

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 December 8, 2004
Jefferson City, Missouri
9 Volume 9
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12 In the Matter of the Tariff Filing)
of The Empire District Electric)
13 Company to Implement a General) Case No. ER-2004-0570
Rate Increase for Retail Electric)
14 Service Provided to Customers in)
Its Missouri Service Area)
15
16
17 KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.
18
19 ROBERT M. CLAYTON,
JEFF DAVIS,
20 LINWARD "LIN" APPLING,
COMMISSIONERS.
21
22 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Mr. Beecher, come back up
3 and take the hot seat, please. I'll remind you, sir,
4 you're still under oath.

5 THE WITNESS: Yes, sir.

6 MR. KEEVIL: Judge, am I correct that we're
7 on recross based on Bench questions?

8 JUDGE THOMPSON: That is absolutely
9 correct. Mr. Conrad, you may inquire.

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

12 JUDGE THOMPSON: How did we describe this?

13 MR. CONRAD: I guess it would be Data
14 Request No. 440.

15 JUDGE THOMPSON: Data Request No. 440.
16 Very well.

17 BRADLEY BEECHER testified as follows:

18 RE CROSS-EXAMINATION BY MR. CONRAD:

19 Q. Mr. Beecher, good morning. I had
20 previously shown to you and it now has been marked as an
21 exhibit or marked for identification, rather, as
22 Exhibit 114. And that is before you, is it not, sir?

23 A. Yes, it is, sir.

24 Q. Are you able to identify that document?

25 A. Yes.

1 MR. CONRAD: Okay. And, your Honor, for
2 the benefit of the record, what I have done is, this is
3 basically just as we received them from the -- from the
4 company, and to avoid any -- or try to avoid any question
5 about that, I've provided the Commission and the witness
6 with all of the materials relevant to that, including the
7 transmittal sheet and so on.

8 My understanding is this is off of EFIS,
9 and you perhaps recognize that more than I do, how that
10 process all works, but I'm not as familiar dealing with
11 that as perhaps I should be. But let's direct our
12 attention then to that.

13 BY MR. CONRAD:

14 Q. Who is the responding party on behalf of
15 Empire?

16 A. My understanding is this Data Request was
17 answered by Blake Mertens.

18 Q. And his responsibilities, sir, are?

19 A. He at that time worked for me directly as a
20 planning engineer.

21 Q. Now, this request if I look at the --
22 actually, I guess it would be the fourth page in, at the
23 bottom of that there is a response to the request saying
24 something along the lines that Empire does not track
25 natural gas variable transportation costs. Per discussion

1 with John Cassidy, attached is a spreadsheet showing, and
2 we talked yesterday about what TME is, 12 months ended
3 natural gas commodity costs, and then that sheet is the
4 final page of the packet, is it not, sir?

5 A. A sheet entitled Natural Gas Costs.

6 Q. Right. Now, the first column is, of
7 course, the 12-month ended date, then you have MMBtu,
8 costs before derivative, gain or loss. Help me understand
9 what that is.

10 A. That, in essence, is the cash cost that we
11 paid for the gas that's in the MMBtu column.

12 Q. And the derivative gain/loss?

13 A. What is the amount of gain. If it's a
14 negative number, loss; if it's a positive number, that we
15 incurred on our swaps or NYMEX positions.

16 Q. And the total column is simply a summing of
17 the prior two columns?

18 A. That's correct.

19 Q. And then the final column is just the total
20 column divided by the volumes; am I correct?

21 A. That's correct.

22 MR. CONRAD: And, Mr. Beecher, with that,
23 your Honor, I'm concluded. Thank you very much.

24 JUDGE THOMPSON: Thank you, sir. Okay.

25 MR. CONRAD: Oh, and I'm sorry. I should

1 have offered 114 and I failed to.

2 JUDGE THOMPSON: Very well. Do I hear any
3 objections to the receipt of Exhibit 114?

4 (No response.)

5 JUDGE THOMPSON: Hearing none, the same is
6 received and made a part of the record of this proceeding.
7 (EXHIBIT NO. 114 WAS RECEIVED INTO
8 EVIDENCE.)

9 JUDGE THOMPSON: Mr. Keevil, redirect.

10 REDIRECT EXAMINATION BY MR. KEEVIL:

11 Q. Mr. Beecher, let's turn first to the --
12 what Mr. Conrad was just asking you about, DR 440, which I
13 believe is Exhibit 114. And DR 114 (sic) appears to show
14 a reduced amount of MMBtus for the TME periods in 2002,
15 2003. Is there an explanation for that?

16 A. As I started to explain yesterday, in the
17 '99-2000 and up to June 2001 time frame, we did not have
18 State Line combined cycle, and we did not have the new
19 FTA, 100 megawatts of FTA that came on line in 2003.
20 Yesterday Mr. Conrad read through me some
21 of the several of the 12-month ending numbers. One he
22 didn't read into the record was on June 30th, 2002, our
23 12-month ending number was actually 10,902,725, very close
24 to the model runs that we have today.
25 One of the reasons that the gas purchase

1 falls off in 2003 has to do with a term contract purchase
2 that we purchased from AEP in that time frame. Staff and
3 company have worked through an understanding of that. But
4 in essence, AEP had to sell some power for market
5 mitigation reasons, and we were able to purchase that.
6 That's no longer available in the marketplace, and so
7 Staff and company have both adjusted the AEP purchase out
8 of the models. So that's the reason the '03 number is
9 lower.

10 Q. And I believe you indicated yesterday, but
11 just to be sure, the models indicate a burn of what?

12 A. Typically in the 8 to 10 million MMBtu
13 range.

14 Q. Going back to yesterday, Mr. Frey, I
15 believe it was, asked you to describe the two approaches
16 to fuel cost recovery, the issue in this case, and you
17 described the traditional method and the IEC method. And
18 I believe during your discussion with Mr. Frey at that
19 time, you said something to the effect of the IEC ceiling
20 reflects current prices in the market, and I would ask if
21 you could explain that comment.

22 A. My comment wasn't meant to be about Staff's
23 run or Empire's run particularly, but the way we had
24 designed the IEC in the past was for the top of the band
25 to be reflective of current prices in the market. And in

1 this case that also reflects a significant amount
2 of hedged gas that we already have, so it's really the
3 prices in the market for only the unhedged portion of the
4 gas.

5 Q. I believe Mr. Frey also asked you yesterday
6 regarding -- some questions regarding Staff's IEC proposal
7 specifically and asked you that -- or asked you whether if
8 Staff's proposed IEC term was longer, would you consider
9 Staff's proposal reasonable, and didn't ask you anything
10 about changing Staff's floor or ceiling. What's your
11 position on that?

12 A. Well, again, first and foremost is
13 litigation risk. And if there's risk of litigation, even
14 if Staff changes their term, I think that still needs to
15 be considered. We talked later in my testimony that day
16 regarding how far natural gas has to fall for the
17 remainder of the spot price in order for us to reach the
18 floor, and the floor simply is not attainable, given our
19 current hedged position and what that already costs.
20 Given current gas prices, I believe gas has
21 to fall in order for us to reach Staff's ceiling, and so,
22 you know, there are -- I think Staff made a fair effort at
23 the time they filed their direct testimony to use an
24 EIA forecast that was prevalent at that time, but
25 unfortunately gas just went up after that.

1 Q. You mentioned the litigation risk. What is
2 it about the litigation risk that is of concern to you?

3 A. If we have an IEC and we have litigation,
4 that's going to cause uncertainty in the market, and
5 uncertainty in the market generally is not met very
6 kindly, but mostly if we set a low floor, a floor that we
7 can't live to, and we have to collect the entire IEC under
8 bond, it may and will cause us cash problems on our
9 interest coverage ratios.

10 Q. Mr. Frey was also asking you some questions
11 yesterday about the last time Empire had an IEC and the
12 fact that at that time it terminated early. Why did
13 the -- why did Empire's IEC terminate early in the last --
14 the last time Empire had an IEC?

15 A. When we brought State Line combined cycle
16 on line, we didn't really have any natural gas hedge or
17 natural gas strategy. Through that case -- and prices
18 hadn't been really volatile. There wasn't really a need.
19 Prices became volatile. We worked out the IEC mechanism
20 in the case, but I realize the IEC was only interim and
21 that we needed to manage our fuel costs, so right after
22 that and even during that, we developed our energy risk
23 management policy and -- which laid out kind of a dollar
24 cost average approach where we're buying a percentage of
25 each year's gas into the future.

1 Fortunately for Empire and our customers,
2 gas prices fell right as we initiated our hedging program,
3 and so a majority of our hedges that were placed early on
4 were placed at a very low time in the market.

5 On top of that, we got a little bit lucky
6 in the fact that Enron went bankrupt, and when Enron went
7 bankrupt, we were able to replace some of our hedges that
8 were with Enron that were in the \$3.80 range with hedges
9 that were down in the \$3 range. So the market was low and
10 it really just -- it's a function of when we started our
11 hedging program.

12 Q. So it would be fair to say that
13 circumstances were substantially different in the 2002
14 time frame?

15 A. The drop in gas prices after the spike in
16 '01 combined with the fact we started our hedging program
17 at the same price is really what kept our prices low in
18 2002 and '03 and even into the start of '04.

19 Q. Okay. You were also asked questions by, I
20 think, Mr. Coffman and several of the Commissioners also
21 about having a fuel adjustment clause or -- I'm not
22 exactly sure what the term is in Oklahoma, but what would
23 essentially be a fuel adjustment clause in Oklahoma. Do
24 you recall that?

25 A. Yes, I do.

1 Q. Okay. Now, so Oklahoma has a fuel
2 adjustment clause?

3 A. That's correct.

4 Q. And is it your understanding of Public
5 Counsel's position in this case that companies with a fuel
6 adjustment clause are therefore less risky?

7 A. I don't know that I've read that in
8 testimony, but I think it's sure been insinuated to me
9 while I've been sitting here on the stand.

10 Q. So under that theory, Empire would be less
11 risky in Oklahoma than it is in Missouri, correct?

12 A. Under that theory, that would be correct.

13 Q. When was your last Oklahoma rate case?

14 A. In 2003.

15 Q. Do you know what return on equity was
16 authorized in that Oklahoma rate case?

17 A. 11.27.

18 Q. Mr. Coffman was also asking questions
19 yesterday about having a rate case every two years. From
20 your perspective, what are the problems with having a rate
21 case every two years?

22 A. I think as I answered yesterday, there's
23 uncertainty in the marketplace. That's a problem. We're
24 in this business for the long run, and we need to be able
25 to plan for safe and reliable service for our customers,

1 and part of that takes longer than a two-year planning
2 cycle. And I also don't think it's necessarily a great
3 use of resources in a process that takes this many
4 resources to go through.

5 Q. Including expense being one?

6 A. Including rate case expense, you bet.

7 Q. While we're talking about having a rate
8 case every two years, do you know when KCPL initiated
9 their last rate case?

10 A. My understanding is after Wolf Creek, the
11 nuclear power plant, came on in like 1985 is the last time
12 Kansas City filed a case on their own.

13 Q. I believe it was Mr. Frey yesterday asking
14 you some questions about your surrebuttal testimony where
15 you refer to the term of an IEC that would be acceptable
16 to Empire. And I may have misinterpreted Mr. Frey's
17 intent there, but the implication by Mr. Frey seemed to be
18 that you were posing some sort of threat to the Commission
19 or something of that nature. I just wanted to ask you,
20 what will Empire do if the IEC is not properly crafted?
21 Was that your intent?

22 A. It was not my intent to threaten the
23 Commission, and I think I said several times yesterday
24 that we're going to live with what this Commission
25 decides, and we trust them to balance the interest of the

1 customers and the shareholders the best that they can.

2 Q. Do you have a copy of the reconciliation
3 which Staff filed yesterday morning with you?

4 A. Yes, I do. Let me find it. I have it,
5 sir.

6 Q. Okay. Mr. Frey also asked you some
7 questions about that -- that \$19,587,103 figure that is
8 shown in the Staff column on the line that says interim
9 energy charge. Can you clarify your understanding of what
10 that number represents?

11 A. On the total company basis, it's my
12 understanding that the Staff's base number is around 110,
13 their ceiling number is around 134, with the difference in
14 that case being \$24 million being the IEC. My belief of
15 what's on this page is that nominally \$24 million
16 multiplied by our Missouri jurisdictional component of
17 about 80 percent.

18 Q. So that 19.5 figure there on the
19 reconciliation is Staff's position; is that correct?

20 A. That's my belief.

21 Q. So that's not your position?

22 A. No.

23 Q. I believe it was Mr. Coffman yesterday that
24 asked you toward the end of the day if Empire -- if Empire
25 had ever not been able to borrow money, and your answer

1 was no. Do you recall that line of questioning?

2 A. Yes, I do.

3 Q. Now, if the financial communities views

4 Empire as riskier, your financing costs will be higher,

5 correct?

6 A. I think it's indisputable that if you have

7 lower bond ratings, meaning weaker bond ratings, your

8 borrowing costs will higher than, say, if you're a

9 BBB- company than if you're an A- company.

10 Q. On those occasions when you have had a

11 chance to or been forced to, however it played out, to

12 speak with a financial analyst, have they given you any

13 indication of their -- their, not your -- their view of

14 Missouri utility company risk?

15 A. I think we've read the same things that's

16 been published that probably everybody in this room has

17 read. They are very concerned about lack of a fuel

18 adjustment clause in Missouri. They're concerned about

19 low depreciation rates, and they're concerned about

20 perceived low ROEs.

21 MR. KEEVIL: Judge, if I could have just a

22 minute here.

23 JUDGE THOMPSON: Certainly.

24 MR. KEEVIL: I think that's all I have,

25 Judge.

1 JUDGE THOMPSON: Thank you very much,
2 Mr. Keevil.
3 You may step down, Mr. Beecher.
4 MR. KEEVIL: His testimony has been
5 received, correct, your Honor? I just always like to make
6 sure.
7 JUDGE THOMPSON: Yes, it's been received.
8 MR. KEEVIL: Thank you.
9 JUDGE THOMPSON: Ms. Tietjen.
10 (Witness sworn.)
11 JUDGE THOMPSON: You understand that you
12 can be prosecuted for perjury if you should give false
13 testimony in this proceeding?
14 THE WITNESS: Yes, sir.
15 JUDGE THOMPSON: Please take your seat.
16 Would you go ahead and state your name for the record and
17 spell your last name.
18 THE WITNESS: Jill Tietjen, T-I-E-T-J-E-N.
19 JUDGE THOMPSON: Thank you. You may
20 inquire, Mr. Keevil.
21 JILL TIETJEN testified as follows:
22 DIRECT EXAMINATION BY MR. KEEVIL:
23 Q. Ms. Tietjen, by whom are you employed?
24 A. I'm self-employed.
25 Q. As a?

1 A. An engineering consultant.

2 Q. Now, are you the same Jill Tietjen who has
3 caused to be prepared and filed direct testimony in this
4 case which has been premarked as Exhibit No. 17?

5 A. Yes, sir.

6 Q. Do you have any changes or corrections you
7 would like to make to your direct testimony?

8 A. No, I don't.

9 Q. If I were to ask you the questions that
10 appear in Exhibit 17, your direct testimony, would your
11 answers be the same as contained therein?

12 A. Yes.

13 MR. KEEVIL: Your Honor, I would offer
14 Exhibit 17 into the record -- into the evidence and tender
15 the witness for cross on the issue of fuel and purchased
16 power and IEC.

17 JUDGE THOMPSON: Thank you, sir. Do I hear
18 any objections to the receipt of Exhibit 17?

19 MR. CONRAD: No objection.

20 JUDGE THOMPSON: Hearing none, the same is
21 received and made a part of the record of this proceeding.

22 (EXHIBIT NO. 17 WAS RECEIVED INTO
23 EVIDENCE.)

24 JUDGE THOMPSON: Mr. Conrad?

25 CROSS-EXAMINATION BY MR. CONRAD:

1 Q. Good morning, Ms. Tietjen. I want to be
2 sure I'm saying that right.

3 A. Good morning, Mr. Conrad. That's correct.

4 Q. Looking at your testimony in the exhibit
5 package marked as 117, would you please turn with me to
6 the second page of your Schedule JST-12.

7 MR. KEEVIL: Excuse me. Mr. Conrad, did
8 you say Exhibit 117?

9 MR. CONRAD: I may have.

10 JUDGE THOMPSON: Just plain 17.

11 MR. CONRAD: Pardon me. I've got hundreds
12 in my mind.

13 BY MR. CONRAD:

14 Q. Exhibit 17. Are you there, Ms. Tietjen?

15 A. Yes, sir.

16 Q. Now, I see that is a -- let's look at the
17 very first page of that. That's just an explosion, if you
18 will, of the projected -- since we're dealing with January
19 '05, I guess that's a projection, right?

20 A. Yes, sir.

21 Q. Okay. Now, the second page of that takes
22 us back to 2003, does it not? And that's an explosion of
23 the figure that we saw earlier. By the way, do you have
24 available to you Exhibit 114?

25 A. I do not.

1 Q. Let me provide you with a copy of that.

2 And I haven't checked this, but let's just do it together.

3 The 12 months ended December 31, 2003, on Exhibit 114,

4 last page, 6,449,607?

5 A. Yes, sir.

6 Q. And that is -- that's just an explosion of

7 that -- your second sheet on your exhibit Schedule 12,

8 page 2 is just a month-by-month explosion of that, right?

9 A. Maybe mine's labeled incorrectly, but I

10 have something that says Schedule JST-13, but it's the

11 same -- it's the same schedule.

12 Q. Okay.

13 A. And the numbers agree across within

14 roundoff.

15 Q. And now let's look, if you would, with me

16 for JST-14, which is the last page in your packet. And am

17 I correct that the -- what you have labeled there as the

18 highest case relies on a gas purchase of 9.8 million MCF?

19 A. The \$5.50 gas case results in a gas burn of

20 9.898 million.

21 Q. That's how the model works?

22 A. That's correct.

23 Q. That you give prices, and the lowest case

24 is 10.6 million?

25 A. The \$3.02 gas is 10.667 million.

1 Q. Now, you were here just a moment or two ago
2 when Mr. Beecher was on the stand, but did you happen to
3 be here yesterday? You were not, I think.
4 A. I was not in this room yesterday.
5 Q. But you did hear him testify a few moments
6 ago that the range of gas burn was 8 to 10 million?
7 A. Yes.
8 Q. The difference between 8 and 10 being
9 2 million; can we agree on that?
10 A. Yes, depending on a lot of factors in the
11 modeling process.
12 Q. And if you multiply 2 million MCF by gas
13 that cost \$3.50, what do you get?
14 A. You said 3.50?
15 Q. Yes, ma'am.
16 A. \$7 million.
17 Q. Now, if you do the same 2 million times gas
18 that costs \$5.50, what do you get?
19 A. \$11 million.
20 MR. CONRAD: Thank you, ma'am. That's all.
21 JUDGE THOMPSON: Thank you, Mr. Conrad.
22 Mr. Frey?
23 MR. FREY: We have no questions for this
24 witness. Thank you.
25 JUDGE THOMPSON: Mr. Coffman?

1 MR. COFFMAN: No questions.

2 JUDGE THOMPSON: Questions from the Bench,
3 Commissioner Clayton?

4 COMMISSIONER CLAYTON: No questions.

5 JUDGE THOMPSON: Redirect, Mr. Keevil?

6 REDIRECT EXAMINATION BY MR. KEEVIL:

7 Q. Ms. Tietjen, if you burn less gas, does
8 that mean you don't have the expense or you're replacing
9 it with something else?

10 A. You burn less gas because there's an
11 opportunity to do something else which also costs money.
12 Generally that means that you're -- on the Empire system,
13 you're purchasing power. And right now the market price
14 of power is also a function of the price of natural gas.
15 So the costs don't go away, they are just replaced by an
16 alternative cost. Almost the same magnitude actually,
17 because it's based on natural gas.

18 Q. The price?

19 A. The price of the purchased power now is
20 driven by the price of natural gas in the market.

21 Q. Regarding the range of the gas burn, the
22 8 to 10 million, how is that determined? Is that -- did
23 you just pull that figure out of the air, or where did
24 that come from?

25 A. The range of 8 to \$10 million is a function

1 of a lot of model analysis that was conducted that looks
2 at a wide range of factors for modeling, including
3 projections for demand, which is based on, among other
4 factors, economic growth in the area, and weather, if new
5 industrial customers come into the area or new residential
6 load growth, the price of coal, the price of natural gas,
7 the availability of Empire's generating units, the
8 availability of generating units by Empire's neighbors,
9 the ability -- the availability of transmission on the
10 Empire system, the availability of transmission on other
11 systems, heat rates on Empire's system.

12 There's outages, planned outages, scheduled
13 outages, forced outages, very wide range of factors that
14 determines whether that burn will be either towards the
15 lower end of the 8 million range or towards the higher end
16 at the \$10 million value.

17 Q. Do you happen to know if Empire has added
18 any gas-fired generation in recent years?

19 A. Yes, Empire has added units that total
20 approximately 400 megawatts that burn natural gas.

21 Q. Do you know when that -- approximately when
22 that was added? Or if not, that's fine.

23 A. I don't know the specific in-service dates
24 of all of those units.

25 Q. Now, regarding the 8 to 10 million burn,

1 have you had a chance to compare your model's projected
2 burn with Staff's model's projected burn?

3 A. My understanding is that the Staff model
4 also has projections of burn in the 8to \$10 million range,
5 that the models, unlike in past years actually are very
6 closely tracking in terms of their results.

7 Q. I think you said the 8 to \$10 million
8 range.

9 A. I'm sorry. 8 to 10 million -- 8 to
10 10 million Btu range.

11 MR. KEEVIL: Okay. Thank you. That's all.

12 Thank you.

13 JUDGE THOMPSON: Thank you, Mr. Keevil.

14 You may step down, and you are excused.

15 Mr. Cassidy, you'll be returning to the
16 stand. Thank you, Mr. Cassidy. I'll remind you that
17 you're still under oath. I believe we had completed

18 Mr. Coffman's cross-examination, and it is now time for
19 Mr. Keevil's.

20 You may inquire, Mr. Keevil.

21 MR. KEEVIL: Thank you, your Honor.

22 JOHN CASSIDY, having been previously sworn, testified as
23 follows:

24 CROSS-EXAMINATION BY MR. KEEVIL:

25 Q. Mr. Cassidy, good morning, first of all.

1 A. Good morning.

2 Q. Is it your understanding that under the
3 regulatory framework, the company is supposed to recover
4 its actual prudently incurred fuel and purchased power
5 costs?

6 A. It's my understanding that they are
7 supposed to have the reasonable opportunity to recover
8 their actual and prudently incurred fuel and purchased
9 power cost.

10 Q. As a representative of the Staff, do you
11 care about the company's financial health?

12 A. Yes.

13 Q. Now, Staff is proposing, as I understand
14 it, Mr. Cassidy, a two-year IEC term; is that correct?

15 A. Yes, that's the Staff's proposal.

16 Q. And I believe it was indicated yesterday,
17 or at least implied, that the reason for that two-year
18 term was so that gas can return -- gas prices can return
19 to normal. Do you agree with that reasoning or --

20 A. No, I don't agree with that. The reason
21 the Staff proposed a two-year term is that an IEC is an
22 interim rate, and a two-year term would be a reasonable
23 length of time for an interim rate. If you extend beyond
24 that, you're moving closer to something that's permanent
25 or more permanent.

1 Q. By that same token, two months would be
2 more permanent than one month, correct?

3 A. Correct.

4 Q. Now, if prices don't decline, gas prices
5 don't decline, is it Staff's position that Empire should
6 file another rate case in 13 months?

7 A. No, because there are other variables that
8 can take place and change in that length of time that may
9 impact whether or not Empire has to file a rate case. For
10 example, Empire could become more efficient in other areas
11 of their operations that would save money that could
12 offset continued high gas costs.

13 Q. But the IEC would expire in two years,
14 correct, under your proposal?

15 A. That's correct.

16 Q. And therefore, Empire would have to file
17 some sort of case to take care of -- allow for that, would
18 it not?

19 A. No. As I've just answered, there are other
20 variables that can impact Empire's situation over the
21 course of those two years.

22 Q. And has -- in this case, did Staff raise
23 issues regarding Empire's efficiency on the issues that
24 would amount to \$20 million?

25 A. Not that I'm aware of in this case.

1 Q. Mr. Cassidy, do you know, does Staff
2 request certain information, data, reports, that sort of
3 thing, from Empire on a routine basis regarding its
4 operations?

5 A. I believe there's some reports that are
6 provided to members of our energy department, but I'm not
7 familiar with those.

8 Q. Your -- what would you call it, your IEC
9 range gas prices is based on an EIA forecast; is that
10 correct?

11 A. The ceiling of my IEC range is partially
12 based on an EIA forecast.

13 Q. EIA stands for what?

14 A. Energy Information Administration.

15 Q. So would you agree that since that is not a
16 market, you cannot buy or sell gas on the EIA?

17 A. The EIA is not a market. I would agree
18 with that.

19 Q. You've read Mr. Beecher's rebuttal
20 testimony, correct?

21 A. Yes, I have.

22 Q. Do you have a copy of it with you?

23 A. Yes, I do.

24 Q. Could you turn to pages 8 and 9 of
25 Mr. Beecher's rebuttal?

1 A. Okay. I'm there.

2 Q. Okay. Beginning on line 12 of page 8, and
3 then running through I guess the tables on page 9,
4 Mr. Beecher addresses your IEC floor recommendation. Do
5 you see that?

6 A. Yes. This is where he makes some
7 observations.

8 Q. Now, you've had his rebuttal testimony and
9 you did not file any surrebuttal disputing the
10 calculations Mr. Beecher makes on those portions of his
11 rebuttal testimony, correct?

12 A. There's nothing in my surrebuttal
13 addressing these observations, but I believe that I could
14 make some comments now about them.

15 Q. Do you disagree with Mr. Beecher's method
16 of allocation there on the top of page 9?

17 A. At this point in time, Mr. Beecher's
18 calculations that -- when he filed this rebuttal
19 testimony, these calculations may be correct. However,
20 things change as time progresses. As time moves on,
21 Empire's hedge position may change, which would impact
22 these calculations.

23 Q. I'm sorry. Go ahead if you weren't
24 finished.

25 A. Okay. And there are also other variables,

1 fuel variables that could impact these calculations: Coal
2 prices could change, oil prices, purchased power prices
3 could change. All of those factors could impact these
4 calculations. So that may be his best representation on
5 this given day of what he believes it will take to achieve
6 the IEC floor, but that can change.

7 Q. Well, you mentioned Empire's hedging
8 position changed. If Empire's hedging position changed
9 and went up, that would require that these numbers shown
10 in Mr. Beecher's testimony, those numbers would actually
11 go down, would they not?

12 A. If their hedged position changed and went
13 up, yes, that would be the case.

14 Q. I believe there was testimony to that
15 effect. Do you remember that?

16 A. Mr. Beecher indicated that his hedge
17 position had increased by 6 or 8 cents roughly. However,
18 Mr. Beecher also has another 20 percent of hedge position
19 that he can tap into based on his risk management policy,
20 and there is potential that his hedge position could go
21 back down based on that additional hedge position that he
22 has available to him.

23 Q. Do you think that it is likely -- well,
24 first of all, let me ask you, do you understand there on
25 page 9 Mr. Beecher's rebuttal, the point that he is making

1 there is that the price of gas has to fall to a range of
2 24 cents per MMBtu to \$1.50 per MMBtu in 2005 in order to
3 achieve Staff's recommended IEC floor?

4 A. That is Mr. Beecher's observation on the
5 day he filed this rebuttal testimony, and I don't dispute
6 that.

7 Q. You don't dispute. Okay. You think it's
8 realistic that gas prices will fall to 24 cents per MMBtu
9 to \$1.50 per MMBtu in 2005?

10 A. It's not likely.

11 Q. Do you really think there's any chance at
12 all of that happening?

13 A. I don't know.

14 Q. When's the last time you remember \$1.50
15 MMBtu gas?

16 A. There were times in the '90s that gas was
17 below \$2 per MMBtu.

18 Q. How about 24 cents per MMBtu, do you ever
19 remember that?

20 A. I'm not old enough to recall that.

21 Q. And staying there on page 9, do you
22 understand Mr. Beecher's rebuttal testimony to show that
23 the price of gas must fall to a range of \$2.50 per MMBtu
24 to \$2.69 per MMBtu in 2006 in order to meet the Staff's
25 recommended IEC floor?

1 A. In order to beat the floor, yes.

2 Q. Do you believe it is realistic that gas
3 prices will fall to a range of \$2.50 to \$2.69 per MMBtu in
4 2006?

5 A. It's possible.

6 Q. Under what set of circumstances can you
7 envision that that would be possible, Mr. Cassidy?

8 A. Well, in 2002 Empire's actual cost for
9 natural gas was \$2.70.

10 Q. Well, that was hedge, was it not?

11 A. Right.

12 Q. So what was the price of gas in the year
13 you reference?

14 A. Something more than \$2.70.

15 Q. Okay. How likely do you think it is we're
16 going to see gas in that range in 2006?

17 A. I don't think anyone can say with any
18 certainty what gas prices will be.

19 Q. Would you agree that there are issues other
20 than gas price that impact Empire's total fuel and
21 purchased power costs?

22 A. Yes.

23 Q. Would you agree that one of those other
24 issues would be abnormal incidents at a generating
25 station, for example?

1 A. Yes, that would be one such example.

2 Q. And, in fact, in recent years there have
3 been some of those incidents on Empire's system, correct?

4 A. It's my understanding they have had some
5 outages.

6 Q. And those types of outages or incidents are
7 not included within the IEC band or range, are they?

8 A. I believe they are, because in developing
9 the IEC band, all of the fuel and purchased power
10 variables are considered when making that determination,
11 as are all of the other variables in the rest of the case.

12 Q. So you believe that unexpected abnormal
13 incidents are built in?

14 A. The Staff's fuel model addresses outages.

15 Q. It addresses outages, but -- planned
16 outages and certain types of other outages, but does it
17 address outages such as happened in 2001, for example, at
18 -- due to the extended outage at Asbury?

19 A. Those outages -- I think when the Staff
20 runs its model, and I would defer to Mr. Bender on that,
21 but he considers all of the outages over an extended
22 period of time in making a determination of what a normal
23 level of outages should be included in its fuel model.

24 Q. Would that more properly be a question for
25 Mr. Bender?

1 A. Perhaps.

2 Q. Mr. Cassidy, just a couple further
3 questions. Do you know what Staff proposed in this case
4 for 100 percent of the labor expenses at Empire?

5 A. I don't personally know, but it was
6 considered by another Staff member in this case.

7 Q. Okay. But you don't know how much Staff
8 proposed for labor?

9 A. I don't know that.

10 Q. Do you know what the EIA gas forecast is
11 for 2006, the price per MMBtu?

12 A. EIA puts -- has put out short-term monthly
13 forecasts that right now only predict 2005 pricing.

14 Q. Okay. Are any of those in the 24 cents to
15 \$1.50 per MMBtu range?

16 A. None that I've seen.

17 MR. KEEVIL: Thank you. No further
18 questions.

19 JUDGE THOMPSON: Thank you, Mr. Keevil.
20 Now we're ready for questions from the Bench.
21 Commissioner Clayton?

22 QUESTIONS BY COMMISSIONER CLAYTON:

23 Q. I have some general questions I was hoping
24 you could help me with. First of all, I was wondering if
25 you could give me an outline of the organization of

1 Staff's witnesses on this case, because there are -- how
2 many witnesses does Staff have on this issue?
3 A. I believe there's --
4 Q. 8 or 10 or something?
5 A. The Staff?
6 Q. Yes.
7 A. I believe myself, Leon Bender and Dr. Kwang
8 Choe.
9 Q. Three, and then rate design?
10 A. Rate design I'm not sure. I think
11 Dr. Watkins.
12 Q. Okay. So 4 or 5 witnesses. Could you
13 identify exactly what each witness, the general nature of
14 their testimony? Not the specifics, but how they each
15 complement and support each other?
16 A. Okay. Mr. Bender's testimony describes the
17 fuel modeling process that Staff undergoes in determining
18 fuel and purchased power for the variable pieces.
19 Dr. Choe has filed surrebuttal testimony in this case
20 addressing the NYMEX pricing and why NYMEX pricing cannot
21 be relied upon in the ratemaking process and why there is
22 no correlation between NYMEX futures prices and actual gas
23 prices. And as far as Dr. Watkins' testimony on rate
24 design, I would just defer to him to explain that.
25 My testimony addresses the use of EIA

1 forecasts versus -- the thrust of my testimony in dispute
2 that we're talking about here is to address the difference
3 in using EIA versus NYMEX pricing.

4 Q. What is EIA again?

5 A. It's the Energy Information Administration.

6 It's a branch of the U.S. Department of Energy. It's
7 charged with developing research and data and reports that
8 are meant to help policymakers determine energy policy.

9 Q. So are you the principal Staff witness for
10 coming up for an estimated price of gas that will then be
11 taken and placed in the model to be run by Mr. Bender?

12 A. That's correct.

13 Q. Okay. Because positions have changed --

14 I'm not saying Staff has necessarily changed -- my notes
15 reflect that I believe you were using a range of \$3.20 gas
16 up to \$5.62 gas; is that correct?

17 A. That's correct.

18 Q. And that was in your direct testimony that
19 was filed?

20 A. Yes.

21 Q. And has that position changed in any way?

22 A. No, it has not.

23 Q. When was your direct testimony filed?

24 A. In September of 2004.

25 Q. Do you monitor the EIA prices on a regular

1 basis?

2 A. Yes.

3 Q. I'm sorry. Go ahead.

4 A. Yes. I monitor them each month to check
5 the new short-term outlook and also look at other areas of
6 that website.

7 Q. And since you filed your direct testimony,
8 have you reviewed them on a regular basis?

9 A. Yes, I have.

10 Q. And have you filed any subsequent testimony
11 that would reflect any changes in the EIA prices?

12 A. Yes. In my surrebuttal testimony on
13 page 8, I outline the EIA forecast for 2005.

14 Q. So does it change your estimate from the
15 3.20 up to the 5.62?

16 A. No, it does not, and I can explain.

17 Q. Please explain.

18 A. Okay. I relied upon the 6.60 estimate. If
19 you look at page 8 of my surrebuttal testimony --

20 Q. You're assuming I can find anything in this
21 stack of paper.

22 A. Let me say -- let me explain what each
23 month's position, short-term outlook is provided. In
24 August they indicated 2005's forecasted price to be 6.60.
25 That is what I have relied upon to develop Empire's cost

1 for unhedged gas, gas that they still have to acquire
2 during 2005. Since that time the EIA has issued reports
3 saying that 2005 gas will be either -- as of September
4 they believed it to be 6.14, October 6.18, November 6.33,
5 and just yesterday for December, in that report they
6 indicated gas would be 6.01.

7 So the Staff believes it has been
8 conservative in developing its IEC ceiling because it has
9 relied upon the worst case scenario that EIA has put out
10 for 2005 gas prices.

11 Q. The prices that are reflected in your
12 direct testimony for gas on the unhedged portions, what
13 price did you use?

14 A. 6.60.

15 Q. Okay. So the price has actually gone down
16 from 6.60 to what, 6.13, I think was the last number that
17 you used?

18 A. The price has gone down from 6.60 to
19 yesterday's report of 6.01.

20 Q. 6.01. Okay. Okay. Do you compare your
21 figures, the EIA figures with the NYMEX figures? Is there
22 a way of cross-checking to make sure that they're within a
23 margin of reasonableness? You're speaking to someone who
24 does not use the EIA on a regular basis.

25 A. Um --

1 Q. Do they have any connection or relevance,
2 any correlation of those values?

3 A. No. I don't believe that there's a
4 correlation between the two. I look at the EIA figures as
5 being something that's based on analytical econometric
6 research that looks at all of the variables that impact
7 fuel and purchased power -- or impact gas cost, I should
8 say.

9 It looks at -- EIA looks at storage. They
10 look at weather, the effects of hurricanes, world events,
11 9/11 or unrest in the Middle East. They consider demand.
12 They consider drill rig counts. All of these variables
13 are entered into their analysis in making this
14 determination.

15 Q. And the NYMEX market doesn't reflect each
16 of those items?

17 A. I think the NYMEX market is more of -- and
18 I would defer to Dr. Choe about what the NYMEX gas futures
19 represent, but it's my understanding that those futures
20 are not intended to be a forecasting tool and that they
21 more represent what traders are speculating.

22 Q. But the traders' behavior, one could
23 assume, would include assessing each of those factors that
24 you just mentioned, wouldn't it?

25 A. Yeah, that's possible. I just don't know.

1 Q. Okay. You have reviewed everyone's
2 testimony on this issue that has been filed by all the
3 parties?

4 A. Yes.

5 Q. So you're knowledgeable of each of the
6 parties' positions?

7 A. Yes.

8 Q. And what is the unhedged estimate price for
9 gas use by Empire?

10 A. Give me a moment and I'll --

11 Q. You don't like looking through that
12 testimony either, do you?

13 A. In their surrebuttal testimony, their
14 unhedged price is 6.79.

15 Q. That was down from 7.50, I believe at one
16 point?

17 A. Correct. 7.50 was their rebuttal position.

18 Q. Okay. Could you describe to me each of the
19 reasons why you believe that figure is not accurate or is
20 not reflective of a proper estimate of cost?

21 A. It's based on the NYMEX futures on a single
22 day, and as Mr. Beecher has indicated on the record, that
23 NYMEX futures are very volatile. They change
24 instantaneously, I believe is the way he described it, and
25 that we've seen this volatility in just the positions he's

1 taken in this case. They've changed since his direct
2 testimony. They've changed since his rebuttal testimony.
3 The NYMEX futures have changed since he filed surrebuttal
4 testimony. They've gone down. As of December 2nd, I
5 believe they were at 6.46.

6 So it's not appropriate to set rates based
7 on a single-day estimate of what traders are speculating
8 futures prices will be.

9 Q. If we would have conducted this hearing
10 within 30 days after the filing of direct testimony, how
11 different would the position of Staff and the company have
12 been prior to the filing of rebuttal testimony?

13 A. On the unhedged piece?

14 Q. Yes.

15 A. You asked prior to the rebuttal testimony

16 or --

17 Q. Well, as I recall, Empire's position has
18 changed at various times throughout these proceedings. If
19 we would have had this hearing based on only the direct
20 testimony, could you describe the difference in position
21 between Empire and Staff on the price of gas, on the
22 unhedged price of gas?

23 A. Okay. At their direct testimony filing, I
24 believe for their IEC proposal, they were using --

25 Q. I don't want to talk about IEC. I want to

1 talk about a flat amount. I'm going to eventually get you
2 to getting to what Staff's position is. I'm going to make
3 you take a position on what Staff's position is on a flat
4 amount for power costs. Okay. So that's where I'm going.
5 So I want to focus on just the total
6 amount. I believe it originally was 123 million, and it's
7 now up around \$137.5 million based on \$5.69?
8 A. That's their base, yes. That's the base
9 amount.
10 Q. The base amount. That's what -- I want to
11 talk about their original base amount in their direct
12 testimony, and I want you to tell me what Staff's base
13 amount is also, so I'm going to get to that.
14 A. Okay. Empire's --
15 Q. Just foreshadowing.
16 A. Okay. In Empire's direct testimony, they
17 filed a base amount of 123 million, and that was driven
18 off of a \$4.71 average natural gas price.
19 Q. And then what would Staff's position be on
20 a base amount?
21 A. Staff has taken no position on a base
22 amount in this case.
23 Q. So it's Staff's position that it ought to
24 just be somewhere in the range that it has suggested?
25 A. Well, the Staff believes that on the advice

1 of its general counsel, that an IEC is lawful and that the
2 Commission has the authority to order one without the --

3 Q. I appreciate that, but if I want to make a
4 decision on a base amount --

5 A. Well, may I explain why I don't believe a
6 base amount can be used? I don't believe a base amount
7 can be used in this case to set just and reasonable rates,
8 and that's because of the fact that Empire is highly
9 reliant on natural gas, and gas prices are very volatile.
10 So the likelihood of being able to set a base price in
11 rates and be right is very slim.

12 There's a high degree of possibility of
13 being wrong in setting a base amount, and the dramatic
14 effects to Empire's shareholders, or conversely to the
15 customers, is so severe that it won't result in just and
16 reasonable rates by doing so. So that's the reason the
17 Staff is only recommending an IEC in this case.

18 Q. I understand that, and I'll be sure to take
19 that message to the General Assembly next time I'm over
20 there. But if I were evaluating this case based on a base
21 amount for energy costs, I need to know whether or not
22 Staff has a position or if Staff is punting on this issue.

23 A. Staff is punting.

24 COMMISSIONER CLAYTON: Okay. Okay. Thank
25 you.

1 JUDGE THOMPSON: Thank you, Commissioner.
2 Commissioner Davis?
3 QUESTIONS BY COMMISSIONER DAVIS:
4 Q. Okay. Mr. Cassidy, refresh for my
5 recollection, you are an Accountant 4; is that correct?
6 A. Yes, that's correct.
7 Q. Or an Auditor 4?
8 A. Yes.
9 Q. Is it auditor or accountant?
10 A. Regulatory Auditor 4.
11 Q. Regulatory Auditor 4. And how long have
12 you worked for the Commission?
13 A. Approximately 13 years, 14 years.
14 Q. And I've read from the back of your direct
15 testimony that you've testified in numerous cases. I'm
16 just trying to get my arms around things here. Who is
17 your supervisor?
18 A. My immediate supervisor is Steve Rackers.
19 Q. Okay. Steve Rackers. And he's also --
20 now, he's not giving any testimony in this case, correct?
21 A. He's filed no testimony in this case.
22 Q. Okay. But has he -- did he supervise the
23 accounting work done in this, the Empire case?
24 A. He was project coordinator on this case and
25 supervised this audit.

1 Q. Okay. What does a project coordinator do?

2 A. He -- a project coordinator coordinates all
3 of the Department's activities in assembling the case. He
4 coordinates, for instance, Mr. Bender's department. He
5 helps to assist to coordinate their function with the
6 audit function. He reviews all of the testimony in the
7 case.

8 Q. He reviews all of the testimony in the
9 case. Does that mean that after he reviews it, that
10 changes are made?

11 A. He reviews it and provides guidance, but to
12 the individuals filing testimony, he does not give
13 direction about what is to be included in the testimony.
14 That's left up to the individual members filing the
15 testimony.

16 Q. So he gives guidance about testimony, but
17 he doesn't ask anyone to change their testimony?

18 A. He might make suggestions that you need to
19 look at this or do this, but the ultimate decision rests
20 with the individual filing the testimony. They're the
21 people that have to defend the issues that go into the
22 testimony and be able to support them.

23 Q. Okay. Now, this -- and I'm sorry. I don't
24 mean to be redundant here. This EIA pricing, that's the
25 federal government's price report, is that correct, or

1 that's a federal agency's price report?

2 A. Right. The EIA is an agency of the U.S.

3 Department of Energy.

4 Q. So they don't actually set the prices. I

5 mean, they're not a -- they're not a market maker? I

6 mean, so people -- people don't necessar-- I mean, they

7 are more a reflection of the market than the market is a

8 reflection of them, correct?

9 A. I think they are -- they do look at the

10 market and consider it, but they also consider many other

11 variables in making their price determination, that the

12 market may or may not be considering.

13 COMMISSIONER DAVIS: I'm going to pass

14 right now, Judge, but I may have some more questions here.

15 JUDGE THOMPSON: Thank you, Commissioner.

16 Commissioner Appling?

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Mr. Cassidy, good morning. How are you

19 doing?

20 A. Good morning.

21 Q. I have two or three questions, sir, please.

22 The first one is, in Staff's overall

23 opinion, is Empire running an efficient organization in

24 their providing electricity to their customers? What are

25 your thoughts, are they running a good organization?

1 A. I can only speak to the fuel area and some
2 of the steps they've done in the areas of hedging, and I
3 believe that they have done a very good job in hedging for
4 natural gas. That policy has benefited Empire's customers
5 to date.

6 Q. Okay. There's been a lot of conversation
7 here in the last -- yesterday and -- on if Empire doesn't
8 get this right this time around, that they can be back in
9 here in the next two years for a rate increase. You have
10 a lot of experience in rate cases, I think, over 13 years.
11 What do you estimate costs for Empire and the Staff, how
12 much would that cost us to do one of these rate cases?

13 A. How much does it cost to do a rate case?

14 Q. Uh-huh. Time, money, depending on -- I'm
15 sure it's dependent on the case, but it runs a few
16 dollars, doesn't it?

17 A. Yeah, there are costs. I don't know that I
18 could quantify exactly, an exact amount for you.

19 Q. Well, I may try Mr. Beecher before he
20 leaves. Maybe he can answer that question. But
21 Mr. Beecher said yesterday and again this morning that he
22 prefers a fuel adjustment clause over the interim energy
23 charge. Do you see any problem with the fuel adjustment
24 clause?

25 A. Yes. And I can give you my viewpoint of

1 what I think a fuel adjustment clause is.

2 Q. Help me out. I'm an old country boy, and

3 I'm just trying to get down to the bottom line here.

4 A. Okay. It's my understanding that the

5 Missouri Supreme Court outlawed the fuel adjustment clause

6 back in the '70s, and so generally speaking, it's my

7 understanding that a fuel adjustment clause, I think

8 they're all different in other states, but generally

9 speaking, a fuel adjustment clause allows an electric

10 company to make fuel and purchased power related price

11 adjustment outside of a traditional rate case. It's done

12 after the fact. And so because of that, it's ignoring all

13 of the other variables in the case.

14 It ignores all of the things like payroll,

15 customer growth, the addition of additional combustion

16 turbines that the company puts on. All of those factors

17 are ignored. It's just a straight whole daily -- it's

18 just a straight pass-through of costs where there's no

19 incentive for the company to work hard to be innovative

20 and be efficient. Whatever the costs are, they are, and

21 that cost is passed through.

22 And I believe a fuel adjustment clause,

23 therefore, eliminates -- also eliminates most of the risk

24 associated with fuel and purchased power because they're

25 guaranteed of recovering that cost.

1 Q. Okay. This morning you mentioned there was
2 other variables that could be used in the next 13 months
3 or the next 18 months if Empire decided to come back in
4 for a rate hearing. Share with me two or three variables
5 that you think they have the option to use. What are some
6 of the other things that could cause?

7 A. Empire could contract -- these are all
8 speculative. I don't know if these will take place, but
9 things that could happen. Empire could obtain coal. It
10 can get a long-term coal contract at a much cheaper rate
11 than currently exists. They can obtain purchased power on
12 a long-term agreement on a much cheaper rate than what
13 we've built into rates now. They could become more
14 efficient in other areas of their operations that offset
15 these other costs that they're concerned about.

16 Q. Last question. Why do you think so many
17 other states have the fuel adjustment clause versus
18 Missouri? What's happening to us? What makes us think
19 we're so --

20 A. I really don't know the answer to that
21 question.

22 COMMISSIONER APPLING: Okay. I think
23 that's all. Thank you.

24 JUDGE THOMPSON: Thank you, Commissioner.

25 Further questions?

1 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

2 Q. Okay. Mr. Cassidy, earlier when you were
3 responding to some questions by Commissioner Clayton, you
4 noted that Mr. Bender testified or is giving testimony in
5 this case, Dr. Watkins, and then there was -- is it
6 Dr. Choe?

7 A. Dr. Kwang Choe.

8 Q. Can you spell that for me?

9 A. C-h-o-e.

10 Q. Anybody else giving testimony?

11 A. Those are the testimonies I'm familiar
12 with.

13 Q. Let me ask you this: As an Auditor 4, do
14 you -- did you supervise anyone else's work on this?

15 A. No, I did not supervise anyone else's work
16 in this case.

17 Q. Okay. So you did all of your own work
18 related to this?

19 A. Related to fuel and purchased power,
20 correct.

21 Q. Related to fuel and purchased power?

22 A. And the interim energy charge.

23 Q. And the interim energy charge. Okay. Now,
24 is Leasha Teel, is she giving testimony?

25 A. She provided testimony on other areas of

1 the case, I believe on maintenance. She's providing
2 testimony on the depreciation cost of removal issue.

3 Q. Okay. Is there anyone else out -- Roberta
4 McKiddy?

5 A. She filed testimony in this case.

6 Q. And what's she talking about?

7 A. She addressed rate base, the energy center.
8 There was an energy center disallowance that was made.
9 She addressed rate case expense.

10 Q. Are there any other accountants or
11 auditors -- excuse me. I keep using these terms
12 interchangeably and they're not. Are there any other
13 auditors from the St. Louis office who have worked on this
14 case?

15 A. Yes, Doyle Gibbs and Sean Devore.

16 Q. And what were their roles?

17 A. Mr. Gibbs addressed the areas of pensions
18 and revenues. Mr. Devore examined miscellaneous expenses,
19 payroll.

20 Q. And each one of these people reports to the
21 project manager, Steve Rackers; is that correct?

22 A. There are -- each one of these people
23 reported to Mr. Rackers in their involvement in this case.

24 Q. Okay. So they all reported to Mr. Rackers?

25 A. Correct.

1 Q. Now let me ask you this: So in the --

2 obviously you prepared your testimony here, and did you
3 then submit that testimony to Mr. Rackers?

4 A. I prepared it and Mr. Rackers reviewed it,
5 yes.

6 Q. And then what happened?

7 A. After his review and the review from other
8 people in the agency, my attorney reviewed it. I believe
9 I showed it to Mr. Bender. It was shown --

10 Q. Did you do anything to change your
11 testimony after any of those reviews?

12 A. Nothing substantive. Maybe changes in --
13 grammatical changes, sentence structure.

14 Q. And you have -- now I'm going to go back to
15 the EIA pricing. The EIA pricing you feel is the most
16 accurate reflection of natural gas purchase prices for a
17 company like Empire; is that correct?

18 A. I believe it's the most reasonable method
19 to use in forecasting natural gas prices.

20 Q. The most reasonable method to use in
21 forecasting natural gas prices?

22 A. In comparison to Mr. Beecher's NYMEX gas
23 futures prices.

24 Q. So hypothetically speaking, if I was
25 crafting an interim energy charge, you would say use the

1 EIA pricing?

2 A. In the development of forecasted gas prices
3 in this -- in these times of volatile gas prices, yeah, I
4 believe the EIA method is more -- a more reasonable method
5 to use in crafting the IEC ceiling than using the
6 company's approach, which uses NYMEX futures prices.

7 Q. I think we established earlier that there
8 is an inherent amount of risk for both the companies and
9 the ratepayers, you know, when there is no -- no fuel
10 adjustment clause or no interim energy charge; is that
11 correct?

12 A. In the times of high -- yes, in times of
13 high volatility in the gas market and combined with a
14 heavy reliance on natural gas and spot market purchased
15 power, yes.

16 Q. In your opinion, are we experiencing a
17 period of volatility in the natural gas market?

18 A. Yes, we are.

19 COMMISSIONER DAVIS: I'm trying to think of
20 how to phrase this question. No further questions at this
21 time.

22 JUDGE THOMPSON: Thank you, Commissioner.
23 Commissioner Clayton?

24 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

25 Q. Since Staff punted on my question of the

1 base amount, I'm going to ask you some questions since
2 you're unbiased on the issue. Looking at the options that
3 we have before us, if we assume -- if we make the
4 assumption that the Commission chooses a base amount
5 rather than taking the IEC method of establishing these
6 power costs, I want to go through the options that the
7 Commission would have before us. Do you understand the
8 general nature of the questions that I'm going to ask?

9 A. Yes, but I wouldn't be taking a position on
10 the base amounts. Is that --

11 Q. That's why I'm asking you these questions.
12 First of all, we could choose the Empire position of
13 \$137.5 million based on \$5.69 unhedged gas using their
14 fuel model. That is one option, correct?

15 A. That is an option.

16 Q. Second option would be that we choose the
17 Office of Public Counsel position which sets a revenue
18 requirement amount of \$126 million roughly based on \$4.68
19 unhedged gas; is that correct?

20 A. Yes. It's about 126 million.

21 Q. 126 million. And then do they use the same
22 fuel model as Empire?

23 A. Public Counsel's gas price was run through
24 Staff's fuel model.

25 Q. Okay. So the models are different?

1 A. Their model is -- our model is different
2 from the company's model. We have a real-time model.
3 They rely on a post model.

4 Q. Is the difference in model significant?

5 A. I don't believe it is, because I think the
6 company has indicated that our modeling has been very
7 close in this case.

8 Q. Okay. So first option is to choose a
9 position of Empire. Second would be Office of Public
10 Counsel. The third option would be that we, that the
11 Commission could choose its own model, its own gas price,
12 as well as other variables that would go into that model.
13 Is that an accurate statement on my part?

14 A. Yes, the Commission has the discretion to
15 choose its own base point.

16 Q. Is it your understanding that there is any
17 significant disagreement on any of the other inputs into
18 the model, like coal prices or purchased power costs or
19 any other variables that would go into that model?

20 A. My understanding is that the most -- the
21 only significant disagreement right now is with the
22 natural gas costs.

23 Q. Okay. So when I suggest that we would
24 choose our -- the model that we want to use, it really
25 doesn't make any difference. The real question before us

1 is what is the estimate on the unhedged price of gas in
2 the future?

3 A. That's correct.

4 Q. Could the Commission look at a fourth
5 option? Could we just pick a number that would estimate a
6 revenue requirement for power costs without identifying a
7 model or a gas price or other inputs? For example, could
8 we just say, well, let's allocate \$120 million for this
9 line item. Do we have that ability to make that choice?

10 A. Yes, I believe the Commission can select a
11 base point based on whatever criteria it deems
12 appropriate.

13 Q. And at the end of the day, everything comes
14 down to that, what we think the price of gas is going to
15 be. Since the models are the same, all the other
16 variables are the same, it really comes down to the price
17 of gas, correct?

18 A. When you are using a base point estimate,
19 that price of gas and combined with Empire's heavy
20 reliance makes it almost certain that you're going to be
21 wrong in selecting that base point, and because of that, I
22 think it makes it impossible to set just and reasonable
23 rates. That's why we've proposed the IEC, and I think
24 there's a lot of --

25 Q. The potential is there for somebody to get

1 burned no matter what number that we pick, is what you're
2 saying?

3 A. Right. I believe -- I believe shareholders
4 could be significantly harmed if you're wrong, and I
5 believe ratepayers could be significantly harmed the other
6 way if you're wrong. That possibility is -- certainly
7 exists.

8 COMMISSIONER CLAYTON: Okay. Thank you for
9 your unbiased opinion.

10 JUDGE THOMPSON: Other questions from the
11 Bench?

12 COMMISSIONER APPLING: I'm going to reserve
13 my questions until you speak. Go ahead.

14 COMMISSIONER DAVIS: I'm going to pass
15 right now, too.

16 COMMISSIONER APPLING: I'll pass, Judge.

17 JUDGE THOMPSON: Commissioner Clayton?

18 COMMISSIONER CLAYTON: I believe I'm done.

19 JUDGE THOMPSON: Well, if there are no
20 further questions from the Bench at the moment, we've been
21 going about 90 minutes, so it's time for a break for the
22 reporter.

23 We'll take 10 minutes. We're in recess.

24 Thank you.

25 (A BREAK WAS TAKEN.)

1 JUDGE THOMPSON: We're ready for recross
2 based on questions from the Bench. Mr. Conrad?
3 MR. CONRAD: No questions, your Honor.
4 JUDGE THOMPSON: Mr. Coffman?
5 MR. COFFMAN: Thank you.
6 RE-CROSS-EXAMINATION BY MR. COFFMAN:
7 Q. I have just two questions here. You were
8 asked about what the EIA does to base its forecast, and
9 can you tell me at what trading hub the EIA bases its
10 forecast information?
11 A. It's based on the price at the Henry hub.
12 Q. And does Empire District Electric Company
13 purchase its actual gas supply from the Henry hub?
14 A. I think it gets it from the Williams --
15 well, that's the old name -- Southern Star Central Gas
16 Pipeline.
17 Q. And is there a basis differential between
18 the Henry hub and the Southern Star Central?
19 A. It's my understanding that the Southern
20 Star is generally a little bit less than the Henry hub
21 price.
22 Q. So to the extent that you're relying on EIA
23 information, it's likely that it might actually be higher
24 than what Empire might experience?
25 A. That's correct.

1 Q. And you did note, I believe, earlier that
2 your -- that the most recent EIA short-term outlook is
3 suggesting a natural gas price of 6.01 per MCF in the year
4 2005, correct?

5 A. That is correct.

6 Q. Does Staff plan on downwardly adjusting its
7 recommendation based on the difference between 6.60 and
8 6.01?

9 A. No, it is not.

10 Q. But would you agree with me that that --
11 the most recent trends would indicate that number's lower
12 than what Staff's recommending?

13 A. Correct.

14 MR. COFFMAN: Thank you. That's all I
15 have.

16 JUDGE THOMPSON: Thank you, Mr. Coffman.

17 Mr. Keevil?

18 RE-CROSS-EXAMINATION BY MR. KEEVIL:

19 Q. Good morning again, Mr. Cassidy.

20 A. Good morning.

21 Q. Let me start out with an easy one, because
22 I think we're in agreement on this. I think you may have
23 misspoken, so I just want to get this clear for the
24 record. In response to some questions from, I believe it
25 was Commissioner Davis, you stated that Roberta McKiddy

1 filed testimony -- at least this is what I think you
2 stated. You stated that Roberta McKiddy filed testimony
3 in this case regarding the energy center disallowance.
4 And my question for you is, isn't it true
5 that that was just a Staff proposed disallowance which was
6 part of the black box settlement in this case?

7 A. That's correct.

8 Q. I thought we agreed on that. I just wanted
9 to make sure.

10 You were asked a lot of questions from the
11 Bench regarding the EIA forecast figure, and I just want
12 to make certain that I understand. That EIA figure is a
13 forecasted price rather than an actual price you can buy
14 gas at, correct?

15 A. Right. It's that agency's best judgment.

16 Q. I believe you stated in response to a
17 question from Commissioner Applying that in your opinion,
18 Empire -- I believe his question was along the lines of,
19 is Empire an efficient organization, and your response was
20 you wanted to live with your response to the fuel and
21 purchased power area, but that you thought Empire had done
22 a good job with its hedging program and has a good hedging
23 program. Did I hear you correctly?

24 A. That's correct.

25 Q. Okay. Now, is it true, Mr. Cassidy, that

1 one of the instruments Empire uses as part of its hedging
2 program are NYMEX contracts?

3 A. I believe that's outlined in Mr. Beecher's
4 Schedule 1 in his direct testimony, and I believe that's
5 one of the hedging instruments that they utilize.

6 Q. So the answer to the question would be yes,
7 then?

8 A. Yes.

9 Q. Okay. So you were not advocating -- due to
10 your apparent belief that the NYMEX is unreliable, you are
11 not advocating that Empire discontinue its hedging program
12 which is -- at least partially uses NYMEX instruments,
13 correct?

14 A. Correct. But those -- realize that those
15 hedged positions can change.

16 Q. You were -- I believe it was Commissioner
17 Appling. I could be wrong on that. But you were asked
18 some questions about the variables that could cause
19 Empire's total prices, or cost I should say, to drop below
20 the bottom of your IEC floor. Do you remember those
21 questions generally?

22 A. If you could refresh my memory.

23 Q. Well, you listed -- I believe it was
24 Commissioner Appling, you listed coal as one variable that
25 could cause Empire's costs to drop, and you again

1 mentioned the efficiency issue that could cause prices to
2 drop.

3 A. Those were examples that I had mentioned.

4 Q. Right. But --

5 A. Not necessarily that those would be the
6 case.

7 Q. Okay. Are you aware that coal costs are
8 currently higher than the coal costs under Empire's coal
9 contracts?

10 A. I'm not aware of that.

11 Q. Okay. That could be true, you just don't
12 know?

13 A. Could be, but I don't know.

14 Q. Okay. Do you expect the heat rates of
15 Empire's generating units to change considerably in the
16 next two years?

17 A. I wouldn't expect them to change, but I
18 don't know.

19 Q. Regarding this -- if Empire was able to
20 operate more efficiently, its total costs might drop below
21 the bottom of your range. Let me just pursue that for a
22 moment. If Empire's actual expenses are approximately
23 \$134 million at the top of your proposed IEC collar and
24 the rates drop back down to \$110 million after the IEC
25 goes away as you propose, as I understand, do you

1 reasonably expect Empire to be able to cut its other costs
2 \$24 million in the next two years from their cost of
3 service?

4 A. I don't know how Empire could do that.

5 Q. But that's what would be required of them
6 under your proposal, correct?

7 A. But that's assuming that gas prices remain
8 high. In other words, you're assuming if gas prices stay
9 high, that Empire's costs would be at or near the ceiling,
10 and if that's the case, then yes, Empire would have to
11 somehow save that amount of money to avoid having to file
12 for a rate case.

13 Q. Would you recognize that \$24 million which
14 they would have to cut due to efficiency gains, as you
15 stated in response to Commissioner Appling's question, do
16 you recognize that that \$24 million would represent
17 approximately two-thirds of Empire's total labor cost?

18 A. I'm sure -- I don't know that for a fact,
19 but I'm sure it's a significant piece of Empire's
20 operations.

21 Q. Do you think Empire could cut two-thirds of
22 its work force between now and the next two years?

23 A. I don't see how that would be possible.

24 Q. In response to -- well, actually, I think
25 the question that Commissioner Davis asked was something

1 along the line of there is inherent risk for both the
2 company and customers if there is no fuel adjustment
3 clause or interim energy charge. Do you recall him
4 asking -- and I think your response was essentially, yeah,
5 that's part of the reason you're proposing an interim
6 energy charge.

7 Would you agree that you -- the company
8 would also have risk if the floor or ceiling of the IEC is
9 set too low, both the company and the customers actually?

10 A. The IEC is designed, yes, the company could
11 have risk if the floor -- the ceiling is set too low if
12 prices exceed the ceiling. The customers would have risk
13 if the floor is set too high and prices went below that
14 level. Now, the purpose of setting -- or the thought
15 process that goes into determining an IEC is not to
16 eliminate all of the company's risk. It's to mitigate the
17 company's and shareholders' and customers' risk, and it's
18 done in a way as to balance that risk for both sides.

19 Q. At least it should be done in that way; is
20 that correct?

21 A. That is Staff's -- that is what Staff has
22 attempted in its determination of the IEC floor and IEC
23 ceiling.

24 Q. How did you determine the IEC ceiling?

25 A. By taking Empire's hedge position and

1 weighting that with the worst-case scenario that EIA has
2 put out to date for 2005 gas prices.

3 Q. So how does that provide safety for the
4 company in regard to risk?

5 A. Well, I've -- I have performed a
6 calculation to determine what level of gas cost the
7 company would have to incur before it -- and assuming that
8 all of the other variables would stay the same, stay
9 constant, before the company would exceed the ceiling that
10 the Staff has proposed, and the company would have to
11 incur gas costs in excess of \$7 per MMBtu based on Staff's
12 proposal.

13 So I believe that I provided a cushion in
14 my ceiling based on the most current -- based on the most
15 current EIA forecast and based on the company's current
16 hedge position.

17 Q. Okay. Then the customers would be provided
18 safety from risk how?

19 A. I believe I've attempted to protect the
20 customers from risk by developing a floor that is based on
21 an actual historic gas cost level. I developed that floor
22 by examining the 32-month period that -- of Empire's
23 hedging program from November 2001, its inception, through
24 June 3, 2004, the end of Staff's update period. That
25 examination produced a floor gas price of \$3.20.

1 I compared that to the level that was
2 included in permanent rates for the company in the last
3 case, which was 3.29, I believe. It appeared to be
4 reasonable in comparison to that, and it certainly
5 compared to be reasonable to other periods of time when
6 volatility didn't exist in gas prices that Empire
7 incurred.

8 Q. When volatility didn't -- you would agree
9 currently there is volatility?

10 A. Right, currently there is volatility.
11 That's the reason for the IEC.

12 Q. You were in here yesterday, were you not --
13 on the issue of risk under the IEC, you were in here
14 yesterday during Mr. Beecher's testimony?

15 A. Yes.

16 Q. Did you hear Mr. Beecher discuss risk
17 associated with -- I believe he called it litigation risk
18 if the Commission adopts an IEC?

19 A. I heard him mention that.

20 Q. Would you agree that that is another risk
21 under the IEC for the company?

22 A. It appears that that's the case.

23 MR. KEEVIL: Judge, just one second.

24 JUDGE THOMPSON: Certainly.

25 BY MR. KEEVIL:

1 Q. Mr. Cassidy, in response to Mr. --
2 Commissioner Clayton, I believe Commissioner Clayton asked
3 you when he was having you compare fuel cost proposal or
4 actually gas cost proposals by the various parties, asked
5 you if Empire's gas -- excuse me -- Empire's fuel number
6 was based on an unhedged gas price of \$5.69, and I believe
7 you said yes.
8 And my question to you is, in fact, isn't
9 that \$5.69 number which is being used by Empire -- I
10 realize you aren't using it -- but that figure is actually
11 a hedged gas price?
12 A. Right. If I said that, I misspoke.
13 5.69 is the average natural gas cost that Empire is using.
14 Q. Which would mean hedged, including hedged?
15 A. Hedged and unhedged?
16 Q. Right.
17 A. The unhedged gas piece was 6.79.
18 Q. In response to that line of questioning
19 by Commissioner Clayton, you also made some reference to a
20 total fuel and purchased power number which was being
21 supported by the Public Counsel's Office in this case.
22 And my question to you is, where in the record in Public
23 Counsel's testimony is Public Counsel's total fuel and
24 purchased power amount that they are recommending for
25 setting permanent rates?

1 A. I can't locate it at this time. I'd have
2 to defer that question to Mr. Busch.

3 Q. Would you disagree with me if I were to
4 tell you it is not in the record anywhere in Public
5 Counsel's testimony?

6 A. I don't know.

7 MR. KEEVIL: Thank you, Mr. Cassidy.

8 JUDGE THOMPSON: Thank you, Mr. Keevil.
9 Redirect, Mr. Frey?

10 MR. FREY: Thank you, your Honor.

11 REDIRECT EXAMINATION BY MR. FREY:

12 Q. Mr. Cassidy, I believe yesterday in your
13 discussion with Mr. Coffman there was some conversation
14 about the process of determining how the true-up and
15 refund would be handled on the -- at the conclusion of the
16 IEC period. Do you recall that?

17 A. Yes.

18 Q. And can you state when you envision that
19 process of actually making the determination of how the
20 true-up and refund will be handled, when you think that
21 will occur?

22 A. I believe that the true-up process would be
23 in place long before the actual true-up audit would take
24 place, and as a result of that, there would be no delays,
25 no possibility for delay of potential refund of

1 overcollections to Empire's ratepayers.

2 Q. Thank you. I believe it was Commissioner

3 Clayton who asked you about the 5.62 ceiling gas price.

4 Can you state or explain how you got the 5.62 as a -- with

5 respect to hedging and also the EIA estimate?

6 A. The Staff calculated that cost based on

7 Empire's hedged position at the time of its direct filing,

8 and that was at 40 percent. 40 percent of the 2005

9 position was hedged at 4.15.

10 Also at that time in the Staff's direct

11 filing EIA for the unhedged piece, the Staff used the EIA

12 forecast August 2004 report, which was \$6.60 for the

13 unhedged piece. That calculation produced a \$5.62 overall

14 price of gas --

15 Q. Okay. And I believe --

16 A. -- to be used in the development for the

17 ceiling.

18 Q. Thank you. I believe Commissioner Clayton

19 was discussing with you whether or not the Staff, or

20 specifically you, had changed your position in connection

21 with direct, rebuttal or surrebuttal testimony, and you

22 got into a discussion on the EIA estimates, I believe,

23 beginning in August. Do you recall that discussion?

24 A. Yes.

25 Q. And what -- which does that -- do those EIA

1 estimates pertain to your base number of \$3.20 for gas?

2 A. Not at all.

3 Q. So they are -- they pertain only to the

4 5.62 then?

5 A. Right. They would only pertain to Staff's

6 calculation of the ceiling.

7 Q. And so you're not using a forecast for

8 inclusion into permanent rates; is that correct?

9 A. Absolutely not.

10 Q. Can you explain how you did come up with

11 the \$3.20 for your base number for the price of gas?

12 A. That is based on looking at Empire's actual

13 cost of gas, and it's based on a 32-month period of time

14 covering Empire's -- from the start of Empire's hedging

15 program, which was November 2001, through the end of

16 Staff's update period, June 30, 2004. That -- looking at

17 that analysis produced a \$3.20 cost for gas to be included

18 in permanent rates.

19 Q. Thank you. And I think there was some

20 discussion of Staff's position on the matter of a

21 single-point estimate to be included in rates, and I

22 believe the word "punting" was used. Do you recall that?

23 A. Yes, I do.

24 Q. Did the Staff consider recommending a

25 single point?

1 A. Oh, certainly the Staff examined throughout
2 the course of its audit, it did extensive work to examine
3 whether or not that was something that could be done, but
4 based on my description of the risk involved in doing
5 that, the Staff chose not to make a recommendation in that
6 regard.

7 Q. And if I asked you to make a recommend-- a
8 single -- a recommendation on a single point based on,
9 say, last May, last August and today, would your answer
10 likely be different or have been different at each of
11 those points, or would you still be recommending an IEC?

12 A. The Staff would still recommend an IEC
13 based on all of those dates because of the volatility and
14 the risk that exists.

15 Q. So the Staff didn't try to duck, let's say,
16 making a single-point recommendation, correct?

17 A. No, it did not.

18 Q. The EIA -- I believe Mr. Keevil asked you
19 if the EIA is a trading price. Do you recall that?

20 A. Yes.

21 Q. And I believe you said it is not; am I
22 correct? Perhaps you said it is a market price.

23 A. I said -- I guess if that's what you say.

24 I don't recall.

25 Q. Okay. Does the EIA reflect a price that is

1 expected to be available to purchasers during 2005?

2 A. I think it makes a good representation of
3 that.

4 Q. And you had a discussion with Mr. Keevil
5 where he was trying to come up with -- I believe the
6 figure was \$24 million. He was exploring with you trying
7 to find \$24 million --

8 A. Correct.

9 Q. -- do you recall that?

10 Do you believe the combination of gas
11 prices and the company's hedged position could decline
12 enough to push the company's cost of gas between the
13 Staff's -- excuse me -- below the Staff's IEC floor?

14 A. It's possible. I mean, look at what
15 happened in the 2001 case. Gas costs plummeted.

16 Q. So that could address the \$24 million
17 Mr. Keevil was looking for?

18 A. Exactly.

19 MR. FREY: Thank you. No further
20 questions, your Honor.

21 JUDGE THOMPSON: Thank you, Mr. Frey.

22 You may step down, Mr. Cassidy.

23 A couple of housekeeping matters. Let's
24 see. Mr. Keevil, do you think you can give me corrected
25 pages for Mr. Beecher's testimony where we had the

1 extensive corrections yesterday?

2 MR. KEEVIL: We can probably get them to
3 you at some point, your Honor.

4 JUDGE THOMPSON: Some point will be fine.

5 Just go ahead and file them in EFIS, if you would. And
6 we'd like some scenarios. Who do I address that to,
7 Staff? Do you guys generally produce the scenarios, or do
8 all parties do those? Would all parties like to do those?

9 MR. COFFMAN: Typically each party.

10 MR. CONRAD: Depends on what they are,
11 Judge.

12 JUDGE THOMPSON: We'd like to see scenarios
13 with ROE variations from 8.0 to 13.0 and hitting every
14 half percent in between, so 8.0, 8.5, 9.0, 9 .5. So get
15 your spreadsheets out.

16 MR. KEEVIL: Could you give those again,
17 Judge?

18 JUDGE THOMPSON: Yeah. Scenarios with an
19 ROE between 8.0 percent and 13.0 percent and hitting each
20 half percent in between.

21 MR. COFFMAN: I assume you're wanting each
22 party's recommendation under each of those?

23 JUDGE THOMPSON: Yeah, I think that would
24 be the best way to do that.

25 MR. KEEVIL: I'm a little confused. That

1 is separate from the fuel issue that we're addressing
2 today, right?

3 JUDGE THOMPSON: Yes, that is separate from
4 the fuel issue. Would you like to do some fuel scenarios,
5 too?

6 MR. KEEVIL: Sure.

7 MR. FREY: Your Honor, when do you want
8 those done?

9 JUDGE THOMPSON: Well, you know, I was
10 going to ask when can you get those to us? Commissioner
11 Clayton suggests 1:30. Somebody would have to miss the
12 holiday lunch. In all -- when can you do that, I mean, by
13 the end of the hearing next week? I don't know what's
14 involved.

15 MR. KEEVIL: Probably by the end of the
16 week. Certainly by the end of the hearing.

17 JUDGE THOMPSON: Certainly by the end of
18 the hearing, and hopefully Monday morning. Try to hit
19 next Monday, all right, if possible. If that's not
20 possible, just let me hear your excuse.
21 And finally, Commissioner -- or excuse
22 me -- Chairman Gaw would like Staff to supplement the
23 record with EIA price forecasts as they become available.

24 MR. COFFMAN: Is that a request that there
25 be post-hearing filings?

1 JUDGE THOMPSON: Yes, as late-filed
2 exhibits. Of course, any late-filed exhibits, parties can
3 file objections and the like.

4 MR. FREY: Through what period, Judge?

5 JUDGE THOMPSON: On an ongoing basis. I
6 mean, this month, next month, the following month. So in
7 other words, as the Commission is deliberating and
8 thinking about this case, they can see what natural gas
9 prices are doing and are perhaps predicted to do.

10 Mr. Conrad?

11 MR. CONRAD: Judge, just to clarify and
12 perhaps to speed that process so the Commission can have
13 that data at the earliest date, I have no problem with
14 reserving exhibits and late-filed and all that, but if
15 we -- if the parties could agree that they would simply
16 file that without any, shall I say, spin or comment or
17 something.

18 JUDGE THOMPSON: That's how we'd like it.

19 MR. CONRAD: That might obviate the
20 potential for objections and speed it into the record.

21 MR. COFFMAN: It's my understanding that
22 the outlooks come out the first week of each month.

23 MR. KEEVIL: Your Honor?

24 JUDGE THOMPSON: Mr. Keevil?

25 MR. KEEVIL: As I think we've indicated

1 this morning, the EIA is just a forecast. If the
2 Commission is interested in having actuals, you need the
3 NYMEX also.

4 JUDGE THOMPSON: Why don't you add those
5 in, too. As much data as we can possibly have.
6 Anything else? And perhaps the parties can
7 discuss the issue Mr. Conrad raised during a break or
8 lunch or something to make sure.

9 MR. CONRAD: Judge, two quick things.
10 Hopefully quick.

11 JUDGE THOMPSON: Yes, sir.

12 MR. CONRAD: Yesterday when we admitted
13 Exhibit 112, which was that map, I did not have copies. I
14 just wanted to note for the record that I have now
15 provided copies of that to all parties that have requested
16 them, and I have a few more in case somebody needs to --

17 JUDGE THOMPSON: Could you let the reporter
18 have one?

19 MR. CONRAD: I certainly will.

20 JUDGE THOMPSON: Thank you.

21 MR. CONRAD: And the second thing was, I
22 did have -- and this is plainly my fault, and I'll just
23 claim senior moment. But Mr. Brubaker had also filed --
24 and this was brought to my attention primarily by Mr.
25 Keevil -- had also filed on September 20 direct testimony.

1 I got confused about our bifurcated process, and I failed
2 to get that marked and a number assigned. So if I could
3 do that quickly, I'll take care of that.

4 JUDGE THOMPSON: Certainly. That would be
5 No. 115.

6 MR. KEEVIL: You're just marking it now,
7 not offering it, right?

8 MR. CONRAD: Yeah. He'll be here today.

9 MR. COFFMAN: In order to distinguish it.

10 JUDGE THOMPSON: And that was filed on what
11 date?

12 MR. CONRAD: Well, I'm sorry. The very
13 first day, on Monday, I had 105, 106 and 107.

14 JUDGE THOMPSON: Right.

15 MR. CONRAD: 105 was his direct for the
16 27th of September.

17 JUDGE THOMPSON: Okay.

18 MR. CONRAD: What 115 would be is his
19 direct for the 20th of September. And I apologize for the
20 confusion. It's my fault.

21 JUDGE THOMPSON: That's quite all right.
22 So Mr. Brubaker's direct filed September 20th will be
23 Exhibit 115.

24 (EXHIBIT NO. 115 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 JUDGE THOMPSON: I guess one final matter.
2 I should note that Mr. McCartney for Aquila was, indeed,
3 excused yesterday and is excused until we begin
4 depreciation.
5 Anything else?
6 MR. KEEVIL: Just for clarification on the
7 ROE scenarios, you want that just addressing -- that will
8 have a flow-through effect, I would think. Did you want
9 it set up like the reconciliation or --
10 JUDGE THOMPSON: Showing how that changes
11 all the numbers at issue.
12 MR. KEEVIL: Okay.
13 JUDGE THOMPSON: Plus any other important
14 numbers that may not be at issue. Okay. Thank you.
15 Dr. Choe, I believe, is our next witness.
16 (Witness sworn.)
17 JUDGE THOMPSON: Do you understand that if
18 you give false testimony in this proceeding, you can be
19 prosecuted for the crime of perjury?
20 THE WITNESS: I do.
21 JUDGE THOMPSON: Please take your seat, and
22 spell your last name for the reporter.
23 THE WITNESS: My name is Kwang Y. Choe.
24 Last name spelled C-h-o-e.
25 JUDGE THOMPSON: You may inquire, Mr. Frey.

1 MR. FREY: Thank you, your Honor.

2 KWANG CHOE testified as follows:

3 DIRECT EXAMINATION BY MR. FREY:

4 Q. Good morning, Dr. Choe.

5 A. Good morning, Mr. Frey.

6 Q. Please tell us by whom are you employed and

7 in what capacity.

8 A. I am employed by the Missouri Public

9 Service Commission as the -- as a regulatory economist.

10 Q. And are you the same Dr. Choe who caused to

11 be filed in this proceeding what's been marked for

12 purposes of identification as Exhibit 36, Choe

13 surrebuttal?

14 A. Yes, I am.

15 Q. Do you have any corrections to make to that

16 testimony at this time?

17 A. No, I don't.

18 Q. If I were to ask you today the questions

19 that are contained in that testimony, would your answers

20 be the same?

21 A. Yes.

22 Q. And are those answers true and correct to

23 the best of your information, knowledge and belief?

24 A. Yes.

25 MR. FREY: Your Honor, I would offer

1 Exhibit 36 into the record and tender the witness for
2 cross.

3 JUDGE THOMPSON: Thank you, Mr. Frey.

4 Do I hear any objections to the receipt of
5 Exhibit 36?

6 MR. CONRAD: No objection.

7 JUDGE THOMPSON: Hearing none, the same is
8 received and made a part of the record of this proceeding.

9 (EXHIBIT NO. 36 WAS RECEIVED INTO
10 EVIDENCE.)

11 JUDGE THOMPSON: Cross-examination,
12 Mr. Conrad?

13 MR. CONRAD: And I have no questions for
14 the witness. Thank you, your Honor.

15 JUDGE THOMPSON: Thank you. Mr. Coffman?

16 MR. COFFMAN: I have no questions of
17 Mr. Choe.

18 JUDGE THOMPSON: Thank you. Mr. Keevil?

19 CROSS-EXAMINATION BY MR. KEEVIL:

20 Q. Good morning.

21 A. Good morning.

22 Q. In your surrebuttal testimony, you were
23 critical of Mr. Beecher's use of NYMEX futures, correct?

24 A. Right.

25 Q. Doesn't Public Counsel witness Busch also

1 use NYMEX futures in his -- developing his positions in
2 this case?

3 A. I've read his testimony, but I was asked to
4 respond to Mr. Beecher, so that my focus was on
5 Mr. Beecher's approach. But as I understand, Mr. Busch
6 also utilizes futures but in a different fashion.
7 Therefore, in spirit my criticism may apply to
8 Mr. Busch's, but it is not equally applicable.

9 Q. Okay. So part of your criticism may apply
10 to Mr. Busch as well as to Mr. Beecher then?

11 A. In that NYMEX should be used.

12 Q. Right. Okay. You mentioned you were told
13 to respond to Mr. Beecher. Were you then not told to
14 respond to Mr. Busch?

15 A. No, I was not specifically told not to
16 respond to Mr. Busch, but I have been asked to respond to
17 Mr. Beecher.

18 Q. Okay. So you were asked by someone to
19 criticize Mr. Beecher's method?

20 A. Well, the Staff had a concern based on
21 Mr. Beecher's methodology utilizing NYMEX futures only;
22 therefore, I had started responding.

23 Q. Do you know why you were not asked to
24 respond to Mr. Busch?

25 A. I don't know.

1 Q. Who makes that decision? Who on Staff
2 makes that decision?
3 A. I don't know.
4 Q. So it's not you, in other words?
5 A. No.
6 Q. Would you agree that looking at Schedule 2
7 attached to your testimony, there are 59 months shown on
8 your chart, and you have the spot price and the
9 corresponding year-ahead futures price for 59 months; is
10 that correct?
11 A. Uh-huh. Right.
12 Q. Okay. Would you agree that on that --
13 according to that chart, during that 59-month period, spot
14 prices were equal to the corresponding year-ahead futures
15 price on two occasions?
16 A. Do you mean exactly equal?
17 Q. Well, no. I'm talking about where your
18 little dots --
19 A. Yes.
20 Q. -- line up on each other.
21 A. Yes, I can see that there were two
22 occasions where red square and blue square coincide.
23 Q. Okay. And that would mean they were equal
24 for that month?
25 A. Not number.

1 Q. Essentially equal, I guess I should say.

2 A. I can check. I have these numbers, so --

3 Q. Okay. I don't think we need to get into

4 that level of detail.

5 A. But based on this schedule, pretty close.

6 Q. Okay. Would you also agree according to

7 that schedule, then, that spot prices were lower than the

8 corresponding year-ahead futures price on 14 occasions?

9 A. Again, I'm not sure exact 14, but I can see

10 that there were occasions where actually spot prices were

11 lower than futures, year before.

12 Q. Well, if you could, there aren't that many

13 of them. Can you count those lower ones up there on your

14 chart?

15 A. You're right.

16 Q. So we've accounted for 16 of the 59 months,

17 then. So then would you agree, then, that spot prices

18 were actually higher than the corresponding year ahead

19 future price 43 times, according to your chart?

20 A. Yes, 43 times spot prices were higher.

21 Q. Higher?

22 A. Yes.

23 Q. Right. So based on that and only that,

24 using year ahead futures prices would actually result in a

25 conservative prediction of gas costs, correct?

1 A. You mean -- I don't quite understand your
2 question. Could you repeat your question?

3 Q. Sure. Based on the fact that according to
4 your chart spot prices were higher than the corresponding
5 year ahead futures price 43 times, using year ahead future
6 prices would actually result in a conservative prediction
7 of gas costs, correct?

8 A. Right.

9 MR. KEEVIL: Thank you. That's all.

10 JUDGE THOMPSON: Thank you, Mr. Keevil.

11 We're ready now for questions from the Bench.

12 Commissioner Clayton?

13 QUESTIONS BY COMMISSIONER CLAYTON:

14 Q. That last question that was posed to you
15 that the NY-- and I want to make sure that I understand
16 it -- that the NYMEX future price being less than the
17 actual spot price 43 times on your chart; is that correct?

18 A. Right.

19 Q. And that you agree that the NYMEX futures
20 price would be a conservative estimate for what the price
21 will be one -- is it one year in advance of what the spot
22 price will be?

23 A. I -- I wouldn't say conservative estimate,
24 because by design NYMEX not really estimating future
25 price. But it turned out the future prices were lower

1 than actual spot realized price year later.

2 Q. In your testimony, do you propose a better
3 method of estimating gas prices in the future?

4 A. That's -- that's a very difficult question
5 to answer. That's the dilemma. It's very difficult to
6 estimate what the future gas prices will be. So I don't
7 know to that answer.

8 Q. Well, I think the answer to the question is
9 no, you don't give a proposal or a method for estimating
10 natural gas?

11 A. Right.

12 Q. Okay. Because it is very difficult?

13 A. Right.

14 Q. But we must choose one; would you agree?

15 A. That's right. That's right.

16 Q. So what would you propose that we choose?

17 A. Again, same answer; I don't know, to be
18 honest with you. It's very difficult.

19 Q. Can you tell me -- can you tell me other
20 methods that would be available in -- not that you would
21 necessarily choose, but that would be available to compare
22 using the NYMEX futures market?

23 A. Again, my answer to you is that I have not
24 spent much on predicting or forecasting or estimating
25 price. Therefore, at this point, I'm not willing to give

1 you any number.

2 Q. You didn't prepare a method in this case,
3 or you're generally not knowledgeable enough about
4 estimating future natural gas costs?

5 A. More the first -- the former, where I have
6 not been involved in setting pricing in this case.

7 Q. What cases -- or have you testified in any
8 cases in the past where you suggested a methodology of
9 looking at or estimating future natural gas costs?

10 A. No, I have not. My testimony has been on
11 futures prices, as to why futures prices are not reliable
12 sources from which --

13 Q. In this case.

14 A. In this case.

15 Q. In this case.

16 A. As well as in previous cases as well.

17 Q. How many cases have you testified in?

18 A. Three prior cases.

19 Q. How long have you been with the Public
20 Service Commission?

21 A. Approximately close to five years.

22 Q. You're going to get your five-year pin
23 coming up here pretty quick.

24 A. That's good news.

25 Q. Yeah.

1 COMMISSIONER DAVIS: Coffee mug and you're
2 vested for pension.

3 JUDGE THOMPSON: Do you have other
4 questions, sir?

5 COMMISSIONER CLAYTON: I do, if you'd be
6 patient with me, Judge.

7 JUDGE THOMPSON: Yes, sir.

8 COMMISSIONER CLAYTON: It takes longer for
9 me too.

10 BY COMMISSIONER CLAYTON:

11 Q. Your testimony on page 3 states that you
12 will provide the Commission with an outline of natural gas
13 futures market and you will explain why the natural gas
14 futures market is not a reliable forecasting tool for
15 predicting actual prices. Is it your opinion that there
16 is no reliable forecasting tool for predicting actual
17 future natural gas prices?

18 A. I don't know when you say reliable how much
19 really weight we can put into terms of reliability, but
20 it's in general very difficult to forecast natural gas
21 prices. In particular, using NYMEX prices is quite
22 unreliable.

23 Q. Is it your testimony that using the EIA --
24 I mean, do you support the testimony of Mr. Cassidy in the
25 estimation of natural gas prices, the method he uses?

1 A. Again, I haven't given my thought much to
2 his methodology, but based on the information we have.

3 Q. Well, I suppose there's methodology and
4 then there's data, and it seems to me that what you're
5 saying is the data from NYMEX is not an accurate
6 predictor. Not necessarily the methodology. I mean,
7 it's -- you don't like the data, the data is not
8 indicative of what that cost will be then. Do you believe
9 the data in EIA is better data or more accurate data that
10 could be used?

11 A. Certainly.

12 Q. I mean, is this part of your job, to assess
13 how to -- how to buy natural gas in the most --

14 A. No. No.

15 Q. Well, what is the type -- what's the name
16 of your position?

17 A. I'm -- I'm the regulatory economist in
18 procurement analysis department where I monitor how
19 natural gas market evolves. And also, I also look at
20 Missouri 10 LDCs, natural gas companies gas procurement
21 method in terms of how they hedge their gas, whether they
22 are reasonable or not, but I don't really forecast what
23 natural gas price will be.

24 Q. Are you saying you look backwards, you look
25 at the past actions of an LDC --

1 A. Yes.

2 Q. -- and their purchasing practice and that
3 you don't look forward?

4 A. Both way. But when I look forward, I
5 don't -- not based on my forecasting price, but their plan
6 perhaps.

7 Q. So you would look at their hedging prices
8 in one, two or three years into the future, would you not?

9 A. Again, right, but that's --

10 Q. How do you evaluate that? If you look at
11 those hedging prices, how do you evaluate whether they're
12 doing a good job hedging or not those future prices?

13 A. It's a little bit different issue than what
14 we have here. But based on their past gas procurement
15 practice, we review how they did and what they did, why
16 they did it. So based on those information, we recommend,
17 and along the way we also ask -- we also inquire about
18 their future plan. But I don't give any value judgment as
19 to what they should do. My job is more or less to review.

20 Q. To review?

21 A. Review their gas procurement practice.

22 Q. Well, if that is what you do, how are you
23 qualified to impeach the testimony of Mr. Beecher in using
24 the NYMEX prices if you're not able to -- if your position
25 and your expertise is not in forecasting future prices,

1 then how are you -- how are you qualified to impeach this
2 testimony?

3 A. Right. But at least I can tell that there
4 is problem with NYMEX futures pricing methodology, as I
5 elaborate in my testimony, surrebuttal testimony. It's
6 not to say that I forecast, but I found problems with
7 NYMEX methodology.

8 COMMISSIONER CLAYTON: Thank you.

9 JUDGE THOMPSON: Thank you, Commissioner.
10 Commissioner Davis?

11 COMMISSIONER DAVIS: No questions.

12 QUESTIONS BY JUDGE THOMPSON:

13 Q. Forgive me for mispronouncing your name
14 earlier, Dr. Choe.

15 A. That's fine.

16 Q. Now your job involves the evolution of the
17 natural gas market, I believe you stated?

18 A. Let me take it back. Not evolution but
19 how -- well, since I came here year 2000, on how natural
20 gas market have developed, especially in terms of how
21 markets have moved.

22 Q. Are you aware of the movements of the
23 market prior to 2000 when you came here?

24 A. I looked back especially in terms of past
25 pricing movement.

1 Q. Let me ask you a question. In 1979, what
2 was the natural gas market like, do you know?
3 A. I don't.
4 Q. Okay. Are you familiar with the other
5 persons who are going to testify in this case? The
6 follow-up is, do you think any of them would know the
7 answer to that question?
8 A. I'm not sure.
9 JUDGE THOMPSON: You're not sure. Okay.
10 Thank you.
11 Recross, Mr. Conrad?
12 MR. CONRAD: Nothing, your Honor. Thank
13 you.
14 JUDGE THOMPSON: Mr. Coffman?
15 MR. COFFMAN: No questions.
16 JUDGE THOMPSON: Mr. Keevil?
17 MR. KEEVIL: Very briefly, your Honor.
18 RECROSS-EXAMINATION BY MR. KEEVIL:
19 Q. I'll mispronounce your name, too. I
20 apologize.
21 A. That's all right.
22 Q. But you were asked several questions by
23 Commissioner Clayton regarding the EIA forecast. And
24 first of all, let me ask you, did you review the EIA
25 forecast used by Mr. Cassidy in this case?

1 A. I looked at how EIA forecasted prices,
2 especially since late summer, based on his information.

3 Q. When you say you looked at how they
4 forecasted prices --

5 A. What they -- what they --

6 Q. What they forecasted?

7 A. Right.

8 Q. But you did not look at the underlying
9 assumptions of those forecasts, correct?

10 A. No.

11 Q. That is correct, you did not look at the
12 assumptions underlying?

13 A. Right.

14 Q. Okay. If you don't like NYMEX, do you
15 think that Empire should be buying its natural gas solely
16 on the spot market instead of hedging gas on NYMEX?

17 A. I don't know. That's -- it's up to them.

18 I don't -- I don't recommend what they should do in terms
19 of gas procurement. So it's totally up to them. So I
20 don't -- I don't recommend, but in general, given market
21 volatility, it's good to hedge your natural gas.

22 Q. Okay. So that would be -- in that regard,
23 then, you would be in favor of using NYMEX contracts for
24 hedging; is that correct?

25 A. In that NYMEX is used as a risk mitigation

1 purpose. In other words, solely for hedging purpose.

2 Q. But if you hedge the gas for purposes of
3 physical use, you oppose that?

4 A. No. No. What I'm saying is it's good to
5 use NYMEX to hedge.

6 Q. Okay. Thank you. That's what I was trying
7 to figure out.

8 Did you -- during the course of preparing
9 your testimony, did you review Empire's natural gas
10 purchasing practices at all?

11 A. No, I didn't.

12 MR. KEEVIL: Thank you. That's all.

13 JUDGE THOMPSON: Thank you, Mr. Keevil.

14 Redirect, Mr. Frey?

15 MR. FREY: Thank you, your Honor.

16 REDIRECT EXAMINATION BY MR. FREY:

17 Q. Dr. Choe, I believe it was Commissioner
18 Clayton who asked you some questions about your
19 background. Do you recall that?

20 A. Yes.

21 Q. And am I correct that you hold 3 degrees in
22 economics of a bachelor's, a master's and a Ph.D.?

23 A. That's right.

24 Q. And that you have been a teaching assistant
25 at the University of Missouri?

1 A. That's right.

2 Q. And that now you are a visiting assistant
3 professor there?

4 A. That's right.

5 Q. And the field is economics?

6 A. Yes.

7 Q. And in the course of your training and
8 experience in the field of economics and here at the
9 Commission, is it correct to say that you have
10 considerable experience looking at markets?

11 A. Yes.

12 Q. And also that you have considerable
13 experience looking at projections and data, this sort of
14 thing?

15 A. Yes.

16 Q. And you're familiar certainly in your work
17 here at the Commission with the futures market, are you
18 not?

19 A. Yes, I am.

20 Q. Mr. Keevil -- I believe you had a
21 discussion with Mr. Keevil on your -- I believe it was
22 Schedule 2 where you were counting the number of times
23 that the spot market price actually turned out to be
24 higher than the futures price. Do you recall that?

25 A. That's right.

1 Q. I think it was something like 14 times?

2 A. Right.

3 Q. This chart is --

4 MR. KEEVIL: Excuse me. I'm going to

5 object to that as mischaracterizing. Spot turned out to

6 be higher 43 times.

7 MR. FREY: Oh, I'm sorry. Yes, I have that

8 backwards. The futures turned out to be higher 14 times.

9 BY MR. FREY:

10 Q. Are these -- I see you have months down

11 here, so can I assume that this is monthly data?

12 A. Yes.

13 Q. Can you tell us what that represents in

14 connection with a month, what each point represents?

15 A. Each point represent -- for instance, if

16 you look the last one, November '04, I'm looking at

17 November 2004 futures price that expired, which become

18 spot price.

19 Q. Okay.

20 A. That's red square. Then right below that

21 red square, the blue square is same November 2004 futures

22 price that was settled one year prior to this expired

23 date.

24 Q. Okay. The -- is it the case that the

25 futures prices used as Mr. Beecher did for estimation

1 purposes can change hourly? I believe we had testimony on
2 that, that they can change hourly.

3 A. I think so. This market is real-time. So
4 it's ongoing, that the changes occur minute by minute,
5 hour by hour.

6 Q. Do you agree with the approach of taking a
7 single day's estimate and working with that to develop a
8 number to be put into permanent rates?

9 A. First of all, I don't -- I don't know
10 whether it's appropriate to use estimate just based on a
11 single day data. So that's first -- first thing I like to
12 correct, because you cannot estimate just based on one
13 single day numbers.

14 Q. And why is that?

15 A. Because there are so many other variables.
16 Especially in this natural gas price, you just cannot base
17 your future projection on one single day.

18 Q. And they're pretty volatile day to day; is
19 that correct?

20 A. Yes.

21 MR. FREY: Thank you, Dr. Choe.

22 That's all, your Honor.

23 JUDGE THOMPSON: Thank you, Mr. Frey.

24 You may step down, Doctor. Thank you for
25 your testimony. It's quarter to twelve; we're going to

1 take a lunch recess now and be back at one o'clock ready
2 to go. Thank you.
3 (A BREAK WAS TAKEN.)
4 JUDGE THOMPSON: Got one o'clock. Let's go
5 ahead and go back on the record. Mr. Bender, step up to
6 the witness stand, if you would, sir.
7 (Witness sworn.)
8 JUDGE THOMPSON: Do you understand that if
9 you give false testimony in this proceeding, you could be
10 prosecuted for the crime of perjury?
11 THE WITNESS: I do.
12 JUDGE THOMPSON: Please take your seat.
13 State your name for the reporter.
14 THE WITNESS: Leon C. Bender.
15 JUDGE THOMPSON: And are we going to
16 inquire, Mr. Frey?
17 MR. FREY: I'm sorry, Judge.
18 JUDGE THOMPSON: That's quite all right.
19 LEON C. BENDER testified as follows:
20 DIRECT EXAMINATION BY MR. FREY:
21 Q. Good afternoon, Mr. Bender.
22 A. Good afternoon.
23 Q. Would you please state by whom you're
24 employed and in what capacity?
25 A. I'm employed by the Missouri Public Service

1 Commission Staff. I'm a utility regulatory engineer.

2 Q. And are you the same Leon Bender who caused
3 to be filed in this proceeding Exhibit 45, which is Leon
4 Bender direct testimony?

5 A. Yes.

6 Q. And do you have any corrections to make to
7 that testimony at this time?

8 A. No, I do not.

9 Q. If I were to ask you today the questions
10 that are contained in that testimony, would your answers
11 be the same?

12 A. Yes.

13 Q. And are the answers true and accurate to
14 the best of your information, knowledge and belief?

15 A. Yes, they are.

16 MR. FREY: Your Honor, I offer Exhibit 45
17 into the record and tender Mr. Bender for cross.

18 JUDGE THOMPSON: Very well. Do I hear any
19 objections to the receipt of Exhibit 45?

20 (No response.)

21 JUDGE THOMPSON: Hearing none, the same is
22 received and made a part of the record of this proceeding.

23 (EXHIBIT NO. 45 WAS RECEIVED INTO
24 EVIDENCE.)

25 JUDGE THOMPSON: Cross-examination. I

1 believe you're up first, Mr. Conrad.

2 MR. CONRAD: No questions, your Honor.

3 JUDGE THOMPSON: Very well. Mr. Coffman?

4 MR. COFFMAN: No questions either.

5 JUDGE THOMPSON: Mr. Keevil?

6 MR. KEEVIL: This one's going to go fast,

7 Judge. I don't have any questions for Mr. Bender.

8 JUDGE THOMPSON: I don't have any questions

9 for you, Mr. Bender, and I guess there's no redirect,

10 since there was no cross, unless you can think of

11 something.

12 You may step down, Mr. Bender.

13 THE WITNESS: Thank you.

14 JUDGE THOMPSON: It's your lucky day. You

15 didn't know you were going to win the door prize for the

16 Christmas lunch, did you?

17 Okay. Our next witness would be Mr. Busch.

18 (Witness sworn.)

19 JUDGE THOMPSON: Do you understand if you

20 were to give false testimony, you can be prosecuted for

21 the crime of perjury?

22 THE WITNESS: I do.

23 JUDGE THOMPSON: Please take your seat.

24 Spell your name for the reporter.

25 THE WITNESS: My name is James Busch,

1 B-u-s-c-h.

2 JUDGE THOMPSON: And, Mr. Coffman, you may
3 inquire.

4 MR. COFFMAN: Thank you.

5 JAMES BUSCH testified as follows:

6 DIRECT EXAMINATION BY MR. COFFMAN:

7 Q. Good afternoon, Mr. Busch.

8 A. Good afternoon, Mr. Coffman.

9 Q. Would you please state your name again and
10 explain your position and by whom you're employed?

11 A. My name is James Busch. I'm employed by
12 the Missouri Office of the Public Counsel, and I'm a
13 public utility economist.

14 Q. Are you the same James A. Busch that has
15 caused to be filed in this case prepared testimony that
16 has been labeled, and that is prepared direct, rebuttal
17 and surrebuttal testimony, 85NP and HC, 86 and 87
18 respectively?

19 A. I am.

20 Q. Do you have any corrections to these
21 prepared testimonies?

22 A. I do not.

23 Q. If I asked you the questions contained in
24 these prepared testimonies, would your answers today be
25 substantially the same or similar?

1 A. They would.

2 Q. I think it's appropriate that I ask you
3 just a couple of clarifying questions. Your testimony
4 covers a recommendation for a natural gas component to be
5 included in a fuel run; is that correct?

6 MR. KEEVIL: Your Honor, I'm going to
7 object to this as improper direct testimony. If he's
8 trying to supplement his prefiled testimony, this is not
9 the proper -- I mean, they had the chance to file their
10 testimony and put whatever in it they wanted in it, and
11 this is not proper direct in Commission proceedings.

12 JUDGE THOMPSON: I --

13 MR. COFFMAN: Your Honor, may I respond?

14 JUDGE THOMPSON: Go ahead. You may. You
15 may respond.

16 MR. COFFMAN: Mr. Keevil has inaccurately
17 described the testimony in the record today as not
18 including an explanation of how the natural gas component
19 of Mr. Busch plugs into the Staff fuel run, and I simply
20 wanted to clarify before we began as to how his
21 recommendation fits into the fuel run and is reflected in
22 the reconciliation.

23 JUDGE THOMPSON: Well, I think you're going
24 to have to --

25 MR. COFFMAN: I believe that Mr. Cassidy

1 has already done that. I just wanted to confirm Mr. Busch
2 agreed with that explanation, which is already in the
3 transcript of today's proceeding.

4 MR. KEEVIL: I would disagree with his
5 characterization of what Mr. Cassidy said, but the
6 transcript, I believe, will reflect what Mr. Cassidy said
7 or didn't say.

8 JUDGE THOMPSON: We don't typically allow
9 that kind of direct, Mr. Coffman. We do prefiled direct.

10 MR. COFFMAN: Simply trying to aid the
11 record.

12 JUDGE THOMPSON: Well, I appreciate that,
13 but I will sustain the objection.

14 MR. COFFMAN: Okay. I tender Mr. Busch for
15 cross-examination and offer into the record Exhibits 85HC
16 and NP, 86 and 87.

17 JUDGE THOMPSON: Okay. Do I hear any
18 objections to the receipt of Exhibit 85, 86, 87?

19 MR. KEEVIL: Yes, your Honor.

20 JUDGE THOMPSON: What's your objection?

21 MR. KEEVIL: Turning first to the direct
22 testimony, Exhibit 85, page 9, beginning on line 7.

23 JUDGE THOMPSON: Hang on just a minute
24 while I find that.

25 MR. COFFMAN: What line are you referring

1 to?

2 MR. KEEVIL: The question beginning on

3 line 7.

4 JUDGE THOMPSON: This is the direct?

5 MR. KEEVIL: Yes.

6 JUDGE THOMPSON: Page 9, line 7. Okay.

7 MR. KEEVIL: Continuing through line 15,

8 Mr. Busch is purporting, it appears to me, to give a legal

9 opinion, and I don't believe he's qualified to do so.

10 JUDGE THOMPSON: Okay.

11 MR. COFFMAN: Obviously Mr. Busch is not an

12 attorney, and, however, at this point appears to be simply

13 stating what his understanding is as it relates to the

14 position statement.

15 JUDGE THOMPSON: I'm going to sustain that

16 objection. Frankly, I don't know how we'd be even able to

17 have a telephone case in this room if we weren't going to

18 let lay people testify about what they think the law

19 means, but nonetheless, I am going to sustain that

20 objection.

21 MR. KEEVIL: Your Honor, turning then to

22 the rebuttal, page 4, beginning on line 19, continuing

23 onto the next page, page 5 through the comma on the first

24 line of page 5. Okay. Also this one objection is going

25 to apply to several places in this testimony, Judge. Do

1 you want me to give you all the places first and then
2 state the objection?

3 JUDGE THOMPSON: Very well.

4 MR. KEEVIL: Page 9, line 20 through
5 page 10, line 16, and also --

6 MR. COFFMAN: Excuse me. Through line 16
7 on page 6?

8 JUDGE THOMPSON: On page 10.

9 MR. KEEVIL: Page 10, all the way
10 through -- starting on page 9. Page 9, line 20 through
11 page 10, line 16.

12 JUDGE THOMPSON: Make sure, Mr. Keevil and
13 Mr. Coffman, that you use your microphones. There's
14 people listening at a distance that can't hear you.

15 MR. KEEVIL: Okay. My next place in the
16 testimony, Judge, would be staying on page 10, lines 22
17 and 23.

18 JUDGE THOMPSON: Okay.

19 MR. KEEVIL: As for this particular
20 objection, it would be the same as the objection I raised
21 to the portion of Mr. Busch's direct testimony. In all of
22 those places, it appears to me that Mr. Busch is giving a
23 legal opinion, and I do not believe he's qualified to do
24 so.

25 MR. COFFMAN: Just so I understand, the

1 place on page 10 you were saying beginning on line 22,
2 including 23 and ending there?

3 MR. KEEVIL: Well, there's two that affect
4 page 10, Mr. Coffman. There's one that begins on page 9,
5 line 20, runs through page 10, line 16, and then there's
6 another one on page 10, just lines 22 and 23, as well as
7 the one on page 4 and 5.

8 JUDGE THOMPSON: Let's start with the one
9 on page 4 running to page 5. What is Public Counsel's
10 position regarding IEC?

11 MR. COFFMAN: There as to that question,
12 which I guess goes from line 19 on page 4 through the end
13 of the comma on the first line at page 5, again, that is
14 including no more information than is included in the
15 position statements, but --

16 JUDGE THOMPSON: And for that reason,
17 there's certainly no reason not to strike it. So I'll
18 sustain the objection with respect to that exhibit.

19 MR. COFFMAN: You will sustain the
20 objection?

21 JUDGE THOMPSON: I will sustain the
22 objection.

23 MR. COFFMAN: Your Honor, as to the --

24 JUDGE THOMPSON: The second one, Please
25 discuss Public Counsel's belief that the IEC constitutes

1 single-issue ratemaking, I'm going to sustain the
2 objection with respect to that.

3 MR. COFFMAN: Your Honor, may I respond?

4 JUDGE THOMPSON: You may.

5 MR. COFFMAN: I would -- I was under the
6 understanding that the next request to strike testimony
7 began at line 9 of page 5.

8 MR. KEEVIL: No. Page 9.

9 MR. COFFMAN: Okay. So after --

10 JUDGE THOMPSON: Page 9, line 20 through
11 page 10, line 16.

12 MR. COFFMAN: So there's no other request
13 to strike testimony on pages 5, 6, 7 or 8?

14 JUDGE THOMPSON: That is correct.

15 MR. COFFMAN: Okay. My misunderstanding.

16 MR. CONRAD: If I might offer one comment?

17 JUDGE THOMPSON: Yes, sir.

18 MR. CONRAD: I'm looking -- and I think I'm
19 on insofar as what is being objected to. What is not
20 being objected to on page 5 is a statement that begins at
21 line 3. It says, Yes, as a policy matter, Public Counsel
22 believes the IEC does not provide appropriate incentives.
23 Now, if that is not being objected to, that
24 certainly is not asking for the witness' legal opinion
25 about anything. He is a representative, I think, of

1 Public Counsel, and he surely should be able to testify as
2 to policy matters.

3 And if that be true, then the question at
4 7 and the answer that begins at 9 simply in my view
5 doesn't do more than explain why do you believe that it
6 doesn't provide appropriate incentives, which is to their
7 question about policy.

8 MR. COFFMAN: May I first simply inquire as
9 to what has -- what has been struck and what's being
10 requested to be struck? As I understand it, the -- there
11 still remains in this testimony on page 5, a question that
12 begins, Does Public Counsel have any other concerns? You
13 did not request --

14 MR. KEEVIL: I did not request that,
15 although I would like to thank you, Mr. Coffman. I do now
16 see that on lines 5 and 6 of page 5, beginning with the
17 comma after the word "ratepayers" on line 5 of page 5,
18 continuing through line 6 on page 5, I would make the same
19 objection to that portion of that.

20 MR. COFFMAN: And, your Honor, I would
21 point out that that is -- those are ratemaking policy
22 concerns, as well as being legal labels that are used.
23 Single-issue ratemaking is a term of art within ratemaking
24 itself, as well as something as prohibitive as a legal
25 matter.

1 JUDGE THOMPSON: Mr. Coffman, if --

2 MR. COFFMAN: And --

3 JUDGE THOMPSON: If a proposed tariff is
4 unlawful because it is either single-issue ratemaking or
5 retroactive ratemaking, then you could successfully oppose
6 that without putting on any testimony at all.

7 MR. COFFMAN: That's true.

8 JUDGE THOMPSON: Right?

9 MR. COFFMAN: That's true.

10 JUDGE THOMPSON: But by simply arguing that
11 legal position. And for that reason, I think that it's
12 best that since an objection has been made here, which is
13 certainly rare in our proceedings, but someone has
14 objected that a lay witness is offering a legal opinion, I
15 think that's a proper objection. I think counsel will
16 have every opportunity to brief the legal issues, and the
17 legal issues don't need the support of this witness.

18 MR. COFFMAN: Your Honor, may I respond?

19 JUDGE THOMPSON: Of course you may.

20 MR. COFFMAN: Single-issue ratemaking is
21 not just a legal term, nor is retroactive ratemaking. And
22 the question prior to this clearly states, Does Public
23 Counsel have any other concerns other than legal concerns?
24 And there are reasons why single-issue ratemaking and
25 retroactive ratemaking may or may not be a good idea,

1 apart from their legality.

2 I certainly would hope that Public Counsel

3 would have the opportunity to provide those policy

4 justifications one way or the other, in that I would not

5 be denied my due process rights to explore those policy

6 rationales one way or the other, whether or not an interim

7 energy charge that was approved by this Commission was

8 found to be legal or not.

9 There is -- these terms are terms of art,

10 and I'm sure I could lay a foundation given the

11 opportunity in accounting and ratemaking journals,

12 publications and textbooks that are completely set apart

13 from legal juris prudence, and that is the point certainly

14 of the question that begins on page 5 and throughout the

15 majority of Mr. Busch's testimony.

16 JUDGE THOMPSON: Are you done?

17 MR. COFFMAN: Yes.

18 JUDGE THOMPSON: I'm sustaining the

19 objection.

20 MR. COFFMAN: And that objection is?

21 JUDGE THOMPSON: Okay. We're going to

22 strike the text that appears on page 4, starting at

23 line 19, and continuing onto the top of page 5 through the

24 first comma on line 1. We're going to strike the text

25 that appears on page 5, line 5, after the comma, and

1 continuing through all the line 6. We're going to
2 strike --

3 MR. COFFMAN: Your Honor, may I make an
4 offer of proof as to that --

5 JUDGE THOMPSON: Absolutely.

6 MR. COFFMAN: -- last request on line 5 and
7 6?

8 JUDGE THOMPSON: First, let me -- let me
9 finish telling you what we're striking, and then you can
10 tell us what your offer of proof is and we'll proceed,
11 okay? Because we need to keep the record reasonably
12 clear.

13 MR. COFFMAN: That's fine.

14 JUDGE THOMPSON: We're going to strike the
15 text that appears on page 9, beginning with line 20, and
16 continuing through line 16, and we're going to strike the
17 text that appears on page 10, beginning with line 22,
18 through the end of line 23; is that clear?

19 MR. KEEVIL: When you say through line 16,
20 I think you meant line 16 of page 10.

21 JUDGE THOMPSON: That's exactly what I
22 meant. Thank you for that clarification.

23 Now, I understand you'd like to make an
24 offer of proof of, in fact, all that text; is that
25 correct?

1 MR. COFFMAN: Before that, your Honor, I
2 would like an opportunity to respond to the objection
3 beginning on lines 20 of page 9. I don't think I've been
4 given an opportunity to respond to the objection.
5 JUDGE THOMPSON: Is the theory you're going
6 to argue different than the one you've already argued?
7 Because I think I've ruled.
8 MR. COFFMAN: It would be similar, although
9 I think that I could by referring to passages within this
10 large portion --
11 JUDGE THOMPSON: Proceed, Mr. Coffman.
12 MR. COFFMAN: Beginning with line 20 on
13 page 9, the discussion about the incentives that are
14 negative with regard to single-issue ratemaking in that
15 effect, I think that you could find, particularly on the
16 top of page 10, where Mr. Busch's testimony refers to the
17 fact that single-issue ratemaking focuses on single issues
18 of variations of cost and fixed costs associated with are
19 already built into the rate base, not be subject to
20 refunds.
21 I mean, those -- those facts are facts as
22 to the mechanics of ratemaking, not necessarily as to any
23 principle of law that is the -- it does not refer to all
24 the requirements in Chapter 386 for the Commission to
25 consider all relevant factors, but is simply a statement

1 about what is positive or negative as to ratemaking
2 mechanics.

3 The subsequent question on that page 10
4 simply refers to retroactive ratemaking, whether or not
5 the mechanics of the ratemaking would be retroactive or
6 not, without any reference to any legal principle, statute
7 or case, and I do not believe that this testimony asserts
8 any -- any set of facts as it applies to the law.

9 It simply provides information as to what
10 Mr. Busch's opinion as an economist and as a ratemaking
11 expert believes to be proper. And I guess I would leave
12 it at that as far as that particular section from pages 9
13 to 10.

14 JUDGE THOMPSON: Okay.

15 MR. COFFMAN: And if I've not persuaded
16 you, then I suppose you will reaffirm your --

17 JUDGE THOMPSON: You know, we operate in an
18 environment of prefiled testimony, right, and so we don't
19 typically do direct testimony the way it is done in the
20 civil court, for example. So in a civil court, pretend
21 for a moment that this were a trial in circuit court and
22 you asked the question, Please discuss Public Counsel's
23 belief that the IEC constitutes single-issue ratemaking.
24 At that point Mr. Keevil would object, calls for a legal
25 conclusion, and the objection would be sustained. For

1 that reason, I'm striking the entire answer.

2 The next question, it's the same thing. It

3 is the question that is objectionable, and if the

4 testimony were being given live, the objection would be

5 interposed when you completed the question, and the

6 objection would be, in my opinion, sustained. So none of

7 what Mr. Busch has said here would come in, would have

8 been said in the civil court, even though perhaps some of

9 what he said is not objectionable.

10 It is the question that is objectionable.

11 You see, the objection is interposed at the end of the

12 question. Now, if we were in a civil court, you would

13 also, of course, have an opportunity to recast your

14 question in an effort to avoid the objection. So what I'm

15 going to do when we finish with Mr. Keevil's objections to

16 your offer of this evidence is, I'm going to give you an

17 opportunity then to pursue direct examination of Mr. Busch

18 on these points to see if you can get what you want out of

19 him without objection. Does that sound fair?

20 MR. COFFMAN: I understand your ruling,

21 sir.

22 JUDGE THOMPSON: Very good. Kellene, is it

23 clear what we've struck?

24 THE REPORTER: Yes.

25 MR. COFFMAN: Am I also to understand that

1 the last two lines on page 10?

2 JUDGE THOMPSON: On 10.

3 MR. KEEVIL: Judge, I have only one other

4 objection. It's not a legal opinion objection, but one

5 other objection to rebuttal for the record, before

6 Mr. Coffman begins.

7 JUDGE THOMPSON: Please.

8 MR. KEEVIL: Page 6 of the rebuttal,

9 beginning on line 17 with the word "in" through page 7,

10 line 2, I believe is hearsay.

11 JUDGE THOMPSON: Through where?

12 MR. KEEVIL: Page 7, line 2.

13 JUDGE THOMPSON: Well, that certainly looks

14 like hearsay to me.

15 Mr. Coffman, do you have a response?

16 MR. COFFMAN: Yes. This is information

17 that is readily available. It is information that is

18 included in a document, a business document that is

19 regularly filed and easily accessible by any party, and

20 that is the Ameren Corporation annual report. And I

21 believe that it's accurately reflected there that all the

22 parties here have seen that. I think that if this is

23 hearsay, then a good portion of a lot of witness'

24 testimony would be struck in this proceeding.

25 JUDGE THOMPSON: I couldn't agree with you

1 more. I will sustain the objection. That is hearsay.
2 There is no exception for something that's readily
3 available. There is no exception for annual reports. If
4 you're seeking the business record exception in Missouri,
5 that's statutory and you haven't laid that foundation. So
6 we're going to sustain that objection.
7 Would you like to make an offer of proof?
8 MR. COFFMAN: Yes. First of all, I'd like
9 to make an offer of proof as to each of the struck
10 portions of Mr. Busch's rebuttal testimony except for the
11 first and last ones. I believe that there is a --
12 JUDGE THOMPSON: Okay. Let's just work
13 through this document here.
14 MR. COFFMAN: I will concede the objection
15 on page 4 and the first portion of the first line on
16 page 5, as well as the statement at the last two lines of
17 page 10.
18 JUDGE THOMPSON: Very well.
19 MR. COFFMAN: As to the others, I believe
20 they refer to policy, rationales and refer to single-issue
21 retroactive ratemaking in accounting and ratemaking terms,
22 and not as legal opinions, and would like to simply -- as
23 well as the objection that was made on pages 6 and 7.
24 JUDGE THOMPSON: I think all you need to do
25 is tell me you want to make an offer of proof and preserve

1 it in the record. And so we will preserve in the record
2 as an offer of proof the text that appears on page 5 at
3 line 5, starting after the comma through the end of
4 line 6, the text that appears on page 6, starting at
5 line 17 after the first period, and continuing to the end
6 of line 2 on page 7, the text that appears on page 9,
7 starting with line 20 and continuing through the end of
8 line 16 on page 10, correct?

9 MR. COFFMAN: That is correct.

10 JUDGE THOMPSON: Okay. Now, I thought we
11 had one in the direct testimony as well, did we not?

12 MR. COFFMAN: Yes. I don't feel I need to
13 make an offer of proof on that.

14 JUDGE THOMPSON: Very well. Now, is there
15 also surrebuttal testimony here? There's two different
16 directs, right, not one direct? There is surrebuttal.
17 I'm confused. There is also surrebuttal. Do we have any
18 objections to that?

19 MR. KEEVIL: No, your Honor, I didn't have
20 any.

21 JUDGE THOMPSON: Very well.

22 MR. COFFMAN: If I might proceed with
23 the --

24 JUDGE THOMPSON: First I get to say that
25 we're receiving Exhibit 85 subject to the objections that

1 I have sustained. We're receiving Exhibit 86 subject to
2 the objections that I have sustained, and we're receiving
3 Exhibit 87 into the record of this matter.

4 (EXHIBIT NOS. 85, 86 AND 87 WERE RECEIVED
5 INTO EVIDENCE.)

6 JUDGE THOMPSON: Now, you may have at
7 Mr. Busch for some direct examination to see if you can
8 get that information in without objection.

9 MR. COFFMAN: Thank you.

10 BY MR. COFFMAN:

11 Q. Mr. Busch.

12 A. Yes.

13 Q. Are you aware of accounting term -- the
14 accounting term "single-issue ratemaking"?

15 A. I am.

16 Q. And --

17 MR. KEEVIL: Judge, I'm going to object to
18 that as an accounting term. It's a legal issue.

19 JUDGE THOMPSON: Well, Mr. Keevil, I think
20 that you would have to have someone to show that it's not
21 an accounting term, so at this point I don't think I can
22 sustain that objection. Please proceed.

23 BY MR. COFFMAN:

24 Q. Would it be fair to say, Mr. Busch, that
25 single-issue ratemaking is a term of art within the area

1 of utility ratemaking?

2 A. Yes.

3 Q. What is your understanding of what
4 single-issue ratemaking entails?

5 A. My understanding of single-issue ratemaking
6 is that, for instance, in this case in the context of a
7 rate case, all relevant factors are taken into account
8 when the utility comes in trying to -- with a rate
9 increase. Single-issue ratemaking would be the looking at
10 only one issue as opposed to all of the various costs and
11 revenues that would be at contest in a rate proceeding.

12 Q. Do you have an opinion about whether
13 single-issue ratemaking is a generally frowned upon or
14 favored method to make rates?

15 A. I don't believe that a single-issue
16 ratemaking is a good way of determining rates, because
17 over the course of time there are many factors that could
18 change, and just because one cost would go up, other costs
19 may go down, and all the factors need to be looked at when
20 the rates are going to be set.

21 So if you just isolate one single issue, I
22 don't believe that that is -- that's a good ratemaking
23 policy.

24 Q. And purely from a utility ratemaking policy
25 perspective, would the interim energy charge as proposed

1 by both Empire and Staff in this case constitute
2 single-issue ratemaking?

3 A. I believe it does.

4 Q. With regard to the phrase "retroactive
5 ratemaking," do you understand that to be an accounting or
6 ratemaking term of general use?

7 A. I believe -- I understand that in the
8 context of regulatory ratemaking.

9 Q. Could you briefly explain what that term
10 refers to with regard to utility ratemaking?

11 MR. KEEVIL: From an accounting
12 perspective?

13 BY MR. COFFMAN:

14 Q. From an accounting or ratemaking
15 perspective.

16 A. From a ratemaking perspective, it's where
17 you look back after the fact and then set a rate or reset
18 a rate after the fact, after a period of time, after
19 something has already occurred.

20 Q. Would it be fair to say that retroactive
21 ratemaking attempts to recover actual expenses from the
22 past?

23 A. Yes, yeah.

24 Q. And in your opinion, does the interim
25 energy charge proposed by Empire and Staff in this case

1 constitute what you understand is the ratemaking term
2 "retroactive ratemaking"?

3 A. Yes. They want to review the actual
4 performance of fuel costs of the company and then
5 retroactively make that rate.

6 MR. COFFMAN: I think that's all I need.
7 Thank you.

8 JUDGE THOMPSON: Thank you, Mr. Coffman.

9 MR. COFFMAN: I would offer Mr. Busch for
10 cross-examination.

11 JUDGE THOMPSON: Very well.

12 MR. COFFMAN: And I guess the --

13 JUDGE THOMPSON: We've already received the
14 exhibits subject to the objections that were sustained.
15 Mr. Frey?

16 MR. FREY: Thank you, Judge.

17 CROSS-EXAMINATION BY MR. FREY:

18 Q. Just a couple of questions, Mr. Busch.

19 Apart from all the legal considerations that have been --
20 that we've been discussing here, am I correct in thinking
21 that your position with regard to a single point estimate
22 of fuel and purchased power as opposed to an IEC, it's
23 independent of those legal considerations? In other
24 words, you, in any event, would be recommending a single
25 point number?

1 A. Yes, yes.

2 Q. And Public Counsel did agree to an IEC as
3 part of the case ER-2001-299, did it not?

4 A. We agreed to it in a Stipulation &
5 Agreement.

6 Q. Okay. In general, are the circumstances
7 significantly different in this case than those exist --
8 that existed in the case at that time, back in 2001?

9 A. Everything changes over time. I don't know
10 if it's significantly different. It could be. There are
11 a lot of considerations that went into our office agreeing
12 to the IEC in our Stipulation & Agreement, and I have not
13 had those same considerations in this case to come to an
14 agreement.

15 MR. FREY: Okay. Thank you. That's all I
16 have, your Honor.

17 JUDGE THOMPSON: Thank you, Mr. Frey.

18 Mr. Conrad?

19 CROSS-EXAMINATION BY MR. CONRAD:

20 Q. Mr. Busch, you're an economist by trade,
21 profession?

22 A. I am.

23 Q. What is a perverse incentive?

24 A. A perverse incentive?

25 Q. Yes.

1 A. It's an incentive that, in my opinion, is
2 not in the best interest of the parties.

3 Q. Help me. What's -- as one of your
4 compatriots says, let's unpack that a little bit. When
5 you say parties, who do you mean?

6 A. It could be if we want to limit it to this
7 scenario, company and the consumers, all consumers.

8 Q. Does that relate in any way to what I've
9 grown up calling the law of unintended consequences?

10 A. I'm not familiar with the law of --

11 Q. Haven't heard that one?

12 A. I have not heard that term. I'm sorry.

13 Q. Well, in the context of this case, again as
14 an economist, have you seen any perverse incentives being
15 discussed?

16 A. I think this IEC does not give the company
17 the incentive to get price -- to get fuel costs as low as
18 possible, because they're allowed if an IEC is authorized,
19 you know, legal challenges and all that other stuff, if
20 there is an IEC, it's a dollar-for-dollar flow-through of
21 those fuel costs within that band, and I think -- I don't
22 think that gives the right incentive to the utility to get
23 the lowest price possible, the lowest fuel costs.

24 Q. All right. But if it's subject -- we're
25 talking about this band.

1 A. Uh-huh.

2 Q. If within that band it's subject to a
3 refund based on actuals --

4 A. Yes.

5 Q. -- how does -- help me understand why that
6 within that band it's a perverse incentive.

7 A. The company doesn't have an incentive to
8 get that price. Let's assume -- and we'll just look at
9 natural gas prices, for instance, because that's what's
10 basically the band, and say it's 3.50 or 5.50. If the
11 company's just allowed to pass through whatever those
12 costs are, they don't care whether the price is 5.25 or
13 the price is 3.75. They have no incentive to go for that
14 3.75 price.

15 Q. Well, wouldn't it be true, though, that if
16 they could -- if they could get down -- you know, if we
17 were below the band, if they could get below the band,
18 they would be able to keep all of the difference, and you
19 don't see that as an incentive?

20 A. That is an incentive, but I think the --
21 depending upon where that floor is set, that incentive --
22 it might be tougher to get to that level. So you would
23 not want to have a floor that is artificially too low that
24 doesn't allow the company to realistically get to those
25 low fuel costs.

1 MR. CONRAD: All right. Thanks. That
2 helps. Thank you.

3 JUDGE THOMPSON: Thank you, Mr. Conrad.
4 Mr. Keevil?

5 CROSS-EXAMINATION BY MR. KEEVIL:

6 Q. Mr. Busch, you mentioned incentives or the
7 lack thereof under the IEC. I believe you stated that
8 there was a dollar-for-dollar pass through to the company
9 within the band. Wouldn't that pass through only occur if
10 the expenses were prudently incurred?

11 A. They have to be prudently incurred, yes.

12 Q. And there would be a prudence review of
13 those expenses?

14 A. There's supposed to be. I don't know if
15 I've read testimony about a prudence review, but there's
16 supposed to be.

17 Q. Changing topics slightly, let me ask you,
18 at the present time, can Empire hedge 2005 -- year 2005
19 gas at your recommended gas price?

20 A. At the present time, Empire has over
21 60 percent of their 2005 natural gas hedged within
22 10 cents of my number.

23 Q. That wasn't my question. We'll get to
24 that. The question I asked was, at the present time, can
25 Empire hedge 2005 gas at your recommended price?

1 A. For the amounts that they have unhedged?

2 Q. For their unhedged, yes.

3 A. Right now today, without looking at what

4 the market's done today, I don't believe so.

5 Q. Do you have, what is it, Exhibit 1-- I

6 think it's 113, which Mr. Frey, I believe it was, entered

7 into the --

8 A. I have 113.

9 Q. You have it now. Thank you.

10 Does that exhibit indicate that at least as

11 of the date of that exhibit, 2005 gas prices were at

12 \$6.54?

13 A. \$6.54.

14 Q. Well, 6.5385.

15 A. There's some handwriting that says 6.5385

16 on that exhibit, and I guess that means 2005.

17 Q. Okay. And your gas price recommendation is

18 4.68?

19 A. My recommendation is for a price of natural

20 gas that Empire will be able to purchase over the course

21 until their next rate case.

22 Q. At \$4.68?

23 A. I believe the price that they will -- that

24 they will pay for natural gas was -- my recommendation was

25 \$4.68.

1 Q. Okay. Now, you mentioned the fact that
2 Empire currently has a certain amount of its 2005 gas
3 hedged. Were you in the hearing room when Mr. Beecher
4 stated what the current hedged price of the 2005 Empire
5 gas is hedged at?

6 A. I was.

7 Q. And that was \$4.78, I believe?

8 A. I believe that's what he testified to.

9 It's a little bit higher than in his rebuttal testimony.

10 Q. So Empire's current hedge price is even
11 higher than your recommended gas price, correct?

12 A. Every so slightly.

13 Q. Can Empire at the present time hedge its
14 2005 gas to bring -- at current prices, can they hedge to
15 bring their 2005 total down to your price?

16 A. They don't have to. They don't have to
17 hedge right now. They are under no obligation to hedge at
18 this point in time.

19 Q. At this point in time, though, the prices
20 would not permit that, correct?

21 A. Prices are elevated right now, but they
22 don't have to -- like you said, they have over 60 percent
23 of their natural gas for this coming year hedged already.

24 Q. Well, you mentioned natural gas prices
25 being elevated right now. When you filed your direct

1 testimony, you were fairly confident that gas prices would
2 come down, were you not?

3 A. I was. Still am.

4 Q. And what have they done to date since your
5 direct testimony was filed?

6 A. Well, since I didn't anticipate Hurricane
7 Ivan going through the Gulf of Mexico and disrupting
8 natural gas supplies when I wrote my testimony, I did not
9 anticipate that short-term upswing in natural gas prices.
10 But since that time and since storage has reached record
11 levels in the first part of November and continues to
12 remain very strong, the prices for natural gas on the
13 futures market has fallen.

14 Q. Since your direct testimony?

15 A. No, since the middle of September. Yes,
16 they rose since this direct testimony.

17 Q. I'm asking about your direct testimony.

18 A. They rose.

19 Q. They've risen since your direct testimony?

20 A. They've risen.

21 Q. And you say you're currently still very
22 confident that gas price will fall, correct?

23 A. I am.

24 Q. Well, isn't it true, Mr. Busch, that in
25 2003 you stated that gas would currently -- and by

1 currently, I mean this time period that we're in right
2 now. You stated that gas would currently be in the 3.50
3 to
4 4.50 range?

5 A. I don't remember what I said in 1993.

6 Q. I didn't say '93. 2003.

7 A. Or 2003. I'm sorry.

8 Q. That was last year.

9 A. I don't remember what I said.

10 MR. KEEVIL: Permission to approach, your
11 Honor?

12 JUDGE THOMPSON: You may.

13 BY MR. KEEVIL:

14 Q. First let me ask you, Mr. Busch, did you
15 file direct testimony in Aquila Case No. ER-2004-0034?

16 A. Yes, I did.

17 MR. KEEVIL: I only have one copy of this,
18 Judge. Can I ask --

19 BY MR. KEEVIL:

20 Q. Okay. Mr. Busch, I've shown you your
21 direct testimony in the Aquila Case ER-2004-0034. And did
22 that refresh your recollection as to what you were saying
23 that gas prices would be as we stand here today?

24 A. I think I said it would be 3.50 to 4.50 for
25 the foreseeable future.

1 Q. And currently where are they?

2 A. Currently, I think they're about -- well,
3 what do you mean, where are they? What price are you
4 asking me to give you?

5 Q. Well, the futures price, as we stand here
6 today.

7 A. I mean, I don't mean to be -- I just want
8 to understand. Do you want the 2005 12-month strip? Do
9 you want the 2005 to 2006 24-month strip? Do you want the
10 January prompt month price? I mean, there's a lot of
11 prices on NYMEX. I want to make sure I understand what
12 you're asking.

13 Q. What's the price today for gas? Is it
14 anywhere in that 3.50 to 4.50 range?

15 A. The sprite -- like a spot price?

16 Q. Well, let's start with that.

17 A. I think spot prices in certain markets are
18 about 5.80. So it's above the 4.50.

19 Q. Okay. And then in your rebuttal testimony
20 in the Aquila case, which was filed in January of this
21 year, you were still quite confident that gas prices would
22 drop, were you not?

23 A. I'd have to refresh my memory on exactly
24 what I said on rebuttal.

25 Q. Mr. Busch, let me ask you this: After

1 showing you your rebuttal testimony from the Aquila case,
2 did you recommend there that the Commission adopt a gas
3 price of 3.99 per MMBtu, as you had proposed in your
4 direct testimony in that case?

5 A. I did recommend that they stick to my 3.99
6 price for natural gas that they would pay.

7 MR. KEEVIL: Can I have just a second,
8 Judge?

9 JUDGE THOMPSON: Certainly.

10 BY MR. KEEVIL:

11 Q. Let me ask you one more question here,
12 Mr. Busch, if I could.

13 A. Sure.

14 Q. I'm not -- to make it clear, I'm not asking
15 for a legal argument or opinion, okay, Mr. Busch? I'm
16 just asking for an if you know.

17 A. Okay.

18 Q. A planned action. If the Commission
19 decides to approve an IEC for Empire in this case, would
20 the Office of Public Counsel seek review in court of that
21 Commission determination?

22 A. I don't know what Mr. Coffman will decide
23 to do if the Commission does that or not.

24 MR. KEEVIL: Thank you. That's all I have.

25 JUDGE THOMPSON: Thank you, Mr. Keevil.

1 Questions from the Bench, Commissioner Clayton?

2 QUESTIONS BY COMMISSIONER CLAYTON:

3 Q. Mr. Busch, with this proposal that you've
4 made on setting a base rate rather than pursue the IEC
5 method of establishing the power costs that need to be
6 recovered through revenues, it seems like somebody's going
7 to get burned no matter what we do because of the
8 volatility in the market. Isn't there a great risk for
9 that?

10 A. I don't -- I don't think I would
11 characterize it as somebody's going to get burned.

12 Q. That's a bad pun. I understand.

13 A. I didn't even catch the pun, to be honest
14 with you.

15 Q. The risk to each side is there, and
16 somebody potentially could lose significant sums of money?
17 And I say either side, ratepayer or the company.

18 A. I don't -- I don't -- I don't agree with
19 that, and --

20 Q. Why not?

21 A. -- I'll explain why.

22 Q. Okay.

23 A. If you look at my recommendation for
24 prices, it's 4.68. And in 2005 the company has a
25 significant portion of their natural gas already hedged at

1 4.71. So a significant portion is already at that level.

2 Q. Above that level?

3 A. Slightly above. I don't know -- I mean, I
4 haven't run a fuel run, and I don't have that model, but I
5 don't know how much of a difference 10 cents would be,
6 okay?

7 Q. You're at 4.68?

8 A. I'm at 4.68, and Mr. Beecher I think has
9 testified at 4.78, so we're -- you know, a 10-cent
10 differential. And there are things that could happen
11 where they may not burn as much natural gas as was built
12 into their -- you know, he'll give you a number, so I
13 don't think it necessarily will go up that high.

14 Q. What is the quantity of gas that you have
15 used in your estimates?

16 A. I -- just to come up with my number, I used
17 test year 2003, and I think it was 6.6 million, but that
18 number that I came up with gets put into a fuel run that
19 Staff has run. And they've run their fuel run with my
20 number to come up with the 126 or so million dollars
21 approximately for fuel costs. And I think if I reviewed
22 it correctly, that has a burn of about 9 -- about 9
23 million MMBtus, using my gas price into the Staff's model.

24 Q. So the 4.68, 126 million is based on how
25 many million MMBtu?

1 A. I believe it's over 9 million MMBtus.

2 Q. 9 million?

3 A. I believe so, from the information that

4 Staff has given me. And if I could go on further about --

5 you talked about customers maybe having to pay, I

6 believe -- and I represent the consumers -- that the price

7 that I'm willing to put into the fuel run to come up with

8 a cost -- a fuel cost is a fair and reasonable number.

9 All -- if the prices would drop, if fuel costs would drop

10 below, the customers would just lose the opportunity.

11 They wouldn't lose any money. They wouldn't have to come

12 up and pay any extra money with my methodology.

13 If fuel costs drop below that, then they

14 drop below that, and then that's something that we could

15 -- you know, if it was substantially below that, maybe we

16 could file a complaint or something like that. But I

17 believe in the current market that my price is a fair

18 price. And even if prices do fall below that, the

19 consumers would just lose the opportunity to get those

20 costs.

21 But I don't think they would get burned.

22 And like I said, with the amount of natural gas that they

23 have hedged already, the chances of that happening are

24 minimized.

25 Q. Okay. I assume you also did an analysis of

1 whether the company could get burned, and I didn't hear
2 you make reference to whether the company would get burned
3 or not or whether that possibility is here in this
4 instance.

5 A. If fuel costs would go up, and they'd have
6 to go up substantially for 2005 to get burned, as you say,
7 because of the amount they've already got hedged at that
8 level.

9 Q. They've got a little under -- they still
10 have to buy 40 percent?

11 A. They still have 40 percent, and there are
12 still 12 months to go in the year 2005. We got right in
13 the mid-- we're just in the beginning of winter, and the
14 futures market is generally higher as winter approaches.
15 And as we get into that winter of not knowing how the
16 winter weather will be, and that has a little bit of
17 uncertainty in the market.

18 We've also got the issue, like I talked
19 about with the hurricane. There's still 5 percent of
20 production in the Gulf of Mexico that is shut in due to
21 that. And every week when I get those reports, it keeps
22 talking how more and more of that natural gas
23 infrastructure is being replaced, which is allowing more
24 and more natural gas to actually be available in the
25 market.

1 So I believe that that's going to have some
2 alleviating effects on the prices of natural gas right
3 now. So -- and then even if prices do go up, the company
4 always has the ability to come in for another rate case.
5 If it's -- if it's substantially higher, they can always
6 ask for an emergency.

7 Q. Substantially higher, what would you
8 consider substantially higher? I suppose what would
9 you -- when I hear the term "substantially," at what point
10 would OPC or you as a witness for OPC, say, wow, that is
11 an emergency? How much would it have to increase?

12 A. I don't know that off the top of my head,
13 sir. I'm sorry.

14 Q. \$1, \$2, \$5?

15 A. I'd have to look at all the factors. I
16 mean, they don't just burn natural gas. They burn
17 other -- coal. They can purchase power.

18 Q. Well, but there's no disagreement on any of
19 the other estimates for the variables that go into the
20 fuel model.

21 A. Right. And if that's --

22 Q. So all things being equal, if gas prices
23 were to --

24 A. If gas prices go up, they may not burn as
25 much natural gas. They could start purchasing more power

1 if they could get that in the market.

2 Q. Okay.

3 A. So those factors would have to be looked
4 at.

5 Q. Aside from the legal argument that an IEC
6 is not allowed in this state, do you have a personal
7 problem with the IEC mechanism that has been used in past
8 cases?

9 A. I prefer the traditional methodology. We
10 have in stipulations agreed to two IECs, and we talked
11 about an IEC in this case for settlement. So it's not a
12 preferable treatment, but it has been utilized in the
13 past.

14 Q. In what instances do you believe that it's
15 appropriate? What factors would you look to?

16 A. Well, you look at factors of the natural
17 gas market, where prices are, other fundamentals in the
18 market.

19 Q. Well, like give me some specific -- like
20 what would the market have to be doing? You say you look
21 at the market, but that doesn't tell me anything.

22 A. Well, when we did the first one, that was
23 just after the price run-up in 2000-2001 where prices hit
24 over 9, almost \$10 for the first time. When we started
25 the discussions of an interim energy charge, nobody knew

1 exactly what was going to happen; was the market going to
2 go back to the traditional, you know, \$2 to \$3 range, or
3 were we hitting a whole new market? Nobody knew.

4 So that was -- you know, and in
5 consideration of other factors, an IEC was okay at that
6 point in time. So that's a factor you have to look at.
7 We like to look at the, you know, Empire --
8 one of the reasons we didn't with Empire was because of
9 their natural gas utilization. They utilize natural gas
10 maybe more so than some of the other electric utilities,
11 so we looked at that as well.

12 Q. Do you participate, in your capacity -- in
13 your role at the Office of Public Counsel, do you
14 participate in prudency reviews of gas purchasing
15 practices in rate cases, procurement analysis? Do you
16 regularly participate in those?

17 A. No. The prudence reviews for gas has
18 generally been in an ACA/PGA proceeding, just due to the
19 time constraints and all the other cases and the fact that
20 we are so small. I would like to participate more. I
21 review what the Staff does. When I worked at the
22 procurement analysis department, I did do some prudency
23 reviews.

24 Q. Are you satisfied that the Staff performs
25 those prudency reviews in an effective and professional

1 manner?

2 A. I believe they do.

3 Q. Would they also be able to do such prudency
4 reviews in an IEC type of mechanism to determine whether
5 or not the company was hedging properly, whether its
6 purchasing practices were proper? Do they have the skills
7 to be able to handle that?

8 A. I do believe they do have the skills. A
9 prudency review of this magnitude is much different than
10 natural gas, because you're not just looking at the
11 purchasing of gas. You have to look at the purchasing of
12 coal, gas, purchased power. It would be more complicated,
13 but I believe the Staff will do the best job they can.

14 Q. Okay. If the legality of an IEC was not at
15 issue, would you still have proposed the same mechanism
16 for power costs in this case?

17 A. For fuel costs?

18 Q. Yes.

19 A. Yes, sir.

20 Q. So you would have offered the base amount?

21 A. Yes, I would have.

22 Q. I know that you are the Office of Public
23 Counsel and your role is to represent the public, but in
24 doing that review, what considerations do you have in
25 looking at the risk that's posed against the company? Do

1 you consider any risks against the company at all, or do
2 you simply look at the risk to the ratepayer?

3 A. Well, we don't have any desire to put the
4 company under -- we don't have any desire to put the
5 company in a position that they can't have the reasonable
6 opportunity to recover their costs, so, you know, we do
7 take that into consideration.

8 Q. You do take the company's risk into some
9 consideration?

10 A. Yes.

11 Q. If Staff, the PSC Staff does a good job at
12 doing prudency reviews of gas purchasing practices,
13 wouldn't there be less risk to both parties if an interim
14 energy charge was employed?

15 A. Less risk to both the company and the
16 consumers?

17 Q. Yes.

18 A. I think that the IEC shifts some of the
19 risk from the company to the consumers, because now the
20 consumers, depending upon where that band is set around a
21 number, they now may have the risk of gas prices and fuel
22 costs going up that they don't currently have under the
23 traditional methodology of one fuel cost. So I think more
24 of the risk is put on the consumers than there is
25 currently.

1 Q. How about if we -- is your analysis the
2 same if we were to choose the revenue amount offered by
3 Empire of \$137.5 million? Would you agree with that
4 analysis?

5 A. Would I agree with the analysis of putting
6 \$137 million in rates?

7 Q. No. If the Commission were to -- were
8 to grant Empire with what they have suggested, the
9 \$137 million for power cost, then the risk is shifted --
10 without an IEC, the risk shifts again. I mean, it depends
11 on from where you start looking at the risk, doesn't it?

12 A. Well, if that is what's just and
13 reasonable, then I still think that an IEC still puts part
14 of that risk -- more of the risk gets put onto the
15 consumers than with an IEC.

16 Q. With an IEC?

17 A. With an IEC.

18 Q. What if we were to use the all things being
19 equal, model being equal, coal costs being equal,
20 purchased power cost, all things being equal, if we were
21 to use a natural gas price at the floor of what Staff has
22 offered in their low range and then Empire's high range,
23 we have a very broad range rather than just a limited
24 window in one part of the spectrum or another, does that
25 improve the risk outlook for both parties subject to

1 prudency review?

2 A. If you use the 3.50 or 3.20, whatever price
3 that the Staff has used as their floor, and then the
4 company's position of 137 million?

5 Q. Yes. The 5.69 I think is what it is.

6 A. I think that's what it is.

7 Q. What if we were to not limit ourselves to
8 the narrow range that I think -- well, I say narrow range,
9 but the range, the \$20 million difference that the other
10 parties have suggested? What if we were to make it broad,
11 subject to prudency review? If the price comes down, the
12 ratepayer's protected; if the price goes up, the company's
13 protected. Subject to prudency review, is that something
14 that you could support?

15 A. Again, you still -- with the potential of
16 the prices going up, you know, based upon what I believe,
17 that risk is put on the burden of the ratepayers, and that
18 is not there currently. I understand that they do lose
19 the opportunity if prices fall under my methodology, but
20 that is what we currently are. And so I don't -- I just
21 think -- I mean, they are protected if the prices fall
22 under the IEC, if the prices do hit the floor or go down.

23 Q. How many -- how many IECs have you
24 supported in the past? I think we've only approved -- or
25 there's only been two; is that correct?

1 A. There have been two IECs. Our office has
2 in the Stipulation & Agreements agreed to two -- the
3 implementation of two IECs.

4 Q. And were you involved in both of those
5 cases?

6 A. I was involved in both those cases.

7 Q. Okay. And the Aquila case was, what, '00
8 to '01?

9 A. No. Aquila was -- the Aquila case is the
10 one that was just approved this past April, I believe.
11 Empire was approved in April of 2001.

12 Q. Okay. Empire was in '01. In the Aquila
13 case, what were the factors that you looked at which made
14 the IEC more attractive?

15 A. There were many factors that were involved
16 in the settlement of the case beyond just the gas prices
17 that allowed us to go ahead and settle that case. I was
18 not privy to all of the other negotiations.

19 Q. So it wasn't your call?

20 A. It was not my call to approve the IEC.

21 Q. In your filed testimony, did you suggest an
22 IEC?

23 A. I did not.

24 Q. You did not. And you offered just a base?

25 A. I offered a base rate. We did offer and we

1 did, you know, have settlement negotiations working toward
2 an IEC in this case as well, but we just never got it.

3 Q. Your testimony in the Empire case in
4 '00-'01, did you support an IEC?

5 A. I believe the IEC came up during the course
6 of negotiations. It was not something that I remember
7 anybody suggesting until we hit negotiations. So nobody
8 supported it as what I recall in testimony. It was a --
9 something that was crafted based upon something that
10 happened a long time ago.

11 Q. Do you support a change in state law to
12 allow for a fuel adjustment clause, or do you have a
13 position?

14 A. I personally don't have a position on that
15 right now.

16 Q. Okay. Have you ever testified in the
17 Legislature on that?

18 A. I have not.

19 Q. Okay. The price that you arrived at, the
20 \$4.68 price, how did you -- what was your mechanism, or
21 what data did you use in coming up with that?

22 A. I utilized the hedged position of Empire.

23 Q. I'm talking about the unhedged portion. I
24 suppose I should rephrase my question. I'm sorry.

25 A. The unhedged piece that I utilized, I

1 utilized a 24-month historical look at NYMEX settlement
2 prices, and I utilized a 24-month futures strip on the
3 date prior to my filing of testimony, and I basically then
4 took the 48 months and I averaged those together.

5 Q. Two years back, two years forward?

6 A. Two years back, two years forward as a
7 reasonable balance between historical and futures.

8 Q. Looking forward you used the NYMEX futures?

9 A. You mean do I use the NYMEX futures --

10 Q. Yeah. Looking forward, what data did you
11 use?

12 A. I used --

13 Q. Mr. Beecher used NYMEX, and I think
14 Mr. Cassidy used --

15 A. He used EIA.

16 Q. -- EIA.

17 A. I used the NYMEX futures.

18 Q. You're comfortable with using the NYMEX
19 futures?

20 A. Not by themselves. I'm comfortable with
21 utilizing that in relationship with like a historical
22 review, but just simply picking a date and saying this is
23 the 12-month or the 24-month strip, I'm not comfortable
24 utilizing that as a futures price.

25 Q. So there has to be some consideration of

1 the historical context of -- I mean, you can manipulate
2 the figures if you pick a certain period of time is what
3 you're saying?

4 A. I believe that you should -- that the
5 historical numbers are relevant to look at when you're
6 coming up with a --

7 Q. Did you use the EIA numbers that
8 Mr. Cassidy used?

9 A. I did not.

10 Q. Have you ever used such figures?

11 A. I've seen them. I've never utilized them.

12 Q. Why not? Do you know what they are? Have
13 you ever --

14 A. Oh, yeah, I've heard of them.

15 Q. Don't get defensive.

16 A. I get a monthly update from EIA to let me
17 know what their projections are. They -- I just -- they
18 look at what's going on in the market. They run their
19 models and they come up with a potential future price. I
20 think my methodology does the same thing. It looks at --
21 because it looks at historical numbers, which is -- any
22 econometric model has to look at history in order to plug
23 in the data in order to spew out a number for what's going
24 to happen in the future.

25 I look at the futures market because it

1 does have some -- it does have some relevance as to what
2 people today are thinking the future may hold. So I think
3 the combination of those two is a reasonable approach.

4 Q. Is there an inherent problem with using the
5 EIA number?

6 A. I don't know if there's an inherent
7 problem, but --

8 Q. Are you not comfortable using those
9 numbers?

10 A. I wouldn't say I'm not comfortable. I just
11 haven't utilized them yet.

12 Q. You get them but you don't use them?

13 A. I get them just so I have an idea of
14 what -- you know, as much information as possible.

15 Q. How do they compare to the NYMEX figures?

16 Do they -- is there always a correlation between the two,
17 or are they incomparable?

18 A. I mean, if you look at like -- you can look
19 at what the futures market on any given day says for the
20 12 months of any given time, and right now it's pretty
21 good because the 12-month strip on the NYMEX is January
22 through December of 2005.

23 If you look at that 12-month strip, compare
24 that to the EIA price prediction of 6.01 on the Henry hub,
25 NYMEX futures is about 40 cents higher than that. But the

1 EIA, they revise their forecast every month as conditions
2 change. So I haven't -- I don't have any problem with it
3 per se. I just never utilized it.

4 Q. So depending on what day -- say we were
5 trying to estimate the price in June of '06, depending on
6 what day in 2004 that you look at either EIA or NYMEX,
7 that number in June of '06 could vary any number of ways?

8 A. I don't believe that EIA gives specific, we
9 think the price in June of '06 will be.

10 Q. How do they work?

11 A. They say, we believe the price for the
12 remainder of the year or for 2005 will be, and they talk
13 about it for a period.

14 Q. A range?

15 A. A range. They don't pick out -- from what
16 I've read, I haven't seen them pick out exact months --

17 Q. Okay.

18 A. -- that says that.

19 Q. But it's not a method that you feel is more
20 accurate or reliable than the NYMEX futures?

21 A. I don't necessarily know that it's more
22 accurate or reliable.

23 Q. So you disagree with Mr. Cassidy in how the
24 methodology is done?

25 A. Oh, his methodology, what he utilizes, I

1 just don't necessarily utilize that as my price
2 prediction.

3 Q. So you don't disagree?

4 A. I don't -- I don't really have an opinion
5 about the EIA.

6 Q. Well, did he do it right, or did he not do
7 it right? I mean, I don't mean to corner you down, but I
8 mean, is it just another method that's subject to
9 reasonable interpretation?

10 A. It's another method that reasonable people
11 can disagree with the results that they got. The
12 methodology of how EIA -- you know, I'm sure that you look
13 at a lot of factors. Mr. Cassidy utilized it as what he
14 felt that the ceiling should be, and I -- I just --

15 Q. Should we adopt the Staff position or your
16 position?

17 A. I would hope you would adopt my position.

18 Q. Because you think it's better, or is it
19 just another reasonable --

20 A. I think mine's the most reasonable approach
21 to take.

22 COMMISSIONER CLAYTON: Okay. Thank you
23 very much for answering my questions.

24 THE WITNESS: Thank you, Commissioner.

25 JUDGE THOMPSON: Commissioner Applling?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. Mr. Busch.

3 A. Commissioner, how are you doing today?

4 Q. I'm just peachy. Help me out just a little
5 bit, if you would. Give me your prediction for the next
6 six months of the year for the prices of gas. Which way
7 are we going? Are we going north? Are we going south?

8 A. I firmly believe that with the fundamentals
9 that are in the market, that the prices should moderate
10 over the next six months to a year. Obviously there are
11 factors. If we have a very cold winter, that could affect
12 it, make them go north.

13 You know, there are obviously many factors,
14 but I think the fundamentals, with storage as high as it
15 is, with the -- with the improvements in the
16 infrastructure down in the Gulf of Mexico after the
17 hurricane, I believe that the prices will moderate.

18 Q. The information that you used to assist you
19 in coming to your decision, your best guesses about what's
20 going to happen in the gas market, who do you use or what
21 do you use to help you out on that?

22 A. I get a daily e-mail from a service called
23 Interfax Daily. They provide data on natural gas prices,
24 they provide information on spot futures, information on
25 pipelines. They give a little synopsis of what happened

1 on the NYMEX the previous day as far as trading, what
2 factors are affecting the market, they believe.
3 I look at Inside FERC. I follow the gas
4 market since I first started -- when I started working at
5 the Staff back in 1997. I look at storage data, I look at
6 futures prices. I talk to, you know, people like
7 Mr. Beecher and his counterparts in the other electric and
8 gas LDCs just to kind of get a feel for what's going on.

9 Q. Did I hear you correctly that OPC did
10 support an IEC in Empire's last rate case?

11 A. No, sir, it wasn't their last rate case.
12 It was the 2001-299 rate case. We came to a Stipulation &
13 Agreement that we -- that there was a IEC in that case.
14 They had another case, ER-2002-424, where we did the
15 traditional methodology.

16 Q. And you probably have answered this
17 question already, but I didn't get it. Why isn't an IEC a
18 good solution in this case?

19 A. We just believe that the incentives that
20 the company loses by having an IEC versus the incentives
21 that they have to get the lowest possible fuel costs in
22 the more traditional method is the best methodology to go
23 forward.

24 Q. So what you're telling me is the company
25 has no interest in conserving fuel?

1 A. I don't know about conserving fuel. I
2 think they -- with our methodology, they have just a --
3 since they can profit if they can get their fuel costs
4 lower, that that's a greater incentive than if they can't
5 profit from it.

6 Q. Am I correct when I say that OPC probably
7 does not support fuel adjustment clauses?

8 A. I believe in the past that Office of the
9 Public Counsel has opposed the fuel adjustment clause.

10 Q. In your opinion, what is the problem with
11 fuel adjustment clauses?

12 A. I think it's some of the same issues that
13 have been raised, the incentive it takes away. A fuel
14 adjustment clause where the prices go wherever they go,
15 there's no ceiling or no floor, that's -- that definitely
16 puts more risk on the ratepayers and takes away from the
17 companies. You've got the retroactive ratemaking and
18 single issue.

19 Q. Are you seeing any misuse of fuel
20 adjustment clauses in other states like Oklahoma as you're
21 reading about that? Is your counterparts in other states
22 telling you that a fuel adjustment clause is a bad deal?

23 A. I have heard from Kansas that -- an
24 electric utility in Kansas which has the ability to adjust
25 their fuel costs has -- there was a complaint that since

1 Missouri does not have a fuel adjustment clause, that the
2 lower fuel generation is given to Missouri customers and
3 the higher fuel costs are given to the Kansas customers
4 because they can pass those costs along. I have heard of
5 that. Other than that, I haven't really heard too much
6 about it.

7 COMMISSIONER APPLING: Mr. Busch, thank
8 you.

9 THE WITNESS: Thank you, sir.

10 JUDGE THOMPSON: Thank you, Commissioner.

11 Recross, Mr. Frey?

12 MR. FREY: Thank you, Judge.

13 RECROSS-EXAMINATION BY MR. FREY:

14 Q. Mr. Busch, I believe it was Commissioner
15 Clayton who asked you some questions about the risks to
16 the company and the risks to the ratepayers upon
17 implementation of your point or single point estimate. Do
18 you recall those questions?

19 A. I do.

20 Q. Would you agree that an IEC puts the
21 company in a less risky position than a single point
22 estimate with regard to the recovery of its fuel and
23 purchased power expenses?

24 A. Yes.

25 Q. And to the extent that an IEC puts the

1 company in a less risky position, would you agree that if
2 the company were to be granted an IEC, the required return
3 on equity should be lower?

4 A. That's not my area, but I believe it would
5 be or should be.

6 Q. And I think you said in response to a
7 request from Commissioner Clayton that if the actual costs
8 came in below your point estimate -- which as I understand
9 it is natural gas costs of \$4.68, is it not?

10 A. Yes.

11 Q. If the actual gas costs came in below that,
12 I believe you said that the customers would lose an
13 opportunity. Do you recall that?

14 A. Yes.

15 Q. And do you think it's fair to say that the
16 10 cents in gas costs would be worth about \$1 million?

17 A. I don't know that off the top of my head.

18 Q. Do you have an estimate of how much
19 10 cents in gas costs is worth?

20 A. No, I don't.

21 Q. Okay. Thank you.

22 I believe you stated in answer to a
23 question from Commissioner Appling that in connection with
24 Case No. ER-2002-424 we did the traditional methodology.
25 I think that's the term you used in discussing that case.

1 A. I think so.

2 Q. Was that case settled by a Stipulation &
3 Agreement?

4 A. To the best of my knowledge, yes.

5 Q. And in total?

6 A. I think so. When you get to the total, I
7 don't remember exactly, but I -- I think so.

8 Q. Thank you. Are you familiar at all with
9 the last Southwestern Bell complaint case in the early
10 '90s?

11 A. I am not.

12 Q. Let me ask you this: If the Commission is
13 concerned about a legal challenge, what do you think of
14 the idea of the Commission ordering a single point
15 estimate and offering an IEC if you can get agreement of
16 the parties?

17 A. I never thought of that, and I'd have to
18 think about that.

19 MR. FREY: I have no further questions.

20 Thank you, Judge.

21 JUDGE THOMPSON: Thank you. Mr. Conrad?

22 RECROSS-EXAMINATION BY MR. CONRAD:

23 Q. Just very quickly, Mr. Busch, to follow up
24 on a question from Commissioner Appling, you made
25 reference to Kansas in response to his question about

1 jurisdictions that had problems with fuel adjustment
2 clauses. Do you recall that exchange?

3 A. I do.

4 Q. Are you aware of any jurisdictions that
5 have discontinued use of a fuel adjustment clause?

6 A. I believe that Kansas has started to limit
7 the use of the fuel adjustment clauses.

8 Q. Any others that you're aware of?

9 A. Not that I'm aware of, no.

10 Q. Now, the Kansas situation you're talking
11 about, does that -- do you know anything about that?

12 A. Other than what I said to Commissioner
13 Appling.

14 Q. So you don't -- if you know just -- if you
15 don't, just say so. Did that involve Aquila?

16 A. I believe it was an Aquila rate case or
17 Aquila case. I don't know if it was a rate case.

18 Q. And if you know, in July of this year, do
19 you know, if you know, that their fuel adjustment clause
20 went to 14 cents per KWH?

21 A. I'm not 100 percent for sure about that.

22 Q. Had you heard anything about that?

23 A. I heard -- I thought I heard something that
24 their fuel, their KWH fuel adjustment clause was rather
25 high. I think I got -- I might have got an e-mail from

1 one of my counterparts in Kansas, but I don't remember.
2 That was a long time ago.
3 Q. Would 14 cents a KWH be high?
4 A. I think so.
5 Q. And you mentioned in response again to
6 Commissioner Appling's question about a complaint. In
7 what context were you using the word "complaint," somebody
8 complained about it or somebody had filed a formal
9 proceeding?
10 A. Oh, in the Aquila case?
11 Q. Yes.
12 A. I believe that there's -- there's testimony
13 against Aquila for that. I don't know where it came -- I
14 mean, I've read the testimony, but I don't know what
15 started the case itself.
16 Q. Now, again, if you know, that you thought
17 was Aquila?
18 A. Uh-huh.
19 Q. Is that what we used to have sometimes used
20 to call the West Plains division of Aquila, out in the
21 western part of Kansas?
22 A. I don't know exactly what they were called
23 in Kansas.
24 Q. Okay. If you don't know, that's fine.
25 A. I don't know.

1 JUDGE THOMPSON: Thank you, Mr. Conrad.

2 Mr. Keevil?

3 RECROSS-EXAMINATION BY MR. KEEVIL:

4 Q. Mr. Busch, I believe you stated that return
5 or rate of return should be lower in states with fuel
6 adjustment clauses. I'd just like to ask you, why is it
7 then that other state commissions in states that have fuel
8 adjustment clauses are authorizing higher returns on
9 equity?

10 MR. COFFMAN: Objection, your Honor, I
11 think that mischaracterizes the cross-examination. I
12 don't think Mr. Busch said that they should be lower in
13 states with it. I think the question referred to whether
14 a fuel adjustment clause or interim energy charge imposed
15 in this case should suggest a lower ROE in Missouri.

16 JUDGE THOMPSON: Mr. Keevil?

17 MR. COFFMAN: Objection to the
18 characterization and the precursor to that question.

19 BY MR. KEEVIL:

20 Q. Let me restate the question, Mr. Busch. If
21 that was what you testified, why does -- why is that not
22 true also in Oklahoma where I believe we had testimony
23 earlier today that there is a fuel adjustment clause and
24 the last authorized return on equity was 11.27 percent for
25 Empire?

1 A. I have no idea why the Oklahoma Commission
2 recommends such a high ROE.

3 Q. Now, in response to a question from
4 Commissioner Appling, I believe the Commissioner asked you
5 where prices are going, meaning natural gas prices. You
6 stated that you were confident they're going down, if I
7 understood you correctly, right?

8 A. I believe they're going down.

9 Q. And you had that same confidence back in
10 that Aquila case when you testified that prices would be
11 going down and we discussed during my cross of you
12 earlier, correct?

13 A. I believe I stated it would be between
14 3.50 and 4.50. I don't remember exactly where the prices
15 were at that time.

16 Q. And prices have gone up considerably since
17 that Aquila case, correct?

18 A. They have gone up.

19 Q. Would you agree your prediction was wrong
20 in the Aquila case?

21 A. I don't know. I'm trying to think back to
22 what prices were at the beginning of this year and end of
23 2003. Right now they're higher than what I thought they
24 would be, according to my testimony.

25 Q. Now, in response to Commissioner Clayton,

1 he asked you how you developed your recommended gas price.

2 And I believe you said that you took the Empire's hedged

3 position and weighted that with the unhedged position.

4 And in the unhedged position you had 24 months historical

5 prices and 24 months of future prices; is that correct?

6 A. That is correct.

7 Q. Okay. So the hedged portion of that

8 calculation would be based on historical prices, would

9 they not?

10 A. The hedged portion is based upon what

11 Empire was able to acquire hedges at, so in the past.

12 Q. In the past?

13 A. Yes.

14 Q. So that would be historical prices?

15 A. That is true.

16 Q. And in your unhedged calculation, you used

17 24 months of historical prices also, correct?

18 A. I did.

19 Q. So aren't you double-counting the

20 historical price there?

21 A. No.

22 Q. Well, you've got historical prices on the

23 hedged position and -- completely historical prices on

24 that hedged position and historical prices on the unhedged

25 position, correct?

1 A. I shouldn't have said that it's historical
2 prices for the hedged. They were able to get into hedging
3 price dollars based upon movements in the market at some
4 point in the past. My 24 months of historical prices
5 utilized actual settlement prices for each month of those
6 past 24 months as opposed to Empire who makes their
7 hedging decisions throughout, you know, the course of
8 time.

9 Q. Well, they make ongoing hedging decisions
10 throughout the course of time, but their past hedging
11 decisions they made in the past, correct?

12 A. They did make those in the past.

13 Q. And the past would be historical, is it
14 not, Mr. Busch?

15 A. But they're utilizing hedging positions
16 that were made in prior years or prior months for some
17 future date of what the price would be in the future. I
18 have used actual settlement for actual historic settled
19 months in my 24-month historical time.

20 Q. I'm not asking about the 24-month. We're
21 talking about the hedge. If I'm understanding you
22 correctly, you're saying that prices they paid in the past
23 for their hedged portion are not historical?

24 A. They -- those are historical prices for
25 future months.

1 Q. Which would be similar to the 24-month back
2 looking?

3 A. Not at all. The 24-month back look says,
4 what was the -- what did the August of 2002 or 2003,
5 whatever month you want to pick, what did that settle at
6 as of three business days prior to that month, which would
7 be July 27th or 28th? That states that --

8 Q. Of what year?

9 A. 2003.

10 Q. Three?

11 A. So the future -- the hedge says they bought
12 a contract in August or July of 2003 for what the price
13 would be for sometime in 2005. That's not a historic
14 price. That's what the going price was people were
15 willing to buy and sell futures contracts for at some
16 later date. My historic 24 months looks at what did the
17 August 2003 month settle at.

18 Q. But when were those people willing to pay
19 that price? In the past, right?

20 A. In the past.

21 Q. So that's the history?

22 A. But that's not historic prices; that's
23 historic futures.

24 Q. I didn't say historic futures. I said
25 historic prices.

1 A. Well, that's what -- they're hedging on the
2 futures.

3 Q. True, but you're using historical prices in
4 the hedged position because that was purchased in the
5 past.

6 A. I'm not utilizing historic -- they did not
7 purchase a futures contract for 2003 -- August of 2003 for
8 delivery August 2003 as part of their hedge position for
9 2005.

10 Q. Do you agree, Mr. Busch, that 2003 would be
11 history as we stand here today?

12 A. I think I said that. I think I've agreed
13 to that.

14 Q. Just wanted to make sure. Now, if Emp--
15 first of all, let me ask you, I think you threw out a
16 megawatt -- excuse me -- it wasn't megawatt. It was an
17 MMBtu burn of approximately \$9 million that we'll get to
18 in a moment. In your supposed recommendation, is that
19 correct, somewhere around 9 million?

20 A. It was approximately 9 million.

21 Q. And Empire's currently hedged for 2005 at
22 about 5.3 million; is that your understanding?

23 A. They were -- their rebuttal had 5.3 million
24 at 4.71. That number has gone up to 4.78. I'm assuming
25 they actually had some more, so they have more than

1 5.3 hedged to get that price up.

2 Q. Yeah, but --

3 A. So I don't know exactly. It's 5.3 or

4 above.

5 Q. Well, if Empire has to buy approximately

6 4 million MMBtu more than their current hedged position to

7 get to your 9-point-something MMBtu burn in your run that

8 we'll get to in a moment, and the current NYMEX prices

9 hold where they are, wouldn't Empire spend \$8 million more

10 than you were recommending?

11 A. I don't know.

12 Q. Well, you know what you're recommending,

13 right?

14 A. 4.68. That's correct.

15 Q. Okay. You know what the current NYMEX

16 prices are, right? Because we talked about that a moment

17 ago. It's on Exhibit 113.

18 A. I would argue those are not current NYMEX

19 prices.

20 Q. Well, those are the current NYMEX prices in

21 the record then.

22 A. Okay.

23 Q. Okay. Would you agree the difference there

24 is approximately \$2 or \$1.70 or whatever it is, if you

25 want to run the math?

1 A. Between 3.64 and 4.68, yeah, I think it's
2 \$1.60.

3 Q. Okay. Times 4 million MMBtu, what would
4 that give you?

5 A. That would give me -- I think the math
6 would give me 4 times \$1.60. Yeah, 6.4. That's what the
7 math would give me.

8 Q. So that's just even under current -- if the
9 NYMEX futures hold where they are without going up at all,
10 they burn what you have claimed is in your run, which we
11 haven't seen but we'll get to, Empire would be spending
12 approximately 6 -- between 6 and 8 million more than your
13 recommendation?

14 A. First, that's a huge assumption to make,
15 that NYMEX prices will stay at these levels. In fact, you
16 know, three days since --

17 MR. KEEVIL: Excuse me, your Honor. I'd
18 ask that the witness be directed to answer the question
19 that's been asked.

20 JUDGE THOMPSON: Read the question back.

21 THE REPORTER: "Question: So that's just
22 even under current -- if the NYMEX futures hold where they
23 are without going up at all, they burn what you have
24 claimed is in your run, which we haven't seen but we'll
25 get to, Empire would be spending approximately 6 --

1 between 6 and 8 million more than your recommendation?"

2 JUDGE THOMPSON: I think that's a yes or no
3 question, Mr. Busch.

4 THE WITNESS: With the assumptions that the
5 prices won't go up, they will stay exactly what they were
6 on December 2nd, and if they burn 9 million MMBtus, that
7 math is correct.

8 BY MR. KEEVIL:

9 Q. The 9 million actually is your assumption,
10 correct?

11 A. The 9 million is the model that the Staff
12 runs for the fuel run with my gas price.

13 Q. Okay. Well, let's get to that. Well, no,
14 we'll save that for the end. In response to some
15 questions from Commissioner Clayton, I believe you said
16 that one of the things Empire could do to potentially
17 lower its fuel cost would be to purchase power instead of
18 generating power with natural gas; is that right?

19 A. I think that's an option that the company
20 has.

21 Q. Isn't it true, Mr. Busch, that market
22 priced purchased power prices are essentially based on
23 natural gas prices?

24 A. I don't know that they're based on natural
25 gas prices.

1 Q. Well, they are -- they track natural gas
2 prices because the power is generated by gas-fired
3 generation?

4 A. I don't know that all purchased power is
5 based on natural gas-fired generation. There might be
6 some that's not based on that.

7 Q. We're talking about -- but the price is
8 going to be tied to the gas price fired generation; would
9 you not agree with that?

10 A. The price is going to be based upon the
11 supply and demand for purchased power in the market at
12 that time.

13 Q. And that's set by -- primarily by gas-fired
14 generation, is it not?

15 A. Gas-fired generation I don't believe sets
16 supply and demand. That's set in the market by buyers and
17 sellers.

18 Q. What sets the price?

19 A. Where supply and demand intersect.

20 Q. If -- so you do not agree that higher gas
21 prices would lead to higher purchased power prices?

22 A. Not necessarily. It could. It may not.

23 Q. Well, do you believe it's more likely that
24 it would than not?

25 A. I don't know that I'd say more likely, but

1 I think that it's a possibility.

2 Q. It's a possibility. Do you think it's a
3 possibility that gas will fall to the 24 cents per MMBtu
4 range?

5 A. Over what period of time?

6 Q. In 2005.

7 A. No.

8 Q. Do you think it's a possibility that gas
9 will fall to the \$1.50 per MMBtu range in 2005?

10 A. Theoretically possible. I don't think it
11 will fall to \$1.50.

12 Q. Okay. So you've seen Mr. Beecher's
13 rebuttal where he did the calculation that in order to
14 reach the Staff's floor, it would have to fall -- gas
15 prices would have to fall to that in order to meet Staff's
16 floor, correct?

17 A. Merely for the year 2005, but not for 2006.

18 Q. Well, the 2006 numbers are also, I believe,
19 in Mr. Beecher's rebuttal?

20 A. They are.

21 Q. And you've seen them as well?

22 A. I have.

23 Q. Do you disagree with Mr. Beecher's
24 calculations in that rebuttal testimony?

25 A. I have no reason to disagree with his

1 calculations.

2 Q. Now, you mentioned the fuel run or the fuel

3 model projecting the amount of burn; is that correct,

4 Mr. Busch?

5 A. I think so.

6 Q. If I could have you turn, then, to page 7

7 of your surrebuttal testimony -- excuse me -- wrong page.

8 Page 5, your surrebuttal testimony.

9 A. I'm there.

10 Q. On line 7 you say that Mr. Beecher

11 calculated his price assuming a burn of 10 million MMBtu.

12 Do you see that?

13 A. Yes.

14 Q. Now, isn't it true, Mr. Busch, that

15 Mr. Beecher used a -- or excuse me -- the fuel model that

16 Mr. Beecher used projected that burn rather than

17 Mr. Beecher just simply assuming a burn?

18 A. I don't know exactly where he got that

19 10 million MMBtu. It would probably be from his fuel run.

20 Q. Have you seen the schedules attached to

21 Mr. Beecher's testimony?

22 A. I -- I have seen them.

23 Q. And you don't recall that they --

24 A. I don't recall the 10 million.

25 Q. Okay.

1 A. I have seen the --

2 Q. Isn't it also true that Staff's fuel model

3 projected a burn of slightly over 10 million MMBtu?

4 A. I don't recall exactly what Staff's fuel

5 burn was, exact number.

6 Q. When you say in your surrebuttal there on

7 page 5 that, let's see, you believe a more reasonable

8 level of expected burn is 8.8, are you disagreeing with

9 Staff's fuel run and company's fuel run?

10 A. No. I'm basing that number off of the gas

11 position sum report that I received from Empire that said

12 that their expected decatherms was 8.833.

13 Q. Okay. So that's not based on this fuel run

14 of yours that you claim to have that's something over --

15 slightly over 9 million?

16 A. No, it's not based on the fuel run that

17 Staff has calculated for me.

18 Q. Okay. Going to this fuel run that you say

19 the Staff has calculated for you, how many megawatt hours

20 are associated with your recommended total fuel price?

21 A. 5,029,958.

22 Q. And where does -- and what's your figure

23 again, that 120-something?

24 A. I think it's, according to what Staff gave

25 me, 126,376,629.

1 Q. Okay. And where is that figure filed in
2 your prefiled testimony?

3 A. That figure per se was not filed in my
4 testimony. But my testimony indicates that my gas price
5 should be put into a fuel run in order to then come up
6 with the appropriate fuel costs that then would be
7 utilized in the ultimate determination of rates.

8 Q. But you never provided that fuel run in
9 your prefiled testimony?

10 A. I never did run the fuel run. It was --
11 the Commission is going to pick a fuel run, and they're
12 going to -- I get to pick my natural gas price and plug
13 that number in.

14 Q. Well, they can certainly pick a fuel run.
15 But if you didn't provide a fuel run, they couldn't pick
16 your fuel run, could they?

17 A. Not my fuel run.

18 Q. Okay. So you didn't do a fuel run; Staff
19 ran a fuel run?

20 A. Staff did the fuel run for me.

21 Q. Okay. Now, if Staff ran the model, the
22 fuel model, did you review the individual inputs into
23 Staff's fuel model?

24 A. I reviewed the testimony of Mr. Bender.

25 It's similar to the fuel models that they've run in other

1 electric cases.

2 Q. Now, Mr. Busch, I asked you if they ran the

3 model. Did you review the individual inputs into your

4 fuel run that --

5 A. No, I did not.

6 Q. You did not. Okay. So do you know what --

7 in your fuel run, do you know what the forced outage rate

8 is used for Asbury?

9 A. Whatever Staff used.

10 Q. Whatever Staff used. Do you know how many

11 megawatt hours are produced by the State Line combined

12 cycle plant?

13 A. I think it's 1,107,754.

14 Q. That's all State Line?

15 A. State Line combined cycle, State Line 1,

16 yet another 19,866, I think.

17 Q. And after -- after you got this run, did

18 you perform a reconciliation of your fuel run done by

19 Staff with the company's proposed fuel runs?

20 A. I did not perform a reconciliation, no.

21 Q. Do you know if anyone has done a

22 reconciliation?

23 A. I think Staff has provided a

24 reconciliation.

25 Q. But that was between their runs and the

1 company's runs, correct?

2 A. I think my -- or Public Counsel's position

3 was in that reconciliation. We talked about that

4 \$12 million yesterday.

5 Q. Oh, I'm not talking about just a recon like

6 that. I'm talking about looking at the differences

7 between the fuel runs themselves --

8 A. No.

9 Q. -- and the inputs used in those fuel runs.

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

11 Q. So there has been no such reconciliation

12 performed between your fuel run and the company's fuel

13 run?

14 A. Like I said, my fuel run is the Staff's run

15 and just my natural gas price.

16 Q. But if you change the natural gas that has

17 flow-through changes that affect things throughout the

18 fuel run, correct?

19 A. Yes.

20 Q. And you have never provided that or done a

21 reconciliation of your run with the company, correct?

22 A. That is correct.

23 Q. Okay. Why is that fuel run not in any of

24 your testimony?

25 A. We do not have the fuel model. We don't

1 have the resources to do that.

2 Q. Well, no, but you claim to have a fuel run,
3 so why is it not in your testimony?

4 A. I -- like I said, it was my fuel. My gas
5 price was to be utilized in the fuel run that was utilized
6 in this case, and I didn't want to come out and suggest
7 that we were supporting necessarily everything that
8 Staff's fuel run -- that could support their fuel run.

9 Q. So you don't necessarily agree with
10 everything in the fuel run?

11 A. Never said that.

12 Q. You said you didn't want to be --

13 A. I'm not supporting it.

14 Q. You're not supporting it?

15 A. Yeah.

16 Q. So what's the opposite of supporting?

17 A. Not opposing.

18 Q. Well, if it isn't in your testimony,
19 Mr. Busch, and if you didn't get with the company prior to
20 today to reconcile the fuel runs -- your fuel run, I
21 should say, with the company, how was Empire expected to
22 be able to rebut or address your fuel run done for you by
23 Staff?

24 A. I don't know.

25 Q. Don't really care either, do you,

1 Mr. Busch?

2 A. If they want to put my number in their fuel
3 run, they could do that as well. I didn't think there was
4 a big difference between the Staff and the company and
5 their fuel runs in this case.

6 Q. Well, but you've admitted if you change one
7 input, that flows throughout the fuel run, correct?

8 A. Sure.

9 Q. Okay. And that could make a big
10 difference, could it not?

11 A. Well, the Staff has a much higher spread
12 between gas costs than I do, and they've run both models.
13 And so I assumed mine would be somewhere in the middle,
14 between those two.

15 Q. Both models, you mean --

16 A. Between the -- yeah, between the base and
17 the floor or base and ceiling. I'm sorry.

18 Q. Now, did you recommend utilizing NYMEX
19 futures to set gas prices in Empire's 2001 case in your
20 direct testimony?

21 A. I think I utilized the same methodology
22 that I used in this case, a hybrid of utilizing historic
23 and futures.

24 MR. KEEVIL: Judge, I'd like reserve an
25 exhibit number. I don't have that with me, but I'd like

1 to reserve an exhibit number for Mr. Busch's --

2 JUDGE THOMPSON: Mr. Busch's fuel run?

3 MR. KEEVIL: No. He doesn't have a fuel

4 run, Judge. His direct testimony in the 2001 Empire case

5 on the fuel issue.

6 JUDGE THOMPSON: Okay. Why don't you

7 reserve No. 116.

8 MR. KEEVIL: And I apologize. I didn't

9 bring that with me, but I will -- prior to filing it, I'll

10 get with Mr. Coffman, and hopefully we can agree that it

11 is what it purports to be.

12 MR. COFFMAN: Just the rebuttal?

13 MR. KEEVIL: No. His direct. I'm sorry.

14 MR. COFFMAN: Oh, just his direct.

15 MR. KEEVIL: Or let me say it this way: I

16 may have the direct rebuttal. It's where he sets forth

17 his -- what he's using to determine his gas price in the

18 Aquila case, that it may be direct, it may be rebuttal. I

19 think it's direct.

20 MR. COFFMAN: Did you say Aquila or Empire?

21 MR. KEEVIL: Excuse me. Empire. Asking

22 too many questions about Aquila earlier. Had Aquila on

23 the brain there. I apologize.

24 Judge, if I could just have a second?

25 JUDGE THOMPSON: You may.

1 MR. KEEVIL: Thank you, Judge. That's all.

2 JUDGE THOMPSON: Let's see. Redirect. Let
3 me ask you, Mr. Coffman, are you going to be long?
4 Because we're past due for a break for the reporter.

5 MR. COFFMAN: Probably be done before
6 three.

7 JUDGE THOMPSON: All right. Why don't you
8 go ahead.

9 REDIRECT EXAMINATION BY MR. COFFMAN:

10 Q. There seems to have been some confusion
11 from Mr. Keevil based on what your recommendation is. I
12 think it might be important to simply clarify once again
13 Public Counsel's position and with regard to how your --
14 how you're recommending that your natural gas price be
15 utilized in this case. Could you simply state that?

16 A. Yes. I recommend a natural gas price that
17 I expected Empire to pay of \$4.68, and that price should
18 have been -- should be utilized into a fuel run, in that
19 fuel run that Staff has provided for me. Like I said, I
20 was under the impression that Staff and company have not a
21 lot of disagreements on the fuel runs. And that come out
22 to a total fuel cost of \$126,376,629.

23 Q. And you have reviewed the fuel run of the
24 Staff and believe it to be reasonable?

25 A. Yes.

1 Q. And has the Office of the Public Counsel
2 had the resources for many years to be able to perform a
3 complete fuel run in an electric rate case?

4 A. Not since I've been there or the few years
5 when I was with the Public Service Commission. I'm
6 familiar with Public Counsel having the resources to do a
7 fuel run.

8 Q. And did you work with Staff personnel who
9 were preparing the reconciliation between all the major
10 parties in the case to determine if their calculations in
11 the reconciliation document were accurate in implementing
12 your position?

13 MR. KEEVIL: Judge, I'm sorry. There was
14 confusion earlier regarding whether we were talking about
15 the reconciliation that was filed or the reconciliation of
16 the fuel runs that I was questioning Mr. Busch about, and
17 I would ask Mr. Coffman to clarify whether his question
18 now relates to the reconciliation which Staff filed Monday
19 or to some fuel run reconciliation, as I was asking
20 Mr. Busch about.

21 BY MR. COFFMAN:

22 Q. My question was as to the final
23 reconciliation document that the Staff filed and I believe
24 all parties have reviewed.

25 A. Yes.

1 Q. Okay. Hopefully that's put to bed. You
2 were asked questions by Commissioners regarding terms of
3 an interim energy charge that has been -- or at least that
4 the parties have agreed not to challenge in two previous
5 Stipulations & Agreements, and you said that you were
6 involved in the negotiations and development of those
7 interim energy charges, correct?

8 A. That's correct.

9 Q. And without revealing any position that any
10 party took in negotiations, is it your understanding that
11 the Office of the Public Counsel agreed to those in
12 response to consideration given overall throughout those
13 rate cases?

14 A. I believe that we agreed to the IECs
15 because of the other considerations in the entire --
16 entirety of the case.

17 Q. And when you were asked to speculate or to
18 give an opinion about what if you were to make a
19 recommendation on some type of fuel mechanism such as an
20 interim energy charge, what type of band between the floor
21 and the ceiling should be appropriate, do you have an
22 opinion about, if you had to choose or die, whether the
23 band between the ceiling and the floor should be wide or
24 narrow?

25 A. I believe that we should probably go with a

1 narrower band.

2 Q. And why is that?

3 A. That keeps the incentive that -- for the
4 company at a more realistic level, and so a narrower band
5 would allow that to occur without -- and it doesn't put
6 too much of the risk of increased full costs on the
7 ratepayers' shoulders.

8 Q. Would it be fair to say that a ceiling and
9 a floor could potentially provide some incentive?

10 A. Incentive for?

11 Q. Either if the ceiling -- the risk that
12 costs may go above the ceiling is a deterrent, does that
13 provide some incentive for the company?

14 A. Yes, yes, yes.

15 Q. And are not some fuel adjustment clauses,
16 could they -- let me withdraw that.

17 Did you state that you were aware that
18 Kansas has scaled back or limited the fuel adjustment
19 clauses that they utilize in -- at least before the Kansas
20 Corporation Commission? Are you aware of any other state
21 that has repealed the fuel adjustment clause in recent
22 years?

23 A. I am not.

24 Q. Are you aware of any state that has adopted
25 a fuel adjustment clause in the last 10 years?

1 A. No.

2 Q. Never mind. While we're still talking
3 about this idea of an interim energy charge or fuel
4 recovery mechanism, you did state, did you not, that the
5 true-up of an interim energy charge would be more
6 complicated than, say, a natural gas PGA/ACA review?

7 A. Yes, I believe it would be more
8 complicated, because where a PGA/ACA review solely looks
9 at the gas that's purchased by the gas LDC, the review of
10 -- the prudence review of an IEC is going to entail a lot
11 more fuels, purchased power and all those types of factors
12 that are not relevant to a gas PGA/ACA review.

13 Q. I believe Mr. Keevil asked you to agree
14 that there would be a prudence review under the interim
15 energy charges recommended in this case, and that whether
16 you would agree that that means that only prudent expenses
17 would be flowed through that mechanism?

18 A. That's the intent.

19 Q. Does the Office of the Public Counsel have
20 resources to conduct such a prudence review?

21 A. We would be stretched very thin to do a
22 full prudence review, especially if there was some -- if
23 there was some problems that were dug up.

24 Q. And I believe that you did state that you
25 believe that the Staff's procurement department is very

1 professional and does the best that it can in performing
2 prudence reviews in the natural gas or the LDC area. Are
3 you confident that the Commission Staff catches every
4 imprudence through those prudence reviews?

5 A. I think they catch every one that they can.

6 Q. With the -- what we call the traditional
7 method of placing a set amount of fuel expense in the
8 rates and setting them there, do you have more confidence
9 that an electric utility going forward would engage in the
10 most prudent and cost-effective procurement practices than
11 under some flow-through fuel mechanism?

12 A. I believe that they would -- since it
13 affects their bottom line, I believe they would do the
14 best they possibly could underneath the traditional method
15 to get the lowest fuel costs possible. I don't know that
16 I would go as far to say as they would act imprudently
17 without that.

18 Q. There was a lot of talk about whether you
19 could rely on the NYMEX futures market to predict the
20 future and some suggestion by Mr. Keevil even that that
21 reflects some actual experience. Isn't it true that the
22 NYMEX futures are prone to significant error?

23 A. Yes. For example, utilizing just like one
24 day for, you know, your complete look at what the future
25 may hold, I'm aware of just before Thanksgiving when the

1 EIA put out their latest storage report, the market was
2 anticipating a withdrawal of 10 -- or 5 to 10, 20 BCF, and
3 the report came out, had a 49 BCF withdrawal, which was
4 shocking right before the long holiday weekend. Caught
5 people off guard. Caused the futures market to go up by a
6 dollar on that day.

7 Then reports came out that there was simply
8 an error in reporting by one of the pipelines of their
9 withdrawals. Eventually it was revised the following
10 Thursday. Should have only been, I think it was a 17 BCF
11 withdrawal. Prices came back down.
12 Therefore, if you would have utilized that
13 day, that would have given a much higher recommendation or
14 much higher strip price than it should have been, merely
15 because somebody along the way had made a mistake. And so
16 that's why just utilizing a single point in time futures,
17 I wouldn't recommend that.

18 Q. And that's -- and that's one of the
19 reasons, I assume, that you have attempted to balance both
20 futures market information with historical prices?

21 A. Yes, because of that potential for
22 short-term blips in the futures market. I like to utilize
23 the historical prices to kind of smooth out any of those
24 potential blips in the market that could occur on any
25 given day.

1 Q. You believe that it's more reasonable to
2 blend historic and future information than to rely on
3 either historical or future information alone?

4 A. Yes, I do.

5 Q. Would -- one more question. In that you
6 are relying somewhat on the Staff fuel run to im-- to use
7 your natural gas input, are you aware of any factors,
8 recent developments that may actually suggest that the
9 Staff's fuel run is underrepresenting recent developments
10 or not representing recent developments for Empire
11 District Electric Company?

12 MR. KEEVIL: Judge, I'm going to object to
13 that. First of all, they bring this fuel run up that
14 we've never been provided and claim it was done by Staff,
15 provided to them, not to us, not in their prefiled
16 testimony. Then they get up here, and apparently now
17 they're trying to undercut their own Staff-done fuel run
18 in redirect testimony, and I just --

19 MR. COFFMAN: Mr. Keevil continues to
20 misrepresent Public Counsel's position in that Public
21 Counsel is recommending the Staff fuel run which
22 Mr. Keevil has seen since direct testimony of the Staff.

23 JUDGE THOMPSON: What was your objection
24 exactly, Mr. Keevil?

25 MR. KEEVIL: We haven't seen this fuel run

1 that they're using today, and now it appears that
2 Mr. Coffman is going to undercut the Staff fuel run that
3 they're basing their -- claiming to base their case on.

4 JUDGE THOMPSON: Okay. Well, I'm
5 overruling that objection. You may answer the question if
6 you're able.

7 THE WITNESS: Could you repeat the
8 question?

9 BY MR. COFFMAN:

10 Q. The Staff fuel run that is being utilized
11 by both Staff and Public Counsel, are there recent
12 developments that perhaps should have been taken into
13 account or might suggest whether the method that Staff
14 uses to develop the fuel run is not taking more recent
15 developments into effect?

16 MR. KEEVIL: Judge, first of all, when will
17 this be provided to us that we might have a look at this
18 fuel run?

19 Second --

20 JUDGE THOMPSON: As I understand the
21 question, the question is -- let me paraphrase -- whether
22 in Mr. Busch's professional opinion, Staff's fuel run
23 should be updated to reflect things that have developed
24 since it was done. I fail to see how the OPC fuel run or
25 non-fuel run, whatever you want to call it that you have

1 not seen, plays into that question. He's asking him
2 whether the Staff fuel run in his opinion should be or
3 should have been updated.

4 MR. KEEVIL: I thought he was asking about
5 the fuel run that they claim Staff did for them.

6 MR. COFFMAN: Public Counsel supports the
7 Staff fuel run with Public Counsel's natural gas price
8 recommendation, and I don't know why Mr. Keevil has a hard
9 time understanding that. But I'm simply asking --

10 JUDGE THOMPSON: I don't want you and
11 Mr. Keevil to scrap here. I just --

12 Kellene, read back the question, if you
13 would, that Mr. Coffman actually asked.

14 MR. COFFMAN: I can rephrase it.

15 JUDGE THOMPSON: I'd like to hear it and
16 then rule on the objection directed to the question you
17 asked.

18 Please read that back.

19 THE REPORTER: "Question: The Staff fuel
20 run that is being utilized by both Staff and Public
21 Counsel, are there recent developments that perhaps should
22 have been taken into account or might suggest whether the
23 method that Staff uses to develop the fuel run is not
24 taking more recent developments into effect?"

25 MR. KEEVIL: And, your Honor, my point is,

1 Staff and Public Counsel are not using the same fuel run
2 because they're changing the fuel prices, and that makes
3 the fuel runs different. They're different fuel runs. We
4 have never seen this fuel run that Public Counsel is --
5 does Public Counsel intend to provide the parties with a
6 copy of this before the close of this hearing?

7 MR. COFFMAN: Your Honor, I understand
8 Mr. Keevil has made a criticism of using Public Counsel's
9 inputs in the Staff fuel run. I think he's made that
10 point laboriously. My question is to the Staff fuel run,
11 which Mr. Keevil inquired of my witness as to what -- as
12 to the relationship between our recommendation and the
13 Staff fuel run.

14 I'm simply, on redirect, asking for the
15 opportunity to inquire of my witness as to what other
16 information he thinks the Staff fuel run may need to take
17 into account based on recent events.

18 MR. KEEVIL: And my point, your Honor, is
19 the Staff fuel run is one thing which Staff filed properly
20 when they were supposed to in the case. This Public
21 Counsel supposed fuel run which Staff did has never been
22 filed, and because the inputs are different, it's a
23 different fuel run. We've never -- Public Counsel has
24 never provided it to us, we don't know what's in it, we've
25 never seen it, we've never had a chance to respond to it

1 or rebut it.

2 JUDGE THOMPSON: I appreciate that. I'm
3 overruling the objection. You may answer the question if
4 you are able.

5 THE WITNESS: I believe in Mr. Cassidy's
6 testimony he refers to adding some natural gas
7 transportation costs into the fuel model that the Staff
8 utilized. One factor that I don't think -- that I haven't
9 seen is the impact that Empire, due to this new
10 transportation, this new pipeline may have the ability to
11 release some of that capacity would help lower some of the
12 fuel costs.

13 And I don't know how -- if that could be
14 modeled into the fuel mold, but it's just -- it's another
15 consideration that they've added these additional
16 transportation costs, which I agree, but it doesn't take
17 into effect the fact that Empire now has the ability and
18 may be able to take advantage of that in the market.

19 BY MR. COFFMAN:

20 Q. So in your opinion, it would have been
21 preferable for capacity release to be used -- potential
22 future capacity release to be input into that model?

23 MR. KEEVIL: I'm going to object. That's
24 leading.

25 MR. COFFMAN: Simply trying to clarify.

1 JUDGE THOMPSON: Sustained.

2 MR. COFFMAN: I think it's clear from the

3 answer. That's all I have.

4 JUDGE THOMPSON: Thank you.

5 MR. KEEVIL: Your Honor, may I ask

6 Mr. Coffman a question? I mean, are we going to be

7 provided with that fuel run?

8 JUDGE THOMPSON: You can ask him that

9 question over the break. We're going to take a recess now

10 for the reporter of 15 minutes. Thank you.

11 (A BREAK WAS TAKEN.)

12 JUDGE THOMPSON: Mr. Busch, I think we have

13 some additional questions from the Bench for you.

14 Commissioner Davis?

15 QUESTIONS BY COMMISSIONER DAVIS:

16 Q. Mr. Busch, you testified earlier that

17 rising -- I'm going to paraphrase -- or this was my

18 impression of your testimony, and you tell me if this is

19 correct. My impression was that you testified that rising

20 natural gas prices don't necessarily lead to higher energy

21 prices; is that correct?

22 A. I think -- were we referring to purchased

23 power prices?

24 Q. Yes, I assume so. I came in sort of in the

25 middle of that.

1 A. Yeah. I said that not necessarily a higher
2 natural gas price would lead to a higher purchased power
3 cost.

4 Q. Okay. Well, could you give me an example
5 of one of those situations where there's an exception to
6 that rule?

7 A. Well, if they purchased power that is
8 generated through coal-fired generation as opposed to a
9 gas-fired generation.

10 Q. Okay. A few moments there before the
11 break, you mentioned the term -- I think it was smoothing.

12 A. Yes.

13 Q. Can you define smoothing for me?

14 A. I was utilizing the term smoothing and --
15 to take into account the fact that if you use a futures
16 market and you're utilizing a date that there are factors,
17 short-term blips in the market, I used like the
18 typographical error on the storage report that caused the
19 futures market to jump up on that day. So I utilized
20 48 months. I utilized the historic prices to kind of
21 smooth out any of those potential problems with the
22 futures market.

23 Q. Are you aware of how the term smoothing is
24 used in the pension fund context?

25 A. No.

1 Q. Okay. Well, my impression is that -- and
2 I'm not an expert on this -- that occasionally in the
3 past, pension funds have used a 3- or 5-year sort of
4 rolling average to balance their assets with their
5 liabilities, which prevents -- which would prevent them
6 from taking
7 any -- all their gains in one year. It also prevents them
8 from taking any losses all in the same year as well. So
9 it sort of, you know, tries to average things out. Is
10 that kind of what you're trying to do here?

11 A. With not really knowing the pensions and
12 from your explanation, it sounds similar, I think, but
13 I -- I don't know for sure.

14 Q. I guess my concern with your use of the
15 term smoothing is the fact that it has been used at times
16 to disguise -- I mean, would you be surprised to learn
17 that, you know, there were several mutual funds -- I
18 believe mutual funds, if not certain pension funds -- who
19 actually got in trouble for, quote, smoothing out their
20 losses, because they, in fact, did not report all of their
21 losses for any given calendar year they were -- or fiscal
22 year. They were actually reporting those losses over an
23 average of 3 years or 5 years. Would that surprise you?

24 A. With all the problems we've had in stuff
25 like Enron, I don't know if anything would surprise me

1 anymore. But I'm not familiar with what you're talking
2 about, Commissioner.

3 COMMISSIONER DAVIS: All right. No further
4 questions.

5 JUDGE THOMPSON: Thank you, Commissioner.
6 Any other additional questions from the Bench?
7 (No response.)

8 JUDGE THOMPSON: Okay. So additional
9 recross based on Commissioner Davis' questions. Mr. Frey?

10 MR. FREY: No questions.

11 JUDGE THOMPSON: Mr. Conrad?

12 MR. CONRAD: Let's see if I can maybe help
13 on one thing.

14 FURTHER RECROSS-EXAMINATION BY MR. CONRAD:

15 Q. Mr. Busch, Commissioner Davis asked you
16 about how it might not impact how -- a change in the gas
17 price, increase in the gas price might not impact into the
18 purchased power price. Do you recall that?

19 A. Yes.

20 Q. Do you -- I'm going to talk concepts with
21 you rather than a specific case for a moment. A load
22 probability curve, a load curve for the utility, visualize
23 that for a second.

24 A. Okay.

25 Q. And imagine that you're a dispatcher and

1 you have to dispatch a plant or a series of plants,
2 meaning turn them on, put them online --
3 A. Uh-huh.
4 Q. -- in order to meet that load curve.
5 Are there going to be points on that curve
6 that you have to, as a dispatcher, bring the plant up
7 online that you cannot sell all of the power that that
8 plant is able to generate into your native load area?
9 A. You mean utilize all that power in your
10 native load?
11 Q. Yes, sir.
12 A. I believe that would probably be true.
13 Q. And what would a smart dispatcher try to do
14 in that circumstance?
15 A. I would assume they would try to sell that
16 power to other parties that needed electricity.
17 Q. So if you visualize that load curve as it
18 comes up either through the day or month or however,
19 typically hour by hour through a day, plants come up in
20 stair steps, don't they?
21 A. I believe so.
22 Q. So if you visualize that curve in stair
23 steps, then there are chunks of plant cap that would,
24 unless they sell it, it otherwise goes unutilized, just
25 sits there and turns, and if it goes unutilized and they

1 don't sell it, they don't get any revenue from it, right?

2 A. That is correct, yes, that they have --

3 when they have turn on that plant, they're not going to
4 utilize all that electricity at one time for native load,
5 and they're going to want to get that revenue if they can,
6 and they're going to sell it in the market.

7 Q. Now, if that plant that the dispatcher was
8 turning on happened to be what we call a base load plant
9 such as a nuke or a coal-based plant, then that cost on
10 purchased power, that chunk of purchased power that would
11 suddenly become available from that utility other than
12 Empire would not necessarily have a price that was driven
13 by natural gas, would it?

14 A. I don't believe it would.

15 Q. Now, would that be an example of what
16 you're talking about?

17 A. Yes, that would be an example.

18 MR. CONRAD: I hope that helps, Judge.

19 JUDGE THOMPSON: Thank you, Mr. Conrad.

20 Mr. Keevil?

21 FURTHER RECROSS-EXAMINATION BY MR. KEEVIL:

22 Q. Mr. Busch, if Empire's going to make a sale
23 on the market, don't they have to get at least their fuel
24 plus incremental O&M, or otherwise they lose money?

25 A. If they don't get a price high enough to

1 recover their costs, then they would have. But if that
2 plant is up and running anyway and they're utilizing that
3 fuel to run that plant, some revenue is better than no
4 revenue.

5 Q. So you're suggesting they sell it at a
6 loss?

7 A. They might.

8 Q. Now, of the -- in your fuel run that Staff
9 performed for you on this purchased power question or the
10 market/spot market question, it appears there's an average
11 spot market price of \$35.62 in that.

12 A. Yes.

13 Q. And would you agree that, for example, the
14 Iatan 1 -- or Iatan is a coal plant?

15 A. I believe it is.

16 Q. And the coal price there at Iatan per
17 megawatt hour, I believe it says 6.77.

18 A. I believe it does.

19 Q. So of that spot market price of 35.62, in
20 your run, how much of that is coal?

21 A. I don't know.

22 Q. You don't know. But this is your run that
23 we're talking about?

24 A. This is the Staff's model utilizing our
25 natural gas price to come up with a number for fuel costs.

1 Q. But you don't know what's in it?

2 MR. COFFMAN: Your Honor, I'm going to

3 object. I think it's beyond questions from the Bench

4 after the break, and these appear to be questions that

5 could have or should have been more probably addressed to

6 Staff.

7 MR. KEEVIL: Actually, Judge, this relates

8 directly to the spot market purchase price question that

9 Commissioner Appling was asking.

10 JUDGE THOMPSON: Objection is overruled.

11 You may answer if you're able.

12 THE WITNESS: I think I said I don't know.

13 BY MR. KEEVIL:

14 Q. Okay. So -- but I believe you told

15 Commissioner Appling that Empire could buy coal-fired spot

16 market power; is that correct?

17 A. I think it's possible that they could.

18 Q. Now, do you really believe that coal

19 power -- or that purchased power is based on coal-powered

20 generation?

21 A. I didn't say they could -- all of their

22 purchased power would be coal purchase. I said it's

23 possible that they could. It's not necessarily going to

24 be all natural gas. I never said they wouldn't buy all

25 coal. I never said they wouldn't buy any natural gas.

1 Q. But you still deny that purchased power
2 prices are driven by natural gas-fired generation prices?

3 A. To some degree, I think they are, but not
4 necessarily all of it.

5 Q. So when on your run the average spot market
6 price is shown as 35.26 and you've got a coal price there
7 at Iatan of 6.77, you don't see the disparity between
8 those?

9 A. I see that there's a difference in number.
10 I think that's referring to the spot market that they're
11 buying the purchased power at \$35, and it cost them 6.77
12 to run Iatan.

13 Q. Yeah, that would be the coal. So how much
14 of that 35.62 is the coal price?

15 A. That's a spot market purchase for purchased
16 power. I don't know. Like I said, I don't know.

17 Q. So you don't know what the purchase -- the
18 spot market purchases shown in your run are?

19 A. Like I said, it's Staff's run with my gas
20 price number, Staff's model.

21 Q. So are you supporting this run or not,
22 Mr. Busch?

23 A. I'm supporting the system fuel and
24 purchased power price of 126 million, because it seems to
25 go with the \$4.68 price of natural gas that I asked Staff

1 to run their model with my natural gas price. And I said
2 in my testimony my natural gas price would need to be put
3 into a fuel model.

4 Q. But you don't know the rest of the --

5 A. I don't know the details of this -- the
6 fuel model, you are correct.

7 MR. KEEVIL: Thanks, Judge.

8 JUDGE THOMPSON: Thank you. Let's see.

9 Redirect, Mr. Coffman?

10 FURTHER REDIRECT EXAMINATION BY MR. COFFMAN:

11 Q. Mr. Busch, are you familiar with the
12 software that the Commission Staff uses to run fuel
13 models?

14 A. I believe it's called real time.

15 Q. Do you have an idea of how much the real
16 time software costs?

17 A. I think I heard at one point in time it's
18 thousands of dollars to get it and thousands of dollars a
19 year to keep the subscription or whatever, the license, I
20 think is what they call it.

21 Q. Have you had some experience in being able
22 to use other parties', including Staff's, model and take a
23 look at the outputs and suggest inputs into?

24 A. In the past we've asked -- I know we've
25 asked Staff to run our fuel cost, natural gas price in

1 their fuel runs in the past. I don't know if we've asked
2 other companies. I can't remember.

3 Q. And do you recall cases in which the
4 Commission has adopted use of inputs from other parties
5 into Staff's fuel run model and other parties' fuel run
6 models?

7 A. I'm not particularly familiar exactly with
8 that occurrence.

9 Q. Would you like to be able to have your very
10 own real time software to play with?

11 A. I think it would be very interesting, and I
12 think we would -- it would allow us to do our own fuel
13 runs and come up with our prices.

14 MR. COFFMAN: Thank you.

15 JUDGE THOMPSON: Thank you. You may step
16 down, Mr. Busch.

17 Mr. Bender, good afternoon again.

18 Mr. Bender, I'll remind you that you're still under oath.

19 Go ahead and take your seat, and I think we have some
20 questions from the Bench for you.

21 Commissioner Clayton?

22 LEON BENDER, being previously sworn, testified as follows:

23 QUESTIONS BY COMMISSIONER CLAYTON:

24 Q. Mr. Bender, I apologize for calling you

25 back. I think your slot went awfully quick. I thought I

1 got down here promptly after our little celebration over
2 the noon hour and, poof, you were gone before I made it to
3 the hearing room. So I apologize for dragging you back.
4 Your role in your testimony in this case is
5 running this so-called fuel model; is that correct?
6 A. Yes, sir.
7 Q. What does that mean?
8 A. What I do is take the various inputs to
9 determine the proper dispatch of the resources to meet the
10 native load.
11 Q. How many variables are there?
12 A. Literally thousands.
13 Q. Thousands of variables. How long does it
14 take to do a fuel run?
15 A. Once you get a fuel run up or model set up,
16 it only takes about 30 minutes to do it. But setting that
17 up can take -- getting all the data together and setting
18 it up may take months.
19 Q. Well, certainly gathering the thousands of
20 variables would take a little bit of time, I would assume?
21 A. Yes.
22 Q. Now, do you gather those mat-- that data,
23 or is that data supplied to you from other Staff members?
24 A. Some is supplied by Staff, much is supplied
25 by the company themselves.

1 Q. Okay. Is the fuel model you run the same
2 fuel model that is run by Empire, do you know?
3 A. No, it's not.
4 Q. Are there 2 different programs?
5 A. We -- the Staff runs a real time fuel
6 model, and the -- Empire runs the Pro Sem. They're 2
7 different models.
8 Q. Are they significantly different?
9 A. I've never run the pro sem model, so I
10 don't really know. I think they both perform the same
11 function.
12 Q. If you put in the same variables, they'll
13 reach the same result?
14 A. Very close.
15 Q. Okay. Are you the only Staff member who
16 runs this model, or at least in this case?
17 A. In this case I am. I'm not the only Staff
18 member who runs the model.
19 Q. But in this case you are the only --
20 A. Yes.
21 Q. -- Staff member who ran a fuel model for
22 this Empire case?
23 A. Yes, sir.
24 Q. Okay. Were you the person who ran this
25 elusive fuel model for the Office of Public Counsel?

1 A. Yes, I am.

2 Q. And were you the person who inputted -- or

3 did you input the data that was suggested by Office of

4 Public Counsel to reach a result?

5 A. The only data I changed was the fuel price.

6 All the other inputs remained the same.

7 Q. So you ran a fuel --

8 A. Gas price.

9 Q. I'm sorry?

10 A. Gas fuel price.

11 Q. Okay. So you ran a fuel model with all of

12 the inputs provided by your colleagues, and that reached a

13 result?

14 A. Yes.

15 Q. And could you describe that result to me?

16 A. Do you need exact numbers or --

17 Q. Well, I believe you supplied a range, and I

18 want to make sure that my notes accurately reflect that,

19 because positions have changed several times throughout

20 the case. So I want to know what numbers you support. If

21 you want to start with dollar amounts, starting off with

22 revenue requirement, ranges, that's fine. If you want to

23 start off with gas price range, that's fine. I'll leave

24 that up to you. But I want you to describe your

25 conclusions to me.

1 A. Well, first of all, the model only
2 calculates the variable costs and not fixed cost. Once
3 the model is run, the results are given to the auditors
4 who add in other fixed costs and other things. So the
5 results I have only reflect the variable costs.

6 Q. Were those variable costs at a range of
7 roughly 86 million -- \$86,319,000 up to \$109,770,000? Was
8 that your final conclusion, the range that you had in
9 variable costs?

10 A. Yes. And those are in the schedule in my
11 testimony.

12 Q. Well, that's where I got that. And then do
13 you know the fixed costs that would be added into that for
14 Staff's position?

15 A. I don't have those numbers with me.

16 Q. Okay. Do you recall the gas prices that
17 were used in those runs, those fuel model runs that you
18 performed?

19 A. We -- I ran two runs. The first was a base
20 gas price of \$3.20, and the setting price of \$5.62.

21 Q. Okay.

22 A. For the Public Counsel, the Public Counsel
23 ord--

24 Q. Hang on before you get to that. Now, those
25 numbers were supplied to you by Mr. Cassidy; is that

1 correct?

2 A. Yes, they were.

3 Q. Or is it Dr. Cas-- Mr. Cassidy?

4 A. Mr. Cassidy.

5 Q. Not Doctor. Okay. Those are supplied by

6 him, so he estimated those figures and gave them to you?

7 A. The gas numbers, yes.

8 Q. Okay.

9 A. As well as other fuel costs for the coal,

10 et cetera.

11 Q. Okay. So you ran those two runs, and those

12 are in your direct testimony?

13 A. Yes.

14 Q. Okay. Have those numbers changed in any

15 way in rebuttal or surrebuttal testimony?

16 A. No, they have not.

17 Q. Okay. Now, Office of Public Counsel -- you

18 were contacted by the Office of Public Counsel to perform

19 a fuel run?

20 A. Yes, I was.

21 Q. And could you describe -- I suppose if it's

22 easier to describe the differences in the run or the

23 similarities, I'll leave that up to you. But could you

24 compare the two runs or the runs that you did for the

25 Office of Public Counsel compared to your two runs?

1 A. The run for Office of Public Counsel was
2 done at 4.69 gas, I believe, and the variable cost would
3 be somewhere in the range -- in the middle of the two
4 ranges. It's -- I think what I have is 101, close to 102
5 million as far as total cost, whereas the --
6 Q. Total variable cost?
7 A. Total variable cost. And the Staff's run
8 is from that, as you mentioned earlier, the 86 to the
9 close to 110 million in round numbers.
10 Q. Okay. And I think you testified you're
11 not -- you're not sure what the fixed costs that would be
12 added to that would be?
13 A. No. Those would be added by Staff witness
14 John Cassidy. I don't know whether he did the same thing
15 for Public Counsel as what he did for us.
16 Q. Well, the difference between the variable
17 cost run of \$102 million compared to the total fuel cost
18 suggested by Office of Public Counsel, that was
19 126 million. That would suggest a fixed cost of
20 \$24 million. Does that sound reasonably accurate?
21 A. That would be in the ballpark.
22 Q. Okay. Were there any other differences in
23 the run, the fuel run that you performed? Were there any
24 other differences in the variables?
25 A. No. The only difference was the gas price.

1 Q. So the coal price was the same?

2 A. Yes, it was.

3 Q. And the purchased power price, I believe,

4 would have been the same?

5 A. Purchased power price and availability were

6 the same.

7 Q. Okay. Have you reviewed the testimony

8 relating to fuel models filed by Empire, Office of Public

9 Counsel and by the intervenors in this case?

10 A. I have reviewed the testimony of Empire. I

11 don't believe I have for Office of Public Counsel or the

12 intervenors.

13 Q. Okay. So you haven't read OPC's testimony

14 in this issue to make sure that it matched your fuel run?

15 A. No.

16 Q. Make sure that it matched up with your

17 handiwork?

18 A. Well, I think OPC was sponsoring the gas

19 price and not necessarily the fuel run, so --

20 Q. Hmm.

21 A. -- that was my impression. So I haven't

22 read their testimony since I didn't do their --

23 Q. That was interesting.

24 A. Since they didn't do their own fuel run,

25 there was nothing there for me to rebut.

1 Q. Okay. Well --

2 MR. KEEVIL: That was my understanding,

3 too.

4 BY COMMISSIONER CLAYTON:

5 Q. But did you review the Empire testimony on

6 this issue?

7 A. Yes, I did.

8 Q. Okay. Recognizing that there are different

9 programs that are used or different models that are

10 used -- I'm not sure the exact terminology -- were you

11 able to compare the data, including natural gas costs, but

12 all other data that were put into the Empire model?

13 A. Yes, we did receive the data in DR forms.

14 Q. Were there any other differences that were

15 placed in their fuel model run that were of significant

16 difference to yours, other than natural gas price?

17 A. In total, the total cost difference was

18 only 1.8 percent. So there were no significant

19 differences other than gas price.

20 Q. Other than gas price. Okay. Are you aware

21 or not aware of what -- of whether there are any

22 differences between Staff and Empire relating to fixed

23 costs?

24 A. I'm not aware of that.

25 Q. You're not aware. Okay. With the natural

1 gas price of 4.69 that you used in the Office of Public
2 Counsel run, are you able to vouch for that \$102 million
3 total variable cost plus the \$24 million fixed cost
4 revenue requirement that's been suggested in their
5 testimony?

6 A. I'm sorry. I don't understand. Have I
7 been able to --

8 Q. Can you vouch for that? Can you vouch for
9 that fuel model run?

10 A. I can vouch for --

11 Q. Is it accurate?

12 A. I can vouch for my run. I don't know what
13 else they have added to that number.

14 COMMISSIONER CLAYTON: Okay. Thank you.

15 JUDGE THOMPSON: Additional questions from
16 the Bench?

17 (No response.)

18 JUDGE THOMPSON: Okay. So cross -- or
19 recross, excuse me, based on questions from the Bench,
20 Mr. Conrad?

21 MR. CONRAD: No questions. Thank you.

22 JUDGE THOMPSON: Mr. Coffman?

23 MR. COFFMAN: No questions.

24 JUDGE THOMPSON: Mr. Keevil?

25 RE-CROSS-EXAMINATION BY MR. KEEVIL:

1 Q. Mr. Bender, let me start toward the end of
2 the questions that Commissioner Clayton asked you and work
3 backward. He asked you, I think, about differences
4 between Staff and Empire's fuel model runs. And have you
5 read Mr. Beecher's rebuttal testimony in this case?
6 A. Yes, I have. It's been a while.

7 Q. Do you have a copy of it there with you on
8 the stand?
9 A. I have copies of parts of it that
10 concerns --

11 Q. The modeling issues?
12 A. -- the fuel model.

13 Q. Okay. If you turn to page 7 of
14 Mr. Beecher's rebuttal testimony.
15 A. Rebuttal?

16 Q. Rebuttal, right.
17 A. I'm there.

18 Q. Do you see there where he says that one
19 area where Empire differs with Staff is on the modeling of
20 spot purchase availability?
21 A. Yes.

22 Q. Do you disagree that the Staff's model and
23 Empire's model, there is a difference between those two
24 models on the non-contract spot availability?
25 A. There is a difference, yes.

1 Q. It just so happened that in the particular
2 runs, the issue between Staff and Empire in this case,
3 there wasn't a great disparity, so no one made a big issue
4 of it.

5 A. In this case, the spot market and the price
6 that the gas turbines dispatch at are very close to each
7 other, so there was no big difference.

8 Q. Okay. I believe that -- staying on that
9 same page of Mr. Beecher's rebuttal, on line 12 he states
10 that in this case with the level of purchased prices and
11 natural gas prices in the models that trade off between
12 spot purchase and combined cycle is close enough so that
13 the impact of the difference in spot purchase availability
14 is minimized. Do you see that?

15 A. With regard to total cost, yes.

16 Q. Right. So that's basically what you just
17 said?

18 A. Yes.

19 Q. You and he agree on that?

20 A. I was referring to total cost and not
21 individual line items.

22 Q. All right. Do gas prices -- natural gas
23 prices affect purchased power prices?

24 A. I -- I assume they do, but I don't think
25 it's the only thing that affects gas prices.

1 Q. Okay. Let me just ask you some basic
2 modeling questions, if I can. In your modeling run, or
3 any modeling run for that matter, do the generators
4 generate the same amount of output when you change the gas
5 cost?

6 A. Are you talking about the gas generators?

7 Q. No. All of the generators of the company's
8 system. If you change gas price, will that have an impact
9 on the generators' output?

10 A. The -- the base load units will stay -- it
11 depends on the time of day. The base load units will
12 pretty much stay the same if you change the gas price.
13 But in this case, due to the fact that there's an
14 interrelationship between the combined cycle and the
15 purchased power, it depends on where you are in the gas
16 price range, which one dispatches first. So they will
17 change. Mainly the gas --

18 Q. Go ahead.

19 A. Mainly the gas generation units.

20 Q. Okay. So the dispatch order will change?

21 A. Yes.

22 Q. And the -- I assume the amount generated
23 from each generator will change?

24 A. Yes, they will.

25 Q. Okay. So if you change the gas price input

1 for the model run, that affects the megawatt hours of the
2 generators?

3 A. It will affect the megawatt hours of the
4 least costly gas units. Generally the cheaper priced ones
5 or the ones with the better heat rates will continue to
6 generate the same as they always have, but the other --
7 the other units which are more costly will back off or
8 shut down.

9 Q. And that would be because of the purchased
10 power interplay?

11 A. Yes.

12 Q. So if you change the gas price, put into
13 the model, that will change the amount and cost of the
14 non-contract purchased power developed by the model?

15 A. Yes, it will.

16 Q. So --

17 A. It will change the amount and the cost that
18 the model actually buys. It won't change any of the
19 inputs.

20 Q. Does it also change the number of MMBtus
21 burned projected?

22 A. Yes, it does.

23 MR. KEEVIL: Thank you, Mr. Bender.

24 JUDGE THOMPSON: Thank you, Mr. Keevil.

25 Mr. Frey, redirect?

1 REDIRECT EXAMINATION BY MR. FREY:

2 Q. Just two questions, Mr. Bender. Is the
3 Staff supporting Public Counsel's gas price generated from
4 our model?

5 A. No, we're not.

6 Q. And did you read Mr. Busch's testimony?
7 Did you review it? You may have stated that before.

8 A. No, I did not. I knew their position, but
9 I did not read his testimony.

10 Q. So you don't know, then, whether their
11 rebuttal or any of their testimony deals with our model?

12 A. No, I do not.

13 MR. FREY: Thank you.

14 JUDGE THOMPSON: Thank you, Mr. Frey. You
15 may step down, Mr. Bender.

16 I think that concludes the witnesses for
17 fuel and purchased power/interim energy charge, except for
18 Mr. Brubaker, who will be available tomorrow; is that
19 correct?

20 MR. CONRAD: That is correct.

21 JUDGE THOMPSON: And so our next witness
22 then would be Mr. Overcast, who's not here, followed by
23 Mr. Watkins; is that correct?

24 MR. CONRAD: I'm sorry. What I was going
25 to say is, I'm endeavoring to have Mr. Brubaker here first

1 thing in the morning, assuming you're starting at nine.

2 JUDGE THOMPSON: As far as I know, we're
3 starting at nine.

4 MR. KEEVIL: Mr. Overcast will also be here
5 tomorrow morning is my understanding, your Honor.

6 JUDGE THOMPSON: Very well.

7 MR. COFFMAN: Your Honor, may I make a
8 suggestion that we begin tomorrow with the -- whatever
9 mini openings there may be on the IEC rate design and then
10 proceed with the witnesses whenever I guess the Commission
11 is prepared, assuming that would take less than half an
12 hour in the morning?

13 JUDGE THOMPSON: Yeah, I think we're going
14 to resume tomorrow morning at 8:30. That way we can have
15 an hour before agenda, but we're also going to start with
16 Mr. Watkins now. We have an hour before the end of the
17 workday. So unless that throws somebody's schedule
18 totally off, it would be my preference to take testimony
19 for the next hour.

20 MR. CONRAD: Judge, could we go off the
21 record for just five minutes here and --

22 JUDGE THOMPSON: Sure. We'll go off the
23 record.

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

25 JUDGE THOMPSON: Mr. Watkins, raise your

1 right hand.

2 (Witness sworn.)

3 JUDGE THOMPSON: You understand that if you

4 were to give false testimony in this proceeding, you could

5 be prosecuted for the crime of perjury?

6 THE WITNESS: Yes, that's my understanding.

7 JUDGE THOMPSON: Take your seat, please.

8 State your name for the reporter.

9 THE WITNESS: My name is James C. Watkins.

10 JUDGE THOMPSON: You may inquire, Mr. Frey.

11 MR. FREY: Thank you, Judge.

12 JAMES C. WATKINS testified as follows:

13 DIRECT EXAMINATION BY MR. FREY:

14 Q. Good afternoon, Mr. Watkins.

15 A. Good afternoon, Mr. Frey.

16 Q. By whom are you employed and in what

17 capacity?

18 A. I'm employed by the Missouri Public Service

19 Commission. My title is manager, economic analysis.

20 Q. And are you the same James Watkins who

21 caused to be filed in this proceeding what have been

22 numbered Exhibits 74 through 77, that is September 27th

23 direct, October 4th direct testimony, and rebuttal and

24 surrebuttal?

25 A. Yes.

1 Q. And do you have any corrections to make to
2 that testimony today?

3 A. No, I don't.

4 Q. If I were to ask you today the questions
5 that are contained in those testimonies, would your
6 answers be the same?

7 A. Yes, they would.

8 Q. And are those answers true and correct to
9 the best of your knowledge, information and belief?

10 A. Yes, they are.

11 MR. FREY: Your Honor, I would offer
12 Exhibits 74, 75, 76 and 77 and tender Mr. Watkins for
13 cross.

14 JUDGE THOMPSON: Any objections to the
15 receipt of Exhibits 74, 75, 76 or 77?

16 (No response.)

17 JUDGE THOMPSON: Hearing none, the same are
18 received and made a part of the record of this proceeding.

19 (EXHIBIT NOS. 74, 75, 76 AND 77 WERE
20 RECEIVED INTO EVIDENCE.)

21 JUDGE THOMPSON: Cross-examination,
22 Mr. Coffman?

23 MR. COFFMAN: I have no questions as to IEC
24 rate design of this witness.

25 JUDGE THOMPSON: Very well. Mr. Keevil?

1 MR. KEEVIL: No questions at this time,
2 your Honor.

3 JUDGE THOMPSON: Mr. Conrad?

4 CROSS-EXAMINATION BY MR. CONRAD:

5 Q. Good afternoon, Mr. Watkins.

6 A. Good afternoon, Mr. Conrad.

7 Q. I'll try to be brief in my questions if
8 you'll be equally brief in your answers.

9 I understand that with respect to the issue
10 of -- well, let me start over.

11 I'm only going to be asking you about the
12 IEC rate design issue, so keep that in mind. Did you
13 participate in the preparation and development of an IEC
14 for Aquila?

15 A. Yes.

16 Q. And is what Mr. Brubaker has proposed in
17 this proceeding similar to that discussed or approved by
18 the Commission in Aquila?

19 A. I'm not sure how to judge the similarity.
20 That wasn't at all clear to me from his testimony. But in
21 subsequent talks with Mr. Brubaker, I understand that that
22 was the position he was attempting to express in his
23 testimony, at least as far as his clients were concerned.

24 Q. And did he not in his last rounds of
25 testimony indicate that he was proposing or was suggesting

1 to the Commission that the same methodology that you had
2 designed in Aquila be used?

3 A. I don't specifically remember that passage
4 of the testimony.

5 Q. Do you have Mr. Brubaker's testimony with
6 you?

7 A. I'm sorry, I don't.

8 MR. CONRAD: Your Honor, may I get mine?

9 JUDGE THOMPSON: Sure.

10 MR. CONRAD: This would be, I believe,
11 Exhibit 107. I'll check that. Yes.

12 BY MR. CONRAD:

13 Q. Mr. Watkins, that is what has been marked
14 for identification, not admitted at this point, as
15 Exhibit 107, the surrebuttal testimony and schedules of
16 Brubaker, November 24. Are we looking at the same
17 document?

18 A. Yes, sir.

19 Q. And may I please direct your attention to
20 page 9?

21 A. Yes, sir.

22 Q. And the answer that begins at line 12
23 through 17 referring to his September 20 testimony, I
24 specifically recommended that for inclusion of cost in
25 rates and for determining refunds to use the same approach

1 that was used in the Aquila rate case in ER-2004-034. Did
2 I more or less correctly read that?

3 A. Yes, sir.

4 Q. And is he correct that you were the
5 principal architect of that methodology? I mean, if you
6 want to disclaim responsibility for it, it's okay.

7 A. No, I'm going to take responsibility where
8 the blame lies. I do not know that I have read
9 Mr. Brubaker's testimony on September 20th regarding fuel
10 and purchased power issues. That was not my issue as
11 far -- the non-rate design aspects of it was not my issue.
12 I don't recall reading that testimony, so I'm not sure
13 what he's referring to here, and I hate to ask for another
14 piece of testimony to know whether he, indeed, said that
15 or not.

16 I don't know that I would accept
17 responsibility for being the architect of the -- the
18 agreement that all the parties reached in the Aquila case.
19 It was a settlement. There was no methodology that I know
20 of that everybody agreed to for how it should be done.

21 Q. Well, everyone signed off on a methodology,
22 did they not?

23 A. Everybody -- it depends on what you mean by
24 methodology. Everybody signed off on what the charges
25 ought to be, yes.

1 Q. And how -- how long it was to be?

2 A. Right.

3 Q. And how it was to be accounted for?

4 A. That it was to be trued-up, yes.

5 Q. And the accounts --

6 A. Yes.

7 Q. -- that were to be reviewed?

8 A. All of those things, yes, sir.

9 Q. And the process?

10 A. Yes.

11 Q. And the process of the refund?

12 A. Yes.

13 Q. And how the refund was to be affected?

14 A. Yes.

15 Q. And how much the refund was to be in the

16 case of particular customers who got checks as opposed to

17 bill credits?

18 A. That's correct.

19 Q. Would you characterize that as a

20 methodology or something else?

21 A. You could use the word methodology for

22 that. I wouldn't have chosen that. I would have chosen

23 something more like mechanism. I think of -- when you say

24 the word methodology, I think the cost allocation

25 principles and --

1 Q. Well, would you accept responsibility for
2 being the principal architect of the mechanism that we
3 used in ER-2004-034?

4 A. Yes, sir, I would.

5 Q. Now, what was -- how did that mechanism
6 treat the calculation of charges to the individual rate
7 classes?

8 A. For the purposes of refunds?

9 Q. For the purpose of figuring the first
10 instance, the charge.

11 A. The charges were what folks agreed to.

12 Q. And there was no mechanism behind the
13 calculation of that charge?

14 A. I believe that there was a method used to
15 calculate those charges, yes.

16 Q. And was the method first to figure out the
17 percentage, equal percentage charge of the fuel, and then
18 to express that for each of the classes as a KWH charge?

19 A. No.

20 Q. Did it result in a difference in KWH
21 charges for each of the classes?

22 A. Yes.

23 Q. Why was that, Mr. Watkins?

24 A. Because that's what everyone agreed to.

25 MR. CONRAD: May I approach?

1 JUDGE THOMPSON: You may.

2 BY MR. CONRAD:

3 Q. Mr. Watkins, I'm showing you an excerpt of
4 a transcript for this Commission. It actually happens to
5 be Volume 20 that was transcribed on April 5, 2004,
6 starting at page 1862. Do you have that before you?

7 A. I do.

8 Q. Do you recall that Chairman Gaw asked you
9 some questions about that at that stipulation and
10 presentation session?

11 A. I recall that he did, yes.

12 Q. And do you -- and were you asked, in Empire
13 the IEC rate was the same cents for KW kilowatt hour for
14 each class. This varies between the different classes.
15 And did you answer, I see. Why -- excuse me. His
16 question was, I see. Why is that from a policy
17 standpoint, why was that done? And did you answer, I can
18 give you two answers. One, it's what everybody agreed to,
19 and I can give you -- question, I understand that.

20 Answer, my -- my view.

21 Were you asked -- give me the other part.

22 Answer, I can give me -- my view about why that is.

23 Question, okay. And then did you answer as begins at
24 line 7, and let's just -- why don't you just read that?

25 A. Do I have to stutter like I did then?

1 Q. That's entirely up to you.

2 A. That when -- when you -- when you look at

3 the hourly fuel costs over a whole year and you match

4 those up with hourly class loads, if you calculate the

5 average for each class, those classes that are relatively

6 high energy users that have high load factors, even if

7 they pay the same price in every hour, will end up with

8 lower average costs than those classes that have less

9 energy usage, lower load factors.

10 Do you want me to keep going?

11 Q. Sure. Your answer does continue.

12 A. Yes. And that's because of the proportion

13 of the -- the proportion of the usage that's on peak

14 relative to the portion that's off peak. So you'll

15 typically see that the energy charges for the residential

16 small commercial classes are higher than they are for the

17 large power, large primary classes. And that's because of

18 the percentage of the users that's on peak versus off

19 peak.

20 The rate design that we've implemented for

21 this IEC has that same characteristic that the average

22 price is lower for the high load factor, high energy

23 consumers than for other classes.

24 Q. And does that appear to be a correct

25 transcription of your testimony at that time?

1 A. I have no reason to question this. Not
2 nearly as eloquent as I would have believed I was.

3 MR. CONRAD: At your Honor's discretion, I
4 have copies of that portion of the transcript which we can
5 mark and authenticate, but my understanding of how that
6 process works is the witness has acknowledged being asked
7 and has given an answer. It's been retranscribed. It's
8 in the current transcript.

9 JUDGE THOMPSON: Once is enough.

10 MR. CONRAD: Very well. And that is all I
11 have. Thank you.

12 JUDGE THOMPSON: Thank you, Mr. Conrad.

13 Questions from the Bench. Commissioner Clayton?

14 COMMISSIONER CLAYTON: Briefly.

15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. I looked at your testimony, but briefly
17 would you just state what you are advocating in your
18 testimony?

19 A. As briefly as I can, what I'm suggesting
20 for the rate design portion of any IEC, how to set the
21 charges for the different customer classes is that those
22 should be based on equal cents per kilowatt hour at the
23 generators but then adjusted for losses to metering
24 voltage of each customer in order to set those charges.
25 So because there are more losses through

1 the transmission and distribution systems for residential
2 customers, their metered kilowatt hour is not equivalent
3 to someone who takes usage at higher voltage. So
4 therefore they pay a slightly higher charge than someone
5 who would be at a higher voltage. But basically the
6 key --

7 Q. I thought I understood it before I came in
8 here today.

9 A. -- the key phrase is equal cents per
10 kilowatt hour at the generator.

11 Q. Okay. And that would only be applicable
12 for an interim energy charge?

13 A. Yes.

14 Q. It would not be applicable if we set a base
15 power revenue requirement, correct?

16 A. That's correct.

17 Q. So this has to do with what happens with a
18 variable natural gas price and what to do with a refund
19 and how to allocate that?

20 A. That's correct.

21 Q. Okay. Have you read the testimony
22 associated with the interim energy charge rate design for
23 all the parties in this case?

24 A. I believe I have.

25 Q. How many positions are there? There are

1 only four parties, so don't make it more complicated than
2 what it is.

3 A. There may be more positions than that. I'm
4 not sure.

5 Q. Well, how many positions does Staff have?

6 A. One.

7 Q. Okay. One. Office of Public Counsel, do
8 they have a different position?

9 A. I don't believe that they have a position
10 in testimony because --

11 Q. On an IEC? Okay.

12 A. -- for other reasons on the rate design.

13 Q. And Empire, what is their position with
14 regard to rate design, and how does it differ from yours?

15 A. It's been a long time since direct
16 testimony. I don't know that they have testimony since
17 then, but I'm pretty sure that the position expressed in
18 the issue statement is that they are in agreement with my
19 recommendation.

20 Q. So we still only have one position, and
21 then there's the intervenor's position?

22 A. That's correct.

23 Q. And are you familiar with that?

24 A. Yes.

25 Q. Did you review Mr. Brubaker's testimony?

1 A. Yes, I did.

2 Q. How does Mr. Brubaker's rate design on the

3 IEC differ from yours?

4 A. Mr. Brubaker has proposed that the

5 allocation of the cost to be recovered by each customer

6 class be done on an equal percentage of current revenues

7 basis rather than an equal cents per kilowatt hour basis.

8 That's the fundamental.

9 Q. Okay. Two positions. Are there any other

10 positions out there? We're out of parties, man.

11 A. I don't believe so. I believe those are

12 fundamentally the two.

13 Q. Okay. So we've got two and that's it.

14 COMMISSIONER CLAYTON: Okay. Thank you

15 very much.

16 COMMISSIONER APPLING: No questions.

17 JUDGE THOMPSON: Very well. Recross,

18 Mr. Coffman?

19 MR. COFFMAN: No recross.

20 MR. KEEVIL: Nothing, your Honor.

21 JUDGE THOMPSON: Mr. Conrad?

22 MR. CONRAD: I'm going to let it stand

23 where it is.

24 JUDGE THOMPSON: Nothing?

25 MR. CONRAD: No.

1 JUDGE THOMPSON: Redirect, Mr. Frey?

2 REDIRECT EXAMINATION BY MR. FREY:

3 Q. Mr. Watkins, I believe the document that

4 Mr. Conrad had you reading from was a transcript of -- was

5 it a presentation hearing in the rate design Stipulation &

6 Agreement, or was it for the entire case? Do you know,

7 Mr. Watkins?

8 A. My recollection of what this was, was

9 during the presentation hearings on the, Stipulation &

10 Agreement, and my recollection is it was an agreement that

11 settled the entire case, so there would only have been one

12 presentation hearing, and rate design would have been a

13 piece of that.

14 Q. Okay. And did the -- had the parties

15 entered into a rate design agreement Stipulation &

16 Agreement apart from the overall settlement? I'm trying

17 to recall this.

18 A. I get a little confused. I believe in the

19 Aquila case we had early on in that process entered into

20 an agreement regarding rate design.

21 Q. And that's general rate design, overall

22 rate design, correct?

23 A. Yes.

24 Q. And then rate design as a part of the -- as

25 to the IEC, was there -- did that -- was -- did that take

1 place later or more or less at the same time or --
2 A. That was later.
3 MR. FREY: Thank you very much. Thank you,
4 your Honor.
5 JUDGE THOMPSON: Thank you. You may step
6 down, Mr. Watkins. Thank you.
7 Okay. We're done for the day. We will
8 reconvene tomorrow at 8:30 in the morning to hear opening
9 statements on the IEC rate design issue.
10 MR. KEEVIL: I'm sorry, your Honor. Could
11 you repeat that?
12 JUDGE THOMPSON: Yeah. We're done for
13 today. We will reconvene tomorrow at 8:30 for opening
14 statements on the IEC rate design issue. We will recess
15 for agenda, and we will go back on the record when the
16 Commissioners are out of agenda.
17 We have two witnesses, then: Mr. Brubaker
18 and Mr. Overcast. And of course Mr. Brubaker will be
19 speaking to two issues rather than just one. Okay.
20 Anybody have anything else?
21 MR. FREY: Yes, your Honor. Staff witness
22 John Cassidy, I'm not sure you excused him.
23 JUDGE THOMPSON: He's excused.
24 MR. FREY: Thank you
25

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