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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
May 3, 2012
Jefferson City, Missouri
Volume 2

In the Matter of the Application)
Of Union Electric Company d/b/a)
Ameren Missouri For the Issuance) File No. EU-2012-0027
Of an Accounting Authority Order)
Relating to its Electrical)
Operations)

DANIEL R.E. JORDAN, Presiding,
REGULATORY LAW JUDGE

KEVIN GUNN, Chairman,
TERRY JARRETT,
ROBERT S. KENNEY,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

1 APPEARANCES:
2 L. RUSSELL MITTEN, Attorney at Law
Brydon, Swearengen & England, P.C.
3 312 East Capitol
P.O. Box 456
4 Jefferson City, MO 65102-0456
(573)635-7166
5 mitten@brydonlaw.com
6 THOMAS BYRNE, Attorney at Law
P.O. Box 66149
7 1901 Chouteau Avenue
St. Louis, MO 63103
8 (314)554-2237
9 FOR: Union Electric Company d/b/a Ameren
Missouri.
10
BRENT ROAM, Attorney at Law
11 Bryan Cave, LLP
211 North Broadway, Suite 3600
12 St. Louis, MO 63102
(314)259-2543
13 brent.roam@bryancave.com
14 FOR: Missouri Industrial Energy Consumers.
15 LISA C. LANGENECKERT
Attorney at Law
16 Sandberg Phoenix & von Gontard, P.C.
600 Washington Avenue - 15th Floor
17 St. Louis, MO 63101
(314)231-3332
18 llangeneckert@sandbergphoenix.com
19 FOR: Barnes-Jewish Hospital.
20 LEWIS R. MILLS, JR., Public Counsel
P.O. Box 2230
21 200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
22 (573)751-4857
23 FOR: Office of the Public Counsel
and the Public.
24
25

1 STEVEN DOTTHEIM, Chief Deputy Counsel

AMY MOORE, Legal Counsel

2 P.O. Box 360

200 Madison Street

3 Jefferson City, MO 65102

(573)751-3234

4

FOR: Staff of the Missouri Public

5 Service Commission.

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

2 (AMEREN EXHIBIT NOS. 1 THROUGH 5, STAFF
3 EXHIBIT NOS. 1 THROUGH 4, OPC EXHIBIT NO. 1 AND MIEC
4 EXHIBIT NO. 1 WERE MARKED FOR IDENTIFICATION BY THE
5 REPORTER.)

6 (WHEREUPON, the hearing began at
7 9:03 a.m.)

8 JUDGE JORDAN: We're on the record. The
9 Commission is calling the case in File No. EU-2012-0027,
10 and the caption of this case is in the matter of the
11 application of Union Electric Company, doing business as
12 Ameren Missouri, for the issuance of an Accounting
13 Authority Order relating to its electrical operations.

14 I'm Daniel Jordan. I'm the Regulatory Law
15 Judge assigned to this action. Also present with me on
16 the Bench is Commissioner Terry Jarrett, and those of you
17 here in the hearing room can see Commissioner Kenney, who
18 is observing the proceedings from the Wainwright Building.
19 Also watching us remotely is the Chairman, Kevin Gunn.

20 I'm going to start by asking everyone to
21 silence cell phones. Make sure your cell phone is silent.
22 I'm going to do that myself right now. I said silence. I
23 meant turn off. That's what I'm going to do. I'm turning
24 my cell phone off right now. I hope everyone else is
25 doing the same.

1 All right. Then let's start with our
2 taking entries of appearance. Let's begin with counsel
3 for Union Electric Company, doing business as Ameren
4 Missouri, hereinafter Ameren.

5 MR. BYRNE: Thank you, Judge. My name is
6 Tom Byrne, attorney for Ameren Missouri. My address is
7 1901 Chouteau Avenue, St. Louis, Missouri 63103.

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

12 JUDGE JORDAN: Thank you. Other attorneys
13 have also appeared for Ameren. I take it they won't be
14 present today; is that correct?

15 MR. BYRNE: That's correct, Judge.

16 JUDGE JORDAN: Thank you very much. For
17 the Commission Staff?

18 MR. DOTTHEIM: Steven Dottheim and Amy
19 Moore, Post Office Box 360, Jefferson City, Missouri
20 65102-0360, appearing on behalf of the Staff of the
21 Missouri Public Service Commission.

22 JUDGE JORDAN: Thank you, Counsel. For the
23 Office of the Public Counsel?

24 MR. MILLS: On behalf of the Office of the
25 Public Counsel and the public, my name is Lewis Mills. My

1 address is Post Office Box 2230, Jefferson City, Missouri
2 65102.

3 JUDGE JORDAN: Thank you. For intervenor
4 Missouri Industrial Energy Consumers?

5 MR. ROAM: On behalf of Missouri Industrial
6 Energy Consumers, my name is Brent Roam, Bryan Cave. The
7 address is 211 North Broadway, Suite 3600, St. Louis,
8 Missouri 63102.

9 JUDGE JORDAN: Thank you. And for
10 intervenor Barnes-Jewish Hospital?

11 MS. LANGENECKERT: Good morning, Judge,
12 Commissioners. This is Lisa Langeneckert with the law
13 firm of Sandberg, Phoenix & von Gontard, 500 Wash-- or
14 600 Washington Avenue, 15th floor, St. Louis, Missouri
15 63101.

16 JUDGE JORDAN: Thank you. I understand
17 that the parties have marked their exhibits. Just make
18 sure that you give a copy to the reporter and deliver one
19 to the Bench when the time comes when you're offering
20 them.

21 Now, I think we have, based on
22 communications yesterday, one preliminary matter that we
23 want to resolve on the record.

24 MR. DOTTHEIM: Yes, Judge. There was an
25 issue raised by Staff that has been resolved between the

1 Staff and Ameren Missouri. The resolution of the issue
2 was communicated to the other parties, and the other
3 parties were asked if they as a result of the resolution
4 of the issue -- and the witnesses were Jason D. Carter for
5 the Staff and Steven Wills for the company -- whether they
6 had cross for Mr. Carter, Mr. Wills, and they indicated
7 they didn't.

8 And I subsequently communicated by e-mail
9 with you so you could communicate with the Commissioners
10 to see if they, as a result, had cross for Mr. Carter and
11 Mr. Wills.

12 I thought I'd read basically what the
13 substance of the settlement was that I communicated with
14 the parties and with you in the e-mail, which is in the
15 Staff's statement of positions for Issue 4, the Staff
16 identified an issue between Staff witness Jason D. Carter
17 and Ameren witness Steven Wills characterized by the Staff
18 as a line loss charge adjustment. Mr. Carter quantified
19 the adjustment was amounting to \$428,250.

20 The Staff and Ameren Missouri have agreed
21 to a dollar settlement of this matter for the purpose of
22 the pending case with no ratemaking or rate design
23 principles being set. The dollar settlement is a positive
24 adjustment of \$214,125 to Staff's pretax number and a
25 negative adjustment of \$214,125 to Ameren Missouri's

1 pretax number.

2 Thus, the Staff and Ameren Missouri agree
3 that the pretax quantification of the, quotation mark,
4 fixed quotes -- excuse me -- fixed costs, close quotation
5 mark, Ameren, parentheses, Ameren Missouri, closed
6 parentheses, slash, quotation mark, lost revenues slash
7 profit, close quotation marks, parentheses, Staff, close
8 parentheses, amount which Ameren Missouri was unable to
9 recover from Noranda due to the effects on Noranda's load
10 of the January 2009 ice storm was \$35,561,503. Assuming a
11 composite income tax rate of 38.3886 percent, the
12 after-tax number is \$21,909,940.

13 I will give a copy of what I have just read
14 to the court reporter, in that I did not read it very
15 artfully. She can make certain that she has exactly what
16 I attempted to read.

17 JUDGE JORDAN: That sounds fine. We can
18 mark that as a joint exhibit.

19 MR. BYRNE: Your Honor, just for the
20 record, Ameren Missouri supports that settlement as well.

21 JUDGE JORDAN: Splendid. I appreciate the
22 parties' work towards eliminating that issue. Just to
23 make sure I understand what has been resolved, do I
24 correctly understand the figure of \$21,909,940 to
25 represent the amount that Ameren is asking for as a

1 subject of this action for deferred reporting?

2 MR. BYRNE: No, your Honor. That's the
3 after-tax number. We -- the before-tax number was the
4 \$35,600,000. So that's the amount that we would ask for.
5 If we were to receive it and if we were to get it in
6 rates, it would be taxed and then we would end up after
7 tax with the lower number.

8 JUDGE JORDAN: I see. So the amount that
9 Ameren is asking to defer recording of is the \$35 million
10 number. The parties believe that the after-tax amount
11 will be the 21.9 million?

12 MR. BYRNE: That's correct.

13 JUDGE JORDAN: Thank you for that
14 clarification. Very good.

15 MR. DOTTHEIM: Yes.

16 JUDGE JORDAN: Okay. Anything else on that
17 matter?

18 MR. DOTTHEIM: So the document which is
19 actually the e-mail, Judge, that I sent to you and copied
20 all parties yesterday will be marked Joint Exhibit 1?

21 JUDGE JORDAN: Yes.

22 (JOINT EXHIBIT NO. 1 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 MR. BYRNE: I guess, Judge, the only other
25 thing in connection with that, should we offer the

1 prefiled testimony of the witnesses whose issue has now
2 been settled?

3 JUDGE JORDAN: Well, since that won't take
4 very long, why don't we do that, just to make sure?

5 MR. BYRNE: Judge, I would offer Exhibits
6 Ameren 4 and Ameren 5, which are the direct and
7 surrebuttal testimony of Steven Wills.

8 JUDGE JORDAN: Very good. And can we also
9 have the prefiled testimony of Jason D. Carter?

10 MR. DOTTHEIM: Yes, Judge. At this time I
11 would offer the prefiled rebuttal testimony of Jason D.
12 Carter, which has been marked as Staff Exhibit 1.

13 JUDGE JORDAN: Very good. Do we then have
14 any -- any objections to any of those exhibits? Joint
15 Exhibit 1? Not hearing any objection. Exhibit 4 of
16 Ameren? Ameren Exhibit 5? Not hearing any objection
17 there either. Staff Exhibit 2?

18 MR. DOTTHEIM: It would be Staff Exhibit 1.

19 JUDGE JORDAN: I'm sorry. I can't read my
20 own handwriting.

21 MR. DOTTHEIM: Excuse me.

22 JUDGE JORDAN: No. My handwriting is my
23 fault. Staff Exhibit 1, any objection? Not seeing any.
24 Then those are entered into the record.

25 (AMEREN EXHIBIT NOS. 4 AND 5, STAFF EXHIBIT

1 NO. 1 AND JOINT EXHIBIT NO. 1 WERE RECEIVED INTO
2 EVIDENCE.)

3 JUDGE JORDAN: And with that, I understand
4 that the parties are planning to call neither Steven Wills
5 nor Jason D. Carter; is that correct?

6 MR. DOTTHEIM: That is correct for the
7 Staff.

8 MR. BYRNE: And for Ameren Missouri.

9 JUDGE JORDAN: Thank you. Are there any
10 other matters preliminary to this before we begin Ameren's
11 case in chief?

12 (No response.)

13 JUDGE JORDAN: Not seeing any, we can -- we
14 can begin evidence with Ameren's presentation. No. I'm
15 sorry. We're going to do opening statements, Ameren
16 first.

17 MR. BYRNE: Good morning, Judge and
18 Commissioners. May it please the Commission? I'm Tom
19 Byrne, and along with my co-counsel, Russ Mitten, I am
20 representing Ameren Missouri in this case.

21 We're here today to address a topic that
22 the Commission is already familiar with, Ameren Missouri's
23 loss of approximately \$36 million of fixed cost recovery
24 due to the effects of a severe ice storm that struck
25 southeast Missouri in late January 2009 and, in

1 particular, the impact of that ice storm on Noranda
2 Aluminum, the company's largest customer.

3 In this proceeding, Ameren Missouri is
4 seeking an Accounting Authority Order, or AAO, authorizing
5 it to defer the approximately \$36 million in unrecovered
6 fixed costs that it experienced as a result of the ice
7 storm. If an Accounting Authority Order is issued in this
8 proceeding, Ameren Missouri will seek to amortize the
9 amount deferred over a reasonable period and include the
10 amortization amount in its revenue requirement in its
11 pending rate case as a true-up item.

12 To put in perspective what Ameren Missouri
13 is asking for in this case, it is important to understand
14 the history of what has gone on in the past with respect
15 to Noranda and the January 2009 ice storm and Ameren
16 Missouri's previous efforts to mitigate the effects of the
17 ice storm.

18 First Noranda. As I'm sure the
19 Commissioners know, Noranda operates a huge aluminum
20 smelter near the bootheel in the outskirts of New Madrid,
21 Missouri. Noranda is the largest employer in southeast
22 Missouri, and it has good-paying jobs in an area of the
23 state where good-paying jobs are particularly hard to
24 find.

25 Power is by far the largest component, cost

1 component in the aluminum smelter business, and in 2005
2 Noranda sought help from the state of Missouri, both at
3 the Legislature and in the Governor's Office, to try to
4 find a cost-based and reasonably priced source of power to
5 help keep its smelter competitive.

6 In 2005, Ameren Missouri stepped forward
7 and agreed to supply cost-based power to Noranda, and the
8 Commission approved the extension of Ameren Missouri's
9 service territory to include Noranda. Noranda got the
10 reasonable priced, cost-based electricity supply it
11 wanted, enabling it to stay competitive and to stay open.

12 Noranda was and is an enormous consumer of
13 power on Ameren Missouri's system. Its consumption
14 approaches 10 percent of all the power that Ameren
15 Missouri sells to its Missouri customers. Stop and think
16 about that for a moment. Ameren Missouri serves all of
17 St. Louis City and County, Wentzville, Jefferson City,
18 Cape Girardeau, almost all of eastern and central
19 Missouri, and yet a single customer, Noranda, consumes
20 about 10 percent of all the power Ameren Missouri sells in
21 the state.

22 Noranda is, of course, our largest
23 industrial customer. In fact, even though we sell to
24 large power consumers like car assembly plants, chemical
25 manufacturers, cement plants and other large users of

1 power, Noranda consumes about as much power as all of our
2 other industrial customers combined.

3 And unlike many customers, Noranda's
4 consumption is steady, 24 hours a day. Noranda runs three
5 shifts, and it consumes power at approximately a
6 98 percent load factor, meaning at any given time it is
7 typically consuming 98 percent of the maximum amount of
8 power available to it.

9 The revenues that Ameren Missouri derives
10 from providing service to Noranda are also large and
11 steady. Specifically, the company receives approximately
12 \$139 million per year from Noranda, which covers a
13 significant share of the fixed costs that the company --
14 of the company's generation and transmission systems.

15 With regard to the ice storm, in January
16 2009 the bootheel was slammed by one of the most
17 devastating ice storms ever to strike the state. As you
18 can see on the picture on ELMO, Ameren Missouri's
19 facilities were completely covered with several inches of
20 ice, and our systems suffered widespread damage.

21 One of the effects of the storm was that
22 over 3,000 poles were broken, and that's the most broken
23 poles the company has ever experienced in a weather
24 incident. 214 miles of wire and cable were downed, and
25 781 transformers had to be replaced. At the time, the

1 company described the damage from the 2009 ice storm as
 2 the most significant damage to the company's distribution
 3 system in history. Governor Nixon declared a state of
 4 emergency, deployed the National Guard to the area, and
 5 sought emergency federal funds to try to address the
 6 damage.

7 Our customers were severely impacted by
 8 this ice storm. Almost all of our customers in a six-
 9 county area, and the six counties were Dunklin,
 10 Mississippi, New Madrid, Pemiscot, Scott and Stoddard,
 11 were left without power, almost all the customers in those
 12 six counties. Food spoiled and pipes froze. Houses and
 13 customer-owned weatherheads were damaged by branches
 14 broken by the weight of the ice. A majority of the trees
 15 in the bootheel were significantly affected, and many
 16 trees died.

17 And Noranda's aluminum smelter did not
 18 escape the damage from that storm. Noranda's smelter is
 19 not directly connected to Ameren Missouri's system, but is
 20 instead served indirectly through transmission lines owned
 21 by the Associated Electric Cooperative. Due to the weight
 22 of the ice, the Associated transmission lines broke,
 23 abruptly cutting off power to Noranda's smelter.

24 Noranda's smelter makes aluminum using
 25 three pot lines with numerous pots on each line. When the

1 power was abruptly cut off, molten aluminum hardened or
2 froze in the pots, shutting down the system. In the
3 immediate aftermath of the storm, there was no telling
4 when or if Noranda would continue operations in the state.

5 Ultimately Noranda was able to fully
6 restore its operations by painstakingly jackhammering the
7 hardened aluminum out of each affected pot, but it took
8 them 14 months to do so.

9 In the months leading up to the ice storm,
10 Ameren Missouri was involved in a rate case, which was
11 Case No. ER-2008-0318, and there are two aspects of that
12 rate case that are relevant here.

13 First, as you would expect, the rate design
14 that was ultimately approved in that rate case allocated a
15 significant amount of the company's fixed generation and
16 transmission costs, tens of millions of dollars, to be
17 recovered from Noranda.

18 Second, in that case, the company sought
19 and ultimately received a fuel adjustment clause. The
20 company had unsuccessfully sought a fuel adjustment clause
21 once before shortly after the Legislature had authorized
22 the Commission to approve fuel adjustment clauses in 2005.
23 The company's position was and is that fuel costs are
24 volatile and largely beyond the company's ability to
25 control and should be recovered through an FAC like most

1 other integrated electric utilities have.

2 Unfortunately, a number of other parties
3 opposed the company's use of a fuel adjustment clause.
4 Among other things, the other parties in that case argued
5 that if the company was to have a fuel adjustment clause
6 to recover its fuel costs, that clause should also be used
7 to flow off-system sales revenues back to customers, and
8 the company had no problem with that provision. We
9 understand and agree that since customers are paying rates
10 that reflect the full cost of operating our generating
11 plants, it's only fair that customers receive the benefit
12 of any incremental power sales that are made in the
13 off-system market.

14 So ultimately the parties stipulated in
15 Case No. ER-2008-0318 that if the Commission approved an
16 FAC, it should approve an agreed-upon tariff that also
17 flowed off-system sales revenues back to customers who
18 were paying the associated costs.

19 In the end, the Commission approved the
20 stipulated fuel adjustment clause tariff with a
21 95 percent/5 percent sharing mechanism, and its Report and
22 Order was issued on January 27th, 2009, just when the ice
23 storm was hitting.

24 When the ice storm hit, in addition to the
25 significant operational problems of getting service to

1 customers restored, Ameren Missouri was faced with a
2 serious financial problem. Because service to Noranda was
3 significantly curtailed, the company could not recover
4 from Noranda the large amount of fixed costs, again, tens
5 of millions of dollars, that was allocated to Noranda by
6 the Commission's rate case order that was issued in the
7 middle of the ice storm.

8 And if the company turned around and sold
9 the power that had been earmarked for Noranda in the
10 off-system market, 95 percent of the revenues would be
11 refunded to customers under the newly approved FAC. This
12 meant that customer bills would be significantly lower
13 than they would have been had the ice storm not hit solely
14 because of the impact of the ice storm. And on the other
15 side of the coin, it meant that the company would fail to
16 recover a large sum of fixed costs that sales to Noranda
17 were expected to cover, also due solely to the ice storm.

18 When faced with this dilemma, the company
19 initially filed an application for rehearing of the rate
20 case order, requesting that the provisions of the FAC
21 tariff be changed to permit it to resell the Noranda power
22 in the off-system market and use only enough of the
23 proceeds from those sales to offset the fixed costs that
24 were being lost and flow the rest of the revenues to
25 customers.

1 But the Commission found that in order to
2 grant the company's request, it would have to set aside
3 the approved stipulation as far as what the FAC tariff
4 would say, reopen the record to take evidence on the
5 appropriateness of the proposed change, and then make a
6 decision, all by the operation of law date in the case,
7 which was March 1st, 2009.

8 And the Commission found that it would be
9 impossible to accomplish all that prior to the operation
10 of law date for the case. So although the merits of the
11 company's request were not considered by the Commission,
12 the company's request was denied.

13 Next when it filed to get the FAC tariff
14 revised, the company tried to mitigate its loss by selling
15 the unused Noranda power to purchasers that would be
16 similar to Noranda, and we wanted purchasers that would be
17 similar to Noranda in two ways.

18 One, we wanted purchasers that would back
19 their purchases -- make their purchases in order to serve
20 load so that their contracts would be backed by load. And
21 we also wanted the purchasers to be excluded from the fuel
22 adjustment clause, just like Noranda's revenues were
23 excluded from the fuel adjustment clause, so that it would
24 mitigate the financial damage that we suffered as a result
25 of the storm.

1 The FAC tariff that had been approved and
2 had been stipulated by the parties had a specific
3 exemption for long-term full and partial requirements
4 sales, and so Ameren went out into the market and sought
5 to enter into long-term full or partial requirements sales
6 contracts to replace the lost Noranda load.

7 As the Commission may remember, the company
8 entered into two contracts of 12 months and 15 months for
9 sales to American Electric Power and Wabash Valley Power
10 Association to serve load that was served by them. At the
11 time we believed that these contracts qualified as
12 long-term partial requirements sales that would be exempt
13 from the fuel adjustment clause and that would let us
14 mitigate our loss that we suffered as a result of the
15 storm.

16 But ultimately the Commission held in Case
17 No. EO-2010-0255 that these transactions did not qualify
18 as long-term requirements sales, that the company had
19 miscategorized them, and the revenues, instead of the
20 company being able to keep the revenues, the revenues had
21 to be flowed back to customers through the FAC.

22 As a consequence, due to the effect of the
23 ice storm, we were left with approximately \$36 million, I
24 guess it was \$35.6 million based on the settlement that
25 Mr. Dottheim described, in unrecovered fixed costs and no

1 way to mitigate the financial effects of that
2 under-recovery.

3 Which brings us to the current proceeding.
4 Here we are requesting that the Commission issue an
5 Accounting Authority Order authorizing us to defer the
6 \$35.6 million in unrecovered fixed costs we have incurred.
7 Again, if the Commission grants this request, we will seek
8 an amortization of that amount over a reasonable period of
9 time, the amortization will mitigate the impact on
10 customers, and attempt to recover it in our pending rate
11 case.

12 The standards for issuing -- the standards
13 for issuing Accounting Authority Orders are set forth in
14 the Uniform System of Accounts, or USOA, which this
15 Commission has adopted. Following an extraordinary event,
16 the USOA specifically authorizes the deferral of any item
17 that affects the utility's net income, revenues, expenses,
18 gains or losses. That means the Commission has the same
19 authority to defer revenues that it has to defer expenses.

20 As the Commission observed in its final
21 order in a recent AAO case involving the Empire District
22 Electric Company in the wake of the Joplin tornado, AAOs
23 are designed to protect a utility from earnings shortfalls
24 that result from extraordinary events. And it's an
25 irrefutable principle of accounting that a sudden and

1 prolonged loss of revenue following an extraordinary event
2 has the same negative effect on net income as does an
3 increase in expenses that more normally is the subject of
4 AAOs.

5 Our opponents in this case oppose the
6 issuance of an AAO for several reasons which we believe
7 are completely meritless. Amazingly, Staff witness Lena
8 Mantle argues that the 2009 ice storm does not qualify as
9 an extraordinary event. However, at her deposition she
10 admitted that she was unfamiliar with the Uniform System
11 of Accounts and the definition of extraordinary that is
12 contained therein, which we believe applies in this case.
13 She also admitted that the 2009 ice storm met each of the
14 criteria listed for an extraordinary event in the Uniform
15 System of Accounts.

16 Staff witness Mark Oligschlaeger advances
17 several meritless arguments in his testimony. First, he
18 argues that an AAO ought never to be issued until all of a
19 utility's earnings are completely exhausted. Even then he
20 says it would be more appropriate for a utility to seek
21 temporary rate relief than to pursue an AAO.

22 Of course, this position is completely
23 inconsistent with the Uniform System of Accounts,
24 standards and the Commission's practice in issuing
25 previous AAOs. If a utility had to completely exhaust all

1 of its earnings before qualifying for an AAO, then all of
2 the AAOs this Commission has ever issued in the past would
3 be improper and the Commission would never issue another
4 AAO in the future. That has never been and should not be
5 the standard for issuing AAOs in this jurisdiction.

6 The cost, the cost of the equity of the
7 company shareholder -- that the company shareholders
8 invest in the company, equity capital that the company
9 must have is just as much of a cost in providing service
10 as any other cost. The Staff and I think MIEC as well
11 will try to argue that that's not really a cost, but it
12 is.

13 Mr. Oligschlaeger also argues that the
14 company is too late in requesting this AAO because the
15 storm that created this loss occurred in 2009. But again,
16 that's demonstrably inaccurate.

17 Ameren Missouri did not know and could not
18 have known that it would suffer any loss until after the
19 Commission issued its final order determining that the AEP
20 and Wabash revenues had to be flowed through the FAC, and
21 that was in April of 2011. At that point the company
22 recorded a charge to earnings of approximately \$17 million
23 to reflect the fact that the AEP and Wabash revenues in
24 that amount had to be flowed through the FAC, but that was
25 in April of 2011, and we promptly filed our application in

1 this case seeking an AAO after that happened.

2 The Commission still hasn't determined and
3 the company still hasn't booked any charge associated with
4 the remaining 25 or 26 or \$23 million -- I think the
5 amount is in dispute -- of loss that the Staff is alleging
6 for a later period.

7 Given these facts, there's no question that
8 the company's filing in this case was filed within a
9 reasonable time. The company could not have filed before
10 the Commission issued its order in the FAC case, because
11 that was the first moment that it could have known that it
12 was not going to be able to mitigate the loss due to the
13 Noranda curtailment.

14 Mr. Oligschlaeger also argues that the
15 company is simply trying to overturn the Commission's
16 decision in the AEP and Wabash case, but again, that's
17 clearly incorrect. If the Commission grants the company's
18 request for an Accounting Authority Order, that decision
19 will be entirely consistent with the previous decision
20 regarding the AEP and Wabash revenues.

21 The issuance of an AAO in this case will
22 have no impact whatsoever on the treatment of the AEP and
23 Wabash revenues, which will continue to be fully credited
24 to customers under the FAC. In fact, you know, in the
25 2010-0255 case, the merits of an AAO were never considered

1 by the Commission, and in fact, the Staff -- Staff lawyer
2 asked the company witnesses if we had considered an AAO as
3 an option. So it's not inconsistent with the decision in
4 that docket.

5 Finally, Mr. Oligschlaeger argues that the
6 company is not seeking to recover lost fixed costs but it
7 is seeking to improperly make up for a revenue shortfall.
8 Mr. Oligschlaeger argues that this is improper based on
9 the Commission's recent decision in issuing an AAO in the
10 Southern Union/Missouri Gas Energy case involving the
11 Joplin tornado.

12 We acknowledge that the company's request
13 could fairly be characterized as either an AAO to recover
14 lost fixed costs, lost or unrecovered fixed costs, or lost
15 revenues that were expected to pay those fixed costs.
16 It's two sides of the same coin in our view. Both
17 characterizations are correct.

18 But it's not true that, as a general
19 proposition, the Uniform System of Accounts precludes the
20 issuance of an AAO to account for lost revenues. In fact,
21 the AAO specifically says that deferrals can be used for
22 revenues and to account for losses occasioned by
23 extraordinary events. Moreover, in his deposition
24 Mr. Oligschlaeger admitted that the Commission has the
25 power, if it chooses to do so, to grant an AAO in this

1 case.

2 With regard to the Southern Union/Missouri
3 Gas Energy case, there are at least two significant
4 factual differences that make the Commission's decision to
5 deny an AAO for lost revenues in that case inapplicable
6 here.

7 First, for whatever reason, MGE's total
8 revenues did not actually decline after the Joplin
9 tornado. Actually, they increased. So in one way of
10 looking at things, they didn't lose any revenues. The
11 revenues increased after the tornado.

12 In this case, Ameren Missouri's revenues
13 declined by \$57 million after the Noranda load was lost,
14 and in large part this decline was due to the loss of
15 Noranda. I guess 35, \$36 million of that 57 was due to
16 the loss of Noranda. So we didn't have a situation like
17 MGE where we earned more revenues after the extraordinary
18 event than we did before.

19 Second, in the case of MGE, the amount of
20 any lost revenues would have been impossible to calculate
21 with precision. Who knows what the level of revenues
22 would have been from a diverse collection of
23 weather-dependent customers that were knocked out by the
24 Joplin tornado? The Commission was not willing to
25 speculate, and that is understandable in that case.

1 But here, where Noranda's load is
2 absolutely steady and where the parties have stipulated
3 the amount of lost revenues at issue, there is absolutely
4 no question about the magnitude of the loss of revenues or
5 the loss of fixed cost recovery.

6 In addition -- well, moreover, the
7 magnitude of the loss in this case dwarfs the loss in
8 revenues that MGE alleged both in terms of total dollars
9 and percentage impact on earnings. In this case, Ameren
10 Missouri witness Barnes has calculated the impact on
11 Ameren Missouri's earnings as approximately 8.5 percent,
12 which is unquestionably a material impact under the
13 Uniform System of Accounts.

14 The reduction to Ameren Missouri's earnings
15 is even worse given the fact that the company's earnings
16 were already significantly below those authorized by the
17 Commission before the effects of the ice storm are even
18 taken into account. Those earnings shortfalls are shown
19 in an attachment to our verified application, and they're
20 also shown in the attachment to Mr. Oligschlaeger's
21 rebuttal testimony.

22 So we had subpar earnings to begin with,
23 and if you add on top of the 35, \$36 million of losses
24 resulting from the ice storm, our earnings picture is even
25 worse. The bottom line is the impact of this ice storm on

1 Ameren Missouri's fixed cost recovery and its recovery of
2 revenues designed to pay those fixed costs is exactly the
3 kind of situation that Accounting Authority Orders under
4 the Uniform System of Accounts were designed to address.
5 The storm was a very extraordinary event that caused a
6 significant shortfall in Ameren Missouri's earnings.

7 The objections raised by the other parties
8 are without merit. The Uniform System of Accounts
9 contemplates an AAO for this kind of circumstance. The
10 Commission has the authority to grant an AAO on these
11 facts, and the Commission should exercise its authority
12 and grant an AAO here. Thank you.

13 JUDGE JORDAN: Thank you, counsel. Can I
14 get -- I'd like to clarify one or two issues that you
15 raised in your opening argument.

16 First, I want to clarify what exactly the
17 amount that we're talking about represents. Talking about
18 something that was caused by the ice storm?

19 MR. BYRNE: Yes.

20 JUDGE JORDAN: But we're not talking about
21 the costs of restoring service?

22 MR. BYRNE: That's correct.

23 JUDGE JORDAN: We're not talking about
24 storm recovery costs?

25 MR. BYRNE: Correct.

1 JUDGE JORDAN: We're talking about -- let's
2 see. You characterized it as fixed costs.

3 MR. BYRNE. Yes. The way we characterized
4 it in our application is that there were fixed costs that
5 were allocated to Noranda, a significant amount of fixed
6 costs that were allocated to Noranda in that rate case
7 that the order was issued right in the middle of the ice
8 storm.

9 JUDGE JORDAN: And the evidence will show
10 us how that amount relates to that characterization?

11 MR. BYRNE: Sure. And we were to recover
12 those fixed costs from revenues from Noranda. So that was
13 the way we were to recover the fixed costs. So we
14 characterized in our application what we're asking for as
15 recovery of fixed costs, which I think is true. Those
16 were fixed costs that were allocated to Noranda in the
17 rate case.

18 But other parties have said, no, it's
19 really the revenues that you didn't receive from Noranda.
20 And I think we've come to the conclusion that those are
21 two sides of the same coin. It is fixed costs that were
22 allocated to Noranda, but it is fixed costs that would be
23 recovered through revenues that we would have gotten from
24 Noranda had the ice storm not hit.

25 JUDGE JORDAN: The idea is that this was

1 all due to this extraordinary event, this ice storm?

2 MR. BYRNE: Absolutely.

3 JUDGE JORDAN: And if I remember the
4 regulation on extraordinary events, they have to be not
5 foreseeable in the sense that it's unlikely that something
6 of this magnitude would happen again?

7 MR. BYRNE: I don't know if the word is
8 unforeseeable is in there, but I do -- I would agree with
9 you that it has to be something that's very unusual and
10 not likely to regularly happen.

11 JUDGE JORDAN: Yeah. The words used are
12 unusual and infrequent, not foreseeably recurring.

13 MR. BYRNE: Yeah.

14 JUDGE JORDAN: That's what I was thinking.

15 MR. BYRNE: I mean, I think the reason I
16 hesitate about the word unforeseeable is, right before the
17 ice storm we prepared -- I mean, a day before we had some
18 inkling that some kind of an ice storm was going to
19 happen. It wasn't -- but I think -- I think we do meet
20 the standard that it's not likely to recur in the future.
21 It's unforeseeable that something like this would occur in
22 the future.

23 JUDGE JORDAN: And it is because of that
24 event that this money did not come in?

25 MR. BYRNE: That's correct.

1 JUDGE JORDAN: Okay. Can you
2 differentiates for me how that would be different if, say,
3 Noranda quit doing business or moved to Arkansas or moved
4 to the Bahamas?

5 MR. BYRNE: Sure. I think the difference
6 is -- and every case we have to be -- you'd have to look
7 at whatever facts there were to see, but to my mind, the
8 case that you postulate is a lot different from this one
9 because customers starting business and going out of
10 business is a normal thing.

11 I mean, Noranda's larger than other
12 customers that go in and out of business, but that's
13 something that happens on our system every day. An ice
14 storm like this being the precipitating event is what
15 really makes this extraordinary, more than Noranda
16 starting business, closing business, if that makes sense.

17 JUDGE JORDAN: Okay. I had just one other
18 thing I wanted to clarify. That was in regard to one of
19 the earlier cases you had mentioned, I think it was
20 No. EO-2009-0255. I think that was the one.

21 MR. BYRNE: That's correct, Judge.

22 JUDGE JORDAN: And I may have -- I may have
23 that confused, but we were talking about a -- I don't
24 think that -- actually, I don't think that's the one. I
25 think we're talking about the one -- I want to talk about

1 the one that happened just as the ice storm was hitting.

2 MR. BYRNE: Okay. That was our rate case,
3 which was ER-2008-0318.

4 JUDGE JORDAN: The ER tells us that. Now,
5 as to that, you described that little bit of procedure at
6 the very end where Ameren had asked for a change based on
7 the ice storm.

8 MR. BYRNE: Yes.

9 JUDGE JORDAN: And the Commission decided
10 it just didn't have time to address that; is that correct?

11 MR. BYRNE: Yes, that's correct. The ice
12 storm hit at the end of January, and I don't know when --
13 you know, it probably took a while before we realized what
14 an impact that was going to have.

15 We filed an application for rehearing, and
16 I think the Commission ended up issuing that order on
17 rehearing say it really didn't have time on February 19th.
18 So you can see, I mean, there's only -- maybe there was 29
19 days in that February, but there's not very many days in
20 February, and they just decided they didn't have time to
21 hold a hearing.

22 JUDGE JORDAN: Okay. So in other words,
23 basically the Commission didn't really approach the merits
24 of --

25 MR. BYRNE: That's correct.

1 JUDGE JORDAN: Okay. Just wanted to make
2 that clear. Some of these issues I am relating from
3 Chairman Gunn.

4 MR. BYRNE: Yes.

5 JUDGE JORDAN: I'm sure he appreciates your
6 clarification. Did either of the other Commissioners want
7 to ask anything?

8 COMMISSIONER JARRETT: I don't have any
9 questions. Thanks, Mr. Byrne.

10 JUDGE JORDAN: Commissioner Kenney?

11 COMMISSIONER KENNEY: No, thank you.

12 JUDGE JORDAN: Thank you.

13 MR. BYRNE: Thank you, Judge.

14 JUDGE JORDAN: And we'll continue with
15 opening statement from the Staff.

16 MR. DOTTHEIM: May it please the
17 Commission?

18 Ameren Missouri is not seeking a deferral
19 of lost fixed costs as it contends. It is seeking a
20 deferral of lost revenues in order to allow it an
21 opportunity to obtain in a future rate case higher profit
22 levels to offset lower profit levels in the past due to
23 the effect of the January 2009 ice storm in southeast
24 Missouri, its Case No. ER-2008-0318 fuel adjustment clause
25 rate design, and the Commission's April 2011 Report and

1 Order in Case No. EO-2010-0255 respecting Ameren
2 Missouri's treatment of its contracts with AEP Operating
3 Companies and Wabash Valley Power Association, Inc.

4 This case actually began when the -- when
5 Ameren Missouri received authorization to implement the
6 fuel adjustment clause it sought and a fuel adjustment
7 clause rate design to which it agreed in Case No.
8 ER-2008-0318. That FAC authorized the company to track
9 and collect from ratepayers 95 percent of the difference
10 in fuel costs included in rate base and those actually
11 experienced net of off-system sales revenue.

12 An FAC is not exclusively for the benefit
13 of shareholders, but it is designed to balance the
14 interests of the shareholder and ratepayer. In this case,
15 for the third time, Ameren Missouri is attempting to
16 rewrite the FAC it requested and received and to secure
17 retroactively all protections and benefits for its
18 shareholders and to put any and all risk from its original
19 FAC on its ratepayers.

20 This time Ameren Missouri is
21 inappropriately seeking to take the first steps toward
22 recovery of lost revenues/profits through an AAO. For all
23 the reasons I will address momentarily, and as the
24 Commission recently found regarding Missouri Gas Energy's
25 request for an AAO to book lost revenues in the Missouri

1 Gas Energy File No. GU-2011-392 relating to the Joplin
2 tornado of May 2011, an AAO is not an appropriate
3 mechanism.

4 On July 25, 2011, Ameren Missouri filed a
5 Verified Application for an Accounting Authority Order.
6 Ameren Missouri contends that it entered into accounts
7 with AEP and Wabash to mitigate the effects of an
8 extraordinary unanticipated and devastating ice storm
9 which resulted in Noranda Aluminum's, Inc.'s revenue
10 contribution being reduced but the fixed costs allocated
11 to Noranda not being reduced over a 14-month period from
12 2009-2010.

13 Ameren Missouri asserts it believed these
14 two contracts involve long-term partial requirements sales
15 and, therefore, revenues derived therefrom were excluded
16 from the Ameren fuel adjustment clause.

17 On April 27, 2011, the Commission issued
18 its Report and Order in Case No. EO-2010-0255, deciding
19 that the AEP and Wabash transactions are not long-term
20 partial requirements sales and are not exempt from the
21 operation of the Ameren Missouri FAC.

22 Ameren Missouri claims that as a
23 consequence of the Commission's decision in Case No.
24 EO-2010-0255, it has now experienced an extraordinary,
25 unanticipated and nonrecurring loss of sales due to the

1 January 2009 ice storm without experiencing an
2 unaccompanying (sic) reduction in fixed costs allocated to
3 Noranda.

4 The Commission held in its Report and Order
5 in Case No. EO-2010-0255 that, quote, Ameren Missouri
6 acted imprudently, improperly and unlawfully when it
7 excluded revenues derived from power sales agreements with
8 AEP and Wabash from off-system sales revenue when
9 calculating the rates charged under its fuel adjustment
10 clause, end of quote.

11 The Staff's position is that Ameren
12 Missouri should not be permitted to use an AAO to
13 effectively overturn the Commission's decision in Case
14 No. EO-2010-0255. The Commission's issuance of its Report
15 and Order in Case No. EO-2010-0255 on April 27, 2011
16 should not be considered an extraordinary event justifying
17 the issuance of an AAO.

18 Based upon the foregoing, among other
19 things, the Staff urges the Commission to reject Ameren
20 Missouri's inappropriate attempt to use an AAO. It should
21 be clear from the Staff's testimony in this proceeding
22 that Ameren Missouri did, in fact, earn a profit during
23 the 2009-2010 period in question.

24 The amounts at issue in this case
25 constitute lost revenues/profits which Ameren Missouri

1 failed to realize because of the Commission's Report and
2 Order in Case No. EO-2010-0255 respecting Ameren
3 Missouri's off-system sales of power to AEP and Wabash.
4 The revenues from Ameren Missouri's transactions with AEP
5 and Wabash were more than sufficient to replace the
6 revenues not received from Noranda due to the January 2009
7 ice storm.

8 Now, the Noranda partial outage commenced
9 January 27, 2009, and Noranda did not return to full load
10 until April 9, 2010.

11 Historically, the Commission has not
12 granted AAOs for what Ameren Missouri is seeking with the
13 AAO that it has applied for. The Commission has granted
14 utilities authority to defer incremental costs to repair
15 and restore the utility's infrastructure from, one,
16 significant damage from extraordinary natural events; two,
17 extraordinary mechanical failure not involving operator
18 negligence; and 3, costs associated with Commission or
19 other governmental mandates. When I said three, costs
20 associated with Commission or other governmental mandates,
21 Commission mandates such as natural gas pipeline
22 replacement programs. The Commission has not authorized
23 the recovery of lost revenues or profits.

24 Earlier you were read this morning from a
25 Report and Order involving the Joplin tornado in File

1 No. EU-2011-0387. You were read an incomplete quote. You
2 were read, the AAO technique protects the utility from
3 earnings shortfalls. The full quote is, the AAO technique
4 protects the utility from earnings shortfalls and softens
5 the blow which results from extraordinary construction
6 programs.

7 The financial impacts of the January 2009
8 ice storm sought to be deferred by Ameren Missouri have
9 already been fully reflected in Ameren Missouri's 2009 and
10 2010 published financial statements and are no longer
11 eligible for deferral. Without a timely request to defer
12 extraordinary costs, those costs will then be charged to
13 net income on the utility's income statement in the period
14 incurred. Once recorded on closed final annual financial
15 statements, nonrecurring costs of an extraordinary nature
16 should not be included in rates set prospectively.

17 Ameren Missouri's fixed costs argument
18 assumes that each dollar of revenue it receives from
19 customers is intended to recover a portion of its fixed
20 costs and thus any reduction in revenues results in a
21 failure to recover all of its fixed costs.

22 In actuality, any reduction in a utility's
23 revenues is first measured against the utility's earned
24 return on equity results and then against its overall --
25 its earned rate of return results. A utility that is

1 earning a positive rate of return is fully recovering all
2 of its expenses, both fixed and variable. A utility that
3 is earning a positive return on equity is recovering all
4 of its expenses, both fixed and variable, as well as its
5 required interest payments to bond holder.

6 Exhibit B to Ameren's Verified Application
7 shows Ameren Missouri experienced a positive ROE in all
8 months affected by the reduced sales from Noranda. By
9 data request, the Staff asked Ameren Missouri to restate
10 its earnings analysis contained in Exhibit B by
11 eliminating 95 percent of the margin booked in relation to
12 the AEP and Wabash transactions in those months as if
13 Ameren Missouri had assumed at the time that the margin
14 from AEP and the Wabash transactions would flow through
15 the FAC.

16 Ameren's Missouri response to the Staff
17 data request showed a positive ROE for the same months in
18 2009 and 2010. Ameren Missouri has been recovering all of
19 its fixed costs during the entire period the Noranda load
20 was reduced on account of the January 2009 ice storm.

21 An AAO itself is not ratemaking but
22 authorization for accounting treatment that permits a
23 utility to later seek ratemaking treatment. The Staff
24 contends that Ameren Missouri's AAO proposal is not a
25 proposal for an appropriate AAO and, if authorized by the

1 Commission, would permit Ameren Missouri to later seek in
2 a ratemaking proceeding unlawful retroactive ratemaking
3 treatment.

4 And the Commission has been told this
5 morning that if it timely, in the context of Ameren
6 Missouri's pending rate case, authorizes an AAO, Ameren
7 Missouri will seek ratemaking treatment in the company's
8 true-up filing in its pending rate case.

9 So although at the moment it can be argued
10 that Issue 5, which is the retroactive ratemaking issue in
11 the list of issues, is not ripe or justiciable in this
12 proceeding, it may very well become very ripe and very
13 justiciable, and the Staff believes and has believed that,
14 at a minimum, this issue should be raised for the
15 Commission's information at this stage.

16 The Staff is not arguing that ratemaking
17 from a proper AAO constitute -- constitutes unlawful
18 retroactive ratemaking. The Staff is arguing or would be
19 arguing in a ratemaking proceeding that ratemaking from an
20 AAO authorized in this proceeding would constitute
21 retroactive ratemaking.

22 Not only has the company closed its books
23 from prior years, what is different from other AAOs, if
24 you go back to what the company is saying is the source of
25 the AAO, the 2009 ice storm, there have been intervening

1 rate cases. There was the ER-2010-0036 rate case. There
2 was the ER-2011-0028 rate case.

3 This is a very different situation than
4 prior AAO applications. The Staff contends that the
5 proper calculation of quantification of the effect on
6 Ameren Missouri of the loss of the Noranda load in 2009
7 and 2010 is an aftertax calculation because Ameren
8 Missouri is, in reality, seeking permission in this case
9 to defer lost revenues, profits, not fixed costs or
10 expenses of any kind.

11 Any revenues ultimately received by Ameren
12 Missouri as a result of the Commission authorizing Ameren
13 Missouri's deferral request will be fully taxable to
14 Ameren Missouri. That is another difference with this
15 AAO. Ameren Missouri must receive from its customers
16 \$35,561,503 if it desires to retain approximately
17 \$21,909,940 after income taxes.

18 When the Commission has allowed Missouri
19 utilities to defer extraordinary expenses in past AAO
20 requests, the amounts were not required to be grossed up
21 for income taxes. The extraordinary expenses that the
22 Commission has allowed utilities to defer in the past were
23 fully tax deductible.

24 Thank you.

25 COMMISSIONER JARRETT: Mr. Dottheim, thanks

1 for that opening. I just had a point of clarification. I
2 understand that Staff and the company disagree on whether
3 they're asking for fixed costs or lost revenues. My
4 question is, hypothetically, if Staff agreed that Ameren
5 was asking only for fixed costs, would Staff -- what would
6 Staff's position be? Would they agree that that's the
7 appropriate use of an AAO? I know it's an if.

8 MR. DOTTHEIM: And, Commissioner Jarrett, I
9 don't know if this answers your question. If you go to --
10 excuse me. I embarrass myself frequently enough as it is.
11 The Ameren Missouri surrebuttal witness on physical plant
12 on the extraordinary --

13 MR. BYRNE: Wakeman.

14 MR. DOTTHEIM: Mr. Wakeman. If you go to
15 Mr. Wakeman's testimony, Mr. Wakeman has in his testimony,
16 he has quantified in his testimony what was -- what were
17 the costs of the ice storm, what were the capital costs
18 and the O&M costs, I believe, and I think he quantifies it
19 something like \$82 million, and I think it's something
20 like 70, \$72 million in capital costs.

21 The company didn't come in for an AAO.
22 Those are in the nature of traditional AAO costs. The
23 company didn't come in for AAOs. The company had rate
24 cases. The company had rate cases to deal with those
25 costs. Those would -- those are as I -- as I read from

1 the order on the Joplin tornado, the AAO technique
 2 protects utilities from earnings shortfalls and softens
 3 the blow which results from extraordinary construction
 4 programs. You have the capital costs and O&M costs. The
 5 O&M costs are costs for bringing in -- bringing in crews
 6 from other utilities, the cost for gas, the cost for
 7 lodging, the cost for overtime, for putting the system
 8 back together, not the cost for lost revenues.

9 COMMISSIONER JARRETT: There is -- you're
 10 right. I don't know if that answers my question or not.

11 MR. DOTTHEIM: Well, if --
 12 Mr. Oligschlaeger's testimony and Mr. Oligschlaeger's
 13 deposition was quoted this morning. Mr. Oligschlaeger
 14 misspoke in his -- in his deposition and corrected that in
 15 his correction sheet. If you go -- if you go to his
 16 testimony, it's in his -- it's in his rebuttal testimony
 17 correctly. He's only identified -- and he did it in his
 18 deposition in one instance -- where lost revenues might be
 19 appropriate for recovery, and it's covered by a Commission
 20 rule on -- which, unfortunately, I'm not as familiar with
 21 as I should be -- on demand side management, demand side
 22 costs.

23 But other than that, it is -- what his
 24 testimony indicates, if the company's not covering its
 25 fixed costs, the company can file a rate case. The

1 company can file for emergency relief. He misspoke in his
2 deposition and indicated that there could be a possibility
3 of an AAO in that situation, and he didn't mean to do so.
4 But there are there ways if the company's not covering its
5 fixed costs.

6 COMMISSIONER JARRETT: I guess correct me
7 if I'm wrong, but I'm going to paraphrase what I thought I
8 heard you say. There are -- there may be different costs
9 that are entirely appropriate for an AAO, and some of
10 those are fixed costs, but the types of costs that Ameren
11 is asking for are not really those types of fixed costs
12 that the Commission has normally looked at in granting
13 AAOs. This is sort of a new animal.

14 MR. DOTTHEIM: Yeah. And Mr. Oligschlaeger
15 can address this. From a policy perspective, I believe
16 the Staff supports AAOs for matters such as infrastructure
17 because it's the infrastructure to serve customers. The
18 Staff wants to encourage the reconstruction of the
19 infrastructure of the utility, and there -- I mean, there
20 are various cases.

21 One of the cases that appears throughout
22 the Commission's AAOs, and I think it was -- it was the
23 first court case, I actually argued it for the Commission
24 and argued -- and argued that -- that AAOs weren't
25 retroactive ratemaking or single-issue ratemaking,

1 appropriate AAOs, and it dealt with, if my memory serves
 2 me, the refurbishment of the Sibley units at a time that
 3 the Sibley units were owned by UtiliCorp United. And
 4 there was -- there was also a coal conversion project
 5 going on at Sibley, and it was a capital project that --
 6 that the Staff thought was appropriate and the Office of
 7 Public Counsel challenged. The Commission approved the
 8 AAO and Public Counsel appealed, and the Western District
 9 Court of Appeals affirmed the Commission.

10 So from the Staff's perspective, the Staff
 11 has supported many AAOs, but the AAOs which the Staff has
 12 supported are -- are not like the AAO that Ameren Missouri
 13 has applied for in this proceeding.

14 COMMISSIONER JARRETT: All right. Thanks
 15 for that clarification. I appreciate it, Mr. Dottheim. I
 16 don't have anything further.

17 JUDGE JORDAN: Commissioner Kenney, did you
 18 have anything?

19 COMMISSIONER KENNEY: Yeah. I don't want
 20 to belabor the issue, but I'm not sure whether I
 21 understood the answer to Commissioner Jarrett's question,
 22 so let me see if I can reframe it slightly.

23 Is it Staff's position that the amount
 24 Ameren's requesting amounts to lost revenues and not fixed
 25 costs, and that's why it's not recoverable under an AAO?

1 MR. DOTTHEIM: Yes.

2 COMMISSIONER KENNEY: Okay. So assuming
3 that these are fixed costs, let's just assume for the sake
4 of argument that we make a factual determination that
5 these are, in fact, fixed costs, would Staff's position be
6 that these are properly recoverable under an AAO?

7 MR. DOTTHEIM: If they were -- well, I
8 mean, if -- they would have to be of the nature that if --
9 if they fall under what I've indicated as capital, I mean,
10 if you --

11 COMMISSIONER KENNEY: It's not whether they
12 are fixed costs, it's whether they are fixed costs of a
13 particular type?

14 MR. DOTTHEIM: Yes. I'm un-- I'm uneasy
15 just responding to a blank reference to fixed costs.

16 COMMISSIONER KENNEY: Okay. Fair enough.
17 Let me ask a secondary question then. Is there any
18 dispute that this is an extraordinary event of the type
19 contemplated to be recoverable under an AAO? Did you hear
20 me?

21 MR. DOTTHEIM: Yes.

22 COMMISSIONER KENNEY: Okay.

23 MR. DOTTHEIM: And Ms. Mantle has a
24 different view of that.

25 COMMISSIONER KENNEY: All right. Thank

1 you.

2 COMMISSIONER JARRETT: I have -- I have
3 just a couple of issues I want to get to. One of them
4 underlies -- did you want to follow up on something?

5 MR. DOTTHEIM: Yes. Judge Kenney?

6 COMMISSIONER KENNEY: I'm still here.

7 MR. DOTTHEIM: Okay. Your question is the
8 Staff really -- I mean, regardless of Ms. Mantle's
9 testimony, the Staff doesn't really get to the issue as to
10 the ice storm being extraordinary because we don't get
11 past what is being sought, which is -- which is lost --
12 which is lost revenues.

13 COMMISSIONER KENNEY: I get that. There
14 are threshold issues that these are lost revenues, and so
15 we don't even need to reach the determination of whether
16 the event was extraordinary not. I get that. Thank you.

17 JUDGE JORDAN: I'd like to address that
18 issue as to the characterization of the amount sought. Do
19 you expect the evidence to show us something that will
20 support the characterization of this? And I'll tell you
21 what I mean. You made reference to amounts that are
22 attributed to return on equity, rate of return, perhaps
23 eventually the fixed costs. Will there -- will the
24 evidence in this case give us some authority -- I guess
25 authority's not the right word. Will there be evidence,

1 expert or otherwise, perhaps by reference to an accounting
2 standard, that will support the characterization of this
3 amount?

4 MR. DOTTHEIM: I don't -- I don't think
5 you're going to -- that there is in the record at the
6 moment what you are probably looking for.

7 JUDGE JORDAN: Right. I'm looking for
8 something that will say, oh, you don't make this money,
9 that represents a loss of fixed costs or doesn't represent
10 a loss of fixed costs.

11 MR. DOTTHEIM. Yeah. I don't know if
12 really you're looking for a treatise or something, and, of
13 course, one might find differing views, but at the moment,
14 I don't think there's in the record what --

15 JUDGE JORDAN: I would expect that to be
16 addressed by the Uniform Standards of Accounting for --

17 MR. DOTTHEIM: Oh, you mean something like
18 GAAP or General Accounting Principles or, you know, FASB
19 or some recognized accounting authority or financial, some
20 financial board or something like that.

21 JUDGE JORDAN: Right. That's the kind of
22 thing I'm looking for. If you don't think the evidence
23 will show that, that's the answer to my question.

24 MR. DOTTHEIM: No. And at the same time,
25 I'm not aware of the Commission having adopted any

1 account -- any financial procedure or guides or what have
2 you. Of course, it's adopted the Uniform System of
3 Accounts, but the rule clearly states it hasn't adopted
4 the Uniform System of Accounts for ratemaking purposes.

5 JUDGE JORDAN: I had one other issue, and I
6 don't know whether this will -- relates to what the
7 evidence will show or whether it's a matter of argument.
8 Ameren has stated that it could not know the amount of its
9 loss until the Commission issued its ruling on the use of
10 the FAC in the prudence review case.

11 Does Staff anticipate offering any evidence
12 on -- is that a evidentiary question or is that just a
13 matter of argument as to the timeliness of the
14 application?

15 MR. DOTTHEIM: Well, I don't know if the
16 company literally meant that from a -- from a dollar
17 figure or whether they -- they didn't -- they didn't know
18 just in general ultimately that they wouldn't prevail and,
19 as a consequence, had -- up until the very moment that the
20 Commission issued its order, had not contemplated taking
21 other action.

22 I think you may -- Mr. Byrne would probably
23 be the best person to respond to that, because I'm not --
24 I'm not sure I understand what he meant.

25 MR. BYRNE: I'd be willing to try, your

1 Honor, if you're interested.

2 JUDGE JORDAN: Insofar as it clarifies what
3 you believe the evidence will show, yes.

4 MR. BYRNE: Sure. I do think -- I do think
5 it's the amount of the loss, if any. If we had won -- if
6 we had won the 255 case -- and that was a three/two
7 decision. It was not clear to me whether we are going to
8 win or lose until the Order was issued. If we had won,
9 that would have mitigated the loss caused by the storm.

10 So I don't believe the Order in the 255
11 case is the precipitating event. The precipitating event
12 is the ice storm. But knowing what, if any, amount of
13 loss there was and whether we would be able to offset it
14 through our efforts to mitigate it, we didn't know that
15 amount until the decision in the 255 case.

16 JUDGE JORDAN: And that's what you expect
17 the evidence will show?

18 MR. BYRNE: Yes.

19 JUDGE JORDAN: Okay. Thank you. I have
20 nothing else. Next on our list of opening statements is
21 the Office of the Public Counsel.

22 MR. MILLS: Good morning. May it please
23 the Commission?

24 And I'm not going to toss in our position
25 on all the issues in this case because I think that the

1 last discourse hits on what is perhaps the most important
2 and perhaps dispositive issue in this case, and as sort of
3 a symbolic effort of that, I will move the focus from
4 where UE has tried to put it, which is on the ice storm,
5 and bring us back to what I think is really the issue in
6 this case, which is the operation of the FAC.

7 And I think one of the things that
8 highlights this is Mr. Byrne's description of the
9 differences between the facts in this case and the facts
10 in the MGE case, and I don't believe that the facts are
11 different at all. And so I think his description was not
12 strictly accurate, because it is not accurate to say in
13 this case that UE's revenues declined so drastically as a
14 result of the ice storm because of the fact that UE was
15 able to make up those revenues through sales to AEP and
16 Wabash, but what happened to those revenues is different
17 than what happened to the revenues that MGE recovered from
18 its customers because of the operation of the FAC.

19 So what we're talking about here is not
20 really a question of recovery of fixed costs or a question
21 of recovery of lost revenues. What we're talking about is
22 recovery of revenues that cannot be recovered because of
23 the operation of the FAC, not revenues that were lost
24 because of the storm. And I think that is absolutely a
25 critical distinction and one that has not been highlighted

1 enough so far either this morning or I think in the record
2 in this case.

3 As a result, of course, of the operation of
4 the FAC, UE's profits were less because those revenues
5 were passed through to customers, but profits are an
6 entirely different animal from revenues and certainly a
7 very different animal from fixed costs.

8 So really, but for the operation of the
9 FAC, we wouldn't be here. As Mr. Byrne pointed out in
10 response to that last question, had the outcome of the FAC
11 case been different, had the Commission ruled that those
12 revenues could, in fact, remain with the company instead
13 of flowing through to customers, we probably wouldn't have
14 a need for the AAO.

15 So it's really the operation of the FAC
16 that leads us here to the request for the AAO rather than
17 the ice storm itself. And that's really the point that
18 I -- I have a great deal of respect for Mr. Dottheim, and
19 he did an admirable job of going through all of the issues
20 in the case, and I fully anticipate that Mr. Roam will do
21 as well, but I really wanted to highlight that one issue
22 because I think it is so critical that I wanted to spend
23 my time this morning addressing that. I'd be happy to
24 answer questions.

25 COMMISSIONER JARRETT: Thanks, Mr. Mills.

1 JUDGE JORDAN: I had just one thing I want
2 to ask. I appreciate the conciseness of your opening
3 statement. I just wanted to ask you the same things that
4 I'd asked the other counsel, which is do you anticipate
5 any evidence as to the characterization of this amount,
6 whether it represents lost return on equity or some other
7 amount, something earmarked?

8 MR. MILLS: I think what the evidence in
9 this case will show is, in fact, what I just said, that
10 there was sufficient revenue coming through the AEP and
11 Wabash contracts as replacement for the revenue of Noranda
12 that there really wasn't any lost revenue, there really
13 wasn't any inability to recover -- to cover fixed costs.
14 It's just a question of did that revenue that flowed in to
15 UE then flowed out again to customers.

16 So I don't think in this case that there is
17 an appreciable reason to distinguish between lost revenues
18 and fixed costs because there really wasn't any lost
19 revenue.

20 JUDGE JORDAN: Commissioner Kenney, did you
21 have anything for counsel?

22 COMMISSIONER KENNEY: No, thank you.

23 JUDGE JORDAN: Thank you.

24 MR. MILLS: Thank you.

25 JUDGE JORDAN: Opening statement from MIEC?

1 MR. ROAM: Good morning, Judge. Good
2 morning, Commission.

3 Before I begin, I thought maybe I would
4 just offer MIEC's position on this issue of whether
5 defining the cost -- or defining the amounts at issue as
6 costs or revenue is dispositive of the case, and our
7 answer would be this: Even if they are defined or
8 characterized as fixed costs in this case, they would be
9 considered fixed costs that were contemplated in rates
10 under Case ER-2008-0318. And so costs that are already in
11 rates and that, in fact, are recovered in revenues, the
12 costs were indeed recovered, they weren't recovered
13 through service to Noranda, but they were, in fact,
14 recovered in revenues in the actual period following
15 ER-2008-0318.

16 So characterizing them as costs or profits
17 or revenues is not necessarily dispositive of the case.
18 Even if they were characterize as costs, they're not
19 incremental costs that were incurred as a result of the
20 ice storm. They were not incremental expenses that were
21 incurred over and above costs that were in rates already.
22 And so even if they're -- even if they're characterized as
23 costs, they're still not recoverable through an AAO. So
24 that's just MIEC's position on that question that's come
25 up a couple times.

1 What I would say is that the evidence that
2 you're about to review in this case will demonstrate that
3 Ameren Missouri's Accounting Authority Order request in
4 this case should be denied for at least three reasons.
5 No. 1, the evidence will show that the purpose of an AAO
6 is to allow a utility to defer for later ratemaking
7 treatment actual incremental expenses that it incurs as a
8 direct result of an extraordinary and unanticipated event.

9 So if the company incurred additional
10 expenses that were not already contemplated in rates as a
11 result of an extraordinary event, then the company could
12 come and seek to defer those expenses through an AAO.
13 That is not what happened here.

14 For an example, counsel for Ameren Missouri
15 recited some statistics about the ice storm, stating that
16 3,000 poles were broken, 214 miles of cable went down, 780
17 transformers I believe were damaged. For clarity, Ameren
18 Missouri is not seeking recovery for the costs incurred to
19 restore or repair those poles, repair or replace the
20 poles, repair or replace the miles of cable, repair or
21 replace the transformers. They have not sought an AAO to
22 recover the costs incurred to repair or replace any of
23 that. These are not storm recovery costs that they are
24 seeking.

25 They are seeking something very, very

1 different. The testimony in this case will demonstrate
2 that the company, in fact, did not -- either did not incur
3 any or did not incur significant or substantial actual
4 incremental expenses as a result of the storm. At least
5 if they did, that's not what they're seeking recovery for.
6 It did not incur additional unanticipated expenses to
7 repair power lines or to hire contractors to restore
8 service. It did not incur any incremental expense for
9 storm recovery, or at least that's not what it's seeking.

10 In other words, while the 2009 ice storm
11 was certainly a severe event, it did not result in any
12 additional significant expenses to the company for which
13 it is seeking a deferral. Accordingly, in this case,
14 there are literally no expenses to defer. There are no
15 costs to defer.

16 While the company characterizes its AAO
17 request in terms of lost fixed cost recovery, the evidence
18 will show that the company is actually seeking phantom
19 profits. It is seeking profits that never existed, or as
20 this Commission characterized them in Case No.
21 GU-2011-0392, it is seeking ungenerated revenues to
22 enhance company profits. And the evidence will show that
23 ungenerated revenues or phantom profits are not
24 recoverable under an AAO.

25 And just as an aside, Ameren Missouri's

1 counsel's reading of USOA to constitute or to permit an
2 AAO for ungenerated revenues I think is -- requires sort
3 of literally acrobatics to get to that conclusion in the
4 USOA.

5 The Commission -- in Case No. GU-2011-0392,
6 the Commission stated that the Commission need not
7 guarantee the company's profits nor shift the risk of
8 disappointing profits to ratepayers, especially when the
9 source of disappointment is the provision of no service.

10 This is precisely what happened here.
11 Ameren Missouri experienced disappointing profits as a
12 result of reduced sales to Noranda Aluminum. As counsel
13 for OPC pointed out, the real sort of precipitating event
14 was the fuel adjustment clause. If it weren't for the
15 fuel adjustment clause, we wouldn't be here because Ameren
16 Missouri could try to generate revenues from off-system
17 sales, which it was prohibited from doing except for the
18 small exclusion and the FAC.

19 So Ameren Missouri experienced
20 disappointing profits really as a result of the FAC and is
21 now seeking to shift the risk of those disappointing
22 profits to Missouri ratepayers through an AAO, and that is
23 inappropriate.

24 So the evidence will show that it would be
25 inappropriate to allow Ameren to defer its lost fixed --

1 its, quote, lost fixed cost recovery in this case because
 2 there are no lost fixed costs to defer. And again, as
 3 another aside, the costs were indeed recovered. They just
 4 weren't recovered through revenue from Noranda. The
 5 company cannot present evidence that it failed to pay any
 6 of its bills or that it didn't -- it actually had a
 7 positive net income. All of the costs were paid. Profits
 8 were generated.

9 Okay. Secondly, even if there were costs
 10 or expenses to defer in this case, which there weren't,
 11 the evidence will show that Ameren's request is at least
 12 two years too late. The evidence will show that under the
 13 Uniform System of Accounts, a request for an Accounting
 14 Authority Order must occur in during the period in which
 15 the extraordinary event to which it relates occurred.

16 In other words, even if an AAO was the
 17 proper mechanism for the company to recover phantom
 18 profits or ungenerated revenue, it would have needed to
 19 file for the AAO before the closing of its books in 2009.

20 Counsel for Ameren pointed out that they
 21 could not have reasonably known the amount of the expense
 22 or cost until EO-2010-0255. If I understand that
 23 argument, basically what Ameren Missouri is saying is that
 24 we didn't know if we would have -- we didn't know what the
 25 outcome would be of us entering into these two off-system

1 contracts. We didn't know that we would -- if we would be
2 allowed to flow -- to not flow the sales through the FAC
3 and, therefore, we couldn't have known how much we lost
4 until EO-2010-0255.

5 This logic makes EO-2010 -- the Report and
6 Order in EO-2010-0255 the extraordinary event. And the
7 Missouri case law is clear on this. An adverse regulatory
8 decision does not constitute an extraordinary event for
9 purposes of an AAO. So I think sort of prolonging the
10 period to EO-2010-0255 just misstates the entire point.

11 Rather than seeking an AAO, and after the
12 storm the company entered into two off-system sales
13 contracts, AEP and Wabash, and unlawfully failed to flow
14 the revenues from those contracts through its new fuel
15 adjustment clause. Now that the company's imprudence has
16 been discovered and corrected, the company is trying to
17 use another inappropriate mechanism to recover profits to
18 which it is simply not entitled. An AAO cannot be used to
19 recover ungenerated revenues to enhance company profits.

20 And third, granting an AAO in this case
21 would prove legally futile. Under well-established
22 Missouri law, the UCCM case, a utility is not permitted to
23 recover in a subsequent case revenue that it failed to
24 generate in a prior period. Such a practice violates
25 Missouri's law against retroactive ratemaking.

1 Accordingly, there would be no rational basis to grant an
2 AAO in this case because any deferral that would be
3 granted could not be factored in to rates in a subsequent
4 case under Missouri law, so the exercise in itself would
5 be futile.

6 In sum, the evidence will show that Ameren
7 Missouri's request is inappropriate for three reasons. It
8 incurred no significant additional expenses as a result of
9 the storm for this Commission to defer. No additional
10 expenses as a result of the storm.

11 No. 2, its request is at least two years
12 too late. There's been two intervening rate cases since
13 the storm. And No. 3, the granting of an AAO, even if it
14 were appropriate, which it is not, would be futile as the
15 inclusion of the amounts deferred in a subsequent case
16 would constitute retroactive ratemaking.

17 So any deferral in this case would not be a
18 deferral of costs or expenses as is contemplated under
19 USOA and all Missouri law, basically, Commission law that
20 deals with AAOs, but it would rather be a granting of
21 ungenerated revenues to enhance company profit, and that's
22 just not appropriate.

23 Accordingly, the MIEC respectfully requests
24 that the Commission deny Ameren Missouri's application for
25 an Accounting Authority Order. I'm happy to take

1 questions.

2 COMMISSIONER JARRETT: I don't have any
3 questions. Thanks.

4 COMMISSIONER KENNEY: Mr. Roam, thank you.
5 No questions.

6 MR. ROAM: Thank you, Commissioner.

7 JUDGE JORDAN: I have nothing. Thank you.
8 Thank you for that statement. For Barnes-Jewish Hospital.

9 MS. LANGENECKERT: Good morning. May it
10 please the Commission?

11 I don't think there's much more I can add
12 to what's already been said by Staff, Office of Public
13 Counsel and MIEC very well, but BJC does believe that
14 Ameren is not attempting to recover lost fixed costs.
15 They're attempting to recover additional revenues they
16 weren't able to earn from Noranda because of the ice storm
17 first, and then further refused when this Commission
18 decided that the illegal attempt to offset the loss of
19 revenue with sales to AEP and Wabash was not appropriate.

20 We do not believe this is appropriate for
21 an AAO, and we ask that you deny Ameren's application.

22 JUDGE JORDAN: Commissioner Jarrett, any
23 questions?

24 COMMISSIONER JARRETT: I don't have any
25 questions. Thank you.

1 JUDGE JORDAN: Commissioner Kenney, any
2 questions?

3 COMMISSIONER KENNEY: No, thank you.

4 JUDGE JORDAN: I have nothing for you.
5 Thank you for that statement.

6 All right. I think this would be a good
7 time to take a brief break before we begin presentation of
8 evidence. So let's take ten minutes, and then we will
9 resume.

10 (A BREAK WAS TAKEN.)

11 JUDGE JORDAN: We're back on the record.
12 Now I believe we're ready for the case in chief from
13 Ameren.

14 MR. MITTEN: Thank you, your Honor. Ameren
15 Missouri calls as its first witness David N. Wakeman.

16 Judge Jordan, as Mr. Wakeman is taking the
17 stand, could I ask if it's acceptable from the Commission
18 if I conduct my direct examination from the counsel table
19 rather than going to the lectern?

20 JUDGE JORDAN: Absolutely you may, and that
21 goes for everyone. And while we're on the subject of
22 examinations, I just want to remind everyone that my
23 background is in administrative law, not in accounting,
24 not in finance. So when I picture a lost revenue, I
25 picture a bag of money with a dollar sign on it falling

1 off the back of a truck. So as these things relate in
2 especially technical meaning, I hope everyone will speak
3 in terms that I can understand. Thank you.

4 (Witness sworn.)

5 JUDGE JORDAN: I'll also note for the
6 record, if anyone prefers an affirmation to an oath, I
7 will administer that. You may proceed.

8 DAVID N. WAKEMAN testified as follows:

9 DIRECT EXAMINATION BY MR. MITTEN:

10 Q. Would you please state for the record your
11 name and business address.

12 A. David N. Wakeman, 1901 Chouteau Avenue,
13 St. Louis, Missouri.

14 Q. Mr. Wakeman, where are you employed and
15 what is your current job title?

16 A. I'm employed by Ameren Missouri. I'm the
17 Vice President of Energy Delivery and Distribution
18 Services.

19 Q. Mr. Wakeman, did you cause to be filed in
20 this docket prepared surrebuttal testimony which has been
21 marked for identification as Ameren Exhibit 1?

22 A. Yes.

23 Q. Was that testimony prepared by you?

24 A. Yes.

25 Q. Do you have any changes or corrections to

1 **the testimony you need to make today?**

2 A. Yes, I do. On page 14, line 18, the second
3 through fifth words should be stricken, "and all of the",
4 and placed with "to cover". And that's all the changes.

5 Q. With that change, if I asked you the
6 questions that are contained in your prepared surrebuttal
7 testimony today, would your answers be the same as are
8 shown there?

9 A. Yes, they would.

10 Q. And is the information contained in your
11 surrebuttal testimony true and correct to the best of your
12 knowledge and belief?

13 A. Yes, it is.

14 MR. MITTEN: Your Honor, I would offer into
15 evidence Ameren Exhibit 1.

16 MR. MILLS: Judge, can we get that
17 correction again? I'm sorry. I didn't follow along.

18 JUDGE JORDAN: Sure, if you please.

19 THE WITNESS: Okay. It's page 14, line 18,
20 and I'm going to strike the second through fifth word,
21 "and all of the", strike that and replace it with "to
22 cover".

23 MR. MILLS: Thank you.

24 MR. MITTEN: Your Honor, I renew my offer
25 of Exhibit 1 into evidence.

1 MR. MILLS: I have no objection.

2 MS. MOORE: No objection.

3 JUDGE JORDAN: Not hearing any objections,
4 that exhibit will be entered into the record.

5 (AMEREN EXHIBIT NO. 1 WAS RECEIVED INTO
6 EVIDENCE.)

7 MR. MITTEN: Your Honor, I have no further
8 questions for Mr. Wakeman at this time. He's available
9 for cross-examination.

10 JUDGE JORDAN: Thank you.
11 Cross-examination from BJH?

12 MS. LANGENECKERT: None of Mr. Wakeman.

13 JUDGE JORDAN: From the Office of the
14 Public Counsel?

15 MR. MILLS: No questions.

16 JUDGE JORDAN: From MIEC?

17 MR. ROAM: No questions, Judge.

18 JUDGE JORDAN: From Staff?

19 MS. MOORE: Just a few. Thank you, Judge.

20 CROSS-EXAMINATION BY MS. MOORE:

21 Q. Good morning, Mr. Wakeman. My name is Amy
22 Moore. How are you doing this morning?

23 A. I'm doing fine. Good morning.

24 Q. Okay. Like I said, I just have a few
25 questions for you. Okay. First of all, in your

1 testimony, you reference the Uniform System of Accounts
2 General Instruction No. 7, correct?

3 A. That's correct.

4 Q. Okay. Is General Instruction No. 7 the
5 Uniform System of Accounts definition of extraordinary
6 items?

7 A. I'm sorry. Could you repeat?

8 Q. Is that General Instruction No. 7 the
9 Uniform System of Accounts definition of extraordinary
10 items?

11 A. Yes.

12 Q. It is. And do you have your testimony
13 there?

14 A. I do.

15 Q. Could you go to page 3, beginning on line
16 17?

17 A. Okay.

18 Q. So that's where that general instruction
19 is. Would you read that definition from your testimony
20 for us?

21 A. Sure. Those items related to effects of
22 events and transactions which have occurred during the
23 current period and which are of unusual nature, infrequent
24 occurrence, shall be considered extraordinary items.
25 Accordingly, they will be events and transactions of

1 significant effect which are abnormal and significantly
2 different from the ordinarily -- ordinary and typical
3 activities of the company and which would not reasonably
4 be expected to reoccur in the foreseeable future.

5 Q. Okay. So that seems to be describing the
6 nature of an event. Would you agree with that?

7 A. I would.

8 Q. I don't see any ellipses in your testimony.
9 Are you aware that that's not the full definition of
10 General Instruction No. 7?

11 A. I am not. To my knowledge, that is.

12 Q. All right. Well, I have a copy here of the
13 full definition that I'd like to show you.

14 MS. MOORE: Judge, I'd like to put that
15 into evidence.

16 JUDGE JORDAN: Okay. For the record, how
17 is that marked?

18 MS. MOORE: That would be Staff Exhibit 5,
19 I think. And what I have I printed off the FERC website.
20 It's pages 1 through 8 of 198 pages. I stopped at No. 8
21 where General Instruction No. 7 is. Can I approach the
22 witness?

23 JUDGE JORDAN: You may, and that goes for
24 everyone.

25 (STAFF EXHIBIT NO. 5 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 JUDGE JORDAN: And have you got a copy for
3 Commissioner Kenney as well?

4 MS. MOORE: I do.

5 JUDGE JORDAN: Just so that everyone knows,
6 by the time this case comes to decision before the
7 Commission, there may be a couple other Commissioners as
8 well.

9 MS. MOORE: I have a few more copies. Do
10 you need some extras?

11 JUDGE JORDAN: Let's have them.

12 BY MS. MOORE:

13 Q. Okay. Mr. Wakeman, you have a copy of
14 this?

15 A. I do.

16 Q. If you would look at page 8 with me. It's
17 the last one.

18 A. Okay.

19 Q. There is the General Instruction No. 7,
20 extraordinary items. Do you agree that's what it looks
21 like it is?

22 A. It does.

23 Q. Okay. And so that has the part of the
24 definition that you quoted in your testimony, correct?

25 A. That's correct.

1 Q. Okay. If you would, please read the rest
2 of the definition for us starting where you left off in
3 your testimony.

4 A. Okay. In determining significance, items
5 should be considered individually and not in aggregate.
6 However, the effects of a series of related transactions
7 arising from a single specific and identifiable event or
8 plan of action should be considered in the aggregate. To
9 be considered as extraordinary under the above guidelines,
10 an item should be more than approximately 5 percent of
11 income computed before extraordinary items. Commission
12 approval must be obtained to treat an item of less than
13 5 percent as extraordinary.

14 Q. Okay. Would you agree that there are then
15 pretty much two main components of this general
16 instruction, there's the nature of the event, the event
17 that you included in your testimony, and then secondly
18 there's kind of a financial aspect here for materiality;
19 would you agree with that?

20 A. Yeah, I would.

21 Q. Okay. Would you also agree that a full
22 determination of what an extraordinary item is using this
23 definition would necessarily require applying both
24 components or all components of the definition?

25 A. Yes.

1 Q. Okay. All right. Let's go back to your
2 testimony. You've compared three other cases to the one
3 at hand, three other storms, or not necessarily three
4 storms but three cases. We have the Aquila Light & Power
5 case, EU-2008-0233, and this starts on page 14, goes into
6 page 15. We also have the Empire District Electric case,
7 EU-2011-0387, and the Missouri Gas Energy case,
8 GU-2011-0392. Did I get those right?

9 A. I believe you did, yes.

10 Q. Okay. And I believe from reading your
11 testimony it looks like you mentioned these cases as
12 examples of instances where the Commission determined an
13 event was extraordinary, correct?

14 A. That's correct.

15 Q. And the Commission determined these events
16 were extraordinary in part because of the extent of the
17 company's storm-related costs, correct?

18 A. Yes, I believe that's correct.

19 Q. Do you know, is that because the costs met
20 the USOA definition of extraordinary in that they were
21 more than approximately 5 percent of the company's income?

22 A. I don't know that, what the Commission was
23 thinking.

24 Q. And you're not aware whether or not that
25 was in the decision?

1 A. I don't remember seeing that.

2 Q. Okay. That's fine.

3 A. But I did read it. I'm not exactly sure.

4 Q. On pages 14 and 15 of your testimony, you
5 discuss the storm-related costs of Aquila, Empire and MGE,
6 correct?

7 A. Right.

8 Q. Okay. You point out that Ameren Missouri's
9 costs for the 2009 ice storm were the highest out of this
10 group; is that correct? That's page 15, line 13.

11 A. Yes. To paraphrase, yes.

12 Q. Okay. Would you expect that a large
13 utility's income, such as Ameren's, would be greater than
14 the amount of income for a smaller utility?

15 A. Yes.

16 Q. Okay. And as we discussed earlier, this
17 General Instruction No. 7 requires that the cost of an
18 alleged extraordinary event be compared to the company's
19 income in order to establish its materiality, correct?

20 A. Yes. I think that's one of the elements of
21 it to be compared, yes.

22 Q. Would you agree that it's logical that in
23 comparing such costs and income, 2 million may be more
24 significant to a small company than 11 million is to a
25 large company?

1 A. Could be.

2 Q. Could be. Okay. So in other words, and in
3 terms of the materiality component of the USOA definition,
4 couldn't 2 million be a much higher percentage of total
5 income for a small utility than is 11 million for Ameren
6 Missouri?

7 A. Yes. Depending on relative numbers, yes.

8 Q. Okay. But looking through here, you've not
9 discussed in your testimony a comparison of such
10 calculations, correct?

11 A. That is correct.

12 Q. And without including such a determination
13 of materiality, we cannot conclude that any event was
14 extraordinary under the USOA definition, correct?

15 A. Well, I guess I would -- I'm not sure
16 that's correct, because as I read the last line, it says
17 that it's to be considered, but there's also a caveat that
18 says if it's less than a certain percentage, the
19 5 percent, then the Commission can so order that. I think
20 it could go either way.

21 Q. So it would be in the Commission's
22 discretion?

23 A. Probably.

24 MS. MOORE: That's all I have. Thank you.

25 Thank you, Mr. Wakeman.

1 THE WITNESS: You're welcome.

2 JUDGE JORDAN: I have no questions
3 transmitted from the Chairman. And for the record, he
4 thanks the parties for their opening statements, the
5 transmission I received late. Had no questions as to
6 that.

7 Commissioner Jarrett, any questions of this
8 witness?

9 COMMISSIONER JARRETT: I do not have any
10 questions. Thank you, sir.

11 JUDGE JORDAN: Commissioner Kenney, any
12 questions.

13 COMMISSIONER KENNEY: No, thank you.
14 Thanks, Mr. Wakeman.

15 THE WITNESS: You're welcome.

16 JUDGE JORDAN: I have no questions. Has
17 the cross-examination generated any recross from BJH?

18 MS. LANGENECKERT: No.

19 JUDGE JORDAN: From the Office of Public
20 Counsel?

21 MR. MILLS: No, thank you.

22 JUDGE JORDAN: MIEC?

23 MR. ROAM: No.

24 JUDGE JORDAN: From Staff? Staff just did
25 its cross. Any redirect?

1 MR. MITTEN: No redirect, your Honor.

2 JUDGE JORDAN: You may step down.

3 (Witness excused.)

4 MR. BYRNE: Judge, could I ask a point of
5 procedure? When Mr. Wakeman testified, you asked the
6 parties if they had recross based on other
7 cross-examination. Typically I've seen it the recross
8 based on questions from the Bench only. Is it -- so I
9 guess that's my question. Is there going to be recross
10 allowed based on other people's cross-examination or is it
11 only going to be recross based on questions from the
12 Bench?

13 JUDGE JORDAN: Thank you for noting that.
14 My inquiry should have been whether there was any recross,
15 and yes, that is really based on the Bench.

16 MR. BYRNE: Okay. Thank you, your Honor.

17 Your Honor, I would call Lynn Barnes to the
18 witness stand.

19 (Witness sworn.)

20 JUDGE JORDAN: Thank you.

21 LYNN BARNES testified as follows:

22 DIRECT EXAMINATION BY MR. BYRNE:

23 Q. Ms. Barnes, could you please state your
24 name and business address for the record.

25 A. Yes. Lynn M. Barnes, 1901 Chouteau Avenue,

1 St. Louis, Missouri.

2 Q. And by whom are you employed?

3 A. Ameren Missouri.

4 Q. And in what capacity?

5 A. As their Vice President of Business
6 Planning and Controller.

7 Q. Ms. Barnes, are you the same Lynn Barnes
8 that caused to be filed in this proceeding direct
9 testimony that's been marked as Ameren Exhibit No. 2 and
10 surrebuttal testimony that has been marked as Ameren
11 Exhibit No. 3?

12 A. Yes.

13 Q. Do you have any corrections to that
14 testimony at this time?

15 A. No.

16 Q. Is the information contained in that
17 testimony true and correct to the best of your knowledge
18 and belief?

19 A. Yes, it is.

20 Q. If I were to ask you the questions
21 contained in that prefiled testimony here today when
22 you're under oath, would your answers be the same?

23 A. Yes.

24 MR. BYRNE: Your Honor, I would offer
25 Ameren Exhibit Nos. 2 and 3 and tender Ms. Barnes for

1 cross-examination.

2 JUDGE JORDAN: Objections?

3 (No response.)

4 JUDGE JORDAN: Hearing no objections, those
5 exhibits will be entered into the record.

6 (AMEREN EXHIBIT NOS. 2 AND 3 WERE RECEIVED
7 INTO EVIDENCE.)

8 JUDGE JORDAN: Cross-examination from BJH?

9 MS. LANGENECKERT: Just a couple questions.

10 CROSS-EXAMINATION BY MS. LANGENECKERT:

11 Q. Good morning, Ms. Barnes.

12 A. Good morning.

13 Q. Ms. Barnes, on page 7 of your surrebuttal
14 testimony, which I understand is Ameren Exhibit 3, you
15 make a statement on lines 15 through 17. Will you let me
16 know when you've arrived there, please?

17 A. Yes. I'm there.

18 Q. You state, and if customer-generated
19 revenues are not available to pay those fixed costs, the
20 burden shifts to the company's shareholders who pay those
21 unrecovered costs through reduced earnings; is that
22 correct?

23 A. Yes.

24 Q. When the Commission approves a return on
25 equity for a regulated utility, is it guaranteeing that

1 the company will earn that return?

2 A. No, it doesn't guarantee that we'll earn
3 it, but it does guarantee that we'll have the opportunity
4 to earn it.

5 Q. Okay. Thank you. Should Ameren's
6 customers bear all of the risk that the company may not
7 earn its approved return on equity?

8 A. No, but we're not asking them to.

9 MS. LANGENECKERT: Thank you. That's all.

10 JUDGE JORDAN: Cross-examination from the
11 Office of Public Counsel?

12 MR. MILLS: Just briefly.

13 CROSS-EXAMINATION BY MR. MILLS:

14 Q. Ms. Barnes, in the application that began
15 this case, the company identified the amount of revenue
16 lost from Noranda as \$36.1 million; is that correct?

17 A. Yes.

18 Q. And I believe that number is also in
19 Mr. Wills' testimony?

20 A. Yes.

21 Q. Has that changed as a result of the
22 agreement that you have reached with the Staff in this
23 case?

24 A. I believe there were some adjustments made
25 for the settlement relating to a leap day, a leap year

1 day, and actually I don't even recall what the other
2 reason was.

3 Q. It could have been line losses?

4 A. Could have been. That wasn't my testimony.

5 Q. And what exactly is the amount for which
6 Ameren seeks deferral today?

7 A. I guess the amount entered in the record
8 this morning, 35.6 million. Does that sound -- that was
9 the number I recall from this morning's session.

10 Q. And from the company's point of view, does
11 that number represent the revenues that would have been
12 recovered from Noranda but for Noranda going down from the
13 ice storm?

14 A. It represents the portion of the fixed
15 costs that were allocated to the rate class that Noranda's
16 in that were unrecovered because we did not sell power to
17 Noranda.

18 Q. Are there any other customers in that rate
19 class?

20 A. No, there are not.

21 Q. So does that number represent the revenues
22 that would have come from Noranda had Noranda not gone
23 down?

24 A. I guess it's a portion of the revenues that
25 would have come from them. It's not the entire amount of

1 revenues that would have come from them. It's just the
2 fixed cost allocation piece.

3 MR. MILLS: Thank you. That's all I have.

4 JUDGE JORDAN: Thank you.

5 Cross-examination from MIEC?

6 CROSS-EXAMINATION BY MR. ROAM:

7 Q. Hello, Ms. Barnes.

8 A. Hello.

9 Q. I just wanted to have you take a quick look
10 at a couple of Ameren Missouri's responses to MIEC's data
11 requests.

12 MR. ROAM: May I approach the witness?

13 JUDGE JORDAN: You may approach the
14 witness. No one will need permission to do that.

15 MR. ROAM: It's MIEC data request -- or
16 responses to MIEC Data Requests 9 and 10. Does anyone
17 need a copy?

18 BY MR. ROAM:

19 Q. Ms. Barnes, have you had an opportunity to
20 look over those responses to --

21 A. Yes.

22 Q. -- those data requests?

23 A. Uh-huh.

24 Q. Have you seen the responses prior to this
25 hearing?

1 A. No, I had not.

2 Q. Is there anything in these data -- in these
3 responses that you know to be inaccurate?

4 A. Because I haven't seen them before, I can't
5 really say, and I didn't prepare them, so I'm not a person
6 to ask that question.

7 Q. Do you have any reason to believe that the
8 responses to these data requests by Ameren Missouri are
9 inaccurate?

10 A. No, I have no reason to believe that they
11 would be.

12 MR. ROAM: At this time I'd like to offer
13 into evidence Ameren Missouri's responses to MIEC's Data
14 Requests No. 1-9 and 1-10.

15 JUDGE JORDAN: And those are MIEC exhibit
16 numbers?

17 MR. ROAM: I believe that would be MIEC
18 Exhibit 2 and 3.

19 (MIEC EXHIBIT NOS. 2 AND 3 WERE MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 JUDGE JORDAN: Objections?

22 MR. BYRNE: I don't have any objection to
23 entering into the record what we provided, but I do note
24 that both of the answers, responses to the data requests
25 refer to an objection, and I guess to complete the record,

1 I'd like our written objection to these to be included
2 with it. Sitting right here, I'm not sure what those
3 written objections said.

4 JUDGE JORDAN: Oh, I see. Yes. On the
5 first page of each, under the heading response, I see the
6 language, subject to the company's objection.

7 MR. BYRNE: So I don't have any problem
8 entering these into the record, but I'd also like the
9 written objection that we supplied because we may have
10 only partially answered the request. Part of it may have
11 been objectionable. Just to complete the answer, I'd like
12 that to be included, too.

13 JUDGE JORDAN: Well, that's fine. I don't
14 have that with me, so --

15 MR. ROAM: And MIEC is happy to stipulate
16 to including that into the record as well.

17 JUDGE JORDAN: That's fine.

18 MR. BYRNE: We'll get a copy, Judge.

19 JUDGE JORDAN: Very good. Hearing no
20 objections, these exhibits will be entered into the
21 record.

22 (MIEC EXHIBIT NOS. 2 AND 3 WERE RECEIVED
23 INTO EVIDENCE.)

24 BY MR. ROAM:

25 Q. Ms. Barnes, do you know when Ameren

1 Missouri closed the books in 2011, approximately?

2 A. For 2011?

3 Q. For 2011.

4 A. It would have been in the first quarter of
5 2012.

6 Q. And that would have been the same for 2010
7 and 2009, it would have been in the first quarter of the
8 subsequent year?

9 A. Yes.

10 Q. For those three years, 2011, 2010 and 2009,
11 the company experienced a positive net income; is that
12 correct?

13 A. Yes.

14 Q. Does the amount of depreciation expense
15 Ameren Missouri records on its books and shows in its
16 income statement in a given period or given year depend
17 upon how much profit the company received that year?

18 A. No.

19 Q. And that's the same for property tax?

20 A. Correct.

21 Q. And the same for fixed O&M expenses?

22 A. The expenses are what were incurred.

23 Q. I'll ask the question again. Does the
24 amount of fixed O&M expenses that the company records on
25 its books and shows in its income statement in a year

1 depend on how much profit the company experienced that
2 year?

3 A. No, it does not.

4 Q. And this was discussed during the opening
5 statements. Ameren Missouri is not seeking to recover
6 replacement or repair costs associated with the
7 approximately 3,000 poles that were damaged as a result of
8 the 2009 ice storm, correct?

9 A. Correct.

10 Q. And it's not seeking to recover costs that
11 were incurred as a result of, I believe the number was 214
12 miles of downed cable that resulted from the 2009 ice
13 storm, correct?

14 A. Correct.

15 Q. And the company is not seeking to recover
16 expenses or costs associated with the 780 transformers
17 that were damaged in the 2009 ice storm, correct?

18 A. Correct, because all of those costs that
19 you just mentioned would have been capital, so they would
20 have been included in rate base.

21 Q. And, in fact, those were -- those costs
22 were taken care of in the subsequent rate case; is that
23 right?

24 A. They were included in the rate base for the
25 subsequent rate case.

1 Q. Right. So we're not seeking -- that's not
2 the -- those are not the costs that we're seeking in this
3 case, correct?

4 A. That's correct.

5 Q. When I see we, I mean you.

6 A. You can if you want to.

7 Q. Did the company -- so the company did not
8 incur any additional incremental costs that were not
9 included in rates as a result of the 2009 ice storm,
10 correct?

11 A. We incurred O&M costs as a part of the
12 storm restoration. However, they were not in excess of
13 what storm costs that are built into base rates already
14 were. So we recovered those through our base rates just
15 because we automatically have a level of storm costs
16 expected built into rates.

17 Q. So the storm costs from the 2009 storm did
18 not rise past the amount that were expected?

19 A. For O&M, that's correct. Because of the
20 nature of the damage, it was all predominantly capital
21 expense in nature.

22 Q. Right. And the company did not incur any
23 additional fixed costs that were not already included in
24 rates as a result of the 2009 ice storm, correct?

25 A. Correct.

1 Q. At the beginning of 2009, do you know what
2 the LME market for aluminum was, the London Metal Exchange
3 market?

4 A. No, I'm sorry, I don't.

5 Q. I don't either. At the beginning of 2009,
6 could you have known whether Ameren -- or rather Noranda
7 planned to take a potline down for service or maintenance?

8 A. No, I wouldn't have known that.

9 Q. At the beginning of 2009, could you have
10 known whether Ameren would be faced with some sort of a
11 force majeure that would have required it to curtail its
12 aluminum making?

13 A. No, I would not have known any of that.

14 MR. ROAM: Thank you, Ms. Barnes. I think
15 that's all I have.

16 JUDGE JORDAN: Any cross-examination from
17 Staff?

18 MR. DOTTHEIM: Yes. Thank you.

19 CROSS-EXAMINATION BY MR. DOTTHEIM:

20 Q. Good morning, Ms. Barnes.

21 A. Good morning.

22 Q. I would like to direct you to your
23 surrebuttal testimony that's been marked as Ameren
24 Exhibit 3, and I'd like to direct you to page 8, your
25 Footnote 2.

1 A. Okay.

2 Q. And in Footnote 2, you refer to Case
3 No. ER-2010-0036, do you not?

4 A. I do.

5 Q. And you refer to the addition of the
6 N factor that was added to the FAC calculation in that
7 case, do you not?

8 A. I do.

9 MR. DOTTHEIM: At this time I'd like to
10 have marked as Staff Exhibit 6 the March 24, 2010
11 Commission Order Approving First Stipulation & Agreement
12 in File No. ER-2010-0036 and attachments.

13 JUDGE JORDAN: You may.

14 (STAFF EXHIBIT NO. 6 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE JORDAN: And Counsel, will you be
17 entering this into the record?

18 MR. DOTTHEIM: Yes, I will be offering what
19 is -- I would like to have, I think I mentioned, marked as
20 Staff Exhibit 6.

21 BY MR. DOTTHEIM:

22 Q. But, Ms. Barnes, if you could just tell me
23 when you've had a chance to take a look at that document.

24 A. I assume you just are interested in the
25 fuel adjustment clause portion?

1 Q. Yes, I am.

2 A. I have read that.

3 Q. Okay. Ms. Barnes, do you recognize that
4 document?

5 A. I do, uh-huh.

6 Q. Is this a document which you're making some
7 reference to in your Footnote 2 where you make reference
8 to the Commission approving the addition of the N factor
9 to the FAC calculation in Case No. ER-2010-0036?

10 A. Yes, it is.

11 MR. DOTTHEIM: At this time I'd like to
12 offer Staff Exhibit No. 6.

13 JUDGE JORDAN: Objections?

14 (No response.)

15 JUDGE JORDAN: Hearing none, Staff

16 Exhibit 6 will be entered into the record.

17 (STAFF EXHIBIT NO. 6 WAS RECEIVED INTO
18 EVIDENCE.)

19 BY MR. DOTTHEIM:

20 Q. Ms. Barnes, Ameren Missouri's financial
21 statements for calendar year 2011 do not reflect any
22 reduction in the normal level of sales made to Noranda due
23 to the January 2009 ice storm, do they?

24 A. No, they do not. Noranda was back to full
25 load in 2010.

1 Q. Ameren Missouri's financial statements for
2 calendar year 2012 do not reflect any reduction in the
3 normal level of sales made to Noranda due to the January
4 2009 ice storm, do they?

5 A. No, they do not.

6 Q. I'd like to refer you to page 5 of your
7 direct testimony, which is Ameren Exhibit 2.

8 A. Okay.

9 Q. And in particular you state on that page,
10 starting in response to a question that starts on line 3,
11 that Ameren Missouri's intent in entering into the
12 contracts for sale of power to AEP and Wabash in 2009-2010
13 was to offset the financial impact of the reduced level of
14 sales to Noranda following the January 2009 ice storm, do
15 you not?

16 A. I do.

17 Q. The amount of net revenues received by
18 Ameren Missouri in 2009 and 2010 from AEP and Wabash
19 pursuant to those contracts was not exactly equal to the
20 effect of the reduction in revenues from Noranda in the
21 same periods due to the January 2009 ice storm, were they?

22 A. I actually don't recall if they were
23 exactly matched.

24 Q. Do you recall whether the net revenues
25 received by Ameren Missouri from the AEP and Wabash

1 **contracts in 2009-2010 was approximately \$4.5 million?**

2 A. I believe that's close, uh-huh.

3 MR. DOTTHEIM: If I could have a moment,
4 please.

5 JUDGE JORDAN: You may. And during that
6 moment, I'll remind everyone to try to speak into the
7 microphone so that everyone is audible to everyone. Thank
8 you.

9 MR. DOTTHEIM: Thank you, Ms. Barnes.

10 JUDGE JORDAN: Questions from the Bench. I
11 have nothing from the Chairman. Commissioner Jarrett,
12 any?

13 COMMISSIONER JARRETT: Yes.

14 QUESTIONS BY COMMISSIONER JARRETT:

15 Q. **Good morning, Ms. Barnes. How are you?**

16 A. Good. How are you?

17 Q. **I'm doing fine. Have you had experience in**
18 **working in the accounting of prior AAOs?**

19 A. I was involved in the one we received back
20 in 2008. It was related to the January 2007 ice storm. I
21 don't recall. I think it was 2008 that we got that order.

22 Q. **So my question is, I guess mechanically,**
23 **from an accounting standpoint, how do you book these**
24 **things? Just explain to me how that works.**

25 A. Sure. I mean, expenses or any costs are

1 recorded in the period they're incurred. If we request an
2 AAO and are awarded one, then at the point in time we have
3 an order, that allows us then to record the regulatory
4 asset, which is in the 182.3 account. And the other side
5 of that entry then is a credit in the income statement, a
6 reduction in expenses for that year. So there is a
7 mismatch from a period perspective. We're recording
8 expenses in one year because we incurred them, and then
9 we're reversing that essentially in the year that the
10 order is awarded.

11 Q. So let me see if I understand correctly.
12 Let's use an example like we have to buy a bunch of extra
13 poles because of an ice storm. So that's an expense, an
14 extra expense?

15 A. Uh-huh.

16 Q. Is that then booked under the accounting --
17 the Uniform System of Accounts, it's booked as an expense?

18 A. Yes.

19 Q. And then the company would request an
20 Accounting Authority Order to move that from an expense
21 into a regulatory asset, so you physically move --

22 A. Yes.

23 Q. -- from the expense account that amount to
24 a regulatory asset account?

25 A. Yes.

1 Q. Now, my question I guess goes to how you
2 characterize this. Was this amount that you're asking
3 for, was it ever booked as an expense?

4 A. Yes, from the standpoint that all of our
5 fixed costs are recorded as they're incurred. I mean, in
6 this case it's a bit unique because you can't point to a
7 specific expense and say, this is the incremental expense.
8 What really has happened is, when rates were set, they
9 were using the cost of service that was the representative
10 of what we expected our costs to be when those rates would
11 be in effect, and they took that cost of service and
12 allocated it through the rate design process to all our
13 customer classes. And so of that, \$36 million -- actually
14 more than \$36 million was allocated to the large
15 transmission service rate class, of which Noranda is the
16 only customer.

17 And the assumption is, with the ratemaking
18 process, as I understand it, is then you recover those
19 fixed costs from those customer classes as you deliver
20 generation to them.

21 In this case, what happened is we still
22 incurred the fixed costs, but we didn't have an ability to
23 bill Noranda to recover those. And because they were the
24 only customer in that rate class, we didn't have an
25 ability to recover those costs from any other customer

1 rate class because they were paying what was allocated to
2 them.

3 Q. And you used the word unique, so I'll ask
4 you this, and this may be -- if you know the answer. I'll
5 ask you the question, but it may be more of a briefing or
6 a legal question for briefing later. But are you aware of
7 any Accounting Authority Order issued in Missouri or any
8 other state or any other jurisdiction which takes the kind
9 of costs that are at issue here and put them into an
10 Accounting Authority Order?

11 A. I really haven't done that research, so I
12 don't know if there have been.

13 Q. Like I said, it may be something for
14 briefing.

15 COMMISSIONER JARRETT: I don't have any
16 further questions. Thank you, Ms. Barnes.

17 COMMISSIONER JARRETT: I don't see any
18 questions from Commissioner Kenney. I had just one
19 question.

20 QUESTIONS BY JUDGE JORDAN:

21 Q. You referred to an allocation and rate
22 design. Are those matters that are reflected in the
23 tariffs?

24 A. Yes. That's how the tariffs would be set.
25 So the rate that's determined in the tariffs for the rate

1 class are billed based on an allocation of the cost of
2 service to each of the rate classes.

3 Q. When I say reflected, what I mean is are
4 they set forth, that this cost comes from this customer?

5 A. It's not that clear because it's the whole
6 cost of service.

7 Q. Okay. When you say that it's not clear,
8 the answer is no, it doesn't say that; is that correct?

9 A. Yes. No is the right answer.

10 JUDGE JORDAN: Recross from BJH?

11 COMMISSIONER KENNEY: I have a question,
12 Judge. I stepped out for a second.

13 JUDGE JORDAN: Sorry, Commissioner.

14 COMMISSIONER KENNEY: I'm sorry about that.

15 QUESTIONS BY COMMISSIONER KENNEY:

16 Q. Still morning. Good morning, Ms. Barnes.

17 A. Good morning, Commissioner.

18 Q. I just have a couple of questions.

19 Mr. Roam asked you about the O&M costs from the storm, and
20 I think you said that they didn't exceed what was already
21 included in base rates?

22 A. That's correct.

23 Q. So Ameren has a tracker for recovery of
24 storm costs, correct?

25 A. No. We actually don't have a tracker, but

1 there is an amount as part of the cost of service built in
2 to our base rates for storm costs, storm restoration
3 costs.

4 Q. And the O&M associated with that ice storm
5 didn't exceed those costs. Do you know what the
6 differential was between what was included in base rates
7 already and what the actual costs were?

8 A. No, I'm sorry, I don't recall what was
9 built into that at that period. We've had a few rate
10 cases since then. I've lost track.

11 Q. And then with regard to other capital costs
12 like poles and wires, you said those would have already
13 been included in rate base in subsequent rate cases --

14 A. That's correct.

15 Q. -- is that correct?

16 A. Uh-huh.

17 Q. And then the footnote in your surrebuttal
18 testimony refers to the N factor that was included, and
19 that was in the 2010-0036 rate case. There was an
20 N factor included to retain revenues from off-system sales
21 in an amount equal to fixed costs not recovered from
22 Noranda --

23 A. Yeah.

24 Q. -- is that right?

25 A. Yes, that's correct.

1 Q. Do you know what would have been recovered
2 as a result of that N factor, like the amount?

3 A. If we had it in place -- do you mean if
4 we'd had it in place in this time period that we're
5 talking about?

6 Q. Right.

7 A. I don't know the exact amount, but it would
8 have been substantially most of the 36 million that we're
9 requesting.

10 Q. So what will be recovered associated with
11 that N factor?

12 A. The N factor only comes into play if
13 Noranda's load subsequently drops below the levels that
14 were built into the stipulation, and so we have not really
15 exercised the N factor since it's been put into place
16 because Noranda's been operating at full load.

17 Q. So it's there to anticipate or to address
18 any future reductions in Noranda's load that may occur?

19 A. That's correct.

20 COMMISSIONER KENNEY: All right. Thank you
21 very much. I'm finished. Thank you.

22 JUDGE JORDAN: Then we'll go to recross.

23 BJH?

24 MS. LANGENECKERT: No.

25 JUDGE JORDAN: Any recross from the Office

1 of Public Counsel?

2 MR. MILLS: Just briefly, your Honor.

3 RECROSS-EXAMINATION BY MR. MILLS:

4 Q. Ms. Barnes, do you have a copy of Staff
5 Exhibit 6, the Stipulation & Agreement, there with you?

6 A. Yes, I have it right here.

7 Q. Was Public Counsel a signatory to that
8 agreement?

9 A. It does not look like it.

10 MR. MILLS: That's all I have.

11 JUDGE JORDAN: Any recross from MIEC?

12 MR. ROAM: Just very briefly, Judge.

13 RECROSS-EXAMINATION BY MR. ROAM:

14 Q. Ms. Barnes, weather fluctuation, a
15 particularly cold or particularly warm period also can
16 have a significant effect on the amount of revenue
17 generated; is that correct?

18 A. Yes, that's correct.

19 Q. And also on earnings, correct?

20 A. Yes, that's correct.

21 MR. ROAM: That's all. Thank you.

22 JUDGE JORDAN: Any recross from Staff?

23 MR. DOTTHEIM: No recross.

24 JUDGE JORDAN: Redirect?

25 MR. BYRNE: Yes, your Honor.

1 REDIRECT EXAMINATION BY MR. BYRNE:

2 Q. Ms. Barnes, Mr. Roam asked you some
3 questions about other types of things that might interrupt
4 service to Noranda, and in particular when he was first
5 cross-examining you he asked you about what if they took
6 down one of their potlines for maintenance. Do you
7 remember that question?

8 A. I do, uh-huh.

9 Q. And then he asked what if -- what if
10 something happened on Noranda's side that was force
11 majeure. Do you remember that?

12 A. Yes.

13 Q. And then he just recently asked what about
14 weather, what about fluctuations in weather. I guess all
15 those things could potentially affect the amount of power
16 that Noranda uses; is that correct?

17 A. Yeah, although they don't seem to be
18 susceptible to weather. Their load's pretty constant no
19 matter what the weather is.

20 Q. Are those the same kinds of things that
21 precipitated -- are there differences between those kinds
22 of things and the thing that precipitated this
23 curtailment?

24 A. Yes. I mean, we have fluctuations in
25 customer loads across our system all the time for whatever

1 reason, and that's not the type of loss that we're looking
2 at here today. This loss is really predicated on the fact
3 that an extraordinary event occurred, being the ice storm,
4 and as a result of that extraordinary event, we had a
5 customer who takes significant load from us and has a
6 large allocation of our fixed costs built into their rates
7 go out of service or at least partially out of service for
8 14 months. And that clearly is an extraordinary item for
9 us and creates a material loss that we could not recover
10 in any other way.

11 Q. Do you have -- Mr. Roam marked a couple of
12 exhibits that were data requests, and particularly I'm
13 looking at MIEC Exhibit No. 2, which was our response to
14 Data Request 1-9 of MIEC. Do you have that?

15 A. I do.

16 Q. And can you tell me what it is?

17 A. It's the dollar amount of revenues
18 collected from customers or refunded to customers under
19 the fuel adjustment clause monthly beginning in, it looks
20 like September 2009, and then it continued through to
21 October 2011.

22 Q. And does it show that we -- what does it
23 show overall?

24 A. It showed overall that we've collected
25 \$178,963,955.

1 Q. And does the collection of that money in
2 your mind represent a big benefit that Ameren Missouri is
3 getting?

4 A. It's actually just allowing us to collect
5 the variable costs that were in excess of what was built
6 in to base rates in the rate cases that preceded these.

7 Q. Does it allow us to collect 100 percent of
8 our variable costs?

9 A. No. It only allows us to collect
10 95 percent.

11 Q. And what's the difference between fixed and
12 variable costs?

13 A. Variable costs fluctuate based on the
14 number of megawatts we generate. Fixed costs do not. We
15 have to incur the fixed costs whether we generate one
16 megawatt or whether we generate hundreds of megawatts.

17 Q. So are the costs reflected in Exhibit
18 MIEC-2, are they fixed or variable costs?

19 A. These would all be variable.

20 Q. You were asked -- well, you were asked some
21 questions about the N factor. Could you briefly explain
22 how the N factor works, if you could?

23 A. I'll try. The way the N factor works, as I
24 understand it, is in the event that Noranda's load drops
25 below a level that's set in the N factor, I don't remember

1 exactly what that level is, but if their load is reduced,
2 then the portion of off-system sales that occur as a
3 result of that from the load that we don't provide to
4 Noranda we are allowed to keep and not include in the FAC
5 to cover those fixed costs that we would otherwise have
6 recovered from Noranda.

7 Q. And do you know when that N factor became
8 effective? There may be a -- in Exhibit 6, Staff
9 Exhibit 6, it may have the tariff sheets. I don't know.
10 Doesn't have effective date. Anyway, do you know about
11 when it became effective?

12 A. It was effective with the conclusion of the
13 2010 rate case. I want to say May of 2010. I don't know
14 if I have that date exactly right.

15 Q. Okay. So after whatever the effective date
16 was, you think May 2010, if this had happened, Ameren
17 Missouri would have been covered by the N factor; is that
18 true?

19 A. Yes, I believe so.

20 Q. And what if this had happened before
21 March 1st, 2009 when the FAC tariff was first approved?

22 A. Then any off-system sales that we would
23 have made over and above what was built into base rates at
24 that time would have been used to offset that loss.

25 Q. So for what period of time was Ameren

1 **Missouri vulnerable to something like this?**

2 A. I guess from March 1st, 2009 until the
3 effective date of the 2010 Order, which actually was
4 probably -- this was probably effective in '11. I think
5 to think through. The 2010 case wouldn't have been
6 effective in 2010. It would have been effective in 2011.
7 So the N factor was after the 14-month period that we
8 incurred the losses with Noranda.

9 Q. Some costs -- you discussed capital costs
10 in response to the storm, and I think the point you made
11 was that the capital costs were recovered in the next rate
12 case. Do you recall --

13 A. Uh-huh.

14 Q. -- answering that question?

15 A. They're included in rate base for the next
16 case, uh-huh.

17 Q. And then Mr. Dottheim asked you some
18 questions about are we still in subsequent years, 2012 I
19 think he asked and maybe 2010 and '11, did we still have
20 reductions in load to Noranda. Do you recall that
21 question?

22 A. Uh-huh.

23 Q. And what did you say?

24 A. I said we haven't had any reductions in
25 load from Noranda during those periods.

1 Q. So would it be fair to say that the
2 reduction in load to Noranda was a one-time nonrecurring
3 reduction?

4 A. Oh, clearly.

5 Q. And do you know whether the Commission
6 allows the recovery of costs related to one-time
7 nonrecurring events in rate cases?

8 A. Not usually in rate cases proper, but it
9 does meet the definition under the USOA of General
10 Instruction 7 for extraordinary events.

11 Q. I guess my question was, if we had not --
12 if we don't get an AAO here, was there any way to recover
13 these costs in a rate case?

14 A. No. We don't have any options if we don't
15 get an AAO. The shareholders end up incurring that entire
16 loss.

17 Q. You were asked by Commissioner Jarrett, I
18 believe, if you were aware of any similar AAOs, and I
19 think you said you weren't -- you hadn't done that
20 research; is that correct?

21 A. Yes, that's correct.

22 Q. Is there any doubt in your mind that the
23 Uniform System of Accounts permits the Commission to grant
24 an Accounting Authority Order in this circumstance?

25 A. No, there's no doubt. It's an

1 extraordinary event which meets the criteria under General
2 Instruction No. 7. It follows with the definitions of
3 descriptions of regulatory assets. And it also meets the
4 Commission's thoughts with respect to the Empire rate
5 order where it has defined in its own words that an
6 Accounting Authority Order to used to protect utilities in
7 earnings shortfalls, and that's clearly what we have here.

8 Q. And is it material under -- the loss that
9 was suffered here material under the Uniform System of
10 Accounts?

11 A. Clearly the 36 million's material.

12 Q. You were asked by Mr. Dottheim again about
13 whether there are any effects in 2011-2012 of Noranda's
14 loss of power.

15 A. Uh-huh.

16 Q. Do you recall those questions?

17 A. I do.

18 Q. Were there any entries in the books of the
19 company that relate in any way to this in 2011 or 2012 or
20 subsequent? Are there any charges taken?

21 A. Well, indirectly, clearly as a result of
22 the decision in ER-2010-0155, the FAC prudence, we did
23 record a charge of \$17 million in April of 2011, and we
24 will have to do that again to 2012 if that same decision
25 is reached in the currently pending prudence review where

1 they're requesting the 26 million similarly related to
2 those contracts being flowed through the FAC.

3 MR. BYRNE: Thank you, Ms. Barnes. That's
4 all I have.

5 JUDGE JORDAN: You may stand down.

6 (Witness excused.)

7 JUDGE JORDAN: We're coming up on noon.
8 This might be a good time for a lunch break. Before I do
9 make a decision on that, let me ask counsel for AmerenUE,
10 will that conclude your case in chief?

11 MR. BYRNE: Yes, your Honor, that does
12 conclude our case in chief.

13 JUDGE JORDAN: Then the next item will be
14 Staff's case in chief, and before we do that, I suggest a
15 lunch break of one hour. Any further or counter
16 suggestions to that? An hour and five minutes. So noted.
17 We will break for lunch. We will resume when the clock on
18 that wall says one o'clock. Thank you.

19 (A BREAK WAS TAKEN.)

20 (STAFF EXHIBIT NO. 7 AND AMEREN EXHIBIT
21 NO. 6 WERE MARKED FOR IDENTIFICATION.)

22 JUDGE JORDAN: We're back on the record
23 now, having returned from our lunch break, and I
24 understand that the parties have a couple of documents
25 that they would like to put into the record, and I think

1 those will be entered by stipulation. Am I correct?

2 MR. BYRNE: I think so, your Honor. The
3 company has Ameren Exhibit No. 6, which is an objection
4 letter that addresses DR 1-9 and DR 1-10, which were
5 previously put into the record. So I would offer Ameren
6 Exhibit No. 6.

7 JUDGE JORDAN: And for the record, is there
8 any objection to the entry of that document into the
9 record?

10 (No response.)

11 JUDGE JORDAN: Seeing none, that will be
12 entered into the record.

13 (AMEREN EXHIBIT NO. 6 WAS RECEIVED INTO
14 EVIDENCE.)

15 JUDGE JORDAN: Have we marked that
16 separately as a separate exhibit?

17 MR. BYRNE: Yes.

18 JUDGE JORDAN: And what was that number
19 again, please?

20 MR. BYRNE: Ameren Exhibit No. 6.

21 JUDGE JORDAN: Thank you. Thank you.
22 Staff counsel?

23 MR. DOTTHEIM: Yes. Ms. Mantle has a, to
24 her rebuttal testimony, which is Staff Exhibit 2,
25 Schedule LMM-1-1. She has a more current page for

1 education and work experience background, and Staff would
2 like to offer that.

3 JUDGE JORDAN: Okay. I understand that
4 that exhibit has been displayed to the other parties.

5 MR. DOTTHEIM: Judge, excuse me for
6 interrupting. I don't know if maybe I should just offer
7 that at the time that Ms. Mantle takes the stand. I could
8 offer it now or when she takes the stand just in a few
9 minutes and I offer her -- her Staff Exhibit 2, her
10 rebuttal testimony.

11 JUDGE JORDAN: Why don't we just do it that
12 way?

13 MR. DOTTHEIM: Okay.

14 JUDGE JORDAN: And is there anything else
15 before we begin Staff's case in chief? And I'm not seeing
16 anything, so Staff may proceed.

17 MR. DOTTHEIM: Staff calls as its first
18 witness Lena M. Mantle.

19 (Witness sworn.)

20 LENA M. MANTLE testified as follows:

21 DIRECT EXAMINATION BY MR. DOTTHEIM:

22 Q. Would you please state your name.

23 A. Lena M. Mantle.

24 Q. And would you please state your job title.

25 A. I'm manager of the energy unit of the

1 Public Service Commission.

2 Q. And would you please state your employment
3 address?

4 A. P.O. Box 360, Jefferson City, Missouri
5 65102.

6 Q. Ms. Mantle, do you have with you a copy of
7 what has been marked as Staff Exhibit 2, your rebuttal
8 testimony in this proceeding?

9 A. Yes.

10 Q. And do you also have what has been marked
11 as Staff Exhibit 7, an update of your education and work
12 experience which is Schedule LMM 1-1 to your rebuttal
13 testimony?

14 A. Yes.

15 Q. Do you have any corrections at this time to
16 Staff Exhibit 2, your rebuttal testimony?

17 A. Yes, I do. Because there's some confusion
18 as to exactly when the ice storm started, what would be
19 called its starting date, I would like to revise my
20 testimony on page 1, line 29, that reads, the January 28,
21 2009 ice storm, and change it to just the January 2009 ice
22 storm. I also referred to the ice storm in the footnote
23 at the bottom of page 2. I would like to just delete that
24 footnote.

25 On page 3, line 5, at the end of that line

1 I start a sentence, the January 28th, 2009 ice storm was
2 somewhat unanticipated. I would like to change that to
3 the January 2009 ice storm was somewhat unanticipated.

4 And then there's one more reference on
5 page 7, line 3, where I'm talking about the minimum load
6 for Noranda, which occurred, and in my testimony I
7 currently say two days after the ice storm began. I would
8 like to strike two days after the ice storm began and
9 replace it with January 30th, 2009.

10 Q. Ms. Mantle, do you have any other
11 corrections or changes to your rebuttal testimony?

12 A. Not other than the other exhibit, the
13 change, Schedule 1-1.

14 Q. And there are no changes to Staff
15 Exhibit 7, which has just been marked as update of your
16 education and work experience background?

17 A. No, there is not.

18 Q. If I asked you the same questions that are
19 contained in Staff Exhibit 2, would your answers be the
20 same as you have just corrected them?

21 A. Yes.

22 Q. And if -- and is the information in Staff
23 Exhibit 2 true and correct to the best of your knowledge
24 and belief?

25 A. Yes.

1 Q. Is the information contained in Staff
2 Exhibit 7 true and correct to the best of your knowledge
3 and belief?

4 A. Yes.

5 MR. DOTTHEIM: At this time I would like to
6 offer Staff Exhibit 2 and Staff Exhibit 7.

7 JUDGE JORDAN: Objections?

8 (No response.)

9 JUDGE JORDAN: Seeing none, those exhibits
10 are entered into the record.

11 (STAFF EXHIBIT NOS. 2 AND 7 WERE RECEIVED
12 INTO EVIDENCE.)

13 MR. MILLS: Judge, just for the record
14 because I think this occurred off the record, we had some
15 discussion, there are -- there is one number that occurs
16 in two places in her testimony that I believe the document
17 is marked highly confidential in the filed version of her
18 testimony. I believe the company is agreeable to
19 considering them public information.

20 MR. BYRNE: That's correct, your Honor.

21 JUDGE JORDAN: That's helpful. That means
22 we won't have to go in-camera.

23 MR. DOTTHEIM: Judge, would you like us, as
24 a consequence, to refile what is the -- the testimony --
25 let me ask if Ms. Mantle could indicate, does that take

1 care -- is there any other highly confidential information
2 in your testimony as a consequence?

3 THE WITNESS: No, there's not.

4 MR. DOTTHEIM: Then as a consequence,
5 Judge, should the Staff possibly file anything in the --
6 in EFIS or refile the testimony without an HC designation?

7 JUDGE JORDAN: Well, if that information is
8 going to be an open record and not protected, then I think
9 that we have -- that we have to do that, yes.

10 MR. DOTTHEIM: Then we will do so.

11 JUDGE JORDAN: May we identify for the
12 record what that number is? First I'm going to ask
13 counsel for Ameren whether what I've heard about that is
14 accurate. Is there a number that you are willing to take
15 out of highly confidential status and turn it into public
16 information?

17 MR. BYRNE: Yes, your Honor.

18 MR. DOTTHEIM: The number I think was on --
19 or number appears twice on page 13.

20 MR. BYRNE: Yes. It's the \$26,342,791 that
21 appears on page 13, line 17, and page 13, line 19.

22 JUDGE JORDAN: I see that.

23 MR. BYRNE: So maybe since I just
24 identified it, maybe they don't have to refile all the
25 testimony. It's up to you.

1 JUDGE JORDAN: Since it's not public
2 anymore, I think another version of this with that number
3 revealed is the way to go.

4 MR. BYRNE: Great.

5 JUDGE JORDAN: And I think I just entered
6 those exhibits into the record.

7 MR. DOTTHEIM: And at this time I would
8 tender Ms. Mantle for cross-examination.

9 JUDGE JORDAN: Thank you. Our
10 cross-examination begins with BJH.

11 MS. LANGENECKERT: No questions for
12 Ms. Mantle.

13 JUDGE JORDAN: Any cross-examination from
14 OPC?

15 MR. MILLS: No questions.

16 JUDGE JORDAN: Cross-examination from MIEC?

17 MR. ROAM: No questions, your Honor.

18 JUDGE JORDAN: Any cross-examination from
19 Ameren?

20 MR. MITTEN: Yes, your Honor.

21 CROSS-EXAMINATION BY MR. MITTEN:

22 Q. Ms. Mantle, good afternoon. Let me first
23 ask you, do you have a copy of the transcript of your
24 deposition in this case with you on the stand?

25 A. Yes, I do.

1 Q. I notice you also had a large binder that
2 you carried with you on the stand. Could I ask you what
3 other documents you have with you?

4 A. I have Mr. Oligschlaeger's testimony. I
5 have a sheet that lists the names -- or the numbers of the
6 cases that were probably relevant to this case so that I
7 would get them correct, and what happened in those cases
8 so that I could make sure I was correct on the stand.

9 Orders from three rate cases:
10 EU-2001-0387, which is an AAO that was requested by
11 Empire; EU-2008-0233, an AAO that was requested by Aquila
12 for the 2007 ice storm; EU-2008-0141, an AAO that was
13 requested by AmerenUE in the 2007 ice storm. I have my
14 deposition.

15 MR. MILLS: Judge, I'm going to object to
16 this question on the grounds of relevance. There's no
17 telling, she may have a grocery list there. Just asking
18 her to list all the documents there I don't believe has
19 any relevance to the issues in this case.

20 MR. MITTEN: I think I'm entitled to know
21 what she's relying on for purposes of testimony.

22 MR. MILLS: And that's not the question he
23 asked.

24 MR. MITTEN: If she has documents with her,
25 she can rely on them while she's testifying. I have a

1 right to know what those documents are.

2 JUDGE JORDAN: Well, that wasn't the
3 question as to what -- you did not ask whether she was
4 referring to anything in answering her questions. You may
5 ask that question if you like.

6 MR. MITTEN: That question can't be asked
7 yet, your Honor. I'm simply asking what documents she has
8 up there that she can refer to during her testimony. That
9 was the purpose of the question.

10 JUDGE JORDAN: Okay. Are you about done
11 with your list?

12 THE WITNESS: No.

13 JUDGE JORDAN: All right. Well, I'll tell
14 you what, if she does refer to a document when answering
15 your questions, then you may certainly inquire as to what
16 that is.

17 MR. MITTEN: Thank you, your Honor.

18 BY MR. MITTEN:

19 Q. Ms. Mantle, at your deposition, you told me
20 that this is the first Accounting Authority Order or AAO
21 case where you appeared as a witness; is that correct?

22 A. That is correct.

23 Q. But you told me you were involved in Staff
24 discussions in two recent AAO cases, which would have been
25 the Empire District Electric AAO case and a case involving

1 Southern Union/MGE; is that correct?

2 A. Actually, I said that -- I said those two
3 first, and then I corrected that there was a third, the
4 Missouri American Water, discussions of an AAO with them,
5 but I don't believe they ever filed that case.

6 Q. You also told me during your deposition
7 that you're not familiar with the Uniform System of
8 Accounts that applies to electric utilities in Missouri
9 and that you did not review any provisions of the USOA
10 prior to filing your rebuttal testimony in this case; is
11 that correct?

12 A. That is correct.

13 Q. Do you happen to have a copy of what has
14 been marked as Staff Exhibit 5?

15 MR. MITTEN: Could the court reporter
16 please give the witness a copy of Staff Exhibit 5?

17 BY MR. MITTEN:

18 Q. Ms. Mantle, if you could please turn to the
19 last page of that exhibit, General Instruction No. 7
20 dealing with extraordinary items, and if you could please
21 take a moment to review General Instruction No. 7.

22 A. Okay.

23 Q. Now, for the next few questions I'd like
24 you to focus on that portion of General Instruction No. 7
25 that precedes the beginning of the parentheses that is

1 about halfway through the definition. Do you see that?

2 A. I see the sentence that starts with the
3 parentheses. Do you want the sentence before that?

4 Q. I'm just saying, for the next few questions
5 I'm going to ask you to focus on that portion of General
6 Order No. 7 that precedes the parenthetical material.

7 A. Okay.

8 Q. That portion of General Instruction No. 7
9 defines what qualifies as an extraordinary event under the
10 Uniform System of Accounts; is that correct?

11 A. Defines extraordinary items which they will
12 be events and transactions of significant effect, so yes.

13 Q. Let me restate the question. The portion
14 of General Instruction No. 7 that I asked you to read
15 defines extraordinary events and transactions; is that
16 correct?

17 A. Again, it says extraordinary items and it
18 defines an item -- extraordinary items and says they will
19 be events and transactions of significant effect which are
20 abnormal and significantly different from the ordinary and
21 typical activities of the company. I don't see the words
22 extraordinary event in there.

23 Q. And so the record is clear, prior to filing
24 your rebuttal testimony in this case, you told me during
25 your deposition that you weren't even aware of the

1 definition that appears in General Instruction No. 7; is
2 that correct?

3 A. Yes.

4 Q. And you also told me during your deposition
5 that you don't know whether in past AAO cases the
6 Commission has relied on General Instruction No. 7; is
7 that correct?

8 A. I don't know if the Commission has. I
9 believe I remember something in my deposition, but yes. I
10 don't know if the Commission's ever relied on that or not.

11 Q. Well, let me focus on the criteria that are
12 set out in General Instruction No. 7 for what constitutes
13 an extraordinary event, transaction or item. First it
14 says, the event or transaction must be of unusual nature
15 and infrequent occurrence. Next it says, the event or
16 transaction must be of significant effect. It also says,
17 the event or transaction must be abnormal and
18 significantly different from the ordinary and typical
19 activities of the company. And finally it says, the event
20 or transaction must be something that would not reasonably
21 be expected to recur in the future. Is that correct?

22 A. In the foreseeable future, yes.

23 Q. In the foreseeable future.

24 A. Yes.

25 Q. With that correction, did I correctly

1 characterize what's in General Instruction No. 7?

2 A. Yes.

3 Q. During your deposition, you told me that
4 the January 2009 ice storm that affected Ameren Missouri's
5 service area in southeast Missouri satisfied each of the
6 criteria we just discussed that is included in General
7 Order No. -- or General Instruction No. 7; is that
8 correct?

9 A. Was the question about the -- does the
10 storm meet all those criteria?

11 Q. Yes, that was my question. Did you tell me
12 during your deposition that the storm meets each of those
13 four criteria?

14 A. I'll need to go through my deposition and
15 make sure that that's correct.

16 Q. Page 35. Perhaps we can save some time.
17 I'll just ask you the questions from your deposition that
18 begin on line 12, and if you can read the answer that you
19 gave.

20 Question: Please answer this question yes
21 or no. Was the January 2009 ice storm that affected
22 Ameren Missouri's service area, quote, of unusual nature
23 and infrequent occurrence? And what was your answer?

24 A. Yes, it was unusual in nature and it didn't
25 happen very often.

1 Q. Question: So you would agree that it was
2 of unusual nature and infrequent occurrence? And what was
3 your answer?

4 A. Yes.

5 Q. Next question: Please answer yes or no.
6 Was the January 2009 ice storm that affected Ameren
7 Missouri's service area of significant effect? And what
8 was your answer?

9 A. Yes.

10 Q. Next question: Please answer yes or no.
11 Was the January 2009 ice storm that affected Ameren
12 Missouri's service area abnormal and significantly
13 different from the normal activities of the company? And
14 what was your answer to that question?

15 A. Yes.

16 Q. Final question: Please answer yes or no.
17 Was the January 2009 ice storm that affected Ameren
18 Missouri's service area an event that would be reasonably
19 expected not to recur in the foreseeable future? And what
20 was your answer?

21 A. Could you read that sentence again?

22 Q. And the next question was: Was the January
23 2009 ice storm that affected Ameren Missouri's service
24 area an event that would be reasonably expected not to
25 recur in the foreseeable future? And your answer was?

1 A. Yes.

2 Q. During your deposition you also told me
3 that Ameren Missouri's loss of rate revenue during the
4 14-month period following the January 2009 ice storm when
5 Noranda's smelting operations were curtailed also
6 satisfied each of the requirements of the USOA's
7 definition of an extraordinary event or transaction that
8 appears in General Instruction No. 7; is that correct?

9 A. I haven't compared my responses to what's
10 in USOA 7.

11 Q. Let's go to the deposition transcript
12 again, specifically page 38, beginning on line 22,
13 question: All right. Let's see if there's some questions
14 you feel qualified to answer. Please answer this question
15 yes or no. Was the 14-month loss of Noranda's rate
16 revenues an event of unusual nature and infrequent
17 occurrence? And what was your answer?

18 A. Yes.

19 Q. Question: Please answer this question yes
20 or no. Was the 14-month loss of Noranda's rate revenues
21 an event of significant effect? And what was your answer?

22 A. Yes.

23 Q. Question: Please answer yes or no. Was
24 the 14-month loss of Noranda's rate revenues an event that
25 was abnormal and significantly different from the normal

1 activities of Ameren Missouri? And your answer?

2 A. Yes.

3 Q. Finally, please answer again yes or no.

4 Was the 14-month loss of Noranda's rate revenues an event
5 that would not reasonably be expected to recur in the
6 foreseeable future? And what was your answer?

7 A. My answer was yes.

8 Q. Now, at page 8 of your surrebuttal
9 testimony, you suggest that Staff foresaw the potential
10 impact on Ameren Missouri if Noranda suddenly closed down;
11 is that correct?

12 A. Staff was aware of a potential of a
13 reduction and raised it in the Staff's suggestions in
14 support of the Unanimous Stipulation & Agreement in
15 Case EA-2005-0180.

16 Q. And in support of the statement, it appears
17 in your rebuttal testimony you include a quotation from
18 Staff's suggestions that were filed in Case No.
19 EA-2005-0180 that states, and I'm paraphrasing, that
20 Ameren would be able to mitigate the effects of Noranda
21 closing down by selling excess power into the off-system
22 market for electricity; is that correct?

23 A. That was mitigated by AmerenUE's
24 opportunity to sell. I'm not sure how you paraphrased it,
25 but that is what it says.

1 Q. So sell into the off-system power market;
2 is that correct?

3 A. Yes.

4 Q. You testified during your deposition that
5 at the time Staff wrote the statement that you quoted in
6 your rebuttal testimony from Case No. EA-2005-0180, Staff
7 assumed that Ameren Missouri would be able to keep all the
8 revenues it derived from the sale of excess power into the
9 off-system market for electricity; is that correct?

10 A. Yes.

11 Q. Following the January 2009 ice storm,
12 Ameren Missouri tried to mitigate the financial effects of
13 losing most of Noranda's rate revenues by selling excess
14 power into the off-system market; is that correct?

15 A. Entered into contracts to sell its excess
16 energy and capacity. I don't know if that's the
17 off-system market or -- but it did do -- attempt to sell
18 excess energy and capacity.

19 Q. And it did so to mitigate the financial
20 effects of a loss of Noranda revenue; is that correct?

21 A. I believe that's what they were attempting
22 to do given the cases that have been filed since then.

23 Q. But thus far, Ameren Missouri has not been
24 allowed to retain any of those power sales revenues; is
25 that correct?

1 A. Ameren has been required to provide
2 17 million of that back through the FAC. There's still an
3 additional 26 million of that revenue that there has not
4 been a decision on. So up to this point in time, Ameren
5 UE has kept that 26 million.

6 Q. But Staff is arguing that Ameren should
7 return that \$26 million to customers through the fuel
8 adjustment clause as well; isn't that correct?

9 A. That is correct.

10 Q. Now, you told me during your deposition
11 that Staff's suggestions in Case No. EA-2005-0180 don't
12 say anything about the financial effects on Ameren
13 Missouri if Noranda closes down but Ameren isn't allowed
14 to keep the revenues it derives from off-system sales; is
15 that correct?

16 A. Can you point me to a page?

17 Q. Page 57, beginning on line 8.

18 A. My answer was, other than taking the time
19 to -- right now to read the whole document, I don't
20 remember that there is, but that doesn't -- I can take the
21 time and read it or...

22 So I did not respond -- I did not say one
23 way or the other.

24 Q. So you said you didn't recall whether there
25 were any suggestions; is that correct?

1 A. That's correct.

2 Q. Since your deposition, have you referred to
3 those suggestions to find out if indeed Staff said
4 anything about what the financial effect on Ameren would
5 be if it wasn't allowed to keep the off-system sales
6 revenues?

7 A. I don't believe I've read that, that Staff
8 suggestions since then.

9 MR. MITTEN: Your Honor, could I ask the
10 Commission to take administrative notice of Staff's
11 suggestions that were filed in Docket No. EA-2005-0180?

12 JUDGE JORDAN: EA-2005-0 --

13 MR. MITTEN: 180.

14 JUDGE JORDAN: -- 180. Yes.

15 MR. MITTEN: Thank you.

16 BY MR. MITTEN:

17 Q. At page 11 of your rebuttal testimony, you
18 state that Ameren Missouri could have withdrawn its fuel
19 adjustment clause tariffs in Case No. ER-2008-0318, which
20 would have allowed the company to keep the revenue it
21 derived from the sale of power to Wabash Valley Power
22 Association and American Electric Power; is that correct?

23 A. Yes.

24 Q. But if it had withdrawn its fuel adjustment
25 clause tariff, Ameren Missouri would not have been able to

1 pass through to customers the increases in fuel and
2 purchased power cost that it experienced between Case
3 No. ER-2008-0318 and the company's next rate case; is that
4 correct?

5 A. That is correct.

6 Q. I want to explore with you your claim that
7 Ameren could have withdrawn the fuel adjustment clause
8 tariff, but before I do that, I need to clear up a couple
9 things. I know you changed your prefiled rebuttal
10 testimony to reflect no specific date for the January 2009
11 ice storm, just referred to it is a January 2009 ice
12 storm; is that correct?

13 A. That is correct.

14 Q. Mr. Wakeman testified in his surrebuttal
15 testimony that the storm ran from January 26th through
16 January 28th of 2009. Do you agree with that
17 characterization?

18 A. Yes.

19 Q. Starting there, I'd like to establish a
20 timeline. The ice storm begins on January 26, 2009 and
21 runs through January 28th of that year. Do you know when
22 the Commission issued its Report and Order in Case
23 No. ER-2008-0318?

24 A. I don't know the exact date. I know it was
25 right at the same time the ice storm started.

1 Q. Ms. Mantle, I just handed you a copy of
2 what I believe is the Report and Order that the Commission
3 issued in Case No. ER-2008-0318; is that correct?

4 A. Yes.

5 Q. Is the date of the issuance of that Order
6 on the front?

7 A. Yes, it is.

8 Q. And what date is that?

9 A. Says January 27, 2009.

10 Q. So that would have been in the middle of
11 the January 2009 ice storm, correct?

12 A. It's the middle date. At the morning of
13 January 27th, we were not -- according to records that
14 I've looked at since the deposition, we were only aware of
15 about 5,400 customers being down, being without power in
16 the bootheel. So it's according to how you define the
17 middle of the ice storm. If it's time-wise, it was the
18 middle day, yes.

19 JUDGE JORDAN: Just for the record,
20 Counsel, can you tell us what you just showed the witness?

21 MR. MITTEN: I haven't showed her anything
22 yet.

23 JUDGE JORDAN: I just saw that out of the
24 corner of my eye.

25 BY MR. MITTEN:

1 Q. Ms. Mantle, I have just handed you two
2 documents. One is a copy of the Commission's Order
3 Denying AmerenUE's Application for Rehearing in Case
4 No. ER-2008-0318, and the other is a copy of the
5 Commission's Order Approving Compliance Tariffs in that
6 same docket. Do you recognize those documents as what I
7 just said they are?

8 A. Yes.

9 Q. Now, according to the Order Denying
10 Rehearing that I just handed you, Ameren Missouri filed
11 its application for rehearing on February 5th, 2009; is
12 that correct?

13 A. That's what it says.

14 Q. And in that application for rehearing, the
15 company asked the Commission for authority to modify the
16 fuel adjustment clause tariff to provide a means to
17 mitigate the financial effects of the loss of most of
18 Noranda's load; is that correct?

19 A. This order states that it would allow
20 Ameren to recoup the revenue it expects to lose because of
21 decreased sales of electricity to Noranda's aluminum
22 smelting plant due to damage to the plant resulting from
23 the recent severe ice storm.

24 Q. And the Order Denying Rehearing was issued
25 on February 19th, 2009; is that correct?

1 A. Yes.

2 Q. And on page 2 of that Order, the Commission
3 says it can't grant Ameren Missouri's request to modify
4 the fuel adjustment clause because that would require the
5 Commission to set aside an approved Stipulation &
6 Agreement that included the fuel adjustment clause tariff
7 and reopen the record to take evidence on the
8 appropriateness of the change to the stipulation but that
9 the Commission believed there was not sufficient time to
10 do that before the operation of law date in Case No.
11 ER-2008-0318; is that correct?

12 A. That is correct.

13 Q. Now, if you could look at the Order
14 Approving Compliance Tariffs that I also gave you, what's
15 the date on that Order? February 19th, 2009; is that
16 correct?

17 A. That is correct.

18 Q. That's the same date as the order denying
19 the company's application for a rehearing, isn't it?

20 A. Yes.

21 Q. Once Ameren knew on February 19 that the
22 Commission would not allow the company to modify the fuel
23 adjustment clause tariff, is it your contention that
24 Ameren Missouri could have unilaterally withdrawn its fuel
25 adjustment clause tariff sheets?

1 A. Not unilaterally because it was a
2 Commission order.

3 Q. So the Commission had already approved
4 those tariff sheets; is that correct?

5 A. They had approved those sheets.

6 Q. And Ameren could not have unilaterally
7 withdrawn those tariff sheets once they were approved you;
8 you agree with that?

9 A. I agree that AmerenUE could not have done
10 that without the Commission's permission.

11 MR. MITTEN: Your Honor, could I ask the
12 Commission to take administrative notice of the Order
13 Denying Ameren's application for rehearing and the Order
14 Approving Compliance Tariff Sheets in Case No.
15 ER-2008-0318?

16 JUDGE JORDAN: Counsel?

17 MR. DOTTHEIM: Judge, I have no objection.
18 I'm -- I don't believe there's frankly a necessity for
19 Mr. Mitten to be making that request. I think that it's
20 standard procedure. I think the Commission can recognize
21 it's own orders.

22 Now, he previously asked that the
23 Commission take administrative notice of Staff's -- if I
24 recall the document correctly, Staff's suggestions in
25 support of the Unanimous Stipulation & Agreement in Case

1 No. EA-2005 0280, and I think his request in that instance
2 was well taken.

3 But I -- I think if this -- if Mr. Mitten
4 wants to go through that formality, but I believe it is
5 standard procedure that -- that parties before the
6 Commission in briefs cite Commission orders, and it's not
7 limited to just reports, reports and orders, and I
8 think -- I'm sorry.

9 JUDGE JORDAN: I don't really hear an
10 objection there. It may be superfluous to ask the
11 Commission to take notice of its own files, but the
12 Commission can take notice of its own files. Was there an
13 objection from OPC?

14 MR. MILLS: Not per se, but I believe that
15 Mr. Dottheim perhaps mischaracterized what happened
16 earlier. Earlier Mr. Mitten said, Judge, may I ask for
17 the Commission to take official notice of the Staff's
18 suggestions, and you said yes, which I took to mean that
19 he may ask. And I believe pursuant to 536.070 sub 6 that,
20 in order to do so, he needs to -- he needs to -- either he
21 does or you need to list the specific facts of which you
22 want to take notice and give us the opportunity to object,
23 and that hasn't taken place yet. I'm waiting for that
24 point in time to determine whether I have an objection
25 when he does actually request that something specific be

1 taken notice of.

2 JUDGE JORDAN: I think when he says "may I
3 ask", he's asking me to take notice. That's --

4 MR. MILLS: Okay. And what exactly was
5 taken notice of, the fact that suggestions were filed or
6 specific facts within those suggestions?

7 JUDGE JORDAN: My recollection is that he
8 asked me to take notice of the suggestions that were filed
9 in that file No. EA-2005-0180. Did I have that correct,
10 Mr. Mitten?

11 MR. MITTEN: That's correct.

12 MR. MILLS: As a result of that, that that
13 comes in as though it were sworn testimony in this case
14 without the opportunity for us to cross-examine the people
15 who wrote that, those suggestions?

16 JUDGE JORDAN: What comes in is the content
17 of the file, as I understand your question.

18 MR. MILLS: Whatever document was filed
19 comes in as though it were in evidence in this case?

20 JUDGE JORDAN: I think that's what official
21 notice is, that the document comes in.

22 MR. MILLS: Okay.

23 JUDGE JORDAN: So if you want to go back
24 to -- would you like to resume where we were?

25 MR. MITTEN: I would like to resume where

1 we were and ask whether or not the Commission has taken
2 official notice of the Order Denying Rehiring and the
3 Order Approving Compliance Tariffs in Case
4 No. ER-2008-0318?

5 JUDGE JORDAN: Yes, the Commission will
6 take official notice of that.

7 MR. ROAM: Judge, if I may weigh in on the
8 earlier discussion. I think I too was a little confused.
9 I was anticipating that there would be certain facts
10 stated and the parties would be given an opportunity to
11 object to those facts being taken into account for
12 administrative notice.

13 You know, and this may be an untimely
14 objection, but I would like to see what document it is
15 that Mr. Mitten has asked to be admitted into evidence,
16 have an opportunity to review that document to see whether
17 or not we object to it. And I'm not talking about the
18 case. I'm talking about the Staff's suggestions.

19 JUDGE JORDAN: Well, insofar as the motion
20 to take official notice is pretty close to superfluous
21 since Mr. Mitten can simply refer to it in a brief, I'm
22 going to overrule that objection.

23 MR. MITTEN: The document's available in
24 EFIS, your Honor.

25 MR. ROAM: Right. Is that -- and I don't

1 know what the practice is. Is that something that doesn't
2 require administrative notice, that it can be referred to
3 in the briefs without it being admitted as
4 administrative -- for administrative notice purposes? I
5 don't know. I actually don't know the answer to that?

6 JUDGE JORDAN: I don't think it's a
7 question of practice. I think it's a question of
8 evidence, and the governing statute, Section 536.070,
9 actually refers to agency documents in a couple of ways.
10 One of them is by official notice, which an agency may
11 always take with regard to its own files, and the other is
12 the provision that says that agency documents don't have
13 to be produced at the hearing in a contested case. They
14 may simply be referred to.

15 So under either of those provisions, the
16 Commission will take notice of what's in its files.

17 MR. ROAM: Okay.

18 BY MR. MITTEN:

19 Q. Ms. Mantle, were you present in the hearing
20 room earlier today when Ms. Barnes talked about the
21 N factor tariff?

22 A. Yes.

23 Q. And as she described it, under the N factor
24 tariff, if usage for Noranda's rate class is reduced by
25 more than 40,000 kilowatt hours in a particular month,

1 **Ameren Missouri gets to keep all of the revenues it**
2 **derives from off-system sales; is that correct?**

3 A. No, that's not correct.

4 **Q. How does the N factor tariff work?**

5 A. The N factor says, if Noranda's load is
6 40 million kilowatt hours lower than the set in the
7 billing units used in the last rate case, then Ameren gets
8 to keep the revenues for the amount of reduction that
9 Noranda's load has been reduced. Anything over that then
10 does flow through the fuel adjustment clause back to the
11 ratepayers, 95 percent of what is above what was already
12 in permanent rates.

13 **Q. If you meet the threshold that's in the**
14 **N factor tariff, Ameren Missouri gets to keep all of the**
15 **off-system sales revenues, is that correct, up to the**
16 **point that the company is made whole? Excuse me.**

17 A. Actually, I think it -- I don't -- let me
18 find the tariff to really answer, please. The tariff says
19 all off-system sales revenue derived from all kilowatt
20 hour of energy sold off-system due to the entire reduction
21 shall be excluded from OSSR. It does not say anything
22 about matching the revenues that would have been achieved
23 from Noranda.

24 **Q. Would you agree with me that the reason**
25 **that Ameren Missouri gets to keep those off-system sales**

1 revenues is to mitigate the financial impact of losing a
2 significant portion of its Noranda load?

3 A. This N factor was agreed to in a
4 stipulation and an agreement.

5 Q. Could you answer my question yes or no?

6 A. I'm trying -- I would like to answer your
7 question, but I cannot because the discussions for that
8 Stipulation & Agreement are considered confidential and I
9 cannot disclose them.

10 MR. DOTTHEIM: Judge, I'm going to object
11 on the basis of what Ms. Mantle just said. And earlier
12 today I had marked as an exhibit Staff Exhibit 6, the
13 Commission's Order Approving First Stipulation &
14 Agreement, approving the stipulation -- the Stipulation &
15 Agreement which approved the N factor. And the N factor,
16 again, was approved by a stipulation and agreement, and it
17 contains the standard boilerplate for stipulations and
18 agreements on page 10, for example, under general
19 provisions, A, the stipulation is being entered into for
20 the purpose of disclosing of the issues, and as Ms. Barnes
21 identified, there are a number of issues that are disposed
22 of in this Stipulation & Agreement.

23 This Stipulation is being entered into for
24 the purpose of disposing of the issues that are
25 specifically addressed in this stipulation. In presenting

1 this Stipulation, none of the signatories shall be deemed
2 to have approved, accepted, agreed, consented or
3 acquiesced to any ratemaking principle or procedural
4 principle, including without limitation any method of cost
5 or revenue determination or cost allocation or revenue
6 related methodology. None of the signatories shall be
7 prejudiced or bound in any manner by the terms of this
8 stipulation, whether it is approved or not, in this or any
9 other proceeding other than a proceeding limited to
10 enforce the terms of this stipulation, except as otherwise
11 expressly specified herein.

12 JUDGE JORDAN: Will counsel repeat the
13 question?

14 MR. MITTEN: Let me rephrase it. It wasn't
15 my intention to get behind the face of the stipulation
16 that was entered into in that case.

17 JUDGE JORDAN: I will sustain the
18 objection. You may rephrase.

19 BY MR. MITTEN:

20 Q. By keeping the off-system sales revenues
21 that it is allowed to keep under the N factor tariff, does
22 Ameren, in fact, mitigate the financial impact of losing a
23 significant portion of its Noranda load?

24 A. The way I read it, it can mitigate or even
25 exceed the revenues it receives from its Noranda load.

1 Q. And the financial impacts that the N factor
2 allows Ameren Missouri to mitigate, are those the same
3 financial impacts that Ameren Missouri is seeking to defer
4 in this case?

5 A. Yes.

6 MR. MITTEN: I don't have any further
7 questions. Thank you, your Honor.

8 JUDGE JORDAN: Questions from the Bench.

9 QUESTIONS BY JUDGE JORDAN:

10 Q. Chairman Gunn had some issues for
11 clarification, if you feel that you can address this. The
12 amounts that are at issue here, variously characterized as
13 lost revenue, fixed costs, ungenerated revenue, are these
14 the same amounts that were at issue in the case -- in the
15 case we have been calling the prudence review?

16 A. There's actually two prudence review cases.
17 The first one, the Commission ordered that 17 million be
18 returned. Those were rev-- the margin from those
19 contracts.

20 Q. Right.

21 A. Now, the second one is 26 million, but what
22 the company is asking for is 35.6 million. So -- and even
23 the 17 plus the 26 is not all the revenues from the AEP
24 and Wabash contracts. Those contracts continued even
25 after the ER-2010-0036 case, but they were flowed through

1 the fuel adjustment clause.

2 Q. Okay. Let me ask it this way. The amounts
3 at issue here today, can you say whether they were
4 intended to be recovered in those contracts?

5 A. I believe Ameren intended to recover those
6 through those contracts, yes.

7 Q. That's my question.

8 A. Yes.

9 JUDGE JORDAN: Thank you. That's all I
10 have. Anything from Commissioner Jarrett?

11 COMMISSIONER JARRETT: Good afternoon,
12 Ms. Mantle.

13 THE WITNESS: Good afternoon.

14 COMMISSIONER JARRETT: I don't have any
15 questions. Thank you.

16 JUDGE JORDAN: I am seeing no questions
17 from Commissioner Kenney, and I have no further inquiry.
18 Do we have any recross from BJH?

19 MS. LANGENECKERT: No.

20 JUDGE JORDAN: From the Office of Public
21 Counsel?

22 MR. MILLS: Yes, sir.

23 RECROSS-EXAMINATION BY MR. MILLS:

24 Q. With respect to the questions that
25 Judge Jordan just asked you, and I think he phrased it in

1 terms of intent, but did not Ameren, in fact, recover the
2 revenues that it would have recovered from Noranda through
3 the AEP and Wabash contracts?

4 A. Recovered that plus more.

5 Q. That plus more. And then subsequently had
6 to return some of that to the customers?

7 A. That is correct.

8 Q. But they did actually recover the revenues
9 plus more?

10 A. Yes.

11 MR. MILLS: No further questions.

12 JUDGE JORDAN: Recross from MIEC?

13 MR. ROAM: No, Judge.

14 JUDGE JORDAN: Recross from Staff?

15 MR. DOTTHEIM: Yes.

16 MR. MITTEN: Your Honor, could the company
17 be allowed to recross before the Staff redirects?

18 JUDGE JORDAN: Hang on just a second. I
19 believe you are correct in the order of recross.

20 RE CROSS-EXAMINATION BY MR. MITTEN:

21 Q. Ms. Mantle, I want to make sure the record
22 is clear as to the differences between the amounts that
23 were issued -- at issue in EO-2010-0255 and the amounts
24 that are at issue in this case.

25 It's my recollection that the amount at

1 issue in the prudence review case, and I'm talking about
2 both the 255 case and the current Staff prudence review,
3 is \$42 million in revenues that Ameren Missouri derived
4 from the sale of power to Wabash and AEP; is that correct?

5 A. I believe it's margin. I don't think it's
6 revenues. I think costs have come out of that, the cost
7 to provide for those, so -- but it is 17.2 million plus
8 26.3, so it's just 43 million instead of the 42 you
9 mentioned.

10 Q. And the amount at issue in this case, the
11 amount that the company is asking to defer is just a
12 little short of \$36 million; is that correct?

13 A. I think it's \$35.6 million as of the
14 agreement read by Mr. Dottheim this morning.

15 Q. And of the approximately \$43 million that
16 was at issue in the prudence cases, the margin on the
17 sales to AEP and Wabash, in Case No. ER-2010-0255, the
18 company was ordered to refund 95 percent of the amount
19 that it had collected up to that point; is that correct?

20 A. It's EO-2010-0255, yes. That was -- and
21 the 95 percent was the 17 million.

22 Q. And in the pending prudence review, which
23 deals with the balance of the approximately \$43 million in
24 margin from those two sales contracts, it's Staff's
25 position that the company should refund 95 percent of that

1 balance; is that correct?

2 A. And I believe the \$26 million is that
3 95 percent.

4 Q. And the 30 -- approximately \$36 million in
5 costs that Ameren Missouri is attempting to defer in this
6 case, it's the company's contention that those are fixed
7 costs that were lost as a result of decreased sales to
8 Noranda during a 14-month period following the January
9 2009 ice storm; is that correct?

10 A. I believe you characterized your position,
11 yes.

12 MR. MITTEN: Thank you. No further
13 questions.

14 JUDGE JORDAN: And now redirect from Staff.

15 MR. DOTTHEIM: Yes. Thank you.

16 REDIRECT EXAMINATION BY MR. DOTTHEIM:

17 Q. Ms. Mantle, regarding a question asked on
18 page 8 of your rebuttal testimony by Mr. Mitten, in regard
19 to Staff's Suggestions in Support of the Unanimous
20 Stipulation & Agreement respecting assumptions by the
21 Staff about off-system sales, his question about
22 assumptions by the Staff, do you recall if there were any
23 assumptions by the Staff about a fuel adjustment clause?

24 A. Not at that time, no. There was no fuel
25 adjustment clause available for electric utilities.

1 MR. DOTTHEIM: Thank you. No further
2 questions.

3 JUDGE JORDAN: You may stand down. I'd
4 like to take a brief break for about ten minutes before we
5 begin with our next witness. Ten minutes. We'll go off
6 the record for that time.

7 (A BREAK WAS TAKEN.)

8 JUDGE JORDAN: Staff ready to continue with
9 its case in chief?

10 MR. DOTTHEIM: Yes. Staff would call as
11 its next witness Mark L. Oligschlaeger.

12 (Witness sworn.)

13 JUDGE JORDAN: Please be seated.

14 MARK L. OLIGSCHLAEGER testified as follows:

15 DIRECT EXAMINATION BY MR. DOTTHEIM:

16 Q. Would you please state your name for the
17 record?

18 A. Yes. My name is Mark L. Oligschlaeger.

19 Q. And would you please state your place of
20 employment?

21 A. The Missouri Public Service Commission.

22 Q. And the nature of your employment?

23 A. I am the, currently the acting manager of
24 the auditing unit within the Commission.

25 Q. Okay. And your address?

1 A. My business address is P.O. Box 360,
2 Suite 440, Jefferson City, Missouri 65102.

3 Q. And are you the same Mark L. Oligschlaeger
4 who has caused to be filed rebuttal testimony that has
5 been marked Staff Exhibit 3?

6 A. I am.

7 Q. And have you caused to be filed what has
8 been marked as Staff -- as your cross surrebuttal
9 testimony, Staff Exhibit 4?

10 A. Yes.

11 Q. At this time do you have any corrections to
12 make to Staff Exhibit 3, your rebuttal testimony?

13 A. Yes, I have two changes. The first one
14 appears on page 10, line 8. The case number that appears
15 there, EO-2010-0036, the letters EO at the beginning
16 should be replaced by the letters ER.

17 My second change is on page 14 of my
18 rebuttal testimony. Hold on. I'm sorry. At page 11 of
19 my rebuttal testimony, line 14, the word association
20 should be replaced with the word associated.

21 Q. Are those all the changes you have to what
22 has been marked as Staff Exhibit 3?

23 A. They are.

24 Q. Do you have any changes to what has been
25 marked as Staff Exhibit 4, your cross surrebuttal

1 testimony?

2 A. I do not.

3 Q. If I were to ask you the same questions
4 that are contained in Staff Exhibit 3, would your answers
5 as you have just corrected them be the same today?

6 A. They would.

7 Q. Is the information contained in Staff
8 Exhibit 3 true and correct to the best of your knowledge
9 and belief?

10 A. It is.

11 Q. Is the information contained in Staff
12 Exhibit 4, your cross surrebuttal testimony, true and
13 correct to the best of your knowledge and belief?

14 A. It is.

15 Q. And you accept Staff Exhibit 3 as your
16 rebuttal testimony?

17 A. Yes.

18 Q. And Staff Exhibit 4 you accept as your
19 cross surrebuttal testimony?

20 A. Yes.

21 MR. DOTTHEIM: I at this time would offer
22 Staff Exhibit 3 and Staff Exhibit 4.

23 JUDGE JORDAN: Objections?

24 (No response.)

25 JUDGE JORDAN: Seeing none, those exhibits

1 will be entered into the record.

2 (STAFF EXHIBIT NOS. 3 AND 4 WERE RECEIVED
3 INTO EVIDENCE.)

4 MR. DOTTHEIM: And I would tender
5 Mr. Oligschlaeger for cross-examination.

6 JUDGE JORDAN: Thank you.
7 Cross-examination from BJH?

8 MS. LANGENECKERT: None for
9 Mr. Oligschlaeger.

10 JUDGE JORDAN: From the Office of Public
11 Counsel?

12 MR. MILLS: Just a couple.

13 CROSS-EXAMINATION BY MR. MILLS:

14 Q. Mr. Oligschlaeger, do you have a copy of
15 Staff Exhibit 5 there with you? That is the first eight
16 pages of the USOA.

17 A. I actually have the entire USOA with me.

18 Q. Well, I'm not going to talk to you about
19 the whole USOA. I'm going to ask you a question or two
20 about item No. 7, extraordinary items that has come up
21 several times in the hearing so far today. Do you see
22 that section?

23 A. I do.

24 Q. The second sentence reads, those items
25 related to the effects of events and transactions which

1 have occurred during the current period and which are of
2 unusual nature and infrequent occurrence shall be
3 considered extraordinary items. Did I read that
4 correctly?

5 A. You did.

6 Q. As we sit here today, what is the current
7 period?

8 A. For most companies using a calendar year
9 accounting basis, it would be the calendar year of 2012.

10 Q. And do you know whether or not Ameren
11 Missouri uses the calendar year?

12 A. I believe they do.

13 Q. So for Ameren Missouri, the current period
14 began in January 1 of 2012, correct?

15 A. Yes.

16 MR. MILLS: That's all I have. Thank you.

17 JUDGE JORDAN: Okay. Any cross-examination
18 from MIEC?

19 MR. ROAM: Just a couple questions, Judge.

20 CROSS-EXAMINATION BY MR. ROAM:

21 Q. Mr. Oligschlaeger, you are a certified
22 public accountant; is that correct?

23 A. I am.

24 Q. I just have a couple of accounting
25 questions for you. If a utility has positive net income

1 in a given period, has it recovered all of its fixed costs
2 for that period?

3 A. By definition, yes.

4 Q. Has it recovered all of its variable costs
5 for that period?

6 A. Yes.

7 Q. So all of its operations and management
8 costs would have been covered if it has a positive net
9 income; is that correct?

10 A. That is correct.

11 Q. And also depreciation expenses would have?

12 A. Yes.

13 Q. And taxes as well?

14 A. Yes.

15 Q. So in this case, is it your position that
16 there are, in fact, no lost fixed costs for Ameren
17 Missouri to defer or for this Commission to defer?

18 A. There -- I'm just having a little bit of
19 trouble with the form of the question.

20 Q. I can rephrase it.

21 A. I was going to say, it is our position, the
22 Staff's position that Ameren fully recovered all of its
23 costs, both fixed and variable, during the period of time
24 in which the load to Noranda would have been affected by
25 the January 2009 ice storm.

1 MR. ROAM: Okay. Thank you. That answers
2 my question.

3 JUDGE JORDAN: Cross-examination from
4 Ameren?

5 MR. MITTEN: Thank you, your Honor.
6 CROSS-EXAMINATION BY MR. MITTEN:

7 Q. Mr. Oligschlaeger, do you have a copy of
8 the transcript of your deposition in this case?

9 A. I do.

10 Q. And I notice that you took with you to the
11 stand a number of documents. I'm not going to ask you to
12 catalog all those documents for me, but I will ask you, if
13 in answering my question you refer to anything that is not
14 testimony or exhibits in this case or is not your
15 deposition transcript in this case, would you please tell
16 me?

17 A. I will intend to do so, and please remind
18 me if I don't.

19 Q. Mr. Oligschlaeger, at page 6 of your
20 rebuttal testimony in this case, you state that generally
21 the Commission requires applicants for AAOs to satisfy two
22 standards: First, that the costs that the utility is
23 seeking to defer pertain to an extraordinary event; and
24 second, that the costs associated with the event be
25 material; is that correct?

1 A. Yes.

2 Q. Now, during your deposition in this case,
3 you told me that the definition of extraordinary items
4 that is found in General Instruction No. 7 of the Uniform
5 System of Accounts controls the determination of whether
6 the event giving rise to an application for an AAO is
7 extraordinary; is that correct?

8 A. Yes.

9 Q. Now, you have in front of you a copy of
10 Staff Exhibit No. 5, which includes General Instruction
11 No. 7; is that correct?

12 A. Yes, I do.

13 Q. Do you agree with me that in the first
14 sentence of General Instruction 7 it says, all items of
15 profit and loss?

16 A. It states that, yes.

17 Q. And during your deposition, you told me
18 that rate -- the rate revenues that a utility collects
19 from customers is an item of profit or loss; is that
20 correct?

21 A. Yes.

22 Q. In this case, Ameren Missouri is requesting
23 authority to defer to Account 182.3 the fixed costs that
24 the company was unable to collect during the 14-month
25 period that Noranda's smelting operations were

1 curtailed.

2 During your deposition, you told me that
3 collecting rates is the method that Ameren Missouri uses
4 to collect fixed costs from its customers; is that
5 correct?

6 A. Yes.

7 Q. Do you have -- you said you had a complete
8 copy of the Uniform System of Accounts; is that correct?

9 A. Yes, it is.

10 Q. Could you please turn to the description of
11 Account 182.3, other regulatory assets, that appears
12 there?

13 A. I am there.

14 Q. And that's the description of the account
15 where Ameren Missouri proposes to book the fixed costs it
16 wasn't able to collect from Noranda during the period
17 Noranda's smelting operations were curtailed; is that
18 correct?

19 A. That is your proposal, yes.

20 Q. And during your deposition, you told me
21 that Staff has never challenged that lost revenues can be
22 deferred to Account 182.3; is that correct?

23 A. We have not taken a position that it is
24 inherently unlawful or -- well, unlawful to do so.

25 Q. Now, directing your attention to subpart A

1 of the description of Account 182.3, that subpart says
2 that, quote, this account shall include the amount of
3 regulatory created assets, close quote; is that correct?

4 A. Yes.

5 Q. And during your deposition, you told me
6 that you assume a regulatory created asset is the same
7 thing as a regulatory asset; is that correct?

8 A. Yes.

9 Q. Could you please now turn to the definition
10 No. 31 in the Uniform System of Accounts, which is the
11 definition of regulatory assets and liabilities?

12 A. I am there.

13 Q. That definition specifically states that a
14 regulatory asset can arise from revenues and expenses; is
15 that correct?

16 MR. ROAM: Judge, may I object to that
17 statement, to that question?

18 JUDGE JORDAN: You may.

19 MR. ROAM: In the sense that that actually
20 misstates the exhibit. I believe the exhibit says
21 regulatory assets and liabilities.

22 JUDGE JORDAN: Any response to that
23 objection?

24 MR. MITTEN: The witness can answer the
25 question. If he thinks I've misrepresented it, he can say

1 so.

2 JUDGE JORDAN: Well, I can read it also,
3 and that's not a quotation of the language.

4 MR. MITTEN: Let me rephrase the question.

5 BY MR. MITTEN:

6 Q. Mr. Oligschlaeger, would you agree that the
7 definition of regulatory assets and liabilities that
8 appears in the Uniform System of Accounts specifically
9 states that regulatory assets and liabilities arise from
10 specific revenues; is that correct?

11 A. That is accurate. That's part of what's in
12 the definition, yes.

13 Q. And the definition also says that a
14 regulatory asset can arise from losses; is that correct?

15 A. Again, that is correct.

16 Q. And during your deposition, you told me
17 that you interpret the reference to losses to mean
18 financial losses; is that correct?

19 A. Yes.

20 Q. During your deposition, you also told me
21 that for a utility like Ameren Missouri, a significant
22 reduction in revenues between rate cases can cause the
23 utility to suffer a financial loss; is that correct?

24 A. Yes.

25 Q. And during your deposition, you also told

1 me that, although as a general principle Staff believes
2 that it's never appropriate to allow a deferral of lost
3 revenues, Staff believes there is at least one exception
4 to that general principle; is that correct?

5 A. That's correct.

6 Q. And that exception is for lost revenues
7 that relate to cost recovery and demand side programs; is
8 that correct?

9 A. Generally speaking, that is correct.

10 Q. Could you tell me where in the Uniform
11 System of Accounts it states that lost revenues related to
12 demand side programs can be deferred but other revenues
13 cannot be deferred?

14 A. The Staff's position is not based on the
15 Uniform System of Accounts in that instance.

16 Q. So would your answer be that there's
17 nowhere in the Uniform System of Accounts that it says
18 that?

19 A. The Uniform System of Accounts does not
20 address that.

21 Q. Is there anywhere in the Uniform System of
22 Accounts where it says that lost revenues related to
23 demand side management program or demand side programs
24 should be deferred but other types of revenues should not?

25 A. That is not addressed.

1 Q. During your deposition, you also told me
2 that you agree that the provisions of the Uniform System
3 of Account either state or imply that revenues is one of
4 the types of items that can be deferred to Account 182.3;
5 is that correct?

6 A. Yes.

7 Q. Could you please turn to page 18 of your
8 rebuttal testimony, Mr. Oligschlaeger, and I'm looking at
9 the answer that begins on line 7 of page 18. There you
10 say that it's theoretically possible that a reduction in
11 revenues associated with an extraordinary event that
12 results in an adverse financial consequence could require
13 regulatory action, but you go on to say that, in its
14 application, Ameren has not alleged that the reduction in
15 its revenues due to the ice storm were of such a magnitude
16 that it materially impaired its financial viability or
17 negatively affected its ability to provide safe and
18 adequate service to its customers; is that correct?

19 A. Yes.

20 Q. When I asked you during your deposition
21 what provision of the USOA requires a showing that a
22 utility's financial viability is impaired before it can be
23 allowed to defer items to Account 182.3, you told me that
24 there is no such standard in the Uniform System of
25 Accounts; is that correct?

1 A. That is correct, and, in fact, this entire
2 discussion that you're referencing from my testimony does
3 not concern Staff's suggested criteria for allowing
4 deferral of revenues or expenses.

5 Q. And I also asked you what provision of the
6 Uniform System of Accounts requires a showing that a
7 utility's ability to provide safe and adequate service has
8 been negatively affected before it can be allowed to defer
9 items to Account 182.3, and you told me that that standard
10 isn't in the Uniform System of Accounts either; is that
11 correct?

12 A. That is true, and again, that is not the
13 Staff's suggested standard for granting of Accounting
14 Authority Orders.

15 Q. And you also told me that you're not aware
16 of any prior Commission cases where a utility was required
17 to show that its financial viability is impaired before it
18 can qualify for an Accounting Authority Order; is that
19 correct?

20 A. That's correct.

21 Q. And you told me that you also are not aware
22 of any prior Commission decisions where a utility has been
23 required to show that its ability to provide safe and
24 adequate service has been negatively affected before it
25 can qualify for an AAO; is that also correct?

1 A. That's correct.

2 Q. Now, during your deposition you also stated
3 that, under General Instruction No. 7, that in order to be
4 considered an extraordinary event, it has to have a
5 5 percent or greater effect on a utility's net income; is
6 that correct?

7 A. Can you repeat that question, please?

8 Q. During your deposition, you also stated
9 that, under USOA General Instruction No. 7, that in order
10 to be considered extraordinary, an event has to have a
11 5 percent or greater effect on a utility's net income; is
12 that correct?

13 A. Yes, with the caveat that the general
14 instruction also states that the 5 percent establishes the
15 limit below which a utility must seek explicit
16 authorization from the regulatory body to defer a
17 particular financial item.

18 Q. And would an effect of 5 percent or greater
19 on a utility's net income satisfy the second of the two
20 criteria that you say the Commission has established for
21 granting AAOs in Missouri?

22 A. That is generally the Staff's position.

23 Q. You also agreed during your deposition that
24 a financial impact on a utility's net income of
25 approximately 5 percent would not impair either the

1 utility's financial viability or its ability to provide
2 safe and adequate service; is that correct?

3 A. That's certainly generally correct, yes.

4 Q. And again, the standard for an AAO under
5 the USOA and under this Commission's past decisions is
6 5 percent of net income, not 100 percent of net income; is
7 that correct?

8 A. That's correct.

9 Q. During your deposition, you also told me
10 that the Uniform System of Accounts does not prescribe one
11 set of rules or criteria for the deferral of expenses and
12 a different set of rules or criteria for the deferral of
13 revenues or other items affecting a utility's net income;
14 is that correct?

15 A. Yes.

16 Q. And before we leave the Uniform System of
17 Accounts, you also told me during your deposition that the
18 USOA gives the Commission the authority to allow a utility
19 to defer revenues that were not collected as a result of
20 an extraordinary event if the Commission so chooses to do
21 so?

22 A. Again, we have not challenged in a legal
23 sense the Commission's ability to do so if it saw fit.

24 Q. I want to change focus for a few minutes,
25 Mr. Oligschlaeger. You told me during your deposition

1 that you had read the Commission's final order in the
2 Empire District Electric Company's recent AAO case, which
3 is Case No. EU-2011-0387, and were aware that the
4 Commission stated in that order that the AAO technique
5 protects the utility from earnings shortfalls; is that
6 correct?

7 A. I have read the order, and the order states
8 that, yes.

9 Q. And you also told me that you agree with
10 that statement; is that correct?

11 A. I think in my testimony I indicated that
12 that is one of the results of granting a deferral order to
13 a company. It is not necessarily or should not
14 necessarily be the primary rationale for doing so.

15 Q. Could you please turn to the transcript of
16 your deposition, beginning on page 21, line 25, and let me
17 know when you are there.

18 A. I am there.

19 Q. Beginning on line 25 appears the following
20 question: Let me ask the question a different way. Do
21 you agree with the statement that appears in the
22 Commission's final order in Case No. EU-2011-0387 that the
23 AAO technique protects the utility from earnings
24 shortfalls?

25 And what was your answer to that question?

1 A. The answer to that particular question was
2 yes.

3 Q. Earnings shortfall, that means a utility's
4 rate of return is reduced below what it otherwise would
5 have been; is that correct?

6 A. That's a reasonable definition.

7 Q. You testified at your deposition that you
8 agree that in most circumstances an extraordinary event
9 will only cause a potential shortfall in a utility's
10 earnings, but it won't eliminate earnings altogether; is
11 that correct?

12 A. In most instances, yes.

13 Q. And that's the situation in the Empire AAO
14 case that I mentioned a moment ago. The May 2001 tornado
15 that struck Joplin caused a potential shortfall in
16 Empire's earnings, but it didn't eliminate the company's
17 earnings altogether; is that correct?

18 A. That's correct.

19 Q. And that was also the case for Southern
20 Union/MGE in its recent AAO case, which was Case
21 No. GU-2011-0392, the Joplin tornado caused a potential
22 shortfall in earnings, but it didn't eliminate earnings
23 altogether; is that correct?

24 A. That's correct.

25 Q. Both Empire and MGE were granted Accounting

1 Authority Orders; is that correct?

2 A. That's correct.

3 Q. You also stated during your deposition that
4 it is Staff's position that an AAO not be granted to a
5 utility with a positive rate of return, that that
6 principle applies to requests to defer lost revenues but
7 does not apply to requests to defer expenses; is that
8 correct?

9 A. Can you repeat that, please?

10 Q. You also stated during your deposition that
11 it is Staff's position that an AAO should not be granted
12 to a utility with a positive rate of return, and that that
13 principle applies to requests to defer lost revenues but
14 it does not apply to requests to defer expenses?

15 A. And your question?

16 Q. Is that what you stated in your deposition?

17 A. I don't recall stating that, and that is
18 not my position.

19 Q. Could you turn to page 24 of your
20 deposition transcript? The question is: Now, does the
21 requirement that an AAO not be granted if a utility has a
22 positive rate of return only applies to requests to defer
23 lost revenues as opposed to defer expenses? And your
24 answer?

25 A. My answer at that time was, in the Staff's

1 position, yes. However, to a very similar question --

2 Q. Mr. Oligschlaeger, there's not a question
3 on the table right now.

4 A. Okay.

5 Q. You also told me that it's Staff's --
6 excuse me. Restart the question.

7 You also told me during your deposition
8 that Staff's position is not based on any provision of the
9 Uniform System of Accounts; is that correct?

10 A. What particular position is that?

11 Q. The position I just stated that the
12 requirement that an AAO not be granted if a utility has a
13 positive rate of return only applies to requests to defer
14 lost revenues as opposed to defer expenses?

15 A. That criteria does not appear in the USOA.

16 Q. Now, at page 18 of your rebuttal testimony,
17 you testify that it is theoretically possible that, as a
18 result of an extraordinary event, a utility could suffer a
19 reduction in revenues where regulatory action might be
20 required. You then state that the appropriate course in
21 such cases would be to file for interim emergency rate
22 relief; is that correct?

23 A. That is correct.

24 Q. During your deposition, you told me that,
25 in Missouri, a utility generally has to show minimal or

1 negative earnings in order to qualify for interim
2 emergency rate relief; is that correct?

3 A. To my knowledge, that has typically been
4 the instances in which companies may have been granted
5 interim relief in the past, though the Commission has
6 never stated that as a criterion.

7 Q. And you also told me that the last time you
8 recall a Missouri utility qualifying for emergency interim
9 rate relief was in the early 1980s; is that correct?

10 A. That's correct. That's the last time I can
11 recall, though I also said that I couldn't categorically
12 say it hasn't happened since then.

13 Q. But it's Staff's -- but Staff's proposed
14 remedy for a utility that suffers an earnings shortfall as
15 a result of its inability to collect revenues or fixed
16 costs as a result of an extraordinary event, your proposed
17 remedy is to file for emergency interim rate relief; is
18 that correct?

19 A. If the company believes that its situation
20 justifies that, yes.

21 Q. Where in the Uniform System of Accounts
22 would I find language that emergency interim rate relief
23 is the appropriate method to deal with an earnings
24 shortfall due to a utility's inability to collect revenue
25 or fixed costs as a result of an extraordinary event?

1 A. Those considerations are not addressed in
2 the Uniform System of Accounts.

3 Q. And are there any prior decisions of the
4 Commission that support Staff's position that interim rate
5 relief is the appropriate method to deal with earnings
6 shortfalls due to a utility's inability to collect
7 revenues or fixed costs as a result of an extraordinary
8 event?

9 A. I'm not aware of any past precedent for
10 this issue specifically coming up.

11 Q. Mr. Oligschlaeger, during your deposition,
12 you agreed that you've been employed by the Commission for
13 more than 30 years, and during that period you've worked
14 on dozens of utility rate cases; is that correct?

15 A. That is correct.

16 Q. You also told me that you are generally
17 familiar with the ratemaking process; is that correct?

18 A. I think that's fair to say.

19 Q. And based on that knowledge and experience,
20 during your deposition you told me that you agree with the
21 following definition: The cost of service of a public
22 utility is the sum of reasonable and prudent operating
23 expenses, depreciation expense, taxes and a reasonable
24 rate of return on the net value of the utility's property
25 that is devoted to the public service. Is that correct?

1 A. That sounds right.

2 Q. And under that definition, does a utility
3 have a right to a reasonable opportunity to earn a fair
4 rate of return?

5 A. The word "right" suggests some legal
6 considerations of which I am not an expert in. My opinion
7 is that in the context of setting rates for a utility, the
8 utility should be afforded a reasonable opportunity to
9 earn its authorized rate of return.

10 Q. And while we're still on the definition,
11 the rate of return on the net value of the utility's
12 property that is devoted to the public service, does that
13 include an amount for the payment of interest on debt?

14 A. It does.

15 Q. And the balance of the rate of return would
16 be the return on equity; is that correct?

17 A. Generally speaking, if equity includes both
18 preferred stock and common stock, I would agree with that.

19 Q. During your deposition, you told me that
20 you agree that if rate revenues are unexpectedly reduced
21 between rate cases without a corresponding reduction in
22 expenses, the reduction in revenues would cause the
23 utility's rate of return to decline; is that correct?

24 A. That is accurate.

25 Q. At some point would you expect an

1 unexpected reduction in a utility's revenues to affect the
2 utility's ability to earn a fair rate of return?

3 A. Depending on the magnitude of that
4 reduction, that might lead the utility to need to file for
5 rate relief.

6 Q. That wasn't my question, Mr. Oligschlaeger.
7 At some point would an unexpected reduction in a utility's
8 revenue affect the utility's opportunity to earn a fair
9 rate of return? Let me -- I may have misstated the
10 question. Let me state it again.

11 At some point would an unexpected reduction
12 in a utility's revenues affect the utility's opportunity
13 to earn a fair rate of return?

14 A. Yes.

15 Q. And the utility would have to absorb that
16 reduction in its rate of return until it's able to file a
17 rate case and get new rates authorized; is that correct?

18 A. Yes.

19 Q. In Missouri, the rate case process
20 generally takes 11 months from start to finish; is that
21 correct?

22 A. It can take up to 11 months, and often it
23 does take 11 months.

24 Q. And it takes several months before that to
25 actually prepare the case for filing, wouldn't you agree?

1 A. That sounds reasonable.

2 Q. Do you know whether or not the unexpected
3 loss of Noranda's revenue due to the January 2009 ice
4 storm affected Ameren Missouri's ability to earn a fair
5 rate of return?

6 A. By their own testimony, it did not
7 materially because they had offsetting sources of revenues
8 at the time of the reduction.

9 Q. Where in Ameren Missouri's testimony does
10 it say that the effects of the January 2009 ice storm did
11 not affect the company's ability to earn a fair rate of
12 return?

13 A. I believe -- I can look for a specific
14 cite. I believe Ms. Barnes stated that the reason why
15 this particular regulatory treatment was not sought prior
16 to July 2011 is that, prior to that time, the company
17 assumed they had a source of income from off-system sales
18 that offset in part or actually entirely the effects of
19 the reduction in load to Noranda.

20 Q. I'd like you to look in Ms. Barnes'
21 testimony and tell me where she said that the effects of
22 the 2009 ice storm did not affect the company's ability to
23 earn a fair rate of return.

24 A. Well, one such place is Mrs. Barnes'
25 surrebuttal testimony, and generally the question --

1 Q. Which page, please?

2 A. Page 12. Generally the question begins at
3 page 1 and ends at -- or begins at line 1 and ends on
4 line 15.

5 Q. And could you tell me specifically where
6 she says that the 2009 ice storm did not affect the
7 company's ability to earn a fair rate of return?

8 A. I don't think she says those words
9 specifically. Her statements there are the basis by my
10 interpretation where I think that's a reasonable
11 description of the company's position.

12 Q. But her statement there is premised on
13 Ameren Missouri's ability to keep all of the revenues it
14 derived from the sale of power to Wabash and AEP; isn't
15 that correct?

16 A. Yes.

17 Q. But the company hasn't been able to keep
18 all of those revenues; isn't that correct?

19 A. Since April 2011, those are the facts that
20 face us, yes.

21 Q. In your deposition, you told me that the
22 overall cost of service is synonymous with the revenue
23 requirement the Commission uses to set rates; is that
24 correct?

25 A. I think what I stated is one common

1 definition of the term revenue requirement, that is true.

2 Q. And you also told me that in a general rate
3 case, rates are set to recover revenues that equal the
4 overall cost of service; is that correct?

5 A. I believe so.

6 Q. And the process for deciding how the
7 revenue requirement gets translated into rates is called
8 rate design; is that correct?

9 A. That's my understanding.

10 Q. One part of the rate design process
11 involves allocating or assigning a utility's overall
12 revenue requirement among its various customer classes; is
13 that correct?

14 A. That's again my understanding.

15 Q. And during your deposition, you told me
16 that you agreed that the overall revenue requirement that
17 is assigned to each rate class consists of operating
18 expenses, including fixed costs, depreciation expense,
19 taxes, and a portion of the utility's rate of return; is
20 that correct?

21 A. That is again my understanding of how it
22 works.

23 Q. Once the revenue requirement has been
24 allocated or assigned to the various rate classes, the
25 final part of the rate design process is to calculate

1 rates that will allow the utility to collect from each
2 rate class the portion of the revenue requirement that has
3 been assigned to that rate class; is that correct?

4 A. That's how I understand it.

5 Q. And you also told me during your deposition
6 that it is your understanding that the rate design process
7 that we just discussed is the process that was used when
8 rates were designed and set in Case No. ER-2008-0318; is
9 that correct?

10 A. That's what I would expect, though I was
11 not personally involved in that process.

12 Q. Noranda Aluminum is Ameren Missouri's -- is
13 in Ameren Missouri's large transmission service rate class
14 and, in fact, is the sole customer in that rate class; is
15 that correct?

16 A. That's my understanding.

17 Q. And since Noranda is the only customer in
18 its rate class, the rates the Commission designed in
19 Case No. ER-2008-0318 were designed to recover a specific
20 level of costs from Noranda; is that correct?

21 A. That's how I would expect it to have been
22 performed, yes.

23 Q. And do you agree that fixed costs were part
24 of the costs that were assigned to Noranda's rate class in
25 Case No. ER-2008-0318?

1 A. I would expect they were.

2 Q. And at page 13 of your rebuttal testimony,
3 you state that fixed costs don't vary with the amount, --
4 excuse me -- fixed costs don't carry in amount with
5 fluctuations in sales volumes; is that correct?

6 A. Yes.

7 Q. So Ameren Missouri would still incur the
8 fixed costs that were allocated to Noranda in Case
9 No. ER-2008-0318 even if Noranda ceased to be a customer;
10 is that correct?

11 A. In the short term, that would be correct.

12 Q. If a portion of Ameren's fixed costs were
13 assigned to Noranda and for a 14-month period following
14 the January 2009 ice storm Noranda's smelter operations
15 were curtailed and Noranda was not using as much
16 electricity as normal, during that period, who paid the
17 fixed costs the Commission assigned to Noranda?

18 A. Under the assumptions in your question, no
19 other customers would have directly paid for them, and
20 that would have shown up on Ameren's financial statements
21 as a reduction in profit.

22 Q. At pages 11 and 12 of your testimony, you
23 suggest that Ameren's request for an Accounting Authority
24 Order may substitute retroactive ratemaking; is that
25 correct?

1 A. Yes.

2 Q. Are you aware that in the Commission's
3 final order in the Empire AAO case that we've talked about
4 a couple of times, that the Commission specifically stated
5 that because an AAO simply allows for certain costs to be
6 separately accounted for, for possible future ratemaking,
7 that granting an AAO does not constitute retroactive
8 ratemaking?

9 A. Yes. And I agree that granting an AAO in
10 and of itself does not, to my knowledge, constitute
11 retroactive ratemaking.

12 Q. And you agree that all Ameren Missouri is
13 requesting in this proceeding is the ability to defer to
14 Account 182.3 fixed costs that the company was unable to
15 recover from Noranda for possible future recovery in a
16 rate proceeding?

17 A. I would agree.

18 Q. You do believe, however, that if Ameren
19 Missouri is granted recovery of those deferred costs in a
20 future rate case, that that may constitute retroactive
21 ratemaking?

22 A. Again, I agree.

23 Q. Let me ask you again to look at the
24 definition of regulatory assets and liabilities that
25 appears in the Uniform System of Accounts.

1 A. I am there.

2 Q. Doesn't subpart A of that definition
3 specifically contemplate that deferred items will be
4 included in different periods for the purposes of
5 developing rates?

6 A. Yes, in a different period than the current
7 period in which authorization for deferral is sought.

8 Q. Does it strike you as odd that the Uniform
9 System of Accounts would specifically contemplate an
10 action that you say is unlawful retroactive ratemaking?

11 A. Well, No. 1, I am not an authority on what
12 is unlawful retroactive ratemaking, but to my knowledge,
13 Staff has never held the opinion that all Accounting
14 Authority Orders must result in retroactive ratemaking if
15 rate recovery is given to deferred costs in all
16 circumstances.

17 Q. In fact, during your deposition you told me
18 that during your 30-plus years on Staff, you have seen the
19 Commission include in the revenue requirement used to set
20 rates costs that were incurred prior to the beginning of a
21 test year; is that correct?

22 A. Costs that were incurred prior to, yes,
23 that is correct.

24 Q. And you also told me that, when that
25 happens, that doesn't constitute retroactive ratemaking?

1 A. Yes, because generally there are costs in
2 the test year that relate through an amortization or some
3 sort of normalization process to costs originally incurred
4 in a prior period.

5 Q. Let me pose a hypothetical for you that
6 we've talked about during your deposition,
7 Mr. Oligschlaeger. Please assume the following facts:
8 The Commission issues an Accounting Authority Order
9 authorizing a Missouri utility to defer costs incurred or
10 revenues lost during an extraordinary event. The AAO
11 order requires the deferred amounts to be amortized over
12 ten years, commencing April 1st, 2012. The extraordinary
13 event occurred in the third quarter of 2011. All of the
14 deferred costs and revenues were either incurred or lost
15 in 2011, and the utility duly closed its financial records
16 at the end of 2011, and the Commission's AAO order is not
17 issued until mid 2012.

18 Do you understand the assumptions?

19 A. Generally, yes.

20 Q. And you testified during your deposition
21 that you believe the AAO order issued by the Commission in
22 the hypothetical I just gave you was inappropriate because
23 the cost to be deferred were incurred in 2011 but the
24 order authorizing the deferral wasn't issued until 2012
25 after the utility's 2011 books were closed; is that

1 correct?

2 A. That's correct.

3 Q. And you also told me that your conclusion
4 would not change if you found out that even though the AAO
5 order was not issued until 2012, the application for an
6 AAO was filed in 2011; is that correct?

7 A. Under the scenario that the books have been
8 closed at the time of the deferral order, my conclusion
9 would not change.

10 Q. But you also testified that you believe one
11 way to avoid the result, and the result I'm referring to
12 is that the Commission's order would be retroactive
13 ratemaking because the books had been closed, was to book
14 a deferral to Account 182.3 before the Commission grants
15 an AAO; is that correct?

16 A. That would have been one solution. Again,
17 the company's external auditors would have some say in the
18 company's ability to do that.

19 Q. Under the accounting standards and rules
20 that are currently applied to a utility like Ameren
21 Missouri, are you absolutely certain that outside auditors
22 would allow the company to book a deferral without a
23 Commission order authorizing that deferral?

24 A. Certainly. The USOA General Instruction
25 No. 7 gives utilities the option of booking deferrals on

1 their own without Commission authorization if the
2 materiality exceeds 5 percent.

3 Q. But outside auditors aren't just concerned
4 with the Uniform System of Accounts; is that correct?

5 A. That would be correct.

6 Q. So let me reask the previous question.
7 Under all the accounting standards and rules that
8 currently apply to a utility like Ameren Missouri, are you
9 absolutely certain that their outside auditors would allow
10 the company to book a deferral without a Commission order
11 authorizing that deferral?

12 A. I'm not absolutely certain in all
13 circumstances. I think it would depend upon the specific
14 circumstances in terms of how the external auditors would
15 react to that.

16 Q. Mr. Roam pointed out during his
17 cross-examination that you're a CPA; is that correct?

18 A. That's correct.

19 Q. Would you be willing to risk your CPA
20 license by advising a utility to book a deferral to
21 Account 182.3 without a Commission order authorizing that
22 deferral?

23 MR. DOTTHEIM: Objection. I think the
24 question is argumentative.

25 JUDGE JORDAN: I'll sustain that objection.

1 I think I've got the point of this line of questioning.

2 BY MR. MITTEN:

3 Q. You're aware that Ameren Missouri tried to
4 mitigate the effects of the loss of Noranda's revenues by
5 entering into power sales contracts that it believed were
6 exempt from the fuel adjustment clause; is that correct?

7 A. Yes.

8 Q. And Ameren Missouri did not learn that its
9 efforts to mitigate the loss of Noranda's revenues would
10 be unsuccessful until the Commission issued its final
11 order in Case No. EO-2010-0255; is that correct?

12 A. That's correct.

13 Q. And you told me during the deposition that
14 even though the chain of events started with the January
15 2009 ice storm, it wasn't until the order was issued in
16 Case No. EO-2010-0255 in 2011 that Ameren Missouri
17 actually experienced a negative impact on its financial
18 records as a result of Noranda's curtailment of its
19 smelting operations; is that correct?

20 A. Yes, that is my opinion.

21 Q. Now, assuming Ameren Missouri did not learn
22 that it would be unable to recover approximately
23 \$36 million in fixed costs as a result of Noranda's
24 curtailment of its smelting operations following the
25 January 2009 ice storm until the Commission issued its

1 order in Case No. EO-2010-0255, do you still believe that
2 Ameren Missouri's AAO application in this case was not
3 timely filed?

4 A. According to the terms of the USOA itself,
5 that would still be true, yes.

6 Q. How quickly after the extraordinary event
7 giving rise to a request for deferral does the USOA
8 require a utility to file an AAO application?

9 A. The only requirement is that it be filed in
10 the current period that is the period in which the alleged
11 extraordinary event occurred.

12 Q. Are there any specific Commission rules
13 dealing with how quickly an AAO application has to be
14 filed?

15 A. Beyond what's contained in the USOA, which
16 is adopted by the Commission rule, I'm not aware of
17 anything additional.

18 Q. At page 12 of your rebuttal testimony, you
19 state that Ameren Missouri had the opportunity to seek
20 rate treatment of the costs associated with the January
21 2009 ice storm in two previous rate cases, Case Nos.
22 ER-2010-0036 and ER-2011-0028; is that correct?

23 A. Yes.

24 Q. At your deposition, you stated that you
25 agree that at the time of each of those rate cases, Ameren

1 Missouri was seeking to recover the fixed cost it was
2 unable to collect from Noranda by selling off-system --
3 excuse me -- excess power in the off-system market and
4 booking those revenues below the line; is that correct?

5 A. Yes.

6 Q. You also testified that, under those
7 circumstances, Staff would not have supported a proposal
8 by Ameren Missouri to also charge its Missouri ratepayers
9 for the same fixed costs in the company that the company
10 thought it was recovering through the sale of off-system
11 power; is that correct?

12 A. Yes.

13 Q. Now, assume that Ameren Missouri had not
14 attempted to recover the fixed costs it was unable to
15 collect from Noranda through off-system sales. If some or
16 all of those fixed costs were outside the test periods
17 used in Case Nos. ER-2010-0036 or ER-2011-0028, is it
18 likely that Staff would have supported including those
19 costs in the calculation of the revenue requirement in
20 either of those cases?

21 A. Perhaps I'm misunderstanding your question.
22 We would have supported the normal -- recovery of the
23 normal level of fixed costs, fixed expenses as part of
24 your rates. In terms of the revenue losses associated
25 with the Noranda ice storm, how that would have been

1 treated in a rate case, I could only speculate.

2 Q. Well, again, my question only relates to
3 the fixed costs that were lost because of the curtailment
4 of Noranda's operations following the 2009 ice storm. If
5 those lost revenues or fixed costs were outside the test
6 period that was used in either Case No. ER-2010-0036 or
7 ER-2011-0028, is it likely that Staff would have supported
8 including those lost revenues or lost fixed costs in the
9 calculation of the company's revenue requirement in either
10 of those two rate cases?

11 A. No.

12 MR. ROAM: I'm going to object. The
13 question was just asked and just answered.

14 MR. MITTEN: Your Honor, I don't think the
15 question was answered, which is the reason I asked it
16 again.

17 JUDGE JORDAN: Please repeat the question.

18 MR. MITTEN: Perhaps the court reporter
19 could read it back.

20 MR. MILLS: Judge, I believe I will have an
21 additional objection once I hear it.

22 (THE REQUESTED TESTIMONY WAS READ BY THE
23 REPORTER.)

24 MR. MILLS: And my objections are, one,
25 that it assumes facts that are not in evidence, and that

1 is that there actually were lost fixed costs; and two,
2 that it calls for speculation.

3 JUDGE JORDAN: I will sustain the objection
4 on your second objection, Mr. Mills.

5 BY MR. MITTEN:

6 Q. You testified during your deposition that
7 generally Staff does not support proposals by a utility to
8 go outside the test period and recover costs; is that
9 correct?

10 A. That's not exactly how I would have -- hope
11 I would have said it. We generally do not support
12 proposals to go beyond the test year, update period and
13 true-up period in order to set rates.

14 Q. You also told me during your deposition
15 that Staff generally opposes including nonrecurring items
16 in the revenue requirement used to set rates; is that
17 correct?

18 A. As a general matter, yes.

19 Q. But you stated that there are exceptions,
20 and that one of those exceptions is for the recovery of
21 items related to extraordinary events; is that correct?

22 A. Yes.

23 Q. And you also told me that it is unlikely
24 that Staff would have supported a request by Ameren
25 Missouri in either Case No. ER-2010-0036 or Case No.

1 ER-2011-0028 to recover the fixed costs it lost during the
2 period Noranda curtailed its smelting operations; is
3 that correct?

4 A. That is correct.

5 Q. You state on page 3 of your rebuttal
6 testimony that Ameren Missouri is attempting to
7 effectively overturn the Commission's decision in Case
8 No. ER -- excuse me -- EO-2010-0255; is that correct?

9 A. Yes, it is.

10 Q. But you testified at your deposition that
11 in Case No. EO-2010-0255, the Commission simply found that
12 Ameren Missouri had improperly classified certain revenues
13 as being outside the fuel adjustment clause; is that
14 correct?

15 A. Among other things in the order, I'm sure
16 that is accurate, yes.

17 Q. And classification of revenues under the
18 fuel adjustment clause is not an issue in this case, is
19 it?

20 A. Not directly, no.

21 Q. You also testified during your deposition
22 that in Case No. EO-2010-0255, Ameren did not request an
23 Accounting Authority Order; is that correct?

24 A. During the pendency of the 2010 case, that
25 is correct.

1 Q. Or in that case itself?

2 A. To my knowledge, yes, that's correct.

3 Q. So in that case, the Commission didn't rule
4 on whether an AAO was appropriate under the circumstances
5 following the 2009 ice storm; is that correct?

6 A. I don't believe so, or yes, that is
7 correct.

8 Q. And finally, during your deposition, you
9 admitted that the issues in this case and in Case No.
10 EO-2010-0255 aren't similar; is that correct?

11 A. Can you point me to where I said that?

12 Q. Page 61, beginning on line 22, question:
13 So really this application and the issues that were
14 considered by the Commission in EO-2010-0255 really aren't
15 that similar, are they? And your answer was?

16 A. My answer was: The issues aren't similar.
17 I would say the dollar amounts are.

18 MR. MITTEN: Your Honor, could I have just
19 one second? I think I'm about finished.

20 JUDGE JORDAN: Certainly.

21 MR. MITTEN: I don't have any further
22 questions. Thank you, your Honor. Thank you,
23 Mr. Oligschlaeger.

24 JUDGE JORDAN: I see no inquiries from the
25 Chairman, nor from Commissioner Kenney. Commissioner

1 Jarrett?

2 COMMISSIONER JARRETT: Good afternoon,
3 Mr. Oligschlaeger. How are you doing?

4 THE WITNESS: Good afternoon.

5 COMMISSIONER JARRETT: I know I'm going to
6 kick myself in the morning for this, but since you -- and
7 especially since you have the entire USOA there in front
8 of you, I will refrain from asking you questions about
9 each and every page of that. I don't have any questions.
10 Thanks.

11 JUDGE JORDAN: We could simply read it into
12 the record.

13 THE WITNESS: No.

14 COMMISSIONER JARRETT: I may have to go
15 down and at some point when it's -- I won't go there.

16 JUDGE JORDAN: Anything else?

17 COMMISSIONER JARRETT: I have no further
18 questions.

19 JUDGE JORDAN: I have nothing for this
20 witness. And since there are no questions from the Bench,
21 there should be no recross, so I believe we can go
22 straight to redirect from Staff.

23 REDIRECT EXAMINATION BY MR. DOTTHEIM:

24 Q. Mr. Oligschlaeger, do you recall Mr. Mitten
25 referred you to the Commission's order approving,

1 incorporating the Unanimous Stipulation & Agreement in the
2 Empire District Electric Company case involving the Joplin
3 tornado?

4 A. I do.

5 Q. File No. EU-2011-0387?

6 A. Yes.

7 Q. Do you have a copy of that Order?

8 A. I do.

9 Q. I'd like to refer you to page 3. Are you
10 there?

11 A. I am.

12 Q. And I'd like to refer you to the second
13 sentence under analysis and decision. I think he referred
14 you or gave you a quote that was also used this morning in
15 opening statement, but it was a partial quote again. I
16 think he cited you the quote, the AAO technique protects
17 the utility from earning shortfalls. Do you see where I'm
18 referring to?

19 A. I do.

20 Q. What I just read, is that a complete
21 sentence?

22 A. It is not.

23 Q. Would you please read the complete
24 sentence?

25 A. Complete sentence reads, quote, the AAO

1 technique protects the utility from earnings shortfalls
2 and softens the blow which results from extraordinary
3 construction programs, close quote.

4 Q. Okay. Would the Staff consider
5 extraordinary construction programs in a category of lost
6 revenue?

7 A. No. They're different items, different
8 financial items.

9 Q. Are they in the nature of -- more in the
10 nature of the traditional items that the Commission grants
11 and the Staff supports Accounting Authority Orders for?

12 A. A number of AAOs have been issued in the
13 past relating specifically to the cost of specific types
14 of construction programs.

15 Q. Okay. And I believe Mr. Mitten referred
16 you to the Commission's Report and Order in April of last
17 year in the AEP and Wabash contract cases, Case
18 No. EO-2010-0255, and I think he may have made some
19 reference to the company having found to have
20 misclassified the contracts.

21 Do you recall whether the Commission found,
22 and I quote, Ameren Missouri acted imprudently, improperly
23 and unlawfully when it excluded revenues derived from
24 power sales agreements with AEP and Wabash from off-system
25 sales revenue when calculating the rates charged under its

1 fuel adjustment charge? Have you got the Order there?

2 A. Yes, I do. Can you give me a page
3 reference?

4 Q. Yes. I think it's -- it's at the very
5 beginning. I think it may be under the synopsis. I don't
6 have a copy in front of me, but I think --

7 A. Yes, on page 2 of the Order under the
8 heading summary, the wording you quoted appears.

9 Q. Mr. Mitten referred you frequently to the
10 USOA. Has the Commission adopted the USOA for ratemaking
11 purposes?

12 A. It has not.

13 Q. I think Mr. Mitten asked you a number of
14 questions regarding whether it's Staff's position that an
15 AAO should not be granted if a utility has positive rate
16 of return, if the AAO should not be granted for lost
17 deferrals or fixed costs, and you were responding, I
18 believe, to that question and were cut off. Could you --

19 A. Yes.

20 Q. Could you please finish your answer as you
21 were going to provide a response?

22 A. Sure. The Staff's criteria for
23 recommending approval of deferral requests through
24 Accounting Authority Orders for either expenses, capital
25 items or lost revenues is in no way dependent upon whether

1 the company can demonstrate it is not recovering its fixed
2 costs or is otherwise earning a negative or minimal rate
3 of return.

4 For expenses and capital items, the
5 criteria we would recommend the Commission use is that
6 which appears in the USOA under General Instruction No. 7.
7 Under the heading of lost revenues or ungenerated revenues
8 or even lost fixed cost recovery, we would not recommend,
9 with the one exception previously noted by me, that
10 deferrals be allowed under any circumstances for those
11 items.

12 Q. Okay. And Mr. Mitten I believe referred
13 you to page 18 of your rebuttal testimony, if you have
14 your copy there.

15 A. I do.

16 Q. Okay. The portion, your response that is
17 at line 7 to 13, and I think he referred you in your
18 deposition also to your responses to questions that he
19 asked you regarding page 18. Was the explanation that you
20 just gave in part relating to page 18, line 7 to 13?

21 A. Yes. My explanation on page 18, that
22 specific question and answer is not -- does not relate to
23 the criteria for acceptance of Accounting Authority
24 Orders. It was part of an explanation of why the
25 company's claim that it has incurred -- or that it has

1 failed to recover all of its fixed costs due to the
2 Noranda reduction in sales is, from our perspective, a
3 false one.

4 Q. I believe Mr. Mitten asked you a number of
5 questions about a utility having the right, and I think
6 you addressed the right as a legal concern or matter, to a
7 reasonable opportunity to earn a fair rate of return when
8 an unexpected reduction in revenues and no corresponding
9 reduction in expenses -- in expenses occurs. Do you
10 recall that?

11 A. I generally recall that.

12 Q. Can a utility by its own actions affect its
13 opportunity to earn a fair or reasonable rate of return?

14 A. Yes, by filing timely requests for rate
15 relief.

16 Q. Are there other means?

17 A. Actually, beyond rate relief, there's
18 always the options of things like expense reduction
19 programs, so called austerity programs, selected attempts
20 to be more economical, et cetera, that in the short term
21 may also offset part of those impacts.

22 MR. DOTTHEIM: If I could have a moment,
23 please.

24 JUDGE JORDAN: You may.

25 MR. DOTTHEIM: Thank you,

1 Mr. Oligschlaeger.

2 JUDGE JORDAN: You may stand down.

3 (Witness excused.)

4 JUDGE JORDAN: I see that we have two more
5 witnesses scheduled. What is the parties' feelings as to
6 timing of that? We're at 3:30 now. We can go all night
7 as far as I'm concerned, but people may need to make
8 arrangements for dinner.

9 MR. BYRNE: From our perspective, I think
10 we'll get done. I mean, it depends, but if -- I think we
11 can get done today.

12 MR. MILLS: Certainly would be my
13 preference. Mr. Robertson is the last witness. He has
14 fairly limited testimony. I think we can get through
15 these next two witnesses within the next hour and a half.

16 JUDGE JORDAN: Splendid. Why don't we
17 begin with MIEC's case, then, and take it from there.

18 MR. ROAM: MIEC calls Maurice Brubaker to
19 the stand.

20 (Witness sworn.)

21 MAURICE BRUBAKER testified as follows:

22 DIRECT EXAMINATION BY MR. ROAM:

23 Q. Good afternoon, Mr. Brubaker.

24 A. Good afternoon.

25 Q. Could you please state your name and your

1 **business address for the record?**

2 A. Yes. Maurice Brubaker, 16690 Swingley
3 Ridge Road, Chesterfield, Missouri 63017.

4 Q. **And where are you employed, Mr. Brubaker?**

5 A. I'm president of Brubaker & Associates,
6 Inc.

7 Q. **So that is your title, the president?**

8 A. It is.

9 Q. **Are you the same Mr. Brubaker that caused**
10 **to be refiled rebuttal testimony in this case marked as**
11 **MIEC 1?**

12 A. I am.

13 Q. **And that testimony was prepared by you?**

14 A. Yes.

15 Q. **Do you have any corrections or amendments**
16 **to that testimony?**

17 A. I do not.

18 Q. **And if I asked you the same questions today**
19 **that were asked of you in that testimony, would you give**
20 **the same answers?**

21 A. I would.

22 Q. **Is that testimony true and correct to the**
23 **best of your knowledge and believe?**

24 A. Yes, it is.

25 MR. ROAM: At this time I would offer into

1 evidence Exhibit MIEC 1. I would tender Mr. Brubaker for
2 cross-examination.

3 JUDGE JORDAN: Hearing no objections, that
4 exhibit will be entered into the record.

5 (MIEC EXHIBIT NO. 1 WAS RECEIVED INTO
6 EVIDENCE.)

7 JUDGE JORDAN: Cross-examination from BJH?

8 MS. LANGENECKERT: No.

9 JUDGE JORDAN: Cross-examination from
10 Staff?

11 MR. DOTTHEIM: No questions.

12 JUDGE JORDAN: Cross-examination from OPC?

13 MR. MILLS: Just very briefly.

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. Mr. Brubaker, are you familiar with the
16 process by which through rate design in a rate case costs
17 are allocated to particular customer classes?

18 A. Yes, I am.

19 Q. And then rates are set upon those
20 allocations?

21 A. Yes.

22 Q. Following --

23 A. Based on the allocations and a number of
24 other factors. Rarely do the revenues that are produced
25 by a particular class equal the costs that anybody

1 allocated to them.

2 Q. And once rates are set in a rate case, is
3 there any requirement that a utility recover the fixed
4 costs that were allocated to that class only from that
5 class?

6 A. No.

7 Q. So, for example, if a utility is able to
8 reduce fixed costs to a particular class, it essentially
9 earns more money from that class than it would have had it
10 not reduced those fixed costs, correct, all else being
11 equal?

12 A. If it reduced cost to the class, all other
13 things being equal relative to other classes, it would
14 increase its -- help increase its return.

15 Q. And if it was extremely successful in doing
16 so and to such an extent that a case could be made that
17 the company was overearning with respect to its costs that
18 were assigned to that class, do you believe that it would
19 be meritorious to file an overearnings complaint for one
20 class?

21 A. No. Once you set rates, you look at the
22 results of the enterprise on an overall basis. You don't,
23 nor could you practically, track what happens with
24 individual classes.

25 Q. And similarly with an alleged failure to

1 recover fixed costs following the conclusion of a rate
2 case, is there any means or mechanism by which recovery of
3 fixed costs per rate class is tracked?

4 A. I've never seen that done. Typically,
5 again, you look at the results for the overall enterprise
6 without trying to discern what class may have had
7 increased sales or what classes may have had diminished
8 sales.

9 Q. And specifically with results to the --
10 with regards to the argument that Union Electric Company
11 failed to recover some fixed costs assigned to the large
12 transmission service class, have you or has anyone in this
13 case done an analysis of the relative recovery of fixed
14 costs from other classes?

15 A. I have not seen any such analysis.

16 Q. So it's possible that even if some fixed
17 costs were not recovered directly from Noranda, fixed
18 costs that had been assigned to other classes may have
19 been over-recovered during this period?

20 A. I think the answer is yes, but to avoid
21 being misinterpreted, when you look at the overall results
22 of the enterprise, all the fixed costs were recovered. So
23 they came from one place or the other. What really
24 happened was there was a failure to achieve the
25 anticipated return on equity.

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

3 JUDGE JORDAN: Any cross-examination from
4 Ameren?

5 MR. BYRNE: No, your Honor.

6 JUDGE JORDAN: I see no inquiries from
7 Chairman Gunn or Commissioner Jarrett or Commissioner
8 Kenney, and I have none. So there should be no recross,
9 and I will ask whether MIEC has any redirect?

10 MR. ROAM: Just about an hour and a half of
11 redirect. No.

12 JUDGE JORDAN: Very good. Sir, you may
13 stand down. Thank you.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 MR. MILLS: Judge, before I call
17 Mr. Robertson to the stand, may I inquire of the parties
18 if there is any cross for him?

19 JUDGE JORDAN: You may inquire. I'll
20 inquire. Will there be any cross?

21 MR. BYRNE: None from Ameren.

22 MR. ROAM: None from MIEC.

23 MR. DOTTHEIM: None from Staff.

24 MS. LANGENECKERT: None from BJH.

25 MR. MILLS: Then, Judge, if there's no

1 cross-examination, may I ask if there is any objection to
2 admitting Mr. Robertson's prefiled testimony by
3 stipulation rather than calling him to the stand simply to
4 go through his qualifications?

5 MR. BYRNE: No objection.

6 MR. ROAM: No objection.

7 MR. DOTTHEIM: No objection.

8 MR. MILLS: With that, I will offer Exhibit
9 OPC 1.

10 JUDGE JORDAN: I just heard that there are
11 no objections, so that exhibit will be entered into the
12 record.

13 (OPC EXHIBIT NO. 1 WAS RECEIVED INTO
14 EVIDENCE.)

15 JUDGE JORDAN: It looks like the parties
16 have held true to their projection. I would like to talk
17 about briefing.

18 MR. DOTTHEIM: Judge, could we go off the
19 record?

20 JUDGE JORDAN: We can if you like.

21 MR. DOTTHEIM: Well, I thought since we've
22 got -- we've got spare time, maybe we could check on the
23 availability of Mr. Carter and Mr. Wills.

24 JUDGE JORDAN: To fill out the remainder of
25 the time?

1 MR. DOTTHEIM: Yes, to fill up the
2 remainder of the time.

3 JUDGE JORDAN: Denied. The regulations of
4 the Commission call for -- set forth a briefing schedule
5 to be using simultaneous briefing of transcript filing
6 plus 20 days for initial briefs, plus ten days for reply
7 briefs. Do the parties want anything different from that?

8 MR. MILLS: Judge, when did we expect the
9 transcript to be in?

10 JUDGE JORDAN: That would be a question for
11 our reporter.

12 THE REPORTER: I think the new contract is
13 seven to ten days.

14 JUDGE JORDAN: So we're talking ten days at
15 the outside?

16 THE REPORTER: Yes.

17 MR. BYRNE: Judge, there appears to be a --
18 we had a jointly proposed procedural schedule for dates
19 with briefs.

20 JUDGE JORDAN: Very good.

21 MR. BYRNE: Looks like we had May 25th as
22 the initial briefs and reply briefs June 12th. Maybe
23 that's a starting point to talk about.

24 JUDGE JORDAN: Well, if that's what we said
25 in the briefing schedule, then so far that's what it is.

1 Let me just say this as to briefing. The Commission would
2 find it helpful if the parties could find an Accounting
3 Authority Order somewhere that addresses these -- amounts
4 of this nature that we have been discussing and include
5 that accounting authority order to defer their reporting.

6 MR. MILLS: And, Judge, may I also presume
7 to suggest that the Commission should find it helpful if
8 no party's able to find such an Accounting Authority
9 Order?

10 JUDGE JORDAN: I think that may be implicit
11 in the results of the parties' research.

12 Well, that's all that I have from the
13 Bench. Is there any matter that we need to take up before
14 we go off the record?

15 MR. MILLS: No, Judge, but just when we do
16 go off the record, I would like to have some discussion
17 with the parties about a possible modification to the
18 briefing schedule. Looking at my calendar, the 25th is
19 the third day of a three-day hearing involving this
20 company in which I'm involved. I don't know if any of the
21 other parties in this case are involved, but it may make
22 it very difficult for me to file a meaningful brief on
23 that date.

24 JUDGE JORDAN: This room is reserved for
25 this action. This room is reserved for this action for

1 the rest of the day. You may certainly use it for that
2 purpose.

3 Anything else I can do for the parties
4 while I'm here on the record? Well, the Commission thanks
5 you for your very hard work and very skillful advocacy and
6 for the courteous proceedings and courteous and helpful
7 proceedings that it has viewed today.

8 MR. DOTTHEIM: Just wait 'til you leave,
9 Judge.

10 JUDGE JORDAN: All I know is what's on the
11 record.

12 (Laughter.)

13 JUDGE JORDAN: And with that, we will go
14 off the record.

15 (WHEREUPON, the hearing concluded at
16 3:43 p.m.)

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STATE OF MISSOURI)
)
) ss.

I, Kellene K. Feddersen, Certified
 with the firm of Midwest Litigation
 hereby certify that I was personally present
 in the above-entitled cause at the
 set forth in the caption sheet thereof;
 and there took down in Stenotype the
 and that the foregoing is a full, true
 transcript of such Stenotype notes so made at
 place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

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