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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
March 10, 2015
Jefferson City, Missouri
Volume 31

In the Matter of Union)
Electric Company d/b/a)
Ameren Missouri's Tariff) File No. ER-2014-0258
to Increase Its Revenues)
for Electric Service)

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

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

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
MIDWEST LITIGATION SERVICES

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

2 (WHEREUPON, the hearing began at
3 8:30 a.m.)

4 JUDGE WOODRUFF: Let's come to order,
5 please. Good morning, everyone. We're back for
6 another day of the Ameren rate case hearing,
7 ER-2014-0258. Today we're going to move into the
8 Noranda rate proposal issue, and before we get
9 started with the first witness, we're going to do
10 the Ameren witnesses first, then we're going to do
11 openings, is the way I understand the schedule.

12 Before we do that, anything else to
13 bring up? I noticed a few minutes ago a
14 Nonunanimous Stipulation & Agreement was filed.

15 MR. ALLISON: Yeah. I apologize.
16 The timing is -- this morning is a little hectic.
17 So there are several consumer parties who have
18 reached an agreement among themselves with respect
19 to Issues 19, 21, 22 and 31, 31 being the issue
20 before us today.

21 I have copies of the stipulation for
22 the Commission's edification. Understanding it was
23 just filed this morning, the Commission may or may
24 not have questions about that today or be prepared
25 to ask questions about that today, but we have the

1 virtue of being here for multiple days. Certainly
2 I know I am ready and willing to answer any
3 questions the Commission may have about it at any
4 time.

5 MS. TATRO: I'm sure there will be
6 questions. Ameren's never seen this. He didn't
7 hand me a copy, so I still haven't seen it. I'm
8 desperately trying to find it on the computer. So
9 I would hope the Commission could give us some time
10 to look at it.

11 COMMISSIONER W. KENNEY: I'd like a
12 copy of it.

13 MR. THOMPSON: Could you identify the
14 issues by name rather than number?

15 MR. ALLISON: Yeah. Just one second.

16 MS. TATRO: I appreciate the copy,
17 but I would repeat my request. We hold any and all
18 questions until I've had time to talk about this
19 with my clients and perhaps read it myself.

20 JUDGE WOODRUFF: Of course I'm not
21 expecting anybody to jump on board at the moment.

22 MR. ALLISON: Absolutely. I think it
23 literally is a matter of timing. We were working
24 on the document until late last night, very late
25 last night, and we filed it as soon as we could

1 this morning. And we fully anticipate frankly that
2 there will be objections to the document and that
3 other parties may decide to sign on. That's
4 entirely understandable. We're not trying to put
5 anybody in a bind or force them to talk about it
6 this morning.

7 JUDGE WOODRUFF: Very good. Let's
8 move on to the first witness then, which would be
9 Mr. Humphreys.

10 (AMERENUE EXHIBIT NO. 19 NP AND HC
11 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

12 (Witness sworn.)

13 JUDGE WOODRUFF: Okay. You may be
14 seated. You may inquire.

15 DAVID HUMPHREYS testified as follows:

16 DIRECT EXAMINATION BY MR. NELSON:

17 Q. Please tell us your name.

18 A. David Humphreys.

19 Q. Mr. Humphreys, where do you work?

20 A. In London.

21 Q. And what do you do? Who do you work
22 for?

23 A. I have a consulting practice. It's
24 DaiEcon Advisors.

25 Q. What do you do for DaiEcon?

1 A. I'm the principal of the company.

2 Q. Are you the David Humphreys who has
3 caused to be filed rebuttal testimony in this case?

4 A. I am indeed.

5 Q. Do you have any changes to that filed
6 testimony?

7 A. No, I don't.

8 Q. Is the testimony given to the best of
9 your knowledge and belief?

10 A. It is.

11 Q. If I asked you the questions
12 contained in your prefiled testimony here today,
13 would your answers under oath be the same as in
14 your filed testimony?

15 A. They would.

16 MR. NELSON: Your Honor, at this time
17 I would offer Exhibits 19 and 19HC into the record
18 as the testimony of David Humphreys.

19 JUDGE WOODRUFF: All right. 19 NP
20 and HC have been offered. Any objection to its
21 receipt?

22 (No response.)

23 JUDGE WOODRUFF: Hearing none, it
24 will be received.

25 (AMERENUE EXHIBIT NO. 19 NP AND HC

1 WERE RECEIVED INTO EVIDENCE.)

2 MR. NELSON: And with that, your
3 Honor, I tender Mr. Humphreys for
4 cross-examination.

5 JUDGE WOODRUFF: And for
6 cross-examination, I was looking around to see
7 who's here. MECG?

8 MR. WOODSMALL: No questions. Thank
9 you.

10 JUDGE WOODRUFF: Consumers Council?

11 MR. COFFMAN: No questions.

12 JUDGE WOODRUFF: You're hiding in the
13 back.

14 MR. COFFMAN: Been delegated to the
15 fifth row.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. ALLISON: No questions.

18 JUDGE WOODRUFF: MIEC?

19 MS. VUYLSTEKE: No questions.

20 JUDGE WOODRUFF: Staff?

21 MR. THOMPSON: No questions. Thank
22 you, Judge.

23 JUDGE WOODRUFF: Did I miss anybody?

24 MR. DOWNEY: Judge, for this segment,
25 we have Noranda attorneys and Ms. Vuylsteke is

1 representing the MIEC.

2 JUDGE WOODRUFF: Then for Noranda.

3 MR. MALLIN: Thank you, your Honor.

4 Kenneth Mallin this morning.

5 CROSS-EXAMINATION BY MR. MALLIN:

6 Q. Dr. Humphreys, as I understand it,
7 you are a principal in your consulting agency; is
8 that true?

9 A. That is correct.

10 Q. Is IT DaiEcon Advisors?

11 A. That is correct.

12 Q. Now, I've searched the Internet on
13 that. Are you the only principal in that
14 particular organization?

15 A. I am indeed, yes.

16 Q. Are you also its only employee?

17 A. I am.

18 Q. How many hours have you spent on this
19 engagement, sir?

20 A. About 35.

21 Q. 35 total hours?

22 A. Something of that order, yes.

23 Q. And as I understand it, you've
24 traveled all the way here to Jefferson City from
25 London, correct?

1 A. That is correct. 35 was prior to
2 getting on the plane.

3 **Q. Prior to getting on the plane?**

4 A. Uh-huh.

5 **Q. And you traveled all the way here in
6 order to testify on behalf of Ameren, correct, sir?**

7 A. It's the nature of the work.

8 **Q. I understand that, but that's what
9 you understood you were doing, correct, sir?**

10 A. Yes.

11 **Q. And what is your hourly rate, sir?**

12 A. \$400 an hour.

13 **Q. And since getting on the plane and
14 traveling here to Jefferson City, how many
15 additional hours have you billed Ameren?**

16 A. Since arriving here, I have three
17 days.

18 **Q. So you've spent three more days
19 helping out Ameren in this case. How many hours
20 have you spent over those three days, sir?**

21 A. I call that seven hours a day, so 21
22 hours.

23 **Q. Okay. Have you had any prior
24 engagements with Ameren?**

25 A. No.

1 **Q. Do you consider yourself to be an**
2 **expert with regard aluminum price forecasting?**

3 A. I think I can, on the basis of my
4 long association with market forecasting in
5 aluminum futures.

6 **Q. Well, I think I can I've heard in the**
7 **context of that little train that might make it up**
8 **the hill. But do you consider yourself, do you**
9 **advertise yourself to the public as an expert in**
10 **the area of aluminum price forecasting?**

11 A. I advertise myself in the business of
12 commodity price forecasting, including aluminum.

13 **Q. And do you hold yourself out anywhere**
14 **on the Internet, any sort of advertisement**
15 **material, because I've searched, in which it says**
16 **that you, Dr. Humphreys, are an expert with regard**
17 **to aluminum price forecasting?**

18 A. You won't find it on the Internet. I
19 don't advertise. Since I took retirement from
20 corporate life, I've had a variety of requests to
21 assist with different projects, and I've had
22 sufficient work so as not to need to advertise.

23 JUDGE WOODRUFF: If I can interrupt
24 for a moment, Mr. Humphreys, can you speak into the
25 microphone?

1 THE WITNESS: Okay.

2 BY MR. MALLIN:

3 Q. Dr. Humphreys, as I understand it,
4 during that professional life of yours you also
5 served as chief economist at Rio Tinto. Did I
6 pronounce that correctly?

7 A. You did, yes.

8 Q. And as I understand, Rio Tinto is a
9 business that's been around for over 100 years; is
10 that right?

11 A. 150 years.

12 Q. It has bauxite mines?

13 A. Uh-huh.

14 Q. Large scale alumina refineries,
15 correct?

16 A. Correct.

17 Q. Is that correct?

18 A. That is correct.

19 Q. I also understand that it holds
20 itself out as having the lowest cost, most
21 technologically advanced primary aluminum smelters;
22 is that also true?

23 A. That is true, though those came with
24 an acquisition that was made after I left the
25 company.

1 **Q.** **Fair enough. As I looked on the**
2 **Internet about the company, I learned it has a**
3 **smelter or two in Australia. Is that your**
4 **understanding?**

5 A. That's correct, yes.

6 **Q.** **In Cameroon?**

7 A. Indeed.

8 **Q.** **In Canada?**

9 A. Many in Canada, yes.

10 **Q.** **In France?**

11 A. Yeah.

12 **Q.** **In Iceland?**

13 A. Uh-huh.

14 **Q.** **In New Zealand?**

15 A. Yes.

16 **Q.** **In Norway?**

17 A. Yes.

18 **Q.** **In Oman?**

19 A. I believe so, yes.

20 **Q.** **And in the United Kingdom, correct?**

21 A. There is a small one in the United
22 Kingdom.

23 **Q.** **As of right now at least, it does not**
24 **have one in the United States of America, does it,**
25 **sir?**

1 A. I'm not altogether certain, but not
2 that I can name anyway.

3 Q. And if we were to compare, if you
4 will, Rio Tinto to Noranda in the present case, you
5 understand that Noranda does have a bauxite
6 facility, correct?

7 A. I do.

8 Q. It only has one bauxite refining
9 facility, though, correct?

10 A. I believe so, yes.

11 Q. As compared to the several, if not
12 many, that Rio Tinto has, correct?

13 A. I'm not an expert on Noranda's
14 corporate facilities, but I believe what you say is
15 true.

16 Q. Thank you. You do understand, do you
17 not, that Noranda only has a single smelter?

18 A. I do.

19 Q. As compared to the many that Rio
20 Tinto has, correct?

21 A. Correct.

22 Q. Now, do you also understand with
23 regard to Rio Tinto that it boasts actually in its
24 annual report, the most recent of which in 2014,
25 that it has unrivaled hydro power position with

1 regard to power needs?

2 A. Yes. That was the reason for its
3 acquisition.

4 Q. And the hydro power we're talking
5 about is electrical power generated by water, dams,
6 things of that nature, correct?

7 A. Correct.

8 Q. In fact, are you aware that Rio Tinto
9 boasts that it has the most significant cost
10 reductions as well as other advantages in the
11 energy acquisition area because of these hydro
12 facilities?

13 A. I wasn't aware of it, but I'm not
14 surprised to hear it.

15 Q. Are you aware that up to 72 percent
16 of its power needs are met by hydrogen-generated
17 power?

18 A. I can believe it.

19 Q. Also known as hydroelectric power,
20 correct, sir?

21 A. Indeed.

22 Q. And that 6 percent of it comes from a
23 nuclear source, correct, sir?

24 A. I would point out that I left Rio
25 Tinto 11 years ago, and a lot has happened in the

1 meantime, including the acquisition of the Alcan
2 assets, most of which you're talking about now.

3 **Q. Those numbers don't shock you?**

4 A. They don't shock me at all, no.

5 **Q. Can you tell us how Noranda gets most
6 of its power, sir?**

7 A. From Ameren.

8 **Q. Is it hydroelectric generated?**

9 A. I couldn't tell.

10 **Q. Is it nuclear generated?**

11 A. I absolutely don't know.

12 **Q. Fossil fuel generated?**

13 A. I repeat, I don't know.

14 **Q. Have you undertaken any independent
15 analysis whatsoever of Noranda's enterprise model
16 in this particular case?**

17 A. No. It was not part of the
18 requirement.

19 **Q. So as a result of which is it fair to
20 say you have no criticisms of that enterprise
21 model?**

22 A. I repeat, I haven't investigated it,
23 nor was I asked to do so.

24 **Q. Is it then fair to say you have no
25 criticisms of that enterprise model?**

1 A. Yes, it is.

2 Q. Am I correct, sir, that you've
3 undertaken no independent analysis of Noranda's
4 liquidity needs in this case?

5 A. I have not.

6 Q. Is it, therefore, fair to say you
7 have no criticisms of liquidity needs that Noranda
8 has identified in this case?

9 A. It was not part of the remit that I
10 was requested to investigate.

11 Q. That being the case, you have no
12 criticisms of liquidity needs Noranda has
13 identified --

14 A. No.

15 Q. -- correct, sir?

16 A. Correct.

17 Q. Am I correct that you have undertaken
18 no independent analysis of Noranda's cash flow
19 needs?

20 A. That is correct.

21 Q. Therefore, you have no criticisms of
22 what Noranda has identified with regard to its cash
23 flow needs, correct, sir?

24 A. That is correct.

25 Q. Am I also correct, sir, that you have

1 not created or somehow authored any sort of an
2 independent stress test or volatility test with
3 regard to Noranda?

4 A. That is correct.

5 Q. In fact, you, for example, didn't
6 bring over one of the stress tests or volatility
7 tests you may have used while over at Rio Tinto in
8 order to try to apply it to Noranda's case?

9 A. No, I didn't.

10 Q. Isn't that correct?

11 A. That is correct.

12 Q. Would you agree with me, sir, that an
13 operation like Rio Tinto where you were the chief
14 economist, because of its larger operations, has
15 the ability to survive the stresses of the
16 marketplace better than Noranda?

17 A. I would imagine so, yes.

18 Q. For example, on the operational side,
19 if Noranda's smelter goes down, it loses a line or
20 two of its pots, it would be in a predicament with
21 regard to meeting its capacity goals for needs with
22 respect to its customers, correct, sir?

23 A. That's correct.

24 Q. In comparison, Rio Tinto may be able
25 to shift that need to one or more of its smelters

1 in order to meet a customer's demands?

2 A. That would be fair, yes.

3 Q. Would you also agree with me that an
4 operation like Rio Tinto is a better place because
5 of its large operation and its wide hydroelectric
6 power abilities to be able to meet the needs with
7 regard to power rates as compared to Noranda?

8 A. Yes, it has more options.

9 Q. Now, in looking at your rebuttal
10 testimony, Exhibit No. 19, on page 3, are you
11 there, sir?

12 A. Yes.

13 Q. You do recognize, do you not, that
14 CRU is a reputable commodity sector consultancy; is
15 that correct, sir?

16 A. I do.

17 Q. And you are aware that CRU as part of
18 its many efforts with respect to its consulting
19 work provides a forecast with regard to aluminum
20 prices, correct?

21 A. Yes. I've been a client of CRU's in
22 the past.

23 Q. In fact, isn't it true you also
24 applied for a job there at one point in time?

25 A. If I did, I've completely forgotten

1 about it.

2 Q. That's all right. It's true that you
3 believe that cycles reflect variations in economic
4 growth, metal output and investing levels?

5 A. Amongst other things, yes.

6 Q. You believe that these things are
7 implicit -- quote, implicit in CRU's forecast,
8 correct, sir?

9 A. CRU takes a wide range of issues,
10 including those which you've mentioned.

11 Q. And you believe that somehow they are
12 implicit in CRU's forecast with regard to aluminum
13 prices?

14 A. I think this is how typically price
15 forecasts are constructed, yes.

16 Q. I'm not talking about the typical
17 forecast. I'm talking about CRU's price forecast.
18 It's your opinion that these particular measures,
19 variations in economic growth, metal output and
20 inventory levels are implicit in CRU's price
21 forecast?

22 A. Yes, indeed.

23 Q. They're not explicit, correct?

24 A. They're implicit, yes.

25 Q. They're not explicit, right?

1 A. Right.

2 Q. Now, you would defer to Mr. Pratt
3 from CRU, who's going to testify in this case, to
4 tell the Commission as to whether or not they are
5 implicit or not, wouldn't you, sir?

6 A. Well, I've -- I have no idea what
7 Mr. Pratt is going to say, but I think my
8 understanding, these forecasts are built of a
9 variety of different elements, including those that
10 you've mentioned. I'd be surprised if he commented
11 differently.

12 Q. You haven't read Mr. Pratt's direct
13 testimony in this case?

14 A. I have indeed, yes.

15 Q. And you have read his surrebuttal in
16 this case, haven't you?

17 A. Yes.

18 Q. So you are aware of what Mr. Pratt
19 has to say about these issues, are you not, sir?

20 A. Well, I don't recall him specifically
21 being asked that particular question as to the
22 manner in which the forecasts were derived and the
23 inputs that went into it.

24 Q. We will ask Mr. Pratt about that.

25 A. Please do.

1 Q. You do understand that with regard to
2 the stress tests and the liquidity analysis
3 performed by Noranda, that they worked closely with
4 CRU in order to come up with the different
5 scenarios?

6 A. I understand that they use the CRU
7 forecast as the basis for those calculations.

8 Q. Well, more than just using the CRU
9 forecast, sir, didn't you understand after reading
10 through Mr. Pratt's testimony that Noranda and CRU,
11 Mr. Pratt in particular, worked closely together in
12 order to determine the appropriate scenarios to
13 present to the Public Service Commission with
14 regard to what price volatility looks like
15 concerning aluminum prices in the future?

16 A. The scenarios were put together by
17 the company, I believe.

18 Q. So you had no knowledge that the
19 company, Noranda, worked closely with CRU and
20 Mr. Pratt in order to put those together, sir?

21 A. I understood they were taking advice
22 from Mr. Pratt but they were not his forecasts.

23 Q. Are you aware that with regard to
24 those price sensitivities -- I'm sorry -- those
25 stress tests or volatility analysis, that the

1 starting point was the forecast price that CRU had
2 determined for the next year or two?

3 A. Yes, I was.

4 Q. \$1.06, correct?

5 A. For which year?

6 Q. For the first year, 2015-2016.

7 A. 106. I was aware they used CRU as the
8 basis from which to derive their scenarios, yes.

9 Q. At \$1.06, correct, sir.

10 A. I don't remember the exact number.

11 Q. Well, do you know what the LME price
12 of aluminum is today, sir?

13 A. Near 80 cents, I think.

14 Q. And if you added the premium, the
15 midwest premium to it, what's the all-in price
16 today, sir?

17 A. 83.

18 Q. You're aware that with regard to the
19 stress tests or the liquidity analysis, after
20 starting with the CRU price forecast, that both
21 Noranda and CRU then applied a historical price
22 cycle in order to estimate what price volatility
23 would look like with regard to aluminum prices --

24 A. Yes.

25 Q. -- are you not, sir?

1 A. I do. And I comment on it in my
2 testimony.

3 Q. Well, I'm sure your counsel will ask
4 you questions about your comments. What I'm
5 interested in, though, is you understand that three
6 different years were selected as reasonable and
7 representative samples, are you not, sir?

8 A. I do, yes.

9 Q. And you understood that the purpose
10 of that selection, those different scenarios was to
11 determine or try to look at what the volatility of
12 aluminum prices would look like in the future,
13 correct?

14 A. Correct.

15 Q. And then ask the question if that is,
16 in fact, the price, what happens to Noranda's
17 liquidity and Noranda's cash flows, correct, sir?

18 A. Correct.

19 Q. You do agree, do you not, sir, that
20 aluminum prices are volatile?

21 A. Absolutely.

22 Q. And that volatility occurs year to
23 year?

24 A. Indeed, yeah.

25 Q. Month to month?

1 A. Yes.

2 Q. Week to week?

3 A. Indeed.

4 Q. Day to day?

5 A. Of course.

6 Q. Now, if you turn to page 6, please,
7 of your rebuttal testimony, and I'm on line 7. Am
8 I correct that you do endorse much of the analysis
9 that has been supplied by CRU in this case?

10 A. Yes, in as far as it relates to
11 general comments on volatility, I do indeed.

12 Q. And you do agree, do you not, that
13 over time aluminum prices tend to reflect broad
14 cyclical patterns?

15 A. Yes, I specifically accept that.

16 Q. And you do agree that the length of a
17 peak or the amplitude of a peak of those cycles
18 vary widely?

19 A. They do.

20 Q. They go up and they go down?

21 A. I say that explicitly in my
22 testimony.

23 Q. And you are also of the view that the
24 future course of aluminum prices cannot be known
25 with certainty, correct, sir?

1 A. Correct.

2 Q. Have you ever prepared your own
3 stress test or volatility analysis of aluminum
4 prices?

5 A. Not recently, no.

6 Q. Have you at any time in your past
7 ever had to sit down across the table from a banker
8 and had to renegotiate either the credit line of a
9 company or the long-term debt of a company?

10 A. No, I haven't.

11 Q. Do you -- at any time in your past
12 professional career ever assisted in the
13 renegotiation of a credit line or long-term debt
14 for an aluminum company?

15 A. No, but I have been involved in the
16 preparation of scenarios to stress test.

17 Q. You're aware that bankers when
18 they're looking at the possibility or a request to
19 refinance a credit line or a long-term debt line,
20 that they are not looking at the best case
21 scenarios?

22 A. I imagine that's one of the things
23 they would look at.

24 Q. They want to test and kick, if you
25 will, the model and see what happens if perhaps the

1 **worst case occurs in order to ensure that the bank**
2 **is repaid whatever loans are made, correct?**

3 A. Yes. That would be doing their job.

4 Q. In your professional career, sir,
5 **have you ever been personally involved in hedging**
6 **aluminum production for any company?**

7 A. No.

8 Q. You realize, do you not, though, sir,
9 **that as part of any hedging transaction, today at**
10 **least, that the party who wishes to hedge is going**
11 **to be required to post collateral in order to**
12 **ensure performance under the hedge contract, do you**
13 **not, sir?**

14 A. There are very many different ways of
15 hedging. That would be the case in some instances
16 and not in others.

17 Q. Are you telling me that you're aware
18 **of hedging transactions where a party is not**
19 **required to collateralize the hedge transaction?**

20 A. I think the different principles
21 apply whether you're actually selling metal forward
22 or whether you're buying options.

23 Q. Well, let me be more specific, sir.
24 **Have you looked at Noranda's financial statement?**
25 **Do you have an opinion whether or not, given its**

1 financial state, it has the ability to hedge
2 without having to collateralize the transaction so
3 that its performance is guaranteed? Have you
4 undertaken that analysis?

5 A. No, I haven't. The analysis I
6 performed is what you see in front of you here.

7 Q. As I understand it, looking at page 6
8 again of your rebuttal testimony, you're of the
9 view that the scenarios selected by Noranda and CRU
10 are not representative or reasonable of future
11 aluminum prices. Is that your opinion, sir?

12 A. Would you repeat the question,
13 please?

14 Q. Page 6 of your rebuttal testimony,
15 line 17.

16 A. Uh-huh.

17 Q. You're of the view that the scenarios
18 selected by Noranda and CRU are not reasonable or
19 representative of future aluminum prices, are you
20 not, sir?

21 A. The comment here relates to those
22 generated by Noranda, not CRU.

23 Q. That's right. You didn't know that
24 CRU had worked closely. I apologize. Let me ask
25 the question again. The scenarios selected and

1 presented to the Public Service Commission are not
2 reasonable or representative of future aluminum
3 prices, correct, sir?

4 A. That's correct.

5 Q. Therefore, you've concluded they have
6 to be arbitrary, correct, sir?

7 A. Well, I spell out some very detailed
8 reasons to why I think that's the case.

9 Q. Those are your personal opinions with
10 regard to the issue?

11 A. Of course, yes.

12 Q. And you understand that Noranda
13 disagrees with your conclusion, correct?

14 A. I do indeed, yes.

15 Q. And you understand that Mr. Pratt
16 disagrees with your conclusions in this area as
17 well?

18 A. Well, I'm not sure that he does in
19 every respect.

20 Q. Well, we'll let Mr. Pratt talk for
21 himself.

22 A. Okay.

23 Q. You believe it's inappropriate, as I
24 understand it, to collect any historical period in
25 order to apply a forecast in order to assess price

1 **volatility; am I correct, sir?**

2 A. I was puzzled as to the grounds on
3 which these were said to be representative.

4 **Q. Well, but you understand Noranda**
5 **disagrees with you on that point, correct?**

6 A. I do.

7 **Q. And whatever puzzlement you may have,**
8 **do you understand Mr. Pratt disagrees with you on**
9 **that as well?**

10 MR. NELSON: Your Honor, I'm going to
11 object in that it assumes facts not in evidence
12 with respect to Mr. Pratt.

13 MR. MALLIN: He's read the testimony,
14 Judge.

15 JUDGE WOODRUFF: You can answer if
16 you can.

17 THE WITNESS: I thought Mr. Pratt
18 made some rather qualified remarks about the
19 representative nature of these. He endorsed my
20 earlier belief that the range of price forecasts or
21 price scenarios offered by Noranda was restrictive,
22 which I understood to mean that he thought a wider
23 range of time periods should have been tested.

24 BY MR. MALLIN:

25 **Q. Am I correct, sir, that you agree**

1 that aluminum prices spend more time in a cyclical
2 trough than they do in a cyclical peak?

3 A. Yes, that's probably broadly true.

4 Q. So in other words, the price of
5 aluminum is lower for longer periods of time than
6 it is higher?

7 A. History tends to suggest that, yes.

8 Q. Now, as I understand, one of the
9 criticisms that you have of the selected ten-year
10 cycle starting in 1998, 1999 and 2000 is that they
11 both -- or I should say all include the boom years
12 of 2006 to 2008, correct?

13 A. At the end of that period, yes.

14 Q. And the boom years 2006 to 2008 were
15 a period where aluminum prices spiked, correct,
16 sir?

17 A. They did.

18 Q. Am I also correct, sir, that by
19 including the 1998, 1999 and 2000 ten-year price
20 cycles, that Noranda, therefore, included the
21 so-called boom years in its analysis of its
22 liquidity and cash flow positions?

23 A. They did include those years, yes.

24 Q. Okay. I'm on page 9 of your rebuttal
25 testimony now, sir. As I understand it, you really

1 don't know and cannot know where we are in the
2 price cycle with regard to aluminum at any
3 particular moment in time; is that correct, sir?

4 A. That's correct.

5 Q. Are you aware of the most recent Bank
6 of America, Merrill Lynch report with regard to
7 Global Metals?

8 A. I have seen a recent Bank of America
9 report, yes.

10 Q. The Global Metals Weekly dated
11 March 4, 2015?

12 A. I don't have it in front of me, but
13 they don't put them out that often. If it was
14 written by Michael Widener (ph. sp.), it's probably
15 the one I'm thinking.

16 MR. MALLIN: Your Honor, with your
17 permission I have a copy of that I'd like to
18 provide to the witness, and I have copies available
19 to others in the room. As I understand it, it
20 should be marked Exhibit 530.

21 (MIEC/NORANDA EXHIBIT NO. 530 WAS
22 MARKED FOR IDENTIFICATION BY THE REPORTER.)

23 MR. MALLIN: Just double checking.
24 I've marked mine as Exhibit 530.

25 JUDGE WOODRUFF: That's correct.

1 MR. MALLIN: Thank you.

2 BY MR. MALLIN:

3 Q. Dr. Humphreys, do you have
4 Exhibit 530 before you?

5 A. I do.

6 Q. Entitled Global Metals Weekly?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Dated March 4, 2015?

11 A. Yes, I do.

12 Q. And this is apparently published by
13 Bank of America, Merrill Lynch?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Have you seen this type of weekly
18 report before?

19 A. Very frequently, yeah.

20 Q. As of -- are you familiar that as of
21 March 4, 2015 Bank of America, Merrill Lynch was
22 reporting that it was lowering the average 2015
23 aluminum price forecast by 7.8 percent? Were you
24 aware of that fact, sir?

25 A. I am now.

1 Q. So you weren't prior to today?

2 A. I've seen this, but I hadn't
3 registered that particular figure.

4 Q. Did you register that that, in terms
5 of dollars and cents, that would mean that the
6 average 2015 aluminum price forecast would be
7 82 cents per pound?

8 A. No, but I see it now.

9 Q. Do you also see, sir, that Bank of
10 America, Merrill Lynch sees a risk that aluminum
11 will touch 74 cents per pound in the coming weeks?

12 A. Yes.

13 Q. You see, sir, Merrill Lynch, Bank of
14 America is also lowering its global average premium
15 forecast?

16 A. Yes.

17 Q. And you see that the reason why they
18 were doing these downgrades was because of a
19 confluence of factors. Do you see that, sir?

20 A. Yes.

21 Q. One of which being that semi exports
22 from China have remained at elevated levels. Do
23 you see that, sir?

24 A. I do.

25 Q. What's a semi export, sir?

1 A. It's a semi-fabricated product. It's
2 a product which is manufactured from an unshapen
3 lump of aluminum.

4 Q. In layman's terms, would that mean
5 there was additional supply or inventory of that
6 particular product in the marketplace?

7 A. It would.

8 Q. Am I also correct that another one of
9 those confluence of factors include the fact that
10 trading on the London Metals Exchange has continued
11 to normalize?

12 A. Normalize?

13 Q. Isn't that what this report says,
14 sir?

15 A. It does. It was talking specifically
16 in relation to the warehousing, I think.

17 Q. In other words, declining queues at
18 warehouses in Detroit, and what's that next word?
19 I always get that wrong.

20 A. Vlissingen.

21 Q. I'm going to defer to you on that.
22 And a declining queue in an LME warehouse means
23 that it's becoming easier, is it not, for a buyer
24 of aluminum to be able to go to that warehouse and
25 get its order fulfilled? Am I correct about that,

1 **sir?**

2 A. That is one of the things that's
3 taken place, not so much in Vlissingen, but
4 certainly in Detroit.

5 **Q. In other words, there's more of an**
6 **acceptance of the use of those LME warehouses in**
7 **the marketplace generally?**

8 A. The metal is becoming more available
9 from those warehouses, yes.

10 **Q. As compared to suppliers like Noranda**
11 **directly, correct, sir?**

12 A. Yes.

13 **Q. Am I also correct, sir, that one of**
14 **the factors identified by Bank of America, Merrill**
15 **Lynch was the fact that they saw flatter forward**
16 **curves?**

17 A. Yes.

18 **Q. That's with regard to the price of**
19 **aluminum in the future, right, sir?**

20 A. That's correct.

21 **Q. Which has caused or challenged the**
22 **financing deals --**

23 A. Yes.

24 **Q. -- correct, sir?**

25 A. That's right.

1 Q. Which means that there are less
2 people willing to finance aluminum purchases,
3 correct, sir?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 Q. Which means that that has again
8 increased the availability of the metal; am I
9 correct, sir?

10 A. Yes, the physical availability. The
11 actual existence of the metal hasn't been changed,
12 but its availability in the market has been changed
13 by those circumstances, yes.

14 Q. And if we turn to page 2 of this
15 exhibit, sir, do you see in the top portions where
16 it says, aluminum in critical conditions?

17 A. I do.

18 Q. And do you see where in Table 1 it
19 identifies new aluminum price forecasts?

20 A. Yes.

21 Q. And let me see if I get this correct.
22 At least with regard to what Bank of America and
23 Merrill Lynch sees, they're seeing an 8.8 percent
24 drop in aluminum price forecasts for the second
25 quarter of 2015, correct, sir?

1 A. Yes.

2 Q. And they are seeing a 10 percent drop
3 in aluminum price with regard to the third quarter
4 of 2015, correct, sir?

5 A. Change in the price or change of
6 their forecast? Change of their forecast?

7 Q. A 10 percent drop in forecast.

8 A. Okay. Uh-huh.

9 Q. Is that yes?

10 A. Yes, that's correct.

11 Q. And with regard to the fourth quarter
12 of 2015, they're seeing an 11.9 percent drop in the
13 forecasted price of aluminum?

14 A. Yes.

15 Q. And if we go to the first quarter of
16 2016, they're seeing an 18.2 percent drop in the
17 forecasted price of aluminum?

18 A. Yes.

19 Q. And if we go to the second quarter of
20 2016, again they're seeing an 18.2 percent drop in
21 the forecasted price of aluminum?

22 A. Yes.

23 Q. So overall, if I'm reading this table
24 correctly, and tell me if I'm wrong, for 2015 Bank
25 of America, Merrill Lynch is saying there's going

1 to be a 7.8 percent drop in the forecasted price of
2 aluminum, correct?

3 A. Correct.

4 Q. That in 2016 there's going to be a
5 15.9 percent drop, correct?

6 A. Correct.

7 Q. And in 2017 there's going to be a
8 19.3 percent drop, correct?

9 A. Relative to their forecast, yes.

10 Q. Are you aware of the CRU Aluminum
11 Market Outlook, the monthly updates?

12 A. I don't have access to it, but I'm
13 aware of the publication, yes.

14 Q. You don't have access to it right now
15 or as part of your consultancy you don't have
16 access?

17 A. I don't have access to it.

18 Q. So you don't have a subscription of
19 that?

20 A. No.

21 Q. Well, let me hand you what I'm
22 interested in.

23 MR. MALLIN: Your Honor, if you
24 would, we'll mark this as Exhibit 531.

25 JUDGE WOODRUFF: All right.

1 (MIEC/NORANDA EXHIBIT NO. 531 WAS
2 MARKED FOR IDENTIFICATION BY THE REPORTER.)

3 MR. NELSON: Your Honor, Noranda has
4 asked a number of data requests particularly with
5 respect to CRU, given Mr. Pratt's involvement in
6 this case. This document's never been produced,
7 and we would object to questioning on this document
8 or its admission. It clearly should have been
9 produced if it had -- if they were intending to use
10 it. And it's responsive to a number of our data
11 requests.

12 MR. MALLIN: Your Honor, I'm not
13 intending to have this particular witness identify
14 the document for purposes of its admission. I'm
15 merely cross-examining this witness who holds
16 himself out as an expert with regard to aluminum
17 prices to see what he is aware of in the
18 marketplace today with regard to what those prices
19 may look like in the future.

20 It's an entirely appropriate area for
21 cross-examination. Whether or not this document
22 comes in at a later point in time in Noranda's
23 case, we can address the objection I think more
24 properly there, sir.

25 MR. NELSON: Your Honor, I think it's

1 the use of the document. Putting aside its
2 admission, it's the use of the document, that has
3 clearly been requested and clearly has not been
4 provided, that is likewise improper, and we would
5 object to any use of the document, let alone its
6 admission.

7 JUDGE WOODRUFF: Any response as to
8 why the document wasn't provided?

9 MR. MALLIN: Your Honor, let me check
10 on that. I want to see when it was actually
11 published as compared to when there may have been a
12 DR with regard to it. Just one minute, your Honor.

13 Your Honor, my understanding from
14 talking with Dr. Pratt is that it was published in
15 mid to late February of 2015. My understanding is
16 it was also a copyrighted material, only available
17 by subscription or license, and that's the reason
18 why I have it. I'm not sure whether or not it was
19 included as a part of the DRs requested by Ameren
20 or not.

21 MR. NELSON: Your Honor, we have
22 existing DRs that were filed back in 2014 which
23 have a continuing duty to supplement. We also
24 asked supplemental DRs in I believe February of
25 this year to which this would be responsive. And

1 so it's been covered multiple different ways, and,
2 in fact, if it's copyrighted, if they don't want to
3 use it in this courtroom, that's one thing. If
4 they want to use it in this courtroom, it's
5 obviously not a problem from a copyright
6 perspective, nor is providing this in discovery.
7 So this should be provided, with all due respect.

8 MR. MALLIN: I still think, your
9 Honor, the question of whether it ultimately gets
10 admitted into evidence or not, it goes to the
11 question of the -- whether or not it fell within a
12 DR, whether it was or was not produced.

13 But in terms of cross-examining this
14 witness, it's entirely appropriate to use any
15 document, especially a document in an area with
16 regard to aluminum price forecasting, when he's
17 tendered himself as expert in that particular area.
18 Any document can be used for this purpose, whether
19 it has or has not been produced.

20 MR. NELSON: Your Honor, I assume
21 Mr. Mallin is going to read into the record from
22 this document, which is no different than admitting
23 the document. The use of this document, which
24 clearly has been requested, would be improper in
25 this matter. It wasn't produced, and whether

1 Mr. Mallin wants to read from it or he wants to
2 submit the document, either way he's trying to put
3 information from this document into the record when
4 it hasn't been produced.

5 JUDGE WOODRUFF: All right. I'm
6 going to defer ruling on the objection and allow
7 the testimony to proceed at this point. You can
8 brief the arguments and we'll decide that as part
9 of the -- taken with the rest of the case.

10 MR. MALLIN: Thank you, your Honor.

11 BY MR. MALLIN:

12 Q. Dr. Humphreys, you have before you
13 now, do you not, Exhibit 531?

14 A. I do.

15 Q. Are you familiar with the monthly
16 updates published by CRU?

17 A. No.

18 Q. Never seen such a document before?

19 A. No.

20 Q. That answers the question that I have
21 then, sir. Thank you.

22 Dr. Humphreys, are you aware that in
23 March of 2015, that Merrill Lynch issued downgrades
24 with regard to Alcoa and Century Aluminum?

25 A. I wasn't, no.

1 Q. You didn't hear in the marketplace
2 with regard to aluminum price forecasting that
3 Merrill Lynch was making those cuts because it felt
4 that the aluminum price forecast and premium -- its
5 premium assumptions were declining?

6 A. No, but it doesn't surprise me. It
7 would be a logically consistent thing for them to
8 do, given that they're taking a price downgrade.

9 Q. Would it also be logical in your mind
10 that such a price downgrade would come about as a
11 result of a larger than expected surplus of
12 aluminum product or inventory in the marketplace?

13 Q. Yes. They laid out their reasons for
14 those changes.

15 Q. Would you also agree that part of the
16 reason why the downgrade would have occurred is
17 because today there is a stronger U.S. dollar?

18 A. I believe it would be one of the many
19 factors that's involved in shaping this price
20 outlook, yes.

21 Q. Would you also agree that that
22 stronger U.S. dollar causes the midwest premium to
23 drop?

24 A. It would -- would encourage imports
25 into the U.S., and to that extent I guess would

1 suppress the midwest premium, yes.

2 Q. Would you be surprised to learn that
3 Merrill Lynch estimated that that price decline
4 with regard to the midwest premium could be as
5 large as 20 percent from its peak?

6 A. Yes, that's entirely possible.

7 Q. Do you know what the peak was of the
8 midwest premium, sir?

9 A. Well, it looks from the chart here to
10 be over \$500 a ton.

11 Q. Without looking at that chart, sir,
12 did you know that?

13 A. No.

14 Q. You agree that there is economic
15 literature out there that talks about price cycles,
16 sir?

17 A. Yes, I am.

18 Q. So-called investment cycles or is it
19 jugular cycles; is that correct?

20 A. That's a cite in my testimony, yes,
21 as one of the various cycles that economists use.

22 Q. Usually 7 to 11 years in length?

23 A. There is a theory, yes.

24 Q. But as I understand your testimony in
25 this case, you're of the belief that the price

1 cycle with regard to aluminum is highly erratic?

2 A. I think the globalization undermined
3 a lot of this theorizing which originally grew up
4 when economies were not as open as they are today.

5 Q. So is it your opinion that in terms
6 of trying to forecast the future in terms of
7 running a business, that now with regard to
8 aluminum prices, what management should expect is
9 wholly unanticipated shocks?

10 A. That would -- that would certainly
11 seem to be the case, yes.

12 Q. You agree, do you not, that using a
13 sensitivity or stress test is an appropriate
14 management tool, especially when dealing with
15 prices of your products?

16 A. Yes.

17 Q. On page 14 of your rebuttal
18 testimony, you note that Noranda at one point in
19 time did hedge some of its product?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes.

23 Q. But you also note that Noranda closed
24 out of those hedging programs in 2010, correct,
25 sir?

1 A. Correct.

2 Q. Did you do any independent analysis
3 of those prior hedging transactions in order to
4 learn the terms and conditions under which Noranda
5 entered into those transactions?

6 A. I did not.

7 Q. Do you have any opinion as to whether
8 or not, since you don't know the terms and
9 conditions under which they entered into those
10 hedge transactions, they can be replicated today?

11 A. I do not.

12 Q. Do you know whether or not any
13 changes in the American banking law has made it
14 more difficult to enter into hedging transactions?

15 A. I believe that the -- in some of the
16 testimony reference is made to the Dodd-Frank Act,
17 but as to whether or not that is the case, whether
18 it has made things difficult or not, I'm not in a
19 position to comment.

20 Q. And you have not undertaken, have
21 you, any sort of an independent analysis of
22 Noranda's loan book or any conditions attached to
23 it in order to determine whether or not its
24 existing loan facilities would allow for any
25 hedging transactions, correct, sir?

1 A. I have not.

2 Q. You simply, as I think you put on
3 page 15, line 16, you just don't have this
4 information, correct, sir?

5 A. Personally, I don't, no.

6 MR. MALLIN: Just one second, your
7 Honor. Thank you, your Honor. Thank you, Doctor.

8 JUDGE WOODRUFF: Thank you. Come up
9 for questions from the Bench. Mr. Chairman?

10 CHAIRMAN KENNEY: No questions,
11 Dr. Humphreys. Thank you very much.

12 JUDGE WOODRUFF: Before we go on, I
13 noticed that we have -- 530 and 531 have been
14 marked. Do you wish to offer them?

15 MR. MALLIN: Not at this time, your
16 Honor.

17 JUDGE WOODRUFF: All right. Thank
18 you.

19 COMMISSIONER W. KENNEY: No
20 questions, Dr. Humphreys. Thank you.

21 JUDGE WOODRUFF: Commissioner Hall?

22 COMMISSIONER HALL: Yes.

23 QUESTIONS BY COMMISSIONER HALL:

24 Q. Good morning, Dr. Humphreys. I have
25 a very general question which may lead to a few

1 more. Maybe not. Why is aluminum pricing so
2 volatile?

3 A. I'm not sure that aluminum is
4 uniquely volatile. I think probably the same
5 applies to all traded metals, particularly those
6 traded on the met exchange. All commodities are
7 subject to news flow and as to factors which may
8 affect the supply and demand. So this would be
9 kind of normal in any commodity market.

10 So I think that aluminum has some
11 particular issues at the moment, some of which have
12 been brought out in the questioning here. One is
13 the extraordinarily important role that China plays
14 in the aluminum market at the moment, accounting
15 something like half the world's aluminum
16 production, and our limitations of our knowledge
17 about how China will respond in the market. I
18 think that is a source of uncertainty, and so --
19 and rumors and so on that lead markets to be jumpy.

20 And the other is uncertainty around
21 the warehousing regulations for the -- for the LME
22 where we still don't have complete clarity on what
23 the consequences of the change of regulation are
24 going to be. But as I say, generally all
25 commodities display volatility.

1 **Q. So aluminum is not any more volatile**
2 **than other traded metals?**

3 A. Actually, over the course of the last
4 decade, I would say it was less volatile if it
5 didn't participate in the big price spike of the
6 2005-2008 to the degree that most of the other
7 nonferrous metals did. So, no, I don't think it's
8 uniquely volatile.

9 **Q. So then price forecasting is -- is**
10 **easier to do for aluminum than most other traded**
11 **metals?**

12 A. Forecasting is never easy for any
13 commodities.

14 **Q. But I'm trying to understand if it's**
15 **more easy -- it's easier than --**

16 A. It hasn't experienced the extremes, I
17 think it's fair to say, in recent years as some of
18 the other commodities have.

19 **Q. And one of the reasons that you cited**
20 **for the volatility is rumors?**

21 A. Uh-huh.

22 **Q. And would that include speculation?**

23 A. It's less to do with speculation than
24 some of these complex financing deals that are
25 partly a product of quantitative easing, cheap

1 money, has encouraged a number of financial
2 institutions into stock holding. Whether that's
3 speculation or not I think is a matter of
4 definition, but certainly there is a significant
5 amount of non-trade money, should we say, in the
6 LME market at the moment.

7 **Q. Over the long-term, supply de--**
8 **supply and demand and input costs essentially are**
9 **what sets the price?**

10 A. Yes.

11 **Q. And what have you seen with regard to**
12 **demands concerning aluminum over the last five**
13 **years and maybe five years into the future? What**
14 **do you predict?**

15 A. Demand at a global level has been
16 consistently strong, and the forecasts, including
17 those for Bank of America, Merrill Lynn, I mean,
18 they're looking at forecast as something in the
19 region of 6 percent growth in demand, which for a
20 metal is -- is quite high. That will be higher
21 than nickel, copper or most of the other nonferrous
22 metals. The problems apprise on the supply side of
23 the industry, and --

24 **Q. By problems you mean in terms of**
25 **forecasting?**

1 A. Problems in terms of forecasting,
2 problems in terms of market balance, because of the
3 enormous role that China plays in the aluminum
4 production, which it doesn't play in some of these
5 other commodities, like copper, nickel.

6 **Q. So the production in China is**
7 **volatile?**

8 A. It's -- it's not simply just
9 volatile. It's unpredictable because it -- it's
10 subject to a lot of political influence, to
11 subsidization, to trade policy and things that we
12 don't have very good visibility on.

13 **Q. Is there a long-term trend with**
14 **regard to aluminum pricing?**

15 A. That's hard to say, but if there is,
16 it's a very gentle change, probably in a downward
17 direction. But that's, again, not untypical for
18 commodities. But for practical purposes, over a
19 ten-year period, I think under the assumption that
20 prices will remain broadly flat, I think it is a
21 reasonable one.

22 **Q. I'm sorry. Say that again.**

23 A. I think over a very long period, most
24 commodities historically have shown a tendency to
25 decline on a relatively slow basis. But over a

1 shorter period the trends are not usually very
2 evident.

3 **Q. So would you expect that trend to**
4 **continue going forward, the gradual decline?**

5 A. Not necessarily, because to do that,
6 really, would presume a decline in energy costs.
7 And I think the general view would be that energy,
8 as seeing here, cheap energy, the lower the prices
9 have come down, a combination of longer-term trends
10 and pressure on carbon charging and things like
11 that mean that energy is unlikely to come down to
12 the degree that it did during a previous era.

13 **Q. So because one of the input costs,**
14 **the most significant input cost will be going up,**
15 **you don't believe that the long-term price will be**
16 **going down?**

17 A. That would be my -- that would be my
18 belief, yes.

19 **Q. And would that still be your belief**
20 **if there was an increase in supply?**

21 A. If there was an increase in supply
22 that resulted in surplus in the market, then I
23 think that some of the higher-cost producers would
24 have to withdraw from the industry.

25 **Q. So an increase in supply would not**

1 **have a downward effect?**

2 A. Well, it would up to a point but, I
3 mean, in the end there has to be some producers in
4 the market to balance it.

5 **Q. After reading your direct testimony,**
6 **it seemed to me that you could almost summarize**
7 **your testimony as being there's no way to predict**
8 **the future of aluminum prices.**

9 A. There's no what?

10 **Q. There's no way to predict the future**
11 **for aluminum prices with the amount of specificity**
12 **that Noranda is -- is arguing.**

13 A. I don't think I'd say quite that. I
14 think there are tools available to us to predict
15 the broad picture, if you like, the essential case
16 for that arising from, as I mention, supply/demand
17 pressures, cost and so on that you factor in to an
18 essential case assumption, because investments have
19 to be made. Companies have to make forecasts. So
20 one can't stand back and say, this is all too
21 difficult, impossible to do.

22 The problems that I had mostly
23 focused on the question of how you draw tunes
24 around that in terms of volatility that you assume
25 around those longer-term trends or means. And

1 that's where I have the real probability and, to be
2 quite honest, in a professional context, where I
3 was working, we never made any attempt to do that
4 because we deemed it to be impossible to do, and in
5 attempting to do that, potentially quite
6 misleading.

7 COMMISSIONER HALL: Okay. Thank you.

8 JUDGE WOODRUFF: Commissioner Rupp?

9 COMMISSIONER RUPP: Thank you.

10 QUESTIONS BY COMMISSIONER RUPP:

11 **Q. Good morning, Doctor.**

12 A. Good morning.

13 **Q. Walk me through the strong dollar and**
14 **how that's influencing midwest premium in the**
15 **aluminum prices.**

16 A. Well, there's -- it has two effects.
17 I mean, there's a general effect, which is that all
18 commodities are priced in U.S. dollars around the
19 world, and there's just a kind of a logical
20 consequence of rising strength of currency is that
21 the prices of commodities go down. I mean, you
22 need less currency to buy a given amount of metal.
23 So there's simple identity there that just feeds
24 through into all commodity prices.

25 But more specifically, there's the

1 effect that a higher dollar will make it more
2 attractive for U.S. consumers to import aluminum
3 rather than to buy it from producers, because
4 obviously the stronger dollar makes imports more
5 attractive, makes it cheaper. So from that extent,
6 that would put the midwest premium under pressure.

7 Q. Is there any type of a currency
8 exchange bump for an international company to
9 be -- participate or playing in this commodity
10 market with, say, the euro and then when they
11 switch it back over to the dollar for their own,
12 will they get some type of a currency bump that
13 will provide additional incentive for them to be in
14 the commodity market?

15 A. I'm not sure I quite understand.

16 Q. I'm not sure I'm asking the question
17 in my head. I'm just thinking of international
18 companies that are -- say they're the euro, and
19 then they want to invest in a U.S. company because
20 of the dollar.

21 A. Yeah.

22 Q. Then when they come back and switch
23 it back to the euro, is there some type of currency
24 exchange premium based off of where the dollar is
25 that would provide incentive for them to invest

1 more into the U.S. company based off of the risk
2 portfolio and everything, but there's a possibility
3 of a currency swap bump?

4 A. That would require the euro to be
5 strengthened against the U.S. dollar for this to
6 occur, and that is not the case at the moment.

7 Q. Okay. That's not the case. Okay.
8 Give me -- the Chinese are basically, in your
9 opinion, from what I was listening online, is
10 increasing the supply and putting it out into the
11 market?

12 A. Well, they're doing both. They're
13 also the world's largest consumer as well as
14 largest producer, and they are not exporting
15 primary aluminum of the sort the Noranda smelter is
16 producing, but they are exporting a semi-fabricated
17 product made from the kind of primary aluminum
18 Noranda is producing because they have a 15 percent
19 export tariff on the exported primary aluminum. So
20 they are massively discouraged from exporting
21 aluminum at the moment, which is why that surplus
22 is expressing itself in exported semi-fabricated
23 products.

24 Q. And then you -- in response to
25 Commissioner Hall's question about the increase of

1 **supply could lead to smaller players in the**
2 **industry to be forced to leave the industry, you**
3 **couple that with the drop in price?**

4 A. Well, the most high-cost production
5 is in China, so by all rights, China should be
6 taking the cut, but -- and it has taken some cuts.
7 But in some areas there subsidization takes place
8 and reluctance to create unemployment.

9 So it's a complex situation to read.
10 Some of the high-cost production outside of China,
11 yes. I mean, Alcoa made an announcement about some
12 of its high-cost capacity in Spain and Brazil that
13 it's contemplating closing down.

14 **Q. And where would you place the Noranda**
15 **smelter in that list of high cost, mid cost, low,**
16 **cost? In your opinion, where do they fall?**

17 A. Well, I haven't looked at the most
18 recent cost codes, but obviously this is a moving
19 target because of the strength of the dollar and so
20 on. But my understanding is that it's a second
21 quartile producer which would put it in the bottom
22 half of the cost codes. You have people from
23 Noranda here are probably in a better position than
24 I am to tell you that.

25 **Q. And in your professional opinion of**

1 monitoring the aluminum prices, at what price do
2 those in the bottom quartile become stressed to
3 where there is not -- for the viability of the
4 organization to exist in a sustained depressed
5 price market where they have to question their
6 existence, where in your mind is that price?

7 A. Well, we clearly at current prices
8 are getting into the area where some producers -- I
9 only briefly looked at the CRU piece here where
10 they are identifying some of the areas that are
11 most exposed. We know who they are. They're
12 apparent from the examination of the cost curve.

13 And there will be companies out there
14 looking at -- well, not just looking at where the
15 price is going, but also looking at where they can
16 cut costs further and considering the
17 sustainability of the current conditions.

18 Because, you know, this is one week's
19 news. Things do turn. Things, markets turn
20 around. They sort. I mean, the price of aluminum
21 actually is no lower today than it was a year ago.
22 So I mean, there is a pattern of volatility, so
23 companies tend to not react to every price
24 movement. They have to be persuaded that those
25 price movements are sustainable before they start

1 making decisions about capacity.

2 Q. And in the Bank of America, Merrill
3 Lynch, the prices, the 8 percent, then the forecast
4 for the 15 percent reduction in the following year,
5 do you assume that those are off of their original
6 projections?

7 A. Yeah.

8 Q. So that is where -- this is where
9 Bank of America and Merrill Lynch had originally
10 projected the price, and these reductions are off
11 of that projection, not off the current price?

12 A. Yeah. Yeah. Absolutely. Most of
13 the big banks will put out quarterly reports, but
14 they will update all their assumptions about where
15 the market's going, responding to the most recent
16 news, trying to factor it in. It's all, you
17 know -- but because, I mean, volatility means you
18 have to keep rewriting the forecast rule.

19 COMMISSIONER RUPP: That's all I
20 have, Judge. Thank you.

21 JUDGE WOODRUFF: I have one question.

22 QUESTIONS BY JUDGE WOODRUFF:

23 Q. You said something that interested
24 me. You said that Chinese production is the
25 highest cost?

1 A. Yes.

2 **Q. Why is that?**

3 A. China -- well, two reasons. One is
4 they don't have a lot of low-cost power, and down
5 in the south they have hydroelectric power, but
6 most of the power in China, 70 percent is generated
7 by coal, and it's not the cheap way to generate
8 power.

9 The other factor is raw materials.
10 They don't have good supplies of cheap raw
11 materials. They have to either import bauxite
12 alumina or use inferior quality, higher cost forms
13 of bauxite alumina derived from their own
14 resources.

15 **Q. Where do they get most of their**
16 **bauxite alumina?**

17 A. Well, they do have a significant
18 production, but their bauxite is very poor quality.
19 The rest of it they tend to get from places like
20 Indonesia, Australia, Guinea, Brazil.

21 JUDGE WOODRUFF: Thank you. Any
22 recross based on questions from the Bench?
23 Anything from Noranda?

24 MR. MALLIN: No, your Honor.

25 JUDGE WOODRUFF: Redirect?

1 MR. NELSON: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. NELSON:

3 Q. Dr. Humphreys, you were asked some
4 questions on cross about your time with Rio Tinto.
5 I want to kind of follow up with a little bit of a
6 broader understanding of your background. In
7 addition to Rio Tinto, you were also the chief
8 economist at a company called Norilsk Nickel?

9 A. Uh-huh.

10 Q. Yes?

11 A. Yes, indeed.

12 Q. And can you tell us at both of those
13 companies generally what your responsibilities
14 were?

15 A. I was chief economist at both, but I
16 was head of -- I was responsible for industry
17 analysis and for price forecasting in both
18 companies, group-wide, worldwide.

19 Q. Have you authored any papers,
20 reviews, books, anything like this on analysis of
21 the aluminum industry in any form?

22 A. I've written something in the region
23 of 200 papers and articles. I have a book coming
24 out shortly. With respect to aluminum
25 specifically, I for many years wrote annual review

1 of the aluminum industry for the Mining Journal.

2 **Q. And it says in your testimony that**
3 **you also served on the statistics committee of both**
4 **the International Aluminum Institute and the**
5 **European Aluminum Association, including a period**
6 **as the chairman of the latter?**

7 A. That's correct.

8 **Q. What is the statistics committee?**

9 A. Well, take them individually. I
10 mean, the European Aluminum Association was the --
11 represented all the companies producing aluminum in
12 Europe, which at the time Rio Tinto was one, and we
13 would assemble twice a year in order to forecast,
14 draw up forecasts for the future, under strict
15 legal controls, I have to add, because of any
16 coming together of producers requires lawyers to be
17 in the room.

18 But we pooled a certain amount of
19 intelligence that we had about what was going on
20 elsewhere in the world to derive forecasts that we
21 could use with our separate companies.

22 The International Aluminum
23 Association is slightly different, much more
24 constrained legally in terms of what we could do in
25 that forum. And there it was more of a question of

1 methodology and determining how that work was done,
2 but the work was all done by the secretary and was
3 more restricted as far as you were not able to
4 identify the individual producers within that in
5 that context. So they generated data which is
6 widely used in the industry.

7 **Q. And your work with statistics, did**
8 **that include work with probabilities?**

9 A. Indeed.

10 **Q. And then are probabilities important**
11 **when we're discussing some of the issues in this**
12 **case like price forecasting?**

13 A. Absolutely.

14 **Q. And how so?**

15 A. Relating to the particular
16 circumstances subject to this discussion, the
17 forecast that we have in front, the only forecast
18 we have in front of us is provided by CRU. And
19 when I say the only forecast, this is the only set
20 of price projections that we have that we can fully
21 work through with regard to all the influences that
22 go into a balanced assessment of the future of the
23 industry.

24 And so from that point of view, if
25 one thinks of it in terms of a bell-shaped curve,

1 this is the most probable outcome. We didn't say
2 the right one, but in terms of today's information,
3 this is deemed to be the most probable outcome.
4 Other scenarios, stress variables and so on would
5 come out somewhere below that point on the bell
6 curve, those close to it with a similar but less
7 probability and those out on the fringes, I mean,
8 very low probability. So, I mean, probability is
9 key to being -- solving issues.

10 **Q. Let me follow up on what you just**
11 **said. With respect to forecast, you said CRU was**
12 **the only forecast --**

13 A. Yeah.

14 **Q. -- that you were aware of in this**
15 **case. Do you consider the Noranda scenarios that**
16 **have been provided that you've looked at to be**
17 **forecasts?**

18 A. No, I don't. I see them as just as
19 that, as scenarios played around that most probable
20 case. By definition, they are less probable
21 outcomes.

22 **Q. And can you tell us a little bit the**
23 **difference between the Noranda scenarios and the**
24 **CRU forecast based on your review as an economist?**

25 A. I'm sorry. Could you repeat that?

1 **Q. Sure. Can you explain to us why you**
2 **characterize CRU as a forecast, whereas the Noranda**
3 **work, those are just scenarios? How are they**
4 **different?**

5 A. Well, forecast that CRU has provided,
6 I mean, CRU will -- has teams involved in aluminum,
7 bauxite, power, fabricated products. I mean,
8 assembling all this data together to try and get as
9 clear a guidance as it can on the supply/demand
10 balance, factoring in what it knows is going on in
11 the stocks and so on to provide its best guess,
12 central case, whatever the most likely outcome.

13 So none of which can be said of the
14 forecast that Noranda has generated. Those are
15 mechanical adjustments that have been made on the
16 basis of what I would consider to be fairly
17 arbitrary assumptions based off what is a genuine
18 forecast.

19 **Q. You talked about -- you just used the**
20 **word central case. Why did you refer to the CRU**
21 **forecast as a central case?**

22 A. Well, it's a central case in that
23 it's the most probable. And central case, since
24 it -- outcomes are likely to be above that as below
25 it, that makes it a central case, in statistic

1 speak.

2 Q. Let's talk a little bit about the
3 price or the discussion that was occurring during
4 cross-examination about the present state of price
5 as we sit here today or yesterday in the aluminum.

6 A. Yeah.

7 Q. Does that concern you in the sense
8 that it fundamentally changes your outlook for the
9 aluminum industry?

10 A. Not at all, no. It supports the view
11 that I expressed in the paper that aluminum price
12 is subject to volatility. I don't think every
13 single piece of news that comes in necessarily
14 should lead to a revision of your views of what's
15 going to happen over the next ten years. It's the
16 nature of markets.

17 And so -- and anyone can relate back
18 to what events of the previous year, as I said, how
19 the price is similar today as it was about a year
20 ago, and in the course of last year, we saw second
21 quarter prices fall, third quarter prices were up.

22 I mean, this is what markets do.
23 They respond to new information as it comes in,
24 some of it good, some of it bad. Some of the
25 recent information hasn't been so good. But one

1 can't rule out that next week the IMS revisions up
2 for the world economy or some announcement out of
3 China about closures. I mean, one doesn't know. I
4 mean, this is why it's very difficult to impose any
5 kind of shape on the future outlook for prices.

6 **Q. And you were asked some questions on**
7 **cross about volatility and about your concerns, if**
8 **I will -- if I may, about trying to predict these**
9 **cycles. Do you recall those questions?**

10 A. Yes.

11 **Q. Why is that problematic in your point**
12 **of view?**

13 A. We have no -- we have no grounds for
14 doing it. There were no scientific grounds for
15 doing it. I mean, you can do it as a basic -- on
16 the basis of arbitrary assumptions about where the
17 world's going to go for scenario purposes, for
18 stress test purposes. But they are arbitrary
19 because there is no scientific basis.

20 Certainly when I was at Rio, we made
21 no attempt to impose any kind of cyclicity on
22 prices out beyond the very, very short-term
23 horizon, not because it was difficult, but because
24 it was impossible.

25 **Q. So distinguish if you could, please,**

1 CRU's forecast, which you do agree with, as I
2 understand it, do you not?

3 A. I did agree with their forecast.
4 They're credible forecasts indeed.

5 Q. Distinguish that with an attempt to
6 forecast volatility in the sense of forecasting or
7 predicting a cycle. How are those things
8 different?

9 A. The -- where the latter is -- is
10 simply plain tunes. It's assumptions, arbitrary
11 assumptions applied to the world on the basis of a
12 series of -- with the assumptions we've had quite
13 explicit, such as they're ten-year cycles and this
14 is the path we expect from them and this is where
15 we think we are, all of which were components.

16 And we chat up to something which
17 seems to me as fundamentally different from what it
18 is CRU had done. They are just tunes played around
19 the central case forecast.

20 Q. In response to a question from the
21 Commission, you mentioned that China, I think the
22 word you used was unpredictable?

23 A. Uh-huh.

24 Q. Could you explain that for us a
25 little bit? What do you mean that China is

1 **unpredictable?**

2 A. Well, it's not very transparent as to
3 how policy is derived there, how the government
4 will respond to particular stimuli. Our knowledge
5 of what is going on there, how much stock is held
6 there, what producers are doing is incomplete. And
7 policy tends to advance in lurches, you know, that
8 over the weekend the government will announce that
9 it's imposing a new tax, export tax, or it's
10 banning subsidies or whatever.

11 So, I mean, this is the nature of the
12 Chinese system is that we don't see things coming,
13 and often they are announcements commonly made over
14 the weekend that you wake up on Monday morning and
15 something has been said or done which changes the
16 outlook of -- the policy context in which the
17 industry is working.

18 **Q. Do those sort of unpredictable**
19 **announcements from China, do those work both ways?**
20 **For example, you could have an announcement when**
21 **you wake up on Monday morning that sends prices**
22 **down, and the next Monday you could have an**
23 **announcement that sends prices up?**

24 A. Well, indeed. I mean, one of the
25 things that China is grappling with at the moment

1 is the policy makers are unhappy about the extent
2 of its exports of energy-intensive products, and
3 some unhappy about the environmental impacts of
4 its -- of its heavy industries. And there have
5 been a number of attempts, some more successful
6 than others, to constrain the growth of these heavy
7 industries, which include aluminum.

8 So tightening of those kind of
9 policies would help restrain -- would serve to
10 restrain the rate of growth of China's production
11 of aluminum. That would be a positive factor for
12 people outside of China. So, yeah, the negative
13 ones we've seen through the export of the semis you
14 already mentioned.

15 **Q. You also talked about the price cycle**
16 **become being more erratic as we are in the midst of**
17 **globalization. Do you recall telling us about**
18 **that?**

19 A. Yes.

20 **Q. I think you were asked a question,**
21 **something along the lines of forecasting wholly**
22 **unanticipated shocks. Do you recall talking about**
23 **that?**

24 A. Yes.

25 **Q. Has that ever been possible to**

1 **forecast fully unanticipated shocks?**

2 A. We're in Donald Rumsfeld territory
3 here. No, it isn't. I mean, that's the nature of
4 market progress through news. News is by nature
5 unpredictable. I mean, I recall going back to the
6 2004 during the run-up to the commodity boom, there
7 were a lot of the analyst community seriously
8 bereaved that the peak was 2004. Prices kept
9 rising four years after that.

10 So you never really know what are the
11 influences that you're going to be grappling with a
12 year down the road.

13 **Q. So the fact that aluminum prices are**
14 **down today, based on your 37 years in the industry,**
15 **your experience, can you tell us with any certainty**
16 **where they're going to be in a month?**

17 A. Absolutely not.

18 **Q. Can you tell precisely where they'll**
19 **be? Will they be up in a year?**

20 A. I absolutely couldn't say. No idea.

21 **Q. What would you refer back to**
22 **determine the trend of prices? What would you rely**
23 **on to determine a trend of prices as you go through**
24 **time from now to the future?**

25 A. I would rely on a fully

1 worked-through forecast that seeks to take into
2 account all the information that we have available
3 to us at the moment, that one can do more than
4 that. And I think organizations like CRU do pretty
5 good on this, and most of the information that is
6 out there on things like stocks, one assumes
7 they're already being factored into those
8 forecasts.

9 **Q. Now, we talked a lot about China and**
10 **supply and inventories in China. Is there a**
11 **one-to-one correlation, if you will, a direct -- a**
12 **correlation that direct between Chinese inventories**
13 **and the markets that Noranda participates in?**

14 A. I would imagine not.

15 **Q. And please explain that. Why not?**

16 A. Well, the markets are highly
17 segmented. I mean, the location of the metals is
18 important and critical for the determination of
19 premium. In fact, this is really what metal
20 premiums, aluminum premiums reflect is local
21 availability of metal being distinct from global
22 availability, which is more represented by the
23 underlying -- underlying price.

24 So -- so there are two levels. Yes,
25 China may have an effect on the global level of

1 pricing, which would affect all aluminum prices in
2 the industry, but its impacts on premiums would be
3 much more limited.

4 Q. So if we want to look at, postulate
5 Noranda's -- the prices Noranda will be able to
6 receive for its products, the supply and the demand
7 situation that Noranda will directly face --

8 A. Yeah.

9 Q. -- can we simply look at China and --
10 to determine these Noranda answers?

11 A. No.

12 Q. Can we simply look at global
13 statistics to determine these Noranda answers?

14 A. No. They would only give partial
15 insights into Noranda's situation.

16 Q. You were asked some questions about
17 hedging, and about a banking regulation or I think
18 you may have mentioned it or Mr. Mallin may have.
19 Is hedging limited to U.S. banking institutions?

20 A. Not at all.

21 Q. There are worldwide banks that are
22 banks in other parts of the world?

23 A. Certainly Europe, yeah.

24 Q. And can you just give us a little bit
25 of an explanation, a little further explanation of

1 **some of the different hedging options that would be**
2 **out there?**

3 A. Well, the two principal means we've
4 discussed in the past in this context are simply
5 selling the product forward. You can sell using
6 forward curves. You can today sell metal a year,
7 two, three years forward. So that -- that is
8 available and that -- for some industries, that's
9 quite widely used.

10 Another approach is through the
11 options, which gives you the right but not the duty
12 to sell products at a pre-agreed price for a
13 premium, for the payment of a premium. And those
14 are perhaps more widely used, I believe, from
15 hedging and nonferrous metals.

16 And one can get very fancy with these
17 sort of options. One can buy put options to cover
18 down-side price risk, but at the same time you
19 write or sell call options for which you get money
20 which will offset the cost of your purchase. And
21 brokers will often devise quite a fancy schemes for
22 providing hedging cover at limited cost and more
23 limited cost.

24 I mean, like any insurance, there is
25 a cost associated with it, but that has to be

1 looked at in relation to what you deemed to be a
2 down-side risk.

3 **Q. Can you buy put options in London?**

4 A. Sure you can, yes.

5 **Q. Can you buy them in Chicago?**

6 A. Sure you can.

7 **Q. There are a number of different**
8 **markets where you can buy them?**

9 A. Well, you normally buy them over the
10 counter with -- through a bank, investment bank
11 broker. But the pricing of those would come off
12 one of those markets.

13 **Q. If you were certain or virtually**
14 **certain that there would be a long-term negative**
15 **price trend similar to what Noranda has postulated,**
16 **could you make an awful lot of money buying put**
17 **options or selling put options?**

18 A. If you were absolutely certain, I
19 would think it was something you'd look at trying
20 to do.

21 **Q. Now, you were referred in some of the**
22 **questions Mr. Mallin asked you to the direct and**
23 **surrebuttal of Collin Pratt. Do you recall those**
24 **questions?**

25 A. Yes.

1 **Q. And you did review Mr. Pratt's direct**
2 **and surrebuttal testimony, I think you told us**
3 **that, fair?**

4 A. Yes, I did.

5 **Q. And did you see in Mr. Pratt's**
6 **surrebuttal testimony areas where he agreed with**
7 **some of your most pertinent criticisms of Noranda's**
8 **approach?**

9 A. Well, certainly I think we were very
10 much aligned with respect to our comments on the
11 volatility and markets and the considerable
12 difficulties indeed, the impossibilities of
13 forecasting or generating scenarios with any
14 confidence that could portray the future having any
15 kind of scientific basis.

16 I mean, I think that that was common
17 ground between us. I think I recall him using the
18 word to try and impose cycles on the future would
19 be misleading. I agree.

20 **Q. So both you and Dr. Pratt have**
21 **used -- would use the term misleading in terms of**
22 **an attempt to predict the cycles up and down around**
23 **average price in the future; is that what you're**
24 **telling us?**

25 A. That is what I understood him to be

1 saying and I would agree with him.

2 Q. And if Dr. Pratt said that -- or
3 Mr. Pratt said that these cycles could not be
4 predicted with accuracy, is that something you'd
5 agree with him on?

6 A. Totally.

7 Q. You were asked some questions about
8 CRU's forecast and including some implicit factors.
9 Could you expand a little bit on what you believe
10 is built into the CRU forecast?

11 A. Well, CRU, like most forecasting
12 organizations, will step out with a review of
13 economic outlook, the various major consuming
14 countries and the likely performance of those
15 countries and will work back towards the
16 assumptions about what their likely level of
17 aluminum demand in the major sectors like
18 construction, like autos, like packaging and so on
19 will be. It assembles that.

20 It has a global network of offices
21 that it works with to collect and assemble this
22 kind of information. Then it will look at
23 producers the world over individually, their plans
24 for production, new projects, and try and assess as
25 accurately as it can the likely output those

1 different smelters are going to be worldwide.

2 It will look at the existing stock
3 levels, insofar as we can assess them, and some of
4 these stocks, as I have indicated, may be places
5 where it's kind of difficult sometimes to get clear
6 handle on them, such as those in China. And we'll
7 look forward, make judgments about where it thinks
8 things are likely to be trending, and from that it
9 will assemble its best guess, it's best estimate of
10 where they think prices might go to balance out all
11 those different factors.

12 **Q. Now, does the CRU forecast, to your**
13 **understanding, include implicit volatility?**

14 A. Yes, I'd say so. And I've been
15 criticized for doing so, but it seems to me almost
16 self evident that that is the case, that -- that
17 the expected -- expected price is a mean, it's an
18 average, and it's an average of all of a variety of
19 data points that lie around, that the exact
20 location of which one can't be certain about, which
21 is why we use the average instead.

22 But to me, when using a long -- an
23 average, one isn't saying there is going to be
24 volatility. One is simply saying one doesn't know
25 exactly what form that volatility is going to take.

1 Therefore, we're not going to make
2 assumptions about the form it's going to take, but
3 it will average somewhere in this kind of area. So
4 there's a difference between incorporating and
5 displaying volatility, and I think it's an
6 important one.

7 **Q. So if we had a forecast price two**
8 **years from now, let's say \$1.06, and that was the**
9 **CRU forecast, are you telling us that implicit**
10 **volatility in that price would be the fact that the**
11 **other highly probable prices were right in that**
12 **neighborhood, above and below?**

13 A. Yes. Yes. I mean, that would be
14 logically the case. If it's -- if that is the most
15 probable outcome on the basis of their estimation,
16 then numbers in that neighborhood would have a
17 greater probability than those, as I said, further
18 down the curve.

19 **Q. In your review of Dr. Pratt's**
20 **testimony, or Mr. Pratt's testimony, did he agree**
21 **with you that CRU's forecast includes implicit**
22 **volatility?**

23 A. He did, yes.

24 MR. NELSON: If I can have just a
25 minute to confer with counsel, your Honor.

1 MR. MALLIN: Sorry, your Honor.
2 We're just checking on whether or not this document
3 needs to be marked as highly confidential.

4 Thank you, your Honor. I apologize
5 for the delay.

6 MR. NELSON: Your Honor, if I may,
7 I'd like to put a document up on the ELMO for the
8 court's reference and counsel's reference. What
9 I'm doing is referring to a chart which is on
10 page 5 of Mr. Humphreys' rebuttal testimony, but I
11 think it's a little easier to go through if we blow
12 it up a little bit.

13 JUDGE WOODRUFF: Go right ahead.

14 MR. NELSON: And I just conferred
15 with counsel, and I think we agreed that the use of
16 this chart, even though it's in part of the HC,
17 they don't have a concern with that.

18 MR. MALLIN: That's true, your Honor,
19 with regard to this particular chart.

20 BY MR. NELSON:

21 Q. Now, Mr. -- Dr. Humphreys, do you
22 recognize this chart?

23 A. Yes. It's Figure 2 out of my
24 testimony.

25 Q. And I'd like to talk a little bit

1 more specifically about your criticisms of
2 Mr. Boyles and Noranda's forecast, but I'd like to
3 do it in the context of this chart. I think the
4 visual may help us. Let's identify a couple of the
5 data points on here. There's a series of green
6 bars and, for the period 1998 to 2016, what do
7 those green bars represent?

8 A. Up to '14?

9 Q. 2014. I'm sorry. Yes, sir.

10 A. They represent historical actual
11 data, which is annual averages of aluminum price
12 over those individual years.

13 Q. And the green bars that are on the
14 right-hand side of the chart, what do those
15 represent?

16 A. Those represent CRU's forecasts.

17 Q. So essentially from here on, these
18 are forecasts by CRU?

19 A. Correct.

20 Q. And then what does the blue line
21 represent?

22 A. The blue line represents one of the
23 scenarios, the A2 scenario presented by Noranda.

24 Q. So let's talk about that scenario a
25 little bit -- in a little bit more detail. Do you

1 **have some criticisms of Noranda's methodology in**
2 **arriving at that blue line?**

3 A. I do.

4 **Q. And can you tell us what those**
5 **criticisms are?**

6 A. Yes. The criticisms I laid out in my
7 testimony were basically of three forms. One
8 related to the imposition of a ten-year cycle that
9 seemed to me somewhat arbitrary. There were other
10 potential periods one could have chosen in the ten
11 years. This provides quite a long cycle.

12 The second was the pattern, the path,
13 if you like, of the -- of the chosen, which
14 effectively is basically using a -- it's a model of
15 an earlier period. In fact, you can visually see
16 that earlier period, if I can stand up and show,
17 that price shape followed that price shape there
18 (indicating). That's the basis on which they have
19 derived that forecast. They've used a historical
20 period and said, well, if we assume that the future
21 looks a bit like that period, then that is what
22 would happen going forward.

23 The third criticism I had is that --
24 is the assumption that they knew as a starting
25 point where we are at this point in the cycle,

1 because you can see graphically there the first few
2 years there is a very explicit assumption that
3 aluminum prices will fall and certainly be much
4 lower than those indicated in the CRU forecast.

5 On all those three grounds, I thought
6 this was defective.

7 **Q. Let me follow up a little bit. Why**
8 **are you critical of use of a ten-year cycle?**

9 A. Well, on its -- it's in conjunction
10 with everything else that I have a problem. The
11 ten-year cycle is somewhat arbitrary. I've
12 indicated in my paper that if you go back over
13 previous cycles, we haven't had many ten-year
14 cycles, that most of them appear to be somewhat
15 shorter than that, if you go on a peak-to-peak or
16 trough-to-trough basis. So from that point of
17 view, I think ten is somewhat arbitrary.

18 **Q. What would have been the effect if**
19 **Noranda had picked a shorter cycle length?**

20 A. Well, it would have certain -- one of
21 the factors is it would have made it impossible to
22 have projected a six or seven-year period during
23 which prices came out below the CRU average for
24 that period.

25 **Q. Let me follow up on that. If we**

1 looked at this chart, is there a six or seven-year
2 period on this chart where Noranda is hypothesizing
3 prices that are consistently below the CRU
4 forecast?

5 A. Yes.

6 Q. And that just happens to be, I guess,
7 the same six, seven-year period where they're
8 asking for rate relief?

9 A. I believe so.

10 Q. If you looked at shorter cycles,
11 would it be less likely that you would have six or
12 seven years where every single year you'd be
13 hypothesizing a price below CRU's base case
14 forecast?

15 A. Yes. I imagine that would be the
16 case, as indeed would be the case if you used some
17 of the other possible scenarios that were
18 identified by Noranda. They had 11 of them. They
19 chose to use three of them.

20 Q. In all three that they used, if we
21 were to put the other two up here and look at the
22 same information, in all three of those, is that
23 blue line always below CRU's forecast for that six,
24 seven-year period?

25 A. It is.

1 **Q. You also talked a minute ago about**
2 **having some concerns about the representativeness**
3 **of the cycle that Noranda chose or the cycles. Can**
4 **you please elaborate on that for us?**

5 A. Well, there were 11. Using this
6 methodology, Noranda derived 11 different profiles
7 of which three were used in this exercise. And
8 they have various reasons for dismissing the other
9 ones, some of which related to high prices in the
10 early part of the period which they thought to be
11 implausible, others because -- well, I don't know.
12 I think this is a question that's best to put to
13 them.

14 What they claim to be representative
15 was all have this distinctive pattern and they all
16 start out with several years of forecast scenario
17 prices which were below those of the CRU.

18 **Q. The three scenarios Noranda picked**
19 **for further study, did they all have this**
20 **characteristic of a long period of low prices in**
21 **the beginning and a sharp spike upwards at the end?**

22 A. Indeed they did. For the reason I've
23 already indicated, the particular period
24 incorporates -- is a mirror of this earlier period
25 which contains some very high prices over the

1 period of 2006 to 2008. So part of the consequence
2 of having those high prices at the end is to
3 surprise those at the front and that is what they
4 obviously focused on.

5 **Q. If we were to graph all 11 Noranda**
6 **scenarios, would we find some scenarios where in**
7 **those first seven years we have prices that were**
8 **higher than the CRU forecast?**

9 A. Absolutely, yes.

10 **Q. And then you also said you had a**
11 **criticism about the assumption of where we were in**
12 **the cycle. Can you explain that to us in a little**
13 **bit more detail?**

14 A. Yes. This point has been raised a
15 number of times and implicit I think in some of the
16 questions today that really we know where we are in
17 the cycle at any particular time, broadly, which
18 doesn't conform to my experience in the industry,
19 to say where you are, you know where you are today
20 in the cycle implies somewhat that you know where
21 we're going next.

22 If we're on the up cycle, the
23 presumption is that we're going up. Tomorrow it's
24 going to be higher. Next week we're here. And
25 experience tells me that you can't do this, that

1 the current price incorporates all the information
2 that is -- that is available to the public and
3 investors. That is the best guess as to it. So
4 today's price is the best guess of the future,
5 which is flat.

6 So I do have a problem with this
7 belief that we know where we are in the cycle, and
8 to the extent that some of the information that has
9 been advanced here as indicative of substantiating
10 a belief that prices must go down from here is
11 information which is not new, it's information
12 which has been out there for some time and
13 information which I assume has been incorporated
14 into the central case forecast that -- that the CRU
15 is working from.

16 **Q. Did you review Dr. Pratt's -- or**
17 **Mr. Pratt's surrebuttal where he expressed a**
18 **concern about a long sequence of negative**
19 **deviations from trend in the first few years with**
20 **respect to the Noranda's scenarios?**

21 A. Yes.

22 **Q. And was he actually echoing a**
23 **criticism of yours?**

24 A. I think he said I had a point.

25 **Q. And that negative deviation, that**

1 blue line that we see all seven years before the
2 CRU forecast; is that correct?

3 A. Yes.

4 Q. Did you read in Mr. Pratt's testimony
5 that he agreed with you that the three scenarios
6 chosen were not sufficiently representative of
7 potential price cycles?

8 A. I believe that's what he said, yes.

9 Q. Is that an area where you and
10 Dr. Pratt -- or Mr. Pratt agree?

11 A. I believe so, yes.

12 Q. Did you see where Mr. Pratt suggested
13 that a broader range of samples should have been
14 collected?

15 A. Yes. I think he said that all 11
16 should have been tested.

17 Q. And do you agree with that?

18 A. It would be one range of options. I
19 wouldn't want to lend any credence to this
20 particular methodology. But yes, if this is the
21 route you're going, you should try to test them
22 all.

23 Q. But at least we'd have a fairer
24 picture --

25 A. Sure.

1 Q. -- of what the possibilities Noranda
2 was postulating were; would be that fair?

3 A. Yes.

4 MR. NELSON: Thank you, your Honor.

5 JUDGE WOODRUFF: You can step down.

6 (Witness excused.)

7 JUDGE WOODRUFF: We'll take a break
8 before we go on to the next witness, and we will
9 come back at 10:30.

10 (A BREAK WAS TAKEN.)

11 (NORANDA EXHIBIT NOS. 600NP/HC,
12 601NP/HC AND 612 WERE MARKED FOR IDENTIFICATION BY
13 THE REPORTER.)

14 JUDGE WOODRUFF: We're back from
15 break, and Ms. Tatro asked to be recognized.

16 MS. TATRO: Thank you, your Honor.
17 Obviously I am recovery from being ill over the
18 weekend, so I apologize now for the voice.

19 Earlier Mr. Downey had indicated that
20 Ms. Vuylsteke was going to represent Noranda and
21 that he would be representing MIEC as if they were
22 separate parties. Prior to Ms. Vuylsteke asking
23 any questions, I wanted to lodge an objection for
24 your consideration.

25 Noranda is not a party in this case.

1 MIEC intervened initially, and then there was an
2 amended application filed which listed members of
3 MIEC, but it did not specifically request that any
4 of those individual members of MIEC be a party
5 separate and -- separate from MIEC.

6 Now, in past rate cases Noranda has
7 intervened as both as part of MIEC and on their
8 own. This summer in the complaint case, Noranda
9 was one of the initial filers of the complaint, and
10 then MIEC intervened separately.

11 So I understand that we have a
12 history of allowing Ms. Vuylsteke to represent
13 Noranda and Ed Downey to represent MIEC, but in
14 this case they are one and the same, and there
15 shouldn't be two attorneys doing whatever cross
16 Ms. Vuylsteke might be doing in this case because
17 Noranda is not a separate party.

18 MR. DOWNEY: Judge, I didn't --
19 there's nothing nefarious intended here. It's just
20 we wanted Ms. Vuylsteke to be separate in case you
21 had questions about the stipulation that was just
22 signed, and that is why we have a representative of
23 the MIEC here in case you had questions for him.
24 She does not intend to direct or cross any
25 witnesses.

1 JUDGE WOODRUFF: So there won't be
2 MIEC cross and Noranda cross of the same witness?

3 MR. DOWNEY: Correct. It's just when
4 you asked the question, was there any cross, we did
5 have cross for Mr. Humphreys. Ms. Vuylsteke said
6 no. I just wanted it to be clear that she meant in
7 connection with just her interest here for the MIEC
8 for the stipulation.

9 MS. TATRO: I guess that's what is so
10 confusing because at the beginning he said she'd be
11 representing Noranda. And I do note on the stip,
12 which I barely looked at, but it does have a
13 signature of Ms. Vuylsteke for Noranda. It's just
14 very confusing. They're not a party to the case.
15 They really shouldn't be signing off on any
16 stipulation, and I'm not sure they really can speak
17 independently.

18 That's just a point I wanted to make,
19 and if it doesn't come up because there isn't
20 anything to be said, that's fine. If it does come
21 up, we can speak to it again.

22 MS. VUYLSTEKE: Your Honor, may I
23 respond briefly?

24 JUDGE WOODRUFF: Sure.

25 MS. VUYLSTEKE: There is a very --

1 there is a very long history of the Missouri
2 Industrial Energy Consumers' participation in
3 Ameren rate cases wherein we have agreed to
4 stipulations and agreements on rate design. The
5 Missouri Industrial Energy Consumers are a separate
6 customer class from Noranda, and they have
7 different interests in cases but also have agreed
8 on many issues, including some of the issues in
9 this case.

10 The Stipulation & Agreement is
11 unique. It's important that the LPS class and the
12 MIEC members be able to state their separate
13 interests to the Commission and explain their
14 positions in this case, and I think that only
15 serves to improve the record and the Commission's
16 understanding of why parties have agreed, and also
17 I think in general it preserves the due process
18 rights of the MIEC members.

19 It's also completely consistent with
20 every case in which we've appeared where the MIEC
21 has been permitted to act on its own behalf by
22 signing stipulations, as we have in this case.
23 Actually, I'm signing the stipulation on behalf of
24 MIEC, and Mr. Downey is signing on behalf of
25 Noranda. This is by agreement of our clients.

1 But I don't think the Commission
2 should change or abandon its longstanding practice
3 with respect to those relationships of the parties.

4 MS. TATRO: If I may?

5 JUDGE WOODRUFF: Sure.

6 MS. TATRO: I'm not sure I would
7 disagree with most of what Ms. Vuylsteke just said,
8 but I would note in those other cases Noranda
9 intervened also as a party in and of itself, and it
10 was their choice not to do so in this case.

11 JUDGE WOODRUFF: At this point I
12 don't believe there's anything before me to make a
13 ruling on. Ameren just brought this up as kind of
14 an informational point at this point until there's
15 something objectionable going on, in which case you
16 may make another objection and I'll make a ruling
17 at that time.

18 MS. TATRO: Thank you.

19 JUDGE WOODRUFF: We'll see how things
20 go. All right. Then we need to bring Mr. Reed up.
21 Good morning, Mr. Reed.

22 MR. REED: Good morning.

23 JUDGE WOODRUFF: Please raise your
24 right hand.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may inquire.

2 MS. TATRO: I believe this is the
3 second time that Mr. Reed has taken the stand, so
4 his testimony -- I would offer his testimony into
5 the record -- I believe this is the last time --
6 and will tender him for cross-examination.

7 JUDGE WOODRUFF: That would be 40 is
8 his rebuttal and 41 is his surrebuttal. Any
9 objections to its receipt?

10 (No response.)

11 JUDGE WOODRUFF: Hearing none, it
12 will be received.

13 (AMERENUE EXHIBIT NOS. 40 AND 41 WERE
14 RECEIVED INTO EVIDENCE.)

15 JUDGE WOODRUFF: For
16 cross-examination, let's begin with MECG.

17 MR. WOODSMALL: No questions.

18 JUDGE WOODRUFF: Consumers Council?

19 MR. COFFMAN: No questions, your
20 Honor.

21 JUDGE WOODRUFF: Public Counsel?

22 MR. ALLISON: No questions.

23 JUDGE WOODRUFF: Staff?

24 MR. THOMPSON: Thank you.

25 JOHN REED testified as follows:

1 CROSS-EXAMINATION BY MR. THOMPSON:

2 Q. Good morning, Mr. Reed.

3 A. Good morning.

4 Q. I understand you're an expert on
5 regulatory policy?

6 A. Yes, sir.

7 Q. Do you agree with me that there is a
8 price point on any given day at which it is better
9 for the non-Noranda ratepayers on Ameren's system
10 to have Noranda as a customer even though it's
11 paying less than the full cost of service?

12 A. If we were to confine the analysis to
13 a given day, I can accept that.

14 MR. THOMPSON: Thank you. No further
15 questions.

16 JUDGE WOODRUFF: For Noranda?

17 MR. DOWNEY: No questions.

18 JUDGE WOODRUFF: Then we'll come up
19 for questions from the Bench. Mr. Chairman?

20 CHAIRMAN KENNEY: I don't have any
21 questions. Thank you, sir.

22 JUDGE WOODRUFF: Commissioner Hall?

23 COMMISSIONER HALL: No questions.

24 Thank you.

25 JUDGE WOODRUFF: Commissioner Rupp?

1 COMMISSIONER RUPP: Not at this time.

2 JUDGE WOODRUFF: There was no
3 recross. Any -- no questions from the Bench, no
4 recross. Any redirect?

5 MS. TATRO: No, thank you.

6 JUDGE WOODRUFF: Then Mr. Reed can
7 step down.

8 (Witness excused.)

9 JUDGE WOODRUFF: All right. At this
10 point then we are ready to move on to opening
11 statements on this issue. A little bit unusual.
12 But we'll begin with Ameren.

13 MS. TATRO: Actually, for this issue
14 don't we start with MIEC since it's their proposal?

15 JUDGE WOODRUFF: That's fine with me.

16 MR. DOWNEY: That's fine.

17 JUDGE WOODRUFF: Okay. Start with
18 MIEC. Mr. Downey, I note that this document is
19 marked as highly confidential.

20 MR. DOWNEY: Yes. As your Honor
21 knows, I indicated earlier, part -- there were
22 parts of this opening statement that contain
23 forward-looking information that's non-public and
24 material. And rather than going in and out of, you
25 know, confidential coverage of this, I thought I'd

1 mark the whole thing as confidential.

2 JUDGE WOODRUFF: Okay. And do you
3 wish your entire opening to be highly confidential?

4 MR. DOWNEY: Yes.

5 JUDGE WOODRUFF: All right. We'll go
6 in camera, then. Anyone in the room who needs to
7 leave, please do so.

8 MR. ALLISON: Your Honor, I just have
9 to note, is -- and ask Mr. Downey fortunately
10 publicly, is there some reason why portions of this
11 cannot be public?

12 MR. DOWNEY: I guess I can go slide
13 by slide. Unfortunately, there are three or four
14 slides here that have confidential information in
15 them, and we're going to be going in and out of
16 open session.

17 MR. ALLISON: I understand the
18 inconvenience. I just -- from OPC's perspective, I
19 think we should err on the side of having
20 everything that we can open and only go into closed
21 session when we absolutely have to. And
22 prophylactically just declaring an entire
23 presentation as highly confidential I think smacks
24 us as being perhaps an overly broad application of
25 the confidentiality.

1 JUDGE WOODRUFF: We can certainly go
2 in and out of in-camera as we need to.

3 MR. DOWNEY: I'll try.

4 JUDGE WOODRUFF: All right. We'll
5 stay in general session at this point and just give
6 me a signal when you want to go in-camera.

7 MR. DOWNEY: The very first slide,
8 Judge.

9 JUDGE WOODRUFF: Well, then we will
10 go into camera at this point.

11 (REPORTER'S NOTE: At this point, an
12 in-camera session was held, which is contained in
13 Volume 32, pages 2224 through 2231 of the
14 transcript.)

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1 JUDGE WOODRUFF: All right. We're
2 back in regular session to continue with the
3 opening for MIEC.

4 MR. DOWNEY: We believe the
5 Commission is the right place to have this issue
6 addressed. The Commission has the authority to
7 provide affordable and sustainable power rates for
8 Noranda.

9 The PSC recognized its authority to
10 provide that rate relief in the last case, the 0224
11 case. We understand the Commission denied that
12 relief in the last case. We've carefully examined
13 that order, and we believe that our requested
14 relief in this case addresses the Commission's
15 concerns.

16 Because our requested rate is above
17 the incremental cost to serve the smelter, other
18 ratepayers are better off with the smelter
19 operating at the reduced rate than if the smelter
20 closes. This issue is clearly within the
21 Commission's purview.

22 And I would say that the stipulation
23 includes most of the consumer parties that are
24 represented in this case, and they agree that
25 Noranda should receive a reduced power rate.

1 Now, one of the issues that came up
2 in the last case was whether this problem should be
3 addressed by the Legislature, and we believe that
4 approaching the Legislature is not the solution
5 because we understand that a small group of
6 legislators can stall any effort there. And I
7 realize I'm speaking to three former legislators,
8 so I think it's probably obvious.

9 We are convinced that the Commission
10 is the right place to be. Only the Commission can
11 address electrical rates in the context of the
12 needs of all of Ameren's ratepayers, and our focus
13 here is not just on Noranda. The focus is on all
14 ratepayers, because we believe they're all better
15 off if we keep Noranda on the system, even at a
16 reduced rate.

17 The rate we do seek is greater than
18 Ameren's incremental cost to serve. Therefore,
19 Noranda would continue to contribute to Ameren's
20 fixed costs. Ratepayers again are better off with
21 Noranda on the system at a reduced rate than
22 closing the smelter.

23 The requested rate, \$32.50 per
24 megawatt hour, was requested over a seven-year
25 period. It represents the rate that Noranda

1 believes would likely allow the smelter to be
2 viable through the entirety of the cycle of the
3 aluminum pricing. The \$34 per megawatt hour rate
4 in the partial stipulation has a longer term, but
5 it also has a number of conditions, and I'll
6 discuss those in a minute.

7 We believe that it represents a
8 reasonable compromise on this issue that was
9 entered into by the representatives of most of the
10 consumer parties in this case. Yet even at a
11 \$34 per megawatt hour rate, the risk of smelter
12 failure is higher obviously than at a \$32.50
13 per megawatt hour rate.

14 Any rate relief is welcome, but the
15 less relief, the less likely the smelter will
16 survive. The shorter the term of the relief, the
17 less likely the smelter will survive. The more
18 conditions placed on the relief, the less likely
19 the smelter will survive.

20 We certainly understand that if the
21 Commission is inclined to grant our request, that
22 it will impose conditions, reasonable conditions
23 upon rate relief, and we've addressed a number of
24 those in the testimony as well as in the
25 stipulation.

1 Noranda agrees to a minimum number of
2 employees, 850, at the smelter during the rate,
3 during the term that the rate would be in effect.
4 Noranda agrees to a minimum level of capital
5 expenditures at the smelter averaging 35 million
6 annually. Noranda agrees to a limitation on
7 special dividends during the term of any special
8 rate. Again, the more conditions imposed, the
9 greater the risk of smelter failure.

10 Our yearly payroll with benefits
11 exceeds \$95 million. Noranda adds over
12 \$336 million each year to the value of all Missouri
13 businesses. Noranda employs almost 900 people from
14 73 local communities. We make over 7.6 million in
15 retirement payments. We support about 3,900
16 Missouri jobs with annual wages and salaries of
17 \$158 million.

18 Noranda pays 17.9 percent of total
19 taxes in New Madrid County where the smelter is
20 located. It pays 28.7 percent of the taxes paid
21 for the New Madrid R-I Schools. Over \$500,000 was
22 donated to the United Way in 2013.

23 Noranda continues to invest in plant
24 with approximately 304 million over the past
25 decade. We are currently investing \$38 million at

1 the New Madrid smelter to improve power
2 reliability.

3 If the smelter were to close, 23 top
4 suppliers and their employees, many in the Ameren
5 service area, would be adversely impacted. Due to
6 the multiplier effect, we create four jobs for each
7 job at the smelter.

8 As the Commission knows, the bootheel
9 is already an impoverished area of the state and
10 includes several of Missouri's poorest counties.
11 Southeast Missouri would be devastated by loss of
12 the smelter, creating large social and economic
13 costs.

14 Ameren customers would be
15 economically harmed by the smelter's closure as a
16 result of the higher power prices they would
17 endure.

18 Now, our most vocal critic is Ameren
19 Missouri. What does Ameren say? Ameren says that
20 the PSC should deny our request. Ameren argues
21 that we do not have a liquidity or cash flow
22 crisis. Ameren Missouri says that we
23 misrepresented our financial issues and future
24 aluminum prices. Ameren Missouri says that we can
25 refinance our maturing debt or otherwise hedge our

1 way out of this predicament.

2 JUDGE WOODRUFF: At this point you
3 wanted to go in?

4 MR. DOWNEY: Yes, please.

5 JUDGE WOODRUFF: We'll go back
6 in-camera.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 Volume 32, page 2238 of the transcript.)

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

3 MR. DOWNEY: Merrill Lynch recently
4 lowered its view of the aluminum price and the
5 premium assumptions. I quote, We see worsening
6 aluminum fundamentals on pressure from LME
7 warehouse rules changes and Chinese exports hurting
8 at least the near term outlook.

9 Merrill Lynch lowered its price
10 objective for Noranda, and that's in a March 4,
11 2015 Investor Report, which I believe you already
12 have. CRU recently concluded that premiums are
13 falling in earnest, and the market is waiting for
14 the bottom. Noranda needs rate relief.

15 Now, Ameren Missouri proposes to
16 provide what it calls a wholesale contract rate to
17 Noranda for five years. The rate would also be a
18 discounted rate. Noranda's proposal and Ameren's
19 proposal are the same in that each would offer rate
20 relief to Noranda for some period of time with the
21 cost of such rate relief borne by other ratepayers.
22 And I would refer you to the surrebuttal of Lena
23 Mantle, page 10, lines 1 through 11.

24 However, in the case of a wholesale
25 contract, Noranda would no longer have a right to

1 service, and other ratepayers would have little say
2 in the terms of rate relief. The Staff and OPC
3 each offered serious opposition to Ameren
4 Missouri's proposal. Significantly, they believe
5 that if other ratepayers will shoulder the effects
6 of a discounted rate, they should have a say on the
7 terms and conditions of such rate. And obviously
8 this Commission is a forum for them to express
9 their positions.

10 Now, recently a nonunanimous or
11 partial stipulation was filed, and it was entered
12 by Noranda, the Office of Public Counsel, the
13 Missouri Industrial Energy Consumers, the Consumers
14 Council of Missouri and the Missouri Retailers
15 Association.

16 And the relevant terms, pertinent at
17 least to the rate relief requested here, are the
18 following: A \$34 megawatts per hour rate, which
19 again is higher than Noranda sought in its direct
20 testimony. No fuel adjustment surcharges.

21 Noranda would be subject to a 50
22 percent of system average rate increase, and would
23 be entitled to no rate decrease. So if there were
24 a rate decrease ordered, Noranda would have no
25 stake in that.

1 If the Legislature enacts any rate
2 mechanism that increases rates, Noranda would be
3 subject to 100 percent of its fair share of those
4 rate increases.

5 Noranda must maintain 850 employees
6 at the smelter. It must spend at least 35 million
7 annually, adjusted for inflation, in capital at the
8 smelter. Special dividends are prohibited. The
9 parties have the right, and I expect they will,
10 monitor Noranda's liquidity, and if it exceeds
11 certain levels provided in the stipulation, it
12 provides a mechanism to increase Noranda's power
13 rate.

14 Significantly particularly to the
15 other consumers, the stipulation prohibits Noranda
16 from taking wholesale service under certain
17 conditions. And subject to these conditions, and
18 there are a lot of them, including Commission
19 approval of the rates, the stipulation has a
20 ten-year term.

21 Now, who will you be hearing from
22 today and tomorrow and possibly Thursday? First
23 Kip Smith. As you know, Mr. Smith is the CEO. He
24 will identify and describe the significant
25 headwinds that are jeopardizing the New Madrid

1 smelter's existence. Those are the volatility of
2 the price of its product and its energy costs.
3 He also addresses the significant debt refinancing
4 issue Noranda faces prior to 2017 and 2019.

5 You'll next hear from Dale Boyles.

6 He is the CFO for Noranda. Mr. Boyles ran
7 sensitivities of Noranda's enterprise financial
8 model with LME aluminum price volatility scenarios.
9 His model sensitivities show that without rate
10 relief Noranda faces serious cash and serious
11 liquidity problems.

12 You'll next hear from Colin Pratt.

13 Mr. Pratt works for CRU and is an aluminum, or
14 aluminium, price expert. He is of the opinion that
15 the price of aluminum is volatile, as is
16 Mr. Humphreys who you heard from today, and that
17 the price sensitivities in the enterprise model run
18 by Mr. Boyles are reasonable.

19 You'll next hear from Steve Swartz.

20 Dr. Swartz is an economist, and after review of the
21 enterprise model sensitivities, opines that,
22 without rate relief, it is unlikely that Noranda
23 can refinance its debt in 2017, much less in 2019.

24 Tom Harris. Mr. Harris is a banker.

25 He testified in the last case. Comes to the same

1 conclusion that Dr. Swartz does, and that is
2 Noranda will be unable to refinance its debt.

3 You'll hear from Henry Fayne.
4 Mr. Fayne is a utility expert with significant
5 expertise related to aluminum smelters. He
6 identifies the difficulties that smelters face to
7 survive, how the New Madrid smelter compares to
8 other U.S. smelters, and how power rates largely
9 determine the survivability of a smelter. He notes
10 that aluminum smelters in the U.S. are quickly
11 becoming a dying breed.

12 Dr. Joseph Haslag. Mr. Haslag, also
13 an economist, has calculated the substantial
14 economic impact that Noranda's smelter has on the
15 local and state economies and the harm to those
16 economies should the smelter close.

17 Mr. Brubaker, who you are quite
18 familiar with. He's a highly respected utility
19 expert both in Missouri and nationally. He
20 addresses the impact to other ratepayers if the
21 smelter closes versus the smelter remaining open at
22 a reduced electric rate. He concludes that those
23 ratepayers are better off with the smelter
24 remaining an Ameren Missouri customer rather than
25 shutting down even if it remains at a reduced

1 electric rate.

2 And last, Mr. Dauphinais, who you
3 heard from last time. He's also a utility expert.
4 He's calculated an incremental cost to serve the
5 smelter. That cost is less and will remain less
6 than the \$34 per megawatt hour stipulated rate as
7 well as the \$32.50 per megawatt hour requested rate
8 for some time, and that is whether you determine
9 that incremental cost using historic information or
10 forward energy prices.

11 Happy to answer any questions.

12 JUDGE WOODRUFF: Questions,
13 Mr. Chairman?

14 CHAIRMAN KENNEY: Just a couple.

15 Mr. Downey, thank you. I just want to ask about
16 the provision in paragraph 23 of the nonunanimous
17 stipulation that you guys filed today in which it
18 ind-- do you have a copy of it?

19 MR. DOWNEY: Not up at the podium.

20 CHAIRMAN KENNEY: I don't know if you
21 need it. You mentioned it in your opening just
22 now, that the customer agrees not to seek to take
23 electric service in a wholesale structure,
24 discontinue service, et cetera. Tell me a little
25 bit about the significance of agreeing not to take

1 service in a wholesale structure, and if you can,
2 tell me what your understanding is of Ameren's
3 proposal to switch the customer to a wholesale
4 contract. And if you can't tell me that, tell me
5 who can tell me that.

6 MR. DOWNEY: Diana, can you address
7 that?

8 MS. VUYLSTEKE: Sure. Chairman
9 Kenney, first of all, with respect to the agreement
10 regarding wholesale service, I think it's best if
11 we could reserve any evidence or argument on that
12 point until the stipulation is considered in the
13 context of witness testimony regarding the various
14 elements of the stipulation itself.

15 Regarding the proposal that Ameren
16 made in its testimony, specifically in its rebuttal
17 testimony of Matt Michels, that proposal was deemed
18 problematic by a number of the parties in the case.
19 And given the various concerns that were raised in
20 the testimony of the Staff and the Office of the
21 Public Counsel, it is not a position of Noranda at
22 this time that they are in support of that
23 proposal.

24 And that's the reason why we have
25 submitted an agreement with other parties for a

1 retail approach to Noranda's service, which we
2 think is probably something that's much more
3 acceptable to the various stakeholders in the case.

4 CHAIRMAN KENNEY: Okay. That's
5 helpful. At the wholesale rate under Ameren's
6 proposal, what would the cost be per megawatt hour?

7 MS. VUYLSTEKE: Mr. Chairman, as far
8 as the proposal that Ameren put forward, I don't
9 believe we know what the price would be for that
10 service. It isn't clear to us what that cost would
11 have been, and I don't know that there will be any
12 evidence from Ameren regarding what it thinks the
13 cost would be in its proposal. But again, I think
14 you will probably hear evidence on that from
15 Ameren.

16 CHAIRMAN KENNEY: Yeah. Well, yeah,
17 and I will ask the same question, but I was kind of
18 curious as to your understanding of it. And you
19 want to reserve questions on the stipulation so
20 that those witnesses are available. Who are the
21 witnesses from Noranda that will be able to answer
22 questions about it?

23 MS. VUYLSTEKE: Regarding the
24 stipulation itself, our primary witness will be
25 Mr. Maurice Brubaker.

1 CHAIRMAN KENNEY: Okay.

2 MS. VUYLSTEKE: We also may have some
3 testimony from Mr. Smith. Usually the Commission
4 has taken some supplemental direct whenever there
5 is a stipulation, particularly a nonunanimous one.
6 So I think those two witnesses can address those
7 issues for us.

8 And I actually don't have a view of
9 the cost of Ameren's wholesale proposal. If we do
10 have an evaluation of that at the time that
11 Mr. Brubaker gets on the stand, I think that he'd
12 be the one to ask.

13 CHAIRMAN KENNEY: Okay. I don't have
14 any other questions. Thank you.

15 JUDGE WOODRUFF: Commissioner Kenney?

16 COMMISSIONER W. KENNEY: Thank you,
17 Mr. Downey. First off, I would like to say I'm
18 very appreciative of the role Noranda plays in the
19 New Madrid area. I have several friends there.
20 They've been a great corporate partner in that
21 area. I had a couple of questions.

22 MR. DOWNEY: Certainly.

23 COMMISSIONER W. KENNEY: Regarding
24 the Stipulation & Agreement, do you know what the
25 limitations is on the dividends?

1 MR. DOWNEY: I'm going to tell you my
2 opinion, but then I'm going to defer to
3 Ms. Vuylsteke because I've been busy --

4 COMMISSIONER W. KENNEY: That's fine.

5 MR. DOWNEY: -- here with the rate
6 case and she's been busy with the stipulation.

7 COMMISSIONER W. KENNEY: If that's
8 something I can ask Mr. Brubaker, if that would be
9 better, I'll just wait.

10 Now, next question. Can you tell me
11 when the last dividend was paid?

12 MR. DOWNEY: I can't, but I can find
13 out.

14 COMMISSIONER W. KENNEY: Was it in
15 2013? Was there a dividend paid in 2013?

16 MR. KIP SMITH: We've been paying
17 routine quarterly dividends since about 2013. The
18 last special dividend was paid in 2012.

19 COMMISSIONER W. KENNEY: 2012.

20 JUDGE WOODRUFF: For the record, that
21 was Kip Smith speaking.

22 MR. MALLIN: 2012 was the last
23 special dividend.

24 COMMISSIONER W. KENNEY: So Noranda
25 pays, what, about 14 million a month in energy

1 costs?

2 MR. DOWNEY: What was it, 100--
3 you're making me do math. 176 million a year.

4 COMMISSIONER W. KENNEY: Okay. Can
5 you tell me -- or I guess most of these questions
6 are for Mr. Brubaker regarding the Stipulation &
7 Agreement because I just wanted some -- let me ask
8 you, what's in this for Ameren?

9 MR. DOWNEY: In the stipulation?

10 COMMISSIONER W. KENNEY: Yeah.
11 What's in it for Ameren? I mean, why they would --

12 MR. DOWNEY: Ameren is not a party to
13 this stip--

14 COMMISSIONER W. KENNEY: I know
15 they're not a party to it. I'm from the
16 Legislature. You mentioned the Legislature. You
17 mentioned three of us in the Legislature.

18 MR. DOWNEY: Sure.

19 COMMISSIONER W. KENNEY: Legislators
20 always give and take. Was there any consideration
21 of raising the customer charge de minimisly to
22 8.58?

23 MR. DOWNEY: I'm sorry. To make --

24 COMMISSIONER W. KENNEY: Was there
25 any consideration in raising the customer charge to

1 8.58 in your conversations, to make it more
2 palatable?

3 MR. DOWNEY: I don't -- I have -- to
4 be honest, I wasn't a party to any of the
5 negotiations.

6 COMMISSIONER W. KENNEY: So you're
7 not the right person. Just --

8 MR. DOWNEY: But I can bring
9 Ms. Vuylsteke up here.

10 COMMISSIONER W. KENNEY: No. That's
11 all right. I can ask the questions later.

12 MR. ALLISON: Commissioner Kenney, I
13 apologize for interrupting. You may want to ask
14 that question to me.

15 COMMISSIONER W. KENNEY: I was going
16 to ask it to you, too.

17 MR. ALLISON: I hope so. I think I'm
18 prepared to answer the question. I hope so. I'm
19 prepared to answer the question, instead of the
20 frustration you may experience here.

21 MR. DOWNEY: I'm sorry.

22 COMMISSIONER W. KENNEY: I didn't get
23 any of my questions answered. Thank you.

24 JUDGE WOODRUFF: Commissioner Hall?

25 COMMISSIONER HALL: Good morning.

1 MR. DOWNEY: Good morning.

2 COMMISSIONER HALL: Will there be a
3 witness able to testify as to what other options
4 Noranda has to purchase power other than to
5 purchase power from Ameren?

6 MR. DOWNEY: There are a couple of
7 Noranda witnesses Mr. Smith and Mr. Boyles, the CEO
8 and the CFO, and they will be our first two
9 witnesses.

10 COMMISSIONER HALL: I have a question
11 about your current understanding, your
12 understanding of the current FAC as it relates to
13 what would happen to Ameren if Noranda were to
14 leave the system.

15 Based on the direct testimony put
16 forth thus far, it would seem that Ameren would
17 lose \$167 million in revenues should Noranda go
18 offline. So then Ameren, I assume, would attempt
19 to find some off-system sales, partners to pick up
20 that power. Under the current FAC, would proceeds
21 from those contracts run through the FAC?

22 MR. DOWNEY: That's a very good
23 question. I've been asking questions about
24 Factor N in the FAC, and I understand that applies
25 only when there is an act of God that forces the

1 smelter closure. So what would Noranda -- or what
2 would Ameren do? I know what it did as a result of
3 ice storm in '09. It asked for an AAO, and it may
4 do the same here.

5 COMMISSIONER HALL: So I take it from
6 that that it is your understanding of the current
7 version of the FAC that Ameren would have to run
8 those contracts through the FAC, and thereby Ameren
9 would lose 95 percent of the \$167 million. Is that
10 your understanding?

11 MR. DOWNEY: I know that it would
12 have to share 95 percent of the margin. I don't
13 know how much of the 167 million is margin.

14 COMMISSIONER HALL: Okay. Do you
15 have a witness who could speak more specifically to
16 that?

17 MR. DOWNEY: Absolutely. It would be
18 Mr. Brubaker and probably Mr. Dauphinais as well.

19 COMMISSIONER HALL: Okay. And then I
20 also have a question about the nonunanimous stip,
21 and you tell me if that should be addressed to
22 somebody else as well, and I'll hold off on
23 frustration until later.

24 MR. DOWNEY: I will say that Mr. --
25 if you want a lawyer to answer the questions, I

1 would ask Mr. Allison because he was involved in
2 the negotiation. I was not. And as you know, this
3 document was just filed this morning.

4 COMMISSIONER HALL: Yeah. Well, it
5 concerns Noranda specifically. All right. Well,
6 I'll ask Mr. Allison.

7 MS. VUYLSTEKE: Commissioner Hall, I
8 negotiated the stipulation on behalf of the
9 parties.

10 COMMISSIONER HALL: Is Noranda
11 interested in taking advantage of this new EDR?

12 MS. VUYLSTEKE: The EDR that's
13 referenced in the stipulation I believe is not
14 appropriate or accessible to Noranda at this time.
15 I think that Noranda is most interested in having a
16 rate that provides it with certainty and
17 sustainability. And so the form of the rate is not
18 the most important part but the package of the
19 rate.

20 The consumers here found a rate that
21 they felt was appropriate that provides protections
22 but is not an economic development rate, and it's
23 just not tailored that way.

24 COMMISSIONER HALL: Well, what aspect
25 of the modified rider would you rely on for the

1 assertion that Noranda would not take advantage of
2 it or attempt to take advantage of it?

3 MS. VUYLSTEKE: Well, the general
4 structure of it is very different than the
5 stipulated approach or a traditional ratemaking
6 approach. I think that we would have to in some
7 detail amend it or change it, and regarding the
8 specific respects in which we'd do that, some of
9 those are technical issues, and so I would defer to
10 Mr. Brubaker on how the economic development rate
11 would have to be changed in order for it to be
12 accessible.

13 COMMISSIONER HALL: Or if, in fact,
14 Noranda --

15 MS. VUYLSTEKE: Or if it does.

16 COMMISSIONER HALL: Exactly. Okay.
17 I have no further questions.

18 JUDGE WOODRUFF: Commissioner Rupp?

19 COMMISSIONER RUPP: Yes. Thank you.
20 I'm going to attempt not to mention anything that's
21 HC, but I'm going to reference some of your HC
22 slides. I believe it was on slide 5, you had a
23 critical point on your graph.

24 MR. DOWNEY: Yes.

25 COMMISSIONER RUPP: Could you explain

1 what that is? Is that when you trigger covenants
2 on bonds or what is that?

3 MR. DOWNEY: This is, of course,
4 subject to correction by either Mr. Boyles or
5 Mr. Smith when they testify. But it's my
6 understanding that is where they cross the
7 100 million minimum liquidity threshold.

8 COMMISSIONER RUPP: And does that
9 trigger a covenant on your existing bonds?

10 MR. DOWNEY: I don't know if it does.
11 That would be a question for Mr. Boyles.

12 COMMISSIONER RUPP: Okay. Great.
13 The 2017/2019 years that you were discussing -- I'm
14 trying not to be HC.

15 JUDGE WOODRUFF: We can go in-camera.

16 COMMISSIONER RUPP: Would you do so?

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

18 (REPORTER'S NOTE: At this point, an
19 in-camera session was held, which is contained in
20 Volume 32, pages 2256 through 2259 of the
21 transcript.)

22

23

24

25

1 JUDGE WOODRUFF: Let's move to Public
2 Counsel for an opening.

3 MR. ALLISON: May it please the
4 Commission?

5 I think in evaluating Noranda's
6 request for relief, a predicate question has to be
7 answered in the affirmative before you move any
8 further, and that is, but for rate relief, will the
9 smelter close or otherwise would Noranda leave the
10 system?

11 The stipulation that was filed this
12 morning is predicated on OPC's response to that
13 question, which is, yes, we believe that, without
14 rate relief, the smelter will no longer operate in
15 New Madrid County. I understand there's
16 disagreement on that point. That's how we come
17 down on the issue.

18 We come down on that that way
19 because, in all candor, we believe the sworn
20 testimony in this case and the last time we talked
21 about this case of Noranda that that's the outcome
22 if they don't -- if they don't receive rate relief
23 in the near future. That's a judgment call at the
24 end of the day more than anything else. Who do you
25 believe? And that's where we come down.

1 So what do we do about it? Everybody
2 wants rate relief. I want rate relief. Every
3 customer I've ever talked to wants rate relief.
4 You know, and how much rate relief are we talking
5 about?

6 Noranda is unlike any other customer
7 in Ameren's territory or in the state of Missouri,
8 and I have to recognize that when I look at these
9 questions and decide from my perspective what I
10 think is representative of the interests of all
11 consumers. Noranda takes a massive amount of
12 power, as we've already been talking about today.
13 Usually that load is very even. There's been some
14 extraordinary events in the past with respect to
15 pot line failures. Typically it's a massive amount
16 fairly evenly distributed, and they contribute
17 substantially to Ameren's fixed costs.

18 When you get to questions that are
19 kind of intrinsic to Noranda, what's the percentage
20 of power in their cost structure, from my
21 perspective I weigh that less, to be honest with
22 you, because everybody has to budget and
23 everybody's looking at utility bills within their
24 own personal cost structure. So that doesn't
25 distinguish Noranda from my perspective compared to

1 every other customer I deal with.

2 What does distinguish Noranda is the
3 massive amount of power they use, their
4 contribution to the system and their contributions
5 in terms of avoided costs on other ratepayers.

6 So I look at Noranda's ratepayer
7 impact. That's my primary guiding post here, and
8 what that impact is on the rest of the system, and
9 then I look at the requested relief. And I'll
10 remind the Commission that back in the summer when
11 they were asking for the \$30 a megawatt hour, I
12 didn't agree with it. They're asking for 32.50 in
13 this case. I don't agree with it.

14 Through a process of negotiation --
15 and the Commission has seen what I would agree to
16 in previous stipulations. In this case, through a
17 process of negotiation, we come to the rate
18 structure that's identified in the stipulation that
19 was filed this morning. And as I mentioned this
20 morning, I remain available. We'll have Lena
21 Mantle from my office will also be available if you
22 have any questions in addition to the other
23 witnesses, and I, of course, remain available to
24 answer any questions about that negotiation.

25 Mr. Downey I thought did a fine job

1 of going through the terms of the stipulation.

2 I won't belabor the point here. To Mr. -- or to
3 Commissioner Hall's question with respect to the
4 EDR, I will tell you the EDR -- this is a process
5 point I think I can share.

6 The EDR, while Noranda understood and
7 I think MIEC understood that that was an important
8 component from the consumers' perspective, EDRs in
9 there were actually because we felt an obligation
10 to be responsive to the Commission's questions with
11 respect to rate design, and EDR was certainly a
12 component to that.

13 So we felt an obligation to put
14 forward what we thought was our answer to that in
15 terms of an exemplar tariff sheet. It was
16 designed neither to be exclusive or inclusive of
17 Noranda, and nor was it negotiated with Noranda.
18 The negotiation Noranda was -- really starts with
19 paragraph 5 and through the rest of the agreement,
20 and that is -- that's where that is.

21 We certainly aren't interested in
22 prejudicing any particular ratepayer, but I don't
23 think the terms -- the terms just weren't intended
24 necessarily to include Noranda. They weren't
25 intended to exclude Noranda either. Just were

1 neutral on that question with respect to the EDR.

2 With that, I think I will take my
3 leave and offer myself up for questioning with
4 respect to the stipulation or any other question
5 you may have for me.

6 JUDGE WOODRUFF: Mr. Chairman?

7 CHAIRMAN KENNEY: Mr. Allison, just
8 one question.

9 MR. ALLISON: Sure.

10 CHAIRMAN KENNEY: Does OPC have an
11 understanding of the Ameren wholesale proposal and
12 what the rate would be?

13 MR. ALLISON: I have an understanding
14 of what Ameren filed in their testimony, and part
15 of that -- my understanding of that was that the
16 rate would be negotiated between Noranda and Ameren
17 and those parties alone, and that the consumers
18 would not be participating in that negotiation.

19 And I don't believe -- and this is
20 just my third-party understanding of that. I don't
21 believe, despite a lot of conversations between
22 Ameren and Noranda on that issue as I understand
23 it, that they ever came to a final term on whatever
24 that rate would be. I don't even know if they came
25 to a preliminary idea of what that rate would be.

1 I have no idea. All I know is that there is no
2 wholesale agreement and that, as contemplated in
3 the direct testimony of Ameren, that agreement
4 would be negotiated between Noranda and Ameren
5 exclusively.

6 CHAIRMAN KENNEY: Okay. Thank you.

7 I have no other questions.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 COMMISSIONER W. KENNEY: Thank you.

10 Mr. Allison, at least I can say you are consistent.

11 Two weeks into the job you filed your first Stip &
12 Agreement in 0258, prefiled in this case and this
13 one, they're all fairly similar. I mean, they have
14 differences, but they do have a similarity where
15 the, in your case, the residential ratepayer pays a
16 subsidy for Noranda taking power, which I'm not --

17 MR. ALLISON: Every ratepayer.

18 COMMISSIONER W. KENNEY: Yeah, every
19 ratepayer. But also, I kind of -- I look at the
20 Office of Public Counsel, I kind of -- all these
21 other groups have their own representatives, and I
22 look at you kind of representing, you know, mom and
23 pop.

24 Now, in testimony I believe it was
25 last week, we heard that the average residential

1 ratepayer on Ameren's system pays \$104 per month.
2 I could be wrong. It could be 103. I think it's
3 104. Do you know what this would increase that
4 average ratepayer's bill by?

5 MR. ALLISON: Sure. If we're talking
6 about the residential ratepayer?

7 COMMISSIONER W. KENNEY: Yes.

8 MR. ALLISON: If we're talking about
9 the residential class, I think it's a little over a
10 dollar a month.

11 COMMISSIONER W. KENNEY: On average?

12 MR. ALLISON: I believe so. It's a
13 little over 1 percent impact.

14 COMMISSIONER W. KENNEY: 1 percent?

15 MR. ALLISON: Yeah. So it's a little
16 over a dollar a month.

17 COMMISSIONER W. KENNEY: Is that a
18 little less than the one you prefiled in 0258 or
19 was that --

20 MR. ALLISON: This is 0258.

21 COMMISSIONER W. KENNEY: No. This is
22 022-- no. This is 0258. The one you prefiled in,
23 the one you -- 0224.

24 MR. ALLISON: Yeah. That's a good
25 question. So the difference between the

1 stipulation in 0224 and this stipulation, I think
2 there are three primary differences. This is a
3 long way to answer your question, which will be at
4 the end of this, I promise.

5 So the rate was different, the
6 escalator was different and -- well, there are four
7 differences. The rate was different, the escalator
8 is different, the FAC is different and the term is
9 different.

10 Okay. So with respect to the base
11 rate itself, we were at 34.44. This agreement is
12 at 34. So it's a 44 cent reduction per megawatt
13 hour for Noranda.

14 With respect to the FAC, we had a
15 phased escalation over five years. This has no
16 FAC.

17 The term, that was a five-year term.
18 This is at most a ten-year term, though there's a
19 very substantial escalator in the back five.

20 COMMISSIONER W. KENNEY: Back three
21 or back five?

22 MR. ALLISON: I'm sorry?

23 COMMISSIONER W. KENNEY: The back
24 three or back five?

25 MR. ALLISON: The back five in this

1 agreement. And then the escalator. The escalator
2 was a fixed limitation. Noranda would receive no
3 exposure above, I think it was 3 percent in that
4 agreement. It might have been 2. In this
5 agreement, they have 50 percent of whatever the
6 cost increase is.

7 So if you look at average cost
8 increase, if you think they're going to be 7
9 percent or higher in the future because of the
10 expected prices of energy going up, then the
11 escalator just picks up half of whatever that is.
12 It could be more than 3 percent. Could be less
13 than 3 percent, depending on whatever the increase
14 is.

15 So the impact at the end of the day
16 in year one, the only difference is in the base
17 rate impact between the prior stipulation and this
18 one, and because it goes from 34.44 down to 34,
19 there's a 44 cent change that will then be spread
20 out over every other class.

21 So I think we had previously
22 calculated year one impact -- and this is
23 stretching a couple of months ago -- also a little
24 over 1 percent. This one is 1.15 percent. I
25 believe the prior stipulation's year one impact was

1 like 1.07 percent, I believe, on the residential
2 ratepayer. The industrial ratepayer in this -- in
3 this stipulation, there's 1.5 percent impact. So
4 the impact isn't the same depending on -- it
5 changes with each class.

6 COMMISSIONER W. KENNEY: Tell me why
7 it's a benefit of the ratepayers in St. Louis to do
8 this.

9 MR. ALLISON: Yeah. So I think you
10 have to answer, as I said before, the but for
11 question. Right? As I offered in the beginning of
12 my statement, if you believe -- and you have to
13 believe this in order to go down this road. But if
14 you believe that the smelter is going out of
15 business or will not otherwise be taking power from
16 Ameren in this -- without rate relief, then you
17 have to look at, okay, if you believe that, then
18 you say is -- you know, what level of relief is
19 appropriate?

20 And at that point you have to look at
21 when are we better off with Noranda than without
22 Noranda? There is a level at which we are better
23 off -- all the other ratepayers are better off
24 without Noranda than with Noranda. There's
25 conflicting evidence, there was last summer, there

1 will be in this case, conflicting evidence about
2 where that level is.

3 We believe that a 1.15 percent, if
4 you're focusing on the residential class, a
5 1.15 percent rate impact is substantially better
6 than the impact would be on the residential
7 ratepayer if Noranda were not to be on the system
8 or otherwise be off the system. We calculate that
9 at somewhere around 2 percent. There's conflicting
10 evidence on that question. And that's -- that's
11 entirely fine. Your judgment will be --

12 COMMISSIONER W. KENNEY: I'm making
13 notes that OPC recommends rate increases.

14 MR. ALLISON: I'm sure you will.
15 Look, I know the burden -- I'm not dumb. I know
16 the burden I bear when I come up here and I present
17 this in front of you, and I --

18 COMMISSIONER W. KENNEY: I'm just
19 giving you a hard time.

20 MR. ALLISON: I appreciate that, sir,
21 and I understand where you're coming from.

22 COMMISSIONER W. KENNEY: Well,
23 there's another group out here in Kansas City, real
24 small group. Might be Gladstone or somewhere,
25 Ameren customers, and I'm going to tell them the

1 same thing, right?

2 MR. ALLISON: Every customer is
3 impacted by this question, just as every customer
4 would be impacted if Noranda were no longer to take
5 power from Ameren's system.

6 COMMISSIONER W. KENNEY: Now I'll ask
7 you, did OPC consider throwing a bone to Ameren and
8 raising the customer rate, I think your words were
9 de minimis, to 8.58 or 8.50?

10 MR. ALLISON: Well, I don't know that
11 I ever characterize 8.50 as de minimis. I didn't
12 say it wasn't de minimis. I suggested that the
13 Commission needs to look hard at the question of
14 what in the universe between 8 and whatever
15 Ameren's proposal ends up being, whether it's 8.50,
16 8.40, whatever, and decide whether or not that was
17 material.

18 You know, I think from my
19 perspective, the evidence was between \$8 and \$8.11.
20 I think we had testimony. That was pretty clearly
21 de minimis. Yeah, that was pretty clearly
22 de minimis. Between \$8.11 and 8.40 or 8.50,
23 whatever that ends up being, is that de minimis? I
24 don't know the answer to that.

25 COMMISSIONER W. KENNEY: That's what

1 Staff had come up with?

2 MR. ALLISON: 8.11 is what Staff had
3 come up with. And that's -- you know, it is what
4 it is. I think -- I suspect people can see both
5 sides of the coin on that. What the Commission
6 decides with respect to that is what it is.

7 To your broader point, which I think
8 is the question about negotiation with Ameren,
9 without getting into the substance of that because,
10 you know, it's inadmissible, and I'm also
11 honor-bound to keep that private, I will say I had
12 many conversations with Ameren to try to figure out
13 how to move forward with them on this agreement. I
14 believe that Noranda had many conversations.

15 COMMISSIONER W. KENNEY: How long --

16 MR. ALLISON: There were a lot of
17 things on the table.

18 COMMISSIONER W. KENNEY: How long
19 have you been in state government here?

20 MR. ALLISON: I have been in state
21 government since 2002.

22 COMMISSIONER W. KENNEY: In Missouri?

23 MR. ALLISON: In Missouri, yeah.

24 COMMISSIONER W. KENNEY: So you've
25 gotten to watch how those guys interact with one

1 another in the Legislature.

2 MR. ALLISON: Yeah, as you know.

3 COMMISSIONER W. KENNEY: I mean, it's
4 not friendly. They both just try to kill
5 everything that each other does.

6 MR. ALLISON: I agree.

7 COMMISSIONER W. KENNEY: Do you agree
8 with that?

9 MR. ALLISON: Yeah. Absolutely.

10 COMMISSIONER W. KENNEY: Thank you.

11 JUDGE WOODRUFF: Commissioner Hall?

12 COMMISSIONER HALL: I have no
13 questions. Thank you.

14 JUDGE WOODRUFF: Commissioner Rupp?

15 COMMISSIONER RUPP: The ice storm
16 AAO, you guys opposed that they do that. What was
17 the dollar amount?

18 MR. ALLISON: 32, 33, I think.

19 MR. BYRNE: 36.

20 MR. ALLISON: 36. Thank you. I knew
21 somebody would correct me.

22 COMMISSIONER RUPP: You guys were
23 opposed to that?

24 MR. ALLISON: Right.

25 COMMISSIONER RUPP: Tim Opitz I think

1 testified to that.

2 MR. ALLISON: Yeah. Not testified.

3 COMMISSIONER RUPP: Was there any
4 discussion of tying -- in your Stipulation &
5 Agreement, of tying it to the price of aluminum
6 versus the liquidity and walk me through your
7 thought process there.

8 MR. ALLISON: Yeah. And there have
9 been other jurisdictions that use an LME trigger
10 for that. I think the -- I start from a position
11 of being skeptical of using LME triggers largely
12 because I dislike the idea of tying our rates to
13 commodities that are, I think, a little bit
14 difficult, I think, for the public and others to
15 understand. You know, the LME price itself, as I
16 think we've heard this morning, there's a lot of
17 playing on the markets, on commodity markets,
18 speculative trading and things like that.

19 The volatility inherent in that I
20 think presented some cognitive problems for us to
21 use that as a trigger. Instead, I think the
22 consensus approach was that some trigger was
23 appropriate for the back five to make sure that
24 Noranda isn't getting enriched.

25 The goal I think of the participating

1 consumers is to get Noranda stable so they continue
2 to take power on Ameren's system, not to enrich
3 Noranda. And as a result, that's why you see a
4 provision in here that prohibits the use of special
5 dividends. That's why you see, I think, a dividend
6 imputation in here that says, you know what, if you
7 want to raise dividends, that's fine, but you're
8 not going to do it with our money. If you want to
9 raise your incentive compensation, that's fine, but
10 you're not going to do it with our money. If you
11 do that, we're going to impute that on you, and you
12 will have made a choice that it was more important
13 for you to raise dividends or to increase incentive
14 compensation than this rate.

15 And so we will use that in the back
16 five years and decide that we will reduce -- we
17 will have the opportunity to come before you to
18 seek a reduction.

19 COMMISSIONER RUPP: I didn't see the
20 stip this morning.

21 MR. ALLISON: I understand.

22 COMMISSIONER RUPP: On the back five,
23 is there -- you mentioned an incentive package or
24 something. I'm thinking of numerous ways a company
25 can get rid of cash --

1 MR. ALLISON: Right.

2 COMMISSIONER RUPP: -- so that it
3 doesn't have too much.

4 MR. ALLISON: We focused in on two
5 points, I think. One was, because of history,
6 dividends and sending out money to shareholders
7 that's our money, giving it to their shareholders.
8 And two, incentive compensation, right. So who
9 is -- by the way, these, I think, were good ideas.
10 I won't claim them to be my own in this process.
11 There were a lot of folks at this table, but I'm
12 reflecting what that process was to answer your
13 question.

14 There was -- so incentive
15 compensation. Those two areas we decided were
16 particularly troublesome, that if they were to take
17 our money and to give it to shareholders or to give
18 it out as bonuses or other kind of incentive
19 compensation, that we wanted to have an opportunity
20 to stop that.

21 So we looked at the first five years
22 of the agreement and where their liquidity is now,
23 and we said over the first five years is it
24 reasonable to expect that they're going to be able
25 to recover their liquidity under this rate to a

1 point that we would want to ask to remove the rate?
2 And looking at all the evidence available to us, we
3 said, you know what, in the first five years,
4 that's probably not right. The back five years,
5 however, there's a real risk. And I think you saw
6 the CRU chart before, you saw where it goes way up,
7 you know, in the back -- in that back five-year
8 time period.

9 So there's risk there, and in order
10 to ameliorate that risk for the ratepayers and make
11 sure that things don't get out of hand with respect
12 to Noranda's liquidity going forward, we would be
13 able to come before the Commission at certain
14 triggers, which are in the agreement, and start to
15 roll back this rate relief as liquidity indicates.

16 COMMISSIONER RUPP: So from the
17 utility's perspective, if you're looking at a
18 seven-year -- seven-year contract and the price of
19 aluminum is increasing, their cash flow's doing
20 great, they're not declaring special dividends,
21 they're not doing incentive factors, but their cash
22 flow just continues to get larger.

23 MR. ALLISON: Uh-huh.

24 COMMISSIONER RUPP: Is there anything
25 that would allow the utility to trigger a new

1 review of this based off of, okay, aluminum prices
2 are here, so we need this -- we have the ability to
3 reexamine this. Is there any trigger from the
4 utility's standpoint that would -- so they're not
5 locked into something for seven years and then
6 prices are up and everything's great?

7 MR. ALLISON: Well, in the first
8 instance, I believe that this is structured to be
9 revenue neutral to the utility. So there's that.

10 To answer your question, I think, the
11 way -- the question that I think you want me to
12 answer is, in all honesty, this is a ten-year
13 proposal. One commission cannot bind a future
14 commission, and so I think this will always be
15 subject to commission review every time rate design
16 occurs. Of course, we would hope that the
17 commission would abide by the proposal that we put
18 forward, but I think this will always be available
19 for the Commission to look at.

20 COMMISSIONER RUPP: Well, then that's
21 an interesting point, because if we're doing this
22 for a liquidity standpoint and to provide rate
23 relief so that they can refinance bonds and renew
24 debt, but if a future commission can't be binded
25 (sic), then how would having a ten-year rate help

1 the company if Wall Street isn't going to accept
2 that because the next commission undo it?

3 MR. ALLISON: And I think -- I think
4 as a technical matter the Commission can undue it.
5 I would hope that a future commission would not
6 want to jump into this thicket voluntarily. A
7 ten-year deal I think provides everybody the
8 certainty that we're looking for and would
9 hopefully avoid us getting forward here in a short
10 period of time talking about the same thing over
11 and over again.

12 We're looking for stability for
13 Noranda so that they remain a valuable contributor
14 to Ameren's electric system for the long term, and
15 we've put forward a proposal that we think does
16 that. It has the virtue of having other people
17 actually on it. In this instance there's a lot of
18 people putting forward their own individual kind of
19 ideas for what the right solution is, but nobody
20 else is adopting them.

21 So what we're trying to do is, to the
22 extent that we can continue to broaden this tent,
23 I would love to have everybody on board, and if
24 that required amendment of this -- I'm speaking for
25 myself here -- in order to get everybody on board,

1 there's no reason why we can't continue those
2 considers. But we needed to get on with the
3 getting on and put something in writing.

4 COMMISSIONER RUPP: That's a good
5 question that Commissioner Kenney had. Where is
6 the incentive for the company to want to even read
7 this?

8 MR. ALLISON: All I can offer is that
9 we have on various occasions tried to explore the
10 company's level of interest in a retail proposal,
11 and I don't speak for the company, of course, but
12 we put a lot of stuff on the table and we weren't
13 getting very positive feedback with respect to how
14 to move forward.

15 The only -- you know, without getting
16 into the details of what was on the table because I
17 think I can't do that and hold that in the
18 confidence that I think is -- I owe the company,
19 all I will say is that there were a lot of options.
20 We continue to be willing to work, I think, in good
21 faith to try to find a pathway forward.

22 This is -- I believe that. I don't
23 think -- I don't think Noranda would disagree with
24 me on that. I think that they would probably agree
25 with that, too. But at some point -- the hearing

1 starts today, and we had to put something in front
2 that had more than one party actually agreeing to
3 something. Everything else was just, here's my
4 idea, here's my idea, here's my idea.

5 COMMISSIONER RUPP KENNEY: Because if
6 memory serves me correct, your first Stipulation &
7 Agreement that you filed that was a complete
8 reversal of OPC's sworn testimony didn't have
9 anybody signed on to it when you filed the
10 stipulation.

11 MR. ALLISON: That's exactly right,
12 but they did pretty quickly thereafter. And I
13 would not characterize it as a complete reversal of
14 OPC's prior testimony. The only testimony we had
15 previously provided was on the FAC, and the
16 testimony -- and that's the same testimony provided
17 in this case, which was that the FAC should be
18 applied to every customer. And that stipulation
19 had the FAC applying to every customer, by the way.

20 This provision doesn't -- frankly,
21 this is a different case. The bargaining positions
22 of the parties are altered in this case compared to
23 where they were before.

24 COMMISSIONER RUPP: Thank you.

25 JUDGE WOODRUFF: I have a legal

1 question dealing with the problem of future
2 commissions being bound by this scenario.

3 MR. ALLISON: Sure.

4 JUDGE WOODRUFF: And thinking about
5 it, there was a similar situation over on the other
6 side of the state in KCPL when they were building
7 Iatan 2, had a special regulatory plan, I believe
8 it was called. Do you know the details of that,
9 how that was set forth?

10 MR. ALLISON: I don't. I will offer
11 to the Commission and the parties that we're
12 willing to engage in constructive conversation
13 about how to structure this. I note with
14 particularity that in the CCN case, in the 2005 CCN
15 case, there was a contract that was pre-negotiated
16 between Ameren and Noranda before they came to the
17 Commission.

18 Many of the terms of that contract by
19 stipulation of the parties were then entered into
20 in the tariff structure of -- for the LTS class at
21 the time. That may be an avenue. Of course, the
22 tariff structure's always open to change. But one
23 of those terms was that it was 15-year contract
24 with a five-year notice provision. If you look at
25 the LTS tariff, it says 15 years with a five-year

1 notice in the LTS tariff. So there is that.

2 Now, there was a separate contract
3 binding Noranda and Ameren outside of the
4 Commission structure in that instance, but there
5 was also a stipulation binding all the stipulating
6 parties to that agreement, and that was reflected
7 in the tariff. That may be a possible avenue.

8 JUDGE WOODRUFF: Yes, something is
9 wrong with that clock. It is actually approaching
10 12 o'clock, not 11:20 as the clock behind you
11 shows.

12 All right. Well, thank you. We'll
13 go through with the other parties that have signed
14 the stipulation's openings here. Consumers
15 Council.

16 MR. COFFMAN: Thank you. Good
17 morning. John Coffman on behalf of the Consumers
18 Council of Missouri.

19 We did not enter into this
20 nonunanimous stipulation lightly. It involved -- I
21 can't even tell you how many hours of negotiation
22 that have gone on with various parties, some that
23 have not -- did not sign on and some that did. And
24 I am, on behalf of the organization I represent,
25 looking out for residential customers only.

1 And from our perspective, we think
2 that this is a fair deal. We wholeheartedly
3 support this stipulation. There's some things in
4 here that are good for residential consumers, at
5 least low usage customers, and the exemption from
6 MEEIA for low-income customers that Ameren had
7 proposed, we are agreeable to that.

8 If we could -- if we could get Ameren
9 Missouri to the table and to agree to something, in
10 answer to your question, I mean, I am bound to
11 support this, and keeping the customer charge at
12 \$8 is something that my client values quite a bit
13 and something we put into the equation in the
14 totality of the agreement to agree to it.

15 If, in fact, it brought other parties
16 onboard and the customer charge increase was, in
17 fact, de minimis, I think that's something that we
18 would certainly look at. If that helps,
19 Commissioner.

20 COMMISSIONER W. KENNEY: Thank you.

21 MR. COFFMAN: The -- I come at this
22 issue of Noranda's special rate deal here from the
23 perspective that I think that closure of the plant
24 is very likely. I don't know if I can garner from
25 the evidence exactly when or how that would happen.

1 But I'm in constant contact with my consumer
2 advocate colleagues in other states, and I'm very
3 aware of the anguish and difficulty that occurred
4 in Ohio and West Virginia with the Ormet plant that
5 shut down a couple years ago, and that has been
6 disastrous for residential customers there. You
7 know, they anguished other this issue for years
8 back and forth.

9 They ultimately did grant Ormet a
10 special deal that was linked to the LME. I don't
11 think that's the best way to go. I am reluctant to
12 recommend that as something to a body that's expert
13 in utility matters. I don't know if that's really
14 something that the Commission should engage in or
15 that other ratepayers should be subject to
16 something that is completely outside at least my
17 expertise and I think the Commission's.

18 But they got a special deal there and
19 still closed down. So now they are working their
20 way through some issues of what happens now with
21 the costs that Ormet's uncollectibles from the
22 smelter and that smelter no longer contributing to
23 the system.

24 And so Consumers Council does not
25 want to see that happen here. So we're coming at

1 this from a firm belief that if Noranda Aluminum
2 went out of business, shut the smelter, that
3 ratepayers would be harmed at least by 2 percent in
4 the rates. I think the evidence is pretty solid on
5 that, that that would be a worse scenario than what
6 is in this proposed ten-year package.

7 And from my perspective, from my
8 understanding of the wholesale proposal that
9 Ameren -- that I learned about for the first time
10 in their testimony, that that would look very
11 similar to ratepayers, I think that would be also a
12 harmful thing for ratepayers. Ameren claims it
13 wouldn't be. I don't understand their analysis on
14 that. We don't know exactly what the rate would
15 be.

16 I think that their proposal is also
17 illegal in several respects. It's still kind of
18 vague, and we don't know what the rate would be,
19 but it would be, I think, an illegal use of the
20 fuel adjustment clause.

21 There was a condition in there to
22 abandon or cancel the opportunity to -- the
23 certificate to serve Noranda, and there are a
24 variety of other legal issues. I don't even think
25 the wholesale proposal is an option that's

1 available legally, and I don't think that it would
2 be good for consumers.

3 So the idea of Ameren (sic) leaving
4 the system either by closing down or by going to a
5 wholesale agreement I believe would be clearly
6 financially worse for residential customers than
7 this proposal keeping Ameren (sic) in the system
8 and keeping their interests aligned with the other
9 customers.

10 The escalator is very important to us
11 in this proposal in that going forward through the
12 ten years Ameren would be exposed to 50 percent of
13 the rate increases that other customers would be
14 subject to. So they would be -- they would still
15 have an interest in what goes on here and that we
16 feel we less exposure to other activities that
17 would hurt consumers.

18 So we also think that the EDR
19 proposal in here is well thought out and could
20 apply to a variety of situations other than the
21 bootheel of Missouri, but that's my perspective on
22 this. I can answer questions if you'd like.

23 JUDGE WOODRUFF: Mr. Chairman?

24 CHAIRMAN KENNEY: Mr. Coffman, thank
25 you. So the Stipulation & Agreement from your

1 perspective renders Ameren revenue neutral,
2 correct?

3 MR. COFFMAN: Yes.

4 CHAIRMAN KENNEY: And you have no
5 reservations that it's all legally permissible?

6 MR. COFFMAN: I believe it is.

7 CHAIRMAN KENNEY: Okay. You
8 indicated that the smelter that shut down in Ohio
9 was ultimately disastrous for Ohio's residential
10 customers?

11 MR. COFFMAN: Yes.

12 CHAIRMAN KENNEY: How?

13 MR. COFFMAN: Well, the final
14 impact --

15 CHAIRMAN KENNEY: How did that
16 manifest itself?

17 MR. COFFMAN: Well, the closure of
18 the plant has now exposed other customers to not
19 only impact of what -- what them leaving the system
20 would do but also now a dispute over what Ormet
21 would have been paying being transferred to other
22 customer classes.

23 CHAIRMAN KENNEY: Do you know or can
24 you quantify the extent to which the other
25 residential customers in Ohio were impacted?

1 MR. COFFMAN: I cannot.

2 CHAIRMAN KENNEY: We do know what the
3 revenue -- or what the economic impact would be to
4 the remaining Missouri customers of Ameren if
5 Noranda leaves the system?

6 MR. COFFMAN: Yes. I think the
7 evidence is sufficient to suggest that it would be
8 about 2 percent increase to the other customers,
9 whereby the proposal in front of you would be a
10 little over 1 percent.

11 CHAIRMAN KENNEY: Why would Ameren's
12 wholesale proposal be illegal, if I understand what
13 you said correctly?

14 MR. COFFMAN: I reserve the right to
15 provide more detailed argument later, but I think
16 that canceling the certificate to serve Noranda, I
17 don't believe that that's within the Commission's
18 authority. I think that -- that it might also
19 violate the contract that's currently entered into
20 between Noranda, Ameren and other -- the Office of
21 Public Counsel.

22 And I believe that it would be an
23 illegal proposal as far as I understand it. And
24 the proposal has not been fleshed out. It's asking
25 for a pre-approval of the impact. I believe that

1 might be illegal.

2 CHAIRMAN KENNEY: Okay. Were you
3 finished? I'm sorry.

4 MR. COFFMAN: Yes, although I reserve
5 the right to articulate other reasons that it is.

6 CHAIRMAN KENNEY: Sure. Okay. I
7 don't think I have any other questions. Thank you.

8 COMMISSIONER W. KENNEY: No
9 questions, Mr. Coffman. Thank you.

10 JUDGE WOODRUFF: Commissioner Hall?

11 COMMISSIONER HALL: Good afternoon.
12 You mentioned a moment ago that it's your belief
13 that Ameren's wholesale proposal would be worse for
14 consumers, for your consumers than the
15 stipulation --

16 MR. COFFMAN: Yes.

17 COMMISSIONER HALL: -- the
18 nonunanimous stipulation. And I'm confused by that
19 because the -- because Ameren's wholesale proposal
20 doesn't set a price. I mean, it says that the
21 price would be subject to negotiation essentially
22 between Ameren and Noranda.

23 Let's say that they came up with
24 32.50 as their price, and then let's also assume
25 the rest of the provisions that relate to price

1 from the stipulation were included in the wholesale
2 agreement between Noranda and Ameren. If that were
3 the case, do you still think that the wholesale
4 proposal would be worse for consumers than the
5 stipulation?

6 MR. COFFMAN: A \$32 rate, which is --

7 COMMISSIONER HALL: Well, 32.50. I'm
8 sorry. 34. 34.

9 MR. COFFMAN: Assuming the same rate
10 for the retail rate?

11 COMMISSIONER HALL: Yes. Yes.

12 MR. COFFMAN: And what else were you
13 asking me to assume?

14 COMMISSIONER HALL: Let's just say
15 that the wholesale agreement contained all of the
16 price provisions that are contained in the
17 stipulation. I guess what I'm getting at, is there
18 something inherent in a wholesale agreement that is
19 unfair to consumers, or is it really an evaluation
20 of the costs that get shifted over to other
21 consumers as a result of either proposal?

22 MR. COFFMAN: I think that -- yeah,
23 that's one aspect of it. There would be
24 potentially stranded costs that are not currently
25 being used to serve. They're dedicated to the

1 native load. And I'm not sure I understand how it
2 would flow through the fuel adjustment clause.
3 That's potentially another legal issue about
4 whether as Ameren had proposed it that it would
5 flow through the fuel adjustment clause.

6 COMMISSIONER HALL: Do you believe
7 that the stipulation contains a rate for Noranda
8 that is not unduly discriminatory?

9 MR. COFFMAN: Yes, when you -- when
10 you consider the alternative.

11 COMMISSIONER HALL: So you believe
12 that --

13 MR. COFFMAN: It is, I believe, below
14 the cost to serve but it does include the
15 contribution to the system that is -- would leave
16 other ratepayers better off than the alternative,
17 assuming that Noranda would go out of business or
18 leave the system. I mean, it's called load
19 retention rates or economic development rates.
20 There are a variety of ways that these proposals
21 have been upheld as nondiscriminatory, and from our
22 perspective, we don't think it is because it's --
23 because we're better off.

24 COMMISSIONER HALL: Well, I was done,
25 but now I'm confused. So if the price were \$33,

1 does at that point become discriminatory?

2 MR. COFFMAN: Well, the
3 discriminatory question is, is it undue
4 discrimination of similarly situated customers.
5 It's a difficult question because Noranda is in a
6 class by itself. They are the only one of its
7 kind.

8 And we can analyze these issues from
9 a variety of different perspectives about how you
10 calculate these costs, and there's no perfect
11 answer. It's my opinion this would not be undue
12 discrimination between the classes. I mean, the
13 courts have certainly held that customer classes
14 are logical and not discriminatory. Does that
15 answer your question?

16 COMMISSIONER HALL: As good as I'm
17 going to get today.

18 MR. COFFMAN: I mean, we're coming at
19 this from the assumption that they are in a class
20 by themselves. They're currently in a class by
21 themselves.

22 COMMISSIONER HALL: But be careful.
23 I mean, are you going to say that because they're
24 in a class by themselves, that there can never be
25 undue discrimination between Noranda and the rest

1 of the ratepayers?

2 MR. COFFMAN: Not necessarily. At
3 some point it would be unjust and unreasonable if
4 not discriminatory.

5 COMMISSIONER HALL: All right.

6 JUDGE WOODRUFF: Commissioner Rupp?

7 COMMISSIONER RUPP: Thank you. You
8 guys opposed the AAO for the ice storm?

9 MR. COFFMAN: Yes.

10 COMMISSIONER RUPP: If this
11 stipulation were to have included the removing of
12 the act of God language from the factor of N, and
13 so if Ameren did leave the system that would
14 allow -- I'm sorry, if Noranda left the system,
15 that would allow Ameren to run those things through
16 the FAC, would you be in favor of that?

17 MR. COFFMAN: You're suggesting
18 taking this agreement and removing the act of God?

19 COMMISSIONER RUPP: If that was
20 included in this, where would that make you?

21 MR. COFFMAN: That an act of God
22 would do what?

23 COMMISSIONER RUPP: So in the factor
24 of N, you would not have the -- if Noranda left the
25 system, then Ameren would be able to run that

1 through the FAC, where would you stand on that?

2 MR. COFFMAN: I'm not sure I like
3 that idea. The ice storm was particularly -- the
4 AAO for the ice storm was particularly concerning
5 to those of us who have fought the fuel adjustment
6 clause, who feel that it's an unfair way to set the
7 system. You know, feeling like the fuel adjustment
8 clause had been adopted under the premise that it's
9 fair, it goes both ways and so forth. As soon as
10 it's adopted, it goes the other way.

11 COMMISSIONER RUPP: Are you signing
12 on to this because Noranda wouldn't be subject to
13 the fuel adjustment clause and that --

14 MR. COFFMAN: No. In fact, that was
15 the hardest part of this deal to swallow. But in
16 totality, we wholeheartedly support the agreement.
17 There's some things in here that might not --

18 COMMISSIONER RUPP: So in your
19 opinion, where is the incentive for the company to
20 possibly join on to this?

21 MR. COFFMAN: Well, they are
22 literally held harmless from this deal. They're
23 revenue neutral as to it. You know, Ameren began
24 negotiating with Noranda, and we weren't invited to
25 those negotiations. We're not -- I mean, we've not

1 sat down with Ameren. We've not been invited to
2 sit down with Ameren on this particular matter. If
3 they -- if there are some tweaks to this agreement,
4 we would be interested to hear what they were. But
5 we certainly do not favor their wholesale proposal.
6 We think that would be worse for consumers. We
7 think that this deal is better than the likely
8 trajectory that we're on if we don't get this deal.

9 COMMISSIONER RUPP: Again, I haven't
10 seen it, so I know there's a minimum number of
11 employees. Is there anything tied to payroll?

12 MR. COFFMAN: Number of employees and
13 a certain amount of investment. This deal, you'll
14 see several --

15 COMMISSIONER RUPP: Are those
16 full-time equivalent, full-time or is it just
17 bodies?

18 MR. ALLISON: Commissioner, I have a
19 copy. If you'd like, I can bring it to you.

20 COMMISSIONER RUPP: Sure. Do you
21 want to highlight the --

22 MR. ALLISON: I just want to make
23 sure you had a copy.

24 COMMISSIONER RUPP: Is there anything
25 in there on minimum level of payroll so that

1 there's no -- so there's no cost-cutting measures
2 to -- and if there was a strike by the union, would
3 that affect the number of employees that they had?
4 Would that give -- would that give the union an
5 additional advantage to --

6 MR. COFFMAN: The portion of the
7 agreement you would look at for that is
8 paragraph 14 on page 4, commit to 850 full-time
9 equivalent personnel.

10 COMMISSIONER RUPP: But there's
11 nothing there on like a floor of payroll?

12 MR. COFFMAN: I don't believe so.

13 COMMISSIONER RUPP: And if the union
14 were to go on strike, would that violate the number
15 of 850 full-time equivalent personnel?

16 MR. COFFMAN: There is a force
17 majeure provision there. I am not sure whether a
18 strike would qualify or not.

19 COMMISSIONER RUPP: Because that can
20 give them a little bit of a bargaining power if
21 they were to trigger their rate increase or
22 something, violation if they were to strike.

23 MR. COFFMAN: I don't know if it's
24 appropriate for me to -- we've negotiated this
25 extensively, many, many hours, and we stand by it.

1 I think I'm bound to support this particular deal.
2 But again, it's nonunanimous. If other parties
3 wish to suggest revisions, then they're welcome to
4 do that.

5 COMMISSIONER RUPP: Wasn't there a
6 nonunanimous stipulation earlier this week that you
7 guys objected to?

8 MR. COFFMAN: Correct. Assuming
9 there's been an objection, I assume there will be
10 an objection, and it does become a joint position.

11 COMMISSIONER RUPP: Thank you.

12 JUDGE WOODRUFF: All right. Thank
13 you. We've -- Ms. Bell, did you want to come up?

14 MS. BELL: Sure. Just a brief
15 opening.

16 JUDGE WOODRUFF: For Missouri
17 Retailers.

18 MS. BELL: May it please the
19 Commission? Stephanie Bell for Missouri Retailers
20 Association.

21 And MRA, like OPC and CCM, believes
22 Noranda is experiencing a liquidity crisis such
23 that it is likely to cease operations at its
24 New Madrid smelter if it cannot obtain rate relief.

25 MRA also believes that it is more

1 beneficial to Ameren Missouri ratepayers other than
2 Noranda for Noranda to remain on Ameren Missouri's
3 system at a reduced rate rather than Noranda to
4 leave Ameren Missouri's system entirely, be that
5 whether the smelter closes or Noranda would go to a
6 wholesale deal.

7 MRA's members have a serious interest
8 in this issue. If the smelter closes, Missouri
9 retailers will lose sales that are multiples of
10 Noranda's annual payroll. Like other Ameren
11 customers, MRA members will be at risk for picking
12 up the balance of Noranda's contribution to
13 Ameren's fixed cost if the smelter closes.

14 And finally, if the smelter closes,
15 all Ameren Missouri customers will lose the
16 considerable benefits of Noranda's customer
17 advocacy.

18 And just to address one of the
19 questions that came up earlier, I believe by
20 Commissioner Hall, what's the difference between --
21 for customers between a wholesale deal and a retail
22 deal, and I think MRA would join in Mr. Allison's
23 position that it's our understanding that that rate
24 would be negotiated between Ameren and Noranda
25 exclusively and that customers would not be at the

1 table for that discussion. And so MRA feels like
2 that the Commission -- if Noranda stays on a retail
3 deal, that the Commission remains a forum for
4 customers to have their concerns brought forward.

5 JUDGE WOODRUFF: Questions?

6 COMMISSIONER RUPP: No.

7 COMMISSIONER HALL: Yeah. Following
8 up on that last point, isn't it true that Ameren's
9 wholesale arrangement proposal would have to be
10 approved by the Commission?

11 MS. BELL: I believe that's true.

12 COMMISSIONER HALL: And in that
13 process, couldn't consumers and other interests
14 have an opportunity to voice their interests and
15 concerns?

16 MS. BELL: Perhaps, but I think from
17 the customers' perspective, I think the way it's
18 structured in the stipulation where certain
19 triggers allow the customers to come forward and
20 express concerns with Noranda, I think that is a
21 better arrangement from the customers' perspective.

22 COMMISSIONER HALL: Okay. Thank you.

23 JUDGE WOODRUFF: Commissioner Rupp?

24 COMMISSIONER RUPP: Who are the
25 largest five members of your association?

1 MS. BELL: The unanimous stipulation
2 has a listing in Footnote 1, but you'll see there I
3 think Macy's is on the list, Schnucks. There's a
4 full listing for your review.

5 COMMISSIONER RUPP: Thank you.

6 COMMISSIONER W. KENNEY: I have one
7 other question. Just a general question. Is there
8 anybody here representing the school boards
9 association or hospital association or the -- those
10 concrete companies that came forward before?
11 You're the concrete company?

12 MR. WOODSMALL: Yes.

13 COMMISSIONER W. KENNEY: Okay. Thank
14 you.

15 JUDGE WOODRUFF: All right. Thank
16 you. It's time for lunch. We'll take a break now.
17 That concludes all the parties who have signed the
18 Stipulation & Agreement.

19 MS. VUYLSTEKE: The MIEC has a
20 statement regarding the Stipulation & Agreement.
21 We are a signatory. We can reserve --

22 MS. TATRO: Mr. Downey gave that. We
23 had this discussion, that they shouldn't be allowed
24 to have two.

25 JUDGE WOODRUFF: We'll deal with that

1 after lunch. We have several more openings after
2 lunch. We'll come back at 1:30.

3 (A BREAK WAS TAKEN.)

4 JUDGE WOODRUFF: All right. Let's
5 come to order again, please. We're back from
6 lunch, and I will announce on the record that
7 during the break the parties informed me that it's
8 very warm in the room, as I'm aware, and I gave
9 everyone permission to take off their jackets.
10 So if anyone out there in the wider world notices
11 that we have become a little bit less formal in the
12 hearing room, that's the reason why.

13 All right. We are in the process of
14 take opening statements. We have opening
15 statements now from all the parties who signed the
16 Stipulation & Agreement. We'll now move to the
17 parties who did not.

18 MS. VUYLSTEKE: Excuse me. Can the
19 MIEC make a statement? I think you asked me at the
20 outset of the earlier hearing on revenue
21 requirement if the MIEC could also make a
22 statement. MIEC is a signatory to the stipulation
23 and represents a different customer class. As a
24 party to that stipulation, I think they would have
25 a right to be heard under the statutes that govern

1 the Commission as intervenors in the case.

2 MR. THOMPSON: Didn't Mr. Downey give
3 an opening statement for MIEC?

4 JUDGE WOODRUFF: That was my
5 impression, that Mr. Downey was speaking for MIEC.

6 MS. VUYLSTEKE: No. It was for
7 Noranda. We assumed based on the Commission's
8 prior rulings that the MIEC would also be able to
9 participate as it has done in every rate case.
10 Even though intervenors joined in a group together
11 to intervene, they also have separate status as
12 parties and rights. So, therefore, we would
13 normally have the right to participate, and we're
14 just asking for the same right in this case.

15 MR. WOODSMALL: Just to jump in in
16 favor of Ameren's response previously, I would note
17 that not only did Mr. Downey give an opening
18 statement, but he deferred some of the Commissioner
19 questions to Ms. Vuylsteke who addressed those
20 questions.

21 MS. VUYLSTEKE: That is because the
22 MIEC is a party to the stipulation and therefore
23 has a view on the stipulation in which it -- the
24 stipulation was signed.

25 MS. TATRO: Your Honor, I think I

1 said this before, but I just want to reiterate,
2 Noranda's not a party to this case. It was their
3 choice not to request to be a party independent of
4 MIEC. They've certainly done that in the past, so
5 they know how to do it. They did not do so in this
6 case, and they shouldn't be given special rights
7 and privileges that any other non-party cannot
8 have.

9 JUDGE WOODRUFF: I'm going to sustain
10 the objections I guess and not allow you to make an
11 opening, a separate opening on behalf of Noranda.
12 If the Commissioners have questions for Noranda,
13 they can address them to Noranda as they wish, but
14 I'm not going to allow a separate opening.

15 MS. VUYLSTEKE: Your Honor, just to
16 be clear, the parties that I would be speaking on
17 behalf of are Anheuser Busch, Monsanto --

18 JUDGE WOODRUFF: That's MIEC.

19 MS. VUYLSTEKE: Correct.

20 JUDGE WOODRUFF: And MIEC already
21 made the opening, I thought.

22 MS. VUYLSTEKE: It was Noranda's
23 opening.

24 MS. TATRO: Well, then let's strike
25 Mr. Downey's opening. If he wasn't speaking for

1 MIEC, then we can strike that opening and

2 Ms. Vuylsteke can give the opening for MIEC.

3 JUDGE WOODRUFF: We're not going to
4 do that either. At this point we're going to move
5 on with other openings, and we'll begin with MECG.

6 MR. WOODSMALL: I have a handout, and
7 I would note that there is one page in here that's
8 highly confidential. I'm not going to discuss it,
9 so I don't want to go into camera. I'm just asking
10 you to tell, when I tell you, not to display it to
11 the world, and I'll give you a heads up about that.

12 JUDGE WOODRUFF: Okay.

13 MR. WOODSMALL: Good afternoon.
14 David Woodsmall on behalf of the Midwest Energy
15 Consumers Group. And to answer a question that
16 will inevitably be asked, my clients include
17 several large industrial customers, such as the
18 concrete companies you referenced earlier, Buzzi
19 Unicem and Continental Cement. Also includes Tyson
20 Foods, Cargill, Explorer Pipeline, POET Biethanol.
21 It includes retailers like J.C. Penney's, casinos
22 like Ameristar - St. Charles, River City Casino,
23 and large campus facilities like Maritz and
24 Mastercard.

25 I'm not going to take you through all

1 the issues today. You've been through these issues
2 before. I know the Commission, all five of you sat
3 through the previous case. I would like to say
4 that, while I wasn't part of that case, my clients
5 were very happy with the result of that case.

6 Just point out one part of that case,
7 this quote: After considering all the evidence
8 presented, the Commission concludes that the
9 complainants have not met their burden in that they
10 have not shown Noranda is suffering from a
11 liquidity crisis. The evidence presented at the
12 hearing did not establish a short-term need for
13 immediate rate relief.

14 Now, some of the evidence that you'll
15 hear today is what has happened with the liquidity
16 since that case? And liquidity here is defined the
17 same way that Mr. Smith defined it in his testimony
18 in that case, in the way largely that it's defined
19 in the stipulation.

20 And you can see that the liquidity
21 has kind of hovered, in the last quarter of 2014
22 went down a little bit, but still is above the
23 \$100 million threshold referenced previously by
24 Mr. Downey. So that's what the liquidity has done
25 since the complaint case.

1 What I find more interesting, and
2 this is really important, is what did Noranda do
3 the last time they had liquidity about this point?
4 Go back to the last rate case, ER-2012-0166, and
5 you can see there that liquidity at the end of 2012
6 was actually lower than it is now. It's
7 158.3 million now. Liquidity in 2012 was
8 154.7 million. So liquidity is higher, but what
9 happened in that case?

10 In that quarter, in a stip-- in that
11 case, in a stipulation dated December 12, 2012,
12 Noranda agreed to an equal percent increase on
13 itself and all other customers. What was the
14 effect? Ameren agreed to an increase of
15 10.1 percent in its rates.

16 So when the liquidity was almost
17 exactly where it is now in the last case, they
18 agreed to a 10.1 percent rate increase, just two
19 years ago. Now they're saying they need 40,
20 \$50 million of rate subsidy. So I find that
21 interesting.

22 Let's get on to the stipulation, and
23 I just knocked this out over lunch, so I hope I
24 cover everything.

25 My clients see five major problems

1 with the stipulation. The first is, in response to
2 your previous question, Commissioner Hall, we
3 believe that the rate is definitely discriminatory.
4 Second problem, the liquidity thresholds as mapped
5 out in that stipulation are not effective.

6 Third, the stipulation does not --
7 while the stipulation binds the consumers, it
8 allows Noranda the comfort of knowing that they
9 have this rate and a 50 percent escalator, it does
10 nothing to keep Noranda from coming in and asking
11 for more rate relief later. That's something they
12 didn't tell you. This doesn't settle anything.
13 They'll be back in the next case. They've been in
14 here five straight cases asking for this.

15 Fourth concern, the term. Ten years
16 is excessive. And the fifth one is the stipulation
17 merely continues the current subsidy that's in
18 LGS/SP rates.

19 Let's take these in order. The rate
20 is discriminatory. As you can see in paragraph 7
21 of the stipulation, it says, set an effective base
22 rate of \$34 per megawatt hour. Now, that is a
23 reduction from the current rate of 37.95, but
24 what's important to remember is that 37.95 rate
25 isn't cost based.

1 That 37.95 rate is already below cost
2 of service by anybody's measure. Staff says it's
3 almost 11 percent below cost of service. MIEC,
4 4.2 percent below. Ameren, 6.2. OPC has a study
5 that says that Noranda's current rate is
6 26.6 percent below cost of service. But yet they
7 want to give them more.

8 This is where I need to have you not
9 show --

10 JUDGE WOODRUFF: That is not going on
11 the Internet right now. I don't have the camera
12 pointed at it. I have a picture of you on the
13 Internet.

14 MR. WOODSMALL: Oh, sorry out there.

15 JUDGE WOODRUFF: There are people in
16 the room that can see it.

17 MR. WOODSMALL: Boy, can't see it
18 anyway.

19 JUDGE WOODRUFF: Can't see it anyway.

20 MR. WOODSMALL: This is Henry's
21 Fayne's exhibit to his testimony, and what I'm
22 trying to do here, and you'll see it in greater
23 depth when we get to his testimony, this is -- the
24 stipulation gives him a rate of \$34. What this
25 exhibit does, and again, HWF-1 to his direct

1 testimony, this puts in context what a \$34 rate for
2 Noranda does. It compares them to what the other
3 domestic smelters are. And as you can tell when
4 you see the rate compared to others, it is very,
5 very low.

6 So the rate is \$34 according to the
7 stipulation, without any -- this is another point.
8 The \$34 rate is without any regard to the outcome
9 of this case. Under the stipulation, any increase
10 that you authorize is distributed to all other
11 parties. You give a 10 percent increase, Noranda
12 doesn't see a penny of that. They get the \$34.

13 So if the Commission authorizes a
14 5 percent increase, Noranda's rate should go from
15 the current 37.95 to 39.85. So in that case the
16 base rate subsidy would be \$5.85 per megawatt hour,
17 the base rate subsidy.

18 We'll turn to the other subsidy.
19 Paragraph 8 exempts Noranda from application of the
20 fuel adjustment clause. Therefore, they are not
21 picking up the entirety of the incremental cost
22 associated with serving their load. The current
23 FAC for the LTS class is supposed to be \$3.96. So
24 that's a second part of the subsidy.

25 So what is the total? You see a base

1 rate subsidy which should be \$5.85, and that
2 doesn't take into account that Noranda's already
3 6 to 26 percent below cost, an FAC subsidy of
4 \$3.96, for a total subsidy of \$9.81 per megawatt
5 hour.

6 Now, what does that mean? Let's put
7 that into real dollars. Noranda uses about
8 4.3 million megawatt hours per year. So given
9 that, the subsidy just coming out of this case is
10 \$42.2 million that's being picked up by other
11 customers. And again, that doesn't account for the
12 fact that they are already paying rates that are
13 below cost. So in my client's mind, the rates
14 under this stipulation are clearly discriminatory.

15 Let's look at another provision we
16 have problems with. The liquidity thresholds are
17 ineffective. Paragraph 19A states that the first
18 liquidity threshold, and it says at \$250 million
19 the customers can seek to increase the rate case
20 escalator from 50 percent. Paragraph 19B has a
21 second liquidity threshold. At 300 million they
22 can attempt to phase out the subsidy.

23 Now, this is highly confidential
24 portion of Mr. Smith's testimony from the complaint
25 case, but he gives you what their target liquidity

1 is. And that puts in some context how high the
2 liquidity thresholds in the stipulation are.

3 A more concern, the liquidity
4 thresholds only apply after five years. It
5 doesn't -- they don't apply in years one through
6 five. So what happens then, the subsidies that
7 Noranda is getting just go straight into their
8 pocket without any chance of recourse by the
9 customers.

10 And let's look at how ineffective
11 these liquidity thresholds are. As I mentioned
12 earlier, the subsidy coming out of this case is
13 \$42.4 million a year. Can't touch those subsidies
14 for five years. So over the course of five years,
15 they will receive, you will see there,
16 \$211 million, assuming nothing else changes.
17 Current liquidity is 158.3 million.

18 So before customers can do anything
19 about this subsidy, Noranda's liquidity will be
20 368.3 million. That is well above the 250 or
21 \$300 million target. So in our mind the liquidity
22 thresholds are ineffective because they're much too
23 high, and also they are much too late. If you're
24 going to do a liquidity threshold, make it in the
25 first case after this case. You know, make it so

1 that you don't enrich the Noranda shareholders.
2 Make it so the customers can immediately look at
3 that liquidity and get that rate relief back.

4 Now, there's another part of the
5 liquidity threshold that's a problem. Footnote 3,
6 page 6 of the stipulation, the definition of
7 liquidity, defined here as cash and cash
8 equivalents plus borrowing capacity under Noranda's
9 asset-based revolving credit facility, unquote.

10 The liquidity threshold doesn't look
11 at other possible borrowing. While they might not
12 have it now, certainly over the course of ten years
13 you've got to believe they're going to borrow money
14 somewhere else, but the liquidity threshold
15 wouldn't include that. It's easy for Noranda to
16 avoid this threshold simply by looking outside of
17 the current revolving credit facility and going to
18 another credit facility.

19 So three problems with the liquidity
20 threshold: They're way too high, they're way too
21 late and they're easily manipulated.

22 The third problem we had is that
23 there's nothing that says that this will satisfy
24 Noranda. Paragraph 27, nothing herein shall bar or
25 prejudice the customer from seeking additional rate

1 relief from the Commission in any future
2 proceedings, unquote.

3 So while the customers are stuck with
4 this agreement, while the customers are stuck
5 giving money to Noranda, Noranda can come in and
6 ask for even more. This does nothing to satisfy
7 the next case or the next case or even the next ten
8 years. It will be an habitual problem.

9 Fourth problem, the term in our mind
10 is excessive. Ten years is a long time, and it
11 doesn't take into account any changes in the
12 economics. You heard Dr. Humphreys testify earlier
13 that it is, quote, impossible, unquote, for anyone
14 to forecast the price of aluminum this far into the
15 future, but yet the signatories are willing to give
16 Noranda a rate relief and other commitments for ten
17 years.

18 Fifth part of the stipulation that we
19 have a problem with, and this isn't Noranda
20 specific, but this has to do with the fact that it
21 continues and perpetuates the current LGS/SP
22 subsidies, and we talked about this before.

23 But you can see here five studies
24 submitted in this case. All those studies show
25 that the current LGS/SP rates range from

1 4.82 percent to 7.7 percent above cost, as much as
2 \$62 million above cost. But yet according to the
3 language in the stipulation, this isn't addressed.
4 Nothing is done to fix it. This class will receive
5 an equal percent increase associated with whatever
6 you authorize and will receive a share of what
7 Noranda avoids. We've heard it said 1.5 percent.

8 You know, so you see that in
9 paragraph 3, apply to all classes and to all rates
10 within the class the system average increase. So
11 this does nothing to fix that problem.

12 I find it interesting here that the
13 parties that are represented that are signing the
14 stipulation are largely residential advocates. You
15 know, I've seen this in the five -- well, the last
16 five when I've done cases, and in each of those
17 cases I've fought against Noranda getting more, but
18 in each of those cases the residential advocates
19 always seem to have money to give to Noranda. They
20 always have money for them.

21 Last time they gave it to them in
22 2010, Noranda turned around and gave that subsidy
23 to its shareholders. It didn't keep that money.
24 It didn't use it for capital expenditures. It gave
25 that money away.

1 So I find it interesting that once
2 again in this case, instead of addressing the
3 current subsidy, they want to give more to Noranda.
4 In my mind, the Commission has done plenty for
5 Noranda. Noranda should at this time get in line
6 behind the LGS/SP customers that are paying rates
7 that are above cost and let that problem be taken
8 care of.

9 I have nothing further, unless you
10 have questions.

11 JUDGE WOODRUFF: Mr. Chairman.

12 CHAIRMAN KENNEY: Mr. Woodsmall,
13 thank you very much.

14 MR. WOODSMALL: Yes, sir.

15 CHAIRMAN KENNEY: Can you hear me
16 okay?

17 MR. WOODSMALL: Yes, I can.

18 CHAIRMAN KENNEY: I want to ask a
19 couple of legal questions about the definition of a
20 discriminatory rate.

21 MR. WOODSMALL: Okay.

22 CHAIRMAN KENNEY: So let me first ask
23 you, as a general proposition, is there a
24 distinction or do you recognize a distinction
25 between a discriminatory rate and an unduly

1 discriminatory rate?

2 MR. WOODSMALL: I'm forced to because
3 that word is in the statute. So yes, I do
4 recognize the distinction.

5 CHAIRMAN KENNEY: Okay. So that's
6 our starting point. Are there any cases that
7 you're aware of that set forth the contours or the
8 parameters of what constitutes undue
9 discrimination?

10 MR. WOODSMALL: No, I'm not aware of
11 any. I'm not aware of even a case where the issue
12 has been raised at the Commission or at court.

13 CHAIRMAN KENNEY: Are you willing and
14 able, could you, either now or maybe in a post-
15 hearing brief, provide us with some guidance as to
16 your client's definition or the contours or the
17 parameters of an unduly discriminatory rate?

18 MR. WOODSMALL: I will try, and, in
19 fact, I can take a shot at it now. Rates that go
20 below cost can happen for a lot of reasons,
21 different usage patterns, all kinds of reasons, and
22 it's not uncommon to see rates that were once
23 slightly above cost end up below cost because of
24 the various customer usage patterns relative to
25 each other.

1 But what we have here is everybody's
2 class cost of service study already shows Noranda
3 below cost. So in my mind, it would be unduly
4 discriminatory to take what everybody believes is
5 already below cost and give them more. So, you
6 know, to take what everybody deems a conclusion and
7 completely ignore that and give an additional
8 subsidy is an undue -- is unduly discriminatory in
9 my mind.

10 CHAIRMAN KENNEY: So just let me see
11 if I can rephrase or paraphrase what you've said.
12 Is an unduly discriminatory rate as you see it one
13 that is below costs for a reason other than just
14 normal fluctuations in usage?

15 MR. WOODSMALL: No. I would say that
16 it would be unduly discriminatory for the
17 Commission to ignore the class cost of service
18 results that already show they're below cost and
19 take them further below cost. You know, to put it
20 in a different paradigm, we see residential classes
21 by all measures, including OPC's study, their
22 costs -- or their rates are currently below cost.

23 For the Commission to take them
24 further below cost I think would be unduly
25 discriminatory. The fact that they're there now

1 may not be an undue discrim-- undue discrimination,
2 but to take them further negative is unduly
3 discriminatory in my mind.

4 CHAIRMAN KENNEY: All right. Well,
5 so let me ask you this: Why isn't it unduly
6 discriminatory right now for them to be below cost?
7 So why is that any different than taking them even
8 further below cost?

9 MR. WOODSMALL: Well, we don't have
10 the evidence in this case to determine why they got
11 below cost. You know, if the Commission in the
12 last case gave them rate reductions and they got
13 below cost because of that, maybe that would be a
14 problem. But in the last case, Noranda agreed to
15 an equal percent increase.

16 So I don't know how Noranda got to
17 this point below cost. You know, it may be that
18 their usage changed relative to the other customer
19 classes. But the fact is, everybody admits that
20 they are below cost, and to take them further below
21 cost and ignore those studies in my mind is undue
22 discrimination.

23 CHAIRMAN KENNEY: I mean, I guess at
24 the end of this discussion we're still -- I'm
25 not -- there's no bright line of demarcation. I

1 think that's clear.

2 MR. WOODSMALL: I agree with you, and
3 like I say --

4 CHAIRMAN KENNEY: But there's --

5 MR. WOODSMALL: I'm sorry.

6 CHAIRMAN KENNEY: But there's not
7 even really a rule of thumb. I mean, by your
8 argument, I mean, residential customers are below
9 cost of service now, and so -- you know, and we
10 don't know how they got there, but there's an
11 argument to be made that that's unduly
12 discriminatory and we should just put everybody at
13 cost of service regardless of whether it causes
14 rate shock or not to be nondiscriminatory.

15 MR. WOODSMALL: And that's not my
16 argument. My argument is not to take residential
17 to cost of service. We -- you will see in
18 Wal-Mart's testimony, and we support it, that their
19 request is to move 25 percent -- eliminate
20 25 percent of the subsidy. There is some concept
21 of gradualism and rate shock and those type of
22 things.

23 So for the Commission to take a step
24 and move them to cost of service I don't think
25 would lead to an unduly discriminatory rate. I

1 think, though, if you recognize that they're
2 currently below cost and you move them further
3 below cost, that is a different beast.

4 CHAIRMAN KENNEY: What if we cite
5 some good reason for doing it?

6 MR. WOODSMALL: I don't know where in
7 the statutes there is authority to violate unduly
8 discriminatory for a good reason.

9 CHAIRMAN KENNEY: Well, but we
10 haven't determined what is or isn't unduly
11 discriminatory. Really, there's no bright line of
12 demarcation. I think what I'm left with is that
13 it's up to our reasoned judgment.

14 MR. WOODSMALL: I agree with you.
15 There is no statute, there is no Commission rule,
16 there are no court cases that tell you what unduly
17 discriminatory is. What I was providing was my
18 definition as to what I believe unduly
19 discriminatory is.

20 So when I say they are already below
21 cost and you move them further below cost, that
22 satisfies my definition, but that is not -- there
23 is no guidance out there. So if you believe it's
24 something else, you can do it and, you know,
25 someone can take you to court and we may finally

1 get that guidance.

2 CHAIRMAN KENNEY: Well, this was --
3 this exchange was helpful. I don't have any other
4 questions. Thank you.

5 MR. WOODSMALL: Thank you.

6 COMMISSIONER W. KENNEY: I have no
7 questions.

8 JUDGE WOODRUFF: Commissioner Hall?

9 COMMISSIONER HALL: Yeah. Good
10 afternoon.

11 MR. WOODSMALL: Good afternoon, sir.

12 COMMISSIONER HALL: Would your
13 analysis of undue discrimination change if you
14 agreed with Noranda's position on its current
15 liquidity crisis?

16 MR. WOODSMALL: Would my analysis
17 change? I don't believe so. I believe the only
18 thing I think that would change is it would
19 eliminate the possibility that someone would
20 challenge the Commission to court. So I heard
21 before the Commission can do unlawful things as
22 long as no one's there to challenge it.

23 COMMISSIONER HALL: We try to avoid
24 that.

25 MR. WOODSMALL: I understand.

1 COMMISSIONER HALL: So if we accepted
2 Noranda's position on its current liquidity crisis,
3 and we also accepted the position or the argument
4 that but for rate relief they may go out of
5 business, so then -- then we look to your clients
6 and to their employees and -- I mean, I'm sorry, we
7 look -- we look to your clients and the rates that
8 they pay and then we -- then we conclude that their
9 rates would increase if we didn't give Noranda the
10 rate relief that they need to stay in business, is
11 that not due discrimination or are we still at
12 undue discrimination in your view?

13 MR. WOODSMALL: If I followed you
14 correctly, I don't see a distinction between what
15 you're asking and what the Chairman asked. If
16 you --

17 COMMISSIONER HALL: Well, I'm giving
18 you a hypothetical, and -- but go ahead.

19 MR. WOODSMALL: What I'm hearing is
20 if, as everybody agrees, Noranda's currently below
21 cost and you say you don't -- you believe that they
22 have a liquidity crisis and you need to do
23 something and you move them further below cost, in
24 my mind, yes, that is unduly discriminatory.

25 COMMISSIONER HALL: Even if it

1 benefits all of Ameren's ratepayers?

2 MR. WOODSMALL: Yes.

3 COMMISSIONER HALL: In the
4 hypothetical?

5 MR. WOODSMALL: Yes, I believe so.

6 And part of the problem is, the hypothetical that
7 you're providing isn't a fact as I would say their
8 below-cost rates are. Every study indicates that
9 their rates are below cost. That in my mind
10 establishes a fact. The hypothetical you're saying
11 is disputed. Staff, Ameren, others have said
12 customers won't be better off.

13 COMMISSIONER HALL: That's just the
14 nature of a hypothetical.

15 MR. WOODSMALL: Sure.

16 COMMISSIONER HALL: Okay. Were you
17 involved in the negotiations of this nonunanimous
18 stipulation?

19 MR. WOODSMALL: Yes.

20 COMMISSIONER HALL: Because I noticed
21 that when you filed your position statement, you
22 said that your position was still evolving or --

23 MR. WOODSMALL: We took no position
24 at that time, right.

25 COMMISSIONER HALL: And now you are

1 taking a firm position?

2 MR. WOODSMALL: Right.

3 COMMISSIONER HALL: And I'm curious
4 about that because the prior position was at 32.50
5 and you took no position. Now they're seeking 34
6 and you're opposed. So what's happened in the
7 interim?

8 MR. WOODSMALL: Oh, just the
9 opportunity to look at the evidence more, to hear
10 cross-examination as it developed, just to see what
11 happened in the hearing. But \$34 after considering
12 all the evidence and talking further with my
13 clients, we determined that that was unduly
14 discriminatory. So by very nature, 32.50 would be
15 as well.

16 There was also the hope that we could
17 do something with consumer protections in the
18 stipulation to make us more comfortable, and that
19 didn't happen.

20 COMMISSIONER HALL: What is your
21 position on Ameren's wholesale proposal?

22 MR. WOODSMALL: The wholesale
23 proposal provides me a great deal of concern from
24 the standpoint of it is Ameren negotiating with
25 Noranda without any customers present. You

1 basically have Ameren pretending to control the
2 wallets of its customers. Ameren's saying now that
3 Noranda doesn't have a liquidity crisis, that they
4 don't need any rate relief, but then to turn around
5 and give that rate relief via a wholesale
6 agreement, to spend its customers' money and then
7 ask the customers to pick up the differential is
8 problematic.

9 I heard you ask the question, well,
10 wouldn't such an agreement be approved by this
11 commission? I don't believe so. Wholesale
12 agreements by federal preemption are regulated by
13 the FERC.

14 So I don't think -- that's why you're
15 being asked to pre-approve the use of the fuel
16 adjustment clause. I don't believe if they reached
17 a wholesale agreement between the two of them it
18 would come to this Commission. Instead they would
19 say, you've already approved the use of the fuel
20 adjustment clause for this purpose, and they would
21 flow the differential back and hit the ratepayers.

22 COMMISSIONER HALL: You don't think
23 in our order we could require that it come before
24 the Commission?

25 MR. WOODSMALL: I don't know if you

1 and Ameren and Noranda could agree to violate
2 federal preemption doctrine, and this is a
3 wholesale agreement. It's federal in nature. I
4 don't believe that even if you all agree to do it,
5 that you could do it.

6 COMMISSIONER HALL: All right. Thank
7 you.

8 JUDGE WOODRUFF: Commissioner Rupp?

9 COMMISSIONER RUPP: No questions.

10 JUDGE WOODRUFF: Thank you very much.

11 MR. WOODSMALL: Thank you.

12 JUDGE WOODRUFF: I'm looking around
13 the room here. I see United for Missouri is here.
14 Did you wish to make an opening?

15 MR. LINTON: United for Missouri has
16 no opening statement.

17 JUDGE WOODRUFF: And then I guess
18 we'll move to Staff.

19 MR. THOMPSON: Thank you, Judge. May
20 it please the Commission?

21 We're here on the last issue in the
22 third week of this Ameren Missouri rate case. Let
23 me echo some of what I said during the general
24 opening at the start two and a half weeks ago.

25 If this rate request is granted, and

1 I haven't calculated in the effects of those
2 stipulations that have already been approved, we're
3 looking at over 50 percent in rate increases over
4 the past seven years. Do we really believe that
5 Ameren's costs for delivering those services has
6 increased by 50 percent in seven years? Hold that
7 in your mind.

8 This case is all about risk, and this
9 issue is all about risk. Noranda, a business, a
10 large business, one with lots of employees that has
11 lots of beneficial effects on the state and on a
12 particular part of the state, but nonetheless a
13 business, Noranda is asking you to shift risk away
14 from Noranda to Ameren's other ratepayers.

15 I mean, if you're an aluminum
16 smelter, you have certain business risks that go
17 along that line of business. One of those risks
18 has to do with the fact that your prices are
19 controlled by an exchange in London, thousands of
20 miles away, that your price can be destroyed
21 because the Chinese are dumping aluminum made by
22 their subsidized smelters into the world market.

23 Those are business risks that go
24 along with being an aluminum smelter. One of those
25 risks is that the price of electricity is going to

1 go up, and you know what, Noranda is situated just
2 like every other ratepayer in Ameren Missouri's
3 service territory. Their rates are going up.
4 Well, so's everybody's. Missouri families are
5 paying more for their electricity, and if you went
6 to any of the local public hearings, and I know you
7 did, you heard them complain about that. Every
8 time we turn around there's a new rate increase,
9 every 18 months on average, and it's not a small
10 one. It's usually several percentage points. I
11 mean, in seven years, 50 percent. That's
12 significant.

13 There are businesses, small
14 businesses that don't have the ability to hire
15 attorneys to come here. They're looking at being
16 priced out of the market because they can't afford
17 their electric bill. There's nobody here speaking
18 for them or for their employees.

19 Now, so what's happening to Noranda
20 in context is what's happening to every customer of
21 Ameren Missouri. That's the point I'm trying to
22 make. Noranda is here as an example of what's
23 happening to every single customer. They're being
24 squeezed with respect to their electric bill. Year
25 after year, case after case, they're being

1 squeezed.

2 Noranda can afford to come here and
3 make its voice heard, but the millions of
4 residential consumers and small business persons
5 cannot. They can just open their bill and gasp,
6 sit down with a piece of paper and a pencil and try
7 to figure it out. What do we do? What do we cut?
8 How do we keep the doors open? My God, who do I
9 have to lay off? Those are real-life decisions
10 that come out of the impact of this case.

11 So Noranda is here as a symbol of
12 every ratepayer. It's big enough, it's rich
13 enough, it's important enough to come here with
14 lawyers. We've heard they've got at least two,
15 maybe more. They can make their voice heard, and
16 their voice should be heard. But the point is, is
17 that what they're complaining of is what is
18 happening to every single ratepayer. Every single
19 ratepayer. And it all has to do with risk.

20 I've heard several questions from the
21 Bench about the Noranda ice storm AAO. That's all
22 about risk. That's Ameren seeking to shift the
23 risk of unrecovered fixed costs to the ratepayers.

24 Now, Ameren of course is an electric
25 utility. What could be more obvious? There are

1 business risks that go along with that line of
2 business. One of those business risks is that an
3 ice storm is going to put a major customer out
4 of -- offline for a period of time. Seems to me
5 that's a natural, an unavoidable risk if you're in
6 the electric utility business. And here they are
7 trying to shift that risk now to the ratepayers.

8 So Noranda is trying to shift its
9 business risk to the ratepayers in the form of a
10 subsidy, a special rate deal of some kind. Ameren
11 is trying to shift its business risk to the
12 ratepayers in the form of an AAO for unrecovered
13 fixed costs.

14 Well, that is why Staff today and
15 every day stands for the traditional ratemaking
16 paradigm. It ain't perfect, but it's the best
17 thing we have. It's the most fair thing that we
18 have. Figure out what it costs to serve each class
19 of customer based on their special peculiarities,
20 divide that cost among all the members of that
21 class using the special statistical methods in the
22 class cost of service study, and assign the costs
23 of serving that class to each member of the class
24 via a bill, a reasonable bill.

25 That's fair. It's the fairest thing

1 we have. And because it's fair, it results in just
2 and reasonable rates. That's what a just and
3 reasonable rate is. It is a fair rate. It's fair
4 to the company because it will collect enough
5 revenue for the company to pay its bills and
6 function and provide service on an ongoing basis
7 for a year. It's fair to the customers because
8 they're paying the costs they are responsible for.

9 If I decide to keep my house at 95
10 degrees through a cold winter, I'm going to pay a
11 lot more than my neighbor, and that's fair. I
12 caused those costs. I operated my thermostat. But
13 if my bill is going to be some number of dollars
14 more so that Noranda can stay open, is that fair?
15 If my bill is going to be some number of dollars
16 more so that Ameren can recover its lost fixed
17 costs because of an ice storm, is that fair? I
18 didn't cause those costs. I didn't cause the ice
19 storm, and I got nothing to do with Noranda.

20 And if you were to bring in Ameren
21 Missouri's millions of ratepayers one by one to
22 stand here, I bet you that's what they'd all tell
23 you. I care about Noranda. I care about Ameren.
24 Gee, they ought to collect their costs, but I'm
25 interested in my bill and paying my share and

1 nothing more. That's the way people feel.

2 So this case is about shifting risk,
3 and I urge you to stick to the traditional cost of
4 service ratemaking paradigm. Figure out how much
5 it costs and apportion that out fairly on the basis
6 of a statistical study.

7 The Chairman was asking about undue
8 discrimination. Discrimination is inherent in
9 ratemaking. It is inherent because every customer
10 is differently situated. You know, there's the old
11 hypothetical about how far am I from the water
12 plant? Well, if I'm further away than my neighbor,
13 it actually costs more to serve me, right? You've
14 got to pump the water that much further. You have
15 to have a water main that goes that much further.
16 It's the same thing with electric.

17 So by treating customers within a
18 class, a rationally formulated class based on
19 consuming characteristics, that's fair. That's as
20 far as you can get, as close to fairness as you can
21 achieve. And then apportion out the costs based on
22 a rational, well-conducted class cost of service
23 study that you have found to be acceptable and
24 worthy of your credence, and that is fair and
25 that's just and reasonable.

1 Now, how far can you depart from just
2 and reasonable? How far can you slip away from
3 that loadstar? Well, as long as what the
4 ratepayers are getting is reasonably equal in value
5 to what they're paying, I think you're okay. So
6 when we talk about a load retention rate where the
7 customers are better off with Noranda on the system
8 than they would be if they went off; in other
9 words, you're giving them some extra cost to avoid
10 other greater costs, I think you're okay because I
11 think you can say the value of what the ratepayer
12 is getting for their payment is reasonable.
13 They're getting what they're paying for.

14 But that's where it's got to be. If
15 you give a subsidy to Noranda where the customers
16 would be better off without Noranda on the system
17 at all, then I think you've crossed into the
18 territory that can't be defended, where the
19 discrimination is undue.

20 So in summary, let me say, Staff
21 objects to the Nonunanimous Stipulation & Agreement
22 that was filed this morning. We don't believe it's
23 a good deal. There are aspects to it that Staff
24 cannot agree to. If you are going to give a
25 special deal to Noranda -- and we don't think you

1 should. We think you should stick with traditional
2 cost of service ratemaking. But if in your
3 weighing of the equities and in your public policy
4 analysis you decide to give Noranda a special deal,
5 then you need to find that point at which the
6 amount of money Noranda is paying leaves customers
7 better off than they would be without Noranda, and
8 you need to design it so that as time goes on and
9 conditions change, that relationship continues to
10 exist, that it continues to be better for Noranda
11 to be on the system even if they're below cost of
12 service than to be off completely.

13 And I suggest that if you give them
14 such a rate, you give it to them for only until the
15 next rate case and examine it again at that time.
16 And they should certainly be subject to the fuel
17 adjustment clause because a huge amount of Ameren's
18 costs go through the fuel adjustment clause, and if
19 they are exempted from that, then who's going to
20 pick up the price of all that fuel? It's all those
21 ratepayers, who would rather not.

22 Thank you very much.

23 JUDGE WOODRUFF: Questions,
24 Mr. Chairman?

25 CHAIRMAN KENNEY: Mr. Thompson, thank

1 you.

2 MR. THOMPSON: Thank you, sir.

3 CHAIRMAN KENNEY: My question is to
4 your last point, and I want to make sure I'm
5 understanding it. So the key point for purposes of
6 our discussion regarding Noranda, the key point at
7 which a below cost of service rate would not be
8 discriminatory is that point at which the remaining
9 ratepayers would be better off with Noranda on the
10 system than off the system?

11 MR. THOMPSON: Yes, sir. And that's
12 a floor. That's a floor. Can't be lower than.

13 CHAIRMAN KENNEY: Below which we
14 cannot go?

15 MR. THOMPSON: Yes, sir.

16 CHAIRMAN KENNEY: So if we find that
17 sweet spot, I'll call it, and then if we were to
18 hypothetically place in there a mechanism by which
19 that rate is consistently and constantly reviewed
20 to ensure that the rate stays at that benchmark,
21 that would avoid a discriminatory rate?

22 MR. THOMPSON: Yes, sir, I believe it
23 would, because as long as the math shows that the
24 value to the ratepayers is equivalent to what
25 they're paying, then I think that they're getting

1 what they're paying, and that's just and
2 reasonable.

3 CHAIRMAN KENNEY: Great. Thank you.
4 That answers my question.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER W. KENNEY: Just one
7 question. Who's going to find that price point for
8 us, the megawatt per hour?

9 MR. THOMPSON: I think Sarah
10 Kliethermes will be able to give you some help on
11 that.

12 COMMISSIONER W. KENNEY: You think
13 she has it?

14 MR. THOMPSON: I don't know if she
15 has it or not, but I know I don't.

16 COMMISSIONER W. KENNEY: Not yet?

17 MR. THOMPSON: I know I don't. And
18 if anyone here for Staff is likely to, I think it
19 would be her.

20 COMMISSIONER W. KENNEY: Thank you.

21 JUDGE WOODRUFF: Commissioner Hall.

22 COMMISSIONER HALL: Yes. Good
23 afternoon.

24 MR. THOMPSON: Good afternoon.

25 COMMISSIONER HALL: I want to ask you

1 about the current version of the FAC.

2 MR. THOMPSON: Yes, sir.

3 COMMISSIONER HALL: And I want to ask
4 you, what would happen under the current version of
5 the FAC should Noranda go out of business and quit
6 paying Ameren the \$167 million a year and Ameren
7 attempted and succeeded in finding a buyer of that
8 additional energy, would those off-system sales run
9 through the FAC?

10 MR. THOMPSON: Yes, sir, they would.

11 COMMISSIONER HALL: And is that
12 crystal clear based on your reading of it?

13 MR. THOMPSON: Based on my reading of
14 it, yes, subject to check. We have Matt Barnes
15 here to testify today. He's our FAC expert.
16 Perhaps he will be able to correct any misstatement
17 I make. But I did talk to him about this exact
18 point over the lunch break, and I believe I have it
19 correct.

20 COMMISSIONER HALL: And then in the
21 process leading up to the hearing in this rate
22 case, is that language one of the issues for us to
23 resolve or is that a -- is that not an issue before
24 us? I mean, obviously --

25 MR. THOMPSON: The tariff language?

1 COMMISSIONER HALL: Yes.

2 MR. THOMPSON: I think various people
3 have or various parties have proposed tariff
4 modifications to go along with their various
5 proposals with Noranda, with respect to Noranda.
6 Noranda has proposed creating a new rate class, for
7 example, that would require a new tariff. Ameren
8 came in with its wholesale suggestion. I don't
9 know if that would require any tariff changes or
10 not. I mean, they were going to give up their
11 certificate, so they're going to step out of
12 regulation entirely with that.

13 COMMISSIONER HALL: Does Staff have a
14 position on Ameren's wholesale proposal?

15 MR. THOMPSON: I do have a position
16 on that. I would direct your attention to
17 Section 91.026, which is a statute based by the
18 Legislature in years past to provide relief to
19 Noranda. At point two it says, notwithstanding any
20 provisions of law to the contrary, any aluminum
21 smelting facility shall have the right to purchase
22 and contract to purchase electric power and energy
23 and delivery services from any provider wherever
24 found or located at whatever rates or charges as
25 contracted for, and such periods or times as is

1 needed or necessary or convenient for the operation
2 of such aluminum smelting facility and for no other
3 purpose.

4 Then at section 3 it states,
5 notwithstanding the provisions of Section 91.025,
6 393.106 and 394.315 to the contrary, any provider
7 of such electric power and energy and delivery
8 services, whether or not otherwise under Missouri
9 regulation, shall have the right to transact for
10 and sell electric power and energy and delivery
11 services to an aluminum smelting facility. Any
12 transactions or contracts pursuant to this section
13 for electric power and energy deliver services
14 shall not be subject to the jurisdiction of the
15 commission -- that's you guys -- with regard to the
16 determination of rates.

17 So the Missouri General Assembly has
18 created a special statute for Noranda allowing them
19 at any time, as I read the statute, to declare
20 themselves to be looking for power on the wholesale
21 market, and any provider of power, which would
22 include Ameren under this language, can say we'll
23 provide that power, and it's not subject to the
24 Commission's jurisdiction.

25 So I don't think this has ever been

1 used. I don't know if it's legal in the sense of
2 constitutional, and it's not my position to
3 question a statute duly promulgated by the
4 Legislature and signed by the governor. How this
5 would interact with the various federal laws that
6 Mr. Woodsmall alluded to, I don't know. Probably
7 could keep a platoon of lawyers employed for ten
8 years. But this does exist.

9 COMMISSIONER HALL: What about from a
10 policy perspective in terms of whether it would be
11 good public policy to --

12 MR. THOMPSON: Well, as you know, my
13 view is where the General Assembly has spoken, the
14 public policy has been determined. So I would read
15 this statute to say that the Legislature -- that
16 the law of Missouri is that Noranda can make this
17 election and that public policy favors it because,
18 after all, it's been embodied in the statute.

19 COMMISSIONER HALL: In other words,
20 what you're saying is the law would allow Noranda
21 and Ameren to come to an agreement as to a
22 wholesale price?

23 MR. THOMPSON: Exactly.

24 COMMISSIONER HALL: And it's your
25 understanding that if they were to come to

1 agreement, this Commission would not have
2 jurisdiction to review that agreement?

3 MR. THOMPSON: I believe that to be
4 true.

5 COMMISSIONER HALL: Thank you.

6 MR. THOMPSON: Thank you, sir.

7 JUDGE WOODRUFF: Commissioner Rupp?

8 COMMISSIONER RUPP: Help me
9 understand your response to Commissioner Hall's
10 question about the -- if Noranda were to leave the
11 system, where everything would flow through the
12 FAC. Why would that be allowed and why was it not
13 allowed in the ice storm event where they attempted
14 to do that and they were not allowed? What has
15 changed?

16 MR. THOMPSON: The way the FAC is
17 currently devised, and it's only changed since that
18 ice storm by the inclusion of Factor N, so this is
19 pre factor N when the ice storm occurred. That
20 provided that -- and you'll recall that Ameren
21 sells all its power to the Midwest, those guys, and
22 they buy it all back to serve their load. Okay.

23 So the tariff provides that those
24 purchases to serve their native load are not
25 subject to the sharing mechanism, but off-system

1 sales, which is to say sales not to serve the
2 native load, are subject to the 95/5 sharing, and
3 95 percent of the revenues from those off-system
4 sales go to the benefit of consumers, that is by
5 reducing the cost of service.

6 So Noranda was part of Ameren's
7 native load. So none of the revenue from Noranda
8 prior to the ice storm was subject to the sharing.
9 The ice storm happened. Ameren went out looking
10 for substitute contracts. It found them, and then
11 Staff litigated and succeeded on the view that,
12 well, those successor contracts, replacement
13 contracts were simply off-system sales. They were
14 not native load and, therefore, they had to go
15 through the sharing mechanism.

16 And because they went through the
17 sharing mechanism, Ameren was left with
18 unrecovered costs. That's the unrecovered fixed
19 costs that they got the AAO for and that's also a
20 subject of this litigation.

21 At the next rate case, the tariff was
22 amended to add Factor N, and Factor N provides that
23 if Noranda goes offline because of an act of God,
24 then Ameren can sell, make off-system sells up to
25 the average level, some stipulated level equivalent

1 to Noranda's load without it being subject to the
2 sharing, and only if they go over that cap would
3 they be subject to the sharing.

4 So that's what protects them from
5 another ice storm because it would be an act of
6 God, and that replacement power, revenue from
7 replacement power would be treated like native load
8 revenue.

9 But if Noranda goes out of business
10 voluntarily, then Factor N doesn't apply. It's my
11 understanding it only applies to an act of God.
12 So if --

13 COMMISSIONER RUPP: So then walk me
14 through. So what would then be the unrecovered
15 cost then to Ameren be if they sold the power
16 through other contracts and ran it through the FAC?
17 What dollar amount are we talking if they did it
18 dollar for dollar?

19 MR. THOMPSON: Well, it would be --
20 they would -- 95 percent of it would be subject to
21 sharing, which the revenue from Noranda today is
22 not. And so 5 -- obviously they would not be
23 recovering as much cost as they had been.

24 COMMISSIONER RUPP: And I can just do
25 the simple math of 167 times 5 percent or is there

1 another --

2 MR. THOMPSON: We would sure have to
3 ask somebody who is an arithmetician, Sarah
4 Kliethermes or somebody else like that.

5 COMMISSIONER RUPP: I'm trying to get
6 an idea of what the exposure then would be to the
7 company if they --

8 MR. THOMPSON: I assume the exposure
9 would be similar to what it was with respect to the
10 ice storm. Now, the AAO involves 36 million of
11 unrecovered fixed costs, but they told you that
12 their losses were greater. I don't know what their
13 total losses from the ice storm were. Is that
14 secret or can you guys tell me?

15 MR. BYRNE: Total losses were
16 significantly more.

17 MR. THOMPSON: Significantly more.

18 COMMISSIONER RUPP: All right. Thank
19 you.

20 MR. THOMPSON: Thank you.

21 JUDGE WOODRUFF: Opening for --

22 CHAIRMAN KENNEY: I have another
23 question. Can you hold on?

24 JUDGE WOODRUFF: Sure. Go ahead.

25 CHAIRMAN KENNEY: I want to go back

1 to this discussion about what happens if Noranda
2 leaves. When we made our determination regarding
3 the AEP and the Wabash contracts and we determined
4 that those sales had to flow through the FAC as
5 off-system sales, correct?

6 MR. THOMPSON: Yes, sir.

7 CHAIRMAN KENNEY: But didn't that --
8 didn't we reach that determination because of how
9 those contracts themselves were structured?

10 MR. THOMPSON: Absolutely.

11 CHAIRMAN KENNEY: So isn't there --
12 is there a circumstance in which American could
13 structure contracts so that they didn't qualify as
14 off-system sales subject to the FAC conceivably?

15 COMMISSIONER MURRAY: Conceivably.
16 You know the answer to every legal question is
17 maybe. I don't mean to be flippant, but yes, det--

18 CHAIRMAN KENNEY: I mean -- go ahead.

19 MR. THOMPSON: I was just going to
20 say, determined and well-qualified attorneys can do
21 all kinds of amazing things.

22 CHAIRMAN KENNEY: Well, I mean,
23 that's what Ameren was trying to do when they sold
24 those -- when they entered into those contracts
25 with AEP and Wabash, they were trying to avoid

1 having to run it through the FAC, and it was the
2 language about whether they were full-requirements
3 contracts or not that was the determining factor.

4 MR. THOMPSON: Yes.

5 CHAIRMAN KENNEY: So, I mean,
6 arguably if they'd structured those contracts
7 differently, we may have reached a different
8 decision.

9 The point that I'm getting at is that
10 the default is that those -- that those sales would
11 flow through the FAC?

12 MR. THOMPSON: It is my belief, my
13 sincere belief as I stand here today that if
14 Noranda leaves the system, that any sales Ameren
15 makes of that power to a replacement buyer who is
16 not part of Ameren's native system, that the
17 revenue would be subject to the 95/5 sharing
18 mechanism in the FAC.

19 CHAIRMAN KENNEY: Regardless of how
20 they structure the contracts?

21 MR. THOMPSON: I will hold out a
22 small possibility that there could be language in
23 the FAC that could be taken advantage of to achieve
24 a different result. I just don't know.

25 CHAIRMAN KENNEY: Okay. All right.

1 That's helpful. Thank you.

2 MR. THOMPSON: Thank you, sir.

3 JUDGE WOODRUFF: Thank you. Opening
4 for Ameren.

5 MS. TATRO: Good afternoon. I'd like
6 to start by formally stating that Ameren Missouri
7 opposes the stipulation filed by MIEC and the other
8 parties earlier this morning.

9 I want to address a couple issues
10 that I've heard Commissioners ask questions about
11 in regards to that, although I have to say,
12 although I spent some time reviewing that
13 stipulation over lunch, I certainly have not had
14 the time necessary to fully think about its
15 implications, to discuss those implications with my
16 client, other than at a high level, enough for them
17 to say we oppose but not enough to address all of
18 the issues. And I'm hopeful we'll be taking that
19 up at a later time when we'll have that
20 opportunity.

21 But I've heard a couple conversations
22 kind of be repeated over and over. First of all, I
23 heard parties say Ameren's held harmless, and I
24 don't think that's true. My client doesn't think
25 that that is true. Certainly our customers aren't

1 held harmless. And although it may be simpler for
2 everyone to believe that Ameren's the big bad
3 utility that doesn't care about its customer, it's
4 not true. Mr. Moehn testified on the very first
5 day in front of all of you that if we don't treat
6 our customers fairly, in the end we will lose.

7 And so it's very important to us, and
8 we are asking customers to pay an increased rate,
9 and we filed several rate cases since 2007, but
10 every one of those has been approved. So
11 Mr. Thompson can get up here and talk about a
12 50 percent increase, but every dollar of that was
13 deserved and was prudent and was necessary to
14 provide sufficient and efficient service to our
15 customers.

16 But asking Ameren Missouri to have
17 its customers pay a dollar so that Apollo can have
18 another dollar in its coffers is just not something
19 that my client can stomach and they're not going
20 to.

21 Additionally, I'm not even sure that
22 the company's held harmless. There's a risk of an
23 appeal by a non-signatory party, such as
24 Mr. Woodsmall. He's a tenacious attorney if you
25 know him. He might take it up on appeal. He might

1 win his discrimination argument. There's a tariff
2 or a statute that says then Ameren Missouri would
3 be refunding money back to customers who have
4 overpaid and collecting additional monies from
5 customers who have underpaid, but I'm not
6 100 percent certain what would happen with the
7 dollars in the difference. It's a relatively new
8 statute. I don't think it's ever been applied.
9 There's some risk there for my client. I could not
10 tell them 100 percent that they have no risk.

11 There's no N Factor for this new IAS
12 class. So if you have an extraordinary event, such
13 as the ice storm which hit in 2007, which you
14 already determined was an extraordinary event,
15 we're right back here having the same discussion.

16 Finally, there's no -- I'm not even
17 certain how to implement the proposal that's before
18 you. How do you set an LTS rate, which you have to
19 keep because if Noranda violates the stipulations
20 they say they're going to keep, the covenants
21 they're making in this, then they go back to the
22 LTS rate.

23 So you have to keep an LTS rate, but
24 you can't actually allocate any costs to it. I'm
25 just not certain how that would work. So if I'm

1 not certain how that works, I have to think there's
2 risk of unrecovered costs for my client.

3 So those are my initial reasons why I
4 don't believe this holds Ameren harmless and why
5 you shouldn't just accept that off the cuff.

6 Now, in addition to that, I've heard
7 some questions about if the customer groups support
8 this, why in the world can't Ameren? Of course
9 that presupposes that we're being held harmless.
10 But frankly I'm shocked that Office of Public
11 Counsel especially signs on this deal so willing.

12 And I don't assign any bad motives to
13 him. I can only say I assume he's accepting
14 Noranda's claim that if they don't get this rate,
15 they eventually will close the smelter.

16 No customer representative has
17 submitted any testimony indicating they've actually
18 tested that theory. The only party in this case
19 that has spent the time and effort to submit
20 testimony to you about whether or not Noranda's
21 claims are true is the one party who's supposedly
22 held harmless.

23 It's not because we like fighting
24 with Noranda. It's causing me stress. It's
25 causing me to lose my voice. We're not doing this

1 for fun. We're doing this because we honestly
2 believe it's the right thing to do for our
3 customers.

4 I also notice that customers when
5 they talk about the cost, when Mr. Coffman talked
6 to you about the cost earlier, Commissioner Hall,
7 he was only talking about the first year. That
8 cost increases every year. As the FAC rate goes
9 up, the cost to the rest of the customers goes up.
10 Every time Ameren Missouri is in for a rate case,
11 the cost to the other customers is going to go up.
12 If it's a ten-year contract, you know that the FAC
13 regulations require us to come back in at least
14 every four years. So we'll be back in at least two
15 more times.

16 Any of those increases increases the
17 burden that's going to be placed upon our
18 customers. I don't know why customers aren't
19 opposing this, they should be.

20 Finally, I just want to address a
21 couple things that were discussed about the
22 N Factor. Remember I told you the N Factor doesn't
23 exist on this new rate class that is being
24 proposed. The N Factor is not dependent upon an
25 act of God. It is any time Ameren Missouri would

1 lose a load of above 40 million kilowatt hours.

2 Now, that is tied to about the
3 approximate usage of one of their pot lines but
4 doesn't require a storm. It could just be they
5 lose an entire pot line, but that's the way that is
6 set up. So just to make sure that is very clear.

7 So that's my short answer as to why
8 we oppose the Stipulation & Agreement. I would ask
9 this Commission to set a specific time and date for
10 a hearing on that Stipulation & Agreement, and I
11 would ask that we be able to reserve the right to
12 call back any Noranda witness that may have already
13 testified at that point in time.

14 I didn't even see this agreement
15 until this hearing began today. So I have not had
16 any opportunity to think about what cross I might
17 need to ask those individuals, and so I reserve
18 that right, please.

19 JUDGE WOODRUFF: Well, I will add at
20 this point that because Staff and Ameren and MEGG
21 have opposed this Stipulation & Agreement, it no
22 longer exists as a Stipulation & Agreement under
23 our regulation. It's now a joint position of the
24 parties. So there's no question that the
25 Commission could approve the Stipulation &

1 Agreement as long as it remains unanimous.

2 Now, the Commission could implement
3 its terms if that were found to be just and
4 reasonable under the -- by competent and
5 substantial evidence.

6 MS. TATRO: You're right. I guess I
7 should phrase that differently. Ameren Missouri
8 came in today prepared to cross-examine their
9 witnesses on liquidity needs and on \$30 rate. We
10 didn't talk about this proposal at all because it
11 didn't exist. At least it wasn't shared with us.

12 So I think we should have the
13 opportunity to recall witnesses later if we
14 determine that we need to do so, and we'll
15 certainly work with scheduling and those types of
16 things. But I think we should have the right to
17 recall a witness that we may cross-examine this
18 afternoon that we find later we need to
19 cross-examine given this change in position.

20 JUDGE WOODRUFF: Are you suggesting
21 later in this week of the hearing?

22 MS. TATRO: Yeah. Maybe by Thursday.

23 JUDGE WOODRUFF: All right. We'll
24 consider that as the need arises.

25 MS. TATRO: All right. Thank you.

1 Turning to the main issue before us and generally
2 the issue of whether or not Noranda needs a
3 subsidized rate. You know, it was about a year ago
4 that Noranda filed its rate shift complaint and
5 when it told you it absolutely had to have a
6 \$50 million a year rate discount, a rate which was
7 \$30 a megawatt hour for ten years, with the
8 potential of a 2 percent increase in each future
9 rate case, and that it had to avoid all FAC charges
10 or else the smelter would be subject to closure by
11 a date that I can't mention because it's highly
12 confidential.

13 Until pressured in evidentiary
14 hearings, Noranda was unwilling to place any
15 conditions, consumer protection conditions on its
16 request, and even when those conditions were
17 offered, it was unclear how they might be enforced.

18 Certainly they could not prevent
19 Noranda's largest shareholder, which is Apollo,
20 from extracting even more cash from Noranda as it
21 has clearly done before. And that's true even in
22 this stipulation. It says they won't have a
23 special dividend, but it still allows them to
24 declare a dividend.

25 Then, Commissioners, in July, after

1 the record in that complaint case, the rate shift
2 case had closed, Noranda signed on to a
3 stipulation, apparently deciding it didn't need \$30
4 a megawatt hour. Instead, 34.44 a megawatt hour
5 for five years would suffice. And I guess it could
6 start paying FAC charges if they were phased back
7 in over that five years. So \$30 didn't really mean
8 \$30.

9 Then Noranda has made yet a third run
10 on a subsidy, again at 34.44 with an FAC phase-in,
11 which is the stipulation filed by the Office of
12 Public Counsel very early in this case.

13 The Commission rejected that attempt.
14 If you'll remember, they requested that it be in
15 effect before -- by December 31st of last year.
16 The Commission refused to do that. And in your
17 Order this last summer, you recognized that there
18 are substantial policy and perhaps legal reasons
19 created by the rate shift request set forth by
20 Noranda.

21 From a policy perspective, you
22 recognized in your Report and Order that, and I
23 quote, a request for an economic development
24 subsidy of this magnitude is more properly directed
25 to the Missouri General Assembly.

1 Moreover, the Commission recognized
2 that, as a minimum, a party seeking to throw out
3 cost causation principles that underline the cost
4 of service ratemaking in Missouri must shoulder a
5 very heavy burden to show that such a rate would
6 not be unduly or unreasonably preferential.

7 So in this case we heard yet a fourth
8 proposal, still seeking a highly subsidized rate
9 for seven years of \$32.50 with no fuel adjustment
10 clause and an annual escalator of 1 percent.
11 And this morning we get the fifth one, which is \$34
12 for ten years with no FAC.

13 But regardless, make no mistake,
14 under any of these proposals, it is a subsidy of
15 hundreds of millions of dollars being shifted from
16 Ameren Missouri's customers to a private company.

17 Now, Noranda is honest in that
18 there's no pretense that its request is anything
19 other than a subsidized rate. It has no basis in
20 cost of service, and Noranda admits that. It
21 admits that it is a heavily subsidized rate that it
22 seeks that is far below the rate that would be
23 supported by any cost of service study in this
24 case, including that of their own witness
25 Mr. Brubaker. Mr. Woodsmall walked you through

1 all of those numbers in his opening.

2 As is the case -- as was the case
3 before, the only basis for the subsidized rate is
4 Noranda's claim of financial need. The bottom line
5 is that Noranda has calculated what it wishes it
6 was paying for electricity and is asking you to
7 grant that wish even though no other customer gets
8 to decide what it pays for electricity.

9 Now, Ameren Missouri's opposition to
10 this request is not made lightly. Noranda's cross
11 of Mr. Humphreys illustrates that the aluminum
12 business is a difficult one, but it also
13 illustrated that electricity is not the cause of
14 that difficulty.

15 Ameren Missouri doesn't want to see
16 Noranda's employees lose their jobs. It does not
17 dispute that the Noranda facility contributes in a
18 significant and positive manner to the economy of
19 southeast Missouri and even to the neighboring
20 states of Illinois, Arkansas, Kentucky and
21 Tennessee.

22 Our executives attended the public
23 hearings in both the rate shift case and this rate
24 case. We heard what those employees told you. It
25 is clear that those employees depend upon Noranda.

1 That is not and has never been the issue in this
2 case.

3 The question in this case is not
4 nearly as narrow as what Noranda would have you
5 believe. The question is not simply whether
6 Noranda has a financial need for a long-term power
7 rate or whether it would close the smelter without
8 it. The evidence will show at best there are
9 substantial questions about whether either of those
10 claims are true.

11 To the contrary, the question is,
12 even if Noranda has that kind of severe financial
13 problems, even if the hypothetical scenario set
14 forth by Noranda in this case might produce a
15 smelter closure, and even if the -- how did Noranda
16 get itself into this position?

17 The evidence will show the answer to
18 that question is that Noranda and its controlling
19 shareholder Apollo put Noranda in the position it
20 is today. Commissioners, you recognized the same
21 in your Order from last summer.

22 And having put itself in that
23 predicament, Noranda now asks you to require Ameren
24 Missouri's other 1.2 million customers to bail it
25 out. We would submit this is questionable at best

1 as to whether the Commission was delegated the
2 authority to engage in picking winners and losers
3 in the marketplace, whether that marketplace
4 involves aluminum companies or automobile
5 manufacturers.

6 Now, perhaps Noranda can convince you
7 that every word of its opening statement is true.
8 You can believe that Noranda is on the verge of
9 laying off every employee it has. You can believe
10 there really is great risk that it's going to have
11 to close the smelter. And if you believe these
12 things, you might understandably want to find a way
13 to help Noranda and its employees and the bootheel
14 region of the state.

15 But if I think about it, making the
16 policy choices that are inherent in providing that
17 kind of help in the face of circumstances is the
18 job of those of the Legislature, those who are
19 elected by the citizens of the state to make those
20 decisions.

21 If, as Noranda witness Dr. Haslag
22 contends, Noranda is an important economic engine
23 for the state, then the state as a whole should be
24 helping Noranda.

25 The irony of this request is that a

1 very significant number of people who Noranda say
2 benefit most from its presence are not being asked
3 to pay one dime of the subsidy that they seek.
4 They are the folks who live in southeast Missouri
5 but are served by cooperatives and by municipal
6 utilities. Many of them are not served by Ameren
7 Missouri.

8 Now, as you know, the Commission's
9 obligation is to set rates that are just and
10 reasonable and which are not unduly preferential or
11 discriminatory, and the process of rates you're all
12 familiar with.

13 The Commission first determines a
14 revenue requirement, which means you determine a
15 level of revenues designed to recover the utility's
16 expected reasonable expenses and allow it an
17 opportunity to earn a reasonable return on its
18 prudent and useful investments in assets used to
19 provide utility service.

20 The Commission then determines rate
21 design, which means you determine how much of that
22 revenue requirement should be collected from the
23 utility's various rate classes using a class cost
24 of service study to allocate the cost to serve each
25 class, making sure that differences in rates have a

1 basis in the differences in character of the
2 service that the utility is providing to the
3 different classes of its customers.

4 Noranda's proposal -- and
5 Commissioner Hall, this is why I believe it's
6 discriminatory. Noranda's proposal has the rate
7 process backwards. It starts by determining what
8 rate works best for that customer for its own
9 particular circumstances and then spreads the
10 remaining revenue requirement to other customer
11 classes. It is the process that is the problem.

12 The real question in this case is the
13 impact of the subsidization request upon the rest
14 of Ameren Missouri's customers, and on this point
15 Ameren Missouri witness Matt Michels demonstrates
16 that the company's customers will be worse off by
17 hundreds of millions of dollars with Noranda paying
18 32.50 or \$34 per megawatt hour than customers would
19 be if Noranda left Ameren Missouri's system
20 entirely. And I encourage you to discuss that
21 subsidy with him.

22 Noranda has pointed out that other
23 states have used special electric rates in order to
24 provide assistance to aluminum smelters in their
25 state. Of course, all of those occurred in

1 different states with different statutory
2 authorities and often special statutory authority
3 directed toward smelters or other very large
4 electrical loads.

5 As is pointed out in the testimony of
6 Ameren Missouri witness Robert Mudge, before coming
7 to their commissions, other smelters have gone to
8 the legislature in the state where they operated
9 and obtained specific enabling legislation,
10 obtaining the policy determination necessary for
11 you to approve special rates.

12 Because no such policy decision has
13 been made in Missouri by the body that ought to be
14 making it, the General Assembly, your inquiry in
15 this case should stop there. Noranda, of course,
16 will tell you that you are indeed the right body to
17 make this determination, so let's assume for a
18 moment that you are.

19 In that case the question becomes
20 should you. And this is no trivial policy matter.
21 It turns on many questions, including whether
22 Noranda has proven sufficient justification for
23 this Commission to require all of Ameren Missouri's
24 customers to pay for part of the cost of serving
25 Noranda.

1 To properly make that policy
2 determination, I believe you need to answer four
3 questions. The first three address facts of the
4 case, and the fourth points to the inevitable
5 policy that your decision will necessarily
6 implicate.

7 First, is Noranda truly facing an
8 imminent and dire financial crisis? Second, if so,
9 was that financial crisis outside of Noranda or
10 Apollo's control? Third, if the financial crisis
11 was outside of Noranda or Apollo's control, is it
12 fair or otherwise appropriate to place the burden
13 to solve those financial problems upon Ameren
14 Missouri's customers alone?

15 And finally, No. 4, should this
16 Commission embark on a new policy of setting
17 preferential electric rates and socializing the
18 impact of that preference to everyone else based
19 solely on a customer's claimed ability to pay?

20 I'd like to talk about each one of
21 those questions, beginning with the first. Is
22 Noranda truly facing an imminent and dire financial
23 crisis? Noranda's testimony certainly paints a
24 dire picture, but that was equally true, perhaps
25 even more true just months ago in the rate shift

1 complaint case. And the public hearings
2 demonstrate they've convinced their employees that
3 their jobs are indeed at risk.

4 There will be lots of arguments and
5 evidence in the record on this issue. But as you
6 noted yourself, Commissioners, this isn't the first
7 time Noranda has made dire claims of threats of
8 layoffs or even plant closures. One of Noranda's
9 prior claims, which did not come true, was pointed
10 out in your Report and Order in last summer's rate
11 shift case.

12 This is from the Findings of Fact in
13 that case. And you see as you read through it --
14 and given the difficulties with my voice, I'm not
15 going to read through the entire thing, but you can
16 see that, Commissioners, you clearly pointed out
17 that in 2010 a similar dire warning was given to
18 you. The Commission did not approve the requested
19 rate design, and it didn't come true.

20 Now, Noranda claimed then that it had
21 to have significant relief, but yet you still
22 denied the settlement. You didn't give them the
23 substantially lower rate in that case.

24 That claim was made again last
25 summer, including threats of up to 200 layoffs by

1 the end of 2014. Those dire consequences also did
2 not come true even though you denied Noranda its
3 requested relief.

4 You also heard Noranda through
5 Mr. Smith tell you in the hearing this summer, last
6 summer, that without relief it may be unable to
7 complete the rod mill at the New Madrid facility
8 and that might even have to build it in another
9 state.

10 But then, just after six months
11 later, 11 days ago, on February 28th, Noranda told
12 its investors and the world at large that indeed it
13 will complete the rod mill facility and that it
14 will complete it at the New Madrid facility and
15 told them that it would be done by the end of 2015.

16 The truth is that Noranda has already
17 invested about three-quarters of the dollars needed
18 to complete the rod mill. It has built the
19 buildings and infrastructure to house it. The
20 equipment is onsite at New Madrid.

21 As Noranda CEO Kip Smith said on that
22 February 28th earnings call, quote, on the rod
23 mill, yes, we are committed to building the
24 facility at New Madrid, end quote. Another dire
25 warning which did not come true.

1 Now, as the testimony of Mr. Mudge
2 points out, the picture Noranda has put before you
3 is a very different one from the picture presented
4 to the investment community right around the same
5 time as Noranda made this filing and since then.
6 There is plenty of evidence in this record to show
7 that Noranda is not in as serious financial
8 difficulty as it claims.

9 First of all, the record in this case
10 will show that Noranda's financial picture has
11 improved since it was last before you asking for a
12 huge rate subsidy. And applying the best forecast
13 of future prices available, which is from CRU,
14 which Noranda endorsed in the last case as a
15 reliable and respected source of industry data, and
16 which Noranda apparently still endorses since a CRU
17 executive is one of the witnesses in this case,
18 using the CRU forecast indicates that Noranda will
19 have more than sufficient liquidity throughout the
20 seven-year period of Noranda's rate request,
21 perhaps under the ten years under the new request.

22 This is all true even assuming
23 Noranda spends the amounts it claims it needs to
24 spend annually over the next seven years. In fact,
25 Commissioners, Noranda will have at least two times

1 at much liquidity in each of the next seven years
2 when you use modeling using CRU's forecast instead
3 of the made-up numbers that they used.

4 Moreover, if one updates Noranda's
5 model using CRU data for January of 2015, Noranda
6 will have even more liquidity and will never get
7 near the minimum level of liquidity that it says it
8 must have.

9 I would submit, however, that Noranda
10 is not entitled to rely upon the assumption which
11 it is essentially asking you to make, but it will
12 spend millions more on capital expenditures in the
13 future than it has generally spent in the past.
14 The evidence will show that, in fact, tens of
15 millions of dollars of these capital expenditures
16 that it assumes in its modeling are completely
17 unexplained.

18 Certainly after it filed for rate
19 relief in 2014, Noranda had no recent history of
20 spending anywhere close to the claimed level of
21 capital expenditures it now says it will have to
22 make. And at a level that more fairly approximates
23 Noranda's actual capital spending, Noranda's
24 liquidity picture is even stronger than the numbers
25 I alluded to before.

1 Another metric worth noting: Noranda
2 focuses solely on its electricity costs, but in
3 this case, as in the last one, it ignores what
4 really determines its competitiveness as compared
5 to its competitors. Electricity is but one cost.
6 Competitiveness is truly dependent upon Noranda's
7 total costs. And Commissioners, you recognized
8 this fact in your rate shift order this summer.

9 In this order you stated, moreover,
10 the cost of electricity is not the only factor that
11 determines whether an aluminum smelter can compete.
12 And if you go down further down it says, when the
13 total cost of production at each smelter is taken
14 into account, at current electricity rates, the
15 New Madrid smelter operates at a total cost that is
16 less than the average cost for a U.S. smelter. In
17 fact, at current rates it is the third cheapest
18 producer of aluminum in the United States.

19 I submit to you that these statements
20 remain true and, in fact, are even more true today.
21 According to CRU, at its current electric rate,
22 Noranda is the lowest cost aluminum smelter in the
23 U.S. The exact numbers are highly confidential,
24 but they can be found in a table in Mr. Mudge's
25 testimony, page 40. The relief it seeks will

1 increase Noranda's competitive advantage by a
2 significant margin.

3 Now, having lost the rate shift
4 complaint case this summer, Noranda takes a
5 different approach in this case, and they're
6 resorting to reimagining aluminum prices at a far
7 lower than the CRU forecast by creating what are
8 effectively hypothetical scenarios of what would
9 happen under certain assumptions that Noranda and
10 Noranda alone chooses to make.

11 Noranda's scenarios start with the
12 assumption that aluminum prices travel on a
13 ten-year cycle. I use the word assumption because
14 Noranda didn't analyze data to approve a ten-year
15 cycle, and Noranda didn't rely on scholarly
16 economic research to demonstrate the existence of a
17 ten-year cycle, and Mr. Humphreys has already told
18 you there is no such set cycle.

19 To the contrary, Noranda assumed a
20 ten-year cycle, and you will hear testimony from
21 both Ameren Missouri and Noranda experts, frankly,
22 that this assumption is not supported by data or
23 academic research.

24 Noranda next derived a historical
25 ten-year price curve, again premised on the

1 unsupported assumption that ten years was a correct
2 cycle. It calculated a total of 11 of these
3 ten-year curves. It then chose those three curves
4 that Noranda, and again Noranda alone, claims best
5 describe the next hypothetical ten years.

6 Notably, each of these curves is very
7 similar in that each hypothesizes aluminum prices
8 are well under CRU's forecast prices for much of
9 the first seven years of Noranda's hypothetical
10 ten-year curve.

11 According to Noranda's testimony, it
12 selected these three curves on the basis of a
13 statement by Noranda expert Colin Pratt that global
14 market conditions are not expected to be tight in
15 the next two years. While Noranda will admit that
16 not tight doesn't mean only when prices are heading
17 down, the three curves Noranda chose all
18 hypothesize that indeed prices are going down, way
19 down and staying down for several years.

20 Noranda rejected the curves it had
21 calculated that shows what would happen if the
22 prices went up.

23 Now, Mr. Pratt agreed with Ameren
24 Missouri expert David Humphreys that the three
25 scenarios selected by Noranda are not sufficiently

1 representative of potential price cycles because
2 they all contain a long sequence of negative
3 variations from trend in the first few years of the
4 forecast.

5 Noranda next calculated its
6 hypothetical cash flow if the hypothetical aluminum
7 prices derived from these three pessimistic curves
8 actually came to pass. In doing so, Noranda made
9 another assumption, that it would spend
10 \$100 million in capital expenditures for each of
11 the next seven years.

12 Noranda has made this assumption
13 despite a lack of historical precedent for capital
14 expenditures of this level. Noranda made this
15 assumption despite a lack of explanation as to
16 where all this money would go, and without any
17 concrete capital expenditure plans beyond the
18 current year.

19 Next, Noranda determined that if all
20 of these assumptions came through, then for certain
21 years it would experience liquidity issues. But in
22 making these assumptions, it made yet another
23 assumption, and that is, even if a liquidity crisis
24 were imminent, that Noranda would essentially do
25 nothing to prevent it.

1 They assume, for example, that it
2 would not adjust its hypothetical level of per year
3 capital expenditures downward but would just keep
4 spending. In other words, Noranda assumed that
5 even if it could see it were about to drive off the
6 cliff, it would not apply the brakes or turn the
7 wheel, but instead would continue full speed ahead
8 over the edge.

9 Now, finally, Noranda assumed that if
10 it experiences a liquidity crisis, it would have no
11 alternative but to shut down the smelter. But in
12 reality, and as admitted by Noranda in discovery
13 and as you'll hear in this case, in the unlikely
14 event of a liquidity crisis, Noranda actually has
15 multiple options, including creditor negotiations,
16 asset sales, even restructuring.

17 After all, Noranda is about to open a
18 \$50 million rod mill in New Madrid and it's turning
19 a profit. Is closure of the smelter truly the only
20 option available to it? Only under Noranda's
21 series of assumptions is that answer yes.

22 So Noranda is asking you,
23 Commissioners, to bet other customers' money, and a
24 lot of it, on a long series of ifs, all of which
25 have to occur in order for Noranda's smelter to

1 close. I've summarized those for you.

2 If Noranda is correct about the
3 length of aluminum price cycles. If Noranda is
4 correct in assuming that it is at the start of such
5 a hypothetical cycle. If Noranda is correct that
6 only hypothetical cycles with long-term depressed
7 prices should be considered. If Noranda, in the
8 face of this hypothetical liquidity crisis, chooses
9 not to take any action to avoid running off the
10 cliff. And if having failed to take any action to
11 avoid running off the cliff Noranda chooses, among
12 a number of options, to actually close the smelter.

13 Only if all of those come true would
14 smelter closure actually occur. This hypothetical
15 chain of events is frankly farfetched and should
16 not form the factual basis for granting a heavily
17 subsidized rate to Noranda.

18 So let's turn to the second question.
19 And that is, if Noranda is facing a dire financial
20 circumstance, is that financial crisis outside of
21 Noranda or Apollo's control?

22 And the answer to this is that they
23 are in a situation of their own making. To put
24 this question in a regulatory language that we are
25 all more familiar with, if imprudent decisions or

1 bad management decisions led to Noranda's current
2 economic situation, then even if you had the power
3 to give them a subsidized rate, they would not be
4 deserving of a financial subsidy from Ameren
5 Missouri or its customers.

6 This is a table from Mr. Mudge's
7 testimony in the rate shift case, which is included
8 as an attachment to his rebuttal in this case. You
9 referenced this in your Report and Order this
10 summer.

11 Headquartered -- as you know, Apollo
12 is headquartered in New York and manages \$159
13 billion in assets worldwide. They're a private
14 equity firm, and they acquired Noranda on May 18,
15 2007 for \$1.165 billion. Of that 1.65 billion,
16 Apollo paid 2. -- I'm sorry, \$214.2 million, and
17 the rest was financed by debt secured by Noranda's
18 assets.

19 25 days later, on June 12th, 2007,
20 Apollo, which controlled Noranda, caused Noranda to
21 borrow 220 million, 214 million of which was used
22 to pay a special dividend to Apollo. You can see
23 that in the third column. At that moment, 25 days
24 after they purchased the company, Apollo had not
25 one dime at risk.

1 But Apollo was not done. In June of
2 2008, Apollo caused Noranda to pay another large
3 dividend, and this time Apollo received over
4 \$100 million. So at that point Apollo had no
5 capital at risk and already realized quite the
6 return on its investment.

7 Since the initial acquisition for
8 what turned out to be a net investment of zero,
9 Apollo has, in fact, received \$422.8 million in
10 dividends, has earned an additional \$31 million in
11 management fees from Noranda, and has sold off
12 stock, for which it paid nothing, worth another
13 151, \$151.1 million. That is \$360 million in
14 Apollo's coffers in excess of its net investment.
15 Yet Apollo still owns a controlling ownership
16 interest of 34 percent in Noranda.

17 Commissioners, I ask you to imagine
18 what Noranda's liquidity would be if even half of
19 those dividends had been left in the company.
20 Imagine what it would be if Apollo had only earned
21 a measly 170 percent return instead of the
22 340 percent return it earned.

23 Now, I am not saying that dividends
24 are a bad thing. Ameren Missouri pays dividends.
25 But Ameren Missouri shareholders have billions of

1 dollars of equity invested in our company, and
2 paying dividends supports access to the capital
3 markets, here the equity markets. For Ameren
4 Missouri it has done just that. For Apollo, it has
5 not supported a dime of equity investment.

6 The point is that Apollo and Noranda
7 made choices, and those choices have left Noranda
8 burdened in debt. Its debt/equity ratio is
9 something like 87 percent, and today it's required
10 to pay nearly \$50 million a year in interest.

11 Yet at the same time, they are here
12 telling you they need a \$40 million discount on
13 their electric rate and that that's the problem in
14 their competitiveness. Not only has Apollo done
15 nothing but profit, but prospectively,
16 commissioners, it can only continue to profit from
17 Noranda because it has no money at risk.

18 The point is that its current
19 liquidity and overall financial circumstances are
20 the product of many factors that far removed from
21 its electric bill. The truth is Noranda -- I'm
22 sorry -- Apollo has depleted Noranda's cash
23 reserves and loaded it up with debt. If all of
24 that money hadn't been bled from Noranda, what
25 financial condition would Noranda be in today?

1 If Noranda doesn't have enough cash
2 on hand, the \$442 million in dividends are a key
3 reason why. If Noranda has exhausted its borrowing
4 ability, the massive loans to pay for the initial
5 purchase and to pay the early dividends and huge
6 debt load produced by both are a key reason why.

7 Noranda points only to Ameren
8 Missouri's electric rates, but it ignores all of
9 these other very key circumstances.

10 Third question. Even if the
11 financial crisis is outside of Noranda and Apollo's
12 control, is it fair to place the burden to solve
13 their financial problems upon Ameren Missouri's
14 customers only?

15 Noranda's request should be put in
16 honest terms here. There have been multiple times
17 in this case where this Commission has asked about
18 affordability in regards to rates for Ameren
19 Missouri's customers.

20 Mr. Moehn has already testified that
21 the decision to file a rate case is not taken
22 lightly, but these cases are necessary and are a
23 reflection of the investments made by the company
24 required to provide safe and adequate service to
25 Ameren Missouri's customers.

1 Ameren Missouri had to install the
2 ESP at its Labadie plant. It had to install a new
3 reactor vessel head at the Callaway plant. It had
4 to replace aging substations like the central and
5 MLK substations in St. Louis. Ameren Missouri has
6 to serve all comers, and the regulatory compact
7 says those customers then have to pay the cost of
8 what it takes to serve them.

9 Let's compare that to Noranda's
10 request. Noranda's request is that Ameren
11 Missouri's customers, including those that live on
12 fixed or low income, pay more for their electricity
13 simply so Noranda and Apollo can be more
14 profitable. It is simply not fair to ask our
15 customers to shoulder this burden and shoulder this
16 burden alone.

17 I'm going to put up an enlargement of
18 Exhibit WRD-4, which can be found in the rebuttal
19 testimony of Ameren Missouri witness William Davis.
20 Kind of hard to see. I apologize for that. The
21 blue dots represent the density of households in
22 Ameren Missouri's service territory. Clearly the
23 vast majority of Ameren Missouri's customers are
24 located in the St. Louis region, which is right
25 there (indicating).

1 Noranda is located in southeastern
2 Missouri, which you can see by the red arrow, which
3 is down here (indicating). As Mr. Davis will
4 testify, 72 percent of Ameren Missouri's customers
5 are located in the St. Louis metropolitan area,
6 meaning the city of St. Louis, St. Louis County,
7 Jefferson County and St. Charles County.

8 Of Ameren Missouri's 1.2 million
9 electric customers, only 39,000 are in the bootheel
10 region. That's only 3 percent of Ameren Missouri's
11 customer base. So 97 percent of Ameren Missouri's
12 customers who are not located near the Noranda
13 plant would be subsidizing Noranda under any of the
14 proposals in front of you.

15 Now, Noranda claims the entire state
16 benefits from Noranda's continued operation, but
17 Noranda's not asking the entire state to subsidize
18 their rate. Residents of Kansas City, who Noranda
19 argue benefit from its continued existence, aren't
20 being asked to subsidize Noranda rate except for
21 the very small number of Ameren customers that are
22 in North Kansas City.

23 Residents of Columbia where
24 Dr. Haslag works won't be paying to subsidize
25 Noranda's rate. Instead, you're being asked to

1 have the City of St. Louis, St. Louis County,
2 Jefferson County and St. Charles County to
3 subsidize those rates.

4 There's no reason why one portion of
5 the state alone should be the one to shoulder this
6 burden. This isn't equitable, and I submit to you
7 it's bad policy.

8 So the fourth and the real policy
9 question for you is, should this Commission embark
10 on a new policy of setting preferred electric rates
11 based on a customer's ability to pay?

12 Put simply, the answer to that
13 question is no. As you stated in your order to the
14 rate shift complaint case last summer, the
15 traditional way of setting rates in Missouri is to
16 base them generally upon a class cost of service
17 study. Granting Noranda's request represents a
18 radical departure from that process, and you should
19 not be ready to make that change.

20 This statement will not come as a
21 surprise to you, but this Commission does not
22 regulate Noranda. You can't make Noranda do
23 anything, nor can you prevent it from doing
24 anything. If you grant their request and six
25 months later they issue a notice to lay off half of

1 its workforce, there's nothing you can do other
2 than perhaps take it away going forward. But the
3 discount they will have already received they will
4 have already received.

5 If you grant this request and Noranda
6 decides not to invest the \$100 million or
7 \$35 million, whichever the number actually is, in
8 capital improvements and instead dividends that
9 money up to Apollo, there's nothing you can do
10 except for change things prospectively.

11 You'll be raising the rates for every
12 one of Ameren's other customers without any way to
13 ensure that Noranda employees who testify before
14 you will keep their jobs.

15 As Ameren Missouri witness John Reed
16 testified, state public utility commissions are ill
17 equipped to get into the business of trying to
18 supervise non-public utilities operating in
19 competitive markets. Is isn't why you were
20 established.

21 The Commission was created to stand
22 in the place of competition because of the monopoly
23 granted public utilities given the essential and
24 mandatory service that we provide. This Commission
25 was not created to pick winners and losers, nor

1 were they designed to try to supervise how those
2 winners were picked among businesses.

3 Then there is the long-term and
4 perhaps even bigger impact of the decision to grant
5 a request like Noranda. Ask yourself whether
6 you're ready for the perhaps unintended but very
7 real consequence of setting rates on a customer's
8 ability to pay. There will be a practical impact
9 if you turn away from traditional cost of service
10 ratemaking.

11 If you go down this path, there will
12 be a long line of customers asking for the same
13 preferential treatment. If you hearken back to the
14 rate shift complaint case this summer, we already
15 saw Continental Cement's testimony saying, if you
16 grant this treatment to Noranda, they would like
17 similar treatment, please.

18 Noranda is certainly not the only
19 company in Ameren Missouri's service territory
20 that's hurting financially. We have residential
21 customers who struggle to pay their bills, and you
22 hear from them at every public hearing for every
23 rate case.

24 So, Commissioners, what is the
25 difference between Noranda and those other

1 companies or those individuals? Is it really just
2 their size? Is it the loudest company that
3 deserves the bailout? And how will you know if
4 another company deserves a subsidized rate? How
5 many employees do they have to employ, how large
6 does their electricity bill have to be before you
7 will agree that they too should qualify?

8 Would other big businesses qualify?
9 What about Monsanto, Enterprise, AB? And what
10 would you tell the mom and pop corner shop who's
11 struggling to pay their electric bill and would
12 like to pay a reduced rate? Are those smaller
13 customers not important enough to be given a
14 special rate?

15 And would it just be businesses?
16 What about public school districts? They do a good
17 thing. Or charitable organizations? And then who
18 is left to make up the difference? Or are you
19 truly going to say that only Noranda is too big to
20 fail, which sounds very much like a political
21 decision instead of a regulatory one.

22 Additionally, there is the very unfun
23 reality of having to investigate these claims and
24 determine who is in true financial need and who is
25 not. Do you have the staff with the skills and

1 time to investigate and judge these claims? Your
2 Staff has not investigated Noranda's claim of
3 financial need in either this case or the rate
4 shift complaint case. They didn't even try. Ask
5 them why. I believe they will tell you it's
6 because they didn't have the time or the resources
7 to do so.

8 Granting Noranda's request would mean
9 that instead of setting a just and reasonable rate,
10 you have picked a winner and you have picked a
11 whole lot of losers. You would be pursuing social
12 policy without the guidance of the Legislature.

13 Now, Commissioners, you have a role
14 in social policy, but when you do it is a function
15 of the Commission's decision to give it to you,
16 such as reflected in energy efficiency, net
17 metering and renewable energy standards.

18 Ameren recognized all these problems
19 last summer and recognizes them today. We also
20 heard you, Commissioners, when you talked about
21 this last summer and you requested the parties try
22 to work out a solution together, and we tried.

23 We have offered the idea of moving
24 Noranda to a wholesale rate. Noranda has a statute
25 that would allow them to do so. I believe you

1 talked about that with Mr. Thompson, and while the
2 terms of that contract would be under federal
3 jurisdiction, certainly you have a role to play.
4 For one thing, you'd have to remove them from
5 Ameren Missouri's service territory, so you'd have
6 to remove them from our certificate of convenience
7 and necessity. So the claims earlier that you have
8 no role to play simply don't make sense.

9 But Ameren Missouri indicated they'd
10 be willing to release Noranda from that contract so
11 it could follow through with the option that's
12 provided to it already by the Legislature, which
13 says that it can go out and buy at wholesale if it
14 desires.

15 Mr. Moehn told you in his testimony
16 that although we have not set forth what that rate
17 would be, it would be a market rate. It would be
18 highly than the \$32 or the \$34 that is currently
19 before you today.

20 The reason Ameren Missouri brought
21 forth the wholesale offer is that it avoids the
22 regulatory compact problem. Wholesale customers
23 don't pay cost of service. They pay a market rate.
24 So if in a rate case rates are reset with Noranda
25 no longer a customer, and then a wholesale contract

1 with Noranda runs through the FAC, and if that --
2 and presuming that rate is higher than the \$32 or
3 the \$34 that Noranda is requesting, Ameren
4 Missouri's customers would be better off. Noranda
5 could have its long-term contract and its long-term
6 certainty, and it wouldn't be subject to the FAC
7 because wholesale customers don't pay the FAC.

8 So we offered what we thought was a
9 viable solution, different, unique, not what they
10 had proposed, but something that could be very
11 workable.

12 Nonetheless, that is all moot. We're
13 not asking you to impose that upon Noranda.
14 Noranda has said they're not interested. I don't
15 believe if they aren't interested that you can
16 force them to become a wholesale customer, and
17 we're not asking you to do so.

18 Simply stated, not only has Noranda
19 once again not justified its need for a huge rate
20 subsidy, but it is asking you to go somewhere that
21 you simply should not go.

22 Commissioners, I ask you to reread
23 your order from this summer. There is no reason
24 for you to decide this issue any differently today
25 than you did last July. Thank you.

1 JUDGE WOODRUFF: Questions,
2 Commissioner, or Mr. Chairman?

3 CHAIRMAN KENNEY: Ms. Tatro, thank
4 you for a very thorough opening. I was going to
5 pose a whole series of like hypotheticals and see
6 what your response would be, but I think you've
7 anticipated just about every one of them. So I
8 only have a couple of questions, and you may have
9 answered this, too.

10 Wouldn't all of the arguments against
11 Noranda's proposal apply with equal force to
12 Ameren's wholesale rate proposal at least from the
13 perspective of treating Noranda specially?

14 MS. TATRO: No, because --

15 CHAIRMAN KENNEY: How come?

16 MS. TATRO: A wholesale customer does
17 not pay the class cost of service. That's a
18 contractual arrangement between Ameren and its
19 customer. So it would be at a market rate. So I
20 think they are completely different, and that's the
21 beauty of this solution is it could get Noranda
22 what they say that they need. And for this I'm
23 presuming they have a finance need. I'm, of
24 course, not conceding that at all.

25 But that's the beauty of this

1 solution is it gets away from the discriminatory
2 rate issue and all of those questions because they
3 don't apply to wholesale contracts. That's the
4 regulatory compact between my company and its
5 customers. There is no such obligation to serve a
6 wholesale customer. There's only a contractual
7 obligation.

8 CHAIRMAN KENNEY: And I get that, but
9 doesn't the fact that Ameren's proposing to allow
10 Noranda to avail itself of what the General
11 Assembly has provided, I mean, doesn't that in and
12 of itself recognize that Noranda is different from
13 everybody else?

14 MS. TATRO: I think Noranda is
15 different than everyone else, and the Legislature
16 has said, because of that, if they would like to
17 avail themselves of wholesale rates, they have the
18 ability to do so. So what we're proposing is
19 absolutely consistent with what the Legislature has
20 proposed. The Legislature went no further than
21 that.

22 CHAIRMAN KENNEY: And I guess even
23 within the construct of the traditional regulatory
24 compact, haven't we set Noranda apart? They're the
25 only one in their class currently, correct?

1 MS. TATRO: They are, and I think
2 that's appropriate because they are a very
3 different customer than most customers. But the
4 rate that they are being charged, although not
5 exactly at cost of service, and maybe Mr. Woodsmall
6 would say that they're currently not paying enough,
7 but at least it is -- it is based off of --
8 generally off of a class cost of service.

9 And I think some of the Bonbright
10 principles that you've heard Mr. Cooper in past
11 cases talk about and you've heard Mr. Davis talk
12 about this summer are probably some of the reasons
13 why they're not exactly at their cost of service.

14 So I think that's already being --
15 that's a long way of saying, I think the
16 differences are already recognized in the current
17 rates.

18 CHAIRMAN KENNEY: Then finally, you
19 didn't -- you acknowledge that nowhere in the
20 testimony regarding the wholesale proposal, I'll
21 just call it the wholesale proposal, the rate isn't
22 set forth, that it would just be a market rate.
23 What is the current market rate in the wholesale
24 market? Do we look to MISO for that?

25 MS. TATRO: You know, I asked this

1 question just over lunch of one of my experts, and
2 it's not as easy to answer as one might guess.
3 I guess for energy, if you're looking at MISO's
4 next day rate, it's something less than 30, but of
5 course you have to have capacity. And if Noranda
6 were to go out to the market, probably someone
7 would want more than 30, especially if they were to
8 lock in a five or a seven or even a ten-year deal.

9 So I can't tell you that it is easily
10 one number or another. But you're right, we didn't
11 get to the point of determining that because
12 Noranda wasn't interested in pursuing that option.

13 CHAIRMAN KENNEY: Okay. But the
14 energy-only price in the MISO day ahead market is
15 currently around \$30 a kilowatt hour or less than
16 30 --

17 MS. TATRO: I think it's just under.

18 CHAIRMAN KENNEY: -- a megawatt hour?

19 MS. TATRO: Yeah. Maybe 28. Mark
20 Peters might be yelling at me now if I'm wrong, but
21 I think that's what he told me.

22 CHAIRMAN KENNEY: Okay. I don't have
23 any other questions. Thank you.

24 JUDGE WOODRUFF: Commissioner Hall?

25 COMMISSIONER HALL: Good afternoon.

1 MS. TATRO: Hello, sir.

2 COMMISSIONER HALL: Why do you
3 believe that Noranda was not interested in the
4 wholesale proposal, in your wholesale rate
5 proposal?

6 MS. TATRO: I honestly do not know.
7 I can tell you that if I were someone who had a
8 fiduciary duty to that company, I would have had to
9 explore it very carefully. I'm sure they have
10 their reasons, but I do not know what they are.

11 COMMISSIONER HALL: Are you aware of
12 any other options that Noranda has to buy the
13 amount of power it needs? And if you're not, if
14 you could point me to a witness who might.

15 MS. TATRO: It has the statutory
16 options. Of course, it gave those statutory
17 options away when they entered into the agreement
18 for us to serve them. So right now, as things
19 exist at this point in time, their option is to
20 take power from us.

21 We, of course, have indicated we're
22 willing to release them from that contractual
23 obligation, to have you release them from our
24 certified territory and to allow them to explore
25 the option of the wholesale contract, which is the

1 alternative allow under the statutes.

2 COMMISSIONER HALL: So your position
3 is that Noranda contracted away its powers under
4 Chapter 91?

5 MS. TATRO: I believe that it did.

6 COMMISSIONER HALL: What is the term
7 of that contract?

8 MS. TATRO: I believe it's a 15-year
9 contract with five-year renewals.

10 COMMISSIONER HALL: When is it up, do
11 you know?

12 MS. TATRO: 2019. That's right,
13 because I think we're coming up on the -- there's a
14 five-year notice provision if either party wanted
15 to give notice that it doesn't want to continue it,
16 and that's coming up.

17 COMMISSIONER HALL: So are you
18 aware -- putting aside the legality and the
19 contractual ability or authority to buy its power
20 elsewhere, are you aware of other options that it
21 has?

22 MS. TATRO: I mean, I guess it could
23 purchase wholesale. It could do some hedging.
24 Obviously there's a bunch of variations on how that
25 could happen.

1 COMMISSIONER HALL: Do you have a
2 witness who has more specifics on that?

3 MS. TATRO: Let me think who I have
4 coming up on the Noranda issue. I think probably
5 Mr. Michels could talk to you about that.

6 COMMISSIONER HALL: If I understand
7 your position articulated at the beginning of your
8 opening, which seemed like a couple days ago --

9 MS. TATRO: I apologize. It's a big
10 issue.

11 COMMISSIONER HALL: It was thorough.
12 I believe what you said is that under the current
13 FAC, if Noranda were to go out of business and
14 Ameren were to not receive the \$167 million in
15 revenues from those sales to Noranda and Ameren
16 turned around and sold that power to another buyer
17 and received contractual dollars for those sales,
18 that those sales would not run through the FAC.

19 MS. TATRO: That's not what I said.

20 COMMISSIONER HALL: Okay. I'm sorry.

21 MS. TATRO: That's okay. First of
22 all, we sell everything into MISO. So if Noranda
23 went out of business tomorrow before anything
24 changed in this case, we would still sell
25 everything into MISO, but we would buy back less

1 because we'd have -- we wouldn't need to purchase
2 to be able to serve Noranda.

3 So there would be more off-system
4 sales, and the difference over what is baked into
5 rates, because each rate case you take out of the
6 FAC, you put it all into base rates, and then the
7 FAC just tracks the differences in between. So to
8 the extent that is a difference, then it would flow
9 through the FAC. We would keep 5 percent.

10 COMMISSIONER HALL: I have no more.

11 JUDGE WOODRUFF: Commissioner Rupp?

12 COMMISSIONER RUPP: Thank you for
13 your very thorough opening.

14 MS. TATRO: I'm beginning to fear
15 that's not really a compliment.

16 COMMISSIONER RUPP: No. I mean it as
17 a compliment. Commissioner Hall might not have,
18 but I do.

19 MS. TATRO: Well, thank you,
20 Commissioner Rupp.

21 COMMISSIONER RUPP: My memory's being
22 taxed from this past summer, or maybe it was a
23 conversation that I had at one of our meetings, but
24 there is an aluminum smelter in this country that
25 gets its power directly from MISO or it's tied

1 right into -- somehow it's tied directly into its
2 RTO. Is there --

3 MS. TATRO: I do not know.

4 COMMISSIONER RUPP: Is there anything
5 that would preclude Noranda from just getting its
6 power directly from MISO and not having to go
7 through a provider?

8 MS. TATRO: I think the way that it
9 works, they'd still be contracting with a provider,
10 but essentially that's a wholesale deal. I mean,
11 in essence that's what they're -- that's what we
12 had offered. It's not on the table anymore because
13 Noranda said no.

14 COMMISSIONER RUPP: And before
15 Noranda came on, were they utilizing that wholesale
16 arrangement through the coops?

17 MS. TATRO: It is my understanding
18 for a short time they had an affiliate that was a
19 power purchaser, and they did purchase wholesale
20 for a relatively short, maybe a couple years,
21 amount of time between when the coop served them
22 and when Ameren Missouri took them on as a
23 customer.

24 COMMISSIONER RUPP: In your opinion,
25 how much are Noranda's rates currently being

1 subsidized?

2 MS. TATRO: I believe our cost of
3 service study, which was sponsored by Mr. Warwick
4 and Mr. Davis, says they're paying 6.7 percent
5 below their cost of service.

6 COMMISSIONER RUPP: Okay. So your
7 opinion is they're already receiving a 6.7 percent
8 benefit?

9 MS. TATRO: Certainly. And I'm not
10 claiming that's unduly discriminatory. I think it
11 happens over time. And the Bonbright principles
12 probably say you wouldn't go directly to putting
13 them at cost of service because of rate shock and
14 those type things.

15 COMMISSIONER RUPP: So moving
16 forward, we finish this hearing and the rates are
17 set and they're exactly the same as they were
18 before this hearing.

19 MS. TATRO: Meaning they're at
20 6.7 percent below?

21 COMMISSIONER RUPP: You would say
22 they would still be receiving a benefit of 6.7?

23 MS. TATRO: Yes.

24 COMMISSIONER RUPP: So it is -- would
25 it be fair to say that Ameren Missouri ratepayers

1 all across the state are already providing a
2 subsidy to Noranda to the tune of 6.7 percent?

3 MS. TATRO: Yes.

4 COMMISSIONER RUPP: And if the
5 Legislature were to pass any type of economic
6 development, then that would be on top of what
7 Ameren ratepayers are already providing the
8 company?

9 MS. TATRO: Yes.

10 COMMISSIONER RUPP: So it wouldn't be
11 in lieu of, it would be a -- the pain would be
12 borne by taxpayers throughout the -- throughout the
13 state, not just the ratepayers?

14 MS. TATRO: Yes.

15 COMMISSIONER RUPP: Thank you.

16 JUDGE WOODRUFF: All right. Thank
17 you. That will be the last opening. We'll take a
18 break before we go to the next witness. Before we
19 all leave the room, I do have a question. It's now
20 3:30, and we have -- Mr. Smith will be the next
21 witness. Do we need to finish Mr. Smith today?

22 MR. SMITH: No.

23 JUDGE WOODRUFF: Any other witnesses
24 that have to be in and out today? Okay. Thank you
25 all very much. We'll take a break. We'll come

1 back at 3:45.

2 (A BREAK WAS TAKEN.)

3 JUDGE WOODRUFF: We're back from our
4 break. Ms. Tatro, you had something you wanted to
5 say?

6 MS. TATRO: I did. I believe that I
7 provided some inaccurate information. I think it
8 was to a question that you asked, Commissioner
9 Hall, which was if Noranda were to go out of
10 business, then do all those revenues flow through
11 the FAC. And I said they did, and of course, that
12 is incorrect.

13 The N Factor. As long as they are on
14 the LTS tariff, the N Factor says that Ameren would
15 keep off-system sales revenues until it's received
16 an amount, if it receives an amount, equivalent to
17 what it then would have otherwise received from
18 Noranda, and then the rest would go back through
19 the FAC.

20 So it's designed to keep us in a
21 better position than we would have been. We could
22 be in a worse position if we don't make as much
23 off-system sales. I apologize for that. The best
24 I can tell you is my decongestant has impacted my
25 ability to answer that question, and I apologize.

1 COMMISSIONER HALL: Okay.

2 MS. TATRO: I thought it only fair I
3 correct the record.

4 COMMISSIONER HALL: And I'm not sure
5 that -- I'm still not sure that I understand it
6 completely. So the excess production that you --
7 that you were or generation that you were selling
8 to Noranda would be sold still to MISO?

9 MS. TATRO: Everything is sold to
10 MISO. We would purchase back less because we would
11 no longer need to serve Noranda, because they're no
12 longer in business in this hypothetical. So there
13 would be more off-system sales. We would retain
14 off-system sales revenues to essentially account
15 for the monies that we aren't getting from Noranda
16 because they're out of business.

17 If we don't have -- if we don't make
18 off-sys-- it's not a guarantee. So if we don't
19 make enough off-system sales to offset that dollar
20 amount, then we're out, and we can't profit by
21 that. So any amount above the Noranda amount would
22 then go back through the FAC.

23 COMMISSIONER HALL: So if you --
24 if Ameren sold the exact amount of power, the
25 480 megawatts I think is what it is, if you sold

1 that and received the same amount that you were
2 getting from Noranda, the 167 million, you would be
3 held harmless for even -- you'd be held harmless
4 even though Noranda is no longer in business?

5 MS. TATRO: Yes.

6 COMMISSIONER HALL: Okay. Let's say
7 hypothetically that we change that in the FAC and
8 ran that 480 megawatts in off-system sales through
9 the FAC. What would Ameren's position on that be?

10 MS. TATRO: So you'd eliminate the
11 N Factor?

12 COMMISSIONER HALL: Yes.

13 MS. TATRO: I think we'd be back in
14 the position that we were in the first time when it
15 actually did happen, when they shut down a couple
16 of their pot lines because of the storm, we'd have
17 no -- it would be an extraordinary event. We'd
18 have no way to recover those costs, and we'd be
19 forced to seek an accounting authority order from
20 you for those ungenerated revenues to cover those
21 fixed costs.

22 COMMISSIONER HALL: But you're not
23 concerned about that because you don't believe that
24 Noranda's liquidity crisis is legitimate. So if we
25 were to change that in the -- in the FAC, it

1 wouldn't -- it wouldn't cause you heartburn?

2 MS. TATRO: Well, I can't say that.

3 I mean, my job as an attorney is to protect my
4 client against worst possible outcomes, and when
5 they lost two pot lines because of an ice storm, it
6 was devastating to the company in terms of -- it
7 was a large impact, right? It was a lot of dollars
8 there.

9 So would I advise my client to do
10 something? I don't think Noranda's going out of
11 business. I think they have financial reasons for
12 Apollo to keep them in business. But that doesn't
13 mean it would be my recommendation to my client or
14 that that would be the most smart, prudent decision
15 for them to make.

16 COMMISSIONER HALL: Okay. I believe
17 that the evidence was that Ameren lost \$54 million
18 in revenues as a result of Noranda being
19 temporarily -- or a certain number of their pot
20 lines being temporarily out of business after the
21 ice storm; is that right? Was it 54 million?

22 MS. TATRO: I'm trying to remember if
23 it was 54 or 67. The amount we lost in revenues
24 was actually higher than the amount we asked for in
25 the AAO. I know that's accurate.

1 COMMISSIONER HALL: Right. Right.
2 Well, that's exactly what I was going to get to.
3 If you know, and this may be getting close to where
4 I need to talk to one of your witnesses and that's
5 fine, but what accounts for that discrepancy
6 between the 54 and the 34 roughly that you were
7 asking for at the AAO?

8 MS. TATRO: When we came in for the
9 AAO, we were trying to be very conservative and
10 very fair to our customers and we asked for the
11 amount of revenue that was needed to cover the
12 fixed costs that we didn't receive revenues to
13 cover.

14 COMMISSIONER HALL: Fair enough.
15 Thank you.

16 COMMISSIONER W. KENNEY: I appreciate
17 it. I apologize for walking out earlier, but I did
18 have a question I wasn't able to ask. You
19 mentioned earlier in your beginning of your
20 statements that any money that went to Noranda and
21 Noranda saved go right to Apollo's investors. Do
22 you recall that?

23 MS. TATRO: Certainly can.

24 COMMISSIONER W. KENNEY: When I was
25 on the Commission when we got that, was one of the

1 Commissioners who voted to allow Ameren to seek the
2 AAO in this case. I've done some research, and I
3 know that that doesn't guarantee that Ameren gets
4 that. But if Ameren were awarded that money, was
5 it 34 or 36 million, it would have been?

6 MS. TATRO: In total, it's over five
7 years, so the revenue requirement impact is going
8 to be less than that.

9 COMMISSIONER W. KENNEY: Who would
10 get that money?

11 MS. TATRO: Well, it would go to
12 Ameren Missouri.

13 COMMISSIONER W. KENNEY: Probably to
14 the ratepayers?

15 MS. TATRO: Or we invest it back into
16 the system.

17 COMMISSIONER W. KENNEY: Or their
18 investors, right?

19 MS. TATRO: Right. We reinvest
20 millions and millions --

21 COMMISSIONER W. KENNEY: That's not
22 what I asked. You said all their investors, right,
23 it could go there?

24 MS. TATRO: It could, yeah. Yeah.

25 COMMISSIONER W. KENNEY: That's all I

1 have.

2 JUDGE WOODRUFF: All right. We're
3 ready for the first witness for MIEC/Noranda, which
4 I believe would be Mr. Smith.

5 MR. MALLIN: Yes, sir, Mr. Smith.
6 Your Honor, could we remove the slide that's up on
7 the screen?

8 JUDGE WOODRUFF: There's no slide on
9 the screen.

10 While we're getting that ready, I'll
11 mention that since the parties told me that there's
12 nobody that has to be finished tonight, we'll plan
13 on going to about five o'clock when we get there
14 and stop there and then resume again in the
15 morning. I think since everybody's melting out
16 there today, that's preferable.

17 All right. If you'd please raise
18 your right hand.

19 (Witness sworn.)

20 JUDGE WOODRUFF: Thank you. You may
21 inquire.

22 Mr. MALLIN: Thank you, your Honor.

23 KIP SMITH testified as follows:

24 DIRECT EXAMINATION BY MR. MALLIN:

25 Q. Mr. Smith, can you provide your full

1 name for us?

2 A. It's Layle Kipland Smith.

3 Q. By whom are you employed?

4 A. Employed by Noranda Intermediate
5 Holding Corporation.

6 Q. In what capacity?

7 A. I'm the president and CEO.

8 Q. And did you cause to be prepared and
9 have filed in this particular case surrebuttal
10 testimony?

11 A. I did.

12 Q. And is that surrebuttal testimony
13 before you as Exhibit 612?

14 A. It is.

15 Q. And if I were to ask the questions
16 that are posed in that surrebuttal testimony, would
17 the answers that you provided in -- or to those
18 questions be the same today as when you prepared
19 it?

20 A. Yes, they would.

21 Q. Are there any changes that you wish
22 to note for the Commission?

23 A. There are none.

24 MR. MALLIN: Your Honor, I would
25 move then for the admission of that testimony,

1 Exhibit 612.

2 JUDGE WOODRUFF: 612 HC and NP have
3 been offered. Any objection to its receipt?

4 (No response.)

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

7 (MIEC/NORANDA EXHIBIT NO. 612 NP AND
8 HC WAS RECEIVED INTO EVIDENCE.)

9 MR. MALLIN: And I'll tender the
10 witness.

11 JUDGE WOODRUFF: Okay. For
12 cross-examination, we'll go off the schedule here a
13 little bit. We will go with Public Counsel.

14 MR. ALLISON: No questions.

15 JUDGE WOODRUFF: And Consumers
16 Council?

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

19 JUDGE WOODRUFF: MECG?

20 MR. WOODSMALL: Thank you, your
21 Honor. May I approach the witness?

22 JUDGE WOODRUFF: You may.

23 MR. WOODSMALL: And I'm going to ask
24 him to read a portion of previous testimony, so we
25 may have to go into camera, but I'll holler when we

1 do.

2 CROSS-EXAMINATION BY MR. WOODSMALL:

3 **Q. Can you identify that document?**

4 A. Yes. It's my confidential testimony
5 dated February 10th, 2014.

6 **Q. In which case?**

7 A. EC-2014.

8 **Q. Was that the complaint case that**
9 **Noranda filed this past summer?**

10 A. Yeah. Uh-huh.

11 **Q. Would you turn to the tabbed document**
12 **or the tabbed page?**

13 MR. WOODSMALL: And I'm going to ask
14 him to read some highly confidential information
15 into the record, so if we can go in-camera for two
16 seconds.

17 JUDGE WOODRUFF: All right. We'll go
18 in-camera. Maybe a little bit longer than two
19 seconds.

20 (REPORTER'S NOTE: At this point, an
21 in-camera session was held, which is contained in
22 Volume 32, page 2409 of the transcript.)

23

24

25

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

3 MR. WOODSMALL: May I approach the
4 witness, your Honor?

5 JUDGE WOODRUFF: You may.

6 BY MR. WOODSMALL:

7 Q. Hand you a document. Can you
8 identify that document for me?

9 A. Document is our most recent 10K.

10 Q. Would you turn to the first tab and
11 tell me what your cash balance was for the most
12 recent 10K?

13 A. \$20.5 million.

14 Q. You would turn to the second tab and
15 read the highlighted amount, the highlighted
16 portion there?

17 A. As -- I have to apologize here. As
18 of December 31st, 2014, available borrowing
19 capacity under the company's asset-based revolving
20 credit facility was 137.8 million, which is net of
21 39.8 million in outstanding letters of credit. The
22 company's total available liquidity as of
23 December 31, 2014 was 158.3 million.

24 Q. Thank you. Hand you another
25 document. Would you agree that that's the 10Q that

1 **Noranda filed for third quarter 2014?**

2 A. Yes, it is.

3 **Q. Would you turn to the first tab and**
4 **tell me what the cash and cash equivalents were?**

5 A. \$24.3 million.

6 **Q. And would you go to the second tab**
7 **and read the highlighted portion?**

8 A. As of September 30th, 2014, available
9 borrowing capacity under the company's asset-based
10 revolving credit facility was 159.2 million, which
11 is net of 33.1 million of outstanding letters of
12 credit. The company's total available liquidity
13 from September 30th, 2014 was 183.5 million, a
14 \$4.2 million increase in total liquidity from
15 June 30th, 2014 and a \$12.9 million reduction from
16 total liquidity of December 31, 2013. There were
17 no outstanding borrowing under the company's
18 asset-based revolving credit facility as of
19 September 30th, 2014.

20 **Q. And I'm going to be asking you a lot**
21 **of questions about a lot of SEC filings. You**
22 **affirm -- as CEO affirm and verify --**

23 A. Yes.

24 **Q. -- those documents; is that correct?**

25 A. Yes, I do.

1 **Q. Hand you another document. Is that**
2 **the 10Q for Noranda for the second quarter of 2014?**

3 A. Yes, it is.

4 **Q. And would you turn to the first tab**
5 **and tell me what the cash and cash equivalents are?**

6 A. \$32.9 million.

7 **Q. Would you turn to the second tab and**
8 **read the highlighted portion?**

9 JUDGE WOODRUFF: Mr. Woodsmall, you
10 need to get to a microphone when you're walking
11 back and forth that way.

12 THE WITNESS: And I offer the Court
13 my apologies. I'm still recovering from a couple
14 of surgeries, so reading sometimes gets tough.

15 As of June 30, 2014, available
16 borrowing capacity on the company's asset-based
17 revolving credit facility was 146.4 million, which
18 is net of 34.6 million outstanding letters of
19 credit. The company's total available liquidity at
20 June 30, 2014 was 179.3 million, an \$11 million
21 reduction from the total liquidity at March 31,
22 2014, and a \$17 million reduction from total
23 liquidity at December 31, 2013.

24 **Q. Thank you. I'm going to hand you a**
25 **document and ask you if you can identify this as**

1 the 10Q for first quarter of 2014?

2 A. Yes, it is.

3 Q. Could you turn to the first tab and
4 tell me what the cash and cash equivalents were for
5 that period?

6 A. \$51.2 million.

7 Q. And would you turn to the second tab
8 and read the highlighted portion?

9 A. There were no borrowings outstanding
10 as of March 31, 2014 under our asset-based
11 revolving credit facility and outstanding letters
12 of credit, a total of 34.8 million. Available
13 borrowing capacity under the facility was
14 139.9 million, calculated as of March 31st, 2014.
15 Together with cash and cash equivalents, total
16 available liquidity at March 31, 2014 was
17 191.1 million.

18 Q. I'm going to hand you a document and
19 ask you if you can identify that as form 10Q that
20 Noranda filed for 2013?

21 A. Yes, form 10Q, December 31, 2013.

22 Q. And would you turn to the first tab
23 and tell me what the cash and cash equivalents were
24 for that period?

25 A. 79.4 million.

1 **Q. Turn to the second tab and read the**
2 **highlighted portion, please.**

3 A. There were no borrowings outstanding
4 as of December 31st, 2013 under our asset-based
5 revolving credit facility, and available borrowing
6 capacity under the facility was 117 million
7 calculated as of December 31, 2013.

8 **Q. I'm going to hand you a document and**
9 **ask you if you can identify that as the 10Q filed**
10 **for third quarter 2013?**

11 A. Yes. I have a September 30th, 2013
12 form 10Q.

13 **Q. Would you turn to the first tab and**
14 **tell me the cash and cash equivalents for that**
15 **period?**

16 A. We had cash and cash equivalents of
17 63.9 million.

18 **Q. Turn to the second tab and read the**
19 **highlighted portion, please.**

20 A. Our effective borrowing capacity was
21 120 million calculated at September 30th, 2013.

22 **Q. I'm going to hand you -- I have three**
23 **more and then I'll be completely done. I'm going**
24 **to hand you another document and ask if that's the**
25 **10Q for second quarter 2013.**

1 A. Yes. I have the 10Q from June 30th,
2 2013.

3 **Q. Would you turn to the first tab and**
4 **tell me the cash and cash equivalents for that**
5 **period?**

6 A. \$57.8 million.

7 **Q. Turn to the second tab and read the**
8 **highlighted portion, please.**

9 A. Our effective borrowing capacity was
10 143.1 million calculated as of June 30, 2013.

11 **Q. I'm going to hand you a 10Q and ask**
12 **you if you can identify that as the 10Q for the**
13 **first quarter of 2013.**

14 A. This is the 10Q as of March 31st,
15 2013.

16 **Q. Would you turn to the first page and**
17 **tell me the cash and cash equivalents for that**
18 **period?**

19 A. \$16.1 million.

20 **Q. Would you turn to the second tab and**
21 **read the highlight portions, please?**

22 A. Our effective borrowing capacity was
23 142.7 million calculated an March of 31, 2013.

24 **Q. And last one, I'm going to hand you a**
25 **document and ask if you could identify that as the**

1 form 10Q filed by Noranda for December 31st, 2012?

2 A. 36.1 million in cash on hand.

3 Q. Just to make the record clear, I
4 believe you might have jumped ahead a question.
5 Would you identify that as --

6 A. Sure. December 31, 2012 10Q.

7 Q. Thank you. And would you tell me he
8 what the cash and cash equivalents were for that
9 period?

10 A. \$36.1 million.

11 Q. And would you turn to the second tab
12 and read the highlighted portion, please?

13 A. Effective borrowing capacity
14 calculated as of December 31, 2012 was
15 118.6 million.

16 MR. WOODSMALL: Thank you. No
17 further questions, your Honor.

18 JUDGE WOODRUFF: Did Missouri
19 Retailers wish to cross?

20 MS. BELL: No questions, your Honor.

21 JUDGE WOODRUFF: United for Missouri?

22 MR. LINTON: No questions.

23 JUDGE WOODRUFF: Staff?

24 MR. THOMPSON: No questions. Thank
25 you.

1 JUDGE WOODRUFF: Ameren?

2 MS. TATRO: I have no cross for
3 Mr. Smith. Thank you.

4 JUDGE WOODRUFF: Come up for
5 questions from the Bench. Mr. Chairman?

6 QUESTIONS BY CHAIRMAN KENNEY:

7 Q. Mr. Smith, good to see you. Can you
8 hear me okay?

9 A. I sure can. Nice to see you as well.

10 Q. I am going to avoid discussing
11 specific dollar amounts, but I wanted to ask about
12 a point that Mr. Woodsmall made in his opening.
13 Were you in the room then?

14 A. Yes, I was.

15 Q. He made a point that two years ago
16 Noranda's liquidity was less than it is today, but
17 that Noranda agreed to an across-the-board
18 increase. Do you recall that testimony
19 generally -- or that part of his opening rather?
20 It wasn't testimony.

21 A. Yes, I do.

22 Q. Do you have a response to that?

23 A. I'm sorry. Just to clarify again, I
24 remember Mr. Woodsmall making that point, but I
25 don't recall what the specific point was about the

1 rate case, that we agreed to a what?

2 Q. Well, the point was -- that he made
3 was that two years ago your liquidity was less than
4 it is today, but in Ameren's rate case two years
5 ago, you weren't seeking the type of relief that
6 you're seeking now and, in fact, agreed to an
7 across-the-board increase.

8 A. I don't recall the specifics of the
9 logic at that time. I would tell you that two
10 years ago and depending where you start two years
11 ago in 2012 and 2013, we were in a different
12 circumstance. We still had borrowing available to
13 us.

14 One of the reasons why our liquidity
15 held up is we were able to take one-time actions to
16 address a sustainable problem. So, for example, in
17 2013 we were able to increase our borrowing by
18 about \$50 million, and when you, you know, get
19 \$50 million worth of cash, it helps you with your
20 cash flow and your liquidity. And in 2012 we
21 raised a net \$166 million as well.

22 So I just don't recall the specific
23 rationale for the support of a system-wide increase
24 but as far as our liquidity was going, we still
25 had -- we still had options as far as raising debt.

1 Q. Okay. A couple of additional
2 questions. What, if any, position does Noranda
3 have on Ameren's, what I'm calling its wholesale
4 offer or wholesale proposal? Why is that or why is
5 that not attractive to Noranda?

6 A. Thank you very much for asking that
7 question, because I was in those meetings with
8 Michael Moehn, and we had numerous meetings, at
9 least seven face-to-face meetings that I can count
10 going back through my calendar, numerous phone
11 calls, lots of texts.

12 There was an enormous amount of
13 interest in coming together on a transaction with
14 Ameren, and I want to compliment Michael Moehn for
15 his extraordinary commitment to try and make
16 something happen. This is an individual that I
17 gained an enormous amount of respect for.

18 But in the end, and since there's
19 been a lot of discussion and speculation about what
20 went on inside those settlement discussions, my
21 only response is that it is -- it is not true, it
22 is just not true that Noranda didn't want that
23 deal, Noranda didn't want to make any deal or this
24 one specifically.

25 Unfortunately, we got down to a

1 single issue where at the end -- and I feel the
2 only thing that's fair, given the confidentiality
3 of those discussions -- to remark is both Michael
4 and I looked at each other and I certainly felt
5 deep regret, and I believe he did as well, and we
6 said, look, we're at an impasse. We're just not
7 going to get past this.

8 We tried over the next few days to
9 see if there was some way we could come up with an
10 alternate structure. But at that point in time, it
11 was decided that we would proceed ahead with the
12 rate case and perhaps there would come another time
13 when we could get together to come together on a
14 deal.

15 Q. Okay.

16 A. And maybe I didn't answer the -- did
17 I answer the question or no? I'm sorry if I
18 didn't.

19 Q. Kind of no, but --

20 A. Well, as far as --

21 Q. I'm sure all the lawyers over there
22 are probably nervous as all get out because you're
23 talking about a settlement discussion, and I'm
24 trying to be respectful of that, and I'm trying to
25 recall the rationale behind the inadmissibility of

1 **settlement discussions.**

2 A. Uh-huh.

3 **Q. And I think it normally has to do**
4 **with the influence on juries and not judges, so I'm**
5 **not entirely sure it's applicable.**

6 A. And I could give you -- and I'm sorry
7 to interrupt. I apologize for not answering the
8 question.

9 **Q. Go ahead.**

10 A. As far as the wholesale rate was
11 concerned, we were -- as long as we were at the
12 same level of the risk and -- and the same value on
13 the rate, we felt that that was something well
14 worth considering, and it became a focus of the
15 discussions. So we didn't have an issue with the
16 concept of wholesale in itself.

17 The issue became how would we -- how
18 would we make sure that the risk was no greater
19 than the risk that we were taking with the retail
20 deal. And that's where I think we couldn't get to
21 an answer.

22 **Q. All right. Let me avoid the**
23 **discussions about the settlement discussions and**
24 **let me come at this a different way. What is it**
25 **about the wholesale proposal that doesn't mitigate**

1 **risk in the same way that Noranda's proposal does?**

2 A. If I could, I'd just like to take a
3 check with my counsel and make sure it's okay if I
4 answer that.

5 **Q. I don't mind.**

6 MR. MALLIN: Mr. Smith, you're free
7 to answer it.

8 THE WITNESS: Okay. Pretty simple.
9 It's this concept of what I've come to think of
10 as -- as -- it's kind of similar to retroactive
11 ratemaking. If a wholesale deal came together and
12 the deal was after some period of time, one year,
13 two years or whatever period of time found to be
14 not lawful, there was the prospect of the damages
15 associated with that having to be paid by one party
16 or the other.

17 So if it turned out that there was a
18 challenge to the rate as opposed to a retail rate
19 where it's really ratemaking on a go-forward basis,
20 that retroactivity was a risk that was at the
21 center of the impasse.

22 BY CHAIRMAN KENNEY:

23 **Q. Okay. Let me -- let me turn to a**
24 **different set of questions or a different question.**
25 **What's the status of the rod mill?**

1 A. Right now the rod mill is in packing
2 crates. It is -- and there are elements of this
3 answer that are going to be highly confidential, so
4 if we could go to just for a moment, that would
5 be --

6 JUDGE WOODRUFF: We will go
7 in-camera.

8 CHAIRMAN KENNEY: That's fine with
9 me.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 32, pages 2424 through 2428 of the
13 transcript.)

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1 JUDGE WOODRUFF: We are back in
2 regular session.

3 CHAIRMAN KENNEY: You know what,
4 Mr. Smith, I thank you for being here. It's good
5 to see you again. I don't have any other
6 questions.

7 JUDGE WOODRUFF: Commissioner Kenney?
8 QUESTIONS BY COMMISSIONER W. KENNEY:

9 Q. Thank you, Mr. Smith. I just had a
10 couple of questions.

11 First off, I was reading something in
12 some financial report a while ago. Did Noranda
13 make a -- make or are they going to make an
14 investment of 18 to 20 million, I thought it was of
15 the fourth quarter of 2014, but I could be wrong?

16 A. This would be 18 million. We are
17 making an \$18 million investment. It is in New
18 Madrid. It is in the first quarter of this year,
19 and it's to rebuild -- when we lost power and our
20 lines went down -- and by the way, I want to
21 really -- every time I talk about this, I always
22 have to applaud Ameren because they did everything
23 in their power to keep us fired up, them and
24 Associated Electric.

25 When we lost power, we ended up

1 having to rebuild the substantial majority of two
2 pot lines, and when you do that, they kind of all
3 have a tendency to need to be rebuilt at the same
4 time. And while we were expecting that surge in
5 pots, we also experienced a number of early pot
6 failures, and so that -- and we accelerated the
7 rebuild program so we can get our plant back up to
8 full capacity, and that's going to take \$18 million
9 in the first quarter.

10 **Q. Okay. You don't have to go there,**
11 **but on page 9, line 2 you mention a black swan.**
12 **What is a black swan?**

13 A. It's -- my version of that is it's
14 a -- it's a bird of darkness. It's just an event
15 that swoops out of the sky that's very bad for you.
16 Did I get that -- I think I got that about right.
17 It's something I've never used before, but
18 apparently it's a fairly common financial term.

19 **Q. Thank you for the education. Has**
20 **Noranda laid off any employees since your last two**
21 **cases we heard?**

22 A. Yes, and that's -- we have. There's
23 kind of a bad news, bad news, good news story here.
24 When we received our results last time, we laid
25 25 people off. We didn't back fill any

1 terminations.

2 **Q. You laid off how many?**

3 A. Our first phase of this was 25
4 people. And the final number, by the way, that we
5 ended up reducing was about 56. And so we -- we
6 laid off 25. There was about a 50/50 mix of hourly
7 and salary. We had hired 16 new people, and this
8 was the -- this was the hardest thing we had to do.
9 We literally had to call them the Friday night
10 before their Monday start and tell them they didn't
11 have a job.

12 **Q. What is your current number of**
13 **employees back?**

14 A. We ended up bringing almost -- we
15 brought -- of those people, we brought 26 back
16 because of this pot rebuild surge.

17 **Q. Of the 56?**

18 A. Yes.

19 **Q. And how many of those 56 were new**
20 **hires?**

21 A. 16.

22 **Q. 16. So you're down a net 15?**

23 A. Yes. In terms of our employees.

24 **Q. Does that cause any -- that seems**
25 **pretty minimal. That probably doesn't have much of**

1 **an impact.**

2 A. No, it doesn't. And again, what
3 happens with these pots when you start losing a
4 significant number of pots, they go unstable, and
5 so you can't -- you can't wait. You've got to
6 bring them back online or you could lose a whole
7 pot line. So we actually have in addition to that
8 added another -- in the addition -- in the spirit
9 of full disclosure, we added 48 contractors so that
10 we could get these things rebuilt.

11 **Q. You actually have more on right now?**

12 A. We have more people. The contractors
13 will be gone March 31.

14 **Q. Okay. And on page 2 you mention**
15 **your -- your -- that electrical cost from about**
16 **32 percent of your average total costs. Is that a**
17 **historic number?**

18 A. Yes.

19 **Q. Every year it's about pretty much in**
20 **that range?**

21 A. It's been in that range, yeah.

22 **Q. Okay. On your 0224 and what you**
23 **asked for in here, and what you signed in that**
24 **Stipulation & Agreement --**

25 A. Excuse me, Commissioner. On that

1 average cost, it's not -- it's not an anomaly, but
2 it fluctuates.

3 Q. I understand that. But you could
4 probably look at that ten-year average, probably be
5 somewhere near there?

6 A. Yeah. I haven't looked at a ten-year
7 average in a while. I just don't remember.

8 Q. But right now it is?

9 A. Yeah.

10 Q. On 0224 and this case in 0258, which
11 you previously filed, and the Stip & Agreement
12 you're about a 13 percent higher rate than you were
13 asking for. Now, with that rate and -- why can you
14 do that today if you couldn't do that six or seven
15 months ago that this rate, which is 13 percent
16 higher than you originally asked for, would allow,
17 make those investments, keep the 850 employees and
18 do everything you want to do?

19 A. That's a question of accepting more
20 risk.

21 Q. So it's just accepting more risk?

22 A. Accepting more risk, yeah.

23 Q. You're confident at that price you
24 can keep the company going and move forward?

25 A. It's more risk, but yes.

1 **Q. I understand more risk, but are you**
2 **confident it's going to continue to move forward?**

3 A. Yes.

4 **Q. So what changed, just the risk?**

5 A. Risk factor, yeah. Our willingness
6 to accept more risk and a couple of things. We've
7 had -- and this may -- this may sound small, but
8 it's really not. We've added a couple of key
9 people, for example, a director of manufacturing
10 who's getting our plants in a shape where they're
11 running.

12 **Q. Because honestly, when you say more**
13 **risk, I mean everything -- business is risk, you**
14 **know that.**

15 A. I get that.

16 **Q. Everything I do is risky, so --**

17 A. We have -- like any commodity,
18 though, you have a -- you have a real array of
19 risk, as you know, from the volatility and the
20 pricing. So getting our costs down and getting to
21 where we needed to be was just fundamental for us.
22 But, yes, it's --

23 **Q. But isn't that in all commodities?**
24 **Like what was oil two years ago?**

25 A. Absolutely.

1 **Q. What was silver, remember, three**
2 **years ago and gold three years ago?**

3 A. That's absolutely true. We're not
4 different. We're no different. Big swings. Just
5 from the 2nd of February until today, LME's gone
6 down 7 cents. Or midwest premium, LME plus
7 midwest, down 7 cents.

8 COMMISSIONER W. KENNEY: Well, thank
9 you very much.

10 JUDGE WOODRUFF: Commissioner Hall?

11 QUESTIONS BY COMMISSIONER HALL:

12 **Q. Good afternoon, Mr. Smith.**

13 A. Afternoon.

14 **Q. Good to see you.**

15 A. Nice to see you as well.

16 **Q. Is Noranda currently paying quarterly**
17 **dividends?**

18 A. We are.

19 **Q. And --**

20 A. A penny a share.

21 **Q. Pardon me?**

22 A. A penny a share.

23 **Q. So what does what come out to each**
24 **quarter?**

25 A. We've got 67 million shares, so

1 670,000 -- or 68 million, so 680,000 a quarter.

2 **Q. 680,000 a quarter?**

3 A. Yeah.

4 **Q. Are you under any obligation to issue**
5 **those dividends?**

6 A. No, we are not.

7 **Q. So it's just a function of your**
8 **fiduciary obligation to your shareholders?**

9 A. We have -- when we had had a 4 cent
10 dividend, we attracted a fairly significant portion
11 of our shareholder base were in funds where they
12 had a dividend requirement in their fund. So what
13 we wanted to do was keep the absolute minimum so
14 that we wouldn't lose access to those funds.

15 **Q. And Apollo currently controls or owns**
16 **30-some percent of Noranda?**

17 A. About 34 percent.

18 **Q. But that is a controlling share?**

19 A. No, it is not.

20 **Q. Okay. I guess I -- maybe it wasn't**
21 **testimony, maybe it was in opening somewhere that**
22 **that was a controlling interest. So how many**
23 **members on the board, on Noranda's board are from**
24 **Apollo?**

25 A. There are four.

1 **Q. Four of how many?**

2 A. Ten. I'd have to -- I'd have to add
3 them up. I believe it's ten. The independents are
4 a majority.

5 **Q. So there's four from Apollo and then**
6 **you are also on the board; is that correct?**

7 A. Yeah.

8 **Q. And what is your affiliation with**
9 **Apollo?**

10 A. None. Well, I have no -- I've never
11 been in their direct employ. I have no business
12 relationship with them, other than in September --
13 well, it will be seven years with Noranda in March,
14 and I have run or -- all or parts of five different
15 companies for them, including Noranda. So I know
16 them well, but I've always taken a paycheck from
17 the company that I work for.

18 **Q. My next couple of questions I think**
19 **concern some highly confidential information. So**
20 **we should probably go in-camera.**

21 JUDGE WOODRUFF: All right. We'll go
22 back in-camera.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, which is contained in
25 Volume 32, pages 2438 through 2440.)

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

3 BY COMMISSIONER HALL:

4 Q. Is it your understanding that you are
5 legally perhaps contractually obligated to continue
6 buying power from Ameren?

7 A. We are right now, it's my
8 understanding. You'd have to ask our legal team
9 for verification. It's my understanding that, yes,
10 we have a contract with Ameren and we're fulfilling
11 that contract.

12 Q. And that there is an option to opt
13 out of the next phase of that contract in 2018?

14 A. I believe there's a five-year
15 notice -

16 Q. So --

17 A. -- for termination of the contract,
18 which is coming up pretty quick.

19 Q. Do you have any other options to
20 purchase power, other than Ameren?

21 A. At the moment, no.

22 COMMISSIONER W. KENNEY: I have no
23 further questions. Thank you, Mr. Smith.

24 JUDGE WOODRUFF: All right. Recross
25 based on questions from the Bench. Anyone wishing

1 to recross? I don't see anyone else, so we'll go
2 to Ameren.

3 MS. TATRO: Thank you.

4 RECROSS-EXAMINATION BY MS. TATRO:

5 Q. Good afternoon, Mr. Smith.

6 A. Good afternoon.

7 Q. The Chair asked you about the rod
8 mill status. Do you recall that questioning?

9 A. Yes.

10 Q. All right. Did you participate in an
11 earnings call for Noranda on February 28th of this
12 year?

13 A. I did.

14 MS. TATRO: May I approach?

15 JUDGE WOODRUFF: You may.

16 BY MS. TATRO:

17 Q. Could you identify this document for
18 me, please?

19 A. This is an edited transcript of our
20 Noranda Q4 2014 Noranda Aluminum Holding
21 Corporation's earnings call.

22 Q. Would you turn to page 13 of that
23 document for me, please? And it's really on the
24 very bottom right-hand corner, and I did circle it
25 to try to make it easier for you.

1 A. Okay. Thank you. Okay. And with
2 respect to the rod mill I think two quarters ago we
3 thought, well, maybe we're going to do it out of
4 state. I guess now it's coming back in state, next
5 to the smelter. I'm guessing that is correct. Is
6 that -- still is that dependent upon getting this
7 rate case done?

8 **Q. Okay. I was actually going to read**
9 **it for you because I know you're having trouble,**
10 **but can you tell me who asked that question?**

11 A. DavidMolkavetski (phonetic) from
12 Jeffries and Company.

13 **Q. Is that an investor group?**

14 A. Yes.

15 **Q. Okay. And he specifically asked if**
16 **the rod mill completion was dependent upon rate**
17 **relief in this case, right?**

18 A. Uh-huh.

19 **Q. Okay. Can you turn the page, please?**
20 **Are you on page 14?**

21 A. Yes, I am.

22 **Q. Sorry. And you are the one that**
23 **answered that question, correct? Again, I**
24 **highlighted it to make easier for you to find.**

25 A. Uh-huh. You know, I --

1 **Q.** **I'm sorry, Mr. Smith. You're the one**
2 **that answered the question, correct?**

3 A. I don't believe so. I actually --
4 after you said that in this meeting, I called my
5 investor relations person to verify that -- now, it
6 was said. Dale Boyles said it, but it was -- it
7 was not me.

8 **Q.** **So it's incorrectly identified in**
9 **your edited transcript?**

10 A. I believe that's correct. I mean,
11 again, I called John Parker, our investor relations
12 officer, you know. Look, the comment was made by a
13 Noranda official, but I'm quite certain it wasn't
14 me.

15 **Q.** **But you were on that call?**

16 A. Yes, I was.

17 **Q.** **And either yourself or Boyles made**
18 **the comment that I have highlighted -- the answer**
19 **that I have highlighted there?**

20 A. Yes.

21 **Q.** **And I'm going to read that for you to**
22 **hopefully make it -- I don't know if your eyesight**
23 **is worse or my voice, but let's try to make this**
24 **easier.**

25 A. Okay.

1 Q. One of you said, I will start with
2 the rod mill, the question about the rod mill, and
3 then I'll turn it over to Gayle to give you insight
4 about the power. On the rod mill, yes, we are
5 committed to building the facility at New Madrid.
6 And as we said, we expect to complete that this
7 year with production coming online in fourth
8 quarter of 2015, and we do have about \$15 million
9 of expected capital spending this year. Did I read
10 that correctly?

11 A. Yes. That's correct.

12 Q. And whoever answered this question
13 did not state in response to the specific question
14 that completion of the rod mill was dependant upon
15 you getting a reduced power rate in this case; is
16 that correct?

17 A. That's correct.

18 Q. And if you were not the one who
19 answered the question, you did not offer any
20 additional comment to correct any misperception
21 that might have been given by that answer, did you?

22 A. That is correct.

23 Q. Then in response to some questions by
24 Commissioner Hall -- and I'm done with that
25 document.

1 A. Okay.

2 Q. In response to some questions from
3 Commissioner Hall, he asked you about does Apollo
4 control Noranda with the 34 percent of stock that
5 they still own. Do you recall those questions?

6 A. That's correct.

7 MS. TATRO: May I approach again?

8 JUDGE WOODRUFF: You may.

9 BY MS. TATRO:

10 Q. Can you identify that document for
11 us, please?

12 A. Yes. This is the Noranda Aluminum
13 Holding Corporation Schedule 14A.

14 Q. And when was it filed?

15 A. I'm sorry. Just looking for the
16 date.

17 Q. Mr. Smith, I apologize. I didn't get
18 to highlight this one. But if you look at the
19 second page of the document, I think it says
20 May 9th, 2014. Does that sound right?

21 A. Yeah. That's not -- you asked me
22 what date it was filed, so --

23 Q. Oh, that --

24 A. Yeah, that's actually the time and
25 date. Sorry about that.

1 Q. That's all right.

2 A. Okay.

3 Q. Well, perhaps if you turn to the last
4 page, I believe that you signed it on February 27th
5 of 2015; is that right? Well, the proxy
6 statement's from 2014; is that fair?

7 A. Yes.

8 Q. All right. Now, if you could
9 continue turning the page, it has a little number 2
10 on the bottom. It's about the fourth page in.

11 A. Okay.

12 Q. And it's titled election of
13 directors. Do you see that?

14 A. Election of directors.

15 Q. Can you tell me how many directors
16 Noranda has?

17 A. Okay. We have 11.

18 Q. Okay.

19 A. Excuse me. Including me, it's 12.

20 Okay.

21 Q. All right. And would you agree with
22 me that of those, Apollo continued -- under the
23 terms, Apollo continues to hold at least 30 percent
24 but not less than 50 percent of the outstanding
25 common stock and has the right to designate six

1 **directors?**

2 A. That's technically correct.

3 **Q. Okay. Let's talk about --**

4 A. But to be a public company, they have
5 to have a minimum number of independents.

6 **Q. I understand. All right. Let's go**
7 **through the individual directors. All right. The**
8 **first one listed there is William Brooks. Do you**
9 **see him -- his name listed there?**

10 A. Yes.

11 **Q. Can you tell me when he became a**
12 **director?**

13 A. July of 2007.

14 **Q. And do you consider him one of the**
15 **independent directors?**

16 A. I believe the answer to that is yes.
17 He was -- he was not considered independent because
18 he was an employee of Noranda, but then I think --
19 I'm not an expert on this, but I think after three
20 years he is considered to be an independent. So,
21 yes, he's independent. That's one.

22 **Q. Next is Matthew --**

23 A. Michelini.

24 **Q. Thank you.**

25 A. He's Apollo.

1 Q. So he is not an independent director?

2 A. That's correct.

3 Q. And when did he join the board?

4 A. He joined the board since 2007. He
5 was a part of the original bunch.

6 Q. All right. And I neglected to ask
7 you earlier, how long of a term do they serve?

8 A. I believe the terms are three years
9 and they're rotated. Not every one's, you know, up
10 at the same time.

11 Q. So these two directors have been
12 reappointed multiple times?

13 A. Yes.

14 Q. Okay. Next director?

15 A. Thomas Miklich, January 2008. He's
16 an independent.

17 Q. Okay.

18 A. Ronald Rolfe, January 2013, he's an
19 independent. Richard Evans, March 2010, he's an
20 independent. Rob Kalsow-Ramos, March 2014, he's an
21 Apollo. Carl J. Rickertsen, April 2012, he's an
22 independent. Alan Schumacher, he's an independent,
23 and he's been on the board since January 2008.
24 Matt Nord has been a director since 2007. He's
25 Apollo. Eric Press, he's a director. He's also

1 from Apollo. And then Elliott Sagor has been a
2 director since March 2014, and he's an independent.

3 **Q. So you'd agree with me out of the**
4 **total of 12 Noranda directors, at least 7 have**
5 **served on the board since 2008?**

6 A. I can count them up. I've got four
7 Apollo guys, so that's four. Miklich, five.
8 Schumacher, six. And myself, seven. Yeah.

9 **Q. Okay. And six of them are directly**
10 **or indirectly associated with Apollo, correct?**

11 A. I'm just curious, how would you
12 conclude that?

13 **Q. Well, they're not independent**
14 **directors.**

15 A. So there's -- maybe I'm missing one
16 here. So there's four Apollo, right? Michelini,
17 Kalsow-Ramos, Press. There's four directly
18 affiliated with Apollo. And then I'm not
19 independent because of my relationship with the
20 company.

21 **Q. Okay. And did you include Ronald**
22 **Rolfe in that?**

23 A. No. Ronald Rolfe's an independent.

24 **Q. Would you agree with me, though, that**
25 **he does sit on the board also of Berry Plastics,**

1 **which is a company that Apollo has an ownership**
2 **interest in?**

3 A. That's correct.

4 Q. Okay. Would you also agree with me
5 **that he is a retired partner at Cravath, Swaine &**
6 **Moore, LLC?**

7 A. Yes, he is.

8 Q. And that's a law firm that represents
9 **Apollo?**

10 A. I honestly don't know their -- their
11 client list and I've never asked them, so --

12 Q. Okay.

13 A. We've certainly never -- to my
14 knowledge, I've not used Cravath. So I -- I would
15 have no personal experience with them using
16 Cravath.

17 Q. All right. We'll save that question
18 **for Mr. Boyles then. And also would you agree with**
19 **me that Mr. Rolfe was on the strategic and audit**
20 **committee of Captain Bidco SAS, which is a private**
21 **company owned by Apollo?**

22 A. Yes.

23 Q. So Mr. Rolfe certainly has some ties
24 **to Apollo?**

25 A. He certainly has -- he certainly sits

1 on boards that Apollo owns. And my experience is
2 that that's -- he's a good director, so --

3 Q. Okay.

4 A. -- I don't know what else to say.

5 Q. But you'd agree with me that he
6 serves on two other Apollo-controlled boards?

7 A. That's correct.

8 Q. And of the seven directors that
9 you've identified as independent, at least two of
10 them have served since 2008 when Apollo first
11 purchased Noranda?

12 A. Yes.

13 MS. TATRO: Okay. Can I mark that
14 document? And then I'll move for the admission.

15 JUDGE WOODRUFF: All right. Your
16 next number is 68.

17 (AMERENUE EXHIBIT NO. 68 WAS MARKED
18 FOR IDENTIFICATION BY THE REPORTER.)

19 MS. TATRO: I believe Mr. Smith has
20 already identified the document. So I would ask
21 for admission of 68.

22 JUDGE WOODRUFF: All right. 68 has
23 been offered. Any objections to its receipt?

24 MR. MALLIN: No objection here, your
25 Honor.

1 JUDGE WOODRUFF: Hearing no

2 objection, it will be received.

3 (AMERENUE EXHIBIT NO. 68 WAS RECEIVED

4 INTO EVIDENCE.)

5 BY MS. TATRO:

6 Q. Finally, Commissioner Hall asked you
7 about what other options you had to get electric
8 power besides Ameren. Do you remember that
9 question?

10 A. Yes.

11 Q. And you answered at the moment you
12 don't have any other options?

13 A. That's correct.

14 Q. Okay. And is that because you have a
15 contract with Ameren Missouri for Ameren Missouri
16 to provide you electric service?

17 JUDGE WOODRUFF: If I could interrupt
18 for a moment. Ms. Tatro, is your microphone on?

19 MS. TATRO: It was not. I apologize.

20 JUDGE WOODRUFF: Thank you.

21 MS. TATRO: Do I need to repeat the
22 question?

23 JUDGE WOODRUFF: If you would,
24 please.

25 BY MS. TATRO:

1 Q. All right. Your answer to one of
2 Mr. -- Commissioner Hall's questions was that you
3 don't have another option beyond Ameren Missouri to
4 get electric service at this time. Do you recall
5 that line of questioning?

6 A. That's correct, yes.

7 Q. And that's because currently there's
8 a contract where you're to take power from Ameren
9 Missouri and Ameren Missouri agreed to provide
10 power to you, correct?

11 A. That's correct.

12 Q. And if that contract terminates in
13 the future, then you may have other opportunities,
14 correct?

15 A. We may, but we may also continue on
16 with Ameren Missouri.

17 Q. Right. But do you agree there is a
18 statute that gives you the authority to purchase on
19 the wholesale market under certain circumstances,
20 right?

21 MR. ALLISON: I'm going to object to
22 the extent that calls for a legal conclusion with
23 respect to the statute.

24 JUDGE WOODRUFF: Overruled.

25 MS. TATRO: I'm only asking to the

1 extent that he knows.

2 THE WITNESS: I'm sorry. Could you
3 repeat the question?

4 BY MS. TATRO:

5 Q. Do you agree that Noranda has the
6 statutory ability to purchase power on the
7 wholesale market?

8 MR. ALLISON: Just to preserve the
9 objection, I'll restate the objection.

10 THE WITNESS: Well, right now with
11 our contract with Ameren, we don't, because of the
12 contract with Ameren, so --

13 BY MS. TATRO:

14 Q. Well, fair enough. Let's pretend
15 there is no such contract. Would Noranda then be
16 able to purchase power on the wholesale market
17 because of that statute?

18 A. I believe that's correct, but you'd
19 have to -- I'd have to check with my legal team.

20 MS. TATRO: Fair enough. Thank you,
21 sir.

22 JUDGE WOODRUFF: Redirect?

23 MR. MALLIN: I'm going to have a fair
24 number of questions. Did we want to stop at five,
25 your Honor, or plow through?

1 JUDGE WOODRUFF: A fair number is how
2 many?

3 MR. MALLIN: Probably at least
4 45 minutes.

5 JUDGE WOODRUFF: Let's go ahead and
6 stop for the night. All right. We will -- we'll
7 stop for the night. We'll reconvene tomorrow
8 morning at 8:30.

9 (WHEREUPON, the hearing was recessed
10 at 4:54 p.m.)

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