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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
June 17, 2014
Jefferson City, Missouri
Volume 7

Noranda Aluminum, Inc.,)
et al.)
)
Complainants,))
)
v.) File No. EC-2014-0224
)
Union Electric Company,)
d/b/a Ameren Missouri,))
)
Respondent.)

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

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

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

2 JUDGE WOODRUFF: Good morning,
3 everyone. Let's come to order. Before we get
4 started with the first witness, Commissioner Hall
5 has something he wanted to say.

6 COMMISSIONER HALL: Mr. Downey?

7 MR. DOWNEY: Right here.

8 COMMISSIONER HALL: Yesterday at the
9 end of the day, you were redirecting Mr. Smith, and
10 you, I think, read a question and answer on a DR
11 concerning negotiations between Noranda and Ameren
12 on a possible legislative fix.

13 MR. DOWNEY: Yes.

14 COMMISSIONER HALL: What was that DR
15 number and date? Can I get a copy of it?

16 MR. DOWNEY: Sure. Wendy, I gave you
17 a copy. Do you have it handy?

18 MS. TATRO: I don't have it with me.

19 MR. DOWNEY: I have it in my mass of
20 records, and I'll fish it out and make 25 copies.

21 COMMISSIONER HALL: Okay. And also,
22 would -- would Mr. Smith be available later today
23 to take a couple more questions on that?

24 MR. DOWNEY: Absolutely. Absolutely.
25 And also, it's my understanding he's going to

1 present something to the Commission today as far as
2 the commitment to any kind of conditions OPC or the
3 Commission wants.

4 COMMISSIONER HALL: Okay. Thank you.

5 MR. DOWNEY: Thank you.

6 JUDGE WOODRUFF: All right. Let's
7 get started with the first witness, then. I assume
8 this is Mr. Harris on the stand.

9 THE WITNESS: Yes.

10 JUDGE WOODRUFF: Please raise your
11 right hand.

12 (Witness sworn.)

13 JUDGE WOODRUFF: Thank you. You may
14 inquire.

15 MR. MALLIN: Thank you, your Honor.

16 THOMAS HARRIS testified as follows:

17 DIRECT EXAMINATION BY MR. MALLIN:

18 Q. Mr. Harris, can you state your full
19 name for us, please.

20 A. Yes. Thomas Nelson Harris.

21 Q. By whom are you employed?

22 A. Silicon Valley Bank.

23 Q. Could you bring that microphone a
24 little bit closer to you?

25 A. Silicon Valley Bank.

1 Q. And in what capacity?

2 A. I'm a director in loan syndications.
3 So I deal with financing companies with syndicated
4 loans.

5 Q. And are you the same Thomas Harris
6 who prefiled both written surrebuttal testimony in
7 this case?

8 A. I am.

9 Q. And do you have any additions or
10 corrections that you wish to make to your
11 testimony?

12 A. No.

13 Q. If I were to ask you the same
14 questions today that are set forth in your prefiled
15 written testimony, would your answers be the same?

16 A. Yes.

17 MR. MALLIN: Your Honor, I move for
18 the admission of Complainant's Exhibit 5 marked
19 highly confidential and Exhibit 6 and tender the
20 witness for cross-examination.

21 JUDGE WOODRUFF: All right.
22 Exhibits 5 and 6 have been offered. Any objections
23 to their receipt?

24 (No response.)

25 JUDGE WOODRUFF: Hearing none, they

1 will be received.

2 (NORANDA EXHIBIT NOS. 5 AND 6 WERE
3 RECEIVED INTO EVIDENCE.)

4 JUDGE WOODRUFF: For
5 cross-examination, we begin with MIEC. The
6 Retailers?

7 MR. SCHWARZ: None, your Honor.

8 JUDGE WOODRUFF: Consumer Council?

9 MR. COFFMAN: No questions.

10 JUDGE WOODRUFF: Wal-Mart?

11 MR. CHAMBERLAIN: No questions.

12 JUDGE WOODRUFF: River Cement?

13 MS. LANGENECKERT: No questions.

14 JUDGE WOODRUFF: OPC?

15 MR. POSTON: No questions?

16 JUDGE WOODRUFF: Staff?

17 MS. HAMPTON: No questions.

18 JUDGE WOODRUFF: Continental Cement?

19 MR. COMLEY: No questions.

20 JUDGE WOODRUFF: Okay. Ameren?

21 MR. LOWERY: No questions, your

22 Honor.

23 JUDGE WOODRUFF: We're on a roll

24 today then. Questions from the Bench then,

25 Mr. Chairman?

1 CHAIRMAN KENNEY: Just a couple.

2 QUESTIONS BY CHAIRMAN KENNEY:

3 Q. Mr. Harris, were you here in the room
4 yesterday?

5 A. I was.

6 Q. So I was asking Mr. Smith about
7 getting financing, and that's what your specialty
8 is --

9 A. It is.

10 Q. -- is obtaining corporate financing?
11 And particularly the capital needs project that he
12 was talking about with respect to the rod mill.
13 What's your opinion about why that wouldn't be an
14 easier project to finance given the fact that it's
15 40 percent committed to one vendor and the other
16 60 percent is committed and there's an additional
17 5 percent that's committed? So it's 100 percent
18 committed, at least the output of the factory is
19 anticipated to be. Why wouldn't that just be a
20 really easy project to finance?

21 A. Well, not being directly involved in
22 the financing, I can speculate based upon my
23 opinion, which is I guess what you're asking.

24 Q. Yes.

25 A. What I'd say is that, first and

1 foremost, there is likely concern on the part of
2 the lenders that the smelter which provides the
3 primary aluminum flow for the rod mill would
4 somehow not be -- not be viable in the company's
5 current state given its current cost structure,
6 most likely being the primary reason.

7 Secondarily, the financial stress of
8 the company that Noranda's experienced recently
9 with the ratings downgrade and with some of the
10 other, you know, liquidity situation that they have
11 with current LME prices and their high power costs
12 would very likely cause concern amongst the
13 lenders.

14 And so if you were going to lend into
15 a specific project, you would want to make sure
16 that all the aspects of that product, including the
17 inputs and the flow of primary aluminum, were going
18 to be intact and that there wasn't going to be an
19 interruption in that flow.

20 **Q. That's helpful. Thank you.**

21 **And do you have any opinion about**
22 **whether, if we grant Noranda's request, it will**
23 **help them to reduce that 87 percent leverage or**
24 **somehow help their CreditMetrics? What's your**
25 **opinion about that?**

1 A. I do. It's interesting because
2 obviously you can think of a lot of scenarios, you
3 know, that would allow the company to reduce its
4 leverage over time and to perform and to remain
5 sustainable.

6 But the single most significant is,
7 if you look at their cost structure, the single
8 largest cost in the smelter operation primary
9 aluminum is going to be the cost of power. And, in
10 fact, it's so significant that, with the company's
11 requested change, you would change their EBITDA
12 profile, their cash flow profile, you know,
13 quickly, and that would be probably one of the only
14 ways to do that, frankly, is to reduce that much
15 cost very quickly.

16 It would also put them on a
17 competitive basis in a -- in a good spot relative
18 to other U.S. smelters, which is another important
19 issue.

20 Lenders when they look at lending to
21 companies also look at things like that as well.
22 They want to see that the company is, in a
23 commodity business, that they are competitive, that
24 they are first or second quartile typically in
25 their cost structure in various different measures

1 and then overall.

2 CHAIRMAN KENNEY: All right. That's
3 helpful. Thanks. I don't have any other
4 questions.

5 JUDGE WOODRUFF: Commissioner Stoll?

6 COMMISSIONER STOLL: I have no
7 questions. Thank you for your testimony.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 COMMISSIONER W. KENNEY: No
10 questions. Thank you.

11 JUDGE WOODRUFF: Commissioner Hall?

12 COMMISSIONER HALL: No questions.
13 Thank you.

14 JUDGE WOODRUFF: All right. Anyone
15 wish to recross based on questions from the Bench?

16 (No response.)

17 JUDGE WOODRUFF: All right. Any
18 redirect?

19 MR. MALLIN: No redirect, your Honor.

20 JUDGE WOODRUFF: Mr. Harris, you can
21 step down.

22 Next witness then would be Henry
23 Fayne.

24 (Witness sworn.)

25 JUDGE WOODRUFF: Thank you. You may

1 inquire.

2 MR. MALLIN: Thank you, your Honor.

3 HENRY FAYNE testified as follows:

4 DIRECT EXAMINATION BY MR. MALLIN:

5 Q. Mr. Fayne, can you state your full
6 name for us, please?

7 A. My name is Henry Fayne.

8 Q. And by whom are you employed?

9 A. I am self-employed.

10 Q. In what capacity?

11 A. As a consultant.

12 Q. Are you the same Henry Fayne who
13 prefiled both written direct and surrebuttal
14 testimony in this case?

15 A. Yes, I am.

16 Q. Do you have any additions or
17 corrections that you wish to make to that
18 testimony?

19 A. No, I do not.

20 Q. If I were to ask you the same
21 questions today that are set forth in your prefiled
22 written testimony, would your answers be the same?

23 A. Yes, they would.

24 MR. MALLIN: Your Honor, I move for
25 the admission of Complainant's Exhibit 7 Highly

1 Confidential, 8 and 9.

2 JUDGE WOODRUFF: Exhibits 7, 8 and 9
3 have been offered into evidence. Any objections to
4 their receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, they
7 will be received.

8 (NORANDA EXHIBIT NOS. 7HC, 8 AND 9
9 WERE RECEIVED INTO EVIDENCE.)

10 MR. MALLIN: Your Honor, I tender the
11 witness for cross-examination.

12 JUDGE WOODRUFF: Beginning with MIEC.
13 Retailers?

14 MR. SCHWARZ: No questions.

15 JUDGE WOODRUFF: Consumers Council?

16 MR. COFFMAN: No questions, your
17 Honor.

18 JUDGE WOODRUFF: Wal-Mart?

19 MR. CHAMBERLAIN: No questions.

20 JUDGE WOODRUFF: River Cement?

21 MS. LANGENECKERT: No questions.

22 JUDGE WOODRUFF: Public Counsel?

23 MR. POSTON: No questions.

24 JUDGE WOODRUFF: Staff?

25 MR. ANTAL: We have a few questions,

1 your Honor.

2 CROSS-EXAMINATION BY MR. ANTAL:

3 Q. Good morning, Mr. Fayne.

4 A. Good morning.

5 Q. You stated in your testimony and in
6 your deposition that you've testified on behalf of
7 other aluminum smelters in other public service
8 commissions; is that correct?

9 A. That is correct.

10 Q. Okay. And I believe you also stated
11 in your testimony and deposition that, in general,
12 many of those long-term special contracts included
13 conditions -- I'm going to strike that question.
14 Sorry about that.

15 Would you agree that one of the
16 factors that determines the success of a smelter is
17 the price of aluminum?

18 A. Yes.

19 Q. In fact, you stated that in your
20 surrebuttal testimony, correct?

21 A. That is correct.

22 Q. Okay. Did you also state in your
23 surrebuttal testimony that -- that Noranda's
24 current condition is at least in part due to the
25 depressed aluminum market that we have been

1 experiencing?

2 A. Yes, I did.

3 Q. Mr. Fayne, are you familiar with the
4 Wall Street Journal?

5 A. Yes, I am.

6 Q. Okay. And other than the questions
7 that were asked of Mr. Smith yesterday, are you
8 familiar with the Wall Street Journal from
9 Thursday, June 12th, 2014?

10 A. Not specifically.

11 MR. ANTAL: Okay. Judge, may I
12 approach the witness?

13 JUDGE WOODRUFF: You may.

14 MR. ANTAL: Let the record please
15 show that I just handed the witness a copy of Staff
16 Exhibit 205.

17 BY MR. ANTAL:

18 Q. Mr. Fayne, does this appear to be the
19 same article that Mr. Smith was given yesterday?

20 A. I believe it is, yes.

21 Q. Okay. And I'll try to limit my
22 questions since many of the questions about this
23 article were asked of him also.

24 Would you agree with the Wall Street
25 Journal statement that 18 percent of all vehicles

1 **in North America will have aluminum bodies by 2025?**

2 A. I have no basis to challenge that, so
3 I would assume it is true.

4 Q. Okay. And then would you also agree
5 that this represents a 17 percent increase from the
6 current level of all-aluminum body vehicles in
7 North America?

8 A. Again, based on the article, yes.

9 Q. Would you agree that the increased
10 use of aluminum in the automotive industry will
11 have a positive impact on the price of aluminum?

12 A. It's difficult to draw that
13 conclusion directly. One would argue that as
14 demand grows, the price should grow, but then it
15 also depends on what's happening on the supply
16 side.

17 Q. Okay. But generally when demand
18 rises, prices go up?

19 A. All other things being equal, prices
20 should go up.

21 Q. Okay. Then all things being equal,
22 would you agree that this increased demand for
23 aluminum will have a positive impact on the
24 profitability of U.S. aluminum smelters?

25 A. If the price goes up and if other

1 costs stay where they are, yes, it would improve
2 profitability.

3 Q. Okay. And in yesterday's testimony
4 we -- Mr. Smith discussed the Midwest premium, I
5 believe it was called.

6 A. Yes.

7 Q. Are you familiar with that?

8 A. Yes, I am.

9 Q. Would you mind telling -- are you
10 aware of what states are included in that premium?

11 A. All of the U.S. smelters obtain the
12 U.S. -- Midwest premium.

13 Q. Midwest premium. Okay. You've
14 stated in your testimony and in your deposition
15 that several U.S. aluminum smelters have closed due
16 to their inability to secure special electricity
17 rates, have you not?

18 A. I did.

19 Q. Okay. In fact, some of those
20 smelters were former clients of yours?

21 A. That is correct.

22 Q. Would you agree with the Wall Street
23 Journal statement that western aluminum producers
24 have been battered after they built capacity in
25 anticipation of demand from China?

1 A. I have no independent basis to either
2 agree or disagree.

3 **Q. Okay. Would you agree, then, with**
4 **the Wall Street Journal statement that China**
5 **developed its own aluminum industry, leaving the**
6 **U.S. smelters scrambling to reduce their**
7 **production?**

8 A. I'm not sure what that statement
9 means. Could you just repeat it?

10 **Q. Sure. Would you agree with the Wall**
11 **Street Journal statement that China developed its**
12 **own aluminum industry and, therefore, it did not**
13 **need aluminum from U.S. smelters, which left**
14 **U.S.-based aluminum smelters scrambling to reduce**
15 **their production?**

16 A. Again, I don't have any independent
17 knowledge to know that direct relationship.
18 Clearly China has built many smelters and has used
19 all of that capacity for its internal needs. I
20 have no idea to what degree that affected directly
21 the U.S. smelters.

22 MR. ANTAL: Okay. No further
23 questions, your Honor.

24 JUDGE WOODRUFF: Then for Continental
25 Cement?

1 MR. COMLEY: No questions. Thank
2 you.

3 JUDGE WOODRUFF: For Ameren?

4 MR. MITTEN: Your Honor, before I
5 begin, I'd like to mark some exhibits.

6 (AMERENUE EXHIBIT NOS. 131 THROUGH
7 134 WERE MARKED FOR IDENTIFICATION BY THE
8 REPORTER.)

9 MR. MITTEN: Your Honor, as soon as
10 the exhibits get passed out, I'll identify for
11 everyone the numbers that have been given to them.

12 JUDGE WOODRUFF: 131 then would be
13 the Opinion and Order from the Commission of Ohio?

14 MR. MITTEN: Yes. It's the 2009
15 Order, as you can see from the last page. 132 is
16 the 2013 Order from the Ohio Commission.

17 JUDGE WOODRUFF: What we've just been
18 handed was the data request.

19 MR. MITTEN: Your Honor, I think the
20 package that you got has three exhibits in it.

21 JUDGE WOODRUFF: I see.

22 MR. MITTEN: And 132 is the 2013
23 Order from the Ohio Commission. 133 is the Order
24 from the West Virginia Commission. And 134 is
25 Noranda's response to Ameren Missouri Data

1 Request 2.3.

2 JUDGE WOODRUFF: Whenever you're
3 ready.

4 CROSS-EXAMINATION BY MR. MITTEN:

5 Q. Mr. Fayne, good morning.

6 A. Good morning.

7 Q. I'd like to begin by asking you some
8 questions about your involvement in this case in
9 support of Noranda's request for a rate subsidy.

10 During your deposition, you told me
11 that Noranda first contacted you about
12 participating in this case in December 2013 or
13 January 2014; is that correct?

14 A. Yeah. That was as best I could
15 recall, yes.

16 Q. And Noranda asked you to testify
17 about what was happening in the aluminum industry
18 with regard to electric rates. More specifically,
19 you were asked to provide testimony about Noranda's
20 proposed \$30 per kilowatt hour rate and where that
21 would fall relative to other smelters in the United
22 States, and how Noranda's proposal might be
23 comparable to or different from what other smelters
24 have received from other regulatory commissions; is
25 that correct?

1 A. That is correct.

2 Q. And I think as Staff counsel
3 indicated earlier, this is not the first case in
4 which you have filed or given testimony supporting
5 reduced or special rates for aluminum smelters; is
6 that correct?

7 A. That is correct.

8 Q. You've testified in support of rate
9 subsidies or special rate arrangements for aluminum
10 smelters in Kentucky, West Virginia and Ohio; is
11 that correct?

12 A. They are all special contracts,
13 that's correct.

14 Q. And at page 8 of your direct
15 testimony in this case, you describe two cases in
16 Ohio, one in 2009 and one in 2013, that dealt with
17 a special rate arrangement for Ormet Aluminum's
18 Hannibal smelter. Did you testify in support of
19 the smelter's special rate proposal in each of
20 those two cases?

21 A. Yes, I did.

22 Q. And at page -- pages 8 and 9 of your
23 direct testimony, you mentioned a 2013 case in
24 West Virginia that involved a special rate
25 arrangement for the Ravenswood smelter. Did you

1 **testify in support of the smelter's special rate**
2 **arrangement in that case?**

3 A. Yes, I did, though I -- looking at
4 the order, it was probably a 2012 case versus a
5 2013.

6 **Q. But the order that I gave you was**
7 **dated 2013?**

8 A. No. The order I thought was dated
9 October 4th, 2012.

10 **Q. My mistake. That's the case in which**
11 **you testified in West Virginia?**

12 A. Yes, it is.

13 **Q. And you have before you documents**
14 **that have been marked for identification as Ameren**
15 **Exhibits 131, 132 and 133. Do you see those?**

16 A. I do.

17 **Q. Let me first ask you to look at the**
18 **documents that have been marked as Exhibits 131 and**
19 **132. Turning first to Exhibit 131, is that a copy**
20 **of the Ohio Public Utilities Commission's Opinion**
21 **and Order in the 2009 case that you described at**
22 **page 8 of your direct testimony?**

23 A. I believe it is, yes.

24 **Q. And turning to Exhibit 132, is that a**
25 **copy of the Ohio Public Utilities Commission's**

1 **Opinion and Order in the 2012 case that you**
2 **described in your direct testimony?**

3 A. I believe it is, yes.

4 **Q. Finally, is Ameren Exhibit 133 a copy**
5 **of the West Virginia Public Service Commission's**
6 **Final Order in the 2012 case that you described in**
7 **your direct testimony in this case?**

8 A. Yes.

9 MR. MITTEN: Your Honor, I'd move for
10 the admission into evidence of Ameren Missouri
11 Exhibits 131, 132 and 133.

12 JUDGE WOODRUFF: 131, 132 and 133
13 have been offered. Any objections to their
14 receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, they
17 will be received.

18 (AMERENUE EXHIBIT NOS. 131, 132 AND
19 133 WERE RECEIVED INTO EVIDENCE.)

20 BY MR. MITTEN:

21 **Q. During your deposition, you told me**
22 **that because you participated in both the Ohio and**
23 **West Virginia cases that we just discussed, that**
24 **you had read the final orders in those cases and**
25 **were generally familiar with the contents of those**

1 orders.

2 A. Yes.

3 Q. Do you recall that?

4 A. As I indicated, I hadn't read them
5 recently, but yes, I am familiar with them.

6 Q. And because you referenced both the
7 Ohio and West Virginia orders in your direct
8 testimony, you were clearly aware of those orders
9 at the time you wrote that testimony; is that
10 correct?

11 A. Oh, yes.

12 Q. Let's first focus on Exhibit 131, the
13 2009 Ohio order. The special rate arrangement for
14 Ormet's Hannibal smelter that the Ohio Commission
15 approved in 2009 based rates for the smelter on the
16 LME price of aluminum; is that correct?

17 A. That is correct.

18 Q. And as the LME price of aluminum
19 increased, so did the rates the smelter paid for
20 electricity; is that correct?

21 A. They both went up and down depending
22 on the price of aluminum.

23 Q. And the Ohio Commission also capped
24 the amount of rate subsidies the smelter could
25 receive in any particular year; is that correct?

1 A. That is correct.

2 **Q. The Ohio Commission also tied rate**
3 **subsidies to a commitment to maintain certain**
4 **minimum levels of employment; is that correct?**

5 A. There was an adjustment depending on
6 employment levels, that is correct.

7 **Q. And the adjustment that you're**
8 **referring to, if the smelter failed to honor its**
9 **adjustment and reduced employment below a minimum**
10 **level, the amount of the rate subsidy decreased; is**
11 **that correct?**

12 A. It would decrease for that specific
13 year, yes.

14 **Q. The Ohio Commission's order also**
15 **included provisions that required the smelter to**
16 **pay rates in excess of the electric utility's**
17 **normal tariff if the LME price of aluminum exceeded**
18 **a certain target price; is that correct?**

19 A. With certain caps, yes, that was
20 correct.

21 **Q. Okay. If we can now shift our focus**
22 **to Exhibit 132, which is the Ohio Commission's 2012**
23 **order. In that order the Ohio Commission amended**
24 **the special rate arrangement that had been approved**
25 **in 2009; is that correct?**

1 A. They made some -- they accepted
2 certain proposed changes, that's correct.

3 **Q. And in the 2012 order, the Ohio**
4 **Commission approved an energy rate of 50**
5 **megawatts -- \$50 per megawatt hour plus applicable**
6 **rate riders and distribution charges but excluding**
7 **fuel adjustment clause charges, and any discounts**
8 **to which Ormet was entitled based on the LME price**
9 **of aluminum would be deducted from that \$50 per**
10 **megawatt hour rate; is that correct?**

11 A. The -- yes, but let me explain. The
12 tariff rate itself was about \$50, and the company
13 was proposing some fuel adjustments in excess of
14 the \$50. So the Commission -- the proposal from
15 Ormet and what the Commission accepted was to cap
16 the tariff amount at \$50 for that period of time.

17 **Q. And again, the starting point for the**
18 **discounts was \$50 per megawatt hour plus applicable**
19 **riders, correct?**

20 A. Yes.

21 **Q. If we can turn next to Exhibit 133,**
22 **the West Virginia order. The West Virginia**
23 **Commission based rates for the Ravenswood smelter**
24 **on the LME price of aluminum; is that correct?**

25 A. That is correct.

1 Q. And like the Ohio Commission, the
2 West Virginia Commission required the smelter to
3 pay a premium above the utility's tariff rate if
4 the LME price of aluminum exceeded a certain level;
5 is that correct?

6 A. With caps, yes.

7 Q. The West Virginia Commission also
8 included a requirement that the corporate parent of
9 the Ravenswood smelter provide a written guarantee
10 that the parent would pay back a portion of the
11 subsidies under the special arrangement in the
12 event the smelter went out of business or was
13 otherwise unable to pay; is that correct?

14 A. Let me clarify that. In terms of the
15 basic discount that the Commission authorized,
16 there was no parent guarantee pay required, nor was
17 there any requirement to pay it back.

18 To the degree that the Commission
19 provided additional flexibility to the company to
20 receive a discount in excess of the authorized
21 amount in any given year, it was for that amount
22 that a payback was required, and it was for that
23 amount that a guarantee was required, but there was
24 nothing required for the basic discount provided.

25 Q. And the basic discount, are you

1 talking about the \$20 million per year?

2 A. I'm talking about the \$40 million per
3 year.

4 Q. \$40 million per year. But anything
5 above that, there was a guarantee by the corporate
6 parent that it would pay that back in the event the
7 smelter went out of business; is that correct?

8 A. That is correct.

9 Q. And the West Virginia Commission also
10 required Ravenswood to make a commitment to invest
11 additional capital in the smelter; is that correct?

12 A. That is correct.

13 Q. Now, before we leave the West
14 Virginia order, in your direct testimony in this
15 case, you mentioned legislation passed in
16 West Virginia in 2012 that provided the legal
17 authority to enable the West Virginia Commission to
18 approve special contracts for energy-intensive
19 industries; is that correct?

20 A. I did indicate that there was
21 legislation passed. I don't believe it was
22 required for this to happen, however.

23 Q. But you did identify legislation that
24 was passed in 2012; is that correct?

25 A. That is correct, but the Commission

1 did provide special contracts and discounts for
2 many, many years prior to that legislation.

3 Q. The response to my question is you
4 did identify special legislation in 2012, correct?

5 A. I did.

6 Q. And you identified that legislation
7 as Senate Bill 256; is that correct?

8 A. That is correct.

9 Q. Could you please turn to page 5 of
10 the West Virginia order? Beginning on that page,
11 the West Virginia Commission discusses legislation
12 passed in 2012 designed to facilitate the restart
13 of the Ravenswood smelter, but that discussion
14 identifies the legislation as HB 101.

15 Is HB 101 the same legislation you
16 identified as Senate Bill 256 in your direct
17 testimony?

18 A. Yes, it is.

19 Q. And one of the features of HB 101
20 that's discussed in the West Virginia Commission's
21 order is that it provided for the use of funds
22 derived from West Virginia's coal severance tax to
23 provide electric rate subsidies for certain large
24 industrial customers; is that correct?

25 A. That is correct. That was roughly

1 half of the amount.

2 Q. \$20 million per year; is that
3 correct?

4 A. Just short of that, but yes.

5 Q. Has Noranda gone to the Missouri
6 General Assembly to seek tax revenues to fund any
7 portion of the rate subsidies that Noranda is
8 proposing in this case?

9 A. Not to my knowledge.

10 Q. At pages 6 and 7 of your direct
11 testimony, you also describe a special rate
12 arrangement between Alcoa's Massena smelters and
13 the New York Power Authority, which is sometimes
14 referred to as NYPA, all capitals, N-Y-P-A; is that
15 correct?

16 A. That is correct.

17 Q. Now, NYPA is not a utility regulatory
18 commission, but is instead a public power authority
19 that sells hydroelectric and nuclear power on a
20 wholesale basis; is that correct?

21 A. That is correct.

22 Q. During your deposition, you told me
23 that you are generally familiar with the terms of
24 the wholesale power agreement between NYPA and
25 Alcoa, and you also told me -- is that correct?

1 A. That is correct.

2 Q. And focusing your attention on
3 Exhibit 134, which is the response to Ameren
4 Missouri Data Request DR 2.3.

5 MR. MITTEN: I'll note for the record
6 that that response is HC, but I don't think any of
7 my questions are going to get into highly
8 confidential information. But if I cross the line,
9 I assume Mr. Mallin will tell me.

10 MR. MALLIN: I appreciate that.

11 JUDGE WOODRUFF: Are you saying that
12 134 should be marked as HC?

13 MR. MALLIN: It is marked HC, your
14 Honor.

15 JUDGE WOODRUFF: I'll certainly note
16 that on my list here.

17 MR. MALLIN: Thank you, your Honor.

18 BY MR. MITTEN:

19 Q. Mr. Fayne, is the response to Ameren
20 Missouri DR 2.3 a copy of the power supply
21 agreement between the New York Power Authority and
22 Alcoa's Massena smelter?

23 A. Yes, it is.

24 MR. MITTEN: Your Honor, I move for
25 the admission into evidence of Exhibit 134.

1 JUDGE WOODRUFF: 134HC has been
2 offered. Any objections to its receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, it
5 will be received.

6 (AMERENUE'S EXHIBIT NO. 134HC WAS
7 RECEIVED INTO EVIDENCE.)

8 BY MR. MITTEN:

9 Q. Mr. Fayne, under that power supply
10 agreement, the rate discount that NYPA provided to
11 the Massena smelter was also tied to the LME price
12 of aluminum; is that correct?

13 A. The rate here was -- was set as a
14 base rate, which is what the power authority set,
15 and then there were some adders depending on the
16 LME price.

17 Q. So at least in part the rate was
18 based upon the LME price of aluminum?

19 A. Oh, no question, yes. That's right.

20 Q. And under the terms of that
21 agreement, in particular Schedule A of the
22 agreement, Alcoa is obligated to maintain a minimum
23 of 900 jobs at the smelter; is that correct?

24 A. That is correct.

25 Q. And Alcoa is also obligated under

1 that same Schedule A to invest \$600 million in the
2 overhaul of the smelter; is that also correct?

3 A. Yes. They were obligated to invest
4 \$600 million in the Massena East facility.

5 Q. Now, Mr. Fayne, we previously
6 established that at the time Noranda filed its
7 application, including your direct testimony, you
8 were aware of the conditions imposed in Ohio,
9 West Virginia and New York to the special rate
10 arrangements that had been approved in each of
11 those states; is that correct?

12 A. That is correct.

13 Q. But despite that fact, and despite
14 the fact that Noranda hired you to testify about
15 what special rate arrangements aluminum smelters
16 had received in other states, Noranda's special
17 rate proposal in this case does not base the price
18 of electricity provided to the New Madrid smelter
19 on the LME price of aluminum; is that correct?

20 A. That is correct.

21 Q. And it does not cap the amount of
22 rate subsidies that the New Madrid smelter would
23 receive in any particular year; is that also
24 correct?

25 A. It fixes the price, which is another

1 way of capping the amount.

2 **Q. It's your understanding that, under**
3 **Noranda's proposal, the amount of subsidies that it**
4 **receives in a particular year is capped?**

5 A. No. I'm just suggesting that they
6 fix -- the design of this rate was to affix the
7 rate as opposed to establish a specific cap since
8 there was no way of knowing where the electric rate
9 would go.

10 **Q. So again, let me go back to my**
11 **previous question. Noranda's proposal does not cap**
12 **the amount of rate subsidies that Noranda could**
13 **receive in any particular year; is that correct?**

14 A. It does not explicitly identify a
15 capped number. It effectively caps it by
16 establishing a fixed rate.

17 **Q. But if costs go up in the future, the**
18 **amount of subsidies that would flow to Noranda**
19 **under that \$30 per megawatt hour rate would**
20 **increase, don't you agree?**

21 A. Yes, I do.

22 **Q. So it doesn't cap the amount of**
23 **subsidies, it merely caps the rate?**

24 A. That's correct.

25 **Q. And the amount of increases that**

1 could occur in that rate in the future?

2 A. That is correct.

3 Q. Noranda's proposal does not also --
4 also does not include any commitment from Noranda
5 to maintain a minimum level of employment at the
6 New Madrid smelter?

7 A. As originally filed, that is correct.
8 But as we heard yesterday, that will change.

9 Q. And as of nine o'clock this morning,
10 we still haven't heard the terms of that
11 commitment; is that correct?

12 A. That is correct.

13 Q. And Noranda's proposal would not
14 obligate the New Madrid smelter to pay a premium
15 above Ameren Missouri's tariff rate if the LME
16 price of aluminum exceeds a certain level; is that
17 correct?

18 A. Yes. We've already discussed, this
19 is not an LME-based rate.

20 Q. And Noranda's proposal doesn't
21 include any commitment to make additional
22 investment in the New Madrid smelter; is that
23 correct?

24 A. Once again, the filing did not
25 include that, but as we heard yesterday, there will

1 be a proposal to commit to an investment level.

2 Q. It's your understanding that there's
3 going to be a proposal both for minimum employment
4 and minimum investment?

5 A. That is correct.

6 Q. But again, as of nine o'clock the
7 final day of the hearing in this case, we still
8 haven't seen that proposal, correct?

9 A. The hearing is not over yet, but that
10 is correct.

11 Q. And finally, Noranda's plan does not
12 obligate Noranda's corporate parent or anyone else
13 to pay back to Ameren Missouri any rate subsidies
14 the New Madrid smelter receives under the rate
15 subsidy plan; is that correct?

16 A. There would be no basis to do that,
17 and nor is that typically required.

18 Q. But the simple answer to my question
19 is, there is no guarantee under Noranda's plan to
20 pay back any of the subsidies?

21 A. There is no guarantee.

22 Q. At page 3 of your surrebuttal
23 testimony in this case, you criticize Ameren
24 Missouri's witness Robert Mudge for his testimony
25 comparing the total operating costs of the

1 New Madrid smelter to the total operating costs of
2 other smelters in the United States. And in
3 response to Mr. Mudge's analysis, you state that,
4 and I quote, it is the cost of electricity that
5 most significantly determines the ongoing success
6 and viability of an aluminum smelter, close quote.
7 Did I correctly quote your testimony?

8 A. Yes.

9 Q. Now, in his direct testimony in this
10 case, Noranda's CEO Kip Smith defined the term
11 liquidity to mean cash on hand plus available
12 borrowings, and I assume you agree with Mr. Smith's
13 definition?

14 A. I certainly do.

15 Q. And Mr. Smith also stated in his
16 direct testimony that electricity is the smelter's
17 largest single item of expense, representing
18 approximately one-third of the smelter's operating
19 cost. I assume you agree with that aspect of
20 Mr. Smith's testimony as well?

21 A. Yes, I do.

22 Q. So that means that two-thirds of the
23 smelter's costs are not related to the cost of
24 electricity; is that correct?

25 A. That is correct.

1 Q. And if Noranda were able to reduce
2 some of the two-thirds of its costs that are not
3 related to the price of electricity, would those
4 reductions affect Noranda's liquidity?

5 A. Yes, and I believe Mr. Smith
6 indicated that that has already been done.

7 Q. In its response to Ameren Missouri
8 DR 4.3, Noranda identified alumina as its second
9 largest cost of producing aluminum at the
10 New Madrid smelter. Assuming all of its other
11 costs remain static, reducing the cost of alumina
12 would help Noranda improve its cash position, don't
13 you agree?

14 A. Yes.

15 Q. But during your deposition you
16 couldn't tell me any steps Noranda has taken in the
17 last 12 months to reduce its cost of alumina; is
18 that correct?

19 A. That would be Mr. Smith's area of
20 expertise.

21 Q. In its response to Ameren Missouri
22 DR 4.4, Noranda identified labor as its third
23 largest cost of producing aluminum. Assuming all
24 other costs of the smelter remain static, reducing
25 the cost of labor would help Noranda improve its

1 cash position? And for purposes of my question,
2 you should assume that the kinds of cost reductions
3 in labor I'm talking about are the kinds that would
4 not affect production, and more specifically I'm
5 talking about reducing labor costs by reducing head
6 count that doesn't affect production or reducing
7 wages and benefits. Would those kinds of
8 reductions help Noranda improve its cash position?

9 A. Yes, they are -- would, and I believe
10 Mr. Smith addressed that yesterday.

11 Q. But during your deposition, you
12 couldn't tell me anything that Noranda has done in
13 the last 12 months to reduce the kinds of labor
14 costs that I just described?

15 A. I'm not familiar with that, that's
16 correct.

17 Q. In its response to Ameren DR 4.5,
18 Noranda identified carbon, which the response
19 defines as coke and pitch, as the fourth largest
20 cost of producing aluminum at the New Madrid
21 smelter. Assuming all other costs at the smelter
22 remain static, reducing the cost of carbon would
23 help Noranda improve its cash position, correct?

24 A. Yes.

25 Q. During your deposition you couldn't

1 tell me any steps that Noranda had taken in the
2 last 12 months to reduce the cost of carbon; is
3 that correct?

4 A. That is correct.

5 Q. And finally, in its response to
6 Ameren Missouri DR 4.6, Noranda said its fifth
7 largest cost of producing aluminum at the smelter
8 varies. Now, assuming all other costs at the
9 smelter remain static, would reducing costs other
10 than those for electricity, alumina, labor and
11 carbon help Noranda improve its liquidity position?

12 A. Yes.

13 Q. But during your deposition you
14 couldn't tell me any steps that Noranda had taken
15 in the last 12 months to reduce any of those other
16 costs; is that correct?

17 A. That is correct.

18 MR. MITTEN: I don't have any further
19 questions, your Honor. Thank you, Mr. Fayne.

20 THE WITNESS: Thank you.

21 JUDGE WOODRUFF: Come up for
22 questions from the Bench. Mr. Chairman?

23 CHAIRMAN WOODRUFF: No. Thank you.

24 JUDGE WOODRUFF: Commissioner Stoll?

25 QUESTIONS BY COMMISSIONER STOLL:

1 Q. I will ask one question. Thank you
2 for your testimony. In -- actually, I think this
3 is HC.

4 JUDGE WOODRUFF: Do we need to go
5 in-camera?

6 COMMISSIONER STOLL: Just very
7 briefly. I'd like a clarification.

8 JUDGE WOODRUFF: All right. We're
9 going to go in-camera. Anyone that needs to leave,
10 please leave. This will be a short one.

11 (REPORTER'S NOTE: At this point, an
12 in-camera session was held, which is contained in
13 Volume 8, pages 541 through 549 of the transcript.)

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1 QUESTIONS BY COMMISSIONER HALL:

2 Q. Exhibits 131, 132 and 133, I have not
3 read them, and I think the answers to these
4 questions might be able to be discerned from
5 reading them, but since I have an expert on the
6 stand I'm going to go ahead and ask you a couple
7 questions about it.

8 To the -- it sounds like there was a
9 subsidy provided to two different smelters
10 partially from taxpayers, partially from
11 ratepayers; is that correct?

12 A. The difference -- it differed by
13 state. For example, in Ohio the full -- to the
14 degree there was a discount provided, it was
15 charged to other customers, the remaining customers
16 in Ohio of that utility.

17 In West Virginia, it was two parts.
18 There was a part that was -- came from tax credits
19 and the other -- well let me back up.

20 In the original special contract in
21 West Virginia, which is not the subject of the
22 order we have here, but in the original one which
23 lasted from 2006 to 2000-- until this -- well,
24 until 2012, to the degree that there was a discount
25 provided, it was picked up by other customers.

1 In the proposed -- the last order,
2 which was never implemented in West Virginia, it
3 was split in two parts. There was a part that was
4 a tax credit and then there was a part that was
5 borne by other customers.

6 COMMISSIONER HALL: I don't believe I
7 have any other questions. Thank you.

8 CHAIRMAN KENNEY: I have -- sorry.

9 JUDGE WOODRUFF: Go ahead,
10 Mr. Chairman.

11 CHAIRMAN KENNEY: No. Go ahead.
12 I'll wait.

13 JUDGE WOODRUFF: Commissioner Rupp?

14 COMMISSIONER RUPP: I get to go
15 before the Chairman? It's a good day.

16 QUESTIONS BY COMMISSIONER RUPP:

17 **Q. Thank you, sir, and I apologize if**
18 **this was mentioned. I was trying to write down**
19 **some figures and look at your testimony. When it**
20 **came to Hawesville and Sebree, you said those were**
21 **at market price?**

22 A. That is correct.

23 **Q. And what's -- currently what's -- if**
24 **you had to calculate a dollar amount of what**
25 **they're paying now based off last week's market**

1 price, what would it be?

2 A. Well, I don't have -- unfortunately,
3 I don't know to what degree either Hawesville or
4 Sebree purchase forward contracts in the
5 electricity market and to what degree they may just
6 be in the spot market. The \$37 that I reflected
7 here is what they -- they indicated was their
8 expectation, and that's the only data I have.

9 Q. So I can assume roughly \$37 for both
10 of those if I wanted to?

11 A. That's what I -- that's the best I
12 can do now, yes.

13 Q. I understand.

14 COMMISSIONER RUPP: Okay. That's the
15 only question I had. Thank you.

16 JUDGE WOODRUFF: Mr. Chairman?

17 QUESTIONS BY CHAIRMAN KENNEY:

18 Q. Sorry, Mr. Fayne. I wasn't going to
19 ask any questions, but something that Commissioner
20 Hall asked triggered a thought.

21 So looking at that exhibit to -- the
22 HWF-1, that's HC, so let's go in-camera.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, which is contained in
25 Volume 8, pages 553 through 558 of the transcript.)

1 JUDGE WOODRUFF: All right. We're
2 back in regular session.

3 FURTHER QUESTIONS BY COMMISSIONER STOLL:

4 Q. I was just curious, what role does
5 aluminum recycling, does that play any role in this
6 at all or --

7 A. I -- obviously it does affect the
8 supply, but I'm not sure that -- I don't know to
9 what extent it affects the price.

10 COMMISSIONER STOLL: Okay. Thank
11 you.

12 JUDGE WOODRUFF: All right. Move to
13 recross. Anyone wish to recross based on questions
14 from the Bench? I see Public Counsel first.

15 RECROSS-EXAMINATION BY MR. POSTON:

16 Q. Good morning. I just have one
17 question. You were asked questions about the LME
18 price, and yesterday we'd heard about a ten-year
19 cycle involving aluminum prices. Do you know
20 anything about that? Can you explain what that is?

21 A. I know generally about it. Mr. Smith
22 would be a better source. But it is just -- really
23 all that it is is a historical study to evaluate
24 what has happened to the commodity price over time,
25 and based on an empirical review of that data, it

1 appears that there is a ten-year cycle where, as
2 Mr. Smith explained yesterday, about part of the
3 time it's above the median price, about
4 two-thirds -- twice that amount of time it is
5 below, and then about 60 percent of the time it's
6 at that median price.

7 And it's just driven by markets.
8 It's not predictable with precision. It's not a
9 specific shape. But it basically says that if you
10 look out over a ten-year time horizon, the
11 probability is, is that off that median price it
12 will be above that some part of the time, below it
13 some part of the time and at the median other parts
14 of the time. But it's purely a review of the
15 historical evidence.

16 MR. POSTON: Thank you.

17 JUDGE WOODRUFF: All right. Now to
18 Ameren.

19 MR. MITTEN: Thank you, your Honor.

20 RECROSS-EXAMINATION BY MR. MITTEN:

21 **Q. Mr. Fayne, Judge Woodruff asked you**
22 **some questions about the international producers of**
23 **aluminum. Do you recall those?**

24 A. I do.

25 **Q. And in your response you indicated**

1 that one of the advantages that international
2 suppliers of aluminum have is that they oftentimes
3 are heavily subsidized by the countries in which
4 they operate?

5 A. That's correct.

6 Q. Are those subsidies broad-based or
7 are they the kinds of subsidies that Noranda is
8 seeking in this case from the customers of a
9 particular serving utility?

10 A. I have no idea how they are -- what
11 the -- what the underlying source of the subsidy is
12 except that the subsidy is granted.

13 Q. You mentioned Saudi Arabia, that the
14 government had set the price of aluminum. Would
15 you consider that a broad-based subsidy or a more
16 narrow-based subsidy like Noranda is seeking in
17 this case?

18 A. Well, I don't mean to be difficult
19 here, but when you talk about broad-based, I assume
20 the implication is that someone -- some broad base
21 of someone is paying for it. I have no idea how --
22 what the payment for that subsidy, where it comes
23 from in Saudi Arabia.

24 I think by your definition I would
25 have no problem agreeing it is -- it is a

1 broad-based one as compared to what we're proposing
2 here.

3 **Q. You also mentioned that some of the**
4 **advantages that these international smelters have**
5 **is that they're state of the art. How would a**
6 **state-of-the-art smelter have an advantage over,**
7 **say, the New Madrid smelter?**

8 A. Specifically, I don't know because I
9 know the New Madrid smelter continually upgrades
10 its process, but I -- so I don't know what the
11 efficiency is in terms of converting the raw
12 materials into aluminum is, how state of the art
13 compares to where Noranda is today.

14 As Mr. Smith indicated yesterday, in
15 the commodity business you're constantly looking
16 for productivity improvements. I'm aware that
17 Noranda is constantly doing that. I just don't
18 know where they are relative to what a new facility
19 would be.

20 **Q. Well, for purposes of my question,**
21 **assume that there are efficiencies in**
22 **state-of-the-art smelters that aren't available to**
23 **Noranda at the New Madrid smelter. Would it be**
24 **fair to characterize Noranda's proposal as an**
25 **attempt to subsidize those inefficiencies?**

1 A. No.

2 **Q. Why not?**

3 A. Because I think the fundamental issue
4 here is that the price of electricity, which I do
5 believe is the driver of whether smelters stay in
6 business or don't, is above -- is well above the
7 global mean. And on that basis, they are at a
8 disadvantage. All that is being asked for is to
9 put them on the same basis with that global.

10 **Q. But if the New Madrid smelter were as**
11 **efficient as some of the state-of-the-art smelters,**
12 **the subsidy that would be required would be smaller**
13 **or there might not be any subsidy required at all;**
14 **would you agree?**

15 A. The fundamental issue here is that
16 New Madrid has taken whatever action it has taken
17 to become efficient. It has taken whatever action
18 it has to reduce its costs, which Mr. Smith
19 certainly has indicated they are doing all that
20 they possibly can to control. They still have the
21 liquidity problem, and the only solution today is
22 electricity. So no, I believe the electricity is,
23 unfortunately, the issue that needs to be addressed
24 today.

25 **Q. But again, my question had to do with**

1 whether -- if the New Madrid smelter were state of
2 the art efficient, it's at least possible that the
3 subsidies that would be required would be less than
4 Noranda is asking for in this case or there might
5 not be any need for subsidies at all. Do you agree
6 with me?

7 A. I -- given the fact that I don't have
8 any idea what the different cost structure would be
9 from Noranda's position today to a state-of-the-art
10 facility, and I understand a state-of-the-art
11 facility has on the other side of it significant
12 investment in terms of capital to build that
13 state-of-the-art facility which needs to be
14 recovered, I just have no basis to either agree or
15 disagree with you.

16 MR. MITTEN: My next questions are
17 going to relate to Mr. Fayne's Exhibit HWF-1, so we
18 probably ought to go in-camera, your Honor.

19 JUDGE WOODRUFF: All right. Back
20 in-camera. I'll give the audience their exercise.

21 (REPORTER'S NOTE: At this point, an
22 in-camera session was held, which is contained in
23 Volume 8, pages 565 through 569 of the transcript.)

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1 MR. MALLIN: Let me restate my
2 question.

3 REDIRECT EXAMINATION BY MR. MALLIN:

4 Q. Mr. Fayne, I'm looking at Exhibit 131
5 and 132 with respect to Ormet and the orders from
6 the Public Utilities Commission of Ohio. How did
7 that work out? Is Ormet still operating today as a
8 smelter?

9 A. No. Ormet shut down in either
10 October or November of 2013, and I understand that
11 the only bidder for that facility right now is a
12 scrap dealer.

13 Q. Notwithstanding whatever relief on
14 rate may have been afforded to them, the smelter
15 shut down?

16 A. The -- the process was that in -- as
17 part of that proposal, the -- Ormet successfully
18 reduced its labor costs, substantially cut back on
19 its pension obligations, and received concessions
20 on a variety of cost structures. The only thing
21 standing in its way of continuing operation was an
22 electric rate which they were unable to get and,
23 therefore, they shut down.

24 Q. How many jobs were lost?

25 A. I can't recall precisely, but I would

1 assume it was over a thousand.

2 **Q. Looking at Exhibit No. 133, the**
3 **Public Service Commission order dealing with the**
4 **plant at Ravenswood; is that correct, sir?**

5 A. Yes.

6 **Q. Now, is that plant still operating?**

7 A. That plant had a special contract, as
8 I mentioned earlier, in 2006 which was tied to the
9 LME. During the recession and the decline in the
10 pricing, it was forced to shut down in 2009. The
11 order that you have in front of you as
12 Schedule 133, Exhibit 133 was a proposed rate to
13 allow the smelter to reopen.

14 Unfortunately, Century did not
15 believe that the discounts provided and the
16 obligations required in that contract were viable
17 to restart the smelter, and it is still shut down.

18 **Q. So notwithstanding the request that**
19 **was made by Century for Ravenswood, that particular**
20 **smelter today still is not operating; is that**
21 **correct?**

22 A. That's correct.

23 MR. MALLIN: Thank you, your Honor.

24 JUDGE WOODRUFF: All right. Then you
25 may step down. Commissioner Kenney.

1 COMMISSIONER W. KENNEY: Judge, as is
2 often the situation here, we have other cases
3 before us. I have to go to Warsaw for a local
4 public hearing and then Lebanon, where Commissioner
5 Rupp will be joining me, but I will be calling in
6 to try to keep in contact. Thank you.

7 JUDGE WOODRUFF: And the phone is
8 here. We're finished with you, Mr. Fayne.

9 Next witness is Mr. Haslag.

10 MR. MALLIN: Your Honor, may I take a
11 five-minute break?

12 JUDGE WOODRUFF: Certainly. We're
13 due for a break anyway. Let's take a break and
14 come back at ten o'clock.

15 (A BREAK WAS TAKEN.)

16 JUDGE WOODRUFF: Let's come to order,
17 please. While we were on break, Mr. Haslag has
18 taken the stand.

19 (Witness sworn.)

20 JUDGE WOODRUFF: You may inquire.

21 MR. MALLIN: Thank you, your Honor.

22 JOSEPH HASLAG testified as follows:

23 DIRECT EXAMINATION BY MR. MALLIN:

24 Q. Dr. Haslag, could you please state
25 your full name.

1 A. Joseph Haslag.

2 **Q. By whom are you employed?**

3 A. I am a professor of economics at the
4 University of Missouri-Columbia.

5 **Q. And in what capacity?**

6 A. I serve as a professor at the
7 University.

8 **Q. Any other positions there?**

9 A. I am also the director of the
10 Economic Policy Analysis and Research Center.

11 **Q. Dr. Haslag, are you the same**
12 **Dr. Haslag who prefiled both written direct and**
13 **surrebuttal testimony in this matter?**

14 A. I am.

15 **Q. Do you have any additions or**
16 **corrections that you wish to make to that**
17 **testimony?**

18 A. No.

19 **Q. If I were to ask you today the same**
20 **questions that are set forth in your prefiled**
21 **written testimony, would your answers be the same?**

22 A. Yes.

23 MR. MALLIN: Your Honor, I move for
24 the admission of Exhibit 10, which is highly
25 confidential, Exhibit 11 and Exhibit 12.

1 JUDGE WOODRUFF: 10, 11 and 12 have
2 been offered. Any objections to their receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, they
5 will be received.

6 (NORANDA EXHIBIT NOS. 10HC, 11 AND 12
7 WERE RECEIVED INTO EVIDENCE.)

8 MR. MALLIN: Thank you, your Honor.
9 I tender Dr. Haslag for cross-examination.

10 JUDGE WOODRUFF: For the Retailers?
11 He's not here at the moment. Consumers Council is
12 not here either. Wal-Mart? Not here. River
13 Cement?

14 MS. LANGENECKERT: No questions.

15 JUDGE WOODRUFF: Public Counsel?

16 MR. POSTON: No questions.

17 JUDGE WOODRUFF: Staff?

18 MS. MYERS: We just have a few
19 questions.

20 CROSS-EXAMINATION BY MS. MYERS:

21 Q. Good morning, Dr. Haslag.

22 A. Good morning.

23 Q. As has been mentioned, my name is
24 Jamie Myers. I'm a Rule 13 certified law student,
25 and I'm working under the supervision of Kevin

1 Thompson here, and we just have a few questions for
2 you.

3 First of all, Dr. Haslag, you're
4 being compensated for the testimony you filed in
5 this case, correct?

6 A. I am.

7 Q. All right. And didn't you also file
8 testimony on behalf of Noranda in a rate case in
9 2010?

10 A. I did.

11 Q. And you were compensated for that
12 testimony as well?

13 A. I was.

14 Q. Okay. Now, in the direct testimony
15 you prepared for this case, I believe it's been
16 labeled Exhibit 10, one of the things you do is you
17 attempt to quantify Noranda's impact on the
18 Missouri economy in terms of GDP; is that correct?

19 A. Yes.

20 Q. And in the testimony you prepared in
21 2010, you also attempted to quantify Noranda's
22 impact on the Missouri economy?

23 A. Yes.

24 Q. So in this testimony, Exhibit 10, for
25 this proceeding, you reported that over the next

1 25 years Missouri's economy would forego nearly
2 \$9 million in economic activity if Noranda were to
3 close, correct?

4 A. No. It's 9 billion, not 9 million.

5 Q. I'm sorry. 9 billion. Thank you for
6 correcting me. 9 billion. And in your 2010
7 testimony you stated that Missouri's economy would
8 forego nearly 3 billion in economic activity over
9 the next 25 years if Noranda were to close; is that
10 correct?

11 A. Yes. If you'll give me the chance to
12 explain, I can clear that difference up.

13 Q. Sure. That would be great.

14 A. In the 2010 case, Mr. Charles Skoda,
15 I had asked him for some data so that I could do
16 these calculations. I shared with him that the
17 minimum data that I needed was the value of the
18 physical capital that is -- the value of the
19 physical capital at the New Madrid smelting plant.

20 The model that I use is called an
21 AK model in the profession. The inputs into that,
22 if you want to think about it, is that you take
23 human and physical capital that is transferred --
24 that is translated into -- so that's a stock, and
25 that's translated into a flow of goods and services

1 that are produced within the state.

2 And so what he gave me was just the
3 physical capital amount. So physical capital is
4 roughly about one-third of total physical and human
5 capital. So based on that number, I came up with
6 somewhere in the neighborhood in the 2010 testimony
7 of about \$3 billion over at that years.

8 And now what Ms. Stacy Miller gave me
9 was, in fact, a different data set, an improved
10 data set upon which to base my calculations. She
11 gave me actually the market value of the product
12 that was sold by Noranda, which is consistent with
13 the measure of gross domestic product at the state
14 level that I was measuring to begin with.

15 And so that already had embedded in
16 it both the value of physical capital and human
17 capital that I was looking for. And with the
18 improved data, I got a -- I got a larger number.
19 They're large not matter what. 3 billion to me is
20 a large number. 9 billion is obviously larger.

21 **Q. So what you're saying is the input**
22 **you used, the inputs for your models came -- the**
23 **data came from Noranda?**

24 A. They did.

25 **Q. Did you take any steps to**

1 independently verify that data?

2 A. I did not.

3 Q. And so there's also a difference in
4 your net general revenue data. Is that a similar
5 situation? I know your 2010 data is about
6 \$200 million lower.

7 A. The method that I used to compute the
8 impact on net general revenue is a linear function
9 of the amount of GDP that's lost in the state. So
10 on average, 3.8 percent of every dollar that's
11 brought in -- or every dollar produced in -- value
12 of goods and services produced in the state of
13 Missouri, 3.8 cents of that goes into the net
14 general revenue fund.

15 So rather than trying to construct,
16 which in my view would be kind of a haphazard and
17 mistaken approach, rather than trying to construct
18 it by looking at individual income taxes, corporate
19 income taxes, sales and use tax, doing it
20 piecewise, I take the long-run average, historical
21 average of the ratio of net general revenue to GDP,
22 that 3.8 number that I just mentioned, and
23 correspondingly the difference between the 2010 and
24 the -- and my testimony today is going to be -- is
25 going to result from the fact that the GDP

1 difference that I computed is different in 2013
2 than it was in the 2010 case.

3 **Q. All right. So again, you were**
4 **relying on the data you received from Noranda?**

5 A. Not in this case, no. Once I had the
6 calculation of GDP, it was my own calculation that
7 was determining the effect on net general revenue.

8 MS. MYERS: Okay. Well, thank you,
9 Dr. Haslag. Your Honor, we have no further
10 questions.

11 JUDGE WOODRUFF: Continental Cement?

12 MR. COMLEY: No questions. Thank
13 you.

14 JUDGE WOODRUFF: Ameren?

15 MR. MITTEN: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. MITTEN:

17 **Q. Good morning, Dr. Haslag.**

18 A. Good morning, Mr. Mitten.

19 **Q. I'm going to replot a bit of the**
20 **ground that Staff counsel just talked to you about.**
21 **Do you happen to have a copy of the testimony that**
22 **you filed in Ameren Missouri's 2010 rate case?**

23 A. I do not have that with me, no.

24 MR. MITTEN: May I approach the
25 witness?

1 JUDGE WOODRUFF: You may.

2 BY MR. MITTEN:

3 Q. Is the document I just gave a copy of
4 the testimony that you filed in Ameren Missouri's
5 2010 rate case?

6 A. It certainly appears to be.

7 Q. That's Docket No. ER-2010-0036?

8 A. Yes.

9 Q. And in both the 2010 rate case and
10 the current case, you used the same formula to
11 calculate the impact on state GDP of a smelter
12 closing; is that correct?

13 A. I used the same model economy, yes.

14 Q. And the basic formula is Y equals A
15 times K?

16 A. Correct.

17 Q. Y being the value of the overall
18 state GDP?

19 A. In a given year, yes.

20 Q. And for a baseline you take that
21 state GDP and you trend it 25 years into the future
22 to estimate what the state GDP would be 25 years in
23 the future; is that correct?

24 A. The baseline calculation takes the
25 historical average of the growth rate within the

1 state of Missouri and projects that forward over
2 the next 25 periods, yes, as the calculation.

3 Q. Maybe I oversimplified. You take the
4 existing state GDP, you grow it by the historical
5 annual growth rate for 25 years, and you come up
6 with an estimate of what the state GDP would look
7 like in 25 years if the smelter continued to
8 operate?

9 A. And each year in between that, yes.

10 Q. And then you make a second
11 calculation in which you subtract out the current
12 value of the smelter's GDP, and then you take that
13 net GDP number less the smelter and you trend that
14 forward in the same manner that you trended the
15 overall GDP in the baseline; is that correct?

16 A. That's correct.

17 Q. And you don't have to really be a
18 math major to know that if you start with a lower
19 net number in that second alternate calculation,
20 the number that you come up with 25 years in the
21 future is going to be lower than if it started with
22 a higher number; is that correct?

23 A. That's correct.

24 Q. Now, in the 2010 case, the average
25 annual growth rate in state GDP that you used for

1 both your baseline and your alternate GDP
2 calculation was 1.29 percent; is that correct? I
3 think you'll find that in your 2010 testimony at
4 page 7, line 5.

5 A. The pages are not marked, so if
6 you'll give me just a moment. I found it, and
7 indeed it was. And so that was calculated on -- so
8 there's a consistent measure of Missouri's real GDP
9 computed by the Bureau of Economic Analysis. The
10 consistent measure goes from 1997.

11 I don't -- without the spreadsheet in
12 front of me or without the Internet in front of me,
13 I can only assume that there's about a year or two
14 lag between that. So I probably had data on the
15 Missouri economy from 1997 on a consistent basis
16 through either 2008 or 2009.

17 Q. The historical growth rate in the
18 2010 case you used 1.29 percent; is that correct?

19 A. Correct.

20 Q. In the current case, the historical
21 growth rate you used is 1.03 percent; is that
22 correct?

23 A. Correct.

24 Q. So between the 2010 case and the
25 current case, the growth rate dropped roughly

1 20 percent; is that correct?

2 A. It dropped 25 basis points.

3 Q. And that's with the smelter in
4 operation, correct?

5 A. That's correct.

6 Q. And in both the 2010 case and the
7 current case, in order to make your net GDP
8 calculation, the calculation without the smelter in
9 operation, you needed to know the smelter's
10 contribution to state GDP so that you'd have a
11 starting point; is that correct?

12 A. Correct.

13 Q. And in the 2010 case, Noranda gave
14 you the value of N in your Y equals -- excuse me --
15 the value of K in your Y equals A times K formula;
16 is that correct?

17 A. No. They gave me a partial value of
18 the K. As I indicated in the previous questions,
19 that K value is a measure of both human and
20 physical capital, and what they gave me was a
21 measure of just the physical capital component. So
22 I had a piece of K, not the entire thing.

23 Q. They gave you a piece of K. You
24 added to K, you multiplied that by A, and you came
25 out with Y, which was the contribution to GDP of

1 **the New Madrid smelter; is that correct?**

2 A. Actually, it was just the reverse.

3 So, in fact, what I did was if -- the question that
4 I was asked to do was to compute the impact if the
5 New Madrid smelting plant were to shut down. So I
6 took that K out of the equation. I subtracted it
7 rather than added it.

8 So I had a change in K and then
9 projected forward what the impact would be on
10 Missouri GDP by not the -- so the critical thing
11 for me is the difference between two lines if you
12 were to draw them with the horizontal axis being
13 time and the vertical axis being real gross
14 domestic product produced in the state of Missouri.
15 It's the difference between those two lines that
16 matters.

17 **Q. But again, you calculated the impact**
18 **on state GDP based upon the piece of K that Noranda**
19 **gave you in the 2010 case; is that right?**

20 A. I did, in exactly the way that I just
21 described.

22 **Q. And based upon the piece of K that**
23 **you got from Noranda in 2010, using your formula,**
24 **you calculated that the contribution to state GDP**
25 **from the smelter was \$159 million; is that correct?**

1 A. No. Let me -- let me look at that.
2 The contribution to state GDP?

3 **Q. That's my understanding of your**
4 **testimony. And I'm looking at page 8, line 10 of**
5 **your testimony from the previous case.**

6 A. Okay. I'm sorry. Yes.

7 **Q. So --**

8 A. That's an annual value, I think. Let
9 me see if that's -- yeah. That appears to be the
10 difference between one year's worth of state GDP.

11 **Q. That's one year's contribution to**
12 **state GDP by the New Madrid smelter; is that right?**

13 A. Correct.

14 **Q. And in the current case, Noranda**
15 **didn't give you a piece of K. It gave you what it**
16 **believes the smelter's actual contribution to state**
17 **GDP is for a year; is that correct?**

18 A. I quibble with the word believe.
19 What I -- what I assumed they gave me was the
20 measure of the value of the product that they
21 produced and sold in a given year.

22 **Q. And instead of 159 million, the**
23 **number that Noranda gave you to use for this case**
24 **was 626.371 million; is that correct?**

25 A. That is correct.

1 Q. And again, based upon what we
2 discussed earlier, the impact of more than
3 \$636 million reduction from overall state GDP if
4 you trend that 25 years in the future is going to
5 have a much greater impact than if you simply
6 reduce overall state GDP by \$159 million; is that
7 correct?

8 A. On a per-year basis, yes.

9 Q. And in the 2010 case, when you
10 subtracted your baseline 25-year GDP from the net
11 25-year GDP that you calculated, the difference was
12 2.996 billion, which would be the effect on the
13 state GDP if the Noranda smelter closed; is that
14 correct?

15 A. Assuming that the value of the loss
16 of physical capital only, yes, that's the...

17 Q. And in the current case, based upon
18 that much larger number that Noranda gave you, your
19 25-year estimate of the smelter closing on state
20 GDP is \$8.917 billion; is that correct?

21 A. It is.

22 Q. Now, during your deposition, you told
23 me that Noranda provided you the information that
24 you used both in your 2010 model and in the model
25 in the current case; is that right?

1 A. That's correct.

2 Q. Now, in DR 1.3, Ameren Missouri asked
3 you to provide copies of the information that
4 Noranda provided you and that you used to base your
5 GDP calculation in this case. And in your response
6 to that DR you said that you got the information
7 from Noranda during a telephone conversation; is
8 that correct?

9 A. That's correct.

10 Q. And there actually is no
11 documentation to support the number that you got?

12 A. I don't have anything written or any
13 sheet of paper that gives me those data.

14 Q. And during your deposition, you told
15 me you couldn't recall who had given you the
16 information over the phone?

17 A. That was my -- I recall the 2010
18 event because I dealt with Mr. Charles Skoda. I
19 have since been -- my memory has been revived by
20 meeting Ms. Miller and knowing that she was the one
21 who gave me the data.

22 Q. And since you didn't have anything in
23 writing, it was really impossible for you to tell
24 how Noranda calculated the information that it gave
25 you in either the 2010 case or the current case,

1 **wouldn't you agree?**

2 A. Yes. Typically in my experience in
3 doing this kind of testimony and this kind of
4 economic impact work, I rely on the -- on someone
5 to give me the company-specific data, and I rely on
6 that to be truthful.

7 **Q. And in your response to a question**
8 **from Staff counsel, you indicated that you didn't**
9 **verify the information --**

10 A. That's correct.

11 **Q. -- that Noranda gave you?**

12 **So at the time you prepared your**
13 **direct testimony in this case, you had nothing from**
14 **Noranda in writing showing how it determined its**
15 **calculation of the smelter's annual contribution to**
16 **state GDP; is that correct?**

17 A. The only thing I can say is that I
18 was very clear in asking for a particular set of
19 data. I asked them for exactly what the measure of
20 the value of the goods and services that they
21 produced, what that as -- what they sold for, and I
22 presumed that they answered me truthfully.

23 **Q. But you didn't verify?**

24 A. I did not verify it independently,
25 no, sir.

1 Q. All we can say for sure is that you
2 had an unverified verbal representation of what
3 that effect on state GDP was?

4 A. Yes.

5 Q. Now, before we leave the GDP
6 discussion, you told me during your deposition that
7 even -- that according to your calculations, even
8 if the New Madrid smelter goes out of business,
9 there is still positive GDP growth on a statewide
10 basis for each of the 25 years you studied; is that
11 correct?

12 A. The rest of the state continues to
13 grow, yes, sir.

14 Q. You also used your model to estimate
15 the effect on state general revenues of the smelter
16 going out of business; is that correct?

17 A. Yes.

18 Q. And you made the same kind of
19 estimate in your 2010 testimony as well; is that
20 right?

21 A. I did.

22 Q. And during your deposition, you
23 explained to me that the general revenue effects of
24 a smelter closure are completely derivative of the
25 GDP effects; is that correct?

1 A. That's correct.

2 Q. In fact, the general revenue effects
3 are a percentage of the GDP effect; is that
4 correct?

5 A. Yes.

6 Q. So again, if you start with a larger
7 net number or a smaller net number as a result to
8 do your 25 year trend, at the end of 25 years the
9 difference on general revenue is going to be bigger
10 than it would be if you started with a smaller
11 number; is that right?

12 A. It will.

13 Q. And in 2010, you testified that the
14 25-year effect of a smelter closure on state
15 general revenue would be \$113.86 million; is that
16 correct?

17 A. It is.

18 Q. And in the current case, your
19 estimate of that same 25-year effect is
20 \$338.87 million. Is that also correct?

21 A. It is.

22 Q. And again, the reason for that is
23 because the effect on GDP that you calculated in
24 the current case is roughly three times the effect
25 on GDP that you calculated in the 2010 case?

1 A. I would simply add that I think I got
2 better data this time.

3 **Q. But you can't know that for sure**
4 **because you didn't verify it, correct?**

5 A. Based on what I asked, if I was given
6 what I asked, it would constitute better data.

7 **Q. If you were given what you asked, but**
8 **you didn't verify? You can't sit here today and**
9 **tell the Commission that you got from Noranda**
10 **exactly what you asked for?**

11 A. I have no reason to think that they
12 were untruthful either, but yes, I have not
13 verified it.

14 **Q. Now, in both 2010 and the current**
15 **case, you also looked at the effect of closing the**
16 **New Madrid smelter and what that effect would be on**
17 **local property taxes; is that correct?**

18 A. Yes.

19 **Q. And at page 14 of your direct**
20 **testimony in this case, you state that Noranda**
21 **reported to you that in 2013 it paid \$3.724 million**
22 **in real estate and personal property taxes; is that**
23 **correct?**

24 A. Yes.

25 **Q. Now, did you get that information**

1 during your telephone call with Noranda as well?

2 A. I did.

3 Q. Do you have any written documentation
4 to support that number?

5 A. I don't.

6 Q. Did you do anything to independently
7 verify that that number is correct?

8 A. I did not.

9 Q. And again, as was the case with your
10 GDP and general revenue calculations, the larger
11 number that you start with at the beginning of your
12 trending analysis, the larger number you're going
13 to end with at the end; is that correct?

14 A. That would be the mathematics, yes.

15 Q. And finally, in both the 2010 case
16 and in the current case, you estimate the effect of
17 closing the New Madrid smelter and what effect that
18 would have on the state unemployment fund; is that
19 correct?

20 A. I did.

21 Q. And in the 2010 case, you estimated
22 that closing the smelter would cost the state
23 unemployment insurance fund between 2.7 and
24 \$7.6 million; is that correct?

25 A. That's correct.

1 Q. And that range would depend upon how
2 long an employee was receiving unemployment
3 benefits; is that correct?

4 A. It would.

5 Q. And in the current case, your range
6 is 2.7 to \$10.3 million; is that correct?

7 A. Yes. Do I have a chance to explain
8 the difference or --

9 Q. The difference is attributable to the
10 fact that, since the 2010 case, the median time on
11 unemployment has increased; is that correct?

12 A. Thank you for reading so carefully.
13 Yes, it is. The BLS -- those numbers are
14 verifiable. Those come from the Bureau of Labor
15 Statistics.

16 Q. I'm not good at arithmetic, but I can
17 read.

18 A. Thank you, sir.

19 Q. Now, in your 2010 testimony, you also
20 noted that one of the effects of a smelter closure
21 would be that the State of Missouri would collect
22 \$2.6 million less in unemployment insurance taxes;
23 is that correct?

24 A. It is.

25 Q. And during your deposition, you told

1 me that it was your understanding that \$2.6 million
2 was the amount Noranda pays annually in
3 unemployment insurance taxes; is that correct?

4 A. That was my understanding, yes.

5 Q. Assuming your understanding is
6 correct, and that for each of the years 2010
7 through 2014 Noranda paid \$2.6 million in
8 unemployment insurance taxes, the total amount of
9 unemployment insurance taxes that Noranda paid for
10 that five-year period would be \$13 million. Is my
11 arithmetic correct?

12 A. It is.

13 Q. Now, your direct testimony in the
14 2010 case also states that you based the amount of
15 benefits that might be paid to Noranda's employees
16 in the event the smelter closes on information
17 provided to you by Noranda that the average annual
18 wage for its hourly employees is \$60,000; is that
19 correct?

20 A. It is.

21 Q. And in your testimony in this case,
22 you also state that Noranda told you that the
23 average annual salary for its hourly employees is
24 \$60,000; is that also correct?

25 A. It is.

1 **Q. Now, did you get that \$60,000 from**
2 **Noranda in the telephone conversation?**

3 A. I did.

4 **Q. Did they give you any documentation**
5 **to support that number?**

6 A. No. The first -- in 2010, I did
7 receive a list, not employee names, but there was a
8 list, and the 60,000 was spot on with the list of
9 salaries that was offered to me.

10 **Q. Did you get a similar list --**

11 A. I did not.

12 **Q. -- from Noranda in this case?**

13 A. I did not.

14 **Q. Did you do anything to try and**
15 **independently verify the accuracy of that \$60,000**
16 **number?**

17 A. This would be proprietary
18 information, and there was -- the only source would
19 have been Noranda. So it seemed to be -- I seemed
20 to be relying on them exclusively for that data.

21 **Q. But in terms of my question, did you**
22 **do anything to independently verify the accuracy of**
23 **the data?**

24 A. And I'm answering your question.
25 There's no independent verification. The only

1 source of that data is Noranda itself.

2 Q. According to the testimony of
3 Noranda's witness Emil Ramirez in this case, 800
4 employees at the New Madrid smelter are represented
5 by United Steelworkers Union. Did you attempt to
6 review the collective bargaining agreements to see
7 if any of those agreements provided for wage
8 increases since you provided your testimony in
9 2010?

10 A. I did not.

11 Q. And if there were wage increases,
12 would that affect the \$60,000 annual number?

13 A. It would affect that number, but it
14 wouldn't affect the unemployment insurance
15 benefits.

16 Q. It would affect the 60,000 number
17 that you used to calculate the unemployment
18 benefits?

19 A. No. See, the way unemployment
20 insurance benefits are provided is there is a
21 minimum amount of \$320 up, and so that -- or
22 there's a maximum amount, I'm sorry, of \$320, and
23 it's a percentage of what your quarterly salary is.
24 A \$60,000 average salary would exceed that \$320
25 amount. So if it was 60,000, 70,000, 120,000, it

1 wouldn't affect my calculation of unemployment
2 insurance benefits.

3 Q. During your deposition I noted that
4 in neither your direct nor your surrebuttal
5 testimonies in this case do you state that you
6 recommend that the Commission grant Noranda the
7 rate subsidies that it's seeking in this case. Do
8 you recall that exchange?

9 A. I do.

10 Q. And you told me that the reason that
11 you didn't include that statement is that Noranda
12 never asked you to make such a recommendation; is
13 that correct?

14 A. That's correct.

15 Q. So during your deposition I asked you
16 if you would make that recommendation, and you told
17 me that you couldn't make such a recommendation
18 because you hadn't done the analysis that is
19 necessary to allow you to do that; is that correct?

20 A. That's correct.

21 Q. I also asked you during your
22 deposition if there is a point where the amount of
23 the subsidies provided to the smelter would exceed
24 the benefits of keeping the smelter open. Do you
25 recall that exchange?

1 A. I do.

2 Q. And you told me that you could build
3 a model to do that analysis, but you hadn't built
4 such a model or done such analysis; is that
5 correct?

6 A. Correct.

7 Q. And finally, during your deposition I
8 represented to you that it is Ameren Missouri's
9 contention in this case that if the liquidity
10 problems Noranda alleges actually exist, that those
11 problems are of Noranda's own making. And if I --
12 I asked you if that would make a difference as to
13 whether rate subsidies should be granted. Do you
14 recall that exchange?

15 A. I do.

16 Q. And your response to my question was
17 to the effect that if bad management was the
18 underlying cause for Noranda's fiscal problems,
19 that a rate reduction would not fix bad management;
20 is that correct?

21 A. As a general economic statement,
22 that's correct, yes.

23 MR. MITTEN: I don't have any further
24 questions. Thank you, Doctor.

25 JUDGE WOODRUFF: Mr. Chairman?

1 CHAIRMAN KENNEY: No questions.

2 Thank you for being here.

3 JUDGE WOODRUFF: Commissioner Stoll?

4 COMMISSIONER STOLL: No questions.

5 Thank you.

6 JUDGE WOODRUFF: Commissioner Hall?

7 QUESTIONS BY COMMISSIONER HALL:

8 Q. Good morning.

9 A. Good morning.

10 Q. The testimony in the case is that
11 Noranda is seeking roughly a \$50 million annual
12 subsidy in their electricity rates, and though
13 there's some disagreement amongst the parties, for
14 purposes of this question let's assume that the
15 \$50 million reduction in Ameren's rates equals a
16 \$50 million increase in other customers' rates.
17 What would the economic impact of that be?

18 A. It wouldn't have an economic impact
19 in my model on -- on gross domestic product or
20 general revenue. So the estimates that I've
21 computed are -- have already taken into account the
22 effect of different expenditure paths for different
23 people, but it wouldn't affect the growth path.

24 Q. Well, your model for determining the
25 effect of Noranda's closure is a GDP model.

1 A. It is.

2 **Q. I'm asking you to maybe go outside**
3 **that model. Because it would seem to me that if**
4 **there's a \$50 million hit to 1.3 million ratepayers**
5 **or 1.2, that's going to have an effect on the**
6 **economy. It has to. So maybe it's not a GDP model**
7 **assessment, but there has to be some other model**
8 **out there that you can help me.**

9 A. So if you were to -- if you were
10 asking me what effect that would have on their
11 expenditure patterns, it's going to have an effect,
12 because if the price of electricity goes up for
13 those 1.2 million people, first of all, they're
14 going to change their spending habits. The price
15 of one good, holding everything else constant, is
16 going to have an effect.

17 And by the law of demand, we would
18 expect that there would be some -- some reduction
19 in the amount spent on electricity if their budget
20 stays the same, which is what the GDP model is sort
21 of -- is alluding to.

22 If their income stays the same, so
23 the left-hand side of their ledger stays the same,
24 the right-hand side, the components of that would
25 change. Their total expenditures would still

1 change.

2 So how they would reallocate, to the
3 best of my knowledge, would be that they would
4 probably spend less on electricity.

5 **Q. So some --**

6 A. Let me rephrase that. They'd buy a
7 smaller quantity on electricity. I believe the
8 elasticity of demand for electricity is in absolute
9 value greater than one, so -- or I'm sorry, less
10 than one. So their total expenditures on
11 electricity would probably still increase, meaning
12 they'd have less to spend on other goods and
13 services.

14 But in terms of having an impact on
15 the total value of goods and services produced
16 within the state, it's not going to have an impact.
17 It doesn't change these people's productivity. It
18 doesn't change how many goods and services they can
19 produce.

20 **Q. But it would affect -- so it would**
21 **affect their consumption of electricity to some**
22 **extent?**

23 A. Yes.

24 **Q. And then it would also affect their**
25 **purchase of other goods and services --**

1 A. That's correct.

2 Q. -- to some extent?

3 A. Yes.

4 Q. But as you sit here today, you
5 wouldn't be able to quantify that?

6 A. I didn't look at it. I don't know
7 what the -- what the effect would be.

8 Q. It's your testimony that a shutdown
9 of the New Madrid smelter would result in an
10 \$8.9 billion hit to Missouri GDP over 25 years; is
11 that correct?

12 A. That's correct.

13 Q. And you determined that number based
14 on the amount of product coming out of the
15 New Madrid smelter?

16 A. Correct.

17 Q. It seems to me that that may almost
18 understate the effect of the economy, because
19 that's not taking into account the spending
20 patterns of employees. It's not taking into
21 account the -- what would happen to the local
22 economy if New Madrid were to shutter. I was
23 wondering if you could comment on that.

24 A. I could. The model that I think
25 is -- you seem to be referring to a model which is

1 referred to as -- that has a multiplier effect. In
2 those models, the idea is that prices don't change
3 at all, so there's no impact on any prices or
4 rates of return or anything, and when you change
5 the quantity demanded of anything, it has a
6 spillover effect and a multiplier effect, and
7 that's the way those calculations are done.

8 In my professional opinion, those
9 models have been largely discredited in terms of
10 the level of -- in terms of scholarly activity, no
11 one uses those models anymore. They still -- you
12 can still compute a multiplier, but it's not of the
13 same sort of which you're talking.

14 So it seems like the cleanest
15 experiment to run is remove an amount of
16 productive -- of output, goods and services that
17 have been produced, and then project that forward
18 over time to see what the impact on the economy is
19 going to be.

20 So if you -- if what you're going to
21 say to me was more along the lines that there were
22 some spillovers, that there were some frictions in
23 the Missouri economy that I didn't take into
24 condition and as the New Madrid plant goes out
25 of -- if it were to close and that there were

1 spillovers that spread through the economy that I
2 didn't take into account, I would have understated
3 the economic impact in that setup.

4 But I don't have those externalities
5 built in and chose not to just for the sake of
6 being conservative in this case.

7 Q. And I'm intrigued by your formula for
8 determining the effect of a GDP reduction on
9 Missouri general revenue. It's 3.8 cents per
10 dollar of GDP?

11 A. Correct.

12 Q. So that -- that would be the same for
13 a Ford plant or New Madrid smelter?

14 A. Correct.

15 Q. And it seems that there's a problem
16 there. I mean, with a -- with a Ford plant you've
17 got a pretty hefty sales tax on each car that rolls
18 off the line. My understanding is that because
19 the purchaser of the New Madrid smelter is not the
20 ultimate -- I'm sorry -- the purchaser of the
21 product coming out of the New Madrid smelter is not
22 the ultimate purchaser, they're not paying a sales
23 tax; is that correct?

24 A. So let me explain. The structure
25 that I used was based on the idea that the ultimate

1 tax base in the state of Missouri is the goods and
2 services that are produced in the state of
3 Missouri, that that's the primary tax base. And so
4 by looking historically, I can figure out what
5 amount is paid into net general revenue out of that
6 tax base.

7 So you can think of what I've
8 computed, that 3.8 number, as being the effective
9 overall tax rate into Missouri's net general
10 revenue account. So that takes into account sales
11 taxes, individual income taxes, corporate income
12 taxes.

13 **Q. Isn't there going to be wide**
14 **disparity between the impact of -- on general**
15 **revenue on shuttering?**

16 A. So even with the size of the Ford
17 plant and the size of the Noranda plant, it is --
18 when those things go into and out of business, the
19 Missouri economy -- when I computed this
20 3.8 percent number, there's been a lot of both
21 large and small companies with different sales tax
22 implications, different individual income tax
23 implications and corporate tax implications. When
24 those have gone into and out of the Missouri
25 economy, the historical average is 3.8 cents per

1 dollar of goods and services produced in the state.

2 Q. But you're not isolating a particular
3 closure there. You're taking -- you're looking at
4 it --

5 A. That's right. I am.

6 Q. -- from a macro perspective.

7 A. I am. And to me, that seems like the
8 cleanest way to approach this. If I were to try to
9 get into the weeds and to do this in a piecemeal
10 fashion, I would be subject to adding up biases
11 that would be going on in the analysis. That's
12 what I'm --

13 Q. It may be the cleanest. It doesn't
14 seem like it's the most accurate to me, but that's
15 okay.

16 Ameren's expert, Mr. Davis, took your
17 numbers, and I wanted to know if you agreed with
18 these, that using -- using your numbers, he
19 computed that Noranda's impact on the state total
20 GDP was .3 percent. Do you agree with that?

21 A. That sounds about right, yeah.

22 Q. And that .3 percent of state general
23 revenue?

24 A. Yes. So what he did was take my
25 numbers and divide it by the aggregate Missouri

1 economy.

2 Q. Concerning the impact on the state
3 unemployment insurance fund, my understanding is
4 that the General Assembly last session passed a
5 bill that shortened the number of weeks that
6 workers were eligible for unemployment benefits.
7 Are you aware of that?

8 A. I am aware of that.

9 Q. And did you take that bill into
10 account in your figure or did -- since it's a bill,
11 has not been signed yet, I don't believe.

12 A. I took what was -- what was the
13 current law when I did my estimates.

14 Q. Do you have any idea how much that
15 would impact your calculation?

16 A. It would be more in the 5 to
17 \$6 million range, I believe, after the curtailment
18 of the benefits, length of benefits.

19 COMMISSIONER HALL: Okay. Thank you,
20 Dr. Haslag.

21 COMMISSIONER RUPP: No questions.

22 JUDGE WOODRUFF: All right. And for
23 recross, anyone wish to do any recross? I don't
24 see any hands go up. Redirect.

25 MR. MALLIN: Thank you, your Honor.

1 REDIRECT EXAMINATION BY MR. MALLIN:

2 Q. Based on questions from the
3 Commission, I just want to make sure I understand.
4 If ratepayers in the Ameren system had \$50 million
5 less to spend, is it still your belief that the
6 result that you reached with respect to the GDP
7 loss of \$8.917 billion is still the same?

8 A. It is.

9 Q. And did you do a calculation to
10 determine what the impact would be to the
11 ratepayers if the smelter closed down altogether in
12 terms of what would happen to their individual
13 lives?

14 A. I did not.

15 Q. Do you know whether or not that
16 number would be more or less than the \$50 million
17 number?

18 A. I don't. I believe Mr. Brubaker and
19 his team will speak on that more confidently than I
20 could.

21 Q. And with regard to Mr. Davis'
22 calculations with respect to your conclusions, the
23 .3 percent of the state's GDP, that's just a
24 mathematical equation? What's the divider? What's
25 the numerator?

1 A. It starts off with accepting the
2 number that I put forward in terms of the annual
3 economic impact and then divides that. So that's
4 the numerator, roughly the 600 million,
5 \$626 million that Noranda gave me, and then
6 dividing that by gross domestic product in the
7 state of Missouri.

8 **Q. Simply turning it into a percentage?**

9 A. Simply turning it into a percentage,
10 yes.

11 **Q. But the numerator itself stays the**
12 **same?**

13 A. That's right. It's treated as if
14 it's the accepted value.

15 **Q. And then with regard to the**
16 **information that was provided to you by Noranda,**
17 **what specifically did you ask for with respect to**
18 **what I believe you call human and physical capital?**
19 **And I apologize. I'm not an economist.**

20 A. No, no. You did very well. Thank
21 you. So I -- when I spoke to them, I asked for
22 either the new measure of physical capital as if
23 they -- that they had given me before or -- so
24 that's one side. The equation is Y is equal to AK .
25 So I asked them for the best measure of K that they

1 could give me. They don't measure -- no one
2 measures human capital.

3 **Q. I don't know what K is.**

4 A. K is this physical and human capital
5 sum.

6 **Q. What's human capital?**

7 A. Human capital is the -- is -- think
8 of it as being the value of the knowledge and skill
9 set that a person brings to a job.

10 **Q. And do I find it on a financial**
11 **statement?**

12 A. You cannot find it, and measuring it
13 has been one of the great challenges of economic
14 science over the last 20 years.

15 **Q. Is there some established or accepted**
16 **formula to get to an answer of human capital?**

17 A. No, there isn't.

18 **Q. Did you provide some guidance to**
19 **Noranda with respect to how it should determine**
20 **human capital?**

21 A. I did not. So what I was left with
22 was asking them, as I had in the 2010 case, for a
23 measure of the value of the plant and equipment
24 that they had on spot or, alternatively, what was
25 the value of the goods and services that they sold

1 based on the product that was generated from that
2 plant.

3 **Q. And that's the number that you**
4 **received from Noranda?**

5 A. It is the latter number that I
6 received from Noranda this time. Whereas, in 2010
7 I just received the physical capital component, a
8 piece of K.

9 **Q. And by physical capital, what do you**
10 **mean?**

11 A. Physical capital is plant and
12 equipment, the machines that are used to produce
13 aluminum.

14 **Q. Now, is that a number that's found on**
15 **a financial statement?**

16 A. Typically it is.

17 **Q. And where typically would you expect**
18 **to find that number?**

19 A. It would be in a balance sheet
20 statement that characterizes the value of the plant
21 and equipment that --

22 **Q. So as compared to human capital,**
23 **which I assume economists may disagree on in terms**
24 **of how to properly account for it, with respect to**
25 **the physical value of the plant and equipment,**

1 that's something that is, in fact, posted or
2 recorded on a financial statement?

3 A. Correct.

4 MR. MALLIN: Thank you.

5 JUDGE WOODRUFF: All right. Then you
6 may step down. Next witness is Mr. Dauphinais.

7 MR. DOWNEY: Judge, I don't know at
8 what point the Commission wants to hear from
9 Mr. Smith again. He's available any time.

10 JUDGE WOODRUFF: Now's as good a time
11 as any.

12 MR. LOWERY: Your Honor, I guess I'd
13 have a question about that. If there's some
14 proposal that's going to be made, rather than them
15 slapping the proposal on the table, we haven't even
16 seen it, putting Mr. Smith on the stand, it seems
17 to be more appropriate that they give us the
18 proposal that they're talking about, we have some
19 time to look at it, let the hearing progress with
20 the other witnesses, and then we can decide when it
21 might be appropriate for Mr. Smith to take the
22 stand.

23 MR. DOWNEY: It's real simple, Judge.
24 I don't know that you need to read anything.
25 Guaranteed 888 head count for the term of the load

1 retention rate. The 100 million in year in capex,
2 that was for the company. The company's willing to
3 commit 35 million a year of that capex to the
4 Noranda smelter. It's really that simple.

5 JUDGE WOODRUFF: Bring him up.

6 MR. LOWERY: Unconditionally?

7 CHAIRMAN KENNEY: Do you have the DR
8 that we were talking about?

9 MR. DOWNEY: The DR, yes.

10 JUDGE WOODRUFF: If Mr. Smith is
11 here, let's bring him up to the stand. We can get
12 it that way.

13 MR. LOWERY: Mr. Downey, can I see
14 the DR to make sure I know the DR you're talking
15 about? Your Honor, I'm going to object to the
16 admission of this DR into the record. By the terms
17 of the DR, which we didn't have in the front of us
18 when these questions were being asked at 9:30 last
19 night, by the terms of the DR, this is a settlement
20 discussion.

21 The DR reflects that Noranda
22 essentially approached the company and said, if
23 you -- if you'll agree to certain things, we won't
24 file an overearnings complaint against you. And it
25 goes on to talk about some other things. That's

1 clearly privileged settlement discussions. The
2 answer really shouldn't have been elicited last
3 night. Again, we didn't have the DR in front of
4 us. We'll have to deal with that as a procedural
5 matter separately since it's already at this point
6 in the transcript.

7 But I don't think it's appropriate
8 for a privileged settlement discussion and a DR
9 reflecting it to be admitted into the record.
10 Whatever an Ameren person did or didn't say is
11 hearsay. They're not here. And so that
12 information's hearsay, and this reflects privileged
13 settlement discussion.

14 MR. DOWNEY: I'll address it. First
15 of all, if it's made by an upper-level management
16 person with Ameren, it's an admission. So that
17 takes care of the hearsay objection.

18 JUDGE WOODRUFF: Admission of what?

19 MR. DOWNEY: Admission of whatever is
20 said.

21 JUDGE WOODRUFF: But is it an issue
22 in the case that they're admitting something?

23 MR. DOWNEY: I think it was an issue
24 in the case. I think there were a lot of
25 questions. Mr. Schwarz asked some questions. I

1 think the Commissioners asked some questions. So
2 that made it an issue, yes.

3 CHAIRMAN KENNEY: Can I ask a
4 question? May I?

5 JUDGE WOODRUFF: Go ahead.

6 CHAIRMAN KENNEY: So the contents of
7 the answer to the DR references a discussion that
8 happened between Mr. Smith and Ameren executives
9 before or after the complaint was filed?

10 MR. DOWNEY: Before. And there is
11 going to be some question legally whether this is a
12 settlement communication and privileged. I don't
13 accept Mr. Lowery's characterization.

14 CHAIRMAN KENNEY: Let's assume --
15 let's assume that it is a settlement discussion,
16 it's privileged. So the rule against that doesn't
17 prohibit it from being disclosed to the trier of
18 fact, does it? It can't be used as evidence, I
19 suppose, and maybe you don't want to admit it to
20 the record, but that doesn't prohibit us from
21 seeing it, does it?

22 MR. LOWERY: I don't know that I can
23 answer that question without looking at it, your
24 Honor. I certainly know that it can't be evidence
25 in this case, and --

1 CHAIRMAN KENNEY: So we arguably --
2 arguably a jury or a finder of fact can't consider
3 it in their deliberations, but that doesn't
4 prohibit it from being disclosed to the tribunal in
5 the first instance, does it?

6 MR. LOWERY: I'm not prepared to
7 agree or disagree with your statement because I
8 don't know the answer to it as I sit here at this
9 moment.

10 MR. DOWNEY: I'm no expert on this.
11 Mr. Mallin is more up to speed on this, and I'd
12 rather he address it, but I understand it is
13 admissible before the Commission.

14 MR. LOWERY: I do know -- I do know,
15 Mr. Chairman, that this is nothing more than
16 Noranda's characterization of a conversation they
17 say took place.

18 CHAIRMAN KENNEY: So the DR was
19 issued by Ameren to Noranda?

20 MR. LOWERY: That's correct. And the
21 DR sought whether or not Noranda had had any
22 negotiations regarding this particular case that
23 we're here for today. The intent of the DR
24 actually was to see whether or not they'd had
25 negotiations with people like Missouri Retailers,

1 Consumers Council and so on who are aligned with
2 them in this case. They then put together an
3 answer and characterized a particular conversation
4 that they claim took place apparently between
5 Mr. Smith and somebody at Ameren, who isn't
6 identified in the DR response.

7 CHAIRMAN KENNEY: So was there a
8 motion in limine to prohibit the disclosure of this
9 DR? I mean, Ameren asked it of Noranda. Noranda
10 answered it. So there's like this interrogatory
11 that's out there that got answered by an opponent.
12 Nobody filed any type of like -- you didn't try to
13 exclude it before the hearing?

14 MR. LOWERY: No. We didn't try to
15 exclude a number of 100-some other DRs that we
16 asked them, but I don't think that has any real
17 bearing on whether or not it's properly admissible
18 or properly before the tribunal.

19 CHAIRMAN KENNEY: Well, if it's
20 privileged, it seems that -- if you're claiming
21 that the answer that you solicited from Noranda was
22 privileged and you didn't want it to be admitted,
23 that there would have been some type of motion in
24 limine to exclude. Do we do motions in limine?

25 JUDGE WOODRUFF: We do, but --

1 MR. LOWERY: I don't believe parties
2 as a general matter can offer their own DR
3 responses into evidence in the case, and we had no
4 intention of offering it, so --

5 JUDGE WOODRUFF: All we really have
6 right now is the motion in limine to an extent, the
7 form of your objection.

8 MR. LOWERY: I guess we have an
9 objection to the disclosure of this DR response,
10 which is Noranda's characterization of a
11 conversation with somebody that's not identified
12 and who isn't even here.

13 JUDGE WOODRUFF: Commissioner Hall,
14 do you want to see it?

15 COMMISSIONER HALL: I do want to see
16 it. And I think the reason why it is relevant is
17 that Ameren is taking the position in this case
18 that the place that Noranda should have gone to
19 solve whatever problem they have with electricity
20 rates is the General Assembly. And there is
21 clearly an interest amongst members of the
22 Commission about what efforts were made to solve
23 this issue over in the General Assembly.

24 And the way this DR has been
25 characterized, which I have not seen yet, is that

1 there was a discussion about that, and so we'd like
2 to see it and learn a little more about it.

3 MR. LOWERY: And I understand that,
4 Commissioner, and I respect your interest in it.
5 The problem is, according to the terms of the DR
6 itself, there essentially was a threat to file an
7 overearnings complaint case made. In that
8 conversation they requested certain -- what would
9 Ameren's position be on this and that.

10 And in that context they're
11 essentially taking the response that they say was
12 made -- which I don't even know was made or not.
13 Again, it's an unidentified person. Don't know
14 what happened here. The DR response is from Gail
15 Lehman, their general counsel, who doesn't even
16 purport to have been involved in the conversation.

17 And the fact that somebody may or may
18 have not said something at that time in response to
19 essentially a threat to engage in litigation
20 doesn't really bear, in my opinion, on the question
21 that you're -- on the issue that you're asking. It
22 would be different if it was just an
23 out-of-the-blue conversation, didn't have a --
24 wasn't involving a threat of litigation, but that's
25 not what we have here.

1 COMMISSIONER HALL: I think all that
2 goes to the credibility of the statement or the
3 weight that we should give that statement.

4 JUDGE WOODRUFF: All right. What
5 we're going to do right now is we're going to go
6 ahead and mark the exhibit, pass it out to the
7 Commissioners, and we'll make a ruling on whether
8 it should be admitted into the evidence.

9 MS. VUYLSTEKE: I just want to add
10 one thing for the Commission as well because I
11 assisted in some of the preparation of the DR, that
12 the information conveyed pertains to legislation.
13 It was disconnected, completely unconnected from
14 any discussion with respect to this case in
15 particular. It was a discussion.

16 And we can certainly lay the
17 foundation if there's a hearsay concern with
18 Mr. Smith since he was a party to the conversation.
19 But this was not a settlement discussion pertaining
20 to this case.

21 JUDGE WOODRUFF: For right now we're
22 going to mark it as Exhibit 30.

23 MR. DOWNEY: Judge, you want me to
24 give this to the Commissioners?

25 JUDGE WOODRUFF: Yes.

1 JUDGE WOODRUFF: And to the parties,
2 of course, as well.

3 (NORANDA EXHIBIT NO. 30 WAS MARKED
4 FOR IDENTIFICATION.)

5 JUDGE WOODRUFF: Commissioner Hall,
6 do you want a chance to ask the witness about this
7 document?

8 COMMISSIONER HALL: I need a moment.
9 KIP SMITH testified as follows:

10 QUESTIONS BY COMMISSIONER HALL:

11 Q. Good morning, Mr. Smith.

12 A. Good morning, Commissioner Hall. How
13 are you?

14 Q. I'm doing well. You came back for
15 more.

16 A. I did. Thank you.

17 Q. You're a good man. The real question
18 that I had was whether or not Noranda tried to seek
19 a solution to its liquidity problem through efforts
20 with the General Assembly. I was not more specific
21 than that. There's obviously a variety of ways
22 that could be done. There could be a legislative
23 mandate for a set price. There could be a piece of
24 legislation that gave companies such as yours
25 preference in setting rates, or there could also be

1 some type of tax credit or deduction or some other
2 type of economic development incentive for job
3 retention. There's a whole variety of things that
4 the General Assembly could do to address the issues
5 that you've raised in this case.

6 And my inquiry, and I believe the
7 inquiry of some of my fellow Commissioners,
8 revolved around whether or not and to what extent
9 Noranda had conversations with members of the
10 General Assembly about those types of solutions,
11 and then that spilled over into a conversation with
12 Ameren, which is apparently reflected in this DR.

13 But this -- this DR seems to discuss
14 a conversation with Ameren about getting support
15 for your rate decrease request here, as opposed to
16 a discussion with Ameren about legislative efforts
17 to solve your liquidity issue. Is that correct?

18 A. If I could explain, and I'll try to
19 keep it short. In the early stages, this DR
20 relates to two different meetings where we raised
21 with Ameren our need for a lower rate in order to
22 address our power issue, which of course is
23 foundational to us improving your position for your
24 liquidity. In those discussions --

25 Q. Actually, Mr. Smith, let me stop you

1 **for a second.**

2 A. Sure.

3 COMMISSIONER HALL: Are you holding
4 the motion in limine?

5 JUDGE WOODRUFF: The document has not
6 been offered at this point.

7 COMMISSIONER HALL: Well, I'm just
8 wondering, if we ultimately decide to sustain the
9 motion in limine, should this conversation be
10 in-camera?

11 MR. LOWERY: I think it should be,
12 your Honor, given the uncertainty about where we
13 are on all of this. It's sort of hard to unring
14 the bell.

15 JUDGE WOODRUFF: All right. We'll go
16 in-camera.

17 COMMISSIONER HALL: I'm sorry,
18 Mr. Smith.

19 (REPORTER'S NOTE: At this point, an
20 in-camera session was held, which is contained in
21 Volume 8, pages 624 through 626 of the transcript.)

22
23
24
25

1 JUDGE WOODRUFF: Okay. We're back in
2 general session.

3 MR. DOWNEY: This type of
4 communication is not admissible to prove liability
5 for or invalidity of the claim or its amount.
6 That's what it says. It can be used for other
7 purposes.

8 This really is kind of tangential to
9 the case, obviously, but I don't think it falls
10 under the privilege for settlement communications,
11 and I don't think it's hearsay. It's an admission.

12 MR. LOWERY: Your Honor, I believe,
13 and I don't have it here, but I believe there's a
14 Commission rule on settlement discussions as well.
15 I believe certainly the Commission --

16 (Phone ringing.)

17 JUDGE WOODRUFF: Commissioner Kenney?

18 CHAIRMAN KENNEY: Hello?

19 COMMISSIONER W. KENNEY: Hello. This
20 is Commissioner Kenney.

21 CHAIRMAN KENNEY: Okay. Got you.

22 MR. LOWERY: I believe the Commission
23 has a fairly significant and long history of
24 applying at least under its rules a privilege
25 against settlement discussions being disclosed that

1 may be broader than the strict evidentiary
2 statement that Mr. Downey just made, which I think
3 typically comes up in the context of a contract
4 dispute or a tort case or something in an ordinary
5 civil case.

6 So the fact that a treatise on
7 evidence may support the idea, well, this literally
8 doesn't quite fit there I don't necessarily think
9 carries the day given the Commission's -- what I
10 believe is an existing Commission rule and the
11 Commission's longstanding practice.

12 MS. VUYLSTEKE: Judge, I would add
13 that this was not a settlement discussion. There
14 was no case filed. It was weeks and weeks before
15 any case was filed. It was a general discussion
16 among a general business discussion that involved
17 some negotiations that led up over time, over many
18 months to -- eventually this case was filed.
19 Eventually there were issues about legislation.
20 But at no time was this considered a settlement or
21 was this case mentioned or -- I don't even -- I'm
22 not even sure this case was thought of.

23 So I would also just add that
24 characterizing this as a settlement discussion on
25 the portion that is being referred to here I think

1 is incorrect.

2 JUDGE WOODRUFF: Well, I believe that
3 it is hearsay. I don't believe that it's an
4 admission of anything. Therefore, I'm going to
5 sustain the objection. The document will not be
6 received.

7 All right. We have Mr. Smith again
8 on the stand. You were going to ask him some
9 questions about some additional -- a new position.
10 Go ahead and do that.

11 DIRECT EXAMINATION BY MR. DOWNEY:

12 Q. Mr. Smith, do you recall the
13 questions last night regarding commitments on head
14 count and capital expenditures?

15 A. I do.

16 Q. Would you please tell the Commission
17 what commitments the company is making in that
18 regard?

19 A. Yes. And thank you again for the
20 opportunity to be here today. We did take the
21 opportunity to reflect on this last night, and so
22 we wanted to present two simple but we believe
23 effective commitments that we would propose to the
24 Commission.

25 The first is that Noranda will

1 employee a total of 888 full-time employees -- that
2 would include our contract workers. That's how we
3 count it up -- at the New Madrid facility for the
4 period of time that this rate is in effect. And
5 that's our first commitment.

6 Second, because key to the
7 sustainability of the smelter is the appropriate
8 investment in the smelter to keep it a reliable and
9 sustainable facility, we will commit to spend a
10 total of \$350 million in capital expenditure
11 dedicated solely to the New Madrid facility over
12 the ten-year period of the rate design.

13 And we believe that those two
14 commitments will be strongly aligned with our
15 desire to in-- we understand the commitment that
16 would be made to Noranda and deeply appreciate the
17 impact of what rate relief would do for us, and we
18 believe that these commitments would support us in
19 creating a sustainable business in Missouri.

20 And so we -- we offer these to the
21 Commission for questions.

22 MR. DOWNEY: May I ask one follow-up
23 question?

24 JUDGE WOODRUFF: Yes.

25 BY MR. DOWNEY:

1 Q. Mr. Smith, there's been a lot of
2 discussion about a \$100 million a year capex need.
3 Would you please explain why you need \$100 million
4 a year capex company-wide versus this commitment
5 here to the smelter?

6 A. Well, first off, we've discussed in
7 detail the need for the \$100 million for the entire
8 company. When we looked at our historical
9 spending, to spend the sustainable investment in
10 your New Madrid facility has actually been a bit
11 less than this over the course of the past ten
12 years.

13 We feel that this represents --
14 again, focusing on the New Madrid smelter and
15 focusing on our desire to keep the facility in New
16 Madrid sustainable, this \$350 million we believe is
17 the appropriate amount to -- in response to this --
18 the wonderful opportunity to get rate relief in
19 Missouri.

20 MR. DOWNEY: I have nothing further.

21 JUDGE WOODRUFF: All right. Then
22 we'll go -- treat this as direct testimony with an
23 opportunity to cross then. Anyone wish to cross
24 based on this new direct testimony? I see Public
25 Counsel.

1 CROSS-EXAMINATION BY MR. ALLISON:

2 Q. I just have a few quick questions.
3 First of all, thank you for this. I think it's an
4 important first step. I think there are many more
5 steps to go before the Office of the Public Counsel
6 would be comfortable.

7 I do want to inquire as to the --
8 first, as to the second component your proposal
9 with respect to a total of \$350 million in capital.
10 Is this -- do I take your testimony to mean that
11 this would just be what you have characterized as
12 sustaining capital? There is no component of this
13 dollar amount that would be contributed to growth
14 capital?

15 A. Historically, a small -- a smaller
16 portion of that would be in growth and special
17 projects. I don't --

18 Q. As I -- I'm sorry. Go ahead. As I
19 recall your testimony yesterday, the number for
20 your current average sustaining capital was
21 somewhere in the high 20 millions, is that -- on an
22 annual basis; is that correct? Where are you at
23 currently?

24 A. Yes, at the -- at the New Madrid
25 smelter.

1 Q. Right, at the New Madrid smelter.

2 A. So there is a portion of this in the
3 past that has been for growth, and there would be
4 some element of that as well in here.

5 Q. And adjusted for inflation, have you
6 done any inflation adjustment over the course of
7 your proposed ten-year cycle that might indicate a
8 proper allocation on an inflation-adjusted basis
9 between sustaining and growth capital in this
10 number that you've submitted?

11 A. No, we have not.

12 Q. Okay. And with respect to the first
13 proposal, 888 full-time equivalent employees, at
14 your current productivity, how many people could
15 you realistically lay off and maintain a viable
16 smelter?

17 I understand your 888 is -- I
18 understand your testimony to be yesterday that you
19 were leery of a commitment based upon unanticipated
20 growth, and really in order to maintain and in
21 order to grow your employee base that you require,
22 growth and maintenance needed to be inherent in any
23 ability to maintain 888 employees.

24 So I'm -- the nature of my question
25 is to get to, frankly, how much of a lug is this

1 **for you for this 888 FTE? And I apologize for the**
2 **compound nature of the question.**

3 A. No problem. We did discuss this. We
4 think that 850 would be a number that over time we
5 could get to, but we also have other -- it means
6 some growth will be necessary, and with the rod
7 mill coming in to play, if we're fortunate enough
8 to -- we will have two idled mills. When that
9 comes up, if we are fortunate enough to grow, that
10 will offer some productivity for us in terms of
11 employees.

12 And so we are -- we are comfortable
13 that we could do this without changing the culture
14 of productivity at the site. So we did consider
15 that we're close enough that we believe certainly
16 in the short term that we can manage this.

17 **Q. Just two more follow-on questions.**
18 **As I understand this proposal, there's no**
19 **commitment with respect to dividend payouts or**
20 **other mechanisms to return value to shareholders;**
21 **is that correct?**

22 A. That's correct. And my --

23 **Q. That's fine. And there's no -- this**
24 **proposal does not address an enforcement mechanism**
25 **in any way, it is just a flat we commit to 888 and**

1 **350; is that correct?**

2 A. That's correct.

3 MR. ALLISON: Thank you.

4 JUDGE WOODRUFF: Staff?

5 CROSS-EXAMINATION BY MR. THOMPSON:

6 **Q. Good morning, Mr. Smith.**

7 A. Good morning.

8 **Q. Are you familiar with the commit--**
9 **the recommendations, the conditions that Staff**
10 **recommended contained in the rebuttal testimony of**
11 **Michael Scheperle?**

12 A. I'm aware but not -- I would say
13 aware but not familiar.

14 **Q. Okay. Let me just take you through**
15 **them quickly, if I could. You would still expect**
16 **to be excused or exempted from the FAC; isn't that**
17 **correct?**

18 A. Yes, that's correct. This would be
19 for our rate design as requested.

20 **Q. Okay. And you would continue to**
21 **request the 2 percent cap on rate increases with**
22 **each rate case; isn't that correct?**

23 A. That's correct.

24 **Q. And you would want the \$30 per**
25 **megawatt hour energy charge; is that correct?**

1 A. That would be the all-in rate, yes.

2 Q. The all-in, yes.

3 A. Yes.

4 Q. Finally, would it be your position
5 that the Metropolitan St. Louis Sewer District
6 class and the lighting class would be excluded or
7 included from any rate increase?

8 A. I don't know the answer to that
9 question.

10 MR. THOMPSON: Okay. Thank you very
11 much. No further questions.

12 JUDGE WOODRUFF: For Ameren?

13 CROSS-EXAMINATION BY MR. LOWERY:

14 Q. Good morning again, Mr. Smith.

15 A. Good morning, Mr. Lowery.

16 Q. Now, the employment commitment
17 apparently includes contractors and employees?

18 A. That's correct.

19 Q. So let me flesh that out a little
20 bit. The 888 employees -- or actually apparently
21 isn't employees. The 888 workers that currently
22 work at the New Madrid facility, how many of those
23 are on Noranda's payroll as employees and how many
24 of those are, I take it, independent contractors
25 that are actually employed by another company but

1 are assigned by that company to work at your
2 facility?

3 A. I don't know the exact number, but
4 the vast majority are Noranda employees.

5 Q. But based on this commitment, you
6 could substantially increase the number of
7 contractors and decrease the number of actual
8 employees; isn't that true?

9 A. It could happen, yes.

10 Q. Are you willing to commit to a
11 certain level of actual employment as opposed to
12 certain level of total contractors plus employees?

13 A. We didn't contemplate that in our
14 discussions. So we certainly would be willing to
15 undertake that dialog, but we don't have a -- we
16 don't have a number developed in that.

17 Q. So at least based on the commitment
18 that you articulated this morning, they could all
19 be contractors sometime over this ten years; isn't
20 that true?

21 A. It could be, but practically
22 speaking, I believe no, but --

23 Q. Those contractors could be supplied
24 by whoever these companies, these contracting
25 companies are, they could be supplied with folks

1 that don't even live in the Bootheel necessarily;
2 isn't that true?

3 A. It's possible.

4 Q. Now, the capital commitment of
5 \$350 million of capital investment solely at the
6 New Madrid facility over the ten-year period, all
7 of that could be spent toward the end of the
8 ten-year period, couldn't it, the way you've laid
9 out this commitment?

10 A. It could be. But we would be willing
11 as -- go ahead. Sorry.

12 Q. Are you willing to make a commitment
13 that it be spent, for example, on a roughly
14 rateable basis over the ten-year period?

15 A. Yes.

16 Q. Let's talk about -- Mr. Allison asked
17 you about this. How does the Commission enforce
18 these commitments? What happens if you don't
19 employ 888 people, either a combination of
20 employees and contractors, or you don't meet the
21 capital commitments that you're indicating you're
22 willing to make, what happens?

23 A. Certainly the process exists today to
24 address that through the Public Service Commission
25 process. That was our anticipation is we -- as we

1 put this together, that if we don't meet our
2 commitments, the Public Service Commission always
3 has the opportunity to bring a complaint and
4 address the rate.

5 Q. Let's flesh that out a little bit. I
6 think Commissioner Bill Kenney was raising this
7 issue yesterday. How does the Public Service
8 Commission bring a complaint against Noranda?

9 A. Well, I'll have to confess my
10 inexperience in that aspect of the process. I
11 don't know exactly how that works mechanically.

12 Q. I mean, and I'm -- I'm not trying to
13 ask you to give legal opinions, but there's really
14 no way to flesh this out without asking you about
15 the practical aspects about how this might work.

16 You do understand that Noranda is not
17 in any way subject to the jurisdiction of the
18 Missouri Public Service Commission, right?

19 A. Other than for our rate, which is --

20 Q. Let me rephrase. You have to pay the
21 rate that the Missouri Public Service Commission
22 approves because Ameren is regulated by the
23 Commission, right?

24 A. Yes.

25 Q. But the Public Service Commission

1 can't tell you to operate or not to operate, to
2 employ people or not employ people, to invest or
3 not invest. That's up to your management and your
4 board of directors; isn't that right?

5 A. Certainly it's our fiduciary
6 responsibility to run the company.

7 Q. And so if you decide not to invest
8 this money, not to employ this level of employees,
9 the Public Service Commission doesn't have a
10 mechanism to do anything about that, certainly not
11 retrospectively; isn't that true?

12 MR. ALLISON: I'm going to object at
13 this point. I think he's asking the witness to
14 offer legal conclusions that the witness himself
15 has confessed he is not in a position to offer. I
16 think that these are legal questions that can be
17 well established in the briefing that comes after
18 this hearing, and we can all flesh that out later.

19 MR. SCHWARZ: I would join in that
20 objection. I think that this is clearly a legal
21 issue. I think that the authority of the
22 Commission is over the rate that Ameren charges
23 Noranda, and it certainly can entertain a complaint
24 that the rate is not consistent with the terms and
25 conditions of service at any particular time.

1 MR. LOWERY: I'll withdraw the
2 question.

3 JUDGE WOODRUFF: All right.

4 BY MR. LOWERY:

5 Q. Let me ask you another question. Did
6 you talk about in -- I assume -- I assume you were
7 together with your team last night when you were
8 developing this proposal or whenever it was. Did
9 you consider or talk about, as a practical matter,
10 let's imagine that you get a \$30 rate and it's in
11 effect -- I'm just trying to make this simple --
12 been in effect exactly a year, and the indications
13 are that you didn't employ 888 people or you didn't
14 meet your rateable capital investment commitment.

15 Did you talk about what happens to
16 that subsidy that you got for the prior year when
17 it turned out you didn't actually meet the
18 commitment? What happens as a practical matter?

19 A. Our expectation was that we would
20 meet the commitment. We did not talk about that.

21 Q. So you didn't talk about it, but --
22 so I'm just going to ask you the question. What do
23 you think is going to happen if it turns out you
24 don't meet one or both of those commitments?

25 MR. ALLISON: I'll just renew the

1 objection again to the extent that it requests for
2 a legal opinion from someone not qualified to --

3 MR. LOWERY: I'm not asking for a
4 legal opinion.

5 JUDGE WOODRUFF: I'll overrule the
6 objection.

7 THE WITNESS: First off, we expect to
8 meet these commitments. And second, again, we
9 were -- we viewed this as that we would rely on the
10 process, whatever the process was that was dictated
11 by the Commission to resolve the issue.

12 BY MR. LOWERY:

13 Q. Well, would Noranda be willing to
14 agree to so some kind of process, whether it be an
15 annual review or some kind of review where it could
16 be determined whether you met the commitments, and
17 if, in fact, you did not meet the commitments, then
18 Noranda would have to repay the full extent of the
19 subsidy for the period for which the commitments
20 were not made? And obviously that repayment would
21 have to be credited back to the customers who
22 actually provided the subsidy. Are you willing to
23 agree to that?

24 MR. ALLISON: And I'll object just to
25 the form of the question in that it assumes that

1 the customers will be the ones who bear the burden
2 of the subsidy per our position previously stated.

3 MR. LOWERY: Sounds more like a
4 statement than an objection.

5 MR. ALLISON: It is to the form and
6 the compound nature. I think the question assumes
7 a number of legal issues and facts not currently
8 before the Commission. So that's the basis of my
9 objection.

10 JUDGE WOODRUFF: I'll overrule the
11 objection. You can answer the question.

12 THE WITNESS: I would expect that
13 there would be a process in place where if -- that
14 the -- that we would be able to work together to
15 remedy any shortfall. And it would seem a remedy
16 that dramatic in nature may not necessarily be in
17 the best interests of either party.

18 BY MR. LOWERY:

19 Q. So I think the answer to my question
20 is no, you're not willing to commit that if a
21 retrospective look is made as to whether you met
22 the commitments and it's determined you did not,
23 you're not willing to commit that those funds would
24 be returned?

25 A. It would seem that there would have

1 to be a better way to design it than that.

2 **Q. So on that particular design, the**
3 **answer is no to my question, you're not willing to**
4 **commit to that design?**

5 A. Absent not having more data and
6 understanding how that design would be put
7 together, I don't think I can answer that question.
8 I just really don't.

9 **Q. Fair enough.**

10 A. I think these are all things that the
11 lawyers can and will need to work out to make what
12 I think are very appropriate commitments practical.

13 **Q. Well, how's that process supposed to**
14 **work? You filed a complaint. You've asked for**
15 **relief. You've asked the Commission to do**
16 **something. Is it now your -- is it now your**
17 **testimony that you're not asking the Commission to**
18 **do something unless you can get all the parties**
19 **together and we all agree on something that we**
20 **bring back to them?**

21 MR. DOWNEY: Judge, I'm going to
22 object. I mean, this is bordering on just
23 badgering the witness. The witness has said he's
24 not the lawyer. He's not -- doesn't handle cases
25 before the PSC, you know. He's expecting lawyers

1 involved, including those for the Staff, to work
2 out terms in tariffs. It's not his area of
3 purview.

4 MR. LOWERY: I'm just trying to
5 understand how the proposal works, your Honor, but
6 that's fine. I'll withdraw the question.

7 JUDGE WOODRUFF: Okay.

8 BY MR. LOWERY:

9 Q. If there -- just a couple more
10 questions along this line. If there -- if we
11 worked out some kind of mechanism by which some
12 money could flow back if you didn't meet the
13 commitments, how would -- if you know -- maybe you
14 don't know, but how could the Commission have some
15 assurance that there would be funds available to
16 fund any repayment that had to be made?

17 For example, in West Virginia, the
18 West Virginia Commission specifically required, I
19 think it was Century -- I don't remember which
20 company it is. I'm sure you know -- specifically
21 required Century's parent, or whatever the
22 company's parent was, to issue a corporate
23 guarantee to make sure there would be a pool of
24 money available if under the terms of that
25 arrangement funds had to be repaid. Is that

1 **something that Noranda would consider?**

2 A. Was this for the Ravenswood smelter?

3 **Q. It's a smelter in West Virginia. I**
4 **think it was.**

5 A. Okay. So that smelter shut down?

6 **Q. That wasn't my question.**

7 A. Again, I can't answer that question
8 without understanding the detail of how the whole
9 process would work.

10 **Q. Would Noranda make additional**
11 **commitments with respect to dividends that could or**
12 **could not be paid during the period any subsidy was**
13 **in effect?**

14 A. At this point in time, these are the
15 two commitments that we're prepared to make.

16 **Q. So you're not willing to commit, for**
17 **example, that no further dividends could be paid to**
18 **Apollo?**

19 A. Well, first off, any dividends that
20 would be paid would be paid to all shareholders of
21 record.

22 **Q. A third of them would be paid to**
23 **Apollo at least based on their current stock**
24 **ownership, though, correct?**

25 A. That's correct. That's correct. And

1 we have a penny dividend, and we've discussed that
2 during the course of the testimony. We have a new
3 board that has a fiduciary responsibility to this
4 company and understands that -- the importance of
5 this rate relief to us.

6 And so this is -- this is not the
7 board that approved the previous special dividends.
8 This is a new board, and we -- as it was said by
9 the Commission, I believe I'm stating this
10 correctly, that the Commission doesn't want to run
11 our company. We've got a board in place that we
12 believe can run this company and run it well.

13 And we think that these two
14 commitments are the ones that are most pertinent,
15 most appropriate to really help us build a
16 sustainable position in Missouri.

17 **Q. And I think this is my final**
18 **question. So this offer that you're making, I**
19 **guess I'll call it an offer, it also doesn't**
20 **reflect any commitment on Apollo's part to reinvest**
21 **any of the money that they've received either**
22 **through dividends or -- I guess primarily through**
23 **dividends? There's no commitment on Apollo's part**
24 **to do anything here; is that right?**

25 **A. That's correct.**

1 MR. LOWERY: That's all the questions
2 I have. Thank you.

3 JUDGE WOODRUFF: Mr. Chairman?

4 CHAIRMAN KENNEY: Was the proposal
5 handed out and I missed it?

6 JUDGE WOODRUFF: There was nothing --

7 CHAIRMAN KENNEY: There's no piece of
8 paper? It's not committed to paper?

9 THE WITNESS: I can give you mine.
10 It's truly that simple. If I could, Mr. Chairman,
11 we were just -- we wanted to make sure we got back
12 quickly and clarified that we were prepared to make
13 guarantees, as you and I discussed, and to make
14 them simple and make them clear.

15 QUESTIONS BY CHAIR KENNEY:

16 Q. I appreciate the effort. I just want
17 to ask a couple of questions about the 888 FTE,
18 including contract workers. Is that a -- is that a
19 floor? It's contemplated that would be a floor?

20 A. Yes. That's correct, yeah.

21 MR. LOWERY: Mr. Chairman, I think
22 maybe your microphone is not on.

23 CHAIRMAN KENNEY: Can you hear me?

24 MR. LOWERY: Yes. Thank you.

25 CHAIRMAN KENNEY: I'm kind of

1 soft-spoken sometimes.

2 BY CHAIRMAN KENNEY:

3 Q. I don't have -- you know, I think
4 Mr. Lowery probably asked most of the questions.
5 Here's the question that I have: Is there any way
6 that you can think of or that you may have
7 discussed with counsel at any point, either before
8 or after the complaint was filed, that these
9 mechanisms, these commitments and the mechanism
10 that you're speaking here could be codified in some
11 piece of legislation? Is that -- let me just start
12 with that question.

13 A. We have not -- we have not discussed
14 that in terms of a legislative ask, no.

15 Q. So let me go back to a little bit of
16 the discussion yesterday that you and I had. It's
17 related to the proposal, but I'm going to get there
18 kind of tangentially. You mentioned yesterday, we
19 talked about the substantial likelihood of imminent
20 closure.

21 A. Uh-huh.

22 Q. Legislature reconvenes in, assuming
23 no -- assuming that there's no special session, the
24 Legislature reconvenes in January. There's others
25 up here that know legislative process better than

1 I, but there's a mechanism by which you could get a
2 piece of legislation passed and an emergency clause
3 inserted so that it would be sometime between
4 January and May you could have a piece of
5 legislation in effect that would facilitate what it
6 is Noranda is trying to do. Am I right about that?

7 COMMISSIONER STOLL: That is correct.

8 COMMISSIONER RUPP: Unless there's a
9 special session.

10 BY CHAIRMAN KENNEY:

11 Q. Unless there's a special session,
12 yeah. Absent a special session, go through the
13 normal regular order, you could have a piece of
14 legislation in effect sometime between January and
15 May. Let's assume everybody agreed on it and the
16 Governor signed it. You could get it done sooner
17 rather than later, maybe January, February, March.

18 Is your liquidity crisis, assuming
19 that it is as you say that it is, could you figure
20 out a way to remain viable through the first
21 quarter of 2015?

22 JUDGE WOODRUFF: Do we need to be
23 in-camera on this?

24 THE WITNESS: Yes.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 8, pages 653 through 656 of the transcript.)

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1 QUESTIONS BY COMMISSIONER STOLL:

2 Q. Good morning again, Mr. Smith. My
3 question would be, did -- in your determining that
4 this is the route that you wanted to take, did you
5 or any of your senior management discuss a
6 legislative -- approaching the Legislature about
7 any of this?

8 A. We -- we did talk about where the
9 most appropriate route was. So I want to be clear
10 on that. We never got to the point where we had
11 any discussions of, you know, who we should
12 contact. As I said, I had no personal discussions
13 with any of our Senators and Representatives that I
14 can recall about taking this to the Legislature.

15 But we -- because of our experience
16 and our confidence in this process and our belief
17 that it was the right place, we really focused all
18 of our energy here very early.

19 Q. So even though there are 900
20 statewide jobs at stake, you didn't get in touch
21 with DED or the Governor's Office or a legislator
22 and say, what do you think we should do? We're in
23 mortal harm of --

24 A. Yeah. And the answer to us was to
25 address the root cause of the issue, which was our

1 power rate, and that's why we're not -- we're --
2 that's the issue, and that's why we're addressing
3 it here, because again --

4 **Q. It was a business decision on your**
5 **part, so there's nothing else I can say about it, I**
6 **guess.**

7 COMMISSIONER STOLL: Thank you.

8 JUDGE WOODRUFF: Commissioner Hall?

9 COMMISSIONER HALL: I have no
10 questions. Thank you.

11 JUDGE WOODRUFF: Okay. Commissioner
12 Rupp?

13 COMMISSIONER RUPP: I do. Thank you.

14 QUESTIONS BY COMMISSIONER RUPP:

15 **Q. The guarantees you're offering look**
16 **something similar to what was offered in Ohio and**
17 **Virginia, and I'm sure you're aware of those**
18 **guarantees that were offered by those smelters from**
19 **the evidence that has been presented.**

20 A. Uh-huh.

21 **Q. Where would Noranda stand if we were**
22 **to just take the same or similar proposals that**
23 **were accepted in West Virginia or Ohio and then --**
24 **and asked you to do the same thing they had? They**
25 **had number of employees. They also had something**

1 on the number of potlines and things in there. Is
2 that something that you have reviewed and what
3 other states have done and have an opinion on how
4 that would affect Noranda?

5 A. I would have to get those in front of
6 me, Commissioner, and take a look at it to address
7 it, you know, a point at a time. But certainly if
8 there's a desire to take a look at other
9 conditions, we would certainly be willing to take a
10 look at that as far as making -- with the focus on
11 keeping the facilities sustainable and keeping the
12 facilities operating.

13 We did not put a potline commitment
14 in, for example, because at 888 people, we have to
15 run all three of our potlines. Otherwise, we'll
16 have people standing around. So our anticipation,
17 we had no anticipation of shutting down any
18 potlines in putting forward that number. At this
19 rate and this activity, we would run all three
20 potlines.

21 Q. Okay. Also, West Virginia and Ohio,
22 they tied some of the subsidies to the LME price of
23 aluminum. Is that something that the company
24 would -- would find agreeable to help through the
25 short liquidity times you're experiencing now?

1 A. We think that that's -- first off, a
2 very small percentage of the smelters globally
3 utilize that mechanism. It's about 18 percent. We
4 don't believe that's a competitive practice, and we
5 think it creates more potential for us not being
6 able to respond to market conditions as we go
7 forward.

8 When we price that \$30 rate, we
9 priced it out looking at the patterns across the
10 most recent cycle. So to put limits on it we think
11 would make that unworkable.

12 **Q. Your goal is \$23 where you would be**
13 **completely cash, and if you look at Massena East**
14 **and Massena West who are tied to LME, they're well**
15 **below that.**

16 A. Yes.

17 **Q. You don't think that's something**
18 **that --**

19 A. If we could get the Massena East
20 contract, I think we'd be very interested in that
21 dialog, yes.

22 JUDGE RUPP: And then could you go on
23 camera for the next couple questions?

24 THE WITNESS: Excuse me. Massena. I
25 think they just refer to it as Massena. I don't

1 think they attribute it to either facility.

2 (REPORTER'S NOTE: At this point, an
3 in-camera session was held, which is contained in
4 Volume 8, pages 662 through 674 of the transcript.)

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1 JUDGE WOODRUFF: We're back in
2 general session. It's almost 12 o'clock, so we'll
3 go ahead and take a break for lunch. We'll come
4 back at one o'clock with Mr. Dauphinais.

5 (A BREAK WAS TAKEN.)

6 JUDGE WOODRUFF: Let's come to order,
7 please. We're back from lunch, and Mr. Dauphinais
8 has taken the stand.

9 (Witness sworn.)

10 JUDGE WOODRUFF: Thank you very much.
11 You may inquire.

12 JAMES DAUPHINAIS testified as follows:

13 DIRECT EXAMINATION BY MR. DOWNEY:

14 Q. Please state your name.

15 A. James R. Dauphinais.

16 Q. And by whom are you employed?

17 A. Brubaker & Associates, Inc.

18 Q. What is your position there?

19 A. I'm a managing principal.

20 Q. Now, have you caused to be prepared
21 some direct testimony and surrebuttal testimony in
22 this case?

23 A. Yes.

24 Q. And do you see Exhibits 13, 14 and
25 15?

1 A. Yes.

2 Q. And is Exhibit 13 your direct
3 testimony?

4 A. Yes.

5 Q. And is that HC or NP?

6 A. It's nonproprietary.

7 Q. All right. And Exhibit 14, what is
8 that?

9 A. That's the highly confidential
10 version of my surrebuttal testimony.

11 Q. And Exhibit 15?

12 A. That's the nonproprietary version of
13 my surrebuttal testimony.

14 Q. Do you have any corrections to those
15 testimonies?

16 A. No.

17 Q. If I were to ask you today the
18 questions that were asked in those testimonies,
19 would your answers be the same?

20 A. Yes.

21 MR. DOWNEY: Your Honor, at this time
22 I'd offer Exhibits 13, 14 and 15 and tender the
23 witness for cross.

24 JUDGE WOODRUFF: All right. 13, 14
25 and 15 have been offered. Any objections to their

1 receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, they
4 will be received.

5 (NORANDA EXHIBIT NOS. 13, 14 AND 15
6 WERE RECEIVED INTO EVIDENCE.)

7 JUDGE WOODRUFF: For
8 cross-examination, then, we begin with MIEC.
9 Retailers?

10 MR. SCHWARZ: I have a few questions.

11 CROSS-EXAMINATION BY MR. SCHWARZ:

12 Q. Good morning, sir, afternoon I guess
13 it is now.

14 Would you explain to the Commission
15 what a normalization adjustment is, please?

16 A. A normalization adjustment removes
17 abnormalities. I know it's difficult to see what
18 that -- that means is basically events that are not
19 going -- or occur extremely infrequently, they're
20 not something we should really base rates upon,
21 that's usually what normalization involves.

22 Weather weatherization is commonly
23 done. We also do normalization of hourly energy
24 market prices, for example, in base rate
25 proceedings for Ameren to set what's called a net

1 base energy cost.

2 Q. Okay. And you reference a number of
3 those in a prior Ameren rate case in your
4 surrebuttal testimony, do you not?

5 A. That's correct.

6 Q. Okay. Ameren is in the MISO
7 footprint as far as transmission is concerned; is
8 that correct?

9 A. Ameren Missouri is in the MISO
10 footprint. It would probably be good to define
11 what MISO is. It's the Mid-Continent Independent
12 System Operator, Inc., which was formerly known as
13 the Midwest -- I'm sorry, Midwest Independent
14 Transmission System Operator, Inc.

15 Q. Okay. And transmission in that
16 footprint is governed by MISO tariffs; is that
17 correct?

18 A. It's governed by a regional tariff
19 that is -- that is -- I don't want to say -- it's
20 more than administrated. It's actually overseen by
21 the MISO organization.

22 Q. And those -- the tariffs are approved
23 by the FERC?

24 A. Correct. The tariffs are approved by
25 the Federal Energy Regulatory Commission.

1 **Q.** **If the Commission grants the --**
2 **strike that.**

3 **The MISO tariffs, the charges under**
4 **the MISO tariffs are not affected by what any**
5 **particular member utility charges any particular**
6 **customer; is that correct?**

7 A. That is correct.

8 **Q.** **A change in the load would affect the**
9 **charges, though, would it not?**

10 A. A change in the load can affect some
11 of the MISO charges to one degree or another.
12 Depends on whether the devisor for a particular
13 rate in question is based on the entire MISO
14 footprint or a limited portion of that footprint.

15 **Q.** **Do you know, does Ameren have its**
16 **peak load in the summer or the winter?**

17 A. Ameren's generally a summer-peaking
18 entity.

19 **Q.** **Do you know, is the MISO load summer**
20 **peaking?**

21 A. The MISO load -- MISO is summer
22 peaking. Both Ameren and MISO have some degree of
23 winter peaking. There's certainly a higher demand
24 during the coldest times of the year than there
25 are, for example, in the spring and the fall. But

1 it's generally both entities are summer-peaking
2 entities. Ameren Missouri I would say is more
3 summer peaking, though it's getting less clear with
4 MISO since the addition of the Entergy system
5 companies in Louisiana, Texas, Arkansas,
6 Mississippi.

7 **Q. Okay. Thank you. The reporter has**
8 **handed you what's been marked as Exhibit 403.**
9 **Would you look at that, please?**

10 A. Yes.

11 **Q. Let me ask you first of all, are any**
12 **of the figures on that page highly confidential?**

13 A. Not on this page. There are
14 supporting schedules that go along with this page.
15 This is just actually the top page of a
16 reconciliation that I created.

17 **Q. Okay. So this is a document that you**
18 **created?**

19 A. This is a document I created.

20 **Q. And you said it's a reconciliation.**
21 **A reconciliation of what to what?**

22 A. It's a reconciliation of Staff's
23 position in this proceeding and Ameren Missouri's
24 historical price position in this proceeding to my
25 surrebuttal position.

1 Q. Okay.

2 A. With regard to the actual net energy
3 cost change and change in MISO administration
4 charges that result from a shutdown of the Noranda
5 load.

6 Q. The first two items in each column
7 are the move to 48 months and move to 36 months.
8 Are those weather adjustments?

9 A. The first adjustment that removes the
10 polar vortex both in the left column and the right
11 column are normalization adjustments for --
12 specifically for what I call the polar vortex
13 anomaly.

14 Q. And those are adjustments to price?

15 A. They're adjustments to price, yes.

16 Q. Okay. What is -- and the adjustments
17 are the same in each column, though the -- I guess
18 actually the numbers are now the same all the way
19 down. So --

20 A. Well, they're not exactly the same.
21 We have different starting points.

22 Q. Right. But the adjustments are the
23 same, are they not?

24 A. The adjustments -- the adjustments
25 are conceptually the same in each row, yes.

1 **Q. The last four are the same?**

2 A. Last four are identical for both
3 Ameren Missouri and for Staff.

4 **Q. And these are all adjustments that**
5 **are discussed in your surrebuttal testimony?**

6 A. No. What you --

7 **Q. The adj--**

8 A. The bottom line position at the
9 bottom of this page, the \$28.49 per megawatt hour
10 in both the left column on this page and the right
11 column on this page, that's my surrebuttal
12 position.

13 What this schedule does is takes
14 Staff's surrebuttal position on the left column and
15 makes the adjustments necessary to reconcile it
16 with my surrebuttal position.

17 And on the right column we're taking
18 Ameren Missouri's historical period position, which
19 includes a 12-month period they had in their
20 rebuttal testimony as well as their MISO charges
21 position in surrebuttal testimony, takes that
22 combination and then reconciles it to my
23 surrebuttal position again.

24 **Q. What's the 42 cent adjustment?**

25 A. The -- are you speaking in regard to

1 the third row?

2 **Q. It looks like the -- it's the third**
3 **row of adjustments, yes.**

4 A. The third row -- we've talked about
5 the second row adjustment. The second row -- the
6 second row is an adjustment to remove the polar
7 vortex anomaly from the normalization.

8 The third row is doing the
9 normalization once you've removed the
10 abnormalities, that is taking 36-month period
11 consistent with what's generally been proposed in
12 the last five Ameren Missouri base rate cases.

13 So you have a combination of both
14 removing the polar vortex anomaly consistent with
15 what's been done in recent Ameren Missouri rate
16 cases and then moving to a 36-month normalization
17 or averaging period.

18 **Q. What's the next entry reflect?**

19 A. Well, we should note, just applying
20 the first two rows brings both Staff and Ameren
21 Missouri to the same position, which would be the
22 adjusted position with those two modifications is
23 \$29.91 per megawatt hour, less than the \$30 per
24 megawatt hour proposed rate in this proceeding.

25 **Q. All right. What does the next**

1 **adjustment reflect?**

2 A. The next adjustment gets into what I
3 call secondary effects. Everything we've talked
4 about up to now have been primary effects.
5 Secondary effects are effects that have less effect
6 on the estimate. And in my direct testimony I
7 didn't deal with -- didn't deal with secondary
8 effects. I had footnotes addressing them.

9 In rebuttal testimony, Ameren
10 Missouri and the Staff introduced a number of
11 secondary effects that have less effect on the
12 estimate, and those had to deal with MISO charges.

13 In my surrebuttal, I brought in
14 another secondary effect which I felt needed to be
15 reflected if you're going to introduce the ones
16 that Staff and that Ameren Missouri introduce. So
17 the -- the third and fourth adjustment I have on
18 here, which are in the fourth and fifth row, this
19 adjustment -- these two adjustments relate to the
20 small reduction in market prices that would exist
21 if Noranda load shut down. It would have some
22 effect on price. It's small, but there would be
23 some effect.

24 In my direct testimony, to be
25 conservative, I basically assumed it to be

1 negligible. But because of the additional cost
2 effects which are of secondary nature that Ameren
3 Missouri introduced and that Staff introduced,
4 my -- it was my position that it's appropriate that
5 you have to reflect that small decrease in market
6 prices that would exist, that would result from a
7 shutdown of Noranda load.

8 **Q. And what does the final adjustment**
9 **do?**

10 A. The final adjustment is really the
11 only difference of significance between Ameren
12 Missouri, Staff, myself with regard to MISO charges
13 other than energy capacity and MISO Schedule 26A
14 charges, and this is related to what I call certain
15 MISO market settlement charges.

16 There is an additional credit that
17 would change due to the shutdown of the Noranda
18 load that was not reflected in the surrebuttal
19 testimony of Ameren Missouri or Staff.

20 **Q. When you talk about the shutdown of**
21 **the Noranda load, are you assuming that that load**
22 **is not replaced elsewhere on the Ameren system?**

23 A. That is correct.

24 **Q. And what's the 2 cent?**

25 A. That's the remaining small

1 difference, but it's just not material at that
2 point, 2 cents per megawatt hour.

3 MR. SCHWARZ: Thank you. I think
4 that's all that I have.

5 JUDGE WOODRUFF: All right. Did you
6 wish to offer 403?

7 MR. SCHWARZ: I'd offer 403.

8 JUDGE WOODRUFF: 403 has been
9 offered. Any objection to its receipt?

10 MR. BYRNE: Your Honor, I may object.
11 I think this is similar to some of the items that
12 Mr. Lowery was talking about the first day where it
13 could have been included in testimony, and it's an
14 attempt to supplement prefiled testimony through
15 friendly cross-examination. So I'll object to it
16 because it should have been prefiled as surrebuttal
17 testimony.

18 MR. DOWNEY: Judge, it's not my
19 exhibit, but I think he just said this is a
20 reconciliation to the various surrebuttals.

21 JUDGE WOODRUFF: I'm going to
22 overrule the objection. 403 is received.

23 (MRA EXHIBIT NO. 403 WAS RECEIVED
24 INTO EVIDENCE.)

25 JUDGE WOODRUFF: Okay. For further

1 cross, then, Consumers Council is not here.

2 Wal-Mart?

3 MR. CHAMBERLAIN: No questions.

4 JUDGE WOODRUFF: River Cement?

5 MS. LANGENECKERT: No questions.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. POSTON: No questions.

8 JUDGE WOODRUFF: Staff?

9 MR. ANTAL: Staff has a few.

10 CROSS-EXAMINATION BY MR. ANTAL:

11 Q. Hello, Mr. Dauphinais.

12 A. Good afternoon.

13 Q. I have a few questions for you. In
14 your direct testimony, did you not estimate the
15 locational marginal price to be \$27.05?

16 A. I did at that time and for the
17 reasons discussed in detail in my surrebuttal
18 testimony.

19 Q. Okay. You're alluding to my next
20 question. You made an adjustment in your
21 surrebuttal, correct?

22 A. Yes.

23 Q. Okay. And that was a range of \$27.91
24 to \$28.49?

25 A. That's correct.

1 **Q. Okay. In your analysis, did you**
2 **review Noranda's opportunities to purchase energy**
3 **on the open markets?**

4 A. That wasn't the nature of the
5 analysis I performed, no.

6 **Q. Okay. And I don't know if you have**
7 **the knowledge to answer this next question, so if**
8 **you don't, I understand. But would you expect**
9 **if -- if Noranda were to purchase energy on the**
10 **open markets, would you expect it to be between the**
11 **range of \$27.91 and \$28.49?**

12 A. I would -- I would need to review
13 everything to make sure I -- I don't think there's
14 another adjustment needs to be made to those
15 numbers. That would be a starting point would be
16 to look at that. Many of the charges that are
17 there are very similar to what Noranda would
18 experience if it was in the open market.

19 **Q. So you would say that would be a**
20 **starting point?**

21 A. It would be a starting point.

22 **Q. Okay. It could be potentially**
23 **higher?**

24 A. Not necessarily. The only reason I
25 have reservations is I haven't sat down and thought

1 through all the implications of that.

2 Q. Okay. I understand that you did a
3 36-month time frame when making these estimations;
4 is that correct?

5 A. That is correct.

6 Q. Okay.

7 A. For my surrebuttal testimony.

8 Q. Just before you mentioned the
9 addition of Entergy to the MISO network, commonly
10 referred to, I believe, as MISO South?

11 A. Correct.

12 Q. This occurred on -- in December of
13 2013, correct?

14 A. That is correct.

15 Q. Okay. The adjustments that you made
16 included a normalization of the price of energy
17 from January of 2014 to April of 2014, correct?

18 A. Can you restate that question,
19 please?

20 Q. One of the adjustments you made to
21 determine your forecast was to the time frame of
22 January 2014 to April -- well, I'll say -- take
23 that back -- to March of 2014?

24 A. That was why I asked you to restate
25 it because I didn't think I heard -- it didn't

1 sound right. Yes. I removed an abnormality during
2 January of 2014 through March of 2014 which I
3 referred to as the polar vortex anomaly.

4 **Q. Yes. Would you agree that MISO South**
5 **is connected to the rest of the MISO network**
6 **through one transmission line?**

7 A. As one interconnection point.
8 There's a three-party agreement between, I think it
9 is Ameren Missouri, Associated Electric Company and
10 Entergy, I believe.

11 **Q. Would you agree that the addition of**
12 **MISO South has the possibility of increasing**
13 **Bootheel locational marginal prices?**

14 A. Not necessarily. One of the things
15 that's in play is there's limitations on how much
16 power can move between the north and the south of
17 MISO and from the south to the north of MISO.

18 **Q. But not -- saying that it's not**
19 **necessarily so doesn't mean that it's not a**
20 **possibility?**

21 A. I don't think there's -- I haven't
22 seen any evidence that there's a significant --
23 hasn't been significantly affected, especially
24 since right now there are -- there's a complaint
25 case at the Federal Energy Regulatory Commission by

1 the Southwest Power Pool against MISO with regard
2 to utilization of that north/south tie.

3 So it's not really being utilized
4 much more significantly than it was prior to the
5 integration of Entergy into MISO, at least for the
6 time being.

7 Q. Okay. Would you agree that the
8 adjustments that you made to normalize from January
9 to March of this year would eliminate any effects
10 the addition of MISO South would have on the LMP in
11 the Bootheel?

12 A. No. I don't think there's a
13 significant effect. I don't believe it removes
14 anything.

15 Q. Okay. You said there's -- you don't
16 believe that there's any significant effect. Does
17 that mean that there is no effects?

18 A. It is not material.

19 Q. Okay. Lastly, I'd like to discuss
20 your adjustment for the polar vortex anomaly
21 specifically. If you would refer to your
22 surrebuttal testimony on page 10, please. You
23 stated there that Staff's witness Ms. Kliethermes'
24 use of a 48-month historic period could attempt to
25 try and average out the polar vortex anomaly, but

1 that that would assume that such an event would
2 occur every four years, correct?

3 A. I said it could be viewed as an
4 attempt to average out the polar vortex anomaly,
5 but it effectively assumes once every four years
6 because it's assuming we have one every 48 months.

7 Q. And just so I can be clear, are you
8 saying that a polar vortex is an anomaly of itself,
9 the weather climate, you know, phenomenon of a
10 polar vortex is an anomaly or that the
11 uncharacteristically cold weather that we saw this
12 past winter is the anomaly?

13 A. It's a combination of that initiating
14 event and what precipitated from it. We know in
15 the Chicago area that this was the coldest December
16 to March period since 1872. We know from the
17 Missouri Climate Center of the University of
18 Missouri that for the period of December through
19 February of this -- that just passed that that's
20 the coldest winter for Missouri in 35 years.

21 And we have MISO presentations which
22 talk about that throughout the region, it was the
23 coldest it's been in 20 years. That precipitated
24 pressure on natural gas. That precipitated
25 pressure on the operation and generation

1 facilities, and all of that led to very high market
2 prices, very high market prices in a very long
3 time. They're not likely to repeat themselves
4 unless you have a --

5 **Q. Thank you for the very thorough**
6 **answer.**

7 **Sir, are you familiar with the**
8 **National Oceanic and Atmospheric Administration?**

9 A. NOAA, yes.

10 **Q. Yes. And would you consider them a**
11 **reliable source of weather information?**

12 A. Yes.

13 MR. ANTAL: Okay. Judge, I would
14 like to pass out Staff's next exhibit, please.

15 JUDGE WOODRUFF: All right. Your
16 next number is 207.

17 (STAFF EXHIBIT NO. 207 WAS MARKED FOR
18 IDENTIFICATION.)

19 BY MR. ANTAL:

20 **Q. Mr. Dauphinais, would you agree that**
21 **the document that I just handed you appears to be**
22 **an article printed off Climate.gov with the NOAA**
23 **insignia on the top of it?**

24 A. It is. I've read this article
25 before. I would note it's dated January 8th, 2014.

1 **Q. Yes, it is from a couple of months**
2 **ago.**

3 A. Prior to the entire cold weather
4 experience we had this past year. It was only in
5 the early part of it. In fact, it was only after
6 the very first severe event, which was January 6
7 through 7.

8 **Q. I agree with your statement. But it**
9 **does -- you would agree that it does describe the**
10 **naturally occurring climate events of a polar**
11 **vortex?**

12 A. It does, and it does note other
13 instances where we've had a weakened polar vortex
14 and dipping down in temperatures, but we have not
15 experienced previously in 20 or 35 years or since
16 1872 if you're in Chicago what we experienced this
17 past winter.

18 **Q. Okay. But you would agree that the**
19 **cold winter that we experienced in 2009 to 2010 was**
20 **attributable to a polar vortex, a negative polar**
21 **vortex as NOAA has stated in this article?**

22 A. Yes, but again, it's not in the same
23 category of what we had this past year.

24 **Q. Okay. And you would agree that the**
25 **frigid start to 2011, to the winter of 2011 was**

1 also attributable to a negative polar vortex as
2 NOAA has stated?

3 A. Again, but not to the same degree,
4 not the same level of abnormality. And we see this
5 in one of my -- one of my figures in surrebuttal
6 testimony, Exhibit -- I mean Figure JRD-2, where we
7 have annual numbers for 2011 on there. Part of
8 what is in there for 2011 -- I'm sorry. We have
9 numbers for 2010 in there as well as 2011, 2009.
10 Basically ever winter from 2009 to 2013.

11 Q. Sir, are you a climatologist?

12 A. No. I don't claim to be.

13 Q. Are you a meteorologist?

14 A. No.

15 Q. Would you consider yourself to be a
16 weather expert?

17 A. No, but I'm relying on information as
18 an expert in my field.

19 Q. Thank you, sir. You've answered my
20 question. Thank you.

21 Do you know whether or not we will
22 have another polar vortex in the next 48 months or
23 not?

24 A. I do not know whether we would have
25 one or not, but I would say, considering we have --

1 the infrequency of what we have experienced to
2 date, one would think that's unlikely.

3 **Q. I would please ask you to turn to**
4 **page 19 of your surrebuttal. I'm particularly**
5 **looking at the bar graph titled MISO Day-Ahead**
6 **Energy Market Anomalies and Trends 2005 to 2014.**

7 A. Yes.

8 **Q. And again, your analysis looked --**
9 **looked back 36 months from the ending point of**
10 **April of 2014, of this year. So from April of 2011**
11 **to 2014 is when you specifically looked at for**
12 **data?**

13 A. No.

14 **Q. No?**

15 A. I'm confused. This graph doesn't
16 cover that period.

17 **Q. It doesn't cover the period of 2011**
18 **to 2014?**

19 A. You said April. This graph covers --
20 this page, Figure JRD-4 you're referring to, goes
21 from basically September of 2005 through March of
22 2014.

23 **Q. That is correct, and not arguing that**
24 **point.**

25 A. Okay.

1 Q. I'm saying your analysis in coming up
2 with the projected LMP --

3 A. Yes.

4 Q. -- looked back from April, ending --
5 the ending period was April of 2014 looking back 36
6 months?

7 A. With an adjustment for January
8 through March of 2014, yes.

9 Q. Yes.

10 A. That was one of the two periods I
11 examined.

12 Q. Would you agree that a person could
13 look at this graph on page 19 of your surrebuttal,
14 looking at the day-ahead energy market prices from
15 2009 onward and see that 2012 and 2013 were
16 abnormally low years?

17 A. Well, there's a problem looking at
18 this by itself, is that this does not give you an
19 entire year. That's why Figure JRD-2 is better for
20 examining that.

21 MR. ANTAL: No other questions, your
22 Honor.

23 JUDGE WOODRUFF: Did you want to
24 offer 207?

25 MR. ANTAL: Yes, please, I would like

1 to.

2 JUDGE WOODRUFF: 207's been offered.

3 Any objections to its receipt?

4 MR. DOWNEY: I'm not sure how
5 relevant it is. I guess I'll object on relevance
6 grounds.

7 JUDGE WOODRUFF: Okay. What's the
8 relevance?

9 MR. ANTAL: It explains the polar
10 vortex anomaly that the witness has made an
11 adjustment for in his testimony.

12 JUDGE WOODRUFF: I'll go ahead and
13 let it in. Objection's overruled.

14 (STAFF EXHIBIT NO. 207 WAS RECEIVED
15 INTO EVIDENCE.)

16 JUDGE WOODRUFF: All right.
17 Continental Cement?

18 MR. COMLEY: No questions.

19 JUDGE WOODRUFF: Ameren?

20 MR. BYRNE: Yes, your Honor, I do
21 have a few.

22 CROSS-EXAMINATION BY MR. BYRNE:

23 Q. Good afternoon, Mr. Dauphinais.

24 A. Good afternoon, Mr. Byrne.

25 Q. Do you have a copy of your deposition

1 that I took of you on June 12th with you?

2 A. Yes, I do.

3 Q. Okay.

4 A. Just need a minute to get to it.

5 Q. I don't need to refer to it now, but
6 I will be in the course of questioning.

7 A. Okay. I'll just have it open and
8 ready.

9 Q. Great. Ready?

10 A. Yes.

11 Q. I wanted to start by asking you some
12 questions about the scope of your testimony. My
13 understanding is that you are not sponsoring any
14 testimony that supports Noranda's need for its
15 proposed rate; is that correct?

16 A. That is correct.

17 Q. And so you haven't done any analysis
18 of things like Noranda's financial condition or
19 future business prospects or aluminum market
20 futures, anything like that?

21 A. That is correct.

22 Q. And as I understand it, the proposed
23 \$30 per megawatt hour rate that Noranda is asking
24 for in this proceeding is not based on any of your
25 calculations; is that true?

1 A. Yes.

2 Q. And as I understand it, you don't
3 know who developed the \$30 per megawatt hour rate
4 or how it was developed; is that true?

5 A. That's true.

6 Q. Would you agree with me that your
7 analysis is designed to show whether customers are
8 better off or worse off if Noranda leaves the
9 system versus paying the \$30 per megawatt hour rate
10 that they proposed?

11 A. Yeah. It's one of two -- one of two
12 benchmarks. Mr. Brubaker had an average variable
13 cost benchmark as well he looked at in his
14 testimony. But I do the -- basically I do
15 calculations which support the examination of the
16 incremental costs that will be avoided from a
17 Noranda shutdown, which Mr. Brubaker then compares
18 to the \$30 rate.

19 Q. Okay. And my understanding is your
20 analysis examines incremental avoided costs as
21 opposed to fully allocated costs; is that correct?

22 A. Yes. The incremental costs avoided
23 by a shutdown of Noranda by Ameren Missouri.

24 Q. And specifically what you looked at,
25 as I understand it, is actual net energy costs, or

1 **ANEC, and other MISO load-based charges and credits**
2 **that would change if Noranda left the system; is**
3 **that correct?**

4 A. Well, very specifically it's the
5 change in actual net energy cost and the change in
6 MISO administration charges.

7 **Q. Okay. There's no credits, it's all**
8 **charges on the MISO administrative side?**

9 A. The MISO administrative charges are,
10 yeah, just charges. The actual net energy cost
11 includes various MISO charges. Some are credits.
12 Some are charges.

13 **Q. And can you explain what ANEC is just**
14 **in general for the Commission?**

15 A. Yeah. Actual net energy -- actual
16 net energy cost is essentially Ameren Missouri's
17 fuel and purchased power cost as reduced by its
18 off-system sales revenues.

19 **Q. And my understanding is in your**
20 **surrebuttal testimony you estimated that if Noranda**
21 **left the system, Ameren Missouri's ANEC and its**
22 **MISO administrative charges would decrease between**
23 **\$27.91 per megawatt hour and \$28.49 per megawatt**
24 **hour; is that correct?**

25 A. Yes.

1 Q. And that's -- and that's slightly
2 below the \$30 per megawatt hour that Noranda's
3 proposing to pay; is that correct?

4 A. A bit below \$30.

5 Q. And isn't it true that your
6 calculation is your estimate of the impact of
7 Noranda leaving the system on ANEC and MISO
8 administrative charges rather than a precise
9 calculation of exactly what those changes would be?

10 A. I think it's the best estimate in
11 this proceeding, but yes, it's my estimate.

12 Q. And isn't it true that there are
13 quite a few components of your calculation of ANEC
14 and MISO administrative charges?

15 A. There are quite a few components.

16 Q. And isn't it true that almost all of
17 the components in your calculation are based on
18 historical costs?

19 A. They're based on historical costs. I
20 had three years worth of data for most of the
21 charges, and I examined using ideally a 36-month
22 average for 2011 through 2013 because they're
23 market driven. In the ANEC we used just 2013,
24 which is actually higher, so it was conservative.
25 That is, it tended to overstate the impact versus

1 using a 36-month average.

2 **Q. But which components did you use 2013**
3 **for?**

4 A. For all the market settlement charge
5 types, I used 2013 to maintain consistency with
6 what I did with auction revenue right -- let me
7 state that more slowly. There's one particular
8 MISO credit, which was auction revenue right, or
9 ARR Stage 2 distribution amounts. That was based
10 on 2013 as well.

11 So I wanted to make sure I had
12 consistency so the other -- so market settlement
13 charges were also based on 2013. At the end, all
14 that was conservative as delineated in footnotes in
15 my schedules.

16 **Q. Were there some components of your**
17 **calculation that were based on -- rather than being**
18 **based on historical costs, were based on published**
19 **MISO rates or charges?**

20 A. Correct. The transmission charges,
21 the non-market-related ancillary services and the
22 administration charges, those are all regulated
23 rates. So those were based on a posted rate if
24 it's available, and if it wasn't available, MISO's
25 posting of sort of the nearest term of -- nearest

1 term rate that would be in effect. So, for
2 example, if we had their forecast of what that rate
3 would be for January through December 2014 and that
4 was the closest in, closest to us period that was
5 available, I used that as the basis of the rate
6 that applies to that charge.

7 Q. Okay. But would it be fair to say by
8 far the largest component of your ANEC calculation
9 was energy prices or power prices; is that correct?

10 A. Absolutely.

11 Q. Okay. And I believe at your
12 deposition you agreed with me that energy prices
13 would comprise over 95 percent of the amount of
14 your estimate; is that true?

15 A. Yes.

16 Q. Okay. And would it be fair to say
17 that you used measurable historical data to make
18 your estimate of power prices?

19 A. Measurable historic data, known and
20 measurable historic data, yes, with basically
21 through a normalization process of averaging 36
22 months, as has been done in rate cases, and
23 removing abnormalities, as has again been done in
24 rate cases.

25 Q. And as I understand it, for -- in

1 calculating your power prices that you used to
2 develop your final estimates in your surrebuttal
3 testimony, you used the average day-ahead hourly
4 prices at the AMMO.UE CP node for your two separate
5 36-month periods; is that correct?

6 A. Correct. For my surrebuttal
7 testimony, yes.

8 Q. Okay. And can you briefly explain to
9 the Commission what day-ahead hourly prices are?

10 A. Yeah. MISO's energy market, there's
11 a day-ahead and a real-time market. The day-ahead
12 market is one which theoretically is voluntary.
13 That is, load-serving entities such as Ameren
14 Missouri can basically bid their forecasted load
15 into that day-ahead market on an hourly basis. And
16 basically generation entities, including Ameren
17 Missouri for its own generation facilities, will
18 offer their generation into the MISO market for
19 each of those hours.

20 MISO will then clear that market in
21 each hour, effectively dispatch or theoretically
22 dispatch that generation to match the load that was
23 bid in. And that will set an hourly market
24 clearing price for each hour that next day. That's
25 the day-ahead market.

1 There's also a real-time market. The
2 real-time market basically settles the difference
3 between what actual load is, that is metered load
4 versus what was bid in the day-ahead market,
5 so each hour the difference between what was
6 actually metered versus what was bid when the
7 day-ahead market was settled.

8 The same thing with generation. If
9 there's a difference in generation in real time
10 versus what was bid in the day-time market and
11 cleared, then that's settled also in the real-time
12 market versus the day-ahead market.

13 **Q. And so for your analysis in your**
14 **surrebuttal testimony, you used the day-ahead**
15 **prices, right?**

16 A. Correct, because that's where you see
17 a very high percentage, typically my experience
18 95 percent of load at least is in the day-ahead
19 market. That's where most of it is.

20 **Q. And you averaged them at the AMMO.UE**
21 **CP node, right?**

22 A. At the AMMO.UE node, correct.

23 **Q. And can you explain what that is?**

24 A. That is the commercial pricing node
25 where Ameren Missouri settles its load with MISO.

1 Q. Okay. And so you averaged all of
2 these hourly day-ahead prices for your two 36-month
3 periods, I guess -- is that correct?

4 A. Correct. Yes.

5 Q. And the first period you used or the
6 earliest in time period that you used was January
7 2011 through December of 2013; is that correct?

8 A. Correct.

9 Q. And for that period you did not make
10 any normalization adjustments; is that true?

11 A. Correct, because it precedes the
12 polar vortex anomaly period.

13 Q. And what was the price per megawatt
14 hour that you came up with for that 36-month
15 period?

16 A. \$27.26 per megawatt hour.

17 Q. Okay. And then the second 36-month
18 period you looked at was May 2011 through April
19 2014; is that correct?

20 A. Correct.

21 Q. And this is the one that you made the
22 normalization adjustment to eliminate the polar
23 vortex; is that correct?

24 A. That is correct.

25 Q. And again, I think you explained this

1 to the Staff, in response to Staff's questions, but
2 the polar vortex is just basically the unusually
3 cold weather, extremely cold weather that we
4 experienced last winter; is that fair to say?

5 A. That was the driving factor. It had
6 obviously -- everything else precipitated from it,
7 but that was the fundamental driving factor.

8 Q. And the way you adjusted for that
9 factor was, as I understand it, you replaced the
10 January through March 2014 data with the average of
11 the January to March 2012 and 2013 data; is that
12 correct?

13 A. Correct.

14 Q. Okay. And what was the price per
15 megawatt hour that you calculated for that period
16 as adjusted?

17 A. \$26.69 per megawatt hour.

18 Q. Okay. So again, your calculation of
19 both prices was purely based on historical
20 information adjusted to remove the polar vortex
21 anomaly; is that correct?

22 A. Correct. I didn't make a -- I talk
23 about this in my testimony. I didn't make a trend
24 adjustment in the data because I didn't feel one
25 was necessary and it was conservative not to do

1 one.

2 Q. Your analysis was not adjusted in any
3 way to take into account things like forward energy
4 prices or anything that might happen in the future;
5 is that correct?

6 A. That's correct. This is consistent
7 with the approaches generally being used in the
8 last five rate cases for Ameren Missouri.

9 Q. And you agree that power prices can
10 be volatile, correct?

11 A. They can be volatile at times, yes.

12 Q. And would you agree that power prices
13 could change significantly over the next ten years?

14 A. They could, yes.

15 Q. Okay. And --

16 A. Both up or down.

17 Q. Sure. And it's certainly possible
18 that power prices could double or triple over the
19 next ten years, isn't it?

20 A. It's possible. That doesn't
21 necessarily mean it's likely, but it's possible.
22 They could go down significantly as well.

23 Q. Sure. And you would agree, would you
24 not, that there are some known factors today that
25 may lead power prices to significantly increase

1 **over the next ten years, wouldn't you?**

2 A. I wouldn't necessarily call them
3 known. I would say they're factors that many
4 believe will have -- could cause prices to go up,
5 yes.

6 **Q. For example, isn't it possible that**
7 **the carbon emission rules that were recently**
8 **published may lead to the retirement of coal**
9 **plants, which would in turn increase power prices?**

10 A. It may, but the degree of what impact
11 that has is not clear right now. That's very clear
12 from following any of the press reports that are in
13 this industry that I follow on a regular basis.
14 There isn't a clear understanding yet of what the
15 real effect is.

16 There's a feeling there's a lot of
17 flexibility built in that rule, but there are some
18 folks who are very concerned and have horror
19 stories that they're concerned we could get a
20 horror story with it.

21 **Q. Sure.**

22 A. We also --

23 **Q. It's uncertain?**

24 A. It's uncertain.

25 **Q. It could have a big impact or maybe**

1 not such a big impact?

2 A. Correct. And for other reasons,
3 including the fact that the rule may be challenged
4 in the courts. So we just don't know right now.

5 Q. And would the same be true for other
6 environmental regulations, there's other things
7 that the EPA is considering beyond the carbon rules
8 which could have a big impact or maybe not such a
9 big impact?

10 A. Yes. Many of these things are
11 already known. They've been known for several
12 years they may be coming. Another example is a
13 cooling water rule. The rule came out again fairly
14 recently and a lot of flexibility. It was actually
15 a lot milder than most folks were expecting.

16 Q. It's my understanding from your
17 deposition that you didn't perform any analysis of
18 the risks or changes that could occur over the next
19 ten years because you don't believe it's relevant
20 to your analysis and it's speculative; is that
21 correct?

22 A. That's correct. For purposes of
23 setting a rate, it's speculative and not relevant.
24 And part of that is that my understanding is this
25 Commission cannot bind future commissions. And so

1 really what we're interested in is the reasonable
2 rate from the point it goes into effect 'til the
3 next time Ameren Missouri's rates are reviewed.

4 **Q. So you didn't feel it necessary to**
5 **look into the future at all because of that --**
6 **because the Commission can examine the rates?**

7 A. Certainly the prices are there and
8 are worth examining on an anecdotal basis, but
9 because the Commission can review this rate and
10 because those are not known and measurable, unlike
11 using normalized historic prices, I didn't feel it
12 was reasonable to base it on those forward prices.

13 And the other complication we have is
14 that the current forward prices, in my opinion, are
15 overstated or are a bit anomalous still because of
16 aftereffects of the polar vortex anomaly.

17 **Q. But those are -- you're talking about**
18 **forward power prices?**

19 A. Correct.

20 **Q. And aren't those forward power prices**
21 **developed by the market?**

22 A. They're developed by the market, but
23 because of the risk associated with the -- with
24 forward contracting, those products tend to be
25 driven more heavily by fear versus other products.

1 **Q.** So you believe your view of the
2 **future is more rational than that of the**
3 **marketplace; is that fair to say?**

4 A. What I feel is that we have to look
5 back at past history and what's happened with
6 forward prices. The best example is to go back to
7 the period right after Hurricanes Dennis, Katrina
8 and Rita and how long it took forward market prices
9 to shake off that anomaly, and it took almost a
10 year.

11 **Q.** And your view that the Commission is
12 **free to examine the reasonableness of the rates in**
13 **the future, that's no different than the**
14 **Commission's ability to examine the reasonableness**
15 **of any rate that exists in the future; is that**
16 **true?**

17 A. Yes.

18 **Q.** Okay. I mean, isn't it true,
19 **Mr. Dauphinais, you're not making any**
20 **representations at all about market prices over the**
21 **next ten years?**

22 A. That's correct.

23 **Q.** And isn't it true that you view your
24 **analysis as simply a reasonable estimate of normal**
25 **market prices between now and Ameren Missouri's**

1 next rate proceeding?

2 A. The next opportunity for the
3 Commission to review Ameren Missouri's rates.

4 Q. Which would be our next rate
5 proceeding?

6 A. Probably the next rate proceeding.

7 Q. And you're aware, are you not, that
8 Ameren Missouri has indicated its intention to file
9 a rate proceeding in July, next month?

10 A. I believe that I've heard that, yes.

11 Q. Now, you talked with Staff a little
12 bit and me about adjusting your power prices for
13 the 36-month period from May 2011 to April 2014 to
14 remove the effect of the polar vortex, correct?

15 A. Yes.

16 Q. And I think you referred to that at
17 least in your deposition as a significant anomaly;
18 is that correct?

19 A. I've used the term severe, I think.

20 Q. Severe anomaly?

21 A. Just like I would put in the same
22 category Hurricanes Katrina and Rita.

23 Q. You jumped ahead to my next question.
24 I was going to ask you if there had been any other
25 severe anomalies over the last ten years. And so

1 would you agree that Hurricane Katrina and Rita was
2 a severe anomaly over the last ten years?

3 A. Severe market anomaly, yes.

4 Q. And would you agree that the rail
5 disruptions in 2005 were a severe market anomaly?

6 A. It was one of the things going on
7 around the same time as Hurricanes Katrina and
8 Rita.

9 Q. Would you agree it's a severe market
10 anomaly?

11 A. It was -- the company identified it
12 as one. I'm not disputing it, that event in 2005,
13 whether it was -- I'm not disputing that it was.
14 In other words, I agree that it was likely a severe
15 market anomaly. Not as severe as the hurricanes
16 themselves necessarily.

17 Q. Every event has a different degree of
18 severity, right?

19 A. Correct.

20 Q. And would you also agree that the
21 financial collapse of 2008 was a severe market
22 anomaly?

23 A. A downward one, but it's one that was
24 sustained, sustained because of the new
25 developments in hydraulic fracking and horizontal

1 drilling with regard to natural gas. That
2 introduced the fundamental shift in the market that
3 ended up sustaining the collapse of prices that
4 occurred in the late summer and fall 2008.

5 **Q. Would it be fair to say that the**
6 **financial collapse in 2008 was a severe market**
7 **anomaly, but it would have been temporary in the**
8 **absence of the fracking change; is that what you're**
9 **saying?**

10 A. Yes. In my view, there would have
11 been recovery. We would have seen a restoration of
12 the year-by-year escalation in natural gas and
13 electricity, energy prices that we saw prior to the
14 summer of 2008 or late summer of 2008.

15 **Q. And I believe in your deposition you**
16 **talked about fracking. You referred to it as a**
17 **fundamental shift in the market; is that fair to**
18 **say?**

19 A. Yes.

20 **Q. And why is it a fundamental shift in**
21 **the market?**

22 A. It introduced access to significant
23 new supplies of natural gas that weren't available
24 before and created a lot of downward pressure on
25 the market price for natural gas. Probably the

1 best example of that is that, as we were running up
2 through 2006, 2007, into 2008, natural gas prices
3 and crude oil prices had a lot -- they were tied
4 together a lot in this country in those two
5 markets. The prices tended to follow each other
6 quite a bit.

7 And once you had the separation from
8 hydraulic fracking and horizontal drilling, the
9 prices separated. And now natural gas prices in
10 this country are not really tied to crude oil
11 prices at all anymore.

12 **Q. And is it true that the difference**
13 **between a fundamental shift in the market and a**
14 **market anomaly is a market anomaly is temporary,**
15 **whereas the fundamental shift in the market has**
16 **longer-lasting effects?**

17 A. Severe market anomaly is temporary
18 and it is infrequent.

19 **Q. Okay. In the last ten years, aside**
20 **from the fracking revolution, have there been any**
21 **other fundamental shifts in the market?**

22 A. What was your period again, ten
23 years?

24 **Q. Ten years.**

25 A. That's the most significant one that

1 comes to mind. There may be other minor ones, but
2 that's the significant. Energy efficiency has
3 grown obviously the last ten years. Wind has come
4 down in cost, solar as well a little bit as well.

5 **Q. So is it possible that energy**
6 **efficiency and renewables could be considered**
7 **another fundamental shift in the market that's**
8 **occurred in the last ten years?**

9 A. Not as dramatic as what we've seen
10 with natural gas, but certainly we're seeing
11 evolution there.

12 **Q. How about the formation of MISO and**
13 **the other -- I know that's probably not in the last**
14 **ten years, but the formation of MISO and the other**
15 **RTOs, was that a fundamental shift in the market?**

16 A. It's a change in how the market
17 operated, including increased transparency in the
18 market is probably its biggest contribution.
19 Certainly improved reliability as well.

20 **Q. So would you consider that a**
21 **fundamental shift in the market?**

22 A. I think it's a shift in the market.
23 Is it as significant as what's happened in natural
24 gas? No. But it is certainly a change in the
25 market, and I think we've seen evidence in the past

1 that it has provided a reduction in cost for Ameren
2 Missouri by participating in MISO, a net reduction
3 in cost.

4 Q. Mr. Dauphinais, in your deposition I
5 asked you about some power prices that you had
6 listed in your direct testimony in Case No.
7 ER-2008-0318. Do you remember that?

8 A. Yes.

9 Q. And maybe the best way to talk about
10 this is to look in the deposition. I think our
11 exchange was on page 55 of the deposition. And so
12 let me just ask you the same questions, but the
13 information's there.

14 And specifically that testimony had
15 the average hourly price per megawatt hour in
16 calendar year 2006 at \$38.97 per megawatt hour; is
17 that correct?

18 A. Well, I think I'd like to have the
19 document you showed me at the time.

20 Q. Sure.

21 MR. BYRNE: May I approach?

22 JUDGE WOODRUFF: You may.

23 BY MR. BYRNE:

24 Q. I'm not going to mark this as an
25 exhibit if we don't need to, but can you tell me

1 **what the document I just handed you is,**

2 **Mr. Dauphinais?**

3 A. Yes. It's a copy of my direct
4 testimony in Case No. ER-2008-0318, and he's turned
5 me to page 5 of that document.

6 **Q. Okay. And does that have -- could**
7 **you just read me the periods of time and the power**
8 **prices on that table?**

9 A. Yes. This is a comparison -- this
10 Table 1 is a comparison of 2006, 2007 and July 2007
11 through June 2008 average hourly wholesale
12 electricity market prices per megawatt hour, and
13 there are four values in this table.

14 One is for calendar year 2006, and
15 it's \$38.97 per megawatt hour. The next is the
16 average of 2006 and 2007 taken together. That's
17 \$40.47 per megawatt hour. Then we have calendar
18 year 2007, which is \$41.99 per megawatt hour. And
19 lastly, July 2007 through June 2008, that's \$44.73
20 per megawatt hour.

21 All these prices are from historical
22 periods prior to the revolution in fracking,
23 horizontal drilling and natural gas.

24 **Q. Fair enough. And you would say**
25 **that's before that fundamental shift in the market**

1 took place, correct?

2 A. Yes.

3 Q. But if those power prices turned out
4 to be power prices that we experience in the
5 future, and if Noranda is just paying \$30 per
6 megawatt hour over the next ten years, isn't it
7 true that Noranda would be paying prices far below
8 what market prices would be?

9 A. Lots of ifs in that hypothetical of
10 yours.

11 Q. Sure.

12 A. I don't necessarily agree that those
13 ifs will happen. But just based on the numbers
14 here, yes.

15 Q. I'd like to talk to you about some
16 smaller components of your analysis. One of the
17 components was capacity prices; is that true?

18 A. Yes.

19 Q. And my understanding is the capacity
20 prices you used in the analysis you did in your
21 direct testimony changed pretty significantly at
22 the time you filed your surrebuttal testimony; is
23 that true?

24 A. Yeah, because it was based on the one
25 known and measurable market price for capacity

1 that's available from MISO, which was an extremely
2 low value.

3 **Q. So what was the price that you used**
4 **for capacity in your direct testimony?**

5 A. It was based on \$1.05 per megawatt
6 day.

7 **Q. And then what changed -- maybe you**
8 **just said this, but what changed between your**
9 **direct and surrebuttal testimony that changed that?**

10 A. Yes. After I filed my direct
11 testimony, the MISO conducted its planning resource
12 auction or capacity auction for the period of June
13 2014 through May 2015, and that auction cleared at
14 a capacity price of \$27.26. I'm sorry. No. I'm
15 sorry. \$16.75 per megawatt day.

16 **Q. Okay. So this component went up**
17 **about 16 times between your direct testimony and**
18 **your surrebuttal testimony; is that correct?**

19 A. It went up 16 times, but that had
20 limited effect, and it's not something I would
21 expect to be repeated. It's really a function of
22 the fact that the 2013-2014 planning resource
23 auction result of \$1.05 per megawatt day was
24 extremely low.

25 **Q. I mean, but doesn't that suggest that**

1 **this component can change significantly from period**
2 **to period?**

3 A. It can change significantly but not
4 necessarily by a factor of 16.

5 **Q. I mean, isn't it true that it could**
6 **change significantly over the next ten years?**

7 A. It can go up. It can go down. We'll
8 have some years it might be lower than this, some
9 years that are higher than this.

10 **Q. But I guess, again, that's probably**
11 **not relevant or significant to your analysis**
12 **because you're not -- the Commission can adjust**
13 **rates, right, so it doesn't matter -- the**
14 **volatility over the next ten years doesn't really**
15 **matter?**

16 A. Yeah. The future price for capacity
17 in MISO is not known and measurable.

18 **Q. How about Schedule 26A charges, can**
19 **you tell -- was that a component of your analysis?**

20 A. Yes, it was.

21 **Q. And do you know what Schedule 26A**
22 **charges are?**

23 A. Yes. Schedule 26A charges, it's the
24 rate that the MISO has to collect, what are called
25 multi-value transmission projects, MVP projects.

1 These are regional transmission projects that the
2 MISO board of directors authorizes. There's a
3 portfolio of those projects that were approved by
4 the board of MISO a couple years ago.

5 Basically, these regional projects,
6 the revenue requirement for them is put together in
7 one big pot and then just divided through by the
8 total number -- total amount of energy consumption
9 of transmission customers in MISO, and that
10 produces a dollar per megawatt hour rate.

11 It's the same dollar per megawatt
12 hour rate whether we're talking Ameren Missouri or
13 somebody in Indiana. It's basically the same rate
14 throughout MISO.

15 **Q. Okay. And what rate did you use for**
16 **this component in your analysis?**

17 A. I used the most recent forecast rate
18 that was available for my direct testimony which
19 applies to 2014, which I believe is still the best
20 known and measurable rate to use at this time.

21 **Q. And do you know what that amount was?**

22 A. 37 cents per megawatt hour.

23 **Q. And I believe in your deposition we**
24 **walked through -- MISO publishes those estimated**
25 **rates for future years; isn't that true?**

1 A. They publish those estimated rates
2 for future years, which assumes that the projects
3 in question will be -- receive certificates from
4 each of the states where such certificates are
5 needed and assumes the projects are constructed on
6 schedule otherwise and that the projects will cost
7 what they're currently estimated to cost, but yes.

8 **Q. Okay. And you read some of the**
9 **figures from MISO's current publication, and I**
10 **won't make you go through that exercise now, but**
11 **would it be fair to say that those figures over the**
12 **next ten years increase four to five times above**
13 **your 37 cent per megawatt hour rate that you used?**

14 A. I believe they escalate over time
15 from 37 cents per megawatt hour to maybe around
16 \$1.80 per megawatt hour. If you've got the
17 schedule, it might make sense to go through it.

18 **Q. Sure.**

19 MR. BYRNE: May I approach the
20 witness, your Honor?

21 JUDGE WOODRUFF: You may.

22 BY MR. BYRNE:

23 **Q. Again, I'm not going to kill trees by**
24 **making this an exhibit if Mr. Dauphinais didn't --**
25 **could you tell me what the document is that I gave**

1 **you?**

2 A. Yes. This is MISO's projection of a
3 Schedule 26A charge from 2015 to 2029. It's a
4 slightly newer version of what was in one of my
5 work papers.

6 **Q. Could you just read there, estimated**
7 **charges for the next ten years, if you don't mind?**

8 A. Can we -- maybe just a range would
9 suffice since they pretty much -- these don't jump
10 up and down. They're not --

11 **Q. That's fine.**

12 A. -- volatile. They increase slowly
13 over time.

14 **Q. Give us an idea of what the increase**
15 **is.**

16 A. So 2014 is not on here. This is a
17 projection for rates starting in 2015. So the
18 first charge on here is 57 cents per megawatt hour.
19 That's a 2015 charge, not a 2014 charge. And maybe
20 running through 2023, that will -- it goes up to
21 \$1.58 per megawatt hour.

22 But again, at this point, this is a
23 projection. It's not known and measurable. It
24 assumes these projects all receive certificates
25 where they're necessary from state authorities. It

1 assumes these projects are constructed and the cost
2 of those projects are what's currently predicted.

3 **Q. And again, even if these increases**
4 **come true, even if these MISO projected increases**
5 **come true, that's not relevant to your analysis**
6 **because you're not looking forward for the next ten**
7 **years because the Commission has the ability to**
8 **change our rates, right?**

9 A. The Commission cannot bind future
10 commissions and has the ability to review the
11 reasonableness of the rate.

12 **Q. Mr. Dauphinais, how long have you**
13 **been filing testimony in Missouri regulatory**
14 **proceedings?**

15 A. I would say I've been involved in
16 Missouri regulatory proceedings in one aspect or
17 another since I joined Brubaker & Associates in
18 1997. I think I filed my first testimony before
19 this Commission possibly 1998 or '99.

20 **Q. Are you aware of any circumstance**
21 **where the Commission has ever tried to lock in a**
22 **rate for a particular customer multiple years?**

23 A. Locked it in in what way? Locked it
24 in for -- in a way that they can't modify it going
25 forward or --

1 Q. Yeah. Just set a rate for a period
2 of years that was -- yeah, set a specific rate that
3 was for a period of years, can you think of an
4 instance where they've ever done that?

5 A. If you're saying the Commission
6 binding future commissions, I'm not aware of them
7 doing that.

8 Q. Okay. When Mr. Fayne -- were you
9 here when Mr. Fayne was testifying?

10 A. Parts of it, but I wasn't necessarily
11 paying that close of attention.

12 Q. I wasn't either.

13 (Laughter.)

14 But at one point where I was paying
15 attention, he said -- I believe he testified that
16 he was -- he was against the idea -- he was
17 asked -- I don't even remember by whom. But he was
18 asked by one of the questioners, would it be
19 appropriate for a smelter to go to market. I think
20 they were talking about some of these other
21 smelters in other states, and maybe in Kentucky or
22 some other state the smelter had gone to the
23 marketplace to get market-based power.

24 And Mr. Fayne said -- the question
25 was, what do you think of that? Do you think

1 that's appropriate? And Mr. Fayne said, I don't --
2 you know, in my opinion, it's not appropriate for
3 smelters to have market-based power contracts.
4 Do you remember that at all?

5 A. I do remember that, yes.

6 Q. So I guess my question for you is, do
7 you agree with Mr. Fayne that it's not appropriate
8 for smelters to have market-based power contracts?

9 A. I really haven't developed an opinion
10 on that.

11 MR. BYRNE: Okay. I don't have any
12 further questions. Thank you, Mr. Dauphinais.

13 JUDGE WOODRUFF: Mr. Chairman, any
14 questions?

15 CHAIRMAN KENNEY: No. Thank you,
16 Mr. Dauphinais.

17 JUDGE WOODRUFF: Commissioner Stoll?

18 COMMISSIONER STOLL: I have no
19 questions. Thank you.

20 JUDGE WOODRUFF: Commissioner Hall?

21 QUESTIONS BY COMMISSIONER HALL:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. You did not perform a cost of service
25 analysis for Ameren servicing Noranda's load, did

1 **idea on a, you know, conversion of dollars per**
2 **megawatt day to dollars per megawatt hour?**

3 A. Yeah. The increase from \$1.05 per
4 megawatt day to \$16.75 per megawatt day, when you
5 convert that to a dollar per megawatt hour basis,
6 it's just an increase of 76 cents per megawatt
7 hour.

8 Q. All right. I'd like you to look at
9 **your exhibit Schedule 2, I guess it's Figure JRD-2**
10 **on page 15 of your surrebuttal. And I'm really**
11 **tired, so I'm not a hundred percent sure I'm**
12 **remembering this correctly, but I believe Staff was**
13 **asking you some questions and you wanted to say**
14 **something and you were cut off. Do you recall**
15 **that?**

16 A. Yes. I -- there was an attempt to
17 use another figure I have as an indication of how
18 prices have behaved in particular in later years,
19 and what I wanted to point out is that that data,
20 which I think was in Figure maybe JRD-4, really
21 didn't give you a complete picture because it
22 didn't provide a full year's worth of data. It
23 just looked at January through March periods and
24 September through December periods.

25 In Figure JRD-2, which is on page 15

1 again of my surrebuttal testimony, you see average
2 around-the-clock day-ahead market prices at
3 AMMO.UE, the pricing node that Ameren Missouri
4 clears its load at, from 2009 to 2013.

5 And what's drawn on here, too, is a
6 linear regression line, and you can see that there
7 is somewhat of a downward trend over the years.
8 And one of my concerns is that, for example, when
9 using 48-month average is that it doesn't -- it
10 starts watering down the effect of the trend,
11 slight trend is here.

12 But also if you'll look, 2010 price
13 is a bit higher than 2011, and if you go to 2009,
14 you're actually a little lower. So when you add
15 2010, it distorts the result because a three-year
16 average and a five-year average are lower than the
17 four-year average.

18 So there is a problem with the
19 48-month average both from a trend perspective and
20 also from a -- the perspective of that it's an
21 isolated year. And if you look one year plus or
22 minus, you get lower result than you do for the
23 48-month result.

24 Plus, of course, in the last five
25 rate cases we've used 36 months for normalization

1 of hourly energy market prices.

2 **Q. Now, it may be a little late in the**
3 **testimony to do this, but tell the Commission what**
4 **the -- what average variable cost means.**

5 A. Average variable cost may be in
6 contrast to incremental avoided cost. Incremental
7 avoided cost effectively treats Ameren as if they
8 are the last customer. Average variable cost
9 basically puts all customers together and doesn't
10 treat any one customer as the one who came first.
11 And so average variable cost currently at least is
12 less than incremental avoided cost.

13 And Mr. Brubaker give us an analysis
14 of average variable cost. If we cover average
15 variable costs, we cover Noranda's share of Ameren
16 Missouri's, for example, fuel and purchased power
17 costs as reduced by off-system sales revenues.

18 **Q. And you used the term incremental**
19 **cost. I'm going to just ask you, is that the cost**
20 **that it would take for Ameren to extract power from**
21 **MISO and sell it?**

22 A. Incremental cost, it's -- one of the
23 factors that goes into the incremental cost is the
24 savings that Ameren Missouri would have by not
25 having to clear the Noranda load in the MISO

1 market. And every hour Ameren Missouri has to
2 clear the Noranda load, roughly 5-- a little bit
3 under 500 megawatts. They have to clear that in
4 the MISO market. What that means is that there's
5 an invoice line in the MISO invoices that says that
6 every hour you pay the market clear price at
7 AMMO.UE for the Noranda load.

8 Well, that goes away if Noranda shuts
9 down. And so that's sort of -- you're removing
10 that extraction of power from the market. It
11 manifests itself in most hours for Ameren Missouri
12 in the accounting as actually an off-system sale,
13 but it's reduction of load clearing in the MISO
14 market.

15 **Q. Just a couple more questions. You**
16 **indicated to Mr. Byrne that your estimate was**
17 **conservative. Can you tell the Commission in what**
18 **respects?**

19 A. Oh, this was with respect to MISO
20 market settlement charges, including ARR Stage 2
21 distribution amounts. Unlike -- unlike a lot of
22 the other market charges, I based those actually on
23 the last year, 2013 rather than 2011, 2012 and
24 2013. I did that partly to maintain consistency
25 with the ARR calculation, but also it also

1 introduces some conservatism in the results because
2 if I use 2011, 2012 and 2013 and average those
3 market settlement charges together, I would have
4 had less of an adjustment than I do, less savings
5 than I do in the calculation I have.

6 **Q. Did you also calculate what you**
7 **thought the drop in power prices would be if a**
8 **large load left the system?**

9 A. Yes. I did a -- we did a robust
10 linear regression of hourly changes in market
11 prices at AMMO.UE versus changes in total MISO
12 load. We did that with three hours of hourly data,
13 26,000 data points.

14 And that linear regression supported
15 that a drop of about 500 megawatts in load, which
16 would be Noranda's load, would on average reduce
17 market prices by one and a half percent.

18 **Q. Now, you used one and a half percent,**
19 **but what did your linear regression analysis**
20 **actually show?**

21 A. Yes, I misspoke. The linear
22 regression actually produced a result of
23 1.81 percent. I would note we also looked at
24 generation nodes as well, and that was a range of
25 1.67 percent to 2.2 percent. To be conservative,

1 we rounded all those results down and only used a
2 downward market price adjustment of one and a half
3 percent rather than what the linear regression
4 results gave us.

5 **Q. And when you say conservative, is it**
6 **fair to say what you're saying is you're projecting**
7 **an incremental cost that is on the high end**
8 **versus on the low end?**

9 A. Yes. Consistency -- consistently
10 through my testimony, when I use the word
11 conservative, I'm saying that basically whatever
12 I'm doing is being done in a way that tends to
13 overstate the savings, not understate the savings.
14 And that's a common practice to use when there may
15 be an uncertainty in a particular or it may be
16 something that isn't that material. It depends
17 what it is.

18 **Q. You told Mr. Byrne that you thought**
19 **your estimate, your forecast was the best forecast.**
20 **Would you explain to the Commission why?**

21 A. I think mine is the best forecast
22 because I have gone through carefully the MISO
23 settlement charges through the MISO settlement
24 calculation guide. I think combined with my 15
25 years of experience in working on MISO matters and

1 consistency in approach with what's been done in
2 Ameren Missouri's rate cases, I think my estimate
3 is the best of the three.

4 MR. DOWNEY: Thank you,
5 Mr. Dauphinais.

6 JUDGE WOODRUFF: All right.
7 Mr. Dauphinais, you can step down.

8 THE WITNESS: Thank you.

9 JUDGE WOODRUFF: We'll take a break
10 before we go ahead with Mr. Brubaker. We'll come
11 back at 2:30.

12 (A BREAK WAS TAKEN.)

13 JUDGE WOODRUFF: Let's come back to
14 order. We're back from our break and Maurice
15 Brubaker has taken the stand.

16 (Witness sworn.)

17 JUDGE WOODRUFF: Thank you very much.
18 You may inquire.

19 MAURICE BRUBAKER testified as follows:

20 DIRECT EXAMINATION BY MR. DOWNEY:

21 Q. Please state your name for the
22 record.

23 A. It's Maurice Brubaker.

24 Q. And by whom are you employed?

25 A. Brubaker & Associates.

1 Q. Your position there?

2 A. I'm president of the firm.

3 Q. And is this your first time filing
4 testimony with the Commission?

5 A. No, it's not, although each
6 experience is different.

7 Q. You should have Exhibits 16 and 17 in
8 front of you. Do you?

9 A. I do.

10 Q. What is Exhibit 16?

11 A. 16 is my direct testimony and
12 schedules.

13 Q. And Exhibit 17?

14 A. 17 is my surrebuttal testimony and
15 schedules.

16 Q. Now, do you have any corrections that
17 you'd like to make to either of those testimonies?

18 A. I do not.

19 Q. If I asked you the questions in those
20 documents, the testimonies, would your answers be
21 the same today?

22 A. They would.

23 MR. DOWNEY: Judge, I offer
24 Exhibits 16 and 17 and tender the witness for
25 cross.

1 JUDGE WOODRUFF: 16 and 17 have been
2 offered. Any objection to their receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, they
5 will be received.

6 (NORANDA EXHIBIT NOS. 16 AND 17 WERE
7 RECEIVED INTO EVIDENCE.)

8 JUDGE WOODRUFF: For
9 cross-examination, beginning with Retailers?

10 MR. SCHWARZ: No questions, Judge.

11 JUDGE WOODRUFF: Consumers Council?

12 MR. COFFMAN: No questions, your
13 Honor.

14 JUDGE WOODRUFF: Wal-Mart?

15 MR. CHAMBERLAIN: No questions.

16 JUDGE WOODRUFF: River Cement?

17 MS. LANGENECKERT: No questions.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. POSTON: No questions.

20 JUDGE WOODRUFF: Staff?

21 MS. JONES: Thank you, your Honor. I
22 just have a few questions.

23 CROSS-EXAMINATION BY MS. JONES:

24 Q. Good afternoon, Mr. Brubaker.

25 A. Good afternoon.

1 Q. Mr. Brubaker, you used a combination
2 of all three rate revenue components being
3 pre-MEEIA, MEEIA and retail rate revenues in your
4 revenue neutral adjustment, correct?

5 A. I think you're speaking of the
6 reallocation of the --

7 Q. Right.

8 A. That is correct.

9 Q. Okay. And yes or no, would you agree
10 that revenue should be allocated excluding
11 pre-MEEIA and MEEIA costs?

12 A. I would not have a problem with that.
13 I don't have any disagreement with Mr. Scheperle's
14 suggestion.

15 Q. Okay. But you actually did not
16 exclude those costs in your residential rate class
17 revenue adjustment?

18 A. I did not, that's correct.

19 Q. In your Schedule MEB-3, you adjusted
20 five rate classes in your base rate adjustment,
21 which was residential, small general service, large
22 general service, small primary service and large
23 primary service, correct?

24 A. Yes.

25 Q. But you did not include the lighting

1 **class or the Metropolitan Sewer District rate class**
2 **in your revenue adjustment, correct?**

3 A. That's correct. Those minor classes
4 were excluded.

5 MS. JONES: Your Honor, I do have an
6 exhibit.

7 JUDGE WOODRUFF: All right.

8 MR. THOMPSON: What number are we up
9 to, Judge?

10 JUDGE WOODRUFF: 208.

11 (STAFF EXHIBIT NO. 208 WAS MARKED FOR
12 IDENTIFICATION.)

13 BY MS. JONES:

14 Q. **What I've handed you, Mr. Brubaker,**
15 **is actually the Ameren filed and approved tariff**
16 **sheets, and for the record, it's labeled as**
17 **tracking No. JE-2013-0582. If you could turn your**
18 **attention to what's been highlighted as incentive**
19 **provisions.**

20 A. Okay.

21 Q. **And what this is is the economic**
22 **development and retention rider?**

23 A. Yes.

24 Q. **Okay. And if you could please read**
25 **me the first highlighted sentence out loud that has**

1 **the handwritten number one and then please stop.**

2 A. Okay. Just for context, this is kind
3 of the standard filing for economic development and
4 retention riders.

5 **Q. Right. Correct. This is the Ameren**
6 **Missouri EDR.**

7 A. Right. Kind of a standard form. The
8 first sentence says, revenues to be received from
9 customer over the term of the contract shall be
10 greater than the applicable incremental cost to
11 provide electric service as determined by the
12 company insuring a positive contribution to fixed
13 costs.

14 **Q. Okay. And, Mr. Brubaker, is that**
15 **requirement one that is a part of Noranda's**
16 **proposal?**

17 A. We have not expressed an explicit
18 requirement. We have looked at the incremental
19 cost currently as calculated by Mr. Dauphinais as a
20 major guidepost to test the reasonableness of the
21 rate, and obviously we are not basing that on a
22 determination by the company.

23 **Q. So you're saying, then, there is a**
24 **positive contribution to fixed costs, is that what**
25 **Noranda is proposing?**

1 A. Yes, there would be. We believe
2 there would be under our -- under our tariff
3 proposal.

4 **Q. Okay. And can you read the second**
5 **highlighted sentence for handwritten number two,**
6 **please, out loud.**

7 A. Sure. Number two says, in no case
8 shall the terms of the contract represent more than
9 a 15 percent discount from otherwise applicable
10 tariffs before tax additions. I think that -- is
11 that the end of the sentence?

12 **Q. That is, yes.**

13 A. Okay.

14 **Q. And, Mr. Brubaker, is that**
15 **requirement one that is part of Noranda's proposal?**

16 A. No. Noranda's proposal is customized
17 to Noranda's situation and is larger than
18 15 percent.

19 **Q. Okay. So Noranda's proposing that**
20 **the rate increase not to be greater than 2 percent,**
21 **correct?**

22 A. I'm sorry?

23 **Q. Rate revenue increase, not to be**
24 **greater than 2 percent?**

25 A. I think that is our belief as to what

1 the impact on other customers would be. This
2 particular provision that you asked me to read
3 didn't speak to that. It spoke to the amount of
4 the difference between the standard otherwise
5 applicable tariff and the contract tariff.

6 **Q. Right.**

7 **A. And that was more than 15 percent.**

8 **Q. I understand that, Mr. Brubaker. So**
9 **my question actually was separate. So Noranda is**
10 **proposing a rate increase to not be greater than**
11 **2 percent, correct?**

12 **A. We believe that with our**
13 **calculations, the impact of serving Noranda at**
14 **\$30 would be less than 2 percent, and the impact if**
15 **they shut down and didn't take service, the impact**
16 **on other customers would be more than 2 percent.**

17 **Q. Okay. So assuming that if -- if**
18 **Ameren comes in for a rate increase and Noranda's**
19 **proposal is actually accepted and the amount of**
20 **increase is greater than 2 percent, then would you**
21 **agree that the subsidy would be greater than**
22 **2 percent?**

23 **A. I would agree that we would need to**
24 **look at the costs and the circumstances, and it may**
25 **or may not be the case.**

1 Q. Okay. Fair enough. Could you read
2 sentence or highlighted portion three for me,
3 please, out loud?

4 A. Sure. That says, nor shall the term
5 of the contract extend more than five years.

6 JUDGE WOODRUFF: Did you have an
7 objection?

8 MR. DOWNEY: It's not necessarily an
9 objection, but my copy and I'm sure other counsels'
10 copies are not highlighted. So it's almost
11 impossible for us to object because only
12 Mr. Brubaker and Staff counsel know what he's going
13 to read before he reads it. By the time I find
14 what he's reading, he's already done with it.

15 So can I just ask counsel to let us
16 all know what you're going to ask him to read so we
17 can identify first?

18 MS. JONES: Sure. What I'm having
19 him reference is the paragraph entitled incentive
20 provisions on the second page of the economic
21 development and retention rider.

22 MR. DOWNEY: All right. Sorry to
23 interrupt.

24 MS. JONES: No. I apologize.

25 BY MS. JONES:

1 Q. So for highlighted paragraph -- or
2 highlighted sentence three, could you read that for
3 me, please?

4 A. I think I just did. Is that that nor
5 shall determine the contract extend more than five
6 years?

7 Q. Right. So everyone else can catch
8 up.

9 A. Okay.

10 Q. Thank you.

11 A. Sure.

12 Q. And is that a requirement that is a
13 part of Noranda's proposal?

14 A. No. As I said before, this is kind
15 of the standard -- standard fare. Noranda's
16 proposal is structured around a ten-year,
17 expectation of a ten-year term.

18 Q. Okay. Thank you. And it's also
19 requirement that the fuel adjustment clause is not
20 excluded in an economic development rider. Is the
21 FAC excluded in Noranda's proposal? That's
22 actually not on here. This is just a question.
23 We're done referencing this page. Thank you. Is
24 the FAC excluded in Noranda's proposal?

25 A. It is.

1 **Q. And then finally, it is a requirement**
2 **of the economic development rider that future rate**
3 **increases are not excluded. Is Noranda's proposing**
4 **a 2 percent cap on this rate increase?**

5 A. Where do you find that language?

6 **Q. Once again, it's not -- I'm not**
7 **referencing the tariff.**

8 A. Okay. I'm not sure about that.

9 **Q. So it's -- you're saying it's your**
10 **opinion then that -- explain what you mean.**

11 A. Well, I'm not sure what provision you
12 are referring to, where I would find it. It is
13 true that Noranda requests that its increases
14 ordinarily be capped at not more 2 percent in any
15 general rate proceeding.

16 **Q. Right. That's that Noranda's**
17 **proposal is?**

18 A. That is correct.

19 **Q. Okay. I'm speaking in reference to**
20 **the economic development rider.**

21 A. I'm just asking, is that language on
22 this tariff sheet?

23 **Q. No, it's not. I'm not referencing**
24 **this anymore.**

25 A. Then I'm not sure.

1 **Q. You don't know?**

2 A. I don't know.

3 MS. JONES: Okay. Thank you. I have
4 no further questions, your Honor. I'd like to
5 offer this as an exhibit.

6 JUDGE WOODRUFF: 208 has been
7 offered. Any objections to its receipt?

8 MR. BYRNE: What's the exhibit
9 number?

10 JUDGE WOODRUFF: 208. It will be
11 received.

12 (STAFF EXHIBIT NO. 208 WAS RECEIVED
13 INTO EVIDENCE.)

14 JUDGE WOODRUFF: For
15 cross-examination, then, Continental Cement?

16 MR. COMLEY: No questions.

17 JUDGE WOODRUFF: Ameren?

18 MR. BYRNE: Just a few, your Honor.

19 CROSS-EXAMINATION BY MR. BYRNE:

20 **Q. Mr. Brubaker, do you have your**
21 **deposition up there with you that I took, I think**
22 **on June 12th?**

23 A. I do, yes.

24 **Q. Let me ask you a couple questions**
25 **about Exhibit 208 that you just went over with**

1 Staff counsel. Looking at the Rider EDRR, it seems
2 like there's maybe a couple of other differences,
3 and maybe I wasn't following closely enough, but --
4 but one difference, it looks to me, difference
5 between EDRR and Noranda's proposal is at the
6 bottom of page 1 of Exhibit 208. It looks to me
7 like Rider EDRR is at the utility -- the electric
8 company's, I guess in this case Ameren Missouri's
9 sole discretion; is that correct?

10 A. Yes. That's what it says.

11 Q. Okay. And then if you look under
12 availability, it looks like the last sentence under
13 availability says that it's only available in
14 conjunction with local, regional or state
15 governmental economic development activities. Do
16 you see that?

17 A. Yes, I do.

18 Q. So that would be a difference from
19 Noranda's proposal as well. You're not proposing
20 that getting local, regional or state governmental
21 economic development assistance is a requirement
22 for Noranda's proposal?

23 A. That's not part of the proposal.

24 Q. Okay. And then at the end on page 2
25 of the document under term it says, the rider shall

1 immediately become void and the company shall have
2 no further obligations or liabilities if any term
3 or terms of the rider are determined to be
4 discriminatory or otherwise unlawful. Do you see
5 that?

6 A. I do.

7 Q. And that's not a condition of
8 Noranda's proposal, is it?

9 A. Well, just to be complete, it says,
10 determined to be discriminatory or otherwise
11 unlawful by a court of competent jurisdiction.

12 Q. Okay.

13 A. So that sort of goes without saying
14 for any proposal, including Noranda's.

15 Q. Okay. Mr. Brubaker, I'm going to ask
16 you a couple of the same questions I asked
17 Mr. Dauphinais about the scope of your testimony.
18 My understanding is you're not testifying about
19 Noranda's need for rate relief they're seeking in
20 this case, are you?

21 A. No, I'm not.

22 Q. And like Mr. Dauphinais, you haven't
23 done any analysis of Noranda's financial condition
24 or the aluminum markets or their competitive
25 position or anything like that?

1 A. I'm not testifying about that, that's
2 correct.

3 **Q. Okay. And my understanding is you --**
4 **your calculations are also not behind the \$30 per**
5 **megawatt hour rate that Noranda is requesting in**
6 **this case; is that correct?**

7 A. We did not develop the \$30 rate, if
8 that's the question.

9 **Q. That's my question.**

10 A. We tested the reasonableness of the
11 \$30 rate.

12 **Q. But someone else beside you**
13 **calculated or came up with the \$30 a megawatt rate;**
14 **is that correct?**

15 A. That's correct.

16 **Q. And my understanding is that the**
17 **final decision to file this complaint was made**
18 **shortly before it was filed; is that correct?**

19 A. That's my understanding, yes.

20 **Q. But you -- your firm was retained in**
21 **connection with this complaint, as I understand it,**
22 **in the late summer of 2013; is that true?**

23 A. Let me state it a little bit
24 differently. We were approached by Noranda through
25 counsel in late summer of 2013 to talk about what

1 they saw as a difficult, challenging situation that
2 they faced with respect to the aluminum market and
3 their power rates, and we began to consider,
4 discuss with them --

5 **Q. My --**

6 **A. -- various items, and then ultimately**
7 **we began to prepare material that could be used for**
8 **a complaint if it turned out that a complaint was**
9 **going to be filed.**

10 **Q. And my understanding is you began to**
11 **prepare that material in September or October of**
12 **2013; is that correct?**

13 **A. I think that's about right.**

14 **Q. And you -- I believe you told me in**
15 **deposition you'd been filing testimony in PSC**
16 **proceedings for over 40 years; is that correct?**

17 **A. Yes.**

18 **Q. But my understanding is that you do**
19 **not remember filing testimony on behalf -- filing**
20 **testimony on behalf of a rate that significantly**
21 **deviated from cost of service rates to retain load**
22 **other than one that was agreed to by the utility**
23 **and the customer; is that correct?**

24 **A. That's right. My involvement in**
25 **these various economic development load retention**

1 tariffs or contracts always seemed to end with an
2 agreement between the utility and the customer.
3 Therefore, testimony by me was not necessary.

4 **Q. So this is a unique case in your**
5 **40-plus years experience?**

6 A. In a sense. I mean, the issues are
7 not unique, but the fact that we had to actually
8 file it before the Commission rather than have an
9 agreement is somewhat different.

10 **Q. Isn't it true, Mr. Brubaker, that**
11 **Noranda as a member of the Missouri Industrial**
12 **Energy Consumers supported the Stipulation &**
13 **Agreement that settled the rate design issues in**
14 **File No. ER-2012-0166, which was Ameren Missouri's**
15 **last rate case?**

16 A. That is correct.

17 **Q. And isn't it also correct that the**
18 **settlement generally followed the class cost of**
19 **service studies that were filed in that case?**

20 A. I would say generally for industrial
21 customers. It's still above what we considered to
22 be fully allocated embedded cost of service, but
23 it's kind of consistent with past Commission
24 practice and the use of cost of service studies.

25 **Q. And again, based on your deposition,**

1 my understanding is that if you were to conduct a
2 class cost of service study for Ameren Missouri's
3 system rights now, you would have no reason to
4 believe that it would be significantly different
5 from the class cost of service studies conducted in
6 the last rate case; is that correct?

7 A. I think that's a reasonable
8 assumption, yes.

9 Q. And you have no reason to believe
10 it's not valid, a valid assumption?

11 A. Well, if we're doing -- again, doing
12 a fully distributed embedded cost of service study,
13 I would expect we would get similar results than
14 what we got last time, which is \$36 range or
15 something like that.

16 MR. BYRNE: Okay. Thank you,
17 Mr. Brubaker. I don't have any other questions.

18 JUDGE WOODRUFF: All right. Come up
19 to questions from the Bench, then. Mr. Chairman?

20 QUESTIONS BY CHAIRMAN KENNEY:

21 Q. Welcome back, Mr. Brubaker. Good to
22 see you again.

23 A. Thank you, sir.

24 Q. I've heard the two phrases and I
25 think they're interchangeable. Is incremental cost

1 **the same as average variable cost?**

2 A. No, sir, they're not.

3 **Q. Can you explain the difference to me?**

4 A. Sure. Average variable cost is
5 simply taking the utility's fuel costs, its
6 variable purchased power expense and some variable
7 operation and maintenance expense and subtracting
8 the revenues from off-system sales and then
9 dividing by the total kilowatt hours. So it's in
10 the context typically of an embedded cost study
11 where we say what are the costs other than the
12 fixed costs --

13 **Q. And then --**

14 A. -- that are involved in serving a
15 customer.

16 **Q. And then what's an incremental cost?**

17 A. Incremental cost would be if you went
18 and said, if we put -- who's the last customer
19 served effectively, and we look at the margin and
20 then we get a -- that incremental, that's what we
21 called or Mr. Dauphinais calls the incremental cost
22 or the avoided cost. So that's a degree higher
23 than the average variable cost.

24 **Q. So the marginal cost is the same as**
25 **the incremental cost?**

1 A. Yes.

2 **Q. That last unit of production?**

3 MR. BYRNE: Mr. Chairman, I'm having
4 trouble hearing you.

5 CHAIRMAN KENNEY: Sorry.

6 THE WITNESS: The last -- more than
7 just the last increment that you're looking at;
8 500 megawatts in this case.

9 BY CHAIRMAN KENNEY:

10 **Q. And then your critique of**
11 **Ms. Kliethermes was that she based her analysis on**
12 **wholesale costs?**

13 A. I think my main complaint there was
14 that she mislabeled what she was doing. She called
15 what we call incremental cost average variable
16 cost. That was not correct. What she calculates
17 is similar to what Mr. Dauphinais calculates, which
18 would be the avoided cost or the incremental cost.
19 But what she called it was average cost, and it
20 just isn't.

21 **Q. So at the end of the day, though, the**
22 **reason that these are relevant is to demonstrate**
23 **that Ameren's better off with Noranda on the system**
24 **than off the system, correct?**

25 A. Yes. The other customers are better

1 off, that's correct.

2 **Q. So, and then part of that analysis**
3 **assumes that Ameren would or would not be able to**
4 **sell the Noranda load into the MISO market at a**
5 **higher price?**

6 A. I'll base it on Mr. Dauphinais'
7 analysis, which I think is similar to the other
8 witnesses. It seems that if they did sell that
9 load in the market, if they could, that they would
10 get the same price for that load as their cost to
11 serve Noranda.

12 **Q. And if they can get higher than that?**

13 A. Well, if they can get higher than 30,
14 then the Noranda price is not as attractive. But
15 based on our calculations, it's less than 30.

16 **Q. But as long as it's higher than their**
17 **cost to serve, then -- to serve Noranda, then**
18 **they're not going to in a worse position?**

19 A. I think the way we calculated it, the
20 two numbers are the same, assuming that they can
21 replace -- they can sell that quantity of power at
22 the same price as -- the same price as --

23 (Phone ringing.)

24 CHAIRMAN KENNEY: Hello?

25 COMMISSIONER W. KENNEY: Commissioner

1 Kenney back on.

2 CHAIRMAN KENNEY: Welcome back.

3 JUDGE WOODRUFF: We have Mr. Brubaker
4 on the stand.

5 THE WITNESS: I'm sorry. Could we
6 back up and ask the question again? I lost my
7 train of thought.

8 BY CHAIRMAN KENNEY:

9 Q. Yeah. I lost -- I don't remember my
10 question, but it was something to the effect if
11 Ameren can sell the missing Noranda load at
12 anything greater than its cost to serve Noranda,
13 they're not -- Ameren wouldn't be financially
14 harmed?

15 A. Ameren in our proposal, they won't be
16 financially harmed regardless of whether that's
17 true.

18 CHAIRMAN KENNEY: All right. I don't
19 have any other questions. Thank you.

20 JUDGE WOODRUFF: Commissioner Stoll?

21 COMMISSIONER STOLL: I have no
22 questions. Thank you, Mr. Brubaker.

23 THE WITNESS: Thank you, sir.

24 JUDGE WOODRUFF: Commissioner Kenney,
25 do you have any questions you want to ask

1 Mr. Brubaker? Commissioner Hall?

2 COMMISSIONER W. KENNEY: I'm sorry.

3 No.

4 JUDGE WOODRUFF: Thank you.

5 QUESTIONS BY COMMISSIONER HALL:

6 **Q. Good afternoon. I believe in**
7 **response to questions from Mr. Byrne you said that**
8 **the cost of service for Noranda in the last rate**
9 **case was in the \$36 range; is that correct?**

10 A. That's correct. Just to be clear,
11 the fully distributed embedded cost of service
12 framework for cost was in that range.

13 **Q. I understand what cost of service is.**
14 **You need to explain to me what you just said.**

15 A. Okay. It means we take all the costs
16 of the utility, the fixed costs as well as the
17 variable costs, and we allocate them out to classes
18 based on something that we think causes the cost to
19 be incurred. So it's -- we call it also sometimes
20 an all-in cost, as opposed to just the average
21 variable or incremental cost.

22 **Q. Got you. And I believe you also said**
23 **that you don't have reason to believe that that**
24 **number has changed between the last rate case and**
25 **today?**

1 A. I would expect that it has not
2 changed very much if we did the same sort of study.

3 **Q. Okay. Do you have an opinion as to**
4 **when it is appropriate to deviate from cost of**
5 **service in rate design?**

6 A. There are generally two reasons. One
7 is almost in every rate case, because of impact
8 considerations, you can't get everybody lined up
9 exactly with cost. That's just sort of overlays
10 all rate cases that we do. But in this case
11 here --

12 **Q. And that's just a mathematical issue.**
13 **That's not a policy issue?**

14 A. Right.

15 **Q. Okay.**

16 A. It sort of is in terms of impact, but
17 beyond that, it's just practicality.

18 **Q. All right.**

19 A. In cases like this where we're
20 dealing with the loss of load or potential loss of
21 load, okay, then you look for a load retention type
22 of rate to see whether or not when the question
23 is -- when the question is not whether we price
24 something higher or lower but whether or not we
25 have a load to price, then the question is do we

1 need to try to do something to retain the load?
2 Would it be beneficial to keep the load on the
3 system at some price less than the fully
4 distributed embedded cost of service?

5 **Q. Okay.**

6 A. So then we look at what are the
7 consequences of the load disappearing versus the
8 load at a price below the traditional embedded cost
9 of service.

10 **Q. So whenever it is better for the**
11 **other customers to subsidize the load for one**
12 **entity than it would be for other customers for**
13 **that entity to go out of business, you would say**
14 **it's appropriate to deviate from cost of service in**
15 **setting rates for that one company?**

16 A. That's -- yes. That's one very
17 important consideration. As I say in my testimony,
18 I think the economic benefits that the customer and
19 the load brings to the state above and beyond just
20 the pure mathematics of the electric rate also are
21 something that should be considered.

22 **Q. Have you ever testified in front of**
23 **this Public Service Commission or a similar agency**
24 **in another state about whether or not it was**
25 **appropriate to deviate from cost of service in**

1 **setting rates for one company and taking the**
2 **position that the Public Service Commission should**
3 **not deviate from cost of service?**

4 A. No, I have not, under -- you know,
5 under economic development type circumstances like
6 this. Where we don't have that, then yes, I've
7 been a proponent generally of moving as close to
8 cost of service as we can given the impact and
9 other considerations. But under circumstances like
10 this where it's -- we have a real prospect of
11 losing the load, I have not ever opposed that.

12 **Q. But when you say that there's a real**
13 **prospect of losing the load, you've also made the**
14 **calculation in this case, and it's in your**
15 **testimony, that it would be better for customers to**
16 **subsidize it than it would be to lose the load.**
17 **What I'm asking is, have you ever made that**
18 **calculation and gone the other way?**

19 A. I have not.

20 COMMISSIONER HALL: All right. Thank
21 you.

22 JUDGE WOODRUFF: Commissioner Rupp?
23 All right. Recross based on questions from the
24 Bench? I see Ameren.

25 RE-CROSS-EXAMINATION BY MR. BYRNE:

1 Q. Just a couple quick questions. One,
2 in response to Commissioner Hall, you were
3 talking -- you were talking about where there's a
4 real prospect of losing the load just now. Do you
5 recall that discussion?

6 A. Yes.

7 Q. And my understanding is you are not
8 providing any testimony about that issue, whether
9 there actually is a real prospect of losing this
10 load; is that correct?

11 A. Right. Like I answered to you
12 earlier, that's not the subject of my testimony.

13 Q. And before, in response to one of
14 Chairman Kenney's questions, you mentioned the \$36,
15 I think it was the -- was it the fully -- what was
16 the \$36 rate? It was fully allocated cost?

17 A. Fully allocated embedded cost of
18 service.

19 Q. From the last rate case?

20 A. From the last rate case.

21 Q. And did that include the rate
22 increase that was ultimately ordered in that last
23 rate case?

24 A. I believe it did, yes.

25 Q. And whose fully allocated cost of

1 **service study was that?**

2 A. I based that off of mine, which is
3 fairly close to the others.

4 **Q. Okay. But there were others that**
5 **were higher, higher than yours?**

6 A. Slightly higher, yes. Not materially
7 higher.

8 MR. BYRNE: Okay. Thank you,
9 Mr. Brubaker.

10 JUDGE WOODRUFF: Redirect?

11 MR. DOWNEY: Thank you, yes.

12 REDIRECT EXAMINATION BY MR. DOWNEY:

13 **Q. I just want to make sure we're real**
14 **clear. Fully embedded cost to serve or all-in rate**
15 **or all-in costs, am I getting the terminology right**
16 **there, first of all?**

17 A. Fully distributed embedded cost of
18 service study.

19 **Q. Fully distributed embedded cost of**
20 **service. Okay. And you called that the all-in**
21 **cost?**

22 A. Yes.

23 **Q. That includes some share of -- would**
24 **that include some share of plant?**

25 A. Yes. It includes the share of all

1 the fixed costs that are applicable.

2 Q. So fixed costs. So if Noranda were
3 to shut down and leave the system, how much of the
4 cost -- how much of the fixed costs would it pick
5 up?

6 A. If it were not a customer, none.

7 Q. I know it's an obvious question. I
8 just want to hear the answer. Okay. So it's going
9 to pick up none. So if it leaves the system, it is
10 not going to help the other ratepayers at all on
11 these fixed costs, correct?

12 A. Correct.

13 Q. Now, if it stays on the system at a
14 reduced rate but above it's what I'm going to call
15 incremental cost, is it going to be contributing
16 anything to the fixed costs?

17 A. Yes, it would be.

18 Q. So if it's at any rate above the
19 incremental rate, it would -- would it be helping
20 other ratepayers or helping Ameren with its fixed
21 costs?

22 A. It would. It would make other
23 customers better off than they would have been had
24 the load disappeared.

25 Q. Okay. And this I'm sure is an

1 oversimplification, but as I understand the
2 incremental cost, it is basically the cost that --
3 I guess what Ameren could get for the power on the
4 open market, right, because it's not selling it to
5 Noranda anymore if Noranda leaves the system?

6 A. It's essentially that. It's the
7 cost -- really the way it's been derived here, it's
8 the costs that would be avoided if Ameren did not
9 serve the Noranda load.

10 Q. And energy costs are just one
11 component of that, correct?

12 A. That's correct.

13 Q. And Mr. Dauphinais made his detailed
14 calculation on that in that regard, did he not?

15 A. He did.

16 Q. All right. So I think you were
17 speaking with Mr. Byrne and you said, these issues
18 are not unique. Do you recall saying that?

19 A. The load retention rate type of
20 approach, yes.

21 Q. And, in fact, that's evidenced by
22 Staff Exhibit 208, is it not?

23 A. It is.

24 Q. And can you tell the Commission when
25 that tariff went into effect, Staff Exhibit 208?

1 A. The date on it is June 30, 2013.

2 Q. Does the Commission have to approve
3 these tariffs before they go into effect?

4 A. My understanding is that the
5 Commission does.

6 Q. And do you know, was Terry Jarrett on
7 the Commission when this tariff was approved?

8 A. To the best of my memory, he would
9 have been.

10 Q. All right. Are you really familiar
11 with the language at least on the first part of
12 this exhibit, the first two pages?

13 A. I've read it before.

14 Q. You realize that Ameren is taking the
15 position in this case that we can't have any kind
16 of reduced rate for load retention unless we go to
17 the General Assembly; are you aware of that?

18 A. I think that's a fair
19 characterization of my understanding of their
20 position.

21 Q. All right. And I notice in this
22 tariff that the company at its sole discretion gets
23 to dole out a discount; is that fair?

24 A. Yes. That's what the tariff says.

25 Q. Can you tell me where in this tariff

1 **it says you have to go to the General Assembly?**

2 A. It does not say that.

3 **Q. All right. We talked about**
4 **incremental costs. We talked about the fully**
5 **distributed embedded costs. We also -- I think you**
6 **testified about the average variable costs. How is**
7 **that different than the incremental cost again?**

8 A. The average variable cost is just --
9 it's a component of the embedded cost of service
10 study that you look at in a rate case. It's simply
11 the -- simply the total dollars, the fuel, variable
12 purchased power costs, O&M expense that varies with
13 generation, minus the revenues from off-system
14 sales, divided by total kilowatt hour sales, which
15 the average across all classes and then adjusted
16 for loss differences.

17 Incremental cost is more or less the
18 last increment of cost in the cost curve if you
19 decide that some customer needs to be put on the
20 increment. It's typically a higher cost than the
21 average variable cost.

22 **Q. Did you calculate the average**
23 **variable cost in this case?**

24 A. I did.

25 **Q. And what was it?**

1 A. For Noranda, \$22.10 a megawatt hour.

2 Q. All right. And I'm a lawyer, so if
3 my math is wrong, correct me, but I'm assuming
4 that's \$7.90 below \$30. Would you agree with that?

5 A. Yes.

6 Q. So does that average variable cost
7 include the kind of costs that are included in the
8 FAC charge?

9 A. Yes.

10 Q. Okay. So would the 22.10 already
11 reflect the type of costs that would be included in
12 the FAC?

13 A. Yes.

14 Q. Okay. Then I want to ask you also,
15 would costs that are included in a fuel adjustment
16 surcharge, an FAC, would they be at all relevant in
17 determining this incremental cost, or is that
18 already, I guess, factored in to the incremental
19 cost?

20 A. The FAC just measures the difference
21 in average variable cost for the components that
22 are in the fuel adjustment clause from a rate case
23 to some other point in time. The incremental cost
24 calculations look strictly at the market and the
25 incremental cost. It has nothing to do with the

1 change in fuel cost from rate case to a future
2 point in time.

3 **Q. Are you aware of any customers in**
4 **Missouri that are receiving load retention rates?**

5 A. Well, there are probably some on the
6 Ameren tariff here that we just talked about.
7 There are others that -- I don't know that they
8 still are, but there have been load retention
9 tariffs in effect for other utilities in the state
10 over the last 10 or 20 years.

11 **Q. Can you name any of the customers, if**
12 **you know, that have received load retention rates?**

13 A. I know that for a period of time the
14 Armco Steel facilities in Kansas City were on what
15 you'd call at least economic development type load
16 retention rates.

17 Kansas City Power & Light Company in
18 the late 1990s had several load retention type
19 contracts when they thought they might be facing
20 retail competition. I think the names of those
21 customers are not public, so I would be reluctant
22 to mention them, but there were several that I
23 think had those contracts for a period of time.

24 Aquila had some special contracts for
25 a period of time.

1 Q. And --

2 A. And there was -- earlier than that,
3 there was an attempt to preserve the Leeds GM
4 facility in the state, and they were working on at
5 least a load retention type tariff. I don't know
6 if it ever went into effect or not, but the plant
7 closed in any event.

8 Q. Now, Staff Exhibit 208 is a load
9 retention tariff for Ameren. Are you aware of any
10 load retention tariffs for any other investor-owned
11 utilities in Missouri?

12 A. Yes. Kansas City Power & Light
13 Company, Kansas City Power & Light Company Greater
14 Missouri Operations both have load retention type
15 tariffs. I'm not sure about Empire District. They
16 may, but I'm not specifically aware of that.

17 MR. DOWNEY: Thank you very much.
18 Thank you, Judge.

19 COMMISSIONER STOLL: Can I ask a
20 follow-up on that?

21 JUDGE WOODRUFF: Go ahead.

22 QUESTIONS BY COMMISSIONER STOLL:

23 Q. Mr. Brubaker, when you say they were
24 working on a load retention tariff, who is they?

25 A. Okay. I'm sorry. General Motors

1 and Kansas City Power & Light Company at the time.

2 I don't know if others were involved or not.

3 **Q. I see. So is that the way you've**
4 **seen it done in the past, typically the company and**
5 **the -- the power company and the company that's**
6 **seeking the load retention tariff?**

7 A. That's frequently been how it's done,
8 yes. I wouldn't say it was exclusively how, but
9 that's been more typical.

10 COMMISSIONER STOLL: Thank you.

11 JUDGE WOODRUFF: Any additional
12 recross? Redirect?

13 (No response.)

14 JUDGE WOODRUFF: Okay. Mr. Brubaker,
15 you can step down.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: Now, there are
18 several other Complainant witnesses its my
19 understanding that the parties have all waived
20 cross on them; is that correct?

21 MR. BYRNE: That's, your Honor.

22 JUDGE WOODRUFF: Do you want to go
23 ahead and offer their testimony at this point?

24 MR. DOWNEY: Yes, your Honor. At
25 this time we would offer Exhibits 18 through 29.

1 Do you need for me to go through each one of them
2 by number?

3 JUDGE WOODRUFF: We'll just say that
4 its Mr. Priggel, Mr. Libla, Ramirez, Romine, Shy,
5 Smith, Hampton, Fayette, Keeny, Hodges, Richardson
6 and Wallingford.

7 MR. DOWNEY: That seems correct.
8 Thank you.

9 JUDGE WOODRUFF: They're all being
10 offered. Any objections to their receipt?

11 (No response.)

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

14 (NORANDA EXHIBIT NOS. 18 THROUGH 29
15 WERE WAS RECEIVED INTO EVIDENCE.)

16 JUDGE WOODRUFF: That's how we make
17 progress around here. Okay. Next witness then
18 will be Ms. Kliethermes for Staff.

19 (Witness sworn.)

20 SARAH KLIETHERMES testified as follows:

21 DIRECT EXAMINATION BY MR. THOMPSON:

22 Q. State your name, please.

23 A. Sarah Kliethermes.

24 Q. Could you spell it for the reporter,
25 please?

1 A. S-a-r-a-h, K-l-i-e-t-h-e-r-m-e-s.

2 And my father apologizes.

3 Q. Ms. Kliethermes, how are you
4 employed?

5 A. I am a Regulatory Economist III for
6 the Staff of the Missouri Public Service
7 Commission.

8 Q. Are you the same Sarah Kliethermes
9 who prepared or caused to be prepared direct
10 testimony -- excuse me -- rebuttal testimony, HC
11 and NP, marked respectively Exhibits 201 and 202,
12 and surrebuttal testimony, HC and NP, marked
13 respectively as Exhibits 203 and 204?

14 A. I am.

15 Q. And do you have any changes or
16 corrections to that testimony?

17 A. I have a correction to my rebuttal
18 testimony, page 9, line 6. I reference the Sioux
19 generation node, and that should been the Rush
20 Island generation node. And I would also note that
21 my surrebuttal addresses certain refinements and
22 corrections to my rebuttal testimony.

23 Q. Okay. You reference the Sioux note
24 and it should have been what node?

25 A. The Rush Island.

1 **Q. And that correction would be in both**
2 **Exhibits 201 and 202?**

3 A. My rebuttal testimony, NP and HC,
4 yes.

5 **Q. Do you have any other corrections?**

6 A. I do not.

7 **Q. With those corrections in mind, would**
8 **you answer these questions the same way if I asked**
9 **them to you today?**

10 A. I would.

11 **Q. And is the information contained in**
12 **your testimony true and correct to the best of your**
13 **knowledge and belief?**

14 A. It is.

15 MR. THOMPSON: At this time, your
16 Honor, I will offer Exhibits 201, 202, 203 and 204
17 and tender Ms. Kliethermes for cross-examination.

18 JUDGE WOODRUFF: All right. Exhibits
19 201 through 204 have been offered. Any objections
20 to their receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, they
23 will be received.

24 (STAFF EXHIBIT NOS. 201 THROUGH 204
25 WERE RECEIVED INTO EVIDENCE.)

1 JUDGE WOODRUFF: For
2 cross-examination, we begin with Ameren.

3 MS. TATRO: No questions.

4 JUDGE WOODRUFF: All right.
5 Continental Cement?

6 MR. COMLEY: No questions.

7 JUDGE WOODRUFF: OPC?

8 MR. POSTON: No questions.

9 JUDGE WOODRUFF: River Cement?

10 MS. LANGENECKERT: No questions.

11 JUDGE WOODRUFF: Wal-Mart?

12 MR. CHAMBERLAIN: No questions.

13 JUDGE WOODRUFF: Consumers Council?

14 MR. COFFMAN: No questions, your
15 Honor.

16 JUDGE WOODRUFF: Retailers?

17 MR. SCHWARZ: Yeah, although not as
18 much as this heap of papers would indicate.

19 CROSS-EXAMINATION BY MR. SCHWARZ:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Would you tell the Commission what
23 your understanding is in a regulatory rate case
24 context, what is a normalization adjustment?

25 A. A normalization adjustment would be

1 an adjustment made to actual numbers to remove an
2 abnormal trend, or an abnormal event I should say.

3 Q. Okay. And the abnormality can be
4 of -- it can be of prices or weather or any number
5 of factors that are considered in a rate case; is
6 that correct?

7 A. Any number of factors would be
8 normalized in the course of a full cost of service
9 study and class cost of service study, yes.

10 Q. Okay. Did you read Mr. Michels'
11 rebuttal testimony?

12 A. I'm sure at some point I did, yes.

13 Q. In his Table 4, he indicates that the
14 average energy charge for 2013 was \$26.86, and then
15 he -- the next number down is a partial 2014 at
16 \$38.93.

17 A. I'm sorry, sir. I do not have a copy
18 of his testimony with me.

19 Q. That's fine. And I will tell you
20 also that my mathematical calculations indicates
21 that that's a 45 percent increase.

22 A. Could you repeat those numbers? I'm
23 sorry.

24 Q. Sure. \$26.86 was the 2013 average
25 energy charge, and a partial 2014 was \$38.93.

1 A. 38?

2 Q. .93.

3 A. Thank you.

4 Q. And those are his numbers. And by my
5 cal-- according to my calculator, not me, is a
6 45 percent increase. Would you consider that a
7 significant -- a 45 percent increase to be
8 significant?

9 A. And I'm sorry. The 26.86 referred to
10 the entire calendar year of 2013?

11 Q. That's my understanding.

12 A. And the 38.93 referred to the partial
13 2014?

14 Q. Yes.

15 A. So that would be the winter months of
16 2014?

17 Q. Yes.

18 A. And what was your question?

19 Q. Would you consider that to be a
20 substantial and significant increase, 45 percent?

21 A. I would consider those numbers to not
22 be in any real way related.

23 Q. That wasn't my question, though.
24 My question was, is a change in average energy
25 charge from \$26.86 to \$38.93 a substantial change?

1 A. I'm sorry. Those -- I don't
2 understand your question in that context.

3 **Q. Is a 45 percent increase in an energy**
4 **charge significant?**

5 A. A 45 percent increase in an average
6 charge over some amount of time may or may not be
7 significant. You don't seem to understand the
8 change in an hourly average over the course of the
9 year. It's not compatible to compare a full year
10 for 2013 to the partial months of 2014.

11 **Q. Well, I get to frame the questions,**
12 **and my question is, with reference to Mr. Michels'**
13 **testimony indicating a shift of 45 percent between**
14 **the average for 2013 and the average for the first**
15 **portion of 2014, an increase of 45 percent, is that**
16 **a -- is 45 percent over that period of time**
17 **significant?**

18 A. If the energy charge for compatible
19 periods changed by 45 percent over one year, I
20 would consider that significant.

21 **Q. I don't think that answers my**
22 **question. It modifies my question. It does not**
23 **answer my question.**

24 JUDGE WOODRUFF: I disagree. I think
25 it did answer your question. Move on.

1 MR. SCHWARZ: So -- never mind.

2 Thank you.

3 JUDGE WOODRUFF: For the Complainant?

4 CROSS-EXAMINATION BY MR. DOWNEY:

5 Q. I just want to understand because
6 you've got a lot of numbers in your surrebuttal.
7 You threw out two figures that I'm going to
8 represent were your calculation of the incremental
9 costs. Did you hear the discussion the last couple
10 hours about incremental costs?

11 A. I did. I disagree that I
12 characterized my figures as incremental costs.

13 Q. I understand. But I'm using the term
14 incremental costs, and I just want to make sure
15 when we communicate, we're talking about the same
16 thing. The cost you calculated that's shown on
17 SLK-5HC of your surrebuttal testimony.

18 A. Which cost?

19 Q. Well, you've got it looks like two
20 different rates here on that schedule.

21 MR. DOWNEY: It's HC, so I guess we
22 need to go in-camera.

23 JUDGE WOODRUFF: All right. We will
24 once again go in-camera.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 8, pages 782 through 790 of the transcript.)

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1 JUDGE WOODRUFF: Okay.

2 THE WITNESS: The more important
3 distinction is between the use of ANEC as a measure
4 of incremental cost -- as a measure of cost, I
5 should say, and the use of the LMP as a measure of
6 variable costs.

7 The ANEC is average net energy cost.
8 It is net of off-system sales margin. That's to
9 say, you take what the actual cost is and then you
10 reduce it by some other amount. And that has
11 nothing to do with what it actually costs to obtain
12 the energy to serve Noranda.

13 QUESTIONS BY CHAIRMAN KENNEY:

14 Q. Okay. So cost to serve Noranda is
15 what?

16 A. Using round numbers I can say without
17 going in-camera, based on the best data I have
18 available, in the neighborhood of 31 and a half
19 dollars, and that's similar to the numbers prepared
20 by the other witnesses.

21 Q. So you-all agree on that?

22 A. I think that under Mr. Dauphinais'
23 calculation, it is 29.91 is his number, which would
24 contribute 9 cents per megawatt hour, assuming
25 again that they're subject to the FAC so that any

1 changes would be able to be passed on.

2 **Q. Okay. So then where do you -- so**
3 **where do you-all disagree then? Where's the**
4 **disagreement?**

5 A. The disagreement is whether or not
6 it's appropriate to take the known cost of
7 acquiring energy to serve Noranda's load and
8 reducing it by the profits that Ameren is able to
9 make using ratepayer-funded assets on other sales.

10 **Q. Reducing it by off-system sales?**

11 A. Yes.

12 **Q. Okay. The cost to serve is what it**
13 **is?**

14 A. The cost to serve is what it is.
15 It's a function of the LMPs and some folks in
16 Carmel and a lot of generators' bids and a number
17 of other factors.

18 **Q. Irrespective of off-system sales?**

19 A. Yes.

20 CHAIRMAN KENNEY: All right.

21 That's -- I don't need to ask any more. That's
22 good enough. Thank you.

23 JUDGE WOODRUFF: Commissioner Stoll?

24 COMMISSIONER STOLL: I have no
25 questions. Thank you for your testimony.

1 JUDGE WOODRUFF: Commissioner Hall?

2 QUESTIONS BY COMMISSIONER HALL:

3 Q. I'll try to make this very brief
4 because I think you've answered this set of
5 questions twice, but I'm not positive.

6 (REPORTER'S NOTE: At this point, per
7 instruction of Judge Woodruff, an in-camera session
8 was held, which is contained in Volume 8, page 794
9 of the transcript.)

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1 BY COMMISSIONER HALL:

2 Q. So any amount above that -- well, so
3 does that amount cover any fixed costs or is that
4 just covering the variable costs?

5 A. At this time, that would only cover
6 the costs that Noranda causes Ameren to incur --

7 Q. Okay.

8 A. -- directly.

9 Q. So have you figured or have you done
10 an analysis of what Noranda's contribution to fixed
11 costs should be?

12 A. I believe I will disagree slightly
13 with Mr. Brubaker. I believe that using the cost
14 of service allocation from the last case and
15 updating it for the changes that have occurred
16 through fuel and off-system sales margins evidenced
17 by the FAC, that that cost would -- the fully
18 embedded cost of service would be somewhere around
19 I believe \$42 or \$43.

20 So, therefore, at that price
21 Ameren -- or, sorry, Noranda would be contributing
22 \$43 minus 31.50, 11.50, although I hate to do math
23 in my head even that simple.

24 Q. Well, the current rate is 41.44?

25 A. Yes. I'm sorry. That was the number

1 I was thinking of.

2 Q. Okay. So this -- this break-even
3 point is the same break-even point from the last
4 rate case, or it's based on the information from
5 the last rate case?

6 A. It is not, no. This is looking only
7 at the LMP information, the wholesale energy cost
8 information. In a rate case context where a
9 customer is providing the contribution towards
10 capital costs and other fixed costs, it's
11 appropriate to reflect the benefits of those fixed
12 costs such as off-system sales margin.

13 That is not what Noranda is
14 requesting here. They are requesting the benefit
15 of the off-system sales margins without making a
16 contribution towards capital costs or fixed
17 expenses.

18 Q. I'm trying to figure out what the
19 number is if you take the break-even point that you
20 determine plus whatever dollar amount you believe
21 is reasonable to set for Noranda's rates as a fair
22 contribution towards its fixed costs and trying to
23 figure out what that number is.

24 A. And I apologize. I --

25 Q. And I'm probably not asking it in the

1 **most precise manner.**

2 A. You are. It's that this is a very
3 different case than what we typically deal with,
4 and so it's difficult to distinguish when someone's
5 referring to embedded cost of service, fully
6 distributed cost of service, versus directly caused
7 cost of service, if you will.

8 And I think I understand your
9 question better now. The current rate that Noranda
10 is paying, I believe you correct me, is
11 41-something.

12 **Q. 41.44, I believe.**

13 A. And that reflect the increase in --
14 that reflects 95 percent of the increases in fuel
15 cost and decreases in off-system sales margin that
16 has occurred since the last rate case. So if what
17 you were trying to do is just have the same amount
18 of fixed costs and contribution to capital costs
19 occur today under an energy-only rate that was
20 determined in the last rate case, then that would
21 be the number. It would be that they're
22 contributing approximately \$10.

23 If that amount were to be reduced by
24 some reason is not something that I have offered
25 testimony over, and it's not something I'm

1 qualified to offer testimony over at this time.

2 COMMISSIONER HALL: Thank you.

3 JUDGE WOODRUFF: Commissioner Rupp?

4 QUESTIONS BY COMMISSIONER RUPP:

5 Q. Welcome.

6 A. Thank you.

7 Q. There was some disagreement over, in
8 your opinion, what Mr. Dauphinais was trying to
9 calculate. Could you explain in opinion what you
10 believe he was calculating?

11 A. As I understand it, Mr. Dauphinais
12 applied a 1.5 percent reduction to his surrebuttal
13 testimony, which I believe was in the neighborhood
14 of \$29.91, and applied that 1.5 percent reduction
15 to reflect what he believes would be the -- an
16 average energy cost consistent with Noranda's load
17 factor were Noranda to cease service, to no longer
18 take energy from any source, other than perhaps an
19 onsite generator. He uses that reduction to say
20 what he believes the harm to ratepayers would be
21 from departure of Noranda load.

22 Q. And in your opinion, if you were
23 calculating that same set of factors, would you
24 agree with his calculations?

25 A. Our calculations in general are very

1 simple. As I noted in my rebuttal testimony, I
2 think it is likely that departure of Noranda load
3 would have some impact on the LMPs in the Ameren
4 service territory. I don't know what that impact
5 would be. I would have to model it. I currently
6 don't have the resources or, frankly, knowledge to
7 model it.

8 I would not know with confidence
9 whether that would be positive or negative given
10 Noranda's load factor and given the fact that it
11 would affect the LMP presumably in all hours. Some
12 hours Ameren is a net seller. Some hours Ameren is
13 a net purchaser.

14 **Q. And I am new. I don't think we've**
15 **had a chance to meet. How long have you been with**
16 **the Commission?**

17 A. I've been with the Commission since
18 May of 2006.

19 **Q. And always in this position?**

20 A. No, sir. I was in the staff -- I was
21 in the general counsel's office, which was renamed
22 the staff counsel's office, until July of last year
23 when I transferred to the energy department.

24 **Q. And your educational background is?**

25 A. Prior to coming to the Commission,

1 I'd gotten my bachelor's degree and gone to law
2 school. Since that time, I've had the opportunity
3 to attend a number of specialized transmission
4 training courses, number of ratemaking courses, and
5 to take some college courses in both economics and,
6 more particularly, transmission dispatch and
7 economics.

8 COMMISSIONER RUPP: Great. Thank
9 you.

10 JUDGE WOODRUFF: All right. Recross.
11 Anyone wish to recross? Ameren.

12 RE-CROSS-EXAMINATION BY MS. TATRO:

13 Q. I was really worried that I was going
14 to miss the opportunity the first time you were in
15 front of me.

16 A. I was very disappointed.

17 Q. In response to the Chair's
18 questioning, you used the phrase cost to serve
19 Noranda, and that's when you used this number 31.5.
20 And I just want to make sure that we're all very
21 clear. That's the incremental cost?

22 A. Yes. That is the directly caused
23 cost to serve Noranda at this time. I should say
24 that's a reasonable estimate for these purposes of
25 that cost. There's a number of finer details, as I

1 discuss in my rebuttal testimony, that would be
2 accounted for in that, but I don't think it would
3 have a measurable change on that over the course of
4 time.

5 **Q. And that is certainly different than**
6 **the fully embedded cost of service?**

7 A. About \$10 different.

8 **Q. And that rate additionally doesn't**
9 **have the contribution to fixed costs that**
10 **Mr. Brubaker talks about in his testimony?**

11 A. At that rate, it would be a negative
12 one and a half dollar contribution.

13 MS. TATRO: Thank you. That's all I
14 have.

15 JUDGE WOODRUFF: Any other recross?
16 Go ahead.

17 RE-CROSS-EXAMINATION BY MR. DOWNEY:

18 **Q. Ms. Kliethermes, do you see**
19 **Mr. Dauphinais' testimony up there?**

20 MR. DOWNEY: And, Judge, this is
21 highly confidential.

22 JUDGE WOODRUFF: All right. We'll go
23 back in camera.

24 (REPORTER'S NOTE: At this point, an
25 in-camera session was held, which is contained in

1 Volume 8, pages 803 through 805 of the transcript.)

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

3 MR. THOMPSON: Thank you.

4 REDIRECT EXAMINATION by MR. THOMPSON:

5 Q. Ms. Kliethermes, you were asked some
6 questions about your education and your career by
7 Commissioner Rupp. Do you recall those questions?

8 A. I do.

9 Q. Okay. Now, before you transferred to
10 your present job, you were employed, you said, in
11 the general counsel's office and the staff
12 counsel's office; is that correct?

13 A. Yes.

14 Q. In what capacity?

15 A. I started as a legal intern prior to
16 my graduation from law school. Upon my graduation
17 of law school, I accepted a position as a legal
18 counsel, which I believe then I was promoted to
19 associate counsel and then senior counsel were my
20 titles.

21 Q. So for purposes of simplification,
22 you were employed as an attorney?

23 A. I was.

24 Q. And you have since had some training
25 as an economist?

1 A. I have.

2 Q. Would you characterize that as a
3 regulatory economist?

4 A. I would. I've studied regulatory
5 economics both through the Commission and through
6 other training sources, as what I would distinguish
7 from academic economics.

8 Q. Now, you were asked some questions by
9 Chairman Kenney. He asked you what you were
10 calculating. Do you remember that?

11 A. I do.

12 Q. And you recall that -- do you recall
13 that you replied that you were calculating a number
14 showing the Commission the cost to serve Noranda?

15 A. Yes. And as reminded by Ms. Tatro, I
16 should probably expand that description to say I
17 was calculating a number showing the cost that
18 Ameren would directly incur in its service of
19 Noranda.

20 Q. Now, that's a phrase you've used
21 quite a bit, and I don't think I've heard other
22 witnesses necessarily use that phrase. When you
23 say costs directly caused, what do you mean? What
24 kind of costs are those?

25 A. Well, as I was discussing with the

1 Chairman and others, I believe, Ameren purchases
2 all of the energy to serve its load back from the
3 MISO market, generally speaking.

4 So if a customer is not taking
5 service from Ameren, all else being equal, it's not
6 so much that Ameren would be selling into the MISO
7 because Ameren's already selling into the MISO.
8 It's a question of how much Ameren would need to
9 purchase back from the MISO to serve its customers.

10 Q. Okay. I'm trying to make this simple
11 enough that I can follow it. There's been a
12 distinction made by several witnesses and quite a
13 bit of the testimony between what are called fixed
14 costs and what are called variable costs. Are you
15 familiar with that distinction?

16 A. Yes.

17 Q. Are the costs that you're speaking of
18 that you're characterizing as directly caused
19 costs, are those, in fact, variable costs?

20 A. In this sense, they would be variable
21 costs, yes.

22 Q. And would you agree with me that
23 variable costs change depending on how much is
24 purchased?

25 A. They do.

1 Q. And fixed costs don't?

2 A. Generally, no, although they will
3 over longer periods of time.

4 Q. And are you familiar with the
5 testimony filed by Mr. Brubaker?

6 A. Generally.

7 Q. And with Mr. -- that filed by
8 Mr. Dauphinais?

9 A. Generally.

10 Q. Would you agree with me that they
11 have characterized the \$30 a megawatt hour rate
12 that they have proposed for Noranda as covering
13 variable cost and contributing to fixed costs?

14 A. I believe that has been their
15 characterization.

16 Q. Do you agree with that
17 characterization?

18 A. I do not with the caveat of to the
19 extent that the number is something in the \$29
20 range or thereabouts, that there may be a very
21 small contribution to fixed costs.

22 Q. Do I understand you correctly to say
23 that at \$30 a megawatt hour, there may be a slight
24 contribution to fixed costs?

25 A. Under certain estimates, yes.

1 Frankly, I believe that my method and that
2 Mr. Michels' method is more reasonable under these
3 circumstances, and that does not show a
4 contribution to fixed costs.

5 **Q. Is this cost figure difficult to**
6 **calculate?**

7 A. No. Noranda has a very high load
8 factor. For purposes of calculating the average
9 wholesale cost, the numbers are widely available.
10 In fact, a simple average of the LMP would provide
11 those numbers.

12 **Q. So you proposed a figure of 31**
13 **dollars and some odd cents?**

14 A. Yes.

15 **Q. Which I understand is highly**
16 **confidential?**

17 A. It is.

18 **Q. And at that figure, that's been**
19 **characterized, for example, Commissioner Hall**
20 **characterized it in his question as a break-even**
21 **point. Would you agree with that characterization?**

22 A. Yes.

23 **Q. By break-even point, would you agree**
24 **that that means that all variable costs are covered**
25 **and no fixed costs are covered?**

1 A. In the context of this case, yes.

2 Q. Is that the same figure that
3 Mr. Brubaker or Mr. Dauphinais has used for the
4 break-even point?

5 A. It is not.

6 Q. And you also discussed, I believe,
7 that it was inappropriate that there should be any
8 benefit of off-system sales to Noranda if they were
9 not contributing to fixed costs. Did I understand
10 that correctly?

11 A. Yes. Unless an off-system sales
12 margin level rises to such a point that the revenue
13 requirement for the company exceeds the total
14 variable costs to its customers, I can't think of a
15 scenario where it would be appropriate for a
16 customer to be charged less than its variable cost
17 of service as a class.

18 Q. Okay.

19 A. Individual customers within a class
20 may experience different results.

21 Q. Now, Commissioner Hall also advised
22 you that the current is rate \$41.44?

23 A. That sounds right.

24 Q. Okay. That is, I hope, not highly
25 confidential?

1 A. It is not.

2 Q. Okay. Now, at \$41.44, is there a
3 contribution to fixed costs?

4 A. Yes.

5 Q. And are you able to quantify that
6 approximately?

7 A. It would be approximately \$10 --

8 Q. Okay.

9 A. -- per megawatt hour.

10 Q. Now, at \$41.44, is it appropriate for
11 Noranda to share in the benefits of any off-system
12 sales?

13 A. It is, and that does reflect their
14 share in the benefits in the share of off-system
15 sales. That reflects approximately \$40 million
16 annually of their share in the benefits of
17 off-system sales.

18 Q. Now, in addition to the phrase
19 directly caused costs, you've also used the phrase
20 incremental cost. What do you mean by the phrase
21 incremental cost?

22 A. I think I only used the phrase
23 incremental cost to draw a distinction with others'
24 use of that phrase. In a traditional cost of
25 service case with a class cost of service study, we

1 look at things like load factor, demand, causation
2 and other elements to basically determine -- well,
3 to study what sort of costs a class of customers is
4 causing the company to incur through use of their
5 own generation.

6 That's not the sort of case before us
7 here. That's not the sort of relief that Noranda
8 has requested. And given the purchases of Ameren's
9 energy through the MISO market, the incremental
10 cost is the same as the variable cost for our
11 purposes in this case.

12 **Q. So for our purposes in this case, the**
13 **incremental cost is the same as the directly caused**
14 **cost?**

15 A. Yes.

16 **Q. Okay. Thank you for clearing that**
17 **up. And what about fully embedded cost?**

18 A. Well, the fully embed costs would be
19 the company's entire revenue requirement assigned
20 and allocated to the customer classes, along with
21 benefits associated with revenues derived from that
22 investment. That is what I think Noranda has
23 requested be ignored.

24 And I don't mean that in a
25 disparaging way. That would also be the measure of

1 costs that under a traditional economic development
2 rate you would be willing to allow some rate that
3 is below fully embedded costs as long as it is
4 above directly above caused costs or variable
5 costs. In this sense, they're synonymous.

6 **Q. What about that figure of \$41.44, is**
7 **that a fully embedded cost figure?**

8 A. It is. It also does reflect that
9 offset for approximately \$40 million of off-system
10 sales margin from the last rate case.

11 **Q. Finally, I think Commissioner Rupp**
12 **asked you what you thought Mr. Dauphinais was**
13 **trying to calculate. Do you recall that?**

14 A. I do.

15 **Q. And what is it that you think**
16 **Mr. Dauphinais was trying to calculate?**

17 A. I think he was trying to calculate a
18 number of what he projects the LMP to be if Noranda
19 was no longer taking service other than perhaps an
20 onsite generator.

21 **Q. Is that the same thing you were**
22 **trying to calculate?**

23 A. No.

24 **Q. So because they're not the same**
25 **thing, would you expect those two figures to be**

1 **comparable?**

2 A. They're similar. They're not
3 comparable. Mr. Dauphinais explicitly adjusted his
4 to reduce it by 1.5 percent.

5 **Q. Is that the only difference between**
6 **your figure and his?**

7 A. He also made adjustments to the -- to
8 the time period used and made adjustments within
9 the time period used. And I believe he used some
10 other figures than I did for items like ancillary
11 services and uplift, although those have a fairly
12 minor impact.

13 **Q. Based on your understanding of what's**
14 **at stake in this case and the calculations and**
15 **investigations you have performed in the course of**
16 **this case, would you recommend that the Commission**
17 **grant the requested relief?**

18 A. Of \$30 with no FAC and no -- and no
19 limitation of 2 percent increases going forward for
20 the next ten years?

21 **Q. I believe that is the requested**
22 **relief.**

23 A. I could not recommend acceptance of
24 that package.

25 MR. THOMPSON: Thank you very much.

1 No further questions.

2 JUDGE WOODRUFF: Thank you. You may
3 step down. Call Mr. Scheperle.

4 (Witness sworn.)

5 JUDGE WOODRUFF: You may inquire.

6 MIKE SCHEPERLE testified as follows:

7 DIRECT EXAMINATION BY MR. OPITZ:

8 Q. Good afternoon, Mr. Scheperle. Can
9 you please state your name and spell it for the
10 court reporter?

11 A. Yes. My name is Mike Scheperle,
12 M-i-k-e, S-c-h-e-p-e-r-l-e.

13 Q. Where are you employed and in what
14 capacity?

15 A. I'm employed at the Missouri Public
16 Service Commission, and I'm the manager of the
17 Economic Analysis Section.

18 Q. Did you prepare the testimony that
19 has been provided to the court reporter as Staff's
20 Exhibit 200?

21 A. Yes.

22 Q. And did you have anything you wish to
23 correct in that testimony today?

24 A. No corrections.

25 Q. If I were to ask you those questions

1 today, would your answers be the same?

2 A. Yes.

3 Q. And to the best of your knowledge and
4 belief, is the information in Exhibit 2-- Staff
5 Exhibit 200 true and correct?

6 A. Yes.

7 MR. OPITZ: Your Honor, Staff offers
8 Exhibit 200 into evidence and at this time tenders
9 the witness for cross.

10 JUDGE WOODRUFF: Exhibit 200 has been
11 offered. Any objections to its receipt?

12 (No response.)

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

15 (STAFF EXHIBIT NO. 200 WAS RECEIVED
16 INTO EVIDENCE.)

17 JUDGE WOODRUFF: And for
18 cross-examination, begin with Ameren?

19 MS. TATRO: No questions.

20 JUDGE WOODRUFF: Continental Cement?

21 MR. COMLEY: No questions.

22 JUDGE WOODRUFF: Public Counsel?

23 MR. POSTON: Yes. Thank you.

24 CROSS-EXAMINATION BY MR. POSTON:

25 Q. Good afternoon, Mr. Scheperle.

1 A. Good afternoon.

2 Q. Your prefiled rebuttal testimony in
3 this case addressed rate design issues; is that
4 correct?

5 A. That is correct.

6 Q. But your testimony did not address
7 how any rate adjustment should be applied to other
8 classes; is that correct?

9 A. Yes, I did make a recommendation on
10 how they should be applied to the other classes,
11 and it is contained in schedule MSS-R3.

12 Q. Your testimony includes a section
13 that discusses Ameren's last rate case,
14 ER-2012-0166 --

15 A. Yes.

16 Q. -- is that correct?

17 And have you read the Report and
18 Order from that case?

19 A. Yes.

20 Q. Are you familiar with the
21 Commission's rate design findings in that case?

22 A. Yes, I am.

23 Q. And a portion of that order is set
24 out in Ms. Mantle's testimony, and I'd like to read
25 a sentence from that. In that Order the Commission

1 states, shifting customer costs from variable
2 volumetric rates which a customer can reduce
3 through energy efficiency efforts to fixed customer
4 charges that cannot be reduced through energy
5 efficiency efforts will tend to reduce a customer's
6 incentive to save electricity.

7 Do you agree with the Commission's
8 findings here?

9 A. Yes, I do.

10 Q. Do you believe promoting energy
11 efficiency is an important goal?

12 A. Yes.

13 Q. Do you believe promoting energy
14 conservation is an important goal?

15 A. Yes.

16 Q. And in that same Order, in the next
17 paragraph the Commission states that increasing
18 customer charges at this time would send exactly
19 the wrong message to customers.

20 Do you agree with the Commission's
21 conclusion there?

22 A. In this limited circumstance of this
23 case, I agree with it. I would -- I understand
24 that Ameren is also filing a rate case, and I would
25 like to do a class cost of service on the customer

1 charges. But in this limited circumstances, we're
2 not recommending a customer charge increase for
3 residential or the small general service. And
4 that's reflected in Staff's, I guess, list of
5 issues.

6 **Q. If rates were to be redesigned in**
7 **this case, do you believe that those considerations**
8 **that the Commission made regarding energy**
9 **efficiency should also be considered in this case?**

10 A. Yes, with the last -- last case that
11 Ameren had, with the customer charge that was
12 addressed on the residential and small general
13 service, but I'm also recommending -- there was
14 nothing in the Report and Order that dealt with the
15 customer charge for the large general service,
16 small primary service or large primary.

17 MR. POSTON: Thank you. That's all I
18 have.

19 JUDGE WOODRUFF: All right. River
20 Cement?

21 MS. LANGENECKERT: No questions.

22 JUDGE WOODRUFF: Wal-Mart?

23 MR. CHAMBERLAIN: No questions.

24 JUDGE WOODRUFF: Consumers Council?
25 Is not here. The Retailers?

1 MR. SCHWARZ: No questions, Judge.

2 JUDGE WOODRUFF: Complainants?

3 MR. DOWNEY: Just a couple.

4 CROSS-EXAMINATION BY MR. DOWNEY:

5 Q. Not even sure where I'm going with
6 this, Mr. Scheperle, but I'm going to ask you a few
7 questions.

8 A. Okay.

9 Q. Are you familiar with how the
10 revenues and margins from off-system sales are
11 allocated?

12 A. Yes, I am.

13 Q. And are they allocated using an
14 energy allocation factor?

15 A. Yes.

16 Q. They're not allocated using a fixed
17 cost allocation factor?

18 A. That is correct.

19 Q. Nothing further.

20 A. Or Staff's position is that we use
21 the energy allocator on there.

22 MR. DOWNEY: Thank you very much.

23 JUDGE WOODRUFF: All right.

24 Questions from the Bench. Mr. Chairman?

25 CHAIRMAN KENNEY: Mr. Scheperle, I

1 don't have any questions. Thank you for your
2 testimony.

3 JUDGE WOODRUFF: Commissioner Stoll?

4 COMMISSIONER STOLL: No questions.

5 Thank you.

6 JUDGE WOODRUFF: Commissioner Hall?

7 COMMISSIONER HALL: Yes. I think
8 just a few.

9 QUESTIONS BY COMMISSIONER HALL:

10 **Q. Do you have an opinion as to when it**
11 **is appropriate in rate -- in rate design to deviate**
12 **from cost of service?**

13 A. I think we ought to be as -- rates
14 should be as close to the cost of service as they
15 should be. I mean, that should be the underlying
16 principle, that we do a class cost of service and
17 the rates should be set on that criteria.

18 COMMISSIONER HALL: Okay. Thank you.

19 JUDGE WOODRUFF: Commissioner Rupp?

20 All right. Any redirect based on that question?

21 I'm sorry. Recross based on that question?

22 Redirect?

23 MR. DOWNEY: Judge, I may have some
24 recross. Can you give me just a second?

25 JUDGE WOODRUFF: All right. We'll

1 wait.

2 MR. DOWNEY: I'm sorry. No cross.

3 JUDGE WOODRUFF: Redirect?

4 REDIRECT EXAMINATION BY MR. OPITZ:

5 Q. Mr. Scheperle, Public Counsel asked
6 you about the recommendation for an application of
7 increase to other classes. Is that what you're
8 recommending in this case?

9 A. Yes. I mean, that's the interclass
10 shift that was my Schedule MSS-R3 that I was
11 talking about.

12 Q. Perhaps I was unclear. You -- while
13 it is true that you did include, I guess, a sort of
14 proposed rate design; is that correct?

15 A. Yes, I did.

16 Q. Was that your overall recommendation
17 to go ahead and include that rate design or rate
18 shift?

19 A. Yes, it is, and in my Schedule MSS-R3
20 is different than Noranda's cause Staff has
21 included the lighting class and the MSD, the
22 Metropolitan Sewer District in that. I think
23 Noranda only included the residential, the small
24 general service, large general service, small
25 primary service and the large primary service.

1 I also included that, but I also
2 included lighting and MSD. And I believe that all
3 customers, all Ameren customers should share in
4 the -- in the revenue requirement adjustment.

5 MR. OPITZ: Thank you. No further
6 questions.

7 JUDGE WOODRUFF: All right. You can
8 step down.

9 Next witness on the list is Lena
10 Mantle. Ms. Mantle, before you come up, I want to
11 ask the parties, do you expect extensive cross on
12 Ms. Mantle? The reason I ask is we have Mr. Chriss
13 and Mr. Conroy. They'd probably appreciate getting
14 out of here before we take our dinner break.

15 MR. DOWNEY: No, I don't.

16 JUDGE WOODRUFF: Let's bring
17 Ms. Mantle up.

18 JUDGE WOODRUFF: Please raise your
19 right hand.

20 (Witness sworn.)

21 JUDGE WOODRUFF: Thank you. You may
22 inquire.

23 LENA MANTLE testified as follows:

24 DIRECT EXAMINATION BY MR. POSTON:

25 Q. Would you please say and spell your

1 name for the court reporter.

2 A. My name is Lena M. Mantle, L-e-n-a,
3 capital M, and then Mantle is M-a-n-t-l-e.

4 Q. Are you the same Lena Mantle that
5 caused to be prepared and filed surrebuttal
6 testimony in this case that's been marked as OPC
7 Exhibit No. 300?

8 A. Yes.

9 Q. And do you have any changes or
10 corrections to your testimony?

11 A. No, I do not.

12 Q. If I asked you the questions in your
13 testimony today here on the stand, would your
14 answers be substantially the same?

15 A. Yes.

16 MR. POSTON: Your Honor, I offer
17 Exhibit 300.

18 JUDGE WOODRUFF: Exhibit 300 has been
19 offered. Any objections to its receipt?

20 (No response.)

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

23 (OPC EXHIBIT NO. 300 WAS RECEIVED
24 INTO EVIDENCE.)

25 MR. POSTON: I tender the witness for

1 cross-examination.

2 JUDGE WOODRUFF: And for
3 cross-examination, we begin with Ameren.

4 CROSS-EXAMINATION BY MR. BYRNE:

5 Q. Good afternoon, Ms. Mantle.

6 A. Good afternoon.

7 Q. Didn't think I'd be saying that
8 again. I just have a couple of questions. One is,
9 my understanding is your recommendation is that
10 Ameren Missouri should -- if the Commission were to
11 grant some rate relief to Noranda, Ameren Missouri
12 should bear at least some of that rate reduction,
13 is that correct, bear the consequences of some of
14 that rate reduction?

15 A. Should bear the consequences of
16 Noranda having a reduced rate, yes.

17 Q. And my understanding is you're not
18 offering an opinion as to whether that would be
19 legal or not, are you?

20 A. No. I'm not an attorney. I'm not
21 offering a legal opinion.

22 MR. BYRNE: Thank you. That's all I
23 have.

24 JUDGE WOODRUFF: Continental Cement.

25 MR. COMLEY: No questions?

1 JUDGE WOODRUFF: Staff?

2 MR. THOMPSON: Thank you, Judge.

3 CROSS-EXAMINATION BY MR. THOMPSON:

4 Q. Good afternoon, Ms. Mantle.

5 A. Good afternoon.

6 Q. We've known each other for some time,
7 haven't we?

8 A. A few years.

9 Q. And we've worked together in the
10 past, haven't we?

11 A. Yes, we have.

12 Q. In fact, you've been my witness
13 frequently, haven't you?

14 A. Yes, I have.

15 Q. How many years did you work for the
16 Commission?

17 A. I worked for the Commission for
18 29 years.

19 Q. And in what -- at the end, what was
20 the capacity?

21 A. When I retired, I was manager of the
22 Energy Department.

23 Q. And how long had you done that?

24 A. I have to check. I became manager in
25 August 2011.

1 **Q. And prior to that, did you also work**
2 **in energy?**

3 A. Prior to that, I was the supervisor
4 of the engineering section -- analysis section, and
5 prior to that, I worked as an engineer in that
6 section, and prior to that, I worked as an
7 economist.

8 **Q. So are you, in fact, a Licensed**
9 **Professional Engineer?**

10 A. Yes, I am.

11 **Q. And are you by education an**
12 **economist?**

13 A. No, I am not, not by formal
14 education. I did work under Dr. Mike Proctor who
15 worked his best to make me an economist.

16 **Q. So you were a regulatory economist,**
17 **sort of like Sarah Kliethermes?**

18 A. Yes.

19 **Q. Okay. And in the course of your**
20 **employment with the Commission, did you become**
21 **familiar with the operations of Ameren Missouri?**

22 A. Yes.

23 **Q. And did you become familiar with**
24 **Noranda Aluminum in its capacity as a customer of**
25 **Ameren Missouri?**

1 A. Yes, I did.

2 Q. And you're familiar with the way that
3 a revenue requirement is calculated?

4 A. Yes, I am.

5 Q. And you're familiar with the way that
6 rate design is performed?

7 A. Yes. The rate designs were performed
8 under my direction as manager of the Energy
9 Department.

10 Q. So based on your professional
11 experience and knowledge, would you recommend that
12 the Commission grant the relief that's requested in
13 this case?

14 A. Personally, it is a hard call. It is
15 one that I believe that Commissioners were set --
16 were -- are designed to do. Would I do it as a
17 commissioner? I don't know. There's so much
18 conflicting -- you know, Noranda is a very
19 important part of southeast Missouri. It's
20 important to keep them viable. But at the same
21 time, we've got the other 1.2 million customers.

22 OPC did not take an opinion or
23 position, and I -- I really don't have one either.
24 It's a hard decision.

25 Q. You've heard testimony, have you not,

1 today concerning what's been characterized as a
2 break-even price?

3 A. Yes.

4 Q. Of the various figures that have been
5 proposed, in your professional opinion, is there a
6 figure that is better than the others to represent
7 that price?

8 A. I don't think there's a single figure
9 that can represent that price because Noranda's
10 asking for this for ten years. I know Ameren
11 Missouri's the only one that did any kind of
12 analysis of past that ten years. When Noranda --
13 when Ameren came to the Commission asking for a CCN
14 to serve Noranda, we looked at 20-plus years, what
15 kind of impact would it have.

16 When we're talking about one price,
17 and that's what it is today, I think that's very
18 shortsighted because if Noranda -- if the
19 Commission does approve this for ten years, we've
20 not looked at what the impact will be for ten years
21 other than what Ameren Missouri has in their
22 testimony.

23 So I would lean toward the position
24 of Ameren Missouri because they've looked at ten
25 years.

1 **Q. Is it your professional opinion that,**
2 **at \$30 per megawatt hour, Noranda would be making**
3 **any contribution to fixed costs?**

4 MR. DOWNEY: Judge, I'm going to
5 object. I don't think her testimony even
6 addressed this issue, the calculation of an
7 incremental cost. I mean, maybe I missed it.

8 MR. BYRNE: Judge, he can ask her
9 questions beyond her testimony.

10 JUDGE WOODRUFF: I'm going to
11 overrule the objection. You can answer the
12 question.

13 THE WITNESS: Would you restate the
14 question?

15 BY MR. THOMPSON:

16 **Q. Is it your professional opinion that,**
17 **at \$30 per megawatt hour, Noranda would be making**
18 **any contribution to fixed costs?**

19 A. I don't know how much that would be.
20 If it is, I believe it would be very little
21 contribution to fixed costs.

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

24 JUDGE WOODRUFF: Okay. For River
25 Cement?

1 MS. LANGENECKERT: No questions.

2 JUDGE WOODRUFF: Wal-Mart?

3 MR. CHAMBERLAIN: No questions.

4 JUDGE WOODRUFF: Consumers Council is
5 not here. Retailers?

6 MR. SCHWARZ: No questions.

7 JUDGE WOODRUFF: Complainant?

8 MS. VUYLSTEKE: Just a couple of
9 questions.

10 CROSS-EXAMINATION BY MS. VUYLSTEKE:

11 Q. Good afternoon, Ms. Mantle.

12 A. Good afternoon.

13 Q. Have you been involved in past Ameren
14 rate cases?

15 A. I was case coor-- co-coordinator for
16 every Ameren rate case since 2000.

17 Q. Well, I think you'll know the answer
18 to this question, then. If you don't, that's fine.
19 But in those cases, did the Staff propose using
20 three-year average power prices for purposes of
21 calculating the fuel expense?

22 A. I know we looked at a lot of
23 different ways of looking at it. That's probably
24 one of them. I cannot off the top of my head
25 remember exactly what each of them were for each of

1 those cases.

2 MS. VUYLSTEKE: Okay. Thank you.

3 JUDGE WOODRUFF: Okay. Come up for
4 questions from the Bench then. Mr. Chairman?

5 CHAIRMAN KENNEY: Hi.

6 THE WITNESS: Hello.

7 CHAIRMAN KENNEY: Good to see you.
8 Welcome back.

9 THE WITNESS: Thank you.

10 CHAIRMAN KENNEY: I have no
11 questions.

12 JUDGE WOODRUFF: Commissioner Stoll?

13 COMMISSIONER STOLL: I have no
14 questions either.

15 JUDGE WOODRUFF: Commissioner Hall?

16 QUESTIONS BY COMMISSIONER HALL:

17 **Q. I just have one question that I've**
18 **asked a number of expert witnesses, and that is, do**
19 **you have an opinion as to when it is appropriate to**
20 **deviate from cost of service in setting rates, if**
21 **at all?**

22 **A. I think the Commission has in the**
23 **past, and I would agree with, when there's going to**
24 **be great rate shock to a customer class. If class**
25 **cost of service study show that they're way off**

1 from their class to serve or their cost to serve
2 and to move them to that would be a tremendous
3 jump.

4 Such as I think lighting in the last
5 case class cost of service showed they were -- they
6 were not contributing enough and it was off by
7 about 11 percent. To move their rates by 11
8 percent and then another however much it was for
9 the increase for the rate case would have caused
10 them extreme rate shock.

11 So at a point where you're going to
12 send customers into rate shock, they won't be able
13 to pay their bills or have to leave the system,
14 then I do believe it's appropriate. And I think
15 the Commission has done that many times in the
16 past.

17 **Q. Would you characterize this as a load**
18 **retention concern or something different?**

19 A. I think that's different. I think
20 this -- what I'm talking about is rates have gotten
21 skewed for some reason, such as what one of Ameren
22 witnesses talks about in his testimony, that if
23 rate increases are capped at 2 percent for Noranda
24 for ten years and then we try to go to cost of
25 service, that would be a tremendous rate shock for

1 them.

2 **Q. So do you believe load retention in**
3 **and of itself is ever a justification for deviating**
4 **from cost of service?**

5 A. My engineering background and my
6 economist background are doing battle.

7 **Q. How about your sociology?**

8 A. Don't have a lot of training in that.
9 I can see -- and again, that's why I think it's put
10 on your-all's, that it's your decision to make.
11 That's what you guys are hired to do.

12 I can see both sides. Load retention
13 does mean a lot for the customers in southeast
14 Missouri. Now, does it mean much for my mother
15 here in Jeff City that Noranda stays in business?
16 No, but her rates would go up, too.

17 So there's that conflict, the bigger
18 picture percent versus each individual customer
19 down to not just Noranda but individual residential
20 or small GS customers that are struggling also.
21 It's a balance.

22 COMMISSIONER HALL: Okay. I have no
23 further questions. Thank you.

24 JUDGE WOODRUFF: Commissioner Rupp?
25 Any recross based on those questions? Yes.

1 REXCROSS-EXAMINATION BY MR. THOMPSON:

2 **Q. Ms. Mantle, you're aware that Noranda**
3 **has brought not just this case but also an**
4 **overearnings case?**

5 A. I'm aware of that.

6 **Q. So it's kind of a one/two punch.**
7 **Would it make a difference to your mother here in**
8 **Jefferson City if Noranda was successful in this**
9 **case in obtaining the relief it has requested and**
10 **was successful in the overearnings case in reducing**
11 **all of the ratepayers' rates? Would that make a**
12 **difference to your mother?**

13 A. My mother cares about her bill. She
14 doesn't care about her rate. And if her bill
15 didn't jump, you know, I don't know that would make
16 a difference to my mother if her -- she's going to
17 love this to know I brought her up in a hearing.
18 But if --

19 **Q. Do you have a picture of her with**
20 **you?**

21 A. I think I do. But to her and most
22 residential customers, it's their bill that they're
23 concerned with. If their bill doesn't increase and
24 Noranda gets what they want, she will be fine with
25 that. But it's having her bill increase while at

1 the same time Noranda's -- to help Noranda. While
2 she is a compassionate person, I don't know
3 whether -- how much difference that would make to
4 her.

5 **Q. So if Noranda was successful in both**
6 **of these cases, would your mother's bill remain the**
7 **same?**

8 A. I'm not aware of how much the
9 overearnings complaint is for, so I don't have -- I
10 don't know.

11 **Q. Okay. But it might?**

12 A. It might.

13 MR. THOMPSON: Thank you. No further
14 questions.

15 JUDGE WOODRUFF: Redirect?

16 MR. POSTON: No redirect. Thank you.

17 JUDGE WOODRUFF: Ms. Mantle, you can
18 step down. We'll bring up Steve Chriss.

19 (Witness sworn.)

20 JUDGE WOODRUFF: Okay. You may
21 inquire.

22 STEVE CHRISS testified as follows:

23 DIRECT EXAMINATION BY MR. CHAMBERLAIN:

24 **Q. Would you please state your name for**
25 **the record.**

1 A. It's Steve W. Chriss.

2 Q. Mr. Chriss, by whom are you employed?

3 A. Wal-Mart Stores, Incorporated.

4 Q. And in what capacity are you
5 employed?

6 A. I'm Senior Manager - Energy
7 Regulatory Analysis.

8 Q. Mr. Chriss, did you cause to be filed
9 what has been marked as Exhibit No. 460 entitled
10 rebuttal testimony of Steve W. Chriss on behalf of
11 Wal-Mart Stores East, LP and Sams East, Inc.?

12 A. I did.

13 Q. Do you have any changes or
14 corrections to that testimony today?

15 A. No.

16 Q. If I were to ask you the same
17 questions that are set forth in that testimony,
18 would your answers be substantially the same?

19 A. Yes.

20 MR. CHAMBERLAIN: Your Honor, I guess
21 with that I would offer Exhibit 460 and tender the
22 witness for cross-examination.

23 JUDGE WOODRUFF: Exhibit 460 has been
24 offered. Any objections to its receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, it
2 will be received.

3 (WAL-MART EXHIBIT NO. 460 WAS
4 RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: Cross-examination,
6 we'll begin with Ameren.

7 CROSS-EXAMINATION BY MS. TATRO:

8 Q. Good afternoon, Mr. Chriss.

9 A. Good afternoon.

10 Q. Now, am I correct in believing that
11 you did not complete any analysis of Noranda's
12 financial condition for your testimony?

13 A. I did not.

14 Q. And you did not complete any analysis
15 of the aluminum industry or Noranda's position
16 within the aluminum industry as part of your
17 testimony; is that correct?

18 A. That is correct.

19 Q. So you're not testifying here today
20 as to whether or not Noranda has a true need for
21 this reduced energy rate, correct?

22 A. That is correct.

23 MS. TATRO: Thank you.

24 JUDGE WOODRUFF: Continental Cement?

25 MR. COMLEY: No questions. Thank

1 you.

2 JUDGE WOODRUFF: Staff?

3 MS. JONES: No questions, your Honor.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. POSTON: No questions.

6 JUDGE WOODRUFF: River Cement?

7 MS. LANGENECKERT: No questions.

8 JUDGE WOODRUFF: Consumers Council?

9 MR. COFFMAN: No questions.

10 JUDGE WOODRUFF: Retailers?

11 MR. SCHWARZ: No questions, Judge.

12 JUDGE WOODRUFF: Complainants?

13 MS. VUYLSTEKE: No questions.

14 JUDGE WOODRUFF: Now we'll come up

15 for questions from the Bench. Mr. Chairman?

16 CHAIRMAN KENNEY: No questions.

17 Thanks for being here.

18 THE WITNESS: You're very welcome.

19 JUDGE WOODRUFF: Commissioner Stoll?

20 COMMISSIONER STOLL: No questions.

21 Thank you.

22 JUDGE WOODRUFF: Commissioner Hall?

23 COMMISSIONER HALL: No questions.

24 JUDGE WOODRUFF: Commissioner Rupp?

25 COMMISSIONER RUPP: None.

1 JUDGE WOODRUFF: No questions from
2 the Bench, so no recross. Any redirect?

3 MR. CHAMBERLAIN: No, your Honor.

4 JUDGE WOODRUFF: You may step down.

5 And Mr. Conroy. Good afternoon. Please raise your
6 right hand.

7 (Witness sworn.)

8 JUDGE WOODRUFF: Thank you. You may
9 inquire.

10 MR. COMLEY: Thank you, Judge
11 Woodruff.

12 J. SCOTT CONROY testified as follows:

13 DIRECT EXAMINATION BY MR. COMLEY:

14 Q. Mr. Conroy, would you state your full
15 name for the reporter, please.

16 A. John Scott Conroy.

17 Q. And by whom are you employed?

18 A. Continental Cement Company.

19 Q. And in what capacity are you employed
20 by Continental Cement?

21 A. I'm the Vice President of Engineering
22 and Projects.

23 Q. Mr. Conroy, were you -- are the same
24 Scott Conroy who caused to be filed in this
25 proceeding a set of written rebuttal testimony

1 **which has been marked by the reporter as**
2 **Exhibit 500?**

3 A. Yes, I am.

4 Q. Do you have any additions or
5 **corrections to your testimony today?**

6 A. No, I don't.

7 Q. If I were to ask you the same
8 **questions that are propounded in the written**
9 **testimony in Exhibit 500, would your answers under**
10 **oath today be the same?**

11 A. Yes, they would be.

12 MR. COMLEY: Your Honor, I offer
13 Exhibit 500 into evidence and tender Mr. Conroy for
14 cross-examination.

15 JUDGE WOODRUFF: Exhibit 500 has been
16 offered. Any objection to its receipt?

17 (No response.)

18 JUDGE WOODRUFF: It will be received.

19 (CONTINENTAL CEMENT EXHIBIT NO. 500
20 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: And for
22 cross-examination, we begin with Ameren.

23 CROSS-EXAMINATION BY MR. BYRNE:

24 Q. **Good afternoon, Mr. Conroy.**

25 A. Good afternoon.

1 **Q.** I noticed in your rebuttal -- in your
2 **rebuttal testimony you say that Continental would**
3 **greatly benefit from a reduction in Ameren's rates**
4 **for electric service. Can you explain how**
5 **Continental would benefit from a reduction in**
6 **Ameren's rates?**

7 A. Our electricity cost is a large
8 component of our overall manufacturing costs. So
9 if our -- if we were given a rate reduction, then
10 that would be a reduction in our cost and,
11 therefore, a potential increase in our financial
12 performance.

13 **Q.** Do you see any difference between
14 **your situation and that of Noranda?**

15 A. Well, I don't completely understand
16 Noranda's financial position, but we're an
17 energy-intensive manufacturer, and electrical
18 energy is a big, like I said, a big component of
19 our cost.

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

22 JUDGE WOODRUFF: For Staff?

23 MR. THOMPSON: Thank you, Judge.

24 CROSS-EXAMINATION BY MR. THOMPSON:

25 **Q.** **Good afternoon, Mr. Conroy.**

1 A. Good afternoon.

2 Q. I'm looking at, I guess it's page 1
3 of your testimony, and am I correct, you've been
4 working in the cement industry since 1985?

5 A. That's correct.

6 Q. Okay. So you're very familiar with
7 the cement industry; isn't that true?

8 A. Yes.

9 Q. Now, your company, how many plants
10 does it have?

11 A. We have one manufacturing plant in
12 Hannibal.

13 Q. Okay. And if you know, how many
14 cement manufacturing plants are there in the
15 United States?

16 A. Somewhere between 90 and 100
17 operating right now.

18 Q. How many have closed since 2005?

19 A. I'm not sure I can answer that.

20 Q. Okay. If you know, how many concrete
21 or cement plants are there in the state of
22 Missouri?

23 A. There are one, two, three, four,
24 five, six.

25 Q. And if you know -- well, let me back

1 up.

2 A. Actually, five.

3 Q. Five. Okay. Now, am I correct that
4 you're a customer, your plant is a customer of
5 Ameren Missouri?

6 A. That's correct.

7 Q. And if you know, what is the customer
8 class?

9 A. You mean under what tariff do we
10 operate?

11 Q. Let me start over. If you know, what
12 is the customer class that your company is assigned
13 to?

14 A. We're under large -- we take service
15 under large primary service. It's Tariff 11M.

16 Q. Tariff 11M, large primary service?

17 A. That's correct.

18 Q. If you know, how many customers are
19 there on the LPS tariff for Ameren Missouri?

20 A. I don't know.

21 Q. Do you think it's more than just your
22 company?

23 A. Yes.

24 Q. Would you be surprised if I told you
25 that Noranda is the only customer on the large

1 **transmission service class?**

2 A. No, I would not be.

3 **Q. And would you be surprised if I told**
4 **you that Noranda is the only aluminum smelter in**
5 **Missouri?**

6 A. No.

7 **Q. That it's one of only nine smelters**
8 **in the United States?**

9 A. I would not be surprised by that. I
10 don't know that for sure, but...

11 **Q. Okay. If you know, what is the load**
12 **factor for your company as a customer of Ameren**
13 **Missouri?**

14 A. I don't have -- I don't know that
15 number.

16 **Q. Okay. Does your plant operate around**
17 **the clock, 24 hours a day?**

18 A. Yes, we do.

19 **Q. Do you operate seven days a week?**

20 A. Yes, we do.

21 **Q. If you know, does your plant take the**
22 **same amount of power every hour and every day that**
23 **it operates?**

24 A. No, we do not.

25 **Q. It varies from time to time?**

1 A. Yes, it does.

2 Q. And if you could explain briefly, why
3 does it vary from time to time?

4 A. Well, our manufacturing operation
5 runs 24/7, but then our shipping operation does not
6 operate 24 hours a day, seven days a week, and some
7 of other smaller operations don't operate 24/7.

8 Q. Would you be surprised if I told you
9 that Noranda takes the same amount of power every
10 hour that it operates?

11 A. I probably would not be surprised by
12 that.

13 Q. The reason I'm asking you these
14 questions, sir, is I think there are several
15 respects in which your company differs from
16 Noranda; would you agree?

17 A. Yes, there are differences.

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

20 JUDGE WOODRUFF: For Public Counsel?

21 MR. POSTON: No questions. Thank
22 you.

23 JUDGE WOODRUFF: River Cement?

24 MS. LANGENECKERT: Just a couple.

25 CROSS-EXAMINATION BY MS. LANGENECKERT:

1 Q. Good afternoon, Mr. Conroy.

2 A. Good afternoon.

3 Q. You mentioned that you work for
4 Continental Cement?

5 A. Yes.

6 Q. And that there are five total cement
7 companies in Missouri. Could you tell me who those
8 are?

9 A. There's Eagle Materials, well,
10 Central Plains outside of Kansas City, Lee's
11 Summit. There's us in Hannibal. Buzzi Unicem has
12 one plant in Festus and one plant in Cape
13 Girardeau, and Holcim has a plant in Ste. Genevieve
14 or Bloomsdale.

15 Q. And do you know if all of those
16 plants are served by Ameren Missouri?

17 A. The Eagle Materials plant or Central
18 Plains Cement is not. The other ones are.

19 Q. Is Holcim?

20 A. Well, Holcim is served by Citizens
21 Electric, the coop in Bloomsdale.

22 Q. So if the three plants that were
23 served by Ameren got an increase based upon
24 Noranda's shifting of the costs and the other two
25 cement plants didn't, would that put the Ameren

1 **cement plants at a disadvantage competitively?**

2 A. Yes, it would.

3 MS. LANGENECKERT: Thank you.

4 JUDGE WOODRUFF: Wal-Mart?

5 MR. CHAMBERLAIN: No questions.

6 JUDGE WOODRUFF: Consumers Council?

7 MR. COFFMAN: No questions.

8 JUDGE WOODRUFF: Retailers?

9 CROSS-EXAMINATION BY MR. SCHWARZ:

10 **Q. In Continental's opening statement,**
11 **Mr. Comley indicated that your electricity**
12 **constituted 12.8 percent of your overall cost. Is**
13 **that accurate?**

14 A. That's correct.

15 MR. SCHWARZ: No further questions.

16 JUDGE WOODRUFF: Thank you. For the
17 Complainants?

18 MS. VUYLSTEKE: Yes, a few questions.

19 I have an exhibit I'd like to go ahead and
20 distribute.

21 JUDGE WOODRUFF: Okay. Your next
22 number is 31.

23 (NORANDA EXHIBIT NO. 31 WAS MARKED
24 FOR IDENTIFICATION BY THE REPORTER.)

25 CROSS-EXAMINATION BY MS. VUYLSTEKE:

1 Q. Mr. Conroy, thanks for your patience.

2 Mr. Conroy, you're concerned about your electricity
3 rates, I assume, and that's one of the reasons
4 you're involved in this case?

5 A. Yes.

6 Q. Okay. In the exhibit that I handed
7 you, this is a chart that we prepared to illustrate
8 Ameren rate increases in recent years, and I would
9 ask you if you can accept, subject to check, the
10 numbers that I'm going to go through with you.

11 A. Okay.

12 MR. BYRNE: I'm going to object, your
13 Honor. This witness doesn't appear to have any
14 knowledge of these numbers. There's no foundation
15 for this document, so I object.

16 MR. COMLEY: I join in the objection.

17 MS. VUYLSTEKE: This document, your
18 Honor, was prepared by Brubaker & Associates. It
19 simply lists out the rate increases in each of the
20 cases from ER-2007-0002 to the most recent case.
21 It just has the amount and the percentages of the
22 increases. And it's not -- it's offered as an
23 illustration.

24 JUDGE WOODRUFF: I'll overrule the
25 objection. You can proceed.

1 MS. VUYLSTEKE: Thank you.

2 BY MS. VUYLSTEKE:

3 Q. Okay. And as we look at this chart,
4 Mr. Conroy, I'd ask you to -- my questions are
5 going to relate to the first two numbers in the
6 columns on the chart. I'm sorry. The first three,
7 the case number and then the requested rate
8 increase and the base rate increase percentage.

9 A. Okay.

10 Q. Okay. So if you go down to the most
11 recent base rate increase, that would have been
12 ER-2012-0166. That's the Commission's case number.
13 And then it looks like that rate increase on the
14 chart was \$376 million, and the percentage increase
15 was 14.5 percent.

16 My question is, did Continental
17 Cement intervene in that rate case?

18 A. I don't believe we did.

19 Q. Moving up the chart to the second
20 most recent Ameren rate case, that is ER-2011-0028.
21 That was a proposed increase of \$263 million, and
22 the percentage was 10.6 percent. Did Continental
23 Cement intervene in that case?

24 A. No, we did not.

25 Q. And I'll try to go through the rest

1 **of these real quick.**

2 MR. BYRNE: Your Honor, I'm going to
3 renew my objection. They didn't even intervene in
4 the rate cases. This witness knows nothing about
5 any of the numbers on this piece of paper. It
6 assumes facts not in evidence. It's just like
7 handing someone a piece of paper they know nothing
8 about and then reading the piece of paper into the
9 record.

10 JUDGE WOODRUFF: Her questions are
11 about whether they intervened in these cases, so --
12 and the document itself has not been offered at
13 this point. I'm going to overrule the objection.
14 You can continue to ask your questions.

15 BY MS. VUYLSTEKE:

16 Q. Okay. And then we have ER-2010-0036.
17 That was a rate increase of \$401 million, and the
18 percentage was 18 percent. Did Continental
19 intervene in that case?

20 A. No, we did not.

21 Q. Almost done. ER-2008-0318,
22 \$250 million roughly, and your rate increase there
23 would have been 12.1 percent under that proposal.
24 Did you intervene in that case?

25 A. No.

1 Q. And then the last case is
2 ER-2007-0002, \$360 million roughly, and the
3 percentage 16.9 percent. Did you intervene in that
4 case?

5 A. No.

6 MS. VUYLSTEKE: And then I have one
7 more exhibit.

8 JUDGE WOODRUFF: It will be 32.

9 (NORANDA EXHIBIT NO. 32 WAS MARKED
10 FOR IDENTIFICATION.)

11 BY MS. VUYLSTEKE:

12 Q. Mr. Conroy, I just handed you a
13 printout from the website Missourians for a
14 Balanced Energy Future, and if you could refer to
15 page 3 of that document. Near the bottom of the
16 page -- I'm sorry. I should have noted that the
17 first page lists supporters, and then page 3 lists
18 businesses, and the businesses that are listed here
19 include your company. There's Alliant Bank,
20 Continental Cement, and then three other -- four
21 other companies, a total of six. And are you
22 listed, are you a business supported of MBEF?

23 A. Well, I've not seen this before, but
24 I see our name on the -- on the document.

25 Q. Are you aware of the organization?

1 A. No, I'm not.

2 Q. You did not know that your company
3 was a member of this organization?

4 MR. COMLEY: Objection. That
5 presumes facts not in evidence.

6 JUDGE WOODRUFF: The question was --
7 what was the question?

8 MS. VUYLSTEKE: Are you -- let me
9 rephrase the question.

10 MR. COMLEY: Are you not aware that
11 you were a member of this organization? And I
12 objected to it on the grounds that it's presuming
13 facts not in evidence.

14 MR. BYRNE: I'll object on the
15 grounds that the question's been asked and
16 answered. She previously asked him if he -- the
17 same question.

18 JUDGE WOODRUFF: I'll sustain that
19 objection.

20 BY MS. VUYLSTEKE:

21 Q. Let me rephrase the question. Is
22 your company a member of MBEF, Missourians for a
23 Balanced Energy Future?

24 A. Well, I see our name on the list that
25 you handed me, so I'll assume that means yes.

1 MS. VUYLSTEKE: Okay. I have no
2 further questions. And then I would ask to move --
3 I would like to get 520 and 521 admitted into the
4 record, your Honor.

5 JUDGE WOODRUFF: 31 and 32.

6 MS. VUYLSTEKE: I'm sorry. 31 and
7 32.

8 JUDGE WOODRUFF: Let's deal with 31
9 first. Any objections?

10 MR. BYRNE: Yes.

11 JUDGE WOODRUFF: What's your
12 objection?

13 MR. BYRNE: I object -- well, 31 is
14 this one? I object that there's been no foundation
15 laid for the document. The witness didn't know
16 anything about it. Plus, it assumes facts not in
17 evidence. All the alleged facts on this document
18 are not in evidence. So I object.

19 MR. COMLEY: I'll follow that with
20 Ms. Vuylsteke did admit that Mr. Brubaker prepared
21 this, and he could have supplied a foundation
22 during the course of his own testimony and did not.
23 Therefore, it lacks foundation and is inadmissible.

24 JUDGE WOODRUFF: I agree, there's no
25 foundation for the document to come in. It will

1 not be received.

2 MS. VUYLSTEKE: And then I would also
3 move to have 532 admitted into the record.

4 JUDGE WOODRUFF: Just 32. It's
5 getting late. All right. Any objections to the
6 admission of 32?

7 MR. BYRNE: I object to that as well,
8 two of the same objections as before. The witness
9 has obviously never seen the document, so there was
10 no proper foundation laid for the document. It
11 assumes facts not in evidence. All the facts on
12 this piece of paper are not in evidence, and it's
13 also hearsay.

14 MR. COMLEY: The other objection is
15 that the witness was not able to say with any
16 definiteness that Continental Cement is a member of
17 the organization. He can only assume that is.
18 That fails. It should be not admitted.

19 MS. VUYLSTEKE: Well, your Honor, the
20 witness saw the sheet. It's printed from a public
21 website from Missourians for a Balanced Energy
22 Future, and he said, I assume we're a member.
23 We're listed on here. I assume we're a member,
24 words to that effect. So it seems to me it's
25 appropriate to let it in the record.

1 MR. COMLEY: Again, the testimony
2 about from where this document is derived comes
3 from counsel, and I agree that counsel does have
4 obligations about testifying before you, but that
5 does not alone give foundation for the document.

6 JUDGE WOODRUFF: I agree. It's
7 hearsay. There's no foundation. It will not be
8 admitted. Anything further?

9 MS. VUYLSTEKE: No further questions.

10 JUDGE WOODRUFF: And we'll come up
11 for questions from the Bench. Mr. Chairman?

12 QUESTIONS CHAIRMAN KENNEY:

13 Q. Mr. Conroy, thanks for being here. I
14 just want to ask you a couple of questions about
15 conversations that Continental may or may not have
16 had about any plans that it has to file a similar
17 case if Noranda is successful. So have you had any
18 of those discussions with upward level management
19 at your company?

20 A. We've discussed it.

21 Q. Can you elaborate on the nature of
22 that discussion?

23 A. We just talked about that as one
24 of -- you know, one of many options if Noranda is
25 granted this relief.

1 **Q. What would be your other options?**

2 A. Well, as our cost -- as our costs go
3 up, we have to look at our overall business plan
4 and make decisions on, you know, what the impact of
5 that cost increase would be, whether it's on
6 employment or benefits or future investments, you
7 know, things such as that.

8 **Q. Have you taken any earnest steps**
9 **towards analyzing the viability of filing a similar**
10 **action here? Have you had discussions with any**
11 **attorneys or any strategic plan drawn up of any**
12 **sort?**

13 A. No -- nothing at this point, no.

14 CHAIRMAN KENNEY: I don't have any
15 other questions. Thanks for taking the time to be
16 here.

17 JUDGE WOODRUFF: Commissioner Stoll?

18 QUESTIONS BY COMMISSIONER STOLL:

19 **Q. A couple quick questions. Did you**
20 **say that Continental owns -- has one facility?**

21 A. We have one manufacturing facility
22 and then two terminals, shipping terminals.

23 **Q. Did you have additional manufacturing**
24 **facilities in the past? I don't know the answer to**
25 **this.**

1 A. Well, we had -- we've had a plant in
2 Hannibal since 1903 where there's been a plant on
3 that site, and in 2000-- beginning in 2006 and
4 completed in 2008 did a large expansion of the
5 facility there, but it's always been located in
6 Hannibal.

7 **Q. And you've had no other facility at**
8 **another location?**

9 A. No manufacturing. We have a shipping
10 terminal down by the -- down by the Arch in
11 St. Louis and then another one up in Iowa.

12 COMMISSIONER STOLL: Thank you.

13 JUDGE WOODRUFF: Commissioner Hall?

14 QUESTIONS BY COMMISSIONER HALL:

15 **Q. Ms. Vuylsteke went through a series**
16 **of Ameren rate cases, I believe there were five,**
17 **and she asked you the same question each time,**
18 **did you intervene in that case, and I believe each**
19 **time you answered no.**

20 A. Yes.

21 **Q. What she didn't ask and my question**
22 **is why, why not?**

23 A. Well, we -- at the time, you know, we
24 knew the rate increase was coming and just made a
25 decision that we chose not to -- not to intervene

1 in that case. And why we are in this case, because
2 we're -- we're being asked to essentially subsidize
3 a reduction for somebody else. It just doesn't --
4 it doesn't seem fair to us. That's why we're
5 involved this time.

6 Q. So it's a fairness issue, a matter of
7 principle as opposed to a business decision?

8 A. Oh, it's both, but --

9 Q. Well, if it was strictly a business
10 decision, then you would have intervened in these
11 other cases.

12 A. In this case, you know, it's a
13 fairness issue.

14 Q. Are you familiar with the term cost
15 taker?

16 A. No, I'm not.

17 Q. Well, I may not do the term justice,
18 but I assume that counsel will rectify my
19 description if it's inadequate. There's been
20 testimony in this case that Noranda is a cost taker
21 in that it can't set the price based on its own
22 costs. The price is set at an international market
23 and -- and that's the price that Noranda has to
24 sell its product at.

25 And so I'm -- I'm wondering, what is

1 **the market for cement? Is it a statewide market?**

2 **Is it a national market? Who are your competitors?**

3 A. We compete with -- you know, in
4 general, the cement business is a -- you draw a
5 150-mile circle around a shipping facility and you
6 compete with whoever sells cement in those areas.
7 We sell cement in St. Louis, so we compete with
8 Buzzi Unicem, River Cement Company and Holcim in
9 St. Louis.

10 When we go up to -- up into our
11 shipping facility in Iowa, we compete with Illinois
12 Cement and Lafarge. So we -- you know, and then
13 the price is set locally.

14 **Q. So if your input costs were to**
15 **increase 2, 3 percent, you would -- generally, you**
16 **would increase your price 2 to 3 percent, but that**
17 **could have an adverse competitive effect on sales?**

18 A. That's correct.

19 COMMISSIONER HALL: Okay. Thank you.
20 I have no further questions.

21 JUDGE WOODRUFF: Commissioner Rupp?

22 COMMISSIONER RUPP: I have no
23 questions, but I need to get on the road to head to
24 the local public hearing in Lebanon. So I'll be
25 calling in.

1 JUDGE WOODRUFF: All right. Recross
2 based on questions from the Bench.

3 FURTHER QUESTIONS BY CHAIRMAN KENNEY:

4 Q. Hold on one second. I want to ask a
5 follow-up question to what Commissioner Hall was
6 just asking, because I think -- just for my own
7 clarification.

8 So Noranda sells this commodity that
9 the price of it is set on a global market, the
10 London Metal Exchange, so they don't have --
11 they're a price taker in that regard because they
12 don't have the ability to set the price for the
13 product. You do have the ability to set the price
14 for your product, correct?

15 A. Within competitive constraints.

16 Q. It's not set for you by a market?

17 A. No, it's not.

18 Q. And presumably if you're raising your
19 prices 2 to 3 percent because of power costs and
20 you said you compete within a geographic circle,
21 presumably your competitors have also experienced
22 that same power cost and are going to pass that on
23 to consumers as well, right?

24 If you're raising your prices 2 to 3
25 percent because of electricity costs and your

1 competitors come within some radius, they're
2 probably taking power from the same source, right?

3 A. Well --

4 Q. So they've experienced the same power
5 cost increase?

6 A. No, because we're shipping cement
7 from our location up into Iowa, and our competitors
8 in Iowa don't take power from Ameren. And then
9 our -- one of our competitors in St. Louis, Holcim,
10 takes power from a coop in Bloomsdale. So they're
11 different as well.

12 Q. So -- but they will have other cost
13 inputs that affect their price that you may or may
14 not have, too, right?

15 A. That's possible.

16 CHAIRMAN KENNEY: All right. Thank
17 you.

18 JUDGE WOODRUFF: Recross based on
19 questions from the Bench? Staff.

20 RE-CROSS-EXAMINATION MR. THOMPSON:

21 Q. I think this gets to what you were
22 asked by Commissioner Hall. Were you present when
23 I was examining Ms. Mantle?

24 A. Just a few minutes ago? Yes, I was.

25 Q. Okay. So like Ms. Mantle's mother,

1 if Noranda got this rate reduction it's seeking but
2 your rates remained the same, would you be happier
3 about it?

4 A. Well, we don't want our rates to go
5 up.

6 Q. Right. So assume they don't go up,
7 but Noranda gets the rate reduction it's seeking.
8 What would Continental's position be then?

9 A. From the beginning, we didn't feel it
10 was fair for our rates to be impacted in a negative
11 way for Noranda to get a rate reduction.

12 Q. What if your rates were not impacted
13 in a negative way, would your position change?

14 A. You mean would we -- would we still
15 be protesting?

16 Q. Exactly right.

17 A. If it all started and there was no
18 negative impact to us, we probably would not have
19 intervened.

20 MR. THOMPSON: Thank you very much.

21 JUDGE WOODRUFF: All right.

22 Redirect.

23 MS. VUYLSTEKE: I had a little bit of
24 recross based on Commissioner Hall's question.

25 JUDGE WOODRUFF: Go right ahead.

1 MS. VUYLSTEKE: Sorry.

2 RECROSS-EXAMINATION BY MS. VUYLSTEKE:

3 A. Mr. Conroy, you were talking with
4 Commissioner Hall a little bit about why you didn't
5 intervene in the prior rate case. Would it make
6 you -- have you ever been concerned about the level
7 of the rate increases that AmerenUE has proposed or
8 been granted in the past five years?

9 A. Yes, we have been.

10 Q. Would it make you feel better to know
11 that there were other industrial consumers that got
12 involved in those cases and questioned the rate
13 increase and spent money to hire lawyers and
14 consultants to work and try and make sure the rate
15 increase was fair?

16 A. Are you asking --

17 Q. Would you feel -- would you be glad
18 to know that that were true?

19 A. Yes.

20 Q. Would it make you feel better?

21 A. Yes.

22 Q. Has it been a factor in your decision
23 not to intervene knowing that there were other
24 customers there that were maybe looking at the rate
25 increase and questioning it, challenging it? If

1 **there were no other customers, would you have**
2 **gotten involved?**

3 A. Well, you know, to say what we would
4 have done in a different circumstance, you know,
5 five years ago, I'm not sure I can say. You know,
6 we -- the cement industry was in -- fell on very
7 hard times over the last, you know, four to five
8 years, and so we were -- you know, we looked
9 closely at where we -- where we spent money and got
10 involved in different things. And so that
11 certainly had a part to play in it.

12 **Q. There's a case going on right now**
13 **that Noranda filed, an earnings complaint that's**
14 **been referred to here in our discussion with you.**
15 **Have you intervened in that case?**

16 A. Yes, we have.

17 **Q. Are you going to file any testimony**
18 **in that case?**

19 A. We've not decided yet.

20 **Q. Are you planning on taking any**
21 **position in that case?**

22 A. We've just filed a -- filed as an
23 intervener, but we've not decided how we'll be
24 involved.

25 **Q. So you -- is it fair to say that you**

1 haven't made any determination of whether you're
2 going to support the complaint in that case?

3 A. We're not in favor of a rate
4 increase.

5 Q. The complaint is for a rate decrease.

6 A. I'm sorry. We're in favor of a rate
7 decrease. I'm sorry.

8 Q. Do you agree with the Complainant's
9 position that Ameren is overearning?

10 A. I'm not -- I'm not sure I'm qualified
11 to evaluate that. I mean, I've -- you know, I've
12 received some documentation on the rate relief, and
13 yeah, that's beyond my ability to make a good
14 determination on whether or not that's valid.

15 Q. In your decision on whether to
16 intervene in particular cases like this case or the
17 prior Ameren rate cases, is it a factor -- is it a
18 factor that Continental Cement is a supplier to
19 Ameren?

20 A. We're not a -- we're not a supplier
21 to Ameren.

22 Q. What would you describe -- how would
23 you describe your business relationship with Ameren
24 in general?

25 A. Well, in terms of -- I mean, they

1 provide electricity for us, and we have to have
2 that to operate our facility.

3 **Q. And last question is, do you expect**
4 **or have any belief as to whether you're going to**
5 **intervene in AmerenUE's next rate case which**
6 **they've said they want to file in July?**

7 A. I'm not sure. We haven't -- like I
8 said, we've not decided that yet.

9 MS. VUYLSTEKE: Okay. No further
10 questions.

11 JUDGE WOODRUFF: Redirect.

12 REDIRECT EXAMINATION BY MR. COMLEY:

13 **Q. Mr. Conroy, Mr. Thompson, who's**
14 **allowed me to sit by him and has otherwise been --**
15 **is normally good company, asked a series of**
16 **questions about the differences between Continental**
17 **Cement and Noranda. Let me ask you this: Can you**
18 **name the similarities between Continental Cement**
19 **and Noranda with respect to electrical**
20 **requirements?**

21 A. Well, we're -- the cement industry is
22 very energy intensive. It takes a lot of
23 electricity to operate our facility. Granted, not
24 nearly what it takes to operate Noranda's facility,
25 but it's still a large component of our cost at

1 12 to 13 percent of our overall manufacturing cost.

2 **Q. In the sense of similarities, would**
3 **you consider the Hannibal operation a fairly strong**
4 **economic benefit to the community?**

5 A. Yes.

6 **Q. In terms of taxes, how would you**
7 **consider the taxes paid by Continental in the Ralls**
8 **County area?**

9 A. Uh-huh.

10 **Q. Any other similarities you can think**
11 **of?**

12 A. Well, I mean, we're -- you know, we
13 play a big part in the community. We provide more
14 than 200 jobs to the community and buy goods and
15 services from local businesses, I'm sure the same
16 way that Noranda does. We don't have 800 and --
17 more than 800 employees like I learned today that
18 they do, but we do have, you know, more than 200 at
19 our Hannibal facility, and most of them live in
20 the -- very near to the plant.

21 **Q. Have you had any opportunity to**
22 **review the testimony and the estimates that have**
23 **been made in this case about how much the bill**
24 **would be in the event Noranda received the relief**
25 **requested in this case?**

1 A. Yeah, I've seen that and, of course,
2 listened today, and for us, you know, if we
3 received a 2 percent increase in our rates, for
4 instance, you know, that's approximately \$150,000 a
5 year increased cost to us.

6 **Q. Do you have an idea of how**
7 **Continental Cement would react to having an**
8 **additional \$150,000 in its electrical bill?**

9 A. You know, that would be a big impact
10 to us. We'd have to review what our options would
11 be. But any time our costs go up, then we have to
12 look at other things to do to still be able to
13 deliver the earnings that we're -- that we need to,
14 whether it's future investment, you know,
15 employment, benefits or other things that -- you
16 know, other things that we do. Any of those would
17 be things we'd consider, any or all of them.

18 **Q. Ms. Vuylsteke asked questions about**
19 **your intervention, Continental's intervention in**
20 **previous UE cases. Can you tell me whether it's**
21 **part of Continental's business plan to actively**
22 **participate or intervene in UE's rate cases?**

23 A. I think in the past Continental has
24 been involved, and there have been times where
25 Continental has not been formally.

1 **Q.** You realize that there is a Staff of
2 the Commission that has statutory duties to review
3 rate cases and come up with reasonable solutions?

4 A. Yes.

5 **Q.** There were questions from
6 Commissioner Hall about competition for your
7 product from Continental Cement. Do you have
8 competition domestically and abroad?

9 A. More domestically, but, you know,
10 being a facility located on the Mississippi River,
11 we do a lot of barge shipments, and so we can ship,
12 you know, both north and south on the river. And
13 then any of our competitors, including
14 international competitors, could ship cement up the
15 river into our market areas.

16 **Q.** There were other questions from
17 Commissioner Hall about Noranda being a cost taker,
18 I think. Related to this, has Continental Cement
19 engaged in any activity toward demand-side
20 management of its own electrical requirements?

21 A. You mean -- can you clarify what
22 exactly you're referring to?

23 **Q.** Has Continental engaged in activities
24 that would try to minimize its demand for power?

25 A. Oh, absolutely. For one, our

1 facility has just been recognized as an Energy Star
2 facility, which is recognition from the
3 Environmental Protection Agency as a very energy
4 efficient plant. In order to be recognized as an
5 Energy Star facility, the cement industry is one of
6 the industry of focus. You have to be in the top
7 25 percent in terms of energy efficiency in the
8 industry, which we are. So that's one of the
9 things we do.

10 With the new plant that we started up
11 in 2008, it's the most modern, most efficient type
12 of cement plant that you can operate now. So those
13 are a couple of -- a couple of examples.

14 MR. COMLEY: That's all I have. Thank
15 you.

16 JUDGE WOODRUFF: All right. You may
17 step down.

18 MR. COMLEY: I'm assuming Mr. Conroy
19 is discharged?

20 JUDGE WOODRUFF: He is. And it's
21 time for our dinner break. We'll take a break now
22 and we'll come back at six o'clock with Ameren
23 witnesses.

24 MR. THOMPSON: Would you consider
25 making it 6:15?

1 JUDGE WOODRUFF: 6:15.

2 (A BREAK WAS TAKEN.)

3 JUDGE WOODRUFF: We're back from our
4 dinner break, and while we gone Mr. Davis has taken
5 the stand.

6 (Witness sworn.)

7 JUDGE WOODRUFF: Thank you. You may
8 inquire.

9 WILLIAM DAVIS testified as follows:

10 DIRECT EXAMINATION BY MR. MITTEN:

11 Q. Would you please state your full name
12 for the record.

13 A. My name is William Davis.

14 Q. Mr. Davis, did you -- you have before
15 you two exhibits that have been marked for
16 identification, Exhibit 100, which is your prefiled
17 rebuttal testimony, and Exhibit 101, which is your
18 prefiled surrebuttal testimony?

19 A. Yes, I do.

20 Q. Did you draft both of those
21 testimonies?

22 A. Yes.

23 Q. And are there any changes or
24 corrections that you need to make to those
25 testimonies at this time?

1 A. No.

2 Q. If I asked you the questions that are
3 contained in Exhibits 100 and 101, would your
4 answers be the same as reflected there?

5 A. Yes.

6 Q. And is the information contained in
7 those exhibits true and correct to the best of your
8 knowledge and belief?

9 A. Yes, it is.

10 MR. MITTEN: Your Honor, I have no
11 further questions for Mr. Davis. I would offer
12 Exhibits 100 and 101 into evidence.

13 JUDGE WOODRUFF: 100 and 101 have
14 been offered. Any objections to their receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, they
17 will be received.

18 (AMERENUE EXHIBIT NOS. 100 AND 101
19 WERE RECEIVED INTO EVIDENCE.)

20 MR. MITTEN: And Mr. Davis is
21 available for cross-examination.

22 JUDGE WOODRUFF: For cross we begin
23 with Continental. I believe they were not coming
24 back. For Staff?

25 MR. THOMPSON: No questions. Thank

1 you.

2 JUDGE WOODRUFF: For Public Counsel?

3 MR. POSTON: Yes, a few.

4 CROSS-EXAMINATION BY MR. POSTON:

5 Q. Good evening, Mr. Davis.

6 A. Good evening.

7 Q. Would you agree that Noranda became a
8 customer of Union Electric, which at that time was
9 AmerenUE, after AmerenUE petitioned this Commission
10 to expand its service area to include Noranda's
11 New Madrid smelter?

12 A. Yes.

13 Q. Residential ratepayers didn't file
14 that request, did they?

15 A. I'm sorry. Could you say that again?

16 Q. Residential ratepayers didn't file
17 that request to expand the territory?

18 A. No.

19 Q. Did small business customers file
20 that request?

21 A. Not that I'm aware of.

22 Q. AmerenUE wanted this customer,
23 correct?

24 A. I don't know if I'd use those exact
25 words, but we filed to add them as a customer, so

1 yes.

2 Q. And due to the load that Noranda
3 requires, Ameren's received substantial benefits
4 from Noranda on their system; is that correct?

5 A. I'm not sure what you mean by
6 substantial benefits.

7 Q. Revenues?

8 A. I guess I would say that, yes,
9 they've been paying their bills, yes.

10 MR. POSTON: That's all I have.

11 JUDGE WOODRUFF: Okay. And River
12 Cement?

13 MS. LANGENECKERT: No questions.

14 JUDGE WOODRUFF: Wal-Mart?

15 MR. CHAMBERLAIN: No questions.

16 JUDGE WOODRUFF: Consumers Council?

17 MR. COFFMAN: No questions?

18 JUDGE WOODRUFF: The Retailers?

19 MR. SCHWARZ: No questions.

20 JUDGE WOODRUFF: Complainants?

21 MR. MALLIN: No questions, your

22 Honor.

23 JUDGE WOODRUFF: Okay. We'll come up
24 for questions from the Bench.

25 CHAIRMAN KENNEY: Short night for

1 you. I don't have any questions either.

2 JUDGE WOODRUFF: Commissioner Stoll?

3 COMMISSIONER STOLL: I hate to
4 disappoint you, but I have no questions either.

5 JUDGE WOODRUFF: No questions from
6 the Bench, so no recross. Any redirect?

7 MR. MITTEN: No redirect.

8 JUDGE WOODRUFF: Mr. Davis, you can
9 step down.

10 THE WITNESS: Thank you.

11 JUDGE WOODRUFF: Mr. Mudge.

12 (Witness sworn.)

13 JUDGE WOODRUFF: Okay. You may
14 inquire.

15 MR. THOMPSON: I have no questions.

16 MR. BYRNE: We need direct.

17 MR. LOWERY: I need to --

18 MR. THOMPSON: I thought you were
19 talking to me. I apologize.

20 MR. LOWERY: It's been a long two
21 days.

22 ROBERT MUDGE testified as follows:

23 DIRECT EXAMINATION BY MR. LOWERY:

24 Q. Mr. Mudge, would you please state
25 your name for the record.

1 A. Robert Mudge.

2 Q. Mr. Mudge, did you cause to be
3 prepared and filed in this rebuttal testimony
4 that's been premarked for identification as
5 Exhibit 102?

6 A. I did.

7 Q. And, Mr. Mudge, if I was to ask you
8 the same questions, would your answers as reflected
9 in that prefiled testimony be the same today?

10 A. Yes, they would.

11 Q. Do you have any corrections to that
12 testimony?

13 A. I do not.

14 Q. Is that testimony true and correct to
15 the best of your knowledge and belief?

16 A. Yes, it is.

17 MR. LOWERY: With that, your Honor, I
18 move for the admission of Exhibit 102, and I guess
19 we actually have -- your Honor, it's 102HC and
20 102NP. I move for the admission of Exhibits 102HC
21 and 102NP and tender the witness for
22 cross-examination.

23 JUDGE WOODRUFF: 102 has been
24 offered. Any objections to its receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, it
2 will be received.

3 (AMERENUE EXHIBIT NOS. 102HC AND 102
4 NP WERE RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: And for
6 cross-examination, beginning with Staff?

7 MR. THOMPSON: No questions. Thank
8 you.

9 JUDGE WOODRUFF: Public Counsel?

10 MR. POSTON: No questions.

11 JUDGE WOODRUFF: River Cement?

12 MS. LANGENECKERT: No questions.

13 JUDGE WOODRUFF: Wal-Mart?

14 MR. CHAMBERLAIN: No questions.

15 JUDGE WOODRUFF: Consumers Council?

16 MR. COFFMAN: No questions.

17 JUDGE WOODRUFF: Retailers?

18 MR. SCHWARZ: No questions.

19 JUDGE WOODRUFF: Complainants?

20 MR. MALLIN: I do have a couple
21 questions, your Honor. Thank you.

22 CROSS-EXAMINATION BY MR. MALLIN:

23 Q. Mr. Mudge, you're testifying here for
24 Ameren; is that correct?

25 A. Yes.

1 Q. Come all the way from Washington,
2 D.C.?

3 A. I did.

4 Q. You work there for a company called?

5 A. The Brattle Group.

6 Q. And I assume you and your firm are
7 being compensated for your services, sir?

8 A. We are.

9 Q. Are you getting paid on an hourly
10 basis or on a project basis?

11 A. On an hourly basis.

12 Q. And is there just one person from
13 your firm working in this particular matter or is
14 there a team?

15 A. There is a team.

16 Q. How many individuals are on that
17 team?

18 A. I'm going to have to count. I would
19 say five.

20 Q. Are you the lead person on the team?

21 A. I am.

22 Q. And how much are you being
23 compensated for on an hourly basis?

24 A. My hourly rate is 475.

25 Q. And the balance of your team, what

1 are their hourly rates?

2 A. Well, they vary by individuals.

3 Q. I'm sure they do. So let's take the
4 next person. Who's that?

5 A. There's a person who is -- bills
6 higher than me.

7 Q. His or her name?

8 A. Her name is Yvette Austin Smith.

9 Q. And what is Yvette's hourly rate?

10 A. Her hourly rate is 650.

11 Q. Okay.

12 A. There is Kevin Hearle.

13 Q. And what's Kevin's hourly rate?

14 A. I'm now going to have to estimate.

15 Q. Okay.

16 A. He's approximately 400.

17 Q. Okay.

18 A. John Tsoukalis.

19 Q. And what's John's rate?

20 A. John is at 350. Michael Kline.

21 Q. What's Michael's rate?

22 A. Michael's at 350.

23 Q. Any other members of the team?

24 A. A junior person.

25 Q. Who's that individual, please?

1 A. Ashley Palmazaro, and she's at, I'm
2 going to guess, 220.

3 **Q. Any other members of the team?**

4 A. That's it.

5 **Q. And when was -- when were you and
6 your firm engaged to assist Ameren in this case?**

7 A. It was February time frame.

8 **Q. February of 2014?**

9 A. February of 2014.

10 **Q. Have you or your firm at any time
11 prior to February of 2014 worked for Ameren?**

12 A. Other members of my firm have worked
13 for Ameren.

14 **Q. Including the individual Yvette that
15 you identify?**

16 A. No. No one from this team has worked
17 for Ameren before.

18 **Q. What other type of engagements have
19 you worked for with respect to Ameren in the past?**

20 A. I have not.

21 **Q. Your firm then, sir.**

22 A. Colleagues of mine have on matters
23 unrelated to this that I probably couldn't specify
24 with any accuracy.

25 **Q. And I don't want you to violate any**

1 nondisclosure agreements you may have in place with
2 respect to those engagements, but can you
3 generalize in terms of have you provided consulting
4 services?

5 A. Oh, yes, indeed. Everything we do is
6 consulting services.

7 Q. Have you testified on behalf of
8 Ameren in the past?

9 A. You know, it's possible that we have,
10 but of course it wasn't me. It was a colleague.
11 It's likely that someone from our firm has.

12 Q. And over what period of time has this
13 relationship then existed between your firm and
14 Ameren?

15 A. I'm going to say ten years.

16 Q. And is there a relationship person or
17 individual who has nurtured that relationship over
18 the last ten years?

19 A. You know, we don't formalize it quite
20 that much, but we have -- there's one of my
21 colleagues who's done the most work for Ameren
22 might be considered to play that role.

23 Q. And in your parlance at -- is it the
24 Brattle Group?

25 A. Indeed, yes.

1 **Q. Is that individual known as a**
2 **relationship partner or a client lead? What's the**
3 **term that you use?**

4 A. We don't actually use a term like
5 that for that role, even though de facto it tends
6 to evolve in the ordinary course of business.

7 **Q. You're the chief operating officer of**
8 **the Brattle Group?**

9 A. I am, yes.

10 **Q. And in that capacity, do you have**
11 **responsibility, what I'll call revenue**
12 **responsibility?**

13 A. If by revenue responsibility, do you
14 mean that I need to maintain my practice in
15 addition to COO-type activities, yes, I do.

16 **Q. Since February of 2004, how much has**
17 **the Brattle Group billed? I may have misspoke. I**
18 **apologize. It is getting late in the day. At**
19 **least I'm not talking about my mother yet.**

20 (Laughter)

21 **Since February of 2014, how much has**
22 **the Brattle Group billed Ameren with respect to**
23 **this particular project?**

24 A. I'm going to estimate between 200 and
25 250,000.

1 Q. Does that include the time that you
2 spent here down in Jefferson City?

3 A. Probably -- no, it doesn't.

4 Q. Are there others here from your team
5 that just have not been at the hearing?

6 A. There are not.

7 Q. And over the ten-year relationship
8 that has existed between the Brattle Group and
9 Ameren, can you give me any estimate of what type
10 of revenues the Brattle Group has earned from
11 Ameren?

12 A. It would be the -- you know, total
13 conjecture.

14 Q. And I don't want you to do that.

15 A. Yeah.

16 Q. In your position as COO, do you have
17 any idea, for example, over the last year or two
18 what the revenues have looked like for your firm?

19 A. I mean, we have so many client
20 matters, I would have had to look at that
21 particular one to answer your question.

22 Q. Fair enough. As I understand your
23 professional background, you were a banker at
24 several banks from 1989 to 2002; is that correct?

25 A. That is correct.

1 Q. And for five years thereafter you
2 worked for Charles River Associates; is that
3 correct?

4 A. That is correct.

5 Q. As a consultant there?

6 A. Yes, indeed.

7 Q. Were you providing similar services
8 as you now provide at the Brattle Group?

9 A. Quite similar.

10 Q. Making yourself available to assist
11 in trials or in hearings such as we're -- such as
12 the one we're at now?

13 A. Yes.

14 Q. And then you joined the Brattle Group
15 in 2008, correct?

16 A. Correct.

17 Q. Now, as I understand it, you've never
18 actually worked at an aluminum smelter; is that
19 correct?

20 A. I have not.

21 Q. Never actually served on the
22 management team of any aluminum smelter, have you?

23 A. I have not.

24 Q. No prior CEO experience with respect
25 to any sort of a manufacturing company; is that

1 correct?

2 A. That is correct.

3 Q. No prior CFO experience of any sort
4 of a manufacturing company; is that correct?

5 A. That is correct.

6 Q. Now, I did see in your materials that
7 you had developed a financial model that was used
8 to unwind a transaction for Big Rivers Electrical
9 Cooperative. You're familiar with that?

10 A. I am.

11 Q. As I understand it, though, in this
12 particular case, you and the Brattle Group did not
13 develop any sort of a unique financial model with
14 respect to the opinions you hold in this case; is
15 that true?

16 A. That is correct.

17 Q. Instead, as I understand it, and
18 correct me if I'm wrong, you used the Noranda
19 Enterprise model that was provided to you; is that
20 correct?

21 A. That is correct.

22 Q. And as I understand it, you ran that
23 model but did change some of the inputs to that
24 model; is that correct?

25 A. We changed inputs to the model. We

1 started by reviewing the model, vetting its
2 mechanisms in those areas accessible to us as
3 experts in financial modeling but not in the
4 aluminum manufacturing industry. We're respectful
5 of things we know and things we don't know.

6 And it's a very, you know, common
7 practice in our world to be both creators of
8 financial models and reviewers and evaluators.

9 **Q. But in this particular case, after**
10 **you vetted the Enterprise model that Noranda**
11 **provided, you decided to use that with respect to**
12 **the opinions and conclusions that you've drawn in**
13 **this case, correct?**

14 A. Yes. And if I can elaborate a little
15 bit on that, I think our --

16 **Q. I'm sure your counsel will let you do**
17 **that. You've answered my question.**

18 A. Okay.

19 **Q. After you vetted the particular**
20 **model, I couldn't find any criticisms of it in the**
21 **report that you submitted as part of your**
22 **testimony. Is that correct, sir?**

23 A. Well, our brief was to assess the
24 internal consistency of the assumptions brought to
25 bear, among other things in the model. So while

1 mechanically, mathematically we thought that it
2 functioned well, but as is articulated in my
3 testimony, we thought -- I thought that the
4 combination of assumptions in particularly
5 different iterations of the model at points in time
6 very close to each other raised major questions
7 about what picture of the world, because that's
8 what a model's intended to do, had the greatest
9 validity.

10 **Q. I appreciate that. But my question**
11 **was, there are no criticisms of the model itself**
12 **found in your report; is that correct?**

13 A. I have no reason to think that, for
14 Noranda's purposes, this model created misleading
15 output.

16 **Q. And, therefore, there's no criticisms**
17 **of the model found in your report, correct, sir?**

18 A. There are criticisms of the use of
19 the model.

20 **Q. But the model, sir, the mathematical**
21 **formula found in the Excel spreadsheet that was**
22 **provided to you, the Noranda Enterprise model,**
23 **there are no criticisms of the model found in your**
24 **report, are there, sir?**

25 A. Well, I think there is at least one

1 that -- and apologies for forgetting. I noticed
2 that in the case of a certain class of capital
3 expenditure which we'll talk about, that there
4 seemed to be major inconsistency in the tax
5 depreciation treatment given to that class of
6 capital expenditure.

7 And folks may or may not be aware
8 that companies for tax purposes are able to
9 depreciate their capital investments, often at
10 rates faster than the book depreciation, and it
11 offsets tax liability and it's a desirable thing.
12 Saves cash flow.

13 **Q. Those depreciation schedules, though,**
14 **vary based upon laws, correct, sir, change over**
15 **time?**

16 A. I'm sorry?

17 **Q. Those depreciation schedules change**
18 **over time, they're dynamic?**

19 A. If by that you mean a given
20 depreciation schedule might allow for 10 percent in
21 one year and 15 percent in the next, certainly.
22 And that is in accordance with tax law
23 corresponding to different classes of assets.

24 But the point I was trying to make
25 was that while certain categories of growth capital

1 expenditure and sustaining capital expenditure in
2 the model were properly modeled in our view or
3 reasonably modeled, I should say, as to tax
4 depreciation, the class of growth capex labeled
5 unidentified totally sidestepped the tax
6 depreciation step.

7 What effect did that have? Well, it
8 understated cash flow because it meant the model
9 was saying Noranda would be paying more taxes than
10 would be appropriate under any definition of proper
11 tax depreciation. So that is an error.

12 **Q. And did you change or correct that**
13 **error in the model for purposes of your opinions**
14 **and conclusions in this case?**

15 A. We -- I observed that that problem
16 existed in my testimony. My testimony was aimed at
17 contrasting the assertions in Mr. Smith's direct
18 testimony with what I thought was a more realistic
19 view of the world, and because my conclusion was
20 that the unidentified capex had not been supported
21 with data, with consistency, tax depreciation is
22 one example -- perhaps we will get to the issue of
23 the different treatment in a presentation to
24 Moody's Investor Service in a moment -- that for
25 purposes of my view of the world, I took out the

1 unidentified capex, thereby removing the tax
2 depreciation problem. And it didn't really require
3 a fix for that reason.

4 **Q. So you didn't fix the model, you**
5 **simply removed that element from the model, is that**
6 **what you're saying, sir?**

7 A. Well, when you say that element, I
8 presume you're referring to the unidentified capex
9 itself. We didn't change the tax mechanism. We
10 removed the capex.

11 **Q. That was -- because that's your view**
12 **of the world, correct?**

13 A. As stated in my testimony.

14 **Q. Do you have any concerns or**
15 **criticisms of the -- Noranda's definition of**
16 **liquidity being the sum of cash plus its available**
17 **borrowing capacity?**

18 A. I think it is a completely reasonable
19 definition for liquidity. It's not the only
20 definition one will see out in the world applied
21 by companies, but it actually has some logic, has
22 plenty of logic to it in the context of Noranda's
23 particular balance sheet and situation.

24 **Q. I did not see any criticisms in your**
25 **report with regard to Noranda's view that its**

1 liquidity needs must be at a minimum of
2 \$100 million; is that correct, sir?

3 A. That is correct.

4 Q. Nor did I see any criticisms in your
5 report with respect to Noranda's belief that its
6 target liquidity should be \$200 million.

7 MR. LOWERY: I apologize. You guys
8 marked those figures as highly confidential and
9 we're not in-camera.

10 MR. MALLIN: I apologize.

11 MR. LOWERY: No apologies needed. I
12 just wanted to warn you.

13 JUDGE WOODRUFF: Do we need to go
14 in-camera?

15 MR. DOWNEY: Nobody's watching now
16 anyway.

17 MR. LOWERY: If they are, they need
18 to find something else to do.

19 JUDGE WOODRUFF: Do we need to go
20 in-camera now?

21 MR. MALLIN: No, Judge. I think I
22 can avoid the numbers. I'll restate the question.
23 I appreciate it. Thank you. Perhaps I should talk
24 about my mom.

25 BY MR. MALLIN:

1 Q. I did not see any criticisms in your
2 report with respect to the maximum target liquidity
3 level identified by Noranda. Is that also true,
4 sir?

5 A. You didn't see any critiques of that,
6 which is because I agreed that more liquidity is a
7 good thing.

8 Q. Now, nor did I see in any part of
9 your report any dispute with Noranda's belief that
10 in order to have a sustainable future, its
11 liquidity needs to exceed its minimum level as
12 identified by Noranda. Is that also true, sir?

13 A. My interpretation of Mr. Smith's
14 direct testimony was that his definition of minimum
15 liquidity was sufficient to support sustainable
16 operations.

17 Q. And you didn't have any criticisms of
18 that in your report, did you, sir?

19 A. I did not have any criticisms of the
20 lower bound as a sustainable liquidity threshold.

21 Q. Now, as I understand it, you did have
22 concerns about what you thought may or may not have
23 been shared with investors and others about the
24 situation with regard to Noranda and its
25 disclosures with respect to cash; is that correct,

1 **sir?**

2 A. Well, I think it's important to
3 articulate what Mr. Smith put forth, which was that
4 there was an imminent liquidity crisis that could
5 lead to closure of the New Madrid smelter.

6 **Q. Well, I'm more interested in your**
7 **concerns with respect to what may or may not have**
8 **been said during earnings presentations and**
9 **conference calls. Apparently you had some concerns**
10 **about what Mr. Smith did or did not say during**
11 **those times; is that correct, sir?**

12 A. And I am trying to be responsive to
13 your question. I think it's in that context that
14 the investor communications were not forthcoming,
15 in my view.

16 **Q. Now, have you, sir, ever had to**
17 **present at an earnings presentation or in an**
18 **earnings conference call?**

19 A. I have not.

20 **Q. Have you ever actually attended one,**
21 **either in person or by telephone?**

22 A. By telephone, sure.

23 **Q. Often?**

24 A. Not often.

25 **Q. You're aware of what limitations or**

1 what I'll call waivers are identified at the outset
2 of those presentations and conference calls, are
3 you not, sir?

4 A. I'm aware that there are some
5 limitations.

6 Q. Are you also aware that primarily
7 those are retrospective in nature in terms of
8 reporting past performance?

9 A. That tends to be what they're about,
10 although there are many earnings calls in which
11 expectations are alluded to.

12 Q. And when such expectations are
13 alluded to either directly or indirectly, that's
14 the reason why those waivers or warnings are put
15 out at the outset; isn't that true, sir?

16 A. Indeed.

17 Q. Let's talk about the earnings
18 presentations and conference call with respect to
19 the first quarter of 2014 for Noranda, February 19,
20 2014. Do you recall that one, sir?

21 A. I do.

22 Q. In that particular case, there was a
23 statement made of \$79 million in cash being
24 available at the end of the year, correct, sir?

25 A. That's correct.

1 Q. Statement being made of \$196 million
2 of total liquidity at the end of the year, correct,
3 sir?

4 A. Correct.

5 Q. Those being references to the end of
6 calendar year 2013?

7 A. That is correct.

8 Q. And did you see in the work that you
9 performed in this case that during that call that
10 Noranda indicated that power was an essential cost
11 to be managed?

12 A. That would have only been fitting
13 given the importance of power, given the importance
14 of alumna, given the importance of labor. They're
15 all big costs.

16 Q. Whether it was fitting or not, did
17 you see during that call when you read the
18 transcript that that statement was made by Noranda?

19 A. Yes, I did.

20 Q. And during this call in February of
21 2014, did you see or read that Noranda talked about
22 the decline of smelters throughout the United
23 States?

24 A. I can't recall.

25 Q. Do you recall an identification by

1 **Noranda in this call that the number of smelters**
2 **had dropped from 32 to 15 to 9 at that time?**

3 A. I don't recall that part of the
4 discussion.

5 Q. Do you recall reading or seeing in
6 that February 2014 call that Noranda identified
7 that power costs were the primary or sole cause of
8 these smelter closings?

9 A. I do not recall that.

10 Q. Do you recall seeing or reading in
11 that conference call that Noranda identified that
12 it was not any different than any other smelter
13 with respect to the problems associated with power?

14 A. I can imagine that statement being
15 made. I don't have a specific recollection of that
16 statement.

17 Q. Let's talk a little bit about the
18 earnings presentation and conference call with
19 respect to the first quarter of 2014 in April of
20 2014. Do you remember that one, sir?

21 A. I do.

22 Q. In that particular time, Noranda
23 talked about the fact that there was approximately
24 \$191 million in liquidity, correct?

25 A. That sounds right.

1 Q. Do you remember seeing or reading
2 with respect to that conference call that Noranda
3 spoke about its belief that it would get the
4 regulated or requested -- I'm sorry -- the
5 requested rate of \$30 per kilowatt, mega
6 kilowatt -- megawatt hour in this particular case?

7 A. Yes, I do recall that.

8 Q. Do you recall in that call in April
9 of 2014 that Noranda disclosed the existence of
10 this rate case involving the PSC?

11 A. Yes.

12 Q. Do you recall in that conference call
13 that Noranda told investors that on page 7 of its
14 materials it had summarized the key elements of the
15 rate that it had requested in this case?

16 A. I don't have a specific recollection
17 of that. I'm not surprised that was there.

18 Q. Do you recall seeing or reading as
19 part of that particular conference call in April of
20 2014 that Noranda told people listening that on
21 Slide 8 of its presentation materials, it was
22 providing a status report with respect to its rate
23 request?

24 A. Again, I don't have a specific
25 recollection of that, but...

1 Q. Do you recall in the April 2014 call
2 that Noranda told those listening that it must have
3 competitive power rates?

4 A. That sounds familiar.

5 Q. Do you recall in the April 2014
6 conference call Noranda told investors that this
7 case was extremely important to the company as a
8 whole and to the smelter itself?

9 A. Yes.

10 Q. Do you recall in the April 2014
11 conference call that Noranda told investors that
12 while the rate case was filed, there was no
13 indication of how the PSC might view the merits of
14 its request?

15 A. I do.

16 Q. Do you recall in this conference call
17 in April of 2014 Noranda told investors and others
18 listening about the fact that the number of
19 smelters that had closed had dropped from 32 to 15
20 to 9?

21 A. I'm not surprised that they said that
22 again in the April call.

23 Q. And in that call in April of 2014, do
24 you recall seeing or reading that Noranda told
25 investors and others listening that it has -- that

1 it was the uncompetitive power rates that was the
2 primary cause of these closures?

3 A. That would be consistent with other
4 statements they've made.

5 Q. You mentioned a little while ago the
6 Moody's presentation. That was a presentation made
7 in January of 2014?

8 A. Correct.

9 Q. You reviewed the Moody's materials, I
10 assume, as part of your work in this case?

11 A. I did.

12 Q. And in those materials, did you see
13 that Noranda had identified to Moody's that
14 intended to seek lower electrical rates?

15 A. Yes.

16 Q. Now, as I understand the Moody's
17 presentation in your report, the model, the
18 Enterprise model from Noranda was run using the CRU
19 LME forecast rather than the LME forward curve; is
20 that correct?

21 A. That is correct.

22 Q. Have you ever used the LME forward
23 curve at any time prior to this case, sir?

24 A. I have not.

25 Q. Have you ever used the CRU LME

1 forecast at any time prior to this case?

2 A. I have not.

3 Q. That's okay. Neither have I, so
4 maybe we can work this together. Are you aware,
5 sir, that the LME forward curve is actual market
6 information?

7 A. It is actual market information, I
8 agree with that. It is actual market information
9 as of the date of the forward.

10 Q. Correct.

11 A. As of a -- it's a price applicable to
12 a future time that only exists at the current time.

13 Q. And it reflects the price of entering
14 into the spot or future transactions market on a
15 particular day, correct?

16 A. It is the price available at a future
17 date available at a current date.

18 Q. In my terms, it would be kind of like
19 going up to the commodities desk up in Chicago
20 somewhere and saying I either have aluminum I want
21 to sell or I have aluminum I want to buy, and on
22 that particular date I can actually strike a
23 transaction based upon the LME forward curve price,
24 correct, sir?

25 A. Well, when you say a particular date,

1 I think it's important to be specific. Say
2 you're -- if you're talking about January 1 and the
3 LME forward for January 30 is \$10, then you can
4 transact on January 1 at \$10 for delivery
5 January 30. But you don't know what the state of
6 the world's going to be when you get to January 30.

7 Q. But what you do know is if you are
8 willing to sell at \$10 and I was willing to buy at
9 \$10 on January 30, we're going to transact business
10 at \$10 for that aluminum, correct, sir?

11 A. Well, with the qualification that
12 you'd be committing to that on January 1.

13 Q. I understand.

14 A. Yeah. Yes.

15 Q. But that's what would happen on
16 January 30, everything else being equal?

17 A. If you entered into that agreement.

18 Q. Are you also aware, sir, that the LME
19 forward curve actually goes out three to five years
20 in the sense that on a particular day I can look at
21 that forward curve and reach an agreement with you
22 based upon that data as to what I might be able to
23 sell and you might be willing to buy aluminum for
24 on a particular date three to five years out?

25 A. Agreed, but you must, to get that

1 price three to five years out, transact on day one.

2 Q. I understand. So the LME forward
3 curve is not an estimate, it's an actual price as
4 of a particular day that I can sell or buy in the
5 future, correct, sir?

6 A. Contingent upon entering into a
7 contract.

8 Q. It's not a forecast, right, sir?

9 A. The LME forward is not a forecast. I
10 believe Mr. Smith stated that clearly in his
11 surrebuttal testimony.

12 Q. Have you ever made a presentation to
13 Moody's before, sir?

14 A. I have.

15 Q. On how many occasions?

16 A. Two that I can recall.

17 Q. Did either involve aluminum?

18 A. Neither involved aluminum.

19 Q. Did either of them involve any other
20 commodity?

21 A. Electricity.

22 Q. In the case that you were dealing
23 with electricity and Moody's, did Moody's have its
24 own proprietary models with respect to how it might
25 value whatever electrical product or unit you may

1 have been discussing with them?

2 A. You know, I can only assume they did.
3 Those weren't visible to our group at the time.

4 Q. Do you know whether they were visible
5 to Noranda when Noranda met with Moody's?

6 A. I can't speculate on what was visible
7 to Noranda or not.

8 Q. Have you ever talked to Moody's about
9 what Noranda did or didn't provide to them or what
10 statements may or may not have been made to them?

11 A. I have not spoken to Moody's about
12 Noranda.

13 Q. As I understand it in looking at your
14 report, you mentioned something called the
15 Bloomberg data; is that correct?

16 A. Yes, indeed.

17 Q. And that is an estimate or a
18 forecast, correct?

19 A. Well, Bloomberg is a news service, a
20 reporting service, and they don't create anything
21 that's not reflected in the market. So the
22 Bloomberg data that anyone could consult on a
23 forward-looking basis includes the very same LME
24 forwards we were just talking about. That's just
25 a -- Bloomberg is a place you can get it.

1 **Q. So the Bloomberg data that you**
2 **referred to in your report is an LME forward curve**
3 **number?**

4 A. The only place I referred to
5 Bloomberg data in my report -- and pardon me. May
6 I look at my --

7 **Q. Look at whatever you want to look at,**
8 **sir. I'm sorry.**

9 A. What page of my testimony are you
10 referring to?

11 **Q. I thought it was on page 17, line 3.**

12 A. Just so everyone's clear, I believe
13 Mr. Mallin is referring to Figure 1 in my
14 testimony.

15 **Q. And there is a reference to Bloomberg**
16 **data, correct?**

17 A. There is.

18 **Q. Now, is that an LME forward curve**
19 **reproduction just simply reported by Bloomberg,**
20 **sir?**

21 A. Yes, it is.

22 **Q. So that is or is not an estimate or**
23 **forecast?**

24 A. That is not a forecast. That is a
25 series of forward prices that one would have been

1 able to transact at on January 22, 2014.

2 Q. Based upon what Bloomberg was
3 reporting at that time?

4 A. Correct.

5 Q. What about the CRU data that's found
6 in that particular chart, is that an estimate or a
7 forecast?

8 A. That is a forecast.

9 Q. So getting back to my Chicago
10 example, there's no trading desk for CRU up in
11 Chicago, is there, sir?

12 A. There is not.

13 Q. Then you also mention a Harbor Base
14 case. Is that an estimate or a forecast?

15 A. That is a forecast.

16 Q. And again, there would be no trading
17 desk up in Chicago with Harbor Base case where I
18 could go buy or sell my aluminum at that price,
19 correct, sir?

20 A. That's correct.

21 Q. And then you mention there's five
22 analysts tracked by Harbor. Do you see that, sir?

23 A. I do.

24 Q. Is that an estimate or a forecast?

25 A. That's a forecast.

1 Q. I guess that's something different
2 than the Harbor Base Case; is that correct, sir?

3 A. That is correct.

4 Q. Here again, there's no place up in
5 Chicago or anyplace where I can go to a desk and
6 buy based upon what these five analysts say the
7 price might be in the future, correct, sir?

8 A. Not to my knowledge. If I might
9 explain further just --

10 Q. I'm sure your counsel will have you
11 do that. Thank you, though, sir.

12 Now, as I understand your opinions in
13 this case, you believe that using the CR data
14 inside of Noranda's model, you believe that Noranda
15 should have sufficient liquidity; is that correct,
16 sir?

17 A. That is correct.

18 Q. Now, in reaching your opinions and
19 conclusions, were you aware of the testimony
20 provided by Mr. Smith yesterday about Noranda's
21 situation as of last Friday, in order to avoid the
22 need to go on to --

23 A. If I understand your question right,
24 I think that would not have been possible at the
25 time of writing my testimony.

1 **Q. Do you in any way dispute the**
2 **testimony that Mr. Smith provided about the current**
3 **status of Noranda with respect to as of the events**
4 **of last Friday?**

5 A. I think there's really no way to even
6 react to what Mr. Smith said yesterday since it was
7 verbally presented. It reflected complex data. It
8 would need to be looked at. Otherwise, no reason
9 to doubt the report of Noranda's CEO, but there was
10 a lot of complexity that would have had to go into
11 the numbers he reported.

12 **Q. Let's talk a little bit about capital**
13 **expenditures. As I understand it, at Moody's at**
14 **least, from what I have read, that Moody's asked**
15 **for and was provided capital expenditures that had**
16 **been approved by Noranda's board of directors. Is**
17 **that your understanding as well?**

18 MR. LOWERY: I'm going to object.
19 That assumes facts not in evidence. Mr. Smith
20 testified that -- never testified that Moody's
21 asked for any particular data.

22 MR. MALLIN: Let me restate the
23 question.

24 BY MR. MALLIN:

25 **Q. Is it your understanding, sir, that**

1 what was provided to Moody's was information with
2 respect to capital expenditures at Noranda that had
3 been approved by its board of directors?

4 A. That's consistent with the
5 explanation in Mr. Smith's surrebuttal testimony.

6 Q. In the two opportunities that you
7 were up at Moody's, were you providing information
8 with respect to capital expenditures?

9 A. Yes.

10 Q. In that particular case, did you
11 provide information with respect to capital
12 expenditures that had been approved by a board of
13 directors?

14 A. We were providing information
15 relating to capital expenditures that had been
16 approved and capital expenditures that were
17 reasonably contemplated but had not yet been
18 approved.

19 Q. Were you asked by Moody's about
20 those?

21 A. Certainly, just in terms of what
22 reasonable expectations might have been.

23 Q. Do you know whether or not Moody's in
24 this particular case asked about reasonable
25 expectations about future capital expenditures?

1 A. I do not know.

2 **Q. Now, as I understand it, your major**
3 **concern with respect to capital expenditures at**
4 **Noranda concerns unidentified growth projects; is**
5 **that correct, sir?**

6 A. That's the bulk of the concern,
7 although it's not the only category of capex that
8 was omitted from the Moody's presentation.

9 **Q. With respect to unidentified growth**
10 **projects, as I understand your concerns, you can't**
11 **find any paper, if you will, that would identify**
12 **what might be on Noranda's radar screen with**
13 **respect to these future projects; is that true?**

14 A. Yeah. If I can appeal to the
15 Commission's common sense and that of everybody in
16 the room, there were categories of capex in
17 Mr. Smith's model that were well-documented and
18 modeled in detail and modeled in a way that showed
19 the motivation, the economic rationale for spending
20 the money. You could see why it was being done.

21 The easiest example to think about is
22 the rod mill that's gotten a lot of discussion in
23 the last few days. The rod mill is well documented
24 in prior internal documents of the company and, in
25 turn, in the financial model yielded production

1 benefits that in turn yielded improved cash flow to
2 the degree that you could approximate an internal
3 rate of return as a result of spending that money.

4 I could find no similar set of
5 relationships in Noranda's model with respect to
6 this class of unidentified capital expenditures.

7 **Q. The amount there is 25 million,**
8 **correct, sir?**

9 A. The amount of?

10 **Q. Unidentified growth projects?**

11 A. Well, it aggregates to 100 million
12 over the years 2015 through 2018, so roughly
13 25 million per year.

14 **Q. As compared to the rod mill project**
15 **which is a 40 to \$50 million capital expenditure?**

16 A. The largest capital cost I've seen
17 assigned to that, and it change in Noranda's
18 documentation a bit, was 45.

19 **Q. With respect to whether or not you**
20 **did or did not see any documents from Noranda on**
21 **that particular point, have you done any sort of an**
22 **independent review or study of Noranda's assets to**
23 **determine whether or not it does or does not need**
24 **to do these growth projects?**

25 A. No.

1 **Q.** So, for example, have you gone to
2 some sort of a general ledger and looked at the
3 assets, when they were acquired, how they were
4 depreciated, what useful life may be left, any sort
5 of an independent look to criticize what Noranda
6 has identified as its unidentified growth projects
7 in the future?

8 A. Only to note that the inclusion of
9 the unidentified growth projects would yield a
10 total capital expenditure level far in excess of
11 anything that's been true in the past for Noranda.

12 **Q.** That's the history, right, sir?

13 A. Correct.

14 **Q.** And you heard Mr. Smith's testimony
15 with respect to what capital may have been
16 available in the past with respect to those
17 projects, right, sir?

18 A. I did hear his testimony on that.

19 **Q.** You didn't take a look at any of the
20 assets of Noranda to determine or whether or not
21 safety concerns or issues were driving the need to
22 include them among the identified capital
23 expenditures in the future, did you, sir?

24 A. No, but neither did I see such
25 logical explanations which could have easily been

1 supplied by the company in support of that
2 schedule.

3 Q. Have you ever had to prepare for any
4 company that you were running a justification for
5 capital expenditure projects?

6 A. In my present job.

7 Q. At the Brattle Group?

8 A. We have capital expenditures.

9 Q. I know you do, just like a law firm
10 I'm sure. How big was the largest capital
11 expenditure?

12 A. 100,000, to date.

13 Q. So in that particular case, you made
14 a business case, I'm assuming, for either your
15 management team or your board of directors of some
16 sort; is that correct?

17 A. Correct.

18 Q. You did not see any documents
19 suggesting that Noranda wasn't going to make such a
20 business case if and when the opportunity arose to
21 spend that capital with respect to its own needs,
22 did you, sir?

23 A. Ultimately a -- an effort was made to
24 supply the intention, to convey the intention to do
25 that, but that was in the form of Mr. Smith's

1 surrebuttal testimony, and still lacked a great
2 deal of specificity. So I guess I have to say no.

3 **Q. Is there some sort of a book I'm**
4 **supposed to go to that tells me how I'm supposed to**
5 **justify a capital expenditure at an aluminum**
6 **smelter company as compared to a consulting firm I**
7 **Washington, D.C.?**

8 A. I would take my cue from Noranda's
9 own board presentations in which certain capital
10 projects, the rod mill's a great example, were
11 quite thoroughly documented, pros, cons, issues of
12 concern, economic impact. For numerous projects
13 there were one-page profiles that were highly
14 informative. But then as to the unidentified
15 growth capex, those didn't exist.

16 **Q. But again we get back to an order of**
17 **magnitude, don't we, sir, when we're talking about**
18 **the rod mile project at \$45 million as compared to,**
19 **say, a \$100,000 capital expenditure, correct, sir?**

20 A. I don't see what the \$100,000 capital
21 expenditure's relevance here is.

22 **Q. Well, perhaps the smaller the capital**
23 **expenditure, the less need at Noranda in its view**
24 **with respect to some sort of paper documentation to**
25 **justify it.**

1 A. But our understanding is that the
2 capital projects intended to potentially fill that
3 category of unidentified growth capex far exceed
4 \$100,000. We know that now from Exhibit, I believe
5 it's B to Mr. Smith's surrebuttal testimony.

6 **Q. Now, at the Moody's presentation, you**
7 **realize, do you not, that Moody's downgraded**
8 **Noranda?**

9 A. I'm aware.

10 **Q. Are you also aware that Moody's**
11 **reported that, at least with respect to its view of**
12 **the LME price in the future, that it set it at**
13 **80 cents for 2014 and 2015?**

14 A. Was that -- were those numbers in the
15 downgrade notice itself?

16 **Q. No. That was in the survey that they**
17 **did with respect to commodities generally. You're**
18 **familiar with that report, are you not, sir?**

19 A. I am. I didn't recall those
20 particular numbers, though.

21 **Q. Now, the 80 cents that Moody's**
22 **reported publicly is less than the LME that Noranda**
23 **used with respect to the forward curve and the**
24 **model it used and the results it presented to the**
25 **Public Service Commission, correct, sir?**

1 A. I believe that's correct.

2 Q. Now, are you telling the Public
3 Service Commission that if you had been Moody's and
4 had been given the presentation that was made by
5 Noranda, that you would not have downgraded them?

6 A. Did not say that.

7 Q. Let's talk about raising additional
8 debt. Is it your testimony that you believe it's
9 possible for Noranda to raise additional debt?

10 A. I think it is highly plausible that
11 Noranda could have raised debt in the form that it
12 is still on record publicly stating that it's
13 intending to raise, and the specific type of
14 financing that Noranda spoke about was, they refer
15 to it as project financing.

16 It's an area that I spent a lot of my
17 career in. In its purest form, it is a financing
18 that is secured solely by the value and the
19 associated cash flows of a particular asset.

20 Q. Let's talk about the rod mill. You
21 heard testimony that such project financing was not
22 available to Noranda, did you not, sir?

23 MR. LOWERY: Assumes facts not in
24 evidence. The only testimony -- the only evidence
25 in this case is that they haven't secured it to

1 this point. There hasn't been testimony that it's
2 not available.

3 JUDGE WOODRUFF: I'll sustain that.
4 You can rephrase your question.

5 BY MR. MALLIN:

6 Q. You have heard testimony in this case
7 that, as of this date, that Noranda has not been
8 able to secure project financing for the rod mill,
9 have you not, sir?

10 A. I believe the first news of that came
11 in Mr. Smith's surrebuttal testimony.

12 Q. And you heard that testimony, did you
13 not, sir?

14 A. I did.

15 Q. Do you have some sort of a suitor out
16 there that you're aware of that wishes to provide
17 the project financing for this rod mill, sir?

18 A. I think the availability of financing
19 for the rod mill is highly fact specific. But as
20 others in this room have pointed out in the last 48
21 hours, there are -- the visible circumstances of
22 that setting are those that ought to contribute to
23 a financeable scenario.

24 Now, each of these project
25 financings, single-asset financings are highly

1 complex, highly fact-specific. Any number of
2 things could create delay, could pose terms that
3 might not be optimally to Noranda's liking but
4 still eminently doable and eminently economic to
5 do, and we just don't know.

6 **Q. Well, do you know whether or not any**
7 **terms were provided to Noranda that it believed to**
8 **be economically reasonable?**

9 A. I don't.

10 **Q. Do you know whether or not any terms**
11 **were provided to Noranda that were unreasonable?**

12 A. I do not.

13 **Q. So you haven't done any testing or**
14 **investigation in that area, have you, sir?**

15 A. I think -- well, I think there was a
16 DR to Noranda seeking precisely that information.

17 **Q. But as of today at least, there's no**
18 **financier of that rod mill project, correct?**

19 A. That is what's report by Noranda.

20 **Q. With respect to raising additional**
21 **capital from shareholders, do you believe that's**
22 **possible for Noranda?**

23 A. I absolutely believe it's possible.
24 Whether it's optimal by various parties' standards
25 is a question to be explored.

1 **Q.** Have you looked at any legal
2 restrictions that may exist with respect to raising
3 additional capital from shareholders in any of the
4 bank covenants and loan agreements that Noranda may
5 have signed?

6 **A.** I'm aware that Noranda has debt
7 covenants that in some conditions place limitations
8 on additional debt.

9 **Q.** How about with respect to the
10 shareholders themselves, are there any agreements
11 there that prevent or limit Noranda's ability from
12 raising additional capital from shareholders?

13 **A.** I don't know.

14 **Q.** You're aware there's no obligation on
15 the part of any shareholder to make an additional
16 capital infusion to Noranda, are you not, sir?

17 **A.** I'm aware of that.

18 **Q.** You're also aware that Noranda has
19 the highest debt burden of all U.S. aluminum
20 producers, are you not, sir?

21 **A.** I'm aware.

22 **Q.** Have you done any sort of a survey of
23 the marketplace to try to identify any banks or
24 equity markets that may be willing to make
25 additional capital or funds available to Noranda?

1 A. I have not.

2 Q. Have you done any due diligence with
3 respect to speaking to anyone at Apollo about its
4 willingness to supply capital?

5 A. I don't think that would be a proper
6 role for me to do.

7 Q. Have you spoken to anyone who's
8 indicated to you his, her or its willingness to
9 invest more money in Noranda?

10 A. Of course not. I don't have enough
11 information to do that, and it would be improper
12 for me to do that.

13 Q. Are you willing to make that
14 investment personally, sir?

15 A. Not enough information. I could be.

16 Q. But not enough information?

17 A. Not enough information.

18 MR. MALLIN: Thank you, sir.

19 JUDGE WOODRUFF: All right. Come up
20 for questions from the Bench. Mr. Chairman?

21 CHAIRMAN KENNEY: Just a few.

22 QUESTIONS BY CHAIRMAN KENNEY:

23 Q. Good evening.

24 A. Hello.

25 Q. I want to start backwards and talk

1 about the unidentified capex because if I --
2 essentially what you're saying is that you're
3 surprised that there's not more detail regarding
4 this capex, the unidentified capex?

5 A. Yes.

6 Q. And do you think that it was added
7 there just for the purpose of saying that there was
8 this \$100 million need for capital spending? You
9 don't come right out and say it, but is that what
10 you're getting at?

11 A. I don't think that's impossible.
12 It's odd to me that such large and proximate in
13 time capital expenditure programs are not better
14 specified. What Mr. Smith's testimony is
15 contemplating is \$100 million of capex starting
16 less than a year from now.

17 His model contemplates these dollars
18 floating starting in 2015. We don't know anything
19 about them. We're starting to learn a little bit
20 more through the surrebuttal testimony.

21 Q. All right. Well, let me ask you
22 another question. Is it -- and this goes to the
23 difference between the Moody's presentation and the
24 testimony here. Is it unusual for an enterprise to
25 put its best foot forward when making a

1 **presentation to Moody's?**

2 A. It is not, but it is unusual for
3 anyone petitioning a rating agency to put forward a
4 set of inconsistent facts. And unless I've
5 completely misunderstood Mr. Smith's surrebuttal
6 testimony, I believe what he has said is that the
7 Moody's presentation on its face had logically
8 inconsistent facts within it in the sense that the
9 expenditure of that unidentified capex in
10 Mr. Smith's telling is necessary to support the
11 level of cash flows that are in that same model.

12 And the reason that that
13 inconsistency was allowed to be present to Moody's,
14 in Mr. Smith's account, is that Moody's
15 understood, Moody's knew, they are a sophisticated
16 audience, they would understand that that capex had
17 to be spent to support that level of EBITDA, the
18 earnings before interest, taxes, depreciation, so
19 and so forth, but essentially cash flow.

20 Now, I find that an extraordinary
21 story. In no rating agency setting that I've been
22 involved with would you -- you put your best foot
23 forward, sure, but it's got to hang together. The
24 facts have to be consistent with each other.

25 And, in fact, as it turned out, if

1 one looks at the Moody's report that shortly
2 followed the downgrade, I believe it's dated
3 March 11, Moody's notes that they were anticipating
4 capital ex-- a high rate of capital expenditures
5 but only up to 2015, and thereafter I believe they
6 used the term cash burn would abate.

7 Well, that's exactly what Noranda
8 told them, and apparently that's the view they took
9 and then published in their analysis on March 11th.
10 So that set of facts does not look to me as though
11 Noranda went in with a slightly disjointed
12 presentation on the understanding that Moody's knew
13 better. They published guidance later that seems
14 to reflect exactly what was in that presentation.

15 **Q. Let me turn back to your report, your**
16 **testimony.**

17 A. Yeah.

18 **Q. And you've got a chart. This is HC,**
19 **so we probably --**

20 JUDGE WOODRUFF: Go in-camera?

21 CHAIRMAN KENNEY: Yeah, I suspect

22 so.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, which is contained in
25 Volume 8, pages 925 through 939 of the transcript.)

1 QUESTIONS BY COMMISSIONER HALL:

2 Q. You are familiar with Apollo?

3 A. Yes, you know, in the same way that
4 I'm familiar with Blackstone or other private
5 equity firms.

6 Q. You describe in some detail, which I
7 can't find at this exact moment, the profits that
8 Apollo received in transactions related to Noranda.

9 A. Yes.

10 MR. LOWERY: Page 39, I think,
11 Commissioner, is probably what you're looking for.

12 BY COMMISSIONER HALL:

13 Q. Close enough probably. It's actually
14 page 38. And I'm wondering if what you know about
15 the profits described on page 38 compare -- how
16 those compare to other transactions that Apollo's
17 been involved in. Is this par for the course or is
18 this unusual?

19 A. I don't think this is wildly
20 unprecedented. I mean, I think the returns are
21 very spectacular, but I couldn't tell you that
22 nothing like this had ever been done by other
23 firms. I'm not sure that's the point, though,
24 really. Apollo did it as some of their peers were
25 doing at the time. It worked out. They loaded the

1 company up with debt. They had no financial
2 exposure. We now stand at a point where the
3 company is suffering a liquidity crisis.

4 Apollo has no obligation, but I think
5 they actually have an economic incentive to invest
6 more, unless somebody else steps in and just hands
7 the company money. They have every reason to
8 contribute more funds to optimize the value of
9 their remaining 34 percent share. That's part of
10 the story here.

11 They've already earned 340 percent
12 internal rate of return. Mathematically,
13 contributing the remaining capital needed to
14 complete the rod mill, 30-some-odd million dollars,
15 a drop in the bucket, and probably preserves the
16 value to a much greater extent of their remaining
17 shareholdings.

18 COMMISSIONER HALL: I have no further
19 questions. Thank you.

20 CHAIRMAN KENNEY: Can I ask a
21 question?

22 JUDGE WOODRUFF: Sure.

23 FURTHER QUESTIONS BY CHAIRMAN KENNEY:

24 **Q. The shares that it has remaining were**
25 **shares that were bought when it made that initial**

1 investment, right?

2 A. Correct.

3 Q. That it then got back, right? So it
4 has -- I mean, it doesn't -- it doesn't have
5 anything at risk even?

6 A. Well, this is a really important
7 distinction. What happened in 2007 was that
8 Noranda bought the whole company with \$214 million
9 of their own money and a billion-some-odd debt.
10 They received virtually 100 percent of the shares
11 in the company at that point in time. A small
12 portion was held by management, but call it
13 essentially at 100 percent.

14 25 days later when additional debt
15 was issued to cash out Apollo, they didn't
16 relinquish their shares. They got their money
17 back, but they still had 90-- I can't remember what
18 it was -- 98 percent of the corporation and
19 continued to hold that 98 percent, which is why
20 they got ongoing dividends, until the time of the
21 IPO in 2010.

22 Q. So not unlike an ordinary shareholder
23 who actually buys some shares and actually has --
24 they have a basis value in the shares that they've
25 purchased with their own money?

1 A. Well, they have a basis value for tax
2 purposes, but they didn't buy the shares in a
3 public market. The public market for Noranda
4 shares started to exist in 2010 when the IPO
5 occurred.

6 **Q. So isn't there an argument, then, in**
7 **that case that -- I mean, yeah, I guess they have**
8 **an incentive to a degree to maximize the value of**
9 **their existing shares. There's no real**
10 **disincentive. If something does go south, they**
11 **haven't lost anything.**

12 A. Well, they hold 34 percent of
13 something. It's worth three and a half dollars
14 today. That was the closing price. If they can
15 contribute \$30 million today and cause that share
16 price to return to \$5 or thereabout, that would be
17 a very fine bargain. That's all I'm referring to.

18 CHAIRMAN KENNEY: All right. Thank
19 you.

20 QUESTIONS BY JUDGE WOODRUFF:

21 **Q. I just have one question. Who owned**
22 **Noranda before Apollo bought it?**

23 A. Apollo bought it from a company
24 called Xstrata, and I don't know the whole
25 corporate history prior to that.

1 JUDGE WOODRUFF: Thank you. Recross
2 based on questions from the Bench then?

3 MR. MALLIN: I do, your Honor.

4 JUDGE WOODRUFF: Anyone else? Anyone
5 other than Complainants? All right.

6 RECROSS-EXAMINATION BY MR. SCHWARZ:

7 Q. In response to Commissioner Hall's
8 question, I think you indicated the share price of
9 Noranda is now around \$3.50, and that's -- that
10 value is not only the smelter but also the bauxite
11 operations and the alumina operations?

12 A. Yes.

13 MR. SCHWARZ: Thank you.

14 JUDGE WOODRUFF: Thank you. Was
15 there anybody other than Complainants? All right.
16 Complainants.

17 MR. MALLIN: Thank you, your Honor.

18 RECROSS-EXAMINATION BY MR. MALLIN:

19 Q. Just a couple of questions about this
20 rod mill. With regard to the rod mill, you were
21 talking about it being -- its output being, if you
22 will, allocated, but were you also present when
23 Mr. Smith indicated that one of the concerns with
24 respect to the financing for the rod mill concerned
25 the aluminum supply necessary to make the rods

1 themselves?

2 A. So the output of the smelter?

3 Q. I'm talking about the input, in other
4 words, the raw material necessary to bring to the
5 rod mill, concerns in terms of anyone who might be
6 willing to finance the project that that supply may
7 not exist. Did you hear that testimony?

8 A. I did hear that, yeah.

9 MR. MALLIN: Thank you. That's the
10 only question I had.

11 JUDGE WOODRUFF: Okay. Redirect?

12 MR. LOWERY: Could we take a five-
13 minute restroom break, please?

14 JUDGE WOODRUFF: Yes, we can. I'll
15 even make it a ten-minute. Come back at ten
16 minutes 'til eight.

17 (A BREAK WAS TAKEN.)

18 JUDGE WOODRUFF: Let's come to order,
19 please. Come to order, please. We're back from
20 our break, we're about to begin with redirect from
21 the company.

22 MR. LOWERY: Thank you, your Honor.
23 Commissioner Hall, I wanted to raise an issue.
24 You asked Ms. Tatro during her opening statement
25 whether somebody would be able to tell you which

1 dividends were special dividends and which were
2 not, and I think she indicated Mr. Mudge could
3 answer that question for you. If you still want an
4 answer, I'll ask him and you can get it. It's up
5 to you.

6 COMMISSIONER HALL: Go for it.

7 REDIRECT EXAMINATION BY MR. LOWERY:

8 Q. Did you hear my question, Mr. Mudge?

9 A. I did. I did.

10 Q. Can you tell us which of the -- which
11 of the dividends in the last few years were special
12 dividends versus just, I guess, routine dividends?

13 A. Sure. We've heard Mr. Smith talk
14 about the typical level of regular, so-called
15 regular dividends that Noranda pays. They've been
16 at about 4 cents per share and then most recently
17 dropped to 1 cent in recognition of the cash flow
18 conserving needs at the immediate time.

19 But in the not too distant past, in
20 2011 and 2012 in particular, when that 4 cent
21 regular dividend was in effect, there were also
22 so-called supplemental dividends paid out in the
23 amounts of \$1 per share in 2011 and \$1.25 per share
24 in 2012. You can sort of sense the magnitude right
25 there. Regular at 4 cents, supplemental at a full

1 dollar per share, that generates a whole lot more
2 money going out to shareholders, and it did,
3 something on the order of 60 million plus in 2011
4 and 80 million plus in 2012. The vast bulk of
5 those dividends were of the supplemental variety.

6 You know, a company may have any
7 number of good reasons to issue dividends like
8 that. They are in business to reward their
9 shareholders.

10 But at the same time, there are
11 competing uses for capital, and I think a concern
12 that I had as I looked at that was, particularly
13 upon review of Mr. Smith's surrebuttal and his
14 Exhibit B identifying projects that he
15 characterized as deferred or pending over time and
16 especially urgent to address now.

17 Well, those were visible to the
18 company. You can see it in their documents. You
19 can see it in SEC filings. Projects like the
20 smelter rectifier project were, you know,
21 understood to be in need of funding in 2011 and
22 2012. The dollars instead flowed out to
23 shareholders, and in some cases, particularly 2012,
24 if memory serves, a lot of that dividending out was
25 funded by additional debt.

1 So the company was getting levered up
2 by while dividends were flowing out. That, of
3 course, has a very accelerated impact on that debt
4 to total capitalization ratio we've been talking
5 about. It's now at 87 percent or stood there at
6 the end of 2013. Well, it really ramped up quickly
7 in 2011 and 2012 as those dividends were flowing
8 out.

9 So I know I've editorialized perhaps
10 more than the question warranted, but those were
11 the special dividends.

12 **Q. And you mentioned 2011 and 2012. The**
13 **2007 and 2008 dividends are listed on your table on**
14 **page 39. Those were also supplemental or special**
15 **dividends; is that right?**

16 A. Indeed they were. And, you know, we
17 sort of leave those out of the frame because they
18 were a long time ago, and, to be fair, Apollo and
19 company management brought debt down after that
20 initial acquisition debt, and the benefit of that
21 initial public offering in 2010 was to very much
22 reduce the debt to capitalization ratio.

23 The rating agencies rewarded them for
24 that. Moody's and S&P upped their ratings in that
25 time frame and then dropped them right back down as

1 dividends flowed out and debt increased.

2 Q. Now, Mr. Mudge, I'm going to attempt
3 to -- and I'm going to be jumping around because
4 the cross-examination sort of is in different
5 places and different people asking you questions.
6 I'm going to attempt to not ask you things that
7 would require us to go in-camera maybe altogether
8 and then try to group things that might cause us to
9 go in-camera at another time.

10 But if I ask you something and you
11 need to use confidential information, you just have
12 to tell us and we'll go ahead and go in-camera.

13 A. That means I have to remember.

14 Q. I'll try to remember, but you'll have
15 to -- I might not know that the question's going to
16 call for confidential information.

17 A. All right.

18 Q. I'm going to start at the end, and
19 it's this question that Mr. Mallin asked you on
20 recross. I think essentially his question was, did
21 you hear the testimony earlier today that suggested
22 that a potential project financier on the rod mill
23 might have some kind of concern about whether or
24 not there would be, I'll call it hot metal, or
25 maybe it's not hot metal at that point, but

1 production from the smelter available for the rod
2 mill. Do you remember that question?

3 A. I do.

4 Q. Does what you heard change your
5 opinion that -- basically I think the opinions you
6 primarily expressed to Chairman Kenney earlier
7 about your assessment of the ability to get
8 project-specific financing for the rod mill?

9 A. And when you say what I heard, you
10 mean what I heard in the general course of the
11 hearing?

12 Q. What you heard earlier about -- about
13 whether there might be an issue of a potential
14 lender being concerned about whether there would be
15 supply from the smelter to the rod mill for the
16 rod.

17 A. I have a reaction to it, and I think
18 it's a legitimate concern. It's one that any
19 prudent lender would have, and I think it was
20 raised by Mr. Harris as well. Of course you care
21 about inputs to the project that you're
22 contemplating funding, and you care about the
23 integrity of the sources of those inputs, and those
24 are currently under the control of Noranda.

25 And so if you have a concern about

1 Noranda's stability in some general vague way,
2 maybe because they've got a lot of debt on their
3 books, that raises that issue.

4 Is Noranda's debt burden, you know,
5 necessarily dispositive as to whether the project
6 financing could work? I would say not necessarily,
7 because the smelter itself as an economic entity
8 apart from the rest of Noranda with all its debt
9 and the alumna refinery, again, apart from all the
10 debt, at intermediate levels, I'll add. The debt
11 is not domiciled at the operating levels of the
12 company.

13 Somebody's going to run those
14 operations, and they -- they cover their costs of
15 operation and basic capex and basic maintenance.
16 What they have a hard time doing, or they could --
17 actually, the numbers I've run show things working
18 fine, but I know that the contemplation is if more
19 capex imperatives than anyone's contemplated so far
20 suddenly become absolutely necessary or the LME
21 drops to 70 cents or some cataclysmic thing, but
22 there's a very substantial downside margin before
23 the fundamental operations are not economic
24 conceivably plucked out of a bankrupt entity.

25 So I think there are ways to

1 structure around that, is what I'm saying. And
2 it's easy to say, well, lenders are skittish about
3 the integrity of the inputs. It depends on knowing
4 more facts about the structure of the deal.

5 **Q. How did that -- can you elaborate a**
6 **little bit on how a scenario might work even if**
7 **there's a bankruptcy like Chapter 13?**

8 A. Well, I mean, it could consist of the
9 company continuing to perform under its
10 obligations, you know, while in the bankruptcy
11 process. But I'm really jumping ahead to maybe a
12 new owner. You know, somebody is going to be
13 interested, absent an utter cataclysm, in operating
14 that smelter and operating the whole value chain.

15 I think all the statements the
16 company makes about the operating logic of the
17 refinery and the smelter are very compelling, and
18 the problem is the debt burden. It's not the
19 fundamental operations.

20 **Q. Commissioner Hall asked you some**
21 **questions about the facts that Mr. Smith had**
22 **relayed in terms of what happened as of last Friday**
23 **in terms of the cash position at Noranda, the draw**
24 **that had been taken on the ABL. Do you recall**
25 **those?**

1 A. Yes.

2 Q. And I think some of your explanation
3 was --

4 JUDGE WOODRUFF: Mr. Lowery, do we
5 need to go in-camera?

6 MR. LOWERY: I don't know that we
7 have to talk about the numbers.

8 JUDGE WOODRUFF: You may have just
9 disclosed some information.

10 MR. LOWERY: Did I use a number?

11 CHAIRMAN KENNEY: You used a number.

12 MS. VUYLSTEKE: It's better to go
13 in-camera.

14 MR. LOWERY: That's fine.

15 JUDGE WOODRUFF: Let's go in-camera.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 8, pages 954 through 956 of the transcript.)

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1 BY MR. LOWERY:

2 Q. You were asked some questions by the
3 Chairman, I think you had a discussion with him
4 about Apollo and the possibility of them injecting
5 some additional equity, and I think the question
6 became about whether it would be dilutive. Do you
7 remember that?

8 A. (Witness nodded.)

9 Q. And maybe this was clear from the
10 record, but I think you maybe used the term it
11 might, in fact, be accretive. Could you explain
12 that?

13 A. Sure. It's in reference to
14 Mr. Smith's explanation of the importance of
15 completing this rod mill, which is that it will not
16 only, as is described in many of Noranda's planning
17 documents, augment EBITDA by 11 and a half million
18 dollars, that's sort of the surface benefit of the
19 rod mill, but --

20 Q. Mr. Mudge, I would caution you not to
21 mention the other number, but you can just refer to
22 what Mr. Smith said in his testimony if you were
23 going to.

24 A. Sorry.

25 Q. That's okay.

1 A. You know, there's sort of an explicit
2 benefit to completing the rod mill in terms of
3 enhanced value-added product. But what Mr. Smith
4 further explained in his surrebuttal and in
5 testimony here was that what's additionally at
6 issue is saving earnings that are twice the
7 expected amount of increased value-added cash flow.

8 So what's really at stake in getting
9 this rod mill completed is a whole lot more cash
10 flow than initially meets the eye, which the
11 absence of which would hurt everybody, all
12 shareholders, the public ones, Apollo.

13 If Apollo's in a position to make
14 that rod mill happen without descending into a true
15 liquidity crisis, well, then it would seem --
16 relative to the adverse consequences, that could be
17 an accretive thing to do. That's what I meant by
18 that.

19 **Q. And I'm not going to ask you to go**
20 **into the number, but the number in addition to the**
21 **EBITDA that Noranda's own documents indicate the**
22 **rod mill would generate from saved business, so to**
23 **speak, that number is in Mr. Smith's surrebuttal**
24 **testimony, is it not?**

25 A. Right.

1 Q. So it's in the record?

2 A. Yeah.

3 Q. The Chairman also had a discussion
4 with you about the unidentified capital
5 expenditures, and I think you indicated that you
6 were surprised there was not more detail about
7 that. Do you recall that?

8 A. Yes.

9 Q. And then there was a discussion
10 about, you know, the idea that Moody's would
11 understand. Do you recall that?

12 A. Yes.

13 Q. Is there any relationship between
14 this issue of whether or not Moody's would
15 understand or not between that -- between what you
16 see of the results of Mr. Smith's direct testimony
17 model and what you see when you conform it to
18 Moody's and what you see of the results of the
19 Moody's model itself in terms of cash flows? Is
20 there a relationship there?

21 A. Yeah, indeed there is, and it's one
22 of the signals that made me concerned about the
23 relationship between the capex and the -- and the
24 EBITDA. And I think this issue has gotten some
25 airing in the proceedings already.

1 Basically, as I investigated this
2 model, I recognized that the difference between
3 what was shown to Moody's and what was shown to the
4 Commission in Mr. Smith's direct testimony was
5 extremely simple. There were just two steps that
6 were taken. One related to LME prices versus CRU
7 pricing, straightforward, what you can sell
8 aluminum for, and the other was the capital
9 expenditure.

10 In total, the difference was
11 125 million between what was shown to Moody's on
12 the one hand and what was shown in his direct
13 testimony on the other.

14 Well, one way to get at the fact that
15 there was a disjoint there would be to put those
16 two models on an even playing field, if you will,
17 by setting the aluminum prices equal to each other,
18 removing one of the differences.

19 You could do it from either
20 direction. You could conform the direct testimony
21 model to Moody's by raising the price to CRU levels
22 or you could take the Moody's model and drop the
23 price down to the LME forwards, either way.

24 But if you did that, if you conformed
25 them as to aluminum pricing assumptions, the EBITDA

1 lines, the earnings before interest, taxes,
2 depreciation and so forth, would be identical, and
3 that's intuitive. It should be iden-- well, who
4 knows? But it happens to be the case that in these
5 numbers presented 13 days apart, the EBITDAs were
6 identical if you set the prices the same. Feels
7 intuitive, I hope. It's intuitive to me that that
8 should be true.

9 But underlying those EBITDA lines
10 were very different projections as to capital
11 expenditures needed to support those level of
12 earnings. In the Moody's presentation, the capital
13 expenditures were \$125 million less than in the
14 model and the testimony that was shown to the
15 commission.

16 Both of those two models, both of
17 those two worlds can't be right. One of them's
18 right. One of them's not.

19 In my rebuttal testimony, I initially
20 drew the conclusion, which I really don't depart
21 from now, that what was wrong was that a lot of
22 capex was not meeting with any reward. a lot of
23 money was being spent with no motivation, which
24 would serve to depress cash flows and exacerbate
25 the liquidity picture.

1 Mr. Smith's surrebuttal testimony
2 asserts it's the other way, that really it was the
3 Moody's presentation where the disjoint lay, and
4 that he was showing them an EBITDA line that was
5 levitating, if you will, without sufficient capital
6 expenditure to support that EBITDA, but that's okay
7 because Moody's is sophisticated and they will
8 impute that necessary capex, which, as Mr. Smith
9 explained, hadn't been approved by the board and
10 it's their policy not to show it in settings like a
11 Moody's presentation for that reason.

12 But nevertheless, whatever the
13 policy, there were two economic facts embedded in
14 that model in his telling that didn't go with each
15 other. There was a "what's wrong with this
16 picture" issue there.

17 And I'm not sure I can find my way to
18 the conclusion that Moody's really did get it
19 because some days later when they came out with
20 their report, they themselves said, well, we are
21 assuming per Noranda guidance that the big cash
22 outflows for capex end in the 2015 time frame. And
23 that's, you know, consistent with what the
24 presentation showed.

25 So something didn't get communicated.

1 Something didn't balance out. That's one source of
2 our concern about the unidentified growth capex.

3 Q. Chairman Kenney was -- you also had a
4 discussion with Chairman Kenney about Apollo's
5 initial acquisition of 100 percent of the stock in
6 Noranda, and I think you actually said Apollo
7 itself had 98 percent of the shares or roughly
8 98 percent of the shares initially.

9 A. Yes.

10 Q. Who had the other 2 percent?

11 A. Management, which I guess did not
12 include Mr. Smith, but top management of the -- top
13 executives of the company at the time.

14 Q. So top Noranda executives?

15 A. Correct. Yeah.

16 Q. I think you might have been asked
17 some questions about whether there might be legal
18 restrictions on injecting additional -- or taking
19 on additional debt. Were you asked about that?

20 A. I think I was, yeah.

21 Q. As you understand it, are those legal
22 restrictions somehow related to not impairing the
23 security of the existing debt-holders?

24 A. Well, it's pretty -- and I'd refer to
25 them more as contractual limitations, unless

1 there's something I'm not aware of. I think it's
2 quite typical for debt instruments to contain
3 covenants limiting additional debt. You know, I
4 think pretty easy intuition behind that is that it
5 dilutes the other lenders' claim on finite
6 collateral. And so they want to at minimum have
7 approval rights over additional debt typically.

8 I'm aware that Noranda's debt
9 instruments have those kinds of covenants. I don't
10 recall the specific details, but I'm confident
11 there are. It's not completely open to take on
12 additional debt in an unlimited way.

13 **Q. If an entity like Apollo, for**
14 **example, was willing to subordinate any additional**
15 **lending like for the rod mill, do you have an**
16 **opinion about whether or not those existing lenders**
17 **would be -- might be willing to work out a deal to**
18 **allow it to happen?**

19 MR. MALLIN: Object to the form.
20 Calls for speculation, lack of foundation.

21 MR. LOWERY: He's an expert witness.
22 I think he can express an opinion based on his
23 experience or not.

24 JUDGE WOODRUFF: I'll overrule the
25 objection.

1 THE WITNESS: I mean, I was a project
2 finance banker for many years, and my intuition is
3 that if you subordinated the additional debt, maybe
4 structured so-called mezzanine financing or
5 subordinated debt, there are many permutations of
6 debt instruments and preferred equity that would
7 come after the existing lenders in terms of order
8 of repayment.

9 Lenders accommodate that all the
10 time. So I just don't think that would be a
11 practical problem, even if you had to get their
12 consent per the terms of the debt instruments.

13 **Q. In your experience, it's not unusual**
14 **to get consent to structure something around those**
15 **initial covenants?**

16 A. No.

17 **Q. You've been here for the entirety of**
18 **the hearings, I believe; is that correct?**

19 A. Yes.

20 **Q. And I know again on this issue of**
21 **project financing and how we might get money for**
22 **the rod mill, have you -- have you heard any**
23 **details during the hearings about why Noranda has**
24 **not as of yet put project-specific financing into**
25 **place for the rod mill?**

1 A. Nothing that would respond to the
2 question of why.

3 Q. **Just the fact that they haven't got**
4 **it yet, right?**

5 A. (Witness nodded.)

6 Q. **There was a discussion, I believe,**
7 **about the Moody's downgrade. Do you remember that?**

8 A. Yes.

9 Q. **And I think -- I think it was**
10 **Mr. Mallin -- I'm sure it was actually, I'd have to**
11 **look at notes -- had you recite assumed Moody's**
12 **LMEs in 2014, 2015, or had you assume some numbers**
13 **that he said were in a Moody's report, correct?**

14 A. Yes.

15 Q. **I mean, do you know as you sit there**
16 **today that those numbers are right?**

17 A. I don't.

18 Q. **But let's assume for purposes of my**
19 **next question they are correct. How do those**
20 **numbers match up with Noranda's realized aluminum**
21 **prices this year? Do you know?**

22 A. They're lower.

23 Q. **So Noranda's done better than Moody's**
24 **was saying they were going to do?**

25 A. (Witness nodded.)

1 Q. And how do they compare -- let's just
2 talk about 2015, I guess, for now. How do they
3 compare to what the forwards are telling us about
4 aluminum prices in 2015?

5 A. Also lower.

6 Q. And how do they compare to what CRU's
7 forecast is?

8 A. Much lower.

9 Q. There was a discussion, I think you
10 were asked the question whether you had done an
11 independent assessment of whether Noranda needs
12 more or needs to invest this \$100 million in capex.
13 Do you remember that?

14 A. Yes.

15 Q. And I think you started to say
16 something about history, and I think Mr. Mallin cut
17 you off. Is there a reason the history's
18 instructive about the need for capital expenditure
19 in the future?

20 A. I think absolutely, particularly in
21 the realm of sustaining capex since that's just
22 what's necessary to keep the machinery running.
23 But history's also instructive for growth
24 initiatives, particularly if the history shows that
25 growth initiatives have been contemplated and

1 perhaps put aside in some cases indefinitely.

2 And the very fact that growth
3 projects are special in the sense of changing
4 company operations in a material way, there's more
5 of a discretionary nature to those. So, you know,
6 I think history is a useful guide to that.

7 **Q. You were asked questions about -- you**
8 **were asked questions about the direct testimony**
9 **model and the economic rationales, whether they**
10 **could be seen in the model or not seen in the**
11 **model. Why is it significant whether you can see**
12 **the relationship between capital expenditures and**
13 **cash flows in the model? Why is that significant?**

14 A. Well, let's assume that we're all
15 sitting here today as Noranda board members, and
16 management has come to us with a proposal to spend
17 \$100 million of capex over the next four years.
18 And setting aside, if you'll indulge me for a
19 second, the notion that spending that money is
20 necessary merely to tread water, which is I think
21 what the conclusion of Mr. Smith's surrebuttal
22 testimony was, but rather that the more ordinary
23 situation would apply and the reason you spend
24 fresh capital like that is to get some benefit.
25 There's a -- there's a motivation for it. People

1 invest money to get more money back over time.

2 And I believe Noranda's responses to
3 some of Ameren's questions on that topic made clear
4 that they evaluate the expenditure of capital funds
5 with reference to an internal rate of return.
6 Pretty normal thing to do.

7 Well, when I first examined the
8 Enterprise model, I was looking for that. I saw
9 \$100 million going out the door. I also saw a very
10 unchanged operating profile over the whole period
11 out through 2018. The only change was a step up, I
12 think partial in 2015 and then '16, '17, '18, in
13 higher value-added product as part of the
14 portfolio, but that was specifically tied to the
15 rod mill investment.

16 And that was described in the Noranda
17 documents and it was labeled quite clearly in the
18 Enterprise model, you could see that these dollars
19 going in here result in this production of higher
20 value-added stuff stepping up, creating -- and
21 we're not in-camera, but creating that quite
22 significant increase in EBITDA as a result.

23 Well, I asked myself, where is that
24 in association with that next \$100 million, and it
25 just wasn't there. So it caused me to wonder, has

1 it been omitted? Has that benefit been omitted?

2 And if so, doesn't that tighten up the cash flow
3 and the liquidity picture very significantly?

4 **Q. When you say tighten up, just so the**
5 **record's clear, do you mean make liquidity and cash**
6 **flow, cash situation look worse or better?**

7 A. Worse.

8 **Q. And that's because the model, the**
9 **portrayal from the model was that you don't get any**
10 **benefit from this \$100 million of capital**
11 **expenditures they say they're going to make in '15,**
12 **'16, '17 and '18; is that right?**

13 A. That was the appearance. That is the
14 question I pose in my testimony, why is that money
15 being invested? And the answer we got back in
16 surrebuttal was that we shouldn't expect to see an
17 improvement. That money's going in to just keep
18 what we've already got. That's what the
19 surrebuttal said.

20 And that's the disjoint between the
21 two -- the two versions. One of them's right and
22 one of them's not.

23 **Q. And by two versions, you mean the**
24 **Moody's iteration of the model and the direct**
25 **testimony iteration of the model?**

1 A. Yeah.

2 Q. You were asked questions about what
3 you knew about Moody's expectations, you know, in
4 terms of what kind of information Noranda would
5 give them about capital expenditures. Do you
6 remember that?

7 A. I do.

8 Q. Your experience with credit rating
9 agencies, is it different than the experience that
10 Noranda's described to us in terms of the
11 information that would be provided?

12 A. It is. I would have never
13 contemplated going into a Moody's presentation
14 offering information that was logically
15 inconsistent and disjointed merely on the
16 expectation that a sophisticated audience could see
17 beyond that, you know.

18 Q. Forgetting what Moody's was doing,
19 just as somebody who might be getting information
20 about a company and trying to evaluate their
21 prospects, their liquidity, their profits and so
22 on, would the kind of information that Noranda gave
23 Moody's, would it be useful in some way to you?

24 A. I would say for somebody looking at
25 the Moody's presentation who was meeting Noranda

1 for the first time, knew nothing about the
2 background or history, that presentation would not
3 really be useful. It would be quite dangerous and
4 damaging if one acted upon that because it was --
5 it would be showing a higher level of cash flow
6 than matched the necessary investment.

7 **Q. What about somebody that actually**
8 **knew something about them, is it useful to them in**
9 **some way?**

10 A. I don't think so either. You'd have
11 to -- there's no reason to force somebody to
12 connect the dots like that.

13 **Q. Because if they have their own model**
14 **and they understand it, they don't really need that**
15 **information; is that right?**

16 A. Merely having their own model doesn't
17 equip them to make the right assumptions about the
18 future capex.

19 **Q. Now, you had a discussion with**
20 **Mr. Mallin about the Bloomberg data, and then you**
21 **also ended up talking about Harbor Freight and a**
22 **couple other, and it was a discussion about your**
23 **chart, and you may find it quicker. It's the one**
24 **where you show three or four different price**
25 **forecasts or at least price views. Do you remember**

1 that?

2 A. I do. I do.

3 Q. Where did that -- where did that
4 information come from? Where did that chart come
5 from? Is that your chart or does that come from
6 some other source?

7 A. This chart is a verbatim reproduction
8 of the pricing graph shown by Noranda to Moody's in
9 the presentation of January.

10 Q. And there was this discussion that
11 went on about what forward prices are and what they
12 are not and transact them and the difference
13 between that and a forecast. Do you recall that?

14 A. Yes.

15 Q. And Mr. Mallin said there's no desk
16 where you can transact at, and I was think he was
17 probably talking about the CRU prices. Do you
18 remember that?

19 A. I do.

20 Q. And you started to explain, but he
21 cut you off. What were you going to say?

22 A. Well, simply that the forwards, which
23 you can transact -- I don't know if you can
24 transact them literally in Chicago or not, but you
25 can transact them in London. Probably you can in

1 Chicago, too -- are prices available today. Those
2 are contracts you can write today, but they are not
3 forecasts of anyone's reasonable expectation of
4 where the spot price will be later at that
5 transaction date. They just don't function that
6 way.

7 And so while they may embed some
8 indirect information about future prices, they are
9 not even intended for that purpose. And there's
10 nobody out there who will say that they're a
11 forecast. In fact, Mr. Smith in his surrebuttal
12 says they are not for forecasting. That's not what
13 they are.

14 By contrast, the CRU numbers are an
15 actual attempt to forecast what the spot prices
16 will be in the future. Now, all forecasts are
17 wrong. That's just in the nature of the exercise.
18 But CRU's forecast is developed by, you know, one
19 of the most, if not the most respected
20 data-gathering organizations in the industry who
21 put together an econometric model that includes
22 data about supply and demand, inventory,
23 macroeconomic factors, interest rates. They have a
24 large model they use to develop this, and they will
25 be wrong. We don't know if they're too high or too

1 low. But they actually produce something that is
2 intended to forecast the price, by contrast to the
3 LME forwards.

4 The way we treated these prices -- I
5 treated these prices in my testimony was not really
6 to come down too heavily on one versus the other,
7 but merely to point out that -- which I think
8 Mr. Smith concurs with in his surrebuttal, that
9 these all form a range. And, in fact, the part of
10 the range that Noranda chose to feature as the main
11 case, the only case on which they constructed cash
12 flows, was in fact the CRU forecast.

13 So I think subsequent testimony spoke
14 about the CRU forecast as a sensitivity, an upside
15 sensitivity, if you will. That was not the
16 labeling that was used. Anyone who didn't
17 understand Noranda's intentions would look at that
18 and say that's what they think.

19 **Q. And speaking of forecast, is it fair**
20 **to say that the output of the direct testimony**
21 **model, for example, in projecting cash flows,**
22 **et cetera for the next five years, that's a**
23 **forecast, right?**

24 A. Correct.

25 **Q. And I think the testimony that you**

1 gave Mr. Mallin and what you just said is that
2 Mr. Smith himself says that LME prices are -- LME
3 forwards are not forecasts, correct?

4 A. Correct.

5 Q. But what did he use to forecast the
6 next five years in his model?

7 A. He used the LME forwards.

8 Q. And he used the CRU forecast for the
9 Midwest premium, right?

10 A. Correct.

11 Q. Now, you were asked some questions
12 about both the first quarter and the second quarter
13 conference calls, earnings calls from Noranda. Do
14 you remember that?

15 A. Yeah.

16 Q. And Mr. Mallin didn't show you these
17 documents, but I want to point out, and I don't --
18 I think it's the Exhibit 111 is the April
19 conference call.

20 MR. LOWER: May I approach, your
21 Honor?

22 JUDGE WOODRUFF: You may.

23 BY MR. LOWERY:

24 Q. And I think the questions related to
25 making clear that the power case is important and

1 what the power case is and those kinds of things.

2 Do you remember that?

3 A. Yeah.

4 Q. Could you read -- first of all, do
5 you recognize this to be the transcript of the
6 Noranda earnings call on April 23rd, 2014?

7 A. I do.

8 Q. Could you read the question and
9 answer from Dave, who apparently is an analyst,
10 that was posed to Mr. Smith?

11 A. Starting with the analyst questions?

12 Q. Yes.

13 A. All right.

14 MR. MALLIN: What page are we on?

15 BY MR. LOWERY:

16 Q. I'm sorry. Page 10.

17 A. So this is a question from Dave
18 Katts, an analyst at JP Morgan. In the filing on
19 the PSC, it said on behalf of Missouri Retailers
20 Association that the issue in the case is whether
21 Ameren's other customers are better positioned with
22 Noranda's continued but reduced contribution to
23 Ameren's fixed costs for like gambling on Ameren's
24 providing those revenues during increase in
25 off-system sales. That may be a typo. But other

1 considerations are nothing more than red herrings.

2 This implies, and I think some of the
3 other filings that you guys have made implies, that
4 if the rate case doesn't go your way, you will shut
5 down. Are you guys definitively saying that if
6 the rate case doesn't go your way, the company is
7 not set up to survive long-term and that a shutdown
8 will be forthcoming as a result?

9 Q. Let me stop you there. And you can
10 read this and verify that I'm correct, but there
11 were a couple paragraphs of a response from
12 Mr. Smith and he sort of gives some information,
13 but then the last paragraph of that answer he even
14 says, now, to get to your question or to answer
15 your question. Do you see that?

16 A. I do.

17 Q. Did I fairly characterize Mr. Smith's
18 answer that the first couple paragraphs of the
19 answer don't really address the question of whether
20 or not they would shut down if they don't get the
21 relief they're asking for? Is that a fair
22 characterization?

23 MR. MALLIN: Let me object to the
24 form of the question. Obviously Mr. Smith in
25 responding to the question thought that all four

1 paragraphs were a response to the question. You're
2 asking him to now speculate as to what was in
3 Mr. Smith's mind when he provided that answer.

4 MR. LOWERY: I'll rephrase the
5 question.

6 BY MR. LOWERY:

7 Q. When you read the first couple of
8 paragraphs of that answer, does it -- to you, in
9 your opinion, is it responsive to the question
10 about whether or not the smelter would close if
11 they don't get the relief?

12 A. It is not.

13 Q. Could you read the last paragraph of
14 the answer? First of all, in your opinion, is the
15 last paragraph at least attempting to address the
16 question of whether the smelter would close if they
17 didn't get the relief they want?

18 MR. MALLIN: Your Honor, I think for
19 completeness purposes, if the response is going to
20 be read, Mr. Smith's entire response to the
21 question --

22 JUDGE WOODRUFF: The document's
23 already in evidence.

24 MR. LOWERY: I was going to say, it
25 speaks for itself. It's in evidence. So they

1 certainly can cite it in their brief.

2 JUDGE WOODRUFF: The objection is
3 overruled on that basis.

4 MR. MALLIN: Thank you, your Honor.

5 THE WITNESS: The last paragraph
6 reads, and now, just as far as the specific answer
7 to your question, this is a judicial process. We
8 are right in the middle of it. So I am sure that
9 you can understand that we are just not in a
10 position to speculate on or comment on the specific
11 outcomes of the case as we go forward. But if you
12 look at the PSC schedule, we anticipate a decision
13 on July 30, and obviously we will have a lot to say
14 about our power immediately after that.

15 BY MR. LOWERY:

16 **Q. Is it fair to say the question of**
17 **whether or not they would close the smelter if the**
18 **relief is not granted was not answered?**

19 A. It was not answered.

20 MR. LOWERY: May I approach again,
21 your Honor?

22 JUDGE WOODRUFF: You may.

23 BY MR. LOWERY:

24 **Q. Hand you what's been admitted already**
25 **as Exhibit 112, and I'm going to point you to**

1 page 8, which Mr. Mallin also pointed you to.

2 And is it correct that page 8 is essentially -- or
3 does it appear to you that page 8 just provides
4 basic information about this case, the one we're
5 here on tonight?

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

7 Q. Does page 8 provide any information
8 about what would happen if Noranda doesn't get the
9 relief that it's seeking in this case, positive or
10 negative?

11 A. It does not.

12 Q. I think you were asked some questions
13 by Mr. Mallin about had you personally participated
14 in an earnings call. Do you remember that?

15 A. Yes.

16 Q. Is it important for you to have
17 personally participated in earnings calls to
18 evaluate the statements that you've seen from
19 Noranda in the first quarter and the second quarter
20 as it might relate to this case or the outcome of
21 this case?

22 A. I don't see why.

23 Q. Can you explain -- Mr. Mallin asked
24 you about concerns that you'd expressed about what
25 had been said or not said during earnings

1 **presentations and conference calls. Can you**
2 **explain why you pointed out the absence of certain**
3 **information in those earnings calls and those**
4 **presentations and so on from Noranda?**

5 A. Well, simply because the direct
6 testimony tied -- or made the case for a very
7 imminent liquidity crisis and defined it very
8 sharply as dropping below \$100 million liquidity by
9 the end of 2015.

10 And that, you know, was a provocative
11 thing to say, and I thought it was fair to examine
12 the record to see whether the company or Mr. Smith
13 had given the investment community any inkling of
14 such an imminent adverse outcome.

15 **Q. And, in fact, don't those earnings**
16 **presentations and calls speak to things about solid**
17 **balance sheets, health balance sheets, strong**
18 **liquidity?**

19 A. Well, there's a lot of --

20 MR. MALLIN: Object to the form.
21 Those documents obviously speak for themselves.

22 JUDGE WOODRUFF: I'll sustain that
23 objection.

24 MR. LOWERY: I'll withdraw the
25 question.

1 BY MR. LOWERY:

2 Q. You were asked whether you had any
3 reason to criticize Mr. Smith's minimum liquidity
4 threshold that he set in his testimony. We don't
5 need to talk about what the number is. Do you
6 remember that?

7 A. I do.

8 Q. And I think you said you didn't; is
9 that right?

10 A. Correct.

11 Q. Why didn't you have a reason to
12 criticize it?

13 A. I felt as though it was proportional
14 to -- it's expressed in dollar terms. So if you
15 had a company ten times the size of Noranda, it
16 wouldn't work. I looked at it and thought it made
17 sense based on the proportionality of Noranda's
18 balance sheet, and I presume, although I don't
19 know, that that's how it was arrived at.

20 Q. You were also asked some questions, I
21 think you were asked isn't it true that you didn't
22 fix the model, because you had identified an issue
23 related to tax depreciation. Do you remember that?

24 A. Correct.

25 Q. Was there anything to fix, so to

1 speak, or why didn't you -- I guess the question
2 is, why didn't you, quote, fix the model?

3 A. I think it's fair to characterize the
4 situation as there really being nothing to fix in
5 the sense that I was not representing a model that
6 I had created or that I thought best forecast
7 likely outcomes, but rather the purpose of my
8 testimony was to assess the internal consistency of
9 Mr. Smith's model.

10 And so the comparisons in my
11 testimony are intended to draw out some of the
12 issues with assumptions that we saw. And in the
13 particular case of the tax depreciation associated
14 with the unidentified capex, which I believe was an
15 error, had that played a role in the versions of
16 the model that I thought better depicted likelier
17 liquidity outcomes, I would have been forced to fix
18 it and point that out and present the results
19 accordingly.

20 As it happened, the versions of the
21 liquidity forecast that I thought made better sense
22 were without that unidentified growth capex that
23 gave rise to that flaw in the model, and so it
24 wasn't relevant.

25 MR. LOWERY: Mr. Mudge, thank you. I

1 don't have any further questions, your Honor.

2 Thank you.

3 JUDGE WOODRUFF: Mr. Mudge, you can
4 step down. Terry Jarrett. Welcome back to the
5 Commission.

6 (Witness sworn.)

7 JUDGE WOODRUFF: Thank you very much.
8 You may inquire.

9 TERRY JARRETT testified as follows:

10 DIRECT EXAMINATION BY MS. TATRO:

11 Q. Good evening, sir. Can you state
12 your name and business address for the Commission?

13 A. Yes. My name is Terry Jarrett. My
14 address is 514 East High Street, Suite 22,
15 Jefferson City, Missouri 65101.

16 Q. And are you the same Terry Jarrett
17 who submitted prefiled testimony on behalf of
18 Ameren Missouri on May 9th, 2014, rebuttal
19 testimony, I apologize, in this case?

20 A. Yes, I am.

21 Q. Do you have any additions or
22 corrections to make to your testimony?

23 A. Yes. I have two minor corrections.
24 The first correction is on page 1, line 10. The
25 case numbers -- the number of cases should read 15

1 electric, 8 gas and 3 water.

2 And then the second correction is on
3 page 14, line 21. The citation to the West
4 Virginia code should be 24-2-1J.

5 **Q. Any other corrections?**

6 A. No other corrections.

7 **Q. If I were to ask you the same
8 questions that are contained within your testimony,
9 would your answers be substantially the same?**

10 A. They would.

11 **Q. And are your answers true to the best
12 of your belief and knowledge?**

13 A. They are.

14 MS. TATRO: I move Exhibit 103 into
15 the record and tender the witness for
16 cross-examination.

17 JUDGE WOODRUFF: 103 has been
18 offered. Any objections to its receipt?

19 (No response.)

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

22 (AMERENUE EXHIBIT NO. 103 WAS
23 RECEIVED INTO EVIDENCE.)

24 JUDGE WOODRUFF: For
25 cross-examination, beginning with Staff?

1 MR. THOMPSON: No questions. Thank
2 you.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. POSTON: No questions.

5 JUDGE WOODRUFF: River Cement?

6 MS. LANGENECKERT: No questions.

7 JUDGE WOODRUFF: Wal-Mart?

8 MR. CHAMBERLAIN: No questions.

9 JUDGE WOODRUFF: Consumers Council?

10 MR. COFFMAN: No questions.

11 JUDGE WOODRUFF: Retailer?

12 MR. SCHWARZ: No questions.

13 JUDGE WOODRUFF: Complainants?

14 MR. DOWNEY: No questions.

15 JUDGE WOODRUFF: Then we'll come up
16 for questions from the Bench. Mr. Chairman?

17 MR. LOWERY: He's been waiting to get
18 this chance for a while, I think.

19 CHAIRMAN KENNEY: Welcome back. Good
20 to see you.

21 THE WITNESS: Good to see you.

22 CHAIRMAN KENNEY: I don't have any
23 questions.

24 JUDGE WOODRUFF: Commissioner Stoll?

25 COMMISSIONER STOLL: I hate to say

1 it, but I have no questions.

2 JUDGE WOODRUFF: Commissioner Hall?

3 COMMISSIONER HALL: We can't let this
4 continue.

5 QUESTIONS BY COMMISSIONER HALL:

6 Q. Mr. Jarrett, I'd like to direct your
7 attention to page 11 of your -- of your rebuttal
8 testimony.

9 A. Okay. I don't have a copy. Could
10 somebody -- okay.

11 MS. TATRO: The first rule of being a
12 witness, Mr. Jarrett.

13 THE WITNESS: I understand. Well,
14 I'm new at this. Commissioner, did you say
15 page 11?

16 BY COMMISSIONER HALL:

17 Q. Yes. Page 11, line 22 to 24. And
18 you succinctly provide an answer to a question that
19 I've asked a series of witnesses over the last two
20 days. You say, a negotiated compromise on rate
21 design may deviate slightly from pure cost of
22 service based rates for some classes of customers,
23 but the overall settlement on that and other issues
24 is in the public interest. Did I read that
25 correctly?

1 A. Yes, you did.

2 Q. The question that I've asked a number
3 of witnesses is, when is it appropriate to deviate
4 from cost of service in setting rates? And like I
5 said a moment ago, I think you provide an answer
6 there, which is a number of qualifications,
7 conditions that I wanted to talk to you about.

8 First of all, is it necessary that it
9 be a negotiated compromise, and if so, why?

10 A. I believe it is, because any time
11 that you get away from cost of service rates even
12 slightly, that means that the cost causer -- at
13 least some cost causers are not paying their full
14 cost of service and others are paying more than
15 their cost of service.

16 So I don't think it would be
17 appropriate for the Commission to do that over any
18 objection from any parties. So that's why I say in
19 my testimony that in the context of a negotiated
20 settlement where there's many, many issues in a
21 rate case, rate design being one of them, a party
22 might want to give a little bit on rate design in
23 order to get something on another issue that
24 they're interested in.

25 Q. Do you believe that that is required

1 **by the law or that's just good public policy?**

2 A. Well, I believe -- I believe it is
3 required by the law. You know, asking a customer
4 to pay more than their fair share I believe could
5 be challenged in court, and, you know, I would
6 think that a court would look at that very
7 seriously.

8 Q. So whenever a customer doesn't agree
9 to it and is charged more than his cost of service,
10 you think he has a cause of action, he or she or
11 it?

12 A. In the context of a rate case, if a
13 party objects to a rate design, then yes, I believe
14 that party would at least have the standing to file
15 a cause of action.

16 Q. They clearly have the standing.
17 Whether they'd be meritorious or not is the issue.
18 So you -- but you -- you think it needs to be
19 negotiated even if it meets the other two criteria,
20 even if it is -- it deviates just slightly and it's
21 in the public interest, you would say it's still
22 inappropriate because it wasn't negotiated?

23 A. Correct.

24 Q. And that's your legal conclusion?

25 A. Well, I'm not testifying as a lawyer

1 here, but yes, that's -- that's my conclusion.

2 Q. I'd be interested in any citation to
3 judicial decisions that support that
4 interpretation.

5 Okay. Then you continue on in your
6 testimony to provide a number of other places where
7 you think that it is appropriate to deviate from
8 cost of service. You talk about energy efficiency,
9 demand response, business attraction and retention.
10 But even in all of those contexts, you still think
11 that it needs to be negotiated, only a slight
12 deviation and in the public interest; is that
13 correct?

14 A. Yes, I believe so.

15 Q. And so do you consider load retention
16 to be something that could be in the public
17 interest?

18 A. Certainly if it's an issue in a rate
19 case where you're considering all relevant factors,
20 then yes, it would be -- I think it could be
21 relevant.

22 Q. I'm going to ask you an unfair
23 question. Is there any way that you could help me
24 out with what slightly means? If the answer is no,
25 I understand that, but --

1 A. You know, it depends on the different
2 facts and circumstances of each situation. You
3 know, that's about the only way I can characterize
4 it. It just kind of depends on what you're
5 comparing to what.

6 I know in some of the rate cases
7 where I participated in, you know, deviations of,
8 you know, a couple of percentage points were
9 slight. Deviation of 20, 25 percent would not be
10 slight.

11 **Q. I assume your position on when it is**
12 **correct or when it is appropriate to deviate from**
13 **cost of service, that would -- that would -- your**
14 **opinion would differ if there was legislation on**
15 **the books like there is in a couple of the states**
16 **that you discussed where there -- which seemed to**
17 **specifically allow for such deviation?**

18 A. Correct. If there's -- if there's
19 enabling legislation giving the Commission
20 authority to do so, then of course. The Commission
21 is a creature of statute and has only the authority
22 given to it by statute. So if the Legislature
23 decides to give the Commission that authority, then
24 certainly.

25 **Q. Let me ask you about something that's**

1 I don't think directly addressed in your -- in your
2 prepared testimony. There's been some discussion
3 about whether or not Noranda could agree to certain
4 conditions if the Commission were willing to
5 provide the relief requested by -- if the
6 Commission were willing to provide the relief
7 requested by Noranda, conditions such as retained
8 employment and capital expenditures.

9 Do you have any -- in your experience
10 with the Commission, do you have any experience
11 with writing tariffs in such a way so as to allow
12 for that?

13 A. No. I did not ever actually draft
14 any tariffs while I was a Commissioner.

15 Q. Do you know how if even -- even if
16 Noranda was willing to make those -- make those
17 promises, do you know how the Commission could
18 assure that those promises were complied with?

19 A. To tell you the truth, I don't see
20 how you could make it in any way enforceable.
21 Noranda is a customer and it's not regulated by the
22 Commission. The tariffs address what the utility
23 has to do. It doesn't address what the -- usually
24 what a customer has to do. And so I don't know --
25 I don't know how you could bring an action to --

1 that a customer violated a tariff.

2 COMMISSIONER HALL: I don't have any
3 further questions. Thank you.

4 JUDGE WOODRUFF: Commissioner Stoll?

5 QUESTIONS BY COMMISSIONER STOLL:

6 Q. I think I do have a question now.

7 When you're talking about cost of service, is there
8 a rate which we might agree to or impose that
9 really would be considered confiscatory?

10 A. Certainly.

11 Q. And what would that -- what would
12 that rate be? How would you describe that rate?

13 It would --

14 A. Well --

15 Q. I wasn't sure exactly how to ask
16 this.

17 A. Right. Well, again, I think, you
18 know, technically you could say any amount that you
19 were taking against someone's will would be
20 confiscatory.

21 Now, to the extent that -- I would
22 certainly say, for example, in this case, you know,
23 what Noranda I know is asking for is about a 26,
24 27 percent rate decrease, and I think if -- if the
25 company were required to assume that or just eat

1 that, the shareholders, then that -- that's a
2 pretty large amount, and that certainly would be
3 confiscatory.

4 **Q. So it would be confiscatory if the**
5 **rate set for a company to pay was less than the**
6 **cost of the generation and delivering that service**
7 **to the customer? If it was below that, would it be**
8 **considered confiscatory?**

9 A. If the rate was below the cost of
10 service, it wouldn't be to that customer. I mean,
11 that customer's paying less than what they're
12 costing.

13 **Q. Okay. So --**

14 A. I'm sorry.

15 **Q. The customer would be paying less**
16 **than the cost of the utility to deliver that**
17 **service to them.**

18 A. Right.

19 **Q. And at some point that would be**
20 **confiscatory?**

21 A. Yeah. I mean, at some point
22 somebody's going to have to make up that
23 difference, whether it's another party or whether
24 it's the company. And so whoever's paying more
25 than their fair share, if another class is

1 subsidizing that, or the shareholders are being
2 asked to assume that, then yes, it would be
3 confiscatory.

4 Q. Or if no one is asked to do that,
5 then the shareholders are not receiving their
6 compensation for the use of their plant and
7 capital; is that right?

8 A. If -- could you say that again,
9 Commissioner? I'm sorry.

10 Q. If someone -- if another class
11 doesn't make that rate up, would the -- the
12 shareholders really would be -- would not be
13 reimbursed for the use of their capital and plant;
14 is that correct?

15 A. You are correct, yes.

16 COMMISSIONER STOLL: Okay. Thank
17 you.

18 JUDGE WOODRUFF: All right.
19 Mr. Chairman?

20 CHAIRMAN KENNEY: Well, I've got to
21 join the fun.

22 QUESTIONS BY CHAIRMAN KENNEY:

23 Q. Let me ask -- and thanks again for
24 being here so late. I'll try to keep this brief.

25 You weren't asked to offer a legal

1 opinion about what was confiscatory and what was
2 not, right?

3 A. Correct.

4 Q. And you're not testifying in your
5 capacity as an attorney?

6 A. That is correct.

7 Q. Okay. Let me just ask a question
8 about public policy consideration and your opinion
9 regarding the public policy consideration. Let's
10 assume we take Noranda at its word that it's
11 experiencing this major liquidity crisis, and all
12 of the other benefits that it has cited that it
13 inures to the state of Missouri generally and to
14 southeast Missouri specifically, take all that as
15 true.

16 Would it still be your opinion that
17 it would -- that we cannot take those
18 considerations into consideration in making a
19 public interest determination about offering a
20 special rate for Noranda?

21 A. I don't believe in the context of a
22 complaint case like this you could.

23 Q. In what context could we?

24 A. Perhaps in a rate case where again
25 all relevant factors are on the table, in the

1 context of if there's class cost of service studies
2 that support Noranda's position on cost.

3 Q. Let's assume there's no class cost of
4 service study that's going to support it because I
5 think even Noranda admit that the rate that they're
6 asking for is completely separated from a cost of
7 service analysis. It's a rate that they need to
8 stay viable.

9 A. Right.

10 Q. I'm saying for the sake of my
11 hypothetical, assume all of those facts are true,
12 that they need this \$30 a megawatt hour rate to
13 stay viable, and all of the tax benefits, all the
14 other economic benefits that inure to southeast
15 Missouri and to the State of Missouri as a whole
16 because of Noranda's existence are all true.

17 Would it be appropriate to allow them
18 that special rate that deviates drastically from a
19 cost of service analysis?

20 A. I think the only way that the
21 Commission could properly do that would be in the
22 context of a stipulation and agreement between the
23 parties.

24 Q. And you think that would be
25 appropriate for us to approve that stipulation and

1 **agreement?**

2 A. I believe that -- I believe that the
3 Commission could reach the conclusion that it's in
4 the public interest.

5 CHAIRMAN KENNEY: Thanks again.

6 JUDGE WOODRUFF: Okay. Recross based
7 on questions from the Bench. I see a lot of hands
8 going up here. I'll just run down the list.
9 Beginning with Staff.

10 MR. THOMPSON: Thank you, Judge.

11 RE-CROSS-EXAMINATION BY MR. THOMPSON:

12 Q. Good evening, Mr. Jarrett.

13 A. Good evening, Mr. Thompson.

14 Q. Following up on some questions from
15 Commissioner Hall, you are aware that there are
16 such things as economic development tariffs and
17 load retention tariffs and the like?

18 A. Yes, I am.

19 Q. And in evidence in this case,
20 Exhibit 208, which I know you don't have a copy of,
21 is Ameren Missouri's Rider EDRR described as an
22 economic development and retention rider. And
23 would you be surprised to learn that it provides
24 for up to a 15 percent discount from otherwise
25 applicable tariffs before tax additions?

1 A. No, I wouldn't be surprised.

2 Q. And would you consider that to be
3 slight?

4 A. From my understanding of this rider
5 and the amount of conditions that are in there in
6 order for the customer to receive this and the
7 limited amount of time that they receive it, yes.
8 I think in the context of the size of Ameren, it
9 would be -- it would be slight. It's a slight
10 deviation.

11 MR. THOMPSON: Thank you. No further
12 questions.

13 JUDGE WOODRUFF: Public Counsel?

14 MR. POSTON: No questions.

15 JUDGE WOODRUFF: River Cement?

16 MS. LANGENECKERT: No.

17 JUDGE WOODRUFF: Wal-Mart?

18 MR. CHAMBERLAIN: No questions.

19 JUDGE WOODRUFF: Consumers Council?

20 MR. COFFMAN: Yes.

21 RECROSS-EXAMINATION BY MR. COFFMAN:

22 Q. Good evening, Mr. Jarrett.

23 A. Good evening, Mr. Coffman.

24 Q. You were asked questions about rate
25 design and cost of -- following the cost of

1 **service, cost causer principles.**

2 A. Correct.

3 **Q. Are you aware of the Bonbright**
4 **Principles of Rate Design?**

5 A. Yes.

6 **Q. Do you ascribe -- subscribe to**
7 **Professor Bonbright's Principles of Rate Design?**

8 A. Generally, yes.

9 **Q. Can you -- can you identify some of**
10 **the principles other than cost causation that**
11 **Professor Bonbright say should be considered in**
12 **designing rates?**

13 A. I actually quote a passage from
14 Professor Bonbright's treatise in my testimony
15 where it talks about cost-based rates being the
16 appropriate way to approach ratemaking. I know he
17 probably does talk about some experimental type of
18 rate designs as well in some other parts of his
19 treatise.

20 **Q. Well, let me ask you about some of**
21 **the other principles that Bonbright lays out in his**
22 **seminal work and see if you agree.**

23 **Do you believe that fairness should**
24 **be a consideration in addition to cause causation?**

25 A. Certainly as it relates to just and

1 reasonable rates, fairness figures in there, sure.

2 **Q. Should the stability of rates be a**
3 **consideration?**

4 A. Yes. You want -- sure.

5 **Q. Public acceptance?**

6 A. Yes.

7 **Q. Okay. Simplicity and understanding**
8 **or understandability?**

9 A. Yes.

10 **Q. Promoting cost efficiency?**

11 A. Yes.

12 **Q. Might tie in with cost causation.**

13 **And avoiding undue discrimination, you mentioned**
14 **that.**

15 A. Correct.

16 **Q. So in your mind, cost causation,**
17 **though, is more important than these other**
18 **principles?**

19 A. It's sort of the foundation of all of
20 those principles. That's sort of the bedrock on
21 which the ratemaking process is based.

22 **Q. You don't disagree with the Bonbright**
23 **principle that all these considerations should be**
24 **taken into consideration as you design those, that**
25 **rates --**

1 A. Right.

2 Q. -- shouldn't necessarily be based
3 solely on the cost of service?

4 A. Well, none of those concepts are, I
5 don't think, inconsistent with cost-based rates.

6 Q. Sometimes might there be some
7 tension, though, amongst those considerations that
8 the Commissioners should weigh and find some middle
9 ground there perhaps?

10 A. I don't know. Do you have any
11 examples you'd like me to consider?

12 Q. Well, this case is full of them.
13 That's enough. I appreciate your talking to me.

14 A. Okay.

15 MR. COFFMAN: Thanks.

16 JUDGE WOODRUFF: Retailers?

17 RECROSS-EXAMINATION BY MR. SCHWARZ:

18 Q. Good evening, Mr. Jarrett.

19 A. Mr. Schwarz.

20 Q. John and I are in the cheap seats.

21 We don't have a microphone.

22 I think you may have left the
23 impression at least with me that -- early in your
24 response that someone who's not a party to a
25 stipulated agreement might have cause to appeal,

1 and I just wanted to confirm that the Commission
2 has procedures in place for nonunanimous
3 stipulations, do they not?

4 A. Yes, they do.

5 Q. And so it's -- the Commission has
6 anticipated and entertains stipulations by some but
7 not all of the parties in cases?

8 A. Yes. If a party doesn't object
9 within a certain amount of time, they are deemed to
10 have -- if the non-signatory parties don't object
11 within a certain amount of time, then the
12 Commission can deem that to be a unanimous
13 stipulation.

14 Q. And if they do object, then the
15 stipulation is treated as a common position of the
16 signatory parties?

17 A. That is correct.

18 MR. SCHWARZ: Thank you.

19 JUDGE WOODRUFF: Complainants?

20 MR. DOWNEY: Yes, your Honor.

21 RECROSS-EXAMINATION BY MR. DOWNEY:

22 Q. Good evening, Mr. Jarrett.

23 A. Mr. Downey.

24 Q. Good to see you again. Can you find
25 Exhibit 208 up there? Is it handy?

1 MR. THOMPSON: May I approach?

2 JUDGE WOODRUFF: You may.

3 THE WITNESS: Okay.

4 BY MR. DOWNEY:

5 Q. I think this is the tariff that
6 Mr. Thompson was referring to. Does that look
7 familiar to you?

8 A. Yes. The economic development and
9 retention rider, yes.

10 Q. And that's the tariff that is there,
11 among other things, to retain existing load. Do
12 you see that under the purpose?

13 A. Yes.

14 Q. And for particularly companies whose
15 exit from the service area is imminent, do you see
16 that at the bottom of the availability paragraph?

17 A. Yes, I do.

18 Q. And Mr. Thompson already talked about
19 the up to 15 percent discount under the incentive
20 provisions paragraph, which is the second page of
21 that document.

22 A. Yes.

23 Q. Do you see the 15 percent discount
24 language?

25 A. Yes, I do.

1 **Q. Do you see the last sentence of that**
2 **paragraph?**

3 A. Yes, I do.

4 **Q. Would you consider that sentence to**
5 **be conditions that the Commission put on the**
6 **recipient of that rate?**

7 MS. TATRO: I'm sorry. I'm not sure
8 where you are on the tariff.

9 MR. DOWNEY: The very last sentence
10 of the second page under the paragraph incentive
11 provisions.

12 MS. TATRO: Thank you.

13 THE WITNESS: No. I do see that.
14 That's what it says.

15 BY MR. DOWNEY:

16 **Q. Just a second. All right. And there**
17 **are some conditions and consequences I guess if the**
18 **customer who has that preferential rate doesn't**
19 **meet those conditions. Would you agree with me**
20 **there?**

21 A. Say that again, please. I'm sorry.

22 **Q. In that last sentence of the**
23 **incentive provisions paragraph, there are**
24 **consequences for any customer that does not meet**
25 **the conditions of that tariff, correct?**

1 A. Yes. That's what it says.

2 Q. And the Commission chose to put those
3 consequences in the tariff, or at least approved a
4 tariff with those consequences?

5 A. That's correct.

6 Q. Okay. And this tariff was -- looks
7 like it was issued May 31 of 2013. Do you see
8 that?

9 A. Yes, I do.

10 Q. And it was effective June 30 of 2013.
11 Do you see that?

12 A. That's what it says.

13 MR. DOWNEY: All right. Thank you.
14 Nothing further.

15 JUDGE WOODRUFF: All right.

16 Redirect?

17 MS. TATRO: Thank you.

18 REDIRECT EXAMINATION BY MS. TATRO:

19 Q. Mr. Jarrett, Commissioner Hall was
20 asking you questions about cost of service studies
21 and what slight deviation might mean. Do you
22 remember that?

23 A. Yes, I do.

24 Q. Have you heard the phrase cost of
25 service is more art than a science before?

1 A. Yes, I have.

2 **Q. What does that mean to you?**

3 A. That means that it is probably
4 impossible to get the rates at exactly right at the
5 cost of service. Normally in rate cases you will
6 have competing cost of service studies the
7 different parties have filed. The numbers may not
8 agree with each other. So there is a -- sort of a
9 range of reasonableness when it comes to setting
10 those -- that, you know, again, it would just be
11 impossible to get it exactly, exactly right. It is
12 an art.

13 **Q. So if a customer's requesting a**
14 **25 percent discount from their cost of service**
15 **based rate, would you consider that to be within**
16 **the range of reasonableness?**

17 A. No.

18 **Q. Why wouldn't you?**

19 A. Well, again, that deviates -- it
20 actually doesn't really even deviate from cost of
21 service. It abandons cost of service.

22 **Q. Okay. Then later on Commissioner**
23 **Stoll was talking to you about when a rate would be**
24 **confiscatory. Do you remember that conversation?**

25 A. Yes, I do.

1 Q. You haven't been present for most of
2 the testimony that has gone on in this case,
3 correct?

4 A. That is correct.

5 Q. I want you to assume with me for a
6 moment that a -- or more than one party has
7 presented to the Commission that if a discount to
8 Noranda is granted, it should not -- the revenue
9 deficiency should not be made up by any other
10 customer, any other customer class.

11 A. Okay.

12 Q. From Ameren Missouri's point of view,
13 would you consider that confiscatory and why?
14 If so, why?

15 A. Yes, I would, because that is
16 requiring the company to not recover its cost to
17 serve that customer, and under the Bluefield
18 standard, I believe that the standard is that a
19 company is entitled to recover all of its prudently
20 incurred costs, plus a reasonable but not excessive
21 profit.

22 Q. Okay. When Mr. Coffman was asking
23 you questions, you talked about the Bonbright
24 Principles of Rate Design. Do you remember that?

25 A. Yes, I do.

1 Q. And he went through several
2 principles asking if you agreed with them. Do you
3 remember that line of questioning?

4 A. Yes, I do.

5 Q. Then he asked you for examples of
6 deviation from cost of service. You asked him for
7 an example, and he said this case is full of them.
8 Do you remember that?

9 A. Yes.

10 Q. So the first principle I believe that
11 he mentioned was fairness. Would you consider
12 Noranda's request for a 25 percent discount to
13 be -- to be consistent with or inconsistent with
14 the principle of fairness?

15 A. Well, I believe that fairness really
16 is based on cost-based rates. A cost-based rate is
17 fair, and any rate that is not cost-based,
18 especially one that -- where you're requesting a
19 25, 26 percent decrease from cost of service, is
20 not fair, because somebody else -- somebody else
21 has to pick that up and subsidize it.

22 Q. Okay. I believe the second principle
23 that he mentioned was stability.

24 A. Correct.

25 Q. Do you believe that Noranda's request

1 **is consistent or inconsistent with this principle?**

2 A. I believe it's inconsistent.

3 **Q. And why?**

4 A. My understanding of what Ameren is
5 asking for a -- is a ten-year decrease with a cap
6 of 2 percent increase or something like that, if I
7 remember correctly.

8 **Q. And just to be clear, you said**
9 **Ameren, but you meant Noranda?**

10 A. I meant Noranda. Excuse me.
11 Noranda. If that were to go into effect, at the
12 end of the ten years, the cost would -- to other
13 customers, the class cost of service would be so
14 skewed after ten years of that that it would be
15 unrecognizable as far as trying to figure a way
16 back to cost-based rates. I mean, it would -- you
17 would -- the rates would just be -- they'd just be
18 terrible.

19 **Q. I believe the third principle was**
20 **public acceptance. Do you remember that?**

21 A. Correct.

22 **Q. Again, do you think Noranda's request**
23 **is consistent or inconsistent with that principle**
24 **and why?**

25 A. I don't believe it is. Again, a

1 cost-based rate is stable, and it -- everybody
2 knows that that's what you're basing your rates on.
3 And it's also, I think -- I think the public
4 accepts that because at least they understand that
5 you're basing the rate on the actual cost the
6 customer is causing.

7 Any time you get too far away from
8 that, a customer's going to wonder why that
9 customer gets to pay such a low rate and doesn't --
10 isn't paying their fair share of the load.

11 **Q. And I think the fourth and final**
12 **principle that Mr. Coffman mentioned was**
13 **simplicity. Do you remember that conversation?**

14 A. I do.

15 **Q. And do you think Noranda's request is**
16 **consistent or inconsistent with that principle and**
17 **why?**

18 A. Again, it's inconsistent because of
19 the way over a ten-year period it's going to skew
20 the rates in such a way that, after that ten years
21 expires, one assumes that you would try to return
22 again to the cost-based rate model, and trying to
23 do that after all of these classes have become
24 skewed would be -- would be a problem.

25 I think it would be a problem for

1 Noranda because they would end up having to pay
2 terrible rates, number one, because if their rates
3 had been depressed so much under cost of service,
4 once that expires, their rates would have to
5 skyrocket to make up for the fact that they're so
6 far below.

7 It would just be a, like I said, a
8 nightmare to try to get the rates back to a
9 cost-base -- onto a cost-based ratemaking basis.

10 **Q. Okay. Thank you. Now, Mr. Downey**
11 **asked you some questions and he handed you -- I**
12 **think he gave you Exhibit 208, which is the EDRR**
13 **tariff that Ameren Missouri has. Do you still have**
14 **that in front of you?**

15 A. Yes.

16 **Q. And he had you look at a section on**
17 **Sheet 86 that talked about ex-- the company exiting**
18 **the service -- let's see, must exit from the**
19 **service area is imminent. Do you see that?**

20 A. I do.

21 **Q. Do you know if there's qualifications**
22 **or requirements on what "exit is imminent" means?**

23 A. Yes. I believe the -- if I can find
24 it. Yes. Where it basically states, electric
25 service under this rider is only available in

1 conjunction with local, regional or state
2 governmental economic development activities where
3 incentives have been offered and accepted by the
4 customer who's requesting service to locate new or
5 expanding facilities in the company's service area.

6 And then it talks about, I believe,
7 as a condition of imminence the company has to
8 provide documentation that they've received a
9 viable electric supply option outside of the
10 company's service area, including an affidavit
11 stating the customer's intent.

12 So for this -- for this rider, for
13 the customer to qualify, they have to be -- have a
14 bona fide offer from another jurisdiction that's
15 got a lower electric rate, and then they have to --
16 they have to show that.

17 **Q. So in your opinion, is this tariff**
18 **designed to bail out companies that are in**
19 **financial trouble?**

20 A. No. As a matter of fact, the order
21 that approved this tariff was the 2007 Ameren rate
22 case, ER-2007-0002. Subsequently in 2013 the
23 company did file a case to repaginate some of their
24 tariff sheets, and that was the ET-2013-0546 case
25 that's listed here on the -- on the tariff under

1 the file stamp.

2 That case didn't -- didn't approve
3 the tariff. It was approved in the rate case.
4 This case simply granted -- the order granted
5 Ameren the approval to repaginate its -- its tariff
6 sheets.

7 So one needs to look at the actual
8 order and the language approving these tariffs in
9 the 2007 rate case, and the one thing that it says,
10 it talks about these economic riders being funded
11 by the shareholders. So the Commission was giving
12 them great discretion in how they crafted these
13 tariffs since they were being paid by the
14 shareholders.

15 And then importantly the Commission
16 said, but it is important -- and I don't know if
17 I'm getting it verbatim, but it says, but it is
18 important that these AmerenUE tariffs do not become
19 simple giveaways to large ratepayers, leaving the
20 residential customers to pick up the tab.

21 So these were never meant to be
22 giveaways. They were meant to, under certain
23 limited conditions, with shareholder money, incent
24 companies that have bona fide offers to leave to
25 stay in Missouri or come to Missouri.

1 Q. Now, the tariff gives Ameren Missouri
2 the discretion to decide if someone should be
3 granted this discount; is that correct?

4 A. That's correct. It's totally at the
5 company's option.

6 Q. Okay. I want to go back just a bit
7 to make sure that it's clear what you just talked
8 about in terms of the dates. Mr. Downey noted that
9 there was an effective date of this tariff in 2013,
10 right?

11 A. That is correct.

12 Q. And you were on the Commission
13 June 30th of 2013?

14 A. That's correct.

15 Q. Is that when the tariff was
16 originally approved?

17 A. No, it was not.

18 Q. Okay. When was the tariff originally
19 approved?

20 A. In the 2007 Ameren rate case.

21 Q. And were you on the Commission at
22 that time?

23 A. No, I was not.

24 Q. Okay.

25 A. It was approved in -- the Report and

1 Order was issued in May, and I was appointed to the
2 Commission in September of that year, later that
3 year.

4 MS. TATRO: And I would like to ask
5 the Commission to take notice of the ER-2007-0002
6 Report and Order.

7 JUDGE WOODRUFF: We'll do so. Do you
8 know, Commissioner Jarrett -- Mr. Jarrett, do you
9 know what page that was on?

10 THE WITNESS: The economic riders are
11 discussed on pages 98, 99 and 100, and the quote I
12 mentioned about these not being simple giveaways to
13 leaving the residential customers to pick up the
14 slack is on page 100.

15 JUDGE WOODRUFF: Thank you.

16 BY MS. TATRO:

17 Q. Thank you. Now, Mr. Jarrett, you
18 mentioned that this EDRR tariff requires that the
19 company receiving the discount also get federal,
20 state or I think local, some kind of economic
21 incentive. It's part of a package, right?

22 A. Yes.

23 Q. Why is that important?

24 A. Well, that's important because it
25 isn't just -- it isn't just Ameren ratepayers being

1 expected to pay for this. This is -- this is a
2 statewide issue, economic development and
3 retention. So what this is saying is that the
4 state, regional, local governments all have skin in
5 the game as well to keep these here because of the
6 economic, you know, the economic development
7 positive aspects of that.

8 So it is only fair that the state,
9 local and regional governments -- and, of course,
10 those are elected officials -- make those
11 decisions, and everybody shares in the burden of
12 these types of incentives.

13 **Q. So in your mind, when you compare the**
14 **type of discount that's available under this**
15 **economic development and retention rider and**
16 **Noranda's request, do you think they're more**
17 **similar or dissimilar and why?**

18 A. Oh, they're completely different.
19 Again, these -- this was approved in the context of
20 a rate case where you consider all relevant
21 factors, and again, it doesn't -- it is a situation
22 where there's some deviation within the -- within a
23 2 or 3 percent margin of Ameren's total -- total
24 rate base, and it's very limited to certain
25 circumstances, and it doesn't -- it's really in the

1 context of cost-based rates.

2 Really Noranda -- and you've got to
3 give them credit for being very forthright about
4 what they're doing. They're asking the Commission
5 to abandon cost-based ratemaking, and they want to
6 just pay a rate that they can afford, and they want
7 all the other ratepayers to take up the slack. So
8 nobody's paying cost-based rates under Noranda's
9 request.

10 MS. TATRO: Thank you, sir. I have
11 no further questions.

12 JUDGE WOODRUFF: All right. You can
13 step down.

14 We have one more witness,
15 Mr. Michels. Let's take a ten-minute break before
16 we bring him up. We'll come back -- actually, an
17 eight-minute break. We'll come back at 9:30.

18 (A BREAK WAS TAKEN.)

19 JUDGE WOODRUFF: Okay. Let's come to
20 order, please. We are back from our break, and it
21 would appear that Mr. Michels has taken the stand.

22 (Witness sworn.)

23 JUDGE WOODRUFF: Thank you very much.
24 You may inquire.

25 MATTHEW MICHELS testified as follows:

1 DIRECT EXAMINATION BY MR. BYRNE:

2 Q. Mr. Michels, could you please state
3 your name and business address for the record?

4 A. My name is Matthew Michels. I go by
5 Matt. My business address is 1901 Chouteau Avenue,
6 St. Louis, Missouri.

7 Q. Mr. Michels, your rebuttal testimony
8 and surrebuttal testimony have been marked as
9 Exhibits 104 and 105 respectively, and I guess I'd
10 like to ask you, are you -- are the questions and
11 answers contained in that testimony true and
12 complete to the best of your knowledge and belief?

13 A. Yes, they are.

14 Q. If I were to ask you the questions
15 contained in those Exhibits 104 and 105 here today
16 when you're under oath, would your answers be the
17 same?

18 A. Yes, they would.

19 MR. BYRNE: Your Honor, I would
20 tender -- or I would offer Exhibits 104 and 105 and
21 tender Mr. Michels for cross-examination.

22 JUDGE WOODRUFF: 104 and 105 have
23 been offered. Any objections to their receipt?

24 MR. POSTON: Yes, your Honor, we do
25 object to the receipt of this evidence for several

1 reasons. Everything in this testimony is based
2 upon an improper legal conclusion that rates can be
3 raised on other customers. There's been no
4 foundation laid.

5 And it assumes facts not in evidence
6 regarding revenue requirement? There's absolutely
7 no revenue requirement evidence that would allow an
8 increase on rates of other classes of customers.
9 And it would be confiscatory for the same reasons
10 we heard earlier. That would be the same towards
11 Ameren.

12 For these reasons, we object to
13 admission of this testimony.

14 JUDGE WOODRUFF: Your response?

15 MR. BYRNE: Your Honor, Mr. Michels'
16 testimony is responsive to the ten-year proposal
17 that Noranda has put forward. I understand that
18 the Office of Public Counsel has legal positions.
19 They can put forward those legal positions in
20 briefs, but it should not prevent Mr. Michels'
21 testimony, which is directly responsive proposal in
22 this case, from being in the record.

23 JUDGE WOODRUFF: I'm going to
24 overrule the objection. 104 and 105 will be
25 received.

1 (AMERENUE EXHIBIT NOS. 104 AND 105
2 WERE RECEIVED INTO EVIDENCE.)

3 JUDGE WOODRUFF: For
4 cross-examination, we begin with Staff.

5 MR. THOMPSON: No questions. Thank
6 you, Judge.

7 JUDGE WOODRUFF: Public Counsel?

8 MR. POSTON: No questions.

9 JUDGE WOODRUFF: River Cement?

10 MS. LANGENECKERT: No questions.

11 JUDGE WOODRUFF: Wal-Mart?

12 MR. CHAMBERLAIN: No questions.

13 JUDGE WOODRUFF: Consumers Council?

14 MR. COFFMAN: No questions.

15 JUDGE WOODRUFF: Retailers?

16 CROSS-EXAMINATION BY MR. SCHWARZ:

17 **Q. Mr. Michels, if this smelter closes,**
18 **and given the certainty of Ameren's testimony, will**
19 **Ameren agree to hold its other customers harmless**
20 **from recovery in base rates of the fixed costs**
21 **Noranda now pays?**

22 A. No.

23 **Q. Okay. On page 30, lines 15 through**
24 **18, you talk about the possibility --**

25 MR. BYRNE: Which piece of testimony?

1 MR. SCHWARZ: His rebuttal testimony.

2 I'm sorry.

3 BY MR. SCHWARZ:

4 Q. You talk about the possibility if
5 Noranda's load goes away of retiring a coal plant.

6 A. Okay.

7 Q. Retiring a plant would not reduce the
8 company's rate base; is that your understanding?

9 A. I don't think that's necessarily
10 true.

11 Q. Okay. So do you understand how the
12 accounts are booked when a plant retires? You're
13 not an accountant, are you?

14 A. I'm not an accountant.

15 Q. Okay. That's fair enough. Would the
16 company greenfield or brownfield a site?

17 MR. BYRNE: Objection. Calls for
18 speculation.

19 JUDGE WOODRUFF: Overruled. If he
20 knows, he can answer.

21 THE WITNESS: I don't know.

22 BY MR. SCHWARZ:

23 Q. Would there be other plant that might
24 have to be retired besides just the generation
25 plant, for instance, the transmission or

1 **subtransmission lines leading to the plant?**

2 A. I don't know. I think it would
3 depend on the facts of the specific situation.

4 **Q. What about, for instance, rail spurs,**
5 **things of that nature?**

6 A. I don't know.

7 JUDGE WOODRUFF: You need to get a
8 little closer to the mic or make sure it's on.

9 THE WITNESS: I'm sorry.

10 BY MR. SCHWARZ:

11 **Q. So I take it, then, that you don't**
12 **know what other costs might be imposed on**
13 **ratepayers or that the company might seek in the**
14 **retirement of coal-fired base plant?**

15 A. Not with the generic example that I
16 offered, which was only offered in order to
17 demonstrate that there were other planning-related
18 risks associated with continuing to have to serve
19 Noranda's load.

20 **Q. But it also doesn't address any**
21 **additional costs that customers might face if**
22 **Ameren chooses to retire base load coal plant; is**
23 **that fair?**

24 A. It doesn't assume anything about cost
25 recovery for that retirement.

1 MR. SCHWARZ: Fair enough. Thank
2 you.

3 JUDGE WOODRUFF: All right. For
4 Complainants?

5 MR. DOWNEY: Yes, Judge. I've got a
6 couple of exhibits.

7 JUDGE WOODRUFF: Your next number is
8 33.

9 (NORANDA EXHIBIT NOS. 33 AND 34 WERE
10 MARKED FOR IDENTIFICATION.)

11 CROSS-EXAMINATION BY MR. DOWNEY:

12 Q. Mr. Michels, do you have Exhibit 33
13 in front of you?

14 A. Yes, I do.

15 Q. Is that Data Request No. Noranda 6-1?

16 A. Yes.

17 Q. And this asks some questions in
18 relation to your testimony, correct?

19 A. That's correct.

20 Q. And this is the data response from
21 Ameren?

22 A. Correct.

23 Q. All right. And then Exhibit 34, is
24 that Ameren's data request response to Noranda 6-2?

25 A. Yes, it is.

1 Q. And it again refers to your
2 testimony?

3 A. Yes, it does.

4 Q. All right. Did you know these data
5 responses had been submitted to Noranda?

6 A. Yes, I did.

7 Q. You'd seen them before?

8 A. Yes.

9 Q. All right. I think I may have
10 misspoken. Exhibit 33 includes your -- Ameren's
11 responses not just to DR 6-1 but also DR 6-4 and
12 7-1; is that correct?

13 A. That is correct.

14 Q. Do they also relate to your
15 testimony?

16 A. 6-4 doesn't specifically reference my
17 testimony, but the others do.

18 MR. DOWNEY: Your Honor, I'm going to
19 offer Exhibits 33 and 34 as admissions of Ameren.

20 JUDGE WOODRUFF: 33 and 34 have been
21 offered. Any objections to their receipt?

22 (No response.)

23 JUDGE WOODRUFF: Hearing none, they
24 will be received.

25 (NORANDA EXHIBIT NOS. 33 AND 34 WERE

1 RECEIVED INTO EVIDENCE.)

2 MR. DOWNEY: No further questions.

3 JUDGE WOODRUFF: Okay. Come up
4 questions from the Bench, then. Mr. Chairman?

5 CHAIRMAN KENNEY: Yeah, just a
6 couple. Sorry.

7 QUESTIONS BY CHAIRMAN KENNEY:

8 Q. Looking at Exhibit 33, what is
9 Schedule 1?

10 A. Well, let me preface this by saying
11 I'm not an expert on what each of these individual
12 charges are.

13 Q. Let me withdraw the question. Did
14 you answer this data request?

15 A. Mark Peters answered this data
16 request, and he is -- he reports to me.

17 Q. Okay. Are you generally familiar
18 with these schedules?

19 A. I am aware of them.

20 Q. And they all refer to parts of MISO's
21 tariff?

22 A. Yes. They're all MISO charges of some
23 sort that we would expect to vary with a change in
24 law.

25 CHAIRMAN KENNEY: Okay. I don't have

1 any other questions. Thanks.

2 JUDGE WOODRUFF: Commissioner Stoll?

3 COMMISSIONER STOLL: I have no
4 questions.

5 JUDGE WOODRUFF: Commissioner Hall?

6 COMMISSIONER HALL: I have no
7 questions. Thank you.

8 JUDGE WOODRUFF: All right. Then go
9 back for recross. I don't know if there was really
10 a question there from the Bench, if anyone wants to
11 recross from what the Chairman said. Redirect
12 then?

13 MR. BYRNE: No redirect, your Honor.

14 JUDGE WOODRUFF: Mr. Michels, you can
15 step down.

16 And we have reached the end of the
17 evidence. In looking at the schedule of exhibits,
18 I show that I did not check off that I had admitted
19 Mr. Dauphinais' direct and surrebuttal. I'm
20 assuming that I did, but in case I didn't before,
21 they will be admitted at this point.

22 One other matter we need to take care
23 of while we're on the record. How soon do we want
24 the transcripts? We have briefs due on July 3rd.
25 I'm assuming you want to expedite the transcript.

1 MR. LOWERY: We need them very
2 quickly.

3 JUDGE WOODRUFF: Go off the record
4 for a moment.

5 (AN OFF-THE-RECORD DISCUSSION WAS
6 HELD.)

7 JUDGE WOODRUFF: We had a discussion
8 while we were off the record. The upshot is that
9 the transcript for the first day will be filed on
10 Friday of this week, and the second day will be
11 filed on Monday of next week, if not on Friday.

12 Anything else we need to do while
13 we're on the record?

14 MS. TATRO: I have a question. You
15 know, there were parts of this that we were
16 in-camera and there was discussion about maybe
17 later parts of it could be released. Is Noranda
18 going to go through and designate that so that the
19 briefs can be properly designated and not have to
20 be changed later? How is that process going to
21 work?

22 JUDGE WOODRUFF: I'm open to
23 suggestions.

24 MS. TATRO: Well, that's my
25 suggestion, Noranda reads the transcript and

1 designates what should be confidential and what can
2 be released.

3 MR. DOWNEY: Some of the confidential
4 was Ameren confidential information, too.

5 MR. LOWERY: I guess I'll raise a
6 question. Process and timing-wise, I mean, from a
7 logistical perspective, if that doesn't happen
8 almost immediately upon the transcript coming out,
9 then that creates some significant issues for
10 making that initial brief date.

11 JUDGE WOODRUFF: Of course you can
12 file highly confidential briefs, too.

13 MR. BYRNE: I have an idea. What
14 about if any party that wants to designate
15 something as highly confidential has to -- you have
16 deadline, say you have until X date, and after that
17 you've lost your opportunity.

18 JUDGE WOODRUFF: That creates
19 confusion, though, too. I mean, that -- I don't
20 know if that's workable.

21 MR. COFFMAN: I'd like to support
22 Ms. Tatro's recommendation. In this case, you
23 know, we operated in a way, I guess, to just
24 facilitate the movement through the witnesses that
25 we don't usually do instead of being careful to

1 make sure we only covered, and there were some
2 inadvertent spans where we did stuff that really
3 should have been accessible to the public.

4 I think that's a better process to
5 have the parties who want something to be
6 confidential to have the responsibility of
7 designating, other than making public parties file
8 a motion and bear the burden of having to prove
9 that.

10 MR. DOWNEY: May I suggest that the
11 transcript's going to come out. Parts of it are
12 going to be public. Parts of it are going to be
13 HC. If you on behalf of your client want to change
14 something one way or the other, then you should
15 have the burden to do that by whatever deadline you
16 fix, Judge.

17 JUDGE WOODRUFF: I agree with that.

18 MR. LOWERY: Your Honor, I agree with
19 that as well. I guess one other -- and it's a
20 compromise. It's not trying to get in the way of
21 what I know Mr. Coffman ultimately wants to do.
22 Mr. Coffman I think probably has a number of areas
23 that he wants to be changed. I think I agree with
24 Mr. Downey he should have to designate what those
25 are.

1 But given the timing and the
2 aggressive schedule in this case, it seems to me
3 that we shouldn't have to deal with that issue
4 while we're trying to get the initial briefs filed.
5 But that motion can be made. The Commission agrees
6 to reclassify part of that.

7 We can always as a matter of really
8 clerical work refile briefs later so that it can be
9 a part of the public record but not get in the way
10 of trying to get our briefs done and get them filed
11 on time in the compressed time frame we're having
12 and have to deal with this issue all simultaneously
13 with trying to do that.

14 JUDGE WOODRUFF: You're suggesting
15 that the briefs be filed with --

16 MR. LOWERY: Based on the transcript
17 as it is now, and then if a motion is sustained to
18 change certain portions and that would require that
19 we reclassify our brief, we can -- we can do the
20 word processing and refile the brief in a way that
21 would match up with that ruling at a later date.

22 JUDGE WOODRUFF: Okay. Well, then
23 I'm not going to set a deadline for filing a motion
24 to reclassify. Whenever anybody's ready to file
25 such a motion, feel free to do so. Keep in mind,

1 of course, that a decision's going to come out at
2 some point and fairly quickly.

3 Anything else we need to deal with?

4 MR. DOWNEY: No. Thank you, Judge,
5 for extending the times both days, and thanks to
6 the parties for participating, and the
7 Commissioners as well.

8 JUDGE WOODRUFF: And you can see
9 they're anxious to get going. Off the record.

10 (WHEREUPON, the hearing concluded at
11 9:47 p.m.)

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C E R T I F I C A T E

STATE OF MISSOURI)

) ss.

COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest
Litigation Services, do hereby certify that I was
personally present at the proceedings had in the
above-entitled cause at the time and place set
forth in the caption sheet thereof; that I then and
there took down in Stenotype the proceedings had;
and that the foregoing is a full, true and correct
transcript of such Stenotype notes so made at such
time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

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