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 1                 STATE OF MISSOURI

 2             PUBLIC SERVICE COMMISSION

 3             TRANSCRIPT OF PROCEEDINGS

 4                 Evidentiary Hearing

 5                  March 11, 2015

 6                 Jefferson City, MO

 7                   Volume No. 33

 8

 9

    In the Matter of Union Electric      )

10  Company, d/b/a Ameren Missouri's     ) File No.

    Tariff To Increase Its Revenues      )    EU-2014-0258

11  For Missouri Operations Company      )

    For Electric Service                 )

12

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14

15          Morris L. Woodruff, Presiding

                    REGULATORY LAW JUDGE

16

             ROBERT S. KENNEY, Chairman

17           WILLIAM P. KENNEY

             DANIEL Y. HALL

18           SCOTT T. RUPP

                    COMMISSIONERS

19

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21

22

23  Reported by:

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

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

 3                  JUDGE WOODRUFF:  Let's come to order.

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

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

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

 7   about to commence with redirect.

 8                  Mr. Smith you can come forward.

 9                  MR. MALLIN:  Thank you, Your Honor.

10   The vast majority of the redirect will be under

11   highly classified or HC.  When I reach a point

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

13   attorneys present.

14                  JUDGE WOODRUFF:  So you want to begin

15   in HC?

16                  MR. MALLIN:  All right.  We will

17   begin In camera.

18                  JUDGE WOODRUFF:  Before we get

19   started we've got some fans here if anyone wants

20   them out there.

21                  Are we okay back here?

22                  CHAIRMAN KENNEY:  I'm okay so far.

23                  JUDGE WOODRUFF:  If anybody wants to

24   plug in a fan feel free.

25                  MR. MALLIN:  I'm going to have marked
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 1   the liquidity chart, I believe we're on 532 if I'm

 2   correct and if I'm wrong I apologize, Your Honor.

 3   JUDGE WOODRUFF: That is correct,

 4   532.

 5   MR. MALLIN: Thank you, Your Honor.

 6   This is 532.

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

 8   which is contained in Volume 34, pages 2464-2476 of

 9   the transcript.)

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 1   JUDGE WOODRUFF: And we are back in

 2   regular session.

 3   Q.   (BY MR. MALLIN) And again Mr. Smith

 4   we're now on page 18 of Exhibit 533, is that true?

 5   A.   Yes, it is.

 6   Q.   What information is being conveyed

 7   here with respect to the rod mill at the New Madrid

 8   facility as part of Noranda's disclosures with the

 9   SEC?

10   A.   First it indicates that we have

11   temporarily delayed the rod mill and this is in

12   response to our ongoing negotiations with Ameren,

13   and we note that there can be no certainty as to

14   when we will be able to complete the construction

15   of the rod mill.

16   Q.   Is there any discussion with regard

17   to whether, and what may happen if Noranda is

18   unable to complete the rod mill?

19   A.   Yes, there are.

20   Q.   What is disclosed there?

21   A.   Well, again I could read that as

22   well. There are a number of items that are listed.

23   Q.   Can you give us a list?

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

25   repeat the question please?

1   Q.   Sure, and I apologize, I understand

2   you had surgery on your eyes, perhaps that was

3   inappropriate for me to have -- let me do this this

4   way: In paragraph 2 of this particular paragraph,

5   Mr. Smith, does Noranda identify for the public and

6   Securities and Exchange Commission what may happen

7   if it does not complete the rod mill?

8   A.   Yes, it does.

9   Q.   In terms of what penalties may exist

10   and things of that nature, true?

11   A.   Yes.

12   MR. MALLIN: Your Honor we would move

13   for the admission of Exhibit 533.

14   JUDGE WOODRUFF: 533 has been

15   offered. Any objection to its receipt?

16   MS. TATRO: Your Honor I note it's

17   not a complete copy of the 10K, just excerpts and

18   to the extent that MIEC would provide the entire

19   portion for the record, I appreciate not killing

20   trees unnecessarily, but --

21   MR. MALLIN: I would be more than

22   happy to do that, I know it was used yesterday and

23   I believe, I don't know if it was in its entirety

24   but I can substitute that.

25   And Your Honor I believe we need now

 1 to remove the chart as well from the television

 2 screen.

 3   JUDGE WOODRUFF: It's not being web

 4 cast.

 5   MR. MALLIN: Okay.

 6   JUDGE WOODRUFF: The camera was not

 7 pointed at it but I appreciate that.

 8   MR. MALLIN: Just trying to be very

 9 careful. Thank you.

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

11 bit about this wholesale proposal --

12   JUDGE WOODRUFF: I'm sorry, I don't

13 think I made a ruling. 533 will be admitted with

14 the substitution.

15   MR. MALLIN: Thank you, Your Honor, I

16 apologize.

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

18 bit Mr. Smith about the wholesale proposal. Do you

19 believe Noranda did everything it could to try to

20 get to a wholesale proposal agreement with Ameren?

21   A.   Yes, I do.

22   Q.   There seems to have been some

23 suggestion that somehow you may have reached a

24 fiduciary duty by not agreeing to one, do you

25 believe that to be the case?

 1   MS. TATRO: I'm just going to object

 2   that is absolutely a mischaracterization of what I

 3   stated. I did not state that anyone at Noranda

 4   violated a fiduciary duty.

 5   JUDGE WOODRUFF: Okay. That's what I

 6   recollect as well.

 7   You can go ahead and answer that

 8   question about fiduciary duty --

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

10   **Q.   (BY MR. MALLIN) Do you believe in**

11   **any way, sir, you breached any sort of fiduciary**

12   **duty as the CEO off Noranda in not reaching that**

13   **agreement with Ameren?**

14   A.   Absolutely not.

15   **Q.   Why not?**

16   A.   First and foremost we entered into

17   good faith negotiations with Ameren. We, for a

18   number of reasons. First and foremost they're our

19   largest supplier and we felt, we've always in every

20   one of the rate cases we've always tried to get to

21   a global settlement and we became very passionately

22   committed to trying to get to a global settlement

23   in this case in part to address some of the

24   questions and directions from the Public Service

25   Commission itself. So we undertook these

 1   negotiations in the best of faith and I can tell

 2   you that I believe that Ameren did as well. Their

 3   focus and their commitment of time, Michael Moehn

 4   was very professional, we routinely met at the drop

 5   of a hat, we had at least eight meetings face to

 6   face, the first started with our teams and then

 7   typically as we got later in the negotiations he

 8   and I, well in all the negotiations he and I would

 9   always have one-on-one time together and in many of

10   our later meetings it was just he and I meeting

11   together. We went through and looked at both

12   retail and wholesale structures, a wholesale

13   structure was proposed by Ameren to provide a rate.

14   We spent a lot of time on this and we ultimately

15   got to a point where we, there was risk created by

16   this structure that was, our principle had always

17   been if we could get the available value at the

18   same risk we were really quite indifferent to the

19   structure as long as our behaviors and the

20   behaviors that we wanted to exhibit could still, we

21   would still be participating in the process, things

22   like that, and we just got to a point where we had

23   an impasse because we weren't willing to take the

24   incremental risk associated with the wholesale

25   structure and nor was Ameren.

1   Q.   Mr. Smith, was it your opinion that

2   any party walked away from those negotiating

3   tables?

4   A.   No, not at all. In fact there was,

5   you know, I certainly left that last meeting very,

6   very disappointed and I obviously can't speak for

7   Mr. Moehn but there was no, nobody stormed away

8   from a negotiating table.

9   Q.   You mentioned the impasse. Was there

10   a particular issue?

11   A.   Yes. It was, and again it was just

12   the structure that was proposed by Ameren was a

13   wholesale structure. We worked in that vain and

14   when we got to the end we just realized that

15   although this type of risk was kind of inherent in

16   the structure it was, with the size of our purchase

17   neither party was willing to accept that risk.

18   Q.   Let's talk a little bit about the rod

19   mill.

20   A.   Sure.

21   Q.   Since June of 2014 has Noranda been

22   able to finance all or any part of that

23   construction?

24   A.   No, we have not.

25   Q.   Is it still the case that Noranda has

 1   **a customer willing to take all if not substantially**

 2   **all of the product that would be made by that rod**

 3   **mill?**

 4   A.   Yes, we do, and we're very blessed to

 5   have a customer big enough to, you know, a single

 6   customer to form the sufficient foundation for us

 7   to commit to build it.

 8   Q.   **And in terms of dollars and cents how**

 9   **much financing has Noranda sought with regard to**

10   **that rod mill?**

11   A.   We were originally, well right now

12   we're seeking 15 million which is roughly a third

13   of the total cost of the rod mill.

14   Q.   **And Noranda's been unable to get**

15   **that**.

16   A.   That's correct. And we've started on

17   a much higher level and Mr. Boyles can give you the

18   specifics on that. We started out at a much higher

19   level trying to finance more of the rod mill but we

20   were, given our financial circumstance and the

21   concern about power we were unable to get financing

22   for a larger amount. We reduced the amount to $15

23   million and to date we have been unable to get that

24   incremental financing.

25   Q.   **Do you believe that that has any**

1   **impact with regard to the refinancing that Noranda**

2   **must do in 2017 and 2019?**

3   A.   It's obviously a deep concern for me

4   because to have a circumstance where we have

5   literally an asset backed $15 million loan that we,

6   that we can't get done I just have to ask the

7   question how are we going to get, you know, $265

8   million asset back, you know, credit facility done

9   and then how are we going to refinance $668 million

10   worth of long term debt.

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

12   A.   Well, Mr. Boyles is probably a better

13   person to ask on that but I would tell you that I'm

14   deeply concerned because I don't see a path.

15   **Q.   Let's talk a little bit about the**

16   **layoffs that one of the commissioners asked you**

17   **about. Did in fact Noranda send out layoff notices**

18   **after the last decision?**

19   A.   We did.

20   **Q.   Did subsequently Noranda return some**

21   **of those employees to work?**

22   A.   We did.

23   **Q.   Can you give me a little bit of**

24   **history on how that came about?**

25   A.   Certainly. By the time we finished

 1   with our, the first phases of our layoffs we had

 2   reduced in total approximately 58, well not

 3   approximately, we had reduced 58 people. When we

 4   encountered our difficulties associated with the,

 5   when we encountered our difficulties associated

 6   with the pot lines and we had this surge of pot

 7   lines that went out because we rebuilt so many at

 8   one time because of the ice storm and then we had

 9   some early pot failures the reality was we just

10   didn't have the manpower to get those lines back up

11   and running and if you run below a certain level of

12   pots you can actually have a pot line or more just

13   spontaneously go down so we had to rebuild these

14   pots. In order to rebuild the pots we were going

15   to have to bring specialized contractors to do so,

16   in order to do that we were going to have to get

17   the cooperation of the union because that's a

18   contracted for, that's a contracted for, it's a

19   contracting out and that requires approval from the

20   union. So what we agreed with the union in order

21   to be able to accommodate bringing in those

22   contractors was that we would delay, we would bring

23   additional Noranda employees into the system and

24   then we would delay the layoffs that, any

25   consideration of the layoffs that we had announced

 1 in our previous rate case testimony until the end

 2 of May.

 3   Q.   **May of 2015?**

 4   A.   That's correct.

 5   Q.   **And over that period of time, so May**

 6 **of 2015, why was that date chosen?**

 7   A.   Well, first we expected to have a

 8 determination of the rate case by then because we

 9 communicated that look, if we had the rate we would

10 obviously honor the head count commitments and we

11 would be running the plant and taking the first

12 steps on our journey on sustainability. If we

13 didn't have the rate then all bets were off and I

14 had personal conversations with the union about

15 that, there was obviously, you know, that was a

16 direct communication by me to the union.

17   Q.   **And just so that I understand, why**

18 **would Noranda be repairing or replacing a pot if it**

19 **was thinking about whether or not to curtail the**

20 **plant?**

21   A.   Well, as I mentioned earlier the cost

22 of restarting these things can be, especially in

23 our circumstance, prohibitive. We have now made

24 the decision to shut down the plant yet we are

25 still very hopeful that we can work together to get

1 rate relief and to make the facility viable and so

2 we didn't want these things to shut themselves

3 down.

4   Q.   **Any safety issue associated with the**

5 **shutdown?**

6   A.   That's another huge issue for us,

7 when you put people into an environment where a

8 facility that large when each one of these pot

9 lines is over 2,000 feet long and if they go out of

10 control and start shutting themselves down then,

11 you know, obviously we have a concern. We know how

12 to run plants safely and frankly we know how to

13 deal with them when we have severe challenges but

14 you just don't want to expose your work force to

15 that kind of challenge.

16   MR. MALLIN: Your Honor this next

17 section will need to be In camera.

18   JUDGE WOODRUFF: Before we go In

19 camera how much more do you have?

20   MR. MALLIN: 15 minutes probably.

21   JUDGE WOODRUFF: The reason I ask is

22 because the people are here to fix the air

23 conditioning.

24   MR. MALLIN: Let's recess and let

25 them do that.

 1   JUDGE WOODRUFF: We'll take a short

 2   break before going In camera and we'll come back at

 3   9:20.

 4   MR. MALLIN: Thank you, Your Honor.

 5   (RECESS TAKEN BY PARTIES)

 6   JUDGE WOODRUFF: All right, we're

 7   back from our break and ready to get started and

 8   hopefully the air-conditioning is going to be

 9   working a little bit. I see some thumbs up out

10   there so hopefully it will be a little bit cooler

11   at this point.

12   MR. MALLIN: Thank you, Your Honor.

13   Are we in HC at this point?

14   JUDGE WOODRUFF: We will go into HC

15   at this point.

16

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

18   which is contained in Volume 34, pages 2488-2489 of

19   the transcript.)

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1   Q.   (BY MR. MALLIN) Yesterday you were

2   asked some questions about Apollo. Just so that

3   I'm perfectly clear what is the actual number of

4   directors on Noranda's board?

5   A.   There are 12 including myself.

6   Q.   12 in total.

7   A.   Yes.

8   Q.   And of the 12 how many are

9   independent as reported to the SEC and others?

10   A.   There are four Apollo directors then

11   myself and then seven independents.

12   Q.   There were dividends paid in the past

13   to all shareholders, special dividends, is that not

14   right, sir?

15   A.   Yes, that's correct.

16   Q.   One of whom would have been Apollo.

17   A.   That's correct.

18   Q.   Do you believe that any of those

19   special dividends paid in the past affects

20   Noranda's ability today to be able to refinance its

21   debt in 2017 and 2019?

22   MS. TATRO: I'm going to object that

23   this is beyond the scope of any cross that, recross

24   that I asked or commissioner questions. It may be

25   responsive to an opening statement but that's not

1   what redirect is for.

2   JUDGE WOODRUFF: I'm going to

3   overrule the objection, I think it's fair.

4   A.   I think the issues associated with

5   Apollo in general and in whole are really old news.

6   The last dividend, special dividend that we did was

7   in 2012 and I would like, and that was actually a

8   question that was asked by Commissioner Kenney, I

9   would like to make one correction to the answer

10   that I gave.

11   Our first regular quarterly dividend

12   didn't start in 2013, it was actually the first

13   quarter of 2011 so it was actually a little bit

14   earlier than what I stated. Really what we're

15   talking about now when it comes to affordable

16   power, and this is really all about affordable

17   power and how we go forward is, you know, the

18   future of New Madrid so frankly I think the

19   discussion of Apollo is a bit of a red herring and

20   I think that the reason that, why we're here, is to

21   address the issue of us having an affordable and

22   sustainable power aid.

23   Q.   **Just one last question Mr. Smith so**

24   **that I'm clear. Are you employed in any capacity**

25   **today by Apollo?**

 1   A.   I am not and never have been. I've

 2   never received a paycheck from Apollo. I've always

 3   been employed by the company that I run.

 4   MR. MALLIN: Thank you, Your Honor.

 5   JUDGE WOODRUFF: And Mr. Smith you

 6   can step down.

 7   A.   Thank you. Thank you very much for

 8   your time.

 9   JUDGE WOODRUFF: And the next Noranda

10   witness then would be Mr. Boyles.

11   (Whereupon, the witness was sworn)

12   MR. MALLIN: Has the witness been

13   sworn?

14   JUDGE WOODRUFF: Yes.

15   MR. MALLIN: Okay. Thank you, Your

16   Honor.

17   DIRECT EXAMINATION

18   QUESTIONS MR. MALLIN:

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

20   A.   Dale Wayne Boyles.

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

22   A.   Noranda Aluminum.

23   **Q.   In what capacity?**

24   A.   As chief financial officer.

25   **Q.   And did you cause to have prepared**

1   and filed with the Public Service Commission

2   certain direct and surrebuttal testimony for this

3   case?

4   A.   Yes, I did.

5   Q.   And are those before you as Exhibit

6   600 with regard to your direct testimony and 601

7   with regard to your surrebuttal testimony?

8   A.   Yes.

9   Q.   And if I were to ask you the

10   questions that are posed in both of those

11   testimonies would your answers to those questions

12   be the same today?

13   A.   Yes.

14   Q.   Is there any changes that you wish to

15   make with regard to those testimonies other than

16   the start date that you had for Noranda?

17   A.   No other changes other than the start

18   date.

19   Q.   And in order to be complete for the

20   record what was your start date at Noranda?

21   A.   It was November of 2013, not October

22   of 2013.

23   Q.   And other than that change are all of

24   those answers still true and correct today?

25   A.   Yes, they are.

 1   MR. MALLIN: Your Honor I'd move for

 2   the admission of Exhibits 600 and 601.

 3   JUDGE WOODRUFF: 600 and 601 both HC

 4   and NP have been offered, any objection to their

 5   receipt?

 6   Hearing none they would be received.

 7   MR. MALLIN: I tender the witness

 8   Your Honor.

 9   JUDGE WOODRUFF: We'll begin with

10   Public Counsel.

11   MR. ALLISON: No questions.

12   JUDGE WOODRUFF: MECG?

13   MR. WOODSMALL: No questions.

14   JUDGE WOODRUFF: Then for United For

15   Missouri?

16   MR. LINTON: No questions.

17   JUDGE WOODRUFF: For Staff?

18   MR. THOMPSON: No questions. Thank

19   you, Judge.

20   JUDGE WOODRUFF: Ameren.

21   MR. NELSON: If it please the Court

22   I'm going to work from the podium because I'm going

23   to be back and forth from the Elmo quite a bit.

24   JUDGE WOODRUFF: That is helpful.

25

 1   CROSS EXAMINATION

 2   QUESTIONS BY MR. NELSON:

 3   Q.   **Good morning Mr. Boyles.**

 4   A.   Good morning.

 5   Q.   **Nice to see you again, sir.**

 6   A.   Nice to see you.

 7   Q.   **I want to follow up little bit on**

 8   **your experience and your job history. As you've**

 9   **just mentioned you've been the CFO at Noranda since**

10   **November of 2013, correct?**

11   A.   That's correct.

12   Q.   **So a little over what, 16 months?**

13   A.   Approximately.

14   Q.   **There about. Before that, your job**

15   **before that you worked for an apparel company,**

16   **correct?**

17   A.   Correct.

18   Q.   **Hanes.**

19   A.   Hanes Brands.

20   Q.   **Would it be fair to say when you were**

21   **working with Hanes Brands you didn't have any**

22   **experience in the metal industry?**

23   A.   That would be fair.

24   Q.   **They do a lot of things but aluminum**

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

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 1          A.     No, it's not.

 2          Q.     Before that you worked at KPMG,

 3   correct?

 4          A.     That's correct.

 5          Q.     They're an accounting firm.

 6          A.     That's correct.

 7          Q.     And likewise you didn't really do

 8   anything with metals when you were with KPMG.

 9          A.     I don't remember, I may have had some

10   clients that were metal producers or extruders but

11   I don't remember.

12          Q.     Nothing that sticks out in your mind.

13          A.     No.

14          Q.     Prior to that you worked at a company

15   called National Gypsum.

16          A.     Yes, approximately one year.

17          Q.     And National Gypsum, they produced

18   and mined gypsum and turned it into things like

19   wallboard.

20          A.     That's correct.

21          Q.     Not anything in the aluminum

22   industry.

23          A.     That's correct.

24          Q.     You didn't do any forecasting work at

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

2   A.   No.

3   Q.   Before that you worked at a company

4   called Collins and Aikman, correct?

5   A.   That's correct.

6   Q.   They did automotive trim products?

7   A.   That was one of their segments.

8   Q.   They didn't work in the aluminum

9   industry.

10   A.   No. It was interior trim and

11 exterior trim type products.

12   Q.   And you didn't do any work in terms

13 of metal, aluminum price forecasting, aluminum

14 price scenarios and things like that when you were

15 at Collins and Aikman, fair?

16   A.   That's fair.

17   Q.   And before that you worked at a

18 different accounting firm, Arthur Young, correct?

19   A.   Yes, they became Ernst and Young.

20   Q.   That was one of the big six and know

21 what are we down to, three or four I guess?

22   A.   Four.

23   Q.   Likewise no work on metals issues

24 that you can recall, correct?

25   A.   Not that I can recall.

 1   Q.   So really the aluminum industry is

 2   brand new to you as of 2013, fair?

 3   A.   It's fairly new, yes.

 4   Q.   Now, there's been some discussion in

 5   this case about a company called Apollo. You're

 6   familiar with Apollo.

 7   A.   Yes.

 8   Q.   And Apollo owned a pretty good chunk

 9   of Noranda's stock, fair?

10   A.   Yes, approximately 33, 34 percent.

11   Q.   And as part of your work as CFO you

12   have to sign off on SEC documents from time to

13   time, correct?

14   A.   That's correct.

15   MR. NELSON: Your Honor, may I

16   approach the witness?

17   JUDGE WOODRUFF: You may.

18   Q.   (BY MR. NELSON) I'm going to hand

19   you a 10K from December 31, 2014, part of it's been

20   marked as 533 and I believe ultimately the entire

21   thing will be substituted in as 533. So looking at

22   that you see on the front cover, do you recognize

23   that as Noranda Aluminum Holding Corporation's 10K

24   filing with the United States Securities and

25   Exchange Commission for the year ending December

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 1    31, 2014?

 2         A.    That's correct.

 3         Q.    And if you turn to the very back of

 4    that document, the very last, very, very last page

 5    there's a Chief Financial Officer Certification,

 6    correct?

 7         A.    Yes.

 8         Q.    And that's your signature.

 9         A.    That's correct.

10         Q.    And you signed that saying that

11    everything in here is true to the best of your

12    knowledge and belief, correct?

13         A.    That's correct, to the best of my

14    knowledge.

15         Q.    If you turn, sir, to page 22 of the

16    document, right at the top of the page.

17         A.    Okay.  I'm sorry.

18         Q.    We're here all day so don't worry

19    about it.

20               Right at the top of that page 22

21    there's a statement about Apollo, correct?

22         A.    That's correct.

23         Q.    If you read along with me, Apollo has

24    the ability to substantially influence our company

25    and the outcome of matters voted upon by our
```

 1   shareholders and to prevent actions which a

 2   shareholder may otherwise do favorably.

 3   Did I read that correctly?

 4   A.   Yes.

 5   Q.   That's a statement to the Securities

 6   and Exchange Commission about Apollo's continuing

 7   influence over Noranda, fair?

 8   A.   It is a risk factor that we list in

 9   our 10K.

10   Q.   And the next paragraph down you talk

11   about Apollo owning a little over 33 percent of the

12   common stock, do you see that?

13   A.   Yes.

14   Q.   And that paragraph ends with the

15   sentence thus, Apollo has the ability to

16   significantly influence our decisions.

17   Did I read that correctly?

18   A.   Yes.

19   Q.   Likewise a true statement?

20   A.   They do through being members of the

21   board of directors, yes.

22   Q.   And the fact that they're a 33

23   percent shareholder of the company, correct?

24   A.   Well, we have to have an independent

25   board per the Stock Exchange rules so they could

```
 1   never be the majority of the board.  So they can

 2   influence decisions as members of the board of

 3   directors.

 4        Q.     But you're not suggesting to us based

 5   on your corporate history that if one company that

 6   owns a third of a company you work for doesn't have

 7   any influence, you're not telling us that, are you?

 8        A.     No, we list it as a risk factor.

 9   They have influence as members of the board of

10   directors.

11        Q.     Let's talk about CRU.  You've heard

12   of them.

13        A.     Yes.

14        Q.     You'd agree with me they're an

15   intelligence firm that provides aluminum market

16   data and forecasts?

17        A.     Yes.

18        Q.     You consider them to be an expert in

19   the aluminum market, correct?

20        A.     Yes.

21        Q.     And in fact you use their data in

22   your operations.

23        A.     Yes, we do.

24        Q.     You communicate CRU data to others.

25        A.     We do occasionally, yes.
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```
 1        Q.      For example you communicate it to

 2   your investors.

 3        A.      Yes.

 4        Q.      Communicate it to analysts, Wall

 5   Street types.

 6        A.      That's correct.

 7        Q.      And you're familiar with Mr. Colin

 8   Pratt.

 9        A.      Yes, I am.

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

11        A.      Yes, he does.

12        Q.      And you in fact have read his direct

13   testimony.

14        A.      Yes, I have.

15        Q.      Didn't disagree with anything he said

16   in there, did you?

17        A.      No.

18        Q.      You've read his surrebuttal

19   testimony.

20        A.      Yes, I have.

21        Q.      You didn't disagree with anything you

22   read in there either.

23        A.      No.

24        Q.      You didn't question anything you read

25   in there.
```

 1   A.   I didn't question anything, I've

 2   certainly looked at his observations and took them

 3   into context of all scenarios that we prepared.

 4   **Q.   In fact, you relied on some of Mr.**

 5   **Pratt's testimony to do some of the work you did in**

 6   **this case, correct?**

 7   A.   That is correct. We work very

 8   closely with CRU.

 9   **Q.   And you're aware that CRU puts out**

10   **quarterly and annual forecasts of aluminum prices,**

11   **correct?**

12   A.   Yes.

13   **Q.   And those are forecasts that you rely**

14   **upon in your daily work?**

15   A.   Occasionally in preparing forecasts,

16   yes.

17   **Q.   And you did some scenarios, now you**

18   **also did some scenarios in this case of**

19   **hypothetical future aluminum prices, correct?**

20   A.   That's right. As part of our risk

21   contingency plan.

22   **Q.   Let's talk about the scenarios you**

23   **put together.**

24   **I'm sorry, did you say you did that**

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

1   A.   Yes. We did some, you know, these

2 scenarios as a way to demonstrate the likely

3 outcomes but we didn't have a way to analyze the

4 volatility of aluminum prices prior to my arriving

5 at the company, so we prepared a more robust

6 analysis now.

7   **Q.   You did those scenarios for this**

8 **case, didn't you?**

9   A.   Yes, but the company lacked that

10 capability to begin with and it was something I

11 believe that we needed as a company.

12   **Q.   Now, you started your analysis, those**

13 **scenarios you put together, first thing you did was**

14 **said let's figure out a length of an aluminum price**

15 **cycle, correct?**

16   A.   I believe that was one of the first

17 assumptions we looked at, yes.

18   **Q.   Now, you didn't run a statistical**

19 **analysis to determine the length of an aluminum**

20 **price cycle, correct?**

21   A.   No, I did not run a statistical

22 analysis but what I did do is look at the projected

23 average price that CRU was projecting over the next

24 10 years so we took that based on, along with other

25 information based on information I gathered from

 1   internal resources that have been in the industry

 2   for many years to develop a 10 year cycle.

 3   Q.   **Maybe I wasn't real clear.**

 4   A.   I just wanted to make sure, we didn't

 5   pull it out of the air.

 6   Q.   **You didn't run a statistical analysis**

 7   **to determine the length of an aluminum price cycle,**

 8   **assuming that that could even be done, fair?**

 9   A.   No, we did not run a statistical

10   analysis.

11   Q.   **Now that would be one way you could**

12   **determine whether or not there was an aluminum**

13   **price cycle of a defined length, correct?**

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

15   Q.   **It would be a way that a scholar, an**

16   **economist or somebody who's trained in statistics**

17   **would do that, fair?**

18   A.   That's fair but we don't have the

19   ability to be able to afford a full-time economist

20   on staff so we have to make use of the best

21   resources and information available that we can.

22   Q.   **How much have you paid CRU in this**

23   **case?**

24   A.   I have no idea.

25   Q.   **Another way to establish a cycle is**

 1   simply to assume one, correct?

 2   A.   Yes. Another way is just to assume

 3   one.

 4   Q.   And that's what you chose to do, you

 5   chose to assume the length of a price cycle?

 6   A.   Based on the best information I had

 7   available to make that decision. I didn't pull it

 8   out of the air.

 9   Q.   And let's talk for a minute about the

10   cycle length. The length of the cycle is important

11   to the rest of your analysis, isn't it?

12   A.   It is, but, you know we did start

13   with a 10 year cycle but as we, you know, submitted

14   our request we only show seven years so essentially

15   it's a 10 year cycle and we showed a seven year

16   cycle as well.

17   Q.   I'm not a statistician but I think I

18   understand this, see if you and I can agree on

19   this. If you have a cycle of 10 years you're going

20   to have some years that are going to be below sort

21   of the average line and some years that are going

22   to be above, correct?

23   A.   That's correct.

24   Q.   That's why you call it a cycle.

25   A.   Right.

```
 1            Q.      If you have a five year cycle you're

 2    going to have some years below your average line

 3    and some years above your average line, correct?

 4            A.      That's correct.

 5            Q.      But if you have a five year cycle the

 6    down years and the up years all have to occur

 7    within that five year time period, right?

 8            A.      Well, in any time period they all

 9    have to occur.

10            Q.      Right.

11            A.      So it doesn't matter if it's five,

12    10, 15, 50, right?

13            Q.      I was just using five as an example.

14    If we use six instead, the down years and the up

15    years would all have to occur within that six year

16    period, right?

17            A.      That's correct.

18            Q.      In the scenarios that you ultimately

19    chose, your scenarios A1, A2 and A3, you have down

20    years all the way year one to year seven, right?

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

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

23            A.      Below the average of what?

24            Q.      Below your average of your cycle for

25    the entire 10 years.
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 1          A.      In my scenarios, in my exhibits what

 2   I did was start with the mean and then we based,

 3   you know, calculated the volatility based on

 4   historical volatility ranges so then we calculated

 5   the prices from there, we didn't just put in

 6   prices.

 7          Q.      Let me see if I can help you.

 8          A.      Maybe I didn't understand your

 9   question.

10          Q.      Were you here yesterday when we

11   talked to Dr. Humphreys?

12          A.      Yes, I was.

13          Q.      And you understand then that that

14   blue line, that's your prices in terms of the A2

15   average that you calculated, the A2 scenario?

16          A.      I don't know for sure.  I don't know

17   the source of this data.

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

19          A.      Yes, this is I believe one scenario

20   that was picked so I don't know if it, it's, you

21   know, representative.

22          Q.      Okay.  Well, we can answer that in a

23   minute.  Let's stick with A2 here for a minute.

24          A.      Okay.

25          Q.      In the A2 scenario you have what,
```

 1   years one through six or one through seven where

 2   the price is pretty low?

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

 4   Q.   Well, just look at that red line,

 5   that's the CRU average price of $1.06. Does your

 6   blue line look lower than the red line?

 7   A.   Yes, the average was $1.06 that we

 8   started with, they computed the volatility, that's

 9   correct.

10   Q.   And as we talk about with any cycle

11   the way you call it a cycle is you've got a whole

12   bunch of really high prices in the last two or

13   three years, right?

14   A.   Yes. You have peaks and you have

15   troughs.

16   Q.   Peaks and troughs.

17   A.   That's correct.

18   Q.   Exactly. If we were to draw that as

19   a five year cycle we'd have to have those high

20   prices in the first five years, correct?

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

22   Q.   That's again our definition of cycle?

23   A.   But you have to establish conditions

24   of where you are today to be able to assume the

25   right scenario.

```
 1          Q.      We'll get to that in a minute.  But

 2    the point is, would you believe me or do I need to

 3    show you, if I put up your A1 graph and your A3

 4    graph we're going to see those blue lines are going

 5    to be below the average in the first five, six

 6    years.  Can we agree on that or do I need to show

 7    you?

 8          A.      Well, I don't know, I didn't graph

 9    them out, I just, you know, they're in my

10    testimony.

11          Q.      Okay.  So you took a 10 year cycle,

12    correct?

13          A.      That's correct.

14          Q.      But in fairness you'd acknowledge

15    that the actual cycle that might apply could be

16    more or less?

17          A.      Could be more or less and I believe

18    Mr. Humphreys yesterday could not define an actual

19    cycle.

20          Q.      In fact the reason he couldn't define

21    an actual cycle given his 37 years of experience

22    and his service on statistical boards and his

23    service as a chief economist is because he said

24    particularly with globalization there is no defined

25    cycle.  You heard that, correct?
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 1          A.      I heard his testimony, yes, but again

 2     the best information I had to determine that 10

 3     year cycle.

 4          Q.      To assume a 10 year cycle, fair?

 5          A.      Well, yes.   There's all kinds of

 6     assumptions in the model.

 7          Q.      Now, you've never used this model

 8     before at Noranda, have you?

 9          A.      No.   As I said we've recently

10     developed this more robust analysis, you know, to

11     use.

12          Q.      And you didn't generate an analysis

13     like this before this case sort of for ordinary

14     course work at Noranda, fair?

15          A.      That's fair.

16          Q.      When you did this cycle analysis you

17     generated 11 different what you call I think

18     volatility curves?

19          A.      Yes.   Scenarios, uh-huh.

20          Q.      Scenarios.   Now, you only took three

21     of those 11 scenarios in your direct testimony and

22     worked them through all the way to a final answer,

23     correct?

24          A.      That's correct.

25          Q.      You disregarded eight of them, you
```

 1 **picked three to study further, correct?**

 2 　　　　A.　　　That's correct. We eliminated

 3 certain of those cycles because of the starting

 4 conditions.

 5 　　　　Q.　　　**And you call those, the ones you**

 6 **picked, you call those A1, A2 and A3.**

 7 　　　　A.　　　I believe those are exhibit numbers,

 8 yes.

 9 　　　　Q.　　　**Okay. And in your surrebuttal you**

10 **told us the reason you picked these three was**

11 **because of some testimony by Mr. Pratt, correct?**

12 　　　　A.　　　Yes, about beginning market

13 conditions. Because when you look at the scenarios

14 as Mr. Humphreys said yesterday it's difficult to

15 predict where you are in a cycle, I agree, but I

16 can't just throw up my arms and say I give up. You

17 know, for me as CFO I've got to evaluate the best

18 information I have at that time and make the best

19 judgments I can so I have to try to pick a place so

20 we work closely with CRU to determine that starting

21 point.

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

23 　　　　A.　　　That's correct.

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

25 **your direct testimony?**

1   A.   During the preparation.

2   Q.   **Well, there was a date you filed your**

3   **direct testimony, right?**

4   A.   That's correct.

5   Q.   **And is it your testimony you worked**

6   **closely with CRU prior to that date?**

7   A.   We did have some discussions about

8   what were the right starting points and things like

9   that, various assumptions.

10   Q.   **You told us in your testimony, and I**

11 **think we heard in opening too, that you worked**

12 **closely with CRU.**

13   A.   Yes, we worked closely with.

14   Q.   **Did you work closely with CRU before**

15 **you filed your direct testimony?**

16   A.   We certainly had conversations, yes.

17   Q.   **You had some conversations.**

18   A.   Yes.

19   Q.   **You talked to them a little bit.**

20   A.   Yes.

21   Q.   **Okay. Now, in the testimony for Mr.**

22 **Pratt that you relied on in terms of picking which**

23 **of these 11 scenarios you wanted to talk about with**

24 **the Commission, that testimony was that the market**

25 **was not expected to be tight over the next several**

 1 **years, correct?**

 2   A.   That's correct. Meaning there did

 3 not seem to be upward pressure on pricing to raise

 4 prices.

 5   **Q.   So you interpreted that testimony as**

 6 **Mr. Pratt saying there would be no significant**

 7 **upward or downward trends for 2016, correct?**

 8   A.   That's correct. And I believe he

 9 also added the year 2017 to that.

10   **Q.   And that was going to be my next**

11 **question, you understood his testimony to be no**

12 **significant upward or downward trends for 2017,**

13 **correct?**

14   A.   In the near term.

15   **Q.   And in fact if we look at your A2**

16 **case you are, you're pretty significantly under**

17 **CRU's forecast for 2016, 2017 and 2018, is that**

18 **fair?**

19   A.   No, I don't think it's significantly

20 different.

21   **Q.   You don't think the difference**

22 **between that green line, that green bar and that**

23 **blue line is significant?**

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

25 about too because prices have changed since we

 1   started with the model and through, you know, the

 2   most recent date of that as talked about yesterday.

 3   Q.   I'm sorry, I didn't ask you about

 4   prices yesterday, I'm talking about the work you

 5   did for your direct testimony, okay?

 6   A.   Okay.

 7   Q.   Let's stick with that for the time

 8   being. Fair?

 9   A.   That's fair.

10   Q.   Now, you believe that Mr. Pratt and

11   CRU actually had already factored in this no tight

12   market to their forecast, correct?

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

14   Q.   You believe that to be the case.

15   A.   Yes. I believe he stated that there

16   is volatility implicit in the near term forecast.

17   Q.   So when we're looking at these green

18   bars which are CRU's forecast numbers, they already

19   have this no tight market condition built in best

20   of your belief, correct?

21   A.   Best of my knowledge. But it doesn't

22   factor in all volatility.

23   Q.   And you'd agree with me that Mr.

24   Pratt didn't testify and he didn't tell you that

25   prices were going down in 2015, 2016 or 2017,

1   correct?

2   A.   That's correct.

3   Q.   An in fact Noranda's internal

4   consensus when you talked to the other people in

5   the C suite offices, the other leaders, their

6   internal consensus was no different from Mr.

7   Pratt's observation, fair?

8   A.   No, we didn't have anything to

9   dispute that information.

10   Q.   Now, follow up a little bit more on

11   your discussions with Mr. Pratt and I want to focus

12   on the discussions you had with Mr. Pratt before

13   you gave your direct testimony. Okay?

14   A.   Okay.

15   Q.   And, but let's set a time line. You

16   gave your direct testimony, correct?

17   A.   Yes.

18   Q.   Let's fix that point in our mind.

19   And then Dr. Humphreys filed a rebuttal after your

20   direct testimony, correct?

21   A.   Yes.

22   Q.   And then after Dr. Humphreys filed a

23   rebuttal Mr. Pratt filed a surrebuttal, correct?

24   A.   That's correct.

25   Q.   And you've read that surrebuttal,

 1   you've already told us that.

 2   A.   Yes.

 3   Q.   And so you saw in that surrebuttal

 4   where Mr. Pratt said you can't predict peaks and

 5   troughs in a cycle. You saw that, correct?

 6   A.   Yes.

 7   Q.   Peaks being things like this little

 8   blue line that goes up and troughs being the one

 9   right here that goes down, those are peaks and

10   troughs, correct?

11   A.   That's correct.

12   Q.   In fact Mr. Pratt said it would the

13   lessor of two evils with a smooth line forecast,

14   correct?

15   A.   I don't remember that statement.

16   Q.   Did you read his deposition too, Mr.

17   Pratt's deposition?

18   A.   No, I did not.

19   Q.   Do you know if he used the word

20   misleading in talking about trying to predict peaks

21   and troughs?

22   A.   No, I did not.

23   Q.   Now in your surrebuttal you said that

24   the three cycles that you selected were not

25   sufficiently representative of potential price

 1   cycles, you read that, right?

 2   A.   I did.

 3   Q.   You read in his surrebuttal when he

 4   talked about you can't predict the timing of cycles

 5   with accuracy, you saw that.

 6   A.   I don't remember those words, it

 7   might be approximately true.

 8   Q.   Well, I don't want to misquote him,

 9   so.

10   A.   I just don't remember all of his

11   testimony right here.

12   Q.   Sure.

13   I'm looking at page 2 of his

14   surrebuttal and if you'd like me to come over and

15   show it to you I can, but page 2 of his

16   surrebuttal, line 12, Mr. Pratt says I believe Dr.

17   Humphreys and I agree that the timing of these

18   cycles can not be predicted with any accuracy.

19   Does that refresh your memory?

20   A.   Right. It's hard to predict what

21   we've tried to do with our scenario planning

22   because I can't just give up, I've got to do

23   something so --

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

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

```
 1        A.    Right.

 2        Q.    Thank you.

 3              And Mr. Pratt said that you couldn't

 4   predict these cycles, I'm sorry, Mr. Pratt also

 5   was, said that these cycles were not potentially,

 6   were not sufficiently receptive of potential price

 7   citations also because each of the scenarios you

 8   chose, each of those three, showed a long sequence

 9   of negative deviations from trend in the first

10   years of the cycle, correct?

11        A.    That's correct.  So that's why we

12   provide additional data.

13        Q.    Okay.  So what we're talking about

14   here is the fact that this blue line is under the

15   green bars going out six, seven years into the

16   future, that's what we're talking about this long

17   negative deviation from trend.

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

19        Q.    Well, again we're talking Mr. Pratt's

20   criticisms of your model.

21        A.    But you were talking those particular

22   lines, that's based on history.

23        Q.    That's what he's referring to though,

24   fair?

25        A.    Right.  Yes.
```

 1   Q.   Mr. Pratt also told us in his

 2 surrebuttal that he thought you should have picked

 3 a broader range of samples to show the Commission,

 4 correct?

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

 6   Q.   So when you were working and having

 7 these conversations with Mr. Pratt provided by your

 8 direct testimony did you just ignore all of these

 9 points?

10   A.   No, we didn't. We give them

11 consideration and that's why we provide the

12 different scenarios in this case but also to

13 understand, to give a visibility to the different

14 scenarios that we looked at.

15   Q.   I'm sorry, again I'm referring to

16 your direct testimony. Let's focus on that time

17 frame.

18   A.   Okay.

19   Q.   Did you just ignore Mr. Pratt's

20 criticisms when you went ahead and filed your

21 direct testimony or had you not even heard it at

22 that point?

23   A.   I'm not sure at what point I heard

24 him, I don't remember that exact date but I did

25 consider those models and we thought that the three

1 we filed were the most representative outcomes of

2 our scenario planning at that time.

3   Q.   **Now, the three scenarios that you**

4 **ran, let's be real clear, those are not price**

5 **forecasts.**

6   A.   No.

7   Q.   **You have not done a forecast of**

8 **aluminum prices in this case, correct?**

9   A.   No, we have not.

10   Q.   **And you're not presenting these to**

11 **the Commission as forecasts, correct?**

12   A.   That's correct.

13   Q.   **What these are are stress tests.**

14   A.   That would be an accurate statement,

15 yes.

16   Q.   **Another word for it would be a**

17 **sensitivity analysis.**

18   A.   Or scenarios, yes.

19   Q.   **Or scenario.**

20   A.   Uh-huh.

21   Q.   **Basically a what if, fair?**

22   A.   That's fair.

23   Q.   **Now, in order to run a stress test**

24 **you have to have a model or a formula or something**

25 **to run it through, correct?**

 1   A.   That's correct.

 2   Q.   **And in your case what you did is you**

 3 **took these different prices that you calculated,**

 4 **your blue lines on these kind of graphs, and you**

 5 **put them into something called Noranda's enterprise**

 6 **model, fair?**

 7   A.   Yes. We did start with what the

 8 actual projected mean, the CRU mean over the next

 9 10 years being the $1.06 and computed the

10 volatility based on history off of that and then

11 put those, and then converted those to nominal

12 values so that you reflect the change and then we

13 put those into the model, that's correct.

14   Q.   **Okay. And everything that you just**

15 **told us up until the last sentence, that was all**

16 **about these blue lines you were calculating,**

17 **correct? It's not about putting it in the**

18 **enterprise model, that's about how you got the**

19 **prices to begin with?**

20   A.   Yes. That's how we determined the

21 volatility, that's correct.

22   Q.   **And that's all the stuff that we just**

23 **went through, all of Mr. Pratt's criticisms, right?**

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

25 volatility because no one can predict the

 1   volatility.

 2   Q.   So let's talk now about the

 3   enterprise model, let's move forward in your

 4   analysis and talk about the enterprise model. Are

 5   you with me?

 6   A.   Okay.

 7   Q.   And in that enterprise model you put

 8   aluminum prices that you'd assumed into it,

 9   correct?

10   A.   That's correct.

11   Q.   And then you had some other factors

12   for things like different kinds of costs that you

13   were assuming, correct?

14   A.   That's correct.

15   Q.   You had capital expenditures that you

16   assumed as part of all of this?

17   A.   That's correct.

18   Q.   And at the end of the day you came

19   out with some liquidity figures that you provided

20   the commission, fair?

21   A.   That's correct.

22   Q.   So you what you do is you put in some

23   inputs or assumptions and you see how that changes

24   the output, that's basically what we're talking

25   about when we're talking about a scenario or

 1   sensitivity analysis.

 2   A.   It is but you have to take all those

 3   assumptions of each other because they're all

 4   highly correlated or related so you can't just

 5   arbitrarily pick as an assumption and plug it into

 6   the model.

 7   Q.   Well you could but the worse the

 8   assumption the worse the output, correct?

 9   A.   Well, the math may work but you just

10   can't change one without giving consideration of

11   how this might impact the other assumptions.

12   Q.   Now, I think you used the term

13   representative scenarios to describe these

14   scenarios in your direct testimony, do you recall

15   that?

16   A.   Yes. Three, yes.

17   Q.   Now, when you were using that term

18   representative scenarios what you meant was

19   receptive of the various scenarios that you ran,

20   correct?

21   A.   Yes, receptive of what the most

22   likely starting points would be.

23   Q.   And most likely, when you use the

24   term most likely that means the most likely of the

25   scenarios you ran, correct?

```
 1          A.      Of the 11, yes.

 2          Q.      So from a universe of 11 when you

 3   said to the Commission when you say hey this

 4   scenario or that scenario was most likely you mean

 5   the most likely of the 11 you chose to run?

 6          A.      Yes, the most likely of those 11

 7   scenarios, that's correct.

 8          Q.      Now, when you used the term likely in

 9   describing your scenarios for the Commission you

10   weren't including any actual calculation of

11   probability, correct?

12          A.      That's correct.

13          Q.      You weren't applying some sort of

14   statistics to this to say oh, I got a plus or minus

15   margin of error, right?

16          A.      That's correct.  We did not apply

17   statistical analysis.

18          Q.      You weren't saying this scenario is

19   more likely to occur than CRU's forecast, nothing

20   like that, correct?

21          A.      Well, we did say that the three

22   scenarios were the most representative of the 11

23   that we ran which included some of the CRU

24   information.

25          Q.      Right.  But you didn't run a
```

1   **probability analysis of any sort to even suggest to**

2   **the Commission that it's somehow more likely that**

3   **one of your negative scenarios is going to occur**

4   **than CRU's best estimate forecast, correct?**

5   A.   We did not run a statistical

6   analysis, that is correct.

7   Q.   **You haven't done any calculation of**

8   **distribution probabilities around CRU's forecast?**

9   A.   No, we did not. We relied on them as

10 an expert.

11   Q.   **And you'd agree with me that the**

12 **three scenarios you chose have the most negative**

13 **cash flow events of any of the 11 scenarios,**

14 **correct?**

15   A.   Those are the outcomes, that's not

16 what we, you know, we did not pick those outcomes,

17 that's a result of the analysis we prepared.

18   Q.   **No, you picked the prices and that's**

19 **the outcomes you got, correct?**

20   A.   We chose the mean as I said from CRU

21 over the next 10 years and then we computed the

22 volatility based on actual historical volatilities

23 so we did not compute or select arbitrarily the

24 prices into the model so it was a computation of

25 historical volatility.

 1   Q.   You didn't run a single scenario

 2   using CRU's forecast, correct?

 3   A.   Their forecast is included, embedded

 4   in the scenarios.

 5   Q.   You don't have a single scenario that

 6   you've run and shown to this Commission either on

 7   direct or on surrebuttal where you plugged in as

 8   the prices the CRU best estimate prices, correct?

 9   A.   Sorry, that's rather broad. My 2015

10   price was the CRU price at the time.

11   Q.   I'll grant you that.

12   A.   And I used the CRU forecast of 10

13   year mean average, okay, so I did use portions of

14   the forecast so I'm not sure which particular part

15   you're referring to.

16   Q.   Sure. Let me be a little more

17   specific.

18   A.   Okay.

19   Q.   For 2017 there's a price that's well

20   above your blue line price, correct?

21   A.   For 2017? Are you talking about the

22   green part or which one are you talking about?

23   Could you ask that again, I'm sorry?

24   Q.   Yeah, sure. The green bar which is

25   CRU's forecast price for 2017, that is above your

1   **blue line, correct?**

2   A.   That's correct.

3   **Q.   Same is true for 2018.**

4   A.   That's correct.

5   **Q.   Same for 2019.**

6   A.   That's correct.

7   **Q.   Same for 2020.**

8   A.   That's correct.

9   **Q.   And you don't have a version of your**

10   **scenarios where you took CRU's price for 2017 and**

11   **plugged it in to see what you get, correct?**

12   A.   No, we did not take CRU's direct

13   forecast for those years and put those into the

14   model because they lacked the volatility analysis.

15   **Q.   Well, they had implicit volatility in**

16   **them, correct?**

17   A.   I believe in the near term, yes. But

18   that doesn't include all volatility as Mr. Pratt

19   points out that it's very difficult to sit here and

20   predict outcomes with absolute certainty.

21   **Q.   And the CRU forecast represents the**

22   **best prediction that you're aware of, correct?**

23   A.   The best information I did have

24   available at the time, yes.

25   **Q.   And even as we sit here today that's**

1 **still the best prediction you're aware of, correct?**

2   A.   Yes.   Based on what I know, yes.

3   **Q.   Okay.   So you never ran a model where**

4 **you used the best prediction you're aware of of**

5 **what future prices are going to be, correct?**

6   A.   That's correct.   That would not be

7 smart in my position, I've got to determine what

8 the viability of this company is, under multiple

9 scenarios, not just the best case.   So I have to

10 look at all cases and look at whether or not there

11 are likely outcomes.   More likely than other

12 eventual outcomes.

13   **Q.   You left it to Ameren's experts to**

14 **actually run your model using the best forecast of**

15 **future prices that any of us have available, didn't**

16 **you?**

17   A.   Well, it's been well discussed about

18 the predictability and the volatility of aluminum

19 prices, it's difficult to take a forecast and then

20 just say that's the way it's going to turn out

21 because of the volatility.

22   **Q.   I'm sorry, maybe you didn't**

23 **understand my question.**

24   A.   Okay.

25   **Q.   The only people who've actually taken**

1   the best forecast of a 2017 price that any of us

2   have and run it through your model is Ameren's

3   experts, correct?

4   A.   I'm not sure I would agree with it's

5   the best case, best forecast.

6   Q.   I thought we just established this.

7   You're not aware of a forecast that's better than

8   CRU's forecast, you just told us that.

9   A.   Maybe I misunderstood your questions.

10   If you're talking about the forecast of actual

11   prices I do believe they are expert in aluminum

12   intelligence and industry conditions and that their

13   near term forecasts appear to be more accurate than

14   their long term forecasts of aluminum prices.

15   Q.   In 2017 we can agree that's near

16   term, correct?

17   A.   I believe that would be in the near

18   term, yes.

19   Q.   Now, if we look at your surrebuttal

20   testimony you did include at the back of your

21   surrebuttal testimony five little graphs, correct?

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

23   Q.   Yes. It's page, Schedule DB1.

24   A.   Yes.

25   Q.   So --

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 1   MR. NELSON: Ken is this highly

 2   confidential?

 3   MR. MALLIN: If you're going to go

 4   into the individual numbers, yes.

 5   JUDGE WOODRUFF: Go into HC?

 6   MR. NELSON: I guess so Your Honor.

 7   MR. NELSON: Thank you, Your Honor.

 8   JUDGE WOODRUFF: And we will go

 9   in-camera.

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

11   which is contained in Volume 34, pages 2531-2536 of

12   the transcript.)

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 1   JUDGE WOODRUFF: We're back in

 2   regular session.

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

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

 5   A.   That's correct.

 6   Q.   And your markets are primarily in the

 7   U.S.

 8   A.   Primarily.

 9   Q.   And U.S macroeconomic factors can

10   also have an impact on your price.

11   A.   That's correct.

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

13   and the factors that apply more globally, they

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

15   A.   No, they don't.

16   Q.   And you're aware that all of these

17   factors get put into the CRU forecast, right?

18   A.   I assume so.

19   Q.   They have a team of researchers

20   that's looking at all of these different inputs and

21   coming up with their best estimate, correct?

22   A.   I believe that would be the case.

23   Q.   And the internal consensus among your

24   senior executives, they're not aware of anything

25   that would say they have a better forecast for 2015

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 1   or 2016 than CRU's forecast.

 2        A.    No, we don't have anything negative

 3   to contradict that.

 4        Q.    Now, in your discussions with your

 5   internal group you didn't even look out as far as

 6   2018, correct?

 7        A.    No.  We were looking at the near

 8   term.

 9        Q.    And if you talk about 2017 you don't

10   recall what that suggestion was.

11        A.    No, I don't.

12        Q.    With respect to aluminum demand,

13   demand, you and I can agree that there's a positive

14   outcome for demand in the markets Noranda serves?

15        A.    Yes, there is.

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

17        A.    I believe so.

18        Q.    It's true over the next year after

19   that as well.

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

21        Q.    Well, do you recall us discussing it

22   at your deposition?

23        A.    I don't remember that particular

24   focus, no, on 2017.

25        Q.    Well, let me ask the question a
```

 1   little differently and see if maybe we can short

 2   circuit this. You'd agree with me absent any

 3   extraordinary events for the next year or two you

 4   believe Noranda's demand outcome is positive.

 5   A.   Yes, we believe we have a good

 6   demand.

 7   Q.   And there's positive changes in the

 8   aluminum market which either directly or indirectly

 9   impact Noranda, correct?

10   A.   Yes.

11   Q.   For example Ford has announced that

12   they're going to all aluminum bodies on their

13   trucks which is going to increase demand for

14   aluminum, correct?

15   A.   That's correct.

16   Q.   Industries are switching from copper

17   wire to aluminum wire, that's driving demand,

18   correct?

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

20   Q.   And you and I can agree that demand

21   conditions in the U.S are more favorable to stable

22   or higher prices than conditions globally are,

23   correct?

24   A.   They are favorable as one of the

25   components that affect prices.

```
 1          Q.     And they're more favorable than

 2    global conditions?

 3          A.     I believe so but I'm not absolutely

 4    sure there.

 5          Q.     As best you can tell as you sit here

 6    today I just made a true statement.

 7          A.     Yes, best I know.

 8          Q.     In fact Noranda, you really have

 9    pretty limited knowledge about global conditions

10    other than what you read from CRU, correct?

11          A.     CRU and what we hear from customers

12    and other intelligence firms.

13          Q.     But mainly CRU.

14          A.     They would be one of the main ones,

15    yes.

16          Q.     So use that term that Mr. Pratt used,

17    tight or tighter, you and I can agree that market

18    conditions in the U.S are tighter than they are

19    globally.

20          A.     That was the forecast, yes.  At that

21    particular time.  But that's different after the

22    Merrill Lynch report that came out the other day,

23    last week.

24          Q.     The Merrill Lynch report about China?

25          A.     But it was talking about that, you
```

 1   know, they were projecting a surplus rather than a

 2   deficit.

 3   Q.   And has that changed CRU's

 4   fundamental forecast?

 5   A.   I don't know yet if that has. I'm

 6   not sure if it's been reflected in their most

 7   recent report but the report that was reviewed

 8   yesterday, yes, they did have a different opinion.

 9   Q.   I'm sorry, I asked about forecasts.

10   A.   Okay.

11   Q.   CRU hasn't done a forecast since

12   January, correct?

13   A.   I believe they did one in February.

14   Q.   Do you have a copy of that forecast?

15   A.   I do not.

16   Q.   Okay. You haven't looked at it.

17   A.   I have not.

18   Q.   Because you're aware we've asked for

19   all CRU forecasts that you've got in your

20   possession, you know that, correct?

21   A.   Yes. I believe that is copyright

22   material that we weren't allowed to provide.

23   Q.   You don't know of any credible source

24   that's saying that there's greater tightness in the

25   U.S. that's expected to change over the next couple

 1 **of years, correct?**

 2   A.   I'm sorry, is that statement from the

 3 CRU forecast?

 4   Q.   **Are you aware of any credible source,**

 5 **you're not aware, let me rephrase the question.**

 6   **You're not aware of any credible**

 7 **source, a source you would consider credible**

 8 **whether it's internally, whether it's CRU, whether**

 9 **it's somebody else who says they expect a greater**

10 **degree of tightness in the U.S market versus the**

11 **world market to change as we look over the next**

12 **several years. You're not aware of any such**

13 **statement by a credible source, correct?**

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

15   MR. NELSON: Your Honor I'm going to

16 mark four exhibits if I could ask the court for the

17 next four exhibit incomes.

18   JUDGE WOODRUFF: We'll start at 69.

19   MR. NELSON: For the record I'm going

20 to mark Exhibit 69 is a document that has been

21 previously marked in deposition as Boyles Exhibit

22 3.

23   JUDGE WOODRUFF: Okay.

24   MR. NELSON: Then Your Honor I'm

25 going to mark as Exhibit 70 a document which has

 1   previously been marked as Boyles Exhibit 4.

 2   Your Honor I'd like to mark as

 3   Exhibit 71 what has previously been identified as

 4   Boyles Exhibit 5 in deposition.

 5   And finally Exhibit 72 previously

 6   marked in deposition as Boyles Exhibit 6.

 7   Q.   **(BY MR. NELSON) You should now have**

 8   **in front of you Boyles Exhibits 69, 70, 71 and 72,**

 9   **sir.**

10   A.   Yes, I do.

11   Q.   **You and I have looked at these**

12   **documents before, correct?**

13   A.   I think we did.

14   Q.   **In your deposition, right?**

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

16   Q.   **Let's see if we can identify them for**

17   **the record.**

18   **Exhibit 69 of course you and I can**

19   **agree, can't we, that's an edited transcript of**

20   **Noranda's fourth quarter conference call with**

21   **analysts and investors?**

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

23   Q.   **You spoke at that event.**

24   A.   Yes.

25   Q.   **And you heard, Mr. Smith was there**

 1   **with you, he spoke at that event, correct?**

 2   A.   Yes. I think they had our comments

 3   mixed up, but.

 4   **Q.   I think Mr. Smith mentioned that.**

 5   **But you talk at these events that somebody**

 6   **transcribes it and then your folks take a look at**

 7   **it, sounds like your investor folks and Mr. Smith**

 8   **take a look at it and if they have any corrections**

 9   **they call about those, correct?**

10   A.   That's correct.

11   MR. NELSON: Your Honor at this point

12   I would move for the admission of Exhibit 69 into

13   evidence.

14   JUDGE WOODRUFF: 69 has been offered,

15   any objection to its receipt?

16   MR. MALLIN: No objection, Your

17   Honor.

18   JUDGE WOODRUFF: Hearing none it will

19   be received.

20   **Q.   (BY MR. NELSON) Now when you do**

21   **these investor conference calls in addition to your**

22   **speaking part you also have some slides that you**

23   **show the investors and the analysts from Wall**

24   **Street, correct?**

25   A.   That's correct.

1   Q.   So let's take a look at Exhibit 70.

2   Exhibit 70 is the slide deck, the slides that you

3   showed investors along with that earnings call that

4   we talked about in Exhibit 69, correct?

5   A.   I believe so, correct.

6   MR. NELSON: Move for the admission

7   of Exhibit 70 into evidence.

8   JUDGE WOODRUFF: 70 has been offered,

9   any objections to its receipt?

10   MR. MALLIN: No objection, Your Honor.

11   JUDGE WOODRUFF: Hearing none it will

12   be received.

13   Q.   (BY MR. NELSON) Now, you had a

14   similar process for the third quarter of 2014,

15   after it was over and you'd gathered the results

16   through a call with Wall Street, somebody

17   transcribed it and you had some slides that went

18   along with your talk, correct?

19   A.   That's correct.

20   Q.   So let's look at Exhibit 71. Is that

21   the slide deck, the group of slides for your third

22   quarter conference call?

23   A.   (Reviewing document). I believe it

24   is.

25   Q.   Okay.

 1   MR. NELSON: Move for the admission

 2 of Exhibit 71.

 3   JUDGE WOODRUFF: 71 has been offered,

 4 any objections to its receipt?

 5   MR. MALLIN: No objections Your

 6 Honor.

 7   JUDGE WOODRUFF: Hearing none it will

 8 be received.

 9   Q.   (BY MR. NELSON) And then finally

10 **Exhibit 72, that's the transcript of what you and**

11 **Mr. Smith said and the questions that the analysts**

12 **from Wall Street asked on that third quarter**

13 **conference call, correct?**

14   A.   Yes, I believe it is.

15   MR. NELSON: Move for the admission

16 of Exhibit 72 into evidence.

17   JUDGE WOODRUFF: 72 has been offered.

18 Any objections to its admittance?

19   MR. MALLIN: No, Your Honor.

20   JUDGE WOODRUFF: Hearing none it will

21 be received.

22   Q.   (BY MR. NELSON) Now, we've talked

23 **about, we've had, sometimes we've had to go highly**

24 **confidential and come back out of confidential,**

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

 1   A.   Yes, I have.

 2   Q.   **All right. We can agree that**

 3 **anything you said in here is not highly**

 4 **confidential, right?**

 5   A.   That would be correct.

 6   MR. MALLIN: Just for clarity, you're

 7 talking about the transcripts.

 8   MR. NELSON: I'm sorry, yes, what's

 9 in the transcripts.

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

11   A.   Yes.

12   Q.   **This is what you were telling the**

13 **public.**

14   A.   That's correct.

15   Q.   **So let's look a little bit at some of**

16 **the things you were telling the public and let's**

17 **start by looking a little bit at demand. Let's**

18 **look at Exhibit 70 and if you could turn with me to**

19 **slide 4 please. And this is an analysis that you**

20 **put together for Wall Street talking about U.S**

21 **aluminum demand and in various kinds of markets,**

22 **correct?**

23   A.   Yes, based on CRU forecasts.

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

25 **numbers in there if you weren't willing to**

 1   **basically support them, correct?**

 2   A.   That's correct.

 3   **Q.   If you thought CRU was dead wrong you**

 4   **wouldn't have put it in this document for**

 5   **investors.**

 6   A.   No, I wouldn't.

 7   **Q.   So you're telling investors the**

 8   **building and construction market four to seven**

 9   **percent growth in demand projected, correct?**

10   MR. MALLIN: I'm sorry Counsel,

11   you're on page 4?

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

13   MR. MALLIN: I apologize.

14   MR. NELSON: I was on slide 4 of

15   Exhibit 70.

16   MR. MALLIN: My only concern is just

17   so that you're clear if you're going to be asking

18   questions about the slides that are not reflected

19   in the transcripts you may in fact be going into HC

20   areas. If you're asking for some further

21   interpretation of what the slides say or don't say

22   we'll just have to be careful I guess is what I'm

23   trying to tell you up front.

24   MR. NELSON: Well, I would welcome

25   counsel any time, I certainly don't mean to step on

 1 your highly confidential so please feel free

 2 anybody to interrupt me. Okay?

 3   MR. MALLIN: I just wanted to alert

 4 you.

 5   Q.   (BY MR. NELSON) Building

 6 construction, you were telling investors U.S demand

 7 rose on the outlook of four to seven percent,

 8 right?

 9   A.   What we did was provide what the CRU

10 forecast was, yes.

11   Q.   Okay. And you don't have any reason

12 to disagree with that.

13   A.   No, I don't.

14   Q.   And that's good positive growth in

15 U.S demand in that market.

16   A.   It is and that has brought sectors,

17 we don't participate in all portions of those

18 sectors.

19   Q.   No. But overall if somebody takes

20 aluminum and uses it to make windows even if you

21 don't make windows that still helps your demand

22 because somebody else is going to have to take your

23 aluminum, correct?

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

25   Q.   And likewise in the electrical market

 1   positive growth four to six percent, that's what

 2   you put forward?

 3   A.   Yes.

 4   Q.   Same thing in consumer durables,

 5   three to seven percent growth, that's pretty

 6   healthy isn't it?

 7   A.   Yes.

 8   Q.   Transportation, eight to 11 percent

 9   growth, that's outstanding, isn't it?

10   A.   Yes.

11   Q.   And then the worst of the bunch is

12   simply flat demand in foil and packaging, fair?

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

14   Q.   In fact you told investors that

15   strong demand provides opportunities to grow with

16   our current customers and to follow the spread of

17   aluminum into new applications, correct?

18   A.   That's correct.

19   Q.   And you certainly didn't suggest to

20   investors that markets, any markets where Noranda's

21   demand would decline, did you?

22   A.   No, we did not.

23   Q.   And if we look at Boyles Exhibit 3,

24   I'm sorry, Trial Exhibit 69. If we go to page 3.

25   Page 3 is some comments by Mr. Smith, your CEO,

 1   correct?

 2   A.   This is faded out. Okay. I think I

 3   have it now. Which particular paragraph?

 4   Q.   I'm trying to find it myself, sir.

 5   If you look down -- here, let me just put it up on

 6   the board.

 7   Do you see the paragraph that begins

 8   with slide 4? It's about a little over halfway

 9   down the page?

10   A.   Yes, I do.

11   Q.   Okay. And Mr. Smith says here slide

12   4 summarizes what we feel is favorable growth

13   outlook for a primary aluminum consumption in the

14   United States. You see that?

15   A.   Yes.

16   Q.   Besides driving our own order book we

17   believe strong demand is the key fundamental driver

18   of sustainability in aluminum prices over the

19   medium and long term.

20   Did I read that correctly?

21   A.   Yes, you did.

22   Q.   And when Mr. Smith was talking about

23   driving our own order book he meant that strong

24   demand was going to help Noranda's orders, correct?

25   A.   Yes.

1   Q.   And when he talks about

2   sustainability in aluminum prices over the median

3   to long term he's talking about prices that are at

4   least stable to positive, correct?

5   A.   I don't know exactly what he meant

6   but I would assume that based on the comment, yes.

7   Q.   Now going back to your scenarios we

8   can agree that your scenarios do not show

9   sustainable all-in prices over the medium and long

10   term, do they?

11   A.   I would disagree, this only talks

12   about the consumption side so you have to factor in

13   the supply side on the all-in on aluminum prices.

14   Q.   You and I got together, what, a week

15   and a half, two weeks ago and took your deposition?

16   A.   Approximately, yes.

17   MR. NELSON: Approach the witness

18   Your Honor.

19   JUDGE WOODRUFF: You may.

20   Q.   (BY MR. NELSON) I'm going to hand

21   you a copy of your deposition. Could you confirm

22   that please?

23   A.   (Reviewing document). Yes, looks

24   like a copy of it.

25   Q.   You were under oath, a court reporter

 1   there, took it all down, correct?

 2   A.   Yes.

 3   Q.   If you look at page 137 of your

 4   deposition. If you want to flip back to the prior

 5   page you see we were talking about Mr. Smith's use

 6   of the word sustainable and then we asked some

 7   questions and answers, okay?

 8   A.   Okay. Let me find it first.

 9   (Reviewing document).

10   Yes, okay. I follow.

11   Q.   So I pointed out Mr. Smith said that

12   there's going to be sustainable prices in the

13   medium to long term and then I asked you the

14   following question: With respect to your '98, '99

15   and 2000 scenarios, and Counsel I'm starting at

16   line 16, do these reflect sustainable all-in prices

17   over the medium and long term?

18   Did I read the question correctly?

19   A.   Is that on 136?

20   Q.   137, sir.

21   A.   Sorry.

22   Q.   I'm setting things up. You and I can

23   agree that --

24   A.   Sorry, I was a little slow.

25   Q.   That's okay.

1   You and I can agree that on pages 136

2   and 137 we're talking about Mr. Smith using the

3   word sustainable for all-in prices when he's

4   talking to investors, correct?

5   A.   Yes.

6   Q.   And then we turn and we look at your

7   '98, '99 and 2000 scenarios, that's some questions

8   on 137, correct?

9   A.   Yes.

10   Q.   And then I asked you do these,

11   meaning your '98, '99 and 2000 scenarios, do these

12   reflect sustainable all-in prices over the medium

13   and long term?

14   Do you see that question?

15   A.   Yes. In those models, yes.

16   Q.   Let me try my question again just to

17   stick to that. Did I ask you the following

18   question: Do those reflect sustainable all-in

19   prices over the medium and long term?

20   A.   Again where is that question?

21   Q.   Start at line 16, page 137.

22   A.   Okay. I'm sorry.

23   Q.   So again do those, meaning the '98,

24   '99 and 2000 scenarios, do they reflect sustainable

25   long-term prices over the medium and long term, did

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 1    I ask you that question?

 2         A.     Yes, you did.

 3         Q.     And the answer you gave was no,

 4    they're not all sustainable, correct?

 5         A.     Yes.  And referring to --

 6         Q.     I'm sorry, sir, I just want to make

 7    sure we're clear.  Did I read your answer

 8    correctly?

 9         A.     You read it correctly but maybe not

10    in the context of my answer.

11         Q.     You and I can agree the global

12    economy is becoming more aluminum intensive?

13         A.     Yes, I believe so.

14         Q.     You have stable demand for your

15    products.

16         A.     Yes, we do.

17         Q.     And your local supply and demand

18    fundamentals are positive?

19         A.     We believe so, yes.

20         Q.     Now let's talk a little bit about

21    your enterprise model and I want to start with

22    looking at a document that was in the opening

23    statement, I believe it's now been labeled as --

24              MR. DOWNEY:  532.

25              MR. NELSON:  The chart?
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Page 2556

 1   MR. DOWNEY: The graph?

 2   MR. NELSON: Yes, the graph.

 3   MR. MALLIN: If you're going to ask

 4   questions about this we're going to have to go into

 5   HC.

 6   MR. NELSON: That's fine, I'm going

 7   to ask one or two.

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

 9

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

11   which is contained in Volume 34, pages 2556-2558 of

12   the transcript.)

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 1   JUDGE WOODRUFF: And we're back in

 2   regular session.

 3   **Q.   (BY MR. NELSON) Now, let's talk**

 4   **about smelter closure. There's been a fair amount**

 5   **of discussion about smelter closure here in this**

 6   **room. You've heard it, correct?**

 7   A.   Yes.

 8   **Q.   In fact you have managed capital**

 9   **spending in the past when you needed to to manage**

10   **your liquidity, correct?**

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

12   use, yes.

13   **Q.   In fact you, for example you slowed**

14   **capital spending for a period of time on the rod**

15   **mill to manage cash.**

16   A.   That's correct.

17   **Q.   Now in your enterprise model to get**

18   **the liquidity assumptions you gave this Commission**

19   **you made an assumption that Noranda for every year**

20   **in your model --**

21   MR. MALLIN: Before you ask the

22   question I think we're going to have to go HC

23   because that number is highly confidential.

24   MR. NELSON: Okay.

25   JUDGE WOODRUFF: Back in HC.

Page 2560

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

 2   which is contained in Volume 34, pages 2560-2584 of

 3   the transcript.)

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 1   Q.   (BY MR. NELSON)   If you can go to

 2   **Exhibit 70.**

 3   MR. NELSON: And I won't read this

 4   into the record Counsel so I'll just point to the

 5   answer then we don't have to go back to highly

 6   confidential.

 7   Right at the top, Exhibit 70, slide

 8   15, the very last slide.

 9   A.   Okay.

10   Q.   **If you read that, just read it to**

11   **yourself, under the key take-a-ways, the sort of**

12   **central bullet point right at the top, again that's**

13   **another repetition of that positive message about**

14   **the company future, fair?**

15   A.   Yes, that we were trying to return

16   the smelter to full production, yes, which will

17   have a positive impact.

18   Q.   **Now, for 2014 you earned a positive**

19   **what, $.14 per share?**

20   A.   Excluding special items, yes, that's

21   correct.

22   Q.   **And that was compared to a $.15 per**

23   **share loss in 2013?**

24   A.   I believe that's correct.

25   Q.   **We've been talking a lot about trend**

 1   **lines, that's a positive trend line isn't it?**

 2   A.   It is. Aluminum prices were up.

 3   **Q.   And you've done that with existing**

 4   **power rates, correct?**

 5   A.   Yes, that's correct.

 6   **Q.   And for that matter when you paid off**

 7   **your line at the end of the third quarter that was**

 8   **with the existing power rates, right?**

 9   A.   That's correct.

10   **Q.   When you paid it off, your credit**

11   **card, your line off at the end of the fourth**

12   **quarter that was with existing power rates,**

13   **correct?**

14   A.   Yes.

15   MR. NELSON: Thank you, Your Honor, I

16   have nothing further.

17   JUDGE WOODRUFF: Okay. Open for

18   questions from the bench.

19   Mr. Chairman?

20   EXAMINATION

21   QUESTIONS BY CHAIRMAN KENNEY:

22   **Q.   Good morning Mr. Boyles.**

23   A.   Good morning.

24   **Q.   How are you?**

25   **So I can talk about the liquidity as**

 1 **long as I don't mention the number, right?**

 2   A.   I believe that's correct.

 3   Q.   **Without going in-camera. Is that**

 4 **right?**

 5   MR. NELSON: I would say that that's

 6 right generally Judge, Commissioner, I'm sorry.

 7   CHAIRMAN KENNEY: That's fine.

 8 Either one is fine.

 9   A.   If we're going to talk about trends

10 or anything like that we may want to go in-camera.

11   Q.   **(BY CHAIRMAN KENNEY) Yeah, I just**

12 **want to ask a question that I think was being**

13 **raised, that -- actually let's do go In camera**

14 **because I want to talk about the specific numbers.**

15   JUDGE WOODRUFF: Okay. Then we'll go

16 back in-camera.

17

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

19 which is contained in Volume 34, pages 2587-2590 of

20 the transcript.)

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1   Q.   (BY MR. CHAIRMAN) So then thereafter

2 comparison of the slides from the opening statement

3 to the transcripts of the fourth quarter earnings

4 calls, do you remember that line of questioning?

5   A.   Yes, sir.

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

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

8 these things.

9   Is it, would you agree or disagree

10 with me that the picture that Noranda presents to

11 its investors on earning calls is that starkly

12 different and rosier than the picture that you all

13 present to us here in the hearing room, in this

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

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

16 case, the picture that you guys present on the

17 earnings calls is different than the picture you

18 present here in the hearing room. Is that a fair

19 characterization?

20   A.   I don't think so.

21   Q.   Tell me why not.

22   A.   We're fully transparent with what can

23 happen and we disclose that in our risk factors and

24 in our earnings call we talk about the improvements

25 quarter over quarter where we do make improvements

 1 where we're making decisions to do everything

 2 possible to keep the smelter open and that's what

 3 we've represented here. What we've presented in my

 4 testimony is the likely outcomes without a power

 5 relief. You know, here's where we will go. We may

 6 not be there today but I can't wait to step out in

 7 front of the train before I come to the Commission

 8 and ask for rate relief.

 9   Q.   I mean in the testimony in here

10 **Noranda makes definitive statements that if this**

11 **Commission doesn't provide the rate relief it's**

12 **requesting these other consequences will definitely**

13 **occur. That's what I was presented here. But then**

14 **when I read the transcripts of the earnings calls**

15 **it's a much more measured tone, and I think that**

16 **you just said it yourself, these are risk factors**

17 **of what may occur, not what definitely will occur.**

18 **How do you explain what is to me a cognitive**

19 **dissidence between what you're telling us and what**

20 **you're telling investors?**

21   A.   Well, I believe what we've prepared

22 is the scenarios of the likely outcomes. We don't

23 typically share those with third parties, we --

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

25 **understand that component.**

1   **So you disclose the risk factors to**

2   **the investors but you don't necessarily provide**

3   **them the conclusions or the consequences of those**

4   **risk factors.**

5   A.   No, I think we have in our previous

6   earnings calls where we did talk about, you know, a

7   sustainable power rate that we need to keep the

8   smelter open and we've talked about it in earnings

9   calls, in our decs, in our 10Qs and 10K so we have

10   discussed those things openly with investors. So

11   if we went back to prior scripts of transcripts of

12   calls there would be lots of discussion around

13   closure of the smelter.

14   Q.   Okay. Thanks for your time.

15   A.   Thank you.

16   JUDGE WOODRUFF: Commissioner Hall?

17   COMMISSIONER HALL: Yes.

18   EXAMINATION

19   QUESTIONS BY COMMISSIONER HALL:

20   Q.   Good morning.

21   A.   Good morning.

22   Q.   **I had a number of questions along the**

23   **same line from the Chairman and I'm going to, I**

24   **think it is without a doubt fact that there is a**

25   **difference between what you are telling investors**

1   **and what you are telling us here today. Now, I'm**

2   **not telling you that it is my belief that there is**

3   **not a way to find some consistency but the**

4   **verbiage, the definitive nature is different**

5   **between the two and what I'm asking for you, from**

6   **you, is to explain to me why there might be that**

7   **discrepancy. Now, you can say there's no**

8   **discrepancy, I'm telling you I don't believe that.**

9   **There is a difference. Now how can you explain**

10 **that difference?**

11   A.   Well, we may not use the exact same

12 words --

13   Q.   **Why?**

14   A.   Well, I may not remember the exact

15 same words the next time I talk about it but in the

16 same context we do talk about and we have talked

17 about closure of the smelter being a possibility.

18 I think we used the words a substantial likelihood

19 if we didn't get power rate relief so we have

20 discussed those things in our earnings calls, those

21 transcripts were presented here, but we have made

22 those disclosures in the past and again we're not

23 predicting absolute closure.

24   Q.   **But you are here. That is what you**

25 **are predicting here. Absent rate relief you're**

 1   **telling us closure. You are not telling investors**

 2   **absent rate relief, closure.**

 3   A.   I think we are, we are in our risk

 4   factor that was talked about earlier. We talk

 5   about rate relief, we talk about how that is

 6   dependent upon keeping that smelter open or not. I

 7   think we use curtail the facility which is both a

 8   shutting of lines as well as closure of the

 9   facility.

10   Q.   Okay. Let me try a different tact.

11   **What would happen if you as a company took the**

12   **highly confidential statements that are in the**

13   **record in this case and put them open to public**

14   **disclosure?**

15   MR. MALLIN: Well, Your Honor the

16   answer to that question in itself is HC.

17   A.   Yes.

18   COMMISSIONER HALL: Okay. Well let's

19   go HC.

20

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

22   which is contained in Volume 34, pages 2595-2621 of

23   the transcript.)

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 1   JUDGE WOODRUFF: We're back in the general

 2   session and it's time to announce lunch break which

 3   I see smiles in the audience for that. We have

 4   agenda today at 12:30 so we'll come back at 1:30.

 5   (Whereupon, a lunch recess was taken)

 6   JUDGE WOODRUFF: Let's come to order

 7   please. We're back from lunch and Mr. Chairman you

 8   had a question you wanted ask counsel before we get

 9   started.

10   CHAIRMAN KENNEY: This is for the

11   attorneys. So last week we settled, or we noted

12   that issue 22 was settled which is the low income

13   exemption from MEEIA.

14   Is that correct? Let's begin there.

15   MS. TATRO: Yes.

16   CHAIRMAN KENNEY: And I asked Mr.

17   Allison about $.08 versus $.11, is that right?

18   MR. ALLISON: Yes.

19   CHAIRMAN KENNEY: It's all allocated

20   to the residential consumers.

21   MR. ALLISON: Correct.

22   CHAIRMAN KENNEY: In which

23   stipulation and agreement will that appear?

24   MS. TATRO: That is the one I have

25   not drafted yet because I frankly forgot.

 1   CHAIRMAN KENNEY: That's not a

 2 problem, I just wanted to make sure I hadn't missed

 3 it somewhere else.

 4   MS. TATRO: It's that issue and

 5 there's one other minor issue that had to be put in

 6 with that stuff, I can't remember off the top of my

 7 head.

 8   CHAIRMAN KENNEY: That's fine.

 9   MS. TATRO: We do owe you that.

10   MR. THOMPSON: LED lighting?

11   MS. TATRO: Yes.

12   CHAIRMAN KENNEY: Yes.

13   MS. TATRO: So that will be on a stip

14 that I'll probably work on this afternoon.

15   CHAIRMAN KENNEY: And then you all

16 filed an amended nonunanimous stipulation regarding

17 certain revenue requirements and you corrected the

18 language that I asked you all to correct.

19   MS. TATRO: Yes, I made an attempt to

20 make all those corrections that I believe you

21 pointed out.

22   CHAIRMAN KENNEY: And I believe it

23 was.

24   MS. TATRO: Thank you.

25   CHAIRMAN KENNEY: So back to the low

1   income MEEIA exemption, it hasn't been reduced to

2   writing and that was one that all the parties had

3   agreed upon, right?

4   MS. TATRO: Right.

5   CHAIRMAN KENNEY: Why does it appear

6   in the Nonunanimous Stipulation and Agreement

7   Regarding Economic Development, Class Cost of

8   Service, Revenue Allocation and Rate Design that

9   the consumer parties have agreed to?

10   MR. ALLISON: Because it hasn't been

11 filed yet and because it was dealing with rate

12 design, class cost of service. It was in that

13 package of issues that had not come in front of the

14 Commission yet.

15   CHAIRMAN KENNEY: But Ameren's not a

16 signatory to this.

17   MR. ALLISON: They are not and I

18 don't see that being necessarily preclusive of any

19 separate document that we would need, I think the

20 terms in there are mutually coexistent to what, a

21 much more narrow document I think that Ameren would

22 want to file.

23   CHAIRMAN KENNEY: I was just confused

24 because that was an issue around which all the

25 parties agreed, there is not a stipulation around

 1   which all parties agreed.

 2   MR. ALLISON: That is exactly right.

 3   CHAIRMAN KENNEY: It struck me as out

 4   of place.

 5   MR. ALLISON: It was in that package,

 6   in developing that stipulation it was in the

 7   package of issues regarding rate design class cost

 8   of service and all of those issues that we are

 9   trying to put in one document.

10   CHAIRMAN KENNEY: Were you guys aware

11   that it was in here?

12   MS. TATRO: Since I wasn't aware of

13   that stipulation until after it was filed, no. I

14   do also find it odd but I don't think it's fatal.

15   CHAIRMAN KENNEY: Thanks. That's all

16   I wanted to know.

17   JUDGE WOODRUFF: Then we're back for

18   the witnesses and we had just completed questions

19   from the bench from Mr. Boyle. Is there anyone

20   wishes to recross?

21   I assume Ameren that Staff wanted to

22   go first.

23   MR. THOMPSON: Thank you.

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 1                 CROSS EXAMINATION

 2   QUESTIONS BY MR. THOMPSON:

 3        Q.     Good afternoon Mr. Boyle.

 4        A.     Good afternoon.

 5        Q.     The Chairman and Commissioner Hall

 6   both asked you questions about liquidity and there

 7   were questions about what would happen if your

 8   liquidity was reduced beyond a critical point.  Do

 9   you recall that?

10        A.     Yes, I do.

11               MR. THOMPSON:  And I don't know

12   whether this needs to be In camera or not.

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

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

15   Maybe after you ask your question I can say no.

16               JUDGE WOODRUFF:  We'll go in-camera

17   at this point.

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

19   which is contained in Volume 34, pages 2626 to 2629

20   of the transcript.)

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 1   MR. NELSON: Your Honor I would ask

 2   the Court to take judicial notice, there was some

 3   questions about the level of dividends, I think

 4   that was covered in case EC-2014-0024 in Exhibits

 5   115 and Exhibit 116 which were the 10Ks for 2013

 6   and 2012 and I believe that that, those documents

 7   would have evidence that supplements what the

 8   witness was able to do in terms of dividends paid

 9   and I would ask the court to take judicial notice

10   of those.

11   JUDGE WOODRUFF: Any objection?

12   MR. MALLIN: As long as they're a

13   public filing I don't have a problem.

14   JUDGE WOODRUFF: It will be a filing

15   in the prior case.

16   MR. LOWERY: They're already in

17   evidence in the last case Judge, they're portions

18   of their 10Ks for those two years.

19   JUDGE WOODRUFF: And I'll assume you

20   will cite to them in your briefs.

21   MR. MALLIN: Which years?

22   MR. LOWERY: '12 and '13. Exhibits

23   115 and 116 from the last case.

24   MR. MALLIN: Got it.

25   MR. NELSON: Nothing further.

 1   JUDGE WOODRUFF: All right.

 2   Redirect?

 3   MR. MALLIN: Yes, Your Honor. Thank

 4   you.

 5   REDIRECT EXAMINATION

 6   QUESTIONS BY MR. MALLIN:

 7   **Q.   Let's talk first a little bit about**

 8   **the AVL, the revolver or the credit card. In**

 9   **calendar year 2014 for what uses or purposes did**

10   **Noranda use those things?**

11   A.   We used it for various purposes to

12   fund normal operating expenses such as payroll, our

13   power bill, our natural gas bills, those type of

14   expenses. We also had unusual operational

15   disruptions that required additional cash as much

16   as I disclosed earlier around the weather impact in

17   2014 as well as another weather impact that shut

18   down our power facility for a day and a half.

19   Those are examples.

20   **Q.   Is it accurate to say that it was**

21   **used for day-to-day operations at Noranda?**

22   A.   Yes it is, during the month.

23   MR. MALLIN: We're going to have to

24   go HC at this point Your, Honor.

25   JUDGE WOODRUFF: We are back In

Page 2632

1   camera.

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

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

5   transcript.)

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

 2    bit about capital expenditures.  In 2012 how much

 3    did Noranda spend on capital expenses or

 4    expenditures?

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

 6    approximately 88 million.

 7          Q.      How about in 2013?

 8          A.      Approximately 73 million.

 9          Q.      And in 2014?

10          A.      Approximately 94 million.

11          Q.      You indicated earlier or identified a

12    piece of equipment called a carbon baked furnace?

13          A.      Yes.

14          Q.      What does that do?

15          A.      Those are the furnaces that are used

16    to take carbon and make anodes using the aluminum

17    making process.  Those furnaces have a life that

18    you have to rebuild those furnaces and they're very

19    expensive, they could range up to approximately $30

20    million to refurbish those furnaces and we have

21    three that are well beyond their normal life.

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

23    furnaces down at New Madrid today?

24          A.      That's correct.

25          Q.      And all three of them are operating?
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 1   A.   Yes.

 2   **Q.   You also mentioned a pot.**

 3   A.   Yes.

 4   **Q.   Approximately how much does it cost**

 5 **to refurbish, repair or replace a pot?**

 6   A.   It ranges from approximately $170,000

 7 to $200,000 per pot.

 8   **Q.   As compared to a line of pots, how**

 9 **many are in a line of pots?**

10   A.   Our first two lines are approximately

11 174 pots apiece, line 3 which is a different

12 technology, larger pots, approximately 162.

13   MR. MALLIN: Your Honor, this is HC

14 at this point.

15   JUDGE WOODRUFF: All right. We'll go

16 back in.

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

18 which is contained in Volume 34, pages 2634-2635 of

19 the transcript.)

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 1   MR. MALLIN: Sorry jumping around,

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

 3   JUDGE WOODRUFF: We're back to

 4   general session.

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

 6   you the slides used during the earnings call for

 7   the third quarter of 2014 and the fourth quarter of

 8   2014? I believe that they are Exhibits 70 and 71.

 9   A.   Yes.

10   Q.   Let's start with first from the third

11   quarter of 2014. Do you have that?

12   A.   Yes.

13   Q.   Page 2 of the slides did Noranda

14   provide all participants and anyone who wished to

15   read or view these slides information with regard

16   to how they should be considering any forward

17   looking statements?

18   A.   Yes, we did.

19   Q.   And what in general were you telling

20   those who attended the call or chose to look at

21   these slides they should be considering when any

22   forward looking statements were being made?

23   A.   Well, that they could consider these

24   forward looking statements are about future, not

25   past events and while certain important risks and

1 uncertainties any of which could cause a company's

2 actual results to differ materially from those

3 expressed in the forward looking statements.

4   Q.   There were certain risks that were

5 identified as part of this third quarter 2014 call,

6 were there not?

7   A.   Yes.

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

9   A.   Yes. We typically review our core

10 product activity program which is on page 7 of that

11 dec.

12   Q.   Mr. Boyles I'm still on page 2,

13 forward looking statements?

14   A.   I'm sorry, you're talking the forward

15 looking statements.

16   Q.   Maybe I'm wrong, tell me if I'm right

17 or wrong here. Did the company, did Noranda, for

18 anyone who wished to participate or review these

19 slides tell those look, there are certain risks

20 that you ought to be aware of with regard to

21 forward looking statements?

22   A.   Yes, we did.

23   Q.   Was one of those the cyclical nature

24 of the aluminum industry?

25   A.   I believe it's on this page, I can't

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 1  pick it up right off the top.

 2      Q.      I'm looking down at the fifth line,

 3  sir, if that helps you.

 4      A.      Yes.

 5      Q.      What other risks or information were

 6  being provided to anyone who was listening in with

 7  regard to forward looking statements?

 8      A.      A downturn in general economic

 9  conditions including changes in interest rates as

10  well as a downturn in the end use markets for

11  certain of the company products.  Fluctuations in

12  the relative cost of certain raw materials and

13  energy compared to the price of primary aluminum

14  and aluminum rolled products.

15      Q.      Anything else?

16      A.      The effects of competition in

17  Noranda's business lines, Noranda's ability to

18  retain customers, a substantial number of which do

19  not have long term contractual arrangements with

20  the company.  The ability to fulfill business,

21  business's substantial capital investment needs,

22  labor relations, i.e. disruptions, strikes or work

23  stoppages and labor costs, unexpected issues

24  arising in connection with Noranda's operations

25  outside of the United States, the ability to retain
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 1   key management personnel and Noranda's expectations

 2   with respect to the acquisition, activity or

 3   difficulties encountered in connection with

 4   acquisitions, dispositions or similar transactions.

 5        Q.     Did Noranda as part of this third

 6   quarter 2014 conference call also tell anyone who

 7   was participating or viewing these slides that it

 8   should go look to Noranda's 10K and its quarterly

 9   reports?

10        A.     Yes, we did.

11        Q.     And for what reason or purpose did it

12   do so?

13        A.     To look at the risk factors and the

14   disclosures in our 10K.

15        Q.     Now, in the third quarter of 2014,

16   this dec, was there certain underlying assumptions

17   with regard to how Noranda may perform going

18   forward into the fourth quarter?

19        A.     That's correct.

20        Q.     And are they found somewhere in this

21   dec?

22        A.     Yes, on slide 7.

23        Q.     I'm on slide 7 that says productivity

24   compliments growth in creating value.  Am I in the

25   right place?
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 1   A.   Yes.

 2   Q.   Okay. What on this page tells me

 3   what the assumptions were with regard to how well

 4   or not Noranda might perform in the fourth quarter?

 5   A.   Well, this gives an update on the

 6   step change and our cost structure that we talked

 7   about and the $85 million improvement in our

 8   segment profit from 2014 to 2016 and we bridge

 9   that --

10   Q.   Hold on a second, you've got me all

11   confused.

12   A.   Okay.

13   Q.   What's a step change?

14   A.   Meaning an increased level, a step

15   change being it could be an increase or decrease in

16   your run rate.

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

18   A.   Your historical profitability.

19   Q.   Okay. And was one of these steps

20   with regard to power?

21   A.   Yes.

22   Q.   What is this telling me with regard

23   to the step change with regard to power?

24   A.   We had included the expectation of

25   obtaining rate relief and achieving these

1   objectives of 50 million.

2   Q.   So that was one of the assumptions

3   with regard to productivity -- you called it

4   segment profit?

5   A.   Yeah, or profitability.

6   Q.   So an assumption to that

7   profitability was how much in rate relief?

8   A.   50 million.

9   Q.   From the Public Service Commission.

10   A.   That's correct.

11   Q.   Now, with regard to the earnings call

12 associated with this particular dec, that's Exhibit

13 No. 72. Do you have that before you, sir?

14   A.   Yes, I do.

15   Q.   The questions and answers here are

16 related to the dec we were just looking at, is that

17 correct?

18   A.   That's correct.

19   Q.   And the statements that you made and

20 Mr. Smith made, did they all assume this $50

21 million of power savings?

22   A.   Yes, they did.

23   Q.   Did anyone on that call ask either

24 you or Mr. Smith I want you to assume for a second

25 that you don't get $50 million in power savings,

 1   what's going to happen to the smelter?

 2   A.   No. No one did.

 3   Q.   Did anyone ask you on the call if you

 4   don't get $50 million worth of power savings what's

 5   going to happen with the company?

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

 7   Q.   Anyone ask you what's going to happen

 8   to its liquidity?

 9   A.   No.

10   Q.   To its cash flow?

11   A.   No.

12   Q.   Let's talk about the slides now from

13   the fourth quarter of 2014. Do you have those

14   before you?

15   A.   Yes, I do.

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

17   A.   Yes.

18   Q.   Is there a similar statement with

19   regard to forward looking statements to anyone who

20   participated on that call or chose to view these

21   slides?

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

23   Q.   I'm not going to have you go through

24   this list again but are the same risk factors

25   identified here again for anyone who was

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 1    participating on that call?

 2         A.    I believe they are.

 3         Q.    And they are found on page 2?

 4         A.    That's correct.

 5         Q.    And again is there a similar

 6    paragraph indicating to anyone viewing these slides

 7    or participating in the call that he or she should

 8    go to the 10K and other quarterly reports filed by

 9    Noranda?

10         A.    Yes.

11         Q.    For what purpose?

12         A.    For discussion of additional risks

13    and uncertainties that may affect the future

14    results of Noranda.

15         Q.    Like the third quarter slides was

16    there any underlying assumptions with regard to

17    power rate as part of this fourth quarter

18    conference call?

19         A.    Yes.  We had a similar update.

20         Q.    Is it on one of the pages in this

21    dec?

22         A.    Page 7.

23         Q.    I'm on page 7, it's entitled Progress

24    On Transformational Pack.  You see that?

25         A.    Yes.
```

1   Q.   Which of those particular items here

2   pertain to the power rate?

3   A.   The second item where you see in the

4   left hand bubble New Madrid electricity rate

5   reduction, $40 million per year. Even at impact.

6   Q.   So what information was being

7   conveyed in this slide to anyone participating in

8   this call or viewing these slides?

9   A.   That included in our transformation

10   of our cost structure the productivity improvements

11   that we include in that $85 million that getting

12   rate relief was a key component of that $85

13   million.

14   Q.   In the amount of $40 million per year

15   in terms of the EBITDA impact.

16   A.   That's correct.

17   Q.   Now let's turn to the transcript from

18   that call, that's Exhibit No. 69?

19   A.   Okay.

20   Q.   Do you have that before you?

21   A.   Yes, I do.

22   Q.   In the statements that were being

23   made in that call as well as the questions posed

24   and the answers provided was this particular item

25   with regard to $40 million per year in energy cost

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 1    savings the underlying assumption to what was

 2    provided to those participating?

 3          A.    Yes, it was.

 4          Q.    Did anyone in this call in the fourth

 5    quarter of 2014 ask the question what would happen

 6    if Noranda did not, Noranda did not get a $40

 7    million per year power rate reduction?

 8          A.    I don't believe so.

 9          Q.    Did anyone ask what would happen to

10    the plant, to the smelter if there wasn't a $40

11    million reduction in power rate?

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

13          Q.    Did anyone ask what would happen to

14    Noranda's liquidity in that situation?

15          A.    No.

16          Q.    Did anyone ask what would happen to

17    its cash flow in that situation?

18          A.    No.

19          Q.    You were in the courtroom, the

20    hearing room earlier when Mr. Smith identified the

21    10K that was filed with regard to December 31, 2014

22    on behalf of Noranda, is that correct?

23          A.    Yes.

24          Q.    You were asked questions about it

25    earlier?
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 1        A.     That's correct.

 2        Q.     And the risk factors that are found

 3   in there address both the smelter itself as well as

 4   the rod mill, is that correct?

 5        A.     That's correct.

 6        Q.     Were you part of the decision making

 7   group that decided those had to be included?

 8        A.     Yes.

 9             MR. MALLIN:  This part does need to

10   go HC, Your Honor.

11             JUDGE WOODRUFF:  All right.

12             MR. LOWERY:  I just wanted to alert

13   you that the last two times you went into highly

14   confidential the microphone apparently was still on

15   even though the picture was still showing.

16             JUDGE WOODRUFF:  Yes, there was a

17   problem particularly at the beginning of your

18   recross.

19             MR. LOWERY:  Thank you, I appreciate

20   it.

21             JUDGE WOODRUFF:  I apologize for

22   that.

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

24   which is contained in Volume 34, pages 2646-2655 of

25   the transcript.)
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 1                    JUDGE WOODRUFF:  And we're out of the

 2    In camera section and redirect is concluded so you

 3    can step down.

 4          A.     Okay.  Thank you very much.

 5                    JUDGE WOODRUFF:  And I believe we

 6    need to call Mr. Haslag next.

 7          (Whereupon, the witness was sworn)

 8                    DIRECT EXAMINATION

 9    QUESTIONS BY MS. ILES:

10          Q.     Good morning.  Could you state your

11    name for the record lease?

12          A.     Joseph Haslag.

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

14          A.     Yes.

15          Q.     Dr. Haslag where are you employed?

16          A.     University of Missouri-Columbia.

17          Q.     And what is your position there?

18          A.     I'm a professor of economics.

19          Q.     Do you hold another position with the

20    university as well as a professorship?

21          A.     I also hold the position as the

22    director of the economic policy and analysis and

23    research center.

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

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

2   A.   Yes.

3   Q.   And is that the testimony that I've

4   handed you?

5   A.   It is.

6   Q.   And could you tell us for the record

7   what the exhibit numbers for those documents are?

8   A.   I would love to.

9   606 and 607.

10   Q.   And are those documents marked 606,

11   606 HC and 607?

12   A.   Yes.

13   Q.   And if I were to ask you the

14   questions that are included in that testimony here

15   today would your answers be the same?

16   A.   They would.

17   Q.   Did you have any corrections to your

18   testimony?

19   A.   No.

20   MS. ILES: Your Honor, I'd move for

21   the admission of the, Dr. Haslag's testimony and

22   tender the witness for cross examination.

23   JUDGE WOODRUFF: 606, HC and NP and

24   607 have been offered. Any objection to their

25   receipt?

 1   Hearing none it will be received.

 2   JUDGE WOODRUFF: Cross examination

 3 beginning with Public Counsel.

 4   MR. ALLISON: No cross. Thank you.

 5   JUDGE WOODRUFF: MECG?

 6   MR. WOODSMALL: No questions.

 7   JUDGE WOODRUFF: Staff?

 8   MR. THOMPSON: No questions. Thank

 9 you.

10   JUDGE WOODRUFF: Ameren?

11   MR. MITTEN: No questions.

12   JUDGE WOODRUFF: Move for questions

13 from the bench then.

14   Commissioner Kenny?

15   CHAIRMAN KENNEY: No thank you.

16   JUDGE WOODRUFF: Mr. Hall?

17   COMMISSIONER HALL: No questions.

18   JUDGE WOODRUFF: All right.

19   There were no questions so there's no

20 need for recross or redirect and you can step down.

21   A.   Thank you very much.

22   MS. ILES: Judge Woodruff we have a

23 request. Let me preface my request by explaining

24 that I was, understood your ruling yesterday that

25 you did not wish to hear an opening statement from

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 1   the MIEC in this matter.  We do, however, have

 2   available today to testify a representative from

 3   the MIEC, he's the chair of the MIEC and he's from

 4   Monsanto Corporation, his name is Steve Spinner,

 5   he's available to provide testimony about the

 6   stipulation which we think would be helpful to the

 7   Commission in evaluating that stipulation.

 8               JUDGE WOODRUFF:  Are you anticipating

 9   there will be questions from the commissioners?

10               MS. ILES:  We would like to ask Mr.

11   Spinner some questions but if the commissioners, if

12   you'd rather do it that way, either way.

13               JUDGE WOODRUFF:  Well I'll ask the

14   other parties.

15               Do you have any objection to bringing

16   Mr. Spinner on?

17               MR. LOWERY:  Yes, we do have an

18   objection, it's completely out of order.  This

19   person's not on the witness list, he didn't file

20   any testimony and the Commission can't consider the

21   stipulation.  The stipulation is a position of

22   these parties, that's all it is, they can't

23   consider it, they can't approve it, they have to

24   decide this case based on the substantial and

25   competent evidence of record and based on the
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1 contested issues that the parties agreed upon that

2 are before them. It's completely improper for MIEC

3 to simply try to bolster the position of giving

4 Noranda some kind of subsidy by bringing Mr.

5 Spinner in at this time so absolutely we object.

6   JUDGE WOODRUFF: Let me ask the

7 commissioners.

8   Do you have any questions you would

9 like to ask Mr. Spinner for MIEC?

10   CHAIRMAN KENNEY: That's a loaded

11 question. I mean so, I guess the other question is

12 do we have any questions about the nonunanimous

13 stipulation and agreement?

14   JUDGE WOODRUFF: Right.

15   CHAIRMAN KENNEY: Maybe. I don't

16 know if I have them today, but.

17   MS. ILES: Mr. Spinner is available

18 right now, he's here today. He is not available

19 tomorrow, he could come back on Friday.

20   CHAIRMAN KENNEY: Why does it have to

21 be him?

22   MS. ILES: He's the chairman of the

23 MIEC and he's just made time in his schedule to be

24 here Mr. Chairman. So he's here.

25   CHAIRMAN KENNEY: Let me ask a

 1   question. MIEC is a party to the case, right?

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

 3   CHAIRMAN KENNEY: Why wasn't he

 4   disclosed as a witness?

 5   MS. ILES: Because what he's here to

 6   talk about is something that hasn't happened before

 7   the hearing started. He's here to talk about the

 8   stipulation that was entered into after the hearing

 9   already started and all the testimony had been

10   filed. And that's why he didn't provide pre-filed

11   testimony and it's my understanding that it is not

12   unusual, that it has happened in the past that

13   witnesses have testified about nonunanimous

14   stipulation and answered questions of the

15   commission on this topic.

16   JUDGE WOODRUFF: What we've typically

17   done is allowed extra questions at the beginning of

18   a witness's testimony who have already pre-filed

19   evidence. It would be unusual to bring in a new

20   witness to testify about that. I don't know that

21   it's unprecedented, I've just never seen it done.

22   MR. LOWERY: May I respond to one

23   comment? It's true that this particular

24   stipulation didn't exist until now but MIEC and

25   others filed a stipulation or at least supported a

 1   stipulation back in I believe it was October that

 2   had a price that was almost the same as the price

 3   that is in this stipulation and many of the terms

 4   of which are in many respects quite similar.

 5   MIEC's had months if they wanted to put on a

 6   witness to support rate relief for Noranda and they

 7   chose not to do so and it's fundamentally unfair

 8   and a violation of what the company's and any other

 9   party's due process at this time to allow a witness

10   to get up without any preparation, without any

11   notes whatsoever and say whatever he wants to say

12   in support of stipulation that doesn't even mean

13   anything at this point. They could have filed a

14   brief in the case and said we support this relief.

15   It makes it no more important than the stipulation,

16   the stipulation is nothing more than an argument at

17   this point.

18   JUDGE WOODRUFF: Mr. Hall do you want

19   to weigh in?

20   COMMISSIONER HALL: I have a

21   question.

22   JUDGE WOODRUFF: Okay.

23   COMMISSIONER HALL: For Mr. Spinner.

24   So I would be fine with --

25   MS. ILES: I'd just like to point out

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 1   that in Ameren's opening statement they

 2   specifically mentioned Monsanto and made the

 3   statement that a company like Monsanto's likely to

 4   come in.  Mr. Spinner 'S from Monsanto, he can

 5   certainly speak to that issue as well.

 6                 CHAIRMAN KENNEY:  Let me ask another

 7   question here th is for Mr. Lowery or whoever wants

 8   to answer.

 9                 Was it contemplated that a corporate

10   -- I mean MIEC is an entity.

11                 MS. ILES:  MIEC is a nonprofit

12   corporation and it's members are corporations.

13                 CHAIRMAN KENNEY:  Was it contemplated

14   that there would be some corporate representative

15   of MIEC to testify?

16                 MR. LOWERY:  No it was not

17   contemplated.  MIEC is a corporation that was

18   formed by attorneys at Bryan Cave and all of the

19   officers and directors at least according to the

20   annual report that's filed each year are also

21   attorneys at Bryan Cave.  MIEC has filed testimony

22   of numerous witnesses in this case.  This is my

23   sixth rate case in a row and I've probably been in

24   20 cases with MIEC, there's never been a corporate

25   representative of MIEC appear so this would be
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 1    unprecedented at least in my 15 years of practice

 2    here at the Commission.

 3                 CHAIRMAN KENNEY:  Mr. Spinner is the

 4    president of the organization?

 5                 MS. ILES:  He's the chair.

 6                 CHAIRMAN KENNEY:  He's not listed on

 7    any of the corporate documents?

 8                 MS. ILES:  I don't think he's a

 9    corporate officer but he's the current chair of the

10    organization.

11                 JUDGE WOODRUFF:  Mr. Thompson you

12    want to be heard?

13                 MR. THOMPSON:  I just wanted to

14    remind the judge that in the past it was the

15    practice to allow the public to testify at rate

16    case hearings when they were convened here in

17    Jefferson City and so in the nature of a local

18    public hearing almost and so perhaps the Commission

19    could take Mr. Spinner's testimony in the same way

20    that the testimony of participants at local public

21    hearings have been taken.

22                 JUDGE WOODRUFF:  That hasn't been the

23    practice in the last 15 years.  At least that I've

24    been here.

25                 CHAIRMAN KENNEY:  Can I say I think
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 1   the issue is kind of disposed of, the commissioner

 2   said he wants to question him, I think we're going

 3   to bring him up and swear him, I guess I'm just

 4   trying to figure out what's fair. Do you want to

 5   take a recess after he testifies to have an

 6   opportunity to cross examine him?

 7   JUDGE WOODRUFF: What I anticipated

 8   doing if we do it we bring him up, ask questions

 9   from the bench then we can have cross based on that

10   and the final chance for redirect based on the

11   questions from the bench.

12   MS. ILES: So no direct by me?

13   JUDGE WOODRUFF: No direct by you.

14   MS. ILES: All right. That would be

15   fine.

16   MR. LOWERY: And I lodge my objection

17   and I certainly respect the right of the

18   commissioners to allow him to testify, I've lodged

19   my objection.

20   JUDGE WOODRUFF: Your objection is

21   noted.

22   MR. LOWERY: There's probably nothing

23   more to say about it.

24   JUDGE WOODRUFF: Bring him forward.

25   (Whereupon, the witness was sworn)

 1   JUDGE WOODRUFF: And for the record

 2   can you identify who you are?

 3   A.   Sure. My name is Steven Spinner, I

 4   am the chair for the MIEC and I understand that

 5   just recently I was also added to the corporate

 6   documents as the vice-president of the MIEC also.

 7   That's a recent development. I am the category

 8   lead for energy procurement for Monsanto, I am

 9   responsible for energy and utility services

10   throughout the United States for the company. In a

11   prior position with Anheuser Busch I had the same

12   position there and prior to that position with

13   Anheuser Busch I was also responsible, part of a

14   team that was responsible for buying over 1.3

15   billion pounds of aluminum every year and so we

16   spent a lot of time studying aluminum smelters and

17   understanding what their cost structures were and

18   so while my knowledge of aluminum markets is a bit

19   dated the process and the inputs to the process I'm

20   sure haven't changed in that approximately 10 years

21   since I was doing that.

22   JUDGE WOODRUFF: Okay.

23   Mr. Chairman did you want to go

24   first?

25   CHAIRMAN KENNEY: Yeah, actually I

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 1   just have a couple questions.

 2   EXAMINATION

 3   QUESTIONS BY CHAIRMAN KENNEY:

 4   **Q.   Are you familiar with the document**

 5   **that's titled Nonunanimous Stipulation and**

 6   **Agreement Regarding Economic Development, Class**

 7   **Cost of Service, Revenue Allocation and Rate**

 8   **Design?**

 9   A.   Yes, sir.

10   **Q.   What was your involvement in the**

11   **preparation of the document?**

12   A.   I got involved some time about 14

13   months ago in negotiating this deal and trying to

14   get all the consumers together in one group to sign

15   on to the stipulation.

16   **Q.   Hold on a second.**

17   A.   Yes, sir.

18   **Q.   I'm talking a document that was**

19   **e-mailed to the parties in the case on the 9th of**

20   **March, 2015.**

21   A.   That's the nonunanimous stipulation.

22   CHAIRMAN KENNEY: May I hand this to

23   him?

24   JUDGE WOODRUFF: Sure.

25   A.   Yes, sir.

1   Q.   (BY CHAIRMAN KENNEY)   You're familiar

2   with this?

3   A.   Yes, I am.

4   Q.   And you're saying the process of

5   developing this document came about 14 months ago?

6   A.   Well, we started negotiating that

7   document that was filed last year asking for rate

8   relief which was since then denied. What we have

9   here is an outcropping of that, that was the basis

10   of it and then we built from there. But I have

11   been involved in negotiations for some 14 months

12   that finally arrived at that document.

13   Q.   And when you say you were involved

14   with negotiations, with whom were you involved with

15   these negotiations?

16   A.   Other consumer parties, the Office of

17   Public Counsel, well, most every, all of the

18   signators of that document listed at the bottom

19   were involved in the negotiations. Along with the

20   two that, Wal-Mart and MECG I believe is the name

21   of the group that are not members of that, were

22   also deeply involved in the negotiations of that

23   document.

24   Q.   Okay. There was a nonunanimous

25   stipulation and agreement that was filed back in

 1   **October of 2014. Is that the document you would**

 2   **have been talking about?**

 3   A.   Yes, sir.

 4   Q.   **That was this other one?**

 5   A.   That was.

 6   Q.   **Right. And this was on outgrowth of**

 7   **that and some other things added to it.**

 8   A.   Right.

 9   CHAIRMAN KENNEY: I don't have any

10   other questions just yet. I may but I can't think

11   of any right now.

12   EXAMINATION

13   QUESTIONS BY COMMISSIONER KENNEY:

14   Q.   **Hello Mr. Spinner.**

15   A.   Hi, how are you?

16   Q.   **Good.**

17   **Does Monsanto have any type of**

18   **financial or business affiliation with Noranda?**

19   A.   No.

20   Q.   **Does Monsanto buy supplies from**

21   **Noranda?**

22   A.   No.

23   Q.   **So why is Monsanto interested in**

24   **Noranda having lower energy rates?**

25   A.   Well, it's important to us to have

 1 Noranda on Ameren's system to help cover, their

 2 huge amount of volume helps cover the fixed cost.

 3 If Ameren, or I'm sorry, if Noranda were to go off

 4 the system I would have to pick up those

 5 additional, I, my company, the MIEC members would

 6 have to pick up that additional fixed charge

 7 coverage and we would see our rates estimated to go

 8 up about 2.1 percent.

 9   **Q.   So this is just the lessor of two**

10 **evils?**

11   A.   That's correct, yes.

12   **Q.   So your rate would increase by what?**

13 **1.1 --**

14   A.   Well, residentials I believe are

15 1.15, the industrials are about 1.5 percent, we

16 would be taking a bigger hit than the residentials

17 would be taking.

18   **Q.   That would save you six-tenths of a**

19 **percent.**

20   A.   That is correct. Additionally the

21 whole idea of having them there to provide the

22 security to the system and provide the, the system

23 just works more efficiently when you have large

24 users on the system that you can depend to be there

25 24 hours a day seven days a week.

 1   Q.   Okay.   Thank you.

 2   JUDGE WOODRUFF: Commissioner Hall?

 3   EXAMINATION

 4   QUESTIONS BY COMMISSIONER HALL:

 5   Q.   Good afternoon. Commissioner Kenney

 6   asked the majority of the questions I was going to

 7   ask but I will turn to one other issue and that is

 8   the economic development rider which is Exhibit A

 9   to the nonunanimous stip. Are you familiar with

10   that?

11   A.   Slightly familiar with it but I'm not

12   a lawyer and so I haven't gone myself into looking

13   at this alternative to the stipulation.

14   Q.   So you are not involved in the

15   drafting or negotiation of this modified economic

16   development rider.

17   A.   No, sir.

18   Q.   So you wouldn't be able to answer any

19   questions about how this could apply to any

20   particular Ameren customer.

21   A.   No, sir.

22   Q.   Okay.

23   COMMISSIONER HALL: I have no further

24   questions.

25   JUDGE WOODRUFF: Cross based on those

 1   questions from the bench?

 2   Ameren?

 3   MR. LOWERY: I assume I can ask cross

 4   about testimony he gave to a question you asked

 5   initially about his position?

 6   JUDGE WOODRUFF: Yes.

 7   CROSS EXAMINATION

 8   QUESTIONS BY MR. LOWERY:

 9   Q.   **Is it your testimony under oath that**

10   **documents have been filed with the Missouri**

11   **Secretary of State making you an officer of MIEC?**

12   A.   I believe that to be correct, I was

13   e-mailed a document for my signature last week

14   which I signed and e-mailed back to Bryan Cave, I'm

15   not sure if it's been filed yet or not.

16   Q.   **So your testimony is you don't know**

17   **if it's been filed.**

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

19   Q.   **Would it surprise you that in fact it**

20   **has not been filed?**

21   A.   It would not surprise me, no. It was

22   a very short time ago.

23   Q.   **So in fact no change has been made**

24   **with the Secretary of State, isn't that true?**

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

 1   MR. LOWERY: I don't have any other

 2   questions Your Honor.

 3   JUDGE WOODRUFF: Any redirect based

 4   on those questions from the bench?

 5   Thank you, sir, you can step down.

 6   MS. ILES: Thank you Your Honor, I

 7   appreciate that.

 8   JUDGE WOODRUFF: And then I believe

 9   we would be ready for Mr. Pratt.

10   MR. MALLIN: Yes, Your Honor.

11   (Whereupon, the witness was sworn)

12   JUDGE WOODRUFF: You may inquire.

13   MR. MALLIN: Thank you, Your Honor.

14   EXAMINATION

15   QUESTIONS BY MR. MALLIN:

16   **Q.   Could you state your full name for**

17   **the record?**

18   A.   Colin Ronald Pratt.

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

20   A.   CRU International.

21   **Q.   And is that C-R-U, CRU?**

22   A.   That's correct.

23   **Q.   And in what position or capacity?**

24   A.   Management consultant and CRU

25   consultant.

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 1          Q.      Did you cause to prepare and have

 2     filed with the Public Service Commission certain

 3     direct testimony as well as surrebuttal testimony?

 4          A.      Yes, I did.

 5          Q.      And are those before you in Exhibits

 6     608 and 609?

 7          A.      No, they're not.

 8          Q.      Well, let me get those for you.

 9                  I'm sorry Mr. Pratt, do you now have

10     them before you?

11          A.      Yes, I do.

12          Q.      Let me ask my question again.  Do you

13     have now before you Exhibit 608 and 609?

14          A.      Yes, I do.

15          Q.      And is 608 your direct testimony in

16     this case?

17          A.      Yes.

18          Q.      And is 609 your surrebuttal testimony

19     in this case?

20          A.      It is.

21          Q.      And if I were to ask you the same

22     questions today would you provide the same answers

23     that are found in both your direct as well as

24     surrebuttal testimony?

25          A.      Yes, I would.
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 1          Q.      Is there any changes that you wish to

 2    make to any of that testimony?

 3          A.      No.

 4                  MR. MALLIN:  Your Honor, I'd move for

 5    the admission of Exhibits 608 and 609.

 6                  JUDGE WOODRUFF:  608 and 609 are

 7    offered, any objection to their receipt?

 8                  Hearing none they will be received.

 9                  MR. MALLIN:  Thank you, Your Honor.

10    I'll tender the witness.

11                  JUDGE WOODRUFF:  For cross begin with

12    Public Counsel?

13                  MR. ALLISON:  No questions.

14                  JUDGE WOODRUFF:  MECG?

15                  MR. WOODSMALL:  No questions.

16                  JUDGE WOODRUFF:  United for Missouri?

17                  MR. LINTON:  No questions.

18                  JUDGE WOODRUFF:  Staff?

19                  MR. THOMPSON:  No questions.  Thank

20    you.

21                  JUDGE WOODRUFF:  Ameren?

22                  MR. NELSON:  No questions.

23                  JUDGE WOODRUFF:  Questions from the

24    bench?

25                  Mr. Chairman?
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 1   CHAIRMAN KENNEY: No questions.

 2   Thank you Mr. Pratt.

 3   JUDGE WOODRUFF: Mr. Hall?

 4   EXAMINATION

 5   QUESTIONS BY COMMISSIONER HALL:

 6   **Q.   Good afternoon.**

 7   A.   Good afternoon.

 8   **Q.   You had a comment in your direct**

 9   **testimony that I hope you could elaborate on. You**

10   **said on page 11 it is often said that an economic**

11   **forecaster is driving a car with only a rear-view**

12   **mirror and with a substantial blind spot. I**

13   **thought it was kind of funny, but also seems**

14   **abundantly accurate but I was wondering if you**

15   **could just comment on that for a second.**

16   A.   What it means is that when we make a

17   full cusp we're using only information we have at

18   present and there's a lag in the receipt of that

19   information so that's the blind spot, so in other

20   words what's happened in the last two or three

21   months may not be apparent because the statistics

22   haven't yet been published or they're going to be

23   revised and we're driving a car with only a

24   rear-view mirror because we know what's happened in

25   the past but we don't know what's going to happen

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 1   in the future.

 2   **Q.   Okay.**

 3   COMMISSIONER HALL: I have no further

 4   questions.

 5   JUDGE WOODRUFF: Mr. Rupp?

 6   Anyone wish To recross based on those

 7   questions from the bench?

 8   Redirect?

 9   MR. MALLIN: No, Your Honor.

10   JUDGE WOODRUFF: All right. Then Mr.

11   Pratt you can step down.

12   A.   Thank you.

13   I believe Mr. Schwartz will be next.

14   MR. MALLIN: Your Honor I'm told Mr.

15   Schwartz apparently caught the flu, unbeknownst to

16   me.

17   JUDGE WOODRUFF: Did anyone have any

18   cross examination for Mr. Schwartz?

19   MR. MALLIN: If I could have two

20   minutes to figure out where we are on that.

21   JUDGE WOODRUFF: All right.

22   MR. MALLIN: I think we have another

23   witness back there we can bring out. Just give me

24   a second if you wouldn't mind Your Honor.

25   JUDGE WOODRUFF: Okay.

 1   (DISCUSSION HELD OFF THE RECORD)

 2   MR. MALLIN: Your Honor just to give

 3 you an update Mr. Schwartz was having GI cramps and

 4 he has gone back to the hotel, I'm hoping to hear

 5 back from him later this afternoon but we are going

 6 to bring forward Mr. Harris.

 7   JUDGE WOODRUFF: Let me ask the

 8 parties about Mr. Schwartz.

 9   Did anyone have any cross examination

10 for him?

11   MR. MALLIN: That's fine, Your Honor.

12   MR. NELSON: Your Honor we would have

13 a small amount of cross examination. Now I offer

14 this as an alternative. My cross examination would

15 be premised upon questions I asked him in

16 deposition and to not further inconvenience Dr.

17 Schwartz the court is inclined to let his direct

18 testimony in under these circumstances. We can

19 certainly submit our cross examination questions

20 and answers by reference to page and line of

21 deposition transcript as an alternative to pulling

22 the poor man in here live.

23   MR. MALLIN: I appreciate the offer,

24 I may accept the offer but the reality is I really

25 need to talk to Mr. Schwartz. As Your Honor is

 1 aware I didn't ask any followup questions at his

 2 deposition because there wasn't a need at the time

 3 so I think it would be prudent on my part to talk

 4 to Mr. Schwartz when we're on our next break to see

 5 where we are and then I'll address the offer from

 6 there.

 7   JUDGE WOODRUFF: That's fine. Got

 8 plenty of other witnesses to get through today, so.

 9 I expect we'll be here tomorrow as well so

10 hopefully he can feel better tomorrow.

11   MR. MALLIN: He did report late

12 yesterday he wasn't feeling well.

13   JUDGE WOODRUFF: That's going around.

14   MR. MALLIN: I appreciate it Your

15 Honor, thank you.

16   JUDGE WOODRUFF: You're welcome.

17   (Whereupon, the witness was sworn)

18   JUDGE WOODRUFF: You may inquire,

19   DIRECT EXAMINATION

20 QUESTIONS BY MS. ILES:

21   Q.   **Will you please state your full name**

22 **for the record?**

23   A.   Thomas Harris.

24   Q.   **Mr. Harris where are you employed?**

25   A.   Silicon Valley Bank.

 1   Q.   And what is your position there?

 2   A.   I am managing director there now. A

 3   slight change from when I gave my testimony.

 4   Q.   Okay. That's different from what's

 5   in your testimony you said?

 6   A.   Just a promotion. Same place.

 7   Q.   Congratulations.

 8   A.   Thanks.

 9   Q.   And did you prepare pre-filed

10   testimony in this case which is, there are copies

11   of it, I've handed to you which is marked Exhibits

12   604 and 605?

13   A.   I did.

14   Q.   And if I were to ask you the

15   questions that are included in that testimony today

16   would your answers be the same?

17   A.   Yes.

18   MS. ILES: Your Honor I offer

19   Exhibits 604 and 605 and tender the witness for

20   cross examination.

21   JUDGE WOODRUFF: 604 and 605 have

22   been offered, any objection to their receipt?

23   Hearing none they will be received.

24   And for cross examination beginning

25   with Public Counsel?

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 1                 MR. ALLISON:  No questions.  Thank

 2   you.

 3                 JUDGE WOODRUFF:  MECG?

 4                 MR. WOODSMALL:  No questions.

 5                 JUDGE WOODRUFF:  United for Missouri?

 6                 MR. LINTON:  No questions.

 7                 JUDGE WOODRUFF:  Staff?

 8                 MR. THOMPSON:  No questions.

 9                 JUDGE WOODRUFF:  Ameren?

10                 MR. NELSON:  No questions.

11                 JUDGE WOODRUFF:  All right.

12   Questions from the bench.  Mr. Chairman?

13                 CHAIRMAN KENNEY:  No questions.

14                 JUDGE WOODRUFF:  Mr. Kenney?

15                 COMMISSIONER KENNEY:  No questions.

16                 JUDGE WOODRUFF:  Mr. Hall.

17                 COMMISSIONER HALL:  No questions.

18   Thank you.

19                 JUDGE WOODRUFF:  Mr. Rupp?

20                 COMMISSIONER RUPP:  No questions.

21                 JUDGE WOODRUFF:  There were no

22   questions from the bench or from other parties so

23   there's no need for recross or redirect and you can

24   step down.

25           A.    Thank you.
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 1   Would Mr. Fayne be next then?

 2   MR. DOWNEY: Yes.

 3   (Whereupon, the witness was sworn)

 4   DIRECT EXAMINATION

 5   QUESTIONS BY MS. ILES:

 6   **Q.   Would you please state your name for**

 7   **the record?**

 8   A.   My name is Henry Fayne.

 9   **Q.   Mr. Fayne, where are you employed?**

10   A.   I'm self employed.

11   **Q.   What is the, do you have a company or**

12   **a consulting business that you work with?**

13   A.   I am a self employed consultant.

14   **Q.   And Mr. Fayne did you prepare**

15   **testimony that was pre-filed in this case, a copy**

16   **of which I've handed you which has been marked as**

17   **Exhibits 602 and 603?**

18   A.   Yes, I did.

19   **Q.   And if I were to ask you the**

20   **questions that are included in that testimony here**

21   **today would your answers be the same?**

22   A.   Yes, they would.

23   MS. ILES: Your Honor, I move for the

24   admission of Exhibits 602 and 603 and tender the

25   witness for cross examination.

 1   JUDGE WOODRUFF: 602 and 603 have

 2   been offered. Any objections to their receipt?

 3   Hearing none they will be received.

 4   And cross examination beginning with

 5   Public Counsel.

 6   MR. ALLISON: No questions.

 7   JUDGE WOODRUFF: MECG?

 8   MR. WOODSMALL: Yes, Your Honor.

 9   CROSS EXAMINATION

10   QUESTIONS BY MR. WOODSMALL:

11   **Q.   Good afternoon Mr. Fayne.**

12   A.   Good afternoon.

13   **Q.   Just refresh my memory, you have**

14   **testified on behalf of Noranda at the Missouri**

15   **Public Service Commission this is your fourth time,**

16   **is that correct?**

17   A.   I have testified before, I'll take

18   your word that it's the fourth time.

19   **Q.   Okay. And in each of those pieces of**

20   **testimony you provided a comparison of Noranda's**

21   **cost of electricity to other domestic smelters, is**

22   **that correct?**

23   A.   That is correct.

24   **Q.   And you're familiar with the smelters**

25   **you have on your list?**

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 1          A.      With most of them, yes.

 2          Q.      Okay.  And the cost of electricity

 3   that you talk about is available at Schedule HWF-1

 4   to your testimony, is that correct?

 5          A.      That is correct.

 6          Q.      Okay.  I'd like to ask you about a

 7   couple of those.  The first one is the word

 8   smelter, are you familiar with that?

 9          A.      The word smelter, just generally,

10   yes, the outgoing smelter.

11          Q.      Is it your understanding that the

12   work smelter is served electricity by a self-owned

13   coal burning power plant?

14          A.      Yes, it's a fully integrated system,

15   coal mine plant and then the smelter.

16          Q.      Okay.  You're a former AEP executive.

17   Would you agree that the costs to build a coal

18   fired plant would be hundreds of millions if not

19   billions of dollars?

20          A.      To build a new one?

21          Q.      Yes.

22          A.      Yes, that would be true.

23          Q.      And do you know if Noranda has

24   explored such an option?

25          A.      I would hope not.
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 1          Q.      Okay.  A couple of others.  The

 2   Hawesville plant, is it your understanding that

 3   Hawesville takes service, gets electric service via

 4   the wholesale market?

 5          A.      Yes.  As of I think the beginning of

 6   2014.

 7          Q.      Okay.

 8          A.      Or thereabouts.

 9          Q.      I'm going to ask you, let me talk

10   with your counsel real quick.

11                  (DISCUSSION HELD OFF THE RECORD)

12          Q.      (BY MR. WOODSMALL) What I'm going to

13   ask you to do, if you go back to your 2010

14   testimony, he provided the same information, a

15   comparison and the information there in HWF-1 that

16   I'll pass out was a public document.  Now the same

17   information is highly confidential, I don't

18   understand the distinction for being highly

19   confidential here and I'm trying to avoid going In

20   camera for this.

21                  JUDGE WOODRUFF:  Okay.

22                  MS. ILES:  Your Honor, it should have

23   been highly confidential in the last because of the

24   source of the information is proprietary and that's

25   why it couldn't be disclosed.
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 1   MR. WOODSMALL: Well, they released

 2   it 2010 and 2012 now suddenly the information is

 3   highly confidential.

 4   MS. ILES: It's actually not

 5   Noranda's interest that we're protecting of that,

 6   it's the source and we should have protected it in

 7   the other case.

 8   JUDGE WOODRUFF: Is it the same

 9   information or is it updated information?

10   MR. WOODSMALL: It's updated.

11   JUDGE WOODRUFF: Okay. You can

12   certainly explore that, I'm inclined to go ahead.

13   MR. WOODSMALL: Okay. We need to go

14   In camera then.

15   JUDGE WOODRUFF: Okay.

16   MR. WOODSMALL: Hold on a second, let

17   me get a foundation established and then we'll go

18   In camera.

19   JUDGE WOODRUFF: Okay.

20   MR. WOODSMALL: 979 Your Honor?

21   JUDGE WOODRUFF: Correct.

22   **Q.   (BY MR. WOODSMALL) Mr. Fayne, do you**

23   **recognize Exhibit 979?**

24   A.   Yes, sir.

25   **Q.   And would you agree that that is the**

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 1   **comparison cost of electricity for the domestic**

 2   **smelters that you filed in ER-2010 dash 0036?**

 3   A.   I can't recall the rate case number

 4   but yes, it represents the 2009 data.

 5   **Q.   Okay.**

 6   MR. WOODSMALL: Now I believe we need

 7   to go In camera Your Honor.

 8   JUDGE WOODRUFF: All right. We will

 9   go In camera.

10

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

12   which is contained in Volume 34, pages 2687-2688 of

13   the transcript.)

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 1   JUDGE WOODRUFF: All right. While we

 2   were in closed section Counsel offered Exhibit 979

 3   which would be, let's see,-- would the exhibit

 4   itself be HC?

 5   MR. WOODSMALL: No, the exhibit was

 6   never marked --

 7   MS. ILES: Well, if I could just

 8   explain Your Honor. The source of the information

 9   is CRU and Noranda is able to access that

10   information because they pay a subscription fee is

11   my understanding and so we had asked CRU if we

12   would be able to provide this information generally

13   without making it confidential, I guess we must

14   have asked after we prepared this in the last case

15   but they did tell us no, they considered it

16   proprietary, it's not available to the general

17   public without a subscription and that's why we

18   marked it HC to protect their proprietary

19   information, it's not really a Noranda secret.

20   JUDGE WOODRUFF: All right.

21   Mr. Woodsmall any response?

22   MR. WOODSMALL: Given the state

23   policy for releasing information this has already

24   been released, to try to unring the bell this is

25   going back to the 2010 case, so five years ago.

 1   The second point is the company, Noranda, has

 2   released CRU information repeatedly as we've seen

 3   in the various SEC filings, they include CRU

 4   information in the decs that we've seen attached to

 5   investor meetings they released CRU information so

 6   the release of CRU information isn't absolute. Or

 7   the protection of it is not absolute.

 8   JUDGE WOODRUFF: We'll ago ahead and

 9   market it as HC understanding that if somebody

10   wants to get creative they can go back and find it

11   in the earlier case. But for this case we'll

12   market it as HC. It's 979 HC, any objections to

13   its receipt?

14   Hearing none it will be received.

15   Any other cross?

16   MR. WOODSMALL: No.

17   JUDGE WOODRUFF: Ameren Missouri?

18   MR. MITTEN: No.

19   JUDGE WOODRUFF: United For Missouri?

20   Mr. Linton?

21   MR. LINTON: No questions, Your

22   Honor.

23   JUDGE WOODRUFF: Staff?

24   MR. THOMPSON: Thank you.

25   CROSS EXAMINATION

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 1   QUESTIONS BY MR. THOMPSON:

 2          Q.     Dr. Fayne, good afternoon.

 3          A.     I wish it was Dr. but it's not.

 4          Q.     Mr. Fayne, excuse me.  I'm glad I

 5   accidentally promoted you rather than accidentally

 6   demoted you.

 7                 I understand you're an expert in the

 8   power industry through years of experience, is that

 9   correct?

10          A.     Yes, sir.

11          Q.     And particularly they provision of

12   power to aluminum smelters, is that correct?

13          A.     Yes, sir.

14          Q.     Okay.  Based on your experience in

15   the power industry would you agree with me that

16   there is a point on any given day at which it is

17   more beneficial for the other ratepayers of Ameren

18   Missouri a point below cost at which it's better to

19   have Noranda on the system than to have them off

20   the system?

21          A.     Yes.

22          Q.     Okay.  And would you agree with me

23   that that point necessarily will change over time?

24          A.     Yes.

25          Q.     As conditions change.
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 1   A.   Correct.

 2   Q.   **Now, do you think that point could be**

 3   **calculated for a period of a week?**

 4   A.   Yes.

 5   Q.   **How about a period of a month?**

 6   A.   Yes.

 7   Q.   **A period of a quarter?**

 8   A.   Yes.

 9   Q.   **A period of a year?**

10   A.   Yes.

11   Q.   **A period of approximately 18 months,**

12   **the average interval between Ameren Missouri rate**

13   **cases?**

14   A.   Yes, I do.

15   Q.   **Thank you.**

16   MR. THOMPSON: No further questions.

17   JUDGE WOODRUFF: For Ameren?

18   CROSS EXAMINATION

19   QUESTIONS BY MR. MITTEN:

20   Q.   **Continuing Mr. Thompson's line do you**

21   **think that that number could be calculated for five**

22   **years?**

23   A.   There could be, one could calculate a

24   number for five years, it would be a forecast, it

25   would not be an absolute.

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 1   Q.   How about seven years or 10 years?

 2   A.   I believe that is all doable.

 3   Q.   But it would be forecasts and not

 4   absolute?

 5   A.   It depends on the rate making

 6   structure quite frankly. It's been done in other

 7   states where rates have been set or discounts have

 8   been provided for 10 year periods where it has been

 9   determined that other ratepayers are better off for

10   that whole period of time.

11   Q.   But I'm getting to the accuracy of

12   the estimate as to what that point would be seven

13   years or 10 years into the future.

14   A.   That could be more difficult but I'm

15   not saying impossible.

16   Q.   And would you agree that the farther

17   out you go the less confidence you would have in

18   that estimate?

19   A.   The potential is that you might hit a

20   brief period where it was incorrect and the

21   customer might not have been better off for a

22   specific period but I think you could probably

23   determine a number where it could be concluded the

24   customer is better off over the entire period.

25   Q.   But again how much confidence would

1   you have in that number?

2   A.   I think that could be done with great

3   confidence.

4   Q.   Mr. Woodsmall noted that this is the

5   fourth time that you've testified on behalf of

6   Noranda before this Commission. Do you recall

7   that?

8   A.   Yes, I do.

9   Q.   But this, Missouri's not the only

10   state in which you have testified in support of a

11   special rate for an aluminum smelter, is that

12   correct?

13   A.   That is correct.

14   Q.   You've previously testified in

15   Kentucky, West Virginia and Ohio, is that correct?

16   A.   That is correct.

17   Q.   Now, could you please turn to page 4

18   of your direct testimony, and I want to focus on

19   the question that begins on line 19. The question

20   says that you conclude that the rate treatment

21   requested by Noranda in this proceeding is

22   consistent with rate treatment provided by

23   regulatory commissions in other states.

24   Did I correctly characterize the

25   testimony?

 1   A.   That's the answer on page 5, yes.

 2   Q.   **And your conclusion is that it is**

 3 **consistent?**

 4   A.   Yes, I do believe it is.

 5   Q.   **In the Kentucky case that you**

 6 **testified, that was on behalf of the Hawesville**

 7 **smelter, is that correct?**

 8   A.   Both Hawesville and Sebree smelters.

 9   Q.   **And in that proceeding the Kentucky**

10 **commission authorized the smelter to break a**

11 **contract where it was receiving service as a retail**

12 **customer and begin to acquire service in the**

13 **market, is that correct?**

14   A.   No, that's not. Their testimony with

15 the Sebree and Hawesville smelters was related to

16 the contract that, with Big Rivers that basically

17 established the relationship with Big Rivers when

18 Louisville Gas and Electric transferred ownership

19 back to Big Rivers. The latest case where those

20 smelters each were permitted --

21   Q.   **Mr. Fayne, I don't think you're**

22 **really answering my question. Could you turn to**

23 **page 6 of your direct testimony?**

24   A.   Yes.

25   Q.   **And beginning on line 7 doesn't that**

 1   testimony say the Kentucky PSC approved Century

 2   Aluminum's request to terminate the Hawesville

 3   contract with Big Rivers before the end of the

 4   contractual term allowing Century Aluminum to

 5   purchase power from the market instead?

 6   A.   I understand --

 7   Q.   Isn't that what it says?

 8   A.   That's what it says but I did not

 9   testify in that case.

10   Q.   Thank you Mr. Fayne, that's the only

11   question I had for you.

12   And beginning at page 6 of your

13   direct testimony you also describe two cases in

14   Ohio, one in 2009 and one in 2013 that dealt with a

15   special rate arrangement for the Ormet Aluminum's

16   Hannibal smelter. Did you testify in support of

17   the smelter's special rate proposal in each of

18   those cases?

19   A.   Yes.

20   Q.   The special rate arrangement for

21   Ormet's Hannibal smelter that the Ohio Commission

22   approved based rates for the smelter on the LME

23   price of aluminum, is that correct?

24   A.   Yes.

25   Q.   And as the LME price of aluminum

 1   increased so did the rates the smelter paid for

 2   electricity, is that correct?

 3   A.   Correct.

 4   Q.   The Ohio Commission also kept the

 5   amount of rate subsidies that a smelter could

 6   refuse in any given year, is that correct?

 7   A.   Yes.

 8   Q.   And the Ohio Commission tied the rate

 9   subsidies provided in the 2009 order to the

 10   smelter's commitment to maintain certain minimum

 11   levels of employment, isn't that correct?

 12   A.   Yes.

 13   Q.   And if the smelter failed to honor

 14   that equipment and reduced employment below the

 15   minimum level the amount of the rate subsidy

 16   decreased, is that correct?

 17   A.   Yes.

 18   Q.   The Ohio Commission also required the

 19   smelter to pay rates in excess of the electric

 20   co-op's normal tariff rate if the LME price of

 21   aluminum exceeded a certain target price, is that

 22   correct?

 23   A.   Yes.

 24   Q.   At page 7 of your direct testimony

 25   you mention a 2013 case in West Virginia that

 1   involved a special rate arrangement for the

 2   Ravenswood smelter. Did you testify in support of

 3   the smelter's special rate arrangement in that

 4   case?

 5   A.   Yes.

 6   MR. MITTEN: Your Honor, I'd like to

 7   have an exhibit marked.

 8   JUDGE WOODRUFF: All right. It's

 9   number 73.

10   Q.   (BY MR. MITTEN) Mr. Fayne if you

11   could take a moment to look at Exhibit 73 and tell

12   me if that's a copy of the West Virginia

13   Commission's final order in the 2013 case involving

14   the Ravenswood smelter's request for special rate?

15   A.   Does appear to be, yes, sir.

16   MR. MITTEN: Your Honor, I move for

17   the admission of Exhibit 73.

18   JUDGE WOODRUFF: 73 has been offered,

19   any objections to its receipt?

20   Hearing none it will be received.

21   Q.   (BY MR. MITTEN) The special rate

22   arrangement the West Virginia Public Service

23   Commission approved based rates for the Ravenswood

24   smelter on the LME price of aluminum, is that

25   right?

1   A.   That's correct.

2   Q.   And like the Ohio Commission decision

3   we discussed a moment ago the West Virginia

4   Commission required the smelter to pay a premium

5   above the utility's tariff rate if the LME price of

6   aluminum exceeded a certain level, is that correct?

7   A.   With a cap, yes.

8   Q.   The West Virginia Commission required

9   the corporate parent of the Ravenswood smelter to

10   provide a written guarantee that it would pay back

11   a portion of the subsidies provided under the

12   special rate arrangement in the event the smelter

13   went out of business or was otherwise able to pay

14   back those amounts, is that correct?

15   A.   Only to the extent that the subsidies

16   exceeded the base amount.

17   Q.   And the West Virginia Commission also

18   required Ravenswood to make commitments to invest

19   additional capital in the smelter, is that correct?

20   A.   That is correct.

21   Q.   Before we leave West Virginia the

22   special rate arrangement the West Virginia

23   Commission approved for that smelter used up to $20

24   million in coal service tax revenues to fund the

25   rate subsidies provided to the smelter, is that

 1   **correct?**

 2   A.   That is correct.

 3   **Q.   And that is an annual amount?**

 4   A.   Yes, sir.

 5   **Q.   And those subsidies were provided by**

 6   **legislation passed by the West Virginia**

 7   **legislature?**

 8   A.   They were not specifically for the

 9   smelter but they were available to any group of

10   energy intensive customers.

11   **Q.   Has Noranda gone to Missouri's**

12   **general assembly to seek any kind of public support**

13   **to help the company avoid closure of the New Madrid**

14   **smelter?**

15   A.   I believe Mr. Smith testified that

16   they have not.

17   **Q.   Indeed Mr. Smith indicated that**

18   **Noranda made a conscientious decision not to seek**

19   **relief for the New Madrid smelter from Missouri's**

20   **general assembly because Noranda believes this**

21   **Commission is the appropriate place to seek that**

22   **relief. Do you recall that testimony?**

23   A.   I do believe that was the case, yes.

24   **Q.   Did Mr. Smith or anyone from Noranda**

25   **consult with you about that decision?**

1   A.   No, sir.

2   Q.   So you've never had any conversation

3 with Mr. Smith or anyone from Noranda about its

4 decision not to go to the Missouri general

5 assembly?

6   A.   No, sir.

7   Q.   Do you agree with that decision?

8   A.   I have to defer to Mr. Smith's

9 judgment, I am not familiar with the politics in

10 Missouri.

11   Q.   At pages 5 and 6 of your direct

12 testimony in this case you describe a special rate

13 arrangement between Alcoa's Massena smelters and

14 the New York Power Authority sometimes referred to

15 as NYPA, N-Y-P-A, is that correct?

16   A.   Yes.

17   Q.   NYPA is not a regulatory commission

18 similar to the Missouri Commission but instead it's

19 a public power authority that sells hydroelectric

20 and nuclear power on a wholesale basis, is that

21 correct?

22   A.   Yes, sir.

23   Q.   Under the agreement between NYPA and

24 Alcoa the rate discount that was provided is tied

25 to the LME price of aluminum, is that correct?

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 1          A.      It is, first of all it's not a rate

 2   discount, it is a rate and then it is a rate that

 3   is adjusted based on the LME.

 4          Q.      And Alcoa under that arrangement is

 5   obligated to maintain a minimum number of jobs at

 6   the smelter, is that correct?

 7          A.      That is correct.

 8          Q.      An Alcoa also is obligated to invest

 9   hundreds of millions of dollars to overhaul the

10   Massena smelter, is that correct?

11          A.      That was the contract, that's

12   correct.

13          Q.      Now, at the time Noranda filed its

14   direct testimony in this case, in December 2014,

15   proposing a special rate for the New Madrid smelter

16   both you and Noranda were aware of the conditions

17   imposed in Ohio, West Virginia and New York to the

18   special rate arrangements for aluminum smelters in

19   each of those states, is that right?

20          A.      I was aware.

21          Q.      Did you not talk to Noranda about

22   that?

23          A.      About what the arrangements were in

24   the other states?  No, because we had, Noranda had

25   provided commitments in the earlier case 0224, and
```

 1   the intent was to provide those same commitments

 2   here so there was no reason to discuss it.

 3   Q.   Again my question was did you discuss

 4   with Noranda any of the commitments or obligations

 5   that were put on the special rate arrangements in

 6   Ohio, West Virginia or New York?

 7   A.   I don't recall having that

 8   discussion.

 9   Q.   But as set out in the direct

10   testimony that was filed for Noranda on December

11   19th, 2014 Noranda's special rate proposal does not

12   base the price of electricity provided to the New

13   Madrid smelter on the LME price of alumina, is that

14   correct?

15   A.   Those commitments were provided in

16   surrebuttal.

17   Q.   The commitment in surrebuttal based

18   the price on the LME price of alumina?

19   A.   No. I'm sorry, there was no LME

20   adjustment.

21   Q.   Again Mr. Fayne my question is

22   limited to the testimony that was filed in December

23   2014.

24   A.   I understand that.

25   Q.   And that particular proposal does not

 1   cap the amount of rate subsidies Noranda could

 2   receive in any given year, does it?

 3   A.   No, it does not.

 4   Q.   And it also does not include any

 5   commitment from Noranda to maintain any minimum

 6   level of employment at the New Madrid smelter.

 7   A.   Explicitly in the testimony it does

 8   not.

 9   Q.   And it would not obligate Noranda to

10   pay a premium above Ameren Missouri's tariff rate

11   if the LME price of aluminum exceeds a certain

12   level.

13   A.   We already determined it was not

14   based on the LME.

15   Q.   So the answer to my specific question

16   would be no, it doesn't include that.

17   A.   It does not include that.

18   Q.   And it does not obligate Noranda to

19   make any amount of additional investment in the New

20   Madrid smelter, is that correct?

21   A.   That is correct.

22   Q.   And it doesn't obligate Noranda's

23   corporate parent or anyone else to pay back to

24   Ameren Missouri or its ratepayers any rate

25   subsidies that the New Madrid smelter receives.

 1   A.   There's no question it's for that, no

 2   it does not.

 3   Q.   **Now, as you indicated Noranda revised**

 4   **its special rate proposal in surrebuttal testimony**

 5   **that was filed earlier, or excuse me, in January,**

 6   **by Kip Smith, Noranda's CEO, is that correct?**

 7   A.   I would not use the term revised but

 8   the commitments were explicitly identified in that

 9   testimony.

10   Q.   **Mr. Fayne, do you know why Mr. Smith**

11   **waited until surrebuttal when no party had an**

12   **opportunity to respond to his testimony to propose**

13   **possible employment and investment commitments?**

14   A.   As you may recall Mr. Smith was, had

15   had some medical issues when direct testimony was

16   filed and I can only assume that that was the

17   reason why it was not reflected initially. The

18   intent from the start was to show those

19   commitments.

20   Q.   **Mr. Boyle is Noranda's CFO, isn't he?**

21   A.   Yes, he is.

22   Q.   **Could he have included those**

23   **commitments in his testimony?**

24   A.   I have no reason why he could not

25   have.

```
 1        Q.      But he didn't.

 2        A.      But he did not.

 3        Q.      But even as revised by Mr. Smith's

 4  testimony Noranda's proposal still is not tied to

 5  the LME price of aluminum.

 6        A.      That is correct.

 7        Q.      And it still doesn't include any

 8  written guarantee from Noranda that it will live up

 9  to its employment or capital investment commitment.

10        A.      I know of no contract that would

11  provide for that and no it does not.

12        Q.      And it doesn't propose to convert New

13  Madrid from a retail electric customer to a

14  customer who procures its power in the wholesale

15  market, do you agree?

16        A.      I can't imagine why it would but yes,

17  I agree with you.

18        Q.      On page 2 of your direct testimony

19  you state that generally electricity accounts for

20  approximately one-third of the production costs of

21  an aluminum smelter.

22        A.      That's correct.

23        Q.      So that means that two-thirds of the

24  smelter's costs are not related to the cost of

25  electricity?
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 1   A.   These are the costs of production and

 2   yes, that would be correct.

 3   Q.   **Would you agree that if Noranda was**

 4   **able to reduce some of the two-thirds of its costs**

 5   **that are not related to the price of electricity**

 6   **that those reductions would have a positive effect**

 7   **on Noranda's ongoing success or viability?**

 8   A.   I believe they've already done that

 9   but mechanically you are correct.

10   Q.   **Now, in its response to some data**

11   **requests that we submitted to Noranda in the 0225**

12   **complaint case Noranda identified alumina as the**

13   **second largest cost of producing aluminum at the**

14   **New Madrid smelter and during your deposition in**

15   **this case you told me you believe that's still**

16   **true, is that correct?**

17   A.   Yes.

18   Q.   **Assuming all other costs at the**

19   **smelter remain static reducing the cost of alumina**

20   **would help Noranda improve its cash position, do**

21   **you agree?**

22   A.   Mechanically, yes.

23   Q.   **But during your deposition you**

24   **couldn't tell me any steps Noranda has taken in the**

25   **last 12 months to reduce its cost of alumina, isn't**

1   that correct?

2   A.   I was not privy to any of those

3   adjustments, that would be a question for Mr.

4   Boyles.

5   Q.   And in those previous data request

6   responses Noranda identified labor as its third

7   largest cost of producing aluminum at the New

8   Madrid smelter and during your deposition you told

9   me you think that's still true, is that correct?

10   A.   Yes.

11   Q.   Assuming all other costs at the

12   smelter remain static reducing the cost of labor

13   would help Noranda improve its cash position, do

14   you agree?

15   A.   Yes, if they were permitted to reduce

16   the staffing level.

17   Q.   Well they could reduce the wages paid

18   to hourly employees, couldn't they?

19   A.   I'm not sure that's even possible

20   given union contracts.

21   Q.   Unions can renegotiate contracts.

22   A.   They could and mechanically you're

23   absolutely correct.

24   Q.   And they could reduce the amounts

25   that are paid to management employees who aren't

 1   subject to collective bargaining agreements, is

 2   that correct?

 3   A.   That is correct.

 4   Q.   And if they did all or both of those

 5   things and all other costs at the smelter remained

 6   static would that help improve Noranda's cash

 7   position?

 8   A.   As a mechanic yes, as a true

 9   viability, debatable.

10   Q.   But during your deposition you

11   couldn't tell me any steps Noranda has taken in the

12   last 12 months to reduce its labor costs, is that

13   correct?

14   A.   I do not know what they have done.

15   Q.   I do not have any further questions.

16   Thank you Mr. Fayne.

17   JUDGE WOODRUFF: Questions from the

18   bench.

19   Mr. Chairman?

20   CHAIRMAN KENNEY: Mr. Fayne nice to

21   see you again.

22   A.   Nice to see you, sir.

23   CHAIRMAN KENNEY: I don't have any

24   questions. Thanks.

25   JUDGE WOODRUFF: Mr. Kenney?

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 1              COMMISSIONER KENNEY:  I have no

 2   questions.  Thank you.

 3              JUDGE WOODRUFF:  Mr. Hall?

 4              COMMISSIONER HALL:  Just a few.

 5                   EXAMINATION

 6   QUESTIONS BY COMMISSIONER HALL:

 7        Q.    Good afternoon Mr. Fayne.

 8        A.    Good afternoon.

 9        Q.    On page 4 of your surrebuttal on

10   lines 3 and 4 taking a part of a sentence there you

11   say that the actual performance and success of a

12   smelter depends on the price of aluminum and it's

13   overall cost.

14        A.    Yes, sir.

15        Q.    That's correct?

16        A.    Yes.

17        Q.    Now, you focus on the cost of

18   electricity because that is the most significant

19   expense that a smelter incurs.

20        A.    Partly.  I focus on electricity, one,

21   because it is the largest cost, yes, that's

22   correct, but I also focus on electricity because

23   that tends to be the differentiator amongst

24   smelters.

25        Q.    Because the other costs are fairly
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 1   comparable?

 2   A.   They vary somewhat from smelter to

 3   smelter but they don't have the same, they're not

 4   as significant as impact on the differentiation.

 5   Q.   **So they're rather constant smelter to**

 6   **smelter.**

 7   A.   As a group of numbers, yes.

 8   Q.   **Okay. And you don't provide any**

 9   **testimony as to Noranda's overall cost of**

10   **production compared to other smelters, correct?**

11   A.   That is correct.

12   Q.   **In your direct testimony you describe**

13   **efforts by state commissions in New York, Kentucky,**

14   **Ohio and West Virginia to either approve or to set**

15   **rates designed to keep a smelter viable.**

16   A.   Yes, sir.

17   Q.   **In any of those states -- strike**

18   **that.**

19   **Did, are you familiar with the**

20   **statutory authority that those commissions had or**

21   **did not have to either establish or approve such**

22   **rates?**

23   A.   In general, yes, and I can give you

24   description state by state if that would help.

25   Q.   **Well, in any of those states did the**

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 1   **commissions lack that authority?**

 2   A.   The, clearly New York is not a

 3   commission --

 4   **Q.   Pardon me?**

 5   A.   The New York, New York Power

 6   Authority is not a commission and their, they have

 7   the authority on their own, it is, clearly the

 8   contract there was done in conjunction with the

 9   governor but there was statutory authority for them

10   to do what they did.

11   **Q.   Okay.**

12   A.   In Ohio the commission believed and

13   it was confirmed that they had the statutory

14   authority to do that and they basically approved

15   the special contracts absent any legislation, any

16   legislation related.

17   **Q.   Just based upon their inherent**

18   **authority to establish just and reasonable rates?**

19   A.   Correct.

20   **Q.   Okay.**

21   A.   And there was, as a side bar there

22   were some legislative review in Ohio about whether

23   the commission could approve special contracts and

24   the thrust of that review was really around the

25   fact that many of the special contracts that were

1   in place were never made public so that that

2   legislative review really confirmed that the

3   commission had the authority to do it but insisted

4   that it all be in the public domain. In West

5   Virginia it was a little less clear. The

6   commission approved the original contract for the

7   Ravenswood smelter on its own authority. The staff

8   of the commission was the only one who objected

9   claiming that the commission did not have the

10   statutory authority so that when the Ravenswood

11   smelter went back for this latest order, latest

12   review, as a, in order to ensure that there was no

13   court appeal, a renewed contract, there was a

14   movement to get the legislature to pass legislation

15   at that point in time which did confirm that the

16   commission had the authority and established some

17   parameters. But the initial efforts in both West

18   Virginia and Ohio, well, the only effort in Ohio

19   basically was done at the regulatory commission

20   without any additional authority.

21   Q.   So those are the four states with

22   which you are familiar?

23   A.   Kentucky, the Kentucky issue was not

24   really a special rate, it was approving a contract

25   with a utility. I'm not sure if falls quite in the

 1   same category. The authority for that commission

 2   which is an interesting outcome, there is no

 3   customer choice in Kentucky yet the commission

 4   authorized the two smelters to go out, that there

 5   is a work around because they technically still buy

 6   their power through a distribution co-op so that

 7   all that the commission did in that case was to

 8   allow them to break the contract.

 9   Q.   So looking at Exhibit 1 for your

10   direct testimony, and I'm not going to reference

11   specific numbers so we can stay in open session,

12   you mention four of the states. What about the

13   others?

14   A.   Well, Warwick as we discussed earlier

15   is self generation so there is no regulatory

16   authority over the price that they pay, they just

17   help generate. If we look at, let's see, Mt. Holly

18   is served by Sante Cooper which is an electric

19   cooperative which is self-governing, there is no

20   regulatory oversight over Sante Cooper, they are

21   certainly composed of a board of their members and

22   that they determine the rate that they will charge

23   the smelter. They do, they are giving the smelter

24   special rates compared to a full tariff, obviously

25   it's not a very great rate but it is a discount

 1   from what their full rate would be.

 2   Q.   And what is the financial status of

 3   Mt. Holy?

 4   A.   Mt. Holly is probably precarious. I

 5   think it's important to understand that the

 6   difference among smelters is not only their cost of

 7   production and whether they can generate cash from

 8   operations it's a question of their basic liquidity

 9   position too and how much they can sustain the Mt.

10   Holly smelter is probably not performing any better

11   than the New Madrid smelter but they are owned by

12   Alcoa and Century both of which have multiple

13   smelters so they are much larger organizations and

14   therefore have some more financial capability to

15   basically withstand those temporary downturns.

16   Q.   So if Noranda had 2 or $300 million

17   more in the bank we might not be here today?

18   A.   Or if Noranda was a multi smelter,

19   multi, you know, global owner of smelters they

20   would have some diversity which might help them in

21   that regard.

22   Q.   Thank you.

23   I think you were going down the list.

24   A.   I'm sorry. I think the only one I

25   left out, well we have Ferndale and Wanachi who are

 1   both served by hydro facilities out west and they

 2   are served at, I don't know how to describe them,

 3   they're served at tariff rates essentially or full

 4   cost of service but they're all hydro based which

 5   makes the costs lower.

 6   **Q.   Through a comment in your testimony,**

 7   **I'm not finding it right now -- oh, here. So page**

 8   **3 of your direct where you say that on line 2 in**

 9   **the U.S in 1980 there were 32 smelters, today there**

10   **are only eight and then in every instance the**

11   **smelter shut down because of high power costs.**

12   **I want to give you a chance to**

13   **qualify that or that's 100 percent the reason why**

14   **every single, those 24 smelters shut down? That**

15   **seems like a pretty strong statement.**

16   A.   Well, it's a strong statement and one

17   could argue it's somewhat exaggerated but basically

18   in all of those cases the press reports indicated

19   that they were shutting down because the cost of

20   electricity relative to the global cost of

21   electricity was too high and therefore the smelter

22   was not profitable over the long term.

23   **Q.   So you base that assertion on press**

24   **accounts.**

25   A.   In most of those cases. I think in

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 1   terms of more recent ones, for example the Ormet

 2   smelter I can tell that you is true firsthand and

 3   in terms of the Ravenswood one I can tell you that

 4   is true firsthand.

 5        Q.      Which one is the Ohio?

 6        A.      Hannibal.  It's Ormet Aluminum

 7   Hannibal smelter.

 8        Q.      And that's the one that shut down?

 9        A.      That shut down just in the last year.

10        Q.      And is it, if you know, is the plant

11   currently mothballed?

12        A.      The plant has been scrapped, sold for

13   scrap.

14        Q.      What did they get for it?

15        A.      I have no idea but it's purely scrap

16   metal.  They did put it up for sale prior to

17   shutting it down, because of the power rate that

18   was available there were no buyers, they put, the

19   only one that bid on it was the scrap metal buyer

20   and it was sold and it is, I think it has been

21   dismantled.

22        Q.      Thanks.

23               COMMISSIONER HALL:  No further

24   questions.

25               JUDGE WOODRUFF:  Mr. Rupp.
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 1                    EXAMINATION

 2   QUESTIONS BY COMMISSIONER RUPP:

 3        Q.    I just have a generic question, it's

 4   about your HC direct exhibit that you had filed on

 5   your direct testimony but I'm not going to ask you

 6   any questions about numbers.  But are you familiar

 7   with the table that I'm referring to?

 8        A.    Page F-1?

 9        Q.    Yes, the aluminum smelter.  In the

10   far column the cost of electricity.

11        A.    Yes.

12        Q.    Is that factoring in all costs to the

13   smelter?

14        A.    It is the cost of electricity

15   delivered to the smelter.

16        Q.    Delivered.  So all costs are factored

17   in, all charges and everything.

18        A.    Yes.

19        Q.    Thank you.

20             JUDGE WOODRUFF:  Any redirect based

21   on questions from the bench?

22             We'll go back to MECG first.

23             MR. WOODSMALL:  Just a couple

24   questions but I think we need to go In camera.

25             JUDGE WOODRUFF:  Okay.  All right.
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2   (REPORTER'S NOTE: An in-camera session was held,

3   which is contained in Volume 34, pages 2719-2721 of

4   the transcript.)

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1   Q.   (BY MR. THOMPSON) I want to inquire

2   further about the arrangement paid by the New York

3   Power Authority.

4   A.   Yes, sir.

5   Q.   Now when Mr. Mitten was inquiring he

6   characterized that as a wholesale supplier of power

7   and you agreed with him. Is it in fact true that

8   the New York Power Authority only sells power at

9   wholesale?

10   A.   No, I think I missed that wholesale

11   number, they do provide power directly to the

12   smelters.

13   Q.   So are those sales to the smelters,

14   are those on retail tariffs?

15   A.   I'm not sure what the precise

16   structure is of the New York Power Authority

17   tariffs.

18   Q.   Okay.

19   A.   So I can't answer the question.

20   Q.   Are you aware that there's a statute

21   in Missouri that might allow Noranda to take power

22   on a wholesale basis?

23   A.   I understand that, with the caveat

24   that they have a contract with Ameren, yes, I am

25   aware of that.

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 1          Q.      Okay.  Well let's just set that

 2   contract aside for the moment with respect to these

 3   questions.  Is it your opinion if it exercised that

 4   option, is it your opinion that it would have to

 5   take power subject to FERC rates?

 6          A.      That I believe would be the case but

 7   I am not an attorney so I certainly won't opine on

 8   that.

 9          Q.      Okay.  Thank you very much,

10                  MR. THOMPSON:  No further questions.

11                  JUDGE WOODRUFF:  For Ameren?

12                       EXAMINATION

13   QUESTIONS BY MR. MITTEN:

14          Q.      Mr. Fayne I'd like to follow up on

15   some questions from Commissioner Hall regarding

16   statutory schemes in other states.  specifically

17   West Virginia.  You still have a copy of Exhibit 73

18   in front of you?

19          A.      Yes.

20          Q.      Could you please turn to page 16?

21          A.      Yes, sir.

22          Q.      The second full paragraph from the

23   bottom of that page states in the statute relating

24   to the determination of a special rate for energy

25   intensive industrial consumers the legislature
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 1   specifically approved the concept of a level and

 2   structure of rates based not solely on cost and not

 3   absolutely without some level of differentiation

 4   from traditionally set rates.

 5             Did I read that correctly?

 6       A.    You did.

 7       Q.    Do you know if the Missouri general

 8   assembly has approached the concept that is

 9   described in the paragraph I just read?

10       A.    I do not know.

11       Q.    Let's move down to the next paragraph

12   that describes West Virginia code section 24 dash 2

13   dash 1J paren lower case a, close paren, paren 6,

14   close paren which says permits the imposition of a

15   special rate that in the judgment of the commission

16   is required for continued new or expanded operation

17   of energy intensive industrial consumers and can

18   reasonably expected to support the long term

19   operation of energy intensive industrial customers.

20             Do you see that?

21       A.    I do.

22       Q.    Do you know if Missouri has a statute

23   like that?

24       A.    I do not.

25       Q.    Let's move to the next paragraph
```

 1   which describes West Virginia, code section 24 dash

 2   2 dash 1J paren lower case C, close paren, which

 3   according to the order authorizes the commission to

 4   consider in addition to all factors which the

 5   commission may consider in setting rates for

 6   consumers of electric power a rate that may take

 7   into consideration fluctuations in the market

 8   prices for goods and products produced or other

 9   variables or factors which may be relevant to or

10   affect the continuing vitality of the energy

11   intensive industrial customers.

12   Do you see that?

13   A.   I do.

14   Q.   Do you know if Missouri has a statute

15   that's similar to that?

16   A.   I do not.

17   Q.   And let's go down to the next

18   paragraph which describes West Virginia code

19   section 24 dash 2 dash 1 J paren lower case E,

20   close paren, and according to the order that price

21   that in order to qualify for the special rate the

22   energy intensive industrial customer must provide

23   information and data demonstrating how the special

24   rate advances the legislative policy goals and

25   findings set forth in the legislation.

1   Do you know if Missouri has a statute

2   similar to that?

3   A.   I do not.

4   Q.   And finally we'll go down to the next

5   paragraph which describes West Virginia code

6   section 24 dash 2 dash 1J paren lower case F, close

7   paren which according to the order authorizes the

8   commission to determine whether any excess revenue

9   or revenues shortfall created by a special rate

10   should be allocated among any other customers of

11   the utility and whether the determination of how

12   that revenue shortfall or excess revenue should be

13   allocated is just, reasonable and fairly balances

14   the interests of other consumers, the utility and

15   the customers receiving the special rate.

16   Do you see that?

17   A.   I do.

18   Q.   Do you know if Missouri has a statute

19   similar to that?

20   A.   I do not know.

21   Q.   No further questions, thank you.

22   JUDGE WOODRUFF: All right. Then

23   redirect.

24

25

1   REDIRECT EXAMINATION

2   QUESTIONS BY MS. ILES:

3   **Q.   Mr. Fayne counsel for Ameren asked**

4   **you some questions about special rate relief that**

5   **was offered to various other smelters around the**

6   **country and I wanted to follow up on some of those**

7   **questions.**

8   **First he asked you about the Kentucky**

9   **case that involves Sebree in Hawesville that**

10   **involved the, a contract that the smelters were**

11   **authorized to break, do you remember those**

12   **questions?**

13   A.   I do.

14   **Q.   And I think you started to tell us**

15   **something about your testimony in that case and he**

16   **cut you off. I just want to give you the**

17   **opportunity to explain what your role in that case**

18   **was.**

19   A.   I had no role in the case that

20   allowed the smelters to break the contract, I was

21   not involved at all. I was involved several years

22   prior in the case that established the contract to

23   begin with.

24   **Q.   Okay. And does that have any**

25   **relevance to the situation with Noranda in this**

```
 1   case?

 2        A.    I'm not sure what many of these, what

 3   relevance they have.

 4        Q.    All right.  Then you, he asked about

 5   a special rate that was set for Ormet?

 6        A.    Yes.

 7        Q.    And this is the smelter that

 8   Commissioner Hall asked you some questions you

 9   explained has been sold for scrap.

10        A.    That's right.

11        Q.    So what happened?  They got a special

12   rate and Mr. Mitten went through the conditions on

13   that special rate but apparently that did not

14   provide sufficient relief to keep the smelter in

15   business?

16        A.    They had a special rate, they had

17   some equity support, the special rate had a

18   declining discount over time.  As it approached

19   toward the end of the contract it was an

20   insufficient discount, the company asked for an

21   acceleration of the remainder of the discount as

22   well as for an incremental discount for one year at

23   which time they had intended to self generate the

24   commission concluded that they did not want to give

25   the additional amount.  The one potential buyer of
```

1   the plant, of the smelter basically determined that

2   with that power rate there was no way to keep it

3   viable more than 12 months and therefore chose not

4   to exercise its option.

5   Q.   Did the conditions that Mr. Mitten

6   went through that were placed on their special

7   rate, did they come into play at all?

8   A.   Never.

9   Q.   Okay. And then you also mentioned

10   Ravenswood which received a special rate and also

11   went out of business.

12   A.   Ravenswood had a special rate back in

13   2006 and this was prior to any legislation in West

14   Virginia, it lasted for about four years and it was

15   based on an LME index. The design was such that it

16   didn't provide sufficient flexibility to get

17   through the peaks and troughs of the LME cycle and

18   as a result when the LME fell dramatically the

19   company became cash poor, it's liquidity went down

20   to zero and it was forced to shut down. It has

21   been shut down since 2009, the special rate that we

22   were talking about in 2013 was their request for a

23   special rate intended to restart the smelter, the

24   company concluded that the rate relief provided in

25   that case was insufficient to support a restart.

1   Q.   Okay. Mr. Mitten and Mr. Thompson

2   both asked you about a wholesale contract for

3   Noranda, do you remember those questions?

4   A.   I do.

5   Q.   Do you know whether Noranda has

6   considered a possible wholesale contract with

7   Ameren?

8   A.   My understanding is there were

9   discussions regarding a potential for transforming

10   the current relationship to a wholesale one versus

11   a retail one.

12   Q.   Do you know why Noranda has not

13   agreed to this wholesale option?

14   A.   I was not directly involved in the

15   latter part of those negotiations but I understand

16   that the, it was unclear who would bear the risk if

17   the rate was not supported.

18   Q.   It was unclear who would bear the

19   risk?

20   A.   My understanding is that it was a

21   risk that was intended to be imposed on Noranda but

22   it was never settled where that risk would reside.

23   Q.   Okay. Do you know whether or not

24   part of the risk had to do with whether or not the

25   contract would be upheld as legal?

 1   A.   I'm not sure whether that was an

 2   issue or not.

 3   MS. ILES: No further questions.

 4   JUDGE WOODRUFF: Okay. Then you can

 5   step down. Thank you, sir.

 6   And we'll take a break before the

 7   next witness which I believe will be Mr. Brubaker.

 8   (RECESS TAKEN BY PARTIES)

 9   JUDGE WOODRUFF: All right, let's go

10   back on the record. We're back from our break and

11   Mr. Brubaker has taken the stand.

12   Did you testify earlier?

13   A.   I did, yes, sir.

14   JUDGE WOODRUFF: You are still under

15   oath then.

16   A.   I am.

17   MR. DOWNEY: Judge, did I not get a

18   ruling yet on introducing Exhibits 503, 504 or 505,

19   Mr. Brubaker's direct, rebuttal and surrebuttal but

20   he has a modification to one of the schedules in

21   his testimony based on the stipulation that the

22   nonunanimous stipulation that was filed and what I

23   did was I provided that schedule to all counsel and

24   to the commissioners and I had it marked as Exhibit

25   534 in anticipation that there would be questions

 1   about how a $34 rate would impact other classes.

 2   So I thought I'd bring that to your attention now.

 3   JUDGE WOODRUFF: Okay. What you gave

 4   me is 534 has multiple pages with Schedules 6, 7, 8

 5   and 9, is that correct?

 6   MR. DOWNEY: I believe that is

 7   correct.

 8   JUDGE WOODRUFF: Okay. Are you going

 9   to just go ahead and offer this?

10   MR. DOWNEY: I'll offer them all now,

11   I know there'll be an objection to Exhibit 534.

12   JUDGE WOODRUFF: All right.

13   All right. Brubaker's direct 503,

14   rebuttal 504 and 505 have been offered, any

15   objections to those documents? I'll deal with the

16   other one later.

17   Okay, 503, 504 and 505 are admitted,

18   534 also has been offered, any objection to its

19   receipt?

20   MR. LOWERY: Your Honor I do object.

21   As I understand it this is a recalculation of an

22   exhibit to one of Mr. Brubaker's testimonies,

23   represented to be based upon the rate reflected in

24   the nonunanimous stipulation, again that

25   nonunanimous stipulation is nothing really more

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 1   than a brief at this point and I don't think that

 2   it's appropriate that witnesses can take the

 3   witness stand, put a bunch of new numbers in the

 4   record just because they are advocating a different

 5   result.

 6              JUDGE WOODRUFF:  Anyone else wish to

 7   respond?

 8              MR. DOWNEY:  I can respond to the

 9   objection.

10              JUDGE WOODRUFF:  Go ahead Mr. Downey.

11              MR. DOWNEY:  I can withhold offering

12   that until I see if there are any questions about

13   the $34 rate and if there are then I can introduce

14   it at that time.

15              JUDGE WOODRUFF:  All right.  We'll

16   defer ruling on that until we go through the cross

17   examination questions and questions from the bench.

18   Okay.

19              So are you offering for cross at this

20   point?

21              MR. DOWNEY:  I am.

22              JUDGE WOODRUFF:  All right.  Public

23   Counsel?

24              MR. ALLISON:  No cross, thank you.

25              JUDGE WOODRUFF:  MECG?
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 1                    MR. WOODSMALL:  Thank you, Your

 2   Honor.

 3                    CROSS EXAMINATION

 4   QUESTIONS BY MR. WOODSMALL:

 5         Q.    Yes, a couple questions.

 6               Were you involved in Ameren's last

 7   case, case number ER-2012-0166?

 8         A.    Yes.

 9         Q.    And do you recall in the context of

10   that case the parties signed and filed a

11   stipulation regarding how to handle revenue

12   allocation?

13         A.    I believe that's correct.  I don't

14   know if it was unanimous or not but something was

15   filed.

16         Q.    Okay.  Do you recall under that --

17   and do you know under that stipulation did MIEC and

18   Noranda sign that stipulation?

19         A.    Yes.  They did.

20         Q.    Do you recall under that stipulation

21   whether MIEC and Noranda agreed to an equal percent

22   across the board of the rate increase?

23         A.    That's my recollection.

24         Q.    Okay.

25         A.    For that part of the rate increase
```

 1   other than what was dealing with the MEEIA charges

 2   which were handled separately.

 3   Q.   Okay. And do you recall in the last

 4   case that Noranda, or Ameren received a 10.1

 5   percent rate increase?

 6   A.   I don't recall the total number, it

 7   sounds about right.

 8   Q.   And if you need to see the report and

 9   order I can provide it to you.

 10   Would you accept that the report and

 11 order in that case was issued on December 12th,

 12 2012?

 13   A.   Yes.

 14   Q.   Turning to your direct testimony,

 15 your schedules MEB-COS 6 through 9.

 16   A.   Okay.

 17   Q.   First off would you agree that these

 18 numbers that you calculated were based upon revenue

 19 neutral, they're based upon current rates, is that

 20 correct?

 21   A.   Yes.

 22   Q.   Okay. And you do not consider the

 23 impact of any revenue requirement increase

 24 authorized by this Commission in this case, is that

 25 correct?

 1   A.   These schedules do not.

 2   Q.   **Okay. Turn to MEB—COS dash 9. Let**

 3 **me know when you're there.**

 4   A.   Okay.

 5   Q.   **As I read this the impact of**

 6 **Noranda's rate proposal, and that's the 32.50 rate**

 7 **and elimination of the FAC would be an impact on my**

 8 **clients, the large primary service, of 1.81**

 9 **percent, is that correct?**

10   A.   Based on a $23.50 rate and for those

11 of your clients here in the LPS class the average

12 would be 1.81 percent.

13   Q.   **Okay. And turning to the schedule**

14 **before that, MEB—COS dash 8. Let me know when**

15 **you're there.**

16   A.   I'm there.

17   Q.   **This is the calculation of the impact**

18 **if the smelter shut down, is that correct?**

19   A.   Correct.

20   Q.   **And under this calculation the 48**

21 **month average the impact to all customers would be**

22 **1.64 percent, is that correct?**

23   A.   Yes. It is.

24   Q.   **Okay. So at least under your**

25 **proposal for the large primary service customers**

1 **they would be better off with Noranda closing down**

2 **by point 17 percent, is that correct?**

3   A.   If you believe the 48 month average

4 which we do not and which Mr. Dauphinais can

5 address. We believe the relevant calculations are

6 the first two columns, the 36 month average

7 consistent with how the, everybody in the case that

8 did fuel runs had looked at the fuel issue so it

9 was 2.01 to 2.22 percent.

10   Q.   **But if the Commission accepts I**

11 **believe it's Staff's methodology, the 48 month**

12 **average, the large primary customers would be**

13 **better off with Noranda shutting down than**

14 **accepting Noranda's proposal in this case, is that**

15 **correct?**

16   A.   It would be on the edge.

17   Q.   **It's a yes or no question. They**

18 **would be point 17 percent better off with Noranda**

19 **shutting down?**

20   A.   Yeah, if you look at the absolute

21 value of the numbers and don't consider the

22 competency or the relevance of the underlying

23 number in that file.

24   Q.   **I may have to get you a heavier coat.**

25   A.   That's okay, I'm doing all right.

1   Q.   The customers, the large primary

2   customers would be point 17 percent better off with

3   Noranda shutting down than the Noranda proposal in

4   this case, is that correct, yes or no?

5   MR. ALLISON: Can I just lodge a

6   clarifying objection?

7   This was the proposal that was

8   originally filed as opposed to the stipulated

9   proposal, is it not? What are we talking when

10   we're talking about proposal, I'm sorry?

11   MR. WOODSMALL: The Noranda proposal

12   in this case.

13   MR. ALLISON: So the 32.50 rate which

14   is not their position now.

15   MR. WOODSMALL: The 32.50 is all that

16   is in evidence now, correct.

17   MR. ALLISON: Okay. I just want to

18   make clear what position Noranda has taken and

19   when.

20   Q.   (BY MR. WOODSMALL) So under the

21   32.50 proposal large primary customers would be

22   better off with Noranda shutting down, yes or no?

23   A.   Only under one of the three

24   calculations presented.

25   Q.   Yes or no, under the 48 month

1   average.

2   A.   Under the 48 month average which is

3   one of the three the answer is yes.

4   **Q.   Okay. And would you agree that under**

5   **the Noranda proposal as presented in your direct**

6   **testimony this would exclude any FAC, foot FAC**

7   **adjustments, is that correct?**

8   A.   When you say this what do you mean?

9   **Q.   The Noranda proposal is to exclude**

10 **future FAC adjustments, is that correct?**

11   A.   Future adjustments, yes. The impact

12 of the current FAC is reflected in MEB-COS 9 at its

13 current level of $4.40 for megawatt hours.

14   **Q.   The Noranda proposal is to exempt**

15 **themselves from the application of the FSC, is that**

16 **correct?**

17   A.   Yes. For the future.

18   **Q.   And so the differential of point 1,**

19 **if the FAC has a positive adjustment the**

20 **differential would be greater than point 17, is**

21 **that correct?**

22   A.   Already that would not be true

23 because the fuel adjustment has already decreased

24 from 4.4 roughly to 3.96 so that already would not

25 be true.

 1   Q.   Okay.   The Noranda proposal in this

 2   case is to have a limited future escalator, is that

 3   correct?

 4   A.   The file proposal in my testimony,

 5   yes.

 6   Q.   And can you tell me what that is,

 7   what that escalator is?

 8   A.   Sure.   One percent annually on the

 9   dollar, on the 12 month anniversary of the

10   effective date of the rates from this case.

11   Q.   So the differential between large

12   primary customers, the impact to large primary

13   customers associated with the Noranda proposal and

14   then shutting down will grow as a result of that

15   limited escalator, is that correct?

16   A.   I need to hear that again. Not sure

17   I understand what the premise is.

18   Q.   The current differential as we

19   discussed using the 48 month average, and all my

20   questions are about the 48 month average, the

21   current differential is point 17 percent, is that

22   correct?

23   A.   Under those assumptions, yes.

24   Q.   Okay.   And will that differential

25   grow because of the limited escalator that you have

 1   **proposed in your testimony?**

 2   A.   It will depend on what happens with

 3   the net actual voided energy costs but likely it

 4   will.

 5   Q.   **Okay.**

 6   MR. WOODSMALL: I have no further

 7   questions. Thank you.

 8   JUDGE WOODRUFF: Staff?

 9   MR. THOMPSON: Thank you, Judge.

10   CROSS EXAMINATION

11   QUESTIONS BY MR. THOMPSON:

12   Q.   **Do you have Exhibit 534 in front of**

13   **you?**

14   A.   Yes, sir, I do.

15   Q.   **Can you tell me what that is?**

16   A.   I can. This is, I would call it

17   supplemental information based on the $34 rate

18   contained in the nonunanimous stipulation and

19   agreement.

20   Q.   **Did you calculate this?**

21   A.   I did.

22   Q.   **And you prepared this document?**

23   A.   I did.

24   Q.   **Now, I think you said in your answer**

25   **that there was a $34 rate that had been proposed?**

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 1          A.     That's correct.

 2          Q.     And how was that proposed?

 3          A.     In the nonunanimous stipulation and

 4   agreement.

 5          Q.     Now you understand there's been an

 6   objection to that.

 7          A.     I do.

 8          Q.     Okay.

 9                 Mr. Brubaker, were you in the room

10   when I was inquiring of Mr. Fayne?

11          A.     I was.

12          Q.     So would you agree that there is a

13   point that you could calculate today, there is a

14   rate at which Noranda's ratepayers, or excuse me,

15   Ameren Missouri's ratepayers other than Noranda

16   would be better off with Noranda on the system than

17   off the system?

18          A.     I would.

19          Q.     A rate below cost.

20          A.     A rate below any embedded allocated

21   cost.

22          Q.     Costs of service.

23          A.     Any allocated embedded costs.

24          Q.     Correct.  And do you have an opinion

25   as to what that number is for today?
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 1          A.     I haven't looked for what it is

 2    today.

 3          Q.     Okay.  Do you have an opinion as to

 4    what that number would be for any particular day?

 5          A.     I haven't looked.

 6          Q.     Okay.

 7          A.     I do not.

 8          Q.     But you are confident you could

 9    calculate it?

10          A.     One could make a determination based

11    on available market data.

12          Q.     And how much confidence would you

13    have in that calculation?

14          A.     Not as much as knowing what it was

15    last week or the week before.

16          Q.     Okay.  Now I'm just talking a

17    particular day.

18                 Now, if you calculated that rate for

19    today could you calculate it for a week?

20          A.     I believe the market information is

21    available to do so.

22          Q.     How about a month?

23          A.     I think so, yes.

24          Q.     A quarter?

25          A.     Yes.
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 1          Q.     A year?

 2          A.     Yes.

 3          Q.     How about an 18 month period such as

 4    the average interval between Ameren Missouri rate

 5    cases?

 6          A.     I think a determination, a reasonable

 7    estimate could be made based upon current

 8    information.

 9          Q.     Thank you.

10                 I have no further questions.

11                 JUDGE WOODRUFF:  All right.  For

12    Ameren.

13                     CROSS EXAMINATION

14    QUESTIONS BY MR. LOWERY:

15          Q.     Following up on Mr. Thompson's

16    questions.  You calculated for example a forecast

17    of what the voided cost would be with Noranda on

18    the system versus off the system on an 18 month

19    basis that would be a forecast, right?

20          A.     It would be, it could either be a

21    fundamental forecast or it could be based on market

22    indexes.

23          Q.     But in any event it's a prediction of

24    the future.

25          A.     It's looking forward, you could lock
```

1   in a price, that's my point.

2   Q.   I didn't ask whether you could

3   contract and lock in a price. Let's imagine we're

4   not contracting, we're not locking in a price,

5   we're not hedging anything, okay?

6   A.   Okay.

7   Q.   All we're doing is we're trying to

8   say I'm trying to predict over the next 18 months

9   whether or not Ameren Missouri's customers will be

10   better off with Noranda on the system or off the

11   system. Do you understand that assumption?

12   A.   I do.

13   Q.   And if you were doing that you would

14   be making an estimate or a forecast of whether or

15   not that would be true because you wouldn't know

16   whether it will be true or not, would you?

17   A.   Right. We don't know for sure about

18   the future.

19   Q.   It's a lot like what Mr. Pratt said

20   when he said driving with a blind spot and only

21   with a rear-view mirror, right, you cannot see

22   forward, can you?

23   A.   Can not be absolutely certain.

24   Q.   And if you prepared such a forecast

25   and you were to say, let's imagine the number was

 1   35 and Noranda would be contributing $40 if they

 2   were paying retail rates on the system, just as a

 3   hypothetical, okay, you understand that? You

 4   understand those assumptions?

 5   A.   I think so, yes.

 6   Q.   And so your forecast was going to be

 7   35 but if it turned out that the actual turned out

 8   to be 41 or 42 then the forecast that said the

 9   customer would be better off with Noranda on the

10   system actually would turn out to be incorrect,

11   isn't that right?

12   A.   For that period of time, yes.

13   Q.   And isn't it true the farther out you

14   go the less reliable such a forecast would become,

15   isn't that true?

16   A.   That is correct.

17   Q.   There isn't really a whole lot of

18   viability in the markets beyond what, two years,

19   three years at best?

20   A.   Two or three years, yes.

21   Q.   The calculations that are reflected

22   in Exhibit 534, and I'm not asking you to identify

23   them, but I'm asking you simply when did you

24   perform these calculations?

25   A.   I prepared these at the request of

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 1   counsel last week.

 2          Q.      Last week.  So you've had these

 3   figures for a week or more, is that right?

 4          A.      I had them, there was no stipulation

 5   until a couple days ago but I had them last week.

 6          Q.      Okay.

 7                  MR. LOWERY:  I don't have any further

 8   questions.

 9                  JUDGE WOODRUFF:  Come up for

10   questions from the bench.

11                  Mr. Chairman?

12                      EXAMINATION

13   QUESTIONS BY CHAIRMAN KENNEY:

14          Q.      Mr. Brubaker, good afternoon.

15          A.      Good afternoon.

16          Q.      Have you offered an opinion on the

17   Ameren proposal to move Noranda to a wholesale

18   rate?

19          A.      I have not presented any testimony on

20   that question.

21          Q.      Do you have an opinion?

22          A.      I had conversations with Noranda as

23   they were having the negotiations with Ameren, I

24   have to be very careful, it's all under

25   confidentiality agreements.  I think I can say it
```

 1   was my view that there were substantial potential

 2   risks of going to that kind of a structure.

 3   **Q.   And what was the risk?**

 4   A.   The risk that I saw, the main risk

 5   was in the first place being able to get that

 6   structure approved. That was a risk. Were it to

 7   be approved then I felt that there were the

 8   potential for a court appeal that would invalidate

 9   that rate and perhaps, perhaps create a retroactive

10   increased requirement under what I understand to be

11   the current statutes, my non-legal understanding of

12   that, or if it were approved and there was a

13   subsequent fuel adjustment proceeding that raised

14   the question of prudency of flowing the costs

15   associated with serving the wholesale customer of

16   this magnitude through the FAC I thought there was

17   a potential for a disallowance and perhaps a

18   retractive refund. Those were the risks that we

19   outlined to Noranda. Now what other risks they may

20   have taken into account or how they may have

21   appraised that in their interface with Ameren I do

22   not know, I was not present for those discussions.

23   **Q.   Okay.**

24   **That's all I have thank you. Thanks**

25   **for your time.**

 1   COMMISSIONER KENNEY: No questions.

 2   Thank you.

 3   JUDGE WOODRUFF: Mr. Hall?

 4   EXAMINATION

 5   QUESTIONS BY COMMISSIONER HALL:

 6   **Q.   Good afternoon Mr. Brubaker.**

 7   A.   Good afternoon.

 8   **Q.   Let me start with probably a pretty**

 9   **easy question and maybe one that -- well. Why does**

10   **Noranda recommend the creation of a new rate class,**

11   **the SAS rate class? Why not just change the rate**

12   **design on the existing LTS?**

13   A.   Certainly you could do that. The

14   basis for the recommendation was to have a place to

15   go back to at the end of the contract period.

16   **Q.   Okay. Exhibit 534, you show, this**

17   **is, contains your computations, correct?**

18   A.   Yes, sir.

19   **Q.   This shows the amount of adjustment**

20   **at the $34 rate as being 16.584 million, is that**

21   **correct?**

22   A.   That is correct, yes.

23   **Q.   Okay. So if you combined that with**

24   **the elimination of the FAC what we are essentially**

25   **talking about is a 35.1 million subsidy, is that**

Page 2750

 1 **correct?**

 2   A.   The difference is 33.2 million on

 3 page 1 of schedule 9.

 4   **Q.   Pardon me?**

 5   A.   Page 1 of schedule 9 it's $33.2

 6 million, or 1.2 percent overall.

 7   **Q.   Well the, in your direct testimony**

 8 **you said that the elimination of the FAC would be**

 9 **18.5 million.**

10   A.   And that was correct at that time.

11 The fuel adjustment has subsequently decreased so

12 just to set the predicate there are two differences

13 in 534 from the filed testimony, one is the level

14 of the rate, the $34 dollars versus 32.50 and the

15 other is to reflect the decrease in the FAC from

16 what it was at the time the testimony was filed to

17 today.

18   **Q.   So the total subsidy you said would**

19 **be 33.2 as shown on, I guess this is page 9?**

20   A.   Page 2 of schedule MEB dash COS dash

21 9. Actually page 1. Pardon me.

22   **Q.   Page 1. 33.2.**

23   A.   33.2. That's the deviation below the

24 fully allocated embedded cost of service.

25   **Q.   Okay. On page 43 of your direct**

 1 **testimony you discuss the justification for a load**

 2 **retention rate and you say on line 6 the basis for**

 3 **such a rate is typically a price at or above**

 4 **incremental costs. What is the incremental cost?**

 5   A.   In this context the costs that we

 6 have evaluated are test year costs and my colleague

 7 Mr. Dauphinais who appears next can give you all

 8 the details for how he got those numbers but we

 9 believe they range from $28.03 a megawatt hour to

10 $29.39 a megawatt hour.

11   Q.   All right.

12   A.   It's really the change in what

13 happens at the margin if the load were not served.

14 It's a combination of what the power would fetch in

15 the open marked were it sold on the open market

16 rather than to Noranda plus any savings in the

17 transmission and other charges that would be

18 avoided.

19   Q.   Later on that same page you calculate

20 **at lines 12 and 13 you calculate the net revenue**

21 **loss if the smelter were not served to be**

22 **approximately 54 to 60 million per year. That**

23 **would be a reduction in revenues to Ameren.**

24   A.   You could look at it that way. It's

25 the, reflects the loss of what they would get --

1   Q.   The reduction in some of their costs,

2   there's a greater reduction in their revenues, the

3   difference is between 54 and 60 million.

4   A.   That's right, yes.

5   Q.   Okay. What are you assuming would

6   happen in that calculation to the electricity that

7   Ameren was selling Noranda?

8   A.   The assumption is that it would be

9   sold in the MSO market.

10   Q.   And what would happen to the revenues

11   from those sales in this calculation?

12   A.   They would flow ultimately through

13   the fuel adjustment clause.

14   Q.   Back to customers.

15   A.   Back to customers, right.

16   Q.   So when you are determining what the

17   percentage increase to customers 2.1 to 2.22 you

18   are assuming that 95 percent of all those, of those

19   offsets in sales are going back to customers and

20   they're still getting a two percent rate increase?

21   A.   That's correct.

22   Q.   Your, what is your understanding of

23   the N factor and whether or not those off system

24   sales proceeds would in fact go back to Ameren

25   customers? Under the current FAC.

 1   A.   I'm trying to remember how that is

 2   worded. I think, I guess it depends on when it

 3   happens, whether it happens, it's accounted for in

 4   a rate case or whether it happens in between rate

 5   cases.

 6   Q.   **Exactly. Explain both to me.**

 7   A.   Okay. If it happens in a rate case

 8   you approve a new rate and then I think what you

 9   see on schedule a COS 8 is what you would get.

10   Q.   **If it happened prior to a rate case.**

11   A.   Then I think Ameren would be

12   permitted to retain part of the lost revenues under

13   the N factor provision of the FAC.

14   Q.   **So the impact on customers would be**

15   **higher than this.**

16   A.   It would be, yes.

17   Q.   **Any idea how much, ball park?**

18   A.   No.

19   Q.   **On page 35 of your direct you give a**

20   **full throated argument in support of cost of**

21   **service rate making. I was wondering if you could**

22   **explain why you believe the cost of service rate**

23   **making is the, is the appropriate way to set rates.**

24   Q.   **Yeah, that's always been pretty much**

25   **my outcome and my philosophy and my testimony, I**

1   think it sums up as equity, conservation and

2   engineering efficiency are the primary bases,

3   primary reasons for going to cost of service under

4   normal circumstances.

5   Q.   Under normal circumstances.

6   A.   Right.

7   Q.   Have you performed a calculation on

8   the cost of, on the cost to serve Noranda or is

9   that a different witness?

10   A.   No, that would be me.

11   Q.   Okay. Where is that calculation in

12   here?

13   A.   I think it's in the data response.

14   Q.   So it's not in your testimony?

15   A.   No, we see the rate of return in the

16   testimony as to the, well I did the rate of return

17   at present rates. The calculation that I did make

18   said that Noranda was about four percent below full

19   embedded cost to service currently.

20   Q.   And so do you know what that rate is,

21   four percent below the current rate, do you know

22   what that is?

23   A.   Current rate is about --

24   Q.   37?

25   A.   37.95, say $38, so four percent of 38

 1   is what, $1.60.

 2   Q.   All right.

 3   COMMISSIONER HALL: No further

 4   questions. Thank you.

 5   JUDGE WOODRUFF: Mr. Rupp?

 6   EXAMINATION

 7   QUESTIONS BY MR. RUPP:

 8   Q.   Good afternoon.

 9   A.   Good afternoon.

10   Q.   Following up on a question that the

11   Chairman had about the risks that you identified

12   with going to the wholesale market, the risks of

13   being a court challenge, you know, to the contract

14   and everything, if the general assembly were to

15   pass some type of legislation that would

16   specifically allow the Commission and parties to

17   enter into those types of contracts would that

18   mitigate that risk of a court challenge?

19   A.   I presume that it would.

20   Q.   Was there any considerations to your

21   knowledge between the parties of Ameren and Noranda

22   on this issue of if they came to an agreement on a

23   contract and dollar amount of presenting a unified

24   front to the legislature and asking for some type

25   of legislation that would provide them more comfort

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 1    with mitigating that risk?

 2         A.     I don't know.

 3         Q.     Thank you.

 4                JUDGE WOODRUFF:  All right.  Any

 5    recross based on questions from the bench?

 6                Begin with Public Counsel.

 7                RECROSS EXAMINATION

 8    QUESTIONS BY MR. ALLISON:

 9         Q.     Mr. Brubaker, how are you?

10         A.     Good, thanks.

11         Q.     Commission Hall asked you some

12    questions about Exhibit 534.  I'm wondering on

13    page, well it's I guess schedule 9, page 1, I just

14    want to make sure I'm reading this correctly and if

15    you can confirm this for me.  So the total overall,

16    or average, I guess I should say the total average

17    impact 1.32 percent, is that correct?

18         A.     Correct.

19         Q.     Okay.  And just going through this

20    classified class if you can confirm for me based

21    upon your calculations the residential class impact

22    would be 1.15 percent, is that correct?

23         A.     That's correct.

24         Q.     And then the small general service

25    impact goes up to 1.18 percent, is that correct?
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 1   A.   That is correct.

 2   Q.   **Large general service impact then**

 3 **goes up to 1.29 percent, is that correct?**

 4   A.   Yes.

 5   Q.   **And that's an increase of 11/10ths of**

 6 **one percent, is that not right?**

 7   A.   I'm sorry?

 8   Q.   **11/100ths of one percent I guess, not**

 9 **1/10ths, that's ridiculous. 11 points, it goes up**

10 **11 points between 1.18 and 1.29, correct?**

11   A.   11/10ths of one percent.

12   Q.   **Thank you.**

13   **Small primary service 1.39 percent.**

14   A.   1.38 percent.

15   Q.   **Or 38 percent, I'm sorry.**

16   A.   Yes.

17   Q.   **And that would be an increase over**

18 **large general service, is that correct?**

19   A.   It would.

20   Q.   **And then large primary service is 1.5**

21 **percent, is that correct?**

22   A.   That's correct.

23   Q.   **And help me understand the classes**

24 **for a second. The large primary service class is**

25 **generally composed of what type of customer?**

 1   A.   Medium to large manufacturing with

 2   demands in excess of 5,000 kilowatts of load.

 3   Q.   **Okay. And then the lighting class is**

 4   **point 92 percent?**

 5   A.   That's right.

 6   Q.   **And then there's a de minimis impact,**

 7   **what I would characterize as a de minimis impact on**

 8   **the Metropolitan Sewer District, is that correct?**

 9   A.   That's correct.

10   Q.   **Let me just take one second and look**

11   **here.**

12   **The FAC, again your original direct**

13   **testimony had calculated the FAC impact of**

14   **Noranda's request at being as I recall somewhere**

15   **around 18 million, is that correct?**

16   A.   That's right. 18, almost 18.5

17   million.

18   Q.   **18.5 million. And because of a**

19   **normal, I won't say normal but a periodic**

20   **adjustment in the FAC the impact is now reduced to**

21   **16.6 million, is that right?**

22   A.   That's right.

23   Q.   **Okay.**

24   MR. ALLISON: I don't have any

25   further questions. Thank you.

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 1                   JUDGE WOODRUFF:  MECG?

 2                   MR. WOODSMALL:  Yes Your Honor.

 3                   RECROSS EXAMINATION

 4   QUESTIONS BY MR. WOODSMALL:

 5        Q.     Since it sounds like Exhibit 54 is

 6   going to be put into evidence I will ask some

 7   questions about that.  And I'll try to be brief.

 8                   Looking at page 1 of your COS 9 of

 9   Exhibit 534, do you have that?

10        A.     Yes, I do.

11        Q.     And column H you identify, you

12   quantify the total subsidy is 33.21 million, is

13   that correct?

14                   MR. DOWNEY:  Where are you David?

15                   MR. WOODSMALL:  Page 1 of MEB-COS

16   dash 9, column 6.

17                   MR. DOWNEY:  I thought you said

18   column 8.

19                   MR. WOODSMALL:  I'm sorry.

20        Q.     (BY MR. WOODSMALL)  Column 6 the

21   total subsidy is 33.21 million, is that correct?

22        A.     Right.  Current difference from

23   current rates.

24        Q.     Okay.  And just to clarify you said

25   previously in response to a question from
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 1   **Commissioner Hall that that was quote, the**

 2   **deviation below any allocated embedded cost of**

 3   **service. That's not correct, is it?**

 4   A.   I can't, any embedded cost of service

 5   would be about four percent higher.

 6   Q.   **Okay.**

 7   A.   On the base rate revenue column.

 8   Thank you.

 9   Q.   **So this is $33 million below that**

10   **four percent, is that correct?**

11   A.   That's correct.

12   Q.   **Okay. Now that 33 million is the**

13   **impact of the nonunanimous stipulation, is that**

14   **correct?**

15   A.   That's right. It would be about 34

16   million with the four percent adjustment, but yes,

17   that's right.

18   Q.   **Okay. Now, going to the page before**

19   **that, MEB-COS dash 8, again looking at column 3,**

20   **the 48 month average that staff proposed, you would**

21   **agree that the impact on customers if Noranda**

22   **closed is 42.698 million, is that correct?**

23   A.   If that's the number I would disagree

24   with your characterization of that number being

25   what staff proposed in this case. That's the

 1   number that staff proposed in a prior case and I

 2   believe staff has a different number in this case.

 3   Q.   **Okay.**

 4   A.   Although like other parties all of

 5   it's put in several different numbers.

 6   Q.   **Okay. Would you agree subject to**

 7   **check that the difference between that 42.698 and**

 8   **33.21 million is $9.5 millions?**

 9   A.   Sounds about right.

10   Q.   **Okay. Now, again that is without any**

11   **consideration of a revenue requirement increase in**

12   **this case, is that correct?**

13   A.   It is.

14   Q.   **Okay. Can you tell me if a revenue,**

15   **if the revenue requirement is increased in this**

16   **case and applied equal percentage across the board**

17   **what percent would Noranda get? I believe it's**

18   **five and a half percent, is that correct?**

19   A.   You're talking Noranda's base rate

20   revenue in percentage of the total.

21   Q.   **Right.**

22   A.   That's about right.

23   Q.   **Five and a half percent. So, and I**

24   **believe that according to the fuel stipulation that**

25   **was filed earlier that calls for an increase in**

 1   fuel costs of 103 million, is that correct?

 2   A.   Sounds about right.

 3   Q.   Okay. 103 million and that doesn't

 4   count any other increase they may get in base

 5   rates, is that correct?

 6   A.   Or decreases, some parties I believe

 7   are suggesting that the overall increase should be

 8   less than the amount that's attributable to fuel.

 9   Q.   Okay. Just for purposes of my

10   calculation assuming Ameren was to receive $150

11   million rate increase.

12   A.   You're generous.

13   Q.   I hope you're right, yes. But it

14   makes for a nice round number. And you gave five

15   and a half percent is what you said earlier would

16   be Noranda's share, would you accept that that is

17    $8.25 million?

18   A.   Yes.

19   Q.   Okay. So you said earlier that the

20   difference between the 42.7 million and 33 million

21   is $9 million, is that correct?

22   A.   It is.

23   Q.   Okay. So that $9 million

24   differential will be reduced if not eliminated as a

25   result of the revenue requirement increase

 1 authorized in this case, is that correct?

 2   A.   If you focus your numbers on the 48

 3 month average which I've suggested is not the right

 4 number that would be true.

 5   Q.   Okay.

 6   No further questions, thank you.

 7   JUDGE WOODRUFF: Staff?

 8   MR. THOMPSON: Thank you Judge.

 9 CROSS EXAMINATIONQUESTIONS BY MR. THOMPSON:

10   Q.   You may have answered this but you

11 were asked questions about Exhibit 534 by

12 Commissioner Hall looking at the first page, line

13 5, that number 16.584, that doesn't take account of

14 any revenue requirement increase in this case,

15 correct?

16   A.   Correct.

17   Q.   Okay. So in reality it would be

18 higher.

19   A.   As a function of whatever increase

20 the company may get.

21   Q.   Now, you were asked questions about

22 risks by Commissioner Rupp, do you recall? And was

23 the risk that Noranda was trying to avoid the risk

24 that it would have to pay the difference between a

25 wholesale rate and Ameren Missouri's wholesale

1 costs of power?

2   A.   I don't know how that would have come

3 out looking at the structure though there was a

4 perceived risk not only of nonimplementation of the

5 rate, there was a wholesale rate that also as I

6 discussed with Commissioner Rupp. What might

7 happen later on and what the outcome of that would

8 be I don't know.

9   Q.   Okay.

10   A.   But there was definitely a perception

11 of risk.

12   Q.   Under your FAC proposal would 95

13 percent of that risk go to ratepayers?

14   A.   No, I don't know that it would. It

15 really depends on the circumstances of what kind of

16 disallowance or adjustment might be ordered.

17   Q.   Okay. Now, your proposal, both the

18 one that you originally filed and the one in the

19 stipulation and agreement, both of those include or

20 both of them provide do they not that Noranda will

21 not be subject to the FAC.

22   A.   That's correct.

23   Q.   And isn't it true that the FAC is

24 adjusted every six months?

25   A.   Four months I think. Every four.

1   Q.   Okay. Every four months, thank you.

2   I stand corrected. So how many four month periods

3   are there in 10 years?

4   A.   30.

5   Q.   Would you agree there are 30? So

6   there would be 30 FSC rate adjustments that Noranda

7   would be exempted from.

8   A.   Yes. Unless the rate is, the rate is

9   subject to continuous review by the Commission in

10   each rate case so unless, and it could be that the

11   Commission would make some change in that in some

12   future rate case, so, you know, whether that would

13   extend for a 10 year period of time I think is, may

14   not.

15   Q.   Okay. Would you agree with me that

16   the costs that go through the FAC are real costs

17   that Ameren has to pay?

18   A.   I think they're hard dollar costs,

19   yes. I don't know that there's anything other than

20   that that's in there.

21   Q.   Okay. And --

22   A.   There are some revenues that offsets

23   a net number but they're all hard costs.

24   Q.   I understand. Taking into account

25   the fact that it's a net number if Noranda is

1   exempt from the FAC then who, if you know or have

2   an opinion, who will be picking up those costs that

3   Noranda's not paying?

4   A.   Other customers.

5   Q.   Thank you. No further questions.

6   JUDGE WOODRUFF: For Ameren.

7   CROSS EXAMINATION

8   QUESTIONS BY MR. LOWERY:

9   Q.   Mr. Brubaker you may have already

10   said this but I wanted to expand on it a little

11   bit. All of the these figures, this $33 million

12   figure which actually if you want to look at it on

13   a, even a current cost of service, current rates

14   are as I see four percent too low but $33 million

15   figure, this 1.23 percent, all of the percentages

16   for each of the rate classes none of them take into

17   account any increase that might be granted in this

18   case or in any future case, isn't that right?

19   A.   That's correct.

20   Q.   And in fact all of these analyses,

21   they don't take into account or make any attempt to

22   predict what the opportunity cost of having Noranda

23   on the system versus off the system in the future

24   will actually be, isn't that right?

25   A.   My colleague Mr. Dauphinais who

1 appears next has taken that into consideration in

2 ways that you can ask him about in coming up with

3 the 28 and $29 numbers for the near term.

4   **Q.   Well I'm going to ask you a few**

5 **questions about it and if you know you can tell me**

6 **and if you don't know then you'll have to tell me**

7 **this too. But I suspect you know something about**

8 **this. Mr. Dauphinais' 28 or $29 figures that you**

9 **cited, he calculated those using historical**

10 **information, he may have adjusted the historical**

11 **information in certain ways but he used historical**

12 **information, isn't that right?**

13   A.   He use historical, that's correct.

14   **Q.   He didn't use forward energy prices**

15 **or forward capacity prices or other forecasts in**

16 **order to calculate those numbers, isn't that right?**

17   A.   I think when you read his testimony

18 you'd see that he considered that and addressed

19 that, has addressed that issue.

20   **Q.   He considered it but he didn't**

21 **actually take any dollar figure for any of those**

22 **parameters from the future and perform calculations**

23 **to come up with that 28 or $29 that you mentioned,**

24 **did he?**

25   A.   He considered it and he doesn't

 1 adjust them for reasons he has explained in his

 2 testimony.

 3   Q.   **But my simple question is he may have**

 4 **considered using future information, he may have**

 5 **reasons for why he didn't actually use those**

 6 **dollars in the future but he didn't actually use**

 7 **any future dollars in calculating the 28 or $29,**

 8 **isn't that right?**

 9   A.   And my response to you would be yes

10 because he didn't think it was necessary.

11   Q.   **I understand I didn't think it was**

12 **necessary. But as we just discussed none of us**

13 **know what the future's going to bring, do we?**

14   A.   We do not.

15   MR. LOWERY: I don't have any further

16 questions Your Honor.

17   JUDGE WOODRUFF: Redirect?

18   REDIRECT EXAMINATION

19 QUESTIONS BY MR. DOWNEY:

20   Q.   **Let's just work backwards Mr.**

21 **Brubaker.**

22   **Do you know why Mr. Dauphinais didn't**

23 **think it was necessary?**

24   A.   I would have to try to summarize his

25 testimony.

1   Q.   That's fine. But Mr. Dauphinais did

2   also consider future forward energy prices?

3   A.   It's my understanding he considered

4   those in arriving at his recommendations.

5   Q.   Okay. And would you explain to the

6   Commission how the base rates rebase fuel costs in

7   a rate case?

8   A.   Typically when you have a rate case

9   there's some increase or decrease, lately it's been

10   an increase in fuel costs and that gets folded into

11   the new base rate so I think Mr. Thompson

12   mentioned 100 million, or Mr. Woodsmall perhaps

13   mentioned $100 million fuel cost that will be

14   folded into base rates in this case and in

15   subsequent cases as well. So it's not all hanging

16   out of the FAC, it gets somewhat escalated each

17   time there's a rate case.

18   Q.   Okay. Do you happen to know in the

19   nonunanimous stip whether the proposal is for

20   Noranda to pay a certain percentage of base rate

21   increases?

22   A.   Yes, I do. It's 50 percent of the

23   otherwise applicable system average increase.

24   Q.   So if fuel costs go up between rate

25   cases what would happen then in terms of rebasing

 1   **and its impact on Noranda? Under the stipulation.**

 2   A.   In part it would be reflected in

 3   increase of the base revenue, base rates for

 4   Noranda.

 5   Q.   **So if I understand correctly Noranda**

 6   **would pay increased costs of fuel once they're, the**

 7   **increased costs are rebased. In base rates.**

 8   A.   They would pay 50 percent of whatever

 9   the increase is including fuel and non fuel.

10   Q.   **Okay. I'm sorry, 50 percent of that.**

11   **Now, you understand the Commission**

12   **retains control over rates?**

13   A.   That's my understanding, yes.

14   Q.   **And one commission can not bind**

15   **future commissions?**

16   A.   I've been told that, yes.

17   Q.   **Do you think that's true?**

18   A.   I believe it is.

19   Q.   **Now, it's my understanding that your**

20   **testimony supported a rate of $32.50 for Noranda?**

21   A.   It did.

22   Q.   **And was that, it was your testimony**

23   **that that rate was better for the other ratepayers**

24   **than if Noranda shut down?**

25   A.   Yes.

1   Q.   And would you explain why?

2   A.   Based on the analysis, the comparison

3   between what they had gotten for the power if it

4   were sold in the wholesale market plus any savings

5   and costs that number was bigger than the reduction

6   in rates for Noranda versus their current rates.

7   So it was a question of which way are you better

8   off, how much, how many dollars of increase would

9   the other customers face with Noranda at a lower

10   rate versus no Noranda and in our evaluation

11   ratepayers would see a higher rate without Noranda

12   than they would under the Noranda served at a lower

13   price.

14   Q.   And if the Commission were to adopt

15   the $34 proposal would your opinion be the same as

16   far as it benefits ratepayers versus Noranda

17   leaving the system?

18   A.   It would be a larger benefit.

19   Q.   And if the Commission adopted a rate

20   that is even higher than $34 would the benefit also

21   increase?

22   A.   Yes.

23   Q.   In your opinion as an expert is the

24   stipulated rate a just and reasonable rate and

25   benefit to ratepayers versus Noranda shutting down?

 1   MR. LOWERY: I'm going to object as

 2   these questions are beyond the scope of any

 3   questions that came from any cross examination.

 4   JUDGE WOODRUFF: I'll overrule the

 5   objection. You can answer.

 6   A.   Yeah, I think it's a fair, would be a

 7   fair and reasonable outcome.

 8   Q.   (BY MR. DOWNEY) Okay. And -- never

 9   mind.

10   And you're familiar with the

11   conditions in the stipulation, are you not?

12   A.   Yes, generally.

13   Q.   Is there a condition on liquidity?

14   A.   There are conditions on liquidity.

15   Q.   Is there a condition on retaining

16   employees?

17   A.   Yes.

18   Q.   Is there a condition on capital

19   expenditures?

20   A.   There is.

21   Q.   Is there a condition on special

22   dividends?

23   A.   There is.

24   Q.   And what is that condition?

25   A.   That there won't be any.

 1   Q.   Did you see my opening statement

 2   earlier this week?

 3   A.   I did.

 4   Q.   There was a slide where I, a couple

 5   of slides where I set out the conditions, do you

 6   recall that?

 7   A.   I do.

 8   Q.   And was that slide accurate to the

 9   conditions? I'm asking you because I may have

10   forgotten some.

11   A.   As I remember it was. I don't

12   remember all the lines on it but there were a

13   number of conditions and I believe that they were

14   all reflected.

15   Q.   Do you know whether those conditions

16   were negotiated to protect ratepayers?

17   A.   That was the purpose of them, yes.

18   Q.   All right. And do you believe that

19   stipulated rate with those conditions is a just and

20   reasonable rate?

21   A.   I think the rate is just and

22   reasonable, I did not participate in negotiated

23   conditions.

24   Q.   And again that's with the assumption

25   that Noranda would close the smelter without a

```
 1   reduced rate.

 2        A.      That's the comparison, that's

 3   correct.

 4        Q.      Now, you had some questions from Mr.

 5   Thompson on the risk of the wholesale deal.  Do you

 6   recall that?

 7        A.     I do.

 8        Q.      And you may have had discussion with

 9   other either commissioners or lawyers but does part

10   of that risk have to do with having Ameren Missouri

11   build the costs, the fixed costs of providing power

12   under that wholesale rate in base rates to

13   ratepayers?

14        A.      I mean I think that got to some of

15   the issues, this was a departure from normal

16   practices and we were concerned about that.

17        Q.      And did you happen to read the

18   testimony of OPC witnesses and Staff witnesses on

19   the wholesale proposal?

20        A.     I did.

21        Q.      And is it fair to say they opposed

22   the wholesale deal?

23        A.      That's fair to say, they certainly

24   did.

25        Q.      Though there was a lot of discussion
```

 1   **I think with Mr. Woodsmall about page MEB-COS 8 in**

 2   **Exhibit 534 regarding this 48 month average?**

 3   A.   Yes.

 4   **Q.   And I believe you testified that you**

 5   **don't believe that is a good way to determine**

 6   **incremental costs, paraphrasing. Do you recall**

 7   **that?**

 8   A.   Yes, I do.

 9   **Q.   Would you explain to the Commission**

10   **why?**

11   A.   We thought it was not representative

12   to have the polar vortex in there and use a four

13   year average. In calculating test year data in

14   this case every party that did it including Staff

15   and Ameren and MIEC removed the effects of the

16   polar vortex just because they're abnormal and we

17   thought why should we evaluate our rate proposal on

18   something that everybody else has already concluded

19   isn't representative so for that reason I don't

20   think that column is the primary basis that should

21   be used for evaluation.

22   **Q.   Now, you were asked some questions**

23   **about I believe page 35 of your direct testimony.**

24   **Q.   Yes.**

25   A.   And I believe you stated that under

```
 1   normal circumstances you are in favor of cost of

 2   service rate making, do you recall that?

 3        A.     Embedded cost of service rate making,

 4   that's right.

 5        Q.     And I know you keep correcting the

 6   lawyers on our use of cost of service and you say

 7   embedded cost of service, what's the difference?

 8        A.     Well, embedded cost of service is

 9   just an allocation of all the elements that are

10   added together to get the utility's total revenue

11   requirement.  And the other cost of service is the

12   incremental analysis which says given two options

13   what are the outcomes of the two options looking

14   just at the costs involved in the two options.

15        Q.     Thank you.

16               Would you, what is your opinion on

17   whether this request of Noranda Aluminum would be

18   considered normal circumstance?

19        A.     I think it's not, it's unusual.

20   Compared to the normal embedded cost rate making

21   but certainly when you look around the country

22   there are a lot of rates of this kind that are set

23   lower than any fully embedded costs but above

24   incremental costs for the same reason we're

25   suggesting it makes sense here, it's better off to
```

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 1   keep the customer at a lower rate than to lose the

 2   customer and have all the power that otherwise

 3   would have been sold to the customer sold in the

 4   wholesale market at a lower price which would

 5   thereby cause the rates of the other customers to

 6   increase more than they would increase under the

 7   special incremental costs based rate for Noranda.

 8        Q.     Is the size of the Noranda load one

 9   factor in your opinion that it's not a normal

10   circumstance?

11        A.     It's certainly a very large load and

12   has to be looked at I think on its own differently

13   than perhaps we look at other loads.

14        Q.     Do you have an opinion whether the

15   incremental cost to serve Noranda between now and

16   the time, the likely time of the next rate case,

17   assume that to be three years or less will be below

18   $32.50 per megawatt hour?

19        A.     I would have to rely on Mr.

20   Dauphinais for that judgment.

21        Q.     And do you respect his opinion?

22        A.     I do.

23        Q.     And is his opinion that it is less

24   than 32.50?

25        A.     It is.
```

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 1   Q.   Is his opinion also that it's less

 2   than $34 per megawatt hour?

 3   A.   If it's less than 32.50 it's less

 4   than 34.

 5   Q.   I asked for that. And thank you for

 6   giving it to me.

 7   A.   I appreciate the obvious questions.

 8   Q.   Have you any explained Exhibit 534

 9   and its calculations?

10   A.   I think so.

11   MR. DOWNEY: Judge I would offer

12   Exhibit 534.

13   JUDGE WOODRUFF: 534 has been

14   offered. Any objections?

15   Hearing no objections it will be

16   received.

17   MR. DOWNEY: I'm not quite finished

18   Judge, give me just a second.

19   That's all we have. Thank you.

20   A.   Thank you.

21   JUDGE WOODRUFF: Then you can step

22   down Mr. Brubaker.

23   A.   Thank you.

24   JUDGE WOODRUFF: And it's nearly

25   5 o'clock so we'll go ahead and stop for tonight,

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 1   we'll resume tomorrow morning at 8:30 hopefully

 2   with the air-conditioning working.

 3

 4

 5   (Whereupon, the hearing concluded at 4:50 p.m.)

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 1   REPORTER CERTIFICATE

 2

 3   I, SUZANNE BENOIST, Certified Shorthand

 4   Reporter, do hereby certify that there came before

 5   me at the Missouri Public Service Commission, 200

 6   Madison Street, Jefferson City, MO 65102, the

 7   above-referenced parties, that the proceeding was

 8   translated and proofread using computer-aided

 9   transcription, and the above transcript of

10   proceedings is a true and accurate transcript of my

11   notes as taken at the time of said event.

12   I further certify that I am neither attorney

13   nor counsel for nor related nor employed by any of

14   the parties to the action in which this examination

15   is taken; further, that I am not a relative or

16   employee of any attorney or counsel employed by the

17   parties hereto or financially interested in this

18   action.

19   Dated this 12th day of March, 2015.

20

21   _____

22   SUZANNE BENOIST, RPR, CCR, CSR-IL

23

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