

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric)
Company d/b/a AmerenUE for Authority)
to File Tariffs Increasing Rates) Case No.:
for Electric Service Provided to) ER-2008-0318
Customers In the Company's Missouri)
Service Area.)

DEPOSITION OF JAMES DAUPHINAIS

November 18, 2008

Sheryl A. Pautler, CCR 871

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 6 7 E-mail. 27
 7 8 Graph. 29
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 11 (Whereupon the exhibits were attached to the original and
 12 copies.)
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 25 Also present:
 Mr. Michael Gorman
 Mr. Maurice Brubaker

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 7 for Electric Service Provided to) ER-2008-0318
 8 Customers In the Company's Missouri)
 9 Service Area.)
 10 DEPOSITION OF WITNESS, JAMES DAUPHINAIS,
 11 produced, sworn, and examined on the 18th day of November,
 12 2008, between the hours of twelve o'clock noon and five
 13 o'clock in the afternoon of that day, at Brubaker &
 14 Associates, Inc., 16690 Swingley Ridge Road, Chesterfield,
 15 Missouri, before SHERYL A. PAUTLER, a Notary Public and
 16 Certified Court Reporter within and for the State of
 17 Missouri, in a certain cause now pending before the Public
 18 Service Commission in the State of Missouri.
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1 IT IS HEREBY STIPULATED AND AGREED, by and
 2 between counsel for all parties, that the deposition of
 3 JAMES DAUPHINAIS may be taken in shorthand by Sheryl A.
 4 Pautler, a notary public and shorthand reporter, and
 5 afterwards transcribed into typewriting; and the signature
 6 of the witness is expressly reserved.
 7 * * * * *
 8 JAMES DAUPHINAIS,
 9 of lawful age, being produced, sworn and examined on
 10 behalf of AmerenUE, deposes and says:
 11 [EXAMINATION]
 12 QUESTIONS BY MR. LOWERY:
 13 Q. Good afternoon, Mr. Dauphinais.
 14 A. Good afternoon.
 15 Q. This is our second deposition in this case.
 16 Well, I guess I won't promise, but I don't think this one
 17 is going to take as long as the last one. How about that?
 18 A. That would be great.
 19 Q. I guess you're not taking any medication or
 20 haven't developed some physical or psychological condition
 21 since the last deposition that would prevent you from
 22 answering my questions fully and truthfully; is that right?
 23 A. That is correct.
 24 Q. As I mentioned the last time I took your
 25 deposition, if you don't understand a question, please ask

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1 me to clarify it. If you don't do that, I'm going to
 2 assume you understood it if you go ahead and answer it.
 3 A. Okay.
 4 Q. Has anything about your assignment changed in
 5 this case since I took your deposition on October 23?
 6 A. No.
 7 Q. You confirmed what your opinions were in
 8 relation to this rate case as of October 23 during your
 9 deposition on that day; is that right?
 10 A. As it existed at that time, yes.
 11 Q. As your opinions existed at that time, right?
 12 A. Yes.
 13 Q. Have you formed any additional opinions
 14 pertinent to this rate case since that time?
 15 A. I have presented my surrebuttal testimony.
 16 Q. So if you formed any or modified any, those
 17 new opinions or modified opinions, whichever they may be,
 18 are reflected in your surrebuttal testimony; is that right?
 19 A. That's right.
 20 Q. And I take it in the context in arriving at
 21 those changed, modified, or additional opinions that may be
 22 reflected in your surrebuttal testimony, you again
 23 considered any facts or information that you felt you
 24 needed to consider that you felt would be important before
 25 you formed those opinions; is that right?

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1 A. That's correct.
 2 Q. Can you just summarize briefly for me how many
 3 additional opinions that you have or how opinions that you
 4 previously expressed have changed?
 5 A. Yes. The change in opinion was in regard to
 6 the recommendation that was previously made in my direct
 7 testimony. In my direct testimony, I made a recommendation
 8 that was based on a PROSYM run performed by the company on
 9 or shortly before January 10 of 2008 that I felt was a more
 10 reasonable estimate of off-system sales revenues on a
 11 normalized basis during the test period.
 12 Since that time, we have obtained more
 13 information on what the actual market prices for power were
 14 through the end of the true-up period through September 30
 15 of this year, 2008. And also we have had the benefit of
 16 seeing staff's own production cost run using their realtime
 17 program and benchmarking that to the company's PROSYM runs
 18 using a common set of assumptions.
 19 Based on that information, I took a look at
 20 also what Mr. Schukar presented and developed a new
 21 recommendation or revised recommendation that is to use a
 22 price in the production cost runs that averages over an
 23 8760-hour basis to the end of a realtime -- not realtime
 24 price -- an hourly -- 8760-hour average prices, the trend
 25 line for that as that trend line ended on September 30,

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1 2008, the end of the true-up period.
 2 (Mr. Gorman entered the proceedings.)
 3 Q. (By Mr. Lowery) The recommended margins that
 4 you would be recommending today are substantially less than
 5 the margins that were reflected in the January 10 PROSYM
 6 run that you had referred to a moment ago; is that correct?
 7 A. That is correct.
 8 Q. Any other modified or additional opinions
 9 other than you essentially just described your basic change
 10 in recommendation from your direct case? Any other
 11 modified or additional opinions since I deposed you on
 12 October 23 that are pertinent in this case that you've
 13 developed?
 14 A. I don't believe there are. There certainly
 15 was response to Mr. Schukar's rebuttal testimony, but
 16 they're consistent, I believe, with the previous opinions.
 17 Q. I want to see if I can tie up a few loose ends
 18 from the last deposition. I asked you whether or not you
 19 agreed that UE native load for the first half of 2008 was
 20 lower than normal and you, I believe, indicated that you
 21 weren't sure, but that's something you thought you would
 22 look at. Have you now confirmed that that is in fact the
 23 case?
 24 A. I've looked at it close enough to say I don't
 25 dispute it.

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1 Q. You don't dispute Mr. Schukar's statement to
 2 that effect?
 3 A. That's correct.
 4 Q. Do you have any opinion now about what the
 5 appropriate level of off-system sales volumes that UE
 6 should hedge or how far forward UE should hedge those
 7 volumes; do you have an opinion about that? I don't
 8 believe you had an opinion before.
 9 A. I don't believe I did and I don't have an
 10 opinion now.
 11 Q. You still don't. You don't take issue with
 12 the general proposition that it's appropriate for UE to
 13 hedge about [REDACTED] percent of its volume, give or take a little
 14 bit, about a year forward?
 15 A. I haven't looked at that time or developed an
 16 opinion about that.
 17 Q. Don't have any criticism about it; don't have
 18 any opinion one way or the other?
 19 A. That's correct.
 20 Q. Have you gone back now and confirmed -- and I
 21 know this is something that would be reflected in PROSYM
 22 runs -- have you confirmed that the company's testimony
 23 that its typical level of unhedged off-systems sales volume
 24 is about [REDACTED] million megawatt hours per year?
 25 A. No, I haven't confirmed that. I haven't

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1 focused on that particular issue.
 2 Q. Haven't looked at that issue, it's not
 3 important to your opinions; is that right?
 4 A. I haven't been asked to review it, so I
 5 haven't considered it.
 6 Q. But it's not important to your opinions
 7 apparently?
 8 A. In regard to off-system sales margin, no.
 9 Q. Did you go back and evaluate whether the range
 10 of uncertainty in off-system sales revenues could be from
 11 [REDACTED] as cited by Mr. Schukar in his
 12 rebuttal testimony?
 13 A. I didn't go back, but I don't necessarily
 14 dispute them. As my own direct testimony indicated,
 15 there's tens of millions of dollars of range where the
 16 actual off-system sales margins could be.
 17 Q. Fair enough. You indicated that you've looked
 18 at spot power prices, what they've done since -- I take it
 19 since June, because I think your last testimony that you
 20 filed, your initial opinion, was based on information
 21 through June; is that correct?
 22 A. That's correct.
 23 Q. You've looked at what power prices -- spot
 24 power prices have done since June; is that correct?
 25 A. Yes, I have.

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1 Q. Have you looked through what spot power prices
 2 have done through September?
 3 A. Yes, I have.
 4 Q. What about through October?
 5 A. Yes.
 6 Q. Have you looked at what they've done so far in
 7 November?
 8 A. No, I have not.
 9 Q. And what -- based on your observation of the
 10 spot power prices since June, what have those power prices
 11 done?
 12 A. Those spot prices since June -- for June?
 13 Q. Yes.
 14 A. They were higher than the previous June. And
 15 for July, they were substantially higher than the previous
 16 July.
 17 Q. What about the level of spot power prices
 18 through October relative to the level of spot power prices
 19 back in June and July of this year?
 20 A. Relative to June and July, they were lower,
 21 but they would be expected to be lower.
 22 Q. Have you examined whether the drop from the
 23 June/July time frame to the September/October time frame
 24 was greater in order of magnitude in 2008 than it was in
 25 2007 or 2006?

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1 A. No. What I did look at is what the prices
 2 were in October 2008 versus October 2007.
 3 Q. But you didn't consider whether or not they've
 4 fallen off to a greater degree this fall in 2008, versus
 5 what they were in the summer of 2008, versus the fall-off
 6 from the summer of 2007 to the fall of 2007?
 7 A. No. I just focused on what October 2008
 8 prices looked like versus 2007, are they higher, are they
 9 lower.
 10 Q. Now, let me make sure I understand MIEC's
 11 position in this case related to off-system sales as of
 12 today as reflected in your surrebuttal testimony. I want
 13 to make sure I understand that this is a position that
 14 you're supporting in front of the commission. As I
 15 understand your surrebuttal testimony, the position that
 16 you support in front of the commission is to either add
 17 12.2 million to the margins from energy related off-system
 18 sales that underlie the company's rebuttal case; that's
 19 Option 1, is that correct so far?
 20 A. That's Option 2.
 21 Q. Option 2. I'm sorry. That's one of the
 22 options you're recommending, right?
 23 A. Yes.
 24 Q. Or -- And let me ask you. That number, the
 25 company's rebuttal testimony run would indicate that the

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1 margins from energy related off-system sales were [REDACTED]
 2 million?
 3 A. That's my understanding.
 4 Q. So Option 2 -- I think I did have it backwards
 5 from your surrebuttal testimony. Option 2 would be to add
 6 12.2 million to the [REDACTED] million number, correct?
 7 A. For the energy margins, yes.
 8 Q. For energy only. We're not talking capacity
 9 and those things at this point, right?
 10 A. Correct.
 11 Q. Or I think you had numbered it the first
 12 option, you would recommend determining off-system sales
 13 margins related to energy by rerunning UE's production cost
 14 model -- excuse me -- with inputs utilized so far, the
 15 loads and the outages, prices through September 30 for
 16 fuel, just like it was run in the rebuttal case, right,
 17 except you would recommend using an energy price of 45.36,
 18 an around-the-clock energy price of 45.36 -- 45.56; is that
 19 correct?
 20 A. Basically. We would scale the hourly
 21 prices -- and hourly prices that AmerenUE developed. We
 22 would scale them so that on average for the year, they were
 23 45.56. You would make a comparable adjustment on natural
 24 gas prices as well.
 25 Q. So that the fuel price input and the power

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1 price inputs would be scaled to match where we were on
 2 the -- in the real case, correct?
 3 A. That's correct.
 4 Q. And 45.56, I believe you explained, that's the
 5 end point of the rolling 8760-hour electricity spot market
 6 price trend line using the data that underlies your Figure
 7 JRD-2 in your surrebuttal; is that right?
 8 A. That's correct.
 9 Q. And that 45.56 captures spot prices from
 10 October 1, '07, to September 30, '08; is that right?
 11 A. That's correct.
 12 Q. So it necessarily captures June and July of
 13 2008?
 14 A. That's correct.
 15 Q. Now, you would expect, I take it, that a rerun
 16 of the PROSYM model would also add approximately
 17 \$12.2 million to that [REDACTED] million energy number that
 18 underlies the company's rebuttal's position?
 19 A. That's right. That's my estimate as to what
 20 the rerun would come out as.
 21 Q. So if there is no rerun using this scaled-up
 22 price that would equate to 45.56 around the clock, MIEC
 23 would be satisfied if the commission just took the
 24 [REDACTED] million related to energy and added 12.2 million to
 25 it related to energy; is that correct?

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1 A. That's correct. We did leave the option that
 2 if the commission -- not the commission -- the commission
 3 staff performed a reasonable run using a similar pricing
 4 method or set of prices, that that might be a reasonable
 5 alternative as well.
 6 Q. Because you agree that the company's PROSYM
 7 model and the staff's realtime model which have been
 8 calibrated to each other using a common set of inputs are
 9 going to produce essentially the same results, correct?
 10 A. For net fuel cost, yes.
 11 Q. You've obviously studied the company's work
 12 papers for its rebuttal case PROSYM run, correct?
 13 A. That's correct.
 14 Q. And you're comfortable with how that run was
 15 conducted; is that right?
 16 A. Yes, I am.
 17 Q. Incidentally, have you now been able to
 18 confirm that about 10 million megawatt hours is the
 19 normalized level determined by UE's rebuttal case PROSYM
 20 run for the off-system sales?
 21 A. For volume?
 22 Q. For volume.
 23 A. Yes.
 24 Q. So let me try to pull together MIEC's
 25 recommendation for off-system sales margins in total.

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1 We've got [REDACTED] million for energy?
 2 A. Uh-huh.
 3 Q. Plus 12.2 million. So the sum of those two I
 4 believe would be [REDACTED] million related to energy; is that
 5 right?
 6 A. Correct.
 7 Q. Do you want to verify that? I want to make
 8 sure that my mathematics is correct.
 9 A. [REDACTED]
 10 Q. [REDACTED] which you agree is the energy number from
 11 the company's rebuttal case, right?
 12 A. Yes.
 13 Q. Then 12.2, which is your number for energy?
 14 A. Correct. [REDACTED] million, yes.
 15 Q. So that's for energy, would be MIEC's
 16 recommendation?
 17 A. Yes.
 18 Q. MIEC would also add 4.7 million for RSG
 19 margin; is that right?
 20 A. Correct.
 21 Q. Could you do that please so we can get a sum
 22 here in a moment.
 23 A. So we'd be up to [REDACTED]
 24 Q. And MIEC would add 11.3 million for capacity;
 25 is that right?

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1 A. That's correct.
 2 Q. And then MIEC --
 3 A. Which would take us to [REDACTED] million.
 4 Q. Then MIEC would then add 3.5 million for
 5 ancillary services; is that right?
 6 A. That's correct. That would take us up to
 7 [REDACTED] million.
 8 Q. And that's versus the company's number of
 9 [REDACTED] million which is 12.2 million of energy margins is
 10 the only difference, right?
 11 A. Correct.
 12 Q. Now, I think you just answered this, but the
 13 entire \$12.2 million dispute between MIEC and the company
 14 strictly relates to energy prices, right?
 15 A. Yes, that's correct.
 16 Q. And essentially you say the price ought to be
 17 45.56 around the clock and Mr. Schukar says it ought to be
 18 43.57?
 19 A. That's correct. The average of the --
 20 Q. The around-the-clock price?
 21 A. Yes.
 22 Q. And really the entire difference between those
 23 two numbers is driven by the fact that you've used the end
 24 point of a trend line for the period October -- generated
 25 from data for the period October 1, 2007, to September 30,

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1 2008, and Mr. Schukar has used an average of the prices for
 2 the 24 months ending September 2008, correct?
 3 A. With the exception I'm not sure the dates you
 4 said on the trend line. The trend line goes beyond one
 5 year. If you said January 1, 2007 through September 30,
 6 2008, the basis of the trend line, yes.
 7 Q. But the end of the trend line is a 12-month
 8 moving average, right?
 9 A. Yes.
 10 Q. So it doesn't include any data before
 11 October -- no data before October 1, 2007 affects that
 12 average; is that correct?
 13 A. It affects the trend line.
 14 Q. It affects the trend line, but it doesn't
 15 affect the 45.56 number; isn't that correct?
 16 A. No. The 45.56 is a product of the trend line.
 17 It's the end point of the trend line on September 30, 2008.
 18 Q. Am I correct that 45.56 is -- it's the
 19 12-month moving average for the period October 1, '07 to
 20 September 30, 2008, correct?
 21 A. No. That would be a higher number.
 22 Q. That would be a higher number. Maybe you can
 23 show me in your work papers what I'm not understanding.
 24 And I brought your work papers with me electronically and
 25 I'll let you take a look at them.

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1 MR. LOWERY: Diana, do you mind if I just come
 2 around?
 3 MS. VUYLSTEKE: No.
 4 Q. (By Mr. Lowery) Mr. Dauphinais, I have your
 5 work papers and some other worksheets in this folder. What
 6 work paper should we be looking at?
 7 A. The work paper for Figure JRD-2.
 8 Q. And do you recall -- and I don't know whether
 9 you recall that that was sent to the company in a zip file.
 10 Maybe you didn't zip it up, maybe Ms. Vuylsteke's office
 11 did.
 12 A. It was sent in a zip file, I believe with the
 13 other public work papers.
 14 Q. So we're talking about this work paper right
 15 here, correct?
 16 A. Yes. Public Figure JRD-2 work paper.
 17 Q. And so can you show me the data that that
 18 produces the 45.56 number?
 19 A. Sure.
 20 Q. We're looking at a work paper titled:
 21 Public_figureJRD-2_workpaper.xls; is that right?
 22 A. That is correct. Let's take a look at a
 23 different tab in the workbook.
 24 Q. We're looking at the Figure JRD-2 tab which is
 25 a graph of data that's on the summary LMP tab in this

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1 workbook; is that right?
 2 A. That's correct. It's actually more easily
 3 seen graphically, unless you need to get to exact numbers.
 4 This trend line on Figure JRD-2 is a linear
 5 interpolation -- I'm sorry -- a linear regression of the
 6 entire curve from January 1 of 2007 through September 30 of
 7 2008. The curve, each point being a rolling 8760-hour
 8 average.
 9 The trend line would be different if the data
 10 for January 1, 2007 through October of 2007 was not present
 11 in the model. It could potentially be a bit different
 12 because it is an input into the linear regression, it
 13 produces the trend line. If we use the price, the
 14 8760-hour average price for September 30, 2008, it's
 15 actually a value that's in excess of \$46 a mega watt hour.
 16 Q. It's slightly in excess of \$46; is that right?
 17 A. That's correct.
 18 Q. So would you approximate it's about 50 cents
 19 per megawatt hour difference?
 20 A. I would say about 30 cents.
 21 Q. About 30 cents difference.
 22 So that roughly 45.86 price, that would be
 23 essentially 12 months of data from October 1, 2007, to
 24 September 30, right, as opposed to the trend line which is
 25 affected by the prices all the way back to 1/1/07; is that

Page 21

1 right?
 2 A. Yes. The 46.33 approximately is just based on
 3 the 12 months ending September 30, 2008, correct.
 4 Q. Now, you said 46.33. Did you mean 30 cents
 5 above 46, when you said 30 cents a moment ago?
 6 A. Yes, I did. I may have misstated that.
 7 Q. Okay. So the 12 months of data from October
 8 1, 2007 would imply a price of 46.33; is that right?
 9 A. That's correct.
 10 Q. You must have done that from memory; you must
 11 have calculated that number before?
 12 A. No. It's just approximately. The 46.33 is
 13 approximately.
 14 Q. All right. And if you influence -- if you use
 15 data back to 1/1/07 which influences the trend line itself
 16 and get to the end point of trend line, we get to 46.56; is
 17 that right?
 18 A. That's correct.
 19 Q. And 45.56 is your recommendation?
 20 A. That's correct.
 21 Q. Now I understand. Thank you.
 22 Let's talk about figure JRD-4. Am I
 23 correct -- this is figure JRD-4 in your surrebuttal
 24 testimony, right?
 25 A. I don't believe I have a figure JRD-4. Yes, I

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1 do. I'm sorry.
 2 Q. You were about to throw me for a loop if you
 3 didn't have a Figure JRD-4.
 4 A. I apologize for that.
 5 Q. That's all right. What page is that on?
 6 A. It's Page 9 of my surrebuttal testimony.
 7 Q. So Figure JRD-4, Page 9 of your surrebuttal
 8 testimony, that plots data for the average Cinergy,
 9 C-I-N-E-R-G-Y, on-peak forward prices over the next 12
 10 months; is that correct?
 11 A. On a rolling basis. So every point is 12
 12 months looking forward.
 13 Q. Right. If we look at a point as of July 31,
 14 it's going to be Cinergy prices, I think, for September
 15 through August; is that right?
 16 A. One month back. August.
 17 Q. Okay. If I look at a point, it's going to be
 18 the succeeding 12-month period, it's going to be the
 19 around-the-clock price for that succeeding 12-month period;
 20 is that right?
 21 A. On-peak prices.
 22 Q. On peak prices of the 12-month period.
 23 A. Yes, sir.
 24 Q. Let me clear that up because we were talking
 25 over each other.

Page 23

1 If I look at a forward price on a particular
 2 day, then I'm getting the on-peak price for that succeeding
 3 12-month period, the on-peak price for that succeeding
 4 12-month period; is that right?
 5 A. That's correct.
 6 Q. And maybe we can just make sure the record's
 7 clear, we'll look at one of your work papers again. We'll
 8 try to do it this way and if I have to get up, I will. You
 9 have a work paper that you provided for JRD-4, correct?
 10 A. That is correct.
 11 Q. And --
 12 A. That's also in the public work papers zip
 13 file.
 14 Q. I unzipped that a moment ago; you saw me do
 15 that. So it should be in here, right?
 16 A. Correct. It's called Public Figure JRD-4 work
 17 paper.
 18 Q. And that's also .xls, it's an Excel file; is
 19 that right?
 20 A. That's correct.
 21 Q. So if we open that up, if I go down here for
 22 example -- if I go down here to Cell E294, then I'm looking
 23 at the forward price as of July 30, 2008, right?
 24 A. That's correct.
 25 Q. For the period September '08 through

Page 24

1 August '09, correct?
 2 A. Yes, that's correct.
 3 Q. In fact, these calculations in Public Figure
 4 JRD-4 work paper.xls that are highlighted in yellow, they
 5 underlie -- those yellow cells underlie your figure JRD-4
 6 in your surrebuttal number; is that right?
 7 A. That's correct. Those are the values picked
 8 up to produce it.
 9 Q. Right. And these yellow cells in this work
 10 paper, they pick up data through August 28, 2008; is that
 11 right?
 12 A. That is correct.
 13 Q. And that's what we see -- I don't guess we can
 14 see the August 28, but you can see graphically that shortly
 15 after August 15, 2008, your Figure JRD-4 ends, correct?
 16 A. That's correct.
 17 Q. Now, you also provided an additional work
 18 paper that's also named Public Figure JRD-4 work paper.xls;
 19 is that right?
 20 A. I believe it was a corrected version or a more
 21 inclusive version.
 22 Q. You provided this one -- this one was provided
 23 on November 7, two days after your surrebuttal testimony
 24 was filed; do you recall that?
 25 A. Yes.

Page 25

1 Q. When I say this one, I mean the first
 2 pubic_figureJRD-4_workpaper that we were just talking about
 3 that has the yellow highlighted cells that pick up data
 4 through August 28; that was provided on November 7,
 5 correct?
 6 A. That's correct.
 7 Q. Then you provided another one on November 10,
 8 I believe. Do you recall that?
 9 A. Yes, I do.
 10 Q. Just verify that I'm looking at the right one.
 11 But we have one here, another public_figureJRD-4_workpaper
 12 with a file date of November 10, right?
 13 A. That's correct.
 14 Q. And I'm opening that November 10 work paper at
 15 this moment, correct?
 16 A. Yes.
 17 Q. Now, the November 10 version of this work
 18 paper includes a graph data that goes beyond August 28,
 19 2008, correct?
 20 A. That's correct. It's based on a database we
 21 maintain -- that we continue to maintain after August 28.
 22 That additional data was not used at the time of my direct
 23 testimony because it didn't exist at that time.
 24 Q. Well, the data that you used in the JRD
 25 figure -- excuse me -- Public Figure JRD-4 work paper, the

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1 chart that is inserted in your work paper as Figure JRD-4,
 2 that's in your surrebuttal testimony; is that right?
 3 A. That's correct.
 4 Q. And that depicts data through August 28; is
 5 that right?
 6 A. That's correct.
 7 Q. And at the time you prepared your surrebuttal
 8 testimony, you had this forward price data beyond
 9 August 28, right?
 10 A. It depends on the date of my direct testimony.
 11 Q. We're talking about surrebuttal testimony.
 12 A. Surrebuttal testimony, that data was
 13 available, yes.
 14 Q. Let me back up. You filed surrebuttal
 15 testimony on November 5, 2008; is that right?
 16 A. That's correct.
 17 Q. And you presented to the commission a Figure
 18 JRD-4 which included forward price data for the period
 19 ending August 28, 2008, right?
 20 A. Correct.
 21 Q. And the work paper that you provided on
 22 November 7, Public Figure JRD-4 work paper as of
 23 November 7, also included -- it included a tab that
 24 included this graph that's on Page 9 of your surrebuttal
 25 testimony; is that right?

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1 A. That's correct.
 2 Q. On November 10, after we asked you about
 3 additional work papers that we could see existed from your
 4 November 7 work paper, you provided the November 10 version
 5 of Public Figure JRD-4 work paper, right?
 6 A. Yes, I did.
 7 Q. And that November 10 version includes
 8 essentially the same chart that's in figure JRD-4, right?
 9 A. That's correct.
 10 Q. But it includes -- depicts data -- we've
 11 obviously got the wrong one. Let's make sure we get the
 12 right one. Mr. Dauphinais, I'm going to mark this and it
 13 will be easier for you to see it on paper, I think.
 14 (Whereupon the reporter marked Exhibit No. 7
 15 for identification.)
 16 Q. (By Mr. Lowery) Mr. Dauphinais, I'm going to
 17 hand you what's been marked Deposition Exhibit 7 and ask
 18 you if you at least recognize the portion from
 19 Ms. Vuylsteke's e-mail to me on down.
 20 A. Yes, I do recognize it.
 21 Q. That's an e-mail that I sent Ms. Vuylsteke on
 22 November 10 asking for a couple of specific work papers.
 23 It's your response to that e-mail attaching two work papers
 24 and then Ms. Vuylsteke's forwarded on to me. And at the
 25 end, I sent it on to some folks myself; is that correct?

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1 A. That's correct.
 2 Q. And that's the same e-mail that I've pulled up
 3 electronically on the computer; is that correct? Feel free
 4 to scroll down if you need to look at it.
 5 A. No. It's the same.
 6 Q. And one of the work papers that you provided
 7 was Public Figure JRD-4 work paper.xls as of November 10,
 8 correct?
 9 A. Correct.
 10 Q. And I'm opening that right now, correct?
 11 A. Yes.
 12 Q. Well, I just hit the wrong button. And the
 13 work paper I have open right now is the one you provided on
 14 November 10, right?
 15 A. That is correct.
 16 Q. And that work paper includes data just as we
 17 looked at in the November 7 version, but it also includes a
 18 chart that is just like figure JRD-4 on Page 9 of your
 19 surrebuttal testimony, but it depicts data -- well, that's
 20 the wrong one. I'm sorry. I'm asking the wrong question.
 21 You provided two work papers on November 10,
 22 right?
 23 A. That's correct.
 24 Q. With the e-mail that is labeled as Deposition
 25 Exhibit 7?

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1 A. That is correct.
 2 Q. And I'm opening the second of those which is
 3 call 144413.xls, right?
 4 A. Correct.
 5 Q. What does that stand for, if it stands for
 6 anything at all?
 7 A. It's just a coding system that works in our
 8 work management system for tracking files.
 9 (Mr. Gorman left the proceedings.)
 10 Q. (By Mr. Lowery) And that work paper, work
 11 paper 144413.xls provided on the 10th, it includes a chart
 12 that is just like -- it's using some of the same data that
 13 Figure JRD-4 uses, right?
 14 A. That's right. It's a continuation of that.
 15 It's an ongoing chart that we maintain internally.
 16 Q. And it continues that chart through, I
 17 believe, October 30, 2008, correct?
 18 A. That looks about right.
 19 MR. LOWERY: I'm going to have a couple other
 20 exhibits marked.
 21 (Whereupon the reporter marked Exhibit Nos. 8
 22 and 9 for identification.)
 23 Q. (By Mr. Lowery) I'm going to ask you to verify
 24 for me whether Exhibit 8 matches up with JRD-4 at Page 9 of
 25 your surrebuttal testimony?

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1 A. It does correspond, yes.
 2 Q. And that was included in the November 7 JRD-4
 3 work paper, correct?
 4 A. That is correct.
 5 Q. And I'm going to ask you whether Exhibit 9
 6 matches up with the Chart 1 tab on the 144413.xls work
 7 paper that was provided on November 10?
 8 A. It's a match.
 9 Q. And if we were to overlay these two Exhibits 8
 10 and 9 together, and we can't get it perfect, but we can
 11 roughly match these up so that the August 15 date continues
 12 on, is it fair to say that what we see is, we see a fairly
 13 precipitous drop in the forward prices around the first of
 14 July that flattens out for a while in early August and then
 15 starts to drop off not as sharply but fairly quickly again
 16 in September through the end of October; is that a fair
 17 characterization?
 18 A. It's a fair characterization.
 19 Q. So this continuing chart, Exhibit 9, that you
 20 say your office -- you indicate that Exhibit 9 is just a
 21 continuation of the figure JRD-4 on Page 9 of your
 22 surrebuttal testimony, you indicate your office maintains
 23 this on a continuous basis, right?
 24 A. We do currently, yes.
 25 Q. You had this information when you filed your

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1 surrebuttal testimony on November 5, right?
 2 A. Yes.
 3 Q. You elected not to share this information with
 4 the commission, correct?
 5 A. It wasn't relevant. It was not relevant.
 6 What was relevant was the curve I had access to and
 7 produced in my direct testimony because I was explaining
 8 how I selected the PROSYM case that was the basis of my
 9 recommendation for off-system sales margin in my direct
 10 testimony.
 11 Q. Let me ask the question again. You, in your
 12 own mind, determined that you didn't believe it was
 13 relevant; therefore, you chose not to share it with the
 14 commission, right?
 15 A. It wasn't relevant to the issue. The
 16 commission does not set rates based on forecast of future
 17 prices. So it is not relevant. It also looks beyond
 18 the -- it looks beyond the end of the true-up period for
 19 the test year.
 20 Q. My simple question was, you had this
 21 information when you filed your surrebuttal testimony,
 22 right?
 23 A. This information was available to me.
 24 Q. And you didn't make the information available
 25 to the commission; whether you think it was relevant to

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1 make it available or not, you chose not to make it
 2 available?
 3 A. It was not information that I felt the
 4 commission needs. It was not relevant to the issue at
 5 hand.
 6 Q. So you didn't make it available?
 7 A. I did not submit it as part of my testimony.
 8 Q. Am I correct that Exhibit 9 indicates that the
 9 forward price for -- forward price for the succeeding 12
 10 months by the end of October is approximately -- sorry.
 11 I've got it upside down -- is approximately \$14 a megawatt
 12 hour lower than the forward price for the succeeding 12
 13 months as of, I guess, August 28?
 14 A. Yeah. \$13. Yes, I would say.
 15 Q. Forward prices have dropped about \$13 between
 16 August 28 and October 31; is that correct?
 17 A. That would be correct. On a rolling 12-month
 18 looking forward basis, yes.
 19 Q. Have you looked at -- have you looked at --
 20 you say that Exhibit 9, your office maintains as a
 21 continuing basis. Have you looked at it including data
 22 beyond October 31 since you filed your surrebuttal
 23 testimony?
 24 A. Yes, I have.
 25 Q. And what are forward prices doing relative to

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1 October 31, since October 31?
 2 A. They're around the same neighborhood.
 3 Q. Have they fallen at all?
 4 A. They go up and down every day. They're in the
 5 same neighborhood plus or minus 2 or \$3.
 6 Q. Would the end point of the chart that's
 7 depicted in Exhibit 9 today be lower than it was at the end
 8 point on Exhibit 9?
 9 A. It's within plus or minus 2 or \$3, I would
 10 say.
 11 Q. Do you know if it would be lower?
 12 A. I can't recall. I looked at it this morning.
 13 But I can't recall if it was exactly lower. I know it was
 14 again in the same neighborhood of around \$55.
 15 Q. Now, let's take a look at work paper 144413.
 16 Let's look at the data. If we look at the data, we see
 17 that the forward price for that succeeding rolling 12-month
 18 period was -- we can call it \$55, can't we, as of
 19 October 31?
 20 A. Yes.
 21 Q. Now, that's a Cinergy on-peak price, right?
 22 A. Correct.
 23 Q. And as we talked about in your last deposition
 24 as your analysis that you provided with your direct
 25 testimony indicated to get that back, to take into account

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1 the basis differential between AmerenUE's generating units
 2 and Cinergy, we've got to apply a ratio of, what, about
 3 .887, if my memory serves me correctly?
 4 A. That's approximately correct.
 5 Q. So if we call it \$55 times .887, we get an
 6 equivalent on-peak price of UE's generating units of about
 7 48.78; is that right?
 8 A. That's correct.
 9 Q. And if we want to estimate what an
 10 around-the-clock price would be, I think you indicated in
 11 your last deposition that a 77 percent ratio is pretty
 12 reliable over time, it's been a pretty reliable ratio; is
 13 that right?
 14 A. That's correct.
 15 Q. So if we want to figure out what the implied
 16 around-the-clock price based on the forwards is, we've got
 17 to multiply that 48.58 by 77 percent, and we're going to
 18 get about 37.56 as an implied around-the-clock price,
 19 correct?
 20 A. We get 37.56. But, again, I would caution two
 21 things, the commission doesn't set rates based on forward
 22 projections of prices. And, second, the market is in very
 23 unusual circumstances right now. There was an article this
 24 morning indicating that we're at the point in time, the
 25 second highest time in history in regard to the number of

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1 commodity traders that are selling short. They're at
 2 record levels. It's like at a 73 percent level.
 3 These prices are unusually low. It may very
 4 much be like the run-up in forward prices following the
 5 hurricanes in 1995 -- 2005. I'm sorry.
 6 Q. But today, Mr. Dauphinais, it's a fact, isn't
 7 it, that the market expects for the succeeding 12 months
 8 past October 31, 2008, that the market expects the
 9 around-the-clock price for that succeeding 12-month period
 10 to be approximately 37.56?
 11 A. The market expects that.
 12 Q. And that was my question, whether or not the
 13 market expects that as of October 31.
 14 A. The market also had a wild expectation after
 15 the hurricanes in 2005 of being very high prices, which
 16 never developed.
 17 Q. I'll ask the question again. As of
 18 October 31, based on the forward prices which represents
 19 the market's expectation of what the prices are going to be
 20 for that succeeding 12-month period, correct?
 21 A. That's correct.
 22 Q. So the market's expectation is roughly 37 and
 23 a half dollar price for that succeeding month period on an
 24 around-the-clock basis, correct?
 25 A. On that particular day, that's the market

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1 consensus of those that are trading in the market, yes.
 2 Q. And that's roughly \$8 a megawatt hour lower
 3 than your current recommended price, correct?
 4 A. Roughly, yes.
 5 Q. Within a few pennies, right?
 6 A. Sure.
 7 Q. And if we're dealing with approximately
 8 10 million megawatt hours and we're dealing with roughly an
 9 \$8 difference, if that happens, we're talking about an
 10 \$80 million drop in off-system sales revenues, are we not?
 11 A. Potentially, if it actually occurs, which it
 12 may not.
 13 Q. Now, let me ask you -- let me make sure I
 14 understand something about forward prices. This \$55
 15 on-peak price as of October -- on-peak forward price at the
 16 Cinergy Hub as of October 31, am I correct that the way
 17 that price is calculated is that we take all of the on-peak
 18 transactions at the Cinergy Hub for the 30 days before
 19 October 31 and these are actual transactions that have been
 20 entered into by traders, and we average them and that's how
 21 the forward price is calculated; is that correct?
 22 A. Based on my understanding, it's based on
 23 reported trades from the day before for the forward months,
 24 the future months. It is a weighted average of those
 25 trades that are reported to the organization that's

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1 calculating the index.
 2 Q. So these are actual transactions that buyers
 3 and sellers have reported; they've transacted at those
 4 prices?
 5 A. Not necessarily. Both MISO and some of the
 6 other suppliers of this information on occasion will take
 7 offers, you know, look at the bid asked and look at people,
 8 offers to buy and bids -- Let me say that different.
 9 Offers to buy and bids to purchase. They look at those
 10 sometimes and they'll sometimes split the difference. It
 11 all depends on how liquid the trading was on the day on
 12 which the basis for the index is being calculated.
 13 Q. Is the Cinergy market in general a liquid
 14 market for electricity?
 15 A. It's the most liquidable electricity market.
 16 But the electricity markets, the forward markets themselves
 17 are less -- far less liquid than say Henry Hub forward
 18 prices or future prices for natural gas.
 19 Q. But at least in part, and it sounds like it
 20 depends on the particular period. At least in part, a
 21 forward price reflects actual transactions that took place
 22 between buyers and sellers; is that correct?
 23 A. If there were a sufficient number of
 24 transactions to satisfy the party that was creating the
 25 index that they felt comfortable in just using actual

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1 transactions, it would be, yes.
 2 Q. Do the folks who make a living buying and
 3 selling power, making decisions, I've got power to sell for
 4 the succeeding 12 months, I'm making a decision, do I sell
 5 it today at the forward price, do I wait because prices are
 6 going to go up; do they look at forward prices to make
 7 those decisions?
 8 A. They certainly have input and usually each
 9 organization has its own forward curve and one of those
 10 inputs would usually be reported prices similar to ones
 11 presented on these curves.
 12 Q. So forward prices are an important input when
 13 traders are making decisions about whether to buy or sell
 14 their power; is that correct?
 15 A. That is correct.
 16 Q. Mr. Dauphinais, when will rates in this case
 17 take effect?
 18 A. I don't know specific date, but I would
 19 believe sometime next year.
 20 Q. Would roughly 11 months after the case was
 21 filed; would that be your understanding?
 22 A. Unfortunately, I don't know for sure.
 23 Q. Fair enough. But you know rates won't take
 24 effect until 2009; is that correct?
 25 A. That is correct.

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1 Q. Mr. Dauphinais, help me understand something.
 2 When I look at your direct testimony and now I look at your
 3 surrebuttal testimony and we've seen spot prices come down
 4 since July and we've seen a very pronounced drop in forward
 5 prices, you've in fact since your direct case, you in fact
 6 have increased your around-the-clock price recommendation
 7 for purposes of setting rates in this case from the price
 8 that you relied upon in your direct case, correct?
 9 A. Because it was based through June 30 of 2008,
 10 correct. I updated it to reflect the end of the true-up
 11 period.
 12 Q. What consideration did you give to the
 13 market's expectation for the next 12 months in raising your
 14 around-the-clock price at surrebuttal on November 5 from
 15 what you had recommended on August 28 when you filed your
 16 direct testimony?
 17 A. Very little. The only -- I put more faith on
 18 the actual numbers because we're supposed -- in rate
 19 making, we set it based on historic numbers adjusted for
 20 known immeasurable changes through the end of the true-up
 21 period, is typically what is done.
 22 Q. Would you agree that what the commission is
 23 trying to do is to set a level of off-system sales margins
 24 that will be reflective of the margins the company could
 25 expect to earn during the time the rates are in effect?

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1 A. Rates aren't set based on that. They're set
 2 based set on the historic test year adjusted by known
 3 immeasurable changes.
 4 Q. Okay. Was the answer to my question no?
 5 A. I would say yes, I would say no. It may
 6 reflect a normalized level during the historic test period
 7 adjusted for known immeasurable changes, but it's certainly
 8 not reflecting a future period when the rates go into
 9 effect.
 10 Q. Let me try to ask it again. So it's your
 11 testimony that what the commission is trying to do is
 12 simply look at what the level has been historically for a
 13 particular period of time and isn't attempting to use
 14 historic information to predict what the level should be
 15 when rates are in effect; is that your testimony?
 16 A. I don't think I said that.
 17 Q. Okay. Clarify then for me. Because it's my
 18 understanding that the commission, when it uses information
 19 to set off-system sales margins or any other revenue or
 20 expense in a rate case, what the commission is trying to do
 21 is to come up with a normalized level of revenue and
 22 expense. In this case, it would be off-system sales
 23 margins. That would be reflective of what, in the
 24 commission's best judgment, would exist when rates are
 25 actually in effect, not reflective necessarily of what took

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1 place in the past. Do you disagree with that?
 2 A. I believe the commission sets the rates in --
 3 the commission's policy has been to set the rates -- the
 4 most reasonable way to set the rates is based on a historic
 5 test year. And the historic test year is what's looked at,
 6 along with known immeasurable changes typically through the
 7 end of the true-up period. They don't separate based on
 8 projections and what may be in effect at the time the rates
 9 go into effect.
 10 Q. I want to read you something and I ask you to
 11 tell me what you think it means. I'll be happy to show
 12 this to you. But the commission has said that a historical
 13 test year is used because the past expenses of the utility
 14 can be used as a basis for determining what rate is
 15 reasonable to be charged in the future.
 16 Doesn't that indicate that what the commission
 17 is trying to do is figure out what level of revenues and
 18 expenses are going to be experienced in the future?
 19 A. No. It means they're determining -- it's a
 20 way of determining a reasonable rate to apply in the
 21 future.
 22 Q. What's the difference?
 23 A. The difference is that the commission feels
 24 the most reasonable indication of what a -- the best
 25 indication of a reasonable rate going forward is to look at

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1 historic data, not at projections.
 2 Q. Do you disagree with the following statement:
 3 The test year is used to forecast what future earnings and
 4 revenues should be; do you agree or disagree with that?
 5 A. I agree with that. The commission uses that
 6 because it feels it's the most reasonable way to forecast
 7 that information. But it's not a projection. They're not
 8 using projections to figure out what should be the rates in
 9 the future period; they're using a historic test year
 10 adjusted for known immeasurable changes through the true-up
 11 period.
 12 Q. You agree what the commission is trying to do
 13 is predict what future earnings and revenues will be,
 14 correct?
 15 A. Rates that may be in effect for some time.
 16 Q. Was that a yes; you do agree that the
 17 commission is trying to predict what future earnings and
 18 revenues will be?
 19 A. They're trying to predict it and they feel the
 20 most reasonable way to do that is use a historic test year
 21 adjusted for known immeasurable changes though the end of
 22 the true-up period.
 23 Q. You agree the commission is not trying to
 24 figure out what rates should have been in the past,
 25 correct?

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1 A. I agree with that.
 2 Q. If the trend that you call known immeasurable,
 3 if that trend is over -- I want you to assume that trend is
 4 over. If the commission relies upon it, then the
 5 commission is going to be setting rates based on an
 6 overstatement of power prices that UE is likely to
 7 experience in the future, isn't it?
 8 A. I disagree with that. I do not assume that
 9 the trend line will continue after September 30 of 2008.
 10 We set it based on the price at September 30, 2008. It can
 11 remain flat. The trend line does not have to continue
 12 upward.
 13 Q. You're not expressing an opinion that the
 14 trend line is going to continue past September 30, correct?
 15 A. That's correct.
 16 Q. Do you have an opinion about that?
 17 A. I believe that over time, it will return to
 18 that trend line.
 19 Q. How about in 12 months succeeding September
 20 30, 2008?
 21 A. It may be below that trend line.
 22 Q. How about in the 36 months beyond
 23 September 30, 2008, what's your opinion?
 24 A. I would expect that it may return to that
 25 trend line.

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1 Q. So for at least the following 36 months, it
 2 may be on average at or below the trend line, right?
 3 A. It may not be 36 months. It could be 12
 4 months.
 5 Q. But your expectation, your opinion as you sit
 6 here today, is that for the following 36 months following
 7 September 30, if you had to make a judgment for a client,
 8 if you had to advise a client about what power prices are
 9 going to do for the 36 months beyond September 30, 2008,
 10 your expectation would be prices are going to be flat or
 11 below the level that's represented by the end of that trend
 12 line over that 36-month period; is that fair to say.
 13 A. No, I would not advise that. I believe now is
 14 a good time to be buying in the forward market at the low
 15 prices that exist because I do not believe those prices
 16 will be realized.
 17 Q. Let's go back to your prior answer. Do you
 18 have an opinion about where power prices are going to be in
 19 relation to the end point of that trend line over the
 20 following 12 months or the 12 months beyond September 30,
 21 2008?
 22 A. My testimony does not rely on that. My
 23 numbers that are produced or recommendation do not rely on
 24 that trend line continuing. However, I do have expectation
 25 that over time, that prices will return to that trend line.

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1 Q. But you're not answering my question. First
 2 of all, do you have an opinion about where power prices
 3 will be for the period October 1, 2008 to September 30,
 4 2009 in relation to the end point of that trend line; do
 5 you have an opinion?
 6 A. In relation to the end point of the trend
 7 line?
 8 Q. Yes. Are they going to be the same as 45.56,
 9 are they going to be lower than 45.56, are they going to be
 10 higher than 45.56 on an around-the-clock basis?
 11 A. I would expect more likely not that they
 12 remain the same if we look over the entire year period.
 13 Q. If net fuel cost in this case are set based
 14 upon a price that isn't realized during the period when
 15 rates are in effect, then we will -- we'll understate net
 16 fuel costs, will we not?
 17 Let me ask it this way: If power prices
 18 aren't realized at or above the level that was assumed when
 19 rates were set in this case, if power prices when rates are
 20 in effect are not realized at or above that level, we're
 21 going to overstate off-system sales revenues which means
 22 we're going to understate net fuel costs, correct?
 23 A. Off-system sales margins may be lower and net
 24 fuel cost may be higher as a result of that. But there are
 25 other things that may change as well that affect rates.

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1 You can't look at one item in isolation.
 2 Q. I'm only talking about net fuel costs though.
 3 A. Net fuel cost is just one element of rates.
 4 Q. If we use a price for off-system sales and we
 5 come up with a figure of \$400 million of off-system sales
 6 revenue and we have \$800 million of gross fuel and purchase
 7 power cost, we'd have \$400 million of net fuel cost, right?
 8 A. Yes.
 9 Q. And if power prices during the time that rates
 10 are in effect are lower than we assumed when we set that
 11 \$400 million off-system sales revenue, then our net fuel
 12 cost are going to be higher when the rates are in effect?
 13 A. They are, but you may have other costs that
 14 are lower.
 15 Q. Is the answer to my question, yes, the net
 16 fuel cost will be higher?
 17 A. Yes. But you may have other costs that are
 18 lower that offset that.
 19 Q. For purposes of setting -- for purposes of the
 20 fuel adjustment clause, those other costs won't have any
 21 bearing, correct?
 22 A. If a fuel adjustment clause is established,
 23 those other costs won't have a bearing on the fuel
 24 adjustment clause.
 25 Q. That's right. So if my off-system sales

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1 revenues do not materialize at the level that was assumed
 2 when the rates were set, then for purposes of my fuel
 3 adjustment clause adjustments, assuming I have one, my net
 4 fuel costs are going to be higher than the base level
 5 established in the fuel adjustment clause, right?
 6 A. That's correct.
 7 Q. Which means it's more likely I'm going to have
 8 an upward adjustment in my fuel adjustment clause rate,
 9 than if I get the level right in the rate case that sets
 10 the base amount that's included in the fuel adjustment
 11 clause, correct?
 12 A. If the net fuel cost is higher than the base
 13 point, the fuel adjustment clause factor will be higher,
 14 yes.
 15 Q. I mean would you agree that the commission
 16 wants to get the off-system sales level for purposes of
 17 setting the net fuel cost, wants to get it as close as it
 18 can to what it reasonably would expect net fuel cost to be
 19 during the period when rates are in effect?
 20 A. Recognizing -- yes, but recognizing rates
 21 could be in effect for a substantial period of time. That
 22 base point could be in effect for a substantial number of
 23 years.
 24 Q. We don't know how long rates are going to be
 25 in effect, do we?

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1 A. That is correct.
 2 Q. And if there isn't an FAC, if you set
 3 off-systems sales based on a power price that's not
 4 materialized while rates are in effect, then the company is
 5 going to take -- the company's earnings are going to take a
 6 hit as a result of that, correct?
 7 A. Not necessarily. There could be other costs
 8 that are reduced that offset that hit.
 9 Q. Can you identify in the utility industry
 10 environment that we're in today, can you identify any costs
 11 that you reasonably expect to go down over the next couple
 12 of years in the utility industry?
 13 A. No. I cannot identify any specific ones, but
 14 there are ones that would have to be examined.
 15 Q. You can't identify any specific ones today,
 16 correct?
 17 A. No, I cannot.
 18 Q. And given the economic conditions, do you
 19 expect loads to be growing rapidly or loads perhaps to be
 20 contracting over the next year or two?
 21 A. I would expect loads to contract to some
 22 degree because of the economic downturn, at least on a
 23 temporary basis.
 24 Q. So if utility expenses are going up and loads
 25 are contracting, and if we set off-system sales margins too

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1 high in this case, it's not very likely that there are
 2 going to be other offsetting revenues or costs that are
 3 going to make up for that off-system sales short falls in
 4 the utility's earnings, is there?
 5 A. I don't know. There may be.
 6 Q. You don't know?
 7 A. No.
 8 Q. Was your answer you don't know?
 9 A. I don't know. There may be.
 10 Q. Let's talk about Figure JRD-2 in your
 11 surrebuttal testimony. That's on Page 5 of your
 12 surrebuttal testimony, right?
 13 A. That is correct.
 14 Q. Now, you've indicated I think pretty clearly
 15 your belief that the commission really ought to ignore what
 16 forward prices are doing, is that correct, for purposes of
 17 setting rates?
 18 A. That's correct.
 19 Q. And that's what you've done; you've ignored
 20 what forward prices are doing, right?
 21 A. I put them aside, that's correct. In part, I
 22 have done that because the current situation may be an
 23 abnormal situation, much like the circumstance with the
 24 forward prices after the hurricanes in 2005.
 25 Q. You don't really know whether it's abnormal or

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1 not, do you?
 2 A. There's some indications it may be because of
 3 the credit crunch.
 4 Q. You don't know whether the current economic
 5 downturn that we're experiencing is going to last three
 6 months or two years, do you?
 7 A. I don't know exactly how long it will last;
 8 that's correct.
 9 Q. It could last for a very extended period of
 10 time, could it not?
 11 A. I don't know.
 12 Q. Have we seen the kind of lack of liquidity in
 13 the credit markets, the level of government intervention in
 14 the financial markets in this country, have you ever seen
 15 those before in your lifetime?
 16 A. No, not this level of intervention.
 17 Q. While it may not be as bad as the crisis in
 18 the late '20s or early '30s, isn't it fair to say that this
 19 is -- the current credit crunch and the current level of
 20 federal intervention in the banking and financial system is
 21 unprecedented since that period of time back in the '30s?
 22 A. It is unprecedented, but it does have to be
 23 put in context. Because in that period, you had
 24 unemployment up to 25 percent. We're certainly not dealing
 25 with that right now. We're not likely to end up in that

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1 situation in part likely because of the early intervention
 2 we had. There's no lag of intervention, which did exist
 3 during the Great Depression.
 4 Q. You, I think, testified earlier that your
 5 figure JRD-2 confirms a known immeasurable upward trend in
 6 spot prices; is that correct?
 7 A. Yes.
 8 Q. Now, you testified earlier in this deposition
 9 that you started -- that the data for JRD-2 starts on
 10 January 1, 2007, which is a data point that reflects the
 11 average prices for 2006, correct?
 12 A. That is correct.
 13 Q. Why did you start your chart only at the
 14 beginning of 2007?
 15 A. That's because the prices in 2005 were
 16 affected by hurricanes and they were affected by some rail
 17 disruptions that occurred in 2005 as well. That was a
 18 major issue in the previous rate proceeding.
 19 Q. Would you agree that changes in prices from
 20 2005 to 2006 did not follow this so-called immeasurable
 21 trend.
 22 A. Yes. Because 2005 had abnormal prices that
 23 don't conform to the trend line as presented in my figure
 24 JRD-3.
 25 Q. Those prices in 2005 they happened, right?

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1 A. They happened, but they're abnormal. It
 2 certainly is an abnormality that should be removed. In a
 3 sense, the trend line is a form of normalization.
 4 Q. You had MISO data back to January 1, 2006,
 5 correct?
 6 A. Yes.
 7 Q. You had that both from the MISO and you also
 8 had that data all the way back to the beginning of the
 9 market in Schukar's work papers, correct?
 10 A. Yes, I did.
 11 Q. You could have examined data and began your
 12 figure JRD-2 back further in time, could you not?
 13 A. I could have, but as I stated before, there is
 14 abnormalities in the data. Abnormalities were recognized
 15 by the company itself in its testimony in the previous
 16 proceeding.
 17 Q. In fact. The point at which you started your
 18 graph which was essentially at the 12 months ending
 19 December 2006; is that right? That's the point that you
 20 started your graph. Essentially that reflects the 12
 21 months ending December 2006, right?
 22 A. The graph starts on the 12 months ending
 23 January 1, 2007 or December 31, 2006, similar point, yes.
 24 Q. Basically that 1/1/07 point are the average
 25 prices for 2006, right?

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1 A. That's correct.
 2 Q. That point in time reflected the lowest
 3 average generation LMPs for UE over roughly the last three
 4 years; isn't that correct?
 5 A. It would, because we're only going back to
 6 2005. If you go -- push further back in time beyond 2005
 7 before the start of MISO/LMP market and look at spot
 8 prices, they were lower than these numbers here.
 9 Q. Right. I understand. But if we start at the
 10 beginning of MISO day two market -- and we didn't have an
 11 LMP market before we started the MISO day two market,
 12 right?
 13 A. But we had daily and hourly and bilateral
 14 markets.
 15 Q. But we didn't have locational marginal
 16 pricing, correct?
 17 A. No. But we had daily, hourly, and bilateral
 18 markets.
 19 Q. The answer to my questions was we did not have
 20 locational marginal pricing prior to April 1, 2005, right?
 21 A. Correct.
 22 Q. So that means that this 1/1/07 point were the
 23 lowest generation LMPs in the LMP market that started in
 24 April 1, 2005 that UE has experienced in last three years,
 25 right?

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1 A. In the last three years, these are the lowest
 2 LMPs, but you can't just look back three years. You have
 3 to look further back.
 4 Q. So the answer to my question though is yes?
 5 A. Yes.
 6 Q. If you pick the lowest point in the data, then
 7 you do a trend line forward, then it's more likely that
 8 your trend line is going to be up; isn't that correct?
 9 A. Yes. But this trend line is not distorted.
 10 It is consistent with the trend line that's on JRD-3 that
 11 goes back to 2002.
 12 Q. I didn't use the word distorted. My simple
 13 question was, you pick the low point and that's where you
 14 start your point on the trend line, then the slope of your
 15 line is more likely to be greater than if you pick a higher
 16 point; it's just a matter of simple mathematics, right?
 17 A. I would agree with that.
 18 Q. You didn't analyze the rolling 8760-hour
 19 average including periods prior to 1/1/07? You didn't look
 20 at the rolling 12-month average on June 30, '06 or the
 21 rolling 12-month average on, let's say, the first year of
 22 MISO market through March 31, '06, you didn't look at that;
 23 is that correct?
 24 A. No. Prices were distorted as I indicated or
 25 abnormal, I should say.

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1 Q. Did you analyze it including generation LMP
 2 data through October 2008?
 3 A. Not in the form of this curve. We looked --
 4 it actually did not look at a rolling average through
 5 October. What I looked at was what happened in
 6 October 2008 versus 2007. From that, I can derive what
 7 happens to this curve. It's what happens to the actual
 8 prices on Figure JRD-2; that is, the rolling 8,760 hour of
 9 actual prices. That impact I can derive. But I haven't
 10 recalculated the trend line.
 11 Q. If I were to calculate -- if you were to
 12 calculate the rolling 8760-hour average for the 12 months
 13 ending 10/31/08, the trend line would become flatter than
 14 it is right now, correct?
 15 A. The trend line would become a little bit
 16 flatter. But, again, the true-up period ended
 17 September 30, 2008. If you go beyond the end of that
 18 true-up period, you need to look at making other known
 19 immeasurable changes. You need to consider all the things
 20 that might have changed since September 30 of 2008.
 21 Q. Even if those other things result in higher
 22 cost?
 23 A. Everything you need to look at.
 24 (Mr. Brubaker entered the proceedings.)
 25 Q. (By Mr. Lowery) Did you analyze the data used

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1 to generate your Figure JRD-2 to determine if there were
 2 any unusual periods or short-term aberrations that might
 3 have affected that rolling 8,760 average?
 4 A. The trend line in itself normalizes many of
 5 those effects. This -- The trend line, through its linear
 6 regression, effectively filters out these minor variations.
 7 We see these variations on here as we see periods the
 8 actual prices are above the trend line and periods where
 9 it's below the trend line.
 10 Q. Are you aware that the commission staff is of
 11 the opinion that energy prices from unit and July of 2008
 12 are too high by themselves for use in calculating
 13 off-system sales which has led them to average prices for
 14 June '07 and June '08 and for July '07 and July '08, were
 15 you aware of that?
 16 A. I'm aware of that. I was aware those prices
 17 were higher. That's why I didn't pick the end point. I
 18 picked the end of the trend line instead.
 19 Q. If you had done the same thing, your trend
 20 line would be flatter than is depicted on Figure JRD-2
 21 also, wouldn't it?
 22 A. It would be inappropriate to do that because I
 23 used the trend line.
 24 Q. Let me get an answer to my question, then you
 25 can tell me why it's inappropriate. The trend line would

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1 be flatter though, would it not?
 2 A. The trend line would be flatter.
 3 Q. And if prices in June and July of 2008 are
 4 abnormally too high, you may disagree with that, but if
 5 they are and your trend line is flatter, then the end point
 6 of your trend line is going to be lower, isn't it?
 7 A. Yes. But I would disagree with the concept of
 8 removing abnormal points from the determination of the
 9 trend line. The trend line takes into effect all the
 10 abnormalities and filters them, effectively normalizes.
 11 Q. But you made no adjustment in calculating your
 12 trend line for abnormally high prices in June and
 13 July 2008. Your opinion is the trend line adjusts for that
 14 already so I don't need to make an adjustment for
 15 abnormally high prices in June and July of 2008; is that
 16 correct?
 17 A. That's correct.
 18 Q. So you did not make a judgment in calculating
 19 the trend line?
 20 A. That's correct.
 21 Q. Mr. Dauphinais, are you ever called upon to
 22 provide for clients a forecast of what average spot prices
 23 for power are going to be in a succeeding period?
 24 A. Yes, I have been before.
 25 Q. If a client came to you and said, I need you

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1 to give me your best forecast of what 2009 average spot
 2 market prices for power are going to be at the Cinergy
 3 Hub -- I guess we'll talk about on-peak prices because I
 4 don't think there's around-the-clock pricing published for
 5 Cinergy Hub -- how would you go about doing that forecast?
 6 What would you do?
 7 A. Depends on the type of forecast that's being
 8 asked for. Because the reality is different clients have
 9 different resources to apply to it.
 10 Q. Let's say if I have a merchant generating
 11 company who's trying to figure out when to buy and when to
 12 sell its power, when to buy back. I've got somebody that's
 13 trying to figure out when to sell power that it has
 14 available.
 15 A. Yes. Certainly one input to that would be
 16 forward prices, but it wouldn't be the only one. The only
 17 one I would recommend would be to do an analysis of
 18 fundamentals with production cost models.
 19 Q. All right. What fundamentals would we be
 20 looking at?
 21 A. Fuel prices, we'd look at supply and demand.
 22 We'd look at various scenarios. You wouldn't just pick a
 23 baseline as support. You'd look at several different
 24 contingency possibilities.
 25 Q. But one of the things you'd look at to try to

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1 figure out what those prices are going to be, is you look
 2 at the forwards at Cinergy over the period that you were
 3 examining, correct?
 4 A. That wouldn't be -- it depends on what you're
 5 trying to produce. If you're trying to produce the market
 6 price, that's something you would compare the results of
 7 your fundamentals analysis to and it wouldn't be
 8 necessarily input into the fundamentals analysis.
 9 Q. When you say fundamentals analysis, are you
 10 saying a fundamentals analysis is the running of a
 11 production cost model based upon a set of inputs?
 12 A. Set of inputs, yes. Fuel prices, outage
 13 rates, expectation of future generation. It would have to
 14 be broad in nature, probably look at the entire region.
 15 There are models that you can purchase to do that.
 16 Q. If you were trying to figure out what inputs
 17 for energy prices to use in your modeling?
 18 A. Yes.
 19 Q. Are you following me so far?
 20 A. Yes.
 21 Q. And you were trying to figure out what the
 22 range of uncertainty in power prices might be for this
 23 forward period, whether it be a year or two or three,
 24 whatever your client was asking you to look at, would
 25 looking at what the range -- what forward prices had done

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1 for the prior year, prior couple of years, would that be
 2 something you might want to look at to try to figure out
 3 what the uncertainty would be?
 4 A. That would be used for comparison. You
 5 wouldn't use that necessarily in a fundamentals analysis.
 6 There might be a parallel analysis based on looking at
 7 forward prices and how high and how low they've gone in the
 8 past and how quickly that's happened. But it would be
 9 parallel analysis to a fundamentals analysis.
 10 Q. You might do that analysis using the forward
 11 prices, what they had done over some historical period and
 12 what the variation had been from the expected value, right?
 13 A. Yes. Both low and high.
 14 Q. So you might do that and you might also run a
 15 production -- I think you're also saying you would also run
 16 a production cost model, right?
 17 A. Assuming the client had the resources, yes.
 18 Q. And you agree that the currently quoted
 19 forward prices for 2009 represent the overall market's
 20 current yield what the average spot prices are expected to
 21 be for 2009, correct?
 22 A. That's the market consensus again on each day
 23 when a price clears. As I stated earlier, it may be
 24 abnormal what's going on right now. We don't know for
 25 sure, but it may be. It's unusual certainly.

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1 Q. Even if it's unusual in your view, it could
 2 very well turn out to be that's what 2009 looks like given
 3 economic conditions we're facing, correct?
 4 A. There's some likelihood that it can, yes.
 5 Q. Can you place a likelihood on it?
 6 A. No. In the next 12 months -- other than I
 7 would say I think it's more likely than not -- this is just
 8 my feeling. It's more likely than not those prices will
 9 not be realized, that those prices are a reflection of the
 10 liquidity and a forward market right now and an
 11 overreaction to the current economic climate.
 12 Q. I think you indicated -- and if this
 13 mischaracterizes your opinion, I know you'll tell me. I
 14 think you indicated that it's more likely than not next
 15 year that around-the-clock prices will be at your end point
 16 of the trend line or perhaps a little bit below than being
 17 above the trend line end point, correct?
 18 A. I said it would be around the trend line, is
 19 what they're forecasting right now, when you look at the
 20 whole year. It may be lower in the early part of the year
 21 and then higher towards the back part of the year.
 22 Q. On average, would you say it's more likely
 23 than not that they will be at or below the end point of the
 24 trend line?
 25 A. I'd say at.

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1 Q. At. So it's more likely than not they're
 2 going to be at the trend line as opposed to above or below
 3 the trend line?
 4 A. They will be in the neighborhood of the trend
 5 line.
 6 Q. They won't materially vary from the end point
 7 of the trend line; can we agree on that?
 8 A. Yeah, we can agree on that.
 9 MR. LOWERY: All right. Just about done.
 10 See, 5:00.
 11 (Whereupon the reporter marked Exhibit No. 10
 12 for identification.)
 13 Q. (By Mr. Lowery) Mr. Dauphinais, I'm going to
 14 hand you what's been marked Exhibit 10. I take it you
 15 recognize this as being exactly the same kind of graph that
 16 we looked at at the time of your last deposition; is that
 17 correct?
 18 A. That is correct.
 19 Q. That's forward price curve from Platts
 20 Megawatt Daily?
 21 A. That's correct.
 22 Q. And I'm color blind, but I think the yellow
 23 line on this top graph is the calendar year 2009 forward
 24 price on-peak price, right?
 25 A. That is correct.

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1 Q. And at the time of your -- at the time of your
 2 deposition, the forward price for calendar year 2009, the
 3 on-peak price as reported by Platts, I can't show you the
 4 graph but I can show you the deposition transcript, we
 5 agreed was about \$58. Do you recall that?
 6 A. Yes.
 7 Q. And today -- or I shouldn't say today. As of
 8 November 13, about a month later, it's fallen to what, it's
 9 fallen about \$5?
 10 A. Yes. It looks like around \$54.
 11 Q. So it's fallen about \$4?
 12 A. Yeah.
 13 Q. So it's continued to fall since the
 14 mid-October data we looked at, correct?
 15 A. Forward prices continue to fall, yes.
 16 Q. And they've fallen for several months in a
 17 row, have they not?
 18 A. They've fallen since the summer or during the
 19 end of summer.
 20 Q. They've fallen in July, August, September,
 21 October and November; is that right?
 22 A. I would have to refer to those earlier
 23 exhibits we went through today.
 24 Q. Well, let's take a look at Exhibit 5 from your
 25 last deposition. It's not in color and we can get the

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1 transcript if you're not sure. But would you agree that we
 2 were, oh, we were around 72 or \$73 in July, right, the
 3 on-peak price?
 4 A. Yes.
 5 Q. And by August 15, we've gotten down to --
 6 we've come down below 70, right?
 7 A. I'd say that's 70.
 8 Q. Then we get to September and we drop down
 9 below 66?
 10 A. Yes.
 11 Q. And we just said we dropped down to 58 in
 12 October. We agreed to that in your deposition transcript,
 13 correct?
 14 A. Yes.
 15 Q. Now we're down to 54?
 16 A. That's correct.
 17 Q. So we've got July, August, September, October,
 18 November, we've continued to drop over that period,
 19 correct?
 20 A. That's correct.
 21 MR. LOWERY: Thank you, Mr. Dauphinais. I
 22 don't think I have any other questions.
 23 I assume you want to read and sign and we can
 24 have the same stipulation we had last time.
 25 MS. VUYLSTEKE: Yes.

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1 (Whereupon signature was reserved.)
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1 CERTIFICATE OF REPORTER
 2 I, Sheryl A. Pautler, Certified Court
 3 Reporter, Notary Public within and for the State of
 4 Missouri, do hereby certify that the witness whose
 5 testimony appears in the foregoing deposition was duly
 6 sworn by me; the testimony of said witness was taken by me
 7 to the best of my ability and thereafter reduced to
 8 typewriting under my direction; that I am neither counsel
 9 for, related to, nor employed by any of the parties to the
 10 action in which this deposition was taken, and further that
 11 I am not a relative or employee of any attorney or counsel
 12 employed by the parties thereto, nor financially or
 13 otherwise interested in the outcome of the action.
 14
 15 _____
 16 Notary Public within and for
 17 the State of Missouri
 18 My commission expires April 10, 2009.
 19
 20
 21
 22
 23
 24
 25

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1 I, JAMES DAUPHINAIS, do hereby certify:
 2 That I have read the foregoing deposition;
 3 That I have made such changes in form and/or
 4 substance to the within deposition as might be necessary to
 5 render the same true and correct;
 6 That having made such changes thereon, I
 7 hereby subscribe my name to the deposition.
 8 I declare under penalty of perjury that the
 9 foregoing is true and correct.
 10
 11 Executed the _____ day of _____,
 12 20___, at _____.
 13
 14 _____
 15 JAMES DAUPHINAIS
 16
 17 My Commission Expires: _____
 18 Notary Public: _____
 19 SP/James Dauphinais
 20 In the Matter of Union Electric Company
 21
 22
 23
 24
 25

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1 Errata Sheet
 2 Witness: James Dauphinais
 3 In Re: In the Matter of Union Electric Company
 4 Upon reading the deposition and before subscribing thereto,
 5 the deponent indicated the following changes should be
 6 made:
 6 Page Line Should read:
 Reason assigned for change :
 7
 7 Page Line Should read:
 Reason assigned for change :
 8 Page Line Should read:
 Reason assigned for change :
 9
 10 Page Line Should read:
 Reason assigned for change :
 11 Page Line Should read:
 Reason assigned for change :
 12
 13 Page Line Should read:
 Reason assigned for change :
 14 Page Line Should read:
 Reason assigned for change :
 15
 16 Page Line Should read:
 Reason assigned for change :
 17 Page Line Should read:
 Reason assigned for change :
 18
 19 Page Line Should read:
 Reason assigned for change :
 20 Page Line Should read:
 Reason assigned for change :
 21
 22 Reporter: Sheryl A. Pautler
 23
 24
 25

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1 Midwest Litigation Services
 2 711 North Eleventh Street
 3 St. Louis, Missouri 63101
 4 Phone (314) 644-2191 * Fax (314) 644-1334
 5 November 19, 2008
 5 Ms. Diana M. Vuylsteke
 Bryan Cave
 6 One Metropolitan Square, Suite 3600
 St. Louis, Missouri 63102
 7
 8 In Re: In the Matter of Union Electric Company
 9
 10 Dear Ms. Vuylsteke:
 11 Please find enclosed your copy of the deposition of
 James Dauphinais, taken on November 18, 2008 in the
 12 above-referenced case. Also enclosed is the original
 signature page and errata sheets.
 13 Please have the witness read your copy of the
 transcript, indicate any changes and/or corrections
 14 desired on the errata sheets, and sign the signature
 page before a notary public.
 15
 16 Please return the errata sheets and notarized signature
 page to Mr. James B. Lowery for filing prior to hearing
 date.
 17
 18 Thank you for your attention to this matter.
 19
 20 Sincerely,
 21
 Sheryl Pautler
 22
 23 CC: Mr. James B. Lowery
 24
 25