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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
June 16, 2014
Jefferson City, Missouri
Volume 5

Noranda Aluminum, Inc.,)
et al.)
)
Complainants,))
)
v.) File No. EC-2014-0224
)
Union Electric Company,)
d/b/a Ameren Missouri,))
)
Respondent.)

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

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

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FOR: Staff of the Missouri Public
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1 Wendy Tatro on behalf of Ameren Missouri. Our
2 address is 1901 Chouteau Avenue, St. Louis,
3 Missouri 63103.

4 MR. LOWERY: Your Honor, also
5 appearing for Ameren Missouri, Jim Lowery, Smith
6 Lewis LLP, P.O. 918, Columbia, Missouri 65205.

7 MR. MITTEN: Also appearing on behalf
8 of Ameren Missouri, Russ Mitten, Brydon, Swearengen
9 & England, 312 East Capitol Avenue, Jefferson City,
10 Missouri 65102.

11 JUDGE WOODRUFF: And for Staff.

12 MR. THOMPSON: Thank you, Judge. For
13 the Staff of the Missouri Public Service
14 Commission, Kevin Thompson, Tim Opitz, Whitney
15 Hampton, Akayla Jones, Alex Antal and Jamie Myers.
16 The last named is a law student certified under
17 Rule 13 who will be appearing here under my
18 supervision. Our address is Post Office Box 360,
19 Jefferson City, Missouri 65102.

20 JUDGE WOODRUFF: Public Counsel.

21 MR. ALLISON: Dustin Allison and Marc
22 Poston on behalf of the Office of the Public
23 Counsel, Jefferson City, Missouri.

24 JUDGE WOODRUFF: For the Missouri
25 Retailers Association.

1 MR. SCHWARZ: Tim Schwarz and
2 Stephanie Bell, Blitz, Bardgett & Deutsch, 308 East
3 High Street, Suite 301, Jefferson City, Missouri.

4 JUDGE WOODRUFF: And for Continental
5 Cement.

6 MR. COMLEY: Good morning, Judge
7 Woodruff. Appearing on behalf of Continental
8 Cement Company, LLC, Mark W. Comley, Newman,
9 Comley & Ruth. MY business address is 601 Monroe
10 Street, Suite 301, Jefferson City, Missouri.

11 JUDGE WOODRUFF: For the Consumers
12 Council.

13 MR. COFFMAN: Appearing on behalf of
14 the Consumers Council of Missouri, John B. Coffman,
15 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

16 JUDGE WOODRUFF: Thank you. For
17 River Cement.

18 MS. LANGENECKERT: Good morning,
19 Judge Woodruff. Appearing on behalf of River
20 Cement Company, Lisa Langeneckert, P.O. Box 411793,
21 St. Louis, Missouri 63141.

22 JUDGE WOODRUFF: For MIEC.

23 MR. DOWNEY: Good morning, Judge. Ed
24 Downey, Bryan Cave, 221 Bolivar Street, Jefferson
25 City, Missouri.

1 JUDGE WOODRUFF: And for the Wal-Mart
2 stores.

3 MR. CHAMBERLAIN: Good morning, your
4 Honor. Rick Chamberlain appearing for Wal-Mart
5 Stores East, LP and Sams East, Inc.

6 JUDGE WOODRUFF: Thank you. For the
7 Cities of Ballwin and O'Fallon, Leland Curtis sent
8 me an e-mail on Friday indicating that they would
9 waive opening statement and waive all
10 cross-examination and asking to be excused from the
11 hearings. I indicated he would be excused. So he
12 is excused at this time.

13 I believe that's all the parties.
14 For preliminary matters, I have a couple pending
15 motions out there that I'll rule upon at this time.
16 On June 3rd, Staff filed a motion for extension of
17 time to file the list of issues, which were then
18 filed the next day. That motion will be granted.

19 Similarly, Wal-Mart Stores filed a
20 motion asking to file their statement of position
21 today out of time. That motion will also be
22 granted.

23 Finally, on June 3rd, United for
24 Missouri filed a petition for leave to appear and
25 file brief as amicus. The time for objections to

1 that has passed at this point and no one objected.

2 I will grant that motion and allow United for

3 Missouri to file an amicus brief.

4 Any other preliminary matters that

5 anyone needs to take up while we're on the record?

6 Mr. Lowery.

7 MR. LOWERY: Your Honor, there is one

8 matter that we'd like to take up. At this time we

9 move in limine for an order that would prohibit

10 friendly cross in these hearings. The basis for

11 our motion are twofold.

12 First of all, as your prehearing

13 order recognized, there are about 15 witnesses, not

14 counting about a dozen or so that the company will

15 waive cross on of complainant's witnesses, that

16 have to be examined in just two days of hearing.

17 Friendly cross will slow down the

18 hearings, which the purpose of which are really for

19 the parties and the Commissioners to cross-examine

20 witnesses about their prefiled testimony, which

21 brings me to the second reason that I don't believe

22 it's appropriate to allow friendly cross in these

23 hearings.

24 In Commission cases, the purpose of

25 the evidentiary hearing is not to act as a

1 substitute for filing -- prefiling testimony where
2 the complainant is supposed to make its entire case
3 in chief in its direct and where all others under
4 your rules are supposed to state any reasons why
5 they disagree with, agree with or propose an
6 alternative to that direct case.

7 Friendly cross is at odds with that
8 requirement because, in effect, it amounts to a
9 party that happens to be aligned with another
10 matter -- and Ameren Missouri's aligned with some
11 parties in this case as well -- basically examining
12 that friendly witness and eliciting evidence to
13 support why they in that case agree with the party
14 who filed the case, which is exactly what your
15 rules say is supposed to happen in rebuttal
16 testimony.

17 That should have been done in
18 prefiling testimony, and we don't think it's
19 appropriate to be done either by us or anybody else
20 through friendly cross.

21 For those reasons, we move that you
22 enter an order in limine prohibiting parties from
23 doing that in this particular case.

24 JUDGE WOODRUFF: Anyone wish to be
25 heard in response to that? Mr. Coffman. Come on

1 up to the microphone here so we can hear you.

2 MR. COFFMAN: Judge Woodruff, I
3 just -- in response, I would like to note that
4 friendly cross really isn't an objection that's
5 noted in the rules of evidence. I think it's
6 sometimes just informally thrown out as something
7 similar to the idea that cross-examination should
8 not be used for direct testimony. Perhaps there is
9 a proper objection in that a particular line of
10 questioning is eliciting direct testimony and not
11 actually true cross-examination.

12 But I would say first that that's
13 not -- that the motion is not articulated in a way
14 that you could rule upon.

15 I would also note that in this case
16 there are a variety of different positions, varying
17 positions on different subissues, and parties are
18 not -- may be aligned on some issues or some parts
19 of some issues. It's really a multifaceted case.

20 I do not expect to have a whole lot
21 of questions, but there may -- I think that the
22 Commission will be better off judging questions as
23 they come than making some blanket ruling that I
24 think would be vague as worded.

25 JUDGE WOODRUFF: Any other responses

1 to the motion?

2 MR. DOWNEY: Yes, your Honor. Ed
3 Downey on behalf of Noranda, MIEC. I would suggest
4 this: The lawyers here today have an obligation to
5 represent their clients, and simply because a
6 particular party agrees with another party should
7 not deprive that lawyer of his and that client's
8 due process right in this proceeding.

9 I would also suggest there's -- as
10 Mr. Coffman said, there's nothing in the rules of
11 evidence that authorize this motion.

12 And last I'd say, if your Honor is at
13 all considering the motion, you should give all the
14 parties an opportunity to brief it as opposed to
15 just springing this motion on everybody at the last
16 second.

17 JUDGE WOODRUFF: Well, obviously
18 briefing of this isn't really practical because
19 we're going to start the hearing in a few hours.
20 All right. Mr. Schwarz, you want to --

21 MR. SCHWARZ: I, too -- well, the
22 Commission has long held that friendly cross is not
23 an appropriate objection. I see no reason to
24 change that at this time. My client doesn't have
25 any witnesses in this case, and although we are

1 generally aligned with Noranda, I will have
2 questions for Noranda witnesses as well as other
3 witnesses. And I believe the purpose of
4 cross-examination is to permit the Commission to
5 get a full and complete record.

6 And in any event, under
7 Section 536.070, any evidence that's objected to is
8 to be taken and preserved in the record. So it's
9 not going to be a big time saver in any event.

10 JUDGE WOODRUFF: Anyone else wish to
11 be heard in response? Mr. Lowery, you have
12 something else?

13 MR. LOWERY: Just very briefly, your
14 Honor. The basis of my motion has nothing to do
15 with the rules of evidence. I didn't say that it
16 did. But it is based on your own rules which
17 require parties not only to state all reasons that
18 they would disagree with a party's direct
19 testimony, but to state any alternatives that they
20 propose and to state reasons that they agree.

21 And so the basis of the motion is, if
22 parties are eliciting friendly cross, that in
23 effect is reflecting agreement with the points that
24 were made. Folks like Mr. Schwarz should have had
25 a witness on rebuttal and that should have been

1 prefiled.

2 JUDGE WOODRUFF: Well, I'm not going
3 to grant the motion. I'm not inclined to hear a
4 lot of, as you described it, friendly cross. As
5 other parties have indicated, there is no
6 definition of that in the Commission's rules or any
7 order forbidding it.

8 As Mr. Coffman indicated, there are
9 provisions that require direct testimony to be
10 prefiled and so forth, and it may be that as
11 individual cross-examination occurs it is, in fact,
12 becoming improper direct, and I would expect an
13 objection to be made at that time on that basis,
14 and I'll consider those objections as they're made.
15 But I'm not going to try and issue a blanket
16 condemnation of friendly cross at this point.

17 MR. LOWERY: Very well.

18 JUDGE WOODRUFF: Any other
19 preliminary matters? Okay. Let's go off the
20 record, then, and we'll deal with premarking
21 evidence.

22 (AN OFF-THE-RECORD DISCUSSION WAS
23 HELD.)

24 (NORANDA EXHIBIT NO. 1 THROUGH 29, UE
25 EXHIBIT NOS. 100 THROUGH 105, MISSOURI RETAILERS

1 ASSOCIATION EXHIBIT NOS. 400 THROUGH 403, WAL-MART
2 EXHIBIT NO. 460, AND CONTINENTAL CEMENT EXHIBIT
3 NO. 500 WERE MARKED FOR IDENTIFICATION BY THE
4 REPORTER.)

5 JUDGE WOODRUFF: We're back, and
6 we're ready to start with opening statements,
7 beginning with Complainants.

8 MS. VUYLSTEKE: May it please the
9 Commission? On behalf of Noranda, I want to thank
10 the Commission for your expedited consideration of
11 this case.

12 There were 32 smelters in the United
13 States 30 years ago. There are nine remaining
14 today, and one of those smelters belongs to the
15 state of Missouri, and it has been a pillar of
16 Missouri's economy and particularly the southeast
17 part of Missouri, the Bootheel, for over 40 years.

18 The evidence in this case will
19 demonstrate that the Commission can find and should
20 find within the boundaries of Missouri law and
21 within established regulatory principles, as well
22 as in the interest of our economy, that the smelter
23 should be sustained with a load retention rate.

24 And we will show in this case first
25 that the smelter is crucial to Missouri's economy,

1 and an economic disaster would result from its
2 closure.

3 Two, that the smelter cannot be
4 sustained without the rate relief that Noranda
5 requests in this case.

6 Three, that if the relief is granted,
7 ratepayers will experience lower rates than if the
8 smelter closes.

9 Fourth, that Ameren ratepayers and
10 all Missouri -- all Missourians will benefit from
11 Noranda's continued presence in the state and its
12 continued contributions.

13 We also believe that the evidence
14 will demonstrate that the Commission should find it
15 in the public interest to retain our state's most
16 energy-intensive manufacturer by granting Noranda's
17 request.

18 And I'd like to begin with I think
19 the most important point in this case in many
20 respects and one I think that the Commission has
21 gained an understanding of, an even deeper
22 understanding of after hearing the employees at the
23 local public hearing.

24 Your Honor, we have a video to play.

25 (The following videotaped statement

1 was played.)

2 MR. PRIGGEL: At the New Madrid
3 facility, we have employees from all of southeast
4 Missouri. We have 73 communities that over 900
5 employees come to work from. A lot of people
6 commute. We have a work schedule, 12-hour shifts,
7 which works well with family life and being able to
8 commute, and it's considered one of the better
9 places or one of the best places to work.

10 Overall Noranda has a payroll of
11 95 million, which goes into the local communities.
12 That money does stay in this area, and I think the
13 overall economic value is like 335 million by the
14 time that the money swaps hands several times.
15 It's a -- it's a definite economic driver of this
16 area.

17 Most everyone here has 25 years
18 experience, 20 years experience. I've worked my
19 way up to 19 years experience. And we realize that
20 this is a good place to work. I've got a son
21 that's a senior this year and he'll be graduating,
22 and his hopes are, is that he's going to -- he's
23 going to go to Mizzou, and he plans on getting an
24 engineering degree, and then he has hopes of coming
25 back to this area. Currently we're building a new

1 rod mill here at the plant, and he would like to
2 come back and possibly be a mechanical engineer for
3 that area.

4 Rod mill, what we do is we take the
5 molten aluminum and we cast it into a bar-shaped
6 form, and then we will roll it into a 3/8 diameter
7 and we'll sell it to customers that will make
8 overhead transmission lines. They'll also make
9 garage motor windings, and that's some of the end
10 users of our rod mill.

11 With the aluminum industry, you
12 always have to be advancing or you're going to be
13 left behind. In the last 30 years there's been 32
14 aluminum smelters. 23 of those have closed in the
15 United States. So if you're not advancing and
16 improving your process, you are going to end up
17 closing.

18 Now, here at Noranda what we've done
19 since 1997, we've increased our production over
20 105 million pounds. That's about a 22 percent
21 improvement over 19-- since 1997. During that
22 time, we've also been able to keep our labor costs
23 low. We've been able to do it with 150 less people
24 than we were at that time.

25 So we -- we're making the movements

1 in our cost structure to try to make sure that
2 we're viable and we're competitive for years to
3 come. But we've done numerous projects. Probably
4 our biggest project has been the single-piece anode
5 project, which has been one of the main reasons why
6 we're making 105 million more pounds. Last year we
7 set a record in production.

8 Also being able to do it with a -- an
9 efficient work force helps us be competitive. But
10 the third thing that we need is we need a viable
11 electrical contract that makes us competitive.

12 Well, a potline is a reduction cell
13 where basically the alumina is introduced into a
14 cryolite bath and a current is sent through it, and
15 it takes the oxygen atom -- atoms off of the
16 alumina and leaves aluminum in the bottom of the
17 pot. Well, we normally run about 500 pots is what
18 we're normally operating.

19 If a potline goes down for an hour to
20 an hour and a half, it's going to start to freeze
21 up. Hour and a half is probably the point of no
22 return where you -- if you do not get power back on
23 the potline, you're going to lose it.

24 That occurred to us back in the ice
25 storm of 2009. Our power feed that was coming in

1 off the grid, I think three of the four lines
2 tripped out, and we had one line left that was only
3 sufficient enough to support one potline, and we
4 had to make decisions as far as which potline to
5 shut down.

6 We initially shut down Potline 3.
7 And as we determined that we were not going to be
8 able to get the ample power supply, we went ahead
9 and shut down Potline 2, which left only Potline 1
10 running.

11 Pretty well everybody in this area
12 did not have any power. And then the word got out
13 that we had the possibility of losing the plant,
14 and we had people calling in and people just
15 showing up just to work, not even scheduled to
16 work, just any way that they could help to make
17 sure that we kept the plant running.

18 So we had -- we had people driving
19 around power lines, under power lines, through
20 trees, leaving their family at home, just to get
21 out here and make sure they were able to keep the
22 potlines running.

23 We were able to save one of the three
24 potlines, which that's critical. When you want to
25 restart a potline, you need molten metal. Having

1 one potline running gave us a leg up on restarting
2 the plant.

3 And I think that management and that
4 our owners seen the amount of effort that people
5 were -- how committed they were to making sure that
6 the place stayed open. Normally most companies
7 would have laid off a good majority of the workers
8 the next day. And what our owners did, they kept
9 everybody on.

10 We started digging the pots where you
11 have to get the -- get the bath out of pots, get
12 the carbon out of pots. We started working on that
13 so that we could bring the potline back up.

14 And we were all on pins and needles,
15 because it was 2008. It was right after 2008, the
16 great recession, and we were afraid that they
17 weren't going to restart the plant, you know. If
18 you did the economics of it, at that time it
19 probably would have been better just to walk away.
20 You know, you would have made a little bit of
21 profit.

22 But our owners, they said, hey, we're
23 going to stick with you, and we restarted the
24 plant. And I can tell you there's 900 people that
25 are very happy that they did.

1 Well, Noranda's a -- a big United
2 Way. That's probably our one charity that we push
3 the most. And, you know, United Way goes to
4 several other charities, and we gave over a half a
5 million dollars last year to United Way.

6 Kenny Rogers is a local -- they work
7 with kids that have motor skills, speech problems,
8 and they try to get them advanced and to -- to be
9 able to keep up with their age level, and we have a
10 lot of charity drives for that in the local
11 community. Kenny Rogers is probably one of the --
12 one of the biggest supporters in this area. I know
13 several children in Portageville, Missouri that
14 receive quite a bit of help from Kenny Rogers.

15 There's a community -- there's a
16 community sheltered workshop. It is a community
17 shelter for individuals that would normally not be
18 able to have a full-time job. When you're
19 aluminum, which this facility makes about
20 585 million pounds, well, you have to ship it, and
21 you'll need some saw runners or some materials, a
22 pallet-type material to put underneath that
23 aluminum to allow you to be able to pick it up with
24 a forklift.

25 So the community sheltered workshop,

1 they make all of our saw runners, all of our
2 pallets that are used for the rod mill, and they're
3 a big part of our operation. I would venture to
4 say we're the community shelter's largest customer.

5 Community sheltered workshop has been
6 with us for a long time. I've been here 19 years,
7 and they've always been the supplier since I've
8 been here. I have been there. I have visited that
9 facility one time, and when I left there I said,
10 that is some special people that's able to work
11 there. I would not know of any other place that
12 they could get a job.

13 We talked about how the -- how the
14 plant has had a vision since 1997 is that we always
15 have to continue to improve, and if we don't, we're
16 going to end up like the 23 smelters that have
17 closed.

18 Since that time we've also installed
19 a second rod mill, and then we're looking at
20 expanding our rod production to another rod mill.
21 And what that's going to allow us to do is it's
22 going to allow us to get the -- to capture the
23 market where copper rod, copper has become so
24 expensive that people are switching over to
25 aluminum rod production, aluminum wire, and they're

1 moving away from copper due to the price of copper.

2 And we think that's a good strategy,
3 and we're trying to invest in that for the future,
4 and it should be an exciting part of Noranda as
5 that plan comes together.

6 (Video ended.)

7 MS. VUYLSTEKE: Thank you for
8 watching that video, and I have a little bit at the
9 very end to close.

10 The importance of the smelter.
11 Noranda's economic benefits to the state are
12 enormous: Yearly payroll with benefits exceeding
13 95 million, value added to Missouri businesses of
14 336 million, 900 employees from 73 local
15 communities, retirement benefits exceeding
16 7.6 million.

17 3,900 Missouri jobs are supported by
18 Noranda, and annual wages and salaries of all of
19 those jobs are \$158 million. Noranda pays
20 17.9 percent of the total taxes in New Madrid
21 County, 28.7 percent of the taxes for the
22 New Madrid R-I schools. 500,000 has been donated
23 to the United Way annually in 2013. And currently
24 Noranda's investing \$38 million at the smelter to
25 improve its power reliability.

1 23 top suppliers of the smelter and
2 their employees, many of whom are in Ameren's
3 service area, would be adversely impacted if the
4 smelter closed. Due to the multiplier effect,
5 Noranda creates four jobs for every one job at the
6 smelter.

7 The smelter is located in a very
8 impoverished area of Missouri. It includes several
9 of the poorest counties in Missouri, and southeast
10 Missouri would be devastated by the loss of the
11 smelter. It would create massive social and
12 economic costs to all Missouri citizens.

13 And this just illustrates the area of
14 the Bootheel. If you look in the lower right-hand
15 corner of the state, you can see that the lightest
16 colored counties -- the dark green are the most
17 prosperous and have the highest median household
18 income. But in the Bootheel you can see that the
19 colors are very light, and that area would be much,
20 much lighter if the smelter was not there.

21 The economic impact of the closure.
22 Missouri GDP would forego nearly 9 billion in
23 economic activity over a generation.

24 Missouri general revenue impact over
25 the next ten years. The present value of lost net

1 general revenue is 138.55 million or 13.8 million
2 annually.

3 Lost property tax receipts. The
4 present value of local property tax receipts would
5 be reduced or shifted by 51.45 million. Expected
6 value of unemployment benefits, range of 4.6 to
7 10 million.

8 Our evidence will show that the
9 economic harm to Ameren customers would also be
10 great. Ameren customers as well as the Missouri
11 economy as a whole would be harmed, and many of
12 Noranda's top suppliers again are in Ameren's
13 service territory.

14 42 percent of Missouri residents are
15 Ameren customers. They would lose directly, most
16 obviously, among many other things, \$6 million in
17 Missouri general revenue benefits if the smelter
18 closes.

19 In addition, Ameren customers are
20 considered -- even if you consider them only to be
21 receiving the benefit of 10 percent of the GDP
22 benefit of the smelter, they would lose \$33 million
23 annually. That's probably conservative, but since
24 those benefits are not easy to just allocate and
25 quantify, even if you look at it in that fashion

1 it's a tremendous impact on Ameren customers alone.

2 Now, when we talk about a load
3 retention rate, there are elements of that rate
4 that have been -- that are kind of the bedrock
5 principles when the load retention rate has been
6 adopted in various states, and also the load
7 retention rate principle has been used by this
8 Commission in a number of instances.

9 But an element of that is that there
10 would be a large economic impact, adverse impact if
11 a business were to leave a utility's system or shut
12 down, and also that that would occur, that the
13 business would actually go out of business.

14 And so we've shown that the economic
15 impact is great if Noranda closes. Another element
16 is Noranda's financial need, and that will be
17 primarily demonstrated in the testimony of Kip
18 Smith.

19 Noranda is currently out of cash and
20 is paying its daily expenses by borrowing against
21 an asset-backed loan. So the paychecks that will
22 be issued this week to employees will be funded by
23 debt.

24 Moody's has downgraded Noranda,
25 Noranda's credit rating on March 7th, 2014, and

1 Moody's also has an unfavorable outlook for the LME
2 through 2015. And that's from its industry report
3 guide in December of 2013.

4 Unless Noranda has the requested rate
5 relief, and this is in the evidence in this case
6 and the affidavit of Kip Smith, Noranda will soon
7 need to cut 150 to 200 jobs. This would result in
8 an insufficient number of employees to run one of
9 the potlines at the smelter.

10 And I think you've already heard from
11 Mr. Priggel and you will hear additionally other
12 evidence in the evidence in this case that once a
13 potline shuts down, the harm is irreparable. It's
14 only a matter of time until the smelter itself will
15 have to shut down.

16 Noranda's rate request is \$30 a
17 megawatt hour, and that number is designed to allow
18 Noranda to operate through a ten-year aluminum
19 pricing cycle. There will be ups and there will be
20 downs, and it's essential in this industry to be
21 able to weather that cycle. In fact, Noranda would
22 need a \$23 per megawatt hour if it was to be cash
23 neutral today.

24 Noranda's financial need is created
25 by two factors at this time. There has been a

1 prolonged depression in the price of aluminum, and
2 there have been very high electricity costs and
3 rate increases in the past several years.

4 So without Noranda's requested rate
5 of \$30 a megawatt hour, there is a substantial
6 likelihood of imminent closure of the smelter.

7 Although Noranda's rate request will have a very
8 positive impact on its cost structure, that alone
9 will not be sufficient, and there will need to be a
10 recovery of aluminum prices eventually to resolve
11 Noranda's liquidity crisis, but the \$30 will help
12 them weather that.

13 Noranda cannot currently raise
14 capital. This is really important because Ameren
15 has stated that there is no liquidity crisis or
16 somehow it hasn't been shown. It's absolutely
17 clear that there is a liquidity crisis in this
18 case.

19 Noranda will be unable to raise
20 capital through issuing either debt or equity until
21 its cash flow and profitability improve, and the
22 evidence in this case will show that. Lenders and
23 equity owners will not invest in a company that's
24 in the middle of a liquidity crisis.

25 And this current drain on liquidity

1 and cash flow is caused both by Noranda's
2 unsustainable power rate and depressed aluminum
3 prices which will not allow Noranda to borrow or
4 attract equity investors. Moody's March 7, 2014
5 downgrade of Noranda puts it at speculative grade
6 liquidity.

7 If Noranda has the \$30 megawatt rate
8 and if it -- megawatt hour rate and if it has the
9 other elements of its rate request, then it will be
10 able to raise the necessary capital and it will
11 be -- maintain ongoing access to the capital
12 markets, and it will have that for financing,
13 refinancing and letters of credit, which will be --
14 the ability to draw those will be significantly
15 enhanced.

16 The evidence will show that leverage
17 will drop for Noranda if it gets this rate from
18 ten times to six times on a pro forma basis. This
19 drop in leverage will represent a step change in
20 the health and sustainability of Noranda, and it
21 will become again an attractive borrower under this
22 new sustainable rate.

23 With a decrease in cost of
24 \$48 million annually that this rate change would
25 provide and other efficiency efforts that Noranda

1 is constantly engaging in, it will be able to
2 obtain financing for important capital projects in
3 the future.

4 Now, I just want to cite to the
5 Moody's downgrade, which will be in the evidence in
6 this case. It was March 7th, and these are the
7 comments and observations of Moody's that you'll
8 see in its report.

9 High leverage evidenced by a debt to
10 EBITDA ratio of 9.3 times, weak aluminum prices and
11 increases cost pressures particularly from energy
12 costs contributed to material deterioration in
13 Noranda's financial performance.

14 Noranda's rate request to this
15 Commission, if successful, will improve Noranda's
16 position. Moody's outlook of stable assumes that
17 Noranda will achieve a more favorable energy supply
18 contract. And the rating could be lowered if
19 CreditMetrics do not show significant improvement.

20 Outlook for aluminum prices. Again,
21 important because Ameren will argue that the
22 outlook for aluminum prices is actually more
23 favorable. It is clearly not. It's not going to
24 get better soon.

25 On December 16th, 2013, Moody's

1 issued its industry outlook. Average aluminum
2 prices fell 14 percent through the end of November.
3 And here's some quotes: Aluminum fundamentals will
4 remain weak with prices under pressure and
5 persistently high inventories. A large number of
6 aluminum smelters are likely producing at
7 break-even levels at best. And given the dynamics
8 of the aluminum market, we see no catalyst for a
9 material price improvement through early to mid
10 2015. Various aluminum smelters have taken
11 increasing aggressive steps to idle or shutter
12 capacity in 2012.

13 Noranda has requested what it needs.
14 It hasn't requested anything more than what it
15 needs. It chose to request what it needed because
16 it thought that that would fit within the
17 principles of the Commission that it take into
18 account the impact on consumers, and also that it's
19 supported by their financial model, that they can
20 get by with the \$30 rate and they will be
21 sustainable, but that doesn't mean it's going to be
22 easy for them.

23 Every dollar a megawatt increase --
24 excuse me. Every dollar a megawatt hour increase
25 in Noranda's power rate will result in an EBITDA

1 loss of 4.2 million. For example, under a \$32 a
2 megawatt hour rate, Noranda would have 8.4 million
3 annually lower EBITDA, which would put it in a
4 position of significant detriment to its ability
5 to reduce debt and produce positive cash flow.

6 At higher power rates, Noranda's
7 ability to access capital markets will be
8 materially diminished. And a rate of \$30 a
9 megawatt hour would enable Noranda to ultimately
10 return to a creditworthy and healthy financial
11 state.

12 The other element of a load retention
13 rate, in addition to the economic benefits to the
14 state and the financial need of the company, is the
15 net benefit to Ameren ratepayers, to ratepayers in
16 general. And in this case we have clear economic
17 benefit to Ameren's ratepayers which outweighs any
18 cost to ratepayers as a result of the decrease.

19 Ameren's other ratepayers will pay
20 lower rates if the New Madrid smelter stays on the
21 system than if it shuts down. And the \$30 a
22 megawatt hour rate is higher than Ameren can sell
23 power for on the market. This results in a net
24 benefit to ratepayers. That's a very key part of
25 the evidence, and it's very technical, and we'll go

1 into the details of that.

2 Additionally, the smelter's
3 contributions to Missouri general revenues also
4 benefit Ameren ratepayers as well and should be
5 taken into account.

6 The evidence shows that every day
7 that Ameren remains -- excuse me -- that Noranda
8 remains an Ameren customer provides an economic
9 benefit to the other ratepayers and to the state of
10 Missouri. If -- the question is raised as to
11 whether Noranda can be sustained. It's -- every
12 day that it stays in business is a benefit.

13 The smelter's load is not going to
14 remain on Ameren's system if it is faced with
15 continuing to have to pay its fully embedded cost
16 of service. That's part of our evidence.

17 Ameren's average variable cost, which
18 includes fuel, variable purchased power and
19 variable operation and maintenance to serve the
20 smelter, is \$22.10 per megawatt hour. If the
21 smelter's rate exceeded the average variable cost
22 of 22.10 per megawatt hour, then the shelter would
23 be covering its average variable cost and, in
24 addition, it would be contributing to recovery of
25 fixed costs. So by this measure, the \$32 -- at \$30

1 a megawatt hour, Noranda is contributing
2 \$33 million to Ameren's fixed cost recovery.

3 Other Ameren -- I'm sorry. Yes.
4 Ameren has currently excess capacity and has stated
5 that it has no capacity additions needed until at
6 least 2029. Ameren customers are better off with
7 Noranda using Ameren's excess capacity at a load
8 retention rate, and if the smelter shuts down and
9 is no longer an Ameren customer, they will pay more
10 than the load retention rate.

11 Now, the impact of Noranda's rate
12 request, if granted, would be \$48 million a year.
13 The impact on customers if the smelter closes is
14 \$55 million a year.

15 Serving the smelter at Noranda's
16 requested rate results in direct benefits to Ameren
17 customers as part of the rate at \$7 million a year,
18 and that doesn't count the \$300 million annually in
19 economic benefits that Ameren customers would
20 participate in from the smelter's contributions to
21 GDP, and it doesn't even count the general revenue
22 benefits that Ameren customers would receive of
23 \$6 million a year.

24 Now, a key part of the evidence which
25 I mentioned is the fact that there is a \$55 million

1 benefit due to the market price of power, and this
2 evidence shows that the incremental cost of serving
3 Noranda's load is a net benefit.

4 There are three witnesses in this
5 case that have evidence on this issue. There is
6 Noranda, the Staff and Ameren. And you can't see
7 that, but I want to highlight kind of what it looks
8 like because you will be seeing this exhibit in the
9 case, and I will go ahead and show you a blowup as
10 well. And this is for future reference because I
11 am not the best person to explain this exhibit, but
12 I just want to highlight a couple of things.

13 This is a chart, a reconciliation
14 prepared by Jim Dauphinais, who is our witness on
15 this issue, and it does the math and explains the
16 adjustments that Mr. Dauphinais would make to the
17 Staff's position and Ameren's position for each
18 separate item where we believe you should find
19 our -- for our evidence.

20 And as the Commission determines each
21 of these issues, they're quantified, Staff and
22 Ameren, and lead to the rate which we've proposed
23 in our surrebuttal position.

24 So we made a road map if the
25 Commission can look at each one of these

1 adjustments and see if you will find in our favor
2 and find for our evidence, which we think is
3 reasonable evidence and the best evidence in this
4 case.

5 And I would just draw your attention
6 to two key numbers that are probably the primary
7 differences between Staff, Ameren and Noranda.
8 These two top numbers reflect the failure of the
9 Staff and Ameren to take into account the polar
10 vortex anomaly, that we have had an extraordinarily
11 cold winter that created a shock in the energy
12 pricing markets.

13 And without considering that anomaly
14 that occurred this year, looking at a 12-month
15 historical period is not reasonable. And in
16 addition to that, the Staff has a four-year --
17 48-month, excuse me, average price that it
18 incorporates into its evidence, but the problem
19 with that is that it assumes that a polar vortex
20 anomaly in effect would happen every four years,
21 and that would be impossible to occur.

22 So these are both fundamental flaws
23 in the Staff and Ameren's analysis, and I think
24 that I just want to highlight that and I want you
25 to please be attentive to that when you hear the

1 evidence on this issue. And this will be presented
2 later in the case.

3 Now, there are a few slides also I
4 want to highlight on that issue. These slides are
5 from MISO's report, and this is also an exhibit to
6 Mr. Dauphinais' surrebuttal testimony. Winter 2013
7 and 2014 operations and market performance. And
8 these slides demonstrate the severe impact that
9 must be taken into account of the polar vortex
10 anomaly on energy market prices, electricity market
11 prices this year.

12 Okay. The impact of extreme low
13 temperatures was experienced across the MISO
14 region. Temperatures in many areas were the
15 coldest experienced in 20 years. Severe weather
16 events. Natural gas prices soaring in the eastern
17 U.S. RTO and ISO prices in the winter of 2014,
18 dramatic spikes.

19 Excluding the polar vortex anomaly
20 from the historical periods used to develop this
21 market rate are -- is extremely unreasonable.

22 There is one other benefit to
23 ratepayers that I want to mention here, and this is
24 an illustration of a larger issue, but I think it's
25 an immediate and very consequential example. There

1 is a non-rate benefit. I say non-rate because it
2 could be viewed as a rate benefit that Noranda
3 provides to ratepayers, and that is that Noranda
4 has led consumer efforts and in some occasions been
5 the principal consumer opposing adverse legislation
6 in the Legislature that Ameren has proposed that
7 would dramatically increase rates.

8 And I think that is significant
9 because Noranda provides valuable information to
10 the Legislature and resources that are needed to
11 protect our laws and statutes in the state, and I
12 think they provide a balanced view to our
13 legislators.

14 There was in the last rate case a
15 proposal by Ameren to enact plant in service
16 accounting, or PISA, and the Commissioners who were
17 on the Commission I'm sure will recall that
18 decision because it was fairly recent. It was
19 actually in December of 2012, and took effect on
20 January 1st of 2013, the decision of the
21 Commission.

22 The Commission rejected this proposal
23 of Ameren. And it is a form of construction
24 accounting for assets that are placed in service
25 between rate cases. And of all the regulatory

1 mechanisms that utilities generally seek,
2 construction accounting is the most expensive and
3 the most adverse to ratepayers.

4 The Commission rejected this
5 proposal. It said that it was bad policy. It said
6 that it was a solution in search of a problem, and
7 it said that it would have a highly adverse impact
8 on ratepayers. The Commission made all those
9 findings.

10 And the Commission's order was issued
11 again on December 12, 2012, Ameren's last rate
12 case. And barely within a year of the Commission's
13 order rejecting this proposal, Ameren proposed
14 Senate Bill 909 this session, and that would allow
15 for the construction accounting to place assets in
16 service between rate cases.

17 To demonstrate the impact of this
18 proposal, and these are Ameren's numbers, you can
19 see the huge rate impact. If Ameren were to file a
20 rate case every 24 months, the cost to ratepayers
21 could be \$260 million over four rate cases. And
22 the chart here illustrates the range of impact
23 depending on the amount of money that Ameren would
24 be seeking to account for between rate cases.

25 Primarily and almost entirely as a

1 result of Noranda's opposition, 909 was not passed
2 in this legislative session. And I believe, and I
3 think the facts show, that this effort to pass this
4 legislation was in many respects an end run around
5 the Commission's decision. And the defeat of 909
6 helped preserve the Commission's discretion and
7 helped preserve the Commission's recent decision
8 and findings, and it also avoided major costs for
9 ratepayers.

10 The legislative involvement of
11 Noranda would probably have to end if the smelter
12 closed because that's Noranda's only Missouri
13 operation. And I think -- and I think the history
14 demonstrates that many consumer-adverse proposals
15 by Ameren in the Legislature would go unchallenged
16 if Noranda was not here with the resources to
17 challenge those and so greatly affected, the most
18 affected customer in many respects of these rate
19 issues.

20 And Ameren has proposed things that
21 primarily affect residential customers, other
22 utilities have, and following principles and
23 precedent and preserving law, Noranda's gotten
24 involved on a variety of issues that impact rates
25 and affect other consumers. And I think that that

1 can also be taken into account as a benefit that
2 Noranda brings.

3 I think it has to be noted here that
4 the business community, the majority of business
5 customers that are involved in PSC rate cases
6 support Noranda's rate increase -- excuse me --
7 rate request, that the Missouri Retailers
8 Association and the Missouri Industrial Energy
9 Consumers, which are two major business groups
10 composing -- composed of many of the largest
11 ratepayers of Ameren, have filed a Nonunanimous
12 Stipulation & Agreement in this case supporting
13 Noranda's rate request.

14 Wal-Mart has not opposed Noranda's
15 rate request. It hasn't supported it, but it also
16 has said that the Commission should consider this
17 evidence very strongly and notes the severe
18 economic impact that the closure of the smelter
19 would have.

20 I think the support of business
21 consumers who have consistently participated in
22 Ameren cases for many years, decades even, and also
23 in legislative matters, shows that the majority of
24 the business community thinks it is best served by
25 Noranda's rate request and by the smelter staying

1 in business.

2 And then we have to note, Noranda's
3 rate request is revenue neutral to Ameren. It
4 doesn't affect their revenues. Noranda is not
5 asking that Ameren be worse off.

6 In 2005 Ameren asked the Commission
7 for permission to serve Noranda, and there were
8 many arguments in the case and there was much
9 testimony about the importance of Noranda and the
10 benefits that Noranda would bring to Ameren's
11 system, to the stability of Ameren's system, and to
12 our state's economy.

13 Now Ameren's testimony shows in this
14 case that it thinks that Ameren customers would be
15 better off without Noranda. Ameren says that it is
16 acting on behalf of consumers to keep rates low in
17 this case, but recall back in the 2010 rate case
18 when Ameren wanted its interim rate increase of
19 \$37 million, that it said in its position statement
20 that this rate increase was nothing more than
21 change on a customer's dresser or in its pocket.

22 Highlighting Ameren's evidence in the
23 case that opposes the rate increase and questions
24 Noranda's evidence of financial need. It states
25 that Noranda does not have a liquidity crisis, that

1 it has misrepresented its financial status to the
2 public, and that Apollo management is responsible
3 for Noranda's financial crisis due to Apollo's
4 actions when Apollo owned Noranda and then had a
5 controlling interest in Noranda.

6 But the evidence shows that Noranda's
7 clearly in a liquidity crisis. It's out of cash.
8 It's paying its daily expenses on its asset-based
9 loan, and it's paying its employees from borrowed
10 money.

11 Noranda has been unable to find a
12 lender to finance a key capital project. Noranda
13 has been transparent in all of its investor
14 communications. And in this case, investors have
15 been informed of this case, are aware of it, and
16 much of the public documentation in this case
17 demonstrates Noranda's need.

18 Noranda's former owner Apollo no
19 longer controls Noranda. They owned the company
20 privately. The company went for public offering.
21 Apollo became a 66 percent shareholder, then became
22 a 33.3 percent shareholder, and Apollo doesn't
23 control the board.

24 So that's in the past. Whatever risk
25 that Noranda -- or that Ameren feels is presented

1 by the former control of Apollo just doesn't exist.
2 And it's very important to note, and the evidence
3 will show in this case, that Apollo -- the purchase
4 of Noranda saved the New Madrid smelter, that if
5 Apollo hadn't come along -- and the testimony of
6 Mr. Smith will show this -- that that smelter may
7 not be in business today.

8 And, additionally, that it was the
9 resources of Apollo that allowed Noranda to
10 survive, the smelter to survive the ice storm.
11 That's clear. And without Apollo, it may have
12 never been rebuilt, it would not have continued its
13 operations through the 2009 ice storm, and that has
14 inured to the benefit of ratepayers.

15 And this is part of Mr. Maurice
16 Brubaker's surrebuttal testimony. It's an exhibit.
17 These are the cumulative net benefits of Noranda
18 versus the market from March of 2010 forward to
19 April of '14, and you can see that these benefits
20 are very significant.

21 So Noranda's survival through the ice
22 storm, which is in part attributable to Apollo as
23 well as the commitment of Noranda's employees and
24 good management, has led to direct benefits to
25 ratepayers.

1 I think that the story of Noranda and
2 the smelter and this need begin and end with the
3 employees, and so I want to show one more video
4 clip.

5 (The following video was played:)

6 MR. PRIGGEL: The counties in this
7 area, we have three of the top ten poorest counties
8 in Missouri. I would think that instead of being
9 the top ten, we would move to the top three poorest
10 counties in southeast -- or in Missouri.

11 If you look back at history, it will
12 show you that we needed manufacturing in this area,
13 and that's the reason why this plant was built, and
14 it would just be devastating to the area if we
15 should happen to lose it.

16 You know, calling from my memory, I
17 think that Noranda pays 28 percent approximately of
18 the school tax at the New Madrid County R-I, they
19 pay 17 percent of the county tax in New Madrid
20 County, and that will be a huge void that will be
21 left for all the kids. And I'm sure enrollment
22 will go down because a good portion of the -- of
23 this area will have to seek employment somewhere
24 else.

25 You really didn't really realize how

1 poor this area is until you try to coach a football
2 team or a baseball team, and then you -- you
3 have -- you have dinners or you have like cookouts
4 for the kids, and the kids, it's -- they take
5 everything home. They don't get any food on the
6 table, and that's -- that is just some of the local
7 area. That's not counting what Noranda's putting
8 into the economy, the overall economy. And if
9 Noranda should pull out, I just can't imagine.

10 One thing that you always hear in the
11 community and also I hear in the state is
12 there's -- there's such a large investment, there's
13 no way that Noranda will ever close. And I had the
14 same opinion, and whenever I got the job at the
15 plant, I was able -- as the engineer of the cast
16 house, I was sent to facilities that had closed.
17 And I went to facilities that were twice as large
18 as ours with twice the investment that Noranda
19 currently has and the plant's closed, and I'm like,
20 how can that happen?

21 And it's a very competitive commodity
22 market, and as I put in -- or as I've worked 19
23 years here, we've had individuals from other plants
24 that have closed that come here and work. And I
25 asked them, I said, how did the plant -- how did

1 your plant close? And they said, it's just like it
2 is in this community. You think that the plant
3 will never close, and then what happens is the
4 financial aspect of the facility and your power
5 contract and your -- if you don't advance your
6 production, all of a sudden you find out that you
7 come to work, there's a pink slip and the place is
8 closed. You think it -- you think it would never
9 happen and all of a sudden it just happens.

10 And, you know, we've got Ormet
11 recently closed, and I'm sure the people in Ormet
12 never thought that the plant would close. And
13 there's a possibility that, you know, if we do not
14 maintain a competitive power rate, that our place,
15 our plant will close.

16 As I visit these plants, I ask
17 myself, what makes -- how is Noranda able to
18 survive? Well, I look back and I look at the
19 production records and, you know, you see that
20 every year there's an improvement. I think that's
21 a testimony to the people that work here. We have
22 employees that are very dedicated to the plant, and
23 as we continue to realize that we have to be more
24 and more efficient to remain competitive in the
25 global atmosphere, and we've actually increased our

1 production from 105 million pounds over -- since
2 1997, which is about a 22 percent increase.

3 And it's a testimony to the people
4 that work here. It's a testimony to the management
5 that had the vision as far as where we need to go,
6 and it's definitely been an interesting journey.

7 (Video ended.)

8 MS. VUYLSTEKE: Unless the
9 Commissioners have any questions, this will
10 conclude our opening statement.

11 JUDGE WOODRUFF: Mr. Chairman?

12 CHAIRMAN KENNEY: Ms. Vuylsteke,
13 thanks. I want to reserve most of my questions for
14 the witnesses, but I want to ask about
15 Mr. Priggel's first video. Did I hear him
16 correctly that Noranda's investing in a new rod
17 mill currently?

18 MS. VUYLSTEKE: That's correct.

19 CHAIRMAN KENNEY: And -- well, can
20 you tell me when that is expected to be completed,
21 or should I ask -- save that for a witness?

22 MS. VUYLSTEKE: I think there are
23 some HC issues associated with that, and so we'll
24 reserve if that's okay, Commissioner.

25 CHAIRMAN KENNEY: That sounds good.

1 I don't have any other questions. Thank you.

2 COMMISSIONER STOLL: No questions

3 right now.

4 JUDGE WOODRUFF: Commissioner Hall.

5 COMMISSIONER HALL: Good morning.

6 MS. VUYLSTEKE: Good morning.

7 COMMISSIONER HALL: I wanted to just
8 be sure that I understand what -- what Noranda
9 believes the appropriate legal standard is. I
10 think Staff takes the position that the Commission
11 can lawfully grant the requested relief if upon
12 consideration of all relevant factors the
13 Commission determines that the requested relief is
14 in the public interest and is neither unduly
15 preferential nor unduly discriminatory. Is that
16 Noranda's position as well?

17 MS. VUYLSTEKE: That the Commission
18 has authority to approve this rate, yes, and that
19 the large transmission class, as recognized in the
20 evidence in this case by numerous parties and has
21 been recognized by both the Commission in the past
22 and by Ameren, is a class completely unique unto
23 itself.

24 And there is no discrimination in
25 providing Noranda a rate that is consistent with

1 its survival and the public interest if you
2 otherwise find the facts in favor of this.

3 COMMISSIONER HALL: There's currently
4 a contract between Ameren and Noranda for
5 electricity, correct? When does that contract
6 terminate?

7 MS. VUYLSTEKE: I believe it expires
8 in June of 2020.

9 COMMISSIONER HALL: And what is -- I
10 know I'm jumping around a little bit. I apologize
11 for that. What is Noranda's position on the cost
12 of service, on Ameren's cost of service for
13 Noranda?

14 MS. VUYLSTEKE: The cost of service
15 at this point is not an element of this case.
16 Noranda is very frankly asking for the
17 Commission -- or asking the Commission for a rate
18 that is not based on its embedded -- fully
19 distributed embedded cost of service.

20 We're asking the Commission to depart
21 from the usual principle of cost of service because
22 of the extraordinary circumstances in this case
23 which make it in the public interest to do so. And
24 as I said before, the Commission has departed from
25 cost of service, from traditional fully embedded

1 cost of service on several occasions where the
2 circumstances warranted this.

3 But we do not have a cost of service
4 study in this case. We had one in the most recent
5 Ameren rate case. Our rate is not based on cost of
6 service.

7 COMMISSIONER HALL: Thank you. I
8 have no further questions.

9 JUDGE WOODRUFF: Thank you,
10 Ms. Vuylsteke. I'm sorry. Did you have questions?

11 COMMISSIONER RUPP: Yes.

12 MS. VUYLSTEKE: I'm sorry.

13 COMMISSIONER RUPP: Did I hear you
14 correctly, you state that Noranda needs \$23 a
15 megawatt hour to be cash neutral?

16 MS. VUYLSTEKE: Correct.

17 COMMISSIONER RUPP: And you're asking
18 for 30. And so how would the bond market -- if
19 you're not cash neutral, how would this rate still
20 provide certainty for them to issue debt?

21 MS. VUYLSTEKE: In the Moody's
22 investor -- excuse me. In the Moody's credit
23 downgrade of Noranda that will be in the evidence
24 in this case, Moody's refers to the fact that
25 there's going to be some quarters where Noranda may

1 be not cash flow positive, that if it can maintain
2 its liquidity and it can weather the cycle, then it
3 will -- it will be okay in terms of its credit
4 outlook, that it will not be downgraded.

5 And so I think that Moody's is
6 assuming with respect to Noranda's current stable
7 outlook that Noranda will obtain rate relief, and
8 it says explicitly that if Noranda doesn't, that
9 could change the picture.

10 So in answer to your question,
11 Commissioner Rupp, I think that the \$30 is enough
12 to provide sufficient liquidity for Noranda to
13 weather the LME cycle and to make sufficient
14 capital investments and also maintain its payroll,
15 basically keep its operations going until things
16 look up.

17 And so that's why Noranda hasn't
18 asked for the most rate relief that it can ask for
19 in this case and still believes that this will be
20 sufficient to give it the credit stability that we
21 need.

22 COMMISSIONER RUPP: And then also you
23 stated in response to Commissioner Hall's questions
24 that the Commission has departed from cost of
25 service numerous times. Will your witnesses have a

1 list of those historical times that they've done
2 that?

3 MS. VUYLSTEKE: Yes. Mr. Brubaker in
4 his testimony will cite some of those cases. And I
5 would note that even Ameren itself has an economic
6 development rider tariff, which is a load retention
7 rate, and is expressly stated that it's to retain
8 load, and that was approved by the Commission I
9 think just a few years ago. I think Commissioner
10 Jarrett was on the Commission at that time as well.

11 COMMISSIONER RUPP: And then will
12 your witness give us a historical view of how many
13 polar vortex events have occurred in the last
14 50 years?

15 MS. VUYLSTEKE: I believe that will
16 be in the testimony of Mr. Dauphinais.

17 COMMISSIONER RUPP: Thank you.

18 JUDGE WOODRUFF: Thank you,
19 Ms. Vuylsteke.

20 MS. VUYLSTEKE: Thank you.

21 JUDGE WOODRUFF: Opening for MIEC?

22 MR. DOWNEY: Judge, MIEC signed on to
23 the Nonunanimous Stipulation and supports Noranda
24 and the Complainants. We have no separate opening
25 statement.

1 JUDGE WOODRUFF: Thank you. Opening
2 for Staff?

3 MR. THOMPSON: Thank you, Judge. May
4 it please the Commission?

5 I am not going to detain you long at
6 all. There's a lot of other people who need to
7 speak and then we need to take testimony. I will
8 tell you that Staff believes you can grant this
9 relief if and only if the facts that you find would
10 support taking that action. I think the action you
11 take has to be driven by the facts. Driven by the
12 facts. So it will depend on the facts that you
13 find, and that's what this hearing is for.

14 Staff is opposed to Noranda's request
15 for one simple reason: That Staff's analysis of
16 the numbers does not support it. Staff's analysis
17 of the numbers does not support it.

18 Noranda says keeping us at this
19 special rate will be better for everybody than
20 losing us entirely. That's their case in a
21 nutshell.

22 Staff believes that the special rate
23 they've requested, in fact, will put the other
24 ratepayers in a worse position than if Noranda left
25 the system entirely.

1 So at a micro level, that's the
2 battle between the parties. How do those numbers
3 work out? What does it cost Ameren to serve
4 Noranda, talking only about the variable part of
5 the price? At \$30 per megawatt hour, will Noranda
6 cover that and make a contribution to fixed costs?
7 That's their argument is that yes, yes, they will.
8 Staff's analysis says, no, sorry, we don't think
9 so.

10 The larger battle, the macro battle
11 between the parties, of course, is, depending on
12 how you determine that, should you grant the
13 requested relief? Is it in the public interest
14 and, therefore, within the ambit of the things the
15 Commission can lawfully do? What you can lawfully
16 do depends on the facts that you find.

17 Thank you.

18 JUDGE WOODRUFF: Thank you.
19 Questions from the Commission? Chairman.

20 CHAIRMAN KENNEY: Yes. Thank you,
21 Mr. Thompson.

22 MR. THOMPSON: Yes, sir.

23 CHAIRMAN KENNEY: I just want to be
24 clear. So Staff's analysis looks solely at what
25 the remaining ratepayers' rates would be if Ameren

1 left the system -- I mean if Noranda left Ameren's
2 system, but does Staff's analysis quantify all
3 these other economic benefits that Ms. Vuylsteke
4 went through, the taxes, the indirect jobs that are
5 created, et cetera?

6 MR. THOMPSON: No. Staff has not
7 separately confirmed either Noranda's financial or
8 liquidity crisis or the economic impact of
9 Noranda's closure on Missouri as a whole or on
10 southeast Missouri. I think that Staff believes
11 both of those things are true and has not, as I
12 said, independently sought to confirm either one.

13 Staff has looked more at the micro
14 aspect, which is what is the actual variable cost
15 of serving Noranda and how does that compare to the
16 \$30 per megawatt hour requested load retention
17 rate.

18 CHAIRMAN KENNEY: As a legal matter,
19 is it an appropriate consideration in determining
20 the public interest, those additional economic
21 impacts that Noranda cites?

22 MR. THOMPSON: What a good question
23 that is.

24 CHAIRMAN KENNEY: Thank you.

25 MR. THOMPSON: I apologize. I'm not

1 trying to duck it. I think that it is an
2 appropriate consideration. The Commission was
3 created to strike that balance among the
4 stakeholders, the shareholders who want a return on
5 their investment, who want to earn money from all
6 the money they've invested in the infrastructure,
7 the plant, the employees to create electricity and
8 provide it to folks, and the ratepayers who
9 generally don't want to pay a cent more than they
10 absolutely have to to get electricity.

11 I attended one of the local public
12 hearings and I heard a lot of Noranda employees who
13 had been brought up in a bus talk about how
14 terrible it would be for them personally, how
15 terrible for their area if Noranda was to close,
16 and I believe all of those things are absolutely
17 true.

18 But I also heard some local
19 ratepayers say, as they always do at every local
20 public hearing I've ever attended, please don't
21 raise my rates. I can't afford it. Please don't
22 raise my rates.

23 So that's the balance the Commission
24 has to strike. Please don't raise my rates is
25 everybody who's not in southeast Missouri, and in

1 southeast Missouri it's, oh, my God, don't let
2 Noranda close.

3 CHAIRMAN KENNEY: Thanks. That's all
4 I have.

5 MR. THOMPSON: Thank you. Any other
6 questions?

7 COMMISSIONER STOLL: I'd like to, but
8 I'll save it.

9 JUDGE WOODRUFF: Commissioner Hall?

10 COMMISSIONER HALL: Thank you. What
11 is the -- what is the case law on undue
12 preferential or undue discriminatory in rate
13 design matters?

14 MR. THOMPSON: Well, there are always
15 subsidies and there are always preferences as a
16 practical matter when you make rates, because all
17 customers are not alike. My house may be closer to
18 the plant than another customer's house, and so
19 it's actually infinitesimally cheaper to provide
20 the service to me than it is to provide it to that
21 other customer, but you can't have a separate
22 rate -- even in this day and age of computers, you
23 can't have a separate rate for every residential
24 customer.

25 So they put us in a class, and they

1 say, you know, you residential guys are all pretty
2 much alike. You use a lot of infrastructure. You
3 take the electricity at a low voltage. So we're
4 going to put you all in a class and charge you a
5 customer charge and a variable charge designed to
6 recoup from you over the course of a year the
7 revenue requirement that your class is responsible
8 for. And that's the way ratemaking is done.

9 And between classes there are also
10 preferences and subsidies. They're also there
11 because, first of all, it's difficult to get it
12 exactly right, and secondly, because historically,
13 you know, you have thousands of residential
14 customers, thousands, and they all pay a small
15 amount every month but, boy, does that add up when
16 it's multiplied by 12 months and thousands and
17 thousands of bills.

18 So you see subsidies being taken from
19 the residential class, for example, because they're
20 not going to notice. It's a few pennies per bill,
21 and, boy, does that sure make a difference to this
22 or that other class.

23 So if you look at the actual class
24 cost of service studies and the agreements that are
25 struck in cases, you will see, yes, there are some

1 subsidies, there are some preferences between
2 classes, just as I said there automatically
3 necessarily have to be within classes.

4 So what's an undue preference?

5 What's an undue subsidy? First of all, what's the
6 case law? I'm not aware of any. I'm not aware of
7 any. The statute says the Commission shall not
8 grant a preference, an undue preference. The
9 Commission shall not take an undue subsidy.
10 There's always some subsidy. There's always some
11 preference.

12 So if the Commission says we know, we
13 know for a fact we're charging this group more than
14 their actual cost in order to benefit this other
15 group, does that become the undue subsidy and
16 preference? Perhaps it does.

17 I recall a water case over a decade
18 ago where there was one very small service area
19 where the price of water was absolutely
20 astronomical because it was such a small customer
21 base over which to spread the cost of drilling new
22 wells and putting in the necessary infrastructure.

23 And the Commission decided to
24 subsidize that area by taking excess money that was
25 paid in another area. So instead of lowering the

1 cost in a different town where the cost had gone
2 down and people were paying more than their actual
3 cost of service, the Commission kept that price
4 flat and threw the subsidy over to this very small
5 community.

6 That launched an appellate and
7 litigation holocaust that went on for years and
8 years and years, and finally petered out after two
9 other rate cases had changed rates around and the
10 Court of Appeals finally said, well, nothing we can
11 do. We'll let it go, but we don't like the looks
12 of this.

13 COMMISSIONER HALL: Let me ask this
14 way. Noranda appears to take the position that
15 this Commission can grant the relief it requests
16 without regard to cost of service, and I was
17 wondering, does Staff agree with that? Can we
18 legally do that?

19 MR. THOMPSON: I believe you legally
20 can, yes. There are load retention rates. There
21 are economic development riders. There are special
22 contracts for this company and for other electric
23 companies in the state. So this is by no means an
24 unknown thing.

25 COMMISSIONER HALL: Thank you.

1 JUDGE WOODRUFF: Commissioner Rupp?

2 COMMISSIONER RUPP: Not at this time.

3 Thank you.

4 JUDGE WOODRUFF: All right. Thank

5 you.

6 MR. THOMPSON: Thank you, Judge.

7 JUDGE WOODRUFF: Opening for Public

8 Counsel?

9 MR. ALLISON: May it please the

10 Commission? Good morning. I'm Dustin Allison.

11 This is my first time appearing in front of you as

12 a Commission, so I appreciate your indulgence with

13 this analysis approach to the case.

14 I appear today with my co-counsel

15 Marc Poston consistent with our statutory

16 responsibilities to represent all the ratepayers

17 who are impacted by Noranda's request for a rate

18 reduction.

19 I want to focus, if I can, first on

20 some ambiguity that I think is in the record about

21 what the impact of Noranda's request may or may not

22 be on Ameren's other ratepayers. As the record in

23 this matter has progressed, and it appears that in

24 the back and forth between Ameren and Noranda what

25 exactly the law requires in this case and what

1 exactly the record supports or permits with respect
2 to impact on the other ratepayers may be getting a
3 little lost.

4 I mean, the question from my
5 perspective is, what exactly can be asked legally
6 and on this record of the other ratepayers based on
7 the evidence in this case? And that point, you
8 know, appears to be muddled, and OPC is going to
9 attempt to clear that up as we have in testimony
10 and as we will over the next couple of days.

11 But we think that that is -- I say
12 that up front because I think we have a different
13 perspective than perhaps the other parties here.

14 Now, Noranda requests a rate of \$30 a
15 megawatt hour, and they call it a load retention
16 rate. They suggest a test for the Commission to
17 apply in order to determine whether Noranda's
18 entitled to that relief.

19 OPC thinks that Noranda's request is
20 probably more properly characterized as an economic
21 development type of rate, and we think that's a
22 fairer characterization of what's happening based
23 on the evidence, and we'll explain that in a little
24 bit.

25 But in any event, as the party

1 adverse to the existing tariff, it's Noranda's
2 burden of proof to demonstrate they're entitled to
3 that rate. Whether Noranda meets or doesn't meet
4 that heavy burden in this case is not a point on
5 which OPC is taking a position, and one might ask
6 why not. I think that's a fair question.

7 It's because Noranda, whether it gets
8 its requested rate or not, that decision actually
9 bears, in our opinion, little relationship to the
10 question of whether or not the other ratepayers are
11 impacted. It is not, from our perspective, a one
12 to one correlation: If Noranda gets relief, then
13 by operation of law the rate on the other
14 ratepayers must go up.

15 We actually think there's an
16 intervening step there, and that intervening step
17 is based upon traditional cost of service
18 principles. That is to say, before raising rates
19 on the other classes, the record in this case must
20 demonstrate that Ameren requires that revenue.
21 There must be evidence to support raising the rate
22 on the other classes.

23 Noranda may or may not prove its case
24 with respect to a reduction for Noranda, but as to
25 a revenue requirement that is going to impact all

1 the other classes, there has to be that evidence.
2 And it's not the ratepayers' burden to put that
3 evidence on. We're -- in this instance, in this
4 case, we're fine with the existing tariff for
5 purposes of this case. It is some other party's
6 burden to put that on in order to raise rates on
7 the other classes.

8 So what does that mean for the
9 Commission as it moves forward? OPC suggests that
10 if Noranda meets its burden and thereby merits some
11 relief, the Commission has the authority to revise
12 Noranda's tariff accordingly. That's perfectly
13 fine.

14 But in order to raise the rates on
15 the other classes so that the other ratepayers bear
16 the financial burden of that relief, there has to
17 be evidence supporting Ameren's entitlement to that
18 revenue.

19 And over the next two days and during
20 your review of the record, we think that you will
21 see that this has not been done in this case, and
22 we do not think at this point it can be done.

23 So relying on a stale revenue
24 requirement from a several-years-ago old rate case
25 is not appropriate and cannot provide an adequate

1 basis on which to raise rates on the other classes
2 of ratepayers using the ratemaking principles that
3 have been long applied by this Commission with
4 respect to cost of service under the law -- and
5 under the law of this state.

6 And this is particularly true whereas
7 here the Commission is aware of at least two other
8 matters in which Ameren's revenue requirement is at
9 issue, I mean, one filed by consumer groups that
10 will be heard in a month suggesting that the
11 revenue requirement has been too high, and another
12 one the Commission has notice already that Ameren
13 has filed that it's going to come in and file
14 another file and suspend rate case, which is
15 exactly, I'm sure, the opposite, that revenue is
16 too low.

17 So it's clear that no one agrees that
18 the current revenue requirement should continue to
19 be in operation, and if so, and without any
20 evidence in this case with respect to revenue
21 requirement, then rates on the other ratepayers
22 cannot be raised.

23 Broadly speaking, we think what has
24 been -- what is two questions has really been
25 conflated into one step by some of the other

1 parties in this case.

2 And so if we think about this from
3 35,000 feet, we think the Commission is really
4 being asked in the first instance, is Noranda
5 entitled to the relief that it's requesting? If
6 the Commission decides no, then your inquiry stops
7 from our perspective.

8 If the answer is yes, then the
9 question becomes something else. Then the
10 Commission must inquire further whether there is
11 any additional evidence in this case to permit the
12 allocation of any of that financial burden to the
13 other ratepayers.

14 If yes, the Commission goes ahead and
15 redesigns rates accordingly. If no, and we think
16 it is no, then ultimately Ameren bears the
17 financial responsibility for that.

18 We suggest, as you'll see through the
19 record and what you'll hear over the next two days,
20 that none of the evidence necessary to make that
21 determination on revenue requirement is here, so
22 Ameren's other ratepayers cannot lawfully be
23 required to bear that financial burden.

24 Now, to be sure, Noranda is
25 suggesting divergence from traditional cost of

1 service principles, and we believe that the
2 Commission -- we agree with Staff, the Commission
3 has the authority to do that if it finds evidence
4 that would support such a conclusion.

5 But that is an independent
6 consideration. We do not advocate and we would
7 strongly suggest that this Commission continue to
8 adhere to cost of service principles as it applies
9 to any revenue requirement and an increase on the
10 other ratepayers. I think those are independent.

11 You know, it's interesting. Ameren I
12 think will come up here and has throughout the
13 course of this case advocated for continued
14 application of cost of service principles, and
15 that's important.

16 I suspect that they vociferously
17 object to what I -- to what I just offered to the
18 Commission, and yet it cannot be both -- the sword
19 for Ameren against Noranda cannot also be the
20 shield protecting them from the consequences of
21 cost of service principles and having a revenue
22 requirement be evaluated in this case.

23 I'd like to transition just for a
24 brief moment -- I won't keep you very much
25 longer -- and spend a moment drawing the

1 Commission's attention to OPC's perspective on
2 matters -- the rest of Noranda's request
3 irrespective of the rate itself.

4 The Commission's going to hear from
5 our consultant, Lena Mantle. We have testimony in
6 the record on these points. Lena's a former
7 29-year member of Staff who, as many of you are
8 aware, ultimately became the manager of the energy
9 department prior to her retirement from the State
10 in 2012.

11 To the extent that the Commission is
12 inclined to grant Noranda any of the relief it's
13 requested in whole or in part, OPC suggests the
14 following: Noranda continue to pay the FAC,
15 Noranda not be limited to a 2 percent increase in
16 future cases, and Noranda not be guaranteed this
17 preferential economic development rate, we call it,
18 over the course of the next decade.

19 Further, we make certain suggestions
20 with respect to the allocation within classes if
21 this does occur. And on that last issue I'd like
22 to take a moment.

23 If the Commission proceeds to
24 increase rates on the other classes in response to
25 Noranda's request, it will be over our objection,

1 but it will also -- from our perspective, at that
2 point the Commission will have diverged entirely
3 from cost of service principles, both for Noranda
4 and frankly for the other rate -- for the other
5 rate-paying classes.

6 And if those are not going to be
7 applied, if cost of service principles aren't going
8 to be applied, then, you know, we submit those
9 principles cannot be applied as a shield to protect
10 Ameren as well. In this situation, Ameren can and
11 should be asked to bear its fair share of the
12 financial burden attendant to Noranda's request.

13 And because we believe that the
14 totality of the record can be read to suggest
15 Ameren continues to receive a benefit from its
16 contract with Noranda, a unique customer to Ameren
17 in many ways, we conclude that it would be just and
18 reasonable for Ameren to bear a portion of that
19 burden of any rate shift stemming from Noranda's
20 request.

21 Again, we oppose any shift onto the
22 other ratepayers, but to the extent that the
23 Commission determines otherwise, we make this
24 alternative argument.

25 Now, because OPC sees Noranda's

1 Request as really seeking implementation of an
2 economic development rate, we set out in testimony
3 our position that the Commission should explore
4 some terms and conditions that we think might be
5 appropriate before the application of such a rate.

6 Such terms and conditions should be
7 tailored to ensure value for the State of Missouri,
8 and the other ratepayers being asked to provide
9 Noranda this relief. And such terms and conditions
10 have been explored in the aluminum smelter cases
11 that have gone before regulatory bodies in Ohio and
12 West Virginia and Kentucky, and they're also
13 explored here by Ms. Mantle and Mr. Jarrett and
14 Mr. Fayne.

15 And to that end, you'll hear us
16 suggest that the imposition of a guaranteed minimum
17 employment requirement at the smelter is necessary
18 for Noranda to receive -- is a necessary condition
19 for Noranda to receive this relief. And frankly,
20 for a company like Noranda, with an operation like
21 an aluminum smelter, that's not much of an ask.
22 It's a floor, frankly, for what should be imposed
23 by the Commission.

24 Further, our testimony suggests that
25 Noranda should commit to a guarantee for annual

1 capital expenditures of at least \$100 million, with
2 specific commitments for capital expenditures at
3 the New Madrid smelter.

4 And this position is frankly entirely
5 consistent with the testimony of Noranda's CEO Kip
6 Smith. Mr. Smith says that the relief they request
7 is necessary to permit Noranda to reinvest
8 \$100 million annually in its operations going
9 forward.

10 And if that's so, then Noranda should
11 have no problem binding itself meaningfully to that
12 level of spending in exchange for the relief it
13 requests and no problem making specific commitments
14 to those investments going forward at the New
15 Madrid smelter.

16 And next, we think the evidence
17 suggests Noranda's ownership has a history,
18 frankly, of pulling substantial amounts of cash out
19 of the company. Now, that's the past, but we think
20 it is an important data point for the Commission to
21 consider. And some will suggest, most likely
22 Ameren, that this has forced the company, if it
23 does have a liquidity crisis, into its current
24 state of affairs.

25 Because rate relief for Noranda will

1 put the company on a path to positive earnings as
2 the price of aluminum improves, the Commission
3 should prohibit the company from issuing dividends,
4 special dividends, share buyback programs or any
5 other mechanism for returning value to shareholders
6 as long as the preferential rate is in effect.

7 If the company wants to keep a
8 dividend, if they want to do a special dividend,
9 start a share buyback program, that's all fine.
10 They're certainly entitled to do that, but they
11 should no longer get a preferential rate. If they
12 have the money for dividends, then they have the
13 money to pay their electricity bill.

14 Further, OPC suggests in its
15 testimony that these commitments should be
16 enforceable, right? While one enforcement tool at
17 the Commission's disposal will be reinstatement of
18 a full rate, that can't be the only tool. If the
19 company fails to meet its obligations, there should
20 be some mechanism for claw back or recoupment from
21 Noranda for the value of the New Madrid smelter's
22 avoided energy costs. Recall that the smelter is
23 just one component of a larger operation that is
24 Noranda.

25 And finally, in that same vein, OPC

1 suggests that as Noranda's fortunes improve, two
2 things should happen. First, not only should the
3 rate relief requested begin to reset back to a full
4 rate on a going-forward basis, but also looking
5 backward at the value that has been offered to
6 Noranda by whoever bore that financial burden,
7 whoever bore that burden should be made whole.

8 And on the first point there's
9 testimony in the record that explores tying
10 Noranda's continued rate relief to the price of
11 aluminum on the LME. OPC actually suggests
12 proceeding with caution about that idea before
13 making -- we're concerned about making any tariff
14 or any rate contingent on the price of any
15 commodity.

16 And in legal briefing after this
17 we'll suggest what we think is a more appropriate
18 method. But for now we think it's sufficient to
19 say we don't believe tying this to LME is a proper
20 mechanism here, and frankly we think it has been
21 unsuccessful in at least two other contexts.

22 And on the second point, the value
23 that Noranda will get from its request, at its core
24 Noranda's request is about liquidity. Right?
25 Noranda's suggesting its financials are too poor to

1 secure financing on manageable terms from
2 traditional sources of liquidity, the banks,
3 potential shareholders, so it comes before the
4 Commission.

5 But Noranda's proposal is structured
6 in a way that it alone benefits from all of the
7 potential upside of this transaction. And if or
8 when LME prices recover, what then becomes of the
9 tens of millions of dollars in value expended by
10 Ameren or other ratepayers that have helped get
11 Noranda by?

12 Under Noranda's proposal, that's just
13 a gift, a gift to the company coming either from
14 Ameren's shareholders, as we think only the record
15 would support, or, over our objections, from all
16 other Ameren electric ratepayers across the entire
17 state. And in exchange, Noranda will try -- it
18 doesn't promise -- it will try to keep the
19 New Madrid smelter open.

20 No lender or equity investor would
21 ever agree to those terms. So why then should the
22 ratepayers or even Ameren for that matter be
23 required to do so?

24 If the Commission's inclined to grant
25 Noranda the relief it requests, then this

1 transaction should not be a gift. And if anybody
2 has any questions, I'll be happy to take them or
3 I'll take my leave.

4 JUDGE WOODRUFF: Mr. Chairman?

5 CHAIRMAN KENNEY: Just a couple.

6 Mr. Allison, welcome.

7 MR. ALLISON: Thank you.

8 CHAIRMAN KENNEY: You mentioned that
9 if the Commission decides to grant Noranda's
10 request, then there's a second step of reallocating
11 the delta revenue requirement. Does OPC offer an
12 opinion on whose burden it is to marshal the
13 evidence?

14 MR. ALLISON: Sure. I think if you
15 look at the statute and if you look at the rules of
16 the Commission, it certainly is Noranda's burden in
17 the first instance to demonstrate their entitlement
18 to some relief, that they're being confined by an
19 unjust and unreasonable rate.

20 Thereafter, we think the burden
21 shifts, and it shifts to Ameren at that point. If
22 there is a revenue requirement to be maintained --
23 again, we are not adverse in this case to the rate
24 that the residential customers or any of the other
25 ratepayers are paying. So it's not our burden. At

1 that point it's Ameren's burden, and Ameren needs
2 to demonstrate its entitlement to revenue in this
3 case, and it hasn't done so.

4 CHAIRMAN KENNEY: So theoretically
5 under that analysis, we could grant Noranda's
6 request and leave all the other ratepayers where
7 they are currently?

8 MR. ALLISON: That's correct. In our
9 opinion, that's exactly right. I would also be
10 mindful of the fact that there's a pending
11 overearnings case, and there's frankly a pending
12 file and suspend rate case coming before the
13 Commission shortly.

14 CHAIRMAN KENNEY: Okay. And then a
15 similar question as the one I asked of
16 Mr. Thompson. Is it appropriate and can the
17 Commission take into account the other economic
18 development considerations that Noranda posits in
19 our public interest analysis?

20 MR. ALLISON: Yes. I think that's
21 absolutely correct. To be clear, OPC, while we
22 don't take a position on the rate, I think we take
23 as a given, as I understood Staff's statement to
24 be, that, again, while we haven't independently
25 quantified this, that the impact on southeast

1 Missouri and perhaps much broader of Noranda's
2 closure will be astounding and astounding from a
3 negative perspective.

4 And so absolutely, that is entirely,
5 I think, within the purview of the Commission. The
6 Commission has the authority, if it thinks the
7 evidence supports Noranda's request, to lower
8 Noranda's rate consistent with the request that
9 Noranda makes in whole or in part.

10 And, frankly, if the evidence existed
11 to raise rates on the other ratepayers, the
12 Commission could do that, too. We just don't think
13 that the record supports that.

14 CHAIRMAN KENNEY: Thank you.

15 JUDGE WOODRUFF: Commissioner Hall,
16 Commissioner Kenney?

17 COMMISSIONER W. KENNEY: No.

18 COMMISSIONER HALL: Good morning.

19 MR. ALLISON: Good morning, sir.

20 COMMISSIONER HALL: I want to make
21 absolutely sure I understand OPC's position on
22 this.

23 MR. ALLISON: Sure.

24 COMMISSIONER HALL: You believe that
25 this Commission has the authority to -- if we

1 determine that Noranda should be granted the relief
2 it requests, that we have the authority to lower
3 Ameren's ROE --

4 MR. ALLISON: Yes.

5 COMMISSIONER HALL: -- in order to
6 pay for it?

7 MR. ALLISON: Yes. But I think there
8 has to be evidence with respect to -- I'm sorry.
9 Go ahead. Yeah. I think -- yes. That's right. I
10 mean, what Noranda is suggesting is not a request
11 based on traditional cost of service ratemaking
12 principles that we have applied.

13 If you think that the evidence
14 supports -- supports that request, which is a --
15 they call it a load retention rate, economic
16 development rate, then yes, because the evidence --
17 whoever bears the burden -- again, it's not us --
18 to demonstrate an entitlement to revenue
19 requirement, we don't suggest -- pardon me. I'm
20 skipping around.

21 But we don't suggest abandonment of
22 cost of service with respect to the other
23 ratepayers. And so we need to continue to apply
24 cost of service principles as it relates to the
25 other ratepayers. We would urge this Commission to

1 continue to do that. And as a result, Ameren is, I
2 think, impacted by that.

3 I will say that to the extent the
4 Commission decides to also abandon cost of service
5 principles with respect to the other ratepayers,
6 then -- and raise their rates, then at that point
7 you've abandoned cost of service principles for the
8 other ratepayers. Right?

9 And so I think from an equitable
10 perspective, from a public interest perspective, it
11 is entirely within the Commission's authority to
12 make Ameren share a portion of that burden.

13 COMMISSIONER HALL: Thank you.

14 Mr. ALLISON: Thank you.

15 JUDGE WOODRUFF: Commissioner Rupp?

16 COMMISSIONER RUPP: Thank you. You
17 did very well first time out of the box. Great
18 job.

19 Just want to see if I'm following
20 your line of thinking.

21 MR. ALLISON: Sure.

22 COMMISSIONER RUPP: You believe this
23 is more of an economic development subsidy or
24 benefit, so -- but if we find that Noranda needs
25 the relief, you believe that that cost should be on

1 Ameren's ratepayers rather than all taxpayers
2 across the state?

3 MR. ALLISON: Let me put it this way:
4 I don't think the -- in the first instance, the
5 record in this case does not support raising rates
6 on any other classes of ratepayers in this case.
7 There is no evidence in this case that would
8 support that.

9 We have not gone through what norm--
10 what I understand normally occurs in ratemaking to
11 determine a revenue requirement that should be
12 applied and then allocate it across the other
13 classes. And so from our perspective, the evidence
14 doesn't support it.

15 Now, if -- if the Commission -- and
16 Noranda requests that the Commission abandon
17 traditional ratemaking principles. I don't take a
18 position on that. The Commission can determine
19 that.

20 If the Commission decides to do that
21 with respect to the other ratepayers, well, I'm
22 taking a position. I say don't do it. Right? But
23 if you do it anyway, then from our perspective, it
24 is entirely equitable, it is in the public record
25 to make sure -- because Ameren receives a

1 benefit -- they will protest this vociferously, but
2 Ameren continues to receive a benefit from having
3 Noranda on its system, and so Ameren should share
4 in the pain.

5 JUDGE WOODRUFF: All right. Thank
6 you.

7 MR. ALLISON: Thank you.

8 JUDGE WOODRUFF: Missouri Retailers?

9 MR. SCHWARZ: Good morning. May it
10 please the Commission? I'm Tim Schwarz. I
11 represent the Missouri Retailers Association in
12 this case.

13 The Missouri Retailers Association
14 supports Noranda's request in this case because
15 Noranda has demonstrated the economic interest, the
16 wherewithal and the willingness to advocate the
17 interests of all Ameren consumers before this
18 Commission and before the General Assembly. A good
19 and current example of that is the pending
20 complaint case EC-2014-0223.

21 Ameren is in this game playing on
22 customers' money. Heads they win. Tails we lose.
23 If Noranda does not get relief, Noranda's smelter
24 may remain open or it may close. If it stays open,
25 the status quo continues. Ameren continues to

1 recover substantial portions of its fixed costs
2 from Noranda.

3 If the smelter closes, however, it is
4 the customers and not Ameren that's on the hook for
5 recovery from the margin of additional off-system
6 sales the fixed costs now picked up by Noranda.
7 Despite the certainty of its testimony and
8 assertions in this case, Ameren is not offering to
9 hold customers harmless from any shortfall in the
10 recovery of fixed costs should the smelter close.

11 Ironically, of course, Ameren will
12 also seek to recover from ratepayers the cost of
13 its attorneys, witnesses and support staff for the
14 prosecution of this case as well. So customers get
15 to pick up that tab.

16 Even more ironically, the Office of
17 the Public Counsel can't get the same deal from the
18 customers that it's actually representing in this
19 matter.

20 If the Commission provides Noranda
21 the relief it seeks and the smelter remains open,
22 there will be no increase in generation,
23 transmission or distribution costs to Ameren
24 Missouri. There will be no effect on off-system
25 sales.

1 If the Commission denies relief or if
2 the relief is inadequate and the smelter closes,
3 the effects on other Ameren customers are not
4 known. Those effects will depend on the extent of
5 future levels of Ameren's off-system sales, the
6 future price of energy and capacity, possible
7 reductions in Ameren's MISO transmission costs, and
8 the future level of Ameren's variable cost of
9 generation, including fuel and labor. The stakes
10 in this case are too high to gamble with keeping
11 the smelter open.

12 It is asserted in some testimony that
13 Ameren's other customers might be better off
14 without Noranda's load on the system. That view is
15 incredibly myopic. Such a scenario depends on
16 Ameren not replacing Noranda's load.

17 Noranda's electric bill, according to
18 Mr. Scheperle's schedule, is more than half of the
19 entire SGS customer class bill. It is more than a
20 fourth of the entire LGS class bill. It is more
21 than two-thirds of the entire SP, small primary
22 class bill.

23 A bill of \$1,000 per month to an LGS
24 customer would increase by less than \$30 per month
25 under the proposal. MRA does not consider that

1 this constitutes undue discrimination against the
2 other customers or an undue preference to Noranda.

3 These facts should also confirm for
4 the Commission the terrible void in the state
5 economy concentrated in an economically distressed
6 region that will result from the shuttering of the
7 New Madrid smelter.

8 MRA's members have skin in this game.
9 In the smelter closes, Missouri retailers will lose
10 sales that are multiples of the \$90 million payroll
11 at Noranda's smelter.

12 Like other Ameren customers,
13 MRA members will be at risk for picking up the
14 balance of Noranda's contribution to Ameren's fixed
15 costs if the smelter closes. All Ameren customers
16 will lose the considerable benefit of Noranda's
17 customer advocacy before this Commission and the
18 General Assembly.

19 MRA urges this Commission, don't roll
20 the dice on the viability of the New Madrid
21 smelter. Grant Noranda the relief it seeks. Thank
22 you.

23 JUDGE WOODRUFF: Questions?
24 Mr. Chairman.

25 CHAIRMAN KENNEY: Thank you. Let me

1 ask you about OPC's assertion that if we grant
2 Noranda's request, then if we reallocate the
3 additional revenue requirement to the other
4 customers, that that's Ameren's burden. No. 1, do
5 you agree with that?

6 MR. SCHWARZ: I don't believe in the
7 circumstances of this case that the revenues can be
8 assigned to Ameren shareholders, no.

9 CHAIRMAN KENNEY: That's a little
10 different question.

11 MR. SCHWARZ: I'm sorry.

12 CHAIRMAN KENNEY: That's what I was
13 going -- that was my second question. My first
14 question is, if we are going to reallocate that
15 additional -- or that reallocated revenue to
16 Ameren's residential and other ratepayers, that's
17 Ameren's burden to demonstrate that that's
18 appropriate?

19 MR. SCHWARZ: No, I don't believe in
20 the circumstances of this case. The current Ameren
21 rates were set in ER-2012-0166, and until those
22 rates are changed, the rates remain lawful and are
23 presumed just and reasonable. Those rates are
24 based on the revenue requirement that was advanced
25 in that case.

1 I think the Public Counsel's position
2 is that, well, that was an eight-inch pie, and we
3 don't know now if we're -- if we have a seven-inch
4 pie or a nine-inch pie or an eleven-inch pie, and
5 therefore, we have to redetermine the size of the
6 pie before we decide that the, you know, size of
7 each slice is appropriate.

8 I don't think that's the case. I
9 think that we are -- and the Commission is
10 perfectly entitled to presume that -- I mean, no
11 one has adduced any revenue requirement evidence in
12 this case. I don't think that it's necessary.

13 That is, the relationship between the
14 ratepayers for the responsibility of the revenue
15 requirement is -- is what's at issue here, and I
16 think that those issues have been adequately
17 addressed.

18 CHAIRMAN KENNEY: So you answered my
19 second question.

20 MR. SCHWARZ: That's twice and I
21 haven't got the first one?

22 CHAIRMAN KENNEY: No. You've
23 answered both now. But I think the way I'm hearing
24 your answer to the first question is there is no
25 need to make a determination about -- the revenue

1 requirement is what it is from the last rate case.

2 So is it self-effectuating in your opinion that we

3 would reallocate it to the other ratepayers?

4 MR. SCHWARZ: The revenue requirement
5 as was established in the last rate case may or may
6 not be collected by the rates that are currently in
7 effect. That is, there may be customer growth.

8 There may be load growth. Certainly the effects of
9 weather can affect it.

10 So that the current revenue that's
11 actually being generated is quite likely not the
12 same as the revenue requirement upon which the
13 relative customer responsibility was designed in
14 the last rate case.

15 But I think that it's -- I think that
16 it's fair that relative customer responsibility can
17 be addressed in these circumstances by the
18 Commission.

19 CHAIRMAN KENNEY: Without any
20 additional evidence?

21 MR. SCHWARZ: About revenue
22 requirement, that's correct.

23 CHAIRMAN KENNEY: All right. No
24 other questions. Thank you.

25 COMMISSIONER W. KENNEY: I just had a

1 quick question. So if this Commission grants
2 relief to Noranda, the Retailers Association is on
3 record as saying that raising rates on your members
4 is okay to cover that?

5 MR. SCHWARZ: Yes.

6 COMMISSIONER W. KENNEY: Thank you.

7 JUDGE WOODRUFF: Commissioner Hall?

8 COMMISSIONER HALL: Thank you. I
9 believe in response to questions from the Chairman,
10 you indicated that it would be inappropriate for
11 the Commission to compensate for the reduction in
12 Noranda's rate by lowering ROE in this proceeding?

13 MR. SCHWARZ: Frankly, I don't think
14 it's an issue in this proceeding. I don't know --
15 and there's no evidence as to what Ameren's current
16 ROE is. So in those circumstances, I think that
17 it's --

18 COMMISSIONER HALL: Let me ask this
19 way: Are we -- are we constitutionally prohibited
20 from doing what OPC is suggesting we should do or
21 is there just a lack of evidence to support
22 doing -- taking that action, or both?

23 MR. SCHWARZ: I hadn't considered if
24 there's a constitutional -- if there would be a
25 constitutional prohibition on it. I would be

1 concerned that there would be. But I think as a
2 practical matter, you don't have to reach the
3 constitutional issue because it's -- it's not
4 necessary for the decision of this case.

5 I think you can -- you can -- this
6 case is a rate design case seeking to reallocate
7 the proportional burden of Ameren's customers as to
8 the current rates now in effect.

9 COMMISSIONER HALL: Thank you.

10 JUDGE WOODRUFF: Commissioner Rupp?

11 COMMISSIONER RUPP: Thank you, sir.

12 How many -- how many members do you have in your
13 association?

14 MR. SCHWARZ: I frankly don't know.

15 COMMISSIONER RUPP: Ballpark, don't
16 know?

17 MR. SCHWARZ: Don't know.

18 COMMISSIONER RUPP: So you don't know
19 how many --

20 MR. SCHWARZ: It's on the order of
21 100 or so maybe.

22 COMMISSIONER RUPP: 100 or so.

23 MR. SCHWARZ: But I'm not a witness,
24 and if I were a witness, I'm unprepared.

25 (Laughter.)

1 COMMISSIONER RUPP: Do you have any
2 idea how many of those members are in Ameren's
3 service area?

4 MR. SCHWARZ: Well, I would guess
5 that it's the bulk of them simply because Ameren
6 has, you know, however many, two-thirds of the
7 customers in the state.

8 COMMISSIONER RUPP: Did you poll your
9 membership on --

10 MR. SCHWARZ: I did not, but I
11 believe that David Overfelt did.

12 COMMISSIONER RUPP: And the one-third
13 that are not -- we're assuming are not in their
14 service area, you think they will receive a benefit
15 because?

16 MR. SCHWARZ: I'm acting on my
17 client's instructions, and I'm sure that
18 Mr. Overfelt is very concerned about the interplay
19 of his members.

20 COMMISSIONER RUPP: Thank you.

21 JUDGE WOODRUFF: Thank you.
22 Consumers Council?

23 MR. COFFMAN: May it please the
24 Commission? Good morning. I'm John Coffman,
25 representing the Consumers Council of Missouri.

1 Our interest in this case is
2 exclusively residential consumers' interests, and,
3 boy, looking at their interest in this case, I have
4 no small amount of fear and loathing about what
5 might transpire. We feel residential consumers are
6 getting squeezed by two giant corporations here.
7 It is really hard to look at this and really know
8 the right way to go. So I don't envy you in your
9 position here.

10 We are not taking a position as to
11 Noranda's evidence on its own liquidity crisis.
12 Frankly, in looking at the other jurisdictions that
13 have addressed these issues previously, the other
14 states, we don't recommend looking at some rate
15 that is based on the price of aluminum. We're glad
16 that Noranda's not asking for that.

17 When you look at the evidence about
18 whether consumers would -- the other consumers
19 would be better off or worse off if the smelter
20 were to close, I have to say that objectively the
21 testimony of -- put forth by Noranda is persuasive.

22 I think that specifically the
23 testimony of Maurice Brubaker and Jim Dauphinais
24 make a good case that if Noranda were to go away,
25 consumers would at least in this time frame be

1 worse off. And so ask you to look at that
2 critically. We know that there is criticism of
3 that by Staff and Ameren.

4 We have to -- we look very critically
5 and skeptically at the evidence from Ameren, of
6 course, who had successfully advocated to raise
7 residential rates about 43 percent over the last
8 few years. This case has got things all, you know,
9 backwards.

10 We don't take a position on a lot of
11 the broader non-rate benefits of Noranda, although
12 we certainly don't question them. Confine --
13 trying to confine our analysis just to the
14 ratemaking process itself, but even then Noranda's
15 participation here I think has benefited the Public
16 Service Commission's deliberations.

17 They have certainly contributed
18 greatly to the analysis of the fuel adjustment
19 clause, investing in fuel modeling and providing
20 evidence I think that has helped the Commission get
21 to the right decision, and has helped consumers of
22 all sizes and all customer classes.

23 So we certainly hope that Noranda
24 stays around. We are not sure we know what rate
25 Noranda -- we think that Noranda may deserve a

1 reduction, whether you call it an economic rate, a
2 load retention rate or something else. But we
3 certainly support the Office of Public Counsel's
4 position that -- that you look first to Ameren
5 before you look to ordinary ratepayers to make up
6 any necessary deficiency to meet that rate.

7 Evidence is not in the record of this
8 case, but there is a pending case where there is an
9 all relevant factors analysis, which I believe
10 shows overearnings on behalf of the utility company
11 that are in excess of any of the amount of money
12 that we are looking at here in this case.

13 And so can't in good conscience say
14 that residential ratepayers should be making up the
15 difference until those issues are resolved and that
16 the Commission makes some resolution on what we
17 believe is an excessive rate of return and an
18 excessive amount of overearnings that have occurred
19 over various periods over the last two years or so.

20 So we think that there does need to
21 be an all relevant factors analysis before you look
22 to our clients, the people that we care about, many
23 of whom are having liquidity crises of their own
24 when they sit around the table and worry about
25 whether they can pay their utility bills and the

1 rest of the things that they need to pay.

2 But assuming that you do find that
3 there should be some contribution from other
4 consumer classes, residential class specifically,
5 we support the Office of Public Counsel's approach,
6 which would be to apply any such deficiency only to
7 the volumetric rate. Please do not apply that to
8 the fixed customer charge. There's several reasons
9 for that in evidence -- in the evidence of Lena
10 Mantle for OPC.

11 And perhaps the most important issue
12 to my client, and that is that you not alleviate
13 Noranda from the obligation to pay the fuel
14 adjustment clause unless you alleviate all
15 consumers from having to pay the fuel adjustment
16 clause. The Commission is not obligated to provide
17 and we often think that that -- that it isn't
18 needed.

19 Residential consumers are now forced
20 to pay 95 percent of the risk of the fuel and
21 purchased power volatility even though consumers
22 have zero control over the fuel procurement
23 policies. We don't like the fuel adjustment
24 clause, and we believe and would hope that, going
25 forward, even if Noranda is given and recognized

1 that they need a lower rate, that they still have
2 some skin in that game. We believe that to the
3 extent that the fuel adjustment clause is forced
4 upon consumers, that all consumers should have the
5 same interest in that particular fuel clause. It's
6 not clear exactly who would pick up the rest of
7 that.

8 We think that Ameren certainly
9 deserves to have more skin in the game than the
10 current 5 percent, and we ask that Noranda continue
11 to have some skin in that game as well.

12 So good luck. That's all I have.

13 JUDGE WOODRUFF: Mr. Chairman?

14 MR. LOWERY: I think that's a first,
15 John.

16 (Laughter.)

17 CHAIRMAN KENNEY: Lost my train of
18 thought. So does -- thanks, John. Mr. Coffman,
19 thank you.

20 Do you also agree with OPC's analysis
21 that there is a shifting burden, that the burden
22 shifts to Ameren?

23 MR. COFFMAN: Yes.

24 CHAIRMAN KENNEY: So you agree with
25 that as well?

1 MR. COFFMAN: Yes.

2 CHAIRMAN KENNEY: And do you have an
3 opinion, then, could we grant Noranda's request
4 without raising rates on the additional consumer/
5 commercial classes and require the shareholders to
6 bear that burden?

7 MR. COFFMAN: I don't know if -- I
8 think you could -- yes, I believe you could grant
9 that, but I wouldn't characterize it as asking
10 shareholders. I think that the current rate of
11 return is out of line with what I think current
12 economic and comparable analysis would show, and I
13 think that you should look to the 223 case with
14 regards to the overearning. We think that the
15 revenue requirement is currently too high.

16 CHAIRMAN KENNEY: Okay. So before we
17 even get to the 223 case, what you're essentially
18 saying is that we could grant Noranda's request and
19 in effect lower Ameren's ROE in this case? Because
20 that's the effect of what we would do if we didn't
21 reallocate.

22 MR. COFFMAN: If you took revenue
23 requirement testimony in this case, or perhaps you
24 could make it contingent upon your ruling in the
25 223 case.

1 CHAIRMAN KENNEY: Okay. I'm not sure
2 I understand. So you're saying we could or
3 couldn't without taking revenue requirement
4 testimony in this case simply grant Noranda's
5 request and leave the remain classes where they
6 are?

7 MR. COFFMAN: Yes, I think there's a
8 way you could do that.

9 CHAIRMAN KENNEY: And what is that
10 way?

11 MR. COFFMAN: By making a finding
12 that -- that the revenue require-- that there is no
13 evidence to support a reduction of the -- or
14 increasing any of the other customer classes or at
15 least the residential class based on the evidence
16 in this record.

17 CHAIRMAN KENNEY: In effect lowering
18 Ameren's authorized ROE?

19 MR. COFFMAN: At least lowering their
20 revenue requirement.

21 CHAIRMAN KENNEY: Okay. All right.
22 Nothing else.

23 JUDGE WOODRUFF: Commissioner Stoll?

24 COMMISSIONER STOLL: No, no
25 questions.

1 JUDGE WOODRUFF: Commissioner Kenney?
2 Commissioner Hall?

3 COMMISSIONER HALL: When you
4 responded to the -- to the issues, the list of
5 issues, you said that your client was taking no
6 position on Question 3, which -- or Issue 3, which
7 is would it be more beneficial to Ameren Missouri
8 ratepayers other than Noranda for Noranda to remain
9 on Ameren's system at the requested reduced rate
10 than for Noranda to leave Ameren Missouri's system
11 entirely?

12 At that time, you said that your
13 client was taking no position on that question. I
14 think you said in your opening that Noranda's
15 expert testimony on that issue was persuasive. Are
16 you -- are you supporting Noranda on that issue?

17 MR. COFFMAN: We're not taking a
18 position on the \$30.00 specifically, but we do
19 believe that residential consumers have been
20 made -- or are in a better financial situation for
21 Noranda being on the system over the past few years
22 and for their actions in this regulatory body. And
23 we do believe that -- we are convinced that
24 consumers would be worse off if Noranda left the
25 system, but we don't feel that we have sufficient

1 information to know exactly what --

2 COMMISSIONER HALL: How much worse
3 off?

4 MR. COFFMAN: Right.

5 COMMISSIONER HALL: Okay. Thank you.

6 MR. COFFMAN: We're not specifically
7 taking a position on \$30 or not \$30.

8 JUDGE WOODRUFF: Thank you,
9 Mr. Coffman.

10 Ballwin and O'Fallon are next on the
11 list. They've been excused from the hearing. They
12 did not wish to do opening. We'll move to
13 Wal-Mart.

14 MR. CHAMBERLAIN: Good morning,
15 Commissioners. My name is Rick Chamberlain. I'm
16 over from Oklahoma City, and I have appeared before
17 this agency several times in the past, not in the
18 last several years. This is the first time I've
19 appeared before these Commissioners. I appreciate
20 the opportunity to appear before you this morning.

21 I'm representing Wal-Mart Stores
22 East, LP and Sams East, Inc. And rather than
23 repeating that over and over again, I'm just going
24 to refer to both of those entities as Wal-Mart. So
25 when I say Wal-Mart, you'll understand I'm

1 referring to both of those.

2 As you no doubt are aware, Wal-Mart
3 does have a few facilities in Missouri, and
4 specifically there are 141 facilities, Wal-Mart
5 facilities in Missouri. Approximately 48 of those
6 are -- 48 retail outlets and a distribution center
7 are served by Ameren.

8 Approximately ten Wal-Marts and one
9 Sams are located within 50 miles of the Noranda
10 smelter. Some of those are served by Ameren. Some
11 are served by other providers as well.

12 Now, as you've probably gathered by
13 now, this case is a little bit unusual. It is
14 also -- Wal-Mart's position in this case is
15 somewhat unusual. By that I mean normally Wal-Mart
16 is a cost of service rate advocate, and they
17 advocate that rates be set based upon a utility's
18 cost of service.

19 And the reason for that is Wal-Mart
20 very strongly believes that those types of rates
21 produce equitable rates that are reflective of cost
22 causation, that they send proper price signals and
23 minimize price distortions.

24 So under normal circumstances
25 Noranda's requested relief in this case would be

1 out of the ordinary and inappropriate in Wal-Mart's
2 view. However, in this particular case, given the
3 specific and extraordinary circumstances presented
4 to you by Noranda, and you'll probably hear us use
5 that phrase over and over again, but due to those
6 circumstances, Wal-Mart does not oppose the reduced
7 rates proposed by Noranda.

8 And Wal-Mart has presented the
9 testimony of a witness in this case, Steve Chriss,
10 an expert witness. He will be testifying on
11 various issues in some detail later on. But let
12 me, if I could, just briefly give you a summary or
13 a road map of the opinions that he's going to
14 address.

15 And let me say also at the outset,
16 there are a number of these issues, and your
17 questions have anticipated some of those, but there
18 are a number of issues in this case that Wal-Mart
19 hasn't taken a position on, and you'll hear that
20 later.

21 But specifically what Mr. Chriss has
22 testified to, again, given the specific and
23 extraordinary circumstances, there's no objection
24 to the requested rate or the escalator by Noranda.

25 Secondly, Wal-Mart does not oppose

1 Noranda's proposed allocation methodology of the
2 revenue requirement shortfall.

3 Mr. Chriss also testifies that for
4 the LGS, SP and LP classes, that's large general
5 service, small primary and large primary classes --
6 those are the classes with a demand component in
7 the tariffs. For those classes Mr. Chriss suggests
8 that any revenue requirement shortfall be
9 calculated and charged on a demand basis rather
10 than an energy basis.

11 Fourthly, I guess, Mr. Chriss
12 testifies that the collection of the revenue
13 requirement shortfall should be done through a
14 separate and identifiable standalone rate, either
15 as a separate appendix to Noranda's proposed
16 Schedule 10M or as a separate rider.

17 And then lastly Mr. Chriss testifies
18 that the structure of the 10M escalator and the
19 2 percent cap should be clearly identified in the
20 tariff.

21 And if I could just elaborate a bit.
22 Those last two points that I mentioned, the
23 collection of the revenue requirement shortfall
24 through a separate tariff, that's basically so that
25 if things changed, there's a way to unravel this.

1 It doesn't just all get rolled into a single tariff
2 and you try to figure out what applies to Noranda,
3 what applies to other people. It just simplifies
4 the administration, I guess would be the way to
5 characterize it, of that -- of that tariff.

6 So those -- that's just a quick
7 overview of Wal-Mart's position. Unless you have
8 any questions, that's all I have.

9 CHAIRMAN KENNEY: I don't have any
10 questions. Thank you.

11 COMMISSIONER HALL: No questions.

12 MR. CHAMBERLAIN: I should mention, I
13 do have extra copies of Mr. Chriss' testimony here
14 if any of the Commissioners needs it.

15 JUDGE WOODRUFF: Thank you, sir.

16 MR. CHAMBERLAIN: Thank you.

17 JUDGE WOODRUFF: We've been going for
18 almost two hours now. We'll take a ten-minute
19 break before we proceed with the other openings.
20 We'll come back at 11:30.

21 (A BREAK WAS TAKEN.)

22 JUDGE WOODRUFF: All right. Come to
23 order, please. I don't have a gavel here anymore.
24 Let's go ahead and get started again. The next
25 opening statement will be from River Cement.

1 MS. LANGENECKERT: Good morning -- I
2 think it's still morning -- Judge Woodruff. As you
3 know, I'm Lisa Langeneckert, and I'm here
4 representing River Cement Company today.

5 River Cement has no witnesses. We've
6 done no studies, and we have no position on a
7 majority of the issues. However, we are concerned
8 about the slippery slope of not using the
9 traditional cost of service based principles that
10 the Commission has used for many years.

11 River Cement is a large user of
12 power, but their usage doesn't compare to Noranda.
13 Their demand is about 40 megawatts. They're an
14 important employer in the communities in which they
15 have plants. Their payroll is approximately
16 22 million a year. They have 175 employees, and
17 their property tax is about 3.8 million.

18 They have participated in many years
19 past in cases before this Commission and believe
20 that the Commission should continue to follow its
21 traditional method of cost of service based rates.

22 They don't deny that Noranda's
23 contributions in southeast Missouri and in the
24 Legislature on consumers' behalf are great, but
25 they are concerned about the slippery slope.

1 Thank you.

2 JUDGE WOODRUFF. Thank you.

3 Continental Cement.

4 MR. COMLEY: May it please the

5 Commission? Good morning.

6 My name is Mark Comley, and I think,
7 along with Ms. Langeneckert, I represent an
8 industrial concern -- and forgive me if I make use
9 of a phrase that's been used in remarks of other
10 people -- that doesn't want to be skinned in this
11 game.

12 I represent Continental Cement
13 Company, LLC. This company has offices in
14 Chesterfield and Hannibal, Missouri, and operates a
15 large manufacturing complex near Hannibal. It is
16 an Ameren customer.

17 Continental sells and manufactures
18 cement. Cement has been manufactured at the
19 Hannibal location since 1903. The product produced
20 at the plant has a history of high quality and was
21 selected for such recognizable projects as the
22 Empire State Building, the Panama Canal, Busch
23 Stadium, the Edward Jones Dome and the Scott Trade
24 Center.

25 The Hannibal plant is fully

1 modernized. Various improvements were made in 2006
2 at a cost of approximately \$200 million. The
3 cement manufacturing appliances are all state of
4 the art. The ingredients for the product are
5 quarried onsite. Its distribution network includes
6 lines from Hannibal, but also it utilizes shipping
7 terminals in St. Louis and Bettendorf, Iowa.

8 Continental currently employs 228 at
9 the plant. Payroll and other benefits at that
10 level of employment exceed \$24 million per year.
11 Continental pays over \$1 million in county or local
12 property taxes annually.

13 It purchases supplies and services
14 locally in the amount of approximately
15 \$46 million a year. Continental charitable
16 contributions and advertising costs are
17 approximately 150,000 to \$200,000 per year.

18 All of the plant equipment requires
19 electrical energy to operate. Plant equipment
20 ranges in size from fractional horsepower motors up
21 to 3,000 horsepower motors. Continental is heavily
22 dependent upon the reliability and quality of
23 energy distributed to these facilities.

24 Energy accounts for approximately
25 12.8 percent of Continental's operating expenses.

1 Electrical service for the plant site comes from
2 Ameren's Marion substation located just south of
3 Hannibal on Highway 79. There are two 34.5 KV
4 lines that deliver power to two substations located
5 at the plant. Plant substations, which are owned
6 by Ameren, contain transformers to take power from
7 the 34.5 KV down to 4 KV for distribution.

8 Demand during normal operations is
9 approximately 18 megawatts. Average electrical
10 energy consumption throughout the year is 9 million
11 kilowatt hours and increases to approximately
12 11 million kilowatt hours during the shipping
13 season. On an annual basis, Continental purchases
14 more than \$6 million of electrical energy from
15 Ameren.

16 The complaint in this case asked the
17 Commission to reduce the rate Noranda pays to
18 Ameren and to increase the rate paid by Ameren's
19 other customers to make the adjustment revenue
20 neutral for Ameren. Continental is an existing
21 customer.

22 As I've already said in my remarks,
23 Continental is a major employer and a significant
24 economic power in northeast Missouri. Increases in
25 its electric rates in response to this complaint,

1 rates that would have been above Continental's cost
2 of service, would be fundamentally unfair and
3 naturally would negatively affect Continental's
4 overall cost of business.

5 Continental's business rises and
6 falls on the quality and reliability of energy
7 supplied by Ameren. If the costs of that energy
8 increase, Continental's costs increase. As
9 Continental's costs increase, it declines as a
10 market competitor.

11 Like Noranda, Continental faces
12 competition from abroad and from domestic cement
13 suppliers that have the advantage of rates that are
14 lower than those charged by Ameren. The slightest
15 increase in Ameren's energy rate has significant
16 effects on the strength of Continental's market
17 position and on its level of employment and its
18 contributions to the local economy.

19 Continental is like many other
20 industrial or commercial firms. It would benefit
21 from a reduction in Ameren's rates. And if the
22 Commission is inclined to reduce Ameren's rate for
23 service to Noranda, in fairness the Commission
24 should consider reducing the rate for Continental
25 as well.

1 Otherwise, if that is not the case,
2 the Commission should deny the relief requested in
3 Noranda's complaint entirely. Giving a particular
4 class of Ameren customer a rate reduction below its
5 cost of service and imposing that cost on other
6 customers is unfair, unduly discriminatory, unduly
7 preferential, and it should be rejected.

8 Continental is sponsoring the
9 testimony of a single witness, Mr. J. Scott Conroy,
10 its vice president of engineering and projects.
11 Forgive me, Judge Woodruff. This may have been a
12 matter I needed to take up preliminarily with you.
13 Because of his business schedule, having him
14 testify tomorrow would be a preference.

15 Last week I tried to poll the parties
16 on whether or not they had any objection to taking
17 his testimony tomorrow. It may be likely -- it may
18 be likely that he's going to testify tomorrow
19 because of the order of witnesses, but out of
20 caution I wanted to make sure that there was no
21 objection to taking him tomorrow. If I could do so
22 again.

23 JUDGE WOODRUFF: Anyone object to
24 taking Mr. Conroy tomorrow? I don't think there's
25 any likelihood he's going to be today.

1 MR. COMLEY: Thank you very much. On
2 another matter, I have no cross-examination for the
3 witnesses today, and like Mr. Curtis, would ask
4 leave from the Commission to be excused.

5 JUDGE WOODRUFF: You may be excused.
6 Wait for questions, however. Mr. Chairman.

7 CHAIRMAN KENNEY: Mr. Comley, thank
8 you. I want to ask you about OPC's analysis that
9 we could grant Noranda's rate increase and then
10 there's a burden that shifts to Ameren to marshal
11 evidence regarding a reallocation of the revenue
12 requirement conditions.

13 Do you agree with that analysis that
14 Ameren then bears the burden of demonstrating that
15 the revenue requirement deficiency should be borne
16 by the rest of the rate classes?

17 MR. COMLEY: Speaking for a client
18 that really doesn't want to have any rate increases
19 on its operating cost, and presuming that the
20 Commission comes to the conclusion that you've just
21 reached, that you would go ahead and enter the
22 relief that Noranda requests, I don't think the
23 Commission can raise the rates automatically. It's
24 not a self-effectuating type of increase.

25 I don't think the -- again, the word

1 a stale revenue requirement I think was used in the
2 remarks of the Office of Public Counsel, and I
3 think that is a very good point. All factors would
4 include the most recent revenue requirement and the
5 most recently updated material for revenue
6 requirement before the Commission can make a
7 decision on increasing anyone else's rates.

8 CHAIRMAN KENNEY: So then the
9 corollary to my first question is then could we
10 grant Noranda's request and leave all the other
11 rate classes' rates where they are, in effect
12 reducing Ameren's authorized ROE?

13 MR. COMLEY: I think the Commission
14 has authority to do that.

15 CHAIRMAN KENNEY: Okay. Thank you.

16 JUDGE WOODRUFF: Commissioner Stoll?

17 COMMISSIONER STOLL: No questions.

18 JUDGE WOODRUFF: Commissioner Kenney?

19 COMMISSIONER W. KENNEY: No

20 questions.

21 JUDGE WOODRUFF: Commissioner Hall?

22 COMMISSIONER HALL: No questions.

23 JUDGE WOODRUFF: Commissioner Rupp?

24 COMMISSIONER RUPP: I was trying to
25 write down some of the things you were saying.

1 Probably it's in your testimony. What's the annual
2 cost to your plant if the request was granted?

3 MR. COMLEY: We haven't got that
4 information in there. If the request is granted,
5 we don't know how much our rates would go up. So
6 we haven't calculated that. So that's not a
7 calculation in the testimony, Commissioner.

8 COMMISSIONER RUPP: Thank you.

9 JUDGE WOODRUFF: I have one quick
10 question. Has Continental Cement been aligned with
11 MIEC in earlier cases?

12 MR. COMLEY: I don't think so. I'm
13 not clear on that, Judge Woodruff. I'll find out,
14 but I don't think it has been with MIEC.

15 JUDGE WOODRUFF: Just a matter of
16 curiosity. Thank you.

17 Now we'll move to Ameren Missouri.

18 MS. TATRO: Thank you, Judge. Good
19 morning, Commissioners. Commissioner Rupp, I'm not
20 sure that I've been in front of you before, but my
21 name is Wendy Tatro, and I'm an attorney for Ameren
22 Missouri. So nice to be in front of you.

23 You know, when Ms. Vuylsteke gave her
24 opening, she accidentally characterized Noranda's
25 request as a request, but she was actually right

1 because it is a rate increase for every single
2 Ameren Missouri customer except for Noranda, which
3 is interesting. This request is unique in the
4 history of the Missouri Public Service Commission,
5 at least that I can find.

6 Noranda wants you to grant them a
7 highly discounted and subsidized electric rate for
8 ten years with no fuel adjustment charges and
9 future rate case increases to be capped at
10 2 percent. Unprecedented.

11 Now, Noranda freely admits that this
12 subsidized rate is not based on any cost of service
13 study. They admit that this subsidized rate is
14 significantly below the class cost of service study
15 that their own witness supported in Ameren
16 Missouri's last rate case. That's Mr. Brubaker.

17 Instead, the only basis for their
18 request is Noranda's claim of financial need.
19 Noranda has calculated what it wishes it were
20 paying for electricity and is asking you to set the
21 rate at that level.

22 Now, you should be aware that Ameren
23 Missouri's opposition to this request is not made
24 lightly. We have great sympathy for the employees
25 of Noranda. We do not dispute that the Noranda

1 facility contributes in a significant and positive
2 manner to the economy of southeast Missouri and
3 even to the neighboring states. We attended those
4 public hearings. It is clear that the employees
5 depend on Noranda.

6 The question in this case is not
7 nearly as narrow as Noranda wants it to be. It is
8 not simply whether Noranda has a financial need for
9 a lower power rate or whether it would close the
10 smelter without it, although there will be evidence
11 to show that there are substantial questions about
12 the truth of both of those claims.

13 The question is also, even if they do
14 have financial problems, how did those problems
15 arise? The evidence will show that Noranda and its
16 controlling shareholder Apollo put Noranda in the
17 position that it is in today and, having done so,
18 they now want Ameren Missouri's other 1.2 million
19 customers to bail them out.

20 And even if Noranda has a significant
21 problem, whether it's their own fault or not, it
22 doesn't mean that the Missouri Public Service
23 Commission is the appropriate venue at which to
24 seek relief.

25 Nor does it mean that your sympathy

1 for Noranda's employees should cause you to ignore
2 your concern for and obligations to the other
3 customers of Ameren Missouri, for if a subsidy is
4 allowed, it is Ameren Missouri's other customers
5 who will ultimately bear that burden.

6 Let's start with the questions at law
7 that are before you. Does this Commission have the
8 legal authority to grant Noranda the subsidized
9 rate it's requesting? Commissioners, you've been
10 placed in a difficult situation, having had Noranda
11 appeal to your sympathies while asking you to
12 provide them rate relief that's not possible under
13 Missouri law. This is something you should not
14 have been asked to decide.

15 I expect that each one of you has a
16 well-meaning desire to see the jobs of Noranda's
17 employees preserved regardless of whose fault it is
18 that the employees may be working for a company
19 whose financial condition is less than optimal.

20 But this body is not empowered to
21 grant the relief requested in this case because the
22 subsidized rate that Noranda is requesting has
23 absolutely no basis and any difference in how
24 Ameren Missouri serves Noranda as compared to how
25 it serves other customers.

1 No doubt about it, there are
2 differences, but Noranda doesn't use Ameren
3 Missouri's distribution system, for example, but --
4 and this is a very important point -- those
5 differences have already been accounted for in
6 Noranda's current cost-based rates.

7 And the law tells you that the rate
8 differences must be based on differences in the
9 character of service that the utility provides the
10 customer. This is a long-held and established law.
11 In 1931, the Supreme Court held a water rate is
12 unduly discriminatory, and they pointed out that it
13 was because there was no cost of service difference
14 upon which to base the different rate, violating
15 the principle of equality.

16 The court said, that principle of
17 equality does forbid any difference in charge which
18 is not based upon difference in service and, even
19 when based upon difference in service, must have
20 some reasonable relation to the amount of
21 difference and cannot be so great as to produce
22 unjust discrimination.

23 So, Commissioners, you can believe
24 every word of Ms. Vuylsteke's opening. You can
25 believe every word of Noranda's CEO Kip Smith's

1 testimony. You can believe that Noranda is on the
2 verge of laying off workers. You can believe that
3 Noranda's smelter faces a substantial risk that it
4 will eventually be forced to be closed. You can
5 believe it all. And you can even desire to help
6 Noranda and its employees and the Bootheel region
7 of this state. But even if everything Mr. Smith
8 testifies to is true, the place to help Noranda's
9 employees is not at the Missouri Public Service
10 Commission.

11 If, as Noranda witness Dr. Haslag
12 contends, Noranda is an important economic engine
13 for the state, then the state as a whole should be
14 helping Noranda, if it truly needs the help and if
15 our elected officials at the Legislature determine
16 that such help should be given.

17 The irony of this request is that a
18 very significant number of people who Noranda says
19 benefit from its presence are not being asked to
20 pay one dime of the subsidy that Noranda is
21 seeking. Those are the folks who live in southeast
22 Missouri but who are served by cooperatives and
23 municipal utilities rather than by Ameren Missouri.

24 The Commission's obligation in all
25 cases is to set rates that are just and reasonable.

1 The process of setting rates occurs like this: The
2 Commission first determines a revenue requirement,
3 which means it determines a level of revenues
4 designed to recover the utility's expected
5 reasonable expenses and allowed an opportunity to
6 earn a reasonable return on its prudent and useful
7 investments in assets used to provide utility
8 service.

9 The Commission then determines rate
10 design, which means it determines how much of the
11 revenue requirement should be collected from the
12 utility's various rate classes using a class cost
13 of service study to allocate the costs to each
14 class, making sure that the difference in rates has
15 a basis in difference -- in the differences in the
16 character of service the utility is providing to
17 different groups of customers.

18 The class cost of service study takes
19 all of the utility's many rate base and expense
20 items and segregates them by function, whether that
21 be production, transmission or distribution. Then
22 the functionalized costs are classified by what
23 aspect of the customers' need drives the cost
24 incurrence. And classification variables include
25 the number of customers in a class, customer

1 demands, customers' total energy consumption, et
2 cetera.

3 Finally, the class cost of service
4 study allocates the functionalized and classified
5 costs to the customer classes by some measure -- we
6 typically call that an allocation factor -- that
7 best represents or estimates the cause of each
8 cost.

9 The subsidization request before you
10 is based upon one factor and one factor alone, and
11 that's Noranda's alleged financial situation.
12 Noranda's proposal in this case has the rate design
13 process backwards. It starts by determining what
14 rate works best for it and spreads the remaining
15 revenue requirement amongst the other customer
16 classes.

17 Missouri law prohibits, and you've
18 heard this already, forbids granting undue or
19 unreasonable preference to any person or
20 corporation. This is often referred to as not
21 allowing undue discrimination.

22 This does not mean the Commission
23 cannot discriminate between classes of customers at
24 all, but it can't unduly discriminate. And as I
25 noted earlier, in all cases there must be a basis

1 for the difference in the rate, and it must relate
2 to some difference in the character of service that
3 the utility is providing.

4 In this case, Noranda wants you to
5 look at its financial condition and rely upon that
6 as the basis for an unduly discriminatory rate that
7 they seek, but the law says Noranda's financial
8 condition is not the issue.

9 The real question is the impact of
10 this subsidization request upon the rest of Ameren
11 Missouri's customers. It is they who will suffer
12 the undue discrimination.

13 You must consider the evidence Ameren
14 Missouri has provided through the testimony of
15 Mr. Matt Michels that demonstrates its customers
16 will be worse off by hundreds of millions of
17 dollars with Noranda paying \$30 a megawatt hour
18 with no FAC and future rate increases capped at
19 2 percent for ten years than customers would be if
20 Noranda left the Ameren Missouri system. The Staff
21 testimony of Sarah Kliethermes reaches much the
22 same conclusion.

23 Now, Noranda points out that other
24 states have used special electric rates in order to
25 provide assistance to aluminum smelters in their

1 state. Of course, all those examples occurred in a
2 different state, which likely have different
3 statutory authorities. And as was pointed out by
4 the testimony of Ameren Missouri witnesses Robert
5 Mudge and Terry Jarrett, before coming to their
6 commissions several of these smelters went to their
7 legislature and obtained specific enabling
8 legislation which preceded the approval of those
9 special rates. Missouri has no such legislation,
10 and Noranda has made no attempt to obtain it.

11 Now, I personally believe your
12 inquiry should stop here because what they're
13 asking you to do is illegal. But let's set those
14 legal issues aside for a moment and presume that
15 there is a legal avenue available to Noranda. Then
16 you are left with a huge policy decision.

17 Has Noranda provided sufficient
18 justification for you, Commissioners, to require
19 Ameren Missouri's residential, commercial and other
20 industrial customers to pay for part of the cost of
21 serving Noranda?

22 To properly answer that policy
23 decision, I believe there are several questions
24 which must be answered in the affirmative before
25 you can grant relief to Noranda. The first three

1 will address facts of the case, and the fourth
2 points to the inevitable policy impact that your
3 decision will implicate.

4 First, is Noranda truly facing a dire
5 financial crisis? Second, if so, is that financial
6 crisis outside of Noranda or Apollo's control?
7 Third, if the financial crisis is outside of
8 Noranda and Apollo's control, is it fair to place
9 the burden to solve their financial problems solely
10 upon Ameren Missouri's customers?

11 And the fourth and final question is,
12 should the Commission even embark on a new policy
13 of setting preferred electric rates based upon a
14 customer's ability to pay?

15 So let's start with the first
16 question. Is Noranda truly facing a dire financial
17 crisis? Well, Noranda's testimony certainly paints
18 a dire picture, and the public hearings demonstrate
19 they have convinced their employees that their jobs
20 are at risk.

21 There will be a lot of arguments
22 about this and a lot of evidence in the record for
23 you to sort through, but let's focus on one area,
24 and that's the question of whether Noranda is
25 facing a liquidity crisis.

1 Kip Smith's direct testimony mentions
2 liquidity 21 times, including using phrases such as
3 liquidity challenges and insufficient liquidity.
4 His surrebuttal uses the term 14 times, using the
5 phrase liquidity crisis three times, significant
6 liquidity issues twice and dire liquidity issues
7 once. And I think if I counted correctly,
8 Ms. Vuylsteke used the term eight times in her
9 opening. It's certainly a theme of their case.

10 But as the testimony of Mr. Mudge
11 points out, the picture Noranda has put before you
12 is a very different one from the picture presented
13 to the investment community around the same time as
14 they made this filing and since then. It is also
15 very different than the one presented to Noranda's
16 board.

17 So let's talk about that timeline.
18 This complaint case was filed February 12th, 2014.
19 On January 31st, 12 days prior to the filing,
20 Noranda made a presentation to Moody's Investor
21 Services. Now, liquidity was mentioned but only in
22 a positive manner. Nothing was said to indicate
23 any type of liquidity crisis.

24 That entire presentation is available
25 to you as Schedule RSM-1HC to Mr. Mudge's

1 testimony. It's confidential, so I can't read you
2 anything out of it without going in-camera, and I
3 don't desire to do that today. But I urge you to
4 read that or to at least read the excerpts that are
5 contained on page 13 of Mr. Mudge's rebuttal
6 testimony.

7 These quotes paint a picture that is
8 180 degrees different from the story presented in
9 Mr. Smith's direct testimony and the story
10 Ms. Vuylsteke told you this morning. Remember,
11 these statements were made 12 days prior to this
12 filing.

13 Next, February 19th, seven days after
14 filing this complaint, Noranda held an earnings
15 call. On that call, Noranda stated it had a solid
16 liquidity position of \$196 million at the end of
17 2013. There's a second earnings call on
18 April 23rd in which Noranda reported \$191 million
19 in liquidity.

20 There was a question asked about the
21 expectations for liquidity at the end of 2014, and
22 the person was assured by Noranda's CFO that
23 Noranda, quote, wasn't, quote, seeing any material
24 changes unless there's something that was
25 unexpected.

1 Then May 30th, just a month after the
2 second investors call, Noranda filed surrebuttal in
3 this testimony, and again Mr. Smith in his
4 surrebuttal attempts to sound the alarm by noting
5 that Noranda has consumed \$46 million in cash since
6 the filing of the case.

7 What he doesn't mention and what the
8 testimony will show in this case is that Noranda
9 actually has more liquidity after the first four
10 months of this year than it did when the year
11 started.

12 He further doesn't mention, and what
13 testimony will show, that Noranda's financials were
14 reduced during the first quarter because of unusual
15 and extreme weather. Otherwise, Noranda would have
16 actually improved its liquidity even further this
17 year, all the while paying its current cost of
18 service based rates for electricity.

19 And in suggesting to you that things
20 have gotten worse for Noranda, Mr. Smith fails to
21 mention, but the evidence will show, that in fact
22 Noranda is ahead of its plan in both cash and
23 liquidity for the first four months of this year.

24 Now, in Mr. Smith's surrebuttal, he
25 responded to Mr. Mudge's testimony and he said,

1 Noranda has always been honest and transparent with
2 the Commission, Moody's and the public.

3 Commissioners, far be it from me to
4 doubt Mr. Smith's statement, but the Commission has
5 to ask itself tough questions when faced with these
6 diametrically opposed statements. After all, the
7 phrases liquidity crisis and solid liquidity
8 positions don't have the same meaning, and I don't
9 know how both can be true when voiced within the
10 same time frame.

11 Mr. Smith's surrebuttal explanation
12 of these seemingly diametrically opposed statements
13 is to explain that the Moody's presentation used
14 CRU projections while the financial model which
15 produced the results that was used on the earning
16 calls used price inputs from the LME forward curve.
17 He explains that the CRU price is an estimate, a
18 projection, while the LME reflects a price at which
19 a transaction could be made on that date. So
20 they're very different things, he assures you.

21 Well, accepting his explanation as
22 true, does that provide you with any confidence
23 that the truer scenario is the crisis scenario?
24 Noranda is reporting two different numbers to two
25 different audiences, and it just happens to use the

1 scenario that best fits the story for each audience
2 at that time. Whether or not there's a liquidity
3 crisis at Noranda is far from clear.

4 The second question, is Noranda
5 face -- if Noranda is facing a dire financial
6 situation, is that financial crisis outside of
7 Noranda and Apollo's control?

8 To put this in regulatory language
9 that we're all more familiar with, if imprudent
10 decisions or bad management decisions led to
11 Noranda's current economic situation, then even if
12 you have the power to subsidize them, they would
13 not be deserving of a financial subsidy from Ameren
14 Missouri's other customers.

15 I want to take you on a short walk on
16 the path of history. Hopefully you can see this.
17 Now, Apollo, according to its website, is one of
18 the world's largest alternative investment
19 managers. They're headquartered in New York. They
20 manage \$159 billion in assets worldwide, and they
21 acquired Noranda on May 18th, 2007 for
22 \$1.165 billion. Now, of that \$1.165 billion, they
23 paid 214.2 million, which is represented right
24 there on this chart, which by the way this is in
25 Mudge's testimony as Table 9, I believe. So they

1 paid \$214.2 million, and the rest was financed by
2 debt secured by Noranda's assets.

3 Then 25 days later -- everything
4 happens very fast. 25 days later, there was a
5 dividend paid of \$214.2 million. Apollo, which
6 controlled Noranda's board at that time, caused
7 Noranda to borrow 220 million, using that to pay
8 the dividend, a special dividend back to Apollo.

9 So at this moment, just 25 days after
10 they had acquired the interest in Noranda, Apollo
11 controlled the company. It owned more than half of
12 the stock, and it had not one dime of its
13 investment at risk.

14 But the story continues. In June of
15 2008, Apollo caused Noranda to pay yet another
16 large dividend, and at this time Apollo received
17 \$100.7 million. So June of 2008, Apollo had no
18 risk and had already realized 150 percent return on
19 its investment in Noranda.

20 You can see there are additional
21 investments -- or dividends that were paid. You
22 can see they sold stock and ultimately got
23 \$359.70 million from Noranda. So since that
24 initial investment, which turned out to be zero,
25 Apollo's received 422.8 million in dividends,

1 \$31 million in management fees, and has sold off
2 stock for \$151.1 million. That's \$360 million in
3 Apollo's coffers. Yet Apollo still owns 34 percent
4 of Noranda, which is enough to still control the
5 board.

6 Imagine what Noranda's liquidity
7 would be if even half of these dividends had been
8 left in the company. Imagine what it would be if
9 Apollo had earned only 170 percent return instead
10 of 340 percent return.

11 Now, Mr. Smith's surrebuttal
12 testimony characterized this whole discussion as a
13 red herring, but it's not. Now, Ameren Missouri is
14 not saying dividends are a bad thing. We pay them.
15 But our shareholders have billions of dollars of
16 equity invested in our company.

17 And as Mr. Smith says, paying
18 dividends supports access to the capital markets,
19 here the equity markets, and for Ameren Missouri it
20 has done just that. For Apollo, it hasn't
21 supported a dime of equity investment.

22 The point here is that Apollo and
23 Noranda have made their choices, and those choices
24 have left Noranda burdened with debt. Its
25 debt/equity ratio is 87 percent, which today

1 require it to pay nearly \$50 million a year in
2 interest. Yet, at the same time Noranda's here
3 telling you it needs \$50 million a year from Ameren
4 Missouri's customers because it lacks sufficient
5 liquidity.

6 And not only has Apollo done nothing
7 but profit, but prospectively it can only profit
8 from Noranda because it doesn't have any money at
9 risk. It doesn't have a dime at risk since a month
10 after they purchased the initial stock.

11 Noranda's controlled by a highly
12 sophisticated private equity firm. Its current
13 liquidity and overall financial circumstances are
14 the product of many factors far removed from its
15 electric bill.

16 The truth is, Apollo has depleted
17 Noranda's cash reserves and loaded it up with debt.
18 If that money, hundreds of millions of dollars
19 hadn't been bled away from Noranda, if those loans
20 hadn't been undertaken, what financial condition
21 would Noranda be in today?

22 If Noranda doesn't have enough cash
23 on hand, the \$442 million in dividends are probably
24 the reason why. If Noranda has exhausted its
25 ability to borrow, the massive loans to pay for the

1 initial purchase and to pay those early dividends
2 are probably the reason why, not Ameren Missouri's
3 electric rates.

4 So why hasn't Apollo reinvested money
5 back into Noranda? Why must that subsidy come from
6 the hardworking people of Missouri rather than from
7 a hedge fund that only profits from Noranda's
8 continued existence?

9 Third question. Even if the
10 financial crisis is outside of Noranda or Apollo's
11 control, is it fair to place the burden to solve
12 their financial problems upon Ameren Missouri's
13 customers alone?

14 Commissioners, we really should put
15 Noranda's request into honest terms. Their request
16 is that Ameren Missouri's customers, including
17 those that lived on fixed or low income, pay more
18 for their electricity so that Noranda and Apollo
19 can have more profits. That is absolutely
20 Noranda's request. And is it really fair to ask
21 Ameren Missouri's customers to shoulder this burden
22 and to shoulder this burden alone?

23 This is an enlargement of
24 Exhibit WRD-2 to the testimony of Ameren Missouri
25 witness Bill Davis. It's kind of hard to see from

1 far away, so I apologize, but it's a map of
2 Missouri. The blue dots represent the density of
3 households in Ameren Missouri's service territory,
4 and clearly the majority of Ameren Missouri's
5 customers are located here, which is the St. Louis
6 region. Noranda is located down here in southeast
7 Missouri.

8 As Mr. Davis testified, 72 percent of
9 Ameren Missouri's customers are located in the
10 St. Louis metropolitan area. That means the City
11 of St. Louis, Jefferson County, Jefferson County
12 and St. Charles County.

13 Of Ameren Missouri's 1.2 million
14 electric customers, only 39,000 are in the Bootheel
15 region. That's only 3 percent of Ameren Missouri
16 customer base. So Noranda's request asks
17 97 percent of Ameren Missouri's customers who
18 aren't located by the Noranda plant to subsidize
19 them under their proposal.

20 Now, I realize Noranda claims the
21 entire state benefits from Noranda's continued
22 operation, but Noranda's not asking the entire
23 state to subsidize its rates. The residents of
24 Kansas City aren't paying anything. Residents of
25 Columbia, where Dr. Haslag works, aren't paying to

1 subsidize Noranda's rates. Instead, Noranda's
2 asking the City of St. Louis, St. Louis County,
3 Jefferson County and St. Charles County to
4 subsidize its rates alone.

5 There is no reason why one portion of
6 the state should shoulder this burden. It isn't
7 equitable and it's bad policy.

8 So that brings me to my fourth and
9 final question. Should the Commission embark on a
10 new policy of setting preferred electric rates
11 based on a customer's ability to pay?

12 Mr. Jarrett and Mr. Davis both
13 testify that the traditional way of setting rates
14 in Missouri is to base them generally upon a class
15 cost of service study. Granting Noranda's request
16 in this case would be a radical departure from that
17 process. Are you ready to make that change?

18 Now, this next statement shouldn't
19 come as a surprise to you, but you do not regulate
20 Noranda. So you can't make Noranda do anything,
21 nor can you prevent them from doing anything. If
22 you grant this request and two months later Noranda
23 issues a notice to lay off half of its workforce,
24 there's nothing you can do to prevent that layoff.

25 If you grant this request and Noranda

1 decides not to invest the \$100 million in capital
2 improvements that are discussed in Mr. Smith's
3 testimony and instead dividends that money up to
4 Apollo, there's nothing you can do. You're going
5 to be raising rates for every one of Ameren
6 Missouri's other customers without any way to
7 ensure that those Noranda employees who testified
8 before you keep their jobs.

9 Now, can you go back later and change
10 the rate? Probably. But we know that process
11 takes time, and in the meantime, Noranda profits.

12 There's another longer-term and
13 perhaps bigger impact on the decision to grant
14 Noranda's request. So, Commissioners, you have to
15 ask yourself, are you ready for the perhaps
16 unintended but very real consequence of setting
17 rates on a customer's ability to pay?

18 If you turn away from using the
19 traditional cost of service basis, there will be a
20 practical effect. If you go down this path, if you
21 cross this Rubicon, there's going to be a long line
22 of customers asking for the same preferential
23 treatment.

24 What will Ameren Missouri's bill look
25 like? For those of you that can see this, this is

1 a mock of Ameren Missouri's bill.

2 We've already seen Continental Cement
3 saying, hey, if you give this to Noranda, I'd like
4 it, too. And Noranda's not the only company in
5 Ameren Missouri's service territory that's hurting
6 financially. We have residential customers who are
7 struggling to pay their bills. You hear from them
8 at every public hearing.

9 So what's the difference between
10 those customers and Noranda? Is it really just
11 size? Is it the fact that Noranda's willing to pay
12 for multiple attorneys from Bryan Cave to represent
13 them? Is that the standard? The loudest company
14 receives the bailout?

15 Look at Continental Cement's
16 testimony sponsored by Mr. Conroy. You just heard
17 the opening statement from their attorney. He
18 talked about how important they are to that region
19 of the state. Do they deserve a subsidized rate?
20 And if not, why not?

21 How many employees do they have to
22 employ? How large does their electric usage have
23 to be in order to qualify for similar treatment?
24 And what other big business would qualify?
25 Monsanto? Enterprise? Anheuser Busch?

1 And, Commissioners, what are you
2 going to say to the mom and pop corner shop who
3 tells you they can't pay their bills and would like
4 a reduced rate? Are those smaller customers not
5 important enough to get a special rate? Is it just
6 for businesses? What about public school
7 districts? What about charitable organizations?
8 Then who's left to pay the difference? Or are you
9 going to say that only Noranda is too big to fail
10 in the state of Missouri?

11 There are other complications.
12 There's the reality that your staff will have to
13 investigate these claims and determine who's in
14 true financial need and who is not. Do you have
15 the staff with the skill and time to investigate
16 and adjudicate such claims?

17 Former Commissioner Terry Jarrett
18 foresaw this risk when he filed rebuttal testimony
19 on our behalf. Using affordability as a criteria
20 for setting rates is not how rates are set in the
21 state of Missouri. Instead of setting just and
22 reasonable rates, which is your statutory
23 obligation, you'll be picking winners and losers.
24 You'll be pursuing social policy without the
25 guidance of the Legislature.

1 Not that you don't have a role in
2 social policy. This Commission encourages
3 utilities to engage in energy efficiency, but why
4 do you do that? Because there's a statute that
5 tells you, the policy of the state is to encourage
6 energy efficiency.

7 Setting new social policy isn't your
8 role, and Noranda shouldn't be asking you to make
9 this choice. They should have gone to the
10 Legislature for assistance and let the entire state
11 bail them out if that's what the entire state
12 deemed important to do.

13 Now, around a year ago this
14 Commission took comments on the idea of
15 establishing a low-income customer rate. MIEC, of
16 which Noranda is typically a member, submitted
17 legal analysis arguing it would be inappropriate
18 for this Commission to use economic need as a basis
19 for setting a rate for low-income customers. And
20 further, they said the Legislature would be the
21 appropriate venue for such action.

22 Their brief stated, the affordability
23 of utility rates is an income problem that all
24 Missourians must address and solve, but it cannot
25 be solved by changing the price of a particular

1 good or service, whether that be groceries, rent or
2 utility service. The Legislature is best equipped
3 to address the issue of low-income assistance and
4 develop solutions for low-income Missourians. The
5 MIEC believes it is unwise and even
6 counterproductive to use the utility ratemaking
7 process to establish or implement social welfare
8 goals.

9 You see, even MIEC agrees with Ameren
10 Missouri, as long as the request isn't one being
11 put forth by their own members.

12 To put it simply, if this request is
13 approved, the history of the Missouri Public
14 Service Commission will change. You'll be known as
15 before Noranda or after Noranda, because this
16 Commission will have fundamentally changed the
17 process of setting rates in Missouri for the long
18 run detriment for utilities and for their customers
19 who can't afford to hire Bryan Cave to request
20 special treatment.

21 Before I close, though, I want to
22 address one question which kept coming up, and that
23 dealt with the Office of Public Counsel and
24 their -- two of the issues that they raise.

25 First was the burden of proof.

1 Noranda's the one with the request in this case.
2 The request is to get the lower rate. The request
3 is to move the rest of the costs equally amongst
4 other customers. That burden of proof is their
5 burden of proof the entire case. It does not shift
6 to Ameren Missouri. Ameren Missouri says stay
7 where we are. Now, the burden is upon the
8 individual or the company making the request. So
9 that is absolutely wrong.

10 But even more disturbing is the idea
11 that Ameren Missouri shareholders could have to
12 absorb this loss or that the revenue requirement of
13 the company could somehow be adjusted in this case.
14 Absolutely that can't happen, and that can't happen
15 for several reasons.

16 First of all, that is absolutely
17 single-issue ratemaking. In setting a revenue
18 requirement, you're required by law to consider all
19 relevant factors, and there's no testimony in this
20 case about a revenue requirement. Noranda is not
21 even making a statements that the revenue
22 requirement is too high. They just want to pay
23 less.

24 So you absolutely have to consider
25 all relevant factors, and you can't decrease Ameren

1 Missouri's revenue requirement. If you did so,
2 that would be a constitutional violation because
3 that would be confiscatory.

4 Ameren Missouri has the right to have
5 a reasonable opportunity to earn its revenue
6 requirement that was set in the last rate case
7 until such time as you change that revenue
8 requirement. So until you hear the earnings
9 complaint, you can't impact the revenue requirement
10 of Ameren Missouri. It is what it is, and it has
11 to be split amongst all of our customers.

12 And I submit to you Commissioners
13 that if you're struggling with finding a way to not
14 increase the cost to residential customers, small
15 commercial customers and other customers, then the
16 answer is don't grant them the request. It is not
17 to pile it upon the shareholders' backs of Ameren
18 Missouri.

19 I have -- I'm open for questions.

20 JUDGE WOODRUFF: Mr. Chairman.

21 CHAIRMAN KENNEY: Ms. Tatro, I think
22 you anticipated one of my questions. Let me just
23 put aside the legal argument that I understand
24 Ameren's threshold argument to be and ask about the
25 liquidity issue. Is it Ameren's position that

1 Noranda isn't suffering a liquidity problem or, if
2 it is, it's not -- it's their own fault?

3 MS. TATRO: I think Ameren has
4 questions about the liquidity question because
5 there are conflicting statements out there, and I
6 think the record will show that it's not clear at
7 this point that they are or aren't.

8 Whether or not it's their fault I
9 think is clear from the chart I had up here earlier
10 that shows the dividends that have been taken out
11 in the hundreds of millions of dollars just for one
12 shareholder group. That clearly would to me
13 indicate that imprudent, bad management and not
14 something that you should bail them out for.

15 CHAIRMAN KENNEY: Let me just ask
16 another question about what you just said just now
17 about the overearnings complaint, because I think
18 you're saying we can't make a determination about
19 the revenue requirement in this case because
20 there's no evidence about that. You seem to be
21 hinting that perhaps we could do that in the
22 overearnings complaint case.

23 MS. TATRO: I think originally,
24 Commissioner, we asked you to consolidate these two
25 complaints. So if you wanted to hold your decision

1 in this case until after the decision in the
2 revenue requirement case, I guess you could take
3 the two up together that way.

4 CHAIRMAN KENNEY: So we don't need to
5 wait until there's a complete rate case to make a
6 determination about what to do with Noranda's rate?
7 We could do that after the overearnings complaint
8 in July?

9 MS. TATRO: You could.

10 CHAIRMAN KENNEY: And then just one
11 final question. The case that you cited from 1934,
12 what's the citation for that?

13 MS. TATRO: I have that for you.
14 State ex rel Laundry versus PSC, 327 Mo 93, 1931.
15 And that case cites several other cases as well as
16 a United States Supreme Court case.

17 CHAIRMAN KENNEY: Thanks. I don't
18 have any other questions.

19 JUDGE WOODRUFF: Commissioner Stoll?

20 COMMISSIONER STOLL: Thank you.
21 Excuse me. Thank you again. And I think you
22 mentioned that if we would grant this request, that
23 other corporations may come to us wanting similar
24 relief. In reading 91.026 state statute, it
25 relates -- excuse me a second.

1 MS. TATRO: Absolutely. I'm going to
2 grab a water as well.

3 COMMISSIONER STOLL: The statute
4 references aluminum smelting facilities. I believe
5 this was passed in 2003. And in paragraph 3, it's
6 notwithstanding provisions of 91.025, so on and so
7 forth, any provider of such electric power and
8 energy and delivery services whether or not
9 otherwise -- let me skip through that. Any
10 transactions or contracts pursuant to this section
11 for electric power and energy and delivery services
12 shall not be subject to the jurisdiction of the
13 Commission with regard to the determination of
14 rates. Are you familiar with that?

15 MS. TATRO: I have read that statute.
16 I don't have it in front of me.

17 COMMISSIONER STOLL: What does it
18 mean? What does that mean?

19 MS. TATRO: Can I grab it from you?

20 COMMISSIONER STOLL: Sure. It seems
21 that it gives Noranda the power to negotiate
22 directly with any provider of electricity.

23 MS. TATRO: Right. When this statute
24 was passed, Noranda could have picked any electric
25 supplier that it wanted. It could have stayed on

1 the open market. It didn't have to have a utility
2 and become part of someone's certificated service
3 territory. So they have the right to do that, and
4 they made their choice. They wanted Ameren
5 Missouri. I think they might have been on the open
6 market for a while, and then eventually they came
7 to Ameren Missouri and became our customer, and
8 that was a proceeding in front of you.

9 I don't think the statute is saying
10 that after they became part of our certificated
11 service territory, that you have no jurisdiction
12 over their rates. I don't think that's what it
13 says.

14 COMMISSIONER STOLL: Yeah. That's
15 what I was wondering, if they still had the ability
16 to come to Ameren Corporation to seek rate relief
17 or not. I was uncertain about that.

18 MS. TATRO: I mean, I think the
19 statute would allow them, subject to two things,
20 going back picking a different supplier or
21 purchasing from the open market. They'd have to --
22 we have a contract that would have to be dealt
23 with, terminated, and we have a certificate that
24 requires that we serve them, so you'd have to
25 release them from -- or release us from the

1 obligation to serve them, but then they could take
2 advantage of that again.

3 I mean, they've been to the
4 Legislature before, and it worked for a while and
5 it's not working again, and now they want something
6 more.

7 COMMISSIONER STOLL: Okay. I think
8 you've answered my question. Thank you.

9 MS. TATRO: You're welcome.

10 JUDGE WOODRUFF: Commissioner Hall?

11 COMMISSIONER HALL: No.

12 JUDGE WOODRUFF: Commissioner Rupp?

13 COMMISSIONER RUPP: Yes. Thank you.

14 When you were pulling up your chart with the
15 dividends, the \$214 million dividend that took
16 place 25 days after Apollo, was that a special
17 dividend? Was that voted on by the board within
18 that period or was that dividend already scheduled
19 before the closing date of 5/18?

20 MS. TATRO: It is my understanding
21 it's a special dividend that was voted on by the
22 board, and the board was controlled by Apollo.

23 COMMISSIONER RUPP: And it was voted
24 on in the time frame of the 5/18 purchase?

25 MS. TATRO: I don't believe it was

1 scheduled prior to the first original 5/18
2 purchase.

3 COMMISSIONER RUPP: Thank you. And
4 then the 100 million and 67 in 2008, was that also
5 a special dividend that was voted on the board or
6 was that a regularly scheduled dividend?

7 MS. TATRO: I'm not sure of that one,
8 so I don't want to answer and mislead you. I'm
9 certain that Mr. Mudge can answer that question for
10 you.

11 COMMISSIONER RUPP: I would like when
12 he presents, to break down those dividends to see
13 which for all shareholders, which were special
14 dividends. And I would assume that you would not
15 be -- or would it be -- let me ask this. Is it
16 Ameren's position that, due to the financial
17 difficulties of Noranda at that time, that they
18 should have ceased paying all dividends until
19 they -- even normally scheduled dividends until
20 they had enough liquidity?

21 MS. TATRO: I think that's certainly
22 an option that ought to be considered. Ameren
23 Missouri has reduced its dividend in the past when
24 it was having issues. That's kind of appropriate
25 and prudent action for companies to take.

1 COMMISSIONER RUPP: And would
2 reducing a dividend or eliminating a dividend at
3 that time send signals to the market that there is
4 troubles and would eventually lead to downgrades or
5 things of that nature?

6 MS. TATRO: Well, that's part of what
7 has to be considered when you make a decision to
8 reduce or eliminate a dividend at the point in
9 time, right. There's probably some risk of that.
10 That's one of the considerations that has to take
11 into effect.

12 COMMISSIONER RUPP: But your witness
13 will address both those?

14 MS. TATRO: Mr. Mudge will be glad to
15 have that discussion with you, yes, and he is
16 eminently more qualified than I am.

17 COMMISSIONER RUPP: Thank you.

18 JUDGE WOODRUFF: Thank you very much.

19 MR. LOWERY: Judge Woodruff, if it
20 please the Commission, I wanted to try to answer
21 Commissioner Stoll's question a little more
22 specifically only because Ms. Tatro was not
23 involved in the case when Noranda came on our
24 system. It would just take just a minute if I
25 could have leave to do that.

1 JUDGE WOODRUFF: Go ahead.

2 MR. LOWERY: Commissioner Stoll, that
3 statute that you have there, Noranda is not being
4 served under that statute. That statute was
5 passed, and they could have chosen an electric
6 supplier outside the regulated space, so to speak,
7 had they wanted to do that.

8 As it turned out, we entered into an
9 agreement with them that they would become a
10 regulated customer. And under that agreement, they
11 waived their right to exercise their authority
12 under that statute for a term of 15 years, which
13 does not end until 2020.

14 So the only relevance of that statute
15 today is come -- upon proper notice, which is a
16 five-year notice that would have to be given five
17 years before 2020, they could sort of resurrect
18 their rights under that statute starting in 2020
19 and they could choose another supplier.

20 But other than that, that statute has
21 no applicability at this time either for Ameren
22 Missouri or for Noranda.

23 COMMISSIONER STOLL: Okay. So
24 Noranda negotiated their rate with Ameren back in
25 2003 or '04?

1 MR. LOWERY: The case was filed in
2 late 2004 and was decided by the Commission based
3 on a stipulation in the spring of 2005. And yes,
4 there was an initial negotiated rate that was
5 supported by evidence in the case and ultimately
6 was agreed upon by the parties in the case that
7 went into effect on May 31st, 2005, I believe. And
8 after that, Noranda's just like any other customer.
9 You have jurisdiction over its rates, over the
10 rates it's paid, actually it's our rates and
11 indirectly over the rates that Noranda pays.

12 And again, the only exception to that
13 is if they give the proper notice, or if we do
14 actually, starting June 1, 2020, they could -- that
15 the rights under that statute could spring into
16 effect again and they could go elsewhere.

17 COMMISSIONER STOLL: Okay. So it
18 could be applicable again, and is that at -- did
19 you say that's at Ameren's notice or --

20 MR. LOWERY: It's a bilateral notice.
21 So if we believed it was the appropriate thing to
22 do to give that notice and have them leave our
23 system in 2020, then we would -- we would make --
24 we would give them the notice and then we would
25 come to you to essentially cancel the certificate

1 that today obligates them to take power from us and
2 obligates us to provide it to them.

3 COMMISSIONER STOLL: Okay. Thank you
4 very much.

5 JUDGE WOODRUFF: Thank you. All
6 right. That concludes the opening statements.
7 It's time for lunch. We'll take a lunch break now
8 and come back at 1:30.

9 (A LUNCH BREAK WAS TAKEN.)

10 JUDGE WOODRUFF: All right. Let's
11 come back to order, please. We're back from lunch,
12 and during the break Kip Smith has taken the stand.
13 Please raise your right hand.

14 (Witness sworn.)

15 JUDGE WOODRUFF: Thank you. You may
16 inquire.

17 KIP SMITH testified as follows:

18 DIRECT EXAMINATION BY MR. DOWNEY:

19 Q. Good afternoon. Would you please
20 state your name.

21 A. It's Layle K. Smith, and I go by Kip.

22 Q. And for whom do you work?

23 A. I work for Noranda Intermediate
24 Holding Corporation.

25 Q. And what is your position?

1 A. I'm the president and the CEO.

2 Q. **In front of you there should be a**
3 **number of documents, including your direct and your**
4 **surrebuttal testimonies. Do you see that?**

5 A. Yes, I do.

6 Q. **And I believe Exhibit 1 is your**
7 **highly confidential direct; is that correct?**

8 A. That's correct.

9 Q. **And Exhibit 2 is the public version**
10 **of your direct?**

11 A. That's correct.

12 Q. **And Exhibit 3 is the highly**
13 **confidential version of your surrebuttal testimony?**

14 A. That is correct.

15 Q. **And then Exhibit 4 is the public**
16 **version?**

17 A. That is correct.

18 Q. **Okay. If I were to -- first of all,**
19 **do you have any corrections to any of those**
20 **testimonies?**

21 A. I do not.

22 Q. **If I were to ask you the questions in**
23 **those testimonies today, would your answers be the**
24 **same?**

25 A. Yes, they would.

1 MR. DOWNEY: Okay. I would offer
2 Exhibits 1 through 4 and tender the witness for
3 cross.

4 JUDGE WOODRUFF: Exhibit 1, 2, 3 and
5 4 have been offered. Any objections to their
6 receipt?

7 (No response.)

8 JUDGE WOODRUFF: Hearing no
9 objection, they will be received.

10 (NORANDA EXHIBIT NOS. 1, 2, 3 AND 4
11 WERE RECEIVED INTO EVIDENCE.)

12 JUDGE WOODRUFF: And for
13 cross-examination, we would begin actually with
14 MIEC. I assume no cross.

15 MR. DOWNEY: No cross.

16 JUDGE WOODRUFF: For the retailers?

17 CROSS-EXAMINATION BY MR. SCHWARZ:

18 **Q. Good afternoon, Mr. Smith.**

19 A. Good afternoon, Mr. Schwarz.

20 **Q. Aluminum prices are listed on the**
21 **London Metal Exchange; is that correct?**

22 A. That's correct.

23 **Q. And they're stated in terms of**
24 **dollars per tonne, spelled t-o-n-n-e; is that**
25 **correct?**

1 A. That's correct.

2 **Q. Do you know how many pounds there are**
3 **in a tonne?**

4 A. 2,204.6 and some change, so it rounds
5 to 205.

6 **Q. Okay. So that if the price of**
7 **aluminum is stated at \$1,000 -- or \$1,800 per**
8 **tonne, that would work out to closer to 82 cents**
9 **than 90 cents; is that correct?**

10 A. Yeah. I think I'd be more
11 comfortable if I had a piece of paper and pencil to
12 do that, or a calculator.

13 **Q. All right. Well, the divisor --**

14 A. The divisor is \$2,204 and change.

15 **Q. Which is larger than 2,000?**

16 A. That's correct.

17 **Q. Okay.**

18 A. That's correct.

19 **Q. Okay. Just -- and they drive on the**
20 **wrong side of the road, too. Are you aware that I**
21 **listened in to your deposition last week?**

22 A. Yes, I am aware.

23 **Q. There was a lot of references to**
24 **Moody's. Can you identify what Moody's is for the**
25 **Commission?**

1 A. Moody's was and is a rating agency
2 that passes opinions on the quality of basically
3 companies for the purposes of rating their debts.
4 And this -- this matter concerned in my deposition
5 centered primarily around a presentation that we
6 gave to Moody's.

7 **Q. Do they also prepare outlooks for**
8 **various business sectors?**

9 A. They do.

10 **Q. I will show you what has been marked**
11 **as Exhibit 401 and ask if you recognize that.**

12 A. Yes, I do.

13 **Q. And can you identify that for the**
14 **Commission?**

15 MR. LOWERY: Your Honor, I'm going to
16 lodge an objection at this point. This document is
17 a document that's existed since December of 2013.
18 It's pretty clear that Mr. Schwarz's point here is
19 to point to adverse credit action on the part of
20 Moody's that's been taken with respect to Noranda.

21 Mr. Schwarz had an opportunity to
22 file rebuttal testimony and to have an expert and
23 actually have him testify about this document and
24 what it means. And this is exactly the kind of
25 situation I was talking about before. I believe it

1 violates the Commission's rules to friendly cross,
2 simply supplement the record, having not brought it
3 up in either direct or rebuttal testimony.

4 MR. SCHWARZ: Well, first of all, I
5 would suggest it's foundation for further
6 questions.

7 Second, I'm not aware of any rule of
8 the Commission that requires me to have a witness.
9 This is my first opportunity to have this
10 discussion with Mr. Smith, and I think that I
11 haven't offered it yet, but I certainly intend to,
12 so...

13 JUDGE WOODRUFF: I'll overrule the
14 objection. And generally on these issues of the
15 friendly cross-type issues, even if I ask or rule
16 upon them at the hearing to deny the objections,
17 you are free to renew your objections in your
18 briefs and argue it more fully there and the
19 Commission will consider that at that time.

20 MR. LOWERY: Am I to understand then
21 that we don't need to object to preserve the
22 objection?

23 JUDGE WOODRUFF: No. I think you do
24 need to object to preserve your objection.

25 MR. LOWERY: All right. Thank you.

1 JUDGE WOODRUFF: We'll proceed from
2 there.

3 BY MR. SCHWARZ:

4 Q. So what is Exhibit 401, for the
5 Commission?

6 A. This is in a Globals Metals Industry
7 industry outlook paper that they have written dated
8 as of December the 16th, 2013.

9 Q. Has Moody's issued a different
10 evaluation of the base metals industry since that
11 time?

12 A. Not that I'm aware of, no.

13 Q. Is it -- I mean, the report speaks
14 for itself, but is it fair to say that the report
15 is unenthusiastic about the prospects for price
16 increases for aluminum through 2018?

17 MR. LOWERY: Your Honor, I object on
18 the basis of hearsay, lack of foundation, and also
19 because I believe it violates the Commission's
20 rules on prefiling testimony.

21 JUDGE WOODRUFF: The document will
22 speak for itself, so I'll sustain the objection on
23 that basis.

24 MR. SCHWARZ: Very good.

25 BY MR. SCHWARZ:

1 **Q. Is Noranda's price expectations**
2 **consistent with that stated in the document?**

3 A. They are -- the price expectations
4 that we built into our model are actually a bit
5 higher than what are stated here by Moody's. For
6 aluminum they expect that in 2014 that they would
7 average about 80 cents a pound.

8 **Q. Show you what's been marked as**
9 **Exhibit 402 and --**

10 A. That's for the, by the way, the LME
11 price.

12 **Q. Yes. Can you identify what's been**
13 **marked as Exhibit 402?**

14 A. Yes. This is Moody's Investor
15 Service. It's a rating action. Moody's downgrades
16 Noranda's rating and outlook is stable.

17 **Q. So -- but it's stable at a lower**
18 **level, is that --**

19 A. That's correct, from CFR to B3,
20 and -- and then they go through in the first
21 paragraph and talk about the -- you know, the
22 various family of -- families of debt that we have
23 and how those were downgraded.

24 **Q. The report -- that report is**
25 **consistent with the sector report that was issued**

1 in the aluminum sector report issued in December?

2 A. Yes, it is.

3 Q. The downgrade report indicates that
4 in October of 2013 the board reduced -- Noranda's
5 board reduced the dividends from 4 cents to 1 cent
6 per share per quarter; is that correct?

7 MR. LOWERY: Your Honor, I object on
8 the grounds there's lack of foundation. The
9 document would speak for itself, and it's also
10 hearsay and violates the Commission's rules on
11 filing testimony.

12 MR. SCHWARZ: I'll withdraw the
13 question.

14 BY MR. SCHWARZ:

15 Q. What is Noranda's current quarterly
16 dividend?

17 A. It is 1 cent per share.

18 Q. On an aggregate annual basis, what
19 does that amount to?

20 A. Approximately \$2.7 million.

21 Q. What will be the dividend policy
22 while the -- assuming that Noranda gets the rate
23 that it seeks, what will be the dividend policy
24 while that rate is in effect?

25 A. I'm sorry. Can you repeat the

1 question?

2 Q. Assuming that Noranda gets the rate
3 that it's seeking here, what will the dividend
4 policy of Noranda be during the pendency as long as
5 that rate is effective?

6 A. At the present time, we have no plans
7 to increase our dividend.

8 Q. Does Noranda understand that Ameren's
9 other customers and its employees would view a
10 payout such as occurred in the past to be a breach
11 of faith?

12 A. Absolutely, yes.

13 Q. As far as setting a rate for ten
14 years, does Noranda understand that this Commission
15 cannot bind future commissions?

16 A. Yes, we do.

17 Q. Well, I have read your testimony and
18 I listened to the deposition last week and I will
19 ask you this: Does Noranda really have a liquidity
20 issue?

21 MR. DOWNEY: Judge, before you
22 answer, I think this is probably an appropriate
23 time to go in-camera. I believe the answer is
24 going to get into some pretty highly confidential,
25 proprietary financial information possibly.

1 JUDGE WOODRUFF: Mr. Schwarz, did you
2 want to proceed at this point with highly
3 confidential?

4 MR. SCHWARZ: I don't know what the
5 answer is.

6 JUDGE WOODRUFF: I don't either.

7 MR. SCHWARZ: But if it entails
8 highly confidential information, I think that we
9 should go in-camera.

10 JUDGE WOODRUFF: All right. Then
11 we'll need to go in-camera.

12 MR. DOWNEY: Your Honor, I'm kind of
13 guessing on cross-examination, so I'm going to
14 guess in favor of keeping confidential information
15 confidential.

16 JUDGE WOODRUFF: We will need to go
17 in-camera then. That means that anyone who does
18 not have authorization to be here, would include
19 the press, needs to leave the room and we will
20 cease the Internet.

21 AUDIENCE MEMBER: Judge Woodruff, do
22 you have a guess how long this will be?

23 JUDGE WOODRUFF: From my
24 understanding, they'll be in and out of highly
25 confidential most of the afternoon.

1 AUDIENCE MEMBER: I'm leaving my
2 power strip.

3 JUDGE WOODRUFF: We'll let you back
4 in to get it.

5 (REPORTER'S NOTE: At this point, an
6 in-camera session was held, which is contained in
7 Volume 6, pages 186 through 194 of the transcript.)

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1 JUDGE WOODRUFF: All right. The next
2 cross-examination then would be from Consumers
3 Council.

4 MR. COFFMAN: Let me know when we're
5 live.

6 JUDGE WOODRUFF: We do have it now.

7 CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. **Good afternoon, Mr. Smith.**

9 A. Good afternoon, Mr. Coffman.

10 Q. **I first would like to ask you about**
11 **the fuel adjustment clause, and looking at your**
12 **prefiled testimony, I'm not sure whether you**
13 **addressed that point directly. But is it your**
14 **understanding that part of the relief that your**
15 **company is asking for in this case is a complete**
16 **exemption from the fuel adjustment clause?**

17 A. Yes. That's correct.

18 Q. **And in your testimony when you talk**
19 **about a sustainable rate of \$30 per megawatt hour,**
20 **does that -- do you mean a \$30 rate without any**
21 **fuel adjustment clause obligation?**

22 A. Yes, that's correct.

23 Q. **Would you agree with me that the --**
24 **as a consumer of electricity, that the fuel**
25 **adjustment clause is not an ideal mechanism from a**

1 **consumer perspective?**

2 A. Yes, I would agree with you.

3 **Q. Has Noranda opposed Ameren's request**
4 **to have a fuel adjustment clause in the past?**

5 A. I'm just thinking, Mr. Coffman. The
6 clause I believe was approved before -- before I
7 became involved with Noranda or about that same
8 time. We have never been fond of it.

9 My hesitation is in the choice of the
10 word oppose. I don't believe we've had a legal
11 proceeding. I don't recall a legal proceeding
12 where we could oppose it, but we have taken issue
13 with and opposed the prudence of some of their
14 filings as part of, you know -- so in that manner,
15 yes, we have opposed them.

16 **Q. And evidence from your experts has**
17 **been the basis of prudence disallowance?**

18 A. Yes.

19 **Q. Correct?**

20 A. Yes.

21 **Q. And we thank you, other consumers**
22 **thank you for that. Would you agree with me the**
23 **clause is a risk-shifting mechanism?**

24 A. Yes, it is.

25 **Q. And in what way? Could you explain**

1 **from your perspective how?**

2 A. It allows -- because the prudency
3 review effectively happens after the -- an expense
4 is charged to the consumers, the risk of having to
5 prove that this is a prudent expense or a lawful
6 expense is transferred to the end of the process.

7 **Q. Would you agree with me that the risk**
8 **of volatility in fuel and purchased power is then**
9 **shifted under the current policy by 95 percent from**
10 **the utility to the consumer?**

11 A. Again, that risk is transferred from
12 the beginning of the process to the end, yes.

13 **Q. Are you aware of any past rate cases**
14 **where consumers have advocated for at least a 50/50**
15 **sharing instead of a 95 percent/5 percent sharing?**

16 A. Mr. Coffman, I'm not an expert on
17 this, but -- I wouldn't know any details of that.
18 I'm aware of it.

19 **Q. Would Noranda favor a fuel adjustment**
20 **clause that only passed 50 percent of the risk of**
21 **volatility as opposed to 95 percent on to your**
22 **company?**

23 MR. LOWERY: Your Honor, I'm going
24 object on relevance grounds, what the relevance of
25 a different fuel adjustment clause other than the

1 one that's in place today is in this case at least
2 escapes me.

3 JUDGE WOODRUFF: Your response?

4 MR. COFFMAN: I'm trying to get at
5 the motivation and importance of the clause to the
6 requested rate.

7 JUDGE WOODRUFF: I'm going to sustain
8 the objection. The continuation of the fuel
9 adjustment clause or the sharing mechanism is not
10 at issue in this case.

11 MR. COFFMAN: Well, as I understand
12 it, it is at issue whether or not there would be a
13 fuel adjustment clause that applied to this
14 customer, and --

15 JUDGE WOODRUFF: But the amount of
16 the fuel adjustment clause is not at issue.

17 BY MR. COFFMAN:

18 **Q. All right. Mr. Smith, in your**
19 **opinion, could Noranda achieve a sustainable**
20 **electric rate without being completely exempted**
21 **from the clause?**

22 **A.** In my opinion, Mr. Coffman, the rate
23 that we have selected, which did not include a fuel
24 adjustment clause, really is the rate that we need,
25 and we really focused on this being an

1 across-the-cycle rate. A big part of that being an
2 across-the-cycle rate just is the nature of our
3 business and making sure we had a rate that would
4 allow us to endure as the LME goes up and the LME
5 goes down.

6 But also that stability and the -- in
7 terms of how it impacts our access to capital
8 markets is really is really very, very important.
9 And so for us the rate that we really believe that
10 we need for across the cycle is a \$30 rate that is
11 stable and does not have the volatility and the
12 potential volatility of the clause.

13 Frankly, if we wanted instantaneous
14 relief, we'd be asking for a \$23 rate, because
15 right now that's what it would take to make us cash
16 neutral. But the reason why the rate is -- that we
17 requested the rate as we did is because of the need
18 for that stability.

19 **Q. But under your proposal, the other**
20 **customers would still be subject to the volatility**
21 **of the fuel adjustment clause?**

22 A. Yes. We're not seeking any
23 additional change to the rate design, other than
24 the rate that we requested.

25 **Q. Does Noranda have any input or**

1 **control over the fuel and purchased power practices**
2 **of the utility?**

3 A. No --

4 MR. LOWERY: I'm going to object, the
5 same objection, that I don't know how that's
6 relevant to this case either.

7 JUDGE WOODRUFF: I'll overrule that
8 objection. You can answer the question.

9 THE WITNESS: No, we do not.

10 BY MR. COFFMAN:

11 Q. **And I'm curious about the line of**
12 **questioning that came before me in your questions**
13 **with Mr. Schwarz, and he asked you about**
14 **discussions that you had with Ameren Missouri prior**
15 **to filing this case. And to your knowledge, can**
16 **you tell me the nature of conversations that were**
17 **not -- were not settlement negotiations that were**
18 **proprietary?**

19 A. I would need to confer with my
20 counsel.

21 Q. **In reviewing the other so-called load**
22 **retention rates that have been litigated in other**
23 **states -- and I assume you've reviewed those**
24 **various cases?**

25 A. Our experts Henry Fayne and Maurice

1 Brubaker and Jim Dauphinais have, and I have read
2 their testimony.

3 Q. And as you noticed that -- in those
4 other cases that there was a different level of
5 opposition or non-opposition from the utility
6 company itself in those jurisdictions?

7 A. I don't recall, Mr. Coffman.

8 Q. Should I direct those questions to
9 Mr. Fayne?

10 A. Please.

11 MR. COFFMAN: I think that's all I
12 have. I appreciate your answers.

13 JUDGE WOODRUFF: Thank you,
14 Mr. Coffman.

15 Mr. Schwarz, I noticed you mentioned
16 a couple of documents. You did not offer them.

17 MR. SCHWARZ: Yes. I would at this
18 stage offer Exhibits, I think it's 401 and 402 --

19 JUDGE WOODRUFF: That's correct.

20 MR. SCHWARZ: -- into evidence.

21 JUDGE WOODRUFF: 401 and 402 have
22 been offered. Any objections?

23 MR. LOWERY: I object on the grounds
24 of hearsay, lack of foundation, and also because it
25 violates, in my view, the Commission's rule on

1 prefiling testimony.

2 JUDGE WOODRUFF: Objections are
3 overruled. They will be received.

4 (MRA EXHIBIT NOS. 401 AND 402 WERE
5 RECEIVED INTO EVIDENCE.)

6 MR. SCHWARZ: I will offer 400. It's
7 just a schematic of an electrical system. It is
8 found in the Commission records online. It's from
9 a June 2007 roundtable that Warren Wood put on when
10 he was still on Staff, and it's publicly available
11 online. I'd ask the Commission to take official
12 notice of it and would offer it at this time.

13 JUDGE WOODRUFF: We can take official
14 notice of it. I'll accept it as an offer. Does
15 anyone object to its receipt?

16 MR. LOWERY: I actually don't object
17 if its being officially noticed, because I think
18 that's an appropriate way to put it in the record.
19 But I don't really see any other way. There's no
20 foundation and it's hearsay otherwise.

21 JUDGE WOODRUFF: Is it in EFIS, you
22 said, part of the Commission record?

23 MR. SCHWARZ: If you go to the
24 Commission website, go to electric, at the bottom
25 of the page it says roundtables and presentations.

1 It's the last roundtable and presentation.

2 MR. LOWERY: I'll actually stipulate,
3 your Honor, that the same or very similar diagram
4 has been in evidence as part of Will Cooper's
5 testimony in numerous rate cases. So I would not
6 object to the Commission taking official notice
7 of -- Mr. Schwarz can probably find the right case
8 number and complete the record.

9 JUDGE WOODRUFF: Okay. It will be
10 received into the record, then, as noticed.

11 (MRA EXHIBIT NO. 400 WAS RECEIVED
12 INTO EVIDENCE AS OFFICIAL NOTICE.)

13 JUDGE WOODRUFF: Okay. Next up for
14 cross-examination is Wal-Mart.

15 MR. CHAMBERLAIN: No questions, your
16 Honor.

17 JUDGE WOODRUFF: River Cement?

18 MS. LANGENECKERT: No questions.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. POSTON: Thank you.

21 CROSS-EXAMINATION BY MR. POSTON:

22 Q. Good afternoon, Mr. Smith.

23 A. Good afternoon, Mr. Poston.

24 Q. I'd like to begin by asking you
25 questions about Noranda's willingness to make

1 certain commitments if the Commission gives Noranda
2 a discount rate to the current rate. And in
3 Mr. Fayne's testimony, he states that Noranda has
4 indicated a willingness to provide an investment
5 commitment and employment level commitment. Are
6 you familiar with that?

7 A. Yes, I am.

8 Q. And can you explain how and where
9 Noranda has made this indication that it would be
10 willing to make such commitments?

11 A. Could I ask you just to clarify the
12 question a little bit?

13 Q. Sure. Restate the question?

14 A. Yes, if you wouldn't mind, please.

15 Q. Mr. Fayne has stated in his testimony
16 that Noranda has indicated a willingness to provide
17 an investment commitment and an employment level
18 commitment. And I'm just asking --

19 A. In what kind of form and what
20 discussions, or what those are or both?

21 Q. Well, he doesn't go into any detail.

22 A. Okay.

23 Q. It was just those statements.

24 A. Certainly. I would be pleased to.
25 We understand that this is a big commitment on

1 behalf of Noranda, and we understand that -- that
2 it's very important for us to commit in return,
3 first to make sure that we have a sustainable
4 business in the Bootheel, which is -- a competitive
5 power rate is absolutely essential, which is why
6 we're here.

7 So in the first case concerning
8 employment, we want to keep as many jobs down there
9 as we can. And so right now we have about 888
10 employees, and we certainly want to keep every
11 single one of them.

12 We have -- we are an industry,
13 however, where there's a lot of focus on
14 productivity. Commodity companies pretty much
15 always have to get more competitive year in and
16 year out. And so we also have to balance that
17 desire with the need to continue to improve the
18 business and drive productivity.

19 So we are -- we are very willing to
20 make commitments around employment. We would need
21 to balance those with a practical approach that
22 allows us to also drive our productivity.

23 We believe that we have a strong
24 track record of job preservation even back to the
25 ice storm in 2009, where we went to a lot of effort

1 to keep 300 people employed when the power lines
2 all went down. So our job isn't -- our job's just
3 to make sure, continue to make sure we are
4 competitive.

5 And so, you know, in that arena, we
6 would start with the 888 employees that we've got.
7 We want to try to preserve every single one of them
8 if we could grow. If we don't grow, it's just the
9 pressure of that productivity will cause our head
10 count to -- our labor productivity to improve and
11 our head count would decline.

12 So if we can find a mechanism where
13 we can start with the 888, the people that we have
14 today, and then make sure that we can still do the
15 kinds of things that the industry demands of us to
16 stay competitive, then I think that would work. I
17 think that would work very well for everyone,
18 because we don't want to get into a position
19 where -- any of us where we have to do a
20 large-scale layoff. That's just not something that
21 we want to do.

22 As far as capital commitments go,
23 this is a ten-year deal, and any annual commitment
24 that you make suddenly becomes a very, very large
25 total commitment. And we know from history what

1 our capital requirements have been in New Madrid.
2 You know, we've typically spent kind of year in and
3 year out, it's plus or minus \$35 million just to
4 keep the place going. There's a lot of consumables
5 in the New Madrid facility, everything from the
6 pots themselves where they're lined with carbon,
7 and you use carbons as both anodes and cathodes and
8 those get consumed. So there's a lot of capital
9 expenditure there.

10 And so again, what our view would be
11 would be that making a capital commitment to
12 reinvest in New Madrid would be certainly something
13 that would make a lot of sense and, you know, we're
14 here for the long haul. We're going to spend money
15 in that plant.

16 And so finding the right way to
17 codify that such that it's a fair return for the
18 commitment of the rate support is something that
19 we're willing to do.

20 **Q. Other than what you've just stated**
21 **right now, is there anywhere else that has been**
22 **stated through testimony?**

23 A. In my deposition we talked about it a
24 little bit, but not that level of detail.

25 **Q. Okay. And are you aware of Public**

1 **Counsel's position as stated in surrebuttal**
2 **testimony of Lena Mantle that any discount rate be**
3 **tied to Noranda's commitments?**

4 A. Yes, I am aware of it.

5 Q. **And the first commitment that OPC**
6 **recommends that Noranda maintain current employment**
7 **levels --**

8 A. Uh-huh.

9 Q. **-- I guess I heard you just state.**
10 **Is that something you are willing to commit to, to**
11 **certain point levels?**

12 A. Yeah. And, again, properly
13 structured so that we can meet the competitive
14 requirements of the business.

15 Q. **And you stated 888 employees, and for**
16 **how long would you commit to having a level at 888?**

17 A. That to me right now would be very
18 difficult to give you an exact date certain,
19 because we really need to work with the Public
20 Service Commission to lay out a schedule, perhaps
21 put together a proposal and how we would go forward
22 and do that. We're just trying to match -- we have
23 no plans for a layoff. We really don't. Having a
24 long-term relationship with our employees is
25 something about which we really pride ourselves.

1 Tomorrow night, I get the opportunity
2 to go have dinner with our 40, 45 and 50-year
3 anniversary celebrants, so this will be very -- I'm
4 looking very much forward to that. We pride
5 ourselves on long-term relationships. We want to
6 keep people for -- we want to offer them the
7 opportunity to earn a career.

8 But that being said, we have a lot of
9 competitive reality that, you know, in ten years to
10 get the same number of pounds out, it will take
11 less of everything we invest in our business. It
12 just has to. That's the way commodities work. So
13 it will take fewer person hours to make the same
14 amount of material, less coke, less caustic, you
15 know, the whole nine yards.

16 So, you know, again, I just want to
17 be clear that this would certainly be something
18 that would have to be practically drafted, and the
19 expectation would be over time for the same amount
20 of volume, it would trend down.

21 **Q. The employees level?**

22 A. Yeah. Growth is our only vehicle to
23 combat that.

24 **Q. The rod mill --**

25 A. Uh-huh.

1 **Q. -- that you discussed, would that**
2 **increase employment level?**

3 A. Initially when we looked at the rod
4 mill, it has such a huge productivity element in it
5 that to make the 165 million or so pounds that we
6 had capacity to make before, we would need
7 substantially less labor. But as we have gone
8 forward with this mill, the -- and without going
9 into highly confidential information, I'll have to
10 stop my answer there.

11 **Q. Noranda has had layoffs in the past;**
12 **isn't that correct?**

13 A. That is correct.

14 **Q. And there was a fairly substantial**
15 **layoff at some point recently; is that correct?**

16 A. In December of last year, about
17 190 people.

18 **Q. Would Noranda be willing to commit to**
19 **retain a certain number of employees based -- at**
20 **the smelter based on the average number of**
21 **employees over a number of years?**

22 A. That's certainly something we would
23 consider, and we would need to -- again, we would
24 need to sit down and make sure that that could
25 align with the practical realities of the business.

1 It's my understanding that this is not an unusual
2 practice for this kind of commitment, and so I'm
3 sure there will be some models out there we could
4 benchmark as well.

5 **Q. What's not an unusual practice?**

6 A. Commitments to employment.

7 **Q. And the second commitment that Public**
8 **Counsel proposed in Ms. Mantle's testimony is a**
9 **commitment to guarantee amounts of additional**
10 **capital investment in the smelter. And in your**
11 **direct testimony, you talk about Noranda's annual**
12 **capital investment requirements and you say Noranda**
13 **had sustaining capital on both capital investments;**
14 **is that correct?**

15 A. That's correct.

16 **Q. And if you add those two together,**
17 **Noranda spends on average 85 to 100 million on**
18 **capital investments every year; is that correct?**

19 A. Yes. Our spend going forward, we're
20 expecting to be right around 100 million. It has
21 been less than that over the recent past.

22 **Q. And I'll get into that in a moment.**
23 **You also state in your direct testimony that for**
24 **2014, Noranda expects to invest 28 million on**
25 **sustaining capital and 38 million on growth capital**

1 **just in the New Madrid smelter; is that correct?**

2 A. Yes. That's correct.

3 **Q. So that's total capital investment of**
4 **66 million in the smelter?**

5 A. Yes.

6 **Q. And how much of that has been spent**
7 **to date?**

8 A. I don't know. I don't know right
9 now.

10 **Q. And how does this 66 million that's**
11 **just, I guess, earmarked for the smelter, how does**
12 **that compare to the average amounts of capital**
13 **investments that Noranda has spent on the smelter?**

14 A. That would be higher because it
15 includes such a large growth component. The
16 \$35 million per year that I mentioned historically
17 has been sustaining capital, maintenance and
18 renewal capital, new forklift, overhead cranes,
19 pots and flues, that sort of thing.

20 **Q. So what you're saying is on average**
21 **you spend 35 million just on the smelter on the**
22 **sustained capital. And then how about growth**
23 **capital?**

24 A. Been very little growth capital in
25 the past two years. We have -- most of our

1 projects, and we really strive for it to be all of
2 our projects, but not every one can, we try to
3 drive growth and productivity because those things
4 are so inextricably linked. The more growth you
5 have, the easier it is to be productive. And vice
6 versa, the more you can lower your costs of your
7 product so you can offer a better product at lower
8 prices, the more pounds you can move.

9 So we have invested a lot in the
10 operations, and sometimes it's actually hard for us
11 to make the distinction between the sustaining and
12 the growth, because our growth tends to be focused
13 on our existing customer base. We don't make
14 speculative investments.

15 We really -- it's like this rod mill,
16 the cornerstone -- we were able to acquire a
17 cornerstone customer, and that cornerstone customer
18 was very helpful in terms of causing that plant to
19 develop.

20 MR. DOWNEY: Judge, if we're getting
21 into an area of confidentiality, do we need to go
22 into closed session?

23 THE WITNESS: I think there's
24 additional information that would be -- that would
25 be helpful.

1 BY MR. POSTON:

2 Q. Regarding what in particular?

3 A. Regarding the level of growth capital
4 versus sustaining capital that goes on at New
5 Madrid. But if you're satisfied with that answer,
6 then --

7 Q. I think we can try to do this without
8 going in-camera. I would like to talk about the
9 100 million that you stated in capital outlay per
10 year that's necessary to maintain operations.
11 That's what your testimony was, correct?

12 A. That's correct.

13 Q. And it's your opinion that this
14 100 million of annual capital investment is
15 necessary for Noranda to stay competitive?

16 A. Yes.

17 Q. And that -- I guess we established
18 already, that 100 is more -- it's more Noranda
19 overall, not just the New Madrid smelter; is that
20 correct?

21 A. That's correct, yes.

22 Q. How much of that 100 million is
23 necessary to be spent just on the smelter to stay
24 competitive?

25 A. That will shift some year to year,

1 but the -- and if you look at what we have done in
2 order to stay within the \$100 million cap this
3 year, the sustaining capital that we have in the
4 business is lower, as you note, than the 35 million
5 that we usually do. So that deferral will need to
6 be made up as we go forward in future years.

7 We have two big projects that we are
8 working on for the primary smelter when you look at
9 the next two or three years. One is the rod mill,
10 which is a \$45 million project, and then the second
11 is a rectifier project, both of which are growth
12 projects.

13 In that we have about 29 million or
14 so of spending left to do. So that's been a very
15 big, integrated project to upgrade the overall
16 technology of the smelter. That's been going on
17 for several years. We've had to pace -- it was
18 several different components. We had to pace the
19 spending of those items as we went through our
20 double dip in the aluminum industry.

21 But that particular project is a
22 productivity and redundancy project that will also
23 give us some additional pounds.

24 So, you know, but between the two of
25 those projects, you consume a few years of -- you

1 know, if you think 25 to 30 million is the growth
2 projects, the primary business is consuming in the
3 early years the majority of our growth capital, and
4 frankly, this year virtually all of it.

5 **Q. Where does Noranda make capital**
6 **investments other than the New Madrid smelter?**

7 A. We have a facility in Jamaica and
8 that's our mine. We're fully integrated, and that
9 integration is -- is to drive both security of
10 supply as well as stability and low cost. We like
11 having buckets of cash to manage. So we have a
12 mine in Jamaica, and there are capital investments.
13 We invest quite heavily in the mine resources, you
14 know, so building haul roads, acquiring service
15 rights, that sort of thing.

16 Then we have a refinery in Gramercy,
17 Louisiana that converts -- we bring the bauxite up
18 the river. We convert that aluminum hydrates into
19 aluminum oxide. So we convert a red dirt into a
20 white powder legally and take that up the
21 Mississippi to our -- our plant in New Madrid. And
22 so that's what we refer to as our upstream
23 business.

24 So those three business units are
25 very tightly linked. And we actually own the mine

1 and the alumina refinery to support the primary
2 business. It helps us reduce our manufacturing
3 cost.

4 The final place where we invest
5 money, but that's really the minority of the
6 capital, is in our downstream business. A typical
7 year in our downstream business, which is our foils
8 business, we make foils, everything from foil that
9 ends up in private label aluminum foils in the
10 grocery store to the pin stock that goes into the
11 radiator vents in your car, and those -- that
12 business typically requires 10 million plus or
13 minus in capital every year. It's not as capital
14 intensive as the smelter.

15 **Q. So the upstream business, as you**
16 **called it, would those survive if Noranda were to**
17 **close the smelter or do those kind of stand on**
18 **their own?**

19 A. We run the businesses independently.
20 So each one of them transfers to one another at a
21 defined market price. So it's -- it's possible
22 that they could be run independently, but the power
23 of the -- the integration really drives the
24 sustainability. It really drives the
25 sustainability.

1 For each and every time for the
2 refinery and the primary business, you have both
3 security of supply as well as a foundational
4 market, and so that's very essentially -- very
5 essential. It's just base loading plant.

6 **Q. Going back to the \$100 million**
7 **figure --**

8 A. Sure.

9 **Q. -- how was that calculated?**

10 A. There were -- as we were looking at
11 the -- as we were looking at a sustainable model
12 and how we viewed both our affordability in terms
13 of capital, so a cap, if you will, how much did we
14 believe that within the boundaries of running our
15 company we could afford to spend.

16 And then we have a process where we
17 look at, you know, if you will, an iterative
18 process where we talk to our plants about what
19 their particular needs are.

20 When we -- when we were evaluating
21 what our needs were for capital over a longer time
22 parameter, we came to -- we first assessed what our
23 sustaining level of capital was, and then we looked
24 at what both our affordability was and what our
25 specific project-related needs were over the short

1 term. And with the presence of the two very large
2 projects and primary, we very quickly got to a
3 point where having a \$100 million plus or minus
4 capital plan was just necessary.

5 So it was based on business needs and
6 making sure that that fit within the boundaries
7 of -- well, it's business need on a variety of
8 different levels.

9 **Q. And most of those projects are in a**
10 **schedule attached to your testimony?**

11 A. We have the projects that are
12 attached to -- we have, first off, the project list
13 for this year, and that's in -- that's in pretty
14 fine detail, and then we have a hopper for a
15 five-year look at our capital, which is quite
16 extensive.

17 **Q. So if Noranda were to get a rate**
18 **discount from this Commission, would Noranda be**
19 **willing to commit to spending 100 million on**
20 **capital investments annually?**

21 A. Again, as we talked about the
22 spending for New Madrid, it would be unusual -- and
23 I'm not saying we wouldn't be willing to do it.
24 I'm just saying it would be very unusual within the
25 industry for a capital commitment that large to be

1 done and in combination with the commitment being
2 to a facility within a company that was other than
3 the facility receiving the power.

4 So typically, if you look at Alcoa,
5 they made their investment commitment in the plant.
6 It was a very large number. Now, of course, they
7 had a 30-year deal. So when they made a commitment
8 of \$600 million over 30 years, it becomes a fairly
9 manageable number on an annual basis.

10 That being said, ten years is a long
11 time, and we can make a very, very substantial
12 investment in New Madrid over a ten-year period
13 that we would be willing to practically commit to.

14 **Q. Is there an amount you could commit**
15 **to, to invest in just the New Madrid smelter?**

16 A. Certainly -- certainly for the
17 maintenance of the facility, the historic numbers
18 that we've had for that sustaining capital, it's
19 hard to imagine those changing. So when you think
20 about that, that over a ten-year period, that's a
21 \$350 million commitment.

22 But I think it would behoove us all
23 for us to go and take a look and see how much we
24 can do, because we've got two big growth projects
25 on top of that right now that we're going to do and

1 we know we're going to do. We are doing one and
2 absent -- and we thoroughly expect to do the other.
3 So I think perhaps us responding with a more formal
4 proposal on that would make some sense.

5 **Q. The third commitment that OPC's**
6 **proposed in Ms. Mantle's testimony is that Noranda**
7 **agree to a capitalization strategy that preserves**
8 **the smelter's ability to continue to operate. Are**
9 **you familiar with that, the proposal we've made?**

10 A. I recall the proposal, but you can
11 help me with all the specifics.

12 **Q. Well, were you in the room when**
13 **opening statements were made this morning?**

14 A. I missed a brief portion of Diana's,
15 which I apologize.

16 **Q. Okay. Well, then, you may have heard**
17 **Mr. Allison's opening statement where he brought up**
18 **the issue of Noranda's ownership pulling**
19 **substantial amounts of cash out of the company.**

20 **And as a condition of getting a**
21 **discounted rate, would Noranda be willing to commit**
22 **that it will not issue dividends, special**
23 **dividends, share buyback programs or use any other**
24 **methods of returning value to shareholders as long**
25 **as the discounted rate is in effect?**

1 A. And with your permission, I'd like to
2 answer a slightly broader question about special
3 dividends. Because we did have a substantial track
4 record of special dividends that, while prudent at
5 the time, and each one of these decisions that I
6 was involved with when I came to the company in
7 March of 2008, although prudent at the time, when
8 we looked back on what transpired with the double
9 dip recession, you know, the benefit of 20/20
10 hindsight is always so informative.

11 And, you know, it's -- looking at
12 that perhaps, you know, we would have wanted to
13 have done something different had we known then
14 what we know today, but we don't. We didn't. And
15 so the -- so we understand the deep concern about
16 the dividends.

17 But there are typical places where
18 restrictions are placed in the financial structure
19 and things like the special dividends, and we have
20 them. There are restrictions when we went and
21 refinanced our company. There are restrictions on
22 our dividends. So that's not unusual, but they
23 typically come with -- with a refinancing of debt.

24 Second -- so just in general on
25 dividends, there are limits on how much that we're

1 allowed to have.

2 Let's talk specifically about special
3 dividends. And I'm not aware of a special
4 dividend, and I -- and I certainly don't have a
5 complete body of knowledge on all things, you know,
6 all things financial, but we only have one class of
7 stock.

8 So any dividend that gets paid to our
9 shareholders gets paid to every last one of them.
10 So the -- so any special dividends for us would go
11 to all shareholders, not just -- not just our
12 owners or the former sole owners of the company.

13 There are a few things that are
14 different now. Apollo does not control our
15 company. They do not. They have four people on
16 the board. They don't have a unilateral way to
17 force things through our board. So we have a board
18 that's got 12 people -- there are 12 members of our
19 board. Four are Apollo. I am the fifth, and then
20 there are seven independents. And that will be
21 in -- and although Apollo has the right to nominate
22 up to six underneath the terms of their contract as
23 a New York Stock Exchange company, to have an
24 independent board we need a majority of
25 independents. So we have seven so we have the

1 structure that we have.

2 Certainly from my perspective and
3 having done everything that we could and everything
4 that we can to drive productivity in our company,
5 including taking our annual productivity -- I mean,
6 we're driving at \$107 million worth of productivity
7 this year. And I'm going to have to -- I'm going
8 to have to stop there, because we can't go in any
9 more of that detail.

10 The -- I can't imagine our -- we have
11 two priorities, and it's to invest in our company,
12 invest in the capital, and we need to reduce our
13 debt. And I, for one, have no interest in
14 supporting another special dividend.

15 So we're -- we've got a lot to do
16 before that's a capital action that needs to be
17 taken again. And as I'm sure you can appreciate,
18 these mechanisms are out there for -- because of
19 the need for publicly traded companies to provide a
20 return to their investor. People aren't going to
21 invest unless you provide a return.

22 I think that for us being a -- we pay
23 a penny dividend, frankly, because we had a bias to
24 be a penny stock. There were companies that bought
25 our company because we paid a dividend, and to go

1 to -- we wanted to maintain our dividend, even at a
2 penny, because it allowed us to keep some of the
3 investors that we still had in our portfolio.

4 So we don't have any plans to change
5 our dividend. We don't have any plans to do a
6 special dividend, and so I just want to be very,
7 very clear about that.

8 We're a New York Stock Exchange
9 traded company. We own our company. We have an
10 independent board, and we all have a fiduciary
11 obligation. And within that fiduciary obligation,
12 we all understand how important this particular ask
13 is and how -- and the fact that the Public Service
14 Commission's going to retain authority over this
15 contract.

16 **Q. Is there a -- I guess I didn't hear**
17 **you say that there was any type of commitment. Is**
18 **there any level of commitment you can make as long**
19 **as this discount rate's in effect that you won't be**
20 **pulling cash out of the company?**

21 A. That's something that would be very,
22 very unusual. Again, we're trying to maintain a
23 practical ability to operate as a publicly traded
24 company. So that's something that I think would be
25 very, very difficult for us to do.

1 But obviously it's a dialog we would
2 be willing to undertake. It would be very -- I
3 think that would be very hard for us to do. We
4 recognize the need to keep the cash in the company.

5 We recognize the need that we've got
6 investments to make. We have an amazingly long
7 list of projects that we need to get done. And, as
8 has been pointed out several times already, we have
9 a very high debt-to-leverage ratio and a
10 debt-to-capitalization ratio. We've got to get
11 that down too.

12 **Q. And I'd like to move on to the fourth**
13 **and last commitment identified in Ms. Mantle's**
14 **testimony, which is the commitment to return over**
15 **time any discounts provided to Noranda that somehow**
16 **is paid for by other ratepayers. And under what**
17 **conditions would Noranda be willing to make such a**
18 **commitment?**

19 A. That one -- that one is also very
20 difficult because of the nature of the aluminum
21 cycle. Over a ten-year aluminum cycle, whether you
22 look back at the last ten years and look where the
23 price goes, Noranda will experience very tough
24 times from a pricing standpoint more than twice as
25 often as we will experience really good times.

1 So about -- say over the last ten
2 years, about call it 17 percent of the time the
3 price is in the extreme upper third, and about
4 37 percent of the time it's in the extreme lower
5 third, and about 63 percent of the time it's below
6 the median.

7 So we're faced with a pricing profile
8 where once -- it's hard enough just to manage the
9 LME fluctuations than managing a formula, and
10 trying to tune a formula to match that becomes
11 really -- becomes really hard.

12 When we looked at our rate, we
13 focused on a rate that would give us what we felt
14 was the highest rate that we could tolerate and be
15 viable across the cycle. So again, we didn't focus
16 on our instantaneous rate of \$23, which would make
17 us cash neutral now.

18 30 won't. We'll need -- we'll need
19 the cycle to improve, and so that rate is actually
20 betting on improvement. It's a cycle, but it's
21 a -- I think it's a bet on history.

22 And so we think that although history
23 is not always a perfect predictor of the past, that
24 if we don't learn from it, we may end up repeating
25 it. And in this particular case, we are always

1 willing to undertake the dialog that that's a --
2 that's a practice that's -- we don't even see many
3 people linked to a variable. Globally only about
4 18 percent of people are linked to the LME as part
5 of a mechanism to support the price. And in the
6 U.S. I think the last one that was linked was
7 Ormet, and they've gone out.

8 **Q. Do you recognize and understand why**
9 **the ratepayers would want such a commitment, a**
10 **payback commitment like that?**

11 A. We certainly -- we certainly do.
12 If we could -- but the reality of our business is
13 that -- that that -- that price, we believe that
14 that price for electricity is what over the cycle
15 provides a sustainable level of cash flow to --
16 where we can carry ourselves through the down times
17 and have enough money to invest properly in the
18 business.

19 **Q. Are there any commitments that**
20 **Noranda could make to assure the ratepayers that**
21 **Noranda will make other customers whole for any**
22 **discounts that end up being paid for by other**
23 **ratepayers?**

24 A. I'm not sure -- again, I apologize.
25 I'm not sure I understand the question.

1 Q. I'm just saying, are there any other
2 type of commitments that Noranda could agree to, to
3 address that issue that if other ratepayers -- the
4 Commission raises their rates because of this, that
5 they somehow are made whole in the long run?

6 A. I'm just not aware of anything at
7 this time that would -- that would -- that would
8 work at that rate.

9 MR. POSTON: That's all I have.
10 Thank you.

11 JUDGE WOODRUFF: Cross by Staff?

12 CROSS-EXAMINATION BY MR. OPITZ:

13 Q. May it please the Commission? My
14 name is Tim Opitz, and I represent Staff of the
15 Commission today.

16 Mr. Smith, you may remember we met a
17 week ago in St. Louis?

18 A. Yes, we did.

19 Q. Thank you for being here. I've got a
20 few questions about the general design proposed by
21 Noranda --

22 A. Uh-huh.

23 Q. -- the FAC exemption and, finally, a
24 few questions about the aluminum market in general.
25 Does that sound all right to you?

1 A. Sure.

2 Q. In your direct testimony -- and I'm
3 making every effort to reference the non-HC
4 versions --

5 A. Okay.

6 Q. -- of your direct and surrebuttal
7 testimony. On page 5, lines 4 to 7, you state that
8 Noranda's proposed rate is greater than the
9 incremental cost to serve the Noranda load, thus
10 creating a direct benefit to other customers. Did
11 I read that correctly?

12 A. Yes.

13 Q. And this conclusion from your
14 testimony is supported by analysis done by
15 Mr. Brubaker?

16 A. Yes.

17 Q. Are you aware that Staff's own expert
18 conducted her own analysis?

19 A. Yes, I am.

20 Q. And being aware of that analysis,
21 you're aware that Staff's expert concluded that it
22 would not be more beneficial to Ameren's other
23 customers if Noranda remained on the system at
24 those rates?

25 A. That's correct.

1 Q. Mr. Smith, you agree that, I think in
2 **general, electricity cost is an important factor in**
3 **the cost of running business?**

4 A. Yes, I do.

5 Q. In fact, it's so significant for
6 **Noranda that that's why you're here today asking**
7 **for rate relief?**

8 A. That's correct.

9 Q. And that relief you ask for today is
10 **in the form of a tariff sheet which would create**
11 **new rates for a customer class of which Noranda is**
12 **the only customer, only member of that class,**
13 **correct?**

14 A. That's correct.

15 Q. And the direct result of that is
16 **lower electricity rates for Noranda?**

17 A. That's correct.

18 Q. Do you agree with your counsel's
19 **response to Commissioner Hall's question during**
20 **opening that -- that the requested rate is not**
21 **based on the cost of service for Noranda?**

22 A. Yes.

23 Q. If Noranda is granted its requested
24 **relief, the rates of all the other customers will**
25 **go up in other rate classes, correct?**

1 MR. POSTON: Your Honor, objection.
2 Counsel's not laying foundation that other rates
3 will go up because of this, and we also object,
4 it's argumentative based on our position that other
5 rates cannot go up based on this case.

6 JUDGE WOODRUFF: Rephrase your
7 question.

8 BY MR. OPITZ:

9 **Q. Mr. Smith, are you aware of the --**
10 **that the testimony of Mr. Brubaker, prefiled**
11 **testimony, included proposed tariff sheets that**
12 **indicated increases to rates in other classes?**

13 A. Yes.

14 **Q. And are you aware that those sheets**
15 **submitted by Mr. Brubaker on behalf of Noranda for**
16 **every other class except the one Noranda would be**
17 **in show an increase in their rates?**

18 A. Yes.

19 **Q. So would you agree that the proposed**
20 **rates by Noranda show that they are suggesting an**
21 **increase in rates of other customer classes?**

22 A. Yes.

23 **Q. Would you agree that those classes**
24 **include residential, small general service, large**
25 **general service, small primary service and large**

1 **primary service classes?**

2 A. I believe so, yes.

3 **Q. If the proposed Noranda rates from**
4 **the sheets go into effect, would you agree that**
5 **higher rates -- those businesses and customers**
6 **within those classes would have to pay more for**
7 **using the same amount of electricity?**

8 A. I believe so. I think that's
9 logical, yes.

10 **Q. And that these increased costs could**
11 **cause any business to have to close its doors or**
12 **cease operations, correct?**

13 A. I just want to make sure I answer
14 this question. You mean any as in every, or there
15 may be a business out there where this could push
16 them over the top?

17 **Q. I apologize for the ambiguity. I**
18 **mean any, as in there may be a business where this**
19 **increased cost would push them out of business?**

20 A. I don't know that I can -- I don't
21 know that I can answer that question. That would
22 speculate that there's somebody close enough
23 that -- I just don't have the data to answer that.
24 Certainly their rates would go up.

25 **Q. Have you -- have you, and by you I**

1 mean Noranda, performed a study about the impact
2 that increased rates would have on other businesses
3 that are Ameren Missouri customers?

4 A. In terms of its impact on their
5 operating liability?

6 Q. Yes.

7 A. No, we have not.

8 Q. Now, one of the other customer
9 classes in particular is a residential class?

10 A. Uh-huh.

11 Q. And, Mr. Smith, I imagine that you
12 pay for electricity that you use at your home; is
13 that a safe assumption?

14 A. I do have electricity at my home,
15 yes.

16 Q. And if you didn't pay, what do you
17 imagine would happen?

18 A. Well, I imagine they'd cut my
19 electricity off.

20 Q. Would you agree that Ameren
21 Missouri's other residential customers may face the
22 same fate if they didn't pay their bills?

23 A. Yes.

24 Q. Has Noranda performed a study or
25 collected data about the impact that these

1 **increased rates would have on Ameren Missouri's**
2 **residential customers?**

3 A. In terms of their ability to pay
4 their bills?

5 Q. **In terms of whether you performed a**
6 **study or corrected any data about the increased --**
7 **the increased amount that they would pay if that**
8 **would --**

9 A. It's my understanding this would
10 represent 2 percent or a little bit less of a bill,
11 and that would be assuming that this was an
12 across-the-board, an even distribution, so
13 2 percent or less for everyone.

14 Q. **Can you clarify what you mean by**
15 **2 percent of increase per dollar or --**

16 A. It would be a 2 percent increase for
17 that residential consumer. So whether it was their
18 annual bill or monthly bill, it would be a little
19 bit less than a 2 percent increase.

20 Q. **Mr. Smith, are you aware of recent**
21 **EPA actions to implement emission controls that**
22 **will almost certainly increase electricity rates?**

23 A. I am.

24 Q. **Would you agree that Ameren will have**
25 **to comply with these rules?**

1 A. I really would refer that question to
2 Mr. Dauphinais or Mr. Brubaker. They're our
3 experts in that area.

4 **Q. Could you agree that to recover the**
5 **rising cost to generate electricity, a utility**
6 **could file a rate case to recover the cost of**
7 **service through increased rates?**

8 A. If those costs were just and
9 reasonable and lawful, yes.

10 **Q. And as I understand, Noranda has**
11 **asked for a ten-year rate with a 2 percent cap on**
12 **any increase over that time along with asking to be**
13 **exempt from any fuel adjustment clause?**

14 A. Yes, that's correct.

15 **Q. Would those conditions insulate**
16 **Noranda from any rising costs related to EPA**
17 **standards?**

18 A. Noranda would be subject to costs
19 from EPA or wherever they might come from, up to
20 that 2 percent cap in a rate case. So, yes, to the
21 extent that they were the driver of those costs, we
22 would be exposed to them, but it would be capped at
23 2 percent in any particular rate case.

24 **Q. So if Ameren Missouri's cost to**
25 **produce electricity in that ten-year period**

1 **increased by more than 2 percent --**

2 A. Per rate case.

3 **Q. -- per rate case, Noranda would only**
4 **pay 2 percent?**

5 A. That's correct.

6 **Q. And if Ameren Missouri wants to**
7 **recover the full amount of any cost of service**
8 **increase that's over 2 percent in that period, that**
9 **money might have to come from the other customer**
10 **classes?**

11 A. That is correct.

12 **Q. Going back to the FAC exemption, and**
13 **I believe you mentioned it on your surrebuttal,**
14 **page 20, you're aware that every Ameren Missouri**
15 **customer pays this, correct?**

16 A. Excuse me one second.

17 MR. DOWNEY: What page?

18 MR. OPITZ: Page 20. This is his
19 general comment area on his surrebuttal. He does
20 not specifically say that every Ameren Missouri
21 customer pays this.

22 BY MR. OPITZ:

23 **Q. I'm simply asking if you would agree**
24 **that currently every Ameren customer pays the FAC**
25 **clause.**

1 A. I would have to say that that's not a
2 specific question that I ever asked Mr. Brubaker or
3 Mr. Dauphinais, because I assumed that they did.

4 Q. In your surrebuttal testimony, on
5 that same page you just looked at, you state the
6 volatility inherent in the FAC creates a material
7 business risk to Noranda. Did I read that
8 correctly?

9 A. Yes.

10 Q. And would you agree that if Ameren
11 Missouri's -- every other Ameren Missouri customer
12 pays that fee currently, that they would also be
13 affected by any volatility in the FAC?

14 A. Yes.

15 Q. Basically, with the FAC, if the price
16 of fuel goes up, these other customers would pay
17 more?

18 A. Yes.

19 Q. But you're asking for Noranda that if
20 the price of fuel goes up, Noranda would pay the
21 same?

22 A. Yes, that is correct.

23 Q. Has Noranda performed any studies on
24 the impact that FAC volatility would have on
25 Noranda?

1 A. We have certainly looked at the impact
2 the FAC has had on us and the fact that of our rate
3 increases, about 17 million of that has been
4 associated with the FAC.

5 So for us, the issue really is the
6 volatility and the unpredictable nature of the
7 increases and the fact that the -- the prudence,
8 just as far as the process goes, that being part of
9 the overall ratemaking process and that prudence
10 happening at the end of that, we had focused for
11 those reasons on a flat rate to provide certainty
12 for us as we approach the public markets and,
13 frankly, as we manage our business.

14 **Q. Well, have you performed any study on**
15 **the impact the FAC volatility would have on other**
16 **customer classes of Ameren Missouri?**

17 A. No, not that I'm aware of.

18 **Q. If we can go back to the ten-year**
19 **rate term with 2 percent increase limit.**

20 A. Sure. Uh-huh.

21 **Q. On your direct, page 3, lines 13**
22 **through 16 --**

23 A. All right.

24 **Q. -- you propose a term of ten years**
25 **subject to rate increase of up to 2 percent at the**

1 time of each general rate increase granted to
2 Ameren Missouri by the Commission during this
3 period. Did I read that correctly?

4 A. That is correct.

5 Q. Would you agree that in general the
6 cost of running a business, any business, can rise
7 over time?

8 A. It can.

9 Q. And --

10 A. It's worth noting, however, that but
11 for the increase in our cost of power from 2008 to
12 today, we would be making aluminum substantially
13 less expensively than we are now.

14 Q. Thank you. Thank you, Mr. Smith.
15 I'm sure that you're aware that when setting
16 utility rates, as referenced in your testimony,
17 that the Commission looks at all relevant factors;
18 is that correct?

19 A. Yes.

20 Q. And are you aware that Ameren has
21 already filed notice of a case?

22 A. Yes, I am.

23 Q. So as I understand it, the cost to
24 produce electricity goes up because of either the
25 EPA or for whatever reason, you're asking that

1 **Noranda's electricity costs remain the same?**

2 MR. DOWNEY: I'm going to object.

3 That's not what he said. I think he just got done
4 saying 2 percent.

5 JUDGE WOODRUFF: I'll sustain the
6 objection.

7 BY MR. OPITZ:

8 Q. I'll rephrase. So if the cost to
9 produce electricity goes up, you are asking that
10 your electricity costs would only increase by
11 2 percent each time Ameren requests an increase?

12 A. That's correct.

13 Q. So essentially are you asking the
14 Commission not to reconsider the costs related to
15 providing service to Noranda's customer class for
16 ten years?

17 A. No. One of the -- one of the most
18 important aspects of using this process to address
19 our rate -- and we are firm believers in the
20 ratemaking process and Public Service Commission
21 process. One of the reasons why we believe that
22 this process is the right place to be is not just
23 the technical ability to evaluate, but also that
24 this rate will be subject to review by the Public
25 Service Commission, such that if something, you

1 know, gets materially out of line, that the
2 Commission can always re-look at this rate.

3 So we're not expecting -- I'm sorry
4 for the long answer, but the short answer to your
5 question is, we're not expecting in the
6 documentation of this that the Public Service
7 Commission would somehow bind future commissions
8 and they wouldn't be able to look at this.

9 **Q. Several parties have spoken during**
10 **their openings of non-rate benefits to other**
11 **ratepayers from Noranda's active participation in**
12 **the Legislature and in rate cases. You'd agree**
13 **with that statement, correct, those statements?**

14 A. I believe that there are -- so yes, I
15 believe that Noranda's very active, but so are a
16 lot of other people. We believe the real value for
17 Noranda to remain on the system is the fact that we
18 will -- we still provide a direct rate benefit to
19 the other consumers, that being that our price will
20 still be above the variable cost to produce.

21 **Q. Keeping in mind your answer earlier**
22 **about you're not asking the Commission to bind**
23 **future commissions, you have asked for this**
24 **ten-year period for the rates to be in effect**
25 **subject to the 2 percent, correct?**

1 A. Yes. That's absolutely correct.

2 **Q. And so if Noranda remains an active**
3 **participant, I'm sure at no small cost, its rates**
4 **would remain capped at the 2 percent increase if**
5 **you were granted your request over that ten-year**
6 **period?**

7 A. Yes, it would be our hope that would
8 be the case.

9 **Q. And if Noranda decides not to**
10 **participate as actively as they have in the past,**
11 **its rates would, under your proposal, remain or**
12 **increase by only 2 percent -- up to 2 percent at**
13 **any time Ameren asked for a rate increase, correct?**

14 A. I believe that's correct, yes.

15 **Q. Thank you. Just one last area,**
16 **Mr. Smith. What is the outlook for the aluminum**
17 **market in the future?**

18 A. I'm only smiling because the --
19 there's a lot of -- I think with any future
20 forecast, there's a lot of different opinions. My
21 review is that demand fundamentals for aluminum
22 remain strong. I believe that the pricing
23 environment is something that is more -- way more
24 difficult to project, but especially -- we're a
25 U.S.-based company, so especially in the U.S., the

1 U.S. demand picture is very solid. And that's one
2 of the reasons why we focused on building this new
3 rod mill and making additional investments in the
4 primary business.

5 But overall, but for this phenomena
6 on regional pricing, the LME has been -- we've seen
7 a period now where the regional premiums like the
8 Midwest premium have been elevated and the LME has
9 tended to be depressed. And there are a lot of
10 experts that believe that that trend will continue.
11 We'll just have to wait -- we'll just have to wait
12 and see.

13 MR. OPITZ: Your Honor, I have a
14 handout I'd like to show. May I approach?

15 JUDGE WOODRUFF: You may.

16 MR. OPITZ: Kevin, will you
17 distribute that, please?

18 JUDGE WOODRUFF: Are you going to
19 mark this?

20 MR. OPITZ: Yes, I can mark this.

21 JUDGE WOODRUFF: Staff's next number
22 will be 205.

23 (STAFF EXHIBIT NO. 205 WAS MARKED FOR
24 IDENTIFICATION.)

25 BY MR. OPITZ:

1 Q. Mr. Smith, would you agree that I
2 handed you a copy of a Wall Street Journal article
3 from Thursday, June 12?

4 A. Yes.

5 Q. And have you had a chance to read
6 this particular article before?

7 A. I have not seen this particular
8 article, but I am quite familiar with the
9 all-aluminum F150.

10 Q. And I've got here that the title of
11 that article is listed as Detroit's Appetite for
12 Aluminum Grows; is that correct?

13 A. Yes, that's correct.

14 Q. Would you be surprised if I told you
15 that, according to this article, by 2025 75 percent
16 of pickup trucks' body parts will be made out of
17 aluminum?

18 A. No, I wouldn't be surprised by that
19 forecast. Whether it comes true or not, we won't
20 know, but I certainly wouldn't be surprised by the
21 forecast.

22 Q. Would you be surprised to learn that,
23 according to this article, 18 percent of all
24 vehicles will have all-aluminum bodies by 2025
25 compared with less than 1 percent now?

1 A. No. I wouldn't be surprised, again,
2 with that forecast. Whether it comes true or not,
3 hard to know.

4 MR. OPITZ: Your Honor, I've got
5 another handout. May I approach?

6 JUDGE WOODRUFF: You may. This will
7 be 206.

8 (STAFF EXHIBIT NO. 206 WAS MARKED FOR
9 IDENTIFICATION BY THE REPORTER.)

10 BY MR. OPITZ:

11 **Q. Mr. Smith, I've handed you a printout**
12 **of a webpage for Clean Line Grain Belt Express; is**
13 **that correct?**

14 A. Yes, that's correct.

15 **Q. And are you familiar with Clean Line**
16 **Grain Belt Express?**

17 A. Yes, I am. I'm aware. I wouldn't
18 say familiar.

19 **Q. You're aware?**

20 A. Yes. I'm familiar with General
21 Cable.

22 **Q. If you look at the first page of that**
23 **handout, it says Noranda Aluminum Holding Company**
24 **is a leading North American integrated producer of**
25 **value-added primary aluminum products and high**

1 quality rolled aluminum coils. Would you agree
2 with that?

3 A. Yes.

4 Q. Goes on, General Cable's partnership
5 with Noranda Aluminum for the Grain Belt Express
6 Clean Line will support an expansion of Noranda's
7 redraw rod production capacity at its aluminum
8 smelter near New Madrid, Missouri.

9 A. Yes.

10 Q. And finally, goes on to say, I
11 believe on the back -- no, still the first page.

12 A. Sure.

13 Q. General Cable has also committed to
14 purchasing all aluminum rod used in the Grain Belt
15 Express conductor from a Missouri manufacturer,
16 Noranda Aluminum.

17 A. Yes.

18 Q. To the best of your knowledge, as CEO
19 of Noranda, are those statements from the Clean
20 Line website correct or accurate?

21 A. Certainly pertinent to us, yes.

22 Q. Counsel for Noranda, and I believe
23 the video during the open statements, referenced
24 that several U.S. smelters have recently closed
25 down. Do you agree that's true?

1 A. Yes, I do. Recently being since I
2 started with Noranda, and I started about six years
3 ago, absolutely.

4 **Q. Will these factors increase demand**
5 **and -- in fact, the increased demand for Noranda**
6 **aluminum in particular and the decrease in the U.S.**
7 **supply of aluminum will, in fact, improve the price**
8 **of the aluminum in the market, correct?**

9 A. So if I could give a slightly longer
10 answer, would that be all right? Because we -- as
11 a company, we fundamentally believe that the price
12 trend driver really is very focused on fundamental
13 demand. So we're always pleased when we see more
14 demand.

15 **Q. I believe your counsel will give you**
16 **an opportunity to respond longer.**

17 A. Uh-huh. The answer is yes. Yes. We
18 do believe the demand will generally support price
19 increases, but you can never predict that that's
20 absolutely going to happen.

21 **Q. Mr. Smith, if the financial outlook**
22 **for Noranda improves, do you plan to ask the**
23 **Commission to redesign the rates?**

24 A. The rate design we're currently
25 asking for?

1 **Q. Yes.**

2 A. No. Because this is an
3 across-the-cycle rate and, as I said earlier, you
4 have really good times over a ten-year period about
5 17 percent of the time, and a little more than
6 twice as much of that you have very, very tough
7 times. And so, as we go through the cycle, the
8 cash generated when -- when pricing is better than
9 the median is necessary for the investment and
10 sustenance of the business when the price is lower.

11 MR. OPITZ: Mr. Smith, thank you for
12 your time, and I have no further questions.

13 Your Honor, I'd like to move to
14 admit, I believe it was 20--

15 JUDGE WOODRUFF: 205 and 206.

16 MR. OPITZ: -- 205 and 206.

17 JUDGE WOODRUFF: Any objections to
18 the receipt?

19 (No response.)

20 JUDGE WOODRUFF: Hearing none, they
21 will be received.

22 (STAFF EXHIBIT NOS. 205 AND 206 WERE
23 RECEIVED INTO EVIDENCE.)

24 JUDGE WOODRUFF: 205 was the Wall
25 Street Journal article, and 206 was the Grain Belt

1 Express Clean Line. All right.

2 MR. OPITZ: Thank you.

3 JUDGE WOODRUFF: For further cross
4 then, Continental Cement. That's right. Next up
5 is Ameren Missouri, but we'll take a break before
6 we start with them. We'll take a break and come
7 back at 3:30.

8 MR. LOWERY: Your Honor, just for
9 your information, we will need to start in-camera.

10 JUDGE WOODRUFF: We'll start on the
11 record.

12 MR. LOWERY: Very well.

13 (A BREAK WAS TAKEN.)

14 JUDGE WOODRUFF: Let's come to order
15 again. It's 3:30 and we're back from the break.
16 Ms. Tatro, you want to be recognized?

17 MS. TATRO: Yes, thank you. Judge,
18 in response to a question from Chair Kenney in
19 opening, I made a misstatement. I just want to
20 correct that so I was not being untruthful to the
21 tribunal.

22 There was a question about changing
23 rates in the earnings complaint case, and I had
24 processed that as him asking about in a rate case
25 rather than the earnings complaint case. So I just

1 wanted to make that correction. You can change the
2 rates in a rate case after all the factors are
3 considered. So I apologize for my error, and if I
4 misled you or confused you, I apologize.

5 JUDGE WOODRUFF: You weren't changing
6 Ameren's position?

7 MS. TATRO: I most definitely was
8 not.

9 JUDGE WOODRUFF: Before we get
10 started with the cross-examination, I want to bring
11 up some other matters. As has been apparent, the
12 progress has been rather slow today. We will be
13 going late tonight. I anticipate breaking for a
14 dinner break at five o'clock, resuming at six, even
15 if it's in the middle of your cross. And we'll try
16 and work around that as much as possible, but we
17 want to go ahead and take a dinner break and be
18 back at six. We'll go until at least nine, and
19 we'll see where we go from there.

20 Another thing that came up is, a lot
21 of the witnesses for the Complainants filed
22 testimony about the impact on the Bootheel if
23 Noranda were to have closed. I don't know if the
24 parties have a lot of cross-examination of those
25 people, particularly the legislators. The

1 Commissioners have told me that they do not have
2 cross-examination. So you might agree amongst
3 yourselves whether or not the parties would have
4 any cross-examination.

5 MR. DOWNEY: I think all the parties
6 waived cross on all of those witnesses. Somebody
7 can correct me if I'm wrong.

8 MR. THOMPSON: That's true.

9 MR. LOWERY: Everybody after
10 Mr. Brubaker on the Complainants' witness list, at
11 least the company has waived cross on them.

12 JUDGE WOODRUFF: Anybody disagree
13 with -- with that? Okay. Well, I think we can cut
14 that substantially then. All right. Let's go
15 ahead and get started, and cross-examination by
16 Ameren.

17 MR. LOWERY: And, your Honor, as I
18 indicated, we're going to have to go ahead and go
19 in-camera. Not every single question is in-camera,
20 but there's so many intertwined on some of these,
21 many of them are, and I don't think there's any
22 practical way to do it but to go in-camera at least
23 for a while.

24 JUDGE WOODRUFF: At this point then
25 we will go in-camera, and once again, anyone who

1 can't be here will have to leave.

2 (REPORTER'S NOTE: At this point, an
3 in-camera session was held, which is contained in
4 Volume 6, pages 254 through 303 of the transcript.)

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1 JUDGE WOODRUFF: If somebody wants to
2 tell the reporters waiting outside that we're back
3 in session.

4 MR. LOWERY: And I have two more
5 exhibits, your Honor.

6 MR. COFFMAN: Your Honor, may I take
7 this moment to ask about the previous long stretch
8 of in-camera that we had? What is the process
9 going to be for declassifying any part of that that
10 it was not actually highly confidential?

11 JUDGE WOODRUFF: When the transcript
12 comes out, make a motion to review it and -- let me
13 start over again.

14 Review it, then make a motion to
15 declassify any portions that you believe should be
16 declassified and the Commission will rule on it at
17 that point.

18 MR. COFFMAN: It will be upon another
19 party to make a motion?

20 JUDGE WOODRUFF: It's going to be on
21 somebody to make a motion.

22 MR. COFFMAN: Okay. Thank you.

23 (AMERENUE EXHIBIT NOS. 115 AND 116
24 WERE MARKED FOR IDENTIFICATION.)

25 JUDGE WOODRUFF: 115 is the 10-K from

1 2013?

2 MR. LOWERY: That's correct.

3 JUDGE WOODRUFF: And 116 is the --

4 MR. LOWERY: Just for clarification,
5 your Honor, these are excerpts from the 10-K or
6 portions of it. They're each well over 100 pages.
7 I have the entire document here if for some reason
8 Mr. Smith would need it, but I didn't want to kill
9 any more trees.

10 JUDGE WOODRUFF: 116 is for 2012?

11 MR. LOWERY: Yes.

12 JUDGE WOODRUFF: You may proceed.

13 BY MR. LOWERY:

14 Q. Mr. Smith, you recognize Exhibits 115
15 and 116 respectively as being portions of Noranda's
16 10-K filed with the SEC for 2013 and 2012, correct?

17 A. Correct.

18 Q. And if we looked at these documents
19 together, and at least if I have the right pages,
20 they would contain information that allows us to
21 see what actual capital expenditures Noranda has
22 made over the past four years, would they not?

23 For example, if we go to page 61 of
24 Exhibit 115, we're going to see capital
25 expenditures for 2011 through 2013, correct?

1 A. Correct.

2 Q. And if I go to page 60 as it turns
3 out on the 2012 10-K, Exhibit 116, I can find the
4 2010 capital expenditure levels, right?

5 A. Correct.

6 Q. So for 2010, Noranda actually
7 invested 61.3 million, right?

8 A. That's correct.

9 Q. For 2011, it was 64.6, right?

10 A. Correct.

11 Q. And for '12 and '13 respectively
12 87.9 and 72.7; is that right?

13 A. Correct.

14 Q. So on average, and you can use my
15 calculator if you need to, but I calculated the
16 averages -- actual average for '11, '12 -- excuse
17 me -- '10, '11, '12 and '13 to be \$71.62 million.

18 A. 71.6.

19 Q. So my math was correct?

20 A. Yes, it was.

21 Q. Now, for the trailing 12 months
22 ending March 31, 2014, so that would be April '13
23 to March of '14, you indicated in your earnings
24 call -- or actually you didn't, but Mr. Boyles did
25 just a few weeks ago -- that you actually invested

1 **about 65 million for that period, right?**

2 A. I believe that's correct, yes.

3 **Q. Now, based on the facts and**
4 **circumstances in a given year, Noranda has**
5 **discretion as to the level of capital expenditures**
6 **that it would make; is that right?**

7 A. We do. Certain projects become
8 non-discretionary for a variety of reasons, but as
9 a general rule you have discretion in your capital.

10 **Q. And so, for example, in your 2013**
11 **plan, it called for you to make 95 million of**
12 **capital investments, but you actually only invested**
13 **72, which we just talked about, right?**

14 A. That's correct.

15 **Q. So you make adjustments sometimes in**
16 **terms of your capital expenditure plans, fair?**

17 A. Yes, we do.

18 **Q. Now, I know that you have said that**
19 **you plan to invest \$100 million per year in 2014 to**
20 **2018. That's what you told the Commission and**
21 **that's what you modeled to the Commission, right?**

22 A. Correct.

23 **Q. And we talked a few minutes ago about**
24 **how your actual expenditures the last four years**
25 **have been 71 million, and when I did the math, your**

1 actual capital expenditures the last three years
2 have been 75 million. Does that sound about right?

3 A. I could check, but that sounds about
4 right.

5 Q. And whether it's by coincidence or
6 not, the 75 million average for the last three
7 years is about the level of capital expenditures
8 that you included in your modeling for the Moody's
9 presentation, right?

10 A. Yes. And that's driven by our
11 estimate that, you know --

12 Q. I understand, but was my -- was the
13 answer to my question yes?

14 A. Yes.

15 Q. And it's also just about the level of
16 capital expenditures that you identify in your
17 direct testimony model apart from the unidentified
18 capex that you include in the model, right?

19 A. Yes, sustaining capital.

20 Q. I apologize for speaking over you.

21 A. Sustaining capital, yes.

22 Q. Now, if Noranda were to close the
23 smelter, then effectively it would exit Ameren
24 Missouri's system, wouldn't buy power anymore and
25 that power would be sold off-system, right?

1 A. That's one option. I mean, the
2 assets -- well, yes, that's one option.

3 **Q. Well, if Noranda exited the system**
4 **and Ameren didn't replace the load -- and you have**
5 **a very significant load, correct?**

6 A. Correct.

7 **Q. So under those assumptions, you**
8 **understand, do you not, that that power would be**
9 **sold in the off-system sales market, right?**

10 A. Yes, provided that they deem those
11 the cost of production and whatnot. As long as you
12 made business sense.

13 **Q. Sure. Assuming somehow -- assuming**
14 **the marginal cost of producing those megawatt hours**
15 **is above the --**

16 A. Right.

17 **Q. -- or the price you get was above**
18 **that cost, Ameren's going to sell in the off-system**
19 **market, right?**

20 A. You would sure think so.

21 **Q. And your company has testimony on**
22 **that issue from Mr. Dauphinais in this case; is**
23 **that right?**

24 A. That's correct.

25 **Q. And basically what Mr. Dauphinais'**

1 testimony is about is what would be Ameren's
2 opportunity cost if Noranda did stop taking power
3 and left the system, and he argues that using
4 historical power prices, the power would have sold
5 for less than the \$30 that you're asking for.

6 And because of that, he argues, using
7 this history, other customers are better off
8 letting Noranda pay the \$30 and keeping them in
9 business rather than Ameren Missouri having to sell
10 that power off-system for less than \$30, right?

11 A. That's correct.

12 Q. And you understand, do you not, that
13 the focus of his testimony is that if one is going
14 to look at power prices for figuring out Ameren
15 Missouri's opportunity cost under the circumstances
16 we just discussed, that one should only look at
17 historical power prices, and the reason one should
18 look at them, he says, is that they are known and
19 measurable, right?

20 A. Obviously Mr. Dauphinais is our
21 expert, and I'd encourage you to take that up with
22 him. But certainly that's present in his
23 testimony, yes.

24 Q. And you understand that that's the
25 premise of his testimony, do you not?

1 A. I think you should take that up with
2 Mr. Dauphinais.

3 Q. That wasn't my question. You
4 understand that that's the premise of his
5 testimony? I accurately described it, did I not?

6 A. I believe you accurately described
7 his testimony or a summary thereof.

8 Q. And the reason he says that is
9 that -- the reason he says that those historical
10 power prices are known and measurable but that
11 forward electricity prices are not known and
12 measurable -- well, that's a bad question. I'm
13 sorry. Let me withdraw that one.

14 The reason he has that premise, the
15 reason he said the things that I summarized a
16 minute ago is that he says historical power prices
17 are known and measurable but forward electricity
18 prices are not known and measurable, fair?

19 A. Mr. Dauphinais is the expert on that.

20 Q. Would you take a look at your
21 deposition again at page 47? Actually, starting on
22 page 46.

23 A. Okay.

24 Q. Starting on line 19. I asked you the
25 question, well, is it your understanding that his

1 argument is if we are going to look at what the
2 power prices are for purposes of figuring out
3 Ameren's opportunity cost, if you leave the system
4 and they sell that power off-system, is it your
5 understanding that what he said -- what he has said
6 is we should only look at historical power prices
7 because they were known and measurable? Is that
8 your understanding or not?

9 And then you said, I'm just not sure
10 that's a fair characterization, that the word
11 that's the -- that it's only -- but clearly that
12 was, you know, that was his focus.

13 Question: That was clearly his
14 focus?

15 Answer: Right.

16 And then on page 48, starting at
17 line 19, I asked you, so that argument -- and I'm
18 referring to Mr. Dauphinais' argument. You
19 understand that, right?

20 A. Yes.

21 Q. So that argument depends upon the
22 Commission relying on history for power prices,
23 right?

24 And you answered -- you didn't say
25 yes, but you said uh-huh, meaning yes, right?

1 And then I went on to say, question:
2 But you're asking the Commission to rely upon what
3 you say in the future you intend to invest in
4 capital expenditures as opposed to what you've
5 actually spent on average in the last four years;
6 isn't that true?

7 And you said, that's correct. Right?

8 A. I have to apologize. I went down to
9 46 and I lost you here for a second.

10 Q. Page 48, lines 13 to 20 -- 13 to 21.
11 I apologize for going too fast.

12 A. Yes. Okay.

13 Q. Question: So that argument depends
14 on the Commission relying on history for power
15 prices, right?

16 Answer: Uh-huh.

17 Question: But you're asking the
18 Commission to rely upon what you say in the future
19 you intend to invest in capital expenditures as
20 opposed to what you've actually spent on average in
21 the last four years; isn't that true?

22 And your answer was, that's correct?

23 A. That's correct. Yes.

24 Q. So for the Commission to accept
25 Mr. Dauphinais' argument, it's got to rely on

1 historic prices, but for the Commission to accept
2 your modeling, the Commission's got to look at
3 forward aluminum prices, correct?

4 A. Or go further back in the history.
5 While it's absolutely correct that we have not
6 spent as Noranda \$100 million capital, there have
7 been periods of time where these assets have.

8 Q. Fair enough. But not in the last
9 four years on average, correct?

10 A. That's correct.

11 Q. Now, I know you're aware that
12 Mr. Mudge provided testimony about Noranda's
13 largest shareholder, correct? That would be
14 Apollo, right?

15 A. Yes.

16 Q. And by Apollo, you understand that I
17 mean collectively Apollo Global Management and any
18 number of its affiliates, right?

19 A. Yes.

20 Q. And while I don't think that you had
21 previously verified the dollars received by Apollo
22 from sales of Noranda stock that are depicted on
23 Table 9 on page 38 of Mr. Mudge's testimony, it's
24 my understanding you were not disputing those
25 amounts are correct; is that true?

1 A. Yes, I did not dispute them.

2 Q. Have you since verified whether
3 they're accurate or not?

4 A. I did not.

5 Q. The other figures that Mr. Mudge
6 reports, the amount of Apollo's initial investment
7 and the amount of all the dividends paid to Apollo,
8 you did affirmatively admit that those were
9 correct, did you not?

10 A. I did.

11 Q. Now, you defended Apollo in your
12 surrebuttal testimony because I believe it's your
13 contention that Apollo took a significant risk in
14 buying Noranda in 2007, right?

15 A. That's correct.

16 Q. And I think you indicated that Apollo
17 did get a significant return for taking what you
18 characterize as a risk, correct?

19 A. That's correct.

20 Q. Mr. Mudge calculated that return at
21 \$360 million in excess of their initial investment
22 of 214 million, right?

23 A. So 316 in excess of the original?

24 Q. 360 in excess of their original. And
25 you agreed that that was the correct number,

1 **assuming that the sales of stock --**

2 A. Share sales were included, yes.

3 **Q. Which you don't dispute that he has**
4 **the right numbers on the share sales?**

5 A. I don't dispute that, that's correct.

6 **Q. And Mr. Mudge calculated an internal**
7 **rate of return of 340 percent, which you said you**
8 **had not confirmed, but you aren't disputing that**
9 **calculation either, are you?**

10 A. I am not.

11 **Q. And you put the words special**
12 **dividends, I believe, in quotes in your surrebuttal**
13 **testimony in response to Mr. Mudge because he**
14 **characterized the \$214 million special dividends**
15 **that Ms. Tatro discussed in her opening this**
16 **morning, he characterized it as a dividend but, in**
17 **fact, it was a special dividend, was it not?**

18 A. It was, but the intent was to
19 highlight that because it was also a return on
20 capital. It was a return of their original
21 investment.

22 **Q. And after that return, they had zero**
23 **money in the company, right?**

24 A. That's correct.

25 **Q. And that return took place 25 days**

1 **after they put in the 214, right?**

2 A. That's correct.

3 MR. LOWERY: I have another exhibit
4 to mark, your Honor.

5 JUDGE WOODRUFF: That will be 117.

6 (AMERENUE EXHIBIT NO. 117 WAS MARKED
7 FOR IDENTIFICATION BY THE REPORTER.)

8 JUDGE WOODRUFF: What was the date on
9 this one?

10 MR. LOWERY: Your Honor, it is -- I'm
11 trying to find it.

12 Thank you, Mr. Thompson. January 31,
13 2008, Form S-4.

14 JUDGE WOODRUFF: All right. You can
15 proceed.

16 BY MR. LOWERY:

17 **Q. Mr. Smith, the court reporter has**
18 **handed you what's been marked for identification as**
19 **Exhibit 117. Is it correct that you recognize this**
20 **document at least as being a portion of a Form S-4**
21 **filed by Noranda in January 2008?**

22 A. I was not an employee of Noranda at
23 this time, but that's certainly what this document
24 appears to be, yes.

25 **Q. And would you turn to the last page**

1 of Exhibit 117, and in the third and fourth
2 paragraphs on that last page, which is actually
3 page 45 of this S-4, those paragraphs explain that
4 Apollo contributed the \$214.2 million and then, on
5 June 7th, which was 25 days later, that Noranda
6 actually borrowed \$220 million and that Noranda
7 used approximately \$216 million of that to pay a
8 cash dividend to the stockholders, including
9 Apollo, right?

10 A. Yes.

11 Q. So the funds that were used to repay
12 Apollo, as you would characterize it, they were
13 borrowed by Noranda, right?

14 A. That's correct.

15 MR. LOWERY: Your Honor, I'd move for
16 admission of Exhibit 117.

17 JUDGE WOODRUFF: 117 has been
18 offered. Any objections to its receipt?

19 (No response.)

20 JUDGE WOODRUFF: Hearing none, it
21 will be received.

22 (AMERENUE EXHIBIT NO. 117 WAS
23 RECEIVED INTO EVIDENCE.)

24 JUDGE WOODRUFF: 115 and 116 have not
25 been offered.

1 MR. LOWERY: I would also offer
2 those.

3 JUDGE WOODRUFF: 115 and 116 have
4 been offered. Any objections to their receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, they
7 will be received.

8 (AMERENUE EXHIBIT NOS. 115 AND 116
9 WERE RECEIVED INTO EVIDENCE.)

10 JUDGE WOODRUFF: And, Mr. Lowery, we
11 are fast approaching five o'clock. Is this a good
12 place to stop?

13 MR. LOWERY: It's perfectly fine. I
14 can just pick back up.

15 JUDGE WOODRUFF: We will then stop
16 for lunch until six o'clock. Before we break, I do
17 want to -- pardon me. We'll call this dinner if
18 you didn't hear the comment about that.

19 I did want to address one matter that
20 Mr. Coffman brought up. He made a motion -- or
21 brought up the question of clarifying procedure on
22 how we would handle possibly reclassifying some of
23 that testimony. I didn't want to seem dismissive
24 of what he said. If you want to file a motion
25 offering a procedure for doing that, that's what I

1 really meant, rather than saying you do it. Okay?

2 Then we are going to take a break for
3 dinner, and we'll come back at six o'clock.

4 (A BREAK WAS TAKEN.)

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9 JUDGE WOODRUFF: Let's come to order,
10 please. All right. We're back from our dinner
11 break, and Mr. Smith is still on the stand and
12 we're still under cross-examination.

13 MR. LOWERY: May I proceed, your
14 Honor?

15 JUDGE WOODRUFF: You may proceed.

16 CROSS-EXAMINATION BY MR. LOWERY:

17 Q. Mr. Smith, you had told the
18 Commission in your surrebuttal testimony that the
19 \$220 million that Noranda borrowed, most of which,
20 as we discussed earlier, went back to Apollo to pay
21 them back the \$214 million, you indicated that that
22 had no significant impact on Noranda's cash
23 position at that time, correct?

24 A. That's correct.

25 Q. But, in fact, having \$220 million of

1 debt does produce interest expense that has to be
2 paid, correct?

3 A. That's correct.

4 Q. And one must consume to cash to pay
5 interest expense, right?

6 A. That's correct.

7 Q. And paying that cash lowers liquidity
8 below where it would have been had you not had to
9 cut those checks for interest, right?

10 A. Over time, yes.

11 Q. And interest also over time lowers
12 your EBITDA, your segment profit, correct?

13 A. That's correct.

14 Q. And today Noranda pays approximately
15 \$50 million annually in interest; isn't that
16 correct?

17 A. A bit under, yes, but very close.

18 Q. Something like 47, 48 million, right?

19 A. 47, yep.

20 Q. Now, in regards to Apollo, you also
21 criticize Mr. Mudge saying that he failed to take
22 into account the importance of paying dividends in
23 order to keep access to the capital markets, right?

24 A. That's correct.

25 Q. Now, after receiving every dime of

1 its initial investment back plus another
2 \$100 million dividend in 2008, Apollo has provided
3 no capital to Noranda at all; isn't that right?

4 A. That's correct.

5 Q. And Apollo had -- or Noranda had an
6 IPO, an initial public offering in 2010 that raised
7 about \$200 million, right?

8 A. Yes. Two actually.

9 Q. Two IPOs --

10 A. Yeah.

11 Q. -- that raised a total of
12 \$200 million?

13 A. Two primaries, yes, May and December.

14 Q. Thank you. And since then, Apollo
15 has received another \$108 million in dividends,
16 right, approximately?

17 A. I would have to verify the number.
18 I just don't have the components in front of me.

19 Q. Well, I don't have the reference, but
20 I asked you about that in your deposition. If you
21 could turn to page 114, please.

22 A. Sure.

23 Q. Make sure I didn't misstate it.
24 Page 114. Actually, page 115. I think we can
25 start there on line 6, Mr. Smith. Have you found

1 it, Mr. Smith?

2 A. Yes, I sure have.

3 Q. So after discussing the two offerings
4 that you just pointed out to me -- I'd forgotten
5 you told me that -- on line 6 I asked you this
6 question: Since that public offering -- and I
7 guess it's two public offerings, right?

8 A. Yeah.

9 Q. -- Apollo has received about another
10 108 million, I said in equity, is that right -- I
11 mean in dividends; is that right? And you said,
12 that's correct.

13 A. Yes. That is correct.

14 Q. And after receiving that additional
15 \$108 million in dividends, Apollo's also put no
16 further capital in Noranda, right?

17 A. That's correct.

18 Q. Apollo doesn't have any money in
19 Noranda at all right now; isn't that true?

20 A. That's correct.

21 Q. And hasn't had any since 2007, has
22 it?

23 A. That's correct.

24 Q. Noranda has not sought to access the
25 equity markets since those IPOs in 2010; isn't that

1 true?

2 A. Yes. That's correct.

3 Q. Despite paying dividends, right?

4 A. Correct.

5 Q. And when I review your recent board
6 materials, your recent CEO reports, your earnings
7 releases, your 10-Ks, I don't see any mention of a
8 plan to access the equity markets because there are
9 no such plans at this time; isn't that true?

10 A. That's correct.

11 Q. Now, you indicated in your
12 surrebuttal testimony that paying dividends
13 supports the company's access to financial markets.
14 That's one of the things you said, right?

15 A. Yes.

16 Q. By that logic, the large dividends
17 paid to Apollo ought to support access to capital
18 for Apollo. Isn't that a fair conclusion one could
19 draw?

20 A. It's a fair conclusion, but it's not
21 necessarily the case that they or any other
22 shareholder would.

23 Q. But regardless, it hasn't actually
24 supported access to capital from Apollo because
25 they haven't reinvested in Noranda at all since

1 they got their original 214 back, right?

2 A. That is correct.

3 Q. Now, all else being equal, which I'm
4 asking you to assume for purposes of my next
5 question, all else being equal, had the more than
6 \$200 million in dividends not been paid to Apollo
7 and had Apollo not taken all of its initial
8 investment out of Noranda, then Noranda would have
9 more cash today, isn't that fair, all else being
10 equal?

11 A. So no investments by us, cash comes
12 in, just doesn't go out?

13 Q. All else being equal, that's right.

14 A. All else being equal. Yes.

15 Q. Now, in your surrebuttal testimony,
16 you gave Apollo credit for reducing your debt by
17 \$285 million, right?

18 A. Yes, in one single transaction,
19 that's -- a series of related transactions, yes.

20 Q. And you gave them credit for that
21 happening, right?

22 A. Yes.

23 Q. But your debt/equity ratio as of the
24 end of 2013 is still 87 percent, isn't it?

25 A. That's correct.

1 MR. LOWERY: Your Honor, I need to
2 get a couple more exhibits marked.

3 JUDGE WOODRUFF: Okay. 118 and 119.
4 (AMERENUE EXHIBIT NOS. 118 AND 119
5 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

6 MR. LOWERY: Thank you, your Honor.

7 BY MR. LOWERY:

8 Q. Now, Mr. Smith, isn't it true that,
9 at present, Apollo still owns 33.67 percent of
10 Noranda's outstanding stock?

11 A. That's correct.

12 Q. And isn't it also true that, at
13 present, Apollo still effectively controls Noranda?

14 A. Could you explain your definition of
15 effective control?

16 Q. Turn to page 121 of your deposition,
17 please. Actually -- yeah, page 121 at line 23.

18 A. Okay.

19 Q. Are you there?

20 A. Yes.

21 Q. I asked you the following questions
22 and answers. Question: This is telling people
23 that Apollo will continue to be able to
24 significantly influence or effectively control
25 Noranda's position, right? And you said, uh-huh.

1 Question: So even at 33.67 percent, its current
2 ownership interest, Apollo effectively controls
3 Noranda still, right? And you said, uh-huh. And
4 has since 2007? Answer: Yes. Question: Is that
5 true? Yes, that's correct.

6 Did I read that accurately?

7 A. Yes, you did.

8 Q. And the court reporter has handed you
9 what's been premarked for identification as
10 Exhibit 118. Do you have that document?

11 A. Yes, I do.

12 Q. And if you turn to the third page --
13 well, first of all, do you recognize this document
14 as being a portion of the March 11, 2014 Noranda
15 prospectus?

16 A. Uh-huh.

17 Q. Mr. --

18 A. Yes.

19 Q. Thank you. And on page 3 of that
20 Noranda prospectus, under the heading -- there's a
21 heading, a bold heading, the first bold heading on
22 the page. Do you see that?

23 A. On page 3, and this is 118?

24 Q. Yes. And it's actually page S5 of
25 the official document, but I didn't print all of

1 the document because it's very large. And that
2 bold heading says, and I quote, Apollo will
3 continue to be able to substantially influence our
4 company and the outcome of all matters voted upon
5 by our shareholders and to prevent actions which a
6 shareholder may otherwise view favorably. Did I
7 read that accurately?

8 A. Yes.

9 Q. And right below that there's the
10 discussion about after Apollo, after consummation
11 of the offering, and the offering that's being
12 referred to there is the sale by Apollo of 10,000
13 of its shares in March of this year, right?

14 A. Correct.

15 Q. So after that sale took place, Apollo
16 will still own 33.67 percent of the stock, as we
17 talked about before. And the last sentence of that
18 paragraph says, thus, Apollo will continue to be
19 able to significantly influence or effectively
20 control our decisions. That's what Noranda's
21 prospectus says, correct?

22 A. Yes. It says influence or control.

23 Q. Or effectively control, right?

24 A. It says or effectively control, but
25 they cannot force actions to happen.

1 Q. Now, you have Exhibit 119 there. Do
2 you have that one?

3 A. I do.

4 Q. And it is a Form S-3 Registration
5 Statement filed with the Securities and Exchange
6 Commission on April 28th of this year; is that
7 right?

8 A. Excuse me. It's 19?

9 Q. 119. I'm sorry.

10 A. I've got 119.

11 Q. I know we have a lot of documents. I
12 apologize for that. I'll let you catch up. Take
13 your time.

14 A. Okay. All right. I have document
15 119.

16 Q. Am I correct that Exhibit 119 is a
17 Form S-3 filed with the SEC on April 28th of this
18 year?

19 A. Yes.

20 Q. And I believe this Form S-3 is what
21 they call a shelf registration; is that fair?

22 A. Yes.

23 Q. And what that means is you're
24 registering debt and equity securities that you
25 don't necessarily have a specific plan to issue,

1 but you've got them registered, and if you decided
2 to do so, you would at least have jumped through
3 that regulatory hoop so that you could do that. Is
4 that fair?

5 A. Yes.

6 Q. And if you turn to page 12 of that
7 document, and I think -- I don't know if it's
8 two-sided or one-sided, Mr. Smith. My copy's just
9 one-sided.

10 A. Mine's two.

11 Q. Yeah, that's what I thought.

12 A. And are you looking for risk factors?

13 Q. No. I'm just looking for page 12 of
14 the document. I just wanted to ask you a question
15 about that.

16 A. I have page 12.

17 Q. And at the top of that it says
18 description of capital stock, right?

19 A. Correct.

20 Q. And it's -- it's describing your
21 authorized shares and it's describing your
22 outstanding shares in that very first paragraph
23 under general, right?

24 A. Yes.

25 Q. And then if you turn to the next

1 page, there's a heading that says composition of
2 board of directors, election and removal of
3 directors. Do you see that?

4 A. Yes.

5 Q. And as you said earlier, it indicates
6 that Noranda has 12 directors, right?

7 A. Yes.

8 Q. And the very last proviso of that
9 paragraph that I'm looking at indicates that, for
10 so long as there is at least one Apollo
11 representative on the board of directors, then a
12 quorum must include such representative, an Apollo
13 representative, unless the representative were to
14 waive the right to be included in the quorum; is
15 that right?

16 A. That's correct.

17 Q. And then on the next page, at the top
18 of page 14, this document is describing Apollo's
19 rights to designate director nominees, correct?

20 A. That's correct.

21 Q. And as long as Apollo's got between
22 30 percent and 50 percent of your outstanding
23 common stock, which they do now, they have a right
24 to designate at least six director nominees, right?

25 A. That's correct.

1 **Q. And that's half the board, right?**

2 A. That's correct.

3 **Q. And what that means is, if they -- if**
4 **they do exercise their right to nominate at least**
5 **six director nominees, if there was another**
6 **director up for election that Apollo didn't want to**
7 **be elected, for example, they could block that,**
8 **couldn't they?**

9 A. Well, it's a New York Stock Exchange
10 company. This may be their right, but they --
11 according to the rules of the New York Stock
12 Exchange, there has to be an independent board. So
13 there have to be seven independents. Otherwise, we
14 can't stay in the New York Stock Exchange. So
15 while they may have the right, in practical reality
16 they couldn't get the seven -- or they couldn't get
17 the six.

18 **Q. This document doesn't talk about**
19 **that, does it?**

20 A. No, it doesn't.

21 MR. LOWERY: Your Honor, I move for
22 the admission of Exhibits 118 and 119.

23 JUDGE WOODRUFF: 118 and 119 have
24 been offered. Any objections to their receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, they
2 will be received.

3 (AMERENUE EXHIBIT NOS. 118 AND 119
4 WERE RECEIVED INTO EVIDENCE.)

5 BY MR. LOWERY:

6 Q. Mr. Smith, if I were to tell you that
7 I looked at Noranda's closing stock price on Friday
8 and that it was \$3.40, does that sound about right?

9 A. Sounds about right.

10 Q. And Noranda has about 68.2 million
11 outstanding shares?

12 A. That's correct.

13 Q. So Apollo has about a third of that,
14 which is around 22 or 23 million?

15 A. That's correct.

16 Q. So based on Friday's closing share
17 price at \$3.40, Apollo's shares are worth about
18 \$77 million as of that time, correct?

19 A. And you're using how many shares
20 for --

21 Q. 22.7 million shares.

22 A. 22.7. By the way -- yeah,
23 77 million. 77.2.

24 Q. So if Apollo had sold the remaining
25 of -- remainder of its shares at that price on

1 **Friday, assuming Mr. Mudge's other figures are**
2 **correct, and you haven't disputed that they are,**
3 **Apollo would have realized above its initial**
4 **investment, 214 million, a total of \$437 million in**
5 **dividends and stock sale proceeds since 2007,**
6 **correct?**

7 A. Yeah. That sounds correct. I'm not
8 going to do the math here. That sounds correct.

9 **Q. On a net investment of zero?**

10 A. On an initial investment of their
11 216 million and -- so they made that -- they made
12 that return based on that investment.

13 **Q. Which they also got back in addition**
14 **to the 437 million that you just agreed was**
15 **correct, right?**

16 A. It's part of the return calculation.

17 **Q. And in addition, they've also**
18 **received 31 million of management fees from**
19 **Noranda; isn't that right?**

20 A. That's correct.

21 **Q. Now, in your opinion, closing the**
22 **smelter would be harmful to Noranda's overall**
23 **financial condition, wouldn't it?**

24 A. That's correct.

25 **Q. And when I say overall, I mean the**

1 whole enterprise, the bauxite, alumina, the
2 integrated upstream and downstream businesses,
3 right?

4 A. Yes.

5 Q. If that financial harm caused by
6 closing the smelter, which I think you characterize
7 as a severe negative for your company, if that harm
8 were to cause significant drop in Noranda's stock
9 price, then that would reduce the value of Apollo's
10 remaining shares as well as the value of the shares
11 held by other shareholders, right?

12 A. If all those conditions occurred,
13 yes.

14 Q. Now, you have not asked Apollo if it
15 would be willing to loan Noranda money as a means
16 to provide more liquidity, have you?

17 A. That's correct.

18 Q. You haven't asked them, for example,
19 if they would be willing to put up the 30 million
20 for the rod mill that you indicate is critical to
21 Noranda's operations, have you?

22 A. That's correct.

23 Q. Now, that rod mill when in operation,
24 you expect it to be accretive to your EBITDA by
25 11 and a half million dollars per year, right?

1 A. That's correct.

2 Q. And you expect it -- in fact, you
3 testified that if you didn't put the rod mill in,
4 you might or would have to effectively exit the
5 U.S. rod mill -- rod market, which would cost
6 you -- actually, this is a highly confidential
7 number. I'll have to come back to that one, your
8 Honor, so we don't have to jump in and out.

9 Now, I know it's your contention that
10 you have debt covenants that by their literal terms
11 might prevent Apollo from loaning you more money or
12 loaning you money at all, but you don't actually
13 know how those other debt holders would react if
14 Apollo was willing to loan you money and
15 subordinate all of its debt to all of the other
16 existing debt, right? You don't know how they
17 would react?

18 A. That's correct.

19 Q. You haven't explored that
20 possibility, right?

21 A. Right.

22 Q. And if Apollo were to do that, Apollo
23 would actually have some monetary capital at risk,
24 which it does not have now, right?

25 A. That's correct.

1 Q. Because other than the value of their
2 existing equity holding in which on a net basis
3 they have nothing invested, Apollo has no skin in
4 the game financially when it comes to Noranda right
5 now; isn't that fair?

6 A. That's correct.

7 Q. And as of this moment, all that can
8 really happen to Apollo's finances as they relate
9 to Noranda is that they could fail to profit more
10 on the 33.67 percent of Noranda's stock that they
11 hold, but they actually can't lose money, right?

12 A. That's correct. On their invested
13 dollars, that's correct, they cannot.

14 Q. Noranda hasn't asked Apollo to make
15 an equity investment in -- a further equity
16 investment in Noranda either, has it?

17 A. That's correct.

18 Q. Do you know how much in dividends
19 Noranda has paid in total the past four years?

20 A. I don't have that number right in
21 front of me.

22 Q. Mr. Smith, do you still have
23 Exhibits 115 and 116? I know you had them before
24 break.

25 A. I do. I do.

1 Q. And those are Noranda' 10-Ks for 2013
2 and 2012, right?

3 A. I'm sorry. The exhibit numbers
4 again?

5 Q. 115 and 116.

6 A. I have them.

7 Q. If you look, I guess, at 116 first,
8 and page -- it's marked as page 23. This is an
9 excerpt from your 10-K, of course. We can see that
10 in 2011 Noranda paid 69.3 million in dividends,
11 correct?

12 A. That's correct.

13 Q. And in 2012 Noranda paid -- well,
14 I'll just tick off the numbers -- paid four
15 different dividends of 2.6 million, 84.3 million,
16 2.6 million, 2.7 million and 2.9 million, right?

17 MR. DOWNEY: What page are you
18 looking at?

19 MR. LOWERY: Page 23 of Exhibit --
20 I'm sorry, Ed. You're right. I jumped to the
21 wrong one.

22 BY MR. LOWERY:

23 Q. I apologize, Mr. Smith. In 2012, on
24 page 23 of Exhibit 116, we see that Noranda paid
25 2.6 million on February 15th, 84.3 on

1 **February 29th, 2.6 on April 24th, 2.7 on July 24th**
2 **and 2.8 on October 24th, right?**

3 A. Correct.

4 Q. **Then if we go to the 2013 10-K, which**
5 **is Exhibit 115, we can see that Noranda paid quite**
6 **a bit less in dividends in 2013, right?**

7 A. Correct. That's correct.

8 MR. LOWERY: I need to get another
9 exhibit marked, your Honor, which I believe will
10 be --

11 JUDGE WOODRUFF: 120.

12 MR. LOWERY: 120. Thank you. While
13 we're at it, your Honor, I'll go ahead and mark one
14 more.

15 (AMERENUE EXHIBIT NOS. 120 AND 121
16 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)
17 BY MR. LOWERY:

18 Q. **Mr. Smith, you should have two**
19 **documents the court reporter just gave you,**
20 **Exhibits 120 and 121. 120 is the -- is a portion**
21 **of the Report and Order from the Commission in**
22 **Ameren's rate case, ER-2010-0036. Do you see that?**

23 A. Yes.

24 Q. **And 121 is a portion of a Form 10-Q**
25 **filed by Noranda, and if you look down at the**

1 bottom you can see it was filed on November 4,
2 2011. Do you see that? I apologize. It's
3 actually for the quarterly period ended
4 September 30, 2011. You can actually see that up
5 sort of in the middle of the first page --

6 A. Uh-huh.

7 Q. -- is that right?

8 A. Yes, that's correct.

9 Q. Now, you filed testimony in
10 ER-2010-0036, right?

11 A. I've participated in every rate case
12 since -- I believe since my arrival. So I don't
13 recall the specifics of the testimony, but I
14 must -- you know, Noranda certainly participated in
15 that rate case.

16 Q. And you recall that you filed
17 testimony, do you not?

18 A. Mr. Lowery, I don't remember the
19 specific testimony.

20 Q. Okay. If you would turn to -- well,
21 first of all, just so people can keep up, I've
22 provided the cover of this Report and Order and
23 I've also provided the first four pages, which
24 basically covers the table of contents and then
25 some more pages. Do you see that?

1 A. Yes.

2 Q. And if you look at the fourth page,
3 the numbered fourth page, you'll see table of
4 content says rate design and class cost of service
5 issues start on page 80?

6 A. Yes.

7 Q. And if you turn to page 80, you'll
8 see a numbered paragraph 2, and that indicates that
9 Public Counsel, MIEC, AARP and Consumers Council
10 and the Missouri Retailers Association have filed a
11 Nonunanimous Stipulation & Agreement about rate
12 design, how the rate increase should be allocated,
13 right?

14 A. Yes.

15 Q. And MEUA, which I believe stands for
16 Midwest Energy Users Association, they opposed that
17 stipulation, correct?

18 A. Yes.

19 Q. And then you --

20 A. I'm sorry.

21 Q. I apologize.

22 A. It says -- okay. They did not oppose
23 the agreement.

24 Q. Third line on page 81 of the Report
25 and Order.

1 A. Okay. Sorry. It does oppose. Got
2 it.

3 Q. So MEUA opposed that stipulation,
4 correct?

5 A. Right.

6 Q. And then if you go down to numbered
7 paragraph 5 on page 81, of course, it points out
8 that Noranda is the only member of the large
9 transmission class, correct? You know that to be a
10 fact, that you are the only member --

11 A. Yes.

12 Q. -- of the LTS class, right?

13 A. Yes.

14 Q. And then if you go to page 88,
15 numbered paragraph 24, we see that the
16 Commission -- and I'm in the last full sentence
17 on -- or the last sentence that starts on paragraph
18 24 on page 88. We see the Commission is describing
19 MIEC's class cost of service study, and they say --
20 the Commission says, Brubaker also advocated that
21 the large transmission class, which would only be
22 Noranda, be moved entirely to its cost of service
23 as shown in MIEC's class cost of service study.
24 That extra movement would require an additional
25 8.2 million from the residential class and would

1 reduce the rate relief that would otherwise flow to
2 other rate classes. Do you see that?

3 A. Yes, I do.

4 Q. And then in paragraph 28 on down the
5 page on page 89, it indicates that the large
6 transmission class, again only member is Noranda,
7 would receive a revenue neutral reduction of
8 11.74 percent which amounts to a reduction of
9 approximately 16.3 million. That means Noranda
10 would receive an actual rate reduction of
11 approximately 2.1 million. Do you see that?

12 A. Yes.

13 Q. And the Commission goes on to note
14 that that would occur while the residential class
15 received an 11.7 percent rate increase, right?

16 A. Yes.

17 Q. And then in paragraph 30 on page 90,
18 they describe MIEC's argument for that treatment.
19 And by the way, Noranda was a participant in MIEC
20 in this rate case, right?

21 A. I believe that's correct.

22 Q. And what the Commission says is that
23 MIEC and in particular Noranda attempt to justify
24 these results by claiming that Noranda needs
25 special rate consideration to remain competitive

1 with other aluminum smelters in the United States,
2 less it be forced to close resulting in economic
3 devastation to Missouri, right?

4 A. Yes. And as we've gone through this,
5 this has -- I now remember this case.

6 Q. And in this case, you testified that
7 the smelter's viability was threatened by the power
8 rates it was paying, right?

9 A. And by the 18.6 or 7 percent increase
10 that was being requested, and it was right on the
11 heels of the great recession.

12 Q. Right. I understand. But your claim
13 in that case, the reason for your claim may have
14 been different and the amount may have been
15 different, but your claim in that case was in many
16 respects similar to the claim that you're making in
17 this case, and that is you need relief from the
18 rate increase that was being proposed there, you
19 need relief from the rates you're paying now here,
20 else the competitive viability of the smelter is
21 threatened, right?

22 A. That's correct. This is an issue
23 that just doesn't go away.

24 Q. And then over on page 92 of the
25 Report and Order the Commission states, clearly

1 Noranda will be affected by the rate increase that
2 will result from this case, but the same can be
3 said about all the other businesses and families
4 that must pay AmerenUE for the electricity they
5 need. The reduction proposed by the stipulated
6 position would give Noranda an actual rate decrease
7 of 2.147 million while all other customers have to
8 absorb a rate increase. That result is
9 inappropriate. That's what the Commission said,
10 right?

11 A. I'm sorry. Which line item are you
12 on?

13 Q. I apologize. Page 92.

14 A. Okay.

15 Q. Paragraph 35.

16 A. Okay.

17 Q. And rather than me rereading it --
18 well, I'll just reread it because you probably were
19 trying to look, and I apologize. I should have
20 taken more time.

21 So the Commission concluded, clearly
22 Noranda will be affected by the rate increase that
23 will result from this case, but the same can be
24 said about all the other businesses and families
25 that must pay AmerenUE for the electricity they

1 need. The reduction proposed by the stipulated
2 position would give Noranda an actual rate decrease
3 of 2.147 million while all other customers have to
4 absorb a rate increase. That result is
5 inappropriate.

6 That's the Commission's conclusion,
7 correct?

8 A. Yes.

9 Q. So that stipulated position that
10 would have given you a rate decrease was rejected
11 by the Commission, right?

12 A. That's correct.

13 MR. LOWERY: Your Honor, I'd move for
14 admission of Exhibit 120.

15 JUDGE WOODRUFF: 120 has been
16 offered. Any objection to its receipt?

17 (No response.)

18 JUDGE WOODRUFF: Hearing none, it
19 will be received.

20 (AMERENUE EXHIBIT NO. 120 WAS
21 RECEIVED INTO EVIDENCE.)

22 BY MR. LOWERY:

23 Q. Now, Mr. Smith, you also have
24 Exhibit 121 there. Do you have that one?

25 A. I do.

1 Q. And by the way, the Commission's
2 decision that we were just talking about was
3 issued on June 7, 2010, correct? I'm sorry. It
4 was issued on May 28, 2010 and became effective on
5 June 7, 2010, right?

6 A. That is correct.

7 Q. Now, Exhibit 121, as we just
8 discussed, is a Form 10-Q that Noranda filed with
9 the SEC on September 30, 2011, and it indicates
10 that at that time there were 67,231,472 shares of
11 Noranda common stock outstanding, right?

12 A. That's correct.

13 Q. And actually, page 2 of Exhibit 121
14 is a press release that Noranda issued on
15 November 2, 2011, a couple days before this 10-Q we
16 just talked about was issued, or couple days before
17 you reported you had 67 million and some odd
18 shares, right?

19 A. Again, I apologize, Mr. Lowery. The
20 question you're asking is?

21 Q. Is page 2 of Exhibit 121, have I
22 accurately identified that as a news release that
23 you issued, Noranda issued on November 2, 2011?

24 A. Yes, that's correct.

25 Q. And so after -- in 2010, advocating

1 that you actually get a rate decrease in Ameren
2 Missouri's rate case at that time, the next year
3 you declared, I guess it's called a supplemental
4 dividend here, but you declared a supplemental
5 dividend of a dollar per share, right?

6 A. That's correct.

7 Q. And at a dollar per share, the
8 supplemental dividend would equate to about
9 \$67 million roughly, correct?

10 A. That's correct.

11 MR. LOWERY: I move for the admission
12 of Exhibit 121, your Honor.

13 JUDGE WOODRUFF: 121 has been
14 offered. Any objections to its receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, it
17 will be received.

18 (AMERENUE EXHIBIT NO. 121 WAS
19 RECEIVED INTO EVIDENCE.)

20 MR. LOWERY: And I think we're going
21 to have to go back in-camera now, your Honor.

22 JUDGE WOODRUFF: All right. If
23 there's anyone in the room who needs to leave,
24 please do so.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 6, pages 349 through 360 of the transcript.)

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1 JUDGE WOODRUFF: Okay. We are back
2 in regular session.

3 MR. LOWERY: I need to get another
4 exhibit marked.

5 JUDGE WOODRUFF: Be 123.

6 (AMERENUE EXHIBIT NO. 123 WAS MARKED
7 FOR IDENTIFICATION BY THE REPORTER.)

8 JUDGE WOODRUFF: Whenever you're
9 ready.

10 MR. LOWERY: Thank you.

11 BY MR. LOWERY:

12 Q. Now, Mr. Smith, the court reporter
13 has handed you what's been marked Exhibit 123,
14 right? You have that?

15 A. Yes.

16 Q. And you've seen this before, right?

17 A. Yes.

18 Q. And what Exhibit 123 is, it's a
19 compilation of data from Bloomberg recording actual
20 historical aluminum prices from the start of 2013
21 'til May of this year and forward aluminum prices
22 through May of 2015, right?

23 A. Yes.

24 Q. And you agree that Bloomberg is a
25 reliable source of market data, correct?

1 A. Yes.

2 Q. You used forward LME prices as of
3 1/22/14 in your analysis, right?

4 A. Yes.

5 Q. And these prices are also forward
6 prices, forward -- reflect forward LME prices, but
7 they are as of 5/27/14, right?

8 A. Yes.

9 Q. Now, forward prices for the LME like
10 the one that Bloomberg -- the one Bloomberg is
11 reporting, you say those are the prices that must
12 be used to evaluate Noranda's future financial
13 prospects for purposes of justifying the rate
14 request you've made in this case, right?

15 A. Yes. We think that creates the most
16 realistic scenario.

17 Q. And there are also forward prices for
18 the Midwest premium, correct?

19 A. The market's not as efficient, but
20 yes.

21 Q. They don't go out as far either,
22 correct?

23 A. That is correct.

24 Q. And you can see those forward prices
25 for the Midwest premium on the third page of

1 Exhibit 123, correct?

2 A. That's correct.

3 Q. And they're over on the -- they're
4 essentially the right three columns, and the prices
5 themselves for the Midwest premiums, those forward
6 prices are that last column that says last price,
7 and the first one is .1865 cents, correct? I'm
8 sorry, .1865 dollars. 18.65 cents, right?

9 A. Correct.

10 Q. Now, according to this May 27 forward
11 curve, the market is telling us that it expects the
12 Midwest premium to remain quite strong through May
13 2015, fair?

14 A. Yes.

15 Q. And you were asked questions about
16 the Midwest premium during recent earnings calls,
17 and you pointed to the strong demand fundamentals
18 that support the Midwest premium, correct?

19 A. Yes.

20 Q. You noted that there is less U.S.
21 supply than there has been and that there is now
22 strong fundamental demand in the market, right?

23 A. Yes.

24 Q. And it's fair to say, is it not, that
25 your view in the next year or so and perhaps longer

1 is that the Midwest premium is expected to stay
2 pretty strong visa-vis where it's historically
3 been, right?

4 A. Yes, versus the historic 6 to 7 cent
5 premium, yes.

6 MR. LOWERY: Your Honor, with that, I
7 would move for the admission of Exhibit 123.

8 JUDGE WOODRUFF: 123 has been
9 offered. Any objections to its receipt?

10 (No response.)

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

13 (AMERENUE EXHIBIT NO. 123 WAS
14 RECEIVED INTO EVIDENCE.)

15 BY MR. LOWERY:

16 Q. Now, in your direct testimony
17 modeling, you didn't use forward Midwest premium
18 prices for your modeling. Instead, you used CRU's
19 forecast of what they expect the Midwest premium to
20 be, right?

21 A. Correct.

22 Q. And it's a forecast that existed, I
23 assume, at the time you filed your testimony,
24 correct?

25 A. That's correct.

1 Q. Now, we talked earlier about using CR
2 prices in the Moody's model, and there you also
3 used CRU prices both for the LME and for the
4 Midwest premium, right?

5 A. Yes.

6 Q. But in your direct testimony you used
7 LME forward prices for the LME and you used CRU
8 forecasted prices for the Midwest premium, right?

9 A. That's correct.

10 MR. LOWERY: I have another exhibit
11 to mark, your Honor. 124.

12 (AMERENUE EXHIBIT NO. 124 WAS MARKED
13 FOR IDENTIFICATION BY THE REPORTER.)

14 JUDGE WOODRUFF: Whenever you're
15 ready.

16 BY MR. LOWERY:

17 Q. Mr. Smith, do you have Exhibit 124?

18 A. Yes, I do.

19 Q. Do you recognize Exhibit 124 as being
20 information from CRU, the company we've been
21 talking about?

22 A. Yes, it is.

23 Q. And do you see down in the bottom
24 left-hand corner, it's fairly small, but this
25 indicates that this is CRU information as of 2014

1 Q2; do you see that?

2 A. Yes.

3 Q. And if you turn to the next page,
4 also down at the bottom toward the left you see
5 that this is CRU information as of second quarter
6 of 2014, right?

7 A. I'm sorry. Say it again.

8 Q. I'm sorry. On the second page of
9 Exhibit 124?

10 A. Yes.

11 Q. And you see a bunch of prices that
12 CRU is providing here?

13 A. Yes.

14 Q. And you see down on the bottom left,
15 you see it's indicating that this is 2014, second
16 quarter 2014 information?

17 A. I'm sorry. The bottom?

18 Q. You see on the screen shot where you
19 see the start bottom at the very bottom corner --

20 A. Yes.

21 Q. -- as if you were on a computer? And
22 then right above that, you see some boxes, aluminum
23 smelting model, then it says Macro 2014 Q2?

24 A. Yes.

25 Q. And this is the kind of data that

1 Noranda used for LME prices in the Moody's
2 presentation, and it's the kind of data that you
3 used for Midwest premium prices in your modeling,
4 correct?

5 A. Yes.

6 Q. And, in fact, you can see down here
7 in row 34, you can see that that's the Midwest
8 premium forecast from CRU, right?

9 A. Correct.

10 Q. And you can go over to where it says
11 2014 and you can see a forecast for '14, actually
12 it goes all the way out to '20 or '21, but for our
13 purposes I'm just focused on the 2014 to 2018
14 numbers. Do you see those?

15 A. Yes.

16 (REPORTER'S NOTE: At this point, per
17 Judge Woodruff's instruction on page 369, an
18 in-camera session was held, which is contained in
19 Volume 6, page 368 of the transcript.)

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1 MR. LOWERY: Your Honor, I apologize,
2 but Ms. Tatro reminds me that the CRU information
3 is actually proprietary. It's not Noranda
4 proprietary. Actually, that should not have been
5 publicly disclosed information. I guess I'd ask
6 that we change the transcript afterwards.

7 JUDGE WOODRUFF: We'll make it 124HC.

8 MR. LOWERY: My mistake. I
9 apologize.

10 JUDGE WOODRUFF: All right. Did the
11 court reporter understand what we're talking about
12 to change?

13 THE REPORTER: Yes. When I get to
14 that point, I'll double check with you.

15 JUDGE WOODRUFF: Okay.

16 BY MR. LOWERY:

17 **Q. And I won't go through it, Mr. Smith,**
18 **because the record is going to reflect this itself,**
19 **but the figures that I just went through for 2014**
20 **to 2018, that's the same kind of information, it's**
21 **the same CRU forecast that you use, but it's a**
22 **forecast as of the second quarter 2014 as opposed**
23 **to forecast from obviously sometime back in**
24 **probably January or February, right?**

25 A. Yes.

1 MR. LOWERY: With that, your Honor, I
2 move for admission of Exhibit 124HC actually.

3 JUDGE WOODRUFF: 124HC has been
4 offered. Any objections to it receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, it
7 will be received.

8 (AMERENUE EXHIBIT NO. 124HC WAS
9 RECEIVED INTO EVIDENCE.)

10 MR. LOWERY: Now, Mr. Smith -- I need
11 to confer with Mr. Downey real quick.

12 THE WITNESS: Your Honor, could I
13 petition for a very quick break?

14 JUDGE WOODRUFF: Yes. We'll go off
15 the record for about five minutes.

16 (A BREAK WAS TAKEN.)

17 JUDGE WOODRUFF: We're back from our
18 break. We'll get started again.

19 MR. LOWERY: Your Honor, I've got a
20 just a little bit more cross-examination to be
21 public, then we'll have to go in-camera one more
22 time. I'll try to separate it so we only have to
23 do that once.

24 (AMERENUE EXHIBIT NOS. 125 THROUGH
25 128 WERE MARKED FOR IDENTIFICATION BY THE

1 REPORTER.)

2 JUDGE WOODRUFF: Okay. I've got 125
3 is the Form 8-K from February 13th of '14. 126 is
4 the brief from EA-2005-0180. 127 is the Swogger
5 direct testimony from that same case, and 128 is
6 Swogger surrebuttal.

7 MR. LOWERY: That's right, your
8 Honor. That's what I have.

9 BY MR. LOWERY:

10 Q. Mr. Smith, you have Exhibits 125
11 through 128 from the court reporter, I take it?

12 A. Yes, I do.

13 Q. Exhibit 125 is a Form 8-K, and more
14 particularly it's the Form 8-K that Noranda issued
15 in connection with filing this case and I guess the
16 actual -- well, I guess it's just this case
17 actually; is that right?

18 A. That's correct.

19 Q. And you issued a Form 8-K on that day
20 because the filing of this case to your company was
21 a significant event, correct?

22 A. Yes.

23 Q. And companies when they have a
24 material announcement of this kind will often --
25 something material happening with the company,

1 **companies will often issue 8-Ks like that. Is that**
2 **your understanding?**

3 A. Yes, it is.

4 **Q. Now, you testified earlier, we talked**
5 **about it briefly, about your cash position as of**
6 **Friday, three days ago, and your liquidity**
7 **position. Noranda hasn't issued an 8-K announcing**
8 **anything about changes in its cash or liquidity; is**
9 **that true?**

10 A. That's correct.

11 MR. LOWERY: Your Honor, I'd move for
12 admission of Exhibit 125.

13 JUDGE WOODRUFF: 125 has been
14 offered. Any objections to it receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, it is
17 received.

18 (AMERENUE EXHIBIT NO. 125 WAS
19 RECEIVED INTO EVIDENCE.)

20 MR. LOWERY: Your Honor, I'm just
21 going to -- I don't really need to ask this witness
22 any questions about 126 through 128, but I am going
23 to ask the Commission to take official notice of
24 them. They are Noranda's prehearing brief in the
25 EA-2005-0180 case, which is the case where Noranda

1 along with Ameren Missouri asked for Ameren to
2 receive a certificate of public convenience and
3 necessity so that Ameren could serve Noranda, and
4 they contain Noranda's positions on what they
5 needed in that case, as well as Mr. Swogger's
6 testimony. Mr. Swogger was the executive or
7 manager in charge of power procurement at Noranda
8 at the time, as his testimony indicates. That also
9 describes what Noranda needs. And I'd ask the
10 Commission to take official notice of those
11 documents.

12 JUDGE WOODRUFF: Any objection to
13 taking notice of those documents?

14 (No response.)

15 JUDGE WOODRUFF: They will be
16 received into the record on that basis.

17 (AMERENUE EXHIBIT NOS. 126, 127 AND
18 128 WERE RECEIVED INTO EVIDENCE.)

19 BY MR. LOWERY:

20 Q. And, Mr. Smith, I apologize, but I'm
21 sort of jumping around to some different topics
22 because I'm trying to prevent the judge from having
23 to go in and out of camera another time.

24 You made a comment earlier today
25 about the 2009 ice storm, and I think you indicated

1 that Noranda kept approximately 300 people working
2 even though you had a couple potlines down for an
3 extended period of time, correct?

4 A. That's correct.

5 Q. And I know that these figures aren't
6 exact and wages might have been somewhat different
7 at that time, but in rough terms, each job at
8 Noranda, depending on the job, on average probably
9 about, what, 90 to 100,000 a year in compensation
10 and benefits, et cetera?

11 A. Right now, you know, 888 people is
12 about 95 million in payroll, but that's the whole
13 workforce. So discount that back to 2004.

14 Q. 2009.

15 A. Excuse me. 2009, yes.

16 Q. Now, in that 2009 ice storm, Noranda
17 had a significant insurance claim, did they not?

18 A. Yes, we did.

19 Q. And I can show this to you. I don't
20 have a printout. I've killed enough trees. But I
21 suspect you remember this, and I'll show it to you
22 if I need to. Noranda received 67.5 million from
23 their insurance carriers related to that event; is
24 that correct?

25 A. That's correct.

1 Q. And that was allocated to selling and
2 general and administrative expenses. Do you
3 remember that?

4 A. No, I don't recall the specific line
5 item to which it was allocated.

6 Q. I think you would agree with me,
7 however, that at least 67 and a half million
8 dollars of the financial impact, which would have
9 included paying these employees while your
10 potline's down and some other things, that was
11 offset by insurance recoveries that you were able
12 to receive; is that correct?

13 A. That's correct.

14 Q. I've heard you mention a few times
15 today, this evening, you've talked about through
16 the cycle. Do you remember that?

17 A. Yes.

18 Q. And I think when you say through the
19 cycle, what you mean is aluminum prices over time
20 go through this cycle, they go up and they go down,
21 they go up and they go down, right?

22 A. Yes.

23 Q. Where are we in the cycle at this
24 point?

25 A. That's the tough part. It's really

1 hard to know.

2 Q. So you just don't really know?

3 A. You really don't know. We've had a
4 couple of pretty tough years in pricing again, but
5 it's -- that's one of the challenges when you --
6 when we're looking forward and we're planning,
7 betting conservatively makes a lot of sense.

8 Q. I understand. Now, I apologize for
9 doing this, but I need to ask you a question or two
10 about Exhibit 123 that we talked about not too long
11 ago.

12 A. Okay.

13 Q. Which is already in evidence. I
14 think this was too obvious to me, and it probably
15 was to you as well, but the first two pages of
16 Exhibit 123 are some graphs that just graph the
17 data that we see on the following pages, correct?

18 A. I've got to -- sorry. I stacked my
19 stuff. Didn't take the time to put it in order
20 here.

21 Q. I'll tell you what, I can save you
22 some time and just hand you this extra copy if
23 that's okay.

24 A. That would be fabulous.

25 Q. You understood, Mr. Smith, that the

1 graphs on pages 1 and 2, it says historic and
2 forward LME prices, and of course could be other
3 prices for other metals, but you understood that
4 these are aluminum prices, correct?

5 A. That's correct.

6 Q. And I want to ask you one other
7 question. If you take a look at the second page of
8 Exhibit 123, you see some -- I guess one's an
9 orange line and one's a red line. They look fairly
10 similar to me. But do you recognize that those
11 lines roughly correspond to the assumptions you
12 made for prices in 2014, in your direct testimony
13 model that would be the lower of the lines, I think
14 it's the orange line, and that the red line that's
15 a little bit higher are the assumptions Noranda
16 made for its 2014 plan about what the sum of LME
17 and Midwest premiums would be, correct?

18 A. Yes.

19 MR. LOWERY: I just have a handful of
20 questions, but we need to go in-camera for them.

21 (REPORTER'S NOTE: At this point, an
22 in-camera session was held, which is contained in
23 Volume 6, pages 378 through 384 of the transcript.)

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1 MS. TATRO: Judge, can I verify that
2 125 was admitted?

3 JUDGE WOODRUFF: I show it as being
4 admitted, yes.

5 MS. TATRO: Thank you.

6 JUDGE WOODRUFF: Come up to questions
7 from the Bench, beginning with the Chairman.

8 QUESTIONS BY CHAIRMAN KENNEY:

9 Q. Mr. Smith, good evening.

10 A. Good evening.

11 Q. Got to be patient a little while
12 longer.

13 A. My pleasure.

14 Q. Maybe not too much longer. So I'm
15 not a finance guy, so I want to make sure I
16 understand what we're talking about here.
17 Liquidity as Noranda uses the term equals cash on
18 hand plus the asset-backed loan?

19 A. Correct.

20 Q. And the ABL is like a revolving line
21 of credit?

22 A. Yep.

23 MR. LOWERY: Mr. Chairman, I
24 apologize for interrupting, but we can't really
25 hear you. I don't know if your microphone is not

1 on.

2 CHAIRMAN KENNEY: Maybe I'm not close
3 enough to it. Sorry.

4 MR. LOWERY: Thank you.

5 CHAIRMAN KENNEY: How's that?

6 MR. LOWERY: That's great.

7 BY COMMISSIONER KENNEY:

8 Q. So I was saying that the definition
9 of liquidity equals cash on hand plus the
10 asset-backed loan, which is a revolving line of
11 credit, right?

12 A. Correct.

13 Q. And it's guaranteed by accounts
14 receivable and other assets?

15 A. Yeah. Has a priority lien on it,
16 yes.

17 Q. So what is the minimum level of
18 liquidity that Noranda needs to remain viable?

19 A. Our target level is --

20 MR. LOWERY: Pardon me.

21 CHAIRMAN KENNEY: Is that HC?

22 MR. LOWERY: Yeah, it is. Ed
23 probably didn't hear the question, but it is HC.

24 THE WITNESS: Yeah.

25 MR. DOWNEY: I heard the question. I

1 didn't know it was HC.

2 CHAIRMAN KENNEY: Listen, I will not
3 know if it is. It's up to you guys to know. So if
4 we need to go in-camera...

5 THE WITNESS: We do.

6 JUDGE WOODRUFF: We'll go in-camera
7 then. Thank you.

8 (REPORTER'S NOTE: At this point, an
9 in-camera session was held, which is contained in
10 Volume 6, pages 388 through 391 of the transcript.)

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

3 BY CHAIRMAN KENNEY:

4 Q. So we talked about the LME, which is
5 the London Metal Exchange?

6 A. That's correct.

7 Q. And that's where aluminum prices are
8 set?

9 A. That's correct.

10 Q. And then on top of that, there's some
11 Midwest premium that's added to that?

12 A. Exactly.

13 Q. And that's the price that you
14 actually get for your aluminum?

15 A. That's correct.

16 Q. So Moody's -- and you said this, too,
17 that the long-term forecasting is that the aluminum
18 prices are going to be depressed. What's
19 contributing to that depression of aluminum prices?

20 A. First, there is a global supply
21 circumstance that, although it's fairly well
22 balanced, there is a concern about inventory
23 overhang. So that would be a fairly significant
24 issue.

25 China has gone -- has become a major

1 player globally. They have about half of the
2 global capacity, and so they have a very large
3 impact on the global competitive circumstance.

4 Its is -- it has been interesting to
5 watch how the pricing mechanism has shifted to
6 regional premiums. Right now all of the regional
7 premiums around the world are doing pretty well,
8 and that's what those premiums were intended for.
9 When you had strong demand, it's -- as the premiums
10 go up, it's to attract additional product.

11 So the biggest issue globally with
12 aluminum is supply and the forecast of supply and
13 the new plants coming on in the Middle East and
14 China. Where we've been helped has been with the
15 Midwest premium. The premium expands, it's like
16 any other commodity. It's always amazing how
17 quickly pricing corrects.

18 And so we've seen in our business --
19 and we compete all up and down the chain. We've
20 seen encouraging of flow from China. We've seen
21 billet from Europe. And so the world is now
22 understanding the U.S. market better.

23 So we have to -- we have to have a
24 cost position where we can compete globally. You
25 compete regionally on the basis of the customer

1 relationship and globally on the basis of cost.

2 **Q. That's helpful. And that's**
3 **anticipated to be the case, the depressed prices,**
4 **for the foreseeable future. How long?**

5 A. Mr. Chairman, it's impossible -- it's
6 really impossible to know, but when we look --

7 **Q. Moody's speculates, right?**

8 A. Right.

9 **Q. They make a forecast?**

10 A. Their forecast is actually lower than
11 ours. They're saying that in '14 the LME is going
12 to be at 80 cents with a down side of 75. And we
13 look at the LME at about -- in our forecast it's a
14 bit over 82 cents. Our Midwest is a little bit
15 lower than where theirs is now.

16 One of the things about these models
17 is you can't just pull one lever. We have looked
18 at some scenarios where we've updated all the
19 various prices and numbers, but when we do that,
20 the answer for 2014 still, you know, with all the
21 puts and takes, it's still about the same. It's
22 around \$7 million less in terms of our liquidity.

23 But the -- but the forecast from
24 Moody's is definitely one that's conservative, and
25 in our business it's -- we can learn from history.

1 And oftentimes when we look at our view of the
2 future, it is informed by what the curve had looked
3 like in the past.

4 And the thing that we keep getting
5 back to is we really tried to put together a rate
6 that was valid across that cycle. And so we tested
7 it to see. If you look at the past ten-year cycle
8 where the LME averaged about \$1.04 as you went
9 through the cycle, when we test that scenario,
10 that's a price at which \$30 will get us through the
11 cycle.

12 **Q. So in terms of comparing Noranda to**
13 **other North American smelters, there's how many**
14 **left, 22?**

15 A. There are just nine of us left now.

16 **Q. There were 22?**

17 A. There were 32, and then that dropped
18 to 15. And when I arrived about in March of 2008,
19 there were 15 of us. Now there are nine. Most
20 recent was Ormet going out last October.

21 **Q. Do any of those other smelters own**
22 **their own bauxite mines and refineries?**

23 A. Alcoa does, a very large global
24 producer. Century does not. We -- during the
25 great recession, they sold us their -- we were in a

1 joint venture partnership with them, and they sold
2 us their portion of the bauxite mine and the
3 alumina refinery.

4 **Q. And does owning a mine and owning a**
5 **refinery, having those upstream and downstream**
6 **businesses, does that add any stability or**
7 **certainty to the business model?**

8 A. It absolutely does. It absolutely
9 does. It also adds value as well, because as
10 prices move in the open market, our -- our price is
11 driven by our cost structure. And so first it's
12 security of supply. We are integrated upstream for
13 security supply, and then second we make sure that
14 we manage our cost buckets for productivity.

15 **Q. Would that then -- would that --**
16 **would you agree with me, then, that that provides**
17 **Noranda competitive advantages as compared to those**
18 **other nine smelters or other eight?**

19 A. I wouldn't claim that we would have
20 that against Alcoa because obviously they are in a
21 global supply basin. They can bring raw materials
22 in from their global network.

23 We think it's one of the things that
24 will help us be here sustainably because we focus
25 very hard on our overall cost picture. And power's

1 about a third, but we've been attacking the other
2 two-thirds. And there's no question that the
3 consistent access to the raw material -- you know,
4 a couple years ago Indonesia announced that they
5 were going to stop exporting bauxite. And as you
6 might imagine, that created quite a stir,
7 especially for the Chinese since they're short.

8 And for us it was -- it was very
9 interesting because of what it did to the price,
10 but we had our supply. So first security of
11 supply.

12 **Q. So you didn't experience any price**
13 **fluctuation because you had your own supply?**

14 A. We had our own supply. We sell it,
15 so we --

16 **Q. You sell it, too?**

17 A. Yeah. We actually sell bauxite and
18 we sell alumina.

19 **Q. So let me just back up to my original**
20 **question.**

21 A. Sure.

22 **Q. Factoring Alcoa out of the equation,**
23 **then, would you agree with me that owning your own**
24 **mine and refinery provides Noranda a competitive**
25 **advantage --**

1 A. We believe that it does.

2 **Q. -- compared with other smelters?**

3 A. Yes. It helps us lower our -- we own
4 those two units to help us lower the cost of
5 manufacture of primary aluminum.

6 **Q. We talked about the mill rod, or the
7 rod mill. I'm sorry.**

8 A. Yes. Yes.

9 **Q. Irrespective of what we do here at
10 the Commission, whether we do or do not grant
11 Noranda's request, Noranda's committed to building
12 that mill; is that correct?**

13 MR. DOWNEY: Kip, does this need to
14 be HC?

15 THE WITNESS: Yeah, it sure does. It
16 sure does.

17 JUDGE WOODRUFF: All right. We'll go
18 back into HC.

19 (REPORTER'S NOTE: At this point, an
20 in-camera session was held, which is contained in
21 Volume 6, pages 399 through 412 of the transcript.)

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

3 BY CHAIRMAN KENNEY:

4 Q. So would Noranda be willing to make
5 definitively any of the assurances that OPC has
6 outlined in terms of the amount of capital
7 investment it would make on an annual basis,
8 maintaining employment at 888? Is that something
9 that Noranda would accept written into a tariff
10 filed at the Commission?

11 A. It is getting late, so I'll try to
12 keep this as short as I can. Yes, we are willing
13 to make commitments on the full employment of the
14 plant, provided that it's structured in a way that
15 we can deal with the practical realities of our
16 business. We have to drive productivity.

17 Q. Let me ask that question, because
18 that was the -- that was, I guess, the part that I
19 didn't understand. So you said assuming that it
20 was structured correctly. Let's say we grant you
21 what you've asked for.

22 A. Yeah.

23 Q. \$30 a megawatt hour.

24 A. Uh-huh.

25 Q. That would need to be tariffed,

1 right, and written into a tariff --

2 A. Uh-huh.

3 Q. -- and filed here at the Commission?

4 In the body of that tariff, can we write a
5 condition that Noranda would accept that you would
6 maintain full employment and make certain dollar
7 amount capital investments over a certain period of
8 time? Assuming hypothetically we grant you the
9 relief exactly as you're asking for it, would
10 Noranda agree to that commitment?

11 A. The answer is yes, but we need to be
12 able to address the realities of our business.
13 This is a business where year in/year out we have
14 to get productivity. And so we have to make sure
15 that the way that that would be structured in terms
16 of -- just in terms of the head count, that we
17 would be able to capitalize on productivity.

18 And ideally we would love to grow.
19 Without growth, you can't -- in a commodity, you
20 can't keep the number of people you have. It's
21 just relentless in terms of the pressure on cost.

22 Q. So what I'm hearing you say actually,
23 I think, is that even if we grant you exactly what
24 you want, you may need to leave some room to
25 decrease that 888 because of lack of growth?

1 A. Over time. And believe me, we will
2 do everything we can to -- that's one of the big
3 reasons why we're putting in this rod mill, to
4 grow. If we don't grow, the rod mill can be run
5 with fewer people. If we grow, then we can add
6 employment. And we're working very hard to grow.

7 **Q. So there is really no guarantee that**
8 **even if we did grant Noranda exactly what it wants**
9 **that you would stay at 888 through the next ten**
10 **years?**

11 A. I think the practical reality, you're
12 not -- you're not going to go down to 600 people,
13 but a 2 percent sort of productivity is something
14 that sure wouldn't be out of the norm for a
15 business like ours. This would not -- but again,
16 our focus would be on growing, but --

17 JUDGE WOODRUFF: Mr. Smith, you're
18 getting away from your microphone.

19 THE WITNESS: I apologize. Our focus
20 would be on growing, but we -- but first we have to
21 stabilize our cost structure and then our desire --
22 we have no desire to reduce our head count, but we
23 have a need to stay competitive over time.

24 CHAIRMAN KENNEY: I don't think I
25 have any additional questions. Thank you.

1 JUDGE WOODRUFF: All right.

2 Commissioner Stoll.

3 QUESTIONS BY COMMISSIONER STOLL:

4 Q. Thank you, Mr. Smith. The line of
5 questioning from Mr. Lowery and your responses were
6 very informative, and I appreciate the Chairman's
7 line of questioning, too.

8 Kind of following up on some of that,
9 the Chairman asked about had you sought any other
10 kind of relief, and you said you thought this was
11 the appropriate venue. And I can see that when
12 you're talking about the kind of prices you pay for
13 electricity, but it just seems like over time, I
14 mean, as you were thinking about the long-term
15 future of Noranda, you would have also been
16 thinking about approaching the State regarding tax
17 credits or some other financial assistance. Tell
18 me -- tell us about that.

19 A. It's -- from our perspective, the
20 issue is power, and you'll hear that from -- from
21 Mr. Harris. You'll hear that from others on the
22 Noranda team. When you look at why smelters go
23 out, the focus is power. And so having -- so we
24 have to address the core issue, which is that our
25 power cost is just not one that can help us sustain

1 our operation. So that's really why we're here.

2 That's really why we're here.

3 **Q. So when Boeing approached the**
4 **Legislature or the Ford plant at Claycomo or**
5 **several other big companies, their power usage just**
6 **isn't as great as yours?**

7 A. That's for sure, yeah. We buy as
8 much power as the entire city of Seattle. It's
9 just a -- it's just -- it's a huge amount of power
10 on one spot. City of Springfield as well. I mean,
11 it's a massive amount of power. About 4.2 million
12 megawatt hours a year.

13 **Q. This would involve some speculation,**
14 **but -- so your contract, the contract between**
15 **Noranda and Ameren is up in six years?**

16 A. Approximately, yes. 2020, yeah.

17 **Q. What if Ameren invoked the five-year**
18 **notice because of CO2 emissions and they were going**
19 **to have to close one of their large plants, what**
20 **would you do?**

21 A. Well, the Commission always -- first
22 off, in that circumstance, the Commission always
23 has the right to reopen the rate that we're asking
24 for. They have authority over this, but -- and we
25 are in Ameren's service territory, and we would

1 work with them to see what kind of service that we
2 could get.

3 Q. I mean, you are in their service
4 territory, but you have a unique relationship in
5 that you're the only company that can go and
6 renegotiate this in I guess six years, though,
7 right?

8 A. Yes.

9 Q. I think -- I think my other questions
10 were answered, and I'm going to save some for my
11 colleagues. So I appreciate your responses.

12 A. Thank you very much.

13 JUDGE WOODRUFF: Commissioner Kenney.

14 COMMISSIONER W. KENNEY: Thank you,
15 Judge.

16 QUESTIONS BY COMMISSIONER W. KENNEY:

17 Q. Mr. Smith, I'd like to thank you for
18 coming here today. Did you fly in to our airport
19 here?

20 A. I did not actually.

21 Q. Then it's a long trip, as everybody
22 finds out when they come to Jefferson City. But
23 I'd like to thank you. Noranda is a great partner
24 in our state, and I have a lot of friends in the
25 Bootheel, and Noranda's been a great partner with

1 **your community.**

2 A. Thank you very much.

3 **Q. Appreciate all that you've done.**

4 **When did Noranda -- when did you first realize that**

5 **you had this problem and decide to focus on the**

6 **energy sector of it?**

7 A. The -- we had been -- I think the
8 catalyst for it was really the competitive activity
9 that was occurring as other -- as other smelters
10 were addressing their power issues, what was
11 transpiring is the ones that were unable to get
12 power like Ormet were still going out. Smelters
13 like Massena were getting --

14 **Q. Okay. You're speaking a language I**
15 **don't --**

16 A. I'm sorry. My apologies.

17 **Q. No. You're fine. I'm just ignorant**
18 **of this. Give me timetables. Was it 2011?**

19 A. Last year.

20 **Q. Last year. So it would have been**
21 **fall --**

22 A. Last year we started note-- the focus
23 in our industry in the U.S. on power was
24 intensifying. So Century was doing it. The
25 folks -- Alcoa was doing it, and then Alcan sold

1 their smelter to Century. So we were looking at a
2 pro forma, and again, Mr. Fayne will give testimony
3 on this, of moving to up near the highest cost of
4 power in the U.S. And so we --

5 **Q. Now, that highest cost of power were**
6 **contracts that you negotiated with Ameren, right,**
7 **Noranda negotiated with Ameren?**

8 A. Well, the rate's set by the Public
9 Service Commission, though.

10 **Q. Yeah, but -- and maybe I'm wrong.**
11 **I've only been here a short time.**

12 A. Uh-huh.

13 **Q. As with a few of my other**
14 **Commissioners. So the way I understand that is**
15 **that there are negotiations and that you being the**
16 **only rate case and the intervenors agree with your**
17 **rate. Am I wrong about that?**

18 A. We can -- we always try to get to a
19 stipulated rate. This time, unfortunately, we were
20 not able to, so far.

21 **Q. You weren't -- at the time you had**
22 **the last rate case, you left unsatisfied?**

23 A. I wouldn't say that we left
24 unsatisfied, but we -- we've realized over the
25 course of the past few quarters that this is

1 something that we just really, really had to
2 address.

3 Q. It's unsustainable under your -- your
4 company believes it's unsustainable?

5 A. That's correct.

6 Q. Due to maybe even other
7 circumstances, like aluminum prices?

8 A. Aluminum prices have been another big
9 contributor, yes.

10 Q. I understand that. I understand
11 that. And I do appreciate, Mr. Smith, that you've
12 been very frank in your answers, and I do
13 appreciate that for a witness that comes here and
14 is very open and forthright on their answers to the
15 questions. I do appreciate that.

16 I have a question for you. I
17 received a letter from Senator Lager today and
18 Representative Funderburk, who are both chairs of
19 the respective energy committees, for lack of a
20 better name, in the House and the Senate, asking us
21 to just -- to not participate, just to -- this is a
22 legislative issue.

23 Representative Chris Kelly out of
24 Columbia, who I have a tremendous amount of respect
25 for, he's been around a long time, pretty much gave

1 the same statement, that this is a legislative
2 issue.

3 And I see on your witness list
4 several Representatives and at least two Senators
5 who are supporting your cause, and I appreciate
6 that, the fact that they're supporting their
7 constituency.

8 But this took place last fall. Did
9 any of them, any of those Representatives or
10 Senators come to you and say, I want to fix this in
11 the Legislature for you?

12 A. Not that I'm aware of. Not that I'm
13 aware of.

14 Q. I mean, because I notice them now,
15 they're coming out and saying we need -- PSC needs
16 to fix this issue. I appreciate that. I really
17 do. But -- and then there's another group of
18 legislators who think that the -- and you have
19 three former legislators here, former Senator Stoll
20 and Senator Rupp and myself, and some of them think
21 that it should be a legislative fix, as I think the
22 Chairman and Commissioner Stoll alluded to.

23 So none of those Representatives or
24 Senators said that they would like to go out there
25 and go to bat for you and try to get this fixed?

1 A. It may have been because of our bias
2 to come here, but I certainly didn't have
3 conversations with any of the Senators.

4 **Q. Noranda did not look at this as an**
5 **economic development issue? You look at it as**
6 **strictly a PSC issue for the --**

7 A. It's a power issue. It's a power
8 issue. And our desire was to get a sustainable
9 rate and one where there was still economic benefit
10 in the rate process, so that we're still picking up
11 some of Ameren's fixed costs so that we have the
12 best shot at being sustainable.

13 **Q. I appreciate that. I can understand**
14 **your concerns in light of your issues. One of the**
15 **things that -- a couple of things that OPC was**
16 **talking about is wanting to put conditions on**
17 **Noranda to do certain things. I'm just struggling**
18 **with this because I don't understand how in this**
19 **situation, in a complaint case where you're wanting**
20 **to have your rates changed, whether -- now, OPC**
21 **doesn't mind and a few other intervenors don't mind**
22 **if your rates are decreased as long as certain**
23 **parties don't get increased. I heard the retailers**
24 **say, you can raise our rates. We don't care, which**
25 **is -- I think that's a great stance.**

1 But I don't know how under that
2 situation that the PSC could put -- encumber you to
3 do anything and say, okay, well, you have to keep
4 this many jobs, or you have to invest this much. I
5 just don't know where that could be done in a case
6 like this. And I would love someone to tell me
7 where that can happen.

8 And I appreciate you've been very
9 forthright. You have not committed to anything.
10 You said here's what we want to do. And I
11 appreciate that, because I'm a small businessman.
12 I don't want to tell you how to run your business.
13 And I don't know that anybody here on the
14 Commission wants to tell you how to run your
15 business. We want you to run your business.
16 You're going to do it a whole lot better than
17 anybody else because you know what you're doing and
18 we don't, and you know your problems.

19 But I don't know how this Commission
20 can do what OPC wants and put these restrictions on
21 you and say -- under this case, under this type of
22 case that we're at before us today.

23 So anyway, that's just maybe more of
24 a comment. But I appreciate you being here. I
25 appreciate your testimony.

1 COMMISSIONER W. KENNEY: Judge, I'm
2 done.

3 JUDGE WOODRUFF: Commissioner Hall.

4 QUESTIONS BY COMMISSIONER HALL:

5 **Q. Good evening. Looking through your**
6 **surrebuttal testimony, you make the case that**
7 **Apollo Management saved the New Madrid smelter when**
8 **they purchased a controlling interest back in 2006;**
9 **is that correct?**

10 A. That's correct.

11 **Q. Could you explain what exactly Apollo**
12 **did that saved the smelter?**

13 A. The first was they -- first was that
14 they actually purchased the smelter. The Xstrata
15 when they purchased, my understanding is that these
16 assets just weren't big enough for them to be
17 interested in, so they put them up for sale. They
18 had one other bidder, and my understanding is that
19 the price that they were -- that they offered they
20 weren't willing to sell it for.

21 Apollo came in, bought the smelter,
22 and owned the smelter at the time when the global
23 great recession hit and the ice storm hit.

24 And so my conclusion is based on a
25 very simple fact set. We know the first bidder,

1 and we know that they were in a -- more of a mood
2 to sell during that period of time than to buy or
3 hold.

4 Q. So you believe that because that was
5 the only viable bidder, had it not made the
6 purchase, then the smelter would have been --

7 A. And who's going to buy a smelter
8 that's three-quarters shut down?

9 Q. So it would have been shuttered, in
10 other words?

11 A. That's my -- that's my view, yes.

12 Q. And you would have tried to sell off
13 pieces to the extent you could, but it would cease
14 functioning as a smelter?

15 A. I believe that -- I believe that's
16 what would have happened, yes.

17 Q. And is -- and if -- if the relief you
18 seek here is not provided to you by the Commission,
19 it's my understanding that there's a substantial
20 likelihood of imminent closure again?

21 A. That's correct.

22 Q. And I believe that you had a -- you
23 answered a couple of questions from the Chairman
24 about you have a management team that is putting a
25 plan in place to look at possible downsizing. Is

1 **this management team also putting together a plan**
2 **for what would happen if this relief is not**
3 **granted?**

4 A. That's --

5 **Q. And does this need to go into --**

6 MR. DOWNEY: Judge, I think this
7 needs to be in-camera. Sorry.

8 JUDGE WOODRUFF: All right. I'm
9 getting used to pushing the button by now.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 6, page 428 of the transcript.)

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1 BY COMMISSIONER HALL:

2 Q. I believe in cross-examination from

3 Ameren they referenced a \$31 million --

4 A. Yes.

5 Q. -- amount. Is that accurate?

6 A. It is.

7 Q. And that \$31 million was received

8 over what time period?

9 A. As soon as we -- from the initiation
10 of their purchase to the time that we went public.

11 Q. And you went public when?

12 A. May of 2010.

13 Q. So they're no longer receiving

14 management fees?

15 A. That's correct.

16 Q. Following up on a couple of questions

17 from other Commissioners, I believe you said that

18 you did not believe that the General Assembly was

19 the proper audience for a discussion on how to fix

20 what ails Noranda?

21 A. That's correct, because it's --

22 because it's a power-related issue.

23 Q. And so I believe you also said that

24 you yourself and no one that you're aware of has

25 had specific conversations with members of the

1 **General Assembly along those lines; is that**
2 **correct?**

3 A. I have not, and we have been very
4 focused on this process as the right process.

5 **Q. And should the Commission not grant**
6 **the relief you seek, would -- do you envision**
7 **having those discussions?**

8 A. It is certainly one of the options
9 that we would have to take a look at.

10 **Q. My understanding is that the**
11 **New Madrid smelter has the fourth highest**
12 **electricity rate of the nine in the United States?**

13 A. Currently, yes.

14 **Q. So there are three that have higher**
15 **rates, and how are those three able to sustain**
16 **themselves with rates that look substantially**
17 **higher than what Noranda's currently paying?**

18 A. We're -- maybe I can just
19 characterize the difference between us and those
20 organizations. They're part of larger companies,
21 so we don't know what type of support or
22 economic -- economic or otherwise they get from
23 their headquarters.

24 But we're a single mine, a single
25 refinery, a single smelter in a downstream

1 business. So we have to make it without support
2 from anywhere else.

3 **Q. So in other words, you don't know?**

4 A. I don't know, that's correct.

5 COMMISSIONER HALL: I think that's
6 all I have. Thank you.

7 JUDGE WOODRUFF: Commissioner Rupp?
8 In-camera?

9 COMMISSIONER RUPP: Yes.

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11 (REPORTER'S NOTE: At this point, an
12 in-camera session was held, which is contained in
13 Volume 6, pages 432 through 442 of the transcript.)

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

3 QUESTIONS BY COMMISSIONER RUPP:

4 Q. When Apollo came on the scene -- let
5 me ask you this question. If you were to -- if you
6 were to have your first choice to borrow money,
7 would you go to a hedge fund equity fund or would
8 you prefer traditional financing?

9 A. And I don't want this to sound like
10 an evasive response, but those different sources of
11 financing are really good at what they do, and one
12 of -- my experience with Apollo -- this is not my
13 first Apollo-owned company. So again, sake of full
14 disclosure, I've owned five different Apollo-owned
15 companies. This one's become my home. I did the
16 first four in probably three and half to four
17 years. I've been six years now with Noranda.

18 They're suburb in my experience at
19 helping build sustainable companies, helping you
20 figure out how to -- because we were a carve out.
21 We didn't have our own systems to help you with
22 those sorts of things.

23 And as you saw from the management
24 fees, they bring extraordinary experience, but
25 they're pretty expensive. And so to the extent

1 that, you know, I was able to borrow money from
2 a -- for example, this capital lease transaction,
3 it's a smaller deal. It's not something that's in
4 their sweet spot and it's not something they're
5 going to be interested in. Frankly, we can find
6 somebody better, we hope.

7 **Q. Is it fair to say that those types of**
8 **financing organizations would -- would probably**
9 **want more control or more say than a traditional**
10 **just you pay this amount of percent and --**

11 A. You can see from the transactions
12 that they negotiated that they place a high premium
13 on influencing control. We're fortunate now we're
14 at a position where New York Stock Exchange has its
15 guidelines, which require us to have an independent
16 board, so we do. And so we are -- we're no longer
17 in a position where we are a controlled company.

18 **Q. And was there any conversations when**
19 **Apollo first came on the scene that subject to the**
20 **infusion of cash into purchasing, that they would**
21 **want a dividend to be declared within the first**
22 **month of ownership?**

23 A. You know, I have -- I didn't come
24 until the following March, so that all happened
25 before I got there. I just honestly don't know.

1 Q. Back to what I was asking you about
2 and you were talking about the rate shift to the
3 other parties if this were to be granted. Would
4 Noranda be amenable if the Legislature created an
5 incentive program that only dealt with Class 1
6 energy users, which you're the only class, as an
7 economic development benefit and you received, you
8 know, basically reductions or cash or tax credits
9 or something to offset your power costs that would
10 be spread across all taxpayers of the state for
11 your economic development impact?

12 Would you be amenable to something of
13 that nature or do you think it needs to come
14 directly from -- directly from your power provider?

15 A. We're very focused on this particular
16 process. If we're not successful here, obviously
17 you would look at other avenues, but this is a --
18 this is a power issue. We really believe it should
19 be a power solution. We really believe that this
20 is the right place to craft the most sustainable
21 solution.

22 Q. Do you really believe it is a power
23 issue or is it an access to capital, you know, debt
24 securities issue?

25 A. Oh, there's no doubt we need to

1 reduce our debt as well, but we're not going to be
2 able to do that without a sustainable cost
3 structure. We can reduce our debt all we want, but
4 without sustainable power costs, we're going to
5 be -- we're going to fall into the same game as the
6 23 that have already gone out in the U.S.

7 **Q. And of the nine that are left, I**
8 **believe someone from your company testified at the**
9 **public hearing that there are only two smelter**
10 **plants that do not receive some type of state**
11 **economic development benefit from their particular**
12 **states, Missouri being one. That was just a rank**
13 **and file employee, so I want to verify if that was**
14 **correct.**

15 A. I would defer the answer to that
16 question to Mr. Fayne. He'll testify to that.

17 COMMISSIONER RUPP: Okay. Thank you.
18 Judge, I believe that's all the questions I have.

19 JUDGE WOODRUFF: Commissioner Stoll.

20 FURTHER QUESTIONS BY COMMISSIONER STOLL:

21 **Q. Just one quick question. In what**
22 **year did Apollo purchase Noranda?**

23 A. 2007.

24 **Q. Okay. So that was before the ice**
25 **storm and all that, right?**

1 A. That's correct.

2 COMMISSIONER STOLL: Okay. Thank

3 you.

4 JUDGE WOODRUFF: All right. We'll

5 take a short break before we come back for recross

6 based on questions from the Bench. We'll come back

7 in ten minutes at 8:55.

8 (A BREAK WAS TAKEN.)

9 JUDGE WOODRUFF: Let's come back to

10 order, please. While we're waiting for Mr. Smith

11 to come back, let's go on the record for another

12 discussion here.

13 It's now almost nine o'clock on the

14 first night. We still haven't finished the first

15 witness. We will definitely finish Mr. Smith

16 tonight, but that leaves a lot of witnesses for

17 tomorrow, and I'm just wondering, what's the

18 outlook as far as cross-examination for those

19 witnesses? Can you give me some idea?

20 MR. LOWERY: From Ameren's

21 perspective, the outlook is we don't have extensive

22 cross for most of them. Russ, I know you have a

23 moderate amount for Mr. Fayne, I believe. We

24 really don't have all that much for most of them,

25 nothing even approaching what we've had today.

1 JUDGE WOODRUFF: That is encouraging.

2 MR. LOWERY: Since I was the
3 examiner, maybe it didn't reflect very well.

4 JUDGE WOODRUFF: I do want to say
5 that we do need to finish tomorrow because there's
6 just really no other way to reschedule any other
7 days of this hearing. So just be aware that we may
8 be here even later tomorrow night if we don't get
9 moving here. That's all I want to say.

10 MR. THOMPSON: We'll look over our
11 cross, Judge, and see what we can cross out.

12 JUDGE WOODRUFF: I appreciate that.
13 Maybe Noranda made a run for it.

14 (AN OFF-THE-RECORD DISCUSSION WAS
15 HELD.)

16 JUDGE WOODRUFF: Okay. We're back on
17 the record, then, and we are now ready for recross
18 based on questions from the Bench, beginning with
19 MIEC.

20 MR. DOWNEY: No questions.

21 JUDGE WOODRUFF: Retailers?

22 RE-CROSS-EXAMINATION BY MR. SCHWARZ:

23 **Q. Mr. Smith, you were asked a number of**
24 **questions by Commissioners Robert Kenney, Bill**
25 **Kenney and I believe Commissioner Stoll about**

1 seeking some kind of relief or solution in the
2 Legislature, and your response to those questions
3 indicated that it was principally a power issue.
4 But in point of fact, isn't there also a practical
5 matter with trying to get that kind of legislation
6 for Noranda in the General Assembly?

7 A. I believe that there would be.

8 Q. And what would you consider those
9 issues to be?

10 A. I think it would be very difficult
11 for there to be legislation passed to support
12 Noranda in an activity like this.

13 That being said, we certainly believe
14 that we have a lot of Senators and Representatives
15 th at support us, but we believe it would
16 fundamentally be very difficult for us to get any
17 form of relief through the Legislature.

18 Q. Why?

19 A. We believe that Ameren would oppose
20 us in the Legislature.

21 Q. Have you had any specific contacts or
22 discussions with Ameren that would lead you to that
23 conclusion?

24 A. I have.

25 Q. And what was the tenor of those

1 **conversations?**

2 A. They were -- it was made very clear
3 to me that -- that they would oppose us in this
4 forum or that one. It was -- it was a difficult
5 conversation.

6 Q. **And that was with senior people at**
7 **Ameren?**

8 A. That's correct.

9 Q. **And as has been noted, there are a**
10 **number of former legislators on the Commission. Is**
11 **it safe to say that the antagonistic positions**
12 **between Noranda and Ameren is reasonably well known**
13 **in the Legislature?**

14 A. I believe that's true. I believe
15 that's true.

16 Q. **Did Noranda support legislation to**
17 **get funding for the Office of Public Counsel**
18 **similar to that of the Commission in the past?**

19 A. I believe the answer to that is yes.

20 Q. **And on that specific issue, was**
21 **Ameren -- Ameren's opposition significant in**
22 **killing the bill, in your opinion?**

23 A. You mean in the past?

24 Q. **Yes.**

25 A. I believe it was not a bill that was

1 well received by the utilities.

2 **Q. And I'll ask again just to make**
3 **clear. You had discussions with senior Ameren**
4 **management that indicated that there would be**
5 **opposition to this particular type of relief?**

6 A. Here?

7 **Q. Both here and the General Assembly?**

8 A. Specifically -- specifically here.

9 **Q. Thank you.**

10 A. Maybe I should -- let me say it more
11 accurately. I think just specifically that they
12 indicated to us that we would not get their support
13 in the strongest of terms.

14 MR. SCHWARZ: Thank you.

15 JUDGE WOODRUFF: All right.

16 Consumers Council?

17 MR. COFFMAN: No questions.

18 JUDGE WOODRUFF: Okay. Wal-Mart?

19 MR. CHAMBERLAIN: No questions, your

20 Honor.

21 JUDGE WOODRUFF: River Cement?

22 MS. LANGENECKERT: No questions.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. POSTON: No questions.

25 JUDGE WOODRUFF: Staff?

1 MR. OPITZ: No questions.

2 JUDGE WOODRUFF: Continental Cement?

3 Ameren?

4 MR. LOWERY: A few, but I don't

5 believe too many, your Honor.

6 RECROSS-EXAMINATION BY MR. LOWERY:

7 Q. Do you still have Exhibit 129 there,

8 Mr. Smith? I'm sorry. 124?

9 A. I'm sure I do.

10 Q. Starting to lose focus.

11 MR. LOWERY: Yeah, it is HC, your

12 Honor, so we'll have to go in-camera.

13 THE WITNESS: I'm sorry. 129?

14 MR. LOWERY: 124.

15 JUDGE WOODRUFF: We'll go in-camera

16 then.

17 (REPORTER'S NOTE: At this point, an
18 in-camera session was held, which is contained in
19 Volume 6, pages 453 through 459 of the transcript.)

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

3 BY MR. LOWERY:

4 **Q. Have you located that exhibit?**

5 A. 127?

6 **Q. Yes.**

7 A. Yes, I have.

8 **Q. Could you turn to page 6, please.**

9 **Now, I know you weren't with Noranda at this time,**
10 **but you know who George Swogger was, do you not?**

11 A. Yes. I never met him, unfortunately,
12 by I know who he was.

13 **Q. George passed away a few years ago**
14 **unexpectedly, right?**

15 A. Right, before I met him. Before I
16 had a chance to meet him.

17 **Q. And George's job, Mr. Swogger's**
18 **job -- I call him George because he was such a**
19 **congenial guy that it just felt better to call him**
20 **George than Mr. Swogger. But Mr. Swogger's job for**
21 **Noranda was, really his sole job was power**
22 **procurement. That's what he did, right?**

23 A. That's correct.

24 **Q. And on page 6 of his testimony, and**
25 **this is testimony from the 2005 case where Noranda**

1 became a customer of Ameren Missouri, page 6 from
2 lines 10 to 13, Mr. Swogger was answering the
3 question, why have you chosen AmerenUE as your
4 supplier? And part of his answer was this:
5 Service under a regulated rate can be a plus. It
6 ensures some oversight of AmerenUE, and I expect
7 that Noranda would receive fair treatment in future
8 rate proceedings with rates that reflect the cost
9 of the service provided to Noranda. That's what he
10 said, right?

11 A. Yes.

12 Q. As opposed to the proposal you're
13 making in this case which is not to pay rates that
14 actually reflect the cost that Ameren incurs to
15 serve you, right?

16 A. Correct. This would be a load
17 retention rate.

18 Q. I want to -- I want to make sure
19 something's clear on the record, and I think it may
20 be -- Commissioner Stoll asked you a clarifying
21 question. Commissioner Hall was asking you
22 questions about why do you contend that Apollo
23 saved Noranda, and you were explaining the bidding
24 and so on and so forth.

25 Well, let me ask it this way: First

1 of all, Apollo acquired a majority of Noranda's
2 stock, in 2007, right, in a leverage buyout?

3 A. That's correct.

4 Q. And as Commissioner Stoll pointed
5 out, the ice storm occurred in 2009, right?

6 A. Correct.

7 Q. So when you -- but I believe in one
8 of your answers to Commissioner Hall's questions,
9 that you made reference to a smelter that was
10 three-fourths shut down and you said, who's going
11 to buy it? Do you remember that?

12 A. That's correct.

13 Q. You weren't meaning to suggest that
14 the ice storm had anything to do one way or the
15 other with Apollo buying or not buying the smelter,
16 were you?

17 A. No. That's correct. I was not
18 suggesting that.

19 Q. And, in fact, if we can go back to --
20 we can go back to --

21 MR. LOWERY: I'm sorry, your Honor.
22 I should have realized this, but I have to go
23 in-camera again. This is my last question or last
24 couple questions.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 6, pages 464 through 486 of the transcript.)

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1 JUDGE WOODRUFF: All right. We are
2 back in regular session. You might want to reask
3 your question. It kind of got lost here.

4 REDIRECT EXAMINATION BY MR. DOWNEY:

5 **Q. Several of the Commissioners asked**
6 **you whether Noranda explored or considered a**
7 **legislative solution. Do you recall that?**

8 A. Yes.

9 **Q. And Mr. Schwarz asked you about**
10 **discussions with Ameren based -- with Ameren as**
11 **well. Do you recall that?**

12 A. Yes.

13 **Q. And based on your discussions with**
14 **Ameren senior management, do you think that Ameren**
15 **would demand some type of adverse legislation in**
16 **exchange for not opposing a legislative power**
17 **solution?**

18 MR. LOWERY: Calls for speculation.
19 I object.

20 JUDGE WOODRUFF: I didn't understand
21 the question either. If you'd rephrase your
22 question.

23 BY MR. DOWNEY:

24 **Q. Based on your discussions with senior**
25 **management, do you think Ameren Missouri would**

1 **demand that you make adverse, adverse to consumers,**
2 **legislative concessions in exchange for Ameren's**
3 **support of a power rate?**

4 MR. LOWERY: His opinion about what
5 Ameren might demand is speculation.

6 MR. DOWNEY: It's based on his
7 discussions with senior management.

8 MR. LOWERY: That's not the question
9 that was asked. I object. It calls for
10 speculation.

11 JUDGE WOODRUFF: I'm going to sustain
12 the objection. You can try and rephrase the
13 question if you'd like. I know it's getting late.

14 BY MR. DOWNEY:

15 Q. All right. Mr. Smith, do you recall
16 a DR, a discovery request from Ameren to Noranda
17 asking if it engaged in any discussions or
18 negotiations with any party regarding such party's
19 position in this complaint case?

20 A. Yes, I do.

21 Q. Okay. Do you recall the answer you
22 gave to that DR?

23 A. Not in its precise words, but it was
24 along the line of that -- that we could secure
25 their support if we were to no longer participate

1 in rate cases, step out of the Legislature and
2 discontinue our participation in FERA. I believe
3 that was the response.

4 MR. DOWNEY: No further questions.

5 JUDGE WOODRUFF: Okay. Then
6 Mr. Smith, you can step down.

7 THE WITNESS: Thank you very much for
8 the opportunity to be here. We really do
9 appreciate it.

10 JUDGE WOODRUFF: All right. Well,
11 that brings us to the end for tonight. We'll
12 resume tomorrow at 8:30 with Mr. Harris, I believe.
13 Have a good night. We're adjourned.

14 (WHEREUPON, the hearing was adjourned
15 at 9:49 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.

Kellene K. Feddersen, RPR, CSR, CCR

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