

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Hearing

January 10, 2011

Jefferson City, Missouri

Volume 2

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In The Matter of The First Prudence Review	)	
Of Costs Subject To The Commission	)	File No.
Approved Fuel Adjustment Clause Of Union	)	EO-2010-0255
Electric Company d/b/a AmerenUE	)	

MORRIS L. WOODRUFF, Presiding  
CHIEF REGULATORY LAW JUDGE

ROBERT M. CLAYTON, III, Chairman  
JEFF DAVIS  
TERRY JARRETT  
KEVIN GUNN  
ROBERT S. KENNEY,  
COMMISSIONERS

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1 JUDGE WOODRUFF: We're here for a hearing in  
2 Case No. EO-2010-0255, which is a prudence review of  
3 AmerenUE's cost -- Ameren Missouri's cost. We'll begin today  
4 by taking entries of appearance beginning with Ameren  
5 Missouri.

6 MR. BYRNE: Thank you, Your Honor. My name's  
7 Tom Byrne and my address is 1901 Chouteau Avenue, St. Louis,  
8 Missouri 63103 appearing on behalf of Ameren Missouri.

9 MR. MITTEN: Russ Mitten; Brydon, Swearngen &  
10 England, 312 East Capitol Avenue, Jefferson City, Missouri  
11 65102 appearing on behalf of Ameren Missouri.

12 JUDGE WOODRUFF: Thank you. Excuse me,  
13 appearances for Staff.

14 MS. OTT: Jamie Ott, P.O. Box 316, Jefferson  
15 City, Missouri 65102 appearing on behalf of the Staff of the  
16 Missouri Public Service Commission.

17 JUDGE WOODRUFF: Thank you. For Public  
18 Counsel.

19 MR. MILLS: On behalf of the office of the  
20 Public Counsel and the public, my name is Lewis Mills, my  
21 address is Post Office Box 2230, Jefferson City, Missouri  
22 65102.

23 JUDGE WOODRUFF: For MIEC.

24 MR. ROAM: Brent Roam, Bryan Cave, 211 north  
25 Broadway, St. Louis, Missouri 63102 appearing on behalf of

1 MIEC.

2 MS. LANGENECKERT: Lisa Langeneckert of the  
3 law firm Sandberg, Phoenix & von Gontard, 600 Washington  
4 Avenue, 15th floor, St. Louis, Missouri 63101 appearing on  
5 behalf of the Missouri Energy Group.

6 JUDGE WOODRUFF: Any other parties here  
7 represented? I don't see anyone else.

8 All right. First thing we'll need to do is go  
9 ahead and premark exhibits so we'll go off the record for  
10 that purpose.

11 (An off-the-record discussion was held.)

12 (Exhibit Nos. 1 through 15 were marked for  
13 identification by the Court Reporter.)

14 JUDGE WOODRUFF: We can go back on the record.  
15 We're ready to begin with opening statements, beginning with  
16 Ameren Missouri.

17 MR. BYRNE: Are the other Commissioners coming  
18 down?

19 JUDGE WOODRUFF: No, we're ready to go.

20 MR. BYRNE: Okay. May it please the  
21 Commission. My name is Tom Byrne and I, along with my  
22 co-counsel, Russ Mitten, are representing Ameren Missouri in  
23 this case.

24 The facts of this case are pretty simple.  
25 About two years ago on January 27th, 2009, this Commission

1 issued its Report and Order approving a rate increase for  
2 Ameren Missouri in case number ER-2008-0318. There are two  
3 aspects to this Report and Order that are important to this  
4 case: First, the rate increase assumed that Ameren would  
5 receive \$139 million per year in base revenues from the  
6 Noranda Aluminum smelter located in New Madrid, which is by  
7 far the company's largest customer. In other words, the  
8 Noranda revenues are designed to cover \$139 million per year  
9 of the company's base cost of service. Second, the Report  
10 and Order for the first time approved a fuel adjustment  
11 clause for Ameren Missouri. And the terms and conditions of  
12 the fuel adjustment clause were stipulated by the parties and  
13 approved by the Commission.

14 As the Commission may recall, just two days  
15 after this Report and Order was issued, southeast Missouri  
16 was struck by perhaps the most severe ice storm ever to hit  
17 this state. Up to five inches of ice coated everything in  
18 southeast Missouri. It is difficult to fully understand the  
19 magnitude of the damage this storm caused --

20 MR. MITTEN: Judge, the ELMO is not  
21 functioning.

22 JUDGE WOODRUFF: I can only do one thing at a  
23 time. I think it will come up when I switch it over to  
24 there. Do you want me to switch it over to there now?

25 MR. BYRNE: Sure.

1 JUDGE WOODRUFF: I'll try.

2 MR. BYRNE: Or perhaps not.

3 JUDGE WOODRUFF: Or perhaps not. I'm sorry, I  
4 can't get it to work.

5 MR. BYRNE: Okay. Okay. As the Commission  
6 may recall, just two days after this Report and Order was  
7 issued, southeast Missouri was struck by perhaps the most  
8 severe ice storm ever to hit the state. Up to five inches of  
9 ice coated everything in southeast Missouri. It is difficult  
10 to fully understand the magnitude of the damage this storm  
11 caused unless you actually had the opportunity to go down and  
12 visit the area.

13 In total, 36,000 of Ameren Missouri's  
14 customers in six counties lost service and over 3,000 of its  
15 electric poles broke from the weight of the ice. Governor  
16 Nixon declared a state of emergency, and our crews  
17 worked 16-hour shifts in freezing cold weather to get  
18 customers on line, but it was still many weeks before service  
19 was restored to the area.

20 If the ELMO had worked, it was a picture of  
21 broken poles laden with heavy ice. It illustrated the  
22 magnitude of the storm.

23 The Noranda Aluminum smelter was severely  
24 damaged as a result of the storm when the Associated Electric  
25 Company transmission lines that deliver the power to -- that

1 Noranda buys from Ameren Missouri went down under the weight  
2 of the ice. Because the plant was processing molten aluminum  
3 at the time of the ice storm, when power was lost, the  
4 aluminum solidified in place at the plant, stopping all  
5 production. The only way for Noranda to restore production  
6 was to jackhammer the solidified aluminum out of pots that  
7 are used at the smelter, which would take at least many  
8 months to do. At that time, it was unclear if Noranda's  
9 smelter ever could or would return to production.

10           When Ameren Missouri was faced with this  
11 catastrophe, it made a decision that the Staff agrees was  
12 prudent. It entered into long-term requirements contracts to  
13 replace the loss of the Noranda load. There are two reasons  
14 that Ameren Missouri made this choice. First, long-term  
15 requirement sales are very similar to the sales that Ameren  
16 Missouri had been making to Noranda. A long-term requirement  
17 sale is a long-term commitment of resources sufficient to  
18 meet at least a part of the purchaser's load obligations,  
19 which is very similar to the character of our service to  
20 Noranda and very much unlike daily spot market sales into the  
21 MISO, which are separate transactions each day.

22           As Ameren Missouri witness Jaime Haro will  
23 testify, it was important for the company to maintain a  
24 balance in its portfolio between long-term commitments backed  
25 by load and short-term energy sales, particularly since a

1 number of the financial players in the short-term energy  
2 market, such as Laymen Brothers, had become unreliable  
3 counterparties.

4           The second reason Ameren Missouri wanted to  
5 enter into long-term requirement sales is that under the  
6 company's tariff, revenues from long-term requirement sales  
7 are treated exactly like the revenues from the sales to  
8 Noranda which they replaced. Under the company's FAC tariff,  
9 although revenues from daily off system sales are factored  
10 into the FAC calculation, revenues from long-term full and  
11 partial requirement sales are specifically excluded from FAC  
12 or OSSR in the FAC, and they are dealt with in a general rate  
13 case, just like the revenues from Noranda.

14           So by entering into long-term requirements  
15 transactions to replace the lost Noranda revenues, the  
16 company could keep customers and the company in the same  
17 financial position that they would have been in with respect  
18 to these revenues as though no ice storm had occurred. In  
19 other words, the Noranda revenues were outside the FAC and  
20 the revenues from the long-term requirements contracts that  
21 replaced the Noranda load were also outside the FAC.

22           For these reasons, the company entered into  
23 two long-term partial requirements contracts with Wabash  
24 Valley Power Association and AEP operating companies. And  
25 here are the contracts. Both of these contracts are attached



1 to Mr. Haro's surrebuttal testimony and they are at the heart  
2 of the controversy in this case.

3           The Staff and the intervenors argue that these  
4 contracts do not qualify as long-term partial requirements  
5 contracts but the evidence in this case will show that they,  
6 in fact, do. With regard to the issue of whether these  
7 contracts are long-term, the evidence in this case will show  
8 that they are long-term contracts as that term is generally  
9 understood and applied in the power marketing industry.

10           The terms of the contracts are 15 months and  
11 18 months, respectively, and the evidence will show that one  
12 year is widely accepted as the demarcation between long- and  
13 short-term power sales in the marketplace, in Federal Energy  
14 Regulatory Commission proceedings and in other contexts.

15           The evidence will also show that these sales  
16 are partial requirement sales because by the terms of the  
17 contracts, the firm capacity and energy provided must be used  
18 to serve customers' load obligations. Wabash is the  
19 purchasing agent for Citizens' Electric Company, which is an  
20 electric cooperative serving approximately 20,000 customers  
21 in Missouri. The contract with Wabash specifically provides  
22 that the power must be used to meet citizens' load  
23 obligations.

24           The AEP operating companies consists of  
25 utilities serving approximately five million customers in 11

1 states. Again, the contract with AEP specifically provides  
2 that the power must be used to meet the purchaser's load  
3 obligations.

4 It is important to note that these are partial  
5 requirements contracts and not full requirements contracts.  
6 Ameren Missouri does not provide every aspect of service to  
7 these customers but we do provide firm capacity and energy  
8 needed to meet their load obligations. So the contracts  
9 qualify as partial requirements contracts. And the  
10 FAC tariff specifically provides that long-term partial  
11 requirements contracts are excluded from the FAC.

12 The Staff and intervenors make several  
13 arguments to support their claim that these contracts are not  
14 long-term partial requirements contracts and that the revenue  
15 must be flowed through the FAC. First they rely heavily on  
16 the reporting instructions buried on page 310 of FERC Form 1  
17 of their definitions of "long-term" and "requirement  
18 service".

19 This is FERC Form 1. It's a  
20 several-hundred-page long reporting document and if the ELMO  
21 had worked, I was going to show you what page 310 of FERC  
22 Form 1 looks like. So I guess with Your Honor's approval, I  
23 will ask the Commissioners to look at it. Can I pass this to  
24 the Commissioners.

25 COMMISSIONER DAVIS: Has everyone out there

1 seen it?

2 MR. BYRNE: It's attached to Mr. Haro's  
3 testimony.

4 COMMISSIONER DAVIS: I just want to make sure  
5 that they have the opportunity to review it before you bring  
6 it up.

7 MR. BYRNE: Okay. Well --

8 (Document passed around room.)

9 MR. BYRNE: Maybe while they're reviewing it,  
10 I can keep talking to not hold up the opening statement. But  
11 I guess what you'll see when you get this piece of paper is  
12 page 310 has very small-print instructions about what is  
13 supposed to be filed on FERC Form 1. That very page is  
14 attached to Mr. Haro's testimony but hopefully illustrates  
15 that it's a -- something in the fine print on page 310 of a  
16 multi-hundred page document. First of all, it is important  
17 to note that the reporting instructions contained on page 310  
18 -- oh, thank you, Brent.

19 A couple of things about these instructions.  
20 First of all, it is important to note that these reporting  
21 instructions date back to at least 1990, which is several  
22 years before open access transmission and the modern electric  
23 market came into existence. Second, these instructions are  
24 simply reporting protocols that are not intended to be  
25 substantive definitions even applicable in FERC proceedings.

1 The FERC Form 1 instructions require  
2 classification of contracts for reporting purposes into three  
3 categories. Under the reporting instructions, short-term  
4 contracts are classified as less than one year,  
5 intermediate-term contracts are classified from one to five  
6 years and long-term is classified as over five years.

7 And as the evidence will show, these  
8 classifications are completely at odds with the one-year  
9 demarcation between short-term and long-term which is used in  
10 the marketplace. Ameren Missouri witness Jamie Haro  
11 testifies that in twelve years in marketing and trading  
12 power, he has never heard anyone refer to an  
13 intermediate-term contracts and never heard anyone refer to  
14 FERC Form 1 in power contract negotiations.

15 Mr. Duane Highley, an executive with  
16 Associated who has 27 years of experience with power  
17 contracts, testifies that one year has always been the  
18 demarcation between long-term and short-term power contracts.  
19 And even some of the witnesses for our opponents have  
20 acknowledged in their deposition that one year is the common  
21 demarcation between long- and short-term contracts in the  
22 marketplace.

23 Moreover, the FERC itself, who is the author  
24 of FERC Form 1, has consistently used one year as the  
25 demarcation point between short- and long-term power

1 contracts. In a recent order involving power contracts, the  
2 FERC stated -- and this is in Mr. Haro's testimony -- but the  
3 statement the FERC made is: "We thus believe that it is  
4 reasonable to use the convention of treating contracts of a  
5 year or more as 'long-term' consistent with our longstanding  
6 practice."

7               There is absolutely no reason to believe that  
8 the unusual definitions of short-term, intermediate-term and  
9 long-term found in the obscure and undated -- in the obscure  
10 and outdated instructions in FERC Form 1, which are  
11 inconsistent with FERC's own longstanding practice, had  
12 anything to do with the language regarding long-term full and  
13 partial requirements contracts found in Ameren Missouri's  
14 tariff. No one ever mentioned FERC Form 1 instructions when  
15 the tariff was proposed and it is clear that the common, and  
16 in fact, almost universally-used demarcation between  
17 long-term and short-term contracts, one year, was what the  
18 tariff language meant.

19               The other parties also rely on the  
20 instructions on page 310 of FERC Form 1 to support their  
21 incorrect contention that these contracts are not partial  
22 requirement sales. The evidence in this case will  
23 demonstrate that a partial requirement sale is simply a firm  
24 contract for capacity and energy that meets part of the  
25 requirements of the purchaser. That is the commonsense

1 definition of the term based on the plain meaning of the  
2 words "partial" and "requirements" and it comports with the  
3 meaning of the phrase as used in the marketplace as the  
4 company's witnesses will testify. In fact, a number of the  
5 witnesses for our opponents testified in deposition that that  
6 is a reasonable definition of a partial requirements sale.

7 But the FERC Form 1 reporting instructions  
8 contain some additional standards that must be met for a  
9 transaction to qualify as requirement service for FERC Form 1  
10 reporting purposes. First, the reliability of the service  
11 has to be the same as, or second only to, the supplier's  
12 service to its own ultimate consumers.

13 Both of these contracts -- both the AEP and  
14 Wabash contracts -- provide for firm capacity and energy, and  
15 so they meet that standard of reliability. The reliability  
16 of service is the same as, or second only to, the reliability  
17 of service Ameren Missouri provides to its own native load  
18 customers.

19 A second standard in the FERC Form 1  
20 definition of requirements service is -- states that the  
21 projected load for requirement service should be considered  
22 in the supplier's system resource planning. The load covered  
23 by the AEP and Wabash contracts has consistently been  
24 considered in Ameren Missouri's system resource planning.  
25 Before the Noranda plant went down, the Noranda plant was

1 considered an all-system resource planning, including the  
2 most integrated resource plan filed by the company in 2008.

3 In 2009, after the AEP and Wabash sales became  
4 substitutes for the lost Noranda load, they were considered  
5 in all-system resource planning, including module e-filings  
6 with the MISO, including annual and monthly capacity position  
7 calculations, load forecasting, fuel budgeting, risk  
8 management position calculations, all of which Mr. Haro has  
9 testified about.

10 Before I stop talking about FERC Form 1, I  
11 have to point out that it's not even possible that the FERC  
12 Form 1 definitions were the basis for the FAC tariff because  
13 Ameren Missouri's sales to its municipal customers, which all  
14 parties agree qualify as long-term full or partial  
15 requirement sales, don't meet the FERC Form 1 definitions.  
16 All but one of the municipal contracts has terms of less than  
17 five years, so none of those would qualify as long-term under  
18 the FERC Form 1 reporting instructions.

19 And although the municipal contracts were  
20 mentioned in Ameren Missouri's last IRP filing, loads for  
21 these customers were not projected in the IRP past the end of  
22 the year of the filing, which was the end of the term of each  
23 of those contracts. So it is simply not possible that Ameren  
24 Missouri as the drafter of the FAC tariff or the Commission  
25 as the approver of the FAC tariff or any of the other parties

1 base the FAC tariff on the classifications contained in FERC  
2 Form 1.

3           The Staff and the other parties also argue  
4 that Ameren Missouri's classification of the AEP and Wabash  
5 contracts as long-term partial requirements sales is simply  
6 an effort on the part of the company to get around the  
7 Commission's denial of the company's request for rehearing in  
8 Case No. ER-2008-0318, which is the case in which the FAC was  
9 initially approved. But that allegation is not true.

10           When the ice storm hit and the Noranda load  
11 was lost, Ameren Missouri was unsure whether it could  
12 negotiate long-term requirement sales of the extra power that  
13 Noranda was no longer taking. As a result, the company filed  
14 an application of the Commission's Order asking the  
15 Commission to amend its tariff so that the power that had  
16 been taken by Noranda could be sold in the short-term  
17 off-system market and excluded from the FAC.

18           The Commission denied the company's  
19 application for rehearing, saying that it could not revise  
20 the agreed-upon FAC tariff language without a hearing and  
21 pointing out that there was insufficient time for a hearing,  
22 given the imminent operation of law date for the case.

23           Specifically, the order said, "If the  
24 Commission were to grant AmerenUE's application for  
25 rehearing, it would have to set aside the approved



1 stipulation and agreement regarding the fuel adjustment  
2 clause, reopen the record to take evidence on the  
3 appropriateness of the proposed change, and make a decision  
4 before the March 1, 2009 operation of law date.  
5 such action is obviously impossible."

6               So -- but in this case, we are not asking the  
7 Commission to set aside the approved fuel adjustment clause.  
8 In fact, we are asking the Commission to apply the FAC tariff  
9 faithfully to its terms which expressly excludes these kinds  
10 of long-term partial requirement sales from its operation.  
11 This is entirely consistent with the Commission's order on  
12 rehearing in Case No. ER-2008-0318.

13               Staff witness Lena Mantle also argues that the  
14 FAC tariff language should be read to include an unwritten  
15 provision that long-term requirements sales are to be limited  
16 to municipal customers. In effect, Ms. Mantle wants the  
17 Commission to amend the tariff after-the-fact to insert a  
18 word that simply does not appear there. Ms. Mantle's  
19 contention is unreasonable. The tariff is clear and contains  
20 no such limitation.

21               Moreover, Ameren Missouri would have no reason  
22 to agree to such a limitation. The company has a long  
23 history of providing long-term requirement sales to  
24 non-municipal customers, such as cooperatives like Citizens,  
25 and regulated electric utilities such as Arkansas Power &

1 Light Company. Ms. Mantle's argument that the tariff should  
2 be read to include this implicit limitation makes no sense,  
3 is inconsistent with the plain meaning of the words in the  
4 tariff, and should be rejected.

5 Finally, Staff witness Dana Eaves argues that  
6 regardless of other considerations, Ameren Missouri's  
7 authorized return on equity compensates it for the risk of a  
8 loss of load like Noranda's. The company completely  
9 disagrees with that. Although the return on equity  
10 compensates a utility for the normal ups and downs tied to  
11 weather and the business cycle, it does not compensate  
12 utilities for the consequences of unusual, catastrophic  
13 events such as the ice storm of January, 2009.

14 This Commission has recognized this fact when  
15 it has approved accounting authority orders authorizing the  
16 recovery of storm response costs, and it is no less true with  
17 regard to the legitimate costs Ameren Missouri will fail to  
18 recover if the Staff and the other parties' contention that  
19 the plain terms of the FAC tariff should be ignored were to  
20 be accepted by the Commission in this case.

21 I would like to address one final legal issue  
22 before I close. The basis of the Staff and intervenors' case  
23 is Ameren Missouri's alleged imprudence. Not imprudence in  
24 entering into the Wabash and AEP contracts, but imprudence in  
25 classifying the contracts as long-term partial requirements

1 sales. Ameren Missouri believes it did not classify these  
2 contracts as anything. Rather, the contracts simply are what  
3 they are.

4 And as I have explained and as the evidence  
5 will show, these contracts clearly are long-term partial  
6 requirements sales. But in any event, any disallowance of  
7 cost based on imprudence requires a showing that the utility,  
8 faced with the circumstances that it faced at the time and  
9 knowing what it knew, made an imprudent decision.

10 The evidence will show that there's no support  
11 whatsoever for such a contention in this case. Ameren  
12 Missouri made no imprudent decision. Moreover, a showing of  
13 imprudence also requires a showing of detriment to  
14 ratepayers. Here, there is no detrimental impact on  
15 ratepayers whatsoever.

16 The company's sales to Noranda, whose revenues  
17 are excluded from the fuel adjustment clause, were simply  
18 replaced by long-term requirements sales to other customers  
19 whose revenues were also excluded from the fuel adjustment  
20 clause.

21 The ratepayers were left in exactly the same  
22 financial position that they would have been in if no ice  
23 storm had occurred. This provides no basis for any  
24 imprudence adjustment, or any reason to, for the Commission  
25 to put the company in a position of being unable to recover a

1 significant portion of its legitimate costs.

2 Thank you for your attention and we look  
3 forward to putting on our evidence in this case.

4 JUDGE WOODRUFF: Thank you, Mr. Byrne.  
5 Opening for Staff?

6 MS. OTT: Good morning. May it please the  
7 Commission. My name is Jamie Ott, and I'm here today on  
8 behalf of the Staff of the Missouri Public Service  
9 Commission.

10 Today we are here because Staff believes  
11 Ameren Missouri was imprudent for not including certain  
12 revenues associated with off-system sales into its fuel  
13 adjustment clause. This imprudence harmed ratepayers because  
14 they did not receive the revenues associated with the  
15 off-system sales that should have been flown through the fuel  
16 adjustment clause. But instead, they were inappropriately  
17 excluded.

18 The issue today before the Commission is  
19 whether or not the power of sales agreements between Ameren  
20 Missouri and American Electric Power Service Corporation and  
21 Wabash Valley Power Association should be included in the  
22 off-system sales revenue calculation of the fuel adjustment  
23 clause. And whether or not it was imprudent for Ameren to  
24 not include them in the off-system sales calculation to the  
25 detriment of the ratepayers.

1 In Case No. ER-2008-0318, the Commission  
2 granted Ameren's request to have a fuel adjustment clause.  
3 In that case, the parties stipulated to certain aspects of  
4 the fuel adjustment clause formula. One being the OSS -- the  
5 OSSR component, the component that we're here today to  
6 discuss. This stipulation was ultimately approved by the  
7 Commission containing the definition of OSSR that was agreed  
8 to by parties.

9 This definition specifically states that  
10 off-system sales shall include all transactions excluding  
11 Missouri retail sales and long-term full and partial  
12 requirement sales that are associated with, one, Ameren  
13 jurisdiction generating units; two, power purchases made to  
14 serve Missouri retail load; and three, any related  
15 transmission.

16 When determining whether the sales made under  
17 the AEP and Wabash contracts, the Commission must determine  
18 whether those contracts meet all sections of the exclusion.  
19 That's long-term, full or partial requirements sales and that  
20 are associated with Ameren's jurisdictional generating units,  
21 power purchases served -- made to serve Missouri retail load  
22 and any related transmission.

23 AEP holds itself out to be one of the largest  
24 electric utilities in the United States delivering  
25 electricity to more than five million customers in 11 states

1 and owning nearly 38,000 megawatts of generating capacity.  
2 And what you didn't hear in Ameren's opening statement is  
3 that AEP does not serve Missouri customers.

4               So clearly, AEP does not meet the requirements  
5 that power purchases excluded are made to serve Missouri  
6 retail load. Thus, it was imprudent for Ameren to exclude  
7 the revenues associated with this contract from the OSSR  
8 calculation.

9               while wabash does serve Citizens Electric,  
10 which is located in southeast Missouri, it also serves  
11 customers in Illinois, Indiana, Michigan and Ohio.  
12 The wabash contract still meets the condition under the  
13 long-term full or partial requirement sales. Staff believes  
14 it fails both the long-term and requirement sales section of  
15 the OSSR component and thus should not be included into the  
16 calculation.

17               when Staff was presented with the AEP and  
18 wabash contracts, it had to make a determination whether or  
19 not the contracts met the definition in the OSSR component of  
20 the FAC. Staff became unclear of what the OSSR definition  
21 meant, the term long-term full, partial requirements sales  
22 meant. Staff searched through Ameren's tariff looking for  
23 the definitions of the term, finding none.

24               It then looked to the stipulation that was  
25 ultimately approved by this Commission for guidance. Again,

1 there was nothing contained within the stipulation and  
2 agreement that defined the OSSR component of Ameren's FAC.

3 Stipulation and agreements are like contracts,  
4 extrinsic received not allowed. However, the parol evidence  
5 rule allows for extrinsic evidence when there's an ambiguity.  
6 Here, there is clearly an ambiguity.

7 So Staff expert Dana Eaves did what a  
8 reasonable person would do and looked outside for sources to  
9 give guidance on what the terms meant. He looked to the FERC  
10 Form 1, which is filed both at the Federal Energy Regulatory  
11 Commission and here at the Missouri Public Service Commission  
12 as Ameren's annual report.

13 Mr. Eaves used the FERC Form 1 because it is a  
14 comprehensive collection of relevant information on Ameren  
15 and utilities are required to report the information  
16 contained therein. He found that the definitions of  
17 requirement service and long-term were defined within that  
18 form.

19 FERC Form 1 defines requirement service as  
20 "Service which a supplier plans to provide on an ongoing  
21 basis, parentheses; i.e., does supplier include projected  
22 load for this service in its system resource planning, end  
23 parentheses. In addition, the reliability of the requirement  
24 service must be the same, or second only to, the supplier  
25 service to its customers."

1 The FERC Form 1 defines long-term as five  
2 years or longer. These definitions clearly do not apply to  
3 the AEP and Wabash contract. Neither contract is contained  
4 within Ameren's integrated resource plan nor are the  
5 contracts greater than five years.

6 Ameren contends that Staff's treatment of the  
7 AEP and Wabash contracts is inconsistent with how it treated  
8 certain municipal contracts in which Ameren has engaged in  
9 wholesale power sales. However, these municipal contracts  
10 are contained within its integrated resource plan, thus  
11 meeting the definition of requirements sales and there are  
12 also renewal contracts that have been in place for more than  
13 five years.

14 Furthermore, Staff expert Lena Mantle was  
15 involved in the 2008 rate case which Ameren sought to  
16 establish a fuel adjustment clause. When Ms. Mantle had  
17 concerns about the definition, she was informed that the  
18 inclusion language was related to Ameren's municipal  
19 contracts. While Ameren claims Ms. Mantle's recollection is  
20 inaccurate, it has provided no evidence to dispute Ms.  
21 Mantle's recollection of events other than the witnesses just  
22 don't remember the conversation.

23 So Staff has treated the municipal contracts  
24 pursuant to the stipulation and agreement and Ameren's  
25 tariffs approved by the Commission, and also consistent with



1 FERC Form 1 and how Ameren itself classifies the municipal  
2 contracts on the FERC form 1 and how it classifies the AEP  
3 and Wabash contract on the FERC Form 1. Ameren has attempted  
4 to circumvent its fuel adjustment clause, the very clause it  
5 so zealously advocated for at the expense of ratepayers. Or  
6 is it to the benefit of shareholders?

7 Ameren seeks to hide behind the ice storm that  
8 caused Noranda to temporarily reduce its load in January of  
9 2009, seeking sympathy for an unfortunate event to benefit  
10 the shareholders. Ameren has interpreted the tariff language  
11 in an unreasonable fashion to get the relief that benefits  
12 the shareholders at the detriment to the ratepayers.

13 while the statute giving the Commission the  
14 authority to grant a fuel adjustment clause does state the  
15 mechanism should be reasonably designed with a sufficient  
16 opportunity to earn a fair return on equity, it does not say  
17 the fuel adjustment clause is to protect shareholders or  
18 customers for that matter from extraordinary events. It only  
19 states that it should be designed to accomplish that goal.

20 when parties entered into the stipulation and  
21 agreement, they were agreeing that it was designed to provide  
22 the utility with an opportunity to earn a fair return on  
23 equity. At no point has Ameren challenged the Commission's  
24 approved fuel adjustment clause as being unlawful for  
25 inadequate design. Nobody disputes the ice storm, however

1 the reality is Ameren had tariffs in effect and had an  
2 obligation to apply those tariffs appropriately.

3 Ameren is seeking to put a hundred percent of  
4 Noranda -- the Noranda outage onto the ratepayers. Staff is  
5 asking the Commission to find that Ameren's treatment of the  
6 AEP and Wabash contracts was imprudent to the detriment of  
7 the ratepayers. Further, Staff asks that this Commission  
8 determine that the revenues associated with the AEP and  
9 Wabash contracts should be included within the OSSR  
10 definition of Ameren's fuel adjustment clause.

11 Today, we have Staff expert Dana Eaves and  
12 Lena Mantle here to answer your questions. Thank you. Thank  
13 you.

14 JUDGE WOODRUFF: Thank you.

15 Opening for Public Counsel?

16 MR. MILLS: Judge, as you know, Public Counsel  
17 can't do everything in all of the cases, we simply don't have  
18 the people. Two of the factors that we look at to decide  
19 whether or not we're going to be active in the case are, one,  
20 how important it is, and two, how well the public interest is  
21 represented by other parties. This case is a very important  
22 case but nonetheless, the position the Public Counsel would  
23 have taken is well represented by the Staff, the MIEC and the  
24 MEG, so Public Counsel has not been active in this case.

25 So with respect to my opening statement, all

1 I'm going to say is that Public Counsel fully supports the  
2 Staff, the MIEC, and the MEG and I will have some  
3 cross-examination for some witnesses in this case, but I will  
4 be in and out of the hearing to address other matters. Thank  
5 you.

6 JUDGE WOODRUFF: Thank you, Mr. Mills.  
7 Opening for MIEC?

8 MR. ROAM: May it please the Commission, my  
9 name is Brent Roam and I'm here on behalf of the MIEC.

10 In Lewis Carroll's masterpiece Through the  
11 Looking Glass, his famous character Alice is talking to  
12 Humpty Dumpty about the words that he uses and their meaning.  
13 Humpty Dumpty says to Alice, when I use a word, it means what  
14 I choose it to mean.

15 well in this case, Ameren Missouri is trying  
16 to make the words found in tariff sheet 98.3 mean what they  
17 choose them to mean rather than what they actually mean in  
18 the regulatory context. As counsel for Ameren pointed out,  
19 Ameren has been seeking a fuel adjustment clause for some  
20 time. It first sought an FAC in '07, was denied it. Came  
21 before this Commission again in 2008 seeking an FAC and at  
22 that time, the parties got together and hammered out an  
23 agreement stipulation that gave Ameren nearly every single  
24 item it sought. No parties objected to the agreement. This  
25 Commission approved it, and in 2009, Ameren got the fuel

1 adjustment contract it had been seeking.

2           within weeks of obtaining the FAC, Ameren came  
3 back before this Commission and asked to have the FAC  
4 modified. Specifically, Ameren asked this Commission to  
5 allow it to keep revenues from off-system sales to recover  
6 for revenues it projected losing with as a result of the lost  
7 load to Noranda Aluminum from an ice storm.

8           This Commission considered and rejected  
9 Ameren's application for a rehearing finding -- and this was  
10 left out of counsel's description of the Finding -- but this  
11 Commission found in its judgment Ameren had found to  
12 demonstrate sufficient reason to rehear the case.

13 Notwithstanding the Commission's order, Ameren entered into  
14 two off-system power sale contracts with Wabash and AEP and  
15 kept the revenues from those contracts in an attempt to  
16 recover for the lost Noranda load.

17           Ameren is now attempting to characterize these  
18 contracts with Wabash and AEP as long-term partial  
19 requirements contracts rather than what they actually are,  
20 off-system sales. Ameren is attempting to justify keeping  
21 these revenues from off-system contracts by reiterating the  
22 severity of the storm that resulted in the lost Noranda load.

23           Clearly if the contracts at issue were, in  
24 fact, long-term partial requirements contracts as Ameren  
25 contends, Ameren would not need to rely on the severity of

1 the ice storm to justify keeping the revenues accrued in  
2 those contracts. They would simply be entitled to those  
3 revenues pursuant to the language in the FAC and tariff sheet  
4 98.3.

5           The phrase at issue, "long-term partial  
6 requirement service" is found in tariff sheet 98.3. This  
7 phrase has a particular meaning within the regulatory  
8 context. Traditionally and according to the published  
9 definitions from multiple sources, not just the FERC Form 1  
10 but from multiple sources that you will hear in this case,  
11 the phrase "long-term partial requirement service" means  
12 service which the supplier plans to provide on an ongoing  
13 basis. In other words, service for which the supplier  
14 includes projected load in its system resource planning.

15           Ameren rejects the traditional definition of  
16 the phrase as it is used in the regulatory context and as  
17 it's formalized in multiple sources and is now attempting to  
18 convince this Commission that long-term partial requirement  
19 service means nothing more than service provided to a  
20 load-serving entity for at least a year. When asked where  
21 they derive this exceedingly broad and self-serving  
22 definition, Ameren's witnesses offer only the vague and  
23 superficial response that their definition is based on their  
24 experience and trading in the wholesale market.

25           The evidence you will hear in this hearing

1 will demonstrate that Ameren's attempt to redefine what are  
2 clearly off-system sales as long-term partial requirement  
3 sales is untenable. First, Ameren's definition of the phrase  
4 flies in the face of the traditional meaning of the terms as  
5 they are understood in the regulatory context. Second,  
6 Ameren's definition defies the formal definition of the terms  
7 as they are described in multiple reliable source materials.  
8 Third, Ameren's definition of the phrase renders the language  
9 of tariff sheet 98.3 almost completely meaningless. And  
10 fourth, Ameren's definition directly contradicts the meaning  
11 of the phrase as it was understood by the parties at the time  
12 they entered the agreement and stipulation.

13               Unlike the characters in the Lewis Carroll  
14 novel, the parties to this action are not allowed to change  
15 the meaning of words to make them mean what they choose them  
16 to mean. Ameren's contracts with Wabash and AEP are nothing  
17 more than off-system power sale contracts. Redefining them  
18 as something else doesn't make them so.

19               As such, this Commission should find that the  
20 revenues derived from the Wabash and AEP contracts should  
21 flow through the fuel adjustment clause, and should also find  
22 that Ameren's failure to flow those revenues through the  
23 FAC was imprudent, improper and unlawful.

24               Thank you.

25               JUDGE WOODRUFF: Thank you. Opening for MEG?

1 MS. LANGENECKERT: I don't think there's much  
2 more I can add to what Staff and MIEC have already said but I  
3 will note that the parties for the FAC stipulation were  
4 Ameren, MIEC, the Staff, OPC and Noranda. MEG was not a  
5 party to this stipulation as we did not take a position on  
6 the FAC in that case.

7 However, every party in that FAC stipulation,  
8 except for Ameren, agree that long-term partial requirements  
9 contracts are not what AEP and Wabash were. Therefore, we  
10 also ask this Commission to ensure that the revenues from the  
11 Wabash and AEP contracts are included in the OSSR. Thank  
12 you.

13 JUDGE WOODRUFF: Thank you. That's all the  
14 openings so we'll move to the first witness, which will be  
15 Mr. Haro, I think.

16 MR. BYRNE: Yes. Ameren Missouri would call  
17 Mr. Haro.

18 (The witness was sworn.)

19 JUDGE WOODRUFF: You may inquire when ready.

20 MR. BYRNE: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. BYRNE:

23 Q. Mr. Haro, could you please state your name for  
24 the record?

25 A. Yes. My name is Jamie Haro.

1 Q. And Mr. Haro, by whom are you employed?

2 A. By Ameren Missouri.

3 Q. And in what capacity?

4 A. I'm director of asset management and trading.

5 Q. And Mr. Haro, are you the same Jaime Haro who  
6 caused to be filed in this proceeding direct testimony that  
7 has been marked as Exhibit 1 and surrebuttal testimony in HC  
8 and NP forms that's been marked Exhibit 2?

9 A. Yes, I am.

10 Q. Do you have any corrections to that testimony  
11 at this time?

12 A. I would only add that as of January 1st, I  
13 acquired the role of supervising for gas supply for LDC and  
14 gas generation.

15 Q. So that's a change to your current duties?

16 A. Correct.

17 Q. Okay. And is the information as amended by  
18 you here today true and correct to the best of your knowledge  
19 and belief?

20 A. Yes, it is.

21 Q. And if I were to ask you the questions  
22 contained in your pre-filed testimony here today when you're  
23 under oath, would your answers to those questions be the  
24 same?

25 A. Yes, they would.



1 MR. BYRNE: Okay. Your Honor, I would offer  
2 Exhibits 1 and 2 HC and NP into the record and tender Mr.  
3 Haro for cross-examination.

4 JUDGE WOODRUFF: Just to be clear, Exhibit 1  
5 is entirely public and 2 is HC and NP; is that correct?

6 MR. BYRNE: Yes, Your Honor.

7 JUDGE WOODRUFF: Okay. Exhibit 1 and Exhibit  
8 2 HC and NP have been offered. Any objections to the  
9 receipt? Hearing no objections, they will be received.

10 (Exhibit Nos. 1, 2 HC and 2 NP were received  
11 into evidence.)

12 JUDGE WOODRUFF: For cross-examination, we  
13 begin with Staff.

14 MS. OTT: Judge, do you mind if I cross from  
15 counsel's table?

16 JUDGE WOODRUFF: That's fine.

17 CROSS-EXAMINATION

18 QUESTIONS BY MS. OTT:

19 Q. Good morning, Mr. Haro.

20 A. Good morning.

21 Q. You indicated your primary job responsibility  
22 is to maintain a balance in Ameren's portfolio; is that  
23 correct?

24 A. That is correct.

25 Q. Prior to this case, what was your involvement

1 with Ameren's fuel and purchase power mechanism?

2 And I'm going to apologize. I have a little  
3 cold.

4 A. I testified for the Case 2010-0036.

5 Q. Now did you have any direct involvement in the  
6 fuel adjustment clause?

7 A. Not in the original one.

8 Q. Can I direct you to page 4 of your direct  
9 testimony?

10 A. Yes.

11 Q. On line 5, you state you were trying to  
12 maintain Ameren's historical balance. Do you see that?

13 A. Yes.

14 Q. Now, have you read Ameren's application for  
15 rehearing in the ER-2008-0318 case?

16 A. I think I read it.

17 Q. Now Ameren suggested if it wasn't granted the  
18 fuel adjustment clause in that case, Ameren's loss would have  
19 resulted in a windfall for Ameren.

20 A. windfall for Ameren? I don't think so.

21 Q. So if Ameren did not have a fuel adjustment  
22 clause, would the ice storm have resulted in a windfall for  
23 Ameren?

24 A. Of off-system sales. Okay. I understand what  
25 you're saying.

1 Q. So you're agreeing that it would have resulted  
2 in Ameren receiving excess revenue if there was not a fuel  
3 adjustment clause?

4 A. That the sales would have gone through the  
5 off-system sales, yes.

6 Q. What's your definition of a "windfall"?

7 A. I guess it's unexpected retribution, out of  
8 the ordinary.

9 Q. Now does your definition of "windfall" apply  
10 the same to customers as it does to Ameren?

11 A. As far as they receive something they weren't  
12 expecting, yes.

13 Q. So what would be the difference for windfall  
14 to a customer than a windfall to Ameren?

15 A. If the customer has established a rate that  
16 they are expecting to keep and all of a sudden they receive a  
17 major credit that they were not expecting, that would be a  
18 windfall for them. Whereas if the company was not expecting  
19 to receive some money and all of a sudden it received some  
20 money, that would be a windfall for the company. However, if  
21 you were expecting to receive some money and all of a sudden  
22 you don't get it and then you get it back, that's not a  
23 windfall.

24 Q. How much money would the company need for it  
25 to be a windfall?

1 A. I don't think I would put a dollar amount.

2 Q. So your unexpected gain is not just a dollar.

3 How much would it have to be to be an unexpected gain?

4 A. I don't know if I can put a dollar amount.

5 Q. Can you put a dollar amount on how much an

6 individual customer would need for it to be a windfall?

7 A. well, I think that the -- in this case, you  
8 were talking about a revenues for \$140 million. That would  
9 be a windfall.

10 Q. Is Staff proposing that \$140 million --

11 A. No, that's assuming that Noranda's revenues  
12 would go away entirely and then the off-system sales would go  
13 to the ratepayers. I would think that's a windfall.

14 Q. Back on page 4 of your direct, you discussed  
15 the importance of maintaining the balance of the company's  
16 portfolio, correct?

17 A. Yes.

18 Q. Okay. Are you familiar with the Commission  
19 regulations 4 CSR 240-20.090?

20 A. I don't know.

21 MS. OTT: Judge, may I approach?

22 JUDGE WOODRUFF: You may.

23 BY MS. OTT:

24 Q. Chapter 20 deals with electric utilities and  
25 I'm going to point you to the section that I gave you. Can

1 you read me the purpose of that section?

2 A. Sure. "Purpose: This rule sets forth  
3 definitions, structure, operation, and procedures relevant to  
4 the filing and processing of applications to reflect  
5 prudently incurred fuel and purchase power costs through an  
6 interim energy charge or fuel adjustment clause which allows  
7 periodic rate adjustments outside general rate proceedings."

8 Q. Now, do you see anywhere in that paragraph  
9 where it says the fuel adjustment clause is used for  
10 maintaining Ameren's portfolio balance?

11 A. No, I don't.

12 Q. Thank you. Now on page 5 of your direct, you  
13 state that it was prudent for Ameren to transact with  
14 counterparties that had retail loads backing their ability to  
15 pay. Do you see that? Line 15?

16 A. Correct.

17 Q. Would it have been possible for Ameren to  
18 enter into short-term power transactions with customers that  
19 possessed retail loads backing their ability to pay?

20 A. Yes.

21 Q. Now has Ameren ever entered into those type of  
22 power transaction with customers for retail load?

23 A. Yes, we do.

24 Q. And are those the contracts you entered into  
25 on the spot market that you're referring to?

1 A. And foreign markets as well.

2 Q. Now I direct you to page 7 of your direct.

3 You indicate that AEP and Wabash contracts are replacing the  
4 Noranda load. Do you see that?

5 A. Yes.

6 Q. Line 12?

7 A. Yes.

8 Q. When did Noranda come back to normal load?

9 A. April, 2010.

10 Q. Do you know when the AEP and Wabash contracts  
11 expired?

12 A. May 31st, 2010 and October 31st, 2010.

13 Q. So there was a period of time when AEP and  
14 Wabash contracts were not replacing the Noranda load?

15 A. Well, I think you got to see the whole volume  
16 of the manual hours we're describing here. At the beginning,  
17 there was not much of a Noranda load, so at the beginning,  
18 they were replacing with a deficit and then as time goes  
19 through, then probably come March or April, the volume  
20 started matching. So if you look at the whole period of  
21 time, I think the manual hours did offset. It was a pretty  
22 fairly comparison of volumes. But if you just look at  
23 specific points in time, yeah, it's an exercise that you have  
24 to do the exercise of manual hours lost and determine if it  
25 was the same type of manual hours that we lost.

1 Q. So during February, March, and April of 2009,  
2 were you not selling the excess capacity on the spot market?

3 A. what year?

4 Q. 2009?

5 A. We sell excess all the time. All the time we  
6 sell excess or buy the deficits.

7 Q. Now let's go to page 2 of your surrebuttal.  
8 You provide a definition of long-term partial requirements  
9 contracts, do you not?

10 A. Yes.

11 Q. where did you get that definition?

12 A. This definition is my understanding of the  
13 market and that's the same definition that I talk to AEP and  
14 wabash when I talk to them about entering into long-term  
15 partial requirements. So they agreed that these contracts  
16 would meet their definition of partial requirement contracts  
17 as well.

18 Q. Can you cite to any regulatory authority that  
19 uses this particular definition?

20 A. Any regulatory authority? well, I think -- I  
21 don't know if you would consider the EEI to be a regulatory  
22 authority.

23 Q. when you say "EEI," what are you referring to?

24 A. Emerson Electric Institute.

25 Q. And what is the --

1 A. The Emerson Electric Institute.

2 Q. And what is the Emerson Electric Institute?

3 A. Well, I think it's an institute that does  
4 research and is an aggregation of companies also.

5 Q. Who are members of the EEI?

6 A. I wouldn't know off the top of my head.

7 MS. OTT: May I approach?

8 JUDGE WOODRUFF: You may.

9 MR. BYRNE: Ms. Ott, can I see what you're  
10 going to show him?

11 MS. OTT: I'm sorry.

12 BY MS. OTT:

13 Q. Can you read what the first sentence says?

14 A. The Edison Electric Institute is the  
15 association of U.S. shareholder-owned electric companies.

16 Q. So the members of this association are the  
17 investor-owned utilities?

18 A. Same as the members of the market where I  
19 transact, yes.

20 Q. But they're investor-owned utilities?

21 A. Yes.

22 Q. So that's the only other authority you used  
23 for your definition of what a long-term partial requirement  
24 contract is?

25 MR. BYRNE: I'm going to object, Your Honor.



1 I think the question mischaracterizes his testimony.

2 MS. OTT: I think the witness just said he  
3 used his own knowledge as well as the EEI for his definition.  
4 If he used something else --

5 JUDGE WOODRUFF: I'm going to overrule the  
6 objection. You can answer and explain if you need to.

7 THE WITNESS: well, at the time when I entered  
8 a contract, I did not look for particular definitions. what  
9 I did was I contacted counterparties and said I need to enter  
10 into a long-term partial requirement deal and that's the kind  
11 of the section I entered into.

12 BY MS. OTT:

13 Q. But I asked --

14 A. Because I agreed with the counterparties. So  
15 at that point in time, I was not researching what people  
16 called them. I just negotiated them like that in the market.

17 Q. But in your testimony, you're defining what a  
18 requirements -- long-term partial requirements contract is  
19 and I'm asking where you got that definition from, not the  
20 definition you used when you're calling up your  
21 counterparties.

22 A. That's what I'm trying to show in my testimony  
23 that at the time of the negotiation, I -- that's what I  
24 requested to the type of transaction with the counterparties.

25 Q. Thanks. Now, further down on page 2, line 17,

1 you state the AEP and Wabash specifically provide firm  
2 capacity. Is it your opinion that firm capacity is the same  
3 as a requirement contract?

4 A. No, it is not. I think a requirement contract  
5 specifies itself in the contract and has several terms in the  
6 contract.

7 Q. Now let's go to page 4 of your surrebuttal.  
8 when you're discussing AEP, who does AEP serve?

9 A. Its load?

10 Q. Yes.

11 A. That's your question?

12 Q. What states does AEP serve?

13 A. Oh, they serve 11 states. I couldn't name  
14 them all, but I know they serve Ohio and they serve other  
15 states. But at the time, I was aware that they were also --  
16 they've been aggressively marketing power in the State of  
17 Missouri, so that's why I called them looking for service in  
18 Missouri.

19 Q. But do they serve Missouri?

20 A. I'm not fully aware about the time right now.  
21 They still have contracts in the State of Missouri.

22 Q. Hold on one second.

23 MS. OTT: May I approach?

24 JUDGE WOODRUFF: You may.

25 BY MS. OTT:

1 Q. I'm going to hand you American Electric  
2 Power's fact book, which is available on their web site. Do  
3 you see on the list of their regional utility division that  
4 they serve anywhere in Missouri?

5 A. They're talking about distribution companies  
6 here. They may have some marketing contracts with citizens  
7 in the State of Missouri that just like other companies do  
8 with city of Rolla or city of Farmington or James -- St.  
9 James, so.

10 Q. But you don't know that they're serving anyone  
11 in the State of Missouri?

12 A. Not as of right now.

13 Q. So how do they meet the Missouri  
14 jurisdictional requirement that's within the -- the tariff on  
15 98.3 if they're not serving anyone in Missouri?

16 A. I don't understand your question.

17 Q. So in the tariff of the OSSR in the exclusion,  
18 it says one of the exclusions is that they must meet the --  
19 be serving Missouri jurisdiction. How is AEP serving  
20 Missouri jurisdiction?

21 A. I don't read the tariff like that. I think  
22 those sub-bullets refer to the off-system sales, not to the  
23 exclusion. If you see where the commas are located, it's  
24 pretty clear that the exclusion applies to the off-system  
25 sales and then the sub-bullets refer to the off-system sales

1 revenue.

2 Q. So when it says that are associated with, you  
3 don't read that to be along with a long-term full and partial  
4 requirement sales?

5 A. I don't have it right here in front of me,  
6 so -- but I can point you exactly where. If I remove the  
7 exception entirely, you'll see where it flows through that  
8 the OSSR related to the three sub-bullets and then the  
9 exclusion only applies to the revenues, not the sub-bullets  
10 to the exclusion. However, if your question is regarding the  
11 --

12 MS. OTT: May I approach?

13 JUDGE WOODRUFF: You may.

14 THE WITNESS: So this reads off-system sales  
15 shall include all sales transactions excluding Missouri  
16 retail sales on long-term full and partial requirement sales,  
17 comma. So that comma, if you remove it, off-system sales  
18 shall include all sales transaction comma excluding Missouri  
19 retail sales on long-term full and partial requirement sales,  
20 comma -- so from here on it applies to off-system sales --  
21 that are associated with AmerenUE Missouri jurisdictional  
22 generating units, which by the way where the sales are coming  
23 are in the Missouri jurisdictional generating units. So that  
24 will tie there even for AEP and Wabash. Power purchases made  
25 to serve Missouri retail load, and three, any related

1 transmission.

2 BY MS. OTT:

3 Q. So is it your testimony you do not believe  
4 that subsection one, two, and three apply to the long-term  
5 full and partial requirement sales?

6 A. I don't believe, and even if it did, those are  
7 sales coming from the generation. So those are sales coming  
8 from Missouri jurisdictional generating units. So even if it  
9 did apply, the sales that I am making are related to those  
10 generating. It refers to the generation, not to the  
11 purchaser. So the generation comes from those type of units.

12 Q. I see where at number one it talks about  
13 jurisdictional generation units. Subsection two says, Power  
14 "purchases are made to serve Missouri retail load." So  
15 wouldn't that not be that the power purchases sales you're  
16 going to -- that you enter into are made to serve the  
17 Missouri retail load?

18 A. We enter into those purchases whenever you  
19 have deficits. So that's -- that's the least of a number  
20 that we're talking about. But still, that doesn't apply to  
21 the exception.

22 Q. So are you saying that none of those apply to  
23 the tariff?

24 A. To the exception. To the exception. It --  
25 none of this apply to the partial requirement -- long-term

1 full and partial requirement sales or the retail sales.

2 Q. Did somebody tell you that that does not apply  
3 to them?

4 A. No, I've been reading this for awhile and I  
5 think I can understand it.

6 Q. So -- but that's just your interpretation of  
7 the exclusion?

8 A. That is my interpretation of the tariff.  
9 That's how I understand it, yes.

10 Q. Now let's turn to page 5 of your surrebuttal.  
11 Is it your opinion that the FERC Form 1's definition are  
12 outdated?

13 A. It's my opinion that they were made in many  
14 years ago, way before the new market started, even before  
15 MISO started. So a lot of those things don't apply.

16 Q. So you're saying they're outdated?

17 A. I would say for a matter of significance, they  
18 can still be used, but not for transacting in the market. I  
19 don't use them for transacting in the market. For accounting  
20 referring purposes, there's many things they work a good  
21 function if you want to do market research and understand  
22 what it's in different utilities and understand what's in the  
23 same basis, I think it's a good tool. But as far as the  
24 market tool to determine what you're transacting, I don't  
25 think they've ever been used like that.

1 Q. I'm going to ask my question again. Is it  
2 your opinion that the FERC Form 1 is outdated?

3 A. I would say yes and no.

4 Q. It's a yes-or-no question, Mr. Haro.

5 A. Depending on the purpose. It's outdated for  
6 market transactions, yes. Is it outdated for accounting  
7 reporting, no. That's the tool we still use.

8 Q. So has Ameren ever made a claim before the  
9 FERC that for market purposes the FERC Form 1 is outdated?

10 A. No, FERC Form 1 never had relevance for me  
11 before or for the company itself.

12 Q. Are you aware if Ameren has ever made a claim  
13 before the Commission that the FERC Form 1 is outdated for  
14 market purposes?

15 A. Before intervenors brought FERC Form 1 into  
16 this division, we never considered it to be that relevant.

17 Q. So you've never made a claim before the  
18 Commission that it was outdated?

19 A. No.

20 Q. Let's go to page 10 of your surrebuttal. Here  
21 you're discussing your contracts with the cities of Kirkwood,  
22 Marceline, Perry, and Kahoka. Now, you're stating that these  
23 power contracts are less than five years; is that correct?

24 A. Except Perry, yes.

25 Q. How long has Ameren had a relationship with

1 the city of Kirkwood?

2 A. I don't know.

3 Q. You've been in your position for five years;  
4 is that correct?

5 A. The last one, yes.

6 Q. And during your tenure in this current  
7 position, has Ameren been in a relationship where it provides  
8 power to the city of Kirkwood?

9 A. Yeah. I think we had a relationship with  
10 Kirkwood for a long time.

11 Q. For more than five years?

12 A. Yes.

13 Q. Okay. How about the city of Marceline? How  
14 long?

15 A. I would assume -- several years.

16 Q. So again, you've been in a relationship with  
17 providing power to the city of Marceline for over five years?

18 A. Yes.

19 Q. Now, the city of Kahoka?

20 A. Yeah, with all the cities, including AEP and  
21 Wabash.

22 Q. I just want the record to be clear, that's why  
23 I'm going through each of them individually. So that would  
24 be the same for the city of Perry, you've had a relationship  
25 with them for over five years?



1 A. Yes.

2 Q. Now does the city of Perry have any of its own  
3 generation?

4 A. I don't think they do.

5 Q. How about the city of Kahoka?

6 A. I think they do.

7 Q. They have -- do you know how much generation  
8 they have?

9 A. Six or seven megawatts.

10 Q. Is it enough to serve their load?

11 A. No.

12 Q. Their city?

13 A. well, I would have to check, but it may be.

14 I'm not sure. It's not economic, though.

15 Q. So the city of Kahoka doesn't have economic  
16 generation?

17 A. They have a generation that it's about seven  
18 megawatts and it would cost \$200 to run, so.

19 Q. So they're not currently using any of their  
20 own generation?

21 A. We call on it from time to time when we have  
22 to get voltage support and things like that from the  
23 distribution site.

24 Q. But on a day-to-day basis, they're not using  
25 any of their own generation?

1 A. No, they're not.

2 Q. How about the city of Marceline, do they have  
3 any of their own generation?

4 A. They may. I don't remember exactly which one  
5 had another generator.

6 Q. So are you aware if the city of Marceline uses  
7 its generation -- if it has generation on a day-to-day basis?

8 A. No, they are the same.

9 Q. Now the city of Kirkwood has some of its own  
10 generation, correct?

11 A. Not yet. I don't think it's online yet.

12 Q. Oh, okay. So Ameren is supplying all of the  
13 city of Kirkwood with its generation?

14 A. Yes, right now we are.

15 Q. Okay. Let's go to page 12 of your  
16 surrebuttal. Starting on line 17, you refer to the Electric  
17 Energy, Inc. glossary of electric industry terms; is that  
18 correct?

19 A. Yes.

20 Q. What type of company is Electric Energy, Inc.?

21 A. I think I may have referred to it as an  
22 electric institute there, not to Electric Energy, Inc. That  
23 may be a mistake.

24 Q. But do you know what the Electric Energy, Inc.  
25 is?

1 A. I wouldn't be able to give you the definition,  
2 no.

3 Q. Do you know who owns the Electric Energy,  
4 Inc.?

5 A. Are you talking about -- is that our  
6 generation in Tennessee Valley? I'm not sure.

7 Q. Does Joppa, Illinois sound more familiar to  
8 you?

9 A. Yes. Yeah, that's a typo in the surrebuttal  
10 testimony. It should have been the electric industry of  
11 terms which is in the glossary, which we talked about before.

12 Q. I just -- I just want to make sure you weren't  
13 defining a term from Electric Energy, Inc.

14 A. No. Sorry.

15 Q. Now on page 24. Let's go there. On Line 19  
16 to 23. Now you state that Ameren never intended to limit the  
17 section of the fuel adjustment clause tariff; is that  
18 correct?

19 A. Yes.

20 Q. Is it your position that they never intended  
21 to limit the section?

22 A. My position is if they wanted to limit it,  
23 they would have included the words in there.

24 Q. Okay. But I'm -- ever. So when they didn't  
25 include it, they never intended to limit it -- the exclusion

1 section of that tariff?

2 A. Yeah, at the time they wrote it, I don't think  
3 that was an intention to exclude it.

4 Q. Do you know if that was changed going forward?

5 A. Yes. We changed it into the next rate case.

6 Q. And what word did you add into that?

7 A. "Municipalities." We clarified it because if  
8 that was intention, then it was very simple to just limit it  
9 to municipalities, so --

10 Q. Okay. Thank you. That let's go to page 28.

11 A. Of my surrebuttal?

12 Q. Sorry. So Mr. Haro, is it fair to say that  
13 "regulation" and "energy trading" are not the same thing?

14 A. Yes.

15 Q. Now is Ameren required by the Missouri  
16 Commission to provide periodic information regarding its  
17 requirement sales and other type of power sales?

18 A. Yes.

19 Q. And what type of reporting mechanism is that?

20 A. I don't know the precise name. I think we do  
21 a quantity report for a fuel adjustment clause.

22 Q. would it also be reported in the annual  
23 report?

24 A. In the what?

25 Q. Annual report.

1 A. I would assume. I don't know.

2 Q. And that annual report is the same FERC Form 1  
3 that you file at the Federal Energy Regulatory Commission?

4 A. Oh, I was thinking about the quarterly reports  
5 that we do for the fuel adjustment clause.

6 Q. Do you report the sales annually?

7 A. Do I report?

8 Q. Do you report the power sales and requirement  
9 sales to the Commission annually?

10 A. Yeah, I think we do.

11 Q. And that's in the annual report?

12 A. Yes, we do.

13 Q. And the annual report is the same as the FERC  
14 Form 1 that you file at FERC?

15 A. Yes.

16 Q. Is it Ameren's position that the information  
17 provided to the Commission through the annual reports  
18 regarding requirement power sales should not be relied upon  
19 at the Commission?

20 A. The information is reliable but it should not  
21 be used for the definition of the tariff of long-term full  
22 and partial requirement sales.

23 Q. Has Ameren ever informed the Commission of  
24 this perceived deficiency in the area of the annual report?

25 A. We have not because before the intervenors

1 brought it to our attention, we didn't consider that  
2 definition to be that important.

3 Q. Does Ameren currently supply any system  
4 planning services for AEP?

5 A. Can you ask again?

6 Q. Does Ameren currently supply any system  
7 planning for AEP?

8 A. No.

9 Q. Does Ameren currently -- did Ameren  
10 currently -- did Ameren supply any system resource planning  
11 for the AEP contract that went into effect in 2009?

12 A. I'm not sure if the way you're asking the  
13 question is the way I understand. The way I understand is  
14 did we include AEP in our system resource planning? Yes, we  
15 did. Did we do it for them, we did not.

16 Q. So you didn't supply them with any planning  
17 services within that contract?

18 A. Planning services for AEP, we don't do that.  
19 we do planning services for Ameren Missouri, which includes  
20 services that we provide to them.

21 Q. Did Ameren supply wabash with any planning  
22 services?

23 A. No, we did not.

24 Q. Now when you said you included them in your  
25 system resource planning, you're just using them as a

1 replacement for Noranda; is that correct?

2 A. No. When I talk about system resource  
3 planning, I talk about multiple things. I talk about what do  
4 I have to show to MISO so I have enough resources to meet my  
5 obligations, so I need to show resources and obligations.  
6 And as the matter of putting those obligations in the system  
7 planning, I am including them in the system planning. So  
8 that's how they get the credits for their planning resource  
9 credits that we use for -- for MISO purposes and for  
10 reliability planning. That's one of the multiple system  
11 resource planning that we use.

12 Q. So are the AEP and Wabash a part of Ameren's  
13 integrated resource plan on file here at the Commission?

14 A. Okay. So that -- but that's a different  
15 question. You're now being specific --

16 Q. I'm not --

17 A. -- for the integrated resource plan. No,  
18 their names of AEP and Wabash were not included.

19 Q. Thank you. Does AEP have any of its own  
20 generation?

21 A. Yes, they do.

22 Q. Does it rely upon Ameren in any way to supply  
23 the generation to meet its load requirement on an ongoing  
24 basis?

25 A. Supply their own generation? No.

1 Q. Now does wabash have any of its own  
2 generation?

3 A. I don't think they do, but I'm not certain.

4 Q. Does Ameren take into account the needs of the  
5 municipalities? When I say "municipalities," I'm referring  
6 to the cities of Kirkwood, Kahoka, Perry and Marceline in its  
7 resource planning?

8 A. Yes. When we filed the marginally and we do  
9 many of our resource plannings, yes, we include those  
10 obligations as well as we did AEP and Wabash.

11 Q. Now was it Ameren's intent when they entered  
12 into the contracts with AEP and Wabash that the contracts  
13 would be for the approximate duration of the Noranda outage?

14 A. At the time that we entered the contracts, we  
15 didn't know the length of the duration of the Noranda outage.  
16 So the way we started them, we had a block contract with AEP  
17 that would cover the base load and we had the second or the  
18 uppermost part of the load that we lost, but we didn't know  
19 that would ever come back. So assuming Noranda wouldn't come  
20 back, then yeah, I guess we would have to renew some of those  
21 contracts. But we didn't know at the time.

22 Q. Now did Ameren seek to renew its contracts  
23 with AEP and Wabash?

24 A. Because as I stated previously, Noranda came  
25 back to full load before the contracts expired.



1 Q. Now do you agree with the FERC Form 1  
2 instructions that indicate that requirement service is  
3 service that the supplier plans to provide on an ongoing  
4 basis? I think you state that on page 176 your surrebuttal.

5 A. I think that's the instruction they give us to  
6 file FERC Form 1, so I have to agree with it.

7 Q. Would you consider a reasonable definition of  
8 "ongoing" to be as long as the Noranda outage last?

9 A. Well, ongoing could be during the term of the  
10 contract as well. I can understand that I'm going to be  
11 ongoing supplying power during the term of the contract.

12 Q. And that could be as long as Noranda was out?

13 A. Or as long as the contract was in place.

14 JUDGE WOODRUFF: Ms. Ott, if I can interrupt  
15 for a moment. As you may all be aware, there was going to be  
16 a national moment of silence for the victims of the Arizona  
17 shooting at ten o'clock and it's my understanding that there  
18 will be an announcement over the intercom to announce that.  
19 When that happens, we will go off the record for that moment  
20 of silence. You can continue until then.

21 BY MS. OTT:

22 Q. Mr. Haro, is it your opinion that electric  
23 companies should be shielded a hundred percent from the  
24 consequences of an extraordinary event?

25 A. No.

1 Q. But isn't that what Ameren is seeking here,  
2 that the shareholders be shielded a hundred percent from the  
3 effect of the Noranda outage?

4 A. No, I think we have a tariff that it's very  
5 clear and the tariff expressively says that long-term full  
6 and partial requirements should be excluded from the  
7 calculation and I enter into long-term full and partial  
8 requirement transactions with those two customers. So I'm  
9 following the letter of the tariff.

10 Q. Did anyone tell you that you had to enter into  
11 a long-term requirements contract?

12 A. No.

13 Q. Now I think I heard earlier that you said that  
14 you had long-term contracts with AEP and Wabash.

15 A. Long-term relationships.

16 Q. Relationships. When you discuss -- talk about  
17 relationships, what are you referring to?

18 A. Well, you were talking about if I had had  
19 relationships with Kirkwood and the other cities for a long  
20 time. I've also had long-term relationships with Citizens  
21 for a long time, which is the load I was serving through  
22 Wabash and I've had interactions with AEP also for a long  
23 time.

24 Q. But when you were talking about the cities of  
25 Kirkwood, Perry, Kahoka and Marceline, you've had long-term

1 contracts, you've had contracts for more than five years with  
2 them, correct?

3 A. We've had contracts that long in the past,  
4 yes. But you specifically asked about relationships.

5 Q. Well, I'll ask about contracts now then. So  
6 you've had contracts in place with the city of Kirkwood for  
7 more than five years?

8 JUDGE WOODRUFF: All right.

9 (A moment of silence.)

10 JUDGE WOODRUFF: We're back on the record.  
11 You may proceed.

12 BY MS. OTT:

13 Q. So you've had a contract with the city of  
14 Kirkwood for more than ten years; is that correct?

15 A. Yeah, before the current ones, yes.

16 Q. How about --

17 A. The current ones are not that long.

18 Q. But there has been no break in service for  
19 more than ten years between?

20 A. For some cities we had. For example, we  
21 didn't renew Hannibal and Kahoka that were included in there  
22 before. So some of it comes, some of it goes. So those  
23 relationships exist but not necessarily with contracts all  
24 the time.

25 Q. Now you bring up the city of Hannibal. You

1 didn't renew that contract. Did Ameren -- is Ameren Services  
2 engaged in a contract with the city of Hannibal now?

3 A. Ameren Services?

4 Q. Yes.

5 A. No.

6 Q. They're not?

7 A. No.

8 Q. Now back to when if you had -- you've had a  
9 relationship with AEP and Wabash you said for a long time.  
10 Do you know when that relationship began with AEP?

11 A. No, I don't know. We've had -- we've had  
12 contracts in place with them for at least since 2002, I  
13 think. There was one EEI that we had in place, but I'm not  
14 sure. I would have to confirm the dates. The last system  
15 that we have in place with them dates to 2006, but that  
16 replaced EEI.

17 Q. How about Wabash? Do you know when that  
18 relationship began with Wabash?

19 A. Well, I see Wabash as Citizens really and that  
20 relationship with Citizens goes way back. You can go to that  
21 FERC Form 90 that you were showing before and Citizens is in  
22 there. So we've had long-term relationship with Citizens.  
23 The thing is we can't transact with Citizens directly  
24 anymore, we have to do it through Wabash nowadays.

25 Q. Okay. But with Wabash, though, how long has

1 that relationship been?

2 A. with wabash itself? I don't know. I don't  
3 know the specifics.

4 Q. Should the AEP and wabash contracts be  
5 included in its resource planning?

6 A. In which resource planning?

7 Q. The integrated resource planning.

8 A. We didn't have our integrated resource plan  
9 during the time of those contracts.

10 Q. But should it be in your new --

11 A. As far as they would have been part of the  
12 year usage for during the plan-ahead, I think they should be.

13 Q. Should the AEP and wabash contracts be  
14 included in the rate case fuel runs?

15 A. Which rate case? Could you be more specific?

16 Q. In general, if you're in a contract with AEP  
17 and wabash, should they be included in the rate case fuel  
18 runs?

19 A. I don't understand what you mean by rate case  
20 fuel runs. When we have a rate case going, is that what you  
21 mean?

22 Q. Yes. If you were in a contract with AEP and  
23 wabash, should those contracts be included in the fuel runs?

24 A. If it's in the test year as part of the  
25 assumptions, they should be included.

1 MS. OTT: Just one second.

2 BY MS. OTT:

3 Q. Mr. Haro, earlier you were discussing the lost  
4 revenue due to Noranda. Have you seen Ameren's 2008 annual  
5 report?

6 A. I have seen it.

7 MS. OTT: May I approach?

8 JUDGE WOODRUFF: You may.

9 MS. OTT: Thank you.

10 BY MS. OTT:

11 Q. I'm going to direct you to page 69 in there.  
12 Now in Ameren's 2008 annual report, they discussed the  
13 Noranda outage here on page 69; is that correct?

14 A. No, I haven't finished reading it.

15 Q. Okay. I'll give you a moment.

16 A. Yes, if you don't mind, yes.

17 Q. So would a fair characterization of that  
18 paragraph you just read indicates that because Noranda went  
19 off line, you had the ability to have off-system sales?

20 A. It says you could, yes.

21 Q. Could. But you didn't want to because that --  
22 that would mean that the money would go back into the fuel  
23 adjustment clause and go to the ratepayers and not the  
24 shareholders, correct?

25 A. Well, it is not as simple as that. There were

1 several considerations made at the time.

2 Q. But you didn't want to -- does this say you  
3 did not want to enter into off-system sales so you were  
4 considering alternative revenues to recover any lost revenues  
5 resulting from the Noranda power outage?

6 A. what we did was we looked at the tariff plus  
7 and we matched it with the balance of the portfolio and  
8 determined that we didn't want to stay in short-term  
9 contracts. We wanted to cover the long-term duration of the  
10 excess sales. We wanted to make sure that we had the  
11 protection for the market coming off farther down and that's  
12 why we enter into long-term transactions. That was one of  
13 the things we considered.

14 Then the other consideration was we were  
15 looking for similar to Noranda loads to make sure that we had  
16 a similar protection that we had with the Noranda load and  
17 same profile geographically speaking, geographically for  
18 congestion purposes. And based on all the things that we  
19 considered, rebalancing our portfolio from long-term to  
20 short-term and the fact that the tariff allowed us to enter  
21 into partial -- long-term partial requirement transactions,  
22 we decided to go that way and enter into long-term partial  
23 requirement transactions.

24 Q. So is what you're saying is Ameren looked at  
25 the tariff and decided it needed a way to go around the

1 off-system sales to make sure it recovered what it costs from  
2 the Noranda loss?

3 A. No. We looked at the possibilities we had and  
4 the tariff specifically allowed us to enter into long-term  
5 partial requirement transactions, so we decided to enter into  
6 those account transactions.

7 MS. OTT: I would like to mark this annual  
8 report as an exhibit.

9 JUDGE WOODRUFF: All right.

10 (Exhibit No. 16 was marked for identification  
11 by the Court Reporter.)

12 MS. OTT: I'd like to offer Ameren's 2008  
13 annual report into the record.

14 JUDGE WOODRUFF: All right. The 2008 annual  
15 report for Ameren has been offered into evidence. Are there  
16 any objections to its receipt? Hearing none, it will be  
17 received. And Ms. Ott, if you will provide us copies of that  
18 as soon as possible.

19 MS. OTT: I'll have that at the lunch break if  
20 that's okay.

21 JUDGE WOODRUFF: That's fine.

22 BY MS. OTT:

23 Q. I just want to go back to one thing when you  
24 were talking about the AEP and Wabash and how you had a  
25 relationship with them. You did not have contracts in effect



1 during what you perceive as the relationship period with AEP  
2 and wabash, did you?

3 A. I have an enabling master agreement with AEP  
4 that was in effect in that time.

5 Q. That doesn't necessarily mean you were  
6 providing power to AEP under a contract.

7 A. Not like those. I may be selling power to AEP  
8 in any given hour.

9 Q. But that power would be what you consider the  
10 spot market power?

11 A. Or forwards.

12 Q. But that would be a very short duration of  
13 time, correct, like hourly?

14 A. Or monthly. It can vary. It can vary. I can  
15 enter into different transactions with them for different  
16 periods as well.

17 Q. But you're not sure if you were --

18 A. what I didn't have was a partial requirement  
19 transaction like this one. That I am sure. I have other  
20 types of transactions.

21 Q. Or what you require as a partial requirements  
22 transaction?

23 A. And they, too. So both parties agree that  
24 this is a partial requirements contract.

25 MS. OTT: I don't have any further questions.

1 Thank you.

2 JUDGE WOODRUFF: Thank you. And we're due for  
3 a break. We'll take a break and come back at 10:30.

4 (A break was held.)

5 JUDGE WOODRUFF: Let's go back on the record.  
6 Before we took our break, Staff had completed their  
7 cross-examination of Mr. Haro. So we'll move on to Public  
8 Counsel and he's not here at the moment, so we'll move on to  
9 MEG.

10 CROSS-EXAMINATION

11 QUESTIONS BY MS. LANGENECKERT:

12 Q. Good morning, Mr. Haro.

13 A. Good morning.

14 Q. I'm Lisa Langeneckert. On page 3 of your  
15 direct testimony on lines 18 to 21, you state that the  
16 purpose of your testimony is to explain why Ameren Missouri's  
17 decision to enter into the long-term partial requirements  
18 contract addressed in the Staff's prudence report and  
19 recommendation was part of the sound prudent management of  
20 the company's power sales portfolio. Is that an accurate  
21 paraphrasing of what you said?

22 A. Yes.

23 Q. When Ameren Missouri proposed the FAC, was  
24 that part of the sound prudent management of the company's  
25 power sales portfolio?

1 A. what was it?

2 Q. when they proposed the FAC in the 2008 case.

3 A. The FAC itself, was it prudent.

4 Q. No, I'm asking when they proposed it, was that  
5 part of the company's sound prudent management of their power  
6 sales portfolio?

7 A. I'm sorry, I guess I don't understand. You  
8 mean the FAC was part of that -- of that.

9 Q. was the proposal of that FAC part of their  
10 sound prudent management of their power sales portfolio?

11 A. I guess it was, but it was done outside my --  
12 the normal area. what I'm referring to here is the  
13 operations that we do in our group, the operations that we do  
14 in our group is a prudent sound management of the generation  
15 and obligations.

16 Q. Right. And I'm just asking, do you believe  
17 that when Ameren filed the FAC in that case, in the 2008  
18 case, was that part of the -- was their proposal part of the  
19 sound -- was the proposal part of the sound prudent  
20 management of Ameren's?

21 A. That's not what I'm referring to.

22 Q. That's not what asking you, if that's what  
23 you're referring to. I'm asking if that was part of the  
24 sound prudent management of the portfolio.

25 A. I guess it was.

1 Q. Was the FAC that Ameren Missouri proposed --  
2 well, never mind. I asked that.

3 when planning the company's power sales  
4 portfolio, did you consider the possibility of the Taum Sauk  
5 failure?

6 A. Can you repeat again? When I did what?

7 Q. When planning the company's power sales  
8 portfolio, did you or are you aware if anyone else at Ameren  
9 considered the possibility of the Taum Sauk failure?

10 A. We planned for forced outage rates, which  
11 included some portion of that. So when we do our planning  
12 with the rate units, it's appropriate to assume that some  
13 generation will be missing at any point in time.

14 Q. Do you know how much the failure for Taum Sauk  
15 cost Ameren?

16 A. Not off the top of my head.

17 MR. BYRNE: I'm going to object. It's  
18 irrelevant.

19 JUDGE WOODRUFF: What is the relevance of  
20 this?

21 MS. LANGENECKERT: I'm just talking about the  
22 various prudence types of things that Ameren's done, whether  
23 it was prudent or imprudent to anticipate certain things.

24 JUDGE WOODRUFF: I'm going to overrule the  
25 objection. You can go ahead and answer the question. You

1 can ask her to repeat it if you need to as well.

2 MS. LANGENECKERT: I don't think we had a  
3 question outstanding.

4 JUDGE WOODRUFF: Okay.

5 BY MS. LANGENECKERT:

6 Q. I said how much did the outage cost Ameren and  
7 I believe you said you didn't know, correct?

8 A. Correct.

9 Q. Was it prudent of Ameren to discount the  
10 possibility of failure?

11 A. I don't think it is.

12 Q. So even when Ameren acts prudently, there is a  
13 chance of loss; is that correct?

14 A. Yes.

15 Q. Was it imprudent of Ameren Missouri to  
16 discount the possibility that sales to Noranda might  
17 decrease, whether it was because of economic conditions or a  
18 natural disaster?

19 A. I don't think it was.

20 Q. Okay. On page 2 of your surrebuttal  
21 testimony, starting on line 1, you provide the definition of  
22 "long-term partial requirements service." When Ameren  
23 Missouri signed the contracts with AEP and Wabash, did anyone  
24 consult with Staff or anyone else as to the definition of  
25 long-term full or partial requirement service?

1 A. I will correct it because it's partial  
2 requirements sale, which to me is a very important  
3 distinction and I didn't see the need to consult because it  
4 was the tariff that we wrote.

5 Q. Well the FAC stipulation was among several  
6 parties, was it not?

7 A. Yes.

8 Q. So it wasn't just you who developed that  
9 stipulation, it was all those parties in conjunction with one  
10 another in agreement?

11 A. The definition was crystal clear to me at the  
12 time what long-term partial requirement was.

13 Q. Were you part of the FAC stipulation  
14 negotiations?

15 A. No, I was not.

16 Q. Okay. So the fact that it was clear to you at  
17 the time what it meant wasn't really relevant to this  
18 particular stipulation because you weren't involved, correct?

19 A. Well, but I can read the tariff and I know  
20 what it says.

21 Q. Right. But I'm saying that did Ameren  
22 Missouri or AmerenUE at the time ask anyone else what they  
23 thought it meant, any of the other parties who were also  
24 signing the stipulation?

25 A. No, the tariff was already approved at the

1 time.

2 Q. No, I'm talking about the stipulation, before  
3 the tariff was approved, before the tariff was agreed to in  
4 the stipulation.

5 A. Oh, then I don't know. I wasn't part of those  
6 conversations.

7 Q. In the ASMS noted in the current FAC tariff,  
8 the definition of "OSSR" is different from the one that was a  
9 factor in the time period of March, 2009 through September of  
10 2009; is that correct?

11 A. That is correct.

12 Q. And do you believe that the difference of  
13 adding the term "municipalities" has changed the definition  
14 of that?

15 A. I do. I believe it changed.

16 Q. Okay. So under the current tariff, the AEP  
17 and wabash contracts would not be excluded; is that correct?

18 A. Actually, the wabash contract went through  
19 off-system sales as part of that determination, yes. There  
20 was an agreement that we -- so we changed several things.  
21 One of the things was adding that word and the other thing  
22 was that wabash would go through off-system sales.

23 Q. Okay. Since the definition has changed, would  
24 you agree that the previous definition was somewhat  
25 ambiguous?

1 A. No.

2 Q. So what was the need for the change, if it  
3 wasn't?

4 A. It was requested because --

5 Q. By who?

6 A. I don't remember exactly who requested it  
7 during the negotiations, but I don't think it was ambiguous.  
8 I think it was very clear before and now it's very clear what  
9 it refers to.

10 Q. Okay. But it was ambiguous enough that  
11 reasonable people can disagree on the definition or we  
12 wouldn't be here?

13 A. I don't think so. I think it was pretty clear  
14 at that time. I think -- at the time, I had counterparties  
15 agreeing to the definition and that's what I entered into.

16 Q. Counterparties?

17 A. Yeah, my definition of what a long-term  
18 partial requirement is, so I signed contracts like that.

19 Q. What counterparties are you referring to?

20 A. AEP and Wabash.

21 Q. But not parties to the FAC stipulation?

22 A. Not parties to the FAC, correct.

23 Q. Okay. Now in Ameren's FERC Form 1 at page 310  
24 for AEP, and at page 310.3 for Wabash, those sales are  
25 described as IF for intermediate firm; is that correct?



1 A. Yes, that is correct.

2 Q. If you thought that those contracts were  
3 long-term or requirements, why didn't you describe those as  
4 RQ like you did the municipal contracts or LF in that FERC  
5 Form 1?

6 A. I guess it's stipulated in my surrebuttal that  
7 a county uses a litmus test looking for the names in the IRP  
8 to determine what they classify as RQ or LO or not. So still  
9 those contracts are partial requirement transactions that we  
10 considered long-term for other purposes.

11 Q. So you used the definition in the IRP even  
12 though these weren't part of the IRP?

13 A. We used the -- yes, I think accounting has a  
14 litmus test where they looked at the names including --

15 Q. Are you saying accounting?

16 A. Yeah.

17 Q. Okay.

18 A. Ameren Missouri's accounting group uses --  
19 looks back at the previous IRP and looks at the names that  
20 are included in that list.

21 Q. Uh-huh, the names of the?

22 A. Of counterparties. And basically they make  
23 the decision how to classify them for FERC Form 1.

24 Q. Okay. So they just do what they've done in  
25 the past even if that's not the accurate description in

1 Ameren's mind?

2 A. Yeah -- yes. They go by a materiality test  
3 and how much to determine -- they go by the materiality test  
4 to determine how much time they devote to those type of  
5 things and for them, that was a pretty good test at the time  
6 and that's what they used.

7 Q. So they call them intermediate?

8 A. Intermediate.

9 Q. Intermediate contracts?

10 A. Yes.

11 Q. In FERC Form 1?

12 A. Yes.

13 Q. Related to the amount of time that?

14 A. Related to the fact that they are -- their  
15 name of this counterparties were not in the last IRP and  
16 they're between one and three years of duration.

17 Q. Okay. So they did consider them intermediate  
18 because they were between one and three years of duration?

19 A. Correct, as the instructions say, yes.

20 Q. Right. And there was no footnote or letter  
21 that you wrote to FERC at the time that you filed this saying  
22 even though we have this notation, we don't agree with this  
23 term?

24 A. No, for FERC Form 1, we filed for based on  
25 their instructions.

1 MS. LANGENECKERT: Thank you. That's all I  
2 have.

3 JUDGE WOODRUFF: Okay. We'll go to MIEC. I'm  
4 sorry, Mr. Mills, do you wish to cross?

5 MR. MILLS: I have no cross.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. ROAM:

8 Q. Good morning, Mr. Haro.

9 A. Good morning.

10 Q. I just wanted to clarify quickly before we  
11 begin, you were asked about the phrase "ongoing basis" as  
12 that term is used in the FERC Form 1 document. Ms. Ott was  
13 asking you about that -- that term. Do you recall that?

14 A. Yes.

15 Q. Do you recall saying that ongoing basis --  
16 well, first let me just read the definition that you were  
17 discussing from the FERC Form 1 that says, "Requirement  
18 service is service which the supplier plans to provide on an  
19 ongoing basis; i.e., the supplier includes projected load for  
20 the system in its system resource planning." And when you  
21 were asked to define "ongoing basis," you said that to you,  
22 that term could mean just for the extent or the length or the  
23 duration of the contract; isn't that right?

24 A. Yeah, that's right.

25 Q. So -- so that phrase to you means that you

1 plan service that a utility plans to serve for the duration  
2 of a contract?

3 A. It could be interpreted like this, yes.

4 Q. Okay. If the contract is 30 days, would you  
5 still apply that definition "ongoing basis" to 30 days?

6 A. Yeah, if you allow me to clarify, let me tell  
7 you why I say that. Because even the status, when we filed  
8 the IRP, we make the comment that the status were not going  
9 to be renewed but they were included in the IRP because we  
10 planned on serving them for the ongoing duration of the  
11 contract.

12 Q. Okay. We'll get to the cities in just a  
13 moment. I want to make sure that I understand. If you're  
14 saying that the FERC Form 1 phrase "ongoing basis" means  
15 nothing more than the length or the duration of the contract,  
16 then pursuant to your understanding, a week-long contract  
17 would be service for an ongoing -- on an ongoing basis?

18 A. That could be -- that could be written there.

19 Q. So a day-long contract would -- under your  
20 definition -- would fit under this phrase that says a utility  
21 plans to -- plans to serve on an ongoing basis? So a  
22 day-long contract is -- could be construed as an ongoing  
23 basis under your understanding of the FERC Form 1 document?

24 A. If I'm looking at an hourly market, I'll plan  
25 to serve at an ongoing basis for that day.

1 Q. So an hour. An hour-long -- you're supposed  
2 to serve for an hour, that's going to be an ongoing basis  
3 under your definition?

4 A. That may be a stretch.

5 Q. Okay. I mean, isn't that the problem here is  
6 that Ameren is whittling down the terms of all of these  
7 documents to the point where they actually make no sense  
8 anymore? Ongoing basis doesn't mean for the length of the  
9 contract, does it? That's not what this -- that phrase  
10 means, is it, really?

11 A. To me, it does.

12 Q. Okay. So an hour-long contract or at least  
13 you've testified that a day-long contract could be an ongoing  
14 basis?

15 MR. BYRNE: I'm going to object. He's asked  
16 and answered that question.

17 JUDGE WOODRUFF: Overruled.

18 BY MR. ROAM:

19 Q. So a day-long contract constitutes or could be  
20 construed as service on an ongoing basis with your  
21 understanding of a FERC Form 1?

22 A. No, because we're not talking about one-hour  
23 contracts. I don't even have one-hour contracts.

24 Q. No, day-long I said.

25 A. Or day-long contracts.

1 Q. But I asked you moments ago whether a day-long  
2 contract could be construed as an ongoing basis.

3 A. Well, you -- the way I understood is you're  
4 asking the word "ongoing," what does it mean. And to me, it  
5 means uninterrupted. So my understanding is uninterrupted  
6 for the duration.

7 Q. And I'm saying so if you have a one-day  
8 contract, ongoing basis under your understanding would mean  
9 for the duration of that day?

10 A. Yeah.

11 Q. Okay.

12 A. But I don't go into a one-day contract.

13 Q. But that's what your understanding would be?

14 A. It's -- yes.

15 Q. Okay. Do you remember also stating to Ms. Ott  
16 that in your experience, the terms "requirements service" and  
17 "firm service" are not synonymous terms? Did you state that  
18 earlier today in your testimony?

19 A. I don't remember she asking it like that,  
20 though. She asked it differently.

21 Q. Okay. As I recall --

22 A. But still, I don't think it's exactly the same  
23 thing, no.

24 Q. They're not synonymous terms?

25 A. Yes.

1 Q. Okay. Are you familiar with Mr. Highley's  
2 surrebuttal testimony, page 7?

3 A. I don't have in front of me and I know -- I  
4 don't have it in front of me.

5 Q. Would you like to see it?

6 MR. ROAM: This is just Mr. Highley's  
7 surrebuttal testimony.

8 MR. BYRNE: Okay.

9 MR. ROAM: Page 7, line 1 and 2.

10 COMMISSIONER DAVIS: Page 7, line --

11 MR. ROAM: I'm sorry. Page 7, lines 1 and 2.

12 COMMISSIONER DAVIS: I'm sorry, I didn't mean  
13 to interrupt.

14 BY MR. ROAM:

15 Q. In Mr. Highley's testimony, he indicates that  
16 in his experience, the terms "requirements" and "firm" are  
17 synonomous.

18 A. Yes.

19 Q. So Mr. Highley's understanding of the term  
20 either "requirements" or "firm" or both is inaccurate; is  
21 that correct?

22 A. I think he's implying for the word  
23 "requirement" that this is a firm contract. From what he  
24 says, In my experience, the terms "requirements" and "firm"  
25 are synonomous.

1 Q. Okay.

2 A. And in this context, what he's saying is if he  
3 looks at a requirements contract, he assumes that it's a firm  
4 contract and I would agree with that statement.

5 Q. But would you not agree with the statement  
6 that the terms -- he doesn't say what you just said he said.  
7 He says, In my experience, the terms "requirements" and  
8 "firm" are synonymous. That's what his testimony says. You  
9 disagree with that; isn't that correct?

10 A. Not in this context. Not in the context that  
11 he puts it.

12 Q. Okay. So you're saying that you think they  
13 are -- you've testified that they are -- that they are not  
14 synonymous terms but in this instance, they are synonymous  
15 terms. So in which instance are they not synonymous?

16 MR. BYRNE: Your Honor, he keeps interrupting  
17 his answer. Can he be allowed to answer the question?

18 MR. ROAM: I'm asking the question now.

19 BY MR. ROAM:

20 Q. In which instance are they synonymous and in  
21 which instance are they not synonymous?

22 A. If I just do a firm sale for a certain period  
23 of time, that would not necessarily be -- may not necessarily  
24 be a requirement sale. There's -- what he's implying is if  
25 you make a requirement sales, you assume that it's a firm



1 sale. And with that portion, I agree. What I don't think  
2 it's necessarily synonymous is if I sell something firm, it  
3 qualifies as requirements.

4 Q. Right.

5 A. So it's a one-direction equivalence.

6 Q. Right. So if a requirements contract can be a  
7 firm -- or a requirements contract must be a firm contract is  
8 what you're saying?

9 A. Correct, yes.

10 Q. But a firm contract doesn't necessarily have  
11 to be a requirements contract, correct?

12 A. It is one of the characteristics, but it is  
13 not all of them, yes.

14 Q. So "requirements" and "firm," these terms are  
15 not synonymous. They don't mean the same thing?

16 A. I would -- that's what I was trying to say,  
17 yes.

18 Q. Okay. And I won't belabor this point, but  
19 the -- the renewed contracts that you were discussing  
20 earlier -- the Kahoka, Marceline, Kirkwood, Perry -- just for  
21 clarification, those -- Ameren is still serving those  
22 municipal customers, correct?

23 A. Can you repeat which ones?

24 Q. Is it Kahoka, Marceline, Kirkwood, and Perry?

25 A. Yes.

1 Q. And has been serving those customers and I  
2 think you indicated for over -- at least for over five years  
3 through renewed contracts, correct?

4 A. The last contract is 33 months or something  
5 like that, but before we had other contracts.

6 Q. Okay. So there have been uninterrupted  
7 contracts and renewed contracts serving those four customers  
8 for at least five years -- at least ten years, actually,  
9 isn't that correct?

10 A. Yes.

11 Q. To your knowledge, hasn't it been at least 20  
12 years?

13 A. I think yes.

14 Q. Okay. And this also was discussed and I don't  
15 want to belabor it either, but the FERC Form 1, you indicated  
16 that you disagree with that definition -- I believe that in  
17 your testimony, you said that you agree with it for  
18 accounting purposes but not for marketing purposes; is that  
19 right?

20 A. Yes.

21 Q. Okay. You agree with the EEI glossary  
22 definition of "requirement service," correct?

23 A. Yeah, I think EEI definition, yes.

24 Q. Okay. I'm going to read you from the EEI  
25 glossary definition, which was attached to your surrebuttal

1 testimony as I believe JH5 -- sorry, JH -- I believe it's  
2 JH5. Someone correct me if I'm wrong.

3 MS. OTT: I think it's S5.

4 BY MR. ROAM:

5 Q. Oh, S5. And the definition in the EEI  
6 glossary of "requirements service" is "service that the  
7 supplier plans to provide on an ongoing basis; i.e., the  
8 supplier includes projected load for this service in its  
9 system resource planning." Is that the definition that the  
10 EEI glossary gives?

11 A. It's true this is the definition for  
12 "requirement service" but it's true that I also have a  
13 definition for "partial requirements."

14 Q. Okay. And you've stated that and that's not  
15 the question I'm asking. "Requirement service" is defined as  
16 I just defined it; isn't that correct, in the EEI glossary?

17 A. Correct.

18 Q. And that -- that definition is  
19 indistinguishable from the FERC Form 1 definition; isn't that  
20 correct?

21 A. Yes.

22 Q. Okay. If you would turn to page 23 of your  
23 surrebuttal testimony. You reference agreements with  
24 Arkansas Power & Light, APL, and Illinois Power Company, IP;  
25 is that correct?

1 A. Yes.

2 Q. And you refer to APL and IP as out-of-state  
3 regulated electric utilities, correct?

4 A. Yes.

5 Q. Isn't it correct that at the time Union  
6 Electric had retail operations -- at the time UE had retail  
7 operation in the state of Illinois because its service  
8 territory encompassed not only parts of Missouri but also  
9 parts of Illinois? That's correct, right?

10 A. At some point in time, yes.

11 Q. At the time that -- that these agreements were  
12 in place?

13 A. Some of them, yes.

14 Q. I'm talking about the APL one and the IP one.  
15 Yes?

16 A. Yes.

17 Q. And it's also true that for economic reasons,  
18 UE would extend its lines into IP's service territory and  
19 physically serve certain customers because it was cheaper for  
20 UE to serve them than for IP to serve them; isn't that right?

21 A. That's correct.

22 Q. And vice versa. IP would extend its lines in  
23 the service territory of UE and provide service because it  
24 was cheaper to serve?

25 A. Yes.

1 Q. And isn't it true that in the case of the IP  
2 transaction, that UE was actually serving the end-use retail  
3 customers of the other utility?

4 A. Yes.

5 Q. The -- do you recall DR 57-S1? It's where you  
6 provided more explanation about APL than was provided in  
7 the --

8 A. Oh, yes.

9 Q. Okay. And if you recall, does that DR  
10 indicate that during the term of the agreement with APL, that  
11 APL had significant load which was located in the Ameren  
12 Missouri control area?

13 A. Yes.

14 Q. What does it mean to be located in the control  
15 area?

16 A. I think it -- it means that it's part of a  
17 balancing area where the load is supplied and it's within  
18 certain boundaries, electric boundaries.

19 Q. Okay. Is that -- is that what's -- what's  
20 deemed load following?

21 A. Being in a control area? No.

22 Q. Okay. What you just described, that's not --  
23 that's not load following?

24 A. No. I think being a control area is being  
25 inside certain boundaries.

1 Q. Okay. So again, in this case, UE actually  
2 physically served the retail end-use customers of APL,  
3 correct?

4 A. Through the transmission lines.

5 Q. Okay.

6 A. I don't know if they did the distribution, if  
7 that's what you mean.

8 Q. No. That's fine, that they physically served  
9 them is what I mean.

10 A. To certain voltage. But I don't think they  
11 directly served them. That's why I don't know what you're  
12 exactly asking.

13 Q. Okay. We can come back to that. So in your  
14 response to data request 7-8, you were asked to identify the  
15 power sales made to entities other than municipalities by  
16 Ameren Missouri or predecessor companies that would qualify  
17 as requirements agreements over your 12-year career in  
18 wholesale power marketing and trading. Do you recall being  
19 asked that?

20 A. Ameren Missouri, yes; in particular, yes.

21 Q. Ameren Missouri and its predecessors I believe  
22 is the way it was phrased in the DR.

23 A. Yes.

24 Q. Your counsel objected to the length of time  
25 and agreed to provide a response covering the period 2006

1 through the present; is that right?

2 A. Yes.

3 Q. And what was your response to that DR?

4 A. I don't recall it precisely.

5 Q. All right. If I show you a copy of DR 7-8,  
6 would that refresh your recollection?

7 A. Yes.

8 Q. Okay. I'm showing the witness --

9 MR. ROAM: May I approach?

10 JUDGE WOODRUFF: You may.

11 BY MR. ROAM:

12 Q. I'm showing the witness DR response 7-8.

13 A. Yeah, I recall it.

14 Q. And it says, "with the exception of the AEP  
15 and WVPA, which is Wabash agreements, Ameren Missouri has not  
16 executed any agreements with non-municipalities which would  
17 qualify as long-term requirements agreements during the  
18 period 2006 to the present;" is that correct?

19 A. Yes.

20 COMMISSIONER KENNEY: What was the number of  
21 that DR?

22 MR. ROAM: That was 7-8.

23 BY MR. ROAM:

24 Q. Mr. Haro, with respect to the specific  
25 definition of "requirement service" that is contained in the

1 FERC Form 1 report, would you agree with me that there is no  
2 specific term that is length of time that the agreement is in  
3 effect, such as years or months, that is associated with that  
4 term? In other words, FERC Form 1 doesn't designate a  
5 certain length of time?

6 A. Correct, not for the requirements, because  
7 they do define term and the long-term --

8 Q. Right, but under the requirement service  
9 definition, there's not a length of time associated with that  
10 definition?

11 A. Correct.

12 Q. Right. I want to refer you to page 21 of your  
13 surrebuttal testimony, beginning on line 3, you reference  
14 MIEC witness Brubaker's testimony and note that he points out  
15 that under the AEP and Wabash contracts, Ameren Missouri is  
16 not providing various RTO and OATT services; is that correct?  
17 Is that your testimony?

18 A. Yes, that's correct.

19 Q. Isn't it true that rather than not providing  
20 various RTO and OATT services under Wabash and AEP, Ameren  
21 Missouri is not providing any of the RTO and OATT services;  
22 isn't that correct?

23 A. Yes.

24 Q. If you could refer to Schedule JH-S2, the  
25 Wabash contract, JA-S2, which is attached to your surrebuttal



1 and go to Appendix B there in the back, what do the first two  
2 pages of Exhibit B show?

3 COMMISSIONER KENNEY: Isn't this an HC  
4 document?

5 MR. ROAM: Oh, that's a good point. We need  
6 to go in camera. My apologies.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: We are going in camera at  
9 this time. If there's anyone in the audience who cannot hear  
10 the HC testimony, please leave. If counsel will look around  
11 and point out anybody that shouldn't be here.

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

3 BY MR. ROAM:

4 Q. On page 7 of your surrebuttal, lines 25  
5 through 27, you refer to the electronic quarterly report data  
6 dictionary; is that right?

7 A. Yes, that's right.

8 Q. And you state down there, I believe it's  
9 line -- starting at 25, "EQRs provide a detailed,  
10 comprehensive view of the wholesale power markets on a  
11 transaction-by-transaction basis. Unlike FERC Form 1, the  
12 information from EQR reports is regularly reviewed and  
13 utilized by wholesale power market participants," correct?

14 A. Yes.

15 Q. Okay. Now that data dictionary that you  
16 reference, that provides definitions of various types of  
17 contracts, doesn't it?

18 A. I believe, yes.

19 Q. Do you -- does Ameren file quarterly reports?

20 A. Yes.

21 Q. In that data dictionary that you provided, I  
22 believe it was in DR 510, in that data dictionary, there's a  
23 definition of "requirement service," an EQR definition of  
24 "requirement service," isn't there?

25 A. I don't recall the specifics.

1 Q. But do you recall --

2 A. Do you have it?

3 Q. I do. Do you recall whether there is a  
4 definition?

5 A. Of "requirement service," I don't remember  
6 exactly.

7 Q. Okay. I'm going to show you -- I'm going to  
8 show you the data dictionary that you provided in DR 5-10.  
9 You provided it via a link.

10 Do you see where "requirement service" is one  
11 of the product names?

12 A. Yes.

13 Q. And isn't it -- isn't it accurate that  
14 requirement service is one of the designations that is to be  
15 applied to -- to a contract when filing an EQR report, a  
16 quarterly report?

17 A. Yes.

18 Q. There are a number of choices you can choose  
19 from, requirement service is one of them, correct?

20 A. I believe so.

21 Q. You never -- you never filed the wabash and  
22 the AEP contracts as requirement service contracts in your  
23 quarterly reports; isn't that correct?

24 A. As requirements?

25 Q. As requirements contracts.



1 A. I am not sure.

2 Q. would it refresh your recollection if I showed  
3 you a filing -- a quarterly report filing?

4 A. Yeah.

5 MR. BYRNE: Can I see it too, Mr. Roam.

6 MR. ROAM: Sure.

7 BY MR. ROAM:

8 Q. So if you look at -- these pages aren't  
9 numbered, but if you look at I guess it would be the third  
10 page, top of the third page, the AEP contract is referenced  
11 and down at the bottom of that page, the wabash valley  
12 contract is referenced. Do you see that?

13 A. Yeah.

14 Q. And then when you flip to the last page,  
15 right? It is the third to last page, these pages are  
16 unnumbered, unfortunately. Do you see where it says product  
17 name at the top as a category?

18 A. Yes.

19 Q. And where the wabash at the -- would be at the  
20 top, it's designated as a capacity and energy contract, not  
21 as a requirements contract; is that right?

22 A. Is this where all of them are, like all the  
23 CSR classified like that as well? Is that the page you're  
24 looking at?

25 Q. I'm looking at the third to last page.

1 A. But there's no requirements in that page at  
2 all.

3 Q. That's right.

4 A. All are energy and capacity, including the  
5 cities.

6 Q. Right.

7 A. Yes.

8 Q. But did you not, in this EQR, which --  
9 which -- which you file quarterly, you did not designate  
10 these contracts as requirements contracts; is that correct?

11 A. Correct.

12 Q. Okay. Last question, and actually you  
13 answered part of this. You were not present at the meetings  
14 where the parties discussed the stipulation and agreement; is  
15 that correct?

16 A. Yes, that's correct.

17 Q. Okay.

18 MR. ROAM: I think that's all the questions I  
19 have. Thank you.

20 JUDGE WOODRUFF: Thank you. Questions from  
21 the bench. Commissioner Davis?

22 EXAMINATION

23 QUESTIONS BY COMMISSIONER DAVIS:

24 Q. Good morning, Mr. Haro.

25 A. Good morning.

1 Q. Mr. Roam asked some questions about MISO. Do  
2 you know how long MISO's been in existence?

3 A. Since before the one -- I would think that --  
4 I couldn't tell you with precision, but probably mid-90s.

5 Q. Right. Would you agree that the -- the market  
6 for electricity has changed significantly in the last few  
7 years?

8 A. Every year has changed dramatically with new  
9 things, yes.

10 Q. And would you agree that one of those changes  
11 in the market has been the fact that -- that these long-term  
12 purchase power agreements between Ameren Missouri, AmerenUE,  
13 Union Electric and some of the predecessor companies have  
14 gone away or gotten much shorter as well as more complicated?  
15 Is that fair to say?

16 A. Yes.

17 Q. So a lot of them have just gone away in their  
18 entirety. The ones that are left are of a much shorter  
19 duration. The terms are much more complicated. Do you think  
20 the statement that all requirements contracts aren't what  
21 they used to be is a fair statement?

22 A. Yes, absolutely.

23 Q. Now, at one point, Citizens Electric  
24 Cooperative had a long-term purchase power agreement with  
25 either Ameren UE or Union Electric or one of its

1 predecessors, correct?

2 A. I think we've had contracts with Citizens  
3 since 1940, at least.

4 Q. Right.

5 A. And that last contract that Citizens had was  
6 for ten, twenty years, something?

7 A. I believe it was.

8 Q. Something like that. Now, Citizens is now a  
9 member of wabash, isn't it?

10 A. Yes.

11 Q. And it's fair to say that, you know, the fact  
12 that AmerenUE or Ameren Missouri is not entering into these  
13 contracts -- I mean, that's a fairly common occurrence in the  
14 industry now, it's not just AmerenUE or Ameren Missouri  
15 that's no longer entering into these five-, ten-, twenty-year  
16 contracts. It's -- I mean, would you agree with me that most  
17 utilities are -- are scaling those requirements back and not  
18 guaranteeing electricity for long periods of time?

19 A. That is correct.

20 Q. And getting back to the MISO portion, if  
21 you're going to sell electricity, you've got to have  
22 transmission for delivery, correct?

23 A. Within MISO?

24 Q. Yes.

25 A. Well, within MISO, I can sell at a very

1 specific point and buy and sell within that point without --  
2 I would just take the financial penalty to move my generation  
3 from one point in the congestion. From one point to the  
4 other.

5 Q. Right, the congestion.

6 A. Yes.

7 Q. But, you know, whether you're in an RTO or  
8 you're not in RTO, you've still got to have transmission.

9 A. To serve a load, yes.

10 Q. Do you know how does MISO define long-term  
11 transmission contracts for electricity delivery?

12 A. I believe transmission is defined long-term  
13 anything a year or longer.

14 Q. And are you aware, are there instances where  
15 FERC staff has also taken that opinion?

16 A. Oh, there are multiple places. There's a very  
17 well-known case called Mountain View where they define  
18 long-term as contracts longer than a year for power purchase  
19 agreements.

20 Q. Okay. And let me go back and ask you: In  
21 response from questioning from Ms. Ott, and I don't remember  
22 what the exact words were, but this is -- I'm going to ask  
23 the same question Ms. Ott asked, but I'm going to ask it a  
24 different way.

25 Did anyone at Ameren suggest to you that you

1 needed to go enter into a long-term power contract to get  
2 some profit out of the power that Ameren Missouri was left  
3 with as a result of the Noranda outage?

4 A. The decision was made out of several meetings  
5 where we determined what was the best course of action. So  
6 nobody in particular suggested me to remove that margin, but  
7 it was -- we looked at all the factors, all the actions we  
8 needed to take to rebalance our portfolio and we believe that  
9 entering into those type of contracts would actually  
10 rebalance the portfolio.

11 Q. Okay. And who were the people present in  
12 those meetings?

13 A. Well, we -- at that time, we had weekly  
14 meetings and we would have people from the regulatory staff  
15 like Steve Kidwell or Ms. Lynn Barnes was present in those  
16 meetings.

17 Q. Okay. So Steve Kidwell and Lynn Barnes?

18 A. Sometimes Tom Voss was involved in those  
19 meetings because there were direct report meetings. In other  
20 meetings, we would have people from corporate planning like  
21 Steve Wells or people from regulatory accounting like  
22 Mr. Weiss -- I'm sorry, Weiss, and --

23 Q. That's Charles Weiss?

24 A. No, Gary Weiss. So I don't recall all the  
25 meetings and exactly who were in all of them, but that's --

1 that's the kind of people that we would have -- we would have  
2 to see forecasting, what was the expected outcome, what was  
3 Noranda telling us was going to happen. So it was a fairly  
4 complicated decision to try to see what was the best course  
5 of action to take.

6 Q. Okay. And was Mr. Shucker, was he involved in  
7 those meetings?

8 A. No, at the time he was no longer -- I took his  
9 former role, so he was not present in those meetings.

10 Q. And let me ask you this: when you entered  
11 into these contracts with AEP and Wabash, after you'd entered  
12 into them, if Noranda would have come in to you or announced  
13 that through some miracle they were going to be able to get  
14 back to operating at close to a hundred percent capacity six  
15 to eight months earlier than would you have anticipated, you  
16 would have been -- still been responsible for providing  
17 Noranda electricity as well as fulfilling these contracts,  
18 would you not?

19 A. Yes, I would have.

20 Q. And so you didn't have the power, you would  
21 have had to have gone out and procured that power some way  
22 somehow, correct?

23 A. If I didn't have it, correct.

24 Q. Right.

25 COMMISSIONER DAVIS: Judge, no further

1 questions at this time.

2 JUDGE WOODRUFF: Commissioner Jarrett.

3 EXAMINATION

4 QUESTIONS BY COMMISSIONER JARRETT:

5 Q. Good morning, Mr. Haro. I just have a few  
6 questions regarding this FERC Form 1 that's been talked about  
7 this morning. Do you know who at Ameren is responsible for  
8 completing that?

9 A. I don't know specifically because there's  
10 several different portions so different groups fill out  
11 different portions.

12 Q. Is there a witness here from Ameren that could  
13 answer those questions if I have questions about who filled  
14 it out?

15 A. I think Ms. Barnes may be able to give you a  
16 better explanation.

17 Q. I'll ask her when she's on the stand, then.  
18 Thanks.

19 COMMISSIONER JARRETT: I have no further  
20 questions.

21 JUDGE WOODRUFF: Commissioner Gunn.

22 COMMISSIONER GUNN: I just have a couple.

23 EXAMINATION

24 QUESTIONS BY COMMISSIONER GUNN:

25 Q. The contracts that you entered into with AEP



1 and wabash, were they boilerplate contracts or were they  
2 specifically drawn up to address the situation?

3 A. They were a combination. AEP is a  
4 boilerplate. We used an ASDA with just a cover sheet, so the  
5 cover sheet specified the terms and the wabash contract was  
6 sort of a boilerplate. You could see a lot of people using  
7 that but it has certain modifications. We call that a  
8 long-term contract.

9 Q. Okay. In your opening statement -- in his  
10 opening statement, Mr. Byrne said that Ameren essentially  
11 drafted this fuel adjustment clause tariff that we have.  
12 Were you involved in that?

13 A. No, I was not.

14 Q. Now, I was looking at some definitions of  
15 long-term. You saw me kind of behind here and doing some  
16 other things looking for definitions of long-term. And a lot  
17 of the definitions I found seem to be tied to investments or  
18 debt or so on which are tied to the IRS code which says that  
19 you have to hold an investment longer than a year in order to  
20 get the benefit under the tax treatment of that.

21 So other than those definitions, which appear  
22 to be tied to the tax code, you said that there was a case --  
23 Mountain View case which says long-term is longer than a  
24 year?

25 A. And FERC has some other places that states

1 that that's their longstanding practice to use the definition  
2 of one year or longer.

3 Q. That's FERC's longstanding practice?

4 A. Yes. That's in my surrebuttal testimony on  
5 page 7. It says we thus believe it is reasonable to use the  
6 convention of treating contracts of a year or more as  
7 long-term consistent with our longstanding practice. That's  
8 line 13 of page 7 of my surrebuttal.

9 Q. You, in response to Ms. Ott's question, you  
10 had a quote, and I didn't write it down exactly. But you  
11 said you called up some folks and said I need to enter into a  
12 long-term partial sales requirement contract. Do you  
13 remember saying that?

14 A. Yes.

15 Q. Now, was that because you were specifically  
16 trying to exclude these types of contracts from a fuel  
17 adjustment clause?

18 A. Well, it was a combination of reasons. I  
19 needed to -- at the time, when we lost Noranda, I was looking  
20 for contracts that would replace them.

21 Q. Right.

22 A. And that would be the most similar -- whatever  
23 was the most similar to the Noranda load was the long-term  
24 partial requirement contract. Something that would be backed  
25 by load and I was looking mostly for people in Missouri. So

1 I called wabash knowing that they served citizens and that's  
2 kind of a negotiation I was trying to get. So it was to  
3 rebalance the portfolio to that kind of credit exposure, to  
4 that kind of customer, and also to fulfill that word of the  
5 tariff as well that said the long-term partial requirement  
6 transaction would be excluded.

7 Q. So it did enter into your mind when you were  
8 filling out these contracts that you wanted to find a  
9 transaction that was specifically excluded from fuel  
10 adjustment clause?

11 A. Yes, it did.

12 Q. Okay. Now let me ask you this: If Noranda  
13 had by some miracle been able to restart two months after --  
14 after the power outage, would Ameren have had enough capacity  
15 to serve Noranda plus the AEP and wabash contracts?

16 A. Capacity itself? For most of the year, we  
17 would have. Maybe we'd have had a shortfall in one or two  
18 months that we would need to require back. But overall, we  
19 would have. Because remember, we had the Noranda load there  
20 so that was included in our capacity plan. When -- oh, you  
21 say Noranda came back?

22 Q. If Noranda came back. So if all of a sudden  
23 by some miracle it kicked up and so you had some -- the  
24 requirements that you had to serve Noranda as well as AEP and  
25 wabash, would you have had the ability to do that?

1 A. The energy would have been able to fulfill  
2 easily. The energy, maybe a month or two we would have had  
3 to do something.

4 Q. Were the AEP or Wabash contracts ever meant to  
5 last longer than the Noranda outage?

6 A. We didn't know at the time how much Noranda  
7 was going to be gone. At some point, we believed that maybe  
8 they were never going to get back the third line, so when we  
9 made the decision, we were trying to protect that scenario  
10 that maybe they wouldn't get that third line back ever. And  
11 also as part of the negotiation of those contracts, the  
12 terms -- get the term by what we call the planning year. So  
13 for example, the AEP ends right with the planning year  
14 because that's what they were requiring. So it's part of the  
15 negotiation how much those contracts lasted.

16 Q. But you wouldn't have negotiated those  
17 contracts for longer than where your -- where Ameren's  
18 estimates were that a Noranda outage would have taken place.  
19 Let me rephrase that a little bit.

20 The reason why you specifically entered into  
21 these contracts was to replace Noranda load, it was not to  
22 fulfill some other requirements of the company?

23 A. Correct, it was just the Noranda load.

24 Q. And absent the ice storm --

25 A. I don't think I would have entered into those

1 contracts.

2 Q. Okay. In Ms. Mantle's testimony, she stated  
3 that she had a conversation with someone that essentially at  
4 least verbally put a little bit of a definition around these  
5 contracts. I know it's a factual issue as to whether those  
6 conversations took place. Did you ever have any  
7 conversations with Ms. Mantle?

8 A. No.

9 Q. would you have been the person in Ameren that  
10 was?

11 A. I was not in those negotiations at the time.

12 Q. who do you believe, and it may not be one  
13 specific person, if those were to have taken place, and I'm  
14 not saying they are, who would have been the person that  
15 would have been most likely to have had those conversation?

16 A. I would have thought that Mr. Gary Weiss would  
17 have known about them because he was part of the negotiation  
18 team.

19 Q. okay. All right.

20 COMMISSIONER GUNN: I don't think I have  
21 anything else.

22 JUDGE WOODRUFF: Commissioner Kenny.

23 EXAMINATION

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Good morning, Mr. Haro.

1 A. Good morning.

2 Q. I'm going to ask you a couple of questions  
3 about the wabash and AEP contracts, but I don't think we need  
4 to go in camera for them, unless -- depending upon your  
5 answers to the questions.

6 A. Thank you.

7 Q. You negotiated both of them, correct?

8 A. Yes, I did.

9 Q. And you executed both of them on behalf of  
10 Ameren?

11 A. Yes.

12 Q. Can you point to me in either the wabash or  
13 the AEP contract someplace in there where it defines  
14 "long-term" or "partial requirements sales"? Is there a  
15 specific definition in either of those contracts?

16 A. I don't think there's some particular  
17 definition. I think if you look at --

18 COMMISSIONER KENNEY: I think if we do get  
19 into the specifics, do we need to go in camera?

20 MR. BYRNE: I think this will be okay,  
21 Commissioner.

22 COMMISSIONER KENNEY: All right.

23 JUDGE WOODRUFF: Oh, I'm sorry, I'm looking at  
24 the wrong one.

25 BY COMMISSIONER KENNEY:

1 Q. JHS-1 and JHS-2, correct?

2 A. Yes. I have them here somewhere. Okay. I  
3 have S-2 here in front of me.

4 Q. It's the wabash?

5 A. It's the wabash contract. And to me, when I  
6 see --

7 Q. where are you looking?

8 A. Page 2.

9 Q. what language in there is synonomous with or  
10 would lead to a conclusion that that's defining "long-term  
11 requirements"?

12 A. The long-term to me is defining if you go to  
13 the appendix. If you go to Appendix A at the bottom, it  
14 defines that it's 18 months, so by the standards that we  
15 utilized, 18 months qualifies with long-term.

16 Q. Appendix A at the bottom, scheduling?

17 A. It's a Table 1, product, price, and term. And  
18 it says a product price and when it begins and when it ends  
19 and the regulatory term 18 months.

20 Q. So that's defining the term of the contracts,  
21 but that's not defining the term "long-term"?

22 A. Yeah. No, I don't have a particular  
23 definition of "long-term" or "partial requirements".

24 Q. Okay.

25 A. Per se.

1 Q. All right. My second question, then, the  
2 counterparty to the contract, is Rick Kunz, president and  
3 CEO, right?

4 A. Yes.

5 Q. Do you know if he he'll be here to testify  
6 about his definition of "long-term" and "requirements  
7 contract"?

8 A. I would assume that he would agree because the  
9 contract specifically says --

10 Q. No, I'm asking if you know if he'll be here to  
11 testify as to his understanding.

12 A. No, I don't think he will be here to testify.

13 Q. Okay. And then the same with respect to the  
14 AEP contract. Now, you said that this was just an  
15 International Swaps and Derivatives Association form  
16 contract; is that right?

17 A. Yes.

18 Q. Okay. And it's denominated as the master  
19 agreement between AEP and Ameren?

20 A. Yes.

21 Q. Does it contain a definition of "long-term"?

22 A. I don't think it contains it per se.

23 Q. Okay. Or "partial requirements"?

24 A. No.

25 Q. Okay. And it is executed by you and Todd Bush



1 on behalf of AEP?

2 A. Correct.

3 Q. Do you know if Mr. Todd Bush will be here to  
4 testify as to his understanding of those definitions?

5 A. I don't think he will be.

6 Q. Now, I want to turn your attention back  
7 because I had some questions about the tariff itself, sheet  
8 term one, two, three, four, five, six, and seven, and the  
9 definition of off-system sales is located on 98.3, correct?

10 A. I don't have it with me.

11 (An off-the-record discussion was held.)

12 BY COMMISSIONER KENNEY:

13 Q. I just wanted to be clear that I understood.  
14 You said that I'm looking at the definition of off-system  
15 sales shall include all sales transactions and -- are you at  
16 that paragraph?

17 A. Yes.

18 Q. And the clause that begins after the comma  
19 that's in the fourth line down that reads, "that are  
20 associated with, one, Ameren Missouri jurisdictional  
21 generating units; two, power purchases," et cetera. Your  
22 testimony was that that clause was modifying the off-system  
23 sales portion of that paragraph and not the long-term full  
24 and partial requirements portion.

25 A. Correct.

1 Q. Okay. I just wanted to make sure I understood  
2 that. Now, Mr. Roam was asking you about a DR that asked  
3 Ameren to indicate other contracts -- other requirements  
4 contracts with non-municipalities. Do you remember that  
5 question?

6 A. Yes, I do.

7 Q. And I think the objection was to the timing or  
8 the length of time requested by the DR and so the response  
9 was limited to 2006 forward.

10 A. Yes.

11 Q. And Ameren doesn't have any other examples of  
12 requirements contracts or non-municipalities from 2006  
13 forward; is that correct?

14 A. Yes, that's correct.

15 Q. Are you aware of any requirements contracts  
16 with non-municipalities in your time at Ameren, which would  
17 precede 2006?

18 A. Yes, but if you recall before that time, we  
19 had a Joint Dispatch Agreement, so the marketing arm was  
20 responsible for all kinds of transactions that would qualify  
21 as long-term. So any of those transactions would have been  
22 negotiated by our marketing arm up until the Joint Dispatch  
23 Agreement was dissolved. And that's why we don't have that  
24 much history at Ameren Missouri directly entering into those  
25 type of negotiations.

1 Q. So the marketing arm would have executed or  
2 entered into requirements contracts with non-municipalities?

3 A. Correct.

4 Q. Prior to 2006?

5 A. Oh, multiple. We have city -- we have  
6 schools, we have -- in the retail side, we have Citizens was  
7 part of them as well. Yeah, there were multiple contracts.

8 COMMISSIONER KENNEY: I don't have any other  
9 questions. Thank you for your time.

10 JUDGE WOODRUFF: Now we will move to recross  
11 based on questions from the bench, beginning with Staff.

12 MS. OTT: I have a couple.

13 RECROSS-EXAMINATION

14 QUESTIONS BY MS. OTT:

15 Q. Mr. Haro, when you were having a discussion  
16 with Commissioner Davis, he was referring to purchase power  
17 agreements. Are purchase power agreements the same as  
18 requirements contracts?

19 A. Some purchase power agreement are requirement  
20 contracts, yes.

21 Q. But not all?

22 A. I don't know. Saying all is very  
23 encompassing. I'm not sure.

24 Q. Would you say the meaning of purchase power  
25 agreements is the same as the meaning of requirements

1 contracts?

2 A. You're asking if I would say the meaning of  
3 purchase power agreement is the same as the requirement  
4 contract?

5 Q. Yes.

6 A. Not necessarily.

7 Q. When would it not be the same?

8 A. You can have a purchase power agreement that  
9 doesn't have the firmness that you would expect or that is  
10 not directly assigned to a load. I don't know -- I'm not  
11 sure.

12 Q. Can you give me an example when a purchase  
13 power agreement would be the same as a requirements contract?

14 A. I would assume the power purchase agreement  
15 itself specifies it.

16 Q. So the agreement would specifically say this  
17 is a requirements contract within the language of the  
18 purchase power agreement?

19 A. That's one way. The other way is if they  
20 include capacity and energy, which would be a partial  
21 requirements or if they have the firmness that we have talked  
22 about or it's assigned to serve a load. So it depends on the  
23 terms of the contract.

24 Q. So is any requirement contract -- or is any  
25 contract that provides for capacity and energy within it,

1 would you consider that a requirements contract?

2 A. If it's to serve load and have the firmness  
3 that we've talked about, I would think that could qualify as  
4 a requirements contract.

5 Q. It could, but not necessarily?

6 A. I think it would.

7 Q. So every contract that provides to serve  
8 capacity and energy is a requirements contract under your  
9 definition?

10 A. To a load?

11 Q. To a load.

12 A. Yes.

13 Q. Now, Commissioner Gunn was asking you  
14 questions about what you were doing when Noranda went offline  
15 to enter into these contracts and you said you were  
16 specifically only looking to enter into contracts with  
17 individuals serving Missouri.

18 A. At first we tried. That's how we tried, yes.

19 Q. And so then when you entered into the AEP,  
20 they weren't serving Missouri load, correct?

21 A. The contract we -- I don't know if they were  
22 serving Missouri load. I thought they were and that's why I  
23 called them. But the contract we entered into was not for  
24 Missouri load, correct.

25 Q. So then just to be clear, when you -- you

1 originally were only looking for contracts for people serving  
2 within the state of Missouri and then when you couldn't  
3 locate one inside the state of Missouri, then you went to  
4 outside states as well?

5 A. Correct.

6 Q. Now, Commissioner Kenney was asking you about  
7 the tariff and the definition of OSSR within the tariff. And  
8 you indicated you don't -- you don't believe that at that --  
9 after the comma that says that are associated with and then  
10 the one, two, three apply to the long-term full and partial  
11 requirement sales, correct?

12 A. Correct.

13 Q. Okay. Then do you enter into off-system sales  
14 with individuals outside of the State of Missouri?

15 A. Yes, I do.

16 Q. So how would you classify a sale made to  
17 somebody serving somebody outside the State of Missouri?

18 A. For what duration? what type of contract?  
19 Are you talking about shorter term?

20 Q. I'm talking about a sale for -- that's outside  
21 of the State of Missouri. Is that not an off-system sale?

22 A. Are you talking partial requirement?

23 Q. We'll start with partial. For a partial  
24 requirement.

25 A. Yeah, I think they're off-system sales.

1 Q. So is any sale not serving Ameren load, do you  
2 consider that to be an off-system sale?

3 A. I guess I'm not understanding your question.  
4 Can you repeat your question, please?

5 Q. So do you consider -- what do you consider a  
6 sale made not to serve Ameren load? Do you consider it an  
7 off-system sale?

8 A. I guess it depends. It depends on if it's --  
9 if it's a long-term partial requirement transaction, it's  
10 part of this exclusion. If it is not, then I consider it --  
11 I consider it an off-system sale, yes.

12 Q. So then going under what you've just stated,  
13 is it your opinion, then, the AEP contract, which is not  
14 serving Missouri retail load, is not an off-system sale?

15 A. I think it's a sale that it's excluded from  
16 this.

17 Q. So then is it your testimony that the AEP  
18 contract does not meet any part of the definition of OSSR  
19 because it's not meeting Missouri retail load?

20 A. No, that's not what I'm trying to say.

21 Q. Okay. Then I'm confused. Your interpretation  
22 of the OSSR, you say that off-system sales shall include all  
23 transactions that are associated with one, two, and three,  
24 correct?

25 A. Yeah, but here doesn't talk about load. It

1 talks about generation.

2 Q. Okay.

3 A. So those --

4 Q. Number two says power purchases related to  
5 serve Missouri retail load; is that correct?

6 A. Yes.

7 Q. So then is it your -- is it your opinion that  
8 the AEP contract does not fall under the OSSR at all because  
9 it's not serving Missouri retail load?

10 A. I guess the way I see it is it falls under but  
11 it's part of the exclusion. So it gets excluded from the  
12 OSSR factor.

13 Q. Okay. But you testified earlier you don't  
14 believe that the long-term full and partial requirement sales  
15 are tied to the one, two, and three.

16 A. Yeah, that I agree. I think the one, two, and  
17 three apply to the sales transactions referred to first. But  
18 still, I don't understand your point. I think even if they  
19 were, this one, two, and three are talking about generating  
20 units. Where the sales coming from? They're coming from the  
21 jurisdictional generating units, yes, they are. They're  
22 coming from Labadie, they're coming from Rush Island.  
23 They're coming from those units. It has nothing to do with  
24 purchasing.

25 And purchase power means, so in the case that



1 you don't have a generator, you're buying power to supply to  
2 the load. So at no point is it referencing the load or where  
3 the load is situated at. So I'm very confused with your  
4 question, sorry.

5 Q. So Number two does not say power purchases  
6 served to Missouri load. That statement is not referring to  
7 Missouri load at all. That's referring to a generating unit?

8 A. It's a purchase. So they're talking about the  
9 supply side. Where is the supply coming from?

10 MS. OTT: I don't have any other questions.

11 JUDGE WOODRUFF: Public counsel?

12 MR. MILLS: Just a few and at the risk of  
13 jumping right into that briar patch.

14 RECROSS-EXAMINATION

15 QUESTION BY MR. MILLS:

16 Q. With respect to the -- to the definition of a  
17 "requirements contract," does load have any relevance?

18 A. Say that again.

19 Q. With respect to whether or not a contract is a  
20 requirements contract, does the load have any relevance?

21 A. I think it does.

22 Q. Okay. So in order to know whether a contract  
23 is a requirements contract, you have to know what the load is  
24 and where the load is; is that correct?

25 A. I don't think you necessarily need to know

1 where it is or what it is, but you have to point to a load.

2 Q. You have to point to a load?

3 A. Yes.

4 Q. And how do you do that without knowing what it  
5 is or where it is?

6 A. With a CP note.

7 Q. I'm sorry?

8 A. With a CP note in the MISO model. You point  
9 to a specific point where the load is, so is that your  
10 definition of knowing where the load is?

11 Q. It's not my definition. Is it your  
12 definition?

13 A. Well, to me, if I am saying in the contract  
14 that this contract is to serve load and I'm pointing to a  
15 specific delivery point, that's enough to say that it's -- I  
16 mean, the whole UE load is in the one particular CP note, so  
17 that's enough for me.

18 Q. And what does "CP" stand for, just so the  
19 record is clear?

20 A. Commercial point.

21 Q. Commercial point. Okay. So for the AEP  
22 contract, what is CP note?

23 A. It's the Cynergy.

24 Q. And for the Wabash contract?

25 A. It's the Citizens. I can tell you exactly

1 which one it is, it's Citizens dot something ammo.wvpa.

2 Q. So for your definition of a requirements  
3 contract, all you need to know about the load is where you  
4 are -- where your delivery point is; is that correct?

5 A. Well, I have a contract that specifically says  
6 that the buyer shall use a product to partially meet the  
7 requirements of Citizen Electric Corporation in Missouri. So  
8 to me, that's a good definition.

9 Q. Okay. Now, before you entered into the AEP  
10 and Wabash contracts, how many other counterparties did you  
11 contact to try to enter into the similar sorts of contracts?

12 A. I also contacted MJMEUC.

13 Q. Missouri Joint Municipal Electric Utility  
14 Corporation, perhaps?

15 A. Sorry.

16 Q. Something like that. And MJMEUC would have  
17 been a load in Missouri; is that correct?

18 A. That is correct. The problem that we have  
19 with loads in Missouri is that sometimes we're not very well  
20 connected with them. If they're not within MISO, the  
21 deliverability becomes a problem.

22 Q. Okay. Before you entered into the contracts  
23 with AEP and Wabash, I believe from Commissioner Davis, you  
24 said you had several meetings to discuss what you should do;  
25 is that correct?

1 A. That is correct.

2 Q. Now, did these meetings take place before or  
3 after, or both, the point in time at which the Commission  
4 denied AmerenUE's application for rehearing in the 2008-0318  
5 case?

6 A. I think the meetings happened before and  
7 during and after, yes.

8 Q. Before, during, and after. Okay. And did the  
9 application for rehearing and the Commission's response to it  
10 get discussed in those meetings?

11 A. I guess once -- once the Commission decision  
12 was made, we knew what the tariff was and we knew it wasn't  
13 going to change, so we knew what we needed to do or what were  
14 the tariff that we needed to meet, so.

15 Q. Okay. So the tariff itself and the  
16 Commission's reaction to AmerenUE's application for rehearing  
17 were both factors that entered into the types of contracts  
18 that you entered into?

19 A. Correct.

20 Q. Okay. Now, can you name for me all the people  
21 that you know either from UE or hired by UE to work on the  
22 2008-0318 rate case?

23 A. Two thousand -- let me first start thinking  
24 what you're talking about.

25 Q. The one in which the stipulation and agreement

1 was entered into that established the FAC.

2 A. No, that's a -- 2008. Okay. I don't know. I  
3 wasn't very well involved in that case. I wasn't involved at  
4 all, actually.

5 Q. Okay. If that's your answer. That's fine.

6 MR. MILLS: That's all the questions I have.

7 Thank you.

8 JUDGE WOODRUFF: For MEG?

9 MS. LANGENECKERT: No questions.

10 JUDGE WOODRUFF: MIEC?

11 MR. ROAM: Just a couple brief ones.

12 RECROSS-EXAMINATION

13 QUESTIONS BY MR. ROAM:

14 Q. Do you recall Commissioner Davis asking you  
15 about the changes over the years in MISO and the wholesale  
16 marketing field?

17 A. Yes, I do.

18 Q. Do you recall your testimony -- your  
19 surrebuttal testimony where you indicate that the EQR, the  
20 Electric Quarterly Reports, unlike the FERC Form 1, the  
21 regular review -- they are regularly reviewed and utilized by  
22 wholesale power market participants?

23 A. Yes.

24 Q. Do you recall when the -- the order discussing  
25 or revising the electric data dictionary that you gave us, do

1 you recall when that order was entered?

2 MR. BYRNE: I'm going to object. It's outside  
3 the scope of the questions from the bench.

4 JUDGE WOODRUFF: Can you repeat the question?

5 MR. ROAM: Mr. Haro was asked about how the  
6 wholesale market has changed over the years. And in his  
7 testimony, he -- he discussed the quarterly reports as being  
8 a regularly reviewed -- unlike FERC Form 1, that it's  
9 regularly reviewed and utilized by wholesale power markets  
10 and it's comprehensive, it's detailed.

11 And so I'm asking him about when the data  
12 dictionary that he gave us in his data request, when was that  
13 published? was that part of the old ways or was that  
14 something new and germane to his understanding of the terms?

15 JUDGE WOODRUFF: I'll overrule the objection.

16 BY MR. ROAM:

17 Q. Do you know when that data dictionary was  
18 published?

19 A. I don't know exactly the date, but I know it  
20 was the function of multiple rounds of discussions between  
21 many parties. So I --

22 Q. Okay. The question is just --

23 A. I believe it's 2005, but I'm not positive.

24 Q. If I show it to you, would it refresh your  
25 recollection?

1 A. Yes.

2 Q. What's the issuance date on that data  
3 dictionary?

4 A. This version is 2008, yes.

5 Q. October 28, 2008?

6 A. Yes. But the definitions were discussed many,  
7 many times before getting to that final.

8 Q. Okay. But the definition as published and  
9 issued is from 2008?

10 A. When it was published, yes.

11 Q. Now, this is -- this is changing gears  
12 completely, but in an electric system, do generators vary  
13 their outputs so that generation equals load at all times, do  
14 you know?

15 MR. BYRNE: I'm going to object, it's outside  
16 of the scope of the questions asked from the bench.

17 JUDGE WOODRUFF: What's the scope within?

18 MR. ROAM: Mr. Haro was asked about sales that  
19 match load and the relationship between capacity and load and  
20 there was an extended discussion of that. And I'm trying to  
21 understand whether output -- whether generators vary their  
22 output so that generation equals load at all times.

23 MR. BYRNE: With which Commissioner was that  
24 discussed?

25 MR. ROAM: That was with redirect with Ms. Ott

1 or recross with Ms. Ott.

2 JUDGE WOODRUFF: That's not a Commissioner  
3 question then.

4 MR. ROAM: I'm trying to remember what her  
5 question was.

6 JUDGE WOODRUFF: I'll sustain the objection  
7 then.

8 MR. ROAM: Okay.

9 JUDGE WOODRUFF: Did you have anything  
10 further?

11 MR. ROAM: Oh, I'm sorry. No further  
12 questions.

13 JUDGE WOODRUFF: Okay. Then we'll go to  
14 redirect.

15 MR. BYRNE: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 QUESTIONS BY MR. BYRNE:

18 Q. Ms. Ott, in her initial questioning, asked you  
19 about a question about if Ameren didn't have an FAC and it  
20 had lost the Noranda load and it sold power into the  
21 off-system market, would Ameren Missouri's shareholders have  
22 gotten a windfall. Do you remember that question?

23 A. I do.

24 Q. Can you explain a little bit about what  
25 circumstances they would get a windfall and what



1 circumstances they wouldn't get a windfall if we did not have  
2 an FAC?

3 A. Well, they actually would not get a windfall  
4 since they were just replacing a loss. So they would end up  
5 even. So there was no windfall for the shareholders if there  
6 was no fuel adjustment clause.

7 Q. Okay. Okay. Ms. Ott also asked you some  
8 questions about the contracts that you -- that the company  
9 has with Kirkwood and Marceline and the other cities and  
10 about Ameren's long relationship with the cities. Do you  
11 remember those questions?

12 A. Yes, I do.

13 Q. And let me ask you this: Did Ameren expect to  
14 continue to have a long relationship with the cities at the  
15 time that its FAC tariff was filed and approved?

16 A. Not necessarily. Actually, in the IRP that we  
17 filed and as Mr. Wills has in his testimony, we made the  
18 clarification following the IRP that the contracts were going  
19 to expire and they just -- we just assumed that the IRP, the  
20 expiration date of 2008 for those contracts. So as a matter  
21 of fact, we lost two customers out of the pool that we had,  
22 Hannibal and Centralia went away.

23 Q. So just to put a finer point on it, when was  
24 the IRP filed?

25 A. 2008.

1 Q. And when did you anticipate -- when did the  
2 IRP anticipate the relationship with these municipalities  
3 would end?

4 A. By the end of that year.

5 Q. Okay. You also mentioned in response to  
6 Ms. Ott's questions that Ameren Missouri has had a long  
7 relationship with AEP and Wabash slash Citizens. Do you  
8 remember that discussion?

9 A. Yes. Yes, I do.

10 Q. Can you explain a little bit more about  
11 Ameren's long relationship with Citizens?

12 A. Yeah. I think Citizens has been a long-term  
13 customer for Ameren since probably 1940s.

14 Q. And did we have contracts with Citizens?

15 A. Long-term contracts with them, yes. The thing  
16 is that nowadays, you can't transact directly with them.  
17 Since they are a Wabash member, you have to contract with  
18 Wabash to get a contract with Citizens.

19 Q. And in the contracts with Citizens, were they  
20 long-term requirements contracts?

21 A. Yes, they were.

22 Q. And I think you talked about a typo in your  
23 testimony. I just want to make sure we get that right. I  
24 believe it was your surrebuttal testimony on page 12,  
25 line 17. But let me make sure that's right. Yeah. Page 12,

1 line 17 and 18. It says Electric Energy, Inc. as the  
2 abbreviation for EEI. What's that supposed to be?

3 A. It should be Edison Electric Institute.

4 Q. Okay. In response to one of Ms. Ott's  
5 questions, I think you may have said that the tariff was  
6 clarified when we added the word "municipal," but then later  
7 in response to Ms. Langeneckert's question, you said it was  
8 changed. Can you tell me, when we add the word "municipal?"  
9 Can you tell me what happened?

10 A. Yeah, I think when we added the word, it was a  
11 change to the tariff, it was a change that came with other  
12 changes in the -- in the tariff itself.

13 Q. So it was not a clarification?

14 A. It was not a clarification. It was a change.

15 Q. Okay. And I think in response to one of the  
16 Commissioner's questions, they were asking about the AEP and  
17 Wabash contracts and extending beyond the date that Noranda  
18 came back. And I forget, what date did you say Noranda came  
19 back?

20 A. Sometime in April.

21 Q. Okay. But did -- at a certain point, were the  
22 revenues from AEP and Wabash because of the change in the  
23 tariff where they were treated as off-system sales after a  
24 certain point in time?

25 A. That is correct, after June, the Wabash

1 contract was treated as off-system sales.

2 Q. And why was that treated that way?

3 A. That was part of the changes in the fuel  
4 adjustment and result of the stipulation agreement with the  
5 last rate case.

6 Q. And how about AEP, what happened to that on  
7 June 21st?

8 A. AEP had expired already.

9 Q. Mr. Roam asked you about the EEI definition of  
10 "requirement service." Do you remember that?

11 A. Yes, I do.

12 Q. And I think you were -- in response, you  
13 started to talk about another EEI definition of "partial  
14 requirements service" and he cut you off. Do you have a  
15 definition of "partial requirement service" that's --

16 A. Yes, the tariff actually says partial  
17 requirement service, we looked at the EEI partial  
18 requirements definition that reads, "A wholesale customer who  
19 purchases or is committed to purchase only a portion of its  
20 electric power generation needs from a particular entity.  
21 There often is a specified contractual ceiling on the amount  
22 of power that a partial requirement customer can take from  
23 the entity. In contrast, a requirements or full requirements  
24 customer is committed to purchase all of its needs from a  
25 single entity and generally would not have a ceiling on the

1 amount of power it can take."

2 So in my perspective, AEP and wabash fall into  
3 the classification of a partial requirements as opposed to  
4 the definition he was making me look up.

5 Q. So they would qualify under that EEI  
6 definition of "partial requirements?"

7 A. Very clearly.

8 Q. Okay. Mr. Roam also talked to you about  
9 Appendix B, I think it was on the -- which contract, either  
10 the AEP or Wabash contract. Do you remember which one?

11 A. Wabash.

12 Q. Okay. And I think his point was that under --  
13 under that Appendix B, the buyer was paying a bunch of  
14 charges for OATT and RTO service?

15 A. Yes.

16 Q. And I guess my question to you is: would it  
17 make much difference if the buyer paid those charges directly  
18 or if the seller paid them and then charged the buyer?

19 A. You can include it in the price or they don't  
20 have to get the volatility when they're making their  
21 statement. So it doesn't make a difference.

22 Q. Okay. Either way, will the seller ultimately  
23 pay the price for those charges?

24 A. Well, you can argue that the buyer would pay  
25 it anyway, either through the price or paying it directly

1 through the RCO.

2 Q. I'm sorry, I said the seller, I meant the  
3 buyer. Okay. Commissioner Kenney was asking you about terms  
4 in the contracts, in other words whether long-term is defined  
5 in either of the AEP or Wabash contracts or partial  
6 requirements. And I guess let me start by asking you about  
7 long-term. I think you said there's no definition of  
8 long-term in those contracts in response to Commissioner  
9 Kenney's questions; is that correct?

10 A. Not of the finishing percent, just as a  
11 stating of a duration of the contracts.

12 Q. So how do you know these contracts are  
13 long-term?

14 A. Because they're longer than a year.

15 Q. Let me ask about partial requirements. And  
16 you may have talked about this, but on -- can you take a look  
17 at the first contract, which I guess is --

18 A. Wabash.

19 Q. -- Wabash. And can you tell me where it  
20 discusses partial requirements in that contract?

21 A. It's in the second page where it -- where we  
22 discussed the -- I'm sorry.

23 Q. I believe the -- the -- if you look at --  
24 well, it's at the end, the confirmation letter is at the end  
25 of the contract.

1 A. That's -- that's AEP, right?

2 Q. Right.

3 A. AEP, yes. If you look at the product itself,  
4 the top, it says, Physical capacity and associated energy,  
5 and in parentheses, it says partial requirements-base load.

6 Q. Okay. And is there another place on that?

7 A. In the very first paragraph, it states, The  
8 capacity and energy provided by AmerenUE will enable AEP to  
9 partially meet load-serving requirements. And then the terms  
10 of this confirmation are as follows.

11 Q. And do those provisions indicate a partial  
12 requirements contract?

13 A. Well, the provisions, yeah, because they're in  
14 the contract and that's what we intended to have. But also  
15 the fact that we're providing capacity and energy and it's a  
16 part of the contract. So the firmness as well.

17 Q. Okay. And how about the same question with  
18 regard to the wabash contract -- I mean -- yeah, the wabash  
19 contract. Where's the language in the contract that suggests  
20 that it is a partial requirements contract?

21 A. Page 2 as part of the product definition, the  
22 second paragraph reads, The energy provided hereunder shall  
23 be firmly -- firmly have the meaning ascribed to such term  
24 and schedule peak. The buyer shall use the product to  
25 partially meet the requirements of Citizens Electric

1 Corporation in Missouri.

2 Q. And does that term in your mind make it a  
3 partial requirements contract?

4 A. The term, yes, and then there's other factors  
5 we talked about, how this load is equally treated as native  
6 load and things like that that really make it a firm  
7 contract.

8 Q. Where does it say that?

9 A. I think it's bullet 19 on page 8, the priority  
10 of supply. In a long-form contract like this, it's commonly  
11 found that the seller agrees that it will consider buyer  
12 equivalent to seller's native load customers and agree that  
13 the product that it will provide to buyer pursuant to this  
14 agreement will be system-proof power, be the same quality as  
15 the electric power that the seller provides to its firm  
16 retail customers.

17 Q. Okay.

18 A. And then it goes on.

19 Q. In response to a couple of the commissioners,  
20 I think perhaps Commissioner Davis and Commissioner Gunn,  
21 they were asking you about what -- why you entered into this  
22 type of agreement and I think you testified that you were  
23 looking to try to replace Noranda with similar -- with a load  
24 that had similar characteristics to Noranda; is that correct?

25 A. That is correct.



1 Q. And then you were also asked about getting --  
2 making it a long-term partial requirements contracts, whether  
3 you intentionally did that. How does how the revenues from  
4 long-term partial requirements contract are treated compare  
5 with how the revenues that we would have gotten from Noranda?

6 A. They're following the same part of the  
7 exclusion. The revenues are the retail revenues that they  
8 would have -- we would receive from Noranda are excluded as  
9 well as this new contracts were excluded afterwards. So they  
10 fall in the same side that the revenues from Noranda would  
11 be.

12 Q. So like replacing the type of load, you're  
13 also trying to replace the type of revenues?

14 A. That's correct.

15 Q. Okay. You also said in response to some  
16 questions that during the period where there was a Joint  
17 Dispatch Agreement, that Ameren's marketing arm entered into  
18 requirement contracts. Do you remember that testimony?

19 A. Yes, I do.

20 Q. Do you know when the Joint Dispatch Agreement  
21 started?

22 A. I think it was 1998, if not 1997.

23 Q. Okay. And before the partial -- before the  
24 Joint Dispatch Agreement started, did Ameren Missouri enter  
25 into requirements contracts with other parties?

1 A. Yes, they did.

2 Q. Ms. Ott had -- was discussing -- I guess on  
3 her recross based on questions from the bench, she was asking  
4 you about purchase power agreements. Do you remember those  
5 questions and how they differed from requirements contracts?  
6 Do you remember that discussion?

7 A. Yes.

8 Q. Do you have our tariff still up there?

9 A. I do. I think.

10 Q. Do you want us to find it for you? And in the  
11 tariff under the definition of "OSSR," where it's talking  
12 about it lists number one, two, and three, and one being  
13 Ameren Missouri jurisdictional generating units, two being  
14 power purchases made to serve Missouri retail load, and three  
15 being any related transmission, is number two when it says  
16 power purchases made to serve Missouri retail load, is that  
17 talking about the requirements contracts, like AEP and  
18 wabash?

19 A. Not at all.

20 Q. Okay. What's it talking about?

21 A. It may be talking about contracts that you  
22 enter to supply the load whenever you're short --  
23 economically short, for example, that it's better to buy  
24 energy from the market than to -- to generate it yourself.

25 Q. So would it be fair to say that's talking

1 about Ameren Missouri being the purchaser rather than the  
2 seller?

3 A. Yes, that's correct.

4 Q. Okay. Mr. Mills asked you about  
5 counterparties that you contacted and I think you said in  
6 addition to the AEP and Wabash, you also contacted MJMEUC.  
7 And can you tell me why -- why was it -- why did you only  
8 contact those few counterparties?

9 A. The initial reason was those were  
10 counterparties that I knew were serving load in Missouri or I  
11 thought they were serving load in Missouri that I could  
12 access through MISO. So that's the main reason why I looked  
13 at them. And then I needed somebody large enough to buy a  
14 bigger block of energy than a city may be able to buy and  
15 would have the flexibility to enter into the contracts at the  
16 time they were requiring to enter into those contracts.

17 Q. So there was an element of the size of the  
18 counterparty or the size of the power needs of the  
19 counterparty?

20 A. Correct, if I needed to get 200 to 250  
21 megawatts done, yes.

22 Q. Okay.

23 MR. BYRNE: May I have just a second, Your  
24 Honor?

25 (An off-the-record discussion was held.)

1 BY MR. BYRNE:

2 Q. When Mr. Roam was asking you on  
3 cross-examination, he was asking you about the EQR report and  
4 he pointed you to a page where instead of using the word  
5 "requirements" to describe the transactions with the  
6 municipalities and with AEP and Wabash, instead the words  
7 "capacity" and "energy" were used in that report. Do you  
8 remember that?

9 A. Yes, I do.

10 Q. Is there any significance to that with regard  
11 to this case?

12 A. Well, I think for that matter, the cities and  
13 the long-term partial requirement contracts, all those  
14 contracts were treated equally. They were all treated as two  
15 elements, capacity and energy.

16 Q. Let me ask it this way: Just because they're  
17 capacity and energy contracts doesn't mean they're not  
18 requirements contracts, does it?

19 A. Actually, it means that they're partial  
20 requirement contracts, at least.

21 Q. Okay.

22 MR. BYRNE: Thank you. I have no further  
23 questions.

24 JUDGE WOODRUFF: Mr. Haro. You can step  
25 down -- I'm sorry.

1 COMMISSIONER KENNEY: I'm compelled, and I  
2 hate to do this because I know it will open up another round  
3 of questions, but I'm compelled to ask this because it's  
4 important. This is prompted by questions that Mr. Byrne was  
5 just asking about the definition of OSSR, because I'm  
6 confused now. So bear with me and forgive me.

7 FURTHER EXAMINATION

8 QUESTIONS BY COMMISSIONER KENNEY:

9 Q. Off-system -- and just make sure I'm reading  
10 this correctly. Off-system sales shall include all sales  
11 transactions -- I'm skipping all the rest of this and jumping  
12 down to that are associated with. So your reading of this  
13 means that off-systems sales shall include all sales  
14 transactions that are associated with, one, Ameren Missouri  
15 jurisdictional generating units, right? Am I right so far?

16 A. Yes.

17 Q. All right. Number two, power purchases. This  
18 is where I got confused. These are power purchases made by  
19 Ameren to serve Ameren's Missouri retail load?

20 A. Yes.

21 Q. Okay. So off-system -- so I can put in  
22 between "made" and "to," I can insert "by Ameren" and between  
23 "serve" and "Missouri," I could put "Ameren's," and that's  
24 how you're -- that's what is intended by this clause; is that  
25 correct?

1 A. Can you repeat that?

2 Q. where it says number two, power purchases made  
3 to serve Missouri retail load.

4 A. Uh-huh.

5 Q. You're saying that that is purchases made by  
6 Ameren --

7 A. Yes.

8 Q. -- to serve Ameren's Missouri retail load?

9 A. Yes.

10 Q. So off-system sales shall include all sales  
11 transactions that are associated with Ameren Missouri  
12 jurisdictional generating units?

13 A. Uh-huh.

14 Q. Two, power purchases made by Ameren to serve  
15 Missouri's retail load. And three, any related transmission.

16 A. Yes.

17 Q. All right. I just wanted to make sure I'm  
18 clear. That's it. Anyone want to recross based on those  
19 questions? Any redirect based on those questions?

20 MR. BYRNE: No, Your Honor.

21 JUDGE WOODRUFF: All right. Thank you then,  
22 Mr. Haro. You can step down now.

23 THE WITNESS: Thank you.

24 JUDGE WOODRUFF: And we are due for lunch.  
25 we'll take a break now and come back at 1:30.

1 (A break was held.)

2 JUDGE WOODRUFF: Okay. We're back from lunch.  
3 Ameren Missouri can call the next witness.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. MITTEN:

6 Q. would you please state your name and address  
7 for the record?

8 A. Lynn M. Barnes, 1901 Chouteau Avenue, St.  
9 Louis, Missouri 63103.

10 Q. Ms. Barnes, where are you employed and what is  
11 your job title?

12 A. I work for Ameren Missouri as their  
13 vice-president of business planning and controller.

14 Q. Ms. Barnes, did you cause to be pre-filed in  
15 this testimony prepared direct testimony, which has been  
16 marked for identification as Exhibit 3 and prepared  
17 surrebuttal testimony which has been marked for  
18 identification as Exhibit No. 4?

19 A. Yes.

20 Q. Let me first focus your attention on Exhibit  
21 No. 3. Do you have any changes or corrections that you need  
22 to make to that testimony at this time?

23 A. No, I do not.

24 Q. If I ask you the questions today under oath  
25 that are contained in that testimony, would your answers be

1 the same?

2 A. Yes.

3 Q. And is the information contained in that  
4 testimony true and correct to the best of your knowledge and  
5 belief?

6 A. Yes.

7 Q. Let me next direct your attention to what has  
8 been marked as Exhibit 4. Do you have any changes or  
9 corrections to make to Exhibit 4 at this time?

10 A. I do have one correction. It is on page 2,  
11 line 10. The sentence in the middle of that line reads,  
12 "this amount represents nearly eight and a half percent of  
13 Ameren Missouri's net income for the period March, 2009 to  
14 May, 2010." Instead of nearly eight and a half percent, that  
15 should say nearly nine percent.

16 Q. Any other changes or corrections?

17 A. No.

18 Q. With the exception to the correction that you  
19 just made, if I were to ask you the questions that are  
20 contained in Exhibit 4 today, would your answers be the same?

21 A. Yes.

22 Q. And is the information contained in Exhibit 4  
23 true and correct to the best of your knowledge and belief?

24 A. Yes.

25 MR. MITTEN: Your Honor, I would offer into



1 evidence Ameren Exhibits 3 and 4.

2 JUDGE WOODRUFF: Exhibit 3 and 4 have been  
3 offered. Any objections to their receipt? Hearing none,  
4 they will be received.

5 (Exhibit Nos. 3 and 4 were received into  
6 evidence.)

7 MR. MITTEN: And Ms. Barnes is available for  
8 cross-examination.

9 JUDGE WOODRUFF: For cross beginning with  
10 Staff.

11 CROSS-EXAMINATION

12 QUESTIONS BY MS. OTT:

13 Q. Good afternoon, Ms. Barnes.

14 A. Good afternoon.

15 Q. You have a copy of your direct and surrebuttal  
16 in front of you?

17 A. I do.

18 Q. Do you have any other testimony in front of  
19 you?

20 A. I have a copy of my deposition.

21 Q. Okay. Let's start at page 7 of your direct  
22 testimony. Now, starting with line 18, you state that the  
23 customers begin to receive an enormous windfall occasioned by  
24 an act of God.

25 A. Yes.

1 Q. As the controller of Ameren Missouri, have you  
2 quantified this windfall amount that you're speaking of?

3 A. I believe I do in my testimony as far as what  
4 revenues we stood to lose as a result of Noranda not being  
5 available. And that was \$139 million that was included in  
6 the base rates that were set in that case.

7 Q. And that's -- is that revenues associated just  
8 with fuel costs?

9 A. That's the amount of our rates, our base rates  
10 from a revenue requirement perspective that were allocated or  
11 would come from Noranda's load in the base rate calculation.

12 Q. Now in that sentence, what is your definition  
13 of enormous as it relates to this issue?

14 A. Well, \$139 million is pretty big.

15 Q. So at what number would it not become  
16 enormous?

17 A. Generally from a materiality perspective,  
18 we'll look at one to two percent of revenues as being maybe  
19 not as material.

20 Q. So in that sense, I'm not a math expert by any  
21 means, so you're saying 1.3 million to about 2 million would  
22 not be enormous? And I could just be calculating that wrong.

23 A. Yeah, that's probably fair. A million would  
24 probably not be.

25 Q. How about 10 million?

1 A. That's borderline, yes.

2 Q. How would you define "windfall" as it relates  
3 to this issue?

4 A. In this context, what windfall would mean is  
5 essentially having someone benefit from something that they  
6 really didn't have any cause or reaction to. Just sort of  
7 came to them without them having to take any actions on their  
8 own or being deserved of it necessarily.

9 Q. So you're saying that the customers do not  
10 deserve the revenues associated with the AEP and Wabash  
11 contract?

12 A. I'm saying that the customers, if -- if we  
13 wouldn't have acted the way we would have, the customers  
14 would have benefitted from the storm occurring and the  
15 Noranda's load going down.

16 Q. Now, is this \$139 million windfall that you  
17 speak of for customers, would the customers actually see that  
18 amount?

19 A. They would have received a refund for whatever  
20 off-system sales that we would have sold that excess load  
21 that we didn't -- weren't able to sell to Noranda through the  
22 FAC calculation.

23 Q. So they would have seen the entire \$139  
24 million?

25 A. They would have seen whatever portion we

1 sold -- whatever the revenues were from those megawatt hours  
2 that we were -- Noranda -- we didn't serve Noranda, so  
3 whatever the market price was for those, could have been  
4 more, could have been less, whatever we would have sold that  
5 power at the time.

6 Q. Now as its controller of Ameren Missouri, do  
7 you know what the restoration costs were associated with the  
8 January 2000 -- or January 28, 2009 storm?

9 A. I don't remember the exact amount. It was in  
10 the \$25 million range, plus or minus.

11 Q. Do you know who is ultimately paying for those  
12 restoration costs of the ice storm?

13 A. The storm restoration costs were addressed --  
14 it's part of a normal course in the next rate hearing, which  
15 was the 2010-0036 and really aren't relevant to this  
16 discussion of the FAC prudence. It's outside of the context  
17 of this hearing.

18 Q. That's all right, ma'am. I'm asking the  
19 questions that you may not think they're relevant but I do.  
20 would you classify these restoration costs as  
21 enormous?

22 A. They were outside of the mainstream, yes.

23 Q. Now, for Ameren Missouri, you're kind of the  
24 defender of the fuel adjustment clause currently; is that  
25 correct?

1 A. Yes.

2 Q. And you've -- you actually filed testimony in  
3 your current rate case ER-2011-0028?

4 A. Yes.

5 Q. You do not have a copy of that with you today?

6 A. No, I did not bring that with me.

7 Q. Okay.

8 MS. OTT: May I approach?

9 JUDGE WOODRUFF: You may.

10 BY MS. OTT:

11 Q. I'm handing Ms. Barnes a copy of her direct  
12 testimony in ER-2011-0028. I'm going to draw your attention  
13 to page 9 in the footnote, and can you read the sentence that  
14 starts on the third to the last line and begins "The FAC is  
15 a?"

16 A. "The FAC is a two-way street as demonstrated  
17 by the company's first adjustment, which passed a temporary  
18 reduction of net fuel costs on to customers. That situation  
19 could arise again, and if it does, customers will get 95  
20 percent of that reduction."

21 Q. Do you still believe that the FAC is designed  
22 to be a two-way street?

23 A. Yes, I do.

24 Q. So that means at some point, the customers may  
25 benefit in a reduction in fuel costs and at some point the

1 customers may be paying more because of an increase?

2 A. That's right. If our fuel costs turn out to  
3 be less than what is built into base rates, then that would  
4 require us to give a refund to our customers and we would do  
5 that.

6 Q. All right. You said you had a copy of your  
7 deposition in front of you, correct?

8 A. I do, uh-huh.

9 Q. And you remember being deposed on  
10 November 19th, 2010?

11 A. Yes.

12 Q. Okay. Let's turn to page 9 of that  
13 transcript. Okay. Now, you were asked what your familiarity  
14 with the fuel adjustment clause is, correct?

15 A. Yes.

16 Q. And can you please read starting at line --  
17 your answer starting on line 18?

18 A. Uh-huh. While in my current position, I have  
19 responsibility for defending it, I guess -- is that the right  
20 term? -- in our rate cases when we request to continue it and  
21 then I also monitor from an accounting perspective how we  
22 administer it so that we're following the rules.

23 Q. Okay. Now on page 10 of that deposition, you  
24 were asked to define what "long-term full requirement sales"  
25 is. And that was the question, lines 2 through 5. And your

1 answer begins on line 6. Can you read that -- your answer  
2 into the record?

3 A. That term is used from a contract perspective  
4 and frankly I don't get involved in negotiating those types  
5 of contracts so I don't know if I have a definition in my  
6 mind of what those are. I defer to Mr. Haro, which I'm sure  
7 exhausted that discussion of what those are.

8 Q. Now, Ms. Barnes, you just read into the record  
9 that you monitor from accounting perspective how Ameren  
10 administers so it follows the rules; is that correct?

11 A. Yes.

12 Q. Okay. And you just read in that you really  
13 don't know what these contracts are; is that correct?

14 A. I don't negotiate the contracts, that's  
15 correct.

16 Q. So you don't know what the contracts are?

17 A. I believe the question was asking me about the  
18 terms and I said I didn't know what the terms were in the  
19 context of negotiating the contracts.

20 Q. Do you think it's important to know what the  
21 terms of the contracts are so Ameren Missouri can comply with  
22 the fuel adjustment clause?

23 A. I think that I can read a contract and if it's  
24 for a period longer than 12 months, I can ascertain that  
25 that's long-term. And the contracts, as Mr. Haro earlier --

1 or addressed, state in them that they're partial requirements  
2 contract. So I think without knowing specifically what  
3 exactly those terms mean, I can ascertain whether or not  
4 they're properly classified for the FAC tariff.

5 Q. Well, you just said they're just terms. But  
6 you don't actually know how to apply the long-term  
7 requirements contract. So what you're saying is just because  
8 it says it's one, you're going to believe that it's a partial  
9 requirement contract?

10 A. I'm not a lawyer, but I did have a business  
11 law course where I understand that the terms of the contracts  
12 are what's agreed upon by the two parties involved in the  
13 transaction, and so the terms of the contract would dictate  
14 what the belief is on both sides of the parties on what  
15 exactly has transpired and so that's why I used the contract  
16 terminology to do the classification.

17 Q. Now did you make the classification whether or  
18 not these contracts flow through the FAC or not?

19 A. Not personally, no.

20 Q. So did you ever do a valuation of whether or  
21 not these contracts should flow through the fuel adjustment  
22 clause?

23 A. I'm not sure what you mean by "valuation."

24 Q. Did you ever make a determination that they  
25 should or should not flow through the fuel adjustment clause?



1 A. Not personally, no.

2 Q. Now since you just -- you previously testified  
3 that you're responsible for defending the fuel adjustment  
4 clause for Ameren --

5 A. Uh-huh.

6 Q. -- are you familiar with the Commission Rule  
7 240 Chapter 20 sub 090?

8 A. I'm familiar with that being the FAC rules. I  
9 don't have them memorized, but --

10 Q. Do you know what the purpose of those rules  
11 are?

12 A. Are to layout the terms under which we  
13 administer the fuel adjustment clause is how I understand it.

14 Q. Now based upon your knowledge of the rules, do  
15 they refer anywhere about recovering losses from acts of God?

16 A. I don't know specifically. I haven't read  
17 them in awhile, so I don't know if they do or not.

18 Q. Are you familiar with an accounting authority  
19 order is?

20 A. Yes.

21 Q. Could Ameren Missouri have sought an  
22 accounting authority order relating to the loss revenue as a  
23 result of the Noranda outage?

24 A. I suppose we could have in the subsequent rate  
25 case. Not sure that we felt we needed to since we had a

1 tariff that allowed us some options on how to mitigate the  
2 loss.

3 Q. Was it ever discussed whether or not you  
4 should file an accounting authority order to recover the  
5 Noranda loss?

6 A. I don't recall if that was discussed as an  
7 option or not.

8 Q. Do you know who would recall whether or not  
9 that was an option?

10 A. No, not off the top of my head. There were a  
11 lot of people in the meetings where we talked about all of  
12 this. I don't recall specifics about that being part of the  
13 discussion.

14 Q. Let's go to page 6 of your direct testimony.  
15 Starting on line 8, you say two-thirds of Noranda's capacity  
16 was lost for the long-term. How do you define "long-term" as  
17 it relates to lost capacity?

18 A. I believe at that time, the information we had  
19 from Noranda was they thought it could be at least 12 months  
20 before they would be back on.

21 Q. So only a loss of Noranda for 12 months or  
22 greater would be a long-term loss for Noranda?

23 A. Uh-huh, similar to how we define long-term for  
24 other things.

25 Q. Do you know how long Noranda was decreased by

1 this two-thirds capacity?

2 A. No, I don't recall. I don't have that  
3 information.

4 Q. Is Noranda at full capacity now?

5 A. Yes.

6 Q. And do you know when they came back on?

7 A. I believe Mr. Haro testified it was  
8 approximately April of 2010.

9 Q. Now did you know that it came on in April of  
10 2010 or did you only know from hearing Mr. Haro testify  
11 earlier?

12 A. No, I was involved in discussions -- we were  
13 monitoring Noranda and I know when they came back on full.

14 Q. Now, was the Noranda at full capacity at any  
15 time while the AEP and Wabash contracts were in effect?

16 A. For AEP, since that contract expired at the  
17 end of May, they would have been on two months. And for  
18 Wabash, that contract didn't expire until October, so they  
19 would have been on for, what, six months, approximately.

20 Q. Now, on page 8 of your direct, starting around  
21 line 9, you state, "Even more importantly, the allocation of  
22 megawatts associated with the Noranda loss load to long-term  
23 requirement contracts would keep all parties financially  
24 whole -- or parties close to financially whole in accordance  
25 with the FAC tariff that the Commission had already

1 approved."

2 MR. MITTEN: I'm sorry, Counsel, did you say  
3 that was her direct testimony?

4 MS. OTT: Yes.

5 MR. MITTEN: Beginning on line 9?

6 MS. OTT: Yes. Eight. Sorry.

7 BY MS. OTT:

8 Q. If I gave you a copy of the fuel adjustment  
9 clause you reference, could you point to me the terms you  
10 speak of about that it was meant to keep all parties as close  
11 to financially whole?

12 A. I believe it's in the definition of the  
13 off-system sales. I mean, what I'm trying to say in this  
14 testimony is that when we lost the Noranda load, what we  
15 wanted to do was look for a way to replace that load so that  
16 the revenues from the replacement would be accounted for the  
17 same way as the Noranda load that we lost or those Noranda  
18 revenues. So that's really what that's talking about.

19 Q. So are you saying that the off-system sales  
20 revenue portion of the tariff was drafted in the event that  
21 you lost the Noranda load?

22 A. No. What I'm saying is that off-system sales  
23 in general are any sale that's not sold to a native load  
24 customer. So if I'm not selling to my native load, then the  
25 only other alternative I have is to sell it off-system. And

1 if you look at the definition of off-system sales in the  
2 tariff, what we sold, the contracts are off-system sales, but  
3 they meet the exclusion as defined in the tariff of contracts  
4 that will not run through the FAC as an off-system sale. And  
5 so their treatment --

6 Q. But is the purpose of off-system sales to keep  
7 the company financially whole?

8 A. The purpose of off-system sales is to sell any  
9 excess generation that we have over and above what our native  
10 load requires in another setting. And that can be done a  
11 multitude of ways.

12 Q. Couldn't the company also back down  
13 generation?

14 A. If it economically made sense to do so, if we  
15 couldn't sell the off-system -- the excess generation in a  
16 profit, there are some opportunities to back down, but with  
17 coal generation and our nuclear for sure, you can't just turn  
18 them on and off. So there's limited capability to do that.

19 Q. Now Ms. Barnes, you're a certified public  
20 accountant licensed in Missouri?

21 A. Yes.

22 Q. I'm going to ask you a hypothetical question.  
23 If a business in a competitive environment lost a major  
24 customer and it was important for the business to maintain  
25 its earnings, would you have any advice as to any measure the

1 company could take in aiding the company to maintain its  
2 earnings?

3 A. Well, since earnings are calculated as either  
4 revenues minus expenses, if I have less revenues, then my two  
5 choices are either to find an alternative customer to  
6 increase my revenues or to reduce my expenses in some manner.

7 Q. So instead of finding another customer, could  
8 Ameren have cut its expenses to reduce what you perceive were  
9 the lost revenues from Noranda?

10 A. Well, your hypothetical was assuming that we  
11 were in a non-regulated environment and I would say the  
12 answer's a little bit different if you're in a regulated  
13 state because of the way our revenues -- going out and  
14 getting a new customer in a regulated environment is a little  
15 different than if you're in a competitive environment.

16 Q. But in a regulated environment, you can still  
17 cut expenses.

18 A. Except I don't necessarily get the benefit of  
19 doing that if I'm already not recovering my expenses because  
20 you just took away a big chunk of the revenues from a base  
21 perspective.

22 Q. Do you know what Ameren's total revenue was  
23 for 2008?

24 A. Not off the top of my head.

25 Q. Do you know what they were for 2009?

1 A. Not off the top of my head.

2 Q. Okay. On page 8, down at lines 23 and 24, you  
3 discussed Ameren recovering its rate of return. How often  
4 does Ameren earn its authorize the -- Commission-authorized  
5 return on equity?

6 A. Rarely.

7 Q. So it's not common for it to actually earn its  
8 authorized return on equity?

9 A. That's correct.

10 Q. All right. I'm going to turn to your  
11 surrebuttal, page 2, lines 8 and 9. This \$42 million you're  
12 discussing, is that fuel cost or fixed cost?

13 A. The \$42 million represents the net margin on  
14 the AEP and Wabash contracts.

15 Q. So when you say "margin," are you referring to  
16 profit?

17 A. Yes.

18 Q. Now, did Ameren's (sic) outage, all other  
19 things being equal, result in a reduction of Ameren's net  
20 fuel or purchase power cost?

21 A. If we had -- to the extent that we didn't  
22 generate, it would have reduced our fuel costs. If we  
23 generated and sold the power to other parties, it would have  
24 been allocated to those contracts or through the fuel  
25 adjustment clause, if they were off-system.

1 Q. Let's go to page 6 of your surrebuttal. You  
2 state that the adoption of Staff's -- and this is -- you  
3 state that the adoption of Staff's position will deny Ameren  
4 Missouri the right to recover more than 42 million of  
5 prudently incurred fuel and purchase power costs. Do you see  
6 that?

7 A. Yes.

8 Q. Can you point out to the Commission exactly  
9 what fuel and purchase power costs Staff is recommending  
10 disallowance in this proceeding?

11 A. By running \$42 million of additional  
12 off-system sales through the fuel adjustment clause has the  
13 effect of reducing the amount of fuel and purchase power  
14 costs that we will recover in total. And so it's a  
15 disallowance -- it effectively has the same impact as  
16 disallowing \$42 million of prudently incurred costs.

17 Q. But Staff is not recommending to disallow any  
18 prudently incurred fuel costs?

19 A. Maybe not intentionally. But by requesting  
20 that these contracts be classified that way, it has the same  
21 effect.

22 Q. But let me go back to my question. Staff is  
23 not denying any prudently incurred fuel costs be disallowed?

24 A. Not specific costs, no.

25 Q. Now would you agree with me that flowing --



1 that flowing changes in the fuel and purchase power expenses  
2 to customers through a fuel adjustment mechanism would allow  
3 Ameren to recover costs faster than if it waited until the  
4 next general rate case proceeding?

5 A. Yes.

6 Q. In general, does accelerated recovery through  
7 the fuel adjustment mechanism by Ameren of changes in the  
8 fuel and purchase power costs improve Ameren's ability to --  
9 excuse me -- the ability to earn a fair return on equity?

10 A. Yes, it's a component that does help us get  
11 closer.

12 Q. Let's turn to page 3 of your surrebuttal. On  
13 lines -- I'm going to direct you to lines 10 through 13. How  
14 does Ameren normally recover costs from an extraordinary  
15 event?

16 A. It depends on where we are in the rate process  
17 when the extraordinary event occurs. If it occurs within a  
18 test year, it might be recovered through a normal rate-making  
19 process. If it occurs outside of a test year, it may be  
20 something that would be requested in the form of an  
21 accounting authority order in a rate case proceeding that  
22 happens after that timeframe, and those are probably the two  
23 basic ways.

24 Q. Now, has Ameren not recovered its fuel costs  
25 through the fuel adjustment clause?

1 A. No, Ameren has. We're in the process. We are  
2 recovering our fuel costs.

3 Q. Now, I want to go back. You said you didn't  
4 know what the revenues were for the years 2008 and 2009.

5 A. Yes.

6 Q. Now you're the controller of the company and  
7 you're not familiar with what those revenues were?

8 A. You know, I see a lot of numbers in the course  
9 of my job and I don't remember all of them. I could  
10 certainly identify it if you showed me a document and asked  
11 me what they were.

12 Q. So how did you determine that the 139 was a  
13 material number if you don't remember what the annual  
14 revenues were?

15 A. Well, I know about order of magnitude what  
16 they are, but I don't know what they are specifically.

17 Q. And what, in your order of magnitude, are they  
18 for the year 2008?

19 A. Ameren's revenues?

20 Q. Yes.

21 A. They're in the billions. Probably two  
22 billion.

23 Q. And for 2009?

24 A. Same relatively. They weren't that different  
25 year over year.

1 Q. And when we're talking about Ameren, we're  
2 talking about Ameren Missouri?

3 A. No, Ameren in that context is Ameren  
4 Corporation, which is the publicly traded company.

5 Q. How about for Ameren Missouri?

6 A. I don't know. It's hundreds of millions of  
7 dollars. I don't know if it's quite a billion in revenues.  
8 could be. I just don't recall.

9 Q. So it's more than 500 million?

10 A. Yes.

11 Q. So it's closer to almost a billion?

12 A. Yeah, could be slightly over. I'm just not  
13 sure exactly.

14 Q. Now, at the time Ameren -- and when I say  
15 "Ameren," I'm referring to Ameren Missouri. I can't use the  
16 AmerenUE yet, so I'm sorry. I have to shorten it, otherwise  
17 I'll use the wrong name.

18 A. That's okay.

19 Q. When it filed its request for rehearing in  
20 Case No.ER-2008-0318 concerning the Noranda outage, how long  
21 did Ameren estimate that all -- you might have already  
22 answered this, all or part of Noranda's load would be lost?

23 A. I believe based on the information we had from  
24 Noranda at the time or what was publicly available from them,  
25 we had thought it was well over 12 months or at least 12

1 months. But there wasn't a lot of certainty at that time, I  
2 think, on their part either.

3 Q. Now, is it Ameren's position that any customer  
4 taking firm service from Ameren under wholesale contract of a  
5 duration of greater than one year is a long-term requirements  
6 customer?

7 A. That's probably a better question for Mr. Haro  
8 to answer than for me to answer. Definitely if it's over 12  
9 months. When you start talking about terms like "firm" and  
10 "requirements," that's not really my area of expertise.

11 Q. So you would not have an opinion, then, if the  
12 term "firm" and "requirements" are synonymous?

13 A. No, I wouldn't have an opinion about that.

14 Q. Now, if the contracts of the nature of AEP and  
15 Wabash under Ameren's interpretation should be excluded from  
16 the fuel adjustment clause in any event, could you explain  
17 why Ameren felt the need to file a request for rehearing in  
18 the 2008 rate case seeking exclusion of all off-system sales  
19 resulting from the Noranda loss?

20 A. I think that because we were in a situation  
21 where the order had just been granted and rates were not yet  
22 in effect, we felt that the first order would have been to  
23 change the -- or request a rehearing to modify the tariff to  
24 accommodate this request.

25 Since the order that came from the Commission

1 basically said not enough time to decide that situation on  
2 its merits, then we looked at the tariff that we had to live  
3 with and tried to figure out within the confines of the  
4 tariff what alternatives were available.

5 Q. Now, were you involved in deciding what was  
6 within the confines of the tariff to work with?

7 A. I was in the discussions but I was fairly new.  
8 I wasn't the witness for the '08 case and so I was still  
9 learning FAC at that point. So I was involved in a lot of  
10 the discussions from a listening perspective but not really  
11 involved in making the decisions.

12 Q. So you weren't an active participant?

13 A. Probably not. That's a good way to  
14 characterize it at that point.

15 Q. Is it possible that Ameren could experience a  
16 windfall that might allow it to collect greater net fuel  
17 adjustment clause revenues from a customer than otherwise?

18 A. The way the FAC is currently designed, I don't  
19 think so.

20 Q. Could you commit to the Commission that Ameren  
21 would take a position that it would oppose recovery of any  
22 additional net fuel and purchase power expenses that it might  
23 experience through -- in the future through the fuel  
24 adjustment clause as a result of a windfall?

25 A. Okay. Can you ask that question again,

1 please?

2 Q. Okay. Could you take a position that Ameren  
3 would oppose any recovery of additional net fuel and purchase  
4 power expenses it might experience in the future through the  
5 fuel adjustment clause as a result of a windfall?

6 A. I think de facto we already have because of  
7 the way the clause is structured. Mechanically, I don't know  
8 how the math works that would lead to what you're suggesting,  
9 so I'm not sure what I'm agreeing to.

10 Q. Okay. I'll leave it at that. Do you consider  
11 the Noranda outage to be an extraordinary event?

12 A. Yes. Absolutely.

13 Q. Was that the extraordinary event or was the  
14 ice storm the extraordinary event?

15 A. The ice storm was an extraordinary event from  
16 a storm restoration perspective. Noranda's load, when it was  
17 the largest customer we had and represented four percent of  
18 our load, made that an extraordinary event from a revenue  
19 perspective.

20 Q. Would you consider a \$17 million to be spread  
21 across Ameren's customers to be a windfall for customers?

22 A. Yeah. It's a \$17 million refund that they  
23 really aren't entitled to.

24 Q. Do you know what that \$17 million amounts to  
25 on an average customer?

1 A. No.

2 Q. Have you ever sought to determine what that  
3 \$17 million to flow back through the fuel adjustment clause  
4 would be to an average customer?

5 A. No.

6 Q. Do you think it's important to know that to  
7 determine whether or not it's an actual windfall for a  
8 customer or not?

9 A. If the customer doesn't do anything and  
10 receives even a dollar as a refund for something that they  
11 only got but for an act of God that happened somewhere else  
12 in the state, then I don't know if it matters. They still  
13 aren't entitled to it.

14 Q. So your definition more on windfall is about  
15 entitlement, whether or not somebody is entitled to something  
16 or not? It's not monetary?

17 A. Well, what we were trying to accomplish with  
18 this was make sure that everyone was whole.

19 Q. That's not my question though.

20 A. Okay.

21 Q. My question is whether or not your definition  
22 of windfall has to do -- it's not monetary. It's something  
23 that somebody doesn't deserve is how you're characterizing it  
24 now?

25 A. No, I think it's monetary, but I mean in my

1 mind, a windfall when you receive it is monetary and it's  
2 something that you didn't expect and weren't necessarily  
3 entitled to but someone chose to grant it to you.

4 Q. So is it your position that a windfall is that  
5 you didn't expect to get it or that you weren't entitled to  
6 get it?

7 A. Both.

8 Q. So is it Ameren's position that the impacts of  
9 extraordinary events from Ameren's fuel adjustment clause  
10 should always be excluded from the FAC?

11 A. Not necessarily. We follow the tariff and so  
12 whatever actions that were taken as long as they met the  
13 requirements and the interpretation of the tariff would be  
14 appropriate.

15 Q. Now, under Ameren's current tariff language in  
16 effect, would the contracts with identical terms to the AEP  
17 and Wabash contracts be excluded from Ameren's fuel  
18 adjustment clause?

19 A. Yes, under the current tariff they would be.  
20 And Wabash was reclassified in June when the new tariffs went  
21 into effect.

22 Q. Now, was that reclassification based in the  
23 last rate case?

24 A. It was based in the tariff changes and what  
25 the tariff now says after the last rate case.



1 Q. Do you know if the wabash contract is within  
2 the jurisdictional allocations?

3 A. It is not now because it's being classified  
4 under the tariff as an off-system sale.

5 Q. Now, it's your position that Ameren entered  
6 into the AEP and wabash contracts to restore Ameren to the  
7 same place it was prior to the ice storm?

8 A. Yes.

9 Q. How did entering into these contracts get  
10 money from the fuel cost to the utility any quicker than  
11 before the ice storm?

12 A. It's not about quicker. It's about at all.  
13 we lost revenues from base rates because Noranda wasn't  
14 taking any load. And what we did was we entered into these  
15 two contracts that mimic the type of load that Noranda would  
16 have taken and so the revenues then that we received from  
17 those contracts, we treated the same way as we would have  
18 treated Noranda revenues had they been working.

19 Q. But isn't the purpose behind the fuel  
20 adjustment cost to recover fuel costs to the company?

21 A. Yes.

22 Q. And it's the fuel adjustment clause is not  
23 there to recover base rates?

24 A. But we're trying to recover revenues. So we  
25 entered into contracts that --

1 Q. But is -- that's not my question. Is the fuel  
2 adjustment clause there for the utility to recover base  
3 rates?

4 A. No.

5 Q. It's just there to cover fuel costs?

6 A. It's meant to recover fuel costs in excess of  
7 what's built into base rates.

8 MS. OTT: I don't have any other questions.

9 JUDGE WOODRUFF: Public counsel?

10 MR. MILLS: I have no questions.

11 JUDGE WOODRUFF: MEG?

12 CROSS-EXAMINATION

13 QUESTIONS BY MS. LANGENECKERT:

14 Q. Just a couple. Good afternoon.

15 A. Good afternoon.

16 Q. Now, you have stated that you believe that  
17 AmerenUE is not earning its allowed ROE; is that correct?

18 A. It was not during the timeframe that is in  
19 question.

20 Q. Okay. Is it now?

21 A. I believe as of September, it was.

22 Q. Okay.

23 A. So the 12 months ended September.

24 Q. All right. Now, in the time period in  
25 question when Noranda was out because of the ice storm, was

1 AmerenUE underearning for reasons unrelated to Noranda as  
2 well or was it solely Noranda that was the cause of the  
3 underearning?

4 A. I think there were probably multiple  
5 contributing factors, but that was definitely a large factor.

6 Q. On page 6 of your surrebuttal, you state that  
7 any FAC approved by the Commission must be reasonably  
8 designed to provide a utility with a sufficient opportunity  
9 to earn a fair return on equity. If AmerenUE was  
10 underearning for other reasons, not just because of the  
11 Noranda outage, should PSC allow Ameren to redefine its FAC  
12 so as to remedy that?

13 A. I believe what I was trying to say was that  
14 the design of the FAC needed to be such a way that it would  
15 allow a sufficient opportunity. Not that it would guarantee  
16 that we would earn a return just by the FAC being designed a  
17 certain way.

18 And in this case, I believe if these contracts  
19 are classified as off-system sales, that that design is in  
20 question, and whether or not the design as the Staff's  
21 proposing would have met the requirements of the statute.

22 Q. So it's back when the FAC was designed that  
23 you feel that it was designed improperly?

24 A. Well, as it's being interpreted by the Staff,  
25 it causes it to be questioned. If we follow the tariff as it

1 was written at the time the way we're interpreting it, then I  
2 think it was designed fine.

3 Q. Is it just the Staff who interpreted it that  
4 way or is it every --

5 A. Well, intervenors. It's the Staff's prudence  
6 report.

7 Q. Okay. No problem. Now, if Noranda had gone  
8 out of business and didn't have any use for Ameren's power  
9 anymore, what would you have suggested be done under the  
10 former FAC?

11 A. We would have probably done the same thing we  
12 did. We would have entered into contracts to mimic the  
13 revenue and the load that Noranda represented until we were  
14 able to adjust rates for the lower load coming from the  
15 native sales.

16 Q. Do you believe that by not anticipating the  
17 possibility, Ameren was somehow at fault or imprudent?

18 A. No. I think, you know, with any business,  
19 there's always an element of risk and when you evaluate risk,  
20 you look at both the likelihood of a risk and what the  
21 financial consequences are of a risk and you make decisions  
22 based on those two things.

23 I think all of us would agree that it was  
24 highly improbable that Noranda was going to have an ice storm  
25 hit at that precise moment and drop its load. I'm sure they

1 didn't plan for that to happen. And so we can't make rates  
2 or make business decisions that encompass everything that  
3 could possibly happen to us. Frankly, we can't afford to.

4 Q. Now, is the 4.4 percent reduction in -- the  
5 actual reduction or what Ameren expected at the time of the  
6 ice storm?

7 A. That's the actual reduction based on the  
8 Noranda load that was built into base rates.

9 Q. Do you agree that the ROE that the Commission  
10 allows includes a risk premium?

11 A. I don't know about a premium. I think it  
12 ensumes (phonetic) some level of risk or loss in load or  
13 change in load. Probably not a four percent one, though.

14 Q. Is the actual dollar amount impact from the  
15 loss of Noranda's load plus the possible 17 million refund  
16 greater than the risk premium allowed in AmerenUE's ROE in  
17 Case No. ER-2008-0318?

18 A. Yes, I believe it is.

19 Q. But you do agree that the ROE includes a risk  
20 premium?

21 A. I'm not sure if we have a premium. I think  
22 having an FAC mitigates a risk and so I'm not sure that that  
23 would have warranted a premium in the ROE. Frankly, I  
24 believe there might have been some who thought that our ROE  
25 should be lower because we have an FAC, not higher.

1 Q. Because it lowers your risk?

2 A. Yes.

3 JUDGE WOODRUFF: For MIEC?

4 MR. ROAM: Just a couple questions.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. ROAM:

7 Q. Good afternoon, Ms. Barnes.

8 A. Good afternoon.

9 Q. Do you recall testifying earlier that it was  
10 your recollection that Ameren Missouri's total revenues for  
11 2008 were in the hundreds of millions, approximately, and  
12 then Ameren totals revenues in 2008 were approximately two  
13 billion?

14 A. Yes, I do recall. Did I have the numbers  
15 wrong?

16 Q. What's that?

17 A. You probably have the right numbers.

18 Q. How did you know?

19 A. There's an annual report floating around here  
20 somewhere.

21 Q. Would it surprise you if Ameren Missouri's  
22 total revenues were actually almost three billion and  
23 Ameren's total revenues were almost eight billion?

24 A. No, it wouldn't surprise me.

25 Q. If I show you the report, would you be willing

1 to stipulate that those are, in fact, the right numbers?

2 A. Absolutely.

3 Q. I'll just show you the 2008 -- excuse me, I  
4 marked on them, but -- so page 12, but it's 2.75 and that's  
5 Ameren Missouri, and then if you -- sorry, I'll let you look  
6 at it.

7 A. Actually, that's not actually the report I was  
8 looking at. Do you have an income statement? Do you have  
9 the rest of the report?

10 Q. I believe that's all I have. That's the 2008  
11 annual report.

12 A. The one you gave me is missing pages 1  
13 through 12.

14 Q. I think they're in the back. They're on top  
15 of this.

16 A. All right. Our total operating totals for  
17 Union Electric company -- and this is on page 88 of the  
18 annual report -- for 2008 were 2.96 billion. So I stand  
19 corrected. And the operating revenues for Ameren Corporation  
20 during that same timeframe for the end of 2008 were 7.8  
21 billion and that's electric and gas.

22 Q. Okay.

23 A. And that's on page 84 of the annual report.

24 Q. Thank you. I want to go back to something  
25 just for clarification, and because this came up in your

1 deposition and also in your testimony earlier. And your  
2 position was I believe that because Ameren and the  
3 counterparties in the Wabash and AEP contracts designated  
4 those contracts -- or because the language in that contract  
5 referenced partial requirements and because those contracts  
6 were over a year, by the mutual understanding of those  
7 parties, that that made those contracts long-term partial  
8 requirements contracts. Is that your position?

9 A. Yes.

10 Q. Okay. It's also true, isn't it, that that  
11 term shows up in the -- in the tariff, 98 -- sheet 98.3?

12 A. As an exclusion to the off-system sales,  
13 that's correct, uh-huh.

14 Q. Right. The Wabash and AEP counterparties are  
15 not parties to that stipulation and agreement or the FAC or  
16 the tariff. They were not parties to that, right?

17 A. That's correct.

18 Q. So that term has to have -- we need to  
19 understand what that term means within the context of the  
20 tariff that was agreed upon by all the parties here and  
21 approved by the Commission. We're not looking at  
22 necessarily -- in other words, I understand how two parties  
23 can define the terms of their own contract. But when those  
24 terms are applied to a tariff that some -- these other  
25 parties are not a party to, don't we need to understand what



1 the parties that were a party to the tariff, don't we need to  
2 understand what they meant by those terms?

3 A. The parties that you're referring to were  
4 involved when that tariff was created --

5 Q. Right.

6 A. -- and if they had any question about how to  
7 interpret it, I would have assumed they would have asked at  
8 that time, although I didn't participate --

9 Q. I believe that's going to come up at some  
10 point.

11 A. -- in that conversation.

12 MR. MITTEN: Your Honor, can she please be  
13 allowed to answer the question fully before Mr. Roam --

14 MR. ROAM: I apologize for interrupting.

15 BY MR. ROAM:

16 Q. Carry on.

17 A. So we wrote the tariff and the other parties  
18 all agree to the tariff and at that point, I don't know what  
19 else to assume but that they would have understood how we  
20 were interpreting those words when the tariff was drafted and  
21 agreed to in the FAC. And so we then were going out and  
22 entering into contracts. We were using that same  
23 understanding of what was written into the tariff in  
24 negotiating the contract terms with the counterparties.

25 Q. That's the subject of this hearing, though, is

1 that the parties apparently didn't have an agreement as to  
2 what those terms meant amongst themselves?

3 A. I'm not sure what else we could have done to  
4 ensure that everybody was thinking about this the same way.  
5 If we are having conversations around tariff negotiations --

6 Q. I'm sorry, I hate to interrupt, but I'm asking  
7 a question. If it's not responsive, then I will interrupt  
8 and ask to get back on track. You weren't at those meetings,  
9 were you?

10 A. No, I was not.

11 Q. So you're not aware of what was being  
12 discussed in terms of what that term meant among the parties  
13 that came up with the stipulation and agreement, right?

14 A. Right.

15 Q. And so there is a discussion now about what  
16 those terms mean among all of the parties who were parties to  
17 that agreement, correct?

18 A. Yes.

19 Q. Okay. I want to turn you to page 7 of your  
20 direct testimony where you quote a portion of -- you quote a  
21 portion of the Commission's Order denying rehearing?

22 A. Yes. Somewhere.

23 Q. It's seven -- I believe it's seven -- let's  
24 see.

25 MR. MITTEN: Line 9.

1 BY MR. ROAM:

2 Q. Seven, lines 9 through 13. And you quote the  
3 portion of the Order that says, "If the Commission were to  
4 grant AmerenUE's application for rehearing, it would have to  
5 set aside the approved stipulation and Agreement regarding  
6 the fuel adjustment clause, reopen the record to take  
7 evidence on the appropriateness of the proposed change, and  
8 make a decision before the March 1, 2009, operation of law  
9 date."

10 On page 5 of your surrebuttal testimony,  
11 lines 2 through 6, you summarize or you opine on the -- on  
12 the reason that the Commission denied Ameren's application by  
13 stating that, one, the Commission was unwilling to modify the  
14 Agreement and Stipulation without holding a hearing, and two,  
15 the Commission concluded that there was not time for such a  
16 hearing; is that correct?

17 A. Uh-huh, that's correct.

18 Q. The two places where -- the one place where  
19 you quote a portion of it and here where you opine on the --  
20 on the underlying reason, you don't quote the entire Order;  
21 is that right?

22 A. Yes.

23 Q. Isn't it true that the -- that the Commission  
24 found that in its judgment, AmerenUE had failed to show  
25 sufficient reason to rehear the report and order?

1 A. If -- you're reading from the Order, so.

2 Q. Here, I'll give you a copy of it. Could you  
3 read the highlighted portion of that order?

4 A. Section 386.500.1 RSMo 2000 indicates, "The  
5 Commission shall grant an application for rehearing if in its  
6 judgment sufficient reason therefore be made to appear.  
7 Ameren has not shown sufficient reason to rehear the report  
8 and order. The Commission will deny AmerenUE's application  
9 for rehearing."

10 Q. Thank you. Ms. Barnes, I want to turn you now  
11 to page 4 of your surrebuttal testimony, lines 14 through 18,  
12 you state, "On the other hand, Staff's reclassification of  
13 these contracts, if approved, will result in the company's  
14 inability to recover approximately \$42 million of its  
15 legitimate costs incurred during the accumulation periods  
16 effected by the contracts while resulting in a windfall of  
17 \$42 million for customers during that."

18 That \$42 million that you're referring to, is  
19 that -- is that a pretax amount?

20 A. Yes.

21 Q. Okay. What would that amount be after income  
22 taxes?

23 A. I don't have it in front of me. I responded  
24 to a data request. I believe the taxes would be about \$15  
25 million on that amount.

1 Q. Fifteen?

2 A. Yes.

3 MR. ROAM: No further questions. Thank you,  
4 Ms. Barnes.

5 JUDGE WOODRUFF: Open for questions by the  
6 bench, then. Chairman Clayton.

7 EXAMINATION

8 QUESTIONS BY CHAIRMAN CLAYTON:

9 Q. I can kind of see you over there. If I asked  
10 ask some questions that have been repetitive, I apologize for  
11 not being here for all your testimony.

12 A. That's okay.

13 Q. I wanted to compare, I guess get a couple of  
14 explanations for how Ameren categorizes different pieces of  
15 these transactions and then I want to compare before and  
16 after the existence of a fuel adjustment clause.

17 A. Okay.

18 Q. So if we get to a point where you're not the  
19 right person, then I completely understand that.

20 A. Okay.

21 Q. The first question that I have is can you --  
22 can you give me in a very brief explanation an idea, aside  
23 from serving your native load customers, in all classes, how  
24 many different types of contracts exist that would either be  
25 bilateral or some other term of contract that would be

1 outside of a tariff rate? How many types of agreements are  
2 there?

3 A. Now that's Mr. Haro. I don't have the number  
4 for that. I know we do those. I don't know how many  
5 different types there are.

6 Q. Are you aware, if you look at the existence of  
7 a bilateral contract, I know Ameren serves wholesale to a  
8 number of municipal providers in Missouri, perhaps outside of  
9 the State of Missouri. Prior to the existence of a fuel  
10 adjustment clause, how were those revenues and those fuel  
11 costs addressed in terms of Ameren's revenue requirement?

12 A. Okay.

13 Q. Can you understand that?

14 A. I can explain that. In typically as part of  
15 the rate-making process, there's a jurisdictional allocator.  
16 And the purpose of that allocator is to take the costs that  
17 are associated with those contracts that are for wholesale  
18 customers that are not part of the native load or the retail  
19 and allocate some of the costs to those contracts. So that  
20 the revenues for those contracts match those costs and the  
21 rate maker -- or the ratepayer's not paying for costs that  
22 don't relate to their own service.

23 Q. Okay. So you have an allocator that would  
24 apply on both sides of the equation, on both costs in terms  
25 of fuel expense as well as revenue that would potentially

1 come in as a sale on the system?

2 A. Yeah, the revenue requirement would take into  
3 consideration whatever revenues we expect to get from those  
4 wholesale contracts.

5 Q. Okay. Now, under the existence of a fuel  
6 adjustment clause, does that mechanism change?

7 A. Not for wholesale customers. Because they  
8 were excluded as part of the tariff from the off-system sales  
9 calculation.

10 Q. Okay. And can you just -- I've looked through  
11 the tariff several times and can you just describe where  
12 those types of contracts would be excluded?

13 A. If you look at -- I don't have the tariff in  
14 front of me, but it's in the off-system sales, the OSSR  
15 definition.

16 Q. I've got it right in front of me.

17 A. And it gives you an exclusion of certain  
18 contracts, and I don't believe wholesale is specifically  
19 mentioned. It's in the context of the long-term full or  
20 partial requirements. The wholesale would fall under that as  
21 well as the AEP and Wabash contracts.

22 Q. So the language excluding revenues as well as  
23 costs --

24 A. Yes.

25 Q. -- would be removed from the fuel adjustment

1 clause calculation based on the language excluding Missouri  
2 retail sales and long-term full and partial requirement  
3 sales?

4 A. That's correct.

5 Q. And then I think I read in the position  
6 statement "long-term" is defined by Ameren as what?

7 A. As anything that's in excess of 12 months.

8 Q. And where is that definition coming from? Is  
9 it written anywhere, is it listed anywhere? Is it in a  
10 handbook?

11 A. No, I would say that it's a general business  
12 practice. Mr. Haro testified earlier that that's a  
13 longstanding practice with FERC from a power marketing  
14 perspective. And I would say as an accountant from a  
15 business perspective that that generally is the line of  
16 demarcation between current and long-term that we use for  
17 financial purposes.

18 Q. So is there anything written that would define  
19 that?

20 A. I don't think so. Not in a guidebook  
21 anywhere.

22 Q. Now, when it says full and partial requirement  
23 sales, what does that mean?

24 A. That's another question for Mr. Haro. That's  
25 kind of outside my area of expertise.



1 Q. That's what I get for being late.

2 A. Sorry.

3 Q. Okay. The discussion that you had just  
4 recently on making the number of revenues that would be  
5 required I guess to make Ameren whole under this circumstance  
6 would be roughly the 42 million plus an addition for income  
7 taxes; is that correct?

8 A. The 42 million is before income taxes, so  
9 that's the revenue top line and then obviously income taxes  
10 would be taken from that.

11 Q. Okay.

12 CHAIRMAN CLAYTON: Thank you very much.

13 JUDGE WOODRUFF: Commissioner Davis.

14 COMMISSIONER DAVIS: Pass.

15 JUDGE WOODRUFF: Okay. Commissioner Jarrett.

16 EXAMINATION

17 QUESTIONS BY COMMISSIONER JARRETT:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. I want to talk a little bit about the FERC  
21 Form 1 --

22 A. Okay.

23 Q. -- because I know that was in some testimony.

24 A. Yes.

25 Q. And are you the person --

1 A. I'll try.

2 Q. -- that can answer questions? well, I'm  
3 looking at, I guess, the FERC Form 1 that was filed, it was  
4 part of Mr. Brubaker's testimony. Did you have a chance to  
5 look at that?

6 A. No. If someone has a copy, I can certainly  
7 try and answer your questions.

8 Q. Right. well, I notice that, you know, it's  
9 there at the top of this table, it talks about requirement  
10 service and then you've got Centralia, Hannibal, Kahoka,  
11 Kirkwood, Marceline, and Perry all classified as RQ, which  
12 means for requirement services; is that correct?

13 A. Yes.

14 Q. And then you go down to AEP, there are two  
15 entries for AEP. One of them is IF and one of them is SF.

16 A. Yes.

17 Q. Now, if they are requirements contracts, why  
18 are they classified as IF and SF?

19 A. well, as Mr. Haro already testified, this  
20 document's prepared by accountants who are using definitions  
21 in this FERC Form 1 to define how to report to those  
22 contracts. And that reporting definition is different than  
23 what is used to actually transact business for those  
24 contracts. And so as he testified, the litmus test that they  
25 used was whether or not a particular contract was included in

1 our last IRP.

2 And because the IRP that was on file at that  
3 point in time had been completed prior to these contracts  
4 being created, they obviously were not included in that IRP  
5 and so the accountant who prepared this report did not  
6 include them as RQ.

7 Q. Do you know the name of the accountant who  
8 prepared this?

9 A. Yeah, the work for this page is done in a  
10 corporate controller's group. They don't work for me  
11 directly, but the accountant's name is Georgette Culley.  
12 She's a labor union-represented employee. And then her  
13 supervisor, and there's several levels of review after she  
14 prepares it.

15 Q. well, who ultimately has responsibility for  
16 what's filed?

17 A. I sign the FERC Form 1 for Ameren Missouri and  
18 for Union Electric Company at FERC.

19 Q. And does anybody in your group check with the  
20 marketing folks to see how these contracts should be  
21 classified?

22 A. we don't. The supervisor who takes a look at  
23 this is familiar and works on all of the transactions for the  
24 trading organization and so they're familiar with the  
25 contracts and they're also familiar with the definitions in

1 the FERC Form 1.

2 Q. well, looking at these now, do you think the  
3 designation of AEP and Wabash as either IF or SF is correct?

4 A. well, given the definitions that are listed  
5 here in the FERC Form 1 where they're defining IF as terms  
6 between one and five years, I'm not sure they have a choice  
7 but to classify them that way for this purpose.

8 Q. well, read the definition for "requirements  
9 service." It doesn't have a timeframe in there. It's a  
10 purpose test. What's the purpose? If it's for requirement  
11 service, there's no timeframe. Some other contract might be  
12 long-term or short-term, but for requirements, there's no  
13 designation of whether it's long-term or short-term?

14 A. That's correct, although there is a  
15 parenthetical -- sorry to interrupt you -- that talks about  
16 the supplier including the projected load for this service in  
17 its system resource planning. And I believe that's the piece  
18 where because these contracts weren't in place, the way the  
19 accountants were defining "system resource planning" was, was  
20 it in our IRP or wasn't it. And because these contracts  
21 weren't in place, although the Noranda load was contemplated  
22 in our IRP, they didn't interpret these contracts that way  
23 and so that's why they were classified like that.

24 Q. were these subsequently -- I believe Mr. Haro  
25 said these subsequently were in the integrated resource plan.

1 A. Because they were replacing Noranda's load,  
2 from an overall load perspective, I think the load was  
3 already was captured in the system planning, it's just  
4 there's a three-year period when IRPs are filed and  
5 transactions can take place in that interim time that may not  
6 actually be in the IRP specifically.

7 Q. Right, but are there annual updates to those?

8 A. I'm not familiar enough to know whether we do  
9 formal annual updates or not.

10 Q. Now, I did have one question. I believe it  
11 was Ms. Ott asked you some questions about the 42 million.

12 A. Yes.

13 Q. I believe it was in your surrebuttal on  
14 page 2. My question would be: If you had sold that same  
15 amount of power to Noranda that you ultimately sold to AEP  
16 and Wabash under those contracts, is that how much profit --  
17 would you have -- would the amount of profit that you would  
18 have received from sales to Noranda be 42 million?

19 A. For that level of service, yes, I believe so.

20 Q. All right.

21 COMMISSIONER JARRETT: That's all I have.

22 Thank you.

23 JUDGE WOODRUFF: Commissioner Gunn.

24 EXAMINATION

25 QUESTIONS BY COMMISSIONER GUNN:

1 Q. I just want to follow-up, but I want to stay  
2 on this form because it's interesting. So essentially what  
3 you're saying is: Is that this form, even though it has  
4 definitions in it and it has requirements or RQ, requirement  
5 service definitions, and it even divides -- according to this  
6 form, the AEP contract or transaction would be under the  
7 non-RQ line item in here. So for purposes of all this, we're  
8 just -- this has no meaning?

9 A. It really doesn't. Because the FERC Form 1  
10 instructions were not what were contemplated in interpreting  
11 the FAC tariff. So they're two different definitions, two  
12 different interpretations.

13 Q. And while this one is written and is a  
14 required reporting form, there is a kind of a theorial  
15 (phonetic) generally accepted idea of what these definitions  
16 are somewhere else which is what you-guys were following?

17 A. The definitions that are -- that we were  
18 following for the tariff -- FAC tariff purposes were based on  
19 how businesses transacted, not based on what definitions were  
20 in a reporting document to prepare every year and submit.

21 Q. So other than with municipalities, you have  
22 long-term partial -- do you have other -- other than these  
23 two, do you have other long-term partial sale requirement  
24 contracts?

25 A. Historically we have. In the past. I would

1 say probably less so since we picked up the Noranda load  
2 because it's such a large portion of our load that we would  
3 have less excess capacity available to be able to enter into  
4 these types of contracts. So I would say less so since  
5 Noranda's come on our system.

6 Q. How long would those contracts have been for?

7 A. That's Mr. Haro's area of expertise. I don't  
8 know what length they would have ranged.

9 Q. Do you know if they were longer than a year?

10 A. I don't.

11 Q. All right. But there is somewhere where we  
12 could ask for previous contracts that were classified  
13 under -- that you classified under this -- under this  
14 long-term definition that we would be able to -- there is  
15 some historical data?

16 A. Yes, I believe Mr. Weiss actually has that in  
17 his testimony, so you could ask him those questions.

18 Q. So you said that the line of demarcation for  
19 financial purposes was a year. Now, I mentioned how some of  
20 the long-term definitions I saw were actually tied to the IRS  
21 code where you had to hold debt for longer than a year in  
22 order to get the tax benefits --

23 A. Right.

24 Q. -- from it. Is that what you were talking  
25 about that for financial purposes that when you classify

1 these things, that you're classifying how you -- for tax  
2 purposes or are you saying that -- that you classify  
3 long-term -- it's not tied to the IRS code, it's tied to some  
4 other reporting requirement or reporting methodology that you  
5 have?

6 A. I would suggest to you that at least in my  
7 accounting background, Generally-Accepted Accounting  
8 Principles that are used to prepare financial statements, for  
9 that purpose when we're explaining what current versus  
10 long-term is, it's generally a year is what is used as that  
11 line of demarcation.

12 Q. Okay. Were you involved in the discussions  
13 that determined that you were going to enter -- that it was  
14 necessary to enter into some contracts in order to replace  
15 the load that was -- that was lost when Noranda had its  
16 outage?

17 A. I was in some of those discussions, primarily  
18 as Ms. Ott put it as a listener, probably not a contributing  
19 party at that point.

20 Q. And Mr. Haro testified that one of the  
21 considerations for the way these contracts were set up was to  
22 avoid putting them through the fuel adjustment clause. Would  
23 you agree with that?

24 A. Yes, because we were trying to mimic the  
25 revenue stream that we lost from Noranda. So we were looking



1 for within the tariff interpretations, what opportunities  
2 would allow us to enter into contracts to replace the  
3 revenues that were lost from the Noranda load.

4 Q. And you were trying to do an apples-to-apples  
5 kind of --

6 A. As close as possible, yes.

7 Q. Now, if a week after you had signed these  
8 contracts Noranda had magically started up again, would --  
9 how would you have treated these contracts? would you flow  
10 them through the fuel adjustment clause? The AEP and wabash  
11 contracts.

12 A. whether Noranda's load was there or not wasn't  
13 what was the determining factor on interpreting the tariff.  
14 so the way the tariff was written at that time, we would have  
15 had to keep treating them the same way we did treat them  
16 whether Noranda came up or not. we would have just had to  
17 have figured out how to meet that load requirement because we  
18 still had the firm requirement to provide that load to those  
19 customers.

20 Q. So when you say how to figure out how to meet  
21 that load requirement, there was some question in your mind  
22 that if all three contracts could be met with Noranda, wabash  
23 and AEP, if all three were required to be fulfilled at the  
24 same time?

25 A. well, that would be Mr. Haro's judgment

1 because he's much closer to the load.

2 Q. You just -- you just spoke of it, so I'm  
3 asking your opinion as to what you just said.

4 A. From a basic -- the idea was to enter into  
5 contracts to sell the power that we would have otherwise sold  
6 to Noranda and to sell it in a way that the revenues that we  
7 received from those sales would be treated from the  
8 accounting purpose the same way the Noranda revenues would  
9 have been treated.

10 when we start talking about quantities, about  
11 how much did we sell, I wasn't involved in that piece of it  
12 and we were using our judgment based on the information we  
13 had at the time about when Noranda was going to come back  
14 online.

15 Q. So let me just go back. You said, we would  
16 have had to figure out how to meet that load.

17 A. "We," Ameren Missouri.

18 Q. No, I understand. So my question is, though:  
19 were you privy to conversations within the company where that  
20 was discussed, that at some point, they were going to have to  
21 figure out how to meet the load if all three contracts  
22 were -- needed to be fulfilled at the same time?

23 A. Yes. And as a result, I don't think that we  
24 did a one-for-one. I don't think Noranda's entire load  
25 matches what those two contracts were for because we were

1 unsure when Noranda was going to come back and how quickly  
2 they were going to ramp back up.

3 Q. Was there any discussion that these contracts  
4 from a revenue standpoint would be renewed or extended beyond  
5 the year regardless of what happened with Noranda?

6 A. No. I was not involved in any discussions  
7 about that.

8 Q. So as far as you know, these were one-time,  
9 one-year contracts?

10 A. They were designed term-wise to mirror what we  
11 believed the Noranda loss was going to be as best we could.

12 Q. And that was the sole purpose of entering into  
13 these contracts?

14 A. Yes.

15 Q. Okay. The -- and I don't think I'm getting  
16 into any confidential information, but Noranda is in a  
17 special rate class?

18 A. Yes.

19 Q. Because of the amount of load that they are  
20 responsible for?

21 A. Yes. They have their own rate.

22 Q. Now, were the AEP and Wabash prices set at a  
23 market price when the contracts were entered into or were  
24 they set at the same price that Noranda --

25 A. That would have been a good Mr. Haro question,

1 but I believe that they were priced at what we -- at what our  
2 rate was with Noranda, not at market necessarily.

3 Q. So they received a substantial discount from  
4 what they would have received on an open market because you  
5 were trying to replace?

6 A. I don't believe it was based on what market  
7 prices were at the time, but that again would be a Mr. Haro  
8 question because I'm not as close to the market conditions at  
9 that point, but power prices were depressed. They still are,  
10 and I'm not sure there was that big of a gap between what we  
11 were getting from Noranda and what the market was at that  
12 point.

13 Q. Let me ask it this way: Were the AEP and  
14 Wabash contracts meant to generate extra revenue or was it  
15 solely meant to replace revenue, from your understanding?

16 A. Solely meant to replace revenue.

17 Q. Okay. So now you -- and I know you're not a  
18 lawyer and I'm not asking for a legal opinion, but you talked  
19 a little bit about these tariff provisions and what these  
20 tariff provisions meant.

21 So if -- and it's your opinion, and I  
22 understand it may be a lay opinion qualifies, so the lawyers  
23 don't have to jump out of their seats. In your opinion,  
24 could Ameren and AEP enter into a contract for 11 months and  
25 say that it is a long-term contract?

1 A. No.

2 Q. Because of this -- the way business is done?

3 A. Right.

4 Q. So in your opinion, the tariff controls the  
5 contract and that if -- let me ask a second question, because  
6 I'm jumping ahead of myself. The parties couldn't define  
7 long-term through contract alone, in your opinion?

8 A. The parties couldn't define the term  
9 "long-term" -- you mean without the tariff?

10 Q. You're saying that there is a -- there is a  
11 business definition of "long-term."

12 A. Yes.

13 Q. We don't have, in the tariff, a definition of  
14 "long-term." So in the absence of a term's clearly defined  
15 in the tariff --

16 A. Uh-huh.

17 Q. -- the parties -- two parties could contract  
18 but there is still limitations on what they can contract to?

19 A. Yes.

20 Q. So the definition -- so just because parties  
21 agree in a contract, that can't alter the terms of a tariff?

22 A. Correct.

23 Q. So if -- if we determine what the  
24 interpretation of long -- of long-term is and it's different  
25 than what the parties agreed to between Ameren and Wabash

1 and/or AEP, then our interpretation of the tariff would  
2 control?

3 A. Since the Commission ordered the tariff, yeah,  
4 I would think you would be able to make that distinction.

5 Q. And that is all qualified as a lay opinion.

6 A. Exactly. Not a lawyer.

7 Q. I think -- I think that's all I have. But  
8 just to clarify, so if the AEP and Wabash were ultimately  
9 passed through the fuel adjustment clause, they would be  
10 subject to the 95/5 split that was in the original tariff?

11 A. Yes.

12 Q. And how would that -- how would that 95  
13 percent be returned? You're saying that it's a refund from a  
14 practical matter, that would be a credit?

15 A. It would reduce -- in the next accumulation  
16 period, I'm not sure how the mechanics would exactly work,  
17 this would run through an accumulation period as we have  
18 those and these revenues would be net against whatever  
19 increased costs were in that period. And then I would assume  
20 whatever that net amount would be would be refunded back to  
21 customers over the customary 12 months the way the tariff  
22 works.

23 Q. And that would manifest itself in a reduced  
24 fuel charge?

25 A. Yes.

1 Q. So they wouldn't -- you would take the amount  
2 that was to be returned passed back to the customer and then  
3 you would figure out what that payment was per customer over  
4 the 12-month period and reduce the fuel charge by that  
5 amount?

6 A. It would just be run through the surcharge.

7 Q. Okay. I don't think I have anything else.  
8 Thank you.

9 JUDGE WOODRUFF: Commissioner Kenney.

10 EXAMINATION

11 QUESTIONS BY COMMISSIONER KENNEY:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. I just have a few questions.

15 A. Okay.

16 Q. You were in the room for Mr. Haro's testimony?

17 A. I was.

18 Q. So you heard the discussion that I had with  
19 him regarding the definition of off-system sales revenue  
20 that's on the tariff of 98.3?

21 A. Yes.

22 Q. Do you have a copy of the tariff?

23 A. No.

24 Q. Can someone provide that to you, please?

25 MR. BYRNE: I think you do.

1 BY COMMISSIONER KENNEY:

2 Q. I just want to make sure we're all on the same  
3 page with respect to how we're reading this. Do you have it?

4 A. I do.

5 Q. It begins, "off-system sales shall include all  
6 sales transactions" and then it's got that parenthetical and  
7 a comma, and it's got that exclusionary language, "excluding  
8 Missouri retail sales and long-term full and partial  
9 requirement sales."

10 Let me ask my first question: Is it your  
11 understanding or is it your assertion, then, that the AEP and  
12 Wabash contracts fall within that exclusionary and/or partial  
13 requirements contracts?

14 A. Yes.

15 Q. Okay.

16 A. That's correct.

17 Q. And you pick up after that comma there, and it  
18 says "that are associated with, one, AmerenUE Missouri  
19 jurisdictional generating units; two, power purchases made to  
20 serve Missouri retail load; and three, any related  
21 transmission." And is it your understanding that the  
22 language that begins "that are associated with, one, Ameren  
23 jurisdictional," et cetera, et cetera, that clause modifies  
24 the off-system sales shall include all sales transactions  
25 provision?



1 A. Yeah, to me, the way I interpret that, that  
2 clause refers to the source of the power that's going to be  
3 sold. So as I mentioned earlier, off-system sales  
4 essentially are any sales that are not sold to retail  
5 customers. And in this case, we have an exclusion for  
6 long-term full and partial requirements customers. And the  
7 sources from where that generation is going to come from are  
8 Missouri jurisdictional generating units or if we purchase  
9 power.

10 Q. So, okay. Then, okay, so you're interpreting  
11 it the same way Mr. Haro did. Number two, power purchases  
12 made to serve Missouri retail load refers to power purchases  
13 by Ameren to serve Ameren's Missouri retail load?

14 A. And I would -- yeah, it's not worded that way.  
15 I would also say that would cover anything excluded, so it  
16 would also -- retail load and it would have also been used  
17 to, if we needed to purchase power to serve long-term full or  
18 partial requirements contracts that were excluded, that would  
19 be in there, too. The idea is to match the costs with the  
20 revenues. So if the revenues were excluded, then the costs  
21 would be excluded, or included, as the case may be.

22 Q. Okay. Now I think you confused me.

23 A. I'm sorry. Didn't mean to.

24 Q. Because that sounds a little bit different  
25 from what Mr. Haro said then. The exclusionary language is

1 the exclusionary language that's set off by commas after that  
2 parenthetical, after the including MISO revenues in FERC  
3 account 447, excluding Missouri retail sales and long-term  
4 full and partial requirement sales. That's the exclusionary  
5 language, right?

6 Q. Yes. And that's the revenue side of the  
7 equation.

8 Q. Everything else, the rest of that language is,  
9 what, off-systems sales?

10 A. It's where the generation is coming from for  
11 those off-system sales.

12 Q. Okay. All right.

13 A. And it can either come from our own  
14 generation, which is in Missouri jurisdiction, or we can buy  
15 power to serve those customers, whether they're the retail or  
16 whether they're the full and partial requirements contracts  
17 because we're treating those as if they're retail load.

18 Q. Okay. And I think this was a line of  
19 questioning or the dialogue you were having with Commissioner  
20 Gunn and you said that the FERC form was not what was  
21 contemplated for purposes of the definitions in the FAC?

22 A. That's correct.

23 Q. How do you know that? Because isn't that, in  
24 fact, the reason why we're here, because some folks are  
25 interpreting the FERC form as supplying the definitions for

1 "long-term" and "requirements contracts?" So what is the  
2 basis for your belief in making that statement?

3 A. The basis for my belief is that as, again, as  
4 transactions are made in the -- in the market, FERC Form 1 is  
5 not the driving force. I think there was some testimony  
6 quoted from Mr. Haro around FERC's definition in the power  
7 trading context that doesn't match, frankly, what's in their  
8 FERC Form 1 definition. So the FERC Form 1 is a reporting  
9 document.

10 Similar analogy might be to think about a tax  
11 return. We complete a tax return based on what the IRS  
12 requirements are for us to complete that form. That doesn't  
13 necessarily match how we record transactions in the general  
14 ledger for Generally-Accepted Accounting Principles or how we  
15 transact business. And I make the same analogy for this.

16 Q. So the basis for your belief is your opinion  
17 and your understanding, not based upon your recollection of  
18 negotiations with the other side and the other parties when  
19 the FAC was being written?

20 A. Absolutely. I wasn't in those discussions.

21 Q. Okay. I just wanted to make sure that there  
22 wasn't somebody from OPC or from our Staff that said oh,  
23 yeah, we don't contemplate that FERC Form 1 will apply. No  
24 one ever said that?

25 A. I wasn't in the room, so I don't know.

1 Q. I also want to talk just about your  
2 surrebuttal testimony on page 2 where -- and I think this is  
3 where you corrected it. You said on line 10 should have been  
4 changed from eight and a half percent to nine percent.

5 A. Yes.

6 Q. So the \$42 million of legitimate costs for the  
7 four accumulation periods, we're talking it's a 14-month  
8 period; is that right?

9 A. Yeah, it's from March, 2009 to May, 2010,  
10 uh-huh.

11 Q. And the 42 million represents nine percent of  
12 Ameren's overall net income for that 14-month period?

13 A. That's correct.

14 Q. And if my math is correct, then Ameren's  
15 overall net income for that 14-month period would have been  
16 around 466 million and some change?

17 A. Yeah, it's in the ballpark. I can't remember  
18 the exact number, but that would be reasonable.

19 Q. And -- all right. So if Ameren's required to  
20 refund that amount, you have opined that that would  
21 constitute a windfall to the Missouri consumers that receive  
22 the refund?

23 A. Yes.

24 Q. And why do you think that would be a windfall?  
25 I hate to beat this horse again, but I'm just not sure why

1 that would be considered a windfall?

2 A. If the purpose of interpreting the tariff and  
3 entering into those contracts was to mimic the revenues that  
4 we lost from Noranda, which the Noranda load and the Noranda  
5 revenues that 139 million we talked about was how the rates  
6 were set, how the base rates were set and what costs were  
7 assumed to be recoverable through the Noranda load. If this  
8 \$42 million goes back to customers, there will -- Noranda,  
9 frankly, is one of the customers that will get a refund and  
10 the refund is only going back to them because there was an  
11 ice storm in southeast Missouri that caused Noranda to lose  
12 their load. Not for my other reason. So not sure how that's  
13 fair or -- to me, that's a windfall, I guess.

14 Q. But no Ameren customer is going to receive a  
15 check for some amount of money?

16 A. No. As we talked with Commissioner Gunn, it  
17 would flow through the FAC mechanism, and so it would reduce  
18 the surcharge that runs through their bill.

19 Q. So when they start to get billed from some  
20 period forward, they would be billed less than what they  
21 otherwise would be billed?

22 A. Yes.

23 Q. Because my conception of a windfall is some  
24 amount of money that's coming back to you as opposed to less  
25 money leaving my pocket. But I just wanted to make sure I

1 understood what you meant by windfall.

2 COMMISSIONER KENNEY: Okay.

3 JUDGE WOODRUFF: Did you have any further  
4 questions?

5 CHAIRMAN CLAYTON: I just have a few quick  
6 follow-up financial questions.

7 FURTHER EXAMINATION

8 QUESTIONS BY CHAIRMAN CLAYTON:

9 Q. Prior to the existence of the concept of a  
10 fuel adjustment clause, rates were set where you would  
11 allocate a certain amount of base expense and then you would  
12 offset that expense with a base off-system sales dollar  
13 amount?

14 A. Right.

15 Q. Does that make sense? I'm not explaining it  
16 very well.

17 A. Yes.

18 Q. But basically, you would -- the Commission  
19 would set a number of revenue requirement and then -- and  
20 that would include a component that would offset expense and  
21 that would be any off-system sales that were made?

22 A. Yeah. I think I understood what you said.  
23 Let me say it a different way and see if I'm understanding  
24 what you're saying. That when the revenue requirements  
25 determine what the base rates -- how much revenue we're going

1 to collect from customers, it contemplates that we're going  
2 to sell some level of off-system sales when it calculates  
3 that number.

4 Q. which reduces?

5 A. which reduces the revenue from them. That's  
6 right.

7 Q. Now in that scenario where you're just setting  
8 base expense, you're setting a base amount that you  
9 anticipate from off-system sales, if Ameren sells more  
10 off-system sales than what is included in there, all things  
11 being equal, then Ameren makes more money?

12 A. The shareholders get to keep it.

13 Q. Shareholders get to keep it?

14 A. Uh-huh.

15 Q. If Ameren sells fewer off-system sales, then  
16 Ameren shareholders end up eating that expense?

17 A. That's correct.

18 Q. Now, that dynamic changes with the existence  
19 of a fuel adjustment clause?

20 A. That's correct.

21 Q. So you have base amounts that are set in for  
22 fuel and I assume off-system sales and then any adjustments  
23 will cause the rider to either go up or go down?

24 A. That's correct.

25 Q. And in fact, Ameren for some time has had a

1 negative rider; isn't that correct?

2 A. The first accumulation period resulted in a  
3 refund or a negative rider but actually since then, it's  
4 always been an increase.

5 Q. Then it went up. So I think the first period  
6 it actually went negative --

7 A. Yes, that's correct.

8 Q. -- which I think there was some discussion  
9 whether that was even possible under the way the rules were  
10 set up. So it went negative and now it's gone positive as  
11 time has passed?

12 A. That's correct.

13 Q. Now, under the traditional method of  
14 rate-making, Ameren had built-in incentives through the  
15 financial model that it wants to -- it wanted to reduce  
16 expenses as much as possible and enhance revenues wherever  
17 possible because if you have that incentive to go out and  
18 make more off-system sales, you get to take that home to the  
19 shareholders, right?

20 A. There was a better chance or an opportunity  
21 that I would say went away when we got the fuel adjustment  
22 clause.

23 Q. Well, that's what I want to ask about. In  
24 this circumstance where you have off-system sales that flow  
25 through at the 95-percent level, Ameren really doesn't have a



1 financial incentive to maximize off-system sales because they  
2 end up losing that sale through the fuel adjustment clause?

3 A. At the end of the day, we don't recover all of  
4 our costs from rates. I mean, so I wouldn't look at it that  
5 way. I mean, we don't manage our business trying to figure  
6 that sort of thing out. What we're trying to do is serve our  
7 customers and recover the costs at all in some cases, but  
8 timely, so.

9 Q. Well, I guess in this circumstance -- let me  
10 ask the question this way: If you compare two different  
11 scenarios, the first scenario -- and they both assume that  
12 Noranda -- or that the ice storm occurred, Noranda shut down.

13 A. Okay.

14 Q. Okay. Ameren has a choice of whether it is  
15 going to go out and try to get -- make a deal with AEP or  
16 Wabash or whatever. Ameren is considering that circumstance.  
17 If you assume the position taken by Staff and Public Counsel  
18 that that type of contract is a flow-through in the fuel  
19 adjustment clause. To Ameren financially, does it make a  
20 difference financially whether you do that deal or you do not  
21 do the deal with AEP and Wabash?

22 A. Versus just selling on the open market, on the  
23 spot market?

24 Q. Well --

25 A. Again, we have a certain amount of generation

1 that we can't back down necessarily to offset the entire  
2 amount that we couldn't serve Noranda with, so we would have  
3 had to sell something on an off-system sales mechanism.

4 Q. which would flow through?

5 A. well, it depends on what kind of contract. If  
6 it didn't meet the exclusion, then it would flow through.

7 Q. Right.

8 A. And so whether that was economical to do so  
9 and depending on what was built into that base.

10 Q. I guess what I'm trying to ask from a  
11 financial standpoint, does it really make -- if you assume  
12 the position taken by Staff and Public Counsel, Ameren signs  
13 the off-system sale contract, assuming that it flows through.  
14 I know that that's hard for you to do that. But I'm trying  
15 to get at the incentives that are built into this. If you  
16 assume the position taken by these people, financially if you  
17 make the deal, that amount flows through. If you don't, the  
18 rider, does it really change?

19 A. No, but from a financial perspective or a  
20 business perspective, and Mr. Haro addressed some of this.  
21 we still look at the portfolio and the counterparty risk  
22 that's out there. And you do subject yourself to market  
23 prices going up or down if you leave a lot of your generation  
24 available to only selling the spot market.

25 So whether or not we would have done that, if

1 there was no opportunity for this to be an exception and if  
 2 it would have run through the off-system sales. I mean, I  
 3 can't speculate on what we would have done, but knowing now  
 4 that prices were dropping during that timeframe, getting into  
 5 a long-term contract would have been seen as something that  
 6 we should have done for the benefit of our ratepayers.

7 Q. well, you have the whole issue of what would  
 8 staff look at in terms of prudence whether you made the sale  
 9 or not.

10 A. Correct.

11 Q. But from a purely financial standpoint on the  
 12 impact on rates, would rates change if you compare a  
 13 circumstance where you sign the contracts with AEP and wabash  
 14 or you don't because it's a 95-percent pass-through. So  
 15 revenues go up, it's going to pass through. If they don't,  
 16 you don't make the sale. For Ameren, the revenue remains the  
 17 same, isn't it?

18 A. Yeah, the piece that's missing there is that  
 19 base rates were set assuming a load level that suddenly  
 20 dropped by four percent. And so it created a hole. And so  
 21 there was no way to close that hole. There wouldn't have  
 22 been in the scenario that you just laid out.

23 Q. I'm just trying to figure out how a mechanism  
 24 like a fuel adjustment clause works. And it changes the  
 25 dynamic, doesn't it, for how off-system sales are handled?

1 A. well, it limits the opportunity -- the upside  
2 opportunity for the -- for us to offset.

3 Q. Limits the upside and protects you from a  
4 downside, potentially?

5 A. That's right. That's right. And it's meant  
6 to. That's what a rider mechanism is for is to mitigate  
7 risk, both positive and negative. And it does that.

8 CHAIRMAN CLAYTON: Okay. Thank you.

9 JUDGE WOODRUFF: Okay. Recross based on  
10 questions from the bench beginning with Staff.

11 RECROSS-EXAMINATION

12 QUESTIONS BY MS. OTT:

13 Q. Ms. Barnes, I just want to make sure I heard  
14 you right when you were just talking to Commissioner Clayton.  
15 You said you entered into these contracts for the benefit of  
16 the ratepayers?

17 A. No, he was asking a hypothetical, I believe,  
18 if you followed his line of questioning.

19 Q. Okay. Maybe that's where I got lost a little  
20 bit. So you didn't enter into the AEP and Wabash contracts  
21 for the benefit of the ratepayers?

22 A. We entered into the AEP and Wabash contracts  
23 to mimic the load that we lost from Noranda, to replace the  
24 revenues that we lost from Noranda under the confines of the  
25 tariff.

1 Q. So is that to benefit the ratepayers or the  
2 shareholders?

3 A. It ultimately benefits both because we need  
4 shareholders in order to fund the shortfall that we don't  
5 receive from ratepayers so that we can continue to provide  
6 the service that we provide and that they expect. So we have  
7 to balance both.

8 Q. So how did that benefit ratepayers?

9 A. Ultimately, if we don't have enough revenues,  
10 then we have to cut our costs, as you were eluding to  
11 earlier. And if we reduce our costs, then that may reduce  
12 the level of service we're able to provide to customers.

13 Q. So when you say you had to reduce your -- you  
14 would have to reduce the level of service you would provide,  
15 are you saying you would be providing inadequate service  
16 then?

17 A. Hopefully not. We certainly would not be  
18 striving for that, but if our revenues get low enough and we  
19 need to synchronize our spend, I would hope it wouldn't get  
20 there, but.

21 Q. Okay. Also, when you were talking with  
22 Chairman Clayton -- I apologize for that earlier -- we were  
23 kind of going through the financial. So -- and you're saying  
24 and I'm going to try to do a math equation, so it may be  
25 confusing -- that you have more than a million customers. So

1 if you round it down to a million and we're saying that --  
2 Staff is proposing that 17 million should have flown through  
3 the fuel adjustment clause in this preview.

4 A. Right.

5 Q. Now, if you have -- and that would flown  
6 through through a year?

7 A. Yes.

8 Q. Okay. So that would be roughly \$17 per  
9 customer per year, if you do the math.

10 A. Okay.

11 Q. So that would be about \$1.40 a month.

12 A. Okay.

13 Q. So I think Commissioner Kenney was also asking  
14 something about the money, like, the customer is not going to  
15 receive a check for \$1.40 a month. It's just going to be  
16 their fuel costs will be reduced by \$1.40 per month?

17 A. And that's \$1.40 of prudently incurred costs  
18 that we will not recover.

19 Q. And we're talking about costs, we're not  
20 talking about fuel costs?

21 A. No, I'm talking about fuel costs. If we run  
22 it through the mechanism, then there will be \$1.40 a month of  
23 costs per customer that we don't recover because we're  
24 offsetting these costs with these revenues.

25 Q. But the 17 million wasn't for -- for fuel

1 costs. It's the margin from the fuel costs, right?

2 A. That's right. But the net base fuel cost  
3 calculation that we used in the fuel adjustment clause  
4 calculation includes its total costs for fuel minus the  
5 margins from off-system sales. So if we increase the  
6 off-system sales revenue number, it will reduce the net base  
7 fuel costs that then gets compared to what's in base rates.  
8 So it results in costs that we incurred not getting  
9 recovered. That's how the math works.

10 Q. Now earlier, you were saying that cost and  
11 revenues are within that off-system sales revenue component?

12 A. Yes.

13 Q. Are you sure -- is it revenues or -- and costs  
14 or just revenues?

15 A. No, off-system sales less revenues less the  
16 fuel costs to provide those is -- it's a net number.

17 Q. Can you show me where it has costs in the  
18 tariff language under the OSSR component?

19 A. It's in the overall formula for the fuel and  
20 purchase power adjustment.

21 Q. Okay. So it's not in the off-system sales  
22 revenue component?

23 A. Well, but if you look at where -- how the  
24 formula works, the costs are included and then the revenues  
25 are subtracted from those costs to get to the net base fuel

1 costs.

2 Q. And I was just trying to clarify that it's not  
3 the OSSR term that has the costs, it's another piece of the  
4 fuel adjustment clause?

5 A. Yes, but it's all part of the same formula  
6 that's used.

7 Q. Now, when you were having a discussion with  
8 Commissioner Gunn, you were kind of talking about the FERC  
9 form and then the -- for financial and marketing purposes,  
10 the demarcation of a long-term contract.

11 A. Uh-huh.

12 Q. Now, is it your opinion that the "energy  
13 markets" and the "regulation" are the same thing?

14 A. The "energy markets" and "regulation?" I'm  
15 not sure I know what you mean by that.

16 Q. Is transactions and the energy market the  
17 same -- the same as how things are treated here in the  
18 regulatory world?

19 A. Not always, but for the definition of a  
20 long-term, I believe we do use one year when we're doing rate  
21 making.

22 Q. So are sales reported as long-term and  
23 short-term on the company's financial statements?

24 A. No, revenues are not a long-term/short-term.  
25 It's balance sheet items. So it would be things like debt,



1 receivables, inventory, rate base. Those -- those would be a  
2 long-term or short-term definition or interpretation for  
3 those.

4 Q. Now, also going back to your discussion about  
5 the FERC Form 1, you were talking about the different parts  
6 of Ameren that deal with the FERC Form 1, and while the  
7 accounting department was the one that initially proposed the  
8 tariff language, it's actually the marketing department that  
9 interprets?

10 A. No. It's the -- well, the accounting  
11 department that specifically works on the accounting for the  
12 fuel costs and for the power sales is the same department  
13 within the accounting group that also prepares that page of  
14 the FERC Form 1.

15 Q. So who wrote the FAC tariff?

16 A. I don't know.

17 Q. Do you believe that Marty Lyons could have  
18 been involved in drafting the proposed --

19 A. He was our witness at that time for that case,  
20 so I would assume he was in the discussions, but I don't know  
21 for a fact.

22 Q. Okay. And is he the former controller for  
23 Ameren?

24 A. No, he's the CFO for Ameren Corporation.

25 Q. But was he a former controller?

1           A.       For Ameren Corporation. We didn't have  
2 separate controllers for Ameren Missouri and Ameren Illinois  
3 at the time.

4           Q.       Okay. Now earlier when you were also talking  
5 with Chairman Clayton, you described the contracts that are  
6 supposed to be included in the OSSR as wholesale contracts.  
7 Do you remember that conversation?

8           A.       Yes.

9                   MS. OTT: I would like to go ahead and have  
10 some exhibits marked.

11                  MR. MITTEN: Your Honor, isn't the recross  
12 limited to the additional questions that Chairman Clayton  
13 asked? He didn't ask any questions about the municipal  
14 contracts.

15                  JUDGE WOODRUFF: Questions from the bench in  
16 general.

17                  MS. OTT: She defined that the OSSR was  
18 wholesale contracts. These contracts all are identified as  
19 wholesale contracts where the AEP and Wabash contracts do not  
20 have the wholesale language in it and I think her whole  
21 discussion has been that if the language is within the  
22 tariff -- or if the language within the contract says it's a  
23 partial contract, then it must be a partial contract. So if  
24 it says it's a wholesale contract, it must be a wholesale  
25 contract; and if it's not in there, it's not. I think it

1 goes to prove --

2 THE WITNESS: Could I clarify what I said was  
3 that wholesale contracts would be a subset of the exclusion  
4 that says long-term full and partial requirements contracts.

5 MS. OTT: I would still like to have these  
6 exhibits marked.

7 JUDGE WOODRUFF: All right. Number 17.

8 (Exhibit No. 17 was marked for identification  
9 by the Court Reporter.)

10 MS. OTT: I'll offer them at this time.

11 JUDGE WOODRUFF: Okay. 17HC has been offered.  
12 Any objections to its receipt?

13 MR. MITTEN: Could I have a moment to look at  
14 them?

15 JUDGE WOODRUFF: Certainly.

16 MS. OTT: They're also responsive to number DR  
17 Number 50.

18 MR. MITTEN: I have no objection then.

19 JUDGE WOODRUFF: All right. Hearing no  
20 objection, they will be received in evidence and it's my  
21 understanding that staff will be providing copies of these to  
22 the bench later.

23 MS. OTT: Certainly, Your Honor.

24 BY MS. OTT:

25 Q. Now Ms. Barnes, are these the type of

1 wholesale contracts you're referring to when you were talking  
2 to Chairman Clayton that would be excluded from the  
3 off-systems sales component of the fuel adjustment clause?

4 A. Yes.

5 Q. And isn't it a fact that that's how they are  
6 treated as -- they're excluded from the off-system sales  
7 component?

8 A. That's correct.

9 MS. OTT: I don't have anything further.  
10 Thank you.

11 JUDGE WOODRUFF: All right. Then for Public  
12 Counsel.

13 MR. MILLS: Just a few questions.

14 RECROSS-EXAMINATION

15 QUESTIONS BY MR. MILLS:

16 Q. First with respect to the -- to the rate  
17 that's implicit in the AEP and Wabash contracts, and I'm not  
18 sure I understood your testimony completely. Is it your  
19 testimony that the rate was set in those contracts to recover  
20 only the revenues lost because of the Noranda outage?

21 A. That was the goal, yes.

22 Q. Okay. And was that rate higher or lower than  
23 market -- than you could have gotten at market rates at the  
24 time?

25 A. I think at the time, they approximated market.

1 That would really be a question for Mr. Haro because he was  
2 involved in negotiating the contracts and had a much better  
3 sense of what the market was at that point in time.

4 Q. Is it fair to say that you don't get involved  
5 in negotiating contracts?

6 A. Yes, very fair.

7 Q. So you're not really familiar with the whole  
8 trading desk and how they operate; is that correct?

9 A. That's correct.

10 Q. Then with respect to some questions that you  
11 had with Chairman Clayton, and let me just give you a  
12 different hypothetical that I think sort of carries on from  
13 where he was. If you -- if Ameren Missouri found itself in a  
14 situation where without effecting its earnings, its bottom  
15 line at all, if could make transactions that would benefit  
16 customers by several millions of dollars. Is it your  
17 testimony that AmerenUE would or would not make those  
18 transaction?

19 A. We would.

20 Q. Okay. Now, I believe you testified in  
21 response to questions from Commissioner Jarrett that one of  
22 your responsibilities is to review and sign the FERC Form 1;  
23 is that correct?

24 A. Yes.

25 Q. And from what portion of your responsibilities

1 does that derive?

2 A. As controller of Ameren Missouri.

3 Q. Okay. And you became controller in 2007?

4 A. That's correct.

5 Q. And so -- did you sign the FERC Form 1 in  
6 2007?

7 A. I'd have to go back and check, but I would  
8 assume yes. I don't recall specifically, but.

9 Q. And before that, who was the person that would  
10 sign those?

11 A. You'd have to check, but it would have  
12 probably been Marty Lyons or Bruce Steinke because they're  
13 the corporate controllers.

14 Q. So if it was Marty Lyons, I would assume -- is  
15 it your understanding that his role would be to review the  
16 FERC Form 1, to understand it before he signed it?

17 A. As best he can. I mean, we all delegate  
18 levels of review throughout our organization.

19 Q. Are you familiar with Mr. Lyons' role when he  
20 was controller at Ameren and did things such as sign the FERC  
21 Form 1 for AmerenUE at the time?

22 A. I am generally.

23 Q. Was he involved in trading activities?

24 A. No. The group that accounts for the trades  
25 would have been under his purview.

1 Q. But he wasn't directly involved in negotiating  
2 trades and talking to counterparties?

3 A. That's correct, no.

4 Q. Thank you.

5 MR. MILLS: No further questions.

6 JUDGE WOODRUFF: Okay. For MEG.

7 MS. LANGENECKERT: Just a couple.

8 RECROSS-EXAMINATION

9 QUESTIONS BY MS. LANGENECKERT:

10 Q. Ms. Barnes, you had a line of questioning from  
11 Commissioner Gunn when he asked about your contracts with AEP  
12 and Wabash for the sales.

13 A. Uh-huh.

14 Q. Did I understand correctly that you felt that  
15 AEP and/or Wabash both were of the agreement with Ameren that  
16 the sales were long-term sales?

17 A. Yes.

18 Q. Were AEP and Wabash aware of the FAC tariff  
19 that was in place?

20 A. I don't know. I didn't talk to AEP or Wabash.

21 Q. Okay. Do you believe that they could have  
22 agreed -- okay.

23 I think Commissioner Gunn asked you about a  
24 hypothetical of whether the parties could agree to something  
25 in a contract that was just between them and may not

1 necessarily be the same terms that were used elsewhere. And  
2 you said you did not believe -- as I recall, you said you did  
3 not believe they could in this case.

4 A. I believe what I said was that there are  
5 general business understandings and that how a tariff is  
6 interpreted, we interpreted the tariff the same way we would  
7 transact business.

8 Q. We being Ameren?

9 A. We being Ameren Missouri.

10 Q. Okay.

11 A. And that ultimately tariff interpretation is  
12 the Commission's opportunity or requirement because they're  
13 the ones that set the tariffs. And so if they interpret  
14 something differently than a general business practice, I  
15 guess it's within their purview to do that, but that wouldn't  
16 necessarily mean the counterparties or that we would have  
17 interpreted it any differently.

18 Q. But if they do interpret it differently at the  
19 Commission and Ameren and AEP thought that it was something  
20 else, would AEP or Wabash still be required to follow the  
21 Commission's interpretation?

22 A. I don't think so. AEP and Wabash aren't  
23 subject to this jurisdiction, so the transaction -- the  
24 business transaction would remain the same. The contract is  
25 still the same. We still had the same requirement to provide



1 generation to them and for them to use that to serve load.

2 And that doesn't change no matter what the tariff says or how  
3 it's interpreted by this Commission.

4 Q. So it doesn't matter whether AEP or Wabash was  
5 aware of the FAC and whether it was a long-term contract or  
6 not?

7 A. That's correct, from their perspective, that's  
8 correct.

9 Q. So there doesn't have to be a meeting of the  
10 minds in that contract as it relates to what long-term means?

11 A. For FAC tariff purposes, no.

12 Q. Or for your contract purpose?

13 A. For contract purposes, the two parties  
14 involved in the contract need to understand what the term of  
15 the contract is. I don't know how AEP and Wabash classify  
16 the contract from their perspective. But I believe we all  
17 were in general agreement that 12 months constitute a  
18 long-term contract. When Mr. Haro said he called and asked  
19 for a long-term contract that he was looking for, I believe  
20 in both parties' minds that meant it was 12 months or longer.  
21 Q. So if it turns out the Commission thought that  
22 long-term did not mean 12 months or longer, it meant five  
23 years or some other amount, do you believe that those other  
24 parties would have to live with that analysis by the  
25 Commission?

1 A. I don't think it would impact them one iota.

2 Q. So it doesn't really matter whether it's  
3 called long-term to them?

4 A. As it relates to the tariff, no, I don't  
5 believe it does.

6 MS. LANGENECKERT: Thank you.

7 JUDGE WOODRUFF: From MIEC.

8 MR. ROAM: Just a couple follow-up questions.

9 RECROSS-EXAMINATION

10 QUESTIONS BY MR. ROAM:

11 Q. Ms. Barnes, I think that you testified in --  
12 or when you were discussing this issue with Commissioner  
13 Gunn, I believe you testified that if in the event Noranda  
14 came up unexpectedly early, that Ameren would still be  
15 entitled to keep the revenues from the wabash and AEP  
16 contracts even though -- even though Noranda came up to full  
17 capacity or almost full capacity in that hypothetical?

18 A. The classification of the contracts doesn't  
19 change based on what Noranda's load is or is not.

20 Q. Right.

21 A. The terms of the contract are what they are.  
22 The contract is classified under the tariff and that doesn't  
23 change.

24 Q. Okay. In that event, I guess I'm having  
25 trouble understanding -- a large part of your testimony is

1 dedicated to explaining the severity of the ice storm and,  
2 for example, page 3 of your surrebuttal testimony goes to  
3 great lengths to describe how much was lost or stood to be  
4 lost by Ameren and how great this ice storm was.

5           You state that "The loss of the load to  
6 Noranda was six times greater and is by far the largest loss  
7 of load to a single customer Ameren Missouri's ever  
8 experienced." You go on to state "Moreover, it is  
9 significant that the loss of the Noranda load was  
10 attributable to an ice storm. And not just any ice storm.  
11 The ice storm of 2009 was the most severe ice storm ever to  
12 hit Ameren Missouri." And so on. You carry on.

13           If -- if it's your testimony that whether or  
14 not there was an ice storm, you could have entered into these  
15 contracts and kept the revenues, then what is the -- what is  
16 the significance of this extended testimony about the  
17 severity of the ice storm?

18           A.     well, I think that as we've talked this  
19 afternoon, there's been this concern that somehow this  
20 wasn't -- our actions weren't imprudent, which is I believe  
21 the purpose of this hearing. And I think the point of all  
22 that was to suggest that even in trying to mitigate risk as  
23 best we can from a business perspective, this level of  
24 mitigation would not have been contemplated.

25           Losing the largest customer by far in our

1 system for a greater than 12-month period unexpectedly is not  
2 something that would have been contemplated in any of the  
3 rates that were set. And what we were trying to do at that  
4 point in time was use the terms of the tariff to figure out  
5 how to mitigate a catastrophic event that occurred to us.

6           So this wasn't just a normal business issue  
7 that we were trying to address. This was something that was  
8 unexpected and was extremely significant to us and we need to  
9 figure out a way to mitigate it and we were able to use the  
10 tariff language and we believe we followed the tariff  
11 language in mitigating that catastrophic event that occurred.

12           Q.     I guess I still don't understand with that  
13 answer what the relevance of the catastrophic event was if,  
14 in fact, you could have entered into these contracts with or  
15 without the catastrophic event and it would have been deemed  
16 excluded from the FAC. If that's your testimony, then the  
17 storm is neither here nor there with respect to how that  
18 clause should be interpreted.

19           A.     I think the storm just suggests that we were  
20 not trying to do something to necessarily improve our  
21 shareholder circumstances at the cost of the ratepayers.  
22 what we did was directly correlated to what happened with  
23 Noranda. And those contracts were entered into, I believe  
24 Mr. Haro said that as well.

25                   Those contracts were entered into because we

1 suddenly had a loss in native load that we needed to restore  
2 and we chose to enter into those contracts because they  
3 followed the tariff language to, again, mimic the revenues  
4 that we lost from Noranda with those contracts. So the look  
5 and feel of what we delivered to them is the same as what we  
6 would have delivered to Noranda.

7 Q. I understand that testimony. I guess I'm  
8 just -- I guess just let me ask it in a yes-or-no. Is the  
9 fact of the storm germane, relevant in any way to how this  
10 Commission interprets the clause that is at issue in the  
11 tariff?

12 A. I don't think so.

13 Q. Okay. Briefly, I also just wanted to just  
14 touch very briefly on your discussion with Commissioner  
15 Kenney with respect to what constitutes a windfall. And on  
16 page 8, lines 12 through 16 of your direct testimony. I'm  
17 sorry, it's 11.

18 A. Page 11 or line 11?

19 Q. Page 8, lines 11 through 16. And you state,  
20 "Because revenues from long-term requirements contracts were  
21 not flowed through the FAC under the tariff, customers would  
22 not continue to receive a windfall from the ice storm.  
23 Instead, they would be in the same position that they would  
24 have been in if the ice storm had not occurred."

25 My question is: Doesn't that assume that the

1 retail customers that you're referring to didn't suffer their  
2 own loss of revenue to their own businesses as a result of  
3 the ice storm?

4 A. Yes, that does.

5 Q. Is that a fair assumption to make about these  
6 retail customers?

7 A. I don't know. I can't solve world hunger  
8 here. All I can do is try to suggest that for this  
9 proceeding, that what we were trying to do is make sure that  
10 the rates that were charged and the revenues that we received  
11 or that they paid were the same and that they were not  
12 impacted positively or negatively from an electric rate  
13 perspective as a result of the storm that occurred.

14 Q. I'm not asking you to solve world hunger,  
15 Ms. Barnes. I'm asking you about the content of your  
16 testimony where you state that the customers would not  
17 continue to receive a windfall from the ice storm and instead  
18 they would be in the same position that they would have been  
19 if the ice storm had not occurred. My question to you is:  
20 You don't know what position they would be in if the ice  
21 storm had not occurred with respect to their own revenues?

22 A. But I do know what they would have been  
23 charged --

24 Q. And that's a yes-or-no question.

25 A. No, I do not know what their financial

1 position would have been.

2 Q. Thank you. And finally, Ms. Barnes, you  
3 discussed a loss of \$139 million associated with the loss of  
4 the Noranda load; is that correct?

5 A. Yes.

6 Q. How much of that revenue is related to fuel?

7 A. I don't know if I know that off the top of my  
8 head.

9 Q. well, let me ask you this, unless you have an  
10 answer to that: would you agree that if Noranda is not  
11 taking power, UE is not incurring fuel expenses?

12 A. No, we're not. That's correct.

13 Q. So is it not your position that the \$17  
14 million you are selling -- or sorry, you are seeking to  
15 exclude from the FAC is an attempt by UE to recover the fixed  
16 costs assigned to Noranda?

17 A. In effect, because we're trying to mimic the  
18 revenues, we're trying to mimic an apportion of the Noranda  
19 revenues that were lost were based on fixed cost allocations  
20 to Noranda. So that would be correct.

21 Q. Thank you.

22 MR. ROAM: That's all I have.

23 JUDGE WOODRUFF: All right. We've been going  
24 for over two hours so we're overdue for a break. Let's take  
25 a ten-minute break and come back at 3:45 and we'll go ahead

1 with redirect. We're off the record.

2 (A break was held.)

3 JUDGE WOODRUFF: All right. Let's come to  
4 order please. We're back for redirect on Ms. Barnes and you  
5 can proceed.

6 MR. MILLS: Judge, before we begin with  
7 redirect, can we reflect on the record whether or not  
8 Ms. Barnes was coached during the break on how to respond to  
9 questions during redirect?

10 JUDGE WOODRUFF: Do you wish to voir dire or?

11 MR. MILLS: Sure. That would be great. Thank  
12 you.

13 JUDGE WOODRUFF: Go ahead.

14 VOIR DIRE EXAMINATION

15 QUESTIONS BY MR. MILLS:

16 Q. Did you discuss with counsel the possible  
17 questions that they were going to ask you on redirect and  
18 your possible answers?

19 A. We talked about questions, yes.

20 Q. And did you discuss what your answers might  
21 be?

22 A. I would have reviewed with them what I thought  
23 I would say.

24 Q. And did they make any suggestions as to what  
25 your answers should be?



1 A. Yes.

2 MR. MILLS: That's all I've got, Judge.

3 JUDGE WOODRUFF: Okay.

4 MR. MILLS: I don't know what to do about it,  
5 but I think it's an unfortunate situation that the timing  
6 worked out such that the witness gets to get coached before  
7 we do redirect and then we don't get another opportunity at  
8 her.

9 JUDGE WOODRUFF: If --

10 MR. MILLS: I did want to get that on the  
11 record because I think it's important.

12 JUDGE WOODRUFF: I appreciate that. And of  
13 course, you've had an opportunity to make any objections  
14 before we took the break.

15 MR. BYRNE: Your Honor, whenever you call a  
16 break, there's an opportunity to consult with attorneys and  
17 every party does that all the time. So I mean, it's -- I  
18 guess the luck of the break was in our side this time but  
19 sometimes the luck of the break is on Mr. Mills' side.

20 JUDGE WOODRUFF: And Mr. Mills, if you find  
21 anything that's egregious that comes up during this redirect  
22 and you wish to request any further relief, do so.

23 MR. MILLS: Okay. Thank you.

24 JUDGE WOODRUFF: You may proceed.

25 REDIRECT EXAMINATION

1 QUESTIONS BY MR. MITTEN:

2 Q. Ms. Barnes, do you recall some questions from  
3 Commissioner Clayton regarding winners and losers in the  
4 pre-fuel adjustment clause era?

5 A. Yes.

6 Q. And he asked you some questions, I believe, if  
7 prior to the adoption of a fuel adjustment clause, if Ameren  
8 had made more off-system sales than were reflected in base  
9 rates, whether shareholders or customers would win. And he  
10 asked you the same question if Ameren's off-system sales were  
11 less than the levels included in base rates; is that correct?

12 A. Yes.

13 Q. I'd like to look at -- at the other side of  
14 the coin. Prior to the implementation of the fuel adjustment  
15 clause, if Ameren's total fuel and purchase power costs  
16 exceeded the amount that had been included in base rates,  
17 would there be a winner or a loser under that scenario?

18 A. The situation works the same for costs as it  
19 would for off-system sales. If the amount of fuel costs were  
20 higher than what was in rate base, the shareholders would  
21 have borne that difference. And if the costs were lower,  
22 then the ratepayer would have been paying at the base rates  
23 and the shareholders would have benefitted.

24 Q. Based on your understanding of the fuel  
25 adjustment clause, was it supposed to address the issues of

1 winners and losers with respect to off-system sales or total  
2 fuel and purchase power costs?

3 A. The purpose of the rider in general is to  
4 mitigate risk and to also level the playing field and that is  
5 why it is a two-way rider. It's up or down, customers can  
6 receive refunds or pay additional depending on direction of  
7 the costs, net base fuel costs compared to what's built into  
8 base rates.

9 Q. Is it your understanding that there's supposed  
10 to be winners or losers under the fuel adjustment clause  
11 that's at issue in this case?

12 A. It's not about winners and losers. Frankly,  
13 it's about cost recovery and we're trying to mitigate so  
14 there aren't any winners or losers, so that everyone's  
15 treated equally.

16 Q. There were a number of questions that were  
17 asked regarding storm restoration costs following the 2009  
18 ice storm. Do you recall those questions?

19 A. Yes.

20 Q. And I believe in your testimony, direct  
21 testimony -- excuse me, the surrebuttal testimony, page 4,  
22 beginning on line 4, you say, "It is true that prudently  
23 incurred restoration costs from the 2009 ice storm were  
24 reflected in Ameren Missouri's rate set in Case No.  
25 ER-2010-0036 in accordance with the standard treatment for

1 storm restoration costs." Is that correct?

2 A. Yes.

3 Q. Is there a difference between the storm  
4 restoration costs that were collected in that rate case and  
5 the costs that are at issue in this case?

6 A. Yeah, they're totally different.

7 Q. Could you explain that difference for me?

8 A. Storm restoration costs are related to  
9 repairing the damage from the storm and are not fuel-related  
10 at all. So they would not be subject to anything with  
11 respect to the fuel adjustment clause.

12 Q. Mr. Roam asked you if you thought the ice  
13 storm, the event of the ice storm, was really relevant to  
14 this proceeding. Do you think the issue of restoration costs  
15 is relevant to this case?

16 A. No.

17 Q. Is there a difference between margin and  
18 profit as it applies to the definition of off-system sales  
19 revenues for purposes of the fuel adjustment clause?

20 A. No. Margin is generally revenues less fuel  
21 costs. And in the case of how it's applied in the fuel  
22 adjustment clause, that could be the same thing as the profit  
23 from the sale. That's a different definition than if you're  
24 looking at net income, for example, for an entire company,  
25 however.

1 Q. So when you referred to the \$42 million that's  
2 at issue, are you referring to margin or were you referring  
3 to profit?

4 A. That was the margin on those off-system -- or  
5 on those contracts, which is the revenue minus the fuel costs  
6 associated with those contracts. That's why we have the tax  
7 effected if we're going to record a profit at the end to  
8 determine the bottom line impact.

9 Q. There was also a discussion of \$139 million in  
10 costs that had been assigned to Noranda in Case No.  
11 ER-2008-0318; is that correct?

12 A. Yes.

13 Q. And there was a discussion about if you're  
14 confronted with a financial situation resulting from an act  
15 of God, you can deal with that by either increasing revenues  
16 or decreasing expenses. Do you recall that discussion?

17 A. Yes.

18 Q. With respect to the \$139 million of costs that  
19 were assigned to Noranda in ER-2008-0318, would it have been  
20 possible for Ameren to have made itself whole by reducing  
21 expenses of \$139 million?

22 A. Not and maintain the level of service that our  
23 customers expect.

24 Q. Could you explain that in a little more  
25 detail?

1           A.       Our total expenditures on annual basis, that  
2 would be over ten percent reduction in our expenses. And it  
3 would be impossible for us to be able to maintain the system  
4 from our liability perspective and make the needed repairs,  
5 do maintenance, trim trees, whatever was required in order  
6 keep the system running, operating as reliably as it  
7 currently does and as our customers expect.

8           Q.       Now, Commissioner Gunn asked you a series of  
9 questions to the effect that the definition of certain terms  
10 at issue in this case are not included in Ameren's fuel  
11 adjustment clause but there are definitions written down in  
12 instructions to the FERC Form 1. Do you recall those  
13 questions?

14          A.       Yes.

15          Q.       What is the basis for Ameren's definition of  
16 the terms that are at issue in this case?

17          A.       Well, I think mostly those were all discussed  
18 in Mr. Haro's testimony but there are FERC orders that talked  
19 about what longstanding business practice is, the EEI  
20 definitions that were referred to in Mr. Haro's testimony are  
21 written down that define those terms, the municipal contracts  
22 that we have and have had for years, are established based on  
23 those same terms. So there are things out there that have  
24 been written down historically to address those.

25          Q.       There was also a discussion with Commissioner

1 Gunn, I think he posed a hypothetical to you that for  
2 purposes of the hypothetical, you had entered into -- and by  
3 you, I mean Ameren -- had entered into the AEP and Wabash  
4 contracts. And then a very short time period later, the  
5 Noranda load came back on line and whether or not Ameren  
6 would be in a position to retain all of the off-system sales  
7 revenues associated with the Wabash and AEP contracts. Do  
8 you recall that question?

9 A. Yes.

10 Q. Now, in this case, is there only one issue of  
11 prudence or is there more than one?

12 A. There's actually two, and while we wouldn't  
13 have changed the classification of those contracts under the  
14 tariff, clearly the Commission Staff would have had the  
15 ability from a prudence perspective to question the prudence  
16 of entering into those contracts if, in fact, Noranda would  
17 have come back way sooner than we were anticipating.

18 Q. Did the Commission Staff, in fact, review  
19 Ameren's decision to enter into those contracts and determine  
20 whether or not the decision was prudent or imprudent?

21 A. They did, and specifically stated in the  
22 report that entering into the contracts was prudent.

23 Q. I can't recall who it was, but someone asked  
24 you if you knew who wrote the definition of "off-system sales  
25 revenue" that is included in the tariff.

1 A. Yes.

2 MR. MILLS: I object. I don't think anybody  
3 asked that question, so I think it misstates the record.

4 JUDGE WOODRUFF: I recall that question.  
5 Counsel, do you recall who asked the question?

6 MR. MITTEN: It may have been Ms. Ott.

7 JUDGE WOODRUFF: I seem to recall that  
8 question being asked also, Mr. Mills, so I'll overrule the  
9 objection.

10 MR. MILLS: So long as the record speaks  
11 rather than Mr. Mitten's recollection of the record, I think  
12 that's fine. So I guess I would object to the form of the  
13 question.

14 JUDGE WOODRUFF: What's your objection?

15 MR. MILLS: If what Mr. Mitten says  
16 inaccurately characterized the record, then I think the  
17 question is objectionable because it mischaracterizes the  
18 record.

19 JUDGE WOODRUFF: And his response was I think  
20 somebody asked.

21 MR. MILLS: And my response to that is if  
22 somebody did ask, that's fine, but I don't want Mr. Mitten's  
23 testimony to come in that that's the fact. So that's all I'm  
24 saying.

25 JUDGE WOODRUFF: I'm basing my ruling on my



1 own recollections, which is not photographic, so.

2 MR. MITTEN: My notes reflect the fact that  
3 staff did ask that question on recross.

4 JUDGE WOODRUFF: You can proceed.

5 BY MR. MITTEN:

6 Q. Do you know whether or not the definition of  
7 "off-system sales revenue" that was approved by the  
8 Commission in Case No. ER-2008-0318 differs from the  
9 definition of "off-system sales revenue" that was initially  
10 proposed by Ameren in that case?

11 A. I was not in those discussions, but I have  
12 been told that it did not change.

13 MR. MITTEN: I think that's all the redirect  
14 questions I have, Your Honor.

15 JUDGE WOODRUFF: All right. You can step  
16 down. I see three more Ameren witnesses listed on the  
17 schedule today and it's now after four o'clock and it's  
18 snowing heavily outside. Is there anyone that you need to  
19 have a need to call today that you might want to take out of  
20 order? Because I do intend on ending at five o'clock today  
21 and starting it tomorrow. I'll let you call your next  
22 witness, whoever you want to call.

23 MR. BYRNE: Could we call Mr. Highley out of  
24 order?

25 JUDGE WOODRUFF: Does anyone object to that?

1 we'll call Mr. Highley.

2 (The witness was sworn.)

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. MITTEN:

5 Q. would you please state your name and business  
6 address for the record?

7 A. Duane Highley, 2814 South Golden, Springfield,  
8 Missouri.

9 Q. Mr. Highley, by whom are you employed and what  
10 is your job title?

11 A. I am employed by Associated Electric  
12 Cooperative. I'm the director of power production for the  
13 cooperative.

14 Q. Mr. Highley, did you cause -- did you prepare  
15 and cause to be filed in this case surrebuttal testimony  
16 which has been marked for identification as Exhibit No. 7?

17 A. Yes.

18 Q. And do you have any changes or corrections  
19 that you need to make to that testimony at this time?

20 A. No.

21 Q. If I asked you the questions that are  
22 contained in that prepared testimony, would your answers be  
23 the same as are shown there?

24 A. Yes.

25 Q. And is the information in your prepared

1 testimony true and correct to the best of your knowledge and  
2 believe?

3 A. Yes.

4 Q. Your Honor, I would offer into evidence  
5 Exhibit No. 7.

6 JUDGE WOODRUFF: Exhibit 7 has been offered.  
7 Any objections to its receipt? Hearing none, it will be  
8 received.

9 (Exhibit No. 7 was received into evidence.)

10 MR. MITTEN: And I offer Mr. Highley for  
11 cross-examination.

12 JUDGE WOODRUFF: Okay. Beginning with Staff.

13 CROSS-EXAMINATION

14 QUESTIONS BY MS. OTT:

15 Q. Good afternoon, Mr. Highley. Could you please  
16 describe your job responsibilities?

17 A. My current job responsibilities include the  
18 operation and maintenance of fleet of nine plants in three  
19 states along with membership on the senior management team of  
20 Associated Electric Cooperative. As such, I serve as  
21 chairman of the contract committee, which is three senior  
22 managers within the cooperative report to the CEO, and review  
23 all items of significance go before the board of directors.

24 Q. Now in your role, are you in any way  
25 affiliated with the Missouri Public Service Commission for

1 regulatory purposes?

2 A. No. Associated Elective Cooperative is not  
3 regulated by the Missouri Public Service Commission. We do  
4 for report to the Missouri Public Service Commission for  
5 safety only.

6 Q. Have you ever testified before the Commission  
7 before?

8 A. No.

9 Q. Do you consider yourself an expert in regards  
10 to the fuel adjustment clause?

11 A. No.

12 Q. Have you ever served as a witness in a case  
13 when the subject matter was a fuel adjustment clause?

14 A. I served as a witness in a case before the  
15 U.S. federal government Department of Energy, Southwestern  
16 Power Administration in their rate hearing including  
17 adjustment clauses similar to the fuel adjustment clause  
18 that's being discussed here, which was a power cost  
19 adjustment clause.

20 Q. Did you serve as an expert on that --

21 A. No.

22 Q. -- for fuel adjustment clause in that case?

23 A. No.

24 Q. Who contacted you from Ameren in regards to  
25 this matter?

1 A. Tom Byrne.

2 Q. And what were you asked to do when Ameren  
3 contacted you?

4 A. If I could offer an opinion on two contracts,  
5 the wabash contract and AEP contract.

6 Q. And what information was provided to you at  
7 that time?

8 A. Copies of those contracts.

9 Q. Did Ameren tell you what their position was  
10 regarding those contracts?

11 A. I understood there was a dispute about the  
12 quality of the contracts, the terms of whether they  
13 represented long-term contracts and whether they represented  
14 requirements contracts or not, yes.

15 Q. So assuming you're here today, you accepted  
16 their offer to participate in this case?

17 A. Yes.

18 Q. Do you have a written contract to provide  
19 services to Ameren for this proceeding?

20 A. No.

21 Q. Are you being compensated for being here  
22 today?

23 A. No. I wish I was.

24 Q. Are you receiving any non-monetary  
25 compensation for being here today?

1 A. Other than just the opportunity to be here,  
2 no.

3 Q. Are you currently being compensated from your  
4 current position where you work at AEIC-- or AEI for being  
5 here today?

6 A. I am compensated today as part of my normal  
7 job duties and responsibilities.

8 Q. Is it typically your normal job duties and  
9 responsibilities to serve as a witness in regulatory matters  
10 before the Commission?

11 A. No, this is very unusual.

12 Q. And they're not making you take a vacation day  
13 or sick leave to be here?

14 A. No, ma'am.

15 Q. And have you ever represented Ameren in a case  
16 before?

17 A. No.

18 Q. Did you talk to any of the Ameren witnesses  
19 about this case?

20 A. Prior to the case? Yes.

21 Q. And which witnesses did you talk to?

22 A. Those that are in this room today.

23 Q. So you spoke with all of them; Mr. Haro,  
24 Ms. Barnes, Mr. Weiss, and --

25 A. No, just Ms. Barnes and Mr. Haro.

1 Q. Did you talk to those witnesses about this  
2 case?

3 A. Yes.

4 Q. Did they offer their opinion in regards to the  
5 contracts in this case?

6 A. Yes.

7 Q. Did you read their testimony prior?

8 A. I've read their filed testimony.

9 Q. Did you read their direct testimony before you  
10 drafted your surrebuttal testimony?

11 A. No.

12 Q. So you read their filed testimony after?

13 A. Spent the weekend.

14 Q. This past weekend?

15 A. Yes.

16 Q. Did you talk to any other party to this case  
17 about this proceeding?

18 A. Our board of directors.

19 Q. And when I meant "party," anyone in this room  
20 today.

21 A. Only the gentleman who accompanied me, Steve  
22 St. James.

23 Q. Who is Mr. St. James?

24 A. He works for me as contract administrator.

25 Q. Now were you a party to the AEP contract?

1 A. No.

2 Q. Were you involved in the negotiations of the  
3 AEP contract?

4 A. No.

5 Q. Were you a party to the Wabash contract?

6 A. No.

7 Q. And were you involved in any of the  
8 negotiations of that contract?

9 A. No.

10 MS. OTT: I don't have any further questions.

11 JUDGE WOODRUFF: All right. Public Counsel.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. MILLS:

14 Q. Mr. Highley, did you sign a non-disclosure  
15 agreement in this case?

16 A. No.

17 Q. Did you see the -- were you provided with  
18 copies of the AEP and the Wabash contracts?

19 A. Yes.

20 Q. Okay. Have you -- have you negotiated a  
21 number of power contracts in the course of your career?

22 A. Yes.

23 Q. Have you negotiated contracts with Union  
24 Electric company or any of the agents acting on its behalf?

25 A. I do not recall any contracts involving Union



1 Electric company --

2 Q. Okay.

3 A. -- that I directly negotiated.

4 Q. Okay. Are you familiar with a gentleman named  
5 Marty Lyons who worked or works for or on behalf of AmerenUE?

6 A. No.

7 Q. Now, with respect -- you said that you had  
8 some involvement with a power adjustment clause for the  
9 Southwest Power Administration; is that correct?

10 A. I submitted testimony on behalf of Associated  
11 Electric Cooperative in their rate cases.

12 Q. And when was that?

13 A. It would have been in the '90s, late '90s.

14 Q. Nothing more recent than that?

15 A. No, not my direct testimony with them.

16 Q. Okay. Have you had any other involvement with  
17 fuel adjustment clauses?

18 A. I've had discussions with our board of  
19 directors about the implementation and formation structure of  
20 such a clause for our cooperative, which was ultimately  
21 rejected by our board.

22 Q. Okay.

23 MR. MILLS: That's all the questions I have.

24 JUDGE WOODRUFF: For MEG.

25 MS. LANGENECKERT: No questions.

1 JUDGE WOODRUFF: For MIEC.

2 MR. ROAM: Just a few.

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. ROAM:

5 Q. Good afternoon, Mr. Highley.

6 A. Hi.

7 Q. You may have mentioned this, but the company  
8 you work for, AECI, is not regulated by the Missouri Public  
9 Service Commission except for safety; is that correct?

10 A. We report for safety, we're not regulated by  
11 the Missouri Public Service Commission.

12 Q. I see. Okay. And you're not regulated by  
13 FERC?

14 A. That's correct.

15 Q. AECI is regulated by Rural Utility Service,  
16 RUS; is that correct?

17 A. We are.

18 Q. Okay.

19 A. And by our twelve-member board of directors.

20 Q. Okay. On page 7 of your surrebuttal  
21 testimony, you state that in -- sorry. I said -- yeah,  
22 page 7. Page 7, starting on line 6, "In my 27 years of  
23 negotiating, administering and reviewing power sales  
24 contracts, I have never seen 'long-term' or 'requirements  
25 service' used in practice in the restrictive manner as

1 Mr. Brubaker, Mr. Fayne, Ms. Laconte, Mr. Eaves and  
2 Ms. Mantle suggest, nor have I ever considered the  
3 definitions contained on page 310 of the FERC Form 1 as  
4 determinants of the character of a power sales agreement,"  
5 correct?

6 A. Correct.

7 Q. Are you familiar with -- are you familiar with  
8 the annual report that AECI files with the RUS?

9 A. Our annual report?

10 Q. Uh-huh.

11 A. Yes.

12 Q. Is that -- is that called Form 12B -- or  
13 US12B?

14 A. Yes, there is an RUS Form 12 that is filed by  
15 Associated.

16 Q. And have you -- do you file this report?

17 A. I have contributed to elements of that report  
18 in the past.

19 Q. Okay. And so you've assisted in its  
20 preparation?

21 A. Correct.

22 Q. And are you aware that there are instructions  
23 for preparing the report?

24 A. Yes.

25 Q. And are you familiar with those instructions?

1 A. Yes.

2 Q. Okay. I'm going to give you a copy of those  
3 instructions to review. And if you'll turn to page 15 of  
4 those instructions, under column B, now again, these are the  
5 instructions for filling out RUS Form 12 for purposes of  
6 filing with the -- with RUS?

7 A. The Rural Utility Service, yes.

8 Q. Rural utility service?

9 A. Correct.

10 Q. And see under column B?

11 A. Uh-huh.

12 Q. See where it indicates a definition for  
13 "requirements service"?

14 A. Yes.

15 Q. And do you see where requirements service is a  
16 little acronym there is RQ?

17 A. Yes.

18 Q. Okay. Now, does the definition -- tell you  
19 what, just read out the definition of "requirements service"  
20 for me from the guide for preparing the -- RUS Form 12.

21 A. Requirements -- okay. It says, RQ for  
22 requirements service, "Requirements service is service which  
23 the supplier plans to provide on an ongoing basis; i.e., the  
24 supplier includes projected load for the service in its  
25 system resource planning. In addition, the reliability of

1 requirements service must be the same as, or second only to,  
2 the supplier's service to its ultimate consumers."

3 Q. Is that the same -- were you here earlier to  
4 hear Mr. Haro testify?

5 A. Yes.

6 Q. And do you recall the definition that was  
7 given in the EEI glossary for "requirements service"?

8 A. In the EEI glossary?

9 Q. Uh-huh, do you recall hearing that?

10 A. Yes.

11 Q. And do you know -- do you note if there are  
12 any differences between this definition and the definition  
13 given in the EEI glossary?

14 A. I don't recall that with enough specificity of  
15 the EEI glossary nor have enough familiarity with that to  
16 know if that's exactly the same definition.

17 Q. Okay. Did any material terms stick out to be  
18 as being different?

19 A. No.

20 Q. How about with respect to the FERC Form 1  
21 definition?

22 A. I actually did some independent research on  
23 FERC Form 1 since we do not routinely file FERC Form 1.

24 Q. Uh-huh.

25 A. But it's my understanding that the RUS Form 12

1 was developed from FERC Form 1.

2 Q. Okay.

3 A. So they have a common heritage and common  
4 definitions. And in my review, these terms RQ, LF, et  
5 cetera, are identical to those used in the FERC Form 1.

6 Q. Okay. So let's go on down to the next  
7 definition which is "long-term service," long-term -- looks  
8 like it says "long-term firm service." And it gives two  
9 definitions; one is the definition of "long-term" and the  
10 other is the definition of "firm." What is the definition of  
11 long-term in the RUS guide?

12 A. It says "long-term" means five years or longer  
13 and -- that's what it says.

14 Q. Okay. Were you involved in the preparation of  
15 RUS Form 12 in 2009?

16 A. No.

17 Q. What year were you involved?

18 A. It would have been in the early '90s.

19 Q. Okay. Early '90s?

20 A. The terms have not changed since that time.

21 Q. The terms have not changed?

22 A. Correct.

23 Q. Do you have any input on how the contracts  
24 that are listed in this form are designated? I mean, do you  
25 have any input on how they're designated?

1 A. Currently, I do not, in my current  
2 responsibilities; however, in the past, I had to make that  
3 judgment.

4 Q. Okay. And do you recall whether you followed  
5 the requirements of the -- that are stated in this guide in  
6 terms of how you designated the contracts in the RUS Form 12?

7 A. In the days when I completed RUS Form 12 and  
8 had responsibilities for portions of it, I had to make  
9 judgments based on these definitions, which are broadly  
10 overlapping definitions and it's difficult to make  
11 distinctions between those categories. But I did.

12 Q. You did?

13 A. Yeah.

14 Q. You followed the --

15 A. The definitions as best I could.

16 Q. Okay. I'll ask you this and you may not know  
17 the answer, but it's my understanding -- I have a copy of the  
18 2009 RUS form. Do you know how the contracts that are listed  
19 in this form are designated? Do you know how many of them are  
20 designated?

21 A. I'm sure I have not seen a 2009 filing.

22 Q. Okay. I'll just show it to you. And although  
23 you didn't have any preparation of this, you may have some  
24 insight on why these designations were chosen. I think I  
25 only have one copy, gentlemen, but you're welcome to take a

1 look at it.

2 MR. MITTEN: Your Honor, it's difficult for me  
3 to see if he's never seen this document how he would have any  
4 knowledge as to how the information contained in the document  
5 was prepared or derived.

6 JUDGE WOODRUFF: That's an objection on  
7 relevance, I assume?

8 MR. MITTEN: It's an objection on foundation.  
9 The witness has already said he's never seen the document.  
10 I'm going to object to any questions being asked based on  
11 that document.

12 JUDGE WOODRUFF: Your response?

13 MR. ROAM: I'm not seeking to admit the  
14 document. He's filled out this form before. He's familiar  
15 with the form. He can -- some of these contracts have been  
16 in place for many years. He can take a look at this document  
17 and see if he understands why these were designated this way  
18 or not based on --

19 JUDGE WOODRUFF: So the question is more about  
20 the contracts than it is about the document?

21 MR. ROAM: Right.

22 JUDGE WOODRUFF: I'll overrule the objection.

23 MR. MITTEN: And since there's not an  
24 additional copy, may I look over the witness' shoulder?

25 JUDGE WOODRUFF: That would be fine.



1 BY MR. ROAM:

2 Q. Do you see how -- do you see how those  
3 contracts that are listed there are designated or what  
4 their -- what their designation is, what their two-letter  
5 designation is?

6 A. Yes.

7 Q. And what is that?

8 A. It's OS.

9 Q. Do you know what OS?

10 A. It says "other service" in the definition for  
11 statistical classification.

12 Q. Okay. So none of those contracts are  
13 designated as requirements contracts? None of them is  
14 designated as RQ; is that correct?

15 A. That is correct.

16 Q. Do you know, are you familiar with any of  
17 those contracts that are listed there?

18 A. Yes.

19 Q. Do you know that -- the term or duration of  
20 any of those contracts?

21 A. That, I do not know.

22 Q. Do you know whether the duration of any of  
23 those are extended to 2050?

24 A. Yes.

25 Q. And which ones are extended to 2050?

1 A. None of the contracts listed here.

2 Q. what about on page 2?

3 A. The reason I'm saying this is because the only  
4 contracts I'm aware of that we hold that go through 2050 are  
5 all requirements to our six owners and I don't see clearly  
6 that they're listed here other than number one, which says  
7 Central Electric Power Coop and I don't know if that contract  
8 represents that sale or some other sale.

9 Q. Okay. And do you --

10 A. But we have six owners with whom we have  
11 50-year -- or through 2050 all requirements contract  
12 obligations.

13 Q. Do you know -- and let me take that back.

14 A. But I'm not aware of others that have a  
15 50-year term on this.

16 Q. Okay. So those 50-year contracts, do you  
17 know, are they to be listed in this RUS Form 12, do you know?

18 A. I don't believe they're listed in that list of  
19 sales.

20 Q. what about on this page here or the prior  
21 page? what's that one, KMO?

22 A. Okay. The page that you're showing me now  
23 lists sales that include sales to our six owners.

24 Q. Let me -- if I can just short circuit it by  
25 asking you --

1 A. And those are listed as LF.

2 Q. LF?

3 A. Uh-huh.

4 Q. And that's the KMO -- KMO contract, the Sho-Me  
5 Power contract?

6 A. Correct.

7 Q. The M&A?

8 A. Correct.

9 Q. The Central?

10 A. Yes.

11 Q. The Northeast Missouri?

12 A. NW. That's a different co-op.

13 Q. The Northwest Electric Co-op?

14 A. NW is their name, not Northwest.

15 Q. Sorry, NW, okay. And then Northeast Missouri,  
16 that's one, too?

17 A. Correct.

18 Q. And those are the ones -- the contracts that  
19 are to -- that are through 2050, correct?

20 A. Correct.

21 Q. Those are not designated as requirements  
22 contract in that form, are they?

23 A. That's correct.

24 MR. ROAM: That's all I have, thank you.

25 JUDGE WOODRUFF: Okay. Questions from the

1 bench, Commissioner Davis.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER DAVIS:

4 Q. Good afternoon, Mr. Highley.

5 A. Good afternoon, Commissioner.

6 Q. I think you already answered this question  
7 from Ms. Ott, but how'd you get roped into this again?

8 A. Because I have operated for 27 years in the  
9 wholesale power market in the Midwest very near to Ameren's  
10 service territory and have great familiarity with how the  
11 wholesale power markets work. I guess someone in Ameren  
12 thought it would be a good idea that I might know something  
13 about the normal characteristics of a wholesale power  
14 agreement and what constitutes long-term and what constitutes  
15 requirements in the market as people do business.

16 Q. And you've been here all day, have you not?

17 A. Yes, sir.

18 Q. And do you recall my questioning of -- was it  
19 Jamie?

20 JUDGE WOODRUFF: Yes.

21 BY COMMISSIONER DAVIS:

22 Q. That -- would you agree with me that wholesale  
23 power contracts have changed significantly in the last  
24 decade?

25 A. Significantly would be almost an

1 understatement. The business that existed in the late '80s  
2 and early '90s is no longer in existence and the type of  
3 contracts that counterparties execute today, very, very  
4 little resemblance to the type that they executed in the  
5 mid-'80s, late-'80s.

6 Q. Now, Mr. Roam was asking you questions  
7 about -- about some of your long-term power contracts. And  
8 let me just see if I have this correct, and you tell me if I  
9 have this correct or feel free to add anything. But  
10 Associated Electric Cooperative's made up of six G&Ts?

11 A. Correct.

12 Q. And you have all requirements contracts to  
13 serve those six G&Ts?

14 A. All requirements in the traditional sense of  
15 all requirements, yes.

16 Q. Right. And they have members -- or they  
17 have -- each one of those G&T cooperatives, like KMO, I think  
18 Mr. Roam referenced KMO, they have two representatives that  
19 sit on the AECI board of directors, correct?

20 A. That is correct.

21 Q. And AECI is a not-for-profit corporation,  
22 correct?

23 A. Correct.

24 Q. And KMO Power is also a not-for-profit rural  
25 electric corporation?

1 A. Correct.

2 Q. And earlier, and I can't remember if this was  
3 from Mr. Roam or if this was from someone else, you had said  
4 that the Associated Electric Cooperative board had considered  
5 implementing a fuel adjustment clause, sort of similar to  
6 what Ameren has done, but they rejected it, correct?

7 A. Correct.

8 Q. They did something else, didn't they?

9 A. Yes. Is that a question, sir?

10 Q. Yes.

11 A. They raised the rates --

12 Q. Right.

13 A. -- to provide a financial cushion in lieu of  
14 having a fuel adjustment clause.

15 Q. Okay. So it's -- I'm not sure if you would  
16 use the same as the -- I mean, it's basically like a future  
17 test year? Is that a fair characterization?

18 A. I don't work in the regulated environment to  
19 understand all the ramifications of what a future test year  
20 means.

21 Q. Okay. I mean, when you are figuring out what  
22 you're going to need for your fuel costs, I mean, to the best  
23 of your knowledge, does Associated look -- they look at prior  
24 history but they also look at what the projection for the  
25 next --

1 A. Absolutely.

2 Q. -- twelve months is going to be, roughly?

3 A. Yes, and beyond.

4 Q. And beyond.

5 A. And we do an annual update to a ten-year  
6 financial forecast --

7 Q. Okay.

8 A. -- including a very detailed cost of service  
9 study for the coming year on an annual basis as part of our  
10 annual planning cycle.

11 Q. So you do a detailed cost of service study for  
12 the upcoming year?

13 A. Yes.

14 Q. And that's what you base your rates on?

15 A. Correct.

16 Q. Mr. Highley, did you have anything else you  
17 wanted to add?

18 A. No. It's been my privilege to be here and  
19 thank you. I don't think I'm finished, but I just want to  
20 thank the Commission for the opportunity to attend. It's not  
21 our normal activity as you know.

22 Q. well, thank you for coming, Mr. Highley.  
23 That's all I have.

24 JUDGE WOODRUFF: Commissioner Kenney?

25 COMMISSIONER KENNEY: Mr. Highley, thanks for

1 coming.

2 THE WITNESS: Thank you.

3 EXAMINATION

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q. So you were called essentially because Ameren  
6 considered you to be an expert in negotiating wholesale power  
7 contracts?

8 A. I believe they thought I would be able to  
9 render an opinion on whether these particular contracts would  
10 commonly be known as long-term requirements contracts.

11 Q. Okay. Do you consider yourself an expert?

12 A. I do.

13 Q. Okay. Good. I was going to say don't be  
14 modest, but you weren't.

15 A. I wasn't.

16 Q. All right. You also used a phrase in just  
17 discussing with Commissioner Davis "the traditional sense of  
18 all requirements." By "traditional sense," do you mean that  
19 the supplier supplies all of the buyer's needs?

20 A. Yes.

21 Q. Irrespective of the amount needed?

22 A. I mean in the traditional all requirements  
23 sense before there was Order 88 and all the deregulation, all  
24 requirements meant not just all your load with no limit  
25 regardless of what your peak was, but it also meant voltage



1 control and other ancillary services such as load balancing.  
2 So that was all included.

3 Q. So a traditional requirements contract wasn't  
4 just supplying all of the needed megawatts?

5 A. A traditional all requirements contract. Now,  
6 when we talk about requirements contract, that gets very  
7 vague. And part of the purpose of my testimony was to  
8 illustrate the vagueness of the word "requirements" compared  
9 to "firm" and "non-firm."

10 Q. So a traditional all requirements, you provide  
11 all the ancillary services --

12 A. Traditional all requirements, yeah.

13 Q. But with respect to partial requirements  
14 contract, there are ambiguities as to what those requirements  
15 are?

16 A. Any time you depart from all requirements,  
17 the -- a partial requirements contract can be about whatever  
18 you want it to be and you have to read the language and  
19 terms -- the specific terms and conditions of that contract  
20 to know what's required of it because the word "requirements"  
21 is not specific enough in industry to tell you precisely what  
22 it means.

23 Q. Would it be fair to say, then, that there is  
24 no standard definition of a "partial requirements contract"  
25 and it's whatever the parties to the contract decide that it

1 means?

2           A.       I believe that, to me, because the obligation  
3 the power supplier takes and we operate in a wholesale  
4 market, we move a lot of power between SPP and MISO into  
5 other areas. From the obligation taken on by the power  
6 supplier to supply firm power is the obligation. If you're  
7 supplying it to the same level of reliability as your native  
8 load or next to the same level of reliability, then you are  
9 supplying firm power which is essentially requirements power.

10                   I know there was a question earlier about  
11 whether they're truly synonymous terms. And the only  
12 distinction I can come up with between "firm" and  
13 "requirements" is that you put the word "requirements" in the  
14 contract because a firm obligation has to serve someone's  
15 ultimate native load. I am standing behind that as if it's  
16 my own load and in the marketplace, a firm contract has that  
17 level of reliability which you see if you serve your own  
18 load.

19           Q.       So then would the firm contractor, would that  
20 also include all the ancillary services?

21           A.       Not necessarily, no.

22           Q.       Okay.

23           A.       In fact, today, it usually does not. And most  
24 of those ancillary services have been disaggregated and  
25 they're covered by RTO such as MISO, so spinning reserve and

1 load balancing and voltage control are separately billed  
2 services or separately provided services today.

3 Q. And somebody has to pay for that?

4 A. Correct, somebody does.

5 Q. So whether the supplier or the taker pays for  
6 that is a point of negotiation between buyer and taker?

7 A. Correct, and it can go either way. We have  
8 seen contracts in both directions.

9 Q. So whether those services are or are not  
10 supplied by the supplier isn't determinative of whether it's  
11 a requirements contract or not?

12 A. If I understand your question, what you're  
13 saying is whether or not ancillary services are provided does  
14 not alone determine the requirements contract and I would  
15 agree with that.

16 Q. But under a traditional requirements contract,  
17 all of those ancillary services would have been --

18 A. I need to clarify. Under a traditional all  
19 requirements contract.

20 Q. Okay.

21 A. So in my mind, there is all requirements  
22 contracts, which would have traditionally included all  
23 ancillary services. Even today, that gets vague, okay,  
24 because ancillary services are covered by our power markets.  
25 So I think I was answering that --

1 Q. You said even today it gets vague.

2 A. Even today, it gets vague on an all  
3 requirements contract. I'm trying to make the distinction  
4 between "all requirements" and "requirements contracts."  
5 Because requirements or partial requirements means  
6 essentially one in the same and you have to read the detailed  
7 terms and conditions of the contract.

8 The most commonly used definition of  
9 "requirements," though, is it's going to serve some ultimate  
10 load to distinguish it from firm. But in terms of the  
11 obligation made by the power supplier, who is actually  
12 supplying the power, it's identical. Whether I'm selling it  
13 to someone as firm power or whether I'm selling it to them as  
14 requirements firm power, I have the same exact obligation and  
15 that's my reason for saying they're synonymous.

16 Q. But then I go back to my initial question.  
17 There is no set definition of what a "requirements" or  
18 "partial requirements" contract is as we use that term today?

19 A. There is not a consistent set definition of  
20 "requirements" or "partial requirements" other than it has to  
21 be firm and you have to see language such as "firm" or  
22 "planning reserve credits" or "uninterruptible" or "to be  
23 served at the same level of reliability as your own native  
24 load." Any of those words in the contract tell you that it's  
25 firm and any or all of those words can be present to tell you

1 that's a firm obligation. If further it has the word  
2 "requirements" in it, then it's a requirements contract.

3 Q. And then -- okay. That helps. Ms. Ott was  
4 asking you about what testimony you read in preparation for  
5 drafting your own surrebuttal testimony. And you said you  
6 hadn't read Mr. Haro's or Ms. Barnes' testimony until this  
7 weekend, correct?

8 A. Yes. I did read the -- and I'm not sure I  
9 spoke properly there. I did read those Brubaker, Fayne,  
10 Laconte, Eaves and Mantle testimony.

11 Q. That was actually my question. You read that  
12 testimony in advance of preparing your testimony?

13 A. Correct, but I did not see that surrebuttal  
14 until this weekend and all that other follow-up from the  
15 other witnesses today.

16 Q. But you had the direct testimony of Staff?

17 A. Correct.

18 Q. And Mr. Brubaker's and MEG's witness?

19 A. Correct.

20 Q. In advance of preparing your own?

21 A. Prior to when I filed -- the testimony that  
22 was available prior to filing my testimony.

23 COMMISSIONER KENNEY: Okay.

24 JUDGE WOODRUFF: Recross based on questions  
25 from the bench beginning with Staff.

1 RECROSS-EXAMINATION

2 QUESTIONS BY MS. OTT:

3 Q. I just have a quick follow-up. When you were  
4 discussing with Commissioner Kenney, you kept saying "all  
5 services." Is "all services" the same as "full services" in  
6 the -- as full requirements?

7 A. I'm sorry, can you repeat that? "All  
8 services?"

9 Q. You were using the phrase "all services." Do  
10 you use "all services" to mean the same as "full  
11 requirements?"

12 A. When I was talking to Commissioner Kenney?

13 Q. Yes.

14 A. Okay. I was talking about the all  
15 requirements definition of the contract, which I'm not sure  
16 is your issue here, but the all requirements contract  
17 traditionally in the past had included all other ancillary  
18 services that can be delivered with firm power such as load  
19 balancing, voltage control, inadvertant balancing. Those are  
20 services that a load-servicing entity must have supplied by  
21 someone, but that's an all requirements contract. I'm trying  
22 to make a distinction between the "all requirements" and a  
23 "requirements" or "partial requirements" contract. Partial  
24 requirements does not necessarily have to include all of  
25 those services.

1 Q. Okay. So you have three categories. All  
2 requirements, full requirements and partial requirements?

3 A. Full requirements and all requirements I use  
4 interchangeably. I apologize for the confusion, but I --  
5 those are the same terms.

6 Q. Okay. That's where --

7 A. All requirements, full requirements is the  
8 same class of service.

9 Q. And as you're speaking, your experience is  
10 from working in the non-regulated industry?

11 A. It's -- our business is non-regulated but the  
12 majority of the clients with whom we interchange power are  
13 regulated entities, just because that's the majority of the  
14 marketplace. So counterparties are frequently regulated  
15 entities.

16 MS. OTT: I don't have any further questions.  
17 Thanks.

18 JUDGE WOODRUFF: Public counsel.

19 MR. MILLS: Just a few.

20 RECROSS-EXAMINATION

21 QUESTIONS BY MR. MILLS:

22 Q. In response, I believe these were questions  
23 from Commissioner Kenney, but you were talking ancillary  
24 services. And you said that they are currently mostly  
25 disaggregated; is that correct?

1 A. In many markets, yes.

2 Q. And in the MISO market, they were  
3 disaggregated when?

4 A. Starting in '92 and later in the late '90s,  
5 like '96 or so with the Order 888 and filing orders.

6 Q. So in practice, when were they fully  
7 disaggregated from a contract perspective?

8 A. When MISO entered its Day 2 activities in the  
9 post-2000 timeframe, like 2002 or something like that.

10 Q. Now, with respect to your discussion both with  
11 Commissioner Davis and Commissioner Kenney in which you had  
12 to sort of distinguish between "traditional all requirements"  
13 or "full requirements contracts" and "latter day full  
14 requirements contracts," is it fair to say that the  
15 definition of "requirements contracts" depends on the  
16 context?

17 A. The definition of "requirements" depends on  
18 the context. I guess would I agree with that.

19 Q. So it may mean something different to a person  
20 whose job it is to fill out FERC Form 1 than to someone who  
21 does trading?

22 A. I believe so.

23 Q. Okay. That's all I have. Thank you.

24 JUDGE WOODRUFF: For MEG.

25 MS. LANGENECKERT: No questions.



1 JUDGE WOODRUFF: MIEC.

2 MR. ROAM: No questions.

3 JUDGE WOODRUFF: Redirect.

4 REDIRECT EXAMINATION

5 QUESTIONS BY MR. MITTEN:

6 Q. Mr. Highley, during your discussions with  
7 Commissioner Davis, you mentioned that there are six full  
8 requirements contracts involving the six owners of AEI. I  
9 believe that was your testimony.

10 A. Correct.

11 Q. And are those the six contracts that were  
12 listed on your report that you discussed with Mr. Roam?

13 A. As briefly as I saw that report, I'm a little  
14 hesitant, but I believe that is what those represent. I  
15 don't see the megawatt hours that go along with those, but it  
16 looks like that would be the contracts.

17 Q. And none of those contracts on that report was  
18 designated RQ?

19 A. That's correct.

20 Q. Even though they weren't designated RQ on the  
21 form, is there any question in your mind that those six  
22 contracts are requirements contracts?

23 A. In terms of -- they're not just requirements  
24 contracts, they're all requirements contracts because there's  
25 no limit on the amount of capacity they can take from us.

1 It's whatever their peak demand is and we supply ancillary  
2 services to meet their load. So it's even beyond that.

3 Q. And Mr. Roam also asked you to -- I think you  
4 read into the record an excerpt from your testimony on  
5 page 7, if you could turn to that. I believe the sentence he  
6 read in begins on page 6.

7 A. Okay.

8 Q. The sentence beginning "In my 27 years."

9 A. Oh, I'm sorry, it begins on page 7 at line 6.

10 Q. Yes, I'm sorry.

11 A. Okay.

12 Q. Would your answer that's reflected in your  
13 prepared testimony be any different if instead of the  
14 definitions contained on page 310 of the FERC Form 1 were  
15 replaced with the definitions contained on page 17 of the  
16 Guide for Preparing Financial and Statistical Reports for  
17 power supply borrowers and electric distribution borrowers  
18 with generating facilities?

19 A. Is what you're referring to from the FERC  
20 Form 12 instructions?

21 Q. From the RUS.

22 A. RUS Form 12? My answers would be the same.  
23 The RUS Form 12 being similar to a statistical report similar  
24 in nature to the FERC Form 1.

25 Q. During your discussion with Commissioner

1 Kenney, I believe you also said that there's not a consistent  
2 definition of "requirements."

3 A. I haven't been able to find one. I would say  
4 the closest that I can come up with is that if you are  
5 serving ultimate load, that represents requirements.

6 Q. In light of that testimony, is there any doubt  
7 in your mind that the contracts between Ameren and AEP and  
8 Wabash are partial requirements contracts?

9 A. No. The reasons being it not only says the  
10 word "requirements," but it also says "firm." It also talks  
11 about planning reserve credits, which means that it has been  
12 through system planning, has been set aside as capacity. You  
13 can only count capacity once and nobody gets to count it more  
14 than once.

15 So when I sell a capacity to you and you get  
16 to take credit for it, I've made a transfer of that capacity.  
17 So it's a firm obligation equivalent to my native load and so  
18 it's not just the word "requirements" that I relied upon in  
19 my review of the contracts to determine whether they were  
20 representative. I mean, you can stick the word in there. I  
21 don't think they would be. But because the word's in there  
22 along with "firm capacity," "planning reserve credits" and an  
23 "obligation to serve equivalent to native load," I believe  
24 that represents a requirements agreement.

25 MR. MITTEN: I don't have any further

1 questions. Thank you Mr. Highley.

2 JUDGE WOODRUFF: Thank you Mr. Highley. You  
3 can step down.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: I'm not going to call any  
6 other witnesses today. What we need to decide is how we want  
7 to proceed for tomorrow. Right now we're scheduled to start  
8 at 8:30. And the weather may be bad, we may want to start  
9 later than that. But I do want to ask the parties how do you  
10 feel about where we're at today? We've only gone through  
11 three witnesses. Is anybody thinking, "Oh, my god, how are  
12 we going to get through tomorrow?" Or are you thinking we're  
13 right on track?

14 MR. BYRNE: We think we can get through  
15 tomorrow. I mean, obviously it depends on other people, but  
16 other primary witnesses are -- were Mr. Haro and Ms. Barnes  
17 in terms of quantity of testimony filed, so maybe that would  
18 suggest, but the cross-examination might not be as long for  
19 the other witnesses and I think we're going to go pretty  
20 quick.

21 JUDGE WOODRUFF: For your cross?

22 MR. BYRNE: Yes.

23 JUDGE WOODRUFF: Ms. Ott, any different view?

24 MS. OTT: No, I think we should be able to  
25 finish tomorrow.

1 JUDGE WOODRUFF: Okay. Well, then, the next  
2 question is: Do we want to start later than 8:30 tomorrow?  
3 I want to make sure everybody can actually get here on time.

4 MR. MILLS: Judge, it's not my issue, but for  
5 those issues for out-of-town, they may actually like to start  
6 early and get done early and be heading home before it gets  
7 dark tomorrow.

8 JUDGE WOODRUFF: Well, that may be, too.

9 MR. BYRNE: Of course, what I hear is it's  
10 going to snow all night tonight and then tomorrow -- in fact,  
11 why don't we go off the record, Judge.

12 JUDGE WOODRUFF: Okay. Let's go off the  
13 record.

14 (An off-the-record discussion was held.)

15 JUDGE WOODRUFF: Okay. While we were off the  
16 record, we had a discussion and it was generally a  
17 concurrence of the parties that we would start tomorrow at  
18 nine o'clock, so we will start tomorrow at 9:00.

19 MS. OTT: And before we go off the record  
20 today, I have copies of Exhibit 17 for the Commissioners.

21 JUDGE WOODRUFF: Go ahead and pass them out.  
22 we're off the record.

23

24

25

CERTIFICATE OF REPORTER

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1780, and Certified Realtime Reporter, the officer before whom the foregoing hearing was taken, do hereby certify that the witnesses whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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Jennifer Leibach, RPR, CRR, CSR, CCR

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