

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 February 22, 2005
7 Jefferson City, Missouri
8 Volume 1
9

10 In the Matter of the Application)
of union Electric Company for a)
11 Certificate of Public Convenience)
and Necessity Authorizing it to)
12 Construct, Install, Own, Operate,) Case No. EA-2005-0180
Control, Manage and Maintain)
13 Electric Plant, as Defined in)
Section 386.020(14), RSMo, to)
14 Provide Electric Service in a)
Portion of New Madrid County,)
15 Missouri, as an Extension of Its)
Existing Certificated Area)
16

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18 KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

19 JEFF DAVIS, Chairman,
20 STEVE GAW,
ROBERT M. CLAYTON,
21 LINWARD "LIN" APPLING,
COMMISSIONERS.

22

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

2 JUDGE THOMPSON: We are here in the
3 application of Union Electric Company for a certificate of
4 public convenience and necessity authorizing it to
5 construct, install, own, operate, control, manage and
6 maintain electric plant as defined in Section 386.020(14),
7 RSMo, to provide electric service in a portion of New
8 Madrid County, Missouri as an extension of its existing
9 certified area.

10 This is Case No. EA-2005-0180. We will
11 take oral entries of appearance. In order to speed this
12 up, don't bother to give me your firm or your address.
13 Just tell me who you are and who you're representing. And
14 we will start with AmerenUE.

15 MR. LOWERY: Good afternoon, your Honor.
16 James B. Lowery representing AmerenUE.

17 JUDGE THOMPSON: Good.

18 MR. FITZHENRY: Edward Fitzhenry on behalf
19 of Ameren as well.

20 JUDGE THOMPSON: Noranda?

21 MR. CONRAD: Stu Conrad on behalf of
22 Noranda.

23 JUDGE THOMPSON: Staff?

24 MR. DOTTHEIM: Steven Dottheim appearing on
25 behalf of the Staff.

1 JUDGE THOMPSON: Thank you. Office of the
2 Public Counsel?

3 MR. COFFMAN: John B. Coffman appearing on
4 behalf of the Office of the Public Counsel and the
5 ratepaying public.

6 JUDGE THOMPSON: Thank you. Missouri
7 Industrial Energy Consumers?

8 MS. VUYLSTEKE: Diana Vuylsteke for MIEC.

9 JUDGE THOMPSON: Thank you. Missouri
10 Energy Group?

11 MS. LANGENECKERT: Lisa C. Langeneckert
12 appearing on behalf of MEG.

13 JUDGE THOMPSON: Thank you. With respect
14 to preliminary matters, there's been a motion to withdraw
15 as a party filed by the Missouri Joint Municipal Electric
16 Utilities Commission. Any objections?

17 (No response.)

18 JUDGE THOMPSON: Hearing none, the same is
19 granted.

20 There has been a motion to be admitted
21 pro hoc vice by Mr. Fitzhenry, who indicates that he has
22 complied with all the requirements of the Missouri Supreme
23 Court with respect to such admission. Are there any
24 objections?

25 (No response.)

1 JUDGE THOMPSON: Hearing none, the same is
2 granted.

3 The parties let me know also Friday in a
4 conference call that the issue presently before the
5 Commission is now limited to the question of whether the
6 LTS tariff should be approved; is that correct? Am I
7 correct in assuming, then, that there's no longer any
8 issue on the part of any party as to whether or not the
9 certificate should be granted?

10 MR. COFFMAN: Your Honor, perhaps some
11 clarification. As I understand the applicant's request,
12 they are asking that a certificate be approved only on the
13 condition that the proposed LTS tariff be approved and
14 that certain ratemaking findings be approved.

15 As I understand it, no party is opposing
16 the concept of a certificate on the boundaries proposed,
17 but different parties have different conditions upon which
18 they would see a certificate be granted. So I think with
19 that clarification, you're correct.

20 JUDGE THOMPSON: Well, I'm simply trying to
21 understand for myself and for the Commissioners what
22 exactly needs to be decided in this case, and are you
23 telling me it is, in fact, more than the tariff?

24 MR. COFFMAN: I think that -- I think that
25 the contested issues as I understand them all relate to

1 the terms of service that would be applicable to Noranda
2 Aluminum, and so, yes, the differences all revolve around
3 whether the LTS tariff is appropriate or some other terms
4 or tariff or conditions are appropriate. To the extent
5 that other parties have linked that as a condition to a
6 certificate, you could argue, I guess, that the
7 certificate is at issue. I don't think it would probably
8 be accurate to say that no one opposes their certificate
9 by itself.

10 JUDGE THOMPSON: No one opposes the
11 certificate by itself?

12 MR. COFFMAN: That probably wouldn't be
13 accurate because different parties have linked approval of
14 that certificate to other conditions, including the
15 applicants.

16 JUDGE THOMPSON: Well, okay. That's fair
17 enough. Let's do this in an easy way. With respect to
18 the request for a certificate, now, Ameren and Noranda, I
19 assume you support that; is that correct?

20 MR. LOWERY: That is correct.

21 MR. CONRAD: That's correct, your Honor.

22 JUDGE THOMPSON: Very good. Staff, do you
23 support that or not?

24 MR. DOTTHEIM: The Staff supports the
25 issuance of a certificate of convenience and necessity

1 that has been applied for before the Commission.

2 JUDGE THOMPSON: Thank you. Public
3 Counsel?

4 MR. COFFMAN: We have no objection to a
5 certificate with -- provided there are no strings attached
6 to that certificate.

7 JUDGE THOMPSON: We're just doing the
8 certificate in isolation with this question. Industrial
9 Energy Consumers?

10 MS. VUYLSTEKE: We support granting the
11 certificate.

12 JUDGE THOMPSON: Thank you. MEG?

13 MS. LANGENECKERT: We have no problem with
14 the certificate as long as Ameren is able to prove that it
15 isn't detrimental to those current customers.

16 JUDGE THOMPSON: Well, you know, when you
17 say that, you're kind of saying that you oppose the
18 certificate unless they can show this. Is that what
19 you're saying? I mean, we're going to be litigating that
20 issue here today?

21 MS. LANGENECKERT: No, I wouldn't say that.
22 I just -- our concern is that being a regulated customer
23 for Noranda may end up costing the consumers that are
24 currently under Ameren's service more than if they were an
25 unregulated customer.

1 JUDGE THOMPSON: Okay. So you oppose the
2 certificate, then, or maybe you oppose the certificate?

3 MS. LANGENECKERT: Right. We just need to
4 gather more information hopefully. We were unable to get
5 it during discovery, so we're hoping we'll be able to get
6 it in this hearing.

7 JUDGE THOMPSON: Thank you. I appreciate
8 that.

9 Now, the tariff, again, I assume that
10 Ameren and Noranda support the tariff?

11 MR. LOWERY: That is correct, your Honor.

12 MR. CONRAD: That is correct.

13 JUDGE THOMPSON: Thank you, sir.

14 Mr. Dottheim?

15 MR. DOTTHEIM: The Staff is opposed to the
16 LTS tariff that AmerenUE and Noranda have proposed in this
17 proceeding.

18 JUDGE THOMPSON: Very good. Mr. Coffman?

19 MR. COFFMAN: Public Counsel is also
20 opposed to the LTS tariff as proposed.

21 JUDGE THOMPSON: Thank you. Ms. Vuylsteke?

22 MS. VUYLSTEKE: We do not oppose the LTS
23 tariff.

24 JUDGE THOMPSON: Do not?

25 MS. VUYLSTEKE: Do not oppose it.

1 JUDGE THOMPSON: Very good.

2 Ms. Langeneckert?

3 MS. LANGENECKERT: With the previous
4 proviso, we do not oppose it either.

5 JUDGE THOMPSON: So for you, it's also a
6 maybe?

7 MS. LANGENECKERT: I guess.

8 JUDGE THOMPSON: Very good. Now, there was
9 reference to certain findings; is that correct? Could you
10 remind me, Mr. Lowery, what those findings are?

11 MR. LOWERY: Yes, your Honor. And we
12 clarified very specifically, I think on pages 23 to 25 of
13 our brief -- it's on one of those pages -- exactly what we
14 are asking for, but essentially we're asking that the
15 Commission find that our decision to serve Noranda if the
16 Commission grants the certificate and approves the tariff
17 is a prudent decision.

18 We're not asking that the incurrence of
19 cost in the future, future decisions that are made, that
20 those decisions are prudent, but that if the Commission
21 finds that granting the certificate is in the public
22 interest, that our commencement of service to Noranda
23 would not later be subject to challenge as being prudent
24 -- imprudent after the fact. That at bottom is what we're
25 asking for.

1 JUDGE THOMPSON: Okay. Let me make my
2 notes here. Very well. And again I assume that you and
3 Mr. Conrad, that your clients are in favor of that
4 finding; is that right?

5 MR. CONRAD: That's correct, your Honor.

6 JUDGE THOMPSON: Thank you. Mr. Dottheim?

7 MR. DOTTHEIM: The Staff generally takes
8 the position that a prudency determination should be made
9 in a ratemaking proceeding. The Staff with the
10 application that was originally filed thought that
11 AmerenUE was seeking a prudency determination regarding
12 the tariff itself, and the Staff had indicated that it was
13 opposed to a prudency determination of the tariff for
14 ratemaking purposes and in general was opposed to the LTS
15 tariff.

16 JUDGE THOMPSON: And with the clarification
17 that Mr. Lowery has given us as to exactly what the
18 prudency determination they're seeking is, is Staff
19 opposed to it?

20 MR. DOTTHEIM: The Staff takes a position
21 that it's best that prudency determinations be made in the
22 context --

23 JUDGE THOMPSON: Is that a yes? Just
24 trying to hurry things along, sir.

25 MR. DOTTHEIM: Yes. I mean, also too, that

1 goes along with that, there is also the question of the
2 effect of the Ag Processing --

3 JUDGE THOMPSON: I understand.

4 MR. DOTTHEIM: -- decision which, Judge, I
5 know you're quite familiar with, as are the Commissioners.

6 JUDGE THOMPSON: Thank you, Mr. Dottheim,
7 and I apologize if I appeared to be rude.

8 Mr. Coffman, yes or no?

9 MR. COFFMAN: Public Counsel is opposed to
10 AmerenUE's request for pre-approval of prudence in this
11 case.

12 JUDGE THOMPSON: Thank you. Ms. Vuylsteke?

13 MS. VUYLSTEKE: We're opposed to the
14 request for preapproval.

15 JUDGE THOMPSON: You are opposed?

16 MS. VUYLSTEKE: Yes.

17 JUDGE THOMPSON: Thank you.

18 Ms. Langeneckert?

19 MS. LANGENECKERT: We're opposed.

20 JUDGE THOMPSON: Very good. And you're
21 certain of that, that's not a maybe?

22 MS. LANGENCKERT: Certain.

23 JUDGE THOMPSON: Thank you. Okay. Now we
24 know what we're here to decide and what everyone's
25 position is on those things.

1 Now, Ms. Vuylsteke, you had a preliminary
2 matter involving revised testimony. Would you like to
3 take that up now?

4 MS. VUYLSTEKE: Yes, thank you, Judge. We
5 had submitted prefiled rebuttal testimony of our witness
6 Mike Gorman. Since that testimony has been filed and very
7 recently, we have decided that we would like to withdraw
8 an issue from this case and just leave one issue on the
9 record, and I have circulated to the parties and provided
10 to the court reporter with a copy of this revised
11 testimony that basically strikes that issue from our
12 original testimony. And I would like the Commission's
13 leave to submit that today.

14 JUDGE THOMPSON: In other words, you want
15 to hand it out?

16 MS. VUYLSTEKE: Correct.

17 JUDGE THOMPSON: And we're not going to
18 take up the issue of its admission until Mr. Gorman
19 testifies; is that right?

20 MS. VUYLSTEKE: That's correct, although
21 I'm not sure yet whether anyone would have cross for
22 Mr. Gorman, and if he does not need to appear, it would be
23 in some ways more efficient if it would be acceptable to
24 the Commission and to you if we could find out now whether
25 anyone objects to the admission of this document. But if

1 you'd rather wait, that's fine.

2 JUDGE THOMPSON: I'd rather wait and take
3 it up as with all the other testimony. Very well. So if
4 you want to hand that out, then.

5 MS. VUYLSTEKE: I think everyone has it
6 already.

7 JUDGE THOMPSON: I don't think we have it
8 up here.

9 MS. VUYLSTEKE: I apologize.

10 JUDGE THOMPSON: I've just been advised
11 I've been mispronouncing your name. I do apologize. The
12 final E is silent?

13 MS. VUYLSTEKE: Yes, two silent letters.

14 JUDGE THOMPSON: Okay. Very good. I
15 appreciate it.

16 MR. LOWERY: Your Honor, while
17 Ms. Vuylsteke is getting that, I have one other quick
18 preliminary matter when you are ready for that.

19 JUDGE THOMPSON: That final E is silent,
20 sir. What is your matter?

21 MR. LOWERY: Your Honor, due to my
22 inability to type properly, there's one typo in the
23 stipulation that I just gave you. It's in the last line
24 of the very last paragraph, and I would ask if we could
25 amend that by interlineation to insert one word.

1 JUDGE THOMPSON: You can certainly so move.

2 And where would that be, the last line of the last
3 paragraph?

4 MR. LOWERY: Page 5, paragraph 12, last
5 line before the word "Noranda."

6 JUDGE THOMPSON: Yes.

7 MR. LOWERY: It should say "energy to serve
8 Noranda."

9 JUDGE THOMPSON: Very well. Any objections
10 to that amendment?

11 MR. CONRAD: No.

12 JUDGE THOMPSON: Hearing none, your motion
13 for leave to amend by interlineation the stipulation of
14 uncontested facts is granted.

15 MR. LOWERY: Thank you.

16 JUDGE THOMPSON: And finally, I believe a
17 week from today we're scheduled for closing arguments; is
18 that correct? And so --

19 MR. LOWERY: It's March 3rd, I believe.

20 JUDGE THOMPSON: I apologize. So when will
21 we need the transcripts?

22 Kellene, when are you planning to get them
23 done?

24 THE REPORTER: Whenever you need them.

25 JUDGE THOMPSON: Whenever we need them. I

1 like that. When would you guys like them?

2 MR. LOWERY: You had ordered that they be
3 done by this Friday.

4 JUDGE THOMPSON: Okay. Friday. Let's work
5 with Friday. Okay. I think that's all the preliminary
6 matters. Let's go ahead and start with opening
7 statements. And I believe Ameren that's your --
8 Mr. Dottheim?

9 MR. DOTTHEIM: Yes, if I might ask a
10 question.

11 JUDGE THOMPSON: You may.

12 MR. DOTTHEIM: You've scheduled -- the
13 Commission has scheduled closing arguments for March 3.
14 The Prehearing Briefs were filed on last Friday, and
15 you've gone to each of the parties this afternoon and
16 asked them a number of questions on positions they're
17 taking.

18 Are you contemplating that the closing
19 arguments would also involve any legal argument respecting
20 the Prehearing Briefs that were filed, which at certain
21 instances involve arguments or cases that parties may not
22 have seen before, or is it premature to ask you about
23 March 3 at this point?

24 JUDGE THOMPSON: No, I think that's a very
25 good question, and I will say this: You may do that

1 however you would like. In other words, you may respond
2 to those Briefs in the manner contained in your closing
3 argument. If you would like, you can actually write a
4 Reply Brief and file it no later than March 3rd, or why
5 don't we even say March 1st, so we can have had a chance
6 to read it, but that's optional if you want to. All
7 right?

8 MR. DOTTHEIM: Thank you.

9 JUDGE THOMPSON: Anything else? Okay.
10 Mr. Lowery?

11 MR. LOWERY: Thank you, your Honor. May it
12 please the Commission? My name is Jim Lowery, and I,
13 along with my co-counsel Ed Fitzhenry, represent AmerenUE
14 with respect to our efforts to serve Noranda and obtain
15 the certificate and the approval of the tariff we've asked
16 for in our application.

17 Before I describe that application and some
18 of the evidence in this case in more detail, I wanted to
19 address a couple of preliminary matters. A few minutes
20 ago we handed out a Stipulation of Uncontested Facts that
21 the Judge asked us to prepare, and I would commend your
22 attention to that when you have a moment because I think
23 it will help you see that there's been substantial
24 narrowing of the issues that existed in this case that
25 might have appeared at least in terms of the amount of

1 prefiled testimony that originally existed.

2 I'd also like to direct your attention to
3 the Prehearing Brief that we filed last week pursuant to
4 Commission order. I'd like for you obviously to read the
5 Brief in its entirety, but in particular I direct your
6 attention to pages 2 and 3 and pages 21 to 23 of that
7 Brief, because in it those pages address some legal issues
8 that I think some of the Commissioners have some questions
9 about and we tried to answer those questions.

10 And I'm not going to talk about the
11 answers. You can obviously read those for yourself. But
12 I would point out that we address the following questions.
13 We addressed what would happen with respect to the
14 proposed large transmission service tariff, the LTS tariff
15 that we've proposed if Noranda left our service after
16 15 years or more.

17 We addressed the fact that Noranda is not
18 in any other provider service territory and has not been
19 in any other service territory. We addressed the lifespan
20 of the LTS tariff. We addressed the relationship between
21 the contract that we have with Noranda that led to this
22 application and the tariff itself. And we also, as I
23 mentioned a moment ago, addressed the prudence finding
24 that we are requesting and exactly what we are or are not
25 requesting of the Commission.

1 So with that background in mind, let me try
2 to discuss for a few minutes what the evidence in the case
3 shows.

4 We are asking for two things. We're asking
5 that you extend our service territory to encompass
6 Noranda's facilities. And I've put an aerial photo. I
7 hope everybody can see it so that I can be on the record.
8 I'll just hold it here a moment. This is Noranda's
9 smelting facility in New Madrid County, Missouri. Our
10 existing service territory is over here within the blue
11 area. We are asking to certificate Noranda's property
12 that would make it adjacent to our service territory.
13 This is the Mississippi River.

14 Granting the certificate that we've
15 requested is going to allow us to provide cost-based
16 long-term service to Noranda, which is what they need.
17 And another important thing that it's going to do, this
18 will bring Noranda into our certificated area. Noranda is
19 not electrically connected to AmerenUE's system. Noranda
20 will be taking transmission service in order to get the
21 power that we will supply via transmission through
22 Associated Electric Cooperative, Inc.'s AECI transmission
23 system.

24 And so we have an interconnection some
25 miles away with AECI's system. We will be utilizing an

1 this service? Noranda has operated the aluminum smelter
2 that they have in New Madrid for more than 30 years. They
3 employ over 1,100 people, most of whom are Missourians.
4 They basically consume their peak energy needs, which is a
5 very large need, about 470 to 475 megawatts, they
6 basically consume that 24 hours a day, 7 days a week.
7 They need a long-term fixed or cost-based contract for
8 base load production.

9 The reason they need that is because of the
10 economics of their business as it relates to electricity.
11 33 cents of every dollar they spend to operate their
12 business, their plant in New Madrid is spent on electric
13 energy. Just to give you a comparison, Noranda obviously
14 employs a lot of people. They have a big payroll. They
15 spend a lot of money on goods and services in the area.
16 Their payroll's about 57 million.

17 They spend about 22 million on goods and
18 services in the area. Their electricity costs on an
19 annual basis by comparison are approximately \$135 million.
20 So you can see that the cost of their electricity is a
21 very critical component of their amount to operate and
22 continue to be successful.

23 Cost is not the only issue, though, for
24 them with regard to electricity. They have what I would
25 characterize as an extraordinary need for reliable power,

1 because as I understand it they have these big vats or
2 pots of molten aluminum that they use in their process,
3 and electricity is what they need to make that process
4 work. If they lose their electricity for any period of
5 time beyond maybe an hour, they can suffer irreparable
6 damage to their facility. So it's important to them that
7 they have a utility that has the ability to provide them
8 reliable service. And it's so important to them both the
9 cost and reliable issues, that they have a full-time
10 executive who does nothing but procure electricity for the
11 facility, and that's Mr. Swogger who you'll hear from
12 later today.

13 For about 30 years Noranda had a cost-based
14 electricity supply. They lost that in 2003. That was
15 supplied from plants that were operated by Associated. At
16 that time what was on the table for them was an index-
17 based price proposal tied to coal and natural gas indices.
18 Noranda didn't feel like that that was something they
19 could live with in their business, it was going to be too
20 much of a burden for them, and so they entered into an
21 interim two-year deal on a short-term basis with a power
22 marketer, Brass Can Energy Marketing, Inc. That deal
23 comes to an end at the end of May this year and the Brass
24 Can is not interested in continuing it.

25 So they have since entered into that

1 short-term deal, they've worked with AmerenUE, ultimately
2 leading to an agreement on December 14 of last year that
3 has led to the application. We reached the agreement on
4 December 14th. We filed our application six days later
5 with this Commission.

6 The key terms of that December 14th
7 agreement are they will become a regulated customer to be
8 treated just like any other regulated customer we have,
9 and they will take service under the LTS tariff. The only
10 thing different about the regulated service to Noranda and
11 regulated service to any other customer we would have is
12 that because of a special statutory right that they were
13 given by the Legislature in 2003, they have the option no
14 earlier than 15 years after service commences to choose
15 another supply.

16 Now, they have to do that on 5 years
17 notice, so they could get this notice in year 10 and leave
18 after year 15, but if they wait until year 15, they're
19 going to be with us through year 20. They don't have to
20 exercise it, but they have that option.

21 As I noted before and as was discussed in
22 some of the preliminary matters, really this case I think
23 at this point comes down to a discussion of the LTS
24 tariff. And I wanted to talk a minute about why we
25 believe the LTS tariff is appropriate and makes eminent

1 sense in this case, and it's because of unique service
2 characteristics that Noranda has.

3 Everyone agrees that Noranda is a very
4 large customer. They need 470 megawatts almost every hour
5 of every day. So that's one distinguishing characteristic
6 for Noranda. Everyone also agrees that Noranda takes
7 transmission level service, and what that means is they
8 don't take distribution from AmerenUE. They own their own
9 161,000 kilovolt lines and transformers that take the
10 power at that voltage directly from AECI's substation
11 after it's been wheeled by AECI.

12 A third thing that makes Noranda unique is
13 that they have this very high load factor, 98 to 99
14 percent, and they have that because the nature of aluminum
15 smelting is they've got to take the power full bore all
16 the time or their process simply doesn't work. Regardless
17 of how big the load is, that's how they have to take the
18 power. So when you combine that load factor with the size
19 of their load, they're very unique in that regard.

20 Four, they need third-party transmission
21 service. They need additional transmission from AECI that
22 they have arranged and that they will pay for in order to
23 get the power to them so AmerenUE is not providing direct
24 transmission, and the line losses on the system are thus
25 much different than they would be if AmerenUE was

1 providing that.

2 And finally because they're so large,
3 there are credit issues. Noranda will be buying about
4 \$11 million per month of electricity from AmerenUE, so
5 we've included credit provisions in the LTS tariff that
6 don't exist in our other tariffs, because frankly we don't
7 have a customer that generates that kind of receivable
8 each month.

9 The LTS tariff is specifically designed to
10 take all five of these factors into account. It also
11 includes one other design feature that you may have read
12 about if you've looked at the pre-filed testimony or the
13 Briefs, and that is the ACF, the annual contribution
14 factor. What we did is, we're in the middle of a rate
15 moratorium. We don't have at this time a full-blown class
16 cost of service study that builds up the rates, looks at
17 what the revenue requirement could be, how it might be
18 equitably allocated across all classes.

19 We don't have the benefit of that. We'll
20 have that by January 1 of next year, and we agreed and
21 were required by the stipulation you approved in the 2002
22 complaint case to provide that.

23 But we don't have it now, and so what we
24 did is, we didn't want to change the revenue structure
25 that is reflected in the tariffs that went into effect in

1 2002, so we took our existing large primary service, LPS
2 tariff, and that's the tariff that you'll hear Staff talk
3 about that they would like to see Noranda take service
4 under.

5 We took that tariff. We made adjustments
6 to take into account lack of distribution, the differences
7 in transmission, but then we included this ACF that
8 essentially means that the revenues produced under the LTS
9 tariff between now and whenever this Commission may
10 exercise its authority to change that tariff are going to
11 be the same as they would have been had the LTS tariff
12 been in effect. But we've taken into account these unique
13 service characteristics which the LPS tariff does not do.

14 The evidence is going to reflect, I think,
15 that there's really not much dispute about most of what
16 I've just indicated. The dispute lies in whether we ought
17 to have an LTS tariff or whether we ought to have an LPS
18 tariff or whether we ought to have potentially another
19 kind of mechanism.

20 Staff doesn't agree that the adjustments
21 that we made hit the mark close enough, and so for reasons
22 that to be honest are not entirely clear to us, Staff
23 prefers to the LPS tariff be used.

24 Staff also wonders about what would happen
25 if Noranda's load factors was substantially reduced or

1 their load was reduced, and Noranda's load factor --
2 there's no evidence and I don't think you'll hear any
3 evidence that suggests in any way, shape or form that
4 there's any reason to believe that the size of their load
5 or their load factor would change. We don't think that
6 concern really has any merit.

7 The evidence will also show that nothing
8 about the LTS tariff is going to bind the Commission in
9 terms of what decision it makes about rate classes, rate
10 design, equitable allocation of costs in a future rate
11 case.

12 Public Counsel takes an entirely different
13 view and, in fact, a unique view in this case. Public
14 Counsel says, Commission, you don't have the authority to
15 approve regulated service to AmerenUE at all. Once we
16 have the new statute that the Legislature passed, they
17 must proceed under the -- under that statute. Staff
18 actually indicates that perhaps we could proceed under the
19 statute, but I think expresses a preference that we don't
20 do so, that we actually proceed using regulated service.

21 Public Counsel also proposes a special
22 contract tariff mechanism that basically is tied to
23 certain costs that you might identify related to Noranda,
24 off-system sales that did or didn't happen. And at bottom
25 I think that if Staff's proposal -- or if Public Counsel's

1 proposal was accepted, it would in effect defeat the very
2 purpose for which Noranda and the Commission or the
3 company have come to the Commission; that is, to get
4 approval of long-term cost-based regulated service.

5 MIEC says that we don't think there's a
6 detriment or a benefit. And MEG, their position honestly
7 to me is a little bit unclear. I think they share some of
8 Public Counsel's views, but they also suggest that we need
9 more study, we need more analysis, and they think that
10 Noranda should enter yet another short-term deal pending
11 getting those further analyses.

12 At bottom I think our request is rather
13 simple. We ask that Noranda be approved as a certificated
14 customer. We ask that the LTS tariff be approved, and we
15 ask on one aspect, that is the decision to begin that
16 service, if you find that granting the certificate is in
17 the public interest, that that decision be found to have
18 been a prudent one, not that all future decisions related
19 to our cost be found prudent, but that particular decision
20 be found prudent.

21 With that, I thank you for your time, and
22 we very much look forward to presenting the case to you.
23 Thank you.

24 JUDGE THOMPSON: Thank you, Mr. Lowery.
25 Mr. Conrad?

1 MR. CONRAD: May it please the Commission,
2 and good afternoon.

3 More years ago than I like to think of,
4 when I started practicing law in 1974, the first case I
5 worked on happened to be a FERC case involving at that
6 time Northwest Central Pipeline, formerly City Service,
7 now Southern Star, for those of you who keep track of
8 those things. In connection with that, I was privileged
9 to go to a settlement conference in Washington.

10 We had lunch with a seasoned FERC
11 practitioner by the name of Mort Simon. He was in
12 practice with his wife. Their firm was named Simon &
13 Simon, not surprisingly. And during that lunch I asked
14 Mr. Simon, well, what position do you think we should
15 assume for my client, which in that case was Midwest Gas
16 Users. Mr. Simon resting on many years of experience
17 leaned back and said, well, I've always found it best to
18 wait until the elephant picked where they wanted to sit
19 before you picked your chair.

20 My client's problem is we already picked
21 our chair, and it's right here and it isn't built on
22 railroad cars. And we find ourselves as business people
23 wanting to do a deed and caught in a regulatory dance,
24 shall we say, about which you're going to hear. The scale
25 of this picture isn't shown on it. Perhaps it is and I'm

1 not able to find it. But for your information, these
2 buildings, the ones that appear here to be horizontal, are
3 about a quarter mile long, so it's a fairly substantial
4 size operation.

5 As this case has worked through to today,
6 we find that it really involves only two criteria, which
7 Mr. Lowery has very well summarized those and I'm going to
8 try to avoid replicating that in an effort to keep things
9 moving along. The first thing was the certificate of
10 public convenience and necessity. The second one was
11 approval of the tariff under which service could be
12 provided to my clients.

13 The case became more complicated because of
14 some timing issues with the Metro East case, but that has
15 been now resolved, and we are left then with essentially a
16 tariff issue. Until this afternoon it had been my
17 understanding that no party opposed the issuance of the
18 certificate by itself. I'm left in a little bit of doubt
19 with respect to MEG's position which is, as your Honor
20 characterized it, was a strong maybe. But we would see at
21 least at base that no one really ought to oppose that.

22 There appear to be disagreements over
23 various interpretations as to how the application and
24 paragraphs in the application can be read. And we're not
25 entirely sure that we understand all the nuances that some

1 of the parties want to point out, but in any event, it
2 would appear that the major issue surrounds this tariff.

3 As Mr. Lowery pointed out, and let me point
4 out again at least for the benefit of the Commission and
5 to be sure that my client's position is made clear,
6 Noranda needs reliable electric service. The nature of
7 the aluminum smelting process is a continuous process that
8 cannot be cycled on and off. Interruption of the supply
9 beyond about an hour as Mr. Lowery mentioned is serious
10 and would cause extensive damage to the process.

11 The power supply must correspondingly be
12 firm. That kind of goes hand in hand with the idea of
13 reliable. But because it's firm, it ends up being a base
14 load type of -- of load from the system dispatcher's
15 perspective. Cost, electricity represents -- and
16 Mr. Lowery gave you some of the figures -- roughly a third
17 of the smelter's operating costs, and they are the single
18 largest operating cost. Its ability to remain viable
19 depends on maintaining ability to deliver a competitively
20 priced product to the market.

21 Although Noranda is large, we do not make a
22 market. We take a market, and the market that we take is
23 reflective of the worldwide price for aluminum. It is
24 thus critical that all of Noranda's costs be under control
25 and remain economical to the maximum extent possible, and

1 that supply must meet those criteria for the long term.
2 In the -- in the power market of today, it's very
3 difficult to find longer-term deals, and the idea of a
4 longer-term arrangement in this case 15 years with an
5 evergreen provision as Mr. Lowery has discussed was a very
6 important factor to us.

7 The argument about the tariff, I'll just
8 kind of try to come to that. The size of the load we
9 think makes Noranda rather unique. We think 475 megawatts
10 is the peak, and that would make it the largest retail
11 load in the state.

12 It's continuous in use as I've mentioned.
13 Noranda maintains what it calls three potlines. A pot is
14 a large vessel, and by large I mean swimming pool large
15 into which alumina -- which I am told is a refined version
16 of what I grew up learning by the term bauxite. You've
17 heard that term. Alumina is a refined version of that.
18 It is dropped on a continuous basis into this pot, and
19 periodically about 1,000 or
20 1,200 pounds or thereabouts of molten aluminum is tapped
21 from the bottom of the pot, and that process just
22 continues throughout.

23 That means it's a high load factor. We
24 take high voltage service. Mr. Lowery mentioned that
25 161 KV line. I am told that the substation is right in

1 this area (indicating). The reporter obviously can't pick
2 up this area, but hopefully the Commissioners can, and
3 from there it comes on a 161 KV line for which Noranda is
4 responsible, owns and maintains, into its plant where it
5 goes into what Noranda calls a rectifier yard.

6 The alternating current is converted into
7 direct current at that location, and that is stepped down
8 and the various processes of a high voltage and lower
9 voltage switch gear, all of which is owned and maintained
10 by Noranda. And as some of you may know, you also need,
11 if you're going to present a relatively unity power
12 factor, you also have to spend some money for static
13 capacity to set that up.

14 There are no distribution services provided
15 by Ameren at all. Noranda takes from its own transmission
16 line and after the transmission of the power through that
17 line to the smelter goes through the various processes
18 that I have mentioned. The potlines, and I think,
19 Commissioner Gaw, you may -- I hope you're not alone in
20 being interested in this, but I was interested in this.
21 Each of these pots runs apparently on 4.5 loads, but there
22 are -- in one line there's 170 of them. In another line
23 there's corresponding number, and a third line there's a
24 larger number, and the voltages are in series and so they
25 have to add up.

1 So if you do the math, you end up with two
2 lines at 812 volts and one at 690. But here is the
3 payoff. Two of the lines are at 170,000 amps, and the one
4 is at 218,000 amps. Losses, there are losses associated
5 with this, but Noranda picks all of them up. It receives
6 the power at a transmission level and so it has to absorb
7 losses, and we will under the contract and under the
8 arrangements purchase the additional power from Union
9 Electric/Ameren to make up those losses.

10 Now, this type of service suggests to us a
11 special tariff, which has been proposed. However, your
12 Staff, redoubtable as they may be, does not seem to want
13 to use the tariff that has been proposed, but rather wants
14 to use an LPS tariff, which in our view does not fit
15 Noranda. Staff wants to apply a series of adjustments or
16 credits, some of which we don't yet know, to this tariff
17 to attempt to make it fit.

18 In effect, there's several analogies, but
19 when I go to buy a suit anymore, I have to go further down
20 the rack than I used to, but I find that I'm not able to
21 still buy an average size suit and an average size shirt.
22 I try to find something that fits.

23 And from a business sense, it makes sense
24 to us to try to get it right, to try to get it right in
25 the beginning, to make it simple, to make it

1 straightforward in the first place.

2 I thought of a couple analogies. Some of
3 you may remember a movie, and I think it was starring Jack
4 Nicholson, called Five Easy Pieces, in which
5 Mr. Nicholson, whatever his character was, at one point
6 found himself in a restaurant that refused to provide him
7 with toast. Can I order toast? No, you can't get toast.
8 He says, can you give me a bacon, lettuce and tomato
9 sandwich on toast? Yes, said the waitress. Okay. That's
10 what I want, but hold the bacon, the lettuce and the
11 tomato.

12 Now, although the analogy is certainly far
13 from perfect, it seems to us that that is really what
14 Staff is doing. They want us to order a Big Mac when all
15 we need is a sesame seed bun, and I'm expected then to
16 say, but hold the two all beef patties, special sauce,
17 lettuce, cheese, pickles and onions. And it seems more
18 straightforward to us to just say, I want a bun. That's
19 all I want.

20 Rates are structured in order to group
21 together customers with common load and usage
22 characteristics. Noranda is larger than all of the
23 current LPS customers added together. Another old friend
24 of mine by the name of Stan Whitaker, now deceased, used
25 to characterize that as a recipe for rabbit and elephant

1 stew; one rabbit and one elephant.

2 It is no more appropriate in our view to
3 group Noranda with LPS customers than to group LPS and
4 residential customers together under one tariff. It is
5 likely that one could take a residential tariff, apply it
6 to an existing industrial customer and apply enough
7 credits and riders and unique tweaks to adjust the rate
8 down to the cost of service for that customer, but that's
9 really not a rational process.

10 If customers with common load and usage
11 characteristics are grouped together, there is only one
12 aluminum reduction facility in Missouri. So it is not
13 surprising that a tariff that addresses the load and usage
14 characteristics of Missouri's only aluminum reduction
15 facility does not include other customers with dissimilar
16 load and usage characteristics.

17 Staff also seems concerned, and you'll
18 hear, I think, testimony about the inclusion of a load
19 factor consideration in the tariff. This too as I've
20 discussed with you is a characteristic of aluminum
21 production. Were another aluminum reduction facility to
22 locate in UE's service territory, presumably they also
23 would be able to utilize the LTS tariff as it's been
24 proposed. It's not a closed door.

25 But that only one customer at one point in

1 time may qualify for service under a particular tariff
2 does not make that tariff unduly discriminatory.
3 Discrimination refers to a difference in treatment. Undue
4 discrimination refers to a difference in treatment that
5 lacks a rational basis for that difference in treatment.

6 And Mr. Lowery has dealt also with the
7 annual contribution factor or ACF, and I will simply
8 say -- confirm what he has said from our side of the
9 table, that that is no more than the price of the deal
10 that was negotiated between Ameren and Noranda. By its
11 terms, that factor disappears when a new rate case comes
12 into fruition. And we chose to do it that way simply so
13 that no one could claim that we were trying to lock in
14 some established price level or some established practice.
15 And lo and behold, despite that, we have been met with
16 that challenge.

17 And finally, both UE and Noranda have
18 sought diligently to make it clear, in the prefiled
19 testimony in the Briefs and the materials that we have
20 provided to you that you five are entirely free in a
21 future rate case to do whatever you will with this tariff.
22 It is an interim measure. It will -- it will be updated,
23 cost of service data will be updated along with other cost
24 of service data and that will be used to develop an
25 appropriate tariff if this one is not for Noranda.

1 But this gets us through, and it's in the
2 context of a rate moratorium where Ameren cannot increase
3 the cost to any other customer nor for that matter
4 decrease it. They simply can't change it without the
5 Order of the Commission. So we have intentionally left
6 that to the Commission and to your-all's sound discretion
7 in the next proceeding.

8 There has been a concern voiced that
9 sometime during this 15-year period that lo and behold
10 Noranda may go out of business. Well, let me tell you
11 that we're not here before you to tell you we have any
12 intention or any belief that we're going to go out of
13 business.

14 And that leads me to the final point that I
15 want to make, and that is about load factor. There's been
16 testimony voiced by the Staff and you'll hear testimony
17 either today or tomorrow, well, what if Noranda's business
18 goes down, would their load factor decrease and thus would
19 there be some kind of a differential, a seam if you will
20 between the two tariffs?

21 Well, if you heard what I was telling you
22 about how three potlines work, you would then quickly
23 understand that the only way that Noranda could reduce its
24 production is to shut down one entire potline, which
25 leaves two lines which would continue to operate at a

1 continuous level, and so the load factor for the load
2 that's there would not deteriorate at all.

3 Now, we have offered the testimony of
4 Mr. Swogger, who is our manager of electrical procurement,
5 and Noranda has also brought before you -- I just want to
6 mention these, Judge, so that we can hopefully decide
7 whether the Commission wants to hear from them -- Mark
8 Baker, who is the mayor of New Madrid, Lanie Blank, who is
9 a State Representative, House District 161, and I
10 understand has a committee chair responsibility also.
11 Harvey Cooper is the executive director of the Sheltered
12 Workshop in the New Madrid area.

13 Mr. Steve McPheeters is a communications
14 supervisor for Noranda. Terry Swinger is a state
15 representative from House District 162, and David Seamon
16 is director of business development for the Economic
17 Development Department of the State of Missouri. I guess
18 he has characterized himself as kind of being the State's
19 chief business development officer.

20 All of those folks in addition to Mr. Don
21 Johnstone, a technical witness, have been submitted for
22 your consideration today. It is our understanding that
23 only Mr. Swogger and Mr. Johnstone are to be
24 cross-examined, and we would be happy to have anyone or
25 all of these other people here, but because they are not

1 under our -- with the exception of Mr. McPheeters, under
2 our direct control, we need to have some direction from
3 you whether you would want to talk to any of them.

4 They all testify to one point, and that is
5 Noranda is very important in the community for southeast
6 Missouri. It has a very large economic swath down there,
7 and is a very important part of these people's districts
8 and their operations, both in their house districts and
9 for the state of Missouri.

10 So with that, I would leave the matter to
11 others at this point and will be here, but I can take any
12 questions if you have them.

13 JUDGE THOMPSON: Any questions from the
14 Bench?

15 COMMISSIONER GAW: I do.

16 JUDGE THOMPSON: Commissioner Gaw.

17 COMMISSIONER GAW: Yes. Mr. Conrad, I
18 think just a couple of areas I need some clarification on,
19 and it really has to do with service territory in general.

20 MR. CONRAD: I'll do the best I can.

21 COMMISSIONER GAW: Maybe later on someone
22 can clarify this for me if you can't. If we did not have
23 the intervening statute that allows Noranda to shop, would
24 there be -- what would the process be before the
25 Commission if -- if this proposal were in front of us as

1 just a service territory acquisition?

2 MR. CONRAD: I'm not sure. Are you saying
3 like without a tariff proposal?

4 MR. CONRAD: Let's say that Noranda was
5 still served under the -- let's back date us to whenever
6 the service was delivered by Associated and the city of
7 New Madrid, and we get rid of the intervening statute for
8 a minute. What would be the procedure before the
9 Commission if UE were going to say they wanted to acquire
10 that service territory?

11 MR. CONRAD: Without the statute?

12 COMMISSIONER GAW: Without the statute.

13 MR. CONRAD: My understanding of how that
14 process would work, Judge, is absent the statute, which to
15 some extent takes away the so-called anti-flipflop, the
16 city and potentially AEI as existing suppliers would have
17 an opportunity to object, and if UE sought service
18 territory extension to bring this within its footprint if
19 you will, they would have the opportunity to object to
20 that.

21 As I understand it the same way, that an
22 REA on the corresponding side of the state but in the
23 south frequently battles with Union -- excuse me -- with
24 Empire about service territories, where that statute does
25 not apply. That doesn't prejudge what the result of the

1 case will be, but it would be -- they would have, I think,
2 the opportunity to appear, to object, raise questions,
3 whatever.

4 COMMISSIONER GAW: Would they be given
5 notice? Would that be a territorial agreement case? What
6 would you call that?

7 MR. CONRAD: I guess it would just be the
8 service certificate case. A territorial agreement as I
9 understand it's where two utilities, two or more have gone
10 together and have amenably drawn a pencil on a map and
11 said, you take this, I take this and so on. But a
12 certificate application would be --

13 COMMISSIONER GAW: To add that into their
14 service territory?

15 MR. CONRAD: Yes.

16 COMMISSIONER GAW: Okay. If all -- maybe
17 Ameren has already cited this in its briefing. I don't
18 know.

19 MR. LOWERY: Commissioner Gaw, I beg your
20 pardon. If I can help you with that. On page 21 and
21 carrying over to page 22 of our Brief, we addressed your
22 very specific question. And Mr. Conrad is correct. If a
23 rural electric cooperative or a municipally owned electric
24 utility was at this moment serving Noranda, then the anti-
25 flipflop statutes would probably apply --

1 JUDGE THOMPSON: Okay.

2 MR. LOWERY: -- and I can't recite the
3 mechanism exactly how that works, but there would be a
4 mechanism for them to object to UE becoming the
5 certificated provider for Noranda.

6 However, Noranda using the statutory rights
7 they were given in 2003 was able to move away despite the
8 anti-flipflop statute to Brass Can, and they are not now
9 being served by either a municipally owned electric
10 utility or a rural electric cooperative or for that matter
11 a regulated public utility. So the anti-flipflop statutes
12 don't apply to this application, and we are in an open
13 competition situation. Anyone could seek to serve them at
14 this point in time, and we are simply --

15 COMMISSIONER GAW: Okay. I'm going to stop
16 you, because my problem -- my problem is trying to
17 understand which statutory provisions we're under at which
18 point in time. And it is very -- it seems to me that we
19 keep jumping back and forth, and I'm not clear about what
20 the status of the law is in regard to what provisions are
21 in operation at any point in time in regard to Noranda,
22 and it's very -- that that's why I keep asking these
23 questions.

24 If we were today in a position where
25 Noranda was being served by the city of New Madrid -- and

1 I'm not clear, if somebody wants to clarify that for me,
2 whether that was service that Associated provided directly
3 to Noranda or whether that was provided under contract
4 through the city of New Madrid at the time just prior to
5 the cessation of that contract --

6 MR. CONRAD: Judge, you might ask --

7 COMMISSIONER GAW: -- or that provision of
8 service?

9 MR. CONRAD: You might note on your pad
10 when Mr. Swogger's on the stand, he could give you
11 considerable detail on that.

12 COMMISSIONER GAW: All right.

13 MR. CONRAD: My understanding standing here
14 before you and trying to answer is that at that time -- I
15 think the contract occurred at the time you're talking
16 about -- there was something of a mutual arrangement
17 between AECI and the city of New Madrid with some of the
18 generating portions if you will coming from the city of
19 New Madrid, some others coming from AECI. The power
20 would, of course, be coming through AECI's network. So as
21 you're familiar, it's not always possible. Electrons
22 don't know that.

23 COMMISSIONER GAW: I'm just sure somebody
24 will get into this to some extent. Where is the New
25 Madrid plant that's owned by AECI on that map?

1 MR. CONRAD: I want to say city of New
2 Madrid is up -- the plant is up here, if I remember where
3 we were.

4 COMMISSIONER GAW: Just up to the north?

5 MR. CONRAD: Yeah, up to the north.

6 MR. SWOGGER: The plant is actually --

7 MR. CONRAD: Mr. Swogger is speaking.

8 COMMISSIONER GAW: We'll get to that in a
9 little bit. I'll ask -- I'll ask -- I'm sorry,
10 Mr. Swogger.

11 MR. CONRAD: That's why I said, if you
12 remember to ask him.

13 COMMISSIONER GAW: I'll do that. But as
14 far as the provision of service is concerned, no matter
15 what we do on these agreements, the electrons are going to
16 come out of that plant in all likelihood. That's a matter
17 that we don't have to go into right now.

18 MR. CONRAD: Yeah. And subject to that, I
19 think Staff Witness Proctor, to whom I would commend your
20 reading of his testimony, has pointed out that the physics
21 of this don't change. This is one level --

22 COMMISSIONER GAW: This is regulatory laws.
23 We don't deal with the reality of things. We just deal
24 with the things that we all make up to try to --

25 MR. CONRAD: Judge, I'm not going there.

1 COMMISSIONER GAW: Okay. Anyway, back to
2 my legal question. If there -- if we're in a position
3 here where that had not changed and we were just dealing
4 with a switching of the providers, it's your understanding
5 at this point -- and I'm hearing this from Ameren -- that
6 there would be some sort of notice given in regard to this
7 acquisition of territory and an opportunity to object.
8 Let me ask Staff if they see that in the same fashion.

9 MR. DOTTHEIM: Commissioner, this is as
10 AmerenUE has addressed it in its prehearing brief. It's
11 asking what the Staff had hoped to address. I don't know
12 if what you're thinking of, what has been mentioned is the
13 anti-flipflop statutes.

14 COMMISSIONER GAW: Right.

15 MR. DOTTHEIM: There's also the statutes
16 that are referred to as the change of electric supplier
17 statutes, not that they're ultimately really different,
18 but that's another terminology. And the change of
19 electric supplier may occur by statute for a reason other
20 than a rate differential.

21 So there would likely be, I would think, an
22 issue raised as to what is the reason for the change of
23 electric suppliers. Is it for rate differential? Is it
24 because the existing supplier no longer wishes to supply?
25 And since it's not an investor-owned utility, does it

1 necessarily have an obligation to serve?

2 COMMISSIONER GAW: Well, I'm going to get
3 to that obligation to serve in a moment, but go ahead.

4 MR. DOTTHEIM: And of course, the
5 Commission's authority, statutory authority regarding
6 territorial agreements and change of electric suppliers
7 also involves not just rural electric cooperatives but
8 also municipal utilities. So those various statutory
9 sections as you are recalling correctly, and of course the
10 Commission not infrequently has territorial agreement
11 cases pending before it or change of electric supplier
12 cases before it.

13 COMMISSIONER GAW: Are those the same
14 things you're talking about? They're not the same things.
15 I'm seeing shaking of heads back there, so --

16 MR. DOTTHEIM: No, there are different
17 nuances, and I'll let others address -- address that.
18 Territorial agreements at times involve territories where
19 there are not customers. I think generally change of
20 electric supplier cases involve specific individuals,
21 entities, that are seeking to change from one supplier to
22 another, whether it be from an electric coop to an
23 investor-owned utility or even from one rural electric
24 coop to another.

25 In fact, frankly -- and I won't go into

1 it -- the Commission has presently pending before it a
2 territorial agreement case involving two rural electric
3 cooperatives. And of course municipals are -- can be
4 involved in the mix, and it is my recollection from both
5 the statute and the Commission's rules that notice is to
6 be provided to -- if there is a case to be filed at the
7 Commission, the parties filing the case are to provide
8 notice to the other electric suppliers, whether they know
9 them either to have an interest or to not have an
10 interest.

11 COMMISSIONER GAW: Let me ask this
12 question. Does anyone currently have an obligation to
13 serve Noranda under state law? Whoever wants to venture
14 on that one, go ahead.

15 MR. LOWERY: I think the answer is no.

16 MR. CONRAD: And we will agree with that.

17 COMMISSIONER GAW: And before this --
18 before we got to this point where there was this
19 intervening statute and this new bid or this contract with
20 Brass Can, was there -- was anyone obligated to serve
21 Noranda?

22 MR. LOWERY: I believe the answer is no. I
23 don't believe a rural electric cooperative or municipally
24 owned utility has the same kind of obligations of an
25 investor-owned utility by you folks has.

1 COMMISSIONER GAW: Even after they have
2 been serving them?

3 MR. LOWERY: Correct.

4 MR. DOTTHEIM: Other than maybe some
5 contract law or some analysis.

6 MR. LOWERY: If your contract was a
7 contract, that's a different question, but if it's a
8 lawful obligation . . .

9 COMMISSIONER GAW: There's a statutory
10 requirement to serve?

11 MR. LOWERY: I believe no.

12 MR. COFFMAN: I suppose I should be clear,
13 because I think I have a different take on the law than
14 the other parties here, and that is I do not believe that
15 subsequent to the passage of 91.026 that anyone has an
16 obligation to serve Noranda and that Noranda is, absent
17 the contractual obligation to serve, free to choose, to go
18 wherever it wishes, and that the anti-flipflop statute
19 simply does not apply to Noranda, period.

20 MR. DOTTHEIM: Commissioner, sometimes what
21 might seem confusing is of course with investor-owned
22 utilities there are service territories, certificates of
23 convenience and necessity or their transmission line
24 certificates of convenience and necessity. The rural
25 electric cooperatives have a map of the state, and it very

1 don't have an answer for you. It's not anything that I've
2 researched or that I'm actually aware of being addressed
3 that I am aware of.

4 COMMISSIONER GAW: Okay. Go ahead.

5 MR. LOWERY: I really would give the same
6 answer. My belief is that it just is -- it's a removal of
7 competition between those two particular or three, it
8 could be three, parties that have come to the Commission
9 and asked them to remove that competition among
10 themselves. But I don't believe, subject to I'd have to
11 look at that as well, that they somehow become regulated
12 public utilities that you have certificated and you have
13 charged with an obligation. I don't believe that's the
14 case.

15 COMMISSIONER GAW: I've just not had this
16 discussion before and I'm looking for a little insight.

17 The other thing that I was going to ask is,
18 in regard to the rural electrics, whether or not they have
19 any obligation to serve as a result of their status as a
20 rural electric cooperative from the federal level or in
21 regard to their ability to get financing through the
22 various -- through the federal financing that is available
23 to rural electrics, whether or not that availability of
24 financing conditions the service of the ter-- of certain
25 territories, if you all know.

1 MR. DOTTHEIM: Commissioner, I don't know
2 the answer to that. I would think certainly one would
3 have to look at those agreements, documents that have been
4 entered into as to whether, in essence, some obligation to
5 serve within an area has been created through the
6 financing.

7 COMMISSIONER GAW: You don't know, is
8 what --

9 MR. DOTTHEIM: I don't know.

10 MR. LOWERY: Commissioner Gaw, I have had
11 the pleasure or displeasure of reading a rural utility
12 service indenture in its entirety, and it's incredibly
13 long, but I do not believe that there -- it's a security,
14 it's mortgage and that's all it is. And if the rural
15 electric cooperative, of course, doesn't provide service
16 and doesn't have revenues, it's not going to be able to
17 make its mortgage payments. But there is nothing in my
18 experience, at least in the ones that I've read, that
19 talks about any particular territory or obligation.

20 COMMISSIONER GAW: Well, it just strikes
21 me as odd that there wouldn't be something because that
22 was -- as I understand it, that was part of the mission of
23 rural electrics when they were created was to bring
24 service out to areas that no one else would serve. I find
25 it a little difficult to believe there's nothing there.

1 I'm just not familiar.

2 MR. LOWERY: They have incentive to spread
3 out as much as they can economically.

4 COMMISSIONER GAW: Well, not necessarily in
5 every case, though. This one is not an example of that
6 necessarily. There are a lot of areas and farms out there
7 that receive electricity that probably in and of
8 themselves were not very financially positive for the
9 rural electric without some incentives being given for
10 them to reach out there, and I'm just not sure what that
11 is. So in regard to requirements --

12 MR. CONRAD: Let me add, and I don't know
13 if this cuts through because I sense that your Honor's
14 question has both gone perhaps deeper than --

15 COMMISSIONER GAW: Yeah. I'm not to the
16 end of it yet.

17 MR. CONRAD: But to the extent that it
18 makes a difference from where you're coming from, both
19 AECI and the BPU, which I understand is the designation
20 board of public utility for city of New Madrid, are well
21 informed of this transaction.

22 AECI is obviously involved in it as we've
23 discussed in the sense of providing some of the
24 transmission service necessary to get from Point A to
25 Point C, and Mr. Swogger when he gets to the stand will

1 be, I'm sure, happy to relate to you his experiences as a
2 member of the board of public utilities of city of New
3 Madrid.

4 So -- and, in fact, there's been a very
5 cooperative relationship. So if the concern which I sense
6 is different than this, but if the concern is that they
7 have not gotten notice, they have, I think.

8 COMMISSIONER GAW: I'm glad for that to be
9 clarified. That's not really the purpose of my inquiry.
10 I'm -- the next question is, is this -- is Noranda in or
11 out of the city limits of New Madrid?

12 MR. CONRAD: That's one I don't know. I
13 think they are not in the city limits of New Madrid.

14 MR. LOWERY: This is hearsay, but
15 Mr. Swogger told me some weeks ago that they were out, I
16 believe.

17 COMMISSIONER GAW: Okay. He can clarify
18 that when he gets on the stand for me if someone will ask
19 him that if I fail.

20 The next question I have is, if -- once
21 Ameren does incorporate Noranda into its service
22 territory, what is its requirement to serve, its
23 obligation to serve after the plant is in its service
24 territory?

25 MR. CONRAD: Let me take a stab at that. I

1 think from our perspective that obligation to serve would
2 be the same as any other retail customer within that
3 service territory, subject only to what we've talked about
4 in the sense of the size and load characteristics.

5 COMMISSIONER GAW: Somebody -- first let me
6 ask if everyone agrees with that.

7 MR. COFFMAN: I don't agree with that
8 necessarily.

9 COMMISSIONER GAW: Okay. Go ahead,
10 Mr. Coffman.

11 MR. COFFMAN: Because in this case there's
12 a proposed contract whereby Noranda would have the option
13 to leave the system, and I think that even if you don't
14 believe Section 91 would otherwise apply, it is a
15 component of this deal, the right to choose another
16 supplier after a certain number of years. And there is no
17 obligation to serve other than the contractual one that
18 may exist between Noranda and AmerenUE for the 15-year
19 period.

20 COMMISSIONER GAW: And Ameren's position on
21 this issue is?

22 MR. LOWERY: We completely disagree with
23 Public Counsel. We will have an obligation to serve them
24 just like we would any other customer.

25 COMMISSIONER GAW: Whether they have a

1 contract or not?

2 MR. LOWERY: We are not going to be serving
3 them under the contract. The contract specifies the
4 agreement that we made with them in terms of what we were
5 going to bring to you and ask you to approve. We're
6 asking to certificate them and approve a tariff, and if
7 you do so, they're our regulated customer.

8 Now, another question you may have, and I
9 think you might raise this, is if they do exercise their
10 statutory right to leave -- and that aspect of the
11 contract will remain once they become our customer. It's
12 all that will remain is their -- because we can't -- we
13 can't -- we can't if they're willing to relinquish it
14 forever but they're not willing to relinquish this
15 forever. They've waived and relinquished it for 15 years.

16 So at the end of that 15 years, they can
17 exercise that statutory right, and as we describe in our
18 brief, what we would propose to do at that time, they have
19 to give us five years prior notice. We would come back to
20 the Commission and say, they're leaving, please cancel our
21 certificate, which is something the Commission does from
22 time to time, so that we wouldn't have an obligation to
23 serve a customer that has decided to leave and that we
24 don't have.

25 But while they're our customer, they're our

1 customer. You have oversight of them, us, in the same way
2 you do with everyone else is our view, and we think it's
3 clear if they take service under the tariff.

4 MR. CONRAD: And to clarify that just
5 slightly and not in any significant way to disagreement, I
6 think Mr. Lowery mentioned the term of that agreement on
7 the part of my client to not exercise that right is
8 15 years. I actually think if we look at the term in the
9 agreement, it is for the term of the agreement.

10 So as he correctly mentioned, if there's a
11 5-year notice provision, and in year 14 they were to --
12 Noranda were to give notice, then the obligation would
13 continue for the balance of that 5-year notice period,
14 which it would tack on, I guess, in that case 4 more years
15 to the 15 original. So it's not really totally precise to
16 say 15 years. It's for the term of the agreement.

17 MR. LOWERY: I agree.

18 COMMISSIONER GAW: Just real quick point of
19 clarification that you cannot -- you're not able to get
20 out of the contract, though, for the first 10 years,
21 right?

22 MR. CONRAD: No. Actually it's -- it's a
23 15-year deal, but if Noranda wished to bring it to an end
24 at the conclusion of year 15, they would have to give
25 notice of that year 10.

1 COMMISSIONER GAW: But it can't happen any
2 sooner than that?

3 MR. CONRAD: That's correct.

4 COMMISSIONER GAW: Unless we get into these
5 issues about whether Noranda is no longer running or
6 something like that?

7 MR. CONRAD: Sure.

8 COMMISSIONER GAW: So if -- let me give
9 you -- and Staff want to respond to that, if you need to?

10 MR. DOTTHEIM: Off the top of my head, I
11 don't think I would disagree with Mr. Lowery or
12 Mr. Conrad. I don't think the Staff has the same view as
13 the Office of Public Counsel's expressed by Mr. Coffman.

14 COMMISSIONER GAW: Here's my question,
15 scenario then. Just tell me how this plays out. If
16 Noranda gives notice that at the end of 10 years in year
17 15 they're out, they take a short contract for a year --
18 I'm not sure that's realistic, but take a short tip with
19 someone else. That's -- they call you guys and say, we
20 want back on, or that could change. Does -- barring a
21 withdrawal of the certificate on the service territory,
22 does Ameren have to supply the electricity to Noranda?

23 MR. LOWERY: I think that I would say yes
24 under whatever tariff is in existence for which they
25 qualify lawfully under our tariffs, if we have not

1 canceled their certificate. I think we would come back
2 and ask for that cancellation, but if we haven't, there's
3 going to be a tariff that they fit somewhere. May not fit
4 perfectly, but there's going to be a tariff they're going
5 to qualify for, and that tariff would apply and we'd
6 provide them service under that tariff.

7 MR. CONRAD: And under the facts you
8 proposed, we agree.

9 COMMISSIONER GAW: Staff?

10 MR. DOTTHEIM: Staff would again off the
11 top of my head agree with what Mr. -- what Mr. Lowery has
12 indicated and Mr. Conrad has concurred in. I'm not sure
13 that the tariff issue might be as easy as just expressed,
14 just as the present tariff issue is not seemingly very
15 easy to address as far as under what conditions, under
16 what tariff is AmerenUE obligated to provide service.

17 COMMISSIONER GAW: Okay. Are you-all going
18 to develop that testimony? I won't ask any more questions
19 about it if you are.

20 MR. LOWERY: That scenario?

21 COMMISSIONER GAW: Well, the idea of what
22 would occur. Probably not.

23 MR. LOWERY: No, probably not. I guess
24 what I was assuming in your hypothetical was when they
25 left at year 15, they would have been taking service under

1 a tariff, you know.

2 COMMISSIONER GAW: If you've got a tariff
3 that only applies to Noranda, I would assume that you-all
4 wouldn't keep that tariff hanging around.

5 MR. LOWERY: But your hypothetical assumed
6 we didn't cancel the certificate, and I would assume if we
7 don't cancel the certificate, the tariff would still be
8 around. One would go hand in glove with the other. If
9 we're really going to get rid of the certificate, we'd get
10 rid of the tariff as well.

11 COMMISSIONER GAW: Why couldn't you get rid
12 of the tariff and leave the certificate?

13 MR. LOWERY: Well, you could, I suppose. I
14 don't think we would do that, though. I think if they
15 leave we would just ask for the tariff and the authority
16 to be canceled.

17 COMMISSIONER GAW: Assuming that Noranda
18 was the only one operating under that tariff.

19 MR. LOWERY: Absolutely, which they may or
20 may not be. You have the authority to set the tariff as
21 you see fit over that period.

22 COMMISSIONER GAW: Okay. Does the
23 Commission have the authority to grant a certificate to
24 serve an area for a period of time?

25 MR. LOWERY: I don't know the answer to

1 that, to be honest. We are not asking that you do that
2 because I think there could be perhaps an uncertainty
3 about that, and that's why we elected just to ask for a
4 certificate, and with the mechanism because we'd have five
5 years notice, it didn't seem to us it would be a problem
6 to come in and seek cancellation.

7 MR. CONRAD: Judge, I guess I kind of get
8 to the same place, biological process as Mr. Dottheim
9 mentioned off the top of my head, which is a dangerous
10 place to and a thinning place to work from.

11 But it would seem that a certificate is
12 premised upon the idea that the public convenience and
13 necessity is served by it, and so unless that public
14 convenience and necessity is somehow terminated, then the
15 certificate would continue as long as the public
16 convenience and necessarily continued.

17 Obviously what you were positing was the
18 situation of which the public convenience and necessity
19 would terminate. And so what Ameren is saying, I think,
20 is that they would come in at that point and ask that it
21 be canceled, turned back.

22 COMMISSIONER GAW: Okay.

23 MR. CONRAD: I think the answer to your
24 question as you posed it is no.

25 COMMISSIONER GAW: Okay.

1 MR. COFFMAN: Commissioner, I believe that
2 393.107, which is the certificate of convenience and
3 necessity statute, does provide that the Commission can
4 conditionally approve a certificate for two years, I
5 believe. So there's that provision, but that's the only
6 provision in the law that I'm aware of that applies to
7 a -- and Mr. Dottheim may remember.

8 MR. LOWERY: I think the two-year provision
9 just simply says if you grant a certificate, if the
10 utility doesn't exercise authority for two years, it sort
11 of becomes void. That's what --

12 COMMISSIONER GAW: There have been a lot of
13 interpretations saying that doesn't mean quite what it
14 might insinuate it means.

15 MR. LOWERY: Well, it doesn't mean you have
16 to serve the whole area. If you exercise some authority,
17 you've activated for all time, I think is what the case
18 law says.

19 MR. COFFMAN: Without necessarily agreeing
20 with that, that's the only provision that I'm aware of in
21 the law that applies to a term of years.

22 COMMISSIONER GAW: Okay. Does anyone else
23 have anything to add? I didn't mean to cut the other
24 parties out of that discussion.

25 Okay. Now, in regard to -- will you-all --

1 do you-all have -- since this thing is narrowed down, I'm
2 trying to figure out what's left on this plate. Will you
3 have testimony to present in regard to what advantage is
4 gained by adding this territory into Ameren service
5 territory, as opposed to just serving under a contract
6 pursuant to the intervening statute? Is that something
7 that you-all are going to develop in testimony even after
8 the issues have been narrowed down or not?

9 MR. CONRAD: Actually, Judge, I don't know
10 if this goes entirely to your point, but Mr. Swogger has
11 pointed out in his direct testimony -- I can't cite you a
12 page and line right now, but he has pointed out in that
13 why he believes from his company's perspective that
14 regulated service is preferred, lining it up against his
15 criteria for what he needs, because there is then some
16 supervision, some -- if you will, some oversight of the
17 activities.

18 COMMISSIONER GAW: I appreciate that, but
19 Noranda's position is they're not wanting in here beyond
20 the 15-year period. I'm trying to understand the -- it's
21 very difficult for me to understand Noranda's position on
22 that being regulated service --

23 MR. CONRAD: Well --

24 COMMISSIONER GAW: -- having just passed
25 the statute that says they don't have to have regulated

1 service. Now they want regulated service but they only
2 want it for 15 years, and I'm just trying to understand
3 which is it, are they having their cake or are they eating
4 it and which is it?

5 MR. CONRAD: Well, the term of -- see, this
6 is where I think the 15 years is maybe confusing things.
7 This contract could last, Commissioner, for 50 years.

8 COMMISSIONER GAW: Okay.

9 MR. CONRAD: It's the initial term is 15.

10 COMMISSIONER GAW: I understand, but if
11 this were a normal case and it weren't for that statute,
12 we'd just be talking about whether or not this ought to be
13 included in Ameren's service territory and we wouldn't be
14 talking about anything else.

15 MR. CONRAD: I grant you.

16 COMMISSIONER GAW: So I'm just trying to
17 gather a little more confidence here that what we're
18 really talking about is that Noranda is seeking to be
19 under Ameren's umbrella, and with some degree of certainty
20 that that's not something that's going to go away at the
21 end of 15 years because of all the planning and building
22 and money that gets invested by Ameren in order to serve
23 its load.

24 And in this particular case one customer
25 amounts to a very significant amount of load and would

1 have an impact on that planning process. So, and I -- so
2 anything that you-all can do to help me with that would be
3 appreciated.

4 MR. LOWERY: Mr. Nelson's testimony,
5 Mr. Swogger's testimony I think do address those issues,
6 and you'll hear from both of them.

7 MR. CONRAD: If I can -- if I could just
8 say one closing thing here that I had on my pad and I
9 forgot. On behalf of Noranda I do want to thank -- and
10 I'm sorry that two of the Commissioners have stepped away,
11 but I do want to thank you for in the procedural schedule
12 recognizing the obstacle that we have that's impending on
13 us as of the end of May, that we've -- if we're going to
14 keep this jenny going, we've got to have something to move
15 to.

16 So we are appreciative of the consideration
17 that you-all have shown us in the sense of schedule, and
18 will commend this to your sound discretion on the
19 evidence.

20 COMMISSIONER GAW: Okay.

21 MR. CONRAD: Thank you, Judge. If you have
22 something else.

23 COMMISSIONER GAW: Oh, I think that -- I
24 think that most of what I need to inquire about mainly
25 could be directed for witnesses. The obligation to serve

1 question, anything you-all can do to enlighten me on that,
2 whether or not there is a way to have this service
3 territory actually reflect what is happening here in
4 regard to time elements would be helpful to me. And I
5 think -- I think I'll just leave it at that.

6 And I understand Public Counsel's position,
7 if I'm not mistaken, is that this should be done purely
8 under that statutory provision. It's Public Counsel's
9 position that they do not have any right to come in under
10 this -- under Ameren's service territory as a regulated
11 customer.

12 MR. COFFMAN: There are a lot of difficult
13 questions about how to interpret that statute in this
14 context. The one thing that I am convinced of, though, is
15 that the Commission doesn't have discretion to approve a
16 tariffed rate.

17 It does seem to me that the applicant here
18 had -- well, or are attempting to have it both ways. Even
19 if you didn't believe that the statute applied to any
20 service to Noranda, the deal here being proposed includes
21 the option to invoke or exercise the right after 15 years,
22 and to me it is a -- I think even under that reading would
23 be a contract pursuant to that section which makes it very
24 clear there is no obligation to serve absent a contractual
25 obligation to.

1 COMMISSIONER GAW: Can you-all clarify for
2 me, not now, not necessary to do it now, but please
3 clarify for me what the specific advantages are to Noranda
4 in getting into the service territory that you would not
5 be able to achieve through a contract? And I need -- I
6 need Ameren to do that for me as well, why that's in
7 Ameren's best interests, and try to stay -- I mean, to the
8 extent that that has to do with anything beyond that 15
9 years and that obligation to serve, that that to me is an
10 issue that plays into that mix but not necessarily in a
11 positive way for Ameren.

12 So I need to understand from Ameren's
13 standpoint, how is that -- how is it a good thing to put
14 them in the service territory?

15 I heard some discussion at some point this
16 time about advantages dealing with transmission service
17 and other things, and I just need that clarified when you
18 get to it. And I'm going stop because I've taken way more
19 time.

20 MR. CONRAD: Well, I appreciate your
21 questions, Judge. Would you prefer, your Honor, that we
22 do that at either the time I think set for oral argument
23 or memorandum or whatever?

24 COMMISSIONER GAW: That's fine. But if
25 there's testimony that you might have otherwise ignored

1 because of narrowing down the issues -- I wouldn't be
2 saying this now if it wasn't for that problem. When you
3 narrow down the issues, I don't know if you'll be leaving
4 things like that out because you're no longer talking
5 about service territory, and that sort of pertains to that
6 part of it that I have some -- have concerns about.

7 MR. LOWERY: I think just to allay that
8 concern, the only testimony that's not going to be offered
9 into evidence, and I don't believe there's any objection
10 to this from parties, deals with MJMEUC'S intervention and
11 transmission issues they raised that are now off the
12 table, and also some limited testimony that dealt with
13 Metro East issues that are now not an issue.

14 All the other testimony, including
15 testimony directed to what you're asking about, is going
16 to be a part of those records and those witnesses will be
17 here.

18 COMMISSIONER GAW: That will be helpful.
19 That's all I have, Judge. I apologize for taking so much
20 time.

21 JUDGE THOMPSON: That's quite all right,
22 sir. Thank you very much.

23 We'll go ahead and take ten minutes and be
24 back for the opening statement of Mr. Dottheim.

25 (A BREAK WAS TAKEN.)

1 JUDGE THOMPSON: Fire away.

2 MR. CONRAD: Your Honor, I think I had
3 misspoken in two particulars. One, I had misidentified
4 the board of public utilities to which I referred as being
5 that of New Madrid. I'm advised that New Madrid does not
6 have one of those, and it is, in fact, the BPU of Sikeston
7 that Mr. Swogger is a participant in.

8 The second thing, perhaps somewhat less
9 important, is he informs me from the technical side that I
10 misstated about one-third of the amount of aluminum gets
11 tapped periodically. It's about 3,000 pounds. I'm sure
12 that's kept everyone -- that particular point kept
13 everyone in suspense. Thank you.

14 JUDGE THOMPSON: We don't want it misstated
15 in the record. Very well.

16 Mr. Dottheim?

17 MR. DOTTHEIM: Thank you. May it please
18 the Commission?

19 From the Staff's perspective there's
20 generally only one issue remains in the case, a rate
21 design tariff issue, should Noranda take service under the
22 present large primary service tariff with certain
23 modifications or should the Commission authorize the
24 creation of a new tariff and with it a new tariff class,
25 the large transmission service tariff?

1 Any Metro East transfer issue in this case
2 was, as far as the Staff is concerned, removed from the
3 case with the Commission's February 10 Report and Order on
4 Rehearing.

5 Nonetheless, the Staff would note that on
6 Friday in the Metro East transfer case an application for
7 rehearing was filed by the Office of Public Counsel, and
8 AmerenUE filed a motion for clarification, and that is in
9 part reflected in the noncontested statement of facts that
10 was distributed earlier today. And the original can be
11 filed with the Commission, and I expect that's what the
12 parties will do.

13 It is the Staff's view that AmerenUE and
14 Noranda are not proceeding by Section 91.026 but by
15 Section 393.170, 393.130, 393.140 and 393.150. It would
16 appear that only the Office of the Public Counsel has an
17 outstanding issue on the question of jurisdiction, other
18 than the numerous questions that were raised earlier this
19 afternoon which the parties will now endeavor to respond
20 to.

21 Because AmerenUE is seeking that the
22 Commission approve a new tariff for the provision of
23 service to Noranda, the certificate of convenience and
24 necessity statute 393.170 is not the only statute involved
25 in this case.

1 Again, it would appear at least from the
2 Staff's perspective that the large transmission service
3 tariff that has been filed by the -- by AmerenUE and for
4 purposes of Noranda taking service under that tariff is
5 the remaining issue. It was initially unclear to the
6 Staff whether the adoption of the proposed LTS tariff was
7 being presented to the Commission by Noranda and AmerenUE
8 as a necessary condition for AmerenUE to serve Noranda as
9 a Missouri retail electric customer.

10 I had thought for a while in my review,
11 very brief review of the Briefs that have been submitted
12 that maybe that has been clarified based upon some other
13 things that have been said today. I am again less clear,
14 and that is the question of whether if the Commission does
15 not approve the large transmission service tariff but
16 orders or authorizes AmerenUE to provide service to
17 Noranda under some other tariffs, for example, the large
18 primary service tariff, I think the question remains and
19 hopefully will be clarified whether AmerenUE and Noranda
20 intend to go forward with the transaction, the agreement
21 they've entered -- they've entered into.

22 It is from the Staff's perspective that a
23 new rate classification for AmerenUE such as being
24 proposed should receive a full and timely review before it
25 is implemented. Generally new customer classes have not

1 been established outside the context of a customer class
2 cost of service, comprehensive rate design proceeding
3 and/or rate increase excess earnings revenues rate
4 decrease proceeding.

5 Not only has Ameren and Noranda sought to
6 establish a new customer class in a certificate of
7 convenience and necessity proceeding, they have done so in
8 an expedited proceeding.

9 It is the Staff's position that Noranda
10 should take service pursuant to AmerenUE's present large
11 primary service tariff for the purpose of taking service
12 at least initially.

13 As both AmerenUE and Noranda have
14 indicated, as a result of the Stipulation & Agreement in
15 Case No. EC-2002-1, AmerenUE is to submit no later than
16 January 1, 2006 a Missouri jurisdictional customer class
17 cost of service study and a Missouri jurisdictional
18 revenue requirement cost of service study covering the
19 12 months ending June 30th, 2005. AmerenUE may file a
20 general rate case, and other entities may file an excess
21 earnings revenues complaint case.

22 The Staff in particular views that forum as
23 the best that would lend itself for the review of a new
24 customer class cost of service tariff.

25 AmerenUE's determination of the rate

1 components for the proposed large transmission service
2 tariff is from the Staff's perspective flawed, and from
3 the Staff's perspective Noranda should be served on the
4 large primary service tariff until a later proper
5 determination of the rate components for the large
6 transmission service tariff can be made.

7 If Noranda's load factor stays as high as
8 it is assumed that it will in the future, Noranda will be
9 charged the same total amount whether it takes service
10 under the existing large primary service rate schedule
11 tariff or under AmerenUE's proposed new large transmission
12 service rate schedule tariff. If Noranda's load factor is
13 less than the load factor assumed in the AmerenUE
14 analysis, then the large transmission service tariff rate
15 to Noranda will be less than the large primary service
16 tariff service rate to Noranda.

17 There is in the large transmission service
18 tariff rate as proposed by AmerenUE and Noranda an annual
19 contribution factor which makes the charges under the
20 proposed large transmission service tariff and under the
21 existing large primary service tariff equivalent, again at
22 Noranda's assumed load factor.

23 The agreement between AmerenUE and Noranda
24 provides that the annual contribution factor, the ACF
25 shall be eliminated effective upon a Commission order in a

1 proceeding where AmerenUE's rates for its bundled service
2 classifications are changed.

3 The Staff Witness Mr. James Watkins'
4 recommendation in this proceeding is that the Commission
5 should order AmerenUE to file a revised large primary
6 service tariff including provisions for third-party
7 transmission service, and AmerenUE should serve Noranda
8 under such a revised large primary service tariff.

9 Mr. Watkins raises questions concerning how
10 AmerenUE has structured the large transmission service
11 tariff regarding adjustments for energy and demand losses
12 and adjustments for Noranda's non-use of AmerenUE's
13 distribution facilities.

14 AmerenUE performed no cost studies
15 respecting the components of the large transmission
16 service tariff. Mr. Watkins recommends that cost studies
17 be performed and that this be done in the context of
18 AmerenUE's next general rate proceeding that the various
19 parties have discussed in their filed testimony.
20 Mr. Watkins proposes that the reasonableness of any other
21 rate form to serve Noranda should be determined by the
22 Commission in such a proceeding that could occur as early
23 as 2006.

24 The Staff has attempted to raise a number
25 of issues for which it believes there is a lack of clarity

1 as has been presented to date for the Commission. One of
2 those that was discussed in a somewhat oblique manner
3 today is the willingness of Noranda and AmerenUE to see
4 changes made to the tariffed rate for service to Noranda.

5 A review of the testimony I think generally
6 indicates that that willingness on the part of AmerenUE
7 and Noranda is in the context of the Commission
8 continuing, once adopting a large transmission service
9 tariff, to continue with a large transmission service
10 tariff and not switch to some other tariff, whether it be
11 a large primary service tariff or some other tariff,
12 tariff other than a large transmission service tariff.

13 In part the Staff's concern about the case
14 as it has been presented to the Commission and what is
15 being sought by AmerenUE and Noranda is a prejudgment of
16 the large transmission service tariff which Staff believes
17 should be thoroughly reviewed in a context other than in
18 the present certificate of convenience and necessity
19 proceeding.

20 I would note that there is one other issue
21 in particular that was raised by the Staff in its prefiled
22 testimony, a reliability issue going to the question of
23 whether the Ameren system will be able to meet its
24 15 percent reserve margin for the summer. The Staff has
25 recommended to the Commission that that issue be addressed

1 and that AmerenUE provide assurances that that 15 percent
2 reserve margin can be met by the Ameren system. AmerenUE
3 in surrebuttal testimony has indicated that although it
4 believes that the Commission has no jurisdiction over that
5 matter because it relates to the Ameren system, AmerenUE
6 is willing and will provide assurance in the context of
7 this proceeding that it has the reserve capacity to meet
8 the requirements of the Ameren system for the summer.

9 As I've previously indicated, the Staff has
10 indicated that it does not oppose the Commission issuing
11 to AmerenUE a certificate of convenience and necessity to
12 include in its service territory the Noranda smelting
13 facility.

14 The Staff's economic analysis of the
15 transaction was performed by Dr. Michael Proctor who is a
16 witness still in this proceeding.

17 Based on the economic analysis of
18 incremental costs and benefits arising from Noranda being
19 served by AmerenUE as a retail electric customer, it is
20 the Staff's determination that so long as it is clear to
21 Noranda that it is not being provided some assurance or
22 some expectation being created that in the future its
23 rates will not be increased, the Commission should approve
24 AmerenUE's application for a certificate of convenience
25 and necessity to serve Noranda as a retail electric

1 customer.

2 The Staff's estimate of AmerenUE's
3 incremental cost to serve Noranda is less than the
4 incremental revenues AmerenUE will receive under the
5 proposed large transmission service tariff in 2005 and
6 2006. However, in 2007 and for the remainder of the
7 15-year agreement between AmerenUE and Noranda, the
8 situation is reversed.

9 There's nothing in AmerenUE's filing that
10 would prevent rate level increases in the years beyond
11 2006, when AmerenUE's cost to serve the Noranda load will
12 increase due to, among other things, significant
13 investments in generation plant upgrades to meet
14 environmental standards.

15 AmerenUE will incur additional transmission
16 costs to serve Noranda's load that is administrative
17 charges and potentially some congestion charges. However,
18 it does not appear that additional upgrades to the
19 transmission system will be required to serve the Noranda
20 load.

21 I think it was previously indicated by one
22 of the other counsel who gave an opening statement prior
23 to me this afternoon that the Staff has expressed a
24 preference for Noranda proceeding in a regulated manner
25 rather than a non-regulated manner. I haven't visited

1 with counsel who made that comment. Offhand I do not
2 recall any Staff testimony that literally addresses that
3 issue at least from the perspective that I thought that it
4 was broached. Thank you.

5 JUDGE THOMPSON: Thank you very much,
6 Mr. Dottheim. Any questions from the Bench?

7 Commissioner Appling?

8 COMMISSIONER APPLING: Mr. Dottheim, how
9 are you doing?

10 MR. DOTTHEIM: Fine, Commissioner.

11 COMMISSIONER APPLING: There's one
12 question. I want to get this answered before I go home
13 tonight if I can, and that question will be to you, to
14 Conrad, to UE and maybe Office of the Public Counsel. I'm
15 probably going to hear more about the two tariffs than I
16 really want to, and I don't want to go any further down
17 the road until I get a clear definition, what's the
18 difference in these two. Can you -- and I would like to
19 go on the record with you and UE, and Office of Public
20 Counsel, what is the difference in these two tariffs?

21 MR. DOTTHEIM: There are many differences
22 which I'm quite certain in the remainder of the
23 proceedings will be addressed by the parties--

24 COMMISSIONER APPLING: The other part I
25 would like you to address, who's going to be harmed if we

1 use the LTS or the LPS?

2 MR. DOTTHEIM: There's --

3 COMMISSIONER APPLING: Take it any way you
4 want, whatever way you choose, but I need to get that
5 clear from somebody here before I leave and making sure
6 that everybody agree or disagree on that so that I can
7 come in here tomorrow with that definition behind me.

8 MR. DOTTHEIM: I will attempt in some
9 fashion to address your question. I don't know how
10 successful I'm going to be.

11 There is some argument that might be made
12 that no one would be harmed by either of the two tariffs
13 because in the ultimate question as to what will Noranda
14 be required to pay AmerenUE for service under either of
15 the tariffs, the large transmission service tariff at
16 least for its initial phase until there is some future
17 change in bundled rates, the large transmission service
18 tariff in particular because of the annual contribution
19 factor will produce revenues equal in essence to the
20 revenues that would be produced under the large primary
21 service tariff.

22 But other than that, the two tariffs are
23 very different. They have very different criterion for
24 who qualifies under the two tariffs. At the moment, there
25 is no other customer or at the moment potential customer

1 that would take service under the large transmission
2 service tariff, which -- and you'll hear from the Office
3 of Public Counsel and others, even the Staff, whether that
4 raises or does raise questions of undue discrimination.

5 The rate structures are very different.
6 The -- again, in part because of the applicability of the
7 tariffs, and as I endeavored to indicate, it is the
8 Staff's perspective that before a tariff for a new
9 customer class is adopted by the Commission, that it
10 obtain a high level of close scrutiny, which the Staff
11 advocates for the large transmission service tariff and
12 from a dollar impact again, for Noranda to take service
13 under the large primary service tariff, what it will be
14 paying in rates so long as its load factor remains as it
15 is presently projected will be in essence equivalent.

16 COMMISSIONER APPLING: Okay. Thank you,

17 MR. DOTTHEIM: Commissioner, you've
18 undoubtedly heard in other proceedings and heard in this
19 proceeding the word "prejudgment." AmerenUE is requesting
20 that the Commission make a prudence determination for
21 ratemaking purposes. Originally the Staff thought that
22 that was meant in particular to apply to the large
23 transmission service tariff. AmerenUE has sought to
24 clarify to indicate that that in particular is to apply to
25 the certificate of convenience and necessity which it is

1 seeking that the Commission authorize.

2 One of the Staff's concerns is the matter
3 of prejudgment of the large transmission service tariff at
4 this stage. And seemingly and hopefully we will get some
5 further clarification from Noranda, AmerenUE as to whether
6 Noranda and AmerenUE will go forward under any condition
7 other than the Commission authorizing the large
8 transmission service tariff.

9 Also too that seems to raise the question
10 of -- and I'm not sure that this truly has been addressed,
11 as to whether the Commission at some later date in 2006,
12 if there is either an AmerenUE rate increase case or there
13 is an excess revenues rate reduction case, whether
14 AmerenUE and Noranda are agreed that the Commission may
15 adopt some tariff other than the large transmission
16 service tariff which it may adopt in this proceeding or
17 whether they're seeking that the Commission in essence
18 lock itself into the large transmission service tariff for
19 the duration of the term of the agreement between AmerenUE
20 and Noranda and the large transmission service tariff
21 itself.

22 COMMISSIONER APPLING: Thank you, sir.
23 Someone else?

24 MR. FITZHENRY: Yes, Commissioner. I'm Ed
25 Fitzhenry for AmerenUE, and I think I heard your question

1 was, can someone please explain to you the differences
2 between the current large primary service rate which is
3 part of AmerenUE's rate schedule and the proposed large
4 transmission service rate. I'll try to do that, and I
5 will try to hold back from responding to Mr. Dottheim's
6 commentary in its entirety.

7 You heard Mr. Lowery talk about some of
8 these things in his opening statements. First, there are
9 specific credit requirements that are in the LTS tariff
10 that you will not find in the LPS tariff, nor will you
11 find in any other specific rate schedule.

12 AmerenUE wanted this additional protection
13 by being able to call upon Noranda and demand certain
14 credit protection because of its size and because from
15 time to time the economy fails, different things happen,
16 and industrial customers are having difficult times, we
17 want to be sure that AmerenUE and its ratepayers are
18 protected in some form or fashion, and so we negotiated in
19 the LTS tariff these specific credit requirements.

20 Second, you've heard a lot of discussion
21 today about the contract term or the term, the 15-year
22 term of service that we're obligated to provide to Noranda
23 and we will, and they can give us a 5-year notice when
24 they want to end that relationship.

25 Well, guess what, under the large primary

1 service rate that Staff advocates, the term of service
2 under that rate is one year. So what that means is if you
3 accept Staff's proposal and you put Noranda on the LPS
4 rate and Noranda takes service on the LPS rate, they can
5 give us three days notice prior to
6 June 1, 2006 and say, we're out of here, from a rate
7 standpoint. And I don't think anybody here wants that.

8 In fact Dr. Proctor in his testimony talks
9 about why he likes the 5-year notice because that will
10 give AmerenUE time to plan for losing Noranda's load.
11 Noranda -- or AmerenUE's load increases by about
12 100 megawatts each year, and so that ties in nicely with
13 this 5-year notice provision. But again, as I said, under
14 the Staff proposal, Noranda can give us one year notice
15 and they're out of here and they're no longer a customer
16 of AmerenUE.

17 Third, in the LTS there are specific what's
18 called transmission service requirements. It says in that
19 tariff right now today that we do not have any obligation
20 to construct, build, upgrade or any transmission plant or
21 facility to serve Noranda. That's their responsibility;
22 that's going to be their cost. That language is not in
23 the large primary service rate.

24 Presumably, if we are obligated to serve
25 Noranda under the LPS rate and there is a need for

1 transmission plant upgrade or some other transmission
2 facilities that we have to build to serve Noranda, first
3 that's going to be our cost and then that cost is going to
4 be passed along to other ratepayers. Again, we thought
5 that was best for us and for our ratepayers that that
6 responsibility remain with Noranda.

7 The other part about the transmission
8 service requirements piece is they are not in the AmerenUE
9 footprint. You've heard some discussion about that
10 earlier today. And the world of electricity is evolving
11 and we're creating RTOs and MISOs and PJMs, and so there's
12 a large amount of charges and costs and fees that are
13 being generated by these organizations.

14 What we said in our LTS tariff is if
15 there's such a cost or charge that's related to the fact
16 that Noranda is not in the Ameren footprint or the Ameren
17 control area that's going to be their cost, that's their
18 charge, that's their responsibility.

19 In the large primary service rate that
20 Staff is telling you that we should have Noranda be served
21 on, there is no such language, and presumably if there are
22 those kind of costs or charges incurred during the time
23 that AmerenUE is serving Noranda while it's taking service
24 under the LPS, it could be AmerenUE's cost responsibility
25 and consequently its ratepayers.

1 Those are some of the principal differences
2 between the LTS rate and LPS rate. Again, there were
3 other comments made by Mr. Dottheim that I would be
4 somewhat inclined to respond to, but I want to answer your
5 question directly and I'll leave it at that.

6 COMMISSIONER APPLING: Thank you. Stu,
7 when you talk I listen.

8 MR. CONRAD: Let me see if I can boil it
9 down to what we're seeing because we're looking at it,
10 Judge, from a business perspective. And from a business
11 perspective, the LPS rate, large primary service is -- is
12 not customized for us, and in order to take that average
13 size suit as I referred to it and make it fit, you have to
14 take this credit over here, and take another credit over
15 here and add something else back and then take something
16 else away. And it just seems to us from the perspective
17 of simpler is better to just start with the right size and
18 start with something that fits us and then we don't have
19 to do all this tinkering.

20 And I would amplify, I guess, the comments
21 that have been made. We -- this is a transitional device,
22 and we're intending to leave it in your all's good hands
23 as far as the future as to what the future picture of a
24 tariff would be because at that point we will have -- you
25 will have the data that you need to make a decision as to

1 how to fine-tune this further. We've done the best that
2 we can do, and it just makes sense to us to try to keep it
3 as simple as we possibly can.

4 COMMISSIONER APPLING: OPC?

5 MR. COFFMAN: Yes. Commissioner, we do not
6 support either the LTS tariff or the LPS tariff as the
7 appropriate vehicle here. One thing I do agree with
8 Mr. Conrad, this is a very unique customer. In fact, we
9 think they should be served on what has been called by
10 this Commission a special contract tariff, and that's what
11 our testimony supports.

12 And we do not support the LTS tariff
13 because we do not think that what Ameren is proposing in
14 that tariff incorporates all of the costs or all of the
15 risks associated with the way that they are planning to or
16 proposing to serve Noranda, and we are concerned that the
17 other ratepayers would be picking up the difference.

18 Mr. Conrad makes the colorful analogy to be
19 putting on the LPS tariff as of having to order a BLT
20 sandwich in order to get toast. I would suggest that the
21 LTS tariff is essentially ordering a BLT, only paying for
22 the toast and requiring other customers to pick up the
23 difference in the cost.

24 We are concerned with this very unique
25 customer and its special right at least under this deal

1 after a certain number of years to be able to leave the
2 system, to exit. I mean, that's one cost that needs to be
3 incorporated, and we think that it can be done in the
4 general framework that this Commission has used with KCPL
5 and other utilities in what's called a special contract
6 tariff. You will see those components in the testimony of
7 Mr. Ryan Kind.

8 COMMISSIONER APPLING: Mr. Coffman, let's
9 do a hypothetical right quick. Okay. Take Noranda off
10 the table and let's visit a company from Nebraska
11 someplace, any place outside of the state of Missouri that
12 says we'd like to move to Missouri and set up a plant and
13 employ 2,500 people with the electrical load larger than
14 what Noranda's asking. Under the same condition, what
15 would your recommendation be?

16 MR. COFFMAN: A special contract tariff
17 seems appropriate. This Commission recently, I think
18 perhaps a couple years ago, approved a special economic
19 development-type tariff for Missouri-American Water
20 Company in order to encourage a new company to establish
21 itself in St. Joseph.

22 And the general framework of what would be
23 included in the special contract is put into a tariff, and
24 then the contract could be worked out to meet the special
25 economic development needs of that customer within the

1 parameters of that tariff.

2 COMMISSIONER APPLING: What if Arkansas was
3 competing for this 2,500 employees?

4 MR. COFFMAN: That's the most typical type
5 of special contract whereby the first element is that
6 there needs to be proof that this customer has other
7 options to leave the system or in case with the
8 Missouri-American tariff that they had other options other
9 than coming to Missouri?

10 COMMISSIONER APPLING: Who do you see being
11 hurt?

12 MR. COFFMAN: We are concerned that this
13 proposal to provide regulated service as opposed to some
14 other unregulated service is an attempt to put other
15 ratepayers at risk for costs that otherwise AmerenUE might
16 be at risk for. We think that this type of service under
17 a different tariff could hold other ratepayers harmless
18 and still provide for this very special customer.

19 COMMISSIONER APPLING: Thanks.

20 JUDGE THOMPSON: Thanks, Commissioner.
21 Other questions from the Bench? Very well.

22 Sir, Mr. Chairman.

23 CHAIRMAN DAVIS: Mr. Dottheim, do you think
24 Noranda is different than other -- is it LPS users, is
25 that the correct term, people under -- you think Ameren is

1 any different than anybody else under the LPS tariff?

2 MR. DOTTHEIM: Noranda is different. Each
3 customer is unique, of course. It would be argued that --
4 by Noranda and AmerenUE that Noranda is more unique than
5 others. Yes, there are factors involving Noranda that
6 make it different, and that the Staff believes should be
7 looked at in a proper -- in a proper context.

8 CHAIRMAN DAVIS: Can you elaborate a little
9 further?

10 MR. DOTTHEIM: Yes, in the context other
11 than in a certificate of convenience and necessity
12 proceeding that is expedited to begin with. It's not a
13 situation where -- but Noranda and AmerenUE, I think, need
14 to clarify this, whether they are literally saying to the
15 Commission that they will not go forward with their
16 agreement unless there is the LTS tariff provided to it.

17 What the Commission is being asked to do is
18 to provide -- is to do rate design, highly complex -- what
19 would otherwise be highly complex technical rate design,
20 customer class cost of service analysis on the back of an
21 envelope in a very quick manner.

22 And there's an interim means of addressing
23 the situation possibly. Noranda and AmerenUE may be
24 indicating that there is no way of addressing it in the
25 interim of a short period of time until the AmerenUE

1 customer class cost of service revenue requirement
2 analysis and customer class cost of service rate design
3 analysis is filed on January 1, 2006.

4 CHAIRMAN DAVIS: Okay. Well, refresh my
5 recollection, Mr. Dottheim. When does their contract to
6 purchase power from Brass Can run out?

7 MR. DOTTHEIM: May 30th of this year, so
8 they must have power arranged so that it is available as
9 of or no later than June 1 of this year.

10 CHAIRMAN DAVIS: So if you were going to --
11 if you were going to structure this deal, Mr. Dottheim,
12 how would you do it, or would you do it?

13 MR. DOTTHEIM: Yes, I would attempt to do
14 it, but would attempt to do it in the manner that the
15 Staff has suggested.

16 CHAIRMAN DAVIS: Okay. And can you
17 articulate that way for me in 50 words or less?

18 MR. DOTTHEIM: Pursuant to one of
19 AmerenUE's existing customer class cost of service tariff,
20 which is the large primary service tariff. Now, there
21 would have to be adjustments made to it for, for example,
22 third-party transmission service because of Noranda taking
23 transmission service through AECI, but that is what the
24 Staff would propose.

25 CHAIRMAN DAVIS: Okay. So what you're

1 saying is you don't see the LTS as an extension of the LPS
2 tariff where Ameren attempted to negotiate some of these
3 things out with Noranda; is that correct?

4 MR. DOTTHEIM: Well, seemingly they
5 attempted to negotiate a great many things out and create
6 a tariff that only applies to one potential customer, and
7 that's Noranda.

8 CHAIRMAN DAVIS: And I can't remember what
9 the exact phrase was from the brief or from the tariff.
10 It's for users that use more than -- what is it?

11 MR. DOTTHEIM: Yeah, it's -- it's under
12 paragraph 6, it's the criterion for application. It's
13 both the -- I think in excess of 3 million --

14 CHAIRMAN DAVIS: Is it kilowatts?

15 MR. DOTTHEIM: Megawatts.

16 CHAIRMAN DAVIS: Megawatts. Any idea how
17 many people are altogether in the -- how many kilowatt or
18 megawatts are in the LPS tariff?

19 MR. DOTTHEIM: I think -- offhand I don't
20 recall how many customers take service under the LPS
21 tariff, and clearly the Noranda load is exceptional.

22 CHAIRMAN DAVIS: But yet, you know, to use
23 Mr. Conrad's words, you want to try to make Mr. Conrad fit
24 in one of your suits; is that correct?

25 MR. DOTTHEIM: We think we can fit him into

1 one of our suits.

2 CHAIRMAN DAVIS: It may look more like a
3 mini skirt on Mr. Conrad. One last question here. When
4 Mr. Coffman was discussing, you know, certain risks
5 associated with this transaction that he did not feel were
6 accounted for by the LTS tariff, do you share those
7 concerns, and if so, what are those risks?

8 MR. DOTTHEIM: The risks are that it is an
9 undue discrimination that is encompassed by the tariff.
10 The risk is not just in the Noranda case, but just in the
11 performing of rate design customer class cost of service
12 analysis in a manner akin to how it is being proposed to
13 be done that has broad implications on a going-forward
14 basis for -- for any customer of AmerenUE or for just in
15 general the rate design of AmerenUE and how that would be
16 fashioned on a going-forward basis.

17 CHAIRMAN DAVIS: Mr. Dottheim, have you
18 read the testimony of some of the people that gave
19 depositions in this case, Terry Swinger and some of the
20 other people from the area?

21 MR. DOTTHEIM: Yes, Chairman, I've read all
22 the testimony that's been filed, including those
23 individuals.

24 CHAIRMAN DAVIS: Did you find anything
25 persuasive in their testimony?

1 MR. DOTTHEIM: I think their concerns are
2 real, relevant, persuasive. As far as attempting to
3 address the Noranda situation and the Staff things that it
4 is proposing to do just that, the Staff for one minute
5 doesn't seek to give short shift to any of those concerns.

6 CHAIRMAN DAVIS: And I'll offer the parties
7 the opportunity to respond as well, but have they
8 communicated to you why your -- why your method is not
9 acceptable to them?

10 MR. DOTTHEIM: Chairman, when you say --

11 CHAIRMAN DAVIS: I mean, what is your
12 impression of their response to your proposal?

13 MR. DOTTHEIM: I think in particular if
14 you're referring to the Noranda, the witnesses for
15 Noranda. Once the Staff filed its testimony, its rebuttal
16 testimony, Noranda filed surrebuttal testimony of two
17 witnesses, Mr. Swogger and Mr. Johnstone. So the other
18 individuals who had filed direct testimony did not file
19 surrebuttal testimony. I don't know that it would have
20 been any different, that they would have raised any other
21 concerns regarding to going to the jobs that Noranda
22 represents and the social fabric of southeast Missouri.

23 CHAIRMAN DAVIS: Earlier you mentioned that
24 you opposed this tariff because it was, quote, undue
25 discrimination.

1 MR. DOTTHEIM: That is not the principal
2 reason.

3 CHAIRMAN DAVIS: Okay, but --

4 MR. DOTTHEIM: That is a reason for
5 consideration. I'm sorry, sir.

6 CHAIRMAN DAVIS: Didn't the Legislature
7 open the door to this kind of tariff when they passed
8 Section 91.026?

9 MR. DOTTHEIM: Chairman, I have given
10 serious thought to what I think you're saying, that is
11 that the Legislature by enacting Section 91.026 has
12 indicated that what might otherwise be thought of or
13 deemed to be undue discrimination for whatever reason
14 because of the importance of Noranda to southeast Missouri
15 or whatever reason it is, that the Legislature has
16 considered that and in enacting 91.026 has made the
17 decision that what it is attempting to effectuate is not
18 undue discrimination or undue preference.

19 And at the same time, I've given thought
20 that 91.026 set up a procedure by which Noranda could
21 obtain supply other than retail regulated supply. The
22 Legislature did not do anything specifically regarding
23 Chapter 386 or Chapter 393, and I thought in those terms
24 of those statutory provisions that have not been
25 addressed, and --

1 CHAIRMAN DAVIS: But certainly these --
2 91.026 was drafted subsequently to most of the provisions
3 in Chapters 386 and 392.

4 MR. DOTTHEIM: Yes, most definitely. And
5 again, I think it is a question that's not -- that's not
6 one to be dismissed.

7 CHAIRMAN DAVIS: Okay. Thank you,
8 Mr. Dottheim.

9 Can we go back to Mr. Coffman just for one
10 second?

11 JUDGE THOMPSON: Absolutely.

12 CHAIRMAN DAVIS: Okay. Mr. Coffman, in
13 response to Commissioner Appling's request or question,
14 you -- is there any -- are there any risks or anything
15 that Mr. Dottheim didn't address that you'd like to
16 mention?

17 MR. COFFMAN: One of the major risks
18 involves the potential for Noranda to leave the system
19 after a number of years, 15 years or earlier if some
20 misfortune occurs and the impact that would have on the
21 resource planning of the company. There are -- I mean, I
22 don't know if you would describe them necessarily as
23 risks, but there are costs potentially associated with
24 serving Noranda over a number of years that we don't think
25 are included in the LTS tariff.

1 CHAIRMAN DAVIS: Can you specifically state
2 what you think some of those costs are?

3 MR. COFFMAN: I guess primarily that's
4 the -- you know, some type of premium to recognize the
5 risk that the rest of the ratepayers are bearing that
6 Noranda would leave the system. And we take particular
7 note of the statute that you're talking about, the 91.026,
8 and, in fact, have difficulty understanding how that
9 can -- I mean, obviously it makes Noranda unique.

10 I think I have apart from Mr. Dottheim
11 recognized that it is a unique customer under the law.
12 But as I understand it, to the extent that that statute
13 applies, the Commission has no jurisdiction as to the
14 determination of rates, and so we kind of get caught in a
15 loop there.

16 And Commissioner Gaw asked some very tough
17 questions earlier about what exactly the legal impact of
18 that statute is and the obligation of service and the
19 Commission's jurisdiction and how that interrelates with
20 the Commission's certificate statutes, questions that I'm
21 not sure I know the exact answer, but it's certainly a
22 unique situation that we're in. I'm sorry if I didn't
23 answer your question.

24 CHAIRMAN DAVIS: That's fine. No further
25 questions, Judge.

1 JUDGE THOMPSON: Commissioner Appling, did
2 you indicate you had a question, sir?

3 COMMISSIONER APPLING: I want one more
4 question if I can ask this question to Dr. Proctor.

5 JUDGE THOMPSON: He hasn't been sworn yet.

6 COMMISSIONER APPLING: Okay. That's fine.
7 Then we'll go with Doctor -- not Doctor, but to
8 Mr. Dottheim. Okay? Take a stab at this one. The
9 proposal look like an out of box thinking, this proposal
10 in which Noranda has put before us, and UE. Is there
11 anyone on the Staff has -- are you aware of any other
12 energy company that serves large customers with an LTS
13 tariff? If so, do you know anything about their
14 experience? Have you read anything, heard anything,
15 talked to anybody, watched anybody on TV as far as what
16 has happened?

17 MR. DOTTHEIM: Commissioner Appling, no.
18 I'm sorry.

19 COMMISSIONER APPLING: You know of no other
20 company has used --

21 MR. DOTTHEIM: And that's not because I've
22 done some exhaustive analysis and there is none. I'm just
23 unaware of that situation. I think that maybe one or more
24 of the parties may have attempted to address that in the
25 Prehearing Briefs that they filed, but I myself have not

1 had an opportunity to preview those Prehearing Briefs as
2 much as I need to.

3 But I suspect that with the further
4 opportunity to bring those situations to the
5 Commissioners' attention, that if there are such
6 situations, there probably will be an effort to maybe
7 bring that to the Commission, to the attention of the
8 Commissioners.

9 So it's a situation that I'm not aware of
10 any that exist, but it is not because I've done any
11 analysis in that predicament.

12 COMMISSIONER APPLING: Thank you, sir. I
13 respect that. OPC?

14 MR. COFFMAN: I'm sorry. What's the
15 question?

16 COMMISSIONER APPLING: Thought I'd catch
17 you daydreaming. Have you experienced, read about any
18 other company that has used LTS tariff?

19 MR. COFFMAN: As far as I know, this is the
20 first time anything like this tariff has been proposed.
21 But in our proposal we have, I think, proposed something
22 that has been used in a very similar situation, and that
23 is the special contract tariff that Kansas City Power &
24 Light Company has used for GST Steel Company, a similar
25 large customer that had very special needs. And although

1 we didn't always agree with how that was applied, that
2 seems to be the more appropriate way to match the needs of
3 this customer.

4 COMMISSIONER APPLING: Okay. Thank you.

5 MR. DOTTHEIM: Commissioner?

6 COMMISSIONER APPLING: Yes, sir. I'm
7 sorry.

8 MR. DOTTHEIM: Before Mr. Coffman had
9 mentioned GST, I recalled them myself, and they were the
10 largest -- I believe the largest customer of Kansas City
11 Power & Light. They were at one time Armco, Inc. in a
12 different life, and for a period of time Mr. Conrad, who's
13 representing Noranda, represented Armco, Inc. in Kansas
14 City Power & Light rate cases. GST steel is regrettably no
15 longer in business.

16 There are other large industrial customers
17 that come before the Commission, General Motors, what have
18 you. In particular, I think as Mr. Coffman has mentioned,
19 special contracts involving Kansas City Power & Light and
20 for that matter there are two industrial groups that are
21 intervenors in this proceeding that have their own views
22 on the pending -- the pending issues. So although
23 initially there were no specific companies that I could
24 recall, the Kansas City Power & Light situation with a
25 number of special contracts existing in that -- in that

1 jurisdiction, the manner in which that company has
2 proceeded.

3 COMMISSIONER APPLING: Thank you.
4 Mr. Conrad, do you have anything to add to that? You seem
5 to have your fingerprints on a lot of things around here,
6 so --

7 MR. CONRAD: I'm sorry. Judge Gaw was
8 looking at me.

9 COMMISSIONER APPLING: And telling you not
10 to say anything.

11 MR. CONRAD: I can, I think, speak with
12 some limited degree of authority with respect to the Armco
13 situation in Kansas City. That was not this case. In
14 fact, that was hooked to a tariff that Kansas City Power &
15 Light had called PL1 and they variously designated it
16 other things.

17 That agreement, Judge, was what we called a
18 demand curtailment agreement. Because of the specific
19 characteristics of the steel works, they were able to dial
20 back their load on certain circumstances under notice from
21 Kansas City Power & Light down to a floor, which they
22 agreed upon, and then at a later point in time could
23 recover the energy that had not been sold to them, at a
24 later point in time when it was off peak and it was
25 beneficial to Kansas City Power & Light, improved KCPL's

1 load factor, yada, yada, yada. In so doing, they were
2 excused from the demand ratchet that was otherwise in
3 place on that tariff.

4 So it was, I think, to some extent, whether
5 Mr. Dottheim remembers it in that level of detail I don't
6 know, but that's an apples and oranges, too.

7 The first part of your question,
8 Mr. Johnstone might be able to speak to that in more
9 detail when he takes the stand and hopefully will remember
10 the question. But what he has advised me and which I
11 would say to you is obviously hearsay, but I'll state the
12 source, is that for something like 20 years plus or minus,
13 TVA, Tennessee Valley Authority, has had tariffs in place
14 to deal with its customers, and any customer that took
15 service in this nature had to take under that tariff and
16 did so at a transmission level.

17 So in the sense of your comment about
18 thinking out of the box, has something like this been done
19 before, whether that's precisely an analog for your
20 question, I don't know, because I'm not familiar with
21 those tariffs. He is. But that may be helpful to you in
22 searching your way through that.

23 I can get into -- I can wax eloquently all
24 the rest of the afternoon about Armco and GST, but I'm
25 sure that's not what you're interested in.

1 COMMISSIONER APPLING: I would be
2 interested in listening to it, but probably the rest of
3 these people wouldn't be, so we'd better move on. Thank
4 you.

5 JUDGE THOMPSON: Further questions from the
6 Bench?

7 I have some questions from Commissioner
8 Murray. Mr. Dottheim, do you believe it would be better
9 for UE to serve Noranda under the tariff that would allow
10 cancellation with a few days notice as opposed to the
11 15-year minimum and 5-year notification after that that
12 the proposed LTS tariff provides?

13 MR. DOTTHEIM: I think it would be better
14 for Noranda to be served under the 15-year term with a
15 5-year notice situation given the nature of its -- of its
16 load, once that is being determined on a long-term basis
17 as opposed to a certificate of convenience and necessity
18 proceeding.

19 JUDGE THOMPSON: Okay. Another question
20 for you from Commissioner Murray. How can you claim that
21 UE is asking for pre-approval of ratemaking treatment by
22 simply asking the Commission to find that adding Noranda
23 to its service territory is prudent? Haven't they agreed
24 that the rates will be fully subject to change at the time
25 of the next rate case?

1 MR. DOTTHEIM: I'm really not sure what
2 Noranda and AmerenUE mean by rates being fully subject to
3 change in the next proceeding. I think one of the
4 limitations that I believe comes across in the testimony
5 that's been filed is the change can occur in the context
6 of an LTS tariff, but only in the context of an LTS
7 tariff.

8 JUDGE THOMPSON: Thank you. Mr. Coffman, I
9 apologize for being confused. Did we ever get to your
10 opening statement?

11 MR. COFFMAN: No, but after all these
12 questions, I imagine I can be very brief.

13 JUDGE THOMPSON: Step on up then.

14 MR. COFFMAN: There's not much that we
15 haven't covered so far in these questions, so may it
16 please the Commission, Public Counsel is very sympathetic
17 to Noranda Aluminum's situation and hope that there will
18 be a way to find firm, reliable, low cost service to them,
19 and that they will continue to be the economic engine that
20 they are serving the southeast portion of the state in the
21 manner that they now do.

22 We are somewhat confused as to why AmerenUE
23 is proposing all of the particulars that are in their
24 application in this case. I mean, I can surmise as to
25 why, and I think that -- and I'm not speaking for Ameren,

1 but I think it's because they would like to mitigate their
2 risk of serving Noranda in the way that they are and have
3 other ratepayers potentially bearing that risk, and that
4 is concerning to us.

5 UE has negotiated this contract that's the
6 basis of this deal with Noranda over a period of about a
7 year in private. We have now had a couple of months to
8 look at it, and it seems to be provided here in a take it
9 or leave it situation.

10 UE seems to be saying take all of the terms
11 that we are putting in the prayer for our relief or we're
12 not going to do this, and as we see it, this deal has been
13 negotiated without the other public interest parties being
14 involved, and that's why we are here to suggest somewhat
15 of a modification to the manner in which they are
16 proposing it and hope that the Commission would look at
17 that and urge somewhat of a different approach than the
18 LTS tariff and the pre-approval of prudence.

19 It seems to be two issues remaining in this
20 case. Perhaps they're linked, but at least those two
21 matters need to be addressed.

22 Of course, the testimony of AmerenUE
23 Witness Craig Nelson also discusses other things that are
24 implied to be prerequisites or conditions, and that
25 involve conditions on the Metro East transfer and CT

1 transfer of Pinckneyville and Comundy that have to be
2 exactly to UE's liking, and those are being played out in
3 other proceedings. Those are not in this particular case.

4 We see no reason why Noranda and AmerenUE
5 could not contract to provide service in an unregulated
6 way or in a regulated way that did not involve a tariff to
7 this Commission. Company is proposing that service be
8 provided to Noranda in a way that we believe puts other
9 ratepayers at risk of some higher rates, and we do -- are
10 cognizant of the fact that there is a rate moratorium that
11 was agreed upon before it was contemplated Noranda would
12 be a customer.

13 Part of that moratorium and stipulation
14 involves a cost of service study that will be coming
15 hopefully to this Commission next year, and we would
16 assume that whatever is approved in this case will be
17 incorporated into that class cost of service study. So
18 this is important as to what's assumed or going forward.
19 We do not believe that the LTS tariff incorporates all of
20 the costs or all of the risk associated with the decision
21 to serve, and I think that that's fairly clear.

22 Again, we are proposing a special contract
23 tariff approach. This is a -- it's a unique approach but
24 one that has been worked out and vetted in a variety of
25 proceedings with this Commission over the past ten years,

1 and it is a known quantity, whereas this LTS tariff is
2 not. In a sense, the LTS tariff kind of proposes the
3 backwards -- a backwards approach, in other words a
4 contract that includes a tariff as opposed to a tariff
5 that would incorporate a contract under certain conditions
6 that would protect other ratepayers.

7 And just briefly, the type of framework
8 that is similar to what KCPL had for GST Steel would set
9 rates at the fully allocated embedded cost plus any
10 foregone margin on off-system sales associated with
11 providing service to Noranda that are not offset by
12 Noranda's contribution to the recovery of fixed production
13 cost, and that there would be some provision similar to an
14 exit fee that would recover any stranded costs if Noranda
15 chose to leave the UE system and exercise their right that
16 they have.

17 Obviously this would -- a special contract
18 would recognize the fact that there is a statute that
19 gives Noranda a special right that no other customer in
20 the state has with regard to electric service.

21 And just to sum up that, that would be our
22 preference for how this customer should be treated and
23 hope that that could be done in some way, and also ask the
24 Commission to reject the request for any predetermination
25 of prudence of this deal or of what a just and reasonable

1 rate would be in the next proceeding.

2 That's all I have.

3 JUDGE THOMPSON: Thank you, Mr. Coffman.

4 Seeing no questions, you may step down.

5 Ms. Vuylsteke?

6 MS. VUYLSTEKE: May it please the
7 Commission? Diane Vuylsteke for the Missouri Industrial
8 Energy Consumers.

9 Our position in this case is that there is
10 no detriment from Ameren's application and we support
11 Ameren's application. We have the testimony of Mike
12 Gorman in the record. That testimony has been revised
13 from prefiled testimony, and he will be available tomorrow
14 if the Commission has any questions. And that's all I
15 have. Thank you.

16 JUDGE THOMPSON: Thank you, Ms. Vuylsteke.
17 Ms. Langeneckert?

18 MS. LANGENECKERT: May it please the
19 Commission? I'm Lisa Langeneckert, and I represent the
20 Missouri Energy Group, which is a group of non-profit
21 hospitals and large industrial businesses and customers in
22 Missouri.

23 Ameren has chosen to apply to the Public
24 Service Commission for a certificate of convenience and
25 necessity to extend the Ameren service territory to

1 include the Noranda facility in New Madrid County,
2 Missouri, thereby placing the contract between Noranda and
3 Ameren and the tariff of choice, the LTS tariff, under PSC
4 jurisdiction.

5 While it is obvious that both Ameren and
6 Noranda feel that being regulated by the PSC is in their
7 best interests, the MEG wants to ensure that serving
8 Noranda as a regulated customer is in the public interest
9 and will not be to the detriment of customers in
10 AmerenUE's existing territory.

11 Both AmerenUE and Noranda have cited
12 passage of Section 91.026 as proof that the Missouri
13 Legislature wanted to be sure that Noranda had additional
14 options to obtain the power it needs.

15 The MEG agreed with AmerenUE and Noranda in
16 its own Memorandum of Law that the statute reflects the
17 Legislature's intent to give Noranda more options for its
18 purchase of power. You will note that Section 91.026 also
19 sets out language protecting the current customers of any
20 utility whom Noranda chooses as its new supplier. This
21 language states that the change of supplier shall have no
22 negative financial impact on other electricity customers
23 of the supplier.

24 While this statute's language refers to
25 municipal utilities and rural electric cooperatives whose

1 customers do not have the regulatory protections of this
2 Commission, it shows that the Legislature was concerned
3 with the legislation's effect on any existing customers of
4 the chosen utility.

5 The MEG just wants to be sure that serving
6 Noranda under a regulated transaction protects the
7 customers in AmerenUE's existing territory as well as if
8 AmerenUE were serving Noranda under a nonregulated
9 contract as approved by the Legislature with
10 Section 91.026.

11 In addition, AmerenUE witnesses have
12 testified that it will need to build 600 megawatts of
13 gas-fired peaking generation in the near future, which
14 will cost AmerenUE \$87.50 a kilowatt a year in order to
15 serve the Noranda load.

16 The MEG argues that reinstituting some form
17 of the capacity interruptible rate that reduces peak load
18 and previously cost AmerenUE \$60 a kilowatt hour a year
19 would enable AmerenUE to save 27.50 a kilowatt hour per
20 year and would also put AmerenUE in compliance with the
21 stipulation it signed in EC-2002-1 to use its best efforts
22 to increase the amount of demand response options,
23 including interruptible load, by 200 megawatts. I believe
24 the value to AmerenUE for this will be over \$5 million a
25 year.

1 Then if you have 200 megawatts of
2 interruptible load, the MEG is not against Ameren serving
3 Noranda. It just wants to ensure that such service is not
4 at the expense of the customers in AmerenUE's existing
5 service territory who do not presently enjoy the luxury of
6 having electric utilities compete for the opportunity to
7 serve them.

8 That's it. Thank you.

9 JUDGE THOMPSON: Thank you very much. Any
10 questions for Ms. Langeneckert?

11 (No response.)

12 JUDGE THOMPSON: Hearing none, you may step
13 down. Mr. Cooper? I apologize for getting to you so late
14 in the day.

15 COMMISSIONER CLAYTON: Let the record
16 reflect that 4:10 p.m., we are now getting to our first
17 witness.

18 JUDGE THOMPSON: Before we start this
19 witness, in order to expedite the proceedings, I'd like to
20 adopt a convention that has been put in place occasionally
21 during rate cases and other lengthy proceedings where the
22 preliminary questions with respect to this is your
23 prefiled testimony, if I asked you the same questions you
24 would give us, and all those preliminaries be taken as
25 essentially stipulated. You'll have your opportunity to

1 object to the testimony, of course, when it's offered. Is
2 that acceptable to all the parties?

3 MR. CONRAD: It is.

4 MR. COFFMAN: Yes.

5 MR. LOWERY: It is, your Honor.

6 MR. DOTTHEIM: Yes.

7 JUDGE THOMPSON: Very good. Then would you
8 raise your right hand, please.

9 (Witness sworn.)

10 JUDGE THOMPSON: Would you please state
11 your name for the recorder.

12 THE WITNESS: Wilbon, W-i-l-b, as in boy,
13 o-n, middle initial L, last name Cooper, C-o-o-p-e-r.

14 JUDGE THOMPSON: Thank you, sir. Take your
15 seat.

16 You may inquire.

17 MR. FITZHENRY: With that direction, Judge,
18 I will be brief.

19 WILBON COOPER testified as follows:

20 DIRECT EXAMINATION BY MR. FITZHENRY:

21 Q. Mr. Cooper, have you caused to be prepared
22 and filed in this proceeding your direct testimony
23 identified for the record as Exhibit 106 and your
24 surrebuttal testimony identified as Exhibit 107?

25 A. Yes, I have.

1 JUDGE THOMPSON: See, that's all part of
2 what you can skip. You can just say I offer, and they'll
3 object or not as they see fit.

4 MR. FITZHENRY: Your Honor, I move to offer
5 into evidence Mr. Cooper's direct and surrebuttal
6 testimony, Exhibits 106 and 107, and tender Mr. Cooper for
7 cross-examination.

8 JUDGE THOMPSON: I see his direct as being
9 105 and his surrebuttal as being 106.

10 MR. LOWERY: That's correct. I think you
11 must have had an old list, Ed. I'm sorry about that. 105
12 and 106 is the correct -- is the correct designation.

13 MR. FITZHENRY: Thank you, Mr. Lowery.
14 I'll remember that.

15 JUDGE THOMPSON: Any objections to the
16 receipt of Exhibit 105 or 106?

17 (No response.)

18 JUDGE THOMPSON: Hearing none, the same are
19 received.

20 (EXHIBIT NOS. 105 AND 106 WERE RECEIVED
21 INTO EVIDENCE.)

22 JUDGE THOMPSON: Thank you, Mr. Fitzhenry.
23 Cross-examination, let's see, Mr. Conrad?

24 MR. CONRAD: Judge, maybe I misread it. We
25 were talking about this just before lunch, and I had read

1 that Order that you'd issued on the 15th as saying that
2 you had intended the Commissioners to go first, which
3 would save a round of cross.

4 JUDGE THOMPSON: You're quite right. I
5 forgot about that. Questions from the Bench?

6 MR. CONRAD: It's your courtroom.

7 JUDGE THOMPSON: Questions from the Bench?
8 Why don't you go ahead if you have cross, sir?

9 MR. CONRAD: I do not.

10 JUDGE THOMPSON: Very well. Mr. Dottheim?

11 MR. DOTTHEIM: Yes, thank you.

12 CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. Good afternoon, Mr. Cooper.

14 A. Good afternoon, Mr. Dottheim.

15 Q. Mr. Cooper, would you agree that the
16 fundamental difference with respect to distribution
17 facilities between Noranda and other customers taking
18 service at this transmission voltage level is that
19 AmerenUE has some investment in radial, r-a-d-i-a-l, feed
20 lines at transmission voltage to serve those other
21 customers?

22 A. That would be the primary cost difference.
23 There would be some additional electrical devices, such as
24 disconnect switches or circuit breakers, but the radial
25 line would be the primary cost difference.

1 Q. And would you please explain what is a
2 radial line?

3 A. Essentially that's a line that connects
4 from the transmission system directly into the customer's
5 transformation/distribution facilities.

6 Q. Would you agree that Noranda is the only
7 AmerenUE customer that can qualify for the proposed LTS
8 tariff under the rate application provisions proposed by
9 AmerenUE?

10 A. That would be correct.

11 Q. Is the LTS tariff an interim proposal of
12 AmerenUE?

13 A. Mr. Dottheim, if I understand your question
14 correctly, the tariff itself is being filed at this time
15 in order to address Noranda's need to get service from the
16 company effective July 1st, 2005, and as I stated in my
17 testimony, there is no intent with regard to the tariff to
18 bind the Commission to any future LTS tariff or any future
19 ratemaking principle.

20 Q. If I could refer you into the tariff to
21 paragraph 6, the rate application provisions.

22 A. I am there.

23 Q. Do you know whether AmerenUE has any
24 present intention to change or propose any changes in
25 those rate application provisions in the near term?

1 A. AmerenUE does not have any intention to
2 change any of those provisions contained in paragraph 6.

3 Q. Mr. Cooper, would you agree that presently
4 AmerenUE does not have any tariffed rate classes that
5 apply to only one customer?

6 A. Any tariffed service classifications, I
7 think a strict response to your question would be no.
8 However, we do have cable TV booster stations that that
9 rate or that particular type of billing is tied solely to
10 cable TV operators.

11 Q. Mr. Cooper, would you agree that if
12 AmerenUE transmission level customers other than Noranda
13 were able to take service on the large transmission
14 service tariff that's proposed, that AmerenUE would lose
15 revenues from those customers?

16 A. Under your hypothetical, that would be
17 correct, but I guess I don't agree with the hypothetical.
18 If those customers were to take transmission level service
19 from the company, AmerenUE would have to agree essentially
20 to sell those customers the existing facilities that it's
21 responsible for installing, owning and operating on an
22 ongoing basis.

23 Q. Mr. Cooper, would you agree that if
24 Noranda's load factor would drop below 98 percent and stay
25 at a lower level for an extended period of time, that it

1 would no longer qualify for the large transmission service
2 tariff rate?

3 A. Yes, Mr. Dottheim. Under paragraph 6, rate
4 application, the continuation of the 98 percent load
5 factor requirement is discussed within that paragraph.

6 Q. Mr. Cooper, would you agree that if Noranda
7 no longer qualifies for the large transmission service
8 tariff rate, AmerenUE would inform Noranda that it could
9 no longer take service under the large transmission
10 service tariff rate and would require that Noranda choose
11 between the large primary service tariff rate or the small
12 primary service tariff rate?

13 A. Mr. Dottheim, accepting your hypothetical,
14 that would be correct. But as we heard earlier today,
15 it's extremely unlikely that Noranda would lose
16 qualification under the LTS tariff as proposed in my
17 testimony.

18 Q. Mr. Cooper, I'd like to direct you to your
19 direct testimony, which is Exhibit 105, and I would like
20 to direct you to your Schedule WLC-2.

21 A. Okay, Mr. Dottheim, I'm there.

22 Q. In this Schedule WLC-2, that's a schedule
23 relating to the development of the service classification
24 for large transmission service rates?

25 A. Yes. That's a summary of the development

1 of the large transmission service tariff rate, absent the
2 contribution, annual contribution factor or the ACF as
3 we've referred to earlier.

4 Q. And I'd like to direct you to line 23.

5 A. Okay. I'm there.

6 Q. And we had a conversation in deposition
7 just last week, and I'd like to refer you back to the
8 calculation that I previously asked you to make, and that
9 is looking at line 23 of your Schedule WLC-2, do you agree
10 that if a customer taking service on the LTS tariff, the
11 large transmission service tariff, has a month in which
12 its load factor drops to 50 percent, the effective rate
13 that customer would pay would increase from 3.023 cents
14 per kilowatt hour to 3.961 cents per kilowatt hour,
15 excluding customer charge and the Rider C adjustment?

16 MR. FITZHENRY: Your Honor, objection as to
17 form and relevance. First there's been no fact
18 established and I don't believe there will be any fact
19 that the load factor could go below 98 percent, and so in
20 terms of relevance, whatever number Mr. Cooper calculates
21 will have no meaning in the record.

22 MR. DOTTHEIM: I've asked Mr. Cooper to
23 assume for me, it's a hypothetical, which I would like to
24 ask him and have, to calculate the cents per kilowatt hour
25 rate if the load factor were 50 percent rather than the

1 99 percent that is shown on line 23.

2 JUDGE THOMPSON: Okay. Assuming I allow
3 him to respond to that question, how does that help us get
4 to where we need to be?

5 MR. DOTTHEIM: That helps us get to where
6 we need to be to in part show the significance of the load
7 factor and the effect on the -- in this instance the large
8 transmission service rate, and I then am going to ask
9 Mr. Cooper to perform a similar calculation on the large
10 power service rate, which does not have the same
11 limitation on load factor as the large transmission
12 service rate does.

13 JUDGE THOMPSON: I'm going to sustain the
14 objection. Move on, please.

15 BY MR. DOTTHEIM:

16 Q. Mr. Cooper, I'm going to ask you to refer
17 to your Schedule WLC-3, which is the next schedule in your
18 direct testimony.

19 A. I am there.

20 Q. Okay. And I'm going to direct you to
21 line 21, and again ask you about a calculation that I
22 asked you to perform last week regarding the effect on the
23 large power service rate if the load factor for a month is
24 50 percent. I'd like to ask you if the effective rate
25 that the customer would pay would increase from 3.25 cents

1 at a 99 percent load factor to 4.23 cents per kilowatt
2 hour at a 50 percent load factor?

3 MR. FITZHENRY: Same objection, your Honor.

4 JUDGE THOMPSON: I'm going to sustain it,
5 Mr. Dottheim. There's no evidence that the load factor
6 for Noranda is going to be anything other than 98,
7 99 percent.

8 MR. DOTTHEIM: With all due respect, Judge
9 Thompson, I posed it as a hypothetical, and I thought that
10 I was in -- as a consequence was in the bounds of what
11 properly could be cross-examined, but I will move on.

12 JUDGE THOMPSON: Thank you, sir.

13 BY MR. DOTTHEIM:

14 Q. Mr. Cooper, on the large power service --
15 excuse me -- the large primary service rate, is there a
16 load factor limitation respecting that tariff?

17 A. There is none.

18 Q. Is it possible for a customer to take
19 service at a 99 percent load factor?

20 A. Yes, that would be possible.

21 Q. Would it be possible for a customer to take
22 service at a 50 percent load factor?

23 A. That would also be possible. As you stated
24 earlier, there is no load factor criteria floor or ceiling
25 with regard to the application of the large primary

1 service rate.

2 Q. Would you expect that same customer
3 operating at a 50 percent load factor would pay a higher
4 average rate per kilowatt hour than would a load factor
5 customer under the large primary service rate at
6 99 percent load factor?

7 MR. FITZHENRY: Your Honor, I'm going to
8 object to relevance. Mr. Cooper's here to give testimony
9 as to his rate design with respect to the LTS rate. He's
10 not here to talk about nuances with Mr. Dottheim about the
11 LPS rate.

12 MR. DOTTHEIM: The schedule to which I am
13 referring Mr. Cooper to deals with the large power service
14 rate.

15 MR. FITZHENRY: Only in terms of the rate
16 comparison, the dollars that might be derived.

17 MR. DOTTHEIM: And as a consequence, I
18 believe my question is relevant as to Mr. Cooper, who is
19 making the comparison.

20 JUDGE THOMPSON: Well, there is interest on
21 the Bench in hearing the answers to these questions.
22 Therefore, I'm going to allow the question. When you're
23 done with that one, if you could give me an offer of proof
24 with respect to the ones that I previously overruled, I
25 would appreciate that.

1 THE WITNESS: I recall the question,
2 Mr. Dottheim. Thank you. The answer to your question
3 would be yes, and the reason why the answer is yes is that
4 you'll have more units in the denominator to spread across
5 fixed charges, so your per unit rate declines.

6 MR. DOTTHEIM: I'd like to go back to one
7 of the prior questions, make an offer of proof. I'd asked
8 Mr. Cooper the question -- I'd referred him to his
9 Exhibit 105, his direct testimony, his Schedule WLC-2,
10 line 23, and I referred Mr. Cooper to a deposition from
11 last Thursday where I asked him the question regarding
12 what would be the effect as far as the cents per kilowatt
13 hour if on line 23 the 99 percent load factor dropped to a
14 50 percent load factor.

15 And last Thursday I believe that Mr. Cooper
16 indicated, and I believe he would have indicated today,
17 that the effective rate that the customer would pay would
18 increase from 3.023 cents per kilowatt hour to 3.961 cents
19 per kilowatt hour.

20 JUDGE THOMPSON: Very well. I believe you
21 had another question.

22 MR. DOTTHEIM: Yes. I'd like to make an
23 offer of proof on the other question relating to
24 Mr. Cooper's Schedule WLC-3 of his direct testimony where
25 last week in a deposition on Thursday I'd asked

1 Mr. Cooper, what would be the effect -- in referring to
2 line 21, what would be the effect on the cents per
3 kilowatt hour calculation if the load factor went from 99
4 percent down to a load factor of 50 percent?

5 And I believe Mr. Cooper in that deposition
6 indicated, and would have indicated today, that the effect
7 of the load factor going from 99 percent to 50 percent
8 would result in a 3.25 cent per kilowatt hour number
9 increasing to 4.232 cents per kilowatt hour.

10 JUDGE THOMPSON: Thank you, Mr. Dottheim.
11 Does that conclude your offer of proof?

12 MR. DOTTHEIM: Yes.

13 JUDGE THOMPSON: Thank you, sir. Please
14 proceed.

15 THE WITNESS: Mr. Dottheim and
16 Mr. Examiner, if I may, Mr. Dottheim quoted a figure of
17 4.232 in his latest scenario. I believe that should be
18 4.323.

19 JUDGE THOMPSON: You accept that
20 correction, Mr. Dottheim?

21 BY MR. DOTTHEIM:

22 Q. Mr. Cooper, have I misstated the number you
23 gave me last week or have you looked at that number and
24 has it changed?

25 A. I have not had an opportunity to view the

1 transcript from the deposition. The reporter may have
2 mistakenly transposed the 23 to 32.

3 MR. DOTTHEIM: If Mr. Cooper says that's
4 what the number is, that's what the number is.

5 JUDGE THOMPSON: Very well. The offer of
6 proof will be corrected accordingly.

7 BY MR. DOTTHEIM:

8 Q. Mr. Cooper, would you agree that both the
9 large power service -- excuse me -- the large primary
10 service and the large transmission service rate structures
11 charge customers a higher rate per kilowatt hour for a
12 lower load factor?

13 A. Yes. If one were to work through the rate
14 structure, the higher the load factor, the lower the
15 realization; the lower the load factor, the higher the
16 cents per kilo power realization.

17 Q. Would you agree that a customer with a
18 50 percent load factor would pay a higher average rate per
19 kilowatt hour if it is served under the company's existing
20 large primary service tariff than it would pay if it were
21 served under the company's proposed large transmission
22 service tariff?

23 MR. FITZHENRY: Your Honor, I'm going to
24 offer a standing objection in order to help move these
25 proceedings along again. There has been no testimony or

1 any indication in prefiled testimony that Noranda's load
2 factor would go anything below 98 percent, and so I'm just
3 raising that objection, and I will have it stand if you
4 permit.

5 JUDGE THOMPSON: Very well.
6 Mr. Dottheim, I assume you're eliciting this testimony in
7 order to use it to argue that the tariff should not be
8 approved?

9 MR. DOTTHEIM: Yes, that is correct.

10 JUDGE THOMPSON: That's what we're here to
11 determine. So I'm going to overrule your standing
12 objection. Please proceed.

13 THE WITNESS: Mr. Dottheim, if you would
14 restate or repeat the question, please. Repeating it
15 would be fine.

16 BY MR. DOTTHEIM:

17 Q. Mr. Cooper, would you agree that a customer
18 with a 50 percent load factor would pay a higher average
19 rate per kilowatt hour if that customer is served under
20 the company's existing large primary service tariff than
21 the customer would pay if it were served under the
22 company's proposed large transmission service tariff?

23 A. I'm having difficulty giving you a definite
24 yes on that, Mr. Dottheim, and the reason I'm having
25 difficulty is that the existing large primary service rate

1 has structure to accommodate a customer who will be taking
2 service at 138.

3 The end result demand and energy charges
4 for the large primary service rates, those rates are
5 higher under the large primary service rate than they are
6 under the large transmission service rate because of
7 adjustments that we have made to reflect the fact that
8 Noranda totally avoids the use of the company's
9 distribution system, and also the losses are lower to
10 serve Noranda than they are the typical customer on the
11 company's large primary service rate.

12 So I would suggest that by default the LTS
13 rate, I believe, will always result in a lower realization
14 than the large primary service rate, because the rates are
15 lower, assuming the same load factor because the rates are
16 lower, the demand charge is lower, the energy charge is
17 lower, ignoring the application of the ACF.

18 Q. Thank you, Mr. Cooper.

19 Mr. Cooper, if the rate structure within a
20 tariff takes into account load factor by charging a lower
21 load factor customer a higher per kilowatt hour charge, is
22 there need to use load factor as a condition for
23 determining whether or not a customer qualifies for
24 service under that tariff?

25 A. It's a pretty broad statement,

1 Mr. Dottheim. See if I can put a bit more meat around
2 that.

3 Let's assume that you're starting from
4 scratch and you're looking to develop customer classes.
5 Could one develop a rate design for a given group of
6 customers that were fairly homogenous with regard to load
7 and load characteristics even though the load factors may
8 range from, let's say, 50 percent to 70 percent, could one
9 develop a rate that would be just and reasonable, I would
10 suggest, and also fully reflect cost causation and
11 equitable cost recovery principles that would result in a
12 different realization or a higher realization for the
13 customer with a lower load factor than a customer within
14 that same class with a higher load factor? The answer is
15 yes.

16 Q. I'm not sure you answered my question. Let
17 me ask it again.

18 If the rate structure within a tariff takes
19 into account load factor by charging a lower load factor
20 customer a higher per kilowatt hour charge, is there a
21 need to use load factor as a condition for determining
22 whether or not a customer qualifies for service under that
23 tariff?

24 A. Mr. Dottheim, in general the answer to your
25 question is yes. However, one is also concerned with rate

1 migration. You may have certain language within the
2 tariff that may prevent a customer from migrating from one
3 rate class to another that may tie in to load factor or
4 some other consideration in order to promote revenue
5 stability.

6 Q. Mr. Cooper, in regards to the large
7 transmission service tariff, and I want to refer you to
8 the 98 percent load factor condition, was the 98 percent
9 load factor condition for qualifying for the large
10 transmission service tariff meant to be a condition that
11 would allow AmerenUE to remove Noranda from the large
12 transmission service tariff if Noranda's load factor
13 decreased and remained below 98 percent over --

14 CHAIRMAN DAVIS: Judge, can I interrupt
15 here for a second? Can we get George Swogger or somebody
16 on the stand right now to ask whether this
17 98 percent load factor is really an issue or not? Because
18 I don't want to take all day listening about what-ifs if
19 it's not feasible.

20 JUDGE THOMPSON: I don't know how you
21 accomplish that, but I think Mr. Swogger is our next
22 witness.

23 MR. LOWERY: If Mr. Conrad has no
24 objection, we have no objection to Mr. Swogger being taken
25 out of order.

1 MR. CONRAD: Mr. Swogger and his attorney
2 have no objection.

3 JUDGE THOMPSON: Come on up, Mr. Swogger.
4 We're going to interrupt the examination of Mr. Cooper to
5 hear from Mr. Swogger.

6 CHAIRMAN DAVIS: They can be up there side
7 by side together. I don't care.

8 (Witness sworn.)

9 JUDGE THOMPSON: Would you please state
10 your name for the reporter.

11 THE WITNESS: George E. Swogger,
12 S-w-o-g-g-e-r.

13 JUDGE THOMPSON: Thank you very much. Take
14 your seat.

15 Mr. Conrad, do you have any exhibits you
16 want to offer?

17 MR. CONRAD: Yes. If we want to do it at
18 this time, I'll be happy to do that.

19 JUDGE THOMPSON: Let's go ahead and do it
20 so we don't forget.

21 CHAIRMAN DAVIS: We need to know if he's
22 competent to answer that question. If he's not, there's
23 no point to call him.

24 COMMISSIONER GAW: And I need to know,
25 Judge, are we going to a different witness or are we just

1 trying to establish the point on the load factor?

2 JUDGE THOMPSON: We're just going to
3 establish the point on the load factor, but I thought
4 since we had him up there, we'd go ahead and get the
5 testimony in. Any objections to the receipt of 200 or
6 201?

7 (No response.)

8 JUDGE THOMPSON: Hearing none, the same are
9 received,

10 (EXHIBIT NOS. 200 AND 201 WERE RECEIVED
11 INTO EVIDENCE.)

12 JUDGE THOMPSON: Now, then . . .

13 MR. CONRAD: Judge, I'm not sure that I
14 have any more direct at this point.

15 JUDGE THOMPSON: You can sit down.

16 MR. CONRAD: I think I'm done.

17 JUDGE THOMPSON: Mr. Chairman?

18 CHAIRMAN DAVIS: Mr. Dottheim, do you want
19 to ask Mr. Swogger some questions about Noranda's load or
20 do you want me to ask him?

21 MR. DOTTHEIM: Mr. Chairman, I can ask some
22 questions and if they're not to your liking, you can --

23 CHAIRMAN DAVIS: Carry forward.

24 GEORGE E. SWOGGER testified as follows:

25 CROSS-EXAMINATION BY MR. DOTTHEIM:

1 Q. Mr. Swogger, is it presently assumed that
2 Noranda will operate at a 98 percent load factor?

3 A. Yes.

4 Q. Are there circumstances under which Noranda
5 would operate at a lower load factor than 98 percent?

6 MR. CONRAD: Does counsel want to specify a
7 period?

8 MR. DOTTHEIM: I'll let Mr. Swogger
9 indicate what period might be applicable or possible.

10 THE WITNESS: The way a potline works, you
11 cannot continuously operate at a load factor below
12 98 percent. Could you for a one-hour period? Yes. But
13 on a long-term basis, no. You'd be out of business.

14 BY MR. DOTTHEIM:

15 Q. Mr. Swogger, when you say on a long-term
16 basis, what --

17 A. Days, weeks, months. You couldn't do it
18 over a continuous period.

19 Q. And when you say days, how many days? Are
20 you saying one day, two days?

21 A. Easy question, tough answer. I don't know
22 how much people want to learn about the aluminum process,
23 but we operate three potlines, and for simplicity it's not
24 exactly this way, but let's say each one uses a third of
25 the electricity or about 150 megawatts.

1 Worst-case scenario that I could think of
2 would be that one potline -- and this hasn't happened
3 since the 1980s, mid '80s where for some reason we lost a
4 potline. For that day or -- and if you said over that
5 month, that particular line would have a lower load
6 factor, but it would be offline. Once it goes offline, it
7 stays offline for months, and oftentimes never does
8 return.

9 So the other potlines would continue to run
10 at 98 percent load factor, so there's no way that we could
11 operate an aluminum plant or any primarily aluminum plant
12 that I'm aware of. I don't think it's possible to operate
13 on a continuous basis at a low load factor. It's just
14 impossible.

15 Q. And when you say the load factor for the
16 two potlines that were continuing would be at 98 percent,
17 now, would that be an -- would that be aggregated in any
18 manner for determining what is the load factor for the
19 plant itself or load factor determined strictly on the
20 basis of per potline?

21 A. I'm not sure I understand the question.

22 Q. You indicated there was a situation, I
23 think you mentioned in the 1980s where a potline went
24 offline, it was not making aluminum. The load factor in
25 that situation was what, zero?

1 A. For that day, hour, I mean, you know, once
2 it goes offline, it goes to zero, and it stays there. And
3 in that case it stayed there for years, so -- but we -- I
4 mean, the load factor on the rest of the plant would
5 continue to be at 98 percent. Instead of taking
6 450 megawatts, just to round it off, we'd be taking
7 300 megawatts, and we would take that 300 megawatts at
8 98 percent.

9 Q. There wouldn't be an aggregation of the
10 three potlines, one of which was not online, that wasn't
11 functioning for the determination of -- for the facility,
12 the load factor?

13 A. I don't understand your question. The way
14 our contracts have worked in the past, I mean, after you
15 lost the line, at the end of the month you would adjust
16 your take to the 300 megawatts and then you'd be at
17 a 98 percent load factor for -- and then we can run two
18 potlines theoretically for the next 30 years at 98 percent
19 load factor.

20 Q. But it wouldn't be at less than 98 percent
21 because one of the potlines would not --

22 A. Has no effect.

23 Q. In that situation where you describe where
24 one potline was out, that did affect the total megawatt
25 hours of electricity that was utilized by the facility?

1 A. That's correct.

2 MR. DOTTHEIM: Chairman Davis?

3 QUESTIONS BY CHAIRMAN DAVIS:

4 Q. All right. Mr. Swogger, let's restate for
5 the record. How long has Noranda been open?

6 A. 34 years.

7 Q. And how long have you been employed there?

8 A. Be 25 years this August.

9 Q. Okay. And in the 25 years that you've been
10 working there, to the best of your knowledge, when has --
11 how many instances and how often has Noranda dropped below
12 that 98 percent load factor?

13 A. The instance I'm talking about was
14 basically an act of God. It was the coldest day we ever
15 had and we froze up the rectifier. I mean, that did
16 occur. I want to say '85. I might miss it by a year or
17 so. That's the only time that I can recall.

18 The other -- you know, on an hourly basis
19 or something, if-- you know, there's been times when we
20 didn't receive power due to some problem on the system for
21 a half an hour or an hour because we couldn't, you know,
22 Associated could not provide it, so in those cases your
23 load factor's down because you didn't get it.

24 Q. And then --

25 A. That wasn't due -- I mean, Noranda would

1 have loved to had it. We just --

2 Q. Can you describe for this Commission and
3 for those present who might not necessarily be familiar
4 with the potline, you know, exactly what happens to a pot
5 of molten aluminum if it gets cold?

6 A. If you don't get power for much more than
7 an hour, depending upon the ambient temperature, obviously
8 in the winter it's quicker and in the summer it's a
9 little bit longer, and how the pots were operating prior
10 to that -- we'll just say an hour -- the pots can freeze
11 up. If they freeze up, you cannot restart them without
12 digging them out and doing a long, expensive process. It
13 also damages the pots essentially for the rest of their
14 life, and pots typically last about five years, so we're
15 continuously rebuilding pots.

16 During that five-year life, it will
17 probably shorten the pot life by maybe a year. Every
18 pound of aluminum made during that period of time would be
19 at a higher cost because the resistance will be higher.
20 It will take more power to make one pound of aluminum and,
21 therefore, you're less efficient.

22 So it's oftentimes catastrophic if you lose
23 a potline due to power, and that's why reliability is such
24 a crucial part of this deal.

25 Q. So it's your present intention to operate

1 above the 98 percent load factor for all perpetuity; is
2 that correct?

3 A. Absolutely. You cannot -- I mean, you
4 can -- all smelters are that way. That's the way they're
5 designed and that's the only way they can operate.

6 CHAIRMAN DAVIS: Thank you.

7 JUDGE THOMPSON: Mr. Dottheim?

8 MR. DOTTHEIM: Can I follow up?

9 JUDGE THOMPSON: Sure.

10 RECROSS-EXAMINATION BY MR. DOTTHEIM:

11 Q. Mr. Swogger, I think you made reference to
12 a potline or pot being replaced every five years, or did I
13 misunderstand?

14 A. Yes. The way our process works is you
15 lose, it varies, but say 8, 10, 12 pots a month. We're
16 always building them on a continuous basis. So we lose
17 one, we try to start one, so that we always try to use the
18 same amount of electricity.

19 But pots sometimes fail at an erratic pace.
20 You might lose 15 one month and 5 the next. Typically you
21 lose 8 to 10. And that's how it works. It's just a
22 continuous -- we're always building pots.

23 Q. Are lines ever down for maintenance
24 purposes?

25 A. For less than an hour, yes. Periodically

1 there are certain things that you have to do. We
2 typically hold those maintenance outages to 20 minutes.
3 Half hour would be a long one. But there would be only
4 one line at a time, and, yes, that happens on an
5 infrequent basis, but it does occur. Infrequent may be
6 once a month, just to give you a rule of thumb, but it's
7 not -- it's not something we do every day.

8 Now, we would schedule with the power
9 company. You know, we'd -- typically today we'll call
10 them up say, hey, we've got maintenance planned at
11 one o'clock. We're going to be offline for approximately
12 20 minutes. We'll use 150 megawatts less to coordinate
13 things. That's how it works.

14 MR. DOTTHEIM: Thank you, Mr. Swogger.

15 JUDGE THOMPSON: Any other questions of
16 Mr. Swogger? Very well.

17 MR. CONRAD: Just out of curiosity, we were
18 on this one issue.

19 CHAIRMAN DAVIS: We might all have some
20 more questions for Mr. Swogger later.

21 JUDGE THOMPSON: We're doing a non-linear
22 hearing.

23 MR. CONRAD: That's fine. I don't have a
24 problem. I just wanted to know.

25 JUDGE THOMPSON: Thank you very much,

1 Mr. Swogger.

2 I know I've had enough excitement for one
3 day. It's about seven minutes to five, so we're going to
4 go ahead and recess. We will reconvene tomorrow. Now,
5 that's the crucial question. What time can we all be here
6 tomorrow?

7 MR. LOWERY: Whenever you tell us to be
8 here.

9 MR. FITZHENRY: Nine o'clock?

10 JUDGE THOMPSON: Nine o'clock's fine with
11 me.

12 MR. FITZHENRY: Can we ask about
13 Mr. Swogger's approach to rectifier tomorrow on the stand?

14 JUDGE THOMPSON: Absolutely. We haven't, I
15 don't think, exhausted the topic.

16 MR. LOWERY: Judge, a very quick question.
17 Do we need to file the original of that stipulation with
18 the secretary or by providing you is it filed or --

19 JUDGE THOMPSON: No. You have to file that
20 with the secretary.

21 MR. LOWERY: Well, I gave you the original.
22 Can I trade?

23 JUDGE THOMPSON: You're assuming I still
24 have it, can still find it.

25 MR. LOWERY: No, I think you gave it to me.

1 I apologize.

2 JUDGE THOMPSON: So we'll go ahead and
3 adjourn for today. See you at nine o'clock tomorrow.

4 WHEREUPON, the hearing of this case was
5 recessed until February 23, 2005.

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