

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Hearing  
8 April 11, 2007  
9 Jefferson City, Missouri  
Volume 9

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12 In the Matter of the Tariffs of )  
Aquila, Inc., d/b/a Aquila Networks)  
13 - MPS and Aquila Networks - L&P )  
Increasing Electric Rates for the ) Case No. ER-2007-0004  
14 Services Provided to Customers in )  
the Aquila Networks - MPS and )  
15 Aquila Networks - L&P Service Area )

16

17 CHERLYN D. VOSS, Presiding,  
REGULATORY LAW JUDGE.

18

19 JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
20 LINWARD "LIN" APPLING,  
COMMISSIONERS.  
21

22

23 REPORTED BY:

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

2 JUDGE VOSS: We'll go on the record, and I  
3 believe we are going to begin today with Ms. Brockway.

4 MR. COFFMAN: Thank you. AARP would call  
5 to the stand Nancy Brockway.

6 (Witness sworn.)

7 JUDGE VOSS: Your witness.

8 (EXHIBIT NO. 600 AND 601 WERE MARKED FOR  
9 IDENTIFICATION BY THE REPORTER.)

10 NANCY BROCKWAY testified as follows:

11 DIRECT EXAMINATION BY MR. COFFMAN:

12 Q. Please state your name for the record.

13 A. Nancy Brockway.

14 JUDGE VOSS: Ms. Brockway, will you make  
15 sure your microphone is on?

16 THE WITNESS: Is that better?

17 JUDGE VOSS: Yes, that's better. Thank  
18 you.

19 MR. COFFMAN: Did you swear her in?

20 JUDGE VOSS: I did.

21 BY MR. COFFMAN:

22 Q. Are you the same Nancy Brockway that has  
23 caused to be filed in this case surrebuttal testimony that  
24 has been marked as Exhibit 601?

25 A. I am.

1           Q.       And are you -- in that testimony, do you  
2       also adopt the direct testimony that had been previously  
3       filed in this case by Ronald J. Binz?

4           A.       I do. I did.

5           Q.       And that has been marked as Exhibit 600.  
6       And have you completely read the testimony and exhibits  
7       attached to Ron Binz' testimony of January 25, 2007 and  
8       fully adopted it as your own testimony here today?

9           A.       Yes.

10          Q.       Do you have any corrections to these  
11       testimonies?

12          A.       No.

13          Q.       If I asked you the same questions contained  
14       therein today, would your answers be the same to your best  
15       information, knowledge and belief?

16          A.       Yes.

17                   MR. COFFMAN: I would tender Ms. Brockway  
18       for cross-examination.

19                   JUDGE VOSS: Do you want to offer the  
20       exhibits as well?

21                   MR. COFFMAN: I would offer Exhibits 600  
22       and 601 into the record.

23                   JUDGE VOSS: Are there any objections to  
24       the admission of those exhibits?

25                   (No response.)

1 JUDGE VOSS: Hearing none, they're  
2 admitted.  
3 (EXHIBIT NOS. 600 AND 601 WERE RECEIVED  
4 INTO EVIDENCE.)  
5 JUDGE VOSS: And first up is Public  
6 Counsel.  
7 MR. MILLS: No questions.  
8 JUDGE VOSS: Very interesting. My list has  
9 AARP crossing their own witness.  
10 MR. CONRAD: That will be fun.  
11 MR. COFFMAN: I'll be happy to do that.  
12 JUDGE VOSS: You'll get your turn. Federal  
13 Executive Agencies?  
14 CAPTAIN HOLLIFIELD: No questions, your  
15 Honor.  
16 JUDGE VOSS: Sedalia Industrial Energy  
17 Users Association?  
18 MR. WOODSMALL: No, thank you, your Honor.  
19 JUDGE VOSS: Staff?  
20 MR. FREY: No, thanks, your Honor.  
21 JUDGE VOSS: Aquila?  
22 CROSS-EXAMINATION BY MR. MITTEN:  
23 Q. Ms. Brockway, good morning.  
24 A. Good morning.  
25 Q. Could I ask you to please first turn to

1 page 4 of your surrebuttal testimony?

2 A. I'm there.

3 Q. On that page you state, quote, provided --  
4 that you recently provided testimony on the problems  
5 associated with the introduction of a fuel adjustment  
6 clause; is that correct?

7 A. Yes.

8 Q. Now, the testimony you referred to there,  
9 was that the testimony that you recently gave in the  
10 AmerenUE rate case?

11 A. It may have been. I also had provided some  
12 testimony in Nova Scotia, and I don't have the date of the  
13 filing of the Ameren testimony, so I don't remember which  
14 of those I was referring to.

15 Q. Was the Nova Scotia testimony on fuel  
16 adjustment clause?

17 A. There was some testimony on fuel adjustment  
18 clause, yes. There were other issues. I don't know  
19 whether it was prefiled testimony or it came up in the  
20 examination.

21 Q. If you could please turn to -- I'm not sure  
22 that there's a number for this schedule. I guess it's  
23 Exhibit NB-1, page 2, where you list your previous  
24 testimonies. The second --

25 A. Excuse me.

1           Q.       -- is the Nova Scotia Power, Inc. Is that  
2 the testimony that you were referring to?

3           A.       I don't have a copy of my schedule. I'm  
4 sorry.

5                   MR. COFFMAN: Permission to approach?

6                   JUDGE VOSS: Go ahead.

7                   THE WITNESS: Let me take a look. So what  
8 we're looking for is testimony that I might have been  
9 referencing?

10 BY MR. MITTEN:

11           Q.       You said that you had testified in Nova  
12 Scotia, and I notice that the second item listed on the  
13 grid is testimony, Nova Scotia Power, Inc., and I was  
14 wondering if that was the testimony you were referring to.

15           A.       It may have been Item 4, which is the extra  
16 large industrial interruptible rates. I apologize. I  
17 don't -- all those cases were ongoing at the same time,  
18 and they get mixed up in my mind.

19           Q.       So in terms of prefiled testimony, would it  
20 be fair to say that the only time you have prefiled  
21 testimony regarding the issue of fuel adjustment clause  
22 would have been in the Ameren case and in the Aquila case,  
23 both of which are currently pending in Missouri?

24           A.       Well, that's certainly the most extensive  
25 treatment of it. I think there was some discussion in



1 part of the first Nova Scotia -- last Nova Scotia case  
2 actually that you did refer to. But as far as extensive  
3 discussion, that's correct.

4 Q. Could I ask you to please next turn to  
5 page 8 of your surrebuttal testimony?

6 A. Yes.

7 Q. There you state, and I quote, neither  
8 Mr. Fetter nor Mr. Williams claims consistently that a  
9 utility has no control over its costs of fuel and  
10 purchased power; is that correct?

11 A. Yes.

12 Q. Do either Mr. Williams or Mr. Fetter ever  
13 say that a utility has no control over its fuel and  
14 purchased power costs?

15 A. If the question is do they ever say it has  
16 zero control, I don't think so, but I -- I'd have to go  
17 back and look, but it doesn't ring a bell.

18 Q. Now let me ask you to turn to page 15 of  
19 your surrebuttal testimony, and there you cite some data  
20 from Martin Lyons' direct testimony in Case No.  
21 ER-2007-0002, the pending AmerenUE rate case; is that  
22 correct?

23 A. Yes.

24 MR. MITTEN: May I approach the witness,  
25 your Honor?

1 JUDGE VOSS: You may.

2 BY MR. MITTEN:

3 Q. Ms. Brockway, I've handed you a copy of  
4 Mr. Lyons' direct testimony in the Ameren case, and I  
5 would ask you to turn to page 5 of that testimony.

6 A. I'm there.

7 Q. There's a question and answer beginning on  
8 line 9 and concluding on line 16. Is that the information  
9 that you relied on for the statement in your testimony  
10 regarding Mr. Lyons' testimony?

11 A. Appears to be.

12 Q. Just so the record is clear as to exactly  
13 what Mr. Lyons said in that case, could you please read  
14 into the record the question and answer from page 5 of his  
15 direct testimony?

16 A. Question: Do utilities operating in other  
17 jurisdictions utilize FACs?

18 Answer: Electric utilities utilize FACs in  
19 a large majority of other jurisdictions in the US. Our  
20 research shows that FACs are authorized in 27 of the 29  
21 other non-restructured states like Missouri where the  
22 electric utilities still generate their own power to  
23 deliver to customers. In all restructured states where  
24 the utilities -- the whole thing?

25 Q. Yes.

1           A.       -- where the utilities typically do not own  
2     generation but purchase power in competitive markets,  
3     mechanisms are available for flowing through the electric  
4     utility's purchased power costs. As a consequence, nearly  
5     all states currently authorize some type of fuel  
6     adjustment clause for their electric utilities.

7           Q.       Thank you. Also on page 15 and continuing  
8     on to page 16 of your surrebuttal testimony, you state  
9     that the Public Utilities Regulatory Policy Act of 1978  
10    required state public utility commissions to examine their  
11    fuel clauses every two years, and then you mention that  
12    three states, Missouri, Texas and Indiana, subsequently  
13    abolished their fuel clauses; is that correct?

14          A.       Yes.

15          Q.       Is it your understanding that when the  
16    Missouri Commission discontinued the use of the fuel  
17    clause in 1979, it did so as the result of a PURPA review?

18          A.       I don't know.

19          Q.       And if we could go back to page 5 of your  
20    prefiled surrebuttal.

21          A.       I'm there.

22          Q.       There you state in your discussion of  
23    after-the-fact prudence reviews that prudence reviews are  
24    implicit in Aquila's proposed fuel adjustment clause; is  
25    that correct?

1           A.       Not exactly. You could read it that way,  
2 but what I was just saying was that in the fuel adjustment  
3 clause there would be a prudence review, and it goes  
4 without saying it's after the fact. It's after the costs  
5 have been incurred.

6           Q.       Are you aware that prudence reviews are  
7 explicit both in the underlying fuel adjustment statute  
8 and in the Commission's fuel adjustment clause rules?

9           A.       Yes. And I was not trying to say that  
10 there's anything cute about Aquila's fuel adjustment  
11 clause. It has it in there. It has it in conformity with  
12 those requirements. All I was saying is that it's not --  
13 that the mechanism that is chosen here for dealing with  
14 whether or not there are efficiencies or worse is an  
15 after-the-fact prudence review.

16          Q.       You also in your testimony discuss the  
17 difference between prudence and efficiency as standards;  
18 is that correct?

19          A.       Yes.

20          Q.       And you understand that prudence is the  
21 standard that's prescribed by both statute and rule in  
22 Missouri?

23          A.       Can you say more about what you mean is the  
24 standard? The standard for what?

25          Q.       Well, it's the standard against which fuel

1 and purchased power costs are to be judged under both the  
2 statute and the Commission's rules; is that correct?

3 A. If you mean the utility is entitled to a  
4 reasonable opportunity to recover all of its prudently  
5 incurred costs, yes. If you mean that regulatory  
6 mechanisms can't be used to incent efficiency, then I  
7 don't agree.

8 Q. But prudence is the only standard that's  
9 actually stated in the statute and the rules?

10 A. I defer to counsel on that. If you say so,  
11 I would accept that.

12 Q. That's fine. If you could now turn to  
13 page 12 of your surrebuttal testimony.

14 A. I'm there.

15 Q. Beginning at line 16 you address the topic  
16 of whether Wall Street prefers utilities that have fuel  
17 adjustment clauses; is that correct?

18 A. That's right.

19 Q. In your experience, do Wall Street analysts  
20 actually indicate such a preference for utilities --

21 A. Yes.

22 Q. -- that have fuel adjustment clauses? They  
23 do?

24 A. Yes.

25 Q. And if Wall Street analysts do express such

1 preferences, is your belief that that fact should be given  
2 little weight by the Commission in deciding whether or not  
3 to authorize a fuel adjustment clause for Aquila?

4 A. Did you say little weight?

5 Q. Yes.

6 A. It's actually a complicated analysis.

7 Obviously Wall Street analysts have an impact on  
8 purchasing decisions by investors in bonds and stocks.

9 The problem is that it often happens that Wall Street  
10 analysts end up giving short-sighted advice which in the  
11 long run is not good for their clients.

12 So actually I've done some research into  
13 this because I've been a staff member of or a member of  
14 commissions that didn't always get the best rating as far  
15 as being -- having constructive regulatory environment,  
16 and yet in states that had constructive regulatory  
17 environments, the utilities drove themselves into the  
18 ground because they weren't constrained from their own  
19 worst impulses.

20 So over the long haul, it's not necessarily  
21 in the investors' interest to accept everything that the  
22 Wall Street analyst is saying.

23 Q. Ms. Brockway, I wasn't asking you about  
24 investors. I was asking you whether or not the fact that  
25 Wall Street analysts expressed preferences for utilities

1 with fuel adjustment clauses is, according to you,  
2 something that this Commission should give little weight  
3 to in this case?

4 A. I didn't use the term little weight, and I  
5 was trying to explain that how much weight to give it is a  
6 function of what investors will do on the basis of that  
7 advice. I think it's entitled to some weight, but not as  
8 much weight as certainly Aquila's witnesses would give it,  
9 would give their Wall Street analyst's advice.

10 Q. Would you agree with me, Ms. Brockway, that  
11 the presence or absence of a fuel adjustment clause would  
12 have some impact on a utility's risks?

13 A. Yes.

14 Q. And would you also agree that Wall Street  
15 research firms such as Standard & Poor's would consider  
16 the presence of a fuel adjustment clause as a risk factor  
17 in assigning a risk ranking to a utility?

18 A. Yes.

19 MR. MITTEN: Your Honor, may I approach the  
20 witness?

21 JUDGE VOSS: Yes.

22 BY MR. MITTEN:

23 Q. Ms. Brockway, I have handed you a copy of a  
24 Standard & Poor's publication entitled U.S. Utility and  
25 Power Ranking List. Do you see that document?

1           A.       Yes.

2           Q.       Now, the pages to this document  
3 unfortunately are not numbered, but if you could please  
4 turn to the fifth page of the publication.

5                   JUDGE VOSS: What was this publication  
6 titled?

7                   MR. MITTEN: I'm sorry. It's called U.S.  
8 Utility and Power Ranking List, published by Standard &  
9 Poor's.

10                  THE WITNESS: You're looking at the page  
11 that you've highlighted?

12 BY MR. MITTEN:

13           Q.       Yes.

14           A.       All right.

15           Q.       Now, I have attempted to highlight those  
16 companies that you have included from Dr. Hadaway's proxy  
17 group which you discuss at page 13 of your surrebuttal  
18 testimony.

19           A.       They don't look familiar. I have  
20 Mr. Hadaway's testimony here. What are these highlighted  
21 utilities supposed to mean?

22           Q.       Those are the utilities, I believe, that  
23 have a fuel adjustment clause from Dr. Hadaway's proxy  
24 group.

25           A.       Well, let me put it this way. There are



1 some utilities on this list that you have shown me  
2 which -- let me take that back. They're shown in a  
3 different format from Dr. Hadaway's list, so --

4 Q. They are. I was pretty much stuck with the  
5 format that Standard & Poor's used, but I attempted to go  
6 through the list and identify all of the companies that  
7 had been included in Dr. Hadaway's proxy group that had a  
8 fuel adjustment clause.

9 A. Looks about right. One could quibble with  
10 it. I mean, PS&H, I don't know that I'd call it a fuel  
11 adjustment clause, but aside from quibbles like that --

12 Q. Now, I have highlighted those so that it's  
13 easier for you to identify them. Would you agree with me  
14 that the majority of those highlighted companies have a  
15 No. 4 ranking by Standard & Poor's?

16 MR. MILLS: Your Honor, I'm going to  
17 object. He's asking her to draw some inference from some  
18 document for which no foundation has been laid.

19 MR. MITTEN: I'm not asking for an  
20 inference. I'm simply asking her to tell me what it says  
21 on the document.

22 MR. COFFMAN: Your Honor, it is unclear  
23 which utility -- when he says the highlighted utilities,  
24 it's not clear what he's --

25 MR. MITTEN: I'm sorry. I was referring to

1 the utilities that were included in Dr. Hadaway's proxy  
2 group that have a fuel adjustment clause and that  
3 Ms. Brockway used for -- as the basis of her testimony on  
4 page 13.

5 MR. MILLS: Your Honor, I could produce a  
6 document that would show the exact same list of utilities  
7 and put them at No. 11 or No. 38 or whatever number I  
8 wanted. Without a foundation, there's no way that you can  
9 ask this question.

10 JUDGE VOSS: Initially she did say that she  
11 wasn't even certain they were the companies in question.

12 MR. MITTEN: But then she said she was  
13 certain that they were the companies in question.

14 MR. CONRAD: I have a slightly different  
15 question. I'm wondering if counsel's question is intended  
16 to include in the list of Mr. Hadaway's DCF model  
17 companies the companies that Mr. Hadaway acknowledged had  
18 been placed as below investment grade by Standard &  
19 Poor's?

20 JUDGE VOSS: And I'm wondering why you  
21 didn't ask Mr. Hadaway these questions.

22 MR. MITTEN: Your Honor, Ms. Brockway in  
23 her testimony takes a subgroup of Dr. Hadaway's proxy  
24 group and calculates an average DCF return. I'm simply  
25 asking her questions about the companies in her subgroup.

1                   MR. COFFMAN: Your Honor, the problem is  
2 he's referring to a document that is not in evidence.  
3 We're not really even sure if the particular list he's  
4 referring to exactly ties to Mr. Hadaway's or  
5 Ms. Brockway's schedules.

6                   JUDGE VOSS: Would you like to try to  
7 re-authenticate the document? If you need additional  
8 time, we can come back.

9                   THE WITNESS: I can tell you already that  
10 one of them is -- if the highlighted ones are supposed to  
11 not have a fuel adjustment clause?

12 BY MR. MITTEN:

13               Q.       Yes.

14               A.       There's one of them that does.

15               Q.       Which one would that be?

16               A.       SCANA Corporation.

17               Q.       All right.

18               A.       Because Dr. Hadaway's list would have, for  
19 example, Southern Company and then all the four  
20 subsidiaries. Whereas, on this list they'd be broken out.  
21 So it's a little bit hard to go back and forth between  
22 them.

23               JUDGE VOSS: Would you be able to  
24 authenticate this document if you had additional time to  
25 look at it? That might be an answer, to take a break and

1 let her have time to --

2 MR. MITTEN: That's fine.

3 JUDGE VOSS: -- look at this document and  
4 come back later.

5 MR. MITTEN: I just want to make sure that  
6 I'm covering the companies that were included in her  
7 subgroup. If there's a mistake, like the SCANA Company,  
8 then we can certainly take that.

9 JUDGE VOSS: I'd also want her to identify  
10 that she's familiar with this document and it is what it  
11 is represented to be. I'm not sure she's done that.

12 MR. MITTEN: She doesn't have to be  
13 familiar with the document in order for me to use it for  
14 impeachment purposes.

15 THE WITNESS: My main problem with the  
16 document is that it's dated May 2006. Do you have a more  
17 recent version? Because, as I said, not all things are  
18 equal, so whatever the rankings are at this point, they  
19 might have changed.

20 MR. MITTEN: I don't have a more recent  
21 version.

22 MR. COFFMAN: Your Honor, I think the  
23 initial question, though, is the fact that the foundation  
24 for this document, any answer regarding this document is  
25 going to be meaningless without some foundation.

1                   MR. MITTEN: Your Honor, it's a document  
2 from Standard & Poor's, which is a recognized rating  
3 agency. If the question -- if the Commission has  
4 questions as to the reliability, that goes to the weight  
5 but not to the ability -- to my ability to use it to  
6 question this witness.

7                   MR. MILLS: And not to quibble, but it's  
8 not a document from Standard & Poor's until the witness  
9 says it's a document from Standard & Poor's.

10                  JUDGE VOSS: That was my point, too.

11                  MR. COFFMAN: Mr. Mitten's not a witness.  
12 We'd still like to have some testimony that serves the  
13 foundation.

14                  THE WITNESS: There's another one on the  
15 list, Madison Gas & Electric, which is - Dr. Hadaway shows  
16 does have a fuel adjustment clause.

17                  JUDGE VOSS: Would you like to try to  
18 authenticate the document and have the witness state that  
19 it is what it appears to be? I think that is the problem  
20 is that she has not identified it as that document and  
21 authenticated it for the record, if she can.

22                  MR. MITTEN: I would ask that under the  
23 Commission's rules, let me offer this as an exhibit, have  
24 you rule on that offer.

25                  JUDGE VOSS: Okay.

1                   MR. MILLS:  If that was an offer, I'm going  
2 to object.

3                   JUDGE VOSS:  I thought it was a plan to do  
4 something.  I didn't think it was actually the offer.

5                   MR. MILLS:  I thought that's what it was,  
6 but I wasn't sure.  I wanted to make sure I objected.

7                   MR. MITTEN:  Your Honor, I'm not sure  
8 there's any way this witness could authenticate the  
9 document.

10                  MR. WOODSMALL:  That makes it easier.

11                  THE WITNESS:  I'm also not certain about  
12 Wisconsin Power & Light.  It may be that it's on  
13 Dr. Hadaway's list under another name.  I can't be sure.  
14 Nor Louisville Gas & Electric.

15                  JUDGE VOSS:  If this witness cannot  
16 authenticate the document, how can the Commission accept  
17 it into the record as what it purports to be?

18                  MR. MITTEN:  If you refuse to allow it as  
19 an exhibit, I would simply ask it be preserved in the  
20 record pursuant to the Commission's rules.

21                  MR. COFFMAN:  Is that an offer of proof?  
22 There hasn't even been a ruling.

23                  MR. MITTEN:  I'm offering it into evidence.  
24 It's been objected to, and I'm waiting for a ruling from  
25 the Bench.

1 JUDGE VOSS: I would like you to first see  
2 if the witness can authenticate it, if it's something  
3 she's familiar with, has seen, and would state for the  
4 record that it is what it appears to be. If she can't,  
5 then we'll take it as an offer of proof or subject to  
6 check.

7 BY MR. MITTEN:

8 Q. Ms. Brockway, are you familiar with that  
9 document?

10 A. I haven't seen this particular document  
11 before, no.

12 Q. Are you familiar with research from  
13 Standard & Poor's?

14 A. Yes. That's what they do, they do  
15 research.

16 Q. Have you ever relied on research documents  
17 from Standard & Poor's?

18 A. Yes.

19 Q. Do you have any reason to believe that the  
20 document before you is not a document from Standard &  
21 Poor's?

22 A. No. It appears to have been downloaded  
23 from the web, although the header and footer that would  
24 identify the web download are garbled.

25 JUDGE VOSS: That was something I noted as

1 well. Well, to preserve it for the record, let's mark it  
2 as Exhibit -- what are you up to, 39?

3 MR. MITTEN: I don't know.

4 JUDGE VOSS: I believe you're on 39.

5 (EXHIBIT NO. 39 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 JUDGE VOSS: And you can cross on it, but  
8 it will be done as an offer of proof.

9 MR. MITTEN: I understand. We're going to  
10 move on to something else.

11 BY MR. MITTEN:

12 Q. I'd like you to turn to pages 21 and 22 of  
13 Mr. Binz' direct testimony which you have adopted in this  
14 case.

15 A. I'm there.

16 Q. Now, there's a discussion there of a fuel  
17 adjustment clause that is included as part of the Wyoming  
18 tariff of Rocky Mountain Power Company; is that correct?

19 A. Yes.

20 Q. Are you aware that Rocky Mountain Power  
21 Company's Wyoming tariff was a result of a stipulated  
22 settlement of a general rate case that that company filed  
23 in 2005?

24 A. Yes.

25 Q. So you will agree that Wyoming's fuel



1 adjustment clause was not imposed on that company over its  
2 objection?

3 A. That would be a fair inference, yes.

4 Q. Now I want you to focus on what's been  
5 referred to in Mr. Binz' testimony as a sharing mechanism,  
6 in particular on page 24. As I understand AARP's  
7 alternative fuel adjustment proposal, if actual fuel and  
8 purchased power costs are within a band of 7 and a half  
9 percent above or below the amount that's included in base  
10 rates, there would be no charges or credits run through  
11 the fuel adjustment clause; is that correct?

12 A. If this particular example were adopted,  
13 that's correct.

14 Q. And that's referred to as a dead band in  
15 Mr. Binz' testimony?

16 A. Yes.

17 Q. And if actual fuel and purchased power  
18 costs are outside the dead band, either above or below,  
19 then there would either be partial recovery or partial  
20 refund of the difference; is that correct?

21 A. Partial flow through or partial refund,  
22 yes.

23 Q. Under the alternative fuel adjustment  
24 clause that was proposed in Mr. Binz' testimony, would  
25 Aquila's fuel and purchased power costs be subject to some

1 sort of prudence review?

2 A. Yes.

3 Q. So if you could focus on the grid that  
4 appears on page 24 of Mr. Binz' testimony, and I want to  
5 focus especially over on the far right-hand column,  
6 beginning with the line that says, up to 7 and a half  
7 percent above base, where it says company absorbs  
8 100 percent.

9 A. Yes.

10 Q. Within the dead band there would be 7 and a  
11 half percent of prudently incurred fuel and purchased  
12 power costs that the company would pay for itself; is that  
13 correct?

14 A. In any given period, yes.

15 Q. And moving up the chart, where it says,  
16 over 7 and a half percent and up to 20 percent, there  
17 would be within that band 25 percent of the company's  
18 prudently incurred fuel and purchased power costs that the  
19 company would pay for itself?

20 A. Well, it would have to find other  
21 efficiencies, just as it does under ordinary ratemaking.

22 Q. But the ratepayers would not pay for that?

23 A. Not as a line item.

24 Q. And moving up the chart, where it says,  
25 company absorbs 15 percent, the ratepayers wouldn't pay

1 for that either?

2 A. With the same caveats.

3 Q. And those would be prudently incurred fuel  
4 costs, correct?

5 A. Under your hypothetical.

6 Q. And then the last grid where it says,  
7 company absorbs 5 percent, again, ratepayers would not pay  
8 for that?

9 A. Not directly as a line item.

10 Q. And those would also be prudently incurred  
11 fuel and purchased power costs?

12 A. Under your hypothetical, yes.

13 Q. For five years, beginning in October 1998  
14 through October 2003, you served as a member of the  
15 New Hampshire Public Utilities Commission; is that  
16 correct?

17 A. Yes.

18 Q. And during your tenure in New Hampshire,  
19 electric utilities in that state were authorized to use  
20 automatic fuel and purchased power cost recovery  
21 mechanisms; is that correct?

22 A. Those that weren't restructured. It was  
23 somewhat more complicated for those that were  
24 restructured, but for those that were not restructured,  
25 there was a fuel clause in effect.

1           Q.       Now, in response to one of my Data  
2 Requests, you referred me to the New Hampshire Commission  
3 website and told me that I could find some orders that I  
4 had requested on that website. Do you recall that?

5           A.       Vaguely, but yes.

6           Q.       I went to that website and I reviewed all  
7 of the orders that were issued during your tenure on the  
8 New Hampshire Commission that had anything to do with fuel  
9 adjustment. I didn't find a single order where you had  
10 voted against a fuel adjustment mechanism. Would that be  
11 correct?

12          A.       That's correct.

13          Q.       I also didn't find any concurring opinions  
14 that you had filed expressing your reservations about fuel  
15 adjustment clauses.

16          A.       That's correct.

17          Q.       There were a number of prudency reviews  
18 that were conducted while you were on the New Hampshire  
19 Commission; is that correct?

20          A.       There were some. I don't know what you  
21 mean by a number, but yeah.

22          Q.       I looked at those orders as well, and I  
23 didn't see a single one of those orders where you had  
24 voted against the requested change in rates, that you had  
25 voted that the utility had acted imprudently.

1           A.       I don't think that's exactly correct, but  
2 I'm trying to remember how the sequence went. It may have  
3 been that the order that started the -- our effort to  
4 enforce our prudence authority with regard to Connecticut  
5 Valley Electric occurred before I got there, but I  
6 certainly participated strenuously in our efforts to keep  
7 the United States District Court from denying us the  
8 opportunity to enforce our prudence authority.

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

11                  JUDGE VOSS: Yes, you may.

12 BY MR. MITTEN:

13           Q.       Ms. Brockway, I've handed you a copy of an  
14 order of the New Hampshire Commission in a case involving  
15 Connecticut Valley Electric Company. Is that the case you  
16 just referred to?

17           A.       Well, this is an order in an ongoing saga  
18 of an effort to enforce our prudence authority with  
19 respect to this company, yes.

20           Q.       And in that order, if you look beginning  
21 on, I guess it's the first full paragraph on page 1, it  
22 indicates that the New Hampshire Commission had issued an  
23 order in December 1997 finding certain activities of the  
24 company to be imprudent, but that later the Commission had  
25 been enjoined from enforcing that order; is that correct?

1           A.       Yes. I don't know that the injunction is  
2 listed in the first paragraph, but yes, actually that's  
3 correct.

4           Q.       I'm sorry. The injunction is discussed I  
5 think on page 2 of the order.

6           A.       Yeah. Okay.

7                   MR. MITTEN: Your Honor, may I approach the  
8 witness again?

9                   JUDGE VOSS: Yes, you may.

10          BY MR. MITTEN:

11           Q.       Ms. Brockway, I've handed you a copy of a  
12 December 31st, 2002 order of the New Hampshire Commission  
13 that was issued in a prudence review case involving Public  
14 Service Company of New Hampshire; is that correct?

15           A.       A prudence review case? I'm not sure. I'd  
16 have to look at it, but I don't recall it being a prudence  
17 issue.

18           Q.       Well, we'll get to that in a minute, but  
19 could you look at the last page and confirm that --

20           A.       Oh, yeah. Okay. This is the one about  
21 Seabrook? Last page being 44?

22           Q.       Yes. And just confirm to me that you  
23 participated in this order.

24           A.       Yes.

25           Q.       Now, if you'd like to look at the order

1 briefly to refresh your recollection, we can take a moment  
2 to allow you to do that.

3 A. Yeah, if I could. Yes, I recall this case.

4 Q. And in reviewing the order, did you confirm  
5 that it, in fact, was an order in a prudence review  
6 involving Public Service Company of New Hampshire?

7 A. Yes, it was.

8 Q. Now, as reflected in that order, the  
9 parties to that case included the New Hampshire Commission  
10 Staff, the Office of Consumer Advocate, and three  
11 intervenors, a state senator, the Robert McGlaucklin  
12 (phonetic) Trust and the Governor's Office of Energy and  
13 Community Services; is that correct?

14 A. I'd have to check, but sounds right.

15 Q. And on page 5 of the order, it indicates  
16 that at issue in that case were three specific outages.

17 A. Yes.

18 Q. And on pages 3 and 4 of the order, it  
19 indicates that six witnesses filed testimony in that case,  
20 four for the company and two outside experts that were  
21 retained by the Commission Staff; is that correct?

22 A. Sounds right.

23 Q. And the Commission's order in that prudence  
24 review is 44 pages long; is that right?

25 A. Yep.

1           Q.       And there's a pretty comprehensive  
2 discussion in that order of the positions of the parties  
3 and the Commission's conclusions regarding the evidence  
4 that was produced in that proceeding; would you agree?

5           A.       Yep.

6           Q.       And ultimately, based on the evidence in  
7 that case, the Commission found that the utility had acted  
8 prudently with respect to each of those three outages; is  
9 that correct?

10          A.       There may have been one where we said --  
11 one or two where we said we couldn't find imprudence,  
12 which if it's there, it would be an important distinction.

13          Q.       Well, let's look at the specific findings  
14 to make sure that we're clear on this. With regard to the  
15 unplanned outage at the Newington Station, could you  
16 please turn to page 31 of the order?

17          A.       Yeah.

18          Q.       Could you read the last sentence in the  
19 first full paragraph on that page?

20          A.       We agree with the findings of staff experts  
21 that PS&H managed this outage and repairs in a prudent and  
22 reasonable manner and will allow the purchased power costs  
23 associated with this outage.

24          Q.       With regard to the unplanned outage caused  
25 by failure of EDG-1B at Seabrook Station, could you please



1 turn to page 37 of the order?

2 A. Yep.

3 Q. And could you read the first three  
4 sentences in the first full paragraph on that page?

5 A. Based on the record before us, we believe  
6 that the failure of EDG-1B on December 3rd, 2000 was  
7 unpredictable even to the manufacturer of the generator.  
8 No operating instructions exist which require plant  
9 personnel to vent that section of line or to suspect that  
10 air could be trapped in that area. Given the  
11 circumstances which existed at the time and the knowledge  
12 that they possessed, Seabrook operators acted reasonably  
13 and prudently in the manage of this event.

14 Q. That's all I need. And with respect to the  
15 unplanned outage during spring snows, could you turn to  
16 page 38 of the order?

17 A. I just want to point out that on 35 --

18 Q. Could you answer my question first?

19 A. All right.

20 Q. On page 38, could you read the first two  
21 sentences of the first full paragraph beginning on that  
22 page?

23 A. We find that management acted prudently in  
24 operation of the plan and implementation of corrective  
25 action. We find that the sequence of events could not

1 have been foreseen and that the corrective action  
2 initiated by the response team was reasonable and  
3 appropriate.

4 Q. And the passages that I asked you to read  
5 were the findings of the Commission with respect to each  
6 of the outages that was the subject of that proceeding; is  
7 that correct?

8 A. That's right.

9 MR. MITTEN: I have no further questions  
10 for Ms. Brockway. Thank you.

11 JUDGE VOSS: We're up to questions from the  
12 Bench. Commissioner Murray?

13 COMMISSIONER MURRAY: I have none. Thank  
14 you.

15 JUDGE VOSS: Commissioner Appling?

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. Good morning, ma'am.

18 A. Good morning.

19 Q. Good to see you back so soon.

20 A. Nice to be back.

21 Q. Who are you representing here this morning,  
22 AARP; is that correct?

23 A. That's right.

24 Q. What is your recommendation for Aquila  
25 concerning the fuel adjustment clause?

1           A.       The first recommendation is that no fuel  
2   adjustment clause be implemented in this -- for Aquila,  
3   that it hasn't met the test that it requires a fuel  
4   adjustment clause.

5                   If the Commission believes that a fuel  
6   adjustment clause should be implemented, the  
7   recommendation is that a form of sharing mechanism be  
8   implemented so that some of the incentives of current  
9   regulation for efficiency be retained. Between me and  
10  Mr. Binz, we give a couple of examples of how that might  
11  be done. Mr. Binz has a sophisticated form with a dead  
12  band and tapered bands in either direction. You could do  
13  a 50/50 split. I think Mr. Johnstone talks about that.  
14  Mr. Featherstone talks about an IEC.

15                  Those are all ways of retaining some of the  
16  incentive to be efficient that current regulation has  
17  while allowing some immediate flow through for the company  
18  of increased costs.

19                  COMMISSIONER APPLING: Okay. Thank you.

20                  JUDGE VOSS: I know the Chairman has a few  
21  questions for Ms. Brockway, but in furtherance of moving  
22  the hearing along, we'll go ahead with recross based on  
23  questions from the Bench and then go back when the  
24  Chairman can join us. So Public Counsel?

25                  MR. MILLS: No questions. Thank you.

1 JUDGE VOSS: Federal Executive Agencies?

2 CAPTAIN HOLLIFIELD: No questions, your  
3 Honor.

4 JUDGE VOSS: Sedalia Industrial Energy  
5 Users Association?

6 MR. CONRAD: Just one perhaps. Maybe two,  
7 Judge.

8 RECROSS-EXAMINATION BY MR. CONRAD:

9 Q. Good morning, Ms. Brockway.

10 A. Good morning.

11 Q. And likewise, it's good to see you back.

12 A. Nice to see you, too.

13 Q. The Commissioner asked you about your  
14 recommendation, and in responding to that you used the  
15 term incentive. Could you explain to me what you mean  
16 when you say incentive?

17 A. What I mean is if you have a situation in  
18 which the Commission has set in base rates the amount of  
19 fuel that the Commission has determined is what's likely  
20 to be the expense facing the company in the period when  
21 rates are likely to be in effect and then something  
22 happens so that maybe fuel prices start coming up, the  
23 company if it doesn't get 100 percent flow through of  
24 every penny of those increased costs is going to have an  
25 incentive to sharpen its pencils, to see if there's any

1 way using any of the other tools that it has at its  
2 availability to bring the fuel costs down.

3                   That's not to say that it's going to  
4 instantly create new LNG tanks along the coastlines or  
5 solve the Middle East peace process or anything like that.  
6 I'm not talking about that type of impact. I'm talking  
7 about the types of things that Mr. Binz and I have  
8 mentioned that a utility can do to maintain control over  
9 its costs. Some of them are short term. Some of them are  
10 long term.

11                   Like, whether you choose to have a heavily  
12 base load plant situation or you're more heavily weighted  
13 to things which have higher fuel costs, what terms you  
14 have in your contracts. All these things -- hedging  
15 activities. All of these things are things that the  
16 utility can do, operation of its plants, to be more  
17 efficient and to squeeze more juice out of the plants it  
18 has given the cost that it's facing.

19                   And if it has no reason to fear costs going  
20 up, if it just flows them immediately through to  
21 customers, then it doesn't have that same drive to be  
22 efficient, and it can sit back and focus its management  
23 attention on something else. And the customers then would  
24 pay higher costs than they should have paid because the  
25 company simply wasn't driven to be as efficient as

1 possible.

2                   So the incentive there is the incentive to  
3 maintain its earnings notwithstanding that some portion of  
4 its cost picture is going up.

5           Q.       I take it, then, that the incentive that  
6 you're referring to when you responded to the  
7 Commissioner's question is something other than an  
8 incentive from a threat of a subsequent prudence review;  
9 is that correct?

10          A.       Oh, absolutely. That's there in either  
11 case.

12                   MR. CONRAD: Thank you, Judge. That's all.

13                   JUDGE VOSS: Staff?

14                   MR. FREY: No questions, your Honor.

15                   JUDGE VOSS: Actually, we'll do recross  
16 and --

17                   COMMISSIONER APPLING: Let me ask one  
18 question.

19 FURTHER QUESTIONS BY COMMISSIONER APPLING:

20          Q.       Mrs. Brockway, in New Hampshire when you  
21 was on the Commission, you did authorize companies to use  
22 a fuel adjustment clause in some of your cases; isn't that  
23 correct?

24          A.       There was a fuel clause in effect when I  
25 got there, and we were in the middle of restructuring, so

1 we continued to use that form of regulation for  
2 un-restructured utilities. Our main objective at the time  
3 was to get them off of traditional regulation and to  
4 restructure, but where we weren't able to do that, we did  
5 continue with fuel clauses and other tools that were  
6 there.

7 Q. I've heard all the testimony about the --  
8 not about, but from the intervenors here about to not give  
9 a clause and the reason why they should not authorize one  
10 for Aquila. Would you just touch on your experience with  
11 the company or the companies in New Hampshire. Was there  
12 something that was -- that caused a lot of problem or no  
13 problems at all? Did it run as it was ordinarily supposed  
14 to or was there something that you -- you're here  
15 recommending not one for Aquila, so did you have some bad  
16 experiences in New Hampshire with fuel adjustment clauses?

17 A. Well, we did, and I think the case that we  
18 just went through was for me an example of a bad  
19 experience where I pretty well thought there was something  
20 going on there, but in an after-the-fact prudence review,  
21 there was no way to get to the bottom of it and no way to  
22 find imprudence that would stand up in a court of law, and  
23 that was our standard.

24 I think the other thing about fuel clauses  
25 for me was that I had been in jurisdictions that had them

1 then for 20 years or so, and they became very rote, and it  
2 was more an accounting process than anything else. They  
3 were not a good vehicle for trying to encourage a company  
4 to be more efficient. I accepted them as part of the  
5 landscape. It was not, small P political, politically  
6 likely that any changes were going to be made. People  
7 were really focusing on the restructuring.

8 I would say that the fact of having a fuel  
9 clause is one thing that led some people to think, it was  
10 one argument that was made by people for restructuring, an  
11 introduction of competition. It was argued that fuel  
12 clauses made the utilities inefficient and unattentive,  
13 and that the private sector could do a better job.

14 So it was sort of a dull hum in the  
15 background. There wasn't a whole lot of point in spending  
16 a lot of time on it. It didn't accomplish very much.  
17 Really the thing was that I put my energies elsewhere.

18 COMMISSIONER APPLING: Thank you very much.  
19 Sorry, Judge, to butt back in.

20 JUDGE VOSS: No problem. We'll go back and  
21 start down the list in case anyone has any questions based  
22 on the additional Bench questions. Again, Public Counsel?

23 MR. MILLS: Just briefly.

24 RE-CROSS-EXAMINATION BY MR. MILLS:

25 Q. I think in response to a question by



1 Commissioner Appling you mentioned 20 years. Were you  
2 taking into account both your Massachusetts experience and  
3 your New Hampshire experience?

4 A. And my Maine experience.

5 Q. And Maine. And all of those states had  
6 fuel adjustment clauses?

7 A. They were all introduced in the '70s when  
8 the two Arab oil embargoes created extraordinary rate  
9 increases.

10 Q. And how do the electricity rates in those  
11 three states compare to Missouri's electricity rates  
12 currently?

13 A. I think Massachusetts may have surpassed  
14 Hawaii as having the highest electric rates in the  
15 country. We're paying at retail for residential 20 cents  
16 a kilowatt hour now.

17 MR. MILLS: Thank you. That's all I have.

18 JUDGE VOSS: Federal Executive Agencies?

19 CAPTAIN HOLLIFIELD: No questions, your  
20 Honor.

21 JUDGE VOSS: Sedalia Industrial Energy  
22 Users Association?

23 MR. CONRAD: Nothing further, your Honor.

24 JUDGE VOSS: Staff?

25 MR. FREY: No questions. Thank you.

1 JUDGE VOSS: Aquila?

2 MR. MITTEN: No questions, your Honor.

3 JUDGE VOSS: Then we'll do redirect with  
4 the understanding that when the Chairman comes down, if he  
5 does have questions, we'll go through this again.

6 THE WITNESS: Your Honor, could we take a  
7 short break?

8 JUDGE VOSS: Yes, let's take a short break.  
9 Five minutes or ten.

10 (A BREAK WAS TAKEN.)

11 JUDGE VOSS: We will go back on the record,  
12 and since -- I believe Commissioner Appling has one  
13 additional question for Ms. Brockway.

14 FURTHER QUESTIONS BY COMMISSIONER APPLING:

15 Q. I don't seem to be finished with you this  
16 morning.

17 A. My pleasure.

18 Q. Your last question was comparison of  
19 Massachusetts and Missouri on the prices of things.  
20 That's really comparing apples to oranges when you talk  
21 about Missouri versus Massachusetts, right?

22 A. Well, there certainly are some underlying  
23 differences that give you a happier picture. You're  
24 closer to gas supplies for one thing, and you have more  
25 coal in your -- in your mix of plants. But I do think

1     that the form of regulation has some impact on rates, and  
2     I don't think we've gotten it right in New England yet.  
3     We're working on it.

4             Q.       I won't comment on that, but thanks for  
5     your comment.

6                     COMMISSIONER APPLING:   That's all I have.

7                     JUDGE VOSS:   Did you have additional  
8     questions, Commissioner Murray?

9                     COMMISSIONER MURRAY:   Just one.

10    QUESTIONS BY COMMISSIONER MURRAY:

11             Q.       Did you take a look -- and I'm sorry if  
12     it's in your testimony and I missed it, but did you take a  
13     look at the proposal of the industrial intervenor for the  
14     sharing mechanism?

15             A.       Mr. Johnstone?

16             Q.       Yes.

17             A.       Yes, I did.

18             Q.       And how did you think that proposal  
19     compared to a straight FAC that the company is suggesting?

20             A.       I think it's superior in that it does  
21     provide a level of continued risk to the company that  
22     would provide the incentive we were talking about earlier  
23     to be particularly efficient.  It doesn't -- I don't think  
24     it exposes the company to extraordinary risks, but it does  
25     include enough that if you're going to have some kind of

1 adjustment mechanism, something like that is a good middle  
2 ground.

3 Q. And did you also look at Staff's IEC  
4 proposal?

5 A. Yes.

6 Q. What's your opinion of that?

7 A. That actually functions somewhat similarly,  
8 and so again, I would think that that is a reasonable  
9 middle ground if you're going to have -- middle ground  
10 between 100 percent flow through of every penny and zero  
11 flow through between rate cases. We're talking about  
12 between rate cases, and, of course, if the company is  
13 stuck, they can always come back for a rate case if things  
14 dramatically change.

15 But absent that, some mechanism like the  
16 IEC does provide continued incentives while giving the  
17 company an ability to protect itself from some short-term  
18 fluctuations.

19 Q. So is your bottom line that the company  
20 should not be able to eliminate all risks of recovery of  
21 the fuel expenses?

22 A. Yes, I would think that would not be good  
23 policy if it could be avoided.

24 COMMISSIONER MURRAY: Okay. Thank you.

25 JUDGE VOSS: Chairman Davis?

1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. Good morning, Ms. Brockway.

3 A. Good morning, Chairman.

4 Q. Okay. In your surrebuttal testimony, I  
5 believe you took issue with maybe it was Mr. Williams'  
6 analogy with gasoline or petroleum. Do you recall that?

7 A. The gas station owner, yeah.

8 Q. So let me get this straight. If AARP's  
9 position in this case is that we don't need a fuel  
10 adjustment, we don't need anything, we don't need an IEC,  
11 you know, just set one rate and go on?

12 A. That's right.

13 Q. Okay. Should we go to the State  
14 Legislature and say, let's pass a law that says you can't  
15 sell gasoline in this state for more than \$2.50 a gallon?

16 A. Well, not as an extension of my arguments  
17 against having a fuel clause in this case.

18 Q. Why not?

19 A. The gas station owner is subject to  
20 competition.

21 Q. Well, but it would be a level playing field  
22 for everyone. They'd all have to play by the same  
23 statute.

24 A. Well, those who could be more efficient and  
25 sell it for less than \$2, they would make money, but those

1     who were -- who couldn't sell it for \$2 would be driven  
2     out of business, and that amount is going to fluctuate.

3             Q.       Could you conceive of a scenario where no  
4     one would be able to sell it at that price?

5             A.       Yes.

6             Q.       Okay. Ms. Brockway, in your experience,  
7     how long do you think it would take a company to put  
8     together the information to just come in and file for a  
9     rate case? Do you have any idea?

10            A.       If the company has the luxury, I've seen  
11    companies take six or seven months to put together a rate  
12    case. If a company is facing an emergency, they can put  
13    one together very quickly, a month, two, three weeks.

14            Q.       Okay. So a month or two or three weeks.  
15    Okay. And then in Missouri, are you familiar with how  
16    long it takes to process a rate case under normal  
17    standards?

18            A.       No. No, I'm not.

19            Q.       So if we have a statute that says it's  
20    11 months, then you'd have no reason to doubt that?

21            A.       Right. That would be the outside limit on  
22    the Commission's time.

23            Q.       Okay. So in lieu -- if it takes 11 months  
24    to process a rate case and at least another two or three  
25    weeks if not a month on top of that for the company to get

1 ready to file a rate case, and we're not going to give a  
2 company like Aquila a fuel adjustment, do you think we  
3 should just require them to hedge out 100 percent of their  
4 fuel costs a year in advance?

5 A. I don't see a necessary relationship  
6 between those two, but let me think this through. First I  
7 want to talk about the premise, and that is how much time  
8 it would take the Commission to issue an order that would  
9 prevent a financial hardship to the company.

10 Q. Well, you could assume that the premise is,  
11 with the same group of people here, it would take an  
12 entire 11 months.

13 A. Well, I don't agree with that, because  
14 we've certainly in commissions that I've been staff on and  
15 I think even at the --

16 Q. Well, I don't care what you agree with,  
17 Ms. Brockway. What I care about is, for purposes of this  
18 scenario, it's 11 months. If nothing else, you can refer  
19 back to the Empire rate case as prima facie evidence that  
20 it will take 11 months even if a company is suffering  
21 under hardship. So we can move past that and you can  
22 continue.

23 A. Well, in my mind, I was thinking of the  
24 following scenario: That coal prices and natural gas  
25 prices tripled within a couple of months. I really don't

1 think it would take 11 months for the Commission to be  
2 able to respond to that, and critics of the Commission who  
3 didn't allow it to respond to that would have, I think, a  
4 hard time trying to drag things out. But I'll take your  
5 hypothetical. Now you're talking about hedging?

6 Q. Uh-huh.

7 A. I think hedging is a prudent course of  
8 action for a utility in a circumstance where there is  
9 considerable volatility up and down in fuel prices and the  
10 utility wants to protect itself and ultimately its  
11 consumers against the risk of prices spiking up and does  
12 so by paying an insurance premium, if you will, so that it  
13 doesn't -- it won't get all the benefit of prices dropping  
14 down. It will have to pay the premium regardless of how  
15 things turn out.

16 And so whether or not it's necessary or  
17 prudent in any given case depends upon your anticipation  
18 of how volatile prices in the particular fuel will be.

19 Q. Well, let's look at Aquila. Do you  
20 think -- do you think they have a lot of risk, a lot of  
21 volatility, due to their dependence on natural gas?

22 A. I think within the natural -- to the extent  
23 that they use natural gas, there is volatility in that  
24 market, yes. So hedging to some extent is probably a good  
25 idea. I have not and couldn't intuit how much hedging



1 would be the prudent thing to do. I'm not trying to opine  
2 on that.

3 Q. So you have no idea how much hedging would  
4 be prudent?

5 A. No, other than that some probably would be.

6 Q. Okay. Now, do you see -- I mean, obviously  
7 you've already given testimony that, what was it, coal  
8 prices have tripled, and what did natural gas do? Didn't  
9 you just say that a few minutes ago?

10 A. No. I was -- no, not at all. I was doing  
11 a hypothetical.

12 Q. So coal prices haven't tripled?

13 A. Well, over a certain period of time I think  
14 they have, but that's not what I was testifying to.

15 Q. Okay.

16 A. They've also come back down. I wasn't  
17 trying to -- I was doing a pure hypothetical of a  
18 situation in which there would be such an emergency that  
19 nobody could keep the Commission from helping the company  
20 prevent economic disaster.

21 Q. What is your definition of economic  
22 disaster?

23 A. Well, certainly --

24 Q. Bankruptcy?

25 A. Well, that certainly would be, but I don't

1 think you'd have to go that far.

2 Q. Okay. Well, how far do you think you'd  
3 have to go?

4 A. To get an emergency rate increase?

5 Q. Uh-huh.

6 A. I'm talking now in my hypothetical, which  
7 again, your Honor, may not be yours.

8 Q. Okay. Tell me your hypothetical again.

9 A. I'm talking about -- and we're talking  
10 about fuel costs here.

11 Q. Uh-huh.

12 A. For whatever reason, coal prices from today  
13 or from whatever they are that the Commission finds is  
14 going to be what they're going to be over the period that  
15 rates are set, coal prices triple, natural gas prices  
16 triple, and this happens within a month. Some huge crisis  
17 happens. I'm not saying that's the only circumstance and  
18 where -- how far down I would back to the kind of ebbs and  
19 flows of prices. I haven't got an opinion.

20 But if some catastrophe like that happened  
21 all of a sudden, and if the company's earnings plunged,  
22 I've certainly participated with -- I know in my -- I've  
23 either supported as a staff member or voted for it -- I  
24 get them mixed up, I can't remember which -- emergency  
25 rate increases. So I can imagine emergency rate

1 increases.

2 I don't know whether Missouri has a  
3 temporary rate increase or emergency rate increase  
4 provision. But again, I see it that you have up to 11  
5 months, but the parties are entitled to due process.  
6 They're not entitled to drag things out so the company is  
7 plunged into financial distress.

8 Q. And so you don't necessarily view the  
9 environment here as any more or less litigious than  
10 anywhere else?

11 A. No.

12 Q. Okay. Now, you were, what was it, 20 years  
13 regulatory experience in New Hampshire, Massachusetts.  
14 Were you in Maine as well?

15 A. Yes.

16 Q. Okay. And you were a commissioner in  
17 New Hampshire; is that right?

18 A. That's right.

19 Q. How many people live in New Hampshire?

20 A. About a million.

21 Q. About a million. And how many customers  
22 did the largest electric utility have when you were there?

23 A. 4 or 500,000. Maybe as many as 700,000. I  
24 can't remember.

25 Q. And did they have -- they have fuel

1 adjustment?

2 A. Until they were restructured. Actually,  
3 they're only semi-restructured. So they have some kind of  
4 reconciliation, but I've lost track of exactly what it is.

5 Q. Okay. Did Massachusetts have fuel  
6 adjustment?

7 A. Yes.

8 Q. Did Maine have fuel adjustment?

9 A. Yep.

10 Q. Okay. Going back to Mr. Binz' testimony,  
11 which you have adopted, it says one of -- on page 7,  
12 there's some bullet points. One of them was, well, if the  
13 Commission adopts an incentive-based cost adjustment  
14 mechanism of any kind, it should consider directing the  
15 parties to negotiate the details of implementation of the  
16 mechanism in lines with -- in line with the principles the  
17 Commission would include in its order. I believe that's  
18 lines 22 to 25 on page 7 of Mr. Binz' direct testimony.

19 And, Ms. Brockway, can you give me any hope  
20 at all that these parties in this room could ever come to  
21 an agreement on this issue if we were to direct it?

22 A. Yes, actually. If you set the parameters,  
23 if you set the key parameters, there will or there --  
24 there will or there will not be. If you say there will  
25 not be, of course there's no need to negotiate. If you

1 say there will be, then you could say there will or there  
2 will not be some kind of a sharing. If you say there will  
3 not be, that is off the table. If you say there will be,  
4 you can set the parameters of that to some extent or  
5 completely, and that would resolve the most -- the issues  
6 about which there's been the most contention, or you could  
7 set some parameters around those issues.

8                   There are a number of other details to be  
9 dealt with, but I think once the Commission sets those  
10 major parameters, the parties could fairly quickly come to  
11 some agreement within it. I think what I know about the  
12 status of the debate here in Missouri comes from reading  
13 the testimonies and talking to counsel.

14                   So it may be that there's something else  
15 going on here that I haven't picked up on, which is --  
16 which is going to make people unreasonable, but so far  
17 what I've seen is a very reasonable and principled debate  
18 over the underlying merits of the fuel clause and the  
19 types of fuel clause to have, and once the Commission  
20 decides those parameters, that people will come together  
21 around the details.

22           Q.       Is it your position that a fuel clause is  
23 never appropriate?

24           A.       No.

25           Q.       Okay. Seldom appropriate?

1           A.       Seldom.

2           Q.       Okay. And what scenario could you conceive  
3 that it would be appropriate?

4           A.       Well, I think going back to the '70s,  
5 before people had a long review about what was happening  
6 in oil markets and where people were dependent on oil, I  
7 remember gasoline prices tripling practically overnight  
8 and doing that twice within a decade. And there were  
9 people at the time saying that oil prices are shortly  
10 going to go up to \$100 a barrel, and there weren't very  
11 many people who were taking a contrary view.

12                    So if you thought there would be no easing  
13 back of prices and continual spikes going up, you could  
14 understand why it might be appropriate to have a fuel  
15 clause at least partially. I think you still would want a  
16 sharing mechanism because even if the input prices are  
17 going up, you have other aspects of the business that  
18 affect your total fuel cost that you can control, but you  
19 might want some protection against those spikes in the  
20 underlying fuel cost.

21                    I think Mr. Binz and I lay out three  
22 criteria and discuss their application here, starting on  
23 page 11. They represent a significant portion of a  
24 utility's costs, they fluctuate significantly, and they  
25 are outside the utility's control. And I -- the third one

1 is the big problem that we've been debating here. I think  
2 it's only when you get into extreme spikes that, at least  
3 in the short run, there's nothing the utility can do to --  
4 no matter how efficient it gets, to protect itself.

5 But absent that, there are ebbs and flows.  
6 Even in a gradually increasing fuel cost scenario, there  
7 are ebbs and flows, prices go down again, and ordinary  
8 ratemaking can handle those. It's when you get these  
9 extraordinary increases that it might make sense to give a  
10 utility some protection.

11 Q. Mr. Binz in his direct testimony referenced  
12 the concept of dead banding.

13 A. Yes.

14 Q. It's also a component of the Staff's  
15 interim energy charge. What do you think of that concept?

16 A. I think that's an excellent concept because  
17 it provides for -- it retains a portion of the traditional  
18 incentives of regulatory lag, which both gives the company  
19 an incentive to be most efficient and also,  
20 correspondingly, when prices go down, it gives them not  
21 necessarily a windfall but some extra reward, and then  
22 outside of the dead band whatever the protections are for  
23 extraordinary events can be fashioned.

24 Q. Is it fair to say that customers really  
25 don't like price spikes? Let's talk about residential

1 customers. Is it fair to say that residential customers  
2 really don't like price spikes and are ill equipped to  
3 deal with them --

4 A. Yes.

5 Q. -- in general?

6 A. Yes.

7 Q. Okay. Have you looked at Mr. Johnstone's  
8 soft cap language?

9 A. I did at one point. I have it here if we  
10 want to get into some detail.

11 Q. Well, do you have an opinion in general as  
12 to Mr. Johnstone's, quote, soft cap language?

13 A. Taking that separate from the question of  
14 any sharing, I'd actually rather see more discretion given  
15 to the Commission with respect to the timing of further  
16 deferrals. It's so dependent upon the circumstances, and  
17 you could have a situation in which you defer a cost  
18 because it goes over the soft cap, but then your prices  
19 are still going up and you've doubled it up on customers  
20 in the next year or the next period.

21 So I would rather see a situation in which  
22 the Commission had the discretion either to flow it all  
23 through at the time, because even though that's nasty  
24 poison, it's better than pancaking it on rates later or  
25 not, deferring it because there is an opportunity to see



1 an opportunity with prices easing off in the future to  
2 spread things out over a period of time.

3 Q. Okay. What if we were to set up a system  
4 where, for instance, let's say the company was earning, I  
5 don't know, less than -- hypothetically speaking, let's  
6 say their allowed rate of return is 8 percent, and let's  
7 say they were to dip below, say, 4 percent. Do you think  
8 it would be appropriate under a scenario like that to  
9 allow them to recover 100 percent of their fuel costs  
10 under that scenario?

11 A. I think the answer is yes, but we're  
12 assuming prudence and all other things --

13 Q. Right.

14 A. -- being equal except for -- that sounds to  
15 me like a situation in which my scenario is starting to  
16 emerge with tremendous spikes in cost over which they have  
17 no control.

18 Q. Right. All things -- all things being  
19 equal, they're not -- there's no allegation of  
20 mismanagement or malfeasance or anything like that. Okay.

21 CHAIRMAN DAVIS: Judge, I don't have any  
22 further questions at this time. Thank you.

23 QUESTIONS BY JUDGE VOSS:

24 Q. I had a couple Commissioner Murray's  
25 questions brought up for me. In your experience with the

1 fuel adjustment clause when they were in effect, what type  
2 of fuel expenses were included in those? Was it just the  
3 fuel cost itself and expenses to get the fuel source to  
4 the plant? It was a long time ago. If you don't  
5 remember, just --

6 A. What I'm hesitating about is that I'm not  
7 sure that transportation always was included. I think it  
8 probably was, but I don't really remember. It would  
9 probably be easier if you asked me some things that you  
10 thought might not be included, and I could tell you  
11 whether I remembered if they were.

12 Q. Well, there was some discussion earlier on  
13 this issue when you weren't present about things inside  
14 the plant that are currently put into fuel costs when  
15 you're setting the base rate for it, such as trucks to  
16 load things within the plant and belts within the plant.

17 And I assume -- I'm just asking, were  
18 things like that included in something that would flow  
19 through in your experience with fuel adjustment clauses?  
20 And again --

21 A. Well, I can tell you the trucks wouldn't  
22 be. That's a capital item. The belts may be. Basically,  
23 the traditional fuel clause would include items that  
24 varied depending upon level of sales. Fuel and things  
25 that depended upon the amount of fuel that you burned,

1    which in turn a shorthand for that would be things that  
2    varied depending upon level of sales, and trucks don't --  
3    over the long term, yes, but in the short term, no.  
4    Belts, maybe, if you had to run the plant harder, less  
5    hard.

6           Q.       But those are things that would be in the  
7    base rates but not things that would flow through a fuel  
8    adjustment clause?

9           A.       That's right.

10          Q.       That's what I was trying to find out, that  
11   those type of things would be included as something that  
12   would flow through.  If belts broke, would they be able to  
13   add that in and pass that on, or would they have to wait  
14   until a rate case?

15          A.       What I'm saying is that traditionally it's  
16   fuel and variable O&M, and the O&M varies based on the  
17   amount of fuel that you burn.  So if the O&M doesn't vary  
18   depending upon how much fuel you burn, then it should be  
19   included in base rates.  If it varies directly with how  
20   much fuel you burn, then there's an argument that it could  
21   go through a fuel clause.

22                   JUDGE VOSS:  Thank you.  Let's see.  Public  
23   Counsel?

24                   MR. MILLS:  Just very briefly.

25   FURTHER RE-CROSS-EXAMINATION BY MR. MILLS:

1           Q.       Ms. Brockway, in response to a question by  
2 Commissioner Appling regarding the difference between  
3 Missouri and Massachusetts, for example, I think one of  
4 the things you pointed out was that Missouri is more  
5 heavily weighted towards base load coal plants. Do you  
6 recall that?

7           A.       Yes.

8           Q.       Were you present when company witness Davis  
9 testified?

10          A.       No. I probably have read his testimony,  
11 though.

12          Q.       Are you aware that he testified that a  
13 utility being more heavily weighted toward base load may  
14 actually be a result of not having a fuel adjustment  
15 clause?

16          A.       That would make sense because you want --  
17 if you have to take 100 percent of the risk that your fuel  
18 prices won't go up, you're going to plan to try to  
19 minimize that risk consistent with an integrated look at  
20 all of your costs.

21          Q.       And conversely, the dependence of  
22 northeastern states on natural gas may be partly at least  
23 a result of decades of operating under a fuel adjustment  
24 clause? Is that not possible?

25          A.       Well, the northeast isn't heavily reliant

1 on natural gas, but we now are in a market in which  
2 natural gas sets the price for everything. So that skews  
3 things a bit. I think it's difficult to say because  
4 natural gas came in around the same time, in large amounts  
5 around the same time as restructuring. But certainly  
6 earlier the fact that we had a couple of oil plants  
7 probably was influenced by the set of risks and rewards  
8 that were facing companies.

9 MR. MILLS: Thank you. That's all the  
10 questions I have.

11 JUDGE VOSS: Federal Executive Agencies?

12 CAPTAIN HOLLIFIELD: No questions, your  
13 Honor.

14 JUDGE VOSS: Sedalia Industrial Energy  
15 Users Association?

16 MR. CONRAD: Jest a couple, Judge.

17 FURTHER RE-CROSS-EXAMINATION BY MR. CONRAD:

18 Q. Ms. Brockway, I believe Chairman Davis was  
19 asking you about customer impacts in the context of that  
20 soft cap in Mr. Johnstone's proposal, and he used the  
21 example of residential customers. In your experience as a  
22 staff member and commissioner, do you have a feeling that  
23 the industrial customers are immune from such impacts?

24 A. Oh, no. I would say, if anything, they're  
25 probably more vociferous in their concern about it because

1 of the difficulty in planning their -- I've never seen a  
2 situation in which an industrial group did not do whatever  
3 it could to stabilize the path of rates that it was going  
4 to be facing.

5 Q. And Chairman Davis also asked you a couple  
6 of questions about the degrees of litigiousness. If you  
7 had to put a scale of one to ten, with one being the least  
8 litigious situation that you've seen and ten being the  
9 most, where would you put Missouri?

10 A. Well, based just on what I've seen?

11 Q. Certainly.

12 A. Because I've been -- I've been referenced  
13 to other cases that I was --

14 Q. You're an old hand at this. You've been in  
15 two cases already.

16 A. Well, these two cases strike me as, at  
17 least within the hearing room, not very litigious at all.  
18 I did have a little go-around with Mr. Lowery, but that  
19 was all part of the game.

20 Q. Now, Chairman Davis also asked you about  
21 parties being encouraged to go out and settle an issue.  
22 Do you recall that series of questions?

23 A. Yes.

24 Q. In your experience as a commissioner, as a  
25 staff member, have you ever seen that done?

1           A.     Oh, yes, all the time.

2           Q.     How does that usually occur in your  
3 experience?

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

5           Q.     Well, how would that -- how would that come  
6 to pass? How would a commission or a commissioner that  
7 wanted to encourage the parties to settle go about doing  
8 that, in your experience?

9           A.     Well, there are a number of models.  
10 Mr. Binz' proposal is that in the final order in this  
11 docket the Commission says -- if it wants to have a fuel  
12 clause, it says, we're going to have a fuel clause, and it  
13 need say nothing more than that and send people off to  
14 negotiate or, as Mr. Binz recommends, it sets more of the  
15 parameters and gives people a deadline, come back with an  
16 agreed-upon tariff. Of course you have to have a default,  
17 so if there's no tariff agreed upon, the company gets to  
18 come back with its filing and you may order other parties  
19 to make their own filings.

20                     Within -- before the final order in this  
21 docket, the Commission -- I don't know where we are in the  
22 schedule. If there is time, the Commission could say,  
23 look, we want -- from the Bench the Commission could say,  
24 we've heard all this testimony. We think that there is a  
25 possibility for settlement, just the way a judge would do

1 it in a civil litigation. Just go say, we want you to go  
2 off and come up with something and bring it back if you  
3 can. If you can't, we'll decide it.

4 Because you already have the issue teed up  
5 in this case, those are the two methods that come to mind.

6 Q. Now, I believe he also asked you about  
7 that -- again that settlement process. You have read, I  
8 take it, in the preparation for your work here the  
9 Commission's comparatively new rule on fuel adjustments,  
10 have you not, ma'am?

11 A. I did. I can't say it chapter and verse.

12 Q. Certainly. Would you not agree with me  
13 that the Commission here might very well say, well, look,  
14 Ms. Brockway, we've already laid that out, we've already  
15 laid out the parameters. How would you respond to that  
16 comment?

17 A. Well, if the Commission wanted to say to  
18 the parties, go ye and negotiate something within the  
19 parameters of the rule, we're going to have one. That's  
20 the first decision, we're going to have one or we're not  
21 going to have one in this docket. So if they say, yes,  
22 you're going to have one and go ye and negotiate, that  
23 would be a fairly open-ended instruction to the parties,  
24 because within the rule as I understand it, there is a  
25 deal of discretion for the Commission with respect to



1 particular items, and the Commission would not have, as I  
2 understand your question, given specific instructions as  
3 to those areas of discretion.

4 Q. Now, looking at the next level at that  
5 process, assume with me for just a moment that the  
6 Commission or apparently the Commission gives an  
7 indication that it would like parties to go forward and  
8 negotiate a package that it's confronted with a difficult  
9 question, and after some comparatively short gestation  
10 period the parties give birth to such a package and  
11 present that to the Commission that appears on its face to  
12 deal with a multiple-year arrangement.

13 Further assume with me that midway in that  
14 arrangement the Commission intercepts that process and  
15 whether -- for whatever reason it sees fit chooses not to  
16 enforce the agreement that it had previously approved and  
17 that it had encouraged the parties to negotiate.

18 In your opinion, would that kind of  
19 activity serve to encourage or discourage further  
20 negotiation by parties in such circumstances?

21 A. Discourage.

22 MR. CONRAD: Thank you, ma'am. That's all.

23 JUDGE VOSS: Staff?

24 MR. FREY: No questions.

25 JUDGE VOSS: Aquila?

1 MR. MITTEN: No questions.

2 JUDGE VOSS: Redirect based on questions  
3 from the Bench? Actually, this is -- no. We haven't had  
4 any redirect. We started and stopped. So redirect  
5 generally.

6 REDIRECT EXAMINATION BY MR. COFFMAN:

7 Q. I think I might work backwards based on the  
8 questions. Judge Voss asked you a question regarding in  
9 your experience what costs have been included and not  
10 included in fuel mechanisms in the past, and do you have  
11 experience or a recommendation regarding what items  
12 generally should not be included, such as labor costs  
13 related to fuel, fuel handling?

14 A. Well, again, I would say that the rule is  
15 fuel and variable O&M, that is O&M that varies with the  
16 amount of fuel used. If the labor costs don't vary with  
17 the amount of fuel, then they shouldn't be included. If  
18 they do, there's an argument that they should be included.

19 I would say you don't have to include  
20 everything that could be included. I think it's more  
21 important not to include anything that shouldn't be  
22 included. The company would still have an opportunity to  
23 recover those costs that are not included, but care should  
24 be taken to keep things out of a reconciling mechanism if  
25 they don't vary according to the amount of fuel that's

1     used.

2             Q.       I know that the scope of your testimony in  
3     this case is generally just regarding to fuel mechanism  
4     issues, but have you reviewed the recent Stipulation &  
5     Agreement as to certain issues that were filed in this  
6     case?

7             A.       It's been a while.

8             Q.       Okay. Do you have any knowledge of the  
9     fact that the parties have come together and settled a  
10    variety of issues?

11            A.       Yes.

12            Q.       Including fuel and hedging issues?

13            A.       If you recall that to me, yes, but --  
14    sounds right.

15            Q.       Okay. In preparation to testify in this  
16    case, did you review some history of Aquila, Inc. in past  
17    years, its ups and downs?

18            A.       Well, I understand Mr. Williams testified  
19    about that.

20            Q.       Do you have knowledge about whether Aquila  
21    has only had rate increases in the last 20 years or  
22    whether it's had some rate decreases?

23                    MR. MITTEN: Your Honor, I'm going to  
24    object. Counsel's going to have to tie this to something  
25    that was discussed earlier in order for this to be proper

1     redirect examination.

2                     MR. COFFMAN: I'll be happy to do that.

3                     MR. MITTEN: I don't recall any of these  
4     issues coming up.

5     BY MR. COFFMAN:

6             Q.       You were asked by Mr. Conrad and I believe  
7     by Commissioners about certain hypotheticals and involving  
8     how a fuel mechanism would work in a scenario where fuel  
9     prices were increasing in subsequent years. Do you recall  
10    those questions?

11            A.       Yes.

12            Q.       And you were asked about how the incentives  
13    would work there. Would the incentives work the same way  
14    or would there be some in a -- a rate or a fuel cost  
15    decrease scenario? How would the incentives work in a  
16    fuel adjustment clause with sharing, as we've been  
17    discussing today, if in subsequent years the fuel prices  
18    tend to be decreasing?

19            A.       The company's earnings would increase.

20            Q.       And their earnings would increase even  
21    greater than they would under traditional cost of service  
22    regulation, correct, assuming all other costs remain the  
23    same?

24            A.       Outside the dead band, yes.

25            Q.       And --

1           A.       No. No. I don't think they would. Under  
2 traditional ratemaking, if fuel prices go down below the  
3 amount reflected in rates, everything else equal, all of  
4 that gain goes -- flows through to the company.

5           Q.       And in a rate decrease scenario under an  
6 FAC with sharing, some of that bonus would be retained but  
7 not all of it; is that fair?

8           A.       Outside of the dead band, yes. Within the  
9 dead band, the company retains all of it.

10          Q.       And in your experience, is the incentive in  
11 a rate decrease -- or fuel cost decrease scenario just as  
12 important as the fuel increase incentives?

13          A.       Yes. The whole point is to be symmetrical  
14 with respect to risk and reward.

15          Q.       Are all the so-called FAC sharing proposals  
16 that are being discussed here today symmetrical?

17          A.       Yes.

18          Q.       And with regards to the fuel cost or  
19 expense decrease scenarios, are you aware of any such  
20 experiences that Aquila has had in recent years with cost  
21 decreases?

22          A.       Yes. As I understand it, over the last  
23 decade or two, fuel prices have gone up, fuel prices have  
24 gone down. There have been times when the company has  
25 done well relative to the expectations that were embedded

1 in the rates that were set in the prior period, and other  
2 times when it has not and has come in for relief from that  
3 increase.

4 Q. Let me -- you were asked by Commissioner  
5 Davis about the gas station analogy that was discussed  
6 back and forth in testimony, and is one important  
7 distinction about that analogy the fact that a gas station  
8 like, say, an LDC has simply one product that's being  
9 passed through whereas an electric company has a variety  
10 of fuel sources to choose from?

11 A. Yes. I say that in my testimony. There's  
12 a lot more opportunity for an electric company to adjust  
13 its operations to manage. If you have increased costs in  
14 one fuel and not in another, which sometimes happens, that  
15 would be one obvious area where you could ease back on the  
16 use of one perhaps and ramp up on the use of the other  
17 within some parameters.

18 Q. You were asked several questions regarding  
19 prudence reviews, and I assume that you have some  
20 experience in reviewing both LDC prudence issues and  
21 electric company prudence issues?

22 A. Yes.

23 Q. Could you compare the difficulty and  
24 resources involved in those two types of prudence issues  
25 with regard to fuel?

1           A.       Well, the prudence issues in the gas  
2   company situation have had to do with marketing, and the  
3   ones that I remember have had to do actually with hedging,  
4   and they've usually come up when someone has complained  
5   that prices didn't go up and the hedge was therefore not  
6   necessary and, therefore, the hedge premium shouldn't be  
7   passed through. And my position has always been you pass  
8   it through because it's a -- it's an insurance premium if  
9   it was prudent to have incurred the hedge in the first  
10  place, but you don't judge it on hindsight.

11                   It's much more complicated in the electric  
12  industry because there are hundreds and thousands of  
13  decisions that the electric company has control over which  
14  may or may not have an impact on the length of an outage.  
15  The case that was referred to me earlier shows the  
16  tremendous complexity. That was a nuclear plant that had  
17  to have emergency generation.

18                   But in a coal plant, although it's somewhat  
19  simpler than a nuclear plant, it's still a fairly  
20  complicated machine, and there's a tremendous amount of  
21  attention that has to be paid to a lot of details. It's  
22  not always possible to tell exactly what happened that led  
23  from one event to another.

24           Q.       When you were at the New Hampshire  
25  Commission, do you know how many employees were dedicated

1 to reviewing prudence audits?

2 A. We almost always had to go out in electric  
3 cases and get independent expertise because it required an  
4 engineering expertise that it was hard to get on staff.  
5 We couldn't pay enough to keep the qualified engineers for  
6 any length of time.

7 Q. Did you feel like you were able at the  
8 commission to have sufficient resources to perform the  
9 necessary after-the-fact prudence reviews of fuel?

10 A. No.

11 Q. If you were to make a recommendation --  
12 assuming that the Public Service Commission went with  
13 100 percent pass through as Aquila is requesting, do you  
14 have a recommendation as to the level of resources they  
15 would need to dedicate to prudence reviews of such an FAC?

16 A. Oh, well, first of all, we -- you'd need a  
17 good audit division because you'd need to spend a fair  
18 amount of time auditing the questions that Judge Voss was  
19 talking to me about, about should this cost be in, should  
20 this cost be out. When you get down into your  
21 subaccounts, you just have to pour over those books in a  
22 great deal of detail. And we often had problems where  
23 through inattention or inadvertence, I'll say to be  
24 charitable, things were misbooked and included in fuel  
25 costs that shouldn't have been there, or they weren't



1 included soon enough to be reflected in rates and that was  
2 a problem because then all of a sudden you had to raise  
3 rates maybe during the winter.

4                   So that's one whole thing is just the  
5 accounting is, you have to have -- I can't tell you  
6 full-time equivalents. We had a smaller state, although I  
7 think for this purpose it doesn't matter because it's just  
8 a number of zeros that you're talking about. We had six  
9 or seven in the audit department, and we had seven to ten  
10 in the electric department, and then in the gas and water  
11 division we had so many, and I --

12               Q.       And how many -- and for that number of  
13 employees, how many electric companies were they auditing?

14               A.       We had seven electric companies and two  
15 or -- two gas companies, but that's just the -- that's  
16 just the audit side. That -- we're -- we're not talking  
17 with the engineering side, which is where some of the  
18 really difficult prudence issues come up, the ones that  
19 are very hard to pin down.

20                   And that, as I say, although we had some  
21 excellent engineering staff, they had other duties, too.  
22 We almost always hired out, and it would be 100 to  
23 \$200,000 a case for outside assistance.

24               Q.       You've discussed several frustrations that  
25 you've had with the after-the-fact prudence review. Would

1     you say that the issue of whether a utility should have  
2     built or bought purchased power or whether it should have  
3     built as many natural gas plants as it has is an issue  
4     that can easily be reviewed in a fuel mechanism prudence  
5     review?

6             A.     No. They don't themselves to that,  
7     although the CV -- Connecticut Valley case that I was  
8     referred to at base had that issue in it. It was, you  
9     know, buy -- continue under your wholesale contract with  
10    your parent or affiliate or go out into the market.

11            But other -- that's the only case I can  
12    think of where that type of issue was -- we tried to deal  
13    with it in a fuel clause. Basically you need an  
14    integrated resource plan in order to get at that -- at  
15    that broader comparison of options.

16            Q.     And would it be fair to say that during  
17    that ongoing saga, as you described it, with Connecticut  
18    Valley Electric, that the majority of the commission that  
19    you were on felt that there was some -- there was some  
20    problem with that utility?

21            A.     Oh, absolutely. That -- yes.

22            Q.     And was it -- was it fair to say, based on  
23    your testimony to Mr. Mitten's questions, that the  
24    commission was frustrated in its efforts to address it?

25            A.     Very frustrated.

1           Q.       Even enjoined in court from being able to  
2 do anything about it?

3           A.       Yes. The court left us in a situation  
4 where we couldn't move to competition, but we couldn't  
5 regulate traditionally. So effectively we had an  
6 unregulated monopoly operating.

7           Q.       In your opinion, would that frustrating  
8 situation have developed if that utility had not been  
9 under a fuel adjustment clause regime?

10          A.       I think the answer is yes. No. I think it  
11 could have happened anyway, but I'm trying to think of how  
12 it would have happened.

13          Q.       Would the Commission have been able to  
14 address it more easily in your estimation without a fuel  
15 adjustment clause in place, or is it too complicated to  
16 opine on?

17          A.       It's not too complicated to opine upon. I  
18 just can't take your -- I don't think that that situation  
19 is one that proves the argument that we don't need a fuel  
20 clause.

21          Q.       Well, let me move on to the other case that  
22 Mr. Mitten questioned you on, and that was the Public  
23 Service Company of New Hampshire decision from December  
24 2002. I believe you were attempting to explain one of  
25 your answers about something on page 35. Did you have a

1 full opportunity to explain your answer?

2 A. Well, on page 35, we found nothing in the  
3 record to provide a sufficient causal link between a  
4 violation of the Nuclear Regulatory Commission requirement  
5 that the company admitted it had violated and the engine  
6 failure in the case that would allow us to make a finding  
7 of imprudence.

8 This is again one of those situations where  
9 it sure seemed as if, had they followed the NRC  
10 guidelines, this wouldn't have happened, the later engine  
11 failure. The NRC was saying you've got to have a  
12 corrective maintenance and operational measures in place  
13 from the first failure to the later failure that caused  
14 the extension of the outage.

15 Boy, it sure seemed that way, but when you  
16 get down to something that will withstand an appeal, we  
17 did not have a majority of the Commission that was willing  
18 to take that step.

19 Q. In other words, would it be fair to say you  
20 didn't have a majority that could -- that felt that they  
21 could support the finding of imprudence?

22 A. That's right.

23 Q. And isn't it true that imprudence is a  
24 tougher standard than simply operating efficiently or  
25 inefficiently?

1           A.       That's the central point of my testimony,  
2   yes.

3           Q.       And is that point that prudence reviews are  
4   setting a much higher standard for finding difficulties  
5   than simply the ongoing economic incentive to be  
6   efficiently generally?

7           A.       Definitely. Both in substance and in  
8   process.

9           Q.       And so was your experience with both of  
10   those cases part of the overall experience that has led  
11   you to believe that after-the-fact prudence reviews are a  
12   very weak incentive?

13          A.       This is certainly the most recent one that  
14   I remember, yes. It was a very frustrating case. I do  
15   believe that if there had been no fuel clause operating,  
16   PS&H might have made some different decisions back along  
17   when it came to different decision points and may well  
18   have prevented the extended outage that was caused by the  
19   failure of the engine.

20          Q.       So assuming that the Public Service  
21   Commission, against the objection of the consumer parties  
22   here, decided to go with some form of a fuel adjustment  
23   clause, would the -- and this is based on questions that  
24   you answered with regard to Commissioner Murray -- would  
25   the central recommendation that you're making here be that

1 at least some level of risk be maintained by the company,  
2 that not 100 percent be transferred to consumers?

3 A. Yes.

4 Q. Have you reviewed the fuel adjustment  
5 clause rules recently promulgated by this Commission?

6 A. I have, but again, if you have a particular  
7 rule in mind, you'll have to refresh my memory.

8 Q. Do you recall the --

9 MR. MITTEN: Objection, your Honor. This  
10 is beyond the scope of any questions that have been asked  
11 by the Commissioners or by any of the parties.

12 MR. COFFMAN: This goes to the questions  
13 Mr. Conrad asked about the parameters within the rule and  
14 whether a settlement can be encouraged or ordered by the  
15 Commission.

16 JUDGE VOSS: I don't recall --

17 MR. COFFMAN: Mr. Conrad --

18 JUDGE VOSS: -- mentioning ordered by the  
19 Commission. I know that the Commissioners also asked some  
20 questions -- could you restate your question?

21 MR. COFFMAN: Sure. Certainly.

22 BY MR. COFFMAN:

23 Q. Do you recall the questions you were asked,  
24 Ms. Brockway, about the potential parameters of a  
25 settlement that might be encouraged by the parties?

1           A.       Yes.

2           Q.       Do you recall questions in that regard  
3   about the parameters that have already been set under the  
4   Commission's FAC rules?

5           A.       Yes.

6           Q.       Do you recall that one provision in those  
7   FAC rules would have the Commission determine what portion  
8   of fuel and purchased power costs are in a fuel mechanism  
9   and what portion are not?

10          A.       It's the kind of discretion I was referring  
11   to.

12          Q.       You were asked by Mr. Mitten some questions  
13   regarding your testimony on the Wall Street preference for  
14   fuel adjustment clauses, and I believe that you said  
15   something about analysts giving short-sighted advice  
16   sometimes and how that -- that preference should be taken  
17   in context, taken maybe not as important as other facts in  
18   the case, and I believe you were interrupted, and I just  
19   wanted to make sure you had an opportunity to fully  
20   expound upon your comment there.

21          A.       I don't have a lot more to add. The basic  
22   idea is that if you're looking just at the very short term  
23   and not at long-term trends, not at these issues that  
24   we've been talking about about how do you manage your  
25   portfolio, how do you make decisions between base load and

1 more fuel intensive plants, how do you deal with rate  
2 design and its impacts on the type of behavior and thus  
3 the demands that are put on your system.

4                   If you're not looking in a long-term way --  
5 and I posit that Wall Street is typically not looking in a  
6 long-term way -- you can end up making a series of  
7 decisions that gets you into a lot of trouble. I don't  
8 have the specifics on the top of my head, but at one time  
9 the Maine Commission was being severely criticized and the  
10 chairman of the commission undertook a little study. He  
11 was criticized by Wall Street.

12                   And there were companies that had gotten  
13 very favorable reviews by Wall Street that then made very  
14 imprudent investments and ended up in very serious  
15 financial trouble. So I since then have taken a somewhat  
16 jaundiced view about Wall Street analysts. It's true that  
17 Wall Street analysts have some impact on bond-buying  
18 decisions and on -- the ratings have an impact on  
19 companies because of terms in the bond indentures, and  
20 they have some impact on stock buying, but they don't  
21 dictate those things.

22                   And I rather doubt that Warren Buffet pays  
23 a whole lot of attention to what Wall Street analysts say  
24 about these things.

25                   Q.       I assume that you have reviewed what the



1 more popular Wall Street analysts have been predicting  
2 about the electric industry over the last 20 years?

3 A. I try to keep up.

4 Q. And in your opinion, how well have they  
5 done as prognosticators about this particular industry?

6 A. As I recall, there was almost a unanimous  
7 buy rating on Enron up until very, very late in its  
8 pre-bankruptcy life. Wall Street analysts have displayed  
9 some of the same type of unfortunate pack mentality that  
10 all of us are prone to.

11 MR. COFFMAN: That's all the questions that  
12 I have. Thank you.

13 JUDGE VOSS: I believe, Ms. Brockway, you  
14 are excused. Let's take a break and start back with  
15 Mr. Johnstone's questions from the Bench at five 'til.

16 (A BREAK WAS TAKEN.)

17 JUDGE VOSS: We are back on the record and  
18 we are going to recall I believe Mr. Johnstone to the  
19 stand for redirect. I would remind you, Mr. Johnstone,  
20 that you are still under oath.

21 MR. WOODSMALL: Thank you, your Honor.  
22 Just very few questions.

23 DONALD JOHNSTONE testified as follows:

24 REDIRECT EXAMINATION BY MR. WOODSMALL:

25 Q. In yesterday's questioning by Mr. Mitten,

1 you were asked a number of questions about the sharing  
2 feature of the alternative FAC. Do you recall those  
3 questions?

4 A. Yes.

5 Q. In the sharing feature, is that what you  
6 mean by skinning the game?

7 A. Many parties have referred to that as  
8 skinning the game. I think that if you take a long  
9 perspective on our economic system, a couple hundred years  
10 ago there was a book written called An Inquiry Into the  
11 Wealth of Nations by Adam Smith, and it talked about an  
12 invisible hand.

13 The point is that our economic system has  
14 been set up in a way that responds to the profit motive.  
15 It's produced tremendous growth in this country, and it's  
16 as though we want to take this major piece of the  
17 company's expenses, I think 46 percent is the number, and  
18 pretend that the profit motive no longer works.

19 I think that's just an unreasonable  
20 proposition, and we're far better off if we can find a  
21 regulatory system which will indeed preserve a measure of  
22 the profit motive and the incentives that have been a part  
23 of regulation in the past.

24 Q. Thank you. That answered my next question,  
25 too. Moving on, you were asked questions yesterday about

1 the differences between your testimony in this case and  
2 the testimony you filed in the UE rate proceeding. Do you  
3 recall that?

4 A. Yes, I do.

5 Q. And do you believe that there are  
6 differences between those two pieces of testimony?

7 A. Well, yes, there are differences. There  
8 are not, however, inconsistencies. Basically, that  
9 testimony was a subset of the issues here, and that was a  
10 choice that was made by my client in that case. The  
11 decision was made by Noranda to not pursue revenue  
12 requirement issues, and it was their opinion that some of  
13 these issues that we're talking about here indeed affect  
14 the revenue requirements. For that reason, they were not  
15 addressed in that case by me.

16 Q. If you had been retained in that case to  
17 address revenue requirement issues, is it your belief that  
18 your testimony in UE would have been similar to what it is  
19 here today?

20 MR. MITTEN: Your Honor, I'm going to  
21 object. That calls for speculation.

22 MR. WOODSMALL: I'll withdraw it.

23 BY MR. WOODSMALL:

24 Q. One final question. You were asked  
25 questions yesterday in an exhibit by Mr. Mitten -- I'm

1     sorry, not an exhibit, but an overhead by Mr. Mitten  
2     regarding how changes in fuel price would be flowed  
3     through the alternative FAC. Do you recall that?

4             A.       Yes.

5             Q.       Looking behind you, I have prepared an  
6     overhead, and you can see in line 1 a situation in which  
7     Aquila has fuel and purchased power in base rates of  
8     \$200 million. Do you accept that? Can you understand?

9             A.       Yes. Subject to all the caveats that we  
10    talked about yesterday in carrying those forward to this,  
11    yes.

12            Q.       Okay. Assume, if you will, that in the  
13    first year you have a decrease in fuel and purchased power  
14    costs of \$20 million, and that's shown on line 2. Can you  
15    tell me, fill in the blank on line 3, how much of that  
16    decrease of \$20 million will flow through the FAC?

17            A.       Under the alternative FAC that's attached  
18    to my testimony, and based on those assumptions, which I  
19    think need to be explored some, but based on all other  
20    things being equal, then 10 million would flow through.

21            Q.       And how will the other 10 million that  
22    doesn't flow through the FAC be treated?

23            A.       That would be treated in the same way that  
24    it would have been traditionally treated. It's a part of  
25    the revenues of the company that are used to offset the

1 costs of the company, and when you compare the revenues to  
2 cost, you'll determine the earnings.

3 Q. And is that what you mean by base rate  
4 treatment?

5 A. That is what I mean by that.

6 Q. All other things equal, all other expenses  
7 and costs being equal, how will that \$10 million that  
8 receives base rate treatment affect the company's  
9 financial statements?

10 A. It would improve their return if everything  
11 else stayed equal.

12 MR. WOODSMALL: I have no further  
13 questions. Thank you, sir.

14 JUDGE VOSS: I will excuse Mr. Johnstone.  
15 If you're around and the Commissioners have questions,  
16 I'll note that Commissioner Murray has e-mailed and she's  
17 watching and she does not have any questions for you.

18 Staff, I don't know which witness you would  
19 prefer to call next.

20 MR. FREY: Ms. Mantle, except I don't see  
21 her.

22 JUDGE VOSS: She's right there.

23 MR. MILLS: Let's call Mr. Taylor back.

24 MR. FREY: Didn't we decide that Mr. Taylor  
25 will be called after lunch?

1 JUDGE VOSS: Unless the parties want to  
2 bring him forward sooner.

3 (Witness sworn.)

4 JUDGE VOSS: Please proceed.

5 MR. CONRAD: Judge, not being fully  
6 equipped to handle the technology in the 21st century  
7 courtroom, I just wanted to let you know that we are still  
8 seeing ELMO on the screen. I don't know if that means  
9 that --

10 JUDGE VOSS: You wanted to be on camera,  
11 didn't you?

12 THE WITNESS: Oh, yes.

13 JUDGE VOSS: Please proceed.

14 LENA MANTLE testified as follows:

15 DIRECT EXAMINATION BY MR. FREY:

16 Q. Please state your name, ma'am.

17 A. My name is Lena M. Mantle.

18 Q. And by whom are you employed and in what  
19 capacity?

20 A. Employed by the Missouri Public Service  
21 Commission as manager of the energy department.

22 Q. And did you prepare and cause to be filed  
23 in this proceeding what has been marked as Exhibit  
24 No. 218, surrebuttal testimony of Lena M. Mantle, HC and  
25 NP?

1 A. Yes.

2 Q. And are there any corrections to that  
3 testimony?

4 A. No.

5 Q. If I were to ask you today the same  
6 questions as are contained therein, would your answers be  
7 the same?

8 A. Yes.

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

11 A. Yes.

12 MR. FREY: Your Honor, I would tender --  
13 offer Exhibit 218 into evidence and tender the witness for  
14 cross.

15 JUDGE VOSS: Are there any objections to  
16 the admission of that exhibit?

17 (No response.)

18 JUDGE VOSS: Hearing none, it will be  
19 admitted.

20 (EXHIBIT NO. 218NP AND HC WAS RECEIVED INTO  
21 EVIDENCE.)

22 JUDGE VOSS: And Public Counsel?

23 MR. MILLS: No questions.

24 JUDGE VOSS: AARP? We'll come back.  
25 Federal Executive Agencies?

1 CAPTAIN HOLLIFIELD: No questions, your  
2 Honor.

3 JUDGE VOSS: Sedalia Industrial Energy  
4 Users Association?

5 MR. CONRAD: No questions.

6 JUDGE VOSS: Aquila?

7 MR. MITTEN: No questions.

8 JUDGE VOSS: Just out of curiosity, I know  
9 that she wasn't originally listed on the witness list, but  
10 we thought someone had questions for her. Was that  
11 possibly AARP?

12 MR. FREY: I thought it was Aquila, your  
13 Honor, but apparently not.

14 JUDGE VOSS: In that case, Ms. Mantle,  
15 you're excused. In that case, I guess we are ready for  
16 Public Counsel's witnesses.

17 MR. MILLS: I'll call Russ Trippensee.  
18 And, Judge, correct me if I'm wrong, but I believe his  
19 testimony has already been marked and given to the court  
20 reporter; is that correct?

21 JUDGE VOSS: I believe that is correct.

22 MR. MILLS: He has previously appeared.

23 JUDGE VOSS: It's been marked.

24 Mr. Trippensee, you're still under oath.

25 THE WITNESS: Thank you.



1 RUSS TRIPPENSEE testified as follows:

2 DIRECT EXAMINATION BY MR. MILLS:

3 Q. Mr. Trippensee, do you have any corrections  
4 to your testimony?

5 A. Yes, I do. On my rebuttal testimony,  
6 page 7, the question and answer beginning on line 5 and  
7 continuing through line 17 needs to be deleted.

8 MR. MITTEN: I'm sorry. Could you give me  
9 that again, please?

10 THE WITNESS: Rebuttal testimony, page 7,  
11 beginning on line 5 through line 17, the entire question  
12 and answer needs to be deleted.

13 MR. MITTEN: Thank you.

14 MR. MILLS: And, your Honor, I believe  
15 we've already done the preliminaries about his  
16 qualifications and his testimony, so with that, I will  
17 finally offer his prefiled testimony and tender him for  
18 cross-examination.

19 JUDGE VOSS: Let me double check the  
20 numbers on his. Are there any objections to the admission  
21 of Exhibits 403 or 404?

22 (No response.)

23 JUDGE VOSS: Hearing none, they're  
24 admitted.

25 (EXHIBIT NOS. 403 AND 404 WERE RECEIVED

1 INTO EVIDENCE.)

2 JUDGE VOSS: And first up is AARP.

3 MR. COFFMAN: No questions.

4 JUDGE VOSS: Federal Executive Agencies?

5 CAPTAIN HOLLIFIELD: No questions, your

6 Honor.

7 JUDGE VOSS: Sedalia Industrial Energy

8 Users Association?

9 MR. WOODSMALL: No, thank you, your Honor.

10 JUDGE VOSS: Staff?

11 MR. FREY: No, thanks.

12 JUDGE VOSS: Aquila?

13 MR. MITTEN: No questions.

14 JUDGE VOSS: Well, Mr. Trippensee, I

15 believe that you are excused subject potentially to recall

16 for Commissioner questions.

17 THE WITNESS: Thank you.

18 JUDGE VOSS: Let's see. Is Janet Wheeler

19 in the room?

20 MR. COFFMAN: She just left.

21 MR. CONRAD: Is she on the witness list?

22 JUDGE VOSS: No, she's not. Her presence

23 was requested.

24 MR. MILLS: I will call Ryan Kind. Judge,

25 has his testimony been marked as 405 and 406?

1 JUDGE VOSS: Let me double check. No. He  
2 is 401 and 402.

3 MR. MILLS: Okay.

4 (EXHIBIT NOS. 401 AND 402 WERE MARKED FOR  
5 IDENTIFICATION BY THE REPORTER.)

6 (Witness sworn.)

7 JUDGE VOSS: You may proceed.

8 RYAN KIND testified as follows:

9 DIRECT EXAMINATION BY MR. MILLS:

10 Q. Mr. Kind, by whom are you employed and in  
11 what capacity?

12 A. I'm employed by the Missouri Office of the  
13 Public Counsel as the Chief Energy Economist.

14 Q. And have you caused to be -- have you  
15 prepared and caused to be filed in this case direct  
16 testimony which has been marked as Exhibit 401 and  
17 rebuttal testimony which has been marked as Exhibit 402?

18 A. Yes, I have.

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

21 A. No, I do not.

22 Q. Are the answers -- the questions and  
23 answers thereto set forth in that testimony true and  
24 accurate to the best of your knowledge and belief?

25 A. Yes, they are.

1           Q.       And if you were asked those same questions  
2 here today under oath, would your answers be the same?

3           A.       Yes.

4                   MR. MILLS: With that, your Honor, I will  
5 offer Exhibits 401 and 402 and tender the witness for  
6 cross-examination.

7                   JUDGE VOSS: Are there any objections to  
8 the admission of those exhibits?

9                   (No response.)

10                  JUDGE MILLS: Hearing none, they're  
11 admitted.

12                   (EXHIBIT NOS. 401 AND 402 WERE RECEIVED  
13 INTO EVIDENCE.)

14                  JUDGE VOSS: AARP?

15                  MR. COFFMAN: No questions.

16                  JUDGE VOSS: Federal Executive Agencies?

17                  CAPTAIN HOLLIFIELD: No questions, your  
18 Honor.

19                  JUDGE VOSS: Sedalia Industrial Energy  
20 Users Association?

21                  MR. CONRAD: Just a couple, your Honor.

22 CROSS-EXAMINATION BY MR. CONRAD:

23           Q.       Good morning, Mr. Kind.

24           A.       Good morning.

25           Q.       May I -- I think the questions that I have

1 for you, short and sweet though they may be, will be on  
2 Exhibit 401, which is your fuel adjustment clause  
3 material. And I was looking particularly at the questions  
4 and answers that begin I believe on page 15, line 5,  
5 subdivision Roman IV.

6 A. Yes, I'm with you.

7 Q. Have you had occasion to look at the  
8 testimony of Staff witness Taylor?

9 A. Yes, I have.

10 Q. I note and he has not -- after several  
11 attempts, he has not yet made it to the stand, so let  
12 me -- let me ask you in something of a hypothetical sense,  
13 Mr. Kind. He discusses what I might generically call  
14 performance standards, heat rates and the like.

15 A. Correct.

16 Q. I notice your testimony on page 15 talks  
17 about Aquila's compliance with the FAC rules, but I looked  
18 in vain there for any reference to the heat rate  
19 requirements of the rule. Was that not covered?

20 A. I actually do refer to it in line 15 where  
21 I've noted item number P.

22 Q. That's actually lines 14 and 15, 4 CSR  
23 243.161(P). What was it about the proposal filed by the  
24 utility that you found wanting?

25 A. Well, in addition to the fact that they

1 really didn't spell out the testing procedures in their  
2 testimony, they didn't provide a schedule. My  
3 interpretation of the rule in Section P is that utilities,  
4 when they're required to provide a schedule, that we  
5 should get a schedule that shows unit by unit when those  
6 units will be tested, and I -- when I wrote this  
7 testimony, I searched for that schedule and could not find  
8 one.

9 Q. Now, you had mentioned that you had read  
10 Mr. Taylor's testimony?

11 A. That's correct.

12 Q. Is his solution that he proposes one that  
13 would meet with your approval?

14 MR. MITTEN: Objection, your Honor. That  
15 goes beyond the scope of Mr. Kind's direct testimony. All  
16 he says in his direct testimony is he's been unable to  
17 locate the information. He doesn't take a position on it  
18 one way or the other.

19 MR. CONRAD: Well, I'm asking him if he has  
20 read Mr. Taylor's testimony, which he indicated he has.  
21 Mr. Taylor hasn't yet been on the stand, which would put  
22 us out of sequence. In the agreed-upon sequence of  
23 witnesses, Mr. Taylor would have been there. I would have  
24 asked Mr. Kind if he had been in the room and had heard  
25 Mr. Taylor's testimony, and would have then asked him



1 Mr. Kind to comment on a statement that may or may not be  
2 made later. That's not cross-examination based upon his  
3 direct testimony.

4 MR. CONRAD: And once again, your Honor,  
5 the statutes in this state are very, very clear in the  
6 Administrative Procedure Act, I am not limited in my  
7 cross-examination to direct. I am limited only by what is  
8 relevant.

9 MR. MILLS: And as I understood the  
10 question, it had to do with Mr. Taylor's prefiled  
11 testimony.

12 JUDGE VOSS: That was what I heard as well.

13 MR. MILLS: And I think certainly that is  
14 common practice in Commission proceedings that you ask one  
15 witness about what someone else has testified to. I think  
16 that almost by definition makes it relevant and makes it  
17 something within this witness' experience.

18 JUDGE VOSS: I think the objection is  
19 overruled, but just be careful of the scope of what you  
20 ask.

21 MR. CONRAD: Do you need the question  
22 again, Mr. Kind?

23 THE WITNESS: That would be helpful,  
24 please.

25 MR. CONRAD: Is it possible for the



1 reporter to read it back?

2 THE REPORTER: The last question was, "Is  
3 his solution that he proposes one that would meet with  
4 your approval?"

5 BY MR. CONRAD:

6 Q. Very well. Do you understand the question?

7 A. I do understand the question. Yes, I -- in  
8 reviewing Mr. Taylor's testimony, I felt that he addressed  
9 this issue properly and that the recommendations that he  
10 made in his testimony were an appropriate way to resolve  
11 the issue, the issue of, you know, what should they do in  
12 terms of what type of testing procedures should be  
13 employed and at what intervals the testing should take  
14 place.

15 His testimony did not address, you know,  
16 their failure to comply with filing requirements. It  
17 didn't make up for that, but it did -- essentially was a  
18 Staff witness providing information that the company  
19 should have provided themselves, and I felt like he did so  
20 in an appropriate manner.

21 Q. You don't disagree, though, that that  
22 information is important in the context of an FAC  
23 decision?

24 A. Oh, I think it's vital given the altering  
25 of incentives that occurs when a utility is permitted to

1 operate with a fuel adjustment clause.

2 MR. CONRAD: And that is all I have, your  
3 Honor. Pardon me. Oh, yes.

4 BY MR. CONRAD:

5 Q. Have you had an opportunity to look at  
6 Aquila's FAC proposal? I guess I'm broadening it to your  
7 401, Mr. Kind.

8 A. Yes, I have. I have to say probably  
9 Mr. Trippensee gave that closer scrutiny of the OPC  
10 witnesses than I did.

11 Q. Very well. Have you had occasion to look  
12 at what has been characterized as the alternative FAC  
13 proposal primarily sponsored by Mr. Johnstone?

14 A. I am generally familiar with the concept  
15 that he's proposing of having an FAC pass through  
16 50 percent of the variations from the level of fuel costs  
17 that are reflected in base rates, yes.

18 Q. As the various witnesses have come to the  
19 stand one by one, one or more of the members of the  
20 Commission have asked them, of those two alternatives,  
21 which do you -- which does that witness prefer. Which of  
22 those two would you prefer?

23 A. OPC would much prefer the type of fuel  
24 adjustment clause that's been proposed by Mr. Johnstone in  
25 that it -- it retains a portion of the beneficial

1 incentives that exist today.

2 MR. CONRAD: Thank you, Mr. Kind. Thank  
3 you, your Honor. That's all I have.

4 JUDGE VOSS: Staff?

5 MR. FREY: No questions.

6 JUDGE VOSS: And Aquila?

7 MR. MITTEN: Yes, your Honor.

8 CROSS-EXAMINATION BY MR. MITTEN:

9 Q. Mr. Kind, good morning.

10 A. Good morning.

11 Q. Could you please first turn to page --  
12 pages 6 and 7 of your direct testimony, Exhibit 401?

13 A. Okay. I'm on page 6.

14 Q. Now, on those pages you describe a number  
15 of what you term as relevant factors that must be  
16 considered in making a decision on Aquila's proposed fuel  
17 adjustment clause; is that correct?

18 A. On pages 6 and 7?

19 Q. Yes.

20 A. Yes, I do.

21 Q. And on page 7, one of the factors that you  
22 identify as being relevant is, quote, whether the proposed  
23 FAC is reasonably designed so it does not guarantee that  
24 Aquila will achieve at least some given rate of -- given  
25 return on equity, close quote; is that correct?

1           A.       That's part of one of the bullet points on  
2     page 7, yes.

3           Q.       If the Commission approves Aquila's  
4     proposed fuel adjustment clause, will that guarantee that  
5     the company will earn a particular return on equity?

6           A.       No, I don't believe so.

7           Q.       Now, Senate Bill 179 requires that fuel  
8     adjustments be designed so that they provide the utility a  
9     sufficient opportunity to earn a fair rate of return on  
10    equity; is that correct?

11                  MR. MILLS: I object to the extent that it  
12    calls for a legal conclusion. If he wants to ask  
13    Mr. Kind's lay opinion, that will be fine.

14                  MR. MITTEN: Your Honor, Mr. Kind refers to  
15    Senate Bill 179 in his testimony, and if he can refer to  
16    it and opine on it in his direct, he ought to be able to  
17    do so from the stand.

18                  JUDGE VOSS: I agree, as a lay witness, not  
19    as an attorney. I'm sure Mr. Kind can clarify that you're  
20    giving a position not as attorney but as an expert in this  
21    area.

22                  THE WITNESS: I could certainly respond to  
23    that as a layperson. Which section of SB 179 are you  
24    referring to?

25    BY MR. MITTEN:

1 Q. Section 4, sub 1.

2 A. Okay. And was there a question pending?

3 Q. The question is, do you agree that Senate  
4 Bill 179 requires that fuel adjustment clauses be designed  
5 so that they provide a utility a sufficient opportunity to  
6 earn a fair rate of return on equity?

7 A. Yes. I mean, it actually just says a fair  
8 return, not a fair rate of return, but yes.

9 Q. That's fine. Thank you. Now, at page 8 of  
10 your testimony, you quote from Aquila's 2005 Form 10-K  
11 report; is that correct?

12 A. Which line are you on?

13 Q. Begins on line 20 and continues on down to  
14 line 32.

15 A. Yes, I'm with you.

16 Q. Now, the passage that you quote in your  
17 testimony describes the measures that Aquila took to  
18 mitigate its exposure to price increases for coal and gas  
19 used to generate electricity for its Missouri customers;  
20 is that correct?

21 A. That's what it appears to indicate, yes.

22 Q. Now, Aquila also has electric operations in  
23 Colorado and Kansas; is that also correct?

24 A. I'm really not certain of the current  
25 status of the pending sales of those operations.

1 Q. At the time you wrote your testimony, did  
2 Aquila have electric operations in Colorado and Kansas?

3 A. I know that at the time this SEC 10-K came  
4 out, they did.

5 Q. All right. And because neither Kansas nor  
6 Colorado is mentioned in the passage from the 10-K that  
7 you have quoted in your testimony, you assumed that Aquila  
8 took no mitigation measures in either of those states; is  
9 that correct?

10 A. Right. I've not seen any evidence to  
11 counter that assumption.

12 Q. At the time you wrote your testimony, had  
13 you read the entire 2005 Form 10-K report for Aquila?

14 A. I believe that I read the portions that  
15 were relevant to the FAC issue.

16 Q. But you didn't read the entire document; is  
17 that correct?

18 A. I skimmed it.

19 Q. Did you read it? Does skimming qualify as  
20 reading as far as you're concerned?

21 A. For my purposes, for purposes of the  
22 testimony I wrote here, yes.

23 Q. Now, at page 9 of your testimony, you  
24 state, and I quote, the Commission should take into  
25 account --

1           A.       I'm sorry. I'm not with you. What line  
2 are you on?

3           Q.       Begins on line 6 and continues on to  
4 line 9. The Commission should take into account the  
5 reduced attention that Aquila will likely give to hedging  
6 at its Missouri electric operations when determining  
7 whether approving Aquila's proposed FAC would be  
8 consistent with the public interest. Is that a correct  
9 reading of your testimony?

10          A.       That's what I stated.

11          Q.       Now, do you -- based on the fact that you  
12 skimmed the Form 10-K report, do you believe that that  
13 statement fairly and accurately reflects all of the  
14 information that was in that document?

15          A.       That statement is not based solely on  
16 information in that document.

17          Q.       But my question was, do you believe that  
18 that statement fairly and accurately reflects all the  
19 information that was included in the Form 10-K report?

20          A.       As pertains to this issue, yes, I do.

21                   MR. MITTEN: Your Honor, may I approach the  
22 witness?

23                   JUDGE VOSS: Yes, you may.

24 BY MR. MITTEN:

25          Q.       Mr. Kind, I have handed you a copy of

1     Aquila's 2005 Annual Report to Shareholders, and let me  
2     ask you, when you prepared your direct testimony in this  
3     case, did you have occasion to review that document?

4             A.       Yes.  Not in exactly the same format as  
5     this one, but I think it's the same document.

6             Q.       If I described that annual report to you as  
7     a 10-K wrap, and that's w-r-a-p, would you know what I  
8     meant?

9             A.       Well, I know what a 10-K is.  I'm not sure  
10    what the wrap part of that designation is.

11            Q.       Well, let's look at the annual report for a  
12    moment.  It appears to me that the annual report consists  
13    of a two-page letter to shareholders and then a copy of  
14    the company's 2005 Form 10-K report; is that correct?

15            A.       Yes.  I don't believe the document I  
16    reviewed included the report to shareholders.  That's not  
17    actually part of the 10-K itself.

18            Q.       I understand, but it is part of the annual  
19    report?

20            A.       It's part of the one that you presented to  
21    me.  It's not part of a 10-K annual report.

22            Q.       All right.  Let me make sure I'm clear.  
23    The letter to shareholders is part of the Annual Report to  
24    Shareholders, correct?

25            A.       It's certainly part of this one.



1           Q.       Well, let's focus on the portion of the  
2     annual report that consists of the 2005 Form 10-K report,  
3     and let me ask you first to turn to page 91.

4           A.       If you'll bear with me for just a second.  
5     I think I also have a copy of this document with me. I'd  
6     just like to be able to compare the documents. Okay.  
7     Thank you.

8           Q.       On the copy of the Annual Report to  
9     Shareholders that I handed you, I have highlighted some  
10    language on page 91. Could you please read that  
11    highlighted language into the record.

12          A.       Okay. All of our gas utilities have PGA  
13    provisions that allow them to pass the prudently incurred  
14    cost of the commodity to the customer. To the extent that  
15    gas prices are higher or lower than amounts in our current  
16    billing rates, adjustments are made on a periodic basis to  
17    true up billed amounts to actual costs incurred. These  
18    adjustments are subject to periodic prudence reviews by  
19    state utility commissions.

20                 In addition, as allowed by state regulatory  
21    commissions, we have entered into certain financial  
22    instruments to reduce our customers' underlying exposure  
23    to fluctuations in gas prices. These financial  
24    instruments are considered derivatives under SFAS 133 and  
25    are marked to market and recorded in our PGA accounts as

1 they are collectable under the provisions of the PGA upon  
2 settlement.

3 Q. So according to the passage from the Annual  
4 Report to Share -- excuse me -- the Form 10-K report that  
5 you just read into the record, even though Aquila has PGAs  
6 in place that allow it to recover from its customers its  
7 prudently incurred gas costs, it has entered into  
8 contracts to mitigate the fluctuation in gas prices; is  
9 that correct?

10 A. It appears to indicate that, yes.

11 Q. Now, given that, does that cause you to  
12 reconsider the position that you stated in your testimony  
13 that if a fuel adjustment clause is allowed for Aquila's  
14 electric operations, it is likely to discontinue hedging?

15 A. No, it does not, because in my testimony I  
16 was comparing the hedging activities that occurred at  
17 Aquila's electric operations in other states against the  
18 hedging activities that occur at Aquila's electric  
19 operations in Missouri, and I don't really feel like  
20 the -- adding what's going on with gas LDCs is sort of an  
21 apples to oranges comparison that in my mind wasn't  
22 directly relevant or I would have addressed it in my  
23 testimony.

24 Q. Now, let me ask you to turn to page 2 of  
25 the letter to shareholders that's part of the Annual

1 Report to Shareholders that I've handed you.

2 A. Okay. I've never seen this document before  
3 that you're presenting to me.

4 Q. And I have highlighted a portion of the  
5 language on page 2.

6 A. Okay.

7 Q. Could you please read that into the record.

8 MR. MILLS: Your Honor, I object. The  
9 witness has never seen this before, and to have him just  
10 read willy-nilly from a document that the Commission  
11 doesn't have in front of it, that hasn't been offered and  
12 this witness can't authenticate is -- there's simply no  
13 foundation laid to read this into the record.

14 JUDGE VOSS: Can you authenticate the  
15 document?

16 MR. MITTEN: It's a published copy of the  
17 company's Annual Report to Shareholders. I don't have a  
18 witness to authenticate it. If you're not going to allow  
19 me to use it to impeach the witness, then you'll have to  
20 make a ruling on that basis.

21 JUDGE VOSS: In what manner were you  
22 planning to use it to impeach the witness?

23 MR. MITTEN: Just to see if the statement  
24 that he included in his testimony is consistent with  
25 publicly available information that Aquila has provided.

1                   MR. MILLS: And, your Honor, my objection  
2 doesn't go to the use of impeachment or even of relevance.  
3 It's to foundation. We don't know that this is an Aquila  
4 annual report. This witness has never seen it before.  
5 There's no way to authenticate it.

6                   JUDGE VOSS: I would let it in as a  
7 business record, but without an adequate foundation, I'm  
8 afraid I'm going to have to sustain the objection. Would  
9 you like to make an offer of proof?

10                  MR. MITTEN: I'll make an offer of proof  
11 that this is a business record for Aquila. It is a copy,  
12 a published copy of the company's 2005 Annual Report to  
13 Shareholders. And the passage that I was going to ask  
14 Mr. Kind about appears on page 2 of the letter to  
15 shareholders and states as follows: We took significant  
16 steps in 2005 to mitigate high fuel cost impacts on behalf  
17 of our customers and shareholders by implementing  
18 state-by-state hedging programs. This allowed us to  
19 prudently manage the risks associated with volatility of  
20 natural gas prices.

21                  JUDGE VOSS: And that was 2005?

22                  MR. MITTEN: Annual Report to Shareholders.

23                  JUDGE VOSS: Thank you.

24                  MR. CONRAD: And, your Honor, while this  
25 point is there, I need to -- not that we have objection to

1 counsel's offer of proof, which under the statutes he's  
2 certainly entitled to make, but the purpose of that offer  
3 of proof is simply to preserve that material in the record  
4 for subsequent judicial review.

5 JUDGE VOSS: I'm aware of that.

6 MR. CONRAD: The ALJ or the RLJ has ruled  
7 to its admissibility, and subsequently that could be taken  
8 up with a court if it was ever necessary. So I just  
9 wanted to be sure that my understanding of that is the  
10 same as yours.

11 JUDGE VOSS: I've made offers of proof  
12 myself, so I do understand that.

13 MR. MITTEN: Your Honor, I'm also advised  
14 that a copy of the 2005 Annual Report to Shareholders is  
15 filed with the Commission as a matter of rule. So I would  
16 ask that the Commission take official notice of the copy  
17 that is on file with the Commission.

18 JUDGE VOSS: Do we have an objection to  
19 that? Because I'm inclined to take notice.

20 MR. MILLS: If that is the case and the  
21 Commission does have it as part of its official records,  
22 then the Commission can take official notice of it. But  
23 whether or not it's the same annual report as what counsel  
24 just read from, I don't know, and I suppose you will have  
25 to determine that at some point off the record, and we

1    won't know, because what counsel has provided is not  
2    something that he got from the Commission apparently, so  
3    we don't know if it's the same annual report.

4                   JUDGE VOSS:  My understanding of what just  
5    happened is that if he wanted to reference that document  
6    in a brief, we've taken notice of its existence.  It  
7    doesn't mean that Mr. Kind is required to acknowledge it  
8    when he can't authenticate what it is.  Does that answer  
9    your question?

10                  MR. MILLS:  I think so.  I think that puts  
11    the onus on the company to actually get -- if they want to  
12    use it in the brief, to get a copy from the Commission's  
13    official records to see that it squares with the  
14    Commission's annual report.

15                  MR. CONRAD:  And there's some question at  
16    least in this counsel's mind, Judge, as to whether what is  
17    filed is the annual report or the Form 1, the FERC Form 1.

18                  MR. MILLS:  Yes.  There are annual reports  
19    filed by all utilities with the Commission, but they are  
20    not necessarily the same as the annual reports to  
21    shareholders, which is what Mr. Mitten just read from.

22                  MR. MITTEN:  Your Honor, I believe that the  
23    Annual Report to Shareholders is also filed in addition to  
24    the FERC Form 1.  But I would ask that official notice be  
25    taken pending my being able to verify that over the lunch

1 hour.

2 JUDGE VOSS: If that document is officially  
3 filed with the Commission, the Commission -- I'll take  
4 official notice of it. Is everybody happy? Okay. Then  
5 let's proceed with the cross of Mr. Kind.

6 BY MR. MITTEN:

7 Q. Mr. Kind, in your direct testimony, you  
8 argue that Aquila should be required to show financial  
9 need before it's allowed to implement a fuel adjustment  
10 clause; is that correct?

11 A. I think I argue that that's one of many  
12 factors that should be taken into account. I don't really  
13 argue that any single factor should be considered in  
14 isolation, which seemed to be implied by your question.

15 Q. I wasn't suggesting that it was the only  
16 factor, but it is one of the factors that you argued  
17 should be considered, correct?

18 A. That's correct.

19 Q. Again, directing your attention to the  
20 Form 10-K report for 2005, could you please turn to  
21 page 22 of that document.

22 A. Okay.

23 Q. And near the bottom of the page, I have  
24 highlighted some language. Would you please read that  
25 into the record.

1           A.       Our fuel and purchased power costs for our  
2 Missouri electric utilities are expected to significantly  
3 exceed the costs we were able to pass through to customers  
4 during 2006.

5           Q.       And moving over to page 23 of the 2005  
6 Form 10-K report, I have highlighted some language at the  
7 top of that page. Could you please read that into the  
8 record.

9           A.       Okay. The sentence that you've  
10 highlighted reads, our inability to pass through fuel and  
11 purchased power costs to our electric -- to our Missouri  
12 electric customers may adversely affect your ability to  
13 satisfy the financial covenants in our credit agreements,  
14 which if breached could cross default our other debt  
15 instruments.

16                    You didn't want me to read the sentence  
17 before that?

18           Q.       Just the portion that I highlighted.

19           A.       Okay.

20           Q.       Do either or both of the sentences that you  
21 just read into the record suggest to you that Aquila has  
22 financial need for a fuel adjustment clause?

23           A.       Not in the context that I analyzed  
24 financial need in my testimony, no.

25           Q.       Could you please turn to page 4 in the 2005



1 Form 10-K report, and I have highlighted some language  
2 near the bottom of that page. Would you please read that  
3 into the record.

4 A. Okay. You just want me to read that one  
5 sentence?

6 Q. Just the highlighted part, yes.

7 A. All right. In Missouri, which is our  
8 largest service area, we currently do not have the ability  
9 to adjust the rates we charge for electric service to  
10 offset all or part of any increase or decrease in prices  
11 we pay for fuel we use in generating electricity or for  
12 purchased power, and then in parentheses i.e. a fuel  
13 adjustment mechanism. These costs could substantially  
14 reduce our operating results.

15 Q. Would you next turn to page 70 of the  
16 Form 10-K report for 2005.

17 A. Yes. I see you have highlighted another  
18 passage there. I guess you want me to read that?

19 Q. I do.

20 A. Okay. Let's see. The first bullet at the  
21 top of page 70 reads -- it's actually just a part of a  
22 sentence. Do you want me to read the lead-in to that or  
23 just that portion?

24 Q. Just read the portion that's highlighted,  
25 please.

1           A.       Okay. If the rules implementing the  
2       adopted fuel clause adjustment legislation are delayed, we  
3       may incur significant losses if we are not otherwise  
4       permitted to pass through to ratepayers costs associated  
5       with fuel purchases for our Missouri electric operations.

6           Q.       Mr. Kind, do either or both of the last two  
7       passages that I asked you to read from the Form 10-K  
8       report suggest to you that Aquila has a financial need for  
9       a fuel adjustment clause?

10          A.       Not in the context in which I've analyzed  
11       financial need in my testimony, no.

12          Q.       Just a couple more questions. You state  
13       several places in your testimony that the Commission needs  
14       to consider whether Aquila's use of a fuel adjustment  
15       clause will be consistent with the public interest; is  
16       that correct?

17          A.       I think I do. Is there a particular  
18       passage that you wanted to ask me a question about?

19          Q.       No, not a particular passage. I'm just  
20       asking you if you don't make that statement several places  
21       in your testimony?

22          A.       At least once I know, yes.

23          Q.       Does Public Counsel believe that rates that  
24       prohibit a company from recovering all of its prudently  
25       incurred fuel and purchased power costs are in the public

1 interest?

2 A. I don't think that that's an issue that  
3 we've had reason to address as part of this case.

4 Q. So you don't know the answer to that  
5 question?

6 A. Sounds like a pretty major question. We  
7 usually would -- if an issue like that arises, we  
8 generally talk about it internally. We haven't done that.

9 Q. Does Public Counsel believe that a  
10 ratemaking methodology under which it is highly unlikely  
11 that a utility will recover all of its prudently incurred  
12 fuel and purchased power costs and still have a reasonable  
13 opportunity to earn a fair rate of return is in the public  
14 interest?

15 A. I guess the question's kind of confusing.  
16 Unlikely that they'd have a reasonable opportunity to  
17 recover their prudently incurred costs, but would still  
18 despite that have a reasonable return?

19 MR. CONRAD: I'll make it easy. I'll  
20 object because it's argumentative.

21 MR. MITTEN: It's not an argumentative  
22 question.

23 JUDGE VOSS: Could you restate? I didn't  
24 catch it as argumentative, but --

25 BY MR. MITTEN:

1           Q.       Does Public Counsel believe that a  
2     ratemaking methodology under which it is highly unlikely  
3     that a utility will recover all of its prudently incurred  
4     fuel and purchased power costs and still have a reasonable  
5     opportunity to earn a fair rate of return is in the public  
6     interest?

7           MR. CONRAD:   Same objection.

8           THE WITNESS:   I think my answer would be  
9     the same as the prior question, as it's not something that  
10    we have had any reason to address that issue as part of  
11    this case.

12          MR. MITTEN:   Thank you.

13          JUDGE VOSS:   And I think it was the -- I  
14    think what you're objecting to was that he stated that it  
15    would be --

16          MR. CONRAD:   Highly unlikely.

17          JUDGE VOSS:   Commissioner Appling, did you  
18    have any questions for this witness?

19          COMMISSIONER APPLING:   No questions for  
20    this witness.

21          JUDGE VOSS:   Redirect?

22          MR. MILLS:    Yes, a few.

23    REDIRECT EXAMINATION BY MR. MILLS:

24           Q.       Mr. Kind, Mr. Conrad asked you some  
25    questions particularly about what was wrong with Aquila's

1 filing with respect to 4 CSR 240-3.161(2)(P). Do you  
2 recall that?

3 MR. MITTEN: Your Honor, I'm going to  
4 object. Mr. Conrad's questions were clearly in the nature  
5 of friendly cross, and so I don't think that they are the  
6 proper basis for Mr. Mills to be able to ask questions on  
7 redirect.

8 MR. MILLS: If Mr. Mitten had objected to  
9 those as friendly cross, perhaps the questions would not  
10 have been asked, but since they have been, I think I am  
11 entitled to an opportunity to explore them on redirect.

12 JUDGE VOSS: And that was going to be my  
13 comment. Objection's overruled. Be careful.

14 BY MR. MILLS:

15 Q. Do you recall that question?

16 A. Yes, I do.

17 Q. Did you make an attempt to determine  
18 whether any other similar filing requirements were met or  
19 not met in Aquila's original filing?

20 A. Yes, I did. I cited the deficiencies in  
21 their meeting filing requirements H, L, O, P, Q, R and S.  
22 And I've since made a further assessment based on, you  
23 know, additional review of their rebuttal testimony as to  
24 the status of many of those filing requirements still not  
25 having been met.

1           Q.       Okay. And what did your further review  
2     lead you to conclude?

3                   MR. MITTEN: Your Honor, I object as to  
4     being beyond the scope of proper redirect examination.  
5     Mr. Conrad's questions were limited to one specific  
6     alleged deficiency, not a laundry list.

7                   MR. MILLS: And Mr. Conrad asked about a  
8     filing deficiency, and I think that certainly asking about  
9     additional filing deficiencies is well within the scope of  
10    redirect. I think if I were limited to asking only the  
11    questions that people asked on cross, then there wouldn't  
12    be any point for redirect. It's to explore the areas that  
13    have been opened up on cross-examination and allow the  
14    witness to further explain those areas.

15                  MR. MITTEN: Your Honor, redirect is by  
16    definition prescribed by the scope of the  
17    cross-examination.

18                  MR. MILLS: In general, but it is not  
19    limited to the exact questions that were asked.

20                  JUDGE VOSS: But the topics of the  
21    questions, and I think you are getting close to -- I'm  
22    going to let you go ahead for now because this is  
23    something that I think the Commissioners also may have  
24    some questions about, but you are getting close to going  
25    beyond the scope, in my opinion.

1                   THE WITNESS: Okay. Well, with respect to  
2 O, item O, under that subsection of the filing  
3 requirements they're supposed to specify the resources  
4 that they'll utilize over the four-year period in which  
5 the fuel adjustment clause would be in effect, and in the  
6 case of this utility, they've got a major capacity  
7 shortfall coming up just a year from now. So they're  
8 unable to specify what resources will be utilized over the  
9 four-year period for about 15 percent of their capacity  
10 needs.

11                   With respect to Item P, I've already  
12 discussed that. And then with respect to Item Q, do they  
13 have a long-run IRP process in place, and I would say  
14 that, you know, that's -- an appropriate process, I would  
15 say no. In the case of this utility, for years they've  
16 done analysis to say we should be doing a significant  
17 amount of DSM. They've never followed up and actually  
18 implemented their findings that came out of that process.

19                   And as I mention in my testimony, it's just  
20 been a generally flawed process up to now in terms of what  
21 they've been doing with their IRP analysis. Certainly if  
22 the Commissioners had questions, I could get into some of  
23 those details.

24                   And then the other item is that they're  
25 supposed to come up with a complete examination -- in

1 Item R, they're supposed to have a complete examination of  
2 the forecasted investments that they would make in order  
3 to comply with environmental regulations, and their  
4 analysis of the environmental investments that will be  
5 necessary is incomplete by their own admission.

6 On Schedule BMA-1, page 2 of Block Andrews'  
7 testimony, he refers there in the second sentence to a  
8 partial completion of a draft study to determine the cost  
9 of dollars per ton removed basis for adding controls to  
10 reduce SO-2 emissions on Aquila owned and operated units.  
11 So they're obviously deficient in that area as well with  
12 respect to the requirement that they will have performed a  
13 complete examination of forecasted investments.

14 BY MR. MILLS:

15 Q. And with respect to the -- you listed in  
16 response to this last question and in the previous  
17 question, I believe, you listed a number of letters. Are  
18 those all sub-subparagraphs under 4 CSR 240-3.161(2)?

19 A. Yes, they are.

20 Q. Now, Mr. Conrad also asked you a question  
21 about Mr. Johnstone's proposal. Does Public Counsel  
22 support that proposal?

23 A. No. We don't support Commission approval  
24 of any fuel adjustment clause for Aquila in this case.

25 Q. So explain your answer to Mr. Conrad,



1 please.

2 A. Okay. I felt like Mr. Conrad was asking me  
3 not really whether we had departed from our position of  
4 not supporting a fuel adjustment clause at all, but if we  
5 were to have a fuel adjustment clause, which of the  
6 proposals that have been made by the company and other  
7 parties would we prefer. And so I told him that we would  
8 have a clear preference for Mr. Johnstone's proposal.

9 Q. Thank you. Now, Mr. Mitten asked you some  
10 questions about Aquila's Kansas operations and Colorado  
11 operations. Can you tell us how -- in comparison to the  
12 Missouri electric operations, how big are the Kansas and  
13 Colorado operations?

14 A. Well, they're very small, especially the  
15 Colorado operation. I characterize it as being tiny. In  
16 fact, it's so small that they don't rely on any of their  
17 own generation resources in Colorado, is my understanding,  
18 that they rely purely on purchased power.

19 Q. Now, do you have -- do you still have a  
20 copy of Aquila's 10-K from 2005?

21 A. I have a copy that contains some of -- some  
22 of the pages from that 2005 10-K. I don't believe it's  
23 necessarily all the ones that Mr. Mitten was asking me  
24 about.

25 JUDGE VOSS: That's the 2006 10-K?

1                   MR. MILLS: No. The 2006 10-K has been  
2 admitted into the record. The 2005 10-K Mr. Mitten asked  
3 this witness to read random samplings of sentences and  
4 partial sentences, and I was going to ask Mr. Kind to read  
5 the passage, the entire passages so that he could put  
6 those random samples into context.

7                   JUDGE VOSS: That's fine. I didn't realize  
8 you were talking about --

9                   MR. MILLS: Can I get a copy back from  
10 counsel for Aquila so that Mr. Kind can look at that  
11 document some more and be able to answer redirect  
12 questions on it?

13                  MR. MITTEN: Sure.

14 BY MR. MILLS:

15                  Q. And Mr. Kind, I know at least one of the  
16 sentences that Mr. Mitten had you read, you felt that  
17 perhaps another sentence might have put it into context,  
18 and at least one of the things that Mr. Mitten had you  
19 read was only part of a sentence. Can you quickly glance  
20 through that document and see if there is additional  
21 information that would put into context the passages that  
22 Mr. Mitten had you read?

23                  A. Yes. He asked me to read a sub-bullet at  
24 the top of page 70, which was a sub-bullet of a bullet  
25 that began on the prior page, at the bottom of page 69.

1 The bullet that began on the -- on the bottom of page 69  
2 then is actually a lead-in from a sentence that begins on  
3 the top -- towards the bottom of page 68. And the section  
4 that all of this is contained in is a section that's  
5 entitled forward-looking information, and that's -- that  
6 section begins with sort of a preface paragraph that  
7 states, this report contains forward-looking information.  
8 Forward-looking information involves risks and  
9 uncertainties, and certain important factors can cause  
10 actual refers to differ materially from those anticipated.  
11 The forward-looking statements contained in this report  
12 include.

13 And then, you know, I could actually read  
14 about one and a quarter pages to get up to the little  
15 piece of the forward-looking statements section that he  
16 had me read.

17 Q. But if you were to do that, it would make  
18 lunch for all of us later, so let's skip over that.

19 A. Okay. I might -- it might be helpful to  
20 just read the one bullet that preceded the sub-bullet.

21 Q. Please do.

22 MR. MITTEN: Your Honor, if there's a  
23 concern that I'm quoting out of context, I will be happy  
24 to offer the entire 2005 Form 10-K into evidence. That  
25 way everyone can have all the verbiage and all the

1 context.

2 MR. MILLS: And think that would be  
3 helpful, although it may or may not limit the amount of  
4 redirect on this topic I want to do.

5 JUDGE VOSS: That might mean he wouldn't  
6 have to read it, or will he still read it to do the  
7 redirect?

8 MR. MILLS: I think he's going to have to  
9 look at at least the partial sentence and sub-bullets that  
10 Mr. Mitten pulled out in order to make the transcript on  
11 this topic readable.

12 JUDGE VOSS: Okay.

13 MR. MILLS: And I don't know if that was an  
14 offer or a contingent offer or what we had there from  
15 counsel for Aquila.

16 MR. MITTEN: It was offer. I'm simply  
17 trying to avoid having to have Mr. Kind read a page and a  
18 half of irrelevant information into the record.

19 MR. CONRAD: We would -- I would guess I'd  
20 suggest if counsel's going to make an offer of an exhibit,  
21 then it would be nice to have a copy, and maybe he could  
22 identify which parts of the company's 10-K that are filed  
23 with the SEC are irrelevant.

24 MR. MILLS: And I have another suggestion.  
25 Perhaps we could break for lunch and Mr. Kind could read

1 through this document over the lunch hour and then we will  
2 be able to quickly move to the portions of the 2005 10-K  
3 that will help put into context the passages that Mr. Kind  
4 was asked to read earlier.

5 JUDGE VOSS: I was going to ask how much  
6 more you had for Mr. Kind. Is that agreeable to everyone?  
7 We will take a break. We'll come back at about 2:15.

8 MR. WOODSMALL: 1:15?

9 JUDGE VOSS: I mean 1:15.

10 (A BREAK WAS TAKEN.)

11 JUDGE VOSS: We'll begin with Mr. Lewis.

12 MR. MILLS: Thank you.

13 JUDGE VOSS: Redirect.

14 BY MR. MILLS:

15 Q. Mr. Kind, when we broke for lunch, you were  
16 looking at Aquila's 10-K from 2005 with the idea of  
17 looking at passages in the context of the entire document  
18 to more fully explain and put into context the passages  
19 that Mr. Mitten had you read. Have you had a chance to do  
20 that?

21 A. Yes, I have.

22 Q. Please go ahead and explain where what he  
23 had you read fits into the whole document and read the  
24 relevant passages surrounding what he had you read so that  
25 we have a full record.

1           A.       All right. Thank you. Mr. Mitten had  
2 asked me to read into the record certain limited passages  
3 from -- probably four or five different passages from the  
4 Aquila 2005 10-K, and often I was reading just one  
5 sentence out of a paragraph and maybe one paragraph out of  
6 a longer section, and I think that it would be important  
7 for the Commission to see the context in which those  
8 passages appear in this document and helpful to them in  
9 their determination of some of the issues that Mr. Mitten  
10 was cross-examining me about, such as the fuel adjustment  
11 clause and the earnings position of Aquila.

12                   The first passage I wanted to comment on is  
13 he had asked me to read a passage, which is the first  
14 sentence in the last partial paragraph on page 22 of this  
15 document, and that passage is pertaining to the company's  
16 fuel and purchased power costs and their expectations as  
17 to what they may be in calendar year 2006. Of course,  
18 this report, this 10-K is no longer the most current 10-K.  
19 There's now a 10-K that covers the calendar year 2006 and  
20 makes some projections about calendar year 2007.

21                   But anyway, that passage that he had me  
22 read at the bottom of page 22 was included in a section on  
23 risk factors that begins at the top of the page, and there  
24 was a subheading that preceded three paragraphs, one of  
25 which Mr. Mitten had me read a sentence from. And that

1 subheading is entitled, we expect to incur net losses.  
2 And I think it's important for the Commission to see an  
3 overall perspective of Aquila's financial position, the  
4 two paragraphs that preceded the third paragraph that  
5 Mr. Mitten had me read a part of.

6                   The first paragraph under we -- and I will  
7 say these are fairly short paragraphs. This won't take  
8 too long. The first paragraph under this subheading, we  
9 expect to incur additional losses, reads as follows:  
10 Except for the quarter ended March 31st, 2005, during  
11 which we earned nominal net income, we have not earned net  
12 income since the quarter ended March 31st, 2002. During  
13 the three-year period ending December 31st, 2005, we have  
14 recorded cumulative net losses of approximately  
15 858.9 million.

16                   And it's my understanding that those losses  
17 are mostly related to Aquila's since terminated merchant  
18 generation operations.

19                   The next paragraph says, we may incur  
20 material impairment charges if we decide to sell our  
21 interest in our Crossroads merchant peaking power plant  
22 and if we are able to exit or otherwise terminate our  
23 Elwood tolling contract. In addition, we expect to  
24 continue to incur operating losses from our remaining  
25 merchant services business.

1                   Then there's just one other portion of this  
2 document that I wanted to place into context, one of the  
3 statements that Mr. Mitten had asked me to read into the  
4 record. And the statement I wanted to put in context is  
5 the sub-bullet at the top of page 70 that Mr. Mitten had  
6 asked me to read, which pertains to the adoption of fuel  
7 adjustment clause legislation in Missouri.

8                   And that sub-bullet was one of  
9 approximately 30 bullets and sub-bullets contained in a  
10 section of this document that appears on page 68, which is  
11 entitled forward-looking information, and this is a  
12 standard part, of course, of any 10-K where the company  
13 that's writing the 10-K sort of gives its disclosure about  
14 certain events that may occur in the future, most of which  
15 would be unanticipated, that may affect the management  
16 analysis that's contained in the 10-K.

17                  And just a couple of the bullets that I  
18 think are pertinent to the fuel adjustment clause issue  
19 and Aquila's earning situation that I would like to read  
20 into the record. On page 69, the second bullet, which  
21 also contains a couple of sub-bullets, reads as follows:  
22 We're developing a comprehensive plan to eliminate the  
23 majority of the allocated costs related to the utilities  
24 that are being sold when the support services are no  
25 longer required, and we expect that a portion of these



1 costs will be reallocated to our remaining utility  
2 operations for recovery in future rate cases.

3               Some important factors that could cause  
4 actual results to differ materially from those anticipated  
5 include, and then there's two sub-bullets. We may not be  
6 able to eliminate a majority or even a material amount of  
7 the overhead costs allocated to the held for sale utility  
8 divisions. The next sub-bullet is, regulatory commissions  
9 may not approve some or all of any cost reallocations in  
10 future rate cases.

11              And then I just wanted to read also the  
12 next bullet that follows that and one of the sub-bullets  
13 which pertains to the filing requirements in the fuel  
14 adjustment clause rule for the utility to state that it  
15 has an adequate resource planning process in place.

16              So this bullet reads, we anticipate  
17 significant additional capital expenditures in order to  
18 satisfy our long-term power generation and transmission  
19 needs and comply with environmental rules and regulations.  
20 Some important factors that could cause actual results to  
21 differ materially from those anticipated include, and then  
22 the -- one of the sub-bullets under that bullet reads, we  
23 may not receive shareholder approval to issue additional  
24 shares of our common stock which may be required to fund  
25 part of our anticipated future capital expenditures.

1                   I think this is particularly relevant to  
2   the resource planning process of Aquila in that they --  
3   the process may come up with plans that the utility's not  
4   even capable of implementing if they're the optimal plan  
5   and yet the fuel adjustment clause that they propose would  
6   pass the fuel costs of any suboptimal plans on to  
7   ratepayers.

8           Q.       Thank you. One final topic. Mr. Mitten  
9   asked you about Senate Bill 179. Do you recall that?

10          A.       Yes, I do.

11          Q.       And I think he had you look for, and I  
12   believe it turned out to be in paragraph 4, a section  
13   about a fair return. Do you have 179 with you?

14          A.       That's correct. It's in Section 4,  
15   subsection 1, yes.

16          Q.       Does that section talk about guaranteed  
17   cost recovery?

18          A.       No, it does not. It just speaks to  
19   allowing the utility to have a sufficient opportunity to  
20   earn a fair return on equity, and, of course, the return  
21   on equity occurs after the utility has recovered all of  
22   its prudently uncovered costs. I think I didn't state it  
23   quite right. All of its prudently incurred costs.

24          Q.       Now, a paragraph or two above that in  
25   Section 1, does that talk about incentives that the

1 Commission may allow?

2 A. Yes, it does. It states, the Commission  
3 may, in accordance with existing law, include in such rate  
4 structures features designed to provide electrical  
5 corporation with incentives to improve the efficiency and  
6 cost effectiveness of its fuel and purchased power  
7 procurement activities.

8 Q. And in your opinion, is there a way to  
9 construct a meaningful and fair incentive that does not  
10 have the utility have some cost at risk?

11 A. I have not seen any proposals for doing  
12 that. Certainly I guess you could create a meaningful  
13 incentive, but if it's a nonsymmetrical incentive, I  
14 wouldn't think it would be fair to ratepayers in that it  
15 wouldn't be an equitable balance between shareholders and  
16 ratepayers.

17 MR. MILLS: Thank you. That's all I have.

18 JUDGE VOSS: Mr. Kind, you're excused.

19 THE WITNESS: Thank you.

20 MR. MITTEN: Your Honor, as I promised over  
21 the lunch hour I would take a look at the Commission's  
22 rules. I apologize. I was in error. The annual report  
23 that is filed with the Commission is, in fact, the FERC  
24 Form 1. So I would withdraw my request that the  
25 Commission take administrative notice of Aquila's 2005

1 Annual Report to Shareholders.

2 I do have an offer of proof on a portion of  
3 that document, and maybe to avoid any question as to  
4 whether or not there was improper context in any of the  
5 quotations from the Form 10-K that I asked Mr. Kind about,  
6 I would ask the Commission to take administrative notice  
7 of the company's 2005 Form 10-K.

8 MR. MILLS: I guess my concern is that  
9 Form 10-K is not filed with this Commission. It's not  
10 part of the Commission's records. It's part of the SEC's  
11 records. And perhaps you can take administrative notice  
12 of a fellow government body's records, but it certainly  
13 isn't part of your records.

14 JUDGE VOSS: Several pages from other 10-Ks  
15 were brought in, but they were authenticated by a witness  
16 as to what they were.

17 MR. MITTEN: Your Honor, I believe the rule  
18 regarding administrative notice applies to records  
19 regularly kept by any governmental body, and a Form 10-K  
20 report is required to be filed annually by any listed  
21 company with the Securities and Exchange Commission. It's  
22 available on the SEC's Edgar website. It's also available  
23 on Aquila's website as required by Sarbanes-Oxley.

24 JUDGE VOSS: Does anybody have an objection  
25 to that?

1 (No response.)

2 JUDGE VOSS: The Commission will take  
3 notice of the 2005 Form 10-K.

4 And I guess, Staff, does that bring us --

5 MR. WOODSMALL: Just to clarify, your  
6 Honor, you are taking notice of the 10-K and not, I  
7 believe, what was discussed earlier as the wrap sheet  
8 or --

9 MR. MITTEN: I've only asked that you take  
10 administrative notice of the 10-K.

11 MR. WOODSMALL: Okay. Thank you.

12 JUDGE VOSS: By wrap sheet, were you  
13 referring to the --

14 MR. WOODSMALL: Pretty packaging.

15 JUDGE VOSS: Okay.

16 MR. FREY: I guess it's time for Mr. Taylor  
17 to retake the stand. Are you ready?

18 JUDGE VOSS: I'm ready if you guys are  
19 ready.

20 MR. FREY: And I believe his testimony, his  
21 rebuttal testimony has already been admitted into the  
22 record and, of course, he's been sworn.

23 JUDGE VOSS: I'll remind you, Mr. Taylor,  
24 that you are still under oath.

25 THE WITNESS: Yes.



1 A. Yes.

2 Q. Your single piece of testimony, if I'm  
3 understanding, has been marked as --

4 MR. CONRAD: Counsel, do you have the  
5 exhibit numbers so it's clear on the record?

6 MR. FREY: 227.

7 BY MR. CONRAD:

8 Q. So that's what I will be referring to, and  
9 I might ask you to turn to page 3 of Exhibit 227, please.

10 A. Yes.

11 Q. Line 17. Let me know when you're there.

12 A. I'm there, sir.

13 Q. That line, the line preceding and the very  
14 short one that follows reference a quote from, I take it,  
15 Mr. Gray's testimony?

16 A. Yes.

17 Q. That is the first time, and perhaps I  
18 missed it, that I have seen in your testimony the letters  
19 SPP referred to. Could you tell me what that refers to,  
20 please?

21 A. That refers to Southwest Power Pool.

22 Q. And that is what organization, sir?

23 A. That is an R-- I think it's called an RTO.  
24 It's similar to MISO.

25 Q. Now, similar to MISO?

1           A.       They're not as far advanced as the MISO  
2     organization as far as the way they control the electrical  
3     systems.

4           Q.       Now, I've heard MISO before, and I take it  
5     since you testified and your testimony here indicates that  
6     you did submit testimony in the recently concluded Ameren  
7     hearing, did you not, sir?

8           A.       Yes, I did.

9           Q.       And Ameren is a major player in MISO?

10          A.       That is correct.

11          Q.       Is Aquila a major player in SPP?

12          A.       No.

13          Q.       Who are the major players in SPP?

14          A.       I know Kansas City Power & Light is a major  
15     utility in SPP, and then there are other utilities in  
16     Kansas, Oklahoma, Arkansas, Tex-- not Texas, but southwest  
17     of Missouri generally.

18          Q.       So I guess I'm curious. To your knowledge,  
19     and to the extent there is -- don't speculate. If you  
20     don't know, just say so. Is Aquila a member of any RTO?

21          A.       Not to my knowledge.

22          Q.       Help me then understand, if you can  
23     explain, why they would be referencing SPP if they're not  
24     a member of that RTO.

25          A.       I'm not sure.



1           Q.       Is that part of the difficulty that you  
2    had?

3           A.       My difficulty was more with the  
4    applicability of the SPP criteria to the Missouri rule for  
5    the heat rate testing.

6           Q.       Now, if there were -- are you -- let me  
7    back up a second.

8                    Are you familiar in your responsibilities  
9    for the Commission, have you had occasion to look at the  
10   SPP, I think we're talking generally about heat rate  
11   requirements.

12          A.       Yes.

13          Q.       Have you had occasion to look at those?

14          A.       The SPP criteria is not a heat rate testing  
15   requirement. It is a unit capability requirement.

16          Q.       And just help me understand because I have  
17   not read that. Is there any kind of an enforcement  
18   mechanism that's applicable to that?

19          A.       I am not familiar with that aspect.

20          Q.       So as far as you know, it's just an  
21   abstract requirement out there?

22          A.       It is a requirement to where utilities  
23   perform power plant tests so that they can determine at  
24   what level a power plant can be -- a generating unit can  
25   be operated within the system; in other words, what level

1 of generation can SPP count on from that unit.

2 Q. And that's done under the SPP procedures?

3 A. Yes.

4 Q. How often?

5 A. Every three years is a capability test, and  
6 then on the other years I think it's referred to as an  
7 operational test, but that is not at the same power level  
8 as the capability test necessarily.

9 Q. All right. At an earlier point I queried  
10 you about the heat rate test that you're talking about  
11 here.

12 A. Yes.

13 Q. And you're using the term capability, unit  
14 capability test; am I correct?

15 A. That is the SPP terminology.

16 Q. Okay. Distinguish for me those two things.

17 A. A capability test is a test performed that  
18 determines the, I would call it the rated output of the  
19 generating unit, so many megawatts. A heat rate test or  
20 efficiency test is a test that is performed to see how  
21 effectively that unit can utilize a fuel source in  
22 generating electricity. So you put in so much energy and  
23 you get so much electrical energy out, and you can measure  
24 that either in terms of efficiency as a percentage or as a  
25 heat rate in terms of BTUs per kilowatt hour. And they're

1 somewhat interchangeable terms.

2 Q. Okay. The last sentence, sir, the very  
3 last statement you made threw me a little bit. When you  
4 say they're interchangeable terms, what terms are you  
5 interchanging?

6 A. Efficiency and heat rate.

7 Q. Got you. Okay. And the capability test,  
8 unit capability test is just a test of how much the unit  
9 under such circumstances, optimal circumstances let's say,  
10 can do, can produce, megawatts?

11 A. Yes.

12 Q. And is it that latter test that  
13 occasionally you see reference in utility materials to  
14 such and such a plant was derated from its name plate  
15 capacity from, say, 100 megawatts to 90 megawatts or  
16 something? Would that on the basis of that type of test?

17 A. That would be a possible occurrence, yes.

18 Q. Now, that being the case, and reflecting  
19 back, I want to kind of back you up on the 10,000 foot  
20 view for a moment here, why is that distinction that  
21 you've drawn between those two tests important for our  
22 consideration of an FAC?

23 A. Our concern is from an efficiency or heat  
24 rate perspective, because we want to make sure that the  
25 unit is operating at the optimal heat rate or the maximum

1 efficiency so that the power is produced in the most  
2 economical manner.

3 A capability test can be performed and,  
4 quite frankly, the unit does not have to be operating  
5 efficiently to perform a capability test.

6 Q. So a few moments ago when I asked you about  
7 a capability test being done under optimal conditions, my  
8 hypothetical about the conditions maybe is quarrelsome?

9 A. Subject to interpretation, I think.

10 Q. And you are suggesting, if I understand it,  
11 the American Society of Mechanical Engineers Performance  
12 Test Codes is a better tool to use for the purpose that  
13 we're designing here?

14 A. I did not recommend that we -- that the  
15 utility explicitly use those documents, but I recommend  
16 that they at least utilize those documents as a source of  
17 information in developing their internal procedures for  
18 performing the testing.

19 Q. Now, is it a fair summary of your  
20 testimony, you did an executive summary, as in your view  
21 as an engineer, the company complied with the requirements  
22 of 4 CSR 240-3.161(2)(P), which is the heat rate  
23 requirement?

24 A. As an engineer, my answer would be they  
25 have filed information regarding that section of the rule.

1 At this point, Staff has not been completely satisfied  
2 that the testing would be performed in a manner acceptable  
3 to us.

4 Q. It is my understanding that, in point of  
5 fact, the utility did not actually make a filing in that  
6 regard; isn't that true?

7 A. There was a filing in their direct  
8 testimony, basically like a paragraph, yes.

9 Q. Which we previously referred to about that  
10 SPP thing?

11 A. Yes.

12 Q. Which references a different animal from  
13 what I've taking your testimony to be?

14 A. It references an SPP --

15 Q. Capability?

16 A. -- electrical facility rating test. They  
17 were saying that they would do a heat rate test at the  
18 same time that they were doing the capability test.

19 Q. Now, Mr. Taylor, do you have before you a  
20 kind of 4 CSR 240-3.161?

21 A. Yes.

22 Q. I believe it actually happens to be -- and  
23 I'm not sure if my paging is the same as yours, but it  
24 happens to be on page 19 of mine that I find that  
25 subdivision upper case P in parens. Are you there?



1 SPP test, which is required, either every three years or  
2 annually depending on the test. They would take  
3 additional data during the -- during those tests so that  
4 they could perform a heat rate calculation on the unit.

5 Q. Now, you used the term in your answer just  
6 a moment ago the SPP test which is required. By whom is  
7 it required?

8 A. Southwest Power Pool.

9 Q. But we previously established, did we not,  
10 that Aquila is not a member of the SPP?

11 A. To the best of my knowledge.

12 Q. And you indicated, I believe, that there  
13 was no enforcement of which you're aware?

14 A. To the best of my knowledge.

15 Q. So help me understand when you say  
16 requirement.

17 A. I may have misstated using that word. The  
18 utility is performing this testing in accordance with the  
19 SPP criteria.

20 Q. By that in your view does not comply with  
21 the provision of the Commission's rule that we referenced  
22 a moment ago?

23 A. The SPP criteria -- for example, the SPP  
24 criteria would not require the utility to take any data  
25 associated with the fuel consumed during the test, and

1 heat rate needs that data. Heat rate testing requires at  
2 least some minimal amount of fuel consumption versus power  
3 output.

4 Q. Now, does heat rate -- think with me for  
5 just a moment about a coal burning unit.

6 A. Yes.

7 Q. You mentioned MMBtu's as a value.

8 A. Yes.

9 Q. Does coal vary in heat rate, heat content?

10 A. The fuel itself?

11 Q. Yes, sir.

12 A. Yes.

13 Q. And how does that come to be?

14 A. Different mines may produce different  
15 heating values of coal. Even different locations in the  
16 same mine, probably some differences.

17 Q. Would you agree with me that occasionally  
18 in a coal pile there could be some blending?

19 A. Yes, sir.

20 Q. All of which I take it you would agree with  
21 me that that is an important value and it varies more  
22 frequently than every three years; am I correct?

23 A. Yes, it does.

24 Q. And back to a 10,000 or maybe even a 20,000  
25 foot view, I take it, if I direct you to page 4, in the



1 last question and answer that actually continues over to  
2 page 5, if you might look at that and tell me if -- I  
3 won't ask you to read that. I'm just wanting to know if  
4 that's a fair summary of why you think as an engineer --  
5 used to work on submarines I take it from your testimony?

6 A. Yes.

7 Q. -- why that's important.

8 A. Yes. That's a fair --

9 MR. CONRAD: Very good. Mr. Taylor, I  
10 thank you very, very much for your testimony, and thank  
11 you for your service in our military. Judge, that's all I  
12 have.

13 JUDGE VOSS: Okay. And Aquila?

14 MR. MITTEN: Thank you, your Honor. Just a  
15 few questions.

16 CROSS-EXAMINATION BY MR. MITTEN:

17 Q. Good afternoon, Mr. Taylor.

18 A. Good afternoon.

19 Q. In your mind, could there be a difference  
20 between the adequacy of a proposed test, based on your  
21 opinion, and whether or not a proposed test complies with  
22 the Commission's rule?

23 A. Yes.

24 Q. Now, you mentioned in response to some  
25 questions from Mr. Conrad that Aquila is not a member of

1 the Southwest Power Pool, correct?

2 A. To the best of my knowledge, yes.

3 Q. Would that preclude Aquila from adopting  
4 SPP's standards and imposing those standards on itself?

5 A. No.

6 Q. Is that your understanding of what Aquila  
7 proposes to do?

8 A. As far as the unit or the electrical  
9 facility rating test, that would be my understanding, yes.

10 Q. And you indicated that under those SPP  
11 standards, it does call for periodic testing of units,  
12 correct?

13 A. Capability or operational testing, yes.

14 Q. And data would be developed through those  
15 tests; is that correct?

16 A. Yes.

17 Q. And according to Aquila, it was going to  
18 use the data developed through those tests to do rate  
19 calculations; is that correct?

20 A. Not entirely.

21 Q. Okay. Explain to me where I went afoul  
22 there.

23 A. The SPP criteria would not include, for  
24 instance, taking data related to the fuel consumption. It  
25 would only be looking at the unit electrical output.

1           Q.       So the SPP test may not be adequate to make  
2     the heat rate determinations that you believe are  
3     necessary; is that right?

4           A.       That's correct.

5           Q.       Has Aquila indicated a willingness to work  
6     with Staff to develop heat rate testing plans or  
7     procedures that satisfy your requirements?

8           A.       Yes.

9           Q.       And you believe that it can do that prior  
10    to the first prudency review?

11          A.       Yes.

12          Q.       If an FAC is adopted in this case?

13          A.       Yes.

14                   MR. MITTEN: I have no further questions.

15    Thank you.

16                   JUDGE VOSS: Redirect?

17                   MR. FREY: No redirect, your Honor. Thank  
18    you.

19                   JUDGE VOSS: Mr. Taylor, you're excused.

20                   Are there any other additional matters we  
21    need to take up before we go off the record today?

22                   MR. FREY: Is this it? Is this the last  
23    day?

24                   MR. MITTEN: Mr. Taylor's not coming back  
25    again?

1 JUDGE VOSS: Not unless he really wants to.  
2 Tomorrow morning at nine o'clock we have the stipulation  
3 presentation.

4 MR. FREY: I was just wondering if we need  
5 to perhaps then review all of the evidence and make sure  
6 we've got all the evidence in we think we're supposed to  
7 have in.

8 JUDGE VOSS: You guys may review that  
9 quickly if you like. I looked at everything that was  
10 offered was admitted. If there's anything you'd like to  
11 bring up tomorrow during the stipulation presentation, if  
12 there's any evidence you think has fallen through the  
13 cracks that wasn't included in the stipulation that needs  
14 to be addressed.

15 MR. FREY: Okay. We can do that then after  
16 the presentation hearing?

17 JUDGE VOSS: We will have agenda right  
18 after that, though, too. Have you looked through your  
19 testimony, or you can't speak for the other Staff counsel?

20 MR. FREY: No. Perhaps everybody else is  
21 happy and feels as though there aren't any problems. I  
22 was just wondering if it might be worthwhile to go over it  
23 all.

24 MR. CONRAD: Is counsel's question limited  
25 to the case as far as problems, happiness?

1 JUDGE VOSS: I can say for AARP, both of  
2 their pieces of testimony were offered and admitted.

3 MR. COFFMAN: We're good.

4 JUDGE VOSS: Exhibits 500 through 510 and  
5 512 that were offered by the Sedalia Industrial Energy  
6 Users Association and the Federal Executive Agencies were  
7 admitted. The only one that wasn't was 511. Actually, I  
8 think it was marked but never offered.

9 MR. WOODSMALL: Right. I know 511 wasn't.

10 JUDGE VOSS: And Public Counsel has offered  
11 Exhibit 401 through 415, which were admitted with the  
12 exception of lines 18 through 20 on page 13 of Ted  
13 Robertson's rebuttal testimony.

14 For Staff, 206, 207, 208, 209, 217, 218,  
15 21, 22, 23, 26, 27, 235, 236, 237, 240 and 241 were all  
16 offered and admitted. If there's something else that  
17 needs to be?

18 MR. FREY: I think you mentioned 217, and  
19 I'm not sure when that was admitted for Ms. Mantle. I  
20 offered 218. 217 is my understanding was going to be  
21 admitted in connection with the Stipulation & Agreement.

22 JUDGE VOSS: That was probably my marking  
23 mistake, assuming that you'd offered both pieces.  
24 Ms. Mantle's direct testimony, 217 is still pending.

25 MR. FREY: Right.

1 JUDGE VOSS: For Aquila, I have 9, 10, 13,  
2 14, 15, offered and admitted. And 18, 19, 27, actually,  
3 all of Mr. Eades' testimony has been offered and admitted.  
4 Is that correct with everyone?

5 MR. MITTEN: Yes, I believe so, your Honor.

6 JUDGE VOSS: Mr. Williams' testimony was  
7 offered and admitted. 36, which is Davis, and 37 were  
8 offered and admitted. And 38 and 39 -- actually, 38 was  
9 offered, and 39, which is the Standard & Poor's list, was  
10 preserved as an offer of proof in the record but not  
11 admitted. And that's all I have. Does that sound all  
12 right to everybody?

13 From recent cases, are there any issues  
14 that the parties feel were raised during the course of  
15 cross-examination that aren't set out in the issues list  
16 that need to be addressed? If not, are there any  
17 additional issues that the parties would like to address  
18 before we go off the record?

19 (No response.)

20 Hearing none, we will go off the record and  
21 resume tomorrow at nine o'clock for the stip presentation.

22 WHEREUPON, the hearing of this case was  
23 recessed until April 12, 2007.

24

25

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