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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
June 21, 2012  
Jefferson City, Missouri  
Volume 2

In the Matter of the Second )  
Prudence Review of Costs Subject )  
To the Commission-Approved Fuel ) File No. EO-2012-0074  
Adjustment Clause of Union )  
Electric Company d/b/a Ameren )  
Missouri )

RONALD D. PRIDGIN, Presiding,  
SENIOR REGULATORY LAW JUDGE.  
  
TERRY M. JARRETT,  
STEPHEN M. STOLL,  
COMMISSIONERS.

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

2 (WHEREUPON, the hearing began at 8:35 a.m.)

3 (EXHIBIT NOS. 1 THROUGH 9 WERE MARKED FOR  
4 IDENTIFICATION.)

5 JUDGE PRIDGIN: Good morning. We are on  
6 the record. This is the hearing in Case No. EO-2012-0074,  
7 in the matter of the second prudence review of costs  
8 subject to the Commission-approved fuel adjustment clause  
9 of Union Electric Company, doing business as Ameren  
10 Missouri.

11 I am Ron Pridgin. I'm the Regulatory Law  
12 Judge assigned to preside over this hearing. It is being  
13 held on June 21st, 2012, here in the Governor Office  
14 Building in Jefferson City, Missouri. The time is about  
15 8:38 in the morning.

16 I would like to get entries of appearance  
17 from counsel, please, beginning with Ameren Missouri.

18 MR. BYRNE: Your Honor, I'm Tom Byrne  
19 representing Ameren, Missouri. My address is  
20 1901 Chouteau Avenue, St. Louis, Missouri 63103.

21 JUDGE PRIDGIN: Mr. Byrne, thank you. On  
22 behalf of Staff of the Commission?

23 MR. LOWERY: Your Honor, pardon me. I was  
24 going to enter my appearance as well.

25 JUDGE PRIDGIN: My apologies.

1 MR. LOWERY: Your Honor, also on behalf of  
2 Ameren Missouri, Jim Lowery of the law firm Smith Lewis,  
3 LLP, P.O. Box 918, Columbia, Missouri 65205. Thank you.

4 JUDGE PRIDGIN: Mr. Lowery, thank you. I  
5 apologize. I saw you there.

6 MR. LOWERY: Not a problem.

7 JUDGE PRIDGIN: Any further entries for  
8 Ameren?

9 MR. LOWERY: No, your Honor.

10 JUDGE PRIDGIN: Thank you. On behalf of  
11 the Staff, please.

12 MR. THOMPSON: Thank you, your Honor.  
13 Kevin Thompson and Amy Moore for the Staff of the Missouri  
14 Public Service Commission, Post Office Box 360,  
15 Jefferson City, Missouri 65102.

16 JUDGE PRIDGIN: Mr. Thompson, thank you.  
17 And as I alerted the parties before we went on the record,  
18 Mr. Mills for the Office of the Public Counsel e-mailed me  
19 yesterday and said he did not wish to participate and  
20 asked if he needed to file anything, and I told him I  
21 thought it would be adequate if I simply announced it to  
22 the parties on the record, and that way it's in the  
23 transcript. So OPC will not be participating in this  
24 hearing.

25 Entry of appearance on behalf of Missouri

1 Industrial Energy Consumers, please.

2 MR. ROAM: Yes, Judge. Brent Roam of the  
3 law firm Bryan Cave on behalf of MIEC. Our address is  
4 211 North Broadway, Suite 3600, St. Louis, Missouri 63102.

5 JUDGE PRIDGIN: Mr. Roam, thank you. On  
6 behalf of Missouri Energy Group, please.

7 MS. LANGENECKERT: Yes, Judge. I actually  
8 am appearing on behalf of Barnes-Jewish Hospital today.  
9 Missouri Energy Group is not participating in this  
10 portion. My name is Lisa Langeneckert. I am with the law  
11 firm of Sandberg, Phoenix & von Gontard. My address is  
12 600 Washington Avenue, 15th Floor, St. Louis, Missouri  
13 63101.

14 JUDGE PRIDGIN: Ms. Langeneckert, thank  
15 you. And when I go through and call out parties, is it  
16 your preference, instead of Missouri Energy Group, I ask  
17 if Barnes-Jewish has any questions?

18 MS. LANGENECKERT: Yes, please. Thank you.

19 JUDGE PRIDGIN: Very good. Any further  
20 entries? All right. Anything further from the parties  
21 before we proceed to opening statements?

22 MR. ROAM: Judge, I would just ask that,  
23 for purposes of expediency and efficiency in this case,  
24 that the Commission take judicial notice of the transcript  
25 in EO-2010-0255. That was the first prudence review that

1     dealt with the same contracts at issue in this case and  
2     the same tariff language at issue in this case.

3                     JUDGE PRIDGIN:   Do I hear any objection?

4                     MR. LOWERY:   No objection, your Honor.

5                     MR. THOMPSON:   No objection.

6                     JUDGE PRIDGIN:   Hearing none, the  
7     Commission will take notice of the transcript in  
8     EO-2010-0255.

9                     Anything further before we proceed to  
10    opening?

11                    MR. LOWERY:   Your Honor, in light of that,  
12    there was one matter in that transcript that the  
13    Commission actually took official notice of as well, and  
14    that was a particular schedule from Mr. Lyon's testimony  
15    in the 0318 rate case.   I would ask that, consistent with  
16    what we just did, that the Commission also take judicial  
17    notice or official notice of that same schedule.   I don't  
18    have a page reference, but it is specifically referenced  
19    in the transcript where the Commission took notice of  
20    that.

21                    JUDGE PRIDGIN:   Any objections?

22                    MR. THOMPSON:   No objection.

23                    MR. ROAM:   No objection.

24                    JUDGE PRIDGIN:   So noted.   The Commission  
25    will take notice of that.   Anything else from the parties

1 before we proceed to opening?

2 Real briefly, before I forget, I understand  
3 that the parties have a -- in a different case have a  
4 procedural conference set at two o'clock, and we will  
5 certainly break for that. My plan is to go until about  
6 12:30, and that will allow parties, I think, ample time  
7 for lunch and to go to your conference, and then, since  
8 it's just across the hall, I'll kind of keep an eye on  
9 what's going on, but I would say tentatively we would go  
10 back on the record here about 2:45. I talked with Judge  
11 Woodruff, and that was kind of our best guess. Obviously  
12 if we're ready earlier, we'll start earlier, and if you  
13 need more time, that's fine as well.

14 So my preference would be to take a  
15 mid-morning break, go 'til about 12:30, and then start  
16 back up here about 2:45. Any problems from any of the  
17 parties with that?

18 MR. LOWERY: No, your Honor.

19 JUDGE PRIDGIN: All right. If there's  
20 nothing further from the parties, we'll proceed to opening  
21 statements. Mr. Lowery or Mr. Byrne? Mr. Lowery.

22 MR. LOWERY: Thank you,

23 JUDGE PRIDGIN: When you're ready, sir.

24 MR. LOWERY: Good morning. May it please  
25 the Commission? My name is Jim Lowery, and along with my

1 co-counsel, Tom Byrne, I am representing Ameren Missouri  
2 in this case.

3 The facts of this case are fairly  
4 straightforward, and I believe they're pretty well known  
5 certainly to Commissioner Jarrett and also Commissioner  
6 Gunn and Commissioner Kenney because the same facts gave  
7 rise to a different case.

8 The main issues in this case were  
9 previously decided against the company in Case  
10 No. EO-2010-0255 by a three/two vote with Chairman Gunn,  
11 Commissioner Kenney and then Chairman Clayton in the  
12 majority, and Commissioner Jarrett and then Commissioner  
13 Davis in the minority.

14 Also, since that case was decided, the  
15 Circuit Court of Cole County has rendered a judgment  
16 reversing the Commission's decision in that case and  
17 determining that the Commission erred in its ruling in  
18 that case. So the Commission ruled against the company in  
19 that case, but the Circuit Court of Cole County has  
20 indicated the Commission was wrong when it did so.

21 But given that some time has passed and a  
22 lot of cases come before the Commission and we have  
23 Commissioner Stoll, of course, on the bench now who wasn't  
24 present for that case, I thought it was important to reset  
25 the facts and go over the facts and reset what the issues



1 are and review where we are because even I, who was  
2 involved in most of the events involved in that case, my  
3 memory gets a little fuzzy over time as well. So let me  
4 do that now.

5 A little more than three years ago, on  
6 January 27, 2009, the Commission issued a Report and Order  
7 approving a rate increase for Ameren Missouri, and that  
8 was in Case No. ER-2008-0318. There are two aspects of  
9 that Report and Order that are directly relevant to this  
10 case.

11 First, that rate increase assumed that  
12 revenues from Noranda Aluminum, which operates a large  
13 smelter in New Madrid, as I think you know, assumed that  
14 the company would be receiving about \$139 million annually  
15 in base revenues from Noranda. In other words, it assumed  
16 that Noranda's revenues would cover about \$139 million a  
17 year of Ameren Missouri's base cost of service. And when  
18 I say about a, I mean pretty much exactly that number  
19 because Noranda's load simply doesn't vary hardly at all  
20 over the course of the year. They are a nearly  
21 100 percent load factor customer.

22 The second aspect of that Report and Order  
23 that's important is that the Commission also approved a  
24 fuel adjustment clause, or FAC, for the company in that  
25 case.

1                   Now, almost immediately after that Report  
2     and Order was issued, southeast Missouri was struck by  
3     perhaps the most severe ice storm the state has ever seen.  
4     Up to five inches of ice coated everything in southeast  
5     Missouri, and if you actually didn't visit -- and I  
6     didn't, but I've seen pictures. If you actually didn't  
7     visit, it's difficult to completely understand the  
8     magnitude of the storm.

9                   But to give you some statistics, the  
10    company, 36,000 of the company's customers lost service.  
11    That was over a six-county area, so it was over a wide  
12    area. Over 3,000 of the company's poles were destroyed,  
13    most of them snapped in two. Governor Nixon declared a  
14    state of emergency. The company's crews worked  
15    16-plus-hour days in freezing temperatures to restore  
16    service, and still took many weeks to get service restored  
17    to everyone.

18                  Now, the Noranda Aluminum smelter was also  
19    severely damaged by that storm, and this is because the  
20    transmission lines that serve Noranda, which are not  
21    Ameren Missouri transmission lines, they're Associated  
22    Electric transmission lines, they collapsed under the  
23    weight of the ice, and so Noranda lost power or most of  
24    its power.

25                  Because the Noranda plant was processing

1 molten aluminum at the time, that aluminum solidified in  
2 these pots that they use in their production lines, and  
3 when that happened, the only way to restore production is  
4 to literally by hand jackhammer the solidified aluminum  
5 out of those pots, and at the time it was unclear if  
6 Noranda -- when Noranda or if Noranda would ever actually  
7 be able to return to full service.

8                   Faced with that catastrophic event which  
9 was caused by an act of God, Ameren Missouri made a  
10 decision that the Staff agrees was a prudent decision. It  
11 entered into two long-term requirements sales contracts.  
12 I'll talk more about that in a minute. Under those  
13 contracts, Ameren Missouri sold the power that Noranda  
14 would have been taking to these two requirements  
15 customers.

16                   Now, there are a couple of reasons Ameren  
17 Missouri did this. The first reason is that long-term  
18 requirements sales are very similar to the kind of sales  
19 that were being made to Noranda. As Ameren Missouri  
20 witness Jaime Haro will testify, it was important for the  
21 company to maintain a balance in its generation portfolio  
22 between long-term commitments backed by load -- Noranda  
23 was backed by load, these contracts are backed by load --  
24 and short-term energy sales particularly since at that  
25 time, as you recall, Lehman Brothers had declared

1 bankruptcy in the fall of '08 and we were in sort of the  
2 crescendo of the financial crisis. Particularly at that  
3 time we had a number of players in the -- financial  
4 players in the energy markets who were unreliable. And so  
5 it was important from a creditworthiness standpoint also  
6 to enter into similar kinds of sales for that piece of the  
7 company's portfolio.

8           The second reason the company entered into  
9 long-term requirement sales is that, under the company's  
10 tariffs, revenues from long-term requirement sales are  
11 treated exactly like revenues from Noranda were treated.  
12 Under that tariff, although revenues from daily off-system  
13 sales are factored in to the FAC calculation, revenues  
14 from long-term full or partial requirements contracts are  
15 specifically excluded from the fuel adjustment clause  
16 calculations. That is, they're specifically excluded  
17 from, quote, factor OSSR that I'll talk about in a minute.

18           So by entering into these long-term sales  
19 transactions to replace the lost Noranda revenues, the  
20 company could keep customers and the company in the same  
21 position with respect to net fuel costs as they would have  
22 been in had this ice storm not occurred at all.

23           The two contracts the company entered into  
24 were with Wabash Valley Power Association, which serves  
25 citizens load in southeast Missouri, and the AEP operating

1 companies, with is an amalgamation of several utilities in  
2 states like Kentucky and Indiana. Both of these contracts  
3 are attached to Mr. Haro's surrebuttal testimony. We  
4 marked them HC when we attached them. Actually, that was  
5 an error. We don't need to treat them as HC. Your Honor,  
6 actually, we really only need one Exhibit 4, I think it  
7 is, because at the time we filed them before, they were  
8 HC. They weren't over. Now they are, so they really  
9 don't need to be treated that way.

10 JUDGE PRIDGIN: Very good.

11 MR. LOWERY: In any event, the Staff and  
12 the intervenors argue that the power sales under these  
13 contracts do not qualify as long-term partial requirements  
14 sales. That's really what this case is about. The  
15 evidence in the case is going to indicate that, in fact,  
16 they are long-term requirement sales.

17 And if that is the case -- and the Cole  
18 County Circuit Court said it's the case. If that's the  
19 case, not only should the company have excluded the  
20 revenues from its FAC rate calculation like it did, the  
21 company is required by law to have excluded them from the  
22 FAC rate calculations. That's because a tariff, just like  
23 a statute, carries the force and effect of law. It's  
24 binding on the company, it's binding on customers, and  
25 it's binding on the Commission.

1                   The evidence in this case will show that  
2   the revenues from these kinds of sales are outside the FAC  
3   because, as I mentioned, the express terms of the tariff,  
4   Factor OSSR -- Mr. Byrne is putting the Factor OSSR  
5   definition up on the easel.

6                   You'll note I have two definitions here.  
7   The reason I have two definitions is, the top definition  
8   is Factor OSSR as it was contained in the FAC tariff that  
9   was filed when the rate case itself was filed on  
10   April 4th, 2008. The bottom half is the same definition,  
11   it's identical, you will notice, as approved by the  
12   Commission in January of 2009 in the 0318 case.

13                  As that definition plainly shows, if you  
14   have a power sale that satisfies two conditions, it is  
15   treated outside the FAC. It is not an off-system sale.  
16   It has to be long-term, and it has to be a full or partial  
17   requirements sale. In this case, we're not talking about  
18   a full requirements sale. We're only talking about  
19   partial requirements sales.

20                  Now, with regard to the issue of whether  
21   these sales are long-term, the evidence in this case will  
22   show that in the power sales industry, at the time this  
23   tariff was proposed and approved, a sale is long-term if  
24   it is for one year or more. The terms of the Wabash and  
25   AEP contracts are 15 and 18 months, which is obviously

1 more than a year.

2 That a sale is long-term if it is for a  
3 term of one year or more is widely accepted in the power  
4 sales industry and in the energy markets. It's widely  
5 accepted by the Federal Energy Regulatory Commission  
6 itself that regulates these kinds of contracts. And  
7 indeed in this Commission's own rate case decisions on a  
8 number of issues, including specifically issues involving  
9 approval of fuel adjustment clauses, the Commission has  
10 drawn the demarcation line between short and long-term at  
11 one year.

12 Note also, for example, in the Aquila FAC  
13 decision, which was the first FAC this Commission  
14 approved, there was a debate about whether long-term or  
15 short-term capacity contracts should be included in the  
16 FAC. The Commission said, if they're long-term, they  
17 should not be included. So the demarcation, even in the  
18 FAC context, this Commission has used is at one year.

19 MIEC doesn't really dispute the long-term  
20 issue. They really only dispute the partial requirements  
21 sales issue, as I'll get to in a minute.

22 Now, the Staff claims that these two  
23 contracts do not reflect long-term partial requirements  
24 sale, but they do so by relying on 20-plus-year-old FERC  
25 Form 1 instructions that the evidence will show were not

1 before the Commission when this tariff was approved and  
2 when it was proposed and, for a number of reasons I'll get  
3 into in a moment, could not possibly have formed the basis  
4 for what those -- that language means in the tariff.

5 The evidence will also show that these  
6 sales are partial requirements sales because a partial  
7 requirements sale exists when energy and capacity is sold  
8 on a firm basis to entities that have a load-serving  
9 requirement of their own.

10 Now, it's important to note that these are  
11 partial requirements sales contracts, not full  
12 requirements sales because some parties, in particular  
13 MIEC, attempt to make much of the fact that Ameren does  
14 not provide or did not provide every potential service  
15 under these contracts that a seller of energy and capacity  
16 could provide.

17 To that contention we say, so what? We're  
18 not talking about full requirements contracts. We're not  
19 contending they're full requirements contracts. They are  
20 partial requirements contracts, and that's all they need  
21 to be in order to be excluded from the FAC calculations.

22 Now, the Staff and the intervenors make  
23 several arguments to support their claim that these  
24 contracts do not reflect partial requirements sales.  
25 As I alluded to a moment ago, the Staff and MIEC both rely



1 heavily on this FERC Form 1, these instructions. This is  
2 a FERC Form 1. It consists of about a half a ream of  
3 paper. And there are two definitions in the reporting  
4 instructions on page 310 that they rely upon. They rely  
5 upon a definition of long-term, and they rely upon a  
6 definition of requirements service.

7 Now, to give you some context regarding the  
8 FERC Form 1, it's a reporting document that's been around  
9 for a long time. It's been around we know since at least  
10 1990, probably before, but we have the 1990 version that  
11 has the exact same language in as the same language exists  
12 today.

13 And Mr. Byrne has already put it up on the  
14 easel, but the page that the Staff has brought up in this  
15 case is this page 310 in the middle of this report. Those  
16 instructions and that language existed well before modern  
17 electric markets existed, which really didn't start coming  
18 into being until FERC Order 888 came out in about 1998.

19 These instructions are simply reporting  
20 protocols which even the FERC itself completely disregards  
21 in determining what is a long-term contract, as I'll  
22 discuss more in a moment. These instructions have three  
23 definitions for terms. They have short-term definition,  
24 which means, I believe, less than a year. They have an  
25 intermediate term definition, which means one to five

1 years, and then they have a long-term definition which  
2 means more than five years.

3 But as the evidence will show in this case,  
4 those classifications are completely at odds with the one  
5 year demarcation used in the energy markets and the power  
6 sales business. They're completely at odds with this  
7 commission's own demarcation of long-term and short-term  
8 of one year, and they're completely at odds with how the  
9 FERC itself treats power energy and capacity contracts.

10 Even some of the witnesses for our  
11 opponents have acknowledged that one year is a common  
12 demarcation between long and short-term in the  
13 marketplace.

14 As I mentioned, FERC, the agency itself  
15 that authored this form a long time ago, consistently  
16 ignores these definitions. And Mr. Byrne is going to hold  
17 up an illustrative excerpt from a FERC decision that talks  
18 about what a long-term contract is, and what the FERC had  
19 to say -- and I believe this was in 2005. This is about  
20 seven or eight years after the energy markets really  
21 started to evolve as they existed in 2008-2009 when these  
22 tariffs were proposed. The FERC said, we thus believe it  
23 is reasonable to use the convention of treating contracts  
24 of a year or more as long-term consistent with our  
25 longstanding practice, which I would submit by then was

1 seven years, at least seven years along at that point in  
2 time.

3 The bottom line is, there's absolutely no  
4 reason to believe that the unusual definitions of  
5 short-term, intermediate term and long-term that are in  
6 page 310 of the FERC Form 1 instructions, which are  
7 inconsistent with FERC's longstanding practice, had  
8 anything to do with what long-term partial requirement  
9 sales meant in the FAC tariff proposed in 2008 and  
10 approved in 2009.

11 In fact, the FERC Form 1 was not before the  
12 Commission in that case. Nobody mentioned it. It wasn't  
13 on anybody's minds. As I talked about a moment ago, it  
14 didn't come up until well after the controversy that gave  
15 rise to this case came up.

16 Now, I think I mentioned a minute ago that  
17 these instructions cannot possibly have anything to do  
18 with what long-term means, and why did I say that? Well,  
19 one reason I said it is they weren't before the Commission  
20 in the case. So they couldn't have informed the  
21 Commission's intent because they weren't part of the  
22 record in the case.

23 But secondly, if those instructions  
24 control, as the Staff contends that they do, then there  
25 are three long-term requirements sales with municipal

1 customers that were in existence at about the same time as  
2 these AEP and Wabash contracts. That fact would also have  
3 been classified improperly. In other words, those  
4 contracts were excluded from the FAC rate calculations  
5 because they are sales, they are long-term requirements  
6 sales. But if the Staff is right, they have to be  
7 included as a matter of law, but nobody contends that they  
8 have to be included. If the FERC Form 1 definitions  
9 apply, then those contracts are misclassified as well.

10 Well, why doesn't it apply? Those  
11 contracts have terms of 36 months, 36 months and 39 months  
12 respectively. Well, clearly if the FERC Form 1 says that  
13 a long-term contract is more than five years, those  
14 contracts aren't long-term contracts and they have to be  
15 excluded. They weren't included and it was proper not to  
16 include them, just like it was proper not to include --  
17 not only proper but required not to include the AEP and  
18 Wabash contracts because they too are long-term contracts.  
19 As I mentioned, they're also partial requirements sales.

20 So how do these FERC Form 1 instructions  
21 come up in the first place? The instructions came up when  
22 Staff witness Dana Eaves, who is an accountant and who,  
23 with all due respect, doesn't really know anything about  
24 the power sales business and has no experience in the  
25 power sales business, brought them up in his rebuttal

1 testimony in the EO-2010-0255 case, and he brought them  
2 up, I believe it was November 24th, 2010. Note that  
3 November 2010 is almost two years after the FAC tariff was  
4 approved. Also note that these FERC Form 1 instructions  
5 were not brought up at all in the Staff's prudence report  
6 that was filed many months earlier in that case as being a  
7 basis for the disallowance the Staff was proposing.

8 Now, how the FERC Form 1 instructions could  
9 have anything to do with language proposed in April 2008,  
10 that language that didn't change during the entire rate  
11 case, instructions that weren't before the Commission,  
12 instructions that are at odds with the energy marketplace,  
13 instructions that are at odds with how FERC treats  
14 long-term and short-term, instructions that are at odds  
15 with how this Commission treats long-term and short-term  
16 in the regulatory context, how that can have anything to  
17 do with the intention of the fuel adjustment clause tariff  
18 language is a mystery that our opponents, despite trying  
19 for a few years, have not been able to satisfactorily  
20 explain.

21 Now, while the evidence in this case  
22 completely debunks the notion that the FERC Form 1  
23 instructions have anything to do with the FAC tariff, the  
24 other parties nevertheless also rely on page 310 and those  
25 instructions to support their contention that the

1 contracts are not partial requirements sales. But the  
2 evidence in this case will demonstrate that a partial  
3 requirements sale is a firm sale of energy and capacity to  
4 an entity that itself has a load-serving requirement.

5 That's a common sense definition. It's the  
6 definition used in the marketplace. It comports with the  
7 plain meaning of the word partial and requirements. In  
8 fact, some of our opponents have testified it's a  
9 reasonable definition of a partial requirement sale in the  
10 energy marketplace.

11 One last point about these FERC Form 1  
12 instructions. The Staff is sponsoring two witnesses in  
13 this case, Mr. Eaves and Lena Mantle. Ms. Mantle  
14 essentially puts no stock in the definition of long-term  
15 in the Form 1 instructions. Instead, she and Mr. Eaves  
16 are not entirely on the same page about the definition of  
17 long-term.

18 She testified in the last case that the  
19 energy markets were evolving and had evolved by 2008-2009,  
20 and that at that time a long-term contract was one with a  
21 minimum term of about three years. She also said at one  
22 point about four years.

23 Either way, the municipal contracts are not  
24 going to qualify under Mr. Eaves' definition, and what  
25 you've got is you've got the situation where, if

1 Ms. Mantle's right, then the FERC form 1 instructions  
2 can't apply, and if Mr. Eaves is right, then Ms. Mantle is  
3 wrong.

4 And the other point that you need to keep  
5 in mind is, because it's -- it's really beyond dispute  
6 that you can't use the five-year demarcation in the FERC  
7 Form 1 instructions to inform the FAC tariff for  
8 long-term, you can't pick and choose which pieces of the  
9 FERC Form 1 you might want to rely upon and other pieces  
10 you don't want to rely upon. They either apply or they  
11 don't. And because they don't, the definitions of  
12 requirement service in the FERC Form 1 also doesn't apply  
13 to the case.

14 And for all of those reasons, MIEC witness  
15 Maurice Brubaker's reliance on both the FERC Form 1 and an  
16 identical Edison Electric, Inc., or EEI, definition of  
17 requirements service also doesn't hold water.

18 I would also note that the Staff and  
19 Mr. Brubaker aren't entirely on the same page in this case  
20 either because Mr. Brubaker hasn't taken any issue with  
21 whether or not the AEP and Wabash contracts are long-term.  
22 He just takes issue with the requirement sales prong of  
23 the definition.

24 Now, Mr. Brubaker has come up in this case  
25 with a new argument that he didn't have in the last case.

1 He contends that there's a different FERC report called  
2 the EQR, or electronic quarterly dictionary report, that  
3 has yet a different definition of requirements service  
4 than the one that exists in the FERC Form 1. And he  
5 claims that because the AEP and Wabash contracts were not  
6 reported as RS on that form, then that shows in his mind  
7 that they were not requirement sales.

8 The problem is that Mr. Brubaker apparently  
9 overlooked the fact that the municipal contracts that I  
10 talked about also are not reported as RS on that form. As  
11 Mr. Haro testifies, nobody pays attention to those kinds  
12 of things in the energy marketplace, and that's why that  
13 is not -- that's not reported on the form.

14 But the point is, all of those contracts  
15 are reported consistently. And so if Mr. Brubaker's  
16 right, again, we've got this issue where the municipal  
17 contracts, in their mind, apparently would have to be also  
18 excluded from the FAC -- or included in the FAC, pardon  
19 me, but everybody agrees that they, in fact, were properly  
20 excluded.

21 Now, the Staff and the other parties also  
22 argue that Ameren Missouri's classification of these two  
23 contracts was simply an effort on the part of the company  
24 to get around the Commission's denial of the company's  
25 request for rehearing in the 318 rate case, which again is



1 the case where the FAC was initially approved, but those  
2 allegations also are not borne out by the evidence.

3 When the ice storm hit and the Noranda load  
4 went down, the company didn't know whether or not it could  
5 enter into sufficient long-term requirement sales  
6 contracts to cover the large volume of power that had  
7 become available that Noranda was not taking. As a  
8 result, the company first filed an application for  
9 rehearing asking the Commission to modify the FAC tariff  
10 in effect so that customers and the company would be in  
11 the exact same position with respect to the costs and  
12 revenues tracked in that tariff as if the ice storm had  
13 not occurred.

14 Now, the company denied rehearing -- or  
15 excuse me. The Commission denied rehearing, and in doing  
16 so -- and Mr. Byrne has put an excerpt from your Order up  
17 on the easel. In doing so, this is what the Commission  
18 had to say: If the Commission were to grant AmerenUE's  
19 application for rehearing, it would have to set aside the  
20 approved Stipulation & Agreement regarding the fuel  
21 adjustment clause, reopen the record to take evidence on  
22 the appropriateness of the proposed change and make a  
23 decision before the March 1, 2009 operation of law date.  
24 Such action is obviously impossible. And that Order was  
25 issued on February 19th, so you're less than two weeks

1 away from the operation of law date.

2 Nothing in that Order is inconsistent with  
3 what the company's done. The company is not asking the  
4 Commission to disregard the FAC tariff in this case.  
5 Didn't ask the Commission to do that in the last case. In  
6 fact, the company is asking the Commission to apply the  
7 tariff as written and as the Cole County Circuit Court  
8 found that it was written.

9 Now, Staff witness Lena Mantle also argues  
10 that the tariff language -- and I'll ask Mr. Byrne to put  
11 the tariff language back up. She argues that the tariff  
12 language should be read to include words that don't appear  
13 there. That is, she argues that the tariff should be read  
14 to be limited to -- or requirement sales would be limited  
15 to only sales to municipal customers. What she's asking  
16 you to do is retroactively amend the language, which you  
17 don't have any power to do because the tariff's binding on  
18 all of us as long as it's in effect, to add words that are  
19 not there.

20 Not only are the words not there, either  
21 explicitly or by implication, but Ameren Missouri would  
22 have no reason to have agreed or proposed such a  
23 limitation. The company has a long history of making  
24 long-term requirements sales, yes, to municipalities and,  
25 yes, to other non-municipal customers as well. In fact,

1 the company has also been a requirements sale customer  
2 with other utilities.

3 Ms. Mantle's argument that the tariff  
4 should be read to include this unstated limitation doesn't  
5 make sense, and it is directly contradicted by the plain  
6 meaning of the tariff.

7 Now, finally, the evidence will show that  
8 even if our opponents were right, and we certainly aren't  
9 conceding they are, but even if they were, the sum the  
10 Staff claims should be refunded, 26.3 million  
11 approximately in this case, would be 3.3 million too much.  
12 If that sum were refunded, it along with the 17 million  
13 that was ordered refunded in the 255 case would total  
14 about 46.8 million or, not coincidentally, about  
15 3.3 million more than the margins the company actually  
16 received from these two contracts.

17 Ameren Missouri witness Gary Weiss  
18 demonstrates this is true, and the testimonies of  
19 Ms. Mantle and MIEC witness Greg Meyer don't really do  
20 anything to refute that testimony.

21 I would like to address one final legal  
22 issue before I close. The basis of the Staff's and  
23 intervenors' claim in this case is that the company acted  
24 imprudently, not imprudence in entering into the  
25 contracts, but they claim that we were imprudent in,

1 quote, classifying them the wrong way. We weren't  
2 imprudent in classifying them one way or the other. They  
3 are what they are, and they are classified -- the  
4 contracts are the kind of contracts they are, and the  
5 classification, the requirements of the tariff are what  
6 they are.

7                   There's simply no evidence in this case  
8 that the company has acted imprudently in some way. But  
9 even if there was imprudence in the case, the law says  
10 that before a disallowance can be made for imprudence,  
11 there must be harm to ratepayers. The evidence in the  
12 case demonstrates that the company's sales to Noranda,  
13 whose revenues were excluded from the fuel adjustment  
14 clause, were simply replaced by the long-term requirement  
15 sales to these two customers.

16                   The evidence is that ratepayers' bills with  
17 respect to the revenues and costs tracked in the FAC ended  
18 up being the same as they would have been had Noranda not  
19 gone down because of the ice storm. That's not harm. If  
20 the tariff requires what we say that it requires, and we  
21 certainly believe that it does, it's not harm for the  
22 customers to pay the bills that the tariff says that they  
23 should pay.

24                   Lastly before I sit down, I'd like to give  
25 the Commissioners, and I've got copies for all the parties

1 as well, a chronology -- a chronology that summarizes most  
2 of the facts I've walked through and a few others that  
3 will be supported by the evidence. As I mentioned for  
4 myself as preparing for this case, I found it a little bit  
5 difficult to keep track of all the dates and events that  
6 actually are relevant, and I thought this might be  
7 helpful. If it's not, you can recycle it.

8 I thought it might be helpful to you as you  
9 hear these witnesses talk about -- there's about --  
10 there's two different cases, two difference prudence  
11 reviews, other proceedings that are relevant to this case,  
12 and I thought it might be helpful.

13 I appreciate your attention and your  
14 patience, and we look forward to presenting the evidence  
15 to you.

16 COMMISSIONER JARRETT: Mr. Lowery, I have  
17 just one or two questions.

18 MR. LOWERY: Absolutely.

19 COMMISSIONER JARRETT: You mentioned  
20 EO-2010-0255 in your opening. Is there anything in the  
21 company's case, position, testimony, theory that is  
22 different from that prior case in this case?

23 MR. LOWERY: I think there is some  
24 evidence, your Honor, that you'll hear in this case that  
25 has some differences. I think as we've studied the -- as

1 we've studied the facts and we've studied some of these  
2 things, I think we have identified some differences. I  
3 think most of the evidence is certainly very similar, but  
4 not entirely so.

5 COMMISSIONER JARRETT: Okay. Thank you.

6 JUDGE PRIDGIN: Mr. Lowery, if I may, is  
7 there any -- is there any legal difference? Is there any  
8 difference in the applicable tariffs, statutes,  
9 regulations of these two cases?

10 MR. LOWERY: There is not, your Honor.

11 JUDGE PRIDGIN: Thank you.

12 MR. LOWERY: Thank you very much.

13 JUDGE PRIDGIN: Opening from Staff, please,  
14 Ms. Moore or Mr. Thompson.

15 MR. THOMPSON: Thank you, your Honor. May  
16 it please the Commission?

17 JUDGE PRIDGIN: Mr. Thompson.

18 MR. THOMPSON: As Mr. Lowery explained and  
19 as the judge announced when we went on the record, this is  
20 the second prudence review of Ameren Missouri's fuel  
21 adjustment clause, Ameren Missouri, who is really the  
22 Union Electric Company, doing business as Ameren Missouri,  
23 and formerly doing business as AmerenUE. We'll refer to  
24 the company today as Ameren for convenience purposes.

25 We're here because Staff has recommended

1     that Ameren refund some \$26 million to its ratepayers  
2     because of imprudent conduct. A fuel adjustment clause,  
3     or FAC, is a device for reducing regulatory lag.  
4     Regulatory lag is the period that elapses between the  
5     occurrence of some change in the operating conditions that  
6     entitles the utility to collect more money from its  
7     customers and the effective date of new tariffs allowing  
8     it to actually collect that additional money. An example  
9     might be a new union contract, for example, that raises  
10    the wages of employees.

11                   In Missouri, a general rate case, which is  
12    how these changes get into the rates, takes 11 months from  
13    start to finish. So regulatory lag is at least that long.  
14    It's at least 11 months long. Utilities like Ameren don't  
15    like regulatory lag because they're paying the additional  
16    costs during that time but they're not collecting  
17    additional money to cover those additional costs.

18                   A fuel adjustment clause is one mechanism  
19    that's available in Missouri to reduce that lag. How does  
20    it work? The fuel adjustment clause allows Ameren to pass  
21    changes in its fuel and purchased power costs on to  
22    customers in rates almost immediately without having to  
23    wait 11 months for the general rate case process to  
24    complete.

25                   For fuel and purchased power expense at

1     least, there is no longer any regulatory lag. How does  
2     Ameren's fuel adjustment clause work? There is a certain  
3     base amount of fuel costs that are built in to the rates  
4     that come out of a general rate case. It is the  
5     difference between this base amount and what Ameren  
6     actually pays for fuel and purchased power during every  
7     four-month-long accumulation period that is passed on to  
8     customers through the fuel adjustment clause.

9                     It's important to note that only 95 percent  
10    of that difference is passed on to customers. The other  
11    5 percent is the responsibility of the company's  
12    shareholders. This sharing mechanism is intended to  
13    promote efficiency on the part of Ameren management in  
14    managing its fuel and purchased power costs.

15                    If there is an under-recovery during an  
16    accumulation period, that is if Ameren spends more for  
17    fuel and purchased power than the base amount, 95 percent  
18    of that extra expense is then recovered over the following  
19    12-month recovery period.

20                    By way of example, if Ameren spends  
21    \$10 million more on fuel and purchased power during an  
22    accumulation period, 10 million over the base amount, then  
23    9.5 million would be collected from ratepayers through the  
24    fuel adjustment clause over the following 12-month  
25    recovery period.



1           The reverse is also true. If Ameren spends  
2   less on fuel and purchased power than the base amount  
3   during an accumulation period, then 95 percent of that  
4   difference is returned to ratepayers over the following  
5   12 months, and the shareholders keep the other 5 percent.

6           The fuel adjustment clause, therefore, is  
7   fair. It's even handed. It's fair to the company, and  
8   it's fair to the customers. Ameren is assured of quickly  
9   recovering almost all of its fuel and purchased power  
10  costs without the delay in expense of a major rate case.  
11  Equally, the customers are assured of quickly getting the  
12  benefit of lower than expected fuel and purchased power  
13  costs. Both sides have a risk of financial loss, and both  
14  sides have a chance of financial gain.

15          There is one detail that I've not yet  
16  mentioned. Just as Ameren's customers are responsible for  
17  the cost of power that Ameren purchases to serve them, in  
18  addition to the fuel that Ameren purchases and burns to  
19  drive its generators, so they receive the benefit of any  
20  money that Ameren makes by selling extra power at  
21  wholesale. These sales are called off-system sales.

22          As you might expect, Ameren's customers  
23  receive the benefit of only 95 percent of any off-system  
24  sale. The shareholders get the other 5 percent. That  
25  means that the amount of any under-recovery during an

1 accumulation period that the ratepayers will be  
2 responsible for is calculated by subtracting 95 percent of  
3 any money made from off-system sales. Likewise, the  
4 amount of any over-recovery during an accumulation period  
5 that Ameren will have to return to the customers is  
6 calculated by adding 95 percent of any money made from  
7 off-system sales.

8                   When Ameren's fuel adjustment clause was  
9 designed, certain sales of wholesale were carefully  
10 excluded from off-system sales. These are sales that  
11 Ameren's customers get no benefit from. They are excluded  
12 from the fuel adjustment clause. What sales are these?  
13 They are sales for resale, power sales to cities that use  
14 that power to serve their own customers, cities that have  
15 their own power department but no generation to actually  
16 produce energy. These cities must buy power year in and  
17 year out to meet the requirements of their customers.

18                   These sales reflect longstanding  
19 relationships between Ameren and these cities,  
20 relationships so longstanding that Ameren actually plans  
21 for these sales in its integrated resource planning  
22 process. Ameren makes sure that it will have the capacity  
23 to meet the requirements of these cities.

24                   The actual language of Ameren's tariff  
25 that's at issue here today is as follows: Off-system

1 sales shall include all sales transactions, including MISO  
2 revenues in FERC Account No. 447, excluding Missouri  
3 retail sales and long-term full and partial requirements  
4 sales that are associated with, one, AmerenUE Missouri  
5 jurisdictional generating units, two, power purchases made  
6 to serve Missouri retail load, and three, any related  
7 transmission.

8                   The sales in question are described in the  
9 tariff as long-term full and partial requirements sales.  
10 These sales are not off-system sales. They are not part  
11 of the fuel adjustment clause calculations.

12                   Now we've set the scene by explaining how  
13 the fuel adjustment clause works. You understand the  
14 point. Ameren's customers get 95 percent of the benefit  
15 of any off-system sales, but no benefit at all from any  
16 long-term full or partial requirement sales. Turning that  
17 around and looking at it from Ameren's point of view,  
18 Ameren gets all the money from any long-term full or  
19 partial requirements sales, but Ameren only gets 5 percent  
20 of the money from off-system sales. That's what this case  
21 is about.

22                   On January 28, 2009, as you've already  
23 heard, an ice storm struck southeastern Missouri. The ice  
24 storm knocked down the power lines that serve the aluminum  
25 smelter operated by Noranda at New Madrid, Missouri. At

1     that time Noranda was Ameren's largest single customer.  
2     Noranda lost two-thirds of its smelting capacity because  
3     of the storm, and as a result, only needed one-third of  
4     the electricity that Ameren had counted on selling to it.

5                 Ameren was left in the position of losing  
6     \$90 million per year on its Noranda sales. These sales,  
7     of course, the Noranda sales, were regular retail sales.  
8     They were not part of the fuel adjustment clause  
9     calculation. Ameren gets to keep all of the money it  
10    collects on regular retail sales.

11                Ironically, this ice storm occurred the day  
12    after this Commission issued its Report and Order in  
13    Case No. ER-2008-0318. This is the general rate case in  
14    which Ameren's fuel adjustment clause was first approved.  
15    The ice storm meant that Ameren unexpectedly had a lot of  
16    extra power to sell, the power that it had planned to sell  
17    to Noranda.

18                However, the full adjustment clause meant  
19    that Ameren would only get 5 percent of the revenues from  
20    those sales if they sold that -- if they sold that power  
21    as off-system sales, that is, to anyone other than its  
22    regular customers.

23                Ameren found itself in a difficult position  
24    following the ice storm. First, Ameren tried to get the  
25    Commission to modify the fuel adjustment clause it had

1 just approved. You heard about that from Mr. Lowery. The  
2 Commission would not do it. Next, Ameren turned around  
3 and made two new power sales contracts, one with American  
4 Electric Power Service Corporation, universally referred  
5 to in this case as AEP, and the other with Wabash Valley  
6 Power Association for resale to Citizens Electric right  
7 here in Missouri.

8 Ameren purposefully and intentionally did  
9 its best to try to make these two new contracts look like  
10 long-term full or partial requirements sales because that  
11 was the one and only loophole in the brand-new fuel  
12 adjustment clause. That was the one and only way that  
13 Ameren could keep all of the revenues from those sales.

14 The AEP contract was for 100 megawatts over  
15 15 months. The Wabash contract was for 150 megawatts over  
16 18 months. That was about the length of time that it was  
17 expected to take for Noranda to get back into full  
18 operation after the ice storm.

19 The crux of this case is that Ameren  
20 insists that the power sales to AEP and Wabash were  
21 long-term full or partial requirements sales and that  
22 Ameren, therefore, gets to keep all that money. Staff as  
23 well as the Missouri Industrial Energy Consumers and  
24 Barnes-Jewish Hospital insist that the power sales to AEP  
25 and Wabash were off-system sales and that Ameren,

1     therefore, only gets to keep 5 percent of the money it  
2     made on those sales. That's what this case is about.

3                     One requirement for a fuel adjustment  
4     clause in Missouri is a prudence review at an interval not  
5     longer than 18 months. This case is just such a prudence  
6     review, but it is not the first time this Commission has  
7     reviewed the prudence of the facts that I have just  
8     described to you.

9                     In Case EO-2010-0255, the first prudence  
10    review of Ameren's fuel adjustment clause, this Commission  
11    determined, and I quote, that Ameren Missouri acted  
12    imprudently, improperly and unlawfully when it excluded  
13    revenues derived from power sales agreements with AEP and  
14    Wabash from off-system sales revenue when calculating the  
15    rates charged under its fuel adjustment clause.

16                    I quote from the Report and Order issued on  
17    April 27, 2011, which was not so very long ago. In that  
18    decision this Commission concluded those contracts are not  
19    full or partial requirements contracts as defined by  
20    Ameren Missouri's tariff. They simply do not have the  
21    characteristics to qualify as such contracts. Ameren  
22    Missouri calls them such, but it must stretch the  
23    definition beyond the breaking point to do so. If Ameren  
24    Missouri's definition were accepted, nearly any sales  
25    contract of over one year duration would qualify as a

1 long-term full or partial requirements contract that could  
2 be excluded from the fuel adjustment clause. Ameren  
3 Missouri would be able to choose unilaterally to define an  
4 off-system sale out of the fuel adjustment clause and  
5 thereby increase its profits at the expense of its  
6 ratepayers.

7                   Such a broad definition would render the  
8 tariff's definition of off-system sales nearly meaningless  
9 and would make the fuel adjustment clause extremely  
10 one-sided in a way that was not intended by the Commission  
11 or by the parties to the Stipulation & Agreement that  
12 presented that tariff language to the Commission for  
13 approval.

14                   The Commission ordered Ameren to refund  
15 some \$17 million to its customers in that case, the first  
16 prudence review.

17                   You will recall that when I earlier  
18 described how Ameren's fuel adjustment clause works, I  
19 noted that it is designed to be fair. It is fair because  
20 there is risk of loss accepted on both sides. It is fair  
21 because there is a chance of gain on both sides. I have  
22 read at some length from the Commission's prior decision  
23 because it emphasizes that Ameren's construction of the  
24 fuel adjustment clause, the construction that Ameren is  
25 arguing to you today, is not fair at all.

1 Ameren understands the fuel adjustment  
2 clause to assign all of the risk of loss to the customers  
3 and all of the chance of gain to itself. That is not what  
4 this Commission intended when it approved this fuel  
5 adjustment clause. It is not what the parties intended  
6 who agreed that Ameren should get a fuel adjustment  
7 clause.

8 Staff urges the Commission to reject  
9 Ameren's unfair and self-serving interpretation of the  
10 fuel adjustment clause and to render a decision just like  
11 the one you issued in Case EO-2010-0255, on April 27,  
12 2011.

13 Ameren has made much of a recent decision  
14 by the Circuit Court of Cole County. Judge John Beetem  
15 reversed this Commission's decision in that prior case.  
16 Judge Beetem says that you got it wrong in that decision.  
17 Let me tell you right now that Judge Beetem's decision is  
18 legally meaningless. Your own external litigation  
19 department will soon file a notice of appeal in that case  
20 and take it to the Missouri Court of Appeals for the  
21 Western District of Missouri.

22 One effect of the filing of that notice of  
23 appeal is that Judge Beetem's decision will no longer  
24 matter. The Western District will review this  
25 Commission's decision, not the decision of Judge Beetem.



1 I think you can expect a very different decision from the  
2 Court of Appeals. I'm sure Ameren would tell you the  
3 opposite.

4 In closing, let me assure you that Ameren's  
5 fuel adjustment clause has worked exactly as it was  
6 designed to work. No one expected that ice storm. No one  
7 foresaw that. But it was one of the risks that Ameren  
8 accepted when it asked for a fuel adjustment clause. In  
9 fact, it was one of the risks that Ameren accepted when it  
10 asked for the right to serve Noranda in the first place.

11 Contrary to Ameren's assertion, there has  
12 been no windfall for customers. In fact, the customers  
13 have shouldered the burden of the extensive storm  
14 restoration costs.

15 Staff urges you to apply the fuel  
16 adjustment clause according to its language as the parties  
17 that agreed to it intended. Staff urges you to once again  
18 conclude that Ameren acted imprudently, improperly and  
19 unlawfully and order Ameren to refund \$26 million to its  
20 customers through its fuel adjustment clause. Thank you.

21 JUDGE PRIDGIN: Mr. Thompson, thank you.  
22 Commissioner?

23 COMMISSIONER JARRETT: Yes. Mr. Thompson,  
24 I'll ask you the same question I asked Mr. Lowery. As you  
25 know, we heard Case EO-2010-0255. Is the position of

1 Staff, the testimony, the theories, are they all the same  
2 or essentially the same or are there any differences?

3 MR. THOMPSON: I believe they're  
4 essentially the same.

5 COMMISSIONER JARRETT: Okay. My second  
6 question is, as I recall, and correct me if I'm wrong,  
7 Staff's position in the EO-2010-0255 case and in this case  
8 is that Ameren was not imprudent in entering into the  
9 contracts at issue?

10 MR. THOMPSON: That's correct. In fact,  
11 our position is they would have been imprudent had they  
12 not.

13 COMMISSIONER JARRETT: Right. And so is  
14 what Staff essentially arguing is that Ameren violated its  
15 tariff?

16 MR. THOMPSON: Yes, Commissioner.

17 COMMISSIONER JARRETT: And what's the  
18 appropriate avenue for Staff to take against a company  
19 when they have violated a law, a statute, a regulation or  
20 a tariff?

21 MR. THOMPSON: Normally we would file a  
22 complaint.

23 COMMISSIONER JARRETT: And isn't that  
24 really the appropriate avenue to pursue in this case?  
25 Since it isn't a prudence issue -- you've already admitted

1 it was prudent. So this isn't a prudence case. This is a  
2 violation of tariff case.

3 MR. THOMPSON: My view is that the statute  
4 envisions -- because you'll recall that the prudence  
5 review takes place as part of a true-up to make sure that  
6 the amount of money that is flowed in either direction is  
7 the correct amount. And I think as part of that true-up,  
8 I think the review, the scope of the review is not limited  
9 to imprudence, but did they get it right?

10 And a classification mistake, which is the  
11 basis of this case, I think is part of that review. It  
12 could be done as part of a separate case, I agree, but I  
13 think it's more economical that it be part of this review  
14 because this review would happen anyway. It's required by  
15 law.

16 COMMISSIONER JARRETT: I'll ask Mr. Lowery  
17 that question.

18 MR. LOWERY: Your Honor, I think that you  
19 are probably right. We have chosen not to make, I guess,  
20 a legal issue of that particular issue because of the  
21 expectation Staff would simply file a complaint and we  
22 would be essentially in the same place.

23 But I would say that this case has nothing  
24 to do with prudence. It has to do with what the tariff  
25 allows and, in fact, what the tariff requires. And if

1 we're right about what the tariff requires, regardless of  
2 all of this -- all of these statements about what people  
3 intended -- and by the way, what the law says is what the  
4 Commission and the company intended, what the parties  
5 intended is irrelevant to tariff determination.

6 But putting that aside, if we're right  
7 about what the tariff means, then the Commission is bound  
8 as a matter of law to rule in our favor, and if we're  
9 wrong, they would be bound as a matter of law to rule  
10 against us.

11 COMMISSIONER JARRETT: Any other counsel  
12 want to weigh in on that?

13 MR. ROAM: I'll just jump in with this. I  
14 noticed that distinction in some of the testimony, the  
15 argument being that it wasn't imprudent, it was just  
16 potentially a violation of the tariff. I agree with  
17 counsel that it's certainly more economical to do it here  
18 rather than have to do this one and do another one, but I  
19 would also assert that it's imprudent for the company to  
20 violate its own tariffs.

21 So I think it's implicit in the illegality  
22 of violating the tariff that it's imprudent to break the  
23 law. So I don't see there being a legal distinction  
24 between, well, that's illegal but not imprudent. I think  
25 it is imprudent to do things that are unlawful to the

1 detriment of Missouri ratepayers.

2 COMMISSIONER JARRETT: Let me throw this  
3 question out. The procedures that we are facing in this  
4 case as it is styled and the procedures in a complaint  
5 case, are there differences?

6 MR. LOWERY: Your Honor, I think there  
7 arguably is. I think the burden of persuasion would fall  
8 upon the complainant in a complaint case, and there's  
9 probably less clarity about where that falls in this  
10 particular case.

11 COMMISSIONER JARRETT: So the burden of  
12 proof in this case may be different than it would be in a  
13 complaint case?

14 MR. LOWERY: Could be. I'd also, if I  
15 might, respond just very briefly to what Mr. Roam had to  
16 say. I think it might very well be imprudent to knowingly  
17 violate a tariff, knowingly violate a law. That's  
18 probably not a prudent business decision.

19 But the argument that's being made on that  
20 point presupposes that they're right about the tariff  
21 interpretation and that we knew that they were right about  
22 the tariff interpretation, and both of those suppositions  
23 are not supported by the facts that have been adduced to  
24 this point.

25 COMMISSIONER JARRETT: Doesn't the fuel

1 adjustment clause tariff in our rules talk about a  
2 prudence review and set out what kind of prudence review  
3 it is, and would that contemplate violation of a tariff in  
4 a prudence review according to the FAC statute and/or  
5 rules?

6 MR. LOWERY: I don't think, for example,  
7 being sloppy about how much we pay for coal, let's say,  
8 for example, and having a prudence disallowance because we  
9 didn't act as a reasonable utility in buying coal has  
10 anything to do with violating the tariff or not violating  
11 the tariff, if that's your question.

12 COMMISSIONER JARRETT: Anybody else? I  
13 have nothing further. Thanks.

14 JUDGE PRIDGIN: Mr. Thompson, I'll try to  
15 ask you the same question I asked Mr. Lowery. The words  
16 may be a little different, but my intent is to ask the  
17 same question. Is there any legal difference between this  
18 case and EO-2010-0255?

19 MR. THOMPSON: No, Judge, there's not.

20 JUDGE PRIDGIN: Thank you.

21 MR. THOMPSON: Thank you.

22 JUDGE PRIDGIN: I'm sorry. Commissioner  
23 Stoll had questions. Excuse me.

24 COMMISSIONER STOLL: In reference to the  
25 circuit court decision, when will that review -- when will

1 the Court of Appeals look at that decision? How does that  
2 work?

3 MR. THOMPSON: The rule of thumb is one  
4 year for every level of review. So if they -- I am told  
5 that the deadline for filing the notice of appeal is  
6 July 2nd. So we could look for a decision by July of next  
7 year.

8 COMMISSIONER STOLL: I'll leave it at that  
9 right for right now. Thank you.

10 MR. THOMPSON: Thank you, sir.

11 JUDGE PRIDGIN: Mr. Thompson, thank you.  
12 MIEC, opening statement, Mr. Roam. When you're ready,  
13 sir.

14 MR. ROAM: Thank you. May it please the  
15 Commission, Judge?

16 In the immortal words of the great Yogi  
17 Berra, this case feels like de deja vu all over again.  
18 Berra was referencing Mickey Mantle's and Roger Maris'  
19 repeated back to back home runs in the early 1960s. This  
20 deja vu experience, unfortunately, is slightly less  
21 glamorous and in baseball terms represents Ameren's third  
22 swing at the same pitch.

23 The most important point to bear in mind in  
24 this case is that all of the issues and all of the claims  
25 and all of the law and all of the facts have already been

1 analyzed and decided. This case has already been fully  
2 and fairly adjudicated to a final judgment on the merits  
3 by the Commission in EO-2010-0255. So just to be clear,  
4 this is not an analogous case or a similar case. This is  
5 precisely the exact same case. The only difference  
6 between the two cases is that this case relates to  
7 accumulation periods 3 through 5 rather than the first  
8 case related to accumulation period 1 and 2.

9               There was only one central question in the  
10 prior case, and it is the exact same central question in  
11 this case. Namely it's this: Did the AEP and Wabash  
12 contracts constitute long-term partial requirements sales  
13 as that phrase was intended and understood by the  
14 parties -- and when I say parties I mean also Ameren,  
15 Ameren was a party to the tariff -- so by the parties, by  
16 Ameren Missouri and by the Commission at the time it was  
17 drafted and at the time it was approved in ER-2008-0318?  
18 That's the question before the Commission.

19               The good news that this Commission has  
20 already unequivocally and correctly answered the question,  
21 and the answer is no. The answer was no in the prior  
22 case, and it is still no in this case because absolutely  
23 nothing of any consequence has changed between the first  
24 case and this case. The contracts that were at issue in  
25 that case are the same contracts that are at issue in this



1 case. Tariff language is the same, and there's no new  
2 information or evidence that changes any of the operative  
3 facts or the law.

4 The AEP and Wabash contracts were not  
5 long-term partial requirements sales in 2009 when they  
6 were entered. They were not long-term partial  
7 requirements sales when Staff analyzed them during the  
8 prudence audit, and they are not long-term or partial  
9 requirements sales today.

10 Traditionally, and according to the  
11 longstanding published definitions from multiple sources,  
12 not just the FERC Form 1, multiple regulatory sources, the  
13 phrase long-term partial requirements service means  
14 service which the supplier plans to provide on an ongoing  
15 basis. In other words, service for which the supplier  
16 includes projected load in its system resource planning.

17 Ameren now seeks to reject the traditional  
18 definition of the phrase as it is used in the regulatory  
19 context and formalized in multiple regulatory sources and  
20 is attempting to convince this Commission that long-term  
21 partial requirements service means nothing more -- or  
22 requirement sales means nothing more than service provided  
23 to a load serving entity for at least a year.

24 And I would point out that despite Ameren's  
25 attempt to denigrate the 20-year-old definition of FERC

1 Form 1, that's not the only source. In fact, all of the  
2 regulatory sources that discuss this issue comport with  
3 the positions proffered by the Staff and MIEC, the  
4 non-Ameren parties, all of them. And Ameren is not able  
5 to point to a single regulatory source that supports its  
6 position.

7 When asked where Ameren derives their  
8 exceedingly broad and self-serving definition of the  
9 phrase at issue, Ameren's witnesses only offer the vague  
10 and superficial response that their definition is based on  
11 their experience trading in the wholesale market.

12 And to be fair, that might actually be  
13 true. In the wholesale market, in the marketplace there  
14 may be terms that are used that are distinct and different  
15 from the terms -- or the meaning of the terms are  
16 different than the way they're meant in the regulatory  
17 context. Tariff is a regulatory document, and we are  
18 defining this term as it was understood by regulators in  
19 the regulatory context, not as between Ameren and the  
20 people with whom they are entering the contracts, Wabash  
21 and AEP.

22 So the evidence you'll hear in this case  
23 will demonstrate that Ameren's attempt to redefine what  
24 are clearly routine off-system sales as long-term partial  
25 requirements sales is untenable.

1 First, Ameren's definition of the phrase  
2 flies in the face of the traditional meaning of the terms  
3 as they are understood as they were intended in the  
4 regulatory context by everyone.

5 Second, Ameren's definition defies the  
6 formal definitions of the terms as they are described in  
7 multiple reliable sources.

8 Third, Ameren's definition of the phrase  
9 renders the language of tariff sheet 98.3 almost  
10 completely meaningless as was pointed out by counsel  
11 earlier. It incorporates or includes any number of types  
12 of contracts, none of which were contemplated by the  
13 parties, including Ameren and the Commission.

14 And fourth, Ameren's definition directly  
15 contradicts the meaning of the phrase as it was understood  
16 by Ameren and the other parties at the time they entered  
17 the agreement and it was understood -- and as it was  
18 understood and intended by this Commission when it  
19 approved the agreement. Indeed, the only evidence in this  
20 case with respect to the parties' intent -- when I say the  
21 parties, I mean Ameren as well. The only evidence with  
22 respect to the parties' intent regarding this language was  
23 provided by Lena Mantle who testified that during the  
24 negotiations, when this phrase was discussed, explicitly  
25 discussed, an Ameren representative confirmed to her that

1 this phrase, long-term partial requirements sales,  
2 referenced the contracts between Ameren Missouri and the  
3 municipalities. So there was a conversation about the  
4 parties' intent at the time, and it did not -- it did not  
5 include the types of contracts into which Ameren entered  
6 that are at issue in this case.

7 What is really at stake in this case is the  
8 integrity of the bargain struck between Missouri  
9 ratepayers and Ameren Missouri in the Stipulation &  
10 Agreement that was approved in Case No. ER-2008-0318.

11 As the Commission knows and has been  
12 established, Ameren had been seeking a fuel adjustment  
13 clause or an FAC form several years. The obvious benefit  
14 to Ameren Missouri of receiving the fuel adjustment clause  
15 would be that Ameren could immediately and automatically  
16 increase the rates of Missouri ratepayers whenever fuel  
17 costs rise or revenues from off-system sales drop.

18 Rather than file a rate case where the  
19 Commission could consider all relevant factors to  
20 determine whether Ameren was entitled to a rate increase,  
21 the FAC allows Ameren to immediately increase rates above  
22 those established in base rates.

23 The FAC has proven to be a great financial  
24 boon to Ameren Missouri. From September 2009 through  
25 October 2011, you will hear evidence in this case that

1 Ameren has collected from customers through the FAC  
2 approximately \$179 million. That's approximately  
3 \$7 million per month or over \$80 million a year through  
4 the FAC.

5 On the over hand, the bargain for Missouri  
6 ratepayers implicit in this agreement is that when fuel  
7 costs drop or off-system sales increase, Ameren Missouri  
8 ratepayers will automatically benefit from lower rates.  
9 That's the bargain. That's the bargain that was struck.  
10 While fuel costs slightly decreased during the first  
11 period of the FAC, the vast majority of months they  
12 increased, benefitting Ameren Missouri to the detriment of  
13 ratepayers.

14 However, in this case, Ameren entered into  
15 two off-system sales contracts with AEP and Wabash  
16 generating millions of dollars of revenue, and based on  
17 the language of the FAC, Missouri ratepayers should have  
18 benefited. They should have benefited. It's not a  
19 windfall from an act of God. It's a benefit implicit in  
20 the agreement between the parties. They should have  
21 benefited from these increased revenues by experiencing a  
22 drop in rates of approximately \$26 million.

23 However, in violation of the tariff, Ameren  
24 Missouri excluded these two contracts from the fuel  
25 adjustment clause and failed to flow the revenue through

1 to Missouri ratepayers. How did they do that? It was  
2 actually quite simple. The evidence will show that the  
3 tariff, Tariff 98.3, allowed Ameren to exclude contracts  
4 that constituted long-term partial requirements sales.  
5 That's the phrase at issue in this case. That phrase as  
6 was amply and exhaustively demonstrated in the prior case  
7 has a particular meaning in the regulatory context and had  
8 a particular meaning as intended by Ameren Missouri and  
9 the Commission and the parties to the tariff.

10 The meaning of the phrase long-term partial  
11 requirements sales as was understood by everyone did not  
12 include the types of bilateral sales agreements  
13 characterized by AEP and Wabash. However, by  
14 characterizing them or branding them as long-term partial  
15 requirements sales, Ameren was able to not flow the  
16 revenues from those contracts through the FAC, and that  
17 deprived Missouri ratepayers of the benefit of the bargain  
18 that they had struck with Ameren Missouri to the tune of  
19 \$26 million.

20 You have already heard and you will  
21 continue to hear from Ameren in ever-increasing  
22 descriptions the destruction of the 2009 ice storm.  
23 There's no question that the 2009 ice storm was a bad  
24 storm. However, as was admitted by Ameren's witness Lynn  
25 Barnes in the prior case, the fact of the ice storm is not

1     germane or relevant in any way to how this Commission  
2     interprets the clause at issue in the tariff. In other  
3     words, the storm is a red herring in this case. The storm  
4     does not alter the language of the tariff. It does not  
5     alter the type of contracts referred to by the AEP and  
6     Wabash sales.

7                     It doesn't have -- it provides some helpful  
8     and informative background information, but it is not  
9     germane or relevant in any way to the analysis of what  
10    constitutes a long-term partial sale, and it does not --  
11    is not germane or relevant in any way to whether or not  
12    these -- the AEP and Wabash sales were long-term partial  
13    requirements sales.

14                    You may also hear evidence that  
15    EO-2010-0255 was reversed -- we did that discuss that. It  
16    was discussed a moment ago -- by the circuit court in this  
17    county. The MIEC has already filed its notice of appeal  
18    to the Western District, and it's our understanding that  
19    the Commission, the other parties are going to do the  
20    same.

21                    And with all due respect to the circuit  
22    court's judgment in that case, its dubious reasoning will  
23    almost certainly be overruled by the Western District and  
24    the Commission's Report and Order in EO-2010-0255 will  
25    remain the law of the land.

1                   Finally, you will hear evidence that  
2   between the prior case and this one, Ameren has officially  
3   rebranded the contracts at issue as requirements sales  
4   contracts in its annual reports. This fact is of no  
5   consequence at all. In the first case dealing with these  
6   contracts, the Commission in its Order reasoned that  
7   calling a dog a duck doesn't make it quack. In this case,  
8   the fact that Ameren has now officially registered the dog  
9   as a duck still won't make it quack. The contracts have  
10   not changed despite their rebranding.

11                   In sum, the Commission reached the right  
12   decision on these same facts the first time they were  
13   brought before you, and the MIEC respectfully requests  
14   that the Commission reach the same decision in this case.  
15   Ameren Missouri harmed its ratepayers by depriving them of  
16   the benefit of the bargain struck in their Stipulation &  
17   Agreement. It is patently unfair for Ameren to accrue  
18   \$179 million in benefits from this agreement and deprive  
19   Missouri ratepayers of the \$26 million to which they are  
20   entitled under the same agreement.

21                   Accordingly, the MIEC respectfully requests  
22   that this Commission order Ameren to refund to Missouri  
23   ratepayers the \$26 million of which they were deprived by  
24   Ameren's imprudent, improper and unlawful conduct. Thank  
25   you.



1 JUDGE PRIDGIN: Mr. Roam, thank you.

2 COMMISSIONER JARRETT: Mr. Roam, I'll ask  
3 you the same question that I asked the other counsel. In  
4 this case, is your position, theories, testimony  
5 essentially the same as it was in the prior case?

6 MR. ROAM: It is, Commissioner.

7 COMMISSIONER JARRETT: Judge, I apologize.  
8 I'm still kind of chewing on this legal issue, and I want  
9 to -- this is open to all counsel. I'm looking at  
10 paragraph 5 in the Conclusions of Law in the EO-2010-0255  
11 case, and it states, and I quote, the Commission  
12 established its standard for determining the prudence of a  
13 utility's expenditures in a 1985 decision. In that  
14 decision, the Commission held that a utility's  
15 expenditures are presumed to be prudently incurred, but if  
16 some other participant in that proceeding creates a  
17 serious doubt as to the prudence of the expenditure, then  
18 the utility has the burden of dispelling those doubts and  
19 proving the question expenditure to have been prudent.

20 In a complaint case, I believe the burden  
21 is on the complainant to prove with a preponderance of the  
22 evidence that the utility violated a law or Commission  
23 rule or tariff, which is law. Doesn't that turn the  
24 burden of proof -- in a prudence case, the burden of proof  
25 really falls on the company, and in a complaint case, the

1 burden of proof falls on the Staff who's bringing the  
2 complaint. So isn't that a fundamental issue in this case  
3 on who has the burden of proof when we're talking about  
4 not a prudence issue necessarily but a -- but a tariff  
5 violation?

6 MR. ROAM: I would just say weigh in on  
7 that to say that a tariff -- I don't know why a tariff  
8 violation could not be considered a prudence issue. And  
9 so unless there was a legal challenge to the tariff  
10 violation being considered as part of the prudence review,  
11 then I don't know that it matters at all whether -- I do  
12 see your point that the burden of proof is different in a  
13 prudence review than it would be in a complaint case, but  
14 unless there's some reason why, you know, a tariff  
15 violation cannot be considered as part of a prudence  
16 review, then I don't know that it matters that it's being  
17 considered as part of the prudence review.

18 And again, just to -- a statement I made  
19 earlier is that it -- and I'm not -- I haven't done a  
20 prudence review before, but -- except 0255, but it would  
21 be our position that it is wildly imprudent for the  
22 company to violate its own tariff to the detriment, as we  
23 see it, to Missouri ratepayers.

24 COMMISSIONER JARRETT: Well, and maybe  
25 the -- you can use imprudent in different ways, and isn't

1 for our purposes a prudence review a financial review, a  
2 financial audit of what the company has expended, and the  
3 auditors look at it and they determine whether or not the  
4 company spent the money wisely that they spent? That's,  
5 to my understanding, what a prudence review is in the  
6 context of what we do as regulators.

7 It may very well be imprudent in a general  
8 sense to violate a tariff, but that's not what a prudence  
9 review under our rules does. And, of course, anybody else  
10 can respond.

11 MR. BYRNE: Your Honor, just briefly. I do  
12 think there's some merit in what you're saying. To the  
13 extent -- and I think maybe this is the point you're  
14 getting to. To the extent a tariff violation or a law  
15 violation is included within the prudence case, I think  
16 the Commission can and probably should apply the burden of  
17 proof standard that applies in a complaint case, which may  
18 be higher than the burden of proof in a prudence case.

19 COMMISSIONER JARRETT: And that's really  
20 the question I'm getting to. What am I supposed to  
21 consider and who am I supposed to look at as having the  
22 burden of proof when I'm trying to make a decision in the  
23 case?

24 MR. BYRNE: I think regardless of the  
25 context that the argument is raised in, if they allege a

1 violation of a tariff or a violation of a statute or some  
2 other matter that's complaint-worthy, I think the burden  
3 of proof is the higher standard that's applied to  
4 complaint cases, even if it occurs in the context of a  
5 prudence review.

6 COMMISSIONER JARRETT: Mr. Thompson?

7 MR. THOMPSON: Well, first of all, I would  
8 disagree with Mr. Byrne that there's a higher standard in  
9 a complaint case. The standard is more likely than not in  
10 either case. The question is just who bears it, who is it  
11 the bears the burden of proving their case and loses if  
12 they don't?

13 But this case isn't going to turn on a  
14 failure of proof. This case is going to turn on the  
15 Commission's interpretation of the tariff language. So I  
16 don't know -- from that standpoint, I don't know that it  
17 makes a difference. I don't think anyone's going to lose  
18 because they didn't put forward a prima facie case, for  
19 example. I think, in fact, we're all pretty much in  
20 agreement on the operative facts.

21 It's the interpretation of that tariff  
22 language that the case turns out, and much of the evidence  
23 you're going to hear is really merely persuasive in the  
24 sense of, well, they must have meant this or they must  
25 have meant that or those same words were used in this way

1 in this other context.

2 So I really don't know that it makes a  
3 difference. I think the question you're asking is  
4 certainly absolutely valid from a legal standpoint, but as  
5 I said earlier, I also think that what the General  
6 Assembly contemplated was perhaps a somewhat broader  
7 review than what we might generally mean when we say  
8 prudence review in the sense -- remember there's also a  
9 true-up where the amount of money that is floated in each  
10 direction is also squared against the records, is audited  
11 and determined that it's the correct amount.

12 So I think basically every 18 months the  
13 General Assembly wants to be sure that everything's being  
14 done correctly, correctly. And the way this case has gone  
15 forward, it's the company that has essentially been called  
16 upon to justify the conduct of management, which is the  
17 same thing that happens in a prudence review after the  
18 complaining party has met that initial hurdle to get  
19 beyond the presumption of prudence, and in a sense it's  
20 the same thing that happens in a complaint case where the  
21 company is defending the actions. So that's my response,  
22 sir.

23 COMMISSIONER JARRETT: Okay. Mr. Byrne,  
24 you seem to --

25 MR. BYRNE: I do. I think I do agree with

1 Mr. Thompson to the extent that the Commission is  
2 interpreting the tariff, that's not -- his point is there  
3 aren't facts at issue, but I do think there are some facts  
4 in this case that are at issue, and we'll see how the  
5 record develops. There may be more facts that become at  
6 issue as the record goes on.

7 But, for example, a fact that -- just as an  
8 example, a fact that's been brought up is the question of  
9 what was said. Ms. Mantle thinks that the company said it  
10 only applies to municipals during the discussion and the  
11 company says it didn't. Now, that's a fact that's at  
12 issue that may have some bearing on the interpretation.

13 And I think when there are facts like that,  
14 the burden of proof does matter. And there aren't that  
15 many in this case, but I believe there are a few.

16 MR. ROAM: I would just add one thing, and  
17 that is that unless -- unless reviewing the application of  
18 the tariff is somehow legally prohibited from being  
19 performed during a prudence audit or a prudence case, then  
20 it should be permitted. Unless there's some reason why we  
21 can't consider Ameren Missouri's application of the tariff  
22 in a prudence review, then it's perfectly legally fine to  
23 do so.

24 And if it's legally fine to do so in a  
25 prudence review, then whatever burden of proof is required

1 in a prudence review should apply to all of the issues in  
2 this case.

3 COMMISSIONER JARRETT: Well, the majority  
4 in the other case relied on the prudence review standard  
5 because they stated so in the conclusions of law. So is  
6 that the wrong standard, then? Did they apply the wrong  
7 standard in that case?

8 MR. ROAM: In the 0255 case?

9 COMMISSIONER JARRETT: Yeah.

10 MR. ROAM: No. That's exactly what I mean.  
11 If we are permitted to discuss or analyze, if the  
12 Commission's permitted to analyze Ameren Missouri's  
13 application of the tariff in a prudence review, then the  
14 prudence review standard should apply to that review. So  
15 I think they applied the right standard, and I think the  
16 same standard should be applied in this case, unless  
17 there's some legal reason why this Commission cannot hear  
18 this issue within a prudence review.

19 COMMISSIONER JARRETT: How about due  
20 process of law in applying the correct standard of review?  
21 Isn't that a violation of due process of law if we don't  
22 apply the correct burden of proof?

23 MR. ROAM: Certainly. But I'm arguing that  
24 we are applying the correct burden of proof in this case,  
25 as it was applied in the previous case, unless there is a

1 legal restriction that says the Commission may not  
2 consider Ameren Missouri's application of a tariff in a  
3 prudence review, in which case, if we did that and then  
4 applied the wrong standard, then we would violate due  
5 process.

6 But unless we have some legal prohibition  
7 from doing that, unless the Commission is legally  
8 prohibited from analyzing this issue within a prudence  
9 review, then it should be analyzed within a prudence  
10 review and given the burden of proof that is required by a  
11 prudence review.

12 COMMISSIONER JARRETT: Anybody else?

13 MR. BYRNE: I think you're on to something,  
14 Judge. I think -- I think perhaps the standard of -- an  
15 allegation's being made that we violated the tariff. The  
16 burden of proof ought to apply that applies when someone  
17 alleges that you violate your tariff. We could brief this  
18 issue.

19 COMMISSIONER JARRETT: I would appreciate  
20 that very much. Thank you.

21 JUDGE PRIDGIN: Commissioner Stoll. Yes,  
22 sir.

23 COMMISSIONER STOLL: Not having been here  
24 for the first case, and trying to understand your position  
25 in this case, are you saying or is it your position that



1 the sale should have been included in the FAC because it  
2 was not a long-term partial requirements sale because it  
3 did not -- it was not sold to a regular customer? I'm not  
4 sure how to phrase that.

5 MR. ROAM: Well, yeah. No. There are a  
6 few definitions of what constitutes long-term or in our  
7 case partial requirements sales.

8 COMMISSIONER STOLL: Okay.

9 MR. ROAM: And the witnesses will discuss  
10 those definitions, and our position is that the AEP and  
11 Wabash contracts did not comport with those definitions.  
12 And when that definition or when those phrases were  
13 drafted in the tariff, no one, including Ameren Missouri,  
14 any of the other parties, the Commission, would have  
15 contemplated that the types of -- or would have intended  
16 that the types of contracts characterized by the AEP and  
17 Wabash contracts would have been considered long-term  
18 partial requirements sales, and that just would never have  
19 been considered and was not intended.

20 And the reason there are -- there's a lot  
21 of evidence that will come up in this, but, for instance,  
22 one of the reasons is because Ameren then would be able to  
23 enter into these types of contracts at will to the  
24 detriment of Missouri ratepayers. They could have entered  
25 into these types of contracts with or without the storm if

1 we use their definition. Their definition of that phrase,  
2 long-term partial requirements sales, Ameren's definition,  
3 is so broad and so vague that it essentially becomes  
4 meaningless within the tariff. It's -- the words are  
5 rendered meaningless because it could include nearly any  
6 conceivable sale to a anyone for a year or more, and that  
7 just simply was not intended by the Commission, wasn't  
8 intended by Ameren, it wasn't intended by any of the other  
9 parties. It's not what the phrase means.

10 COMMISSIONER STOLL: And that will be  
11 discussed as we move along?

12 MR. ROAM: Uh-huh. Yeah.

13 COMMISSIONER STOLL: Thank you.

14 JUDGE PRIDGIN: Mr. Roam, I'll try to ask  
15 the same question I asked other counsel. Any legal  
16 difference between this case and the 2010-0255?

17 MR. ROAM: No.

18 JUDGE PRIDGIN: I thought you addressed  
19 that in opening, but I wanted to be perfectly clear.  
20 Thank you very much.

21 MR. ROAM: Thank you.

22 JUDGE PRIDGIN: All right. Barnes-Jewish,  
23 Ms. Langeneckert. When you're ready, ma'am.

24 MS. LANGENECKERT: May it please the  
25 Commission? I'm Lisa Langeneckert, and I represent

1 Barnes-Jewish Hospital.

2 One of the negatives to going last is that  
3 all the competent counsel ahead of you get to make a lot  
4 of the good arguments, but one of the benefits is that you  
5 don't have to make them yourself.

6 Mr. Roam had referenced Yogi Berra, and the  
7 quote that he used has stood the test of time, but I think  
8 more pop culture and Groundhog Day. It seems like we're  
9 doing the same thing that we did in the last case.

10 Barnes-Jewish Hospital agrees with both  
11 Staff and the MIEC that the Wabash and AEP contracts were  
12 not long-term requirements sales and that the revenues  
13 from those off-system sales should have flowed through the  
14 FAC. Ameren could have withdrawn the FAC after the ice  
15 storm, but they chose not to, to the shareholders' credit,  
16 because they've received a lot of revenues from that as  
17 noted by Mr. Roam.

18 Like the 19 million from the first prudence  
19 review that this Commission indicated should be refunded  
20 to the customers, we believe that the 26 million at risk  
21 in this case also should be refunded to the customers.  
22 Thank you.

23 JUDGE PRIDGIN: Ms. Langeneckert, thank  
24 you. Commissioner Jarrett.

25 COMMISSIONER JARRETT: I don't want to

1     leave you out. I just want to ask you, is your case  
2     essentially the same as it was in the prior case?

3                   MS. LANGENECKERT: Well, we had a witness  
4     in the last case and we had had a different name, but in  
5     this case we do believe that they are not long-term  
6     requirements sales, and so our positions are the same, but  
7     we don't have a witness.

8                   COMMISSIONER JARRETT: Very good. Thank  
9     you.

10                  JUDGE PRIDGIN: And same question,  
11     Ms. Langeneckert. Any legal difference between this case  
12     and the 2010-0255?

13                  MS. LANGENECKERT: I do not believe there  
14     is.

15                  JUDGE PRIDGIN: All right. Thank you.  
16     Thank you very much. Before we proceed to witnesses, this  
17     looks to be a natural time for a break, and --

18                  MR. LOWERY: Your Honor, if I may, before  
19     we go off the record?

20                  JUDGE PRIDGIN: Yes, sir.

21                  MR. LOWERY: Commissioner Jarrett, you've  
22     asked the same question of each of us, and I was not able  
23     to give you a very complete answer, but I thought about it  
24     a little bit, and there's four or five facts that I know  
25     are different in the record in this case. Other counsel

1 may have thought of some, too. I submit that if they  
2 have, they probably should maybe amend their answer as  
3 well.

4 Let me give you five that I thought of,  
5 evidence that will be presented in this case that wasn't  
6 in the other case. In the other case, the AEP and Wabash  
7 contracts had not been included in the company's IRP  
8 because they didn't exist, but they have been included in  
9 the subsequent IRP in this -- that occurred since that  
10 case was concluded. So that's a new fact.

11 There's the issue about the \$3.3 million  
12 that Mr. Weiss and Ms. Mantle testify, which is a new  
13 issue that didn't exist in the other case.

14 There's another municipal contract. I  
15 talked about three that would have, under the other  
16 parties' theories, also have to have been included.  
17 There's another one that has arisen. There are facts  
18 about that that weren't adduced in the first case.

19 Mr. Brubaker's new argument that I  
20 mentioned in opening statement, that's a new factual  
21 argument as well.

22 And Mr. Eaves also points to some  
23 additional FERC Form 1 reporting that he brought up that  
24 also was not brought up in the last case, and we've  
25 responded to that, and I won't go into the details of

1     them. Those are five things, five factual matters that  
2     all matter, I think, in terms of the legal issues in this  
3     case that were not present in the record in the last case.

4                   COMMISSIONER JARRETT: Thank you,  
5     Mr. Lowery. I appreciate that. That allows me to focus  
6     on those new areas a little bit more maybe than I would  
7     have normally. Thanks.

8                   JUDGE PRIDGIN: Mr. Lowery?

9                   MR. LOWERY: Judge, I have one other  
10    question. We may have misunderstood you. Normally in the  
11    typical rate case orders that come out, we do not bring  
12    copies of all the prefiled testimony for the Bench because  
13    it's filed in EFIS and we assume you have it. So we don't  
14    have copies for all of you today. We can get them if  
15    you'd like for us to do that, but we had assumed that the  
16    Commissioners already had a copy of all the prefiled  
17    testimony.

18                  JUDGE PRIDGIN: I don't need a copy, but I  
19    will defer to the Commissioners to see if they would like  
20    it.

21                  MR. LOWERY: Okay. Thank you.

22                  JUDGE PRIDGIN: All right. Anything  
23    further before we take a break?

24                  MR. ROAM: If I could just address just a  
25    couple of the points made by Mr. Lowery. That is that the

1 EQR issue that Ameren is discussing or is characterizing  
2 as a new argument, the transcript of EO-2010-0255 will  
3 reflect that that was part of the discussion and part of  
4 the evidence in that case. That's not a new position or a  
5 new argument.

6 Also, that the company after EO-2010-0255  
7 retroactively or included these contracts in their IRP.  
8 I'm not sure that that's a relevant germane fact just  
9 because to correct something or to alter something after  
10 the Order was issued, I don't know that that shows -- I  
11 don't know that that provides any relevant information  
12 with respect to the nature of these contracts. That's  
13 all.

14 MR. LOWERY: I don't want to perpetuate  
15 this, but the AEP and Wabash contracts were included in  
16 the 2011 IRP that was filed after that case was over.  
17 There was no retroactive correction or change to the prior  
18 IRP. So it is an entirely new fact.

19 MR. ROAM: I apologize. I don't mean  
20 retroactive. I mean it was done after the case was  
21 issued, after the Order was issued.

22 JUDGE PRIDGIN: All right. Thank you,  
23 counsel. Anything further before we go on break? Hearing  
24 nothing, according to the clock in the room here it's  
25 about seven or eight minutes after ten. Let's resume at

1 10:25 according to that clock. If there's nothing further  
2 from counsel, we are off the record.

3 (A BREAK WAS TAKEN.)

4 (MIEC EXHIBIT NOS. 10 AND 11 WERE MARKED  
5 FOR IDENTIFICATION.)

6 JUDGE PRIDGIN: Good morning. We are back  
7 on the record. We have completed opening statements and  
8 should be ready to go on to our first witness.

9 Just a scheduling announcement. Again,  
10 it's my intent to go 'til roughly 12:30. I try to break  
11 whenever I get a natural break, whenever a witness is  
12 finished or a lawyer is finished, and that's my intent to  
13 do. If we start bumping up around 12:30, I may just kind  
14 of throw the brakes on and say, we need to stop or please  
15 just a few more questions or whatever to try to get to a  
16 point so you can have lunch and get to your two o'clock  
17 conference.

18 And then I will either be here or in my  
19 office, but it's my plan to kind of keep an eye on your  
20 conference without interrupting or pushing, and then 2:45  
21 is kind of a rough estimate as to when I would want to  
22 resume. Obviously if it gets done more quickly and you're  
23 ready to go before then, please let me know. And if you  
24 need more time, again, that's not a problem.

25 MR. LOWERY: Your Honor, just for your



1 information, there's really I think one DR to be discussed  
2 during that conference, and so I would anticipate it would  
3 be shorter rather than longer.

4 JUDGE PRIDGIN: Is 2:30 you think a more  
5 reasonable --

6 MR. THOMPSON: I think 2:30 would be fine,  
7 Judge.

8 JUDGE PRIDGIN: Very good. Obviously with  
9 plenty of flexibility, we'll plan to resume about 2:30.

10 All right. Anything further before we  
11 proceed to witnesses?

12 (No response.)

13 JUDGE PRIDGIN: All right. Hearing  
14 nothing. Looks like the first witness on the list is --  
15 these are Ameren witnesses first, would be Lynn Barnes.  
16 Ms. Barnes, come forward to be sworn, please.

17 (Witness sworn.)

18 JUDGE PRIDGIN: Thank you very much.  
19 Please have a seat. And Mr. Byrne, when you are ready.

20 MR. BYRNE: Thank you, your Honor.

21 LYNN BARNES testified as follows:

22 DIRECT EXAMINATION BY MR. BYRNE:

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

25 A. Yes. It's Lynn M. Barnes, 1901 Chouteau

1 Avenue, St. Louis, Missouri 63103.

2 Q. And by whom are you employed, Ms. Barnes?

3 A. Ameren Missouri.

4 Q. And in what capacity?

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

7 Q. And are you the same Lynn Barnes who caused  
8 to be filed in this case direct testimony that's been  
9 marked as Exhibit 1 and surrebuttal testimony that's been  
10 marked as Exhibit 2?

11 A. Yes, I am.

12 Q. And do you have any corrections to any of  
13 that prefiled testimony?

14 A. No, I don't.

15 Q. Are the -- is both -- are both sets of that  
16 prefiled testimony true and correct to the best of your  
17 knowledge and belief?

18 A. Yes, it is.

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

22 A. Yes, they would.

23 MR. BYRNE: Your Honor, I'd offer  
24 Exhibits 1 and 2 and tender Ms. Barnes for  
25 cross-examination.

1 JUDGE PRIDGIN: Exhibits 1 and 2 have been  
2 offered. Any objection?

3 MR. THOMPSON: No objection.

4 JUDGE PRIDGIN: Hearing none, Exhibits 1 2  
5 are admitted.

6 (AMEREN EXHIBIT NOS. 1 AND 2 WERE RECEIVED  
7 INTO EVIDENCE.)

8 JUDGE PRIDGIN: Cross-examination.  
9 Barnes-Jewish, any questions?

10 MS. LANGENECKERT: Barnes-Jewish has no  
11 questions of Ms. Barnes. Thank you.

12 JUDGE PRIDGIN: Obviously I'll leave it up  
13 to counsel. You may cross-examine from the podium or your  
14 seat, whichever you're more comfortable. MIEC, Mr. Roam?

15 MR. ROAM: Just a few questions.

16 CROSS-EXAMINATION BY MR. ROAM:

17 Q. Hello, Ms. Barnes.

18 A. Good morning.

19 Q. Most of what I would normally be asking was  
20 discussed in the prior case, so I'll just limit the  
21 questions to a few here.

22 Ms. Barnes, you were not at any of the  
23 meetings where the terms of the Stipulation & Agreement  
24 relating to the FAC tariff at issue in this case were  
25 discussed, correct?

1 A. That's correct.

2 Q. And you were not privy to any of the  
3 discussions between the parties, between Ameren and any of  
4 the other parties during this negotiation period, correct?

5 A. Correct.

6 Q. It's your position that the tariff language  
7 would have allowed Ameren to enter into the AEP and Wabash  
8 contracts with or without the event of this storm; is that  
9 correct?

10 A. Yes. That's my belief.

11 Q. And Ameren Missouri would have been able to  
12 keep the revenues from those contracts whether or not  
13 there had been a storm; is that correct?

14 A. Yes.

15 Q. So under your definition, Ameren could have  
16 actually entered into more than the AEP and Wabash  
17 contracts, they could have entered into like contracts,  
18 additional like contracts and kept the revenues from those  
19 contracts; isn't that correct?

20 A. I guess legally they could. Practically,  
21 it has to be based on what level of excess generation we  
22 have available, and there are limitations because we need  
23 generation to serve load, that we would not be able to  
24 enter into multiple long-term requirements contracts  
25 because that could expose us to not having enough power

1 available during a peak period for our native load  
2 customers.

3 So we maybe could have under the tariff  
4 entered into those contracts, but prudently we would not  
5 likely have done that because we would have been exposing  
6 ourselves to prudence opportunities to provide energy to  
7 our native load customers.

8 Q. Do you have -- Ms. Barnes, do you have your  
9 direct testimony with you?

10 A. I do.

11 Q. Would you mind to turn to Appendix B  
12 attached to your direct testimony?

13 A. I have it. That's Appendix B to the  
14 tariff, correct?

15 Q. That's right.

16 A. Uh-huh.

17 Q. Now, if you can tell me, if you go down  
18 to -- if you go over to the totals column, do you see that  
19 to your far right?

20 A. Yes.

21 Q. And then you come all the way down onto the  
22 second page of that document where it says negative  
23 10,085,818?

24 A. Yes. I see that.

25 Q. Does that not represent that Ameren was

1 projected to sell 10 million megawatt hours of off-system  
2 sales after serving its native load?

3 A. I believe that represents what we believe  
4 the excess generation would have been available.

5 Q. And that would have been 10 million  
6 megawatt hours?

7 A. Yes, I believe that's right.

8 Q. Those would have been sales; isn't that  
9 right? If you look to the far left on that second to  
10 bottom row, it's a little cut off on my copy, but I  
11 believe it says sales.

12 A. Well, it would have been the excess that  
13 was available for sale barring any situations where units  
14 went down or we would not have needed it for peak for  
15 native load purposes.

16 Q. Okay. And the AEP contract asked for  
17 100 megawatts per hour; isn't that right?

18 A. I believe that's right.

19 Q. And the Wabash was 150 megawatts per hour?

20 A. I believe so.

21 Q. Now, you changed -- Ameren changed the  
22 classification of the AEP and Wabash contracts in its  
23 annual reporting; isn't that right?

24 A. Between 2009 and 2010, yes.

25 Q. And that was after the Report and Order was

1     **issued in EO-2010-0255?**

2             A.       I believe the decision was made before that  
3     Order because the FERC report would have been due by the  
4     end of April. So the report would have had to have been  
5     completed before we had that Order.

6             **Q.       So would the decision have been made after**  
7     **the case at issue in EO-2010-0255?**

8             A.       It would have been made -- I think we had  
9     discussions after the hearing perhaps but before we had a  
10    judgment.

11            MR. ROAM:   Okay. Thank you. No further  
12    questions.

13            JUDGE PRIDGIN: Thank you. Questions from  
14    Staff, Ms. Moore?

15            MS. MOORE:   No questions, Judge. Thank  
16    you.

17            JUDGE PRIDGIN: Questions from the Bench.  
18    Commissioner Jarrett?

19            COMMISSIONER JARRETT: I have no questions,  
20    Ms. Barnes. Thank you.

21            JUDGE PRIDGIN: Commissioner Stoll?

22            COMMISSIONER STOLL: No questions.

23            JUDGE PRIDGIN: I have no questions. Any  
24    redirect?

25            MR. BYRNE:   Yes, your Honor. Just briefly.

1 REDIRECT EXAMINATION BY MR. BYRNE:

2 Q. Ms. Barnes, Mr. Roam was asking you some  
3 questions about, you know, could you have -- could you  
4 have entered into additional long-term requirements  
5 contracts, and I think he pointed you to Appendix B  
6 attached to the stipulation that was part of -- that was  
7 part of -- that was attached to your testimony. I'd like  
8 to ask you to elaborate a little bit on your answer if you  
9 could.

10 You know, why couldn't Ameren Missouri  
11 enter into -- basically sell all of its additional  
12 off-system sales power under long-term requirements  
13 contracts?

14 A. Well, first of all, it's not available  
15 24/7. Those excess generation that are available come at  
16 certain times of the day or certain times of the month  
17 even or year. And because of the unpredictability of  
18 things like weather and other demands on the system, we  
19 have to maintain some of our generation and keep it  
20 available in the event that we need it for native load.

21 In the event that we don't need it for  
22 native load, then we can sell it on a short-term basis,  
23 and those constitute off-system sales. So those are  
24 generally the types of sales that we are running through  
25 the fuel adjustment clause, but we don't lock up and can't



1 frankly commit all of our generation on a long-term basis  
2 or we would be forced to buy power in the event that we  
3 needed it to serve native load customers. And that could  
4 be deemed to be imprudent if the cost of that power was in  
5 excess of what it cost us to generate it.

6 Q. Mr. Roam cited you to the 10 million  
7 megawatt figure that's on that Appendix B, and I think the  
8 perhaps implication was we could have sold 10 million  
9 megawatt hours. Could we have sold anything close to that  
10 even if we wanted to?

11 A. I don't believe so, but I'm actually not  
12 the expert on who buys and sells power. So that might be  
13 a question for --

14 Q. Is most of our off-system sales on the peak  
15 day of the year?

16 A. No, they're not. They're in shoulder  
17 months generally, which are the spring and fall typically.

18 Q. Okay. And I'm assuming would that preclude  
19 you from entering into long-term year-long contracts if  
20 the capacity's only available, the energy's only available  
21 in the shoulder months?

22 A. Yes.

23 MR. BYRNE: Thank you, Ms. Barnes. I have  
24 no other questions.

25 JUDGE PRIDGIN: Mr. Byrne, thank you.

1 Ms. Barnes, thank you. You may step down.

2 And I apologize if I mispronounce the name.

3 I believe the next witness is Jaime.

4 MR. LOWERY: Jaime.

5 JUDGE PRIDGIN: Haro.

6 MR. LOWERY: Haro.

7 JUDGE PRIDGIN: Haro. Mr. Haro, if you'll  
8 raise your right hand to be sworn, please.

9 (Witness sworn.)

10 JUDGE PRIDGIN: Thank you very much, sir.

11 Please have a seat. Mr. Lowery.

12 MR. LOWERY: Your Honor, for clarity, as I  
13 mentioned, I think, during my opening statement, I think  
14 we can just have Exhibits 3 and 4, and we will just put  
15 the HC version into the record as Exhibit 4. We really  
16 don't need to have two versions.

17 JUDGE PRIDGIN: So instead of Exhibit 4HC  
18 and NP, we'll simply have Exhibit 4?

19 MR. LOWERY: That's what I would suggest.

20 JUDGE PRIDGIN: Any objections?

21 (No response.)

22 JUDGE PRIDGIN: All right. Thank you.  
23 When you're ready, Mr. Lowery.

24 MR. LOWERY: Thank you.

25 JAIME HARO testified as follows:

1 DIRECT EXAMINATION BY MR. LOWERY:

2 Q. Would you please state your name for the  
3 record.

4 A. Yes. My name is Jaime Haro.

5 Q. And I didn't pronounce it perfectly right  
6 either. Mr. Haro, what is your -- what's your job title?

7 A. I am Director of Asset Management and  
8 Training for Ameren Missouri.

9 Q. Mr. Haro, did you cause to be prepared for  
10 filing in this docket direct and surrebuttal testimony  
11 that's been premarked as Exhibits 3 and 4?

12 A. Yes.

13 Q. If I were to ask you the same questions  
14 that are posed in those testimonies, would your answers be  
15 the same?

16 A. Yes, they will.

17 Q. Do you have any corrections or changes that  
18 need to be made to that testimony?

19 A. No, I don't.

20 MR. LOWERY: With that, your Honor, I would  
21 offer Exhibits 3 and 4 and tender Mr. Haro for  
22 cross-examination.

23 JUDGE PRIDGIN: Exhibits 3 and 4 are  
24 offered. Any objections?

25 MR. THOMPSON: No objection from Staff.

1 JUDGE PRIDGIN: Hearing none, Exhibits 3  
2 and 4 are admitted.

3 (AMEREN EXHIBIT NOS. 3 AND 4 WERE RECEIVED  
4 INTO EVIDENCE.)

5 JUDGE PRIDGIN: Cross-examination.  
6 Barnes-Jewish, Ms. Langeneckert, any questions?

7 MS. LANGENECKERT: No questions.

8 JUDGE PRIDGIN: Okay. Thank you.  
9 Mr. Roam, any questions?

10 CROSS-EXAMINATION BY MR. ROAM:

11 Q. Good morning, Mr. Haro.

12 A. Good morning.

13 Q. I just have a few questions for you as  
14 well. You also were not in any of the meetings where the  
15 terms of the Stipulation & Agreement were -- or of the  
16 tariff at issue in this case were discussed; is that  
17 right?

18 A. No, I was not.

19 Q. And so you were also not privy to any of  
20 the discussions between the parties regarding to the  
21 tariff language; is that correct?

22 A. That is correct.

23 Q. The requirements contracts to which Ameren  
24 was a party at the time the tariff was entered, if you  
25 recall, those were all municipal contracts; isn't that

1 correct?

2 A. That is correct.

3 Q. And those were Kahoka, Marceline, Kirkwood  
4 and Perry?

5 A. We may have also had a few others like  
6 Hannibal and Centralia.

7 Q. But they were all municipals?

8 A. Yes. But those terminated, though.

9 Q. Okay. But at the time the tariff was  
10 entered, they were all municipal requirements? All the  
11 requirements contracts were to municipals, correct?

12 A. That is correct.

13 Q. And Ameren has been providing service to  
14 these customers for in excess of ten years; isn't that  
15 correct?

16 A. Yes.

17 Q. In fact, in excess of 20 years; isn't that  
18 correct?

19 A. Yes, it is.

20 MR. ROAM: No further questions.

21 JUDGE PRIDGIN: Thank you. Cross from  
22 Staff, Ms. Moore?

23 MS. MOORE: No questions. Thank you.

24 JUDGE PRIDGIN: Any Bench questions,  
25 Commissioner Jarrett?

1 COMMISSIONER JARRETT: Mr. Haro, thank you  
2 for your testimony. I don't have any questions.

3 JUDGE PRIDGIN: Commissioner Stoll, any  
4 questions?

5 COMMISSIONER STOLL: I have no questions.

6 JUDGE PRIDGIN: And none from me. Any  
7 redirect?

8 MR. LOWERY: Just a couple questions, your  
9 Honor.

10 REDIRECT EXAMINATION MR. LOWERY:

11 Q. Mr. Haro, Mr. Roam asked you whether or not  
12 all of the -- whether or not you had been serving all of  
13 these municipal customers for a long time or something  
14 like that. Do you recall that?

15 A. Yes, I do.

16 Q. Do you have any municipal customers today  
17 that you hadn't been serving for quite some time?

18 A. Yes. The city of California we had not  
19 served and during that time another customer of ours.

20 Q. Do you know how long it had been from, say,  
21 the current time period to in the past when you  
22 actually -- between the time when you actually had a  
23 contract with California and the contract you have now?

24 A. I would think it's excess of eight years.

25 Q. And do you know how the City of California

1 contract has been treated for purposes of the fuel  
2 adjustment clause?

3 A. They were excluded from the fuel adjustment  
4 clause. They were treated as long-term full or partial  
5 requirement deals.

6 Q. Even though you didn't have a relationship  
7 with City of California for eight or ten years?

8 A. That is correct.

9 Q. Do you know what the term of the California  
10 contract that we're talking about is?

11 A. It's -- I think it's 41 months, but I have  
12 it here. Let me double check. Yeah, 41 months from  
13 January 1st, 2010 to May 31st, 2013.

14 Q. So obviously less than five years?

15 A. Less than five years.

16 Q. Mr. Roam asked you whether you had been  
17 privy to the discussions that led to the Stipulation &  
18 Agreement relating to the FAC tariff that was approved in  
19 the 0318 case. Do you remember those questions?

20 A. Yes, I do.

21 Q. Were you privy to discussions at the  
22 company that led to the development of the FAC tariff and  
23 in particular factor OSSR in that tariff before it was  
24 proposed by the company?

25 A. Not exactly. Not directly.

1           Q.       Well, when you say not directly, were you  
2 indirectly involved?

3           A.       Well, I was part of the group that did  
4 those transactions at the time.

5           Q.       And when you say those transactions, were  
6 the transactions that the company had done that you would  
7 consider to be long-term requirement sales, were they  
8 limited to municipal?

9           A.       They were certainly not. I think it's  
10 pretty clear what the tariff states is long-term full or  
11 partial requirement transactions. It doesn't limit it to  
12 municipal utilities. Obviously we had in mind that we  
13 could enter into those kind of transactions.

14          Q.       How do you know that you had it in mind?  
15 Is that because you have had other transactions in the  
16 past?

17          A.       Yeah. Through experience I've seen  
18 customers that buy these kind of transactions, like large  
19 customers. For example, Keystone or Caterpillar or ADM,  
20 for example, they tend to buy this kind of transactions  
21 because they need the full requirements or the partial  
22 requirements. As a matter of fact, we're an IOU. We're  
23 not a municipality. We're not a municipality, and we have  
24 been ourselves purchasers of the services.

25          Q.       So when you say -- are you referring to a



1 particular contract where Ameren Missouri has been, I  
2 guess, on the purchaser side of a long-term requirements  
3 sale?

4 A. That is correct. We were a customer of  
5 Arkansas Power & Light for many years where we were buying  
6 165 megawatts of energy and capacity, no other service but  
7 just energy and capacity, and they classified it as an RQ  
8 in their FERC Form 1. So we were definitely the recipient  
9 of RQ transaction as stated by FERC Form 1.

10 Q. And when you say -- is that contract, is it  
11 similar to the AEP and Wabash contracts except Ameren  
12 Missouri was the purchaser, but is the nature of the  
13 contract the service similar to the AEP and Wabash  
14 contracts?

15 A. It was pretty much similar because we have  
16 the right to take up to 165 megawatts, but we could  
17 schedule at different times. So it was very similar to  
18 both of those contracts.

19 Q. Has Ameren Missouri had long-term partial  
20 requirement sales contracts with non-municipalities where  
21 you're the seller, Ameren Missouri itself?

22 A. Yes. We have had transactions with APL  
23 also. We have sold them those kind of transactions where  
24 we had different territories that we need to serve.

25 Q. Are there any others, Mr. Haro?

1           A.       I think we had some other transactions with  
2   Illinois Power at the time that were also -- Illinois  
3   Power's not a municipality, of course. We had  
4   transactions with them where we sold them requirement  
5   service.

6           Q.       And just to be clear, you had transactions  
7   that were both more than a year and also constituted firm  
8   energy and capacity to Illinois Power?

9           A.       Correct.

10                  MR. LOWERY: Thank you, Mr. Haro.

11                  JUDGE PRIDGIN: All right. Thank you.

12   Mr. Haro, thank you very much. You may step down, sir.

13                  And Mr. Weiss would be the next witness.

14   Come forward to be sworn, please, sir.

15                  (Witness sworn.)

16                  JUDGE PRIDGIN: Thank you very much.

17   Please be seated. Mr. Byrne, Mr. Lowery.

18   GARY S. WEISS testified as follows:

19   DIRECT EXAMINATION BY MR. BYRNE:

20           Q.       Good morning, Mr. Weiss.

21           A.       Good morning.

22           Q.       Could you please state your name and  
23   business address for the record.

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

1 Q. And by whom are you employed, Mr. Weiss?

2 A. I'm employed by Ameren Missouri as Manager  
3 of Regulatory Accounting.

4 Q. And are you the same Gary S. Weiss that  
5 caused to be filed in this case direct testimony that has  
6 been marked as Exhibit No. 5?

7 A. Yes, I am.

8 Q. Do you have any corrections to that  
9 prefiled testimony?

10 A. None.

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

14 A. Yes, it is.

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

18 A. Yes, they would.

19 MR. BYRNE: Your Honor, I would offer  
20 Exhibit No. 5 into evidence and tender Mr. Weiss for  
21 cross-examination.

22 BY MR. BYRNE:

23 Q. I'm sorry. Mr. Weiss, did you also cause  
24 to be filed surrebuttal testimony that's been marked as  
25 Exhibit 6?

1           A.       Yes, I did.

2           Q.       And is the information contained therein  
3 true and correct to the best of your knowledge and belief?

4           A.       Yes, it is.

5           Q.       If I were to ask you the questions  
6 contained in Exhibit No. 6, would your answers be the  
7 same?

8           A.       Yes.

9                   MR. BYRNE: Your Honor, I would offer  
10 Exhibits 5 and 6 and tender Mr. Weiss for  
11 cross-examination.

12                   JUDGE PRIDGIN: Mr. Byrne, thank you.  
13 Exhibits 5 and 6 have been offered. Any objection?

14                   (No response.)

15                   JUDGE PRIDGIN: Hearing none, Exhibits 5  
16 and 6 are admitted.

17                   (AMEREN EXHIBIT NOS. 5 AND 6 WERE RECEIVED  
18 INTO EVIDENCE.)

19                   JUDGE PRIDGIN: Cross-examination,  
20 Barnes-Jewish, Ms. Langeneckert?

21                   MS. LANGENECKERT: No questions for  
22 Mr. Weiss.

23                   JUDGE PRIDGIN: Mr. Roam.  
24 CROSS-EXAMINATION BY MR. ROAM:

25           Q.       Good morning, Mr. Weiss.

1 A. Good morning.

2 Q. Just some -- quickly, some housekeeping.

3 Do you have your DR responses with you, your responses?

4 A. I have most of them.

5 Q. Okay. I actually have a copy.

6 MR. ROAM: May I approach?

7 JUDGE PRIDGIN: You may.

8 BY MR. ROAM:

9 Q. These are data responses MIEC 1-004, 1-005,  
10 1-006, 1-007 and 1-008. Do you have those?

11 A. I have all those.

12 Q. I'll hand around all of them in just a  
13 minute. Mr. Weiss, do you -- Mr. Weiss, were you  
14 responsible for responding to those data responses?

15 A. Yes, I was.

16 Q. And if you were to respond to them today,  
17 would you give the same answers that you gave when you  
18 responded to them?

19 A. Yes, I would.

20 MR. ROAM: Judge, at this time I'd move to  
21 enter Data Responses, I believe it was 5 -- I'm sorry, 6,  
22 7 -- 4, 5, 6, 7 and 8 as Exhibits 11, 12, 13, 14 and 15, I  
23 believe.

24 JUDGE PRIDGIN: My records would show it's  
25 12 through 16, actually. I think Mr. Meyer's rebuttal

1 would be Exhibit 11. So each one of them labeled MIEC  
2 01-004 being Exhibit 12, et cetera. All right. Any  
3 objection?

4 MR. BYRNE: Your Honor, I notice on 1-005  
5 it refers to an attachment or maybe multiple attachments  
6 of contracts, and so I guess I would ask if we're going to  
7 put in 5, we ought to put in the whole answer, which  
8 includes the attached contracts.

9 JUDGE PRIDGIN: Mr. Roam, any response?

10 MR. ROAM: Actually, I believe that was in  
11 there by mistake, Judge. We are going to withdraw MIEC  
12 01-005.

13 JUDGE PRIDGIN: All right.

14 MR. ROAM: I also just note on here, it  
15 look like the printout on some of these, there's some sort  
16 of a formatting glitch, but we can get you the corrected  
17 versions. The content is there. It's just that instead  
18 of an apostrophe there are all kinds of very odd-looking  
19 symbols.

20 JUDGE PRIDGIN: I understand.

21 MR. THOMPSON: Do you have a copy for us by  
22 chance?

23 MR. ROAM: Yeah.

24 JUDGE PRIDGIN: Here's what I propose:

25 Let's go back and renumber these since you didn't actually

1 offer that one data request. So the Data Request MIEC  
2 01-004 would be Exhibit 12. 01-006 would be Exhibit 13.  
3 01-007 would be Exhibit 14. 01-008 would be Exhibit 15.  
4 And, Mr. Roam, you've offered those; is that correct?

5 MR. ROAM: That's correct.

6 JUDGE PRIDGIN: Any objection?

7 MR. BYRNE: No objection.

8 JUDGE PRIDGIN: Hearing none, Exhibits 12,  
9 13, 14 and 15 are admitted.

10 (MIEC EXHIBIT NOS. 12 THROUGH 15 WERE  
11 MARKED AND RECEIVED INTO EVIDENCE.)

12 JUDGE PRIDGIN: Mr. Roam, when you're  
13 ready, sir.

14 BY MR. ROAM:

15 Q. Mr. Weiss, when did you file the 2011 IRP?

16 A. I wasn't involved. I think it was in  
17 February of 2011.

18 Q. February of 2011?

19 A. I think so.

20 Q. And you're aware that the AEP contract  
21 terminated in May of 2010; isn't that right?

22 A. That's correct.

23 Q. The Wabash contract terminated in October  
24 of 2010; isn't that correct?

25 A. That's correct.

1 MR. ROAM: Thank you. No further  
2 questions.

3 JUDGE PRIDGIN: Thank you. Any questions  
4 from Staff, Ms. Moore, Mr. Thompson?

5 MS. MOORE: No questions. Thank you.

6 JUDGE PRIDGIN: Any Bench questions,  
7 Commissioner Jarrett?

8 COMMISSIONER JARRETT: Mr. Weiss, no  
9 questions. Thank you.

10 THE WITNESS: Thank you.

11 COMMISSIONER STOLL: I have no questions.

12 JUDGE PRIDGIN: And I have no questions.  
13 Any redirect?

14 MR. BYRNE: Just one, your Honor.

15 REDIRECT EXAMINATION BY MR. BYRNE:

16 Q. Mr. Roam just -- Mr. Weiss, Mr. Roam just  
17 asked you about the timing of the February 2011 IRP filing  
18 and the fact that the AEP and Wabash contracts expired a  
19 few months before that filing. Do you have any idea why  
20 those contracts were included in the filing if they  
21 expired before the filing was made?

22 A. That's not my area of responsibility, but I  
23 am aware that the data usage about the IRP was developed  
24 during the time when those contracts were in effect, and  
25 so they were included.



1           Q.       Mr. Roam asked you about Data Request 005,  
2       which he didn't end up offering, but can you -- and we  
3       don't have the attachments, but can you just tell me what  
4       that question and answer is, the 01-005?

5                   MR. ROAM: Judge, I'm going to object.  
6       This is beyond the scope of what was asked. That DR was  
7       withdrawn.

8                   MR. BYRNE: He did ask him about it.

9                   MR. ROAM: It was withdrawn.

10                  JUDGE PRIDGIN: He asked, but he's  
11       withdrawn the question. I'm going to sustain.

12                  MR. BYRNE: No further questions. Thank  
13       you.

14                  JUDGE PRIDGIN: Mr. Weiss, thank you. You  
15       may step down.

16                  Mr. Wills, if you'll come forward to be  
17       sworn, please, sir.

18                         (Witness sworn.)

19                  JUDGE PRIDGIN: Thank you very much, sir.  
20       Please have a seat. Mr. Byrne, Mr. Lowery.

21                  MR. LOWERY: Thank you, your Honor.

22       STEVEN M. WILLS testified as follows:

23       DIRECT EXAMINATION BY MR. LOWERY:

24           Q.       Would you please state your name for the  
25       record.

1 A. My name is Steven M. Wills.

2 Q. And what's your job title, Mr. Wills?

3 A. Managing Supervisor of Quantitative  
4 Analytics.

5 Q. Did you cause to be prepared for filing in  
6 this docket surrebuttal testimony that's been marked as  
7 Exhibit 7?

8 A. Yes, I did.

9 Q. If I were to ask you the same questions  
10 that are posed in that prefiled testimony, would you give  
11 the same answers?

12 A. Yes.

13 Q. Are they true and correct to the best of  
14 your knowledge and belief?

15 A. Yes, they are.

16 MR. LOWERY: With that, your Honor, I'd  
17 offer Exhibit 7 and tender Mr. Wills for  
18 cross-examination.

19 JUDGE PRIDGIN: Exhibit No. 7 has been  
20 offered. Any objection?

21 (No response.)

22 JUDGE PRIDGIN: Hearing none, Exhibit 7 is  
23 admitted.

24 (AMEREN EXHIBIT NO. 7 WAS RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE PRIDGIN: Cross-examination,  
2 Ms. Langeneckert?

3 MS. LANGENECKERT: No questions for  
4 Mr. Wills. Thank you.

5 JUDGE PRIDGIN: Mr. Roam?

6 CROSS-EXAMINATION BY MR. ROAM:

7 Q. Good morning, Mr. Wills.

8 A. Good morning.

9 Q. Did you respond to -- do you recall  
10 responding to MIEC's Data Request 01-009?

11 A. I don't remember specifically off the top  
12 of my head.

13 Q. I'll bring you a copy.

14 MR. ROAM: May I approach, Judge?

15 JUDGE PRIDGIN: You may.

16 (MIEC EXHIBIT NO. 16 WAS MARKED FOR  
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. ROAM:

19 Q. Mr. Wills, does that document reflect the  
20 data request that you responded to?

21 A. Yes, it does.

22 Q. And does that answer reflect the answer  
23 that you gave?

24 A. Yes, it does.

25 Q. Is that the same answer you would give if

1     you were asked today?

2                   A.       Yes.

3                   MR. ROAM: Judge, at this time I would move  
4     to put into evidence MIEC's data -- or the response to  
5     MIEC's Data Request 01-009, which I believe puts us at  
6     Exhibit 16.

7                   JUDGE PRIDGIN: That's correct. Yes, sir.  
8     Any objection?

9                   (No response.)

10                  JUDGE PRIDGIN: Hearing none, Exhibit  
11    No. 16 is admitted.

12                  (MIEC EXHIBIT NO. 16 WAS RECEIVED INTO  
13    EVIDENCE.)

14                  MR. ROAM: And I have no further questions.  
15    Thank you.

16                  THE WITNESS: Thank you.

17                  JUDGE PRIDGIN: All right. Thank you. Any  
18    cross from Staff, Ms. Moore?

19                  MS. MOORE: None. Thank you.

20                  JUDGE PRIDGIN: Bench questions?

21                  COMMISSIONER JARRETT: No questions.

22    Thanks.

23                  COMMISSIONER STOLL: No questions. Thank  
24    you.

25                  JUDGE PRIDGIN: Commissioner Stoll, thank

1       you. I have no questions. Any redirect?

2                       MR. LOWERY: Just a little bit, your Honor.

3       REDIRECT EXAMINATION BY MR. LOWERY:

4               Q.       Mr. Wills, the only questions you were  
5       asked were about your response to MIEC DR 1-009, correct?

6               A.       That's correct.

7               Q.       Why were the rates established in Case No.  
8       2010-0036, why was your answer limited to the filing of  
9       that case, what we filed in that case as opposed to how  
10      the rates were established in that case?

11              A.       Well, there was a Stipulation & Agreement  
12      that ultimately governed how the jurisdiction -- the quote  
13      that the DR refers to, I believe, if I'm -- if I could  
14      look it up just to be sure.

15              Q.       Yeah. Take your time.

16              A.       It talks about the handling of the  
17      AEP/Wabash loads in our direct case. That was ultimately  
18      the subject of a Stipulation & Agreement between the  
19      parties to settle the issue. So basically, that was a  
20      settlement reached by the parties.

21              Q.       What in the Stipulation & Agreement caused  
22      the AEP and Wabash contracts to effectively be included in  
23      the FAC when rates were established or after rates were  
24      established? Was there something in the stipulation that  
25      caused that to happen?

1 MR. ROAM: Judge, I'm going to object.

2 This is far beyond the scope of the request, the question  
3 in the data response and the answer given. This is  
4 opening up the entire case and asking any question.

5 JUDGE PRIDGIN: Mr. Lowery?

6 MR. LOWERY: The DR request asked Mr. Wills  
7 whether or not his statement relates to how rates were  
8 proposed, essentially proposed in the 0036 case or to how  
9 they were established in the 0036 case. And as Mr. Wills  
10 just testified, there was a stipulation that caused how  
11 they were proposed to be established to be changed from  
12 how they were actually established, and I think it's  
13 relevant for the Commission to understand why that change  
14 was made.

15 JUDGE PRIDGIN: I'll overrule.

16 BY MR. LOWERY:

17 Q. Do you remember the question?

18 A. I think I do.

19 MR. ROAM: If I may, I apologize, but I  
20 just need to make one more objection for the record.

21 JUDGE PRIDGIN: Certainly.

22 MR. ROAM: This gets into discussions  
23 related to the Stipulation & Agreement. Those are  
24 privileged.

25 MR. LOWERY: I asked him is there something

1 in the stipulation that explains why the rates were  
2 established differently than they were proposed, which is  
3 not a settle -- that was not an offer of compromise and  
4 settlement. It's asking what's in the stipulation, which  
5 is in the record, in the Commission's record obviously.

6 JUDGE PRIDGIN: And I do see the  
7 distinction. I would certainly admonish counsel and  
8 witnesses to stick with what's actually in the stipulation  
9 that's been publicly filed versus any sort of  
10 negotiations, which I don't want you to get into.

11 THE WITNESS: Sure. The reason that that  
12 treatment occurred in the Stipulation & Agreement is that  
13 the Stipulation & Agreement also changed the definition of  
14 the tariff to specifically exclude anything but Missouri  
15 municipalities going forward from this from the off-system  
16 sales definition. Municipals would be the only things  
17 subject to the exclusion going forward.

18 So AEP and Wabash then wouldn't be  
19 appropriate to include in jurisdictional allocation  
20 factors if going forward from that point there was -- they  
21 wouldn't be treated as off-system sales per the change in  
22 definition of the tariff.

23 BY MR. LOWERY:

24 Q. So the stipulation -- so the stipulation  
25 required that language be added to the FAC tariff that

1     **limited the application of that exception to**  
2     **municipalities; is that right?**

3             A.       Yes.

4             MR. LOWERY:   No further questions.

5             JUDGE PRIDGIN:   All right.   Thank you.

6     Mr. Wills, thank you very much.   You may step down.

7             And looks like we're ready for MIEC  
8     witnesses, Mr. Brubaker.   If you are ready, sir.

9             (Witness sworn.)

10            JUDGE PRIDGIN:   Thank you very much.

11     Mr. Roam, when you're ready, sir.

12     MAURICE BRUBAKER testified as follows:

13     DIRECT EXAMINATION BY MR. ROAM:

14            Q.       **Good morning, Mr. Brubaker.**

15            A.       Good morning.

16            Q.       **Could you please state your name for the**  
17     **record.**

18            A.       It's Maurice Brubaker.

19            Q.       **And what is your title?**

20            A.       I'm president of Brubaker & Associates,  
21     Inc., a consulting firm.

22            Q.       **And did you cause to be filed in this case**  
23     **the rebuttal testimony that's been marked as Exhibit 10?**

24            A.       Yes.

25            Q.       **If I pose the same questions to you today**



1     that were in that testimony, would you give the same  
2     answers?

3             A.     I would.

4             Q.     Do you have any corrections or amendments  
5     to that testimony?

6             A.     No, I don't.

7                     MR. ROAM: At this time I'd like to offer  
8     Exhibit No. 10 into evidence and tender the witness for  
9     cross-examination.

10                    JUDGE PRIDGIN: Exhibit No. 10 has been  
11     offered. Any objection?

12                             (No response.)

13                    JUDGE PRIDGIN: Hearing none, Exhibit 10 is  
14     admitted.

15                             (MIEC EXHIBIT NO. 10 WAS RECEIVED INTO  
16     EVIDENCE.)

17                    JUDGE PRIDGIN: Cross-examination.

18     Ms. Langeneckert, any questions?

19                    MS. LANGENECKERT: No.

20                    JUDGE PRIDGIN: Mr. Thompson or Ms. Moore?

21                    MS. MOORE: No questions.

22                    JUDGE PRIDGIN: Mr. Lowery, Mr. Byrne, any  
23     questions?

24                    MR. LOWERY: No questions.

25                    JUDGE PRIDGIN: Any bench questions,

1 Commissioner Jarrett?

2 QUESTIONS BY COMMISSIONER JARRETT:

3 Q. Good morning, Mr. Brubaker.

4 A. Good morning, Commissioner.

5 Q. I just wanted to ask you, is there anything  
6 in your testimony that's different or substantively  
7 different, I guess, than your testimony in the prior case  
8 that I should maybe focus on?

9 A. I guess there are really two questions  
10 there.

11 Q. Okay.

12 A. There's some responses I make to some  
13 statements that are contained in the testimony of Ameren  
14 witnesses that were not made in the prior case, and so  
15 there was no response at that point in time.

16 I think the only other thing I mentioned  
17 the definitions and the electric quarterly report, the  
18 EQR. They were mentioned in the last case but just not in  
19 my testimony.

20 Q. Okay.

21 A. I don't think this's any other difference.

22 COMMISSIONER JARRETT: All right. Thank  
23 you, Mr. Brubaker. Appreciate it.

24 JUDGE PRIDGIN: Commissioner Stoll?

25 COMMISSIONER STOLL: I have no questions.

1 Thank you.

2 JUDGE PRIDGIN: I have no questions. Any  
3 recross based on Bench questions? Going once. Going  
4 twice.

5 (No response.)

6 JUDGE PRIDGIN: Any redirect?

7 MR. ROAM: No, Judge.

8 JUDGE PRIDGIN: All right. Thank you.

9 Mr. Brubaker, you may step down.

10 Mr. Meyer is the next witness.

11 (Witness sworn.)

12 JUDGE PRIDGIN: Thank you very much.

13 Mr. Roam, when you're ready, sir.

14 GREG R. MEYER testified as follows:

15 DIRECT EXAMINATION BY Mr. ROAM:

16 Q. Mr. Meyer, can you please state your name  
17 for the record?

18 A. Greg Meyer.

19 Q. And what is your title?

20 A. I'm a consultant for Brubaker & Associates.

21 Q. And did you cause to be filed rebuttal  
22 testimony in this case that has been previously marked as  
23 Exhibit 11?

24 A. Yes, I did.

25 Q. If I pose the same questions to you today

1 as were in that testimony, would you give the same  
2 answers?

3 A. Yes, I would.

4 Q. Mr. Meyer, do you have any corrections or  
5 amendments to that testimony?

6 A. No, I do not.

7 MR. ROAM: Judge, at this time I'd like to  
8 offer Exhibit No. 11 into evidence and tender the witness  
9 for cross-examination.

10 JUDGE PRIDGIN: All right. Exhibit 11 has  
11 been offered. Any objection?

12 MR. BYRNE: No, your Honor.

13 JUDGE PRIDGIN: Hearing none, Exhibit 11 is  
14 admitted.

15 (MIEC EXHIBIT NO. 11 WAS RECEIVED INTO  
16 EVIDENCE.)

17 JUDGE PRIDGIN: Cross-examination.  
18 Ms. Langeneckert, any questions?

19 MS. LANGENECKERT: No.

20 JUDGE PRIDGIN: Ms. Moore, Mr. Thompson?

21 MS. MOORE: No questions.

22 JUDGE PRIDGIN: Mr. Lowery, Mr. Byrne?

23 MR. BYRNE: No, your Honor.

24 JUDGE PRIDGIN: Bench questions,  
25 Commissioner Jarrett?

1 QUESTIONS BY COMMISSIONER JARRETT:

2 Q. Good morning, Mr. Meyer. How are you  
3 doing?

4 A. Good morning.

5 Q. I'll ask you the same question I asked  
6 Mr. Brubaker. Anything in your testimony that is  
7 different from the prior case that I should focus on?

8 A. Yes. In the prior case there wasn't an  
9 argument or a dispute over the amount of the refund.  
10 Mr. Weiss puts in testimony, direct testimony that says  
11 that the margins should be reduced in this case, the  
12 26 million, approximately 26 million should be reduced for  
13 the 300,000 that was contained in the stipulation.

14 It's my contention than Mr. Weiss is  
15 incorrectly applying the conditions of that stipulation  
16 within the context of this case.

17 COMMISSIONER JARRETT: Thank you,  
18 Mr. Meyer.

19 JUDGE PRIDGIN: Commissioner Stoll, any  
20 questions?

21 COMMISSIONER STOLL: I have no questions.  
22 Thank you.

23 JUDGE PRIDGIN: And I have none. Any cross  
24 based on Bench questions?

25 (No response.)

1 JUDGE PRIDGIN: Seeing none. Any redirect?

2 MR. ROAM: No, Judge.

3 JUDGE PRIDGIN: Thank you. Mr. Meyer,  
4 thank you very much. You may step down.

5 MR. LOWERY: Your Honor, I have I guess a  
6 request or a question and a request as well, and it  
7 doesn't you involve you, Greg. I'm sorry. I apologize  
8 for confusing you.

9 Given that the record from the 255 case,  
10 the entire transcript has been noticed by the Commission,  
11 we certainly do have questions for Mr. Eaves and  
12 Ms. Mantle, but I think we might have considerably less  
13 questions than we might have thought.

14 And if we could take a recess, I think we  
15 might be able to more efficiently handle it. I can go  
16 ahead and do it, I can go ahead and deal with it now, but  
17 I think it might be more expeditious and efficient if we  
18 could recess and I think we could probably reset and  
19 reduce the amount of cross-examination that we intended to  
20 do.

21 JUDGE PRIDGIN: I tend to be in favor of  
22 efficiency and expediency. Are there any objections to  
23 Mr. Lowery's request?

24 (No response.)

25 JUDGE PRIDGIN: Roughly how much time would

1     you like?

2                   MR. LOWERY: Well, I probably -- I mean, I  
3     guess I would suggest maybe we just come back after lunch  
4     and the discovery conference. I suspect we can finish  
5     both witnesses today if we do that. I think our  
6     cross-examination will probably be substantially cut down.  
7     Now, if that doesn't please the Bench, I can probably do  
8     it in less time. I certainly can do it in less time.

9                   JUDGE PRIDGIN: I have no problem with  
10    that. So it's my understanding you would simply like to  
11    recess until after your discovery conference?

12                  MR. LOWERY: Then we'd start with  
13    Ms. Mantle. There's only two witnesses left, Ms. Mantle  
14    and Mr. Eaves.

15                  JUDGE PRIDGIN: Any objections, comments,  
16    preferences?

17                  (No response.)

18                  JUDGE PRIDGIN: Hearing none, let us stand  
19    in recess until after the discovery conference. We will  
20    resume roughly 2:30 or whenever the discovery conference  
21    has ended and you've had time to come back. Thank you  
22    very much. We are off the record.

23                  (A BREAK WAS TAKEN.)

24                  JUDGE PRIDGIN: Good afternoon. We are  
25    back on the record, and I understood we would be going on

1     it Ms. Mantle as the next witness. She has already taken  
2     the stand, and I will administer the oath here in just a  
3     moment. Is there anything else counsel needs to bring to  
4     my attention before Ms. Mantle is given the oath?

5                     MR. LOWERY: I don't believe so, your  
6     Honor.

7                     JUDGE PRIDGIN: Ms. Mantle, if you'll raise  
8     your right hand to be sworn, please.

9                     (Witness sworn.)

10                    JUDGE PRIDGIN: Thank you, very much.

11     Ms. Moore, Mr. Thompson, when you're ready.

12                    MS. MOORE: Thank you, Judge.

13     LENA MANTLE testified as follows:

14     DIRECT EXAMINATION BY MS. MOORE:

15                    **Q. Ms. Mantle, would you please state your**  
16     **full name for the record.**

17                    A. Lena M. Mantle.

18                    **Q. And where are you employed?**

19                    A. I'm employed by the Missouri Public Service  
20     Commission.

21                    **Q. In what capacity?**

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

23                    **Q. Are you the same Lena Mantle who prepared**  
24     **and caused to be prepared the testimony marked Exhibit 9?**

25                    A. Yes.



1           Q.       Do you have anything you wish to correct  
2   about that testimony?

3           A.       I do have one correction.

4           Q.       Go ahead.

5           A.       On page 8, line 14, I want -- it should  
6   read, "mention of the AEP and Wabash contracts on  
7   September 30th, 2009." So striking the words "was 21 days  
8   later on October 14th, 2010."

9           Q.       Anything else?

10          A.       That's all.

11          Q.       Okay. With that correction in mind, if I  
12   asked you the same questions today, would your answers be  
13   the same?

14          A.       Yes.

15          Q.       And is the information in that document  
16   true and correct to the best of your knowledge and belief?

17          A.       Yes.

18                   MS. MOORE: Your Honor, Staff offers  
19   Exhibit 9 and tenders the witness for cross.

20                   JUDGE PRIDGIN: Exhibit No. 9 has been  
21   offered. Any objections?

22                   (No response.)

23                   JUDGE PRIDGIN: Hearing none, Exhibit No. 9  
24   is admitted.

25                   (STAFF EXHIBIT NO. 9 WAS RECEIVED INTO

1 EVIDENCE.)

2 JUDGE PRIDGIN: And cross-examination,  
3 Ms. Langeneckert?

4 MS. LANGENECKERT: No questions.

5 JUDGE PRIDGIN: All right. Thank you.  
6 Mr. Roam, any questions?

7 MR. ROAM: No questions, Judge.

8 JUDGE PRIDGIN: Thank you. Mr. Lowery,  
9 Mr. Byrne?

10 MR. LOWERY: Yes, your Honor. Thank you.

11 JUDGE PRIDGIN: When you're ready.

12 CROSS-EXAMINATION BY MR. LOWERY:

13 Q. Ms. Mantle, let's just start with the  
14 correction you just made to your testimony because I'm not  
15 sure I got it down right. The sentence that starts on  
16 line 13 should read, the first time that Staff saw any  
17 mention of the AEP and Wabash contracts was what?

18 A. On September 30th, 2009.

19 Q. On September 30th, 2009. And does the rest  
20 still read correctly, the in Ameren's response to the data  
21 request? That's all still correct?

22 A. Yes.

23 Q. Do you have a copy of your testimony in  
24 this case with you, I assume?

25 A. Yes.

1 Q. Do you have a copy of your testimony from  
2 the 0255 case with you?

3 A. I do not believe I do.

4 Q. Do you have a copy of your deposition that  
5 was taken in that case with you?

6 A. Yes, I do.

7 Q. Do you have a copy of the transcript from  
8 the hearing in that case when you were cross-examined in  
9 that case with you?

10 A. Yes, I believe I do. I think I printed off  
11 all of them.

12 Q. I'm only asking because we might need to  
13 refer to them. If you don't, I can give you copies.

14 MR. LOWERY: May I approach, your Honor?

15 JUDGE PRIDGIN: You may.

16 BY MR. LOWERY:

17 Q. Ms. Mantle, I'm just going to give you a  
18 copy of your testimony from the 0255 case. Ask you if you  
19 recognize that that is your testimony from the 0255 case?

20 A. Yes, it is.

21 Q. Ms. Mantle, you've never bought or sold  
22 power in the power markets; is that correct?

23 A. That is correct.

24 Q. Now, in this case, there's really only one  
25 provision of the FAC tariff that's at issue, and that

1 provision is the definition of Factor OSSR. Would you  
2 agree with that?

3 A. I would agree the definition of OSSR is  
4 what is in the contested point in this case. Whether  
5 that's a provision or not, I --

6 Q. Sure. Fair enough. This case turns on  
7 that definition; would you agree with that?

8 A. Yes.

9 Q. You've examined the tariff that was  
10 proposed in the ER-2008-0318 rate case and the tariff that  
11 was approved in that case, and the terms of Factor OSSR in  
12 both of those tariffs are the same; is that right?

13 A. Yes.

14 Q. Now, you claim that Ameren Missouri told  
15 you that the phrase long-term full and partial requirement  
16 sales was a description of the wholesale contracts Ameren  
17 Missouri had with municipal utilities to provide  
18 electricity to them, right?

19 A. That is what they told me.

20 Q. That's what you -- that's what you claim,  
21 correct?

22 A. That is what they told me.

23 Q. Now, the words that comprise Factor OSSR in  
24 the tariff that govern the period on review here, and that  
25 would be the tariff approved in the 0318 case, those words

1     contain no reference to the phrase being limited to  
2     municipal utilities, do they?

3             A.       No, they do not.   If they did, I probably  
4     would have understood what they meant.

5             Q.       Ms. Mantle, I'm going to ask you when I ask  
6     you a yes or no question to just answer my question, and  
7     if Ms. Moore or Mr. Thompson would like to ask you some  
8     further questions based on that, they'll be able to do so.  
9     Okay?

10            Now, no one testified in the 318 case that  
11   Factor OSSR was limited to requirement sales to municipal  
12   utilities, did they?

13            A.       I don't remember any of them doing that.

14            Q.       There's no mention that you recall in any  
15   testimony in the 318 case that limits Factor OSSR to  
16   requirement sales to municipal utilities, is there?

17            A.       Not that I'm aware of.

18            Q.       You can't identify the exact person that  
19   you say told you this, can you?

20            A.       No.

21            Q.       You state that the statement that you claim  
22   was made that -- you claim that the statement that you  
23   claim was made was made during a technical conference in  
24   the 318 case, right?

25            A.       Yes.

1           Q.       You state that Gary Weiss is typically at  
2 those conferences, correct?

3           A.       Yes.

4           Q.       Now, Mr. Weiss says in sworn testimony that  
5 no one at Ameren Missouri would have told -- would have  
6 represented to you that municipal contracts are the only  
7 long-term full or partial requirement sales that could be  
8 included in the exclusion. That's what he says, right?

9           A.       I believe I read that in his testimony,  
10 yes.

11          Q.       And I notice that you were very careful in  
12 your testimony. You say that, quote, Ameren Missouri told  
13 me it, and by it I take it you mean the phrase long-term  
14 full and partial requirements sales, that it was a  
15 description of the wholesale contracts that Ameren  
16 Missouri had with municipal utilities. That's your  
17 testimony, right?

18          A.       Yes.

19          Q.       And it did refer to this phrase long-term  
20 full and partial requirements sales, right? Is that what  
21 you meant by it?

22          A.       The whole phrase the Missouri retail sales  
23 and long-term full and partial sales -- partial  
24 requirements sales that are associated with, one, AmerenUE  
25 Missouri jurisdictional generating units, two, power

1 purchases made to serve Missouri retail load, and three,  
2 any related transmission.

3 Q. But it's not your contention that anyone  
4 told you that that phrase described only a description of  
5 municipal contracts, is it?

6 A. They only mentioned municipal contracts, so  
7 they -- they did not say one way or another whether it was  
8 anything else. I would assume that when I asked the  
9 question and they answered it, they gave me the full  
10 answer.

11 Q. It's not your contention that anyone said  
12 that that phrase describes only municipal contracts, is  
13 it? You're not contending anyone told you that, are you?

14 A. I don't believe they used the word only,  
15 but they did say that it referred to the municipal  
16 wholesale contracts.

17 Q. You say in your testimony they said it was  
18 a description of the wholesale contracts, right?

19 A. Yes.

20 Q. A description of the wholesale contracts,  
21 right?

22 A. Yes.

23 Q. Not the only -- not the description of the  
24 only kind of contracts that could fall within that phrase?  
25 Nobody told you that; isn't that true?

1           A.       It's true that --

2           Q.       Then I think you've answered my question.  
3   You made an assumption about what was in their mind,  
4   didn't you?

5           A.       No, I did not. I made an assumption that  
6   they would tell me that they would answer the question  
7   that I asked fully. That's the assumption that I made.

8           Q.       You made an assumption that what they told  
9   you included the word only when it didn't include that  
10   word; isn't that right?

11          A.       I assumed that they gave me the full answer  
12   when they gave me that answer, that they didn't have other  
13   things that were included or they would have mentioned it.

14          Q.       You're not testifying that you said, does  
15   this only cover municipal contracts? Is that the question  
16   you asked them?

17          A.       I did not ask them that.

18          Q.       Okay. Now, you never asked the person you  
19   claim said that this phrase referred to municipal  
20   contracts, you never asked the company to confirm that in  
21   any kind of writing? You never asked a DR about it, did  
22   you?

23          A.       No.

24          Q.       You never asked the person you claim said  
25   this to confirm that your understanding was accurate, did



1     you?

2             A.       No.

3             Q.       And you don't have any way of knowing as  
4     you sit here today that what was in your mind, what your  
5     understanding was also was the understanding that was in  
6     the mind of the person that you say said this, right? You  
7     don't know what they were thinking, do you?

8             A.       I can't read the mind of my husband yet,  
9     and we've been married a long time. I won't pretend the  
10    read the minds of other people.

11            Q.       Nor can anyone say that Ameren Missouri  
12    knew what was on your mind either, right?

13            A.       That's correct.

14            Q.       Now, when you were having this conversation  
15    recounted in your testimony -- let me strike that.

16                    When you were having this conversation that  
17    you recount in your testimony, did you ask the speaker --  
18    now, never mind. I think you've answered that question.  
19    Pardon me.

20                    Now, you might have taken notes during the  
21    technical conference but you can't find them, is that  
22    true, if you took them? You're not sure if you took them,  
23    but if you did, you can't find them; is that right?

24            A.       That's correct.

25            Q.       Ms. Mantle, I'm handing you a document.

1     **Ask you if you can identify it, please?**

2             A.       It's a data request asked of Ameren  
3     Missouri by Dana Eaves in this case.   It would be Data  
4     Request No. MPSC 0050.

5             Q.       And it reflects the length of the contracts  
6     with four cities, four municipalities, Kirkwood, Kahoka,  
7     Marceline and Perry; is that right?

8             A.       Yes.

9             Q.       And all of those contracts, according to  
10    the Staff, are long-term partial requirement sales within  
11    the meaning of the FAC tariff; is that right?

12            A.       The meaning of the FAC tariff that was in  
13    effect at the time that we're discussing, yes.

14            Q.       Right.   The one that was approved in the  
15    0318 case that this case depends on, right?

16            A.       Yes.

17            Q.       And three of those four contracts have  
18    terms of less than five years; isn't that right?

19            A.       Yes.

20            Q.       Now, Ameren Missouri's current FAC tariff,  
21    as this language is carried through, the Factor OSSR  
22    definition has changed from what it was or it's different  
23    than what it was from the 0318 case; isn't that right?

24            A.       That is correct.

25            Q.       And it's different because it contains

1     three words that it didn't contain at the time it was  
2     approved in the 0318 case and at the time it was in effect  
3     relevant to this case; is that right?

4             A.     I don't have the current tariff with me. I  
5     believe what you're referring to is the tariff that went  
6     into effect in the next rate case. The current tariff  
7     takes out all mention of contracts, municipals or  
8     otherwise.

9             Q.     You're correct. I'm referring to the  
10    tariff that went into effect as a result of the  
11    ER-2010-0036 case, right?

12            A.     I'm assuming that's what you're talk-- is  
13    that what you're telling me you're talking about?

14            Q.     I am. In that tariff in that case, the  
15    Factor OSSR definition changed by adding three words to  
16    it, correct?

17            A.     We clarified it, yes.

18            Q.     It has three words in it in that tariff in  
19    the Factor OSSR definition that were not in the tariff in  
20    the Factor OSSR definition that was approved in the 0318  
21    case, correct?

22            A.     I don't have that tariff in front of me.  
23    I'll take your word that it was three words. I do know  
24    that it did change.

25            Q.     Well, let's make sure the record's clear.

1 I'm going to hand you Mr. Weiss', I guess it's direct  
2 testimony in this case. I'm going to ask you to turn to  
3 the Stipulation & Agreement that's attached to that. Do  
4 you recognize that stipulation?

5 A. Yes. It's the Second Nonunanimous  
6 Stipulation & Agreement in Case ER-2010-0036.

7 Q. And that's -- and that Stipulation &  
8 Agreement was made to make the change, you called it a  
9 clarification, to the Factor OSSR definition, right? I  
10 think it's maybe on the second page of that stipulation.

11 A. There is a definition of OSSR on the second  
12 page, paragraph numbered 4. I believe the only change to  
13 it was we put in the words to Missouri municipalities.

14 Q. Would it be -- I'm holding up, and you can  
15 verify, but I'm holding up what I'll represent to you to  
16 be the exact same language you're reading in that  
17 stipulation. These three words were added to the  
18 Factor OSSR definition, correct?

19 A. I believe that's correct.

20 Q. So when you said a moment ago that the  
21 tariff was clarified, what you're really saying is you are  
22 contending that the tariff approved in the 0318 case  
23 effectively contained those three words even though it  
24 didn't actually contain them, right?

25 A. Yes.

1           Q.     Are you familiar with the Staff's position  
2 statement in this case?

3           A.     What case are you referring to?

4           Q.     I apologize. The case that we're here on  
5 today.

6           A.     I know I've read it. I don't have a copy  
7 with me.

8           Q.     Okay. Let me give you a copy. Now, the  
9 Staff's position statement reflects that there are four  
10 issues in this case; is that right?

11          A.     There's five.

12          Q.     Five. I'm sorry. There's five issues in  
13 this case. Would you agree that the issue -- the  
14 resolution of issue one does not depend in any way on when  
15 Staff became aware of the existence of the AEP and Wabash  
16 contracts?

17          A.     That's correct.

18          Q.     In fact, when Staff became aware of the  
19 existence of those contracts has no relevance to any of  
20 the five contested issues that we've agreed upon, does it?

21          A.     No.

22          Q.     I mean, the tariff says what it says,  
23 right, and it means what it means?

24          A.     Yes.

25          Q.     When Staff became aware of those contracts

1 doesn't change the tariff language or what it means,  
2 right?

3 A. No, it does not.

4 Q. It's not a fact that's going to help the  
5 Commission resolve any of the issues in this case, is it,  
6 when you became aware of it?

7 A. I put that in my testimony to give the  
8 Commission some idea of the difficulty that Staff had in  
9 finding out about these contracts. These contracts, now  
10 we're on our third case on them. Obviously Ameren  
11 Missouri believes they're very important, yet it was --

12 MR. LOWERY: Your Honor, I'd ask you direct  
13 the witness to just answer the questions. I certainly  
14 didn't ask her to explain why she put it in her testimony.

15 JUDGE PRIDGIN: Do you want to ask your  
16 question again, Mr. Lowery?

17 BY MR. LOWERY:

18 Q. When the Staff became aware of the  
19 existence of those contracts is not a fact that will help  
20 the Commission resolve any of the agreed-upon contested  
21 issues in this case, is it?

22 MR. ROAM: Objection. Calls for  
23 speculation.

24 JUDGE PRIDGIN: I'll overrule.

25 THE WITNESS: I believe it does. I

1 believe --

2 BY MR. LOWERY:

3 Q. You believe it does?

4 A. Yes, or I would not have put it in my  
5 testimony.

6 Q. You had very similar testimony, nearly  
7 identical testimony in the 255 case, didn't you?

8 A. Yes.

9 Q. I want to look closely at what you thought  
10 was important enough to include in your testimony not once  
11 but not twice. You asked yourself a question on page 8,  
12 line 4 of your testimony in this case -- I'll let you get  
13 there if you'd like.

14 A. Okay.

15 Q. You say, how did Staff become aware of the  
16 AEP and Wabash contracts, end quote, right? That's what  
17 you testified. That's the question you asked, correct?

18 A. Yes.

19 Q. And when you say, when did you become  
20 aware, you're not referring to Lena Mantle, you're  
21 referring to the Staff, right?

22 A. Yes.

23 Q. And you say that wasn't until, and I guess  
24 now you're saying September of 2009, right?

25 A. That is correct.

1           Q.       In fact, you're quite specific at lines 13  
2       to 14 on page 8 where you say, quote, the first time that  
3       Staff saw any mention, end quote, of these contracts was  
4       in this now September '09, right?

5           A.       That's correct.

6           Q.       Who are your direct reports?

7           A.       Natelle Dietrich.

8           Q.       Was Mr. Rogers, was John Rogers your direct  
9       report at one time?

10          A.       I do not -- when you say direct report, who  
11       I report to?

12          Q.       No. Who are your direct reports.

13          A.       Who reports to me?

14          Q.       Yes.

15          A.       Okay. John Rogers, Mike Scheperle, Dan  
16       Beck, Bob Leonberger and Tom Imhoff.

17          Q.       Would it be fair to say that Mr. Rogers has  
18       three main responsibilities, electric utility resource  
19       planning filings, demand side management programs and fuel  
20       adjustment clauses?

21          A.       Yes.

22          Q.       Would it be fair to say that one of his  
23       responsibilities is to review the monthly FAC reports that  
24       utilities must submit under 4 CSR 240-3.165?

25          A.       I do not believe it is his responsibility



1 to review each one of those reports, no.

2 Q. Is it somebody that works for him, is it  
3 their responsibility?

4 A. Yes.

5 Q. You don't review them, I take it?

6 A. No. I don't have time.

7 Q. When those reports are submitted via EFIS,  
8 who on the Staff gets notified?

9 A. I do. John Rogers does. I believe  
10 everybody in his section does, plus numerous people across  
11 the Staff, too. I don't -- I do know they do because  
12 usually I check to make sure they're getting notified.

13 Q. Now, one of the requirements of the FAC  
14 rules, and I'm correct that you were pretty deeply  
15 involved in developing those rules; is that correct?

16 A. Yes.

17 Q. One of the requirements of those rules is  
18 that the monthly FAC report must report, quote, all  
19 significant factors that have affected the level of RAM  
20 revenues and fuel and purchased power expenses, end quote?

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes.

24 Q. So for Ameren Missouri, if a factor exists  
25 or arose in a month that affected in some material way the

1 level of off-system sales, because for Ameren Missouri  
2 off-system sales is a RAM revenue, right? Is that true?

3 A. Yes.

4 Q. RAM stands for rate adjustment mechanism,  
5 right?

6 A. Which could be a fuel adjustment clause or  
7 an interim energy charge.

8 Q. Right. So an FAC is a type of a RAM,  
9 right?

10 A. Yes.

11 Q. So if Ameren Missouri has an event,  
12 something, a factor arises in a month that materially  
13 affects off-system sales, that rule requires Ameren  
14 Missouri to report that significant factor in that report,  
15 correct?

16 A. Yes.

17 Q. Ms. Mantle, I'm going to hand you two  
18 documents. I'm going to ask you to take a look at them  
19 and ask if you would recognize those as being monthly FAC  
20 reports of the type we were just discussing for Ameren  
21 Missouri? Might have been AmerenUE at the time.

22 A. They did appear to be the monthly reports  
23 for March and May of 2009.

24 Q. And according to the affidavits that are on  
25 the cover of those reports, the March report was submitted

1 on the 1st of June 2009, and the May -- and the report for  
2 May was submitted the 31st of July?

3 A. That's when they signed the affidavit. I'm  
4 assuming they appeared here soon after that.

5 Q. Could you turn to the, I believe it is the  
6 fifth page of each of the packets that I've given you.

7 A. Okay.

8 Q. For the March 2009 report, isn't it true  
9 that it lists as a significant factor affecting RAM  
10 revenues and expenses new wholesale customer - AEP?

11 A. Yes.

12 Q. And for the May report, isn't it true that  
13 for a significant factor affecting RAM revenue and  
14 expenses it lists a whole wholesale customer, Wabash  
15 Valley Power Association?

16 A. Yes.

17 Q. Is it your testimony that no one on the  
18 Staff pays any attention to these reports?

19 A. It's my testimony that while that is one  
20 line in a monthly report, it may or may not have been  
21 looked at immediately. We had a lot of rate cases here at  
22 the Commission in that time. We had quite a workload. We  
23 had a lot going on. I don't know when they would have  
24 first looked at it. But the first time that it came to  
25 the attention of, to my awareness and the people that work

1 on the fuel model and that do jurisdictional allocation  
2 factors was what is listed in my testimony.

3 Q. But your testimony doesn't say that -- but  
4 your testimony doesn't say that the first time it came to  
5 Lena Mantle's attention or Erin Maloney's attention or  
6 Shawn Lange's attention or whoever else you might have  
7 been talking to in your prior answer, it doesn't say that  
8 the first time it came to their attention was in September  
9 of 2009. It says the first time Staff was aware was in  
10 September 2009; isn't that right?

11 A. It says the first time it saw any mention  
12 of the contracts, so --

13 Q. So either Staff didn't look at these  
14 reports, in which case they're just being ignored, they're  
15 not being looked at in a very timely fashion, or Staff did  
16 look at them and your testimony is wrong because the Staff  
17 did see mention. It may not have been you personally, but  
18 the Staff saw them mentioned, didn't they?

19 A. I would not say just because these reports  
20 were not looked at the day after we received them that we  
21 ignored them. We do have work to do, and it is not  
22 necessarily a high priority when they came in. We do  
23 review them.

24 Now, as to the second part of your  
25 question, I believe it is Matt Barnes who reviews these.

1 He saw that. But as to what the full impact or what that  
2 made -- difference that made, we weren't aware of that.  
3 It wasn't mentioned until October -- or I mean  
4 September 30, 2009.

5 Q. Let's be careful about the use of the word  
6 we. We in your world in this hearing room today means  
7 Lena Mantle and maybe a few other people, right?

8 A. And perhaps the word mention is too light  
9 of a word. Be aware of, as you had said earlier, probably  
10 should have been the words that I used. We saw it  
11 mentioned, but to really be aware of what the contracts  
12 were and how they were being treated by Ameren Missouri we  
13 did not know until September 30th.

14 Q. Perhaps the question you asked yourself  
15 should not have been when did Staff first see mention or  
16 when was Staff first aware. Maybe it should have been  
17 were you first aware. Wouldn't that have been a more fair  
18 representation of the facts?

19 A. No, because I don't think I saw on  
20 September 30th, 2009, the answer to that data request. I  
21 probably didn't see that for quite a while.

22 Q. So Staff's not aware of those customers,  
23 the existence of those customers even though Mr. Barnes, a  
24 member of the Staff, you testified here today would have  
25 looked at the reports, right? Is that your testimony,

1     that Staff's not aware?

2             A.       They're -- yes.

3             Q.       And that testimony's not true, is it,  
4     because Staff was aware?

5             A.       Staff had read -- and I don't know when  
6     Mr. Barnes read the reports. It may have been well after  
7     September 30, 2009.

8             Q.       In which case the report sat around in the  
9     Staff's in box, so to speak, for four months, right?

10            A.       Could have very well been, but it wouldn't  
11     be in the in box. It would have been in EFIS. But yes,  
12     because of the workload, we don't always get to review the  
13     stuff that comes in right away.

14            Q.       You might understand why perhaps the  
15     company, oh, perhaps was a little prickly about the  
16     concept that the Staff wasn't aware of these contracts and  
17     you put it in your testimony to do with any of the issues  
18     in this case when, in fact, the company did make the Staff  
19     aware of those contracts, didn't it?

20            A.       The Staff mentioned it in monthly filings  
21     in the FAC monthly reports.

22            Q.       As it was required to do, right?

23            A.       Yes.

24            Q.       And, in fact, listed it as a significant  
25     factor affecting off-system sales revenues, right? Or I

1 say RAM revenues, but that includes off-system sales,  
2 doesn't it?

3 A. Yes.

4 Q. Now, not only did the Staff possess two FAC  
5 reports before September 30th, 2009 that advised of these  
6 contracts, but the Staff possessed some other documents,  
7 didn't it?

8 A. I believe that Mr. Wills wrote testimony  
9 that there was two bilateral contracts that were entered  
10 into, and he included some mention of them in his work  
11 papers, and I believe those were filed in July of 2009.

12 Q. And you didn't look at those either until  
13 sometime later, right?

14 A. I don't know when -- I personally did not  
15 look at Mr. Wills' work papers. That would have been  
16 Lange, Shawn Lange, the Staff member or other Staff  
17 members that were working on it. I don't have time to  
18 look at every work paper.

19 Q. Have you since looked at those work papers?

20 A. No.

21 Q. Mr. Wills testifies that those work papers  
22 specifically called out the AEP and Wabash contracts, does  
23 he not?

24 A. That is what he testifies, yes.

25 Q. You don't have any reason to dispute his

1 testimony, do you?

2 A. Well, he also had said that he put those  
3 contracts into his direct testimony, which just mentioned  
4 that there were two bilateral contracts. It did not  
5 mention that it would be treated as a municipal customer  
6 would in the rate case. None of -- bilateral contracts  
7 aren't unusual.

8 Q. You didn't answer my question, though. I  
9 asked you whether or not Mr. Wills testified that in his  
10 work papers he specifically called out the AEP contract  
11 and the Wabash contract, and you said he did testify to  
12 that, correct?

13 A. Yes.

14 Q. And I asked you whether you had any reason  
15 to doubt whether or not his testimony about what he put in  
16 his work papers was true. Do you have any reason to doubt  
17 that his testimony about his work papers is true or not?

18 A. I find Mr. Wills to be an honest man, and  
19 I -- but I do know, too, that he said that in his  
20 testimony he --

21 Q. Ms. Mantle --

22 A. I'm telling you why I --

23 Q. But you've already answered my question.

24 MR. ROAM: Judge, can the witness please  
25 answer the questions? It's not the question that counsel



1 may want to hear, but if Ms. Mantle could please complete  
2 the answer, it would be very helpful.

3 JUDGE PRIDGIN: No. I mean, if that's an  
4 objection, I'm going to overrule. I think he's entitled  
5 to lead the witness, and if he thinks -- if any lawyer  
6 thinks a witness isn't answering a question, they can  
7 interrupt or ask for the bench to direct them to answer  
8 what they're being asked. If we have to go through it  
9 word by word, we will. If that's an objection, I'll  
10 overrule.

11 BY MR. LOWERY:

12 Q. So just to reset, Ms. Mantle, you find  
13 Mr. Wills to be a truthful and credible man, and so if he  
14 said that he provided work papers that called out these  
15 contracts by name on or about the time he filed his direct  
16 testimony, you don't doubt that that's true, do you?

17 MR. ROAM: Judge, I'm going to object.  
18 That misstates the evidence. Ms. Mantle said she found  
19 him to be truthful and honest man but, and then began to  
20 explain. Counsel is only paraphrasing the beginning of  
21 her statement, and he interrupted her and cut her off for  
22 the second part of her statement. I just think that if  
23 we're going to have -- if we're going to refer to  
24 testimony, it should be complete. I would just object on  
25 the grounds that he's misstating the testimony in the

1 case.

2 MR. LOWERY: Your Honor, the witness is  
3 certainly free to tell me, that's not what I said. I  
4 don't think Mr. Roam is free to coach Mr. Thompson's  
5 witness. That's not an objection. It's an attempt to  
6 coach Ms. Mantle from the counsel chair.

7 JUDGE PRIDGIN: I'm going to overrule. I  
8 recall Ms. Mantle's answer saying she believes he was an  
9 honest man, and I don't recall truthful or credible being  
10 in her answer. So if you want to rephrase your  
11 question...

12 BY MR. LOWERY:

13 Q. Do you think Mr. Wills is lying when he  
14 said that he provided work papers near the beginning of  
15 that rate case that specifically called out the AEP and  
16 Wabash contracts?

17 A. I believe there was mention of those  
18 contracts somewhere in his work papers.

19 Q. Fair enough. And he didn't testify that he  
20 mentioned those contracts by name in his testimony, did  
21 he, in his testimony in that rate case? He never said  
22 that, did he?

23 A. My memory is that he said that he told  
24 Staff, that he mentioned that there were two bilateral  
25 contracts that were entered into.

1           Q.       In his testimony he generically mentioned  
2       that there were two new wholesale contracts, right, or  
3       bilateral?

4           A.       I don't have his exact words in front of  
5       me, but something to that -- to that --

6           Q.       But in his work papers, he testified that  
7       he actually did name them by name, right?

8           A.       Somewhere in his pile of work papers, yes,  
9       he said that he did.

10          Q.       And, in fact, he testified to those facts  
11       in the 0255 case, didn't he?

12          A.       Yes, he did.

13          Q.       But you saw fit in this case to repeat the  
14       allegation that Staff wasn't aware of the contracts until  
15       I guess now September 30th, 2009, right?

16          A.       Yes.

17          Q.       Having been told by Mr. Wills that he  
18       provided specific information about those contracts in his  
19       work papers in July of 2009, right?

20          A.       Yes.

21          Q.       Do you recall back in December of last  
22       year, about six or seven months ago, that Judge Woodruff  
23       convened a prefiling conference in advance of Ameren  
24       Missouri's current rate case --

25          A.       Yes.

1           Q.       -- the 0166 case? You were there, weren't  
2     you?

3           A.       Yes, I was.

4           Q.       Do you remember speaking up during that  
5     conference and addressing Judge Woodruff and you raised  
6     the issue about incomplete work papers? Do you remember  
7     that?

8           A.       Yes, I do.

9           Q.       And do you remember telling the judge that  
10    if we have the work papers when they are filed -- and when  
11    you -- what I meant by that was when a rate case is filed,  
12    right?

13          A.       Yes.

14          Q.       -- that alone would help us considerably.  
15    Do you remember telling Judge Woodruff that?

16          A.       Yes. If we received them when testimony  
17    was filed, that would help.

18          Q.       And then you said something about that  
19    Staff has had to ask for work papers for the fuel model in  
20    the past. Do you remember saying that?

21          A.       Yes.

22          Q.       But then you clarified that you didn't know  
23    if you'd had to do that for Ameren Missouri. Do you  
24    remember saying that?

25          A.       Yes.

1           Q.       So let me ask you, Ms. Mantle, if getting  
2 work papers essentially contemporaneously with when a rate  
3 case is filed is important enough for you to speak up at  
4 that prefiling conference and address the judge and tell  
5 the judge it would help you considerably to get them, and  
6 I say -- when you say you, I take it you mean your  
7 department, right?

8           A.       Yes.

9           Q.       If that's important enough to get them when  
10 the rate case is filed, then doesn't it follow that one  
11 would reasonably expect that the Staff would actually use  
12 the work papers when the rate case is filed?

13          A.       Staff did use the work papers. Staff also  
14 had other rate cases going on at the time. If we have the  
15 work papers when we can find time to start looking at  
16 them, they're there rather than having time to actually  
17 look at the work papers and work on it and the work papers  
18 don't exist and then we have to ask for a DR.

19          Q.       Yeah. I think you've answered my question.  
20 So Staff had the work papers and Staff used the work  
21 papers, which means Staff was aware also, in addition to  
22 the FAC reports, Staff was also aware in July 2009 that  
23 the AEP and Wabash contracts existed because the work  
24 papers called them out, right?

25          A.       It was in the work papers, but that does

1 not mean that -- we had KCPL and Greater Missouri  
2 Operations Company in and I believe Empire and Ameren all  
3 at the same time.

4 Q. So you didn't really use them then?

5 A. We used the work papers. We didn't use  
6 them -- we may not have used them immediately when they  
7 came in.

8 Q. All right. Another subject of testimony  
9 that you have is about the W factor, right?

10 A. Yes.

11 Q. Probably should just let you keep this.  
12 This is Mr. Weiss' direct testimony, and it has the  
13 stipulation we looked at before attached to it. Would you  
14 turn to that stipulation, please.

15 A. Okay.

16 Q. That stipulations has three main sections,  
17 does it not, with big bold headings that I think are  
18 underlined, or they're at least bold; is that right?

19 A. Yes.

20 Q. One of the headings says AEP and Wabash  
21 contracts, correct?

22 A. Yes.

23 Q. One of them says other issues?

24 A. Yes.

25 Q. One of them says general provisions, right?

1 A. That is correct.

2 Q. In your testimony, in your surrebuttal, I  
3 guess actually it's your rebuttal testimony -- or  
4 direct/rebuttal testimony, is the point that you were  
5 trying to make in response to Mr. Weiss' testimony about  
6 this W factor that the \$300,000 per month is a black box  
7 settlement amount? Is that really the point you're  
8 making?

9 A. Yes.

10 Q. What does W stand for in the stipulation  
11 that was entered in the 0036 case that we just talked  
12 about?

13 A. It stands for \$300 (sic) a month that would  
14 be credited or revenues that would offset fuel cost.  
15 That's what it stands for.

16 Q. 300,000, right?

17 A. Yes.

18 Q. The W factor is located within the discrete  
19 section of that stipulation that's entitled AEP and Wabash  
20 contracts, isn't it?

21 A. Yes.

22 Q. And the other discrete section that says  
23 other issues, it settles issues in the case, it looks like  
24 two issues that have nothing to do with the fuel  
25 adjustment clause or AEP and Wabash; isn't that right?

1 A. Yes.

2 Q. Now, you point to -- you point to another  
3 stipulation from the 318 case, right, in your testimony?

4 A. I have described the S factor. I believe  
5 that was in a stipulation in the 318 case.

6 Q. Have you read Mr. Weiss' surrebuttal  
7 testimony where he describes the stipulation, the 318  
8 stipulation that you had mentioned in your testimony?

9 A. I read it, yes.

10 Q. Is he right that the S factor that you  
11 pointed to in your testimony is in a stipulation expressly  
12 labeled a black box settlement amount, that the S factor  
13 is a called a black box settlement amount?

14 A. That is correct. That's what I said in my  
15 testimony, too.

16 Q. The \$300,000 per month in the 0036  
17 stipulation isn't referred to as a black box settlement,  
18 is it?

19 A. No. It was part of what was necessary to  
20 settle the fact that we would not take to the Commission  
21 the AEP and Wabash contracts.

22 Q. Isn't it true that the 0036 settlement  
23 agreement that's attached to Mr. Weiss' direct testimony,  
24 the one that has the W factor, isn't it true that it's a  
25 settlement document showing the Noranda load loss and an



1 offset to fuel and purchased power cost to run through the  
2 FAC relating to AEP and Wabash?

3 A. You're trying to trick me. You've got two  
4 page 2s in here.

5 Q. Sorry about that. Copy machine tricked me.

6 A. What was the question again?

7 Q. Isn't it true that the 0036 settlement  
8 agreement, the one that has the W factor in it attached to  
9 Mr. Weiss' direct testimony in this case, is a settlement  
10 document that shows the Noranda load loss and an offset to  
11 fuel and purchased power costs that would otherwise be run  
12 through the FAC that relates to AEP and Wabash?

13 A. Can you point to me where it says anything  
14 about Noranda? I believe that's part of your question.

15 Q. I think you're right. I don't think it  
16 does. Let me rephrase the question. Isn't it true that  
17 that settlement agreement, the one with the W factor, is a  
18 settlement document showing an offset to fuel and  
19 purchased power costs that would otherwise run through the  
20 FAC relating to AEP and Wabash?

21 A. No, that is not what it says.

22 MR. LOWERY: Need to get an exhibit marked,  
23 your Honor.

24 JUDGE PRIDGIN: This should be Exhibit

25 No. 17.

1 (AMEREN EXHIBIT NO. 17 WAS MARKED FOR  
2 IDENTIFICATION.)

3 BY MR. LOWERY:

4 Q. Can you identify Exhibit 17, please?

5 A. They are DRs requested of me in the  
6 EO-2010-0255 case.

7 Q. In fact, more accurately stated, they're  
8 your responses to DRs that were sent to you, correct?

9 A. Yes.

10 Q. Would you turn to DR response -- the  
11 response to DR No. 7?

12 A. Yes.

13 Q. Can I ask you to -- well, I'll read the  
14 question and I'll ask you an answer. Does the question  
15 read, please list by document, paper or electronic, type,  
16 date and author/recipient if shown by the document, all  
17 documents reviewed, whether relied upon by Ms. Mantle or  
18 not by Ms. Mantle in arriving at the opinions expressed in  
19 Ms. Mantle's testimony filed in this docket. Was that the  
20 question?

21 A. Yes.

22 Q. And the third bullet down, one of the  
23 documents you answered you described as follows: Ameren  
24 ER-2010-0036 settlement document showing Noranda load loss  
25 and AEP and Wabash offset, end quote.

1 A. Yes.

2 Q. Is that your answer?

3 A. Yes.

4 Q. And the settlement document you're  
5 referring to in your answer to DR No. 7 is the settlement  
6 document that you have in front of you that's attached to  
7 Mr. Weiss' surrebuttal testimony, is it not?

8 A. Yes.

9 Q. There's only one possible offset in that  
10 settlement agreement, isn't there, the \$300,000 per month  
11 for 12 months reflected by the W factor; isn't that true?

12 A. The W factor is reduction in fuel cost for  
13 the time period as set out in that Stipulation &  
14 Agreement. So in that case, if you call that an offset,  
15 yes, it is.

16 Q. You called it an offset, didn't you?

17 A. That's what this -- this DR says.

18 Q. You called --

19 A. I did not call the W factor in AEP and  
20 Wabash offset.

21 Q. You said the settlement document shows an  
22 AEP and Wabash offset, correct?

23 A. It say showing Noranda load loss and AEP  
24 and Wabash offset.

25 Q. And my question is, the only offset

1 reflected in that settlement agreement is the \$300,000 per  
2 month reduction, offset, whatever word you want to use, to  
3 fuel costs that was agreed upon, right?

4 A. That is the only monetary offset, yes.  
5 There are other provisions in this section that the  
6 parties reached an agreement on in order to not bring the  
7 AEP and Wabash contract dispute before the Commission.

8 Q. Other compromises or offsets, is that your  
9 testimony today?

10 A. It offsets the fact that -- of taking the  
11 issue to the Commission, yes.

12 Q. Okay. Fair enough. If your testimony is  
13 that compromises that are made offset something, then  
14 that's fair enough.

15 MR. LOWERY: Your Honor, I would mark -- or  
16 excuse me. I would offer Exhibit 17 into the record.

17 JUDGE PRIDGIN: Exhibit 17 has been  
18 offered. Any objection?

19 (No response.)

20 JUDGE PRIDGIN: Hearing none, it is  
21 admitted.

22 (AMEREN EXHIBIT NO. 17 WAS RECEIVED INTO  
23 EVIDENCE.)

24 MR. LOWERY: I have no further questions,  
25 your Honor.

1 JUDGE PRIDGIN: Mr. Lowery, thank you. Any  
2 bench questions? Commissioner Jarrett?

3 COMMISSIONER JARRETT: I have no questions.  
4 Thanks, Ms. Mantle.

5 JUDGE PRIDGIN: Commissioner Stoll.

6 COMMISSIONER STOLL: I have no questions.  
7 Thank you.

8 QUESTIONS BY JUDGE PRIDGIN:

9 Q. Ms. Mantle, I think just a quick question  
10 just to make sure the record is clear. Could you quickly  
11 describe your understanding of a black box settlement here  
12 at the Commission?

13 A. A black box settlement is a type of  
14 settlement that is not necessarily tied to any factor  
15 within the rate case. It's typically an amount agreed to  
16 by the parties. Sometimes in the past it has been the  
17 entire revenue requirement. In this case, it was an  
18 amount that was determined so that the parties would reach  
19 an agreement on not bringing the contracts to the  
20 Commission at that point in time.

21 Q. Is it accurate to describe a black box  
22 settlement as several different issues somehow being  
23 settled without any -- without any showing of which issue  
24 was compromised to what extent, it's just that the parties  
25 agreed to settle all of their disputes and this is the

1 number that they've all chosen without showing necessarily  
2 the rationale or the explanation of how they arrived at  
3 that number because it's confidential, it's just how  
4 they've decided to resolve their dispute? Is that a fair  
5 characterization?

6 A. Yes. It doesn't say where that money is  
7 going to come from. It doesn't say from the Wabash  
8 revenues or anything else. It is just an amount that is  
9 used with no strings to it to settle that portion of the  
10 case.

11 JUDGE PRIDGIN: All right. Thank you.  
12 That's all I have. Any recross based on bench questions?

13 MR. LOWERY: Just a little bit, your Honor.

14 RECROSS-EXAMINATION BY MR. LOWERY:

15 Q. I think you testified a moment ago that the  
16 AEP and Wabash contract agreement in that stipulation was  
17 an offset -- an offset, I guess, to the Staff's ability or  
18 willingness to otherwise take the AEP and Wabash issue to  
19 hearing in that rate case; is that a fair recitation?

20 A. Not just the Staff, but the other parties,  
21 too.

22 Q. I'll expand it to the other parties. But  
23 the offset that you said you were referring to was a  
24 compromise so that all the parties wouldn't take this  
25 issue to the Commission, right?

1 A. Correct.

2 Q. This issue being the AEP and Wabash issue,  
3 right?

4 A. The one that we have in front of us today,  
5 yes.

6 Q. So the only issued settled by the AEP and  
7 Wabash contract section of that stipulation is the AEP and  
8 Wabash issue; isn't that right?

9 A. The only settlement was that we would not  
10 take those contracts to the Commission at that time.

11 Q. And in exchange for that, the company was  
12 to pay \$300,000 per month for 12 months through the FAC;  
13 isn't that right?

14 A. Yes.

15 MR. LOWERY: Thank you, your Honor. No  
16 further questions.

17 JUDGE PRIDGIN: Thank you. Redirect?

18 MS. MOORE: Yes, just a little bit, your  
19 Honor.

20 JUDGE PRIDGIN: When you're ready.

21 REDIRECT EXAMINATION BY MS. MOORE:

22 Q. Ms. Mantle, just a few questions. First,  
23 can you tell me just briefly what is the purpose of a  
24 technical conference?

25 A. The technical conference is for the

1 technical experts to get together to talk about perhaps  
2 corrections to each other's positions, clarification of  
3 what the other parties have presented. Sometimes there  
4 may be settlement out of it, but a lot of times it's just  
5 trying to figure out what the other parties have done and  
6 why.

7 Q. Okay. So when you're asking questions in a  
8 technical conference, the purpose of asking those  
9 questions is to, I think you said, understand?

10 A. To clarify the other parties' positions.

11 Q. So Mr. Lowery asked you about that, about  
12 your recollection of when you asked for the meaning of  
13 requirements contracts. Do you remember that question he  
14 asked?

15 A. Yes.

16 Q. When you asked about the meaning of  
17 requirement contracts, what was your understanding of the  
18 answer?

19 A. The understanding of the answer was that it  
20 was the municipal contracts, that Ameren had been  
21 providing power to some municipalities for as long as I  
22 had been at the Commission, since 1983. It made perfect  
23 logic to me because costs were being allocated to those  
24 munis. It did not make sense for the revenues to flow  
25 through.



1                   On the other hand, the tariff is set up so  
2     that a long-term purchased power, the reason for that  
3     would be if it's over a long period of time, the utilities  
4     do have to come in for a rate case at least every four  
5     years. It would be put into revenue requirement at some  
6     point in time. So the explanation that was given to me  
7     made perfect sense.

8                   **Q.       So once you understood it that way, you**  
9     **were okay with it because it made sense in your experience**  
10    **and everything that you had known beforehand?**

11                   MR. LOWERY: Objection, leading.

12                   JUDGE PRIDGIN: I'll sustain.

13     BY MS. MOORE:

14                   **Q.       Would you say that your under-- excuse me.**  
15                   **Once you received the answer to your**  
16    **question, were you comfortable with that answer?**

17                   MR. LOWERY: That's also leading, your  
18     Honor.

19                   JUDGE PRIDGIN: Overruled. She can answer  
20     yes or no to that or I don't know.

21                   THE WITNESS: Yes.

22     BY MS. MOORE:

23                   **Q.       Based on what?**

24                   A.       Based on the history that I had here  
25     working at the Commission, working with not only AmerenUE

1 but also with the other utilities and how they dealt with  
2 municipalities and their loads and the fuel expense  
3 estimate in a rate case and allocation factors, and just  
4 the fact that prior to the time that AmerenUE started  
5 calling these two contracts, AEP and Wabash contracts  
6 wholesale customers, prior to that I'd never heard that  
7 term used for anything other than municipal -- contracts  
8 with municipal utilities.

9 Q. Okay. Mr. Lowery also asked you about why  
10 you included your recollection of when Staff first became  
11 aware of the contracts we've been discussing. Do you  
12 remember being asked about that?

13 A. Yes.

14 Q. Why did you include that section of your  
15 testimony relating to when you became aware of the  
16 contracts?

17 A. As os now obvious, since this is the third  
18 case we've got before the Commission about these  
19 contracts, these contracts were very important to Ameren  
20 Missouri. Typically when there's something important,  
21 they have come to us in the past and explained what was  
22 going on. They didn't put an line in testimony that says  
23 we've entered into bilateral contracts, which didn't  
24 explain that at that point they were considered wholesale  
25 customers as municipals were considered, and that the

1 mention of a wholesale contract with AEP in a fuel FAC  
2 report did not mean that -- we would have never guessed  
3 that that meant that AmerenUE was going to say that those  
4 revenues should not flow through the FAC.

5           So the -- I wanted to get across to the Commission  
6 that Ameren was not real forthright and upcoming with  
7 telling Staff about these contracts for something so  
8 important to them. I believe that -- that it was  
9 something that they should have told us about and been up  
10 front and forthright with it, rather than us having to  
11 discover them through DRs or even digging through --  
12 Mr. Wills' is a fine analyst, and his work papers are  
13 usually too big to send over the Internet. So to find,  
14 you know, a mention in his work papers, I have no doubt  
15 that they were in -- a mention was in there, but that  
16 really isn't telling the Staff what's going on. That's  
17 just putting it in and, I don't know, flying under the  
18 radar until we actually found out about it the way that it  
19 was described in my testimony.

20           **Q.       Ms. Mantle, would you say that Staff takes**  
21 **seriously the FAC reports Mr. Lowery was asking about?**

22           **A.       Yes, we do.**

23           **Q.       Would you also say that you take seriously**  
24 **those work papers that he asked you about?**

25           **A.       Yes, we do. It helps us to do our work.**

1           Q.       And finally on this issue, when would you  
2 say Staff first became aware of how these contracts were  
3 treated under the FAC?

4           A.       I don't know if we were really aware of  
5 that until later in the case. At the point that I  
6 described in my testimony, we were trying to figure out  
7 how to include them in the case as far as fuel costs go,  
8 as far as jurisdictional allocation factors go, because  
9 it's so very important that the costs get allocated  
10 correctly.

11                   And so at that point we were focusing on  
12 the rate case itself and trying to get those numbers  
13 correct. I believe it was probably later on in the rate  
14 case that we realized that these revenues had not been  
15 flowing through the FAC, and that was one of the big  
16 reasons we had this AEP and Wabash settlement in this  
17 nonunanimous stip because it became apparent late in the  
18 case that they were not flowing through. So I don't know  
19 exactly when we found that out.

20           Q.       Mr. Lowery also asked you about the  
21 W factor. You discussed that. Just a few questions on  
22 that. According to the stipulation itself, what does the  
23 W factor have bearing on?

24           A.       It doesn't have bearing on anything. It is  
25 just an amount that would be used to offset fuel cost in

1 the FAC for the time period provided in the Stip &  
2 Agreement.

3 Q. Does the stipulation indicate what effect  
4 the W factor would have on parties' positions in future  
5 cases such as this one?

6 A. No, it did not. Actually, it explicitly  
7 stated that -- I believe it's in my testimony on page 11,  
8 starting on line 18, the signatories expressly agreed the  
9 stipulation does not and is not intended to preclude any  
10 party from taking any position in this or any subsequent  
11 Commission case, including the position that these AEP and  
12 Wabash contracts for periods prior to the effective new  
13 rates from this case should be treated as off-system sales  
14 for purposes of AmerenUE's current fuel adjustment clause.

15 So it expressly said that any party could  
16 take any position with respect to this W. So Ameren could  
17 take the position that they have and Staff could take --  
18 Staff and MIEC could take the positions that we have.

19 MS. MOORE: That's all I have, Judge.  
20 Thank you.

21 JUDGE PRIDGIN: Ms. Mantle, thank you very  
22 much. You may step down.

23 I believe Mr. Eaves is the next witness.

24 MR. EAVES: Would you mind taking a short  
25 break so I can get some water?

1 JUDGE PRIDGIN: Mr. Eaves has asked for a  
2 quick break. Any objections?

3 (No response.)

4 JUDGE PRIDGIN: Let's take about a  
5 ten-minute break then. We'll come back at 3:45. Thank  
6 you. We're off the record.

7 (A BREAK WAS TAKEN.)

8 JUDGE PRIDGIN: We are back on the record.  
9 I don't believe I administered the oath to Mr. Eaves. I  
10 will do that here shortly just to be sure. Is there  
11 anything else from counsel before Mr. Eaves is sworn in?

12 (No response.)

13 JUDGE PRIDGIN: All right. If you'll raise  
14 your right hand to be sworn, please.

15 (Witness sworn.)

16 JUDGE PRIDGIN: Just a moment, please. I  
17 think I have neglected to get my camera duties on.  
18 Ms. Moore or Mr. Thompson, whenever you're ready.

19 MS. MOORE: Thank you, Judge.

20 DANA EAVES testified as follows:

21 DIRECT EXAMINATION BY MS. MOORE:

22 Q. Mr. Eaves, if you would state your full  
23 name for the record.

24 A. Dana Eaves.

25 Q. And where are you employed?

1 A. Missouri Public Service Commission.

2 Q. In what capacity?

3 A. I'm a utility regulatory auditor.

4 Q. Are you the same Dana Eaves who prepared or  
5 caused to be prepared the testimony marked Exhibits 8HC  
6 and NP?

7 A. Yes.

8 Q. Do you have anything you wish to correct  
9 about that testimony?

10 A. I have one minor change to my direct/  
11 rebuttal testimony. Page 2, line 22, there's an extra  
12 coma between 3 and 1. It should be August 31st. That's  
13 the only change or correction I have.

14 Q. If asked the same questions today, would  
15 your answers be the same?

16 A. Yes.

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

19 A. Yes.

20 MS. MOORE: Your Honor, Staff offers  
21 Exhibit 8HC and NP and tenders the witness for cross.

22 JUDGE PRIDGIN: Ms. Moore, thank you. Any  
23 objections?

24 MR. BYRNE: None, your Honor.

25 JUDGE PRIDGIN: Hearing none, Exhibits 8HC

1 and NP is admitted.

2 (STAFF EXHIBIT NOS. 8HC AND 8NP WERE  
3 RECEIVED INTO EVIDENCE.)

4 JUDGE PRIDGIN: Cross-examination.  
5 Ms. Langeneckert, any questions?

6 MS. LANGENECKERT: No. Thank you.

7 JUDGE PRIDGIN: Mr. Roam?

8 MR. ROAM: No, Judge.

9 JUDGE PRIDGIN: Mr. Byrne or Mr. Lowery?

10 MR. BYRNE: Yes, your Honor.

11 CROSS-EXAMINATION BY MR. BYRNE:

12 Q. Good afternoon, Mr. Eaves.

13 A. Good afternoon.

14 Q. Mr. Eaves, do you have your testimony with  
15 you on the witness stand?

16 A. Yes.

17 Q. And do you have the prudence reports that  
18 the Staff submitted in this case with you?

19 A. Yes. I have -- you said prudence reports.  
20 I have the prudence report for this issue.

21 Q. Okay. That's really all you need. The  
22 first prudence report relating to AEP and Wabash?

23 A. Yes.

24 Q. Okay. Do you happen to have Staff's report  
25 for the first prudence review, the EO-2010-0255 case?



1 A. I did not bring that with me.

2 Q. Okay. Do you have your deposition from the  
3 first prudence review?

4 A. Yes, I do.

5 Q. Okay. I'd like to start by talking a  
6 little bit about your background. You're an auditor at  
7 the Commission; is that correct?

8 A. Correct.

9 Q. Okay. And my understanding is you've  
10 worked at the Commission since 2001; is that right?

11 A. Yes.

12 Q. Okay. And what college degrees do you  
13 have?

14 A. I have a business of administration degree,  
15 a BS.

16 Q. What's the emphasis in?

17 A. Accounting.

18 Q. Accounting. Okay. Which makes sense for  
19 an auditor, I guess. Now, my understanding from the  
20 previous case is that neither in your job at the  
21 Commission nor at other jobs that you've had before have  
22 you had any experience buying or selling power; is that  
23 correct?

24 A. That's correct.

25 Q. Okay. And my understanding is that you've

1 never worked for an electric utility or any other entity  
2 that buys or sells power; is that correct?

3 A. That's correct.

4 Q. And you have no experience in negotiating  
5 power contracts; is that correct?

6 A. That's correct.

7 Q. Now, as I understand it from the  
8 proceedings today, the key issue in this case is whether  
9 the AEP and Wabash contracts constitute long-term partial  
10 requirements contracts. Would you agree with that?

11 A. Yes.

12 Q. And that's because, under the language in  
13 the company's FAC tariff that was in effect during the  
14 relevant time periods, if the AEP and Wabash contracts are  
15 long-term partial requirements contracts, they're excluded  
16 from the FAC just like volumes that had been sold to  
17 Noranda were excluded from the FAC; is that correct?

18 A. That's correct.

19 Q. But if they're not long-term partial  
20 requirements contracts, then they're included in the FAC  
21 and the margins have -- at least 95 percent of the margins  
22 have to be refunded to customers through the FAC; is that  
23 correct?

24 A. Yes.

25 Q. And you were the Staff witness, were you

1 not, that was -- that initially made the recommendation in  
2 Case No. EO-2010-0255 that AEP and Wabash revenues for  
3 that period be excluded from the FAC -- I mean included in  
4 the FAC; is that correct?

5 A. Yes. I wrote testimony and also testified.

6 Q. And from your deposition in that case, and  
7 if you have your deposition -- well, from your deposition  
8 in that case, it's my understanding that you relied  
9 exclusively on FERC Form 1 for your definition of  
10 long-term and partial requirements sales; is that correct?

11 A. I don't know if I said that in that  
12 deposition associated with 0255.

13 Q. Take a look. Do you have your deposition?  
14 I think you do.

15 A. For this case I do.

16 Q. Well, I was --

17 A. I don't have -- I don't have my  
18 deposition -- I'm sorry. I take that back. I am a little  
19 confused.

20 Q. That's okay.

21 A. Yes, I do have my deposition for the 0255  
22 case.

23 Q. Since we didn't depose you in this case,  
24 I'm glad you don't have a deposition.

25 A. I think Yogi Berra is playing an evil trick

1 on me.

2 Q. Well, take a look -- the part I am  
3 referring to I believe is on page 44 of that deposition.  
4 The question says, on line 20 -- are you there yet?

5 A. Page 44, line 20.

6 Q. And the question says: Okay. So the  
7 record is clear, you relied exclusively on FERC Form 1 for  
8 your definition of long-term full and partial requirements  
9 sales; is that correct? Answer: Yes.

10 A. And that's still correct, yes.

11 Q. Okay. And I'd like to take a look at the  
12 Staff prudence report and recommendation filed in the  
13 initial FAC prudence case, EO-2010-0255. Did you say you  
14 have a copy of that?

15 A. No.

16 MR. BYRNE: Okay. I would like to mark  
17 that as an exhibit, if we could.

18 JUDGE PRIDGIN: This will be Exhibit 18.  
19 And does this need to be 18HC? I notice an HC designation  
20 on the front page.

21 MR. BYRNE: I don't believe so, your Honor.

22 MR. LOWERY: No.

23 JUDGE PRIDGIN: Thank you.

24 MR. BYRNE: It was HC in that case because  
25 the contracts were still pending.

1 JUDGE PRIDGIN: Thank you.

2 (AMEREN EXHIBIT NO. 18 WAS MARKED FOR  
3 IDENTIFICATION.)

4 BY MR. BYRNE:

5 Q. Can you identify the document that's been  
6 marked as Exhibit 18 for me?

7 A. Yes. Title of the document is Prudency --  
8 Prudency Review of Costs Related to the Fuel Adjustment  
9 Clause for the Electric Operations of Union Electric  
10 Company, d/b/a AmerenUE, March 1st, 2009 through  
11 September 30th, 2009, Missouri Public Service Commission  
12 Staff Report, File No. EO-2010-0255.

13 Q. Great. And can you take a look at page 16,  
14 section H of that document, which is entitled off-system  
15 sales?

16 A. I'm there.

17 Q. And my understanding was that you were the  
18 author of that section of the report; is that correct?

19 A. Yes.

20 Q. Okay. And isn't that the section of the  
21 report that deals with the prudence adjustments related to  
22 the AEP and Wabash contracts for the period of time that  
23 was covered by that audit?

24 A. Yes.

25 Q. And isn't it true that in the section which

1 runs from page 16, I guess, to page 19, that the only  
2 reason that was given for making that prudence  
3 disallowance was the Commission's order on rehearing in  
4 Case No. ER-2008-0318?

5 A. Yes.

6 Q. And then in the conclusion, which appears  
7 on page 18, it says, given the Commission's February 19th,  
8 2002 decision to not modify AmerenUE's FAC due to the loss  
9 of Noranda load, it would be imprudent not to treat the  
10 revenues from the sales of the energy that became  
11 available due to the loss of the Noranda load as  
12 off-system sales revenues under AmerenUE's FAC.  
13 Therefore, AmerenUE was imprudent in not including the  
14 costs and revenues associated with the AEP and WVPS  
15 contracts in the FDA calculations for accumulation periods  
16 1 and 2. Did I read that correctly?

17 A. I believe so.

18 Q. Okay. And isn't it true that in this  
19 report you never even mention FERC Form 1?

20 A. That's correct.

21 Q. And I noticed on page 19 you have a list of  
22 documents that you reviewed, and you did not include FERC  
23 Form 1 in the list of documents that you reviewed in  
24 preparing that report; is that correct?

25 A. That's correct. It's not mentioned.

1           Q.       And have you read the Commission's Order on  
2 Rehearing in Case No. ER-2008-0318?

3           A.       I have.

4           Q.       And would you agree with me that the --  
5 well, let me read you a portion of the order and ask you a  
6 question about it, and it's the portion of the order that  
7 Mr. Lowery had in his opening statement. It says, if the  
8 Commission -- and I believe it might even be in your  
9 testimony, too. But the part I'm talking about says, if  
10 the Commission were to grant AmerenUE's application for  
11 rehearing, it would have to set aside the approved  
12 Stipulation & Agreement regarding the fuel adjustment  
13 clause, reopen the record to take evidence on the  
14 appropriateness of the proposed change, and make a  
15 decision before the March 1, 2009 operation of law date.  
16 Such action is obviously impossible.

17                   And, I mean, would you agree with me that  
18 that was the Commission -- that was the Commission's logic  
19 in denying the rehearing that they expressed in their  
20 order?

21          A.       Yes.

22          Q.       Okay. And isn't this just saying that the  
23 Commission basically didn't have time to hold a hearing to  
24 consider the merits of the application that Ameren  
25 Missouri had filed or AmerenUE had filed rather than --

1     rather than -- rather than a decision on the merits of  
2     that application?

3             A.       I think the Order says what it says. I  
4     find it difficult to interpret other than what it says.

5             Q.       Well, you're not saying -- let me ask you  
6     this: You're not saying that it was a substantive  
7     decision on the merits of AmerenUE's application for  
8     rehearing, are you, when they said they didn't -- such  
9     action is obviously impossible to hold a hearing?

10            MR. THOMPSON: Judge, I'm going to  
11   interpose an objection to this line of questioning at this  
12   time. I think this is cross-examination that perhaps  
13   should have been asked during the proceedings in 0255.  
14   This is a different time period. Staff has a different  
15   report. I don't see the relevance of this line of  
16   questioning to the issue that's in front of the Commission  
17   today.

18            JUDGE PRIDGIN: Mr. Byrne?

19            MR. BYRNE: Yeah. Your Honor, we've taken  
20   administrative notice of the entire last record, and the  
21   Staff's testimony included -- including the witness'  
22   testimony refers extensively to the previous docket and  
23   says -- I mean, basically in this case they've said the  
24   whole reason that they're proposing the prudence  
25   disallowance is based on the same reason as the last case.



1 So it seems to me it's reasonable to inquire a little bit  
2 into the reasons from the last case.

3 JUDGE PRIDGIN: I'll overrule.

4 BY MR. BYRNE:

5 Q. Do you remember the question?

6 A. I will need it again. Thank you.

7 Q. Let me try to restate it since I muddled it  
8 up a little bit. I think my question was, you're not  
9 saying, are you, that the Commission in issuing the Order  
10 on Rehearing Case No. ER-2008-0318 made a substantive  
11 decision on the merits of Ameren Missouri's application  
12 for a rehearing, are you, as opposed to a procedural  
13 decision that there wasn't time to hold a hearing?

14 MR. ROAM: I'm going to object that it  
15 calls for a legal conclusion and also calls for  
16 speculation as to what was in the minds of the Commission  
17 at the time.

18 JUDGE PRIDGIN: That objection I'll  
19 sustain.

20 MR. BYRNE: I mean, Judge, the Order is the  
21 basis for his prudence adjustment.

22

23

24

25

1 BY MR. BYRNE:

2 Q. Okay. Let's look at the FERC definitions  
3 from the Form 1 that you are relying on, and I've got them  
4 here. I don't think I need to mark them as an exhibit  
5 because this is attached as an exhibit to Mr. Haro's  
6 testimony, but for convenience I'd like to give you a copy  
7 to look at.

8 JUDGE PRIDGIN: You did not want this  
9 marked as an exhibit, correct?

10 MR. BYRNE: I don't think we need to,  
11 Judge. It's already attached to Mr. Haro's testimony. So  
12 I don't want to clutter up the record any more than we  
13 need to, but at least I want to ask him questions about  
14 it.

15 BY MR. BYRNE:

16 Q. And if you look on the seconds page of the  
17 document I gave you, it's page 310 of the FERC Form 1 that  
18 is also included as an attachment to Mr. Haro's testimony  
19 as Schedule JH-S3. And Mr. Eaves, this is a 1990 FERC  
20 Form 1 report, is it not?

21 A. Did you say 1990?

22 Q. Yeah.

23 A. Yes, I believe that's how you would refer  
24 to this.

25 Q. And would you agree with me that it has the

1 same reporting instructions that are reproduced on  
2 pages 15 and 16 of your direct dash surrebuttal testimony?

3 A. I'm assuming it is. Without checking, I  
4 would have no reason to believe it's not.

5 Q. Would you mind checking?

6 A. And you say it's contained where?

7 Q. I believe it's on page 15 and 16 of your  
8 direct/surrebuttal testimony. It's --

9 A. And the sections you're talking about is  
10 the reference to RQ, LF, IF, SF, LU and IU, is that what  
11 you're --

12 Q. Yes.

13 A. Okay. I'm with you now.

14 Q. If you want to take a minute and compare  
15 them. Let me know when you're ready.

16 A. They appear to be the same.

17 Q. And so would you agree with me that the  
18 reporting instructions that you're relying on are at least  
19 more than 20 years old based on appearing in this 1990  
20 version of the FERC Form 1?

21 A. They appear in the current version of the  
22 FERC Form 1. So when they were placed into the -- when  
23 FERC decided to put them in, I don't know. I don't know  
24 that that's relevant. There's probably a lot of stuff,  
25 language in the FERC Form 1 that's been in the FERC Form 1

1 for years and years.

2 Q. I'm not asking you whether it's relevant.

3 I guess I'm just asking you whether the fact that the same  
4 language appears in the 1990 version of the FERC Form 1 as  
5 appears in the current version of the FERC Form 1 suggests  
6 the language has been in there for more than 20 years?

7 A. Yes. I'm sorry. Yes.

8 Q. And Mr. Haro testified that there's been  
9 some significant transformation in the power markets in  
10 the United States over the last 20 years. Would you agree  
11 with that?

12 A. Yes.

13 Q. Are you familiar with the Energy Policy Act  
14 of 1992?

15 A. No.

16 Q. Are you familiar with FERC Order 888?

17 A. Yes.

18 Q. And can you tell me what FERC Order 888  
19 did to the power markets?

20 A. I believe it could be described as  
21 deregulated it, the transmission side, changed -- changed  
22 how power could be bought and sold.

23 Q. Did it create power markets of the kind  
24 that did not exist previously?

25 A. I think that's fair to say, yes.

1           Q.       Okay. And do you know when FERC Order 888  
2       was issued?

3           A.       I'm sorry. When it was?

4           Q.       When it was issued?

5           A.       1998.

6           Q.       Okay. And did it create different kinds of  
7       power transactions than had taken place before FERC  
8       Order 888?

9           A.       I don't know if it created. I think it  
10       might have allowed.

11          Q.       Okay. Did the fact that the FERC  
12       definitions, the FERC Form 1 definitions that you're  
13       relying on, did the fact that they were written more than  
14       20 years ago give you any pause in using them to support  
15       your prudence disallowance?

16          A.       No, absolutely not.

17          Q.       Okay. One aspect of the FERC Form 1  
18       instructions that you are relying on is its definition of  
19       long-term contracts; is that correct?

20          A.       Yes.

21          Q.       And the definition that you're relying on  
22       says that long-term contracts are five years or longer; is  
23       that correct?

24          A.       I believe that's what the definition is,  
25       yes.

1           Q.       Okay. And FERC Form 1 also says that  
2       intermediate term contracts are between one and five  
3       years; is that correct?

4           A.       Sounds right, yes.

5           Q.       Feel free refer to the Form 1 instructions  
6       if you need to, but is that correct?

7           A.       I believe so, yes.

8           Q.       And under those instructions, short-term  
9       contracts are less than one year; is that correct?

10          A.       Yes.

11          Q.       And taking a look at the language in the  
12       FERC Form 1, right above RQ it says No. 3, and this is  
13       sort of before all the RQ and IF and SF and LU and IU are  
14       defined, but No. 3 says, in column B enter a statistical  
15       classification code based on the original contractual  
16       terms and conditions of the service as follows. And then  
17       it lists RQ, LF, IF, SF, LU. Did I read that correctly?

18          A.       You did.

19          Q.       So when I read paragraph No. 3, I read it  
20       to require to refer to contractual terms and conditions;  
21       is that correct?

22          A.       That's what -- that's what it says. On the  
23       original contractual terms and conditions of the service  
24       as follows. Then describes the RQs, the various  
25       categories.

1           Q.       Right. And so it doesn't say -- it talks  
2 about the contractual, original contractual terms and  
3 conditions, not relationships of the parties that might be  
4 beyond a contract; is that correct?

5           A.       You're going to have to break your question  
6 down for me.

7           Q.       Well, it doesn't talk about relationships  
8 beyond contractual terms, does it? It talks about  
9 contractual terms and conditions.

10          A.       I can tell you what it says. I don't know  
11 what it doesn't say. It says, based on original  
12 contractual terms and conditions of the service as  
13 follows. Now, is that the whole world, is that what  
14 you're asking me, is that the whole --

15          Q.       Well, I guess I'm trying to get you to say,  
16 and I think you have agreed, that it's contractual terms  
17 and not other types of relationships beyond contractual  
18 terms that this is referring to; is that correct?

19          A.       Yes, I think that's correct.

20          Q.       Okay. Now, Mr. Haro in this case and I  
21 think Mr. Highley from Associated in the last case, whose  
22 record we've taken notice of, testified that these FERC  
23 Form 1 definitions are inconsistent with the definitions  
24 of long-term and short-term contracts commonly used in the  
25 power markets. Is that correct, that they've testified to

1     **that?**

2             A.       I know there was some debate about that,  
3     whether those two individuals testified about that or not.  
4     In my view of it, the way I understood the testimony to  
5     play out is that they're really talking about two separate  
6     things.  When you talk about the power market, I mean,  
7     you'd have to define what the individual was talking about  
8     in the power market.  These contracts --

9             Q.       So you don't know whether Mr. Haro  
10    testified that the definition of long-term and short-term  
11    in the power markets is different than the definitions in  
12    the FERC Form 1?

13            A.       I don't recall.

14            Q.       Okay.  Well, do you recall him saying  
15    that -- Mr. Haro testifying that he had never heard of an  
16    intermediate term contract being used in the marketplace?

17            A.       I don't recall.

18            Q.       Okay.  And do you recall him testifying  
19    that the demarcation between short-term and long-term  
20    contracts consistently used in the power markets is one  
21    year?

22            A.       I think -- I don't remember if it was  
23    Mr. Highley.  I think there was some debate about are  
24    these -- in the context of these contracts, could they be  
25    considered, quote, in the power market.



1 Q. So you --

2 A. In my mind, the power market and these  
3 contracts are not the same.

4 Q. Right. I understand. I understand that,  
5 but that's not the question I'm asking you. I guess I'll  
6 limit it to Mr. Haro because he's in this case. Do you  
7 recall Mr. Haro testifying that the demarcation between  
8 short-term and long-term contracts consistently used in  
9 the power markets is one year? Do you recall that or not?

10 A. I don't recall. I know that's been --  
11 that's been stated. I just don't recall.

12 Q. Fair enough. Would you agree with me that  
13 Mr. Haro and Mr. Highley have considerable experience  
14 operating power markets?

15 A. They certainly do.

16 Q. Okay. Do you have any reason to doubt  
17 their testimony about what the -- what terms are used and  
18 the definition of terms in the marketplace?

19 A. No. I think you have to define  
20 marketplace, and I'm not trying to be argumentative, but,  
21 you know, these are very specific contracts. What happens  
22 in the market in power trading, terms and conditions could  
23 be slightly different than what they are --

24 Q. Okay.

25 A. -- you know, as what we're looking at on

1 the regulatory side.

2 Q. Let me ask you this. Let me you, I  
3 understand you don't -- you don't recall, but just assume  
4 for a second that Mr. Haro suggested that the definitions  
5 of short-term and long-term that are in this FERC Form 1  
6 are inconsistent with the definition of those terms that  
7 are used in the marketplace. Assume that's true.

8 A. I will.

9 Q. Would that give you any pause about using  
10 the FERC Form 1 definitions in this case?

11 A. No.

12 Q. Are you aware that Staff witness Lena  
13 Mantle has stated that with the evolution of the power  
14 markets, that by the time the FAC was proposed and  
15 approved for Ameren Missouri, the minimum term for a  
16 contract, a power contract to be a long-term contract was  
17 three years and not five years? Were you aware of that?

18 A. I do remember her saying that, yes.

19 Q. And are you aware that MIEC witness Maurice  
20 Brubaker does not -- has not advocated the use of five  
21 years as the demarcation between long and short-term  
22 contracts in this case?

23 A. You don't have a source to point me to  
24 where he said that or --

25 Q. No. If you don't know, that's okay. If

1     you don't know, that's fine. I don't know a source to --

2             A.       I mean, you're asking me under oath to say  
3     he said that, and without you pointing me to testimony or  
4     somewhere, I --

5             Q.       I don't know is a perfectly good answer.

6             A.       Okay. I don't know.

7             Q.       Okay. Does the inconsistent testimony of  
8     Ms. Mantle at least give you any pause as to your  
9     testimony that five years is the appropriate demarcation  
10    between long and short-term power contracts based on these  
11    FERC Form 1 instructions?

12            A.       I don't know that Ms. Mantle's testimony is  
13    inconsistent. Inconsistent with my testimony or --

14            Q.       Yeah, with your testimony. She says three  
15    years is the minimum for a power contract to be long-term.  
16    You say the FERC Form 1 instructions which require them to  
17    be five years control. Does that inconsistency give you  
18    any pause about your testimony?

19            A.       No.

20            Q.       Okay. Were you aware when you decided to  
21    point to the FERC Form 1 that the FERC itself does not  
22    follow the Form 1 definitions in deciding whether a power  
23    contract is long-term or short-term?

24            A.       I don't believe --

25                    MR. THOMPSON: I'm going to object. That

1 assumes facts not in evidence.

2 JUDGE PRIDGIN: Mr. Byrne, could you ask  
3 the question again, please?

4 MR. BYRNE: Sure. Were you aware when you  
5 decided to put -- to use FERC Form 1 as your source for  
6 the demarcation of long-term and short-term contracts that  
7 the FERC itself does not follow its own FERC Form 1  
8 definitions in deciding whether a power contract is  
9 long-term or short-term?

10 And in terms of facts in evidence, Mr. Haro  
11 has cited the FERC case and provided a pretty detailed  
12 excerpt from the FERC case where the FERC says that they  
13 don't follow those instructions, and actually there's  
14 multiple cases that he cited. And I'm only asking him if  
15 he's aware of the FERC.

16 MR. THOMPSON: You're asking it as a fact.  
17 So I'm going to renew that objection because I don't  
18 recall that part of Mr. Haro's testimony.

19 MR. BYRNE: If you give me a second, I'll  
20 cite it to you. Your Honor, in his surrebuttal testimony  
21 on page 7, beginning -- well, the answer beginning on  
22 line 5, there's a quote from FERC and the FERC quotes --  
23 well, there's a question, does FERC itself use the  
24 definition appearing on page 310 of the FERC Form 1 in  
25 differentiating between long-term and short-term

1 contracts? There's an answer where he says it's  
2 abundantly clear based on numerous FERC decisions that  
3 they do not follow the FERC Form 1 and then there's a  
4 quote from a case. I think that is in evidence.

5 JUDGE PRIDGIN: Objection's overruled.

6 BY MR. BYRNE:

7 Q. Do you remember the question, Mr. Eaves?

8 A. Yes. And I think I reviewed a couple of  
9 those decisions, and I think what FERC was referring to in  
10 those decisions they made were not necessarily  
11 requirements contracts. They were talking about other  
12 different types of contracts, but not necessarily the  
13 requirements contracts.

14 Q. Were you aware that the FERC's longstanding  
15 practice is that one year is the demarcation between  
16 short-term and long-term power contracts?

17 A. I'm sorry. I'm having a hard time hearing  
18 you.

19 Q. I'll tell you what, maybe I'll go up to the  
20 podium.

21 A. It just -- it's like a lost over here.

22 Q. Sure. I understand. I apologize. So I  
23 guess the question was, were you aware that FERC's  
24 longstanding practice is that one year is the demarcation  
25 between short-term and long-term power contracts?

1           A.       What I'm aware of is what the definition  
2 gives me in FERC Form 1. So if -- short-term firm  
3 service, demarcation, each period of commitment for  
4 service. Let me see. Short-term. I don't think I have  
5 that in front of me, but --

6           Q.       Okay. Let me try another question. Why  
7 don't you assume that FERC doesn't follow its own Form 1.  
8 Just assume that to be the case.

9           A.       I'll do my best.

10          Q.       And if the FERC doesn't follow its own  
11 Form 1, would that give you pause to relying on those  
12 Form 1 definitions?

13          A.       I guess in that hypothetical it might give  
14 me pause, yes.

15          Q.       Fair enough. Mr. Eaves, are you aware that  
16 Ameren Missouri has a number of municipal contracts that  
17 all parties agree should be excluded from the FAC but  
18 which do not meet the FERC Form 1 definition of long-term?  
19 Are you aware of that?

20          A.       Yes.

21          Q.       Are you aware that the company has a power  
22 sale contract with the City of Kirkwood for 29 months,  
23 which is a lot shorter than five years?

24          A.       I am aware -- Commissioner Kenney asked me  
25 a line of questions in the last hearing about that.

1           Q.       Are you aware that the company had a power  
2     sale contract with the City of Marceline, Missouri for  
3     36 months, which is much shorter than five years?

4           A.       I'm not sure of the exact term without  
5     looking, but I would agree that it was shorter than five  
6     years.

7           Q.       Are you aware that the company had a power  
8     sale contract with the City of Kahoka for 36 months, which  
9     is much shorter than five years?

10          A.       Again, without looking at the term of the  
11     contract, I know it's shorter than five years, and I  
12     struggled with knowing what to do with those contracts in  
13     my initial proposal.

14          Q.       Are you aware that the company has recently  
15     entered into a new contract with the City of California,  
16     which was not a customer in the previous number of years,  
17     beginning January 2010 for 41 months, which is much  
18     shorter than five years?

19          A.       I know they've entered into a contract with  
20     California, Missouri, but I'm not sure of the term.

21          Q.       And does the fact that all of these  
22     contracts, which everyone agrees are excluded from the  
23     FAC, don't meet the term for long-term contained in those  
24     FERC Form 1 definitions give you any pause for relying on  
25     those definitions to exclude AEP and Wabash?

1           A.       It gave me pause. I thought about it, I  
2       used my professional judgment, and I determined to exclude  
3       the municipals as they were intended to from the FAC.

4           Q.       So the second definition in FERC Form 1  
5       that you are relying on is the definition of requirements  
6       service; is that correct?

7           A.       Yes.

8           Q.       And your argument is that the AEP and  
9       Wabash contracts don't meet the definition of requirements  
10      service, so they are not excluded from the FAC; is that  
11      correct?

12          A.       That's correct.

13          Q.       And as a preliminary matter, would you  
14      agree with me that the FAC tariff that was in effect  
15      during the relevant period refers to requirements sales  
16      and not requirements service?

17          A.       Yes.

18          Q.       So the phrase that is defined in FERC  
19      Form 1 is not exactly the same phrase that's used in the  
20      tariff, correct?

21          A.       Yes.

22          Q.       Okay. And isn't it possible that a  
23      different phrase could have a different meaning?

24          A.       Certainly could, but I thought it was  
25      clear.



1           Q.       And would you also agree -- and if you  
2       don't remember, just say you don't remember or you don't  
3       know, but would you also agree that Mr. Haro and  
4       Mr. Highley in the last case stated that the definition of  
5       requirements service in FERC Form 1 is inconsistent with  
6       the definition of requirement sale commonly used in the  
7       power markets?

8           A.       I don't remember.

9           Q.       Okay. Are you -- do you recall that  
10      Mr. Haro provided a definition of requirement sale used in  
11      the marketplace as following: A contract that calls for  
12      the sale of firm power and capacity to a purchasing entity  
13      with an obligation to serve load during the term of the  
14      agreement. Do you recall that?

15          A.       I don't.

16          Q.       Assuming -- I know you don't recall, but  
17      assuming for a moment that they testified that the  
18      definition in the marketplace is different than the  
19      definition in FERC Form 1, does it give you any pause if  
20      the definition of requirement sale in the marketplace is  
21      different than the definition of requirement service that  
22      you relied on in FERC Form 1? Does that give you any  
23      pause?

24          A.       Under your scenario, I would have to use my  
25      professional judgment and consider those factors.

1           Q.       Let's take a look at this FERC Form 1  
2       definition again as it relates to requirements service.  
3       So if you wouldn't mind looking under RQ, which I think is  
4       where the --

5           A.       I'm there.

6           Q.       -- requirements service is defined. And  
7       I'm reading it. It says, RQ - full requirements service.  
8       Requirements service is service which the supplier plans  
9       to provide on an ongoing basis, i.e., the supplier  
10      includes projected load for this service in its system  
11      resource planning. Did I read that sentence correctly?

12          A.       Yes, you did.

13          Q.       And then it says, in addition, the  
14      reliability of the requirements service must be the same  
15      as or second only to the supplier's service to its own  
16      ultimate consumers.

17          A.       That's correct.

18          Q.       And I want to focus on the sentence that  
19      talks about providing service on an ongoing basis. Do you  
20      see that?

21          A.       Yes, I do.

22          Q.       And it says, you know, plans to provide on  
23      an ongoing basis, i.e. the supplier includes projected  
24      load for the service in its system resource planning. And  
25      isn't it true, Mr. Eaves, that i.e. means that is?

1           A.       I think so.

2           Q.       So if you substituted that is for i.e. it  
3 would say, requirements service is service which the  
4 supplier plans to provide on an ongoing basis, that is,  
5 supplier includes projected load for this service in its  
6 system resource planning; is that correct?

7           A.       Yes, you could read it that way.

8           Q.       And isn't it true that by saying i.e. or  
9 that is, the FERC Form 1 is actually defining what ongoing  
10 basis means? Ongoing basis, that is the supplier includes  
11 projected load for this service in its system resource  
12 planning.

13          A.       I would agree.

14          Q.       So if a transaction is included in system  
15 resource planning, it meets the definition of ongoing in  
16 the FERC Form 1, is that correct, because that's how it's  
17 defined here?

18          A.       Tell me what you mean by transaction.

19          Q.       Well, you know, a contract or a sale or  
20 some transaction that's at issue, you know, some  
21 transaction that's at issue. If it meets -- what I'm  
22 suggesting to you is if it meets the definition of ongoing  
23 basis in this FERC Form 1, which says that is the supplier  
24 includes projected load for this service in its system  
25 resource planning. So this service is what I'm talking

1     about. If it's includes in system resource planning, then  
2     by definition it is on an ongoing basis under the terms --  
3     under the definition contained in this FERC Form 1; is  
4     that correct?

5             A.       Yes. I think it's open for a little -- if  
6     it's included and not used --

7             Q.       I mean, it says -- it says i.e. or that  
8     is --

9             A.       Yeah.

10            Q.       -- buyer includes projected load for this  
11    service in its system resource planning. So if it  
12    includes the load for that service in its system resource  
13    planning, that means it's on an ongoing basis, doesn't it,  
14    under this definition?

15            A.       I think that's the intent of the language,  
16    that if you -- if you're going to have a long-term  
17    contract, it's going to appear within the, I'm going to  
18    call it integrated resource plan, the IRP for a period  
19    of -- for a period of time. You're going to recognize the  
20    fact that it's ongoing, that you're going to have to  
21    supply those customers under the terms of the contract,  
22    and that it would appear in the company's IRP.

23            Q.       Let me stop you for a second. This isn't  
24    talking about long-term here. This is talking about  
25    requirements service. Look again. It says RQ for

1 requirements service.

2 A. Okay. I'll give -- I'll give you that,  
3 yeah.

4 Q. So when it's talking about requirements  
5 service, it says it has to be on an ongoing basis, that  
6 is, the supplier includes projected load for service in  
7 its system resource planning. So I'm saying that defines  
8 what on an ongoing basis means for purposes of this RQ  
9 definition, does it not?

10 A. I think that's the intent of it, yes.

11 Q. Isn't it true that you said in your  
12 deposition in the last case that, in your view, long-term  
13 requirements sales don't necessarily have to be limited to  
14 municipal customers? And I've got a reference.

15 A. No. I believe I remember saying that, and  
16 I remember why I said it, yes.

17 Q. Okay. Isn't it true that you also said  
18 that it was not necessary for partial requirements  
19 contracts to include congestion management services?

20 A. Congestion management services is part of  
21 ancillary services, and there's a bucketful of ancillary  
22 services that a supplier could negotiate in a contract to  
23 serve. I don't think -- just because it didn't have  
24 congestion management in it wouldn't taint that.

25 Q. Would you agree with me that if it's a

1     partial requirements sale as opposed to a full  
2     requirements sale, it doesn't necessarily have to include  
3     any particular ancillary services so long as power and  
4     capacity are included in the sale?

5             A.       Don't know that it would have to.   Probably  
6     would, but wouldn't have to.

7             Q.       And maybe in many cases some ancillary  
8     services are included, but they don't have to be?

9             A.       May have to get the power and ancillary  
10    service to provide the power.

11            Q.       But would you agree with me that it doesn't  
12    have to include any particular ancillary services if it's  
13    a partial requirements sale?

14            A.       I don't know that there's a hard set fast  
15    rule that says -- that says what you said.   I would think  
16    that you would probably have an ancillary service if you  
17    supplied, but you may not.   There's -- could be an  
18    occasion that you could have supply power and not provide  
19    any ancillary services.

20            Q.       But in contrast, if you had a full  
21    requirements service, that would more suggest that all of  
22    the ancillary services would be provided along with the  
23    power and the capacity; is that fair?

24            A.       Yeah, because I don't know who else would  
25    do it.

1 Q. Fair enough.

2 A. I guess you could contract those ancillary  
3 services out to a different provider, but might be  
4 impossible technically to do.

5 Q. Mr. Eaves, isn't it true that when you  
6 first considered making the prudence adjustment in Case  
7 No. EO-2010-0255 associated with the AEP and Wabash sales,  
8 that you discussed whether you should make the adjustment  
9 with Staff member John Rogers?

10 A. Yes.

11 Q. And isn't it true that Mr. Rogers told you  
12 that he did not know whether the AEP and Wabash contracts  
13 were long-term, full or partial requirements contracts?

14 A. Yes. I believe I stated that either in my  
15 deposition or testimony, yes.

16 Q. Okay. And did Mr. Rogers' opinion that he  
17 wasn't sure whether they were long-term, full or partial  
18 requirements contracts give you any pause about making  
19 your adjustment?

20 A. Certainly.

21 Q. In reading the first prudence report filed  
22 in this case, it looks to me like the logic for your  
23 prudence adjustment is that the issues in this case with  
24 respect to AEP and Wabash contracts are the same as the  
25 issues in the previous prudence case, and since the

1 Commission found imprudence in that previous case, it  
2 should also find imprudence here; is that fair?

3 A. That's fair.

4 Q. Okay. Would you agree with me that, from  
5 Staff's perspective, this case is just the same as the  
6 previous case except for a different time period is  
7 involved?

8 A. Yes. I think the company has raised a  
9 couple of additional issues in their surrebuttal testimony  
10 possibly. So besides that, yes.

11 Q. And would it also be fair to say that if  
12 the Missouri courts ultimately reverse the Commission's  
13 decision in that first prudence case and find that the  
14 revenues from the AEP and Wabash contracts should be  
15 excluded from the FAC, then that decision should also be  
16 applicable to this prudence review proceeding?

17 MR. ROAM: I'm going to object. That calls  
18 for a legal opinion.

19 MR. BYRNE: I don't have a response, so I  
20 withdraw the question.

21 BY MR. BYRNE:

22 Q. In your testimony on page 8, lines 15 to  
23 16, you talk about Ameren Missouri and its shareholders  
24 being at risk for the reduction in revenues due to the ice  
25 storm and the loss of customer load is part of the risk



1     that shareholders assume when seeking to earn a return on  
2     equity, but you're not an expert on return on equity  
3     issues, are you, Mr. Eaves?

4             A.       I understand return on equity. I don't  
5     know if I'd classify myself for the purposes of this case  
6     as an expert. Dr. Warren, a series of expert witnesses  
7     that testifies, and I'm sure they have greater knowledge  
8     than I do.

9             Q.       I mean, what qualifications would you have  
10    to be an expert on return on equity issues, if any? And  
11    if you don't have any, that's fine. It's not your job.

12            A.       Well, I understand it. Through working at  
13    the Commission and dealing with these cases, I understand  
14    how return on equity works. I understand how it impacts  
15    revenue requirement. I understand basically the  
16    components of how you get to an ROE or ROR, rate of  
17    return. I understand those aspects, but I didn't do a DCF  
18    model. I didn't do a CAPM model. I didn't --

19            Q.       Sure. Let me ask it with a little sharper  
20    point. You don't think you would -- you wouldn't be  
21    qualified to file return on equity testimony in a rate  
22    case, would you?

23            A.       I could probably get there, yes.

24            Q.       Okay. And you did not -- as I understand  
25    it, you did not read any of the return on equity testimony

1 from Case No. ER-2008-0318, did you?

2 A. I think I read it. I think I had an issue  
3 of recalling who was the expert witness at the time when I  
4 was on the stand.

5 Q. I mean --

6 A. But I did read -- I did read the testimony.  
7 It's a lot of testimony. There was a lot of witnesses in  
8 that case. I think I said it was David Murray was the  
9 expert witness or something, and it was probably Dr. Hill  
10 or one of the others, but --

11 Q. I believe -- I believe what you -- with  
12 regard to the Staff testimony, you thought it was David  
13 Murray and it was actually Dr. Hill, and I also think --

14 A. Okay.

15 Q. -- in that case, and I can show you a  
16 transcript citation, that you did not read any of the  
17 other testimony beyond the Staff. Does that sound right  
18 to you?

19 A. I read a lot of stuff. I would think  
20 that's probably fair. I might have read it. Do I have  
21 any recollection of reading it in the details involved in  
22 the testimony? No.

23 Q. On page 12 of your testimony, lines 19 and  
24 20, you say that Ameren Missouri's FAC benefits Ameren  
25 Missouri greatly. Do you see that?

1 A. Yes.

2 Q. But isn't it true that the benefit is only  
3 that it allows the company to recover costs that it has  
4 already actually incurred?

5 A. That's the purpose, outside of a general  
6 rate case. It reduces regulatory lag.

7 Q. Right. Isn't another way of saying it, it  
8 limits the damage that regulatory lag inflicts on the  
9 company rather than providing it with a big benefit?

10 A. I wouldn't agree with it, no. Regulatory  
11 lag can benefit the company as well.

12 Q. In a period of declining costs, I guess it  
13 could benefit the company; is that true?

14 A. There's -- the regulatory lag benefits the  
15 company. I don't know if I could say if it's a 50/50  
16 balance. Some of it depends on the company, how they  
17 manage. I know after a rate case, a level of payroll can  
18 be established and Ameren Missouri could, you know,  
19 terminate or cause to be terminated a block of employees,  
20 and that would benefit the company until the next rate  
21 case. So that -- I mean --

22 Q. Let me ask you this.

23 A. Regulatory lag goes both ways.

24 Q. Hasn't regulatory lag significantly  
25 negatively impacted electric utilities in Missouri over

1 the last ten years or do you not -- yes, no, or you don't  
2 know?

3 A. Don't know that I've done an analysis, so I  
4 wouldn't know.

5 Q. Okay. Fair enough. And you also say if  
6 the -- on page 20, line 7 and 8.

7 A. You say page 20?

8 Q. Page 20, line 7, 8 and 9. It says, as I  
9 testified earlier, if Ameren Missouri's customers are  
10 required to assume the risk of an FAC, then they should  
11 benefit when fuel and purchased power costs go down as  
12 offset by additional off-system sales. Do you see that?

13 A. Yes.

14 Q. What risks are the customers assuming under  
15 the FAC? I mean, aren't they just paying the costs the  
16 utility prudently incurs in order to serve them?

17 A. Yes. But under traditional ratemaking,  
18 there's a greater risk when an FAC is employed.

19 MR. BYRNE: Okay. Thank you, Mr. Eaves. I  
20 don't have any other questions.

21 THE WITNESS: Thank you.

22 MR. BYRNE: I apologize for not being loud  
23 enough earlier.

24 THE WITNESS: I have a hearing problem, so  
25 thank you.

1 JUDGE PRIDGIN: Mr. Byrne, thank you. Let  
2 me see if we have any bench questions. Commissioner  
3 Jarrett?

4 COMMISSIONER JARRETT: Judge, I have no  
5 questions. Thanks, Mr. Eaves.

6 THE WITNESS: Thank you.

7 JUDGE PRIDGIN: Commissioner Stoll?

8 COMMISSIONER STOLL: I have no questions.

9 THE WITNESS: Thank you, Commissioner.

10 JUDGE PRIDGIN: No questions for me. Any  
11 redirect?

12 MS. MOORE: Just a bit.

13 REDIRECT EXAMINATION BY MS. MOORE:

14 Q. Mr. Eaves, do Ameren Missouri's FAC tariffs  
15 define long-term, full or partial requirements sales?

16 A. No.

17 Q. So what other sources are helpful in  
18 understanding these terms?

19 A. Where I turned to first was the FERC  
20 Form 1. The reason I do that is or did that is the FERC  
21 Form 1 is really a basis for a lot of the accounting or  
22 auditing work that we do. It's filed with FERC, and it's  
23 also filed with the Commission as their annual report. I  
24 used to be in the rates department, in the accounting  
25 department, and that was just a very common document to

1 use when a rate case was started or prudency review would  
2 start. I don't necessarily use the FERC Form 1, but in  
3 the start of the prudency, but just naturally went to a  
4 FERC Form 1. It's an important document.

5 Q. Does the age of the language of FERC Form 1  
6 have any effect on its current use?

7 A. No, because if FERC thought it needed to be  
8 changed, they would change it.

9 Q. Are you aware of any reason why FERC would  
10 be compelled to continue using its Form 1 in its present  
11 state?

12 A. Repeat your question one more time.

13 Q. Are you aware of any reason why FERC would  
14 be compelled to continue using its Form 1 in its present  
15 state with its present wording?

16 A. Because it must be accurate.

17 Q. Mr. Byrne asked you a few questions about  
18 if certain things gave you pause before about using FERC  
19 Form 1. I'm going to ask you specifically about a couple  
20 of those. He mentioned Mr. Brubaker used other things,  
21 other methods for helping us understand what requirements  
22 contracts are. Why does that not give you pause?

23 A. Why does that give me pause or not give  
24 me --

25 Q. Why does it not give you pause that

1     **Mr. Brubaker would use other methods of understanding what**  
2     **requirements contracts are?**

3             A.       Because I think I have the controlling  
4     authority tell me, to give me the guidance that I need in  
5     order to sponsor my adjustment.

6             **Q.       Are the definitions used in power trading**  
7     **necessarily the definitions that should be used in this**  
8     **case?**

9             A.       I don't believe so.

10            **Q.       And why do you not believe so?**

11            A.       I think when you're talking in general in  
12   the power market and what Mr. Haro and some of the others  
13   do for the utility, in my mind there's a clear separation  
14   of the two. I mean, these particular contracts in the  
15   industry, people understand what they mean. It's just  
16   general knowledge of what these contracts stand for.

17                    In the power market, the power market has  
18   changed. We now have regional transmission organization,  
19   MISO, SPP in this state. We have various changes. We're  
20   going to have transmission groups.

21                    And so the power market on that side has  
22   changed, I agree, but for these specific contracts,  
23   they've really not changed over the years, and I think  
24   FERC reflects that, that they haven't saw fit to change  
25   the language because we know what they are in the

1 industry, has certain meanings to us.

2 And I know there was a lot of talk about  
3 when did Staff know, when did Staff not know. I mean,  
4 you've really got to be able to connect the dots. I mean,  
5 you're going to change terminology things of these type of  
6 contracts and you want to call them something else, then  
7 that gives us pause and maybe we don't understand what  
8 you're trying to do, and we don't understand until you  
9 actually apply these things into the FAC.

10 I mean, I hate to say it, but sometimes you  
11 have to hit me between the eyes for me to understand, you  
12 know, what the company was trying to do.

13 Q. Okay. Could FERC have different  
14 definitions of long-term that apply to different areas  
15 that FERC regulates?

16 A. I think they do, because clearly they have  
17 a set of definitions laid out here, and in the -- in some  
18 of the orders that they -- that they had for other cases,  
19 I think if you read the context of those other cases,  
20 they're not talking about requirements contracts and those  
21 type things. They're talking about completely other types  
22 of contracts, was my interpretation of what was going on.

23 Q. Okay. In your understanding, what is the  
24 purpose of integrated resource planning?

25 A. Integrated resource planning gives the



1 company various options in order to serve load to their  
2 customers, different generation options, different --  
3 different provisions that will steer the company into a  
4 path of being able to provide service to their customers.

5 Q. And when you receive a report that shows an  
6 IRP plan, what does that tell you?

7 A. When I see what?

8 Q. When you receive a report that shows an IRP  
9 plan, what does that tell you?

10 A. I don't understand your question. I'm  
11 sorry.

12 Q. Does it tell you what's going to happen,  
13 what's anticipated to happen, is that what the company's  
14 trying to tell you?

15 A. Well, the company will generally have  
16 different scenarios laid out, and those scenarios can say,  
17 we need to build generation, we need energy efficiency, we  
18 need to have -- we need to buy more power, we need -- I  
19 mean, they're very concrete.

20 They're pages and pages, thousands of  
21 papers in worksheets. So they really lay out a direction  
22 for the company on what resources are they going to use in  
23 order to serve their customers in the future.

24 Q. If something is listed in an integrated  
25 resource plan, does that necessarily mean that -- say the

1     contracts we're talking about, does that mean that those  
2     contracts are expected to be continued on an ongoing  
3     basis?

4             A.       Yes.

5             Q.       Were the AEP and Wabash contracts included  
6     in any of Ameren Missouri's IRP plan reports?

7             A.       In their 2011 plan, I've had cause to go  
8     back and look. In the work papers, they do designate  
9     certain amounts of load for the AEP and Wabash in 2010,  
10    but the contracts expired in 2010.

11            Really the forecasting years for that  
12    particular plan would have been from 2011 through 2010.  
13    So the effects of AEP and Wabash would not have been  
14    forecasted into prior years. It was used as a data set.

15            Q.       In other words, could you tell from that  
16    plan that you reviewed whether Ameren Missouri expected  
17    those contracts to be in place on an ongoing basis?

18            A.       No.

19            Q.       No, you could not tell, or no, they were  
20    not?

21            A.       They were not going to be included in the  
22    IRP on an ongoing basis. They expired in 2010. They  
23    forecasted for 2011. They wouldn't have been included in  
24    the 2011 forecast. The forecast for the last IRP was 2011  
25    through 2030, so it would have been a 20-year forecast,

1 and they expired in 2010, the first -- the first year of  
2 that 20 years.

3 MS. MOORE: That's all I have, Judge.

4 Thank you. Thank you, Mr. Eaves.

5 THE WITNESS: Thank you.

6 JUDGE PRIDGIN: Mr. Moore, thank you.

7 Mr. Eaves, thank you very much. You may step down.

8 And that appears to be the last witness of  
9 the day. Anything further from counsel?

10 MR. THOMPSON: Judge, I have one point. I  
11 understand that the initial brief is due July 13th  
12 pursuant to the schedule that's already been --

13 JUDGE PRIDGIN: I just looked. I think I  
14 saw it was the 20th.

15 MR. LOWERY: I think we moved that, Kevin.  
16 I think we moved the schedule. I think I looked at that  
17 earlier, Judge, and I think we intentionally moved it when  
18 we moved the hearings a week.

19 MR. THOMPSON: All right. That takes care  
20 of my problem.

21 JUDGE PRIDGIN: Very good. Thank you.  
22 Anything further?

23 (No response.)

24 JUDGE PRIDGIN: All right. Hearing  
25 nothing, then that will conclude the hearing in

1 EO-2012-0074. Thank very much. We are off the record.

2 (WHEREUPON, the hearing concluded at

3 4:52 p.m.)

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C E R T I F I C A T E

STATE OF MISSOURI )

) ss.

COUNTY OF COLE )

I, Kellene K. Feddersen, Certified  
Shorthand Reporter with the firm of Midwest Litigation  
Services, do hereby certify that I was personally present  
at the proceedings had in the above-entitled cause at the  
time and place set forth in the caption sheet thereof;  
that I then and there took down in Stenotype the  
proceedings had; and that the foregoing is a full, true  
and correct transcript of such Stenotype notes so made at  
such time and place.

Given at my office in the City of  
Jefferson, County of Cole, State of Missouri.

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Kellene K. Feddersen, RPR, CSR, CCR

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