

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) No. ER-2008-0318
Increasing Rates for Electric)
Service Provided to Customers in)
the Company's Missouri Service)
Area.)

DEPOSITION OF RYAN KIND

witness produced, sworn and examined on the 13th day
of November, 2008, between the hours of 9:00 a.m.
and 1:15 p.m, at the Office of Public Counsel, 200
Madison Street, in the City of Jefferson, County of
Cole, State of Missouri, before

SHELLEY L. MAYER
Certified Court Reporter
C.C.R. No. 679

and a Notary Public within and for the County of
Boone, State of Missouri, in the above entitled
cause, taken on the part of the Union Electric
Company d/b/a AmerenUE.

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S-T-I-P-U-L-A-T-I-O-N

19 It is hereby stipulated and agreed by and
 20 between the parties herein that a copy of this
 21 transcript shall be submitted to the witness for his
 22 signature before filing with the Court.
 23
 24
 25

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1 RYAN KIND
 2 being first duly sworn by Shelley L. Mayer, Notary
 3 Public, testified as follows:

EXAMINATION

4 By Mr. Lowery:
 5 Q. Morning, Mr. Kind.
 6 A. Good morning, Mr. Lowery.
 7 Q. You've had your deposition taken several times
 8 before, correct?
 9 A. Yes. Several times by your company I believe.
 10 Q. Just a few basic ground rules that I'll go over
 11 that probably's unnecessary since you've had
 12 your deposition taken, but obviously you need to
 13 verbalize your answers because the court
 14 reporter can't take down a head nod or a head
 15 shake. And I'll try not to talk over you and
 16 try not to talk over me so she can get all of
 17 that down. If you need to take a break, just
 18 ask and we can do that.
 19 I assume you're not taking any medication
 20 that would interfere with your ability to
 21 understand my questions or answer them
 22 truthfully, is that true?
 23 A. That's correct.
 24 Q. You don't of know of any other reason you
 25

1 wouldn't be able to understand my questions and
 2 answer them --
 3 A. No.
 4 Q. -- truthfully; is that right? If you don't
 5 understand a question or I'm not clear, I'd ask
 6 that you tell me so I can rephrase the question,
 7 repeat it so we can make sure --
 8 A. Okay.
 9 Q. -- that you understand my questions.
 10 A. Uh-huh.
 11 Q. Let me talk about some definitional things and
 12 see if we can agree on those. If I say Ameren,
 13 I'm going to be talking about Ameren Corporation
 14 and its subsidiaries as a whole as opposed to
 15 Union Electric Company. You understand that?
 16 A. So you would be talking about both the holding
 17 company and all of its subsidiaries?
 18 Q. Right.
 19 A. Okay.
 20 Q. If I say Union Electric Company or AmerenUE, I'm
 21 talking about just Union Electric Company, you
 22 understand that?
 23 A. Okay.
 24 Q. If I say off system sales without mentioning
 25 margins, I'm talking about off system sales

1 revenues, not margins, okay?

2 A. Well, it's okay. I mean it would help if you

3 clarify because that's not usually the way I

4 think about it probably, but I -- we'll try and

5 track that.

6 Q. If I'm talking about off system sales margins,

7 I'll talk -- I'll say off system sales margins.

8 You understand the difference, correct, between

9 revenues and margins?

10 A. That's correct.

11 Q. In other words when we're talking about -- well,

12 and when I say off system revenues, I'm going to

13 be including energy related revenues, ancillary

14 services, and capacity related revenues. If I

15 just say off system sales revenues generally,

16 I'll be talking about all three of those

17 components. Does that make sense to you?

18 A. Uh-huh, yes, uh-huh.

19 Q. Okay. When I say --

20 A. But you won't be including nonasset based

21 trading revenues I assume.

22 Q. Not unless I talk about it specifically.

23 A. Uh-huh.

24 Q. When I say net fuel costs, I'm talking about the

25 sum of fuel and purchased power costs less off

1 system sales revenues. Do you understand that?

2 Is that clear to you?

3 A. Would you repeat that again?

4 Q. If I say net fuel costs, I mean the sum of fuel

5 and purchased power costs less off system sales

6 revenues.

7 A. Okay.

8 Q. Does that make sense to you?

9 A. Well, I don't know that it makes sense. I

10 understand your definition of it. I'm not sure

11 if I would agree on it, but.

12 Q. Well, what -- with what don't you disagree about

13 how I define net fuel costs? I'm not trying to

14 be difficult, but I'm just trying to make sure

15 we're not talking past each other in our

16 questions -- in the questions and answers that

17 you give.

18 A. Well, I think I would just probably take away

19 all of the off system sales margins that are

20 being earned by UE in all areas whether it's for

21 asset based, nonasset based, trading of, you

22 know, financial instruments.

23 Q. Well, let me -- let me -- let me ask you. It

24 sounds like what you would -- what you would

25 subtract from the sum of fuel and purchased

1 power would be energy, ancillary services,

2 capacity, nonasset based trading, all of those

3 revenues you would subtract from the sum of fuel

4 and purchased power to get net fuel costs. Is

5 that what you're saying?

6 A. Pretty much everything that goes into the

7 calculation that UE does of its gross margin,

8 you know, that I've described in my testimony.

9 Q. Would be subtracted from the sum of fuel and

10 purchased power costs to get to that fuel cost,

11 is that how you look at it?

12 A. Uh-huh.

13 Q. Okay. And when I say fuel costs, I'm not

14 talking about net fuel costs, I'm talking about

15 the sum of fuel and purchased power only if I

16 just say fuel cost. Do you understand that?

17 A. Yeah, okay.

18 Q. Does that make sense to you, the distinction

19 that I'm drawing between net fuel costs and fuel

20 costs; is that right?

21 A. Well, I mean if you're talking gross fuel costs,

22 I guess, yes.

23 Q. Coal, nuclear, gas, and purchased power,

24 correct? Are there any other fuel costs that

25 you know of at AmerenUE other than the ones that

1 I just mentioned, fuel and purchased power

2 costs?

3 A. Coal, nuclear, gas. I guess you didn't mention

4 fuel oil.

5 Q. Fuel oil, okay, that's one more. And then

6 purchased power cost?

7 A. Is there a question there?

8 Q. Are there any others that you know of --

9 A. Are there any others?

10 Q. -- other than those?

11 A. I'd have -- probably have to give it some more

12 thought. There could be others. There's

13 various types of coal. I don't know if you

14 consider it all actually coal. You know, there

15 probably are some. I don't know, UE has burned

16 tires at times and I'm not sure frankly if

17 they're burning any right now or not.

18 Q. How would you define fuel and purchased power

19 costs at AmerenUE?

20 A. Are we talking about for serving native load now

21 or just the total cost? I'm not sure if we --

22 how we distinguished that in the --

23 Q. We're talking --

24 A. -- earlier discussion.

25 Q. -- about fuel and -- it doesn't make any

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1 difference. You can define -- if it's defined
 2 differently in your mind for native load versus
 3 for wholesale sales or for off system sales,
 4 then you can define it differently if you think
 5 there's some difference. So tell me how would
 6 define it for those categories, fuel and
 7 purchased power?
 8 A. Well, I mean you can do it both ways probably.
 9 It just depends on how you do the calculations,
 10 you know. You can separate out the -- the fuel
 11 that's used to make off system sales as, you
 12 know, as done in one of Ameren's calculations.
 13 It's part of Mr. Finnel's work paper that I used
 14 as a -- I think I reference that in my
 15 testimony.
 16 Q. What are the components of the fuel and
 17 purchased power costs is my question, in your
 18 mind?
 19 A. Irrespective of whether it's used for --
 20 Q. Correct. Irrespective of --
 21 A. -- native load or --
 22 Q. -- whether it's used --
 23 A. -- off system sales?
 24 Q. -- to generate energy to serve native load
 25 versus generating energy to --

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1 A. I think --
 2 Q. -- sell off system?
 3 A. -- it -- pretty much all the areas that we've
 4 discussed. And, you know, we've discussed the
 5 main areas of fuel at least.
 6 Q. And those --
 7 A. For instance Ameren has been or UE has been
 8 talking about entering into a contract for I
 9 think a hundred megawatts of wind. I don't
 10 think that they're actually taking that power
 11 yet, but frankly I don't know, so -- what the
 12 status is.
 13 Q. So those main components are the delivered cost
 14 of coal, right?
 15 A. Uh-huh.
 16 Q. The delivered cost of natural gas for
 17 generation, right?
 18 A. Right.
 19 Q. And the delivered cost of fuel oil for
 20 generation which is a very minor component, but
 21 nevertheless there is a little bit, right?
 22 A. That's my understanding.
 23 Q. The -- and the delivered cost of the nuclear
 24 fuel burned at the Callaway plant, right?
 25 A. Uh-huh.

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1 Q. And whatever purchased power from whatever
 2 source the company obtains to serve a load or to
 3 make off system sales, are those the main
 4 components --
 5 A. I think --
 6 Q. -- of fuel purchased power?
 7 A. -- we -- I would agree those are the main
 8 components.
 9 Q. Can we agree for purposes of my question if I
 10 say fuel and purchased power costs, I'm talking
 11 about the sum of those main components?
 12 A. Yeah, okay, the main components.
 13 Q. In the context of preparing your various prefile
 14 testimonies, did you consider all of the factors
 15 and information that you considered to be
 16 important in arriving at your opinions about the
 17 company's fuel adjustment clause request and in
 18 arriving at your opinions about the Company's
 19 off system sales revenues or off system sales
 20 margins?
 21 A. Sort of a multiple question there. Maybe we
 22 could do one at a time.
 23 Q. In the context of preparing your various prefile
 24 testimonies --
 25 A. Okay.

Page 13

1 Q. -- did you consider all of the information that
 2 you thought was important to arrive at your
 3 opinions about the Company's fuel adjustment
 4 clause request? Let's talk about the fuel
 5 adjustment clause first.
 6 A. Yeah. All the information and then my -- just
 7 my -- my general knowledge of, you know, as
 8 well.
 9 Q. But you -- any information that you considered
 10 to be important in arriving at your opinions
 11 about the Company's fuel adjustment clause
 12 request, you considered that when you prepared
 13 your three testimonies; is that correct?
 14 A. Well, yeah, at least at the time I wrote my
 15 testimony. Certainly, you know, things change
 16 over time. New information comes to light and,
 17 you know, you might reassess your opinion or you
 18 might -- I mean to me coming up with a position
 19 is a process more than just a single snapshot at
 20 a certain point of time.
 21 Q. Is there --
 22 A. But you put the -- you put that snapshot into
 23 your testimony.
 24 Q. Is there any particular information that since
 25 you've prepared your prefile testimonies

1 relating to the fuel adjustment clause that you
 2 didn't consider then that you believe to be
 3 important to that -- your opinions about the
 4 fuel adjustment clause now?
 5 A. Nothing that comes to mind right now.
 6 Q. Nothing that comes to mind.
 7 A. No.
 8 Q. Same question with respect to your opinions
 9 about off system sales revenues or off system
 10 sales margins, did you consider all of the
 11 information that you believed to be important
 12 about that issue, those issues, off system
 13 sales, off system sales revenues, off system
 14 sales margins when you were preparing your
 15 prefile direct testimonies?
 16 A. I guess it's a little more complicated in that
 17 area to the extent I could obtain the
 18 information that I thought was important in
 19 formulating a position. Obviously there have
 20 been some problems there and I've identified
 21 some of those problems in my surrebuttal
 22 testimony.
 23 Q. And what information that you considered to be
 24 important did you feel that you did not have
 25 when you were forming your opinions about off

1 specifically in your surrebuttal testimony the
 2 information that you felt like you needed or
 3 thought was important that you did not get or
 4 didn't have the time to prepare your
 5 surrebuttal; is that right?
 6 A. Yeah. I mean I'm not going to be talking about
 7 specific numbers. It's sort of a, you know,
 8 type of information, a category of information.
 9 Q. Right. My question -- my question is, just to
 10 try to shortcut this is have you mentioned in
 11 your surrebuttal the information that you
 12 considered to be important that you didn't have
 13 at the time you prepared your surrebuttal, is
 14 that already mentioned in your surrebuttal
 15 testimony?
 16 A. Yes, it is.
 17 Q. Okay. So we don't -- we don't need to go
 18 through every single one, it's in your
 19 surrebuttal testimony, there's not additional
 20 information that you considered to be important
 21 to your opinions about off system sales or off
 22 system sales revenues --
 23 A. Oh, well --
 24 Q. -- that you didn't have at the time you prepared
 25 your prefile testimonies; is that correct?

1 system sales or off system sales margins?
 2 A. Okay. Well, I think I identified it in my
 3 surrebuttal testimony. There were certain DR --
 4 MR. MILLS: If I can jump in here, I know
 5 there is some highly confidential information in
 6 your surrebuttal testimony. If you can
 7 caution -- we can talk about that, make it clear
 8 for the court reporter that --
 9 MR. LOWERY: Let's go off the record for
 10 just a second.
 11 MR. MILLS: Okay.
 12 (Off the record.)
 13 Q. (By Mr. Lowery) Let me -- let me ask it this
 14 way. Any information that you at the time you
 15 were filing your -- preparing your --
 16 A. I guess I'm just trying to follow up on that.
 17 Q. Well --
 18 A. That discussion of highly confidential and --
 19 Q. I'm trying to shorten --
 20 A. -- make sure I'm clear about it.
 21 Q. Let me try to shortcut it and if you don't feel
 22 like -- if you feel like there's something you
 23 need to say about that, then you can say that.
 24 A. Okay.
 25 Q. I think you're about to go through and point

1 A. No, I wouldn't -- I don't think I'd agree with
 2 that. I think I'm still developing my views in
 3 the area of what UE's opportunities were in the
 4 Illinois auction and how those opportunities
 5 were pursued. And there's a lot of details of
 6 that that it's just still unclear and I need
 7 more information from the company. I really
 8 need to do some additional discovery.
 9 Q. All right. Let me -- let me try to make sure I
 10 understand your answer to the last couple of
 11 questions. Other than additional information
 12 regarded to AmerenUE's participation or lack of
 13 participation in the Illinois auction --
 14 A. Uh-huh.
 15 Q. -- any information that you considered to be
 16 important to your opinions about off system
 17 sales revenues or off system sales margins you
 18 either had looked at, reviewed any such
 19 important information at the time you prepared
 20 your prefile testimonies or you've mentioned in
 21 your surrebuttal testimony information that you
 22 considered to be important that you didn't have;
 23 is that correct?
 24 A. Well, I guess the only thing I'm not sure about
 25 in agreeing with that is just that there's just

1 a limitation on, you know, really how much
 2 ground I can cover in terms of reviewing
 3 information. And basically I kind of have to
 4 try to do the best I can, you know, just as --
 5 with my ability to cover information. And
 6 there -- there are times when I just -- I'm not
 7 able to really cover in kind of detail that I'd
 8 like to all the information that's available.
 9 Q. Mr. Kind, is there any specific information,
 10 putting aside the Illinois auction issue, that
 11 you consider to be important relating to your
 12 opinions about off system sales or off system
 13 sales margins that you didn't have at the time
 14 you prepared your prefile testimonies other than
 15 information that you've indicated in your
 16 surrebuttal testimony that you did not have,
 17 anything specific?
 18 A. Okay. That's a different question I guess.
 19 Information I didn't have versus information I
 20 think would be necessary or --
 21 Q. Would you like for me to have the court reporter
 22 read the question back?
 23 A. That would be fine.
 24 MR. LOWERY: Can you read the question back
 25 please.

1 just don't have -- know all that at my
 2 fingertips, so I think I'm going to have to give
 3 you an I don't know answer.
 4 Q. This -- these additional data requests, was your
 5 consideration developed in them after you filed
 6 your prefile testimonies?
 7 A. Some of it would have been probably prior to --
 8 the stuff I'd be talking about now would have
 9 been prior to surrebuttal.
 10 Q. So is your answer that there is information that
 11 you consider to be important relating to the
 12 opinions on off system sales and off system
 13 sales margins expressed in your prefile
 14 testimonies, there's information you considered
 15 to be important that you didn't have and that
 16 you did not list in your surrebuttal testimony,
 17 is that --
 18 A. I'm thinking --
 19 Q. -- your testimony today?
 20 A. -- it would have to be that there may be, not
 21 that there is. I just, I can't say with
 22 certainty that there is --
 23 Q. And you --
 24 A. -- or not.
 25 Q. -- can't state anything specific as you sit here

1 THE WITNESS: I mean that and the prior
 2 question you asked. Then I'll know if the
 3 question's changed.
 4 MR. LOWERY: The question before I said,
 5 would you like for me to have the court reporter
 6 read the question back. Please read that
 7 question.
 8 (The question was read back by the court
 9 reporter.)
 10 THE WITNESS: Okay. And that's -- that's
 11 the prior question or his most recent question?
 12 Q. (By Mr. Lowery) That's the most recent
 13 question.
 14 A. Most recent question, okay. All right. I
 15 thought we were trying to get at whether or not
 16 the question had changed, but that's the
 17 question you'd like an answer to?
 18 Q. Yes.
 19 A. Yes. Information that I didn't have other than
 20 information pertaining to the Illinois auction.
 21 You know, there could be something that I might
 22 for instance be in -- in the process of
 23 developing some -- some new data requests with
 24 Lewis, things we've been discussing, do we, you
 25 know, we need to ask for this information, and I

1 today that falls into that category; is that
 2 correct?
 3 A. Well, probably if I sat and thought about it
 4 long enough, I might -- I would think of
 5 something, but I think you want an answer pretty
 6 quick. So can I think of something, you know,
 7 just in the next minute or two, I don't --
 8 nothing comes to mind.
 9 Q. And you can't think of anything right now?
 10 A. Right now.
 11 Q. Nothing is coming to mind right now?
 12 A. That's correct.
 13 Q. Have you testified about fuel adjustments
 14 clauses in any other cases? And obviously I
 15 know of one, but tell me which cases you know of
 16 that you've testified about fuel adjustment
 17 clauses?
 18 A. The -- the UE rate case, that -- the most recent
 19 rate case that preceded this case and then also
 20 the -- the most recent Aquila rate case and the
 21 most recent Empire rate case.
 22 Q. Just those three?
 23 A. That's all I can think of right now. I -- that
 24 would have -- you know, we haven't had that sort
 25 of an issue in Missouri for very long, so I'm

Page 22

1 thinking that's probably right.
2 Q. Does the National Association of State Consumer
3 Advocates have a position on the use of fuel
4 adjustment clauses or similar mechanisms by
5 regulated utilities in nonstructured states?
6 A. Not that I know of.
7 Q. How about the Electric Committee of the NASCA,
8 do they have -- do they have a position?
9 A. You mean NASUCA?
10 Q. Yes.
11 A. Okay.
12 Q. National Association of State Consumer
13 Advocates.
14 A. You said N-E and I --
15 Q. Sorry.
16 A. That threw me off.
17 MR. MILLS: There's a U in there, but.
18 Q. (By Mr. Lowery) Got it.
19 A. I don't think that the Electric Committee comes
20 up with positions.
21 Q. Do you have a position, a personal position on
22 the use of fuel adjustment clauses or similar
23 mechanisms by regulated utilities in
24 nonrestructured states?
25 A. Well, just the positions that you'll see

Page 23

1 expressed in my testimony I guess would be my
2 position. Basically my position I would think
3 now is -- is -- since we've -- the Missouri
4 Commission has sort of laid out their criteria
5 for when they -- they want to give a fuel
6 adjustment clause or when it's, you know, a
7 utility should get a fuel adjustment clause,
8 then my personal position would be, you know,
9 you apply those criteria, how do those apply to
10 the utility that's applying for fuel adjustment
11 clause.
12 Q. Under what circumstances would you support
13 granting a fuel adjustment clause?
14 A. Well, I think if it would be harmful -- it seems
15 like if it would be harmful to rate payers, you
16 know, not to have one would be an obvious
17 consideration.
18 Q. So if in your opinion it's harmful to rate
19 payers not to grant a fuel adjustment clause,
20 you'd support fuel adjustment clause?
21 A. Yeah. I mean that's sort of a guiding thing for
22 policies. You do, in our office, do things that
23 are consistent with the law and that are good
24 for rate payers.
25 Q. Any other circumstance when you would support a

Page 24

1 fuel adjustment clause other than to avoid harm
2 to rate payers?
3 A. Well, usually if there's harm to rate payers,
4 it's be -- it would be because there would be
5 some harm to a utility and its ability to
6 provide safe and adequate service, so that would
7 be something that would be related to it.
8 Q. So if the lack of a fuel adjustment clause
9 impairs the utility's ability to provide safe
10 and adequate service, you would support a fuel
11 adjustment clause under those circumstances; is
12 that correct?
13 A. Yeah. And then of course the question is how do
14 you make an assessment, you know, whether it's
15 going to impair their ability to provide safe
16 and adequate service.
17 Q. Let me ask you about your current off system
18 sale margins recommendation. In your
19 surrebuttal testimony you pointed to the
20 electric margin interchange and those three
21 words are in quotes. That was provided in UE's
22 supplemental response number three to Staff DR
23 242 for the 12 months ending 9-30-2008, correct?
24 A. I've referred to that as part of a placeholder
25 recommendation, that's correct.

Page 25

1 Q. And I'm going to show you what I represent to be
2 Company's response, supplemental response number
3 three to Staff DR 242. Is that the data request
4 response that you referred to and I was just
5 talking about?
6 A. I believe so. I don't know whether or not -- I
7 just don't recall whether or not this was the
8 entire -- are you representing this as being the
9 entire response, this one spreadsheet that's
10 attached to the cover page?
11 Q. Is that spreadsheet the spreadsheet from which
12 you derived your [REDACTED] million number that's
13 listed in your surrebuttal testimony?
14 A. Well, we could sure look at the numbers in
15 there. I mean it --
16 Q. Do you -- do you need a calculator?
17 A. I've got the -- the numbers all listed I think
18 in my Attachment E. I may need some -- a
19 magnifying glass, but.
20 Q. I bet Mr. Mills would get you one if you really
21 need one.
22 A. Oh, I wasn't looking at the right one. Well,
23 I -- I do -- I believe that is the source
24 document, yeah. I think it's the same one
25 that I've referenced on page 13 of my

1 surrebuttal.
 2 Q. So what you did, Mr. Kind, is that you summed --
 3 starting for October 2007 through September
 4 2008, you summed the line called electric margin
 5 interchange on the Company's response,
 6 supplementary response number three to Staff DR
 7 242; is that correct?
 8 A. I believe so, yes.
 9 Q. And the sum of -- of the electric margin
 10 interchange was this [REDACTED] million number
 11 that's on line 8 at page 13 of your surrebuttal
 12 testimony, right?
 13 A. That's right.
 14 Q. And that number includes margins from asset
 15 based energy sales; is that right?
 16 A. Yes, I think so.
 17 Q. And from capacity sales, correct?
 18 A. I think so.
 19 Q. And from ancillary services, right?
 20 A. I think it does, yes.
 21 Q. What else does it include to your knowledge if
 22 anything?
 23 A. I think that would be all.
 24 MR. LOWERY: Let's just go ahead and mark
 25 this.

1 OPC DR 2109, right?
 2 A. Yes, it is, uh-huh.
 3 Q. So the [REDACTED] million number we just talked
 4 about includes excess sales of generation after
 5 native sales, right?
 6 A. Correct.
 7 Q. It includes bilateral net sales, correct?
 8 A. I wouldn't be sure if it includes all of that
 9 because some -- it depends on I think if
 10 there's, you know, bilateral net sales, if
 11 there's a bilateral -- bilateral purchase that's
 12 lined up with a bilateral sale, I'm not sure
 13 that it would be in there. Sort of an arbitrage
 14 type -- type thing.
 15 Q. Is it your testimony that you do not know
 16 whether or not the [REDACTED] million number
 17 includes all of the components listed in the
 18 response to OPC DR 2109 that you've attached as
 19 Attachment F of your surrebuttal, with the
 20 exception of nonasset based trading? I would
 21 agree with you that --
 22 A. No, I don't --
 23 Q. -- that [REDACTED] does not include --
 24 A. I don't --
 25 Q. -- nonasset based trading.

1 (Deposition Exhibit 1 was marked for
 2 purposes of identification.)
 3 Q. (By Mr. Lowery) Mr. Kind, I'm going to hand you
 4 again what's been marked as Deposition Exhibit
 5 1, ask you just to confirm that in fact this
 6 supplemental response number three to Staff
 7 DR 242 is the -- and the spreadsheet attached to
 8 it is the spreadsheet that you relied upon in
 9 coming up with your [REDACTED] million number; is
 10 that correct?
 11 A. Is has an exhibit number on it. RK1.
 12 Q. RK1.
 13 A. Yes, that's the one.
 14 Q. Is that correct?
 15 A. Uh-huh.
 16 Q. Now if we look at your Attachment F to your
 17 surrebuttal testimony, would you agree that the
 18 [REDACTED] million number includes all of these
 19 gross margin numbers, it includes excess sales
 20 after generation, right, after -- excess sales
 21 after -- I'm looking --
 22 A. Looking at DR response to 2146?
 23 Q. I'm looking at your Attachment F.
 24 A. Oh, F. I was on G, sorry. Okay. 2109, right?
 25 Q. Your Attachment F is the Company's response to

1 A. -- believe it includes all those.
 2 Q. What do you believe it does include?
 3 A. Does include, the excess sale of generation
 4 after native sales and capacity net sales.
 5 Q. You believe it includes those two components of
 6 the response to OPC DR 2109?
 7 A. Yes, I think so.
 8 Q. In addition to the [REDACTED] million that you
 9 recommend for inclusion and off system sales
 10 margins in this case you also recommend a dollar
 11 value related to nonasset based trading,
 12 correct?
 13 A. That's correct.
 14 Q. And your surrebuttal testimony indicates that
 15 you believe UE has -- has made [REDACTED] million on
 16 nonasset based trading for the 12 months ending
 17 9-30-2008, correct?
 18 A. I think that's right. If you'll refer me to a
 19 page, I --
 20 Q. Page 8, line 11 of your surrebuttal.
 21 A. Page 8. Yes, that's correct.
 22 Q. So you would add the [REDACTED] million to the [REDACTED]
 23 right?
 24 A. I think my testimony discusses that, yeah.
 25 Q. Is that right? You would add [REDACTED] million to

1 [redacted] correct?
 2 A. Yeah. And again we're just talking about
 3 placeholder recommendation here. This isn't
 4 really our primary recommendation in this area
 5 of course.
 6 Q. We'll get back to the distinction you're drawing
 7 between a placeholder recommendation and primary
 8 recommendation, but based upon your surrebuttal
 9 testimony at this point you would -- you first
 10 start with [redacted] million, right?
 11 A. That's correct.
 12 Q. And you add [redacted] million to it, correct?
 13 A. Uh-huh, yes.
 14 Q. All right. Now there's another component that
 15 you discuss that you believe need to be -- needs
 16 to be taken into account in UE's off system
 17 sales margins and that's the energy value --
 18 value associated with the Taum Sauk plant,
 19 right?
 20 A. That's right.
 21 Q. You talk about that on page 10 of your
 22 surrebuttal, correct?
 23 A. Yes.
 24 Q. And your recommendation for determining that
 25 value for the purposes of determining off system

1 sales margins in this case is that the Company
 2 and/or the staff run their production cost
 3 models and whichever figure the Commission
 4 arrives at based on those production cost models
 5 you would accept as the energy value of Taum
 6 Sauk; is that right?
 7 A. That's right.
 8 Q. And you understand that the Company's number as
 9 of Mr. Schukar's rebuttal testimony was 20.9
 10 million for the energy value of Taum Sauk, do
 11 you recall that?
 12 A. Is it in Mr. Schukar or Mr. Finnel's? I don't
 13 remember which one it's in.
 14 Q. It's in one or the other. The Company's
 15 position was 20.9 million is the energy value of
 16 Taum Sauk at the time of the Company's rebuttal
 17 testimony, do you recall that?
 18 A. I don't recall the exact number, but I do recall
 19 that it was something in that general range.
 20 Q. If we assume that that's the calculated value
 21 based upon the Company's fuel cost run and if we
 22 assume that the Commission were to agree with
 23 that value for the energy value of Taum Sauk,
 24 then you would add to the [redacted]
 25 million we talked about a minute ago, you would

1 add 20.9 million, right?
 2 A. That's correct.
 3 Q. All right. Now, you also have a fourth
 4 component that you talk about and that's what
 5 you call a hold harmless adjustment relating to
 6 capacity from Taum Sauk, right?
 7 A. Yes.
 8 Q. And that number, your recommendation for that
 9 number is \$ [redacted] million; is that right?
 10 A. Yes, that's what I state on here.
 11 Q. So we'd have to add [redacted] million to the three
 12 figures we just talked about, correct?
 13 A. For the placeholder recommendation, yes.
 14 Q. And I saw -- I see that you're writing some
 15 numbers down, but one number I don't see on your
 16 piece of paper is the [redacted] million.
 17 A. Oh, yeah.
 18 Q. That's got to be in there too, right?
 19 A. We talked about that at first, yeah. [redacted]
 20 yeah. Well, anyway, I'm just trying to roughly
 21 follow the conversation, I'm not trying to do a
 22 computation here. I'm just trying to sort of
 23 keep track.
 24 Q. Just to make sure that I'm not misstating your
 25 testimony, is [redacted] million the amount of margin

1 from nonasset based trading that you say needs
 2 to be included in UE's off system sales margins
 3 in this case?
 4 A. Well, from -- I mean it's -- it's from that
 5 particular -- I'll tell you what, the best way
 6 to reference it probably is --
 7 Q. On page 8 of your surrebuttal testimony.
 8 A. Uh-huh. If you look at the list of the -- of
 9 the various -- I had a list of the different
 10 components of the UE calculation of financial
 11 hedging-net margins. That -- that starts on
 12 page 6 of my testimony.
 13 Q. Well, let me -- let me get an answer to my
 14 question first because --
 15 A. Well, this is trying to give you an answer.
 16 Q. Well, let me -- let me ask the question again.
 17 A. I don't think it's a yes or no answer.
 18 Q. Your surrebuttal testimony on page 8, lines 11
 19 and 12 says, and I quote, Public Counsel
 20 recommends that \$ [redacted] million --
 21 A. Uh-huh.
 22 Q. -- or \$ [redacted] be included as margins from
 23 UE's nonasset based trading activities. Is that
 24 or is that not your recommendation in this case
 25 relating to nonasset based trading activities?

1 A. That is a recommendation that we've made, and
 2 I'm trying to make sure that we don't have any
 3 confusion about the terminology.
 4 Q. First of all, that was a yes or no question.
 5 Can you answer that question yes or no?
 6 A. How do -- how are you defining nonasset based
 7 trading?
 8 Q. How are you defining it, Mr. Kind? You used the
 9 phrase on line 12 on page 8 of your surrebuttal
 10 testimony, I didn't.
 11 A. Okay. Then let's turn to page 6 of my testimony
 12 at lines 20 and 21. Long term spec, short term
 13 spec, those are the two numbers that -- that --
 14 the two categories that would go into there.
 15 Now --
 16 Q. Are you recommending -- so you define nonasset
 17 based trading activities as long term spec and
 18 short term spec; is that correct?
 19 A. I believe that's the -- the UE definition that's
 20 been used.
 21 Q. How do you define it? You used the term
 22 "nonasset based trading" in your testimony, did
 23 you not?
 24 A. Uh-huh.
 25 Q. How did you define that term when you used it?

1 A. When I used it I was referring to those two
 2 particular categories --
 3 Q. Meaning --
 4 A. -- which is I think the UE definition, yeah.
 5 But I think some people could interpret nonasset
 6 based trading to include some of these other
 7 items that are -- that are listed here on page 6
 8 and 7.
 9 Q. Mr. Kind, we can be here all day and we can --
 10 we can have another deposition if we need to.
 11 This is a simple point that you in my view are
 12 just being unduly difficult about. You used the
 13 term "nonasset based trading." Did you or did
 14 you not use that term?
 15 A. Yes, I did.
 16 Q. How did you define that term when you used it?
 17 A. I just answered that question.
 18 Q. Well, answer it again.
 19 A. Okay. Be happy to. I defined it as including
 20 these items, long term spec and short term spec
 21 as they're listed in lines 20 and 21.
 22 Q. And you --
 23 A. On page 6 of my surrebuttal testimony.
 24 Q. And you recommend that \$ [REDACTED] million be
 25 included in the Company's off system sales

1 margins for purposes of setting rates in this
 2 case to represent the long term spec and the
 3 short term spec that you just mentioned on page
 4 6, lines 20 and 21 of your -- of your
 5 surrebuttal, correct?
 6 A. That's correct.
 7 Q. So at this point we've talked about four figures
 8 which I understand you're going to call your
 9 placeholder recommendation. So just to clarify
 10 that point for purposes of my questions, we've
 11 talked about [REDACTED] correct?
 12 A. Yes.
 13 Q. And [REDACTED] million, right?
 14 A. That's right.
 15 Q. And 20.9 million assuming the Commission were to
 16 use the Company's modeled energy value of the
 17 Taum Sauk plant, right?
 18 A. That's right.
 19 Q. And [REDACTED] million for a capacity value of Taum
 20 Sauk, correct?
 21 A. Yeah, for the current period I think.
 22 Q. Right. And then you have one more component
 23 that you've recommended to include in off system
 24 sales margins that you just alluded to and
 25 that's what you I believe refer to as a prior

1 period Taum Sauk capacity figure, correct?
 2 A. That's right.
 3 Q. And that's [REDACTED] million; is that right?
 4 A. Sounds right. I'd have to --
 5 Q. Surrebuttal testimony page 11, line 9.
 6 A. Well, I refer to my prior adjustment there and I
 7 guess it's --
 8 Q. It's in --
 9 A. It's in my --
 10 Q. -- your direct testimony, is it not?
 11 A. -- direct testimony, right. So the prior period
 12 was [REDACTED]
 13 Q. [REDACTED] I was a thousand dollars off. If we sum
 14 the five figures we just talked about together,
 15 we get [REDACTED] is that
 16 right?
 17 A. Yeah, that sounds right.
 18 Q. [REDACTED] is correct?
 19 A. Well, yeah. I mean I don't have a calculator
 20 with me.
 21 Q. Well, I'm going to let you use one then,
 22 Mr. Kind.
 23 MR. MILLS: Do you want to get your own or
 24 do you want me to get you one?
 25 THE WITNESS: No. If he's got one handy,

1 that's fine.
 2 Q. (By Mr. Lowery) Please verify that the five
 3 figures we just talked about total [REDACTED]
 4 million.
 5 A. [REDACTED] yeah.
 6 Q. And just so that the record is more clear,
 7 that's the sum of the [REDACTED] million electric
 8 margin interchange that you calculated using
 9 the -- using what we've marked as Deposition
 10 Exhibit RK1, the spreadsheet attached that's the
 11 second page of Deposition Exhibit RK1, correct?
 12 A. That's right.
 13 Q. And that's the period October 1, '07 to
 14 September 30, '08, correct, those margins,
 15 correct?
 16 A. I'm sorry, that was the what?
 17 Q. That [REDACTED] million is for the period October 1,
 18 '07 to September 30th, '08, right?
 19 A. Yes.
 20 Q. And so that's the first number. The second
 21 number is the [REDACTED] million which is the
 22 nonasset based trading number that you
 23 calculated, correct?
 24 A. That's right.
 25 Q. And the \$20.9 million number is the Company's

1 A. We have a recommendation for a methodology on
 2 how to arrive at that number.
 3 Q. Describe your recommended methodology.
 4 A. Okay. It's the -- it's the gross margin
 5 calculation that is -- is described on page 10,
 6 line 17.
 7 Q. Page 10, line 17 of your surrebuttal testimony?
 8 A. That's correct, yes.
 9 Q. Your testimony today is that Public Counsel
 10 recommends that the AM&T gross margin for some
 11 period which I guess we'll talk about that in a
 12 second, should be the off system sales margins
 13 used to set rates in this case, is that your
 14 testimony?
 15 A. Yeah. And we've specified the time period just
 16 a few lines above that.
 17 Q. Your testimony then --
 18 A. I mean it needs to be adjusted again for the
 19 energy capacity off system sales margins forgone
 20 due to Taum Sauk outage.
 21 Q. Well, let -- let me step back and parse this a
 22 little bit. Your recommendation is that for the
 23 12 months ending September 30th, 2008, that the
 24 Commission use the actual AM&T gross margin to
 25 set off system sales in this case with

1 production cost model value for the energy from
 2 the Taum Sauk plant on the assumption that the
 3 Commission would accept that number for the
 4 energy value of Taum Sauk, right?
 5 A. Uh-huh.
 6 Q. The \$ [REDACTED] million is your calculated current
 7 period capacity number for Taum Sauk, right?
 8 A. Right.
 9 Q. And the [REDACTED] million is your prior period Taum
 10 Sauk adjustment related to capacity, correct?
 11 A. That's correct.
 12 Q. If the Commission were to set off system sales
 13 margins in this rate case at \$ [REDACTED] million,
 14 would that match the recommendation that you
 15 made in your surrebuttal testimony?
 16 A. No, it would not.
 17 Q. And why not?
 18 A. Because I've just -- I haven't recommended this
 19 method. All I've done is I've just said that
 20 this is the -- an alternative approach that --
 21 that would need to be taken in an attempt to
 22 gauge off system sales margins in a similar
 23 manner to the manner that we recommended.
 24 Q. Do you have a recommendation for off system
 25 sales margins in this case?

1 adjustments relating to Taum Sauk, correct or
 2 incorrect?
 3 A. That's correct.
 4 Q. And there would be --
 5 A. For a certain time period that we'd be
 6 specifying.
 7 Q. Well, you -- we had a good answer until -- until
 8 then. The time period is the 12 months ending
 9 9-30-2008, right?
 10 A. Yes, I just didn't know if I heard that as part
 11 of your question.
 12 Q. Well, let me restate the question. Is Public
 13 Counsel's recommendation that the off system
 14 sales margins to be set for rate making purposes
 15 in this case should be the AM&T gross margin
 16 described on page 10, lines 17 to 20 of your
 17 surrebuttal testimony for the 12 months ending
 18 9-30-2008 plus adjustments related to the Taum
 19 Sauk plant that we'll talk about in a moment?
 20 A. That's right, yeah.
 21 Q. And you would recommend three adjustments
 22 related to the Taum Sauk plant, one adjustment
 23 would be for the energy value, right?
 24 A. That's right.
 25 Q. One adjustment would be for current period

1 capacity value which would be [REDACTED] million,
 2 right?
 3 A. The current period Taum Sauk holds harmless
 4 adjustment that we recommended, yes, that's [REDACTED]
 5 million.
 6 Q. And one would be for the prior period hold --
 7 hold harmless adjustment which you would
 8 recommend to be [REDACTED] million, right?
 9 A. That's right.
 10 Q. And if the Commission were to use the Company's
 11 production cost model, then you would go along
 12 with the \$ [REDACTED] million energy value of the Taum
 13 Sauk plant if that's what the Commission decides
 14 to use, correct?
 15 A. Yes.
 16 Q. So the -- the Public Counsel's recommendation
 17 is, I'll use X as a variable for the AM&T gross
 18 margin for now, okay, plus 20.9 million if the
 19 Commission uses the Company's production cost
 20 model result, right?
 21 A. That's right.
 22 Q. Plus [REDACTED] million, plus [REDACTED] million, correct?
 23 A. That's correct.
 24 Q. What is the Company's -- in your view, what is
 25 the Company's AM&T gross margin for the 12

1 A. Well, there's no numbers there.
 2 Q. That wasn't my question. Do you believe it
 3 gives you the information you need or not?
 4 A. No, I don't believe it gives me the information
 5 needed to actually quantify Public Counsel's
 6 recommendation in this area.
 7 Q. Mr. Kind, explain to me your answer at the
 8 bottom of page 8 on line 23 and it carries over
 9 to line 8 on page 9 of your surrebuttal
 10 testimony where you indicate that Public Counsel
 11 is no longer recommending that an average of the
 12 '06 and '07 amounts for financial hedging-net
 13 margins be added to the fuel run estimates. Is
 14 it your testimony that instead of that
 15 recommendation you believe that those components
 16 are included in this gross margin and that if
 17 you had the number that you want for the 12
 18 months ending 9-30-08, that those numbers would
 19 be included in that -- that 9-30-08 -- 12 months
 20 ending 9-30-08 number? Am I understanding your
 21 position?
 22 A. More or less. There's a little bit of, you
 23 know, some subtle differences there.
 24 Q. Like what are the subtle differences?
 25 A. Well, the -- it's the same -- I believe that

1 months ending September 30th, 2008?
 2 A. Still trying to figure that out.
 3 Q. Still trying to figure it out?
 4 A. Well, we've got, what I guess we consider to be
 5 nonresponsive DR responses, so there's, you
 6 know, discovery issues about that that are
 7 addressed in my surrebuttal testimony.
 8 Q. You claim that you need the -- you need
 9 different responses to OPC DR numbers 2146 and
 10 2147 to arrive at that number, the AM&T gross
 11 margins for the 12 months ending 9-30-08, is
 12 that what you're talking about?
 13 A. Yeah. I need -- we need responses that contain
 14 the requested information.
 15 Q. Are we talking about DR's 2146 and 2147?
 16 A. I'm pretty sure those are Attachment G and
 17 they're referenced on page 11.
 18 Q. Page 11, lines 13 to 16 of your surrebuttal
 19 testimony?
 20 A. Those are the Public Counsel DR's and the UE
 21 response that we're talking about, yes.
 22 Q. You have been provided a response to 2146 and
 23 2147, but you don't believe the response gives
 24 you the information that you need; is that
 25 correct?

1 category would be included in the gross margin,
 2 but the numbers that we used before were from
 3 different time periods. They were just calendar
 4 years, I think '06 and '07, and an average of
 5 those two figures. And we're -- we're looking
 6 for the numbers that would be for that same
 7 category, I believe they would be part of this
 8 gross margin but they would be for the -- going
 9 through the September 30th update period in this
 10 case.
 11 Q. Let me see if I can restate that. Previously
 12 you had made a recommendation of [REDACTED] million in
 13 your direct testimony which was an average of
 14 '06, '07 of what you refer to as final -- as
 15 financial hedging-net margins, correct?
 16 A. Well, it -- I mean, yeah. I mean I'm using a UE
 17 defined category there, yeah. That's -- that's
 18 the one I've named.
 19 Q. Previously you recommended [REDACTED] million which
 20 was an '06, '07 average of the financial
 21 hedging-net margin number, correct?
 22 A. Yes.
 23 Q. And you're not recommending [REDACTED] million
 24 anymore, right?
 25 A. That's right.

1 Q. What you are recommending is the use of the
 2 gross margin for the 12 months ending 9-30-08,
 3 correct?
 4 A. That's right.
 5 Q. Which you believe includes the financial
 6 hedging-net margins, correct?
 7 A. I should say I'm recommending that, you know, of
 8 course that net margin with some adjustments as
 9 we've discussed earlier.
 10 Q. What are those adjustments? I'm sorry, you're
 11 talking about the Taum Sauk adjustments?
 12 A. Yeah, that's right.
 13 Q. Just the three Taum Sauk adjustments, the 20.9
 14 million assuming the Commission uses the
 15 Company's --
 16 A. Yes, the --
 17 Q. -- production model?
 18 A. -- same three that --
 19 Q. Well, just so the record's clear.
 20 A. Okay.
 21 Q. Just those three adjustments, 20.9 million
 22 assuming the Commission uses the Company's
 23 production cost model for Taum Sauk energy, [REDACTED]
 24 million, [REDACTED] million, right?
 25 A. That's right.

1 certain.
 2 Q. What are you analyzing? You talking about the
 3 Illinois auction?
 4 A. No. I'm talking about just exactly how -- how
 5 the different figures get -- get added up, how
 6 the financial hedging piece goes into the gross
 7 margin, and I just haven't --
 8 Q. Is that because you're not sure --
 9 A. It's not part of our -- my -- our development
 10 of the position that we have now, so it's not --
 11 I don't know that it's -- it's something that
 12 I'm -- I'm, you know, going to really evaluate
 13 further.
 14 Q. Did you say it's something you are going to
 15 evaluate further?
 16 A. I don't know that it is something, but -- but it
 17 may be something I see some additional
 18 information on just in the course of other
 19 evaluations.
 20 Q. Is the fact that you're unwilling to give a
 21 direct answer to that question because you're
 22 not sure whether or not some or all of the
 23 financial hedging-net margin may already have
 24 been taken into account in the other numbers
 25 we're talking about?

1 Q. All right. Assuming those adjustments are
 2 made, so our -- so let's ignore those for
 3 purposes of this question, you are recommending
 4 those three adjustments plus the gross margin
 5 for the month -- for the 12 months ending 9-30-
 6 08, and it's your contention that that gross
 7 margin includes the financial hedging-net margin
 8 number, correct?
 9 A. Yes, that's correct.
 10 Q. And so it's your contention that the \$ [REDACTED]
 11 million number that we talked about earlier does
 12 not include the financial hedging-net margin
 13 number, correct?
 14 A. Correct.
 15 Q. So when we calculated [REDACTED] million before, you
 16 think there's one thing missing from that number
 17 and that would be the financial margin --
 18 financial hedging-net margin number for the 12
 19 months ending 9-30-08, correct?
 20 A. Well, I think that's -- that that's probably
 21 right.
 22 Q. Well, why is it probably right and not right?
 23 A. I just -- I think I will be -- you know, I still
 24 need to do some additional analysis in this area
 25 before I just say, you know, absolutely I'm

1 MR. MILLS: I'm going to have to object to
 2 the form of the question just for the record.
 3 You can go ahead and answer.
 4 THE WITNESS: And that -- whether it be
 5 taken into account in which other numbers, the
 6 other three elements that we're proposing as
 7 adjustments?
 8 Q. (By Mr. Lowery) The five numbers that we added
 9 together before to come up with \$ [REDACTED] million,
 10 do you know whether or not in any of those five
 11 numbers, that some -- whether or not some or all
 12 of the financial hedging-net margins for the
 13 period, 12 month period ending 9-30-08 have
 14 already been taken into account, do you know?
 15 A. Whether they were taken into account in the
 16 gross margin number?
 17 Q. That wasn't my question.
 18 A. Okay. Sorry.
 19 Q. We had five numbers, [REDACTED] you remember that
 20 one, right?
 21 A. Yes, I do.
 22 Q. We had [REDACTED] right?
 23 A. Uh-huh.
 24 Q. We had 20.9?
 25 A. Uh-huh.

1 Q. Right?

2 A. Right. I'm just not following you in what's

3 taken into account in what.

4 Q. We had [REDACTED] right?

5 A. In our prior discussion, yeah.

6 Q. And [REDACTED]

7 A. Uh-huh.

8 Q. And 20.9?

9 A. Yeah.

10 Q. Right?

11 A. We talked about all those numbers, yes.

12 Q. Okay. And [REDACTED] that was the fourth number,

13 right?

14 A. Yes.

15 Q. And [REDACTED] that was the fifth number, right?

16 A. The fifth number in this alternative framework

17 that I suggested that, you know, someone -- that

18 you might look at as a way to get at this, yes.

19 Q. And the sum of those numbers was \$ [REDACTED]

20 million, right?

21 A. That's right.

22 Q. Do you know whether or not any of those five

23 components may already include some or all of

24 the financial hedging, dash, net margin numbers

25 for the 12 months ending 9-30-08, do you know?

1 A. I -- I guess I would phrase it the other way,

2 whether the -- those -- whether those numbers

3 could be included in the financial margin

4 number, the net hedging -- I'm losing the phrase

5 actually now, the --

6 Q. Financial hedging, dash, net margin, that's

7 the --

8 A. That's the one.

9 Q. That's the phrase you use on page 8, line 24,

10 right?

11 A. Yeah, financial hedging, dash, net margin,

12 that's the UE definition I'm referring to. And

13 I believe that your question is is the financial

14 hedging-net margin in any of those five

15 numbers?

16 Q. Or is some of the financial hedging-net margin

17 in any of those five numbers, do you know?

18 A. Oh, yeah. It's just the -- some of it is in

19 there in that it's in the spec piece.

20 Q. Is it your belief that the only piece of the

21 financial hedging-net margin for the 12 months

22 ending 9-30-08 that is in that \$ [REDACTED] million

23 number, the speculative piece, the nonasset

24 based trading piece, is that your testimony?

25 A. Oh, no, actually because the [REDACTED] includes --

1 includes capacity and ancillary services as well

2 as energy so that would be another element.

3 Q. So the energy -- to the extent energy, ancillary

4 services, capacity, and nonasset based trading,

5 to the extent those four items are part of the

6 financial hedging-net margins for the 12 months

7 ending 9-30-08, those numbers are already in the

8 [REDACTED] million, is that your testimony?

9 A. I think I'd have to hear that question again

10 please.

11 MR. LOWERY: Can you read it back please.

12 (The question was read back by the court

13 reporter.)

14 THE WITNESS: Well, no, I don't think

15 that's right. I mean the only piece -- the

16 pieces of the financial hedging-net margin that

17 are in that earlier figure that you've

18 calculated are --

19 Q. (By Mr. Lowery) The earlier figure being [REDACTED]

20 million, right?

21 A. Right, right. It's the -- it is -- the parts of

22 financial hedging-net margin that's in there are

23 the capacity, ancillary service margins, and the

24 short term and long term spec.

25 Q. Well, you said you didn't agree with my

1 question, but I think you did. If ancillary

2 service -- do you believe that ancillary

3 services is part of the financial hedging-net

4 margins?

5 A. Yes.

6 Q. Do you believe that capacity --

7 A. Well, the capacity piece of ancillary services,

8 not the energy piece.

9 Q. All right. Do you believe the capacity piece of

10 ancillary services is part of the financial

11 hedging-net margin number?

12 A. Yes.

13 Q. Do you believe that capacity generally is a part

14 of the financial hedging-net margin number?

15 A. Yes.

16 Q. Do you believe that nonasset based trading is

17 part of the financial hedging-net margin number?

18 A. I believe that the short term and long term spec

19 are part of it.

20 Q. Which you agree based on the words you've used

21 in your surrebuttal means nonasset based

22 trading, right?

23 A. UE has --

24 Q. You tell me what -- you tell me what term you

25 want to use, Mr. Kind.

1 A. Right. UE has used those terms
 2 interchangeably. I would include some other
 3 items from that list on page -- pages 6 and 7 in
 4 nonasset based trading.
 5 Q. When you use nonasset based trading in your
 6 surrebuttal testimony, when you use that term --
 7 A. Uh-huh.
 8 Q. -- when you wrote that term --
 9 A. Uh-huh.
 10 Q. -- you were only talking about the long term
 11 spec and short term spec though, correct?
 12 A. That's correct.
 13 Q. So to summarize again you believe that the
 14 capacity part of ancillary services is part of
 15 the financial hedging-net margin, right?
 16 A. Right.
 17 Q. You believe capacity is part of the financial
 18 hedging-net margin, right?
 19 A. Right.
 20 Q. And you believe that as you've used the term in
 21 your surrebuttal testimony, that nonasset based
 22 trading activities are part of the financial
 23 hedging-net margin, correct?
 24 A. Right.
 25 Q. So if you were to calculate a final hedging-net

1 A. I've recommended the methodology that UE uses to
 2 calculate its gross margins and the numbers that
 3 it calculates which I expect to be able to
 4 obtain.
 5 Q. Do you -- is it your testimony that the
 6 financial hedging, dash, net margin number is a
 7 part of the gross margin number?
 8 A. Yes, it is.
 9 Q. Mr. Kind, do you have an opinion about whether
 10 forward prices or expenses or data or
 11 transactions that would occur beyond the cutoff
 12 date in a rate case, the cutoff date for the
 13 test year or if you true up or update the test
 14 year, the cutoff date for the true up or the
 15 update, do you have an opinion about whether
 16 these kinds of forward looking items or items
 17 beyond the cutoff date should be used to set
 18 rates?
 19 A. I would think generally not, but, you know,
 20 what -- what you want to do is come up with a
 21 recommendation that sort of represents utility's
 22 ongoing level of costs and sometimes I think
 23 it's helpful to look forward beyond that cutoff
 24 date.
 25 MR. LOWERY: Would you mark that please.

1 margin number for the 12 months ending 9-30-08,
 2 you couldn't just add that to the \$ [REDACTED]
 3 million number to come up with the -- a
 4 recommended margin number because you would be
 5 double counting at least those three components
 6 that are already accounted for in the final
 7 hedging-net margin number, correct?
 8 A. I think so. That's not something I recommended.
 9 Q. Let me ask the question again. You couldn't
 10 just add the financial hedging-net margin number
 11 to the \$ [REDACTED] million number because if you did
 12 that, you would be double counting the ancillary
 13 services, capacity related ancillary services,
 14 the capacity, and the nonasset based trading
 15 number, correct?
 16 A. Yes.
 17 Q. Is it your testimony, your belief that whatever
 18 other components of financial hedging-net
 19 margins exist would need to be added to the
 20 [REDACTED] million number?
 21 A. Yes, I think I'd agree with that. But when you
 22 say would need to be added, it's not needed to
 23 be added for the recommendation I'm making.
 24 Q. And again what recommendation are you making for
 25 off system sales margins?

1 (Deposition Exhibit 2 was marked for
 2 purposes of identification.)
 3 Q. (By Mr. Lowery) Mr. Kind, I'm going to hand you
 4 what's been marked as Deposition Exhibit RK2 and
 5 ask you if you recognize that document either
 6 the first or the second page or both?
 7 A. No, I don't believe. This looks like an email
 8 that came in early this morning. Saw something
 9 similar to this earlier in the case that didn't
 10 have as many columns for different parties.
 11 Q. When you say this, you're referring to the
 12 second page --
 13 A. Second page.
 14 Q. -- of Exhibit RK2, right?
 15 A. That's right, yes.
 16 Q. Do you -- now I understand you said you hadn't
 17 seen this, but do you recognize this as being a
 18 draft of a reconciliation for this rate case
 19 that's been prepared by the staff, the
 20 Commission staff in this case?
 21 A. I didn't read the front page enough to see what
 22 it's --
 23 Q. Take your --
 24 A. -- really supposed to be, but I --
 25 Q. Take your time.

1 A. -- would expect that's probably what it is.
 2 Yeah, I would agree with that.
 3 Q. Mr. Kind, have you been involved in discussion
 4 with members of the staff over the last several
 5 days or weeks about providing them information
 6 from which they could develop the reconciliation
 7 the staff's supposed to file in this case?
 8 A. I have received a call from Mr. Cassidy earlier
 9 in the week.
 10 Q. Talking about John Cassidy?
 11 A. Yeah.
 12 Q. A staff auditor?
 13 A. On Monday I think or -- I think it was Monday.
 14 And he was asking about some of OPC's positions
 15 in surrebuttal testimony because he was working
 16 on the off system sales part of that, of a
 17 reconciliation.
 18 Q. Mr. Cassidy contacted you and said the staff --
 19 and if I'm paraphrasing improperly, you tell me,
 20 but is a fair characterization of that telephone
 21 call Mr. Cassidy called and indicated staff's
 22 putting together the reconciliation, they're
 23 looking at your surrebuttal testimony, we're --
 24 A. Uh-huh.
 25 Q. -- trying to figure out the appropriate numbers

1 Q. Well, that number's not listed in your
 2 surrebuttal testimony, is it?
 3 A. No, it's not.
 4 Q. How would Mr. Cassidy have arrived at this very
 5 specific \$ [REDACTED] million number based upon your
 6 surrebuttal testimony and based upon your
 7 conversations with him?
 8 A. He would have looked at surrebuttal testimony,
 9 different pieces of it, and added some things
 10 together apparently. It looks like that's what
 11 happened.
 12 Q. Did Mr. Cassidy ask you to verify if that's a
 13 correct number?
 14 A. No. I've -- I've never seen this calculation or
 15 that number. I'm not familiar with that number.
 16 Q. Is that number right?
 17 A. For?
 18 Q. Off system sales margins. That's what the
 19 reconciliation says that number represents,
 20 correct?
 21 A. Well, some of the elements of it may be correct,
 22 you know, that were used to -- to get there, but
 23 the final number doesn't recommend -- doesn't
 24 represent our recommendation in this case.
 25 Q. You don't have a final number for a

1 to include on the reconciliation for OPC's
 2 position on the off system sales issue? Is that
 3 a fair characterization of the conversation?
 4 And if not, tell me how it's not.
 5 A. Yeah, that's -- I think that's basically what --
 6 what was -- they were asking about.
 7 Q. So, Mr. Kind, the -- let me start with the [REDACTED]
 8 million, [REDACTED] million number at the bottom of
 9 this reconciliation labeled --
 10 A. Sorry, I can't see that.
 11 Q. Sorry. I'll lean over the table if you don't
 12 mind.
 13 A. That's fine.
 14 Q. [REDACTED] million number.
 15 A. Okay.
 16 Q. Listed under OPC.
 17 A. Uh-huh.
 18 Q. In the off system sales margin row. Do you see
 19 that?
 20 A. Yes, I do.
 21 Q. Do you know where staff got that number?
 22 A. I -- I am just guessing that it was from looking
 23 at our surrebuttal testimony and my explaining
 24 our surrebuttal testimony in the conversation I
 25 had with Mr. Cassidy.

1 recommendation in this case, do you?
 2 A. We're still working on obtaining that
 3 information from your company.
 4 Q. Was that a yes or a no? Do you or do you not
 5 have a final number for off system sales margins
 6 to recommend in this case at this moment in
 7 time?
 8 A. No. We have the methodology that we discussed
 9 earlier.
 10 Q. Is it your testimony that you have no idea how
 11 Mr. Cassidy came up with \$ [REDACTED] million?
 12 A. Well, I have an idea. I had a conversation with
 13 him, but he was --
 14 Q. Then --
 15 A. -- trying to interpret basically what our --
 16 what our recommendation was and -- in my
 17 surrebuttal testimony.
 18 Q. So tell me what your idea is about how he came
 19 up with \$ [REDACTED] million?
 20 A. I don't have an idea without, you know, taking
 21 a, you know, looking at this document, spend
 22 some time to look at it and see what he added up
 23 to get there, I haven't done that.
 24 Q. Well, do you want to take a break so we can do
 25 that?

1 A. That would be fine.
 2 MR. LOWERY: Okay. Let's go off the record.
 3 (Off the record.)
 4 Q. (By Mr. Lowery) All right. Mr. Kind, we were
 5 talking about -- when we went off the record we
 6 were talking about Exhibit, Deposition Exhibit
 7 RK2, correct?
 8 A. Correct.
 9 Q. Just so the record's clear I believe you
 10 indicated before we went off the record that you
 11 had an idea about how Mr. Cassidy might have
 12 come up with this [REDACTED] million. Then you
 13 indicated that maybe you needed to study this
 14 reconciliation more. And then an off-the-record
 15 discussion was held between you and Mr. Mills
 16 and myself and I think you and Mr. Mills came to
 17 the conclusion that this reconciliation doesn't
 18 really inform how the \$ [REDACTED] million number
 19 was determined; is that fair?
 20 A. I think so, yeah. I mean it's just you'd have
 21 to sort of see what numbers were, you know,
 22 the -- added and subtracted to come up with some
 23 of the numbers on there probably.
 24 Q. Well, all of the numbers above the off system
 25 sales margin line or row I should say really are

1 supplementary response number three to DR 242,
 2 the nonasset based trading number, the current
 3 period Taum Sauk number, the prior period Taum
 4 Sauk, and the energy value of Taum Sauk, you
 5 believe that that's how they came up with the
 6 [REDACTED] million?
 7 A. I mean I -- I'm just speculating that that's the
 8 framework that they were trying to follow. It
 9 doesn't look like they came up with the, you
 10 know, a number similar to the one that we've
 11 discussed.
 12 Q. Well, what did Mr. Cassidy ask you?
 13 A. Oh, just to explain the position that we had,
 14 you know, what was this gross margin number.
 15 He -- I can't actually remember. He had some
 16 confusion -- oh, I know. The confusion was
 17 about the -- our -- my discussion of how you
 18 have to make an adjustment to the gross margin
 19 number for the Taum Sauk energy sales hold
 20 harmless piece. He -- for some reason that was
 21 the main part of our conversation I think was
 22 explaining that to him, that he had some
 23 confusion about how that -- how that fit into
 24 it. Or he just didn't -- I don't know. He
 25 didn't understand if that was a separate

1 differences between the respective parties cases
 2 and the Company's case.
 3 A. Uh-huh.
 4 Q. As opposed to being additive to the off system
 5 sales margin number that's listed below for each
 6 party.
 7 A. Okay.
 8 Q. Is that fair?
 9 A. I assume that's what they did, yeah.
 10 Q. That's typically what staff does in a
 11 reconciliation? You've seen a lot of
 12 reconciliations, have you not?
 13 A. I've seen then, but I don't generally get into
 14 the mechanics.
 15 Q. Well, let me ask the question again. Do you
 16 have an idea about how Mr. Cassidy or staff if
 17 it wasn't Mr. Cassidy personally arrived at a
 18 \$ [REDACTED] million off system sales margin
 19 recommendation for the Office of Public Counsel?
 20 A. Well, I know how they did not get it. It's not
 21 from the gross margin numbers because that's not
 22 available, so they must have looked at the
 23 alternative approach that I outlined in my
 24 testimony.
 25 Q. Which is the electric interchange from the

1 recommendation maybe or a recommendation in
 2 terms of a, you know, that went along with the
 3 gross margin. I think that was it.
 4 Q. Did Mr. Cassidy tell you that staff was going to
 5 calculate an off system sales margin to include
 6 on the reconciliation or was trying to calculate
 7 an off system sales margin --
 8 A. Yeah, they were trying to and at some point we
 9 would -- we would see their calculations.
 10 Q. And this is the first time you've seen the
 11 result of their calculations?
 12 A. That's correct, yes.
 13 Q. Did he explain to you or confirm with you how he
 14 was going to go about calculating that number?
 15 A. I don't think we talked about, you know, exactly
 16 in detail how the calculation would be made, no.
 17 Q. And you just had the one conversation about the
 18 reconciliation, you think it was Monday of this
 19 week?
 20 A. It was either Monday or yesterday and it was
 21 just -- yeah. He called, left a message, he
 22 wanted to speak with me. And I got back to him,
 23 I'm thinking I was too busy yesterday, so it
 24 must have been Monday.
 25 Q. Now, we were talking a moment ago about whether

1 transactions or information or data beyond a
 2 cutoff date, whether it be a trued up test year,
 3 an updated test year, or test year, whether you
 4 thought that those kinds of items should be used
 5 for rate making purposes, and I believe your
 6 answer was generally no, but you might want to
 7 look at forward data at times when you are
 8 setting rates in a -- in a rate case. Is that a
 9 fair characterization of your answer?

10 A. Yeah.

11 Q. Let's talk some more about this nonasset based
 12 trading which we can agree for purposes of my
 13 questions if I say nonasset based trading, I say
 14 speculative book, I say speculative trading, I
 15 am talking about the long term spec and the
 16 short term spec that you identified --

17 A. Uh-huh.

18 Q. Let's just get it right, in your surrebuttal
 19 testimony.

20 A. Page 6.

21 Q. At page 6, lines 20 and 21. Okay, can we agree
 22 to that?

23 A. Okay.

24 Q. That's fine?

25 A. Yes.

1 Q. And that's the \$ [redacted] million number that's
 2 discussed in your surrebuttal testimony we were
 3 talking about earlier, right?

4 A. So when we talk about that number, we're talking
 5 about these two things?

6 Q. Right.

7 A. We can agree on that, yes.

8 Q. All right. And if I -- if I talk about
 9 speculative trading, nonasset based trading,
 10 speculative book, I'm talking about those two
 11 things, long term spec and short term spec,
 12 okay?

13 A. Okay.

14 Q. All right. Do you know what mark-to-market
 15 means?

16 A. Yeah, I -- basically. It's -- it's sort of an
 17 accounting concept where you would, you know,
 18 you'd have -- sometimes you'd have financial
 19 instruments that the value of them changes over
 20 time and so maybe you had -- if you have some
 21 that you own, you will -- you'd make adjustments
 22 to your book to reflect mark-to-market sometime.

23 Q. Let me -- let me -- let me describe my
 24 understanding, and I think it's probably the
 25 same as what you just described, see if you

1 agree with my understanding of this. Mark-to-
 2 market means that for financial accounting
 3 purposes companies are required to adjust their
 4 income statement each month to reflect the
 5 difference between the value of a transaction as
 6 contracted versus the value of the transaction
 7 if at month's end that transaction was priced at
 8 market?

9 A. If there's -- if you can come up with some
 10 estimate of a market price I think, and I think
 11 there's limitations on ability to do that.

12 Q. But if there is a way to come up with a market
 13 price, companies are required to adjust their
 14 income statement to take into account the
 15 difference between the contracted price and the
 16 market price as of the end of the month, that's
 17 what they have -- they have to mark that
 18 transaction to market on their income statement;
 19 is that right? Is that your understanding?

20 A. Generally. I don't know, you know, the
 21 specifics of the requirement. I haven't ever
 22 for instance read the requirement, but I think
 23 that's the general concept.

24 Q. Well, assume that that's correct and I think we
 25 agree that's the general concept, but assume

1 that's correct for purposes of my question,
 2 okay?

3 A. Okay.

4 Q. Is that fair?

5 A. And you're talking about a monthly adjustment?

6 Q. I'm --

7 A. Is that part right?

8 Q. Assume that's what mark-to-market means.

9 A. Okay.

10 Q. For purposes of these questions, okay?

11 A. All right.

12 Q. I want you to assume that on October 31st, Union
 13 Electric sells a 50 megawatt on peak swap for
 14 16,000 megawatt hours of power.

15 A. Fifteen or 50?

16 Q. Fifty, 5-0 megawatts.

17 A. Fifty megawatts.

18 Q. On peak.

19 A. On peak swap.

20 Q. For 16,000 megawatt hours of power. And that
 21 swap is for settlement in February, so let's
 22 just say October 31, '08, February '09.

23 A. I'm just -- I'm guess I need to get all this
 24 written down.

25 Q. Sure.

1 A. October 31, a 50 megawatt on peak swap. And
 2 then what was it --
 3 Q. For 16,000 --
 4 A. -- after that?
 5 Q. -- megawatt hours of power.
 6 A. Okay. So megawatts.
 7 Q. Megawatts, yeah. It's 50 megawatts, but it's on
 8 peak, so that equates to 16,000 megawatt hours
 9 of power. And the way -- I think -- I'm pretty
 10 sure you'll understand this, but there's 20 days
 11 of the month that are on peak, there's 16 hours
 12 on peak, that's 320 hours times 50 megawatts,
 13 that's how we get 16,000 megawatt hours. Do you
 14 understand that?
 15 A. Yes.
 16 Q. That makes sense to you, right?
 17 A. Yeah, that makes sense.
 18 Q. All right. So it's October 31 is when the
 19 contract is entered into, the swap's entered
 20 into.
 21 A. Yeah, I got that down.
 22 Q. And the swap is going to settle in February '09,
 23 okay? You got all those facts, right, in mind?
 24 And there's one more piece you need and that is
 25 the contract price is \$50 a megawatt hour which

1 is also the market price on October 31.
 2 A. Okay.
 3 Q. You with me?
 4 A. Yeah.
 5 Q. All right. Now based upon our understanding of
 6 what mark-to-market is, we're assuming for
 7 purposes of my questions, would you agree that
 8 the mark-to-market at the end of October is zero
 9 because the market price on October 31 and the
 10 contract price are both \$50?
 11 A. You know, I would assume that's right, I've just
 12 never done these calculations.
 13 Q. Based on -- based on our understanding of mark-
 14 to-market, that would be correct, right?
 15 A. I just don't think I can agree because I'm -- I
 16 just, you know, I have -- I like to be absolute.
 17 Q. Mr. Kind, you agreed --
 18 A. You know, pretty sure when I --
 19 Q. You agreed a moment ago that your general
 20 understanding of mark-to-market was that in a
 21 month if the market price varies from the
 22 contract price, the accounting rules require the
 23 company to mark that contract to market. If
 24 there is no difference between market and
 25 contract price, there would be no mark-to-

1 market, isn't that a simple concept?
 2 A. I would expect that would be right, but I -- I
 3 don't know for sure.
 4 Q. Well, based upon your expectation, let's assume
 5 your expectation is correct, all right, for
 6 purposes of my question. So assuming your
 7 expectation is correct, there would be no mark-
 8 to-market on this swap at the end of October
 9 because the contract price and the market price
 10 were the same in my example, right? Based on
 11 your expectation. If your expectation's wrong,
 12 then you're covered, but if your expectation's
 13 correct, there's no mark-to-market, right?
 14 A. There just might be more elements in the whole
 15 mark-to-market --
 16 Q. Assuming there are no other elements, Mr. Kind,
 17 and assuming your expectation is correct, there
 18 would be no mark-to-market if the contract price
 19 and the market price is the same at the end of
 20 October, isn't that correct?
 21 A. I don't know.
 22 Q. I want you to assume that's correct for the
 23 purposes of my questions, all right?
 24 A. Assume -- you want me to assume that there is
 25 no --

1 Q. Mark-to-market --
 2 A. -- mark-to-market --
 3 Q. -- adjustment.
 4 A. -- adjustment at the end of October. Okay.
 5 Q. I want you to assume that when the contract
 6 price and the market price of the commodity
 7 that's the subject of the swap are the same at
 8 the end of the month, that there is no mark-to-
 9 market adjustment. Can you make that
 10 assumption?
 11 A. Okay.
 12 Q. You have that assumption in mind, correct?
 13 A. Yes.
 14 Q. All right. Based on that assumption for this 50
 15 megawatt on peak swap that we are talking about,
 16 since the market price and the contract price
 17 are both \$50 on October 31, there would be no
 18 mark-to-market adjustment based on that
 19 assumption, right?
 20 A. Again, I don't know. I'm -- I just don't -- I
 21 just don't work in this area enough to really
 22 say I don't think.
 23 Q. Based on the assumption that if the market price
 24 and the contract price is the same, there is no
 25 mark-to-market adjustment. That's the

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1 assumption that I'm asking you to assume,
2 correct?
3 A. Uh-huh. That's what you're requesting, yes.
4 Q. Based on that assumption if the contract price
5 and the market price are both \$50 on October 31,
6 there would be no mark-to-market adjustment,
7 correct?
8 A. I'm just not sure.
9 MR. LOWERY: Let's go off the record.
10 (Off the record.)
11 Q. (By Mr. Lowery) Go back on the record.
12 Mr. Kind, we had an off-the-record discussion,
13 and your attorney explained to you that these
14 are hypothetical questions based upon
15 hypothetical assumptions. You understand that,
16 right?
17 A. Yes, I do.
18 Q. Let's reset the hypothetical again. On October
19 31st UE sells a 50 meg -- 50 megawatt on peak
20 swap that relates to 16,000 megawatt hours of
21 power and that swap under the contract will
22 settle in February '09 at a -- at -- and the
23 swap was contracted for at the then market
24 price, the October 31 market price of \$50 a
25 megawatt hour. Do you understand those

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1 assumptions?
2 A. I guess it's not real clear to me what you're
3 defining as a swap, but.
4 Q. Other than understanding the intricacies of a
5 swap, you understand the question. Is that --
6 those assumptions; is that correct?
7 A. In just the general mechanics, I mean it's going
8 to settle in February '09, I'm not real clear on
9 the mechanics of that.
10 Q. When I say settle, I mean that the company has
11 entered into an obligation to deliver that power
12 or deliver dollars that would equate to that in
13 February '09. Do you understand that?
14 A. So, and by deliver power you mean physical
15 delivery like to a hub, something like that I
16 suppose?
17 Q. Mr. Kind, is it fair to say that you've never
18 engaged in any kind of short term or long term
19 speculative trading?
20 A. Don't think I have.
21 Q. You don't deal in options, financial options?
22 A. No experience with that.
23 Q. You don't deal in swaps?
24 A. No, I don't deal in swaps.
25 Q. You don't deal with any of the instruments that

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1 make up the short term spec or the long term
2 spec that we talked about that's listed on page
3 6, lines 19, 20 -- excuse me, 20 and 21 of your
4 surrebuttal testimony, is that fair to say?
5 A. Which lines did you specify?
6 Q. Lines 20 and 21.
7 A. Lines 20 and 21.
8 Q. Of your surrebuttal testimony.
9 A. No, I really don't.
10 Q. You really don't know anything about how
11 these -- how those instruments work, do you?
12 A. I know, you know, just a little general
13 knowledge, but in terms of specific knowledge, I
14 wouldn't go -- get involved in that market
15 myself with --
16 Q. You don't know --
17 A. -- my level of knowledge.
18 Q. You don't know how the mark-to-market accounting
19 rules affect the Company's income statement
20 month-to-month relating to the instruments that
21 are dealt with in the long term spec and the
22 short term spec, do you?
23 A. Not in a precise way.
24 Q. How about an imprecise way, what's your
25 imprecise understanding about how the mark-to-

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1 market affects the income statement?
2 A. I would say just that there is an effect based
3 on variations in the market.
4 Q. Are effects on a utility's income statement the
5 same as revenues the utility receives?
6 A. No. I mean there's a difference between the
7 cash flows to that effect.
8 Q. Are -- are utility rates set based upon a
9 company's income or are utility's rates based
10 upon revenues, like revenues for native load,
11 revenues for off system sales, other
12 miscellaneous revenues like revenues from
13 trading? Which is it, are utility rates in the
14 rate-making formula utilized by the Commission,
15 are they -- is a component of that calculation
16 revenues or is a component net income?
17 A. I think revenues is probably the right answer.
18 Q. Let me make sure you and I understand the rate-
19 making formula, the basic formula. The formula
20 is, if I'm trying to figure out a utility's
21 revenue requirement, I add up all the utility's
22 expenses for a given test year period, right?
23 That's one component; is that right?
24 A. Expenses, yes, that's right.
25 Q. Depreciation, second component, right?

1 A. Yes.
 2 Q. Taxes, third component, right?
 3 A. That's also a component.
 4 Q. And then there's a return on rate base is the
 5 fourth component, right?
 6 A. I think there's cost to debt.
 7 Q. Doesn't the return on rate base encompass -- I'm
 8 not talking about just return on equity.
 9 A. Oh, okay.
 10 Q. Return on rate base, wouldn't --
 11 A. The total.
 12 Q. -- that encompass --
 13 A. Sure, sure.
 14 Q. Weighted average cost of capital would include
 15 the cost of debt?
 16 A. Yeah.
 17 Q. So again expenses, taxes, depreciation, and
 18 return on rate base, I sum those up for whatever
 19 test period I'm examining. When I say I, I
 20 guess I should say whatever test period the
 21 Commission's relying upon. I sum those up and I
 22 get a revenue requirement, correct?
 23 A. That's the basic rate-making formula I think,
 24 yes.
 25 Q. That's the formula the Missouri Commission uses

1 indicate a rate increase is warranted, or the
 2 opposite would be true, if the revenues were
 3 more than that revenue requirement, then a rate
 4 decrease would be indicated if the revenues for
 5 that test period were more than that revenue
 6 requirement, right?
 7 A. The normalized revenues.
 8 Q. Normalized revenues, I'll amend my question.
 9 A. Right.
 10 Q. The normalized revenues, right?
 11 A. Right.
 12 Q. Just like the expenses are normalized on the
 13 expense side, right?
 14 A. Yes.
 15 Q. In comparing revenues and figuring out whether a
 16 rate increase or a rate decrease is warranted,
 17 the Commission, in none of those calculations
 18 does the Commission look at income of the
 19 utility, right? Commission's looking at
 20 revenues on the revenue side, not income,
 21 right? Not income from an income statement
 22 perspective, correct?
 23 A. I would think that's generally correct. If
 24 there are exceptions, could be, I don't know.
 25 Q. You're not aware of any --

1 and will be using in this case, correct?
 2 A. I think that's the general formula. I --
 3 frankly if they depart from that formula at
 4 times, I -- I don't know.
 5 Q. You've been working in the Office of Public
 6 Counsel for what, 15 plus years, 20 years?
 7 A. Uh-huh, that's right.
 8 Q. You've been in a lot of rate cases, right? Lot
 9 of cost of service rate cases for electric
 10 utilities and water utilities and gas utilities,
 11 all of which are regulated in essentially the
 12 same way, correct, from a -- from a rate making
 13 perspective?
 14 A. Yes.
 15 Q. Those four components, those are the basic four
 16 components of the revenue requirement for a
 17 utility like Union Electric Company, right?
 18 A. That's right.
 19 Q. And so you -- you come up with that revenue
 20 requirement on one side and then on the other
 21 side you have to look at revenues. So you have
 22 to add up native load revenues, off system sales
 23 revenues, other revenues, and if the revenues
 24 based on that same test year period are less
 25 than the revenue requirement, then that would

1 A. No.
 2 Q. -- exceptions to that rule?
 3 A. That's right.
 4 Q. Okay. And we agreed a minute ago that you have
 5 a general enough understanding of the mark-to-
 6 market to know that mark-to-market adjustments
 7 affect the income statement, not the revenues of
 8 the utility, right?
 9 A. Yes, I think that's right.
 10 Q. So when a contract is mark-to-market at the end
 11 of each month, there's no revenue associated
 12 with that mark-to-market, the income statement
 13 moves up or down, but there's no revenue, right?
 14 A. As long as they continue to -- to hold the
 15 financial instrument, or the, you know, the
 16 contract stays as it is.
 17 Q. And when the contract is no longer held, it
 18 settles, the transaction concludes, whatever
 19 term you want to use, at that point there's
 20 going to be a revenue if the contract is in the
 21 money. Do you know what I mean by in the money
 22 from the utility's perspective?
 23 A. Yes, I do.
 24 Q. So if it's in the money, the utility made a good
 25 decision, then there will be revenue when that

1 contract settles, right?
 2 A. Yeah. I mean probably there's revenue either
 3 way, but is it enough revenue to cover expenses
 4 is the question.
 5 Q. There'll be net revenues in favor of the utility
 6 if the utility --
 7 A. The margin -- yeah.
 8 Q. If the utility made a good bet, right?
 9 A. Yeah. I don't think all these things have to do
 10 with making bets. Sometimes it's risk
 11 mitigation.
 12 Q. Okay.
 13 A. But yeah.
 14 Q. Whatever -- whatever reason if -- if the
 15 contract settles, the utility's either going to
 16 have a net gain or -- net revenues, a net gain
 17 or a net loss and there's going to be dollars,
 18 actual cash loads are going to change hands,
 19 right?
 20 A. That's right.
 21 Q. And the mark-to-market has nothing do with that,
 22 correct?
 23 A. No. It's sort of the value in the interim I
 24 suppose.
 25 Q. If you -- you are recommending that the -- that

1 that component of the gross margin would be
 2 included in that gross margin, included in off
 3 system sales margins for setting rates, correct?
 4 A. That's our current recommendation and that was
 5 put forth in surrebuttal, yes.
 6 MR. LOWERY: Mark that please.
 7 (Deposition Exhibit 3 was marked for
 8 purposes of identification.)
 9 Q. (By Mr. Lowery) Mr. Kind, is it your
 10 recommendation that income on the income
 11 statement related to the long term spec and the
 12 short term spec, that income be used in the
 13 gross margin calculation or that revenues and
 14 costs related to the long term spec and short
 15 term spec be included in the gross margin
 16 calculation?
 17 A. Recommendation in the surrebuttal was to use the
 18 UE calculation of gross margin.
 19 Q. So if UE calculates gross margin using revenues
 20 and costs associated with the long term spec and
 21 the short term spec and not income related to
 22 the long term spec and the short term spec,
 23 you're okay with using revenues and costs and
 24 not income; is that right?
 25 A. Yeah. I mean that's the definition here on, you

1 net gain and loss for the 12 months ending
 2 9-30-08 for this nonasset based trading, this
 3 long term spec, short term spec.
 4 A. Uh-huh.
 5 Q. You're recommending that that be included in the
 6 calculation of the Company's off system sales
 7 margins for purposes of setting rates in this
 8 case, right?
 9 A. I would like to hear that repeated again please.
 10 Q. You believe that the net gains and losses, the
 11 revenues and the costs associated with long term
 12 spec and short term spec, you believe that those
 13 are part of the gross margin, correct?
 14 A. Yes.
 15 Q. And your recommendation is that the gross margin
 16 for the 12 months ending 9-30-08 be the off
 17 system sales margin number for the Company in
 18 this case, right?
 19 A. That's the recommendation.
 20 Q. All right. And one component of that gross
 21 margin is this long term spec, short term spec,
 22 right?
 23 A. That's right.
 24 Q. And you would recommend that the revenues and
 25 the costs matching up that same 12 month period,

1 know, on page 10 at line 17. It's revenues
 2 minus costs from all those activities.
 3 Q. Mr. Kind, I'm going to hand you what's been
 4 marked Deposition Exhibit RK3 and ask you if you
 5 recognize that set of documents?
 6 A. I'm sorry I'm pausing to respond. I guess I
 7 should look through all of them. I did take a
 8 brief look at these as they arrived by -- by
 9 email yesterday afternoon.
 10 Q. You recognize that as the Company's -- may I
 11 have it please?
 12 A. Certainly.
 13 Q. Because I can't remember the number. You
 14 recognize this as being the Company's corrected
 15 response to OPC DR's 2178 and 2179, correct?
 16 A. Yes.
 17 Q. And you understand that the Company explains in
 18 this response, in this corrected response to
 19 2178 that the prior information that the Company
 20 provided you that you actually included as
 21 Attachment D to your surrebuttal testimony was
 22 incorrect? You understand that, correct?
 23 A. I think that's the gist of it. Again I've just
 24 taken a quick glance at it as it came in
 25 yesterday.

1 Q. Is it -- is -- and you take all the time you
 2 need right now because it's only a paragraph
 3 long.
 4 A. Sure.
 5 Q. And has a spreadsheet attached.
 6 A. Okay.
 7 Q. But is a fair characterization of Mr. Dodd's
 8 corrected response that the Company previously
 9 provided you income figures related to the long
 10 term spec and the short term spec instead of
 11 providing you revenues and costs related to the
 12 short term spec and the long term spec?
 13 A. Yeah, it -- I think that's correct. Then the
 14 numbers that they provided before were not
 15 accurate in the sense that I requested --
 16 Q. You asked for revenues?
 17 A. -- revenues and costs and --
 18 Q. You asked for revenues and costs because when
 19 you set rates --
 20 A. And that's what --
 21 Q. -- you set it based -- I'm sorry.
 22 A. -- the Company represented them to be, but now
 23 they're -- they've recognized apparently that
 24 there was an error.
 25 Q. I apologize for speaking over you. Just so the

1 Q. And let me -- let me just back up. What you did
 2 to come up with the \$ [REDACTED] million number in
 3 your surrebuttal testimony is that you added up
 4 the revenue, slash, cost row on Attachment D for
 5 October, November, and December '07 and for
 6 January through September '08, right? You
 7 netted them together. When I say add up, but
 8 you netted all those 12 months together,
 9 correct?
 10 A. I think the margins were already calculated in
 11 what I was provided earlier. I didn't
 12 recalculate them.
 13 Q. Well, let's -- let's do that. I hate to take
 14 the time, but I think we better just so that the
 15 record's clear.
 16 A. Is this the original DR response that we're
 17 looking at now?
 18 Q. This is your attachment D.
 19 A. Oh, okay.
 20 Q. Which was the --
 21 A. Oh, I -- I'm sorry, I'm sorry.
 22 Q. You have that, right?
 23 A. I was on -- I do. I was on E. Okay. Okay.
 24 Q. So we're looking at Attachment D as in dog to
 25 your surrebuttal testimony, right?

1 record's clear because I doubt if we got that
 2 very clearly, what Mr. Dodd has told you there
 3 is, I gave you the wrong information, I gave you
 4 income figures, not revenue figures, you asked
 5 for revenue figures and so I'm now giving you
 6 the revenues and the costs associated with the
 7 long term spec and short term spec, right?
 8 A. That's what he says he's providing this time.
 9 Q. And -- and it made sense that you asked for
 10 revenues and costs instead of income because as
 11 we just talked about if you're setting rates,
 12 you're looking at revenues and costs, you're not
 13 looking at income on the income statement,
 14 right?
 15 A. Well, I was just looking for the revenues and
 16 costs in this particular area. That's the data
 17 that I -- that I wanted.
 18 Q. Right.
 19 A. To use in formulating Public Counsel's position.
 20 Q. So to the extent that your Attachment D had the
 21 wrong information and it was income and not
 22 revenues --
 23 A. Attachment D to?
 24 Q. To your surrebuttal testimony.
 25 A. Surrebuttal, yeah.

1 A. Uh-huh.
 2 Q. And that's the original incorrect response to
 3 OPC 2178 and 2179, right?
 4 A. Yes.
 5 Q. And if you were to add up the revenue, slash,
 6 cost row --
 7 A. Uh-huh.
 8 Q. -- for October, November, and December '07 and
 9 for January through September '08, you net those
 10 12 figures together, you would get the \$ [REDACTED]
 11 million positive number that you have in your
 12 surrebuttal testimony, right?
 13 A. That's how I calculated it, yes.
 14 Q. All right. To -- actually and since that's as
 15 Mr. Dodd explains in Deposition Exhibit RK3,
 16 since your Exhibit D numbers were income and not
 17 revenue through no fault of yours, the
 18 calculation of the [REDACTED] million is wrong, isn't
 19 it?
 20 A. Well, I'll need to look at these things.
 21 Q. All right. Well, let's take a look at them.
 22 Would you please add up the actual revenues and
 23 costs for the long term spec and short term spec
 24 for October '07 through September '08 that's
 25 been provided by Mr. Dodd in the corrected

1 responses to OPC 2178 and 2179 that have been
 2 marked as Deposition Exhibit RK3?
 3 A. Okay, let's see.
 4 Q. Just hit the on, CA button down there to your
 5 left. There you go.
 6 A. Gotcha, thank you.
 7 Q. Would you rather have your own --
 8 A. Oh, I can certainly add them up. I do these
 9 kind of things in spreadsheets where it's kind
 10 of like if you do a, you know, calculation,
 11 you've got adding machine tape and a
 12 spreadsheet. I mean we can -- subject to
 13 later --
 14 MR. LOWERY: Why don't we go off the record.
 15 (Off the record.)
 16 Q. (By Mr. Lowery) Let's go back on the record.
 17 Mr. Kind, you have now taken a look at the
 18 actual Excel spreadsheet that was provided in
 19 re -- in the corrected response to OPC DR 2178
 20 and 2179 which has been marked as Deposition
 21 Exhibit RK3. And you verified that using the
 22 revenues and costs, not the income that Mr. Dodd
 23 incorrectly gave you before, but using the
 24 revenues and costs for the speculative book for
 25 October '07 through September '08, the Company's

1 actually lost approximately \$ [REDACTED] on the long
 2 term spec and the short term spec, correct?
 3 A. I think that's correct. That's what the latest
 4 DR response indicates, yes.
 5 Q. If this data's what it's represented to be, the
 6 Company has lost this [REDACTED] -- roughly \$ [REDACTED] on
 7 the long term spec and the short term spec for
 8 the 12 months ending September 30, '08, if the
 9 data is what it's represented to be, right?
 10 A. I think so. I had some difficulty getting
 11 information from the Company in this area, but
 12 I, you know, I think that's probably correct.
 13 The Company has indicated that it's changed its
 14 accounting in this area in response to what they
 15 say are some FERC requirements and because of
 16 that you'll see a change in the numbers I think
 17 when you get to maybe June or July of '08, but I
 18 think so.
 19 Q. You don't have any reason to believe that that's
 20 incorrect at this moment as you sit here?
 21 A. No. But it's an area that I may explore further
 22 still.
 23 Q. I take it that if in fact as appears to be the
 24 case, the Company's lost \$ [REDACTED] instead of
 25 made \$ [REDACTED] million over the last 12 months, if

1 in fact that lowers the Company's gross margin,
 2 that's okay with you, it would still be your
 3 position that the long term spec and the short
 4 term spec should be included in the
 5 determination of off system sales margins in
 6 this case; is that right?
 7 A. At this point I haven't changed from the
 8 recommendation in surrebuttal testimony about
 9 that methodology of calculating gross margin is
 10 what we should be using to come up with off
 11 system sales.
 12 Q. So a loss, a loss in the long term spec or the
 13 short term spec will be reflected in the gross
 14 margin, won't it?
 15 A. I would expect it would be, yes.
 16 Q. So the gross margin's going to be smaller if
 17 there's a loss on the speculative book for the
 18 period over which you're examining the gross
 19 margin than is -- than if there was a gain in
 20 the speculative book, right?
 21 A. Probably. I'm still waiting to get the
 22 calculation of gross margin, but there's --
 23 Q. But --
 24 A. -- some logic to that.
 25 Q. -- as you sit here today, OPC's not changing its

1 recommendation for how the speculative book
 2 should be treated for rate making purposes in
 3 this rate case; is that right, as you sit here
 4 today?
 5 A. Have -- no, we haven't made any changes. You
 6 know, just getting some new information I
 7 usually adjust some information for a while
 8 before formulating a position.
 9 Q. Mr. Kind, do you dispute that the Uniform System
 10 of Accounts requires that the long term spec and
 11 the short term spec be booked or accounted for
 12 below the line, below the line meaning not as
 13 part of the regulated rate, regulated aspect of
 14 the Company's business?
 15 A. I don't really have an opinion on that I don't
 16 think. I haven't looked up that regulation, and
 17 so -- and I don't think you have to rely
 18 strictly on Uniform System of Accounts --
 19 Q. Well, that wasn't --
 20 A. -- for those purposes.
 21 Q. The second part of that wasn't my question.
 22 Let's assume for purposes of my question, it's
 23 just an assumption, the assumption may be wrong,
 24 in fact I think it is wrong, but for purposes of
 25 my question assume that the Missouri Commission

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1 was bound in all respects to follow the Uniform
2 System of Accounts when it does rate making for
3 an electric utility, okay? Can you assume that?
4 A. And that's the USOA as modified by FERC over
5 time?
6 Q. The current edition of the USOA issued by the
7 Federal Energy Regulatory Commission for
8 Electric Utilities.
9 A. Okay.
10 Q. Okay. Can you make that assumption?
11 A. Yes.
12 Q. All right. Do you dispute that based on that
13 assumption that the long term spec and the short
14 term spec should not be accounted for as part of
15 the revenue requirement in this case?
16 A. No.
17 MR. LOWERY: Just mark these please.
18 (Deposition Exhibits 4 and 5 were marked for
19 purposes of identification.)
20 Q. (By Mr. Lowery) Going to hand you what's been
21 marked Deposition Exhibits 4 and 5 and ask you
22 if you recognize those documents?
23 A. Yes, I do.
24 Q. Can I have them please?
25 A. Certainly.

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1 Q. These are the Company's responses to OPC DR's
2 2067 and 2090, correct?
3 A. That's correct.
4 Q. Is a fair characterization of these two
5 responses that they indicate that the FERC
6 Uniform System of Accounts for Electric
7 Utilities does require that the long term spec
8 and the short term spec be recorded below the
9 line?
10 A. They -- they indicate that that's the opinion of
11 Union Electric, yes.
12 Q. Do you have a different opinion?
13 A. I haven't -- I don't really have an opinion
14 about that.
15 Q. You don't have an opinion one way or the other
16 about whether Union Electric Company's opinion
17 about what the USAO -- USOA has to say on this
18 is correct or incorrect, is that fair, you don't
19 have an opinion about that?
20 A. That -- that's fair.
21 Q. Okay. If you assume -- if you were to assume
22 that Union Electric Company's opinion was right,
23 is it OPC's position that the Commission should
24 give the Company accounting authority to account
25 for the long term spec and the short term spec

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1 above the line?
2 A. If -- if such an accounting authority order
3 would be necessary to do that, that would be
4 consistent with our recommendation.
5 Q. All right, fair enough. On page 13 of your --
6 of your surrebuttal testimony you begin to
7 explain why you changed your overall
8 recommendation about off system sales between
9 your direct testimony and your surrebuttal
10 testimony, right?
11 A. Yeah, I think I touch on it earlier, but
12 that's -- that's where I -- I do --
13 Q. Well, you ask yourself a direct question at line
14 16 and 17 on page 13 in your surrebuttal
15 testimony. Why has OPC chosen to change its
16 proposal for off system sales margins at this
17 time, right?
18 A. Yes, that's correct.
19 Q. So this is your basic -- that -- the answer
20 following that question is your basic
21 explanation for why you're proposing something
22 different in surrebuttal than you did in direct,
23 is that fair?
24 A. Well, it's -- most of it. It's also addressed
25 just briefly on page 9, line 6 where it talks

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1 about how -- well, I guess going up above that
2 from lines four to eight, OPC's decision to drop
3 our recommendation with respect to components of
4 financial hedging and net --- net margins, other
5 than nonasset based trading components also been
6 influenced by our decision to --
7 COURT REPORTER: I'm sorry?
8 THE WITNESS: I'm sorry. I -- also been
9 influenced by our decision to recommend that the
10 Commission use actual OSS margin results from
11 the year ending September 30, 2008, in place of
12 OPC's prior direct testimony proposal to use
13 UE's 2008 budget projections for OSS margins.
14 Q. (By Mr. Lowery) All right. So lines 4 to 8 on
15 page 9 gives a little bit of information about
16 why you changed your proposal and then the
17 answer starting on line 18 of -- on page 13 of
18 your surrebuttal is the rest of the explanation,
19 correct?
20 A. Yeah. I don't know if it continues to 14 or
21 not. I think it does.
22 Q. Yeah, I said the answer beginning on --
23 A. Oh, okay.
24 Q. -- line 18 of page 13.
25 A. Sorry.

1 Q. Right?

2 A. Yes.

3 Q. That goes over to line 13 of page 14, right?

4 A. Yes, that's right.

5 Q. Okay. Now one reason that you give, you cite

6 the Empire case and that would be the Empire

7 case, case number ER-2008-0093; is that right?

8 A. Yeah.

9 Q. You cite the Empire case, and you essentially

10 indicate that the Commission used the last 12

11 months of data through the Empire true up and so

12 that influenced your decision to recommend that

13 the Commission use the last 12 months of

14 information through the true up in this case,

15 right?

16 A. It was part of our -- change in our

17 recommendations, yes.

18 Q. That was one reason, right?

19 A. One element.

20 Q. Right. Am I correct that off system sales

21 margins for Empire are a much, much smaller

22 portion of Empire's profits than they are for

23 UE?

24 A. Yes, I think that's correct.

25 Q. When did the MISO Day 2 energy market commence

1 operation?

2 A. Oh, probably about two or three years ago.

3 Q. Does April 1, 2005, sound right?

4 A. I'm not sure. I mean it's definitely in the

5 ballpark. I've got it. I think I also refer

6 here, I think it's in this passage where I refer

7 to my direct testimony in UE's last rate case

8 and -- where it gets into some of those details,

9 that they would probably be found there in the

10 passage that I've referenced.

11 Q. That doesn't sound too far off from being

12 accurate to you as you sit here today?

13 A. No. I -- it certainly doesn't.

14 Q. All right, that's fine. Is it fair to say that

15 the MISO Day 2 energy market operates today much

16 like it did when it started?

17 A. Yes, I think so.

18 Q. Which means Union Electric has, if my date's

19 right, more than three years experience

20 operating the Day 2 energy market, you said two

21 or three years ago, you said my date sounds like

22 it may be about right. But in any event Union

23 Electric Company's got two, three plus years of

24 experience in the MISO Day 2 energy market,

25 correct?

1 A. UE or its agent, Ameren Energy, yeah.

2 Q. And Ameren Energy was the agent for Union

3 Electric Company's power sales into the market,

4 right?

5 A. Their sales and ADM sales or Magenco sales, yes.

6 Q. Well, are you sure about that?

7 A. For -- through the JDA. Those sales were made

8 by Ameren.

9 Q. Is it your testimony that Ameren Energy at any

10 time made sales of energy from the nonUnion

11 Electric Company generating units?

12 A. That's my understanding, yes. That they made --

13 they made the -- the end money energy sales for

14 energy that was, you know, in excess of what was

15 needed to serve the loads of ADM and UE.

16 Q. It's your understanding? You don't know for

17 sure if that's right; is that correct?

18 A. That's my recollection. I mean --

19 Q. The --

20 A. -- I haven't looked at -- I haven't looked at

21 the JDA recently and studied that, you know,

22 just recently for this case, you know, if that's

23 what you're getting at.

24 Q. You could be wrong about that, couldn't you?

25 A. It's possible, sure.

1 Q. Isn't -- in fact isn't -- wasn't the JDA simply

2 an after the fact accounting -- called for an

3 after the fact accounting adjustment that

4 allocated margins from off system sales between

5 the UE's affiliate in Illinois and UE?

6 A. I think that characterization may be correct.

7 But it's not inconsistent with Ameren Energy

8 being the entity that made the -- the sales for

9 both ADM and UE.

10 Q. Well, regardless the -- the folks who bid UE's

11 generation into the MISO Day 2 market have, if

12 my time frame is correct, April 1, 2005, have

13 more than three years of experience in doing

14 that, correct?

15 A. Well, when you say the folks, I mean it's

16 changed over time. It was Ameren Energy and

17 now --

18 Q. It's generally --

19 A. -- it's AM&T.

20 Q. -- the same group, isn't it?

21 A. Well, I mean Shawn Schukar's gone from that

22 group and I think that obviously he was a key

23 part of it I would think.

24 Q. Is it generally the same group with the

25 exception of the fact that Mr. Schukar has a

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1 different position now, do you know?

2 A. I -- I really don't know --

3 Q. You really --

4 A. -- that it is.

5 Q. -- don't know, do you?

6 A. Again as I -- Mr. Schukar would be a key change,

7 but I -- there's -- there are transfers of -- of

8 personnel amongst the Ameren affiliates on a

9 pretty regular basis I think.

10 Q. In the Empire case you cite the Commission went

11 with your recommendation to use off system sales

12 margins for Empire for the 12 months ending

13 February 28th, '07, I think it was in that case.

14 So that was the true up date in that case.

15 A. I believe that's right.

16 Q. Because that was the first 12 month period

17 following the start of the EIS market in SPP,

18 that's why the Commission went with that

19 recommendation, isn't that right?

20 A. I think that was, you know, one of the things

21 that they considered by pointing that out in my

22 testimony.

23 Q. That was the primary reason they made that

24 decision, isn't it, as reflected in their report

25 and order?

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1 A. I couldn't say without looking at the report and

2 order. You obviously have it there and I don't.

3 Q. Let's go ahead and mark that.

4 (Deposition Exhibit 6 was marked for

5 purposes of identification.)

6 Q. (By Mr. Lowery) I'm going to hand you what's

7 been marked Deposition Exhibit RK6 and ask you

8 if you recognize it as the Commission's report

9 and order in the Empire case we've been

10 discussing?

11 A. Yes, I do.

12 Q. Would you take a look at the Commission's

13 decision on off system sales on page 56 and

14 verify that in fact that is the Commission's

15 decision on off system sales margins on page 56?

16 A. I think I'm in agreement with your last

17 question, but if you'd repeat it again, that

18 would be helpful.

19 Q. Would you just verify that the Commission's

20 decision on off system sales margin in the

21 Empire case we've been discussing is reflected

22 under the heading called decision on page 56 of

23 that report and order, Deposition Exhibit RK6?

24 A. Sure, yes.

25 Q. And is it a fair characterization of their

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1 decision that they cite their agreement with the

2 Office of the Public Counsel to use the last 12

3 months of margins through the end of the true up

4 date in that case on the basis that the EIS

5 market in SPP started up within that 12 month

6 period?

7 A. That's -- that's what they cite in their

8 decision. There's other factors, you know,

9 above there in their discussion that they cite

10 as well.

11 Q. May I have that please?

12 A. Yes.

13 Q. In their decision that's the only factor they

14 cite, isn't --

15 A. That's correct.

16 Q. -- that fair to say?

17 A. That's correct.

18 Q. They found that Empire's prospects for future

19 off system sales, quote, fundamentally changed

20 within that 12 month period because of the EIS

21 market, correct?

22 A. Yes.

23 Q. UE prospects relating to off system sales didn't

24 fundamentally change on October 1, 2007, did

25 they?

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1 A. Was that the date when the JDA terminated?

2 Q. No, no. It's just October 1, 2007. It's the

3 first day of the 12 month period --

4 A. Oh, October.

5 Q. -- for the 12 months ending the --

6 A. I see what --

7 Q. -- test year, right?

8 A. -- you're saying. I guess I -- okay.

9 Q. Let me ask the question again. UE's prospects

10 for making off system sales in the MISO Day 2

11 market didn't fundamentally change on October 1,

12 2007, did they?

13 A. Not on that one day, no.

14 Q. Didn't fundamentally change between October 1,

15 2007, and September 30, 2008, either, did they?

16 A. Prospects have changed with the, you know,

17 there's been a delay in the ancillary services

18 market actually going into effect, but in terms

19 of the prospects, that's something that has

20 changed I would say during that time period.

21 Q. The MISO Day 2 market operates as of today and

22 it operated as of September 30th, 2008,

23 essentially the same way that it's operated

24 since the beginning of the MISO Day 2 market.

25 We talked about that earlier, correct?

1 A. Yeah, I don't think I'm disagreeing with that.
 2 Q. Nothing happened on October 1, 2007, that
 3 constituted a fundamental change or a major
 4 change in the way the MISO Day 2 market worked
 5 in the ensuing 12 months or a major change or a
 6 fundamental change in UE's prospects for making
 7 off system sales, isn't that fair to say?
 8 A. On that date, I don't think anything happened
 9 that would have changed those things.
 10 Q. And through September 30th, 2008, nothing has
 11 changed since October 1, '07 to -- to September
 12 30th, 2008, nothing of any substance has changed
 13 in the operation of the market, right?
 14 A. Of the MISO Day 2 market --
 15 Q. Correct.
 16 A. -- you're referring to? No, no, I don't think
 17 so.
 18 Q. And if we go back to October 1, 2006, nothing
 19 major or fundamental changed about the operation
 20 of the MISO Day 2 market on that date either,
 21 did it?
 22 A. No.
 23 Q. And if we look at October 1, 2006, to September
 24 30, 2008, no fundamental or major changes in how
 25 the MISO Day 2 market operates have occurred

1 during that 24 month period, isn't that right?
 2 A. What was the start and end again?
 3 Q. October 1, '06, to September 30, '08.
 4 A. That's correct.
 5 Q. So at least over the last 24 months and if we --
 6 and if the MISO market in fact started on April
 7 1, '05, all the way back to April 1, '05, the
 8 fundamental market conditions and opportunities
 9 for UE's generation to be sold have not changed,
 10 correct?
 11 A. No, I -- I don't think I can agree with that.
 12 Going from what date, starting again there?
 13 Q. Let's go from October 1, '06 first through
 14 September 30th, '08. There's been no
 15 fundamental or major change during that 24 month
 16 period in how Union Electric Company bids its
 17 generation, how it makes off system sales?
 18 A. Well, I think there has. It's -- the JDA went
 19 away during that period, so there's -- UE's
 20 often making sales at market instead of making
 21 transfers at cost to its affiliates.
 22 Q. Well, let me ask you this, Mr. Kind. The
 23 termination of the JDA did not change how UE bid
 24 its generation into the MISO Day 2 market, did
 25 it?

1 A. If you're talking about just the methods that
 2 they used to bid versus the amount of excess
 3 energy that they'd have available to bid in.
 4 Are you limiting it to just the methods or are
 5 we including a broader view of what --
 6 Q. Before the JDA terminated, did UE bid its units
 7 in on a day ahead basis based upon the economic
 8 dispatch of those units and the locational
 9 marginal prices in the market? Is that how UE
 10 bid those units in before the JDA terminated?
 11 A. Basically I would say yes.
 12 Q. The day after the JDA terminated, did UE
 13 continue to bid those units in basically the
 14 same way?
 15 A. Again it's back to what do you mean by bid those
 16 units in. They're going to have more excess
 17 energy from those units to bid into the market.
 18 Q. That's not true, is it? The JDA was an after
 19 the fact accounting device that allocated who
 20 got the profits from the excess energy that UE
 21 was selling into the market, but it didn't
 22 affect the dispatch of the UE units and it
 23 didn't affect what units were bid in at what
 24 price, did it?
 25 A. No, I don't think I can agree with that. It's

1 not that I disagree, but I'm just not -- I'm not
 2 sure about that.
 3 Q. You don't know, do you? You're assuming when
 4 you cite the JDA as some fundamental change,
 5 you're assuming that the JDA affected how UE bid
 6 its units into the MISO Day 2 market, aren't
 7 you?
 8 A. That and just the, you know, the general mind
 9 set of -- of the utility and how it changes when
 10 you're not linked together with your -- with
 11 affiliates like that. You're becoming, I
 12 wouldn't say you're becoming independent of your
 13 other affiliates, but there is an increase in
 14 independence probably.
 15 Q. Let me ask the question again. It's a yes or no
 16 question. You may be assuming other things, but
 17 one of things you're assuming when you cite the
 18 JDA as some fundamental change, when you cite
 19 the termination of the JDA as a fundamental
 20 change, you are assuming that the termination of
 21 the JDA changed the manner and method by which
 22 UE decided which units to be bid and at what to
 23 bid them into the MISO Day 2 market, that's one
 24 of the assumptions you're making, yes or no?
 25 A. I think I was making that assumption --

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1 Q. You were making that --

2 A. -- when I --

3 Q. You've answered --

4 A. -- wrote the testimony.

5 Q. -- my question. You've answered my question,

6 Mr. Kind.

7 A. I guess we --

8 Q. And that assumption may or may not be correct.

9 You don't know if that's assumption's correct or

10 not, do you?

11 A. The assumption that -- that the method of

12 bidding it into market changed or remained

13 constant?

14 Q. Yeah.

15 A. Is that the assumption?

16 Q. That's right. You don't know if that

17 assumption's correct or not, do you?

18 A. Not right now I don't.

19 Q. Does the Commission's report and order in the

20 Empire case indicate that using the most recent

21 12 months is always the best indicator of

22 margins in coming years?

23 A. No.

24 Q. Now you also cite as -- well, let me ask you

25 this. You used the term "major change" in your

Page 111

1 surrebuttal testimony on page 14 at line 2. Can

2 you define what you mean for me by major?

3 A. Significant changes.

4 Q. Is major different or the same than a

5 fundamental change? Commission used the term

6 "fundamental" in the Empire decision. Are you

7 using the term "major" synonymously with

8 fundamental or is it different somehow?

9 A. I don't know. I hadn't really thought about it.

10 Could be the, you know, you'd look at the

11 changes and a couple of major changes can add up

12 to a fundamental change. I haven't really tried

13 to track with, you know, how it matches up with

14 their language.

15 Q. I didn't ask you to try to track. It was your

16 word. How do you think it lines up with their

17 language? Do you think that -- is it in your

18 mind major is something less than fundamental or

19 maybe you need more than one major change to add

20 up to a fundamental change, is that -- is that

21 your characterization, the words that you chose?

22 A. I just wasn't really, you know, looking at the

23 relative significance of those two terms I guess

24 when I -- when I picked the term that I've

25 stated here, being a major change.

Page 112

1 Q. Major and significant are synonymous in your --

2 in your view, your use of the term "major"?

3 A. Yeah, as adjectives. It's the changes

4 themselves that would be, you know, important.

5 Q. You talk about recent changes, what's recent?

6 A. Recent would just be I would say the last couple

7 years.

8 Q. Last couple years?

9 A. For purposes of this discussion.

10 Q. One of the -- you cited the -- you cited the

11 Empire decision, talked about that, cited the

12 termination of the JDA, we talked about that as

13 being reasons the Public Counsel changed its

14 recommendations from the direct case. Third

15 thing you cited was the creation of the AM&T

16 group that you say started at the beginning of

17 2008?

18 A. Uh-huh.

19 Q. Right?

20 A. That's right.

21 Q. Can you explain in detail for me how the

22 creation of the new AM&T trading group is a

23 major change?

24 A. Uh-huh.

25 Q. In how Union Electric Company markets its excess

Page 113

1 energy?

2 A. Well, it just -- it's a major change I think in

3 the sense that it's -- it's moving people that

4 were in other affiliates directly under,

5 becoming part of the regulated entity. And I

6 think that would affect the mind set of people

7 working there to some extent as opposed to just

8 operating as an agent for someone. That would

9 be one part of the change. I think there's a

10 little bit less reliance on shared personnel

11 from -- from Ameren's service as you get --

12 again it's just more people who have more of a

13 focus of working for a regulated utility.

14 Q. At least from January 1, 2007 forward, Ameren

15 Energy was a subsidiary of Union Electric

16 Company and acted only as agent for Union

17 Electric Company, right?

18 A. That's not my understanding that they were a

19 subsidiary, but they -- I'm not sure.

20 Q. You don't know?

21 A. I just hadn't -- I guess I -- yeah, I guess I

22 don't know, I think that's right.

23 Q. You don't really know the details of how Ameren

24 Energy's operations differ or didn't differ or

25 don't differ I should say from AM&T's

Page 114

1 operations, do you?

2 A. I mean one of the -- I think I know that there's

3 a difference in terms of, you know, management.

4 I mean for example we had Andy Serri was heading

5 up both regulated and nonregulated trading

6 organizations and --

7 Q. Was Andy Serri --

8 A. -- that had been happening for a while.

9 Q. Was Andy Serri in charge of Ameren Energy in

10 2007?

11 A. No. I think it was 2006 was when he was in

12 charge.

13 Q. Starting 1-1-07 Andy Serri had nothing to do

14 with Ameren Energy, did he?

15 A. No. But it's still the organization that he

16 formerly ran and so you're asking me --

17 Q. That wasn't my --

18 A. You're asking me --

19 Q. That wasn't my question.

20 A. -- what the differences were and that's part of

21 how I see a difference.

22 Q. Well, the question I just asked you wasn't --

23 didn't have anything to do with the differences,

24 so let's see if I can get an answer to that

25 question. In 2007 Mr. Serri had no

Page 115

1 responsibility, supervision, connection with

2 Ameren Energy, yes or no?

3 A. No formal -- he was not in a formal chain of

4 command with Ameren Energy. I -- I can't say

5 for sure that he didn't have any involvement.

6 Q. You can't say for sure I'm not going to have a

7 car wreck on the way back to Columbia either,

8 can you, but you have no facts upon which to

9 base an assertion that Mr. Serri had --

10 A. Well, I sure --

11 Q. -- anything to do with Ameren Energy --

12 A. -- hope you don't --

13 Q. -- in 2007?

14 A. -- have a car wreck on the way back to Columbia,

15 Jim.

16 Q. Answer my question, Mr. Kind. You have no facts

17 upon which you are basing this implication that

18 Mr. Serri had something to do with Ameren Energy

19 in 2007, do you?

20 A. Don't have any reason to believe that, you know,

21 to say that with absolute certainty that he had

22 continual -- continuing involvement.

23 Q. You don't -- you're speculating. Any assertion

24 you make that Mr. Serri had any relationship to

25 Ameren Energy in 2007 is nothing but your

Page 116

1 speculation, right?

2 A. Well, no, I don't think so. I mean it depends

3 what you mean being involved in 2007. He was in

4 the loop on what -- what Ameren Energy was doing

5 in 2006 and the deals that they were making for

6 2007, so there were certainly lingering effects

7 of his involvement.

8 Q. Mr. Serri had no responsibilities as an

9 employee, agent, manager, executive, officer, or

10 in any other capacity with Ameren Energy after

11 12-31-2006, yes or no?

12 A. You know, beyond the lingering of the impacts,

13 just what you're mentioning I think the answer

14 would be, probably would be no.

15 Q. And you qualify it with probably because of some

16 speculation you have that there might be

17 something you don't know about, is that why you

18 qualify your answer with probably, there could

19 be something you don't know about?

20 A. Could be an area that, yeah, that --

21 Q. But you can't cite --

22 A. -- I -- that I'm not --

23 Q. But you can't cite anything, you can't cite to

24 anything, right?

25 A. Not that comes to mind right now, no.

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1 Q. Please identify for me whether the functions

2 performed by the AM&T group, this division of UE

3 as it's called now, whether those functions

4 differed in some material way from the functions

5 performed by Ameren Energy for UE?

6 A. Well, I think there's a -- it depends on

7 whether -- I don't know if you'd consider the

8 learning curve to be part of the functions.

9 Q. No, I don't.

10 A. No, okay.

11 Q. Functions. Did -- did Ameren Energy market UE's

12 excess energy?

13 A. Yes.

14 Q. AM&T does the same thing?

15 A. Yes.

16 Q. Did Ameren Energy market UE's capacity?

17 A. To some extent.

18 Q. Perhaps not as much marketing as you wanted them

19 to, but to the extent marketing of capacity was

20 done for UE, did Ameren Energy do that as

21 opposed to somebody else --

22 A. Yes.

23 Q. -- within the Ameren organization? Yes? Was

24 that a yes?

25 A. Yes.

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1 Q. Does AM&T do that now?
 2 A. Yes, they do.
 3 Q. Ancillary services, Ameren Energy performed the
 4 same function? I'm not talking about the
 5 magnitude of effort.
 6 A. Uh-huh.
 7 Q. But the same function related to Ameren's
 8 ancillary services that AM&T performs now?
 9 A. Yes.
 10 Q. Ameren Energy in terms of working with the power
 11 plants on coal blending at Sioux or other
 12 operational issues about how to -- to dispatch
 13 those plants in the most economically
 14 advantageous way, Ameren Energy did those things
 15 before, AM&T does them now, right?
 16 A. I -- the specific example you gave of the
 17 blending of fuels at Sioux, I'm not sure that
 18 initiative was -- was underway while -- within
 19 Ameren Energy, I'm not aware of that. I am
 20 aware of it at AM&T.
 21 Q. If it had have been, you don't know when Sioux
 22 coal blending started, you don't know if it
 23 started in '08 or went on in '07, '06, you just
 24 don't know?
 25 A. Well, it -- it showed up in either '07 or '08,

Page 119

1 I'd have to -- I'd have to look.
 2 Q. In fact Sioux coal blending was -- was an issue
 3 in the last rate case, wasn't it?
 4 A. I don't know.
 5 Q. In terms of staff? You don't know. You
 6 don't -- you don't realize -- you didn't realize
 7 that the company was blending coal at Sioux back
 8 in 2006 and that how that blending was done was
 9 a -- was a component in staff's and the
 10 Company's production cost modeling, you weren't
 11 aware of that?
 12 A. No.
 13 Q. Can you identify trading policies at AM&T that
 14 are different than the trading policies that
 15 bound Ameren Energy with respect to Ameren
 16 Energy's marketing of Union Electric Company's
 17 capacity or energy?
 18 A. Well, I know there's a, you know, there's a new
 19 version of the risk management guidelines that
 20 went into effect I think in May of '08, and I
 21 guess to answer your question I'd need to
 22 analyze that compared to prior versions.
 23 Q. You're not aware as you sit here --
 24 A. It's not something I've done.
 25 Q. Right. You're not aware as you sit here today

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1 of there being a material change in the trading
 2 policies or risk management policies that Ameren
 3 Energy was bound by in trading UE's assets
 4 versus the trading policies and risk management
 5 policies that AM&T is bound by in trading those
 6 assets? You're not aware of there being
 7 material differences as you sit here today,
 8 correct?
 9 A. Well, I'm aware of differences, you know, during
 10 certain periods at least in '06 compared to then
 11 to today, but if you're saying '07 --
 12 Q. To today.
 13 A. -- versus '08, I can't point to any.
 14 Q. Can't point to any, all right. Wasn't -- let's
 15 just talk about '07, we won't talk about the
 16 pre-'07 period at this point. Wasn't it your
 17 understanding that Ameren Energy's essential
 18 charge, their essential function was to maximize
 19 energy and capacity sales from UE's generating
 20 units just like AM&T's central function or
 21 purpose is to do the same thing for UE's
 22 generating units today?
 23 A. Same purpose I believe, yes.
 24 Q. Is transferring employees from a division, from
 25 a subsidiary whose sole purpose was to market

Page 121

1 the UE assets to UE itself so that they're just
 2 direct employees with a different name, is that
 3 necessarily in your mind a major change, just
 4 the fact that those employees were transferred,
 5 the name changed, and now instead of acting as
 6 an agent, they just act directly, is that a
 7 major change?
 8 A. Yes.
 9 Q. Even though you can't really cite any particular
 10 differences in how the two groups operate?
 11 A. Well, I mean I know that the fact that Ameren
 12 Energy was an agent of UE hindered UE's --
 13 created extra complications for UE to
 14 participate in the Illinois auction.
 15 Q. That wasn't an issue in 2007, was it?
 16 A. Well, I mean similar issues can arise again
 17 certainly. It certainly was a -- they would
 18 have had the same constraint if they tried to
 19 participate if there was an Illinois auction
 20 that was available for their participation.
 21 Q. The -- the last category of changes that you
 22 talk about that caused you to change your
 23 recommendation, you -- you cite back to your
 24 direct testimony in the last rate case.
 25 A. Uh-huh.

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1 Q. Which would have been filed in December 2006,
2 right?

3 A. I think I brought that with me today. I thought
4 you might want to ask about that. Yes, December
5 15th --

6 Q. So any change --

7 A. -- 2006.

8 Q. So any changes that occurred regarding Union
9 Electric Company's, the marketing or trading of
10 its generating assets that you would have talked
11 about in December '06 obviously had to take
12 place before December '06, didn't they?

13 A. Any changes that were talked about in this
14 testimony --

15 Q. Right.

16 A. -- would have had to have taken place prior to
17 the time I wrote the testimony.

18 Q. Right.

19 A. Yeah, I can agree with that.

20 Q. So those changes now are a couple years -- at
21 least occurred at least a couple of years ago
22 roughly?

23 A. Yeah. I think that's the point I was making
24 there.

25 Q. Mr. Kind, true or false, Mr. Schukar's capacity

Page 123

1 adjustment in this case assumes that all 440
2 megawatts of Taum Sauk capacity would have been
3 sold in July, August, and September had Taum
4 Sauk been available?

5 A. I think that's probably correct. It sounds
6 right.

7 I want to take a quick restroom -- take a
8 break while you're looking at that.

9 MR. LOWERY: Sure.
10 (Off the record.)

11 Q. (By Mr. Lowery) Mr. Kind, I asked you a moment
12 ago and you agreed with this I believe, I said,
13 true or false, Mr. Schukar's capacity adjustment
14 in this case assumes that all 440 megawatts of
15 Taum Sauk capacity would have been sold in, I
16 should have said June, July, August, and
17 September had Taum Sauk been available.

18 A. Oh.

19 Q. And you said you think that was probably right,
20 and I was going to show you Mr. Schukar's
21 supplemental direct testimony if you weren't
22 sure.

23 A. Okay.

24 Q. And I would direct your attention to, starting
25 on line 12 and probably most of the rest of page

Page 124

1 3 of his supplemental direct testimony, see if
2 in fact that indicates that what I just said is
3 true.

4 MR. MILLS: If I'm paying by the page, I
5 hope you're not planning on making that an
6 exhibit.

7 MR. LOWERY: I'm not.

8 THE WITNESS: And it -- just this whole
9 answer here?

10 Q. (By Mr. Lowery) I think if you start with the
11 sentence, the first full sentence on line 12 and
12 read, you'll be able to confirm that Mr. Schukar
13 assumed that all 441 -- 40, I don't know why I
14 want to say 41, 440 megawatts of Taum Sauk would
15 have been sold for June through September.

16 A. Yeah, I would assume that he's got, you know,
17 work papers that are consistent with that that
18 show these 440 megawatts for those four months.

19 Q. Unless he's lying he assumed that all of Taum
20 Sauk capacity was sold for June, July, August,
21 and September for purposes of making his
22 adjustment for Taum Sauk capacity, right?

23 A. That's what he says, yes.

24 Q. And -- and you've been provided his work papers
25 associated with the supplemental direct

Page 125

1 testimony, have you not?

2 A. Yes.

3 Q. You have not --

4 A. Aren't -- isn't -- this was direct or rebuttal,
5 because he changed in --

6 Q. This is supplemental direct testimony.

7 A. Oh, okay. I thought he changed his position on
8 that in rebuttal for some reason, but maybe it
9 was -- maybe the change occurred between --
10 between direct and supplemental direct, I'm just
11 not sure what it was. That's probably what --
12 that's what it was I imagine, okay.

13 Q. So you understand now that Mr. Schukar is
14 assuming for purposes of his Taum Sauk capacity
15 adjustment that all 440 megawatts would have
16 been sold for June through September, right?
17 You may disagree on the price, but.

18 A. Yeah.

19 Q. In terms of how much would be sold, you --

20 A. Looks like that was his approach.

21 Q. And this added \$4.9 million to Mr. Schukar's off
22 system sales revenue recommendation, right?

23 A. That number sounds right.

24 Q. True or false, UE -- UE did not sell all of the
25 capacity it had for January to May or for

Page 126

1 October to December 2008?

2 A. January to May. I don't absolutely know for

3 sure that that's correct, but in general it's,

4 you know, the shoulder months are where the

5 sales are at the maximum level.

6 Q. Let me ask it this way before I go further.

7 It -- it would not surprise you and/or it makes

8 sense to you that UE did not sell all of its

9 capacity January to May and October to

10 December? Does that make sense to you? Does

11 that sound right?

12 A. Yes, that does.

13 MR. LOWERY: Would you mark this please.

14 (Deposition Exhibit 7 was marked for

15 purposes of identification.)

16 Q. (By Mr. Lowery) Do you recognize this document

17 that's been marked as Deposition Exhibit RK7?

18 And I'll represent to you that there are

19 literally hundreds of pages of additional

20 attachments because this was DR 211, it's all

21 the capacity information, but the information I

22 have included in Deposition Exhibit RK7, and

23 I've included a capacity position sheet, one of

24 the capacity position sheets. With all that

25 explanation, do you recognize that?

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1 A. I -- I know I've looked at this DR response,

2 yeah, and this is probably the initial response

3 or might have been supplemental responses or

4 something maybe.

5 Q. This I believe is the initial response. It

6 doesn't say supplemental, right, it just says

7 response?

8 A. Right, that's right, that's right.

9 Q. And, Mr. Kind, the first three pages of this

10 exhibit are Mr. Schukar's actual response,

11 right?

12 A. Yeah. Well, he's -- there's a whole bunch of

13 data there as part of his response, but it's not

14 all verbal, so yes.

15 Q. Right.

16 A. Yes.

17 Q. And do you recognize the spreadsheet that's

18 behind those three pages as being one of the --

19 one of the spreadsheets that shows UE's capacity

20 position? You've seen this kind of spreadsheet

21 numerous --

22 A. I've seen that kind of spreadsheet. I don't

23 know that I've -- that I've looked at this

24 specific one. I looked at -- I looked at parts

25 of this DR response definitely.

Page 128

1 Q. You see that the one I've attached is for 2008?

2 A. Yes.

3 Q. Okay. And you -- you know being familiar with

4 this spreadsheet, ones like it that in order to

5 figure out how much capacity UE has to sell that

6 you would look at the new construction or

7 purchases where required reserve row --

8 A. That's correct.

9 Q. -- to figure out that number? And this shows

10 that for January, February, March, April, May

11 and then for October, November, and December

12 that UE had quite a lot of capacity that it did

13 not sell, correct?

14 A. This particular spreadsheet shows that, yes.

15 Q. Which doesn't surprise you?

16 A. No.

17 Q. Now, Mr. Kind, given that Mr. Schukar included

18 \$4.9 million of additional past due revenues

19 related to Taum Sauk on the assumption that all

20 of Taum Sauk's 440 megawatts would be sold for

21 the summer months of June to September, your

22 statement at page 15, line 17 to 20 of your

23 surrebuttal testimony is wrong, isn't it? Page

24 15, lines 17 to 20.

25 A. I -- I guess I'm not agreeing that it's wrong

Page 129

1 and I'm -- but I'm unclear as to, you know, in

2 what -- what respect you're suggesting that it

3 is wrong.

4 Q. Well, I'm talking about on line 17, page 15, the

5 sentence that starts first and that ends on line

6 20 with the word "valuable."

7 A. Uh-huh.

8 Q. You say that Mr. Schukar ignores the fact that

9 having the Taum Sauk unit in service would mean

10 that the Company would have additional capacity

11 to sell during the summer months --

12 COURT REPORTER: I'm sorry?

13 MR. LOWERY: Sorry.

14 Q. (By Mr. Lowery) You say, quote, first,

15 Mr. Schukar ignores the fact that having the

16 Taum Sauk unit in service would mean that the

17 Company would have additional capacity to sell

18 during the summer months of June through

19 September when this capacity is most valuable,

20 end quote.

21 If UE has sold all of its capacity for those

22 months and if Mr. Schukar assumes that if Taum

23 Sauk was available, UE would sell all of the

24 Taum Sauk capacity, what did Mr. Schukar

25 ignore?

1 A. Well, it seems that you're just trying to sort
 2 of take out a piece of this argument and I've
 3 kind of got an argument here as to just -- as to
 4 why for example if you have more capacity
 5 available during those four summer months, it's
 6 going to increase your ability to sell capacity
 7 year round.
 8 Q. Ah-ha. But --
 9 A. That's -- you know, that's one of the arguments
 10 I make here.
 11 Q. I understand that.
 12 A. Uh-huh.
 13 Q. So you're not arguing that the Company could
 14 have sold more capacity in June through
 15 September, because Mr. Schukar already assumed
 16 that all of Taum Sauk would be sold June through
 17 September, right?
 18 A. Yeah, I don't think I'm approaching it from that
 19 perspective.
 20 Q. Well, let me try to get an answer to my
 21 question. You are not arguing that the Company,
 22 that there is some capacity for June to
 23 September that the Company hasn't accounted for
 24 in its capacity numbers for purposes of setting
 25 off system sales; is that right?

1 statement, right?
 2 A. Yes, ordinarily.
 3 Q. Let's talk about your beach front rental houses
 4 in Maine example. How much total rent income
 5 would you expect to realize from acquiring an
 6 additional -- a third beach home in Maine? You
 7 talk about two, right? Right?
 8 A. Which -- where? I have --
 9 Q. Surrebuttal testimony, page --
 10 A. I have several different examples.
 11 Q. Surrebuttal testimony, page 16, lines 1 to 17.
 12 A. Okay. Okay. So I have an example here of the
 13 two beach front homes and you have a question
 14 about a third?
 15 Q. Yeah. Let me ask the question again. How much
 16 total rent income would you expect to realize
 17 from acquiring an additional, a third beach home
 18 in Maine if the first two beach homes that you
 19 already own are vacant and if you already have
 20 no interest from prospective renters for those
 21 two vacant beach homes?
 22 A. They're vacant year round?
 23 MR. MILLS: You have you to say that out
 24 loud.
 25 MR. LOWERY: Yes. Thank you.

1 A. Accounting for in what sense? In the Taum Sauk
 2 adjustment or I'm not sure what you're getting
 3 at.
 4 Q. Your argument is -- your argument is if the
 5 Company actually could sell Taum Sauk during
 6 June to September, that it might be able to sell
 7 more capacity in the shoulder months, right?
 8 A. That's one of arguments that I make, yes.
 9 Q. Your argument's not that Mr. Schukar didn't
 10 calculate a Taum Sauk adjustment based on the
 11 assumption that all of Taum Sauk was sold for
 12 those summer months, correct?
 13 A. That's correct.
 14 Q. As an economist you understand, do you not, that
 15 if the supply of a product increases without a
 16 corollary increase in demand, then all else
 17 being equal the price of the product would
 18 ordinarily be expected to go down?
 19 A. Unless you've got some extraordinary, you know,
 20 elasticity of supply and demand involved.
 21 Q. I said ordinarily.
 22 A. Ordinarily.
 23 Q. That would be true, right?
 24 A. Okay, okay. Yes.
 25 Q. With that qualifier, you agree with that

1 THE WITNESS: And assuming they're, you
 2 know, comparable properties.
 3 Q. (By Mr. Lowery) Comparable properties.
 4 A. Don't think you're going to get income.
 5 Q. None, right?
 6 A. For the third one.
 7 Q. Right. You won't get any income from the third
 8 home based on those assumptions, will you?
 9 A. You couldn't rent the other two?
 10 Q. You couldn't rent the other two, the third one's
 11 essentially comparable to the other two, so you
 12 won't get any income from the third one if you
 13 acquire it, will you? You wouldn't expect to?
 14 A. I think that's right.
 15 Q. Assume that demand by prospective renters for
 16 beach homes in Maine does not change, the demand
 17 doesn't change, okay, you with me?
 18 A. Uh-huh.
 19 Q. And assume further that the Maine beach home
 20 rental market has existing vacant properties
 21 other than your original two, and say they're
 22 comparable properties, all right? You with me
 23 so far?
 24 A. Okay.
 25 Q. If you built a third beach home or you had a

1 third one that you were occupying that you just
 2 thought, I'm going to turn this into a rental
 3 house instead, would the addition of that third
 4 vacant identical beach home on exactly the same
 5 strip of beach where the other two identical
 6 beach homes are already vacant be expected to
 7 increase or decrease the expectation of rents
 8 that you could demand for the other two?
 9 A. Just wouldn't change it if you couldn't expect
 10 any rent in the first place.
 11 Q. I'm not talking about my first question.
 12 A. Oh, okay.
 13 Q. Okay?
 14 A. Because I haven't -- I don't have the new --
 15 Q. All right.
 16 A. I haven't shifted --
 17 Q. Let's start over.
 18 A. -- hypotheticals.
 19 Q. First question stood on its own, okay. Demand
 20 for prospective renters for beach homes in Maine
 21 doesn't change, the beach home rental market has
 22 existing vacant properties other than the two
 23 you have. If you -- if you acquire a third one,
 24 would the addition of that third one to your
 25 portfolio of beach homes, it's the same, they're

1 than the two you have. You build a third one,
 2 right?
 3 A. Uh-huh.
 4 Q. Would the addition of that third one that you
 5 built be expected to increase or decrease the
 6 expectation of rents which could be demanded for
 7 the other two that you already had?
 8 A. If it's a competitive market, you wouldn't
 9 expect there would be any impact on price.
 10 Q. The addition of additional supply when demand
 11 does not change, you would expect the price to
 12 stay the same?
 13 A. Such a small increment in additional supply in a
 14 competitive market, yes. I wouldn't expect to
 15 see any difference in price.
 16 Q. Certainly wouldn't expect the price to go up,
 17 would you?
 18 A. I wouldn't expect any difference.
 19 Q. When you say in a competitive market, what do
 20 you mean?
 21 A. Well, you've got a large number of buyers, large
 22 number of sellers, we've got a commodity that
 23 you can -- you can definitely identify that sort
 24 of has a -- a uniform value in the sense that
 25 it's, you know, people can trade it as sort of a

1 comparable beach homes, it's the same strip of
 2 beach, would that be expected to increase or
 3 decrease -- you built a new one. I'm sorry,
 4 let's get my example more -- more specific. You
 5 built a new one so we have a new one coming on
 6 to the market. Would that --
 7 A. And you have two that you already own that are
 8 vacant?
 9 Q. You have two that are vacant already. You have
 10 two -- well, I don't care whether they're vacant
 11 or not, again the question stands on its own.
 12 Let me start over. Demand doesn't -- demand by
 13 prospective renters for beach homes in Maine
 14 along this area of beach, I don't know how long
 15 the beach is in Maine, but let's say there's not
 16 much beach there, so let's agree that we have
 17 one beach market -- or one beach home market in
 18 Maine, can we agree to that for purposes of this
 19 example?
 20 A. Yeah, the coastline or --
 21 Q. All right.
 22 A. -- wherever the beach homes are.
 23 Q. So the demand by prospective renters for beach
 24 homes in Maine doesn't change, the Maine beach
 25 home rental market has existing properties other

1 generic commodity and there's -- nobody has
 2 market power.
 3 Q. You consider -- you consider the beach home
 4 rental market in Maine to be essentially a
 5 commodity type market?
 6 A. No. In your hypothetical it is, but no.
 7 Q. In my hypothetical it is why?
 8 A. Well, I may be going back to your prior
 9 hypothetical, but I'm not --
 10 Q. Which I -- which I asked you not to do.
 11 A. I'm not --
 12 Q. Right?
 13 A. I'm not sure. I'm not sure if that was part of
 14 this or not.
 15 Q. Well, Mr. Kind, we'll start over again. Forget
 16 the prior hypothetical, all right? That's not
 17 part of the assumption for this hypothetical at
 18 all.
 19 A. Well, I'm not suggesting that it should be or it
 20 was. I'm just suggesting I'm not sure that I
 21 kept all the facts straight between the two
 22 hypotheticals.
 23 Q. Well, let's -- let's slow down. Let's slow down
 24 and then -- and see if you can get the facts
 25 straight. Demand by prospective renters for

1 beach homes in Maine doesn't change, that's fact
2 number one, you got that one?
3 A. Got that one.
4 Q. The Maine beach home rental market has existing
5 vacant properties in addition to the two that
6 you own. You own two, that's all at this
7 point. And there's other vacant beach homes in
8 that same market, all right?
9 A. Okay.
10 Q. Then you build a third one that's essentially
11 comparable to the other ones that other owners
12 have and to the two that you already have, all
13 right? You got that?
14 A. Yeah. That's the same one I thought I had last
15 time and I was trying to verify and you thought
16 I was confusing it with the prior one.
17 Q. Well, you said you went back to the other one,
18 so.
19 A. I was trying to clarify that it was in fact part
20 of this one.
21 Q. You have those three assumptions in mind, right?
22 A. That's right. Well, I mean I've got more than
23 three assumptions, but.
24 Q. All right. What do you have?
25 A. I've got no change in demand by renters, there

1 are two vacant homes that I own.
2 Q. Yep.
3 A. There are others vacant in the same market and
4 then there's a -- I'm building a new property
5 that is comparable to the ones I already own and
6 the others that are vacant.
7 Q. Okay. That's four, I stand corrected. The
8 addition of the third one that you're building,
9 would it be expected to increase or decrease the
10 expectation of the rent that you could demand
11 for the other two that you already own?
12 A. I wouldn't expect that there would be any
13 change.
14 Q. What if you built five more?
15 A. At some point there would be a change.
16 Q. How do you know one more won't cause that change
17 to happen, two more, three more?
18 A. I'm just assuming there's thousands and if you
19 just add one more, it just doesn't matter.
20 Q. So it's -- it's the proportionality of how
21 much -- it's what percentage increase in supply
22 that one more home represents, that's going to
23 determine whether the expectation of rents would
24 change, is that what you're saying?
25 A. Yes.

1 Q. Clearly at some point you're going to cross the
2 line to where when demand doesn't change and the
3 supply increases, the price is going to go down,
4 right?
5 A. Yes.
6 Q. All right. I want to add some assumptions.
7 Assume -- well, no, I don't want to add
8 assumptions. Let's -- let's look at another
9 situation. Assume that renters are only
10 interested in renting beach homes for the four
11 summer months of June to September, okay?
12 That's a standalone hypothetical, you understand
13 that, right?
14 A. So we're starting over again.
15 Q. Starting over, draw a line. All right. Assume
16 that renters are only interested in renting
17 beach homes for the four summer months of June
18 to September, okay, got that one?
19 A. Uh-huh.
20 Q. Assume that other landlords are willing to rent
21 their beach homes for June to September at
22 \$1,200 a month. Assume you own two beach
23 homes. And when I said assume landlords are
24 willing to rent for \$1,200 a month for those
25 four months, I'm talking about other landlords,

1 landlords other than you, all right?
2 A. Uh-huh.
3 Q. How much would you expect to receive in monthly
4 rent for your beach homes if you required a 12
5 month lease for your beach homes?
6 A. Again I think the assumption was that there's no
7 value to renters of -- of having a home in those
8 other eight months.
9 Q. That's correct.
10 A. Uh-huh. And how much would I expect to receive
11 in --
12 Q. For your beach homes, your two if you required a
13 12 month lease?
14 A. Assuming there's no secondary market for these
15 people who rent them, they could sublease to
16 others, there's no value for the people who
17 would rent them or no value to others who --
18 Q. Add that assumption, that's fine.
19 A. Well, I would assume that the rentals would take
20 place at -- for the year at the same price as
21 they would for those four months.
22 Q. Forty-eight hundred dollars per house, right?
23 A. Right.
24 Q. And the reason is based on those assumptions
25 that if renters only want the homes from June to

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1 September, they're not going to pay more for an
2 annual lease than they could pay for an
3 identical beach home with a lease for the four
4 summer months that they want, correct?
5 A. That's correct.
6 Q. How much would you be willing to pay in rent for
7 a beach home in Maine during the month of
8 February if you had no vacation time in February
9 and you had no interest in visiting the Maine
10 beach in February? And this has nothing do with
11 the prior question.
12 A. No vacation time and?
13 Q. And no interest in visiting -- how much would
14 you be willing to pay for a beach home in Maine
15 if you had no vacation time -- a beach home in
16 Maine in February if you had no vacation time in
17 February, in other words you can't go to Maine
18 in February.
19 A. Uh-huh.
20 Q. And you don't have any interest in visiting
21 Maine in February. You're not going to Maine in
22 February. How much would you be willing to pay
23 for a beach home in Maine? And assuming there's
24 no secondary market where you can buy it and
25 sublease it to somebody? Or rent it and

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1 sublease it to somebody.
2 A. I wouldn't be paying anything, so zero --
3 Q. Okay.
4 A. -- I guess to be more precise.
5 Q. Can you explain in detail for me on what you
6 base your assertion at page 16, line 24 to page
7 17, line 3 of your surrebuttal testimony?
8 A. Starting at line 24 and continuing to where?
9 Q. To line 3 and starting with --
10 A. Okay.
11 Q. The, if Taum Sauk were still in service over to
12 adjoining months, on what -- what's the -- in
13 detail what's the basis of that assertion?
14 A. Well, I guess my knowledge in general that there
15 are -- there are considerable number of sales
16 taking place in, you know, a full year, capacity
17 sales at -- at Ameren and -- from them and from
18 other -- other utilities.
19 Q. Okay. Your knowledge in general?
20 A. Uh-huh.
21 Q. That there are -- there are annual sales of
22 capacity?
23 A. Right, right.
24 Q. And what else?
25 A. And the other basis would be that you don't

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1 really know what you can get from selling
2 something unless you've got it for sale and are
3 trying to sell it. I mean it --
4 Q. All right.
5 A. There's -- in other words the idea there is that
6 for somebody to say, you know, I haven't made
7 more sales, well, that to me is not -- not the
8 measure of the sales that you could possibly
9 make if you had this capacity, the capacity to
10 sell in these summer months that you could
11 package together in a longer term sale.
12 Q. But, Mr. Kind, you say that you believe it would
13 enable, and what you've told me is you're
14 generally aware that there are some annual sales
15 made.
16 A. Uh-huh.
17 Q. And that you don't know for sure if you could
18 make them or not, but how does that lead you to
19 a belief that in fact more sales would be made?
20 I don't understand how that leads you to a
21 belief. I understand how it could lead you to a
22 maybe, possibly. But you say I believe it would
23 happen. Am I misreading your testimony?
24 A. No. I do believe some additional sales would be
25 enabled.

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1 Q. And the only thing you base that on is general
2 knowledge that some annual sales are made by
3 utilities?
4 A. I just --
5 Q. And that's really the only thing you base it on,
6 isn't it?
7 A. No. Just a -- you know, there's a lot more
8 knowledge that just goes into the, you know,
9 having an understanding of the give and take
10 amongst traders for looking at different
11 products and just how -- how marketers go about
12 marketing this type of a product.
13 Q. Have you ever made any sales of capacity for
14 nonsummer months?
15 A. Of generation capacity?
16 Q. Yeah.
17 A. No, I have not.
18 Q. Have you ever made any sales of capacity at
19 all?
20 A. I'm -- I have never been employed by an electric
21 utility.
22 Q. You don't -- you don't have any experience at
23 trading capacity whatsoever, do you?
24 A. My own firsthand experience, I've not been
25 involved in that, no.

1 Q. Locationally where is the most --
 2 A. I could probably, you know --
 3 Q. There's not a question pending.
 4 A. -- more than answer --
 5 Q. There's not a question. There's not a question
 6 pending.
 7 MR. MILLS: You asked him a question about
 8 his experience. He's trying to elaborate his
 9 previous answer.
 10 MR. LOWERY: And I have started another
 11 question.
 12 MR. MILLS: Just because he paused you can't
 13 cut him off.
 14 MR. LOWERY: I had started another question.
 15 Q. (By Mr. Lowery) Locationally, Mr. Kind, where is
 16 the most valuable capacity market?
 17 A. You mean in terms of a geographic location,
 18 right? Is that what you're getting at?
 19 Q. That's generally where --
 20 A. Okay.
 21 Q. That's generally how we would look at capacity
 22 markets, wouldn't we, where we might make
 23 capacity sales?
 24 A. PJM. There may be other high capacity markets
 25 in the northeast, but I know certainly PJM is

1 about. That's not --
 2 Q. Well, in this --
 3 A. -- necessarily the way I look at it.
 4 Q. -- deposition, the adjustments that you've made,
 5 the [REDACTED] million, the [REDACTED] million, you weren't
 6 talking about these -- these products where
 7 we're packaging them with energy, were you? You
 8 were talking about selling --
 9 A. Certainly part of my general knowledge that goes
 10 into making a recommendation like that, yeah.
 11 Q. But the -- the capacity from which those numbers
 12 was derived was just sales of I think for lack
 13 of a better term regulatory capacity, wasn't
 14 it? Wasn't that how you were looking at those
 15 numbers or am I mistaken about that?
 16 A. That's how the calculation is made for a hold
 17 harmless adjustment, but my assessment of
 18 whether or not that's a reasonable hold harmless
 19 adjustment is not based solely on the market for
 20 regulatory capacity.
 21 Q. I take it you agree that location's important
 22 when selling capacity products?
 23 A. Location and, you know, the development of a,
 24 sort of a framework for being able to sell it
 25 such as there is in MISO for regulatory

1 higher than MISO and I think MISO is generally
 2 higher than SPP.
 3 Q. What are the general products that are traded
 4 for capacity?
 5 A. Well, it -- the product that's traded in MISO
 6 is -- has been referred to as a regulatory
 7 capacity, that's -- that's one of the products,
 8 but then there are -- there are other products
 9 where capacity gets bundled with energy and you
 10 have to have capacity in order to sell that
 11 product. That would be a product like
 12 ancillary services as an example of that or, you
 13 know, the -- if you were to provide for, you
 14 know, power that's required by one of the
 15 tranches in the Illinois auction, you'd have to
 16 have capacity, would have to be part of that
 17 product that you're selling.
 18 Q. You're talking about capacity associated with
 19 energy sales in those last two examples, right?
 20 A. I'm talking about combined products that include
 21 both -- both elements, yes.
 22 Q. But we've been -- we've been talking about
 23 capacity, we've been talking about just
 24 capacity, haven't we?
 25 A. I'm not sure when you say we've been talking

1 capacity. But also, you know, location whether
 2 it's important or not, it sort of depends on
 3 what you've got in terms of the firm
 4 transmission that you have lined up.
 5 Q. So if I want to sell capacity into the MISO, I
 6 have to have firm transmission lined up to go
 7 with it?
 8 A. No, I'm not suggesting that. But if you're
 9 wanting to sell into Intergy for example, UE has
 10 firm transmission paths to Intergy that would
 11 facilitate some capacity sales.
 12 Q. Would one -- why would one capacity product sell
 13 for a higher price than another one?
 14 A. Well, higher price in terms of dollars per KW
 15 per month?
 16 Q. Yes.
 17 A. Is that --
 18 Q. Yes.
 19 A. Capacity has different values at different times
 20 of the year. And for instance if you sell an
 21 annual capacity product, it -- you wouldn't
 22 expect it to get as much -- as much on a per
 23 monthly basis price as just selling during the
 24 peak summer months.
 25 Q. What about locationally?

1 A. That's why -- that's why in my testimony I -- I
 2 used numbers from annual sales versus, I
 3 wouldn't apply numbers from sales just during
 4 the peak months to all 12 months and then come
 5 up with a value for the hold harmless Taum Sauk
 6 capacity values, but rather I would use an
 7 annual figure because it would be more
 8 appropriate.
 9 Q. The location also makes a difference in terms of
 10 price, doesn't?
 11 A. I'm not seeing that as being real relevant to
 12 UE's ability to sell capacity other than if they
 13 were to want to get some of the higher prices
 14 that are available in PJM, but I don't think
 15 anyone's suggesting those kind of higher prices
 16 should be applied.
 17 Q. Would capacity -- would capacity from Callaway
 18 be more valuable than capacity from the Sioux
 19 plant?
 20 A. I don't have any reason to believe it would be.
 21 Q. When do most of the capacity transactions occur
 22 in the marketplace?
 23 A. I mean it's -- it's ongoing. Some people line
 24 it up in the final six months of a year for the
 25 following year. Some people will line it up in

1 parties?
 2 A. But you're not wanting to hear the names of
 3 specific utilities?
 4 Q. Oh, I don't -- I don't care. I --
 5 A. Or just maybe a -- well, I mean it's people --
 6 well, it's a combination of people who are
 7 buying it because they are just short on
 8 capacity and they need it in order to meet the
 9 reserve margin requirements of their regional
 10 reliability organization, there's that type of a
 11 customer. And then there's also customers that
 12 people might do something like if you're short
 13 say on just June and July on capacity, you might
 14 be in the market for capacity so to enable you
 15 to sell a bigger calendar strip.
 16 Q. So you -- other utilities are the main counter
 17 parties on capacity transactions, is that your
 18 testimony?
 19 A. LSE's basically.
 20 Q. Load serving entities?
 21 A. Yes.
 22 Q. Okay. In my -- I understand the distinction,
 23 but load serving entities are -- generically
 24 could be referred to as utilities for the most
 25 part, isn't that true?

1 the first quarter of a year for the year
 2 beginning July 1 going through June 30th. Some
 3 people get themselves sort of in a -- in a
 4 shortage situation and in May have to hurry up
 5 and line up some capacity for June 1st. So
 6 it's -- it's just an ongoing situation.
 7 Q. You don't really have an answer to my question?
 8 I asked you when most, the majority of capacity
 9 transactions occur in the marketplace, not one
 10 person does this and one person does that, but
 11 do you have an opinion about that or not? If
 12 you don't, that's fine.
 13 A. It seemed to me that a few years ago it used to
 14 be more in the third and fourth quarter to get
 15 capacity for the following year and now it seems
 16 to be shifting somewhat, that it's occurring
 17 more throughout the year and there's even daily
 18 sales of capacity taking place.
 19 Q. Who are the most active counter parties on
 20 capacity transactions with utilities?
 21 A. Which utilities specifically?
 22 Q. No, no. Just in general.
 23 A. Oh.
 24 Q. Utilities out in the capacity market, selling
 25 capacity, who are the most active counter

1 A. Well --
 2 Q. I mean it could be a municipal or --
 3 A. -- it depends on what state you're from. If
 4 you're from Missouri you often think of
 5 utilities as vertically integrated utilities.
 6 If you're from Illinois, you probably have a
 7 different conception.
 8 Q. Right, right. Those are T&D utilities, they're
 9 still utilities, right? They just don't own
 10 their own generation?
 11 A. Well, I was thinking more of the LSE aspect in
 12 Illinois, that there's some nontraditional
 13 players there, you know, Morton & Stanley and
 14 people like that involved.
 15 Q. You attached a DR response to your surrebuttal
 16 testimony and it's Attachment -- I believe it's
 17 L. No, sorry, it's I, I guess, Attachment I.
 18 And that's a response to OPC DR 2194, right?
 19 A. Yes.
 20 Q. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. No, he didn't.
 24 Q. Are you calling Mr. Schukar a liar in your
 25 surrebuttal testimony?

1 A. I don't believe I've used that word in my
 2 surrebuttal testimony.
 3 Q. Without using that word, is that the substance
 4 of your testimony [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 A. Is there a specific statement there that you're
 10 referring to?
 11 Q. I -- first just ask if that's the --
 12 A. I'm not --
 13 Q. If that's the --
 14 A. I have -- I have never accused Mr. Schukar of
 15 being a liar.
 16 Q. Are you -- are you suggesting that his response
 17 to OPC DR 2194 is less than truthful?
 18 A. I don't think I've made that suggestion.
 19 Q. Are you suggesting that whether you made it in
 20 your surrebuttal testimony or not?
 21 A. No, I'm not making that suggestion.
 22 Q. So if Mr. Schukar says [REDACTED]
 23 [REDACTED] that's good enough for
 24 you, you believe him?
 25 A. Oh, well, I -- I'm kind of a, you know, an

1 auditor type and I -- I just like to review all
 2 the facts before I would make a final
 3 determination. If I would see -- to see if I
 4 would see things the same way as Mr. Schukar
 5 would see things.
 6 Q. So you're not calling Mr. Schukar a liar and
 7 you're not saying that he is misrepresenting his
 8 DR response answer, but you're also not willing
 9 to say that the answer is accurate, is that fair
 10 to say?
 11 A. I'm still pursuing additional information in
 12 that area and I just --
 13 Q. Was the --
 14 A. I identified an apparent discrepancy in my
 15 testimony.
 16 Q. Was the answer to my question yes or no? I
 17 didn't ask you if you were still looking at
 18 information. I asked you whether or not you
 19 were suggesting that Mr. Schukar's answer to
 20 your DR 2194 was incomplete or inaccurate in
 21 some respect?
 22 A. I'm suggesting that I -- I'm not sure. And when
 23 I'm not sure of things, I don't call people
 24 liars.
 25 Q. But you also aren't willing to say that you

1 believe Mr. Schukar's told you the truth either,
 2 are you?
 3 MR. MILLS: I'm going to have to object.
 4 That's been asked and answered a number of
 5 times. You can answer if you want, but there's
 6 no real point to it.
 7 Q. (By Mr. Lowery) Do you have an answer to that
 8 question?
 9 A. I'm not willing to say that he's told me the
 10 truth, what he believes is the truth or what is
 11 the truth, I don't know. I have no reason to
 12 believe that Mr. Schukar would tell me something
 13 that he doesn't think is true.
 14 Q. So at least you believe that -- that he believes
 15 he's told you the truth?
 16 A. As far as I know, that would be his intention,
 17 yes. Would be my presumption.
 18 Q. Where does it say in your Attachment J or your
 19 Attachment K that [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. I don't think it says that in there.
 24 Q. Okay.
 25 A. XXXXXXXX --

1 Q. Is Attachment --
 2 A. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 Q. I --
 6 A. [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q. All right. Let me ask that. Where does it say
 10 in Attachment J or in Attachment K that
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 A. And maybe I misspoke. What I meant to say is I
 15 haven't -- what I suggested here is that it
 16 appears [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 Q. And where does it say in Attachments J or K that
 21 [REDACTED]
 22 [REDACTED]
 23 A. That's a conclusion that I drew.
 24 Q. So it doesn't -- I'm sorry. It doesn't say
 25 that, you drew a conclusion from your review of

1 documents, is that fair?
 2 A. Yeah. I don't have a document that states
 3 precisely that you're stating.
 4 Q. Is it a fair characterization of Attachment K
 5 that this is [REDACTED]
 6 [REDACTED]
 7 A. That's fair.
 8 Q. So it was sent to [REDACTED]
 9 [REDACTED]
 10 A. [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 Q. None of which means that [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 A. Well, the point I was making is that just

1 (Deposition Exhibit 8 was marked for
 2 purposes of identification.)
 3 Q. (By Mr. Lowery) Going to hand you what's been
 4 marked Deposition Exhibit RK8 in a moment, ask
 5 you if you recognize it. And then ask you if I
 6 accurately -- have accurately read a sentence.
 7 The Missouri Public Counsel's arguments, this is
 8 a quote, are speculative and the Missouri Public
 9 Counsel has failed to demonstrate or document
 10 how the participation of Union Electric and
 11 Ameren Energy market in the CPA as approved and
 12 overseen by the Illinois Commission will result
 13 in a transfer of benefits from captive rate
 14 payers of the Ameren Illinois utilities to the
 15 Ameren company shareholders, end quote.
 16 Do you recognize the order that's attached
 17 to Deposition Exhibit RK8, and if so, would you
 18 verify that I read the sentence on page 12 of
 19 the FERC order accurately?
 20 A. And where did you -- where were you reading
 21 from?
 22 Q. Starting with the word "the."
 23 A. Uh-huh.
 24 Q. On the one, two, three, four --
 25 A. I see.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 Q. And the point you were making on pages 17 and 18
 5 of your surrebuttal testimony about that really
 6 amounts to nothing more than your own
 7 speculation, conclusions you've drawn yourself
 8 which really amount to your speculation, isn't
 9 that right?
 10 A. No, I wouldn't characterize it that way.
 11 Q. You wouldn't agree it's speculative?
 12 A. No, correct.
 13 Q. Did OPC have some of the same kinds of concerns
 14 about Ameren Energy's relationship with --
 15 excuse me, AEM's relationship with Ameren Energy
 16 in terms of the Illinois auction itself that OPC
 17 expressed at the FERC?
 18 A. Yes.
 19 Q. You were involved in that case?
 20 A. Yes.
 21 Q. You've read the order that the FERC issued
 22 denying OPC's protest?
 23 A. Yes. I think they suggested we should have
 24 protested at the Illinois commission.
 25 MR. LOWERY: Would you mark that please.

1 Q. -- five, six, seventh -- seventh or eighth line
 2 down.
 3 A. Yes, I think you read that accurately.
 4 Q. The concerns that you were expressing in this
 5 FERC docket are similar to the concerns you're
 6 expressing now in terms of worrying about the
 7 fact that -- worrying about whether Ameren
 8 Energy's involvement as you say with Ameren --
 9 or Ameren Energy marketing's involvement with
 10 Ameren Energy somehow may have influenced UE's
 11 decision to participate or not to participate in
 12 the Illinois auction to the detriment of
 13 Missouri rate payers, the concern is basically
 14 the same, correct?
 15 A. That concern and just the whole holding company
 16 structure of the company and how that relates to
 17 it.
 18 Q. And that --
 19 A. I guess --
 20 Q. -- concern --
 21 A. -- I wouldn't -- when you say it's the same
 22 concern, yeah, the concern is similar that --
 23 that UE may not be getting the same benefits for
 24 its rate payers from participating in an auction
 25 like that, that they would get if they were a

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1 standalone entity, didn't have these affiliate
 2 relationships.
 3 Q. And you disagreed that the concerns that you're
 4 expressing in this rate case were speculative,
 5 you said I disagree with that. But the FERC
 6 characterized your similar concerns, I won't say
 7 they're the same, similar concerns as
 8 speculative in rejecting OPC's protest, correct?
 9 A. I think we've already discussed that. Yes,
 10 agree again.
 11 Q. So the answer's yes, the FERC characterized
 12 those similar concerns as being speculative?
 13 A. That's what they said in the passage that you
 14 read there.
 15 Q. Mr. Kind, what experience do you have regarding
 16 sharing percentages, sharing percentages of
 17 changes in fuel costs or in net fuel costs
 18 through a fuel adjustment clause? Do you have
 19 any experience beyond being a witness in the
 20 recent Aquila and Empire case, a witness in the
 21 last UE rate case and this UE rate case?
 22 A. Just the other experience would be just general
 23 knowledge of what takes place in other states
 24 and, you know, the kinds of things I learn by
 25 sharing information with my colleagues at NASUCA

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1 when I attend conferences and things like that
 2 and just reading things in the trade press.
 3 Q. Can you cite to me a single example where an
 4 electric utility has a fuel adjustment
 5 clauses -- clause and share changes in the cost
 6 or revenues that are being tracked in that fuel
 7 adjustment clause 50/50 with customers?
 8 A. No, I can't.
 9 Q. Can you cite me a single example where the
 10 sharing within the fuel adjustment clause is
 11 60/40?
 12 A. I cannot.
 13 Q. How about 70/30?
 14 A. No.
 15 Q. How about 75/25?
 16 A. No.
 17 Q. 80/20?
 18 A. No.
 19 Q. 85/15?
 20 A. No.
 21 Q. 90/10?
 22 A. I think I've seen that, but I can't reference
 23 you to a specific example I guess, and that was
 24 your question.
 25 Q. Do you disagree that nearly 90 percent of all

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1 electric utilities that have a fuel adjustment
 2 clause have no sharing whatsoever?
 3 A. I just don't know.
 4 Q. You don't agree or disagree?
 5 A. That's correct.
 6 Q. You don't have any basis to disagree with that
 7 statement?
 8 A. No, I don't.
 9 Q. At pages 6 and 7 of your rebuttal testimony you
 10 justify your 50/50 sharing proposal based on two
 11 things if I am reading it correctly.
 12 A. What page are we going to?
 13 Q. Pages 6 and 7 of your rebuttal.
 14 A. Okay.
 15 Q. First you base your 50/50 proposal on your claim
 16 that UE has lowered dependence on volatile
 17 fuel -- or excuse me, volatile purchased power
 18 in fuels like natural gas relative to other
 19 Missouri utilities. And second, you base your
 20 50/50 sharing on a recognition of UE's hedging
 21 practices with regard to its fuel. Is that a
 22 fair summary of the two bases that you rely upon
 23 in recommending the 50/50 sharing?
 24 A. Yes, that's what it says there.
 25 Q. What analysis have you done respecting your

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1 50/50 sharing proposal if any?
 2 A. In terms of like plugging in numbers, no, I
 3 haven't done any analysis.
 4 Q. Analysis at all, looking at fuel adjustment cost
 5 tariffs of other utilities in other states or in
 6 this state, analyzing how much the sharing will
 7 mean in terms of earning or fuel costs under
 8 recoveries or over recoveries, any kind of
 9 analysis whether it's qualitative or
 10 quantitative.
 11 A. Well, I guess it would be more just qualitative
 12 analysis looking at how UE has performed and
 13 type of ratings they get from credit agencies
 14 without having a fuel adjustment clause at all.
 15 Q. You haven't analyzed how the 50/50 sharing would
 16 affect UE's cash flows?
 17 A. No, I have not.
 18 Q. You haven't analyzed how that would affect
 19 customer's rates that would be set in this case
 20 if we had a 50/50 sharing mechanism in a --
 21 let's say if UE's proposal was otherwise
 22 accepted as proposed, but it had a 50/50 sharing
 23 mechanism, you haven't analyzed how that would
 24 affect customer's rates going forward?
 25 A. Haven't -- no quantitative analysis, no.

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1 Q. Haven't --

2 A. I mean I've certainly thought, you know, there

3 would still be less volatility in the periodic

4 adjustments when you're only reflecting 50

5 percent of the variation of fuel costs, I mean

6 that kind of analysis if that's what you're

7 referring to.

8 Q. You haven't analyzed how it would affect -- how

9 50/50 sharing would affect UE's rates?

10 A. Well, I think --

11 Q. I mean, excuse me.

12 A. -- I just addressed that.

13 Q. My apologies. UE's earnings?

14 A. Earnings, no, huh-uh.

15 Q. You haven't done any analysis on how having or

16 not having a fuel adjustment clause affects

17 Union Electric's credit ratings?

18 A. Just to go back to what I had stated before

19 about credit ratings have, you know, for UE have

20 been pretty decent absent fuel adjustment

21 clause.

22 Q. Other than an observation historically that in

23 your view the credit ratings have been pretty

24 decent --

25 A. Uh-huh.

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1 Q. -- you haven't done any other analysis relating

2 to having or not having a fuel adjustment

3 clause --

4 A. That's correct.

5 Q. -- and how that relates to UE's credit rating?

6 A. Yeah, that's correct.

7 Q. Same question about how having or not having an

8 FAC affect UE's access to capital, you haven't

9 really done any analysis? You'd give the same

10 answer you gave about the credit ratings in --

11 in -- if I asked you the same question about

12 access to capital, would you not?

13 A. Pretty much, yes.

14 Q. You haven't done any analysis about how having

15 or not having a fuel adjustment clause affects

16 UE's cost debt, is that true?

17 A. That's true.

18 Q. Or how it affects its cost equity?

19 A. That's true.

20 Q. If the Commission disagrees with OPC's position

21 and decides to approve a fuel adjustment clause

22 for AmerenUE, have you provided every change

23 that you would recommend to AmerenUE's FAC

24 proposal?

25 A. Well, you know, as of the time the testimony was

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1 written at least, yeah, and as of today I have

2 no -- no further feedback on the specifics of

3 the mechanics of how the proposal would work.

4 Q. If the Commission disagrees with your opposition

5 of the FAC, what you are recommending to them is

6 fine, but build in a 50/50 sharing, that's your

7 basic recommendation if they choose to disagree

8 with you about whether to grant an FAC at all;

9 is that right?

10 A. Well, the other aspect of the FAC that I gave

11 testimony on were the OSSR factor and the TS

12 factor.

13 Q. Fair enough. Do you know how much UE's fuel

14 costs have increased on average over the past

15 few years? And I'm talking about fuel costs

16 now.

17 A. No.

18 Q. Do you know how much they're expected to

19 increase on average over the next few years?

20 A. Specific number, no.

21 Q. So you obviously didn't consider UE's rising

22 fuel costs in arriving at your opinion about the

23 50/50 sharing mechanism, correct?

24 A. I did actually, yeah, uh-huh.

25 Q. Well, if you don't know how much they've risen

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1 in the past and you don't know how much they're

2 rising in the future, how could you have

3 considered them in arriving at your -- arriving

4 at your 50/50 sharing percentage opinion?

5 A. Well, I know that UE and Ameren management have

6 stated that they intend to have frequent rate

7 cases, and with frequent rate cases whatever

8 they're not collecting through the -- the 50

9 percent that they can't pass on, then would be

10 picked up in a rate case.

11 Q. So part of your thinking was, well, they may not

12 recover 50 percent, but they will be able to

13 come in and -- and reflect those increases in

14 base rates at least in your view of the world

15 fairly quickly if they come in with frequent

16 rate cases, was that part of your thinking?

17 A. Well, yeah. And likewise, you know, if fuel

18 costs were to go down, then, you know, you

19 would -- you'd get a true up to an actual level

20 of fuel costs fairly often, you know. Uh-huh,

21 that was part of the thinking.

22 Q. Would you agree that if fuel costs are being

23 tracked in a fuel adjustment clause whether they

24 be net fuel costs or they be fuel costs alone,

25 if whatever is being tracked are rising, then

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1 all else being equal any sharing mechanism's
2 going to result in utility forgoing a
3 recovery -- forgoing recovery of part of the
4 increases?
5 A. I'd just like to hear that again please.
6 Q. Would you agree that if whatever costs are being
7 tracked in the fuel adjustment clause, or costs
8 and revenues in the case of net fuel costs.
9 A. Okay.
10 Q. Whatever's being tracked, if the level of
11 whatever's being tracked are rising --
12 A. Uh-huh.
13 Q. Say net fuel costs are going up next year, the
14 next year, the next year. If those net fuel
15 costs are rising, then any sharing mechanism
16 that applies to what is being tracked will
17 result in utility forgoing recovery of a part of
18 those increases?
19 A. If you're just comparing say 50/50 sharing
20 versus --
21 Q. No sharing --
22 A. -- no sharing --
23 Q. -- or 95/5.
24 A. -- or 95/5, then, yes, I'd agree.
25 Q. If you thought fuel costs or net fuel costs in

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1 this case because that's what would be tracked
2 in the UE fuel adjustment clause, if you thought
3 that that was -- those were going to fall from
4 the base level while the fuel adjustment clause
5 operates, as a customer representative would you
6 want customers to have a large or smaller share
7 of the change?
8 A. Well, I think it would depend on sort of the
9 rate of decline, but in general we would want it
10 to be the higher level of sharing because it
11 gives a greater incentive for the utility to
12 operate efficiently and keep the fuel costs down
13 and to maximize off system sales margins.
14 Q. If you thought that net fuel costs, AmerenUE's
15 net fuel costs were going down, then AmerenUE's
16 95/5 mechanism actually would be a better deal
17 for customers than your 50/50 mechanism,
18 wouldn't it?
19 A. If you ignore the effective incentives, you have
20 to assume it's just a static situation.
21 Q. Okay. With that qualifier, 95/5's better for
22 customers, right?
23 A. With -- well, their bills are lowers, that's
24 better for customers, yes.
25 Q. You pointed to Mr. Miller's 1998 letter to

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1 shareholder in this case. I don't remember if
2 it was you or Mr. Boss that pointed to it in the
3 last rate case. One of you did point to this in
4 the last rate case as well, correct?
5 A. I think probably so. I don't -- can't say for
6 sure.
7 Q. You don't remember if you it was you or him?
8 A. I don't and I'm not even sure if it was pointed
9 to, but I wouldn't be surprised. I didn't --
10 well, I'm trying to think. I had the thought
11 that I wanted to include it and I think I
12 actually did perhaps get it, you know, or had a
13 pdf of it from putting it in testimony in the
14 past.
15 Q. You think probably you actually brought this up
16 in the last rate case as well, don't -- didn't
17 you?
18 A. That's what I'm saying, yes.
19 Q. Yeah. Is the electric utility industry the same
20 today as it was ten years ago?
21 A. No.
22 Q. Were coal prices more stable ten years ago than
23 they are today?
24 A. Depends on whether you're looking at which
25 market I think. If you're looking at --

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1 Q. Which one you want to look at?
2 A. Yeah. The Powder River -- Powder River Basin is
3 still -- there's just not a huge amount of
4 volatility there compared to the eastern coal
5 markets today.
6 Q. How about the stability of Powder River Basin
7 coal ten years ago versus stability of spot
8 Powder River -- Powder River Basin coal today,
9 it's not the same?
10 A. Certainly recent trends in the last year or two
11 that, yeah, it wouldn't be the same.
12 Q. Really more than just the last year or two,
13 isn't it? Wasn't there a lot of volatility in
14 PRB coal, Powder River Basin coal in '05, again
15 this year?
16 A. This year I know, yes.
17 Q. Were the conditions affecting the cost of rail
18 transportation for Powder River Basin coal,
19 let's talk about that, different ten years ago
20 than they are today?
21 A. I'm sure they were.
22 Q. Was power traded differently ten years ago than
23 it is today in the market that UE operates in?
24 A. Yeah. It was much more reliant on just
25 bilateral transactions.

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1 Q. There wasn't a MISO Day 2 market, right?
2 A. No, there wasn't.
3 Q. Are UE's off system sales exposed to the same
4 kind of volatile power markets to which Aquila
5 is exposed in buying lots of purchased power to
6 serve Aquila's loads?
7 A. I'm not sure about that. They're different
8 markets.
9 Q. I asked about whether they're exposed to the
10 same kind of volatility. Are -- are power
11 prices that Aquila has to pay to purchase power
12 to serve load, are those power prices volatile?
13 A. I'm not sure that I'd characterize them as being
14 volatile. There's an upward -- there's
15 definitely an upward trend in the prices.
16 Q. Daily power prices aren't volatile for Aquila?
17 They don't go up and down from day-to-day,
18 month-to-month?
19 A. They go up and down. I don't know that I'd
20 characterize them as volatile.
21 Q. How many megawatt -- how many dollars per
22 megawatt hour does it take for you to
23 characterize a power price movement as volatile,
24 50 cents, five dollars?
25 A. Well, I mean just to look at having changes in

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1 hourly prices, I would look more at the
2 volatility of power costs over time is what's
3 important to me I think.
4 Q. To the extent Aquila has to go buy power in the
5 spot market, isn't it exposed to the daily ups
6 and downs in the spot prices in the power market
7 in -- from which it's buying its power?
8 A. It is, but it's those ups and downs, how they
9 translate into energy costs over time that I
10 would look at.
11 Q. Isn't to whatever extent we can -- we can spar
12 about what's volatile or not, but whether it's
13 volatile, whether -- whether you would
14 characterize the power prices to which Aquila --
15 Aquila's exposed to buy purchased power is
16 volatile or not, that variation, that volatility
17 or lack thereof is similar to the volatility or
18 lack thereof in -- in the way you characterize
19 it that UE would be exposed to in making daily
20 off system sales into the MISO market, isn't
21 it? Aren't they similar?
22 A. Well, I -- I don't think it's that simple of a
23 question. I mean there's -- you know,
24 there's -- for Aquila they've got purchases that
25 they're making where they've locked in some

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1 energy prices just as UE has made -- gotten
2 sales where they've locked in some energy
3 prices, so --
4 Q. Let's talk about --
5 A. -- you really have to --
6 Q. -- the nonlocked in portion -- portion of their
7 purchases and the nonlocked in portion of UE's
8 sales.
9 A. Uh-huh.
10 Q. Let's compare the unhedged purchases for Aquila
11 and the unhedged sales for UE.
12 A. Okay.
13 Q. Similar volatility or similar power markets that
14 have price movements that are similar for
15 Aquila's purchases, unhedged purchases, and UE's
16 unhedged sales, right?
17 A. There's going to be some similar movements. I'm
18 not going to characterize it I don't think as
19 similar volatility.
20 Q. Why not? What's different?
21 A. I'd want to look at the data.
22 Q. You don't know, so you're unwilling to commit?
23 A. It's not a comparison that I've performed --
24 Q. You haven't looked at the --
25 A. -- in this case.

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1 Q. You haven't made that comparison? Do you agree
2 that a majority of the megawatt hours that UE
3 sells off system are sold into the spot power
4 market?
5 A. Yes, I do.
6 Q. Which means UE's earnings have a lot of exposure
7 to the spot power market?
8 A. Definitely a lot of exposure. I think I would
9 agree with that, yes.
10 Q. Power prices could go way up and off system
11 sales could go way up, power prices could go way
12 down, off system sales could go way down, right?
13 A. Yeah, but of course how that translates into
14 earnings, it's just, you know, those prices,
15 changes in prices might be saving you money on
16 serving native load. There could be some off
17 setting changes. I think that was an issue in
18 the last case.
19 Q. UE's Taum Sauk factor and proposed fuel
20 adjustment clause is a fixed value for energy
21 and capacity, right?
22 A. A fixed value that -- that represents, yeah, a
23 sum of estimates of those two combined, if
24 that's what you mean.
25 Q. Right.

1 A. Yes.
 2 Q. Okay. But it -- it would be -- according to
 3 UE's proposal it would be determined in this
 4 case and it would be -- the TS factor would be
 5 fixed in the operation fuel adjustment clause,
 6 right?
 7 A. That's the UE proposal, yes.
 8 Q. How was the energy value calculated?
 9 A. I think it was done through fuel runs that were
 10 done with and without Taum Sauk being available
 11 for dispatch.
 12 Q. Fuel run used historical energy prices? Use a
 13 two year average of historical L&P's at UE's
 14 generators, right?
 15 A. Oh, okay, I was thinking of fuel prices. I was
 16 thinking UE was using some forward natural gas
 17 prices I think, but in terms of the sales of
 18 energy.
 19 Q. Well, and the purchases too, right?
 20 A. Yeah. I guess UE's using a two year average I
 21 think historical.
 22 Q. Isn't that your understanding that UE's using a
 23 two year --
 24 A. Yeah.
 25 Q. -- historical average of the L&P's --

1 are based on a projection beyond the true up
 2 date in this case, can you, or you don't know?
 3 A. I don't know.
 4 Q. Just don't know?
 5 A. No.
 6 MR. LOWERY: Mark one more.
 7 MR. MILLS: I'll hold you to that.
 8 (Deposition Exhibit 9 was marked for
 9 purposes of identification.)
 10 Q. (By Mr. Lowery) Mr. Kind, handing you what's
 11 been marked as Deposition Exhibit RK9.
 12 A. Okay.
 13 Q. Want you to confirm that this is the work paper
 14 that underlies the capacity value in table four
 15 of Attachment C to your direct testimony, what
 16 you've called a work paper?
 17 A. I think that and a copy of the spreadsheet was
 18 probably supplied as well as part of my work
 19 papers.
 20 Q. I don't know what spreadsheet you're referring
 21 to because I don't believe one was provided.
 22 A. I'm thinking table four, but I don't know for
 23 sure, I'd have to look. Maybe it's self-
 24 explanatory, and I didn't -- didn't provide an
 25 electronic copy of it. I think I did though. I

1 A. Yes.
 2 Q. -- at UE's generators as an input to the model?
 3 A. Uh-huh.
 4 Q. Isn't -- isn't it all also your understanding
 5 that UE's using the past two years, '06, '07 gas
 6 prices as an input into the model?
 7 A. I really can't say that I --
 8 Q. You're not sure about the gas --
 9 A. -- know -- that I know about all the details of
 10 the inputs to the model.
 11 Q. Okay. You're not sure about the gas prices?
 12 A. Huh-uh.
 13 Q. UE's used weather normalized loads using 30
 14 years of weather history?
 15 A. I'm really not sure what -- you know, I sort
 16 of -- I've -- I have a proposal that includes
 17 using that differential and it's sort of what
 18 the Commission determines as a reasonable
 19 differential.
 20 Q. Can you --
 21 A. That's what I think they should include, you
 22 know, in terms of that. We have other
 23 recommendations.
 24 Q. You can't identify any inputs into UE's modeling
 25 that produce the energy value of Taum Sauk that

1 think it would be both.
 2 MR. LOWERY: Well, Mr. Mills, I suppose
 3 while we're on the record, but in fact isn't the
 4 reason that email was sent to us is because a
 5 spreadsheet wasn't provided?
 6 MR. MILLS: If -- if I recall, there was --
 7 you did put in a request for work papers
 8 supporting the calculation in table four on
 9 Attachment C and we provided this in response to
 10 a request.
 11 Q. (By Mr. Lowery) Not a spreadsheet.
 12 A. But I think your question had to do with how did
 13 I choose the capacity prices that are in table
 14 four. It didn't mean that we didn't have --
 15 give you a spreadsheet.
 16 Q. Is it your testimony you gave us the spreadsheet
 17 that underlies table four?
 18 A. That's my recollection.
 19 Q. Will you --
 20 A. And we'd be happy --
 21 Q. Will you be happy to check on that?
 22 A. Happy to provide it if we have it, certainly.
 23 If you asked for it and you wanted it and we
 24 didn't provide it --
 25 Q. Mr. Kind, are parties in Public Service

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1 Commission rate cases required to ask for work
 2 papers that underlie testimony?
 3 A. We had to ask for your class costs of service in
 4 this case.
 5 Q. That wasn't my question.
 6 A. It happens.
 7 Q. Wasn't my question.
 8 A. Could have been a mistake here, I don't know.
 9 Q. Fair --
 10 A. But I certainly would have intended to include
 11 it.
 12 Q. Fair enough. You would have intended to include
 13 it, but you don't know if you did or not, is
 14 that -- is that fair?
 15 A. It's my recollection that I did, but I -- I
 16 can't say with absolute certainty.
 17 MR. LOWERY: I assume that you want to waive
 18 presentment, but read and sign, right?
 19 MR. MILLS: Yeah.
 20 MR. LOWERY: And can we stipulate that if
 21 the deposition isn't signed at the time of the
 22 hearing when Mr. Kind takes the stand, it'll be
 23 treated as if is -- as if it was signed?
 24 MR. MILLS: Assuming that it -- we receive
 25 it in hand at least seven days ahead of that

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1 point in time, yes.
 2 MR. LOWERY: I think you're going to get it
 3 tomorrow.
 4 MR. MILLS: Okay.
 5 MR. LOWERY: I don't think Mr. Kind will be
 6 testifying next Thursday, so.
 7 MR. MILLS: Okay.
 8 MR. LOWERY: Okay. Seven days is fine.
 9 (Off the record.)
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1
 2 _____
 3 RYAN KIND
 4 STATE OF MISSOURI)
 5)
 6 COUNTY OF _____)
 7 The undersigned Notary Public of the State
 8 of Missouri with principal office in the County of
 9 _____, does hereby certify:
 10 That on _____, _____, the
 11 foregoing deposition was submitted to the witness
 12 for examination and was read; at which time any
 13 changes which the witness desired to make were
 14 entered upon the deposition and that thereafter the
 15 deposition was signed before my said witness.
 16 Wherefore, I have subscribed my name and
 17 affixed my seal this _____ day of _____,
 18 _____.
 19 _____
 20 Notary Public
 21
 22
 23 My commission expires: _____,
 24 _____.
 25

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1 I, Shelley L. Mayer, Stenographic Reporter and
 2 Notary Public, do hereby certify that pursuant to
 3 notice there came before me
 4 RYAN KIND
 5 at the Office of Public Counsel, 200 Madison Street,
 6 in the City of Jefferson, County of Cole, State of
 7 Missouri, on the 13th day of November, 2008, who was
 8 by me first duly sworn to testify the whole truth of
 9 his knowledge concerning the matter in controversy
 10 aforesaid; that he was examined and his deposition
 11 then and there written in stenotypy by me and
 12 afterwards typed under my direct supervision, and is
 13 fully and correctly set forth in the foregoing
 14 pages; that presentment of this deposition to the
 15 witness for signature was requested by counsel and
 16 the witness.
 17 Given at my office in the City of Columbia,
 18 County of Boone, State of Missouri, this 13th day of
 19 November, 2008.
 20 My commission expires August 29, 2012.
 21
 22
 23 _____
 24 Shelley L. Mayer,
 25 Notary Public within and
 for Boone County, Missouri

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 OF THE STATE OF MISSOURI

3 In the Matter of Union Electric)
4 Company d/b/a AmerenUE for)
5 Authority to File Tariffs) No. ER-2008-0318
6 Increasing Rates for Electric)
7 Service Provided to Customers in)
8 the Company's Missouri Service)
9 Area.)

10 CERTIFICATE OF OFFICER
11 STATEMENT OF DEPOSITION CHARGES

12 I, Shelley L. Mayer, Certified Court Reporter of
13 Martin & Daniel Court Reporters, hereby state and
14 certify that the deposition of Ryan Kind was taken
15 on behalf of Union Electric d/b/a AmerenUE on the
16 13th day of November, 2008.

17 I hereby certify that the original deposition of the
18 deponent is in the custody of James Lowery.

19 TAXED IN FAVOR OF:

20 Union Electric, represented by James Lowery
21 Deposition Charges \$ _____
22 State of Missouri, represented by Todd Iveson
23 Deposition Charges \$ _____
24 Office of Public Counsel, represented by Lewis Mills
25 Deposition Charges \$ _____

Upon delivery of transcript, the above charges had
not yet been paid. It is anticipated that all
charges will be paid in the normal course of
business.

Given at my office in the City of Columbia, County
of Boone, State of Missouri, this 13th day of
November, 2008.

Shelley L. Mayer, CCR No. 679
Certified Court Reporter