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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Hearing
June 6, 2012
Jefferson City, Missouri
Volume 5

In the Matter of the Third)
Prudence Review of Costs)
Subject to the Commission-) File No. EO-2011-0390
Approved Fuel Adjustment)
Clause of KCP&L Greater)
Missouri Operations Company.)

HAROLD STEARLEY, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

TERRY M. JARRETT,
STEPHEN M. STOLL,
COMMISSIONERS.

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REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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

2 (WHEREUPON, the hearing began at 8:30 a.m.)

3 JUDGE STEARLEY: Good morning. It is
4 Wednesday, June 6, 2012, and the Commission is back on the
5 record with its evidentiary hearing in File
6 No. EO-2011-0390.

7 We left off yesterday with the
8 cross-examination of Dana Eaves, and we are picking up
9 with that again today. And Mr. Eaves, you are reminded
10 that you're still under oath.

11 THE WITNESS: Yes.

12 JUDGE STEARLEY: Mr. Fischer, you may
13 proceed.

14 MR. FISCHER: Thank you, Judge.

15 DANA EAVES testified as follows:

16 CROSS-EXAMINATION (CONTINUED) BY MR. FISCHER:

17 Q. Good morning, Mr. Eaves. Welcome back. I
18 hope you had a good evening. The good news is that I was
19 able to go through the cross, and I think we've
20 substantially reduced the amount of time we need to spend
21 together this morning. I do have a few more questions,
22 though, that I need to ask.

23 Prior to the time that you filed the Staff
24 Report in November of 2011, did you review any surveys of
25 the electric companies in the electric industry to

1 **determine which companies were using natural gas futures**
2 **contracts to cross hedge their electric price risk?**

3 A. Being familiar with the regulated electric
4 utilities in the state, I knew that no other utility in
5 the state was doing it the way GMO was doing it. I didn't
6 go outside and look at other utilities within the nation.

7 Q. So you didn't have a survey to look at at
8 that point? There wasn't something published somewhere
9 that included that information?

10 A. If there was, I didn't see anything. Just
11 from my general knowledge, I knew it wasn't a common
12 practice.

13 Q. Did you formally survey the other companies
14 in the state of Missouri?

15 A. No. I didn't think there was a need to
16 because I was familiar with their hedging practices.

17 Q. So is it correct to conclude, then, that at
18 the time you filed your Staff Report in November, you
19 didn't have information at least outside of Missouri about
20 what the companies were doing regarding the use of natural
21 gas futures contracts to hedge their electric price risk?

22 A. I knew it was a -- I knew the practice was
23 uncommon. It wasn't -- it's kind of a novel -- a novel
24 approach exactly the way GMO is doing it. I don't know of
25 any vertically integrated regulated utilities using the

1 practice that's been successful. I haven't found -- I
2 didn't find anything. I didn't conduct a formal survey to
3 answer your question, though.

4 Q. And you didn't attached any information to
5 your Staff Report that showed what the electric industry
6 practices were at the time with regard to the use of
7 natural gas futures to price -- to hedge their electric
8 price risk, right?

9 A. No, I did not.

10 Q. And you didn't attach any information to
11 your direct or rebuttal testimony that showed what the
12 electric industry practices were at the time with regard
13 to the use of natural gas futures to hedge their electric
14 price risk, right?

15 A. That's correct. I didn't attach anything.

16 Q. Well, after you filed your Staff Report
17 that recommended an \$18.8 million disallowance, did you
18 seek information from GMO regarding what the industry
19 practices were with regard to the use of natural gas
20 futures to hedge electric price risk?

21 A. Nothing directly that I can think of, other
22 than a series of data requests that I would have
23 submitted.

24 MR. FISCHER: Judge, I'd like to have a
25 data request exhibit marked here.

1 JUDGE STEARLEY: All right. I believe we
2 are up to GMO Exhibit No. 17.

3 (GMO EXHIBIT NO. 17 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)
5 BY MR. FISCHER:

6 Q. Mr. Eaves, I'd like to show you a data
7 request that you propounded to the company, question
8 No. 89. Do you recall that data request?

9 A. Yes, I've seen it.

10 Q. And I believe you issued that to the
11 company regarding a survey that the company had conducted;
12 is that correct?

13 A. Yes.

14 Q. I believe that response indicates at the
15 top that the date of the response is March 26th of 2012;
16 is that correct?

17 A. Yes.

18 Q. Prior to March 26, 2012, did you have any
19 surveys that showed you what the electric industry
20 practices were with regard to use of natural gas futures
21 to hedge electric price risk?

22 A. No.

23 MR. FISCHER: Judge, I'd move for the
24 admission of that exhibit, which includes the question,
25 DR question No. 89.

1 JUDGE STEARLEY: Any objections to the
2 admission of GMO Exhibit No. 17?

3 MR. THOMPSON: No objection.

4 JUDGE STEARLEY: It shall be admitted and
5 received into the record.

6 (GMO EXHIBIT NO. 17 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. FISCHER:

9 Q. Let's change gears just a little bit,
10 Mr. Eaves, and talk about correlation coefficients. The
11 last sentence on page 9 of the Staff Report, if you go to
12 that.

13 A. Could you help me with the page number
14 again?

15 Q. Yes, indeed. Page 9. If you go to the
16 very last sentence that carries over to page 10, it
17 indicates that the two markets, parentheses, NYMEX natural
18 gas and purchased power markets, parentheses closed, are
19 not directly linked sufficiently that a prudent person
20 would use options purchases in the natural gas futures
21 market to prudently offset the risk of price volatility in
22 the spot purchased power market.

23 I believe earlier in the testimony you
24 changed -- you changed one of the words options to
25 futures; is that right?

1 A. Yes.

2 Q. Okay. With that correction, though, that's
3 what that sentence would indicate; is that right?

4 A. Yes.

5 Q. Did you attach to the Staff Report any
6 studies that showed the level of correlation between
7 natural gas and purchased power markets?

8 A. No, not to the report.

9 Q. And in your rebuttal, or your direct
10 rebuttal and it's called, on page 11, would you go to that
11 page for me, at lines 14 through 16.

12 MR. THOMPSON: What page was that, Jim?

13 MR. FISCHER: Page 11.

14 MR. THOMPSON: Thank you.

15 BY MR. FISCHER:

16 Q. At lines 14 through 16 you state, Staff's
17 analysis shows there is not a sufficient correlation
18 between the natural gas prices of NYMEX natural gas
19 futures and on-peak spot market prices for electricity to
20 justify GMO's hedging program; is that right?

21 A. Yes.

22 Q. Now, are you suggesting there that there is
23 no correlation between natural gas prices and spot
24 purchased prices -- spot purchased power prices?

25 A. No.

1 Q. Is this your personal opinion, that the
2 natural gas and the purchased power markets are not
3 directly linked or positively correlated?

4 A. It's my professional opinion in this case
5 for the purpose that they were used that there's not --
6 they were not sufficiently correlated.

7 Q. Okay. And isn't that one of the very, very
8 fundamental points of disagreement between yourself and
9 the company's witnesses, Dr. Woo and Mr. Blunk, in this
10 case?

11 A. On this particular -- we narrow it down,
12 this particular aspect of my adjustment, yes.

13 Q. Okay. And I believe you told me in your
14 deposition that electric prices and natural gas prices
15 were not a lockstep and I believe you said will never
16 resolve what the correlation numbers should be in order to
17 base your hedging strategy on it. Do you recall that
18 discussion?

19 A. I recall the discussion.

20 Q. And you mentioned experts are going to
21 disagree, right?

22 A. I think if we have to pick -- I think if
23 the question was, what does the correlation coefficient
24 have to be in order to make GMO's or someone else's
25 hedging program like this successful, and I think what I

1 was trying to answer is that that number's going to be
2 very difficult to get to because the different experts are
3 going to disagree.

4 Q. Okay. In your rebuttal testimony on
5 page 15, you do include some analysis of correlation
6 coefficients related to the average SPP prices and
7 Panhandle natural gas prices; is that right?

8 A. Yes.

9 Q. Now, did you personally conduct this study
10 of the correlation between the natural gas markets and the
11 on-peak purchased power markets?

12 A. Yeah. I did the -- I obtained the data and
13 put together the chart.

14 Q. And you did that after you filed your Staff
15 Report which recommended an \$18.8 million refund, right?

16 A. Yes.

17 Q. Now, as I understand one of the answers to
18 a data request, this analysis wasn't done prior to the
19 time you submitted the Staff Report, but it was done
20 before you did your rebuttal testimony, correct?

21 A. Correct. I had seen a chart very similar
22 to this before I filed my report.

23 Q. That was contained in Dr. Woo's testimony?

24 A. No. This would have been before the
25 report. This would have been on SPP's website.

1 Q. Oh, okay. Yeah. You told me in the
2 deposition that you did look at the SPP website, I
3 believe, and you saw some charts and graphs related to
4 that topic?

5 A. Yes.

6 Q. Were any of those charts and graphs
7 included in the Staff Report?

8 A. No.

9 Q. Were any of them included in your direct
10 rebuttal testimony?

11 A. No.

12 Q. Were any of them included in your work
13 papers?

14 A. Might have referenced the website, but I
15 didn't include those work -- those charts.

16 Q. Okay. Is there any type of study attached
17 to the Staff Report that demonstrates that NYMEX natural
18 gas prices and purchased power prices are not directly
19 linked or positively related?

20 A. No.

21 Q. Now, correlation is a measure of
22 association between two variables; is that right?

23 A. Yes, in general.

24 Q. The value of a correlation coefficient can
25 vary from a minus one on one side to a plus one; is that

1 right?

2 A. Yes.

3 Q. A minus one indicates a perfect negative
4 correlation while a plus one indicates a perfect positive
5 correlation; is that true?

6 A. Yes.

7 Q. Now, when there's a positive correlation
8 between two variables, as the value of one of the
9 variables increases the value of the other variable
10 increases; is that right?

11 A. Sometimes.

12 Q. Well, if it's a positive correlation,
13 wouldn't it always be true? If they're perfectly
14 positive, they would always --

15 A. If they're perfectly positive, yes.

16 Q. Okay. But generally, positive correlations
17 mean, as a general statement, they go in the same
18 direction. Negatives go the other way. One goes up, the
19 other goes down, right?

20 A. They may not be in perfect sync.

21 Q. Okay.

22 A. I think Dr. Woo said in his deposition it's
23 like a dance. They move together, but they're not always
24 perfectly in sync. So I like that. That's a good way to
25 do that.

1 Q. And he described himself dancing with his
2 wife, I think.

3 A. I think so.

4 Q. Not always perfectly in sync but generally.

5 A. There's times they're not.

6 Q. Okay. On page 15 of your direct rebuttal
7 testimony, you state at lines 3 through 6, you were asked
8 the question anyway, did Staff determine the correlation
9 coefficient for the data it used to create the preceding
10 figure? And it's referring to your Figure 1 on that page.
11 Do you see that?

12 A. Yes.

13 Q. And I think you answer yes, for the period
14 February 2007 through October 2011, the data has a
15 correlation coefficient of .0 -- 0.8941; is that correct?

16 A. Correct.

17 Q. And then on pages 9 through 10 you state,
18 the Staff would call this relationship as having a strong
19 positive association for the data set in the analysis
20 period; is that right?

21 A. Correct.

22 MR. FISCHER: Judge, I'd like to have
23 another DR marked.

24 JUDGE STEARLEY: We are at Exhibit No. 18
25 for GMO.

1 (GMO EXHIBIT NO. 18 WAS MARKED FOR
2 IDENTIFICATION.)
3 BY MR. FISCHER:

4 Q. Mr. Eaves, does this appear to be a DR that
5 you requested from the company? It was DR No. 118. I'm
6 sorry. It was a data request we asked of you, I believe.

7 A. That's correct.

8 Q. Okay. I'd like to ask you to focus on the
9 C part of the question here where we asked that you state
10 the minimum level that a correlation coefficient would
11 have to be for Mr. Eaves to conclude that the correlation
12 coefficient has a, quote, strong positive association. Do
13 you see that?

14 A. Yes.

15 Q. And then if we go down to your answer in
16 the C part, I believe you state, Mr. Eaves provides the
17 following reference: Quote, as a rule of thumb, a strong
18 correlation or relationship has an R value range of
19 between 0.85 to 1 or negative 0.85 to negative 1; is that
20 right?

21 A. Yes.

22 Q. So is it correct to conclude that you
23 believe that there is a strong positive correlation
24 between the SPP electric prices and the NYMEX natural gas
25 prices that you analyzed on page 15? Isn't that what you

1 said in your testimony?

2 A. Yes, and that's what the data shows.

3 Q. Okay. Now the R squared coefficient for
4 the period you reviewed was between .85 and 1; is that
5 correct?

6 A. The R value was.

7 Q. Okay. The R value. The analysis period of
8 February 2007 to October 2011, that's longer than the
9 audit period that was actually involved in this case,
10 which I believe was June 1st of 2009 through November 30,
11 2010; is that right?

12 A. Yes.

13 Q. And I believe you told me that, in the
14 deposition, that you didn't do a correlation analysis for
15 the FAC period itself; is that right?

16 A. That's correct.

17 Q. Let's look back on page 15 of your direct
18 testimony again at that Figure 1 that you have. It's got
19 the chart. I handed it out, I think, in the opening
20 statement. Do you remember that?

21 A. Yes.

22 Q. Okay. If we just eyeball the data for the
23 FAC audit period of June 1st through -- 2009 and going
24 through November 30, 2010, wouldn't you agree that the red
25 line and the blue line move in the same directions and are

1 nearly on top of each other?

2 A. They do have similar movement, yes.

3 Q. I believe in your deposition you indicated,
4 they appear to be, yes. You'd still agree with that?

5 A. Yes.

6 Q. Given how those lines move from June 1st,
7 2009 through November 30, 2010, wouldn't you expect the
8 R value, the correlation coefficient to actually be higher
9 than the .8941 that covers that whole period when there's
10 more variation in other parts of the time period?

11 A. I don't know if it's higher or lower. I
12 didn't do the calculation. But it would be within that
13 range, I would think.

14 Q. Okay. Well, is the .85 the minimum level
15 of correlation coefficient that you believe would indicate
16 that the data are strongly -- or having a strong positive
17 association?

18 A. Could you repeat your question?

19 Q. Certainly.

20 A. I kind of lost it there.

21 Q. Is the .85 the minimum level of correlation
22 coefficient that you believe would indicate that the data
23 are having a strong positive association?

24 A. Yes.

25 Q. What is the minimum level of correlation

1 **coefficient that you believe would indicate that data are**
2 **highly correlated?**

3 A. I think as -- as I stated in response to
4 this data request, as a rule of thumb, the .85 is probably
5 a good range. Some of the things to think about is not
6 every commodity, not every item that you're trying to draw
7 a correlation to is the same. So some things that show
8 .85 you might -- you might want to have a little higher
9 correlation to it to get a better relationship.

10 But those things aside, what we're talking
11 about here has -- the relationship between these two
12 commodities have over a long period of time tend to have a
13 high level of correlation.

14 **Q. So you're saying that a .85 is a minimum**
15 **level from your perspective to define it as being highly**
16 **correlated?**

17 A. If I had to pick a number, 85 sounds --
18 .85 sounds like a good number.

19 **Q. Okay.**

20 A. I mean, again, I come back to my original
21 statement and we're -- it's difficult to say this is the
22 number, because that number is -- it's subjective, and
23 sometimes you have to use professional judgment.

24 **Q. And that's what you've applied in this**
25 **case, right?**

1 A. I've tried.

2 Q. I'd like to refer you to your deposition on
3 page 102, and I asked you, could you prudently use that
4 cross hedging to effectively cross hedge those two
5 products? Do you see that?

6 A. Just a moment.

7 Q. Certainly.

8 A. Do you have a line number?

9 Q. Yeah. I'm going to ask you about lines 8
10 through 11 where you answered. You said there, I think
11 with the dollars at risk here, with what we're talking
12 about, the correlation should almost be perfect all the
13 time, and that's what I would be comfortable with. Do you
14 recall that answer?

15 A. Yes.

16 Q. Now, having read the testimony in this
17 case, do you still believe that the correlation should be
18 almost perfect all of the time before it would be prudent
19 to use natural gas futures contracts to hedge the price of
20 spot purchased power?

21 A. Yes, because the correlation doesn't tell
22 the entire story. Correlation is not causation.

23 Q. Having read the testimony of Mr. Blunk and
24 Mr. Bresette and now Dr. Woo, do you understand that the
25 industry considers hedges to be highly effective even

1 **though they don't have a perfect correlation?**

2 A. Yes, and I think that's the reason we're
3 here today.

4 Q. Because you disagree with the industry on
5 that, right?

6 A. Not that I disagree with the industry.
7 It's I disagree with the application of the methodology
8 that GMO has used in order to cross hedge. They're not
9 making an investment here.

10 Q. I'm asking, do you disagree with the
11 accounting profession and the electric industry profession
12 that finds that if you have a correlation of .80 or above,
13 that that means you can effectively hedge natural gas and
14 electricity prices?

15 A. Yes, I'm going to have to say I do in this
16 case because it doesn't -- it doesn't fairly represent
17 what's occurred --

18 Q. And that's --

19 A. -- in application of this.

20 Q. And that's because you feel like, given the
21 dollars at stake here, the correlation should be almost
22 perfect all of the time, right?

23 A. For the program that GMO has, yes.

24 Q. Mr. Eaves, are you generally familiar with
25 the Statement of Accounting Standard 133, which is

1 accounting for derivative financial instruments and
2 hedging activities?

3 A. Yes.

4 Q. Prior to the time that the company filed
5 its testimony in this case, had read FASB 133?

6 A. I had.

7 Q. Prior to the time you'd filed the Staff
8 Report, do you recall if you had looked at FAS 133?

9 A. Yes.

10 Q. In your deposition you testified, it had
11 been a while since I looked at it. Was it so long ago
12 that you couldn't tell us when you looked at it prior to
13 filing the Staff Report?

14 A. Yeah, that would be correct. I don't know
15 when I look at it. I know I've reviewed it on different
16 occasions.

17 Q. Would it have been within the time that you
18 actually initiated the Staff audit?

19 A. I don't think I looked at 133 prior in
20 immediate period before I filed the report. 133's a
21 financial -- 133 really talks about the financial side of
22 hedging, and that's not what I'm reviewing here.

23 Q. Well, it addresses how the accounting
24 profession is to review the effectiveness of hedges for
25 accounting purposes, doesn't it?

1 A. Yes, but not in a regulated utility, it
2 doesn't apply or may not apply. Doesn't apply in this
3 case.

4 Q. So you're not -- you're saying that the
5 regulated accounting is contrary to the Generally Accepted
6 Accounting Principles on that point?

7 A. Yes.

8 Q. Based on your personal opinion?

9 A. Based on my professional opinion and how
10 regulated utilities book their costs to record their
11 costs.

12 MR. FISCHER: I'd like to have another
13 exhibit marked, Judge.

14 JUDGE STEARLEY: Certainly. We are up to
15 GMO Exhibit No. 19.

16 (GMO EXHIBIT NO. 19 WAS MARKED FOR
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. FISCHER:

19 Q. Mr. Eaves, I'd like to show you an exhibit
20 that we used in your deposition, and I asked you in the
21 deposition a question, whether you agreed with the
22 statement that is at the bottom of page 3 of 9 on the
23 first column at the very bottom. I'd like to ask you
24 whether you agree or disagree with that statement. This
25 is a -- is this a CME Group report that we talked about in

1 the deposition?

2 A. Yes.

3 Q. I'd like for you to look at that last
4 paragraph on page 3 of 9 where it says, application of a
5 correlation analysis for the purpose of an existing
6 ex ante effectiveness of the hedge requires that
7 derivatives and the hedged item exhibit a correlation
8 coefficient of at least 0.90, and then there's a
9 parentheses, or an R squared greater than or equal to .080
10 with respect to their price fluctuations. Do you see
11 that?

12 A. Yes.

13 Q. Do you agree with that?

14 A. I agree that that's what it says in this
15 document.

16 Q. Do you agree, though, that for purposes of
17 the accounting profession, that that's the test they use?

18 A. I don't know that I can speak for the
19 accounting profession.

20 Q. Okay. Then the next sentence is, this
21 criterion was prescribed informally but publicly by the
22 staff of the Securities and Exchange Commission. Do you
23 have any knowledge about that?

24 A. No.

25 Q. You didn't investigate what the Securities

1 and Exchange Commission staff standard is for determining
2 whether derivatives in hedges are effective or not?

3 A. No.

4 Q. And then there's an example. It says, for
5 example, or e.g., if there's no liquid futures contracts
6 based on jet fuel, if there's a correlation between jet
7 fuel and heating oil exceeds the threshold, the evidence
8 validates hedge effectiveness. Hedge effectiveness in
9 this context of futures contracts is most commonly
10 demonstrated via the correlation methodology. Do you see
11 that?

12 A. Yes.

13 Q. Do you agree that hedge effectiveness in
14 the context of futures contracts is most commonly
15 demonstrated via the correlation methodology?

16 A. Yes.

17 Q. When I asked you a question in the
18 deposition about whether you agreed with this report that
19 a correlation coefficient with an R squared equal to or
20 greater than 0.80 would be necessary to establish an
21 effective cross hedge, I believe you indicated to me that
22 you didn't know at that point?

23 A. I don't know was probably a pretty good
24 answer on this, because this -- this is the -- this is my
25 understanding of the foundation of the company's reason

1 why they thought they could do this.

2 Q. That's okay. I'll have your counsel ask
3 you about that, but I just like to -- you didn't know at
4 the time, and that's still a good answer from your
5 perspective?

6 A. Yes, and I don't know is a good answer on
7 this.

8 Q. When you say you don't know, are you saying
9 that you don't know what the accounting profession
10 considers the standard for effective cross hedges?

11 A. No. I'm thinking about the application of
12 it.

13 Q. Okay. Do you understand that the
14 accounting profession includes a rule of thumb, if you
15 want to call it that --

16 A. I do.

17 Q. -- of .80 or greater to determine that a
18 hedge is effective?

19 A. For an R squared value, yes. That's what
20 it says here.

21 Q. And you're not disagreeing with that?

22 A. No.

23 Q. But you still hold the opinion that, with
24 the dollars at risk here, that the correlation coefficient
25 should be almost perfect all the time and that's what

1 you're comfortable with?

2 A. Yes.

3 Q. Now, has the Commission, to your knowledge,
4 ever made a finding that the correlation coefficient
5 should be almost perfect all of the time before it would
6 be prudent to cross hedge electricity prices with natural
7 gas futures contracts?

8 A. I don't know.

9 Q. Okay. Have you researched that?

10 A. No.

11 Q. Have you ever seen an article or a textbook
12 or a PSC opinion in Missouri or anywhere else in the
13 country that found that the correlation coefficient should
14 be almost perfect all of the time before it would be
15 prudent to cross hedge electricity prices with natural gas
16 futures contracts?

17 A. No.

18 Q. I believe you testified in your deposition
19 that you only discussed natural gas hedging with
20 Mr. Sommerer of the Staff and no one else; is that right?

21 A. I don't recall discussing it with anyone
22 else.

23 Q. Did Mr. Sommerer express a view that the
24 correlation coefficient should be almost perfect all of
25 the time before it would be prudent to cross hedge

1 electricity prices with natural gas futures contracts?

2 A. I don't believe we discussed correlation
3 coefficient.

4 Q. Okay. So is it safe to conclude, then,
5 that this opinion that you're giving is your opinion?

6 A. Yes.

7 Q. That report indicated that they could cross
8 hedge jet fuel and heating oil if the data was correlated
9 to at the .80 R squared threshold level. Do you have a
10 reason to disagree that that's possible?

11 A. You can certainly do it.

12 Q. The report goes on to state, hedge
13 effectiveness in the context of futures contracts -- I
14 believe you already answered this -- is the most commonly
15 demonstrated method of looking at correlation
16 methodologies, right?

17 A. Yes.

18 Q. Do you believe the Commission should review
19 the effectiveness of GMO's hedges in this case?

20 A. Repeat the question one more time.

21 Q. Do you believe that it's important for the
22 Commission to review the effectiveness of the hedges that
23 the company used in this case?

24 A. I'm not sure if I'm clear on your question.

25 I know it's a simple question, but I'm not clear. Are you

1 asking me should the Commissioners do the calculation?

2 Q. No, I'm not really asking them to do that.

3 I'm asking -- asking you whether, in your opinion, this is
4 an issue they should be concerned about, whether those
5 hedges are considered highly effective or not?

6 A. Yes, in a clear understanding of what GMO
7 hedging practices are in this area.

8 Q. Do you think they should use your personal
9 standard or do you think they should use the standard that
10 is applied by the accounting profession, the electric
11 industry and the SEC staff?

12 A. I'm not going to speak for what the
13 Commission should or shouldn't do. They can weigh what
14 they want. I think they need to look at the outcome and
15 see exactly how this program is put together.

16 Q. That's a fair answer, I think. Now, would
17 you agree that the futures hedge that the company buys is
18 established by the market and not the company? I mean,
19 whenever they go out and make a decision to hedge, they
20 have to buy it at the market. They don't decide, well,
21 I'd like to buy it a lower level, right?

22 A. That's correct. Just like a stock, if I
23 want to buy Facebook today, I would go out and buy me a
24 share of Facebook at whatever the market price was,
25 whatever my broker could buy it for.

1 Q. Probably lower than it was whenever they
2 first came on the market.

3 A. I've heard that.

4 Q. I've heard that, too.

5 Would you agree that the market price is
6 established by buyers and sellers and their willingness to
7 transact?

8 A. Yes.

9 Q. Would you agree that the -- that the drop
10 in price was not expected by the market whenever Mr. Blunk
11 decided to -- when I'm talking about the drop in price of
12 electric and natural gas markets, that that really wasn't
13 expected, it wasn't reflected in the futures price when he
14 went out to buy futures contracts? Otherwise --

15 A. It should have been. I mean, some level --
16 some level of decrease in price would be a reflection of
17 buyers' and sellers' attitudes during that period.

18 Q. Yeah. And that's reflected in the futures
19 price that he had to pay to get that hedge, right?

20 A. That's correct.

21 Q. Do you know what the market price is
22 expected to be for natural gas one, two or three years out
23 from now?

24 A. Do I personally know?

25 Q. Yeah.

1 A. Or does the market know?

2 Q. Well, I'm asking you right now if you would
3 happen to know?

4 A. I haven't looked at it.

5 Q. If I told you that the market price in July
6 of 2013 is expected to be \$3.40, but the current price
7 today is \$2.40, would that surprise you in any way?

8 A. No.

9 Q. Okay. Well, assuming that that's the case,
10 what should a reasonable person in Mr. Blunk's shoes do?
11 Should he hedge or should he not hedge?

12 A. I think you have to look at why are you
13 hedging, what are you trying to do? Are you trying to
14 make money or are you trying to mitigate risk?

15 Q. Let's assume he's trying to mitigate risk
16 because he can't make any money in this transaction.

17 A. That's correct. So he's not an investor.
18 He's trying to mitigate the risk of future energy prices,
19 not the risk of future -- future natural gas prices, is my
20 understanding. That's what he's trying to do. That's
21 where the risk is at. What can the company buy the energy
22 price -- what can the -- what can the company buy on the
23 spot market and what price will that be in three years?

24 Q. But if we're just -- if we're talking about
25 a dollar difference between the current spot market and

1 **the expected market a year from now or two years from now,**
2 **should the company prudently hedge at this point?**

3 A. I really don't feel that the purchased
4 power portion of their hedging program, that it's --
5 there's any value there to do it. All it appears to be
6 doing is adding cost to an already substantial amount of
7 purchased power that they have to buy. It hasn't offset
8 cost because they haven't locked in an energy price.

9 And, you know, my analysis, my very simple
10 analysis shows that sometimes the markets are correlated,
11 sometimes they're not correlated. What do you do when the
12 markets aren't correlated? I don't think the company's
13 effectively answered that. All I can do is review, you
14 know, what they should have done. And in my mind, with
15 just the simple analysis I've provided, showed that it
16 wasn't going to have a dramatic impact on energy price
17 that they had to buy.

18 Q. So you're saying, are you not, that there's
19 not really any benefit to trying to reduce the volatility
20 of price spikes for the customer?

21 A. There is, but not in the approach that GMO
22 has done.

23 Q. And that's --

24 A. That's the problem.

25 Q. And that's because the correlation is not

1 **perfect all of the time?**

2 A. It's not that the correlation isn't perfect
3 all the time. What happens is that there's another piece.
4 There's not -- they're not -- okay. There's two pieces to
5 their hedging program. They hedge NYMEX futures
6 contracts. They go out and they buy NYMEX futures
7 contracts at a price, and that price is going to be
8 different.

9 And they buy it for two different reasons.
10 One is to offset their purchased power needs. The other
11 is to physically take the gas, or if they don't physically
12 take the gas, they swap the gas and they get the gas and
13 they burn it in their generators.

14 That gas that they get and they burn in
15 their generators when it comes out of the generator has a
16 price, whatever that price would be based on the
17 generator. That's a hedge. That's what all the utilities
18 do or the majority of the utilities do. It's a -- it's a
19 common practice. It seems to reduce volatility. It's a
20 good thing. We've encouraged them to do it.

21 **Q. Prior to this case, Mr. Eaves, had you ever**
22 **suggested that using natural gas futures contracts to**
23 **cross hedge electricity prices was imprudent?**

24 A. To be honest with you, I didn't know anyone
25 was doing it in the state.

1 Q. And you hadn't investigated it either; is
2 that right?

3 A. I had no reason to investigate it. I
4 didn't know they were doing it.

5 Q. But you made a disallowance of
6 \$18.8 million before you investigated that?

7 A. No. No. Let me back up. When I said when
8 I didn't investigate it, I understood what they were doing
9 at the time I filed my report. I thought you were saying
10 well in advance of me filing my report, before the
11 prudency case came up, was I aware that there was any
12 regulated utility within the state using this practice.
13 My answer would be no. And I think the majority of the
14 Staff, if not all of the Staff, didn't know this was
15 occurring, and especially at this level.

16 Q. Now, this is the third prudence review of
17 GMO's FAC mechanism; is that right?

18 A. Yes.

19 Q. In the first two prudence reviews of the
20 company's FAC, did -- you didn't allege or the Staff
21 didn't allege that it was imprudent to use natural gas
22 futures to hedge electric price risk; is that right?

23 A. They did not. I was not involved in those
24 cases.

25 Q. And I believe the record already reflects

1 that in those first two FAC prudence reviews, the Staff
2 did not allege that there was any imprudence in those
3 periods; is that right?

4 A. I believe that's correct.

5 Q. Staff did not assert that the fuel costs
6 and the purchased power costs or the hedging costs were
7 imprudent in those previous prudence reviews; is that
8 right?

9 A. Yes, but I don't know what level of
10 understanding the auditors had of what was going on.

11 Q. Is it correct to conclude that Staff had no
12 reason at least to believe in those cases that fuel costs
13 and purchased power costs and hedging costs were
14 unreasonable or excessive?

15 A. Can you repeat your question one more time?

16 Q. Would it be correct to conclude that Staff
17 had no reason to believe that the fuel costs or purchased
18 power costs or hedging costs were unreasonable or
19 excessive in those cases?

20 A. Yes. I'm just not sure what analysis they
21 performed, what their level of understanding was.

22 Q. Okay. That's fair. But they didn't find
23 anything unreasonable based on whatever level of
24 investigation they did, right?

25 A. They didn't find it, and I don't know if

1 they looked?

2 MR. FISCHER: Okay. Judge, I'd like to
3 perhaps mark this exhibit. It's already in the record and
4 I've already referred to it in my opening statement, but
5 perhaps it would be good to mark it at this point.

6 JUDGE STEARLEY: That will be GMO Exhibit
7 No. 20.

8 (GMO EXHIBIT NO. 20 WAS MARKED FOR
9 IDENTIFICATION.)

10 BY MR. FISCHER:

11 Q. Mr. Eaves, have you had a chance to look at
12 this chart again, this graph again?

13 A. Yes.

14 Q. This shows the graph of the total variable
15 fuel and purchased power costs which include the hedges
16 for the review period in this case. Is that your
17 understanding, that black box has those three graphs in
18 it --

19 A. Yes.

20 Q. -- for November of '09, May '10 and
21 November of '10; is that right?

22 A. Yes. That's what the chart shows.

23 Q. It shows the total variable fuel and
24 purchased power costs for these previous periods of
25 November '07, May of '08, November of '08 and May '09; is

1 that correct?

2 A. Yes.

3 Q. Would you agree with me that the total
4 variable fuel and purchased power costs were declining
5 from November '09 in the review period to May of 2010 in
6 this graph?

7 A. That's what the graph shows.

8 Q. Would you also agree with me that the graph
9 indicates that the total variable fuel and purchased power
10 costs were at a lower level in May of 2010 and November of
11 2010 than the levels in previous periods of November '07
12 through May of '09; is that right?

13 A. That's what the graph shows.

14 Q. Would it be correct to conclude, then, that
15 Staff found that fuel and purchased power costs in
16 previous review periods were not unreasonable even though
17 they were higher than the fuel and purchased power costs
18 during the review period in this case?

19 A. Just because the variable fuel costs were
20 higher in different periods doesn't mean that the costs
21 contained within the black circle are prudent.

22 Q. That's not what I'm asking you. I'm just
23 asking you, would it be correct to conclude that Staff
24 found that the fuel and purchased power costs in previous
25 review periods were not unreasonable? Would you agree

1 with that?

2 A. Staff didn't recommend any adjustment or
3 propose any adjustment based on that.

4 Q. And that's true even though they were
5 higher than the fuel and purchased power costs during the
6 review period in this case; is that true?

7 A. I think what this chart illustrates is that
8 if you have higher -- well --

9 Q. Is that true?

10 A. I'm not sure what the chart illustrates. I
11 agree with you. They appear to be higher in prior
12 periods.

13 Q. And that's what the Commission ultimately
14 needs to look at is whether these prices paid by consumers
15 are reasonable or not, right?

16 A. Yeah.

17 MR. FISCHER: Okay. I would move for the
18 admission of the exhibits I've talked about today, Judge.
19 And, Mr. Eaves, you've been very patient, and I have no
20 more questions. Thank you.

21 THE WITNESS: Thank you, Mr. Fischer.

22 JUDGE STEARLEY: Any objection?

23 MR. THOMPSON: No objection.

24 MR. CONRAD: Could I ask one question about
25 GMO 20?

1 JUDGE STEARLEY: Certainly.

2 MR. CONRAD: Counselor, you indicated that
3 that was in the record somewhere already?

4 MR. FISCHER: Yes, sir.

5 MR. CONRAD: Could you identify?

6 MR. FISCHER: It's in either the direct or
7 the surrebuttal of Mr. Blunk.

8 MR. CONRAD: And the legend on it that
9 starts out lower rates, that's --

10 MR. FISCHER: That is a legend -- I have to
11 correct that -- that was included in the opening
12 statement. The actual graph was part of the record.

13 JUDGE STEARLEY: So what was in the record
14 was just the --

15 MR. FISCHER: Yes. Mr. Conrad, you're
16 right. The table itself but not my legend. I took that
17 just off the slide. So we can strike that if you'd like,
18 Judge, since that's not evidence. That's my statement in
19 opening statement.

20 MR. CONRAD: I was going to say, that
21 looked kind of like argument if the other part of it was
22 in the record. Judge, to that extent, I guess I'd object,
23 but counsel's indicated he can strike that.

24 JUDGE STEARLEY: Mr. Fischer, if you're
25 going to strike that, I guess there's nothing for me to

1 rule on then.

2 MR. FISCHER: Yeah. That's fine. I'll
3 amend it to that extent on the record. Thank you, Judge.
4 I appreciate it.

5 JUDGE STEARLEY: And, Mr. Conrad, I believe
6 you indicated yesterday on the phone you did not have any
7 cross for this witness?

8 MR. CONRAD: I do not. Thank you.

9 JUDGE STEARLEY: Commissioner Jarrett, do
10 you have any questions?

11 COMMISSIONER JARRETT: I don't have any
12 questions. Thanks, Mr. Eaves.

13 JUDGE STEARLEY: Then we will be proceeding
14 to redirect.

15 MR. THOMPSON: Thank you, Judge. If I
16 could have a moment to collect myself.

17 JUDGE STEARLEY: By all means.

18 MR. CONRAD: Judge, while counsel is
19 working through his notes there, I just want to take the
20 opportunity to thank you for the courtesy and the
21 extensions of privilege that you granted yesterday to
22 permit me to participate by phone.

23 JUDGE STEARLEY: That's not a problem at
24 all, Mr. Conrad. I'm sorry that it wasn't conveyed to me
25 earlier. We would have got you in here earlier.

1 You may proceed.

2 MR. THOMPSON: Thank you, Judge.

3 REDIRECT EXAMINATION BY MR. THOMPSON:

4 Q. Let me start with this before I forget it.

5 I'm looking at page 15 of your direct rebuttal testimony

6 where you have that Figure 1 at the top.

7 A. Yes, I'm there.

8 Q. And I have in my hand here GMO's

9 Exhibit 19, which is the CME Group report. Do you recall
10 that?

11 A. Yes.

12 Q. I'm on page 3 of 9 where you were asked
13 about the paragraph at the bottom of column 1 and the top
14 of column 2. Okay. Take a look, if you would, on page 15
15 of your direct rebuttal testimony, and I am looking at
16 lines 5 and 6. Do you see that?

17 A. Yes.

18 Q. And am I reading that correctly, you say
19 that for the period of February 2007 through October of
20 2011, the data has a correlation coefficient of 0.8941; is
21 that right?

22 A. Yes.

23 Q. Okay. Now, when we look at GMO's

24 Exhibit 19, at that paragraph at the bottom of column 1,

25 it says, does it not, that application of a correlation

1 analysis for the purpose of establishing ex ante
2 effectiveness of the hedge requires that the derivatives
3 and the hedged item exhibit a correlation coefficient of
4 at least 0.90; is that right?

5 A. Yes.

6 Q. Well, would you agree with me that 0.8941
7 is less than 0.90?

8 A. Yes.

9 Q. So applying the rule that Mr. Fischer
10 pointed you to, would you agree with me that, in fact,
11 there's not adequate correlation between natural gas
12 futures and purchased power prices during the period
13 depicted in your chart?

14 A. Just looking at the numbers, strictly
15 looking at the numbers, that's what it shows.

16 Q. So even using the support that GMO relies
17 on, this hedge is not effective; isn't that what that
18 tells you?

19 A. Yes.

20 Q. Okay. Now, you were asked some questions.
21 Now I'm looking at GMO 20, right? We're all familiar with
22 GMO 20.

23 A. Yes.

24 Q. We've struck the legend at the top. The
25 rest of it's still there. And you were asked the question

1 whether or not Staff must have concluded that higher
2 prices in past periods were okay because they made no
3 recommended disallowances in the first and second prudence
4 reviews. Do you recall that?

5 A. Yes.

6 Q. Okay. Is it possible, Mr. Eaves, that
7 excessive could be a cumulative thing?

8 A. Yes.

9 Q. In other words, could it be that Staff
10 looked at this hedging program in the first prudence
11 review and looked at this prudence review -- this hedging
12 program in the second prudence review and continued to be
13 concerned, and only in the third prudence review did Staff
14 reach the trigger point of recommending a disallowance?
15 Is that possible?

16 A. That's possible.

17 Q. Okay. In fact, you testified, I believe,
18 that it was the magnitude of the hedging costs that caught
19 your attention; isn't that correct?

20 A. Yes. And I can clarify what I mean by
21 that.

22 Q. Okay. Please do.

23 A. Is during the period where I'm putting
24 together this report that was filed, I was the lead
25 auditor. In that capacity, there's other subject matter

1 experts that have various areas within the FAC review. It
2 is my charge to make sure that the report is assembled and
3 put together timely.

4 Part of my direct responsibility was to
5 analyze fuel costs, and I like to go in and go back to the
6 general ledger, go back to some of the other reports
7 that are supplied by the company to determine what the
8 various components of fuel costs are, coal, natural gas,
9 oil, transportation, make sure that there's no costs that
10 are included in the FAC that shouldn't be there.

11 During my analysis, I noticed that hedging
12 costs in the amount of, I believe, \$22 million appeared in
13 an Account 547, which is, my understanding is the fuel
14 account specifically related to gas. I also calculated
15 the gas price of what they actually purchased in gas, and
16 that was approximately \$20 million. I noticed that they
17 had \$22 million in losses in natural gas hedging and then
18 had \$20 million in natural purchases.

19 It looked unusual to me, and that's when I
20 tried to ferret out what was going on. I had a meeting, I
21 asked for a meeting with the company. We discussed it,
22 and I was understanding what they were -- what they were
23 doing with this purchased power, hedging purchased power.

24 That's when it became clear to me exactly
25 what the company was doing. Up to that time, I had -- I

1 knew this method existed, but I had no idea that the
2 company was utilizing this methodology. And I don't
3 believe any of the other Staff understood that that's what
4 they were doing. And the one reason I think we didn't
5 have a clear understanding is that the way that they
6 booked the costs, the hedging costs, I don't believe
7 clearly indicates what they were actually doing.

8 That's a big deal in my mind. Them -- GMO
9 not booking these costs to the purchased power Account 555
10 is a big deal to me. May not be to everyone else, but in
11 my job capacity, that's a big deal. And I think that's
12 the reason for some of this confusion on the Staff's part
13 is how these costs were booked. It took, you know, took a
14 special meeting with the company in order to determine
15 that's what was going on. So --

16 Q. So you found \$22 million in hedge losses in
17 the natural gas account? Is that what you just testified?

18 A. I believe so. I don't have the work papers
19 in front of me. That's the number that comes to mind.

20 Q. I understand. And \$20 million in natural
21 gas purchased costs?

22 A. Yes.

23 Q. And that was just for this review period;
24 isn't that correct?

25 A. Yes.

1 Q. Do you know if this hedging program lost
2 money in prior periods?

3 A. Yes.

4 Q. Okay. Let me show you page 14 of the
5 rebuttal testimony of Mr. Hyneman. Do you see that
6 paragraph there that's circled?

7 A. Yes.

8 Q. I wonder if you'd read that paragraph.

9 MR. FISCHER: Judge, I'm going to object.
10 It's beyond the scope of cross-examination.

11 MR. THOMPSON: I don't believe it is beyond
12 the scope, Judge.

13 JUDGE STEARLEY: Well, let me look at the
14 testimony and I'll make a determination. Which page,
15 counselor?

16 MR. THOMPSON: Page 14, rebuttal of
17 Mr. Hyneman.

18 JUDGE STEARLEY: And which lines are we
19 looking at?

20 MR. THOMPSON: The paragraph at the top of
21 the page.

22 JUDGE STEARLEY: I'm not sure that that
23 topic was brought up on cross-examination.

24 MR. THOMPSON: Okay. I'll withdraw the
25 question.

1 JUDGE STEARLEY: And I know this was part
2 from yesterday, so if anyone can refresh my memory, I'm
3 certainly open to that.

4 BY MR. THOMPSON:

5 Q. Well, take a look back at GMO Exhibit 20.
6 Do you have that there?

7 A. I do.

8 Q. And the happy legend that has been
9 stricken, what does that say?

10 A. Lower rates do not harm customers.

11 Q. Let me ask you this, Mr. Eaves. Had they
12 not had these hedging losses, would those rates have been,
13 in fact, even lower?

14 A. Yes.

15 Q. Now, you were asked yesterday what you
16 would do if you were going to hedge spot purchased power
17 price risk. Do you recall that line of questioning?

18 A. Yes.

19 Q. And I think you responded that the very
20 first thing you would do is get an analysis?

21 A. Yes.

22 Q. What do you mean by that?

23 A. I think I -- I think I indicated yesterday
24 that possibly I'd go to a consulting firm or something or
25 some other entity or do it in house, which means the

1 utility would provide the technical resource to do it.

2 And I think what I was trying to key in on was the
3 analysis specifically related to the hedging program, the
4 purchased power aspect.

5 But making that statement, the company does
6 do quite a bit of analysis in this area in their
7 integrated resource plan, and I think Lena Mantle
8 yesterday talked briefly about the integrated resource
9 plan and what that is to accomplish as far as providing
10 least cost energy prices to customers or at least least
11 price -- least cost options for the customer.

12 And so the analysis -- really, the analysis
13 has kind of been done if they follow their integrated
14 resource plan. I know for a fact the integrated resource
15 plan doesn't consider hedging costs. So the integrated
16 resource plan is already telling them that they need to
17 buy purchased power.

18 There's no reason to add additional costs
19 or play the market the way that they've done because they
20 have generation sufficient to supply their native load,
21 and that's regulated by NERC. It's just that some of
22 their generation is at a higher cost and usually can't
23 beat market price.

24 Effectively what GMO's hedging policy has
25 done is just added cost on top of the purchased power

1 price. It hasn't mitigated any risk, or if it has
2 mitigated risk, depending on how you want to measure it,
3 they paid an extremely high price for that insurance.

4 They claim that they have a \$40 million
5 annual risk for purchased power. That's what -- that's
6 what they're trying to hedge is that \$40 million worth of
7 risk. And in this 18-month review period, if they had
8 losses of 22 million, that risk might go up to 51 million.
9 So they paid 22 million in premium in order to offset a
10 \$40 million risk. I think that's a very high premium.

11 Q. Now, there were questions yesterday about
12 the degree of correlation between natural gas and
13 purchased power prices. Do you recall that line of
14 questioning?

15 A. Yes.

16 Q. I think you stated that there were other
17 drivers, and that for that reason you required a near
18 perfect level of correlation. There's been lots of talk
19 about that yesterday and today. Do you remember that?

20 A. Yes.

21 Q. Let me show you something. Tell me if you
22 recognize this document (indicating).

23 A. Yes.

24 Q. What is it?

25 A. The title of the document is Monthly State

1 of the Market Report, May 2009, published June 22nd, 2009,
2 produced by SPP Market Monitoring Unit.

3 Q. Okay. Take a look at, I think it's page 3.

4 A. Okay.

5 Q. Do you see the paragraph at the bottom of
6 page 3?

7 A. Yes.

8 Q. And I wonder if you would read that
9 paragraph.

10 MR. FISCHER: Judge, I'm going to object on
11 the grounds that we haven't talked about any reports from
12 SPP, the monitoring reports, related to cross-examination
13 of this witness.

14 MR. THOMPSON: Well, you asked him why he
15 wanted a higher level of correlation, and he told you it's
16 because there were other drivers as to the purchased power
17 fuel prices. I think this is absolutely within the scope
18 of what you've asked him repeatedly.

19 MR. FISCHER: And as well, if this was part
20 of the reliance of the Staff, it should have been included
21 in the work papers.

22 JUDGE STEARLEY: The objection will be
23 overruled.

24 BY MR. THOMPSON:

25 Q. Go ahead and read that paragraph.

1 A. One final noteworthy issue is fuel on the
2 margin, Figure 10. Coal generation was setting price
3 48 percent of the time in May. This is the highest since
4 EIS market startup. This appears to be driven by the
5 significant base load capacity additions from Nebraska,
6 specifically nuclear plants replacing natural gas
7 generation resulting in more coal units on the margin.

8 Q. Thank you, Mr. Eaves. May I approach?

9 Now, you indicated that if you were going
10 to be engaged in this kind of hedging, you would want an
11 analysis. Did you ask GMO to provide you with whatever
12 analysis it is they relied on in embarking on this
13 expensive process?

14 A. I believe I did. I don't know if I can
15 cite exactly what data request or when or where I did it,
16 but I do remember asking them, do you have any analysis
17 that would help guide me in why you're doing this?

18 Q. And did you get anything in response to
19 that request?

20 A. I don't remember anything. I think we
21 received a significant amount of testimony in this case
22 relating to why they did it, but really what I was looking
23 for was a document at the time that they started this
24 program or when Mr. Blunk took over the program. I was
25 hoping that there'd be some analysis, some documents, some

1 e-mails, something that would guide me in their
2 decision-making before they started or continued with the
3 program.

4 Q. Would you expect such an analysis to
5 include scenarios as to what actions to take in the event
6 of different market movements?

7 A. It would be very helpful to me, yes.

8 Q. For example, a scenario explaining what
9 actions to take in the event that the market dropped and
10 continued dropping?

11 A. That would be helpful, yes.

12 Q. Perhaps a mitigation plan in the event that
13 the market collapsed?

14 A. Yes.

15 Q. As far as you know, does GMO or did GMO
16 have any kind of mitigation plan?

17 A. I haven't seen one if they have one.

18 Q. If you know, did GMO take any steps to
19 mitigate these losses?

20 A. Other than decreasing the volumes,
21 possibly, that's the only action I know of that they've
22 taken, to the amount of hedges that they would have
23 placed. I think that would have fallen off. I don't know
24 of any other steps that they've taken.

25 Q. Okay. Now, you were asked by Mr. Fischer

1 whether or not, in your opinion, the Commission should
2 review the effectiveness of GMO's hedges. Do you recall
3 that question?

4 A. Yes.

5 Q. Okay. I'm going to show you something we
6 talked about yesterday. This is Schedule WEB-9. Do you
7 recall that?

8 A. Yes. I've seen this several times.

9 Q. And what do you know that to be?

10 A. This was put together by Mr. Blunk
11 purporting to show the effectiveness of GMO's hedging
12 practices for purchased power.

13 Q. Okay. And that shows what GMO
14 characterizes as both sides of the story, doesn't it, the
15 physical side and the derivative side; is that correct?

16 A. Yes.

17 Q. Okay. And take a look over there on the
18 physical side. Do you see a forecast or expected cost of
19 purchased power?

20 A. Yes, I do.

21 Q. What's that figure?

22 A. \$51.55 per megawatt hour.

23 Q. Do you have any idea where that figure came
24 from?

25 A. Let's see if it's noted on a footnote or

1 anything. It's not noted on the sheet. I would suspect
2 it would come out of their IRP process.

3 Q. But that's a guess; is that right?

4 A. Yes.

5 Q. I mean, do you know that or are you
6 guessing?

7 A. I'm guessing.

8 Q. Okay. So you don't know where that number
9 came from?

10 A. I don't. It's not noted on the sheet, and
11 I don't believe I've heard anywhere where that number
12 comes from.

13 Q. Let me ask you this. Hypothetically,
14 suppose that number was inflated.

15 A. Okay.

16 Q. Would that misstate the effectiveness of
17 GMO's hedge under that analysis?

18 A. It would change the calculation, the dollar
19 offset ratio. It would change the dollar offset ratio.

20 Q. Okay. Now, you were asked about a webinar
21 that you participated in; is that correct?

22 A. Yes.

23 Q. Why would you participate in a webinar?

24 A. To get an understanding of a particular
25 subject matter.

1 Q. Should the Commission conclude that because
2 you attended that webinar, that Staff believes cross
3 hedging is, therefore, prudent and acceptable?

4 A. I would hope not.

5 Q. That's not what that means, is it?

6 A. No.

7 Q. Okay. Now, you were asked by Mr. Fischer
8 about FAS 133. Do you recall that?

9 A. Yes.

10 Q. What is FAS 133?

11 A. It's the controlling article that instructs
12 corporations and other entities how to account for
13 derivative transactions.

14 Q. And I think you testified that FAS 33, in
15 your opinion, doesn't apply here?

16 A. That's correct.

17 Q. Why is that?

18 A. Because FAS has another section, I believe
19 it's FAS 171, that allows --

20 Q. Could it be FAS 71?

21 A. 71, I believe.

22 Q. Okay. Go on.

23 A. That allows regulated utilities a variance,
24 different FAS statements, and this would be one that they
25 would be able to not -- I hate to say not follow, but

1 follow in a different manner. Whatever the Commission
2 instructed them to do, it would be considered GAAP
3 accounting and, therefore, they would comply with FAS 133.

4 Q. Okay. In fact, the Commission did instruct
5 them to do something, did it not?

6 A. Yes.

7 Q. Do you recall the Stipulation & Agreement
8 in 2005?

9 A. I've seen it, yes.

10 Q. Okay. And did the Commission approve that
11 Stipulation & Agreement?

12 A. Yes.

13 Q. Did that consequently constitute an
14 Accounting Authority Order?

15 A. That's my understanding, yes.

16 Q. Now, you were asked by Mr. Fischer whether
17 or not the drop in natural gas prices was expected or not
18 expected. I think the question was something along the
19 lines of, so the drop in price was not expected by the
20 market, no one expected it. Do you recall that question?

21 A. Yes.

22 Q. Now, you are familiar with the prudence
23 standard, are you not, under which this case is going to
24 be decided?

25 A. Yes.

1 Q. And isn't it true that under that standard,
2 that the company's decisions are judged with respect to
3 what they knew or should have known at the time the
4 decisions were made?

5 A. Yes.

6 Q. So if nobody expected the market to drop,
7 who is it that has the burden to prove that that's what
8 people thought at that time?

9 A. I guess it would be the decision-makers.

10 Q. I mean, isn't that something the company
11 needs to show the Commission?

12 A. I would think so, yes. That's what I've
13 been looking for is, please show me what, you know, what
14 was in your mind at the time you made these decisions.

15 Q. And have they shown you that?

16 A. Only in a retrospective view.

17 Q. Now, you're familiar with hedging, correct?

18 A. Yes.

19 Q. And, in fact, you reviewed their hedging in
20 this case, correct?

21 A. Correct.

22 Q. Now, over time, we understand that in
23 hedging -- or would you agree, in hedging that sometimes
24 you make money, sometimes you lose money?

25 A. Yes.

1 Q. Making money, losing money, that's not the
2 object of the hedge, is it?

3 A. No.

4 Q. The object of the hedge is to protect
5 something else, correct?

6 A. Let me back up. I think you could have a
7 strategy of trying to make money when you hedge.

8 Q. Okay.

9 A. There's people that -- there's people that
10 make money and there's people that lose money in trying to
11 do that.

12 Q. If you know, has GMO indicated that its
13 strategy is to make money when it hedges?

14 A. Their strategy, as I understand it, is to
15 mitigate the purchased power, the on-peak purchased power
16 risk.

17 Q. Okay. Would you expect their hedging to
18 net out to zero over time?

19 A. I think -- I think that would be a good
20 outcome. Now, my expectation of that might not be that
21 exactly. I think there should be ups and there should --
22 for -- I think one of the tests to evaluate whether or not
23 your hedging program is effective is, are you always out
24 of the money or are you always in the money? What's
25 happening with your hedging program?

1 I think if you saw that your hedging
2 program was always out of the money, was always costing
3 you money, then I think you have to kick in the analytics
4 to say yes this is effective, this is not effective. And
5 exactly what tests you would use and all that criteria, I
6 think you just -- there needs to be some document out
7 there that says, look, we've -- our program has not
8 performed the way we would like for it to perform, and,
9 therefore, we need to do X or these are our options.

10 Q. If you know, is Aquila's hedging program
11 always out of the money?

12 A. Aquila's?

13 Q. Or GMO's. Pardon me.

14 A. For the review period, I'm going to say
15 yes, it was always out of the money. And I believe in
16 Mr. Hyneman's testimony he may have done some analysis
17 showing when it was in the money or out of the money,
18 something like that. I think he did some analysis of
19 that.

20 Q. Did Mr. Fischer ask you if you had surveyed
21 other Missouri electric utilities to find out whether they
22 engaged in this kind of hedging?

23 A. He did.

24 Q. Do you know if Staff has asked Ameren if
25 they engage in this kind of hedging?

1 A. I'm not sure. I don't recall.

2 Q. Let me show you something. Tell me what
3 that is.

4 A. This is a data request in the matter of
5 Union Electric Company, d/b/a American (sic) Missouri's
6 tariffs to increase its revenues for electric service,
7 Data Request No. MPSC 0242. It looks like it was issued
8 by Lisa Ferguson, who's an auditor in the St. Louis
9 office.

10 Q. What's the date of issue? Does that appear
11 on there anywhere?

12 A. 4/10/2012.

13 Q. And what is the question?

14 MR. FISCHER: Judge, I'm going to object to
15 this. There's no foundation that has been laid. This
16 witness I don't think has previously indicated he knew
17 what Staff had done. This is from another case without
18 any community to cross-examine any witness regarding it.
19 And just because it's a data request in some other case
20 doesn't mean it can be introduced in the record or ask
21 questions about it.

22 JUDGE STEARLEY: Do you have some
23 foundation you can lay, Mr. Thompson?

24 MR. THOMPSON: Well, I think Mr. Eaves said
25 he recognized it as a data request. This is certainly

1 within the scope of the cross-examination.

2 JUDGE STEARLEY: Is that data request part
3 of any public record or public filing?

4 MR. THOMPSON: Well, in Missouri practice I
5 can ask a witness about anything. I'm not moving to admit
6 that data request. I am merely presenting it to the
7 witness and asking the witness questions about it. If the
8 witness doesn't know, that's how he would answer.

9 JUDGE STEARLEY: Overruled.

10 THE WITNESS: The way GMO administers their
11 program is they let the price for -- the price for energy
12 for the spot purchased power price just float in the
13 market. And what I mean by that is that it's still
14 subjected to market price. Whatever the price is on that
15 day that they have to buy that power is the price that
16 they pay for it. They haven't locked it in. All they've
17 done is hedged for the gas portion.

18 In the seminar that I attended and that
19 we've talked about, this concept is -- within that seminar
20 they talked about how you could show the other side of the
21 hedge, and that's what Mr. Blunk did in his Schedule
22 WEB-9. I know it was admitted as an exhibit number, but I
23 don't know what it is. And that's where he comes up with
24 the \$51 and he shows market price.

25 You know, that's fine to show this on a

1 schedule and to come up with what he calls a dollar offset
2 ratio, but for a regulated utility, it's really not
3 applicable. The dollars on the other side of the hedge,
4 it doesn't show up in their financials. No one gets
5 credit for it. It's a phantom number. It's just -- in my
6 mind, just meaningless.

7 Now, I think a case could be made that if
8 they would have gone out, and I know I've used the term
9 locked in the price on the other side, if they would have
10 contracted and instead of subjected themselves to the
11 market variances, you know, I think that there's some
12 sharing of risk there. Under their approach, in my
13 mind --

14 JUDGE STEARLEY: Mr. Eaves, just for
15 clarification, when you contracted, are you talking about
16 like a long-term purchased power agreement or are you
17 talking about contracting?

18 THE WITNESS: Well, there's various forms.
19 You could go with a long-term contract. You could go with
20 a contract that, if the market did this, then the deal is
21 going to -- then we're going to work the deal, we're going
22 to swap prices, we're going to -- you're going to provide
23 me electricity but only if the price hits a certain level.
24 So there's various ways to structure these contracts.

25 You know, I think one of the facts that's

1 been overlooked and I've said many times is that they have
2 a sister company, KCP&L, that purports itself very long on
3 power. They've got lots of power. I don't know what's
4 attempted between the two companies to help resolve this
5 risk that GMO faces in the purchased power market.
6 There's various things to do.

7 But I guess the problem I have with this,
8 if they were a nonregulated utility, if they were divested
9 and they do whatever they wanted to do in the market, they
10 could account for it this way. This would be -- I'm okay
11 with that.

12 But under a regulated -- a regulated
13 utility, I just don't feel that this method is the way to
14 account for it. And that's the real issue I have is that
15 I know from this type of a program, if I was in their
16 shoes and I was going to do this program and I thought it
17 was a great program, I would have been before the
18 Commission explaining exactly what I was going to do.

19 And I think that's why we have hard
20 feelings in this case is that it wasn't done. Everybody
21 wasn't on the same page in agreement with what was going
22 on.

23 BY MR. THOMPSON:

24 Q. Mr. Eaves, was it your finding as the lead
25 auditor in this case that GMO's purchased power hedging

1 **activities caused harm to the ratepayers?**

2 A. Yes.

3 MR. THOMPSON: Thank you. No further
4 questions.

5 JUDGE STEARLEY: All right. Mr. Eaves,
6 that concludes the redirect from Staff, and you are
7 excused as a witness.

8 MR. FISCHER: Judge, I would request just
9 for completeness of the record that the full copy of the
10 SPP monitoring report that was quoted from during the
11 redirect be entered into the record.

12 JUDGE STEARLEY: Mr. Thompson, I believe
13 you can offer that as an exhibit.

14 MR. THOMPSON: I'll be happy to, your
15 Honor. I only have one copy of it. I guess I can find
16 some more. I don't know what exhibit number we're up to.

17 MR. FISCHER: If it's put on EFIS, I think
18 we'll all have copies.

19 JUDGE STEARLEY: It will be Exhibit No. 11
20 for Staff. And as long as we're in that vein, I have a
21 couple others I'd like to direct for you.

22 MR. THOMPSON: I would offer Staff
23 Exhibit 11 at this time.

24 JUDGE STEARLEY: Any objections to the
25 admission of Staff Exhibit No. 11?

1 (No response.)

2 JUDGE STEARLEY: Hearing none, it shall be
3 received and admitted into the record.

4 (STAFF EXHIBIT NO. 11 WAS MARKED AND
5 RECEIVED INTO EVIDENCE.)

6 JUDGE STEARLEY: I believe, if I've kept
7 tally, I heard at least three FAS statements referenced,
8 Statement 133, 171.

9 MR. THOMPSON: I think was a misstatement
10 for 71.

11 JUDGE STEARLEY: 71. Was there another one
12 mentioned in that?

13 MR. FISCHER: There was an ASC codification
14 that's related to 133, I believe. Maybe that's what
15 you're thinking of.

16 JUDGE STEARLEY: That could be. I would
17 like those financial statements to be admitted as an
18 exhibit, Mr. Thompson.

19 MR. THOMPSON: Very well.

20 JUDGE STEARLEY: That will be Staff Exhibit
21 No. 12.

22 MR. THOMPSON: Can we late file them,
23 Judge? I don't have them here.

24 JUDGE STEARLEY: Yeah. Next Friday?

25 MR. THOMPSON: That will be fine. Thank

1 you.

2 JUDGE STEARLEY: Additionally, throughout
3 the case there's been reference to the FAC tariffs, and
4 I'd like you to file --

5 MR. THOMPSON: I think those tariffs are in
6 the record attached to various pieces of testimony.

7 MR. FISCHER: Yes, Judge. They're attached
8 to Mr. Rush's testimony. There are different versions
9 depending on the effective dates of those tariffs, so you
10 have to be sure you look at which effective dates there
11 are.

12 JUDGE STEARLEY: Do we have all the FAC
13 tariffs going forward from what would be the original page
14 to its current version?

15 MR. THOMPSON: I'm sorry. What was that?

16 JUDGE STEARLEY: Do we have all the FAC
17 tariffs included going from the original page up to the
18 current version?

19 MR. THOMPSON: Okay.

20 JUDGE STEARLEY: Because I've seen a number
21 of tariffs when I went back and reviewed various tariff
22 tracking numbers and case numbers.

23 MR. FISCHER: Judge, it's my understanding
24 that the current tariff itself would not be included in
25 the record because it changed after the period of review

1 in this particular case. So that's not included in the
2 record. I'm not sure if that's what you're asking for,
3 but the relevant tariffs that were part of this review
4 period have been attached to Mr. Rush's testimony.

5 JUDGE STEARLEY: I would like copies of the
6 tariffs both before and after the relevant review period
7 be entered.

8 MR. THOMPSON: So all of GMO's FAC tariffs
9 from the very first one to the present?

10 JUDGE STEARLEY: That's correct. And I
11 have some tracking numbers. You can double check me,
12 counselor. These may or may not be correct based on my
13 search of EFIS.

14 MR. THOMPSON: I've just been handed what
15 you wanted. I'm told this is all of the FAC tariffs.

16 JUDGE STEARLEY: Very good.

17 MR. THOMPSON: What should we call this
18 exhibit?

19 JUDGE STEARLEY: You're up to Staff Exhibit
20 No. 13.

21 MR. THOMPSON: I offer Staff Exhibit 13.

22 JUDGE STEARLEY: Any objections?

23 MR. FISCHER: Judge, I haven't seen it, but
24 I'm assuming it's what they say it is. I'm happy with
25 that.

1 MR. THOMPSON: Do you want to take a look
2 at it?

3 JUDGE STEARLEY: If you don't want to
4 review it this second, you can always file something. At
5 this point I'm going to admit those into the record.

6 (STAFF EXHIBIT NO. 13 WAS MARKED AND
7 RECEIVED INTO EVIDENCE.)

8 MR. THOMPSON: I'm told by Mr. Hyneman that
9 he referenced a GAAP Statement No. 2 in his testimony. Do
10 you want that included with the other financial stuff?

11 JUDGE STEARLEY: Yes.

12 MR. THOMPSON: Okay. Thank you.

13 JUDGE STEARLEY: The Commission would like
14 to be able to review all these statements that were
15 referenced throughout the proceeding.

16 MR. FISCHER: Judge, we also, if this is a
17 good point, have obtained certified copies of the two
18 documents that you requested yesterday. We'd enter those
19 into the record.

20 JUDGE STEARLEY: Yes. I want to get to
21 that in just one moment. Let's go ahead and take those
22 up. Those were --

23 MR. STEINER: 11 and 12.

24 JUDGE STEARLEY: 11 and 12 or 10 and 11?

25 MR. STEINER: I think 11 and 12. We have

1 an exhibit that was 10. I have GMO 11, Staff suggestions
2 in support.

3 JUDGE STEARLEY: That's correct, yes.

4 MR. STEINER: And then the transcript was
5 No. 12. These are certified copies.

6 JUDGE STEARLEY: And, Staff, you had raised
7 an objection based on the parol evidence rule; is that
8 correct?

9 MR. THOMPSON: That's absolutely right, and
10 I would make a further objection on the fact that
11 Mr. Schallenberg is available to testify. I think that if
12 the Commission wants to know what Mr. Schallenberg thinks
13 about the language of that Stipulation & Agreement, then I
14 think we should put Mr. Schallenberg under oath on the
15 stand and the Commission can ask him any questions it
16 wants.

17 JUDGE STEARLEY: The Commission can
18 certainly decide if they'd like to call him. The
19 Commission can also refer to any documents in its past
20 records whether they're admitted into evidence or not.
21 But let's address your parol evidence rule objection.

22 MR. THOMPSON: Certainly. Our research
23 shows that the parol evidence rule is a substantive rule
24 of contract law. It is often referred to as an
25 evidentiary rule, but it's not an evidentiary rule. It is

1 a rule, substantive rule of contract law. Consequently,
2 it is applicable to this and other tribunals where
3 technical rules of evidence don't apply.

4 JUDGE STEARLEY: All right. Very good.
5 There are also a number of exceptions to that rule,
6 counselor.

7 MR. THOMPSON: That is correct.

8 JUDGE STEARLEY: If there is a question as
9 to whether or not the four corners of an agreement omit a
10 fundamental assumption upon which the agreement is made,
11 parol evidence rule does not exclude.

12 MR. THOMPSON: My understanding, in fact,
13 is that if the Commission finds the writing to be
14 ambiguous, then parol evidence is admissible as to the
15 intention of the parties with respect to the ambiguity.

16 JUDGE STEARLEY: That's a second exception.
17 A third is, any time there is a need to show the
18 surrounding circumstances to explain meaning and
19 application of the language, parol evidence rule doesn't
20 apply. I believe the exceptions would apply in this
21 instance. There is no express language in paragraph 17 of
22 the Stipulation & Agreement, which has been referred to as
23 the AAO which has also been ordered by the Commission,
24 that talks about splitting out different types of hedging
25 costs expressly in different accounts.

1 But beyond that, counselor, I think we need
2 to look at this as not necessarily being a contract
3 matter, although I will also note that the case law makes
4 quite clear that the Commission has the authority to
5 abrogate terms of even private contracts if they find them
6 to be against the public interest. In order for them to
7 do that, they have to review and decide what the contract
8 is doing.

9 But stepping out of contract law, because
10 someone could also make an argument that we don't do
11 contract law here, I don't think we're really looking at a
12 contract. When the Order was issued approving that
13 Stipulation & Agreement and ordering the parties to comply
14 with the terms of that agreement, it was in effect making
15 that agreement and those terms an Order of the Commission.
16 Appropriately speaking, you have called it an Accounting
17 Authority Order. Even by title it's an Order.

18 Case law makes quite clear the Commission
19 can review all its prior Orders in any prior case as part
20 of its fact finding. So I'm going to overrule the parol
21 objection or parol evidence objection.

22 MR. THOMPSON: Thank you, your Honor.

23 JUDGE STEARLEY: With regard to
24 Mr. Schallenberg, it will be the Commission's decision if
25 they wish to question him further and call him as a

1 witness for additional material.

2 MR. THOMPSON: Thank you.

3 JUDGE STEARLEY: Mr. Hyneman was given the
4 opportunity to explain Staff's position with regard to
5 both of the documents in question.

6 Additionally, we have certified copies of
7 those documents before the Commission, and in addition to
8 allowing their admission as exhibits, we will take
9 official notice of those documents.

10 I also want to make clear that just as I
11 have directed Staff to file additional exhibits on these
12 financial accounting statements and on the FAC tariffs, it
13 is not unusual for a presiding officer to order such
14 additional exhibits be filed. In fact, it's part of the
15 Commission's rules that the presiding officers can order
16 the admission of other evidence, give time periods for
17 them to be applied, and that the presiding officer can set
18 whatever number that officer wishes for those exhibits

19 Is there anything else we need to take up
20 with regard to those two particular exhibits? They are
21 admitted and received into the record.

22 (GMO EXHIBIT NOS. 11 AND 12 WERE MARKED AND
23 RECEIVED INTO EVIDENCE.)

24 JUDGE STEARLEY: With regard to some of the
25 testimony that's been referenced in the parties' prefiled

1 testimony, testimony that's been referenced in other
2 cases, I believe there's been references to Mr. Proctor's
3 prior testimony. There have been references perhaps to
4 Mr. Featherstone's prior testimony by both Staff and GMO.
5 I will direct the parties to file certified copies of that
6 testimony as exhibits.

7 MR. FISCHER: I think we can do Proctor.

8 JUDGE STEARLEY: I don't have a full list
9 in front of me, and I can't recall, even though I've read
10 his testimony at least three times, I can't recall all the
11 references.

12 MR. FISCHER: Judge, I think we've quoted
13 portions of it, so we should be able to -- you're asking
14 just for the full exhibit?

15 JUDGE STEARLEY: Yes. That's correct. I
16 don't want anyone to say anything's been taken out of
17 context.

18 And since we've had quite a bit of
19 testimony that's been heavily reliant on these prior
20 cases, the Commission's going to take official notice of
21 ER-2005-0436, ER-2007-0004, ER-2009-009, EO-2009-0115,
22 EO-2010-0167 and ER-2010-0356, and specifically that would
23 be official notice of any Stipulations & Agreements, any
24 Commission Orders approving those, any filings in
25 association with those, like suggestions in support

1 thereof, for example, and any witness testimony admitted
2 in those cases.

3 I've kind of jumped to some housekeeping
4 issues since we were on the issue of exhibits. Is there
5 anyone that wants to make a closing statement or argument?

6 MR. FISCHER: Judge, are you expecting
7 briefs to be filed in this case? If so, I would waive my
8 closing.

9 JUDGE STEARLEY: I believe we've set that
10 in the procedural schedule already.

11 MR. FISCHER: We have. I think the
12 evidentiary hearings were extended beyond the date that
13 was included in the original procedural schedule. The
14 simultaneous post-hearing briefs were now scheduled for
15 June 14, but that was based on a middle of May hearing. I
16 wonder if we should be talking about perhaps extending
17 that time to give us adequate time to review the
18 transcripts and brief the case.

19 JUDGE STEARLEY: Did I not extend all the
20 dates?

21 MR. FISCHER: Maybe you did.

22 JUDGE STEARLEY: Let's double check the
23 Order here.

24 MR. FISCHER: You're correct. I apologize.
25 Simultaneous briefs are due July the 6th and findings of

1 fact on July the 10th.

2 JUDGE STEARLEY: All right. And I believe
3 we have the transcript scheduled to be filed by June 15th.

4 MR. THOMPSON: Judge, I'm going to be out
5 of town between July 7 and 14. I wonder if we can extend
6 the date for the findings of fact.

7 JUDGE STEARLEY: I was just going to ask if
8 anyone needed extensions here. Is everyone okay with the
9 dates for post-hearing briefs?

10 MR. THOMPSON: We'll get you a brief on
11 July 6th.

12 JUDGE STEARLEY: If you're going to ask for
13 an extension, ask now.

14 MR. FISCHER: We would like, I think like
15 to have a reply brief as well. I think we can do the
16 July 6th date. We do have the MEEIA hearings, and that
17 may be a complicating fact. I think we can get that done,
18 but we would like to have a reply brief if that would be
19 possible.

20 JUDGE STEARLEY: All right. And,
21 Mr. Thompson, what date would you like for proposed
22 findings and conclusions?

23 MR. THOMPSON: How about July 20th? How
24 about July 20th? It's a Friday.

25 JUDGE STEARLEY: Is that acceptable for the

1 parties, have reply briefs due that same day?

2 MR. THOMPSON: That works for me.

3 MR. FISCHER: That's fine, Judge.

4 JUDGE STEARLEY: All right. We'll go with
5 that.

6 MR. THOMPSON: Judge, with respect to
7 official notice, I'm wondering about the first two
8 prudence review cases.

9 JUDGE STEARLEY: Yes.

10 MR. THOMPSON: Would you want to take
11 official notice of those as well? I don't have the
12 numbers.

13 JUDGE STEARLEY: I think I got those. I
14 believe that was the EO-2009-0115 and the EO-2010-0167.

15 MR. THOMPSON: Okay. Very good.

16 JUDGE STEARLEY: I can double check.

17 MR. THOMPSON: You did get those. Thank
18 you.

19 JUDGE STEARLEY: And while we're at it, why
20 don't you go ahead and file Staff's reports and
21 recommendations in both of those cases as an exhibit?

22 MR. THOMPSON: Okay.

23 JUDGE STEARLEY: Those have certainly been
24 referenced enough in this proceeding.

25 MR. THOMPSON: Do you want to assign

1 numbers for them now?

2 JUDGE STEARLEY: Since I've given you a
3 list of things, we are picking up with Staff -- FAC
4 tariffs are going to be Staff Exhibit 13.

5 MR. THOMPSON: So this would be 14 and 15?

6 JUDGE STEARLEY: Yes.

7 MR. THOMPSON: Okay. Thank you.

8 MR. STEINER: I'm unclear on what Staff
9 Exhibit 12 is, which financial standards.

10 MR. THOMPSON: FAS 133, FAS 71, the ASC
11 that you guys referred to, and then the statement that
12 Mr. Hyneman mentioned, Statement No. 2, financial
13 concepts.

14 MR. STEINER: That's a financial statement?

15 JUDGE STEARLEY: I think you said that was
16 a GAAP statement. Is that correct, Mr. Hyneman?

17 MR. HYNEMAN: It's a Financial Accounting
18 Standards Board statement, statement of financial
19 concepts.

20 MR. THOMPSON: Why don't you file the one
21 that you mentioned.

22 MR. STEINER: That's what I'm trying to get
23 clear.

24 MR. THOMPSON: I would be more than happy
25 to have you file the exhibit.

1 MR. STEINER: So we will make that one of
2 our numbers or can I file --

3 MR. THOMPSON: Does that work for you,
4 Judge?

5 JUDGE STEARLEY: That's fine with me. GMO
6 would be at No. 21. As long as they all get filed so the
7 Commission can review them.

8 MR. STEINER: We'll file the standards.
9 You file concepts.

10 JUDGE STEARLEY: Are there any other
11 housekeeping matters we need to take up at this time.

12 MR. FISCHER: Judge, I would ask, I don't
13 think any of our exhibits were excluded. I just want to
14 make sure I asked that they be admitted. Are there any on
15 your list that I didn't get admitted?

16 JUDGE STEARLEY: I have them all as being
17 admitted, but just to make sure I didn't miss something,
18 GMO's exhibits that have been offered to this moment have
19 all been admitted and received into the record.

20 MR. FISCHER: Thank you, sir.

21 MR. THOMPSON: Could we do the same with
22 Staff?

23 JUDGE STEARLEY: We can do the same for
24 Staff in case I possibly missed anything. All of Staff's
25 exhibits offered at this point have been admitted and

1 received into the record.

2 MR. THOMPSON: Thank you, Judge.

3 JUDGE STEARLEY: All right. Anything else
4 we need take up at this time?

5 All right. Well, we stand adjourned, and I
6 thank you all very much.

7 (WHEREUPON, the hearing concluded at
8 10:18 a.m.)

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C E R T I F I C A T E

STATE OF MISSOURI)

) ss.

COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest Litigation
Services, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

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