

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing

January 11, 2011

Jefferson city, Missouri

Volume 4

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

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

ROBERT M. CLAYTON, III, Chairman
JEFF DAVIS
TERRY JARRETT
KEVIN GUNN
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1 JUDGE WOODRUFF: Good morning, everyone.
2 welcome back to the hearing on Case No. EO-2010-0355. when
3 we left off yesterday, we just finished with Mr. Highley, and
4 we've got two more Ameren witnesses to take care of, so call
5 your next witness.

6 MR. MITTEN: The company calls Gary Weiss.
7 (The witness was sworn.)

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. MITTEN:

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

12 A. My name is Gary S. Weiss. My business address
13 is 1901 Chouteau, St. Louis, Missouri 63103.

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

16 A. I'm currently employed by Ameren Missouri, and
17 I am manager of regulatory accounting.

18 Q. Mr. Weiss, did you prepare and cause to be
19 filed in this case surrebuttal testimony which has been
20 marked for identification as Exhibit No. 5?

21 A. Yes, I did.

22 Q. Do you have any changes or corrections to that
23 testimony that you need to make today?

24 A. Yes, I do. If you look on page 4, lines 22
25 and lines 23, I have 21. It should be 23. I either can't

1 type or can't count. I'm not sure which one it is. But it
2 should be 23 instead of 21.

3 Q. Any other changes or corrections?

4 A. No, that's all.

5 Q. With the addition of that change, if I ask you
6 the questions that are contained in your prepared testimony
7 today, would your answers be the same as are reflected there?

8 A. Yes, they would.

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

12 A. Yes, it is.

13 MR. MITTEN: Your Honor, I would offer into
14 evidence Exhibit No. 5.

15 JUDGE WOODRUFF: Exhibit No. 5 has been
16 offered. Any objections to its receipt? Hearing none, it
17 will be received.

18 (Exhibit No. 5 was received into evidence.)

19 MR. MITTEN: And Mr. Weiss is available for
20 cross-examination.

21 JUDGE WOODRUFF: Okay. Beginning with Staff.

22 CROSS-EXAMINATION

23 QUESTIONS BY MS. OTT:

24 Q. Good morning, Mr. Weiss.

25 A. Good morning.

1 Q. I believe you state in your surrebuttal
2 testimony that one year is the demarcation point between
3 short-term debt and long-term debt; is that correct?

4 A. That is correct.

5 Q. For financial reporting purposes, does Ameren
6 classify short-term debt separately from long-term debt?

7 A. I know on the income statement it is. I'm not
8 sure about the SEC reporting. I do not deal with the SEC
9 reporting.

10 Q. So it's a separate line item on the balance
11 sheet?

12 A. Yes.

13 Q. Does it also classify interest on short-term
14 debt separately than interest on long-term debt?

15 A. No. I think interest is combined into one
16 account.

17 Q. Is it combined into one account for the income
18 statement?

19 A. Yes.

20 Q. Now, for financial reporting purposes, does
21 Ameren classify fuel costs associated with short-term power
22 sales separately from fuel costs associated with long-term
23 power sales?

24 A. No.

25 Q. So they're all classified in the same group

1 for the income statement?

2 A. Yeah, there is just one item, total fuel cost.

3 MS. OTT: I have no further questions.

4 JUDGE WOODRUFF: All right. Then Public
5 Counsel.

6 MR. MILLS: No questions.

7 JUDGE WOODRUFF: MEG?

8 MS. LANGENECKERT: No questions.

9 JUDGE WOODRUFF: MIEC?

10 MR. ROAM: Just a couple quick questions.

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. ROAM:

13 Q. Mr. Weiss, on page 5 of your surrebuttal
14 testimony, you state that an annualized level of sales to
15 both AEP and Wabash were included by the company in the
16 calculation of the allocation factors used to develop the
17 revenue requirement the company filed in Case No.
18 ER-2010-0036; is that right?

19 A. That is correct.

20 Q. When you filed the 2010-0036 rate case, you
21 used a 4.41 percent fixed allocator and a 5.08 percent
22 variable allocator for the FERC jurisdictional customers; is
23 that right?

24 A. I do not recall. They seem in the correct
25 range.

1 Q. Okay. It's -- I'll give you the DR just to --
2 for point of reference. It's DR 4-001.

3 A. That is correct.

4 Q. However, after the stipulation and agreements
5 and true-up, the trued-up revenue requirement used a .87
6 percent fixed allocator and a .84 percent variable allocator
7 for the FERC jurisdictional customers, correct?

8 A. That is correct.

9 Q. Isn't it true that the difference between
10 these allocators resulted from the removal of the wabash and
11 AEP contracts from the calculation of allocators?

12 A. Yes. As part of the stipulation agreements in
13 that case, it was agreed to remove wabash and AEP from the --
14 treat them as off-system sales, along with other stipulation
15 agreements that reflected other changes to the fuel
16 adjustment clause and other operations.

17 Q. All right. So the removal of those two
18 contracts is reflected in the difference between the
19 allocators that were filed and the allocators that were --
20 that was established at the end of that case; is that right?

21 A. That is correct.

22 MR. ROAM: No further questions. Thank you.

23 JUDGE WOODRUFF: Okay. I have no questions
24 from the bench, so there's no need for recross. Any
25 redirect?

1 MR. MITTEN: Just a couple questions.

2 REDIRECT EXAMINATION

3 QUESTIONS BY MR. MITTEN:

4 Q. Mr. Weiss, in response to some questions from
5 Mr. Roam, you mentioned that there were a number of changes
6 included in the stipulation that was entered into in Case No.
7 ER-2010-0036; is that correct?

8 A. That is correct.

9 Q. Could you detail, as best you can, what
10 changes were involved in that stipulation?

11 A. Well, the ones I'm referring to that impacted
12 the calculation of the allocation --

13 MR. ROAM: Judge, I'm going to object. I
14 think this goes beyond the scope of the cross-exam. I only
15 asked him about the fixed allocators. I didn't ask him about
16 the changes. That was an answer that he gave that was
17 nonresponsive to the question. So I didn't question anything
18 about the changes in the -- during that case. I asked about
19 the allocators strictly.

20 JUDGE WOODRUFF: And your response?

21 MR. MITTEN: Well, I think he asked about the
22 stipulation in the case, and I'm simply asking that the
23 record be as complete as possible on what was included in
24 that stipulation.

25 JUDGE WOODRUFF: I'm going to overrule the

1 objection. You can answer.

2 BY MR. MITTEN:

3 Q. Do you recall the question, Mr. Weiss?

4 A. Yes, I do. There were three or four items
5 that I would say were related. We have the treatment of
6 wabash and AEP as off-system sales, we had the addition of
7 the word "municipal" to the FAC tariff, we had the addition
8 of the end factor to the FAC tariff. And those were the main
9 items that impacted the calculation of the allocation
10 factors, and there was also an agreement to reflect an
11 additional refund of money to ratepayers in the
12 FAC calculation due to this operation.

13 Q. Was there any change made to the fuel
14 adjustment clause in ER-2010-0036 that was based on Ameren's
15 experience due to the Noranda outage?

16 MR. ROAM: Objection. This goes way beyond
17 the scope of my cross-examination.

18 JUDGE WOODRUFF: I'm going to sustain that
19 objection.

20 MR. MITTEN: I have no further questions.
21 Thank you.

22 JUDGE WOODRUFF: You may step down. Call your
23 next witness.

24 MR. BYRNE: Your Honor, we'll call Steven
25 Wills.

1 JUDGE WOODRUFF: Good morning, Mr. Wills.

2 THE WITNESS: Good morning.

3 (The witness was sworn.)

4 JUDGE WOODRUFF: You may inquire.

5 MR. BYRNE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. BYRNE:

8 Q. Good morning, Mr. Wills. Could you please
9 state your name and business address for the record?

10 A. Steven M. Wills. My address is 1901 Chouteau
11 Avenue, St. Louis, Missouri 63103.

12 Q. And are you the same Steven M. Wills that
13 caused to be filed in this case surrebuttal testimony that's
14 been marked as Exhibit 6 in this case?

15 A. Yes, I am.

16 Q. And do you have any corrections that you need
17 to make to that surrebuttal testimony?

18 A. No, I do not.

19 Q. Is the information contained in your
20 surrebuttal testimony true and complete to the best of your
21 knowledge and belief?

22 A. Yes, it is.

23 Q. And if I were to ask you the questions
24 contained in that surrebuttal testimony today when you're
25 here under oath, would your answers be the same?

1 A. Yes.

2 MR. BYRNE: Your Honor, I would like to ask
3 Mr. Wills another question, and I guess the reason I'm asking
4 to do that is during the hearing yesterday, Commissioner Gunn
5 asked Ms. Barnes a question about the -- about how the
6 contracts were negotiated, the AEP and the Wabash contracts,
7 and whether those -- whether the prices that were negotiated
8 in that contract were based on market rates.

9 Ms. Barnes did not participate in the
10 negotiation of those contracts, and she gave an answer
11 that's -- that was inaccurate to his question. Mr. Wills
12 knows the accurate answer to the question, and I would ask
13 the bench's indulgence to get him to correct the record from
14 yesterday.

15 JUDGE WOODRUFF: Any objection to that
16 question being asked?

17 MR. ROAM: What was the correction that you're
18 seeking to have?

19 MR. BYRNE: What Ms. Barnes was asked by
20 Commissioner Gunn, if the contracts with AEP and Wabash were
21 based on market prices, and she said they were not, and
22 that's an inaccurate answer. And Mr. Wills knows the correct
23 answer.

24 MR. ROAM: Okay. I guess I have no objection.

25 JUDGE WOODRUFF: All right. Of course, he can

1 still object after you hear the answer to it.

2 MR. BYRNE: And you can cross-examine him on
3 it, too. I wanted to do it ahead of time to give the parties
4 an opportunity to ask cross-examination on it.

5 JUDGE WOODRUFF: Proceed.

6 MR. BYRNE: Thank you, Your Honor.

7 BY MR. BYRNE:

8 Q. Mr. wills, were you present at the hearing
9 yesterday?

10 A. Yes, I was.

11 Q. And did you hear the question where
12 Commissioner Gunn asked Ms. Barnes about whether the AEP and
13 wabash contracts were negotiated at market prices?

14 A. Yes, I heard that.

15 Q. And what's the answer to that question?

16 A. They were at market prices.

17 Q. And how do you know they were market prices?

18 A. As part of my responsibilities, I put various
19 analytical support to Mr. Haro on the trade floor, and part
20 of that support is pricing some of his wholesale offers that
21 he makes to customers in contracts such as these. So I
22 participated in the pricing of the AEP and wabash contracts.

23 Q. So what did you do in that role?

24 MR. ROAM: I'm going to object at this point.
25 we've gone beyond what the request was. I think it's been

1 established, and I think the record has been cleaned up.

2 JUDGE WOODRUFF: I'll overrule the objection.

3 You can go ahead and answer.

4 BY MR. BYRNE:

5 Q. What did you do in that role?

6 A. Basically, I accumulated market price data and
7 looked at the terms of the proposed contract and structure,
8 the way the sales would be expected to occur and applied
9 those market prices that we accumulated to them to calculate
10 an all-in rate for the contracts.

11 Q. Are the market prices -- did the market prices
12 end up being close to what the Noranda price was?

13 A. Yeah, they're within -- they ended up being
14 pretty close to what Noranda's tariff rate ends up being.

15 Q. Thank you very much, Mr. Wills. I have no
16 further questions. I'd offer Exhibit 6 into the record and
17 tender Mr. Wills for cross-examination.

18 JUDGE WOODRUFF: Exhibit 6 has been offered.
19 Any objection to its receipt? Hearing none, it will be
20 received.

21 (Exhibit No. 6 was received into evidence.)

22 JUDGE WOODRUFF: Cross-examination, beginning
23 with Staff.

24 ///

25 ///

1 CROSS-EXAMINATION

2 QUESTIONS BY MS. OTT:

3 Q. Good morning.

4 A. Good morning.

5 Q. On page 4 of your surrebuttal testimony, you
6 discuss some distinctions between the municipal contracts.

7 Does the city of Perry have any of its own generation?

8 A. I don't believe so.

9 Q. How about the city of Kahoka?

10 A. Yes, they do.

11 Q. Do they utilize their own generation?

12 A. There are times when they've utilized it.

13 Q. Do they regularly use their own generation?

14 A. Not in day-to-day operations.

15 Q. How about the city of Marceline?

16 A. Yes, they do.

17 Q. And do they utilize their generation on a
18 daily basis?

19 A. No.

20 Q. How often do they use their own generation?

21 A. I don't have a number off the top of my head,
22 but it's fairly infrequent.

23 Q. Now, is that the same for the city of Kahoka,
24 it's infrequent?

25 A. Yes.

1 Q. And how about the city of Kirkwood?

2 A. I don't believe they have any yet.

3 Q. Now, how about AEP, does it have any of its
4 own generation?

5 A. Yes.

6 Q. Now, is it dependent upon Ameren to serve the
7 majority of its load?

8 A. No. It's just a partial requirements
9 contract, so it only serves a part of the load.

10 Q. Is it a significant part of its load?

11 A. I don't know what their total load is, but I
12 know it's very large, in the hundred megawatts. Whether you
13 call that significant or not, I guess, would be a matter of
14 opinion.

15 Q. If their web site holds out that they have
16 38,000 megawatts of its own load, does that sound roughly
17 familiar to you?

18 A. I would -- I believe that was in the order of
19 magnitude.

20 Q. So a hundred megawatts isn't of significance
21 at all?

22 A. It's not a large part of their generation.

23 Q. How about Wabash, does it have any of its own
24 generation?

25 A. I don't know.

1 Q. Do you know if it's dependent upon Ameren to
2 serve the majority of its load?

3 A. I don't know. I don't think so, but I don't
4 know.

5 Q. Now, on page 4, lines 21 through 22, you
6 discussed that you had some municipal agreements that Ameren
7 did not plan to serve or did not continue to renew the
8 contracts. Do you see that?

9 A. Yes.

10 Q. Why did Ameren not -- why did Ameren decide
11 not to continue to renew those contracts?

12 A. Well, it's -- you know, we have a response in
13 our IRP to that question from the Staff, and I think what the
14 key in there is that we're in a different landscape than we
15 were a decade earlier, and these are subject to the
16 competitive marketplace. So the IRP is a process of
17 determining the resources that you're going to plan to build
18 in the future, and I think that it was not viewed as
19 something that we wanted to build resources for customers
20 that were subject to the competitive landscaping could leave
21 us unless we had a contractual relationship extended with
22 them to that time period.

23 Q. Now, is the city of Centralia one of these
24 contracts that Ameren decided not to renew?

25 A. Well, again, we -- we didn't necessarily

1 decide not to renew, but they did not renew. We decided not
2 to plan our resources for the long-term for the city of
3 Centralia.

4 Q. Now, is the city of Centralia served by Ameren
5 Services?

6 A. No.

7 Q. Ameren Energy?

8 A. Not Ameren Energy.

9 Q. Is it served by an affiliate of Ameren?

10 A. I think it is. I'm not a hundred percent sure
11 of the contract.

12 Q. So Ameren Missouri did not renew, but an
13 affiliate of Ameren did enter into a contract with the city
14 of Centralia?

15 A. I believe so, but not one that Ameren Missouri
16 would plan any resources for in an integrated resource plan.
17 It's a completely separate affiliate that has nothing to do
18 with the IRP process or our planning process.

19 Q. Well, I wasn't asking -- well, are the terms
20 in the FERC Form 1 for contracts used in long-term resource
21 planning?

22 A. Not in the context that I've used them, been
23 involved in.

24 Q. Now, were you in the room yesterday for
25 Mr. Haro's testimony?

1 A. Yes, I was.

2 Q. And he was talking about planning resources.

3 Are all planning resources for MISO included in Ameren's
4 long-term resource planning process?

5 A. I mean, I don't -- the same generating units
6 that are represented by our planning resource -- our MISO
7 planning resources are also the generating units, I think,
8 that we consider as a part of our resource mix in the IRP, if
9 that's what you're asking.

10 Q. Do you know how long the MISO resource
11 planning is forecasted?

12 A. I think we provide a ten-year forecast, but
13 the planning year is one year, but you also provide
14 additional data that goes out for ten years, I think.

15 Q. So the planning year for the MISO is one year?

16 A. Yes.

17 Q. And what is the planning year for the
18 Commission's IRP process?

19 A. I'm not familiar with there being a planning
20 year. There's a planning horizon that's 20 years.

21 Q. So would the contract for AEP and Wabash have
22 been included in the MISO planning?

23 A. Yes.

24 Q. And would they be included in the PSC's IRP
25 process?

1 A. Yes, to the extent that there was any
2 contractual obligation in the forecast horizon. So that
3 would, of course, depend on the timing of the filing versus
4 the timing of when the contracts expired or were in place.

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

6 JUDGE WOODRUFF: All right. Public Counsel?

7 MR. MILLS: No questions.

8 JUDGE WOODRUFF: MEG?

9 MS. LANGENECKERT: No questions.

10 JUDGE WOODRUFF: MIEC?

11 MR. ROAM: No questions.

12 JUDGE WOODRUFF: I have no questions from the
13 bench, so no recross. Any redirect?

14 MR. BYRNE: Yes, just one, I think.

15 REDIRECT EXAMINATION

16 QUESTIONS BY MR. BYRNE:

17 Q. Mr. wills, when you were answering questions
18 with Ms. Ott, you were talking -- you used the word "renewal"
19 when you were talking about entering into contracts with the
20 municipalities.

21 Are those true renewals, or are they new
22 contracts every time the contract turns over?

23 A. No. If I used the word "renewal," I misspoke.
24 They are new contracts that aren't dependent on the prior
25 contracts.

1 Q. So it's not like a roll-over or something?

2 A. That's correct. There's no contractual
3 provision that ties from one contract to the next. It's a
4 brand new agreement that's a separate contract.

5 MR. BYRNE: Thank you. That's all the
6 questions I have.

7 JUDGE WOODRUFF: All right. Then you can step
8 down. Thank you.

9 COMMISSIONER KENNEY: Judge Woodruff?

10 JUDGE WOODRUFF: Yes?

11 COMMISSIONER KENNEY: This is Robert Kenney.
12 Up here now. Hi, everybody.

13 JUDGE WOODRUFF: We just finished with
14 Mr. Weiss and Mr. Wills.

15 COMMISSIONER KENNEY: No, I was here for the
16 end of Mr. Weiss and Mr. Wills.

17 JUDGE WOODRUFF: Okay. Very good. I assume
18 that means you don't have any questions for him.

19 COMMISSIONER KENNEY: I don't. I just wanted
20 to let you-guys know I'm here.

21 JUDGE WOODRUFF: Okay. I appreciate that.

22 COMMISSIONER KENNEY: Thank you.

23 JUDGE WOODRUFF: All right. Well, let's move
24 on to the Staff's witness, which would be Mr. Eaves, I
25 believe.

1 MS. OTT: Staff calls Mr. Eaves.

2 (The witness was sworn.)

3 JUDGE WOODRUFF: You may be seated. You may
4 inquire.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. OTT:

7 Q. Good morning.

8 A. Good morning.

9 Q. Can you please state your name for the record?

10 A. My name is Dana Eaves.

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

13 A. I am employed by the Missouri Public Service
14 Commission as a regulatory utility auditor.

15 Q. And are you the same Dana Eaves that
16 previously caused to be filed Staff's -- or the sponsor of
17 Staff's prudence review report, Staff's correction to the
18 prudence report and the supplement to the prudence report, as
19 well as the prepared direct rebuttal testimony which has been
20 previously marked for identification as Exhibits 8, 9, 10,
21 and 11, and 11 is HC and NP?

22 A. Yes.

23 Q. And with respect to your prepared direct
24 rebuttal, was that prepared by you or under your direct
25 supervision?

1 A. Yes.

2 Q. Do you have any corrections to that testimony
3 at this time?

4 A. No.

5 Q. If I were to ask you the same or similar
6 questions contained within that testimony, would your answers
7 that you would give today be substantially similar?

8 A. Yes.

9 Q. would they be true and accurate to your best
10 information, knowledge, and belief?

11 A. Yes.

12 Q. Now, in regards to Staff's prudence report
13 correction and supplement, are you the Staff witness that is
14 sponsoring all the information contained therein?

15 A. Yes.

16 Q. And do you have any -- and is that information
17 contained true and accurate to your best information,
18 knowledge, and belief?

19 A. Yes, it is.

20 MS. OTT: with that, I'd like to offer
21 Exhibits 8, 9, 10, and 11HC and NP into the record.

22 JUDGE WOODRUFF: 8, 9, 10 and 11NP and HC have
23 been offered. Any objection to their receipt? Hearing none,
24 they will be received.

25 (Exhibits Nos. 8, 9, 10, 11NP and HC were

1 received into evidence.)

2 MS. OTT: And with that, I will tender Mr.
3 Eaves for cross-examination.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. MILLS: No questions.

6 JUDGE WOODRUFF: For MEG?

7 MS. LANGENECKERT: No questions.

8 JUDGE WOODRUFF: MIEC?

9 MR. ROAM: No questions.

10 JUDGE WOODRUFF: Ameren Missouri?

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. MITTEN:

13 Q. Mr. Eaves, good morning.

14 A. Good morning.

15 Q. Could I ask you to first turn to the portion
16 of Staff's report on prudence review of costs that begins on
17 page 16 of that report for which I believe you have
18 designated as Schedule DEE1-18.

19 A. Yes, I'm there.

20 Q. And that's the portion of the Staff report
21 that deals with off-system sales revenues that are at issue
22 in this case; is that correct?

23 A. That's correct.

24 Q. And if you flip to the back of that section,
25 Staff expert Dana Eaves, you authored that section; is that

1 correct?

2 A. Yes, I did.

3 Q. Now, if you could turn to the -- to what's
4 been designated as Schedule DEE1-20, the conclusion section
5 of Section H.

6 A. I'm sorry, what was the number again?

7 Q. DEE1-20. It's the Section 3 entitled
8 "Conclusion" of Section H.

9 A. You're going to have to point me to it. I
10 don't know if I have it.

11 MR. MITTEN: Your Honor, may I?

12 JUDGE WOODRUFF: You may.

13 BY MR. MITTEN:

14 Q. Could you please read aloud the first two
15 sentences in the conclusion section?

16 A. "Given the Commission's February 19th, 2010,
17 decision to not modify AmerenUE's FAC due to the loss of
18 Noranda's load, it would be imprudent not to treat the
19 revenues from the sales of the energy that became available
20 due to the loss of the Noranda load as off-system sales
21 revenue under AmerenUE's FAC. Therefore, AmerenUE was
22 imprudent in not including the costs and revenues associated
23 with the AEP and VPS contracts in the FPA calculations for
24 accumulation Periods 1 and 2."

25 Q. So as stated in Staff's own report, it wasn't

1 the definitions and the instructions of the FERC Form 1 and
 2 it wasn't the language of Ameren's tariff. It was the fact
 3 that the Commission had denied Ameren's application for
 4 rehearing in Case No. ER-2008-0318 that led the Staff to
 5 conclude that Ameren acted imprudently in excluding certain
 6 revenues from the calculation of off-system sales revenues;
 7 is that correct?

8 A. I think that's only part of the reason. And
 9 that's what's stated in the report.

10 Q. That's what's stated in the report. Would you
 11 go through Section H and tell me if anywhere in Section H you
 12 refer to definitions in the instructions of FERC Form 1?

13 A. I do not.

14 Q. Would you go through Section H and tell me if
 15 anywhere in that section you refer to the language of
 16 Ameren's fuel adjustment clause tariff?

17 A. I do not.

18 Q. Would you flip to the end of Section H where
 19 you list the documents that you reviewed, where you agree
 20 that the instructions for the FERC Form 1 are not listed
 21 under the documents that you reviewed?

22 A. That's correct.

23 Q. Would you agree that Ameren's fuel adjustment
 24 clause tariff is not listed there?

25 A. It is not listed.

1 Q. And would you also agree that neither the
2 wabash nor the AEP contracts are listed among the documents
3 you reviewed to reach the conclusions in Section H?

4 A. They are not listed.

5 Q. Now, when I took your deposition in this case,
6 you told me that it would be inappropriate to ignore the
7 language of the Company's fuel adjustment clause tariff
8 simply because the Commission denied the Company's
9 application for rehearing in Case No. \ER-2008-0318. Do you
10 recall that testimony?

11 A. Yes, I believe so.

12 Q. Now, based on that statement, what should the
13 Commission consider most important in reaching its decision
14 in this case; the language in Ameren's tariff or the fact
15 that the application for rehearing was denied in Case No.
16 ER-2008-0318?

17 A. Subsequent to this report that I did file
18 direct -- direct/rebuttal testimony, and I think brought in
19 more evidence into the case on what -- what issues should be
20 looked at, what evidence should be looked at in this case and
21 for the Commission to make a determination.

22 Q. So it was the information that you considered
23 subsequent to filing your prudence report that the Commission
24 should consider?

25 A. Well, I know for a fact that, in composing

1 this report, I did review Ameren's FAC, various documents,
2 and they are not listed in the report.

3 Q. Not mentioned in the report in Section H,
4 correct?

5 A. That's correct.

6 Q. And before I leave Section H, could you turn
7 again to Schedule DEE1-20. That's the page that we referred
8 to earlier.

9 A. I'm there.

10 Q. And could you please direct your attention to
11 the first full paragraph on the page and could you please
12 read that paragraph aloud, the one beginning "The Commission
13 denied."

14 A. "The Commission denied AmerenUE's application
15 on February 19th, 2009. In its order denying the
16 application, the Commission stated that the loss of the
17 retail margin from Noranda was not a sufficient ground to set
18 aside the approved stipulation and agreement regarding the
19 flow of off-system sales through the AmerenUE's FAC and grant
20 rehearing."

21 MR. MITTEN: Your Honor, may I approach the
22 witness for purposes of handing him a document?

23 JUDGE WOODRUFF: You certainly may.

24 MR. ROAM: Is that the Order?

25 MR. MITTEN: Yes.

1 BY MR. MITTEN:

2 Q. Mr. Eaves, I've just handed you a copy of the
3 Commission's Order denying Ameren's application for rehearing
4 in Case No. ER-2008-0318; is that correct?

5 A. Yes.

6 Q. And that's the document that you're referring
7 to in the paragraph that you just read; is that correct?

8 A. Yes.

9 Q. Could you show me where in that order it
10 states that the Commission stated that the loss of retail
11 margin from Noranda was not a sufficient ground to set aside
12 the approved stipulation and agreement regarding the flow of
13 off-system sales through Ameren's fuel adjustment clause?

14 A. I don't believe it was a direct quote. I
15 think it was paraphrased.

16 Q. And so the record is clear, could you please
17 read aloud the first paragraph on the second page of that
18 order.

19 A. "If the Commission were to grant AmerenUE's
20 application for rehearing, it would have to set aside the
21 approved stipulation and agreement regarding the fuel
22 adjustment clause, reopen the record to take evidence on the
23 appropriateness of the proposed change, and make a decision
24 before the March 1, 2009, operation of law date. Such action
25 is, obviously, impossible."

1 Q. And that's what the order specifically states
2 as the reason for denying the application for rehearing; is
3 that correct?

4 A. That's correct.

5 Q. Now, so we're clear, it's Staff's position
6 that Ameren Missouri acted imprudently because it's your
7 belief that the revenues derived from both the AEP and Wabash
8 contracts aren't long-term full and partial requirement
9 sales; is that correct?

10 A. Yes.

11 Q. So for the next few minutes, I'd like to focus
12 on your qualifications to make that determination, Mr. Eaves.

13 You have never bought or sold electricity in
14 the wholesale power markets; is that correct?

15 A. That's correct.

16 Q. And you've never been involved in the
17 negotiation of any requirements contract, long-term or
18 otherwise; is that correct?

19 A. That's correct.

20 Q. Prior to the current case, your only
21 responsibility for power supply contracts was to review those
22 contracts in your capacity as a Commission auditor; is that
23 correct?

24 A. That's correct.

25 Q. And during your tenure at the Commission, you

1 told me that you have reviewed a total of ten or fewer power
2 supply contracts, correct?

3 A. Yes. I think I was unsure of how many I
4 reviewed, and so I think a good number was ten. I don't
5 think that overstated or understated the amount of contracts
6 I've reviewed.

7 Q. And of those ten or fewer contracts, during
8 your deposition, you told me that you don't recall how many
9 times you read the full contract and how many times you
10 simply read the summary page, correct?

11 A. That's accurate.

12 Q. Now, you told me that you read five or six
13 contracts in connection with this case. So does that mean
14 that prior to this case, you read or reviewed five or fewer
15 power supply contracts?

16 A. I'm really not sure. I mean, in the course of
17 employment at the Commission, I've reviewed hundreds, if not
18 thousands, of documents. And for me to go back and parse out
19 which were power supply agreements, which were other types of
20 agreements, it would be difficult.

21 Q. Well, Mr. Eaves, during your deposition, you
22 told me it was ten or fewer contracts and again this morning
23 you told me it was ten, so are you still unsure?

24 A. I'll stick with that number.

25 Q. Prior to this case, have you ever given

1 testimony about requirements in power supply agreements?

2 A. No.

3 Q. In fact, this is the first case involving
4 Ameren Missouri that you've ever testified in; is that
5 correct?

6 A. That's correct.

7 Q. And you have no formal training in
8 requirements contracts for electricity, do you?

9 A. I've never taken a course that specifically
10 talked about requirements contracts.

11 Q. Now, during your deposition, you told me that
12 in June 2010 you attended what you termed an in-depth seminar
13 entitled "Introduction to electricity Markets." Do you
14 recall that?

15 A. Yes.

16 Q. And that seminar was two days long; is that
17 right?

18 A. Approximately two days, yes.

19 Q. Now, during your deposition, I asked you if
20 you consider yourself an expert on requirements contracts for
21 electricity. Do you recall that?

22 A. Yes.

23 Q. And you told me that you do consider yourself
24 an expert, didn't you?

25 A. I did.

1 Q. And even though you have no formal training in
2 requirements contracts, you told me that you considered
3 yourself an expert first because you have more knowledge than
4 the average person off the street, which you said is the
5 Commission's standard for expert witnesses; is that correct?

6 A. I made that statement, yes.

7 Q. And you also told me during your deposition
8 that the experience that qualifies you as an expert is the
9 work that you did on this case; is that correct?

10 A. Yes.

11 Q. And you also told me that your specific
12 experience in this case was that you reviewed Ameren's fuel
13 adjustment clause tariff, you reviewed the testimony filed in
14 this case, you reviewed the data requests and the responses
15 and the issues in this case; is that correct?

16 A. That's correct. I also supplied a data
17 request that the company had posed outlining all the various
18 documents that I had reviewed. And I don't know if I had a
19 complete list during the deposition or not.

20 Q. And that's the sum of your experience, what I
21 just said and what you've just said; is that correct?

22 A. Yes.

23 Q. Now, let's change focus for just a minute.
24 Did you participate in any capacity in Case No.
25 ER-2008-0318, which was the Ameren Missouri rate case in

1 which the fuel adjustment clause at issue in this case was
2 approved?

3 A. No.

4 Q. So you were not a party to any of the
5 discussions that may have taken place during that case
6 regarding the intended meaning of Ameren's fuel adjustment
7 clause?

8 A. That's correct, I did not attend any of the
9 meetings.

10 Q. When did you first become aware of the
11 definition of "OSSR" that is included in Ameren Missouri's
12 fuel adjustment clause?

13 A. I assumed my position in the energy resource
14 analysis department in October of 2009. Sometime after that,
15 I did review various FAC tariffs. I probably would have
16 become aware of it sometime after that period. I didn't get
17 intimately familiar with it until this case.

18 Q. Okay. When did you first become aware of it?

19 A. Sometime after October 2009.

20 Q. And when would you say you became intimately
21 familiar with it?

22 A. I filed my Staff report or the Staff report
23 was filed October 31st, 2010. Yeah, 2010. So sometime prior
24 to that, I would have worked very closely with the Ameren's
25 FAC filing or Ameren's FAC tariff.

1 Q. Now, when you first read the definition of
2 "off-system sales revenue" that is included in the fuel
3 adjustment clause tariff that was approved in Case No.
4 ER-2008-0318, did you consider the phrase "long-term full or
5 partial requirement sales" that's included in that definition
6 to be ambiguous?

7 A. I did not have a clear understanding of what
8 that was.

9 Q. Now, during your deposition, you told me that
10 in interpreting the definition of "OSSR" that is included in
11 Ameren's fuel adjustment clause tariff, you relied solely on
12 the definition of "long-term" and "requirements" that are
13 found on page 310 of the instructions to FERC's Form 1; is
14 that correct?

15 A. That's correct.

16 Q. When did it become clear to you, Mr. Eaves,
17 that the FERC Form 1 definitions applied to the definition of
18 "off-system sales revenue" that is included in Ameren's fuel
19 adjustment clause tariff?

20 A. It would have been sometime prior to the
21 filing of my report. It would have been in the summer of
22 2010.

23 Q. Now, during your deposition, you told me that
24 prior to drafting the Staff's report, you talked to John
25 Rogers about whether he thought the AEP and Wabash contracts

1 were long-term partial requirements contracts. Do you recall
2 that?

3 A. Yes.

4 Q. And so the record is clear, who is John
5 Rogers?

6 A. He's a manager of the energy resource analysis
7 department for the Missouri Public Service Commission.

8 Q. Now, when you asked Mr. Rogers what he thought
9 those -- whether he thought those contracts were long-term
10 partial requirements contracts, what did he tell you?

11 A. I believe he stated he didn't know.

12 Q. You told me you also asked Lena Mantle whether
13 she thought the AEP and Wabash contracts were long-term
14 partial requirements sales; do you recall that?

15 A. Yes.

16 Q. And so the record is clear, is that the same
17 Lena Mantle who has filed testimony in this case?

18 A. Yes.

19 Q. Ms. Mantle told you that she did not believe
20 the AEP or Wabash contracts were either long-term or partial
21 requirements contracts; is that correct?

22 A. Yes.

23 Q. But during your deposition, you told me that
24 Ms. Mantle never stated to you why she believed that; is that
25 correct?

1 A. I think that's correct, other than long-term
2 wasn't five years. But I just -- I'm just not clear. So to
3 make the record clear, I'm going to stick with what I said in
4 my deposition.

5 Q. All right. And that was that she didn't tell
6 you why she thought they were neither long-term nor partial
7 requirements contracts?

8 A. That's my recollection.

9 Q. Now, you told me during your deposition that
10 prior to writing Staff's prudence report in this case, you
11 didn't ask anyone at Ameren Missouri what the company thought
12 the phrase "long-term full or partial requirements sales"
13 means; is that correct?

14 A. That's correct.

15 Q. And you also told me that you didn't ask
16 either AEP or Wabash if they thought their contracts with
17 Ameren Missouri were "long-term full or partial requirements
18 sales;" is that correct?

19 A. That's correct.

20 Q. And you also told me that you didn't ask AEP
21 and Wabash because you don't think the opinions of the party
22 to a contract is relevant in determining the nature of that
23 contract; is that correct?

24 A. I don't know if I stated that or not.

25 Q. Do you have a copy of your deposition?

1 A. Yes, I do.

2 Q. Could you please turn to page 42. Could you
3 read the question that begins on line 16.

4 A. "Question: So it's your position that the
5 view of the parties to a contract is irrelevant in
6 determining the nature of the contract?"

7 Q. And what was your answer to that question?

8 A. "Answer: For the purpose of my proposed
9 adjustment, yes, that's correct."

10 Q. Okay. Thank you. You also told me during
11 your deposition that you don't know if the definition of
12 "long-term" used for purposes of the FERC Form 1 differs from
13 the definition of that term used in the wholesale electric
14 power markets; is that correct?

15 A. That's correct, because I haven't found
16 anything defined in the wholesale power market.

17 Q. If there was a difference, would you consider
18 that to be relevant?

19 A. Yes, but since I didn't find anything, it's
20 hard to make that determination.

21 Q. If there was a recent decision by the FERC
22 that stated that it was FERC's longstanding policy to treat
23 contracts of one year or more as long-term, would you
24 consider that relevant?

25 A. If it was speaking in the context of

1 requirements contracts, possibly, yes.

2 Q. Possibly?

3 A. I'd have -- lots of uncertainties there. I'd
4 have to take a look and review.

5 Q. At page 7 and 8 of your prepared testimony,
6 you discussed the possible effect of Staff's proposed
7 prudence adjustment to Ameren Missouri's earnings, and
8 beginning at line 1 of page 8, you state, "Loss of customer
9 load is part of the risk included in shareholders' return on
10 equity."

11 Did I quote that portion of your testimony
12 correctly?

13 A. Yes, you did.

14 Q. Now, you're not an expert on the appropriate
15 return on equity for a utility such as Ameren; is that
16 correct?

17 A. I think in my deposition you asked me a line
18 of questions about whether or not I was an expert or not. I
19 don't remember exactly what I said, but I have an
20 understanding of -- of risk as far as it applies to return on
21 equity.

22 Q. well, let me ask you here today, Mr. Eaves:
23 Do you consider yourself an expert on the cost of equity for
24 a utility such as Ameren?

25 A. I think what I said in my deposition --

1 Q. I'm not asking you about your deposition. I'm
2 asking you sitting here today, do you consider yourself an
3 expert on the cost of equity for a utility such as Ameren?

4 A. Yes.

5 Q. And is that based on your education and
6 training?

7 A. Based upon my experience with the Commission.

8 Q. Have you ever filed testimony on a rate of
9 return for a regulated public utility?

10 A. No.

11 Q. What is your undergraduate degree in,
12 Mr. Eaves?

13 A. Business administration with an emphasis in
14 accounting.

15 Q. Do you have any graduate training in finance?

16 A. No.

17 Q. Now, in her surrebuttal testimony, Ms. Barnes
18 notes that Noranda's load by itself represents 4.4 percent of
19 Ameren Missouri's retail customer load.

20 would you agree with me that 4.4 percent is an
21 abnormally large portion of a utility's retail load to be
22 vested in a single customer?

23 A. It's a large load. It's a large portion. I
24 don't know if it's abnormal. I think other utilities
25 possibly have other large customers.

1 Q. Do you know of any Missouri utility that has a
2 single customer that represents 4 percent or more of its
3 load?

4 A. I know in Missouri, there's no other customer
5 that large for one single utility.

6 Q. Now, in light of Ms. Barnes' statement, do you
7 believe that your statement at the top of page 8 that I read
8 a moment ago is true for the return on equity that the
9 Commission set for Ameren in Case ER-2008-0318?

10 A. Yes, I think it's accurate.

11 Q. Now, during your deposition, I asked you a
12 number of questions regarding the basis for that statement on
13 page 8, and you told me that at some point in time, you
14 either reviewed the written testimony or saw the oral
15 testimony of Staff's rate of return witness in ER-2008-0318;
16 is that correct?

17 A. Yes.

18 Q. Who was Staff's rate of return witness in that
19 case?

20 A. I believe it was David Murray.

21 MR. MITTEN: May I approach the witness for
22 purposes of handing him a document?

23 JUDGE WOODRUFF: Yes.

24 BY MR. MITTEN:

25 Q. Mr. Eaves, I have just handed you a document

1 that is entitled "List and Order Schedule of witnesses and
2 Order of witnesses and Opening Statements" that was filed in
3 Case No. ER-2008-0318. Do you see that?

4 A. Yes.

5 Q. Would you please turn to page 8 of that
6 document? There's a listing there of the return on equity
7 witnesses.

8 would you agree with me that David Murray's
9 name doesn't appear anywhere on that list?

10 A. Yeah, that's correct.

11 Q. In fact, the list says that Steven Hill was
12 the Staff's cost of equity witness in that case; is that
13 correct?

14 A. That's correct.

15 Q. And you also told me that you did not review
16 the testimony of any of the other rate of return witnesses in
17 ER-2008-0318; is that correct?

18 A. That's correct. That's what I said.

19 Q. So, again, focusing on the document that I
20 just showed you, you didn't read Dr. Moren's testimony, you
21 didn't read Mr. Gorman's testimony and you didn't read Ms.
22 Laconte's testimony; is that correct?

23 A. Best of my recollection, I don't believe I
24 did.

25 Q. And you also told me during your deposition

1 that you don't know whether any rate of return witness in
2 ER-2008-0318 specifically addressed the risk to Ameren
3 Missouri if Noranda's load was lost. Do you recall that?

4 A. Not exactly. If you could point me to that,
5 that would help.

6 Q. Do you still have your deposition transcript
7 in front of you?

8 A. Yes, I do.

9 Q. Could you please turn to page 65.

10 A. I'm sorry, 65?

11 Q. Yes.

12 A. I'm there.

13 Q. Could you read the question beginning at
14 line 12.

15 A. "Question: Do you know if any of the
16 witnesses who filed rate of return testimony in Case No.
17 ER-2008-318 discussed the specific risk associated with
18 losing a customer the size of Noranda?"

19 Q. And could you read your answer?

20 A. "I don't recall anything. Could be."

21 Q. So let me review what you've just told me.
22 You only reviewed the testimony of one witness and you
23 couldn't even recall who that witness was, and you don't know
24 if any of the witnesses in ER-2008-0318 specifically
25 addressed the risk to Ameren of losing a customer the size of

1 Noranda; is that correct?

2 A. That's correct.

3 Q. would it be prudent for the Commission to rely
4 on the statement that you made on page 8 of your testimony?

5 A. I believe there was some other questions --

6 Q. I'm --

7 A. -- within my deposition that kind of speaks to
8 the same --

9 Q. Mr. Eaves, could you answer the question I
10 specifically asked?

11 A. Yes. would you repeat, please?

12 Q. I said, based upon the testimony that you have
13 given thus far, that you reviewed the testimony of only one
14 witness in ER-2008-0318, and you couldn't even recall who
15 that witness was, and you don't know whether any of the rate
16 of return witnesses in that case specifically addressed the
17 issue of whether or not the risk to Ameren of losing a
18 customer the size of Noranda was considered in setting the
19 company's rate of return; in light of that, do you think it
20 would be prudent for the Commission to rely on the following
21 statement that appears on page 8 of your testimony: "Loss of
22 customer load is part of the risk included in shareholders'
23 return on equity"?

24 A. I think the Commission will give the weight
25 they choose to my testimony.

1 MR. MITTEN: I don't have anything further.
2 Thank you, Mr. Eaves.

3 JUDGE WOODRUFF: Okay. Questions from the
4 bench? Mr. Davis, do you have any questions of Mr. Eaves?

5 COMMISSIONER DAVIS: Judge, I could ask
6 questions, but I'm just not going to belabor the issue.
7 Thank you.

8 JUDGE WOODRUFF: All right. Commissioner
9 Kenney?

10 COMMISSIONER KENNEY: Mr. Eaves, can you hear
11 me okay?

12 JUDGE WOODRUFF: Loud and clear.

13 THE WITNESS: Yes.

14 EXAMINATION

15 QUESTIONS BY COMMISSIONER KENNEY:

16 Q. One of the disputed issues here is the
17 definition of the term "long-term," right?

18 A. That's correct.

19 Q. And if we use the FERC Form 1 definition of
20 long-term, only one of the Ameren municipal contracts would
21 be excluded from the off-system sales revenue definition; is
22 that right?

23 A. That's correct.

24 Q. So can you tell me or explain to me why, then,
25 those contracts are not excluded from the definition of OSSR?

1 A. well, for the purpose of my adjustment or my
2 proposed adjustment, when reviewing the FERC Form 1 and how
3 they had the various contracts categorized, I did notice
4 after I got information from data requests that the municipal
5 contracts that they have listed as RQ were not included --
6 were not a full five years. I did additional research to
7 find that those contracts, they've had a relationship with
8 those companies for multiple years, ten years or longer, I've
9 heard even up to 20 years.

10 So I just didn't feel that I could support
11 that type of an adjustment just on that particular part of
12 the FAC tariff, just the long-term portion. I felt clearly
13 that the AEP and the Wabash contracts fell within -- fell
14 outside of that exclusion and that these municipal contracts,
15 they fell within the exclusion.

16 Q. But if we look at each contract individually
17 and not the length of the relationship, only one of the
18 contracts would fit the definition of long-term applying the
19 FERC Form 1 definition, right?

20 A. I believe it's Perry, and they have a 77-month
21 contract in force with those -- with Perry.

22 Q. And each of the other contracts are less than
23 five years?

24 A. That's correct.

25 Q. Okay.

1 A. It's something I struggled with.

2 Q. Go ahead.

3 A. I just want to say that it's something I
4 struggled with.

5 Q. Whether to exclude or not exclude those other
6 contracts?

7 A. That's correct, based upon the long-term
8 definition as used in FERC Form 1.

9 Q. Additional question, and I'm going to ask this
10 and maybe this might be appropriate for Ms. Mantle, but this
11 is your opinion.

12 If we disallow or reclassify the AEP and
13 wabash contracts, are we denying Ameren the right to recover
14 that \$42 million imprudently incurred fuel and purchase power
15 costs, in your opinion?

16 A. No.

17 Q. And why not?

18 A. Because it's neither fuel or purchase power
19 costs. It's revenue.

20 Q. Okay.

21 A. It's revenue from the contracts that I've
22 proposed to include as off-system sales.

23 Q. And were you present in the room yesterday for
24 Mr. Highley's testimony?

25 A. Yes.

1 Q. And he and I had a discussion about full or
2 all requirements contracts versus requirements contracts. Do
3 you remember that discussion?

4 A. I do.

5 Q. And Mr. Highley's opinion, I asked him if the
6 definition of "requirements contracts," those requirements
7 contracts that are less than all requirements contracts,
8 whether that -- whether there was a set definition of that
9 term.

10 Do you believe that there's a set definition
11 of the term requirements contracts?

12 A. Yes.

13 Q. And what is that definition?

14 A. It's the definition that is included as RQ on
15 page 310 of the FERC Form 1. And I think you can find -- I
16 think yesterday it was brought up that it's found in other
17 locations as well. I think the municipals, I think it was a
18 FERC Form 12, possibly, that had the same definition.

19 Q. And is it your belief that you can have
20 requirements contracts with entities that are not municipal
21 entities?

22 A. I think so. I think it's much clearer a
23 requirements contract if it's provided to, like, a municipal
24 utility. I think that line becomes much deeper in the sand.
25 But I do think you can have a requirements contract that's a

1 non-muni contract. That's my interpretation.

2 COMMISSIONER KENNEY: Okay. All right,
3 Mr. Eaves. I don't have any other questions. Thank you.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: All right. And we'll go to
6 recross based on questions from the bench, beginning with
7 Public Counsel.

8 RECROSS-EXAMINATION

9 QUESTIONS BY MR. MILLS:

10 Q. Just briefly, and more of a clarification than
11 anything else. Were you here for the testimony yesterday of
12 Mr. Highley?

13 A. Yes.

14 Q. And does he work for the cooperative rather
15 than municipals?

16 A. Yes.

17 Q. So would the Form 12 that he discussed have
18 anything to do with municipalities, or would it be something
19 the cooperatives file with the Rural Utility Service?

20 A. I think -- I'm not sure. I don't think I've
21 ever seen a Form F-112.

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

23 JUDGE WOODRUFF: For MEG?

24 MS. LANGENECKERT: No questions.

25 JUDGE WOODRUFF: For MIEC?

1 MR. ROAM: No questions.

2 JUDGE WOODRUFF: For Ameren?

3 MR. MITTEN: Just a couple, Your Honor.

4 RECROSS-EXAMINATION

5 QUESTIONS BY MR. MITTEN:

6 Q. Mr. Eaves, in response to questions from
7 Commissioner Kenney, you cited the long-term relationship
8 that Ameren has with certain of the municipal customers it
9 serves on post-sale basis; do you recall that?

10 A. Yes.

11 Q. Does Ameren also have a long-term relationship
12 with Citizens Cooperative?

13 A. I'm not sure.

14 Q. How about the long-term relationship with AEP?

15 A. I'm not sure.

16 MR. MITTEN: Thank you.

17 JUDGE WOODRUFF: All right. Redirect?

18 REDIRECT EXAMINATION

19 QUESTIONS BY MS. OTT:

20 Q. Mr. Eaves, Mr. Mitten had you look at page I
21 think, 18 or -- 18 of your Staff's prudence report, which I
22 think is DEE1-18.

23 A. Yes.

24 Q. Now, was Staff's -- when he had you read that
25 line about the motion for rehearing, was that the only reason

1 Staff made a disallowance?

2 A. No. In my direct testimony, I expand upon the
3 reasons why Staff is proposing the adjustment.

4 Q. And why was Staff proposing the adjustment?

5 A. It's my opinion as an auditor reviewing the --
6 the FAC tariffs and the language within that tariff and the
7 context of the contracts, it became clear to me that the AEP
8 and the Wabash contracts didn't meet the terms spelled out in
9 the tariff.

10 Q. Now, when Staff files a recommendation such as
11 this one, is there anything that prevents Staff from
12 continuing to conduct research and analysis, especially if
13 the case is going to hearing?

14 A. Absolutely not.

15 Q. So you continue to do research?

16 A. I'm sorry?

17 Q. So you continue to do research and analysis?

18 A. Yes.

19 Q. Is that what you did here?

20 A. Yes.

21 Q. Now, Mr. Mitten was also talking about your
22 experience with requirements contracts. Do you have any
23 experience working with contracts in general?

24 A. I have in the past, yes.

25 Q. And what is that experience?

1 A. Before coming to the Missouri Public Service
2 Commission, I was employed in various positions, and as a
3 result of those positions, I've negotiated various types of
4 contracts.

5 Q. So are you saying you've reviewed contracts
6 throughout your entire career?

7 A. A portion of my career, yes.

8 Q. So it wasn't something new for you to read
9 contracts related to this case?

10 A. I've reviewed contracts before. Whether they
11 were requirements contracts or employment contracts or real
12 estate contracts, all various different types of contracts I
13 have reviewed. In the context of my employment, lots of
14 various contracts.

15 Q. Now, earlier Mr. Mitten was discussing what
16 you relied on for long-term and partial requirements and I
17 think you were discussing the FERC Form 1.

18 Did you review any other sources in
19 determining your definition of "long-term" or "requirements
20 contracts?"

21 A. I reviewed -- the FERC Form 1 was my -- my
22 main guide. Since then, I have come -- have come across
23 other definitions that support that, the FERC Form 1
24 definition.

25 Q. And what are those sources?

1 A. Most -- the one I've recently found, it's a
2 definition supplied by the U.S. Energy Information
3 Administration Independent Statistics and Analysis. Their
4 acronym is EIA, and they give a definition for full
5 requirements consumer and a partial requirements consumer
6 that are very similar to what's contained in the FERC Form 1.

7 Q. What is that definition -- are you reading
8 from something up there?

9 A. Yeah. I printed something out off the
10 Internet from their web site.

11 Q. And what's the definition -- can you read the
12 definition for me?

13 A. "Full requirements consumer: A wholesale
14 consumer without other generating resources whose electric
15 energy seller is a sole source of long-term firm power for
16 the consumer's service area. The terms and conditions of
17 sale are equivalent to the seller's obligation to its own
18 retail service, if any."

19 Q. And you said there was another definition?

20 A. Yeah. There's one provided for partial
21 requirements consumer.

22 Q. And can you read that?

23 A. Yes. "A wholesale consumer with generating
24 resources insufficient to carry all its load and whose energy
25 seller is a long-term firm power source supplemental to the

1 consumer's own generation or energy received from others.

2 The terms and conditions of the sale are similar to those for
3 a full requirements consumer."

4 Q. Now, you said that you used the FERC Form 1 as
5 your main guide. Why did you use that source?

6 A. My experience has always been when we've --
7 when I've done cost of service rate cases, other things, the
8 FERC Form 1 that's filed with the Missouri Public Service
9 Commission is kind of our guidepost or our starting point for
10 audits and other types of actions here at the Commission. So
11 I just naturally turned to the FERC Form 1 to see what type
12 of definitions they would have relating to the FAC rider
13 definition of "OSSR."

14 Q. Now, Mr. Mitten was also asking you whether or
15 not you had contacted the company about what the language
16 meant in the tariff in relationship to this case.

17 Is it -- does Staff normally contact the
18 company during a contested case?

19 A. No, not in this context.

20 Q. Would it be typical for Staff to contact AEP
21 or Wabash in this case?

22 A. No.

23 Q. Now, Mr. Mitten was also asking you about who
24 served as certain experts in the rate case ER-2008-0318.

25 Do you know how many witnesses were involved

1 in that case?

2 A. I don't.

3 Q. Do you have an estimate?

4 A. I think a general rate case as large as that,
5 it wouldn't surprise me to have 20 witnesses. We have ten in
6 this case.

7 Q. So is it -- is that -- is that a lot of
8 witnesses or --

9 A. A lot of witnesses in this case?

10 Q. Yes.

11 A. I think it's a lot of witnesses in this case,
12 yes.

13 Q. So do you remember every witness in every case
14 that has been before the Commission?

15 A. No.

16 Q. Okay. And has Ameren -- was that Ameren's
17 last rate case?

18 A. They've had a subsequent rate case.

19 Q. And you've been at the Commission for awhile?

20 A. Since 2001.

21 Q. Have you been involved in rate cases since
22 you've been here?

23 A. Yes.

24 Q. And have you participated in various meetings
25 or discussions about the entire rate case process?

1 A. Yes.

2 Q. So do you have a general understanding of the
3 regulatory process?

4 A. Yes.

5 Q. So you also have an understanding of what
6 return on equity is?

7 A. Yes.

8 Q. Do you understand how it applies to a rate --
9 in a rate case?

10 A. Yes.

11 Q. Now, Commissioner Kenney was also asking some
12 questions in terms of how the municipal contracts would be
13 treated using your definition of "long-term" and
14 "requirements contracts."

15 would it be correct to include revenues from
16 the municipal contracts if their costs were excluded in a
17 rate case?

18 A. Could you ask that one more time, please?

19 Q. would it be correct to include the revenues
20 from a municipal -- from municipal customers if their costs
21 were excluded in the rate case?

22 A. No, it wouldn't be correct.

23 MS. OTT: I don't have anything further.

24 JUDGE WOODRUFF: All right. Then, Mr. Eaves,
25 you can step down.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: Staff can call its next
3 witness.

4 MS. OTT: Staff would like to call Ms. Lena
5 Mantle.

6 (The witness was sworn.)

7 JUDGE WOODRUFF: You may inquire.

8 DIRECT EXAMINATION

9 QUESTIONS BY MS. OTT:

10 Q. Will you please state your name for the
11 record.

12 A. My name is Lena M. Mantle.

13 Q. And whom are you employed and what capacity?

14 A. I'm employed by the Missouri Public Service
15 Commissioner -- Commission as the manager of the energy
16 department.

17 Q. Are you the same Lena Mantle that has
18 previously caused to be prepared direct and --
19 direct/rebuttal testimony which has been previously marked
20 for identification as Exhibit 12?

21 A. Yes, I am.

22 Q. And with respect to that prepared
23 direct/rebuttal, was that prepared by you or under your
24 direct supervision?

25 A. It was prepared by me.

1 Q. Do you have any corrections to make to your
2 testimony at this time?

3 A. No.

4 Q. And if I were to ask you the same or similar
5 questions contained within that direct/rebuttal testimony,
6 would your answers be the same?

7 A. Yes.

8 Q. would they be true and accurate to your best
9 of information, knowledge, and belief?

10 A. Yes.

11 MS. OTT: with that, I'd like to offer
12 Exhibit 12 into the record.

13 JUDGE WOODRUFF: Exhibit 12 has been offered.
14 Any objections to its receipt? Hearing none, it will be
15 received.

16 (Exhibit No. 12 was received into evidence.)

17 JUDGE WOODRUFF: Cross-examination beginning
18 with Public Counsel.

19 MR. MILLS: Thank you, Your Honor. Just a
20 few.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. MILLS:

23 Q. Ms. Mantle, in preparing for your role in this
24 case, did you review Union Electric tariff sheet 98.3?

25 A. I reviewed the tariff sheet 98.3 that was

1 filed by Marty lines, the one in the stipulation and
2 agreement, and the final one.

3 Q. Okay. You're getting ahead of me, but that's
4 good.

5 So you have gone through and you traced back
6 the history of sheet 98.3 to the direct testimony of Marty
7 lines filed in Case No. ER-2008-0318 in April of 2008?

8 A. Yes.

9 Q. And is the currently effective sheet -- well,
10 I'm sorry, the sheet 98.3 that was effective at the time
11 relevant to the prudence adjustment in this case, is that the
12 same as the tariff sheet -- the exemplar tariff sheet that
13 was attached to Mr. Lyons' direct testimony?

14 A. No, it is not.

15 Q. And are there significant differences with
16 respect to the definition of "OSSR?"

17 A. Not with the definition of "OSSR."

18 Q. Okay. So with respect to the language on
19 sheet 98.3 that defines OSSR, are there differences between
20 the sheet that was effective at the time of the prudence
21 disallowance and the exemplar sheet that Mr. Lines filed in
22 his direct testimony?

23 A. There are no differences in the OSSR
24 definition.

25 Q. Okay. Were you here yesterday for the

1 cross-examination of UE witness Barnes?

2 A. Yes, I was.

3 Q. And did you hear her offer the opinion that,
4 as far as she knows, Mr. Lines was not involved in trading or
5 power contracting?

6 A. Yes, I heard that testimony.

7 Q. Okay. Do you have any reason to disagree with
8 that?

9 A. No, I do not.

10 Q. Okay.

11 MR. MILLS: Judge, that's all the questions I
12 have. Thank you.

13 JUDGE WOODRUFF: All right. MEG?

14 MS. LANGENECKERT: No questions.

15 JUDGE WOODRUFF: MIEC?

16 MR. ROAM: Just a couple questions.

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. ROAM:

19 Q. Hello, Ms. Mantle.

20 A. Good morning.

21 Q. Were you directly involved in the negotiation
22 process in the 2008 rate case that resulted in the FAC tariff
23 that is the subject of this hearing?

24 A. Yes, I was.

25 Q. Were any of the witnesses that Ameren

1 presented in this hearing, were any of them present in any of
2 the meetings discussing the terms and conditions of the
3 FAC stipulation and agreement that resulted from the case?

4 A. Mr. Weiss may have been.

5 Q. Did -- and if Mr. Weiss was, were there any
6 other witnesses involved in those meetings that Ameren
7 presented?

8 A. No.

9 Q. Can you tell this Commission how you
10 interpreted the phrase long-term partial requirement service
11 found in tariff sheet 98.3 at the time the parties entered
12 into the FAC agreement?

13 A. When I first read Marty lines' testimony and
14 looked at the exemplar tariff, that was -- that definition
15 was one that I was concerned about because I wasn't for sure
16 what it meant. And for that reason, I had asked AmerenUE
17 during the settlement technical conference exactly what that
18 meant.

19 At that time that I was given the answer,
20 well, that's our wholesale municipal customers. No one else
21 in the room seemed to disagree with them. It seemed like
22 everybody else thought it was obvious, so that is the
23 definition that I gave to OSSR when the stip and agreement
24 was entered into.

25 Q. So when -- that question, in other words,

1 everybody in the room or other people in the room heard the
2 question and heard the response; is that accurate?

3 MR. BYRNE: I'm going to object on the grounds
4 that this is friendly cross-examination, Your Honor.

5 JUDGE WOODRUFF: That's always a difficult
6 situation to deal with in these types of situations where
7 there are multiple parties supporting the same position, but
8 I'm going to go ahead and overrule the objection and allow it
9 in this case, for this question anyway.

10 BY MR. ROAM:

11 Q. As you recall, when that question was asked
12 and answered, was that a question that was private between
13 you and one other individual, or was it sort of out there
14 where everyone could hear the question and answer?

15 A. I believe it was out where everyone could hear
16 it, or at least more than the person who I was talking to.
17 And I wish I could remember who that person was, but it would
18 have been a UE representative at one of those technical
19 conferences.

20 Q. Okay. So in your opinion and understanding as
21 to the development of this tariff, was the exclusion of
22 long-term full and partial requirements sales included in
23 this tariff because the cost and revenues of those customers
24 were not included within the context of the rate case revenue
25 requirement?

1 A. when -- one of the things that I considered
2 when I was told that definition was it didn't make sense to
3 me because the cost of wholesale municipal customers are
4 allocated to them in a rate case. The UE retail customers do
5 not have to pay for those costs so, therefore, they should
6 not get those revenues.

7 So that -- I believe that's the question that
8 you were asking. It made sense to me that the revenues from
9 those customers would not be included in OSSR.

10 Q. Okay. So is it your opinion, Ms. Mantle, that
11 the revenue excluded from the FAC should match those
12 customers who were included in the FERC jurisdictional
13 allocations calculated in a rate case?

14 MR. BYRNE: I'm going to object because the
15 question is leading and he's not an adverse -- he's a
16 friendly cross-examiner.

17 JUDGE WOODRUFF: Yeah, I'll sustain that
18 objection.

19 MR. ROAM: Which part?

20 JUDGE WOODRUFF: The leading part of it.

21 MR. ROAM: Okay. Sure.

22 BY MR. ROAM:

23 Q. So Ms. Mantle -- let me think about how to ask
24 this question.

25 Okay. How -- how are the costs associated

1 with municipals treated in rate cases, I guess would be the
2 question?

3 A. In rate cases, there are jurisdictional
4 allocation factors that are calculated based on the energy
5 and demands of the municipal customers and the retail
6 customers. Those allocation factors are applied to various
7 costs within the rate cases; that way the retail customers do
8 not pay the cost that's allocated to the municipal customers.

9 Q. Ms. Mantle, let me go back. I actually wanted
10 to ask one more question about that question that you asked
11 and the response that you received in the room during that
12 technical meeting.

13 The individuals that were there, the
14 individuals that you worked with during that process from
15 Ameren, to your knowledge, were those individuals traders, or
16 were they individuals that were involved in the rate-making
17 process -- or in rate cases, or do you know?

18 A. They would have been individuals involved in
19 the rate case process.

20 Q. Ms. Mantle, in the 2010 rate case, the tariff
21 language was revised to limit the exclusion to long-term
22 sales to Missouri municipalities; is that correct?

23 MR. BYRNE: I'm going to object on the grounds
24 the question is leading and he's a friendly cross-examiner.

25 JUDGE WOODRUFF: Again, sustained.

1 BY MR. ROAM:

2 Q. Ms. Mantle, was the tariff language changed in
3 the 2010 rate case?

4 A. Yes.

5 Q. And how so?

6 A. when we specifically included the word
7 "municipal" in the definition -- or municipalities. I don't
8 know the exact word, but we made it specific to municipal
9 utilities.

10 Q. Is it your opinion that that change -- let me
11 give you a copy of it.

12 MR. BYRNE: Your Honor, I'm going to object
13 because I think he's about to ask her a leading question.

14 MR. MILLS: So would that give you a leading
15 objection?

16 JUDGE WOODRUFF: I will still require you to
17 ask the questions, Brent.

18 MR. ROAM: That's a great objection, Tom.

19 BY MR. ROAM:

20 Q. Okay. What changes were made to that -- to
21 that tariff that were different from the previous tariff?

22 A. Actually, I don't see a difference in what you
23 gave me and what was in effect before.

24 Q. Let's see. Sorry, I gave you the wrong page.
25 There it is.

1 A. Yes, this is actually the tariff sheet 98.10,
2 and the difference is the word "Missouri municipalities" was
3 placed in the definition after "long-term full and partial
4 requirements sales." So it reads, "Off-system sales shall
5 include all sales transactions (including MISO revenues in
6 FERC account Number 447), excluding Missouri retail sales and
7 long-term full and partial requirements sales to Missouri
8 municipalities, and they're associated with, one, AmerenUE
9 Missouri jurisdictional and generating units, two, power
10 purchases made to serve Missouri retail load, and three, any
11 related transmission."

12 Q. With respect to the phrase "Missouri
13 municipalities" -- and I'll ask this question in the same way
14 Mr. Byrne asked it of Mr. Haro yesterday -- is that -- in
15 your opinion, is that a clarification or is that a
16 substantive change?

17 A. I believe that's a clarification.

18 Q. And what is the basis for that belief?

19 A. The dispute that this whole case is about.

20 Q. Can you expand on that? In other words, do
21 you mean that --

22 A. Don't ask a leading question. The
23 disagreement in this case is over the definition of "OSSR."
24 We came to understand that there was a difference in that --
25 in how that was viewed in the last rate case, ER-2010-0036,

1 and spent quite a bit of time in settlement discussions
2 regarding that. So we were -- I was very aware that there
3 was differences in how to interpret that and this -- those
4 words were put in there to help clear up those differences.

5 Q. Okay. Just give me one minute. Ms. Mantle,
6 this is on a different topic.

7 Can you describe what the relationship is
8 between generation and load in an electric system?

9 A. In an electric system, you cannot store
10 electricity that's been generated cost effectively. So
11 electricity has to be generated at the time of demand.
12 There's only -- if you generate more, you've got to sell it
13 or do something with it because of the physical
14 characteristics of electricity.

15 Q. Okay. Given that explanation, for system
16 reliability, do generation and load have to be equal?

17 MR. BYRNE: I'm going to object, Your Honor,
18 again. This is friendly cross-examination, which is even
19 beyond anything that's in her testimony. It's just
20 supplementing. It's an opportunity for her to provide
21 supplemental testimony right now, and so I'm going to object
22 on the grounds that it's friendly cross outside the scope of
23 what she testified about.

24 JUDGE WOODRUFF: Your response?

25 MR. ROAM: I guess the response is I'm not

1 actually sure what the rules are about friendly cross or how
2 that's -- how that's dealt with in this -- in this
3 environment. I do think that I'm entitled to cross-examine
4 the witness, and so unless there's some rule that I'm not --
5 that I could be pointed to that would show me that I'm not
6 permitted to cross, I guess I would just have to say I don't
7 know what basis the objection is.

8 MR. BYRNE: Your Honor, I think, as you've
9 pointed out, you've struggled with friendly
10 cross-examination, I mean, and it is allowed to some degree,
11 and I think within limits it's been allowed in cases. But --
12 and to the extent he's asking her about her testimony, fine.
13 But now he's -- now he's asking about things completely
14 outside the scope of the testimony she filed. It just gives
15 her an opportunity to supplement the record with additional
16 surrebuttal testimony and no time for the adverse party to
17 prepare for that.

18 I don't think -- I don't think it's fair, and
19 I think that he's reached the limit of tolerance for friendly
20 cross.

21 MR. MILLS: Judge, can I speak on this as
22 well?

23 JUDGE WOODRUFF: Certainly, Mr. Mills.

24 MR. MILLS: I think the real objection, there
25 is no rule against friendly cross, and in Missouri cross is

1 not limited by direct testimony. The real problem with
2 friendly cross is when you have parties that are aligned with
3 each other that use the cross-examination process to buttress
4 the witness's direct testimony, and that causes an unfairness
5 to the other parties.

6 I don't think you have the same problem when a
7 party who is more or less aligned with another party asks
8 questions of a witness that are not contained in that
9 witness's direct testimony and can explore a new area. I
10 think that's the whole purpose of cross-examination is to
11 talk about things that the witness may have knowledge of
12 that's relevant to the record.

13 So, you know, to the extent that these
14 questions had to do with bolstering Ms. Mantle's direct
15 testimony, the friendly cross might be a valid objection.
16 But to the extent that these are issues that a different
17 party other than the Staff wants to explore that Ms. Mantle
18 has knowledge of and that are relevant, I don't think there's
19 any valid objection to doing that.

20 MR. BYRNE: I mean --

21 MR. ROAM: Let me just jump in. I can
22 actually short-circuit a bit of this. I can withdraw that
23 last question and ask one additional question that is germane
24 to the testimony that has been offered in this case, and
25 that's my last question.

1 JUDGE WOODRUFF: All right.

2 MR. ROAM: And then we can reserve this
3 discussion for a later date, if that's okay with you.

4 JUDGE WOODRUFF: Will that come up again? But
5 if that's what you want to do, go ahead.

6 MR. ROAM: So I will withdraw my last
7 question.

8 BY MR. ROAM:

9 Q. Ms. Mantle, can you conceive of any sale of
10 capacity and energy that would not ultimately serve load?

11 A. No.

12 MR. ROAM: No further questions.

13 JUDGE WOODRUFF: Okay. Move to AmerenUE for
14 cross.

15 MR. BYRNE: Great.

16 CROSS-EXAMINATION

17 QUESTIONS BY MR. BYRNE:

18 Q. Good morning, Ms. Mantle.

19 A. Good morning.

20 Q. A couple questions that were raised in
21 cross-examination by the other parties. One question you
22 were asked: Is were any traders present at the discussions
23 of -- in ER-2008-0318, do you remember that question, or was
24 regulatory type of people?

25 A. Yes, I remember that question.

1 Q. Do you know if Shawn Shucker was present
2 during those discussions?

3 A. That's who I was trying to think of whether he
4 would be there or not. And I did qualify that answer with I
5 don't believe so.

6 Q. Okay. But if he was there, he's a trader, is
7 he not, for Ameren?

8 A. You-guys change jobs so often, I'm not for
9 sure what he is, but he could have been at that time.

10 Q. Okay. Okay. There was also some questions
11 about the -- having -- similar treatment in the
12 jurisdictional allocation factor, in other words, the
13 municipal contracts were included in the jurisdictional
14 location factor and then they were also included in OSSR.

15 Do you remember that question you got, I
16 think, from Mr. Roam?

17 A. I think they were excluded in the OSSR.

18 Q. Excluded in the OSSR and included in the
19 jurisdictional allocation factor that allocating costs away
20 from --

21 A. That's correct.

22 Q. -- jurisdictional customers? Okay.

23 But isn't it true that there were some --
24 like, the Hannibal and Centralia customers would have been
25 included in the jurisdictional allocation, but because their

1 contracts had expired, they would not have been excluded from
2 OSSR?

3 A. For Staff's derivation of the jurisdictional
4 allocators, we asked which -- we check into which municipal
5 customers will be continuing because we know that there are
6 municipal customers that come off the system and come on to
7 the system. So I'm not certain to any specific municipal
8 utility, but I do know that if there's a municipal utility
9 that will soon be leaving AmerenUE, AmerenUE will not be
10 providing service to it soon after or during the rate case
11 process. We typically do not include that as a municipal
12 customer in our calculation of allocation factors.

13 Q. Okay. Do you have your direct/rebuttal
14 testimony with you there?

15 A. Yes, I do.

16 Q. And do you happen to have your deposition with
17 you?

18 A. No, I do not.

19 Q. You're in luck. I brought an extra copy.

20 A. I know my family's been wanting to read it.

21 Q. Now, my understanding, your direct/rebuttal
22 testimony is about eight pages long; is that correct?

23 A. Page 8 does end with, "Does this conclude your
24 direct/rebuttal testimony?" And my answer was, "Yes, it
25 does."

1 Q. And it looks to me like about the first two
2 and a half pages are your qualifications and a summary of the
3 following testimony; is that fair to say?

4 A. Yes.

5 Q. So you've got about five and a half pages of
6 testimony on the substance of this case; is that true?

7 A. Yes.

8 Q. Let me ask you another question. Have you
9 ever bought or sold power, Ms. Mantle?

10 A. No, I have not.

11 Q. Okay. Can you take a look at page 6 of your
12 direct/rebuttal testimony? And -- I'm sorry, I'm on page 8.
13 At the top of the page, it says -- the question says, "Did
14 Ameren Missouri include the AEP and WPA contracts in its net
15 system input provided to Staff for that case?"

16 And your answer begins, "No, it did not." Do
17 you see that?

18 A. Yes.

19 Q. And did you read Steve Wills' surrebuttal
20 testimony?

21 A. Yes.

22 Q. Do you happen to have a copy of Mr. Wills'
23 surrebuttal testimony?

24 A. Not up here.

25 Q. Okay. I think I have a copy. There's a copy

1 of Mr. Wills' surrebuttal testimony.

2 And Mr. Wills disagrees with you on that
3 point, and let me show you where I'm looking. I think it's
4 on page 10, line 3. Starting on line 3, he says, "Ms. Mantle
5 also claims that Ameren Missouri included AEP and Wabash in
6 the jurisdictional allocation factors in Case No.
7 ER-2010-0036 but not in the net system input." Cites your
8 testimony. "Is this statement accurate?" And he says, "No."
9 And he says it actually was included, and he attaches a copy
10 of his testimony.

11 Is Mr. Wills right about that?

12 A. I believe we are probably talking about two
13 different things. He -- those loads were supplied to Staff
14 and did end up in the net system input. When we asked for
15 net system input, we were -- well, UE keeps changing the
16 definition of that on us, too. So what we were supplied did
17 not have that -- what comes in monthly on the 3.190 data,
18 which is called net system input, it did not have those loads
19 in there.

20 Q. Okay. But what Mr. Wills says is in his
21 direct testimony in Case No. ER-2010-0036, that he did
22 include it as -- I mean, I guess, Ameren refers to it as net
23 system output, you refer to it as net system input, but
24 that's the same thing; is that correct?

25 A. I'm not for sure. Those definitions are

1 changing on us every rate case. But his testimony says that
2 his direct testimony revealed that appropriate adjustments
3 were made to net system output. It does not say that we were
4 supplied net system output with that in it.

5 Q. Did you go back and look at his testimony and
6 work papers from that case?

7 A. I discussed it with my staff who actually
8 worked on that case several times to make sure that I got the
9 same answer every time.

10 Q. Just so I understand, are you saying Mr. Wills
11 is wrong when he says I provided this to you in my direct
12 testimony in Case No. ER-2010-0036? Is he wrong about that?

13 A. I read -- I don't think that he's wrong. He's
14 saying that he -- that appropriate adjustments were made. He
15 did supply those loads to us, and eventually we ran the fuel
16 model with and without those loads. Yes, the adjustments
17 were made, eventually.

18 Q. Well, he's saying the adjustments were made in
19 his direct testimony and work papers; is that true or is that
20 not true?

21 A. It may have been, but it was not supplied to
22 staff that way. When -- we did not start with what the
23 utility has. We start with the net system input that's
24 provided to us as part of 4 CSR 240-3.190.

25 Q. Well, you're not -- I mean, his direct

1 testimony and schedules and work papers were provided to the
2 Staff, were they not?

3 A. Yes, but we start with the data. We don't --
4 we don't start with what the company's analysis did.

5 Q. Okay. So he provided it to you, but you
6 didn't look at it. You looked at the other stuff. Is that
7 what you're saying?

8 A. We looked at what AmerenUE had provided to us
9 as net system input/output. Yes, I believe at this point we
10 were -- that's what we were --

11 Q. Okay.

12 A. As a part of 4 CSR 240-20 -- wait. 3.190.

13 Q. Okay. And -- but I guess, if I go back to
14 your question on page 8, it says, "Did Ameren Missouri
15 include the AEP and WPA contracts in its net system input
16 provided to Staff in that case?" So that's not talking
17 about -- and you say, "No, it did not." And that's not
18 talking about those reports. That's talking about what we
19 provided you in that case, isn't it?

20 A. No. It says provided to Staff for that case.

21 Q. Okay. For that case. So you don't think
22 direct testimony is something we provided for that case?

23 A. For as long as I can remember -- and I've been
24 working with net system input for most of my 27 years at the
25 Commission -- we have always started with the data supplied

1 as a part of 3.190 data.

2 Q. So you're saying direct testimony is not
3 something provided for that case but periodic reports outside
4 the case are something provided for that case?

5 A. The reason that 4 CSR 240-3.190 was written
6 was to provide Staff with that data on an ongoing basis so
7 that we could start on our rate case analysis when the
8 company filed.

9 Q. well, let me ask you this: At the bottom of
10 page 10 of Mr. wills' testimony, he says that if you had been
11 correct that we did not provide net system input, it would
12 have adversely affected the company, it would have -- it
13 would have been detrimental to the company. Is he correct
14 about that?

15 A. So your question is: If you -- if he did not
16 provide that, it would have been detrimental to the company?

17 Q. Right. In other words, if we -- and what he's
18 saying is if we included AEP and wabash in the jurisdictional
19 allocation factors but then not in the net system input or
20 output, that would have been detrimental to the company; is
21 that true?

22 A. That's true, and that's one of the ways we
23 found out that AEP and wabash was part of this case -- the
24 case.

25 Q. Okay. Turning back to your testimony on

1 page 6, at the bottom of page 6, you've got -- well, bottom
 2 half of page 6, you've got Staff's discovery of the AEP and
 3 Wabash contracts as your heading. And you're discussing when
 4 you first became aware of the AEP and Wabash contracts; is
 5 that correct?

6 A. That's when the energy staffers became aware
 7 of it, yes.

8 Q. Okay. And then at the bottom of the page, you
 9 say, "The first time Staff" -- and I'm quoting you -- "saw
 10 any mention of the AEP and WVPA contracts was when Mr. Haro
 11 answered a data request in Case No. ER-2010-0036," and on the
 12 next page, page 7, you say, "It was provided on October 14th,
 13 2010." Is that what that says?

14 A. That's what that says.

15 Q. And is that the correct date? That's not very
 16 long ago.

17 A. Probably is off by a year.

18 Q. Probably off by a year. Okay. Let me provide
 19 you a copy of that data request, and I'm handing you -- I
 20 don't want to necessarily mark it as an exhibit, but I'm
 21 handing you MPSC data request 184, which I believe is the
 22 data request you reference in your testimony; is that true?

23 A. Well, I reference 184 and 186.

24 Q. But you're talking about the first time you
 25 found out, it's 184, right, right at the top of page 7?

1 A. Yes.

2 Q. Okay. What's the -- what's the date of our
3 response to data request 184?

4 A. September 29th, 2009.

5 Q. I mean, do you think that sounds like a more
6 legitimate date for when you found out -- found out about
7 this than October of 2010?

8 A. That's how quick we'd like to receive
9 responses from our DRS, yes, but I must have been mistaken.
10 I don't know where I got the October date from.

11 Q. Okay. Fair enough. Fair enough. And --
12 okay. Correcting it to be 2009, Mr. Wills also provided some
13 testimony about his view that the company provided this
14 information before September or October, 2009.

15 And in particular, on page 9 of his
16 surrebuttal testimony, he talks about -- he talks about the
17 fact that mention was made of these contracts in his direct
18 testimony that he filed in Case No. ER-2010-0036, and that
19 direct testimony would have been filed on July 24th, 2009; is
20 that correct?

21 A. He mentions or he talks about the date is
22 July 24th, 2009. That I will agree with.

23 Q. Okay.

24 A. His testimony states, "The company entered
25 into two long-term personal requirement contracts with new

1 customers in the spring of 2009. At that time, we still
2 thought that partial -- that the definition in OSSR meant
3 municipal customers." That would not surprise me to find out
4 that you entered into contracts with two new municipal
5 customers.

6 Q. But at least he made mention of the new
7 contracts in his testimony; isn't that correct?

8 A. He made mention of two -- entering into two
9 more contracts, yes. He did not say with who and anything
10 about the terms.

11 Q. Okay. Now, my understanding is he also
12 provided the names of the counterparties to the contracts in
13 his work papers that were filed with his -- right after his
14 direct testimony; is that correct?

15 A. It looks like that's what he said, yes.

16 Q. Did you go back and look at those work papers?

17 A. I have no reason to doubt Mr. Wills. No, I
18 did not.

19 Q. Okay. So we would have then made Case No.
20 ER-2010-0036; isn't that correct?

21 A. It would have been buried in a stack of work
22 papers.

23 Q. On page 310 of the stack of work papers?

24 A. I don't know what page. As I said, I did not
25 go back. But those work papers are very voluminous.

1 Q. Okay. On page 6 of your testimony, turning
2 back to your testimony again, I believe you say, to your
3 knowledge, contracts like AEP and WVPA contracts have never
4 been included in the calculation of jurisdictional allocation
5 factors in any Ameren Missouri rate case or in Ameren
6 Missouri's resource planning process. Do you see that?

7 A. I do.

8 Q. And were you aware that for many years, Ameren
9 Missouri provided requirement service to Citizen's Electric
10 Company?

11 A. Yes.

12 Q. Do you think that the requirement service that
13 we provided to Citizen's Electric Company might be similar to
14 the WVPA contract where Ameren Missouri is providing
15 requirement service for Citizen's Electric Company?

16 A. No, it is not. It was a very long-term
17 contract. It was for full requirements. So they got all of
18 the power and electricity requirements of their customers
19 from AmerenUE. That is very different from the wabash
20 contract, which has a ceiling on the amount that they can
21 get, it has prices. It's -- it was a very different
22 contract.

23 Q. Are you aware that Ameren Missouri also
24 provided requirement service to out-of-state electric
25 utilities in the past?

1 A. I believe that's probably true. I cannot
2 remember any such contract, but --

3 Q. Do you know, for example, if Ameren Missouri
4 provided service to Arkansas Power & Light Company?

5 A. I know Arkansas Power & Light Company has a
6 purchase power agreement with UE. It could have been that
7 there was one the other way around.

8 Q. Were you aware that those sales to Citizens
9 and to Arkansas Power & Light Company were included in the
10 jurisdictional allocation factor in previous rate cases of
11 Ameren Missouri?

12 A. That would have had to have been rate cases
13 back in the '80s because AmerenUE went without a rate case
14 for so long. I was not aware of that, no.

15 Q. Okay. Now, I'd like to talk to you a little
16 bit about -- well, it's on page 4 of your testimony and
17 you've talked a little bit with Mr. Roam about this --
18 this -- that your allegation that someone from Ameren
19 Missouri told you at one of the technical conferences that
20 the exclusion from OSSR for long-term full and partial
21 requirements sales was intended only to address municipal
22 contracts.

23 That's your testimony, is it not?

24 A. Yes, it is.

25 Q. Okay. But my understanding is, you don't know

1 who the exact person who said that to you was; is that
2 correct?

3 A. That's correct.

4 Q. And -- but I believe you testified at your
5 deposition that you thought -- and I can show you the page if
6 you don't remember this -- but you thought Gary Weiss, will
7 Cooper and Steve Kidwell were typically at those technical
8 conferences, and it could have been one of them?

9 A. That's correct.

10 Q. Okay. And my understanding is you never asked
11 for confirmation in writing from the company about this
12 supposed clarification; is that correct?

13 A. That's correct.

14 Q. And you never asked a data request related to
15 this supposed clarification?

16 A. Didn't think that I needed to.

17 Q. Okay. And did you ever ask whether, whatever
18 person may have told you this, had the authority to bind
19 Ameren Missouri in a matter as important as this?

20 A. I do not typically ask that of every answer
21 that I get from a utility employee about an answer they give
22 me. No, I did not ask that.

23 Q. And you never asked the company to amend the
24 tariff to -- up until this last rate case, you never asked a
25 company to amend the tariff to include the word "municipal,"

1 right, in ER-2008-0318?

2 A. No, I did not.

3 Q. And you haven't been able to find any notes
4 that reflect any of these conversations; is that correct?

5 A. That's correct.

6 Q. Okay. Let me ask you this: why wouldn't you
7 ask that the tariff be amended to include the word
8 "municipal" in Case No. ER-2008? Surely, you know that there
9 are other entities besides municipalities that could
10 conceivably enter into a long-term full or partial
11 requirements contract with AmerenUE or Ameren Missouri, don't
12 you?

13 A. The person that answered me stated that
14 with -- definitively, and it made sense to me.

15 Q. well, wouldn't -- let me ask you this:
16 Isn't -- when Ameren files a tariff, isn't it -- in theory,
17 it could be in effect forever, it could be in effect for a
18 long time; isn't that true?

19 A. Yes.

20 Q. And what about -- how is -- if there's this
21 implicit limitation, how is a person who succeeds you in your
22 job going to know about that implicit limitation?

23 A. The same way that I don't know about implicit
24 pieces of tariffs that were filed before I came. I typically
25 don't want to rewrite tariffs just because I would have used

1 different wording.

2 Q. But wasn't it important to make sure that the
3 tariff is clear if there -- so that future people would know
4 that there's this limitation on -- to municipalities?

5 A. Obviously.

6 Q. Okay. Ms. Mantle, do you know when Ameren
7 Missouri's last integrated resource plan would have been
8 filed?

9 A. I believe it's 2008. I don't know the exact
10 date.

11 Q. How about February 5th, 2008; does that sound
12 right?

13 A. That sounds correct.

14 Q. And would it be fair to say that it would have
15 been impossible for Ameren Missouri to include the AEP and
16 wabash contracts in that IRP filing because they didn't exist
17 yet?

18 A. That's correct.

19 Q. Okay. And the date of that filing is almost a
20 year before the ice storm occurred and Noranda lost service;
21 is that correct?

22 A. That's correct.

23 Q. Okay. But the Noranda load would have been
24 included in that February 5th, 2008, IRP filing; is that
25 correct?

1 A. That's correct.

2 Q. Okay. Let me ask a little bit about long-term
3 partial requirement sales, which is the term in the tariff
4 that we've been talking about. Let's talk about long-term
5 first.

6 My understanding, from your deposition, is
7 that you believed -- you believe that the term "long-term"
8 has evolved as the market for electricity has evolved; is
9 that correct?

10 A. That is correct.

11 Q. And my understanding of your testimony is
12 that, whereas, a long-term contract used to be five years,
13 now three years is about the longest that you've seen; is
14 that correct? I can show you in your deposition if you want
15 me to.

16 A. Would you, please?

17 Q. Sure. Look on your deposition, I believe it
18 is page 30. Let me see if I can find it. Okay. Look at
19 page 31, at the top of page 31. Actually, the question
20 starts at the bottom of page 30. It says, "And you" --
21 "Question: And you indicated that the definition has
22 evolved. Is there a different definition of long-term now
23 than there was when the Commission approved the fuel
24 adjustment clause that is at issue in this case?"

25 "Answer: With the opening of the wholesale

1 electric markets and the ability to buy on-the-spot purchase
2 spot market, utilities are reluctant to offer long-term
3 contracts, so where in the past it may have been a five-year
4 would be long-term, now three-year is about the longest I've
5 seen."

6 Is that your testimony from your deposition?

7 A. That is my testimony.

8 Q. Okay. And would you agree that the minimum
9 term that an agreement has to be in effect to qualify as a
10 long-term requirement sale, in your view, is three years?

11 A. Around three years, yes.

12 Q. Okay. Would it be fair to say that the
13 evolution of the electric markets began with FERC
14 Order No. 888?

15 A. Yes.

16 Q. And would you agree that FERC Order No. 888
17 made fundamental changes to the electric power markets in the
18 United States?

19 A. Yes.

20 Q. And can you explain a little bit about what
21 those fundamental changes were?

22 A. It's my understanding that FERC 888 opened up
23 transmission so that utilities could make closed-sale
24 transactions, not just with their neighboring utilities but
25 with other utilities across the nation.

1 Q. Do you know when FERC Order No. 888 was
2 issued?

3 A. I believe it was the late 1990s. I do not
4 know the exact date.

5 Q. Would you agree with me to the extent that the
6 FERC Form 1 instructions were written prior to 1990, they
7 would not reflect the fundamental changes in the marketplace
8 that occurred after FERC Order No. 888 was issued?

9 A. I agree.

10 Q. I'd like to talk about your definition of
11 requirement sales. And, again, this is -- take a look at --
12 this is on page 33 of your deposition, I believe, and the
13 quote I have is, "On a requirement sale, there would be some
14 requirement for providing electricity, but it could vary
15 quite a bit." And that's up on page -- line 6, 7, 8. Do you
16 see that?

17 A. Yes.

18 Q. Is that your testimony?

19 A. Yes, it is.

20 Q. Okay. And for full requirement sales, your
21 definition is that the seller is providing for all of the
22 customer's needs; is that correct?

23 A. That's correct.

24 Q. And that would even include providing
25 electricity to meet growth and load on a forward basis, and

1 it could include other things; is that correct?

2 A. That is correct.

3 Q. Okay. And with regard to partial
4 requirements, as my understanding of your view is partial can
5 mean fulfilling part of the purchaser's requirements, not
6 necessarily fulfilling all their needs; is that correct?

7 A. That's correct.

8 Q. Okay. A partial requirements contract could
9 be from a municipal customer who has some of its own
10 generation so you're not providing the full requirements for
11 that customer; is that correct?

12 A. That is correct.

13 Q. And isn't it true that the contracts with AEP
14 and wabash are also partial requirements contracts under your
15 definition because Ameren Missouri is fulfilling some but not
16 all of their requirements of AEP and wabash?

17 A. That is correct.

18 Q. Okay. And isn't it true that the reason you
19 think the AEP and wabash contracts are not long-term partial
20 requirements contracts is because they are not long enough?

21 A. That's correct.

22 Q. Okay. Would you agree that your definition of
23 "partial requirements sales" is based on the plain meaning of
24 the words in that phrase?

25 A. Yes.

1 Q. Okay. Ms. Mantle, did you review the AEP and
2 Wabash contracts as part of your review in Ameren Missouri's
3 last rate case, which was Case No. ER-2010-0036?

4 A. As a part of that rate case, no, I did not.

5 Q. Let me hand you a copy of your surrebuttal
6 from that case.

7 Is that your surrebuttal testimony from
8 Case No. ER-2010-0036?

9 A. Yes, it is.

10 Q. Okay. Take a look beginning on page 15 of
11 that testimony. And it's entitled, "Surrebuttal of Jamie
12 Haro." Do you see that?

13 A. Yes.

14 Q. And if you go to page 16, the question says,
15 "Would you like to respond to Mr. Haro's rebuttal testimony
16 regarding his concerns with Office of the Public Counsel
17 witness Ryan P. Kind?"

18 And the answer says, "Yes, I would like to
19 respond to Mr. Haro's rebuttal testimony regarding the
20 bilateral contracts that AmerenUE entered into when Noranda's
21 load was reduced by the January, 2009 ice storm. Although
22 Mr. Haro does not specifically state the bilateral contracts
23 were entered into with, as I wrote on pages 62 to 63 of the
24 Staff revenue requirement and cost of service report filed on
25 December 18th, 2009, AmerenUE entered into contracts with

1 Ameren Electric Power Company, (AEP) and Wabash Valley Power
2 Cooperative, (Wabash). During this time period, Mr. Haro
3 makes several statements regarding AmerenUE's FAC, but these
4 contracts and how these type of contracts should be dealt
5 with in the future that staff would like to address." And
6 then you go on to address those issues; is that correct?

7 A. Except instead of Ameren Electric Power
8 Company, it's American Electric Power Company.

9 Q. Oh, I'm sorry.

10 A. That is what my testimony states, yes.

11 Q. Okay. And I don't want to read every word of
12 your testimony, but then you go on to discuss these contracts
13 and how it relates to off-system sales; is that correct?
14 Take a minute to read it. I know it goes on for a couple
15 pages.

16 A. How far back do I need to go?

17 Q. Well, are you still talking about the AEP and
18 Wabash contracts? Keep reading until you stop talking about
19 the AEP and Wabash contracts.

20 A. Okay.

21 Q. I mean, would it be fair to say that you
22 address the AEP and Wabash contracts in your surrebuttal
23 testimony and talk about the FAC a little bit?

24 A. Yes.

25 Q. And would it be fair to say that you reviewed

1 those contracts before filing this testimony?

2 A. I did not look at the specific contracts, no.

3 Q. You didn't look at the specific contracts
4 before filing this testimony about them?

5 A. No.

6 Q. Okay. Well, how did you know they were
7 bilateral contracts then?

8 A. By this time, I sat through many discussions
9 with AmerenUE and the other parties regarding these
10 contracts. I was taking the word of the AmerenUE experts
11 that were at these meetings.

12 Q. So you filed, I don't know, five or six pages
13 of testimony about these contracts in our last rate case, and
14 you didn't read them?

15 A. That's correct.

16 Q. Okay. Let me ask you this: I'd like to take
17 a look at the transcript from the hearing in that case, and
18 I'm giving you a complete copy of a -- a complete copy of
19 volume 31 of the transcript. But I would like to mark a page
20 of that transcript as an exhibit, if I could.

21 JUDGE WOODRUFF: Next number is 18.

22 (Exhibit No. 18 was marked for identification
23 by the Court Reporter.)

24 BY MR. BYRNE:

25 Q. And I guess I would -- oh, I didn't give you

1 the page. Sorry. And this is page 2518 out of that larger
2 transcript, and I'd like you to first take a look at the
3 larger transcript, if you would, and compare the 2518 that I
4 handed you with 2518 out of that transcript and make sure
5 that it's an accurate copy of it.

6 A. It looks to be an accurate copy.

7 Q. Okay. And if you look earlier in that
8 transcript, your portion of the testimony begins on
9 page 2512; is that correct? Do you see that? "My name is
10 Lena Mantle" on page 2512?

11 A. Yes.

12 Q. So that's where your testimony starts. And
13 then I'm cross-examining you, I think, starting on 2514. Do
14 you see that? On line 13, I start cross-examining you on
15 page 2514?

16 A. That's correct. Yes.

17 Q. And I'm still -- as you page through the
18 transcript, I'm still cross-examining you when you get to
19 page 2518, which I've marked as an exhibit. Would you agree
20 with that?

21 A. Yes.

22 Q. Okay. I'd like to read a little portion of
23 this. On 2518, beginning on line 6, it says:

24 "Question: In your surrebuttal testimony on
25 page 16 at line 7, you have just -- you discussed some

1 bilateral contracts AmerenUE had with American Electric Power
2 Company, Wabash Valley Power Cooperative that we entered into
3 in the wake of the loss of the Noranda load. Do you see that
4 discussion?

5 "Answer: Yes.

6 "Question: And my understanding is that these
7 two contracts with AEP and Wabash Valley were bilateral,
8 long-term partial requirements contracts. Will you agree
9 with that?

10 "Answer: Yes."

11 Did I read that accurately?

12 A. Yes, you did.

13 Q. And was that your sworn testimony in that
14 case?

15 A. Yes, it was.

16 MR. BYRNE: Okay. Thank you. I don't have
17 any other questions, and I'd like to offer this exhibit.

18 JUDGE WOODRUFF: Exhibit 18 has been offered.
19 Any objections to its receipt?

20 MR. MILLS: Judge, I'd like to reserve until I
21 have a chance to review the whole transcript to see if
22 there's anything within the surrounding context.

23 MS. OTT: I would second that.

24 JUDGE WOODRUFF: All right. I'll reserve
25 ruling on that. We are due for a break now anyway. Let's

1 come back at 11:30.

2 (A break was held.)

3 JUDGE WOODRUFF: Okay. It is 11:30 and we're
4 back from our break. We were coming up to questions from the
5 bench. Commissioner Davis, do you have any questions for
6 Ms. Mantle?

7 COMMISSIONER DAVIS: No.

8 JUDGE WOODRUFF: All right. I don't have any
9 questions. Maybe Commissioner Jarrett comes in -- no. Mr.
10 Mills? Oh, Commissioner Jarrett as well. Commissioner
11 Jarrett, do you have any questions for Ms. Mantle?

12 COMMISSIONER JARRETT: Does Commissioner Davis
13 have any?

14 COMMISSIONER DAVIS: No.

15 COMMISSIONER JARRETT: I guess it's still
16 morning.

17 EXAMINATION

18 QUESTIONS BY COMMISSION JARRETT:

19 Q. Good morning, Ms. Mantle.

20 A. Good morning.

21 Q. I take it from your testimony today and back
22 and forth with Mr. Byrne -- and correct me if I'm wrong --
23 but you agree that these are partial requirements contracts,
24 but the dispute is whether they're long-term or not. Is that
25 accurate?

1 A. The plain reading of the word "partial
2 requirement customers," yes, I agree that -- because they're
3 only providing part of their loads. Long-term, that is
4 probably what it boils down to.

5 Q. Right.

6 A. But -- and Staff has always contended that
7 that whole definition of "OSSR" is important, not just those
8 few words.

9 Q. Okay. But as far as long-term, what should we
10 look at to determine what is long-term?

11 A. That's a real good question because it so
12 often has to do with what you're looking at. I know Adam
13 McKinney has showed us FERC decisions where they say we don't
14 know, despite what AmerenUE provided in its testimony. And
15 that was on a note for rulemaking for FERC. And then there's
16 another definition in there of ten years for transmission
17 planning. Of course, that's transmission, and we've got, you
18 know -- it all has to do with -- with what it's being used
19 for.

20 And with a fuel adjustment clause, the purpose
21 is to track fuel costs to serve the customers. If you have a
22 contract that is long enough to go across the hearing -- or
23 the rate cases, which have to be at least every four years,
24 then the costs from that long-term contract will be put in
25 one of those rate cases. And so that will be part of your

1 base fuel cost. The capacity cost will be put in the rate
2 case.

3 And that's more for on a going-forward basis
4 as far as purchasing to meet your load. Now, when you turn
5 it around the other way, now more or less they're selling
6 excess load. Okay? If it was a long-term contract where
7 they were selling the revenues from that capacity payment
8 will be part of the permanent rates. The revenues that they
9 received for the energy will be part of the revenues
10 offsetting the cost in that rate case. And it's not Staff's
11 position that they should be counted twice. They should --
12 you know, should count for permanent sales but not for -- for
13 the FAC.

14 It all has to do with what are we really
15 trying to do, and we're not trying to double-dip for the
16 utility or the customers. It's just trying to get that
17 correct.

18 Q. Right.

19 A. And so in that case, long-term, you know,
20 If -- if they file a case and there's only three months of an
21 agreement left, Staff typically does not include that in
22 their cost or in their revenues because it's not going to be
23 there on an ongoing basis. If it looks like they're going to
24 turn it over and it's going to continue, we might. So it --
25 but -- so it has to do with how long it is across those rate

1 cases.

2 Q. Right. And -- and in this case, I think
3 you've been here for most of the testimony. I think the
4 Ameren witnesses yesterday basically testified that they were
5 trying to -- to get contracts to match or to mimic the
6 Noranda load for as how long they anticipated it was going to
7 be out?

8 A. That's how I understood their testimony.

9 Q. So in that sense, it's not permanent; it's a
10 temporary until Noranda gets back up?

11 A. But that's recovering permanent rate, the
12 fixed cost. It really doesn't have anything to do with the
13 fuel cost. I agree that when Noranda went down, there was a
14 lot of their fixed costs that they didn't recover that is
15 included in their rates.

16 But what they're trying to do is use these
17 contracts and put them of a term where they would not come
18 back through the FAC, according to their definition. So that
19 they can use that to offset this revenue deficit for their
20 fixed costs. And, you know, they said that Noranda was only
21 going to be probably down 12 months. Well, they made sure
22 the contracts were longer than that so that they could call
23 it a long-term contract and get around this provision in
24 the -- in the FAC clause.

25 Q. Okay. So any other thoughts on guidance on

1 what we should look at to be long-term?

2 A. I think it will be important to your decision
3 what you do say in this case and not only for AmerenUE but
4 also for Empire and Greater Missouri Operations. I just ask
5 that when you make that determination, think about, you know,
6 what are we really trying to do here. Are we trying to have
7 a way that a company can make up some revenues that it did
8 not get from some other reason, or are we using this for the
9 reason that the -- that it was created for?

10 COMMISSIONER JARRETT: Okay. Thank you,
11 Ms. Mantle.

12 COMMISSIONER DAVIS: Judge, Commissioner
13 Kenney's got something, but I want to -- it doesn't matter to
14 me. Go ahead, Commissioner Kenney.

15 COMMISSIONER KENNEY: I do, but you can go
16 ahead, though.

17 EXAMINATION

18 QUESTIONS BY COMMISSIONER DAVIS:

19 Q. Ms. Mantle, I was listening to your response
20 to Commissioner Jarrett. I mean, isn't that management's
21 province to -- I mean, you know, is Ameren providing safe and
22 adequate service?

23 A. Yes.

24 Q. I mean, then isn't it their prerogative -- I
25 mean, don't they get some leeway in how they manage the

1 company and -- I mean, don't they get some leeway into how
2 they manage their company?

3 A. Yes.

4 Q. Then I understand your point that if it looks
5 like a duck, if it walks like a duck, if it quacks like a
6 duck, it's a duck. But I'm just concerned as to, you know,
7 where do we draw that line here at this Commission?

8 I mean, I'm concerned that if we were to
9 follow Staff's interpretation that, you know, we -- they
10 wouldn't be an investor-owned utility, they'd be a Social
11 Services agency. How do you respond to that?

12 A. Well, I -- what I see that AmerenUE did -- and
13 it is their prerogative, management -- was to look at how the
14 FAC tariff was written. I mean, if there wasn't an FAC, this
15 is exactly what they would have done had Noranda gone down.
16 They would have entered into these contracts, that revenue
17 would have gone back to the shareholders.

18 Q. Uh-huh.

19 A. That -- and that -- yeah, that's how utilities
20 operate. In this case, they come to the Commission and said,
21 Commission, we -- we want to pass that risk of fuel cost on
22 to the customers.

23 Q. Uh-huh.

24 A. And the Commission agreed that it should be,
25 did the 95/5 and then, you know, turned around almost

1 immediately and wanted to change that so that they could get
2 back to where they were before. I guess we are part of in
3 the development of the rules of the FAC, the playing rules.
4 Since we've started getting these in all the utilities, every
5 time there's a case, we find new things, this type of hearing
6 comes up, and yeah, if you-guys draw a line, we will follow
7 that line. That's -- that's one of the things that we hope
8 we get out of this case.

9 Q. Right. And I missed -- that point is not lost
10 on me because they do have all the numbers and they control
11 the data and, you know, it's been my impression that if you
12 don't ask the right questions, then you're not going to
13 get -- they're only going to answer the question that's
14 asked, and they're not going to volunteer any information to
15 you.

16 I mean, is that a fair analysis?

17 A. Yeah. And apparently, according to Tom Byrne,
18 I'm now supposed to always ask them for a verified statement
19 that what they told me was correct every time UE talks to
20 me -- anybody from UE talks to me. Of course, I can't do
21 that. You can't do business that way, but --

22 Q. We can put it in the rules that way. They
23 will complain about it, and they'll say why do -- why does it
24 have to be so -- why do you want everything to be a verified
25 statement? We can point back and say, Mr. Byrne. All right.

1 COMMISSIONER DAVIS: Thank you, Ms. Mantle.

2 JUDGE WOODRUFF: All right. Commissioner
3 Kenney?

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER KENNEY:

6 Q. Good morning, Ms. Mantle. How are you?

7 A. I'm doing fine.

8 Q. I just have a few questions, some of which I
9 asked Mr. Eaves, but let me first ask, the costs associated
10 with supplying the AEP and Wabash contracts, where are those
11 costs allocated, or how are those allocated?

12 A. I know where they're allocated now. I don't
13 know where they were -- where they were allocated during
14 this -- the accumulation periods that are in question here,
15 the time periods that are in question here.

16 Currently, the costs are part of the costs
17 that the retail customers bear in the current rates, and
18 that's why the revenues are coming back through the FAC. I
19 believe my -- the resource analysis staff has checked that,
20 and the cost of these contracts were not included in the
21 fuel, and that's all been part of their calculation of the
22 \$17 million is -- amount that would go back to the customers.
23 It's not just all the income from these contracts. It's the
24 revenues minus the cost.

25 Q. Okay. And is it Staff's position that the

1 FERC Form 1 definition of "long-term" should control, not
2 just in this case but in any other case in which we are faced
3 with that situation?

4 A. Unless the Commission comes up with something
5 in this case that helps us find that line somewhere else.
6 Like Mr. Eaves said, we've looked, and it's one of those
7 terms that are used that everybody's supposed to know what it
8 means until we come down to a hearing like this.

9 Q. And then I will ask you the same question I
10 asked Mr. Eaves. You were around yesterday for my discussion
11 with Mr. Highley?

12 A. Yes.

13 Q. Yes? Okay. And would you agree that, with
14 respect to the definition of a "requirements contract" as
15 opposed to a "full" or "all requirements contract," there's
16 no definitive definition?

17 A. I've seen the definitions that Mr. Eaves gave
18 you from the DOE EIA glossary. That's the -- like I said,
19 we've searched, and that's all we've been able to find.

20 Q. Do the tariffs typically -- and I've looked.
21 Are there circumstances where you'll have, like in a standard
22 contract, a definitions section where terms are specifically
23 defined? I mean, I know we have like the OSSR is defined in
24 the particular calculations.

25 But are terms like "long-term" and

1 "requirements contracts," are those typically defined in a
2 tariff in a definitional section?

3 A. They've not been defined in FAC tariffs. We
4 do have other types of tariffs that do have definitions in
5 them.

6 Q. Okay. So that may be something we want to
7 consider going forward?

8 A. I believe it is.

9 Q. Okay. Do you agree with Lynn Barnes from her
10 testimony that the four percent loss -- or the 4.4 percent
11 loss of load and four percent of revenue requirement is not a
12 normal fluctuation of customer load?

13 A. It's not a normal fluctuation in customer
14 load, but it should have been something that AmerenUE took
15 into consideration when it took Noranda on as a customer.
16 They did not have to take Noranda on, and they chose to. So
17 I believe that's one of the risks that they should have
18 evaluated when they took them on.

19 Q. So if -- if a commercial enterprise makes the
20 decision that a significant part of its revenue is going to
21 come from one customer, it should take that risk of the loss
22 of that customer into account?

23 A. Yes.

24 COMMISSIONER KENNEY: Okay. Okay. Thank you.

25 JUDGE WOODRUFF: Mr. Chairman, do you have any

1 questions?

2 CHAIRMAN CLAYTON: Ms. Mantle, I apologize for
3 being late yet again today.

4 EXAMINATION

5 QUESTIONS BY CHAIRMAN CLAYTON:

6 Q. If we were in a traditional rate-making
7 methodology where you do not have a rider, the way things
8 used to be prior to Senate Bill 179, and you had the similar
9 occurrence happen where Noranda goes off line, what would
10 have happened in that sense with the off-systems sales? what
11 would have happened in terms of Ameren revenues and rates
12 affecting customers?

13 A. The rates for the customers would stay the
14 same until they came in the next rate case, but I do believe
15 that the only prudent way for AmerenUE or any other utility
16 to act is to -- they now have this surplus capacity. They've
17 got base load surplus capacity they could get a good price
18 for out on the market, and they should go and enter into
19 these contracts.

20 It makes -- it's not really even base load.
21 If they have excess peaking capacity, they need to go out
22 and -- and try to find contracts for those. And in this --
23 the case where there's no FAC, those revenues would have all
24 come back to the shareholders. That profit that they made,
25 the difference between the cost and energy and the revenues

1 would go back to shareholders.

2 Q. Because there would be no changing rate
3 mechanism, basically? Rates would stay the same and the
4 revenue would come in and the company would keep the revenue
5 because tariffs are set, the rates are set, the revenue would
6 go to the shareholders?

7 A. Add the shareholders were bearing the risk of
8 change in fuel cost.

9 Q. Okay. There is a -- I took from Staff's
10 filings in the legal pleadings, as well as the testimony, not
11 all of it, but there are several references to the decision
12 of the Commission to not grant rehearing or to not set aside
13 the stipulation from the last case.

14 And it almost suggests that Staff's position
15 in this case is based on the Commission's action in -- in not
16 granting rehearing. Does that sound familiar?

17 A. That is one of the things we looked at. We
18 also -- AmerenUE didn't come back in when they did get these
19 contracts and when you did have more time to try to change
20 things. This is -- you know, we didn't learn about it until
21 the last rate case toward the end -- middle to end of the
22 last rate case.

23 Q. What was the timing for the last rate case and
24 with the ice storm and with the shutdown of Noranda; do you
25 recall?

1 A. The ice storm was late January, I believe.
 2 Spent a lot of days in between. The Commission order came
 3 out, I believe, in February, and then a little bit later, the
 4 next week, UE filed for rehearing, and they entered -- and
 5 you denied it, the next week they entered into one of these
 6 contracts.

7 Q. So did they enter into the contract after the
 8 Commission had rendered its decision?

9 A. Yes.

10 Q. Okay. Now, if the timing between the ice
 11 storm and the conclusion of the last Ameren -- of that Ameren
 12 rate case had not been close in time that -- and so the
 13 Commission never would have acted on an application for
 14 rehearing on this subject, would Staff's position be
 15 different today or would Staff be advocating -- and if you
 16 can't answer that hypothetical, but the gist of my question
 17 is, how much direction is Staff taking from the Commission's
 18 decision in denying rehearing in rendering its opinion or
 19 recommendation today?

20 A. That -- I would say that's a considerable
 21 portion of that, but we also look at what the FAC was
 22 designed to do and how it did shift risk to the ratepayers.
 23 And just the whole concept of how do you include these costs
 24 in revenues in the FAC and what is the appropriate way -- the
 25 equitable method to do that.

1 Q. In -- from Staff's point of view looking at
2 the timeline of the case, the ice storm, the outages, the
3 signing of the contract, from Staff's perspective, is there
4 anything else that Ameren could have or should have done in
5 addressing the shifts in revenue with the shutting off of
6 Noranda? Is there anything else that Staff thinks they
7 should have done differently?

8 A. I think they could have come to Staff and let
9 them know what they were doing. We could have -- they could
10 have requested something --

11 CHAIRMAN CLAYTON: Hang on. If we need to
12 take a phone call or something or if you're going to watch a
13 video, share with all of us.

14 BY CHAIRMAN CLAYTON:

15 Q. Go ahead.

16 A. I mean, and part of it is the fact that we had
17 -- they did not come tell us what was happening. They didn't
18 come and ask the Commission after the rate case was over for
19 determination of what to do with this.

20 Q. But wasn't this issue raised in their
21 application? This issue was raised in their application for
22 rehearing or to set aside the stipulation, wasn't it?

23 A. But if we had come forward then to do anything
24 about it, we don't have a contract, so why are we bringing
25 this up?

1 Q. But if -- if Noranda's going to be out, a
2 significant amount of load is going to be taken off the
3 system, what other options would Ameren have than to go out
4 and look for significant contracts to sell power? And maybe
5 I'm just not as familiar with how the trading desk works or
6 how bilateral contracts are signed, but what else could they
7 have done other than seek these types of contracts?

8 A. I don't know. I don't know.

9 Q. Okay. So if they had come to the Staff
10 talking about these contracts, would there be any
11 alternatives other than what we're facing here today, an
12 up-or-down vote on a sizable amount of money?

13 A. well, I think you can look to the last rate
14 case where we did -- the parties did come together and they
15 had an agreement on the end factor, which is part of the
16 tariff now that addresses such a catastrophic event. And
17 that wasn't just Staff and UE. That was all the parties came
18 together and came up with this.

19 So I mean, Staff understands the impact on
20 AmerenUE. That's not part of it. But we do try to work
21 things out.

22 Q. what do you mean the "end factor?" Could you
23 give me a little additional explanation of what you're
24 talking about?

25 A. I don't have the -- that tariff in front of

1 me, I don't believe. But my remembrance of it is if a
 2 significant portion of AmerenUE load goes down -- and I
 3 believe it may be 400 megawatts -- that it's very close to
 4 what we have here, AmerenUE would be able to make up some of
 5 that revenue difference. That's my recollection from the --
 6 the -- the last case, what the end factor is. So --

7 Q. So that language is in the tariff or it's not
 8 in the tariff?

9 A. It is in the tariff. I don't have the tariff
 10 in front of me, so I can't give you the exact language.

11 Q. How does that affect this case then? Does it
 12 affect this case at all?

13 A. I don't believe so, because that is -- I mean,
 14 I'm using that as an example of what the parties -- they are
 15 agreeable, but at this point, AmerenUE didn't let us know, we
 16 didn't know anything about it. And to us, it was a
 17 work-around with the FAC tariff, which we, you know, just
 18 found out late, in the last -- last rate case about --

19 Q. Well, after the -- after the storm had
 20 occurred, you mean?

21 A. Actually, we -- it would have been September,
 22 October before we found out about these contracts.

23 Q. I guess I'm confused. Having the knowledge of
 24 either the -- the ongoing negotiation of these types of
 25 contracts, considering that there really weren't that many

1 options for finding a buyer for all this power, what would
 2 Staff having that knowledge, what would that mean in terms of
 3 Staff's position, if you would have heard about it in
 4 February or March? I mean, we'd still be where we are today.
 5 I guess I'm not understanding how that would change this
 6 case.

7 A. I'm not sure that we would be.

8 Q. Okay.

9 A. If AmerenUE had come and said, look, we've got
 10 this really significant loss of load, we're going to enter
 11 into these contracts, can we work something out? I mean,
 12 Staff works with the utilities. We're not always at
 13 loggerheads with them. We work for what we believe is best
 14 for the ratepayers and the shareholders. And we realize that
 15 it's an impact on the shareholders. So I mean, we've got a
 16 longstanding history of working with the utilities to work
 17 through things.

18 Q. Does -- did Staff have a position in the rate
 19 case about whether or not -- and if so, how much -- of
 20 off-system sales should flow through the fuel adjustment
 21 clause?

22 A. In the last rate case, we did recommend the
 23 95/5 percent. So 95 percent of that should go through to the
 24 customers.

25 Q. Is -- I take it from Staff's position -- and

1 I'm making an assumption that may not be -- I'm sure -- you
2 don't hesitate in correcting me, so feel free -- that if
3 you're going to have a fuel adjustment clause, off-system
4 sales have to flow through in a similar, if not identical,
5 fashion to offset; is that correct?

6 A. That's our current position, yes.

7 Q. So you could never have a situation where your
8 fuel cost is set off on a rider and then you just include a
9 base amount for off-system sales?

10 A. That's one possible alternative. That's not
11 Staff's position.

12 Q. Okay. Does -- from Staff's perspective, do
13 you see the question that is before us as we define what is
14 in these tariffs? Is this a question of -- of law or a
15 question of policy, and are there implications beyond this
16 case, or is this a one-shot deal that probably won't play
17 out, won't have any impact in the future?

18 A. I'm not an attorney. I don't think it's law,
19 but I think it is policy. You know, Staff does follow what
20 you lay out for us, typically, or show you why we think we
21 shouldn't. But as I was telling Commissioner Davis, that,
22 you know, we're still evolving in these FACs, still trying to
23 figure out how to do them best. Every rate case, Empire, UE,
24 or Greater Missouri Operations Company, we come up with
25 improvements in the tariff language and in the FAC.

1 And to me, it's just part of this evolution of
2 what will our FAC finally look like going forward in the
3 long-term. Whatever language we may come up with for -- out
4 of this case will likely be in Empire and Greater Missouri
5 Operations Company tariffs also as soon as we can get them in
6 there.

7 CHAIRMAN CLAYTON: Okay. Okay. Thank you
8 very much.

9 JUDGE WOODRUFF: Okay.

10 COMMISSIONER DAVIS: Can I go back?

11 FURTHER EXAMINATION

12 QUESTIONS BY COMMISSIONER DAVIS:

13 Q. Ms. Mantle, I apologize. You know, I've heard
14 you say a couple times, Ms. Mantle, that you, quote, didn't
15 know anything about it. I mean -- I mean, what did you think
16 when they filed their motion for rehearing and said, oops,
17 now we don't want a fuel adjustment anymore?

18 A. Uh-huh.

19 Q. I mean, did you or, I don't know, Mr. Dottheim
20 or Mr. Williams or Wes Henderson or Bob Schallenberg say --
21 pick up the phone and say, what's up with that?

22 A. Well, I do have to agree that if they hadn't
23 entered into a contract long -- a capacity contract, we'd
24 probably be coming back in and saying they weren't prudent.
25 We typically don't call up the utilities and say what's going

1 on today, have you entered into any new contracts?

2 Q. Yeah, but when they filed their motion for
3 rehearing, I mean -- I mean, I can't ask -- I can't ask what
4 the substance of the conversations in any settlement
5 negotiations were, but you're telling me there were not any
6 discussions?

7 A. Not until the rate case, no.

8 Q. well -- until the new --

9 A. Until the ER-2010-036 rate case and not at the
10 beginning of the rate case either.

11 Q. So they just filed their motion for rehearing,
12 and they didn't say nothing to nobody and that --

13 A. They did include --

14 Q. They just let their pleadings speak for
15 themselves?

16 A. If we had known what they were, filings
17 that -- FAC monthly filings --

18 Q. Uh-huh.

19 A. -- we may have been able to figure -- you
20 know, now we go back and look and say, oh, that's what that
21 meant. And this is part of learning how to do an FAC.

22 But no, we don't call up a utility on a
23 regular basis and -- or even, you know, yeah, they had --
24 they had filed this pleading and, like I said, if they hadn't
25 entered into the contracts --

1 Q. I'm not expecting you to put on your badge and
2 go down to St. Louis and patrol Ameren headquarters and peek
3 in people's offices and say, what's going on today? But
4 it's, like, we all know, you know, what a big load Noranda
5 is. We all know what them going down in an ice storm means,
6 and obviously, you know, for someone who was the -- for the
7 company that was probably the major proponent of the fuel
8 adjustment charge, I mean, it's a pretty drastic change in
9 position to say, you know, after they just spent 11 months
10 litigating it, to say, oh, sorry, we don't want it anymore,
11 or at least not for the next year or two.

12 A. And we looked at they had -- they had
13 requested that the fuel cost risk be -- be shifted to the
14 ratepayers during the FAC --

15 Q. Right.

16 A. -- and now all of a sudden, when they are no
17 longer bearing that risk, I mean, it just -- to turn
18 around -- like I said, they weren't trying to recover fuel
19 costs that Noranda is using. This was -- they were trying to
20 recover their fixed costs --

21 Q. Right.

22 A. -- in the permanent rates.

23 Q. Yeah.

24 A. And so now they've lost one of their tools for
25 making up revenues like that.

1 Q. Right.

2 A. And that should have been part of their --
3 their thought process when they asked for the FAC.

4 Q. Well, I mean, it's saying it should have been
5 part of the thought process when they negotiated the FAC.
6 Maybe it should have been part of the thought process when
7 they first signed the contract with Noranda.

8 A. Yes.

9 Q. Right?

10 A. That's right. When they took that risk on of
11 what happens --

12 Q. Because they do have force majeure provisions
13 in their coal contracts or with their railroads, don't they?

14 A. Yes.

15 Q. Now, the end tariff resolves this problem for
16 the future, correct?

17 A. I would assume that we can negotiate this case
18 to change that end factor. But yes.

19 Q. But I mean, just -- the concept of the end
20 factor tariff would resolve future problems of this nature.

21 Now, we still may have arguments over what the
22 wording in the end factor tariff means.

23 A. That's correct.

24 Q. But the whole concept that's behind the -- the
25 end tariff is -- so we've resolved this problem going

1 forward?

2 A. Yes.

3 Q. And can you briefly refresh for my
4 recollection how the end tariff works again? Do you recall?

5 A. I don't have the tariff in front of me. My
6 recollection is there is a certain amount, like up to 400
7 megawatts -- or 400 or more megawatts load is lost by
8 AmerenUE.

9 Q. Uh-huh.

10 A. Then this -- this kicks in, and it allows them
11 to recover the fixed costs from that amount that went down.
12 But once they recover that -- just that fixed cost, all of it
13 goes back to the -- goes back through the FAC to the
14 ratepayers -- well, not a hundred percent of it. Whatever
15 the split is, 95/5.

16 Q. Now, if we applied the end tariff, do you know
17 what the outcome would be for Ameren?

18 A. I believe they would probably recover their
19 fixed costs. There would be some extra revenue from these
20 tariffs above that amount that they believe they lost from
21 Noranda.

22 Q. Okay. So it would actually be more?

23 A. Yes.

24 CHAIRMAN DAVIS: Okay. Thank you. No further
25 questions.

1 JUDGE WOODRUFF: Okay. Move to recross based
2 on questions from the bench, beginning with Public Counsel.

3 MR. MILLS: Yes.

4 RECROSS-EXAMINATION

5 QUESTIONS BY MR. MILLS:

6 Q. Ms. Mantle, you had some questions from
7 Commissioner Kenney about what it means to be a requirements
8 contract. Do you recall that?

9 A. Yes.

10 Q. Let me have you think first off about a
11 contract with a municipality. For all the municipalities
12 that have typically historically been requirements customers
13 of AmerenUE and Union Electric before that, do those
14 municipalities resell power?

15 A. They sell it to the people that live within
16 the city, the municipality.

17 Q. Okay. So when they -- when they buy power
18 from UE, they buy it for the purpose of serving their
19 customers?

20 A. Yes.

21 Q. Not for reselling to other wholesalers?

22 MR. BYRNE: I'm going to object. It's a
23 leading objection by a friendly cross-examiner.

24 MR. MILLS: I can rephrase, Your Honor.

25 JUDGE WOODRUFF: Please do.

1 MR. MILLS: It will take a little longer, but
2 I will rephrase.

3 BY MR. MILLS:

4 Q. Is it typical for a municipal utility to trade
5 power, that is, resell to another reseller?

6 A. I'm not aware of that ever happening.

7 Q. Okay. So in the sense of a requirements
8 contract for a municipality, the word "requirements" means
9 they use it for their own requirements to serve their own
10 load?

11 MR. BYRNE: I'm going to object to the
12 question. It's a leading question from a friendly
13 cross-examiner.

14 JUDGE WOODRUFF: I'm going to overrule that
15 objection. It's more of a summary of the previous question.

16 THE WITNESS: Yes, it's for the requirements
17 of their own customers.

18 BY MR. MILLS:

19 Q. Okay. And could a similar arrangement be made
20 with a cooperative?

21 A. Yes.

22 Q. Okay. Are you familiar with wabash valley
23 Power?

24 A. Somewhat. They came into the Commission
25 pretty soon after Citizens joined wabash and gave a

1 presentation to the Commission. So from that presentation,
2 that is -- and looking at their web page since then, that
3 would be the base of my knowledge.

4 Q. Does wabash valley provide power to Citizens?

5 A. Yes.

6 Q. And does Citizens serve end users?

7 A. Yes.

8 Q. Does wabash valley serve end users?

9 A. No.

10 Q. Okay. Now, let's look at AEP. Are you
11 familiar with what AEP is?

12 A. Not as familiar as I am with wabash, but yes.

13 Q. Okay. Is it a large utility?

14 A. Yes, it is very large.

15 Q. Okay. Do you know whether it buys and sells
16 power?

17 MR. BYRNE: I'm going to object to this as
18 being outside the scope of anything any of the Commissioners
19 asked.

20 MR. MILLS: This is all about the definition
21 of "requirements" and how it applies to the AEP and the
22 wabash contracts.

23 JUDGE WOODRUFF: I'm going to overrule the
24 objection.

25 THE WITNESS: I believe they are probably very

1 active in trading on the market, selling -- buying and
2 selling, and if they can purchase and then resell it for a
3 better price, they do. Just like one of our utilities would.

4 BY MR. MILLS:

5 Q. Okay. So if UE enters into a contract with a
6 municipality, do you know where the power is going to go to?

7 A. It goes to that municipality, to their
8 customers.

9 Q. Okay. And if UE sells power to AEP, do you
10 know where the power is going to go to?

11 A. No, I do not.

12 Q. Is it possible it could be resold to another
13 utility?

14 A. It's very possible.

15 Q. Okay. In the case of AEP, how can you be
16 assured that AEP is using power under the AEP contracts at
17 issue here for its own requirements?

18 A. I don't believe you could.

19 Q. Okay. Does the fact that the contract itself
20 puts in the word "requirements" give you any assurance?

21 A. No.

22 Q. Okay. And with respect to Wabash Valley, is
23 it even possible that Wabash Valley can use that power to
24 serve its own end-use customers?

25 A. It doesn't have end-use customers.

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

3 JUDGE WOODRUFF: All right. For MEG?

4 MS. LANGENECKERT: No questions.

5 JUDGE WOODRUFF: MIEC?

6 MR. ROAM: Just a couple questions.

7 RECROSS-EXAMINATION

8 QUESTIONS BY MR. ROAM:

9 Q. Do you remember when you were asked questions
10 about what Ameren could have done after the storm and after
11 the application for rehearing was denied -- well, let's just
12 say after the storm, when you were speaking with Chairman
13 Clayton?

14 A. Yes, I believe Chairman Clayton and
15 Commissioner Davis both asked those.

16 Q. Commissioner Davis. Okay. Could Ameren have
17 requested to cancel or withdraw the FAC?

18 A. Yes.

19 Q. Did they do that in their application for
20 rehearing?

21 A. No.

22 Q. would that have resolved this issue?

23 A. It might have created some others, but it
24 would have resolved this one, yes.

25 Q. Okay. Do you recall speaking with

1 Commissioner Kenney and Commissioner Jarrett about the
2 meaning of that clause that is at issue that's in tariff
3 sheet 98.3, about the meaning of the terms in that clause?

4 A. Yes.

5 Q. What is your opinion about how that clause --
6 not how that clause -- not how you interpret that clause. I
7 guess the question is: Can people interpret that clause
8 differently? Can reasonable people come to disagreements
9 about what that clause means within the context of tariff
10 sheet 98.3?

11 A. Obviously, that's what this whole hearing is
12 about.

13 Q. In that respect, is that clause ambiguous?

14 A. Yes.

15 Q. Who drafted that clause?

16 A. Someone in AmerenUE.

17 Q. Do you know who?

18 A. It was sponsored by Marty Lines and his direct
19 testimony in Case ER-2008-0318.

20 MR. ROAM: No further questions. Thank you.

21 JUDGE WOODRUFF: For Ameren?

22 MR. BYRNE: Yes, Your Honor.

23 RECROSS-EXAMINATION

24 QUESTIONS BY MR. BYRNE:

25 Q. Ms. Mantle, let me see if I understand this

1 right in terms of --

2 JUDGE WOODRUFF: I don't think your
3 microphone's on.

4 BY MR. BYRNE:

5 Q. Let me see if I understand your testimony
6 correctly about what would happen before, during, and after.
7 As I understand it, before we had a fuel adjustment clause,
8 Ameren would have been able to -- able to address Noranda --
9 the loss of Noranda load by selling the volumes in the
10 off-system market and making itself whole in that way; is
11 that correct?

12 A. Yes.

13 Q. And after the end factor, we would -- we would
14 have been protected by the end factor, right? So if this
15 situation had occurred after the end factor was in effect, we
16 would have been protected in that situation from a loss of
17 revenues; is that right?

18 A. I believe that's what the end factor was
19 designed for.

20 Q. So all we've got is a relatively limited
21 period of time here, like from -- I guess from March 1, 2009,
22 until the end factor was approved; when was that, do you
23 know?

24 A. I think it went into effect when the tariffs
25 went into effect, which would have been late June 2010.

1 Q. Okay. So in this little window of time from
2 March of 2009 until June of 2010, that's where we can't
3 protect ourself from this kind of loss; is that correct?

4 A. You cannot recover -- or you cannot cover
5 those losses through revenues from off-system sales because
6 of the tariff that you were under.

7 Q. But only during that narrow window of time,
8 right? Year and a half period out of our hundred-year
9 history, I guess; is that right? Because the end factor lets
10 us use off-system sales revenues to protect against this and
11 before there was any FAC, we could use off-system sales; is
12 that correct?

13 A. I don't want to reveal what happened in the
14 settlement conferences, but there could have been other
15 possibilities, yes.

16 Q. Let me ask you this: You said, I think when
17 you were talking to maybe Commissioner Clayton or
18 Commissioner Davis, but I think you said, if only we would
19 have gone to the Staff after -- after the request for a
20 hearing was denied, right? You know, maybe we could have --
21 something could have been done; do you recall that testimony?

22 A. Yes.

23 Q. What could have been done?

24 A. I don't know. But we've always had a history
25 of working with utilities to resolve their problems, you

1 know, things that on the outside initially people would say
2 we would never get to where we were. But we could have come
3 up with a settlement on how to deal with these revenues, how
4 to recover, give some of the revenues back to AmerenUE. I
5 don't know what might have been the outcome. AmerenUE could
6 have filed something, the parties could work together.

7 Q. So you can't tell me now what a possible
8 resolution would have been if we would have come and talked
9 to Staff?

10 MR. ROAM: Objection. This has been asked and
11 answered several times now.

12 JUDGE WOODRUFF: Overruled.

13 THE WITNESS: No, I cannot tell you.

14 BY MR. BYRNE:

15 Q. Okay. And do you know if it's possible to
16 change an FAC tariff in between rate cases?

17 A. I don't know.

18 Q. Okay.

19 A. Other tariffs are changed between rate cases.

20 Q. I think in response to one of Commissioner
21 Davis' questions, you said that there was some extra revenue
22 beyond what was needed to make Ameren whole for the Noranda
23 loss. Do you recall that?

24 A. Yes.

25 Q. Do you know how much extra revenue there is?

1 A. No, I do not. And if I did, it would have
2 been part of the settlement discussions, and I can't reveal
3 that here.

4 Q. Isn't it true -- aside from the settlement --
5 I know there was a settlement, but just whatever was extra
6 was very small compared to the amount of revenue that was
7 involved; would you agree with that?

8 A. Yeah.

9 Q. And it was the subject of a settlement, right?

10 A. We did discuss that when we -- in the last
11 case.

12 Q. Okay. We discussed the little bit of extra
13 revenue, right?

14 A. We discussed all of this in the last rate --
15 in the last case.

16 Q. Okay. Mr. Mills talked to you about the
17 difference between selling to municipalities versus --

18 MS. OTT: I'm going to object. Redirect is
19 supposed to be based -- or cross is supposed to be based on
20 questions from the bench, not from questions from the other
21 parties.

22 MR. BYRNE: Well, I can -- I mean, Mr. Mills
23 was asking about a subject from the bench. I can ask about
24 that subject as well.

25 JUDGE WOODRUFF: Correct. Overruled.

1 BY MR. BYRNE:

2 Q. Okay. Mr. Mills, in dealing with questions
3 from the bench, was asking about the difference between
4 municipalities and AEP, for example.

5 And I guess my question for you is: Do you
6 know of anything that prevents a municipality from selling
7 power?

8 A. No.

9 Q. Isn't it true that municipalities sell power
10 all the time?

11 A. I don't -- I'm not aware of it, no.

12 Q. Do you know if they do or not?

13 A. I don't know.

14 Q. Okay. Let me say it another way. For all you
15 know, municipalities are selling power all the time; is that
16 true?

17 A. If a municipality sells power, it will have to
18 be one of the large municipalities. Many of these
19 municipalities have three -- very few workers that cover the
20 electric distribution system, the water and sewer, and they
21 aren't sophisticated enough to go out there and sell on the
22 market.

23 Q. Do you know if MJMEUC, do you know what that
24 is?

25 A. Yes, I do.

1 Q. Do you know if they sell power on behalf of
2 their member municipalities?

3 MR. MILLS: Judge, I'm going to have to object
4 to this, beyond the scope of any questions from the bench.
5 We never talked -- nobody asked anything about MJMEUC and
6 whether they buy and sell power. It's an entirely different
7 issue.

8 JUDGE WOODRUFF: There was a discussion about
9 whether municipalities sell power, so I'll allow it.

10 MR. MILLS: Municipalities, but not MJMEUC.

11 JUDGE WOODRUFF: Well, I'll overrule the
12 objection.

13 THE WITNESS: And the question again?

14 MR. BYRNE: The question is -- well, maybe the
15 question -- if the court reporter could read back the
16 question because I'm not sure I can state it.

17 (The question was read.)

18 THE WITNESS: No, I do not.

19 BY MR. BYRNE:

20 Q. Okay. I think -- I think you testified in
21 response to questions from some of the Commissioners that
22 Ameren should have taken into account this risk, I guess the
23 risk of losing Noranda in an ice storm when it -- when it
24 entered into a contract with Noranda. Do you remember that?

25 A. Not just losing it due to an ice storm, but it

1 going out of business, closing its doors. All of that should
2 have been part of the consideration of risk when they signed
3 the contract with Noranda.

4 Q. And what should we have done to take into
5 account that risk?

6 A. I think you should weigh the revenues that you
7 would receive from Noranda versus the possibility that it
8 wouldn't be there anymore and those revenues would not be
9 collected. Of course, those revenues would not be collected
10 only until you could get another rate case.

11 So you have to weigh those, you know, and
12 that's part of the management prerogative that Commissioner
13 Davis was talking about.

14 Q. But aren't the -- aren't the revenues that we
15 get from Noranda the subject of tariff rates approved by the
16 Missouri Public Service Commission?

17 A. That was a choice made by Noranda and
18 AmerenUE.

19 Q. But the amount of the rates is set by the
20 Public Service Commission, is it not?

21 A. Yes, it is.

22 Q. Do you think when the Missouri Public Service
23 Commission set the rates, they included the risk of losing
24 Noranda to an ice storm in their consideration?

25 A. I believe they utilized information on the

1 cost to serve Noranda, just like they did any of the other
2 class cost of service classes when they set the rates.

3 Q. Commissioner Clayton asked you a little bit
4 about the timeline, and I just want to -- I mean, my
5 understanding is that the order was issued by the Commission
6 in ER-2008-0318 on January 27th.

7 Does that sound like a date that's right to
8 you? I think you said it was in February.

9 A. It may have been late January. It was after
10 that ice storm. Not too much, though.

11 Q. My understanding is the ice storm was, like,
12 the 28th, 29th. Is that possible?

13 MR. MILLS: I object. That's a leading
14 question. It's -- in fact, it's very close to having a
15 lawyer testify, so I object on that basis.

16 MR. BYRNE: I'm the only lawyer that's allowed
17 to ask an adverse witness leading questions. All these other
18 lawyers are not supposed to do that.

19 JUDGE WOODRUFF: I'll overrule the objection.

20 THE WITNESS: I did not know the exact dates
21 of the storm, when the hearing came out, when the filing for
22 rehearing was done. I know the order of them. There was the
23 ice storm, the order that came out from the Commission, the
24 request for rehearing, and then very shortly after that
25 request was denied that AmerenUE entered into one of these

1 contracts.

2 BY MR. BYRNE:

3 Q. I think early in your discussion with the
4 Commissioners, you were -- you were talking about -- maybe it
5 was Commissioner Jarrett, but you were talking about what
6 long-term might be, and I think you said the utility is
7 required under the FAC to file a rate case every four years.
8 So maybe every four years would be -- or four years might be
9 a long-term; is that what you said?

10 A. That could be a very appropriate definition in
11 this case with the fuel adjustment clause.

12 Q. And would it have to -- would the four years
13 have to span two rate cases, or could it -- or could it span
14 only one rate case and stop two years into the -- into the
15 range of time between the two rate cases?

16 A. It could. Because when we set rates
17 currently, we do a historical test year, but we also look for
18 our annualization and normalization adjustments as to what is
19 likely to continue into the future.

20 Q. So if you had --

21 A. So if it was in the middle of -- two years of
22 the contract was gone and there was another two years, yeah,
23 we'd probably keep that contract in.

24 Q. What about three years on one side of the rate
25 case and one year left?

1 A. I don't know. It's according to how much the
2 contract was and how likely we thought it was that it would
3 be renewed.

4 Q. You were asked by one of the Commissioners
5 whether -- maybe it was Commissioner Clayton -- whether this
6 is a one-shot deal. Do you remember that? Or is it likely
7 to be repeated?

8 A. Yes.

9 Q. Do you remember that question?
10 Isn't it true that this is certainly a
11 one-shot deal under the facts that we have here today because
12 the end factor prevents this situation from being repeated?

13 A. This specific -- as long as the end factor is
14 in your tariff, that is correct.

15 Q. So would you agree with me that under these
16 facts, this is a one-shot deal?

17 A. But the Commission can make decisions that --
18 that affect the FAC on a going-forward basis.

19 Q. But could I get a yes or no to that question?

20 A. Is it a one-shot deal? Yes.

21 Q. Okay. I think you also said in response to a
22 question that you found out about these contracts in
23 September or October.

24 Not to rehash questions before, but isn't it
25 true that they were mentioned in Mr. Wills' direct testimony

1 in Case No. ER-2010-0036 and in his work papers filed --
2 well, the testimony was filed on July 24th?

3 A. I would not say the contracts -- the AEP and
4 wabash contracts were mentioned in his testimony. Bilateral
5 contracts were mentioned in his testimony. These -- or it
6 may not have been bilateral. But what his testimony said was
7 AmerenUE had entered into two additional contracts.

8 Q. Okay. But he testified that his work papers
9 provided the names of those contracts?

10 A. That very well could be.

11 Q. Okay. Commissioner -- no.

12 MR. BYRNE: Thank you, Ms. Mantle. I have no
13 further questions.

14 JUDGE WOODRUFF: Chairman Clayton?

15 CHAIRMAN CLAYTON: Judge, I hate to do this,
16 but I have basically two questions to ask, and I hope to be
17 very quick about this and get the other parties. But just
18 for clarification.

19 FURTHER EXAMINATION

20 QUESTIONS BY CHAIRMAN CLAYTON:

21 Q. Comparing the figure -- the dollar amount at
22 issue in this case, if the end factor tariff were applied, is
23 the dollar -- would the dollar amount be identical or
24 different than what it is? Do you know?

25 A. I don't know. We did not look at that.

1 Q. Okay. The end -- the end factor tariff, was
2 it a negotiated piece in the last case, or was it just a
3 tariff filing that was approved as it came through?

4 A. It was a negotiated part of the tariff.

5 CHAIRMAN CLAYTON: Okay. Judge, is there any
6 way that analysis could be provided, just a comparison of how
7 the end factor would apply, if it existed in this case?

8 JUDGE WOODRUFF: Is that something Staff could
9 do? I mean, it may be a complicated thing. I just don't
10 know the answer.

11 THE WITNESS: I don't know. I don't know if
12 we have enough information to do that.

13 MR. BYRNE: I think it could be, Your Honor.
14 I think we could -- I think we could figure out what the end
15 factor would be as applied to this circumstance.

16 JUDGE WOODRUFF: Is it -- do the parties
17 believe that's important or relevant?

18 MR. MILLS: Judge, if I may, one, I don't
19 believe it's relevant; and two, I don't believe it's
20 appropriate because if I could -- when I asked questions on
21 redirect, I think I will be able to elicit from Ms. Mantle
22 that the agreement on the end factor was part of an agreement
23 that settled a number of issues and had a bunch of different
24 moving parts with it.

25 So how the parties resolved this issue on a

1 going-forward basis as a tradeoff to some other things really
2 doesn't tell us a lot about how the issue should be resolved
3 in the context of this contested case. And I think it may
4 very well give a misleading result because of the other
5 factors in the settlement agreement.

6 MS. OTT: Judge, I'd also like to say it's not
7 relevant because the end factor wasn't in the tariffs that
8 are at issue in this case. So I understand what you're
9 trying to get at, Chairman Clayton, but I think it's not
10 relevant to this case because it's not the law we're trying
11 to interpret here today.

12 CHAIRMAN CLAYTON: Why are you looking at me,
13 Judge? What are you going to do?

14 JUDGE WOODRUFF: All right. Well, we'll move
15 on, then. Did you have any other questions?

16 CHAIRMAN CLAYTON: Well, what do you mean
17 we're moving on?

18 MR. BYRNE: I mean, all the other attorneys
19 talked about it being relevant, but I'm saying it could be
20 done if it's deemed to be relevant.

21 CHAIRMAN CLAYTON: I understand. I think the
22 discussion is helpful in seeing this move forward. It may or
23 may not be relevant. And if it's a complicated and
24 negotiated deal on the other piece, it may not be as helpful.
25 And, Judge, if Ms. Ott has the courage to say we can't have

1 that information, then you ought to have the courage to
2 say --

3 JUDGE WOODRUFF: Okay. You cannot have that
4 information.

5 CHAIRMAN CLAYTON: But you don't have to enjoy
6 it.

7 JUDGE WOODRUFF: All right. Anyone wish to
8 recross based on those additional questions? Yes, Mr. Mills.

9 RECROSS-EXAMINATION

10 QUESTIONS BY MR. MILLS:

11 Q. Ms. Mantle, were there other items in the
12 negotiation that ultimately resulted in the stipulation and
13 agreement that included the end factor?

14 A. Yes.

15 Q. One or two, a lot?

16 A. A lot. It was the whole -- it was the whole
17 tariff and not only the tariff, but other aspects of the
18 case.

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

20 JUDGE WOODRUFF: Okay. Anyone else wish to
21 recross?

22 RECROSS-EXAMINATION

23 QUESTIONS BY MR. BYRNE:

24 Q. Was one of the things that was included in the
25 negotiations the small extra amount of revenue beyond what

1 Noranda would have provided? Was that one of the things
2 considered in that settlement?

3 A. I don't think I can really --

4 Q. Well, you just -- you just named a bunch of
5 other things.

6 A. No. I didn't mention -- I think I just said
7 there was many other things. That was part -- that
8 information was part of our discussion.

9 MR. BYRNE: Okay.

10 JUDGE WOODRUFF: Any other recross? Redirect?

11 REDIRECT EXAMINATION

12 QUESTIONS BY MS. OTT:

13 Q. Earlier you were having some discussions with
14 Mr. Byrne about, I guess, getting verified statements from
15 witnesses during technical conferences.

16 Does staff always follow-up with DRs on
17 everything that's been discussed in technical conferences?

18 A. No, we do not.

19 Q. Who generally attends these technical
20 conferences?

21 A. It's usually analysts and regulatory personnel
22 from the utilities and it may be -- and also attorneys.

23 Q. Now, are these people that attend these
24 technical conferences generally people that have authority to
25 make decisions in a case or can work out issues in a case?

1 A. They can work out issues, but I think it's --
2 there are also -- I mean, even Staff, there's some issues in
3 which we have to take to upper management, and I would assume
4 that they are the same way.

5 Q. But are issues resolved in technical
6 conferences?

7 A. All the time.

8 Q. And what's really the purpose behind the
9 technical conferences?

10 A. The technical conferences is to get
11 face-to-face with people to work out differences in analysis,
12 differences in positions so that the parties can understand
13 where the other party is coming from and work out -- possibly
14 work out a solution. But a lot of it is to understand the
15 other parties' position.

16 That's hard to do sometimes when -- if we have
17 to write a DR and write the exact DR to get the right answer.
18 So it's easier to talk to the people face-to-face and get
19 information from them.

20 Q. So is every -- does somebody take minutes
21 during these technical conferences?

22 A. Only in some of the AmerenUE resource planning
23 meetings that are occurring now. They do have somebody
24 transcribing every meeting.

25 Q. So --

1 A. Typically, no. Other than that, I've never
2 had anybody -- seen anybody transcribing meetings.

3 Q. And a little bit later, Mr. Byrne was talking
4 about FERC Order 888 and the fundamental changes in the
5 electric markets.

6 Have all of those changes been implemented?

7 A. Those changes have taken time to implement and
8 time to evolve. It wasn't like Order 888 was a magic pill
9 and everything changed overnight. You know, there was Order
10 889 that supplemented 888, and I believe there was Order
11 2000. RTOs were formed, independent system operators were
12 formed, the day ahead market. All of these have evolved
13 since FERC Order 888 and -- and just like everything else in
14 life, they're just constantly changing and evolving.

15 Q. So just so I understand, the energy markets
16 are still evolving today?

17 A. Yes. Some RTOs are more advanced than others.

18 Q. Now, Mr. Byrne also handed you a piece of the
19 transcript from the last rate case and had you read a section
20 of it.

21 When you were testifying in that case, were
22 you testifying that you had read those contracts?

23 A. No.

24 Q. What was your testimony based upon?

25 A. It would have been based on conversations in

1 the settlement -- or talks with AmerenUE and -- and other
2 parties in the case.

3 Q. He also brought up your deposition in which
4 you had defined requirements within it. If we were to use
5 the definition the company has interpreted requirements for
6 long-term, could there be problems with recognizing the
7 contracts in the IRP planning process?

8 A. Are you talking about the long-term portion of
9 that or --

10 Q. Yes, the long-term portion.

11 A. Yes. It would -- it would -- would not work
12 well. I mean, the resource planning process, you're trying
13 to look to see how you would meet forward loads over the next
14 30 years. And as a part of that should also consider if you
15 have excess capacity how to sell it. But a one-year contract
16 is more or less meaningless when you're doing a resource
17 planning process.

18 Q. Why is the resource planning process
19 important?

20 A. Well, in this case, it's important because
21 these municipal contracts -- the municipal loads have always
22 been forecast, been included as part of AmerenUE's forecast.
23 I did look at the 2008 filing, and they ended their forecast
24 in 2008. The municipalities, they weren't going to renew the
25 contracts. We're in 2011 now. We know that they are, so I

1 would expect to see some in their next filing, some kind of
2 forecast on their municipalities.

3 It's because the municipalities, again, do not
4 have the ability to do a forecast of their loads, to know
5 what kind of growth they're looking at. And all of that is
6 always covered by those -- if it's a full requirements
7 contract, the loads of the municipality is met for as long as
8 the contract is in effect.

9 Q. Commissioner Davis was asking you about, isn't
10 it kind of the prerogative of the utility to manage it in its
11 own way.

12 Is Staff trying to tell Ameren how to manage
13 its business through this case?

14 A. No.

15 Q. The Commissioner -- when you were discussing
16 with Commissioner Davis, you also had mentioned that it
17 wasn't imprudent for them to enter into the contracts.

18 What is the imprudence Staff is suggesting in
19 this case?

20 A. How they interpreted the tariff and how they
21 did not flow those revenues back through to the customers.

22 Q. Then you were also, I think -- I believe it
23 was Commissioner Davis, it may have been Commissioner
24 Clayton -- was discussing the risk of losing Noranda. How is
25 risk factored into a rate case?

1 A. Typically, through the ROE is one of the ways
2 that risk is -- about the only one I can think of at this
3 point.

4 Q. So is the risk of losing a customer, would
5 that be part of the analysis that the rate of return expert
6 would evaluate?

7 A. If there's a customer as large as Noranda is
8 and to that utility system, I believe it should be
9 considered.

10 MS. OTT: I don't have anything else. Thank
11 you.

12 JUDGE WOODRUFF: Thank you. Ms. Mantle, you
13 can step down.

14 It's 12:35, and we've got three more witnesses
15 left, so I need to take a lunch break, unless you're going to
16 tell me that we're going to be done with these witnesses in
17 ten minutes or something. I see heads shaking no to that, so
18 we'll take a break. We'll come back at -- let's make it
19 1:45.

20 (Whereupon, a lunch recess was taken.)

21 JUDGE WOODRUFF: Okay. We're back from lunch,
22 and it's time to get started again. We finished with Staff's
23 witnesses, and I believe the next witness is Ms. Laconte for
24 MEG.

25 (The witness was sworn.)

1 JUDGE WOODRUFF: You may inquire.

2 DIRECT EXAMINATION

3 QUESTIONS BY MS. LANGENECKERT:

4 Q. Good afternoon, Ms. Laconte.

5 A. Good afternoon.

6 Q. Could you state your name and business address
7 for the record, please.

8 A. Billie Sue Laconte, 8000 Maryland Avenue,
9 Suite 1210, Clayton, Missouri 63105.

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

11 A. I work for Drazen Consulting Group, Inc., and
12 I'm a senior consultant.

13 Q. Are you the same Billie Laconte who caused to
14 be filed in this case direct testimony which has been marked
15 as Exhibit No. 15?

16 A. Yes.

17 Q. Are there any changes to your testimony?

18 A. Yes, I do have some. At page 3 at the end of
19 line 14, it says, "Rates paid." "Rates paid" should be
20 scratched out, and it should be replaced with "payments."

21 Q. Okay.

22 A. On line 16, after the word "actual," insert
23 "revenue."

24 Q. All right.

25 A. And again on line 17, after the word "actual,"

1 insert the word "revenue."

2 Q. Okay.

3 A. On page 5, line 14, it lists -- it says the
4 word "six" twice. "Six" should be replaced with "four."

5 Q. Okay. Are those all your changes?

6 A. Yes, they are.

7 Q. Other than those changes, if you were to be
8 asked the same questions today that you were asked when you
9 prepared this testimony, would your answers be the same?

10 A. Yes, they would.

11 Q. And is this testimony true to the best of your
12 knowledge, information and belief?

13 A. Yes.

14 MS. LANGENECKERT: I would like to offer
15 Exhibit 15 into the record and tender Ms. Laconte for
16 cross-examination.

17 JUDGE WOODRUFF: Thank you. Fifteen has been
18 offered. Any objections to its receipt? Hearing none, it
19 will be received.

20 (Exhibit No. 15 was received into evidence.)

21 JUDGE WOODRUFF: And for cross-examination,
22 beginning with Staff.

23 MS. OTT: Staff doesn't have any questions
24 right now.

25 JUDGE WOODRUFF: Public Counsel?

1 MR. MILLS: No questions.

2 JUDGE WOODRUFF: MIEC?

3 MR. ROAM: No questions.

4 JUDGE WOODRUFF: Ameren Missouri?

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. MITTEN:

7 Q. Ms. Laconte, good afternoon.

8 A. Good afternoon.

9 Q. Could you first please turn to Appendix A of
10 your prepared testimony in this case?

11 A. Yes.

12 Q. Which is entitled, "Experience of Billie Sue
13 Laconte." Now, in the first paragraph of Appendix A, you
14 list the areas in which your consulting work has focused
15 since you joined Drazen Consulting in May of 1995; is that
16 correct?

17 A. Yes.

18 Q. And one of the areas listed in that paragraph
19 is contract interpretation; is that correct?

20 A. Yes.

21 Q. Now, during your deposition for this case, I
22 asked you if your testimony in this case relates to contract
23 interpretation, and you said it did not, but you did say your
24 testimony involves tariff interpretation; is that correct?

25 A. Yes.

1 Q. You also told me during your deposition that
2 you are not comfortable calling yourself an expert on
3 anything; is that correct?

4 A. That's correct.

5 Q. May I infer from that that you are not,
6 therefore, comfortable in calling yourself an expert on
7 tariff interpretation?

8 A. I said I'm not comfortable calling myself one;
9 I didn't say I wouldn't call myself one.

10 Q. well, do you call yourself an expert on tariff
11 interpretation?

12 A. Yes.

13 Q. well, I would like to explore for the next few
14 minutes the background and experience that you have that you
15 believe qualifies you as an expert on tariff interpretation.

16 You've never actually bought or sold power in
17 the wholesale power markets; is that correct?

18 A. That's correct.

19 Q. And you've never drafted or negotiated a full
20 or partial requirements contract; is that also correct?

21 A. That's correct.

22 Q. And during your deposition, you told me that
23 you do not consider yourself an expert on the retail or
24 wholesale power markets in the United States. Is that also
25 correct?

1 A. That's correct.

2 Q. And you've never consulted with a client
3 regarding a full or partial requirements power contract; is
4 that correct?

5 A. That's correct.

6 Q. And when I asked you during your deposition
7 what formal training you had that you believed qualified you
8 as an expert in utility tariffs, you told me that that
9 training consisted of your undergraduate degree in
10 mathematics and course work that you did in economics during
11 your MBA program; is that correct?

12 A. That's correct.

13 Q. Now, you did participate in
14 Case No. ER-2008-0318, but your participation in that case
15 was pretty much limited to testimony on Ameren's rate of
16 return; is that correct?

17 A. That's correct.

18 Q. You did not submit any testimony on the fuel
19 adjustment clause that Ameren proposed in that case; is that
20 correct?

21 A. That's correct, we didn't oppose it.

22 Q. And you told me during your deposition that
23 you were not involved in any of the discussions that led to
24 the stipulation and agreement as to all FAC tariff rate
25 design issues that was entered into and filed in

1 Case No. ER-2008-0318; is that correct?

2 A. That's correct, but I did see copies of the
3 stipulation.

4 Q. But my question was: You weren't involved in
5 any of the discussions that led to that stipulation?

6 A. I wasn't in the discussions, but I did see the
7 versions of the stipulation before it was filed.

8 Q. Now, would you agree with me that a major
9 issue in this case is the meaning of the phrase "long-term
10 full or partial requirement sales" that is used in the
11 definition of "off-system sales revenue" that was approved by
12 the Commission in Case No. ER-2008-0318?

13 A. Yes.

14 Q. Do you -- excuse me. Were you present in the
15 room earlier today when Ms. Mantle testified?

16 A. Yes, I was.

17 Q. Now, Ms. Mantle testified that there were no
18 changes at all in the definition of "off-system sales
19 revenue" that was approved by the Commission in
20 Case No. ER-2008-0318 from the definition that was initially
21 proposed by Ameren. Do you agree with that testimony?

22 A. It's my recollection what Ameren proposed was
23 slightly different than what was finally approved or agreed
24 upon in the stipulation.

25 Q. So you disagree with Ms. Mantle on that point?

1 A. Yes.

2 Q. Now, during your -- do you recall what changes
3 there were in the final version of the definition of
4 "off-system sales revenue?"

5 A. I remember looking at Mr. Lyons' testimony,
6 and at the end of it he had an appendix that went through
7 several of the items that are listed in the FAC tariff. And
8 for off-system sales revenue, I can't remember the exact
9 words, but I know that there was an additional few words that
10 I think referred to jurisdictional or non-jurisdictional
11 sales.

12 MR. MITTEN: Your Honor, could I ask the
13 Commission to take the official notice of the direct
14 testimony and the exhibits of Martin Lyons that was filed in
15 Case No. ER-2008-0318 so that the record is clear on what
16 exactly Mr. Lyons proposed as opposed to what was finally
17 adopted by the Commission?

18 JUDGE WOODRUFF: Do you have -- Mr. Mills, did
19 you wish --

20 MR. MILLS: Well, Mr. Lyons' testimony talked
21 about a lot more than this, and I don't know that a lot of it
22 is relevant, so I may have an objection to relevance. I
23 certainly have no objection to the Commission taking official
24 notice of sheet 98.3 as an attachment to Mr. Lyons'
25 testimony.

1 JUDGE WOODRUFF: I am concerned about the
2 Commission taking official notice of a large document without
3 knowing exactly what to look for. So if you can narrow it
4 down, I think it would be very helpful.

5 MR. MITTEN: I think Mr. Mills' point is
6 well-taken. I'm only interested in the exemplar tariff sheet
7 that was attached to Mr. Lyons' testimony with the proposed
8 definition of "off-system sales revenue." and is that the
9 sheet that you've just mentioned?

10 MR. MILLS: It is. It is an exemplar sheet to
11 his testimony. It was also marked as 98.3.

12 JUDGE WOODRUFF: And is that -- which portion
13 of his testimony? This is pre-filed testimony?

14 MR. MITTEN: It was pre-filed direct
15 testimony, Your Honor.

16 JUDGE WOODRUFF: Okay. The Commission will
17 take administrative notice of that document.

18 MS. LANGENECKERT: Would you like the schedule
19 number of that?

20 JUDGE WOODRUFF: That would certainly be
21 helpful as well.

22 MS. LANGENECKERT: It is MJL-E1-1.

23 JUDGE WOODRUFF: Okay.

24 BY MR. MITTEN:

25 Q. Ms. Laconte, during your deposition, you told

1 me that you agreed that if a word or phrase in a document
2 drafted by someone else is unclear, that asking the drafter
3 for clarification is a good way to determine what the drafter
4 meant when he or she used the confusing word or phrase. Do
5 you recall that?

6 A. Yes, I do.

7 Q. So tell me, since you agree that the
8 intentions of the drafter are important, did you ever ask
9 anyone from Ameren Missouri what the company meant by the
10 phrase "long-term full or partial requirement sales" as it's
11 used in the definition of "off-system sales revenue" in the
12 fuel adjustment clause tariff?

13 A. Are you talking about the proposed tariff or
14 about the one that was agreed upon in the stipulation?

15 Q. Either one.

16 A. No, I didn't.

17 Q. In fact, during your deposition, you told me
18 that you have no idea what meaning Ameren Missouri intended
19 by the words used in the definition of "off-system sales
20 revenue" that the company proposed as part of its fuel
21 adjustment clause; isn't that correct?

22 A. I think when you asked me that question, you
23 were referring to what was filed in the direct testimony as
24 opposed to what was filed -- or what was approved in the
25 stipulation, and so my answer was yes, I didn't know what

1 Ameren's intentions were when they filed their direct
2 testimony with that definition in it.

3 Q. Do you know what Ameren's intentions were with
4 respect to the definition of off-system sales revenue that
5 ultimately was approved by the Commission in ER-2008-0318?

6 A. I know what my understanding is of the
7 definition of off-system sales revenue. I can't tell you
8 what Ameren's intention or what Ameren's thinking.

9 Q. Well, my question was Ameren's intention, and
10 I think you answered that.

11 Now, for purposes of your testimony in this
12 case, you rely solely on the FERC Form 1 to define the words
13 used in the phrase long-term full or partial requirement
14 sales; is that correct?

15 A. Yes.

16 Q. Now, looking at the definition of "off-system
17 sales revenue" that was included in the fuel adjustment
18 clause approved by the Commission in Case ER-2008-0318, tell
19 me, what is it about the language in that tariff that
20 convinced you that the FERC Form 1 definitions should apply
21 to the word -- to the phrase "long-term?"

22 A. I'm sorry, you'll have to repeat the question.
23 Can you break it up? It would be easier for me then.

24 Q. I don't know that I can break it up, but I'll
25 be happy to repeat it.

1 A. Okay.

2 Q. Looking at the definition of "off-system sales
3 revenue" that was approved by the Commission in
4 Case No. ER-2008-0318 --

5 A. Uh-huh.

6 Q. -- can you tell me what was it about that
7 definition that convinced you that the FERC Form 1 definition
8 should apply to the term "long-term" as used in that
9 definition?

10 A. Well, when I was reviewing it, usually when we
11 review tariffs, we do look at what utilities -- we look at
12 their FERC Form 1 to see how they classify something. It's a
13 public document -- or part of it is public, so we just
14 assumed that what the utility, when they filed that, the way
15 they classified it, was the same thing as was in the tariff.

16 Q. So when you read a utility tariff, you go
17 directly to the FERC Form 1 to see if there are any
18 definitions; is that what you're telling me?

19 A. I did in this case because there was some
20 questions.

21 Q. But what caused you to go to the FERC Form 1
22 in this case if that's not your usual practice?

23 MR. ROAM: I'm going to object. That
24 misstates the testimony. The witness did not testify that
25 this wasn't her usual practice.

1 MR. MITTEN: I'll withdraw the question and
2 restate it.

3 BY MR. MITTEN:

4 Q. I asked you previously if it is your usual
5 practice to go to the FERC Form 1 to seek definitions of
6 utility tariffs.

7 would you answer that question yes or no,
8 please?

9 A. If I have a question about a tariff, we may go
10 to the FERC Form 1 for clarification.

11 Q. And sometimes you don't go to the FERC Form 1;
12 is that correct?

13 A. That's correct.

14 Q. So what was it in this case that caused you to
15 go to the FERC Form 1 definition for the meaning of the
16 phrase "long-term?"

17 A. I would have to say that it was in discussion
18 with my co-workers that we decided that we should say, well,
19 what does this mean? well, let's look in the FERC Form 1,
20 maybe that will give us some answers as to what "long-term
21 full and partial requirements contract" means.

22 Q. And was it your impression that the
23 definitions that were included on page 310 of the
24 instructions of the FERC Form 1 represented FERC's definition
25 of "long-term?"

1 A. Yes.

2 Q. Now, did you read Mr. Haro's surrebuttal
3 testimony that was filed in this case?

4 A. Yes, I did.

5 Q. Do you recall that in that testimony, Mr. Haro
6 included an excerpt from a recent FERC decision that said it
7 was the FERC's longstanding practice to treat contracts of
8 one year or more in length as long-term?

9 A. Yes, I recall that, but that's not what it
10 says in the FERC Form 1.

11 Q. I understand that. But would you agree that
12 that suggests that there may be more than one definition of
13 "long-term" that the FERC uses?

14 A. Sure.

15 Q. Looking again at the definition of "off-system
16 sales revenue" that was included in the fuel adjustment
17 clause tariff approved by the Commission in ER-2008-0318,
18 what was it in that tariff language that convinced you that
19 the definition in the instructions of the FERC Form 1 should
20 apply to the word "requirements" as it's used in that tariff?

21 A. Well, again, I discussed with my co-worker the
22 definition. We decided to look at the FERC Form 1, and
23 there's a clear definition in there of "requirements." So it
24 just made sense to me that, since the utility classifies it
25 that way and also files that report with the state, that that

1 was what the definition means.

2 Q. So you assumed that that's what Ameren
3 intended when it drafted -- used the word "requirements" in
4 the tariff; is that correct?

5 A. Yes.

6 Q. Now, do you know if wholesale power markets
7 define the word "requirements" differently than
8 "requirements" as defined for purposes of the FERC Form 1?

9 A. I'm not sure.

10 Q. Have you read Duane Highley's surrebuttal
11 testimony in this case?

12 A. I briefly reviewed it.

13 Q. Do you recall that Mr. Highley testified that
14 in his 27 years' experience buying and selling power in the
15 wholesale power markets, he has never once heard anyone refer
16 to the FERC Form 1 definitions in the negotiations of
17 wholesale power contracts?

18 A. Yes, I can understand why that's not discussed
19 in the negotiation of a wholesale power contract, but we're
20 talking about tariff here that the Commission has to review
21 and make a decision on. Just because that's what the terms
22 are that are used when you negotiate a contract does not mean
23 that that's what the Commission has to use for their
24 definition.

25 Q. Well, if Mr. Highley is correct and there is a

1 definition of requirements in the wholesale power markets
2 that is different from the definition of "requirements"
3 that's included in the instruction to the FERC Form 1, is
4 that something the Commission ought to take into
5 consideration in interpreting the tariff at issue in this
6 case?

7 A. I think that's something Ameren should take
8 into consideration when they negotiated the tariff.

9 Q. Well, that wasn't my question.

10 A. You're right.

11 Q. Do you think that's something that the
12 Commission should take into consideration in deciding the
13 issues in this case?

14 A. I think the Commission should take into
15 consideration all the information they're given.

16 Q. Now, do you also recall that in both Mr. Haro
17 and Mr. Highley's testimony, they stated that if a power
18 supply contract contains a requirement for both capacity and
19 associated energy, then it's considered a requirements
20 contract?

21 A. Are you saying, do I remember seeing that in
22 the testimony?

23 Q. Yes.

24 A. Yes, I do.

25 Q. Do the AEP and Wabash contracts each contain

1 requirements for both capacity and associated energy?

2 A. Yes. However, I would like --

3 Q. I don't have a question.

4 A. Okay. I was just going to add a little more.
5 Thought it might help.

6 Q. Now, you state in your prepared testimony that
7 Ameren did not project the loads for either the wabash or AEP
8 contracts in its system resource planning; is that correct?

9 A. Yes.

10 Q. But you told me during your deposition that
11 prior to filing your testimony in this case, you had not
12 reviewed any of Ameren's IRP filings; is that correct?

13 A. That's correct. But when I respond to that,
14 my understanding was that in preparation for this testimony,
15 had I reviewed their IRP filings. I participated in the 2008
16 IRP development, I was in the meetings, and I reviewed the
17 2008 IRP filing when it was made in February of 2008.

18 Q. So you did review the filing, but it was well
19 in advance of your testimony in this case?

20 A. Yes, yes.

21 Q. Thank you for clearing that up. So based upon
22 your participation in Ameren's 2008 IRP case, do you know
23 whether the load that was used to serve the AEP and wabash
24 contracts was included in that IRP filing?

25 A. As far as I know, it was not.

1 Q. It was not?

2 A. That AE -- you're asking me if AEP and
3 Wabash --

4 Q. If the load that Ameren used to serve those
5 two contracts, was that load included in Ameren's 2008 IRP
6 filing?

7 A. How do you define that load?

8 Q. The load that was used by Ameren to serve
9 those two contracts.

10 A. I don't think it was included in there.

11 Q. Was the Noranda load included in the 2008 IRP?

12 A. Yes.

13 Q. And is it your understanding that, because
14 Ameren had -- or excuse me, Noranda had curtailed service,
15 that Ameren used a portion of the Noranda load to serve the
16 AEP and Wabash contracts?

17 A. Yes, they could have.

18 Q. They could have? You don't know that that's
19 what they did?

20 A. I'll assume that they did.

21 Q. Well, if they, in fact, used the Noranda load
22 to serve the AEP and Wabash contracts, was that Noranda load
23 included in Ameren's 2008 IRP filing?

24 A. If it was included in there, then it should
25 have been listed as RQ in their FERC Form 1.

1 Q. well, didn't you tell me a moment ago that the
2 Noranda load was, in fact, included in the 2008 IRP filing?

3 A. Yes, and that's in Ameren's FERC Form 1 along
4 with AEP and Wabash.

5 Q. I think the record's clear enough on that.

6 Ms. Laconte has an MBA in finance, and you
7 have testified before this Commission on more than one
8 occasion on cost of capital issues; is that correct?

9 A. Yes.

10 Q. Now, based on your experience, are you
11 familiar with the term "intermediate bond" as it's used in
12 the securities market?

13 A. I don't know the exact definition of it.

14 Q. You don't? But there is a term "intermediate
15 bond" used in the securities market?

16 A. Yes.

17 Q. But you don't know what the length of that is?

18 A. No, I do not.

19 Q. Is there also a term "long-term bond" used in
20 the securities market?

21 A. Yes.

22 Q. And is a long-term bond different than an
23 intermediate-term bond?

24 A. Yes.

25 Q. Do you know how the securities market defines

1 long-term bond?

2 A. Could be ten years, could be thirty years.

3 Q. So you don't know; is that what you're telling
4 me?

5 A. Well, it depends. It used to be thirty years,
6 and then they didn't have them for awhile and everybody went
7 to ten years, and now they're back to thirty.

8 Q. Well, do you know the definition of
9 "long-term" --

10 A. I don't know the exact definition of a
11 long-term. I think I answered it.

12 Q. Would you agree with me that, even though the
13 term "'intermediate" and "long-term bond" are used in the
14 securities market for regulatory purposes, every debt
15 security that's more than 12 months in length is considered
16 to be long-term debt?

17 A. I'm sorry, did you say for regulatory
18 purposes?

19 Q. Yes.

20 A. Yes, for regulatory purposes, that's how debt
21 is defined.

22 Q. Now, could you please turn to page 7 of your
23 pre-filed testimony? And beginning at line 9 of that
24 testimony, you state, "The point of the FAC tariff is to flow
25 through 95 percent of the change of net fuel costs regardless

1 of outcome." Is that correct?

2 A. Yes.

3 Q. Now, you told me during your deposition that
4 you used the phrase "regardless of outcome" to include
5 situations where the operation of a fuel adjustment clause
6 would prevent a utility from having a sufficient opportunity
7 to earn a fair return on equity; is that correct?

8 A. Yes.

9 Q. And you also told me that you used the phrase
10 "regardless of outcome" to include situations where the
11 operation of the fuel adjustment clause would result in a
12 huge profit windfall for the utility; is that correct?

13 A. Yes.

14 Q. Are you familiar with Section 386.266, which
15 is the Missouri statute that authorizes the Commission to
16 approve fuel adjustment clauses for utilities in this state?

17 A. I'm familiar with it.

18 Q. well, based on your understanding of that
19 statute, is the Commission authorized to approve a fuel
20 adjustment clause that will in some situations prevent a
21 utility from earning a sufficient rate of return on equity
22 and in other situations allow it to earn a windfall profit?

23 A. I think it depends on how you define
24 "sufficient" and "windfall." If it results in a utility
25 earning 400 basis points or more below the return on equity,

1 then yes, they should not authorize that tariff. If it
2 results in the utility -- the effect of the tariff means that
3 the utility earns 100, 200 basis points below the return on
4 equity, then yes, I think they can authorize that.

5 Q. well, if 400 basis points below the return on
6 equity is too much, what's a range that you're comfortable
7 with?

8 A. 100 to 200 basis points.

9 Q. So if the operation and the fact that the fuel
10 adjustment clause that the Commission approved only resulted
11 in reduction of a utility's earnings by 100 or 200 basis
12 points, it's your understanding of the statute that that's
13 permissible?

14 A. Yes. Because when the Commission authorizes a
15 return on equity, they also build in what's called a risk
16 premium, and that takes into consideration the risk that a
17 utility faces. Some of that is financial risk, others is
18 business risk. In this case, the FAC is business risk.

19 Q. And is it your understanding that, in setting
20 the rate of return for Ameren Missouri in
21 Case No. ER-2008-0318, the Commission specifically considered
22 the business risk to Ameren of losing the Noranda load?

23 A. I don't know if the Commission specifically
24 considered that when they determined the return on equity. I
25 do know that the Commission is well aware of business risks

1 that the utility faces, especially the risk of Noranda. At
 2 the time the Commission authorized return on equity, that's
 3 when the financial markets had just fallen. Everyone was
 4 questioning what was going to happen. And at that point, I
 5 think Noranda even themselves was questioning whether they
 6 were going to stay in business.

7 Q. Well, perhaps you're not in a position to
 8 opine on what the Commission considered, so let me ask: When
 9 you filed rate of return testimony in Case No. ER-2008-0318,
 10 did you specifically discuss the business risk to Ameren of
 11 losing the Noranda load?

12 A. I didn't specifically mention Noranda, but I
 13 as I recall, I discussed the load profile -- or not the load
 14 profile, but the type of customers they have and the design
 15 of the tariffs as business risk.

16 Q. So it's your testimony today that generally
 17 discussing the load profile for a utility like Ameren is the
 18 equivalent of discussing the business risk of losing the
 19 customer the size of Noranda?

20 MS. LANGENECKERT: I think he's
 21 mischaracterizing what she's saying.

22 MR. MITTEN: I was just asking her a question.
 23 I wasn't characterizing anything.

24 JUDGE WOODRUFF: I'll overrule the objection.

25 BY MR. MITTEN:

1 Q. Is it your testimony today that a general
2 discussion of the business risk profile of a utility like
3 Ameren Missouri is equivalent to specifically discussing the
4 business risk associated with losing a load the size of
5 Noranda?

6 A. Well, when you say a general discussion of the
7 load forecast, I think we don't just say some load forecast.
8 We look at the makeup of the utility and what their -- what
9 type of customers they have. And so the Commission is well
10 aware of the type of customers that AmerenUE has.

11 Q. Well, Ms. Barnes, in her testimony, indicated
12 that Noranda represented 4.4 percent of Ameren's load. Do
13 you recall that testimony?

14 A. Yes, I do.

15 Q. Do you know of another utility in Missouri
16 that has a single customer that represents 4.4 percent of its
17 load?

18 A. I'm not aware of that.

19 Q. And if Ameren is unique among Missouri
20 utilities in that consideration, you don't think that that
21 warrants specific discussion in the cost of capital testimony
22 with regard to the business risk that the company is facing?

23 A. I think that business risk and as it's defined
24 includes the makeup of the utilities, customers, and implicit
25 in that is that the Noranda load was part of AmerenUE's --

1 was part of their load and that there is that risk that
2 Noranda could be lost, the load could be lost, and the
3 Commission was well aware of that when they determined the
4 return on equity.

5 Q. And you're sure the Commission was well aware
6 of it? Because you weren't sure a moment ago.

7 MR. ROAM: Objection. Is that a question?

8 THE WITNESS: I don't think that's what I
9 said. I think what I said was I wasn't aware of everything
10 that the Commission -- well, you're going to have to repeat
11 to me what I said, but --

12 BY MR. MITTEN:

13 Q. well, you did say that you weren't aware of
14 everything the Commission considered in issuing its Order in
15 ER-2008-0318; is that correct?

16 A. I don't recall saying that.

17 Q. Do you recall what you did say?

18 A. No.

19 MR. MITTEN: I think the record will speak for
20 itself. Thank you, Ms. Laconte.

21 THE WITNESS: You're welcome.

22 JUDGE WOODRUFF: Okay. Then we'll come up for
23 questions from the bench. Commissioner Davis, do you have
24 any questions for Ms. Laconte?

25 COMMISSIONER DAVIS: No questions.

1 JUDGE WOODRUFF: Commissioner Jarrett?

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

4 JUDGE WOODRUFF: Commissioner Kenney?

5 COMMISSIONER KENNEY: No. Thank you for your
6 time.

7 JUDGE WOODRUFF: No questions from the bench,
8 so no need for recross. Any redirect?

9 MS. LANGENECKERT: Just a couple questions.

10 REDIRECT EXAMINATION

11 QUESTIONS BY MS. LANGENECKERT:

12 Q. When was the last time that you reviewed the
13 FAC tariff that was the exemplar tariff that Marty Lyons
14 filed with his testimony in ER-2008-0318? Has it been some
15 time since you reviewed that?

16 A. I reviewed that, I would say, in November. I
17 don't think your mic's on.

18 Q. So November of 2010?

19 A. Yes.

20 Q. Okay. And did you hold up the two tariffs,
21 the one that actually was approved in the case and the one
22 that Marty submitted and looked to see if the language was
23 similar?

24 A. I remember -- I'm sorry to interrupt. What I
25 looked at was Mr. Lyons' testimony, and at the end he had, I

1 think it was an appendix. And it wasn't the actual tariff,
2 but the appendix went through the tariff and it defined the
3 terms. And so I looked at that term in there, the term of
4 "off-system sales revenue," and I looked at that and compared
5 it to what was approved.

6 Q. Okay. So it's not the actual tariff that he
7 submitted and the tariff that was approved that you feel are
8 different. It was the appendix that you're referring to when
9 you say there were differences?

10 A. Yes. When I looked at his definition of
11 "off-system sales revenue" in that appendix, it was different
12 than what was approved in the stipulated tariff.

13 Q. Okay. Now, during that actual discussion, you
14 did indicate that we were not part of the FAC testimony and
15 discussion over the stipulation, but that we had reviewed --
16 or you had reviewed the various drafts of the FAC tariff and
17 the stipulation language relating to it; is that correct?

18 A. That's right. Every time the parties would
19 come up with another version, they would circulate that among
20 all the interveners, and I would review it.

21 Q. Okay. And do you recall at any time during
22 that that Ameren gave a definition of the "long-term"
23 language in the tariff?

24 A. No, I do not.

25 Q. So it was just -- is it your impression that

1 at this point, where we are today, Ameren assumed that
2 everyone else agreed with their idea of what long-term meant?

3 A. Yes.

4 Q. Now, there was some -- the question about the
5 business risk of Noranda -- I'm sorry, the business risk to
6 Ameren of Noranda being 4.4 percent of its load. Do you
7 remember that question from Mr. Mitten?

8 A. Yes.

9 Q. Do you believe that the risk that was taken on
10 by Ameren for that 4.4 percent was a risk that Ameren
11 obviously agreed to by being part of that contract, by
12 submitting that contract with Noranda?

13 A. Yes. As I recall, Ameren actually had to come
14 and request and get approval from the Commission to serve
15 Noranda, so they should have been well aware of that.

16 Q. And many of the parties that are in this room
17 were also part of that negotiation where Noranda wanted to be
18 in a contract with Ameren; is that correct?

19 A. That's right. I participated in that.

20 Q. Okay. And do you recall there being any
21 concern among the parties that there was a risk that there
22 was that much load going to one of Ameren's customers and
23 what might happen with other customers?

24 A. I can't recall if I discussed that or others
25 discussed that with me. I do recall going back and looking

1 at my own notes that we did have that concern.

2 Q. Okay. Now, there was some -- there were a few
3 questions I'll just touch on about your education and
4 experience in this area.

5 Do you recall looking at the education,
6 experience of the various witnesses that Ameren has
7 presented?

8 A. Yes.

9 Q. And did you make any notation of those various
10 experiences and how they might compare to yours in this type
11 of situation?

12 A. Well, yes, I did, since I was questioned about
13 it at length during my deposition.

14 Q. Okay. And what did you notice?

15 A. I did notice that one of their witnesses,
16 Mr. Wills, has a BS and an MS in music. That Ms. Barnes,
17 while she does have a bachelor's in accounting, she doesn't
18 have an advanced degree and the only utility she's worked for
19 is Ameren. Mr. Haro is an electrical-mechanical engineer,
20 but he also has an MBA, but there's no emphasis listed. The
21 only utility he's worked for is Ameren. Mr. Highley is --
22 has a bachelor's and master's in engineering, and he's only
23 worked for AECI. And that Mr. Weiss has a BS in business
24 management and -- but also an MBA.

25 Q. And in that -- in noticing all that and the

1 fact that many of these parties had only worked for one
2 utility in their career in working in this field, did you
3 see -- did you think of how that might compare to the amount
4 of experience you have with various utilities?

5 A. I guess I looked at it and I thought -- I
6 questioned whether they had -- could be considered experts as
7 well -- could be considered an expert.

8 MS. LANGENECKERT: Okay. All right. Thank
9 you. That's all.

10 JUDGE WOODRUFF: All right. Then Ms. Laconte,
11 you can step down. That completes MEG's portion, and we'll
12 move on to MIEC, which I believe is Mr. Fayne.

13 MR. MILLS: And, Judge, while Mr. Fayne is
14 coming forward, can I raise a couple of housekeeping matters?

15 JUDGE WOODRUFF: Go right ahead.

16 MR. MILLS: First, I'd like to request that
17 the Commission take official notice of a small portion of the
18 transcript in ER-2010-00 -- I'm sorry, I've got the wrong
19 case there. Never mind.

20 I'd like to have the Commission take official
21 notice of the signature sheets of Union Electric's annual
22 reports for the years 2007 and 2008, which were both signed
23 by Marty Lyons.

24 JUDGE WOODRUFF: Okay.

25 MR. MILLS: Those are the annual reports which

1 include the FERC Form 1s and there was some testimony from
2 Ms. Barnes that appeared to be to the contrary yesterday.

3 JUDGE WOODRUFF: I know the 2008 annual
4 report, I believe, was put into evidence yesterday by Staff.

5 MR. MILLS: I think that is not the annual
6 report that is filed with the Commission, but that's the
7 annual report to shareholders, if I'm correct.

8 MS. OTT: That is correct.

9 MR. MILLS: So what I'm talking about is the
10 annual report that's filed with the Commission that consists
11 in part of the FERC Form 1's that we've all been discussing.

12 JUDGE WOODRUFF: And how would the Commission
13 have access to these?

14 MR. MILLS: They're filed in EFIS.

15 JUDGE WOODRUFF: Where?

16 MR. MILLS: They're part of the Commission's
17 official records. Well, one way to get to them is on the
18 resources tab, annual reports, and then you search by utility
19 and by year.

20 JUDGE WOODRUFF: Okay. And you're only
21 talking about the signature pages?

22 MR. MILLS: Yeah, because, as has been noted,
23 they're fairly lengthy reports. But the question arose
24 yesterday as to whether or not Ms. Barnes or Mr. Lyons would
25 have filed the FERC Form 1 and the annual report in 2008, and

1 the Commission can take judicial notice of its own record to
2 show that Mr. Lyons filed both 2000 (sic) and 2008 and signed
3 both of those documents.

4 MR. BYRNE: I don't have a problem with it,
5 but would it make it easier if you show them to me, I'll
6 stipulate that he signed them and maybe that's
7 administratively easier. 2007 and 2008, I hereby stipulate
8 that Marty Lyons signed them.

9 JUDGE WOODRUFF: Is that satisfactory,
10 Mr. Mills?

11 MR. MILLS: I suppose so. I don't know why
12 that's better than taking official notice of the Commission's
13 own record.

14 MR. BYRNE: It doesn't matter. If it's easier
15 to take official notice, that's fine, too.

16 JUDGE WOODRUFF: I'm just hesitant to take
17 notice of documents that aren't actually in the record.

18 MR. MILLS: At the first break, I've got them
19 here, I'll make copies and I'll mark them.

20 MR. BYRNE: See, that's why it's easier for me
21 to stipulate.

22 JUDGE WOODRUFF: That would be fine.

23 MR. MILLS: Okay. That's fine.

24 MS. LANGENECKERT: While we're taking official
25 notice of things, can I suggest something else?

1 JUDGE WOODRUFF: All right.

2 MS. LANGENECKERT: We already are taking
3 judicial notice of the FAC language that Marty Lyons
4 submitted with his testimony.

5 JUDGE WOODRUFF: Correct.

6 MS. LANGENECKERT: There is Schedule MJLE4-7,
7 which gave a complete explanation of all the revenues that
8 should be considered in the determination of the various
9 items that Mr. Lyons had with his testimony or his off-system
10 sales, and there's a couple coal sales, coal and
11 transportation. And I think that this adds to what we
12 already have taken official notice of when it comes to the
13 off-system sales.

14 JUDGE WOODRUFF: Is that another exhibit to
15 the same direct testimony that we --

16 MS. LANGENECKERT: Yes, it was. It was the
17 next page, I believe.

18 JUDGE WOODRUFF: All right. Any objection to
19 taking judicial notice of that?

20 MR. BYRNE: Just a second.

21 MR. MITTEN: Judge, we do object because I'm
22 not sure you can just take this one page out of Mr. Lyons'
23 testimony and necessarily make sense out of it. As far as
24 the tariff exemplar that I asked you to take official notice
25 of, that's simply a side-by-side comparison of what was filed

1 with what was finally approved. I think the document that
2 Ms. Langeneckert has asked you to take official notice of is
3 substantive testimony or at least an exhibit to substantive
4 testimony, and I'm not sure that one page speaks for itself.

5 JUDGE WOODRUFF: I've not seen the document,
6 so I can't really respond to that. Ms. Langeneckert, do you
7 have a response?

8 MS. LANGENECKERT: This is a table and it
9 gives an explanation or comments relating to, I guess -- I'm
10 not quite sure in accounting what the numbers are under the
11 column major and it has a 447 and then there are comments
12 relating to the various levels, and I think that if this
13 helps the Commission in determining what was meant by that
14 tariff that Mr. Lyons submitted, that it would be helpful to
15 the Commission and should be taken into account.

16 JUDGE WOODRUFF: Is the solution, then, to go
17 ahead and take in the entire testimony?

18 MS. LANGENECKERT: I don't know. We're not
19 relating to -- Mr. Lyons' testimony relates to many things in
20 addition to the off-system sales and the FAC tariffs.

21 JUDGE WOODRUFF: I was asking more for
22 Mr. Mitten. would that be acceptable to Ameren?

23 MR. MITTEN: We would be amenable to taking
24 official notice of Mr. Lyons' entire testimony and the
25 schedules that were attached thereto because the page

1 Ms. Langeneckert is asking you to take official notice of is
2 one page in a 13-page schedule, which is not
3 self-explanatory.

4 JUDGE WOODRUFF: We tried to avoid this when
5 we first brought this up, but does anyone have any objection
6 to taking administrative notice of the entire Marty Lyons
7 direct testimony? I don't see anybody raising any
8 objections, so we will take administrative notice of that.

9 when you're writing your briefs and you want
10 to refer to this, please refer to specific parts of the
11 testimony that you want the Commission to consider, and so we
12 can narrow it down in that way. All right.

13 MS. LANGENECKERT: Thank you.

14 JUDGE WOODRUFF: All right. We're ready to
15 move on then. Mr. Mills, I do have one other question. You
16 started to deal with it. It's No. 18, Exhibit 18 that was a
17 portion of the transcript proceedings in ER-2010-0036. This
18 morning I deferred ruling on that to give you more time to
19 look at that. Have you had a chance to look at that?

20 MR. MILLS: I've glanced at it, and I don't
21 have any objection at this point.

22 JUDGE WOODRUFF: All right.

23 MS. OTT: Staff had an objection to that, and
24 I would ask that all portions of Ms. Mantle's testimony in
25 that case be admitted, so that would be from page 2512 to

1 2547, and not just the single page in which Ameren was
2 seeking to admit.

3 JUDGE WOODRUFF: And can you get me a copy of
4 the entire portion that you want to have admitted as an
5 exhibit? Not this instant, I understand.

6 MS. OTT: I can give you a section.

7 JUDGE WOODRUFF: We'll have at least one more
8 break, I expect, today, so -- the way we're going, we may
9 take it very soon here. So we'll deal with that after the
10 next break.

11 MS. OTT: Okay.

12 JUDGE WOODRUFF: Okay. And Mr. Fayne is
13 waiting patiently over here.

14 (The witness was sworn.)

15 JUDGE WOODRUFF: You may inquire.

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. ROAM:

18 Q. Good afternoon, Mr. Fayne.

19 A. Good afternoon.

20 Q. Could you please state your name and your
21 business address for the record?

22 A. My name is Henry Fayne, 1980 Hillside Drive,
23 Columbus, Ohio 43221.

24 Q. And by whom are you employed and in what
25 capacity?

1 A. I am self-employed as a consultant.

2 Q. Did you prepare and cause to be filed in this
3 case direct testimony previously marked Exhibit 13?

4 A. Yes, I did.

5 Q. Do you have any corrections or amendments to
6 that testimony?

7 A. No, I do not.

8 Q. If I were to ask you the questions in that
9 testimony today, would your answers be the same?

10 A. Yes, they would.

11 Q. And is your testimony true and accurate to the
12 best of your knowledge?

13 A. Yes, it is.

14 MR. ROAM: At this time, I move to admit
15 Exhibit No. 13 into evidence and tender the witness for
16 cross-examination.

17 JUDGE WOODRUFF: Thirteen has been offered.
18 Any objections to its receipt? Hearing none, it will be
19 received.

20 (Exhibit No. 13 was received in evidence.)

21 JUDGE WOODRUFF: For cross-examination, we
22 begin with Staff.

23 MS. OTT: No questions.

24 JUDGE WOODRUFF: Public Counsel?

25 MR. MILLS: Just a few, Your Honor.

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. MILLS:

3 Q. Mr. Fayne, first of all, do you have -- was
4 your deposition taken in the course of preparing for this
5 hearing today?

6 A. Yes, it was.

7 Q. And do you have a copy of your deposition
8 there with you?

9 A. Yes, I do.

10 Q. Do you recall during the course of your
11 deposition being asked questions about the importance of the
12 intent of a drafter in interpreting agreements or language in
13 general?

14 A. Yes, I do recall the question.

15 Q. And were you here yesterday for opening
16 statements?

17 A. Yes, I was.

18 Q. Do you recall Mr. Byrne in his opening
19 statement again mentioning the importance of the intent of
20 the drafter?

21 A. Specifically, I don't recall that statement.

22 Q. Okay. Now, with respect to the question of
23 what constitutes a -- a requirements contract, did you have
24 questions about that in your deposition?

25 A. Yes, I did.

1 Q. Okay. And can you summarize for me the
2 testimony that you gave in your deposition as to exactly what
3 constitutes a requirements contract?

4 A. The deposition covered, I'd have to say, two
5 types of contexts. One was what is a requirements
6 transaction in the context of the fuel clause and then what
7 is a requirements contract, I would describe it in the
8 context of the marketplace.

9 Q. Okay.

10 A. And the -- I think there's a very significant
11 distinction between those two, as I think I explained during
12 my deposition, but certainly it has been in the context of
13 testimony of the last two days requirements contract in the
14 context of a marketplace has a general definition of meeting
15 the buyer's load requirements, a transaction that meets the
16 requirements for the buyer to meet its load obligations.

17 And while there may be nuances around what
18 that definition is in the marketplace and in contracts and in
19 specific transactions in terms of duration or whether there's
20 an end use -- a direct end-use buyer or it's being resold,
21 there may be some lack of clarity around that.

22 A requirements contract in the context of a
23 fuel clause is a very different matter and I think -- because
24 it is -- really needs to be defined in the full context of
25 the regulatory rate-making treatment of the utility.

1 MR. MITTEN: Your Honor, I may have an
2 objection. Could Mr. Mills please point to where Mr. Fayne
3 described what he's testifying to in his deposition?

4 MR. MILLS: Judge, I've asked a question a
5 long time ago, and the witness is in the middle of an answer.
6 I'm not going to go back and rephrase my question at this
7 point.

8 JUDGE WOODRUFF: I'm going to overrule the
9 objection. Go ahead.

10 THE WITNESS: And as I did explain in my
11 deposition, in the regulatory context, the determination of
12 whether a requirements transaction or the terms used in the
13 tariff make sense has to how it has been developed in the
14 context of that full rate-making process.

15 BY MR. MILLS:

16 Q. And which of those two is more relevant to our
17 discussions in this case?

18 A. My belief is the only relevance is how it's
19 treated in the regulatory process.

20 MR. MILLS: Thank you. That's all the
21 questions I have.

22 JUDGE WOODRUFF: All right. For MEG?

23 MS. LANGENECKERT: No questions.

24 JUDGE WOODRUFF: For Ameren?

25 MR. MITTEN: Yes.

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. MITTEN:

3 Q. Mr. Fayne, good afternoon.

4 A. Good afternoon.

5 Q. In response to your counsel's question, you
6 said you didn't have any changes or corrections to make to
7 your testimony; is that correct?

8 MR. ROAM: I just want to object that he was
9 not questioned by his counsel -- oh, I'm sorry. Did you say
10 your counsel's?

11 MR. MITTEN: Yes.

12 MR. ROAM: Right. And he wasn't questioned by
13 his -- are you talking about the questions he was just asked?

14 MR. MITTEN: No. I was talking about your
15 qualifying questions.

16 MR. ROAM: Oh, I apologize.

17 THE WITNESS: Yes, sir.

18 BY MR. MITTEN:

19 Q. Could you please turn to the cover sheet of
20 your testimony that you filed in this case?

21 A. Yes, sir.

22 Q. If you look at the top, it says sponsoring
23 party, Noranda Aluminum, Incorporated, and if you look down
24 about the middle of the page, it says it's on behalf of the
25 Missouri Industrial Energy Consumers. Which is it,

1 Mr. Fayne?

2 A. It is on behalf of the Missouri Industrial
3 Energy Consumers.

4 Q. But in your deposition, you told me that you
5 were initially contacted by Noranda to testify in this case;
6 is that correct?

7 A. That is correct.

8 Q. And you also told me that you were charging
9 \$400 an hour for the work that you're doing in this case?

10 A. That is correct.

11 Q. And who is paying your fee, MIEC or Noranda?

12 A. MIEC.

13 Q. Now, you state in testimony that you filed in
14 this case that it's your opinion that Ameren Missouri's power
15 supply contracts with AEP and Wabash are not partial
16 requirements contracts; is that correct?

17 A. I believe I did state that in the -- that that
18 was true in the context of the fuel clause.

19 Q. Well, I'd like to ask you some questions for
20 the next few minutes about your qualifications to make that
21 determination.

22 You told me in your deposition that you don't
23 consider yourself an expert on requirements contracts for
24 electricity; is that correct?

25 A. That's correct.

1 Q. And during your deposition, you also told me
2 that during your career at American Electric Power, you were
3 not responsible for buying or selling electricity; is that
4 correct?

5 A. That is correct.

6 Q. And you were never directly involved in
7 negotiating a power supply contract. Is that also correct?

8 A. That is also correct.

9 Q. And during your tenure at AEP, you said you
10 participated in a review of a total of no more than ten power
11 supply contracts; is that correct?

12 A. I explained that I was well aware of the
13 contracts that were being in place and the transactions that
14 were taking place, but that in terms of specific contracts,
15 the most that I had reviewed were ten.

16 Q. And none of those contracts was a full or
17 partial requirements contracts; you also told me that,
18 correct?

19 A. That would be true.

20 Q. And you also told me that your review of those
21 contracts was not as a power marketer but, instead, in the
22 fulfillment of your fiduciary duties; is that correct?

23 A. That's correct.

24 Q. So you were more interested in the financial
25 terms of the contract. would that be a fair

1 characterization?

2 A. That would be a fair characterization.

3 Q. Now, the fewer than ten contracts that you
4 personally reviewed while you were at AEP, that was the full
5 extent of your involvement with buying or selling power or
6 with power supply contracts during your career at that
7 company; is that correct?

8 A. I wouldn't -- no, I would not describe it that
9 way. As I indicated, I was aware of transactions that were
10 taking place. I was in general ways involved and
11 knowledgeable about what was going on. In terms of direct
12 involvement, it was limited to those ten.

13 Q. Do you have a copy of your deposition
14 transcript?

15 A. I do.

16 Q. Could you please turn to page 23.

17 A. Yes, sir.

18 Q. would you please read the question beginning
19 at line 25.

20 A. "So reviewing fewer than ten contracts was
21 really the extent of your involvement in buying and selling
22 power while you were at AEP?"

23 Q. And your answer to that question?

24 A. My answer said, "I think that would be fair,
25 yes."

1 Q. Thank you.

2 Now, you also told me that during your career
3 at AEP, you never testified before any state or federal
4 regulatory agency about power supply contracts; is that
5 correct?

6 A. That is correct.

7 Q. You retired from AEP in 2004, and in 2005 you
8 began a career as a consultant. Is that also correct?

9 A. That is correct.

10 Q. Now, since you became a consultant, your
11 activities have focused almost exclusively on representing
12 large industrial customers in negotiating power supply
13 contracts; is that correct?

14 A. That is correct.

15 Q. And you told me during your deposition that
16 you have been involved in these types of negotiations
17 approximately four or five times; is that right?

18 A. That is correct.

19 Q. And all of the industrial customers that you
20 represent are aluminum smelters similar to Noranda; would you
21 agree?

22 A. Until recently, yes, that is correct.

23 Q. And although you are involved in negotiations
24 on behalf of these smelters, you told me that you've never
25 bought or sold energy in the wholesale power markets on

1 behalf of a client since you became a consultant; is that
2 correct?

3 A. That is correct.

4 Q. And the contracts involving the smelters are
5 all retail contracts and none is a requirements contract; is
6 that correct?

7 A. They're all retail contracts. Requirements
8 contract is not a term that would be applicable.

9 Q. Now, you did not participate in
10 Case No. ER-2008-0318 in any manner; is that correct?

11 A. That is correct.

12 Q. In fact, at the time you filed your testimony,
13 you had not even read the Commission's Report and Order in
14 that case. That's what you told me during your deposition,
15 correct?

16 A. I told you I did not recall. In hindsight,
17 when I went back, I had read it.

18 Q. So you made a mistake in your deposition?

19 A. I did.

20 Q. During your deposition, you told me that you
21 are only marginally familiar with Case No. ER-2008-0318 and
22 the events that led up to the Commission's approval of
23 Ameren's fuel adjustment clause; is that correct?

24 A. That is correct.

25 Q. And among the reasons you're only marginally

1 familiar with that case is that, prior to filing your
2 prepared testimony in this case, the only document from that
3 case that you reviewed was the fuel adjustment clause tariff
4 itself?

5 A. I -- again, that was my recollection at the
6 time. I did read the Commission order, as well as the
7 application, as well as the stipulations. I didn't recall
8 all those pieces at the time.

9 Q. So there were two pieces that you didn't
10 recall during your deposition. That was the Report and Order
11 and the stipulations?

12 A. That would be true.

13 Q. When you first read the definition of "OSSR,"
14 off-system sales revenue, that's part of the fuel adjustment
15 clause that was approved in Case No. ER-2008-0318, did you
16 have a clear understanding of what Ameren Missouri intended
17 when it used the phrase long-term full or partial requirement
18 sales in the definition?

19 A. When I read the fuel clause to evaluate it in
20 the context of this proceeding, I evaluated or I interpreted
21 the terms in the context of full rate-making and based on my
22 30 years of experience at AEP. And what I did in terms of
23 interpreting the term long-term partial requirements
24 contracts was to evaluate it in the context of how base rates
25 were set and how fuel clauses work in that context because

1 it's critical that there be consistency between those pieces.

2 So I interpreted those terms to be contracts
3 that were intended to be wholesale jurisdictional customers
4 would be the only kind of customers that would be excluded,
5 and all other sale -- wholesale sales would be treated as
6 off-system sales.

7 Q. Now, I know Mr. Mills asked you a number of
8 questions that characterized the testimony in your
9 deposition.

10 Could you direct me to where in your
11 deposition the testimony you just referenced is located?

12 A. The testimony I just referenced?

13 Q. Yes. The discussion you just referenced of
14 there being a difference between the market definition and
15 the regulatory definition.

16 MR. ROAM: I'm going to object. If counsel
17 has a specific deposition cite he'd like to direct the
18 witness to. I don't think it's fair to ask the witness to
19 review his entire deposition and try to come up with a cite
20 that counsel's seeking.

21 JUDGE WOODRUFF: I'll overrule that objection
22 because the witness indicated he knew where it was, I
23 believe.

24 MR. ROAM: That's not my recollection. If
25 we're going to give -- if we're going to ask the witness to

1 go through the entire deposition, I'll ask that we take a
2 break and let him read the entire deposition and then respond
3 to counsel's question. If he's asking him to pinpoint a cite
4 where he made a statement, the witness needs an opportunity
5 to review that deposition.

6 JUDGE WOODRUFF: I'm going to ask the witness
7 before I rule on this. Do you know what cite you're talking
8 about?

9 THE WITNESS: Oh, I was not talking about a
10 deposition. I believe the question was when did I -- how did
11 I -- how did I -- my understanding of the question I was
12 asked was when I reviewed the fuel clause, how did I define
13 the terms. And I was explaining that I do believe I did
14 discuss it in my deposition. I'd have to go find out where,
15 however.

16 JUDGE WOODRUFF: Okay.

17 THE WITNESS: But I was answering the question
18 directly, not in the context of the deposition.

19 MR. MITTEN: And my question was in the
20 context of Mr. Mills' questions to the witness as to where in
21 his deposition he made the distinction between one definition
22 of requirements for regulatory purposes and another
23 definition for market purposes.

24 MR. ROAM: It's clear that Mr. Mitten is
25 asking the witness to find a particular quote somewhere in

1 his deposition. The witness has no idea where that quote is,
2 and if this question is allowed to stand, then I'm going to
3 request that we take a break and the witness take an
4 opportunity to review his deposition and then be able to --
5 to refer to the cites that Mr. Mitten is asking for.

6 JUDGE WOODRUFF: All right. So far I've heard
7 counsel say he doesn't know where anything is. I haven't
8 heard the witness say it.

9 THE WITNESS: I think I can find a --
10 something that would be indicative, if that would be helpful
11 to move this along.

12 MR. ROAM: Okay.

13 JUDGE WOODRUFF: We are, in fact, due for a
14 break anyway. Let's take a break now. We'll come back at
15 3:00 and then we'll deal with that.

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

17 JUDGE WOODRUFF: All right. We're back from
18 our break and back on the record. And, Mr. Mitten, if you
19 want to go ahead and ask your question again and we'll see if
20 there's a response or a further objection.

21 BY MR. MITTEN:

22 Q. Mr. Fayne, were you able to locate in the
23 deposition the reference that I asked you about before the
24 break?

25 A. Yes, I did find a section which I believe is

1 responsive, which is on page 36 of my deposition, lines 2
2 through 18.

3 Q. If you could turn to page 35 of your
4 deposition.

5 A. Yes, sir.

6 Q. There's a question that begins on line 14.
7 That question is: "What do you believe the phrase 'long-term
8 full and partial requirements sales' means as it's used in
9 the fuel adjustment clause tariff that was adopted in
10 Case No. ER-2008-0318?"

11 And could you read into the record your
12 response to that question?

13 A. Starting on line 18?

14 Q. Yes.

15 A. Okay. "I interpreted those to be wholesales
16 of wholesale power" -- it should have been sales of wholesale
17 power -- "that were long-term. We can talk about what
18 long-term means in a moment, but there were obliga- -- but
19 that were obligations of the utility to ensure that the power
20 and the energy was provided in the long-term and was included
21 in the utilities resource planning effort."

22 Q. And there's a question that then begins on
23 line 24 that states, "Now, what is the basis for your
24 interpretation and what support do you have for that
25 interpretation?"

1 And that leads into the answer that you
2 identified a moment ago; is that correct?

3 A. That is correct.

4 Q. Okay. Could you read that answer into the
5 record, please?

6 A. Yes, sir. "The basis of my interpretation,
7 clearly one that the Commission can accept or not, but my
8 interpretation is years of experience in the regulatory
9 environment in terms of how one treats different types of
10 sales and the treatment of whether a sale is a system sale
11 or, as I explained through my testimony, an opportunities
12 sale really depends on how the transaction is treated in the
13 full regulatory rate-making process.

14 "And if it meets the requirement of being a
15 transaction that is in an integrated resource plan, it would
16 be a transaction that would be part of the cost of service
17 allocation. If it is not part of a cost of service
18 allocation, then it is effectively an opportunity
19 transaction. And different Commissions have different
20 treatment for that, but that is not the same as a long-term
21 full requirements transaction by my definition."

22 Q. Now, during cross-examination by Mr. Mills,
23 you talked about a distinction between the regulatory
24 environment and the market environment for the definition of
25 a requirements contract. Do you recall that?

1 A. Yes.

2 Q. And is that the distinction that you were
3 talking about, in order to be a requirements contract in a
4 regulatory environment, it has to be included in a resource
5 plan?

6 A. I believe the distinction is for it to be a
7 requirements sale in the context of the regulatory
8 environment, it needs to have cost of service treatment. I
9 used this example as part of a resource plan because that is
10 typically how it would work.

11 Q. What other cost of service treatment would
12 qualify?

13 A. I'm sorry?

14 Q. Are there other cost of service treatments
15 that would qualify other than a resource plan?

16 A. Oh, yes. I think the setting of rates base --
17 of base rates is the -- is the more important context.

18 Q. So in order to be considered a requirements
19 contract in a regulatory environment, that contract would
20 specifically have to be included in a resource plan or in a
21 utility rate-making or both?

22 A. I -- to clarify, in order to be a requirements
23 contract in a regulatory context, it has to be a transaction
24 that would typically be treated as a wholesale jurisdictional
25 customer in a base rate proceeding.

1 And the reason I'm varying a little bit from
2 what I said in my deposition right now is that the regulatory
3 process, despite all the efforts to make it so, is not
4 perfect. And there are timing issues in terms of whether --
5 when integrated resource plans are filed, when rate cases are
6 filed, and I believe it is really around intent as opposed to
7 the specifics. So it's intent on whether that sale is
8 intended to be part of a wholesale jurisdiction and it would
9 qualify to be part of a wholesale jurisdictional allocation
10 would determine whether or not it was a requirement sale.

11 Q. So during your deposition, you told me one
12 thing and today you're telling me something else?

13 A. No, I'm not telling you something else at all
14 today. I'm clarifying what I told you in my deposition.

15 Q. But some of the information that you're
16 providing today you didn't give me in your deposition; is
17 that correct?

18 A. I believe I did. I don't believe I did it
19 very clearly.

20 Q. Now, during your deposition, I asked you if
21 during your career you had ever read a document that had been
22 written by someone else where the meaning of one or more of
23 the words or phrases in the document was unclear. Do you
24 recall that?

25 A. I do recall the question.

1 Q. And you told me in response that reaching out
2 to the drafter of the document was a good way to clarify the
3 meaning of the word or phrase you didn't understand; is that
4 correct?

5 A. I don't recall the answer. Can you point me
6 to where that was?

7 Q. Certainly. Page 33 of your deposition.

8 A. I believe my answer was somewhat different.
9 The question you asked was: "would you agree with me that
10 asking for clarification from the drafter of a document is a
11 good way to determine what the drafter meant when he or she
12 used a particular term or phrase?"

13 My answer was, "As a conceptual matter, maybe.
14 It would depend."

15 Q. well, could you look on page 34 for a moment.

16 A. Yes.

17 Q. Question beginning on line 9: "well, would
18 you agree with me that asking for clarification from a
19 drafter of a document is a good way to determine what the
20 drafter meant when he or she used a particular term or phrase
21 in that document?"

22 And could you please read into the record what
23 your answer to that question is.

24 A. My answer to that was: "I would agree with
25 you that it is a good way to learn what the drafter meant.

1 It is not necessarily a good way to understand what the
2 outcome was."

3 Q. Prior to preparing your testimony in this
4 case, did you reach out to anyone at Ameren Missouri to try
5 and find out what the company meant by the phrase full or
6 partial -- long-term full or partial requirement sales as
7 used in the definition of off-system sales revenue that's in
8 the fuel adjustment clause tariff that's at issue in this
9 case?

10 A. I did not think that was relevant, so no, I
11 did not.

12 Q. Now, during your deposition, you told me that
13 the critical factor in determining whether a power supply
14 contract is a long-term requirements contract is whether the
15 commitment to support those sales is included in the
16 utilities resource planning, correct?

17 A. Yes.

18 Q. But even though you consider what a utility
19 includes in resource planning to be critical, you told me
20 that prior to filing your testimony in this case, you did not
21 review any of Ameren's IRP filings; is that correct?

22 A. That is correct.

23 Q. And prior to filing your testimony in this
24 case, you didn't review Chapter 22 of the Commission's rules
25 which governs the filing of IRPs by electric utilities in

1 Missouri; is that correct?

2 A. That is correct.

3 Q. So since you didn't read Chapter 2,
4 hypothetically speaking, if the interval between IRP filings
5 in Missouri is three years and a contract is only 30 months
6 in duration within that three-year interval, is it your
7 position that that contract could never be considered a
8 requirements contract?

9 A. In the context, again, of a fuel clause, which
10 as I explained earlier, the determination of whether it could
11 be counted as a requirements context -- contract in the
12 context of a fuel clause is really a function of whether or
13 not it is appropriate to treat as a wholesale jurisdictional
14 customer, an allocated wholesale jurisdictional customer in a
15 rate case, whether or not it physically happens that way or
16 not.

17 I would argue that a 30-month contract
18 probably never would rise to that level, whether or not it
19 was included in an integrated resource plan. So the fact
20 that it's not -- that it was something that occurred in the
21 interim between two IRPs would not be a particularly relevant
22 fact.

23 Q. And that is solely in the regulatory context
24 or in the market context as well?

25 A. Solely in the regulatory context.

1 Q. well, during your deposition, you told me that
2 a requirements contract could be any length, even as short as
3 six months; is that correct?

4 A. I -- my -- I did say that in the context of a
5 market environment.

6 Q. would you turn to page 61 in your deposition.

7 A. Yes, sir.

8 Q. Question beginning on line 7: "Is it your
9 testimony that a contract can be a full requirements contract
10 if it's any duration?" And your answer was?

11 A. I'm sorry, what line? I lost your line.

12 Q. I started the question on line 7. "Is it your
13 testimony that a contract can be a full requirements contract
14 if it's any duration?" And your answer to that question was?

15 A. My answer to that question was: "Yes." And
16 it was based on an understanding by the time we had reached
17 that stage in the deposition that we were talking about
18 market contracts.

19 Q. But you didn't say that in your response, did
20 you?

21 A. I apologize if I was not clear.

22 Q. And going to the question that begins on line
23 11: "So it can be in as little as six months?" And your
24 response was?

25 A. Again, my response is: "Yes." But, again, I

1 was -- at that point, I understood that we were talking about
2 market contracts.

3 Q. But you didn't say that?

4 A. I did not say it.

5 Q. And you didn't ask me for clarification, did
6 you?

7 A. I did not ask you for clarification. I'm
8 explaining what the answer meant.

9 Q. And the next question was, "And it can be 15
10 months?" And your answer was?

11 A. "Yes."

12 Q. "And it can be 18 months?" And your answer
13 was?

14 A. "Yes."

15 Q. Again, without any qualification?

16 A. That is correct.

17 Q. Now, you also told me during your deposition
18 that you are not familiar with Section 386.266, the statute
19 that authorizes the Commission to approve fuel adjustment
20 clauses in Missouri; is that correct?

21 A. That's correct, yes.

22 Q. So you don't know any of the requirements of
23 that statute as far as fuel adjustment clauses?

24 A. I do understand them more now. Since the
25 deposition, I read the Commission Order which describes some

1 of those requirements.

2 Q. Is there a requirement in that statute that a
3 fuel adjustment clause approved by this Commission must give
4 a utility a sufficient opportunity to earn a fair return on
5 equity?

6 A. I do believe there is, yes.

7 Q. Is there any requirement -- never mind.
8 Excuse me. Withdraw the question. I think I just have one
9 more question, Mr. Fayne.

10 Now, the two power supply contracts that are
11 at issue in this case, the AEP and the Wabash contracts, the
12 ones that you say are not requirements contracts?

13 A. Yes, sir.

14 Q. Prior to filing your testimony in this case,
15 you didn't read or review either of those contracts, did you?

16 A. Prior to that, no, I did not.

17 MR. MITTEN: Thank you.

18 JUDGE WOODRUFF: All right. Questions from
19 the bench? Commissioner Davis, do you have any questions?

20 COMMISSIONER DAVIS: No questions.

21 JUDGE WOODRUFF: All right. Commissioner
22 Kenney?

23 COMMISSIONER KENNEY: No, thank you.

24 JUDGE WOODRUFF: All right. No questions from
25 the bench, so no recross. Any redirect?

1 MR. ROAM: Just a couple very brief ones.

2 REDIRECT EXAMINATION

3 QUESTIONS BY MR. ROAM:

4 Q. Do you recall, Mr. Fayne, when counsel stated
5 that you had told him in deposition that you had not reviewed
6 any other documents other than the tariff --

7 A. I --

8 Q. -- prior to filing your --

9 A. I don't recall the question precisely, but
10 yes, I do recall something to that general nature.

11 Q. Can I have you look at page 30 of your
12 deposition? In fact, maybe we should go to page 29.

13 A. Yes, sir.

14 Q. Can you read starting at line 24 on page 29 on
15 to page 25 -- I'm sorry, 29, line 24, down to line 5 of page
16 30.

17 A. Yes. It says, "As best I can recall, I did
18 review the Staff report, I reviewed the testimony of the two
19 Ameren witnesses, Ms. Barnes and Mr. Haro, and I reviewed the
20 stipulations in the 2010 case. And I reviewed the tariff,
21 but I can't recall whether it was Ms. Barnes or Mr. Haro
22 referred to in testimony from the 2008 case."

23 Q. And then his question was, "Anything else?"

24 And your response was, "To the best of my
25 knowledge and recollection, that would be it." Is that

1 right?

2 A. Yes, that's correct.

3 Q. So when you were just questioned by
4 Mr. Mitten, he mischaracterized your deposition answer,
5 didn't he, when he said that you had told him that you had
6 only reviewed the tariff?

7 A. Without remembering the precise words, if that
8 was the characterization, yes, it would be incorrect.

9 Q. He also indicated when he was walking through
10 page 61 of your deposition, and he represented when he was
11 asking his questions that you had failed to -- to offer a
12 clarification about the distinction of the types of treatment
13 you were giving the term "requirements contracts," whether
14 you were talking about, you know, marketplace or whether you
15 were talking about in the regulatory context. Do you recall
16 him saying that?

17 A. Yes, I do.

18 Q. And do you recall apologizing for not being
19 clear?

20 A. I do.

21 Q. Okay. If you would look at page 61, starting
22 line 2, where this conversation about requirements contracts
23 is being exchanged, line 2, does your -- does your deposition
24 statement say, "when duration becomes the issue, I believe is
25 when you start looking at regulatory treatment associated

1 with that."

2 Do you see that statement?

3 A. Yes, I do.

4 Q. So was that a -- was that a qualification in
5 terms of whether you were discussing regulatory versus market
6 interpretations of requirements contracts?

7 A. Yes. In particular it is. I go back two or
8 three lines at the bottom of page 60, I think it becomes
9 clear that I was attempting to make a distinction between
10 market and regulatory. Perhaps still not clear, but there.

11 Q. Why should the Commission pay attention to
12 the -- the requirements definition within the regulatory
13 context instead of in the market context?

14 A. Well, as I explained earlier, I think the fuel
15 clause is intricately related to the way rates and tariffs
16 are established. It's just one component. And there needs
17 to be consistency between the components in order to be fair
18 to ratepayers. And it is really the regulatory environment
19 that should prevail, not the market.

20 MR. ROAM: I have no further questions, Thank
21 you.

22 JUDGE WOODRUFF: All right. Then Mr. Fayne,
23 you may step down.

24 THE WITNESS: Thank you.

25 JUDGE WOODRUFF: And MIEC can call the next

1 witness.

2 (The witness was sworn.)

3 JUDGE WOODRUFF: You may inquire.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. ROAM:

6 Q. Good afternoon, Mr. Brubaker.

7 A. Good afternoon.

8 Q. Can you please state your name and your
9 business address for the record?

10 A. It's Morris Brubaker. My address is 16690
11 Swingley Ridge Road, Chesterfield, Missouri 63005.

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

13 A. I'm sorry, off to a bad start. 63017.

14 Q. Oh, okay. And by whom are you employed and in
15 what capacity?

16 A. By the firm of Brubaker & Associates. My
17 title is managing principal and president.

18 Q. And did you prepare and cause to be filed in
19 this case direct testimony previously marked Exhibit 14 NP
20 and HC?

21 A. Yes.

22 Q. Do you have any corrections or amendments to
23 that testimony?

24 A. I do not.

25 Q. And if I were to ask you the questions in that

1 testimony today, would your answers be the same?

2 A. They would.

3 Q. And is your testimony true and accurate to the
4 best of your knowledge?

5 A. Yes.

6 MR. ROAM: At this time, I move to admit
7 Exhibit 14 NP and HC into evidence and tender the witness for
8 cross-examination.

9 JUDGE WOODRUFF: 14 NP and HC has been
10 offered. Any objections to its receipt? Hearing none, it
11 will be received.

12 (Exhibit No. 14 NP and HC has been received
13 into evidence.)

14 JUDGE WOODRUFF: And cross-examination, we
15 begin with Staff.

16 MS. OTT: No questions.

17 JUDGE WOODRUFF: Public Counsel?

18 MR. MILLS: I think just one.

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. MILLS:

21 Q. Mr. Brubaker, on your testimony at page 6,
22 this is the classic passage where you say calling a dog a
23 duck doesn't make it quack. If the words in the confirmation
24 letter or the agreement are not necessarily determinative of
25 whether a contract is requirements or not requirements

1 contract, what do we need to look to, to make that
2 determination?

3 A. I would look to the nature of the services
4 provided in the context in which they are provided and
5 whether or not in this case these contracts have
6 characteristics like the municipal contracts and whether you
7 would expect them to be included in long-term resource
8 planning. I didn't find any of those characteristics to be
9 consistent with requirements contracts.

10 Q. And when you say you didn't find any of those
11 characteristics to be consistent with requirements contracts,
12 do you mean you didn't find those characteristics in these
13 contracts?

14 A. In the AEP and Wabash Valley contracts, yes.

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

16 JUDGE WOODRUFF: MEG?

17 MS. LANGENECKERT: No questions.

18 JUDGE WOODRUFF: Ameren?

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. BYRNE:

21 Q. Good afternoon, Mr. Brubaker.

22 A. Good afternoon.

23 Q. Do you have a copy of your testimony with you?

24 A. I do.

25 Q. And do you have a copy of your deposition with

1 you?

2 A. I do.

3 Q. Do you have anything else with you?

4 A. I do.

5 Q. what-all have you got?

6 A. what-all have I got? FAC tariff, AEP, Wabash,
7 and municipal contracts. Might be a few other loose pages in
8 here.

9 Q. Okay. Let me ask you this. And I'm going to
10 be referring to your deposition if you're unsure about some
11 of these things.

12 But it's my understanding, based on your
13 deposition, that you agree with Mr. Eaves that it was not
14 imprudent for Ameren Missouri to enter into the AEP and
15 Wabash contracts; is that true?

16 A. I believe you asked me that, and I said I
17 agreed.

18 Q. And you still agree with me now?

19 A. Yes.

20 Q. Okay. And Mr. Brubaker, isn't it true that
21 you yourself have never executed an energy trade?

22 A. Never personally executed. We do advisory
23 services for many of our clients, and they actually execute
24 the trades that we agree upon and decide would be
25 appropriate.

1 Q. And my understanding is that you've never
2 traded capacity before?

3 A. Correct.

4 Q. And you've never traded ancillary services?

5 A. Correct.

6 Q. And you've never marketed any of those items?

7 A. That is also true.

8 Q. And my understanding is you do not consider
9 yourself an expert in energy trading?

10 A. In energy trading, correct.

11 Q. And you don't consider yourself an expert in
12 energy marketing; is that true?

13 A. Correct.

14 Q. Okay. Mr. Brubaker, it's my understanding
15 that, unlike some of the other witnesses, you have chosen not
16 to make an issue out of what is the meaning of long-term for
17 purposes of the tariff in this proceeding; is that correct?

18 A. It is.

19 Q. And my understanding is that you agree that in
20 the market today a lot of people talk of one year as being a
21 dividing point for long-term versus short-term; is that
22 correct?

23 A. In the market as distinguished from in the
24 regulatory arena, that would be correct.

25 Q. Okay. And you agree that one year is the

1 demarcation point between long-term electric transmission
2 contracts and short-term electric transmission contracts?

3 A. That's my understanding, yes.

4 Q. Okay. And you also agree with Mr. Weiss, I
5 think, that one year is the dividing point between long-term
6 debt and short-term debt for purposes of establishing a
7 utilities capital structure?

8 A. Generally, I think that's correct.

9 Q. Okay.

10 A. I don't know if that's true in all
11 circumstances, but in general, that would be accurate.

12 Q. Okay. Mr. Brubaker, isn't it true that in
13 your view whether a particular contract or even a particular
14 customer's load appears in the latest IRP filing is not
15 necessarily determinative as to whether it is a requirements
16 contract? And I cite you to your deposition, if you'd like
17 to see it. Page 69, line 12, I believe.

18 A. Okay.

19 Q. And I'll -- well, I'll read you the question
20 again, if you're -- are you there?

21 A. Yeah, I'm there, uh-huh.

22 Q. Okay.

23 A. What I responded to was it didn't necessarily
24 have to be in the IRP because we have issues of timing and
25 you might execute something after the IRP was filed, but yet

1 it's, say, a five-year contract that extends out into the
2 future but wasn't in the last IRP because you didn't have it
3 executed at the time you filed the last IRP.

4 Q. It's not determinative if it's not in the IRP;
5 is that fair to say?

6 A. Correct, correct.

7 Q. Let me ask you this, Mr. Brubaker: Noranda is
8 a pretty large customer as a lot of the other witnesses have
9 talked about; is that true?

10 A. Yes.

11 Q. And do you know how it compares to Ameren
12 Missouri's other industrial customers? Is it larger?

13 A. It's larger than any of the other customers.

14 Q. Is it larger than all of the other industrial
15 customers put together?

16 A. I don't know. I think it might be close.

17 Q. Do you know what load factor Noranda had for
18 their load?

19 A. They're about 98 percent load factor.

20 Q. And that's a very high load factor, isn't it?

21 A. It is.

22 Q. And what's a load factor, just so the record's
23 clear?

24 A. A load factor is the ratio between average use
25 and maximum use.

1 Q. Okay. And some of the other witnesses --
2 well, we've had some discussion about how -- what percent of
3 Ameren's load Noranda constitutes.

4 Do you remember some of the other witnesses
5 talking about that?

6 A. I do.

7 Q. And I'm going to show you Ms. Barnes'
8 testimony. I've heard the number 4.4 percent kicked around,
9 and I'd just like to clarify what that is.

10 I'm showing you Ms. Barnes' testimony on
11 page 2, and toward the bottom she talks about the 4.4. It
12 says, "However" -- could you just read that out loud, that
13 sentence.

14 A. The sentence from Ms. Barnes' testimony?

15 Q. Yeah.

16 A. "As the energy associated with Noranda's loss
17 of load represented 4.4 percent of Ameren Missouri's retail
18 customer load and approximately four percent of the base rate
19 revenue requirement from which rates in this case were
20 developed, I believe that the authorized ROE approved," et
21 cetera.

22 Q. Okay. So when she's talking about four point
23 -- here, I'll take that back. Sorry.

24 So when she's talking about 4.4 percent,
25 that's the load that was lost?

1 A. That's what her testimony indicates, yes.

2 Q. Okay. But do you know as a percent, let's
3 say, in terms of the megawatt hours for a whole year, do you
4 know what percent Noranda would represent for Ameren
5 Missouri, about?

6 A. It would be in the range of nine percent to
7 ten percent of total retail system output.

8 Q. Okay. Mr. Brubaker, in your deposition I
9 asked you some questions about partial requirements -- a
10 partial requirements contract. And let me ask you this.

11 would you agree with me that a partial
12 requirements contract provides less complete service than a
13 full requirements contract?

14 A. I kind of remember that, but do you have the
15 page cite?

16 Q. Yeah. On page -- look on page 23. I don't
17 know if I asked you that exact question. I was going to get
18 to what you said at the bottom of that page.

19 A. Yeah. We were talking here about my
20 experience in putting together contracts in the retail open
21 access environment, and I was observing some of the kinds of
22 transactions that were available at the time.

23 Q. Well, would you agree with me -- and I guess
24 it's not in your deposition. Would you agree with what I
25 asked before, which is that a partial requirements contract

1 provides less complete service than a full requirements
2 contract?

3 A. I think of that kind of distinction in the
4 retail open access market. The definition of the concept of
5 partial requirements in the regulated context, I think, is
6 more in terms of what I talked about in my testimony, which
7 is -- or maybe also in the deposition -- that a full
8 requirements contract provides all of the service that's
9 needed by a customer. A partial requirements would suggest
10 that there is more than one supplier to the customer. That's
11 the distinction I would make in this context.

12 Q. Would it be fair to say at the bottom of
13 page 23 in your deposition that you say a kind of product or
14 something that's more barebones where the utility or the
15 customer may purchase a block of power and then do hourly,
16 and it says denominations, but it probably means nominations
17 for the difference, and at the top of the next page you say
18 that's -- that's -- that would constitute a partial
19 requirements contract?

20 A. Yeah. In that context, yes.

21 MR. BYRNE: Okay. Thank you, Mr. Brubaker. I
22 don't have any further questions.

23 JUDGE WOODRUFF: Open it up for questions from
24 the bench. Commissioner Davis, any questions for Mr.
25 Brubaker?

1 COMMISSIONER DAVIS: I only have a couple.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER DAVIS:

4 Q. Mr. Brubaker, we've had a lot of discussion
5 here about the propriety of relying on the FERC Form 1
6 definitions. You've testified at FERC on numerous occasions,
7 haven't you?

8 A. A couple of times. Not numerous, I would say.

9 Q. Do you -- do you read FERC decisions?

10 A. I sometimes read FERC decisions or sometimes
11 read reports about the FERC decisions.

12 Q. Right. Is it -- it's more common that you
13 probably read reports about the FERC decisions?

14 A. Absolutely, yes.

15 Q. Do you think it's fair of me to characterize
16 FERC as having a bias towards utilities, in favor of
17 utilities?

18 A. Hmm. Fairness is a tough concept sometimes.
19 Were you to suggest to me that the utilities --

20 Q. You can rephrase the question and answer it
21 however you want to.

22 A. I may have to go back and testify at FERC at
23 some point.

24 I think at least in recent times in the areas
25 of transmission issues, my impression is that FERC is fairly

1 generous to the utilities. whether that's a bias or not or
2 just carrying out their policy positions, I leave to others
3 to judge.

4 Q. All right. So would you encourage this
5 Commission to be somewhat careful about what FERC policies it
6 chooses to adopt and borrow from?

7 A. Well, in terms of what's happening in the
8 marketplace and with transmission in particular, I certainly
9 would.

10 COMMISSIONER DAVIS: Thank you, Mr. Brubaker.
11 No further questions.

12 JUDGE WOODRUFF: Commissioner Kenney, do you
13 have any questions?

14 COMMISSIONER KENNEY: I do. Just one.

15 EXAMINATION

16 QUESTIONS BY COMMISSIONER KENNEY:

17 Q. Good afternoon, Mr. Brubaker.

18 A. Good afternoon, Commissioner Kenney.

19 Q. How do you respond to the notion that the
20 definitions that are contained on the FERC Form 1 are
21 antiquated and inappropriate for use in the wholesale -- the
22 modern wholesale market?

23 A. Well, I would draw the distinction,
24 Commissioner, between the wholesale market and trades that
25 take place among wholesale parties and the use of the FERC

1 Form 1 definitions for purposes of retail rate regulation, or
 2 I would note that the FERC Form 1's are filed with this
 3 Commission routinely, and I think I heard Staff say they
 4 start there. That's kind of a handy reference point for the
 5 accounting and for an understanding of the assets and the
 6 transactions.

7 And I think that's more relevant to what we're
 8 doing here in the regulated context. There are two clearly
 9 different aspects out there. The wholesale market is -- is
 10 not the same as the retail market. The retail regulated
 11 market, we have certain rulings and conventions. I have
 12 always considered the FERC definitions of requirements sales
 13 to be what is appropriate and important for retail
 14 regulation.

15 So I find nothing wrong with having -- having
 16 two sets of divisions because we're talking about two
 17 different markets and two different purposes.

18 Q. So the context that we're dealing with, trades
 19 between wholesale parties, is appropriate to use the FERC
 20 Form 1, and it may or may not be appropriate for trades in
 21 the wholesale market?

22 A. I think --

23 Q. Is that a fair summary of what your answer
 24 was?

25 A. Yes. I think we've heard the traders in the

1 wholesale market have different conventions and different --
2 different approaches. And, quite frankly, in the wholesale
3 market, whether you call something a short-term, medium-term
4 or long-term is not as important as how long actually is it
5 and what sort of obligations are the parties undertaking. So
6 I can well see why there are different kinds of concepts out
7 there.

8 Q. But we're not dealing with trades in the
9 wholesale market, we're just dealing in trades or contracts
10 between the wholesale parties.

11 Is that the distinction that you're drawing?

12 A. I think I'm going a little further than that,
13 Commissioner Kenney. I'm saying that what we're doing here,
14 what the Commission does, is to regulate Ameren Missouri, and
15 in so doing, it has to understand what the context is and
16 what requirements contracts I think have traditionally been
17 and how they have been treated in jurisdictional allocations
18 in rate cases. And that's a whole different matter than what
19 may be taking place among power traders in the wholesale
20 market.

21 There's certain allocation paradigms that are
22 followed and certain conventions and treatments of contracts
23 and undertakings of obligations that affect retail rates.
24 And because we have both base rates and fuel adjustment
25 clauses adjusting what customers pay, it's important to -- to

1 keep a clean distinction there and to understand the
2 implications of the contracting process.

3 Q. But Ameren's argument is that how these -- how
4 the AEP and Wabash contracts, how they're treated depends
5 upon how they are defined in the wholesale market.

6 A. I understand that's their argument. I
7 disagree with that approach. I think what's more relevant is
8 how are they -- how are they traditionally treated in retail
9 rate cases because that's what we're doing here is setting
10 retail rates. And the definition of "requirements contracts"
11 that contemplates including in the resource plan and planning
12 to provide service on an ongoing basis, I think to me is --
13 is the more compelling argument and reason for deciding how
14 to treat them.

15 COMMISSIONER KENNEY: Okay. Thank you. I
16 don't have any other questions.

17 JUDGE WOODRUFF: Thank you. We will go to
18 recross based on questions from the bench, then, beginning
19 with Staff.

20 MS. OTT: No questions.

21 JUDGE WOODRUFF: All right. For Public
22 Counsel?

23 MR. MILLS: I do have just a couple questions,
24 if I may, please. And may I approach the witness?

25 JUDGE WOODRUFF: You may.

1 RECROSS-EXAMINATION

2 QUESTIONS BY MR. MILLS:

3 Q. Mr. Brubaker, Commissioner Kenney asked you
4 some questions about whether or not the FERC Form 1 was --
5 was outdated. Do you recall that?

6 A. I do.

7 Q. And can you tell me -- and perhaps the
8 document I just handed you might refresh your recollection.

9 Can you tell me when the 2007 annual report,
10 including the FERC Form 1, for Union Electric Company was
11 filed with the Public Service Commission?

12 A. According to this, which I think is the sheet
13 that counsel for Ameren Missouri stipulated was the signature
14 sheet that accompanied that filing by Mr. Lyons, it was April
15 of 2008.

16 Q. Okay. So that was pretty much squarely in the
17 context of Case No. ER-2008-0318, in which the fuel
18 adjustment clause was approved; is that correct?

19 A. It would have been, yes.

20 Q. And, in fact, can you tell me the date on
21 which Mr. Lyons filed his direct testimony that had the
22 exemplar tariff sheets attached?

23 A. That says April 4th, 2008.

24 Q. Okay. So in the same month, Mr. Lyons filed
25 testimony defining the terms of the fuel adjustment clause

1 and the OSSR in the fuel adjustment clause, as well as
2 attesting to the accuracy of the FERC Form 1 for the previous
3 year?

4 A. Correct.

5 Q. Including the FERC Form 1 definitions of
6 "requirements contracts?"

7 A. He certified the accuracy of their filing in
8 compliance with FERC Form 1 reporting instructions.

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

10 JUDGE WOODRUFF: All right. For MEG?

11 MS. LANGENECKERT: No questions.

12 JUDGE WOODRUFF: For Ameren?

13 RECROSS-EXAMINATION

14 QUESTIONS BY MR. BYRNE:

15 Q. Mr. Brubaker, Mr. Mills was just asking you
16 about FERC Form 1. I mean, I know you hesitated, so I'm
17 going to ask you, you don't believe that Ameren certified as
18 to the validity of the instructions on the form when they
19 filed their Form 1, do you?

20 A. No. That's why I responded the way that I
21 did. So no, I don't.

22 Q. And do you know -- well, isn't it true that
23 those instructions -- I understand we make filings every
24 year, but the instructions on the filing form date back to at
25 least 1990, don't they?

1 A. Back awhile. I don't remember if it was 1990
2 or sometime in the '90s.

3 MR. BYRNE: Okay. No further questions.

4 JUDGE WOODRUFF: All right. Redirect?

5 MR. ROAM: Just very briefly.

6 REDIRECT EXAMINATION

7 QUESTIONS BY MR. ROAM:

8 Q. Commissioner Kenney was asking you about sort
9 of whose definition to adopt and -- and whether we should
10 adopt the definitions of these contracts as they may be in
11 the -- as they may or may not be used in the marketplace.

12 Specifically, the wabash and the AEP
13 contracts, do those have a particular duration?

14 A. They do.

15 Q. So whether or not they were characterized as
16 long-term, short-term, intermediate-term, is that immaterial
17 with respect to how long the duration of that contract is
18 for? In other words, do the terms of the contracts, the
19 actual duration specified in the contract control the length
20 of that contract?

21 A. It would, yes.

22 Q. So I guess what I'm asking is, is it -- is
23 it -- how important is it what that -- whether it's
24 characterized as a long-term, short-term, or
25 intermediate-term contract for purposes of the parties that

1 -- that are in the contract?

2 A. I think the characterization doesn't govern
3 itself. It's the terms of the contract, including the length
4 of contract that would define what the deal was.

5 Q. Right. But, similarly, the -- the terms and
6 conditions that are specified in the contract in terms of
7 what is to be supplied by the seller and what -- you know,
8 and what it costs to the buyer, those terms are laid out
9 within the contract as well; isn't that correct?

10 A. That is correct.

11 Q. So, again, the definition of the contract of
12 whether it is a requirements contract or not a requirements
13 contract, as between the parties, that characterization of
14 the contract would not be as important or controlling --

15 MR. BYRNE: I'm going to object to the grounds
16 that the question is leading.

17 MR. ROAM: I'll -- I'll amend my question.

18 JUDGE WOODRUFF: Okay.

19 BY MR. ROAM:

20 Q. would that characterization be as important or
21 would it be as controlling as the terms that are specified in
22 the contract itself?

23 A. No, it would not.

24 Q. So in that respect, are the terms as long-term
25 and requirements, as they're understood in the marketplace

1 versus as they're understood in the regulatory context, are
 2 those terms that are -- as they're used in the marketplace or
 3 the definitions as they're used in the marketplace,
 4 relevant -- as relevant to this proceeding as how those terms
 5 are defined in the regulatory context?

6 A. No. I think it's -- what's important is what
 7 the regulatory paradigm is, how contracts are treated, and
 8 how they're understood in the regulatory process. In
 9 particular, the concept of requirements contracts is being
 10 something that's ongoing and that the utility has plans to
 11 continue to serve either the same contract or renewed
 12 contracts or extended contracts to me is a lot more important
 13 than what traders may use to refer to contracts in the
 14 marketplace for shorthand or convenience purposes.

15 MR. ROAM: I have no further questions. Thank
 16 you.

17 JUDGE WOODRUFF: All right. Thank you,
 18 Mr. Brubaker. You can step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: I believe that's all the
 21 witnesses. We still need to do a couple exhibits. First of
 22 all, let's deal with Exhibit 18, which was the one-page of
 23 the transcript.

24 MS. OTT: Staff has made copies of the entire
 25 section of Ms. Mantle's cross-examination.

1 JUDGE WOODRUFF: Okay. Do you want to go
2 ahead and offer that as a separate exhibit or as an extension
3 of 18?

4 MS. OTT: Substitute 18.

5 MR. BYRNE: Is the --

6 JUDGE WOODRUFF: So this is a new 18.
7 Question from the court reporter, is this now a Staff
8 exhibit, or is this still an AmerenUE exhibit? And I don't
9 care, whatever you guys want to call it.

10 MR. BYRNE: I think it should be an AmerenUE
11 exhibit because it helps our case so much.

12 (Exhibit No. 18 was marked for
13 identification.)

14 JUDGE WOODRUFF: It will then still be
15 considered an AmerenUE exhibit as offered by Staff. So any
16 objections to the receipt of the new expanded 18? Hearing no
17 objections, it will be received.

18 (Exhibit No. 18 was received in evidence.)

19 JUDGE WOODRUFF: Mr. Mills, you also had some
20 documents?

21 MR. MILLS: Yes. And I've got that the
22 signature page from the annual report for the calendar
23 year 2007 and calendar 2008. It may be easier just to mark
24 them separately, but it's up to you.

25 (Exhibit Nos. 19 and 20 were marked for

1 identification.)

2 JUDGE WOODRUFF: That would be fine.

3 That's 19 and 20. Let's call 2007 19 and 2008 then will be
4 20.

5 MR. MILLS: Judge, at this time, I'd like to
6 offer Exhibits 19 and 20.

7 JUDGE WOODRUFF: 19 and 20 have been offered.
8 Any objections to their receipt? Hearing none, they will be
9 received.

10 (Exhibits Nos. 19 and 20 were received in
11 evidence.)

12 JUDGE WOODRUFF: Okay. I believe that takes
13 care of all the exhibits. Everything has been admitted. The
14 only remaining question is what to do about briefs.

15 MR. MILLS: Judge, I do have one more issue
16 and we can take it up before or after.

17 JUDGE WOODRUFF: Let's do it now.

18 MR. MILLS: Okay. With respect to the AEP and
19 the Wabash contracts that are attached, I believe, to
20 Mr. Haro's testimony, I move that the highly confidential
21 designation be removed from those based on the fact that UE
22 has chosen to distribute those to someone who is neither
23 retained by UE, nor subject to a non-disclosure agreement.
24 So that I think that, to the extent that there was any highly
25 confidential -- any reason to designate them as highly

1 confidential, I think UE has waived that by distributing them
2 to Mr. Highley.

3 JUDGE WOODRUFF: Response?

4 MR. BYRNE: He makes a good point. I think --
5 I think, you know, we marked those highly confidential, and
6 I -- but I think -- I think Mr. Mills is probably correct,
7 and I think -- and I -- perhaps I could try to get a
8 confidentiality agreement after the fact from Mr. Highley,
9 but the real truth is those contracts are historical. I'm
10 not sure it hurts us that much to have them disclosed, so I
11 guess I don't have any objection to removing the designation.

12 JUDGE WOODRUFF: All right. I'll grant Public
13 Counsel's motion then.

14 MR. MILLS: Thank you.

15 JUDGE WOODRUFF: And you'll have to change the
16 designation in EFIS, I guess.

17 Anything else anyone wants to bring up? All
18 right. Let's deal with briefs. One round of briefs, or do
19 you want two?

20 MR. BYRNE: I'd prefer two, Your Honor.

21 JUDGE WOODRUFF: All right. And I believe the
22 transcripts will be coming out in about ten days, I believe.
23 January 24th. Should be fine as far as the Commission is
24 concerned unless someone wants to expedite transcripts sooner
25 than that.

1 when do you want the briefs to be due?

2 Probably middle of February would be appropriate.

3 MR. BYRNE: Okay.

4 JUDGE WOODRUFF: Let's say February 11th for
5 initial briefs.

6 MS. OTT: That's actually a State holiday.

7 JUDGE WOODRUFF: That's a Friday.

8 MS. OTT: Do the 18th?

9 JUDGE WOODRUFF: The 18th would be the next
10 Friday.

11 MS. OTT: I just would like to point out
12 that's during KCP&L and GMO's rate cases.

13 JUDGE WOODRUFF: Yes.

14 MR. MILLS: Also when we're doing two-a-day
15 local public hearings in the UE rate case.

16 MR. BYRNE: Why don't we make it a little bit
17 earlier, then, so we get it before.

18 MS. OTT: The rate cases start on Monday, so I
19 don't think there's anything before that we can --

20 JUDGE WOODRUFF: Well, we do have a week in
21 February that we don't have anything scheduled here at the
22 Commission?

23 MR. BYRNE: That was for our gas rate case.
24 which week is the gap week?

25 JUDGE WOODRUFF: It's the week of the 7th

1 through the 11th, so that Thursday would be the 10th. So
2 February 10th for the initial briefs, and reply briefs, let's
3 say, the 24th, two weeks later.

4 MR. BYRNE: And, I'm sorry, when would the
5 transcript be available just under normal --

6 JUDGE WOODRUFF: January 24th.

7 MR. BYRNE: January 24th.

8 JUDGE WOODRUFF: I don't hear any cries of
9 pain out there that are audible anyways. So that's what
10 we'll go with. If you find that that's not going to work,
11 anybody can file a motion to change that, if you need to.

12 MR. BYRNE: I'm probably going to ask for the
13 transcript expedited for whatever that's worth.

14 JUDGE WOODRUFF: Okay. All right. Anything
15 else anyone wants to bring up? All right. Then we are
16 adjourned.

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CERTIFICATE OF REPORTER

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1780, and Certified Realtime Reporter, the officer before whom the foregoing hearing was taken, do hereby certify that the witnesses whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Jennifer Leibach, RPR, CRR, CSR, CCR

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