

Exhibit No.:
Issue(s): Fuel Adjustment Clause – Power
Sales Business
Witness: Jaime Haro
Sponsoring Party: Union Electric Company
Type of Exhibit: Surrebuttal Testimony
Case No.: EO-2012-0074
Date Testimony Prepared: June 8, 2012

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-2012-0074

SURREBUTTAL TESTIMONY

OF

JAIME HARO

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a AmerenMissouri**

**St. Louis, Missouri
June, 2012**

SURREBUTTAL TESTIMONY

OF

JAIME HARO

CASE NO. EO-2012-0074

1 **Q. Please state your name and business address.**

2 A. My name is Jaime Haro. My business address is One Ameren Plaza,
3 1901 Chouteau Avenue, St. Louis, Missouri 63103.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am Director, Asset Management and Trading for Union Electric Company d/b/a
6 Ameren Missouri (“Ameren Missouri” or “Company”).

7 **Q. Are you the same Jaime Haro who filed direct testimony in this case?**

8 A. Yes, I am.

9 **Q. What is the purpose of your surrebuttal testimony in this proceeding?**

10 A. The purpose of my surrebuttal testimony is to respond to the direct/rebuttal
11 testimony of various witnesses who contend that Ameren Missouri’s energy and capacity sales
12 contracts with the American Electric Power Operating Companies (“AEP”) and Wabash Valley
13 Power Association, Inc. (“Wabash”) do not reflect long-term requirements sales. Based on those
14 contentions, these parties argue that the AEP and Wabash sales are not excluded from the term
15 “OSSR” as defined in the Company’s Fuel and Purchased Power Adjustment Clause tariff
16 (“FAC tariff”) in effect during the period addressed in this prudence review.

17 **Q. At pages 14-15 of his direct/rebuttal testimony, Staff witness Dana Eaves**
18 **states that you have not provided a definition of a long-term partial requirements contract.**
19 **In this context, what is the definition of that term?**

1 A. As I testified in Case No. EO-2010-0255, a contract reflects a long-term partial
2 requirements sale if it calls for the sale of firm power (and capacity) to a purchasing entity with
3 an obligation to serve load during the term of the agreement. Other requirements of buyers who
4 must serve load could include things like regulation, spinning reserves and supplemental
5 reserves. The demarcation between short- and long-term is one year. I would also note that the
6 only other witness in this case or in Case No. EO-2010-0255 that has any actual experience in
7 the power sales business, Duane Highley from Associated Electric Cooperative, Inc., agreed with
8 this definition. Case No. EO-2010-0255, Ex. 7, p. 5, l. 13-17 (regarding requirements sale); p. 6,
9 l. 7-9 (regarding long-term).

10 **Q. Are these the definitions as you understood them to be at the time that the**
11 **FAC tariff was proposed, considered by the Commission, and ultimately approved by the**
12 **Commission, as well as at the time that the AEP and Wabash agreements were executed?**

13 A. Yes. Those definitions have been well-established in the power sales industry for
14 many years, certainly since the evolution of modern wholesale energy markets post-FERC Order
15 888, which was issued in 1997.

16 **Q. Do the AEP and Wabash contracts in fact reflect long-term partial**
17 **requirements sales?**

18 A. Yes they do. The contracts themselves, which I have attached as Schedules
19 JH-S1 and JH-S2, have terms of 15 months (AEP) and 18 months (Wabash). Consequently they
20 reflect long-term sales under the commonly accepted use of that term in the wholesale electric
21 marketplace, and as the Company has consistently used that term in connection with its activities
22 related to wholesale power marketing. The contracts also specifically provide that the firm
23 capacity and energy sold under the contracts will be used to meet load obligations of the

1 purchasers, who themselves have load-serving obligations. This is the commonly understood
2 meaning of a partial requirements sale, as I noted earlier, and it is how the Company has
3 consistently used that phrase in connection with its activities relating to wholesale power
4 marketing. The Wabash contract states: “The Buyer shall use the Product [capacity and energy]
5 to partially meet the requirements of Citizens Electric Corporation in Missouri.” The AEP
6 contract states: “The Capacity and Energy provided by AmerenUE herein will enable AEP to
7 partially meet load serving requirements,” and the “Trade Type” is identified as “PHYSICAL
8 Capacity and associated energy (Partial Requirements—Baseload).” As a consequence of both
9 the contract terms and the nature of the contracts, both contracts reflect partial requirements
10 sales.

11 **Q. Missouri Industrial Energy Consumers (“MIEC”) witness Maurice**
12 **Brubaker argues that the words in the contract have “no meaning as to the character of the**
13 **service supplied,” and that “[c]alling these transactions requirements service does not**
14 **make them so anymore [sic] than calling a dog a duck makes it quack.” (Brubaker direct,**
15 **p. 9, lines 1-2). Is Mr. Brubaker correct?**

16 A. No, Mr. Brubaker, who concedes that he is not an expert in either energy
17 marketing or trading,¹ is incorrect. Not only do the words in the contracts have meaning, in that
18 they constitute the terms of seller’s and buyers’ obligations, but as noted, the nature of these
19 buyers is such that they have a requirement to serve load. Including terms in a contract that
20 accurately reflect the terms of the sale is not the equivalent of calling a dog a duck. It might be
21 “calling a dog a duck” if a power seller entered into a contract with a financial trading firm (e.g.,
22 banks like Barclay’s and Citibank, which regularly buy power for trading purposes but which

¹ Case No. EO-2010-0255, Tr. p. 501, l. 8-13.

1 have no load serving requirements) and stated that the power is to be used to serve load the buyer
2 *doesn't have*, but it's calling a "duck a duck" to state that the power sold here is to serve load
3 requirements that the purchasers *actually have*.

4 **Q. Are these contracts, in substance, partial requirements contracts?**

5 A. Yes, they are. As indicated in the agreements, capacity and energy from the
6 Wabash contract is to be used to partially meet the load obligations of one of its members,
7 Citizens Electric Corporation ("Citizens"), which is a large electric cooperative that serves more
8 than 20,000 customers in Southeast Missouri. Wabash is the not-for-profit cooperative that
9 acquires capacity and energy on behalf of its members, including Citizens, which use that
10 capacity and energy to meet their load obligations. Capacity and energy provided under the AEP
11 contract is to be used to partially meet the load obligations of the AEP Operating Companies,
12 which consist of electric utilities serving more than 5 million customers in 11 states.

13 **Q. What is the basis for the other parties' contention that the AEP and Wabash**
14 **contracts do not reflect long-term partial requirements sales?**

15 A. The Staff relies on how the Company reported the subject contracts pursuant to
16 reporting instructions on page 310 of the Federal Energy Regulatory Commission's ("FERC")
17 Form 1, which is the annual report for electric companies used by FERC and adopted by the
18 Missouri Public Service Commission. For reporting purposes only, this form classifies contracts
19 as short-term (less than one year), intermediate term (1-5 years) and long-term (greater than
20 5 years). Form 1 also applies a definition of "requirements service" (it has no definition for a
21 "requirements sale"), which ties to a utility's system resource planning. MIEC witness Brubaker
22 uses the identical "requirements service" definition from an Edison Electric Institute ("EEI")
23 glossary, which Mr. Brubaker agrees was adopted by EEI from the FERC Form 1.

1 **Q. Is the FERC Form 1 relied upon in the power sales business as a reference**
2 **for contract negotiations or for defining the seller’s or buyer’s obligations under a power**
3 **sales contract?**

4 A. No. In my 14 year career in the power sales business, and specifically in
5 wholesale power marketing and trading, I have never once heard any reference to FERC Form 1
6 (by those engaged in power marketing at Ameren Missouri or by other market participants), let
7 alone to the obscure reporting instructions found at page 310, in negotiating the terms and
8 conditions of wholesale power contracts, or in defining the parties’ obligations.

9 **Q. Is it appropriate to use the definitions of “long-term” and “requirements**
10 **service” contained in FERC Form 1 to interpret Ameren Missouri’s FAC tariff?**

11 A. No, it is not. The delineations between categories of contracts for annual
12 reporting purposes contained in Form 1 bear no resemblance to the definitions of those terms
13 used in the modern power sales business, and no relationship to the common meaning of the
14 terms “long-term” and “requirements sale.” The FERC Form 1 reporting instructions date back
15 at least to 1990, years before the modern open access market for electricity existed. I have
16 attached as Schedule JH-S3 a copy of page 310 of Union Electric Company’s 1990 Form 1
17 which shows the use of these terms in the reporting form has not changed over the last 20 years.

18 **Q. Has the wholesale market for electric energy changed since the definitions of**
19 **“long-term” and “requirements service” were first included in the reporting instructions**
20 **used for the Form 1 Report?**

21 A. Yes, the wholesale market has changed dramatically since those definitions were
22 first included. The definitions included in the Form 1 predate both the Energy Policy Act of
23 1992 and FERC Order 888, which fundamentally changed the wholesale market for electricity in

1 the United States. The Energy Policy Act of 1992 laid the foundation for the eventual
2 deregulation of the wholesale market for energy in North America by requiring utility companies
3 to allow external entities fair access to electric transmission systems, thereby enabling large
4 energy customers to choose their electric suppliers. The FERC adopted Order 888, as well as a
5 series of related orders, in the late 1990s to ensure the objectives of the Energy Policy Act were
6 implemented through standards mandating fair and open access to transmission. In short, the
7 modern wholesale market for electricity bears little resemblance to the market that existed when
8 the definitions of “long-term” and “requirements service” were first adopted in the reporting
9 instructions for the Form 1.

10 **Q. Do participants in the electric markets refer to contracts with a term of**
11 **1-5 years as “intermediate term” contracts?**

12 A. No. In the 14 years that I have marketed and traded power, I do not recall ever
13 hearing the phrase “intermediate term” used to describe a contract, let alone specifically one with
14 a term duration of 1-5 years (as defined on page 310 of the FERC Form 1). In fact, the first time
15 I ever heard the use of the phrase “intermediate term” was when Mr. Eaves brought up the FERC
16 Form 1 instructions in his pre-filed testimony in Case No. EO-2010-0255. I would note that
17 Mr. Eaves did not list the FERC Form 1 (nor did Staff in general list it) in his portion of the
18 Staff’s prudence review report in that case, even though it later became the centerpiece of
19 Mr. Eaves’ argument that a contract is only “long-term” if it has a term of more than five years.
20 I would also note that Staff witness Lena Mantle contradicted Mr. Eaves in Case No. EO-2010-
21 0255, arguing at various times that “long-term” meant about three years or perhaps four years,
22 although she cited no basis for those contentions. And I would note that Mr. Brubaker has never
23 taken issue with the Company’s contention that “long-term” means one year or more.

1 Regardless, in the electric power sale business, the demarcation point between long-term and
2 short-term is indisputably one year, and has been for many, many years.

3 **Q. Does FERC itself use the definitions appearing on page 310 of the FERC**
4 **Form 1 in differentiating between long-term and short-term contracts?**

5 A. No. In its decisions dating back to at least 2002, FERC has completely ignored the
6 reporting convention in its Form 1 and has consistently used one year as the demarcation
7 between short-term and long-term contracts. The FERC made this abundantly clear in its order
8 in Docket No. RM06-10-001, issued June 22, 2007—less than a year before Ameren Missouri’s
9 filing in Case No. ER-2008-0318 (the case in which the FAC tariff in effect during the
10 accumulation period for this prudence review was approved). In that order, FERC described its
11 consistent use of this demarcation between long- and short-term contracts:

12 Additionally, the Commission at the time of enactment of EAct 2005 had for
13 years defined long-term contracts under the OATT as one year or longer.
14 Similarly, the Commission has treated power sales with a contract term of greater
15 than one year to be “long-term” for reporting purposes. See, e.g., Revised Public
16 Utility Filing Requirements, Order No. 2001, 667 FR 31043, FERC Stats.& Regs.
17 par. 31,127 (2002), Order No. 2001-A, 100 FERC par. 61,074, reconsideration
18 and clarification denied, Order No. 2001-B, 100 FERC par. 61, 342 (2002). **We**
19 **thus believe it is reasonable to use the convention of treating contracts of a**
20 **year or more as “long-term” consistent with our longstanding practice.**
21 (emphasis added.)²
22

² *Re: New PURPA 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,305 (2007), p. 18-19 n.17.

1 Additionally, the FERC’s Electronic Quarterly Report (“EQR”) data dictionary states: “Contracts
2 with a duration of one year or greater are long-term. Contracts with shorter durations are short-
3 term.” (*Re: Revised Public Utility Filing Requirements for Electric Quarterly Reports*, “Order
4 Revising Electric Quarterly Report Data Dictionary,” 125 FERC ¶ 61,103 (2008) p. 33). All
5 public utilities and power marketers must file EQRs for each calendar quarter. The filings must
6 summarize contractual terms and conditions for market-based power sales, cost-based power
7 sales, and transmission service. EQRs provide a detailed, comprehensive view of the wholesale
8 power markets on a transaction-by-transaction basis. Unlike FERC Form 1, the information
9 from EQR reports is regularly reviewed and utilized by real world wholesale power market
10 participants. The Kirkwood, Kahoka, Marceline, Perry, AEP and Wabash contracts are all
11 categorized as long-term firm contracts in this report.

12 There are also numerous FERC orders in individual cases that reflect the common
13 definition of one year for long-term contracts. For example, in its order in the *Mountainview*
14 *Power* case, FERC stated:

15 While we are conditionally accepting the PPA on the basis that it is consistent
16 with the Commission’s current policy, we will henceforth require that all affiliate
17 **long-term (one year or longer) power purchase agreements**, whether at cost or
18 market, be subject to the conditions set forth in Edgar. (emphasis added.)³
19

20 **Q. Why does FERC Form 1 continue to categorize contracts as short-term,**
21 **intermediate-term and long-term when these categories are not used by FERC in other**
22 **contexts?**

23 A. I don’t know why FERC chose those reporting classifications more than 20 years
24 ago. As best as I can tell, those classifications are simply a vehicle for data collection for that

³ *Re: Southern California Edison Company, On Behalf of Mountainview Power Company LLC*, “Order Conditionally Accepting Proposed Rate Schedule and Revising Affiliate Policy,” 106 FERC ¶ 61,183, at 58 (2004).

1 particular report. FERC Form 1 could require that contracts be divided into 3 or 5 or 20 different
2 categories, but that reporting convention would not affect what is a long-term or short-term
3 contract in the marketplace, or how FERC delineates short-term and long-term contracts in other
4 contexts pursuant to its longstanding practice. The FERC Form 1 instructions are for the limited
5 purpose of completing page 310 of the form. Those definitions never applied to or limited the
6 use of the term “long-term” as it is currently used in the wholesale power market. In particular,
7 they have never formed the basis of Ameren Missouri’s understanding of the meaning of “long-
8 term” in the wholesale marketplace, nor are those terms even used in the power sales business.

9 **Q. Is there other evidence that the standard definition of long-term is one year**
10 **or longer?**

11 A. Yes. In other areas of the electric business, one year is consistently used as the
12 demarcation point between long-term and short-term. Both the Midwest Independent
13 Transmission System Operator, Inc. (“MISO”) tariff as well as FERC’s pro forma Open Access
14 Transmission Tariff (“OATT”) define long-term point-to-point electric transmission as one year
15 or longer. Additionally, the North American Electric Reliability Corporation (“NERC”)
16 Glossary of Terms Used In Reliability Standards defines a Resource Planner as: “The entity that
17 develops a *long-term (generally one year and beyond)* plan for the resource adequacy of
18 specific loads (customer demand and energy requirements) within a Planning Authority Area.”
19 (emphasis added.) See Schedule JH-S4. Even the Ameren Missouri FAC tariff at issue in this
20 case uses one year as the demarcation point between capacity contracts whose costs are included
21 as purchased power expense and flowed through the FAC and those whose costs are not included
22 as purchased power expense and are thus excluded from the FAC. (See Original Sheet No. 98.3,
23 definition of “CPP”). This is a clear recognition that one year is the appropriate demarcation

1 between long-term and short-term capacity contracts. Outside the context of power sales and
2 transmission, long-term is also regularly used to describe other types of contracts of one year or
3 more. For example, as Ms. Barnes testifies, this Commission considers debt instruments with a
4 term of one year or longer to be long-term debt in establishing the capital structures for all
5 utilities.

6 **Q. Notwithstanding that one year is used by wholesale power market**
7 **participants, by the FERC and in other contexts as the demarcation between long-term and**
8 **short-term contracts, is it possible that the FAC tariff at issue in this case was meant to**
9 **incorporate the definition of long-term contracts (5 years) contained on page 310 of the**
10 **FERC Form 1?**

11 A. No, that is not possible. When Ameren Missouri originally proposed the FAC
12 tariff, when it was being considered by the parties to Case No. ER-2008-0318, and when the
13 Commission ultimately approved the tariff in that case, the scope of the exclusion from “OSSR”
14 was clearly meant to be broad enough to encompass the municipal contracts with the cities of
15 Kirkwood, Marceline, Perry and Kahoka that were in existence at the time the tariff was
16 approved. All parties apparently agree with this because no party argues that it was improper for
17 Ameren Missouri to exclude the revenues from those municipal contracts from OSSR for the
18 period at issue in this prudence review proceeding. But only one of those contracts, the contract
19 with the City of Perry, had a term of five years or longer. The contracts for Kirkwood
20 (29 months), Marceline (36 months), and Kahoka (36 months) had significantly shorter terms.⁴
21 The intended meaning of “long-term” in the FAC tariff had to be less than five years, or these

⁴ Ameren Missouri’s municipal contracts have sometimes been shorter than the AEP and Wabash contracts. For example, in October 2009, Ameren Missouri and the City of Kirkwood entered into a separate partial requirements

1 contracts would not have qualified for the exclusion. Consequently, it is not possible that the
2 tariff could have been based on consideration of the definition of long-term (5 years) found on
3 page 310 of FERC Form 1.

4 Those who argue that the AEP and Wabash contracts are included in factor OSSR cannot
5 have it both ways; that is, they can't claim the FERC Form 1 reporting instruction definition of
6 five years or longer for "long-term" controls, but at the same time exclude contracts with terms
7 of less than five years (29 months, 36 months and 36 months) from OSSR. This conclusively
8 shows that the FERC Form 1 instructions had nothing to do with the meaning of the phrase
9 "long-term full and partial requirements sales" in the Company's FAC tariff.

10 **Q. Turning now to the debate about when a contract reflects a "partial**
11 **requirements sale," you previously stated that this term refers to, among other things, the**
12 **seller's obligation to sell firm energy and capacity to meet part of the purchasing entity's**
13 **load obligation during the term of the agreement. Is there support for this definition?**

14 A. Yes. Based on my years of experience as a marketer and trader of power, this is
15 the definition of a partial requirements sale that market participants use. This definition is also
16 supported in industry publications. For example, EEI's Glossary of Electric Industry Terms,
17 p. 115, defines "Partial Requirements" as "a wholesale customer who purchases, or is committed
18 to purchase, only a portion of its electric power generation need from a particular entity. There
19 often is a specified contractual ceiling on the amount of power that a partial requirements
20 customer can take from the entity. In contrast, a 'requirements' or 'full requirements' customer
21 is committed to purchase all of its needs from a single entity and generally would not have a
22 ceiling on the amount of power it can take." Similarly, the North American Energy Standards

agreement with a term of 14 months. In 2008, Ameren Missouri entered into a partial requirements contract with the

1 Board (“NAESB”) Wholesale Electric Quadrant (“WEQ”) Glossary defines “Partial
2 Requirements” as “a sale of power to a purchaser in which the seller pledges to meet a specified
3 part of the purchaser’s requirements.” Copies of the EEI and NAESB definitions are attached as
4 Schedule JH-S5. These definitions are intuitive. They make common sense based on the plain
5 meaning of the words “partial” and “requirements.” Webster’s Dictionary defines “partial” as
6 “of or relating to a part rather than the whole; not general or total,” and it defines “requirement”
7 as “something required; something wanted or needed; necessity; something essential to the
8 existence or occurrence of something else.” Webster’s Ninth New Collegiate Dictionary. So it
9 makes logical sense that a partial requirements sale would be a sale that provides *part* of the
10 power and capacity needed by the purchasing entity to meet its load obligations.

11 **Q. As previously discussed, some of the witnesses in this case rely on the**
12 **definition “requirements service” contained in FERC Form 1 reporting instructions (and**
13 **repeated in the EEI glossary) to argue that the AEP and Wabash contracts do not reflect**
14 **long-term partial requirements sale. Do you have any further comment on this?**

15 A. Yes. First, to state the obvious, neither the FERC Form 1 nor the EEI glossary
16 contain a definition for “partial requirement sales” let alone for “long-term partial requirements
17 sales.” Second, let me reiterate that the 20-year-old FERC Form 1 definition of “requirements
18 service” is not the appropriate definition to use for purposes of classifying the AEP and Wabash
19 contracts. It does not match the definition of requirements sale commonly used in the modern
20 marketplace, and does not comport with the plain meaning of the word “requirements” as
21 contemplated in Ameren Missouri’s tariff. Moreover, as I previously discussed, it is clear that
22 the FERC Form 1 definition was not being relied upon when the FAC tariff was drafted and

1 approved. In fact, the FERC Form 1 instructions' definitions were not before the Commission in
2 the rate case where the subject FAC tariff was approved at all, and as I noted, weren't brought up
3 by anyone until after-the-fact, indeed after the Staff had already claimed "imprudence" for how
4 we classified the subject contracts. And the FERC Form 1 instructions' definitions simply
5 cannot have formed the basis for the meaning of the FAC tariff language because if they did all
6 but one of the Company's municipal contracts would have had to have been reclassified because
7 they do not meet the definition of "long-term" contained in Form 1. Since the Form 1 definition
8 of "long-term" was not being considered when the Company's FAC tariff was developed and
9 adopted, it is not reasonable to believe the definition of "requirements service" that appears on
10 the same page of Form 1 -- and that doesn't even appear in the FAC tariff -- was being
11 considered. In other words, these FERC Form 1 instructions either formed the basis for the
12 meaning of the phrase "long-term full and partial requirements sales" in the Company's FAC
13 tariff or they did not. Neither Staff nor the other parties can pick and choose one definition
14 (e.g., "requirements service") while ignoring the other (e.g., "long-term"). Finally, I would note
15 that here too the Staff witnesses are not on the same page. While Mr. Eaves points to the FERC
16 Form 1 instructions' definitions which include the "requirements service" definition, Ms. Mantle
17 disagrees with Mr. Eaves in that she testified that under her definition of "requirements" the AEP
18 and Wabash contracts do reflect requirements sales. Case No. EO-2010-0255, Tr. p. 380,
19 l. 13-17.

20 **Q. What about Mr. Eaves' contention that there must be an "ongoing"**
21 **relationship with the buyer in order for a requirements sale to exist?**

22 A. The Commission bought into this concept in the Report and Order in Case No.
23 EO-2010-0255 as well. This "ongoing" principle appears in the FERC Form 1 instructions'

1 definitions. I have already explained that those instructions cannot possibly control, inform, or
2 have been relied upon when the “long-term partial requirements sale” provision in the FAC tariff
3 was proposed and approved.

4 Additionally, it must be noted that the facts do not support Mr. Eaves’ construction of
5 “ongoing.” In addition to the four long-term requirements contracts with municipalities I
6 referred to earlier that were in effect while the AEP and Wabash contracts were in effect, the
7 Company formerly had long-term requirements contracts with two other cities, Hannibal and
8 Centralia. Those two contracts both expired December 31, 2008. The Company has not had a
9 contract with them since then. However, even though the Company had no contract with them
10 and no intention of continuing to sell them energy and capacity, when the FERC Form 1 for 2008
11 was filed in April, 2009, the contracts were listed as “RQ,” the FERC Form 1 instructions’
12 “requirements service” definition, though they had both already expired as of the date the form
13 was submitted. If Mr. Eaves were right that the concept of ongoing requires that one intends to
14 continue serving a particular buyer’s load, then clearly neither of those agreements could be
15 considered “RQ” because there would be no “ongoing” service. No one has suggested that those
16 contracts did not reflect long-term partial requirements sales, just as no one contends that the
17 four other municipal contracts (three of which do not meet the “long-term” definition in the
18 FERC Form 1 instructions) do not reflect long-term requirements sales. The bottom line is that
19 Mr. Eaves’ opinion regarding what “ongoing” means can’t be squared with the facts.

20 Perhaps even more important is the fact that the most recent IRP at that time specifically
21 noted that the Company had *not* included any load obligation for any of the agreements with the
22 cities (Centralia, Hannibal, Kirkwood, Kahoka, Marceline, Perry) beyond December 31, 2008.
23 (This was previously noted by Mr. Steven M. Wills in his surrebuttal testimony [p. 4, l. 20-21] in

1 Case No. EO 2010-0255). It makes no sense for Mr. Eaves to somehow divine an intent on the
2 Company's part to serve a customer on an "ongoing" basis according to his view of what that
3 means when the Company's IRP specifically excludes those customers' volumes from its service
4 plans, indicating that the Company isn't going to serve them on an "ongoing basis" (as Mr.
5 Eaves would define the term). In sharp contrast, the volumes (loads) associated with the AEP
6 and Wabash agreements – which were the volumes that would have been taken by Noranda's but
7 for the ice storm – were specifically included in the IRP. And as Mr. Wills testifies, the AEP and
8 Wabash contracts were reflected in the analysis that formed the basis for the next IRP (filed in
9 February 2011) for the duration of the contract terms. If anything, the notion that Ameren
10 Missouri had an ongoing intent to serve this load as evidenced by the IRP is much stronger with
11 regard to the AEP and Wabash agreements than it is for the agreements with the various cities.

12 The bottom line is that just as is the case with the FERC Form 1 instructions' definition
13 of "long-term," the Staff and interveners attempt to rely upon their take on a FERC Form 1
14 instructions' definition of "requirements service" that would, if applied equally to other contracts
15 with the cities (that all agree *are* long-term requirements sales) would in fact disqualify them as
16 such.

17 All of this discussion about the FERC Form 1 instructions' definitions is really a
18 sideshow, because I've demonstrated that those instructions can't apply, both because of the
19 facts surrounding all of the Company's long-term requirements sales, and because the
20 instructions weren't on anyone's minds, or before the Commission, when the FAC tariff was
21 proposed or approved.

22 **Q. Another argument that has been made is that because the AEP and Wabash**
23 **contracts were not included in the Company's IRP then those contracts were not part of**

1 **the Company’s “system resource planning,” as that term is used in the FERC Form 1**
2 **instructions’ definitions. Were the sales to AEP and Wabash considered in Ameren**
3 **Missouri’s system resource planning?**

4 A. Absolutely. As Mr. Wills explains, the IRP merely reflects a snapshot of Ameren
5 Missouri’s resource plan at a point in time – as of February 2008. Obviously the 2008 IRP
6 predated the beginning and end of the AEP and Wabash contracts since they did not begin until
7 March and May, respectively. An IRP is not the embodiment of the ongoing system resource
8 planning process that occurs every day between the three-year IRP preparation and filing cycle.⁵
9 Aside from the snapshot in the IRP, the AEP and Wabash contracts were important
10 considerations in that ongoing planning process. For example, the MISO requires Ameren
11 Missouri to demonstrate on a monthly basis that it has sufficient “Planning Resource Credits” to
12 cover its firm demand (load and sales) plus an applicable reserve margin. As noted, to make this
13 demonstration, Ameren Missouri submits a “Module E” compliance report to the MISO.
14 Ameren Missouri accounted for the AEP and Wabash contracts in its Module E filings because
15 these contracts call for the sale of firm capacity. This is just one example of how Ameren
16 Missouri engaged in system planning that accounted for both the AEP and Wabash loads. In
17 addition, Ameren Missouri included these loads in its annual and monthly capacity position
18 calculations, load forecasting, fuel budgeting and risk management position calculations. These
19 are all elements of system resource planning. And again, this “system resource planning”
20 concept comes from the FERC Form 1 instructions’ definitions, which have nothing to do with
21 this case anyway.

⁵ As Ameren Missouri witness Steve Wills discusses in his surrebuttal testimony, Mr. Brubaker contradicts the Staff’s contention that not listing the two contracts in the IRP renders them outside the system resource planning

1 **Q. You also characterize the sales obligation under the AEP and Wabash**
2 **agreements as calling for delivery assurances second only to the service provided to**
3 **Ameren Missouri’s own customers. Can you explain further?**

4 A. Yes. The Wabash contract specifically addresses this issue. Paragraph 19 of the
5 contract states in relevant part: “Seller agrees that it will consider Buyer equivalent to Seller’s
6 native load customers and agrees that the Product that it will provide to Buyer, pursuant to this
7 Agreement, will be System Firm power with the same quality as the electric power that the Seller
8 provides to its firm retail customers.” The AEP contract provides for the sale of “Firm LD
9 Capacity as that term is defined in the Edison Electric Institute MISO Module E Capacity
10 Transaction Confirmation, Version 1.0--October 20, 2008 incorporated herein by this reference
11 and associated Firm LD Energy.” The Company’s obligation to AEP and Wabash was the same
12 as, or second only to, the service obligation it has to its own customers.

13 **Q. On page 7 of his direct testimony, MIEC witness Brubaker points out that**
14 **under the AEP and Wabash contracts Ameren Missouri is not providing various RTO and**
15 **OATT services, and implies that this fact is relevant to whether the AEP and Wabash**
16 **contracts reflect requirements sales. Do you agree?**

17 A. No. Mr. Brubaker’s testimony proves just one thing: that AEP and Wabash, and
18 not Ameren Missouri, are responsible for various RTO and OATT charges. Whether Ameren
19 Missouri pays these charges and then bills Wabash and AEP, or Wabash and AEP pay them
20 directly, has nothing to do with whether the power sales reflected in the contracts are partial
21 requirements sales. More importantly, I would note again that the AEP and Wabash agreements
22 are *partial* requirements sales and as such one should not expect them to impose on the seller the

process. Mr. Brubaker admitted that whether the contracts are listed in the IRP is not determinative of whether they

1 obligation to provide every activity or product feature that one might expect if a full
2 requirements sale was agreed upon.

3 I have attached as Schedule JH-S6 some examples of other requirements contracts where
4 the purchaser, not the seller, is responsible for some of these RTO and OATT services, including
5 an agreement with the City of Kirkwood, which the Commission itself has described as a full
6 requirements wholesale customer.⁶

7 **Q. You previously referenced the FERC EQR. In Mr. Brubaker’s testimony he**
8 **finds it notable that “Ameren Missouri did not classify either the AEP sale or the Wabash**
9 **sale as requirements contracts in its EQR filings,” apparently suggesting that this shows**
10 **that they are not requirements sales. How do you respond?**

11 A. Mr. Brubaker should have examined the EQR filings more carefully. Not only
12 are the AEP or Wabash agreements not reported in the EQR as requirement contracts, but neither
13 are the agreements with Kirkwood, Kahoka, Marceline, Perry. This is something that
14 Mr. Brubaker should have known (or if he did know should have acknowledged), because I
15 made note of this in my surrebuttal testimony in Case No. EO-2010-0255, (p. 7, l. 1-2). If
16 Mr. Brubaker’s theory is that not designating a contract in the EQR as “requirements service”
17 means it is not a “requirements sale” within the meaning of the FAC tariff, then like Mr. Eaves’
18 misapplication of “long-term” from the FERC Form 1 instructions’ definitions the contracts with
19 the municipalities would also fail to qualify. No one makes such a claim. Consequently, for this
20 additional reason it is obvious that what is a “requirements sale,” as used in the FAC tariff, is not

are requirements sales. Case No. EO-2010-0255, Tr. p. 502, l. 12-18; 23 to p. 503, l. 6.

⁶ Comments of the Missouri Public Service Commission Regarding the Department of Energy’s 2009 Transmission Congestion Study and the Designation of National Interest Electricity Transmission Corridors, p. 6 n.2, presented at the June 18, 2008 Pre-Congestion Study Regional Workshop in Oklahoma City, Oklahoma. See Schedule JH-S7.

1 controlled or informed by the definitions of “requirements service” in either the FERC Form 1
2 instructions or the FERC EQR.

3 **Q. At pages 15-17 of his testimony, Mr. Eaves also attempts to use recent FERC**
4 **Form 1 reporting as a basis to argue that the subject contracts do not reflect long-term**
5 **partial requirements sales, describing a change in the reporting for the AEP and Wabash**
6 **contracts from 2009 to 2010. Was there a change?**

7 A. Yes, there was. As Ms. Barnes explains in her surrebuttal testimony, the
8 Company’s accounting staff had previously used a simple litmus test in deciding if a contract
9 should be reported as “RQ”. That litmus test was whether the contract was listed in the last IRP
10 completed before the report was made. However, as I explained earlier system resource planning
11 is an ongoing process that is broader than the snapshot taken each time an IRP is prepared. It’s
12 my understanding that the accounting staff, in recognition of this fact, subsequently determined
13 that it was more appropriate to tie RQ reporting to whether the contract was included in system
14 planning (e.g., reported in our Module E submittals to MISO) rather than simply listed in the
15 IRP.

16 **Q. But Mr. Eaves also claims that in 2010 the AEP contract was reported as**
17 **“SF”, which stands for short-term firm, apparently implying that the Company has**
18 **referred to the AEP contract at issue in this case as a “short-term” contract. Is he correct?**

19 A. No, he is not. FERC Form 1 includes many transactions. The contracts reported
20 in 2010 as “SF” were completely different contracts with AEP than the contract that is at issue in
21 this case. As a matter of fact, the line in the FERC Form 1 report that Mr. Eaves pointed to
22 summarizes 77 different transactions with AEP totaling 14,121 MWh. Because all of those
23 transactions had terms of less than one year (and most of them only a few hours) they are of

1 course short-term contracts. Mr. Eaves wrongly assumed that he was looking at reporting for the
2 AEP contract at issue in this case – he wasn't.

3 **Q. Mr. Eaves also points to an AEP contract report in 2009's FERC Form 1 as**
4 **SF. Did he make the same mistake?**

5 A. Yes, he did. Again, the AEP contract at issue in this case was reported as "IF,"
6 which stands for "intermediate firm" according to the FERC Form 1 instructions. As I already
7 explained, in the power sales business the concept of an "intermediate" term contract isn't
8 relevant – anything over one year is long-term – but we are constrained to use "IF" for a contract
9 with a term of more than one year but less than five years for FERC Form 1 reporting purposes.
10 The contracts with AEP designated as "SF" in the 2009 FERC Form 1 were 86 different short-
11 term contracts, totaling 18,747 MWh, and – all had individual terms of less than a year.

12 **Q. On page 18 of his testimony Mr. Eaves poses the following question to which**
13 **he gives the following answer:**

14 **Q. Do you know when Ameren Missouri initially entered into these [the**
15 **Kirkwood, Kahoka, Marceline, Perry] contracts?**

16
17 **A. No. In response to Staff Data Request 58 in File No. EO-2010-0255,**
18 **Ameren Missouri stated 'Ameren Missouri is unable to ascertain the dates**
19 **requested'.**

20
21 **Did Mr. Eaves accurately represent the question asked of the Company and its**
22 **answer?**

23 A. No, he did not. While he accurately quoted our *response*, he failed to note that
24 the *question posed* in that data request did not ask for the date that these agreements were entered
25 into. Rather, it very specifically and narrowly asked for the date that was "the first time
26 AmerenUE or Union Electric initially provided service to each Municipal customer through a

1 requirements contract, enabling agreement or arrangement.” That is, the data request asked for
2 the very first time that Ameren Missouri provided service to one of these entities.

3 **Q. So are you saying that Mr. Eaves’ representation that he doesn’t know when**
4 **Ameren Missouri provided service to these municipalities is wrong?**

5 A. Yes, because we have provided all of the information he needs to ascertain those
6 dates and we fully answered his questions. Ameren Missouri’s responses to Staff Data Requests
7 50 and 50.1 in Case No. EO-2010-0255 (which Mr. Eaves himself asked) included copies of
8 each of those municipal agreements. Those contracts contained not only the date of execution
9 but all pertinent terms and conditions, including the specific terms of the contracts.

10 They clearly show the start and end date of the contracts and the fact that for 3 of
11 the 4 terms are clearly less than five years (and more than one year) and that therefore they too
12 would not be “long-term” under the FERC Form 1 instruction definition Mr. Eaves relies upon.

13 **Q. Why do you bring this up?**

14 A. Because Mr. Eaves’ testimony leaves a misleading impression. While I can’t
15 speak to what Mr. Eaves does or does not know – he may have been mistaken without realizing
16 it – the impression his question and answer leaves is that the four municipal contracts may have
17 been going on for many years, and that this then supports his argument that those contracts are
18 “ongoing” (i.e., that these contracts had a term in excess of five years) whereas the AEP and
19 Wabash contracts did not have a term in excess of five years. That impression is false.

20 **Q. Please summarize your testimony.**

21 A. The AEP and Wabash contracts reflect long-term partial requirements sales. They
22 are long-term because their terms are greater than one year, which is the demarcation point
23 between long-term and short-term widely used in the wholesale power markets and consistent

1 with FERC’s longstanding practice. There is really no credible support for the argument that
2 these contracts are not long-term. The AEP and Wabash contracts also reflect “partial
3 requirements” sales because they are firm contracts for capacity and energy that serve a portion
4 of the load obligations of the purchaser. This meets the definition of partial requirements sales
5 commonly used in the wholesale power markets. It is also consistent with the plain meaning of
6 the term “partial requirements.” Although it is not necessary to qualify as a partial requirements
7 sale, the loads served under these contracts were also included in the analysis that formed the
8 basis for Ameren Missouri’s 2011 IRP filing and in its ongoing system resource planning efforts,
9 and the reliability of the service under the contracts is unquestionably the same as, or second
10 only to, the reliability of service provided to Ameren Missouri’s own ultimate customers, which
11 means that these contracts reflect partial requirements service.

12 Finally, it is crystal clear that Ameren Missouri’s FAC tariff could not have been based
13 on the 20-year-old definitions of “long-term” and “requirements service” found on p. 310 of
14 FERC Form 1, since many of the municipal contracts that all parties agree qualify as long-term
15 requirements sales contracts do not meet these definitions.

16 Q. **Does this conclude your surrebuttal testimony?**

17 A. Yes, it does.

