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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Discovery Conference  
August 30, 2012  
Jefferson City, Missouri  
Volume 16  
  
In the Matter of Union Electric )  
Company d/b/a Ameren Missouri's ) Case No. ER-2012-0166  
Tariffs to Increase its Revenues )  
for Electric Service )  
  
MORRIS L. WOODRUFF, Presiding  
CHIEF REGULATORY LAW JUDGE

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

2 JUDGE WOODRUFF: We're on the record. Good  
3 afternoon, everyone. We're here for the discovery  
4 conference concerning Ameren Missouri's rate case. It's  
5 Case ER-2012-0166. We'll begin today by taking entries of  
6 appearance from everyone who is here. Let's begin with  
7 Ameren.

8 MR. MITTEN: Your Honor, appearing on behalf of  
9 Union Electric Company doing business as Ameren Missouri  
10 is Russ Mitten, Brydon, Swearngen & England, 312 East  
11 Capitol, Jefferson City, Missouri, 65102.

12 JUDGE WOODRUFF: And for Staff?

13 MR. THOMPSON: Kevin Thompson for the Staff of  
14 the Missouri Public Service Commission, Post Office Box  
15 360, Jefferson City, Missouri, 65102.

16 JUDGE WOODRUFF: And Office of Public Counsel?

17 MR. MILLS: Lewis Mills, Post Office Box 2230,  
18 Jefferson City, Missouri, 65102.

19 JUDGE WOODRUFF: And for MIEC?

20 MS. VUYLSTEKE: Diana Vuylsteke, Bryan Cave, 211  
21 North Broadway, Suite 3600, St. Louis, Missouri, 63102.

22 JUDGE WOODRUFF: All right. Thank you. We have  
23 one item to bring up, which was Ameren Missouri's Request  
24 to Compel MIEC to provide some data requests.

25 MR. MITTEN: Yes. And I'd like to update the

1 letter that I sent you on April -- August 28th, your  
2 Honor. Ms. Vuylsteke and I have been able to resolve our  
3 differences with regard to one of the DRs, and it's MIEC  
4 DR 019.

5 JUDGE WOODRUFF: Which one is that?

6 MR. MITTEN: It was my request for information  
7 regarding cost advantages that Noranda believes that its  
8 New Madrid smelter has over other aluminum producers.

9 JUDGE WOODRUFF: Okay. So the other ones  
10 remain?

11 MR. MITTEN: Yeah. The other ones remain.

12 MR. THOMPSON: Your Honor, at this time, Staff  
13 would ask for permission to be excused from the remainder  
14 of the hearing as we don't have any issues.

15 JUDGE WOODRUFF: You're free to leave.  
16 What about --

17 MR. MILLS: Me, too?

18 JUDGE WOODRUFF: And Public Counsel as well.

19 MR. MILLS: Thank you.

20 JUDGE WOODRUFF: Okay. Well, then we still have  
21 a number of issues to be determined today. This is the  
22 first time we've actually conducted one of these discovery  
23 conferences. And as you're probably aware, the Commission  
24 has delegated authority to me to make a decision on the  
25 record today.

1 I anticipate doing that after hearing arguments  
2 from the parties. If -- if it gets to be something that's  
3 technical and I'm not comfortable making a decision on the  
4 spot here today, I'll do a written decision subsequently.

5 If you're not satisfied with what I -- with my  
6 ruling, I think it would be appropriate to request  
7 reconsideration, which would take it to the Commission if  
8 that's what you want to do.

9 MR. MITTEN: Okay.

10 JUDGE WOODRUFF: And let's start with Ameren, if  
11 you can give me some background on what this is all about.

12 MR. MITTEN: There were a number of data  
13 requests that we submitted regarding the rate design  
14 testimony submitted by Noranda's CEO, Kip Smith. And all  
15 of -- there are a number of the data requests that --

16 THE COURT REPORTER: Excuse me. Can we go off  
17 the record for a second?

18 JUDGE WOODRUFF: Yes.

19 (Break in proceedings.)

20 MR. MITTEN: I'll start from the beginning. All  
21 of the disputes involve Data Requests that Ameren sent to  
22 MIEC regarding the rate design testimony that was filed by  
23 Noranda's CEO, Kip Smith.

24 If you would like, I can go through -- excuse  
25 me. Noranda objected to a number of the Data Requests,

1 and I sent you a copy of that objection with my letter on  
2 August 28th.

3 Noranda has provided some information subject to  
4 its objections to some of the Data Requests. Other Data  
5 Requests, they haven't responded to at all, except for DR  
6 19.

7 It's Ameren Missouri's position that the  
8 responses that they have sent subject to the objections  
9 are incomplete or inadequate, and we're asking you to  
10 compel them to fully and completely answer each of those  
11 Data Requests.

12 And with regard to the objections that have been  
13 raised, it's our position that those objections are  
14 unfounded and unsupported by applicable law and we would  
15 ask you to overrule those objections and compel the  
16 company to fully and completely respond to any data  
17 Requests that they haven't responded to at all subject to  
18 those objections.

19 JUDGE WOODRUFF: Ms. Vuylsteke, if you want to  
20 give a general response, and then we'll go through each  
21 one individually.

22 MS. VUYLSTEKE: Sure. I'll be glad to give a  
23 general overview. The evidence in the case so far that  
24 Noranda has submitted is the testimony, direct testimony,  
25 of Kip Smith.

1           The testimony of Kip Smith is similar to the  
2   testimony that he filed in prior cases, but there are some  
3   important differences. Mr. Smith has modified his  
4   testimony from prior cases in that he's not discussing the  
5   details of comparisons with other smelters in the United  
6   States.

7           And I -- I believe that, in this particular  
8   case, by simply referring to the cost of service testimony  
9   of Morris Brubaker, Mr. Smith is showing that Noranda is  
10   not asking for a special rate or special rate treatment  
11   other than cost of service treatment that Mr. Brubaker  
12   recommends in his testimony. And Mr. Smith specifically  
13   refers to Mr. Brubaker's testimony.

14          So I think this testimony is different and kind  
15   in prior cases. And in some areas where Mr. Mitten may  
16   refer you to a prior Motion to Compel from a couple of  
17   years ago, I think that the relevance question comes into  
18   play.

19          This is not exactly like the prior testimony.  
20   We're not getting into the details of, you know, other  
21   smelters' cost. We're not getting into the details of  
22   comparison of costs. And we purposely tried to stay away  
23   from that because Noranda is not asking for anything  
24   really special in this case.

25          As far as the issues that, you know, Mr. Mitten

1 is going to raise today, a lot of them are, you know,  
2 detailed -- I think what he is looking for is really  
3 detailed narrative support regarding Noranda's financial  
4 information, cost of production, financial projections and  
5 budgets.

6 And I wanted to keep -- as you're considering  
7 relevance as well as the other objections raised that this  
8 case is about Ameren's rates. And while Noranda is here  
9 to say, we care about our rates, this is a huge cost to  
10 us, this is a third of our business cost, of course, it's  
11 going to affect our business, and it's important to us.  
12 That's the thrust of this testimony.

13 I think that Ameren's just seeking to kind of  
14 get into Noranda's business in a way that it's not  
15 comparable when Ameren's regulated and all of it's, you  
16 know, profit is set by the Commission, et cetera.

17 I think that when you look at the materiality of  
18 this and the probative value of it, it's important to kind  
19 of keep in mind that there's a limit to how far Ameren  
20 should be able to dig into Noranda's business when all Kip  
21 is really saying is this is a very important cost to us,  
22 and we hope the Commission will keep that in mind.

23 JUDGE WOODRUFF: Okay. Before we start going  
24 through the individual case in the DRs, do you want to  
25 have the opportunity to discuss this amongst yourselves



1 further to try and work anything out?

2 MR. MITTEN: We have. We've had several  
3 conversations. We have been able to work out some of the  
4 differences, including the differences regarding DR019 yet  
5 today, but we've not been able to resolve the differences  
6 on the ones that were included with my letter of August  
7 28th.

8 MS. VUYLSTEKE: Well, and there's one additional  
9 thing I wanted to mention. First of all, Mr. Mitten has  
10 been very helpful and cooperative in discussing these  
11 issues when we have had a number of pretty lengthy  
12 conversations and even several this morning.

13 But Mr. Smith is being deposed, as you probably  
14 are aware, on September 13th, I believe. And there's been  
15 a Notice issued. So I think some of these answers, it  
16 will be our position, that it would be more useful and  
17 reasonable to just get his narrative descriptions in  
18 deposition rather than in Date Request/Interrogatory form.

19 JUDGE WOODRUFF: Okay. And I assume you want to  
20 get that information before the deposition if you can?

21 MR. MITTEN: I do. I need some information in  
22 order to prepare for the deposition. Simply waiting till  
23 the deposition and asking the witness questions and having  
24 to rely on his answers without any data to support those  
25 answers is really not satisfactory discovery.

1 JUDGE WOODRUFF: Okay. Let's go ahead and then  
2 go through each one.

3 MR. MITTEN: One point, I would take issue with  
4 something Ms. Vuylsteke said. We believe that Noranda is  
5 looking for special treatment in this case. It's --  
6 Brubaker & Associates has sponsored testimony that  
7 supports a revenue requirement well below the one that  
8 Ameren filed with its case.

9 Moreover, Ameren Missouri's proposed rate design  
10 in this case is for a uniform percentage increase across  
11 the board. Noranda is looking for a revenue neutral  
12 decrease in rates that moves it closer to its cost before  
13 any across the board increase would be applied.

14 So, again, Noranda is looking for different rate  
15 design and revenue requirement treatment than Ameren has  
16 proposed in this case.

17 JUDGE WOODRUFF: And Noranda is in the unique  
18 position of being the sole member of its rate class, large  
19 transmission class.

20 MR. MITTEN: That's correct.

21 JUDGE WOODRUFF: All right. Let's go ahead and  
22 start with MIEC 009, I guess, the first one.

23 MR. MITTEN: Until this morning, there was no  
24 response at all provided to that DR. This morning, Ms.  
25 Vuylsteke has provided me a response that simply says,

1 Subject to MIEC's prior objections, Mr. Smith's statement  
2 is based on his business judgment.

3 That response is -- is wholly inadequate. The  
4 statement that we were attempting to get additional  
5 information on is Mr. Smith's statement that, Ameren  
6 Missouri's proposed rate increase threatens the viability  
7 of the New Madrid smelter.

8 And I think we are entitled to know what  
9 information Mr. Smith relied on when he made that  
10 statement. Every decision that a corporate executive  
11 makes is based upon business judgment, but it's business  
12 judgment based on something.

13 And we believe that we're entitled to inquire  
14 about that because that is a key statement that was  
15 included in Mr. Smith's rate design testimony in this  
16 case.

17 JUDGE WOODRUFF: What's your response?

18 MS. VUYLSTEKE: Your Honor, first of all, I  
19 think that that request is, at a minimum, extremely  
20 burdensome. There are years and years of data that  
21 Mr. Smith is basing that on, all of Ameren's prior rate  
22 cases, all of the testimony that he's seen, the mental  
23 impressions and opinions of counsel and numerous retained  
24 experts, and, also, his length service of several years  
25 now as the CEO of Noranda.

1           To provide such a broad answer to such a broad  
2 question, I think, would take pages and pages of data and  
3 potentially volumes of data. And I think, given the  
4 burden that that places on Mr. Smith and on Noranda, this  
5 would be a question much better suited for a narrative in  
6 the deposition.

7           But to provide all of the documents and all of  
8 the detail and all of the records that Mr. Kip relies upon  
9 in making the simple statement that a 15 percent rate  
10 increase imposes a burden on the viability of the smelter  
11 when it's a third of their costs, I think that's a common  
12 sense conclusion that doesn't justify that broad of -- of,  
13 you know, a supporting narrative. And I just don't think  
14 it's reasonable in scope.

15           JUDGE WOODRUFF: That does strike me as being a  
16 fairly broad category. Is there -- can it be narrowed?

17           MR. MITTEN: Judge, I don't know. I assume Mr.  
18 Smith had something in mind when he made the very serious  
19 allegation that, Ameren Missouri's proposed rate increase  
20 threatens the viability of the New Madrid smelter. At a  
21 minimum, he should be able to provide a narrative of the  
22 things he had in mind when he reached that conclusion.

23           JUDGE WOODRUFF: Something more than business  
24 judgment?

25           MR. MITTEN: Something more than simple business

1 judgment. There had to be something specific that he was  
2 relying on when he reached that very serious conclusion.

3 JUDGE WOODRUFF: And, Ms. Vuylsteke, you're  
4 saying there's no particular study or some -- some  
5 document that could be produced for this?

6 MS. VUYLSTEKE: There -- there isn't. I think  
7 if you, you know, look at all of the different public  
8 statements and things that are filed at the SEC, the 10Qs  
9 and those types of documents, the words importance of  
10 electricity cost to an aluminum smelter, I think,  
11 emphasizes the importance of electricity cost.

12 Those are a lot of public documents. But in  
13 terms of his own conclusion, I just think that there's  
14 just a myriad -- I mean, this is a person who runs a  
15 company that, you know, their survival depends on keeping  
16 electricity cost reasonable. That's one of the reasons  
17 why we have fewer smelters in the United States than we  
18 did before and the issues that are part of the record in  
19 prior rate cases that we didn't really raise here.

20 So I think that if it was a simple, this is an  
21 important cost for the industry, we need to have  
22 reasonable electricity cost to be competitive, that would  
23 be -- you know, we're glad to provide that kind of  
24 narrative.

25 But I hate to open the door to this enormous

1 -- that leads to more Data Requests about other smelters'  
2 cost and global costs. And it seems like it's just going  
3 to open the door to too broad of an inquiry.

4 I don't know the solution. I mean, I'm happy to  
5 try to work out a narrative answer that's more simple.

6 MR. MITTEN: At a minimum, I think we're  
7 entitled to a much longer narrative answer that explains  
8 what Mr. Smith had in mind when he made this statement.  
9 But, again, this goes beyond the importance of  
10 electricity.

11 This -- Mr. Smith has alleged in his testimony  
12 that Ameren's rate increase threatens the viability of the  
13 New Madrid smelter. That's a very, very serious charge.  
14 And for a corporate executive to make that kind of  
15 allegation in public, he had to have something very  
16 specific in mind. We're simply attempting to find out  
17 what that was.

18 JUDGE WOODRUFF: All right. Well, I think it is  
19 a little overbroad in that you're asking for all data  
20 documents and information that he may have relied on.  
21 That would -- presumably could ask for an article that he  
22 read in the Wall Street Journal five years ago or  
23 something.

24 So I think this does need to be narrowed. I  
25 think there is some room for a more detailed narrative

1 response, as you indicated, than simply saying it's  
2 business judgment, the kind of things you've actually said  
3 here on the record. Again, but --

4 MR. MITTEN: Your Honor, I'd be willing to  
5 modify the request to have Mr. Smith describe the data  
6 documents and information that he relied on as support for  
7 his conclusion, and that wouldn't require them to produce  
8 documents, but it certainly would require Mr. Smith to  
9 tell us what was on his mind when he reached that  
10 conclusion.

11 JUDGE WOODRUFF: Would that be acceptable?

12 MS. VUYLSTEKE: Yes. I'll work with Mr. Smith  
13 on developing a more detailed response that maybe strikes  
14 a balance.

15 JUDGE WOODRUFF: And is that acceptable to you,  
16 Mr. Mitten?

17 MR. MITTEN: That's fine. That's fine.

18 JUDGE WOODRUFF: Okay. Let's move on to the  
19 next one then. It's 14.

20 MR. MITTEN: In his testimony, Mr. Smith refers  
21 to three-year productivity goals of the New Madrid  
22 smelter. And we want to get copies of those productivity  
23 goals so that we can evaluate what they say and whether or  
24 not Mr. Smith's testimony regarding those productivity  
25 goals is accurate and complete. Since he mentioned them

1 specifically in the testimony, we believe that they are  
2 discoverable.

3 JUDGE WOODRUFF: Okay. Your response?

4 MS. VUYLSTEKE: My response would be, first of  
5 all, I don't believe that their -- the details of how  
6 Noranda expects to achieve its productivity goals are  
7 relevant to the issues in this case.

8 The fact that Noranda has productivity goals is  
9 -- is enough. We've provided those goals. But the  
10 details of basically how a company is run to be efficient  
11 are -- again, that's very broad, voluminous, and the  
12 material issues in this case is what Ameren's rates should  
13 be.

14 I think this is an example of really getting  
15 under Noranda's business in a way that doesn't really --  
16 isn't probative to the issues of what -- what Ameren's  
17 rates should be.

18 I would add that in working with the company to  
19 try to come up with a response to this, once we had the  
20 goals to see if there was any way -- anything that  
21 existed, a document or anything that showed those kinds of  
22 details. You know, the company didn't have anything like  
23 that, but they said their productivity goals are very  
24 diffusely -- there is a broad -- very broad group of  
25 people that is responsible for productivity of the



1 company.

2 And a lot of it is simply just done at the plant  
3 level, and there isn't really a document or a study or an  
4 analysis that show details of how the goals are going to  
5 be achieved.

6 So I'm not exactly sure what Mr. Mitten is  
7 looking for, if he thought there might be a study. I  
8 think that asking Noranda to put together that kind of  
9 information for this response, the burden would outweigh  
10 the probative value.

11 JUDGE WOODRUFF: So the disagreement is over the  
12 second sentence of the DR, then? Is that fair to say?  
13 That's the, Please describe in detail how Noranda expects  
14 to achieve these productivity goals.

15 MR. MITTEN: Well, I'd like to see a copy of the  
16 productivity goals. I was a corporate executive for more  
17 than 26 years, and I know how corporations put together  
18 productivity goals.

19 There are top level productivity goals that then  
20 go down in the organization to be fulfilled. I'm looking  
21 at the top level productivity goals that Mr. Smith  
22 specifically referred to in his testimony.

23 And, again, this goes to his argument that  
24 Ameren Missouri's rates threaten the financial viability  
25 of the enterprise because he specifically states in his

1 testimony that these productivity goals are one of the --  
2 the four strategic elements that Noranda considers with  
3 regard to investments in Missouri and that these strategic  
4 elements are what determines the short-term performance  
5 and long-term viability of the New Madrid smelter.

6 Mr. Smith injected into this case the issue  
7 regarding the viability of the smelter and how Ameren  
8 Missouri's electric rates affect that. I'm simply  
9 entitled to inquire as to what's behind the statements  
10 that he included in his testimony, and that's all I'm  
11 trying to do. All I'm interested in is the high level  
12 productivity goals that he referred to in his testimony.

13 JUDGE WOODRUFF: And that's not what's in this  
14 10K?

15 MR. MITTEN: No.

16 MS. VUYLSTEKE: I think, in my discussions with  
17 the company to resolve the response, they informed me that  
18 this was this it, the 10K and the 10 -- the analyst  
19 presentation are the productivity -- set forth the  
20 productivity goals.

21 If there is any other documents, you know, I  
22 will go back to the company again. But they -- they knew  
23 that we were having this hearing today, and it's very  
24 important to them to be obviously, extremely credible and  
25 to be transparent. And they said that literally this is

1 what they have.

2 MR. MITTEN: If this is all they have, Judge,  
3 then I would like them to say that as part of the response  
4 to this DR so that I can ask Mr. Smith about it during his  
5 deposition and cross-examine him on that point during the  
6 hearing in this case.

7 JUDGE WOODRUFF: Are you willing to make that  
8 stipulation?

9 MS. VUYLSTEKE: We're glad to do that. Sure.

10 JUDGE WOODRUFF: Okay. Consider it resolved?  
11 Or do you want --

12 MR. MITTEN: It's resolved, yes, provided that  
13 they -- they give me the answer that I asked for.

14 JUDGE WOODRUFF: Right. And we have another one  
15 of these coming up in a couple weeks, so --

16 MR. MITTEN: We do.

17 JUDGE WOODRUFF: And, of course, you can file  
18 otherwise, too.

19 MR. MITTEN: Well, I may need to do that  
20 because, again, I'm going to use this information to  
21 prepare for a deposition that's scheduled on the 13th.

22 JUDGE WOODRUFF: Sure. And we'll try and make a  
23 ruling as quickly as possible. Let's move on to 15, then.

24 MR. MITTEN: 15, again, goes directly to  
25 Mr. Smith's allegation regarding the effect of Ameren

1 Missouri's proposed rate increase on the viability of the  
2 New Madrid smelter.

3 I'm seeking here budgets and financial  
4 projections for the years 2012 through 2015 that include  
5 the assumptions that are included in those budgets  
6 regarding the cost of electricity.

7 There has been an objection -- or filed -- an  
8 objection filed to this DR. I have gotten nothing back in  
9 response. In conversations with Ms. Vuylsteke, they claim  
10 that this is subject to the attorney/client privilege.

11 And I can find no law in the state of Missouri  
12 that would support these claims. The information that I'm  
13 seeking is prepared in the ordinary course of business by  
14 the corporation, and that's what I'm seeking.

15 I'm looking for high level budgets with specific  
16 information regarding the assumptions that are included in  
17 those budgets regarding the price of electricity.

18 JUDGE WOODRUFF: Your response?

19 MS. VUYLSTEKE: I -- I do believe, your Honor,  
20 that this is attorney/client privileged information.  
21 Ameren -- Ameren's rates are set by the Commission through  
22 the PSC process.

23 And there is no possible method for Noranda to  
24 make a projection about Ameren's electric rates without  
25 considering, you know, the regulatory posture of the

1 Commission, the chances of success in litigation, and the  
2 various positions of the parties, the likelihood of  
3 settlement on issues like rate design, the likelihood of  
4 success on issues like revenue requirement.

5 To the extent that these forecasts would even  
6 be, you know, relevant to this case, they are privileged  
7 because there is no possible way these forecasts don't  
8 include the mental impressions of counsel as well as  
9 retained experts.

10 And I do think it's important for the Commission  
11 to keep in mind that, you know, Noranda will be under  
12 contract with Ameren until, I believe, 2021, but there  
13 will come a point where Noranda is going to have to  
14 renegotiate its contract and petition the Commission or  
15 Ameren petition the Commission to again serve Noranda.

16 So information about how Noranda's evaluating  
17 future electric rates, I think disclosing that could  
18 prejudice them in their future discussions with Ameren as  
19 well. So I think there's kind of a double reason to find  
20 attorney/client privilege and risk here of disclosure that  
21 would outweigh any benefits to Ameren from having it. And  
22 that's the basis for our objection.

23 JUDGE WOODRUFF: Is that what you're looking  
24 for, Mr. Mitten, that kind of projection from them?

25 Mr. MITTEN: Judge, what I'm looking for is

1 their financial projections as to whether or not they're  
2 going to be profitable through 2015. And if they are,  
3 what their assumptions are regarding electric rates  
4 because that goes directly to the credibility of  
5 Mr. Smith's assertion that Ameren Missouri's rates are  
6 threatening the financial viability of the New Madrid  
7 smelter.

8 First of all, with regard to the strategic  
9 disadvantages that would pose for Noranda, as Ms.  
10 Vuylsteke said, they're under contract with Ameren  
11 Missouri through 2021. The budgets and projections that  
12 I'm seeking are through the end of 2015. So they're well  
13 in advance of any renegotiation of the contract with  
14 Ameren so there would be no strategic advantage lost by  
15 providing that.

16 And as far as the legal strategy information  
17 that is included in corporate budgets, again, I go back to  
18 my 26 years experience as a corporate General Counsel who  
19 included in budgets information that was relevant to  
20 threatened or pending litigation. That certainly is in  
21 the detail of the budgets. But when those get rolled up  
22 to the corporate budget itself, you can't find that  
23 information.

24 Again, all I'm looking for are income statements  
25 and balance sheets, the kind of things that are usually

1 included in corporate budgets and information regarding  
2 the assumptions that went into those budgets regarding the  
3 electric rates that would be in effect for 2012, 2013,  
4 2014 and 2015.

5 JUDGE WOODRUFF: Sounds like what you're asking  
6 for is something that's not necessarily going to be an  
7 attorney/client privilege. And I agree with Ms. Vuylsteke  
8 that you don't have a right to discover her consultations  
9 with clients about what sort of trial strategies and so  
10 forth as to where they think -- how they think the  
11 Commission's going to rule.

12 MR. MITTEN: And I don't --

13 JUDGE WOODRUFF: I think we can agree on that.

14 MS. VUYLSTEKE: I think our fundamental argument  
15 that Mr. Mitten and I are having here is that the  
16 projection on electric rates are fundamentally revealing  
17 the litigation strategy that Noranda has consulted with us  
18 about -- about what future rates will be, how long  
19 Ameren's going to stay out, when they're going to come  
20 back in, what the likelihood of success is.

21 And with respect to the statement about  
22 viability, going back to the relevance issue, there's --  
23 Noranda is saying in this case their viability is  
24 threatened, that it's such a large cost.

25 I don't see the relevance of, you know,

1 certainly, 2013 to 2015. And to the extent that we're  
2 talking about, you know, 2012, I think we're in the very  
3 midst of the litigation. I think the privilege applies to  
4 current and future litigation. And very clearly, in the  
5 current litigation, we have to say what we think electric  
6 rates are going to be and would be saying how we expect  
7 this case to come out.

8 I understand Mr. Mitten's point that he's saying  
9 that, you know, at a higher level, we don't need to see  
10 the e-mails that Counsel sent to Noranda. But just the  
11 very guess -- it would be as if Ameren had to guess where  
12 it's going to come out in this case. What are your  
13 projections of the rates for this case?

14 MR. MITTEN: Judge, I would be very surprised if  
15 Noranda was using projections that it got from its lawyers  
16 regarding electric rates to rely on those for purposes of  
17 its budget.

18 But let's assume hypothetically -- the reason  
19 I'm looking for this, hypothetically, over the next  
20 three-year period, Noranda assumes that its electric rates  
21 are going to be 50 percent higher than they are right now.  
22 But those projections still show Noranda to be a  
23 profitable and financially viable company.

24 We're -- we should be entitled to see that  
25 because that directly contradicts Mr. Smith's testimony in



1 this case, and it can be used for impeachment purposes  
2 both at the deposition and in the hearing of this case.

3 And without the specific information I'm looking  
4 for, we have to accept Mr. Smith's testimony at face  
5 value. And that simply isn't fair to Ameren Missouri.

6 JUDGE WOODRUFF: Okay. Is there any way we can  
7 narrow this to limit issues on attorney/client?

8 MR. MITTEN: Again, I can't fathom that any  
9 Court would consider a budget that is prepared by a  
10 corporation in the ordinary course of business to be  
11 subject to the attorney/client privilege.

12 The law in this state regarding attorney/client  
13 privilege is very clear. It says it protects confidential  
14 communications, oral and written, between an attorney and  
15 his client with reference to litigation pending or  
16 contemplated.

17 This is a corporate budget that covers all costs  
18 and revenues this company is going to face for the next  
19 three-year period. If there is any legal input into the  
20 budget, it is miniscule. And, again, at the level that  
21 I'm looking for, the final rolled up budgetary numbers, I  
22 couldn't find or identify that legal advice if I tried.

23 MS. VUYLSTEKE: Your Honor, to me, you know,  
24 when it's a third of the business's costs, I think that if  
25 Noranda is required to disclose what it thinks its

1 electric rates are going to be, it will -- it's not just  
2 attorney/client privilege.

3 It's attorney/client privileged because they  
4 rely -- this is a price regulated entity. I think  
5 Mr. Mitten is correct that in probably most corporate  
6 budgets, it's not a huge issue. It doesn't reveal that  
7 much.

8 But when you have an entity that one-third of  
9 its costs is electricity and that cost is completely set  
10 by a regulatory agency based on litigation, I do think  
11 that that is an area where the very facts of the budget  
12 that's there will reveal our litigation strategy and our  
13 predictions of the outcome of litigation. And I don't  
14 think that Ameren would want to answer a similar question.

15 MR. MITTEN: Ameren has already turned over  
16 budgets that have been requested by various parties in  
17 this case. And it has done so in every case I've been  
18 involved with. That's a routine request for utilities.

19 They routinely turn that over because even  
20 though they're pervasively regulated and even though  
21 lawyers have input into some small level of those budgets,  
22 they recognize that there is no colorable claim of  
23 attorney/client privilege to the kinds of information I'm  
24 looking to get from MIEC in this case.

25 MS. VUYLSTEKE: Well, And I would add it's also

1 work product privilege because it's prepared in  
2 anticipation of litigation as well.

3 MR. MITTEN: Well, budgets are prepared for  
4 corporate planning purposes. They are not prepared in  
5 anticipation of litigation. That's just nonsense, your  
6 Honor.

7 JUDGE WOODRUFF: All right. You made a  
8 statement at the end that you're looking for documents  
9 prepared for corporate planning purposes.

10 MR. MITTEN: That's what a budget does. Budgets  
11 are not prepared for litigation. They're prepared for  
12 corporate planning purposes, to run the business, not for  
13 litigation.

14 MS. VUYLSTEKE: Your Honor, I don't see the  
15 relevance or the probative value of Noranda's budgets and  
16 its predictions of how Ameren's rates are going to come  
17 out to any issues in this case which are what Ameren's  
18 rate increase should be.

19 The statement that was just made, the viability  
20 of the smelter depends on the outcome of this case or that  
21 if Ameren gets the rate increase that it seeks threatens  
22 the viability of smelter, I don't think having predictions  
23 of future rates is really relevant to that issue in this  
24 case.

25 It doesn't give Ameren enough -- they're saying

1 they're going to impeach his credibility in the current  
2 case. That statement could be incorrect that the  
3 viability is threatened.

4 I think on the face of it that a third of their  
5 cost and 50 percent rate increase that to delve deeply  
6 into their budgets in the future three years is not going  
7 to provide evidence that is relevant enough to justify the  
8 burden.

9 MR. MITTEN: This is not a huge burden, Judge.  
10 The documents exist. They're not voluminous. I'm simply  
11 asking for copies of them so that I can determine whether  
12 or not Mr. Smith's statement regarding the threat to the  
13 viability of the smelter is true.

14 MS. VUYLSTEKE: To be clear, I'm not saying  
15 producing the budgets and the forecasts would be  
16 burdensome in terms of the work involved and volume of  
17 data.

18 I'm talking about the burden on the company of  
19 having to reveal its predictions about the outcome of  
20 litigation.

21 MR. MITTEN: Mr. Smith injected into this case  
22 the issue regarding the effect of Ameren's proposed rate  
23 increase on the viability of the enterprise. I'm entitled  
24 to discovery to find out whether or not that statement is  
25 true. That's all I'm trying to do, your Honor.

1 JUDGE WOODRUFF: All right. I'm going to rule  
2 in Ameren's favor on this one with the understanding that  
3 what they're looking for here is budgets prepared for  
4 corporate planning purposes. And it's not -- not looking  
5 specifically for projections from Ameren on how this rate  
6 case or future rate case is going to turn out. What  
7 you're looking for is corporate planning budgets.

8 MR. MITTEN: That include information regarding  
9 the assumptions that went into those budgets as to what  
10 the cost of electricity is going to be.

11 JUDGE WOODRUFF: If that sort of information is  
12 part of the documents for the budget.

13 MR. MITTEN: They would probably have to  
14 identify it because there's not going to be a line item on  
15 the budgets that says -- if it says power costs, it's not  
16 going to tell me what rate per kilowatt hour they included  
17 in that calculation.

18 And that's the information that I need because  
19 not only do I need to know what their gross assumption is  
20 regarding power costs, but I need to know what their  
21 assumption was as to the rate for power because that's  
22 critical to determine whether or not Mr. Smith's  
23 allegation is true that the magnitude of the rate increase  
24 that Ameren is proposing in this case threatens the  
25 financial viability -- excuse me -- of the New Madrid

1 smelter.

2 MS. VUYLSTEKE: I would disagree that the  
3 information would be -- would be necessary or relevant.  
4 If it -- if Ameren's rates increase is 15 percent or 5  
5 percent, whatever the rate increase is that Mr. --  
6 Mr. Smith is saying threatens the viability, that, in and  
7 of itself, depends on the financial status of Noranda in  
8 the sense that if they're profitable or unprofitable, 5  
9 percent or 15 percent could make a difference.

10 But actually getting in to the details of what's  
11 behind those assumptions, it doesn't make sense to me that  
12 we need to know the electric forecast or electric rate  
13 projections.

14 In particular, if he's looking for the overall  
15 projections of the profitability of the company, I can  
16 understand you could see how much of a hit this rate  
17 increase would take on their rates with respect to if it's  
18 going to put them under or not. That would globally maybe  
19 be relevant.

20 But to get into the assumptions about what power  
21 rates are going to be next year, that's judging -- that's  
22 two-thirds of their other costs that are involved.

23 MR. MITTEN: I understand that, your Honor. But  
24 if I've got a budget for 2013 or 2014 or 2015 that shows  
25 the Noranda smelter is profitable and the gross power

1 costs that are included in that budget are based on an  
2 assumption of electric rates that is 50 or 100 percent  
3 higher than they are right now, then that is probative as  
4 to whether or not Mr. Smith's testimony in this case is  
5 true.

6 And the only way that I can find that out is to  
7 see the budgets and to know what assumptions were included  
8 in those budgets regarding the cost of electricity.

9 JUDGE WOODRUFF: All right. This is a difficult  
10 question. And I'm not going to try and make a ruling from  
11 the Bench. I'm going to take it back and give it some  
12 consideration and issue a written order on it in the next  
13 couple days.

14 MS. VUYLSTEKE: Your Honor, would it be useful  
15 at all for us to provide any written material briefing or  
16 anything like that? Or would you prefer that we just let  
17 it rest on our argument?

18 JUDGE WOODRUFF: I think you've made it clear at  
19 this point. I don't want to make something off the cuff  
20 that's going to have a large impact on both sides here, so  
21 I'll issue a written decision on this. And I anticipate  
22 I'll do that by Tuesday at the latest.

23 MR. MITTEN: Thank you.

24 JUDGE WOODRUFF: Okay. Let's move on, then, to  
25 16.

1 MR. MITTEN: Here I'm seeking information  
2 regarding a \$38 million in capital investment that  
3 Mr. Smith refers to on pages 8 and 9 of his pre-filed  
4 testimony.

5 This investment, according to Mr. Smith, is  
6 going to be made to increase the energy efficiency of the  
7 Noranda smelter. I have simply asked for a detailed  
8 description of how that \$38 million is going to be spent,  
9 over what period Noranda intends to expend it, what  
10 amounts have already been spent and what amounts are going  
11 to be spent in the future. Prior to today --

12 JUDGE WOODRUFF: The response -- I'm sorry.

13 MR. MITTEN: I've gotten information regarding  
14 roughly 13 million of the 38 million. I got some  
15 additional information from Ms. Vuylsteke this morning.  
16 Quite frankly, I'm not a hundred percent sure how to  
17 interpret it because there are at least two different  
18 numbers there.

19 But the bottom line is I still don't know about  
20 the full \$38 million that is listed in Mr. Smith's  
21 testimony. I think I'm entitled to a narrative answer.  
22 And that's, again, all I'm asking here for as to  
23 specifically how they intend to spend that money and when  
24 they intend to spend that money. I don't have that now.  
25 And I'm asking the Commission to order Noranda to provide



1     that information to me.

2                   MS. VUYLSTEKE: Your Honor, I want to be clear  
3     about, you know, what we have provided and what we're  
4     willing to provide and what may be missing.

5                   First of all, we have no objection to providing  
6     this information at all. Okay? I think it's an issue of  
7     putting the pieces together and there must be a piece  
8     missing.

9                   There is a huge capital improvement project  
10    involving a rectifier. And I provided information to  
11    Mr. Mitten this morning about that that was apparently not  
12    included in what we previously provided. And I think it's  
13    a question of adding up -- I've asked the Plant Manager to  
14    create a document that lists every component of the  
15    38 million.

16                  And on the way down here, he was still e-mailing  
17    about it. So we will produce this information. I think  
18    we've produced a fair amount of it already, and I think  
19    it's just a question of there's a piece missing on adding  
20    up to the numbers on the energy efficiency investment.

21                  MR. MITTEN: Judge, if they're willing to  
22    provide what Ms. Vuylsteke just described, that's what  
23    I've been asking for all along. But this is the first  
24    I've heard that they'd be willing to provide that.

25                  JUDGE WOODRUFF: You're willing to provide --

1 MS. VUYLSTEKE: I believe, yes. If it's simply,  
2 you know, adding up to get to the 38 million, then --

3 MR. MITTEN: And when you intend to spend the  
4 money. That's the other piece of it.

5 MS. VUYLSTEKE: Okay.

6 JUDGE WOODRUFF: Resolved, then?

7 MR. MITTEN: Yes.

8 JUDGE WOODRUFF: All right. Then 18?

9 MR. MITTEN: Part of the this, I think, has been  
10 resolved based upon some additional information that Ms.  
11 Vuylsteke sent me this morning. There were two parts to  
12 this.

13 One, I asked for, in rank order, items --  
14 Expense Items 2 through 5 of the top five expense items  
15 for the Noranda smelter and the percentages that each of  
16 those items represent. Ms. Vuylsteke provided that to me  
17 this morning.

18 The second part of the answer -- or the request  
19 asks for a description of the steps that Noranda has taken  
20 in the last two years and any additional steps that it  
21 plans to take through 2015 to control those cost elements  
22 2 through 5.

23 Again, this goes to the voracity of Mr. Smith's  
24 testimony regarding the threat that Ameren Missouri's  
25 rates poses to the long-term viability of the Noranda

1 smelter.

2 I'm simply attempting to find out what steps  
3 Noranda has done to get lean and mean. And Mr. Smith  
4 specifically says in his testimony that they have done  
5 everything that they can do to control costs other than  
6 electricity.

7 And I believe I'm entitled to -- to test the  
8 voracity of that statement, and this is one of the means  
9 that I'm doing it.

10 JUDGE WOODRUFF: Okay. Any response?

11 MS. VUYLSTEKE: Similar to our other responses,  
12 when you get into a detailed description of -- of cost  
13 cutting measures for the past several years and, you know,  
14 plans to do that in the future, I think that's a very  
15 burdensome request that is so overbroad that any -- any  
16 relevance or any benefit to Noranda -- I mean that Ameren  
17 from having this answer would be far outweighed by the  
18 burden on Noranda in doing so.

19 I think that you could go on for, you know,  
20 again, volumes about everything that Noranda's done for  
21 several years back and several years ahead. I think the  
22 key question is that, you know, Noranda has identified  
23 areas where it's trying to cut costs. It's identified its  
24 energy efficiency measures. It's talked about its  
25 lay-offs. It's provided information to investors

1 regarding its efforts and to this Commission through  
2 Mr. Smith's testimony.

3 It's the level of detail that's the problem.  
4 And it's not, again, comparing Noranda to Ameren. Of  
5 course, you know, where Ameren's cost of service is at  
6 issue in this case, we have to understand their costs and  
7 those costs have to be verified by the Commission.

8 In the present case, Noranda is not the  
9 regulated entity. They're simply saying, We're cutting  
10 out costs, this is a cost that's set by the Commission,  
11 it's important to us.

12 I don't know that that justifies the kind of  
13 level of inquiry that Ameren's going to here. And if  
14 there is something we can do to find a balance where, you  
15 know, it's limited in scope in some reasonable way that  
16 doesn't take days of work -- this is lots of level of  
17 inquiry that it certainly would be justified with regard  
18 to Ameren.

19 MR. MITTEN: Again, it is limited in scope, the  
20 last two years, the next three years. And I can't believe  
21 that's going to take more than a few pages to provide the  
22 narrative description that I've asked for. And that's all  
23 I've asked for is a narrative description.

24 JUDGE WOODRUFF: Is Noranda willing to provide a  
25 narrative description of that nature?

1 MS. VUYLSTEKE: I -- of course, we are. And if  
2 it's limited in scope and we can take a shot at creating  
3 with Kip the description of the kind that he would do in  
4 his deposition.

5 I just want to understand that we don't have to  
6 get into supporting details and, you know -- you know,  
7 from employees or specific programs that have to be  
8 discussed in detail where you could have literally, you  
9 know, reams and reams of information put together. If  
10 it's simply a few pages of narrative description, I think  
11 we can put that together with Kip.

12 MR. MITTEN: Well, I think it's up to Noranda as  
13 to the level of detail that they want to provide. But I  
14 would like a fulsome, narrative description of what they  
15 have done in the last two years. Again, Mr. Smith takes  
16 great pains in his testimony to say, We've done everything  
17 we can to control and cut costs, all our operating costs,  
18 except for electricity.

19 I want to know what he's done, what he plans do  
20 in the next three years because, again, that goes to the  
21 credibility of his testimony with regard to what they've  
22 done in the past and the credibility of his testimony as  
23 to what they plan to do in the future to keep those costs  
24 down so that they can preserve the Noranda smelter as a  
25 financially viable operation.

1 MS. VUYLSTEKE: I would like to understand on  
2 the future costs what you're driving at, where in his  
3 testimony he's saying we're going to be cutting costs in  
4 the future specific -- I mean, we're talking about things  
5 they've done in this time frame for purposes of this case  
6 that they've been efficient. But I think cost cutting to  
7 the future is much harder to find a connection to his  
8 testimony.

9 MR. MITTEN: If he doesn't know -- if they don't  
10 have any plans in the future to cut or control the second  
11 through fifth largest elements of cost, I'm fine for him  
12 to say that because that gives me a basis to question him  
13 both during his deposition and on the stand during the  
14 hearing in this case. But I need something -- some sort  
15 of response to this that is more than what's in his  
16 testimony.

17 JUDGE WOODRUFF: Is that something that Noranda  
18 can provide?

19 MS. VUYLSTEKE: Yes. I mean, I'm not conceding  
20 the relevance of the future costs, cost cutting measures.  
21 But, I mean, I will -- I'm sure Kip has some ideas about  
22 ways they're going to cut costs, and I'm willing to  
23 provide that.

24 JUDGE WOODRUFF: Okay. Resolved?

25 MR. MITTEN: That's fine.

1 JUDGE WOODRUFF: Okay. And 19 you said was  
2 resolved. 20?

3 MR. MITTEN: Well, 20, I think, has been  
4 partially resolved as well based upon some additional  
5 information that Ms. Vuylsteke provided today. But  
6 there's still some additional information that I would  
7 like. Actually, I'm sorry. 20 hasn't been responded to  
8 at all, I believe. Is that correct, Diane?

9 MS. VUYLSTEKE: Correct. Correct.

10 MR. MITTEN: Okay. Again, it goes to the  
11 overall credibility of Mr. Smith's contention that Ameren  
12 Missouri's electric rates threaten the viability of the  
13 Noranda smelter. I would like to know, in light of that,  
14 whether or not Noranda has investigated the possibility of  
15 self-generating the electricity that it needs to keep the  
16 smelter open.

17 If it hasn't done any studies, all I want them  
18 to do is say so. If they have done studies along those  
19 lines, I would like to see them. Either way, that gives  
20 me, again, a basis to inquire of Mr. Smith during the  
21 deposition and to ask him questions during  
22 cross-examination at the hearing.

23 I -- I would note that a similar question was  
24 raised by MEUA in Ameren's last rate case. And Noranda  
25 objected to it then as well. You overruled that

1 objection.

2 In that case, there was -- there were additional  
3 contentions made by Noranda that are not in this case.  
4 But I believe the information that I'm looking for is as  
5 relevant to the allegation regarding the ongoing viability  
6 of the New Madrid smelter as it is to the additional  
7 issues that were raised in the last rate case.

8 JUDGE WOODRUFF: Your response?

9 MS. VUYLSTEKE: In the instance of this  
10 particular Data Request, I think of all the Data Requests,  
11 this may be the one that is the most objectionable to  
12 Noranda.

13 And that is because just the mere answering of  
14 this question, I think, is -- is beyond not only the scope  
15 of any issue in this case, but could be damaging to  
16 Noranda in the future as it -- you know, and six or seven  
17 years is actually not that long of a time when you're  
18 looking at what you're going to do to get electricity for  
19 -- for, you know, the level of load that Noranda has.  
20 You're talking about an entire power plant needed to serve  
21 them.

22 To have to go into that when they're going to  
23 have to be negotiating with Ameren in a few years about  
24 new supply, not only is it outside of the scope of this  
25 case, but it's actually prejudicial to Noranda to have to



1 reveal this.

2 To the extent that any studies existed, they  
3 would be protected by privilege. They would -- they would  
4 have experts and attorneys that would be advising them.  
5 They are under contract with Ameren until 2021, so it's  
6 not relevant to this case whether or not Noranda has  
7 looked at other power options.

8 And I would add that regarding -- and I pointed  
9 this out to Mr. Mitten this morning. At the time that you  
10 compelled the answer to a similar question by MEUA, you  
11 stated in your Order that it was because Noranda had  
12 brought up the issue of other smelters.

13 And if you recall, there was data comparison  
14 regarding how are other smelters getting their electricity  
15 and why is it cheaper? And that one of the comparable --  
16 one of the smelters that was part of Noranda's evidence or  
17 brought up in Noranda in this evidence is a  
18 self-generating smelter, and you said, therefore, it's  
19 relevant in this case.

20 MR. MITTEN: Judge, with regard to the  
21 confidentiality and the concerns about the competitive  
22 disadvantage that this information would put Noranda in in  
23 its future negotiations with Ameren Missouri, I would  
24 simply note that based upon your ruling in the last rate  
25 case, that genie is apparently already out of the bottle.

1 All I'm looking for is the information that was  
2 provided in the last case and any new information that has  
3 been generated since the last case. That's all I'm  
4 looking for.

5 MS. VUYLSTEKE: Your Honor, I would just -- I  
6 disagree with Mr. Mitten that whatever was produced in the  
7 last case -- and I, frankly, don't recall exactly what it  
8 was, but it wasn't -- I don't believe it was anything that  
9 had any significant detail in it.

10 Whether or not it's prejudicial to Noranda to  
11 produce that changes from year to year. It could be very  
12 prejudicial now or two years from now whereas it wasn't a  
13 couple of years ago, depending on what, if any, work  
14 Noranda has done on the issue.

15 But I think the main -- the hook, you know, the  
16 relevance, the very relevance of this question depends on  
17 the evidence that Noranda put in and what Kip's testimony  
18 said. And it has changed with regard -- it is not in his  
19 current testimony. So that's why -- that's why we're  
20 objecting.

21 JUDGE WOODRUFF: Which rate case was this I made  
22 the ruling in?

23 MR. MITTEN: 2011-0028, the most recent previous  
24 rate case.

25 JUDGE WOODRUFF: Did I make a ruling -- did I

1 make it --

2 MR. MITTEN: You did.

3 JUDGE WOODRUFF: -- on the Bench or --

4 MR. MITTEN: No. It was a written ruling.

5 I've got a copy of it if you'd like to see it, your Honor.

6 JUDGE WOODRUFF: I would.

7 MR. MITTEN: This is a clean copy for you. And  
8 your specific ruling on this issue is -- if you'll excuse  
9 me a moment -- on page 8, beginning on page 8. It's Data  
10 Request 1.16.

11 JUDGE WOODRUFF: Uh-huh.

12 MR. MITTEN: One additional point, I understand  
13 Ms. Vuylsteke's concerned about the competitive  
14 disadvantage. The problem is the law doesn't recognize a  
15 privilege for competitive disadvantage.

16 This is not subject to any recognized privilege  
17 that I'm aware of, and, therefore, if it's relevant to  
18 this case -- and, again, I believe it is because it does  
19 go directly or indirectly to the voracity of Mr. Smith's  
20 claim that Ameren Missouri's rates threatened the  
21 viability of the New Madrid smelter -- then I'm entitled  
22 to get this information in discovery.

23 MS. VUYLSTEKE: I would that add that my issue  
24 of a competitive prejudice or competitive disadvantage is  
25 not based on privilege. It's based on prejudice and

1 relevance.

2 I still -- I assert the privilege because any  
3 information that's been gathered or discussed with regard  
4 to other power options, if it has been discussed, is going  
5 to necessarily involve negotiations with Ameren, the  
6 contract that Noranda currently has with Ameren and the  
7 conclusions of -- of counsel regarding these  
8 possibilities.

9 This information would be privileged if it were  
10 produced and if there was such an analysis. But the issue  
11 of competitive prejudice goes to relevance. It doesn't go  
12 to privilege. That's a separate issue.

13 MR. MITTEN: And Mr. Smith didn't have to  
14 testify in this case. And I assume that he took into  
15 account all of the potential up sides and down sides of  
16 testifying before he made the decision to file testimony  
17 in the case.

18 And, again, he opened the door by making the  
19 charge that Ameren Missouri's charges for electricity  
20 threaten the viability of the New Madrid smelter.

21 I believe, again, I'm entitled to test the voracity of  
22 that.

23 And one of the things I'd like to know is if  
24 Ameren's rates are as bad as Mr. Smith says they are, if  
25 they are as detrimental to the long-term viability of the

1 smelter as he says they are, have they looked at  
2 alternatives? And if they have, I'm entitled to get them.

3 If they haven't, they can say so because I think  
4 that, in and of itself, says something about the voracity  
5 of his testimony.

6 MS. VUYLSTEKE: Sorry. I have to respond. I  
7 don't mean to drag out the argument.

8 JUDGE WOODRUFF: That's fine.

9 MS. VUYLSTEKE: But the idea that somehow  
10 Mr. Smith opened the door or waived this or knew that he  
11 was going to be asked and took that risk, I think that the  
12 testimony is different, fundamentally different than the  
13 two prior testimonies.

14 I think that we purposely did not bring up the  
15 issue of comparison with other smelters. So if you're  
16 going to make the argument that Kip, you know, knew that  
17 this question was going to be asked and didn't want to  
18 answer it but knew he was getting into this, I would say  
19 this is absolutely the kind of issue that he did not want  
20 to get into. And the fact his testimony is very  
21 specifically different in this case than in the prior  
22 cases, I think, demonstrates some reliance on the  
23 rationale that the Commission previously used to compel  
24 the production of the information.

25 JUDGE WOODRUFF: All right. I'm going to defer

1 ruling on this one, also. I'll include it with the  
2 written decision that I'll be issuing in a day or two.

3 MR. MITTEN: Thank you, your Honor. I believe  
4 that's the last one.

5 JUDGE WOODRUFF: Okay. Very good. Any final  
6 thoughts?

7 MR. MITTEN: The one request I was made, I -- I  
8 submitted these Data Requests sometime ago, more than a  
9 month ago, and I haven't gotten some of the answers that  
10 Ms. Vuylsteke now says that she's going to provide to me  
11 yet. Could I ask that she be ordered to provide the  
12 information that she has agreed to provide no later than  
13 the end of business next Wednesday? Next Thursday, being  
14 the holiday on Monday. Excuse me. That would be a week  
15 from today.

16 JUDGE WOODRUFF: And your response?

17 MS. VUYLSTEKE: We'd agree to that.

18 JUDGE WOODRUFF: All right. Then you are so  
19 ordered.

20 MR. MITTEN: Thank you.

21 MS. VUYLSTEKE: Thank you.

22 JUDGE WOODRUFF: All right. Well, thank you all  
23 for being here today, and I'll get that Order out just as  
24 quickly as I can. And I'll ask the court reporter to  
25 expedite the transcript. I'd like to have it by the end

1 of day Friday.

2 THE COURT REPORTER: All right.

3 JUDGE WOODRUFF: Okay. Thank you. We're  
4 adjourned.

5 MR. MITTEN: Thank you, your Honor.

6 JUDGE WOODRUFF: Thank you.

7 (The proceedings were concluded at 3:00 p.m. on  
8 August 30, 2012.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI )

4 ) ss.

5 COUNTY OF OSAGE )

6

7 I, Monnie S. Mealy, Certified Shorthand Reporter,  
8 Certified Court Reporter #0538, and Registered  
9 Professional Reporter, and Notary Public, within and for  
10 the State of Missouri, do hereby certify that I was  
11 personally present at the proceedings as set forth in the  
12 caption sheet hereof; that I then and there took down in  
13 stenotype the proceedings had at said time and was  
14 thereafter transcribed by me, and is fully and accurately  
15 set forth in the preceding pages.

16

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21 \_\_\_\_\_  
Monnie S. Mealy, CSR, CCR #0539

22 Registered Professional Reporter

23

24

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