

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5
6 Evidentiary Hearing
7 August 24, 2017
8 Jefferson City, Missouri
9 Volume 2
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12 In The Matter of the Sixth)
Prudence Review of Costs)
13 Subject to the Commission-)
Approved Fuel Adjustment) File No. EO-2017-0065
14 Clause of the Empire)
District Electric Company.)
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18 MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
19
20 STEPHEN M. STOLL
SCOTT T. RUPP
MAIDA J. COLEMAN
COMMISSIONERS
21
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23 REPORTED BY:
AMANDA N. FARRAR, CCR
24 MIDWEST LITIGATION SERVICES
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APPEARANCES

For The Empire District Electric
Company:

MS. DIANA C. CARTER
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
Jefferson City, Missouri 65102
dcarter@brydonlaw.com
(573)635-7166

For The Office of the Public Counsel:

MR. MARC D. POSTON
Office of the Public Counsel
200 Madison Street, Suite 650
Jefferson City, Missouri 65102
marc.poston@ded.mo.gov
(573)751-5558

For The Office of the Public Counsel:

MR. RYAN SMITH
Office of the Public Counsel
200 Madison Street, Suite 650
Jefferson City, Missouri 65102
ryan.smith@ded.mo.gov
(573)751-5558

For the Staff of the Missouri Public
Service Commission:

MR. ROBERT S. BERLIN
Missouri Public Service Commission
200 Madison Street, Suite 800
Jefferson City, Missouri 65102
bob.berlin@psc.mo.gov
(573)526-7779

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

2 (The hearing commenced at 8:31 a.m.)

3 JUDGE WOODRUFF: Good morning, everyone.

4 We're here for an evidentiary hearing in File
5 No. EO-2017-0065, which concerns a prudence review
6 of the fuel adjustment clause of the Empire District
7 Electric Company.

8 We'll begin today by taking entries of
9 appearance beginning with -- let's begin with public
10 counsel.

11 MR. POSTON: Good morning. Marc Poston
12 and Ryan Smith appearing for the Office of the
13 Public Counsel and the public.

14 JUDGE WOODRUFF: Okay. And for Empire?

15 MS. CARTER: Diana Carter for The Empire
16 District Electric Company.

17 JUDGE WOODRUFF: And for the Staff?

18 MR. BERLIN: Robert S. Berlin appearing
19 on behalf of the Staff of the Missouri Public
20 Service Commission.

21 JUDGE WOODRUFF: Thank you. And I
22 believe that's all the parties.

23 This hearing was initially scheduled to
24 begin yesterday. We had a motion filed very late on
25 Tuesday requesting a continuance for health reasons

1 and we went ahead and granted that. I do want to
2 state that when you request a hearing -- or a
3 continuance in one of these cases, please do it as
4 early as possible, and I know that isn't always
5 doable, but it does create problems for the
6 Commission and for the commissioners' schedules when
7 we get a request for a delay late in the day. So,
8 just for future reference.

9 All right. We'll begin today with
10 opening statements beginning with the Office of
11 Public Counsel.

12 MR. POSTON: Good morning. May it
13 please the Commission:

14 I'm Marc Poston with the Office of the
15 Public Counsel. I'm here on behalf of the public
16 and the residential and business customers of Empire
17 District Electric Company.

18 The reason we're here today is to
19 present evidence to you regarding Empire's fuel
20 adjustment clause and to show you how Empire's
21 imprudent actions caused ratepayer harm.

22 Commission -- I'm sorry. Let me pass
23 out -- actually, I have copy slides of my -- copies
24 of my slides. It might be easier to see it that
25 way.

1 JUDGE WOODRUFF: All right.

2 MR. POSTON: So, the Commission was
3 given the authority to approve fuel adjustment
4 clauses or FACs in 2005, and Empire was granted an
5 FAC in 2008. The law allows only prudently-incurred
6 fuel and purchase power costs to be passed onto its
7 customers. The FAC allows costs to be passed onto
8 customers before the prudence of such costs are
9 determined by the Commission, and the law requires
10 prudence reviews every 18 months. As in
11 satisfaction of Section 386.266.4 of that, OPC
12 raises its concerns in this proceeding.

13 If you find costs were imprudently
14 incurred, the statute states the Commission shall
15 require a refund of any imprudently-incurred costs,
16 plus interest. If costs were imprudently incurred,
17 a refund is mandatory.

18 What are prudently or
19 imprudently-incurred costs? The Commission has used
20 the reasonable person standard in the past. It asks
21 was Empire's conduct reasonable at the time under
22 all circumstances, considering they had to make fuel
23 decisions based on information available at the
24 time. Imprudence cannot be based on hindsight.
25 This is the standard OPC applied in this case.

1 You may hear claims today that OPC's
2 evidence of imprudence is based on hindsight, but
3 that's simply not true. The only evidence we rely
4 upon to show imprudence is information that was
5 available to Empire at the time it made the fuel
6 purchasing decisions. That is information available
7 at the time it entered into the natural gas
8 contracts that resulted in the costs incurred during
9 the review period. Empire may argue that we're
10 presenting a hindsight review because we present
11 information on the losses that were incurred during
12 the period, but the only relevancy of the losses is
13 that they allow us to calculate to the penny the
14 harm that customers incurred as a result of the
15 company's decisions. After all, harm is a necessary
16 component of a prudence disallowance. There must be
17 imprudence, but there also must be harm to the
18 customer.

19 We're not saying that because there were
20 losses the company was imprudent. We're saying the
21 imprudence incurred when Empire persistently entered
22 into hedging contracts for gas to be delivered
23 during the review period. The losses were the
24 result of that imprudence. So, please, don't be
25 mislead into believing anything we present to you

1 today is based on hindsight. Our evidence of
2 imprudence is based on what Empire knew before it
3 entered into those contracts. And the question to
4 ask is: Would a reasonable person, knowing what
5 Empire knew at the time, have entered into those
6 contracts?

7 Who is Empire? As you know, Empire was
8 acquired by the Canadian Incorporation Algonquin
9 Power. Here in Missouri they operate as Liberty
10 Utilities and as Empire.

11 Algonquin describes itself on its
12 website as a North American diversified generation,
13 transmission and distribution utility with
14 \$10 billion in total assets. They own over 50
15 generation facilities and over 20 utilities.
16 Algonquin is a very healthy corporation.

17 I borrowed this chart from their website
18 and, as you can see, their stock has doubled in just
19 the last five years. So, when we talk about
20 refunds, this is who will be impacted, a very
21 healthy and profitable corporation.

22 When you deliberate on this case and
23 consider whether Empire's conduct was reasonable, I
24 ask that you first consider whether it was
25 reasonable considering who would be impacted by

1 Empire's decisions or who was impacted by Empire's
2 decisions. Since Empire's FAC allows it to pass
3 along 95 percent of any increase to Empire's fuel
4 and purchase power costs, Empire's customers are the
5 ones paying these costs. Empire's actions impacted
6 over 127,000 residential customer accounts, which
7 affect over 300,000 people. Empire's actions
8 impacted over 21,000 businesses, including small
9 family-owned businesses. When thinking about
10 reasonableness, we must think about those impacted.

11 As you know, Empire's service territory
12 is in the southwest corner of Missouri where they
13 provide service in 15 Missouri counties. Empire
14 also has small territories, as you can see, in
15 Kansas, Oklahoma, and Arkansas, with a large
16 majority of their territory and customer base is
17 here in Missouri. Empire's service territory
18 straddles both the Osage Plains and the Ozark
19 mountains. So, it's a pretty area, as I'm sure
20 you've seen, but, unfortunately, it's had its
21 economic struggles.

22 All but one of the 15 counties served by
23 Empire have poverty rates above the U.S. average.
24 Some are well above the poverty rate, with three
25 counties with over 20 percent living in poverty.

1 The unweighted average for the 15-county area is 17
2 1/2 percent in poverty. That's a lot. If we apply
3 that poverty rate to the population they serve, we
4 can estimate there are over 50,000 Missouri citizens
5 living in poverty that are served by Empire. We
6 need to think about these people when we think about
7 reasonableness.

8 Empire is just one Missouri business,
9 but its decisions impact over 22,000 other Missouri
10 businesses. All of these families, businesses, they
11 have no choice but to receive their electric service
12 from Empire and, so, they have to throw their trust
13 that Empire will act reasonably when making
14 decisions that impact those customers, and they also
15 trust this Commission to hold the company
16 accountable.

17 So, the fuel cost at issue are natural
18 gas purchases made to fuel Empire's generators. In
19 particular, the issue involves Empire's gas hedging
20 costs. Empire's tariff defines hedging costs as
21 realized losses and costs minus realized gains
22 associated with mitigating volatility in the
23 company's cost of fuel including futures contracts
24 and forward contracts.

25 A hedge is essentially a bet. The

1 company is betting that the price it locks in today
2 years in advance will be at or below the future
3 price that the company would otherwise pay if it
4 didn't lock in the price earlier. It's a gamble
5 using ratepayer money. They do this through two
6 types of contracts. Forward contracts or fiscal
7 contracts are entered with suppliers such as BP
8 where they lock in a price, amount, and a delivery
9 date. Future contracts are traded on NYMEX just
10 like other commodities and they, too, lock in price,
11 amount, and a date in the future.

12 Our evidence of imprudence begins with
13 Empire's 2001 risk management policy and the natural
14 gas hedging portion of that policy.

15 The policy is extremely inflexible in
16 that it mandates predetermined volumes of gas be
17 hedged well in advance regardless of what the market
18 is doing. As of 2003 Empire's hedging policy
19 requires that they begin hedging four years ahead by
20 hedging 10 percent of the gas need four years later.
21 By year three they've hedged 20 percent. By year
22 two they've hedged 40 percent, and by year one, one
23 year ahead of delivery, they've already hedged
24 60 percent of their need.

25 I should note that beginning hedging

1 four years out is earlier than any other Missouri
2 electric company hedges for gas.

3 Hedging gas and betting you'll beat the
4 market may be reasonable during a period where the
5 market is rising or even during a period of market
6 volatility, but when prices are declining or when
7 prices are no longer volatile, hedging is no longer
8 reasonable.

9 Empire pays a premium for hedging gas so
10 early or should I say Empire's customers pay a
11 premium for Empire's hedging costs so earlier. In a
12 declining or nonvolatile gas market it's an
13 imprudent bet. But Empire's policy is to lock in
14 predetermined volumes every year without the
15 flexibility to consider the market. Like clockwork
16 they lock in 10 percent, 20 percent, 40 percent,
17 60 percent. Rising market, 10, 20, 40, 60. Falling
18 market, 10, 20, 40, 60. Steady market, 10, 20, 40,
19 60. It doesn't matter to Empire what the market's
20 doing. They always hedge their minimums, and they
21 continue this policy today.

22 That's the first evidence of imprudence,
23 an inflexible hedging policy. The next evidence of
24 imprudence is Empire's refusal to change that policy
25 after the historic and significant change to the gas

1 market that occurred in 2008.

2 I'm sure you're all aware of the shale
3 gas revolution that occurred around 2008. You
4 didn't even have to be in the utility industry to
5 know that new technologies, in particular hydraulic
6 fracturing or fracking, changed the gas market by
7 tapping huge reserves of previously unavailable
8 natural gas. The impact was immediate as gas prices
9 plunged 50 percent in 2009 to an average price of
10 just 3.95 per MMBTU.

11 This chart shows the average spot prices
12 that the U.S. Energy Information Administration or
13 EIA recorded between 1997 and 2007. Spot prices
14 refer to the daily prices recorded at the Henry Hub,
15 which is a location in Louisiana that interconnects
16 with nine different interstate pipelines. Henry Hub
17 prices are used as the primary price of natural gas.

18 As you can see, prices spiked around
19 2001 and then steadily increased with big peaks in
20 2006 and 2008. In 2009 prices dropped quickly and
21 have remained low since February of 2010, only
22 peaking above \$5 for a month or two in early 2014
23 due to a weather abnormality referred to as a polar
24 vortex.

25 Now, I put in this that the next two

1 slides are highly confidential, but after
2 discussions with the company, it's my understanding
3 that these numbers are not confidential and, so, I'm
4 going to proceed with those slides.

5 So, we know what the market did, but
6 what information did Empire have at the time? This
7 isn't a hindsight review. So, we have to consider
8 what they knew when they hedged gas. One
9 significant source of information available to
10 Empire is the results of its hedging practices. The
11 results of its 10, 20, 40, 60 percent hedging
12 policy. That's what this slide shows.

13 The first indication Empire had that its
14 hedging practices needed to be reviewed was the huge
15 loss Empire took in 2009, almost \$23 million. As
16 noted on this slide, this was the first year that
17 Empire was able to pass along its fuel cost changes
18 to its Missouri customers through the FAC, a
19 95 percent passthrough. Despite passing along these
20 losses to customers, Empire continued its hedging
21 strategy through 2010, incurring another \$14 million
22 in losses, again passing those losses to its
23 customers.

24 To be clear, when I say losses, what I'm
25 referring to are losses Empire records as losses,

1 which is the difference between what they paid to
2 hedge gas and what they would have paid had they
3 stopped hedging, had they not hedged. That's how
4 the success or failure, that is the gains or losses,
5 of their hedging is determined.

6 By the beginning of 2011, they had
7 already racked up \$37 million in losses in just two
8 years since the market changed, but did they change
9 their policy? No. They continued marching ahead,
10 20 -- or 10 percent, 20 percent, 40 percent,
11 60 percent, and they added another 9 million losses
12 in 2011.

13 By the end of 2011, according to
14 Empire's self-imposed, four-year-out hedge strategy,
15 they needed to start hedging gas for 2015. And as
16 you know, the prudence review period before you
17 today begins in March 2015 and goes through the end
18 of August 2016. That means the gas hedges Empire
19 entered into in 2011, 2012, 2013, and 2015 and what
20 they knew at that time need to be the focus.

21 If we look at the year after year
22 hedging losses in comparison to what the market was
23 doing, we see a market that leveled off and a
24 company's policy that failed to notice. You see a
25 market that leveled off well before the period now

1 on review and you see losses that should have
2 prompted changes by 2011, which is when their policy
3 said they needed to begin hedging gas for 2015. By
4 2011 they knew the market had changed, they knew
5 their hedging losses had resulted in over
6 \$46 million in losses or the hedging policy had
7 resulted in over about \$46 million in hedging
8 losses. Did they alter their policy? No. They
9 plowed ahead, 10 percent, 20 percent, 40 percent, 60
10 percent.

11 By the end of 2012 they incurred another
12 14 million in losses. So, they're up to \$62 million
13 in losses in just four years, but they went ahead
14 and locked in 20 percent for 2015 and 10 percent for
15 2016. The same pattern continued month after month,
16 year after year, losses on top of losses. In 2013
17 they incurred another 9 million losses. In 2014
18 they incurred just shy of \$2 million in losses as a
19 result of the polar vortex, cold spell, but even
20 with the vortex they still lost. By the end of 2015
21 they had incurred another 11 million in hedging
22 losses, and by the end of 2016 another 7 million.

23 And in their prefiled testimony in this
24 case they argued that this policy is prudent and
25 should continue. They want to continue a policy

1 that recognizes -- that requires minimum hedges
2 without the flexibility to recognize changes in the
3 market. A policy that has racked up 95 million in
4 total company losses since 2008.

5 The evidence we present to you will show
6 that they continued to accept hedging losses month
7 after month, year after year, locking in 10, 20, 40,
8 60. The evidence will show Empire entering into
9 hedging contracts at the very next month they
10 recorded as loss. If this were a competitive
11 company that couldn't pass its losses onto a captive
12 customer base, I would expect those making these
13 decisions to be fired, but Empire has little to no
14 skin in the game. So, they have no incentive to
15 change their policy.

16 Prior to getting approval to use the
17 FAC, Empire had realized year-end gains in five of
18 the seven years, roughly a 70 percent success rate.
19 Since then, since getting the FAC and passing these
20 costs onto customers, Empire's hedging strategy for
21 eight straight years has a zero percent success
22 rate. The evidence will show Empire should have
23 suspended this policy by 2011 before it incurred
24 hedging losses within this review period. Empire
25 didn't even adjust its policy to hedge less.

1 Please, note this evidence is not
2 hindsight evidence. It's evidence of what was
3 occurring at the time they hedged for the review
4 period. Our evidence will show Empire knew and
5 should have known that its hedges would continue to
6 incur losses.

7 The results of their failed strategy is
8 not the only information telling Empire to change.
9 The U.S. Energy Information Administration, EIA, by
10 the end of 2011 projected declining gas prices
11 through 2012. By the middle of 2012, the EIA
12 projected gas prices at or below \$4 through 2020,
13 steady prices for the next eight years. At this
14 point, according to Empire's policy, it should have
15 hedged just 10 percent of the 2015 gas and nothing
16 for 2016. But Empire ignored the EIA forecast and
17 continued hedging.

18 Empire should also have taken notice of
19 what other utilities around the country were doing
20 in 2010 and 2011. Nevada Power, Colorado Springs
21 Utilities, South Carolina Electric suspended their
22 hedging. Piedmont removed its minimum 22.5 percent
23 hedging requirement, which is only a fraction of
24 Empire's 60 percent hedging requirement.

25 If we look at Empire's integrated

1 resource plan or IRP filed with the Commission in
2 March of 2012, we see Empire recognizing the drop in
3 gas prices. We see Empire recognizing what they
4 call the boom in production in shale formations,
5 which they say opened up natural gas reserves that
6 are large enough to supply the U.S. for decades.
7 They recognize the boost in supplies and storage,
8 which they say set new record season highs. Despite
9 all this, in 2012 they continued locking in gas
10 hedges at 10 percent, 20 percent, 40 percent,
11 60 percent.

12 Later in 2012, again, well before most
13 of the gas was purchased for the current period,
14 under review the staff advised Empire to re-examine
15 its policy. The staff noted that Empire's policy
16 dated back to the last decade when gas prices were
17 highly volatile and that for the last three or four
18 years the market had changed. Staff specifically
19 mentioned that Empire should look to add flexibility
20 to its policy. Empire chose to ignore staff's
21 advice.

22 Empire's position statement and its
23 prefiled testimony suggests that their hedging
24 policy and their hedging losses are partly the fault
25 of this Commission, Commission staff, or even OPC's

1 fault for not objecting. There should be no
2 question that Empire's management is responsible for
3 the hedging losses and no one else.

4 On the same page of their position
5 statement, they also say hedging decisions should be
6 made by management. Well, they can't have it both
7 ways. They can't blame the regulator and then claim
8 it's their call to make. We agree these are
9 management decisions that should be left to them,
10 but with that comes responsibility and they need to
11 be held responsible when their imprudent actions
12 cause harm to their customers.

13 Empire's imprudent policy has racked up
14 nearly 95 million in total company hedging losses in
15 just the last eight years, an average of almost
16 \$12 million per year. In the prudence review period
17 they incurred 16 million in total company hedging
18 losses, 13 million of which were passed onto their
19 Missouri customers. 38 cents of every dollar that
20 Missouri customers pay for natural gas was due to
21 hedging losses.

22 If the Commission agrees that Empire
23 imprudently incurred hedging costs for the review
24 period, the law requires those costs to be refunded.
25 In this case, that amounts to 13.1 million that

1 should be refunded to Missouri's Missouri
2 customers -- Empire's Missouri customers.

3 An additional point regarding ratepayer
4 harm and the underlying policy of the FAC was
5 spelled out in the appellate court decision State,
6 ex rel., Union Electric Company v. Public Service
7 Commission, that's 399 S.W.3d 467, it's a 2013 case
8 where the Western District Court of Appeals upheld a
9 Commission order directing Ameren Missouri to refund
10 approximately \$17 million through its FAC, finding
11 the company imprudently failed to properly account
12 for two power sales contracts as off-system sales.
13 The Court stated that a company is not obligated to
14 have an FAC in its tariff, that an FAC can operate
15 to both a utility's benefit and detriment, and that
16 there is an underlying quid pro quo in that
17 ratepayers are obligated to pay an increased rate in
18 the event that fuel prices rose, but would benefit
19 from a decreased rate if fuel prices dropped.

20 Since 2008 the natural gas spot market
21 has plummeted. However, Empire's customers have not
22 experienced those savings because of Empire's
23 hedging losses due to its self-imposed benchmarks.

24 In prior cases the Commission has
25 adopted the standard of whether utility expenses are

1 presumed to be prudently incurred, but such
2 presumption does not survive a showing of
3 inefficiency or improvidence according to the
4 Missouri Court of Appeals. Inefficiency means not
5 producing the effect intended or desired, and
6 improvidence means not foreseeing or not providing
7 for the future.

8 The evidence in this case will clearly
9 show Empire's hedging policy was inefficient and
10 failed to protect Empire's customers from paying
11 huge hedging premiums in the future. Empire was
12 negligent and their negligence caused harm to their
13 customers by ignoring information indicating
14 declining, steady, nonvolatile gas market, and then
15 incurring millions in losses by blindly applying its
16 14-year-old, outdated, self-imposed purchasing
17 benchmarks.

18 A party challenging the prudence
19 presumption needs to only raise serious doubts about
20 the prudence of Empire's practices. The Court of
21 Appeals stated in the associated natural gas case,
22 that I believe every party has cited already, the
23 Court said where some other participant in the
24 proceeding creates serious doubt as to the prudence
25 of an expenditure, then the applicant has the burden

1 of dispelling these doubts and proving the
2 questioned expenditures to have been prudent.

3 The evidence we present goes well beyond
4 just raising serious doubt and instead proves the
5 company was imprudent. Empire now has the burden of
6 proving their hedging losses were prudently incurred
7 and Empire's prefiled testimony does not come close
8 to presenting a reasonable explanation for
9 continuing with an inflexible policy knowing what it
10 knew at the time about the changing market and the
11 repeated failure of that policy. The mere fact that
12 they want to continue with this policy show just how
13 inflexible this company is to revisions.

14 OPC has four witnesses that prefiled
15 testimony in this case. Our hedging witnesses are
16 Mr. John Riley, a CPA for the last 19 years, with
17 over nine years of audit experience; and Mr. Charles
18 Hyneman, also a CPA, a former staff auditor, with
19 extensive experience before this Commission. I'd
20 like to publicly commend these two for the work that
21 they've put into this case, hundreds of hours
22 auditing the company's hedging practices and
23 researching the gas market and data relied upon by
24 Empire. They've been working this issue for what
25 seems like a year now and in my mind have prepared

1 compelling evidence of imprudence.

2 Also prefiling testimony for OPC were
3 Ms. Lena Mantle and Mr. John Robinett. Ms. Lena
4 Mantle mostly focused on purchase power issues, but
5 she also does talk about the hedging practice. And
6 while we have reached an agreement with staff
7 regarding the issues on purchase power that
8 Ms. Mantle addresses and heat rates that
9 Mr. Robinett addresses -- I'm sorry. Yeah, we have
10 reached an agreement. So, we don't intend those to
11 be issues before the Commission.

12 In conclusion, I'd like to highlight two
13 quotes from the Commission's order that granted
14 Empire an FAC. The Commission recognized that
15 after-the-fact prudence reviews such as this is no
16 substitute for an appropriate financial incentive to
17 control costs. Unfortunately, it appears that
18 Empire needs a greater financial incentive than a 95
19 percent limit on what cost changes they pass to
20 customers. Ordering a refund for Empire's customers
21 will hopefully act as an incentive for future
22 periods.

23 Accordingly, OPC's position under Issue
24 1, was Empire imprudent, the answer is yes, they
25 were imprudent. Under Issue 2a, if they were

1 imprudent, should the Commission order a refund.
2 The answer has to be yes because the statute
3 requires a refund when imprudence is found. Under
4 Issue 2b, what should be the amount of the refund,
5 the answer is 13.1 million, which equal the hedging
6 losses or harm caused to ratepayers due to Empire's
7 hedging policy.

8 Issues 3 and 4 ask whether Empire should
9 change its hedging policy and whether Empire's
10 hedging policy should be approved by the Commission.
11 These are not appropriate issues in this case. This
12 case is about a past period, not future periods.
13 Little evidence has been presented about the future
14 of Empire's policy.

15 That's all I have. Thank you.

16 JUDGE WOODRUFF: Any questions from the
17 commissioners?

18 COMMISSIONER STOLL: No questions.
19 Thank you.

20 COMMISSIONER RUPP: No.

21 JUDGE WOODRUFF: Thank you.

22 Opening for Empire.

23 MS. CARTER: Good morning.

24 JUDGE WOODRUFF: Good morning.

25 MS. CARTER: Thank you for granting the

1 continuance and giving me a day for antibiotics. I
2 had a surprise pop-up infection just on Tuesday.
3 So, we acted as quickly as we could and very much
4 appreciate you letting there be a day for the
5 medicine to work before I had to appear in front of
6 people. So, thank you very much.

7 Public counsel's opening statement, of
8 course, is not evidence. I would like to address
9 just briefly two of the things that would not be
10 proper for evidence in this case just to note those
11 from the opening statement.

12 There was discussion of the parent
13 company. There was no parent during the audit
14 period. We're talking about a past period. So,
15 whether or not things have changed now since
16 January, that's not at issue. We're talking about
17 Empire Electric, which is still its own utility
18 today. That is the utility before you in this case
19 and will continue.

20 Mr. Poston also addressed the harsh
21 poverty situation in Empire's service territory. We
22 certainly acknowledge that. It, however, cannot be
23 the basis of the decision on prudence. You must
24 look at what Empire did under the circumstances. In
25 order for Empire to continue providing service, we

1 can't order disallowances and change prices based
2 solely on the income of customers.

3 Empire's hedging policy and all costs
4 that were flowed through the FAC during the prudence
5 period under review were prudent. We have three
6 levels to look at in this case. First, there's
7 Empire's hedging guidelines, the benchmarks
8 Mr. Poston referred to right at the end of his
9 opening statement. This is where OPC focuses and
10 this is where OPC stops, but then we have Empire's
11 actual hedging decisions and other fuel purchases.
12 There are more than 800 fuel purchase transactions
13 relevant to the audit period. OPC's testimony does
14 not address these specific transactions or raise any
15 serious doubt as to any particular hedging
16 transaction. Again, their focus stays here at the
17 benchmark or guidelines that are in our written
18 policy.

19 And then, third, what you're actually
20 needing to issue a decision on are the actual fuel
21 costs, the costs flowed through the FAC. Total net
22 fuel and purchase costs for the review period were
23 more than 217 million with total energy costs of
24 more than 193.6 million that flowed through the FAC
25 for just the audit period. The Commission's FAC

1 rule defines fuel and purchase power costs for us.
2 It's defined as prudently incurred and used fuel and
3 purchase power costs including transportation and
4 then specifically excludes prudently -- oh, excuse
5 me, notes a specific exclusion that
6 prudently-incurred costs do not include any
7 increased cost resulting from negligent or wrongful
8 acts or omissions by the utility. There is nothing
9 in the prefiled testimony and nothing that can be
10 presented to you that can demonstrate that Empire's
11 customers paid increased costs resulting from
12 negligent or wrongful acts or omissions of the
13 company or any otherwise imprudent acts or omissions
14 of the company. It's quite to the contrary, and
15 this is supported by the testimony of Empire
16 witnesses Aaron Doll, Blake Mertens and Rob Sager,
17 and also the staff's testimony, primarily the staff
18 report which was filed earlier in this case.

19 When you refer -- excuse me. When you
20 review Empire's FAC costs, including its hedging
21 costs by asking whether the conduct was reasonable
22 at the time under all the circumstances, considering
23 that the company had to solve its problems
24 prospectively rather than in reliance on hindsight,
25 you find Empire's FAC costs to have been prudently

1 incurred.

2 The FAC was first authorized in 2008 and
3 then that FAC was approved with certain
4 modifications in five more rate cases and in each of
5 those rate cases the Commission decides what cost
6 categories can be included in the FAC. In all of
7 those six rate cases hedging costs were specifically
8 listed as a -- excuse me, as a cost category for
9 FAC. Again, that would be the case immediately
10 prior to the audit period and the current case. The
11 Commission has decided that hedging costs, including
12 hedging losses, in fact, Mr. Poston quoted the exact
13 language in Empire's approved FAC tariff that
14 specifies that hedging losses may be passed through
15 the FAC.

16 And then, as Mr. Poston mentioned,
17 there's also the prudence reviews that are required
18 every 18 months. Right now we're looking at the
19 14th, 15th and 16th six-month accumulation periods.
20 Five prudence reviews have occurred previously, all
21 with no findings of imprudence on the part of
22 Empire. Now, as in those five prior reviews, staff
23 again found no imprudence on the part of Empire, but
24 as you heard from Mr. Poston, Public Counsel takes
25 issue in this sixth prudence review with Empire's

1 hedging plan. Those percentages he mentioned over
2 and over, the guidelines for Empire for hedging.
3 Empire's hedging policy that's set for -- excuse me,
4 set forth in its risk management policy has been
5 substantially unchanged, those guidelines, since
6 prior to the FAC was authorized for Empire. In
7 other words, the hedging policy that OPC is now
8 attacking in this sixth prudence review is the same
9 hedging policy that was in place when the FAC was
10 authorized was in place in all five of the rate
11 cases where the FAC was continued, all with the
12 Commission determination that hedging losses were to
13 be passed through the FAC, and it's also the same
14 policy that was in place in the five prior FAC
15 prudence reviews, all where no imprudence was found.
16 It seems disingenuous for OPC to now say hedging is
17 a risk or a gamble or automatically imprudent
18 because of this policy that has been before the
19 Commission and has been reviewed by OPC for all
20 these years, all with agreement and Commission
21 approval that hedging losses would flow through the
22 FAC.

23 OPC's prefiled testimony contains no
24 credible evidence on imprudence. Instead of
25 reviewing Empire's hedging decisions based on the

1 information available at the time, OPC looks only at
2 the hedging guidelines, the percentages that Empire
3 believes should be hedged, and then looks at the
4 accounting losses and says all of that money should
5 be refunded.

6 Today Mr. Poston referred to hedging as
7 a bet or a gamble. Previously, this Commission, OPC
8 itself has always referred to hedging as more like
9 insurance. It was the opposite of a bet or a
10 gamble. We hedged to ensure against risk. That had
11 always been, in at least my time period, the
12 Commission's guidance. We hedged to ensure against
13 risk. Getting rid of hedging and just playing the
14 market, that was a bet or a gamble. That's
15 speculation. That's not what Empire did. They
16 hedged against the risk of loss.

17 Empire employs a balanced approach to
18 managing the risk associated with supplying fuel to
19 its national gas -- excuse me, natural gas
20 generators, a task requiring consideration of many
21 factors. OPC claims that this policy is too rigid
22 because it sets guidelines for how much should be
23 hedged at certain points in time, but OPC fails to
24 understand that Empire's risk management policy
25 where these percentages are set forth as guidelines,

1 provides all the flexibility that Empire needs to
2 hedge prudently. Empire's risk management policy or
3 RMP allows the company to address various areas of
4 risk, price volatility, credit exposure and volume.
5 It was designed to provide structure and guidance
6 while still allowing a large amount of flexibility,
7 offering a variety of financial tools to accommodate
8 various market conditions. That is done by Empire
9 on a daily basis. Again, more than 800 transactions
10 were at issue during the audit period.

11 Mr. Poston put up a slide -- excuse me, a
12 slide saying this is what Empire should have known.
13 You might notice that all that was on that slide
14 were recorded losses for accounting purposes. He
15 didn't show you any data that Empire was seeing at
16 the time the hedges were placed. We can't just look
17 at what losses were recorded after the fact. That's
18 not a prudence review. You have to look at the time
19 the hedges were placed, what Empire was seeing then.
20 And the Commission actually has dealt with a similar
21 case and made the exact statement that hedging
22 losses can only be determined after the fact. You
23 have to look at the time the hedge was placed and
24 what Empire was seeing, not just losses. The
25 Commission even has a rule for the gas utilities

1 that says losses are not the key for a hedging plan.
2 Mr. Poston also used the word clockwork,
3 but then by the end of his opening statement he
4 referred to self-imposed benchmarks. Well, that
5 part is accurate. Empire, through constant meetings
6 at least quarterly, they get together all the people
7 involved, discuss those percentages, discuss what's
8 going on in the market, and they can change that
9 risk management policy at any time, but they've
10 decided not to looking at all the data. They decide
11 that they still need those hedging percentages in
12 order to ensure against risk for their customers,
13 but then you also have the stat where they make all
14 of the individual hedging decisions, those 800
15 financial transactions, and they weren't all
16 hedging, more than half of those were spot market
17 purchases, but in terms of dekatherms more than
18 half. You have to look at those actual transactions
19 and what was going on at the time of each of those
20 transactions. You can't just wait and after the
21 fact look at losses and say, well, that means it was
22 imprudent.

23 This is not a bet or a gamble. Hedging
24 has always been said to be the opposite of that.
25 OPC witness Chuck Hyneman, in fact, in his testimony

1 in this case compares hedging to purchasing fire or
2 earthquake insurance. Well, if I buy insurance to
3 protect against fire loss, I pay my premiums every
4 month for 20 years, but I still don't have a fire,
5 it was still the right thing to do to have insurance
6 in case there was a fire and I would be protected.
7 We know fires happen. We don't know when or to
8 whom, but we know they happen. So, we buy
9 insurance. We also know that natural gas prices
10 will change. There's always volatility and we do
11 not want the utility speculating and playing the
12 market, not having that insurance in place. That's
13 part of why the Commission has encouraged hedging by
14 its utilities.

15 Now, the insurance example is an
16 oversimplification because hedging isn't just about
17 price. The oversimplification of the review process
18 by OPC dismisses the value and purpose of the hedge,
19 which is to protect against exposure to risk. While
20 a dollar to dollar comparison may result in the
21 recording of a loss or gain for financial hedges,
22 Empire's customers still benefit from Empire's risk
23 management policy which effectively manages risk and
24 provides price stability. It has never been and, in
25 Empire's opinion, nor should it be the goal of the

1 risk management policy to ensure the lowest possible
2 cost for fuel because no one can predict that price.
3 You don't know when it will be the lowest. It will
4 go up, it will go down, it will go up, will go down.
5 This is what we know.

6 Losses are not a fault. We don't blame
7 the Commission. There's not a fault to be assigned.
8 Losses are a reasonable and prudent consequence of
9 hedging against that risk and, again, that is why
10 the Commission has even put it in a rule those
11 almost same words that we can't look just at hedging
12 losses to determine prudence. Empire has done quite
13 well managing that price volatility over time with
14 its hedging program.

15 Now, Empire does have additional issues
16 on the list. Whether Empire should stop hedging or
17 change its hedging program. Those questions don't
18 require a Commission decision in this proceeding
19 and, as Mr. Poston mentioned, they are management
20 decisions and we don't think they should be taken
21 away from Empire's management, but these are the
22 decisions that are being attacked by OPC in this
23 proceeding.

24 In his direct testimony, OPC witness
25 Mr. Hyneman is asked the question. Again, so this

1 is OPC posing a question to Mr. Hyneman, their own
2 witness. The question: Should Empire suspend its
3 natural gas hedging activities until the natural gas
4 market experiences significant price fluctuations as
5 it did in the period 2000 through 2008? And
6 Mr. Hyneman says yes in response to that question in
7 his own testimony. He then adds it is now time for
8 Empire to stop hedging in Missouri. So, OPC's
9 direct testimony in this case is certainly trying to
10 tell Empire what they should and should not do in
11 terms of hedging. So, we're just looking for some
12 guidance from the Commission since OPC's request is
13 not in line with what we had been receiving from the
14 Commission previously.

15 Empire stands behind its hedging program
16 as defined in the risk management policy and would
17 have grave concerns regarding stopping hedging as
18 suggested by OPC because of the exposure that its
19 customers would then face. Empire, though, is
20 always willing to get together with all stakeholders
21 and discuss alternative policy suggestions,
22 including those on hedging.

23 And that leads us to the final issue on
24 the list for Empire, which is whether a mechanism
25 should be put in place so that there can be prior

1 review of hedging plans, either by all stakeholders
2 or possibly also the Commission, which is done in
3 other states, including some of the other states
4 that OPC speaks of in terms of their hedging plans
5 being different from Empire's. Again, this question
6 doesn't have to be answered in this proceeding, but
7 an answer would certainly help. It could help
8 Empire's customers and conserve the resources of all
9 the stakeholders. As mentioned earlier, the hedging
10 policy that OPC is now attacking is the same hedging
11 policy that was in place for six rate cases and five
12 prior prudence reviews. Advanced approval of a
13 hedging program or plan wouldn't replace the need
14 for the prudence reviews because you still actually
15 have to look at the decisions, what OPC didn't
16 consider in this case, but the actual individual
17 decisions and those costs that then flow through the
18 FAC, but it could avoid the situation we're in in
19 this case.

20 And I mentioned earlier that the
21 Commission faced a somewhat similar situation
22 approximately five years ago. This is addressed in
23 Empire's testimony and our statement of position.
24 It was a GMO prudence review where staff alleged
25 that GMO's hedging policy was inflexible and asked

1 for approximately 15 million to be refunded to
2 customers. The Commission found in favor of GMO and
3 did not order any disallowances, finding that you
4 cannot determine the success or failure of a hedging
5 program by looking only at the futures market
6 transaction and that hedging losses cannot be known
7 until after the fact or in hindsight. The
8 Commission concluded because all of staff's studies
9 were totally in hindsight or else a mixed hindsight
10 and prospective study, none are relevant to the
11 Commission's determination. The Commission staff
12 has failed to provide substantial controverting
13 evidence to rebut the presumption of the prudence of
14 GMO's hedging practices. The Commission staff has
15 failed to meet its burden by a preponderance of the
16 evidence of proving that GMO was imprudent with its
17 hedging practices during the prudence review period.
18 Well, the same is true here for OPC and Empire, and
19 I encourage you to issue similar findings in this
20 case.

21 Stemming from that GMO prudence review,
22 the Commission opened an investigatory docket
23 because there were issues raised in that case
24 regarding GMO's hedging plan. Not their individual
25 hedging decisions and resulting cost, but their

1 plan. So, the Commission decided to open a working
2 docket to then look at those policies or procedures
3 for electric utilities for hedging. With the
4 conclusion of that working docket, and that was a
5 2013 working docket, the Commission assured the
6 utilities that it was not changing its policy on the
7 prudence of hedging.

8 Considering OPC's current attack on
9 Empire's hedging program as opposed to addressing
10 specific hedging transactions and costs, it may be
11 time for another hedging working docket or possibly
12 a pre-approval process so that the utilities have
13 some assurance of what the Commission wants and what
14 the stakeholders want in advance instead of waiting
15 year after year after year of having the Commission
16 authorize the inclusion of hedging losses in the FAC
17 to then be told that their hedging policy is
18 imprudent. Thank you.

19 JUDGE WOODRUFF: Any questions from the
20 commissioners?

21 COMMISSIONER STOLL: No questions.
22 Thank you.

23 COMMISSIONER RUPP: Yeah, I do.

24 JUDGE WOODRUFF: Ma'am, we have a
25 question, if you want to come back up.

1 COMMISSIONER RUPP: All right. I hope
2 you're feeling a little better.

3 MS. CARTER: I am. Antibiotics are
4 good. Thank you.

5 COMMISSIONER RUPP: So, you had stated,
6 you know, that the hedges basically are to ensure
7 against risk, but if 95 percent of the risk is being
8 basically taken away with the fuel adjustment
9 clause, what is the need and what is the need for
10 the policy for the hedging if so much risk is being
11 transferred away?

12 MS. CARTER: Well, Empire had this
13 hedging policy, wanting to have a certain amount of
14 their necessary volumes hedged in advance prior to
15 the FAC, and prior to the FAC that was in place for
16 Empire to protect Empire's shareholders. With the
17 FAC that policy is in place to protect the
18 customers. That is the reason for it. There's a
19 5 percent protection still for Empire since it's a
20 95-5 sharing in the FAC, but the primary focus is to
21 protect the customers. Mention the polar vortex for
22 example. And the testimony of Empire shows the
23 prices of gas aren't the same for an hour, let alone
24 a day, a week, or a month or a six-month
25 accumulation period. They are constantly changing

1 and that is why hedging was viewed as the prudent
2 policy for electric utilities, particularly one like
3 Empire that relies on this fuel to run their
4 generators.

5 COMMISSIONER RUPP: So, I guess where,
6 where is the incentive for Empire to provide the
7 lowest possible price for the customer, you know,
8 when, when you're only exposed to about 5 percent of
9 the risk? You've mitigated a bunch of the risk.
10 So, where is the incentive for Empire?

11 MS. CARTER: Not to question the premise
12 of the question, but that assumes that Empire
13 wouldn't actually do something in the interest of
14 their customers. That's the incentive is having the
15 price low and stable, not necessarily the lowest.
16 Again, you can't guess that. OPC wants Empire to
17 stop hedging right now and wanted Empire to stop
18 hedging, apparently, in 2009 or 2011. But prices,
19 although, they haven't been the same as they were
20 before 2008, they've still fluctuated. There are
21 constant fluctuations, and that's why the Commission
22 has authorized an FAC still in each of the rate
23 cases. There's still that risk, and also now that
24 prices are low, historically low, they're going to
25 go up or at least we can assume that because that's

1 what history shows us. And if you look at what
2 Empire saw at the time it placed its hedge, we
3 thought prices were going to go up then and that's
4 why they placed the hedge. There's no lock in.
5 It's not an inflexible policy. They look each day
6 at the data and it's to protect customers against a
7 spike or against frequent changes and smooth out
8 that volatility. It's not just for the lowest
9 price. Again, we can't know the lowest price and we
10 don't -- it's our understanding the Commission does
11 not want the utilities to be speculating on what may
12 be the lowest price and to put that risk on their
13 customers.

14 COMMISSIONER RUPP: I understand not
15 going to the lowest price, but to mitigate the least
16 amount of risk. So, how often does Empire review
17 its risk management plan?

18 MS. CARTER: There are at least
19 quarterly meetings. One of the exhibits we have
20 ready to go are the meeting minutes. It's the RMOC,
21 the risk management oversight committee, and
22 meetings are at least quarterly. I've noticed some
23 of them are more often, I'm sure when a special
24 issue or something that they feel needs attention.

25 COMMISSIONER RUPP: So, you've reviewed

1 this quarterly, so four times a year since 2008.
2 So, roughly you're looking at eight years. So,
3 you've reviewed this 32 times and every time Empire
4 has said, yeah, this is still the best policy?

5 MS. CARTER: And again, what's in the
6 policy that OPC takes issue with are those
7 guidelines, those percentage guidelines. And yes,
8 Empire continually makes the decision that those
9 percentage guidelines are what are prudent for
10 Empire and Empire's customers. The individual
11 hedging decisions are made farther down the line
12 there and are constantly being made.

13 COMMISSIONER RUPP: So, who actually
14 makes those decisions?

15 MS. CARTER: There are a number of
16 people. And do you mean the actual day-to-day,
17 like, spot market decisions?

18 COMMISSIONER RUPP: Yeah. Like, who's
19 the person that's making the decision and executing
20 the transaction?

21 MS. CARTER: Exhibit 12 to Empire's risk
22 management policy has the names of those involved,
23 and I do not know them offhand.

24 COMMISSIONER RUPP: And how long has
25 that been the same -- I'll look at the exhibit, but

1 has that person been the same person overseeing
2 that? Is there new? I know with Algonquin coming
3 in. Has there been a change in leadership in
4 overseeing that program for that --

5 MS. CARTER: No, there is not. There
6 are changes from time to time, and if you look at
7 the RMOC meeting minutes you can see where there are
8 changes. The three gentlemen we have testifying for
9 Empire today are all three very much involved. I
10 don't think any of them are the actual transaction
11 makers.

12 Nod up and down if that's correct.

13 COMMISSIONER RUPP: And how long have
14 those three gentlemen or people that are going to
15 be, how long have they been with the company?

16 MS. CARTER: Do you mind if they say
17 that out loud?

18 COMMISSIONER RUPP: That would be great.

19 MS. CARTER: Aaron, how long have you
20 been --

21 MR. DOLL: I've been with the company
22 about 11 years, and this will be about one year in
23 my current position.

24 MR. SAGER: 10 years for me, Rob Sager.

25 MR. MERTENS: 16 years, Blake Mertens.

1 MS. CARTER: And there has not been a
2 change with the merger. They're the same, same
3 folks involved.

4 COMMISSIONER RUPP: Okay. Thank you.

5 MS. CARTER: Thank you.

6 Any other questions?

7 JUDGE WOODRUFF: No. Thank you.

8 COMMISSIONER STOLL: Thank you.

9 JUDGE WOODRUFF: Opening from staff.

10 MR. BERLIN: Good morning. May it
11 please the Commission:

12 I'm Bob Berlin, staff counsel, and I
13 have a few general opening comments to set the stage
14 on the issues that are before you today.

15 This case involves the staff's sixth
16 prudence review of the costs subject to the
17 Commission-approved fuel adjustment clause or FAC of
18 the Empire District Electric Company. Missouri
19 Statute Section 386.266.4, subparagraph four, and
20 Commission Rule 240-20.090(7) required that the
21 staff perform prudence reviews of an electric
22 utility's FAC no less frequently than at 18-month
23 intervals.

24 In this prudence review the staff
25 reviewed, analyzed, documented items affecting

1 Empire's fuel cost and purchase power cost, net
2 emission allowance cost, off-system sales revenues,
3 and renewable energy credits revenues for Empire's
4 14th, 15th and 16th six-month-long accumulation
5 periods, which began March 1st of 2015 and ended
6 August 31 of 2016. This is called the review period
7 for the prudence report.

8 When staff evaluates for prudence it is
9 guided by whether a reasonable person would find
10 both the information the decision maker relied on
11 and the process that the decision maker used when
12 making decisions was reasonable based on the
13 circumstances and the information known at the time
14 the decision was made without the benefit of
15 hindsight.

16 The decisions that were actually made by
17 the company are disregarded and instead the staff
18 focuses its review on evaluating the reasonableness
19 of the information that the company relied on and
20 the decision-making process at the time those
21 decisions were made. Should the staff determine in
22 the course of its review that either the information
23 relied on or the decision process used by the
24 company was imprudent, then the staff will examine
25 whether the resulting imprudent decision caused harm

1 to the ratepayers and if so, staff would recommend a
2 refund. Now, that did not occur in this case.

3 As stated in staff's prudence review
4 report, the staff did not identify any evidence of
5 imprudence on the part of Empire during the review
6 period. Now, Public Counsel, obviously, did not see
7 it this way. Public Counsel took issue with
8 Empire's gas hedging activities and its risk
9 management policy and requested a hearing, which is
10 why we're here this morning. The staff reviewed
11 Empire's gas hedging activities and the costs it
12 incurred and determined that Empire conducted its
13 gas hedging program in accordance with the company's
14 risk management policy and its Commission-approved
15 FAC tariff.

16 And I want to make a key point here
17 about staff's prudence review of Empire's gas
18 hedging. The staff does not make a determination
19 that gas hedging is prudent. That is not staff's
20 job. Because Empire's gas hedging expenditures are
21 consistent with Empire's risk management policy and
22 are done in compliance with Empire's FAC tariff, the
23 gas hedging expenditures are presumed to be prudent.
24 The staff's charge was to examine whether the
25 transactions were done in accordance with Empire's

1 risk management policy in its FAC tariff, and as a
2 result of its review the staff concluded that it
3 could find no evidence of imprudence on the part of
4 Empire.

5 And before I conclude, I'd like to make
6 one final point, possibly two. Staff's view on this
7 matter is that a general rate case proceeding is a
8 more appropriate forum for in-depth reviews of the
9 prudence and reasonableness of utility hedging and
10 risk management policies. In fact, and you've heard
11 it mentioned earlier, in Empire's recent rate case
12 questions were raised at that time and no changes to
13 Empire's risk management policy or its FAC tariff on
14 the hedging issues were made.

15 And I would also point out, you know,
16 that Mr. Poston in his opening focuses quite heavily
17 on 386.266.1, but I would direct you to 386.266.4.
18 What that part of the statute states is that the
19 Commission shall have the power to approve, modify,
20 or reject adjustment mechanisms that are submitted
21 in accordance with the statute only after providing
22 the opportunity for a full hearing in a general rate
23 proceeding. The Commission may approve such rate
24 schedules after considering all relevant factors
25 which may affect the cost or overall rates and

1 charges of the corporation, and the statute then has
2 a few other guidelines, and Ms. Carter talked to the
3 process used by the Commission in general rate case
4 proceedings whereby the tariffs are reviewed and
5 then compliance tariffs are filed as a result of the
6 general rate case proceeding and the issues that are
7 resolved in those rate cases.

8 Ms. Carter also mentioned that there was
9 a working docket. This subject of utility gas
10 hedging is not new to the Commission. In fact, the
11 working docket is EW-2013-0101 in the matter of the
12 working docket to address the hedging practices of
13 electric utilities used to mitigate the rising cost
14 of fuel. In EFIS that docket is considered closed,
15 but this subject has been addressed recently by the
16 electric utilities and by the stakeholders.

17 On the gas hedging issues in front of
18 the Commission this morning staff offers two
19 witnesses. Ashley Sarver will answer questions on
20 her examination of Empire's hedging activities which
21 she documented in the staff's prudence report. Dana
22 Eaves filed rebuttal testimony on the policy
23 considerations behind Empire's gas hedging and has
24 offered to answer more of the why type of questions
25 and questions that may relate back to Empire's

1 previous general rate cases on the gas hedging
2 issues.

3 Now, also appearing today are staff
4 witnesses J. Luebbert and David Roos. Now,
5 Mr. Luebbert provided testimony on the matter of
6 heat rate results and Mr. Roos provided testimony on
7 true purchase power and off-system sales. Both of
8 these issues did not make it to the issues list and
9 are not presented for Commission decision, but I
10 will bring them up to testify to their portion of
11 staff's prudence review report so that we can get it
12 properly entered into the record.

13 This concludes my remarks, and I'll
14 answer any questions if you have any.

15 JUDGE WOODRUFF: Any questions?

16 COMMISSIONER STOLL: No questions.

17 COMMISSIONER RUPP: Yeah.

18 So, staff does not think there was
19 anything unreasonable or imprudent in the FAC -- I
20 mean in the hedging process? That's your position?

21 MR. BERLIN: That's correct.

22 COMMISSIONER RUPP: Okay. Does staff
23 have a position on how well Empire hedges?

24 MR. BERLIN: On how well they do their
25 job in hedging?

1 COMMISSIONER RUPP: On how well they
2 mitigate the risk in what they pay for the -- you
3 know, for that.

4 MR. BERLIN: Not, not beyond the staff's
5 finding that the company properly followed its risk
6 management policy and the limits that were set forth
7 in that policy and as well following the hedging
8 that's permitted under the Commission-approved FAC
9 tariff. We did not get --

10 COMMISSIONER RUPP: So, as long as they
11 followed their written policy and as long as they
12 applied to the tariff, staff's like you're good to
13 go?

14 MR. BERLIN: Well, and as well as the
15 transactions cost that were reviewed by Ms. Sarver
16 or staff didn't reveal anything that would cause
17 further questioning or direct her or other staff in
18 any additional investigation beyond what I just
19 described.

20 COMMISSIONER RUPP: Thank you.

21 JUDGE WOODRUFF: Thank you.

22 I believe that's all the opening
23 statements. Let's take a short break before we
24 begin the testimony. Let's come back at 9:50.

25 (A short recess was taken.)

1 JUDGE WOODRUFF: All right. Let's come
2 back to order. We're back from break.

3 Mr. Poston, before we call your first
4 witness up, do you want to go ahead and give me the
5 numbers of your testimony?

6 MR. POSTON: Okay.

7 JUDGE WOODRUFF: You're starting with
8 number one, right?

9 MR. POSTON: Yeah. And again, I'll say
10 that on this it's marked as HC. I will cross that
11 out because the information in here the company's
12 told us no longer needs to be treated confidential.
13 So, Exhibit No. 1 will be the direct testimony of
14 John Riley, Exhibit No. 2 is the rebuttal testimony
15 of John Riley, and Exhibit 3 is the surrebuttal
16 testimony of John Riley.

17 So, we won't be submitting any NP. I
18 guess it's all NP now.

19 JUDGE WOODRUFF: All right. You can
20 call your first witness.

21 MR. POSTON: OPC calls John Riley.

22 JOHN RILEY,
23 having been called as a witness herein, having been
24 first duly sworn, was examined and testified as
25 follows:

1 JUDGE WOODRUFF: You may inquire.

2 DIRECT EXAMINATION

3 BY MR. POSTON

4 Q. Will you, please, state and spell your
5 name for the court reporter.

6 A. My name is John S. Riley, R-I-L-E-Y.

7 Q. Are you the same John Riley that caused
8 to be prepared direct, rebuttal, and surrebuttal
9 testimony that has been premarked as Exhibits 1, 2,
10 and 3 respectively?

11 A. Yes, sir.

12 Q. Do you have any corrections to that
13 prefiled testimony?

14 A. Yes, sir, I do.

15 Q. What is your first correction?

16 A. Direct testimony, page 5, line 23,
17 starting on line 24, "Unless a company is betting on
18 the price of natural gas going," it says, "down."
19 It should be up. "There really isn't any hedging
20 that is suitable for this pricing."

21 Q. I'm sorry. Where are you?

22 A. Line 23, page 5.

23 Q. Of direct testimony? Oh, I'm sorry.

24 A. Yes.

25 Q. I was on Hyneman testimony.

1 **Okay. Go ahead. Line?**

2 A. Line 23, the word "down" should be up.

3 **Q. Okay. And what's your next correction?**

4 A. Page 14 of the direct testimony starting
5 on line 8 there's a question and answer in there
6 that actually is a quote, not -- it's not actually
7 one of my questions and answers. It's a question
8 and answer from an Empire witness. It's not in
9 quotations. So, it should be -- it should be
10 considered a quote and not question and answer.

11 **Q. Okay. Do you have other changes on that**
12 **same page?**

13 A. At the bottom in footnote No. 8, "Please
14 review the hedging strategy section quoted on page 7
15 of this testimony." It's actually page 9, 10, 11
16 and 12.

17 MR. POSTON: And Judge, we have prepared
18 a replacement page that shows that as a quote that
19 I'd like to hand out just to...

20 JUDGE WOODRUFF: Do you want to mark it
21 as a separate exhibit? That seems to be the
22 reasonable way to do it.

23 MR. POSTON: To mark it as an exhibit?

24 JUDGE WOODRUFF: Yeah.

25 MR. POSTON: Okay. Let's do that.

1 Exhibit 4.

2 JUDGE WOODRUFF: It should be 4.

3 And was that to his direct?

4 MR. POSTON: That's direct.

5 Q. (By Mr. Poston) Do you have any other
6 changes, Mr. Riley?

7 A. Yes, sir.

8 Q. And can you, please, talk into your
9 microphone.

10 A. Continuing in direct testimony, page 17,
11 line 14, "Leave hedging strategy in December of
12 2011," should be by December 2011.

13 Q. Do you have anything else?

14 A. One other on page 18.

15 Q. Of direct?

16 A. Of direct in footnote No. 16 it says,
17 "Empire did not hedge in one of the 18 months." It
18 was Empire did not hedge -- did not financially
19 hedge in one of the 18 months.

20 Q. Okay. With these corrections, if I were
21 to ask you the same questions that appear in your
22 testimony today, would your answers be the same or
23 substantially the same?

24 A. Yes, they would.

25 Q. And are these answers true and accurate

1 to the best of your knowledge?

2 A. Yes, sir.

3 MR. POSTON: Your Honor, I offer
4 Exhibits 1, 2, 3, and 4.

5 (OPC's Exhibits 1 through 4 were offered
6 into evidence.)

7 JUDGE WOODRUFF: 1, 2, 3, and 4 have
8 been offered. Any objections to their receipt?

9 Hearing none. They will be received.

10 (OPC's Exhibits 1 through 4 were
11 received into evidence.)

12 MR. POSTON: I tender this witness for
13 cross-examination.

14 JUDGE WOODRUFF: Okay. And for
15 cross-examination we begin with the staff.

16 MR. BERLIN: No questions, Judge.

17 JUDGE WOODRUFF: For Empire?

18 MS. CARTER: No questions, Judge.

19 JUDGE WOODRUFF: All right. Any
20 questions from the bench. Commission Stoll?

21 COMMISSIONER STOLL: No questions, Your
22 Honor.

23 JUDGE WOODRUFF: Commissioner Coleman?

24 All right. There were no questions from
25 the bench. So, no need for recross and no recross,

1 so no redirect.

2 And you can step down.

3 You can call your next witness.

4 MR. POSTON: OPC calls Charles Hyneman.

5 CHARLES HYNEMAN,

6 having been called as a witness herein, having been

7 first duly sworn, was examined and testified as

8 follows:

9 JUDGE WOODRUFF: You may inquire.

10 DIRECT EXAMINATION

11 BY MR. POSTON

12 Q. Could you, please, state and spell your
13 name.

14 A. Charles R. Hyneman, H-Y-N-E-M-A-N.

15 MR. POSTON: Judge, I've not premarked
16 this. Maybe we should premark his testimony as
17 well.

18 JUDGE WOODRUFF: Yes, beginning with 5.

19 MR. POSTON: So, the direct testimony of
20 Charles Hyneman Exhibit 5.

21 JUDGE WOODRUFF: Yes.

22 MR. POSTON: Rebuttal testimony of
23 Charles Hyneman Exhibit 6, and surrebuttal testimony
24 of Charles Hyneman Exhibit 7.

25 JUDGE WOODRUFF: And was any of his

1 confidential?

2 MR. POSTON: No.

3 JUDGE WOODRUFF: You may inquire when
4 you're ready.

5 Q. (By Mr. Poston) Mr. Hyneman, did you
6 prepare and cause to be filed testimony that's been
7 premarked as Exhibits 5, 6, and 7 respectively?

8 A. Yes.

9 Q. And that's your direct, rebuttal, and
10 surrebuttal testimonies?

11 A. That's correct.

12 Q. Do you have any corrections to that
13 testimony?

14 A. Yes. I have a couple minor corrections.
15 The first will be on my rebuttal testimony at page
16 2.

17 Q. Okay. And what is the correction?

18 A. On line 16 after the words, "witness
19 Doll," should be the words not. It should read, not
20 an auditor.

21 Q. Okay. What's your next correction?

22 A. It's on page 6, line 12, I refer to
23 schedule CRH R-2, which is my direct testimony I
24 filed in File No. ER-2010-0355.

25 Q. Which testimony is this?

1 A. I'm sorry. It's still in the rebuttal
2 at page 6, line 11.

3 **Q. Oh, line 11.**

4 A. Yes.

5 **Q. Okay.**

6 A. It refers to schedule CRH-R-2. That
7 schedule was inadvertently not filed with my
8 rebuttal testimony and we are making copies now and
9 will be having it available today. Schedule 1 was
10 duplicated instead of this being put in as schedule
11 2, so...

12 **Q. And what is that schedule?**

13 A. It is my direct testimony in, as a
14 member of the staff, in Case No. ER-2010-0355 and it
15 talks about the generally-accepted auditing
16 standards that were ordered by the Commission in
17 that case.

18 MR. POSTON: So, Judge, we're making
19 copies of that to we can make that as another
20 exhibit. We just don't have it ready at this
21 moment.

22 JUDGE WOODRUFF: All right. Let's go
23 ahead and give it a number. We'll call it No. 8.

24 MR. POSTON: Okay.

25 JUDGE WOODRUFF: And we'll call it

1 Hyneman schedule. And it was to his rebuttal?

2 MR. POSTON: CRH-R-2.

3 JUDGE WOODRUFF: Okay. Was that to his
4 rebuttal testimony or...?

5 MR. POSTON: Yes, rebuttal.

6 A. And I had two minor corrections to my
7 surrebuttal testimony at page 5. On page 5 at line
8 10 after the words, "staff rate case auditors,"
9 should be inserted the word "and." So, it should be
10 staff rate case auditors and staff natural gas
11 procurement analysis department auditors.

12 And on line 12 the fifth word in is the
13 word "and," and that word should be any, A-N-Y.

14 Q. (By Mr. Poston) Are those all your
15 corrections?

16 A. Yes.

17 Q. If I were to ask you the questions that
18 appear in your testimony today on the stand, with
19 those corrections, would your answers be the same or
20 substantially the same?

21 A. Yes, they would.

22 Q. And are these answers true and accurate
23 to the best of your knowledge?

24 A. Yes, they are.

25 MR. POSTON: Your Honor, I offer

1 Exhibits 5, 6, and 7. And I'll withhold offering
2 Exhibit 8 until we've brought that in.

3 (OPC's Exhibits 5 through 7 were offered
4 into evidence.)

5 JUDGE WOODRUFF: 5, 6, and 7 have been
6 offered. Any objections to their receipt?

7 Hearing none. They will be received.

8 (OPC's Exhibits 5 through 7 were
9 received into evidence.)

10 MR. POSTON: I tender Mr. Hyneman for
11 cross-examination.

12 JUDGE WOODRUFF: Cross beginning with
13 staff.

14 MR. BERLIN: Just a couple questions.

15 CROSS-EXAMINATION

16 BY MR. BERLIN

17 Q. Mr. Hyneman, are you familiar with the
18 2017 integrated resource plan annual update process?

19 A. No.

20 Q. Do you participate in the 2017
21 integrated resource plan update process? And by
22 that I mean would you participate in preparing
23 comments of the Public Counsel?

24 A. No.

25 Q. Okay.

1 A. Well, and to be -- I've had discussions
2 with Dr. Geoff Marke concerning that, but I have not
3 participated in, in submitting comments, but I had
4 discussions with Dr. Marke.

5 Q. Okay. Would you have had discussions
6 with Dr. Marke regarding the 2017 integrated
7 resource plan annual update for KCP&L Greater
8 Missouri Operations Company perhaps?

9 A. It, it could have been, yeah. I wasn't
10 sure exactly what case. We were talking in general.

11 Q. All right.

12 MR. BERLIN: Judge, may I approach?

13 JUDGE WOODRUFF: You may.

14 You want to mark this as an exhibit?

15 MR. BERLIN: Yes. Can we mark that as
16 Exhibit 205?

17 JUDGE WOODRUFF: Sure.

18 Q. (By Mr. Berlin) Mr. Hyneman, just spend
19 a minute there to look at that document.

20 You had indicated earlier you may
21 have -- you've had some conversations with
22 Dr. Marke. And would you identify the document that
23 I just handed out, which is premarked as Exhibit
24 205?

25 A. Yes. It's the comments of the Office of

1 the Public Counsel in File No. EO-2017-0230 in the
2 matter of the 2017 integrated resource plan annual
3 update for KCPL, Greater Missouri Operations
4 Company.

5 Q. And do you have any reason to believe
6 that that's not a true and correct copy?

7 A. I do not.

8 Q. I would ask that you turn to page 5, and
9 that's page 5 on the Public Counsel's memorandum.

10 A. Okay.

11 Q. But before we do that, if you go to page
12 1, would you agree with me that this is a document
13 prepared by Dr. Geoff Marke, chief economist?

14 A. Yes, I would.

15 Q. And if you'd turn to page 5, please.

16 A. I'm there.

17 Q. Okay. And there's a paragraph in the
18 middle of the page titled fuel costs. Do you see
19 that?

20 A. Yes.

21 Q. Could you read that paragraph, please.

22 A. Yes. "According to the EIA's short-term
23 energy outlook, the average natural gas price to
24 generators was \$2.88 for MMBTU in 2016 compared to
25 \$3.58 for MMBTU in the first half of 2017 (plus

1 24 percent). The higher cost of fuel this summer
2 will have a negative impact on electric ratepayers.
3 Moving forward (e.g. more than five years out) there
4 is a concern that the vast expansion of U.S. natural
5 gas export market and increased consumption from gas
6 generators (as a result of coal and nuclear
7 closures) could generate intense price spikes,
8 especially if winters deviate from average to more
9 extreme temperatures. To be clear, OPC believes
10 that natural gas is abundant and expects to remain
11 the dominant source for the nation's supply for
12 years to come. We are, however, nonetheless
13 cognizant of the risk involved in increasingly
14 becoming more pathodependent on single fossil fuel
15 type and intermittent resources. Adding analysis,
16 examining the extreme outlier natural gas price
17 fluctuations as scenarios may be warranted (see also
18 the polar vortex)."

19 Q. Yeah. And you would agree that that
20 last sentence there's a footnote 11 citing -- where
21 Dr. Marke cites to an article by a D. Nicks of Time
22 in 2014 titled Polar Vortex Sends Natural Gas Prices
23 on Roller Coaster?

24 A. Do I --

25 Q. Do you agree with that footnote that

1 **Mr. Marke -- Dr. Marke cites to?**

2 A. I agree that's the footnote he cites to.

3 **Q. All right. So, it would appear,**
4 **Mr. Hyneman, that Dr. Marke, the chief economist for**
5 **Public Counsel, has a -- has a view that there is,**
6 **indeed, volatility in the gas market?**

7 A. That's not what this document says that
8 there's volatility in the current gas market.

9 MR. BERLIN: I have no further
10 questions, Judge.

11 JUDGE WOODRUFF: All right.

12 MR. BERLIN: I would move to enter this
13 into the record as Staff Exhibit 205.

14 (Staff's Exhibit 205 was offered into
15 evidence.)

16 JUDGE WOODRUFF: 205 has been offered.
17 Any objections to its receipt?

18 Hearing none. It will be received.

19 (Staff's Exhibit 205 was received into
20 evidence.)

21 JUDGE WOODRUFF: For Empire?

22 MS. CARTER: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MS. CARTER

25 **Q. Mr. Hyneman, your position is that OPC**

1 performed an audit of the costs that flowed through
2 Empire's FAC for the audit period; is that correct?

3 A. No. I think I was clear in my direct
4 testimony that we performed a prudence review and
5 cost audit of Empire's hedging policy and hedging
6 losses for the audit period. We did not perform a
7 prudence review or cost audit of any other part of
8 Empire's fuel or purchase power costs.

9 Q. So, OPC didn't actually look at the fuel
10 costs that flowed through the FAC?

11 A. I'm not sure what the -- what Ms. Mantle
12 looked at. I know she did not do an audit and
13 review, a prudence review of the purchase power or
14 other fuel costs. OPC's focus and scope in this
15 case was primarily on Empire's natural gas fuel
16 hedging policy.

17 Q. Just the policy, not the individual
18 transactions?

19 A. The policy itself, the employment of the
20 policy in 2010 through 2015 when the hedging losses
21 that were recognized in the audit period were
22 transacted. That was the main focus. The hedging
23 policy, the prudence of employing that policy, the
24 prudence of not changing that policy, and the costs
25 that result from not changing that policy.

1 Q. To assess the prudence of the fuel costs
2 that went through Empire's FAC, there would be more
3 than 800 fuel transactions to be reviewed, correct?

4 A. I have no idea of the number.

5 Q. Do you know how many financial hedges
6 were placed?

7 A. I know there are several over a long
8 period of time. I think the period, I think,
9 identified in the case, I think Mr. Mertens
10 identified that they began around 2010 and they ran
11 up through 2015, and those are the hedge
12 transactions that were placed that resulted in the
13 hedging losses that we're addressing in this case.

14 Q. 51 different financial hedges for
15 8,730,000 dekatherms. Does that sound correct?

16 A. Could be.

17 Q. You wouldn't know?

18 A. I reviewed the hedge transactions, but I
19 didn't count them.

20 Q. Okay. But you reviewed those 51
21 financial hedge transactions?

22 A. Yes.

23 Q. But your testimony doesn't contain any
24 information regarding the prudence or imprudence of
25 those 51 individual transactions, correct?

1 A. Those transactions --

2 Q. I'm sorry, Mr. Hyneman. Is that
3 correct?

4 A. I'm sorry. Could you repeat the
5 question?

6 Q. Your testimony that you prefiled in this
7 case does not contain any testimony on those 51
8 individual financial hedges; is that correct?

9 A. No, that's not correct. I describe the
10 hedges, that they were placed, the time period, the
11 method used, NYMEX, the pros and cons addressed by
12 the company of using NYMEX. I didn't list any exact
13 dollar amounts in my testimony, but I did review the
14 transactions. I noted they were imprudently
15 incurred as a result of imprudent hedging policy
16 that was employed through 2010 to 2015.

17 Q. And again, the focus being solely on
18 that policy?

19 A. Well, I think that's what we're
20 alleging. We're alleging that the policy as it is
21 today is imprudent and using that policy in the
22 2010-2015 time frame, a policy that was designed for
23 a completely different natural gas market, and staff
24 has identified this too in testimony, was imprudent.
25 It was a policy that may have been prudent in 2009

1 and before, but with the change in the natural gas
2 market from one of high volatility and high prices
3 to one of extreme low volatility and low prices, no
4 changes to the policy was imprudent and I think
5 that's clear.

6 **Q. Are you aware of the number of physical**
7 **hedges with regard to costs flowed through the FAC**
8 **for the audit period?**

9 A. I'm aware that Empire has de-emphasized,
10 I think, the number of fiscal hedges is my
11 recollection, but I can't recall an exact number.

12 **Q. You don't recall if there were 20**
13 **physical hedges for almost 3 1/2 million dekatherms?**

14 A. No. That type of analysis may have done
15 by OPC witness Riley and he got into the actually
16 number. I'm not aware of the number.

17 **Q. Now, are you aware of the number of spot**
18 **market purchases for the FAC cost?**

19 A. We, we are not addressing spot market
20 purchases at all. I mean, they were not part of our
21 scope. So, I don't think I would have counted the
22 number of them.

23 **Q. So, you didn't look at any of the, I**
24 **believe, according to Empire's testimony, 775 spot**
25 **market purchases for almost 17 million dekatherms?**

1 A. I don't think it would be reasonable to
2 look at those transactions if they weren't in our
3 audit scope. Our audit scope was hedging
4 transactions, not --

5 **Q. Again, so not the fuel cost that went**
6 **through the FAC?**

7 A. Right. Well, to correct that, you are
8 putting the fuel costs -- you're assuming -- you're
9 classifying these hedging losses as fuel costs and
10 those went through FAC. I know you characterized
11 those as accounting losses. They're not accounting
12 losses. They're really dollar losses you're
13 charging to your ratepayers. So, those are fuel
14 costs and I did analyze those quite extensively.

15 **Q. You just didn't analyze the other fuel**
16 **costs?**

17 A. They were not part -- the open market
18 purchase of natural gas were not part of our scope.
19 Our scope was the hedging policy and the hedging
20 losses that resulted from the imprudent use of that
21 policy.

22 **Q. And I'm sorry, Mr. Hyneman. I just want**
23 **to make sure we're clear. Those are costs that**
24 **flowed through the FAC, correct?**

25 A. That's correct.

1 Q. But they weren't looked at by OPC?

2 A. Your open market, your daily index price
3 purchases?

4 Q. Correct.

5 A. I didn't. I think Mr. Riley may have,
6 but I didn't look at those.

7 Q. The guidelines for Empire's hedging
8 policy, those are set forth in the risk management
9 policy, correct?

10 A. That's correct.

11 Q. And for reference, that is attached to
12 Mr. Sager's rebuttal testimony as appendix RS-1.
13 And I'm going to use RMP sometimes and sometimes
14 risk management policy. Does that work for you?

15 A. Yes, it does.

16 Q. And then Empire has a committee to
17 oversee its risk management policy known as the
18 RMOC, risk management oversight committee. You're
19 familiar with that, correct?

20 A. I am.

21 Q. How often does Empire's RMOC meet?

22 A. Well, I, I obtained the minutes to these
23 meetings in response to data request. I think we
24 started looking at them in 2010 and all the way
25 through maybe just a few months ago. I think we

1 asked for an update on those. But I did go through
2 each of the minutes, and at some times they met, I
3 think, monthly, at some times quarterly, at some
4 times there were long periods of time between the
5 meetings that weren't explained, but, so, I don't
6 think there's any systematic pattern to the meetings
7 over the years.

8 Q. Are you familiar with how many meetings
9 there were during the audit period?

10 A. Are you talking about March 2015 through
11 August 2016?

12 Q. Yes.

13 A. I can count.

14 Q. No. That's all right.

15 You looked at those meeting minutes --

16 A. Yes.

17 Q. -- correct?

18 A. I did.

19 Q. And you looked at the meeting minutes,
20 for example, the year leading up to the audit
21 period?

22 A. I looked at the meeting minutes from
23 January 12, 2010, through April 18 of 2017.

24 Q. Since Commissioner Rupp had asked a
25 question about this also, let me hand you that DR

1 response that we're marking as Exhibit 109. What is
2 that that you have there?

3 JUDGE WOODRUFF: I show 109 as being the
4 Sager correction sheet.

5 MS. CARTER: Oh, then it should be 110.

6 Q. (By Ms. Carter) Can you tell us what is
7 marked there as Exhibit 110?

8 A. It's what appears to be Empire's
9 response to OPC data request 1005.

10 Q. And is that what you were referring to
11 just a moment ago?

12 A. Yes.

13 Q. The data request response?

14 A. Yes, it was.

15 Q. You requested those minutes and then you
16 received the minutes in return?

17 A. Correct.

18 MS. CARTER: I would ask for Exhibit 110
19 to be admitted, and that is confidential. So, it
20 should be Exhibit 110-C. Is that, Judge, how you
21 want us to do that?

22 (Empire's Exhibit 110-C was offered into
23 evidence.)

24 JUDGE WOODRUFF: That is what I want you
25 to do, yes.

1 110-C has been offered. Any objection
2 to its receipt?

3 Hearing none. It will be received.

4 (Empire's Exhibit 110-C was received
5 into evidence.)

6 Q. (By Ms. Carter) Mr. Hyneman, the minutes
7 reflect that various topics are discussed at those
8 RMOC meeting minutes, correct -- excuse me, at those
9 RMOC meetings?

10 A. There are a limited number of topics,
11 yes.

12 Q. And I'm sorry. I asked if there were
13 various topics and you changed that to limited.

14 A. Well, I mean, a limited number of topics
15 were addressed at the meetings. Within that limited
16 number, it could be various topics.

17 Q. The Commission first authorized FAC for
18 Empire in its 2008 rate case, correct?

19 A. Yes.

20 Q. And it approved continuation of Empire's
21 FAC with certain changes in five additional rate
22 cases; is that correct?

23 A. Yes.

24 Q. So, that would be all Empire Electric
25 rate cases from 2008 through the present; is that

1 right?

2 A. I believe so, yes.

3 Q. And then there have also been five FAC
4 prudence review dockets for Empire before this case,
5 correct?

6 A. Correct.

7 Q. Empire witness Aaron Doll states in his
8 prefiled direct testimony that Empire has been found
9 to be prudent in all five of its prior FAC audits,
10 and then I'm looking at page 2 of your rebuttal
11 testimony, you're asked if this statement by
12 Mr. Doll is false and you testified that it is
13 false.

14 A. Correct. It is false.

15 Q. You also state in your rebuttal
16 testimony at page 2, line 10 that finding no
17 evidence of imprudence in no way means or even
18 indicates that Empire has acted prudently in its
19 incurrence of fuel and purchase power costs; is that
20 correct?

21 A. That's correct.

22 Q. So, it's your opinion that five prior
23 prudence reviews with no finding of imprudence
24 cannot even indicate that Empire acted prudently?

25 A. Yes. And as --

1 Q. Yes, that is your opinion?

2 A. Mr. Berlin stated and he stated clearly
3 in his opening statement the fact that they found no
4 evidence of imprudent does not mean that Empire was
5 prudent. Those are his exact words.

6 Q. And I'm sorry, Mr. Hyneman. My question
7 was: It's your opinion that no finding of
8 imprudence in five prior prudence reviews doesn't
9 even indicate that Empire acted prudently?

10 A. Yes. And I'll explain. Mr. Berlin
11 explained staff does not look at the prudence of the
12 hedging policy. It only looks at whether you
13 complied with your hedging policy. So --

14 Q. And, Mr. Hyneman, I'm sorry.

15 A. -- given that, there is --

16 Q. That's not actually what I was asking,
17 about staff's opinion. I was asking for your
18 opinion and you answered me. Thank you.

19 A. Okay.

20 Q. In the 2008 rate case where the
21 Commission first authorized an FAC for Empire,
22 neither staff or OPC or any other party challenged
23 Empire's hedging policy as set forth in its risk
24 management policy, correct?

25 A. I don't recall, but I know that sounds

1 reasonable. In 2008 the natural gas market was
2 volatile and high priced. So, I think a robust
3 hedging policy during that time would be reasonable.

4 Q. And at the conclusion of that 2008 rate
5 case, the FAC was authorized for Empire and listed
6 as a cost category are hedging losses, correct?

7 A. I don't know for sure, but it sounds
8 reasonable.

9 Q. And then in the 2010 rate case the
10 Commission authorized the continuation of the FAC,
11 correct?

12 A. I don't know.

13 Q. You didn't look at that?

14 A. Oh, of the FAC? I'm sure it did because
15 they continued with it.

16 Q. And again, there was no imprudence
17 alleged as to Empire's hedging policy?

18 A. I do not believe for OPC's perspective
19 they even did any kind of prudence review or audit
20 during that period for that case.

21 Q. And coming out of the 2010 rate case the
22 Commission again authorized hedging losses to pass
23 through the FAC?

24 A. I don't know if they specifically noted
25 that. I think if staff didn't note any prudence

1 disallowance, the Commission just would have
2 approved it. I don't think any other party
3 challenged it.

4 Q. You don't know if that was in the
5 tariff?

6 A. It may have been in the tariff. Was the
7 Commission specifically aware that they approved
8 losses for hedging, I don't know that.

9 Q. I'm sorry, Mr. Hyneman. Are you saying
10 that the Commission-approved tariff wouldn't,
11 wouldn't control the tariff that was approved by the
12 Commission and included hedging losses?

13 A. If you're -- if you're asking me if I
14 knew that the Commission was aware that Empire
15 incurred hedging losses during that prudence period,
16 I don't know that.

17 Q. And, Mr. Hyneman, thank you for that
18 clarification. I certainly wasn't asking for what
19 you knew about what the Commission knew.

20 A. Okay.

21 Q. I'm asking you to confirm that the
22 Commission, in fact, authorized a tariff that
23 included hedging losses passing through the FAC?

24 A. For what year again?

25 Q. Coming out of the 2010 rate case.

1 A. I believe. Subject to check, I believe
2 that's correct.

3 Q. And that would be the same again for the
4 2011 Empire Electric rate case?

5 A. Again, subject to check, I do believe
6 that is correct.

7 Q. And again, with the Empire Electric 2012
8 rate case again a tariff resulted for the FAC with
9 hedging losses included?

10 A. I know that Empire incurred hedging
11 losses consistently since, I think, 2009 every year.
12 I think Mr. Riley identified a total of \$65 million
13 in losses, but I believe that they're in each FAC
14 audit period, but I'm not 100 percent sure, but it
15 sounds reasonable.

16 Q. You don't know if Empire's FAC tariff
17 included hedging losses, the Commission-approved
18 tariff?

19 A. I know Empire incurred hedging losses
20 each year. To the extent that they review and
21 included in --

22 Q. And, Mr. Hyneman, I'm sorry. We have a
23 disconnect here. I'm asking about the tariff that
24 was on file and approved by the Commission. I don't
25 need you to guess.

1 A. Well, I'm trying to be cooperative, but
2 I have not read the tariff.

3 **Q. Okay. So, you don't know?**

4 A. Well, no. I'm trying to be -- I assume
5 it's correct, but I don't know specifically if it's
6 correct.

7 **Q. And then you would assume also, then, it**
8 **was correct for the most recent rate case -- well,**
9 **and also the 2014 rate case that again the**
10 **Commission authorized an FAC tariff that included**
11 **hedging losses?**

12 A. Again, I assume. I saw no specific data
13 on that. I know hedging losses were an issue in the
14 rate case, the rate case was settled. Now --

15 **Q. And again, Mr. Hyneman, I'm just asking**
16 **about the FAC tariff.**

17 A. Again, the best I can do is say I did
18 not read that.

19 **Q. You didn't find that relevant?**

20 A. To the rate case?

21 **Q. No. To this proceeding, the FAC tariff**
22 **that's at issue?**

23 A. I had no reason to believe that Empire's
24 hedging losses during that period were not included
25 in the tariff. The documents I read by staff

1 supported that they were, but I didn't feel
2 necessary to go back and read the tariff to verify
3 that.

4 Q. Okay. Well, then just to wrap that up
5 then. You acknowledge that Empire's
6 Commission-approved FAC tariff, tariffs for the
7 audit period include hedging losses as a cost
8 category to flow through the FAC?

9 A. I believe so, yes.

10 Q. Are you familiar with Commission Rule 4
11 CSR 240-20.090?

12 A. Is that the FAC rule?

13 Q. It is.

14 A. Yes, I am.

15 Q. And are you familiar with the definition
16 of fuel and purchase power costs in that rule?

17 A. I've read it on a number of occasions,
18 yes.

19 Q. And so, you are aware that by rule fuel
20 and purchase power costs are defined as prudently
21 incurred and used fuel and purchase power costs
22 including transportation?

23 A. Yes.

24 Q. In Empire's first FAC prudence review
25 did staff assert any imprudence on the part of

1 **Empire?**

2 A. I don't believe staff has ever asserted
3 any imprudence in any sense on Empire's FAC.

4 Q. And, Mr. Hyneman, to the best you can,
5 if you can answer the question I ask, that will help
6 us move --

7 A. I believe I did.

8 Q. -- through this more smoothly.

9 A. I believe I did.

10 Q. Again, I'm asking about the first FAC
11 prudence audit.

12 A. Okay.

13 Q. To your knowledge, did staff or OPC or
14 anyone else allege any imprudence on the part of
15 **Empire?**

16 A. OPC, to my knowledge, did not do any
17 investigation or any audit in which they would have
18 alleged. This is the first time OPC has been
19 involved in a FAC prudence audit. So, I can say
20 without doubt that it didn't do it back then and,
21 and I think Mr. Eaves or staff said in their cost of
22 service report that they have never found Empire
23 imprudent in any fuel and purchase power cost since
24 they started reviewing them and I think it's 2007,
25 2008.

1 Q. And in that first FAC prudence audit the
2 Commission issued an order accepting staff's report,
3 correct?

4 A. I believe so, yes.

5 Q. There was no finding of imprudence and
6 no disallowances, correct?

7 A. By staff, I think the only party who was
8 involved, and I think that is correct.

9 Q. And I'm sorry, sir. And the Commission,
10 correct? The Commission issued an order approving
11 staff's report?

12 A. I believe so, yes.

13 Q. And in the second FAC prudence audit for
14 Empire, again, no party alleged any imprudence and
15 the Commission issued an order finding no
16 imprudence, correct?

17 A. Again, and when you say no party, I just
18 want to be clear that the only party to my
19 recollection was staff, and staff admitted here
20 today they do not do prudence reviews of, for
21 example, hedging policies. So, to the extent
22 that --

23 Q. Okay. Mr. Hyneman --

24 A. -- that adds clarification.

25 Q. -- I will object to the extent you are

1 answering for staff. If you could just give me the
2 information that's within your knowledge instead of
3 telling me what you think staff believes. Do you
4 understand that difference?

5 A. Well --

6 Q. We'll let staff witnesses answer those
7 questions for staff.

8 A. And I don't want to --

9 JUDGE WOODRUFF: If I can interrupt
10 here. We're kind of going back and forth between
11 the two of you.

12 Mr. Hyneman, just answer the question
13 that's asked of you, and your counsel will give you
14 a chance to elaborate when you're on redirect.

15 THE WITNESS: I just --

16 JUDGE WOODRUFF: We can make this go a
17 lot faster that way.

18 THE WITNESS: I can try, but some
19 questions cannot be answered yes or no. So, I just
20 want that for a point of clarification.

21 JUDGE WOODRUFF: All right.

22 MR. POSTON: Judge, I just want to point
23 out her question was about what staff did.

24 Q. (By Ms. Carter) I'll try that -- I'll
25 restate the question for you, Mr. Hyneman. In the

1 second FAC prudence audit for Empire, are you aware
2 of any party alleging any imprudence on the part of
3 Empire?

4 A. No.

5 Q. And as a result of that second FAC
6 prudence audit, the Commission issued an order
7 noting no finding of imprudence, correct?

8 A. Yes.

9 Q. And there were no disallowances,
10 correct?

11 A. I believe that to be correct.

12 Q. And the same would be true in the third
13 FAC prudence audit, correct?

14 A. Yes.

15 Q. Again, no disallowances were ordered by
16 the Commission, correct?

17 A. Not that I'm aware of.

18 Q. No finding of imprudence, correct?

19 A. I will answer the question that I'm not
20 aware of any.

21 Q. And again, in the fourth FAC prudence
22 review for Empire there was no allegation of
23 imprudence and no finding of imprudence, correct?

24 A. None that I'm aware of.

25 Q. And no disallowances were ordered?

1 A. None that I'm aware of.

2 Q. And then, again, in the fifth FAC
3 prudence review for Empire no allegations of
4 imprudence and no finding of imprudence, correct?

5 A. None that I'm aware.

6 Q. And no disallowances were ordered by the
7 Commission, correct?

8 A. None that I'm aware of.

9 Q. The hedging portion of Empire's risk
10 management policy that was in place during the audit
11 period for this case was also in place during the 12
12 months prior to the audit period, correct?

13 A. Yes. The exact same policy was in place
14 for, I think, since 2001.

15 Q. And that's what I was wanting you to
16 confirm. That it was in place through those five
17 prior prudence reviews and through those six prior
18 rate cases, correct?

19 A. Yes.

20 Q. At what point, on exactly what date was
21 there no longer volatility in the natural gas market
22 in your opinion?

23 A. At some point, and I can go back and
24 look at the chart, but some point in 2009. And I
25 think -- I think Mr. DaFonte of Liberty Utilities, I

1 know he's in charge of Empire's hedging program now.
2 I believe he pointed out that it was, like, 2010
3 time frame in his testimony that I cited. I believe
4 it was in 2009, though, is when the market changed.

5 Q. And just for matter of the record,
6 Mr. Hyneman, you stated that someone new is in
7 charge of Empire's hedging policy. Do you have any
8 basis for that statement?

9 A. Yes. Mr. Francisco DaFonte filed
10 testimony before this Commission in a -- in a PGA
11 case, I believe, which he cited he was in charge of
12 fuel and procurement for Empire.

13 Q. I'm sorry. Would that be for Empire
14 Gas?

15 A. Well, it's for I think --

16 Q. PGA would be Empire Gas, correct? Not
17 Empire electric?

18 A. He, he cited he was in charge of fuel
19 procurement for Empire's region at that time.

20 Q. I'm sorry. Is this testimony in an
21 Empire Gas case that you're referring to?

22 A. I can look it up in my testimony. I
23 cited the case number in my testimony, so...

24 Q. In your opinion when did Empire's risk
25 management policy first become imprudent?

1 A. I think in 2010. By not responding to
2 the significant changes in the natural gas market in
3 2009, in 2010 when Empire continued with their
4 hedging program that was designed on a high
5 volatile, high price gas market, that's when it
6 became imprudent. There was no changes made. It
7 just kept on plugging, chugging as if nothing
8 happened.

9 Q. So, in 2010, in OPC's opinion, that is
10 when the policy we're talking about became
11 imprudent?

12 A. Right. And that's been generally
13 accepted throughout --

14 Q. Mr. Hyneman, is that yes?

15 A. Yes.

16 Q. And so, to OPC Empire's hedging program
17 was imprudent at the time of each of the five prior
18 FAC prudence reviews --

19 A. Yes.

20 Q. -- is that correct?

21 A. That's correct.

22 Q. And in each of those five prior prudence
23 reviews, there was no allegation of imprudence
24 alleged to the Commission, correct?

25 A. Again, I will -- I will qualify my

1 answer with I don't believe there was and that would
2 have only been made by staff. OPC --

3 Q. You're not aware of any?

4 A. OPC was not involved in those cases.
5 So, they didn't make any, and I --

6 Q. OPC has a right to be a party to every
7 case, correct? You're automatically a party to
8 every case?

9 A. I believe so, yes. Subject to
10 resources, availability, yes.

11 Q. And in all five of those prior prudence
12 reviews, there were no disallowances ordered by the
13 Commission, correct?

14 A. I think that's correct.

15 Q. It's my understanding that you believe
16 the only prudent objective of an electric utility's
17 hedging program is to provide insurance against
18 sudden major price increases; is that correct?

19 A. Yes. And I think that was -- I think
20 you mentioned that today when you referred to my
21 testimony, you say insurance for example of a fire,
22 and I use that I think -- in fact, Mr. Blunk of
23 KCPL, who's very respected from the Commission, used
24 that --

25 Q. And, Mr. Hyneman, thank you very much

1 for that additional explanation, but if you could
2 let me just ask my next question after you've
3 answered my question.

4 MR. POSTON: Judge, if she could stop
5 interrupting him and just let him answer these
6 questions.

7 JUDGE WOODRUFF: He just needs to answer
8 the questions and not elaborate, and you'll get your
9 opportunity.

10 THE WITNESS: I was trying to answer the
11 question.

12 JUDGE WOODRUFF: Well --

13 THE WITNESS: I want to be clear.

14 JUDGE WOODRUFF: You have a -- and it's
15 understandable, but you have a tendency to try and
16 explain yourself more than answering. If you can
17 answer the question yes or no, answer the question
18 yes or no and don't go on into elaborations.

19 THE WITNESS: Okay.

20 Q. (By Ms. Carter) You believe that it is
21 imprudent to have a hedging program with an
22 objective being to mitigate natural gas price
23 volatility, correct?

24 A. It's not a yes-no because I think
25 mitigating price volatility can be a sub-objective

1 of a hedging policy. It can be -- it can be part of
2 it, but the only reason that you would have a
3 hedging policy would be to protect customers against
4 major swings in prices. I think that's, that's
5 pretty clear.

6 Q. And in your testimony you state that
7 hedging is to provide insurance against volatility
8 or price increases, correct? You use the word
9 insurance?

10 A. Yes.

11 Q. Is it now your opinion, as was stated in
12 OPC's opening statement, that hedging should be
13 considered a bet or a gamble?

14 A. I don't -- I know you reference
15 Mr. Poston's using that term. I don't recall him
16 using that term or how he used it. So, I could
17 agree with how he characterized it. I just don't
18 remember how he did.

19 Q. Is that how you would characterize
20 hedging, as a bet or a gamble?

21 A. No.

22 Q. Has the Commission ever said in a rule
23 or any other source you can point to that the only
24 prudent objective of a hedging program is to provide
25 insurance against sudden major price increases?

1 A. Commission has -- they have used that in
2 report and orders, yes.

3 **Q. That that should be the only prudent**
4 **objective of a hedging program?**

5 A. Again, you're asking me to recall. I
6 think they use that as a reason for hedging.
7 Whether they had sub-objectives like mitigation of
8 price volatility, I don't know. They could have,
9 but that's the one I remember.

10 **Q. Are you aware of a Commission rule,**
11 **something that might apply to all companies, that**
12 **would say that?**

13 A. That use that word specifically, the
14 only objective would be to mitigate?

15 **Q. Yes, that agreed with your testimony**
16 **that that is the only prudent objective.**

17 A. I don't know of any, no.

18 **Q. On pages 24, 25, and 26 of your rebuttal**
19 **testimony you point to a change made by Liberty**
20 **Utilities to its hedging program in New Hampshire?**

21 A. Yes.

22 **Q. And you cite to testimony from a**
23 **Mr. Francisco DaFonte with Liberty?**

24 A. Correct.

25 **Q. We were just talking about him a moment**

1 ago, correct?

2 A. Yes.

3 Q. At the time Liberty Utilities requested
4 to change its hedging program in New Hampshire,
5 Empire was not in any way affiliated with Liberty,
6 correct?

7 A. I think that's correct.

8 Q. And during the audit period for this
9 case and all the months prior to the audit period,
10 Liberty and Empire were not connected; is that
11 right?

12 A. You know, if this audit period goes
13 through August of 2016, whether there was
14 discussions about merging the two operations, it
15 probably went on. They did not officially merge, I
16 think, until January 1st of 2017.

17 Q. After the audit period, correct?

18 A. That effective date of the merger was
19 after the audit period.

20 Q. And to my knowledge and Mr. DaFonte
21 still does not have a position with Empire Electric
22 in gas procurement. Do you have reason to believe
23 Mr. DaFonte is connected with gas procurement for
24 Empire Electric?

25 A. Yes.

1 **Q. And what is that?**

2 A. And I can review my testimony. I don't
3 know exactly where it is. But I know that he cited
4 that he was in charge of Liberty Utilities
5 procurement, he's the vice president of fuel
6 procurement, and since Empire falls under Liberty
7 Utilities I would assume that he was in charge of
8 Empire's. Now, we, we attempted to get a discussion
9 with Mr. DaFonte to clarify those issues, but Empire
10 refused to make him available to discuss that. So,
11 that's my understanding based on the evidence that I
12 have seen.

13 **Q. Mr. Hyneman, do you have any reason to**
14 **believe that Mr. DaFonte had anything to do with**
15 **Empire's gas procurement during the audit period or**
16 **prior to the audit period?**

17 A. No.

18 **Q. So, an interest to speak with**
19 **Mr. DaFonte could have nothing to do with costs that**
20 **flowed through the FAC during the audit period,**
21 **correct?**

22 A. Other than get his opinion on the
23 reasonableness of it, yes.

24 **Q. His opinion just as another person in**
25 **the utility industry?**

1 A. Well, who is currently overseeing
2 Empire's hedging policy, yes.

3 Q. Again, Mr. Hyneman, you keep telling us
4 that, but it's not in testimony from Empire and we
5 don't have verification of that and we don't believe
6 it to be true. So, what I'm trying to find out is
7 why Mr. DaFonte would be relevant to the audit
8 period.

9 MR. POSTON: Judge, I want to object to
10 the form of some of these questions. Ms. Carter
11 keeps testifying as to her, her understanding of
12 things. Like, she's testifying as to what she
13 thinks are true and accurate instead of asking the
14 question, the question of the witness.

15 JUDGE WOODRUFF: I'll sustain that
16 objection. Your personal opinion isn't relevant.

17 A. Could you repeat the question, please?

18 Q. **(By Ms. Carter) What is the relevance to**
19 **you of Mr. DaFonte's opinions for the audit period?**

20 A. Again, I don't want to quibble. When
21 you talk about the audit period, I'm talking about
22 the period the hedging transaction occurred. That's
23 the prudence period we're talking about. You book
24 the cost in May '15 to August 2016. That's really
25 not relevant. That's just the amount of hedging

1 losses that you book based on the hedging
2 transactions in 2010 and 2015. So, that's the
3 period -- that's the prudence period we're looking
4 at. Mr. DaFonte told his Commission at that time
5 that the market is no longer volatile, customers are
6 not being served in any sense by hedging through the
7 NYMEX and, therefore, he went to his commission and
8 said we want to stop hedging, it no longer provides
9 a benefit. Now, it just so happens that
10 Mr. DaFonte, as head of Liberty Utilities gas
11 procurement, is now aligned with Empire and I wanted
12 to just say the questions I wanted to ask him, if we
13 were afforded the opportunity, would be more
14 questions about his, his understanding of the market
15 during that time, if he's instituted any change at
16 Empire consistent with his position back in 2013,
17 2014, to get more information, but we -- you guys
18 wouldn't make him available. So, that information
19 was not obtained.

20 Q. And all these questions that you'd want
21 to ask were related to after the audit period,
22 correct?

23 A. No.

24 Q. They're related to the audit period?

25 A. I would have asked him questions about

1 his decisions back in 2013, 2014 about asking his
2 commission to allow them to suspend and stop their
3 NYMEX hedging program.

4 Q. Okay. When Mr. DaFonte was not
5 connected to Empire, correct?

6 A. Correct.

7 Q. So, what I was asking is you would just
8 ask him questions as someone else in the utility
9 industry, what his opinion would have been on
10 another company's hedging policy?

11 A. Well --

12 Q. Is that right?

13 A. That and other questions like what
14 changes has he made at Empire reflecting his
15 position with Liberty Utilities, has he followed
16 through and made the same assertion that Empire's
17 customers are no longer protected.

18 Q. And I'm sorry, Mr. Hyneman. That would
19 be long after the audit period; is that correct?

20 A. You're asking me what questions I would
21 have asked him. That is one of them.

22 Q. And that would be for after the audit
23 period, correct?

24 A. It would be related to the period 2010
25 through 2015.

1 Q. Was Liberty Utilities in any way
2 associated with Empire during that time period you
3 just stated?

4 A. I don't know if they're in any way
5 associated. They were not associated. They're not
6 part of the same company.

7 Q. Mr. Hyneman, do you have a copy of
8 Public Counsel Data Request 1009 --

9 A. Could you --

10 Q. -- with you?

11 A. -- reference it?

12 Q. I'll just hand that to you.

13 A. Yes, I am.

14 MR. POSTON: Can I see a copy of that as
15 well?

16 MS. CARTER: If he can pass that to you.

17 THE WITNESS: Sure.

18 Q. (By Ms. Carter) That's OPC's data
19 request --

20 A. Right.

21 Q. -- to Empire?

22 Is that what you were referring to as
23 the request to speak with Mr. DaFonte?

24 A. Yes.

25 Q. And you said Empire refused to let you

1 talk with Mr. DaFonte; is that correct?

2 A. That is correct.

3 Q. And is that --

4 A. You objected to the data request.

5 Q. And that's what I wanted to ask. Your
6 assertion that we re -- that Empire refused to let
7 you speak to Mr. DaFonte, is that based solely on
8 the fact that they objected to the data request as
9 seeking irrelevant information and being outside the
10 scope of a data request?

11 A. Well, that was your basis, I assume, for
12 objecting, but you objected. You did not allow that
13 conversation to take place.

14 Q. Mr. Hyneman, if you look at the second
15 page, that's the objection, correct?

16 A. Yes. The objection says you believed
17 it's irrelevant and outside the scope of proper
18 discovery. That was your basis.

19 Q. Could you read that entire paragraph
20 there for us?

21 A. Yes. "Empire objects to this DR on the
22 basis that it seeks irrelevant information and falls
23 outside the scope of proper discovery for this
24 proceeding. Please, let me know if you have any
25 questions."

1 **Q. There was no follow-up from OPC in**
2 **response to that objection, correct?**

3 A. OPC did not have the time to chase down
4 every objection that Empire lodged on its data
5 request.

6 **Q. OPC never contacted Empire to ask for a**
7 **meeting with Mr. DaFonte or contacted Mr. DaFonte**
8 **directly, correct?**

9 A. It was OPC's understanding that it could
10 not force Empire to provide him for this discussion.

11 **Q. And that was based solely on the fact**
12 **that you asked for a meeting through a data request**
13 **and that data request was objected to?**

14 A. Right. If we would have put the
15 resources, money and time into seeking a deposition,
16 it might have been a different outcome.

17 **Q. Or a call to Mr. DaFonte?**

18 A. Well, I didn't want to call Mr. DaFonte
19 without going through Empire.

20 MS. CARTER: Could we have this marked
21 as Exhibit 111, I believe?

22 JUDGE WOODRUFF: Right, 111.

23 MS. CARTER: And I would move for its
24 admission.

25

1 (Empire's Exhibit 111 was offered into
2 evidence.)

3 JUDGE WOODRUFF: Do you have copies?

4 MS. CARTER: I do not. I can make those
5 when we take a break, Judge, if that's all right.

6 JUDGE WOODRUFF: All right. What do we
7 call it? Data request response?

8 MR. POSTON: 1009, right?

9 MS. CARTER: I'm sorry. Mr. Hyneman
10 there has.

11 MR. POSTON: Is that DR-1009.

12 THE WITNESS: I don't still have it.

13 MS. CARTER: Yes. It's OPC Data Request
14 1009 dated July 14, 2017, and also attached is the
15 objection from July 17th, 2017.

16 JUDGE WOODRUFF: It's been marked as
17 111?

18 MS. CARTER: 111.

19 JUDGE WOODRUFF: All right. Any
20 objections to its receipt?

21 Hearing no objections. It will be
22 received.

23 (Empire's Exhibit 111 was received into
24 evidence.)

25 JUDGE WOODRUFF: And if you can get a

1 copy.

2 MS. CARTER: And Judge, I'm going to
3 hang onto it so I can make copies and I'll bring it
4 back to the court reporter and others.

5 Q. (By Mr. Poston) The case you referred to
6 in your testimony with Mr. DaFonte in New Hampshire,
7 New Hampshire has regulatory review and approval of
8 hedging policies, correct?

9 A. It appears that way, yes. I haven't
10 seen a rule that they do, but by Mr. DaFonte seeking
11 commission permission to stop hedging, that would --
12 that would be my assumption.

13 Q. The petition that's attached to your
14 testimony asks approval of the New Hampshire
15 Commission to modify a hedging plan, correct?

16 A. Yes.

17 Q. And that's not done here in Missouri,
18 correct?

19 A. No.

20 Q. And also that Liberty Company is a gas
21 company, an LDC company, correct?

22 A. Correct.

23 Q. Not an electric company?

24 A. That's correct.

25 Q. And to your knowledge, Empire Electric

1 **and Empire Gas don't hedge in the same manner,**
2 **correct?**

3 A. I am not aware of the specifics of
4 Empire Gas's hedging policies.

5 Q. You looked into the specifics of Liberty
6 Gas's hedging in New Hampshire, but did not look at
7 Empire Gas's hedging in Missouri; is that correct?

8 A. No. I, I noted that Mr. DaFonte
9 requested permission from the commission to suspend
10 its NYMEX hedging because there's no longer price
11 volatility in the natural gas market.

12 Q. And I'm sorry, Mr. Hyneman. My question
13 was: But you didn't look at Empire Gas's hedging;
14 is that correct?

15 A. No. Yeah, my focus was the NYMEX
16 volatility. It was not whether Liberty Utilities
17 was electric or gas utility or Empire was electric
18 or gas. The focus was there's no longer volatility
19 in the natural gas market at that time. That's the
20 relevant fact and that's what my testimony was
21 responsive to. Not whether it was a gas LDC or an
22 IOU or anything like that. It was about the NYMEX,
23 the natural gas.

24 Q. Okay. It didn't matter to you that it
25 was a gas company instead of an electric company?

1 A. In that particular scenario, no.

2 Q. And it didn't matter to you that it was
3 in New Hampshire where hedging is preapproved?

4 A. No.

5 Q. And the Liberty Utilities docket you
6 discuss in your testimony was in 2014, correct?

7 A. Yes.

8 Q. And so, in 2014 Liberty Gas in New
9 Hampshire was asking permission to change their
10 hedging policy, correct?

11 A. Yeah, I don't -- I have the date of his
12 testimony.

13 Yes, it was in May of 2014 when he made
14 the request.

15 Q. So, in 2009 and 2010 and 2011 and 2012
16 and 2013, as far as you know Liberty Gas had a
17 hedging program that used NYMEX?

18 A. As far as I know, yes.

19 Q. And this petition that you have attached
20 to your testimony is not to stop hedging completely,
21 correct?

22 A. It's to stop NYMEX fuel price hedging.
23 They wanted to do a basis-type hedging because
24 there's a price increase from where the gas is
25 located to New England because of the pipelines

1 getting the gas --

2 Q. They were asking --

3 A. -- the gas up into New England, that's a
4 basis issue that they wanted to continue, but
5 nothing to do with price hedging is what it was.

6 Q. Is your understanding?

7 A. Well, that's the truth, yes.

8 Q. That they filed a petition to get
9 pre-approval from a Commission to make a change to
10 their hedging policy?

11 A. Yes.

12 Q. And they were asking to eliminate
13 current hedging program because it focused
14 exclusively on the hedging of the NYMEX Henry Hub
15 futures contracts, correct?

16 A. No. He said the hedging program as
17 currently constituted does not provide customer
18 benefit --

19 Q. And I'm sorry, Mr. Hyneman. That is
20 something else that's in the testimony, yes. I'm
21 asking you what he stated in the petition, what they
22 asked of the New Hampshire Commission that's
23 attached to your testimony as schedule CRH S-5 of
24 your surrebuttal.

25 A. And I just found that statement. Yes,

1 you're right. It says, "The company proposes to
2 eliminate the current hedging program which focused
3 exclusively on the hedging of NYMEX/Henry Hub future
4 contracts."

5 Q. And it goes on to say they'd like to
6 replace it with a program to hedge using physical
7 fixed basis supply contracts --

8 A. Yes.

9 Q. -- correct?

10 A. Yes.

11 Q. That's what they were asking for
12 pre-approval of?

13 A. Yes.

14 Q. And under Empire's current hedging
15 program as set forth in its risk management plan,
16 Empire is not required to focus exclusive on the
17 hedging of the NYMEX and Henry Hub futures
18 contracts, correct?

19 A. No.

20 Q. That was the case with the Liberty Gas
21 program you addressed, but that's not the case with
22 Empire Electric, correct?

23 A. Correct. That's what his testimony says
24 that their hedging program focused exclusively on.

25 Q. Again, that's Liberty Gas?

1 A. Yes.

2 Q. But Empire Electric's policy that you're
3 challenging does not require Empire to exclusively
4 focus on hedging NYMEX Henry Hub futures contracts,
5 correct?

6 A. No. They have other hedging mechanisms.

7 Q. In fact, under their current risk
8 management plan, they could use the basis swaps,
9 correct? What Liberty Gas in New Hampshire was
10 asking approval to do, Empire Electric can already
11 do that under their current risk management policy,
12 correct?

13 A. They may be able to do it. It wouldn't
14 make to me any sense to do it, I think, in either no
15 or negative basis Empire, but I think the policy may
16 allow that. I don't know. It's not -- they don't
17 do basis swaps right now that I'm aware of. So, it
18 wasn't a focus of my audit.

19 Q. But it's in the flexibility of their
20 policy, correct? A wide range of tools could be
21 used, swaps with Bank of America, physicals, NYMEX
22 futures, NYMEX basis swaps, all of those are
23 permitted under Empire Electric's current policy,
24 correct?

25 A. I believe they are, yes.

1 Q. So, the Liberty Gas New Hampshire case
2 that you discuss where they had to go in and get
3 pre-approval to change their hedging program, Empire
4 Electric wouldn't need to do that here, correct?

5 (1) There is no pre-approval. (2) Empire Electric
6 can already engage in that activity under their risk
7 management policy.

8 A. I believe -- I didn't see their risk
9 management policy, if it authorizes the use of basis
10 swaps. So, I'm basically saying I don't know that
11 it prohibits it, but to the extent that you say it
12 can, I have no reason to disagree with that.

13 Q. Did you review their policy to see what
14 financial instruments are available?

15 A. Yes, but I do not recall seeing the word
16 that they can hedge for basis differences.

17 Q. But you're certain it's not exclusively
18 to NYMEX Henry Hub futures as was the case with
19 Liberty Gas in New Hampshire?

20 A. No. It's a primary -- Empire primarily
21 hedges through the NYMEX, more so recently than
22 prior, but they, they do heavily engage in financial
23 hedging, yes.

24 Q. You confirmed for me earlier that in
25 your opinion the only prudent objective of an

1 electric utility's hedging program is to provide
2 insurance against sudden major price increases,
3 correct?

4 A. Correct.

5 Q. But it's also your opinion that an
6 electric utility should not hedge to lock in low
7 prices for its customers, correct?

8 A. Well, if you had a policy where you had
9 a volatile market and prices were -- you had
10 evidence that prices were going to go up and you
11 could lock in low prices now, that would be
12 reasonable. But when you're in a sustained low
13 price market with zero indication that prices will
14 go up because of the shale gas revolution, then
15 you're locking in prices that are likely higher than
16 the prices that will be in the market at the
17 appropriate time.

18 Q. You believe Empire should stop hedging
19 at this time, correct?

20 A. I believe Empire should suspend its
21 hedging program exactly like KCPL did and exactly
22 like GMO did, the other two electric utilities that,
23 that we reviewed. They suspended it and the
24 Commission approved it. They suspended the natural
25 gas hedging program. They are still allowed to

1 engage in hedging under the FAC should the market
2 change, should something happen --

3 Q. Mr. Hyneman, I believe your direct
4 direct quote at Hyneman direct page 19, lines 4 to
5 14. This will be at line 14. "It is now time for
6 Empire to stop hedging in Missouri."

7 A. Okay.

8 Q. That was your testimony, correct?

9 A. Yes. And I also indicated in testimony
10 that they should suspend similar to KCPL and GMO.
11 So, the stop there means stop or suspend until the
12 market changes and then start again if necessary.

13 Q. Those mean exactly the same thing,
14 correct? Stopping now, you can also say suspend,
15 but you mean don't hedge now, correct?

16 A. Yes.

17 Q. So, either way we use it, it's you stop
18 now, don't hedge now?

19 A. But suspending means you keep the option
20 in place and if the market changes, you start again
21 and that's what we agree to with KCPL and that's
22 what we agree to, staff and OPC agreed to GMO. We
23 are just saying that's what Empire should do as
24 well.

25 Q. There are currently historically-low gas

1 **prices, correct?**

2 A. Yes.

3 **Q. If Empire stops hedging at this time,**
4 **would that be prudent to OPC?**

5 A. Yes.

6 **Q. OPC would state that is a prudent**
7 **decision to stop hedging at this time?**

8 A. That Empire would be allowed to keep --
9 well, again, Empire would change its hedging policy
10 to be more like other utilities in Missouri, like
11 KCPL and GMO, who use a market-sensitive hedging
12 policy, and I go and describe that, and, and, and
13 keep that policy available to be restarted should
14 the market change, and the market hasn't changed,
15 now we're going on eight years consistently
16 nonvolatile, low prices. Should something happen,
17 which is not anybody's foreseeing, then yes, it
18 could restart its hedging program to protect against
19 major increases in prices, but that will prevent
20 continuing to incur losses in a nonvolatile,
21 low-cost market.

22 **Q. So, you want them to stop now?**

23 A. Suspend, yes.

24 **Q. And I'm sorry, Mr. Hyneman. Just for --**
25 **you mean stop hedging right now, correct? Don't**

1 **hedge right now?**

2 A. Suspend their hedging activity. Right.
3 Stop indicates that abandoning it. No. Suspend in
4 case the market changes, then restart.

5 **Q. Currently for this time period you want**
6 **them not to engage in any hedging transactions,**
7 **correct?**

8 A. Correct. That's correct.

9 **Q. Are you certain a rapid increase in fuel**
10 **costs is not coming?**

11 A. As certain as I can be, yes. I mean,
12 for all indications we have more natural gas through
13 shale gas than we could burn for years and years and
14 everybody understands that. There's more gas
15 available. Now, if there is an environmental law
16 that stops shale gas and supplies tighten, prices
17 could increase. What's the likelihood of that?
18 Nobody is predicting that. So, I mean, could it?
19 It could, but it's not very likely at all and it's
20 not worth incurring millions and millions of dollars
21 of losses for something that's not likely.

22 **Q. And fracking, fracking could stop being**
23 **a viable option, correct?**

24 A. It could be, but anything could be --
25 quit being a viable option. There's no indication

1 that it will be.

2 Q. And you're certain there won't be a fuel
3 cost increase in the years to come when you would be
4 hedging for?

5 A. When you say in the years to come, I've
6 seen predictions from, from Morgan Stanley analysts
7 that go out to 2030. The EIA has gone out to 2040
8 expecting low, nonvolatile gas prices. And if
9 you're talking about experts, then those people are
10 saying no, we're not going back to a high-price
11 environment. That's the Energy Information Agency,
12 the National Department of Energy, it's Morgan
13 Stanley analysts who are experts in the field,
14 they're all predicting low, nonvolatile gas prices
15 for the foreseeable future.

16 Q. Are those the articles you have attached
17 to your testimony?

18 A. I don't know. I do have articles
19 showing that, yeah, if you'd like.

20 Q. Is there anything in your testimony that
21 supports your statement that there is no reason to
22 believe that fuel costs will be increasing?

23 A. I don't recall if it's in any of my
24 schedules right now, but I do have the articles and
25 the information available. I know Mr. Doll attached

1 to his surrebuttal an article where the EIA said
2 that they expect low, moderate gas prices into the
3 foreseeable future. So, Mr. Doll has that in his
4 testimony.

5 Q. You believe that article attached to
6 Mr. Doll's testimony is support for your position
7 that we can be assured that there will not be an
8 increase in fuel costs?

9 A. I think he highlights on one
10 individual's testimony, Mr. Andrew Weissman, who --
11 and his position is while we have plenty of gas,
12 more gas than we need, his concern is we do not have
13 enough supply, but that concern has been rebutted by
14 experts in the industry and I say the overwhelming
15 consensus from the information I have reviewed calls
16 for low to moderate gas prices for the foreseeable
17 future.

18 Q. But you didn't attach any evidence of
19 that to any of your testimony, correct?

20 A. I wasn't aware of that article that
21 Mr. Doll attached to his testimony until his
22 surrebuttal testimony.

23 Q. Mr. Hyneman, you didn't attach or
24 include in your testimony any evidence to back up
25 your statement that you're making on the stand right

1 **now, correct?**

2 A. I don't believe that is correct.

3 **Q. The statement that there's -- that all**
4 **analysts agree there will not be an increase in fuel**
5 **costs?**

6 A. Well, I don't know if I made that
7 statement, but I think -- I think if you have
8 perspective here, now, OPC is charged with raising
9 serious doubt about Empire's hedging policy. We've
10 done that overwhelmingly so. Now, I think that
11 places the burden on Empire to show, okay, no, this
12 is what the analysts are showing, this is our
13 evidence that gas prices are going up and that's why
14 we continue to hedge. Empire has not done that
15 until this article attached to Mr. Doll's rebuttal
16 testimony he found an individual who said, hey, gas
17 prices might go up, but the overwhelming evidence is
18 that it's not. And I think that's important. This
19 is kind of a side issue. We're talking about 2010
20 to 2015. You're discussing the future. It's not
21 really an issue in this case. We didn't devote a
22 lot of resources to the future. We devoted all our
23 resources to 2010, 2015, our primary resources to
24 that period.

25 **Q. Mr. Hyneman, do you have with you a copy**

1 of OPC's presentation or its opening statement?

2 A. No.

3 MS. CARTER: Marc, do you happen to have
4 an extra copy of that for Mr. Hyneman?

5 A. I don't think I reviewed that.

6 Q. (By Ms. Carter) If you will turn to page
7 8, slide 16.

8 A. I'm there.

9 Q. Who prepared that chart in slide 16?

10 A. I have no idea.

11 Q. You didn't review that or see that?

12 A. No.

13 Q. If you will look at it now and answer a
14 couple questions for me. If I'm looking between
15 2012 and 2014, I see gas prices from \$2.50 up to \$6.
16 Do you see that?

17 A. Yes, roughly. I mean, there's no
18 numbers, but that's roughly what they are.

19 Q. So, that would be roughly a 250 percent
20 change in prices?

21 A. Yeah, there's a short time. The polar
22 vortex, a short time weather increase in 2014 caused
23 a bump in the -- or slight increase in the prices
24 over that time.

25 Q. This chart shows us that within one-year

1 **period, within, yeah, a one-year period there was a**
2 **250 percent change in prices, volatility of 250**
3 **percent?**

4 A. It was a short term increase in the
5 price of natural gas due to the polar vortex, which
6 was that isolated and short-term weather event, yes.

7 **Q. Would you consider that a price spike**
8 **that a hedging program should insure against?**

9 A. Very short-term price spike, yes. I
10 mean, if, if, if those are the type of events that
11 characterize the market like they did prior to 2009
12 when you had those price spikes. This is an
13 isolated event. The only one that's happened since
14 2009. So, if you're asking do I think you should
15 have a hedging policy to prevent a once in every
16 seven or eight years short increase in prices, no, I
17 wouldn't.

18 **Q. Gas prices change every hour, every day,**
19 **every week, every month, correct?**

20 A. Yes.

21 **Q. They're constantly changing; is that**
22 **right?**

23 A. Yes.

24 **Q. And the availability of gas also**
25 **changes, correct?**

1 A. I mean, the, the storage levels of gas
2 change, yes.

3 **Q. Are you familiar with Empire's storage,**
4 **how much gas they can have on hand?**

5 A. In reading the risk management oversight
6 committee minutes, I noticed that Empire for a short
7 term had some gas storage for its electric
8 operations, but for some reason that wasn't clear I
9 think it abandoned it. So, I don't know why, but
10 for a short-term time it had some storage.

11 **Q. So, if Empire Electric doesn't contract**
12 **to buy its gas in advance, there's not a guarantee**
13 **that there will be gas available when they need it,**
14 **correct?**

15 A. Well, they do contract in advance, but
16 the natural gas market is characterized by
17 overwhelming supply of natural gas.

18 **Q. So, you don't think there's any issues**
19 **about having gas at a certain place at a certain**
20 **time without any hedging in advance, no?**

21 A. I have seen no issues.

22 **Q. And as you said, they've been hedging,**
23 **correct?**

24 A. Well, I'm talking about, yeah, NYMEX
25 financial futures has nothing to do with obtaining

1 gas. That's strictly a financial transaction.

2 Q. They also do physical hedges --

3 A. Yes.

4 Q. -- correct?

5 A. Yes. Now, is there any indication that
6 without those physical hedges that they wouldn't
7 have a supply of gas? There's none whatsoever.

8 Q. You didn't -- did you look for that and
9 make that determination?

10 A. I looked over hundreds of documents and
11 many, many minutes from the RMOC, Empire testimony,
12 I've never seen any indication that Empire was
13 concerned at all about not having an adequate supply
14 of natural gas.

15 Q. Because they hedge, correct?

16 A. Well, that could be your reason. I
17 don't know.

18 Q. You don't have --

19 A. I will say that KCPL doesn't hedge, GMO
20 doesn't hedge. They are not worried about supply of
21 gas. So, I can't say yes, that's why Empire.

22 Q. Are KCPL, GMO, and Empire exactly the
23 same in terms of their generation mix?

24 A. KCPL is less dependent on natural gas.
25 GMO is heavily dependent on natural gas in a similar

1 way, I think, as Empire.

2 Q. Yes? I'm sorry. Did you say we have
3 the same generation mixes?

4 A. Nobody has the same generation
5 resources, but I think GMO is more similar to
6 Empire. GMO doesn't have nuclear. It has coal and
7 natural gas primarily, relies on the purchase power
8 market a lot. Empire has a lot of natural gas, but
9 it also has, you know, hydro and coal resources.

10 Q. You agreed in your testimony that
11 hedging isn't one size fits all, correct?

12 A. That is correct.

13 Q. Has to be specific to the company,
14 correct?

15 A. It should be, yes.

16 Q. And now, if you wait, if you hedge
17 nothing, what OPC's proposing here, no hedges, then
18 you'd also be speculating on the price, correct?

19 A. No.

20 Q. No?

21 A. No. Empire says they hedge to mitigate
22 price volatility. If there's no price volatility or
23 very limited price volatility, by definition there's
24 no reason to hedge. So, it's not betting in
25 anything. You're letting the customers pay the

1 price of the market. The market has been low
2 priced, low volatile for nine years.

3 Q. I'm sorry, Mr. Hyneman. I'll try to ask
4 that more clearly.

5 If you don't hedge and you wait to buy
6 100 percent of your fuel needs on the spot market,
7 you do not know what the price will be until the
8 very second you purchase the gas, correct?

9 A. Yes.

10 Q. Because it changes, hourly, monthly,
11 weekly, constantly, correct?

12 A. Yeah, correct.

13 Q. So, you do not -- you cannot have any
14 price certainty on what your fuel cost will be,
15 correct?

16 A. Correct.

17 Q. As you were just saying, you address in
18 your testimony the suspension of hedging programs
19 for KCP&L and GMO. Those suspensions were agreed to
20 in very recent rate case stipulations, correct?

21 A. Correct.

22 Q. At the time the Commission approved
23 those stipulations, were there any disallowances or
24 refunds for hedging losses leading up to that time?

25 A. For those cases?

1 **Q. Correct.**

2 A. No. I don't think any party sought
3 refunds. So, therefore, the Commission would not
4 have that issue before them.

5 **Q. And Mr. Berlin asked you about the GMO**
6 **IRP proceeding and you read from paragraph five on**
7 **page 5 of that report that is Staff Exhibit 205. Do**
8 **you recall that?**

9 A. I do.

10 **Q. And OPC notes increasing fuel costs from**
11 **2016 to 2017, correct?**

12 A. Yes. From \$2.88 cents to \$3.58 for the
13 first half of 2017. That's -- I don't know what it
14 is now. I think gas prices have moderated. So, at
15 this point in 2017 it could be below the 2.88 it was
16 in 2016. I suspect it may be.

17 **Q. So, sometimes the information we have**
18 **about gas prices in advance changes as we move**
19 **forward to the actual moment in time, correct? We**
20 **might think gas prices are going up, that's what the**
21 **data will show, but then they don't go up; is that**
22 **correct?**

23 A. Yes. The future gas prices cannot be
24 predicted with certainty. I agree with that.

25 **Q. Starting just prior to the audit period**

1 in this case and continuing forward, Empire's fuel
2 cost for customers went down with each FAC
3 adjustment, correct?

4 A. I have some knowledge of that, but I
5 don't have specifics. I had discussion with
6 Ms. Mantle and she indicated that Empire's FAC costs
7 have gone down.

8 MS. CARTER: And Judge, I don't know if
9 you want exhibits for this or take notice. I went
10 ahead and marked as exhibits the FAC orders that
11 would show the adjustments.

12 JUDGE WOODRUFF: If you've got them,
13 let's go ahead and put them in as exhibits.

14 Q. (By Ms. Carter) So, we have Exhibit 112,
15 which is an order approving tariff to change fuel
16 adjustment clause rates. You see that?

17 A. Yes, I do.

18 Q. And that in the first paragraph of that
19 Commission order indicates a decrease of 65 cents
20 per month; is that correct?

21 A. Yes.

22 MS. CARTER: And I'll show you Exhibit
23 113.

24 Q. (By Ms. Carter) And Exhibit 113, that's
25 for the next period, and does it also show a

1 **decrease? I think it's the top of page 2 of that**
2 **order.**

3 A. Because I was confused. I'm looking at
4 an underrecovery in paragraph one. Yeah, I don't
5 understand that underrecovery issue, but I will say
6 that it does state that there's \$1.29 decrease in
7 residential bill.

8 Q. And then the Exhibit 114, and that would
9 be for the next period. And does that show a
10 decrease also?

11 A. Empire, I think, requested \$1.51
12 decrease.

13 Q. So, the fuel adjustment clause, the cost
14 that the customer was paying, again, went down?

15 A. That's what Empire requested. I'm
16 trying to find where the Commission ordered it,
17 but...

18 Q. That is the order you have in your hand,
19 correct?

20 A. Yes. The Commission is describing how
21 they requested. I don't see where they ordered it,
22 but I would imagine that they did.

23 Q. It approves the new tariff, correct?

24 A. I guess it's implicit in the tariff that
25 it's a decrease, right.

1 MS. CARTER: And then I'll show you
2 what's been marked as Exhibit 115.

3 Q. (By Ms. Carter) That's for the next
4 period. Does that also have a decrease in fuel
5 costs being paid by Empire's customers?

6 A. 35 cents per month, that's correct.

7 Q. And then Exhibit 116, and that takes us
8 just past the audit period. Does that show another
9 decrease?

10 A. \$2.50 per month request, yes.

11 Q. Decrease?

12 A. Yes.

13 MS. CARTER: Would move for the
14 admission of Exhibits 112 through 116, which are the
15 Commission orders approving the FAC tariffs.

16 (Empire's Exhibits 112 through 116 were
17 offered into evidence.)

18 JUDGE WOODRUFF: Okay. Exhibits 112
19 through 116 have been offered. Any objections to
20 the receipt?

21 Hearing none. They will be received.

22 (Empire's Exhibits 112 through 116 were
23 received into evidence.)

24 Q. (By Ms. Carter) In your rebuttal
25 testimony, Mr. Hyneman, first looking at page 4,

1 line 5, you state that the Commission should give no
2 consideration to the staff's findings in the area of
3 Empire's hedging costs; is that correct?

4 A. Yes.

5 Q. And you state on page 5, line 7, that
6 you believe staff's FAC prudence reviews do not
7 provide adequate protection for Missouri ratepayers;
8 is that correct?

9 A. Yes, that's correct.

10 Q. You state on page 6, line 15, that you
11 have no doubt that staff's prudence reviews of
12 electric utilities' fuel and purchase power costs
13 need to be improved; is that correct?

14 A. That's exactly correct.

15 Q. To your knowledge did staff conduct its
16 prudence review in this case in the same general
17 manner as it conducts FAC prudence reviews for the
18 other electric utilities?

19 A. I have no reason to believe they didn't.

20 Q. And to your knowledge did staff conduct
21 its FAC prudence review in this case in the same
22 general manner as it has in all prior prudence
23 reviews?

24 A. I have no reason to believe that they
25 did not.

1 Q. When did you -- when did OPC ask the
2 Commission to open a rule making or a working docket
3 to address OPC's concerns with staff's FAC audit
4 procedures? Did you?

5 A. I don't believe we did.

6 Q. At any time did you ask the Commission
7 to address these alleged failures?

8 A. Well, no.

9 Q. Before staff began its audit in this
10 case, did you notify staff that you believe their
11 audit procedure was faulty?

12 A. When I was a member of staff, I did
13 express concerns about the robustness of staff FAC
14 audits, yes.

15 Q. In this case when staff was beginning
16 its review when OPC received notice that staff was
17 beginning its review, did OPC notify staff that it
18 believed its audit procedures were faulty?

19 A. I did not do an extensive enough review
20 of staff's audit procedures to make that conclusion.
21 I made that conclusion in this case. Now, whether
22 OPC moves further on that, I don't know. That's a
23 decision for the director. But we haven't really
24 had time to address that question. We're in the
25 middle of this case.

1 Q. OPC raised the issue of staff's audit
2 procedures for the first time after staff filed
3 their report in this case, correct?

4 A. Yes.

5 Q. And it was mentioned that that's no
6 longer on the issues list?

7 A. That what's no longer on the issues
8 list?

9 Q. OPC's alleged failures -- excuse me,
10 allegations of staff's alleged failures with the
11 audit?

12 A. I don't -- I don't think it should be an
13 issue in this case. I mean, we -- in direct
14 testimony we didn't mention anything about the
15 staff's finding. We didn't raise the concern until
16 Empire used the staff's finding inappropriately and
17 incorrectly and we had to defend that staff's audit
18 is not sufficient to protect ratepayers against
19 imprudent actions on Empire. So, our, our concern
20 about staff's audit was in response to Empire's
21 using staff's audit as part of its evidence that it
22 was prudent.

23 Q. So, it's OPC's position that Empire
24 should not put stock in staff's audit, staff's
25 report in this case?

1 A. Can you repeat that question? I'm
2 sorry.

3 **Q. Is it OPC's position that Empire should**
4 **not use staff's report in this case?**

5 A. I have no position on what Empire should
6 do with staff's report. My position is the
7 Commission should not give any evidence, credibility
8 at all to staff's report. Staff admitted today it
9 does not do a prudence review. It just admitted
10 that. So, why would the Commission give any
11 credence to a document that purports to do a
12 prudence review that does not do it. I don't know.
13 So, I stand by my testimony.

14 **Q. But at this moment OPC is still not**
15 **asking the Commission to direct staff to review FAC**
16 **costs differently, correct?**

17 A. OPC made the recommendation that the
18 Commission order staff to adopt standards, audit
19 standards, generally-accepted audit standards, the
20 exact way the Commission did in a previous prudence
21 review. It was the Iatan construction audit. The
22 Commission said staff will comply with
23 generally-accepted auditing standards. I was the
24 staff lead on that. I did staff training on those
25 standards. The staff complied with those standards

1 going forward in that prudence case and I think
2 adoption of those standards and compliance with
3 those standards would help staff FAC auditors
4 improve their audits in their FAC reviews. It would
5 require them to make major changes, and I think that
6 is needed to protect customers if that is the intent
7 of staff's reviews.

8 Q. In this case you didn't ask the
9 Commission to order staff to use those standards in
10 their review, correct?

11 A. I believe I did in testimony.

12 Q. After the fact, after staff had issued
13 their report?

14 A. Yes.

15 MS. CARTER: Thank you. I have no other
16 questions at this time.

17 JUDGE WOODRUFF: All right. Questions
18 from the bench? Commissioner Stoll?

19 COMMISSIONER STOLL: No questions.
20 Thank you, Your Honor.

21 JUDGE WOODRUFF: Commissioner Rupp?

22 COMMISSIONER RUPP: Yes. I just have
23 one.

24 So, in your, you know, suggestion that
25 Empire should suspend or stop, what parameters would

1 you outlay for them to begin again?

2 THE WITNESS: Again, in testimony I said
3 the same way KCPL and GMO. In those cases both
4 staff and OPC did not set parameters. They left it
5 on management discretion. If the market changes and
6 it becomes volatile and you think you need to engage
7 in hedging, go ahead. We left it on management's
8 discretion.

9 COMMISSIONER RUPP: Thank you.

10 JUDGE WOODRUFF: Any recross based on
11 questions from the bench beginning with staff?

12 MR. BERLIN: No questions.

13 JUDGE WOODRUFF: Empire?

14 MS. CARTER: No. Thank you.

15 JUDGE WOODRUFF: Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. POSTON

18 Q. I'm going to try to work backwards.

19 A. Okay.

20 Q. Do you think a finding in this case of
21 imprudence would give staff reason to change their
22 reviews?

23 A. It should.

24 Q. And is this case about how staff
25 conducts its reviews?

1 A. No.

2 Q. Does when we raise the issue change
3 whether those reviews are appropriate?

4 A. No.

5 Q. Does the question over OPC raising --
6 not raising these issues with staff previously, are
7 we doing that now?

8 A. Yes.

9 Q. Ms. Carter had entered into evidence a
10 number of prior FAC orders from this Commission.
11 Does the Commission in those orders say that they
12 are approving the company's hedging policy going
13 forward?

14 A. No.

15 Q. When we look at the prior FAC rates and
16 the decreases that are in those prior orders, are
17 those decreases -- do those decreases involve more
18 than just natural gas costs?

19 A. Yeah. They involve the costs that are
20 included in the FAC, which is a portion of the costs
21 of operating a utility. For example, I understand
22 Empire has some of the highest rates in the state
23 for electric utilities. These costs only apply to
24 fuel and purchase power costs, so that segment of
25 their operations.

1 Q. Knowing what we know about the hedging
2 losses that the company took, did those -- did the
3 natural gas purchases contribute at all to these
4 reductions?

5 A. It made them less than they would be.

6 Q. So, the customers would have actually
7 seen lower rates had Empire not hedged?

8 A. Yes.

9 Q. Lower than what is appearing on all of
10 these orders?

11 A. Correct, for the period appearing under
12 the review, but I think for this case, but over this
13 case, yeah, because the losses were incurred, I
14 think, beginning in 2010 all the way through
15 current, at least 2016.

16 Q. So, to the extent that the rate changes
17 in these orders cover those same periods, your
18 testimony is that the rate would be lower had the
19 company not hedged?

20 A. Correct.

21 Q. Did Empire commit to review its policy
22 going forward?

23 A. Yes. In Mr. Brad Beecher's testimony
24 before the Commission in a 2004 rate case he made a
25 commitment, and I call it a commitment, I think

1 Empire disagrees, but he said that Empire will
2 review its risk management policy almost annually
3 based on lessons learned and changes in the market.
4 That was in 2004. The market in 2009 completely
5 changed from one of high price, high volatility to
6 one of consistent low price and low volatility. It
7 was a major upheaval, primarily due to shale gas,
8 the millions and millions and millions of gas
9 supplies that became available. In response to that
10 change in that market, despite what Mr. Beecher
11 committed to the Commission, Empire made no changes
12 to its strict and rigid hedging policy. It had
13 minimum hedges it had to do in accordance with its
14 policy and it committed to that. Gas prices were
15 steady and going down, but it kept buying and kept
16 incurring losses over that period 2010 to 2015. It
17 took no actions in response to the change in the
18 market. That is the essence of OPC's case. They
19 were not responsive. They, they designed -- or, or
20 they used a hedging program that was designed in
21 2001 for the market in 2001. The market changed;
22 the hedging program did not change.

23 And it's not like we're raising this
24 issue for the first time. Staff in its 2012 rate
25 case put Empire on notice to say, hey, you're still

1 using an old outdated policy, you need to reevaluate
2 that policy. Empire ignored it, made no changes.
3 So, it's not just OPC raising it in 2017. Staff
4 raised this concern in direct testimony in 2012.
5 Empire ignored it and now the customers are
6 suffering millions and millions of dollars of
7 hedging losses because they decided that they were
8 not going to change, and that's the essence of where
9 we're at in this case.

10 Q. Ms. Carter asked you questions about
11 OPC's opening statement and she referred you to
12 slide 16 on page 8. Do you still have that?

13 A. Yes.

14 Q. So, are weather fluctuations to be
15 expected?

16 A. Yes.

17 Q. Does that change long-term forecasts?

18 A. No.

19 Q. Does that change your opinion of whether
20 their policy is reasonable?

21 A. No.

22 Q. Can I have you look at slide 13, which
23 is on page 7.

24 A. Yes.

25 Q. And what does this slide show?

1 A. Well, that slide shows starting in 2009
2 that gas prices have been low and steady and just
3 had a blip in 2014, the polar vortex, that one blip.
4 Other than that, it's been low, looks like it's been
5 below \$5 for most of that six- to seven-year period
6 reflected here.

7 **Q. And what does this slide tell you about**
8 **what a volatile market looks like compared to a**
9 **nonvolatile market?**

10 A. Well, what I'm looking at here is the
11 volatile market in 2000 -- started in 2001. It was
12 characterized by extreme variations in prices.
13 That's what this chart reflects. Since 2009 when
14 prices dipped down, there have been a steady
15 decrease in prices with a steady decrease in
16 volatility with minor exceptions in 2014. That two-
17 or three-month period in 2014 was an exception and
18 it was due to a weather event. So, that's what it
19 shows me.

20 **Q. You testified that you've seen no issues**
21 **about Empire having gas available at a particular**
22 **time. Have you seen anything to show that hedging**
23 **is why they have had gas available?**

24 A. No.

25 **Q. How does Empire acquire the gas it**

1 **doesn't hedge?**

2 A. It acquires gas through bilateral
3 contracts with different parties and it acquires gas
4 through the index or the open market, which is
5 daily, monthly, or that period.

6 **Q. Of the 800 transactions that you heard**
7 **Ms. Carter talk about in her opening, how many of**
8 **those were hedging versus spot?**

9 A. I would assume the vast majority were
10 spot market transactions. My, my review of the
11 hedging transactions over the period, I can't
12 estimate, but it was nowhere near 800, so...

13 **Q. Did she refer to 50-something financial**
14 **hedges and 20-something --**

15 A. Yeah. I recall more than 50, but it's
16 not out of the range of reasonable it could be that
17 many.

18 **Q. So, would the vast majorities then be**
19 **the spot market?**

20 A. I believe so, yes.

21 **Q. If Empire had relied on the spot market,**
22 **what would they have saved customers for the review**
23 **period?**

24 A. I believe on a total company would be
25 about 60 million, but on a net Missouri jurisdiction

1 it was about 13 million.

2 Q. And what would they have saved customers
3 total company since 2008?

4 A. I don't know in Missouri juris, but I
5 think it's in the millions of millions of dollars.
6 I think 50, 65.

7 Q. If Mr. Riley's testimony says
8 95 million, would you have reason to dispute that?

9 A. I think that includes both financial and
10 fiscal. Right, yeah. I think it is. I don't know
11 if that number has been objected to by Empire, but
12 it's a good estimate of that period.

13 Q. There was lots of discussion, questions
14 about pre-approval. Do you believe Empire wants
15 pre-approval in this case of its hedging policy?

16 A. I think I've seen indications that they
17 do.

18 Q. Do you have concerns with what
19 pre-approval would have on Empire's management
20 responsibility to monitor the market and reevaluate
21 its policy?

22 A. Well, it depends. I mean, you can have
23 pre-approval which allows sufficient management
24 discretion to operate based on, on, on prudent
25 management actions. For example, the Kansas

1 Corporation Commission requires electric utilities
2 to get pre-approval to hedge. They said that they
3 told Empire they could not hedge in Kansas. They
4 tried. They couldn't. KCPL, for some reason,
5 doesn't hedge in Kansas. Aquila is one of -- is, is
6 a Missouri utility that did. Now what they had, now
7 they had a preapproved plan and they had a budget
8 and I think the budget at that time was several
9 years ago was \$600,000, which means that's a cap.
10 You in -- you incur more than \$600,000 of losses,
11 you absorb the rest. So, if you design a
12 pre-approval in a certain way, and there's different
13 opinions on this, it can be reasonable and it could
14 take some of the uncertainty away from the company.
15 So, I, I'm one that would support a reasonable
16 pre-approval process for a hedging plan.

17 **Q. Considering --**

18 **A.** But that's not the position of OPC.
19 That's my own personal position.

20 **Q. Considering Empire's current hedging**
21 **policy, are the wide range of tools, to use**
22 **Ms. Carter's language, when she talked about swaps**
23 **and options and those kind of things, are those**
24 **enough to protect Empire's customers given their**
25 **current hedging policy?**

1 A. No. And, for example, one of the things
2 that -- and I'm very familiar with KCPL and GMO and
3 their hedging programs, and one of the things that
4 they would use if you're in a flat market, a low
5 price market, they would use call options, which
6 means they would pay a price as a premium at a high
7 level. For example, we're in a \$3, \$2 gas market.
8 They would say okay, we're going to buy a call
9 option at \$5, which the market hasn't seen 5 except
10 for that short time with the polar vortex, and that
11 premium would be low because it's not expected that
12 it's going to get to that level. So, they can do
13 protection using call options. They decided not to
14 implement that feature. KCPL uses it, GMO uses it,
15 but Empire decided to rely primarily on NYMEX
16 futures contracts and counter-party swaps, so...

17 MR. POSTON: Sorry. I can't read my own
18 handwriting here.

19 **Q. (By Mr. Poston) There was questions**
20 **about you not attacking or -- or not attaching**
21 **articles about the future of the gas market. Is**
22 **that relevant to the March 2015, August 2016 review**
23 **period?**

24 A. No. And that's the, the sentiment I
25 expressed to Empire is based on Mr. Doll's

1 surrebuttal testimony, which he raised the issue of
2 that and it's perfectly fine of him to do so, we did
3 additional research and we found substantially that
4 the opinion of the experts was that gas prices going
5 forward and for a long period of time and I think
6 Liberty -- Mr. DaFonte at Liberty also expressed the
7 same thing, is expected to be low and nonvolatile,
8 but we, we did not make that a major focus in our
9 prudence audit.

10 **Q. There was questions over the prior staff**
11 **prudence audits. What did staff find and what was**
12 **staff's review parameters to your knowledge?**

13 A. My review of the staff report and I
14 reviewed the data requests, and I was a little
15 confused because staff's -- the data that staff
16 solicited from Empire was every DR was prefaced with
17 the statement from May 2015 to August 2016, dealing
18 with all the questions, but the hedging programs as
19 well. The imprudence took place when the
20 transactions were made in 2010 to 2015. So, staff's
21 discovery process would not even obtain the data
22 they needed to look at the hedging transactions.
23 So, I was confused on what -- why they would design
24 their discovery that way.

25 Reviewing the report, basically they

1 relied on one or two DRs, did not do any meetings
2 with the company, no discussions, and those were the
3 primary -- and I reviewed their scope, those are the
4 primary concerns that said this is -- this is not
5 really a review or an audit, but it's more or less
6 what the accounting industry refers to a compilation
7 and did they put this in the right accounts, did
8 they comply with their policies. It's not an audit.
9 It's not a review. It's, it's merely a compilation
10 process to say, hey, yeah, you booked this right,
11 you complied with your policies. I don't believe at
12 all that's the intent of a prudence review and but
13 that's where staff is today. That's why we're
14 raising this concern. Staff FAC auditors need
15 standards. They need -- the Commission ordered
16 staff to use them in the past and I think they need
17 to order them again.

18 **Q. There was a lot of questions about prior**
19 **reviews and Commission -- and Commission findings.**
20 **Is the Commission to blame for Empire's hedging**
21 **losses?**

22 A. No.

23 **Q. Is staff to blame?**

24 A. To the extent the staff did not identify
25 the problems. And again, I want to give credence.

1 In the 2012 rate case staff rate case auditors
2 identified a problem and they put in direct
3 testimony, and I have it right here, they said,
4 look, this is -- you're using an old hedging policy
5 that was designed for a previous market, you need to
6 reevaluate that and make appropriate changes.
7 That's what staff told Empire. Empire ignored it.
8 Now we're five years later, same thing. Finally,
9 we're raising the issue. OPC has never gotten into
10 FAC cases before, but the way staff approaches these
11 audits is a major reason why we're involved, why
12 we're here today. And we need to protect ratepayers
13 to the extent we can and that's what we're doing in
14 this case and not being done currently and that's a
15 concern.

16 Q. So, even though staff raised the
17 concern, is it ultimately Empire management
18 responsibility?

19 A. Absolutely it is. It is.

20 Q. And is OPC to blame for Empire's hedging
21 losses?

22 A. No.

23 Q. There was a lot of questions about
24 Empire's tariff, that it allows hedging -- it
25 defines hedging costs to allow losses. Does that

1 include imprudently-incurred hedging losses?

2 A. No.

3 Q. Are imprudent costs allowed to flow
4 through the FAC?

5 A. No. The, the FAC rule does not allow
6 recovery of imprudently-incurred costs.

7 Q. That's a statutory requirement as well,
8 isn't it?

9 A. Yes.

10 Q. At the beginning of Ms. Carter's
11 cross-examination of you, she talked about these 800
12 transactions and I believe she referred to 51
13 financial hedge transactions. Did you review any of
14 those hedging transactions?

15 A. Yes.

16 Q. Did you review specific transactions?

17 A. Yes.

18 Q. And what did your specific transaction
19 review determine?

20 A. Well, and if you'd like, I can go
21 through the individual transactions, but what I did
22 is analysis between what the hedge price they paid
23 on the NYMEX and the closest -- and I use the EIA,
24 the Energy Information Administration, what they
25 predicted the gas prices for that year, and I looked

1 at okay, they pay -- they paid \$4.50 for contract in
2 2001 -- 2011 for gas in 2013. I looked at the EIA
3 forecast for prices in 2013 and compared that price
4 to what they bought the hedge for. And on many
5 occasions they were buying futures price over what
6 the EIA was predicting for that year. I looked at
7 the risk management minutes. Empire indicated that
8 they use no consultants, no expert's opinion on
9 where the market is. They had a discussion of the
10 market. They reviewed the NYMEX futures for a
11 portion. I think they even stopped looking at that
12 in 2013. But up to, I think, like 2013 they were
13 looking at the futures price and basing their
14 decisions on what the futures price says, and in my
15 testimony I explained a lot about why that's not
16 necessarily a good thing.

17 **Q. Do you have examples that show**
18 **particular dates they entered in transactions and**
19 **what they bought it for and what the EIA was**
20 **projecting?**

21 A. Yes, I do.

22 **Q. Can you give some of those?**

23 A. And bear with me. I have a lot of
24 documents here.

25 And again, I want to make the point that

1 not all purchases were made above market, but some,
2 some were. For example, on October 15th, 2012,
3 Empire paid \$4.26 for MMBTU for gas to be delivered
4 in December 2013. Now, that was October 15 of 2012.
5 The EIA issues a short-term energy outlook. It's a
6 predict -- it's a prediction of different prices.
7 They do it monthly. Empire entered into the
8 transaction on October 15, 2012. On October 10th,
9 2012, the EIA released their projection for natural
10 gas prices in 2013 at the Henry Hub, which is the
11 index price we all use, of \$3.49 at MMBTU. And just
12 five days later Empire purchased gas at \$4.26. Now,
13 did they explain any justification why they believed
14 prices were going to go up to 4.26 at that period
15 when the EIA -- I think that's the only evidence
16 that existed that I'm aware of. They had this
17 readily available. -- was \$3.49?

18 Now, that by definition is imprudent
19 unless they can show, well, we know the EIA said
20 this, but we had other information here that said,
21 you know, gas prices may go up 4.50, 4.80, 4.90, so
22 we're going to hedge at 4.26. I haven't seen any
23 evidence of that. The only evidence I've seen about
24 prediction of future prices through the EIA was a
25 lot lower than what they bought the hedge at and

1 there's several examples in there.

2 **Q. Can you provide more examples, please?**

3 A. Yes. On October 18, 2013, they
4 purchased a gas futures contract at \$4.33 for
5 January 2015 delivery. The EIA projected gas
6 average for 2014 of \$3.91 and Empire paid \$4.33 for
7 January 2015 gas.

8 **Q. So, that projection would have been**
9 **available to Empire through the EIA before they**
10 **entered in that transaction?**

11 A. Yes. My analysis made sure I used the
12 most recent forecast prior to the purchase. So,
13 there's no hindsight analysis in this at all. The
14 information was available before they entered the
15 transaction.

16 **Q. Can you give another example?**

17 A. Yes. Some of these, Empire hedges so
18 far out in the future, it's hard to get a close EIA
19 date, but we go way back in 2010 Empire had bought a
20 natural gas contract at \$6.08 for July '14 delivery
21 and that goes four years out. The EIA only goes two
22 years out. So, the closest point I can get that is
23 2011 where they're saying \$5.33 they predicted that
24 year. Again, not de facto imprudent, but this is
25 evidence that the EIA was predicting lower prices.

1 If Empire had evidence that gas prices were going to
2 go up or any indication to justify a hedge of \$6,
3 then it would be a different scenario, but they have
4 not provided any evidence or found any indication
5 that gas prices were going up.

6 Q. And when you said EIA goes out two
7 years, that's their -- is that their short-term
8 analysis?

9 A. That's their short-term energy outlook,
10 right.

11 Q. Is there another analysis they provide
12 of longer-term forecast?

13 A. Yeah, and it's not as specific. They
14 don't do -- to my knowledge, they don't do what they
15 predict the average price will be in a certain time
16 frame. They do -- in their annual outlook, I
17 believe, they give general indications of where the
18 prices are.

19 Q. And what was their projection through
20 this time period?

21 A. Again, I don't have that number in front
22 of me right now.

23 Q. Is it possible that those projections
24 are in Mr. Riley's testimony?

25 A. It's very possible.

1 Q. You had questions about the GMO and KCPL
2 rate cases. Were hedging losses included in the
3 revenue requirement in that case -- those cases?

4 A. Those cases resulted in what is
5 typically known as a black box settlement where
6 different parties have a different understanding of
7 what's in there. OPC's understanding, based on its
8 position, is that no hedging losses were included in
9 the revenue requirement approved by the Commission
10 in that case. Now, KCPL may have a different
11 opinion. Staff may have a different opinion. But
12 we made sure the number we agreed to reflected our
13 concerns about those prices or those costs.

14 Q. Mr. Berlin asked you questions about OPC
15 comments and an IRP case. Are those comments in the
16 time frame that they discuss, are they relevant to
17 this case and the review period we're looking at?

18 A. No. I mean, and the comments were, you
19 know -- I think the comments that they're referring
20 to that I had conversations with Mr. Marke about the
21 IRP and he provided the IRP comments. There was one
22 individual who said that gas prices in the future
23 could go up because of the exports of liquid natural
24 gas and various factors, but countering that in the
25 same article was the EIA projecting, projecting

1 flat, moderate prices for several years in the
2 future, so...

3 Q. But that, that projection that the
4 prices could go up, was that a five years ahead and
5 beyond?

6 A. Yeah. It was into the future. And
7 again, it's not related -- it's related maybe to the
8 issue of whether Empire should continue hedging, it
9 may be relevant to that, but as far as the costs
10 disallowance that OPC is proposing, it's not related
11 in any manner to that.

12 Q. If we were to look at what the
13 projections are going forward from this point and
14 use that to determine whether their prudency pol --
15 whether they were prudent when they were acquiring
16 gas for this period, would that be relying on
17 hindsight evidence?

18 A. Yes.

19 Q. Because the projection is from -- it was
20 dated, what, 2016-2017?

21 A. Yeah. And despite Empire's accusations,
22 and I haven't seen them defend them at all, OPC went
23 to great lengths and because we know the
24 Commission's concern with hindsight and we've seen
25 Commission orders saying staff used hindsight. We

1 went to great lengths to not using data as evidence
2 of imprudency outside that period. It was before
3 the period and at the period. And, and we made
4 no -- we included no evidence of hindsight at all,
5 and to the extent Empire made those accusations they
6 have not substantiated them.

7 **Q. And when you say you looked at evidence**
8 **before the period, you're talking about the period**
9 **when they were making the hedges for the costs that**
10 **were incurred during the review period?**

11 A. Yeah. We looked at the gas prices going
12 out and up to these transactions. For example, if
13 they bought a hedge in 2013, we didn't say hey,
14 look, 2014 they were lower than what you bought.
15 That's hindsight. We used the data at or before,
16 information that would be available to Empire
17 management when they engaged in the transaction.

18 MR. POSTON: Thank you. That's all the
19 questions.

20 JUDGE WOODRUFF: All right. And it's
21 time for our lunch break.

22 You can step down from the stand.

23 We'll come back at 1 o'clock.

24 (A lunch recess was taken.)

25 JUDGE WOODRUFF: All right. We're back

1 from lunch and we'll go ahead and get started here.

2 If you want to call your next witness.

3 MR. POSTON: OPC calls John Robinett.

4 (The witness was sworn in.)

5 JUDGE WOODRUFF: You may inquire.

6 MR. POSTON: Before, can we go ahead and
7 premark his testimony?

8 JUDGE WOODRUFF: Sure. You're up to
9 No. 9.

10 MR. POSTON: Okay. So, 9 would be
11 direct testimony of John Robinett, 10 rebuttal
12 testimony of John Robinett, and 11 surrebuttal
13 testimony.

14 JOHN ROBINETT,
15 having been called as a witness herein, having been
16 first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. POSTON

20 Q. Can you, please, state and spell your
21 last name for the court reporter.

22 A. John A. Robinett. It's R-O-B-I-N-E-T-T.

23 Q. Are you the same John Robinett that
24 caused to be prepared and filed direct, rebuttal,
25 and surrebuttal testimony that's been premarked as

1 **Exhibits 9, 10, and 11?**

2 A. I am.

3 **Q. And do you have any corrections to this**
4 **testimony?**

5 A. Just to my direct. On page 1 the
6 heading at the top of the page should be direct
7 instead of rebuttal.

8 **Q. And that's your only change?**

9 A. Yes.

10 **Q. If I were to ask you the questions that**
11 **appear in your testimony today, would your answers**
12 **be the same or substantially the same?**

13 A. They would.

14 **Q. Are the answers in your testimony true**
15 **and accurate to the best of your knowledge?**

16 A. They are.

17 MR. POSTON: Your Honor, I offer
18 Exhibits 9, 10, and 11.

19 (OPC's Exhibits 9 through 11 were
20 offered into evidence.)

21 JUDGE WOODRUFF: 9, 10, and 11 have been
22 offered. Any objections to their receipt?

23 Hearing none. They will be received.

24 (OPC's Exhibits 9 through 11 were
25 received into evidence.)

1 MR. POSTON: I tender this witness for
2 cross-examination.

3 JUDGE WOODRUFF: Cross-exam from staff?

4 MR. BERLIN: No questions, Judge.

5 JUDGE WOODRUFF: For Empire?

6 MS. CARTER: No questions.

7 JUDGE WOODRUFF: Commissioners have any
8 questions?

9 COMMISSIONER STOLL: I have no questions
10 of this witness. Thank you.

11 JUDGE WOODRUFF: I have no questions
12 either. No need for recross or redirect.

13 You may step down.

14 THE WITNESS: Thank you.

15 MR. POSTON: OPC calls Lena Mantle.

16 (The witness was sworn in.)

17 MR. POSTON: And Judge, I'll premark her
18 direct testimony as Exhibit 12, rebuttal as Exhibit
19 13 and surrebuttal as Exhibit 14.

20 LENA MANTLE,
21 having been called as a witness herein, having been
22 first duly sworn, was examined and testified as
23 follows:

24

25

1 DIRECT EXAMINATION

2 BY MR. POSTON

3 Q. Would you, please, state and spell your
4 name.

5 A. My name is Lena M. Mantle, M-A-N-T-L-E.

6 Q. Are you the same Lena Mantle that caused
7 to be prepared and filed direct, rebuttal, and
8 surrebuttal testimony that's been premarked as
9 Exhibits 12, 13, and 14 respectively?

10 A. Yes.

11 Q. Do you have any corrections to your
12 testimony?

13 A. No.

14 Q. If I were to ask you the questions in
15 your testimony today, would your answers be the same
16 or substantially the same?

17 A. Yes.

18 Q. And are these answers true and accurate
19 to the best of your knowledge and belief?

20 A. Yes.

21 MR. POSTON: Your Honor, I offer
22 Exhibits 12, 13, and 14.

23 (OPC's Exhibits 12 through 14 were
24 offered into evidence.)

25 JUDGE WOODRUFF: 12, 13, and 14 have

1 been offered. Any objections to their receipt?

2 Hearing none. They will be received.

3 (OPC's Exhibits 12 through 14 were
4 received into evidence.)

5 MR. POSTON: I tender Ms. Mantle for
6 cross-examination.

7 JUDGE WOODRUFF: Staff?

8 MR. BERLIN: No questions, Judge.

9 JUDGE WOODRUFF: Any from Empire?

10 MS. CARTER: No questions.

11 JUDGE WOODRUFF: Commissioner Stoll?

12 COMMISSIONER STOLL: I might -- let me
13 just ask her a question.

14 Good afternoon.

15 THE WITNESS: Good afternoon.

16 COMMISSIONER STOLL: In your testimony
17 you talk about there are two types of purchase power
18 that make up the Commission's definition of true
19 purchase power. Can you explain the significance of
20 that in this case?

21 THE WITNESS: The significance in this
22 case -- and it's something that staff and OPC has
23 worked out. The significance is the purchase power
24 pieces need to be reviewed in a prudence review.
25 You have purchase power that's purchased through

1 contracts. With Empire it's with Plum Point Energy
2 Center in Arkansas and then they have some wind
3 purchase power contracts. That's one type of
4 purchase power that's part of what the Commission
5 has, has identified as true purchase power. The
6 other piece of true purchase power is power that is
7 purchased from the SPP integrated market, and a
8 review of that amount is very important because it
9 shows how much that utility is relying on the market
10 instead of relying on its own resources. So, a
11 review of those numbers would either point to
12 something that needs to be delved in a little closer
13 to be looked at to do a full audit on. A rising
14 number in the market purchases, it may indicate a
15 lot of different things. When I reviewed them, I
16 was -- did not see anything that concerned me. They
17 went up and went down. There were good reasons for
18 it. So, I did not follow that any further than just
19 looking at those numbers and providing that review
20 to the Commission.

21 COMMISSIONER STOLL: Okay. Yeah. So,
22 with the -- in the integrated market and with the
23 purchase power on the spot market it could be
24 advantageous to do that rather than hedging or some
25 aspects of hedging or how would --

1 THE WITNESS: Actually, that's not tied
2 to hedging at all in this --

3 COMMISSIONER STOLL: Not at all.

4 THE WITNESS: -- review. It was a piece
5 of information that OPC believed was not reviewed
6 and actually staff told us that was correct, they
7 had not reviewed those pieces in their review. And
8 so, OPC felt it was important to look at those
9 things and, so, we did a review and provided for the
10 Commission the results of that review.

11 COMMISSIONER STOLL: Okay, okay. Thank
12 you.

13 JUDGE WOODRUFF: Any recross based on
14 those questions from the bench? Redirect?

15 Thank you, Ms. Mantle. You can step
16 down.

17 That was Public Counsel's last witness.
18 I noted that we had marked schedule 8 with
19 Mr. Hyneman's schedule. Did you wish to offer that
20 at this point?

21 MR. POSTON: Yes. Judge, I'd like to
22 offer Exhibit 8.

23 (OPC's Exhibit 8 was offered into
24 evidence.)

25 JUDGE WOODRUFF: And we had a discussion

1 before we came back on the record from lunch. This
2 is marked -- has a HC stamp on it and I'm
3 understanding it's not, in fact, HC; is that
4 correct?

5 MR. POSTON: We have -- that's correct.
6 We've torn off the back page that had potentially HC
7 material on it.

8 JUDGE WOODRUFF: So, it was only the
9 chart at the back of the document that was HC that
10 should have been removed?

11 MR. POSTON: That's correct.

12 JUDGE WOODRUFF: This document is not
13 HC?

14 MR. POSTON: That's correct.

15 JUDGE WOODRUFF: 8 has been offered.
16 Any objections to its receipt?

17 Hearing none. It will be received.

18 (OPC's Exhibit 8 was received into
19 evidence.)

20 JUDGE WOODRUFF: Before we move on from
21 public counsel, I have one question for the counsel.
22 There's been discussion in this case and Ms. Mantle
23 brought it up or had discussion about this also.
24 There was a couple issues that were resolved between
25 staff and public counsel that are not presented to

1 the Commission for resolution. Is there an intent
2 to file a stipulation agreement on those issues or
3 are they just being resolved between staff and
4 Public Counsel?

5 MR. BERLIN: Judge, if I could answer
6 that.

7 JUDGE WOODRUFF: Go ahead.

8 MR. BERLIN: Now, I wasn't part of the
9 actual conversations, but my understanding of this
10 is that we agreed to pull them off of the issues
11 list which are the issues that are to be presented
12 to the Commission for decision today. So, I mean,
13 we're not trying those issues.

14 JUDGE WOODRUFF: I understand that, but
15 my question is are you going to ask the Commission
16 to make any sort of findings on that, or is that
17 just informally being resolved?

18 MR. BERLIN: I think we inform -- I
19 think we informally agreed that we would not pursue
20 those issues in the context of this hearing.

21 JUDGE WOODRUFF: Okay.

22 MR. POSTON: I concur with that. Since
23 we've not -- did not put those on the issues list,
24 we didn't feel it necessary to prevent a -- to
25 provide a stipulation on that. We just have an

1 understanding between the two parties about how
2 we'll address those issues moving forward.

3 JUDGE WOODRUFF: I'm not suggesting
4 anything different. I just wanted to be clear as to
5 what might be coming in the future.

6 MR. POSTON: I understand.

7 JUDGE WOODRUFF: We'll move over then to
8 Empire's case.

9 MR. POSTON: I believe staff was next.

10 JUDGE WOODRUFF: I'm sorry. Okay.
11 Staff.

12 Is it Empire then?

13 MS. CARTER: Yes. Aaron Doll.

14 AARON DOLL,
15 having been called as a witness herein, having been
16 first duly sworn, was examined and testified as
17 follows:

18 JUDGE WOODRUFF: You may inquire.

19 DIRECT EXAMINATION

20 BY MS. CARTER

21 Q. Please, state your full name.

22 A. My name is Aaron J. Doll. Doll is
23 D-O-L-L.

24 Q. Did you cause to be prepared for the
25 purposes of this proceeding on behalf of Empire

1 certain direct, rebuttal, and surrebuttal testimony
2 in question and answer form?

3 A. Yes, ma'am.

4 Q. Is it your understanding that those
5 three pieces of testimony have now been marked as
6 Exhibits 100, 101, and 102?

7 A. Yes, ma'am.

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

10 A. Yes. I have three changes. Change
11 number one, in rebuttal testimony, page 2, line 3,
12 the first word should be minimum rather than
13 maximum.

14 Q. And what is the next change?

15 A. The second change is in appendix AD-2,
16 the 2007 gains should be \$1,921,630 due to \$455,000
17 gains not included in the previous version, bringing
18 the total gains to 42,252,118 and a total net of
19 \$2,259,949.

20 Q. And what was the third change?

21 A. The third change is in rebuttal
22 testimony at Doll appendix AD-2 also maybe public
23 and does not need to be classified as confidential.

24 Q. And all of your changes are listed on a
25 correction sheet, correct?

1 A. Correct.

2 Q. And that has been marked as Exhibit 103?

3 A. Correct.

4 Q. If I asked you the questions which are
5 contained in Exhibits 100, 101, and 102 as amended
6 by Exhibit 103, would your answers be substantially
7 the same?

8 A. Yes, ma'am.

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

12 A. Yes, ma'am.

13 MS. CARTER: Your Honor, I offer
14 Exhibits 100, 101, 102, and 103 into evidence, and
15 tender the witness for cross-examination.

16 (Empire's Exhibits 100 through 103 were
17 offered into evidence.)

18 JUDGE WOODRUFF: Exhibits 100 through
19 103 have been offered. Any objections to their
20 receipt?

21 Hearing none. They will be received.

22 (Empire's Exhibits 100 through 103 were
23 received into evidence.)

24 JUDGE WOODRUFF: And for
25 cross-examination we will begin with staff.

1 MR. BERLIN: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. BERLIN

4 Q. Mr. Doll, were you in the room during
5 the time that Mr. Hyneman was on the stand?

6 A. Yes, sir.

7 Q. Mr. Hyneman stated to the Commission
8 that he's certain about the low gas cost environment
9 and that that low gas cost environment will go on
10 into the future. Do you carry that -- are you that
11 certain about the gas pricing and the gas markets?

12 A. I am not certain about the gas prices
13 into the future.

14 Q. Okay.

15 A. I think history's shown that they move
16 around quite a bit.

17 MR. BERLIN: Thank you. No further
18 questions.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. POSTON: Yes, thank you.

21 CROSS-EXAMINATION

22 BY MR. POSTON

23 Q. Good afternoon, Mr. Doll.

24 A. Good afternoon.

25 Q. Your testimony states your title is

1 **director of electric procurement. What are your job**
2 **responsibilities?**

3 A. Currently my job responsibilities
4 involve the procurement of natural gas and coal for
5 our generation fleet. They also involve our
6 offering in of generation to the SPP market, as well
7 as our procurement of load for the SPP market.
8 Additionally, they also involve working with the
9 southwest power pool on various working groups.

10 Q. Do you actual -- do you make the actual
11 natural gas transactions yourself or is it somebody
12 who works under you who makes those?

13 A. The manager under me actually executes
14 the trade with my supervision.

15 Q. And how long have you been in this
16 position?

17 A. July 2016 I assumed the position.

18 Q. And what year did you begin your
19 employment with Empire?

20 A. October 16th, 2006.

21 Q. And were you professionally employed
22 before you began with Empire?

23 A. Yes. I worked at an elementary school
24 in Joplin.

25 Q. In your rebuttal testimony you refer to

1 **Empire's approach to hedging as a lateral approach.**

2 **Do you agree with that? I was looking at page 3.**

3 A. Page 3 of rebuttal?

4 **Q. Yes.**

5 A. I just want to make sure I'm on the
6 right line. Can you cite the line?

7 **Q. I'm sorry. Page 2.**

8 A. Line 1, yes.

9 **Q. And you say the policy allows for**
10 **strategic input to vary the amount of the natural**
11 **gas hedged. When you say Empire's policy allows you**
12 **to vary the amount hedged, you're referring to the**
13 **ability to hedge more than the minimum?**

14 A. Yes, sir.

15 **Q. Would you agree that policy does not**
16 **allow you to hedge below those minimums?**

17 A. Yes, sir.

18 **Q. So, it's a one-way ladder? You can**
19 **climb up, but you can't climb down?**

20 A. Yes, sir.

21 **Q. And in your testimony you discuss NYMEX**
22 **futures prices, and is that how Empire determines**
23 **the reasonableness of a hedge by looking at NYMEX**
24 **future prices?**

25 A. I think we look at a variety of

1 information available. At this point all the data
2 that we see we have not seen substantial deviations
3 between what a NYMEX forward curve has shown and
4 what various other forecasts have shown as well.

5 Q. My question was: Is that how you
6 determine reasonableness? You just said that's one
7 of the things you look at?

8 A. That is one of the things that we look
9 at.

10 Q. Would you agree with me that NYMEX
11 futures prices for a given month are determined
12 based on the actual contracts already entered into
13 for that month?

14 A. Yes, sir. They are a moving range based
15 on the contracts entered into.

16 Q. Would you agree with me that generally
17 speaking the further into the future you go, the
18 NYMEX futures prices are based on fewer
19 transactions?

20 A. Yes. There is limited liquidity in the
21 future.

22 MR. POSTON: I have a handout. I
23 thought I had a handout. Here it is.

24 Judge, if we could have this marked.
25 What are we up to?

1 JUDGE WOODRUFF: No. 15.

2 MR. POSTON: 15. If the court reporter
3 could, please, give the witness what's been marked
4 as Exhibit 15. Thank you.

5 Q. (By Mr. Poston) And you have before you
6 what's been marked as Exhibit 15, correct?

7 A. Yes, sir.

8 Q. And do you recognize this as a table
9 that appears on page 6 of your rebuttal testimony?

10 A. Without checking every single number, it
11 appears that it's the exact same table.

12 Q. And this is a June 16, 2017, screen-shot
13 from the NYMEX web page showing natural gas
14 commodity futures price quotes; is that correct?

15 A. I'm not sure it's from the NYMEX web
16 page. I think it's from the -- it references in
17 line 9 of my testimony on page 5 that it's from
18 www.future.tradingcharts.com.

19 Q. But these are the NYMEX futures; is that
20 correct?

21 A. Yes, sir.

22 Q. And let's go to the top, top row. Can
23 you, please, just walk us through the headings and
24 what each number represents in that column?

25 A. Sure. Typically, when you procure gas

1 you'll see a chart like this that will kind of show
2 you where the high and low offers have been within
3 that trading day or that trading period. The last
4 would be the last offer that was made at that time,
5 which generally is identical to the set. The change
6 is the change between the last and the previous
7 price, I believe. The volume is the amount of
8 MMBTUS that has been traded at that point. And the
9 prior day is the, the set which is the same from the
10 current day, just the day prior, and then there's
11 the option interval. Not sure what that last one is
12 actually.

13 **Q. If you were to see this screen and**
14 **decide you wanted to purchase 1,000 dekatherms of**
15 **gas to be delivered in June of 2019, what would be**
16 **the price that Empire would pay?**

17 A. You said June of 2019?

18 **Q. Yes.**

19 A. It shows the last procurement was \$2 and
20 roughly 72 cents, but there hasn't been much
21 activity on that at this particular time whenever
22 this was printed off.

23 **Q. And so, are you basing that off of the**
24 **last or the set or what are you basing that off of?**

25 A. Just basing it off the last.

1 Q. And if we look in the volume column, the
2 further out in the future we go, the fewer volumes
3 there are that have been hedged, correct?

4 A. That is correct.

5 Q. And I believe you testified that means
6 the further out you go in the future, those prices
7 are based on fewer transactions?

8 A. That is correct.

9 Q. And if we look two years out, down
10 towards the bottom we see few, if any, transactions
11 occurring, correct?

12 A. That is correct.

13 Q. And if we jump down to the very bottom
14 of the column, we see the number two -- or the very
15 bottom of the page, we see the number two in the
16 volume column, correct?

17 A. That is correct.

18 Q. And what does that number represent?

19 A. Not sure if that's two deals or -- I'm
20 not 100 percent sure what exactly the volume is
21 represented on this particular table.

22 Q. So, what could it possibly be?

23 A. It could just be two contracts.

24 Q. Or could it be one contract for two
25 volumes?

1 A. No.

2 Q. And why do you say that couldn't be?

3 A. There's a minimum threshold of the
4 amount of contracts that you're typically able to
5 buy. Typically, we purchase in 10,000s.

6 Q. So, that couldn't -- could that be
7 20,000 dekatherms, one contract for 20,000?

8 A. It could be.

9 Q. Can you tell me who contracted for those
10 volumes?

11 A. I cannot.

12 Q. So, you don't know if those contracts
13 were entered into by an electric company, an LDC, a
14 bank or someone else?

15 A. I cannot.

16 Q. Can you tell me if those volumes were
17 contracted by a gas speculator?

18 A. I cannot.

19 Q. Can you tell me whether those volumes
20 were acquired through another company's particular
21 risk management policy?

22 A. I cannot.

23 Q. Can you tell me whether the buyer was
24 experienced at entering into financial hedging
25 contracts or whether they were on day one of his or

1 her job?

2 A. I cannot.

3 Q. Can you tell me whether that buyer
4 checked EIA forecast to determine whether the price
5 was in line with those forecasts?

6 A. I cannot.

7 Q. So, all this really tells you are the
8 volumes and the prices, correct?

9 A. That is correct.

10 Q. Would you agree with me that regardless
11 of what the NYMEX futures are reporting, Empire's
12 policy requires it to hedge the year-end minimums?

13 A. Can you, please, restate the question?

14 Q. Would you agree with me that regardless
15 of what the NYMEX futures are reporting, Empire's
16 policy requires it to hedge the year-end minimums?

17 A. To the extent Empire does not make a
18 change to its policy, it will hedge to the minimums.

19 Q. And the policy does not have built in
20 flexibility for you to choose not to lock in the
21 minimums if forecasts are saying gas prices are
22 declining, correct?

23 A. If there were to be a substantial
24 deviation between the forecasts and the NYMEX
25 curves, we would have to have approval from RMOC to

1 change the risk management policy to procure less
2 than the minimum volumes.

3 Q. And have you done that?

4 A. We have not.

5 MR. POSTON: I'd like to have another
6 exhibit marked.

7 Judge, do you know what number we're up
8 to?

9 JUDGE WOODRUFF: 16.

10 MR. POSTON: First, I'd like to offer
11 Exhibit 15.

12 (OPC's Exhibit 15 was offered into
13 evidence.)

14 JUDGE WOODRUFF: The futures table?

15 MR. POSTON: Yes.

16 JUDGE WOODRUFF: It's been offered. Any
17 objections to its receipt?

18 Hearing none. It will be received.

19 (OPC's Exhibit 15 was received into
20 evidence.)

21 Q. (By Mr. Poston) The court reporter has
22 handed you what's been marked as Exhibit 16; is that
23 correct?

24 A. That is correct.

25 Q. Do you agree the first page of this

1 exhibit designates this as OPC Data Request 1327
2 that was answered by you?

3 A. I don't know that I can verify that it
4 was that data request number, but I know OPC did
5 request gas position reports.

6 Q. Well, if we turn to the first page -- or
7 the second page, would you agree this is Empire's
8 gas position summary showing Empire's physical and
9 financial hedges as of January 9th, 2009?

10 A. Yes.

11 Q. And what is Empire's purpose for
12 preparing these summaries?

13 A. The purpose of the gas position report
14 is to -- is distributed to various RMOc members,
15 actually all RMOc members and attendees, to show
16 where the hedging portfolio is at a point in time
17 and what the prices related to those open positions
18 currently are.

19 Q. So, help the Commission understand what
20 they're looking at, and let's look at the second
21 column titled February 2009. Do you see that?

22 A. Yes, sir.

23 Q. And do you agree that this shows the
24 hedges Empire had in place on January 9th, 2009, for
25 gas to be used in February 2009?

1 A. Yes, sir.

2 Q. And if we move down the column, we see a
3 77 percent number. Does this indicate that on
4 January 9th, 2009, Empire had hedged for 77 percent
5 of its gas need for February 2009?

6 A. Based on expected burn, it had
7 77 percent hedge from upside volatility, yes.

8 Q. And that leaves 23 percent of your gas
9 need for February that is not hedged, right?

10 A. That is correct.

11 Q. And how would you typically acquire this
12 remaining 23 percent?

13 A. We would take either a physical position
14 at index or do daily spot prices during the actual
15 burn month.

16 Q. And in the ninth row of the
17 February 29th column we see the description net all
18 position mark to market. That figure shows the
19 results of your February 29th hedging as of
20 January 9th, 2009, correct?

21 A. Correct.

22 Q. And because it's in parentheses, that
23 means it's being reported as a loss, correct?

24 A. I believe that is correct.

25 Q. And if we move across the columns, we

1 see that as of January 9th, 2009, you were recording
2 losses throughout the entire year over the next 11
3 months of 2009, correct?

4 A. Through the end of 2009, was that the
5 question?

6 Q. Yes.

7 A. Yes, that is correct.

8 Q. And when we get to the column titled
9 year 2010 and 60 percent minimum, that means your
10 policy is to hedge 60 percent of your 2010 need by
11 the end of 2009, correct?

12 A. That is correct, a minimum of
13 60 percent.

14 Q. And would you agree this shows you've
15 already hedged 64 percent?

16 A. Yes.

17 Q. And if we go to the last column, we see
18 that for all of your hedges in place as of
19 January 9th, 2009, you were reporting those as over
20 \$9 million in losses, correct?

21 A. Yes.

22 Q. And if we look further down, we can see
23 that those losses are broken down between physical
24 hedges and financial hedges, correct?

25 A. That is correct.

1 Q. And according to this report, would you
2 agree it shows the furthest out that Empire had
3 hedged was 10 percent for 2013, four years into the
4 future, consistent with your hedging policy?

5 A. We had hedged at least a minimum of 10
6 percent year 2013, four years out, yes.

7 Q. So, this was 2009. If you flip through
8 the other pages, would you agree this exhibit
9 appears to be the first month's gas position summary
10 through August 31st, 2016?

11 A. Sorry. I'm not positive I understand
12 the question.

13 Q. I'm asking you to flip through and look
14 at the exhibit and agree with me that what this
15 exhibit shows is the first month's gas position
16 summary report between January 2009 and August 2016.

17 A. This does not show all of Empire's gas
18 position reports, but this does show from 2009. I
19 can flip through.

20 These appear to just show one report a
21 month, which I believe there were more than that.

22 Q. Correct. If this showed all the
23 reports, it would be a much thicker document,
24 correct?

25 A. Yes, sir, it would.

1 **Q. So, let's look at a few more gas**
2 **position summaries. Please, turn to the April 2nd,**
3 **2010, report.**

4 A. April 2nd, 2010.

5 **Q. And that report shows \$20 million in**
6 **losses, correct?**

7 A. For the net of all five years?

8 **Q. Yes. Is that correct?**

9 A. Yes, it does. Well, to be clear, this
10 doesn't actually show losses. This shows the
11 percentage of what your mark to market is. So, the
12 point of the position report is to show what our
13 open positions currently would be valued at if we
14 liquidated at that particular time the report was
15 created. So, these actually do not show losses,
16 just to make that clear.

17 **Q. But had they been liquidated at that**
18 **time -- I mean, explain this. This is showing what**
19 **the projection is would be a loss; is that correct?**

20 A. So, based on current NYMEX prices at the
21 instant this report is produced, if you were to
22 liquidate every position based on what the current
23 NYMEX price was, this is what your net result would
24 be. So, none of these had been incurred. This is a
25 forward-looking report.

1 Q. And on that date, April 2nd, 2010, it
2 shows losses being reported for every month and
3 every year shown, correct?

4 A. The outer years don't show them by
5 month. So, I couldn't say for certain that is true.

6 Q. But all of the columns on here are
7 showing losses, correct?

8 A. Yes. The columns are, yes.

9 Q. And as of April 10th, Empire had not
10 hedged anything for 2014 yet, correct?

11 A. At this point it appears we had not
12 hedged anything for 2014.

13 Q. Okay. Let's look at June 4th, 2010, and
14 would you agree with me here it shows Empire has
15 started hedging for 2014 and it's already reporting
16 a loss on that hedge, correct?

17 A. For year 2014?

18 Q. Yes.

19 A. You're on June 4th of 2010?

20 Q. Yes.

21 A. It shows -- once again, it does not show
22 a loss. It shows that the mark to market position
23 is \$84,000 unfavorable.

24 Q. Negative, right?

25 A. (The witness nodded his head.)

1 Q. Okay. Let's jump ahead to October 8th,
2 2010. Now, October of 2010 is when Empire states
3 that it began hedging for 2015; is that correct?

4 A. It does not show that in this report,
5 but I believe there was a transaction made in
6 October of 2010 for 2015.

7 Q. So, as of October 8, 2010, before any
8 2015 hedges were placed, this is the information you
9 had available as to how your hedging program was
10 performing, correct?

11 A. Correct.

12 Q. And by October 8, 2010, all of your
13 hedges were showing \$20 million mark to market in
14 the negative, correct?

15 A. This is an aggregate of all of our
16 positions. So, I can't say that there was hedges
17 that weren't showing favorable that may have been
18 netted by some unfavorable positions.

19 Q. But if you look at them all on the
20 aggregate, it's a \$20 million negative, correct?

21 A. In the aggregate the mark to market
22 shows that it is \$20 million unfavorable.

23 Q. And the hedges you had already entered
24 into for 2014 were already showing a mark to market
25 of negative \$400,000?

1 A. That is correct.

2 Q. Okay. So, let's turn the page to
3 November 5th, 2010. And would you agree that now we
4 can see the 2015 hedge or hedges appear in the
5 second-to-last column?

6 A. Yes, sir.

7 Q. And so, this hedge was placed less than
8 a month prior and it's already being recorded as a
9 negative, correct?

10 A. Its mark to market is showing that it is
11 \$10,000 unfavorable, that there's a three -- less
12 than a 3-cent difference, yes.

13 Q. Okay. Let's jump ahead to January 6th,
14 2012. And would you agree with me that according to
15 this, by then Empire had hedged 11 percent of your
16 2015 need and nothing for 2016, correct?

17 A. That is correct.

18 Q. And you're showing over 800,000 mark to
19 market in the negative for 2015, correct?

20 A. That is correct.

21 Q. And you're showing 21 million in mark to
22 market negative for all of your hedges; is that
23 correct?

24 A. As a net in the aggregate, yes. I can't
25 confirm that every hedge is negative.

1 **Q. Did these numbers cause Empire to stop**
2 **hedging?**

3 A. No. Empire has continued to hedge from
4 2001 to current day. We have made adjustments
5 within our strategy that is allotted for within the
6 risk management policy, but at this time the only
7 way we see to protect our customers from upward
8 price risk is to hedge.

9 **Q. Did these numbers cause Empire to reduce**
10 **its hedging percentages?**

11 A. The percentages were not changed, but I
12 believe we did hedge slightly higher percentages
13 earlier on and have hugged closer to the bands in
14 the latter years, but the percentages did not
15 change.

16 **Q. Okay. Let's jump ahead to January 4th,**
17 **2013, jump ahead a year. So, by then you show you'd**
18 **locked in 20 percent for 2015, correct?**

19 A. 20 percent of the expected burn, yes.

20 **Q. And 10 percent for 2016, correct?**

21 A. That is correct.

22 **Q. Again, both showing mark to market in**
23 **the negative in the aggregate amount of over**
24 **\$13 million?**

25 A. Of those last two years, or are you

1 talking about the total position now?

2 Q. The total.

3 A. The total position, yes, in the
4 aggregate is showing that number, yes.

5 Q. And you're already showing a negative
6 for the year 2015 and year 2016, correct?

7 A. Yes.

8 Q. Did Empire change its policy at this
9 point?

10 A. No, Empire did not change its risk
11 management policy at this point.

12 Q. So, Empire continued to follow its
13 policy of locking in 10 percent, 20 percent,
14 40 percent, and 60 percent, correct?

15 A. Those are the minimum bands that we
16 would have hedged. We did not change that, but
17 there could have been strategy deviations inside
18 this.

19 Q. Okay. Let's jump ahead another year to
20 January 10th, 2014. So, according to this, we can
21 see that Empire had locked in 41 percent of its gas
22 need for 2015, correct?

23 A. That is correct.

24 Q. And you're already showing a mark to
25 market in the negative of over \$2 million, correct?

1 A. A net mark to market negative, yes.

2 Q. And you've locked in 22 percent of your
3 need for 2016, correct?

4 A. That is correct.

5 Q. And you're already showing over 800,000
6 marked to market in the negative, correct?

7 A. That is correct.

8 Q. In fact, all of the hedges across the
9 board in the aggregate, as they're aggregated here,
10 are all showing in the negative mark to market,
11 correct?

12 A. In the aggregate, yes.

13 Q. And Empire continued to follow its
14 policy by locking in 10 percent for 2017, correct?

15 A. That is correct.

16 Q. And that one's already showing 400,000
17 negative mark to market, correct?

18 A. That is correct.

19 Q. At that point did Empire decide its
20 policy wasn't working?

21 A. I don't think that Empire evaluates
22 whether its policy is working based on obtaining the
23 lowest price or having a mark to market that shows
24 that it is beating the market. Empire's policy
25 shows that it's effective by protecting upward price

1 risk.

2 Q. So, is the answer to the question no?

3 A. What was the question again?

4 Q. At that point did Empire decide its
5 policy was not working?

6 A. No, Empire did not.

7 Q. Okay. Let's jump ahead another year.
8 January 9th, 2015. So, would you agree with me that
9 by then you had hedged 50 percent of your 2015
10 need -- well, I take that back.

11 Well, according to this, what would this
12 tell you about your need that you had locked in for
13 2015?

14 A. Because this was done as of January 9th,
15 2015, and this is a forward-looking report, this
16 would just have February through December. So, that
17 would have 58 percent.

18 Q. And you already hedged 42 percent of
19 your need for 2016, correct?

20 A. That is correct.

21 Q. And again, by this point, the mark to
22 market in the aggregate is showing 13 million in the
23 negative in total, correct?

24 A. Across all the years?

25 Q. Yes.

1 A. That is correct.

2 Q. And it's your testimony that this policy
3 is prudent; isn't that correct?

4 A. Yes, that is my testimony.

5 Q. Have you made any changes to this
6 hedging policy since this review period?

7 A. We made -- we made changes to our risk
8 management policy altogether during this period. Is
9 your question have we changed the minimum band
10 levels during this period?

11 Q. That was going to be my next question,
12 yes. Have you changed those band levels?

13 A. We have not changed the band levels
14 during the prudence audit period.

15 Q. Have you changed the band levels since
16 then?

17 A. We have not changed the band levels
18 since then.

19 MR. POSTON: Judge, I'd like to offer
20 Exhibit 16.

21 (OPC's Exhibit 16 was offered into
22 evidence.)

23 JUDGE WOODRUFF: 16 has been offered.
24 Any objections to its receipt?

25 MS. CARTER: Judge, only somewhat. It's

1 not an objection. What is here is part of the
2 response to the data request. There's hundreds,
3 maybe thousands, if you print it all out, more pages
4 that was provided in response to the data request.
5 So, we have no objection to it being admitted for
6 what it is, which is part of the response to the
7 data request. The summary reports I believe, Marc,
8 did you pull?

9 MR. POSTON: Yeah. He's testified what
10 it is. It's the first summary report for each month
11 from January 2009, I think it was, through the end
12 of the audit period.

13 JUDGE WOODRUFF: Are reports prepared
14 daily? Is that...?

15 THE WITNESS: I'm sorry?

16 JUDGE WOODRUFF: Is there a new report
17 every day?

18 THE WITNESS: For the position reports,
19 they were done weekly and at some point, and it may
20 have been outside the audit period, they had been
21 revised back to monthly.

22 MR. POSTON: So, the only reason, this
23 would be a very big, big document if I had included
24 them all. I have no problem with including them all
25 if anybody wants all those, but...

1 JUDGE WOODRUFF: I don't think it's
2 necessary. All right.

3 MS. CARTER: And again, it's not an
4 objection to what it is. It's just that it purports
5 to be the response to the Data Request 1327 where in
6 reality the response to Data Request 1327 had to be
7 provided electronically because of the amount of
8 data and the number of tabs in each.

9 JUDGE WOODRUFF: I think the record's
10 pretty clear as to what it is.

11 For what it is, it is received.

12 (OPC's Exhibit 16 was received into
13 evidence.)

14 Q. (By Mr. Poston) Empire provides electric
15 distribution service in Kansas; is that correct?

16 A. That is correct.

17 Q. In 2006 Empire petitioned the Kansas
18 Corporation Commission, or KCC, for approval of its
19 risk management policy; is that correct?

20 A. I'm not 100 percent familiar with that
21 particular case, but I believe that that sounds
22 reasonable.

23 Q. Are you --

24 A. What was the time frame?

25 Q. They petitioned in 2006.

1 A. But what, what month? I'm sorry.

2 Q. What month?

3 A. Yes, sir.

4 Q. March 30th of 2006.

5 A. Okay. I started in October. So, any
6 familiarity I'd have with it is just from reading
7 some past orders.

8 Q. Okay. So, you --

9 A. I was not a part of that process.

10 Q. You started in October of 2006?

11 A. October 16th of 2006.

12 Q. Are you aware that the KCC denied that
13 application in 2008?

14 A. Yes. The KCC, from my recollection of
15 reading that order some time ago, the KCC advised
16 not to -- I'm trying to think exactly. I can't -- I
17 can't tell you the exact language, but essentially
18 they did not want the -- they did not advocate for
19 hedging at that particular time. I honestly can't
20 tell you a whole lot of the particulars of the case.

21 MR. POSTON: Can I approach?

22 JUDGE WOODRUFF: You may.

23 Q. (By Mr. Poston) Can you identify the
24 document I've handed you?

25 A. It's from the Kansas Corporation

1 Commission, Docket No. 06-EPDE-1048-HAD in the
2 matter of the application of the Empire District
3 Electric Company for approval of its existing energy
4 risk management policy which includes Empire's
5 natural gas hedging program.

6 Q. And what's the title of -- is that a KCC
7 order?

8 A. It appears that it's a KCC order.

9 Q. And what is the title of that order?

10 A. You're probably going to have to help me
11 out with this. I'm not a regulatory guy. Is it the
12 one I just read?

13 It says order denying application.

14 Q. And so, I've highlighted some language
15 from that order. Could you, please, read that into
16 the record?

17 MS. CARTER: Judge, I object to further
18 questions on this case being directed to this
19 witness as he said he was not involved with the case
20 and, in fact, was not employed at the time the
21 application was filed. Also, I object to the
22 relevance of this 2008 Kansas order or at least
23 until we can see it before it's read into the
24 record.

25 MR. POSTON: I mean, it's, it's a public

1 record that we can certainly cite to this without
2 even getting it in, but this goes -- directly to the
3 portion I'm having him reading goes directly to the
4 issues that are before us today about the hedging
5 policy and whether a risk management policy should
6 be preapproved by a Commission.

7 JUDGE WOODRUFF: Please, allow the
8 counsel to see the document before it's read in.

9 MR. POSTON: Yeah, that's fine.

10 (A discussion was held off the record.)

11 JUDGE WOODRUFF: Having read it,
12 Counselor, do you have any objection?

13 MS. CARTER: I do not. Thank you.

14 **Q. (By Mr. Poston) Okay. The question was:**
15 **Could you just, please, read in the highlighted**
16 **portion.**

17 A. "The Commission concurs with staff's
18 memorandum filed in redacted five. This matter and
19 this determination that Empire's gas hedging program
20 is incompatible with hedging programs currently
21 approved and in place with respect to other public
22 utilities regulated by the Commission. Therefore,
23 the Commission finds that Empire's application
24 should be dismissed. The Commission further concurs
25 with staff's additional recommendations that (1)

1 Empire will pass no gains, losses, or costs related
2 to its financial hedging activities to Kansas
3 ratepayers through its energy cost adjustment
4 mechanism; and (2) no cost related to Empire's
5 financial hedging activities will be included for
6 rate determination in future rate -- in future
7 proceedings before the Commission. Staff's report
8 and recommendation states that counsel for Empire
9 was provided a copy of staff's memorandum and Empire
10 has no objection to staff's recommendation that this
11 application be denied and that the company be
12 ordered to implement items one and two referenced
13 above."

14 **Q. The risk management policy Empire uses**
15 **today here in Missouri includes the same hedging**
16 **policy that the KCC concluded was incompatible with**
17 **other hedging programs, correct?**

18 **A.** I can't speak to the particulars of the
19 case. From my recollection, it may have been the
20 instruments that Empire had listed in its policy
21 that kept it from being included in the Kansas
22 Commission's ruling.

23 **Q. That's not my question to you. My**
24 **question to you is: Is your hedging policy that's**
25 **included in your RMP now, is that the same hedging**

1 policy that was included in the RMP at that point in
2 2008?

3 A. Subject to going back and checking, it
4 would probably be largely the same policy.

5 Q. So, today Empire does not pass hedging
6 costs on to its Kansas ratepayers, correct?

7 A. We do not pass any hedging losses or
8 gains to the Kansas ratepayers.

9 Q. But here in Missouri do you agree that
10 Empire has been passing those costs on to Missouri
11 ratepayers since Empire was granted an FAC in 2008?

12 A. Empire passes along 95 percent of all
13 hedging costs or gains from market activity to its
14 ratepayers via the fuel adjustment clause, yes.

15 MR. POSTON: Thank you. That's all the
16 questions I have.

17 JUDGE WOODRUFF: Any questions from the
18 bench? Commissioner Stoll?

19 COMMISSIONER STOLL: No questions, Your
20 Honor.

21 JUDGE WOODRUFF: Commissioner Rupp had
22 to leave this afternoon, but he left me some
23 questions and I'll go ahead and ask them at this
24 point.

25 First of all, what brokerage firm does

1 Empire use for placing hedging contracts?

2 THE WITNESS: We typically do our future
3 trades with the NYMEX. We have a list of
4 counterparties that we have various ISDA and ASB
5 contracts with if we were to do either a physical
6 forward or a futures contract with a counter-party.

7 JUDGE WOODRUFF: And is there a
8 compensation bonus structure for Empire employees
9 based on the hedging activity?

10 THE WITNESS: There is not a
11 compensation structure. The only thing that I can
12 think of is a corporate goal is lower -- or is low
13 fuel and purchase power costs as determined by -- I
14 think they start with the, the base cost and then
15 they create a band around it. So, you could -- you
16 could make the argument that low fuel and purchase
17 power costs is a component of a corporate goal that
18 then gets fed into possible merit incentives.

19 JUDGE WOODRUFF: A public Counsel
20 witness stated that call options could be used to
21 hedge risk on natural gas prices. What is the
22 rationale behind Empire's nonuse of call options?

23 THE WITNESS: The time -- honestly, at
24 the time that -- in the current market, let's speak
25 to the current market, the call options would be

1 valuable if we had higher-dollar gas costs, 5, \$6,
2 where we thought a precipitous drop, we could take
3 advantage of with a call option. We've done plenty
4 of analysis on the premiums of the call options to
5 see what opportunities are there, but I can speak to
6 currently and the current low-dollar gas market
7 there does not seem to be much benefit from
8 especially the premiums that you pay on the call
9 options to protect yourself, your customers from
10 price exposure.

11 JUDGE WOODRUFF: Commission Coleman, do
12 you have questions?

13 COMMISSIONER COLEMAN: No.

14 JUDGE WOODRUFF: I have one question of
15 my own.

16 THE WITNESS: Yes, sir.

17 JUDGE WOODRUFF: It was mentioned that
18 the costs of hedging are currently passed through
19 the FAC; is that correct?

20 THE WITNESS: Yes, sir.

21 JUDGE WOODRUFF: Now, if there were no
22 FAC, the cost would still be recovered through a
23 rate case in general rates; is that correct?

24 THE WITNESS: I would probably have to
25 defer to somebody in regulatory, or Rob may be able

1 to answer that question, how those would be treated.

2 JUDGE WOODRUFF: Okay. That's all the
3 questions I have.

4 Any recross based on those questions
5 from the bench? From staff? Empire?

6 MS. CARTER: And I'm sorry, Judge. Were
7 we moving to redirect at this point?

8 JUDGE WOODRUFF: Recross.

9 MS. CARTER: Okay.

10 MR. BERLIN: No recross.

11 MR. POSTON: I have no questions.

12 JUDGE WOODRUFF: Thank you. Then you
13 can step down.

14 MS. CARTER: Oh, we have redirect.

15 JUDGE WOODRUFF: I'm sorry. Hence your
16 confusion.

17 MS. CARTER: Yes, because you asked me
18 if I had recross. I just wanted to make sure.

19 JUDGE WOODRUFF: I'm sorry. I was
20 getting confused. It's a slow afternoon.

21 MS. CARTER: We flipped our parties here
22 also.

23 JUDGE WOODRUFF: Okay. Go ahead.

24

25

1 REDIRECT EXAMINATION

2 BY MS. CARTER

3 Q. Mr. Doll, Mr. Berlin for staff asked you
4 if you agree with Mr. Hyneman of OPC that
5 Mr. Hyneman had said he was certain gas prices would
6 stay low into the future and you stated that you did
7 not agree with that statement. Why is it you
8 disagree with, with that statement?

9 A. I have a few thoughts. It's probably a
10 little better articulated just reciting some from my
11 rebuttal testimony, if that's appropriate.

12 On page 8 of appendix AD-1, which was
13 the EnerKnol article that was cited in one of OPC's
14 testimony and then appended to my testimony. The
15 last paragraph basically tries to wrap up what's
16 going on with the natural gas market and hedging.
17 And so, I'll just read a section from that.
18 "Despite the trend towards lower prices and abundant
19 supply forecast, the natural gas market remains
20 dynamic. While natural gas prices are projected to
21 stay low, lower prices will increase demand for
22 electricity generation, petrochemical production,
23 LNG exports, placing some upward pressure on prices.
24 The EPA regulations on carbon emissions could result
25 in retirement of older coal units, potentially

1 requiring combined cycle natural gas generation to
2 fill the generation gap."

3 Then it goes on to describe a particular
4 facility that's working on liquefied natural gas.
5 And the, "Export facilities will greatly increase
6 natural gas demand when they come online. Demand is
7 also influenced by weather and pipeline constraints.
8 For these reasons, hedging could reach a point where
9 the current costs to consumers turn into substantial
10 benefits."

11 I think there's another article appended
12 to Mr. Mertens' testimony and I have a further one
13 in my surrebuttal.

14 Q. Mr. Poston asked you about the risk
15 management policy setting minimums, and I believe
16 you said you would hedge to the minimums, correct?
17 That would be your --

18 A. Yes.

19 Did you not want me to read the second
20 part to that?

21 Q. If you would just tell us the place in
22 your testimony. You don't need to read the whole
23 article --

24 A. Okay.

25 Q. -- but if you have a key part you would

1 **like the Commissioners to know, that would be great.**

2 A. Sure. Appendix AD-1 is a Utility Dive
3 article that discusses conversations at NARUC
4 between Andrew Weissman, some other various
5 professionally in the industry, and basically goes
6 through and cites, as Mr. Hyneman had explained,
7 supply has been abundant and, although, you can
8 never guarantee supply constraints will happen,
9 they're a possibility, but primarily demand is what
10 increases. When you have lower natural gas prices,
11 that increases the demand for natural gas. So, he
12 goes through and numerates the various economic
13 indicators that he sees that would cause increased
14 demand and what I think he defines as sharp price
15 spikes. That's the gist of it.

16 **Q. So, Mr. Doll, articles such as those**
17 **three you referenced and discussions at NARUC SPP**
18 **referred to earlier, that forms the basis for your**
19 **opinion of why you're not certain gas prices will**
20 **stay low?**

21 A. I have not found a universal opinion
22 from everybody that says that natural gas prices
23 will stay low, that they typically act in cycles and
24 that the cycles occur for a reason. So, low natural
25 gas prices presage increase demand, which then

1 raises the price.

2 Q. Mr. Poston also asked you about whether
3 or not the people who do the hedges could go to the
4 committee and ask for a change. Do you recall that,
5 those questions?

6 A. Somewhat. I may need those questions
7 read to me for sure.

8 MR. POSTON: I don't know if I recall
9 asking that question.

10 Q. (By Ms. Carter) He said -- well, he
11 specifically asked you if you had done it, if you
12 had gone to the RMOC to ask for a change, and you
13 said no, that had not been done. Do you recall
14 that?

15 A. Yes.

16 Q. Could you go if you felt that was
17 prudent? If you felt a change to the minimums was
18 warranted, could you go to the committee and ask for
19 a change?

20 A. Yes. I have a voting seat on RMOC, as
21 well as a common presenter to the committee, as well
22 as some of my analysts and managers are as well.
23 So, we could advocate to the risk management
24 oversight committee for changes to the risk
25 management policy if we felt it were prudent.

1 **Q. Mr. Poston asked if you would go and ask**
2 **for that change if you saw forecasts predicting**
3 **lower prices in the future. Do the forward curves**
4 **that you review predict lower prices in the future?**

5 A. I think in my rebuttal testimony -- oh,
6 let me be sure.

7 I think on page 5 of my rebuttal
8 testimony I do cite that not only do the forecasts
9 predict lower prices for natural gas, the forward
10 curves also reflect that. So, I go through and at
11 that point in time show what's called as
12 backwardation where I can buy somewhere around \$2.90
13 gas for this July, but next July it's around 2.80
14 and the July after that it's around 2.70. So, the
15 forecast and the NYMEX curves were in sync on that.

16 **Q. And was that also in the audit period?**

17 A. I'm sorry. What was the question?

18 **Q. Did you answer the question as to**
19 **current forward curves?**

20 A. Current forward curves?

21 **Q. At the time you placed hedges for the**
22 **audit period, what were the forward curves showing?**

23 A. The forward curves were showing
24 generally whatever spot prices were, they were
25 increased, which is fairly traditional for a forward

1 curve to show.

2 Q. Mr. Poston asked you about mark to
3 market looking at Exhibit 16. Do you still have
4 Exhibit 16 there with you just for reference, the
5 gas position reports?

6 A. Yes, ma'am.

7 Q. He asked you about just specific entries
8 on specific pages. First he referred to them as
9 losses and then he started to say mark to market
10 negative. Do you recall that?

11 A. Yes, ma'am.

12 Q. Is that how Empire evaluates the
13 performance of its hedging policy, whether or not
14 mark to market shows as a negative if it were to be
15 liquidated at that moment?

16 A. No. We certainly consider what the
17 portfolio is showing as far as prices, but the
18 reality is Empire is trying to hedge from adverse
19 price movement and to take what the current forward
20 curves show and try to forecast yourself exactly
21 what the price is going to be does not provide you
22 that adverse price protection. At that point you'd
23 be only trying to guess the market. So, Empire does
24 not evaluate it solely based on that. We do
25 consider that as far as what the cost of hedging is,

1 but we evaluate the value of hedging by providing
2 that what I've heard termed as insurance.

3 Q. Mr. Poston asked you about a Kansas
4 Corporation Commission 2008 order, correct?

5 A. Yes, he did.

6 Q. And that is regarding an application
7 from 2006 by Empire, correct?

8 A. I believe that is correct.

9 Q. I believe that's what you said to
10 Mr. Poston when you were looking at the documents.

11 So, we're talking about a time frame --
12 the order was in 2008. So, we're looking at 2006 to
13 2008 for that case; is that correct?

14 A. That is correct.

15 Q. And that would be a time period when OPC
16 agreed the gas market was highly volatile, correct?

17 MR. POSTON: Objection; leading.

18 JUDGE WOODRUFF: I'll sustain that.

19 Q. (By Ms. Carter) Do you recall what OPC's
20 testimony was about when the gas market was highly
21 volatile?

22 A. I believe Mr. Hyneman on his time on the
23 stand and possibly in his testimony stated that
24 somewhere around 2009 is when the volatility dropped
25 due to the shale gas formation.

1 Q. And do you agree that the gas market was
2 volatile --

3 MR. POSTON: Objection; leading.

4 Q. (By Ms. Carter) What is your opinion on
5 the volatility of the gas market in 2008?

6 A. In 2008 the gas market displayed extreme
7 volatility.

8 Q. And Empire was hedging both for Missouri
9 and Kansas at the time -- was Empire hedging for
10 both Missouri and Kansas at the time?

11 A. I believe Empire was hedging for
12 Missouri and Kansas at that time.

13 Q. Was Empire showing gains or losses if
14 you did a mark to market on financial hedges in
15 2008?

16 A. I don't have the position reports in
17 front of me. The only ones that were included were
18 2009 forward. So, I hate to say without certainty
19 exactly what the position reports were showing.

20 Q. If you will give me a minute. It's a
21 schedule in someone's testimony that shows hedging
22 gains and losses from -- I believe Mr. Poston used
23 that in his opening statement as well. Perhaps I
24 can refresh your recollection or do you recall if
25 Empire was showing --

1 A. My schedule AD-2 in my rebuttal
2 testimony shows a net gain of \$6,043,000 --
3 \$6,043,016 for 2008; 2007 would have been the
4 corrected number of \$1,921,630 in gains; and then
5 2006, which would have been the time of the initial
6 Commission application to the KCC showed \$1,286,382
7 in gains.

8 Q. Were there also gains in 2007?

9 A. Yes. \$1,921,630.

10 Q. The time of the -- that's when the time
11 of the Commission order was, correct, 2008?

12 A. Yes.

13 Q. Do you hedge -- does Empire currently
14 hedge for Missouri customers only?

15 A. No. Empire hedges for all customers.

16 Q. Does that include customers in Kansas?

17 A. That does include customers in Kansas.

18 MS. CARTER: Thank you. That's all I
19 have.

20 JUDGE WOODRUFF: All right. Then you
21 can step down, Mr. Doll.

22 And we're due for a break. We'll come
23 back at 2:30.

24 (A short recess was taken.)

25 JUDGE WOODRUFF: All right. It's 2:30.

1 So, let's come back to order, and I believe we're
2 ready for the next witness for Empire.

3 MS. CARTER: Call Blake Mertens.

4 BLAKE MERTENS,
5 having been called as a witness herein, having been
6 first duly sworn, was examined and testified as
7 follows:

8 JUDGE WOODRUFF: You may inquire.

9 DIRECT EXAMINATION

10 BY MS. CARTER

11 Q. State your full name.

12 A. Blake A. Mertens, M-E-R-T-E-N-S.

13 Q. Have you caused to be prepared for the
14 purposes of this proceeding on behalf of Empire
15 certain rebuttal and surrebuttal testimony in
16 question and answer form?

17 A. I have.

18 Q. Is it your understanding that those
19 pieces of testimony have been marked as Exhibits 104
20 and 105?

21 A. Yes.

22 Q. Do you have any changes that you would
23 like to make to your testimony at this time?

24 A. I do not.

25 Q. If I asked you the questions which are

1 contained in Exhibits 104 and 105 today, would your
2 answers be substantially the same?

3 A. They would.

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

6 A. Yes.

7 MS. CARTER: I offer Exhibits 104 and
8 105 into evidence, and tender the witness for
9 cross-examination.

10 (Empire's Exhibits 104 and 105 were
11 offered into evidence.)

12 JUDGE WOODRUFF: 104 and 105 have been
13 offered. Any objections to their receipt?

14 Hearing none. They will be received.

15 (Empire's Exhibits 104 and 105 were
16 received into evidence.)

17 JUDGE WOODRUFF: For cross-examination,
18 then, we begin with staff.

19 MR. BERLIN: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. BERLIN

22 Q. Good afternoon, Mr. Mertens.

23 A. Good afternoon.

24 Q. Were you in the hearing room when
25 Mr. Hyneman was on the stand?

1 A. I was.

2 Q. And you were here when he stated that he
3 was certain of the low cost gas environment, that
4 would -- that it would remain on into the future?
5 Do you recall that testimony?

6 A. I do recall that testimony.

7 MR. POSTON: Judge, I'd object. I don't
8 know if Mr. Hyneman used the term certain. I think
9 he's --

10 MR. BERLIN: No. He used the term
11 certain, Judge.

12 MR. POSTON: I know he said into the
13 foreseeable future, those were the, the forecasts,
14 but I just want to just make note that Mr. Hyneman's
15 testimony should speak for itself.

16 JUDGE WOODRUFF: It will speak for
17 itself and if there's objections, they're all
18 overruled.

19 Q. (By Mr. Berlin) Okay. So, Mr. Mertens,
20 are you certain that we're going to remain in a low
21 cost gas environment now and into the future?

22 A. I am not. I remember, you know, in 2004
23 and '05 I, you know, harping back to those times, I
24 went to many different analyst-type presentations
25 put on, different conferences. I can remember one

1 specifically was with Raymond James and they said
2 that natural gas prices will not go above this 4 to
3 \$5 per MMBTU for the time frame that we're in and
4 then, low and behold, a year to a year-and-a-half
5 later we were up into the teens. So, you know,
6 there's, there's many factors that can change that
7 would make me believe that we're not certain the
8 prices will remain low.

9 Q. Okay. And would you agree that we are
10 currently in a low cost gas -- low gas cost
11 environment now?

12 A. I would, yes.

13 Q. And so, how would you characterize the
14 risk of gas prices going forward? Is there greater
15 risk that the prices will be going down or would
16 there be risk that they could be going up?

17 A. Obviously, much greater risk that they
18 would go higher. You know, we've seen even within
19 the last three to four years with the polar vortex
20 prices, you know, on a realtime basis got up into
21 the teens and even higher. So, when they get up to
22 those levels -- you know, there's much more
23 likelihood that they'll get up, you know, above \$5
24 than they would be down below. So, there's much
25 more risk on the upside.

1 MR. BERLIN: Okay. Thank you, Judge. I
2 have no further questions.

3 JUDGE WOODRUFF: For Empire -- or for
4 Public Counsel?

5 MR. POSTON: Can I just have one moment,
6 please?

7 JUDGE WOODRUFF: Sure.

8 CROSS-EXAMINATION

9 BY MR. POSTON

10 Q. You answered a question there about the
11 polar vortex saying that the price had gone up into
12 the teens. That was just one day; isn't that
13 correct?

14 A. I can't recollect if it was one or two
15 days, but it was -- it was not for the whole month,
16 you'd be correct in saying that.

17 MR. POSTON: Thank you. That's all.

18 JUDGE WOODRUFF: All right. Questions
19 from the bench?

20 COMMISSIONER STOLL: No questions, Your
21 Honor.

22 JUDGE WOODRUFF: No need for recross.
23 Any redirect?

24 MS. CARTER: No, Your Honor.

25 JUDGE WOODRUFF: All right.

1 Mr. Mertens, you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: You can call your next
4 witness.

5 MS. CARTER: Rob Sager.

6 ROBERT SAGER,
7 having been called as a witness herein, having been
8 first duly sworn, was examined and testified as
9 follows:

10 JUDGE WOODRUFF: You may inquire.

11 DIRECT EXAMINATION

12 BY MS. CARTER

13 Q. Please, state your full name.

14 A. It's Robert W. Sager, S-A-G-E-R.

15 Q. Have you caused to be prepared for the
16 purposes of this proceeding on behalf of Empire
17 certain rebuttal and surrebuttal testimony in
18 question and answer form?

19 A. I have.

20 Q. Is it your understanding that the
21 testimony has been marked as Exhibits 106, 107 --
22 let me check.

23 JUDGE WOODRUFF: I've got 106, 107, 108
24 and 109.

25 Q. (By Ms. Carter) Yes. -- 106, 107, and

1 108 for identification?

2 A. Yes.

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

5 A. Just one change to the rebuttal
6 testimony. We had the attachment to our RMOC
7 policy, and pursuant to the recent Commission rules
8 there should be a confidential and public version.
9 For the public version only appendix 12 should be
10 redacted.

11 Q. And is that change set out on a
12 correction sheet?

13 A. It is.

14 Q. And it's been marked as Exhibit 109 for
15 identification?

16 A. Yes.

17 Q. If I ask the questions that are
18 contained in those exhibits, with the change in
19 Exhibit 109, would your answers be the same?

20 A. Yes.

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

23 A. Yes.

24 MS. CARTER: Your Honor, I offer
25 Exhibits 106, 107, 108, and 109 into evidence, and

1 tender the witness for cross-examination.

2 (Empire's Exhibits 106-C through 109
3 were offered into evidence.)

4 JUDGE WOODRUFF: It's my understanding
5 that Exhibit 106 is confidential, the confidential
6 version?

7 MS. CARTER: That is correct.

8 JUDGE WOODRUFF: Those exhibits have
9 been offered. Any objections to their receipt?

10 Hearing none. They will be received.

11 (Empire's Exhibits 106-C through 109
12 were received into evidence.)

13 JUDGE WOODRUFF: And for
14 cross-examination beginning with staff.

15 CROSS-EXAMINATION

16 BY MR. BERLIN

17 Q. Good afternoon, Mr. Sager.

18 A. Good afternoon.

19 Q. Mr. Sager, I'm going to ask you the same
20 question. Are you certain that we will remain into
21 a -- in a low gas cost environment now and into the
22 future?

23 A. No, I'm not certain of that at all.

24 Q. Why is that?

25 A. I think history has proved itself that

1 there is a cyclical nature that affects those
2 prices. That's been already recanted here today,
3 whether it's in a month, a day, an hour, or over
4 several-year period, there's -- the facts are that
5 they will go up and they will go down at times.

6 **Q. Does Empire purchase gas at spot price?**

7 A. We do.

8 **Q. Could you explain what that means, what**
9 **buying gas at spot price entails?**

10 A. Well, Mr. Doll would probably be able to
11 respond to that more eloquently than I can, but spot
12 purchases are basically made at a time when you
13 don't have the volumes that are necessary to meet
14 the load needs, from a non-engineer's perspective I
15 guess, and those spot prices are -- we engage in
16 spot prices to cover those types of positions.

17 MR. BERLIN: Okay. Thank you. No
18 further questions, Judge.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. POSTON: Yes. Thank you.

21 CROSS-EXAMINATION

22 BY MR. POSTON

23 **Q. Good afternoon.**

24 A. Good.

25 **Q. Would you agree with me the focus of**

1 your testimony is on Empire's risk management policy
2 and the risk management oversight committee?

3 A. That would be correct.

4 Q. And the risk management oversight
5 committee, or RMOC, has oversight of Empire's gas
6 hedging practices and policies, correct?

7 A. Correct.

8 Q. And you're the chair of that committee;
9 is that correct?

10 A. Currently, yes.

11 Q. Do you believe Empire and the RMOC have
12 a duty to your customers to make reasonable
13 decisions that impact Empire's fuel costs?

14 A. Yes, we do.

15 Q. Do you believe Empire and the ROMC --
16 RMOC have a duty to your customers to periodically
17 evaluate your fuel purchasing policies to ensure
18 your policies are reasonable?

19 A. Yes, we do.

20 Q. And how often do you believe the RMOC
21 should reevaluate your gas hedging policies?

22 A. We constantly look at our hedging
23 policies to see if we feel like it fits our current
24 needs.

25 Q. So, your answer is you should constantly

1 be looking, looking at the policy to see if it needs
2 revisions?

3 A. Correct.

4 Q. When the gas markets undergo significant
5 change, do you believe that that justifies a
6 reevaluation of your hedging policies?

7 A. Numerous actions can cause a need to
8 justify a revision to the policy, price included,
9 yes.

10 Q. So, significant changes to the gas
11 markets, that's one reason you should reevaluate?

12 A. Yes.

13 Q. Would you agree with me that as markets
14 change, market risks also change?

15 A. Generally speaking, yes.

16 Q. And under your hedging policy section of
17 your RMP it includes minimum percentages of gas that
18 must be hedged by the end of the year, correct?

19 A. Its states the current amount of minimum
20 hedges that we would expect, yes.

21 Q. And those are the 10 percent,
22 20 percent, 40 percent, 60 percent numbers that have
23 been discussed previously, correct?

24 A. Correct. For years one through four,
25 correct.

1 **Q. And these percentages are based upon**
2 **volumes, not prices, correct?**

3 A. True, they're based on volumes.

4 MR. POSTON: Judge, I have an exhibit to
5 mark. This is actually -- I believe it's probably
6 identical to the exhibit that the company entered,
7 Exhibit 110. I'm going to walk through it. So,
8 I've got some that are spiral-bound. So, I'd still
9 like to pass these out because it's going to be
10 easier to flip through.

11 JUDGE WOODRUFF: Okay. So, we're
12 talking about 110-C, which is the RMOC minutes?

13 MR. POSTON: Right. And maybe it's best
14 just to have this marked as well since this is what
15 I'm going to --

16 JUDGE WOODRUFF: If that's what you're
17 referring to, yeah, we'll mark it as 17.

18 And it's confidential also, right?

19 MR. POSTON: Yes.

20 JUDGE WOODRUFF: Call it 17-C.

21 **Q. (By Mr. Poston) You have a copy of**
22 **what's been marked as Exhibit 17, correct?**

23 A. Yes.

24 **Q. Do you agree with me this is -- this**
25 **exhibit is a data request by OPC to Empire, Data**

1 Request 1005, and the documents Empire provided in
2 response to that data request?

3 A. I believe so, yes.

4 Q. And this exhibit includes the minutes of
5 your RMOC meetings from 2010 through 2017; is that
6 correct?

7 A. I believe so.

8 MR. POSTON: Judge, since this has been
9 marked as confidential, I'm going to go through some
10 of this and have some of this entered into the
11 record, ask questions about it. So, I would assume
12 the company wants this in camera.

13 MS. CARTER: Yes, we should. Since we
14 don't know, obviously, exactly what you're going to
15 ask and what's going to be said, it would be safer
16 if we could just be in camera.

17 JUDGE WOODRUFF: All right. We'll go in
18 camera at this point. If there's anyone in the back
19 of the room that needs to leave, please do so.

20 (REPORTER'S NOTE: At this point, an
21 in-camera session was held, which is contained in
22 Volume 3, Page 223 through 236.)

23 * * * * *

24

25

1 (REPORTER'S NOTE: The proceedings
2 resumed in open session.)

3 JUDGE WOODRUFF: All right. We're out
4 of the in-camera session.

5 Q. (By Mr. Poston) Okay. I have exhibit
6 premarked as Exhibit 18. Do you have a copy of
7 that?

8 Can you identify this document?

9 A. The attachment to the data request?

10 Q. Yes.

11 A. It's Empire's energy risk management
12 policy dated July 6th of 2010.

13 Q. And would this have been the policy that
14 was in effect when Empire began making its purchases
15 or hedges for the period under review in this case?

16 A. In part, yes.

17 Q. And how long would this policy have been
18 in effect?

19 A. Well, until the most recent revisions
20 were made, I believe.

21 Q. Which is when?

22 A. I don't have that right in front of me
23 at this time.

24 Q. Would there have been any substantial
25 changes to the hedging policy portion since this?

1 A. To the hedging policy specifically,
2 well, we do have considerable new wording language
3 added related to the SPP integrated market, but if
4 you're asking in regards to natural gas, is that --

5 **Q. Right.**

6 A. -- what you're referring to?

7 **Q. To natural gas.**

8 A. Then the answer would be no. It's
9 likely substantially the same.

10 **Q. Okay.**

11 MR. POSTON: Your Honor, I offer Exhibit
12 18.

13 (OPC's Exhibit 18-C was offered into
14 evidence.)

15 JUDGE WOODRUFF: And you indicated this
16 will be confidential, this portion of it?

17 MR. POSTON: Yes.

18 JUDGE WOODRUFF: Okay. We'll mark it as
19 18-C. I believe the indication was that the only
20 part of it that is confidential is appendix 12?
21 Correct?

22 MS. CARTER: That's correct, Judge.

23 MR. POSTON: I mean, we could pull it
24 out.

25 JUDGE WOODRUFF: It's all right. We'll

1 leave it in there.

2 MR. POSTON: Okay.

3 JUDGE WOODRUFF: I will ask Empire's
4 counsel also. I believe you indicated that it's
5 also somewhere in Mr. Sager's testimony?

6 MS. CARTER: And actually, it may be a
7 different date for the policy.

8 THE WITNESS: It is.

9 JUDGE WOODRUFF: Okay. Is it entirely
10 public in that except for that?

11 MS. CARTER: We filed two versions. One
12 with appendix 12 blocked out and then the
13 confidential version where you see appendix 12.

14 MR. POSTON: Okay. We just wanted to
15 make sure we were getting in the policy that was in
16 effect once they started making the purchases.

17 JUDGE WOODRUFF: Okay. 18-C has been
18 offered. Any objections to its receipt?

19 Hearing none. It will be received.

20 (OPC's Exhibit 18-C was received into
21 evidence.)

22 MR. POSTON: That's all the questions I
23 have. Thank you.

24 JUDGE WOODRUFF: Okay. Questions from
25 the bench? Commissioner Stoll?

1 COMMISSIONER STOLL: No questions, Your
2 Honor.

3 JUDGE WOODRUFF: Commissioner Coleman?
4 I have no questions. No need for
5 recross.

6 Any redirect?

7 MS. CARTER: Yes. Thank you.

8 REDIRECT EXAMINATION

9 BY MS. CARTER

10 Q. Mr. Sager, Exhibit 17-C that you were
11 looking at, the risk management oversight committee
12 minutes.

13 A. Yes.

14 Q. If you look at page 49 for me, minutes
15 of April 5, 2012.

16 A. Yes.

17 Q. What is the price shown under current
18 gas market at that time?

19 A. Mr. McCord reported prices were in the
20 \$1.60 range.

21 Q. And then if you look at page 82, again
22 under the current gas market review, is that price
23 still at 1.60?

24 A. No, it is not.

25 Q. What is the spot price according to

1 **these meeting minutes?**

2 A. Spot price is currently in the \$3.75
3 range.

4 JUDGE WOODRUFF: I'm sorry. We were in
5 confidential when we were discussing that. Do we
6 need to be in camera here?

7 **Q. (By Ms. Carter) Mr. Sager, you tell me**
8 **if those particular numbers? I don't.**

9 A. Those particular numbers would not be
10 considered confidential because they're spot prices
11 that's available to everyone in the market.

12 JUDGE WOODRUFF: Okay.

13 MS. CARTER: Thank you, Judge.

14 JUDGE WOODRUFF: Let me know if we need
15 to go in camera.

16 MS. CARTER: Yes. Thank you for the
17 reminder.

18 **Q. (By Ms. Carter) Mr. Poston asked you if**
19 **you believed Empire had a duty to its customers to**
20 **act prudently with regard to fuel costs and you said**
21 **yes. Do you recall that?**

22 A. Yes.

23 **Q. Do you believe that Empire has fulfilled**
24 **or satisfied that duty?**

25 A. Yes, I do.

1 Q. He asked you if a purpose of a hedge is
2 to ensure against volatility and you said yes, that
3 is one purpose of a hedge?

4 A. Uh-huh.

5 Q. What are the other purposes of a hedge?

6 A. Well, the actual -- the purpose behind
7 our risk management policy is basically to define an
8 approach that we'll utilize to manage our power and
9 natural gas commodity risk overall. So, the hedging
10 is definitely a key component to that. Whereas,
11 your -- we do numerous different types of
12 transactions to allow for that, which is already
13 afforded in our policy. So, specifically it may not
14 just be a future, but also a physical forward. We
15 have to make sure that the units that we have, some
16 of the most efficient units in the SPP are available
17 to run. That's one of the things we do to keep our
18 costs low for the customers, and we have to be able
19 to have those units available and if the gas is not
20 available, then those units won't run. So, there's
21 various avenues. You kind of have to go down
22 several different ways to look at that, but
23 that's -- so, we're trying to prevent risk that not
24 only from a price standpoint, but also a volume
25 perspective, and also the counterparties that we do

1 the hedges with. We take all those into
2 consideration.

3 Q. Mr. Poston had you read only from the
4 meeting section -- meeting minute section titled
5 current gas market?

6 A. Uh-huh.

7 Q. Is that all that's in the meeting
8 minutes?

9 A. No, it's not.

10 Q. What other topics are discussed at the
11 RMOC meetings?

12 A. Well, the current gas position review is
13 specifically noted throughout the minutes that are
14 in this exhibit and Mr. Doll had previously talked
15 about all the things that what that position report
16 does from a -- when we look at the hedging
17 percentages and where we're at. We also review the
18 counterparty positions, as I alluded to before.
19 When we have various market activities that we know
20 are going to change, I mentioned the southwest power
21 pool earlier, we went through extensive review and
22 discussion in these minutes to address that. Even
23 in just this specific meeting minutes that I have in
24 front of me, which is July 13th, just happen to have
25 open to that one. You know, there's talk about the

1 Dodd-Frank legislation and what we needed to do to
2 prepare ourselves for that legislation and how that
3 would impact our actual hedging and trading
4 activities. So, there's numerous things that are
5 included in these minutes.

6 **Q. The section labeled current gas market,**
7 **does that represent the entirety of the gas market,**
8 **what's stated there?**

9 A. No, it does not.

10 **Q. What do you discuss beyond what is**
11 **stated in the minutes?**

12 A. Well, oftentimes -- just in general
13 throughout the meetings?

14 **Q. For the gas market.**

15 A. For the gas market in general, okay.
16 So, we often look at what areas are available, if we
17 know that there's going to be issues with supply.
18 We also take into consideration the gas market and
19 how it moves in relation to the weather. We also
20 have to consider the current gas position.
21 Obviously, volume is a big issue for us as well and
22 what our expectations are for sales and how much
23 those units are going to run. So, all of those
24 issues effectively get discussed throughout the
25 meeting and to ensure that we are actively hedging

1 appropriate amount for our units to be able to run.

2 MS. CARTER: That's all the questions I
3 have.

4 JUDGE WOODRUFF: Okay. And, Mr. Sager,
5 you can step down.

6 And we're ready to move over to the
7 staff's witnesses.

8 MR. BERLIN: Staff's first witness is J.
9 Luebbert.

10 J. LUEBBERT,
11 having been called as a witness herein, having been
12 first duly sworn, was examined and testified as
13 follows:

14 JUDGE WOODRUFF: You may inquire.

15 DIRECT EXAMINATION

16 BY MR. BERLIN

17 Q. Good afternoon, Mr. Luebbert. Please,
18 state your name for the Commission and spell it for
19 the reporter.

20 A. J. Luebbert, L-U-E-B-B-E-R-T.

21 Q. And that's simply a J., correct?

22 A. The letter J.

23 Q. And how are you employed by the
24 Commission?

25 A. I'm a utility engineering specialist.

1 Q. How long have you been employed by the
2 Commission?

3 A. A little over a year. I guess closer to
4 a year-and-a-half.

5 Q. And are you the same J. Luebbert who
6 caused to be prepared certain narrative testimony
7 verified by personal affidavit in the staff's sixth
8 prudence audit report on the matter of Empire's
9 Commission-approved fuel adjustment clause?

10 A. I am.

11 MR. BERLIN: And I'll note that that
12 report is premarked as Exhibit 200.

13 Q. (By Mr. Berlin) And you're the same J.
14 Luebbert that included your credentials in staff's
15 addendum filed shortly after that premarked as
16 Exhibit 201?

17 A. That's correct.

18 Q. Do you have any correct --

19 MR. BERLIN: And I also note that -- I
20 should note, too, that Staff Exhibit 200 is in both
21 confidential and public formats.

22 Q. (By Mr. Berlin) Do you have any
23 corrections to make to your portion of staff's
24 prudence review report?

25 A. I do. I have one correction. On page 8

1 of staff's report, the second-to-last line on the
2 page, the word "prudent" should be changed to
3 imprudent.

4 Q. Do you have any other corrections to
5 make?

6 A. No, I don't.

7 Q. And are you the same J. Luebbert who
8 caused to be prepared certain rebuttal testimony in
9 a question and answer format?

10 A. I am.

11 Q. And that is premarked as Exhibit 203,
12 and do you have any corrections to make to your
13 rebuttal testimony at this time?

14 A. No, I don't.

15 Q. And so, with the correction you made to
16 the prudence review report, is the information
17 contained in your testimonies and the conclusions
18 that you have reached in both your direct portion
19 and your rebuttal testimony true and correct to your
20 best information and belief?

21 A. Yes.

22 MR. BERLIN: Judge, before I tender the
23 witness, I want to note that at the introduction of
24 staff's last witness that participated in staff's
25 prudence review report I'll move to admit that into

1 the rec -- in the record at that time along with
2 staff's addendum that contains the witness
3 credentials, but at this point I would move to enter
4 into the record Mr. Luebbert's rebuttal testimony
5 premarked as Exhibit 203.

6 (Staff's Exhibit 203 was offered into
7 evidence.)

8 JUDGE WOODRUFF: All right. 203 has
9 been offered. Any objections to its receipt?

10 Hearing none. It will be received.

11 (Staff's Exhibit 203 was received into
12 evidence.)

13 MR. BERLIN: Thank you, Judge. I tender
14 Mr. Luebbert for cross-examination.

15 JUDGE WOODRUFF: Cross beginning with
16 staff -- oh, excuse me. Beginning with Empire.

17 MS. CARTER: No questions.

18 JUDGE WOODRUFF: For Public Counsel?

19 MR. SMITH: No questions.

20 JUDGE WOODRUFF: All right. Any
21 questions from the bench?

22 COMMISSIONER STOLL: No questions of
23 this witness. Thank you.

24 JUDGE WOODRUFF: No need for recross or
25 redirect then.

1 And you can step down.

2 THE WITNESS: Thank you.

3 MR. BERLIN: Staff's next witness is
4 Dr. David Roos.

5 DAVID ROOS,
6 having been called as a witness herein, having been
7 first duly sworn, was examined and testified as
8 follows:

9 JUDGE WOODRUFF: You may be seated.
10 And you may inquire.

11 DIRECT EXAMINATION

12 BY MR. BERLIN

13 Q. Mr. Roos, please, state your name for
14 the Commission and spell it for the reporter.

15 A. David C. Roos, R-O-O-S.

16 Q. How are you employed by the Commission?

17 A. I'm currently employed as a utility
18 engineering specialist with the water and sewer
19 department and formerly a regulatory economist with
20 the energy resources department.

21 Q. And for the purposes of staff's prudence
22 review report in this case you were working in which
23 capacity?

24 A. As a regulatory economist with the
25 engineering re -- or I'm sorry, with the energy

1 resources department.

2 Q. And how long have you been employed by
3 the Commission?

4 A. About 11 years.

5 Q. And so, are you the same David Roos that
6 caused to be prepared certain narrative testimony
7 verified by personal affidavit in staff's sixth
8 prudence audit report on the matter of Empire's
9 Commission-approved fuel adjustment clause?

10 A. I am.

11 MR. BERLIN: And that is premarked as
12 Exhibit 200 in both HC and NP formats I'll note.

13 Q. (By Mr. Berlin) And the same David Roos
14 who included credentials in Staff Exhibit 201, the
15 addendum?

16 A. That's correct.

17 Q. Do you have any corrections to make to
18 your portion of staff's prudence review report?

19 A. I do not.

20 Q. Okay. And so, are you the same David
21 Roos caused to be prepared certain rebuttal
22 testimony in a question and answer format premarked
23 as Exhibit 204?

24 A. I am.

25 Q. Do you have any corrections to make to

1 **your rebuttal testimony?**

2 A. Yes, I do. It's on page 4. The
3 sentence beginning on line 5. I would like to add
4 the words except for KCPL to the beginning of that
5 sentence so that it reads, "Except for KCPL, none of
6 the Commission-approved FACs have reporting
7 requirements related to true purchase power costs
8 and/or true off-system sales revenues."

9 Q. Okay. Could you just state that again
10 so I have -- I was on the wrong page. Page 4 of
11 your rebuttal?

12 A. Page 4, line 5.

13 Q. Okay. Except for KCPL?

14 A. "Except for KCPL, none of the
15 Commission-approved FACs have reporting
16 requirements."

17 Q. Okay. Thank you.

18 And with that correction is the
19 information contained in your testimonies and the
20 conclusions that you have reached in both your
21 direct portion and the rebuttal testimony true and
22 correct to your best information and belief?

23 A. It is.

24 MR. BERLIN: Judge, again I'll withhold
25 moving the staff prudence review report into the

1 record. And at this time I will move to enter into
2 the record Mr. Roos' rebuttal testimony premarked as
3 Exhibit 204.

4 (Staff's Exhibit 204 was offered into
5 evidence.)

6 JUDGE WOODRUFF: 204 has been offered.
7 Any objections to its receipt?

8 Hearing none. It will be received.

9 (Staff's Exhibit 204 was received into
10 evidence.)

11 MR. BERLIN: I tender Mr. Roos for
12 cross-examination.

13 JUDGE WOODRUFF: For cross we begin with
14 Empire.

15 MS. CARTER: No questions.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. SMITH: No questions.

18 JUDGE WOODRUFF: Any questions from the
19 bench?

20 COMMISSIONER STOLL: No questions.

21 COMMISSIONER COLEMAN: No questions.

22 JUDGE WOODRUFF: No recross or redirect.
23 And you can step down.

24 THE WITNESS: Thank you.

25 MR. BERLIN: Next witness for staff will

1 be Ashley Sarver.

2 ASHLEY SARVER,
3 having been called as a witness herein, having been
4 first duly sworn, was examined and testified as
5 follows:

6 JUDGE WOODRUFF: You may inquire.

7 DIRECT EXAMINATION

8 BY MR. BERLIN

9 Q. Good afternoon, Ms. Sarver. Would you,
10 please, state your name for the Commission and spell
11 it for the reporter.

12 A. Ashley Sarver, S-A-R-V-E-R.

13 Q. And how are you employed by the
14 Commission?

15 A. I'm a utility regulatory auditor with
16 the department of auditing.

17 Q. How long have you been employed by the
18 Commission?

19 A. For almost four years.

20 Q. Are you the same Ashley Sarver who
21 caused to be prepared certain narrative testimony
22 verified by personal affidavit in the staff's sixth
23 prudence audit report on the matter of Empire's
24 Commission-approved fuel adjustment clause?

25 A. Yes.

1 MR. BERLIN: And that I will note again
2 is premarked as Exhibit 200 in both HC, NP formats.

3 Q. (By Mr. Berlin) And did you also include
4 your credentials in the addendum that was filed,
5 which is premarked as Exhibit 201?

6 A. Yes.

7 Q. Okay. Do you have any corrections to
8 make to your portion of staff's prudence review
9 report at this time?

10 A. Yes, I do.

11 Q. Okay.

12 A. On page 16 the sentence that starts
13 with, "During the review period Empire experienced a
14 hedging loss." I'd like to put a hedging net loss.

15 And then on page 17 on No. 4, documents
16 reviewed, underneath A I would like to add DR No. 2,
17 No. 31, and DR No. 49.

18 Q. Do you have anymore corrections?

19 A. No. That's all.

20 Q. And so, with those corrections is the
21 information that is contained in your portion of
22 staff's prudence review report and the conclusions
23 that you have reached true and correct to your best
24 information and belief?

25 A. Yes.

1 MR. BERLIN: And Judge, since Ms. Sarver
2 is the last witness who actually directly prepared
3 and contributed to staff's prudence review report on
4 Empire's FAC, I would like to move to admit both
5 staff's prudence review report, which is premarked
6 as Exhibit 200 in HC and NP formats into the -- into
7 the record.

8 JUDGE WOODRUFF: Okay. You want to
9 offer 201 also?

10 MR. BERLIN: I will offer 201 as well.
11 That's the addendum that includes staff witness
12 credentials.

13 (Staff's Exhibits 200 and 201 were
14 offered into evidence.)

15 JUDGE WOODRUFF: 200 and 201 have been
16 offered. Any objection to their receipt?

17 Hearing none. They will be received.

18 (Staff's Exhibits 200 and 201 were
19 received into evidence.)

20 JUDGE WOODRUFF: Did she have any other
21 testimony?

22 MR. BERLIN: No, Judge, she did not
23 prepare any other testimony.

24 JUDGE WOODRUFF: All right. For cross,
25 then, beginning with Empire.

1 MS. CARTER: No questions. Thank you.

2 JUDGE WOODRUFF: Public Counsel?

3 MR. SMITH: Yes, I have a few.

4 CROSS-EXAMINATION

5 BY MR. SMITH

6 Q. Afternoon, Ms. Sarver.

7 A. Hello.

8 Q. Is this your first case relating to
9 natural gas hedging and financial and fiscal
10 hedging?

11 A. Yes.

12 Q. In addition to your undergraduate
13 degree, do you have any other academic degrees like
14 master's degrees?

15 A. No.

16 Q. Do you have any other outside charters
17 like a chartered financial analyst or any outside
18 charters that would qualify you as an expert witness
19 in this subject matter?

20 A. No.

21 Q. Do you have any outside certifications
22 like a certified public accountant would have that
23 would qualify you to testify as an expert witness?

24 A. I don't feel like I'm an expert witness,
25 but no, I do not.

1 Q. In the accounting courses you had in
2 school in your undergraduate degree, did any of
3 those courses focus on the subject of financial or
4 physical natural gas hedging?

5 A. I don't remember.

6 Q. Have you ever traded natural gas
7 futures?

8 A. No.

9 Q. In any of your past jobs have you ever
10 reviewed or studied physical or financial natural
11 gas hedging practices?

12 A. No.

13 Q. You did not file rebuttal or surrebuttal
14 in this case, correct?

15 A. Correct.

16 Q. Was that a management decision or your
17 decision?

18 A. Management.

19 Q. And you are no longer in the energy
20 resources department, true?

21 A. True.

22 Q. And your current role is in auditing; is
23 that correct?

24 A. Yes.

25 Q. Since you did not submit rebuttal or

1 surrebuttal and are now in a different section, I
2 wanted to verify that you've been continuing to
3 review the filings in the case, the data requests in
4 this case?

5 A. Dana Eaves has taken over.

6 Q. Have you reviewed any of the direct
7 testimony, rebuttal testimony, surrebuttal testimony
8 filed in this case?

9 A. To a -- to a very minor, to a -- I just
10 skimmed it.

11 Q. Okay. After you filed your report, did
12 you review any data requests filed in this case?

13 A. No, not after I filed the report.

14 Q. Okay. I understand there's been a
15 correction to the documents you relied on?

16 A. Uh-huh.

17 Q. So, previously the document reflected
18 that, the document meaning staff's sixth prudence
19 staff's report, reflected that you had relied on
20 Data Requests 1, 29, 47, and the general ledger at
21 pages 14 and 17 of your report?

22 A. Uh-huh.

23 Q. Does that sound right?

24 A. Yes.

25 Q. Would you agree that Data Request 29 is

1 the same as the general ledger?

2 A. Yes.

3 Q. So, to be clear that those are
4 duplicative?

5 A. Uh-huh.

6 Q. For Data Request 47 --

7 A. Sorry.

8 Q. -- will you agree that the energy risk
9 management policies requested were those only for
10 the review period?

11 A. Yes.

12 Q. So, you did not actually request the
13 energy -- energy risk management policies prior to
14 the review period?

15 A. No.

16 Q. And would you agree that those policies
17 prior to the review period would be the policies
18 that control the hedges that resulted in your
19 analysis during the review period?

20 A. Yes.

21 Q. Isn't it true that you only reviewed
22 whether or not Empire followed the policy? And the
23 policy specifically meaning their energy risk
24 management policy.

25 A. I reviewed their policy along with their

1 tariff.

2 Q. Okay. Did you review it for compliance
3 with the policy or did you conduct a prudence audit?

4 A. The compliance.

5 Q. Okay. So, you did not conduct a
6 prudence audit?

7 A. No, because the rate case did a prudence
8 of the policy.

9 Q. In Data Request 1, which you say you
10 also reviewed, isn't it true that that data request
11 sought information only to compute the FAR, or the
12 fuel adjustment rates, during the review period?

13 A. Yes.

14 Q. And as you review these, these
15 documents, including the documents you recently
16 corrected, the Data Request 2 and Data Request 31,
17 did you review any scholarly articles that the
18 company was looking at at the time they were making
19 the hedges?

20 A. No.

21 Q. Did you review any forecasts the company
22 might have been looking at when they made their
23 hedges?

24 A. No.

25 Q. Did you review any information that the

1 company looked at when they were making their
2 hedges?

3 A. I reviewed the -- no.

4 Q. Has the staff of Missouri Public Service
5 Commission provided any formal training to you on
6 the prudence standard?

7 A. While I was working with this, I
8 contact -- I mean, I asked other staff, I worked
9 with energy resources, questions.

10 Q. What is your understanding of the
11 prudence standard that you would have applied in
12 this case?

13 A. Any reasonable person would have done
14 the transactions or would have made the decision.

15 Q. Can you elaborate on that?

16 A. With the information they were given at
17 that time, they --

18 Q. Go ahead.

19 A. Just with the information they were
20 given at that -- given at that time to make it a
21 reasonable decision.

22 Q. And earlier your, your testimony was
23 that you did not review that information, correct?

24 A. Did not review the?

25 Q. Information at the time of the hedges

1 that Empire would have been looking at.

2 A. I reviewed the costs that Empire had.

3 Q. If you would flip to -- do you have the
4 staff report in front of you?

5 A. Yes, I do.

6 Q. Okay. If you'd flip to page 1 of that
7 report.

8 A. Okay.

9 Q. And I'm actually not referring to the --
10 I don't -- I don't think I've seen a copy of what
11 was given to you, but there's a pleading and then
12 there's also the staff report. And so, I'm only
13 talking about page 1, not page I.

14 A. Uh-huh.

15 Q. Okay. And do you see that that third
16 paragraph states the prudence standard that staff
17 claims that applies in a prudence review case?

18 A. Yes.

19 Q. Would you read that?

20 A. "In evaluating prudence, staff reviews
21 whether a reasonable person would find both the
22 information the decision maker relied on and the
23 process the decision maker employed when making the
24 decision under review was reasonable based on
25 circumstances at the time the decision was made,

1 i.e. without benefits of hindsight."

2 Do you want me to keep going?

3 Q. That's enough.

4 So, by only reviewing the costs in the
5 review period, isn't that only reviewing the
6 hindsight information?

7 A. That's information that we had at that
8 time.

9 Q. Are there -- in the documents reviewed
10 section, are there any other documents you reviewed
11 that in addition to your corrected documents, or is
12 it just those documents?

13 A. Just those documents.

14 Q. Okay. So, you didn't review Empire's
15 IRP, correct?

16 A. Correct.

17 Q. You didn't review any NYMEX charts at
18 the time that hedges were being made, correct?

19 A. Correct.

20 Q. All right. So, isn't it true that in
21 the section of your report that deals with natural
22 gas costs -- let's see here. I think that starts
23 around page 14 or 15. Yeah, page 14 of staff's
24 report. You include a block quote from the energy
25 risk management policy that extends for three of the

1 four pages of your review of Empire's hedging
2 practices?

3 A. Yes.

4 Q. And the total number of pages spent on
5 analyzing natural gas costs is four pages?

6 A. Yeah. Yes.

7 Q. So, you placed quite a bit of emphasis
8 on the energy risk management policy, correct?

9 A. Yes.

10 Q. And that's the policy dated April 29th,
11 2016, correct?

12 A. Correct.

13 MR. SMITH: All right. I guess
14 depending on whether we're considering -- I think we
15 determined that the energy risk management policy is
16 now not confidential except for appendix 12. Is
17 that the parties' understanding?

18 MS. CARTER: Yes. It depends on which
19 exhibit you're looking at.

20 MR. SMITH: Okay. I'm wanting to ask a
21 few questions about the energy risk management
22 policy and I want to make sure if we need to go off
23 camera that --

24 MS. CARTER: Oh, that would not be
25 confidential.

1 MR. SMITH: May I approach?

2 JUDGE WOODRUFF: You may.

3 Is this 18 or will it be something
4 different?

5 MR. POSTON: That's different.

6 JUDGE WOODRUFF: Okay. So, it will be
7 19 then.

8 MR. POSTON: Is that 19-C?

9 JUDGE WOODRUFF: Is this confidential
10 for the same reason as the other one?

11 MS. CARTER: I'm flipping. I don't
12 actually see index 12 in this one.

13 MR. SMITH: Oh, in this one.

14 MS. CARTER: Could it be out of order,
15 but if I just go after 11 I don't see 12.

16 MR. SMITH: And this would be the
17 April 29th version. So, perhaps there wasn't an
18 appendix 12.

19 MS. CARTER: I believe Empire had
20 realized it was causing problems with
21 confidentiality and pulled it out from the regular
22 document. So, this does not need to be marked
23 confidential.

24 JUDGE WOODRUFF: Okay.

25 Q. (By Mr. Smith) Okay. Are you familiar

1 with this document?

2 A. Yes.

3 Q. And what is this document?

4 A. It's the Empire District Electric
5 Company energy risk management policy April 29th,
6 2016.

7 Q. And there's a data request form attached
8 to the risk management policy, true?

9 A. Yes.

10 Q. And is that your name in the description
11 section where it says DR requested by Ashley Sarver?

12 A. Yes.

13 Q. And that's your email address?

14 A. Yes.

15 Q. Okay. If you'd flip through this for a
16 minute and make sure that it appears to be a true
17 and correct copy of the document that was actually
18 given to you.

19 A. It looks to be correct.

20 Q. Are you familiar with the risk
21 management oversight committee?

22 A. I know that they review this.

23 Q. Would you flip to the sixth page?

24 I apologize. These aren't numbered
25 neatly. The page I'm referring to has RMOC

1 responsibilities. Do you see that?

2 A. Yes.

3 Q. In the second paragraph from the bottom,
4 do you see that?

5 A. Uh-huh, yes. Yeah.

6 Q. And that refers to committee meetings
7 that took place, true?

8 A. Yes.

9 Q. Did you request at the time or prior to
10 filing your report any of these committee meetings,
11 meeting minutes? I'm sorry.

12 A. I don't think we did.

13 Q. Would you agree that the meeting minutes
14 would give the Commission insight into the
15 decision-making process of Empire at the time of the
16 hedges?

17 A. Yes.

18 Q. And staff ignored that information in
19 staff's report, correct?

20 A. I don't think we ignored it. We
21 didn't -- we didn't ask for it.

22 Q. Can you flip to page 9 in this report or
23 if it's easier, since the numbering may be a little
24 off, I think it's also within page 15 of staff's
25 report and staff's report I believe is labeled as

1 confidential. However, I believe it's the same
2 information.

3 Are you there?

4 A. Yeah.

5 Q. All right. On that page do you see
6 where it talks about physical forward purchases or
7 physical forward contracts?

8 A. On page 9 of the policy?

9 Q. Yes.

10 A. What paragraph is it?

11 Q. Perhaps it would be easier to go to
12 staff's report.

13 A. Okay. Yeah.

14 Q. So, on page 15 of staff's report.

15 A. Okay.

16 Q. Now, they don't have lines, but --

17 A. Uh-huh.

18 Q. -- on the second-to-last paragraph do
19 you --

20 A. Yes.

21 Q. Do you see all of -- all of these things
22 here?

23 A. Yes.

24 Q. Will you read that paragraph?

25 A. Uh-huh. "For the electric segment

1 purposes, hedging includes physical forward
2 purchases, physical management tools such as
3 pipeline imbalance tariffs, park and loan,
4 interruptible storage, OTC swap and exchange trade
5 financial contracts."

6 Q. And did you review the prudence of
7 physical forward purchases?

8 A. To my understanding, they didn't have
9 any physical forward purchases.

10 Q. Your testimony today is that there were
11 no physical forward purchases by Empire?

12 A. No. They -- I misstated. They did have
13 some.

14 Q. Did you review the prudence of any
15 physical forward purchases?

16 A. Yes.

17 Q. Can you show me where that analysis is
18 in your report?

19 A. It wouldn't be in my report.

20 Q. If it's not in your report, you'd agree
21 the Commission can't review it, true?

22 A. On the hedging I came to the conclusion
23 that it's all the natural gas derivatives, that
24 \$10,712,000.

25 Q. It's your testimony today that on page

1 16 of staff's report where you cite to a figure
2 10,712,168, it's your testimony that that is
3 comprised of both physical hedging losses and
4 financial hedging losses?

5 A. This would be financial.

6 Q. So, previously I thought you said that
7 that number included physical hedging losses?

8 A. It includes only the financial hedging.

9 Q. So, where in your -- well, we covered
10 that, I think.

11 Now, within that same paragraph you
12 calculate that the financial hedging net loss
13 represents 15 percent of Empire's total natural gas
14 costs of \$69,301,828 for the review period; is that
15 correct?

16 A. Yes.

17 Q. The \$69 million figure did not deduct
18 for transportation service charges, correct?

19 A. Correct.

20 Q. And when you calculated 15 percent, that
21 was the number that excluded physical hedging
22 losses, correct?

23 A. So, what was your question? Sorry.

24 Q. When you calculated that the losses
25 represent 15 percent of Empire's total natural gas

1 costs, you're only talking about financial hedging
2 losses, correct, not physical hedging losses, or
3 both?

4 A. Financial hedging losses.

5 Q. And you would agree if Empire had
6 physical hedging losses, although I understand you
7 didn't calculate that, that that percentage would be
8 greater?

9 MS. CARTER: I'm going to object to the
10 question in that it assumes there is such a thing
11 recorded as a loss for a physical hedge, which has
12 not been testified to.

13 MR. SMITH: I believe it has been
14 testified to in the written testimony. If she's
15 referring to Ms. Sarver's testimony, I would agree
16 that she did not make such a calculation.

17 MS. CARTER: No. I'm referring to all
18 testimony in the case, because there's not -- there
19 is not testimony in the record that would support a
20 question regarding losses on physical hedging.

21 JUDGE WOODRUFF: Can you clarify your
22 question or restate your question?

23 MR. SMITH: I think I'll just move on.

24 Q. (By Mr. Smith) On page 1 of staff's
25 report, previously we went over the prudence review

1 standard, and the last sentence of that same
2 paragraph that starts with the word "only," can you
3 read, read that?

4 A. Uh-huh. "Only if an imprudent decision
5 resulted in harm to ratepayers staff will recommend
6 a refund."

7 Q. So, you would concede if the Commission
8 decides that there was imprudence, that the harm in
9 this case would be the harm described on page 16 of
10 your testimony?

11 A. The staff did not find any imprudence in
12 our prudence review.

13 Q. And just the question. So, if the
14 Commission were to find imprudence, however, you
15 would agree that the \$10 million figure included on
16 page 16 would represent the harm to ratepayers that
17 would result in a refund?

18 A. I mean, if the Commission said that,
19 then yes.

20 Q. Are you familiar with EO-2015-0214?

21 A. No.

22 Q. Did you read staff's fifth prudence
23 audit?

24 A. Yes.

25 Q. In the Empire case?

1 A. Yes.

2 MR. SMITH: May I approach?

3 JUDGE WOODRUFF: Uh-huh.

4 MR. SMITH: I don't know if I offered
5 Exhibit 19. I'd also like to offer that.

6 (OPC's Exhibit 19 was offered into
7 evidence.)

8 JUDGE WOODRUFF: Exhibit 19 has been
9 offered. Any objections to its receipt?

10 Hearing none. It will be received.

11 (OPC's Exhibit 19 was received into
12 evidence.)

13 JUDGE WOODRUFF: This will be 20.

14 MR. SMITH: Yes, sir.

15 JUDGE WOODRUFF: And I'll note that this
16 is marked as HC. Do we know if this is still being
17 confidential?

18 MR. SMITH: I do not have the answer to
19 that. I think this would have been a staff's
20 designation. So, I'm...

21 JUDGE WOODRUFF: Mr. Berlin, do you know
22 if it's still confidential?

23 MR. BERLIN: What he just handed out?

24 JUDGE WOODRUFF: Yes.

25 MR. BERLIN: Well, it is marked HC. I

1 would have to look at it to find the HC and, again,
2 I can see some HC portions here with regard to
3 operations risk on page 12. There's some on page 11
4 with fuel adjustment clause. I think this appears
5 to -- from what I can tell, it appears to state the
6 risk management policy in effect. So, I would -- I
7 would ask Empire counsel if they -- if Empire
8 considers this material to be HC, but we consider it
9 HC.

10 MR. SMITH: And if it would help, I
11 would limit my questions to pages 10 through, I
12 guess, 17 of that report.

13 JUDGE WOODRUFF: I think that's where
14 all the HC markings are.

15 MR. SMITH: You're probably right.

16 MS. CARTER: And I'm sorry, Judge,
17 because we're just seeing it. I mean, I'd have to
18 actually read it in order to determine if the
19 material is HC or not.

20 JUDGE WOODRUFF: Well, for the moment
21 we'll mark it as 20-C, and if we get into questions
22 that look like they're going to be in confidential,
23 we'll go in camera.

24 You can inquire.

25 Q. (By Mr. Smith) Ms. Sarver, are you

1 **familiar with this document?**

2 A. I was not involved in the case, but I
3 read it.

4 **Q. So, you're familiar with the document?**

5 A. I've seen it before.

6 **Q. Can you identify the document?**

7 A. Uh-huh. It's the fifth prudence review
8 of costs related to the fuel adjustment clause for
9 electric operations of Empire District Electric
10 Company, March 1st, 2013 through February 28th,
11 2015, and it's the Missouri Public Service
12 Commission staff report.

13 **Q. Does this appear to be a true and**
14 **correct copy of that report to the best of your**
15 **knowledge?**

16 A. To the best of my knowledge.

17 **Q. When you read this report, did you**
18 **review it in preparation for the, for your report,**
19 **your section of staff's sixth prudent audit?**

20 A. Yes.

21 **Q. Are you aware that a substantial portion**
22 **of the language used in the sixth prudence review is**
23 **identical to the language in this report?**

24 A. That could be possible.

25 **Q. Isn't it true you copied and pasted much**

1 of this information into your own report?

2 A. No.

3 Q. Would you read the second sentence on
4 page 14?

5 A. This amount -- so, I'm reading from
6 Section C, natural gas cost --

7 Q. Yes.

8 A. -- one description?

9 The second sentence is, "This amount
10 includes Empire's natural gas fuel costs for all
11 generating stations producing electrical energy for
12 resale -- for retail sales and off-system sales and
13 various miscellaneous charges such as firm
14 transportation service charges and other
15 miscellaneous fuel handling expenses."

16 Q. Would you go to page 14 of staff's
17 report in this case?

18 A. Yes.

19 Q. Would you read the second sentence of
20 section C, natural gas cost description, the second
21 sentence in that first paragraph?

22 A. "This amount includes Empire's natural
23 gas fuel costs for all generating stations producing
24 electrical energy for retail sales and off-systems
25 sales and various miscellaneous charges such as firm

1 transportation service charges and other
2 miscellaneous fuel handling expenses."

3 Q. Would you agree that that language is
4 the same or substantially the same?

5 A. Yes.

6 Q. If we were to go elsewhere in the
7 report, would you agree that other language is the
8 same or substantially the same?

9 A. In other areas, yes.

10 MR. SMITH: No further questions.

11 JUDGE WOODRUFF: All right. And we'll
12 come up for questions from the bench.

13 COMMISSIONER STOLL: No questions, Your
14 Honor.

15 COMMISSIONER COLEMAN: No.

16 JUDGE WOODRUFF: No questions. So, no
17 need for recross.

18 Any redirect?

19 MR. BERLIN: Yes, Judge.

20 REDIRECT EXAMINATION

21 BY MR. BERLIN

22 Q. Let me start from kind of in reverse
23 order here.

24 A counsel just had you read two
25 sentences that were identical from fifth prudence

1 review report an identical sentence to the sixth
2 prudence review report. Was there any change with
3 regard to the context and the subject matter of that
4 sentence between the fifth prudence report and the
5 sixth prudence report?

6 A. No.

7 Q. Okay. Ms. Sarver, would you tell the
8 Commission what it is that you reviewed in the
9 course of your duties in this prudence review
10 report?

11 A. Uh-huh. I reviewed the costs,
12 transactions regarding hedging, I reviewed that to
13 see if it was imprudent, and then I reviewed the
14 risk management policy, the April 29th, 2016, and
15 the tariffs that were in effect during the review
16 period.

17 Q. Now, when you reviewed the costs, did
18 you review individual transaction costs of the
19 hedges that were placed during the period in review?

20 A. Yes.

21 Q. The actual hedge cost of each hedge
22 placed or did you review, like, a monthly total or
23 some kind of a total that would track that?

24 A. I reviewed both.

25 Q. Okay. And just to be clear, you made a

1 correction to your direct report in which you stated
2 that you actually did review and rely on responses
3 to other data requests --

4 A. Yes.

5 Q. -- is that correct?

6 And could you just restate what other
7 data requests that you reviewed and relied on?

8 A. Yes. I included DR No. 2. This is
9 staff's DR's. Data Request No. 2, No. 31, and
10 No. 49.

11 Q. And can you give a general description
12 of the information that was contained on those data
13 requests that you relied on?

14 A. Yes. Data number -- Staff Data Request
15 No. 2 was the fuel reports, and then Staff Data
16 Request No. 31 is the calculation of the net actual
17 commodity cost of natural gas, and then Staff DR
18 No. 49 is the gas position reports.

19 Q. Okay. And just to summarize, you, you
20 mentioned Staff DR 1, 29, and 47?

21 A. Correct.

22 Q. Okay.

23 MR. SMITH: I'm sorry. You mean 2?

24 THE WITNESS: No.

25 Q. (By Mr. Berlin) Ms. Sarver, you added,

1 when you made a correction, the Staff Data Request
2 No. 2, 31, and 49, correct?

3 A. Yes.

4 Q. Okay. And you also -- just to be clear,
5 did you review the company's FAC tariff on hedging?

6 A. Yes.

7 Q. And based on your review of the cost
8 that you just mentioned that you reviewed, were
9 those costs in compliance with the company's risk
10 management policy?

11 A. Yes. And tariff.

12 Q. And the tariff?

13 A. Uh-huh.

14 Q. And when you conducted that review of
15 those costs, did you find any costs in that group of
16 costs that raised a red flag of imprudence?

17 A. No.

18 Q. Now, Ms. Sarver, counsel had also asked
19 you if you in your review, your prudence review, if
20 you looked at articles, forecasts, some information
21 when making hedges and outside information. That
22 was not -- was that part of your review or...?

23 A. No.

24 Q. Okay. Was consulting with other staff
25 and management part of the process you employed in

1 your review? In other words, you did --

2 A. Yeah, I did. I talked to other staff
3 members.

4 Q. And who did you talk to?

5 A. I talked to Dana Eaves and Matt Barnes
6 and John Rogers.

7 Q. Did any one of them tell you how or what
8 to, to -- what your results were?

9 MR. SMITH: I'm going to object that
10 this is hearsay.

11 JUDGE WOODRUFF: I'll sustain that.

12 Q. (By Mr. Berlin) You mentioned in an
13 answer to your question that -- to a question that
14 you relied heavily on the risk management policy of
15 the company, correct?

16 A. Yes.

17 Q. And is it your understanding that the
18 company's risk management policy sets the parameters
19 for gas hedging?

20 A. Yes.

21 Q. And based on your review, did the
22 company follow its gas -- its risk management policy
23 in the parameters set forth within it?

24 A. Yes.

25 Q. There were some questions about physical

1 hedges, but physical hedges were not part of your
2 review, were they?

3 A. That is correct.

4 Q. You had -- there were some questions,
5 too, about page 16 of staff's prudence review
6 report. In fact, I think you made a correction to
7 the paragraph that counsel had asked you about. And
8 you identified \$69,300,000-plus as the total natural
9 gas cost during the review period; is that right?

10 A. That is correct.

11 Q. That's total gas cost?

12 A. That is total natural gas costs.

13 Q. Okay. And then you had determined that
14 Empire had experienced a hedging net loss on natural
15 gas derivatives of some \$10,712,000; is that right?

16 A. Yes.

17 Q. And so, the costs to the company and to
18 the ratepayer for the hedging insurance policy that
19 we have here is 15 percent of the total natural gas
20 costs; is that right?

21 A. Yes.

22 Q. So, 15 percent sounds like a pretty
23 reasonable number to buy an insurance policy; would
24 you agree?

25 A. Yes.

1 Q. And would you also agree that we have
2 gone through in this review period an unusual period
3 of natural gas cost --

4 MR. SMITH: I'm going to object to
5 leading.

6 JUDGE WOODRUFF: I'll sustain that.
7 If you want to rephrase your question.

8 MR. BERLIN: Sure.

9 Q. (By Mr. Berlin) During the period of
10 review, did the utility experience an unusual period
11 of low natural gas costs?

12 A. Yes.

13 Q. Okay. Counsel asked you some questions
14 about the fifth prudence review report that was done
15 by staff. Why did you look at that?

16 A. Just for a base on my audit, my review.

17 Q. Okay. And when you conducted your
18 prudence review of the hedging costs, you indicated
19 you found no costs that raised a red flag; is that
20 right?

21 A. Correct.

22 Q. And so, your conclusion was there were
23 no -- there's no evidence of imprudence on the part
24 of --

25 MR. SMITH: Objection; leading.

1 JUDGE WOODRUFF: Sustained again.

2 Restate.

3 Q. (By Mr. Berlin) And would you, please,
4 restate the conclusion of your audit -- or of your
5 prudence review report.

6 A. "Staff found no indication of imprudence
7 associated with Empire's purchase of natural gas
8 including the hedging loss on natural gas
9 derivatives for the prudence review period.

10 Q. And that's your testimony?

11 A. Yep.

12 MR. BERLIN: No further questions,
13 Judge.

14 JUDGE WOODRUFF: All right. And,
15 Ms. Sarver, you can step down.

16 Let's take about a ten-minute break
17 before we go on with Mr. Eaves, come back at 4:20.

18 (A short recess was taken.)

19 JUDGE WOODRUFF: All right. Let's get
20 back to order, please.

21 Mr. Eaves is at the stand, but before we
22 get to him, I believe you wanted to offer 20-C for
23 Public Counsel.

24 MR. SMITH: Yes.

25

1 (OPC's Exhibit 20-C was offered into
2 evidence.)

3 JUDGE WOODRUFF: Okay. 20-C has been
4 offered. Is there any objections to its receipt.

5 Hearing none. It will be received.

6 (OPC's Exhibit 20-C was marked for
7 identification.)

8 DANA EAVES,
9 having been called as a witness herein, having been
10 first duly sworn, was examined and testified as
11 follows:

12 JUDGE WOODRUFF: You may be seated.

13 And you may inquire.

14 DIRECT EXAMINATION

15 BY MR. BERLIN

16 Q. Mr. Eaves, please state your name for
17 the Commission and spell it for the reporter.

18 A. Dana Eaves. D-A-N-A E-A-V-E-S.

19 Q. How are you employed by the Commission?

20 A. I'm a utility regulatory auditor V.

21 Q. And how long have you been employed by
22 the Commission?

23 A. Approximately 16 1/2 years.

24 Q. And are you the same Dana Eaves who
25 caused to be prepared certain rebuttal testimony in

1 a question and answer format in both HC and NP
2 formats?

3 A. Yes.

4 MR. BERLIN: Note that those are
5 premarked as Exhibit 202 HC and NP.

6 A. Yes.

7 Q. (By Mr. Berlin) Do you have any
8 corrections to make to your rebuttal testimony at
9 this time?

10 A. Yes. I have two and a possible third
11 one. Page 1 of my rebuttal testimony, line 19 where
12 the word "Starver" should be Sarver, S-A-R-V-E-R.

13 Page 5, line 4, the 22 percent should be
14 12 percent.

15 And then based upon a correction by
16 Mr. Doll, possibly my chart will have a different
17 total contained in my rebuttal testimony as well
18 and --

19 Q. Which chart is that?

20 A. Let me get to that here. I believe
21 that's table one. With his correction, if you would
22 include that correction, instead of being a negative
23 \$3.1 million, approximately it would be a negative
24 \$2.2 million.

25 And that's all the corrections I have.

1 Q. So, the negative 3,142,906 becomes

2 2.2 --

3 A. Approximately. I haven't --

4 Q. -- million.

5 A. 2.2 million, yes. I haven't corrected
6 the table electronically. So, I'm estimating.

7 Q. Do you have any other corrections to
8 make?

9 A. I do not.

10 Q. And with those corrections, is it -- is
11 the information contained in your rebuttal testimony
12 true and correct to your best information and
13 belief?

14 A. Yes.

15 MR. BERLIN: And I'll move to enter
16 Mr. Eaves' rebuttal testimony in both HC and NP
17 formats premarked as Exhibit 202 into the record.

18 (Staff's Exhibit 202 was offered into
19 evidence.)

20 JUDGE WOODRUFF: 202 has been offered.
21 Any objections to its receipt?

22 Hearing none. It will be received.

23 (Staff's Exhibit 202 was received into
24 evidence.)

25 MR. BERLIN: I tender Mr. Eaves for

1 cross-examination.

2 JUDGE WOODRUFF: Beginning with Empire.

3 MS. CARTER: No questions.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. SMITH: Yes. Thank you.

6 CROSS-EXAMINATION

7 BY MR. SMITH

8 Q. Good afternoon, Mr. Eaves.

9 A. Good afternoon.

10 Q. As I just heard and you responded, I
11 understand you're making a correction to your
12 testimony based on the testimony of Mr. Doll?

13 A. Yes.

14 Q. So, you haven't actually run those
15 calculations yourself, correct?

16 A. I have not updated my chart or my table.

17 Q. Have you run those calculations
18 yourself?

19 A. Can you be more specific when you say
20 calculations? You mean Mr. Doll's calculations?

21 Q. Correct.

22 A. No.

23 Q. In that same chart, that purports to
24 show the results of the hedging practices over a
25 time period, correct?

1 A. Correct.

2 Q. And there is a calculated loss figure,
3 correct?

4 A. Correct.

5 Q. And this does not -- this figure does
6 not contemplate physical hedging losses, correct?

7 A. It does not.

8 Q. Earlier did you hear an exchange about
9 whether or not any party had calculated physical
10 hedging losses?

11 A. OPC witnesses attempted to calculate
12 that, I believe.

13 Q. And you would agree that -- first of
14 all, have you read Mr. Riley's testimony?

15 A. Yes.

16 Q. His direct testimony?

17 A. Yes.

18 Q. His rebuttal testimony?

19 A. Yes.

20 Q. Surrebuttal testimony?

21 A. Yes.

22 MR. SMITH: May I approach?

23 JUDGE WOODRUFF: You may.

24 MR. SMITH: This is already in the
25 record marked, I believe, it's Exhibit 1, is that --

1 JUDGE WOODRUFF: Mr. Riley's direct.

2 MR. SMITH: Yes.

3 Q. (By Mr. Smith) Would you, please, flip
4 to page 20 of that document?

5 A. I'm there.

6 Q. All right. In the first paragraph,
7 second-to-last sentence, would you read that
8 sentence?

9 A. Okay. First paragraph,
10 second-to-the-last sentence, starting with, "The
11 sum"?

12 Q. Correct.

13 A. "The sum of physical hedging for the
14 prudence review period is \$6,073,353."

15 Q. And did you review how Mr. Riley
16 calculated that figure?

17 A. Yes. From memory I believe I understand
18 what he did, yes.

19 MR. SMITH: May I approach?

20 JUDGE WOODRUFF: You may.

21 This will be 21.

22 MR. SMITH: Yes.

23 Sorry, Judge. Did you need extra copies
24 for the other Commissioners?

25 JUDGE WOODRUFF: No. It's fine.

1 MR. SMITH: All right. So, I believe
2 this is HC or C.

3 JUDGE WOODRUFF: We'll mark it as 21-C.

4 MR. SMITH: And I think based on this
5 being a chart of figures, it probably would be best
6 to go in camera for this.

7 JUDGE WOODRUFF: All right. Then we'll
8 go in camera at this point.

9 (REPORTER'S NOTE: At this point, an
10 in-camera session was held, which is contained in
11 Volume 3, Page 292 through 294.)

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1 (REPORTER'S NOTE: The proceedings
2 resumed in open session.)

3 JUDGE WOODRUFF: We are back in regular
4 session.

5 COMMISSIONER STOLL: Okay. Back in
6 regular session. Okay.

7 Yeah, I do have just a couple questions.
8 First of all, could Empire District discontinue
9 their hedging practice or discontinue their hedging
10 altogether? Do you know according to their tariff?

11 THE WITNESS: They certainly could. The
12 tariff doesn't control whether or not they hedge.
13 Those are management decisions its made.
14 Specifically, the tariff, the FAC tariff allow them
15 to recover costs or net costs and revenues from
16 hedging activities, the result of hedging activities
17 and specifically financial hedging. That's really
18 what Empire does. The physical hedges, the
19 calculated amount, actually the way that's done is
20 physical hedges are just strictly gas costs and the
21 gas costs are flowed through the FAC as well.

22 COMMISSIONER STOLL: Okay.

23 THE WITNESS: So, as a point there is no
24 physical gains and losses from those transactions
25 that flow through the FAC because they're really not

1 calculated and accounted for that way. They're just
2 determined to be gas costs and recovered that way.

3 COMMISSIONER STOLL: Okay. In reading
4 your rebuttal testimony, I just wanted to ask you a
5 question. Is there a reason why or if you could
6 explain to me a reason why one company might
7 discontinue their hedging policy and another like
8 Empire District continue using their hedging policy.

9 THE WITNESS: Certainly.

10 COMMISSIONER STOLL: Is there a
11 difference in utilities?

12 THE WITNESS: Certainly. As stated
13 before, there's not a cookie-cutter approach to
14 hedging. Each utility has different resources,
15 resource mixes. Some rely more heavily on coal than
16 they do on natural gas. Empire relies heavily on
17 natural gas. So, having a hedging policy, it is
18 important to them in my mind, some form of hedging
19 policy.

20 In GMO I know there's been -- I was
21 involved in several GMO cases where hedging was
22 brought up. There are different flavors of hedging
23 and the big issue with GMO that I took, that staff
24 took, was their cross-hedging policy and
25 cross-hedging is a practice where you secure NYMEX

1 futures contract in hopes of offsetting an energy
2 price down the road that you would buy off the
3 market. I claim that that policy that GMO had was
4 flawed. I won't get into all the details because
5 it's really complicated, but it was flawed. The
6 Commission did not see it that way. But they also
7 have just a plain vanilla that I'm going to call a
8 hedging program where they buy different types of
9 NYMEX futures contracts or other types of financial
10 instruments to try to mitigate the risk of any fuel
11 prices in the future. Since we don't know what the
12 fuel prices are going to be in the future and fuel
13 is a critical component to produce energy that they
14 sell to their customers, it's important to have a
15 stable supply of gas.

16 COMMISSIONER STOLL: Okay.

17 THE WITNESS: As well as the other fuel,
18 but really we're focusing on gas today.

19 COMMISSIONER STOLL: And my other
20 question is: What would be a company's incentive to
21 utilize a hedging practice that might be judged to
22 be imprudent?

23 THE WITNESS: That's a big question.

24 COMMISSIONER STOLL: Is there an
25 incentive to -- any reason to --

1 THE WITNESS: I don't think there's any
2 incentive under the way utilities are regulated by
3 Missouri Public Service Commission to act
4 imprudently at all because there are tools in the
5 regulatory tool box that can be used to penalize
6 companies that do, and if they were found to make
7 imprudent actions related to costs or other items,
8 the Commission has the ability to take those moneys
9 away through an adjustment.

10 COMMISSIONER STOLL: And that would be
11 in a general rate case?

12 THE WITNESS: Could be in a general rate
13 case, can be in a prudency review as well or any --
14 or now we have MEAA, which operates very much the
15 same way. They can adjust rates between general
16 rate cases in those two vehicles.

17 COMMISSIONER STOLL: Okay. I think
18 that's it. Thank you.

19 JUDGE WOODRUFF: Commissioner Coleman?

20 COMMISSIONER COLEMAN: No.

21 JUDGE WOODRUFF: Commissioner Rupp left
22 me some questions for staff witness as well. So,
23 I'll ask them.

24 First question is: Mr. Berlin said in
25 his opening that the scope staff uses for its FAC

1 prudence review does not include the reasonableness
2 of Empire's risk management policy. Where does
3 staff get its guidance for the scope of its reviews?
4 Statute, Commission rule, or Commission orders?

5 THE WITNESS: Well, it's in both. It's
6 in rules and statute. In the rules it's fairly open
7 that says staff will conduct prudency review, an FAC
8 prudency review no less than 18 months. It doesn't
9 go any further and say exactly what the scope of
10 that is and that's been developed over time by doing
11 the various prudency reviews. And really the tariff
12 is, is -- I've done my share of prudency reviews,
13 FAC prudency reviews, and the tariff is really kind
14 of a starting point as far as the type of costs, the
15 nature of costs that can be recovered through the
16 FAC. And so, that's where we -- that's where we
17 start.

18 JUDGE WOODRUFF: Is there a specific
19 reason why you wouldn't review the reasonableness of
20 the risk management policy?

21 THE WITNESS: Well, that's really
22 already been done. That's already been established
23 in the rate case. That reasonableness of the risk
24 management policy has already -- has already been
25 done.

1 JUDGE WOODRUFF: Do you know when that
2 would have been done in Empire's case?

3 THE WITNESS: Would have been in their
4 last rate case.

5 JUDGE WOODRUFF: So, in each rate case
6 it can be an issue; is that --

7 THE WITNESS: Yeah. Each rate case you
8 have an approval process for the FAC and during that
9 approval process of the rate case or that section of
10 the rate case that's when those type of issues are
11 hashed out, what are you going to recover through
12 the FAC, how it's going to be recovered, those type
13 issues are all worked out. So, during a prudency
14 review we don't go back and rehash all that.

15 Now, if we were to find that there is an
16 issue with that was contained in the risk management
17 policy, that would probably be a concern and an
18 issue would be raised.

19 JUDGE WOODRUFF: Well, that leads into
20 the next question that he asked -- asked me to ask.

21 Mr. Hyneman stated that staff called
22 into question Empire's hedging practices in its 2012
23 rate case. What has caused staff's position on
24 Empire's hedging practices to change since that
25 time?

1 THE WITNESS: I think we called into
2 question their practices, but we didn't make a
3 recommendation for an adjustment. Since then we've
4 had hedging -- we've had a hedging workshop where
5 all the parties were able to get together and talk
6 about these very complicated and sensitive issues
7 related to fuel supply, specifically hedging. And
8 so, we've done that. So, and again, you know, just
9 because we have low gas prices today doesn't mean
10 that we won't -- that they're going to maintain low
11 prices in the future. But as far as the facts and
12 circumstances that occurred back during that case, I
13 can't necessarily make a judgment why we didn't make
14 the same recommendation this time other than we just
15 didn't have the same concern as we did last time.

16 JUDGE WOODRUFF: Did you work on that
17 2012 rate case?

18 THE WITNESS: Let me look. I have a
19 list of cases I worked on.

20 I don't have it on my list unless I
21 don't -- it looks like I worked on a -- the last
22 Empire case I would have worked, rate case, last
23 Empire rate case, would have been ER-2008-0093,
24 according to my list.

25 JUDGE WOODRUFF: All right. That's all

1 the questions from Commissioner Rupp. I have one
2 question of my own, though, and it's about the
3 recovery of the costs of hedging. Now, currently
4 they're recovered through the FAC; is that correct?

5 THE WITNESS: I'm sorry. There's two?
6 I didn't hear what you said. I'm sorry.

7 JUDGE WOODRUFF: I'm sorry. My question
8 is about the recovery of the costs, the hedging
9 costs. Currently it's recovered through the FAC; is
10 that right?

11 THE WITNESS: Yes.

12 JUDGE WOODRUFF: What if there were no
13 FACs? How would it be recovered?

14 THE WITNESS: Through the normal
15 rate-making process.

16 JUDGE WOODRUFF: Can you tell me how
17 that would work?

18 THE WITNESS: A level of costs for
19 various transactions, whether it's fuel or hedging
20 would be put into -- built into rates and that level
21 would be -- would stay the same until such a time
22 another rate case occurs and those costs would be
23 adjusted. So, if Empire was below or above the
24 dollars that were put in for cost recovery, they
25 would either bear the cost or they would have, have

1 gains.

2 JUDGE WOODRUFF: So, you might go back
3 over five years and average the gains or losses and
4 bake that into the rates?

5 THE WITNESS: Right. Have some type of
6 annualization or normalization adjustment for each
7 cost item.

8 JUDGE WOODRUFF: Okay. That's all the
9 questions I have then.

10 Any recross beginning with Empire?

11 MS. CARTER: I had just one based on a
12 commissioner question.

13 RECROSS-EXAMINATION

14 BY MS. CARTER

15 Q. Commissioner Stoll had asked you -- I'm
16 not certain of the question, but your answer was
17 about staff's issues with GMO's cross-hedging --

18 A. Yes.

19 Q. -- do you recall that?

20 Empire doesn't cross-hedge, correct?

21 A. Correct.

22 Q. And they didn't cross-hedge during the
23 review period?

24 A. That's correct.

25 MS. CARTER: Thank you. That's all I

1 have.

2 JUDGE WOODRUFF: Public Counsel?

3 MR. SMITH: Just a couple.

4 RECROSS-EXAMINATION

5 BY MR. SMITH

6 Q. Earlier you had stated that financial
7 hedging costs would go through the FAC. Isn't it
8 true that only prudent, prudently-incurred financial
9 hedging costs would be recouped through the FAC?

10 A. And that's true for all costs.

11 Q. If the Commission were to find that a
12 utility's hedging practice, in this case Empire, was
13 imprudent in the context of this case, can a refund
14 of those costs to customers act as an incentive to
15 curve -- curb the behavior of Empire in the future?

16 A. Yes.

17 Q. In the rate case that was discussed, I
18 don't have the case number in front of me, did the
19 Commission explicitly review the risk management
20 policy or is that a case that had resulted in a
21 settlement?

22 A. Would that be the ER-2014-0351 possibly?

23 Q. I believe it would have been the number
24 ending in 0023, 2016.

25 A. 0023?

1 **Q. Yes.**

2 A. ER-2016-0023. Let's see. I'm trying to
3 see if I have any documentation that tells me how
4 that case was disposed of.

5 Okay. I have a copy of partial order
6 issued by the Commission, and if you'd grant me just
7 a moment, let me see if they state anywhere in here
8 about that particular issue.

9 Really what I'm seeing is that the
10 Commission approved the FAC to continue, but I don't
11 see any, anything that would point me to saying that
12 they predetermined or prejudged or ordered the RMP
13 to go forward.

14 **Q. Is that as a result of a settlement to**
15 **your knowledge?**

16 A. To my knowledge, there's an order
17 stating that the FAC will go forward. So, I'm
18 assuming that was not a result of the settlement.

19 MR. SMITH: Thank you. No further
20 questions.

21 JUDGE WOODRUFF: Any redirect?

22 MR. BERLIN: And Judge, I get recross
23 from the bench, too, don't I?

24 JUDGE WOODRUFF: Oh, I'm sorry. Yes.

25

1 REDIRECT EXAMINATION

2 BY MR. BERLIN

3 Q. Mr. Eaves, and I'll start with some
4 questions I think Mr. -- or Commissioner Stoll had,
5 and Public Counsel also asked you some questions
6 regarding physical hedging. So, but Commissioner
7 Stoll had asked about physical gas hedges and how
8 they're treated. Could you just explain in laymen's
9 terms what a physical hedge is and where those costs
10 go.

11 A. Yeah. I think the best way I can
12 explain it in the way I understand it is if you go
13 to the gas station tomorrow and fill your tank,
14 you're buying at a price certain and you have to
15 determine whether or not you think the price is
16 going to be more tomorrow or the next week in
17 determining on how much you're going to buy in your
18 tank and you pay, you pay at the pump and you drive
19 away and if the price changes between the next
20 fill-up, you don't get to go back to the gas station
21 and get a refund or they don't make you go back and
22 pay additional money because the gas price went up.

23 Physical hedges is physical forward
24 contracts. You enter into a contract to buy it for
25 a price certain and it is price certain. That's the

1 way I understand physical forward contracts.

2 Q. And the treatment of those costs go
3 where?

4 A. Fuel costs, natural gas fuel costs.

5 Q. So, they roll directly into the costs of
6 gas?

7 A. Yes.

8 Q. I think Commissioner Stoll had some
9 questions about differences between the utilities.
10 Let me ask you is Empire, in your opinion, sensitive
11 to natural gas pricing?

12 A. Yes.

13 Q. And why is that?

14 A. They rely heavily on natural gas and
15 they have some very efficient units that SPP
16 controls and they're a lower price unit, economic to
17 run and they run a lot, and SPP controls that.

18 Q. And do you have a sense as to the amount
19 of generation that Empire fuels with natural gas?

20 A. I did at one time. I don't know that I
21 do today, but it's significant.

22 Q. Right. Okay. And it's safe to say,
23 too, that in the forward purchasing of natural gas,
24 electric utilities are also competing with the
25 natural gas utilities; is that right?

1 MR. SMITH: Objection; leading.

2 JUDGE WOODRUFF: I'll sustain that.

3 Q. (By Mr. Berlin) Can you tell me -- can
4 you explain the market that -- a little bit about
5 the market, who the buyers are of this natural gas?

6 A. Well, there are -- Empire is not the
7 only one that requires natural gas to do their
8 business. There is limited pipeline space. There
9 is limited pipelines. To be able to physically get
10 the gas, that's the major responsibility that Empire
11 has that I see is be able to have sufficient fuel,
12 whether it's coal or natural gas, to be able to burn
13 in their generating units to supply electricity to
14 their customers. That's, that's goal number one in
15 my mind as a regulator, you got to keep the lights
16 on, and they do that by acquiring fuel in simple
17 terms. So, competition for natural gas, there is a
18 market for natural gas. Empire does not drive the
19 price for natural gas. They don't have -- with what
20 they burn, they probably have very limited influence
21 on the overall market of what the price would be.
22 They're subjected to market price just like all the
23 other competitors in the market.

24 Q. There were some questions I think from
25 Commissioner Rupp about the scope of a prudence

1 review and you indicated, I believe, that the FAC
2 tariff is a starting point; is that right?

3 A. Yes.

4 Q. And how does the Commission go about
5 changing an FAC tariff? Where is that done?

6 A. That would be as a result of a rate
7 case.

8 Q. And Empire's FAC tariff permits hedging
9 and collection of the costs of hedging; does it not?

10 A. Yes.

11 Q. I think Public Counsel had asked you in
12 a question about adopting Ms. Sarver's testimony,
13 and you did not formally adopt her testimony, did
14 you?

15 A. I didn't think there was a need to in
16 this case that Ms. Sarver testified. She was here
17 to answer, support her testimony that she filed. I
18 might have -- if she had left employ of the
19 Commission or something else happened, I would have
20 adopted her testimony as if it was my own, but I
21 didn't think there was a need to this time.

22 Q. So, with that answer then, I assume that
23 you agree with the conclusions that Ms. Sarver made?

24 MR. SMITH: Objection; leading.

25 JUDGE WOODRUFF: Sustained.

1 Q. (By Mr. Berlin) Do you agree with
2 Ms. Sarver's testimony?

3 A. Yes.

4 Q. Did Ms. Sarver consult with you
5 throughout the prudence review process?

6 MR. SMITH: Objection; calls for
7 hearsay.

8 MR. BERLIN: No, it doesn't. Judge --

9 JUDGE WOODRUFF: I'll overrule the --

10 MR. BERLIN: -- he knows whether or not
11 Ms. Sarver --

12 JUDGE WOODRUFF: I'll overrule the
13 objection.

14 You can answer the question.

15 A. I was in the room today and Ms. Sarver
16 said she discussed it with me. We might have had a
17 discussion, but I don't remember it and I don't
18 remember what we talked about. I have lots of
19 discussions and that particular conversation I don't
20 recall.

21 MR. BERLIN: Judge, I have no further
22 questions. Thank you.

23 JUDGE WOODRUFF: All right. Mr. Eaves,
24 you can step down.

25 And I believe that concludes the

1 testimony in this case. We already have dates
2 scheduled for post-hearing briefs will be October 5
3 and then reply briefs on October 26th. Is there
4 anything else we need to take up while we're on the
5 record?

6 MR. BERLIN: Judge, there was mention
7 throughout the course of the hearing today about a
8 working docket on electric utility gas hedging, that
9 docket being EW-2013-0101. I would ask or request
10 that the Commission take administrative notice of
11 that docket.

12 JUDGE WOODRUFF: Of all the contents of
13 that docket?

14 MR. BERLIN: Yes.

15 JUDGE WOODRUFF: Can you be more
16 specific? Is there anything in particular that you
17 want us to -- I don't want to have to recreate the
18 entire document for on appeal or something.

19 MR. BERLIN: One minute, Judge, please.

20 JUDGE WOODRUFF: Sure.

21 MR. BERLIN: Judge, I would limit the
22 notice to the reports that staff filed. There's one
23 staff report filed dated April 8th, 2013, and I
24 believe there's one more report that staff filed.
25 Staff filed another report on January 31st, 2014.

1 JUDGE WOODRUFF: Is there any objection
2 to taking official notice of those documents.

3 MR. SMITH: I'm sorry. So, your -- just
4 so I'm clear, you're wanting to admit as public
5 records the previous prudence review audits, the
6 reports? I missed that. I'm sorry.

7 MR. BERLIN: No. I'm just merely
8 asking --

9 JUDGE WOODRUFF: Go ahead and explain
10 what you're talking about.

11 MR. BERLIN: I'm merely asking the
12 Commission take administrative notice or official
13 notice, as we call it, of the working docket on
14 electric utility hedging and, in fact, it was styled
15 in the matter of a working docket to address the
16 hedging practices of electric utilities used to
17 mitigate the rising costs of fuel.

18 JUDGE WOODRUFF: And you're asking me to
19 take administrative notice of the two staff reports
20 in the case?

21 MR. BERLIN: That is correct.

22 MR. SMITH: No objection, Judge.

23 JUDGE WOODRUFF: All right. The
24 Commission will take administrative notice of those
25 two staff reports.

1 Anything else while we're on the record?

2 MR. POSTON: We would also like to move
3 for you to take administrative notice of two
4 documents. There has been mention about the staff's
5 suggestion in 2012 about the company on stopping
6 hedging. So, we'd like to take administrative
7 notice of the staff's initial brief in EO-2011-0390.
8 And there was also questions from Commissioner Rupp
9 regarding ER-2012-0345, the rate case, and we'd also
10 ask to take administrative of the staff's cost of
11 service report in that case.

12 JUDGE WOODRUFF: All right. Any
13 objections?

14 MS. CARTER: Yes, Judge, to a brief,
15 which is not testimony, not evidence. Unless we
16 want to, I guess, bring in more of a record than
17 that. It seems like one brief taken out of context.

18 JUDGE WOODRUFF: What would be the
19 purpose -- what would be the purpose of taking
20 notice of the brief?

21 MR. POSTON: It was discussed in
22 testimony about the staff telling the company in
23 2012 -- their discussions with the company or their
24 suggestions to the company about reviewing their
25 policy.

1 JUDGE WOODRUFF: So, it would be showing
2 what staff's position was at that point?

3 MR. POSTON: Yeah, yeah. And it's --
4 I'm just asking for administrative notice of that.

5 JUDGE WOODRUFF: Do you still object?

6 MS. CARTER: I do, yes, that it's taken
7 out of context and not relevant to this proceeding.

8 JUDGE WOODRUFF: I will take
9 administrative notice of those documents that you've
10 mentioned.

11 MR. POSTON: Thank you.

12 JUDGE WOODRUFF: Anything else?

13 All right. Then we are adjourned.

14 (The hearing adjourned at 5:00 p.m.)
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25		

1 CERTIFICATE OF REPORTER

2

3 I, Amanda N. Farrar, a Certified Court
4 Reporter for the State of Missouri, do hereby
5 certify that the witnesses whose testimony appears
6 in the foregoing transcript were duly sworn; the
7 testimony of said witnesses was taken by me to the
8 best of my ability and thereafter reduced to
9 typewriting by me; that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 the action in which this hearing was taken, and
12 further that I am not a relative or employee of any
13 attorney or counsel employed by the parties thereto,
14 nor financially or otherwise interested in the
15 outcome of the action.

16

17



18

19

Certified Court Reporter

20

21

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25

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