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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Hearing

8

September 12, 2006

Jefferson City, Missouri

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Volume 14

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In the Matter of The Empire)

District Electric Company of)

13

Joplin, Missouri, for Authority to)

File Tariffs Increasing Rates for) Case No. ER-2006-0315

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Electric Service Provided to)

Customers in the Missouri Service)

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Area of the Company)

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COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE.

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JEFF DAVIS, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

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REPORTED BY:

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

2 JUDGE DALE: We are here today on
3 September 12th, 2006, resuming the hearing in
4 ER-2006-0315, the rate case of Empire District Electric
5 Company. Today we begin fuel and purchased power expense
6 level. Is there anything that I need to address before we
7 call witnesses?

8 MR. WOODSMALL: Your Honor, as an initial
9 matter, Praxair and Explorer would like to object to the
10 receipt of any evidence on this matter. You may recall
11 that in response to the Commission's May 2nd order
12 clarifying continued applicability of the interim energy
13 charge, Praxair and Explorer filed on May 26th a motion to
14 reject specified tariff sheets and strike testimony.

15 The Commission did strike some of the
16 testimony and did reject some of the tariff sheets, but
17 did not go as far as Praxair and Explorer requested. In
18 response to that order rejecting those tariff sheets and
19 striking certain testimony, we filed a motion for
20 rehearing on June 23rd. That motion for rehearing is
21 still pending some four months later, and I just wanted --
22 three months later, and I just wanted to renew my
23 objection to the receipt of any evidence on this issue.

24 JUDGE DALE: Your objection is noted, but
25 the only testimony that will be excluded at this time

1 relates to an alternative energy recovery mechanism, fuel
2 adjustment mechanism. Testimony concerning rolling those
3 costs into base rates will be accepted into evidence, and
4 you can preserve your objection.

5 MR. WOODSMALL: Thank you.

6 MR. MILLS: And, your Honor, just for the
7 record, Public Counsel also filed a motion for rehearing
8 on or about the same date.

9 JUDGE DALE: Also preserved.

10 MR. MILLS: Thank you. And another matter,
11 if I may. The procedural schedule that the parties
12 submitted indicated that the Public Counsel witness on the
13 issues for today and for tomorrow has limited
14 availability. His availability has turned out to be even
15 more limited than we originally thought, and we would like
16 to get him up on the stand and out of here as quickly as
17 possible today. And if it was possible, we would even
18 propose taking him first, out of order, so that he could
19 get done and get out of here in time to catch his flight.

20 I've spoken to counsel for several of the
21 other parties. I don't know if they have objections or
22 not, but they're at least aware of the situation.

23 JUDGE DALE: Are there any objections to
24 taking him out of order?

25 MR. WOODSMALL: None by Praxair/Explorer.

1 MR. COOPER: Empire has no objections.

2 MR. FREY: No objections.

3 JUDGE DALE: Then after we do the openings
4 for this topic, he will be the first witness up.

5 MR. MILLS: Thank you very much.

6 JUDGE DALE: So we're ready to begin the
7 openings. Is there anything else?

8 (No response.)

9 JUDGE DALE: Then Mr. Cooper?

10 MR. COOPER: Good morning. What's at issue
11 at this point in the hearing can be stated very simply.
12 It's the natural gas price. For Empire, fuel and
13 purchased power is the largest expense category in the
14 company's overall cost of service, accounting for almost
15 50 percent of total expenses during the test year.

16 In arriving at its recommendation for the
17 appropriate level of on-system fuel and purchased power
18 expense, Empire used the sophisticated computer modeling
19 system known as ProSim. This model is used by more than
20 100 energy companies worldwide to estimate their
21 production costs. It recommends the optimal dispatch of
22 resources on an hourly basis, based on a wide variety of
23 data, including fuel cost, unit startup costs and variable
24 operating and maintenance costs. It's a chronological
25 production costing model that Empire has used for many

2 Staff used a similar computer modeling
3 system, a real-time model, to derive its recommendation as
4 to on-system fuel and purchased power expense. Amazingly,
5 these models make projections that are extremely close.
6 The reconciliation in this case identifies the difference
7 between the Empire and Staff recommendations on a Missouri
8 jurisdictional basis to be a total of approximately
9 \$4.4 million -- It's an exciting unwinding issue that
10 you'll hear later this week -- on an expense item that for
11 Empire is worth well over \$100 million.

19 While there are differences between the
20 parties as to how to arrive at the appropriate spot gas
21 price, the evidence shows that there's virtually no
22 difference between Empire and Staff as to the resulting
23 price used. The difference between Staff and Empire is
24 actually based upon two items related to the hedged price.

1 using the actual hedged prices for the period April of
2 2006 through December 2007. A portion of these hedges,
3 those from April of 2006 through December of 2007 -- or
4 excuse me, from April of 2006 through December of 2006,
5 will not be applicable to the period when rates will be in
6 effect. Further, the Staff's use of a 21-month period
7 rather than 12 or 24 months weights certain parts of the
8 year more heavily than others in the price they were --
9 they utilized.

10 Empire used an actual hedge price for
11 hedges covering the period January 7 through December of
12 2007. Once you find the hedge price or once a hedge price
13 and spot price are determined, to find the weighted cost
14 of gas, a decision still must be made as to what extent
15 each will apply to the gas to be burned. In other words,
16 if the hedged price is lower than spot price, applying a
17 higher percentage of the gas to the hedged price will
18 necessarily lower the weighted cost of gas.

19 The Staff hedged price was based on
20 a point in time when Empire had approximately 60 percent
21 of its needs hedged for the year 2007. Staff assumed that
22 80 percent of Empire's needs could be covered essentially
23 at that hedged price in deriving its weighted cost of gas.
24 Thus, Staff necessarily assumed for purposes of its
25 estimate that Empire could hedge 80 percent of its natural

1 gas 2007 needs at the same price that Empire had hedged
2 gas for the period from April of 2006 through December of
3 2007.

4 This assumption served to more heavily
5 weight Staff's hedged price and further lower Staff's.
6 Evidence will show that the Staff's assumption has not
7 turned out to be accurate in regard to the price at which
8 Empire could hedge additional amounts of gas for 2007.

9 Neither the Public Counsel nor the
10 industrial intervenors used a model to estimate on-system
11 fuel and purchased power expenses. OPC suggested using
12 the future market for spot natural gas prices; however, it
13 did not provide a fuel cost estimate based on this
14 recommendation.

15 The industrial intervenors attempted to
16 predict future cost of natural gas by using a mixture of
17 historical prices and future prices. This resulted in a
18 spot gas price that's approximately \$1.70 less than the
19 price used by Empire and Staff. The Missouri
20 jurisdictional difference between Empire and industrials,
21 again setting aside the unwinding issue which will come up
22 later this week, is approximately 5.8 million.

23 Thank you.

24 JUDGE DALE: Thank you. Mr. Frey?

25 MR. FREY: Thank you, your Honor. May it

0660

1 please the Commission? I'll be brief because Mr. Cooper
2 went through pretty much what I was going to say quite
3 thoroughly except, of course, Staff takes a different view
4 of the evidence in this case.

5 I would say that we're here today
6 concerning two issues: Namely, the proper expense level
7 for fuel and purchased power, which is what Mr. Cooper
8 addressed; and then the appropriate fuel and purchased
9 power recovery method, and in particular whether or not
10 the IEC should be continued.

11 For the entirety of this proceeding the
12 Staff has had a position only with respect to the first
13 issue, namely the appropriate level of fuel and purchased
14 power expense, and that's where the Staff is today.

15 If the Commission decides that the IEC
16 should be continued, fuel and purchased power as an issue
17 goes away. The question of the appropriate level of fuel
18 and purchased power expense arises only if the Commission
19 decides to grant Empire's request to terminate the IEC.
20 And in that event, as Mr. Cooper pointed out, the issue
21 really boils down to a dispute about what gas price should
22 be used in arriving at the recommended fuel and purchased
23 power price.

24 Staff believes the evidence will show that
25 its methodology produces the most reasonable price of

0661

1 natural gas to be incorporated in the rates. Consistent
2 with its past practices, Staff relies on the company's
3 actual experience. It computed weighted average spot
4 purchase cost based on a 12-month test year update period
5 actual ending March 31st, 2006, and it computed the
6 weighted average hedging price, as Mr. Cooper pointed out,
7 based on actual contracts over the period April 2006 to
8 December 2007, and then its overall gas price was
9 calculated assuming a mix of 80 percent hedged gas,
10 20 percent spot purchased gas. The difference between
11 Empire and Staff on this issue amounts to about 4 and a
12 half million dollars, 4.6 million.

13 With respect to the issue whether the IEC
14 should be terminated per the company's request, again, the
15 Staff has taken no position on this issue. The Staff is a
16 non-signatory to the Stipulation & Agreement, and after
17 careful review was unable to say whether the document was
18 conclusive on this question. Staff's review is set out in
19 some detail in its April 24th, 2006 response to Empire's
20 motion for clarification. Thank you.

21 JUDGE DALE: Mr. Mills?

22 MR. MILLS: Thank you. Just for my own
23 edification, is the Commission looking for opening
24 statements on simply the first issue for today or both
25 issues today at this point? We have fuel and purchased

1 power expense level first and the IEC continuation
2 question second.

3 MR. COOPER: I would suggest from Empire's
4 position that obviously from my opening that we thought we
5 were trying the fuel and purchased power expense level
6 issue as indicated on the list of issues, and Empire will
7 have a separate opening at such time as we get to the fuel
8 recovery method/IEC continuation issue.

9 JUDGE DALE: My only caveat to that would
10 be if your witness with limited availability is going to
11 discuss both of those issues, you may want to at least
12 touch on --

13 MR. MILLS: Yeah. And although he is
14 listed under the IEC continuation issue, his only
15 reference in his testimony was that another Public Counsel
16 witness testified on that issue.

17 JUDGE DALE: Okay.

18 MR. MILLS: So I don't expect him to have
19 any significant cross-examination or any testimony about
20 that issue. So I will simply talk about fuel and
21 purchased power expense level.

22 In its order issued April 11th, 2006, the
23 Commission established a test year in this period updated
24 for known and measurable changes through March 31, 2006.
25 Public Counsel believes that it's appropriate to look at

0663

1 natural gas prices as of that date in order to estimate
2 and put into rates an appropriate amount for natural gas
3 prices in the future.

4 In his opening statement, Mr. Cooper noted
5 with pride Empire's modeling capabilities and also noted
6 that OPC didn't run its own model. I confess that we
7 don't have the same capability as Empire does, but we did
8 ask Empire to run their fuel model for us and Empire
9 graciously agreed.

10 We will offer in evidence today the model
11 run that shows the natural gas prices as of the end of the
12 test period that Public Counsel suggests that we use in
13 this case. Thank you.

14 JUDGE DALE: Thank you.

15 MR. WOODSMALL: Your Honor, given our
16 standing objection regarding the receipt of evidence on
17 this issue, Praxair/Explorer does not have an opening
18 statement. I would note, however, that we are offering
19 the testimony of Maurice Brubaker on the issue and that
20 testimony is being offered without prejudice to that
21 standing objection.

22 JUDGE DALE: Certainly.

23 MR. WOODSMALL: Thank you.

24 MS. CARTER: Aquila has no statement on
25 this issue.

0664

1 JUDGE DALE: Thank you. Is there anybody
2 I'm missing?

3 (No response.)

4 JUDGE DALE: Then I believe we can go with
5 your witness.

6 MR. MILLS: Okay. I'll call Ralph Smith to
7 the stand, please.

8 (Witness sworn.)

9 JUDGE DALE: Thank you. Please be seated.

10 RALPH C. SMITH testified as follows:

11 DIRECT EXAMINATION BY MR. MILLS:

12 Q. Could you state your name for the record,
13 please.

14 A. My name is Ralph C. Smith.

15 Q. And by whom are you employed and in what
16 capacity?

17 A. I'm employed by Larkin & Associates as a
18 senior regulatory analyst.

19 Q. And on whose behalf are you testifying in
20 this procedure?

21 A. On behalf of the Public Counsel.

22 Q. Thank you. Are you the same Ralph Smith
23 that has caused to be filed testimony in this case that
24 has been marked as Exhibit 81 for your direct testimony,
25 Exhibit 82 for your rebuttal testimony, and Exhibit 83 for

0665

1 your surrebuttal testimony?

2 A. Yes.

3 Q. Have you also caused to be prepared an
4 errata sheet that deals with corrections line by line for
5 those pieces of testimony?

6 A. Yes, I have.

7 Q. Do you have a copy of that errata sheet?

8 A. Yes.

9 MR. MILLS: Your Honor, I'd like to have an
10 exhibit marked. Are we at 110?

11 JUDGE DALE: Yes, we are.

12 MR. MILLS: Exhibit 110 I will identify as
13 the errata sheet of Mr. Smith.

14 (EXHIBIT NO. 110 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)
16 BY MR. MILLS:

17 Q. And rather than going line by line and page
18 by page, does this errata sheet identify all of the
19 corrections to your three pieces of testimony?

20 A. To the best of my knowledge, yes, it does.

21 Q. And with these corrections, if I were to
22 ask you the same questions that are contained in your
23 prefiled testimony, would your answers be the same today?

24 A. Yes, they would.

25 Q. And are those answers true and correct to

1 the best of your knowledge, information and belief?

2 A. Yes.

3 MR. MILLS: Okay. With that, I would offer
4 Mr. Smith's testimony, Exhibits 81, 82 and 83, and
5 Exhibit 110, and tender the witness for cross-examination.

6 JUDGE DALE: Are there any objections?

7 (No response.)

8 JUDGE DALE: Then Exhibits 81, 82, 83 and
9 110 will be admitted into evidence.

10 (EXHIBIT NOS. 81, 82, 83 AND 110 WERE
11 RECEIVED INTO EVIDENCE.)

12 JUDGE DALE: Mr. Frey, I believe you're
13 first up for cross.

14 MR. FREY: I have no questions, your Honor.

15 JUDGE DALE: Okay. Mr. Woodsmall?

16 MR. WOODSMALL: No questions, your Honor.

17 JUDGE DALE: Ms. Carter?

18 MS. CARTER: I have no questions.

19 JUDGE DALE: Mr. Cooper?

20 MR. MITTEN: Mr. Cooper's gone. I'll be
21 doing the cross-examination.

22 CROSS-EXAMINATION BY MR. MITTEN:

23 Q. Good morning, Mr. Smith.

24 A. Good morning.

25 Q. The Office of Public Counsel and Empire

1 agree that the revenue amount associated with off-system
2 power sales in this case should be based on a five-year
3 average; is that correct?

4 A. We have both used a five-year average, but
5 we disagree about the amount.

6 Q. Exactly. We disagree as to how that
7 five-year average should be calculated; is that correct?

8 A. We disagree about one item in the five-year
9 average, which is the sale of purchased power from an AEP
10 purchase.

11 Q. Empire believes that the revenue associated
12 with that AEP-related transaction should be taken out
13 before you calculate the five-year average, and the Public
14 Counsel believes it should be left in; is that correct?

15 A. That's correct.

16 Q. Now, the AEP transaction that we're
17 talking about, that was a transaction that occurred over a
18 13-month period beginning June 1st of 2002 and concluding
19 June 30th of 2003; is that correct?

20 A. I believe so.

21 Q. And during that period of time, Empire was
22 able to resell power that it acquired from AEP; is that
23 correct?

24 A. Yes.

25 Q. Now, according to Mr. Keith, the AEP

1 resales amounted to a significant portion of Empire's
2 off-system sales during 2002 and 2003; is that correct?
3 The specific amounts are highly confidential that are
4 included in Mr. Keith's testimony, but they are
5 significant portions of the overall revenue that the
6 company derived from off-system sales during those
7 periods; is that right?

8 A. During those two years, a significant
9 proportion of the off-system sales margin was derived from
10 the resale of the power that the company purchased from
11 AEP. In other years, the company had other --

12 Q. But I'm --

13 A. -- margin --

14 Q. -- talking about 2002 and 2003.

15 A. Right. But when you look at the five-year
16 average, the average is very close.

17 Q. Mr. Smith, could you please confine your
18 answers to the questions that I've asked you. I asked you
19 whether or not the effect of the AEP transaction occurred
20 in 2002 and 2003, simple yes or no?

21 A. The transaction was in those two years,
22 parts of those two years, yes.

23 Q. Could you please turn to the schedules that
24 you have attached to your rebuttal testimony, Schedules
25 RCS-R1 and RCS-R2, and I'm specifically interested in the

0669

1 information that appears on the bottom of both of those
2 schedules.

3 A. Yes.

4 Q. What you show there are the gross amounts
5 of off-system sales profit or margin for Empire on two --
6 or on RCS-R1 for calendar years 2001 through 2005 and on
7 RCS-R2 for years ended March 31st, 2002 through 2006; is
8 that correct?

9 A. Yes.

10 Q. Now, the years that the AEP purchase or
11 transaction occurred -- excuse me. Let's look at RCS-R1
12 for a moment, and I'm going to ask you to make some
13 calculations, Mr. Smith. Do you happen to have a
14 calculator with you?

15 A. Yes.

16 Q. Now, the change 2001 to 2002, I calculated
17 that to be over 500 percent; is that correct? Would you
18 like to do the calculation yourself?

19 A. 832,000 roughly to 5.1 million?

20 Q. Yes.

21 A. Yes.

22 Q. And then if you look at the change between
23 2002 and 2003, it dropped off almost 41 percent?

24 A. It dropped from 5.1 million to
25 approximately 3 million.

0670

1 Q. And is that approximately 41 percent?

2 Would you like to do the calculation?

3 A. It's approximately 41 percent, yes.

4 Q. And then it dropped off another 44 percent
5 between 2003 and 2004; is that right?

6 A. Dropped from 3 million to 1.687 million.

7 Q. And is that approximately 44 percent?

8 A. You said 44 percent?

9 Q. Yes.

10 A. Approximately, yes.

11 Q. And then between 2004 and 2005, it
12 increased by about 108 percent; is that correct?

13 A. Approximately 107 percent.

14 Q. Was that 107 -- 107 percent, 108 percent?

15 A. 107.5.

16 Q. That would be approximately 108 percent?

17 A. Close enough.

18 Q. If you could make the same calculations for
19 the data that are on RCS-R2 on the March 31 year-end
20 basis. Again, between 2002 and 2003, I see an increase of
21 almost 500 percent; is that right?

22 A. Yes.

23 Q. And between 2003 and 2004, a decrease of
24 about 58 percent?

25 A. Approximately, yes.

1 Q. And then between 2004 and 2005, another
2 decrease of about 14 percent?

3 A. Approximately 14.5 percent, yes.

4 Q. And then between 2005 and 2006, sales
5 increased by about 44 percent; is that correct?

6 A. If you're talking about the net margin
7 shown on this exhibit.

8 Q. Yes, that's what I'm talking about.

9 A. 44.4 percent.

10 Q. So based on the information that is shown
11 on your two schedules, off-system sales margins fluctuated
12 drastically over the five-year period that you looked at,
13 is that correct, whether you do it on a year-end basis or
14 a March 30 basis; is that correct?

15 A. They fluctuated significantly from year to
16 year. The average is pretty close to the test year
17 amounts, and there's also other corroborating evidence.

18 Q. Again, if you could just limit your answer
19 to the question that I asked.

20 MR. MILLS: Your Honor, I think he's trying
21 to explain his answer, and counsel keeps cutting him off.
22 I don't think that he's wandering far afield. I think
23 he's answering the question to the best of his ability,
24 and if he were allowed to finish his answer, I think we
25 would understand that.

1 JUDGE DALE: Let me remind the witness that
2 if he is asking a leading question, which is one that
3 calls for a yes or no answer, you should confine your
4 answer to yes, no, sometimes, maybe or I don't know. It
5 will be up to Mr. Mills then to get your explanation in
6 full when he has an opportunity for redirect.

7 BY MR. MITTEN:

8 Q. Now, the AEP transaction that we spoke
9 about a moment ago, that transaction or a similar
10 transaction did not recur any time through the five-year
11 period that you studied for calculating your average; is
12 that correct?

13 A. Similar off-system sales margins were
14 realized during other years in the five-year period.

15 Q. But again my question was, the AEP
16 transaction or something similar to it did not recur
17 during the five-year period that you studied to calculate
18 your average; is that right?

19 A. The AEP transaction --

20 JUDGE DALE: Excuse me. Yes, no, maybe,
21 sometimes or I don't know.

22 THE WITNESS: No. The AEP transaction was
23 limited to a specific period, but there were other
24 transactions that produced a similar level of off-system
25 sales margin on a five-year average basis.

1 BY MR. MITTEN:

2 Q. And you don't have any evidence that the
3 AEP transaction or something similar to it is going to
4 recur during the period of time rates set in this case are
5 likely to be in effect; is that correct?

6 A. No, that's not correct. If you'll look at
7 page 7 of my surrebuttal testimony, we did not only look
8 at the five-year average, we also looked at the test
9 period actual of 2.8 million, the test year budgeted
10 amount of 2.834 million, the 2006 budgeted amount of over
11 4 million, \$4,077,839, as well as five-year average for
12 three different periods for 9/30/05, to 12/1/05 and
13 3/31/06. All those numbers are converging on our normal
14 representative amount of approximately 2.8 million, which
15 is what I'm recommending.

16 Q. Again, let me get back to my question. And
17 let's look at your two schedules for reference points.
18 During 2002, on a year-end basis it shows a margin of
19 5.1 million. And 2002 -- or 2003, on a March 31 basis, it
20 shows margins of 5.8 million. Do you have any evidence
21 that margins of that magnitude are going to recur during
22 any year during which rates set in this case are going to
23 be in effect?

24 A. No. As I just explained --

25 JUDGE DALE: After the no, that's the end

1 of the answer. Mr. Mills will follow up.

2 BY MR. MITTEN:

3 Q. Now, again directing your attention to the
4 two schedules that we have been talking about, would you
5 agree with me that, given the significant increase that
6 occurred during the period of time that the AEP-related
7 transactions were taking place, that simply including that
8 in an average is going to arithmetically increase the
9 average?

10 A. Including any amounts in an average will
11 either increase or decrease it.

12 Q. But since the amount that the company
13 realized during the period of time it was reselling AEP
14 power is so significant and so out of line with any of the
15 other numbers that are shown on your schedule, that had a
16 significant impact on the average that you calculated,
17 wouldn't you agree?

18 A. Each one of the five years had a
19 significant impact on the average.

20 JUDGE DALE: I'm sorry. Once again, yes,
21 no, I don't know, maybe, sometimes. It's a yes/no
22 question. Please answer it.

23 THE WITNESS: Yes, 2002, 2003 had an impact
24 on the average, as did every other year.

25 BY MR. MITTEN:

1 Q. What was the average that you calculated
2 leaving the AEP related margins in?

3 A. If you look at Schedule RCS-R2 for the five
4 years ending March 31st, the average is 2.862 million.

5 Q. And what's the average that you calculated
6 with the AEP-related revenues excluded?

7 A. I didn't calculate that average.

8 Q. You didn't calculate an average?

9 A. I didn't calculate the average with the AEP
10 sales excluded because I didn't think it was appropriate
11 to exclude them.

12 Q. Did you -- you didn't make any calculation
13 just for comparison purposes to see how the AEP
14 transaction impacted the average you calculated?

15 A. I didn't do that calculation. Empire
16 witness Keith has, and I show a comparison against his
17 recommendation on page 7 of my surrebuttal testimony.

18 Q. Now, Mr. Smith, at page 3 of your
19 surrebuttal testimony, you indicate that you have
20 confidence in the accuracy of your average because it is
21 close to test year actuals; is that correct?

22 A. Page 3 of my surrebuttal?

23 Q. That's what it says.

24 A. I'm reading at page 3, starting on line 17,
25 while this individual transaction might have been unusual,

1 the average annual level of off-system sales margin when
2 this transaction is included in computing the average is
3 very close to the actual test year amount and to Empire's
4 test year budget amount for off-system sales margin.

5 Q. I understand that's what it says. My
6 question to you was, you took comfort in the fact that
7 your average was close to the actual test period amount;
8 is that right?

9 A. I'm not sure I would use those exact words,
10 taking comfort. I did look at the test year actual and
11 all of the other information shown on page 7 of my
12 surrebuttal.

13 Q. Directing your attention for one final time
14 to the two schedules that are attached to your rebuttal
15 testimony, if someone had attempted to estimate the next
16 year's off-system sales based upon the current year's
17 off-system sales, they would have been wrong by a
18 considerable margin each and every one of the five years
19 that you looked at during your study; isn't that correct?

20 A. I'm not sure I understand the question.
21 You're saying if somebody took one year and attempted to
22 base the next year's estimate off of the preceding year,
23 would there have been a difference?

24 A. There would have been a significant
25 difference in each and every one of the five years you

1 studied for purposes of calculating your average?

2 A. There would have been a difference. I
3 should clarify that I'm not recommending using a one-year
4 amount. I'm recommending using a five-year average, which
5 happens to be close to the test year amounts.

6 JUDGE DALE: Could we get an answer to the
7 question about whether or not there would be a significant
8 difference?

9 THE WITNESS: If you took one year --

10 JUDGE DALE: Yes or no.

11 THE WITNESS: Well, he's suggesting
12 something that I didn't really recommend.

13 JUDGE DALE: He's asking you a question,
14 and your job is to answer his question. Whether or not
15 you recommended it or not, could you please just answer
16 his question?

17 THE WITNESS: There would be a significant
18 difference in the actual fluctuations from year to year.

19 BY MR. MITTEN:

20 Q. Given that fact, could you or the
21 Commission take a great deal of comfort in the fact that
22 your average is close to test year actuals?

23 A. Yes, I believe so.

24 Q. You think test year actuals is going to be
25 an accurate predictor of what the level of off-system

0678

1 sales are likely to be in the future during the period
2 rates set in this case are in effect?

3 A. Yes, I think it's one part of the
4 information that needs to be examined.

5 MR. MITTEN: I don't have any further
6 questions. Thank you, Mr. Smith.

7 JUDGE DALE: Thank you. Are there
8 questions from the Bench?

9 COMMISSIONER APPLING: I think I have a
10 couple.

11 JUDGE DALE: Thank you.

12 QUESTIONS BY COMMISSIONER APPLING:

13 Q. Good morning, Mr. Smith.

14 A. Good morning, Commissioner.

15 Q. You doing all right physically?

16 A. Yes.

17 Q. Okay. Sorry to hear you had the accident
18 and all that, but you're doing okay this morning?

19 A. That wasn't me. That was a different
20 witness.

21 MR. MILLS: Unfortunately, that's our other
22 expert witness. He will be in here later in the week.

23 COMMISSIONER APPLING: I apologize to you.
24 You seem to be looking pretty healthy this morning, too.

25 BY COMMISSIONER APPLING:

1 Q. At the present time, Mr. Smith, can Empire
2 secure natural gas and purchased power at the price
3 suggested by Staff witness Fischer? I assume you're
4 somewhat familiar with Staff witness Fischer's
5 recommendation and testimony that was submitted?

6 A. Somewhat. I did read her testimony.

7 Q. Do you think that Empire can secure natural
8 gas at the prices which Staff is recommending?

9 A. I'm not certain if they can or not.

10 COMMISSIONER APPLING: Okay. Then I
11 will -- I will curtail my questions. Judge, I have no
12 further questions of this witness.

13 JUDGE DALE: Thank you. Are there any
14 questions based on questions from the Bench?

15 (No response.)

16 JUDGE DALE: In that case, redirect?

17 MR. MILLS: I do have a few. Thank you.

18 REDIRECT EXAMINATION BY MR. MILLS:

19 Q. Mr. Smith, let me ask you, you were asked a
20 lot of questions about the AEP contract. Is it your
21 understanding that that contract ran from roughly June
22 2002 to June 2003?

23 A. Yes.

24 Q. Approximately half in 2002, half in 2003?

25 A. Seven months in 2002, six months in 2003 is

0680

1 my understanding.

2 Q. So, in fact, there was more of that
3 contract in 2002 than 2003?

4 A. Right.

5 Q. Okay. Now, I think you were asked a
6 question about whether the power from that contract was
7 resold at a profit. Do you recall that question?

8 A. Yes.

9 Q. How do you know that it was that specific
10 power that was resold?

11 A. Empire identified that power as being sold
12 and calculated the off-system sales margin based on the
13 price received for that power less the energy cost of that
14 power.

15 Q. How did Empire identify the electrons from
16 that sale that were later resold?

17 A. I'm not totally sure how Empire identified
18 it.

19 Q. So it could very well have been that the
20 power from the native load, from their native generation
21 was resold and the power from AEP was used by their native
22 load during that same period of time?

23 A. That could be, but typically an economy
24 energy sale would be made using the next increment of
25 cost, of variable cost for generation or purchased power.

1 So while I don't know the exact specifics of how Empire
2 identified the off-system sale to be related to the AEP
3 purchase, my presumption would be that that purchase was
4 probably the highest energy cost available source of power
5 during those particular hours on Empire's system at the
6 time the sales were made.

7 Q. And is there some way of knowing that the
8 native load didn't use those electrons that came from AEP?

9 A. Perhaps research during those prior periods
10 could reveal that information.

11 Q. In determining the revenue requirement for
12 a utility, what is the purpose of using a five-year
13 average?

14 A. The purpose, as I understand it, of
15 evaluating the amount of off-system sales margin to use in
16 this case is to identify a reasonable representative
17 amount that can be used in the derivation of Empire's
18 Missouri jurisdictional revenue requirement. And I
19 presented the evidence that we relied upon for that
20 conclusion, and it's basically summarized in a table on
21 page 7 of my surrebuttal testimony.

22 It compares the test year actual
23 amount of 2.8 million; the test year budgeted amount of
24 2.834 million; Empire's 2006 budgeted amount of
25 \$4,077,839; five-year average ending September 30, 2005,

1 2.752 million; five-year average ending December 31st,
2 2005, 2.828 million; and a five-year average ending
3 March 31st, 2006, 2.862 million.

4 And specifically I've recommended the
5 2.862 million five-year average ending March 31st, '06,
6 which is in line with all those other numbers, and also
7 because it represents a five-year average, which I
8 understand is consistent with how this amount has been
9 determined in prior cases, not necessarily every single
10 prior case, but some prior cases. And the updating
11 through March 1st, 2006 I understand is also consistent
12 with the Commission's order, considering the test year in
13 the update period.

14 So that's basically how I arrived at my
15 conclusion, recommendations concerning this amount, and I
16 do believe that represents a reasonable representative
17 amount for the derivation of Empire's Missouri
18 jurisdictional revenue requirement.

19 Q. Okay. Let's cut to the chase. For
20 something like off-system sales, why is it better to use a
21 five-year average than the test year amount?

22 A. Because as Empire's attorney took me
23 through, the amounts do fluctuate significantly from year
24 to year. And when you have a situation like that, one of
25 the basic ratemaking tools is to use an average because it

1 averages or normalizes out the annual fluctuations.

2 Q. And what is the effect of using a five-year
3 average but then taking out, for example, just one
4 particular high point?

5 A. Well, that's also shown on the table on
6 page 7 of my surrebuttal testimony. Empire's proposal as
7 presented in Mr. Keith's rebuttal testimony is to use an
8 amount for off-system sales margin of 1.552 million.
9 That's substantially below any of the other comparable
10 numbers, and I believe it's too low and not
11 representative.

12 Q. Now, let's talk about a different way to
13 treat the AEP contract that Empire believes should be
14 excluded.

15 MR. MITTEN: Your Honor, I believe this is
16 going way beyond the scope of my direct examination.

17 MR. MILLS: His cross-examination had
18 almost everything to do with the AEP contract and whether
19 or not it should be included in the five-year average.

20 JUDGE DALE: I'll have to agree and
21 overrule.

22 BY MR. MILLS:

23 Q. The AEP contract I believe you've testified
24 was partly in 2002 and partly in 2003. If you were to
25 look at your Schedule RCS-R2 attached to your rebuttal

0684

1 testimony, what would your average be if you simply used
2 the three years after the AEP contract and got rid of the
3 two years in which the AEP contract was contained?

4 A. Referring to RCS-R2 using --

5 Q. Using 2004, 2005, 2006 to simply remove the
6 AEP contract and the years in which it took place for
7 consideration altogether and use a three-year average.

8 A. I haven't calculated that amount yet, but I
9 can.

10 Q. Please do.

11 A. If you give me a minute. It would be
12 2.511 million.

13 Q. Okay. And if you were to do the same thing
14 with RCS-R1 from that testimony --

15 JUDGE DALE: Mr. Mills, will you check your
16 microphone while he's --

17 MR. MILLS: Thank you.

18 BY MR. MILLS:

19 Q. My question was, will you please do the
20 same thing with Schedule RCS-R1 from that testimony?

21 A. Did you want a two-year average of 2004 and
22 2005, since part of the AEP was in 2003?

23 Q. Yes.

24 A. 2.595 million.

25 Q. Now, in general, from an analyst's

1 standpoint, if you were to remove an outlier from a
2 five-year average because it was high, wouldn't you
3 normally remove the lowest outlier as well? If you were
4 simply trying to remove peaks or -- significant peaks or
5 significant valleys, wouldn't you take out highs and lows
6 rather than simply highs?

7 A. Yes. If you're going to start monkeying
8 with the five-year average to take out years that are
9 either way high or way low, you would probably want to
10 take out years that are very low, like the first year in
11 this five-year average, as well as perhaps the highest
12 year. But I believe it's actually preferable to include
13 all the years in and to just do the five-year average.

14 MR. MILLS: Thank you. That's all the
15 questions that I have.

16 JUDGE DALE: Thank you, sir. You may step
17 down.

18 MR. MILLS: Your Honor, the questions had
19 primarily to do with the off-system sales issue. Is it --
20 is Empire done with cross-examination of this witness?

21 MR. COOPER: Yes, we are.

22 MR. MILLS: Okay. Thank you.

23 MR. COOPER: At this time I believe we're
24 ready for Empire to call Mr. Todd Tarter.

25 (Witness sworn.)

1 JUDGE DALE: Thank you. Please be seated.

2 TODD W. TARTER testified as follows:

3 DIRECT EXAMINATION BY MR. COOPER:

4 Q. Please state your name.

5 A. Todd W. Tarter.

6 Q. By whom are you employed and in what
7 capacity?

8 A. The Empire District Electric Company as the
9 manager of strategic planning.

10 Q. Have you caused to be prepared for the
11 purposes of this proceeding certain direct, supplemental
12 direct, rebuttal and surrebuttal testimony?

13 A. Yes.

14 Q. Is it your understanding that that
15 testimony has been marked as Exhibits 15HC, 15NP, 16HC,
16 16NP, 17HC, 17NP and 18HC and 18NP for purposes of
17 identification?

18 A. Yes.

19 Q. Do you have any changes that you would like
20 to make to that testimony at this time?

21 A. No.

22 Q. If I were to ask the questions which are
23 contained in the cited exhibits today, would your answers
24 be the same?

25 A. Yes.

1 Q. Are those answers true and correct to the
2 best of your information, knowledge and belief?

3 A. Yes.

4 MR. COOPER: Your Honor, consistent
5 with how Empire has treated the testimony of, I guess,
6 Mr. Gipson and perhaps others that were to appear more
7 than one time, I do not plan to offer Mr. Tarter's
8 testimony at this time. We would plan to offer that when
9 he appears later on the fuel recovery method/IEC
10 continuation issue.

11 JUDGE DALE: That will be fine.

12 MR. COOPER: That being the case, we tender
13 the witness for cross-examination.

14 JUDGE DALE: Ms. Carter, I figured since
15 you changed seats you --

16 MS. CARTER: I'm not actually here.

17 JUDGE DALE: Okay. Praxair/Explorer?

18 MR. WOODSMALL: Your Honor, we have no
19 questions. I would note, however, that a portion of his
20 testimony has been stricken pursuant to the Commission's
21 Order of June 15. That notice may be a little premature
22 given that Mr. Cooper said it's not even offered yet, but
23 I just merely note that.

24 JUDGE DALE: Public Counsel?

25 MR. MILLS: Yes, thank you. I have a few

1 questions.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Mr. Tarter, are you familiar with the
4 Commission's April 11th, 2006 order that set a test year
5 of the 12 months ending December 1, 2005, adjusted and
6 updated for any known and measurable changes through
7 March 1, 2006?

8 A. No. What I was aware of was at the time
9 that Empire filed its direct testimony, that we had
10 selected a test year of 12 months ending September 2005.

11 Q. Okay.

12 A. And at the time I think that the other
13 parties filed their testimony, it was March 31st, '06.

14 Q. Are you aware of the test year that the
15 Commission has ordered to be used in this case?

16 A. I am today.

17 Q. Okay. So what is your understanding of
18 what that test year is?

19 A. March 31st, '06.

20 Q. Okay. Now, the production cost run in your
21 rebuttal testimony reflects projected costs for calendar
22 year 2007, doesn't it?

23 A. Just the gas prices are for 2007.

24 Q. And those are for calendar year 2007, the
25 gas prices?

0689

1 A. Yes, they are.

2 Q. How far is the end of 2007 from the end of
3 the test period updated as ordered by the Commission?

4 A. Well, January '07 would be nine months from
5 the term.

6 Q. And you ran through the end of 2007?

7 A. Yes.

8 Q. How far is the end of 2007 from the end of
9 the test period?

10 A. Nine months plus twelve months.

11 Q. Your initial production cost run used NYMEX
12 natural gas futures prices from November 2005 as the gas
13 cost price input to Empire's production cost model, didn't
14 it?

15 A. Yes.

16 Q. Less the basis adjustment?

17 A. That's true.

18 Q. What have natural gas prices done since
19 November 2005?

20 A. As I've noted in my testimony, they've
21 declined.

22 Q. Significantly?

23 A. Depends on how you use the term
24 significant.

25 Q. All right. As you would normally use it in

0690

1 everyday conversation, would you say the decline is
2 significant?

3 A. I think that the average cost of the spot
4 price in our initial runs was over \$9, and at the time of
5 our rebuttal testimony, it was \$7.96.

6 Q. If you were buying gas, would you say
7 that's significant?

8 A. If I had to buy a lot of gas, I would, yes.

9 Q. Let's refer to your surrebuttal testimony
10 at page 8. Page 8, line 9, you agree that the gas prices
11 have declined since November of 2005; is that correct?

12 A. Yes.

13 Q. Now, on the same testimony at page 6,
14 starting at line 19, you state that OPC witness Smith does
15 recommend using the futures markets for spot natural gas
16 prices, although he does suggest a different time frame
17 than the company used. Is that your testimony?

18 A. Excuse me. I wasn't there.

19 Q. Okay. I'm sorry. Page 6, line 19.

20 A. Yes, I do.

21 Q. And, in fact, you go on to say that
22 Mr. Smith suggests using NYMEX futures prices with
23 appropriate basis adjustment as of March 31st, 2006 for
24 the period April 2006 through December 2006; is that
25 correct?

0691

1 A. Yes, I do.

2 Q. Now, using known and measurable prices as
3 of March 31st, 2006 would be in compliance with the
4 Commission's April 11th, 2006 order that we just
5 discussed, would it not?

6 A. Yes, it would.

7 Q. Now, did Public Counsel ask you to make a
8 production cost run using information updated for known
9 and measurable changes through March 31st, 2006?

10 A. Yes.

11 MR. MILLS: Your Honor, I'd like to have an
12 exhibit marked, and this will be a highly confidential
13 exhibit.

14 JUDGE DALE: This will be 111HC.

15 (EXHIBIT NO. 111HC WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 MR. MILLS: Your Honor, may I approach?

18 JUDGE DALE: Yes.

19 BY MR. MILLS:

20 Q. Mr. Tarter, I've handed you what has been
21 marked as Exhibit 111HC. I've also handed you what I will
22 represent to you is the printout of the e-mail that you
23 sent to my office conveying the production cost run that
24 is part of Exhibit 111HC. Now, the e-mail that you sent
25 us actually had information from two production cost runs;

0692

1 is that correct?

2 A. Yes.

3 Q. One as of March 31, 2006, and one as of
4 July 10th, 2006 --

5 A. Yes.

6 Q. -- is that correct?

7 If you will look at what's been marked as
8 Exhibit 111HC, will you confirm that it contains the
9 information that has been labeled OPC Run 1, which is the
10 March 31st, '06 information?

11 A. I'm sorry. My exhibits aren't labeled.

12 Q. The one that you have in your hand, that's
13 111.

14 A. Thank you. Okay. I'm sorry. What's the
15 question?

16 Q. The question is, does Exhibit 111HC
17 accurately reflect the March 31st run that you did and you
18 sent to OPC?

19 A. Yes, it does.

20 Q. Okay. And did you perform that run
21 yourself?

22 A. Yes, I did.

23 MR. MILLS: With that, your Honor, I'll
24 offer Exhibit 111HC.

25 JUDGE DALE: Are there any objections?

0693

1 (No response.)

2 JUDGE DALE: Hearing none, Exhibit 111HC is
3 admitted into evidence.

4 (EXHIBIT NO. 111HC WAS RECEIVED INTO
5 EVIDENCE.)

6 BY MR. MILLS:

7 Q. Now, this run not only reflects known and
8 measurable natural gas prices as of March 31st, 2006, but
9 also reflects other adjustments to the production cost
10 model that Empire and Staff have agreed upon; is that
11 correct?

12 A. Yes, I think that's right.

13 Q. Okay.

14 A. I can't speak for Staff.

15 Q. Okay. And the other changes that went into
16 the production model run are described in your rebuttal
17 testimony at pages 10 through 11, and you've enumerated
18 them as exhibit -- as Items 1 through 4; is that correct?

19 A. Yes, that's correct.

20 Q. Now, could you just briefly describe
21 to us and explain what those four adjustments are at
22 pages 10 and 11 on your rebuttal testimony?

23 A. Okay. They were changes we made to our
24 production cost model since the time of our direct filing.
25 No. 1 was we changed our hourly loads to match what the

1 Staff had because that was an update to a different test
2 period and also to accept their -- adopt their load growth
3 and weather normalization.

4 No. 2 was making a correction to the outage
5 schedule for the Jeffrey Energy Center units in the model
6 run. We had an error in our initial run. We just
7 corrected that.

8 No. 3 was a spot purchase availability that
9 was changed to match the Staff. No. 4, the State Line
10 combined cycle minimum up time was changed.

11 Q. Okay. And I believe you said you couldn't
12 speak for Staff, but is it your understanding that these
13 are all items that the company and the Staff are in
14 agreement upon?

15 A. I believe so.

16 Q. Okay. Item No. 2, the scheduled outages
17 for the three Jeffrey units, what was the nature of that
18 change?

19 A. I had listed in my schedule in my direct
20 testimony that we had 30 days of outage for each of those
21 three units, but what had inadvertently happened was it
22 only had 21 days of outage for one of the units and zero
23 days for two of the units.

24 Q. And what is the 30 days based upon? Let me
25 ask you this first. You have now changed your production

0695

1 cost model to use 30 days for each of those three units;
2 is that correct?

3 A. Yes.

4 Q. And what is that 30 days based upon?

5 A. It's based on, I believe it's a five-year
6 history and NERC GADS data for those type of units of
7 those vintage. Those are an average.

8 Q. And when you did that five-year average,
9 did you throw out any of the data, do you know?

10 A. No. In fact, I used the exact same outage
11 schedule that we used in our previous case.

12 Q. Okay. So when you did the five-year
13 average to come up with those 30 days, you included all
14 the data?

15 A. And actually I didn't do the average.

16 Q. The way the calculation was done, it used
17 all the data?

18 A. I believe so.

19 Q. And then the change to No. 3, and that was
20 the one that the spot purchase availability has been
21 changed to match Staff's run, did that change increase or
22 decrease spot purchase availability?

23 A. It increased it some hours and decreased it
24 some hours.

25 Q. What's the overall change?

1 A. I'm actually not sure.

2 Q. Did that change, if you were just to
3 isolate that change, did that increase your production
4 run, the overall cost, or decrease it?

5 A. I didn't make that run with just that one
6 change specifically. I made several changes to the model.

7 Q. Do you know -- if you had done that change,
8 do you know what the result would have been?

9 A. I'm really not sure without making the run.

10 Q. Okay. Now, when you recently did an IRP
11 submission, did you do a production cost run for that?

12 A. Our consultants did.

13 Q. Do you know if they made that change in
14 particular in the run that they used for your IRP
15 submission?

16 A. No. I see these as two completely
17 different things.

18 Q. So no, they didn't make that change?

19 A. They did not change to this availability,
20 no.

21 Q. Do you do production runs for budget
22 purposes?

23 A. Yes, I do.

24 Q. And when you do those runs, do you make
25 this change?

1 A. Actually, I believe that our current budget
2 runs we're working on does have this spot purchase
3 availability in it, yes.

4 Q. Okay. When you made that change, did you
5 review historical data on spot purchase availability
6 before you made the change?

7 A. No. I reviewed what -- Staff work papers.

8 Q. Okay. Now, with respect to the change
9 No. 4, why did you make that change? That's the minimum
10 up time for the State Line combined cycle unit.

11 A. Right. I called some people in the
12 operations area of our company, told them about the
13 change, asked them if they thought that would be
14 appropriate, and the answer was yes, because they do not
15 consider it to be a cycling unit.

16 Q. So up until the time that you saw Staff's
17 model run, what was the information that led you to model
18 the State Line combined cycle unit, the minimum up time
19 for that unit the way that you had it?

20 A. Because I'd used same inputs from the
21 previous rate case.

22 Q. And what were those based upon?

23 A. I'm not sure. I didn't set up that, the
24 data in our previous rate case.

25 Q. Now, those four changes that we've been

1 talking about, when you did the production cost model run
2 that's been marked as Exhibit 111, are those same changes
3 reflected in that model run?

4 A. You're referring back to (indicating)?

5 Q. Yes.

6 A. Yes.

7 MR. MILLS: Okay. If I may, I want to
8 check with counsel just to make sure some numbers are
9 either confidential or not confidential.

10 BY MR. MILLS:

11 Q. Now, referring to your rebuttal testimony,
12 page 12, line 15, and also in the table on page 14, some
13 of these numbers are highly confidential, but the number
14 I'm going to cite you to is not. The total amount is
15 166 million; is that correct?

16 A. Roughly, yes.

17 Q. And what does that 166 million figure
18 represent?

19 A. It represents the total company on-system
20 fuel and purchased power expense, including demand
21 charges.

22 Q. Okay. And on a Missouri-specific basis, do
23 you have that number?

24 A. I don't.

25 Q. Could I get that number by multiplying by

0699

1 .8249?

2 A. Roughly 137 million.

3 Q. Is that the appropriate allocation factor?

4 A. I'm not sure.

5 Q. Okay. So the 137 you cited was just a
6 mathematical calculation, you have no opinion as to
7 whether that would be an appropriate approximation for
8 Missouri?

9 A. I would say it would be an appropriate
10 approximation, but I'm not sure if it's the exact number.

11 Q. Okay. Now, if we were to refer you to
12 Exhibit 111HC, what is the number on that exhibit -- and
13 that's the March 31 production cost run. What is the
14 number on that exhibit that's comparable to the
15 166 number?

16 A. It's roughly 165 million.

17 Q. That's the -- and I've just checked with
18 your counsel, and he tells me that this particular number
19 on the sheet is not highly confidential, so what is the
20 whole number?

21 A. Okay. 164,804,530.

22 Q. Okay. Now, if I could -- since you just
23 had the calculator out, if I could have you do another
24 calculation. If I could have you compare the difference
25 between that number and the approximately \$166 million

0700

1 number shown on the table on page 14 of your rebuttal
2 testimony.

3 A. 1.2 million, approximately.

4 MR. MILLS: That's all the questions I
5 have. Thank you.

6 JUDGE DALE: Thank you. Questions from the
7 Bench?

8 COMMISSIONER APPLING: Judge, thank you.

9 QUESTIONS BY COMMISSIONER APPLING:

10 Q. Mr. Tarter, how you doing?

11 A. I'm fine, thank you.

12 Q. You're requesting that -- at least Empire
13 is, that -- to consider that this Commission terminate the
14 IEC. It's only been 18 months ago that you-all entered
15 into this agreement, and I'm just trying to get
16 comfortable with the reason why you-all would enter into
17 this in the beginning.

18 MR. COOPER: Commissioner, I hate to do
19 this, but I guess there was precedent set earlier in the
20 proceeding. I would like to lodge an objection to a
21 Commissioner question here because this morning
22 Mr. Tarter's on the stand to talk about the fuel prices
23 and what the appropriate fuel and purchased power price
24 is.

25 Later when we get to the fuel method issue,

1 which follows this one, hopefully later today, Empire will
2 have the witnesses that are -- that have really testified
3 on the issue you're approaching there, and --

4 COMMISSIONER APPLING: I see that he's
5 coming back on the schedule. That's fine. We'll reserve
6 the questions until that time. The answer is the same. I
7 just want to make sure we get it in the record.

8 MR. COOPER: Thank you, sir.

9 JUDGE DALE: Well, this is just a
10 ground-breaking hearing all around. And I think I just
11 went out of order there, didn't I? Because I didn't ask
12 Staff, do you have questions?

13 MR. FREY: Yes, I do, your Honor. Thank
14 you.

15 CROSS-EXAMINATION BY MR. FREY:

16 Q. Good morning, Mr. Tarter.

17 A. Good morning.

18 Q. With respect to some questions that
19 Mr. Mills had for you, he was covering those changes that
20 you made in connection with your rebuttal testimony. You
21 were going through that. And I just wanted to ask you in
22 going from your direct case to your rebuttal case, overall
23 your fuel and purchased power number increased, did it
24 not?

25 A. Yes, it did.

1 Q. I think you indicated in your rebuttal it
2 increased as a result of these changes that you made which
3 you outlined here; is that correct?

4 A. Yes, it did -- it did change and it did
5 increase and these were the changes that were made.

6 Q. Okay. I think Mr. Mills asked you if you
7 could say -- provide some information as to the
8 directionality of the change or contribution of the change
9 for one of those changes, I believe it was No. 3, and I
10 think you answered that you didn't know. Do I have that
11 correct?

12 A. Yeah, at this time I'm not sure what that
13 one change, what difference that that made.

14 Q. Okay. If I were to ask you the same
15 question with regard to all of the other changes, could
16 you give us some idea how you would expect each of them to
17 influence the directionality of the fuel and purchased
18 power number?

19 A. Well, obviously No. 1, changing loads, if
20 you increase the load, you increase the total cost.

21 Q. Okay.

22 A. No. 2, since Jeffrey Energy Center is one
23 of the lower cost units, if you increase the outage time
24 for it, then you increase the cost. Spot purchase
25 availability, since that changed a lot of different hours

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1 and there's hourly purchases data in it there, it's kind
2 of too complex to say exactly what it did.

3 The minimum up time for State Line combined
4 cycle, what we did was allow the model not to cycle it on
5 and off quite as much to be more in line with the way it
6 really operates. So since the model has less ability to
7 run this model on and off, then it probably increases the
8 cost somewhat.

9 Q. To run that unit on or off, correct?

10 A. Right. It's not so much because of the
11 unit is -- itself is such a high cost unit. It's more
12 because the model doesn't have the flexibility to say I
13 want to turn you off and then turn you right back on.

14 Q. I see. Okay. So it's kind of a model
15 constraint then?

16 A. Yes.

17 Q. Okay. No. 5?

18 A. Okay. Sorry. I only went through four
19 with him. No. 5 and 6 was changing the gas prices. That
20 actually would bring the price down because gas prices
21 came down.

22 Q. Okay.

23 A. And the overall effect was an increase, but
24 the overall -- we changed the megawatt hours, you've got
25 to remember, too, so we changed the volumes, so you'd

1 expect it to go up. On a dollar per megawatt hour basis
2 is probably more accurate to look at, and it did go up on
3 a dollar per megawatt hour basis but slightly.

4 Q. Thank you. Turning to page 5, line 16 of
5 your rebuttal, you state that the Staff's approach to
6 developing a price of natural gas does not eliminate the
7 impact of that normal weather during the test year; is
8 that correct?

9 A. That's true.

10 Q. And so you would agree that the price of
11 natural gas is influenced by weather, correct?

12 A. That's true.

13 Q. And is the quantity of natural gas used to
14 generate electricity also influenced by weather?

15 A. Yes.

16 Q. Are there other factors such as purchased
17 power costs that affect the quantity of natural gas used
18 by Empire?

19 A. That's possible, yes.

20 Q. Isn't it true that weather in other parts
21 of the country can influence natural gas prices paid by
22 Empire?

23 A. Yes. There's a lot of factors that affect
24 natural gas.

25 Q. And in light of this, isn't it fair to say

1 that it would be extremely difficult, if not impossible,
2 to weather normalize gas prices?

3 A. Yes, and I think that's why it's difficult
4 to use historical prices in a normalized case.

5 Q. Okay. You're not aware, then, of the
6 existence of any methodology for weather normalizing
7 natural gas prices?

8 A. No.

9 Q. And I believe perhaps you just testified
10 that many factors influence the price of natural gas, did
11 you not?

12 A. Yes, I do.

13 Q. Can you give some examples of those
14 factors?

15 A. Hurricanes, oil prices, wars and things in
16 oil-producing countries in the Mideast, how many combined
17 cycle units and gas units that are being run in the
18 country, perception, commotions, they all affect natural
19 gas price.

20 Q. Okay. Could you turn to your surrebuttal
21 testimony, please, and read the question and answer on
22 page 6, beginning at line 3?

23 A. Do the production cost models used in this
24 case contain forecasted data other than forecast of
25 natural gas prices? Yes. But I would say that natural

1 gas price is probably affected by more factors and is the
2 most volatile of all the forecasted variables in the
3 production cost model.

4 Q. So even if it would be possible to weather
5 normalize natural gas prices, it's highly unlikely it
6 would be worth it because of a myriad of other factors
7 affecting its -- affecting the price; is that a fair
8 statement?

9 A. I don't know if that's a fair statement or
10 not. If there was a period where there wasn't hurricanes
11 and other things going on and -- you know, I think weather
12 can have a big impact.

13 Q. Okay. So is it your testimony, then, that
14 if the rest of the world is quiet and all we have is
15 weather, that it might -- it might be appropriate to
16 weather normalize natural gas prices as a predictor?

17 A. If you could weather normalize natural gas
18 prices?

19 Q. Correct.

20 A. If you could, then I think it would be
21 worth doing that for a normalized run.

22 Q. Okay. Did Empire employ NYMEX futures
23 prices to come up with its spot purchased price for
24 natural gas?

25 A. The NYMEX price is minus basis.

1 Q. And in your opinion, do those prices
2 reflect weather normalization of gas prices?

3 A. Well, actually, when I was speaking about
4 the NYMEX prices minus basis, I was talking about in your
5 direct filing. In our update run, we actually used actual
6 vendor quotes to purchase the gas.

7 Q. Okay. And were those quotes weather
8 normalized by the suppliers?

9 A. They were just provided by the suppliers.
10 I don't know what they do with them.

11 Q. Would you -- would you question that they
12 were weather normalized by the suppliers?

13 A. I have no idea.

14 Q. Well, if they were to weather normalize
15 them, was it not your testimony that there's no way to do
16 that, or did I misunderstand?

17 A. Well, I was speaking to historical prices,
18 the actual weather that occurred. I think we're talking
19 about future prices, and we don't know what the weather
20 that's occurring.

21 Q. Okay. At the bottom of page 3 -- excuse
22 me -- page 2 in your surrebuttal, you state that natural
23 gas prices cannot be predicted with any degree of
24 certainty; is that correct?

25 A. Yes, it is.

1 Q. And you acknowledge in your surrebuttal
2 that these prices, these NYMEX futures prices are not an
3 accurate predictor of future natural gas prices, correct?

4 A. I say that they're just the best proxy that
5 we have at this time.

6 Q. Do you say -- can you point me to where you
7 say that?

8 A. The answer is yes. I'm looking.

9 Q. Okay. Take your time.

10 JUDGE DALE: Mr. Frey, how many more
11 questions do you have, how much more time?

12 MR. FREY: I would say about probably 15,
13 20 minutes, your Honor.

14 JUDGE DALE: Why don't we go ahead and take
15 a break, let him look for the spot in the testimony and
16 we'll come back. Ten minutes. Off the record.

17 (A BREAK WAS TAKEN.)

18 JUDGE DALE: We're back on the record and
19 continuing with Mr. Frey's questioning of the witness.

20 MR. FREY: Thank you, your Honor.

21 BY MR. FREY:

22 Q. I believe I asked you a question as to
23 whether or not you acknowledge that future prices are not
24 an accurate predictor of the future, of future natural gas
25 prices, and I think your answer was that you said they

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1 were a good proxy. And I had asked you could you point to
2 that in your surrebuttal testimony, and you were going to
3 do that, I believe.

4 A. Yes. I'm on my surrebuttal testimony on
5 page 4, line 18, and I say, as I stated in my rebuttal
6 testimony, starting on page 12, line 2, the updated
7 production cost simulation contains recent forward-looking
8 natural gas price information for calendar year 2007, the
9 period during which rates from this rate proceeding are
10 likely to be in effect. Natural gas price information
11 from July 10, 2006 would be used in the update of the
12 company's production cost simulation to be consistent with
13 the information presented in supplemental direct
14 testimony.

15 These current natural gas prices have been
16 used to model the future because they are the best proxy
17 available for the non-hedged portion of Empire's natural
18 gas requirements at this time. However, due to the
19 volatility of the natural gas market, the future price of
20 natural gas cannot be predicted precisely.

21 Q. Okay. So you're referring, are you not, to
22 the quotations you received from suppliers?

23 A. Yes.

24 Q. Okay. My question was directed at NYMEX
25 futures.

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1 A. Absent quotes from suppliers, then I would
2 say that the same would apply if you were trying to look
3 for the future, but using the NYMEX minus the basis
4 adjustment would be the best proxy.

5 Q. Could you turn to page 2 of your
6 surrebuttal testimony and read the sentence on line 22,
7 beginning with the word Empire?

8 A. Line 22?

9 Q. Yes.

10 A. Beginning with Empire?

11 Q. Yes.

12 A. Okay. Empire has stated throughout this
13 case and in past cases that natural gas prices cannot be
14 predicted with any degree of certainty.

15 Q. Okay. And I believe your testimony just a
16 minute ago was that the NYMEX future prices are the best
17 proxy absent quotes from suppliers; is that correct?

18 A. That I would know to use, yes.

19 Q. Okay.

20 A. But they're still not -- they're still a
21 forecast what the future's going to be. It's what you can
22 buy from the future, represents what you can buy from the
23 future today, but they're still, when you get to that
24 point in time, I think what we've all decided and what
25 I've read in testimony, everybody's kind of come to the

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1 same conclusion that you can't forecast natural gas
2 prices.

3 Q. Okay. But when you say futures prices are
4 the best proxy, can you state what you base that opinion
5 on?

6 A. I guess I base that on my experience and
7 working in the industry and also talking with our people
8 who can purchase gas and what we've used in our budgeting,
9 things in the past, people's -- I've asked people during
10 budget meetings, what do we want to use for future prices,
11 and they say, the best thing we've got to use right now is
12 NYMEX futures minus basis when you're looking at a future
13 time frame.

14 Q. Okay. I believe my original question
15 referred to what I understood to be your position as set
16 out in your surrebuttal testimony that you acknowledge
17 that NYMEX futures prices are not an accurate predictor of
18 future natural gas prices, and I would ask you to read in
19 your surrebuttal testimony, on page 4, the statement on
20 line 8 beginning with the word historical.

21 A. Historical natural gas prices are not
22 accurate predictors of what future natural gas prices will
23 be either.

24 Q. Okay. Now, wouldn't a reader be entitled
25 to infer from that that you're stating that NYMEX futures

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1 are not an accurate predictor of future natural gas
2 prices?

3 A. Can you restate that again?

4 Q. Wouldn't a reader of that statement be
5 entitled to infer from the word either specifically that
6 you're stating that historical -- that NYMEX futures
7 prices are not an accurate predictor --

8 MR. COOPER: Objection, your Honor.

9 MR. FREY: -- of natural gas prices?

10 MR. COOPER: Objection. I believe it calls
11 for Mr. Tarter's speculation as to what some other third
12 party reader might get from that sentence in his
13 testimony.

14 MR. FREY: I will rephrase the question,
15 your Honor.

16 BY MR. FREY:

17 Q. Does that not mean that natural gas prices,
18 that NYMEX futures prices are not an accurate predictor
19 along with historical natural gas prices?

20 A. I guess what I will say to that is what
21 I've said in my testimony. You can't predict future
22 natural gas prices with any degree of certainty.

23 Q. Okay. Thank you. Well, if that's true, --
24 well, I'll skip that question.

25 You have moved in this proceeding, have you

1 not, from NYMEX future prices to these quotations from
2 suppliers of prices that they're willing to offer?

3 A. Yes.

4 Q. Is this an indication that Empire is going
5 to renounce its reliance on NYMEX futures as a means of
6 predicting natural gas prices in the future?

7 A. I can't speak for Empire on that. We had
8 those quotes and we used them in supplemental direct
9 testimony, and we made the decision to use those in our
10 normalized run.

11 Q. For purposes of this proceeding, you've
12 kind of renounced NYMEX prices now and moved to this new
13 position?

14 A. No, I'm not renouncing anything.

15 Q. Have you looked at the gas prices in
16 September 2006?

17 A. Yes, I have. I've looked at our gas
18 position report from that time frame.

19 Q. Okay. And my question to you with respect
20 to that and with respect to that report is, are those
21 prices higher or lower? Are they going down in general --

22 A. Are you talking --

23 Q. -- relative to rebuttal filed?

24 A. What I'm talking about from our gas
25 position report, what exactly gas prices are you talking

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1 about?

2 Q. I'm talking about the Southern Star prices
3 that are computed on the commodity table.

4 A. I don't think I have those with me right
5 now to compare them, so --

6 MR. FREY: Can I confer with counsel, your
7 Honor?

8 JUDGE DALE: Yes.

9 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

10 BY MR. FREY:

11 Q. Mr. Tarter, do you recognize the documents
12 that I've handed you?

13 A. Yes, I do.

14 Q. And can you state what they are?

15 A. The first page you gave me is what I
16 referred to earlier as the gas position report. It's as
17 of September 1st, 2006. It is provided by the people in
18 our gas position, people who do this in our energy trading
19 area, wholesale energy trading area.

20 Q. And the second document? Because that's
21 the one I'm going to ask you about.

22 A. Okay. There's three columns of gas prices,
23 NYMEX column, it says SStar, CGP. I'm assuming that's
24 Southern Star, and it's got prices from January '05
25 through December '08.

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1 Q. Okay. And the numbers that are highlighted
2 in that page?

3 A. Yes, they start with January '07.

4 Q. And those are the Southern Star numbers?

5 A. That's the Southern Star column.

6 Q. Okay. And I believe my question was, have
7 the gas prices gone up or declined relative to the numbers
8 that you put forth in your supplemental direct testimony,
9 and specifically at page 5 on the bottom?

10 A. I'm sorry. Page 5?

11 Q. Right.

12 A. Of?

13 Q. Your supplemental direct.

14 A. Do you mean page 5 and 6?

15 Q. Yes. Starting at the bottom of page 5.

16 A. Okay. I've compared the numbers. What is
17 your question?

18 Q. My question is, have those numbers gone
19 down relative to the numbers that are contained in your
20 surrebuttal -- supplemental direct testimony?

21 A. Yes, they have gone down somewhat.

22 Q. Okay. And those are monthly figures,
23 correct?

24 A. Yes.

25 Q. And virtually all of them have come down,

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1 have they not?

2 A. Yes.

3 Q. Thank you. So just to repeat, virtually
4 all of the numbers have gone down from -- in years 2007
5 and 2008, correct?

6 A. I just looked at '07.

7 Q. I'll ask you to look at 2008, too. I'm
8 sorry.

9 A. Yes, they are lower.

10 Q. Thank you.

11 MR. FREY: Your Honor, I have some -- just
12 a few more questions for Mr. Tarter, but I believe they
13 may be of the HC variety, so I think we have to go
14 in-camera.

15 JUDGE DALE: Give me a few minutes.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 15, pages 717 through 730 of the transcript.)

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1 JUDGE DALE: Please proceed.

2 REDIRECT EXAMINATION BY MR. COOPER:

3 Q. Mr. Tarter, your Honor asked several
4 questions about the use of NYMEX future prices in regard
5 to coming up with your spot price for purposes of the
6 model. And I think along the way you were asked whether
7 Empire had, and I don't remember the exact word, but
8 essentially disavowed the use of NYMEX future prices.

9 Could you explain to us, I guess, why in
10 the rebuttal run you used something other than NYMEX
11 futures and how that relates to your answer?

12 A. Yes, because we had a Commission order
13 asking us to see what we -- what price we could hedge at
14 cost to hedge all of our gas needs at that time for
15 calendar '07. So we actually made -- or called the
16 vendors and got actual vendor quotes to do that.

17 Q. In the absence of those actual vendor
18 quotes, what would you use for that same purpose?

19 A. Probably the NYMEX futures minus the basis,
20 if you're looking for a future period.

21 Q. In regard to your spot gas price, again,
22 your Honor asked several questions about how that was
23 derived. In the end, how does the spot gas price you used
24 relate to spot gas price that's been utilized by the Staff
25 in this case?

1 A. They're very close. I believe that the
2 Staff using the 12 months ended March '06 actuals came up
3 with an average of 7.963. Are we --

4 Q. We're in public session. Why don't you
5 just -- well, hard to put the horse back into the barn,
6 but --

7 A. It's a historical period.

8 Q. It's a historical period. Okay.

9 A. They're almost the same.

10 Q. Okay. Now, you were asked some questions
11 about some comments you made in regard to weather
12 normalization or the ability to normalize gas prices in
13 relation to weather. Could you explain to us what your
14 point was in that section of your testimony?

15 A. I wasn't trying to say that you can do it
16 or that Staff should have done it. All I was trying to
17 point out was that the historical period that they looked
18 at, there was a January that we did not even purchase any
19 spot gas, so that didn't -- so that didn't even -- gas for
20 January, which is typically high, higher priced, if it's a
21 normal weather year, and we tend to use a lot of gas in
22 January because it's cold and we have high demand.

23 Nothing got averaged in for January because
24 it was a very mild weather year, one of the warmest
25 Januarys we've had in many, many years. So I was just

0733

1 pointing out that that's a problem with using historical
2 and that specific historical period.

3 MR. COOPER: That's all the questions I
4 have, your Honor.

5 JUDGE DALE: Thank you. Mr. Tarter, you
6 may step down.

7 MR. COOPER: At this point Empire would
8 call Mr. Rick McCord.

9 (Witness sworn.)

10 JUDGE DALE: Thank you. Please be seated.

11 RICHARD McCORD testified as follows:

12 DIRECT EXAMINATION BY MR. COOPER:

13 Q. Please state your name.

14 A. Richard McCord.

15 Q. By whom are you employed and in what
16 capacity?

17 A. I'm employed by the Empire District
18 Electric Company as director of supply management.

19 Q. Have you caused to be prepared for the
20 purposes of this proceeding certain supplemental direct
21 testimony in question and answer form?

22 A. Yes, I have.

23 Q. Is it your understanding that that
24 testimony has been marked as Exhibits 19HC and 19NP for
25 identification?

0734

1 A. Yes.

2 Q. Do you have any changes that you would like
3 to make to that testimony at this time?

4 A. No, I don't.

5 Q. If I were to ask you the questions
6 contained in Exhibit 19HC and 19NP today, would your
7 answers be the same?

8 A. Yes.

9 Q. Are those answers true and correct to the
10 best of your information, knowledge and belief?

11 A. Yes, they are.

12 MR. COOPER: Your Honor, I believe this is
13 the only time Mr. McCord is to be called to the stand, so
14 I would offer in evidence Exhibit 19HC and 19NP and tender
15 the witness for cross-examination.

16 JUDGE DALE: Is there any objection? Then
17 Exhibit 19, both HC and NP, will be admitted into
18 evidence.

19 (EXHIBIT NOS. 19HC AND 19NP WERE RECEIVED
20 INTO EVIDENCE.)

21 JUDGE DALE: Mr. Woodsmall?

22 MR. WOODSMALL: Nothing, your Honor.

23 JUDGE DALE: Mr. Mills?

24 MR. MILLS: No questions.

25 JUDGE DALE: Mr. Frey?

1 MR. FREY: Thank you, your Honor. Just a
2 few questions.

3 CROSS-EXAMINATION BY MR. FREY:

4 Q. Mr. McCord, good morning.

5 A. Good morning.

6 Q. On page 6 of your supplemental direct
7 testimony, you state that Empire requested price quotes
8 from natural -- various natural gas suppliers; is that
9 correct?

10 A. Yes, that's correct.

11 Q. And you received responses from a number of
12 suppliers, three suppliers?

13 A. I believe that's true, yes.

14 Q. Are they the only suppliers who responded
15 or were there others?

16 A. I believe that those were the only
17 suppliers who responded to our request.

18 MR. FREY: Your Honor, I'm sorry. I should
19 have mentioned that this is -- I'd like in-camera for this
20 session. I don't think we've divulged anything highly
21 confidential at this point, but from here on in...

22 (REPORTER'S NOTE, at this point an
23 in-camera session was held, which is contained in
24 Volume 15, pages 736 through 742 of the transcript.)

1 JUDGE DALE: Mr. Frey?

2 MR. FREY: Your Honor, we're scheduled to
3 call Ms. Janis Fischer at this time, but I would like to
4 point out that it's come to my attention that Dave Elliott
5 is not listed under fuel and purchased power. There is no
6 issue as far as we know with regard to his running of the
7 fuel model. However, we need to find a way to get his
8 testimony admitted into the record, and I was wondering if
9 you'd like to call Mr. Elliott at this point to do that,
10 or is there another way that that should be handled?

11 JUDGE DALE: Let me just ask if there are
12 any objections. Do you want to do all the introductory
13 things? There were times yesterday when we did all the
14 introductory things and times when we didn't.

15 MR. MILLS: From Public Counsel's
16 perspective, I'm perfectly happy to waive the formalities
17 and state that I have no objection to the admission of
18 Mr. Elliott's testimony.

19 MR. WOODSMALL: Agreed.

20 MR. COOPER: Empire would agree as well.

21 JUDGE DALE: Okay.

22 MR. FREY: Well, then if I may, your Honor,
23 I would offer Exhibits 37 and 38, direct and supplemental
24 direct for Mr. Elliott, into the record.

25 JUDGE DALE: And those will be admitted

1 into the record.

2 (EXHIBIT NOS. 37 AND 38 WERE RECEIVED INTO
3 EVIDENCE.)

4 MR. FREY: Thank you.

5 (Witness sworn.)

6 JUDGE DALE: Thank you. Please be seated.

7 JANIS E. FISCHER testified as follows:

8 DIRECT EXAMINATION BY MR. FREY:

9 Q. Please state your name for the record.

10 A. Janis E. Fischer.

11 Q. And by whom are you employed and in what
12 capacity?

13 A. I'm employed by the Missouri Public Service
14 Commission as a utility policy analyst.

15 Q. And did you prepare and cause to be filed
16 in this proceeding what has been marked as Exhibits 39, 40
17 and 41, which would be respectively Janis Fischer direct,
18 HC and NP, Janis Fischer rebuttal HC and NP, and Janis
19 Fischer surrebuttal HC and NP?

20 A. Yes.

21 Q. Do you have any corrections to that
22 testimony?

23 A. Yes, I do. To the direct testimony on
24 page 7, beginning on line 16, going through line 18, that
25 should be omitted.

1 And then on -- again in the direct
2 testimony, on page 26, at line 22, where it says these
3 contracts, it should say this contract. And that's all.

4 Q. Okay. Thank you. And subject to those two
5 corrections, are the answers contained in your testimony
6 true and accurate to the best of your knowledge,
7 information and belief?

8 A. Yes.

9 Q. And if I asked you the same questions
10 today, would your answers be the same?

11 A. Yes, they would be.

12 MR. FREY: Your Honor, I would offer at
13 this time Exhibits 39, 40 and 41 into the record.

14 JUDGE DALE: Is there any objection?

15 (No response.)

16 JUDGE DALE: Then Exhibits 39HC and NP,
17 40HC and NP and 41HC and NP will be admitted into the
18 record.

19 (EXHIBIT NOS. 39HC, 39NP, 40HC, 40NP, 41HC
20 AND 41NP WERE RECEIVED INTO EVIDENCE.)

21 MR. FREY: And I tender the witness for
22 cross.

23 JUDGE DALE: Mr. Woodsmall?

24 MR. WOODSMALL: No questions, your Honor.

25 JUDGE DALE: Public Counsel?

0746

1 MR. MILLS: No questions.

2 JUDGE DALE: Empire?

3 MR. COOPER: Yes, your Honor.

4 I think it would probably be helpful, your
5 Honor, if we started in-camera.

6 JUDGE DALE: Okay. Hold on just a second.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 Volume 15, pages 747 through 750 of the transcript.)

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1 JUDGE DALE: You may proceed.

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. You would agree with me, then, that even
4 though Empire and Staff use different methods to get to
5 their gas -- their spot price for gas, the ultimate spot
6 price used by the two is almost identical, correct?

7 A. Based upon at that point in time our
8 Staff's number going out through March and the company's
9 number going through July 10th, yes, those numbers were
10 almost identical.

11 Q. Now, the operation of law date in this case
12 is January the 1st of 2007, isn't it?

13 A. Yes, it is.

14 Q. Now, as I understand -- as I understand it,
15 when you derived your hedged price, you looked at actual
16 hedges in place for the months of April of 2006 through
17 December of 2007; is that correct?

18 A. Yes, as of March 31st, '06, what hedges
19 they actually had in place for that time period.

20 Q. Would you agree with me that no matter
21 what rates result from this case, they will not be in
22 effect for the months April of 2006 through December of
23 2006?

24 A. My understanding, I guess, is that if the
25 hearing were to end and the Commission were to order out

1 for this case early, that it's possible that those rates
2 could go into effect before January 1, but January 1 would
3 be the expected date.

4 Q. Now, as I calculate it, utilizing the
5 April 2006 through December 2007 period covered
6 approximately a 21-month period, correct?

7 A. Yes, it did.

8 Q. So within that period of time, as it rolled
9 out, you ended up with two summer periods, two fall
10 periods, but only one set of January through March data,
11 correct?

12 A. In looking at the 21 months that you're
13 referring to which we used in our analysis, yes, that's
14 correct.

15 Q. Now, on the other hand, in regard to hedged
16 prices, Mr. Tarter used actual hedged prices associated
17 with the hedges in place for 2007, didn't he?

18 A. Yes.

19 Q. If you had not used the 2006 hedge
20 information, in other words, if you had based your hedge
21 number on only the period January of 2007 through December
22 of 2007, how would your hedged price have related to
23 Mr. Tarter's?

24 A. Well, since I believe we were relying on
25 the same source information, they would have been

1 identical or unless I missed -- when I look at the hedges
2 versus the spot, and I get a transaction that occurs close
3 to the first of the month, sometimes I used a little bit
4 of judgment as to what would fall into hedge versus the
5 spot price. But I would say if Staff only looked at '07,
6 they should have been nearly identical prices.

7 Q. As we talked about before, in order to get
8 to your weighted cost we have to know more than just the
9 spot price and the hedged price, correct?

10 A. Yes.

11 Q. We also have to know the percentage of gas
12 we're going to assume to be purchased at each of those
13 prices, correct?

14 A. Well, in Staff's methodology, we took the
15 weighted price and applied that to every month in the
16 model, as opposed to Empire did a different methodology on
17 that with having, I believe, every month of hedge into
18 each month of the model run. So we did have a different
19 methodology.

20 Q. Now, at the time you came up with your
21 hedged price, what percentage of its needs did Empire
22 hedge for the year 2007, approximately?

23 A. I don't recollect off the top of my head.
24 I think I address that in my testimony. I would have
25 used -- as discussed in Mr. Tarter's cross-examination,

1 Empire provided summary reports on a monthly basis in
2 response to Data Request 199, and I would have taken the
3 information provided to us at the end of March and would
4 have looked at the hedged amounts, I believe, from that
5 actual report.

6 The other thing I did also in my analysis
7 is when -- the detail behind that report in that Data
8 Request response provides a tab or an Excel spreadsheet
9 that breaks out each transaction, and so I went through
10 the process of separating out the hedges from the spot,
11 and then for each month calculated what was hedged versus
12 spot. And then I also reviewed the fuel runs for the
13 generating units to compare that to what was presented by
14 Empire as being the actual gas used for each of the months
15 in those periods.

16 Q. Well, let's go back to the question about
17 the percentage here. In computing your weighted cost of
18 gas, I believe you used the percentage of or you assumed
19 that Empire had 80 percent of its gas hedged, correct?

20 A. Yes.

21 Q. And would you agree with me that as of the
22 time your hedged price was derived, Empire had quite a bit
23 less than that actually hedged for the year 2007?

24 A. At that point, yes, they would have had
25 less '07 gas hedged, assuming that as they go out in time

0755

1 they would hedge more.

2 Q. So what you did was you took that
3 historical hedged price based upon something less than
4 80 percent and then applied the 80 percent figure to it to
5 arrive at your weighted cost of gas, correct?

6 A. Yes, we did.

7 Q. And the result of that is to necessarily
8 assume, isn't it, that that increased amount of hedging or
9 that increased percentage of hedge can be done at the same
10 hedge price as the one that you were utilizing?

11 A. Well, when you say assume, we looked at a
12 lot of different scenarios, and part of what drove us to
13 choose the 80 percent was a response to a Data Request we
14 received from the company that indicated that for 2007
15 they anticipated hedging up to 80 percent.

16 MR. FREY: Your Honor, I'm sorry.

17 THE WITNESS: Oh, I'm sorry.

18 MR. FREY: This might be highly
19 confidential.

20 THE WITNESS: I'm sorry. I'll refrain from
21 any set numbers.

22 Would you ask me again?

23 BY MR. COOPER:

24 Q. I think the question was that by taking a
25 hedge price based upon one percentage of the needs having

1 been hedged and then increase -- and then taking that same
2 hedged price and applying a higher percentage necessarily
3 assumes that Empire will be able to hedge a different am--
4 additional amounts at the original hedge price or the
5 hedge price you started with?

6 A. Well, our assumption was in part based upon
7 if you can choose hedge prices versus spot prices, and my
8 understanding is theoretically hedging is done to try to
9 beat the spot prices. And I believe in Empire's case they
10 have been successful in that, that weighting to a hedge
11 price when you know that there will be additional hedges
12 in place would be more representative than using a spot
13 price.

14 Q. I believe you were here this morning
15 during Mr. Tarter's testimony. Would you agree with me --
16 and maybe you have independent knowledge of this. Would
17 you agree with me that Empire has since hedged additional
18 gas for 2007 and that the gas has been hedged or the
19 average hedge price is now higher than the hedge price you
20 used?

21 A. I have looked at that. We had an update to
22 the same Data Request 199, and it indicates that Empire
23 has gone out and made, I wouldn't say a lot of -- probably
24 about -- I have that information with me, but I recollect
25 maybe four to six hedges out into '07. And when I compare

1 those to the hedges they had in place at the end of March,
2 those prices are higher.

3 But I also would want to say that with
4 the true-up analysis that we have yet to perform, Staff
5 would -- plans to review the hedges that Empire has in
6 place out through the end of '07 at the time of our
7 true-up review. So anything that they have done since the
8 end of March we will review.

9 Q. Now if you'd turn with me to your
10 surrebuttal testimony for a minute on page 9. Are you
11 there?

12 A. Yes.

13 Q. And if you'd look at lines 20 through 22, I
14 believe you have a statement, given the company's
15 inability to forecast accurately natural gas prices in the
16 future, recent historical gas price levels should be used
17 in this proceeding for pricing of spot natural gas. Do
18 you see that sentence?

19 A. Yes, I do.

20 Q. You don't claim that the Staff has any
21 superior ability to forecast accurately natural gas
22 prices, do you?

23 A. No.

24 Q. And in fact, are you familiar with Staff
25 witness Choe's testimony in this case?

1 A. Yes, I have read it.

2 Q. And would you agree with me that he makes a
3 statement that we cannot predict with any certainty what
4 the future of the natural gas market will bring?

5 A. Yes, I would agree with that statement.

6 Q. And are you also familiar with the
7 testimony of Staff witness Busch?

8 A. Yes, I've read that also.

9 Q. And would you agree with me that he states
10 similarly that the only certainty about forecasting
11 natural gas prices is that the forecast will be wrong?

12 A. Yes, unfortunately, that's true.

13 MR. COOPER: That's all the questions I
14 have, your Honor.

15 JUDGE DALE: Thank you. Are there
16 questions from the Bench?

17 (No response.)

18 JUDGE DALE: Then redirect.

19 MR. FREY: May I have a moment, your Honor?

20 JUDGE DALE: Certainly.

21 REDIRECT EXAMINATION BY MR. FREY:

22 Q. Ms. Fischer, Mr. Cooper I believe asked
23 you a question about whether if you had done your analysis
24 on the basis of hedged prices on the basis of 2007 alone
25 as opposed to also including I guess it's April through

1 December of 2006, whether or not the answer would be
2 essentially the same as what the company got. Do you
3 recall that question?

4 A. Yes, I recall that question.

5 Q. And I think you answered that you thought
6 it would be the same.

7 A. Yes.

8 Q. Is that the case?

9 A. Yes.

10 Q. Would there be any difference because the
11 company was using July 10th as its date and we were using
12 March 31st, 2006?

13 A. Okay. I guess I didn't understand his
14 question in that context. Because as you move out in
15 time and Empire enters into additional hedges, of course,
16 the numbers change. So if at the end of March Empire
17 looked at '07 hedges, Staff's '07 hedges would have
18 matched, yes.

19 For Staff to match Empire's at July 10th,
20 we would have had to go back, reexamine hedges that
21 occurred from the end of March to July 10th in order to
22 match. I'm sorry. I didn't pick up on that.

23 Q. Okay. Thank you.

24 MR. FREY: I have no further questions,
25 your Honor. Thanks.

0760

1 JUDGE DALE: Thank you. Then, Ms. Fischer,
2 you may step down.

3 MR. FREY: Okay. Staff calls Kwang Choe.

4 (Witness sworn.)

5 JUDGE DALE: Thank you. Please be seated.

6 KWANG Y. CHOE testified as follows:

7 DIRECT EXAMINATION BY MR. FREY:

8 Q. Now, I'll have you state your name for the
9 record.

10 A. Kwang Y. Choe.

11 Q. And by whom are you employed and in what
12 capacity?

13 A. I'm employed by the Missouri Public Service
14 Commission as a regulatory economist.

15 Q. And, Dr. Choe, did you prepare and cause to
16 be filed in this proceeding rebuttal testimony which has
17 been marked as Exhibit 69?

18 A. Yes, I did.

19 Q. And do you have any corrections to that
20 testimony?

21 A. No, I do not.

22 Q. If I were to ask you the same questions
23 today as are in that testimony, would your answers be the
24 same?

25 A. Yes.

0761

1 Q. And are the answers contained in that
2 testimony true and accurate to the best of your knowledge,
3 information and belief?

4 A. Yes.

5 MR. FREY: Your Honor, I would offer
6 Exhibit 69 into the record and tender the witness for
7 cross.

8 JUDGE DALE: Is there any objection to
9 Exhibit 69?

10 (No response.)

11 JUDGE DALE: Then it will be admitted into
12 evidence.

13 (EXHIBIT NO. 69 WAS RECEIVED INTO
14 EVIDENCE.)

15 JUDGE DALE: Mr. Woodsmall?

16 MR. WOODSMALL: No questions.

17 MR. MILLS: No questions.

18 MR. COOPER: No questions.

19 JUDGE DALE: With that, unless there are
20 questions from the Bench, you may step down. Thank you.

21 THE WITNESS: Thank you.

22 MR. FREY: James Busch is next.

23 (Witness sworn.)

24 JUDGE DALE: Thank you. Please be seated.

25 JAMES A. BUSCH testified as follows:

1 DIRECT EXAMINATION BY MR. FREY:

2 Q. Could you state your name for the record,
3 please, sir.

4 A. My name is James A. Busch.

5 Q. And by whom are you employed and in what
6 capacity?

7 A. I'm employed by the Missouri Public Service
8 Commission as a regulatory economist.

9 Q. And did you prepare and cause to be filed
10 in this proceeding supplemental direct testimony and
11 surrebuttal testimony which have been marked for purposes
12 of this proceeding Exhibit 61 and 63?

13 A. Yes.

14 Q. And are there any changes to that
15 testimony?

16 A. No.

17 Q. And if I were to ask you the same questions
18 today, would your answers be the same?

19 A. Yes.

20 Q. Are those answers true and accurate to the
21 best of your knowledge, information and belief?

22 A. They are.

23 MR. FREY: And I would offer Exhibits 61
24 and 63 into the record, your Honor.

25 JUDGE DALE: Are there any objections?

1 (No response.)

2 JUDGE DALE: Hearing none, then,

3 Exhibits 61 and 63 are admitted into evidence.

4 (EXHIBIT NOS. 61 AND 63 WERE RECEIVED INTO
5 EVIDENCE.)

6 MR. FREY: Tender the witness for cross.

7 MR. WOODSMALL: No questions, your Honor.

8 MR. MILLS: No questions.

9 MR. COOPER: No questions.

10 JUDGE DALE: Thank you, Mr. Busch.

11 MR. WOODSMALL: Your Honor, I'd note at
12 this time, we are prepared to call Mr. Brubaker. As
13 the issue list and the hearing schedule indicated,
14 Mr. Brubaker is not available tomorrow, so any questions
15 regarding the unwinding of future contract, the forward
16 contract that is scheduled for tomorrow would have to be
17 taken up today. Talking with counsel for Empire, they
18 said they have no problems with that being taken up today.
19 They would request, though, that if we can, that we do
20 that after the Commission's lunch break, agenda break,
21 whatever, however you want to proceed.

22 JUDGE DALE: Are there any questions for
23 Mr. Brubaker on the issue of fuel and purchased power
24 expense level?

25 MR. MILLS: I have none.

1 MR. COOPER: No, your Honor.

2 MR. FREY: No, your Honor.

3 JUDGE DALE: Okay. Then we will be able to
4 start with fuel recovery mechanism right after lunch. And
5 then should we take Mr. Brubaker out of order at that
6 time?

7 MR. WOODSMALL: Excuse me, your Honor?

8 JUDGE DALE: Do you wish to take
9 Mr. Brubaker out of order this afternoon?

10 MR. WOODSMALL: Yes, to the extent we can,
11 right after lunch if we can take up Mr. Brubaker on the
12 issue of the unwinding of the contract, then we'll be done
13 with him and we can move on to the remainder of the energy
14 or the fuel recovery mechanism.

15 JUDGE DALE: He will also be testifying on
16 that issue. Will he testify on that issue --

17 MR. WOODSMALL: At the same time.

18 JUDGE DALE: At the same time. Okay. I
19 think I understand. I know that the Commission's agenda
20 is scheduled to begin at noon. I had planned to break at
21 right around noon and give everyone to 1:30. Let's go
22 ahead and break now and come back at 1:15. I want to give
23 the Commissioners enough time to eat lunch in addition to
24 their agenda session.

25 MR. MILLS: Before we break, it's my

0765

1 understanding that Mr. Smith is finally done and excused;
2 is that correct?

3 JUDGE DALE: I believe so. Is there
4 anybody who had anything else for Mr. Smith?

5 (No response.)

6 JUDGE DALE: Okay.

7 (Witness excused.)

8 MR. MILLS: Thank you.

9 JUDGE DALE: And we're off the record and
10 adjourned until 1:15.

11 (A BREAK WAS TAKEN.)

12 JUDGE DALE: Okay. We're back on the
13 record, and we're going to handle a few procedural
14 matters.

15 MR. FREY: Thank you, your Honor. I'd like
16 to offer into the record the supplemental direct testimony
17 of Lena Mantle, Exhibit No. 66, and the supplemental
18 direct testimony of Dr. Henry Warren, Exhibit No. 68. We
19 had discussed the possibility of admitting this evidence
20 without necessity of these witnesses taking the stand, and
21 I'd like to do that right now.

22 JUDGE DALE: Is there any objection?

23 (No response.)

24 JUDGE DALE: Hearing none, Exhibits 67 --
25 I'm sorry -- 66 and 68 will be admitted into the record.

1 (EXHIBIT NOS. 66 AND 68 WERE RECEIVED INTO
2 EVIDENCE.)

3 MR. FREY: Thank you.

4 JUDGE DALE: Is there any other procedural
5 matter that we can take care of at this point?

6 MR. MILLS: Sure. While we're doing that,
7 can we do the same with Exhibit 71, the supplemental
8 direct testimony of Ryan Kind, and 84, the supplemental
9 direct testimony of Russell Trippensee?

10 JUDGE DALE: Is there any objection?

11 (No response.)

12 JUDGE DALE: Hearing none, then those --
13 then 84 supplemental direct of Russell Trippensee, and 71,
14 the supplemental direct of Ryan Kind, will be admitted
15 into evidence.

16 (EXHIBIT NOS. 71 AND 84 WERE RECEIVED INTO
17 EVIDENCE.)

18 MR. MILLS: Thank you.

19 JUDGE DALE: Any other matters we can take
20 care of? Then we'll --

21 MR. WOODSMALL: Do you want to go ahead and
22 start with Brubaker and then get through any cross and
23 he'll be available for any questions that they have?

24 JUDGE DALE: Let's go ahead and do that.
25 Mr. Brubaker, I'm sure you've already testified in this

0767

1 proceeding.

2 THE WITNESS: Yes, I have.

3 JUDGE DALE: I'll just remind you you're
4 under oath.

5 THE WITNESS: Thank you.

6 JUDGE DALE: Public Counsel crosses first.

7 Oh, wait a minute. Do we have to do some introductory
8 stuff? I'm sorry.

9 MR. WOODSMALL: Thank you, your Honor.

10 MAURICE BRUBAKER testified as follows:

11 DIRECT EXAMINATION BY MR. WOODSMALL:

12 Q. Would you state your name for the record.

13 A. Yes. My name is Maurice Brubaker.

14 Q. And by whom are you employed and in what
15 capacity?

16 A. Brubaker & Associates as managing principal
17 and president.

18 Q. And on whose behalf are you appearing here
19 today?

20 A. On behalf of the industrials, Praxair and
21 Explorer Pipeline Company.

22 Q. And did you cause to be filed in this case
23 what has been marked as Exhibit 85, your direct testimony
24 on revenue requirement, 86, your direct testimony on rate
25 design, 87, your rebuttal testimony on rate design, fuel

1 and purchased power expense, and 88, surrebuttal testimony
2 on rate design, fuel and purchased power expense?

3 A. I did.

4 Q. And do you have any corrections to make to
5 any of those documents at this time?

6 A. I do not.

7 Q. And were those documents prepared to the
8 best of your knowledge and belief?

9 A. And are accurate, yes.

10 Q. Yes. And if I were to ask you the same
11 questions that are contained therein today, would your
12 answers be the same?

13 A. They would.

14 MR. WOODSMALL: At this time, your Honor, I
15 would offer Exhibits 85, 87 and 88. This witness will be
16 coming back up for Exhibit 86 on rate design, so I just
17 offer the three of those and tender the witness for
18 cross-examination.

19 JUDGE DALE: I show that 87 and 88 have
20 already been partially admitted, just for everybody's
21 records. Is there any objection to 85, the remainder of
22 87 and the remainder of 88?

23 (No response.)

24 JUDGE DALE: Hearing none, then those will
25 be received into evidence.

1 (EXHIBIT NOS. 85, 87 AND 88 WERE RECEIVED
2 INTO EVIDENCE.)

3 MR. WOODSMALL: And just by way of
4 clarification, your Honor, I believe that Mr. Brubaker
5 will be tendered for cross on the issues of fuel and
6 purchased power level, the fuel expense recovery mechanism
7 and the unwinding of the forward contract.

8 MR. FREY: And the rate design will be
9 taken up on Thursday and he'll be back on Thursday?

10 MR. WOODSMALL: He will be. Tender the
11 witness, your Honor.

12 JUDGE DALE: And now?

13 MR. MILLS: And now I still have no
14 questions.

15 MR. FREY: No questions.

16 JUDGE DALE: Empire?

17 MR. SWEARENGEN: Empire has no questions.

18 Thank you.

19 JUDGE DALE: That was easy.

20 MR. WOODSMALL: Can I do redirect?

21 JUDGE DALE: Only based on the questions.

22 MR. WOODSMALL: Your Honor, at this time we
23 would make Mr. Brubaker available when the Commission
24 comes back down.

25 JUDGE DALE: If they have any questions, we

0770

1 can do that. Let's go ahead with Mr. Gipson and do the
2 same.

3 MR. SWEARENGEN: Call Mr. Gipson.

4 JUDGE DALE: I'll just remind you that
5 you're still under oath. And ready to proceed when you
6 are, Mr. Swearengen.

7 MR. SWEARENGEN: Thank you, your Honor.

8 W.L. GIPSON testified as follows:

9 DIRECT EXAMINATION BY MR. SWEARENGEN:

10 Q. Would you state your name for the record,
11 please.

12 A. William Gipson.

13 Q. Mr. Gipson, you've testified previously in
14 this proceeding; is that correct?

15 A. I have.

16 Q. And I think you have three pieces of
17 testimony; is that correct?

18 A. I do.

19 Q. Direct, supplemental direct and rebuttal;
20 is that true?

21 A. That's correct.

22 Q. And for the record, your direct testimony
23 has been marked as Exhibit 5, your supplemental direct as
24 Exhibit 6, and your rebuttal as Exhibit 7; is that true?

25 A. Yes.

1 Q. If I asked the questions that are contained
2 in those three exhibits, would your answers under oath
3 this afternoon be the same?

4 A. Yes, they would.

5 Q. And would they be true and correct to the
6 best of your knowledge, information and belief?

7 A. Yes, they would.

8 MR. SWEARENGEN: With that, your Honor,
9 today will be the last time that this witness will
10 testify. He has testified previously on a couple of other
11 topics, but this is the last time he will be here, so I
12 would offer into evidence Exhibits 5, 6 and 7 and tender
13 the witness for cross.

14 JUDGE DALE: Thank you. This is a witness
15 who has had some testimony already stricken, so the
16 admission would be subject to that previous striking.

17 MR. SWEARENGEN: But I'm offering all of it
18 again for the record. I'm offering the entirety of
19 Exhibit 5, 6 and 7.

20 JUDGE DALE: Is there any objection to the
21 entirety of 5, 6 and 7?

22 MR. WOODSMALL: Your Honor, it's my
23 understanding that a portion of his testimony has
24 previously been stricken. Mr. Swearengen stated in an
25 earlier day in this hearing that he was offering it as an

1 offer of proof. Given that caveat that those portions are
2 being offered as an offer of proof, I have no objections.

3 MR. SWEARENGEN: Yeah, assuming the
4 Commission again says that this testimony can't be
5 admitted, Mr. Woodsmall is correct. When you rule in that
6 direction, I would ask that it be preserved under the
7 Commission rule, but I assume that you would rule first.

8 JUDGE DALE: Well, I am going to rule that,
9 with the exception of the stricken portion, since there
10 are no objections, I will admit Exhibits 5, 6 and 7.

11 (EXHIBIT NOS. 5, 6 AND 7 WERE RECEIVED INTO
12 EVIDENCE, WITH THE EXCEPTION OF THE STRICKEN
13 PORTIONS.)

14 MR. SWEARENGEN: And then with respect to
15 the stricken portions or the portions that you're not
16 receiving in evidence, your Honor, I would ask that under
17 5 CSR 40-2.130, that that material to which the objection
18 has been sustained be nonetheless preserved in the record
19 in accordance with the rule. Thank you.

20 JUDGE DALE: Certainly. Mr. Woodsmall?

21 MR. SWEARENGEN: Excuse me, your Honor.
22 May I approach the witness?

23 JUDGE DALE: Certainly.

24 THE WITNESS: Thank you, counsel.

25 MR. SWEARENGEN: Thank you.

1 CROSS-EXAMINATION BY MR. WOODSMALL:

2 Q. Good afternoon, Mr. Gipson.

3 A. Good afternoon.

4 Q. I believe that you stated previously that
5 you're the chief executive officer for Empire; is that
6 correct?

7 A. I am.

8 Q. And how long have you been the CEO of
9 Empire?

10 A. May of 2002.

11 Q. Could you describe briefly some of your
12 responsibilities as chief executive officer?

13 A. I think I stated on the record a couple of
14 days ago that they're many and broad, but include things
15 such as mission, vision, key business strategies, moving
16 the organization in accordance with those.

17 Q. As the CEO, would it be fair to say that
18 you are the individual responsible for the day-to-day
19 management and operation of the company?

20 A. Not entirely. I have a pretty good senior
21 management team that manages much of the day-to-day
22 operations of the company. In fact, I have two chief
23 operating officers, one for our electric business and one
24 for our gas business, and they are directly responsible
25 for the day-to-day operations of those business segments.

1 In addition to that, Mrs. Walters is our
2 vice president of regulatory and general services. I rely
3 on Mrs. Walters to manage day-to-day operations that come
4 under that portion of her, you know, responsibility. And
5 in addition to that, I have a chief financial officer, VP
6 of finance and chief financial officer that is responsible
7 for the day-to-day management of the operations under his
8 purview.

9 Q. Ultimately, would it be fair to say, then,
10 that the day-to-day operations are made at least under
11 your supervision, you supervise these individuals; is that
12 correct?

13 A. I do, but again, I rely on them to manage
14 the day-to-day operations of the business.

15 Q. Okay. But the buck stops here?

16 A. The buck has to stop somewhere.

17 Q. And that's with you?

18 A. It is with me.

19 Q. Okay. Thank you. We're going to take a
20 little trip back through time. Going back a little way,
21 are you familiar with Empire rate proceeding Case
22 No. ER-2001-299?

23 A. 2001?

24 Q. 2001.

25 A. I can -- I may be able to recall some

1 specifics on that case.

2 Q. Okay. Would you agree that that was --
3 that that was the case in which Empire received its first
4 IEC?

5 A. Tell me, Mr. Woodsmall, when did that case
6 conclude? When did rates go into effect in that case?

7 Q. We'll get to that. We'll just --

8 A. Well, you used a case number, and I think
9 of them differently.

10 Q. The Report and Order was issued
11 September 20th, 2001.

12 A. Was that the one where rates went into
13 effect in December of '01?

14 Q. I couldn't tell you, but I'll take your
15 answer and we'll just move along.

16 A. If we can presume that that's the case
17 that rates took effect in December of '01, then I think I
18 can -- I can stipulate or answer affirmatively that that's
19 the case that I believe our first interim energy charge,
20 in which it was implemented.

21 Q. I believe you are correct.

22 A. Okay.

23 Q. Can you tell me who Myron McKinney is?

24 A. Myron McKinney is the chairman of the board
25 of the Empire District Electric Company.

1 Q. And previously was he an officer with the
2 company?

3 A. He was previously chief executive officer
4 of the company.

5 Q. Immediately before you took that position;
6 is that correct?

7 A. He is my immediate predecessor.

8 Q. Okay.

9 MR. WOODSMALL: May I approach the witness,
10 your Honor?

11 JUDGE DALE: Certainly.

12 BY MR. WOODSMALL:

13 Q. I'm going to hand you a document. Can you
14 identify that document for me, please?

15 A. It says on its cover it's the direct
16 testimony of Myron W. McKinney.

17 Q. And that was filed in Case No. ER-2001-299;
18 is that correct?

19 A. That's what it says on the document.

20 Q. Okay. Turning to page 5, would you read
21 the testimony starting on line 4 through 12?

22 A. The first full sentence?

23 Q. Yes.

24 A. As the Commission is undoubtedly aware,
25 natural gas prices are at levels not seen since the energy

1 crisis of the late '70s. Since no mechanism exists to
2 recover these costs outside of the rate case scenario,
3 they must be included in rates. It is Empire's belief
4 that Missouri electric customers would be well served if
5 the Commission would actively support an adjustment clause
6 to mitigate the fluctuation of fuel prices on rates, while
7 at the same time providing the utility with some
8 opportunity to recover fuel costs which may be well above
9 those included in its tariffs. Empire intends to request
10 the introduction of legislation to this end and encourages
11 the Commission to support such legislation.

12 Q. And can you tell me when that testimony was
13 filed?

14 A. It says on the cover November 2002.

15 Q. So you would agree that with the filing of
16 this case, Empire was seeking, discussing, at least
17 broaching the subject of trying to receive an adjustment
18 clause for the treatment of fuel and purchased power?

19 MR. SWEARENGEN: I'm going to object. It's
20 unclear from the question when he says this case, what
21 he's talking about. As far as I'm concerned, this case is
22 the current rate case that we're in right now.

23 BY MR. WOODSMALL:

24 Q. Okay. I'll rephrase. Would you agree that
25 with the testimony that you just read of Mr. McKinney in

1 Case No. ER-2001-299, that Empire was seeking some sort of
2 an adjustment mechanism for the treatment of fuel and
3 purchased power?

4 MR. SWEARENGEN: I'm going to object to
5 that question because that's not what the testimony said.
6 It was pretty clear what the witness was talking about,
7 and that's a mischaracterization of the testimony. Object
8 on that basis.

9 MR. WOODSMALL: I believe, your Honor, it
10 said it is Empire's belief that Missouri electric
11 consumers would be well served if the Commission would
12 actively support an adjustment clause to mitigate the
13 fluctuation of fuel prices on rates, and they intend to
14 add -- they say that the opportunity to recover fuel
15 costs, blah, blah, blah. Never mind. He read it in.
16 BY MR. WOODSMALL:

17 Q. Do you recall whether Empire eventually
18 received an interim energy charge as a result of the
19 Commission's decision in ER-2001-299?

20 A. Yes, I think I've already stated that.

21 Q. Okay. Can you recall any of the details of
22 that interim energy charge?

23 A. Only in very -- only in very broad
24 terms. I recall that it seems to me that it was a tariff
25 that was designed to generate something on the order of

1 15 or \$16 million per year. My memory is it was about a
2 half a cent a kilowatt hour for -- or yeah, \$5 a megawatt
3 hour for fuel and purchased power. And at that time
4 Missouri jurisdictional was about 4 million megawatt
5 hours. So about 15 to \$16 million is my memory.

6 Q. Do you recall what the term of that IEC was
7 for?

8 A. I believe the -- it was -- it was a
9 three -- or a two-year term, then it was terminated
10 earlier than -- terminated earlier than that.

11 Q. Okay. We'll get around to that.

12 MR. WOODSMALL: I'd like to mark an
13 exhibit, your Honor.

14 JUDGE DALE: Certainly. We're at 112.

15 (EXHIBIT NO. 112 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 BY MR. WOODSMALL:

18 Q. Do you recognize this document, Exhibit
19 No. 112, Mr. Gipson?

20 A. I've got to tell you, I think this is the
21 first time I've seen this.

22 Q. This is the first time. You don't
23 recognize any of the information contained therein as
24 being consistent with what you were describing?

25 A. I see that the per kilowatt hour charge

1 was, like I said, about a half a cent a kilowatt hour, but
2 I have -- I honestly don't recall seeing this --

3 Q. Okay.

4 A. -- prior.

5 Q. Given the first -- your understanding of
6 the first IEC, would you agree that the IEC provided a
7 ceiling that is an amount that Empire was allowed to
8 recover from ratepayers for fuel and purchased power?

9 A. There was a -- you know, we described it as
10 such, that there was a floor, if you will, which
11 represented the amount of fuel and purchased power to be
12 recovered in the base rates, and then this interim
13 surcharge that would have established a ceiling, as you
14 suggest.

15 Q. Okay. And your understanding of that IEC,
16 the company would have an incentive to try to make sure
17 that fuel and purchased power expense remained below that
18 ceiling; is that correct?

19 A. I'll answer your question, and then I'd
20 like to expand on it a bit, if you'll allow me.

21 Q. Well, I'll let your attorney do that for
22 you.

23 A. Well, then ask me the question again.

24 Q. Would you agree that the existence of an
25 IEC ceiling provided an incentive for the company to keep

0781

1 its fuel and purchased power expense below that ceiling?

2 A. I'll agree with that.

3 Q. Okay. And would you agree that the
4 establishment of a floor at the base rate level provided
5 an incentive for the company to attempt to drive its fuel
6 and purchased power expense below the level of that floor;
7 is that correct?

8 A. I'll agree with that.

9 Q. And if the company was successful in
10 driving fuel and purchased power expense below the level
11 of the floor, would you agree that those monies below the
12 floor would not be subject to refund?

13 A. I believe that was what was stipulated in
14 the agreement.

15 Q. Okay. Those monies would be retained by
16 the company; is that correct?

17 A. That's my recollection, yes.

18 MR. WOODSMALL: Your Honor, give me a
19 moment, please.

20 JUDGE DALE: Sure.

21 BY MR. WOODSMALL:

22 Q. You mentioned earlier that the first IEC
23 was terminated. Do you recall making that statement?

24 A. I did.

25 Q. And do you recall Empire terminated that

1 IEC through an agreement with the parties in that case, in
2 Case No. ER-2002-424?

3 A. I think I remember a little bit different.

4 Q. Okay. Please expand.

5 A. I remember that we were experiencing a
6 falling -- a situation of falling fuel prices, and outside
7 of the -- I believe outside of the context of a general
8 rate case we approached the parties, maybe made a filing
9 to the Commission to first reduce the level of the interim
10 energy charge to stop collecting from our customers that
11 surcharge of quite that same size, and then ultimately to
12 terminate the interim energy charge. That's my
13 recollection.

14 Q. Do you recall whether that IEC was
15 terminated simultaneous with the creation of new rates in
16 the rate case?

17 A. My memory is that it was outside of a
18 general rate case.

19 Q. But you don't recall whether the timing of
20 it, the timing of it was timed so that it was coincident
21 with the implementation of a rate case?

22 A. I don't believe it was.

23 Q. Okay.

24 A. That's not my recollection. I think I've
25 told you what my recollection is.

0783

1 Q. Nevertheless, the termination of the IEC
2 resulted in Empire collecting fuel and purchased power
3 expense through base rates and not through an IEC any
4 longer; is that correct?

5 A. When we terminated the interim energy
6 charge, we stopped charging our customers the surcharge.

7 Q. And so any level of I -- any level of fuel
8 and purchased power expense that was recovered would have
9 necessarily been recovered through base rates; is that
10 correct?

11 A. That is correct.

12 Q. Okay. On April 30th, 2004, Empire filed
13 Case No. ER-2004-0570. Do you recall that case?

14 MR. SWEARENGEN: Could you give me the date
15 again, David?

16 MR. WOODSMALL: April 30th, 2004.

17 MR. SWEARENGEN: And what was that number?

18 MR. WOODSMALL: ER-2004-0570. It was your
19 last rate proceeding.

20 THE WITNESS: Rates went into effect
21 March 27th, '05.

22 BY MR. WOODSMALL:

23 Q. That's correct. Do you recall that
24 proceeding?

25 A. I do recall that proceeding.

1 Q. Do you recall in that case Empire stating
2 that an IEC was preferable to the traditional forecast of
3 fuel and purchased power expense?

4 A. I don't recall it specifically, but I'm not
5 surprised.

6 Q. Can you tell me who Brad Beecher is?

7 A. Brad Beecher is the vice president and
8 chief operating officer for our electric business.

9 MR. WOODSMALL: Your Honor, I'd like to
10 mark an exhibit.

11 JUDGE DALE: This will be 113.

12 (EXHIBIT NO. 113 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. WOODSMALL:

15 Q. Can you identify Exhibit No. 113,
16 Mr. Gipson?

17 A. On the face, it would appear to be the
18 direct testimony of Brad P. Beecher.

19 Q. And what case was that filed in?

20 A. There's not a case number on here.

21 Q. Okay. Can you tell me the date it was
22 prepared?

23 A. It says April '04.

24 Q. And you said Mr. Beecher has what position
25 with Empire?

1 A. Brad is our chief operating officer for the
2 electric business.

3 Q. Turning to page 3 of that testimony,
4 starting on line 1, could you read the question and
5 answer?

6 A. Starting with line 1?

7 Q. Correct.

8 A. What method is Empire proposing in this
9 case to determine fuel and purchased power cost?

10 Empire has filed tariffs indicative of
11 three separate methods. Our preferred method would be a
12 fuel and purchased power adjustment clause, or FAC.
13 Another alternative filed is interim energy charge. A
14 third but less desirable alternative would be a
15 traditional forecast, which most certainly will be highly
16 contentious among the parties. We believe this third
17 alternative is the most unsatisfactory of the three
18 methods and will produce the least reasonable outcome.

19 Q. Thank you. Would you agree with me
20 that at the time of filing direct testimony in Case
21 No. ER-2004-0570, that Empire believed that the IEC was
22 more desirable than a traditional forecast of fuel and
23 purchased power expense?

24 A. I think Mr. Beecher laid it out pretty
25 well. Our preferred method was an FAC. Secondary to that

1 was an IEC, and third to that would be base rates.

2 Q. Okay.

3 A, I don't believe our position has changed
4 much since then.

5 Q. I want to mark another exhibit.

6 A. Am I through with this one?

7 Q. I believe so.

8 JUDGE DALE: This will be 114.

9 (EXHIBIT NO. 114 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. WOODSMALL:

12 Q. Are you under the understanding,
13 Mr. Gipson, that in order to initiate a rate case,
14 typically the company files rate schedules or tariffs?

15 MR. SWEARENGEN: Your Honor, I'm going to
16 object on the basis that that calls for a legal
17 conclusion, although I understand this gentleman is the
18 chief executive officer of the utility company, and so I
19 understand he can give his understanding. With that, I
20 will remain silent.

21 JUDGE DALE: Could you repeat the question
22 again for me?

23 MR. WOODSMALL: I was just asking Mr.
24 Gipson whether it is his understanding that to initiate a
25 rate proceeding, typically a utility files rate schedules

0787

1 or tariffs.

2 JUDGE DALE: Okay. You can answer that if
3 you know.

4 THE WITNESS: It is my understanding that
5 part of the filing requirements for the initiation of a
6 case is to submit new tariffs to the Commission.

7 BY MR. WOODSMALL:

8 Q. And at the time Empire submitted its
9 tariffs in Case No. ER-2004-0570, do you recall whether
10 Empire requested an IEC or an interim energy charge
11 adjustment clause?

12 A. I'd have to -- I'd have to look at this
13 schedule that you've handed me to know for sure.

14 Q. Please do.

15 A. I believe on the second page, Section 4,
16 Sheet 17, it says rider IEC.

17 Q. Can you tell me, based upon the schedule
18 down at the bottom under conditions --

19 A. Actually, it says rider IEC or rider FA. I
20 should make that distinction. Excuse me.

21 What was your question then?

22 Q. Down at the bottom under conditions, can
23 you read the first sentence to me, please?

24 MR. SWEARENGEN: Excuse me. Are you
25 referring to the letter?

1 MR. WOODSMALL: No. The rider that he
2 referenced, rider IEC.

3 THE WITNESS: Which is the third page of
4 the exhibit you gave me?

5 BY MR. WOODSMALL:

6 Q. Correct.

7 A. Okay. And where did you want me to read?

8 Q. The first sentence under conditions.

9 A. Interim rider shall be in effect from
10 April 27, 2004 through April 27, 2009.

11 Q. Is it your understanding at the time it
12 initiated Case No. ER-2004-0570, that Empire was seeking a
13 five-year interim energy charge?

14 A. Yes.

15 MR. WOODSMALL: Your Honor, before I get
16 too far afield, I'd like to offer Exhibits No. 113 and
17 114.

18 JUDGE DALE: What about 112?

19 MR. WOODSMALL: I'd like to offer it, but
20 he said he didn't recognize it, so I'm not even going to
21 take a shot at it.

22 JUDGE DALE: Is there any objection to
23 Exhibits 113 or 114?

24 (No response.)

25 JUDGE DALE: Hearing none, those will be

1 admitted into evidence.

2 (EXHIBIT NOS. 113 AND 114 WERE RECEIVED
3 INTO EVIDENCE.)

4 MR. WOODSMALL: I'd like to offer another
5 exhibit, your Honor.

6 (EXHIBIT NO. 115 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 MR. WOODSMALL: I believe this is
9 Exhibit 115, your Honor.

10 JUDGE DALE: Yes.

11 BY MR. WOODSMALL:

12 Q. Mr. Gipson, can you identify Exhibit 115?

13 A. This would appear to be my testimony from
14 the -- from April 2004.

15 Q. And do you recognize that document?

16 A. I mean, I don't have any reason to doubt
17 that it wasn't the -- that it wasn't the document or the
18 testimony that was presented as evidence. It's just not
19 marked with an exhibit number or a case number. It looks
20 kind of preliminary to me.

21 Like I said, I have no reason to doubt that
22 it's not the -- not what was introduced. I just don't
23 know that to be a fact.

24 Q. Turning to page 6, line 13, would you read
25 that question and answer, please?

0790

1 A. Did you say 13?

2 Q. Correct.

3 A. What is Empire recommending to regulate the
4 current long-term increases in gas prices? Did you want
5 me --

6 Q. And the answer?

7 A. I'm sorry. Empire has put forth three
8 separate methodologies. These include a fuel and
9 purchased power adjustment clause or FAC, an interim
10 energy charge or IEC, and 12-month-ended forecast that
11 uses production cost modeling. Implementation of one of
12 the alternatives is needed to provide a timely recovery of
13 fuel and purchased power expenses. This will allow --
14 this will also allow for fewer rate cases, improved credit
15 risk and financial flexibility and continued customer
16 protection against fuel price volatility through Empire's
17 hedging activities. Testimony by Mr. Brad Beecher
18 discusses these methodologies in detail.

19 MR. WOODSMALL: Your Honor, I'd offer
20 Exhibit No. 115.

21 JUDGE DALE: Are there any objections?

22 (No response.)

23 JUDGE DALE: Hearing none, Exhibit 115 will
24 be admitted into evidence.

25 (EXHIBIT NO. 115 WAS RECEIVED INTO

1 EVIDENCE.)

2 BY MR. WOODSMALL:

3 Q. Mr. Gipson, would you agree that at the
4 time Empire filed its tariffs and testimony in Case
5 No. ER-2004-0570, that Empire was knowledgeable and
6 familiar with how an IEC worked?

7 A. Yes.

8 Q. You were familiar with a cap on the IEC
9 revenues collected?

10 A. Familiar with the surcharge that, in
11 essence, creates the cap that you talk about, yes.

12 Q. You were familiar with a true-up at the end
13 of the IEC term?

14 A. I was familiar with the -- what we had
15 proposed in the previous case or what was negotiated in
16 the previous case with respect to a true-up, but I need to
17 be a little careful here because in that particular case
18 we did not do a true-up because we refunded all of the
19 money that was collected under that surcharge. So there
20 was really no need to do a true-up.

21 Q. But you were familiar with the concept of a
22 true-up and how a true-up would be done at the end of a
23 term?

24 A. We were familiar with how it was proposed
25 at the time we filed this direct testimony. We were

1 familiar with how it had been stipulated in the agreement
2 from the 2000 -- what I'll call the 2001 case, how it had
3 been stipulated. But actually doing a true-up, we were --
4 no one to my knowledge had any familiarity with what
5 actually would occur.

6 Q. You understood that you were precluded from
7 collecting any rates above the cap; is that correct?

8 A. In the '01 case?

9 Q. Under the IEC as filed in the tariffs in
10 the 0570 case.

11 A. On the IEC tariff or on the FAC tariff?

12 Q. On the IEC tariff.

13 A. On the IEC tariff, that there would have
14 been a fixed rate surcharge. So that would have created a
15 cap, as you suggest.

16 Q. And you would not have been able to collect
17 any rates above that cap in the event that fuel and
18 purchased power went above that cap; is that correct?

19 A. That is correct.

20 Q. Okay. Similar to what we discussed before,
21 you understood that the company could keep any money it
22 saved below the rate base or the base rate floor?

23 A. That is the way that we had proposed the
24 IEC in the -- what I call the '05 case because the rates
25 went into effect in '05.

1 Q. Just for clarification of the record, would
2 you agree that your reference to the '05 case is the
3 ER-2004-0570 docket?

4 A. I don't have --

5 Q. Okay. If I showed you the Report and
6 Order, would that clarify it for you?

7 A. Let me just take your word for it.

8 Q. Okay. Thank you. So is it fair to say at
9 the time you asked for an IEC, you understood the
10 incentives and risks behind operating under an IEC?

11 A. Certainly.

12 Q. Going back to what you call the 2005 case,
13 with your -- with the company's knowledge of the IEC, do
14 you recall that Empire asked the Commission to lift its
15 suspension of the IEC tariff?

16 A. We did.

17 Q. And do you remember the Commission holding
18 an on-the-record presentation to discuss Empire's request
19 to lift that suspension?

20 A. I remember that day clearly.

21 Q. Do you recall testifying at that
22 on-the-record presentation?

23 A. I do. You're not going to have me say
24 babies are going to be born naked, are you?

25 Q. I don't remember that part. Maybe I should

1 find it.

2 A. I just had taken a bit of chiding over that
3 remark since that day.

4 MR. WOODSMALL: May I approach the witness,
5 your Honor?

6 BY MR. WOODSMALL:

7 Q. I've handed you the transcript from that
8 on-the-record presentation. I believe you said that you
9 testified at that on-the-record presentation; is that
10 correct?

11 A. I did.

12 Q. Turning to the last page of what I handed
13 you --

14 A. The very last page?

15 Q. Very last page.

16 A. 233?

17 Q. I believe you can see there that you did
18 actually testify. Is that what it indicates?

19 A. It indicates on line 11 my name, Bill
20 Gipson, and then several items, including presentation,
21 cross-examination questions, recross, et cetera.

22 Q. Can you tell me what page your testimony in
23 that on-the-record presentation began?

24 A. I've got to assume page 123.

25 Q. Okay. And if you need to confirm that by

1 looking at -- I believe if I remember correctly it may
2 actually be page 122.

3 A. I see being sworn in on page 122.

4 Q. Turning to page 128, would you read the
5 sentence beginning on line 24?

6 A. With respect to the interim energy charge,
7 it's a proven regulatory tool. Aquila is now and we used
8 it beginning in October 2001 for about 14 months.

9 Q. Thank you. Turning to page 141 and
10 continuing on page 142, would you read the question and
11 answer that begins on line 17?

12 A. Question: Do you think that the Commission
13 should actually consider whether to impose some sort of
14 rate increase or IEC surcharge during that time period,
15 what has happened in the past as far as your company's
16 performance or what financial needs the company might have
17 after that date or should they focus simply on that time
18 period that would be the subject of the increase?

19 Answer: I think time is of the essence.
20 I'm a firm believer that equity analysts and data analysts
21 have given us significant signals in terms of what their
22 expectations are from companies like Empire, and their
23 expectation is that we find a means by which we can cover
24 our prudently incurred fuel and purchased power costs.

25 Question --

1 Q. That's fine. Thank you.

2 A. Okay.

3 Q. Turning to page 160, would you read the
4 sentence beginning on line 7 and continuing through the
5 end of the paragraph on line 13?

6 A. I know that in our particular case the
7 Standard & Poor's evaluation that was issued right after
8 the conclusion of our '01 case commended the Commission
9 for making that decision in that case. But also, you
10 know, throw in a little jab because it was not permanent
11 in nature and, of course, they're looking for something
12 that's more permanent in nature.

13 Q. Okay. And finally, with regard to your
14 testimony in that on-the-record presentation, turning to
15 page 161, would you read the question beginning on line 4
16 and the first sentence of your answer?

17 A. I'm trying to understand the difference
18 between interim energy charge that has a life of only
19 six months versus a life perhaps over two or three years,
20 over a longer period of time, and I guess what I'm trying
21 to get at is, for this short-term decision that we have to
22 make, how big a message is it being -- I'm sorry -- these
23 aren't my words. I'm having difficulty.

24 And I guess what I'm trying get at is for
25 the short-term decision that we have to make, how big a

1 message is being sent to the analyst and to the equity
2 markets and the like?

3 Answer: I think it's -- I think it's a
4 big -- it is a big one, and it's for the reasons that I
5 just spoke.

6 Q. And again, can you tell me who Brad Beecher
7 is?

8 A. Brad Beecher is the chief operating officer
9 for the electric business at our company.

10 Q. And he was in senior management, a vice
11 president, I believe, at the time that this on-the-record
12 presentation occurred; do you recall?

13 A. This was -- he was just recently promoted,
14 so that would be the case.

15 Q. Turning to the last page of the transcript
16 again --

17 A. All right.

18 Q. -- could you tell me whether Mr. Beecher
19 testified at this on-the-record presentation?

20 A. I know for a fact Mr. Beecher testified at
21 this on-the-record presentation.

22 Q. And can you tell me on what page his
23 testimony began?

24 A. I'm guessing something about 15.

25 Q. Turning to page 98 --

0798

1 A. Okay.

2 Q. -- would you read the full sentence that
3 starts on line 9 and continues on line 10?

4 A. I know and understand the IEC very well and
5 that it's a proven regulatory tool.

6 Q. Thank you. Now, finally, turning to
7 page 109, would you read the question and answer that --
8 questions and answers that begin on line 9 and end on
9 line 21?

10 A. Question: In response to a question from
11 Commissioner Clayton, he was asking what would happen if
12 the Commission does not grant the relief that you were
13 requesting, that the Commission does not authorize lifting
14 of the IEC, and you mentioned the possible capital market
15 reaction. Do you recall that answer?

16 Answer: Yes, I do.

17 Question: What do you mean by that?

18 Answer: I don't know how the capital
19 markets will -- I don't know how the -- I don't know how
20 the capital markets will react to a negative decision from
21 this Commission, but in general I know they look at us
22 having higher risk, not being able to recover our natural
23 gas costs, and they would not look at a decision to put
24 this in -- and they would not -- and they would look at a
25 decision to put -- oh, geez -- and they would look at a

1 decision to put this in place positively.

2 Q. Thank you. Mr. Gipson, do you recall that
3 Empire's request for an IEC being a contentious issue in
4 the 2005 case?

5 A. I remember the entirety of the fuel and
6 purchased power issue being one where we had a -- we had
7 widely conflicting views on how best to set rates that
8 provided for, you know, not only being just and
9 reasonable, but opportunity for a fair return. I remember
10 widely, widely conflicting viewpoints.

11 Q. Okay. And do you recall that the issue of
12 fuel and purchased power expense and the recovery of that
13 expense actually went to hearing?

14 A. I do.

15 Q. Okay. And that a stipulation was completed
16 after the hearing was completed; is that correct?

17 A. Yeah. I remember some -- a lot of
18 different -- like I said, widely conflicting viewpoints.
19 I remember --

20 Q. Do you recall whether the stipulation was
21 completed after the hearing was over?

22 A. I was trying to -- you're asking me things
23 that are a few days back, and I have to --

24 Q. Okay.

25 A. I'm trying to think through that. I

0800

1 remember that when we tried the issue, there was a lot of
2 questions from the Bench about -- because of the
3 conflicting viewpoints and it was clear to me that the
4 Commission was looking for a solution. So, yeah, I do
5 believe that the -- that the IEC was concluded or was
6 negotiated, presented to the Commission following our
7 trial of the issue.

8 MR. WOODSMALL: Thank you. I'd like to
9 mark another exhibit, your Honor.

10 JUDGE DALE: This will be 116.

11 (EXHIBIT NO. 116 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. WOODSMALL:

14 Q. Mr. Gipson, you stated in your last answer
15 that you recall questions from the Bench regarding the
16 methodology and the legality of recovering fuel and
17 purchased power expense. Is that a fair characterization
18 of what you said?

19 A. No. I think what I said was I clearly
20 remember the Commission was looking for a solution.
21 In fact, my recollection is that the line of questions
22 was from Commissioner Clayton, and as I said, by these
23 widely -- wide viewpoints. And I don't want to rehash
24 this with Staff, but I recall him asking the Staff witness
25 if they were punting on the issue.

0801

1 Q. Okay. But there seemed to be --

2 A. And the response was, yes, and I --
3 and I recall the Commissioner or maybe more than one
4 Commissioner sort of gazing into the -- out into the
5 hearing room, asking for the parties to think of something
6 creative to find a solution to this issue.

7 Q. Along those lines, would you turn to what
8 has been marked as Exhibit 116?

9 MR. SWEARENGEN: Your Honor, I'm going to
10 object to any questions to this witness about Exhibit 116,
11 which appears to be a transcript of proceedings from the
12 last rate case, 0570, but it seems to be devoted
13 exclusively to statements by counsel who obviously are not
14 under oath and can't offer testimony. I don't see
15 anything in here where it refers to testimony from the
16 witness, so I would object on that basis.

17 MR. WOODSMALL: I'm not offering it for
18 that purpose. I'm offering it, just as Mr. Gipson said,
19 that certain Commissioners were seeking guidance from the
20 parties, ways to resolve this issue, and this transcript
21 merely reflects what the witness just told us.

22 MR. SWEARENGEN: Well, he hasn't offered
23 the exhibit yet, and I object to him asking any questions
24 of this witness about this document.

25 MR. WOODSMALL: I believe the witness said

1 he was present at this. He recalled -- as he just said,
2 he recalled conversations from the Commission --
3 Commissioners with the parties. I believe it's fair to
4 ask him questions, certainly, about those matters.

5 MR. SWEARENGEN: I don't object to him
6 asking him what he recalls, but I don't think he can
7 testify with respect to this exhibit.

8 JUDGE DALE: With respect to this
9 particular exhibit, inasmuch as it does not contain this
10 witness' testimony, and I think that you have already said
11 that he has already conceded that the Commissioners were
12 looking for guidance, I don't know that you need to have
13 this exhibit to bolster that. There doesn't seem to be a
14 controversy about it.

15 BY MR. WOODSMALL:

16 Q. Let me ask you, then, would reviewing these
17 three pages of this transcript refresh your recollection
18 at all?

19 A. I'd have to -- I'd have to review these
20 three pages.

21 Q. Have at it.

22 A. Is there somewhere specifically you want me
23 to --

24 Q. Starting on page 482 with line 8.

25 A. I don't recall this exchange.

1 Q. Is this exchange, does it -- is it
2 consistent with your previous statement that the
3 Commissioners were looking for guidance from the parties
4 regarding ways to treat fuel and purchased power expense?

5 A. As I said, I wasn't -- I don't recall this
6 exchange. I did tell you what I did recall.

7 Q. And this supports what you recall; is that
8 correct?

9 MR. SWEARENGEN: Your Honor, I'm going to
10 object to that. This witness did not say he supports
11 that. He said he recalls what he recalls. Once again,
12 Mr. Woodsmall's put a document in front of him that this
13 witness is not familiar with, his testimony is not in
14 there. It's a discussion apparently between the Bench and
15 counsel, and I just think it's not proper to --
16 BY MR. WOODSMALL:

17 Q. Let me ask it this way: Does this document
18 that you've just reviewed in any way conflict with the
19 memory that you have of that on-the-record presentation
20 that you described?

21 MR. SWEARENGEN: And, your Honor, I object
22 on that basis because that doesn't solve the problem
23 whether it conflicts or not.

24 MR. WOODSMALL: He can say no. I mean, he
25 can -- I'm not offering it. I'm just asking him if he

1 remembers and if it's consistent with what he previously
2 stated.

3 MR. SWEARENGEN: Well, he already said he's
4 not familiar, he doesn't remember this having taken place.
5 I don't know how he can answer that question.

6 JUDGE DALE: Mr. Gipson, do you have any
7 memory of this exchange?

8 THE WITNESS: I -- honestly, Judge, I don't
9 recall this exchange.

10 JUDGE DALE: Then he can't answer it.

11 MR. WOODSMALL: Marking another exhibit.

12 (EXHIBIT NO. 117 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. WOODSMALL:

15 Q. Mr. Gipson, I believe you stated earlier
16 that after the evidentiary hearings were completed in
17 ER-2004-0570 that a Nonunanimous Stipulation & Agreement
18 was executed. Do you recall that?

19 A. That is my recollection, yes.

20 Q. Okay. Can you tell me what Exhibit 117 is?

21 A. Exhibit 117 would appear to be that very
22 Nonunanimous Stipulation & Agreement regarding fuel and
23 purchased power expense.

24 Q. Looking at the second to the last page, can
25 you tell me if this document was signed on Empire's behalf

1 by your attorney?

2 A. Yes.

3 MR. WOODSMALL: Your Honor, I'd offer
4 Exhibit No. 117.

5 MS. CARTER: If we could just for
6 clarification note, I'm assuming this isn't the document
7 that was actually filed, since it has notes on it.

8 MR. WOODSMALL: Any handwritten brackets
9 and such I agree were not filed. And if you prefer, we
10 could just take administrative notice of this document.

11 JUDGE DALE: Let's just take administrative
12 notice of this document.

13 MR. WOODSMALL: Then I won't offer 117 but
14 take administrative notice of the nonunanimous stip.

15 JUDGE DALE: Yes. I presume there's no
16 objection to that. So for convenience, it may be referred
17 to as Exhibit 117.

18 MR. WOODSMALL: Thank you.

19 BY MR. WOODSMALL:

20 Q. Mr. Gipson, can you tell me what your
21 knowledge is of some of the material provisions contained
22 in the nonunanimous stip regarding -- that granted the
23 IEC?

24 MR. SWEARENGEN: Your Honor, I'm going to
25 object to the form of the question when he says material

1 provisions.

2 MR. WOODSMALL: I'll allow the witness to
3 define material as he sees fit.

4 JUDGE DALE: To the extent that you have an
5 opinion on what's material, you can answer the question.
6 If you can't, you can ask for clarification.

7 THE WITNESS: Okay. I remember that it was
8 designed in large part similar to the previous interim
9 energy charge, that it provided for refund mechanisms
10 similar but also an interim refund. I recall that it, of
11 course, had language that could be earlier terminated by
12 the Commission. I remember a three-year term. I remember
13 about -- my memory is about \$2 a megawatt hour or 2/10 of
14 one cent per kilowatt hour.

15 I remember it was nonunanimous. We
16 couldn't get -- we were unable to get Staff to sign on.
17 We were unable to get the Department of Natural Resources
18 to sign on. In fact, they questioned the lawfulness of
19 the IEC entirely. So those are what I would classify as
20 the material aspects of the document and what I remember.

21 BY MR. WOODSMALL:

22 Q. Okay. Do you recall any provisions
23 regarding interest on refunds after the true-up or after
24 the true-up or after what you called the interim refunds?

25 A. I think similar to the -- I believe similar

1 to the previous interim energy charge, it called for the
2 payment of interest in the event of refunds.

3 Q. Now, very important, Mr. Gipson, did you
4 believe at the time that you directed your attorney to
5 sign this stipulation that you had negotiated an early
6 termination provision to the three-year IEC?

7 A. I -- it was a part of the document. I
8 believe it was part of the previous IEC. I recall that,
9 the knowledge of that in that document, yes.

10 Q. The fact that you didn't mention that
11 earlier, you didn't believe that was a material provision?

12 A. No, I think I did mention that a minute
13 ago.

14 Q. That there was an early termination
15 provision?

16 A. I said I believe that I recall that the
17 document or the instrument could be earlier terminated --

18 Q. Okay.

19 A. -- than the three-year term.

20 Q. You did say that the early termination
21 provision was a material part of this nonunanimous stip?

22 A. I did.

23 Q. Okay. And do you believe that that early
24 termination provision only belonged to Empire or did all
25 parties have the ability to seek early termination of the

0808

1 IEC?

2 MR. SWEARENGEN: Your Honor, once again
3 we're getting into an area here where I think that calls
4 for a legal conclusion. I mean, it's been our position
5 throughout this proceeding that Empire is free to file a
6 rate case and that a proper party is free to file a
7 complaint.

8 MR. WOODSMALL: I'll rephrase the question.

9 MR. SWEARENGEN: There's nothing in this
10 agreement that prohibits that. There's no rate
11 moratorium.

12 MR. WOODSMALL: Your Honor, I believe
13 counsel's not making an objection at this point. He's
14 making argument. And I'll rephrase the question.

15 JUDGE DALE: Thank you.

16 BY MR. WOODSMALL:

17 Q. Was it your belief at the time that you
18 directed your counsel to sign this document that all
19 parties had the right to seek early termination of the
20 IEC?

21 A. Here's -- here's the way I understand it
22 works, Mr. Woodsmall.

23 Q. It's a yes or no question. Was it your
24 belief that at the time that you directed your attorney to
25 sign this document, that all parties had the right to seek

1 early termination of the IEC?

2 MR. SWEARENGEN: And once again, your
3 Honor, that calls for a legal conclusion and this is not a
4 lawyer.

5 MR. WOODSMALL: It calls for his belief.
6 He's the CEO.

7 MR. SWEARENGEN: He's trying his best to
8 answer the question as he can, and I think he ought to be
9 entitled to.

10 MR. WOODSMALL: He's the CEO of the
11 company. He's the one that said the buck stops here.
12 He's the one ultimately that would instruct counsel to
13 sign this document. He is entitled to provide us with his
14 belief of what he thought the company was signing.

15 JUDGE DALE: He has already -- what he said
16 when he discussed the material provisions in my
17 recollection is that it could be earlier terminated by the
18 Commission.

19 MR. WOODSMALL: Okay. And I'm asking now
20 another question.

21 BY MR. WOODSMALL:

22 Q. Was it your belief that at the time that
23 you instructed your attorney to sign this document, that
24 any party could seek early termination of the IEC?

25 A. Yes.

0810

1 MR. WOODSMALL: Okay. I'd like to approach
2 the witness, your Honor.

3 BY MR. WOODSMALL:

4 Q. I'm handing you a document. Can you
5 identify that document for us, please?

6 A. This is a Report and Order before the
7 Public Service Commission of the State of Missouri in
8 Case ER-2004-0570.

9 Q. Okay. And turning to page -- I believe it
10 is --

11 A. Are we finished with 117?

12 Q. Yes, we are. Turning to page 32 of that
13 document, would you read the highlighted portion out loud,
14 please?

15 A. The IEC shall be in effect for three years.

16 MR. WOODSMALL: I'd like to mark another
17 exhibit, your Honor.

18 JUDGE DALE: This will be 118.

19 (EXHIBIT NO. 118 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 BY MR. WOODSMALL:

22 Q. Mr. Gipson, following the issuance of a
23 Commission Report and Order, what is your understanding as
24 to how that Report and Order becomes implemented?

25 A. I believe the Staff of the Commission is

0811

1 ordered, if you will, to develop tariffs that reflect the
2 Report and Order. That may be an interim process with the
3 company and other parties. I've got to tell you, I've
4 never been involved in that part of the process.

5 Q. Okay. Going back to the Report and Order
6 that I showed you previously, would you read Item No. 2
7 for me?

8 A. That Empire District Electric Company may
9 file proposed electric service tariff sheets in compliance
10 with this Report and Order.

11 Q. Thank you. Now, what is your understanding
12 regarding how a Commission's Report and Order becomes
13 implemented by the company?

14 A. My understanding, you know, notwithstanding
15 what I just read, was what my understanding was before
16 that, that it was -- like I said, I've not been involved
17 in the process, and that was my understanding.

18 Q. Okay. Can you look at Exhibit No. 118,
19 please?

20 A. Yes.

21 Q. And can you tell me what that document is?

22 A. It appears to be a cover letter for the
23 electronic filing of revised tariff sheets.

24 Q. And can you tell me what those revised
25 tariff sheets are designed to do?

1 A. Comply with the Commission's Report and
2 Order issued on March 10.

3 Q. And is it true that these tariff sheets are
4 filed on behalf of the Empire District Electric Company?

5 A. It says that here.

6 Q. Turning to the third page, can you tell me
7 the heading on that page?

8 A. State of Missouri Public Service
9 Commission.

10 Q. I'm sorry. Can you tell me what the rider
11 heading is?

12 A. I'm sorry. I wasn't trying to be cute.

13 Q. I understand.

14 A. I'm just trying to be responsive. Inside
15 the box?

16 Q. Correct.

17 A. Interim energy charge rider, rider IEC.

18 Q. And under conditions at the bottom, can you
19 read me the first sentence, please?

20 A. This interim rider shall be in effect from
21 March 27, 2005 through March 26, 2008.

22 MR. WOODSMALL: Your Honor, I'd offer
23 Exhibit No. 118.

24 JUDGE DALE: Are there any objections?

25 (No response.)

0813

1 JUDGE DALE: Then Exhibit 118 will be
2 admitted into evidence.

3 (EXHIBIT NO. 118 WAS RECEIVED INTO
4 EVIDENCE.)

5 BY MR. WOODSMALL:

6 Q. Okay. Kind of switching gears now, you
7 stated before some of your duties and responsibilities.
8 Would you agree that one of your duties includes
9 supervising the preparation and filing of SEC documents?

10 A. No, I would not. We have a very
11 significant process that -- that I do not directly
12 supervise.

13 Q. I believe you stated earlier that the buck
14 stops here, that as the CEO ultimately you're responsible
15 for the company, and the company is responsible for filing
16 various SEC filings; is that correct?

17 A. Can you state that question again, please?

18 Q. You would agree that Empire District
19 Electric Company is responsible for making certain filings
20 with the SEC?

21 A. Yes.

22 Q. Can you tell me what the Sarbanes-Oxley Act
23 of 2002 is?

24 A. Oh, goodness. Well, that's not a short
25 sentence.

1 Q. Your understanding.

2 A. Okay. Sarbanes-Oxley Act was implemented
3 to bring about some rules and regulations with respect to
4 clearer financial statement reporting, particularly 10-Qs
5 and Ks. It brought about a number of reforms with respect
6 to the composition of various committees of the board of
7 directors. Pretty wide-sweeping act following the
8 financial difficulties that occurred with companies like
9 Enron and WorldCom.

10 Q. One of the things you mentioned, and I
11 believe you would agree with this statement, that
12 Sarbanes-Oxley had an effect on the way that certain SEC
13 filings 10-Qs and 10-Ks, are filed and how information is
14 disclosed and certified on those filings?

15 A. Yeah. It was more along the lines in my
16 view of the process that was -- that a company uses to --
17 or at least that's how we viewed it in our organization,
18 that we needed to -- you know, the information was being
19 reported accurately, we had to surround ourselves with
20 some process to make sure -- to ensure that the -- that
21 the information was being reported as accurately as
22 possible. We've accomplished that.

23 Q. Can you tell me when the requirements of
24 Sarbanes-Oxley went into effect?

25 A. The requirements of Sarbanes-Oxley went

0815

1 into effect at different periods of time at four different
2 issues. We were given -- in fact, one of the things that
3 I mentioned through the process was sort of keeping the
4 list of different issues that needed to be addressed with
5 respect to the creation of charters and corporate
6 governance guidelines and codes of ethics and things of
7 that nature that were required under the Act, and there
8 was some companion requirements that came from the New
9 York Stock Exchange.

10 Q. You say you were personally undertaking the
11 task of --

12 A. Making sure that those things, that hit
13 list, if you will, got taken care of.

14 Q. You personally did that?

15 A. I did.

16 Q. Okay. Can you tell me pursuant to
17 Sarbanes-Oxley --

18 A. But I don't think I got to finish my
19 thought --

20 Q. Go ahead.

21 A. -- process. Excuse me.

22 So there were a number of things that were
23 coming about in sort of this corporate reform initiative
24 that had varying implementation timelines. You asked me
25 when it went into effect. I can't remember specifically

0816

1 because there were literally tens of them.

2 Q. Okay.

3 JUDGE DALE: I'm not hearing objections to
4 relevance, but could you give me a hint?

5 MR. WOODSMALL: I'm going to be getting
6 around to a number of SEC filings, and those filings, as I
7 believe we're discussing now, were certified and filed
8 pursuant to Sarbanes-Oxley. So his knowledge of
9 Sarbanes-Oxley that he certifies to is directly relevant
10 and I'll show that. I'd like to mark an exhibit.

11 MR. SWEARENGEN: You know, none of this
12 really has any relevance to this legal question that's
13 before the Commission on whether or not we can terminate
14 the IEC.

15 MR. WOODSMALL: It will.

16 CHAIRMAN DAVIS: Judge, can you ask how
17 long Mr. Woodsmall's going to take?

18 MR. WOODSMALL: I'm about half done.

19 CHAIRMAN DAVIS: So another hour?

20 MR. WOODSMALL: No. It will be longer than
21 that.

22 I believe this is Exhibit 119, your Honor.

23 JUDGE DALE: Yes.

24 (EXHIBIT NO. 119 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. WOODSMALL:

2 Q. Mr. Gipson, pursuant to Sarbanes-Oxley, was
3 Empire required to establish and maintain disclosure
4 controls and procedures, do you recall?

5 A. No, I don't recall if there was a specific
6 requirement of the Act or of the exchange rules or some
7 other means. I don't know. I don't recall -- frankly, I
8 don't recall it being a requirement of anything.

9 Q. Do you recall whether Empire has --

10 A. We did it.

11 Q. -- established and maintained disclosure
12 controls and procedures?

13 A. We certainly did.

14 Q. Okay. Can you look at Docket No. 119 and
15 tell me what is the document that's attached?

16 A. The attached document to the DR 276?

17 Q. Yes.

18 A. It would appear to be our disclosure
19 controls and procedures.

20 Q. And you're familiar with that document?

21 A. I am.

22 MR. WOODSMALL: Your Honor, I'd move for
23 the admission of Exhibit 119.

24 MR. SWEARENGEN: Your Honor, I may want to
25 lodge an objection to this because I'm not sure that this

0818

1 is a complete response to that Data Request. I would want
2 to take the opportunity to determine that, I think, before
3 you rule.

4 MR. WOODSMALL: If I'm providing -- I am
5 providing exactly what Empire provided in response to the
6 Data Request. If counsel wants to reserve the opportunity
7 to review that and make sure it's complete, I have no
8 problems.

9 MR. SWEARENGEN: That's fine. Then to the
10 extent that I determine that, in fact, there is more to
11 this response, I would like that opportunity.

12 JUDGE DALE: Yes.

13 MR. WOODSMALL: And I would object at that
14 point, given that the information wasn't provided in
15 response to my Data Request. So if there is more, I want
16 to see it and have the opportunity to cross-examine based
17 upon that document. But subject to that, I have no
18 problems.

19 MR. SWEARENGEN: That's fine.

20 MR. WOODSMALL: Offer Exhibit No. 119, your
21 Honor.

22 JUDGE DALE: There are no other objections,
23 it will be admitted into evidence.

24 (EXHIBIT NO. 119 WAS RECEIVED INTO
25 EVIDENCE.)

1 BY MR. WOODSMALL:

2 Q. Would you agree that as a result of
3 Empire's disclosure controls and procedures as contained
4 in Exhibit No. 119, that any material information about
5 the company is made known to you and Mr. Knapp prior to
6 the filing of a report with the SEC?

7 A. That was a long question. Will you repeat
8 it?

9 Q. Certainly. Would you agree, given the
10 disclosure controls and procedures that were put in place
11 at Empire, that any material information regarding
12 Empire's finances and operations are made known to you and
13 Mr. Knapp prior to the filing of a 10-K or 10-Q with the
14 SEC?

15 A. Yes.

16 Q. Do you also recall Empire establishing,
17 quote, internal control over financial reporting, unquote,
18 procedures pursuant to Sarbanes-Oxley?

19 A. Section 404, is that your --

20 Q. I don't know what the section is. Can you
21 tell me whether such procedures were established?

22 A. We spent about a million dollars one year
23 trying to establish internal controls over financial
24 reporting.

25 MR. WOODSMALL: Mark an exhibit, your

0820

1 Honor.

2 THE WITNESS: Section 404.

3 (EXHIBIT NO. 120 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 MR. WOODSMALL: I believe this is
6 Exhibit 120, your Honor.

7 JUDGE DALE: Yes.

8 THE WITNESS: Am I finished with 119?

9 MR. WOODSMALL: Yes, I am.

10 BY MR. WOODSMALL:

11 Q. Can you identify the document attached in
12 response to DR No. 278 that's been marked Exhibit No. 120?

13 A. It would appear to be a response from our
14 director of internal auditing, Mrs. Spriggs, that would be
15 Sarbanes-Oxley Section 404, summary of compliance.

16 Q. And you're familiar with that document
17 generally?

18 A. I am familiar with this document.

19 MR. WOODSMALL: Offer Exhibit No. 120, your
20 Honor.

21 MR. SWEARENGEN: Your Honor, before you
22 rule on that, I would have the same objection. I would
23 want the opportunity to review this and make sure it is
24 complete.

25 MR. WOODSMALL: Again, in the event that he

0821

1 finds other information that would more fully complete
2 this Data Request response, I would want the opportunity
3 to cross-examine on this additional information.

4 MR. SWEARENGEN: Well --

5 JUDGE DALE: I'm given to understand that
6 you're checking to make sure that everything that was
7 provided pursuant to the Data Request is, in fact,
8 included in this exhibit.

9 MR. SWEARENGEN: You are absolutely right.

10 JUDGE DALE: Thank you.

11 MR. WOODSMALL: That's fine.

12 JUDGE DALE: It's admitted under those
13 circumstances.

14 (EXHIBIT NO. 120 WAS RECEIVED INTO
15 EVIDENCE.)

16 MR. WOODSMALL: Thank you, your Honor.

17 BY MR. WOODSMALL:

18 Q. Now, moving along, would you agree that
19 Sarbanes-Oxley requires you to certify certain things on
20 your annual 10-K filing with the SEC, as well as your 10-Q
21 filings?

22 A. I certify the K and the Qs.

23 Q. Can you tell me what it is that you certify
24 on those documents?

25 A. The certification is that the documents

1 reflect the financial condition and results of operations
2 in all material respects.

3 Q. Did you say in all material respects?

4 A. That's exactly what I said.

5 MR. WOODSMALL: Mark an exhibit, your
6 Honor.

7 THE WITNESS: Am I through with 120?

8 MR. WOODSMALL: Yes, I hope.

9 (EXHIBIT NO. 121 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 MR. SWEARENGEN: Judge, at some point in
12 time, I think it would be appropriate to take a break. I
13 think the --

14 JUDGE DALE: You are reading my mind.

15 MR. WOODSMALL: This is as good a time as
16 any if you want, your Honor.

17 JUDGE DALE: Excellent. Let's take a break
18 until three o'clock.

19 (A BREAK WAS TAKEN.)

20 (EXHIBIT NOS. 122, 123 AND 124 WERE MARKED
21 FOR IDENTIFICATION BY THE REPORTER.)

22 MR. WOODSMALL: First off, I handed out
23 what's called Form 10-K. Can we mark that as Exhibit 121?

24 JUDGE DALE: Yes.

25 MR. SWEARENGEN: Is there a date on that?

0823

1 MR. WOODSMALL: I'll get to that, yeah.

2 Then Data Request 247, which is the May 9th, 2005 10-Q,
3 122.

4 MR. SWEARENGEN: 2000 what?

5 MR. WOODSMALL: 2005.

6 122, your Honor?

7 JUDGE DALE: Yes.

8 MR. WOODSMALL: August 8th, 10-Q, 123?

9 JUDGE DALE: Okay. 121 is the 10-K;
10 122 is DR 247?

11 MR. WOODSMALL: Correct.

12 JUDGE DALE: Which is actually a 10-Q?

13 MR. WOODSMALL: Correct.

14 JUDGE DALE: 123 is DR 248, which is
15 another 10-Q?

16 MR. WOODSMALL: Correct.

17 JUDGE DALE: And 124 is DR 249, another
18 10-Q?

19 MR. WOODSMALL: Correct.

20 JUDGE DALE: These appear to be three
21 consecutive quarters.

22 MR. WOODSMALL: They are, your Honor.

23 JUDGE DALE: And those are all for 2005.
24 Is it the first three quarters?

25 MR. WOODSMALL: It's for the whole year,

0824

1 but I'll cover that, too.

2 JUDGE DALE: Okay.

3 MR. WOODSMALL: Are you ready?

4 JUDGE DALE: Yes.

5 BY MR. WOODSMALL:

6 Q. Mr. Gipson, do you have what has been
7 marked Exhibit 121?

8 A. Yes.

9 Q. Okay. Can you tell me what that document
10 is?

11 A. This would appear to be a 10-K for the
12 Empire District Electric Company for the fiscal year ended
13 December 31, 2004 filed with the Securities and Exchange
14 Commission.

15 Q. Can you tell me approximately when that was
16 filed with the SEC? I believe if you look at the
17 certifications in the back, they have a date on them.

18 A. It would be mid March.

19 Q. Okay.

20 A. 2005, March -- one of the certifications
21 I'm looking at says March 14.

22 MR. WOODSMALL: Okay. Your Honor, I'd move
23 Exhibit 121 into evidence.

24 JUDGE DALE: Is there any objection?

25 (No response.)

1 JUDGE DALE: Then Exhibit 121 is admitted
2 into evidence.

3 (EXHIBIT NO. 121 WAS RECEIVED INTO
4 EVIDENCE.)

5 MR. WOODSMALL: If we want to save time,
6 your Honor, I can go through the same questions with the
7 other three documents or I can just move all three now.

8 JUDGE DALE: Do all three now.

9 MR. WOODSMALL: I'd move Exhibits 122, 123
10 and 124 into evidence.

11 JUDGE DALE: Is there any objection?

12 (No response.)

13 JUDGE DALE: Then those are all admitted.

14 (EXHIBIT NOS. 122, 123 AND 124 WERE
15 RECEIVED INTO EVIDENCE.)

16 BY MR. WOODSMALL:

17 Q. Turning to Exhibit No. 121, approximately
18 the fifth page from the back, sixth page perhaps, is a
19 document. Up in the upper right-hand corner it says
20 Exhibit 31A. Do you see that?

21 A. I do.

22 Q. And can you tell me what that is entitled?

23 A. Certification of CEO pursuant to
24 Section 302 of the Sarbanes-Oxley Act of 2002.

25 Q. And according to bullet point No. 1, you

1 certify that you have reviewed this annual report on
2 Form 10-K of the Empire District Electric Company; is that
3 correct?

4 MR. SWEARENGEN: Your Honor, I'm going to
5 object. The document speaks for itself and it's been
6 admitted into evidence.

7 JUDGE DALE: It does.

8 MR. WOODSMALL: We want to skip those
9 questions.

10 BY MR. WOODSMALL:

11 Q. Turning to Exhibit 32A, do you see that?

12 A. I do.

13 Q. And can you tell me what that is?

14 A. That is certification of CEO with respect
15 to 18 USC Section 1350 as adopted pursuant to Section 906
16 of the Sarbanes-Oxley Act of 2002.

17 Q. Now, the first bullet point of the report
18 I'm going to ask you about, it states, report fully
19 complies with the requirements of Section 13A of the
20 Securities Exchange Act of 1934. Do you see that?

21 A. I do.

22 Q. Can you tell me what your understanding of
23 Section 13A of the Securities Exchange Act is?

24 A. We are required to file on an annual basis
25 a Form 10-K, and it needs to -- we need to represent in

1 all material respects the financial condition and
2 operations of the company.

3 Q. Okay.

4 A. I'm not -- I've got to tell you, I've not
5 read 13A of the Securities Exchange Act of 1934, but
6 that's --

7 Q. Would you agree -- you said 10-K. Would
8 you agree that Section 13A also applies to 10-Qs?

9 A. I wouldn't dispute it.

10 Q. Okay. You have no reason to doubt that, is
11 what you're saying?

12 A. I have no reason to doubt it. I wouldn't
13 dispute it.

14 Q. Okay. Before I mark this as an exhibit, I
15 want to hand it to you. Can you tell me what that is?

16 A. The cover page?

17 Q. Well, specifically, if you look five pages
18 in, there's a section entitled Section 229.303.

19 A. 229?

20 Q. 303.

21 A. Oh, all right.

22 Q. Have you ever had an opportunity to look at
23 that SEC rule?

24 A. I don't know what I'm looking at.

25 Q. You don't recognize that at all?

1 A. No.

2 Q. You certified in your 10-Qs and 10-Ks
3 compliance with 13A and you've never looked at that rule;
4 is that what you're saying?

5 A. I certified -- I believe I gave you my
6 understanding of what I was -- of 13A, and I certified
7 under that understanding. I've --

8 Q. But you've never reviewed the rule?

9 A. I have not.

10 JUDGE DALE: Am I to understand that the
11 document floating around is a copy of the rule?

12 MR. WOODSMALL: Yes, it is, and similar to
13 what Mr. Swearengen did the other day with the New York
14 Stock Exchange rule that he offered and was admitted, I
15 would offer this rule.

16 MR. SWEARENGEN: I certainly don't remember
17 offering any New York Stock Exchange rule. I really don't
18 recall doing that. I've done a lot of things over here
19 and I remember most of them, but I don't remember that.

20 JUDGE DALE: Exhibit No. 92 wasn't
21 admitted.

22 MR. WOODSMALL: You admitted it subject to
23 the weight of the evidence. You said he could cite to it,
24 your Honor, and I would offer this under similar
25 circumstances.

1 JUDGE DALE: That was a nice way of saying
2 I thought it had no probative weight.

3 MR. WOODSMALL: That's fine, but I would
4 offer this as well, your Honor.

5 MR. SWEARENGEN: For the record, I'm going
6 to object. He hasn't laid any kind of foundation at all
7 that this witness can sponsor this exhibit.

8 MR. MILLS: I thought I objected to
9 Exhibit 92, and I thought I was sustained.

10 JUDGE DALE: I said they could not ask
11 about it, they couldn't discuss it, but if it happened to
12 coincide, that I saw no reason why they couldn't say where
13 they got the language in their -- didn't I go on and on
14 about the preamble of the Constitution and --

15 MS. CARTER: Yeah, that would be the one.

16 MR. WOODSMALL: And you said that they
17 could brief that.

18 JUDGE DALE: I said they could mention it
19 in their Brief that it happened to coincide. If you want
20 to mention in your Brief something that happens to
21 coincide with this --

22 MR. WOODSMALL: I'll treat it the same way
23 that you've treated Exhibit No. 92, your Honor.

24 JUDGE DALE: Yes. I'll give it the same
25 level of probative value I did 92.

0830

1 MR. WOODSMALL: Thank you, your Honor.

2 That is Exhibit 125.

3 (EXHIBIT NO. 125 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. WOODSMALL:

6 Q. Mr. Gipson -- I'm sorry.

7 JUDGE DALE: So this is 17 CFR Parts 200
8 through 239. Is that --

9 MR. WOODSMALL: This is 17 CFR Section
10 229.303.

11 MR. SWEARENGEN: Once again, your Honor,
12 I'm going to object to cross-examining this witness about
13 what the law is.

14 MR. WOODSMALL: I'm done with that exhibit.

15 MR. SWEARENGEN: I object to its admission.

16 JUDGE DALE: It's not admitted, the same
17 way the other one isn't admitted.

18 BY MR. WOODSMALL:

19 Q. Mr. Gipson, do you know whether --
20 personally, do you know whether there is any provisions
21 providing for personal liability in the event that you
22 certify something that turns out to be inaccurate or
23 incomplete in a 10-K or 10-Q?

24 MR. SWEARENGEN: Objection, relevance.

25 JUDGE DALE: I'll sustain it.

0831

1 BY MR. WOODSMALL:

2 Q. Okay. Turning again to Document 121, the
3 10-K, are you familiar with the section of this document
4 entitled management's discussion and analysis of financial
5 condition?

6 A. I am.

7 Q. And can you tell me generally your
8 understanding of what is to be included in that section?

9 A. Again, as I've stated earlier, that the
10 report, you can call it that section, you can call it the
11 entire report, represents the financial condition, results
12 of operation in all material respects.

13 Q. Would you agree that in addition to
14 financial information, it also requires provision of any
15 material information regarding the operations of the
16 company?

17 A. I think that's -- I think that's what I
18 said.

19 Q. It's not just financial information; is
20 that correct?

21 A. It's results of operations.

22 Q. Okay. You've accepted the 10-Q, so I'll
23 skip ahead. We've been talking about the filing of
24 reports with the SEC. In addition to these
25 responsibilities, would you agree that one of your duties

0832

1 is keeping the board of directors informed as to the
2 operations of the company?

3 A. Absolutely. In a -- I don't know where
4 you're -- are you asking me with what level of detail
5 or --

6 Q. I'm just asking if you consider that one of
7 your responsibilities?

8 A. Absolutely.

9 Q. Okay. How do you go about fulfilling this
10 responsibility?

11 A. Gosh, in a number of ways. We have -- am I
12 finished with 121?

13 Q. You're finished with all four of those.

14 A. Now, what was the question?

15 Q. How do you go about fulfilling your
16 responsibility regarding keeping the board of directors
17 informed as to the operations of the company?

18 A. In a lot of different ways. We have a -- I
19 call them from time to time. Of course, we have board
20 meetings, committee meetings. Committee meetings will
21 delve into subject matter more specifically than sometimes
22 the board meetings. We try to focus the board meetings a
23 lot on policy and things of that nature, direction of the
24 organization.

25 I provide a monthly and quarterly report to

1 the board of directors that summarizes the results of
2 operations for the period, and also any general
3 information that I think may be of beneficial value to
4 them. I also include in that any -- not correspondence,
5 but any articles that I believe might be relevant for
6 their position as members of our board of directors.

7 Q. You mentioned the phrase, I believe you
8 said any information that may be beneficial to them?

9 A. Beneficial in their conduct as a board
10 member, yes.

11 JUDGE DALE: Excuse me, Mr. Woodsmall. Is
12 your microphone on?

13 MR. WOODSMALL: I'm sorry, your Honor.

14 BY MR. WOODSMALL:

15 Q. How do you go about -- what type of
16 standard do you use in determining what type of
17 information to give them? Is that just a subjective
18 standard or is there a more formal standard that you use?

19 A. There is not a formal standard. It is -- a
20 lot of times it's intuition. A lot of times it's past
21 actions, requests of theirs specifically. It's -- it
22 evolves over time.

23 Q. I see.

24 A. So it's not a -- we don't have a formula on
25 that one.

1 MR. WOODSMALL: Marking another exhibit,
2 your Honor.

3 (EXHIBIT NO. 126 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 JUDGE DALE: This will be 126.

6 MR. WOODSMALL: I believe it's 127. We
7 marked as 126 as -- I'm sorry. You're right.

8 JUDGE DALE: 125 was the CFR.

9 MR. WOODSMALL: Correct.

10 BY MR. WOODSMALL:

11 Q. Can you tell me what Exhibit No. 126 is?

12 A. I believe it's response to a DR.

13 Q. Can you tell me what the information is
14 that's provided in response to that DR?

15 A. This lists the dates on which the board
16 meetings were held between April 2005 and February 2006.

17 Q. And would you agree -- you say between
18 April 2005. Looking at the question, it says held since
19 March 1, 2005. Would you agree that it's between March 1,
20 2005 and February 2006?

21 A. The board meeting dates that are listed
22 here are between April and February. I presume
23 Mrs. Watson was responsive, that there were not any board
24 meetings held between March 1 and April 27.

25 Q. Okay. Thank you. Would you agree that the

0835

1 first board of directors meeting that was held following
2 the issuance of the Commission's Report and Order in
3 Empire's last case ER-2004-0570 was the April 27-28th
4 board meeting?

5 A. Yes.

6 MR. WOODSMALL: Your Honor, I'd offer
7 Exhibit No. 126.

8 JUDGE DALE: Is there any objection?

9 (No response.)

10 JUDGE DALE: Hearing none, then Exhibit 126
11 will be accepted into evidence.

12 (EXHIBIT NO. 126 WAS RECEIVED INTO
13 EVIDENCE.)

14 MR. WOODSMALL: Mark another exhibit, your
15 Honor, and at this point we're getting into highly
16 confidential information. I'd like to go in-camera.

17 (REPORTER'S NOTE: At this point an
18 in-camera session was held, which is contained in
19 Volume 15, pages 836 through 873 of the transcript.)

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1 MR. WOODSMALL: Mark another exhibit, your
2 Honor.

3 JUDGE DALE: This will be 134.

4 (EXHIBIT NO. 134 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. WOODSMALL:

7 Q. In your duties as CEO, do you have -- do
8 you make webcasts or earnings calls with the public and
9 analysts and such every quarter?

10 A. We offer an opportunity for analysts to
11 hear our story on a quarterly basis and at other intervals
12 when we believe there's been a significant development.

13 Q. And that's not limited solely to analysts;
14 is that correct?

15 A. No, it's not. It's limited to generally
16 shareholders.

17 Q. It's not posted on your website and
18 publicly available?

19 A. It is posted on the website, and generally
20 we limit the discussion with shareholders.

21 Q. So you're saying a member of the general
22 public couldn't call in and listen to that discussion?

23 A. They could call in and listen to the
24 discussion.

25 Q. Okay. You just wouldn't allow them to

1 engage in a question and answer?

2 A. We generally want to keep it -- keep the
3 questions to questions with buy and sell side equity
4 analysts and shareholders or those representing
5 shareholders.

6 Q. Do you recall such an earnings call
7 following the second quarter of 2005, your first quarter
8 under the IEC?

9 A. I recall we had one.

10 Q. Okay. Do you recall any discussion
11 regarding the performance under the IEC?

12 A. This would have been the results of the
13 second quarter 2005, which was our first full quarter
14 operating under the IEC, and we were over -- we were over
15 the top of the column.

16 Q. You recall discussion regarding the
17 performance under the IEC; is that correct?

18 A. I remember that I recall the discussion of
19 the performance over the IEC.

20 Q. Would you agree that that discussion, its
21 conference call is not transcribed by the company; is that
22 correct?

23 A. It is not. There's a service that takes
24 care of that for us.

25 Q. There is, but it's available for a period

1 of time following the call on a link from the Empire
2 website; is that correct?

3 A. I don't know that to be a fact.

4 Q. Okay. Looking at Exhibit 134, do you
5 recall the questions and answers reflected there?

6 A. Honestly, I don't.

7 Q. Do you have any reason to doubt the
8 information contained therein?

9 A. I have no reason to doubt it.

10 Q. Does it sound like information that you
11 provided to analysts at one time, do you recall that?

12 A. It looks like the kind of information that
13 we would provide to analysts. I'm not disputing that this
14 is the transcript, Mr. Woodsmall.

15 MR. WOODSMALL: Okay. Offer Exhibit 134,
16 your Honor.

17 THE WITNESS: Or at least a section of the
18 transcript.

19 MR. WOODSMALL: And subject to that, it is
20 only a portion of the transcript. I didn't take the time
21 to transcribe the entire conference call.

22 JUDGE DALE: Are there any objections?

23 (No response.)

24 JUDGE DALE: Hearing none, then Exhibit 134
25 will be admitted.

1 (EXHIBIT NO. 134 WAS RECEIVED INTO
2 EVIDENCE.)

3 MR. WOODSMALL: Mark another exhibit, your
4 Honor.

5 (EXHIBIT NO. 135 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 MR. WOODSMALL: And I would note here that
8 before we get too far down the road, this is a DR that
9 asked for copies of internal e-mails. There was a
10 reference to certain pages being highly confidential.
11 I've only attached one page. So this is not the entirety
12 of the response provided to me, but the page that is
13 provided was not marked as highly confidential. Is this
14 Exhibit 135, your Honor?

15 JUDGE DALE: Yes.

16 BY MR. WOODSMALL:

17 Q. Do you have a copy of Exhibit 135 in front
18 of you, Mr. Gipson?

19 A. I do.

20 Q. Can you tell me what that document is?

21 A. It would appear to be, as you represented,
22 a response to a DR.

23 MR. SWEARENGEN: Once again, your Honor,
24 I'd like to reserve the right to make sure this is the
25 entirety of the response.

1 MR. WOODSMALL: And I've already
2 represented it's not the entirety of the response. If he
3 wants to give the remainder of it, I have no objection to
4 that. I just -- do we need to mark it as highly
5 confidential if he's going to do that, because there are
6 going to be pages that are highly confidential.

7 THE WITNESS: Can I weigh in on that,
8 Judge?

9 MR. SWEARENGEN: Well, let's just wait and
10 see what I do, and if I bring something back that is HC,
11 we'll mark it at that time.

12 MR. MILLS: And with respect to all of
13 these possible later additions and supplements, when will
14 the other parties have the opportunity to see these?

15 JUDGE DALE: Before the hearing adjourns
16 and while you can still raise an objection.

17 MR. MILLS: And while I will still have
18 time to look at them, analyze them and determine whether
19 they're objectionable and whether there's additional cross
20 necessary based on them?

21 JUDGE DALE: I certainly hope so.

22 MR. MILLS: I do, too. Thank you.

23 MR. WOODSMALL: Your Honor, I'd offer the
24 portion of Exhibit 135 that's been provided.

25 JUDGE DALE: Is there any objection subject

0879

1 to the completeness?

2 (No response.)

3 JUDGE DALE: Hearing none, then 135 will be
4 admitted.

5 (EXHIBIT NO. 135 WAS RECEIVED INTO
6 EVIDENCE.)

7 JUDGE DALE: And I'm not going to mark it
8 as HC at this point.

9 MR. WOODSMALL: Do we need to go back
10 in-camera then? I'm only going to question over the one
11 page that's attached.

12 JUDGE DALE: And that one page is not
13 confidential.

14 MR. WOODSMALL: That's what it indicates,
15 you're correct.

16 MR. SWEARENGEN: That makes sense to me.

17 JUDGE DALE: Then I don't see that we need
18 to go in-camera.

19 BY MR. WOODSMALL:

20 Q. Can you look at the page that's provided
21 attached to Exhibit 135, Mr. Gipson?

22 A. I can.

23 Q. And can you tell me what that is?

24 A. It would appear to be a written or a
25 printed version of an exchange between a couple of our

0880

1 employees.

2 Q. And who are those employees?

3 A. Greg Knapp, the VP of finance and chief
4 financial officer, and Ms. Sherry McCormack. And I've got
5 to tell you I'm not -- I'm not -- I'm embarrassed to say I
6 don't know Sherry's title. She works in our planning and
7 regulatory group or regulatory planning group.

8 Q. Can you tell me what the nature of the
9 communication is in these e-mails?

10 MR. SWEARENGEN: Well, your Honor, I'm
11 going to object to that. It's an e-mail from other
12 people. He didn't generate it. I think it speaks for
13 itself.

14 JUDGE DALE: I believe it does.

15 BY MR. WOODSMALL:

16 Q. Okay. On the last e-mail dated
17 March 15, 2005, 10:21 a.m., do you have any reason to
18 doubt the projected refund of the IEC in Year 3 is
19 \$12.4 million?

20 A. And as I think I said in a previous
21 response, except this is a little different this time,
22 this is before we'd ever collected a single dollar under
23 the IEC. Certainly this, you know, my counsel says, it
24 speaks for itself, but it is on March 15th of 2005.

25 Q. As of the time that the Commission's Report

0881

1 and Order came out, Empire projected a refund obligation
2 of \$12.4 million following the termination of the IEC; is
3 that correct?

4 A. To take it on its face?

5 Q. Is that correct?

6 MR. SWEARENGEN: Well, your Honor, the
7 document speaks for itself.

8 JUDGE DALE: Yes.

9 MR. WOODSMALL: I asked him first if he had
10 any reason to doubt it.

11 BY MR. WOODSMALL:

12 Q. Do you have any reason to doubt
13 that at the end of year three, the projected refund was
14 \$12.4 million?

15 A. At March 15th, 2005, I had no reason to
16 doubt.

17 MR. WOODSMALL: Thank you, your Honor. 135
18 was accepted, your Honor.

19 JUDGE DALE: Yes, subject to the usual
20 reservations.

21 MR. SWEARENGEN: While we're having this
22 pause, could I ask a housekeeping matter?

23 JUDGE DALE: Absolutely.

24 MR. SWEARENGEN: Mr. Todd Tarter is also
25 listed as a witness on the fuel recovery method issue. I

1 think his testimony on that is very limited. I'm sure he
2 would like to be able to go home if no one has any
3 questions for him.

4 MR. MILLS: I have a few questions that I
5 can -- it was my intention to pose to Mr. Gipson first, if
6 they are -- and they may be too detailed for Mr. Gipson to
7 be able to answer thoroughly, and I had planned to pose
8 them to Mr. Tarter. I won't know whether or not I have to
9 pose those questions to Mr. Tarter. So at this point I do
10 have questions for Mr. Tarter.

11 JUDGE DALE: Once Mr. Gipson leaves,
12 perhaps Mr. Tarter can take the stand and have his
13 questions posed to him so that then he can go home. Would
14 that be acceptable to everyone?

15 MR. WOODSMALL: That's fine.

16 MR. MILLS: I don't have very many.

17 CHAIRMAN DAVIS: Judge, I had a few
18 questions that I'd like to ask Mr. Woodsmall before we go
19 on whenever we get done with Mr. Gipson.

20 JUDGE DALE: We're expecting that to be
21 around five of five, and -- but Mr. Woodsmall will be
22 leaving --

23 CHAIRMAN DAVIS: Well, it says 4:45 on my
24 clock right now, so --

25 JUDGE DALE: I think that concludes

0883

1 Mr. Gipson for the day.

2 CHAIRMAN DAVIS: We can invite Mr. Gipson
3 back.

4 JUDGE DALE: He'll be back.

5 MR. WOODSMALL: Do you know when we're
6 taking him back up again?

7 MR. SWEARENGEN: I won't know until I have
8 a chance to talk to him.

9 JUDGE DALE: Why don't we take a
10 five-minute break?

11 MR. SWEARENGEN: Mr. Tarter they tell me
12 can come back, too.

13 JUDGE DALE: Well, at this point if we can
14 take five minutes for you to talk to Mr. Gipson, find out
15 when he can be back, and then the Chairman has his
16 questions for Mr. Woodsmall.

17 CHAIRMAN DAVIS: We'll ask them tomorrow.
18 We will ask him tomorrow.

19 JUDGE DALE: It'll be a lovely start to the
20 day.

21 MR. WOODSMALL: So we're taking up this
22 issue tomorrow?

23 CHAIRMAN DAVIS: No. We're taking up you,
24 Mr. Woodsmall, tomorrow. I've just got a few quick
25 questions for you. I don't know about anything else the

1 Judge has going on.

2 MR. WOODSMALL: Okay. I'll be here.

3 JUDGE DALE: In light of how little ground
4 we've covered this afternoon -- I don't know where I put
5 my cheat sheet. Hold on.

6 MR. SWEARENGEN: Can Mr. Gipson step down
7 at this time?

8 JUDGE DALE: Yes. So how long do we expect
9 the unwinding and the off-system sales to take?

10 MR. WOODSMALL: I have no questions on
11 either of those issues, and I believe two of the
12 witnesses, OPC's witness and Praxair's witness has already
13 been completed.

14 MR. MILLS: And I don't have questions on
15 unwinding. I have only a very limited number on
16 off-system sales.

17 JUDGE DALE: So the only thing we have
18 tomorrow is Ms. Fischer on off-system sales.

19 MR. MITTEN: Mr. Keith also.

20 MR. MILLS: The questions I have are for
21 Mr. Keith rather than Ms. Fischer. And we still have a
22 number of witnesses remaining on this topic.

23 JUDGE DALE: Right. Well, I think that we
24 need to advise Mr. Keith and Ms. Fischer that they don't
25 need to be here promptly at 8:30. I would ask them to

1 show up no earlier than one o'clock based on how this has
2 gone today. Mr. Mills, is that --

3 MR. MILLS: Did I make a face? I apologize
4 if I did. I think we may get to them before one o'clock.
5 I don't know what kind of questions the other parties have
6 for, for example, Ms. Meisenheimer, but I would be
7 surprised if it took all morning to finish up the
8 remaining witnesses on this issue.

9 MS. CARTER: I'm sorry, Judge. Is there a
10 possibility we can wait for Mr. Swearengen to come back
11 in?

12 MR. SWEARENGEN: I'm here. Mr. Gipson says
13 that he can be here at 8:30 in the morning. We'll just
14 pick up with him at that time.

15 JUDGE DALE: If we can just pick up with
16 him where we left off, and then if you really think that
17 it won't take all morning to finish this, then --

18 MR. SWEARENGEN: Do you really need
19 Mr. Tarter? He has no clothes and no hotel room.

20 JUDGE DALE: I think Mr. Woodsmall has
21 extra space at his house.

22 MR. MILLS: Are we still on the record?
23 Honestly, I'm not sure that I do need Mr. Tarter, but I
24 think there's a few million dollars that's kind of hanging
25 out there I'd like to tie down.

1 MR. SWEARENGEN: What we can do is bring
2 him back some other time. He's planning to leave. He was
3 planning to go home. He's checked out of the hotel and
4 has no clean clothes.

5 JUDGE DALE: Well, is there --

6 MR. SWEARENGEN: He would come back. It
7 looks like he's going to have to come back in any event,
8 but it may not be necessary.

9 JUDGE DALE: Because you think Mr. Gipson
10 may be able to answer the questions, and if he can answer
11 the questions you won't need to ask them of
12 Mr. Tarter?

13 MR. MILLS: That's exactly right.

14 JUDGE DALE: Let's just go ahead then, tell
15 Mr. Tarter he can go home, and have Mr. Gipson come back.
16 And if Mr. Tarter needs to come back, we can accommodate
17 him -- there was the afternoon that we're recalling other
18 witnesses. We can always work him in either later in the
19 day tomorrow or on the following day.

20 MR. SWEARENGEN: He can come back on Friday
21 for sure.

22 JUDGE DALE: We'll arrange what we need to
23 arrange as it goes along.

24 MR. SWEARENGEN: Thank you.

25 JUDGE DALE: I think with that, is there

0887

1 any other housekeeping I need to address before we go off
2 the record?

3 MR. WOODSMALL: OPC's ROE witness we're
4 taking up Thursday; is that correct?

5 JUDGE DALE: Thursday afternoon, which is
6 when Mr. Oligschlaeger and I believe Mr. Murray needs to
7 come back as well.

8 MR. MILLS: Yes.

9 JUDGE DALE: Anything else?

10 (No response.)

11 JUDGE DALE: Then we are off the record.

12 WHEREUPON, the hearing of this case was
13 recessed until September 13, 2006.

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0888

1	I N D E X	
2	PURCHASED POWER EXPENSE LEVEL	
3	Opening Statement by Mr. Cooper	656
	Opening Statement by Mr. Frey	659
4	Opening Statement by Mr. Mills	661
5	OPC'S EVIDENCE:	
6	RALPH SMITH	
	Direct Examination by Mr. Mills	664
7	Cross-Examination by Mr. Mitten	666
	Questions by Commissioner Appling	678
8	Redirect Examination by Mr. Mills	679
9	EMPIRE'S EVIDENCE:	
10	TODD TARTER	
	Direct Examination by Mr. Cooper	686
11	Cross-Examination by Mr. Mills	688
	Questions by Commissioner Appling	700
12	Cross-Examination by Mr. Frey	701
	Redirect Examination by Mr. Cooper	731
13	TODD TARTER (In-Camera Session - Volume 15)	
14	Cross-Examination by Mr. Frey	720
	Redirect Examination by Mr. Cooper	726
15	RICHARD McCORD	
16	Direct Examination by Mr. Cooper	733
	Cross-Examination by Mr. Frey	735
17	RICHARD McCORD (In-Camera Session - Volume 15)	
18	Cross-Examination by Mr. Frey	736
19	STAFF'S EVIDENCE:	
20	JANIS FISCHER	
	Direct Examination by Mr. Frey	744
21	Cross-Examination by Mr. Cooper	751
	Redirect Examination by Mr. Frey	758
22	JANIS FISCHER (In-Camera Session - Volume 15)	
23	Cross-Examination by Mr. Cooper	747
24	KWANG Y. CHOE	
	Direct Examination by Mr. Frey	760
25		

0889

1 JAMES A. BUSCH
Direct Examination by Mr. Frey 762

2
PRAXAIR/EXPLORER'S EVIDENCE:

3
MAURICE BRUBAKER
4 Direct Examination by Mr. Woodsmall 767

5 FUEL RECOVERY MECHANISM
6 EMPIRE'S EVIDENCE:

7 W.L. GIPSON
Direct Examination by Mr. Swearengen 770
8 Cross-Examination by Mr. Woodsmall 773
9 W.L. GIPSON (In-Camera Session - Volume 15)
Cross-Examination by Mr. Woodsmall 837

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0890

1	EXHIBITS INDEX	
2		MARKED REC'D
3		
3	EXHIBIT NO. 5	
3	Direct Testimony of W.L. Gipson	772
4	EXHIBIT NO. 6	
5	Supplemental Direct Testimony of W.L. Gipson	772
6	EXHIBIT NO. 7	
7	Rebuttal Testimony of W.L. Gipson	772
8	EXHIBIT NO. 19NP/HC	
8	Supplemental Direct Testimony of Richard McCord	734
9	EXHIBIT NO. 37	
10	Direct Testimony of David W. Elliott	744
11	EXHIBIT NO. 38	
12	Supplemental Direct Testimony of David W. Elliott	744
13	EXHIBIT NO. 39HC/NP	
14	Direct Testimony of Janis Fischer	745
15	EXHIBIT NO. 40HC/NP	
15	Rebuttal Testimony of Janis Fischer	745
16	EXHIBIT NO. 41HC/NP	
17	Surrebuttal Testimony of Janis Fischer	745
18	EXHIBIT NO. 61	
18	Supplemental Direct Testimony of James A. Busch	763
19	EXHIBIT NO. 63	
20	Surrebuttal Testimony of James A. Busch	763
21	EXHIBIT NO. 66	
22	Supplemental Direct Testimony of Lena M. Mantle	766
23	EXHIBIT NO. 68	
24	Supplemental Direct Testimony of Henry E. Warren	766
25		

0891

1	EXHIBIT NO. 69		
2	Rebuttal Testimony of Kwang Y. Choe	761	
3	EXHIBIT NO. 71		
4	Supplemental Direct Testimony of		
5	Ryan Kind	766	
6	EXHIBIT NO. 81NP/HC		
7	Direct Testimony of Ralph Smith	666	
8	EXHIBIT NO. 82		
9	Rebuttal Testimony of Ralph Smith	666	
10	EXHIBIT NO. 83		
11	Surrebuttal Testimony of Ralph Smith	666	
12	EXHIBIT NO. 84		
13	Supplemental Direct Testimony of Russ		
14	Trippensee	766	
15	EXHIBIT NO. 85NP/HC		
16	Direct Testimony of Maurice Brubaker		
17	Revenue Requirement	769	
18	EXHIBIT NO. 87		
19	Rebuttal Testimony of Maurice Brubaker		
20	Rate Design, Fuel and Purchased Power	769	
21	EXHIBIT NO. 88NP/HC		
22	Surrebuttal/Cross Surrebuttal Testimony of		
23	Maurice Brubaker, Rate Design, Fuel and		
24	Purchased Power	769	
25	EXHIBIT NO. 110		
	Errata Sheet of Ralph C. Smith	665	666
	EXHIBIT NO. 111HC		
	On-System F&PP Summary	691	693
	EXHIBIT NO. 112		
	Interim Energy Charger Rider IEC	779	
	EXHIBIT NO. 113		
	Direct Testimony of Brad Beecher, 4/04	784	789
	EXHIBIT NO. 114		
	4/30/04 Letter to Dale Hardy Roberts		
	from David Gibson	786	789

0892

1	EXHIBIT NO. 115		
2	Direct Testimony of W.L. Gipson, 4/2004	789	791
3	EXHIBIT NO. 116		
4	Excerpt of 12/7/04 Hearing in		
5	Case No. ER-2004-0570	800	
6	EXHIBIT NO. 117		
7	Nonunanimous Stipulation & Agreement,		
8	Case No. ER-2004-0570	804	*
9	EXHIBIT NO. 118		
10	3/17/05 Letter to Dale Hardy Roberts		
11	from James Swaengen	810	813
12	EXHIBIT NO. 119		
13	Response to DR 276, Disclosure Controls		
14	and Procedures and Procedures for		
15	Certification of Periodic Reports	816	818
16	EXHIBIT NO. 120		
17	Response to DR 278, Sarbanes-Oxley		
18	Section 404 Summary of Compliance	820	821
19	EXHIBIT NO. 121		
20	Form 10-K, FY Ended 12/31/04	822	825
21	EXHIBIT NO. 122		
22	Response to DR 247, 10-Q, 3/31/05	822	825
23	EXHIBIT NO. 123		
24	Response to DR 248, 10-Q, 6/30/05	822	825
25	EXHIBIT NO. 124		
26	Response to DR 249, 10-Q, 9/30/05	822	825
27	EXHIBIT NO. 125		
28	CFR 229.303 with Index	830	
29	EXHIBIT NO. 126		
30	List of Board of Director Meetings	834	835
31	EXHIBIT NO. 127HC		
32	Minutes, April 27-28, 2005	836	**
33	EXHIBIT NO. 128HC		
34	Minutes, July 27-28, 2005	836	**
35			

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1	EXHIBIT NO. 129HC		
2	Presentation at July 27-28 Board Meeting	836	846
3	EXHIBIT NO. 130HC		
4	Presentation, July 2005, Greg Knapp	836	849
5	EXHIBIT NO. 131HC		
6	Presentation, July 2005, Bill Gipson	836	855
7	EXHIBIT NO. 132HC		
8	April 6, 2005 Presentation to Standard & Poor's	858	861
9	EXHIBIT NO. 133HC		
10	Financial Overview, Notes for Presentation to S&P and Moody's	864	866
11	EXHIBIT NO. 134		
12	Earnings Call July 25, 2005	874	877
13	EXHIBIT NO. 135		
14	Response to DR 270, E-Mails	877	879
15	*Administrative Notice Taken.		
16	**Offer of proof.		

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C E R T I F I C A T E

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STATE OF MISSOURI)

) ss.

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COUNTY OF COLE)

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I, Kellene K. Feddersen, Certified

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Shorthand Reporter with the firm of Midwest Litigation

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Services, and Notary Public within and for the State of

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Missouri, do hereby certify that I was personally present

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at the proceedings had in the above-entitled cause at the

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time and place set forth in the caption sheet thereof;

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that I then and there took down in Stenotype the

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proceedings had; and that the foregoing is a full, true

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and correct transcript of such Stenotype notes so made at

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such time and place.

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Given at my office in the City of

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Jefferson, County of Cole, State of Missouri.

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17

Kellene K. Feddersen, RPR, CSR, CCR

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Notary Public (County of Cole)

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My commission expires March 28, 2009.

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