BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

DEPOSITION OF MAURICE BRUBAKER

October 23, 2008

Sheryl A. Pautler, CCR 871

(Whereupon the exhibits were attached to the original and copies.)

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Customers In the Company's Missouri)
Service Area.)

DEPOSITION OF WITNESS, MAURICE BRUBAKER, produced, sworn, and examined on the 23rd day of October, 2008, between the hours of eight o'clock in the forenoon and five o'clock in the afternoon of that day, at Brubaker & Associates, Inc., 16690 Swingley Ridge Road, Chesterfield, Missouri, before SHERYL A. PAUTLER, a Notary Public and Certified Court Reporter within and for the State of Missouri, in a certain cause now pending before the Public Service Commission in the State of Missouri.

A P P E A R A N C E S

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Also present:

Mr. John Cassidy

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for all parties, that the deposition of MAURICE BRUBAKER may be taken in shorthand by Sheryl A. Pautler, a notary public and shorthand reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

MAURICE BRUBAKER,

of lawful age, being produced, sworn and examined on behalf of AmerenUE, deposes and says:

[EXAMINATION]

QUESTIONS BY MR. LOWERY:
Q. Good morning, Mr. Brubaker.
A. Good morning.
Q. You've been deposed a number of times, correct?
A. Yes.
Q. So you know that you need to give verbal answers and all those kinds of things. I'll try not to talk over you and you try not to talk over me; fair enough?
A. Yes.
Q. I hesitate to ask you this given that Mr. Conrad has already shamed me into not asking the question, but I'm going to ask it anyway. Are you on any medication or have any other kind of condition that would

prevent you from understanding my questions and giving full and complete answers to them?
A. No.
Q. All right. If you don't understand a question or I'm not clear, which is entirely possible, just ask me to rephrase it or tell me you don't understand and I'll try to clarify what I'm asking you; is that fair?
A. Yes.
Q. Let me try to just get some definitional things out of the way. When I talk about Ameren, I'll be talking about Ameren Corporation. If I'm talking about AmerenUE or Union Electric, I'll be talking about the separate company Union Electric Company.
A. Okay.
Q. All right. But I won't use Ameren to refer to UE or AmerenUE. I'll specifically refer to UE or AmerenUE if that's what I mean to do.
A. Okay.
Q. When I say net fuel cost, I mean fuel and purchased power costs, the sum of fuel and purchased power, less off-systems sales revenues.
A. Okay.
Q. And if I say fuel and purchased power or fuel cost, I'm not including off-system sales. Is that fair; do you understand the distinction I'm drawing?

A. It's not clear whether you'd be including the fuel cost associated with off-system sales or not when you say fuel and purchased power cost.
Q. I would be. So if I say fuel and purchased power, I'm including all the fuel and purchased power cost, whether they're associated with off-system sales or retail load, but I'm not including revenues from off-system sales; is that fair?
A. Yes.
Q. Do you understand that now?
A. Yes.
Q. When did you first start doing work on this particular rate case?
A. Shortly after it was filed.
Q. All right. And what was your specific assignment for the case?
A. We were asked to just look at the filing and make an evaluation of what was being requested, what the impact would be, and to identify the key issues.
Q. And when you say we, you mean Brubaker and Associates as an entity?
A. I do.
Q. Not necessarily you personally?
A. I was in charge of the case, so it sort of fell to me to do that.

Q. Who gave that assignment to you?
A. Ms. Vuylsteke.
Q. All right. And has that assignment for Brubaker and Associates, has it changed since the case started, the scope of the assignment or the things you're looking at?
A. Well, in the beginning, you don't know what all the issues are. So it narrowed as we got into it.
Q. Okay. Were you asked to do anything specific other than just generally look at the filing and see what kind of impact it would have on the member companies of MIEC?
A. No.
Q. Were you given any particular direction about what issues you should be looking for or not be looking for?
A. No.
Q. No particular direction about what positions you might want to take or not take on the case?
A. No.
Q. Okay. When did you start developing your direct testimony?
A. I guess from day one, the process begins and you begin to think about issues and what you might put in testimony. Probably the physical writing of the testimony

would have begun a couple weeks ahead of the filing date.
Q. Is it fair to say that you are the person within Brubaker and Associates that's responsible for the fuel adjustment clause issue in this case?
A. Yes.
Q. Is there anyone else who's responsible for that issue?
A. No.
Q. All right. Any one of your consultants or employees who in particular assisted you with that issue on this case?
A. I think I had conversations with Mr. Gorman, Mr. Dauphinais, and perhaps others on the staff just about numbers in the case. But as far as the concepts and the policies, that was me.
Q. All right. In the context of doing your work, did you consider all factors and information that you considered important in arriving at your opinions about the FAC? When I say FAC, you understand I mean fuel adjustment clause proposal in this case?
A. I understand. And the answer is yes.
Q. And are all such important considerations reflected in your direct testimony? And when I say direct testimony, I understand that you filed two different pieces of direct testimony; one, I believe on August 28 and, one,

I believe on September 28. Are all of those important considerations reflected in one or both of those pieces of direct testimony in relation to the fuel adjustment clause issue?

A. I would think that the most important ones are. That's not to say that there aren't other things that I took into account but maybe didn't put into words on paper.

Q. As you sit here today, can you think of some other things that are important that you may have taken into account that you did not discuss in your direct testimonies?

A. Not at this point.

Q. Are you working on surrebuttal testimony?

A. I've been reading other people's rebuttal. I haven't started or made a decision on whether to do surrebuttal.

Q. Do you have any inclination about whether you're going to be doing surrebuttal testimony in this case and on what issues?

A. Not at this point, no.

Q. You have absolutely no idea?

A. Still just reading the testimony and absorbing it.

Q. Have you read all of the fuel adjustment

clause related rebuttal testimony filed by the company?

A. I think I have flipped through -- read through quickly most of it. I wouldn't say that I read every last word or paragraph that deals with it, but I think I reviewed Mr. Lyons', Mr. Neff's, Mr. Arora.

Q. Mr. Glazer's?

A. Probably. I don't have a clear memory of what his subject was.

Q. What factors or information are you considering in making your decision about whether you'll be filing surrebuttal testimony? And I'm particularly interested in surrebuttal testimony that would in some way relate to the fuel adjustment clause.

A. When it gets to surrebuttal, typically we're looking to see are there issues that need to be further clarified or points about my testimony or positions that were, I feel, not correctly represented or was I bundled in with some other witness and kind of rebutted as a group, when in fact my position might be different than that of the other witness. That's the kind of thing I would look for.

Q. Have you identified, at least preliminarily, any kind of testimony in the company's rebuttal testimony that tends to address your positions that you don't feel has been fairly represented or that you are inclined to

surrebut?

A. I haven't looked at the testimony and studied it carefully enough to be able to make that call at this point.

Q. All right. With regard to the fuel adjustment clause issue, could you tell me each and every opinion you've arrived at with respect to that issue in this case. What are your basic opinions about the fuel adjustment clause proposal in this case?

A. I think they're summarized in my testimonies. But basically I've said if there is a fuel clause, that the structure of it in which all fuel and purchased power costs are added and all off-system revenues are subtracted from, that is the proper structure and form of the fuel cost. I've not addressed the other details of the structure of the fuel clause in my testimony.

The other primary factor is that there needs to be a reasonable incentive to the utility. You manage its fuel cost and its generation fleet and its off-system sales so as to benefit customers.

Q. And any other opinions?

A. I think those are the main ones.

Q. And can you describe the process that you went through in reaching your opinion about -- reaching each of those two opinions?

A. Well, with respect to the broad structure, the issue of how to separate fuel and purchased power cost associated with native load sales from those associated with off-system sales was a major issue in the last AmerenUE rate proceeding. And as I indicated in my testimony in this case, there are numerous charges and numerous reconciliations and many, many adjustments that would have to be made to separate those costs out properly.

And it would also be a very substantial audit burden to go back after the fact to make sure it was done correctly. For that reason, as we expressed in the last case and I accept it here, the structure in which we just look at the total cost and total revenues, I think is the most logical.

Q. And if a fuel adjustment clause is to be granted, I believe you've testified that the structure that AmerenUE has proposed is the right structure?

A. At least as to that feature. As I say, I haven't focused on the other aspects of the clause, the details and periods of collection and reconciliation and all that.

Q. Do you have any opinions about any of the other details of the proposal or the clause as you indicate?

A. I haven't formed any, no.

Q. And do you intend to form any in this case?
A. I will look at the testimony and see if there's anything that I care to comment on. I'm not to that point yet.
Q. Well, you're not aware of any change in the proposal since it was filed on April 4, 2008, are you?
A. Not from the company, no.
Q. And so if you haven't formed opinions about any of those matters at this point, are you telling me you may be forming opinions about matters that have already been proposed for, I guess seven months now, before this case is over?
A. If there are testimony from other parties that contain recommendations or features that I might agree with or disagree with, I might choose to say something about those or I might not.
Q. Only in response to modifications or comments that other parties might have respecting the fuel adjustment clause proposal; is that your testimony?
A. That's correct.
Q. You were provided -- given a notice of this deposition, correct?
A. Yes.
Q. And attached to that notice was a subpoena that requested you provide certain materials. Do you

recall that?
A. I do.
Q. And you've produced materials that you believe to be responsive to that request with the exception of Items 7 and 8, I believe, which your attorney had objected to; is that correct?
A. Correct.
MR. LOWERY: Why don't we go ahead and mark that as Exhibit 1.
(Whereupon the reporter marked Exhibit No. 1 for identification.)
Q. (By Mr. Lowery) Mr. Brubaker, I want to hand you what's been marked Deposition Exhibit 1 and ask you if that's a true and accurate copy of the notice of deposition that you were provided?
A. Yeah, I believe so. Yes.
Q. So, Mr. Brubaker, you indicate you've provided written responses to at least some of these items, perhaps all of them?
A. Yes.
Q. You didn't -- in response to the first -- or in response to Items No. 1 and 2, you brought a CV with all of your work papers and some of them printed out. You brought all of your prefiled direct testimony that's been filed in the case. In response to Item No. 3, you

essentially indicate -- and if I'm paraphrasing this incorrectly, let me know -- you essentially indicate that you can't really specifically identify the documents, etc. that you relied upon in forming your opinions; is that essentially the --
A. Well, I think I said, I begin by saying I rely to a great extent on my years of experience and a number of things there that I mention in the written response. But to go back and pull each and every document that might have come to mind, I just wouldn't be able to do that.
Q. I understand. Are there any particular documents other than the orders in the Aquila and Empire cases, obviously the testimony in this case, the order from the last AmerenUE case, any particular documents or data request responses that come to mind that influenced the formation of your opinions, your two key opinions in this case?
A. Not specifically, no.
Q. What about publications or materials, other state regulatory commission orders, any of those that come to mind that have a bearing on or that you relied upon in whole or in part in forming your opinions in this case?
A. I would say not.
Q. Have you testified about fuel adjustment clause proposal requests in other regulatory proceedings?

A. I'm sure I have.
Q. I know you've testified in the recent Empire case?
A. Yes.
Q. And you've testified in the Aquila case when Aquila first received a fuel adjustment clause, although you didn't testify really about the substance of the proposal; is that correct?
A. Correct.
Q. What about other cases; can you think of other cases where you've testified about fuel adjustment clause proposals?
A. Not other recently that comes to mind on the structure of fuel clauses. I know in various cases over the years, I've had testimony that addressed different aspects of the fuel clause, like loss factors or what should be included in the clause in terms of variable only or what sort of other costs might be appropriate, things of that sort. I think it's been a while since I would have done that.
Q. Tell me about the second category. You talked about loss factors. Then I think you were essentially, if I can restate it, you were talking about what kinds of things should be considered fuel and purchased power for purposes of being tracked within a fuel adjustment clause

Page 18

and you were talking about whether it should be just variable items, things that vary with output versus fixed or demand-related items?

A. Correct.

Q. Tell me to the best of your knowledge and recollection what cases you might have testified about those issues.

A. It's been a long time. Nothing comes to mind.

Q. Don't even know the jurisdiction?

A. I can think of some testimony in Florida years ago, but what case or what the specific issue was, I don't remember. Cases in Texas about fuel adjustment. Cases in -- loss factors primarily in Texas. In Louisiana, and I don't recall whether it was testimony or whether it was comments or a working group where there was some modifications adopted for the then existing fuel adjustment clause. We advocated for line loss differentials, was our primary point of issue. I think we took some positions on exclusion of capacity charges from the fuel clause. That's the nature of it.

Q. All right. In response to Item No. 4 on Exhibit A to the notice of deposition, Exhibit 1, you gave a listing, I think to the best of your knowledge, of when you have been deposed in other regulatory proceedings.

A. Correct.

Page 19

Q. Did any of these involve nature, structure, establishment of fuel adjustment clauses to the best of your knowledge?

A. May I look at it?

Q. Absolutely. And you're looking at what you've labeled as Exhibit A, Response No. 4, I think you call it.

A. Correct.

Q. Request No. 4.

A. No.

Q. Probably while we're at it, I'm going to hand you a portion of your written response to the subpoena. And just for the record, ask you to confirm this is one, two, three, four, five, six, seven, eight, nine pages and it's request number three, four, five, and six. Have I accurately described that?

A. It looks like that.

MR. LOWERY: I'm going to have that marked Exhibit 2.

(Whereupon the reporter marked Exhibit No. 2 for identification.)

Q. (By Mr. Lowery) Mr. Brubaker, I'm just going to ask you to confirm that what's been marked Deposition Exhibit 2 was produced by you today in response to a subpoena attached to your notice of deposition?

A. It was.

Page 20

Q. Mr. Brubaker, in terms of work papers, is it correct that you do not have any work papers that relate to your fuel adjustment clause testimony in the case?

A. Right. The basis for the calculations and all were set forth, I thought, in the exhibits and in the testimony.

Q. So the work papers you've produced relate to class cost of service, I believe; is that correct?

A. Correct.

Q. All right. Are there any texts or treatises or standards or authorities, things of that nature, that support the two main opinions that you've given in this case that you're aware of?

A. I don't know. I haven't looked.

Q. None that are contrary to those opinions to your knowledge?

A. There are all kinds of opinions out in the public domain. I'm sure there are people who agree with me and people who don't.

Q. But you're not aware of any in particular because you haven't looked one way or the other?

A. I didn't look at that as a basis for my testimony. I'm aware of them because I do a lot of reading and have done a lot of cases.

Q. Do any come to mind, any particular treatises

Page 21

or articles or authorities that deal with the issue of whether or not fuel purchased power and off-system sales should be included in a fuel adjustment clause or that deal with the second issue; that is, what kind of costs should be included, being ones that vary with output, versus ones that are more demand related or more fixed in nature?

A. None that come to mind particularly.

Q. Let me ask if you agree or disagree with the following statements. First, quote: Incentive plans should link financial rewards to dimensions of company's performance over which the company's management has substantial control.

A. I think that's a factor in consideration.

Q. Do you agree or disagree with the statement?

A. Well, I don't agree that that's the only factor.

Q. You agree that it is one factor?

A. Yes.

Q. Let me ask you if you agree with this statement, quote: There is little to be gained by holding the regulated firm responsible for unanticipated costs that are entirely beyond its control. Pass-through provisions for such costs are advisable.

A. I think that's an overly broad statement. I don't know that I would agree with that as written.

Q. All right. In the Empire case, you cited a Louisiana General Order relating to fuel adjustment clauses, correct?
A. I did.
Q. And I think you testified that you had read that entire order?
A. Yes.
Q. It looks like you've had quite a bit of experience in Louisiana from looking at your deposition list that you provided.
A. Yes.
Q. Louisiana passes through a hundred percent of fuel and power cost, do they not?
A. There are two reservations to that. One is prudency disallowances. And I guess the other factor is they have an earning sharing plan where they calculate return equity and refund or surcharge for earnings every year. I guess the structure to the clause is full pass-through for prudence, but there are other factors in the regulatory scheme.
Q. There is no sharing within the fuel adjustment clause in Louisiana, correct? There is no sharing of the changes from a baseline either up or down in fuel adjustment clauses in Louisiana; isn't that correct?
A. Correct.

Q. And of course there could be prudence disallowances just like there could be prudence disallowance in Missouri or probably just about any other state that has a fuel adjustment clause, correct?
A. Correct.
Q. And those disallowances would only occur if in fact there was a finding that the utility was imprudent in managing or procuring its fuel, correct?
A. That's essentially correct, yeah.
Q. Well, when else would you have a prudence disallowance; wouldn't there have to be a finding of imprudence?
A. Well, if it's a prudence disallowance. I've seen it in Louisiana, fuel prices spike and the commission tells the company to defer some of the costs and collect it later, maybe with a carrying charge, maybe without. So to some extent, that's less than a prudency issue.
Q. Deferral is completely different than, for example, your proposed sharing mechanism where if net fuel costs go up 20 percent, the company simply does not recover that 20 percent. Deferral is completely different than disallowing recovery entirely or not recovering a portion of the cost because of sharing mechanisms, correct?
A. I think I missed something in the beginning of your question. Would you mind restating that or read it

back.
MR. LOWERY: Can you just read that back.
(Whereupon the reporter read back the previous question.)
A. Deferral is different than that. However, I think your question misstates what happens under my adjustment. If fuel costs went up 20 percent, the amount not recovered would be 20 percent of the 20 percent subject to the earnings cap -- or to the impact earnings.
Q. (By Mr. Lowery) That's fair enough. The amount not recovered would be 20 percent of the change?
A. Right.
Q. Not 20 percent of the total net fuel cost?
A. Correct.
Q. If I misstated that, I didn't mean to.
And if that 20 percent exceeded caused a swing of more than 50 bases -- well, it's more than $25 million; is that correct?
A. It's 50 bases points.
Q. Which I think is $25 million.
A. I can tell you what it is based on the filing. It will be whatever the commission finds in terms of rate base and the cap structure. Let me see. Yeah. The cap would be 50 -- 50 million.
Q. 50 bases points; isn't that correct?

A. I'm sorry. 50 bases points, yes.
Q. So whatever the fuel and purchased power is established, whatever the cap structure and the return of equity is ultimately established, you have designed a cap so that if the 20 percent would exceed 50 bases points, the share that the company -- the company's share would be capped at that point at that 50 bases points level, correct?
A. That is correct.
(Whereupon the reporter marked Exhibit No. 3 for identification.)
Q. (By Mr. Lowery) Mr. Brubaker, I'm going to hand you what's been marked Deposition Exhibit 3 and ask you to confirm the Louisiana General Order that you discussed in your testimony in the Empire case and that we were just discussing a moment ago?
A. Yes.
Q. Thank you.
A. It appears to be.
Q. You don't have any reason to believe it's not a true and accurate and complete copy of that general order?
A. I take your word for it. It looks familiar.
Q. Take all the time you need.
A. I'm not going to question it. It appears to

Page 26

be. I just didn't read all the pages. I have no reason to believe it's not true.
Q. Can you point to me within this general order, you were talking about some type of earnings sharing mechanism. Can you point to me in this general order where that appears?
A. No. It's not in the fuel order. It's in the earning sharing orders of the commission.
Q. Which are separate from the fuel adjustment clause, correct?
A. Correct.
Q. They're a separate rate making mechanism that's in place in Louisiana for some or all of their utilities?
A. Well, it's a separate mechanism. You have to view them all together to what happens at the end of the day.
Q. But it's not part of the fuel adjustment clause?
A. Correct. But the point is if the fuel adjustment clause -- if fuel costs went up a hundred percent, recovery was effected. And the end result of that increase in fuel cost and the recovery, as well as other changes in the factors that compose the revenue requirement produced a return equity higher than the last authorized,

Page 27

there would be a refund to customers.
Q. Are you aware of that happening with any of the Louisiana IOUs, in recent years?
A. Oh, yes.
Q. When was the last time it happened and for which IOU that you're aware of?
A. I don't remember exactly when. The two I'm most familiar with are Entergy, Louisiana and Entergy Gulf States, Louisiana. E-N-T-E-R-G-Y, Louisiana, LLC. Entergy Gulf States, Louisiana, LLC.
Q. And you were telling me -- you were telling me you were aware of the last time that there had been, I guess, excess earnings over some sharing band that had been returned to customers?
A. Yeah. I can't remember the -- I can't remember the exact dates. I think there had been combinations of factors that have gone into the clause. Some factors, some costs like purchased power demand charges that the commission occasionally allowed to pass through without going through the clause. So sometimes there would be an increase in the recovery factor, but it was composed of an increase in purchased power demand charges offset by a decrease due to earnings being in excess of the authorized.
Q. Outside the fuel adjustment clause?

Page 28

A. Yes.
Q. But, again -- and if you don't know, it's fine -- but when's the last time in Louisiana you're aware of -- and I assume they look at this on an annual basis or some 12-month period --
A. They do.
Q. -- that the utilities have given money back through this separate return on equity cap, if that's a fair way of putting it, where beyond some level of return on equity, the utility has to give money back; when's the last time you're aware of?
A. I don't have a specific recollection of when that was.
Q. Has it been some years?
A. I'm just not sure. Because the composition of those have multiple factors to them. And sometimes there will be a net increase, but there is a decrease in rates due to earnings in excess of the authorized offset volume increases and things that are allowed to pass through separately. I'm just not in position to speculate about that at this point.
Q. You also talked about a Rocky Mountain Power fuel adjustment clause in the Empire case, did you not, in Wyoming?
A. I think I did, yes.

Page 29

Q. That fuel adjustment clause was established as the result of a settlement; isn't that correct?
A. Initially. I believe it was reauthorized in a subsequent case.
Q. Are you familiar with its reauthorization?
A. Well, generally.
Q. Well, do you know how it was initially established and how it has been reestablished to the extent it has been?
A. It was initially established in a stipulation resolving either a rate case or inquiry into fuel and purchased power cost recovery, subsequently reauthorized, I believe, in a settlement of a subsequent rate case.
Q. So you do recall that it was reauthorized as a result of a settlement of a subsequent rate case?
A. Yes.
Q. Not as a result of a litigated position where the commission picked one side or the other, correct?
A. Correct.
Q. And you were not involved in that case; is that correct?
A. I was not involved in the first case. The firm was involved in the second case. I did not address fuel adjustment issues.
Q. Who was involved from your firm in the second

case?
A. I believe Katie Iverson testified. Michael Gorman testified.
Q. And on what issues were they involved in that case?
A. Ms. Iverson was on cost of service, revenue allocation and rate design. Mr. Gorman on cost of capital. Also Mr. Alan Chalfant, C-H-A-L-F-A-N-T, testified on some rate design issues.
Q. Were you or they involved in the settlement discussions relating to the fuel adjustment clause in that case? And I don't think they called it a fuel adjustment clause. They called it a PCAM, but it's the same thing in effect, is it not?
A. Correct.
Q. Were you or they involved in the settlement discussions regarding the fuel adjustment clause?
A. I was not and I don't believe they were either.
Q. You aren't aware of the terms and the give and take that took place in the settlement discussions that led to a stipulation about the fuel adjustment clause in that case, are you?
A. No.
Q. You don't know what Rocky Mountain Power maybe

gave up to get that settlement, do you?
A. I was not involved in the settlement discussions and not in position to comment on that. I just don't know.
Q. So you don't know what Rocky Mountain Power gave up or didn't give up to get the fuel adjustment clause? Since you were not involved, there's no way you could know; is that fair?
A. Well, I know any settlement is a compromise and people give up things and get things. What specifically went through their mind, I probably wouldn't know even if I was involved.
Q. The Rocky Mountain Power fuel adjustment clause in Wyoming uses a forward looking test year to set the base cost for the fuel adjustment clause; isn't that correct?
A. I believe that's true.
Q. So if fuel costs are rising, however they define them, whether they have a net fuel concept like AmerenUE had proposed or otherwise, whatever fuel costs are the subject of that fuel adjustment clause in Wyoming, if those are rising, then the base against which changes are going to be measured is going to be higher than if you're looking at historic period to establish that base; isn't that correct?

A. That would be true.
Q. That means deviations from the base are likely to be smaller in that factual scenario, than if they had been using historic costs to set the base, correct?
A. All other things equal, yes.
Q. All other things equal, the deviations are likely to be smaller?
A. Yes.
Q. And so we'd be applying sharing percentages to smaller deviation, correct?
A. As long as you're not outside the bounds of the sharing mechanism, that's correct.
Q. Let's assume there isn't a cap.
A. Yes.
Q. And there is no cap, I don't believe, in Wyoming, correct?
A. I believe that's correct.
Q. So if there's no cap and we're using forecasted fuel to set the base in a rising fuel cost environment, then the magnitude of the sharing is going to be smaller because we're sharing around a smaller deviation, correct?
A. As is compared to a historic base level, I would think that would be true.
Q. All right. I think you also had mentioned

Excel Energy in Colorado and several northwest utilities, Avista, Puget Sound -- I don't know if I said that right -- Portland General in the Empire case, correct?
A. Yes.
Q. I think you ultimately ended up providing information on six utilities that you say share changes in fuel costs through a fuel adjustment clause; is that right?
A. I believe that's what I provided, yes.
Q. Do you know how many investor-owned electric utilities there are in non-restructured states? And do you know what I mean by non-restructured states?
A. I do.
Q. Do you know how many there are?
A. Offhand, I don't recall. I know Mr. Lyons had that in his testimony. The number 97 comes to mind.
Q. I think you're close. You may be exactly right. Do you have any reason to dispute the information that Mr. Lyons had provided in his schedule MJL-RE8?
A. As a general proposition, I wouldn't. I haven't, you know, thought about each state, nor are there any exceptions maybe he didn't pick up. In general, I don't have a basis to believe that he's inaccurate.
Q. I'm going to show you Mr. Lyons' rebuttal testimony, specifically schedule MJL-RE8. You've seen this schedule before, correct?

Page 34

A. I've seen it. I've not studied it in detail or gone behind it, but I've seen it.
Q. You don't have any reason to believe that it's inaccurate; you haven't studied it; you haven't gone back and done independent due diligence about it; you don't have any reason to believe it's inaccurate; is that fair to say?
A. Well, I can't vouch for its hundred percent accuracy either. I'm not suspicious that he's purposefully tried to distort the facts. But there may be little nuances of certain clauses that just didn't come up in the review. With that said, I don't have any other basis to disagree with what he'd put out.
Q. And putting aside nuances of the clauses or not, the second column or the third column if you count the labels or the categories of the column, he indicates that 87 of 94 -- I think you said 97. But 87 of 94 utilities in non-restructured states have fuel adjustment clauses?
A. Of some type or the other, that's correct.
Q. That seems reasonable to you?
A. Yeah.
Q. If you add Aquila and Empire to the six that you identified in the Empire case, would it be fair to say that only about 8 of 87, less than 10 percent, have sharing of total cost of fuel purchased power and off-system sales through a fuel adjustment clause?

Page 35

A. If we just look at the fuel clause and don't think about other regulatory mechanisms in place, like earning sharing mechanisms, that would be true.
Q. If we consider sharing within a fuel adjustment clause, that's true, correct?
A. Yes.
Q. You don't have any reason to believe this information is inaccurate, correct?
A. I'd have to go back to my prior responses on that.
Q. But you don't have reason to believe, you're just saying you haven't done due diligence, but you haven't done any investigation or you don't have any information that cast out the information, correct?
A. At this stage of my review, I do not.
Q. And you've been provided the work papers that underlie these schedules, have you not?
A. Yes.
Q. Including work papers provided back in April that underlie essentially the same schedules that were provided with the direct testimony, have you not?
A. I presume so, yes.
Q. I think you agreed in the Empire case that in your experience, sharing percentages through a fuel adjustment clause for these 8 out of 87 utilities is closer

Page 36

to 80, 90 percent, 95 percent, those were the numbers you were talking about?
A. In that range, yes.
Q. So your 20 percent proposal in this case is at the higher end of the spectrum, I guess, from the utility's prospective of the range that you've discussed; is that correct?
A. At the higher end of the range, yes.
Q. Now, I think you testified earlier you agree with the structure of AmerenUE's proposed fuel adjustment clause, right?
A. I think in the context of the discussion that we had which was to put into the clause all the fuel and purchased power cost and then subtract all the revenues from off-system sales; that's what I was addressing in that testimony.
Q. You have, I think, just two criticisms of the fuel adjustment clause proposal; one is that you don't believe it's 95/5 percent sharing is sufficient, right?
A. That's one.
Q. And the second is you want to remove certain costs from treatment via the fuel adjustment clause, wanting them treated solely in base rates; is that right?
A. Actually, I mentioned that in my first piece of testimony. But as I studied the clause and looked at

Page 37

the offsetting revenues that might come out if we took the fixed cost out, I decided that on balance it was okay and I don't have a problem.
Q. You do anticipate my next question. So you are not recommending a change to the components of fuel and purchased power as defined in the proposed fuel adjustment clause testimony -- tariff? I'm sorry.
A. You are correct.
Q. So you've changed your mind about that? I don't mean to be critical.
A. I refined my opinion after I studied the pluses and minuses in the clause and the magnitude of the costs involved.
Q. If I were to put the tariff in front of you -- and the tariff is attached to Mr. Lyons' direct testimony, you recall that, correct?
A. Yes.
Q. And you've studied the tariff obviously fairly closely, right?
A. Some parts more than others, but I read it.
Q. If I were to put the tariff in front of you, the only change that you're recommending to that tariff is that the 95/5 be changed to 80/20 with your 50 bases point cap; is that correct?
A. Correct.

Page 38

Q. No other changes are being recommended by MIEC in this case?
A. Correct.
Q. And you don't anticipate recommending any other changes; is that true?
A. The only reservation I make is other parties have made comments and suggestions on refinement of how the mechanics of the fuel clause works. I will study those in more detail and I may or may not have a reaction to those and may or may not put in further testimony. As I sit here today, I don't plan to change -- to make a recommendation or not make one. I'm just agnostic at this point on that question.
Q. You're agnostic on the question of whether you might agree or disagree in whole or in part with some other modification that somebody else might have recommended in the case?
A. Yeah. Probably agnostic isn't the best word. I would say I'm indecisive or inclusive at this point as to whether any of those would be something I want to say, yes, I like that or, no, I don't. I simply haven't come to that point yet.
Q. Is it fair to say that if you have any other comments about the fuel adjustment clause, that those will be reflected in your surrebuttal testimony?

Page 39

A. If there are any I want to make, yes. If I don't make them and somebody asks me a question like a commissioner or someone else, I guess I'd have to answer that question based on what I thought. But I don't have any plans or know of anything at this point.
Q. But if MIEC is going to take the position on a modification or -- of the fuel adjustment clause proposal, MIEC is going to take that position in surrebuttal testimony; is that fair?
A. As far as any testimony would go, yes. I don't have knowledge of any other thing.
Q. You say in your testimony that you have put aside the issue of whether UE should be granted an FAC. What is your position? What opinion do you have? Should UE be granted an FAC or not?
A. I simply haven't taken a position. I haven't formulated an opinion on whether it's required or not.
Q. And do I take it then you're not going to formulate an opinion on that particular issue in this case?
A. Correct.
Q. You are going to remain agnostic, so to speak, on whether or not the commission should grant the fuel adjustment clause?
A. Correct.
Q. Whether they adopt your 80/20 sharing or not?

Page 40

A. Yeah. That's a separate issue. That's a question of what should the structure be if one is adopted.
Q. So if the commission said, Mr. Brubaker, we agree with you, adopt UE's fuel adjustment clause just like it is, but impose an 80/20 sharing mechanism with a 50 bases point cap just like you designed it, would you support or not support the commission actually granting that fuel adjustment clause?
A. It's a separate issue. I'm not taking a position on whether they should or should not have one, only what it should look like if they do.
Q. You provide some views on the commission's adoption of a 95/5 percent sharing mechanism in the Aquila case, correct?
A. Yes.
Q. When I say you provided some views, in your testimony in this case, you've provided some views about that, correct?
A. Right.
Q. You also talk in your testimony in this case about the 95/5 sharing mechanism adopted in the Empire case, correct?
A. I do.
Q. And you agree that the commission did not engage in any kind of analytical or quantitative analysis

Page 41

to arrive at that 95/5 split, correct?
A. Correct.
Q. Now, the commission in the Aquila case looked at the risk that Aquila, in one year, could fail to recover a million dollars in fuel cost. Do you remember that?
A. I don't remember the specific numbers.
Q. Do you remember that the commission indicated that that would occur if Aquila's fuel cost went up just 15 percent?
A. That may be right. If you're telling me that's in the order, I'll accept that. I just don't have an independent recollection of the numbers.
Q. Assuming that is in the order, and I'm representing to you that it is, and also the commission also in the order had noted that a 15 percent increase on average had been about what Aquila had experienced in recent years. Do you have any recollection of that?
A. Vaguely.
Q. All right. Do you know how much UE's fuel costs have increased on average over the past few years?
A. No. I've not made that calculation.
Q. Have you considered that as a relevant fact in forming your opinions about the fuel adjustment clause in this case?
A. I was generally aware that fuel costs had gone

Page 42

up. I project they're going to go up further. The specific numbers what they'd gone up, I guess I didn't specifically look at. Maybe in the back of my mind when I set the clause so that the cap would be reached at a 35 percent increase in fuel cost, I probably considered that was a fairly significant increase in net fuel cost. But in terms of a specific calculation, I didn't make any.
Q. You are aware that for UE and in the industry generally, that fuel costs have been going up fairly significantly in the last few years; is that fair to say?
A. Fuel costs have gone up, fuel costs have gone down, fuel costs have gone up, fuel costs have gone down over the last several years. It's not been a continuous upward march.
Q. What about in the last three or four years?
A. Same answer.
Q. Same answer. Do you know how much UE's fuel costs are expected to increase on average over the next few years?
A. I don't recall the numbers offhand. They're in the company's testimony.
Q. Do you take issue with the company's testimony in terms of its expectations about increasing fuel costs over the next few years?
A. Sitting here today, I don't take issue with

Page 43

those statements. I do intend to go back and look at them more carefully, but I don't have a disagreement that coal costs generally are going up.
Q. And that nuclear fuel costs generally are going up?
A. Correct.
Q. And I guess in terms of gas costs, they're all over the place?
A. They're up and down, up and down. Spot prices for coal have been up and down, up and down.
Q. But generally up?
A. Generally up.
Q. And coal transportation has definitely been up over the last few years, has it not?
A. Yes.
Q. And coal transportation for UE represents a very substantial portion of the delivered price of coal, does it not?
A. It does.
Q. And UE is essentially captive to just two railroads to get that PRB coal to its clients, correct?
A. Well, I wouldn't say it's captive. I'd say it has for most of its transport routes, a choice of two -- at least two supply routes or two carriers, much better shape than some utilities who are pretty much landlocked to a

Page 44

single carrier.
Q. Those two carriers have a substantial amount of pricing power given the state of rail capacity in the country and the fact that they have limited competition with just one other competitor essentially; isn't that fair to say?
A. They recently have. Although the economy is changing and demand is down. It remains to be seen how effective that will continue to be.
Q. Did you consider AmerenUE's rising fuel costs in arriving at your specific sharing percentage, your 80/20 sharing percent proposal or opinion relating to UE's fuel adjustment clause?
A. Yeah, I was aware generally of that trend.
Q. Well, you say you were aware. Was it relevant to the percentages that you arrived at?
A. I would say I did not specifically take it into account. I was aware generally of the movement upward, the forecast for upward trends in the cost.
Q. But you didn't specifically take it into account?
A. Correct.
Q. Would you agree that if fuel costs that are being tracked in a fuel adjustment clause, whether they be a net fuel cost or fuel and purchased power, remember our

Page 45

definitions at the beginning of the deposition, would you agree that if those are rising, any sharing mechanism is going to result in the utility foregoing of a part of those increases?
A. I guess I need to hear the question again or can you restate it.
(Whereupon the reporter read back the previous question.)
Q. (By Mr. Lowery) Just to clarify, when I say those, I'm talking about fuel, net fuel, whatever the structure of the particular fuel adjustment clause. Let's say in this case it's net fuel cost. If net fuel costs are rising, then any sharing mechanism is going to result in a utility foregoing a part of those increases; isn't that correct?
A. I think that would be true.
Q. Let me ask it this way: If you thought that fuel costs -- let's just stick with net fuel costs. If you thought that net fuel costs were going to be falling while an FAC was in operation, as a customer representative, would you want customers to have a larger or a smaller share of a sharing percentage in that fuel adjustment clause?
A. I would want the clause to be fair. And in my mind in this kind of a circumstance, a symmetrical

Page 46

clause --
Q. Well --
A. -- is reasonable. So I'm perfectly happy to have the utility keep part of the benefits if the fuel costs decrease.
Q. Let me ask it this way: If the fuel cost, net fuel cost, whatever is being tracked are falling while that fuel adjustment clause is in operation, if the customer has a larger share, the customer gets a bigger benefit, right?
A. Over that particular period of time.
Q. If you thought fuel costs were going down, then AmerenUE's 95/5 percent mechanism would look better from a customer prospective than your 80/20 mechanism, wouldn't it?
A. I guess you could say on a short-term basis it would look better. Whether it's the right kind of incentive or the right kind of clause is a separate question.
Q. The customers would get 95 percent of any decreases under that proposal, correct?
A. They would.
Q. And they only get 80 percent under your proposal, right?
A. Subject to the maximum.
Q. Subject to the maximum. I keep forgetting

Page 47

about that.
A. That's right.
Q. Mr. Brubaker, you think over the next few years that on balance, that fuel costs are going to be going up, don't you?
A. Like I say, the economy is taking some turns. It's not clear what the net effect is going to be. What we're seeing right now is coal costs -- contracted for coal costs going up. How long that will maintain itself is an open question.
Q. Well, spot coal costs have certainly been trending up in the last few years, have they not?
A. They've been up and down.
Q. They've been trending up, have they not?
A. I think the overall trend has been up.
Q. You haven't seen anything that has changed that overall trend to date, have you, in coal costs?
A. Not that's actually happened yet.
Q. Now, in a rising fuel cost environment, a sharing grid that looks symmetrical says 80/20 both ways, it won't operate -- it's going to actually operate asymmetrically, isn't it?
A. I don't follow your question.
Q. You have a rising fuel cost environment so you put an FAC in place. It's in place for let's say three

Page 48

years. And in each of those three years when we're tracking changes, fuel costs are going up. Your mechanism is 80/20, and it's 80/20 both directions. But in fact, it's going to operate asymmetrically, isn't it? Only the utility is going to fail to recover a portion of those increases; isn't that right?
A. In that particular period of time under those factual circumstances, that would be true.
Q. All right. If we have a rising fuel cost environment, the utility's odds of having its earnings lowered by failing to recover some percent of that change -- in your case, 20 percent subject to your cap, I understand -- the probability the utility is going to have its earnings cut by failing to recover 20 percent of that change is high, isn't it?
A. It depends on what the alternative was. If the alternative you compare it to was a hundred percent recovery, that would be true. If the alternative is no fuel clause, it's certainly not true.
Q. If the alternative is 100 percent recovery or 95 percent recovery, that's true, correct?
A. Yes.
Q. So when you state on Page 5 of your August 28 direct testimony that your sharing clause is symmetrical, it will only operate symmetrically if there's basically an

Page 49

equal chance that fuel costs that are being tracked will go up or down, correct?
A. I guess when I make that statement, I look at it over time, not necessarily looking just at the next two or three years, recognizing that costs will get reset probably in future cases if there is a clause. And from that point, even if fuel costs have gone up between now and then, they could come down again or changes in the markets could cause --
(Whereupon there was an interruption.)
Q. (By Mr. Lowery) A clause that on its face is symmetrical in that it has the same sharing for increases in the cost being tracked through the fuel adjustment clause as it does for decreases being tracked, right?
A. Yes.
Q. From a design prospective, your clause is designed to be symmetrical, right?
A. It is.
Q. But a clause like that is only going to operate symmetrically. It's actually only going to operate symmetrically -- I'm not talking about the design. I'm talking about how it plays out in real life -- if in fact there's an equal chance that the fuel costs that are being tracked will go up or go down over the period of operation whatever that is, correct?

A. Again, it depends on what the period of operation is we're talking about.
Q. I said over the period of operation. If there is not an equal chance that the fuel costs go up or go down over whatever period of operation you want to pick, you can pick two years, eight years, four years, it doesn't matter. If there's not an equal chance that fuel costs will go up or go down over that period of operation, then the clause is not going to operate in practice symmetrically, is it?
A. I would view it over a long period of time. And it is true that the impact would be symmetrical if there's equal chance of increases or decreases. But those increases or decreases are not just from where they are today. They're from where they are today, as well as from where future base points are set in the fuel clause.
Fuel costs, for example, might go up 15 percent and the fuel base is reset. And then fuel costs decline from that future point, but still are higher than they are currently. Whether there's an equal chance of that, I don't know factually. But we've seen fuel prices go up, we've seen them go down.
Q. But, Mr. Brubaker, you keep changing the question. The basis for my question, the assumption that underlies my question is that only if there is in fact an equal chance that during -- Let's say that we have a fuel

adjustment clause that's going to operate for four years. We know in Missouri it can't operate for more than four years, do we not?
A. We know that you have to come back for a new rate case within four years; that is correct.
Q. And when you come back for the new rate case, you have to get your fuel adjustment clause reapproved, correct?
A. Correct.
Q. So you effectively get -- it could be identical to the old one, but you effectively get a new fuel adjustment clause at a minimum every four years, right?
A. Yes.
Q. So only if there is an equal chance over that four-year period in my hypothetical that fuel costs will go up or go down will a fuel adjustment clause -- a sharing mechanism clause that is designed to be symmetrical in fact will operate symmetrically; isn't that true as a matter of just mathematics?
A. In that period of time.
Q. That is correct, is it not?
A. Yes.
Q. And you have no opinion over, say, the next two years or the next four years about whether or not the

chances of fuel costs that are being tracked going up versus going down are or are not equal; is it your testimony you have no opinion about that?
A. I haven't studied that. The general trend of fuel costs is up, whether that will continue to be the trend over four years, I don't know. I've not tried to make that forecast.
Q. You know that AmerenUE has locked in, particularly over the next couple of years, a fairly high percentage of coal needs, correct?
A. Correct.
Q. And you know, do you not, that those locked-in prices are higher than they are today, correct?
A. They are.
Q. They're substantially higher, are they not?
A. I don't recall the percentages. They're not insignificant.
Q. You are not disputing Mr. Neff's testimony on what those coal cost increases are going to be, are you?
A. No.
Q. And given those -- I don't remember if you used the word significant or substantial -- do you remember which word you used?
A. No, I don't. Not insignificant.
Q. Not insignificant. Given those not

insignificant locked-in coal cost increases, isn't it fair to say that over the next couple of years at least, there's a greater chance that fuel costs are going to be going up, as opposed to going down?
A. Back to your terminology for fuel cost, yes. Not necessarily for net fuel costs.
Q. All right. Fair enough. Do you have an opinion about whether or not net fuel costs at AmerenUE are going to be going up in the next couple of years, two years?
A. I have not tried to make that forecast.
Q. You don't have an opinion about it either?
A. I don't.
Q. You claim in your September 11 direct testimony of Page 7, that a 13 bases point reduction is, quote, truly very minor, unquote. Do you remember that? Do you remember making that statement?
A. Generally. What was the page number?
Q. Page 7, September 11 direct testimony.
A. Yes.
Q. Truly very minor, right?
A. Yes.
Q. Have you ever run a utility company, Mr. Brubaker?
A. No.

Q. Is it your testimony that AmerenUE doesn't care very much about $4 million in earnings?
A. No, I wouldn't say that.
Q. What do you mean by truly very minor then?
A. That it's only 18 [sic] bases points out of, what, a thousand or so bases points ROE, 10 percent ROE.
Q. But you'd agree that AmerenUE certainly cares about $4 million in earnings, wouldn't you?
A. Well, I presume that they do.
Q. You'd agree that the company and staff and others in this case spend quite a lot of time fighting about or arguing about or litigating $4 million or sums that are less than $4 million, do they not?
A. Sure.
Q. Let me ask you this: Should fuel adjustment clauses be designed around when a utility might file its next rate case or should they be designed in a way that makes sense as a matter of policy?
A. I guess I'd look at the policy first.
Q. All right. Let me give you an example. If a fuel adjustment clause provides needed support to a utility credit metrix and is otherwise reasonably designed, I take it then you would agree that a state commission ought to make its fuel adjustment clause approval decision on the merits of the fuel adjustment clause and the facts, rather

than when or whether another rate case is going to be filed; is that fair?
A. Well, I wouldn't tell the commission not to consider that. But certainly -- I just wouldn't tell the commission not to consider that.
Q. Not to consider when a rate case is going to be filed?
A. I wouldn't tell them not to consider that.
Q. But you would agree that the policy of whether the fuel adjustment clause is reasonably designed, whether or not it supports credit metrix and other things is more important than the timing of the next rate case in terms of considering a fuel adjustment clause; from your prospective, would you agree with that?
A. I think they're probably both factors. I don't know that I would say that one trumps the other.
Q. Are they both equal factors; one more important than the other?
A. I can't say.
Q. Timing of rate cases is a fairly uncertain subject, is it not?
A. In some cases more certain than others. Other times, it's more difficult to predict.
Q. Well, if the timing of a rate case is a factor, then should that in some way influence how a fuel

adjustment clause is designed?
A. In and of itself, probably not.
Q. Your Schedule MEB-1 -- I think that was to your September 11 direct testimony, if I'm not mistaken -- you showed varying percent changes in net fuel cost because there is a lot of uncertainty about what the level of net fuel cost might be from year to year, correct?
A. I laid it out just to show the impacts. Different people may have different views about how much it's going to be.
Q. Well, do you agree that there's a lot of uncertainty around what the level of net fuel cost would be from year to year?
A. Yes.
Q. You agree that UE's net fuel costs, they could move considerably from year to year, right?
A. I presume they could. But I've not analyzed the factors and details and the trade-offs between higher fuel costs, higher off-system sales profit. So I'm not testifying about those kind of issues in this case.
Q. Did you read Mr. Arora's direct testimony? I take it you did.
A. I did.
Q. Do you dispute the reasonableness of his conclusion that net fuel costs in the coming years could

vary substantially?
A. No. I didn't go through his calculations or his assumptions or his models.
Q. Well, let me --
A. Let me say other parties in the proceedings have taken exception with those analyses.
Q. Well, either you didn't hear or understand my question, I think. I didn't ask you whether you agreed with his ranges or his calculations. I asked you if you agreed or if you disputed the reasonableness of his conclusion that net fuel cost could vary substantially, just that basic conclusion. He concludes that net fuel cost can vary substantially over the next several years. Do you agree or disagree that that's true?
A. I agree there's uncertainty about that. How substantial it could be or what the probabilities could be, I didn't study his analysis and really can't comment on that.
Q. Well, what about your own opinion? You realize that UE's net fuel cost include off-system sales revenue, right?
A. Yes.
Q. And you certainly, I would think, would agree that the power markets are volatile and uncertain, correct?
A. They have been volatile and uncertain.

Page 58

Q. You don't really expect the power markets to lack volatility and uncertainty next year or the next year, do you?
A. You know, I really haven't studied that or tried to form on opinion about what changes that are going on in the economy might do to those markets. Those are just not areas that I focused on for my testimony and really prefer not to speculate.
Q. Would it surprise you if UE's net fuel cost went up 10, 20, 25, 30, 35 percent in a given -- from one period to the next?
A. Surprise me? I don't know if it would surprise me or not.
Q. Could UE's fuel, not net fuel, but fuel costs go up while off-system sales revenues stay the same?
A. I presume that could happen. I don't know that it would, but I presume it could happen in some circumstances.
Q. So the answer to my question is, yes, UE's fuel costs could go up, not net fuel costs, but fuel costs while off-system revenues stay the same? I said could. So is the answer yes or no?
A. It could.
Q. So the answer is yes?
A. Yes, it could.

Page 59

Q. Could UE's fuel, not net fuel, but fuel costs go up while off-system sales revenues go down?
A. It could.
Q. Could UE's fuel, not net fuel, but fuel costs go up, say a hundred million dollars, while off-system sales revenues go up, say, $50 million?
A. I've not studied that that closely to be able to say. I don't know.
Q. All right. Well, just hypothetically, let's not worry about whether the numbers are right. But the pont is, UE's fuel cost could go up by X and off-system sales revenues could only go up by X minus Y; is that fair?
A. Sure.
Q. Part of the reason there can be disconnect between the movement of UE's fuel cost and off-system sales is that UE hedges its fuel, correct?
A. Hedges part of its fuel, that could be one of the reasons.
Q. And the timing of an increase -- let's say the timing of when UE's coal cost increase may not coincide with an increase in energy prices, correct?
A. Correct.
Q. UE could have new coal contracts come on or new coal transportation contracts come on, both of which have higher prices at a time when power markets are flat or

Page 60

even declining; isn't that correct?
A. Could be, yes.
Q. And if that happens, UE immediately has higher delivered coal costs, but does not necessarily have higher off-system sales revenues, correct?
A. If those were the factual circumstances, that's correct.
Q. And those factual circumstances could occur?
A. In a hypothetical sense, sure, they could occur.
Q. They could occur in the real world, couldn't they, Mr. Brubaker?
A. Hypothetically, yes, they could occur in the real world.
Q. Your schedule MEB-2 to your September 11 direct testimony, are the base fuel costs you list for each of the three companies net fuel costs the way we've defined net fuel cost today?
A. The Aquila numbers, as best I recollect, are the native load fuel cost. Aquila's off-system sales are relatively minor. And in the case references here, there was a margin put into base rates and the off system-sales are not tracked through the fuel cost. So this is strictly their estimated native load fuel cost.
For Empire, it's much the same circumstance.

Page 61

Their off-system sales are relatively modest. And I believe at the end of the day, those margins are put into base rates, not into fuel base. So I think the fuel number is the native load -- estimated native load fuel cost.
Q. Let me ask you this way: Regardless of whether or not off-system sales are an offset to those -- to fuel cost at Empire or Aquila, it really wouldn't change those numbers on your schedule MEB-2 for Aquila and Empire very much at all, correct?
A. That's correct.
Q. Effectively -- and just incidentally, are you sure -- how confident are you that you're right about the off-system sales not having been used as an offset in the Empire case? You seemed a little unsure and that's not my recollection.
A. I would stand to be corrected if you have different information.
Q. The point is didn't --
A. It doesn't make a difference.
Q. For purposes of the analysis you're presenting or the examples you're presenting on MEB-2, it really doesn't make any difference because their fuel cost and their net fuel cost would essentially be the same number; is that right?
A. Correct.

Q. Fuel costs and net fuel costs for AmerenUE are vastly different, correct?
A. Yes, they are.
Q. Empire relies pretty heavily on purchased power and gas power generation to serve load; is that right?
A. Much more so than UE. It might approach 20 percent or 25 percent of their net input.
Q. And Aquila relies heavily on purchased power, correct?
A. Correct.
Q. And in both cases, both being Empire and Aquila, this creates a lot of exposure and fluctuations in their fuel cost due to a high level of uncertainty in the power markets and in the gas markets, right?
A. It does.
Q. So whether Aquila's base fuel costs stay at 194 million or move up or down from 194 substantially depends quite a lot on what the power markets do, right?
A. That would be true.
Q. And for Empire, it depends quite a lot on what the gas and power markets do, correct?
A. Correct.
Q. Whether AmerenUE's net fuel cost in its proposed fuel adjustment clause move up or down

substantially depends quite a lot on what the power markets do as well, does it not?
A. It does in terms of the offset from off-system sales.
Q. Well, we're tracking that fuel cost, right?
A. Correct. I just wanted to be clear.
Q. All right. Just so I'm clear, I asked whether UE's net fuel cost move up or down substantially depends on the power markets, correct?
A. Yes.
Q. And that fuel cost includes the offset provided by off-system sales, correct?
A. Correct.
Q. A majority of the megawatt hours that UE sells off-system are sold in the spot market; is that right?
A. Correct.
Q. So UE's earnings has a lot of exposure to the power markets, don't they?
A. There certainly is exposure, yes.
Q. Quite a lot of exposure, is there not? When we're talking about $450 million of off-system sales revenue in rough numbers?
A. There's a large magnitude of revenues. How much that's going to vary and what the exposure is, is something I have not studied in this case.

Q. Well, you're aware that UE typically has around 10 million megawatt hours per year of off-system sales?
A. Yes.
Q. So a $10 movement in power prices, $10 around-the-clock movement in power prices, that's a hundred million dollars, right?
A. Revenue wise; that's right.
Q. Yes. And that is a -- a hundred million dollars is what, 200 bases points roughly for UE?
A. I believe that's right.
Q. That's quite a lot of exposure, is it not?
A. Wait. Let's see. It may not be that much. I think that's before tax. I think it's one percentage point. ROE is roughly $50 million in revenue requirement. So after tax, it's 34.
Q. All right. So a hundred million dollars is 68?
A. Yes.
Q. That's a pretty significant move in earnings, is it not?
A. Well, it would be if your fuel clause didn't limit the exposure.
Q. Well, my question didn't surround what the fuel clause did or didn't do. My only question was, is

UE's -- are UE's earnings substantially exposed to the power markets?
A. And you can't answer that question without knowing what the formula of the fuel clause is.
Q. What if there isn't a fuel adjustment clause?
A. Then it's exposed to that extent, assuming no other offsetting factors.
Q. But assuming no other offsetting factors, without a fuel adjustment clause, just a $10 move in prices could move UE's earning a hundred million dollars before tax or about $68 million after tax; is that right?
A. The assumption in that question is there's no change in the cost of the power used to supply the off-system sales. If there is a reduction in the price or cost of power used to supply off-system sales, earnings would not see the full effect of the decline in revenue. They would still see the decline of the net effect, whatever that was.
Q. Well, let me posit this question. Let me back up. Most of UE's off-system sales are made from its coal fired units, correct?
A. Most, yes.
Q. Not a whole lot are made from purchased power that is resold, correct?
A. Yes.

Page 66

Q. That's pretty inconsequential, the amount of purchased power that UE buys and then resells in the off-system market is fairly inconsequential in relation to the 10 million megawatt hours UE sells, correct?
A. It's fairly small.
Q. So the situation you just posited is pretty unlikely, is it not, to have much an impact on my example of a hundred million dollars change in off-system sales changes in power prices for power purchased to sell off-system isn't going to effect that number very much, is it, at UE?
A. No. But that's not the only component. There may be spot coal prices that drop, opportunity to make sales. So although the revenues are down, there might be a decrease in the cost of the fuel used to support them. What that would be would depend on factual circumstances.
Q. Let me ask it this way: If there's a $10 change in around-the-clock power prices, all else being equal. All right? We have 10 million megawatt hours of off-system sales a year. That's going to swing UE's earnings. I guess it could be down. It could be up. It's going to swing UE's earnings a hundred million dollars before tax, correct?
A. Ignoring any possible changes in other factors like the cost of fuel used to support off-system sales; if

Page 67

you ignore those factors, the answer would be yes.
Q. And that would equate to $68 million in after-tax earnings roughly, right?
A. Absent a fuel cost and no change in other costs.
Q. And $68 million in earnings is about 20 percent of Ameren's earnings in a year, is it not?
A. Yes.
Q. With an assumed net base fuel cost level of $360 million, you arrived at a 20 percent sharing mechanism with a 50 bases point cap, right?
A. I did.
Q. I take it then that your opinion that this level of skin in the game or alignment of interest, whatever you want to call it, is enough for AmerenUE, right?
A. Yeah, I think it's a reasonable amount.
Q. Assume hypothetically that UE's net base fuel cost in this case were 180 million, not 360 million, half of the 360 million. Does that mean that your percent of earnings would have been just two and a half percent, according to your table MEB-2 or schedule MEB-2?
A. I didn't design -- I didn't try to design a clause with a different level of the base fuel cost. So I don't know. I don't know what all the considerations would

Page 68

be.
Q. Well, isn't that how the math would work out, Mr. Brubaker? Wouldn't the impact in the last column in today's fuel cost of 180 million, wouldn't the percent of earnings' calculation result in two and a half percent? That 5 percent would become two and a half percent; isn't that right?
A. I'm not even sure what you're looking at.
Q. I'm in MEB-FAC-2, your September 11 direct testimony, last column, bottom row where it says 5 percent. If you had changed the base fuel cost number in the sixth column for AmerenUE from 360 million to 180 million, that 5 percent number in that last column, bottom row, would have been two and a half percent, right?
A. Okay. Yes.
Q. Would that mean you would have proposed a 40 percent sharing for UE?
A. I said I haven't designed a clause with a 180 million base number in mind. So I can't really say what I would have proposed. I thought what I proposed made sense in the context of the case at hand.
Q. I'm just trying to understand the logic behind your 20 percent and the percent of earnings that you think is enough alignment of interest. Can you explain that?
A. I thought 50 bases points was a reasonable

Page 69

limit, enough to be meaningful. And I guess I was looking at reasonable or very large increases in cost up to 35 or 40 percent and see where that would hit. And 30 hits about a 35 percent increase or decrease. I just thought overall that was reasonable. It made the incentive effective over a fairly wide range of increases or decreases in costs.
MR. LOWERY: Why don't we take a break.
(Whereupon there was a short break.)
(Mr. Cassidy entered the proceedings.)
Q. (By Mr. Lowery) Mr. Brubaker, let's talk about a hypothetical. Lets assume UE has fuel cost, fuel and purchased power of 800 million in the base year and let's assume the next year those costs go up 35 percent. Let's also assume that UE has 400 million of off-system sales revenues in the base year, and the next year, those revenues stay flat at 400 million. What is the total net fuel cost change in that example?
A. If my math is right, it's $280 million.
Q. That's the math I had. So surely we're both right. What's the bases point impact in that example of your 20 percent sharing mechanism, all else being equal?
A. 50 bases points.
Q. 20 percent of $280 million, how much is that?
A. I'm sorry.
Q. Would you like a calculator?

A. No. I like to challenge myself.
Q. It keeps your math skills sharp.
A. Right. It would be $33 million after tax, is my calculation on roughly 300 million of equity.
Q. It would be 56 million before tax. And you applied about a 38 and a half percent tax rate?
A. Yeah. I get about 33 after tax. On 3 billion of common equity, that's about 1 percent.
Q. It's about a hundred bases points, right?
A. Yeah.
Q. And your cap would then knock that down to a 50 bases point impact, right?
A. Right.
Q. So your assumption that a 35 percent change -- Well, let me ask you this: Was my example, that included a 35 percent change in net fuel cost, did it not?
A. No.
Q. It didn't?
A. Change in net fuel cost is more than that. The net fuel cost --
Q. I'm sorry. I stand corrected. It was a 35 percent change in fuel cost and no change in off-system sales revenues, right?
A. It's about a 70 percent change in net.
Q. Right. In the example I just went through, off-system sales don't offset higher fuel and purchased power cost in that particular example, right?

A. In that example, that's correct.
Q. In that example, the ROEM impact of a 35 percent change in fuel cost is about four times larger than the 12.6 percent that appears in your Table MEB-FAC-2 -- or your Schedule MEB-FAC-2, correct?
A. Let's go back again on that, please.
Q. In Schedule MEB-FAC-2, you had a 35 percent change in net fuel cost and you said that that had about a 12 percent impact on common equity, correct? That's the fifth -- what you've labeled the fifth column, third row.
A. Well, now that is based -- just base fuel cost, 360 divided by 3 billion common equity. That's before any change in fuel cost.
Q. My apologies. I'm looking at the wrong schedule. Schedule MEB-FAC-1.
A. Okay. And your question?
Q. Row 6 or Line 6, had a 35 percent change that you indicated had a bases point change of 12.6 bases points, right?
A. That would be at a 5 percent retention rate.
Q. Right. But if we had a 35 percent increase in fuel cost and off-system sales remained flat, we'd have four times the impact, correct, on earnings?

A. I don't think so.
Q. If fuel and purchased power went up 35 percent and off-system sales did not change, we just established in that example, that net fuel costs went up $280 million, right?
A. Yes.
Q. And we established that that $280 million was roughly a 100 bases points before tax, but your cap would cause the impact through the sharing mechanism to be 50 bases points, correct?
A. A hundred bases points before.
Q. Before tax.
A. Uh-huh. 50 after with the cap.
Q. So if net fuel costs -- if fuel and purchased power cost went up 35 percent, off-system sales did not change, then we would have a -- I guess, actually, we would have about eight times the earnings impact under the 95/5 sharing proposal, than the 12.6 bases points that you demonstrate in this table, correct?
A. In your hypothetical, net fuel cost went up 70 percent, which is what the fuel charge is based on, that's twice 35. So it would be under the 5 percent column, 25 bases points. The percentage changes twice what's shown in the table.
Q. Net fuel cost went up 280 million, did they not, in my example?

A. Yeah. They went up 70 percent. And you're in the 5 percent column instead of the 20 percent column.
Q. It would be 25, twice as much impact, correct?
A. Correct.
Q. All right. Fair enough.
In the Empire case and in this case, you characterized the 95/5, sharing mechanism as, quote, extremely limited, end quote. Do you recall that?
A. Yes.
Q. The commission disagreed with you in the Empire case, did they not?
A. All they said about my clause is it was too complicated and they adopted something else. So I guess by inference, they didn't agree with, for whatever reason, with what I said.
Q. You said 95/5 was extremely limited and they documented 95/5, correct?
A. Correct.
Q. So they must have disagreed it was extremely limited?
A. I don't know.
Q. You don't know.
Speaking of the Empire case, just to clarify the record, do you recognize this as being the report and

order from the Empire case that we're talking about, Case No. ER-2008-0093?

A. Yes.

Q. And you read this order I assume?

A. Yes.

Q. Can you confirm for me on Page 56 that in fact off-system sales are being netted through the fuel adjustment clause in the Empire case?

A. This is different than Ameren. This number is the margin. And my appreciation of the commission decision and the tariff filed by Empire is that the costs dragged through the fuel clause are essentially the native fuel cost. And this $6.1 million margin would be compared to the margins in future time periods, I think, and some adjustment made up or down for that. So it doesn't work in quite the same way.

But it does consider -- I'd have to look at the tariff again to see exactly what happened. But this part of the decision was a little bit less than clear. The intent was that the change in off-system sales margin be recognized. But it would do so differently than how it's done at Ameren.

Q. It would be recognized as part of the fuel adjustment mechanism?

A. That's what they're saying. I'd have to look

at the tariff again. I've just not looked at it for a while.

Q. In any event, regardless, the numbers we're talking about in the Empire case don't really change, whether they were talking about net fuel cost or fuel cost; it doesn't really change the result very much, correct?

A. That's correct.

Q. Your premise that a meaningful sharing mechanism is needed and otherwise the utility will not have enough incentive to properly manage fuel cost; I mean that's your basic premise for having a sharing mechanism, right?

A. Well, and they'll have a bigger incentive.

Q. You cite several factors in your direct testimony, your September 11 direct testimony, on Page 8 that you say the utility has some influence over, correct?

A. September 11 Part 2, yes, I do.

Q. Would you agree that UE has done a very good job of negotiating its fuel and purchased power contracts?

A. I have simply not made those evaluations. And I have no negative comments to make about how the company has handled its acquisition cost. But I have not studied them in such a way to know that they could have done it better or not.

Q. You just have no opinion about the job they've

done one way or another?

A. I've not studied that; so, no, I don't.

Q. I take it then you don't have an opinion about how good of a job or poor of a job either way they have done of taking advantage of the power purchases and sales in the power markets?

A. Again, I've not studied that in detail. So I don't have an opinion about that.

Q. Hedging its fuel supplies?

A. Hedging is a common approach. The specific details of the hedging one could probably study and come to some opinion about whether it was reasonable or not. I've not done it.

Q. What's your opinion, if you have one, about the job Union Electric has done in constructing its portfolio of resources?

A. I've really not looked into that. I don't have any criticism in particular to level at them.

Q. The portfolio of the coal fired units, nuclear plant, and CTGs that it has, you don't have any opinion about whether that is a good, excellent, fair, above average mix of resources?

A. Well, it's a reasonable mix for the AmerenUE system. And at this point in time, I have no criticism of what they've done.

Q. Do you have any opinions about UE's level of skill in negotiating its fuel and purchased power contracts?

A. I don't.

Q. You don't have any criticisms either?

A. I don't.

Q. What has happened to the price levels in UE's coal contracts over the past several years, despite its efforts to manage coal costs?

A. In the last several years, they've increased.

Q. What about transportation contracts, those have increased?

A. Those have increased as well.

Q. Despite the company's efforts?

A. Yes.

Q. And would you agree that the company makes considerable effort to manage those coal and transportation contracts?

A. I believe they do.

Q. If you had to pick which side had more bargaining power when it comes to railroad transportation contracts, UE or the two railroads, which side would have more bargaining power, if you know?

A. Well, it depends on the circumstances at hand.

Q. Which piece of delivered coal cost is more

Page 78

significant, the commodity or the transportation?
A. I'm thinking it's the transportation currently.
Q. Would you agree that despite whatever negotiating skills UE has, it has not been able to stop coal commodity costs from going up?
A. Yes.
Q. And it's not been able to stop transportation costs going up considerably?
A. In the last several years, that's true.
Q. You cite skill in taking advantage of purchases and sales in the economy market. Are you talking about the spot coal markets for example?
A. I would have -- I had more in mind of the power market when I made that statement.
Q. All right. UE doesn't buy very much spot -- buy or sell very much coal in the spot market in relation to its total coal needs, does it?
A. No. It hasn't recently.
Q. Well, historically it has not, correct?
A. I've not looked back over time to know how large of a component that was.
Q. Your prior answer though was recently it has not. You were aware of that, correct?
A. Yes.

Page 79

Q. Do you think UE should do so or do you think UE had better -- that it's better for UE to continue to lock in volumes of coal that it needs to meet its expected coal burden?
A. I think I would say that there's probably a whole range of choices and options for managing purchase and acquisition of fuel supplies. Hedging is the majority of purchases. It's certainly one strategy that has been widely used. I'm not critical of that. I would say that I haven't studied the specifics of the program and how it's done.
Q. You don't have an opinion about whether UE should continue its strategy with respect to coal procurement, the same strategy it's had in the last few years; you don't have an opinion about that?
A. Well, I think it needs to continuously evaluate what's the best strategy in light of the changing market conditions. I'm not going to sit here and say you should hedge more or hedge less, because I simply haven't studied it and I don't have all the facts at hand.
Q. Would you agree UE has no control over the spot market for coal?
A. That's probably true.
Q. UE has no control over the spot market for power?

Page 80

A. That's true.
Q. UE has no control over the spot market for gas?
A. That's true.
Q. You hedged a minute ago when I asked about having no control over the spot mark for coal. It's not your testimony that UE has control over the spot markets for coal, is it?
A. No. I was just trying to think of any circumstances where they might have some market power over a particular producer or a particular mine at a particular point in time.
Q. You're not aware of that being the case, are you?
A. I don't know if it's been the case or not. I don't have any facts about that.
Q. Well, then in answer to my question, you're not aware that it has been the case, right?
A. Right. I'm not aware it hasn't been the case either, but you're correct.
Q. You're aware, are you not, that based upon its expected coal burns in 2009 and 2010, AmerenUE has hedged nearly a hundred percent of its coal needs for '09 and approximately 80 to 85 percent of its 2010 coal needs?
A. I am.

Page 81

Q. You understand when I say hedged, I mean they locked in the quantity and the price?
A. Yes.
Q. Those coal costs are higher in '09, than they were in '08, right?
A. Correct.
Q. When I'm talking about hedged, I'm talking about delivered coal cost too, just for clarity. Did you understand that in my question?
A. I assumed that, yes.
Q. And those delivered coal costs will be higher in 2010 than they were in 2009 and 2008, correct?
A. Based on hedge prices, that's correct.
Q. And since they're hedged and locked in, that's going to happen, is it not?
A. Yes.
Q. And those are going to be higher than the base level of coal costs that are included in base rates set in this case, correct?
A. Correct.
Q. UE has no ability to reduce the costs associated with those locked-in contracts, does it?
A. I haven't studied the contracts. I would assume generally that they don't. But without looking at contracts and knowing the provisions of contracts, I

Page 82

couldn't say that they have no ability.
Q. If we assume that there's no unilateral termination or out-clause for the utility, then UE doesn't have the ability to get out of those locked-in coal prices, do they?
A. I think you'd have to look at the entire contract to make that decision. I've not done that.
Q. Have you looked at coal contracts between utilities and mines in the past? Do you have some familiarity with how those are structured?
A. I haven't looked at them recently.
Q. When you looked at them, did coal companies allow utilities to unilaterally cancel quantities or lower prices?
A. I just don't have a clear memory of what I saw. I think that would largely be circumstantial.
Q. You're not really suggesting that coal companies have entered into contracts that allow a utility to get out of the quantity and price commitments the utility has made for the term of the contract, are you?
A. What I'm saying to you, I have not studied the contract, I've not offered any testimony on the coal contracts and I don't want to sit here and speculate about what's in them or what's not.
Q. Well, it seems to me you were speculating that

Page 83

there might be some out-clauses in those contracts a moment ago?
A. You asked me if they could. I said they might be able to. It depends on the contract.
Q. You don't have any evidence or reason to believe those kind of out-clauses exist, do you?
A. I don't have any information about that either way.
Q. Well, assuming that UE is contractually bound to pay the prices -- higher prices in contracts and to buy the quantities that it's contracted in for. Do you have that assumption in mind?
A. Okay.
Q. Assuming that's the case, then UE is going to eat 20 percent of those higher costs via your sharing mechanism, isn't it?
A. They would be -- it depends on what happens in the off-system sales markets.
Q. Unless off-system sales fully offset those higher costs, UE is going to eat 20 percent of those higher costs, correct?
A. In that period of time, subject to the earnings limitation.
Q. Subject to the cap that I keep forgetting about.

Page 84

A. You do. And it's very important.
Q. It's not intentional.
A. It's a very important part of the proposal.
Q. But subject to a cap on how much UE eats, unless off-system sales in fact offset those higher coal -- delivered coal costs and assuming again that there's no way UE can avoid those contractually, UE is going to eat 20 percent of those, right?
A. All else equal, yeah.
Q. And why should UE be forced to eat 20 percent of known locked-in delivered coal cost increases?
A. Because I think it provides a reasonable incentive in the overall structure of the fuel adjustment clause for them. And I look at this as a long-term proposition. There may be times when coal prices go down from the point at which they are set in a case, and they would then retain a corresponding benefit from that.
Q. So you are looking at a fuel adjustment clause from a policy prospective, from a long-term prospective, irrespective of whether there might be relatively frequent rate cases? When you design your sharing mechanism, you didn't have in mind that there might be a rate case in a year or two or three; you were looking at this as something that would be something sustainable over time?
A. Yes.

Page 85

Q. Over a number of years?
A. Yes.
Q. Wouldn't it make a lot more sense for -- if the baseline for sharing were set relative to these already known locked-in delivered coal cost increases?
A. No. I think the sharing has to be around to test your numbers because that's the basis we're setting rates on. If you had a different set of numbers in the base rates, then I would agree, use a different base. But we're operating off a test here. Other costs may go down in the future. So I wouldn't want to reach out and just pick that one item.
Q. Do you have any criticisms of UE's planned maintenance outage practices over the past several years?
A. I have no criticisms. I haven't looked at them. I have no criticism.
Q. Does UE have a long track record of how it plans and times maintenance outages?
A. Well, they've been doing it a long time, if that's what you mean. Sure.
Q. So the commission and the staff have a lot of information over many years as to duration, timing, activities, how they manage those maintenance outages, correct?
A. Sure they do.

Page 86

Q. Is it fair to say that if UE were to get a fuel adjustment clause and suddenly started behaving differently when it comes to how it plans and times maintenance outages, that staff would notice that?
A. I guess it would depend on how obvious the changes were. I would assume any major changes would be noticed. There may be factual circumstances that you'd have to argue about as whether or not they were justified at any given time.
Q. If the company's equivalent availability started changing in a material way, that's something that would raise a red flag, isn't it?
A. It would be noticed, there would be questions of why it didn't happen, was it preventable.
Q. If the company started putting major planned outages in time periods when off-system sales historically had been maximized, when before, the company put those planned outages in other times, that would be noticed, wouldn't it?
A. If somebody examined it closely, I think it would be.
Q. Well, the staff is going to be auditing the fuel adjustment clause, are they not?
A. Right.
Q. The staff is going to pay attention to outages

Page 87

and availability at power plants as part of that audit, aren't they?
A. I would believe so.
Q. I would certainly think so, wouldn't you?
A. I said I would certainly believe so.
Q. In your -- on Page 8 of your direct testimony, you listed six different factors. And I'm not sure if I understand how Items 1 and 5 are different. Can you explain the distinction you were drawing between Item 1 and Item 5.
A. Looking at the words, I would think 5 could be umbrellaed under 1.
Q. That's sort of what I thought, but you listed them separately and they were your words. So I wasn't sure if you were trying to send a different message with 5 than you were with 1.
A. As I read it today, I don't think so. I don't know what I had in mind when I wrote the words. But I can't see that there's a separate point in 5 --
Q. Fair enough.
A. -- as I read it today.
Q. I'm glad I understand it.
A. Good. We agree on something.
Q. UE today and for several years to come has more generating capacity than it needs both to service

Page 88

native load and to meet a prudent reserve margin; is that true?
A. Yes.
Q. You don't anticipate UE adding any generating resource other than a hundred megawatts of wind that UE is adding pursuant to commitment that it made to the commission in the last case for several years, do you?
A. I'm not aware of any plans to do so.
Q. You wouldn't expect UE to add generating resources for several years given its capacity position now and for the next several years, would you?
A. I wouldn't expect it from a reliability prospective. It's not to say that some opportunity might not arise on the market to acquire for a resource that's looking for a buyer that they might find attractive. Other than that, I don't believe there would be any planning basis for it.
Q. You don't think that there's a high likelihood there's going to be a material change in UE's generation portfolio over the next three or four years, do you?
A. I would not expect there would be.
Q. So Factor 6 on Page 8 really isn't particularly relevant to this particular fuel adjustment clause request, which under Missouri law is going to have to be reviewed at least 37 months from now, right?

Page 89

A. I agree with the latter part of your statement. It will have to be reviewed 37 months from now. As I mentioned before, I was kind of looking at this on a long-term basis realizing it will be revisited periodically.
Q. Fair enough. If this was going to be something that continued over 10 years or 15 years, then generation resource planning might be a relevant consideration. Over the next three or four years, it really doesn't have much impact; isn't that fair to say?
A. I would say it probably won't have much impact over the next three or four years.
Q. A sharing mechanism like you proposed, it presumes -- it's premised on the assumption that without the utility, it will not do as good a job as you think the utility should do in the coming years, is it not?
A. I think it needs -- Excuse me. It provides a better incentive for the utility to do that good job, than not having a sharing.
Q. Let me ask it this way: If the utility would do just as good a job without the sharing as it will do with the sharing, then the sharing wouldn't be necessary, would it?
A. If you could know the unknowable, you could make that argument.

Page 90

Q. Well, my question said if. If the utility would do just as good a job on these six things -- or maybe it's really five things because we collapsed one and five, would do just as good of a job without the sharing as with the sharing, then you don't need the sharing, right, if that were true? I'm not asking you to agree whether it's true or not. But if it were true, you don't need the sharing, right?
A. Again, if you could know the unknowable and know that that's going to be the case, you could make the argument that you wouldn't need the sharing.
Q. You're disagreeing with the premise of the question instead of answering the question. I didn't ask you to agree whether it was or was not true. I asked you if it were true, if we knew it was true, if we the utility was going to do just as good a job on these six factors with or without the sharing mechanism, then you don't need a sharing mechanism?
A. Well, I guess there's also the auditability question and the ability of someone on our prudency review to actually go in and in detail understand all the decisions that the utility made. To some extent, the sharing mechanism provides some comfort on that kind of lack of ability to in detail review each and every decision.

Page 91

But, you know, if you knew for sure, which you can't, that it wouldn't be any different with and without, then you could make the argument that you don't need it. I just think it's an unrealistic premise.
Q. Before you expressed the opinion that UE needed more incentive than provided by 95/5 percent sharing mechanism, what incentives around minimizing fuel costs or maximizing off-system sales which would result in minimal net fuel cost did you consider?
A. I'm not sure I understand your question.
Q. Did you consider what incentives the company already had to minimize fuel cost and/or maximize off-system sales before you proposed your 80/20 sharing mechanism with a cap? I want to acknowledge your cap.
A. I considered that in the current context of regulation for AmerenUE, the absence of a fuel adjustment clause gives fairly significant incentives to manage.
Q. Well, in the context of having a fuel adjustment clause, if you were going to assume that the company was going to get a fuel adjustment clause, before you said UE needs an 80/20 sharing mechanism with a cap in order to keep them honest in their fuel and purchased power and off-system sales activities, assuming they're going to get a fuel adjustment clause, what incentives that already exist at the company did you consider, if any?

Page 92

A. I'm aware that there will be a prudence review.
Q. Okay. Prudence review. You considered that that exists or will exist?
A. Yes.
Q. What else? If you didn't consider anything else, that's fine.
A. I'm trying to think if I did.
Q. It must not have made much of an impact on you because you're having a hard time remembering that you considered anything else; is that fair to say?
A. Well, in terms of explicitly things. I think it's expressed in the testimony why I think it's important to have that incentive, to maintain some incentive.
Q. Let me suggest a few to you. I take it you did not consider the fact that UE's PRB coal is bought through a coal pool whereby UE and its merchant generating company affiliates in Illinois pay the same price for coal; you didn't give that consideration before you recommended your 80/20 sharing mechanism; is that true?
A. I was aware of it.
Q. That's not what I asked you.
A. I didn't explicitly consider that.
Q. Would you agree that this gives Ameren Corporation which owns UE and which owns those merchant

Page 93

generating companies and which controls and actually owns Ameren Fuels and Services a strong incentive to minimize the pooled cost of coal?
A. I would agree that that's present.
Q. It's a pretty powerful incentive, isn't it?
A. Yeah.
Q. Because those merchant generating companies, their bottom line is going to get hit with every dollar of increased coal cost, is it not?
A. Of the pool coal. Coal in the pool.
Q. And those merchant generating fleets, as well as AmerenUE, relies heavily on PRB coal, which is pooled, correct?
A. They do. My memory is there are other coal sources that aren't through the pool.
Q. But those other coal sources are pretty small as a percentage of the coal needs -- the amount of energy produced from non-PRB coal at both companies, the merchant generators and at UE, is pretty small; is that right?
A. I don't recall how small. I couldn't quantify it. I would say it's overwhelmingly from PRB coal.
Q. So if coal costs go up for those merchant generators but power prices don't keep pace, then those merchant generators' margins are going to be cut, aren't they?

Page 94

A. Yes.
Q. So if Ameren Fuels and Services after UE gets a fuel adjustment clause stops paying close attention to the coal cost, then average cost in the pool is going to be up, isn't it?
A. It would.
Q. And that higher average cost is going to get charged to those merchant generators, right?
A. I would assume so, yes.
Q. And it's going to cut their earnings and their ability to dividend earnings up to Ameren Corporation, isn't it?
A. It would.
Q. So clearly there's a strong incentive with or without a fuel adjustment clause given by the coal pool to continue to properly manage those costs and minimize that average cost in the pool, isn't there?
A. It provides an incentive surely.
Q. A pretty strong incentive, isn't it?
A. Yeah, I would think so.
Q. Before you expressed the opinion that UE needed more incentive than provided by the 95/5 sharing mechanism, did you consider the fact that the asset management and trading employees who were responsible for maximizing off-system sales revenues have personal

Page 95

financial incentives through their incentive compensation to maximize those revenues?
A. I'm aware that there's incentive plans, yeah.
Q. But you didn't consider that before you said 80/20 is necessary to keep AmerenUE honest?
A. Well, I thought this was needed in addition to that.
Q. So did you or did you not consider those personal financial incentives before you arrived at your opinion?
A. I was aware of it. So I would say, yeah, I considered it.
Q. Were you aware that the employees responsible for running UE's power plants also have personal financial incentives to keep equivalent availability high?
A. It's my understanding, yes.
Q. You were aware of that when you came up with your 80/20 proposal?
A. Yes.
Q. And being aware of it meant you considered it or you didn't consider it?
A. I considered it.
Q. Did you consider it to be relevant?
A. Yes.
Q. Significant?

Page 96

A. I don't know how significant it would be.
Q. It's true that if those units have higher equivalent availability, UE probably is going to have more megawatt hours to sell off system?
A. Yes.
Q. Did you consider the fact that UE will have to stand before the commission no less frequently than every four years to justify the continuation of a fuel adjustment clause as being an incentive for UE to not cut power plant maintenance or change its outage practices in a detrimental way or stop managing its fuel when you decided that an 80/20 sharing mechanism was necessary?
A. I did.
Q. So that's relevant --
(Whereupon there was an interruption.)
Q. (By Mr. Lowery) Mr. Brubaker, we had a power problem with the transcription so I'm going to ask you a question I think we already talked about, but just to make sure the record is clear.
I think you indicated that you did consider the fact that UE would have to come back no less frequently than every four years for another rate case. And in light of that, it would be foolish for the company to change its maintenance practices or its planned outage schedules or otherwise make changes to its practices that would result

Page 97

in higher fuel cost, lower off-system sales since UE is going to have to re-justify its FAC no less frequently than every four years; is that correct?
A. I think it would not make sense to explicitly make any large changes that were not reasonable. There may be subtle changes made that are hard to detect.
Q. But the fact that UE will have to come back every four years gives it some incentive to continue to do a good job in other areas or else the commission might very well punish it for making changes that are detrimental to its net fuel cost, correct?
A. I would agree with that.
Q. And in fact, do you believe UE is going to be back for a rate case sooner than four years?
A. I guess it depends on what happens as the outcome of this current case. But if UE comes back for the Sioux scrubber capital investment, than it would be sooner than four years.
Q. If in fact UE is going to be back for a rate case in a year or two because of the Sioux scrubber or otherwise, it would be even more foolish so stop managing its net fuel cost when it's going to have to turn around very quickly and re-justify a fuel adjustment clause, wouldn't it?
A. I guess my answer would be the same.

Q. Before you decided that the 95/5 percent mechanism was inadequate, UE needed the 80/20 with the cap, did you consider the fact that the proposed fuel adjustment clause will still create substantial lags in net fuel cost recovery because it's based on historical cost as opposed to forecasted or projected cost?
A. Yes.
Q. Am I correct that most fuel adjustment clauses use projected fuel cost?
A. I don't know that I would say most.
Q. A majority?
A. I don't know that I would say majority. I've not done that survey.
Q. We established the Wyoming one you cited uses projected, right?
A. They do.
Q. And the Idaho one I believe you cited in the Empire case uses projected?
A. I don't recall. If you represent it does, then it does and I'll agree. I just don't recall.
Q. Have you seen the Idaho Power Order that approved the fuel adjustment clause that you cited in Empire that you actually filed a late file Exhibit No. 32 in the Empire case; have you seen that order?
A. I don't recall if I had the whole order, part

of the order, the fuel clause, or the stipulation. I don't recall.
Q. I'm going to hand you a document and ask you if you've seen it or can confirm what it is.
A. It looks like a March 1993 order of the Idaho Public Utilities Commission.
Q. Do you recognize that as being the order that established Idaho Power's fuel adjustment clause, the one that you cited in the Empire case?
A. I don't know if it's been changed since then, I really don't.
Q. When you -- before you commended the Idaho Power tariff to the commission of the Empire case, did you not do any research with respect to how that fuel adjustment clause had been established?
A. First of all, I wasn't asked to commend it or condemn it. I was asked to provide examples of fuel clauses that had a sharing mechanism. So I was not really particularly concerned about the other elements of the clause in answering that question.
Q. You don't independently know whether or not the Idaho clause is based on forecasted fuel cost?
A. I don't.
Q. Would you take a look at pages -- I think it's Page 8 of that order. Under the findings provision, could

you read that first sentence?
A. For the 1993 order, we find a forecasted PCA with a true-up is most appropriate for Idaho Power.
Q. At least at the time that fuel adjustment clause was approved for Idaho Power, it was using forecasted fuel, correct?
A. Yes. That's what the order says.
Q. You don't have any reason to believe that's changed, do you?
A. I don't know whether it's changed or not.
Q. To the extent other utilities fuel adjustment clause use projected cost, the cash flow pressures, the increased cash flow pressures, caused by using historical cost are not present, correct?
A. In an increasing cost market, that would be -- there would be less pressure. There would be less cash flow pressure.
Q. There would be less deferrals, cash flows would be more timely under a fuel adjustment clause in an increasing cost environment, than they are under historical fuel adjustment clause, right?
A. Again, depending on how the base is set in the fuel clause when base rates are set, so --
Q. My assumption is -- the assumption -- the premise of my question is when the base amount in the fuel

adjustment clause for sharing purposes is set based on forecast or projected versus on historical, those utilities with fuel adjustment clauses where the base is set on projected fuel cost are going to have less lag in their cash flows and more timely cash flows, than ones like in Missouri that are set on a historical bases, right?
A. In an increasing cost environment, that would be true.
Q. With that proviso, that would be true?
A. Yes.
Q. And those greater deferrals and those less timely cash flows in a rising cost environment, based on the example we just went through, put greater pressure on a utility's credit metrix who must rely on historical cost to set the base, than it would on a utility's credit metrix that can set its base amount based on projected costs, correct?
A. It would on the cash flow metrix.
Q. On the cash flow metrix. So if we amend my question to focus on cash flow metrix, not credit metrix generally, that would be true, correct?
A. That would be true.
Q. Did you consider this additional downward pressure gives UE an incentive to minimize net fuel cost so that its cash flows are maximized to mitigate those credit

metrix effects of use of historical periods to set the base?

A. Yeah, I guess I considered it. I was aware of it, sure.

Q. Did you consider the fact that the heat rate or efficiency testing requirements of the commission's FAC rules give the company an incentive to continue to properly manage and operate its power plants even with a fuel adjustment clause?

A. Yes.

Q. And that does provide incentive to the utility, does it not?

A. Yes.

Q. And it gives the commission staff and other parties a tool in prudence reviews to use to establish that the company might not be doing an appropriate job of managing those power plants, correct?

A. It does at a gross level. It doesn't get you to all the individual decisions that maybe go into those things, but at a gross level it does.

Q. Do most fuel adjustment clauses or in most jurisdictions require specific efficiency testing and monitoring like required in Missouri?

A. I couldn't say. I've not done that review.

Q. Would you agree that weather in a given year

can have a big impact on energy prices?

A. Yes.

Q. How about the prevalence of outages, particularly unplanned outages of one or more large generators in a region, can that have a big impact on energy prices?

A. Sure.

Q. What about varying levels of system congestion?

A. Yes.

Q. What about the activities of market speculators? Didn't we see some market speculation this last summer that affected energy markets?

A. That's the general belief, yes.

Q. Do you share that belief?

A. It's always dangerous to go out on a limb for that sort of thing. I've not done any study of market behavior or trader behavior. I know there are a number of inquiries that are going on in and some people say it was a factor and some people say it wasn't.

Q. Those in the industry have that general belief that it was a factor, do they not?

A. Many do.

Q. Many do.

The MISO energy market. We've seen capacity

markets developed and ancillary services markets just starting in the MISO. Is it fair to say that MISO's day two energy market has not significantly changed since it started three years ago, other than we've got an ancillary services market that's coming on?

A. I would really defer that to Mr. Dauphinais. My impression is that it hasn't, but don't take that as an inclusive response. He would be much better qualified than I.

Q. Your impression is that -- your personal impression -- you're not the expert in the firm on that, but your personal impression is it hasn't really changed very much?

A. Correct.

Q. Planned outages in the given year are likely to vary from a normalized level of outages, correct, for an individual utility?

A. Yes.

Q. Loads in a given year typically vary from normalized loads, do that not?

A. They do.

Q. Forward energy price curves change a lot throughout a year, do they not?

A. Yes.

Q. Do you agree that when a test year process is

used to set rates, it's important to look at all costs and revenues and look at rate base in a coordinated synchronized fashion?

A. Yes.

Q. Do you have trouble with the long-term forward view of revenues or costs, as opposed to looking at those items using actual historical data?

A. I'm not sure I understand the question.

Q. I think that's a statement you made in the last rate case. Do you remember that?

A. I don't. What was the context?

Q. Well, I think the context was whether one should be looking forward and I think you already talked about it in this deposition. One should be looking forward at particular costs and revenues when the rest of the case is being set based on historic test year. You have trouble mixing and matching the two, do you not, from a rate prospective?

A. Well, generally I believe it's synchronizing the factors that go into the revenue requirement calculation. But in doing that, you look at a number of revenue requirement elements. And I guess it just depends on the specific one or the context. I'm not recalling the context of the question in the last case.

Q. If I told you I was going to make a big bet, puts lots of money on the line based upon forward energy price for energy in 2009 published today, would you think that I'm willing to take on quite a bit of risk?

A. Yes. Unless you hedged it.

Q. If I don't hedge it, if I want to make a big bet based on what forward prices for calendar year '09 are today, that's pretty risky because the odds of energy prices in 2009 actually turning out to be close to the forward price published today aren't very good, are they?

A. They could be higher or lower.

Q. Do you think it's fair to use budgeted or projected figures for an item to set rates for one item, but use historical figures for everything else?

A. I think it all depends on what the item is and the context of what you're trying to accomplish.

Q. Well, when would you use forecast or forward information for one item -- what circumstance, what context would you say it would be fair to use forward information for one item and historical information for everything else?

A. Maybe if you're trying to factor in additional information, more recent information, maybe you believe the historic numbers that somebody has proposed to use aren't realistic or reasonable or appropriately related to other numbers. You'd have to look at the facts and understand

what was going on.

Q. In general, you'd be skeptical of mixing and matching forward information with historical information, wouldn't you, because that would upset the synchronization we talked about a minute ago, wouldn't it?

A. I can't answer that without looking at specific facts. You would ask yourself why and is it better information, is it more realistic.

Q. Do you know what energy prices will be in 2009?

A. I don't.

Q. Or '10?

A. No.

Q. Do you have an opinion about where capacity prices are going to be in 2009 or 2010?

A. I don't.

Q. Do you know how many megawatts of energy AmerenUE will be able to sell next year or the year after?

A. I don't. The facts about the future are hard to come by.

Q. Beliefs about the future often turn out to be wrong, don't they?

A. Often, yes.

Q. Have you ever worked for a regulatory commission staff? I don't think you have according to your

resume.

A. I've never been employed by a regulatory commission staff. We've had some engagements where we've worked for commissions.

Q. Have you ever personally conducted a formal prudence audit of a PGA or a fuel adjustment clause? PGA being a purchase gas adjustment clause.

A. I've done prudency reviews of aspects of purchased power practices. I haven't done a full audit, as I think maybe your question is asking.

Q. That was my question. You haven't either been a staff member or a consultant involved in a staff -- a state regulatory commission staff of a fuel adjustment clause or a PGA audit, have you?

A. Not representing the staff or the commission.

Q. You've been on the company side in such an audit?

A. I've been in cases for customers where audits were being conducted and reviews and prudency of purchasing practices were the issue.

Q. You weren't conducting the audit, right; you were just -- a customer was an intervenor in that case or a participant in that case and the staff or the commission was conducting the audit; is that right?

A. I wasn't doing a comprehensive audit. I was

looking at practices and individual contracts and decisions of how the utility managed its affairs.

Q. Is it your testimony that state regulatory commissions across the country that conduct prudence review audits of fuel adjustment clauses are wasting their time?

A. No. I think you have to do that.

Q. So you don't think the audits are ineffective?

A. I don't think they're unnecessary.

Q. Do you think they're effective?

A. To a point. To the extent you can discover what actually happened and review and audit the key decision making.

Q. Do you have any other opinions about UE's requested fuel adjustment clause that you have not told me or that are not reflected in your prepared written testimony that you filed in this case?

A. I don't believe so.

Q. You have then told me all of the opinions you intend to express in this case?

A. All the opinions I intend to express affirmatively. If a commissioner asks me a question, I guess I'll have to see what the question is and if I can answer it.

MS. VUYLSTEKE: Can I just clarify when you say affirmatively, keep in mind his surrebuttal testimony

Page 110

has not yet been filed.
MR. LOWERY: The witness used the word affirmatively.
Q. (By Mr. Lowery) Do you intend to express additional or different opinions in your surrebuttal testimony from ones that you've expressed so far in this case?
A. I don't have a view yet as what's going to be surrebuttal. I'm not aware of anything that I'm planning to do.
Q. How many hours have you spent on this case to date would you estimate?
A. I would just estimate 150 to 200 hours probably.
Q. How many would you estimate you anticipate spending through the end of the case assuming it goes to hearing?
A. I don't really have a clear view of how many hearings I'm going to be attending. So it could be quite a range.
Q. You have some experience --
A. Probably between 50 and 100, I would guess.
Q. So 250 to 300 total on the case would be --
A. That would be a reasonable guess.
Q. -- reasonable guess?

Page 111

How much revenue do you anticipate Brubaker and Associates will receive relating to this rate case?
MS. VUYLSTEKE: I'm going to object to the form of the question. That issue is subject to objections that have been placed -- objections that we have made to AmerenUE to the questions in the subpoena for documents attached to the deposition notices. And those issues may be resolved by the commission if Ameren files a motion to compel.
So I would object to the form of the question and instruct the witness not to answer.
MR. LOWERY: You're really instructing the witness not to answer about the compensation that a paid witness is getting to testify as an expert witness in a case?
MS. VUYLSTEKE: If I'm understanding your question right, you're not simply asking his hourly rate or how many hours he's spent so far, but the total amount that he expects to get from the case. And Mr. Brubaker has already told you that he doesn't know for sure how many additional hours he's going to spend on the case.
MR. LOWERY: And he can say that he's estimating. If your objection is well taken, then it can be taken up. But other than privilege, you can't instruct the witness not to answer the question.

Page 112

MS. VUYLSTEKE: Well, we've objected to the relevance of the total amount.
MR. LOWERY: That's relevance, but this is a discovery deposition. You can't instruct the witness not to answer a question based on relevance. If it's attorney/client privilege, which it can't be since he's not your client --
MS. VUYLSTEKE: Since we've objected and we've filed our objections with you, then that's an issue for the commission to decide whether or not we have to answer those.
MR. LOWERY: Do you really want me to go to the commission and take everybody's time to depose Maurice again just because I'm asking a compensation question?
MS. VUYLSTEKE: If you want to go ahead and negotiate the issue of the discovery and decide if we want to enter into some compromise keeping in mind our objection, I'm happy to do that.
MR. LOWERY: Let's go off the record for a minute.
(Whereupon there was an off-the-record discussion.)
Q. (By Mr. Lowery) Mr. Brubaker, you estimate that -- and I realize it's -- I'm not holding you to exact number of hours. But you estimate 250 or 300 hours for you

Page 113

personally on this case by the time it's done, correct?
A. Yes.
Q. You bill at what, 315, 350?
A. 315.
Q. $315 an hour. How much have Brubaker and Associates billed MIEC so far on this case?
A. Nothing.
Q. How many hours have Brubaker and Associates put in on this case so far?
A. I don't know.
Q. You have no idea?
A. No, I don't.
Q. All right. Give me just a second.
Mr. Brubaker, you indicated that you were involved in the Wyoming case involving PacifiCorp, is that right -- involving Rocky Mountain Power? Excuse me.
A. I was involved in the most --
Q. In the most recent case?
A. In the most recent decided case. I'm also looking at an issue in the new case.
Q. All right. Would the most recent decided case be this June -- this case that was filed on June 29, 2007?
A. Probably.
Q. Do you recognize that stipulation and agreement?

A. I think I've seen it. Yeah, I think this is the stipulation from the most recent concluded Rocky Mountain Power case in Wyoming.

Q. And this is the stipulation agreement that reestablished or continued Rocky Mountain Power's fuel adjustment clause, the one that we discussed earlier in the deposition?

A. It's the case that was continued, yes.

Q. It's continued.

And so you are familiar with this stipulation agreement, correct?

A. Well, I've seen it. I did not participate in writing the stipulation or negotiating the terms of the conditions.

Q. But you recognize this to be the stipulation agreement that the commission -- the Wyoming commission approved in that case?

A. Yes.

MR. LOWERY: Can we mark that.

(Whereupon the reporter marked Exhibit No. 4 for identification.)

Q. (By Mr. Lowery) So the document we were just talking about, the court reporter has just marked as Deposition Exhibit 4. The document the court reporter marked as Deposition Exhibit 4 is the same stipulation that

you recognize as being the one the Wyoming commission approved that continued Rocky Mountain Power's fuel adjustment clause, correct?

A. It appears to be with the caveats I've given you before. I'm not questioning that's what it is.

Q. As long as I haven't switched pages or something, it is the stipulation, right?

A. Yes.

MR. LOWERY: All right. I think that's all I have.

I assume that you want to read and sign the deposition, waive presentment. Can we stipulate if it's not signed at the time of hearing, it will be treated as if it is signed?

MS. VUYLSTEKE: Why would it not be signed -- why would you want to do that? I'm sure signing the deposition is really verifying that it's accurate as it is. So I wouldn't want to waive that.

MR. LOWERY: The reason I would want to do -- it's almost always done. But you are going to be sent the original of this deposition and you're going to be sent the original errata sheet and you're going to have control of that document. I don't want to get to the hearing and it not be signed and you say we can't use the deposition because we didn't sign it. You're in complete control as

to whether it's signed or not. I have no control over that.

So it's fine, I think Mr. Brubaker should read it. If there's a mistake in transcription, he should correct it, but I want to be sure that the deposition is going to be useable at the hearing. That's all I'm asking for. If it's not signed at the time of the hearing, that it will be treated as it is. You have complete control. You can sign it, then it's not an issue.

MS. VUYLSTEKE: Okay.

(Whereupon signature was reserved.)

CERTIFICATE OF REPORTER

I, Sheryl A. Pautler, Certified Court Reporter, Notary Public within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

____

Notary Public within and for
the State of Missouri
My commission expires April 10, 2009.

Page 118

I, MAURICE BRUBAKER, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed the _______ day of ____________, 20___, at ____.

___________________________________.

MAURICE BRUBAKER

My Commission Expires: ____________________________

Notary Public: ____________________________

SP/Maurice Brubaker

In the Matter of Union Electric Company

Page 119

Errata Sheet

Witness: Maurice Brubaker

In Re: In the Matter of Union Electric Company

Upon reading the deposition and before subscribing thereto, the deponent indicated the following changes should be made:

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Reporter: Sheryl A. Pautler

Page 120

Midwest Litigation Services
711 North Eleventh Street
St. Louis, Missouri 63101
Phone (314) 644-2191 * Fax (314) 644-1334
October 24, 2008

Ms. Diana M. Vuylsteke
Bryan Cave
One Metropolitan Square, Suite 3600
St. Louis, Missouri 63102

In Re: In the Matter of Union Electric Company

Dear Ms. Vuylsteke:

Please find enclosed your copy of the deposition of Maurice Brubaker, taken on October 23, 2008 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page to Mr. James B. Lowery for filing prior to hearing date.

Thank you for your attention to this matter.

Sincerely,

Sheryl Pautler

CC: Mr. James B. Lowery