

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

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6 TRANSCRIPT OF PROCEEDINGS

7 Evidentiary Hearing

8 March 25, 2010  
9 Jefferson City, Missouri  
Volume 33

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12 In the Matter of Union Electric )  
Company d/b/a AmerenUE's Tariffs )  
13 To Increase Its Annual Revenues ) File No. ER-2010-0036  
For Electric Service )

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

17

18 JEFF DAVIS,  
TERRY JARRETT,  
19 COMMISSIONERS.

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

2 (EXHIBIT NOS. 178 AND 179 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE WOODRUFF: Good morning, everyone.  
5 Welcome back to the AmerenUE rate case hearing.

6 Before we get started today, I understand  
7 there's some housekeeping matters several of the parties  
8 want to bring up. Mr. Fischer, you rose first, so I'll  
9 recognize you first.

10 MR. FISCHER: Judge, I just wanted the  
11 record to note that we have passed out and premarked  
12 exhibits related to -- well, Exhibit 178 is a comparison  
13 of major storms to emergency declarations, and then  
14 Exhibit 179 was AmerenUE's response to the request for  
15 additional information from Commissioners Davis and  
16 Jarrett regarding the training proposals.

17 And we had distributed these earlier, but I  
18 wanted the Bench to be aware of that so you could take a  
19 look at that before the issues came up today.

20 JUDGE WOODRUFF: Mr. Comley, I believe you  
21 also had something.

22 MR. COMLEY: Thank you, Judge Woodruff and  
23 the parties. On behalf the Charter Communications, Inc.,  
24 I'd like to offer into the record at this time Exhibit  
25 No. 700, which is the direct testimony of Richard E.

1 Stinneford, who filed testimony on behalf of Charter.  
2 This testimony is offered in support of the Nonunanimous  
3 Stipulation.

4 My understanding is that all the parties  
5 have waived cross-examination on Mr. Stinneford, and I  
6 understand as well from representations from the Bench  
7 that the Commissioners themselves have no questions for  
8 Mr. Stinneford. I'd offer his testimony on the strength  
9 of his affidavit.

10 JUDGE WOODRUFF: Exhibit 700 has been  
11 offered. Any objection to its receipt?

12 (No response.)

13 JUDGE WOODRUFF: Hearing none, it will be  
14 received.

15 (EXHIBIT NO. 700 WAS MARKED AND RECEIVED  
16 INTO EVIDENCE.)

17 MR. COMLEY: Thank you.

18 JUDGE WOODRUFF: Any other preliminary  
19 matters we need to take up?

20 MR. LOWERY: Your Honor, this may be a  
21 point of clarification, but there were three exhibits that  
22 the unions had offered a couple of days ago, 651, 652 and  
23 563, to which objection was made and the objection was  
24 sustained. Those exhibits have been filed in EFIS, and I  
25 assume that's simply essentially filing it with the

1 clerk's office, but it's clear that those are not part of  
2 the record.

3 JUDGE WOODRUFF: That is clear, yes.

4 MR. LOWERY: And then one other item that's  
5 a little bit different. The deposition of Julie Cannell  
6 has also been filed in EFIS, but, in fact, it hasn't been  
7 offered and is certainly not part of the record. We don't  
8 think it should be filed in EFIS at all.

9 JUDGE WOODRUFF: I tend to agree with you  
10 at this point. It was added by my secretary because it  
11 was marked as an exhibit by Staff, because it was given a  
12 premarked number. At the end of the hearing I'll  
13 entertain a motion to remove that from EFIS.

14 MR. LOWERY: We need to renew that motion  
15 at the end of the hearing, your Honor?

16 JUDGE WOODRUFF: Just in case it's offered.  
17 I don't know -- I'll ask Staff counsel, do you have  
18 anything to do with that?

19 MS. KLIETHERMES: That's not my issue, but  
20 I can get that attorney down here.

21 JUDGE WOODRUFF: It's not necessary to  
22 bring him down right now. We'll deal with it before the  
23 end of --

24 MR. LOWERY: We'll bring it up at the end  
25 of the hearing.



1                   MR. DOWNEY: Judge, Exhibit 434 was offered  
2 last week, and I know Mr. Lowery wanted to spend some time  
3 reviewing it to determine whether or not there would be an  
4 objection, and I believe he has no objection to it, so I  
5 would ask the court to admit it.

6                   JUDGE WOODRUFF: Any objection to 434HC?  
7 (No response.)

8                   JUDGE WOODRUFF: Hearing none, it will be  
9 received.

10                   (EXHIBIT NO. 434HC WAS RECEIVED INTO  
11 EVIDENCE.)

12                   JUDGE WOODRUFF: Anything else? I believe  
13 we're going to start today with Mr. Birk on the  
14 depreciation issue.

15                   MR. LOWERY: That's correct. His  
16 testimony's already in the record and he's been sworn,  
17 Judge, so I don't have any preliminaries for him.

18                   JUDGE WOODRUFF: You're still under oath.

19                   THE WITNESS: Yes.

20                   JUDGE WOODRUFF: And for cross-examination,  
21 we've got a lot more parties here this morning. Missouri  
22 Retailers?

23                   MR. SCHWARZ: No questions, Judge.

24                   JUDGE WOODRUFF: Charter? The Muni Group.

25                   MR. CURTIS: No questions.

1 JUDGE WOODRUFF: MEUA?

2 MR. WOODSMALL: No questions, your Honor.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. MILLS: No questions.

5 JUDGE WOODRUFF: Staff?

6 MS. KLIETHERMES: Thank you, Judge.

7 MARK BIRK testified as follows:

8 CROSS-EXAMINATION BY MS. KLIETHERMES:

9 Q. Good morning, Mr. Birk.

10 A. Good morning.

11 Q. Would the economic impact of continuing to  
12 operate the Meramec plant beyond 2021 from an SO2 point of  
13 view be minimal if SO2 allowance prices were low?

14 A. I think when you look at the economic  
15 viability of the Meramec plant, I think the key thing as  
16 you've brought up is going to be the environmental  
17 considerations.

18 Q. So would the economic impacts of continuing  
19 to operate the Meramec plant beyond 2021 from an SO2 point  
20 of view be minimal if SO2 allowance prices are low?

21 A. Can we please go in-camera so I can answer  
22 the question?

23 JUDGE WOODRUFF: Okay. At this point we  
24 will go in-camera. If anyone's in the room that needs to  
25 leave, please do so.

1                   (REPORTER'S NOTE: At this point an  
2 in-camera session was held, which is contained in  
3 Volume 34, pages 2702 through 2704 of the transcript.)

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

3 MS. KLIETHERMES: Specifically Appendix A.

4 MR. LOWERY: Are you referring to the  
5 Black & Veatch report.

6 MS. KLIETHERMES: Appendix A.

7 BY MS. KLIETHERMES:

8 Q. Mr. Birk, is it possible to convert a  
9 coal-burning plant to a gas-fired plant from a purely  
10 engineering perspective?

11 A. Yes, it is.

12 Q. Does that just involve the replacement of  
13 some injectors, I believe they're called?

14 A. It could possibly involve a little more  
15 than that, but plants can be repowered from coal to  
16 natural gas, yes, they can.

17 Q. Does Meramec have access to a natural gas  
18 pipeline?

19 A. They do have access to a natural gas  
20 pipeline.

21 Q. And are the Meramec boilers physically  
22 capable of being retrofitted to run on gas?

23 A. I believe that the capability of the gas  
24 pipeline that exists at Meramec right now would not  
25 support full load operation of Meramec plants.

1           Q.       I believe I asked if the Meramec boilers  
2     were physically capable of being converted to run on  
3     natural gas?

4           A.       I'm not sure without further analysis  
5     whether Units 3 and 4 would be fully capable to do that.

6           Q.       What about Units 1 and 2?

7           A.       Units 1 and 2 can operate on natural gas  
8     right now. They have full load capability on natural gas  
9     right now.

10          Q.       And are Units 3 and 4 similar in design?

11          A.       They are not. They are not similar in  
12     design to Meramec 1 and 2. Meramec 1 and 2 were  
13     combustion engineering tangential fired boilers.  
14     Meramec 3 and 4 are Foster Wheeler front-fired units. The  
15     designs are completely different.

16          Q.       Does it essentially consist of a large box  
17     with a jacket around it that is heated with -- in which  
18     some sort of fluid is heated?

19          A.       All boilers consist of that generally.

20          Q.       And is there a heat source that needs to be  
21     inserted into the center of that large box?

22          A.       That is correct.

23          Q.       And is it possible that gas could be used  
24     to create that heat source inside that large box?

25          A.       I'm not sure that you could get the

1 adequate heat output from natural gas that you could get  
2 from coal and whether it's practical to be able to  
3 retrofit Meramec 3 and 4. We'd have to do more analysis  
4 of that.

5 Q. But it is something that is within the  
6 realm of possibility?

7 A. It's within the realm of possibility, yes.

8 Q. Does burning natural gas result in higher  
9 or lower sulfur emissions than burning a similar amount of  
10 Btus of coal?

11 A. It would result in lower.

12 Q. Does burning natural gas result in higher  
13 or lower mercury emissions than burning a similar amount  
14 of Btus of coal?

15 A. Lower.

16 Q. Does burning natural gas result in higher  
17 or lower particulate emissions than burning a similar  
18 amount of Btus of coal?

19 A. It would be lower.

20 Q. Now, I don't know my engineering terms, so  
21 the -- is there more than one type of sulphur emission  
22 that's a concern?

23 A. Normally what we're concerned about is the  
24 SO<sub>2</sub> emissions. You can potentially get into some type --  
25 sometimes SO<sub>3</sub>, but it's really more dependent upon the

1 environmental equipment and things like that. We are  
2 typically not as concerned with SO3 in our current coal  
3 fleet.

4 Q. So SO2 is the --

5 A. It's the primary, correct.

6 Q. -- main thing EPA and other regulators  
7 would look at?

8 A. That would be correct.

9 Q. And to clarify, natural gas results in  
10 fewer SO2 emissions per Btu than a similar amount of coal?

11 A. Yes, it would.

12 Q. Does burning natural gas result in higher  
13 or lower levels of waste ash than burning coal?

14 A. Burning --

15 Q. I'm sorry. Burning natural gas.

16 A. Yeah, burning natural gas would result in  
17 lower levels of fly ash than burning coal.

18 Q. Would there be virtually any fly ash?

19 A. Virtually none.

20 Q. Would there be virtually any clinker? Is  
21 that the proper term?

22 A. Yeah. Clinkers are bottom ashes, I believe  
23 is what you're referring to. There would be none with  
24 burning natural gas.

25 Q. And does burning natural gas result in a

1 higher or lower CO2 emissions than a comparable amount of  
2 coal?

3 A. Burning natural gas results in about half  
4 the CO2 emissions of burning coal per comparable megawatt  
5 hour generation.

6 Q. Now, I believe you already indicated that  
7 Meramec Units 1 and 2 are capable of running full load on  
8 natural gas; is that correct?

9 A. Yes, that's correct.

10 Q. And 3 and 4 could in theory be retrofitted.  
11 There may be some losses of efficiency. You haven't fully  
12 studied it?

13 A. Correct. We haven't done an analysis. I  
14 would be uncomfortable in saying that they could be fully  
15 retrofitted because, especially with Meramec 3, it is a  
16 twin furnace, one of the last two remaining twin furnaces,  
17 Foster Wheeler units that are operable in the country. So  
18 I don't know how practical it would be to convert that to  
19 natural gas.

20 Q. Let's assume for the sake of these next few  
21 questions that it is capable, such a study is. Assuming  
22 an effective retrofit could be done for Units 3 and 4 and  
23 assuming the current status of 1 and 2 --

24 A. Are we assuming that -- because when you  
25 talk a retrofit to natural gas, as you mentioned earlier,



1   you're talking about putting heat input into a boiler, but  
2   the boiler's just one piece of the plant.  There's turbine  
3   generators and all kinds of other things that go along  
4   with that.

5           Q.       And that's what I'd like to discuss with  
6   you is the elements that would be the same or different  
7   burning natural gas versus burning coal at the Meramec  
8   facility.

9           A.       Okay.

10          Q.       Would the boiler feed systems, would those  
11   be the same or different burning natural gas versus  
12   burning coal?

13          A.       Most likely they would be the same.

14          Q.       Would that include the feed water heaters?

15          A.       Most likely they would be the same.

16          Q.       The evaporator condensers?

17          A.       Most likely they would be the same.

18          Q.       The heater drain pumps?

19          A.       Most likely the same.

20          Q.       The heater drainers?

21          A.       I assume you're referring to the heater  
22   drain valves and things like that.  Is that what you're  
23   referring to?

24          Q.       Sure.

25          A.       Yeah.  I think -- I think that would be

1 similar.

2 Q. The de-aerators?

3 A. The DA on each? Yeah. Those are a portion  
4 of feed water, of the feed water system.

5 Q. The vent condensers?

6 A. The condenser vents?

7 Q. USOA says vent condensers. I'll go with  
8 their wording.

9 A. I think that the balance of plant, as I  
10 said, a lot of that would have to be looked at, but  
11 generally I would say, you know, conversion of fuel type,  
12 generally most of those would probably remain similar.

13 Q. These are the things that deal with taking  
14 that heated fluid jacket and making power out of it as  
15 opposed to getting the fuel into the box, right?

16 A. Those are some of the items that basically  
17 allow the steam to take the high pressure steam and  
18 convert it to electricity.

19 Q. So would the surge tanks be the same or  
20 comparable if you're using either fuel source?

21 A. I'm not sure what the reference is to surge  
22 tanks.

23 Q I don't know either.

24 A. I'm not familiar with those, with those  
25 units.

1 Q. The feed water regulators?

2 A. Most likely those would remain the same.

3 Q. The feed water measuring equipment?

4 A. You're talking about flow and temperature?

5 Q. Sure.

6 A. Yes, that would be similar.

7 Q. The drives associated with any of those

8 pumps and condensers and the aerators, the power sources

9 for those would be the same?

10 A. Yes.

11 Q. The boiler plant cranes?

12 A. Can you repeat the question, please?

13 Q. Boiler plant cranes, hoists and associated

14 drives?

15 A. They -- yeah, they probably wouldn't

16 change.

17 Q. The boilers and baffles?

18 A. I don't know about that without the

19 analysis as we talked about before. You'd have to do some

20 analysis if you're changing the heat input. I couldn't

21 comment on that.

22 Q. The economizers?

23 A. I think I'd prefer that we -- we would have

24 to do a review on that also. You're talking about boiler

25 components now that, when you change a fuel source,

1 generally you may have to -- you may have to review them.

2 You may have to make some changes.

3 Q. Well, and just to clarify, I think you  
4 indicated earlier that on two of those four boilers, they  
5 are already capable of that change, correct?

6 A. They're a different boiler design, and they  
7 were designed to be able to do that, yeah. They're a  
8 different boiler design completely.

9 Q. Well, and we're discussing the four plants  
10 in total, the four units in total.

11 A. But the capabilities of the units are  
12 different. When you look at Meramec 1 and 2, those units  
13 in total are equivalent to about Meramec 3, and they're a  
14 little less than Meramec 4. So it's not proportionate.

15 Q. And I'm not implying that it is. I'm  
16 simply asking for purposes of this exercise that we focus  
17 on what items of physical plant are the same whether the  
18 fuel source is coal or natural gas. Now, the soot  
19 blowers, I think we discussed earlier those probably  
20 wouldn't be necessary, correct?

21 A. The soot blowers. Soot blowers, correct.

22 Q. The foundations?

23 A. Foundations for the plant?

24 Q. Yeah.

25 A. That would be the same.

1 Q. You wouldn't have to dig those back out?

2 A. Hopefully not.

3 Q. The water walls?

4 A. Water walls are in the boiler. Again, that

5 would be something that would have to be analyzed.

6 Q. The arches, grates, insulation?

7 A. I think that would have to be analyzed

8 because that's associated with the boiler.

9 Q. Well, the coal handling and storage

10 equipment, that you wouldn't need, right?

11 A. That would be correct.

12 Q. What about the draft equipment, such as air

13 preheaters and accessories?

14 A. That would probably be -- the draft

15 equipment would most likely be still required. Again,

16 that would have to be analyzed.

17 Q. So that would include the induced and

18 forced draft fans?

19 A. Yes, I would think those would be required.

20 Q. Air ducts?

21 A. Yes.

22 Q. Combustion control mechanisms?

23 A. Yes.

24 Q. The drives and motors associated with that?

25 A. Yes.

1           Q.       The devices that you use for monitoring the  
2   boiler conditions, the instruments and devices associated  
3   with what I'll refer to as account 312, would those likely  
4   be the same or different?

5           A.       I think some would be the same. Some may  
6   change a little bit.

7           Q.       And some of those on Units 1 and 2 would  
8   already be in place for natural gas burning, correct?

9           A.       That's correct.

10          Q.       The lighting systems?

11          A.       Lighting systems would remain the same.

12          Q.       You're not going to upgrade to CFLs?

13          A.       We do where we can. I mean, we do, and we  
14   do what we can to reduce power in our plants, obviously.

15          Q.       The stacks?

16          A.       Most likely they would remain the same.

17          Q.       The station piping?

18          A.       Station piping? I'm not -- I'm not  
19   familiar necessarily with that term.

20          Q.       If I told you that it included pipes,  
21   valves, fittings, separators, traps, D super heaters,  
22   hangers, excavation covering, et cetera, would that  
23   refresh you?

24          A.       I think anything especially on 3 and 4 that  
25   are associated with the boiler proper would have to be

1 reviewed, and obviously there's drains and things in the  
2 plant that probably wouldn't need to be reviewed.

3 Q. The ventilating equipment?

4 A. The plant ventilating equipment would  
5 probably stay the same.

6 Q. The water purification equipment?

7 A. Probably the same.

8 Q. That would include your heat exchangers?

9 A. I think you mentioned the feed water  
10 heaters and heat exchangers would probably remain the  
11 same.

12 Q. The filters?

13 A. Yes.

14 Q. Your water tanks?

15 A. Yes.

16 Q. Piping?

17 A. I think piping's fairly general, but --

18 Q. The piping associated with the water  
19 purification equipment?

20 A. Yes. Uh-huh.

21 Q. The water supply systems?

22 A. I believe those would remain the same.

23 Q. And I assume you don't have a lot of wood  
24 fuel equipment?

25 A. Can you be more specific on that one?

1 Q. Any wood fuel equipment --

2 A. Oh, wood fuel equipment?

3 Q. -- fuel logs, accessories, elevators,  
4 conveyors, bins and grates, do you have any of that  
5 onsite?

6 A. We have elevators and things like that, but  
7 not some of the other stuff.

8 Q. So you wouldn't be getting rid of those if  
9 you switched to gas because you don't have them to begin  
10 with; is that a fair assumption?

11 A. That's a fair assumption.

12 Q. What about air cleaning and cooling  
13 apparatus?

14 A. I assume by air cleaning you're talking  
15 about emissions equipment. I mean, can you be more -- can  
16 you clarify that more?

17 Q. Well, I don't think -- I think you  
18 indicated you wouldn't need as much emissions equipment  
19 with natural gas, correct?

20 A. I think you're -- at Meramec, we basically  
21 have electrostatic precipitators, and I believe those  
22 would continue to remain in operation.

23 Q. So to the extent that you do air handling  
24 equipment environmental controls at Meramec, those would  
25 remain with natural gas?



1           A.       I believe for the most part most of those  
2 would remain, yes. We do not have scrubbers or SCRs at  
3 Meramec.

4           Q.       The cooling systems, air cooling?

5           A.       The -- when you say air cooling, I guess I  
6 kind of think of we have HVAC systems that support control  
7 applications, and that would remain. We don't -- we don't  
8 typically have a whole lot of air cooling, other air  
9 cooling systems in the facility.

10          Q.       What about the cranes, the hoists, the  
11 materials like that that you would have just for your own  
12 plant maintenance and that kind of thing onsite?

13          A.       I think those would remain the same.

14          Q.       Fire extinguishing system? I assume that  
15 refers to the building and not the boiler.

16          A.       Yeah. That would remain the same.

17          Q.       The lubricating systems for the mechanical  
18 parts of the building?

19          A.       Yeah. When I think lubricating systems,  
20 predominantly it's turbine and other equipment, and that  
21 would remain the same.

22          Q.       Would the turbines in general remain the  
23 same?

24          A.       I believe obviously for 1 and 2, you know,  
25 we can already run on gas that way. I think for 3 and 4,

1     you'd probably want to do a review to make sure.

2     Generally, they probably could.

3             Q.       The physical plant -- well, I'm not using  
4     these terms properly, so I'll be as general as I can. The  
5     entire area where the turbine is located, basically  
6     everything that is in that, is it called a turbine house?

7             A.       Turbine floor, turbine room, yeah.

8             Q.       Is there really anything in, on, below or  
9     about that building and its equipment that would change?

10            A.       Again, you know, subject to review, you  
11     know, I think there would be potentially some changes, but  
12     not significant probably.

13            Q.       And again, that's just to clarify, a review  
14     that you haven't done yet to see whether it would be?

15            A.       That's correct.

16            Q.       So you haven't looked to see whether 3 and  
17     4 can be economically converted to run on natural gas?

18            A.       I think we've -- in the past there's been  
19     some real rough analysis to see if there's a potential to  
20     just to switch them, and I think the problem that we've  
21     run into, as I said before, is that the gas infrastructure  
22     isn't there to be able to burn that much gas to get that  
23     level of generation. And I think that's why, you know,  
24     initially when those units were installed, that there was,  
25     you know, that they didn't look at that more. I mean,

1     that's why 1 and 2 have gas capability, and the gas  
2     infrastructure isn't there to support much more than that.

3             Q.     You didn't look at anything specifically  
4     for this case about whether or not there would be retrofit  
5     possibilities?

6             A.     Not for this case.

7             Q.     I've got a lot more lists I could go  
8     through. I think for the courtesy of everyone here, if we  
9     can simplify this, it may be a little easier. Is it safe  
10    to say that other than the coal handling equipment and a  
11    few changes to the boilers and, as you mentioned, bringing  
12    in the actual gas supply in sufficient quantities, that  
13    there's not a lot else that would have to change about  
14    Meramec in order for it to convert to gas?

15            A.     Again, as I mentioned earlier, I think  
16    there'd have to be an analysis done on the boiler  
17    equipment, and I think, you know, at Meramec, especially  
18    Units 3 and 4, the heat rate is significantly higher, and  
19    I think if we were going to look to convert say Meramec 3  
20    and 4 to natural gas, I think what you'd look to also is  
21    would it be more economically viable to, if you're going  
22    to go with natural gas, to go with a combined cycle plant  
23    somewhere else that would employ maybe 10 percent of the  
24    people and have much -- all the -- the amount of equipment  
25    that you described, it would probably be much, much less

1 at a newer plant that has a much better heat rate, that  
2 doesn't have all those water systems, doesn't have all  
3 those air systems, that's really set up to burn natural  
4 gas like a combustion turbine system.

5 I think when you go to decide, well, do you  
6 convert Meramec, the options you have to weigh are, how  
7 does that compare to a brand-new combined cycle plant  
8 somewhere that ultimately is much more efficient and has  
9 much less equipment and takes much less people to operate?

10 Q. How many acres do you have at Meramec?

11 A. I think it's about -- I think it's  
12 somewhere on the order, off the top of my head, 300 or  
13 400, somewhere in there.

14 Q. I was looking on Google Earth yesterday,  
15 actually, at least I think I was, and it looked like there  
16 was a lot of coal yards around it. Was that --

17 A. Coal yards?

18 Q. Was I looking at the right area?

19 A. I think what -- what you see when you look  
20 at it from Google Earth is, there's a -- there's two,  
21 basically two coal areas. There's a place where the main  
22 coal is for the plant, and then there is an auxiliary coal  
23 pile. You probably saw that. And then the rest of it  
24 is -- the rest of the open space is taking up -- taken up  
25 by fly ash ponds.

1 Q. Oh, okay.

2 A. Because over the life of the plant, it went  
3 into service in the '50s, early to late '50s. We've used  
4 up our fly ash pond capability. So when you look and you  
5 see kind of open ground, what's not occupied by coal is  
6 typically old fly ash ponds.

7 Q. How much area does a typical modern  
8 combustion turbine generator take up?

9 A. I'd -- from an acre perspective, I don't  
10 have that off the top of my head. You know, I think if  
11 you're going to say -- if you looked at, like, our Venice  
12 plant, which currently has new combustion turbines there,  
13 it's less acreage than a coal plant.

14 Q. Now, you mentioned Venice. Was that always  
15 a combustion turbine site?

16 A. It was not.

17 Q. What was it before?

18 A. At one point back in the, I guess up until  
19 the mid '70s it burned coal, and then converted to oil,  
20 and ultimately we ended up installing combustion turbines  
21 at the site.

22 Q. Let's switch gears for a little bit and  
23 talk about Labadie.

24 A. Yes.

25 Q. I believe you mentioned in your testimony

1 the, what you described as the significant cost of cooling  
2 towers?

3 A. Yes.

4 Q. Did you do a study of the economic  
5 feasibility of installing cooling towers at Labadie?

6 A. We have looked at that, and basically it  
7 was more to get a rough idea of the site geometry and a  
8 rough idea of what the costs were. When you say an  
9 economic viability study, I don't know that I would phrase  
10 it that way. I would phrase it more as an engineering  
11 analysis to see if it -- where you'd place them and  
12 roughly how much they would cost.

13 Q. Well, when you looked at roughly how much  
14 they would cost, did you figure how many years you would  
15 have available to recoup that expense over? Is that  
16 something that was looked at?

17 A. I think when you look at it, you would  
18 assume that, you know, you assume 20-year life typically  
19 on the site.

20 Q. What year did you anticipate completing  
21 those cooling towers in your quick look at it?

22 A. The cool -- the cooling towers that we  
23 looked at at Labadie were driven by the need to have  
24 adequate cooling water at Labadie, and our concerns at the  
25 time when we looked at it were associated with low levels

1 on the Missouri River, because Labadie being a once-  
2 through cooling-type plant, if we don't have adequate  
3 water in the Missouri River, basically the plant could be  
4 forced to shut down. And we've had periods in the past  
5 where -- where that has been a potential concern.

6 So when we looked at it, part of the  
7 analysis was to help mitigate some of that risk and help  
8 mitigate some of the thermal cooling risk associated with  
9 Labadie. Since that point when the initial analysis was  
10 done, we've returned to more normal levels in the  
11 reservoirs above the Missouri River, so it's kind of --  
12 I'm not going to say -- it's kind of pushed back the need  
13 for those right at this point.

14 So, you know, it's something I'm sure we'll  
15 look at again in the future, but the need wasn't as great  
16 as when we initially looked at it.

17 Q. Are you good at your job?

18 A. I do the best that I can.

19 Q. Are you better than comparable personnel at  
20 other companies?

21 A. I would hope that I am.

22 Q. What percentile would you put yourself in?

23 A. Well, I don't know that I'd put myself in a  
24 percentile. What I would say is that --

25 Q. If you had to.

1           A.       I'm not going to do that, but what I would  
2 tell you --

3                   MS. KLIETHERMES: Judge, could you instruct  
4 the witness to answer the question?

5                   JUDGE WOODRUFF: You'll need to answer the  
6 question.

7                   THE WITNESS: Pardon me, Judge.

8                   JUDGE WOODRUFF: Her question is about what  
9 percentile you'd put yourself into. You don't have to be  
10 modest.

11                  MR. LOWERY: If you can answer the  
12 question.

13                  THE WITNESS: Yeah. I -- I've never --  
14 I've never looked or been rated that way. So I don't know  
15 how to -- you know, what I was going to tell you is that I  
16 believe that when I talk with, you know, or have  
17 discussions in different forums with other peers, I  
18 believe I have experience that is as good as or better  
19 than other people, and I have a pretty wide breadth of  
20 experience as far as what I've done.

21                  MS. KLIETHERMES: I think that's all I  
22 have. Thank you..

23                  THE WITNESS: Thank you.

24                  JUDGE WOODRUFF: Cross for MIEC?

25                  MR. DOWNEY: Yes, Judge.



1 CROSS-EXAMINATION BY MR. DOWNEY:

2 Q. Good morning, Mr. Birk.

3 A. Good morning.

4 (REPORTER'S NOTE: At this point, an  
5 in-camera session was held, which is contained in  
6 Volume 34, pages 2727 through 2738 of the transcript.

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

3 BY MR. DOWNEY:

4 Q. I want you to turn to your rebuttal at  
5 page 12, lines 5 through 7.

6 A. Okay.

7 Q. You note that the heat rate for Meramec is  
8 10,400 to 11,800 Btus per kilowatt hour, do you not?

9 A. Yes.

10 Q. You note that the heat rates for Labadie,  
11 Rush Island and Sioux are lower, 9,400 through 10,300 Btus  
12 per kilowatt hour, correct?

13 A. That is correct.

14 Q. Okay. And it's, I take it, your contention  
15 in your rebuttal that that means that Meramec is less  
16 efficient than those other plants?

17 A. That is correct.

18 Q. It has to burn more coal or more fuel in  
19 order to produce the same amount of electricity?

20 A. It's kind of like a miles per gallon in a  
21 car. It would have a lower miles per gallon than, say, an  
22 equivalent Labadie, Rush Island or Sioux unit would.

23 Q. So you're saying that supports your  
24 position that Meramec would have an earlier retirement  
25 date than, say -- or a shorter life, say, than the other

1 steam plants?

2 A. I think what my testimony says is Meramec  
3 is less efficient and basically requires higher fuel and  
4 emissions costs to operate, and I think one of the things  
5 when you look at plants, especially when you take  
6 environmental considerations into account, the ones that  
7 are the least efficient are the ones that typically become  
8 more cost prohibitive as far as the economics associated  
9 with adding environmental equipment and things added like  
10 that.

11 Q. Are you familiar with who Mr. Loos is?

12 A. Yes, I am.

13 Q. Did I pronounce his last name correctly?

14 A. I believe so, yes.

15 Q. And he works for Black & Veatch?

16 A. I believe he works for -- I'm not sure  
17 whether it's Black & Veatch or Burns & MacDonald.

18 MR. DOWNEY: Your Honor, may I approach the  
19 witness?

20 JUDGE WOODRUFF: You may.

21 BY MR. DOWNEY:

22 Q. I'm handing you what I'll represent is the  
23 direct testimony of Mr. Loos and ask you to look at page 3  
24 of that.

25 A. Yeah. Okay.

1           Q.       It's easy to confuse these consulting  
2 firms. So he does work for Black & Veatch?  
3           A.       Yes, he does.  
4           Q.       And he performed a life analysis for  
5 Ameren, did he not?  
6           A.       Yes, he did.  
7           Q.       And that was pretty much the subject of his  
8 testimony, correct?  
9           A.       That's what I believe it to be, yes.  
10          Q.       I should have left this up there. I'm  
11 sorry. I'm going to ask you to look at Appendix A2 of his  
12 direct testimony. Do you have that?  
13          A.       Yes.  
14          Q.       Okay. Are these his data to support the,  
15 quote, retired plants survey component of his life study?  
16          A.       What the appendix indicates is the age at  
17 retirement, the units retired from service, and from a  
18 velocity suite database dated April 2009.  
19          Q.       I'd ask you to turn to page 4-1 of his  
20 study. You may have to turn back a little bit.  
21          A.       In the appendix?  
22          Q.       Should have flagged it.  
23          A.       Okay.  
24          Q.       On that page, does it indicate that the  
25 data to support the retired plant survey is in

1 Appendix A2?

2 A. Table A1 of Appendix A, is that what you  
3 were referring to?

4 Q. You've got my copy,

5 A. Is this what you're talking about? That's  
6 on page 4-2.

7 Q. Okay. I'm sorry. 4-2.

8 A. Yeah, on page 4-2, on section 4.2, the  
9 retired plant survey.

10 Q. I'd like you to turn back to that  
11 Appendix A2.

12 A. Okay.

13 Q. How many units were included in that  
14 survey?

15 A. It says that there were 586 units included.

16 Q. Do you know the average heat rate for those  
17 units?

18 A. I do not know the average heat rate of  
19 those units.

20 MR. LOWERY: Your Honor, I may not have an  
21 objection. I guess it's a question. Because Mr. Loos'  
22 testimony is in the record, including, I think, the  
23 excerpt that Mr. Downey is marking, and I think the heat  
24 rate's calculated for those units. So I'm not really  
25 sure -- I'm not really sure what the point of asking

1 Mr. Birk all these questions is. Maybe he's laying a  
2 foundation for another question. If that's so, perhaps  
3 it's appropriate, but --

4 JUDGE WOODRUFF: I haven't heard an  
5 objection yet. Is there an objection?

6 MR. LOWERY: Well, I guess I'm going to  
7 object on improper foundation at this point. Perhaps he  
8 can respond to that. Again, he's asking Mr. Birk  
9 questions on things that are already in the record.  
10 There's no foundation that Mr. Birk knows really anything  
11 about this Black & Veatch study in any detail at all.

12 JUDGE WOODRUFF: Mr. Downey, what's your  
13 response to that?

14 MR. DOWNEY: My response is that I'm -- I'm  
15 going to provide a document, Exhibit 442, which is an  
16 admission of the company because it's a response to DRs  
17 from the company, showing the heat rates.

18 MR. LOWERY: Is this going to be 442?

19 MR. DOWNEY: Yes.

20 MR. LOWERY: This document is in Mr. Loos'  
21 testimony that's already in the record. Again, I don't  
22 understand any foundation for any questions to Mr. Birk  
23 about Mr. Loos' study.

24 MR. DOWNEY: Judge, this is  
25 cross-examination. The witness is testifying that the

1 retirement date for Meramec should be earlier than the  
2 retirement dates for the other units or its life should be  
3 shorter because the heat rate is slightly above the heat  
4 rate for the other units, and this document shows that the  
5 average heat rate of the 500-something units that Mr. Loos  
6 studied is actually higher than Meramec, not just higher  
7 than the other steam units, but higher than Meramec.

8 JUDGE WOODRUFF: I'm going to overrule the  
9 objection. You can proceed.

10 BY MR. DOWNEY:

11 Q. Okay. According to Exhibit 442, please  
12 tell the Commission what the average heat rate is for  
13 those 586 units.

14 A. According to Exhibit 442, the average heat  
15 rate is, it appears to be 12,323.

16 Q. Okay. And that is, in fact, higher than  
17 the heat rate for Meramec, correct?

18 A. I believe that's higher than the heat rate  
19 for Meramec.

20 Q. Now, I have another question for you, and I  
21 know this is in the record somewhere, but I'm not sure  
22 it's in one place. There's one nuclear unit that AmerenUE  
23 has, correct?

24 A. That's correct.

25 Q. And there's 12 steam units that Ameren has,

1 correct?

2 A. 12 fossil-fired units, that's correct.

3 Q. And then there's 20-something hydro

4 production units; is that correct?

5 A. There's -- if you don't include Taum Sauk,

6 there's 23. If you include Taum Sauk, there's 25.

7 Q. I was hoping you'd have the exact number.

8 And how many gas turbines does Ameren operate?

9 A. It's -- the individual units, I don't have

10 the exact number on the individual units. You're talking

11 about AmerenUE? You're talking about AmerenUE, I

12 assume --

13 Q. Yes.

14 A. -- correct?

15 And it's -- we have 15 sites, and it's on

16 the order of probably close to 50 units.

17 Q. All right. Thank you.

18 A. Those are gas and oil, by the way. There's

19 some oil-fired units in there, too.

20 Q. I want to follow up on a line of

21 questioning that Staff had, and that is with regard to the

22 gas lines coming into the Meramec plant.

23 A. Yeah, the main gas line coming in. Uh-huh.

24 Q. And you're proposing that that plant be

25 retired in 2022 --



1 A. Yes.

2 Q. -- correct?

3 A. Yes, that's correct.

4 Q. Okay. And is it fair to say that the  
5 company, you're not aware that the company has contacted  
6 your natural gas supplier to determine whether between now  
7 and 2022 those gas lines could be expanded?

8 A. Yeah, I'm not aware that we've done any  
9 studies to determine whether they can or can't be or what  
10 the cost of that would be.

11 MR. DOWNEY: Your Honor, I would offer  
12 Exhibit 442.

13 JUDGE WOODRUFF: 442 has been offered. Any  
14 objection to its receipt?

15 MR. LOWERY: I'm going to object that it's  
16 cumulative. It's already in Mr. Loos' testimony, which is  
17 in the record, this schedule. I don't know why we're  
18 marking it as a separate exhibit and admitting another  
19 duplicate document into the record.

20 MR. DOWNEY: Judge, I did not know it was  
21 in his testimony. Can I just confirm that? If so, then I  
22 won't have any problem.

23 JUDGE WOODRUFF: Take a moment.

24 MR. DOWNEY: It is not my intent to add  
25 extra paper to this record, I can tell you.

1                   MR. LOWERY: Your Honor, the heat rates are  
2 not listed in Mr. Loos' testimony. I don't know where  
3 this document came from. Mr. Birk read a number into the  
4 record but hasn't verified himself whether the  
5 calculation's correct. So I'm going to -- I'd like at  
6 least some time to figure out where this document came  
7 from because I don't even know where it came from.

8                   JUDGE WOODRUFF: Do you know where the  
9 document came from?

10                  MR. DOWNEY: It's a response of Ameren to a  
11 DR that MIEC posed. It's at least an Ameren witness from  
12 Ameren itself.

13                  MR. LOWERY: That might be true, but I  
14 can't verify that, and if I could inquire of Mr. Birk, I  
15 don't think he knows that to be true.

16                  THE WITNESS: I don't know that to be --  
17 that was not a response I --

18                  MR. LOWERY: There's no foundation at least  
19 at this point that that, in fact, is the case.

20                  JUDGE WOODRUFF: If you want to take until  
21 after the next break to look into this as to where it came  
22 from, I'll reserve a ruling on the admission of the  
23 document until then.

24                  MR. LOWERY: Thank you. In fact, I think,  
25 your Honor, if I might be allowed, just to facilitate

1 resolving this issue, if I could inquire of Mr. Birk about  
2 his knowledge of this document, because I'm not sure  
3 there's any foundation, regardless whether it's been  
4 provided by the company or not, that anybody -- that has  
5 been laid that would verify the accuracy of the document.

6 JUDGE WOODRUFF: Go ahead.

7 VOIR DIRE EXAMINATION BY MR. LOWERY:

8 Q. Mr. Birk, has this been marked for  
9 identification as Exhibit --

10 JUDGE WOODRUFF: 442.

11 MR. LOWERY: 442.

12 BY MR. LOWERY:

13 Q. Mr. Birk, have you ever seen this document  
14 before?

15 A. No, I have not.

16 Q. Are you familiar with the data relating to  
17 the 500-some units that are listed in the document?

18 A. I'm not.

19 Q. Have you done any calculations of what the  
20 heat rates for those units are?

21 A. I can't verify any of the accuracy of the  
22 heat rate information on these units.

23 Q. To the best of your knowledge, did you  
24 answer a DR that relates to this?

25 A. Not to my knowledge, no.

1                   MR. LOWERY: That's all I have, your Honor.  
2 We will review the matter, but at this point my objection  
3 is improper foundation for admission of this document.

4                   MR. DOWNEY: Judge, I would just say the  
5 document itself shows that it's a DR response to an MIEC  
6 request and that it's from the company.

7                   JUDGE WOODRUFF: And it's also shown as  
8 Schedule LWL, which I assume is Mr. Loos.

9                   MR. DOWNEY: Yes. In fact, I think  
10 Mr. Lowery thought this came exactly from Mr. Loos'  
11 testimony. You know, I would suggest it's an admission.  
12 If Mr. Lowery wants to question whether I've doctored this  
13 response or in any way altered it, then fine, but it is an  
14 admission.

15                  JUDGE WOODRUFF: All right. Well, I  
16 indicated I'd reserve ruling on that, and that's what I'll  
17 do. Bring it back up again after our next break.

18                  Okay. We'll come -- I assume you were  
19 done, Mr. Downey?

20                  MR. DOWNEY: Yes.

21                  JUDGE WOODRUFF: Come up for questions from  
22 the Bench. Commissioner Jarrett?

23                  COMMISSIONER JARRETT: I have no questions.  
24 Thank you, sir.

25                  THE WITNESS: Thank you, Commissioner.

1 JUDGE WOODRUFF: There are no questions  
2 from the Bench, so no need for recross. Any redirect?

3 MR. LOWERY: I apologize, your Honor. Are  
4 we up for redirect?

5 JUDGE WOODRUFF: Redirect.

6 MR. LOWERY: Thank you.

7 REDIRECT EXAMINATION BY MR. LOWERY:

8 Q. Mr. Birk, I'll start in reverse order.  
9 Mr. Downey asked you about expansion of gas lines that  
10 serve the Meramec plant. Do you remember that question?

11 A. Yes, I do.

12 Q. Do you have any opinion about whether it  
13 would be feasible to expand those gas lines or not?

14 A. Like I said, we -- there's been no formal  
15 analysis, but I know from operational experience that we  
16 currently have problems even at Meramec in the winter with  
17 even being able to start units up at times because of  
18 potential gas limitations.

19 So my opinion would be that there would  
20 be -- there would be limitations especially in the winter  
21 and potentially in the summer with being able to supply  
22 the amount of gas needed at Meramec.

23 Q. The Meramec plant, what's it surrounded by?  
24 What kind of locale does it have vis-a-vis some of the  
25 other plants?

1           A.       Basically, the Meramec plant was built in  
2     the '50s, and what's basically around it now is we've had  
3     more and more development, residential subdivisions. In  
4     fact, a number of years ago we actually had to install  
5     silencers at the plant because of noise concerns of the  
6     local residents, and it's in -- of any of the plants,  
7     fossil plants that we have, it is in the most developed  
8     area.

9           Q.       Do you have any experience with the  
10    difficulty or lack of difficulty, whichever it might be,  
11    for example, of building or expanding a transmission line  
12    or a gas line?

13                   MS. KLIETHERMES: I'm going to object,  
14    Judge. This is exceeding the scope of any  
15    cross-examination or any questions from the Bench.

16                   JUDGE WOODRUFF: There were no questions  
17    from the Bench, but there was cross about the expansion of  
18    the plant or the retrofit of the plant. So I'll allow the  
19    question.

20    BY MR. LOWERY:

21           Q.       Do you have any experience, Mr. Birk, with  
22    the relative difficulty of expanding a transmission line  
23    or a gas line in a more populated area versus a less  
24    populated area?

25           A.       Generally, in a more populated area

1 obviously it's tougher to do. It's tougher to build  
2 transmission or gas lines in a more highly populated area.

3 Q. Do you have any expectation about whether a  
4 gas line could be expanded in this particular area given  
5 the residential development that you've talked about?

6 A. You know, I think it would be -- it would  
7 be tough. It's something we'd have to look at.

8 Q. Mr. Downey asked you some questions about  
9 heat rates of plants, perhaps 500 plants or whatever it  
10 was, 500 units on this particular exhibit that he asked  
11 you about. What does the fact that you see a lot of --  
12 well, let me back up.

13 Do you know whether the calculations shown  
14 on that exhibit is accurate or not?

15 A. For heat rate?

16 Q. Yes.

17 A. I do not know that.

18 Q. If we assume that it is, does the fact that  
19 you see a lot of retired units in a database that may have  
20 a high average heat rate, does that surprise you?

21 A. No. I think it's consistent with the life  
22 of the plants. As technology progressed through time,  
23 generally the newer larger plants got to be more  
24 efficient. And the coal plants that are being built now,  
25 the ones that are are much more efficient than the ones

1     that were built 20, 30 years ago. So it doesn't surprise  
2     me at all that the plants that are retired are the ones  
3     that have the higher heat rates.

4             Q.       Does that relate in any way to your opinion  
5     about the relative retirement date of Meramec versus the  
6     other three coal units UE has?

7             A.       Yes, it does. I think when you look at --  
8     when you look at the Burns & McDonnell analysis, you know,  
9     two things that they basically said they really didn't  
10    consider were the economic viability of the plant and any  
11    environmental regulations.

12            And I think when you take that into account  
13    and you look to spend a capital dollar or even an O&M  
14    dollar at a particular plant, you're going to spend them  
15    at the plants that have the lowest heat rate and basically  
16    have the best future viability.

17            Q.       You were asked a number of questions about  
18    the Burns & McDonnell study. Do you recall those.

19            A.       Yes, I do.

20            Q.       Did Burns & Mac in that study, did they  
21    provide any required capital expenditures that would be  
22    necessary to, say, extend the life of the plant to, say,  
23    2025?

24            A.       Yeah. In the analysis they indicated that,  
25    I think what was in the plan when they did it, and this to



1 me is why some of the data in the study may be a little  
2 bit dated, but they indicated that it was based upon a  
3 level of spend from 2009 through 2014 at Meramec, capital  
4 spend of about \$50 million a year, and then after that  
5 somewhere in the ballpark of 20 or so million a year.

6 Q. Do you know how much the company has been  
7 spending, say, in 2009, '10, maybe as far as '11, plans to  
8 spend as far as '11 at the Meramec plant?

9 A. Yeah. Because of basically what we see  
10 from an environmental perspective, from an economic  
11 perspective, last year we spent -- in '09 we spent about  
12 23 million. This year we're spending about 6 million in  
13 capital at Meramec. Next year we plan to spend on the  
14 order of somewhere around 24 million, and then after that,  
15 it looks like 26 and in that range.

16 So we're not spending anywhere near the 50  
17 million a year that was contemplated when Burns &  
18 McDonnell did this analysis.

19 Q. If I understood your answer, the spend and  
20 the planned spend from, say, '09 to 2011 is about  
21 \$50 million?

22 A. That was the planned spend that was in the  
23 study. What we've actually spent from '09 through what we  
24 plan in 2011 is going to be probably on the order of  
25 \$50 million total, not \$50 million a year.

1           Q.       And Burns & Mac said that you needed to be  
2     spending \$150 million over that period?

3           A.       That's what their analysis was based upon,  
4     yes.

5           Q.       I think you might have answered this  
6     question, but did environmental compliance considerations  
7     fit into the Burns & Mac study in any way?

8           A.       Burns & Mac did not contemplate the  
9     environment requirements. And as I mentioned earlier, in  
10    regards to other environmental issues that are out there,  
11    they didn't contemplate any of those in this analysis.

12          Q.       Are you referring to the other  
13    environmental issues that were discussed in the in-camera  
14    session?

15          A.       Yes, I am.

16          Q.       Those all arose after Burns & Mac's study  
17    was done?

18          A.       Yes. Those were formally issued after the  
19    study was complete.

20          Q.       You were asked by Mr. Downey about plans to  
21    replace the Meramec capacity. Do you remember that?

22          A.       Yes, I do.

23          Q.       Are there some options for replacing that  
24    capacity, and if there are, what might they be?

25          A.       Yeah, there are definitely options, and I

1 think when you look at Meramec and some of this, I think  
2 you'd look toward the potential of peaking gas or  
3 intermediate gas facilities. I think we also have been  
4 developing a renewable portfolio which we believe will  
5 take more prominence in the future. And then we're also  
6 looking for energy efficiency and demand response type  
7 programs.

8                   So I think when we go forward and when you  
9 get a question about what are you going to replace Meramec  
10 with, I think the answer would be it's going to be a  
11 combination of some form of additional gas, some form of  
12 renewables and some form of energy efficiency demand  
13 response.

14           Q.       Do you as the VP in charge of power  
15 operations, do you have an opinion, at least a preliminary  
16 one as you sit here today -- obviously it's 12 years from  
17 now, so it's a little hard to say with specificity, but do  
18 you have an opinion about where the replacement capacity  
19 could come from, you mentioned gas or intermediate, where  
20 that might come from given the options that UE has?

21           A.       I think given the options that we have in  
22 the short term, to me, I believe that what you'd look for  
23 is probably some kind of -- type of potentially  
24 intermediate gas, along with a portion of it being  
25 renewables and then a portion of it coming from energy

1 efficiency. I think you're going to get all three of  
2 those.

3 Q. Would you expect that to be located at  
4 Meramec or perhaps at some other location on UE's system?

5 A. You know, I think we have done analysis in  
6 the past on gas peaking and intermediate plants, and while  
7 we haven't done a specific, okay, what does it look like  
8 at Meramec, what we have found is generally green field  
9 sites, because of what we had talked about earlier with  
10 the ability to get gas and transmission, they have  
11 generally been overall a cheaper way to go than converting  
12 a brown field site to burn gas, generally.

13 Q. You were asked a whole series of questions  
14 by Ms. Kliethermes about all kinds of intricate components  
15 of the plant and converting the Meramec plant to gas. Do  
16 you remember all -- I'm sure you do remember those  
17 questions.

18 A. Yes, I do.

19 Q. Does the company have any plans to convert  
20 the Meramec plant to gas-fired operation?

21 A. We do not currently have any plans to do  
22 that.

23 Q. Is that something that's even on your radar  
24 screen to study?

25 A. It's something that we could potentially

1 look at, but to me, when you look at the amount of old  
2 components that are in that plant and the staffing and the  
3 proximity or location of that plant, when you weigh all  
4 that and realize that you can put a brand-new combined  
5 cycle plant at another location where you'd have all new  
6 equipment, you don't have kind of the geographical  
7 concerns being in a neighborhood, so to speak, and you  
8 have much fewer employees, I think -- I think initially  
9 what we'd look to do to replace that capacity would be  
10 some other site or some other location.

11 Q. I think you mentioned a combined cycle  
12 operation at Venice might be a possibility?

13 A. That's a potential, or converting the  
14 Venice plant to combined cycle would be a potential or a  
15 new green field site. One thing about a new combined  
16 cycle that didn't come up in the Meramec discussion, even  
17 if you do the gas conversion at Meramec, you still have a  
18 plant that has an 11, you know, 11 or so thousand heat  
19 rate. The new intermediate combined cycle plants, they  
20 have heat rates that are in the low 7,000s.

21 So, you know, even though you may look at  
22 it and say, well, yeah, you can put gas at Meramec, why  
23 would you put -- you know, it would be like, you know,  
24 buying a car that gets 20 miles to the gallon as opposed  
25 to buying one that gets 30 miles to the gallon. Why would

1     you do it? Why would you convert something that's older  
2     and less efficient as opposed to putting a new one in  
3     that's more efficient.

4             Q.       Do I understand correctly from your answers  
5     that even if the heat rates were competitive, and it seems  
6     like you're indicating they're not competitive, that even  
7     if they were competitive, that the O&M, labor and other  
8     things associated with trying to run Meramec as an  
9     intermediate or combined cycle plant would be much greater  
10    than another option that was available to you?

11            A.       Yeah.

12                   MR. DOWNEY: Judge, I'm going to object.  
13    That's a leading question.

14                   JUDGE WOODRUFF: Sustain that objection.

15    BY MR. LOWERY:

16             Q.       Do you have an opinion about whether the  
17    relative O&M at a Meramec site that might be turned into a  
18    combined cycle gas plant would be more, less or the same  
19    as another option you might have?

20            A.       Yeah. It -- you know, in trying to convert  
21    a Meramec plant to gas --

22                   MR. DOWNEY: I'm going to object that this  
23    goes beyond the question. The question was, do you have  
24    an opinion? His answer is yes. Now he's providing  
25    narrative.

1 JUDGE WOODRUFF: All right. I'll sustain  
2 that objection. You can ask your next question.

3 BY MR. LOWERY:

4 Q. What is that opinion?

5 A. That opinion -- that opinion is that if  
6 you -- if you convert Meramec to gas, you still have all  
7 of the old infrastructure that you have to deal with from  
8 a capital and O&M perspective. You still have, you know,  
9 as we went through, you still have -- and I think it was  
10 laid out perfectly by the Staff. You still have all the  
11 other turbines, all the old generators, all the old  
12 condensers, all the old feed water heaters, all of that  
13 stuff that would have to be addressed that you wouldn't  
14 have to address with new combined cycle plant somewhere.

15 So, yes, the capital and O&M expenditures  
16 will definitely be higher at -- if you go and repower  
17 Meramec plant than they would be at a new green field  
18 site.

19 Q. Do you have an opinion about what kind of  
20 costs -- let's ignore fuel for a minute, but what kinds of  
21 costs drive the economics of a power plant?

22 A. Basically from an O&M perspective, when you  
23 ignore fuel, it's the maintenance cost associated with the  
24 plant and the operating cost. And typically when you look  
25 at the O&M side of a plant, other than fuel, you know,

1 about 55 to 60 percent of the costs or so are driven by  
2 labor costs, and then the rest of it would be -- would be  
3 basically the cost associated with the maintenance and the  
4 other materials needed to maintain and operate the plant.  
5 So it's a big -- labor's a big component in the cost.

6 Q. Do you know or do you have some reasonable  
7 estimate of how the number of employees and labor costs  
8 might compare at trying to run Meramec as a combined cycle  
9 gas operation as opposed to a new combined cycle gas  
10 operation?

11 A. The closest example I have is our Venice  
12 plant, and at Meramec right now we have about 230  
13 employees, and we get about 900 megawatts or so out of the  
14 plant, maybe a little less. At our Venice plant, which is  
15 just a gas peaking plant, we can get close to 600  
16 megawatts and we have somewhere on the order of probably  
17 six to ten employees.

18 Q. Is there --

19 A. So it's a significant difference.

20 Q. Is there some general rule of thumb or  
21 average amount that an employee, total cost, loaded cost  
22 of wages, benefits, et cetera, what an employee costs you  
23 at a power plant?

24 A. We typically figure, with everything in,  
25 it's typically about \$100,000, everything loaded, per



1 employee.

2 MR. LOWERY: Your Honor, subject to us  
3 coming back and justifying why it's proprietary or highly  
4 confidential later, I would like to go in-camera just for  
5 purposes of a couple questions.

6 JUDGE WOODRUFF: We are going in-camera.

7 (REPORTER'S NOTE: At this point an  
8 in-camera session was held, which is contained in  
9 Volume 34, pages 2763 through 2764 of the transcript.)

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1 JUDGE WOODRUFF: And we're back in regular  
2 session. And while we were in camera, AmerenUE completed  
3 its redirect, so Mr. Birk, you can step down.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: I believe we have one  
6 other matter we wanted to take up this morning, and that  
7 was Mr. Wakeman on the union issues.

8 MR. WOODSMALL: Your Honor, before we get  
9 started on that, I wanted to note, I think as we pointed  
10 out in the witness list, Mr. Chriss, the representative  
11 for MEUA, has to be out of here by noon. I just want to  
12 make everybody aware of that.

13 JUDGE WOODRUFF: I suspect this will be  
14 quick. We'll take Mr. Chriss after we do mini openings on  
15 that issue.

16 MR. WOODSMALL: Great. Thank you.

17 JUDGE WOODRUFF: Mr. Fischer?

18 MR. FISCHER: Yes, Judge. At your  
19 direction, I would call Dave Wakeman back to the stand to  
20 address two exhibits which have been prepared in response  
21 to the Commission's questions.

22 JUDGE WOODRUFF: You have already been  
23 sworn earlier in this proceeding. You are still under  
24 oath.

25 THE WITNESS: Yes, sir.

1 DAVID WAKEMAN testified as follows:

2 DIRECT EXAMINATION BY MR. FISCHER:

3 Q. Please state your name and address for the  
4 record.

5 A. David N. Wakeman, 1901 Chouteau Avenue,  
6 St. Louis, Missouri.

7 Q. And are you the same David Wakeman that  
8 testified, I think, Tuesday of this -- in this hearing?

9 A. That's correct.

10 Q. Mr. Wakeman, do you have copies of the two  
11 exhibits that were prepared in response to the  
12 Commission's questions at that time?

13 A. I do.

14 Q. I'd like to ask you to turn your attention  
15 to Exhibit 278, which is entitled Comparison of Major  
16 Storms to Emergency Declarations.

17 A. Actually, I don't have a copy of that one.  
18 I'm sorry.

19 Q. Let me hand you a copy of 178.

20 A. Thank you.

21 Q. Was this exhibit prepared by you or under  
22 your direction, and can you explain to the Commission what  
23 it is?

24 A. Yes, it was. It was in response to  
25 Commissioner Davis' discussion we had when I testified

1 about the storm tracker and the use of statewide -- or  
2 state emergency declarations to include storms into a  
3 storm tracker as opposed to another definition that I had  
4 proposed. So what we did is we went out and we analyzed  
5 the storms that occurred since 2004 in our service  
6 territory and listed a number of data points here,  
7 customers out, date and expenses, and then whether there  
8 was emergency declaration for those storms. You can see  
9 that in that one column.

10 Q. Turning your attention to the last two  
11 columns of this exhibit, would you explain what those two  
12 columns are designed to show?

13 A. Yes. The second to the last, the IEEE  
14 column indicates whether that storm would have been  
15 classified as a major event given the IEEE 1366  
16 definition. The last column is whether or not the State  
17 had declared an emergency declaration with respect to the  
18 damage that occurred from that storm.

19 Q. Having had the opportunity to review this  
20 data -- or let me ask you first, is this data correct to  
21 the best of your knowledge and belief?

22 A. Yes, it is.

23 Q. Having had an opportunity to review this  
24 matter, do you have any further opinions that you'd like  
25 to express to the Commission regarding the use of the IEEE

1       versus the emergency declaration standards?

2               A.       Yes.  Yes, I do.  Initially I had proposed  
3       we use the IEEE definition, and Commissioner Davis had  
4       suggested is there some middle ground on how we might  
5       approach this, and I think that the emergency declaration  
6       that he proposed, it would be an adequate measure to  
7       include storms within the storm tracker.

8               So if we used the emergency declaration by  
9       the State and when damage occurred in an area and we had  
10       electrical outages associate with that damage, then to  
11       include those costs into a storm tracker I think would be  
12       an appropriate middle ground to strike.

13              MR. FISCHER:  Judge, with that, I would  
14       move for the admission of Exhibit 178.

15              JUDGE WOODRUFF:  178 has been offered.  
16       Does anyone object to its receipt?

17              (No response.)

18              JUDGE WOODRUFF:  Hearing no objection, it  
19       will be received.

20              (EXHIBIT NO. 178 WAS RECEIVED INTO  
21       EVIDENCE.)

22       BY MR. FISCHER:

23              Q.       Mr. Wakeman, then I'd like to turn your  
24       attention to Exhibit 179, which is entitled AmerenUE's  
25       Response to Request for Additional Information for

1 Commissioners Davis and Jarrett. Do you have that exhibit  
2 in front of you?

3 A. Yes, I do.

4 Q. Was this exhibit also prepared by you or  
5 under your direction?

6 A. Yes, it was.

7 Q. Would you explain to the Commission what  
8 this is intended to show?

9 A. Yes. This was a request by Commissioners  
10 Davis and Jarrett that indicated, that asked us to look at  
11 what kind of additional training -- costs would be  
12 associated with training additional employees to, as  
13 response to discussions we had with the union and others  
14 on Tuesday. So this outlines the capital and O&M  
15 expenditures that would allow us to increase training  
16 capability and employees to be trained.

17 Q. Could you go through with a little more  
18 specificity the capital items first?

19 A. Yes, certainly. The first couple items  
20 are -- the first item is an addition to our training  
21 facility in our complex. We currently have a T&D training  
22 center, which is limited in space, and so to accommodate  
23 additional training, we would have to add some building  
24 space.

25 The second item is a new Smart Grid type of

1 switchgear that goes in that facility which would be part  
2 of the training. So it's a new substation switchgear that  
3 would allow employees to train on the newest type of  
4 equipment that we're putting in the field now as opposed  
5 to what we have currently at that facility.

6                   The third item is additional training  
7 equipment for those -- for those employees, new modern  
8 types of devices that we're now using on our system that  
9 would improve training for new employees.

10                   The fourth item, the mobile trailer is  
11 around Smart Grid applications of devices in the field.  
12 It would allow the new distribution system technicians as  
13 well as others at the company to train on these devices  
14 that we put out on the poles and accomplish Smart Grid  
15 applications on the distribution system.

16                   And then the last item under capital is  
17 additional equipment that these employees would need to do  
18 their job. So if we train these additional employees for  
19 them to go out into the field and actually be productive  
20 employees, they need really some significant capital  
21 equipment for relay testers and other things that are  
22 pretty substantial pieces of equipment. So that last line  
23 is the total cost to equip them after they're done  
24 training.

25                   Q.       I notice that 2.1 million is listed as the

1 total cost, and there's a reference to amortized over five  
2 years. Do you know whether similar capital costs have  
3 been amortized in the past?

4 A. Yes. I believe that the approach that was  
5 taken last year was -- or the last rate case surrounding  
6 training with power plant operations was done over a  
7 five-year period, the capital costs.

8 Q. Could you also go through with a little  
9 more specificity the operations and maintenance items that  
10 you have listed?

11 A. Yes. The O&M component is really  
12 specifically around the employees and deals with 14  
13 additional employees, one training supervisor that would  
14 be an addition to the staff at our training facility to  
15 allow us to accomplish this training, and then 13  
16 employees that are in the classifications we discussed the  
17 other day, which are distribution system technician,  
18 system relay testers and substation mechanics.

19 That's the overwhelming portion of that O&M  
20 component. There's a small portion for some minor tools  
21 that are not capital items.

22 Q. Okay. And it totals 1.29 million for the  
23 O&M; is that correct?

24 A. That is correct, yes.

25 Q. And then there's a paragraph that indicates



1     that AmerenUE agrees to assess the incremental value to  
2     customers of these additional investments and provide that  
3     assessment to the Commission Staff and the Office of  
4     Public Counsel by December 31st, 2011; is that correct?

5             A.       That's correct.

6             Q.       Do you know if that's an item that some of  
7     the parties had requested be included in your proposal?

8             A.       Yes, that is. After some discussions,  
9     after the agreement to make this submittal, there were  
10    some comments from the Office of Public Counsel related to  
11    could we do an analysis about the benefit that's gained by  
12    customers as a result of this investment.

13            Q.       Do you have any other comments you'd like  
14    to make regarding Exhibit 179 before I tender you for  
15    cross?

16            A.       No, I do not.

17                    MR. FISCHER: Judge, with that, I'd move  
18    for the admission of Exhibit 179 and tender the witness  
19    for cross on either of these items.

20                    JUDGE WOODRUFF: 179 has been offered. Any  
21    objections to its receipt?

22                    (No response.)

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

25                    (EXHIBIT NO. 179 WAS RECEIVED INTO

1 EVIDENCE.)

2 JUDGE WOODRUFF: Does any party wish to  
3 cross on these issues? Let's start with Public Counsel.

4 CROSS-EXAMINATION BY MR. MILLS:

5 Q. Good morning, Mr. Wakeman.

6 A. Good morning.

7 Q. Are all of UE's trucks brand-new?

8 A. No, they are not.

9 Q. If the PSC were to give you \$2 million,  
10 could you find a way to spend that on your fleet?

11 A. Could we spend it on our fleet? Yes, we  
12 could.

13 Q. Are all of your distribution transformers  
14 brand-new?

15 A. No, they're not.

16 Q. If the PSC were to give you \$2 million to  
17 spend on distribution transformers, could you find a way  
18 to spend that?

19 A. Could we find a way? Yes.

20 Q. Would either of those \$2 million  
21 investments be stupid?

22 A. I don't think they would be prudent  
23 investments at this point.

24 Q. Would they be essential investments?

25 A. Not given the life span of that equipment,

1 no, it wouldn't be essential at this time.

2 Q. So they'd be somewhere on the spectrum  
3 between absolutely pointless and absolutely necessary,  
4 right?

5 A. They would be, yes.

6 Q. Now, if the Commission does not give you in  
7 this case an additional \$1.71 million in addition to the  
8 revenue requirement that it finds otherwise just and  
9 reasonable, would the company's training program be  
10 inadequate?

11 A. No.

12 Q. Now, with respect to the distribution  
13 transformers and the fleet, couldn't we come up with any  
14 number of additional categories of investment where you  
15 could make similar additional investments if the PSC were  
16 to give you additional dollars?

17 A. I suppose we could, yes.

18 Q. Where the investments in any number of  
19 categories would fall on the spectrum between pointless  
20 and necessary?

21 A. Yes.

22 Q. Is there anything so different about the  
23 way that UE invests in employee training compared to all  
24 of the other things that you invest in that requires the  
25 PSC to step in and make you do more than you would have

1 done on your own?

2 A. Could you repeat the question? I'm sorry.

3 Q. Is there anything that's so different about  
4 the way that UE invests in employee training that is so  
5 different from all the other things that you invest in  
6 that requires the PSC to step in and make you do more than  
7 you would have done on your own?

8 A. No. I would say there's not. However, I  
9 would add that this was a discussion that came out of  
10 additional requirements we're going to have going forward  
11 and an aging workforce situation. That was really the  
12 result of those discussions.

13 Q. And you're aware of the additional  
14 requirements, are you not?

15 A. We're aware of some of them, yes.

16 Q. And you have been aware for some time of  
17 the workforce aging issue, have you not?

18 A. That is correct.

19 Q. If the PSC did not step in on your behalf,  
20 you are fully prepared to address them on your own, are  
21 you not?

22 A. We are addressing them, making business  
23 decisions on a daily basis with respect to those issues.

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

25 JUDGE WOODRUFF: Staff?

1 MR. WILLIAMS: Thank you, Judge.

2 CROSS-EXAMINATION BY MR. WILLIAMS:

3 Q. Good morning, Mr. Wakeman.

4 A. Good morning.

5 Q. How are you doing? I want to ask you a  
6 little bit about the emergency declaration standard and  
7 what granularity you're proposing there. Are you  
8 suggesting that any time there's an emergency declaration  
9 standard -- or an emergency declared by the Governor, that  
10 would meet the requirement?

11 A. You know, I think an appropriate use of  
12 that standard might be that when there was storm-related  
13 damage that resulted in emergency declaration in an area  
14 that we incurred outages, that those two could be married  
15 up to indicate that that's an appropriate criteria.

16 Q. Would you set any particular level of  
17 outages or just any outage?

18 A. I think we could -- if you look on the  
19 chart that I put together, they all also include the IEEE  
20 definition. So I think a combination of those two could  
21 used as an appropriate measure.

22 MR. WILLIAMS: No further questions.

23 JUDGE WOODRUFF: Any other cross? AARP  
24 first.

25 CROSS-EXAMINATION BY MR. COFFMAN:

1           Q.     I just want to ask you a couple. With  
2 regard to the Smart Grid equipment --

3           A.     Yes.

4           Q.     -- that is listed here, I think I  
5 understand what Smart Grid switchgear might be. On the  
6 fourth line it's specified mobile trailer to train linemen  
7 on new Smart Grid equipment. Would that be referring back  
8 to the same Smart Grid switchgear?

9           A.     No. That's referring to equipment that's  
10 mounted on distribution poles, automated switches out on  
11 the distribution system that form part of the Smart Grid  
12 outside the substation. These devices could be mounted on  
13 a trailer and brought to different areas to allow training  
14 to be accomplished.

15          Q.     Is there anything listed on this proposal,  
16 Exhibit 179, that would involve equipment that would be  
17 connected to meters?

18          A.     Revenue meters specifically? Customer  
19 revenue meters?

20          Q.     Yes.

21          A.     No, there's not.

22                   MR. COFFMAN: Okay. That's all I have.  
23 Thank you.

24                   JUDGE WOODRUFF: For MIEC.

25 CROSS-EXAMINATION BY MR. DOWNEY:

1 Q. Good morning.

2 A. Good morning.

3 Q. Do you have Exhibit 178 in front of you?

4 A. Which one is that, please? Yes, I do.

5 Q. The comparison of major storms to --

6 A. Yes, I do.

7 Q. See the column expense-total?

8 A. Yes.

9 Q. Okay. Is internal labor included in that

10 column? Do you know what I mean by internal labor?

11 A. I do know what you mean. It is. To my

12 knowledge, it is.

13 Q. Okay. So this column, this expense column

14 actually is greater than the incremental expense you

15 incurred to restore service, right?

16 A. That is correct, yes. It was -- this data

17 was used as the same source of data that was included in

18 my surrebuttal testimony. So for consistency, we used the

19 same data set. It was really intended to be a

20 demonstration of relative cost of the effort and the

21 different criteria for determining whether it's a major

22 event.

23 MR. DOWNEY: Thank you.

24 THE WITNESS: You're welcome.

25 JUDGE WOODRUFF: Questions from the Bench.

1 Commissioner Jarrett?

2 QUESTIONS BY COMMISSIONER JARRETT:

3 Q. I think just one quick question. I  
4 appreciate you providing this information.

5 A. You're welcome.

6 Q. Regarding the O&M expenses on the 14  
7 additional employees, are these classifications that  
8 AmerenUE had the most pressing need as far as shortages of  
9 employees?

10 A. Yes. I think shortages and probably the  
11 most risk on new rules coming out, especially in the relay  
12 tester area for new FERC regulations around testing of  
13 relays on our system, and also probably the most area of  
14 risk with level of training required and the aging  
15 workforce issue. We talked about the other day linemen  
16 and things like that. We've been increasing those numbers  
17 significantly over the last years, but there's still  
18 probably some work that can be done in this area.

19 Q. Right. As far as the capital expenditures,  
20 it seems mostly for Smart Grid type of equipment. Is  
21 AmerenUE deploying a lot of Smart Grid technology?

22 A. It's in two areas. One is the switchgear,  
23 which is the second line. That's inside the substation,  
24 and that's what we currently deploy in our new substations  
25 is a Smart -- what we consider a Smart Grid piece of



1 switchgear. So yes, we are.

2 And then the other, the mobile trailer and  
3 the other kind of Smart Grid stuff, that's stuff we put on  
4 your distribution system. We've made some significant  
5 investments in the past. However, as of late we haven't  
6 been making as large of investments in that specific  
7 equipment and hope to do that in the future still.

8 Q. And so I guess what my final question is,  
9 then, your capital expenditures and the types of employees  
10 that you're hiring, these two marry up? I mean, the  
11 equipment that you're buying is going to train these new  
12 employees?

13 A. That is correct, yes. And in addition, it  
14 would help with other employees as well. There's farther  
15 reaching benefits than just that, but absolutely.

16 COMMISSIONER JARRETT: Thank you for that.  
17 Appreciate it.

18 THE WITNESS: You're welcome.

19 JUDGE WOODRUFF: All right. Anyone wish to  
20 recross based on those questions? Mr. Mills.

21 RECROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Wakeman, with respect to the capital  
23 expenditures that Commissioner Jarrett just asked you  
24 about, the very first -- first of all, do you have a  
25 breakdown of the 2.1 million? Do you have a work paper

1     that supports how you got to 2.1 million?

2             A.       Some rough notes that I have. I've got  
3     some -- some idea if I want me to break it down per line  
4     item. They're pretty rough calculations because we did  
5     this very fast, but they're what our current estimates  
6     are.

7             Q.       Okay. How much -- the very first line,  
8     that's -- you're talking about a building there?

9             A.       Yes. That's correct. Yes.

10            Q.       How much of the 2.1 million is the  
11     building?

12            A.       That's about 600,000.

13            Q.       Do you have any other buildings that you  
14     amortize over five years?

15            A.       I'm not sure. I'm not -- I don't know the  
16     answer.

17            Q.       You don't know?

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

19            Q.       Do you have any other mobile trailers that  
20     you use throughout your service territory?

21            A.       Mobile trailers, yes. Mobile trailers in  
22     this type of -- used for this type of purpose, I don't  
23     believe so.

24            Q.       Used for training in any fashion?

25            A.       Not that I can think of.

1           Q.       Do you know the typical period over which a  
2 mobile trailer is amortized?

3           A.       I do not.

4           Q.       So if the building itself is 600,000, you  
5 still have a million and a half. How is that spread among  
6 the other four categories there?

7           A.       Okay. The Smart Grid switchgear's around  
8 \$500,000. The new training equipment for all the other  
9 items I've discussed briefly is around 400,000. The  
10 mobile trailer is around 100,000. And then the additional  
11 non-training equipment to equip these employees is around  
12 500,000. That should add up to be about 2.1 million.

13          Q.       And with respect to the O&M, do you have a  
14 similar breakdown by line of those expenses?

15          A.       Yes. That's almost all direct labor cost  
16 in those employees, and with I think a minor tool was  
17 around \$100,000. So the rest directly goes to those labor  
18 costs.

19          Q.       And how much for the training supervisor  
20 compared to the regular employees?

21          A.       There was a difference, I believe, in our  
22 initial quick estimates we had about \$100,000 in for the  
23 training supervisor and around 85 or 90 for the other  
24 employees. I believe that's right. Probably closer to 85  
25 the more I think about it.

1 Q. And at least for those --

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

4 JUDGE WOODRUFF: Any other recross?  
5 Redirect?

6 MR. FISCHER: Just briefly, Judge.

7 REDIRECT EXAMINATION BY MR. FISCHER:

8 Q. Mr. Wakeman, in the previous Ameren case  
9 where the Commission granted some additional money for  
10 training and capital expenditures related to training, did  
11 you build a building as part of that?

12 A. Yes, they did.

13 Q. And do you know how those funds were  
14 amortized?

15 A. They were amortized over five years, and I  
16 think the building's part of that cost, but I couldn't say  
17 with certainty.

18 Q. Was that building designed to train people  
19 on the power side rather than the distribution side?

20 A. That is correct, yes.

21 Q. And what would this training facility be  
22 designed to do?

23 A. This would be for specifically distribution  
24 employees.

25 Q. Is it your understanding that the treatment

1 here is similar to what was done in the last rate case?

2 A. Yes. That's what's proposed, yes.

3 MR. FISCHER: That's all I have, Judge.

4 JUDGE WOODRUFF: You can step down, and  
5 we're -- before we go into the next issue, the rate design  
6 class cost of service, we'll take a short break. Come  
7 back at, let's say, 10:15.

8 (A BREAK WAS TAKEN.)

9 JUDGE WOODRUFF: We're back from our break  
10 and ready to move into the next issue, which is class cost  
11 of service and rate design. We'll start off with mini  
12 openings, beginning with the company, for Ameren.

13 MR. FISCHER: Good morning. May it please  
14 the Commission?

15 My name is Jim Fischer, and I'm  
16 representing AmerenUE in the rate design class cost of  
17 service issue. I've just got a brief opening. Ameren's  
18 position regarding the class cost of service study and the  
19 appropriate design of its rates are contained in the  
20 testimonies of -- direct, rebuttal and surrebuttal  
21 testimonies of the witnesses Wilbon Cooper, William  
22 Warwick and James Pozzo.

23 AmerenUE, bottom line, is proposing to  
24 allocate the revenue in this case on an across-the-board  
25 equal percentage increase basis. The allocation of the

1     increase that is included in the Nonunanimous Stipulation  
2     & Agreement that's in front of the Commission is not  
3     completely consistent with our across-the-board approach,  
4     and neither are the proposed cuts for service charges for  
5     the residential small general service classes.

6                     Additionally, while AmerenUE was not privy  
7     to the substantive discussions of the relevant factors  
8     that led to that Stipulation, we do respect the decision  
9     reached by the representatives of a majority of our  
10    customers. AmerenUE does not support or oppose that  
11    Nonunanimous Stipulation & Agreement filed on March 17th  
12    of 2010 by several of the consumer representatives,  
13    including the Office of the Public Counsel, MIEC, AARP,  
14    Consumer Council of Missouri and Missouri Retailers  
15    Association.

16                    With that, I have several witnesses and  
17    they can answer your questions. Thank you very much.

18                    JUDGE WOODRUFF: Than you. Mini opening  
19    for Staff.

20                    MR. WILLIAMS: Thank you, Judge. May it  
21    please the Commission? My name is Nathan Williams, and  
22    I'm appearing on behalf of Staff in this class cost of  
23    service rate design portion of this case.

24                    Like many other issues in the case, issues  
25    such as return on equity, depreciation expense and

1 ultimately AmerenUE's overall cost of service, which is  
2 also called revenue requirement, how customers' rates are  
3 changed to give AmerenUE the opportunity to get the  
4 revenues the Commission finds it appropriate it should  
5 recover is also a matter upon which reasonable people may  
6 disagree.

7                   In the next day or two you will have before  
8 you a number of proposals for how the rates of AmerenUE's  
9 customers should be changed. While the Staff is not  
10 asserting that any party's proposal is unreasonable, the  
11 Staff is asserting that the Staff's proposal is the most  
12 reasonable and the one the Commission should rely on in  
13 setting rates in this case.

14                   In developing its proposal, the Staff  
15 considered not only the result of its class cost of  
16 service study, the Staff also considered the shifts in  
17 class revenue responsibility and rate increases the  
18 Commission ordered in AmerenUE's recent last two general  
19 rate increase cases, ER-2007-0002 and ER-2008-0318.

20                   The Staff also considered the rate designs  
21 of other electric utilities this Commission regulates,  
22 rate impacts to customers of changing customer charges,  
23 and Staff's judgment of public acceptance of preference  
24 for state stability.

25                   The Staff proposes in this case that, on a

1 revenue neutral basis, the revenue responsibility of  
2 AmerenUE's large general service customers be decreased by  
3 \$3 million, approximately a .5 percent change decrease on  
4 a revenue neutral basis, and that the revenue  
5 responsibility of AmerenUE's residential customers be  
6 increased by the same \$3 million, an approximately  
7 .3 percent increase on a revenue neutral basis.

8                   Staff also proposes that the customer  
9 charge be uniform across the small primary service, large  
10 primary service and large transmission service rate  
11 schedules, the rates for Rider B voltage be the same under  
12 all applicable rate schedules, the rates for the reactive  
13 charge be the same for all applicable rate schedules, the  
14 rate associated with a time of day meter charge be the  
15 same for all applicable non-residential rate schedules.

16                   Amerenue's residential customer charge  
17 should be increased by \$1.25 from \$7.25 to \$8.50; that  
18 AmerenUE's small general service customer charge for  
19 single-phase service be increased by \$1.25 from \$8.03 to  
20 \$9.28, and that AmerenUE's small general service customer  
21 charge for three-phase service be increased by \$1.85 from  
22 16.71 to \$18.56.

23                   With the exception of the residential  
24 customer charge where John Rogers is also a Staff witness,  
25 Michael Scheperle is the Staff witness on the class cost



1 of service and rate design issues in this case. I  
2 encourage you to ask them questions on those issues.

3 Thank you.

4 JUDGE WOODRUFF: Thank you. Opening then  
5 for Public Counsel.

6 MR. MILLS: Good morning. May it please  
7 the Commission?

8 Public Counsel supports the Nonunanimous  
9 Stipulation & Agreement that resolved the rate design  
10 issues in this case as a reasonable resolution of the  
11 issues that are raised with respect to class cost of  
12 service and rate design.

13 The resolution in this Nonunanimous  
14 Stipulation & Agreement does not exactly mirror anyone's  
15 cost study. I think everyone has recognized that.  
16 Nonetheless, all of the cost studies in this case have  
17 been conducted and presented by qualified experts, and the  
18 Commission could choose to rely on any or all of these  
19 experts in this case.

20 As a result, I think that the compromised  
21 position that all of the parties who have signed or agreed  
22 not to oppose the Stipulation & Agreement is a reasonable  
23 result and will result in just and reasonable revenue  
24 spread of the revenues determined to be reasonable in this  
25 case.

1 All of the rate classes are represented in  
2 this case, and all the rate classes are represented on the  
3 Stipulation & Agreement, with the exception of lighting  
4 which I'll talk about separately in just a minute.

5 Mr. Coffman's clients are interested solely  
6 in residential rates. Mr. Schwarz' clients are interested  
7 in the SGS and LGS/SPS rates. Ms. Vuylsteke's clients are  
8 large power and large transmission service. of course,  
9 Public Counsel represents all ratepayers.

10 Now, with respect to the lighting class,  
11 the lighting class is unique. In this case, in the First  
12 Nonunanimous Stipulation, UE agreed to do a cost study for  
13 lighting, and so the question of whether the lighting  
14 revenue requirement is high, low or just right will be  
15 informed by a study in the next case, which I think  
16 everyone is fully confident will be filed yet this year.

17 In the absence of data, in the  
18 Stipulation & Agreement that's before you today, the  
19 signatories believed it was appropriate to have lighting  
20 share any increase on a system average basis. That is,  
21 there are no revenue neutral shifts either toward or away  
22 from lighting contemplated by the Stipulation & Agreement.

23 Public Counsel submits that that is a  
24 reasonable result for the lighting class, and that the  
25 shifts that are embodied in the Stipulation for all the

1 other classes are reasonable as well, and urges the  
2 Commission to accept the Stipulation & Agreement.

3 Thank you.

4 JUDGE WOODRUFF: For MIEC.

5 MS. VUYLSTEKE: May it please the  
6 Commission?

7 Settlement is favored in law, and it has  
8 been this Commission's longstanding policy and practice to  
9 approve of settlements of parties on rate design and other  
10 important issues. The customer rate design before you  
11 represents a convergence of the interests of Office of  
12 Public Counsel representing residential customers, of the  
13 large transmission, of the large power, of the  
14 commercials, and we believe that the ability of all these  
15 varying customer classes with very divergent positions to  
16 work out their differences is of great value, and we  
17 believe that the Commission should give that weight and  
18 consideration in deciding whether it results in just and  
19 reasonable rates.

20 These negotiations were lengthy. We  
21 started talking actually back in August. All the parties  
22 were -- we included all of the parties at the table in  
23 various discussions, and the negotiations were very  
24 expensive and complex. And as in prior cases, we believe  
25 this represents a balance of the interests, and also I

1 think it's consistent with what we've been able to do in  
2 every prior Ameren rate case in recent memory.

3 We hope the Commission will again give this  
4 great weight and view this settlement as a reasonable  
5 compromise of varying positions.

6 Thank you.

7 JUDGE WOODRUFF: For MEUA.

8 MR. WOODSMALL: Good morning. Did you ever  
9 have a roommate in college who always seemed to have money  
10 problems? If you didn't, I'm sure you knew someone who  
11 did. You'd get to the beginning of the month, rent is due  
12 or utility bills are owed and the roommate would always be  
13 short on money. Every month you'd get the same sob story  
14 about a tight budget and the roommate who would want you  
15 to cover his share of the utility bill until his money  
16 came in.

17 Come Friday night, though, that roommate  
18 would find money to go out to the bars, to buy his  
19 favorite CD or to take his girlfriend out to dinner.  
20 Incredibly, that roommate would find money for everything  
21 except for paying back the person that he owed money to.

22 That's similar to this case. The  
23 residential customers by their own evidence owe the large  
24 general service class up to \$26 million per year,  
25 \$26 million by their own evidence. Despite this

1 recognition, Public Counsel suggests through its  
2 stipulation that residential customers should only pay the  
3 large general service class \$4 million.

4                   Instead of paying the people they really  
5 owe money to, Public Counsel proposes that residential  
6 customers should give \$16 million to Noranda. Interesting  
7 part is that Public Counsel's own evidence shows that  
8 Noranda is currently paying rates that are approximately  
9 14 million below its cost of service.

10                   We are here today to point out that the  
11 Public Counsel/Noranda Nonunanimous Stipulation does  
12 nothing to fix this problem. As such, we are asking you  
13 to reject the Stipulation and fix this problem yourself.

14                   I've prepared an exhibit. Let's look at  
15 the magnitude of the problem and how we got here today.  
16 In this demonstrative exhibit, I provided some of the  
17 results of the class cost -- of the service studies  
18 prepared in the last three AmerenUE cases. There are  
19 several things I want you to notice.

20                   First, each of the class cost of service  
21 studies in this case indicates that the large general  
22 service class deserves a significant rate decrease.  
23 There's the large general service class (indicating).  
24 Every study shows that they deserve a significant rate  
25 decrease, 25.5 million all the way up to 84.6 million is

1     what the evidence shows.

2                     Based upon current revenues, this means  
3     that the large general service class is 12.7 percent above  
4     cost in the MIEC study. That means one out of every eight  
5     dollars paid by the large general service customer  
6     represents a subsidy to some other class.

7                     Second, I want you to notice that the  
8     problem with the overpayments by the large general service  
9     class is growing with every case. As you can see, under  
10    all the studies, the amount of the subsidy is increasing,  
11    48 million just three years ago to 84 million. Staff's  
12    numbers are showing that it has tripled. The large  
13    general service subsidy is growing out of control, and  
14    this stipulation does nothing to address it.

15                    Third, I want you to notice that three out  
16    of four cost studies indicate that Noranda currently pays  
17    rates that are below its cost of service. We see here,  
18    OPC's study shows that they're 13.7 million under cost of  
19    service. Staff, 5 million. AmerenUE, 2.3 million. Only  
20    the MIEC study shows that they're paying rates above cost.

21                    So in order to approve the Stipulation,  
22    you're going to have to expressly adopt Mr. Brubaker's  
23    study, but if you adopt Mr. Brubaker's study, you have to  
24    recognize that my class of clients are \$85 million over  
25    cost.

1                   Given the evidence that will be presented  
2 to you, it becomes apparent that the solution to the  
3 current problem is not to give Noranda additional rate  
4 relief. The solution is to give Noranda a rate increase  
5 and give the rate relief to the large general service  
6 class that's currently over cost.

7                   Now, how does Noranda attempt to justify  
8 their rate request in this case? Noranda bases its case  
9 on nothing short of economic blackmail. Noranda falsely  
10 claims that its electric rates are greater than those of  
11 its competitor. As a result, the future of the New Madrid  
12 smelter is, quote, on the critical path to failure,  
13 unquote. Noranda then spends the rest of its testimony  
14 explaining how many jobs and tax dollars will be lost by  
15 the smelter's imminent closing.

16                  As indicated, Noranda's claims are patently  
17 false for several reasons. First, despite their claims to  
18 the contrary, Noranda's electric rates are not higher than  
19 their competitors. Once the evidence was gathered, it  
20 become apparent that Noranda's claims are based upon  
21 inaccurate sampling and a failure to tell the whole story.

22                  For instance, Noranda includes certain  
23 closed smelters that have a lower cost of electricity in  
24 their study. However, Noranda conveniently excludes a  
25 smelter that had the highest cost of electricity, and it's

1   also closed. So they seem to pick and choose which closed  
2   smelters they want to include in their analysis.

3                   Still further, Noranda compares itself to a  
4   competitor that self generates its own electricity through  
5   a 755 megawatt coal-fired generation plant. Basically,  
6   Noranda wants the benefits of their own self generation  
7   without spending the money or taking the risk to build  
8   that plant. It's a false comparison.

9                   Second, it is inappropriate to allow  
10   Noranda to claim imminent failure based solely upon its  
11   cost of electricity. The evidence will indicate that  
12   Noranda has many competitive advantages over its  
13   competitors. Noranda claims advantages related to its  
14   cost of bauxite and alumina, advantages with the  
15   reliability of its electrical supply, advantages with its  
16   cost of freight, and advantages with its geographic  
17   location.

18                   Just as the Commission requires a utility  
19   to demonstrate financial need based, quote, upon all  
20   relevant factors, it is inappropriate to allow Noranda to  
21   claim competitive disadvantage by looking at a single cost  
22   item.

23                   Third, the evidence shows that the overall  
24   production cost of its competitors is greater than  
25   Noranda's. While Noranda is quick to point out the number



1 of competitors that have closed in the recent past, that  
2 fact I maintain is dispositive of the fact that Noranda's  
3 costs are lower. While those competitors have temporarily  
4 closed until aluminum prices increase, Noranda continues  
5 to produce at full capacity. The fact that Noranda is  
6 able to continue to produce at full capacity when its  
7 competitors are curtailing production is symptomatic of a  
8 smelter with a cheaper cost of production.

9                   Finally, it is important to note that  
10 despite their claims of imminent doom and peril, Noranda  
11 has not even taken the most basic steps towards closing  
12 the smelter. When asked whether Noranda had even formed  
13 teams to study the closing of the plant, the Noranda CEO  
14 told me no in a deposition.

15                   Furthermore, Noranda continues to accept  
16 economic development money from this state and has made  
17 commitments in those agreements to maintain employment for  
18 at least the next ten years.

19                   In the final analysis, Noranda's claims  
20 ring hollow. You can't really blame them, however.  
21 Noranda saw an opportunity to increase profits and they  
22 took that opportunity. Faced with an upcoming initial  
23 public offering, Noranda sought to inflate profits. If  
24 they succeeded in their decreasing their electric costs,  
25 profits would suddenly spike.

1                   Based upon these increased profits, the  
2 price per share of their IPO would also escalate. As a  
3 result, a few wealthy shareholders in New York City and  
4 Tennessee would suddenly become even wealthier, all on the  
5 backs of Missouri ratepayers.

6                   Ultimately it will be shown that Noranda is  
7 not deserving of any rate concessions. The evidence shows  
8 that they are already paying rates that are below their  
9 cost of service, and despite their claims to the contrary,  
10 Noranda possesses several advantages over their  
11 competitors.

12                  Given this, the Commission should reject  
13 the stipulation reached between Public Counsel and their  
14 new best friend Noranda. Instead, if the residential  
15 customers are to be giving rate concessions to anyone, the  
16 Commission should order that they give those concessions  
17 to the people they openly acknowledge that they owe money  
18 to, the large general service rate class.

19                  Thank you.

20                  JUDGE WOODRUFF: For AARP?

21                  MR. COFFMAN: I'll be brief. I can concur  
22 in the opening comments of Public Counsel, Lewis Mills. I  
23 believe that the Stipulation & Agreement regarding the  
24 rate design is just and reasonable and the result of  
25 extensive negotiations. There were hundreds of iterations

1 and back and forth amongst the parties to get to this  
2 particular result.

3 Obviously whenever you're dealing with  
4 negotiations that are not simply bilateral, there's a lot  
5 of complexity getting everyone to where they are. All the  
6 terms in the Stipulation & Agreement are interdependent.

7 There hasn't been any mention yet, so I  
8 would direct your attention to the customer charge  
9 provisions in paragraph 2. Those are of particular  
10 interest to my clients, ensuring that the residential  
11 customer charge does not rise above \$8. That was part of  
12 the overall Nonunanimous Stip.

13 And with regard to the comments of  
14 Mr. Woodsmall, I would just note that MEUA was involved in  
15 significant negotiations. Unfortunately, they were not  
16 signatory. But I think if you look at the shifts in the  
17 proposal in the Stipulation & Agreement, you'll see that  
18 there is a less than system overall increase proposed for  
19 Mr. Woodsmall's clients, and we believe that the  
20 Stipulation & Agreement treats them in a reasonable  
21 manner.

22 That's all.

23 JUDGE WOODRUFF: Opening for Municipal  
24 Group.

25 MR. CURTIS: May it please the Commission?

1                   We have -- the Municipal Group has been  
2   able to resolve three of its requests, the cost of service  
3   study. The second item is Ameren will agree to develop a  
4   methodology for determining the value of systems within  
5   municipal boundaries and negotiate in good faith with any  
6   5M municipal street lighting municipality or customer who  
7   wishes to purchase the poles and thus be able to move to a  
8   6M category, which is a significantly lower monthly rate.  
9   And finally, the more detail on the billing and ability to  
10   identify, have Ameren identify the precise locations of  
11   poles within municipalities.

12                   Those three items have been agreed to in  
13   the first stipulation, and I believe the Commission has  
14   adopted that. So we appreciate the movement there.

15                   We have two other requests, and that is,  
16   one, that there be in this case no rate increase for  
17   street lighting rates under either the 5M or the 6M  
18   categories, and the moratorium be placed on those until  
19   the next rate case, which we understand will be following  
20   very closely to this one. There will be time in the  
21   interim to do a cost of service study for these street  
22   lighting rates and try to understand whether they are  
23   reasonable or not.

24                   We wanted to add one alternative to the  
25   moratorium request, and that would be the possibility of,

1 if the Commission wishes to pass through any increase,  
2 however determined, to the street lighting customers under  
3 5M or 6M, that we would request the Commission ask Ameren  
4 to escrow these increases to the municipal classes pending  
5 a true-up which will be forthcoming in the next rate case.

6 And with that alternative twist to our  
7 position, we are prepared -- we had previously filed an  
8 objection to the rate design stipulation nonunanimous. We  
9 would like to move -- remove that objection so that we do  
10 not endorse it but we will not object to that stipulation.  
11 So that is a change in our position there.

12 Our witness is Petree Eastman, who is  
13 assistant city manager for University City. She has  
14 prefiled testimony. I think you will find her testimony  
15 interesting.

16 Street lighting is a very small component  
17 of the revenue overall in this case. It is about 32  
18 million annually currently. That is about 1.4 percent of  
19 the total revenues. So it is not a major factor in this  
20 rate case. However, to the municipalities who are truly  
21 struggling financially, every one of them at this time, it  
22 would be welcome to relief to have a moratorium placed  
23 there.

24 And I say this, we say this because we have  
25 looked back, and we have -- this is the first time

1 municipalities, I think I indicated in my earlier opening  
2 statement, have appeared before the Commission in an  
3 Ameren rate case. They simply were not aware that -- of  
4 what was going on.

5                   And accordingly, and probably it's not a  
6 surprise, in looking back at the previous American rate  
7 cases, we cannot find where a cost of service study was  
8 ever done on street lighting. So we've had average  
9 increases pretty much layered on the street lighting bills  
10 without any true cost accounting, and we think that the  
11 rates are much too high right now, that the intuitive  
12 differential, which Ms. Petree will get into, in the gap  
13 on the 5M rates, for instance on a 9500 lumen post-top  
14 fixture, the monthly rate is \$15.91, and that is on --  
15 with Ameren owning the pole.

16                   If the customer or municipality owned that  
17 pole, the monthly charge would be \$2.78. So over \$13 per  
18 month is being paid to Ameren for the pole. For years and  
19 years this has been going on. In addition, you will find  
20 that there is a pole installation charge which Ms. Eastman  
21 addresses in her testimony on top of that. These are  
22 poles that were installed prior to 1988 under American's  
23 tariffs, and any pole that was installed prior to 1988 an  
24 installment fee is provided for in the tariff.

25                   Monthly University City pays approximately

1   \$8,000 a month for about 1,100 poles. I believe that is  
2   correct. Yes. And that's -- that's an installment  
3   charge. That's the cost of the installment. Remember,  
4   all of these installments were made prior to 1988. So  
5   from 1980 or 1975, in addition to paying a very high  
6   monthly rate for a company-owned pole, we're paying over a  
7   long period of time installment charges that we think just  
8   intuitively do not make sense.

9                   We're surprised perhaps and disappointed  
10   that this has never been looked at and addressed here.  
11   There are currently five classifications of customers:  
12   residential, small general service, large general service  
13   and small primary, large primary, large transmission.  
14   There's no category for street lighting.

15                   Now, at 32 million, that's a lot of money,  
16   and it would be appropriate to look at that and find out  
17   whether this is costed properly and allocated properly.  
18   What has been done you'll see in every one of the cost  
19   of -- customer class cost of service studies that have  
20   been introduced here is the lighting revenues have been  
21   spread pro rata-ly across the other five customer classes  
22   and their expenses have. It's just like it's a mere  
23   footnote. So we don't even rate as a customer class as  
24   far as a cost of service is concerned.

25                   So we're here to change that, and we

1 appreciate the Commission's attention to this. We  
2 appreciate the Commission's understanding the plight of  
3 the municipalities and the revenue crises that they are  
4 undergoing. This is not an insignificant amount in their  
5 budgets. University City currently pays, I believe, a  
6 little over \$650,000 annually for street lighting.  
7 The city O'Fallon pays over \$950,000 a year for street  
8 lighting. So these are these are large amounts in.

9 Thank you very much.

10 JUDGE WOODRUFF: Thank you. Opening for  
11 Missouri Retailers.

12 MR. SCHWARZ: Good morning. May it please  
13 the Commission?

14 The Missouri Retailers are signatory to the  
15 Stipulation & Agreement filed with the Commission earlier  
16 this month to resolve the CCOS and rate design issues. If  
17 you consider the parties who are signatories, the Office  
18 of the Public Counsel, the Missouri Industrials, AARP and  
19 Noranda, the Consumers Council of Missouri and the  
20 Missouri Retailers, it's certainly strange bedfellows for  
21 a rate design settlement, but I think that it reflects the  
22 collective judgment of those parties that the proposed  
23 settlement is in their collective judgment a just and  
24 reasonable resolution for this case under this set of  
25 circumstances for the issues addressed.



1                   It is made in the anticipation of all the  
2     signatories that it is not a permanent arrangement. That  
3     is, no one is permanently committing themselves to this  
4     particular arrangement. We all anticipate that when  
5     AmerenUE's Sioux scrubbers go into service later this  
6     year, that AmerenUE will be filing another rate case, and  
7     we will be addressing these same issues in that case.

8                   So it is viewed as a temporary resolution  
9     of the issues presented for resolution, and that  
10    resolution through the settlement does not require the  
11    Commission to adopt or endorse the litigation position of  
12    any of the signatories.

13                  The very nature of settlement is that the  
14    settling parties suggest to the finder of fact, the trier,  
15    that the litigation positions have been set aside, and in  
16    this case, the litigation positions on the issues of class  
17    cost of service and rate design do not necessarily reflect  
18    all of the factors that the Commission takes into account  
19    when it sets rates in cases. That is, it takes into  
20    account rate impacts. It takes into account principles of  
21    gradualism.

22                  So the Commission typically and under the  
23    law is entitled to consider things other than strictly the  
24    class cost of service.

25                  The signatory parties believe that the

1 resolution of this issue by agreement is the best  
2 resolution and a suitable, a just and reasonable  
3 resolution of the issues in this case. We certainly hope  
4 that in the impending Ameren rate case that we can reach  
5 additional agreements on this issue that will continue to  
6 indicate a cooperative spirit among the customers of  
7 AmerenUE and provide a basis going forward perhaps even  
8 for dealing with AmerenUE on such things as, you know,  
9 replacement of generation, that sort of thing.

10 Cooperation is a good thing, and we think  
11 that the ability of the customer groups to arrive at a  
12 collective position is something that the Commission  
13 should take into account, and there's further evidence of  
14 that spirit of cooperation even in this rate case.  
15 The parties filed, I think yesterday, I think it was  
16 filed, a low income program to examine some of the issues  
17 with and problems of Ameren's low income customers.

18 And I call the Commission's attention to  
19 the fact that the signatories on that proposal  
20 voluntarily -- customer classes other than residential  
21 voluntarily agreed to contribute to the funding of that  
22 program. I've been on and around low income programs at  
23 this Commission since 1993, 1994, and I don't remember --  
24 I'm not saying that there hasn't been such a voluntary  
25 contribution, but I don't remember any, and if there have

1    been, it's not very many.

2                   So I think that that's a further reflection  
3    that the collective judgment that the rate design  
4    principles or the rate design and class cost of service  
5    settlement reached by the signatory parties is just and  
6    reasonable and suitable for the Commission's adoption.

7                   Thank you.

8                   COMMISSIONER DAVIS:   Whoa, Mr. Schwarz.  
9    What I heard so far is that a lot of the parties agree to  
10   this proposed rate design and that this Commission should  
11   adopt that rate design, not necessarily because it's the  
12   right rate design, but because it's the one that all the  
13   parties agree to and, therefore, it's somehow just and  
14   reasonable; is that fair?

15                  MR. SCHWARZ:   Well, I wouldn't characterize  
16   it quite that way.   I mean, I may not be as strong a  
17   proponent of the marketplace, but it's certainly a  
18   reflection of the people who are paying the bills that for  
19   the purposes of this proceeding, the results that we have  
20   suggested to you are just and reasonable, not for  
21   eternity, not forever.

22                  It doesn't necessarily indicate that for  
23   all time people are abandoning what may be their  
24   litigation positions.   But for purposes of resolving  
25   issues in this case and awaiting whatever may come in

1 future cases, that it's -- it's reasonable. No, it's not  
2 anyone's litigation position that I'm aware of.

3 COMMISSIONER DAVIS: Okay.

4 MR. SCHWARZ: Well -- well, and I don't  
5 know. Under the Fischer case, I think that there will  
6 have to be evidence.

7 COMMISSIONER DAVIS: Competent and  
8 substantial evidence, because this is merely nothing more  
9 than a joint position statement now, correct?

10 MR. SCHWARZ: I don't know. I hadn't  
11 considered it in that light. I would not answer that as I  
12 stand here right now. I'd have to think about that  
13 further. Is it -- I don't think the court cases indicate  
14 that it is in and of itself evidence. But I want -- I'd  
15 want to review that and consider it further.

16 COMMISSIONER DAVIS: Okay. Is  
17 Mr. Woodsmall proposed rate design somehow flawed?

18 MR. SCHWARZ: I don't know that he's  
19 proposing a rate design. I mean, he's like Oliver Twist  
20 in the -- in the movie. He's --

21 COMMISSIONER DAVIS: He will have an  
22 opportunity to respond to that.

23 MR. SCHWARZ: He wants more, and there's  
24 nothing wrong with wanting more, but it's -- but the  
25 signatories to the -- to the Stipulation & Agreement

1 suggest, including the MRA, which has substantial members  
2 in the LGS class, suggest that, you know, more is better,  
3 but for purposes of this case, we think that the  
4 Stipulation & Agreement is enough.

5 COMMISSIONER DAVIS: So it's adequate?

6 MR. SCHWARZ: It's reasonable.

7 COMMISSIONER DAVIS: Okay. Should the  
8 character of the signatories play an issue in this case?

9 MR. SCHWARZ: Well, I don't know what you  
10 mean by the character. I mean, I think the widespread and  
11 disparate interests of the signatories is something that  
12 the Commission should consider, yes.

13 COMMISSIONER DAVIS: And how do we consider  
14 that?

15 MR. SCHWARZ: Well, I mean, they are  
16 parties who typically in rate design cases have  
17 antagonistic positions, and in this case, under these  
18 circumstances, they have resolved those antagonisms.

19 COMMISSIONER DAVIS: Did you hear  
20 Mr. Woodsmall's opening statements?

21 MR. SCHWARZ: I was here.

22 COMMISSIONER DAVIS: Okay. You remember  
23 the analogy he used about the college roommate --

24 MR. SCHWARZ: Yes.

25 COMMISSIONER DAVIS: -- who didn't

1 necessarily pay his bills, didn't want to pay his bills at  
2 the first of the month, but again always seemed to have  
3 money --

4 MR. SCHWARZ: Yes, I remember the --

5 COMMISSIONER DAVIS: -- for things later  
6 on? What if -- what if we had someone in this case like  
7 Rick Green? What if we had someone here who maybe had  
8 mismanaged the business and were here pleading with us to  
9 say, you know, you can't raise my rates or I'll go out of  
10 business and you'll lose all these jobs? But if it was  
11 someone like Rick Green, is that really this Commission's  
12 responsibility to fix their poor management decisions?

13 MR. SCHWARZ: Well, I think that the  
14 Commission, in fact, when it was considering the merger of  
15 Aquila and whatever Kansas City Power & Light calls itself  
16 these days, that the Commission did consider, you know,  
17 how do we deal with a situation in which the economic  
18 conditions of a regulated utility may or may not be  
19 suitable, and what terms will the Commission impose on the  
20 merger.

21 So, yeah, I think that in that instance,  
22 you chose a regulated utility. I think Mr. Woodsmall's  
23 argument goes to an entity that's not regulated. So I'm  
24 not sure that your selection of Green --

25 COMMISSIONER DAVIS: Well, let's say,

1 hypothetically speaking, that in 2007 Noranda was acquired  
2 by Apollo Management Group and they did a leveraged buyout  
3 and they pulled a billion dollars out of the company, and  
4 then they come here pleading that they can't afford their  
5 electric rates. And if you take a billion dollars out of  
6 the company --

7 MR. SCHWARZ: I would suggest to you that  
8 in a litigation setting, if you were litigating issues,  
9 the relevance of a particular customer to a condition or  
10 situation to the determination of anything in a utility  
11 rate case would be of limited relevance. So whether they  
12 had done well or whether they had done poorly, if I were  
13 litigating the case, I mean, that's a litigation argument,  
14 that's a litigation position.

15 And if the -- if the Commission decides --  
16 if the Commission decides that the Stipulation & Agreement  
17 is it unsuitable, the Commission will be faced with making  
18 exactly -- then the Commission will need to say, oh,  
19 litigation position of party A or the litigation position  
20 of party B or some place in between those litigation  
21 positions is where just and reasonable falls for this  
22 case. And then you'd -- the Commission will need to  
23 address the specific litigation positions and the evidence  
24 propounded by all of the parties.

25 So I think that at some stage, if you get

1 to that point, you'll have the opportunity to write them a  
2 decision reflecting that.

3 COMMISSIONER DAVIS: Thank you.

4 JUDGE WOODRUFF: Okay. Thank you,  
5 Mr. Schwarz. All right. I believe that's all the parties  
6 that wish to respond.

7 MR. WILLIAMS: Commission, if I might on  
8 behalf of Staff. There's been quite a bit of discussion  
9 about the Nonunanimous Stipulation on class cost of  
10 service and rate design. Staff made no formal filing in  
11 response to that proposal. I would like to tell the  
12 Commission that Staff did consider it, and Staff's  
13 position is neither to support nor oppose that agreement.

14 COMMISSIONER DAVIS: Can I inquire of  
15 Mr. Williams just for a second? Mr. Williams, would it be  
16 possible for Staff to prepare either a graph or chart or  
17 multiple graphs or charts, do an overlay of what the  
18 various parties are proposing for cost allocation rate  
19 design?

20 MR. WILLIAMS: Are you talking about their  
21 litigation positions? I believe Mr. Scheperle has that in  
22 his rebuttal testimony.

23 COMMISSIONER DAVIS: Okay. But this is  
24 the -- I want to include the new --

25 MR. WILLIAMS: The change in positions?



1                   COMMISSIONER DAVIS: Yeah, the change in  
2 position, and try to make sure that we've got everything  
3 up to date on that where -- and I'll go back and take a  
4 look at Mr. Scheperle's rebuttal, but do you understand  
5 what I'm asking for?

6                   MR. WILLIAMS: I believe so. I'm not sure  
7 how long it would take Staff to put that together.

8                   COMMISSIONER DAVIS: Kind of a bar chart  
9 that would compare all of the positions that we can  
10 evaluate the similarities and the differences and see how  
11 things have moved.

12                  MR. WILLIAMS: We may be able to get that  
13 accomplished today.

14                  COMMISSIONER DAVIS: Thank you. Thank you,  
15 Mr. Williams.

16                  JUDGE WOODRUFF: All right. I believe  
17 that's all the openings. There are a couple of matters we  
18 need to take up before we actually bring up the first  
19 witness.

20                  First I want to address the Stipulation &  
21 Agreement that was filed in this case has been objected  
22 to. Under the Commission's rules, that means that the  
23 Commission can no longer approve or reject that  
24 Stipulation & Agreement as such. Any decision the  
25 Commission will make in this case will have to be

1 supported by competent and substantial evidence as  
2 established in the Fischer case.

3 At this point, that agreement is simply a  
4 joint position statement to which no party is bound by the  
5 terms of the Commission's regulations. So the way we've  
6 handled these situations in the past is that we'll allow  
7 each of the parties when they're questioning their  
8 witnesses on direct to elicit additional information about  
9 the change in position that was embodied in that  
10 Stipulation & Agreement. That would apply to all the  
11 parties whether they're signatories or not to that  
12 agreement.

13 Mr. Woodsmall.

14 MR. WOODSMALL: Your Honor, I'd like to  
15 object to that proposed procedure from this standpoint.  
16 The parties in this case have had three rounds of  
17 testimony to put in their positions, and I had an  
18 opportunity to do discovery on those positions.

19 Now, to the extent that they're allowed to  
20 put in new evidence, I've been denied all ability to rebut  
21 it. I've been denied all ability to do discovery on it.  
22 To allow them to put in evidence at this point, different  
23 evidence denies me any ability to do discovery.

24 So if you are going to go that direction, I  
25 would ask for a recess so that I can conduct discovery, do

1 depositions if necessary. But they waited 'til the 11th  
2 hour, and it is working to prejudice my clients.

3 JUDGE WOODRUFF: Anyone want to respond to  
4 that?

5 MS. VUYLSTEKE: Your Honor, Mr. Woodsmall  
6 has not shown any hesitance in engaging in discovery on  
7 short notice, including noticing up depositions and having  
8 people appear within the week. He has conducted no  
9 discovery on this stipulation since it was filed last  
10 week.

11 And the Commission's practice has always  
12 been to allow the witnesses while they appear, in the  
13 interest of efficiency of the Commission's process, to  
14 allow witnesses to appear and provide that evidence. I  
15 think that if Mr. Woodsmall wants a recess to rebut  
16 evidence, I think we're fine with doing that. I think  
17 that was done last year when Staff opposed the rate design  
18 settlement.

19 But I do think it would be a waste of the  
20 Commission's and the parties' time to hold an entirely  
21 separate hearing. And I would add that this particular  
22 agreement is based upon the evidence that's in the case.  
23 It's a compromise of the evidence in the case, and it is  
24 within the various testimonies that have already been  
25 filed. So there's nothing here that I think Mr. Woodsmall

1     couldn't have previously conducted discovery upon.

2                     JUDGE WOODRUFF:   I do want to emphasize  
3     that at this point there is no Stipulation & Agreement for  
4     the Commission to approve or reject.   There is a joint  
5     position statement.   And what I would be allowing as  
6     additional direct testimony would simply be explanation of  
7     that party's position.

8                     MR. WOODSMALL:   And I understand that, but  
9     it is evidence that I have not had an opportunity to do  
10    discovery of.   Contrary to what Ms. Vuylsteke said,  
11    when this was filed on Thursday, I immediately got Data  
12    Requests out on Friday to Consumers Council, to AARP, to  
13    Missouri Retailers Association and to OPC, and none of  
14    those have been answered.

15                    So you're allowing them to put in new  
16    evidence that I've been denied an opportunity to do  
17    discovery on.   Either you take a recess and you allow me  
18    to do discovery or you hold them to their testimony that  
19    they prefiled in this case.

20                    JUDGE WOODRUFF:   How much of a recess would  
21    you be asking for?

22                    MR. WOODSMALL:   Given the opportunity to do  
23    discovery, given the time frames that we're having now,  
24    five days, I would say two weeks.   That would still be  
25    well before the true-up hearing in this case.   I think I

1     could do it in two weeks if it accommodates the  
2     commission's schedule.

3                   JUDGE WOODRUFF:   Mr. Schwarz, you want to  
4     be heard?

5                   MR. SCHWARZ:   Well, I think that the  
6     proposal is -- the Bench has made is consistent with the  
7     Commission's rules.   Evidence comes in at hearing all the  
8     time that has not been prefiled.   Things come out on  
9     cross.   Things come out on questions from the Bench that  
10    were not included in any of the prefiled testimony.   And  
11    the fact that we have prefiled testimony does not obviate  
12    the possibility that something's going to come up in the  
13    hearing room that hasn't previously been filed.

14                  Mr. Woodsmall has not indicated how  
15    additional testimony as to the Stipulation & Agreement  
16    would be different or how it would prejudice him or what  
17    areas that he's not explored would now be explored.  
18    It's -- certainly the settlement process is -- he hasn't  
19    claimed surprise on that.

20                  So I think that before any claim of  
21    prejudice and surprise is granted, that we at least get  
22    some explanation of what the surprise and prejudice might  
23    be.

24                  JUDGE WOODRUFF:   Mr. Coffman, you wanted to  
25    be heard?

1                   MR. COFFMAN: The simple point I wanted to  
2 make is there's nothing in the rate design Stipulation &  
3 Agreement, which I agree now is a joint recommendation or  
4 reflection of a new position on the parties, there's  
5 nothing contained in there that is not within the range of  
6 the various cost allocation and rate design proposals of  
7 the parties. On that basis, I don't see the necessity to  
8 allow additional discovery.

9                   JUDGE WOODRUFF: Mr. Fischer?

10                  MR. FISCHER: Yes, Judge. I would just  
11 comment that I would have to agree with your comments that  
12 the situation we're in with a Nonunanimous Stipulation &  
13 Agreement leaves basically a joint recommendation. The  
14 Commission has to decide this case based on competent and  
15 substantial evidence that is in front of it, which will  
16 include the direct, rebuttal and surrebuttal testimony of  
17 the parties and cross-examination.

18                  We should go forward. The company would  
19 oppose any kind of a delay. We're all here ready to try  
20 this case. To the extent there are objections to comments  
21 that are made, those can be made at the time they come up.

22                  JUDGE WOODRUFF: All right. Well,  
23 Mr. Woodsmall, your objection to the procedure is noted.  
24 For the record, I'm going to overrule that objection. At  
25 this point we will proceed. If you have specific

1 objections as witnesses testify, feel free to make those  
2 specific objections.

3 MR. WOODSMALL: Then I'd ask -- given my  
4 witness is going out of order, was not allowed to prepare  
5 rebuttal to this, I'd ask for a 15-minute recess so I can  
6 prepare him for live rebuttal of what I think may be  
7 coming.

8 JUDGE WOODRUFF: That's certainly  
9 reasonable.

10 MR. MILLS: Can I address that question?

11 JUDGE WOODRUFF: Yes.

12 MR. MILLS: What is the live rebuttal to?

13 JUDGE WOODRUFF: The problem is his witness  
14 is coming out of order.

15 MR. MILLS: And that's my problem why? I'm  
16 sorry. I'm willing to accommodate that, but I think this  
17 whole live rebuttal to testimony that hasn't even been  
18 introduced yet, that may not be introduced yet, I mean, I  
19 don't know what he's planning to rebut, but my  
20 understanding of what he just asked for is he wants the  
21 opportunity to put his witness on first to rebut what he  
22 thinks that subsequent witnesses might say after his  
23 witness is leaving town, and I object to that.

24 MR. WOODSMALL: And that's exactly true,  
25 and if you tell me that you're not going to conduct live

1 direct, then I won't have a need for live rebuttal. This  
2 is being done because the parties, the signatories to this  
3 Stipulation have suddenly in the 11th hour changed their  
4 positions, and so I need to be given some latitude.

5 MR. FISCHER: Judge, I may have  
6 misunderstood your ruling. Did you suggest that there was  
7 going to be supplemental live direct coming from the stand  
8 today or were we just going to go forward with  
9 cross-examination based on the evidence?

10 JUDGE WOODRUFF: My suggestion would be  
11 that we would allow live, additional live direct.

12 MR. MILLS: And Judge, if the price to pay  
13 for that is allowing some sort of pre-rebuttal testimony  
14 to what may or may not be elicited in direct, I'm  
15 perfectly willing to forego any additional live direct.

16 MR. WOODSMALL: I'll concur with that.

17 JUDGE WOODRUFF: What's the position of the  
18 other parties? MIEC, you're the other --

19 MS. VUYLSTEKE: Your Honor, I think we  
20 should take a break at this point and then come back and  
21 make these arguments before you after a short recess.

22 MR. WOODSMALL: Your Honor, this is merely  
23 being done so they can strategize again at the 11th hour  
24 and change the rules. Let's get this decision made one  
25 way or the other. We're getting close to the end of the



1   hearing. Let's get it done. I'll take Public Counsel up  
2   on their offer and we'll just take it on the prefiled  
3   testimony.

4                   JUDGE WOODRUFF: MIEC?

5                   MS. VUYLSTEKE: Your Honor, clearly the  
6   Commission is going to need evidence regarding the  
7   position of the parties in this case and regarding the  
8   rate design agreement. There's no doubt about it. The  
9   question becomes what is the timing of that. All the  
10  parties that are signatories believe that it's in the  
11  Commission's interests and the public interest to get this  
12  evidence out today.

13                  If Mr. Woodsmall has additional discovery,  
14  he can be allowed to conduct that additional discovery, if  
15  necessary, after today. But the Commission has been  
16  receiving evidence throughout this hearing, new evidence,  
17  and there's no bar on receiving new evidence within the  
18  hearing particularly where there's a settlement.

19                  So I would suggest the Commission move  
20  forward, and that if we need to have a discussion about  
21  the opportunity for Mr. Woodsmall to get his evidence and  
22  his questions in and the timing for his witness, we're  
23  happy to do that. We just need time to caucus and get  
24  that arranged.

25                  MR. WOODSMALL: Your Honor, as you can

1 hear, the fundamental problem here is that the Stipulation  
2 is not supported by evidence, and now MIEC wants a live  
3 opportunity to put in that evidence that is missing. I  
4 agree with Public Counsel. To the extent Public Counsel  
5 believes it is supported by evidence and is willing to go  
6 off the prefiled testimony, that's the way we should do  
7 it. But we shouldn't allow them to change their position  
8 at the 11th hour and then try to support it with new  
9 testimony.

10 MR. MILLS: As a point of clarification, I  
11 was not proposing that the witnesses not get on the stand  
12 and not be subject to cross-examination and questions from  
13 the Bench. I think we're going to have something beyond  
14 the prefiled testimony. All the witnesses in the case  
15 will take the stand and have the opportunity to be crossed  
16 and the opportunity to stand questions from the Bench. I  
17 think that will allow the record to develop adequately,  
18 and I think that's fine.

19 MS. VUYLSTEKE: I would add, Judge  
20 Woodruff, that the procedure that you outlined at the  
21 beginning is contemplated in the Commission's rules and  
22 that's how the Commission has always proceeded regarding  
23 these types of settlements or joint positions.

24 JUDGE WOODRUFF: Do you know where in the  
25 rules that would be?

1 MS. VUYLSTEKE: Pointing to the  
2 Commission's Rule 4 CSR 240-2.115, on stipulations and  
3 agreements it says that all issues shall remain for  
4 determination in the hearing, and an issue is going to be  
5 the joint position of the parties.

6 MR. WOODSMALL: And there are other  
7 Commission rules that call for the prefiling of testimony,  
8 and nothing in that nonunanimous stipulation rule  
9 otherwise does away with the rule on prefiling of  
10 testimony. We've had that opportunity for prefiling of  
11 testimony. The rules do not contemplate going beyond that  
12 prefiled testimony to take additional evidentiary support  
13 for a nonunanimous stipulation.

14 MR. SCHWARZ: But it's just as clear from  
15 the Commission rules that it doesn't contemplate that all  
16 settlements and stipulations and agreements have to be  
17 filed before direct testimony or rebuttal testimony or  
18 surrebuttal testimony. I -- you know, settlements are the  
19 favored child of the law, and the Commission rules  
20 certainly anticipate and the cases -- I would say that it  
21 is the rule rather than the exception that settlements are  
22 filed after some level of testimony has been filed.

23 And in -- I'm sitting here now trying to  
24 think what kind of discovery can be done on a stipulation  
25 and agreement. The litigation position of the parties has

1   been fully set forth in the prefiled testimony. There's  
2   no question about that. The issue with stipulations and  
3   agreements is the resolution short of litigation of those  
4   issues.

5                   To the extent that Mr. Woodsmall has had,  
6   and his clients have had adequate opportunity to conduct  
7   discovery on the litigation positions, that should be  
8   sufficient. He will not be entitled to inquire into nor  
9   introduce into evidence anything to do with the settlement  
10   discussions or settlement negotiations. So that leaves us  
11   back where we were.

12                   If you can't discover anything about the  
13   and introduce any evidence about the settlement itself,  
14   what does it leave him to discover between now and the  
15   operation of law date? The only thing that -- is the  
16   change in the position of the parties as to the litigation  
17   positions, and he's had full opportunity to conduct and  
18   has taken advantage of his opportunities to conduct  
19   discovery along those lines.

20                   MR. WOODSMALL: And if there's no need as  
21   counsel maintains for discovery, that it won't lead to  
22   anything, how can we even have live testimony? I'm only  
23   seeking to discover information related to that live  
24   testimony. If, as counsel says, there cannot possibly be  
25   any relevant discovery, then by implication there can't be

1 any relevant testimony either and we don't need it.

2 JUDGE WOODRUFF: Well, you've certainly all  
3 given me a lot of things to think about. I'm not going to  
4 make a decision on the spot. We're going to take a  
5 15-minute break. I'm going to consider it. I'll come  
6 back and make my decision.

7 MR. FISCHER: Judge, could I make one last  
8 comment before you do that? On Tuesday of this week, I  
9 believe you ruled that the unions would not be allowed to  
10 make a mini opening statement from the witness stand, and  
11 I believe that's been the consistent position throughout  
12 this case. And I would think that that consistent ruling  
13 here would be we'd just go forward with cross-examination  
14 based on what we had.

15 JUDGE WOODRUFF: Mr. Coffman?

16 MR. COFFMAN: My only comment would be to  
17 reiterate that there's nothing in this particular  
18 Stipulation & Agreement, joint recommendation now, that  
19 goes outside the bounds of prefiled testimony or within  
20 the range of that.

21 I might be more sympathetic to  
22 Mr. Woodsmall's concerns if there was an entire new rate  
23 class created or something that was so creative it was  
24 outside of the range of differences amongst the parties in  
25 the prefiled testimony, but that's not the case. I think

1 just simply going ahead with cross-examination should be  
2 adequate.

3 MR. WILLIAMS: Judge, I just wanted to  
4 point out that taking Mr. Chriss out of order was an  
5 accommodation to MEUA.

6 JUDGE WOODRUFF: We'll take a break now.  
7 We'll come back at 11:40.

8 COMMISSIONER DAVIS: Judge, before we go on  
9 break, can I just inquire? I don't know if it helps  
10 Mr. Woodsmall, but, I mean, could we bring Mr. Chriss back  
11 one day next week, I mean, or something? I'm just  
12 inquiring of the parties, and people may object to that,  
13 too.

14 MR. WOODSMALL: I don't know what his  
15 schedule is. I don't know what the Commission's schedule.  
16 But I would think that if we took a two-week recess, we  
17 might be able to find a date where Mr. Chriss could come  
18 back. We could accommodate, if needed, whatever live  
19 testimony MIEC wants to do, then he could do live rebuttal  
20 to that.

21 JUDGE WOODRUFF: We'll take a break now.  
22 We'll come back at 11:40.

23 (A BREAK WAS TAKEN.)

24 JUDGE WOODRUFF: All right. We're back on  
25 the record, and during the break I had a chance to

1 consider this a little bit further. I've reached a  
2 decision. The Commission is not going to make any special  
3 accommodation for the -- or a change in procedure for the  
4 filing of the joint position statement, which is what  
5 we'll call it now because it, in fact, is no longer a  
6 Stipulation & Agreement. We'll go ahead and proceed with  
7 cross-examination as we would for any other issue. There  
8 will not be any accommodation for extra live direct or  
9 live rebuttal as indicated. All right. That's my  
10 decision on that.

11 One other thing we need to deal with before  
12 we actually call the first witness, and that is MEUA filed  
13 a motion to strike portions of MIEC and Noranda's direct  
14 testimony. Has any accommodation been reached on that?

15 MR. WOODSMALL: No, your Honor.

16 JUDGE WOODRUFF: The motion was to strike  
17 both portions of Mr. Brubaker's testimony and Mr. Smith's  
18 testimony. Noranda filed a response to that in which it  
19 agreed that the portions, listed portions of  
20 Mr. Brubaker's testimony, in fact, should be struck  
21 because they only dealt with the initial \$27 per megawatt  
22 hour rate. The Commission had strike those portions of  
23 Mr. Brubaker's testimony.

24 The other portion of that motion concerned  
25 Mr. Smith's testimony and also asked that portions of that

1 be struck. The Commission will deny that portion of the  
2 motion on the theory that the testimony that was  
3 challenged is still relevant to any reduced rate for  
4 Noranda, not necessarily tied directly to the \$27 an hour  
5 rate.

6 MR. WOODSMALL: Just a point of  
7 clarification, then. In Mr. Smith's direct testimony,  
8 page 9, line 25, he specifically addresses an electric  
9 rate of \$27 per megawatt hour. Are we modifying that  
10 testimony or --

11 JUDGE WOODRUFF: Yes. The Commission will  
12 modify -- the Commission's understanding of that testimony  
13 it that would apply simply to any other reduced testimony  
14 for -- any reduced rate for Noranda rather than  
15 specifically the \$27 per megawatt hour.

16 MR. WOODSMALL: Sp for purposes of  
17 briefing, that will now read, earlier you indicated that  
18 you would address why a reduced electric rate for the New  
19 Madrid smelter?

20 JUDGE WOODRUFF: That's correct.

21 MR. WILLIAMS: Judge, I'm a little  
22 confused, because at this point nothing's been offered  
23 into evidence. So are you saying that when this is  
24 offered it will be treated as if those portions have been  
25 deleted or --



1 JUDGE WOODRUFF: I'm trying to rule on the  
2 motion that was filed in advance of the hearing.

3 MR. WILLIAMS: Well, normally those are  
4 motions in limine which limit what evidence you're going  
5 to offer. I'm just asking about the process as to how  
6 this is going to be treated.

7 JUDGE WOODRUFF: For clarification, I  
8 suppose that motion could be renewed at the time testimony  
9 is offered. Is that acceptable to everyone?

10 MR. WOODSMALL: I think that's cleaner way  
11 to do it.

12 JUDGE WOODRUFF: All right. Let's go ahead  
13 and call the first witness, then, which would be  
14 Mr. Chriss.

15 MR. WOODSMALL: Thank you, your Honor.  
16 MEUA calls Steve Chris to the stand.

17 JUDGE WOODRUFF: Good morning, sir.

18 THE WITNESS: Good morning.

19 (Witness sworn.)

20 JUDGE WOODRUFF: And before each witness  
21 has testified, I've been making a little announcement,  
22 simply that things work much more smoothly if you'll just  
23 answer the questions that are asked you. If the attorney  
24 asks you for a yes or no answer, if you can answer yes or  
25 no or I don't know. Don't go into trying to elaborate

1 additional response explaining your answer unless that's  
2 what the attorney asks for.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: You may inquire.

5 MR. WOODSMALL: Thank you.

6 STEVE CHRISS testified as follows:

7 DIRECT EXAMINATION BY MR. WOODSMALL:

8 Q. Would you state your name for the record,  
9 please.

10 A. My name is Steve Chriss.

11 Q. By whom are you employed and in what  
12 capacity?

13 A. I'm employed by Wal-Mart Stores,  
14 Incorporated. I'm the manager of state rate proceedings.

15 Q. And who are you appearing here on behalf of  
16 today?

17 A. Today I'm appearing on behalf of the  
18 Midwest Energy Users Association, MEUA.

19 Q. Did you cause to be filed in this case what  
20 has been marked your rebuttal testimony, Exhibit 500?

21 A. Yes.

22 Q. Do you have any changes to make to that  
23 testimony?

24 A. No.

25 Q. And is the information contained therein

1 true and accurate to the best of your knowledge and  
2 belief?

3 A. Yes.

4 Q. I would just ask you a simple question. Is  
5 there -- Commissioner Davis asked a question earlier about  
6 positions being summarized. I'm just wondering if you  
7 have any type of information for him.

8 MR. MILLS: Judge, I'm going to object to  
9 this. I think we just talked about no additional direct.  
10 Typically the direct is, is this your testimony, tender  
11 the witness for cross. I don't know what this question is  
12 about.

13 MR. WOODSMALL: I was just trying to help  
14 the Commissioner.

15 JUDGE WOODRUFF: I'll sustain the  
16 objection.

17 Mr. WOODSMALL: With that, I'd move  
18 Exhibit 500 into evidence and tender the witness for  
19 cross-examination.

20 JUDGE WOODRUFF: Exhibit 500 has been  
21 offered. Any objection to its receipt? I'm sorry. I  
22 have 500 as being assigned to Missouri retailers. 550.

23 MR. WOODSMALL: 550. I'm sorry. Thank  
24 you.

25 JUDGE WOODRUFF: Exhibit 550 has been

1 offered? Any objection to its receipt?

2 (No response.)

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

5 (EXHIBIT NO. 551 WAS MARKED AND RECEIVED  
6 INTO EVIDENCE.)

7 JUDGE WOODRUFF: For cross-examination,  
8 Missouri Retailers?

9 MR. SCHWARZ: I have no questions at this  
10 time.

11 JUDGE WOODRUFF: Muni Group?

12 MR. CURTIS: No questions.

13 JUDGE WOODRUFF: Public Counsel?

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. Good morning, Mr. Chriss.

16 A. Good morning.

17 Q. Is it your position that the Commission  
18 should make interclass revenue shifts based on the CCOS  
19 studies filed in this case?

20 A. We don't actually propose the adoption of a  
21 particular cost of service study. What we have shown is  
22 that all the cost of service studies show that schedule  
23 LGS is over, paying over its cost of service, and that  
24 correcting that should be one of the goals in this docket,  
25 and I have that on page 5 of my testimony.

1           Q.       So in your testimony, you don't take a  
2   position as to which of the CCOS studies best estimates  
3   class cost, do you?

4           A.       No.

5           Q.       Now, you've been involved in public utility  
6   regulation for a long time, have you not?

7           A.       Yeah, I guess so. A long time is relative.

8           Q.       Well --

9           A.       Mr. Brubaker's been for --

10          Q.       I think we'll all stipulate to that. Quite  
11   a few years in any event.

12          A.       Yes.

13          Q.       And last year alone, you testified in 11  
14   cases; is that correct?

15          A.       I believe so. Something around that.

16          Q.       Is it typical in your experience that a  
17   public utility commission picks a particular class cost of  
18   service study and says, aha, that's it, we like everything  
19   about that one?

20          A.       I think in my -- in my experience, they  
21   will usually balance a number of items. It really depends  
22   on the state. Some states have very longstanding  
23   traditions in terms of how they do allocations. Others  
24   are more flexible. So it's a fairly wide spectrum of how  
25   it's treated.

1           Q.       Is it MEUA's position on the appropriate  
2 revenue neutral shifts that that shift is dependent on the  
3 Commission approving a specific study in this case in its  
4 entirety?

5           A.       No. The shift that --

6           Q.       I think no answers my question.

7           A.       Okay.

8           Q.       I may get to what you want to say next. If  
9 I don't, Mr. Woodsmall can.

10          A.       Sure.

11          Q.       The reason I'm asking is because your  
12 position statement uses the phrase any approved study, and  
13 I'm trying to understand what your position is if the  
14 Commission doesn't approve one of those studies. Let me  
15 ask you this: Is it the MEUA position that a revenue  
16 neutral shift shifting revenue away from LGS/SPS should be  
17 based on the range of shifts away from LGS/SPS indicated  
18 by the Filed studies?

19          A.       I think it would be easier to restate it as  
20 the Commission should adopt the revenue neutral shift  
21 based upon whatever cost study it approves, if that's a  
22 modification of several or if they use some conglomeration  
23 of them, whatever the cost of service study ends up being  
24 in this docket.

25          Q.       Let's go to your rebuttal testimony where

1     you've got a summary of some of the cost of -- or of the  
2     cost of service studies, and that's attached to your  
3     testimony as Schedule SWC-3; is that correct?

4             A.       Correct.

5             Q.       The very final page. So is it correct that  
6     your testimony is that the Commission should adopt a  
7     revenue neutral shift away from LGS that's based on the  
8     range established on SWC-3?

9             A.       Not on the range, no. I think whatever --  
10    whatever the resulting cost of service is in this docket,  
11    whatever that discrete -- I mean, it might not be one of  
12    these. It may be somewhere within that range. Whatever  
13    they decide, then from that basis, perform the shifts.

14            Q.       But you conceded that it's possible that  
15    the Commission may not actually adopt a class cost of  
16    service study in this case?

17            A.       I guess it is possible.

18            Q.       Okay. So if that were the case, would the  
19    MEUA position be that a revenue shift away from LGS  
20    within -- based on the range shown on SWC-3 is  
21    appropriate?

22            A.       I think the Commission should certainly  
23    consider the range because obviously there are a lot of  
24    options in there.

25            Q.       Okay. And if the Commission were to adopt

1 a revenue shift that is based on the range shown on your  
2 testimony on SWC-3, would that be satisfactory to the  
3 MEUA?

4 A. Yeah. I believe that if -- per my  
5 recommendation No. -- excuse me. I'll find it for you --  
6 recommendation No. 4, if the Commission should adopt  
7 MIEC's 20 percent revenue neutral adjustment, whatever  
8 they believe is the appropriate cost of service in this  
9 docket, even if it's not a specific study, that's  
10 appropriate.

11 Q. And would you agree that the range of  
12 options for the Commission is more or less, at least as  
13 far as the shifts for LGS/SPS, is bounded by the range  
14 shown on your Schedule SW C-3?

15 A. I believe that's a reasonable statement.

16 Q Now, the upper end of that range is  
17 84,603,000; is that correct?

18 A. Correct.

19 Q. And it's your testimony the Commission  
20 should make a 20 percent movement based on these studies;  
21 is that correct?

22 A. Correct.

23 Q. 20 percent of 84,603,000 is 16,920,600; is  
24 that correct?

25 A. I don't have the math in front of me, but



1 I'll take your word for it.

2 Q. Do you have a calculator with you?

3 A. No.

4 Q. Hold on one second.

5 MR. MILLS: May I approach?

6 JUDGE WOODRUFF: You may.

7 MR. WOODRUFF: It doesn't have an equal

8 sign. It's an HP.

9 THE WITNESS: Okay. It's been many years

10 since I've used this style of calculator. If anybody has

11 a more traditional style of calculator, I'd much

12 appreciate it.

13 BY MR. MILLS:

14 Q. I don't know if an I-phone is traditional,

15 but the calculator is.

16 A. I'm going to e-mail all your friends during

17 the -- let's see. This does work better. Thank you.

18 Q. Okay. And my question was, 20 percent of

19 84,603,000.

20 A. Yes, 16,920,600.

21 Q. Now, lower end of the range shown on SWC-3

22 is \$22,896,370; is that correct?

23 A. That would be 4,579,200-something.

24 Q. So based upon the range shown on SWC-3 and

25 your 20 percent recommendation, MEUA would be satisfied if

1 LGS/SPS got a revenue neutral shift that is at least  
2 \$4,579,274; is that correct?

3 A. I believe that's the minimum, yes.

4 MR. MILLS: Judge, I'd like to request a  
5 recess at this time. This is very, very close to what's  
6 in the Stipulation & Agreement. I think in less than half  
7 an hour we can amend the Stipulation & Agreement to get to  
8 the number that Mr. Chriss just testified he'd be  
9 satisfied to.

10 MR. WOODSMALL: Your Honor, I think he is  
11 taking liberties with the record, and I think it will be  
12 clarified on redirect. I can tell you if he's looking for  
13 settlement, taking a recess is a waste of time.

14 MR. MILLS: Judge, this witness just said  
15 that that number would satisfy him, and I think we can get  
16 to that number in a very, very short period of time. The  
17 range of numbers embodied in the Stipulation & Agreement  
18 range above that number at the low end by 700,000 and at  
19 the high end by barely 400,000. We can close that gap.  
20 We can give this witness what he wants, and I think we can  
21 demonstrate that if we have a few minutes to discuss that  
22 with him.

23 MR. WOODSMALL: First off, your Honor, if  
24 Public Counsel is agreeing that their stipulation is not  
25 reasonable, we agree with that.

1                   Secondly, he's only looking at one  
2   recommendation. There's six recommendations, and he's  
3   only hooking at No. 4. No. 5 specifically states that it  
4   would not allow any other movement for the LTS class, and  
5   that is part of his entire testimony. That will be  
6   covered in redirect. So there's no room for settlement if  
7   that's all they're talking is another half million  
8   dollars.

9                   JUDGE WOODRUFF: Well, I don't believe  
10   there's a reason to take a break at this point for  
11   settlement negotiations. If you -- after you finish your  
12   examination of this witness, you want to discuss further  
13   settlement, that's certainly possible, but I don't want to  
14   take a break at this point.

15                  MR. MILLS: Judge, I don't know what I can  
16   do in cross-examination other than to get the witness to  
17   tell me what he wants and tell me I can give it to him.

18                  JUDGE WOODRUFF: Well, he has told you what  
19   he wants, and --

20                  MR. MILLS: All right. Let's go on from  
21   here, then.

22   BY MR. MILLS:

23                  Q.     Mr. Chriss, your client has not taken a  
24   position on the revenue requirement aspect of this case,  
25   has it?

1           A.       Not to my knowledge, no.

2           Q.       Is it correct that a revenue neutral shift  
3   of \$4,579,274 at a \$325 million increase would  
4   substantially impact your clients more than the same  
5   revenue neutral shift at a \$100 million increase?

6           A.       I'd have to do the math.

7           Q.       For a \$300 million versus a \$100 million,  
8   the revenue neutral shift is the exact amount, which one  
9   is better for your customers or clients?

10          A.       I'm not sure off the top of my head.

11          Q.       Let me back up a step. What is your  
12   understanding of what a revenue neutral shift is?

13          A.       The revenue shift takes the -- from my  
14   understanding of this docket, it takes the current cost of  
15   service, takes the cost of service study and figures out  
16   for each class how much they're paying above or below the  
17   cost of service.

18          Q.       Okay.

19          A.       And then the shift is based on that.

20          Q.       And your recommendation is that the  
21   Commission make a revenue neutral shift in this case of at  
22   least \$4.579 million away from large general service,  
23   small primary service?

24          A.       Yes.

25          Q.       Assuming that the Commission does that, is

1 it your testimony that your client is indifferent as to  
2 whether the increase after that is \$100 million or  
3 \$300 million?

4 A. Well, I don't think my client is  
5 indifferent to whether it's 100 or 300. Obviously  
6 the \$300 million increase is much larger.

7 Q. If either 300 million or 100 million is  
8 spread per your recommendation on an equal percentage  
9 increase to all customer classes, would not the class in  
10 which your clients reside be much worse off under a  
11 \$300 million increase than a \$100 million increase?

12 A. Yes, they'd be worse off.

13 Q. And why is it that, given that impact, that  
14 your clients have decided not to take any position on any  
15 of the issues that will affect your rates other than a  
16 revenue neutral shift?

17 A. Speaking very generally, because I -- very  
18 generally, it's a cost issue. You have to pay for  
19 consultants. You have to -- there's a time and effort  
20 part of it. We have budgets, and traditionally our budget  
21 typically allows us to get into cost of service and rate  
22 design.

23 Q. Have you done any analysis to show whether  
24 your -- that your limited budget is better spent on  
25 fighting over your piece of the pie or over the size of

1 the pie? And by using the analogy to a pie, do you  
2 understand what I'm talking about?

3 A. Yes.

4 Q. Have you done any analysis that shows  
5 whether you're better off doing one as opposed to the  
6 other?

7 A. No.

8 Q. Now, in your position -- are you familiar  
9 with the position statement that MEUA filed in this case?

10 A. I reviewed it. MEUA? I thought you said  
11 MIEC. I'm sorry.

12 Q. MEUA.

13 A. I read it before it was filed, yes.

14 Q. And do you agree with it? Does it  
15 accurately reflect the position of MEUA?

16 A. That's my recollection, yes.

17 Q. What specific positions has MEUA taken on  
18 any of the contested issues in this case?

19 A. Are you asking me to see if I can remember  
20 what's on that sheet?

21 Q. Either I can give you a copy of the sheet  
22 if that refreshes your recollection --

23 A. Sure.

24 Q. -- or you can just tell me.

25 A. That would help.

1 MR. MILLS: May I approach?

2 JUDGE WOODRUFF: You may.

3 BY MR. MILLS:

4 Q. Okay. Do you see that the issue listed  
5 on -- that there is one numbered issue listed on a  
6 position statement that's No. 14 with a number of  
7 subparts?

8 A. Yes.

9 Q. And so it's clear that there are at least  
10 14 issues, and you took a position on perhaps one of them?

11 A. Well, yeah, generally. One or two.

12 Q. And with respect to those one or two, which  
13 specific subparts of issue 14 have you taken a position?

14 A. I think we addressed in part subparts 7 and  
15 8.

16 Q. And what is 7 and what is 8?

17 A. 7 is should the revenue responsibility of  
18 the various customer classes be based in part on the cost  
19 of service study results.

20 Q. And what was your position on that  
21 question?

22 A. Well, we took no position on which cost of  
23 service study should be used, but we did say that the  
24 revenue neutral shift should be based on -- generally on  
25 the approved cost of service study in this docket.

1           Q.       And what was question 8 that you said you a  
2 took a position in part on?

3           A.       Should there be an increase or decrease in  
4 revenue responsibility of the various customer classes?

5           Q.       And what is your position on that question?

6           A.       Well, we approached that generally in the  
7 revenue neutral shift.

8           Q.       And what is your testimony on revenue  
9 neutral shift -- let me back up.

10                   What is the MEUA's position on revenue  
11 neutral shifts for other classes other than the large  
12 general service/small power?

13           A.       They should all be adjusted 20 percent.

14           Q.       That all of them should be adjusted  
15 20 percent?

16           A.       Yeah. My understanding of the MIEC  
17 proposal that we agreed with was that there's a 20 percent  
18 revenue neutral adjustment, and that impacts all the  
19 classes.

20           Q.       And is your concern with respect to which  
21 classes?

22           A.       The major classes, residential, small  
23 general, large general, large -- whatever LPS stands for,  
24 and then large transmission.

25           Q.       And do you have a particular concern that



1 the revenue shift away from large general service/small  
2 power go to any other particular class?

3 A. I think the -- for that recommendation --  
4 restate your -- could you ask your question again? I'm  
5 sorry.

6 Q. Let me back up even a little further. Who  
7 makes up the MEUA in this case?

8 A. MEUA is Wal-Mart, Best Buy and Lowe's.

9 Q. Okay. And I assume -- you work for  
10 Wal-Mart?

11 A. Yes.

12 Q. But yet your position reflects not only  
13 Wal-Mart's position but Best Buy and Lowe's as well; is  
14 that correct?

15 A. Yes. As members of the group, yes.

16 Q. And in what customer class do Wal-Mart  
17 and -- under what customer class do Wal-Mart, Best Buy and  
18 Lowe's take service in Missouri?

19 A. I know that we take service under LGS, and  
20 I'm -- due to their participation and agreement on the  
21 issues, I'm assuming that Best Buy and Lowe's also take  
22 service on LGS. They don't share their data with me.

23 Q. You represent them, right?

24 A. I'm testifying on behalf of the group.  
25 Mr. Woodsmall represents the group.

1 Q. Well, you're testifying on their behalf?

2 A. Yes.

3 Q. Is your testimony consistent with your  
4 understanding that they take service only under the  
5 LGS/SPS class or do you have some reason to believe that  
6 they take service under some other classes?

7 A. I don't have any reason to believe they  
8 take service under another class.

9 Q. So your testimony is consistent with the  
10 understanding that all the members of the MEUA take  
11 service under the LGS/SPS?

12 A. Yes.

13 Q. Now, With respect to that, is your primary  
14 concern that the LGS/SPS class more accurately reflect,  
15 the rates for that class more accurately reflect the costs  
16 to serve that class?

17 A. Yes. I mean, we're certainly concerned  
18 that the rates don't reflect the cost of service.

19 Q. Are you concerned that the rates for --  
20 independently of that concern, assuming that the two  
21 concerns can be completely divorced, are you concerned  
22 that the rates for LTS do not accurately reflect the cost  
23 to serve that class?

24 A. I think generally rates should reflect cost  
25 of service for all classes.

1           Q.       And is that a concern of your clients or is  
2       that just simply a general philosophy of ratemaking?

3           A.       That's a general philosophy of ratemaking  
4       and a concern of our clients.

5           Q.       Does it make a difference to the bills that  
6       your clients pay where the revenue neutral shifts away  
7       from LGS/SPS go?

8           A.       As far as the bills, no, but we don't want  
9       to come in and advocate that a class that is overpaying  
10      pay more, that a class that's underpaying pay less.

11          Q.       I'm not asking you to advocate that. I'm  
12      trying to determine how much of your concern in this case  
13      is based on what happens to other classes and how much is  
14      based on what happens to the class in which your clients  
15      are members.

16                   And my question is, if you can get exactly  
17      what you want for the LGS/SPS class, would you be willing  
18      to take that, or are your concerns for other classes so  
19      significant that you would not take what you testified  
20      that you're willing to take for the LGS/SPS class?

21          A.       I think that there's definitely a concern  
22      about the equity of rates and if we're being asked to take  
23      on the significant increase of other classes or not.

24          Q.       And do you believe that that is the case  
25      under the Stipulation & Agreement?

1           A.       I believe -- well, generally, yes, and then  
2     at the -- to my recollection, at the revenue level of  
3     250 million and below, Noranda would actually get a  
4     decrease.

5           Q.       So your concern really is what happens to  
6     Noranda more than what happens to LGS/SPS; is that  
7     correct?

8           A.       Well, what happens to Noranda impacts what  
9     happens to us.

10          Q.       In what sense?

11          A.       In the sense that, from the pool of dollars  
12     for the classes whose increases have been set above  
13     average, from that pool of dollars for us, you know, four  
14     of the four cost of service studies show that LGS is above  
15     cost of service. Three of the four cost of service  
16     studies, including Public Counsel, show that they're below  
17     cost of service.

18                    So for us to get, was it 20 to 25 percent  
19     of the pie and for them to get the rest seems inequitable,  
20     especially if that results in a decrease.

21          Q.       And when you use a pie in that answer, what  
22     sense are you using it?

23          A.       It's the \$20 million generated by the above  
24     average increases to the other classes.

25          Q.       And have you testified that there is an

1     above average increase, that there should be an above  
2     average increase to any of the other classes? Have you  
3     performed any analysis to demonstrate that fact?

4             A.       Not in prefiled testimony. I'm just  
5     addressing the --

6             Q.       Okay. Thank you. That --

7             A.       -- the joint position.

8             Q.       -- answers my question.

9                     So it's your testimony that you think that  
10    the Stipulation & Agreements has created some sort of a  
11    pot and you want a bigger pieces of it; is that correct?

12            A.       That's a fairly colloquial way of saying  
13    it, but sure, that there's a pool of dollars generated,  
14    and it's distributed to essentially two rate classes, LGS  
15    and LTS.

16            Q.       Is there anything this morning that you've  
17    testified to under oath that you think you said wrong?

18            A.       Not that I can recall at this moment.

19                     MR. MILLS: No further questions.

20                     JUDGE WOODRUFF: All right. Next then  
21    would be Staff.

22                     MR. WILLIAMS: Thank you, Judge.

23    CROSS-EXAMINATION BY MR. WILLIAMS:

24            Q.       Good afternoon, Mr. Chriss --

25            A.       Good afternoon.

1           Q.       Would you turn in your rebuttal testimony  
2 to page 6 at line 7. You have a question there --

3           A.       Sure.

4           Q.       -- what is Staff's revenue allocation  
5 recommendation, do you not?

6           A.       Yes, I do.

7           Q.       And is your answer accurate?

8           A.       I can look back to Mr. Scheperle's  
9 testimony, but I believe that's accurate.

10          Q.       Would you reconcile for me that answer with  
11 your statement on page 4 at lines 1 through 3 where you  
12 say, the Commission should, however, reject the OPC and  
13 Staff revenue allocation proposals because they do not  
14 represent a movement towards cost of service?

15          A.       Well, I believe that's a generalization.  
16 There is some movement towards cost of service in the  
17 Staff recommendation, but we're talking about \$3 million  
18 off of Staff's cost study, which is the 72, \$73 range.

19          Q.       So it's a matter of precision, your  
20 statement on page 4 at lines 1 through 3?

21          A.       Explain matter of precision.

22          Q.       Well, you just indicated -- I mean, the  
23 statement literally says that Staff didn't propose any  
24 movement towards cost of service, does it not?

25          A.       Yes, it does say that.

1           Q.     And didn't you say that it's an indication,  
2     that statement is, that there wasn't any significant  
3     movement?

4           A.     Yeah, that would better reflect.

5           Q.     Well, are you changing your testimony or is  
6     this your testimony as written?

7           A.     I would not have a problem with restating  
8     it as any significant movement. That's fair.

9           Q.     Are there any other statements where you  
10    didn't accurately state what you intended to?

11          A.     No.

12                 MR. WILLIAMS: No further questions.

13                 JUDGE WOODRUFF: AARP?

14                 MR. COFFMAN: No questions.

15                 JUDGE WOODRUFF: Ameren?

16                 MR. FISCHER: No questions, your Honor.

17                 JUDGE WOODRUFF: MIEC?

18                 MS. VUYLSTEKE: No questions.

19                 JUDGE WOODRUFF: Then we'll come up for  
20    questions from the Bench. Commissioner Davis.

21    QUESTIONS BY COMMISSIONER DAVIS:

22          Q.     Good afternoon.

23          A.     Good afternoon.

24          Q.     What -- I mean, what do I need to know? Is  
25    it that, just in general, that the LGS customer class is

1   overpaying and you want a bigger share of the pot than  
2   what's in the proposed settlement by the other parties?

3           A.       I think that's a good summary.

4 Q. Okay. How much more?

5           A.       I'm just going to caveat that I don't like  
6   to negotiate on the stand, so I'm not -- under the guise  
7   that I'm not negotiating on the stand, generally --

8 Q. Just tell us what you think is right --

9                   A.       Okay.

10 Q. -- or what you think is fair.

11           A.           Well, that's a two-part question. The  
12 first part, the easy part is that, in the face of  
13 increases to other classes, no class should get a  
14 decrease. So if the revenue requirement level drops to  
15 250 million or below, there should be no decrease to LTS.

16                   You know, going up and above that,  
17 obviously -- I mean, the polite answer is that the  
18 Commission should determine the appropriate split of  
19 revenue between the two.

20 Q. Well, what's your -- refresh my  
21 recollection just what your stated position is again so we  
22 can be clear so we'll know --

23                    A.            Sure.

24 Q. -- what that position is.

25                    You agree that your stated position is a



1 position that you think is appropriate?

2 A. Yeah. Well, I mean, I think in fairness,  
3 all of the rate classes should essentially be in the same  
4 boat. You know, if we're getting some increase, then  
5 Noranda should get some increase. And I don't know how  
6 the dollars work out on that. I think -- and again, you  
7 know, again because I don't like to negotiate on the  
8 stand, if we were to split it 50/50, that's obviously more  
9 fair than -- so 10 million to LGS, 10 million to LTS, and  
10 then no decrease for any class.

11 Q. Okay. And you're going to have to --  
12 you're going to have to forgive me. I know what Noranda's  
13 load factor is. It's like high. It's like 98 percent.

14 A. Sure.

15 Q. Forgive me. I don't know what -- most  
16 Wal-Mart stores I guess are open 24 hours now.

17 A. Uh-huh.

18 Q. Best Buys are not. Home Depose are not.  
19 So what is -- what would -- what is Wal-Mart's load  
20 factor?

21 A. I think -- it varies, but I think that the  
22 typical store is probably in the 55 to 70 percent range,  
23 depending on whether it's a discount store or super  
24 center, how much refrigeration, that sort of stuff it has  
25 in it. There's quite a bit of equipment that does have to

1 run 24 hours a day.

2 Q. And I know that Noranda has made  
3 investments relating to their physical plant. First of  
4 all, they only have one location, and they actually, it's  
5 my understanding, have acquired part of the transmission  
6 and actually do some of the load balancing and perform  
7 some of those functions on their end. So does Wal-Mart do  
8 anything like that? I'm not aware of anything.

9 A. Well, we make large investments in energy  
10 efficiency. A good example of really where we are in  
11 terms of store design and building is the new store on  
12 East McCarty, which has the --

13 Q. I don't want to cut you off here. I'm just  
14 going to tell you that energy efficiency's not doing it  
15 for me.

16 A. Okay. We do participate in 16 or 17 demand  
17 response programs nationwide, both for utilities and RTOs.  
18 I mean, you're talking about a 500 kilowatt to 1 megawatt  
19 facility versus, I think, with Noranda 400 megawatts.

20 Q. 400 to 500.

21 A. Yeah.

22 Q. So they are different animal, you agree?

23 A. Sure.

24 Q. I'm just -- I'm just going to say, so far  
25 you haven't made the case to me that you should apportion

1 it 50/50 with Noranda. So if there's anything else you  
2 want to say, let's get it out here because I'm not -- it's  
3 not resonating here so far.

4 A. I think, you know, you need to determine  
5 the extent to which the types of animals per se are  
6 included in the cost of service study. You know, I  
7 haven't looked that in depth of any of them in particular,  
8 but, you know, are those features -- or the type of load  
9 on the system should be reflected in how the cost of  
10 service study is done and what costs are assigned to the  
11 customer. So, you know, are the types -- is the type of  
12 animal included in the model or is that outside of the  
13 model? And I can't answer that, but that's something for  
14 you to consider in your deliberations.

15 I mean, what -- what's the bubble that  
16 we're talking about? Is it, you know, there's just this  
17 pot of dollars and we have to split it up and it doesn't  
18 really matter how the customers act or what they do, or  
19 does the bubble encompass all the customer actions and so  
20 on and so forth.

21 Commissioner DAVIS: Judge, I don't have  
22 any further questions. Thank you.

23 JUDGE WOODRUFF: Commissioner Jarrett?

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

1 JUDGE WOODRUFF: All right. We'll go back  
2 to recross based on questions from the Bench. Anybody  
3 wish to recross? Start with Public Counsel.

4 RECROSS-EXAMINATION BY MR. MILLS:

5 Q. Mr. Chriss, I believe in response to a  
6 question from Commissioner Davis you referred to how the  
7 revenues would act if the revenue requirement drops to  
8 \$250 million. Do you recall that reference?

9 A. Yes.

10 Q. Revenue requirements in rate cases don't  
11 just drop, do they?

12 A. Well, they get set, but there's a range,  
13 and the range can go up and down.

14 Q. Right. Utilities fight to keep them  
15 higher, other parties sometimes fight to lower them; is  
16 that correct?

17 A. Yes.

18 Q. So if the revenue requirement drops to  
19 250 million in this case, that's because some party is  
20 fighting to get it there, is it not, or parties?

21 A. Yeah. Could be any number of factors.

22 Q. What else could it be?

23 A. The Commission will, based on its  
24 determination between revenue requirement and ROE  
25 testimony, will determine that the number's 250 million or

1     whatever.

2             Q.       Have you seen the latest reconciliation in  
3     this case?

4             A.       I have not.

5             Q.       If I represent to you that it shows that  
6     Union Electric Company still believes that it's entitled  
7     to a \$325 million rate increase, would you accept that as  
8     an assumption?

9             A.       I will accept that as an assumption.

10            Q.       So if the Commission is ultimately to award  
11    a revenue requirement of only \$250 million, that's because  
12    some party other than Union Electric Company has convinced  
13    the Commission that 250 is a more appropriate number than  
14    325, is it not?

15            A.       Sure, one or more parties.

16            Q.       And in this case, that's not the MEUA, is  
17    it?

18            A.       No. We haven't advocated on revenue  
19    requirement.

20            Q.       Not even for a dollar reduction in the ask  
21    for the company, have you?

22            A.       Not to my knowledge, no.

23                    MR. MILLS: No questions.

24                    JUDGE WOODRUFF: Anyone else wish to  
25    recross? Ameren.

1       RE CROSS-EXAMINATION BY MR. FISCHER:

2               Q.       Yes. Mr. Chriss, in response to one of the  
3       questions from Commissioner Davis, I wrote down that you  
4       said that all classes should be in the same boat; if we  
5       get increase, Noranda should get an increase. Is that  
6       what you said?

7               A.       I believe I said that, yes.

8               Q.       Would an equal percentage increase across  
9       the board to all customer classes meet your stated  
10      criteria?

11              A.       Not without some adjustment because I think  
12      that, you know, obviously there are classes that are over  
13      and under cost of service, and so a revenue neutral  
14      adjustment like I propose in my testimony I believe is  
15      appropriate.

16              Q.       So all classes should not be in the same  
17      boat?

18              A.       Well, I think after you make that  
19      adjustment, we're all still in the same boat. I think the  
20      increase is large enough that at most revenue requirement  
21      levels we're all going to get an increase of some sort.

22              Q.       And if there is a substantial increase in  
23      this case, as the company thinks there should be, would an  
24      across-board-board equal percentage increase meet your  
25      stated criteria?

1           A.       No, because I don't believe it would move  
2 classes closer to cost of service.

3           MR. FISCHER:   Thank you.

4           JUDGE WOODRUFF:   Staff.

5       RE CROSS-EXAMINATION BY MR. WILLIAMS:

6           Q       Mr. Coomes (sic), you've testified a lot  
7 that changes should be made based on class cost of service  
8 studies here, have you not?

9           A.       Yes.

10          Q.       Are there any other factors the Commission  
11 should consider?

12          A.       I mean, obviously commissions are put in  
13 the position of balancing the potential impacts to  
14 customers versus what the class cost of service study  
15 says, and so the Commission will make that decision.

16          Q.       Are there any other factors you believe the  
17 Commission should consider?

18          A.       I think the basis should really be cost of  
19 service.

20                 MR. WILLIAMS:   No further questions.

21                 JUDGE WOODRUFF:   Mr. Curtis?

22                 MR. CURTIS:   Just very briefly.

23       RE CROSS-EXAMINATION BY MR. CURTIS:

24          Q.       Mr. Chriss, I represent the Municipal  
25 Group. We're concerned with street lighting. You've

1 heard at least the statement made that there is no class  
2 cost of service study regarding street lighting in this  
3 case?

4 A. I heard that earlier, yes.

5 Q. What do we do with these street lighting  
6 customers since there's no cost of service study?

7 A. That I don't have an answer for. I'm  
8 sorry.

9 MR. CURTIS: Thank you.

10 JUDGE WOODRUFF: MIEC wish to recross?

11 MS. VUYLSTEKE: No, thank you.

12 JUDGE WOODRUFF: Redirect, then.

13 MR. WOODSMALL: No questions.

14 JUDGE WOODRUFF: Then, Mr. Chriss, you can  
15 step down. You can be on your way.

16 All right. It's 12:30. We're due for a  
17 lunch break. Take a break until 1:3. Let's come back, I  
18 believe, with Mr. Cooper for UE. Is that --

19 MR. FISCHER: We were going to put Will  
20 Cooper up first if that would be all right with the  
21 parties.

22 JUDGE WOODRUFF: That's how I had him on  
23 the list. All right. We are adjourned, then, until 1:30

24 (A LUNCH BREAK WAS TAKEN.)

25



## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
 ) ss.  
3 COUNTY OF COLE )

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, do hereby certify that I was personally present  
7 at the proceedings had in the above-entitled cause at the  
8 time and place set forth in the caption sheet thereof;  
9 that I then and there took down in Stenotype the  
10 proceedings had; and that the foregoing is a full, true  
11 and correct transcript of such Stenotype notes so made at  
12 such time and place.

13 Given at my office in the City of  
14 Jefferson, County of Cole, State of Missouri.

15

16 Kellene K. Feddersen, RPR, CSR, CCR

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25

1 (AT THIS TIME THERE WAS A REPORTER  
2 SWITCH.)

3 (EXHIBIT NOS. 134, 135, 136 AND 137 WERE  
4 MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

5 (EXHIBIT NO. 600 WAS MARKED FOR  
6 IDENTIFICATION BY THE COURT REPORTER.)

7 JUDGE WOODRUFF: All right. Let's come  
8 to order, please. We're back from our lunch break,  
9 and Mr. Coffman, you had something you wanted to  
10 bring up?

11 MR. COFFMAN: Yes. If there's no  
12 objection, my client has a piece of testimony  
13 regarding the low income program issues, and I'm not  
14 sure if I'll be here at the end of these proceedings,  
15 and so I would like to offer into the record the  
16 prepared rebuttal testimony of Jacqueline Hutchinson  
17 which is Exhibit No. 600.

18 JUDGE WOODRUFF: All right.

19 MR. COFFMAN: I provided the court  
20 reporter with a copy.

21 JUDGE WOODRUFF: All right. 600 has  
22 been offered. Any objections to its receipt?

23 (NO RESPONSE.)

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

1 MR. COFFMAN: Thank you.

2 (EXHIBIT NO. 600 WAS RECEIVED INTO  
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 JUDGE WOODRUFF: Let's go ahead, then,  
5 take the next witness on rate design which I believe  
6 will be Mr. Cooper.

7 (The witness was sworn.)

8 JUDGE WOODRUFF: Thank you very much.  
9 You may be seated. And you may have heard my little  
10 speech before about simply answering the questions  
11 that are asked of you. If they call for a yes or no  
12 response, just give us a yes or no or I don't know  
13 response. That just makes things move along  
14 smoothly.

15 THE WITNESS: Thank you.

16 JUDGE WOODRUFF: You may inquire.

17 MR. FISCHER: Thank you, Judge.

18 DIRECT EXAMINATION BY MR. FISCHER:

19 Q. Please state your name and address for  
20 the record.

21 A. Wilbon L. Cooper, 1901 Chouteau Avenue,  
22 St. Louis, Missouri, 63103.

23 Q. Are you the same Wilbon L. Cooper that  
24 caused to be filed in this case direct testimony  
25 that's been marked as Exhibit 134, rebuttal that's

1    been marked as 135 and surrebuttal on rate design  
2    issue that was marked as 137 and then one additional  
3    piece of direct on the low income issues which has  
4    been marked as 136?

5           A.       Yes.

6           Q.       Do you have any changes or corrections  
7    to any of those pieces of testimony that we need to  
8    make at this time?

9           A.       No, I do not.

10          Q.       If I were to ask you the questions that  
11   are contained in those written prefiled testimonies  
12   today, would your answers be the same?

13          A.       Yes, they would.

14          Q.       And are they true and accurate to the  
15   best of your knowledge and belief?

16          A.       Yes, they are.

17          Q.       I believe you also had some schedules  
18   attached. Do those schedules accurately depict what  
19   they're designed to show?

20          A.       Yes, they do.

21                 MR. FISCHER: Judge, then I would move  
22   for the admission of Exhibits 134, 135, 136 and 137  
23   and tender the witness for cross.

24                 JUDGE WOODRUFF: All right. 134 through  
25   137 have been offered. Any objections to their

1 receipt?

2 (NO RESPONSE.)

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

5 (EXHIBIT NOS. 134 THROUGH 137 WERE  
6 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
7 RECORD.)

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

10 MR. SCHWARZ: No questions, Judge, I'm  
11 sorry.

12 JUDGE WOODRUFF: Muni Group.

13 CROSS-EXAMINATION BY MR. CURTIS:

14 Q. Good afternoon, Mr. Cooper.

15 A. Good afternoon, Mr. Curtis.

16 Q. I didn't quite -- you filed direct  
17 testimony in this case, right?

18 A. Yes, I filed two pieces of direct  
19 testimony, one on rate design cost -- cost of service  
20 and the other one on the low income pilot -- the low  
21 income rates.

22 Q. Right. I would like to direct your  
23 attention to your direct on the customer class cost  
24 of service.

25 MR. CURTIS: I didn't get the exhibit

1     number again on that.

2                     MR. FISCHER: 134.

3     BY MR. CURTIS:

4             Q.     Do you have that in front of you?

5             A.     Yes, I do.

6             Q.     If you would refer to page 15.

7     Beginning at line 13 you talked about the customer

8     class cost of service study that was performed by

9     Mr. Warwick under your direction?

10            A.     That is correct.

11            Q.     Okay. And you identify one of your

12     exhibits, WLCE 6, which is the same as Mr. Warwick's

13     schedule WMWE 1, right? I'm looking there at

14     line 16.

15            A.     That is correct.

16            Q.     Very good. If you would refer to

17     page 17 of your direct testimony. You've got at --

18     at line 18 sort of a box exhibit on that page. Do

19     you see that?

20            A.     Yes.

21            Q.     Okay. And is -- is street lighting a

22     category in there?

23            A.     No, it is not.

24            Q.     Is not. Would you agree with me that

25     street lighting is a rather unique class of customer?

1           A.       Yes, in that that's the only service  
2       that we provide that's competitive in nature.

3           Q.       How is it unique?

4           A.       Well, it -- again, as I mentioned in my  
5       prior answer, a street lighting service is a service  
6       that we provide either on a company-owned basis where  
7       customers can actually either install themselves or  
8       utilize a contractor or their own employees in order  
9       to install a street lighting system and take meter  
10      service from the company.

11          Q.       Right.  Would you agree with me that  
12      street lighting is off-peak?

13          A.       Our off-peak hours are 10:00 p.m. to  
14      10:00 a.m., Monday through Friday and then weekends.  
15      Street lighting hours are about 4,000 burning hours a  
16      year, and for the most part, the usage would be  
17      off-peak, but there is some --

18          Q.       Some on?

19          A.       That is correct.

20          Q.       Yeah.  And with regard to the 5 M, would  
21      you agree with me that it is unique in that these are  
22      generally not metered?

23          A.       That is correct.  That -- those would be  
24      company-owned lighting standards of facilities.

25          Q.       Okay.  Now, the -- the customer class

1 cost of service that was done by Mr. Warwick under  
2 your direction did not discretely look at the street  
3 lighting class; is that correct?

4 A. Yes, that is correct.

5 Q. Is that because it's too small at only  
6 31 million in total revenues?

7 A. No. I would say that's more so because,  
8 as you point out, street lighting service is very  
9 unique. We could easily accommodate the street  
10 lighting class in the, I'll say Excel-based  
11 spreadsheet that we use for allocating our cost to  
12 our respective customer classes.

13 However, the next step in that process  
14 would be to price out more than approximately 30  
15 offerings that we have within our street lighting  
16 service classifications. And that's a very  
17 cumbersome process and it involves a great deal of  
18 judgment.

19 Q. Sure. Would you take a look at your  
20 exhibit which is identical to Mr. Warwick's E 1? I  
21 can't recall how you designated yours. Was it C 1?

22 A. Would that be Exhibit WLCE 3 listing  
23 customer classes and revenues --

24 Q. It's -- yeah, it's the summary results  
25 of the class cost of service allocation study.



1 MR. CURTIS: May I approach the witness?

2 JUDGE WOODRUFF: You may.

3 BY MR. CURTIS:

4 Q. Here's what I'm looking at. That's  
5 Warwick's. You've got a companion.

6 A. Okay. I have it. Thank you.

7 Q. Yeah, uh-huh. And what -- what exhibit  
8 are you looking at now?

9 A. It's schedule WLCE 6 titled "AmerenUE  
10 Missouri Electric Operations Class Cost of Service  
11 Allocation Study," and the first line there says,  
12 "Title Summary Results."

13 Q. Correct. And reading across -- across  
14 the top column, we have "Missouri Total" and then  
15 "Residential" --

16 A. That is --

17 Q. -- "Small General Service," "Large  
18 General Service" and "Small Primary," "Large Primary"  
19 and "Large Transmission." Are those the column  
20 headings?

21 A. That is correct.

22 Q. Okay. Now, street lighting -- is street  
23 lighting in here at all?

24 A. No, it is not.

25 Q. Would you look at the third line down?

1           A.       Yes, I see it.

2           Q.       Yes.   And what -- and what does that  
3   represent?   That -- that is -- that line is entitled  
4   "Lighting Revenue."   Does that refer to street  
5   lighting revenue?

6           A.       That is correct.   That would be the sum  
7   total of all of the lighting revenues for the  
8   respective street lighting classifications that we  
9   have.   And then it also shows the allocation of those  
10   revenues to our respective customer classes.

11          Q.       Correct.   Now, how are those -- that's  
12   31 million, roughly --

13          A.       That is --

14          Q.       -- system-wide -- Missouri-wide, right?

15          A.       That is correct, on an annual basis.

16          Q.       And that -- that relates to roughly  
17   1.4 percent of your total revenues?

18          A.       That is correct.

19          Q.       Okay.   Now, how did you -- why -- why  
20   are you allocating those across these other classes  
21   of customers?

22          A.       What we've done in our cost study, as  
23   I've pointed out earlier, we did not have a separate  
24   column on allocated costs to the street lighting  
25   category.   We allocated all of our investment, all of

1 our expenses to the nonlighting classes.

2 Q. Uh-huh.

3 A. However, we do get revenues from the  
4 street lighting class in order to -- for the matching  
5 principal we've allocated all the costs, so we feed  
6 back to the street lighting revenues to our  
7 respective customer classes based upon previous  
8 allocations of net original cost rate base.

9 Q. Sure. So you've just folded street  
10 lighting in across the board and there's not a  
11 specific classification on the cost study for that?

12 A. Effectively what we've done is stated  
13 that the street lighting revenues matched the street  
14 lighting cost of service.

15 Q. Right, but that's not an allocation of  
16 cost, is it; that's just a spreading of -- of them  
17 equally to the other classes of customers? They're  
18 footnoted at best?

19 A. Well, as I stated earlier, we did feed  
20 those back to the respective customer classes, again,  
21 to match the fact that we had allocated all of our  
22 costs including our cost of serving street lighting  
23 customers to the nonlighting customer classes. And  
24 the matching budget will suggest that you take the  
25 revenues from the lighting class and then feed those

1 back to the customers to reduce a revenue requirement  
2 that would be required in this case.

3 Q. Right. So just to establish, no -- no  
4 cost of service study was done for street lighting in  
5 this case, right?

6 A. That's correct.

7 Q. And it was not done in the previous  
8 case; is that correct?

9 A. That is correct.

10 Q. In fact, you used a similar allocation  
11 back in your 2008 case, I believe, to what you've  
12 done here?

13 A. That is correct.

14 Q. And the previous case before that, same  
15 methodology, wasn't it?

16 A. That is correct.

17 Q. Okay. So in the past, this case and the  
18 past two rate cases, there's been no cost of service  
19 study done for street lighting?

20 A. That is correct.

21 Q. Do you know, because we asked whether  
22 you had a copy of a cost of service study that was  
23 ever done on street lighting?

24 A. Well, I haven't been around quite as  
25 long as Mr. Brubaker, but I've been around a lot, as

1     you could look at me and probably tell. We did do  
2     lighting studies in the -- I'm going to say in the  
3     '80s. I think from memory, that's probably the last  
4     time we did a comprehensive street lighting study.

5             Q.     For data request purposes, we weren't  
6     able to get a copy of that, I guess, or you were  
7     unable to locate it?

8             A.     That is correct. That was prePCs. We  
9     actually did it by hand.

10            Q.     Mr. Brubaker knows all about that. Do  
11     you have, Mr. Cooper, a copy of the 5 M tariff sheets  
12     with you that you can refer to?

13            A.     Yes, if you'll bear with me just for a  
14     minute, I'll pull those out.

15            Q.     Sure.

16            A.     Okay. I have those in front of me.

17            Q.     Okay. Can you refer to sheet No. 40?

18            A.     Yes.

19            Q.     Please read paragraph E and paragraphs  
20     E 1 and E 2.

21            A.     Okay. Starting with E, "All poles and  
22     cable were required to provide lighting service."

23                    1, "After September 27th, 1988, the  
24     installation of all standard poles and cables shall  
25     be paid for in advance by customer, with all

1 subsequent replacements of said facilities provided  
2 by company."

3               Section 2, "Installations prior to  
4 September 27th, 1988," and then there's a column  
5 entitled "Monthly Rate," and to the left of it, "Wood  
6 pole, \$7.68 per pole; ornamental concrete pole,  
7 \$17.21 per pole; steel breakaway pole, \$51.77 per  
8 pole; standard two-conductor overhead cable, \$2.38  
9 per span; underground cable installed in and under  
10 dirt, \$7.06 per foot. All other underground cable  
11 installations \$13.45 per foot."

12           Q.       If I can just loosely interpret this  
13 section, poles that were installed prior to 1988  
14 carried an installation cost that was then recouped  
15 from the customer; is that correct?

16           A.       It wouldn't be just the installation  
17 cost. It would be the cost of owning, operating and  
18 maintaining those poles, is what these charges  
19 represent.

20           Q.       Correct. Okay. And after September 27,  
21 1988, the customer was to provide all the  
22 installation costs; is that correct?

23           A.       That is correct, for these nonstandard  
24 poles and spans.

25           Q.       Would that in some case mean a customer

1 actually paying for the pole after 1988?

2 A. That is correct. They would pay up  
3 front for the pole as opposed to the -- I'll call it  
4 the rental option that's listed here.

5 Q. Right. And so if we were looking at a  
6 subdivision, the sub -- the developer would put the  
7 poles in to Ameren specifications and then dedicate  
8 those to Ameren?

9 A. Can you rephrase that or repeat it?

10 Q. Okay. Say a typical new subdivision,  
11 the contractor puts in the streets, puts in the  
12 houses, puts in street lighting and -- to Ameren  
13 specifications, and then when they are hooked up,  
14 those are dedicated -- those are typically dedicated  
15 to Ameren?

16 A. No. The ownership -- if they pay us for  
17 the system, then the ownership, operation and  
18 maintenance of those poles rests with AmerenUE.

19 Q. Right.

20 A. If the -- if it's a customer-owned  
21 system --

22 Q. Uh-huh.

23 A. -- then the ownership, operation and  
24 maintenance of those would rest with the customer  
25 unless they opted for energy only if that was

1 applicable or energy and maintenance under service  
2 classification No. 6.

3 Q. If they opted for the energy and  
4 maintenance which is currently \$2.78 per month; is  
5 that correct?

6 A. That varies by light.

7 Q. Yes, yeah. If they -- if they did opt  
8 for that, they would have retained ownership of the  
9 pole; is that correct?

10 A. That is correct.

11 Q. In some cases, though, did not -- wasn't  
12 dedication of these poles made to Ameren such as  
13 Ameren actually owns the poles?

14 A. Not to my knowledge.

15 Q. Really. Okay. Do you know -- and so  
16 the poles that were installed prior to 1988 continued  
17 to pay -- say, looking at the wood pole, would pay  
18 \$7.68 per month to Ameren; is that correct?

19 A. Yes, that would be correct, for the  
20 bumper-to-bumper service, as I call it.

21 Q. Right. Yeah.

22 A. Regardless of what happens to the pole,  
23 Ameren has a responsibility of, again, replacing it  
24 if it's knocked down, or repairing it.

25 Q. Thank you. Mr. Cooper, can you tell me



1 approximately how much it costs today to install a  
2 wood pole?

3 A. No, I don't have those numbers with me.

4 Q. If it's something in the range of  
5 \$2,000, would you accept that?

6 A. I have no basis to accept that. I'm not  
7 saying that it's incorrect, but I can't...

8 Q. Okay. Do you know how much it cost to  
9 install a pole in 1988?

10 A. No.

11 Q. How about 1978?

12 A. No.

13 Q. And if a municipality were trying to  
14 figure out how -- how many times it paid or bought a  
15 pole paying \$7.68 for 20, 30 years, would they be  
16 able to understand whether they had purchased that  
17 pole several times over?

18 A. Well, I don't -- wouldn't call that  
19 purchasing the pole. Simply taking the installation  
20 cost and then dividing it by the monthly rate and  
21 saying that I've, quote, paid for the pole, again,  
22 it's the rent-versus-buy argument where, again, we've  
23 maintained the ownership, operation and maintenance  
24 of that pole for a period of time, and these monthly  
25 charges compensate us for that.

1           Q.       If -- just take a hypothetical, say a  
2   wooden pole installation cost in 1980 was \$1,000 to  
3   install, accept that. If a municipality were paying  
4   this installation fee monthly since 1980, they would  
5   be paying now for almost 30 years; is that correct?

6           A.       The math is correct, yes.

7           Q.       Okay. And if we took those 30 years  
8   times \$7.60 -- I think it was a lower rate earlier,  
9   it was, I think, \$7.33 earlier, the installation  
10   charge per month. But if we did the math and  
11   multiplied the monthly installation fee times 12  
12   months, times 30 years, we would come up with a  
13   number, would we not, that clearly would exceed our  
14   \$1,000?

15          A.       Under your hypothetical, that would be  
16   correct.

17          Q.       Now, has that been studied at all by the  
18   company?

19          A.       No. We would find no reason to perform  
20   a study of that sort. Again, this is the buy versus  
21   rent, own, operate and maintain, and you're also  
22   suggesting that the pole that we installed in 1980 is  
23   the same pole that's there in the year 2000. That  
24   may or may not be the case.

25          Q.       Are those wood poles frequently -- have

1 other purposes for the company?

2 A. Yes. There are some poles that we  
3 utilize for hanging lighting facilities on, and our  
4 rates reflect that. Cable.

5 Q. And distribution lines, maybe?

6 A. That is correct.

7 Q. And cable TV lines?

8 A. That is correct.

9 Q. And you're probably paid for that,  
10 aren't you, by the cable company?

11 A. That is correct. And to the extent that  
12 we're paid by the cable company for that, we offset  
13 our base rate revenues by that amount. If you refer  
14 to the schedule that -- I think it was schedule  
15 WLCE 7, there's a -- there's a line item there called  
16 "Other Revenues" that's also fed back to the customer  
17 class. Within -- in that bucket of dollars would be  
18 dollars that we get from cable companies for  
19 attachments on our poles and other miscellaneous  
20 revenue items.

21 Q. You'd commonly maybe find telephone  
22 lines on those poles?

23 A. Yes.

24 Q. Any other, you know, wireless antenna?

25 A. Possibly.

1           Q.       Uh-huh. Now, when that pole was put in,  
2 the installation charge was made against the street  
3 lighting customer; is that correct?

4           A.       Is your hypothetical at the time that  
5 the pole was put in for street lighting there was no  
6 other -- there were no other attachments on the pole?

7           Q.       Right.

8           A.       The customer at that time would have  
9 paid the tariffed rate for that particular offering.

10          Q.       As these other uses came for the poles,  
11 the telephone lines, cable lines and wireless  
12 antenna, your own distribution lines, were the  
13 municipalities rebated in any fashion for their  
14 original installation charges?

15          A.       Not immediately, but as we filed cases  
16 throughout the years -- and again, the other revenue  
17 buckets I mentioned earlier feeds back revenues that  
18 we get for pole attachments, telecommuni -- I'm  
19 sorry -- telephone attachments, so forth and so on.  
20 So not immediately, but yes, through the regulatory  
21 process those revenues are fed back.

22          Q.       Wouldn't -- wouldn't we -- wouldn't we  
23 see a reduction in the pole installation fee that the  
24 municipalities and other street lighting customers  
25 would be paying over the years as these other

1 customers are using these poles that the  
2 municipalities paid to put in in the first place?

3 A. No. Under your hypothetical, you're  
4 suggesting that our cost structure throughout a  
5 30-year time frame remains the same. Our cost  
6 structure changes over that time frame, both in a  
7 declining cost environment where utility costs go up;  
8 in a declining cost environment, they go down. And  
9 through the regulatory process and known regulatory  
10 lag, at the end of the day, there's equity there, and  
11 then again those revenues are fed back.

12 Q. But right now we're absolutely guessing  
13 because we have no idea because no cost of service  
14 study has been done?

15 A. No, I wouldn't say that we're  
16 absolutely -- I do agree that a cost study has not  
17 been done of the rates that lighting customers are  
18 paying today are presumed to be just and reasonable  
19 as they were approved by the Commission, and in my  
20 belief, it was March of 2009.

21 Q. Right, right.

22 A. And I would also add that in looking  
23 at -- for example, in looking at the metered lighting  
24 rate, it's actually lower than any other rate that we  
25 have on this system for a secondary energy. Even the

1 residential off-peak rate's a bit higher than the  
2 metered lighting rate. And again, as I pointed out  
3 earlier, lighting does have some on-peak usage.  
4 Predominantly off-peak, but there is on-peak.

5 Q. And that would be -- be primarily  
6 recovered in the energy and maintenance component of  
7 the 6 M rate, say?

8 A. It would -- yes, it would be reflected  
9 in there, that would be correct.

10 Q. And that \$2.78 that is in the 6 M rate  
11 for -- for poles that are owned by the customer,  
12 that's the same energy and maintenance level or  
13 charge that a 5 M customer would have?

14 A. No. The -- the -- the -- that's not  
15 quite correct. The -- the maintenance that's  
16 provided under the 6 M is limited maintenance if I  
17 recall correctly. Why don't I refer to the page --

18 Q. Sure.

19 A. -- as opposed to my memory. A company  
20 will furnish electric energy, furnish and replace  
21 lamps -- I'm sorry -- referring to sheet 45 of our  
22 tariff book, electric tariff book. Let me start  
23 over.

24 "A company will furnish electric energy,  
25 furnish and replace lamps, wash lamps and luminaries,

1     adjust and replace control mechanisms as required."  
2     For example, if a luminare in this scenario is shot  
3     out with a BB gun --

4             Q.       Uh-huh.

5             A.       -- then that would be the responsibility  
6     of the customer under 6 M. Under 5 M, that bumper --  
7     bumper-to-bumper warranty I spoke of earlier, we  
8     would take care of that.

9             Q.       Now, looking -- and you're looking at  
10    sheet No. 45 there?

11            A.       That is correct.

12            Q.       Under the 95/100 lumen standard HP  
13    sodium-type light, the energy alone per month is  
14    \$1.35 as a component?

15            A.       That is correct.

16            Q.       And then energy and maintenance together  
17    are \$2.78?

18            A.       That is correct.

19            Q.       Looking at the energy alone component  
20    for a 6 M would be virtually identical for that type  
21    of light, whether it was customer-owned or  
22    company-owned?

23            A.       That is correct.

24            Q.       The maintenance might differ a little  
25    bit as you say because of the bumper-to-bumper

1     warranty on the 5 M?

2             A.       That is correct.

3             Q.       You have agreed, I believe, to embark on  
4     a cost of service study for street lighting as a  
5     result of this case in preparation for the next case?

6             A.       Yes, we have.

7             Q.       Okay. And we are going to do that in  
8     cooperation with the Office of Public Counsel, Public  
9     Service Commission Staff and the Municipal Group.

10            A.       Yes, we will collaborate with the  
11    parties as you mentioned.

12            Q.       Collaborate, set the parameters of the  
13    study and proceed that way?

14            A.       That is correct.

15            Q.       You have heard and we've discussed at  
16    previous times the idea of because there has been no  
17    cost of service study done for street lighting in a  
18    long time and we can't even find the original ones,  
19    you've heard our request to the Commission that they  
20    place a moratorium in this rate case on any further  
21    increases on the street lighting for both 5 M and  
22    6 M?

23            A.       Yes, I did hear that.

24            Q.       And we've discussed that a little bit.  
25    You've heard the -- the idea floated out as an



1 alternative to a moratorium or no increase, escrowing  
2 any increase the Commission might grant or place on  
3 the street lighting, 5 M, 6 M customers, and put that  
4 subject to -- in escrow subject to refund depending  
5 on the results of the class -- the cost of service  
6 study to be determined in the next rate case?

7 A. Yes, I have heard that, but I also, on  
8 advice of counsel, am of the understanding that there  
9 may be some legal problems with that.

10 Q. Okay.

11 A. In addition to the possibility if you  
12 were to implement that, there may be no symmetry, for  
13 example, if the study supported higher -- higher  
14 rates and if you were to rely solely on the study,  
15 then how would you make that up?

16 Q. Well, as a practical matter, these  
17 are -- these are numbers, these are costs that can be  
18 tracked and accounted for and mechanically trued-up  
19 in the next -- the next rate -- rate case based on  
20 the cost of service study, would you agree, as a  
21 mechanical, practical matter that could --

22 A. I'll just refer to my -- the first part  
23 of my prior answer. It's my understanding based upon  
24 advice of counsel that there may be legal problems  
25 with that.

1           Q.       You were here when I gave my opening  
2 statement?

3           A.       Yes, I was.

4           Q.       And you -- you heard my -- my suggestion  
5 from a very wise observer of Public Service  
6 Commission ratemaking cases regarding, I think the  
7 phrase was if you're -- if you're not at the table,  
8 you may be on the menu?

9           A.       I do recall hearing that, yes.

10           MR. FISCHER: Judge, I'm going to  
11 interject here and we -- we shouldn't get too far  
12 into settlement negotiations.

13           MR. CURTIS: Thank you. I just wanted  
14 to give credit where credit was due. Thank you,  
15 Mr. Cooper.

16           MR. COOPER: Thank you, Mr. Curtis.

17           JUDGE WOODRUFF: All right. Moving down  
18 to AARP.

19           MR. COFFMAN: No questions.

20           JUDGE WOODRUFF: MEUA.

21           MR. WOODSMALL: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. WOODSMALL:

23           Q.       Good afternoon, sir.

24           A.       Good afternoon, Mr. Woodsmall.

25           Q.       You testified in the 2007 Ameren case;

1 is that correct?

2 A. I did provide written testimony, yes.

3 Q. And can you tell me what issue you  
4 testified on?

5 A. Class cost of service and rate design.

6 Q. And you conducted a class cost of  
7 service study in that case; is that correct?

8 A. Yes, the Company did file a study in  
9 that case.

10 Q. And do you recall, was that as of July  
11 of 2006?

12 A. I apologize. I do not recall the test  
13 year, but that sounds reasonable.

14 Q. Okay. That's when you filed the  
15 testimony, was July of 2006?

16 A. I believe that's correct.

17 MR. WOODSMALL: Okay. May I approach  
18 the witness?

19 JUDGE WOODRUFF: You may.

20 MR. WILLIAMS: Judge, while we're  
21 dealing with exhibits, Commissioner Davis had  
22 requested some documents.

23 JUDGE WOODRUFF: All right. Go ahead  
24 and give them.

25 MR. WILLIAMS: I've already distributed

1 it. I just need to mark it.

2 JUDGE WOODRUFF: Okay. What number is  
3 this?

4 MR. WILLIAMS: I assume it should be  
5 given an exhibit number.

6 JUDGE WOODRUFF: Okay. This is what  
7 Commissioner Davis had requested this morning,  
8 right?

9 MR. WILLIAMS: That's my understanding  
10 or that's what we attempted to provide.

11 JUDGE WOODRUFF: Okay. Let me get you  
12 your number here. Your next number will be 239.

13 (EXHIBIT NO. 239 WAS MARKED FOR  
14 IDENTIFICATION BY THE COURT REPORTER.)

15 (EXHIBIT NO. 551 WAS MARKED FOR  
16 IDENTIFICATION BY THE COURT REPORTER.)

17 JUDGE WOODRUFF: Let's deal with Staff's  
18 239 here. I assume the parties have had a chance to  
19 see this. Is there any objection to its receipt?

20 (NO RESPONSE.)

21 JUDGE WOODRUFF: Hearing no objection,  
22 it will be received.

23 (EXHIBIT NO. 239 WAS RECEIVED INTO  
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 JUDGE WOODRUFF: Now, getting back to

1 MEUA's cross, your exhibit would be 551.

2 MR. WOODSMALL: Correct, your Honor.

3 BY MR. WOODSMALL:

4 Q. Can you identify Exhibit 551 for me,  
5 sir?

6 A. Certainly. It's AmerenUE's response to  
7 MEUA data request No. 2.2.

8 Q. It's the second set of data requests.  
9 There's actually three of them there -- or six of  
10 them there; is that correct?

11 A. That's correct.

12 Q. Okay. And can you tell me on the second  
13 page, MEUA 2.2, are those the results of the class  
14 cost of service study that Ameren conducted in the  
15 2007 rate case?

16 A. Yes, from a revenue-neutral perspective,  
17 that is correct.

18 Q. Thank you. Did you also testify in the  
19 2008, it was ER-2008-0318 case?

20 A. Yes, I did provide direct, rebuttal and  
21 surrebuttal testimony in that case.

22 Q. Can you tell me what issue you testified  
23 on?

24 A. Class cost of service and rate design.

25 Q. Okay. And turning to the fourth page of

1     this data request, can you confirm that those are the  
2     results on a revenue-neutral basis of your class cost  
3     of service study in that case?

4             A.       That is correct.

5             Q.       Thank you. And then you certainly  
6     testified in this case. Can you tell me if on the  
7     sixth page of that data request, are the results of  
8     your class cost of service study on a revenue-neutral  
9     basis in this case?

10            A.       Yes, they are.

11                   MR. WOODSMALL: Your Honor, I'd move for  
12     the admission of Exhibit 551.

13                   JUDGE WOODRUFF: 551 has been offered.  
14     Any objections to its receipt?

15                   (NO RESPONSE.)

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

18                   (EXHIBIT NO. 551 WAS RECEIVED INTO  
19     EVIDENCE AND MADE A PART OF THE RECORD.)

20     BY MR. WOODSMALL:

21             Q.       When you calculate the necessary  
22     revenue-neutral shifts in a class cost of service  
23     study, you assume that all classes -- all classes are  
24     paying the same overall earned return on equity; is  
25     that correct?

1           A.       The same rate of return on rate base,  
2   yes.

3           Q.       Thank you.  So in the class cost of  
4   service study, there's a built-in assumption that all  
5   classes should pay the same rate of return; is that  
6   correct?

7           A.       No.  That's a calculation that's  
8   performed, and typically it's done on a  
9   revenue-neutral basis.  And then it's also done on  
10   a -- I'll say a prospective or a rate case basis  
11   looking at the proposed revenue requirements in a  
12   case.  One typically will from a cost perspective  
13   simply set the rate of returns -- the rate of returns  
14   for each respective customer class that is given and  
15   that the company is requesting in the case and then  
16   evaluate what the increase or decrease would be by a  
17   customer class.

18          Q.       Okay.  So the rate of return for each  
19   customer class is the same?

20          A.       That is correct.

21          Q.       Okay.  Can you tell me whether AmerenUE  
22   experiences an increased business risk associated  
23   with serving Noranda Aluminum?

24          A.       If you could define what you mean by  
25   "business risk."

1 Q. Well, I'll hand you a data request.

2 A. Thank you.

3 Q. Ask you if you recognize that?

4 A. Yes, I do.

5 Q. And that was responded to by you; is

6 that correct?

7 A. That is correct.

8 Q. And in that, I asked if Ameren

9 experiences an increased business risk associated

10 with Noranda Aluminum; is that correct?

11 A. That is correct.

12 Q. Can you tell me what your answer was,

13 sir?

14 A. The answer was yes.

15 Q. Thank you. And Noranda Aluminum is the

16 sole customer served under the large transmission

17 class tariff; is that correct?

18 A. That is correct.

19 Q. Has AmerenUE attempted to quantify the

20 increased business risk associated with serving

21 Noranda Aluminum?

22 A. One of the stipulations and agreements

23 filed in this case contains an end factor, I believe

24 is what we referred to it as, and it, at least to

25 some extent, mitigates the risk associated with



1 providing service to Noranda.

2 Q. Let me get to it this way: If  
3 Noranda -- if Ameren has an increased business risk,  
4 would you agree there's an associated increase in  
5 return on equity for that risk?

6 A. That's outside of my area of expertise.  
7 I'm not a return-on-equity witness.

8 Q. In your class cost of service study,  
9 have you attempted to assign the business risk  
10 associated with serving Noranda solely to the LTS  
11 class?

12 A. Well, I'm not certain that we, quote,  
13 attempted to assign the business risk. What we did  
14 in our class study is we put Noranda in at full load  
15 as if they're -- the ice storm did not occur and they  
16 were running at their normal level of megawatts which  
17 is approximately -- I think it's 470 to 500  
18 megawatts. And with that approach, along with the  
19 original take-or-pay testimony that I provided,  
20 again, that was an attempt to mitigate the -- the --  
21 the risk, so to speak, of serving Noranda and at the  
22 same time provide equity to our other customer  
23 classes.

24 Q. But in your class cost of service study,  
25 you assume the same rate of return for all customer

1 classes; is that correct?

2 A. That was one of the calculations that  
3 was performed, that is correct.

4 Q. Now, can you tell me whether AmerenUE  
5 actually experienced a loss in 2009 as a result of  
6 providing service to Noranda?

7 A. Yes.

8 Q. And what caused that loss?

9 A. There was an ice storm and Noranda lost,  
10 I'm going to say, approximately two-thirds of its  
11 load, and with the mechanics of the FAC, the energy  
12 that was not sold to Noranda was flowed through the  
13 FAC as off-system sales.

14 Q. I'm going to hand you an excerpt of the  
15 Ameren form 10Q, ask you to read the highlighted  
16 portion, please.

17 A. Okay. "UE estimates this electric  
18 margin from sales to Noranda was \$11 million and  
19 \$30 million lower during the third quarter and first  
20 nine months, respectively, of 2009, compared with the  
21 same periods in 2008, as a result of the outage."

22 Q. And that's the ice storm outage that you  
23 were referring to; is that correct?

24 A. I believe so, yes.

25 Q. You -- you say you were involved in the

1 last two cases. Are you familiar with the  
2 stipulations that were reached in those cases  
3 regarding class cost of service?

4 A. Vaguely, yes.

5 Q. Can you confirm for me that Noranda  
6 received a less than system average increase in both  
7 of those cases?

8 A. That would be correct.

9 MR. WOODSMALL: I have no further  
10 questions. Thank you.

11 JUDGE WOODRUFF: Okay.

12 MR. WOODSMALL: Did I move for the  
13 admission of 551, your Honor?

14 JUDGE WOODRUFF: Yes, it's in.

15 MR. WOODSMALL: Thank you.

16 JUDGE WOODRUFF: Public Counsel.

17 MS. BAKER: No questions, thank you.

18 JUDGE WOODRUFF: Staff.

19 MR. WILLIAMS: No questions.

20 JUDGE WOODRUFF: MIEC.

21 CROSS-EXAMINATION BY MS. VUYLSTEKE:

22 Q. Good afternoon, Mr. Cooper. How are  
23 you?

24 A. Fine, Ms. Vuylsteke. How are you?

25 Q. Fine. Is it your testimony today that

1 because of the unfactor in the FAC under the  
2 stipulation that the business risk that you described  
3 in the data request response referred to by  
4 Mr. Woodsmall was substantially eliminated?

5 A. Well, I don't know if I would say  
6 substantially eliminated. I will say that it does  
7 mitigate the business risk. If there is still a  
8 business risk whereby power prices are below that  
9 which Noranda is paying the company, then Ameren  
10 would see a revenue shortfall.

11 Q. Okay. It's your testimony that the  
12 business risk would be mitigated by the unfactor  
13 stipulation?

14 A. That is correct.

15 Q. Okay. And was the loss of the Noranda  
16 load a result of any imprudent contact by Noranda or  
17 was it the result of an act of God?

18 A. It was a result of an act of God.

19 MS. VUYLSTEKE: Okay. I don't have any  
20 other questions. Thank you.

21 THE WITNESS: Thank you.

22 JUDGE WOODRUFF: Then we'll come up for  
23 questions from the bench. Commissioner Jarrett.

24 COMMISSIONER JARRETT: I have no  
25 questions, thank you.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: All right. No  
3 questions from the bench, so no need for recross.  
4 Any redirect?

5 MR. FISCHER: Just briefly.

6 REDIRECT EXAMINATION BY MR. FISCHER:

7 Q. Mr. Curtis discussed with you at length  
8 the fact that there's no class cost of service study  
9 that relates directly to street lighting in this  
10 case. Do you recall those questions?

11 A. Yes, I do.

12 Q. Do you expect that will be the situation  
13 in the next rate case?

14 A. No. We have committed to performing a  
15 class cost of service -- I'm sorry -- a class cost of  
16 service study that includes lighting in the next case  
17 and to work in collaboration with the parties that  
18 Mr. Curtis mentioned during his cross-examination.

19 Q. And is it your understanding the  
20 Commission has already approved that stipulation and  
21 agreement?

22 A. Yes.

23 Q. He also discussed with you the cost of  
24 street lighting poles going back to 1988, 1978, and I  
25 believe you indicated you didn't know what the costs

1     were; is that correct?

2             A.       That is correct.

3             Q.       And you made a comment that the costs  
4     vary from -- that they may not be the same pole over  
5     that whole period. Could you explain what you  
6     meant -- or may not be the same pole in that location  
7     over that period of time. Could you explain what you  
8     meant by that?

9             A.       Oh, certainly. For example, an  
10    automobile could have taken out a given pole and we  
11    would replace that pole with a new pole or the pole  
12    may have rotted over that period of time and we would  
13    have put in -- or storm, ice storm, hail storm, rain  
14    storm.

15            Q.       Okay. So if the cost would vary from  
16    pole to pole, you'd have to study that to determine  
17    what the cost would be for any particular area?

18            A.       That would be an administratively --  
19    administratively burdensome process.

20            Q.       You also discussed with Mr. Curtis the  
21    fact that there are cable attachments and telephone  
22    lines in some of the poles. Do you recall that?

23            A.       That is correct.

24            Q.       And I believe you indicated there was  
25    some kind of an offset to the base rates as a result

1 of that. Could you explain what you meant there?

2 A. Well, certainly. If I can refer to my  
3 schedule E 6, and I believe it's Mr. Warwick's  
4 schedule E 1. If you look at the base revenue on  
5 line 1, the line 2 is "Other Revenue," and revenues  
6 from cable TV attachments or telephone line  
7 attachments to poles would be included in the other  
8 revenue.

9 And again, that's an offset to base rate  
10 revenues. When we design rates to achieve the  
11 revenue requirement in this case, base rates are  
12 lower due to the fact that we do get revenues from  
13 sources other than our energy customer and demand  
14 charges in the tariff book.

15 Q. Okay. Mr. Curtis also mentioned this  
16 alternative proposal that he mentioned in his opening  
17 statement -- statement about escrowing the street  
18 lighting funds in this case. Do you recall that?

19 A. Yes, I do.

20 Q. If the Commission escrowed those funds  
21 and they subsequently refunded back to street  
22 lighting customers some amount of funds, do you know  
23 of any way to recoup those funds from other  
24 customers?

25 A. No, I do not. We would suffer a revenue

1     shortfall, and all other things being equal, would  
2     not have the same opportunity to earn the rate of  
3     return that would be authorized by the Commission in  
4     this case.

5                     MR. FISCHER:   That's all I have, Judge.

6                     JUDGE WOODRUFF:  All right.  Mr. Cooper,  
7     you can step down.

8                     THE WITNESS:  Thank you.

9                     JUDGE WOODRUFF:  Believe the next  
10    witness would be Mr. Warwick.

11                    MR. FISCHER:  Yes.

12                    (EXHIBIT NOS. 146, 147 AND 148 WERE  
13    MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

14                    (The witness was sworn.)

15                    JUDGE WOODRUFF:  Thank you very much.  
16    You may be seated.  And you probably heard my little  
17    speech also about answering only the questions that  
18    are asked and we'll keep things moving along?

19                    THE WITNESS:  Yes.

20                    JUDGE WOODRUFF:  All right.  You may  
21    inquire.

22    DIRECT EXAMINATION BY MR. FISCHER:

23            Q.     Please state your name and address for  
24    the record.

25            A.     William M. Warwick, 1901 Chouteau



1 Avenue, St. Louis, Missouri 63103.

2 Q. Are you the same William Warwick that  
3 caused to be filed in this case three pieces of  
4 prefiled testimony; a direct which has been marked as  
5 146, rebuttal that's been marked as 147 and  
6 surrebuttal that's been marked as 148 addressing the  
7 rate design class cost of service issue?

8 A. Yes, I am.

9 Q. Do you have any changes or corrections  
10 that you need to make to any of those pieces of  
11 testimony?

12 A. No, I do not.

13 Q. And there were some schedules attached  
14 to that -- the testimony; is that correct?

15 A. Yes.

16 Q. Do those schedules accurately depict  
17 what they're intended to show there?

18 A. Yes.

19 Q. And if I were to ask you the questions  
20 contained in your testimony today, would your answers  
21 still be the same?

22 A. They would.

23 MR. FISCHER: Judge, with that, I would  
24 move for the admission of Exhibits 146, 147 and 148  
25 and tender Mr. Warwick for cross.

1 JUDGE WOODRUFF: 146, 147 and 148 have  
2 been offered. Any objections to their receipt?

3 (NO RESPONSE.)

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

6 (EXHIBIT NOS. 146, 147 AND 148 WERE  
7 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
8 RECORD.)

9 JUDGE WOODRUFF: And for  
10 cross-examination, Missouri Retailers.

11 MR. SCHWARZ: No questions, Judge.

12 JUDGE WOODRUFF: The Muni Group.

13 CROSS-EXAMINATION BY MR. CURTIS:

14 Q. Good afternoon, Mr. Warwick.

15 A. Good afternoon, Mr. Curtis.

16 Q. You were the one who prepared the class  
17 cost of service study; is that correct?

18 A. Yes, I was.

19 Q. Excellent. Let me refer you to page 8  
20 of your direct testimony, in particular line 15.

21 A. I'm there.

22 Q. Would you read that sentence?

23 A. "Account 373, street lighting signal  
24 systems was allocated for customer classes based on  
25 the net original cost rate base as explained

1 earlier."

2 Q. Okay. That is a -- an account for  
3 street lighting?

4 A. That's correct.

5 Q. Does everything go in that that relates  
6 to street lighting?

7 A. I would presume, yes.

8 Q. Okay. So poles, cost of installation?

9 A. There is a separate pole account which  
10 the poles would go into. 364, I believe.

11 Q. That's a separate account?

12 A. Yes.

13 Q. Okay. And you referred to they're  
14 entered -- they're entered -- entered based on their  
15 net original cost rate base. What does that mean?

16 A. It was allocated based on the results of  
17 the plant after you depreciate it. You get your  
18 gross plant less the depreciation. That's your  
19 original net cost rate base.

20 Q. Okay. Let's -- let's talk about the  
21 installation of a -- of a wood pole in 1985 by the  
22 company. You would -- you would know the cost of a  
23 pole, right?

24 A. In 1985 you would know the cost of the  
25 pole. Today we use mass accounting records, so you

1 would not know specifically --

2 Q. You would not be able to go back and  
3 retrieve the cost of that pole from your records?

4 A. Not in our accounting records, no.

5 Q. How about if it were put in in 1995,  
6 would you be able to go back and determine the cost  
7 of that pole in 1995?

8 A. Not an individual pole unless it had a  
9 tag on it.

10 Q. Don't you tag all of your property?

11 A. I'm not aware of that. I'll ask the  
12 Commission Staff later about that.

13 Q. So when -- when these poles went in  
14 service, you would -- somebody would have determined  
15 the cost of the pole, the cost of the installation,  
16 the cost of the particular light -- street lighting  
17 fixture that was on there, right?

18 A. Yes.

19 Q. And that would -- except for the pole  
20 you say is a separate account, all of that street  
21 lighting expense would go into the street lighting  
22 account?

23 A. That's correct.

24 Q. So if it went in, we should be able to  
25 go back and determine where it is now and at what

1 depreciation level, I assume?

2 A. If you assume the year it went in, yes,  
3 but the records are kept en masse.

4 Q. Well, let me ask you, then, are we --  
5 are we going to be able to conduct a street lighting  
6 cost of service study and come out with something?

7 A. It could be difficult, but you know,  
8 there could be some assumptions that need to be made.

9 Q. That's yet to be determined, I guess?

10 A. Right.

11 Q. And is that one reason why you have not  
12 in the last three rate cases, four rate cases  
13 produced here a cost of service study for street  
14 lighting?

15 A. I presume so, yes.

16 Q. That and the relative size, I guess, of  
17 the street lighting account being 31 million?

18 A. Relative compared to the -- the other  
19 customer classes, yes.

20 Q. Okay. Let me refer you, then, to your  
21 Exhibit WMWE 1. And that is the -- the class cost of  
22 service allocation study?

23 A. Yes.

24 Q. In the third line down is "Lighting  
25 Revenue," and I think you'll agree we've established

1     that's the street lighting revenue?

2             A.       That's correct.

3             Q.       And you allocated that across  
4     residential and the other established class of  
5     customers?

6             A.       That's correct.

7             Q.       And on what basis did you spread that  
8     31 million to -- in revenue to those other classes?

9             A.       It should have been on a net original  
10    cost rate base.

11            Q.       Okay. And similarly, although we can't  
12    see it in here, you did something similar with all of  
13    the expenses related to street lighting?

14            A.       Yes.

15            Q.       Okay. And allocated those in a similar  
16    pro rata fashion to the other classes?

17            A.       That's correct.

18            Q.       And from this, I look at the bottom  
19    here, you derive for each -- for the Missouri  
20    system-wide and -- and all of the other classes of  
21    customers, a rate of return?

22            A.       That's correct.

23            Q.       For instance, revenue -- or residential  
24    has a negative rate of return, right?

25            A.       That's correct.

1           Q.       And others have different rates of  
2   return.  But there is no -- you didn't calculate a  
3   rate of return for street lighting customers, did  
4   you?

5           A.       No, I did not.

6           Q.       If you would turn to the next page which  
7   is page 2 of your -- it's E 2 of your schedule WMW.

8           A.       Yes.

9           Q.       And there you also calculated a rate of  
10  return for all the classes other than street  
11  lighting; is that correct?

12          A.       That's correct.

13          Q.       Let me go back to page 1 of your  
14  schedule WMWE 1.  Mr. Cooper, you heard him identify  
15  line No. 2 which is "Other Revenue"?

16          A.       Yes.

17          Q.       And that looks like that's system-wide  
18  at about 60 million?

19          A.       That's correct.

20          Q.       Okay.  And in "Other Revenue" would be  
21  the revenue that Ameren would have gotten from AT&T  
22  and the other companies that are hanging telephone  
23  lines on the poles?

24          A.       That's correct.

25          Q.       And any cable -- cable TV company that

1 had cable lines and utilized those poles would also  
2 be paying you revenue?

3 A. Yes.

4 Q. And any wireless antenna folks who  
5 wanted to hang an antenna on one of your poles, you  
6 would get revenue there?

7 A. I presume that's what it would show on  
8 the --

9 Q. That would all be recognized under  
10 "Other Revenue." Is there any way you -- that any of  
11 that revenue is recognized back to the municipal  
12 street lighting customers who paid for the original  
13 installation on that pole?

14 A. Not individually, no.

15 Q. Or collectively?

16 A. Only that it goes to offset rate base.

17 Q. How does that discretely credit street  
18 lighting customers?

19 A. Your rate base is less.

20 Q. Everybody's rate base is less?

21 A. Yes, but your average increase would be  
22 less, so the average increase of all the classes that  
23 were proposing this case would be less. Same for the  
24 street lighting.

25 Q. Would you agree with me that street



1     lighting is a unique class of customer?

2             A.       Yes.

3             Q.       I mean, it is largely off-peak?

4             A.       As Mr. Cooper pointed out, yes, largely.

5             Q.       Largely.

6             A.       But --

7             Q.       It is largely unmetered?

8             A.       5 M, yes.

9             Q.       Right. So it's just an odd little

10    duckling out there that has taken the remainders of

11    the day, as it were?

12            A.       I would say they take the average

13    increase or -- in the last couple cases.

14            Q.       Have you seen a cost of service study

15    for street lighting ever?

16            A.       At AmerenUE?

17            Q.       Yeah.

18            A.       No, I have not run across one.

19                    MR. CURTIS: Thank you.

20                    JUDGE WOODRUFF: All right. For AARP.

21                    MR. COFFMAN: No questions.

22                    JUDGE WOODRUFF: MEUA.

23                    MR. WOODSMALL: No questions.

24                    JUDGE WOODRUFF: Public Counsel.

25                    MS. BAKER: No questions, thank you.

1 JUDGE WOODRUFF: Staff.

2 MR. WILLIAMS: No questions.

3 JUDGE WOODRUFF: MIEC.

4 MS. VUYLSTEKE: No questions.

5 JUDGE WOODRUFF: All right. Come up for  
6 questions from the bench. Commissioner Jarrett.

7 COMMISSIONER JARRETT: No questions.

8 Thank you, sir.

9 JUDGE WOODRUFF: All right. No need for  
10 recross, then. Any redirect?

11 MR. FISCHER: Just one.

12 REDIRECT EXAMINATION BY MR. FISCHER:

13 Q. Mr. Warwick, would you expect a street  
14 lighting cost of service study to take into account  
15 other revenues?

16 A. Yes.

17 MR. FISCHER: That's all I have. Thank  
18 you.

19 JUDGE WOODRUFF: All right. Mr. Warwick,  
20 you can step down. Is there a witness for Ameren?

21 MR. FISCHER: Mr. Pozzo, he has not been  
22 requested to be cross-examined by anyone and we've  
23 already introduced his testimony into the record.

24 JUDGE WOODRUFF: Okay. I notice they  
25 mentioned one earlier. Let's move on to the MIEC

1 witnesses, then. I understand there's a number of  
2 witnesses who will not be asked cross; is that  
3 correct?

4 MS. VUYLSTEKE: That is correct, your  
5 Honor. I would respectfully propose if it's  
6 acceptable to the bench and the parties that the  
7 witness for the Municipals, Ms. Eastman, might  
8 consider going ahead of us. We had discussed that.

9 JUDGE WOODRUFF: Does anyone have a  
10 problem with that?

11 (NO RESPONSE.)

12 JUDGE WOODRUFF: Let's do it, then.

13 (The witness was sworn.)

14 JUDGE WOODRUFF: And you've also heard  
15 my speech about answering only the questions that are  
16 asked?

17 THE WITNESS: Yes.

18 JUDGE WOODRUFF: Thank you. You may  
19 inquire when you're ready.

20 MR. CURTIS: Thank you.

21 DIRECT EXAMINATION BY MR. CURTIS:

22 Q. Would you state your full name.

23 A. My name is Petree Eastman.

24 Q. And your address?

25 A. City Hall is at 6801 Delmar Boulevard,

1 University City, Missouri.

2 Q. Okay. And by whom are you employed,  
3 Ms. Eastman?

4 A. The City of University City.

5 Q. In what capacity?

6 A. I'm the assistant city manager and the  
7 chief sustainability officer for the City of  
8 University City.

9 Q. Are you the same Petree A. Eastman who  
10 caused to be filed rebuttal testimony which I believe  
11 your Honor has identified as Exhibit 750 in this  
12 case?

13 A. Yes, I did.

14 Q. Ms. Eastman, do you have any additions  
15 or corrections to make to this testimony today?

16 A. I actually do. Throughout the  
17 document -- my testimony, I referred to the charges  
18 for the wood poles, ornamental poles and the line  
19 charges as pole rental, and I think that is probably  
20 an incorrect -- that is an incorrect description of  
21 those charges.

22 In reading carefully the description in  
23 the tariff, it only refers to installation. It does  
24 not refer to the cost of the pole, the cost of the  
25 maintenance of the pole. It is solely the

1 installation of the pole. And I would point to the  
2 tariff itself where it makes a distinction between  
3 pre-'88 poles and post-'88 poles.

4           And the reason why it's only  
5 installation cost is because it's clear from the  
6 tariff that post-'88, the wood poles' installation  
7 has to be paid up front. So therefore, if it were an  
8 ongoing maintenance cost, you would think that you  
9 could not pay that up front and know for sure that  
10 your pole would be maintained. So therefore, I am --  
11 would strike all references to pole rental and insert  
12 the term "pole installation cost."

13           Q.       Have you done that? Can we go page by  
14 page and identify the places?

15           A.       It's primarily on page 14 within the  
16 question starting on line 5. There is discussion of  
17 pole rental on line 7, line 9, line 11, line 12,  
18 line 13, line 15. It's also discussed in our  
19 proposed relief that we seek, and that is on page 15,  
20 line 15. It would -- we have asked for AmerenUE to  
21 permanently remove and cease pole rental charges to  
22 the municipalities that predate 1988. I would ask  
23 that to be said, "pole installation charges to be  
24 removed."

25           Q.       Okay.

1           A.       I believe it's also in one other  
2 location, but I'm remiss as to find exactly where  
3 that is at the moment.

4           Q.       For purposes of these corrections,  
5 though, wherever pole rental is used, you wish to  
6 strike "rental" and use the word "installation"?

7           A.       Yes, sir.

8                   MR. WILLIAMS: May I inquire?

9                   MR. CURTIS: Certainly.

10                  MR. WILLIAMS: I see a reference to pole  
11 rental on page 6 at line 14. Is that one of the  
12 places where it should be changed?

13                  THE WITNESS: That may be it, uh-huh.

14                  MR. CURTIS: Thank you, Mr. Williams.

15                  THE WITNESS: Yes, that is it.

16 BY MR. CURTIS:

17           Q.       Are there any other revisions or  
18 corrections?

19           A.       That's the only revision and correction  
20 that I have at this time.

21           Q.       With these revisions and corrections, if  
22 you were asked these questions today, would your  
23 answers be the same?

24           A.       Yes, sir.

25           Q.       Would those be true and correct to the

1 best of your knowledge?

2 A. Yes, sir.

3 MR. CURTIS: Thank you. Tender the  
4 witness for cross and offer in Exhibit 750.

5 JUDGE WOODRUFF: 750 has been offered.  
6 Any objection to its receipt?

7 (NO RESPONSE.)

8 JUDGE WOODRUFF: Hearing none, it will  
9 be received.

10 (EXHIBIT NO. 750 WAS RECEIVED INTO  
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 JUDGE WOODRUFF: For cross-examination,  
13 Missouri Retailers.

14 MR. SCHWARZ: Thank you, Judge.

15 CROSS-EXAMINATION BY MR. SCHWARZ:

16 Q. From your testimony, I understand that  
17 you did no cost of service studies on the street  
18 lighting classes; is that correct?

19 A. No, sir.

20 Q. What -- what class cost of service study  
21 did you conduct?

22 A. The only -- the only type of study I  
23 conducted was to compare the 5 M rate to the 6 M rate  
24 and ask a series of questions of Ameren as to an  
25 explanation of those two rates.

1           Q.       Let's -- let me approach it -- do you  
2     have any reason to believe that either the 6 M rate  
3     or the 5 M rate accurately reflects the actual cost  
4     to provide the services?

5           A.       Yes, I do.

6           Q.       And how did you determine that?

7           A.       When I looked at the 5 M rate in our  
8     billing that we received, I was looking at it for a  
9     completely different purpose initially, and it was to  
10    determine whether or not we would be able to afford  
11    to retrofit our street lighting for more energy  
12    efficiency. And it was clear because of the way that  
13    we're billed with meters -- without meters, that the  
14    only way to save energy and cost would be to actually  
15    decommission lights.

16                   I had asked Ameren if they could at  
17    least give me the energy portion of the rates so that  
18    we could at least make that calculation, and they  
19    told us to compare it to the 6 M rate. When I did  
20    that, I was astonished to find that the energy  
21    portion and the maintenance portion of the 6 M rate  
22    which deals mainly with the lamp, the bulb, the fuse  
23    of the fixture itself was a minuscule percentage of  
24    the overall rate that we were paying.

25                   And to -- and I understand that with



1    regard to our Ameren-owned poles that we have, quote,  
2    bumper-to-bumper coverage, however, I would dispute,  
3    I guess, two things: One is that if a car hits --  
4    hits a pole and knocks it over, Ameren isn't paying  
5    to replace that pole, a car insurance company is.

6                    When I found that, I thought, well, let  
7    me look at our service records to see. And I asked  
8    for -- from Ameren our service records, and of  
9    course, they could not identify by pole our -- the  
10   services that were conducted on our poles. We're a  
11   very old suburb, and so we have amongst the oldest  
12   poles. And so we thought it was a good test because  
13   it's more likely we have trouble more than maybe a  
14   newer municipality.

15                   And what they sent me were tally sheets  
16   of things that had gone wrong with various poles and  
17   fixtures over the course of about five years. In  
18   fact, I think, oh, 2004. And what I found was that  
19   the bulk of the maintenance was on the bulb, the  
20   fuse, the lamp, all those -- those particular costs  
21   associated with the 6 M maintenance.

22                   I then contacted our public works  
23   department thinking that, well, then, there must be  
24   some way to justify the additional monies that were  
25   being charged on our rate, and I asked for

1 information about our excavation permits. And what I  
2 found was that there was very little permit activity  
3 where excavation was required.

4 All those factors made me conclude, at  
5 least had suspicion, strong suspicion that we were  
6 being vastly overcharged for the actual service that  
7 we were receiving.

8 Q. Well, okay. And that's all reflected in  
9 your testimony, is it not?

10 A. Yes, sir.

11 Q. Let me ask you this: What's -- what's  
12 the cost of a bucket truck to lift a person up to  
13 work on a streetlight?

14 A. It depends on the light, and I would  
15 assume it's somewhere between \$1.35 and 2.78.

16 Q. That's not my question. My question is,  
17 the AmerenUP -- UE people show up in a bucket truck,  
18 lift a worker up to work on a streetlight, what's the  
19 cost of that truck?

20 A. I have no idea.

21 Q. So did you examine any of the  
22 depreciation studies in this case to determine --

23 A. We were not given any --

24 MR. SCHWARZ: Excuse me.

25 THE WITNESS: -- information.

1 MR. SCHWARZ: Judge?

2 THE WITNESS: I'm sorry.

3 JUDGE WOODRUFF: Yeah, please just  
4 answer the questions that are asked.

5 THE WITNESS: Sure, sure.

6 BY MR. SCHWARZ:

7 Q. So did you examine any of the  
8 depreciation studies in this case to determine what  
9 the -- the average service life of any of these  
10 properties are?

11 A. We were not given, despite being -- we  
12 requested the information and we were not given any  
13 of the depreciation studies.

14 Q. Are you aware that the depreciation  
15 studies are filed of record not highly confidential  
16 in this case?

17 A. Not on street lighting it isn't, as far  
18 as I'm aware.

19 Q. So my question was, did you examine  
20 them? What's your answer?

21 A. No.

22 Q. Did you -- okay. So you don't know  
23 if -- if the -- the streetlights or the bucket trucks  
24 or any of the equipment used to provide the service  
25 under 5 M or 6 M, you didn't do any research into the

1 actual cost of providing the service --

2 A. No, sir. I just -- I just looked at the  
3 6 M rate.

4 Q. You compared 6 M to --

5 A. Yes, I did.

6 Q. -- 5 M?

7 A. Yes.

8 Q. That's -- and that's what it appears to  
9 me. But you have no independent basis to know if 6 M  
10 is over or under-recovering the cost to provide it?

11 A. Other than that it was not disputed in  
12 the surrebuttal testimony of Mr. Cooper.

13 Q. And you don't know if the actual cost to  
14 provide service under 5 M is greater or less than the  
15 tariffed rate?

16 A. No, sir.

17 MR. SCHWARZ: Okay. That's all I have.

18 JUDGE WOODRUFF: All right. For AARP.

19 MR. COFFMAN: No questions.

20 JUDGE WOODRUFF: For Staff.

21 MR. WILLIAMS: No questions.

22 JUDGE WOODRUFF: For Ameren.

23 CROSS-EXAMINATION BY MR. FISCHER:

24 Q. Ms. Eastman, you made a -- an analogy to  
25 bumper-to-bumper coverage?

1           A.       No, I -- that was Mr. Cooper's analogy.

2           Q.       Okay.  You -- have -- have you seen the  
3   new car ads lately that have lifetime drivetrain  
4   warranties as part of the purchase price?

5           A.       Possibly.

6           Q.       Are you aware that vehicles -- sometimes  
7   you have vehicle warranties that provide coverage  
8   over a period of time for upfront payments?

9           A.       Sure.

10                  MR. FISCHER:  Okay.  That's all I have.  
11   Thank you.

12                  JUDGE WOODRUFF:  For MEUA.

13                  MR. WOODSMALL:  No questions.

14                  JUDGE WOODRUFF:  MIEC.

15   CROSS-EXAMINATION BY MS. VUYLSTEKE:

16           Q.       Good afternoon, Ms. Eastman.  How are  
17   you?

18           A.       Thanks, hi.

19           Q.       Could you tell me how the Municipal  
20   Group came to be involved in this case?

21           A.       As I shortly mentioned earlier, the  
22   municipalities, as you are probably aware, are  
23   experiencing extremely difficult financial times as  
24   that most cities are financed in large part by sales  
25   tax revenue which is driven, of course, by the

1 economy.

2                   Also coinciding with that decline --  
3 serious decline in revenue, with the election of  
4 President Obama, new legislation for federal stimulus  
5 dollars came about. And under the federal stimulus  
6 package, there is an energy efficiency and  
7 conservation block grant funding which we were  
8 entitled to get direct funding for.

9                   And when we were examining how to spend  
10 this money, which is fairly insignificant in the  
11 scheme of things, we thought retrofitting our  
12 streetlights because of the tremendous cost to our  
13 city, that that would be a good use of our funds. It  
14 would say -- because the mandate under the ARRA money  
15 is to save money, save and create jobs and to produce  
16 energy use.

17                   Because of the way our -- we are billed,  
18 the only way we know for certain that we could save  
19 money or use is to decommission lights. And so that  
20 started our inquiry with Ameren as to kind of what  
21 would it cost to retrofit, and we were told pretty  
22 bluntly that Ameren had absolutely no plans to  
23 retrofit streetlights.

24                   And after seeing how much the energy  
25 portion of the rate is, I can understand why. That

1 got us to thinking as to, wow, what's going on with  
2 these rates? And that was the -- really the  
3 beginning of this -- this process for us.

4 Q. Okay. And -- and you said you attempted  
5 to get cost of service data from Ameren?

6 A. Yes, we did. We asked for -- for data  
7 on the cost of the poles, the cost of the fixtures,  
8 the location of the poles and the fixtures, mapping  
9 data, because one of the things that we decided to do  
10 with our ARRA money was to GIS all of our streetlight  
11 locations so that we could determine whether or not,  
12 in fact, the bills that we were receiving and the --  
13 the -- the lights actually match up with the -- the  
14 bills that we were receiving.

15 And we asked for the mapping data and  
16 was told that we could not get the mapping data  
17 because it was a national security concern, even  
18 though it was something that might have to be put  
19 together -- of course, I subsequently learned that  
20 that information is fairly readily available and  
21 distributed when needed to the public works  
22 department. We essentially have gotten no  
23 information other than what is available at the PSC.

24 MS. VUYLSTEKE: Okay. I have no other  
25 questions. Thank you.

1 THE WITNESS: Uh-huh.

2 JUDGE WOODRUFF: Cross from Public  
3 Counsel.

4 MS. BAKER: No questions. Thank you  
5 very much.

6 JUDGE WOODRUFF: All right. Come up for  
7 questions from the bench.

8 COMMISSIONER JARRETT: No questions.

9 JUDGE WOODRUFF: No questions from the  
10 bench, no need for recross. Any redirect?

11 REDIRECT EXAMINATION BY MR. CURTIS:

12 Q. Ms. Eastman, you were asked by  
13 Ms. Vuylsteke how -- how you got involved in the  
14 case, and that was certainly your entry --

15 A. Yes.

16 Q. -- into the case on behalf of University  
17 City?

18 A. Yes.

19 Q. Can you round out the picture as to how  
20 the other cities in the Municipal League became  
21 involved?

22 A. Sure, sure. And I should have done  
23 that. Because of our concerns about what the rate  
24 that we were paying, I made a simple e-mail request  
25 to our sister cities in the St. Louis County area and



1     asked them to send us their electric bills.   And  
2     knowing that we are all looking under every rock for  
3     every penny, they were very happy to oblige and sent  
4     us all of their bills.

5                     We also subsequently learned that the  
6     City of Ballwin who also pays a tremendous amount of  
7     money -- we pay about \$640,000 a year for our street  
8     lighting, Ballwin was paying upwards of that as well.  
9     And then we also learned that the City of O'Fallon  
10    which has quite a few more lights also was paying  
11    around \$950,000 a year for street lighting.

12                    And we found out from them that when  
13    they did their mapping of their street lightings,  
14    that there were many lights that were not even in the  
15    city limits of O'Fallon and that they were being  
16    charged for many, many years, I think upwards of ten  
17    years for lights that -- that weren't even within the  
18    confines of their municipal -- their municipal  
19    boundaries.

20                    So between that and just the  
21    conversations amongst the cities, we took the lead  
22    because of the significance to our budget and what it  
23    means to us in terms of trying to deal with these --  
24    these costs at the expense of -- of very much needed  
25    municipal services.

1                   We aren't the deadbeat roommate who  
2   doesn't pay their bills. We are somebody who  
3   provides fire and police, community development, code  
4   enforcement, public works, and so this is an  
5   extremely important issue to the municipalities for  
6   providing services that we all enjoy.

7                   MR. CURTIS: Thank you very much.  
8   Nothing further.

9                   JUDGE WOODRUFF: All right.  
10   Ms. Eastman, you can step down, then. Thank you.

11                   We're due for a break. We'll take a  
12   break and come back at three o'clock.

13                   (EXHIBIT NO. 750 WAS MARKED FOR  
14   IDENTIFICATION BY THE COURT REPORTER.)

15                   (A RECESS WAS TAKEN.)

16                   JUDGE WOODRUFF: All right. Let's come  
17   to order, please. We're back from our break and a  
18   disagreement has arisen over who's going to be the  
19   next witness. Ms. Vuylsteke, if you want to address  
20   this first.

21                   MS. VUYLSTEKE: Mr. Smith is the next  
22   witness that MIEC would propose to take the stand.  
23   We think that it's essential to the presentation of  
24   the testimony of MIEC and Noranda that Mr. Smith go  
25   first.

1                   Part of Mr. Smith's testimony relies on  
2   expert testimony from Mr. Fayne and Mr. Brubaker, and  
3   I think it's important for -- for the -- the basic  
4   presentation of the facts to have Mr. Smith go first.  
5   And I understand that Mr. Woodsmall is concerned  
6   about the order and would like Mr. Fayne to go first,  
7   but I -- we're happy to take a break if we need to if  
8   he needs additional preparation, but I don't see a  
9   reason and I think it would interfere with the  
10  presentation of the evidence to take Mr. Fayne before  
11  Mr. Smith.

12                   JUDGE WOODRUFF:   Mr. Woodsmall.

13                   MR. WOODSMALL:   Yes, your Honor.   First  
14  off, it's bad timing on the part of counsel to bring  
15  this up at this moment.   We've had this scheduled --  
16  we did the issue list and the list of witnesses and  
17  the order of witnesses weeks ago.   So the fact that  
18  it is -- this is being sprung now is certainly  
19  inconvenient for me.   I've prepared my  
20  cross-examination in the order that is shown here.

21                   Secondly, counsel says that Mr. Smith  
22  relies on the testimony of Mr. Fayne.   If he relies  
23  on the testimony of Mr. Fayne, we need to get  
24  Mr. Fayne established, get his testimony out there  
25  and then Mr. Smith can build upon it.   It's not vice

1    versa.  So since he's relying upon Mr. Fayne,  
2    Mr. Fayne should go first.  That way, any testimony  
3    of Mr. Fayne that is stricken will have the domino  
4    effect in Mr. Smith's testimony.

5                   JUDGE WOODRUFF:  All right.

6                   MS. VUYLSTEKE:  I would -- I would add,  
7    Judge, that you know, counsel for Staff can speak to  
8    this, but the order of witnesses that's listed here  
9    was an order that the Staff put together, not based  
10   on the order that each witness was intended to  
11   individually go but I believe the order of the  
12   parties, and I'll let Mr. Williams speak to that  
13   issue.

14                  JUDGE WOODRUFF:  Mr. Williams.

15                  MR. WILLIAMS:  Ms. Vuylsteke has  
16   accurately described that.  And as the Commission may  
17   recall, there was a very short time for this order --  
18   the hearing order to be put together.

19                  JUDGE WOODRUFF:  Anyone else want to  
20   jump in on this?

21                  (NO RESPONSE.)

22                  JUDGE WOODRUFF:  All right.  Well, as  
23   Staff has indicated, this order of witnesses is just  
24   something that was put together by Staff, it's not  
25   something that the Commission has ordered, and we've

1    been jumping back and forth on witnesses. I think  
2    the fundamental point here is that it's up to the  
3    parties to choose how to present their testimony.  
4    Therefore, I'm going to allow MIEC to present their  
5    witnesses in the order that they choose.

6                   MR. WOODSMALL: Your Honor, with that,  
7    then, I need to make a motion to strike certain  
8    testimony of Mr. Fayne before Mr. Smith takes the  
9    stand because it will have a domino effect into  
10   Mr. Smith's testimony.

11                  JUDGE WOODRUFF: Okay. Go ahead and  
12   make your motion.

13                  MR. WOODSMALL: Are we on the record?

14                  JUDGE WOODRUFF: We are on the record,  
15   yes.

16                  MR. WOODSMALL: So we're on Mr. Fayne's  
17   testimony. I don't have the exhibit number for that.  
18   Exhibit 421, your Honor, is the direct testimony of  
19   Mr. Fayne, and the parts in question that I will be  
20   addressing are starting from page 8 --

21                  JUDGE WOODRUFF: Just a moment. Let me  
22   get it up here. Okay. This is on page 8, you said?

23                  MR. WOODSMALL: Starting from page 8,  
24   continuing through page 10, line 1 and Exhibit HWF 1  
25   are what I'm going to be addressing.

1                   First off, schedule HWF 1 is classic  
2       hearsay, your Honor. The witness took this  
3       information from the Internet. It is an out-of-court  
4       statement offered for the truth of the matter  
5       asserted. It's Internet information that he did not  
6       verify through any tariffs or contracts. It's  
7       classic hearsay.

8                   Given that that is hearsay, the question  
9       and answer on page 8, lines 10 through 19 is just  
10      testimony based on that hearsay, again, based upon  
11      out-of-court statements offered for the truth of the  
12      matter asserted.

13                  Finally, page 9, lines 11 through 13,  
14      based upon the same schedule, it's also hearsay.

15                  JUDGE WOODRUFF: All right. Do you wish  
16      to make a response?

17                  MR. LEADLOVE: Your Honor, Mark Leadlove  
18      on behalf of MIEC. I will be handling the testimony  
19      of Mr. Fayne. Mr. Fayne is presented as an expert  
20      witness on behalf of MIEC. As such, expert witnesses  
21      can and always do rely on hearsay testimony.  
22      Therefore, the basis of Mr. Woodsmall's motion to  
23      strike is not founded.

24                  Additionally, Mr. Woodsmall had plenty  
25      of time to make this motion earlier, and to wait

1     until this time is just inappropriate.

2                     Additionally, your Honor, as  
3     Mr. Woodsmall is aware from the deposition of  
4     Mr. Fayne, Mr. Fayne not only relied on this CRU  
5     data, and will explain the source of that CRU data,  
6     he also has personal knowledge of four or five of the  
7     smelters that are listed of the -- of the nine or ten  
8     there on the list. So that's clearly not even  
9     classic hearsay.

10                    JUDGE WOODRUFF: Witnesses -- go ahead.

11                    MR. WOODSMALL: Your Honor, to respond,  
12     as he said, Mr. Fayne only has personal knowledge of  
13     four or five. That leaves several that he has no  
14     knowledge of at all. He's relying upon data on the  
15     Internet. Counsel says that the fact that it's  
16     relied upon by an expert somehow makes it competent.  
17     That's not true. While an expert can rely upon that,  
18     that still makes his testimony hearsay.

19                    I would submit too that experts don't  
20     rely on hearsay itself. Experts rely upon things  
21     that fall outside the hearsay rule. Experts rely on  
22     business records, an exception to the hearsay  
23     exception, experts rely on official records, SEC  
24     documents, all exceptions to the hearsay -- the  
25     hearsay rule.

1                   So the fact that an expert is relying  
2   upon it doesn't mean it's not hearsay, it just means  
3   that you have an expert relying on hearsay. It's  
4   double hearsay. So I -- go ahead. I'm sorry.

5                   JUDGE WOODRUFF: All right. I'm going  
6   to overrule the objection. I believe experts can and  
7   do rely on hearsay. It certainly goes to the  
8   credibility of the expert opinion and you still will  
9   be allowed to inquire about that --

10                  MR. WOODSMALL: Okay.

11                  JUDGE WOODRUFF: -- but I'll deny the  
12   motion to strike.

13                  MR. WOODSMALL: So are -- are you -- are  
14   you saying that it's hearsay and you're admitting it  
15   or are you saying it's just not hearsay?

16                  JUDGE WOODRUFF: I'm saying it's hearsay  
17   upon which the witness apparently has relied and  
18   you -- you can inquire about that.

19                  MR. WOODSMALL: Okay. But your ruling  
20   is that it is hearsay?

21                  JUDGE WOODRUFF: The testimony is what  
22   it is.

23                  MR. WOODSMALL: Okay. That was the  
24   extent of my motion to strike on Mr. Fayne's  
25   testimony.



1 JUDGE WOODRUFF: Okay.

2 MR. LEADLOVE: Your Honor, MIEC would  
3 call to the stand Layle (Kip) Smith, please.

4 (EXHIBIT NOS. 426 AND 427 WERE MARKED  
5 FOR IDENTIFICATION BY THE COURT REPORTER.)

6 (The witness was sworn.)

7 JUDGE WOODRUFF: You've heard my little  
8 speech before about answering the questions you're  
9 asked?

10 THE WITNESS: Yes, I have.

11 MR. WOODRUFF: You may inquire.

12 MR. LEADLOVE: Thank you, your Honor.  
13 By way of introduction, my name is Mark Leadlove and  
14 I am appearing in this action on behalf of the MIEC.  
15 This is my first opportunity to practice before the  
16 Commission and I appreciate that opportunity. Thank  
17 you.

18 DIRECT EXAMINATION BY MR. LEADLOVE:

19 Q. Sir, would you state your full name for  
20 the record.

21 A. Yes, it's Layle, L-a-y-l-e, Kiplind,  
22 K-i-p-l-i-n-d, Smith, and I go by Kip.

23 Q. Mr. Smith, by whom are you employed?

24 A. Noranda Intermediate Holding  
25 Corporation.

1 Q. And what is your position?

2 A. I'm the president and CEO.

3 Q. And Mr. Smith, did you cause to be filed  
4 direct testimony and supplemental direct testimony in  
5 this case that's been marked as Exhibits 426 and 427  
6 respectively?

7 A. Yes, I did.

8 Q. And do you have anything to add or  
9 modify to that testimony?

10 A. I do not.

11 Q. And if the questions were asked of you  
12 as they were set forth in the written direct  
13 testimony and the supplemental direct testimony,  
14 would your answers be the same today?

15 A. Yes, they would.

16 MR. LEADLOVE: Your Honor, I would move  
17 for the admission into evidence of Exhibit 426 and  
18 Exhibit 427.

19 JUDGE WOODRUFF: 426 and 427 have been  
20 offered. Are there any objections to their -- any  
21 objections to their receipt?

22 MR. WOODSMALL: Yes, your Honor.

23 JUDGE WOODRUFF: What's your objection?

24 MR. WOODSMALL: Page 6, the question and  
25 answer at the top of the page, there are no line

1 numbers for that, but the first Q and A, he relies  
2 upon the testimony of Mr. Fayne. Again, Mr. Fayne  
3 relied upon hearsay evidence, Mr. Fayne's testimony  
4 has been built on that hearsay evidence and here we  
5 have more testimony. It's triple hearsay at this  
6 point.

7 In fact, Mr. Smith was not offered as an  
8 expert himself on the cost of electricity for  
9 aluminum smelters, so even that can't be used by  
10 counsel now that he's an expert relying upon hearsay.  
11 So it's just triple hearsay, your Honor.

12 JUDGE WOODRUFF: Which exhibit are you  
13 talking about?

14 MR. WOODSMALL: The Q and A at the top  
15 of page 6.

16 JUDGE WOODRUFF: Of the Smith direct?

17 MR. WOODSMALL: Yes, I'm sorry. Yes, of  
18 initial direct.

19 JUDGE WOODRUFF: Okay. Okay. What page  
20 was that again?

21 MR. WOODSMALL: Page 6, the Q and A at  
22 the top of -- it's before the line numbers start.

23 JUDGE WOODRUFF: I'm sorry. I'm in  
24 Mr. Brubaker's testimony. And what is -- which part  
25 of it are you objecting to?

1                   MR. WOODSMALL: The entirety. As see in  
2 the answer there, one --

3                   JUDGE WOODRUFF: That entire question  
4 and answer?

5                   MR. WOODSMALL: Yes. It's based upon  
6 the testimony of Henry Fayne that's based upon the  
7 hearsay information contained in the exhibit.

8                   JUDGE WOODRUFF: Okay. Your response to  
9 that motion?

10                  MR. LEADLOVE: Your Honor, I don't  
11 believe it's provided to prove the -- the truth of  
12 the matter asserted. I think this is the basis for  
13 one of Mr. Smith's pieces of factual evidence that  
14 he'll be giving. Therefore, I don't believe it's  
15 appropriate to strike the testimony. Under -- this  
16 shows why or part of the reason why Mr. Smith  
17 believes what he believes.

18                  MR. WOODSMALL: Then it is offered for  
19 the truth of the matter asserted. If it's not, it's  
20 completely irrelevant.

21                  JUDGE WOODRUFF: And just to be -- so  
22 I'm perfectly clear, you're asking to strike the  
23 question and answer that's above No. 1 here and  
24 that's all?

25                  MR. WOODSMALL: The first question and

1 answer on page 6, yes.

2 JUDGE WOODRUFF: Okay. I believe I'm  
3 going to sustain that objection. That question and  
4 answer will be stricken.

5 MR. LEADLOVE: Very good.

6 MR. WOODSMALL: If we're done with that,  
7 I have further questions.

8 JUDGE WOODRUFF: Okay.

9 MR. WOODSMALL: Objections, questions, I  
10 don't know because of the change in testimony. I had  
11 made a motion to strike certain testimony, as you  
12 addressed earlier, and we kind of agreed that we'd  
13 carry that forward.

14 Starting at the bottom of page 9,  
15 line 24 through the answer finishing on page 10,  
16 specifically his question is: "Earlier you indicated  
17 that you would address why an electric rate of \$27  
18 for the New Madrid smelter was in the public  
19 interest."

20 I believe you've now stricken the  
21 previous reference to the cost of electricity, but  
22 that specifically references a \$27 rate which the  
23 Commission's previously found is irrelevant.

24 JUDGE WOODRUFF: Correct. And I believe  
25 I announced earlier that -- that it would -- that

1 would -- that motion would be denied as to the  
2 substance of the -- substance of the testimony of the  
3 answer, but with the modification to the question.

4 MR. WOODSMALL: And all I'm asking is  
5 for purposes of the record, how does the question now  
6 read, given the modification?

7 JUDGE WOODRUFF: I believe you read it  
8 before and it sounded okay to me at that time. Do  
9 you remember what you said?

10 MR. WOODSMALL: I don't want to -- I'd  
11 love to file their testimony. I'd change it to \$40.

12 JUDGE WOODRUFF: I will say I'll  
13 reaffirm my earlier ruling.

14 MR. WOODSMALL: Okay. I just need to  
15 know so when I put it in the brief what -- how it's  
16 going to read.

17 JUDGE WOODRUFF: All right.

18 MR. LEADLOVE: I believe the  
19 modification was from \$27 to a reduced electric rate  
20 for the New Madrid smelter.

21 JUDGE WOODRUFF: That sounds correct.

22 MR. WOODSMALL: Okay. And give me a  
23 second, your Honor. I think that may have been it.  
24 Yes, your Honor, I have nothing further.

25 JUDGE WOODRUFF: All right. Subject to

1 those objections, the -- which were overruled and  
2 granted as previously indicated, the testimony will  
3 be received. That will be 426 and 427.

4 (EXHIBIT NOS. 426 AND 427 WERE RECEIVED  
5 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

6 MR. LEADLOVE: And your Honor, based on  
7 that, I tender the witness for cross-examination.  
8 Thank you.

9 JUDGE WOODRUFF: All right. Thank you.  
10 For cross-examination we begin with the Missouri  
11 Retailers.

12 MR. SCHWARZ: No questions, Judge.

13 JUDGE WOODRUFF: Muni Group.

14 MR. CURTIS: No questions. Thank you.

15 JUDGE WOODRUFF: Public Counsel.

16 MS. BAKER: No questions, thank you.

17 JUDGE WOODRUFF: AARP.

18 MR. COFFMAN: No questions.

19 JUDGE WOODRUFF: MEUA.

20 MR. WOODSMALL: Thank you, your Honor.

21 CROSS-EXAMINATION BY MR. WOODSMALL:

22 Q. Good afternoon, sir.

23 A. Good afternoon.

24 Q. Can you tell me what the current price  
25 of -- of aluminum is?

1           A.       The price as of earlier this week, I'd  
2     have to -- I'd have to say I did not look at the  
3     price today. It was about 99 cents a pound.

4           Q.       Can you --

5           A.       That's not including the Midwest  
6     premium. That's just the straight price of aluminum.

7           Q.       And can you tell me what the price is on  
8     the LM -- the London Metal Exchange?

9           A.       The London Metal Exchange would be in  
10    dollars per metric ton, so it would be two hundred  
11    and -- 2,200 times that, so...

12          Q.       Approximately -- \$2,200, approximately?

13          A.       Exactly -- approximately.

14          Q.       Can you tell me how the market price of  
15    aluminum has changed over the last two years?

16          A.       If you reference -- and if you go  
17    January to January which I think is a -- is a period  
18    of time that's interesting because in January of '08,  
19    the LME price without the Midwest transaction premium  
20    was about \$1.07.

21                 In January of this year, it was about --  
22    oh, about \$1.03, and I'm working off a chart  
23    that's graphical, so I don't have the exact number  
24    here. So there's -- a point in time to point in  
25    time, there's -- there's quite a bit of stability.



1 In fact, in the week of January -- you know, later in  
2 January, it got back up to about \$1.05 again.

3 But in the interim, the price went to  
4 its all-time record high in July of 2008 and went to  
5 near record lows in March of 2008.

6 Q. Thank you. Besides Noranda, can you  
7 tell me who the other companies are that own aluminum  
8 smelters in the United States?

9 A. I can give you a partial list. I'm not  
10 sure that it's -- I'm not -- I'm not sure it's  
11 complete, but Alcoa owns smelters in the U.S.,  
12 Century owns smelters in the U.S., we own smelters in  
13 the U.S. and Ormet owns smelters in the U.S., one or  
14 more smelters, and also Alcan.

15 Q. Okay. And to your knowledge, those are  
16 the only companies that own smelters in the United  
17 States?

18 A. Yes.

19 Q. Can you tell me who Intalco is?

20 A. Intalco. No, I can't.

21 Q. Can you tell me who Columbia Falls  
22 Aluminum Company is?

23 A. Columbia Falls -- and -- and by the way,  
24 I gave you the names of active smelters, smelters  
25 that are actually operating right now. So I'm sorry.

1 Again, Columbia Falls?

2 Q. Yes.

3 A. That's in Columbia Falls, Montana and  
4 that's a small smelter that's shut down.

5 Q. Okay. When you say "shut down," is it  
6 your understanding that it -- it -- the smelter has  
7 been decommissioned?

8 A. I don't have -- I don't know. I don't  
9 know.

10 Q. Okay. A dozen smelters in the United  
11 States and you don't know if it's temporarily shut  
12 down or if it's permanently decommissioned?

13 A. That's correct.

14 Q. Can you tell me the biggest cost  
15 components for the New Madrid smelter?

16 A. Yes. The largest cost -- there are  
17 four, alumen power, alumina labor and our carbon  
18 products, coke and pitch.

19 Q. Would freight cost be a significant cost  
20 for -- for Noranda?

21 A. It would be a much smaller cost than  
22 those three, but it's about -- but it's still -- I  
23 would still consider it a significant cost, yes.

24 Q. Can you tell me what percent of  
25 Noranda's total costs are represented by electric

1 costs?

2 A. Yes, I can. It's -- it's -- it's just  
3 under a third.

4 JUDGE WOODRUFF: Mr. Woodsmall, is your  
5 microphone on? They're having trouble hearing you.

6 MR. WOODSMALL: Oh, I'm sorry.

7 JUDGE WOODRUFF: Thank you.

8 BY MR. WOODSMALL:

9 Q. Can you tell me what percent of  
10 Noranda's total costs are represented by labor costs?

11 THE COURT REPORTER: Are represented by  
12 what?

13 MR. WOODSMALL: Labor costs.

14 THE COURT REPORTER: Thanks.

15 THE WITNESS: I can, however, these are  
16 now moving into items of confidential information,  
17 business confidential information that we're willing  
18 to share but we'd need to share it in an environment  
19 that would be confidential.

20 MR. LEADLOVE: Your Honor, I would move  
21 that we move in-camera.

22 MR. WOODSMALL: Just a second.

23 BY MR. WOODSMALL:

24 Q. Is it your understanding that these  
25 labor costs and the percent aren't reflected in your

1 10K?

2 A. For the smelter specifically?

3 Q. Yes.

4 A. I don't know.

5 Q. You don't know. Do you sign that 10K as

6 the CEO --

7 A. I do.

8 Q. -- and have to certify the accuracy of

9 the results?

10 A. Yes, I do.

11 Q. And your answer is you don't know if

12 those are contained in your 10K?

13 A. It was my understanding that this

14 information was proprietary, so it was not in the

15 10K -- well, that would suggest it was not in the

16 10K, but -- but honestly I don't remember.

17 MR. WOODSMALL: Okay. Your Honor, we

18 can move in-camera later if I get back to that.

19 JUDGE WOODRUFF: Okay.

20 MR. WOODSMALL: Because I don't want to

21 go in-camera yet.

22 BY MR. WOODSMALL:

23 Q. Can you tell me what percent of

24 Noranda's total cost is represented by the cost of

25 alumina? And maybe I should clarify. You're going

1 to hear -- for the record you're going to hear both  
2 alumina and aluminum. I'll try to be very clear in  
3 pronouncing them. Do you recall the question, sir?

4 A. Again, we would -- we would consider the  
5 specific percentage of alumina proprietary.

6 Q. But do you know the answer?

7 A. Yes, I do.

8 Q. Okay. Can you tell me what percent of  
9 Noranda's total cost is represented by the cost of  
10 carbon anodes?

11 A. I can -- I can give you the cost of the  
12 percentage of coke and pitch, but not the fully  
13 assembled anodes.

14 Q. Okay. Can you tell me what percentage  
15 of Noranda's total cost is represented by freight  
16 cost?

17 A. Yes, I can.

18 Q. Okay. Can you tell me how the New  
19 Madrid smelter's labor costs compare to that of other  
20 domestic smelters?

21 A. I cannot, I don't know.

22 Q. Can you tell me how the New Madrid  
23 smelter's alumina costs compare to that of other  
24 domestic smelters?

25 A. I cannot.

1           Q.       Can you tell me how the New Madrid  
2     smelter's cost of carbon anodes compare to that of  
3     other domestic smelters?

4           A.       I cannot.

5           Q.       Can you tell me how the Noranda  
6     smelter -- the Noranda smelter freight costs compare  
7     to that of other domestic smelters?

8           A.       I cannot.

9           Q.       Would you agree that Noranda has an  
10    advantage over its competitors associated with the  
11    supply of bauxite and alumina?

12          A.       We have an advantage over certain  
13    competitors.

14          Q.       Can you tell me which competitors?

15          A.       What I can tell you is which --

16                   THE COURT REPORTER: I didn't hear. I'm  
17    sorry.

18                   THE WITNESS: Quartile, which quartile  
19    we're in on a global basis. And according to --

20    BY MR. WOODSMALL:

21          Q.       So when I asked you earlier if you could  
22    tell how the New Madrid smelter's alumina cost  
23    compared to other domestic smelters, you can tell me  
24    that now?

25          A.       By quartile -- excuse me. I apologize.

1 Could you ask -- repeat the question, please?

2 Q. I asked you previously can you tell me  
3 how the New Madrid smelter's alumina cost compared to  
4 that of other domestic smelters?

5 A. Specifically, no, I don't know the  
6 specific costs of other smelters, but I do know a  
7 quartile range.

8 Q. Okay.

9 A. In terms of total cost for the alumina  
10 smelter.

11 Q. And what quartile would that be?

12 A. It would be the third quartile.

13 Q. Isn't it true that Noranda owns its own  
14 bauxite mine in St. -- in Jamaica?

15 A. Yes, it is.

16 Q. And Noranda owns its own alumina  
17 refinery in Gramercy, Louisiana?

18 A. Yes, we do.

19 Q. Would you agree with the statement in  
20 the Noranda 10K that, quote, Gramercy provides a  
21 strategic supply of alumina at costs below recent  
22 spot market prices below alumina, unquote?

23 A. In a rising price environment, yes, I  
24 would.

25 Q. In fact, the St. Ann bauxite mine owned

1 by Noranda sells excess -- excess bauxite to third  
2 parties at spot prices; is that true?

3 A. Yes, we do.

4 Q. In addition --

5 A. I'm sorry. I need to correct that. At  
6 contract prices, at contract prices.

7 Q. Can you tell me if those contract prices  
8 are tied to spot prices?

9 A. They are not.

10 Q. The Gramercy Refinery sells excess  
11 alumina to third parties at spot market prices; is  
12 that true?

13 A. Again, we sell at contract prices, but  
14 we do sell our alumina.

15 Q. In fact, Century Aluminum, one of the  
16 competitors you mentioned, buys alumina from the  
17 Gramercy Refinery; is that correct?

18 A. Yes, they do.

19 Q. Would you agree that Noranda has an  
20 advantage over its competitors associated with New  
21 Madrid's, quote, secure source of electrical power?

22 A. When compared to smelters that  
23 experience frequent power interruptions, yes.

24 Q. Can you tell me what smelters experience  
25 frequent power interruptions?



1           A.       I cannot.

2           Q.       Would you agree with the statement in  
3   your 10K that the New Madrid smelters -- that Noranda  
4   has an advantage because the New Madrid smelter's  
5   power costs are not tied to the LME price of  
6   aluminum?

7           A.       In a rising price environment, yes.

8           Q.       Would you agree with the statement in  
9   the Noranda 10K that the New Madrid smelter, quote,  
10   is located in an area with abundant sources of  
11   electrical power, unquote?

12          A.       Yes, I would.

13          Q.       Would you agree that Noranda has an  
14   advantage over its competitors associated with the  
15   New Madrid smelter's strategic location?

16          A.       Yes, I would.

17          Q.       In fact, in your 10K, you claim the New  
18   Madrid smelter is, quote, the closest smelter to the  
19   supplies of alumina; is that true?

20          A.       For alumina that's shipped up to  
21   Mississippi, yes.

22          Q.       In addition, Noranda claims an advantage  
23   because of the New Madrid smelter's, quote,  
24   geographic proximity, unquote, to its downstream  
25   rolling mills; is that true?

1           A.       Yes.

2           Q.       And Noranda claims that that geographic  
3       location gives the New Madrid smelter a competitive  
4       advantage in freight costs as well; is that true?

5           A.       Yes, compared to its North America  
6       competitors, yes.

7           Q.       Can you tell me -- can you list the  
8       smelters that are owned by Alcoa?

9           A.       My understanding is that they own a  
10      smelter in Evansville, Indiana.

11          Q.       Do you know the name of that smelter?

12          A.       I believe that's the Warrick smelter.  
13      The smelter -- they own a smelter in Ferndale,  
14      Washington which locally is referred to as the  
15      Intalco smelter. I don't know what the legal  
16      organization that is, but it's referred to as the  
17      Intalco smelter.

18                    They own a facility in Wenatchee,  
19      Washington, Massena, New York. Those are the ones  
20      that I understand are operating, and they have a  
21      joint venture in Mt. Holly, South Carolina. They  
22      owned shut down smelters in Frederick, Maryland;  
23      Badin, North Carolina; Alcoa, Tennessee; Rockdale,  
24      Texas; Massena, New York and Troutdale, Oregon.

25          Q.       Speaking of the Ferndale smelters, is it

1 your understanding that that is owned solely by  
2 Alcoa?

3 A. I don't know. I don't know.

4 Q. With basically three competitors in the  
5 United States, do you read the 10Ks of your  
6 competitors?

7 A. I do not.

8 Q. Can you tell me what Ferndale's  
9 nameplate capacity is?

10 A. My understanding is it's about 279,000  
11 metric tons.

12 Q. Can you tell me what the current  
13 production status is of Ferndale?

14 A. My understanding is that they have one  
15 line idle.

16 Q. Can you tell me how much capacity that  
17 represents, the one line?

18 A. I cannot. Excuse me. Yes, I can. It's  
19 about 115,000 tons.

20 Q. Thank you. You saved me a trip. The  
21 Mt. Holly smelter, are you familiar with that?

22 A. Yes, I am.

23 Q. Can you tell me what the name --  
24 nameplate capacity is at the Mt. Holly smelter?

25 A. My understanding is it's about 229,000

1     tons.

2           Q.       And what is the Mt. Holly current  
3     production status?

4           A.       My understanding is that they have no  
5     capacity curtailed.

6           Q.       Is it your belief that the Mt. Holly  
7     smelter is owned entirely by Alcoa?

8           A.       It is not. It is a -- they have a  
9     partner with Century in that smelter. I don't know  
10    the specifics or the legal arrangement.

11          Q.       I'm going to ask you to calculate some  
12    numbers later, so I'm going to get some clarification  
13    on that. Handing you what is the 10K of Alcoa, Inc.

14          A.       Uh-huh.

15          Q.       You'll see the Mt. Holly smelter. Can  
16    you tell me the ownership of that smelter?

17          A.       That says "Alcoa 50.33 percent, Century  
18    Aluminum 49.67."

19          Q.       And off to the right column is the  
20    actual Alcoa capacity. Can you tell me what that is?

21          A.       It says "Nameplate capacity, 229,000  
22    tons."

23          Q.       And how much is the Alcoa capacity, far  
24    right column?

25          A.       "115,000 tons."

1           Q.       And does that conform to your knowledge,  
2     the fact that part of it's owned by Alcoa and part of  
3     it's owned by Century Aluminum?

4           A.       Yes.

5                   MR. LEADLOVE:   Your Honor, I would  
6     object to that previous line of questioning -- it  
7     apparently came from the 10K of another party -- as  
8     being hearsay. I've seen him cross-examine witnesses  
9     on it, but it certainly isn't admissible substantive  
10    evidence.

11                  MR. WOODSMALL:   I believe he said it  
12    was -- it conformed to his understanding of the  
13    ownership. He told me specifically that the  
14    nameplate capacity of the Mt. Holly facility was  
15    229,000, he told me that it was owned jointly by  
16    Century Aluminum, and I just asked him if that  
17    conformed to his understanding, and he said yes.

18                  JUDGE WOODRUFF:   Well, I'm -- go ahead  
19    and respond.

20                  MR. LEADLOVE:    I was simply going to  
21    say, your Honor, my understanding of what I heard was  
22    he said that it conformed to his understanding of the  
23    ownership --

24                  THE WITNESS:    Right.

25                  MR. LEADLOVE:    -- and who owned the

1 smelter, not the statistics and the capacity and  
2 whatever else other facts concerning the -- the --  
3 the competitive -- competitor's smelter.

4 THE WITNESS: I have no knowledge of the  
5 capacity split, so I'm sorry if I misunderstood the  
6 question.

7 MR. WOODSMALL: Okay.

8 JUDGE WOODRUFF: Just so the record is  
9 clear, I guess I'll sustain that objection and then  
10 you can go clarify.

11 MR. WOODSMALL: That's -- that's fine.

12 BY MR. WOODSMALL:

13 Q. Can you tell me what the nameplate --  
14 nameplate capacity is on the Alcoa, Tennessee  
15 smelter?

16 A. That would be 215,000 tons.

17 Q. Okay. Can you tell me what the current  
18 production status is of the Alcoa, Tennessee smelter?

19 A. It was closed in 2009.

20 Q. So all 215,000 tons are no longer in  
21 production; is that correct?

22 A. That's -- that's my understanding, yes.

23 Q. Okay. When you say it was closed, is it  
24 your understanding that it is permanently closed?

25 A. No, it is not my -- that is not my

1 understanding.

2 Q. Okay. What is your understanding of the  
3 status of the Alcoa, Tennessee smelter?

4 A. I don't know. I don't know if it's  
5 permanently closed or temporarily closed.

6 Q. Is that the type of information that  
7 would be relevant in your line of work?

8 A. Yes, it would.

9 Q. You mentioned the Warrick smelter. Do  
10 you recall that?

11 A. Yes.

12 Q. Can you tell me what the nameplate  
13 capacity is of that smelter?

14 A. 309,000 tons.

15 Q. Can you tell me what the current  
16 production status is of that facility?

17 A. 40,000 tons.

18 Q. 40,000 tons is the current capacity?

19 A. I'm sorry. 40,000 tons is the -- I  
20 believe that they have one line idle.

21 Q. Okay. Now, here you're using a  
22 different term. You're using the term "idled." What  
23 do you mean by idled?

24 A. I'm using idled, closed and shut down  
25 interchangeably. If there -- if there's a term you'd

1     prefer, I'm happy to stick with it.

2             Q.       No, that -- that clarifies.

3             A.       Okay.

4             Q.       And in your mind, idled, closed, shut  
5     down, you have no knowledge whether that's permanent  
6     or temporary?

7             A.       That's correct.

8             Q.       Okay. Again, would that be the type of  
9     information that would be relevant to your position?

10            A.       Yes, it would, but it would also --

11            Q.       That's -- that's fine. Thank you.

12            A.       Okay.

13            Q.       Would it surprise you to know that that  
14    information's available in Alcoa's 10K?

15            A.       If they have knowledge certain that it's  
16    closed permanently or closed temporarily, no, it  
17    wouldn't surprise me.

18            Q.       Okay. The Massena West smelter, you  
19    mentioned that previously. Can you tell me what the  
20    nameplate capacity is on that smelter?

21            A.       130,000 KT.

22            Q.       K -- 130,000 KT?

23            A.       Excuse me. 130,000 tons, excuse me.

24            Q.       What is Massena West's current  
25    production capacity -- production status? I'm sorry.



1           A.       My understanding is that there are no  
2 lines curtailed.

3           Q.       Okay. Can you tell me what the  
4 Wenatchee -- and I'll spell this for you --  
5 W-e-n-a-t-c-h-e-e, the nameplate capacity is of the  
6 Wenatchee facility?

7           A.       That would be 184,000 tons.

8           Q.       And what is the current production  
9 status of the Wenatchee smelter?

10          A.       There are two lines that are curtailed.

11          Q.       84,000 curtailed?

12          A.       There are two lines, 84,000 tons  
13 curtailed.

14          Q.       And again, you don't know if that's  
15 permanent or temporary?

16          A.       That's correct.

17          Q.       And once again, that would be  
18 information relevant to your position; is that  
19 correct?

20          A.       Yes.

21          Q.       Can you tell me what the Massena East  
22 nameplate capacity is?

23          A.       It is 125,000 tons.

24          Q.       What is the current production status?

25          A.       It is closed.

1 Q. Do you know when that was closed?

2 A. 2009.

3 Q. And again, "closed," you don't know if  
4 that means temporary or permanent; is that correct?

5 A. That's correct.

6 Q. And would that be information relevant  
7 to your position?

8 A. Yes, it would.

9 Q. And would you -- would it surprise you  
10 to know that that information is available in Alcoa's  
11 10K?

12 A. Again, I repeat my answer. If they had  
13 knowledge certain that -- that they knew they were  
14 going to restart it or they were going to keep it  
15 closed forever, that would be -- I wouldn't -- I  
16 would not be surprised to see that in their 10K.

17 Q. Can you tell me what the Rockdale's  
18 nameplate capacity is?

19 A. It is 267,000 tons.

20 Q. What is the current production status?

21 A. It is closed, closed in 2008.

22 Q. Okay. And again, do you know whether  
23 that's temporary or permanent?

24 A. I do not.

25 Q. Would that information be relevant to

1 your position?

2 A. Yes, it would.

3 Q. Would it surprise you to know that  
4 information is available in Alcoa's 10K?

5 A. I would repeat my previous answer.

6 Q. And that is it would not surprise you?

7 A. If they have knowledge certain, it would  
8 not surprise me.

9 Q. And you keep saying that. What do you  
10 mean by "knowledge certain"?

11 A. To me, there's a difference between  
12 stating that we might start a plant back up, we've  
13 got it idled and if we get a good power contract,  
14 we'll start it back up. If -- if someone says that  
15 they've closed it and it's closed for good, then that  
16 would be knowledge certain as opposed to we've idled  
17 the plant with a goal of starting it back up.

18 Q. So if a company said we've idled the  
19 plant until aluminum prices -- aluminum prices  
20 increase, would you consider that a permanent  
21 closure?

22 A. I wouldn't know because I wouldn't know  
23 how much they'd have to increase to -- to have the  
24 plant start back up.

25 Q. Is it Noranda's -- does Noranda believe

1     that the price of aluminum will increase into the  
2     future?

3             A.       We believe that the fundamentals are  
4     there to support the higher prices over the long  
5     term, yes.

6             Q.       Thank you. Can you tell me what  
7     Badin's, B-a-d-i-n, nameplate capacity is?

8             A.       It's 60,000 tons.

9             Q.       What is the current production status of  
10    that facility?

11            A.       It was closed in 2002.

12            Q.       Okay. Do you know if that closure was  
13    temporary or permanent?

14            A.       I do not.

15            Q.       Would you find that information to be  
16    relevant in your current position?

17            A.       Yes, I would.

18            Q.       Would it surprise you again to know that  
19    that information is available in the Alcoa 10K?

20            A.       Again, I'd repeat my answer.

21            Q.       And that is the same answer as with the  
22    Rockdale --

23            A.       If they --

24            Q.       -- and the other facilities?

25            A.       If they had -- if they had knowledge

1 certain that it was closed for good.

2 Q. Okay. Can you tell me what the  
3 Frederick's nameplate capacity is?

4 A. 195,000 tons.

5 Q. What is the current production status?

6 A. It was closed in 2005.

7 Q. Do you know if that's permanent or  
8 temporary?

9 A. I do not.

10 Q. Would you find that information to be  
11 relevant in your current position?

12 A. Yes, I would.

13 Q. And would you -- would it surprise you  
14 to know that that information is available in Alcoa's  
15 10K?

16 A. If they had knowledge certain that that  
17 was to be closed permanently or that they had a  
18 definitive plan to restart it, no, I would not.

19 Q. As a CEO of the -- of an aluminum  
20 company, absent hearing that a company is closing  
21 their facility permanently, what would be your  
22 assumption? How would you read that?

23 A. It would -- given the cost of restarting  
24 these lines, I would assume it was a decision that  
25 would not be taken lightly and that my assumption in

1 most cases would be that it was shut down and it was  
2 closed.

3 Q. Permanently?

4 A. Permanently.

5 Q. Okay. The Troutdale facility that you  
6 mentioned, can you tell me what the nameplate  
7 capacity of that facility is?

8 A. 121,000 tons.

9 Q. What is the current production status of  
10 that facility?

11 A. It was closed in 2002.

12 Q. Do you know if that closure was  
13 temporary or permanent?

14 A. I do not.

15 Q. Would that information be relevant to  
16 your current position?

17 A. Yes, it would.

18 Q. Would it surprise you to know that that  
19 information is available in Alcoa's 10K?

20 A. Given knowledge certain that the plant  
21 was closed or that they had a plan to restart it, no,  
22 I would not be surprised.

23 Q. We've gone through the Alcoa smelters.  
24 Do you know what Alcoa's total domestic aluminum  
25 smelting capacity is in the United States?

1           A.       The -- the active capacity that I would  
2     have would be the -- and if you'd like, I could get  
3     my calculator and add this up.

4           Q.       That would be great.

5           A.       Okay.

6           Q.       Do you know how to use an HP? I'll let  
7     you borrow mine.

8           A.       I actually have one.

9           Q.       Okay.

10          A.       We all get used to our own even though  
11     they're the same. Okay. The nameplate appears to  
12     be, if I did this addition correct, 1,131,000 tons,  
13     and then if you adjust for the figures that you  
14     showed me that they don't have -- that they only have  
15     an allocation of 15,000 tons, that number is correct.  
16     It would be 1,017,000 tons of capacity that they're  
17     currently utilizing.

18          Q.       Do you know how much of Alcoa's domestic  
19     aluminum capacity is currently closed, idled, somehow  
20     not operating?

21          A.       I could add that up as well. So if I  
22     did this right, 1,222,000 tons.

23          Q.       You're showing more has been idled than  
24     even -- I'll let the record speak for itself. Would  
25     you agree that a significant amount of Alcoa's

1 domestic capacity is currently sitting idled or  
2 closed?

3 A. Yes.

4 Q. Can you tell me what Noranda's  
5 production capacity is?

6 A. It's 263,000 tons.

7 Q. Can you tell me what current production  
8 status is?

9 A. We expect to be operating at full  
10 production by April.

11 Q. And why are you not currently at full  
12 production?

13 A. We are still restarting lines from the  
14 outage that we had resulting from 2000 and -- January  
15 of 2009.

16 Q. The ice storm?

17 A. Yes, the ice storm.

18 Q. I asked you this in your deposition:  
19 Absent that ice storm, is it your belief that the  
20 Noranda smelter would have operated at full  
21 production?

22 A. I believe that we would have continued  
23 our production, yes.

24 Q. Thank you.

25 A. And if I could make just a --



1 Q. No, that -- that's plenty.

2 A. Okay.

3 Q. You mentioned Century Aluminum is one of  
4 your competitors. Do you recall that?

5 A. Yes.

6 Q. Can you tell me what smelters Century  
7 Aluminum owns?

8 A. The Hawesville, Kentucky facility, their  
9 portion of Mt. Holly and Ravenswood, West Virginia.

10 Q. Okay. Can you tell me what the  
11 nameplate capacity is on the Ravenswood facility?

12 A. It is 170,000 tons.

13 Q. Can you tell me what the current  
14 production status is?

15 A. It is shut down.

16 Q. Can you tell me when it was shut down?

17 A. Yes, 2009.

18 Q. Okay. When we say "shut down," do you  
19 know if that's temporary or permanent?

20 A. I do not know.

21 Q. Okay. Would you find that information  
22 to be relevant in your current position?

23 A. Yes, I would.

24 Q. Would it surprise you to know that that  
25 information is available in Century Aluminum's 10K?

1           A.       Given knowledge certain that they would  
2   restart the plant or had a plan -- basically had a  
3   plan to restart it or a plan to keep it closed, no, I  
4   would not be surprised.

5           Q.       Again, so few competitors. Do you read  
6   Century Aluminum's 10K?

7           A.       I do not.

8           Q.       Do you know how often that comes out a  
9   year?

10          A.       Yes, I do.

11          Q.       How often?

12          A.       Once a year.

13          Q.       Okay. Can you tell me what Hawesville's  
14   nameplate capacity is?

15          A.       Yes, I can.

16          Q.       And what is that?

17          A.       Excuse me. If I can find it here. It  
18   is 244,000 tons.

19          Q.       Let me ask you, I see you're looking at  
20   a chart. Did you know that information of the  
21   capacity for these smelters before you came -- before  
22   you prepared for this hearing?

23          A.       I did not.

24          Q.       And why did you educate yourself on  
25   that?

1           A.       I felt it would be important for this  
2   hearing.

3           Q.       You find that information would be  
4   something that's relevant to your position as CEO?

5           A.       Yes, I do.

6           Q.       How long have you been CEO of Noranda?

7           A.       Two years.

8           Q.       Have you ever read a 10K of a competitor  
9   in those two years?

10          A.       I have not.

11          Q.       Can you tell me what the current  
12   production status is of the Hawesville smelter?

13          A.       It is -- there was one line curtailed.

14          Q.       Can you tell me how much capacity that  
15   represents?

16          A.       49,000 tons.

17          Q.       And when was that curtailed?

18          A.       I don't know.

19          Q.       Do you know the year?

20          A.       I do not.

21          Q.       Okay. Do you know if that's curtailed  
22   permanently or temporarily?

23          A.       I do not.

24          Q.       Would that information be relevant to  
25   your current position?

1           A.       Yes, it would.

2           Q.       Would it surprise you to know that that  
3 information is available in Century Aluminum's 10K?

4           A.       Given knowledge certain that they were  
5 going to keep it idled or they were going to close it  
6 or have a plan to open it, no, it would not surprise  
7 me.

8           Q.       You mentioned the Mt. Holly facility,  
9 that Century Aluminum owned a portion of that. Do  
10 you recall that?

11          A.       Yes.

12          Q.       Do you know what the nameplate capacity  
13 is on that facility?

14          A.       Yes, I do.

15          Q.       What is that?

16          A.       229,000.

17          Q.       Can you tell me how much of that Century  
18 Aluminum owns?

19          A.       You just showed me that, and it's  
20 just -- just under 50 percent.

21          Q.       Do you know what the current production  
22 facility -- or production status is of the Mt. Holly  
23 facility?

24          A.       I believe it's -- there -- there are no  
25 lines curtailed. It is running.

1           Q.       Can you tell me what Century Aluminum's  
2   total domestic aluminum smelting capacity is?  Would  
3   you accept, subject to check, 528,000 tons?

4           A.       Certainly.

5           Q.       Okay.  Can you tell me how much of  
6   Century Aluminum's domestic smelting capacity is  
7   currently sitting idle?  Would you accept, subject to  
8   check, 219,000?

9           A.       Yes.

10          Q.       You mention that Forman Aluminum is a  
11   competitor; is that correct?

12          A.       Yes.

13          Q.       Can you tell me what facility they own?

14          A.       Hannibal, Ohio.

15          Q.       And again, what is the nameplate  
16   capacity of that facility?

17          A.       270,000 tons.

18          Q.       Do you know the current production  
19   status?

20          A.       Yes.  It's -- there are two lines that  
21   are curtailed.

22          Q.       Do you know how much capacity that  
23   represents?

24          A.       90,000 tons.

25          Q.       Do you know when that was curtailed?

1           A.       I do not.

2           Q.       Have you heard of the Columbia Falls  
3 Aluminum Company?

4           A.       Yes, I have.

5           Q.       Can you tell me if they own any smelters  
6 in the United States?

7           A.       In Columbia Falls, Montana.

8           Q.       Can you tell me what the nameplate  
9 capacity is of that smelter?

10          A.       168,000 tons.

11          Q.       And what is the current production  
12 status of that smelter?

13          A.       It is closed.

14          Q.       Temporarily or permanently?

15          A.       I do not know.

16          Q.       Would that information be relevant to  
17 your position?

18          A.       Yes, it would.

19          Q.       Would it surprise you to know that that  
20 information is available in government documents?

21          A.       No, it would not.

22          Q.       You mentioned Alcan is a competitor. Do  
23 you recall that?

24          A.       Yes, I do.

25          Q.       Do you know Alcan's formal name?

1           A.       They have a smelter in Sebree, Kentucky.

2           Q.       I'm not asking for their smelter.  What

3   is the company's name?  You believe it's just Alcan?

4           A.       Rio Tinto Alcan.

5           Q.       Okay.  It was bought by Rio Tinto; is

6   that correct?

7           A.       That's correct.

8           Q.       Can you tell me when that occurred?

9           A.       I cannot.

10          Q.       And you mentioned they own the Sebree

11   facility; is that correct?

12          A.       Yes.

13          Q.       Where is that located?

14          A.       Sebree -- it's in Kentucky.

15          Q.       And what is the nameplate capacity of

16   that facility?

17          A.       I don't have that data.

18          Q.       Would that information be relevant to

19   your current position?

20          A.       Yes, it would.

21          Q.       Would it surprise you to know that that

22   information is available publicly?

23          A.       No, it would not.

24          Q.       Do you know what the current production

25   status is of the Sebree facility?

1           A.       I do not.

2           Q.       Would that information be relevant to  
3 your position?

4           A.       Yes, it would.

5           Q.       Would it surprise you to know that that  
6 information is available publicly?

7           A.       No, it would not.

8           Q.       In your initial direct testimony, you  
9 state that Noranda needed a certain rate in order to  
10 compete with other domestic aluminum smelters. Do  
11 you recall that?

12          A.       Yes, I do.

13          Q.       And Noranda has since backed off of that  
14 claim; is that correct?

15          A.       That is correct.

16          Q.       Can you tell me what rate Noranda now  
17 needs in order to compete?

18          A.       We need a rate that's in the second  
19 quartile.

20          Q.       Can you tell me what range is bound by  
21 the second quartile?

22          A.       Yes, I can.

23          Q.       First off, do you have independent  
24 knowledge of the range that's bound by the second  
25 quartile or are you just going to refer to



1 Mr. Fayne's testimony?

2 A. Actually, I'll be referring to the data  
3 that comes from CRU, which is a large consulting firm  
4 that specializes in metals and mining.

5 Q. Did you independently gather that  
6 information?

7 A. One of the members of my team did.

8 Q. Okay. Please continue.

9 A. And this is -- this is data as of the  
10 end -- my understanding as of the end of 2009. And  
11 so for the second quartile -- and I'm going to ask  
12 for your indulgence. This list includes smelters  
13 that are shut down, so I need to take those out.

14 Q. Go ahead.

15 A. Please.

16 Q. No, I'll let you finish and then I'll  
17 inquire.

18 A. According to this data, New Madrid at  
19 the end of -- with 2009 data would -- there would be  
20 three smelters with a higher power cost in the United  
21 States and one, two, three, four, five with a lower  
22 cost, so take the nine.

23 Q. Are you doing a calculation as we speak?  
24 Because I asked you if you knew what rate Noranda now  
25 needs in order to compete.

1           A.       My apologies. We need a -- again, my  
2   answer would be a second quartile rate, so I was  
3   looking at the -- just double-checking this data.  
4   Since I'm no longer allowed to rely on Mr. Fayne's  
5   testimony, I was looking at this alternate, so...

6           Q.       And I asked you did you know what range  
7   of rates is bound by the second quartile. I'm not  
8   asking you to calculate. Do you know?

9           A.       I have the data right in front of me.  
10   But --

11          Q.       I'm asking you, do you know, not to  
12   calculate.

13          A.       No.

14          Q.       Okay. I asked you in the deposition  
15   whether Noranda had done an analysis to support their  
16   claim that they needed a rate in the second quartile  
17   and you answered at that time that there was no  
18   written analysis; is that correct?

19          A.       That's correct.

20          Q.       Is that still correct?

21          A.       That's correct.

22          Q.       Can you tell me what the basis is for  
23   your statement that you need an electric rate in the  
24   second quartile?

25          A.       Yes, I can. For --

1           Q.       Go ahead.

2           A.       Okay. Our objective, our mission  
3 statement is to build a sustainable company. This is  
4 an industry that's -- your -- you drive your success  
5 by your cost position. The LME is a globally traded  
6 commodity, so we have very little influence over the  
7 price. So in part, this is judgment, but if you look  
8 at recent practical data, of the five smelters that  
9 shut down in the course of the last year and a half  
10 since the time of the economic crisis, three of them  
11 were in the third or fourth quartile.

12                   The fourth one was right on the edge of  
13 the second and the third quartile, and there was one  
14 that was shut down that was in the -- in the very  
15 first quartile. For us to be competitive both  
16 short-term and long-term, it's clear that from --  
17 from this recent experience that -- that if you don't  
18 manage your costs, all of your costs and manage them  
19 well, survival, sustainability will be very  
20 difficult, so...

21           Q.       Okay. Are you done? I'm sorry.

22           A.       Yes.

23           Q.       Okay. You mentioned manage all of your  
24 costs and manage them well. Can you tell me what  
25 price of aluminum -- what is the price of aluminum in

1 your judgment for this analysis?

2 A. There isn't -- there doesn't need to be  
3 a price for aluminum --

4 THE COURT REPORTER: I didn't  
5 understand. There isn't?

6 THE WITNESS: There doesn't need to be a  
7 price for aluminum when you look at the reality of  
8 smelters that have already shut down.

9 BY MR. WOODSMALL:

10 Q. I don't believe you're answering my  
11 question. Can you tell me what the price of aluminum  
12 is in your analysis? Let me ask, just yes or no, is  
13 there a price of aluminum assumed in -- in your  
14 analysis?

15 A. No.

16 Q. Would you agree that your revenues are  
17 dependent on the price of aluminum?

18 A. Yes, they are.

19 Q. Can you tell me what the cost of alumina  
20 is in your analysis? Is there a cost of alumina in  
21 your analysis?

22 A. No.

23 Q. And that is a significant cost; is that  
24 correct?

25 A. Yes, it is.

1           Q.       Is there a cost of labor built into your  
2 analysis?

3           A.       No.

4           Q.       And that is a significant cost; is that  
5 correct?

6           A.       Yes.

7           Q.       Is there a cost of freight included in  
8 your analysis?

9           A.       No.

10          Q.       That is a significant cost; is that  
11 correct?

12          A.       That's correct.

13          Q.       And is there a cost of carbon anodes in  
14 your analysis?

15          A.       No.

16          Q.       And that is a significant cost; is that  
17 correct?

18          A.       That's correct.

19          Q.       Can you tell me how many employees at  
20 the New Madrid smelter you assumed in your analysis?

21          A.       No.

22          Q.       Can you tell me how much property taxes  
23 the New Madrid smelter paid in your analysis?

24          A.       No.

25          Q.       Would you agree that Noranda currently

1 has approximately 22 million shares of stock  
2 outstanding?

3 A. Yes.

4 Q. And except for a small amount held by  
5 Mr. Gregston, all the stock is held by individuals  
6 living in New York or Tennessee; is that correct?

7 A. That is not correct.

8 Q. Can you tell me what other individuals  
9 living in Missouri hold stock in Noranda?

10 A. It wouldn't be in Missouri. My primary  
11 residence is in Washington State.

12 Q. Okay.

13 A. I -- I commute every weekend to work,  
14 so --

15 Q. Let me --

16 A. -- so working in -- working in  
17 Tennessee, yes.

18 Q. Okay. Let me change the -- the  
19 question. Are there any Noranda stockholders living  
20 in Missouri except for Mr. Gregston?

21 A. Yes, I believe so. Certainly working in  
22 Missouri, but I don't know if their home's not there.

23 Q. Okay. Are you familiar with the Noranda  
24 10K?

25 A. Yes.

1           Q.     You signed that document; is that  
2     correct?

3           A.     Yes.

4           Q.     You attest to the information contained  
5     therein?

6           A.     Yes.

7           Q.     I'll hand you the whole thing, if you  
8     want to see it, but I'm interested in item 12 which  
9     is a list of ownership for Noranda. Do you recognize  
10    that?

11          A.     Yes, I do.

12          Q.     Can you tell me, other than  
13    Mr. Gregston, any of those individuals that live in  
14    Missouri?

15          A.     This isn't the complete list.

16          Q.     Can you tell me, the 10K indicates it's  
17    from December 31st, 2009; is that correct?

18          A.     Yes.

19          Q.     And you attest to that information; is  
20    that correct?

21          A.     Yes.

22          Q.     And that information only shows one  
23    Missouri shareholder; is that correct?

24          A.     Yes.

25          Q.     Thank you.

1           A.       But --

2           Q.       That's enough. I was looking through  
3 your 10K last night, comparing it to your prefiled  
4 testimony, and in your testimony you use words  
5 questioning, quote, the viability of the smelter.  
6 You also discuss the impact on Missouri if the  
7 smelter, quote, were to close. You mentioned in the  
8 testimony that the employees would be, quote, placed  
9 in peril. Finally, you stated that the results of  
10 this case would place the smelter, quote, on the  
11 critical path to failure, unquote.

12                   Can you tell me where in your 10K you  
13 warn potential shareholders of the impending closure  
14 of the New Madrid smelter?

15           A.       The -- there is no warning of an  
16 impending closure of the New Madrid smelter. There  
17 is --

18           Q.       Would that be material information to  
19 potential shareholders?

20           A.       There is a risk factor -- yes, it would.  
21 There's a risk factor associated with power and other  
22 risk factors pertinent to our operation -- our  
23 operations.

24           Q.       And mentioning that risk factor, there's  
25 a risk factor here that says, "Our operations consume



1 substantial amounts of energy and our profitability  
2 may decline if energy costs rise." Is that the risk  
3 factor you're referring to?

4 A. Yes.

5 Q. And would you read the highlighted  
6 portion at the end?

7 A. "The outcome of the rate case, or any  
8 future rate cases Ameren may initiate, could  
9 materially and adversely affect our business,  
10 financial condition, results of operations and cash  
11 flows."

12 Q. Does that mention anything about  
13 employees being placed in peril or the imminent  
14 closure of the smelter?

15 A. It does not.

16 Q. And again, that information would be  
17 relevant to potential shareholders?

18 A. Yes, it would.

19 Q. Are you aware that just three months ago  
20 Mr. Gregston executed a loan agreement with the  
21 Missouri Department of Economic Development?

22 A. Yes, I am.

23 Q. Can you tell me if Noranda made any  
24 commitments in that agreement to maintain employment  
25 in Missouri?

1           A.       Just one moment, please. Excuse me.  
2       Just as a clarification question, which -- which loan  
3       agreement was this? Because there's more than one.

4           Q.       Have you made multiple commitments to  
5       the State of Missouri to maintain employment in  
6       Missouri?

7           A.       We have a commitment with the Action  
8       Fund Loan which is a million dollars that's tied to a  
9       employment level of 800 with the -- and that's got  
10      declining triggers through the course of the  
11      agreement. And then we have a job retention loan  
12      that is tied to employment levels of about 890  
13      employees.

14          Q.       Okay. So the answer to my question is  
15      you have made commitments to the State of Missouri to  
16      maintain employment; is that correct?

17          A.       Yes.

18          Q.       Okay. I think I'm just about done. Can  
19      you tell me what your annual compensation is with  
20      Noranda?

21          A.       My annual base compensation is \$750,000.

22          Q.       And is it true you're also eligible for  
23      a \$750,000 bonus?

24          A.       Actually, that's my target bonus, so  
25      yes.

1           Q.       Okay. Can you tell me is it true that  
2     in 2009 based upon company performance, you exceeded  
3     that bonus and was granted incentive compensation of  
4     approximately 1.34 million; is that correct?

5           A.       Yes, I did.

6           Q.       And you have options to buy additional  
7     stock in Noranda; is that correct?

8           A.       Yes, I do.

9                   MR. WOODSMALL: If I may have a minute,  
10    your Honor, I think I'm probably done. No further  
11    questions. Thank you.

12                  JUDGE WOODRUFF: All right. Further  
13    cross-examination from Staff.

14                  MR. RITCHIE: No questions.

15                  JUDGE WOODRUFF: All right. For Ameren.

16                  MR. FISCHER: No, sir.

17                  JUDGE WOODRUFF: All right. Come up for  
18    questions from the bench. Commissioner Jarrett.

19                  COMMISSIONER JARRETT: No questions.

20                  JUDGE WOODRUFF: All right. Before we  
21    go on, we'll take a ten-minute break. I want to see  
22    if Commissioner Davis is upstairs.

23                  THE WITNESS: Certainly.

24                  JUDGE WOODRUFF: So with that, we'll  
25    take a ten-minute break. We'll come back at 4:25.

1 (A RECESS WAS TAKEN.)

2 JUDGE WOODRUFF: Let's come to order,  
3 please. We're back from our break. During the break  
4 I was in touch with Commissioner Davis. He indicated  
5 he will not be back this evening and will not have  
6 any questions, so we'll move on to recross. Any  
7 party wish to recross? I'm sorry. There was no  
8 questions from the bench, so no need for recross.  
9 Any redirect?

10 MR. LEADLOVE: Yes, your Honor. Thank  
11 you.

12 REDIRECT EXAMINATION BY MR. LEADLOVE:

13 Q. Mr. Smith, during cross-examination by  
14 Mr. Woodsmall, you mentioned -- testified regarding  
15 some competitive advantage based on the price of  
16 bauxite that Noranda enjoys. Do you recall that  
17 testimony?

18 A. Yes.

19 Q. Can you explain to the Commission  
20 what -- why that competitive advantage exists?

21 A. Yes. We're a fully integrated producer  
22 so we made the decision -- we were in a joint venture  
23 partnership with Century Aluminum, we had an  
24 opportunity to buy out their half and we did because  
25 it gave us a better opportunity to reduce our costs

1 other than electricity.

2 In order for us to be successful to  
3 really drive a sustainable business, we have to drive  
4 out costs, so we purchased the other half of the  
5 joint venture. That creates for the opportunity not  
6 only to drive out cost, but also to sell product on  
7 the open market that, again, supports -- effectively  
8 supports the reduction of our overall cost.

9 Q. So during your cross-examination by  
10 Mr. Woodsmall, you identified certain other component  
11 businesses within the Noranda umbrella, if you will.  
12 Can you describe for the Commission the other  
13 businesses that involve Noranda other than the New  
14 Madrid smelter?

15 A. We've divided into two segments, our  
16 upstream and our downstream business. The upstream  
17 business comprises our bauxite mine, our alumina  
18 refinery and the smelter. The downstream business  
19 comprises three rolling mills that complete our  
20 integration and again, to survive in an environment  
21 where we don't have control over our pricing.

22 And it's a globally traded commodity.  
23 We have to have operating flexibility and the ability  
24 to drive out costs, and -- and so that's the  
25 strategic reason why we're integrated from the red

1 dirt in Jamaica all the way to the coiled products.

2 Q. Mr. Smith, during your  
3 cross-examination, Mr. Woodsmall had discussed with  
4 you certain additional competitive advantages. Do  
5 you recall that testimony?

6 A. Yes, I do.

7 Q. And I believe your response to many, if  
8 not all of those, were that the -- Noranda had a  
9 competitive advantage in a rising price environment;  
10 is that fair to say?

11 A. Yes, that's correct.

12 Q. And can you describe what happens if  
13 you're not in a rising -- if Noranda's not in a  
14 rising price environment as it relates to those  
15 competitive advantages?

16 A. The opposite tends to be true.

17 Q. And so, then, Noranda would be at a  
18 disadvantage regarding some -- some competitors;  
19 isn't that right?

20 A. It would be necessary again for us to  
21 redouble our focus on costs because there would not  
22 be an automatic shift in our cost as the LME drops.

23 Q. How much control does Noranda have over  
24 the price environment in which it operates?

25 A. According to the LME, virtually none

1 because it's a globally traded commodity.

2 Q. And to make sure we're clear, are you  
3 saying that Noranda has virtually no control over the  
4 LME price of aluminum?

5 A. That's correct.

6 Q. As a result of that, what do you intend  
7 to do to maintain the business's sustainability?

8 A. We're going to continue the programs  
9 that we have put in place. When we look at our cost  
10 of electricity, we have really focused first on those  
11 elements of our costs that we can control. And in  
12 the New Madrid smelter alone in our productivity  
13 program, we took out of our plant \$27 million worth  
14 of costs, and that was driven by our focus on  
15 productivity.

16 That program continues on again into  
17 next year. We have additional targets for  
18 productivity, but for us to be sustainable, we have  
19 to have a culture that drives cost out. We have  
20 implemented that culture and believe that for our  
21 sustainability -- and we're -- for our  
22 sustainability, we must control our costs, we must  
23 work on all of our costs and we must continue to  
24 be -- to drive productivity.

25 Q. And you testified, I believe, that

1     you -- you've taken some steps or Noranda has taken  
2     some steps to control or limit some of the other  
3     costs; is that right?

4             A.       That is correct.

5             Q.       Can you describe in more detail what  
6     they've done?

7             A.       Yes, I can. In December of 2008, we had  
8     a productivity -- we actually restructured our  
9     company, we called it Project Renewal. As we had  
10    entered into this downturn, we found it necessary to  
11    reduce just under 20 percent of our total workforce.  
12    That had an impact on the New Madrid smelter as well.

13            These are very, very difficult decisions  
14    to make, but in order for us to really preserve the  
15    sustainability of our business -- because in the end  
16    that is our motive. That is our motive for wanting  
17    to reset our power rate, it's our motive for driving  
18    the productivity to achieving short-term success so  
19    that we have an opportunity to be here for as many  
20    tomorrows as we can.

21            We had that program. We did some  
22    special programs in procurement on things like coke  
23    and pitch where we drove \$7 million worth of costs  
24    out of our program. Again, when you add that all up  
25    for the New Madrid smelter, it was just about



1     \$27 million.

2           Q.     And then Mr. Woodsmall asked -- also  
3     asked you a number of questions about other smelters  
4     in the United States, their capacity, their current  
5     status and things like that, and you did not know the  
6     specific -- a lot of the answers to the specific  
7     questions. Do you recall that?

8           A.     Yes, I do.

9           Q.     And he asked you whether or not that  
10    information would have been relevant to your  
11    position, I think what the nature of his question  
12    was. Do you recall that?

13          A.     Yes, I do.

14          Q.     Do you have other staff at Noranda  
15    that's responsible for reviewing and researching the  
16    competitive marketplace?

17          A.     Yes, I do.

18          Q.     And do they provide you with information  
19    that helps you in assessing the competitive  
20    environment?

21          A.     Yes, I do.

22          Q.     And do you rely on any other data  
23    sources other than reading the 10Ks of competitors?

24          A.     Yes, I do. We have outside consultants  
25    as well. And also, again, my staff provides to me

1 summaries of significant events in the marketplace.

2 Q. Now, Mr. Woodsmall asked you some  
3 questions about whether Noranda has taken the  
4 position that fundamentals support higher prices  
5 of -- for aluminum over the long-term. Do you recall  
6 that?

7 A. Yes, I -- yes, I do.

8 Q. What do you consider the long-term to  
9 be?

10 A. First off, it's impossible to know how  
11 quickly or how far prices will rise. But as we look  
12 at the -- the long-term, it's quarter to years,  
13 not -- not weeks to months or months to quarters.  
14 And as we look at the -- the support for higher  
15 prices, that same support for higher prices does not  
16 reflect support for reduced volatility.

17 I would still expect to see the same  
18 type of volatile pricing environment that -- because  
19 this is a commodity that we've -- that we've seen in  
20 the past.

21 Q. Mr. Smith, Mr. Woodsmall asked you a  
22 number of questions about the current status of a  
23 number of competitors' smelters, and you indicated  
24 that some of them had been idle, some had been  
25 closed, things like that. Do you recall that

1 testimony?

2 A. Yes, I do.

3 Q. And does your -- the information that  
4 you relied on for -- for that set of data, is there  
5 an indication as to why some of those smelters  
6 closed?

7 A. There is. And again, this is  
8 information that's been provided to me by my staff.  
9 And as I looked at the -- the smelters that to me are  
10 the most relevant because many of these smelters -- I  
11 started with Noranda now two years ago in March. So  
12 many of the smelters that closed, closed before I  
13 arrived.

14 But if you look at information that is  
15 available publicly and you look at those smelters  
16 that have closed in the time period since I've been  
17 involved with Noranda, and also, coincidentally,  
18 the -- the -- the great recession that has occurred  
19 during that period of time, the Rockdale facility  
20 closed down, the Ravenswood facility closed down, the  
21 Alcoa, Tennessee facility closed down, Massena East  
22 closed down and Columbia Falls closed down.

23 When you look at the Rockdale, Tennessee  
24 site, they focused on the need to secure a  
25 competitive long-term power solution that enables

1     profitability for Rockdale, so they -- they literally  
2     highlighted power as a reason.

3                     In the case of Ravenswood, their CEO,  
4     Logan Krueger, indicated that on -- on their critical  
5     path to any consideration for reopening Ravenswood  
6     would be restarting, would be getting a long-term  
7     power agreement.

8                     For Alcoa, Tennessee, they talked about  
9     economic conditions and then described economic  
10    conditions as customer demand -- the price of metal,  
11    the customer demand, the price for electricity, the  
12    cost for raw material, the overall costs associated  
13    with making the product in one place. Columbia  
14    Falls, Montana also highlighted power. The only one  
15    that didn't was Massena East.

16                    So when we look at the -- the absence of  
17    a specific analysis on our sustainability -- because  
18    the question becomes at what price, at what -- at  
19    what LME price, how does the alumina correlate, is  
20    there a correlation to the oil-based products, our  
21    practical experience tells us of those five smelters  
22    that went out, four correlated it to -- four at least  
23    mentioned electricity. And of the five, three were  
24    in the third and fourth quartile and the fourth was  
25    right on the edge.

1           Q.       And you testified -- going back to this  
2     quartile concept, you testified on cross-examination  
3     that Noranda needed to be in the second quartile.  
4     Can you explain to the Commission what you meant by  
5     that?

6           A.       You know, very -- very simply, and  
7     again, without being able to rely on Mr. Fayne's  
8     testimony, the remaining data that I have would  
9     suggest that -- that the -- the company that's --  
10    that's now on the edge in the -- in the second  
11    quartile would be around \$31 per megawatt hour. So  
12    that's -- that's a -- a bit of an upper boundary, if  
13    you will. But it's critically important for us to  
14    drive all of our costs into the second quartile, not  
15    just power. We are right now a third quartile  
16    smelter.

17          Q.       Let me go back and ask you a question.  
18    Did you or your team -- and we talked about your team  
19    providing you information -- rely on data from a --  
20    from a consulting firm named CRU --

21          A.       Yes, we do.

22          Q.       -- to assess other smelters' operations?

23          A.       Yes. Yes, we do.

24          Q.       What do you understand CRU to be?

25          A.       CRU we understand to be an authority in

1     our industry. This is a firm with over 200 people  
2     involved. They're --

3                   MR. WOODSMALL: Your Honor, I want to  
4     object again. I believe that he is relying upon  
5     hearsay evidence. I've made this objection before,  
6     but he is specifically relying -- he is not an expert  
7     on the cost of electricity, but he's specifically  
8     relying on evidence taken from the Internet and he  
9     can't vouch for its accuracy.

10                  MR. LEADLOVE: I'm sorry, your Honor.  
11     The question that was asked is what does the witness  
12     understand CRU to be, nothing -- it's not even  
13     related to this -- the objection.

14                  MR. WOODSMALL: Okay. He was -- he was  
15     talking about the cost that he got from CRU.

16                  MR. LEADLOVE: I'm sorry. I don't think  
17     he was.

18                  JUDGE WOODRUFF: Well, I'll overrule the  
19     objection at this time. You can renew it maybe  
20     later.

21     BY MR. LEADLOVE:

22                 Q.     What do you understand CRU to be?

23                 A.     A global authority on, you know, mining  
24     and metals. Their -- they have offices around the  
25     globe. And my understanding is it's privately held,

1 about 200 people.

2 Q. And to your knowledge, do they -- do  
3 others in your industry rely on CRU information and  
4 data?

5 A. Yes, they do.

6 Q. Now, Mr. Woodsmall asked you questions  
7 about your analysis of sustainability and that --  
8 asked you whether or not you had a price of aluminum  
9 in your analysis of sustainability. Do you recall  
10 that question?

11 A. Yes, I do.

12 Q. Would you explain to the Commission why  
13 there is no specific price of aluminum in the  
14 analysis of sustainability for Noranda?

15 A. Because in our industry, we have to --  
16 the key for our sustainability and the key for our  
17 survival is our cost. And although our costs are  
18 affected by the LME, it really becomes a question of  
19 at what cost drives what correlation to various other  
20 raw materials. So -- so -- so for us, rather than  
21 try to model a scenario of the impending failure,  
22 what -- what we focus on instead is -- is driving our  
23 cost to the lowest possible level and understanding  
24 that it's a slippery slope when you get out of the  
25 second quartile.

1                   And so for us, we really need to be in  
2     the second quartile as a smelter. Today we're a  
3     third quartile smelter, we're driving our costs, but  
4     with power at roughly a third of our costs getting to  
5     a position of sustainability -- again, remember the  
6     motive is sustainability and it's preserving the jobs  
7     and economic impact that we have in the state of  
8     Missouri for -- and you know, when we talk to our  
9     employees, we say one of the ultimate measures of our  
10    success is how many generations have the opportunity  
11    to seek employment at Noranda. So we really are  
12    focused on short-term success to preserve our  
13    long-term sustainable options.

14           Q.     Mr. Woodsmall also asked you whether the  
15    cost of alumina, cost of labor, cost of freight are  
16    in that analysis, and you indicated --

17           A.     Those would not be for the same reasons.

18           Q.     But I take it from your previous --  
19    well, let me ask you this: Has Noranda done anything  
20    to attempt to control those other costs?

21           A.     Absolutely. And as I discussed earlier,  
22    the New Madrid smelter alone was \$27 million overall  
23    for the company. In -- in 2009, it was just over 43  
24    and a half million dollars.

25           Q.     And Mr. Woodsmall also asked you whether



1 it was true whether or not Noranda had only one  
2 shareholder that resided in Missouri. Do you recall  
3 that testimony?

4 A. Yes, I do.

5 Q. And there was some apparent confusion  
6 whether the 10K accurately or inaccurately corresponded  
7 to Mr. Woodsmall's question. Were you able to check  
8 on that particular question during the break?

9 A. Yes, and --

10 Q. What were you able to ascertain?

11 A. There are 11 shareholders in the state  
12 of Missouri.

13 Q. And is there -- are they identified  
14 specifically in the -- in the 10K that  
15 Mr. Woodsmall --

16 A. No. The list of names was not complete,  
17 but there was a catchall item at the bottom that  
18 included the remainder of the employees.

19 Q. And so it says something along the lines  
20 of "other"?

21 A. Yes, it does.

22 Q. Okay.

23 MR. WOODSMALL: Your Honor, I'd like --  
24 he's changing his testimony. He says he clarified  
25 it, but I'd like to clarify that because he's saying

1     there's a catchall, and I'm looking at it and there  
2     is no catchall. So he's changed his testimony.

3                 MR. LEADLOVE: I would -- I wish you  
4     wouldn't -- I would appreciate it if you wouldn't  
5     interrupt my -- my redirect examination. What --

6                 MR. WOODSMALL: Well, I'm asking to  
7     inquire because he's changed his cross. He said he  
8     called someone and he has completely changed his  
9     position.

10                JUDGE WOODRUFF: Mr. Woodsmall, I'll  
11     allow you to ask a -- some clarifying questions.

12                MR. LEADLOVE: Thank you.

13     BY MR. LEADLOVE:

14                Q.     Now, Mr. Woodsmall also mentioned --

15                JUDGE WOODRUFF: I'm sorry. I thought  
16     Mr. Woodsmall was going to ask some clarifying  
17     questions.

18                MR. WOODSMALL: Okay. You want to do  
19     that now?

20                JUDGE WOODRUFF: Yes.

21                MR. WOODSMALL: Showing you item 12  
22     again, can you tell me where there's a line that's a  
23     catchall?

24                THE WITNESS: I believe that -- well, I  
25     thought it was this -- I'm sorry. I thought it was

1 this line right here where it said, "All officers and  
2 directors" -- my apologies on that. There are 11  
3 other shareholders, and --

4 MR. WOODSMALL: So your 10K is wrong?

5 THE WITNESS: Excuse me just one second.  
6 Again, my apology. This list wouldn't include the  
7 other 11 because they're not executives. They're not  
8 officers or directors which I believe is what that  
9 stipulation says at the top.

10 MR. WOODSMALL: Okay. So there are  
11 beneficial owners that aren't included in the 10K is  
12 what you're saying?

13 THE WITNESS: No. "The following table  
14 sets forth information regarding the beneficial  
15 ownership of our common stock for each person who  
16 beneficially owns more than 5 percent of our common  
17 stock." None of those 11 would. "Each of our named  
18 executive officers" -- none of those 11 are named  
19 executive officers -- "each member of our board of  
20 directors" -- none of those 11 would be members of  
21 that -- "and all of our executive officers and  
22 members of our board of directors as a group." And  
23 the 11, none of them would qualify there either.

24 MR. WOODSMALL: I'm with you. I  
25 apologize.

1 THE WITNESS: No worries, no worries.

2 MR. WOODSMALL: All right.

3 JUDGE WOODRUFF: Back to redirect.

4 BY MR. LEADLOVE:

5 Q. So just to make sure we're clear, you  
6 believe that there are 11 shareholders of Noranda  
7 stock that live in the state of Missouri?

8 A. That's correct.

9 Q. All right. Mr. Woodsmall also asked you  
10 whether -- why there was no mention of 10K of any  
11 impending closure of the smelter, and I believe that  
12 was the term he used. Do you recall that testimony?

13 A. That's correct.

14 Q. And what did you understand -- what do  
15 you understand impending closure of the smelter to  
16 be?

17 A. Well, the reason why I'm here is to make  
18 sure there's no impending closure of the smelter.  
19 That's why I'm here, to make sure that -- that our  
20 costs are in line. And much of what -- much of what  
21 affects that is within our control and that's our  
22 costs, but we need to also include power in that.  
23 And -- and so that's why I'm here.

24 Q. Mr. Woodsmall also asked you about  
25 commitments that Noranda had made to the State of

1 Missouri concerning maintaining employment. Do you  
2 recall that testimony?

3 A. Yes, I do, actually.

4 Q. And are those commitments endless or are  
5 they -- have they got time caps?

6 A. No, they're -- they are time-bound  
7 commitments. But I would have to look at --  
8 they're -- they're not forever. They're not forever  
9 commitments.

10 Q. And what are the ramifications if  
11 Noranda doesn't meet those particular commitments?

12 A. There -- there are penalties in these  
13 agreements that if we don't meet the commitments --  
14 there are penalties associated with not meeting our  
15 commitments.

16 Q. Mr. Smith, Mr. Woodsmall asked you about  
17 your compensation for 2009 and your -- your -- your  
18 salary and your bonus. Do you recall that testimony?

19 A. Yes, I do.

20 Q. Can you tell the Commission what your  
21 bonus was based on in 2009?

22 A. My bonus is based on the same set of  
23 metrics that are used for the entire company. We  
24 have a very broad-based incentive compensation plan.  
25 And so as we build up the hierarchy of goals, there's

1 a set of goals for the -- in our operational goals,  
2 things like safety. Safety is our first goal, both  
3 our upstream and our downstream business, which by  
4 the way, pays out -- if we meet our safety goals, it  
5 pays out regardless of economic performance.

6 And again, as an example for the New  
7 Madrid smelter, these goals would include cash cost,  
8 they would -- cash cost to produce would include  
9 number of pounds going out the door evened out for  
10 that business, enterprise-wide cash flow. We have  
11 that set of metrics for the upstream business,  
12 another set of metrics for the downstream business.

13 And my bonus is based upon an average of  
14 45 -- 45 percent of my bonus is based strictly on  
15 what the upstream business achieves, 45 is based on  
16 what the downstream business achieves, and the  
17 remaining 10 percent was the cash cost of aluminum  
18 because that's another key -- key driver of getting  
19 our cost down.

20 Q. So safety was a primary concern, primary  
21 factor in your bonus in 2009?

22 A. Yes, it's -- it's the first factor on  
23 the chart.

24 Q. Okay. We talked about and you testified  
25 on cross-examination regarding sustainability of

1 Noranda as an -- as an entity. And there's been some  
2 testimony regarding long-term versus short-term kind  
3 of things. Do you believe that Noranda requires some  
4 sort of immediate post-rate relief -- immediate rate  
5 relief?

6 A. Yes, I do.

7 Q. And if there's a delay in that --

8 MR. WOODSMALL: Your Honor, I may miss  
9 the connection, but I never asked him about any rate  
10 relief or anything along those lines. Maybe he can  
11 make the connection for me.

12 JUDGE WOODRUFF: Your response?

13 MR. LEADLOVE: Your Honor, he said -- he  
14 had the witness testify regarding statements  
15 regarding long-term prices, regarding the long-term  
16 trends regarding aluminum, and I want to connect why  
17 he is here now and why he needs immediate relief and  
18 not allow Mr. Woodsmall to paint some picture later  
19 on in a brief that talks about Noranda's statements  
20 regarding the long-term cost of aluminum.

21 MR. WOODSMALL: Exactly. As he admits,  
22 I never asked about the cost of electricity. And I  
23 think as Mr. Smith indicates, he's not an expert on  
24 the cost of electricity either. This is clearly  
25 outside the bounds of my cross.

1 JUDGE WOODRUFF: I'll sustain the  
2 objection.

3 MR. LEADLOVE: If I may just have a  
4 moment, your Honor?

5 JUDGE WOODRUFF: Sure.

6 BY MR. LEADLOVE:

7 Q. Mr. Smith, what is it that you believe  
8 would require Noranda to be sustainable in the long  
9 term?

10 A. We need to build a second quartile cost  
11 position that includes power. We -- there are a lot  
12 of other factors, you know, relationship with our  
13 customers. In fact, we -- we talk in our mission  
14 statement that to be truly sustainable, we have to  
15 build a long-term relationship with a variety of  
16 constituencies, our customers, our coworkers.

17 But -- but we need rate relief and we  
18 need it -- there's an urgency to getting to the  
19 second quarter because we don't know what market  
20 conditions will be like, we don't know what the  
21 volatility of our industry will bring to us, and so  
22 getting on that journey as quickly as possible is  
23 critical to our company.

24 MR. LEADLOVE: Thank you. I have no  
25 further questions, your Honor.



1 JUDGE WOODRUFF: All right. Thank you.

2 And Mr. Smith, you can step down.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: I want to ask -- at  
5 this point ask the parties where we want to go from  
6 here. Looking at the list of witnesses, we've got  
7 Mr. Fayne, I believe, for Noranda yet. Then we've  
8 got the two witnesses for Staff, the witnesses for  
9 Public Counsel and Mr. Brubaker for -- presumably for  
10 tomorrow.

11 But I do want to say the last thing I  
12 want to do is go late on Friday.

13 MR. WOODSMALL: Your Honor, I think I'm  
14 going to have about the same amount of time for  
15 Mr. Fayne, but the other four witnesses, I think,  
16 will go in pretty short order. I'm hopeful of  
17 getting out of here early afternoon.

18 JUDGE WOODRUFF: All right.

19 MR. WOODSMALL: So I have no intentions  
20 of going late if I have any control.

21 JUDGE WOODRUFF: Any other -- anything  
22 else any of the parties want to jump in there?

23 MR. WILLIAMS: All I'll say is Staff  
24 doesn't anticipate any cross.

25 JUDGE WOODRUFF: The Company?

1                   MR. BYRNE: I mean, do you want to  
2 take a witness or two before we go, or do you want  
3 to --

4                   JUDGE WOODRUFF: Well, that's what I'm  
5 asking. Mr. Fayne, I believe, would be the next  
6 witness, and that would be -- that's probably a  
7 couple hours, so that's probably not -- not  
8 appropriate, so...

9                   MR. WOODSMALL: Your Honor, I talked to  
10 Mr. Mills about Public Counsel's witnesses, and I  
11 communicated -- I have a data request outstanding and  
12 I'm hoping to short-circuit the length of my  
13 cross-examination and he said he was going to inquire  
14 about it.

15                   So I'm hesitant to move on to Public  
16 Counsel because absent -- we may be able to make it  
17 more efficient, is what I'm saying.

18                   JUDGE WOODRUFF: Well, let me ask the  
19 company, do you anticipate long cross on any of these  
20 witnesses?

21                   MR. FISCHER: No, sir.

22                   JUDGE WOODRUFF: Okay. Let's go ahead  
23 and break for the night. We'll come back at 8:30  
24 tomorrow morning with Mr. Fayne, I believe. Anything  
25 else before we adjourn?

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: All right. We're  
3 adjourned for the evening. We'll be back at 8:30  
4 tomorrow morning.

5 (Whereupon, the hearing was adjourned  
6 until March 26, 2010, at 8:30 a.m.)

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
 ) ss.  
3 COUNTY OF COLE )

4

5 I, Pamela Fick, Registered Merit Reporter  
6 and Certified Shorthand Reporter do hereby certify  
7 that I was personally present at the proceedings had  
8 in the above-entitled cause at the time and place set  
9 forth in the caption sheet thereof; that I then and  
10 there took down in Stenotype the proceedings had; and  
11 that the foregoing is a full, true and correct  
12 transcript of such Stenotype notes so made at such  
13 time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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PAMELA FICK, RMR, CCR #447, CSR

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