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BEFORE THE PUBLIC SERVICE COMMISSION

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STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

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PUBLIC HEARING

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Jefferson City, Missouri

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In the Matter of a Proposed Rule)
Regarding Electric Utility Fuel)Case No.
and Purchased Power Cost Recovery)EX-2006-0472
Mechanism)

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COLLEEN M. DALE, Presiding
CHIEF REGULATORY LAW JUDGE.

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JEFF DAVIS, Chairman

STEVE GAW

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ROBERT M. CLAYTON, III,

LINWARD "LIN" APPLING,

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COMMISSIONERS.

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REPORTED BY:

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

2 JUDGE DALE: Good morning. My name is
3 Colleen M. Dale. I'm the hearing examiner assigned to this
4 matter, in the matter of a proposed rule regarding electric
5 utility fuel and purchased power cost recovery mechanisms,
6 Case No. EX-2006-0472 on September 7th, 2006. This concerns
7 proposed rules 4 CSR 240-3.161 and 4 CSR 240-20.090 to
8 establish an electric utility fuel and purchase power cost
9 recovery mechanism.

10 At this time, I would like to -- it's not
11 necessarily entries of appearance, but I need to know how many
12 parties I have, who's representing them, who wishes to speak,
13 etc. So if I can get you to somehow begin, we'll start with
14 Staff and kind of work back from there.

15 MR. DOTTHEIM: Steven Dottheim, Post Office
16 Box 360, Jefferson City, Missouri 65102 appearing on behalf of
17 the Staff of the Missouri Public Service Commission.

18 Mr. Warren Wood, the division director for the
19 utility operations division, will be appearing today for the
20 Staff of the Commission to deliver comments on the rulemaking.

21 JUDGE DALE: Thank you.

22 MR. MILLS: On behalf of the Public Counsel
23 and the public, my name is Lewis Mills. My address is Post
24 Office Box 2230, Jefferson City, Missouri 65102.

25 I will be presenting testimony of two

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1 witnesses today, Russ Trippensee, chief accountant for Public
2 Counsel, and Ryan Kind, chief economist for Public Counsel.

3 JUDGE DALE: Thank you.

4 MR. MILLS: Thank you.

5 MR. COFFMAN: John Coffman. I will be
6 offering comments today on behalf of AARP and the Consumers
7 Council of Missouri. I have --

8 JUDGE DALE: And you'll just be making the
9 comments and not be calling any witnesses?

10 MR. COFFMAN: That's my intent, yes.

11 JUDGE DALE: Okay. Thank you.

12 MR. MICHEEL: Douglas E. Micheel appearing on
13 behalf of the Missouri Attorney General. And I filed a
14 written entry and I'll probably make some comments.

15 MS. VUYLSTEKE: Diana Vuylsteke of the law
16 firm Bryan Cave, LLP, 211 North Broadway, suite 3600,
17 St. Louis, Missouri 63102.

18 I am appearing on behalf of the Missouri
19 Industrial Energy Consumers and today we will be offering the
20 testimony of our witness, Maurice Brubaker.

21 MR. LOWERY: Good morning, your Honor. Jim
22 Lowery with Smith, Lewis LLP, PO Box 918, Columbia, Missouri
23 65205 appearing on behalf of AmerenUE.

24 This morning our comments will be offered by
25 our vice president and controller, Martin Lyons. And I would

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1 be available to answer questions Commissioners might have as
2 well. Thank you.

3 JUDGE DALE: Thank you.

4 MR. CONRAD: Your Honor, I'm sorry I missed
5 the rotation here. I was speaking to Mr. Swogger. Stuart
6 Conrad, and I would be making a brief presentation. We will
7 be filing written comments later on today.

8 On behalf of Noranda, Mr. Swogger is here from
9 Noranda and depending on his feelings at the time about how
10 good a job I do, he may want to offer some comments to amplify
11 something that he wants to particularly lift out for the
12 benefit of the Commission.

13 And then if your Honor please, I would,
14 subsequent to that, be offering, again, brief comments and
15 then later written comments on behalf of another group of
16 clients I have that would be the Sedalia Industrial Energy
17 Users' Association, shorthanded as SIEUA, Ag Processing and
18 Praxair, Inc.

19 And I have, your Honor, filled out an entry
20 form. I don't -- as you mentioned, I don't know what's going
21 to happen to that, but we will like -- we would like to get a
22 transcript. Thank you.

23 JUDGE DALE: Okay. Will you have a witness
24 for this Sedalia Industrial Users?

25 MR. CONRAD: No, ma'am, we will not. I don't

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1 intend to be giving testimony, will just be comments. Thank
2 you.

3 JUDGE DALE: Okay.

4 MR. WILLIAMS: Your Honor, Dennis Williams,
5 vice president of electric regulatory services, offering
6 comments on behalf of Aquila.

7 MR. FISCHER: Your Honor, James M. Fischer,
8 Fischer and Dority, PC, 101 Madison Street, suite 400,
9 Jefferson City, Missouri 65101.

10 I'm appearing today on behalf of Kansas City
11 Power & Light Company. We have no witnesses. I may have a
12 comment just concurring in the positions taken by other
13 persons in this docket.

14 JUDGE DALE: Thank you.

15 Is there anyone else? I know that we have one
16 witness who has a time constraint. Are there other witnesses
17 who have time constraints?

18 And when do you need to leave?

19 MR. SWOGGER: Before 2:00, if possible.

20 JUDGE DALE: I think what we will do then is
21 take the Staff first and then we will move on to Noranda. And
22 that way the two people who have time constraints can get out
23 of here in a timely fashion.

24 I think with that, we can just plunge right
25 in. I'm going to take you, if there's no objection, just in

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1 the order that you've entered your appearances instead of
2 going through the usual pro/con thing.

3 MR. WOOD: You ready for me to proceed?

4 MR. DOTTHEIM: Are you going to swear Mr. Wood
5 in?

6 JUDGE DALE: Yes. Because Staff is required
7 to --

8 (Witness sworn.)

9 WARREN WOOD testified as follows:

10 MR. WOOD: Good morning and may it please the
11 Commission. Staff offers its comments in support of Rules 4
12 CSR 240-3.161 and 4 CSR 240-20.090 implementing the electric
13 fuel and purchased power cost recovery provisions of Missouri
14 Revised Statutes, Section 386.266. This section of Missouri
15 statutes is often referred to as Senate Bill 179 or SB 179.

16 Although Staff did not take a position on
17 SB 179, Section 386.266 is the law and Staff is committed to
18 making this law work in keeping with Staff's understanding of
19 it and the rest of the laws of Missouri.

20 Staff believes these rules are well structured
21 to address the issues that face the Commission associated with
22 implementation of the electric utility fuel and purchased
23 power cost recovery portions of 386.266.

24 Staff has conducted over 15 roundtables with a
25 broad group of stakeholders to develop rules to implement the

1 provisions of SB 179. The rulemaking that is the subject of
2 today's hearing is the first of the rules to implement the
3 provisions of SB 179 to make it to this phase of rulemaking.

4 As described in these proposed rules, pursuant
5 to Section 386.266, electric utilities would be permitted to
6 establish future rate adjustment mechanism treatment of
7 permissible costs and revenues through a general rate
8 proceeding where all other relevant costs, revenues and
9 rate-base items are reviewed.

10 Parties to a general rate proceeding which a
11 rate adjustment mechanism has been proposed can offer
12 alternative mechanisms, including incentive programs for the
13 Commission consideration or simply oppose the proposed
14 mechanism. The Commission may approve, modify or reject any
15 proposed rate adjustment mechanism.

16 If approved in some form by the Commission,
17 any rate adjustment mechanism charges or credits must be
18 identified as a line item on the customer's bill. If the rate
19 adjustment mechanism is in the form of a fuel adjustment
20 clause, rates will be able to go up or down with actual
21 changes in fuel and purchased power cost and possibly go up or
22 down based on changes in off-system sales revenues. If the
23 rate adjustment mechanism is in the form of an interim energy
24 charge, then only refunds will be possible.

25 Under Section 386.266, a rate adjustment

1 mechanism cannot be in effect for longer than four years
2 without an earnings review and modification or extension by
3 the Commission. While the rate adjustment mechanism is in
4 effect, the utility's required to comply with the monthly and
5 quarterly reporting requirements to the parties of the rate
6 proceeding of which the rate adjustment mechanism was
7 established, continued or modified.

8 Prudence audits will be conducted no less
9 often than every 18 months. Current proposed rules anticipate
10 annual changes to the rate adjustment mechanism in order to
11 true-up over- or under-collections. The rate adjustment
12 mechanism charge or credit will be permitted to change up to
13 four times per year.

14 In their current form, these rules provide
15 flexibility as to what costs and revenues will be considered
16 in calculating the rate adjustment mechanism. Generally, fuel
17 and purchased power cost, including transportation, will be
18 included in the rate adjustment mechanism.

19 It is anticipated that off-system sales will
20 also be considered in many of the proposed rate adjustment
21 mechanisms. Off-system sales sharing mechanisms as a form of
22 incentives were discussed extensively in stakeholder meetings
23 and will likely be part of any future rate adjustment
24 mechanism implementation discussions.

25 Current proposed rules only permit recovery of

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1 actual costs. No projected or forecasted numbers are
2 permissible. The Staff continues to support this approach.

3 Some stakeholders have represented that
4 absolutely no customer protections exist in these rules. In
5 actuality, these rules have extensive customer protections.
6 While it may be possible to point to another state and say it
7 has this protection or that protection, Staff is not aware of
8 another state that has all the consumer protections these
9 rules offer and still has a rate adjustment mechanism.

10 In summary, these proposed rules include the
11 following consumer-oriented provisions: Establishment of a
12 rate adjustment mechanism or discontinuation, modification or
13 extension of an existing rate adjustment mechanism can only
14 take place in a rate proceeding where all other relevant
15 costs, revenues and rate-base items are reviewed.

16 The Commission has broad discretion to
17 approve, modify or reject any rate adjustment mechanisms and
18 incentive mechanisms proposed by parties in a rate proceeding.
19 No rate adjustment mechanism can be in place for more than
20 four years without having been permitted to continue in effect
21 with or without modification through another general rate
22 proceeding Commission approval.

23 All money collected or credited through a rate
24 adjustment mechanism will be subject to annual true-up with
25 any over- or under-collections being returned to or collected

1 from customers with interest. All expenditures associated
2 with a rate adjustment mechanism will be subject to a prudence
3 audit no less often than every 18 months.

4 Any electric utility authorized by the
5 Commission to have a rate adjustment mechanism will be
6 required to file monthly and quarterly reports regarding its
7 revenues, expenses, fuel and purchased power costs, off-system
8 sales, plant operating characteristics, rate-based
9 quantifications, capitalization quantifications, income
10 statement, operating revenues, operating and maintenance
11 expenses, jurisdictional allocation factors, financial data
12 and budgeting information.

13 In rate proceedings where a utility is
14 requesting a rate adjustment mechanism, parties may propose
15 for the Commission's consideration alternate rate adjustment
16 mechanisms and/or incentive or performance-based programs to
17 improve the efficiency and cost effectiveness of the electric
18 utility's fuel and purchased power procurement activities.

19 These rules are unprecedented in the extent of
20 their discovery provisions for parties to the rate proceeding
21 for which a rate adjustment mechanism is established,
22 continued, discontinued or modified. Any amounts approved for
23 recovery by the Commission through a rate adjustment mechanism
24 are required to be disclosed as a line item on customer bills.

25 These rules do nothing to limit any party's

1 ability to request the Commission establish a complaint case
2 if a party believes over-earnings are occurring as a result of
3 the rate adjustment mechanism or otherwise; and, in fact,
4 require that a procedural schedule delineating the case
5 timeline be issued not later than 60 days from the date of
6 filing of a complaint.

7 Finally, these proposed rules include a
8 provision that require the Commission to review the
9 effectiveness of these rules by no later than December 31st,
10 2010; and if the Commission deems it necessary, initiate a
11 rulemaking proceeding to revise these rulings accordingly.

12 Throughout this process of over a year, Staff
13 has carefully reviewed the concerns expressed by stakeholders
14 and Staff has offered serious responses in an effort to
15 respond to the issues they identified. Staff now offers the
16 following responses to each of the primary concerns expressed
17 throughout these roundtables and public hearings.

18 The first concern: Some stakeholders believe
19 these rules should and some stakeholders believe these rules
20 should not include an in-earnings or threshold need test.
21 Some of these stakeholders are not satisfied that the ability
22 to file a complaint case is the only means to address the
23 electric utility's over-earnings.

24 Staff responds: Proposed Rule 20.090,
25 Section 13 clearly protects the rights of parties to file a

1 complaint case on the grounds the utility's earning more than
2 the fair or reasonable return. Further, this rule requires
3 that if such a complaint is filed, the Commission will issue a
4 procedural schedule that includes a clear delineation of the
5 case timeline no later than 60 days from the date the
6 complaint is filed.

7 In addition to these provisions, Staff notes
8 that these rules include provisions that limit the time a rate
9 adjustment mechanism can be in place without another rate
10 proceeding, require annual true-ups, require prudence audits,
11 require extensive monthly and quarterly reporting, include
12 significant data-sharing with other parties, only allow
13 recovery of actually incurred costs versus projected or
14 forecasted costs and provide for Commission-ordered incentive
15 or performance-based programs designed to improve the
16 efficiency and cost effectiveness of the electric utility's
17 fuel and purchased power procurement activities.

18 In summary, Staff believes that these rules
19 provide for sufficient opportunities for the parties to
20 develop reasonable rate adjustment mechanisms, monitor the
21 performance of these mechanisms and revise these mechanisms if
22 necessary.

23 Another concern: Some stakeholders believe
24 these rules should and others believe these rules should not
25 include a requirement that the utility have an approved

1 Chapter 22 resource plan in place prior to approval of any
2 rate adjustment mechanism.

3 Staff responds: Staff believes that these
4 rules should include a requirement to report on all supply and
5 demand side resources, the dispatch of supply side resources,
6 the efficiency of supply side resources and information
7 showing the utility as a functioning resource planning
8 process, important objectives are which -- of which are to
9 minimize and provide reliable service.

10 These concerns prompted the drafting or
11 proposed Rule 3.161, Section 2, paragraphs O through Q, and
12 Section 3, paragraphs P through R.

13 While Staff believes the idea of having an
14 approved resource plan as a prerequisite to having a rate
15 adjustment mechanism may have some merit, everything
16 considered, Staff does not believe this to be reasonable if
17 the resource planning rules do not contemplate approval for
18 these purposes. Resource planning is not necessarily tied to
19 current fuel and purchased power prudence and the resource
20 planning rules will likely be changed as a result of upcoming
21 rulemaking efforts.

22 Also, Staff believes the information being
23 requested in the current proposed rules along with additional
24 discovery, if needed, will provide parties with sufficient
25 information to argue a utility does not have an adequate

1 planning process in place if, in fact, the utility does not.

2 Another concern: Some stakeholders believe
3 these rules must be written such that the utility continues to
4 have skin in the game in order to assure some level of
5 prudence in utility practices with the rate adjustment
6 mechanism and these incentives should be structured to align
7 the interest of shareholders and ratepayers.

8 Further, some stakeholders believe that rate
9 volatility mitigation and/or cap provision should be added to
10 these rules. Some stakeholders, however, believe the proposed
11 rules go beyond the intent of Section 386.266.1 and would
12 allow the Commission to improved a broader ray of incentive
13 and performance-based programs.

14 Staff responds: Staff agrees that the rules
15 that implement this portion of SB 179 should include
16 provisions for incentive and performance-based programs.
17 Proposed Rule 20.090, Section 11, consistent with Section
18 386.266 provides that the Commission may implement incentive
19 mechanisms from performance-based programs to improve the
20 efficiency and cost effectiveness of the electric utility's
21 fuel and purchased power procurement activities.

22 Proposed Rule 20.090, Section 11, paragraph B
23 specifies important objectives and criteria for establishment
24 of incentive plans such as aligning the interests of the
25 electric utility's customers and shareholders and the overall

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1 anticipated benefits of the electric utility's customers from
2 the incentive or performance-based programs shall exceed the
3 anticipated cost of the mechanism or program to the electric
4 utility's customers.

5 Another concern: Some stakeholders believe
6 that these rules need clear definitions of what is permissible
7 in the rate adjustment mechanism. Staff agrees that whatever
8 costs are to be included in or excluded from a rate adjustment
9 mechanism must be clearly defined.

10 This prompted the specific accounting
11 information language in proposed Rule 3.161 for all costs and
12 revenues to be considered in the determination of any amounts
13 eligible for recovery under the rate adjustment mechanism
14 beyond the requirement to specify which costs and revenues are
15 being proposed for consideration and the specific accounts
16 they are to be recorded in on the electric utility's books and
17 records.

18 Staff believes these rules should preserve
19 flexibility in which costs and revenues may be considered
20 consistent with Section 386.266 as parties may wish to
21 consider different costs in revenues when dealing with
22 different electric utilities.

23 Another concern: Some stakeholders believe
24 that minimum equipment performance standards are needed in
25 these rules.

1 Staff agrees that equipment performance
2 standards should be part of these rules and is included in the
3 proposed rule requirements to develop generating unit
4 efficiency testing and monitoring procedures. Staff will, as
5 a result of receiving this data, have the ability to monitor
6 each electric utility's power plants in terms of their
7 capability to efficiently convert fuel to electricity.

8 Any observed reductions over time may be an
9 indication of the utility's need to implement programs to
10 improve efficiency.

11 Staff views this as a very important and
12 necessary detail since the efficiency of each electric
13 utility's power plant directly relates to each electric
14 utility's fuel and purchased power costs.

15 Another concern: Some stakeholders believe
16 that less prescriptive rules that simply set out the
17 application process should be adopted versus the detailed
18 rules that have been proposed. Some stakeholders also believe
19 that the current level of complexity and requiring complete
20 versus reasonable explanations associated with data
21 requirements could cause potential delays in rate adjustments.

22 Some stakeholders further believe that the
23 extensive monthly and quarterly reporting requirements in
24 these rules are unduly burdensome and of limited benefit.

1 Staff responds: A careful and close review of
2 the proposed rule shows that the requirements for the
3 provision of detailed information is narrowly, not
4 indiscriminately, drafted. Only certain portion of the rules
5 apply to certain filings.

6 For example, in order to establish a rate
7 adjustment mechanism, only a portion of 3.161 applies. Future
8 proceedings to true-up the rate adjustment mechanism or
9 proposed changes to the rate adjustment mechanism are
10 addressed in separate sections of 3.161.

11 This approach to drafting the rules does
12 result in some provisions being repeated in different sections
13 of the rules and adds the length of the rules, but is much
14 more convenient for the reader to have the rules sectionalized
15 in this manner.

16 Regarding the explanations required in the
17 rule, Staff does not agree that 3.161 should not require a
18 complete explanation of the data provided.

19 Regarding the amount of data to be provided
20 and monthly and quarterly reporting, Staff has participated in
21 the meetings where these data descriptions were developed and
22 believes that the data requested is a value and will be used
23 by the parties in their monitoring of rate adjustment
24 mechanism operation, rate adjustment mechanism credits and
25 charges, true-up account monitoring, prudence audits and

1 monitoring of utility earnings.

2 Another concern: Some stakeholders, electric
3 utilities, believe these rules should be clarified to reflect
4 that they believe that under the provisions of the statute,
5 Section 386.266, only utilities can propose to establish or
6 continue a rate adjustment mechanism and that parties should
7 only be able to propose alternatives if the utility proposes
8 to establish or continue in the first place.

9 These stakeholders also believe that these
10 rules should not allow parties to force an undesirable rate
11 adjustment mechanism to stay in place for perpetuity.

12 Staff responds: Staff believes that the
13 current provisions of Section 386.266 and these rules allow
14 only electric utilities propose establishment of a rate
15 adjustment mechanism.

16 After the electric utility has a rate
17 adjustment mechanism in place, future rate proceeding filing
18 to extend, modify or discontinue the rate adjustment mechanism
19 will be subject to alternative proposals of other parties and
20 the Commission's power to approve, modify or reject any of
21 these proposals.

22 The proposed Rule 20.090, Section 3,
23 paragraph A clearly states that parties can oppose the
24 discontinuation of a RAM on the grounds that the utility is
25 opportunistically discontinuing the RAM due to declining fuel

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1 or purchased power costs and/or increasing off-system sales
2 revenues.

3 Staff believes that the final rules should
4 include such a provision. Staff notes, however, that it does
5 believe that it is appropriate that proposed Rule 20.090,
6 Section 2, paragraph E provide the ability for a utility to
7 request a rate adjustment mechanism or recovery of these costs
8 through base rates as part of a rate proceeding in which a
9 rate adjustment mechanism is proposed.

10 And Staff would clarify that in its proposed
11 changes to the rules that will be filed today, we do make a
12 change to a proposed Rule 20.090, Section 2, paragraph E,
13 expanding the ability, in our view, of the Commission to
14 potentially approve or not the ability to shift these -- shift
15 the fuel adjustment clause or interim energy charge costs to
16 base rates.

17 Another concern: Some stakeholders believe
18 that the current rules' limits on costs not to be passed
19 through due to cost being an insured loss or subject to
20 reduction due to litigation are not appropriate as they appear
21 to be structured to prevent inclusion of costs in rate
22 adjustment mechanisms even if no insurance proceeds have been
23 received and even if no prudence disallowance has been
24 determined.

25 Staff responds: Proposed Rule 3.161,

1 Section 7, paragraph F is a utility reporting requirement and
2 reads, Extraordinary costs not to be passed through, if any,
3 due to such costs being an insured loss or subject to
4 reduction due to litigation or for any other reason.

5 Staff views this language as appropriate in
6 that it requires the utility to identify any costs subject to
7 insured loss or litigation and, further, that it puts the
8 utility on notice that such costs may be not be recoverable as
9 long as they're subject to these issues.

10 This is viewed by Staff as an appropriate
11 incentive to the utility to use all means necessary to pursue
12 these appropriate additional funds versus receiving these
13 funds up front from ratepayers.

14 Another concern -- and this is the final one:
15 Some stakeholders believe these rules should not include a
16 requirement that the rules be reviewed in the future by the
17 Commission for their effectiveness.

18 Staff responds: The proposed rules include a
19 December 31st, 2010 review requirement. They do not require
20 that a new rulemaking be initiated, just that the rules be
21 reviewed for their effectiveness.

22 Staff views this as a reasonable requirement
23 in these rules given their content and the potential for
24 lessons to be learned in the next few years due to the rate
25 adjustment mechanisms that may be approved by the Commission.

1 After these rules were sent to the Secretary
2 of State for publishing in The Missouri Register, Staff
3 discovered other appropriate changes and received additional
4 suggested changes from stakeholders to these rules. Staff has
5 considered each of these additional suggested changes and is
6 filing its additional suggested changes in this docket today.

7 And if parties have an interest now before we
8 file them, we have -- we do have 20 copies available here for
9 distribution of what our proposed changes will be. That
10 concludes my prepared portion.

11 JUDGE DALE: Will you be submitting those
12 proposed changes and your remarks as written comments?

13 MR. WOOD: The changes to the rules we were
14 planning on filing today. The written comments are here that
15 are now in the transcript, and I can provide a copy of those
16 too if they're requested.

17 JUDGE DALE: In light of the fact that the
18 transcript won't be ready very quickly, if you could go ahead
19 and file the comments -- the remarks as well, that would be
20 helpful.

21 MR. WOOD: Okay. Yeah, we'll just put that in
22 with our filing today.

23 JUDGE DALE: Thank you.

24 MR. DOTTHEIM: Yes. Both documents can be
25 filed today.

1 JUDGE DALE: Okay. And while we're talking
2 about this, let me remind everyone the comment period closes
3 midnight tonight.

4 QUESTIONS BY MR. DOTTHEIM:

5 Q. Yes. As a matter of clarification, Mr. Wood,
6 on some of the comments you were making that you just
7 delivered, they were addressing, in part, were they not, the
8 additional changes or suggestions that the Staff will be
9 filing today?

10 A. Yes.

11 Q. And did that, in particular, include your
12 reference to the Commission revisiting the rules by
13 December 31, 2010?

14 A. Yes.

15 Q. Okay. That provision is not presently in the
16 rule as published in the Missouri Register?

17 A. It is in the Chapter 20 portion, it is not in
18 the Chapter 3 portion. One of our proposed changes is to add
19 that to the end of Chapter 3 as well.

20 MR. DOTTHEIM: Thank you.

21 JUDGE DALE: Thank you. Are there any other
22 questions from the Bench?

23 Then you may step down, Mr. Wood. Thank you.

24 MR. WOOD: Thank you.

25 JUDGE DALE: Mr. Dottheim, did you have

1 anything else?

2 MR. DOTTHEIM: No.

3 JUDGE DALE; In that case, we will move to
4 Mr. Conrad.

5 MR. CONRAD: If your Honor please, I'll work
6 from here. Good morning to you and to Commissioners that are
7 present. I speak this morning initially on behalf of Noranda
8 Aluminum.

9 And before I begin those comments, I think it
10 is perhaps of moment to mention that throughout this extended
11 process of rulemakings and workshops, the Staff, particularly
12 Mr. Wood, and another lady who is present here today,
13 Ms. Mantle, have, in my view, distinguished themselves.

14 An old friend of mine one time referred to the
15 process of being a managing partner of a law firm as herding
16 cats. And perhaps that aphorism is accurate for the job that
17 they did here. I do need to commend their efforts. They have
18 given unstinting amounts of time I think to this effort. The
19 process is complicated. The interests are many and diverse.

20 And whether or not we might agree or disagree
21 with the substantive comments, I have to commend their
22 efforts. I think they have well deserved the title of being
23 public servants.

24 Noranda operates an aluminum smelter near Cape
25 Girardeau. Its load is unique. It offers about a 100 percent

1 load factor and presents a load of roughly 475 megawatts. The
2 Commission is well familiar, I think, with that plant and our
3 need for reliable power at economical rates to continue its
4 operation.

5 Noranda, through its representatives, has
6 participated extensively in the workshops, focusing attention
7 on four issues. Not that others are not important, but these
8 were the issues that we felt merited specific attention.

9 Those are mandatory loss recognition when the
10 time comes to calculate a rate adjustment mechanism or an FAC;
11 limitation on rate volatility, which we will discuss in a
12 moment; impact on surveillance and the importance of
13 surveillance and robust surveillance rules; and as I think
14 Mr. Wood made reference to, an alignment of interests
15 criteria.

16 In the comments that we will file later today,
17 your Honor, we will expand on two of those, and I will
18 praecipe those briefly for the benefit of your Honor and the
19 Commissioners here this morning.

20 On losses, that is a large dollar issue to
21 Noranda. It is important, in our view, to recognize proper
22 rate design principles. It is important if you go into the
23 purchased power arena, to emphasize and to keep in mind the
24 differences between demand and energy and it's important if
25 we're going to include purchased power contracts and the

1 pricing thereof in the FAC.

2 But loss recognition, in our book, must be
3 mandatory. The present language of the rule says that losses
4 may be considered. We believe it should be should.

5 Losses are a physical fact. They are a
6 necessary component of the transmission of power. And the
7 proposed rule, as I mentioned, suggests that they are
8 optionally considered.

9 The reasons for this are puzzling to us.
10 Flexibility is the only option -- or the only justification
11 that we have heard. And we suspicion that some may want to
12 retain bargaining power or leverage on particular issues.

13 Flexibility shouldn't be present where there
14 is a defined physical principle. Losses are simply a fact of
15 life. It takes power to move power, it takes power to
16 transform the voltage levels of power. And we're concerned
17 that the possible agenda here that isn't being discussed is to
18 shift costs from smaller users to Noranda. We want to pay our
19 costs, but only our costs.

20 The other aspect that I would lift up for you
21 today in these comments is our proposal with respect to a rate
22 cap. The rationale is that Noranda could be harmed --
23 seriously harmed by a spike or an extraordinary increase, that
24 is, a very sharp increase in power costs and that is passed
25 automatically or quickly through an FAC or a RAM.

1 The practical fact for Noranda is that could
2 force the shutdown of the plant in Cape Girardeau. And
3 because of the nature of aluminum and its production, that
4 could make its restart very problematic and the capital costs
5 associated with that could become prohibitive. So that is a
6 very important thing to us.

7 Let me emphasize that there are two types of
8 caps that have been discussed in the process. One is a hard
9 cap in which it is just simply a ceiling and the utility
10 cannot go above that. We have not proposed a hard cap.

11 We have, however, proposed a soft cap, which
12 is perhaps more properly characterized as a deferral mechanism
13 that would allow the utility to simply defer costs above that
14 cap level to a future time and thereby smooth or limit the
15 volatility that the rates would otherwise have, but at the
16 same time allow them at some future time to recover those
17 costs with carrying charges.

18 The problem in the workshops that we ran into
19 with this proposal is that there are big utilities and there
20 are smaller utilities. And a 1 percent cap or a 5 percent cap
21 to a big utility is a very different number than a 1 or a
22 5 percent cap to a smaller utility.

23 And so our suggestion has been to simply allow
24 that issue to be considered in the context of a specific rate
25 case where the utility-specific situation can be crafted.

1 As to surveillance, Noranda believes -- and I
2 think -- we, frankly, I think concur with many of the comments
3 Mr. Wood offered to you earlier. The proposed rule, while not
4 perfect, is adequate and probably can be worked with.
5 However, we would ask your Honors in considering the question
6 of further surveillance, that there not be any weakening of
7 the existing surveillance provisions in the rule.

8 And with that, your Honor, by your leave, I
9 would at least yield the balance of my time and the floor, if
10 he desires, to Mr. Swogger, who is here for Noranda if he
11 wants to address anything specific beyond what I've said.

12 I must not have done a good job.

13 MR. SWOGGER: As usual, Stuart did an
14 excellent job and I have nothing to add, but I would be glad
15 to answer any questions.

16 CHAIRMAN DAVIS: Mr. Swogger, thank you for
17 coming all the way up from New Madrid today. We appreciate
18 you taking the time and energy. We did have a hearing in Cape
19 Girardeau last week and I thought I might see you there since
20 it was somewhat closer in geography, but appreciate your
21 comments and certainly we will be mindful of them.

22 COMMISSIONER CLAYTON: Thank you, Judge.

23 I think I'm going to harass Mr. Conrad rather
24 than you Mr. Swogger, if that's all right.

25 MR. SWOGGER: Great.

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1 COMMISSIONER CLAYTON: I'd never miss an
2 opportunity to do this.

3 Mr. Conrad, I wanted to just get some
4 clarifying information, if I could. And I came down in the
5 middle of your comments and I apologize for walking in in the
6 middle. We have a number of things going on and I was
7 distracted upstairs.

8 Your client has three principal concerns with
9 the rule. Are we able to characterize that that way?

10 MR. CONRAD: That is correct. We had started
11 with four. The two that I've lifted up especially, your
12 Honor, were the recognition -- the mandatory recognition of
13 losses, which is a very important issue, and the rate cap or
14 rate volatility mitigation.

15 I thought it was appropriate in view of
16 Mr. Woods' comments to at least brush on the surveillance
17 issue and ask that that not be weakened. The fourth point,
18 which is alignment of interest, we're simply going to let
19 other people address that.

20 COMMISSIONER CLAYTON: I'm going to get to
21 that.

22 First of all, on loss recognition on the first
23 item, in your comments are you all going to offer specific
24 language that would address your concern in your comments?

25 MR. CONRAD: The comments that we have -- that

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1 we have prepared and will be filing later on do offer some
2 specific language.

3 COMMISSIONER CLAYTON: So there will be some
4 suggested language on that issue.

5 On the rate cap or the soft cap issue, will
6 you be also offering language that would address that issue?

7 MR. CONRAD: Yes, sir.

8 COMMISSIONER CLAYTON: You will.

9 Surveillance, you said that you concurred with
10 Mr. Wood. Since I was here late, which Mr. Wood was that?

11 MR. CONRAD: Warren Wood. Your guys --

12 COMMISSIONER CLAYTON: Oh, our Mr. Wood?

13 MR. CONRAD: Yeah.

14 COMMISSIONER CLAYTON: I wasn't down here when
15 he spoke. You said that the surveillance was adequate and
16 that you want no weakening --

17 MR. CONRAD: That's correct.

18 COMMISSIONER CLAYTON: -- of the surveillance.
19 Is that accurate?

20 MR. CONRAD: That is correct.

21 COMMISSIONER CLAYTON: In Noranda's eyes in a
22 perfect world, is there more surveillance that you would want?
23 Adequate is good, but it's not that strong of a word. Are
24 there additional surveillance safeguards that Noranda will
25 suggest in its comments?

1 MR. CONRAD: There are not. We had offered a
2 number of comments, your Honor, through the workshop process.
3 A number of those I'm pleased to report were incorporated in
4 large measure into what has come out.

5 I think the area -- if I could identify an
6 area that maybe could be, in our view, not necessarily
7 improved upon, but is at least short of the ideal, it is the
8 concept that it ought not to take a rocket scientist to
9 dissect all of the data that will be coming in.

10 And we -- and it would be great if we could
11 have devised a mechanism where you could -- and maybe not
12 literally, but you could pick up one page of data and quickly
13 see on it, yes/no, we're doing a good job/we're not doing a
14 good job.

15 COMMISSIONER CLAYTON: I can't wait to see the
16 TV coverage of that little dance right now if it shows up to
17 tonight.

18 MR. CONRAD: That would be great.

19 COMMISSIONER CLAYTON: So basically you want
20 the information to be conveyed in a manner that it is somewhat
21 easily readable and understandable and useable?

22 MR. CONRAD: That's right. That members of
23 the public, for example, who aren't necessarily trained and
24 wouldn't be expected to be trained could have picked this up
25 or looked at the material and have some level -- higher level

1 of confidence.

2 That's not to say that the information that's
3 coming in that is provided as Mr. Wood -- Warren Wood
4 mentioned, will not be robust. I don't mean to suggest that.
5 And that's why we are suggesting that that process not be
6 weakened. But if there was some way to synthesize that into a
7 more publicly digestible form, that would probably be good.

8 COMMISSIONER CLAYTON: Does Noranda have any
9 problems or any questions with regard to surveillance and the
10 confidentiality of information that is exchanged? Are there
11 any problems associated with HC material that may go back and
12 forth among parties?

13 MR. CONRAD: I think we have tried to address
14 that, your Honor, in the context of the process -- the rate
15 case process in which material would be classified, as we're
16 used to, as proprietary or highly confidential. And I think
17 the process that we have envisioned in this rule contemplates
18 the issuance of the more standard protective order that the
19 Commission is familiar with and using.

20 I think the only issue that required -- I
21 think actually Mr. Dottheim -- and I should not have, by the
22 way, left him out of my list of people that's given a lot of
23 time on this -- that Mr. Dottheim and I have worked on was the
24 problem that the existing protective order that the Commission
25 uses, the standard form, is pretty much case specific.

1 And so we had a concern as to, well, if you
2 had a rate case that was ER-2000-XXX and then three years
3 later you had some kind of a process with respect to that with
4 an update of the FAC that might or might not have been
5 approved in that case, would that bridge the same -- the same
6 thing, would it be a new docket, would you have to do a new
7 protective order.

8 And -- because when I say the protective
9 orders are case specific, if you look at them, they prohibit
10 me from using HC or P material that comes in in Case 1 from
11 using that in Case 2. And that was part of the problem that
12 we've had to deal with.

13 I think we have successfully dealt with that.
14 Frankly, we're probably just going to have to see,
15 Commissioner Clayton, as to how that -- how that will play
16 out. But the concern was that. And I'm not sure if that's
17 responsive to your question, but we -- I think we have
18 addressed that.

19 COMMISSIONER CLAYTON: Adequate response.

20 MR. CONRAD: Yeah. Thank you.

21 COMMISSIONER CLAYTON: On the fourth issue,
22 alignment of interest, I'd like to talk a little bit about
23 that before the next speaker. And I missed your original
24 comment. Noranda hasn't abandoned its push for a change in
25 the structure of a fuel adjustment mechanism by align-- by the

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1 idea of alignment of interest; is that correct?

2 MR. CONRAD: That was one of our four initial
3 points, but we have elected in the comments that we'll file
4 and the comments that I'm making for Noranda today, your
5 Honor, to simply defer to some other parties on that.

6 COMMISSIONER CLAYTON: Is there a particular
7 party or particular position that you are deferring to?

8 MR. CONRAD: Yes. As a matter of fact,
9 Praxair, AGP and SIEUA, for whom I'm hopeful to be addressing
10 you in just a moment or two.

11 COMMISSIONER CLAYTON: Oh, so you're going to
12 address us again?

13 MR. CONRAD: Yes.

14 COMMISSIONER CLAYTON: I thought this was the
15 only opportunity that --

16 MR. CONRAD: By the leave of the Judge, of
17 course.

18 COMMISSIONER CLAYTON: Okay. Well, then I'll
19 let you give that. I won't go into that if you're going to
20 speak to us again. This is odd. So thank you, Mr. Conrad.

21 MR. CONRAD: We had also -- we'd also prepared
22 and will be filing today comments on behalf of Praxair, Ag
23 Processing and the group of companies that I represent in
24 Sedalia that we refer to as the Sedalia Industrial Energy
25 Users' Association or SIEUA.

1 They have paralleled and have obviously used
2 the same counsel and have worked to some extent with us in the
3 workshops for efficiency reasons with Noranda. And as a
4 result, you'll see in the comments, your Honor, that I'll file
5 later on today that they will endorse the positions that I've
6 indicated for Noranda on those -- particularly on those two or
7 three issues.

8 Who they are, let me mention briefly. Praxair
9 is an air liquefaction and industrial gas manufacturer. It
10 has facilities in the Empire District service territory and in
11 KCPL and there are other facilities, although not
12 manufacturing facilities, in the Ameren Service territory.

13 AGP operates a soybean processing facility in
14 St. Joe, which is in the Aquila service territory. And SIEUA,
15 as I mentioned, is a group of manufacturers in and near
16 Sedalia. One is -- actually, two are in Warrensburg more
17 properly, but they are customers of Aquila. They are speaking
18 to you through me today with respect to I think three issues.

19 And I would invite your attention for this
20 part of those comments to what I will refer to as the veto
21 provision, which is (2)(E) of 240-20.019, paren 2, closed
22 paren, E, closed paren.

23 That provision allows a utility to reject a
24 Commission-approved or Commission-ordered modification to a
25 proposed FAC. And as we will amplify in our written comments,

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1 it seems to us that that defeats the purpose of having a
2 hearing.

3 COMMISSIONER CLAYTON: Now, you've changed
4 hats, Mr. Conrad; is that correct?

5 MR. CONRAD: I'm sorry. Yes, sir.

6 COMMISSIONER CLAYTON: Okay. I want to make
7 sure that that's appropriate, make sure there no questions.
8 I'm going to have more questions, but I -- on the alignment of
9 interest issue. You're going to be wearing a different hat --

10 MR. CONRAD: Yes.

11 COMMISSIONER CLAYTON: -- you're going to that
12 and then you're getting into some other issues that your other
13 clients have?

14 MR. CONRAD: Yes, sir.

15 COMMISSIONER CLAYTON: Okay. Before you --

16 MR. CONRAD: I didn't make that clear. I
17 apologize.

18 COMMISSIONER CLAYTON: Before you leave
19 Noranda, is Noranda joining in any other issues that are being
20 raised by other parties? Is it concurring in any other --

21 MR. CONRAD: Not to my knowledge.

22 COMMISSIONER CLAYTON: -- points?

23 MR. CONRAD: It is speaking through the
24 comments that we will be filing and these comments verbally
25 that I've given.

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1 COMMISSIONER CLAYTON: So for Noranda's
2 purposes, you have the three issues, plus you're joining in on
3 the alignment of interest issue and then that's it?

4 MR. CONRAD: Noranda is not taking position in
5 these comments or in its written comments on the alignment of
6 interest. We are simply letting others address that issue.
7 So it's not --

8 COMMISSIONER CLAYTON: You're neutral. You
9 don't -- you've abandoned advocating --

10 MR. CONRAD: We haven't abandoned --

11 COMMISSIONER CLAYTON: -- for it?

12 MR. CONRAD: We haven't abandoned it. We're
13 just not going to advocate that. We're going to prioritize
14 our efforts on those two or three things; principally, the two
15 things, the losses and the rate cap.

16 COMMISSIONER CLAYTON: Staying neutral. Okay.

17 Now, Judge, I'll turn it back over to you.

18 Thank you, Mr. Conrad.

19 MR. CONRAD: Sure. And, your Honor, if I
20 muddled that up with the transition, I apologize.

21 JUDGE DALE: Well, let's just make it clear
22 that now you've moved onto -- oh, you had Noranda questions?
23 I'm sorry.

24 COMMISSIONER GAW: Yes, I do, Judge.

25 MR. CONRAD: Get my Noranda hat back on.

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1 COMMISSIONER GAW: Mr. Conrad --

2 MR. CONRAD: He didn't give me one of those.

3 He gave me a golf shirt, but not a hat.

4 COMMISSIONER GAW: -- I was wondering, you
5 mentioned that there were some things that were changed in the
6 rule drafts that were changed at Noranda's request and I
7 wanted to know if you could list those for me?

8 MR. CONRAD: Oh, boy. Probably not, because
9 that was over such a period of time and there were so many
10 different suggestions, some verbal as we were working through
11 those.

12 COMMISSIONER GAW: Why don't you try to list a
13 few of them?

14 MR. CONRAD: Well, let me get -- I think
15 primarily the surveillance issue is not in the 090 rule, but
16 rather in the surveillance rule. And I guess I had kind of
17 prepared, your Honor, to go with the 090 rule this morning and
18 I did not actually bring all of those.

19 I think one that jumps to mind though that we
20 had emphasized and that I believe Mr. Wood referenced is the
21 movement away from projected data to actual data, historic
22 data for monitoring and for the process of implementation of
23 an FAC.

24 That is one major one that, frankly, in some
25 early drafts of the rule, although this requires me to go back

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1 a number of months, there was a considerable discussion about
2 projected data and the use of that and how that would
3 necessitate then if you have projected data, what you would do
4 with true-ups when data that had been projected suddenly -- or
5 not suddenly, but became then actual data simply by the
6 passage of time and how you would true that up and adjust it.

7 And I think one of the suggestions --
8 certainly not the only, but one of the major suggestions that
9 I believe that we made and others may have joined in this, was
10 to go to actual data.

11 Now, if you're going to pin me to the wall on
12 that, I'm going to have some trouble, but I would be happy to
13 go back through, you know, at a later time perhaps even today
14 if comments are still open, and try to give you a better list.
15 I just didn't come focused on looking at those things, because
16 it's a long -- it was a long process.

17 COMMISSIONER GAW: It was. I'm interested in
18 knowing what it was that -- what concessions that were
19 important to Noranda that you believe Noranda has received in
20 this draft. So if you can do that, that would be fine

21 MR. CONRAD: All right. In earlier -- to
22 focus on the two items that we've listed, in earlier drafts of
23 the rule, the mandatory loss recognition, Judge Gaw, that I
24 had mentioned that we now see has become a "may" had been a
25 "shall."

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1 And we had discussions in several of the
2 workshops -- not lengthy ones, but discussions nonetheless,
3 about the physical principles and why that shouldn't be
4 optional and so on. And at one -- at an earlier point we
5 thought that had been fairly well resolved, but find in the
6 rule that went to the Secretary of State that it was not.

7 Another item on the cap that I mentioned --

8 COMMISSIONER GAW: Is this an issue that you
9 say is not resolved to your --

10 MR. CONRAD: No, it's not. The rule that went
11 to the Secretary of State -- let me find, if I can, that. No,
12 I'm looking for the specific section and I'll point that out
13 to you.

14 This would be, Judge Gaw, in 20.090, paren 9,
15 which is identified as rate design and RAM.

16 COMMISSIONER GAW: Okay.

17 MR. CONRAD: And there the wording is, May
18 reflect differences in losses incurred.

19 COMMISSIONER GAW: So it's 20.090, sub 9?

20 MR. CONRAD: Yeah. Paren 9, closed paren.
21 The design of the RAM rates may reflect differences in losses
22 incurred.

23 Not to -- not to play get-you, but because of
24 your background, Judge Gaw, you realize I think that it is a
25 physical principle. I'm not here to talk about Ohm's law or

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1 impedance or any of those technical things, but you know that
2 those exist. Transformers have hysteresis losses, core losses
3 and any current losses. And that's just the price that you
4 pay when you transform power from one voltage level to
5 another.

6 There are losses -- there are heat losses,
7 there are resistance losses in transmission system, in the
8 wires. There are even losses in resistance in -- in switched
9 gear contacts.

10 COMMISSIONER GAW: Okay. These are issues
11 that you're telling me that you think are still out there that
12 Noranda has concerns about?

13 MR. CONRAD: Yes, sir.

14 COMMISSIONER GAW: Okay. Anything else you
15 want to list on that that you haven't already listed?

16 MR. CONRAD: Well, I had started to mention
17 and did mention in my comments, Judge, the issue of the rate
18 cap. And we had a number of discussions in the workshops
19 about how a rate cap should be formulated, whether we could
20 formulate one, how it could be expressed.

21 And essentially we kind of came to the
22 conclusion on that that we weren't going to be able to at
23 least build something hard, if you will. I don't want to use
24 the term "hard" in the sense of the rate cap, but a finite
25 expression of a rate cap, Commissioner, into the rule itself.

1 And so we went to the position that permits
2 us -- be sure that the rule permits us to deal with that in a
3 utility-specific situation. Because of what I mentioned,
4 utilities are of different sizes and, frankly, their
5 generation fleets are different. Ameren is more coal oriented
6 as is KCPL, while Empire and Aquila, as you well know, are
7 somewhat more dependent on natural gas. And the two -- one
8 size doesn't always fit all.

9 COMMISSIONER GAW: So --

10 MR. CONRAD: We were spending our time, it
11 turned out, trying to develop one size that fit all and it was
12 just not possible. So we said let's deal with that in
13 specifics of the case. I'm sorry I interrupted.

14 COMMISSIONER GAW: That's all right. Does
15 that cover it?

16 MR. CONRAD: Those are the two big ones, yes,
17 sir.

18 COMMISSIONER GAW: Now I want you to go back
19 to what my original question was and tell me those -- and if
20 you can't do it now, if you'll file it later, something, tell
21 me what it is that you received as concessions that are in
22 this draft.

23 MR. CONRAD: I will try to give you a list. I
24 don't know if it would be correct to characterize it as either
25 concessions or wins. It was just -- there's a give and take

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1 in the negotiation process. I mean, you come in with certain
2 things, but certain ideas and certain concepts -- and even
3 through the process you discover, well, maybe there's a better
4 way than what I had thought about doing.

5 So when you do that, I'm not sure if that's a
6 concession so much as it is that you -- that you say, well,
7 you know, somebody else has a good idea once in a while.

8 COMMISSIONER GAW: Now if you would explain to
9 me what the -- I'm having a little trouble understanding
10 whether or not Noranda is taking a different position than
11 your other clients on issues in this rulemaking.

12 MR. CONRAD: They are not emphasizing anything
13 in these comments, Judge, than those two issues and a bleak
14 reference to the surveillance that we think that's reasonable.
15 And if --

16 COMMISSIONER GAW: Does that mean that Noranda
17 disagrees --

18 MR. CONRAD: No.

19 COMMISSIONER GAW: -- with your other
20 clients --

21 MR. CONRAD: No.

22 COMMISSIONER GAW: -- on the issues that they
23 are emphasizing?

24 MR. CONRAD: No.

25 COMMISSIONER GAW: Does that mean that Noranda

1 agrees with your other clients?

2 MR. CONRAD: It means that out of our list of
3 four, that we have not decided at this point in time to
4 emphasize that fourth point and have instead deferred to
5 others to do that.

6 COMMISSIONER GAW: Does that mean that Noranda
7 agrees with the fourth point but just chooses not to have you
8 speak about it?

9 MR. CONRAD: I think that is a fair
10 characterization.

11 COMMISSIONER GAW: Okay. That's all I have
12 for him in regard to Noranda. Thank you, Judge. At this
13 point any way.

14 JUDGE DALE: Commissioner Appling?

15 COMMISSIONER APPLING: Mr. Conrad, I'm
16 probably the only person in this room that need another shot
17 at an item that you mentioned, but would you very briefly
18 define for me one more time the hard cap and the soft cap just
19 briefly, please?

20 MR. CONRAD: Sure. The concept of the hard
21 cap is such that if you set a number and the utility's costs
22 went above that, they would just have to eat the costs that
23 were above that cap and there would be no deferral, no future
24 recovery of them. You run afoul of the timing issues, filed
25 rate doctrine, all of that. That would be what I'm

1 conceptualizing, Commissioner, as a hard cap.

2 A soft cap, which is what we have proposed
3 here, is one that would allow the utility to capture that
4 excess -- although not charge it on the current basis, but
5 would capture that excess and move it to some later period
6 when the cost perhaps had gone down or to smooth it over a
7 period of time, there could be different mechanisms.

8 What we're -- conceptualize that if you had --
9 if you had a chart in front of you and I had a horizontal line
10 that was representing what the rate level was, what causes
11 Noranda concern is something that goes bump like that
12 (indicating) and then might later go back down maybe even
13 lower.

14 Because when it's up here (indicating),
15 because it's going to be up there for three or four months or
16 for some period of time, that might result in the plant having
17 to shut down. And if the plant shuts down, as we've talked,
18 the capital costs associated with that and the capital costs
19 associated with restarting it make that restart unlikely.

20 So what we've said is, clip off that peak and
21 move it to some later period of time allowing the utility to
22 recover carrying costs on that deferred amount which becomes a
23 lump of dollars at some later time and perhaps do things more
24 gradually so that those things could be accommodated in the
25 marketplace. Does that help?

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1 COMMISSIONER APPLING: Thank you, sir.

2 JUDGE DALE: Are there any other questions?

3 CHAIRMAN DAVIS: I've got one. Mr. Conrad,
4 with regard to your proposal, which I guess I will
5 characterize as the, quote, soft cap proposal, one of the
6 concerns that you will hear from some of the other parties is,
7 you know, they would like to see investor-owned utilities have
8 some, quote, skin in the game, so to speak. That, you know,
9 they need to at least have some amount of money at risk.

10 I mean, is there a way with the soft cap that
11 we could, you know, incorporate some sort of incentive
12 mechanism in with that? I mean, is it feasible and --

13 MR. CONRAD: I would think it would be
14 feasible. I mean, we haven't made that as a proposal, but I
15 would think that could be done.

16 CHAIRMAN DAVIS: Okay. Any thoughts on how it
17 might be done?

18 MR. CONRAD: When I get to my other group of
19 clients, I'll be happy to share that with you.

20 CHAIRMAN DAVIS: All right. Thank you,
21 Mr. Conrad.

22 JUDGE DALE: Before we conclude on Noranda,
23 Mr. Swogger had something else he wanted to add.

24 MR. SWOGGER: There -- there seems to be a
25 little confusion. I don't know if everybody was aware of it,

1 but Mr. Conrad was working for this group of clients the
2 entire time and also was working for Noranda and his comments
3 up to now represent Noranda. I have not seen, have not been
4 privy to and I have no idea what he's going to propose on his
5 other -- on behalf of his other clients.

6 I would like to say though perhaps another
7 thing that, you know, Noranda hasn't made a big list of
8 issues. Obviously I've been up here numerous times, many,
9 many and, you know, we could take a position on many issues.
10 We focused on two in particular because they are specific to
11 Noranda, they are critical to Noranda.

12 And there's lots of other ones, of course,
13 that we would be interested in, but as I was informed from day
14 one up here, I believe the idea was for the parties to work
15 together to narrow the list of issues as best we could so that
16 we wouldn't have a big list of things to dump on the
17 Commission.

18 Taking that into account, we believe we've
19 narrowed the -- you know, we've way narrowed the issues down
20 to basically two that are extremely important to Noranda and
21 that's why we did that, to focus our efforts, if you will, on
22 those two issues. And hopefully we'll get a good resolution
23 on those two issues.

24 So, again, I have no idea what he's going to
25 say about -- you know, we may agree, we may not agree. Most

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1 likely we would, but I really don't know. He's not shared
2 that with me. Is that not true?

3 MR. CONRAD: That's fair.

4 MR. SWOGGER: Thank you.

5 COMMISSIONER CLAYTON: Can I -- Mr. Swogger, I
6 apologize. Can I just -- that's a little different than what
7 I thought Mr. Conrad said, so I guess I want to be clear on
8 what Noranda's position is going into this.

9 On the two issues, if we were to adopt -- if
10 we were to adopt Noranda's proposed language on the loss
11 recognition issue and address the soft cap rate cap issue from
12 language suggested by Noranda or if we satisfy you on those
13 two concerns, is it your testimony then at that point Noranda
14 will support the rule?

15 MR. SWOGGER: Yes. As long as there's no
16 weakening in the surveillance.

17 COMMISSIONER CLAYTON: Assuming there's no
18 weakening in surveillance.

19 MR. SWOGGER: Right.

20 COMMISSIONER CLAYTON: So alignment of
21 interest, skin in the game, as suggested by the Chairman,
22 really that's -- you all aren't even -- that's not a high
23 priority. These are your priorities and if these are
24 addressed and no weakening, you support the rule?

25 MR. SWOGGER: That's correct.

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1 COMMISSIONER CLAYTON: Okay. Thank you.

2 JUDGE DALE: Are there any other questions for

3 Noranda?

4 Mr. Conrad, how long do you think you will be

5 for your other users?

6 MR. CONRAD: Well, given that I had

7 anticipated that would take five minutes, I'm a poor judge.

8 JUDGE DALE: Then let's take a five-minute

9 break and come back and that will give everybody a clean break

10 on who you're representing.

11 MR. CONRAD: Okay. That's fine.

12 (A recess was taken.)

13 JUDGE DALE: We're back on the record. We are

14 ready to resume with Mr. Conrad representing the Sedalia

15 Industrial Users, Praxair and Ag Processing.

16 MR. CONRAD: And by your Honor's leave, I

17 won't repeat what I had mentioned but will try to pick up

18 where I left off and perhaps the transcript will survive.

19 We were speaking in opposition, and our

20 comments will reflect some opposition, to what I've

21 characterized as the veto provision which appears in

22 090.(2)(E) that appears to give the utility the ability to

23 withdraw a request for a RAM once the Commission has approved

24 what has been offered or what is the result of the hearing.

25 To us, it defeats the purpose of the hearing.

1 There would be no point for other parties to raise
2 alternatives if the Commission found those alternatives more
3 persuasive, decided in its wisdom to approve those and then
4 the utility can just simply withdraw the package.

5 SB 179 did not repeal existing utility law. I
6 believe, and I think my clients believe, that the PSC is still
7 the regulator and regulated industries should not have power
8 over the PSC. The decisions of the PSC have to be lawful and
9 reasonable but that becomes the constitutional test.

10 Moreover, it strikes us in looking at the
11 language of the provision that I have mentioned and laying
12 that as against Section 5 of Senate Bill 179, now codified as
13 386.266, Section 5 says, Once such an adjustment mechanism is
14 approved by the Commission under this section, it shall remain
15 in effect until such time as the Commission authorizes a
16 modification, extension or discontinuance of the mechanism in
17 a general rate case or complaint proceeding.

18 Well, the Commission would approve that by
19 issuing a Report and Order which would be the fir-- the
20 indication that the utility would have. And if the utility,
21 after the Commission approves an adjustment mechanism under
22 this section, can simply withdraw it, it seems to me that
23 you've got a little bit of a conflict between the rules and
24 statute that purports to require it. So you may want to look
25 at that.

1 We have offered and would suggest in written
2 comments, which I'll just glance over today that the con-- the
3 alignment of interest proposal that we have talked about be at
4 least continued to be considered by the Commission. And, your
5 Honor, we will have specific language on that to submit in the
6 context of those comments for Commission's consideration.

7 If you compare and contrast the track record
8 for some 25 years between electric utilities in this state and
9 natural gas utilities in this state, I think you will find
10 that when the utilities had to absorb the financial
11 responsibility of their purchasing decisions, the result was a
12 significant drive down of costs.

13 Now, I grant that during that 25-year period
14 we were faced with declining costs or the costs tended to
15 decline, but there would have been no justification for things
16 such as aluminum unit trains if there had not been a cost
17 justification and a profit justification to do those types of
18 things.

19 On the other hand, you have the PGA. Sterling
20 example of a purchased gas adjustment which just says if we
21 spend a dollar, we take that dollar and pass it through. And
22 oh, by the way, we may be subject, after a year or year and a
23 half, to some level of an after-the-fact prudence review which
24 we can then challenge as a utility almost ad nauseam. And in
25 the meantime, the customers have paid the cost so much so that

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1 it becomes a difficult problem if there ever is a refund in
2 finding the customers to refund the money to.

3 We would suggest that an alignment of interest
4 better preserves the incentive for the utility to continue to
5 do a good job in purchasing its power. Now, some of those
6 incentives have, of necessity, been obviated by Senate Bill
7 179, but it behooves us to use the flexibility that that
8 statute does give the Commission to encourage, as I think the
9 Chairman has said, the utility to have skin in the game.

10 Our companies are not offended by a utility
11 making a profit. That's what we seek to do. But we think
12 that the costs ought to be under some level of control and
13 policing.

14 And it's important to us to preserve a strong
15 relationship between the responsibility for purchasing
16 decisions and the responsibility for paying for those
17 decisions. If that connection is broken, you have what you
18 end up with when we have the PGA.

19 Interestingly, an incentive proposal was
20 originally proposed in this proceeding by META. They asked --
21 made a suggestion of an incentive to encourage them to do
22 off-system sales and said, Let us keep 25 percent of the
23 margin on off-system sales. And so we said, Why. Well, that
24 will incentivize, to make a noun into a verb -- that will
25 create an incentive for us to do a better job of selling our

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1 excess power. Alas, that proposal was abandoned when we
2 suggested applying the same concept to the cost of fuel.

3 Now, the proposed rule does note, as Mr. Wood
4 pointed out, incentives, as does 179. But these can be
5 strengthened and we would suggest that you consider a 50/50
6 symmetrical division of fuel costs that would put a
7 significant amount of fuel costs into base rates and leave a
8 meaningful and significant portion of the costs in the FAC
9 such that as the utility reduces its costs, it retains a
10 portion as a profit and as costs increase, the customers will
11 be shielded from a portion.

12 And that results in an alignment of interest
13 so that gains from decreased costs are shared and pains from
14 increased costs are shared.

15 As Mr. Wood pointed out, and we concur, that
16 there are -- there is the necessity for equipment performance
17 standards, because you want to assure that maintenance
18 continues and that there's not gaming of that.

19 And as an example of that, I would lift up to
20 the Commission the recent decision that we had in Aquila on
21 their steam system with AGP as the other side of that in which
22 we designed collectively and collaboratively with them a steam
23 fuel adjustment clause that embodies many of these provisions,
24 including some performance standards.

25 We will have some examples for you to review

1 in the comments that we will file today, but we would offer
2 one additional comment before I leave this particular topic
3 that it would be our hope that a well-designed alignment of
4 interests mechanism will avoid fruitless prudence reviews,
5 will save Staff time, allow Staff to focus its efforts on
6 things that are perhaps of greater moment for them and it
7 would be our hope that that might, in fact, prove to be
8 self-policing to a large extent.

9 It's not complete, I'm sure, but it would
10 eliminate some of the controversies that we have where both
11 parties have a share in the ups and downs of the fuel. Now, I
12 would commend further your consideration of our comments that
13 we'll file later on today.

14 The last comment that I wanted to focus on was
15 the transitional rules, which form a part, I believe, as
16 090.17 of the proposed rule. And we've had a problem with the
17 transition rules. We're not really sure where to put them,
18 we're not really sure what they are.

19 This isn't an emergency rule, so when a rule
20 seems to have effect prior to the time that it's adopted as a
21 rule, we seem to have a little bit of a problem with that. In
22 fact, we think it's really a subversion of the proper
23 rulemaking process and the statutes in the Administrative
24 Procedure Act of the state. And there may be others that will
25 speak to that, but there is some perhaps contamination of the

1 entire process by including that there.

2 Anyway, when you adopt final rules, you don't
3 need transitional rules. And when you adopt final rules, the
4 utilities have had considerable notice, both through the
5 workshops and through the filing process itself, of what the
6 final rules were very likely to look at.

7 And they can file what they want when they
8 want to file it. And then they can seek what waivers they
9 want to seek and if that timing of that isn't right and
10 doesn't provide other parties with sufficient opportunity to
11 review what they filed, then we can deal with that in the
12 context of a rate case.

13 But the transitional rules just seem to us to
14 not really have any place in this. And I would -- I would
15 suggest that they just disappear in any final rule because,
16 first of all, they'd almost be moot in a final rule, I would
17 think.

18 So with that, as I said, we will file some
19 comments today with some application particularly on the
20 alignment of interest that I know some of you -- at least one
21 or two of you are interested in. And I will conclude with
22 that and see if you have questions.

23 JUDGE DALE: Are there questions from the
24 Bench?

25 CHAIRMAN DAVIS: No. Thank you.

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1 Thank you, Mr. Conrad.

2 COMMISSIONER GAW: Mr. Conrad, do you have any
3 concerns about the lack of a direct connection in the rule
4 between off-system sales and fuel costs that might be
5 reflected in the fuel adjustment provision?

6 MR. CONRAD: Yes. At two levels. The overall
7 process of including the margin, how the margin from
8 off-system sales will be calculated how much of that is in
9 spread. And the second thing is, well, you then have
10 affiliate issue, which I haven't attempted to address here
11 because for these clients, they're not affiliate issues.

12 COMMISSIONER GAW: Yes.

13 MR. CONRAD: But that -- that could be -- that
14 could be another level of that process. However, the -- what
15 we have proposed, Commissioner, is that that margin simply be
16 part of the overall alignments of interest. And so under my
17 scenario, the symmetrical approach of the 50/50 split, then
18 that would -- that would be part of that.

19 COMMISSIONER GAW: So you would be putting
20 off-system sales into the mix on your split on the other part
21 that dealt with fuel adjustment itself on fuel costs and
22 purchased energy?

23 MR. CONRAD: Yes, sir. Along with the -- the
24 fuel that was necessary to generate --

25 COMMISSIONER GAW: Yes

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1 MR. CONRAD: -- those off-system sales.

2 COMMISSIONER GAW: And that's -- I mean, you
3 have fuel that might be utilized to generate electricity for
4 off-system sales and then you have the fuel that's used to
5 generate electricity that is being used for native load --

6 MR. CONRAD: Yes, sir.

7 COMMISSIONER GAW: -- and so I think what
8 you're saying -- and you might help me if this is incorrect --
9 is that there ought to be an alignment of those off-system
10 sales revenues with whatever costs there are for running those
11 generation units --

12 MR. CONRAD: Yeah.

13 COMMISSIONER GAW: -- so that they're not
14 completely separated; is that correct?

15 MR. CONRAD: Yes, that's correct. I guess
16 what we're -- a good part of what we're seeking is to --
17 during the workshops, some -- some folks came in and said,
18 Well, this is just like the PGA. And I said, Time out.
19 Because, in my view from the gas side, which we're not here on
20 today --

21 COMMISSIONER GAW: Yes.

22 MR. CONRAD: -- the PGA has been and remains a
23 broken process.

24 COMMISSIONER GAW: Yes.

25 MR. CONRAD: But I have thrust my intellect at

1 the Western District without success and haven't been able to
2 convince them of the virtue of my thought on that. So I have
3 to say, well, that's the law because they're -- they sit up
4 there and I'm standing down in front of them. So they get to
5 declare what the law is, but that doesn't mean that I think
6 the process is still right or creating the public process that
7 it should.

8 Moreover, I sat -- was privileged at the
9 invitation of the Commission several years ago to sit on the
10 traveling road show that we had after the gas prices went
11 through the roof and talk to people in a series of around the
12 state workshops. And there was considerable dissatisfaction
13 with the PGA process, how often it was -- how often it was
14 updated, how it was trued up. And a lot of those problems
15 simply remain today. So when we say the PGA should be a model
16 for this, I'm saying time out.

17 Part of the problem -- a large part of the
18 problem, in my book, with the PGA is the disconnection -- the
19 breaking of the connection between the responsibility to pay
20 for what you buy and the obligation to do that purchasing.
21 And when you detach those two, all sorts of strange things
22 start to happen.

23 So what we're suggesting, and to come back
24 here to the FAC, is to try to preserve as much of that
25 connection -- and I think the Chairman has used the phrase

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1 "skin in the game" -- so that everybody has some skin in the
2 game. And if the costs go up, then the costs go up, but
3 everybody shares that pain; if the costs can be driven down,
4 then everybody shares in the gain from driving costs down.
5 And symmetrical probably seems to be the way to go.

6 Now, as I say symmetrical and mention 50/50, I
7 should lift up that the examples that I will be giving you all
8 this afternoon use a 60/40 split. That's not that we think
9 the 60/40 is necessarily right. That's certainly -- you know,
10 you pick numbers --

11 COMMISSIONER GAW: 60 in base rates or 60 --

12 MR. CONRAD: 60 in base rates, I believe, if I
13 remember. But that is done simply so you can track. Because
14 if I had -- if I had an example that said 50/50, you wouldn't
15 be able to tell what was going on. So by using a different
16 number --

17 COMMISSIONER GAW: You can follow the numbers.

18 MR. CONRAD: -- it's possible to follow it
19 through the examples. So I need to lift that up. I did in
20 the comments, but since we're talking about it, I just want to
21 mention that to you.

22 COMMISSIONER GAW: Okay. I'll stop for now.
23 Thank you.

24 JUDGE DALE: Are there other questions?

25 CHAIRMAN DAVIS: Not at this time.

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1 JUDGE DALE: Thank you, Mr. Conrad.

2 MR. CONRAD: Thank you, your Honor. Thank
3 you, Commissioners.

4 Mr. Mills?

5 MR. MILLS: Thank you. I'd call Russ
6 Trippensee to the stand to appear as a witness for Public
7 Counsel.

8 JUDGE DALE: Thank you.

9 (Witness sworn.)

10 JUDGE DALE: Thank you. Please be seated.

11 MR. MILLS: Your Honor, do you want me to ask
12 him questions in terms of identifying himself and his position
13 and all that?

14 RUSSELL TRIPPENSEE testified as follows:

15 QUESTIONS BY MR. MILLS:

16 Q. Okay. Could you state your name for the
17 record, please?

18 A. Russell Trippensee.

19 Q. And for whom do you work and in what capacity?

20 A. I work for the Missouri Office of the Public
21 Counsel. I'm the chief accountant for that office.

22 Q. And have you been involved in the roundtable
23 process with respect to what's been known -- what have been
24 commonly referred to as the SB 179 rules?

25 A. Yes, I have.

1 Q. Those are the rules that are proposed,
2 published with the Secretary of State and under consideration
3 today; is that correct?

4 A. That is correct.

5 MR. MILLS: Your Honor, we are filing later
6 today written comments in this matter. I could have
7 Mr. Trippensee either read those comments into the record at
8 this time or simply summarize them and be ready to answer
9 questions, whichever you prefer.

10 JUDGE DALE: Well, I prefer the summary and
11 questions since they'll be filed in writing.

12 MR. MILLS: Okay. They will be. We have some
13 general comments and as an attachment to those comments, there
14 will be sort of red-lined strikeout versions of the rules as
15 proposed that show some very specific language changes that we
16 would suggest.

17 JUDGE DALE: Thank you.

18 MR. MILLS: With that, I will let
19 Mr. Trippensee proceed.

20 MR. TRIPPENSEE: With regard to the filing of
21 the comments, I believe they have been filed as of right now.

22 JUDGE DALE: I haven't seen them.

23 MR. TRIPPENSEE: So they should be available.
24 We do have hard copies, although they're not exactly formatted
25 the same. I think our support staff changed the spacing that

1 was in it.

2 With regard to the proposed rules, Public
3 Counsel's primary focus I think is on consumer protection --
4 is best characterized as being on consumer protection and we
5 believe that the rules as crafted do not provide adequate
6 consumer safeguards.

7 In our comments, we provide three cites to
8 court decisions that underscore that the Commission's focus --
9 their primary focus and, in fact, the group that they should
10 at all times take above all others is the consumer.

11 I think Mr. Conrad spoke about the veto
12 provision contained in the rules. We mentioned that in our
13 comments. And that is a critical -- or a major example of
14 where these rules are not in favor of the consumer, but in
15 favor of the utility.

16 If this Commission decides that an
17 implementation of a fuel adjustment clause in a certain manner
18 is appropriate, the utility, under the rules as written, can
19 simply say, no, the public interest cannot be served. It goes
20 away. That just is unacceptable to the Public Counsel and is
21 something we do not believe is consistent with the laws of
22 this state.

23 The -- we'd also like to echo the comments of
24 Mr. Conrad on the efforts of the Commission Staff. The
25 individuals Mr. Conrad cited kept the parties informed, kept

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1 us in the loop, arranged the practical considerations of the
2 meetings, which was very important.

3 I will be a little bit on the summary -- a
4 little slow on the summary simply because given our time
5 constraints right now, we got the details done but I did not
6 do a summary in -- in a written format.

7 But I think the -- the alignment of interest
8 issue again is a consumer protection. Simply passing through
9 fuel costs or whatever costs the Commission ultimately would
10 put in a fuel adjustment clause eliminates the very real and
11 tangible incentive associated with -- I believe the Chairman's
12 referred to it as skin in the game. I think that phrase found
13 it into our comments, but I would call also a financial
14 incentive of -- and in real time.

15 If -- if a utility effectively manages their
16 fuel, effectively loads their system, they get a financial
17 incentive through a gain or a loss and they get it at the time
18 it occurs. Regulatory oversight two or three years later is
19 not the same thing.

20 We do not have -- any party, whether it's the
21 Commission, the Commission Staff, Public Counsel, an
22 intervenor, we do not know everything that happened at that
23 point in time when the action actually occurred. And that --
24 we don't have access. One, we were not there; two, we don't
25 have access to the information; three, and most importantly

1 also, we don't control that information. It may not even be
2 available to us two or three years later to even evaluate it
3 from a reasonable per-- reasonable man perspective.

4 Regulatory oversight after the fact is not
5 something our office has ever advocated. Any time we can put
6 in the principles of a capital -- capitalism into the
7 regulatory process, that's a much better process.

8 A competitive market model is -- works if it
9 is truly competitive. Unfortunately, the utility industry is
10 not competitive. So we have regulation. But to the extent we
11 can take that regulatory model and make it more like a
12 competitive industry where -- in competition you have gains
13 and losses, you have winners and losers, you have an efficient
14 market.

15 Along that lines, Public Counsel believes that
16 there needs to be a test to determine initially is a fuel
17 adjustment clause needed to provide safe and adequate service
18 at just and reasonable rates. The current rules as provided
19 provide for no test. The SB 179 rules do not make it
20 mandatory, yet the rules do -- the rules as crafted currently
21 have no guidance on how to make that decision.

22 Again, just and reasonable rates require that
23 we do not set a regulatory model in place that allows -- that
24 is known that it's going to create excess earnings for a
25 company. Again, the rules do not have anything that addresses

1 that.

2 The information -- Public Counsel has supplied
3 some information that we think should be provided when the
4 companies file so that that evaluation can be done. We think
5 that is very important to be able to have that information
6 before the Commission when they make their decision.

7 Part of the pl-- the utility industry and
8 especially the electricity industry is very complex, very
9 capital intensive. Not only do you operate your existing
10 generation fleet. As this Commission knows, there are
11 generation fleets of different -- that have different fuel
12 sources today and different mixes.

13 The decision process for a five- to seven-year
14 construction period to get one of those components of the
15 generation fleet is just as critical to the subsequent cost of
16 fuel and cost of generating electricity or acquiring
17 electricity as is the operation of that fleet.

18 Public Counsel believes -- and I believe
19 Mr. Kind will talk about this a little bit more in detail --
20 but you have to look at that part of the process also. To --
21 to simply blindly say, okay, they've got this generation
22 fleet, what's the cost of operating it is not the appropriate
23 and nor is it in the consumer's best interest.

24 And, quite frankly, the fuel adjustment clause
25 removes or significantly reduces the incentive for Missouri

1 companies to build base load generation. There is -- there
2 are risks, as evidenced by the KCPL and Empire District
3 regulatory plans, and the extensive work that went into
4 crafting those so that these companies can build base load
5 generation.

6 A fuel adjustment clause that passes through
7 fuel costs without looking at that generation planning that
8 allows purchased power costs to be passed through, why would a
9 company go through the effort and the financial risk of
10 building a billion dollar power plant or more, if the -- if
11 you use nuclear, in order to provide the lowest overall cost
12 if they can simply pass -- go out, have a turnkey operation,
13 have a gas-fired turbine slapped down and get generation from
14 that or, heaven forbid, let's go out and do market rates, just
15 go out and purchase power like Illinois.

16 And I don't think anybody's forecasting where
17 those prices are going. They gave that up when it reached
18 well into the double digits. So that is not in Missouri's
19 best interest either.

20 Consumer protections. The lacking of -- I
21 believe Mr. Wood -- and I was not in the room, but I have seen
22 a list of some consumer protections asserted to be in this
23 rule. Most of those on that list were -- I don't know that
24 Public Counsel would define as consumer protection. Some of
25 it was required by the law.

1 The surveillance data that I think has been
2 held up and was somewhat a controversial discussion during the
3 roundtables, surveillance is simply fundamental to the
4 Commission's job to know what is happening in the industries
5 that they are regulating. It is not something that was a
6 concession by Public Counsel or gained by Public Counsel or
7 anything else. It is fundamental to your job.

8 In fact, when I was first hired by the
9 Commission, I was hired in the compliance department of
10 accounting so that -- which the sole purpose of that
11 department was to ensure that information that came into the
12 Commission was accurate, that they could rely on it to
13 regulate their utilities.

14 And that's all surveillance continues to be
15 today. To give you an idea, it does not serve as a basis for
16 any party to file a complaint. It doesn't -- it just gives
17 them an idea of the current status.

18 We did -- I believe I touched on the
19 transition rules earlier if -- we did propose a couple of just
20 language changes to some definitions so that they are
21 consistent between the two chapters. Those are pointed out
22 at -- toward the end of our comments and provided in the
23 red-lined strikeout versions of the rules.

24 I would note, as I said, Staff members were
25 very helpful in this process, bringing it to this point.

1 Mr. Wood supplied what appeared to be an electronic version of
2 the rule, which is what served as the basis for our comments,
3 that was sent to the Secretary of State -- excuse me,
4 electronic copy that was sent to the Secretary of State.

5 However, I would -- as an auditor and CPA, I
6 would point out that I have not had the opportunity to verify
7 word for word that representation. So to the extent there is
8 something wrong there, Public Counsel has not had that
9 opportunity to verify.

10 I would ask you to read the comments in full
11 through the EFIS system in case I have missed something here
12 in summarizing and would welcome any questions you all have.

13 JUDGE DALE: I can tell you that it appears
14 that your comments have come through nicely with the marked
15 changes attached as well.

16 MR. TRIPPENSEE: I believe, in looking at the
17 printed of our comments, there is one edit that needs to be
18 done right on the first page in the first column -- first
19 paragraph, would be the start of the third sentence starts
20 with, FACs. And that should be RAMs.

21 JUDGE DALE: Are there questions from the
22 Bench for Mr. Trippensee?

23 QUESTIONS BY COMMISSIONER GAW:

24 Q. Mr. Trippensee, just if you wouldn't mind, how
25 long have you been involved with regulating utilities now?

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1 A. January 1st, 1978. And prior to that, three
2 months as an intern.

3 Q. Okay. That's not very long, is it?

4 A. No. It seems like yesterday.

5 Q. Yes, I know the feeling.

6 So if you wouldn't mind, in regard to the gas
7 industry, the PGA/ACA process that we now have, do you know
8 how long there's been some sort of a process like that in
9 Missouri on the gas side?

10 A. I believe the PGA was instituted sometime in
11 the 1960's.

12 Q. Before you started?

13 A. Before I started, back when the -- at the time
14 Federal Power Commission regulated the actual cost of gas
15 flowing through the interstate pipelines.

16 Q. Okay.

17 A. And it was under the filed -- initially put in
18 under what was called the filed rate doctrine. The ACA is a
19 much more current part of the process that reconciles what was
20 collected under the PGA. Prior to that, over-collections or
21 under-collections were not addressed.

22 Q. Okay. And how often are those adjustments
23 reviewed, under Missouri process?

24 A. It's my understanding that the -- a year's PGA
25 process is reviewed in total over a period of time between

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1 18 months and 36 months, the whole -- to complete the process
2 after the end of a PGA period.

3 Q. Okay. And the adjustments are done now at
4 least, what, three times a year?

5 A. I believe that's correct. I've kind of lost
6 track of -- they've changed recently, as Mr. Conrad alluded
7 to.

8 Q. What is the enforcement mechanism on the gas
9 side to ensure that utilities have done a good job in the way
10 they purchase gas for the customers they serve?

11 A. The enforcement process rests, as a practical
12 matter, with the investigative and analysis ability of your
13 Staff as they go back -- they try to go back and look at all
14 the information that goes into the gas purchasing, the
15 balancing, the hedging procedures, everything that goes into
16 acquiring gas to provide the customer.

17 While that process is complex, I think Staff
18 has somewhere between four and six people assigned to that
19 department alone. I would sim-- I would point out that gas
20 purchasing for an electric generation is just a component of a
21 much larger process and a much more complex process because
22 they are purchasing the molecule of gas that gets burned by
23 the customer.

24 Q. I want to get back to that in just a moment,
25 but in general, is the concept -- and this is very general.

1 Is the concept that is being used on the gas side -- natural
2 gas companies in regard to the PGA, somewhat similar to what
3 is being proposed with a fuel adjustment clause? And just in
4 general principle.

5 A. I believe in general principle, that would be
6 correct.

7 Q. So the enforcement mechanism to ensure on the
8 gas side that there is compliance and -- well, let me ask this
9 question first.

10 Other than the enforcement mechanism that
11 exists on the gas side on prudence reviews, what incentives
12 are there that exist to ensure that the company does a good
13 job in its gas purchases as an LDC?

14 A. Since it's a total pass-through, I would
15 assert none.

16 Q. Okay. In the last few years since I've been
17 here, I'd like for you to -- my memory of this is that -- I'm
18 having trouble remembering a case where this Commission found
19 or -- found imprudence of a gas company in its purchasing.
20 Can you give me -- shed a little light on what that track
21 history is in regard to how often there's been a final
22 decision where imprudence of a gas purchase was found?

23 A. I am not aware of what I would term as a
24 significant financial finding by this Commission of imprudent
25 practices. There have been some, from an accounting

1 perspective, smaller or less than a material level --
2 materiality level of findings that were either deemed
3 imprudent or miscalculations, things along that line.

4 The real test would come is if there is ever a
5 material finding, which is -- to my knowledge, has never
6 occurred, because in that situation, what you're going to be
7 talking about is a write-off to earnings, and especially if
8 it's accumulated over a few years.

9 We've seen the utilities argue and other
10 venues of deferred amounts, we can't take this hit to
11 earnings.

12 Q. Okay.

13 A. Because of the fact that it -- you know,
14 especially where it's built up over a few years. And that
15 question has not been faced by the Commission, but if it's --
16 if it does create a situation where the consumer can't be
17 protected because of the effect on the investor, then the
18 Commission is going to be unable to do the job that it -- the
19 courts have found they're supposed to do, which is protect the
20 consumer.

21 Q. Okay. But you don't recall a case where
22 there's been imprudence found that produced some material
23 adjustment?

24 A. No, I do not.

25 Q. And would you say in your opinion -- just in

1 your opinion, that that means that all the LDCs have done a
2 wonderful job in all of their purchases for consumers over the
3 years?

4 A. Well, I think our office is -- has asserted
5 that they haven't, so I would have to say no, I do not believe
6 they've done a wonderful job in doing it.

7 Q. Do you think there have been occasions when
8 they have not done a good job in their purchases?

9 A. I believe that would be a fair statement. But
10 the problem is, I don't have all the information, and neither
11 does your Staff, that was available at the time to -- those
12 decisions were made.

13 Q. Do you believe that not having all the
14 information is an impediment to ensuring that gas companies
15 are prudent in their purchases of gas?

16 A. Most definitely.

17 Q. And do you believe that that involves
18 resources? What are the factors there?

19 A. Resources would be one, the ability to look at
20 each and every detail. Second, and probably even as critical,
21 is that the Commission Staff, the other parties do not control
22 the data, the retention of data. That is all with -- under
23 the control of the utility --

24 Q. Okay.

25 A. -- or even if the data is retained.

1 Q. Now, you mentioned earlier that the
2 transactions to review in a gas case may be somewhat different
3 to the number and intricacies of the transactions that might
4 have to be reviewed in an electric case on a fuel adjustment
5 review for prudence.

6 A. Yes.

7 Q. Would you mind going into that for a moment?

8 A. I will try to keep it concise, which is a
9 problem --

10 Q. I would appreciate that --

11 A. -- I have.

12 Q. -- because I know we're under some time
13 constraints.

14 A. A gas company purchases contracts to acquire
15 gas and they purchase transportation for that gas. Those
16 molecules ultimately flow directly from the producer through
17 the transportation system and are burned by the consumer.

18 There are issues involved with system
19 operations of balancing and where gas is taken off and
20 pressure points and things along that line, but it's a
21 relative -- I don't want to say simple, but it is not a
22 complex -- it's kind of a single-pipe -- to use an analogy,
23 it's a single-pipe operation and all the activities within
24 that conduit are related and are not affected by other things
25 of -- like as an example, Laclede Gas is not affected by what

1 now Empire District gas company is doing.

2 Conversely, an electric system is interrelated
3 from coast to coast in some format or matter. What they
4 purchase as fuel is used to produce what the consumer
5 ultimately buy-- or uses.

6 That production also inquire -- requires other
7 inputs, labor, production plant, equipment, all kinds of
8 costs. They have different ways of making electricity with
9 different fuels.

10 They also have to compare how efficiently they
11 can make fuel -- or make electricity to what their neighbor
12 utility or independent generation facility can make fuel and
13 they have to make a decision of whether or not to purchase the
14 electricity or generate their own.

15 While they're making that decision, their
16 operating plants of their own fleet have requirements as to
17 what level of -- they can operate at that if they fall below,
18 especially with base load, they have to come off-line which
19 then creates another whole set of scenario.

20 It's a very complex system. It is. And it's
21 influenced by factors beyond their control, unlike, again, a
22 gas company which is simply a pass-through situation.

23 Q. So if you believe that it has been somewhat
24 difficult to ensure that gas companies are prudent in their
25 purchases because of the factors that you stated earlier, how

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1 much more difficult would it be to monitor the transactions
2 that electric companies are going through in making decisions
3 about what generators to run, whether to sell or to purchase,
4 what fuel to buy, when to buy it, what transportation to use
5 to put -- to take the coal to the generators, how much -- how
6 much money it's costing out there at the moment on a spot
7 market to buy or how much you could get to sell?

8 How much more difficult would it be for Staff
9 and Public Counsel to try to monitor all of that?

10 A. Well, speaking for Public Counsel, with
11 current resources, I can answer very simply. Impossible. For
12 Staff, there would have to be a significant commitment of
13 resources. They probably have the current number of FTEs, but
14 they would not be allocated currently in the right manner.

15 I would just simply point out maybe as an
16 analogy, it's my understanding most all the utilities
17 basically monitor their system continuously. The power flows,
18 the prices -- because they have to do projections for the next
19 day, for the next week. They are continuously monitoring it
20 to operate their system.

21 If you're going to review that, while you can
22 do sampling, you're still going -- you're looking at 24/7/365
23 days of information you're trying to digest, evaluate and look
24 at, and this is critical, what alternatives were out there
25 that were chosen not to do.

1 Q. And that's done on -- those transactions are
2 done on a minute-by-minute or hour-by-hour basis?

3 A. It's my understanding the minimum is an hour,
4 but they -- and after that, it depends on the circumstance.
5 It can go anywhere from an hour up to years.

6 Q. Now, with the structure as it currently is on
7 regulation in Missouri with, for the most part, a utility's
8 having fuel costs and off-system sales revenues in base rates,
9 do you have to go through and monitor all of those
10 transactions to the extent that you're describing?

11 A. No.

12 Q. And why is that?

13 A. Because once base rates are established and
14 the -- that give the utility a reasonable opportunity to earn
15 a rate of return, the competitive model of financial
16 incentives kicks in. What a -- they have the incentive to
17 minimize their cost in order to maximize their earnings. And
18 that's their obligation to their stockholders, to their
19 investors.

20 If they make a good decision and they have a
21 higher level of earnings, I do not have to -- I, by law,
22 cannot go back and recover any of those earnings so I don't
23 worry about it from that standpoint. And from the standpoint
24 of a decline in earnings, I would hope that their managers and
25 their investors would put the proper thing in place to ensure

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1 that they try and maximize the earnings available to the
2 investor.

3 Q. And you would expect them to do that.
4 Correct?

5 A. I would expect them to manage their business
6 efficiently.

7 Q. And would you also -- do our utilities in
8 Missouri have a significant number of employees dedicated to
9 ensuring that that occurs?

10 A. Most definitely. I kind of refer back to the
11 comment by one of -- the chairman of AmerenUE back in the '90s
12 in one of their Annual Reports where he said, The most
13 important person is the person who ran Labadie. It wasn't
14 him. And, you know, he probably could throw in the plant
15 manager at Callaway.

16 Q. Who was it that said that?

17 A. It was the chairman of the board of -- and
18 president of Ameren back in -- in an Annual Report I believe
19 in the '90s. I mean, that's the critical function are the
20 people who are producing that power and who are evaluating
21 which plants and where to acquire it. That's their basic
22 function.

23 Q. Do you recall leadership in Ameren publicly
24 making statements about fuel adjustment provisions or about
25 Missouri's system not having them?

1 A. Well, I -- I think they've made comments about
2 Missouri not having them, but I believe there's also a comment
3 from their Annual Report where they got rid of their -- they
4 requested getting rid of their fuel adjustment in Illinois
5 so -- so that they could provide the proper incentive to their
6 employees.

7 COMMISSIONER GAW: I think that's all I have
8 right now. Thank you, Judge.

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Just a couple. And, Mr. Trippensee, you said
11 you started back in 1978; is that correct?

12 A. That is correct.

13 Q. So that was approximately a year before the
14 state's -- we had fuel adjustment for industrial consumers and
15 maybe commercial prior to '79, didn't we?

16 A. We had a fuel adjustment for residential and
17 commercial. I'm not sure how industrials were handled.

18 Q. Okay. Okay. Maybe I got that backwards.

19 A. But we -- they were taken out around '78, '79
20 and we had to go in and do audits to --

21 Q. And it's fair to say that utilities -- after
22 fuel adjustment was thrown out by the Supreme Court in 1979,
23 it's fair to say that the utilities became much more prudent
24 in their fuel purchasing practices. Correct?

25 A. I believe it's fair to state that the

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1 utilities took measures to reduce their overall cost of
2 service through the '80s as evidenced by the fact most of our
3 electric utilities haven't had major rate increases since the
4 mid-'80s.

5 Not only fuel, but payroll numbers have gone
6 down in absolute for most of the electrics. Just several
7 factors, but payroll is -- the complexity of an electric
8 system and the generation of the provision of electric service
9 is much different than any other utility you all regulate.
10 Level of complexity, that is.

11 Q. Okay. I find that out on a daily basis.

12 CHAIRMAN DAVIS: Thank you, Mr. Trippensee.

13 MR. TRIPPENSEE: Thank you.

14 JUDGE DALE: Thank you, Mr. Trippensee.

15 With your indulgence, we will have a lunch
16 break and then pick up with Mr. Kind after lunch.

17 MR. MILLS: Sounds good to me.

18 JUDGE DALE: Excellent. Let's come back at
19 1:15.

20 (A recess was taken.)

21 JUDGE DALE: I believe we were ready for
22 Public Counsel's second witness.

23 (Witness sworn.)

24 RYAN KIND testified as follows:

25 QUESTIONS BY MR. MILLS:

1 Q. Could you state your name and spell it for the
2 record, please?

3 A. My name is Ryan Kind, R-y-a-n K-i-n-d.

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

6 A. I am employed by the Missouri Office of the
7 Public Counsel as the chief economist.

8 Q. And have you been involved in the discussions
9 of the proposed rules that are under consideration today?

10 A. Yes. I devoted a considerable amount of time
11 to that process of those discussions.

12 Q. In fact, along with myself and Mr. Trippensee,
13 you probably were at virtually every roundtable that was
14 conducted?

15 A. Almost -- probably all but one that I know of,
16 yes.

17 Q. Please go ahead with your testimony.

18 A. Okay. I just wanted to address a couple of
19 additional subjects beyond what's already been addressed by
20 Public Counsel's other witness, Russ Trippensee. And, first,
21 I wanted to briefly address the concept of a soft cap and then
22 the other subject that I want to speak about are long-run
23 utility planning processes and the decisions that result from
24 them and how the proposed rule relates to that issue.

25 First of all, there's been some discussion

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1 that the rules should be modified to include a provision that
2 would have what people refer to as a soft cap. I think that
3 there's probably some distinction between people who propose
4 caps in terms of soft versus a hard cap.

5 And my understanding is that the distinction
6 is that if there's a cap on the amount of increased fuel costs
7 that could be passed through, if it's considered to be a hard
8 cap, then you could just only pass through, say, a percentage
9 increase of so much, say, 10 percent in a given period of time
10 and the -- then your -- so that your adjustment to the fuel
11 collection factor would just increase by 10 percent and
12 utility shareholders would not have a means of getting
13 recovery of any additional costs. I think that's the concept
14 of a hard cap.

15 I think the concept of a soft cap is that it
16 would cap the amount of increase that would be passed through
17 the fuel adjustment factor and, again, say at, for example,
18 10 percent, but if the utility's costs increased during that
19 period of time, say, 20 percent, well, the amount that they
20 couldn't increase their adjustment factor from during that
21 time period in order to reflect their increased fuel costs,
22 they would be permitted to make an adjustment in future time
23 periods to collect some deferred amount. And I think that's
24 the concept of a soft cap.

25 Public Counsel believes that the -- the hard

1 cap idea has some merit. We're probably more interested in
2 the skin in the game concept where you'd have, say, 50 percent
3 of the fuel costs treated through way -- through fuel
4 adjustment clause and the other 50 percent in base rates.

5 But -- and because that really provides
6 some -- some strong positive incentives that I'll elaborate a
7 little bit later in terms of how those incentives relate to
8 long-term resource planning decisions.

9 But the hard cap would provide a similar type
10 of incentive. We just don't feel like it would be as
11 effective. It would not really be, I don't think from the
12 utility management's perspective, as predictable to them in
13 terms of just how much they could and could not pass through.
14 It's very predictable with the skin in the game type mechanism
15 that if it's limited to 50 percent, that's just all you can
16 pass through.

17 With regard to the soft cap and the idea that
18 there would be some deferral to future periods of what could
19 not be collected under a cap in the current period, we really
20 don't see that that provides any significant incentives for
21 utilities to minimize their fuel costs or to make proper
22 long-term resource planning decisions. Any -- any impact that
23 that would have in terms of an incentive, we believe it would
24 be very small and that most utilities would -- would really
25 not take that into account as they made decisions on fuel

1 purchases and decisions on long-term resource planning.

2 So we -- we really don't see much value in --
3 in the soft cap and just thought that we would emphasize that
4 a little bit in my comments because Mr. Trippensee didn't
5 spend a lot of time talking about that concept. And would be
6 glad to answer any questions about our views on that as well
7 as the other things I'm going to be covering later after I'm
8 done with the other comments.

9 The other subject that I want to address again
10 is the -- the relationship between long-term resource planning
11 processes and decisions and the -- the new proposed fuel
12 adjustment clause.

13 The current environment for rate-making in
14 Missouri prior to SB 179 caused utilities to look at their
15 overall costs in a comprehensive way so that they would have
16 incentives to minimize their overall costs and wouldn't just
17 have an incentive to minimize those costs when they look at,
18 say, just day-to-day operational decisions, should we dispatch
19 this plant or that plant to serve our loads in any given hour,
20 but it would go way beyond that in terms of giving them an
21 incentive to make wise choices. At least from the perspective
22 of what's good for consumers, they would be making wise
23 choices about exactly what resources they should have
24 available to serve consumers.

25 And I use the term "resources" instead of just

1 referring to generation units there because consumers can be
2 served through both supply and demand side resources. And
3 the -- the existing framework gives utilities more of an
4 incentive to look at their portfolio of resources that will
5 minimize their costs in the long run.

6 And, you know, you might say, Well, why? Why
7 would that occur? And it really relates to, I think, some
8 concepts Mr. Trippensee spent some time on this morning, which
9 is really just the incentives that these utilities have in
10 between rate cases, the concept of regulatory lag, where they
11 get to retain all their earnings in between the time when
12 rates are set in a rate case and when they're reset again in a
13 subsequent rate case.

14 We've had some experiences with utilities in
15 Missouri that really don't come in to seek rate relief for as
16 long as an entire decade. And during that whole period of
17 time, regulatory lag is a strong incentive for them to take a
18 comprehensive look at their cost structure and to minimize
19 those costs, not just look at, you know, what can we do in
20 this hour.

21 That would be part of it, but to just look at
22 what should our portfolio of resources be, the demand side
23 resources and the supply side resources that are going to both
24 minimize our costs in the long run and also address risks such
25 as the volatility of fuel prices.

1 So that when there's that kind of incentive in
2 place for utilities and they don't have a prospect of passing
3 fuel price volatility on to consumers, it means that they
4 don't want that fuel price volatility to adversely impact
5 their earnings and they're going to be constructing the right
6 portfolio of resources, generation units to -- in order to
7 address that volatility while at the same time having an
8 emphasis on minimizing their overall costs.

9 So I wanted to sort of discuss then -- because
10 this is sort of background for what I wanted to discuss, the
11 relationship between a couple of things. One is the skin in
12 the game type of incentive and the other is having IRP, or
13 Integrated Resource Planning, rule requirements that are
14 enforced for utilities that would seek to have a fuel
15 adjustment clause.

16 Those things can both be a strong force to
17 move utilities to make -- to have both a good resource
18 planning process and to make good decisions as a result of
19 that process. It's for that reason that you will see in the
20 marked-up rule that Public Counsel has submitted with our
21 comments in Chapter 20, a new Section 13 that requires the
22 Commission to make certain findings about the utility's
23 compliance with Commission resource planning rules and just
24 other -- certain other findings about their -- the state of
25 their resource planning.

1 And at this time I did want to make just a
2 couple of minor corrections to the language that we have in
3 our marked-up rule. Again, it's in Chapter 20 and we've
4 inserted a new item 13 that appears on page 8 of our markup.

5 And the first sentence in the new Section 13,
6 it just has a couple of minor sort of typographical errors.
7 The first sentence reads, The Commission shall make finding.
8 And findings -- findings should be plural. It should be
9 findings. So an "S" should be added onto the end of
10 "finding."

11 The Commission shall make findings regarding
12 the resource planning of a utility requesting the -- and then
13 it says, Establish, continue or modify a RAM. It should --
14 instead of say "requesting the," it should say "requesting
15 to." So it would read, Requesting to establish, continue or
16 modify a RAM.

17 And so then I -- I guess the -- I just sort of
18 wanted to also refer to comments that were made earlier today
19 in the hearing by the Commission Staff Witness Warren Wood
20 where I took some -- some notes about his comments. And just
21 paraphrasing, I think he made a statement that was -- pretty
22 much said having an approved resource plan has some merit, but
23 the existing IRP rules weren't really written for that
24 purpose.

25 And I -- I guess I would, you know,

1 respectively disagree with Mr. Wood in that I don't see that
2 the rules needed to be -- would have needed to be written any
3 differently in order to have them be an appropriate guidance
4 for utilities that want to be able to have a fuel adjustment
5 clause. But I -- I was glad to see that the Staff does see
6 that it would be a positive thing.

7 I guess the -- the sense that it would --
8 having IRP requirements would be a positive thing, from Public
9 Counsel's perspective, it's really a vital consumer
10 protection. And we just think that if -- if some people
11 believe that the rules should somehow -- IRP rules should be
12 changed in order to make them fit with the fuel adjustment
13 clause process, then we would say, well, let's just stop this
14 process and let's get those rules fixed first.

15 But, again, we actually don't see a need to
16 fix those rules ourselves, Public Counsel doesn't. At least
17 in terms of them having any flaws that would cause them to not
18 fit well with the fuel adjustment clause rule. So just wanted
19 to mention a little bit about why both of these things, IRP
20 requirements and skin in the game, can lead to good resource
21 planning processes and decisions.

22 First of all, talking about the current IRP
23 rule, I'd be glad to get into the details of it. If any
24 Commissioners have questions about it today, I've got a copy
25 of it with me and we certainly could go over it.

1 But just briefly, some of the things that the
2 rule has in it that would, in my mind, cause it to be a good
3 prerequisite in order for utilities to avail themselves of
4 having a fuel adjustment clause is that there is an explicit
5 requirement in the current IRP rule for utilities to consider
6 the risks that are related to the price and availability of
7 various fuels that are burned in their generation plants.

8 And it -- the rule requires them to take those
9 risks into account both in the planning process, the analysis
10 that's done in the planning process and take those fuel risks
11 into account in terms of the plan that they choose as a result
12 of that planning process.

13 There's -- I think there's some -- there's
14 some debate about maybe whether the current rule actually
15 requires the Commission to make findings about whether or not
16 a utility's resource plan actually is acceptable in terms of
17 meeting requirements of the rule.

18 And for those that have any doubt about that,
19 I would refer them to 4 CSR 240-22.080 and the very last
20 section, which is Section 13, which states that -- and I'll
21 just state the relevant parts, The Commission will issue an
22 order which contains findings that the electric utility's
23 filing pursuant to this rule either does or does not
24 demonstrate compliance with the requirements of this chapter
25 and that the utility's resource acquisition strategy either

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1 does or does not meet the requirements stated in
2 4 CSR 240-22.010(2)(A) through (C).

3 That reference in the rule to a resource
4 acquisition strategy is a reference to the plan that a utility
5 and its management choose as a result of the resource planning
6 process. Resource acquisition strategy is defined in the rule
7 to mean a preferred resource plan, an implementation plan and
8 a set of contingency options for responding to the events or
9 circumstances that would render the preferred plan obsolete.

10 So I -- Public Counsel believes that it's,
11 again, vital that -- for -- in order for a utility to be able
12 to qualify to -- to take advantage of this new rule, that an
13 essential consumer protection is that they have a resource
14 plan where the Commission has made findings that that resource
15 acquisition strategy is consistent with the -- with the policy
16 guidance in the rule.

17 On to the other subject of skin in the game
18 type incentive mechanism and how that incents utilities to
19 make good, long-run planning decisions that recognize fuel
20 risk considerations.

21 It -- it's just, I think, obvious. It should
22 be self-evident that when a utility is only going to be able
23 to pass through half of their variations in fuel costs and
24 their shareholders are going to be responsible for the other
25 half, at least in between rate cases if the other half is

1 collected in base rates, that they're going to have a planning
2 process that addresses fuel risks and they're going to choose
3 a plan resulting from that process that addresses fuel risk.

4 And I think that another point was made this
5 morning, I think it was by Mr. Conrad about the -- the
6 advantage of having some skin in the game and how that would
7 enhance really some self-policing of fuel adjustment clause
8 prudence.

9 I think that he made a very good point there
10 and I think that, you know, these two things together, both
11 skin in the game and the IRP prerequisite would greatly
12 enhance this sort of self-policing concept and greatly reduce
13 the regulatory burden of having to go in and try and analyze,
14 as Mr. Trippensee discussed, all the -- all the -- not just
15 the day-to-day operational decisions that are made, but also
16 to go back and analyze the -- the long-term resource planning
17 decisions that have been made just to see if the fuel costs
18 that are being passed through are prudent.

19 One other comment I wanted to make about
20 Mr. Wood's comments this morning on IRP is that he -- you
21 might think that IRP is already fully addressed in the rule, I
22 think, based on what he said, because he referenced certain
23 provisions in the rule in Chapter 3 that are related to
24 Integrated Resource Planning. And those are provisions in
25 Chapter 3, (2) (O) through (R).

1 And I don't disagree that these are provisions
2 that are related to resource planning and I think it is a good
3 thing for them to be in the rule, that they're helpful.
4 However, it's important to recognize that these provisions in
5 Chapter 3 just pertain to filing requirements, that the
6 utilities have to file certain information about their
7 resource planning.

8 These do not give any guidance to the
9 Commission to say -- as you're looking at an application to
10 establish a fuel adjustment clause, make sure, first of all,
11 that they've got their house in order in terms of resource
12 planning. There's no guidance there whatsoever. This totally
13 leaves it up to other parties to try and look at some
14 information that might be required that would be provided
15 pursuant to these filing requirements and make a case to the
16 Commission.

17 And I would submit that there's -- that there
18 is just -- there should be no case to be made. If -- if a
19 utility doesn't have a reasonable resource planning process,
20 if they haven't made reasonable decisions resulting from that
21 process, then you shouldn't be burdening consumers with a fuel
22 adjustment clause that could be passing through a whole bunch
23 of volatile natural gas prices, volatile wholesale electric
24 market prices.

25 Because there's just -- you know, the consumer

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1 in that situation is really just at -- at the mercy of the
2 company, you know. And they're -- and from my perspective,
3 this Commission just is not -- would not be fulfilling their
4 responsibility to make sure that consumers have just and
5 reasonable rates without taking a thorough look at the
6 resource planning process of the utilities seeking a fuel
7 adjustment clause.

8 And I do appreciate you all bearing with me
9 for that lengthy discussion of resource planning. I know it's
10 not probably the most sexy topic to discuss, but I think
11 it's -- it's a really important one and our office feels like
12 it's one that while it's been addressed to a very limited
13 extent in the rule, needs to be addressed much more
14 thoroughly.

15 JUDGE DALE: Thank you, Mr. Kind.

16 Are there questions from the Bench?

17 CHAIRMAN DAVIS: Yes.

18 QUESTIONS BY MR. CHAIRMAN DAVIS:

19 Q. Okay. So it's your position that the IRP
20 rules don't need to be updated at all or anything?

21 A. No, that's -- that's not my position.

22 Q. Okay. I'm sorry then. What is your position
23 with regard to the IRP rules?

24 A. My position is that the IRP rules have
25 basically got it probably 90 percent already and that the

1 changes that -- that could be made to it are basically just
2 tweak -- some tweaks around the edges, but that as the rule is
3 written today, it can -- can do some very important things in
4 terms of giving utilities guidance for the process of resource
5 planning and guidance in how to go about making decisions as a
6 result of that planning process.

7 Q. Okay. Now, the rule was suspended for a
8 number of years. Correct?

9 A. That's right.

10 Q. And we recently, within the last two years,
11 since I've been on the Commission, unsuspended. Correct?

12 A. Yes. The --

13 Q. Or IT since then has expired I guess is a
14 more -- I guess is the correct --

15 A. That's what happened, yes. I think so.

16 Q. The suspension expired. And those cases -- I
17 know we've got at least one of those cases that's pending
18 before us right now. So let me ask, what needs to be fixed in
19 the IRP rule, in your opinion? So it's your opinion that we
20 not only approve the process, but also would approve the
21 editions -- or, you know, the IRP plan about what generation
22 editions the utility needs to make. Is that a fair statement?

23 A. I think that -- no, that -- that the -- the
24 rule, as it's written, it goes -- it barely stops short of
25 approving investment decisions. It -- what it does is it

1 requires the Commission to make a determination of whether the
2 resource acquisition strategy is consistent with certain
3 principles, but it doesn't get in investment decision by
4 investment decision and analyze them.

5 Q. Do you think we ought to?

6 A. I think that that -- that's an important
7 question. It's -- it's not -- you know, our office signed off
8 on the KCPL regulatory plan that included essentially saying
9 that we were one of the parties that thought they had a
10 reasonable resource plan and the Commission, you know,
11 approved that agreement.

12 I think that, you know, you can -- there are
13 circumstances like that where it might be a positive thing to
14 do. As far as the change that you're asking me about, I think
15 that change, along with other possible changes to the rule,
16 I'd certainly have some ideas about them today, but I would
17 expect that having a full dialogue with all the other
18 stakeholders about potential changes would -- would probably
19 be the best way for me to really come to some conclusions
20 about what changes should best be made.

21 Q. Okay. And, you know, not to belabor this
22 issue, Mr. Kind, but is it fair to say that opinions can
23 change over time?

24 A. Definitely fair to say that.

25 Q. Because I think if we would go back 10 years,

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1 there would be some people that would say that -- or there
2 would have been some people saying at that time in the
3 mid-'90s that there is no need to build any more coal-fired
4 generation in this state, that, you know, all we need to do is
5 throw up these natural gas peaking plants, they're less
6 expensive to construct, you can add the increment that you
7 need. Do you think it's possible that people might have been
8 saying that back then?

9 A. I think that is possible. I think more of
10 what was happening in the mid to late '90s was people feeling
11 like you could rely on competitive wholesale electric markets
12 to make good electric resource planning decisions and we'll
13 just, you know, deregulate the industry so that that part of
14 it is no longer regulated at the state level.

15 Q. That hasn't worked out so well, has it?

16 A. Has not worked out so well, no.

17 Q. Okay. That whole part about generating
18 electricity with natural gas may not have been such a really
19 good idea either, is it?

20 A. I think that went along with the idea that we
21 could let the market make the resource planning decisions
22 because it was mostly merchant plants that were built to do
23 that, not regulated plants.

24 CHAIRMAN DAVIS: Thank you. No further
25 questions.

1 JUDGE DALE: Commissioner Gaw.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. I'll try not to take too much time here. I do
4 want to focus in on that one issue in regard to long-term
5 resource adequacy and, in particular, ensuring that generation
6 gets built that matches the load of a utility company in
7 regard to character.

8 Currently would you agree with me that there
9 is a significant difference in between our utility companies
10 operating in this state from one to another in regard to their
11 generation mix, that they're not the same from one utility to
12 another?

13 A. There are very significant differences, yes.

14 Q. And would you say that -- would it be accurate
15 to say there are two of our utilities that are fairly heavily
16 slanted toward base load -- the base load side of generation
17 and a couple that have more peaking facilities or peaking-type
18 facilities in regard to the mix of their total generation?

19 A. Mostly fair to say, I'd say with some
20 qualifications in that one of those utilities you're referring
21 to as having mostly peaking facilities, they actually have
22 substantial amount of intermediate facilities in that they're
23 gas-combined cycle units and I think there may be some
24 additional plans for them to convert some of their, you
25 know -- just their peaking gas units into combined cycle.

1 And that same utility has often -- has also
2 chosen to include a significant amount of wind generation in
3 its resource mix in -- I think, which is something that can
4 actually help to mitigate some of that gas fuel price risk.

5 Q. Okay. And we could go into that, but I don't
6 see I need to do it right now. What I want to -- what I want
7 to try to understand is how moving to a fuel adjustment
8 mechanism changes the dynamic of incentives that may be in
9 place for a utility to build particular kinds of generation
10 just very briefly, if you could.

11 A. Okay. Well, I think the main point I probably
12 already made, which is just that if you have a situation where
13 a utility can pass on fluctuations in the price of any type of
14 fuel, including natural gas, then they become much more
15 indifferent to having generation units that use that type of
16 fuel because those fluctuations in fuel costs are not going to
17 lead to fluctuations in earnings, and that's obviously
18 something that utility managements try to avoid.

19 They really like to have steady earnings, they
20 like to be able to show the investment community steady
21 earnings and to show them that they don't have large risk
22 exposure. And so once that -- once that risk goes away, you
23 would -- you would expect that it would impact their planning
24 process.

25 Q. Okay. So on a going-forward basis, if rates

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1 are already set and the generation costs are included in base
2 rates that we have and if that's the case, then going forward,
3 putting in -- or employing additional higher fuel-priced units
4 has a negative impact on that utility. Right? Would that be
5 correct?

6 A. Under the current regulatory framework --

7 Q. Yes.

8 A. -- that is correct.

9 Q. But if that's changed and they're under fuel
10 adjustment mechanism, that particular portion is diminished or
11 goes away as far as incentive is concerned?

12 A. Well, that goes away in terms of the incentive
13 for them to, you know, avoid high-priced fuels and, in fact,
14 then they may be responding to an incentive to seek out new
15 sources of generation that have low capital costs because, of
16 course, that's another issue that utilities have in terms of
17 their -- you know, just their financial health and how the
18 investment community perceives them.

19 When they have a whole lot of capital
20 investments, very large capital investments, then obviously
21 there can be some heightened concern from the investment
22 community.

23 Q. So in particular for some utilities that may
24 have some -- say, more difficulty than others in regard to
25 getting capital, it may be much easier for them just to go to

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1 a gas unit or purchasing power as opposed to having additional
2 incentives to work toward a coal generator, for instance?

3 A. I'd agree. But I wouldn't limit that just to
4 utilities that seem to -- that have greater difficulties with
5 raising funds to make capital investments, because some of our
6 large utilities also make large investments in the
7 non-regulated area.

8 Q. Yes.

9 A. So they -- they might just, even if they're
10 going to make capital investments, prefer to make them on
11 non-regulated investments.

12 Q. So you think it could apply to all of our
13 utilities?

14 A. Yes, I do.

15 Q. How do I get to the point -- if I'm looking at
16 this from the standpoint of trying to make sure that
17 generation mix -- it gets toward matching or meshing with the
18 load that a utility has? How do I get to that point? Is that
19 the IRP process that's supposed to do that?

20 A. It is the IRP process that's supposed to do
21 that. At least that's part of it. I think there's more than
22 just matching the right type of generation that based on
23 today's environment it looks like the best choice for meeting
24 your load.

25 There's also the assessment of risks. And

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1 when you're making investments in generation units that can
2 last 40 or 50 years, you want to assess whether or not those
3 are the right investments to make to be serving those loads
4 40, 50 years from now.

5 And that's become especially important lately
6 with -- you know, just that there are getting to be some
7 alternative generation technologies such as wind that are, you
8 know, getting closer to being economical compared to more
9 traditional fossil fuel sources.

10 And it's also important because it seems that,
11 you know, many in -- in the utility industry believe that
12 we're going to have some sort of carbon tax relation over the
13 next 10 or 20 years. So you not only want to get generation
14 units that are going to be a good fit for your load, you want
15 to get units that are going to be a good fit and also be
16 economical over the life of the units.

17 Q. Okay. Do you propose in your language some
18 tie between being able to get a fuel adjustment mechanism and
19 the generation mix that a utility possesses in regard to the
20 load that it serves? Is there some tie in your language or to
21 the resource planning process?

22 A. Yes. I mean, it doesn't tie it to this
23 specific language that you're talking about in terms of
24 generation that's a good fit for load. It ties it to being in
25 compliance with the Commission's resource planning

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1 requirements of which I think that -- that concept is a very
2 important piece of it.

3 Q. Okay.

4 A. And it -- it also just ties it to them
5 having -- during the time period that be covered by the RAM, a
6 reasonable portfolio and supply and demand side resources.
7 And obviously part of having a resource -- a reasonable
8 portfolio of resources is having resources that are a good
9 match for the load that you need to serve.

10 Q. Okay. So the way you've got your wording you
11 think would get that piece taken care of?

12 A. Yes, I do.

13 Q. And there would be an even broader analysis
14 besides just that particular mix of generation and load?

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

16 Q. From a consumer's standpoint, is it beneficial
17 to the bottom line if your generation mix is in close
18 proximity to what your load requirements are?

19 A. That's -- that's definitely one of the very
20 important considerations. We don't want to be running gas
21 units in our reserve base load. You're going to increase
22 prices for consumers. And you don't want to be -- you know,
23 usually don't want to be in the position of being forced to
24 buy power from the market in order to serve your base load
25 because you might be able to get it economically sometimes and

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1 sometimes you may not.

2 Q. So does your language say, just generally --
3 because I haven't had a chance to read the written comments
4 yet. Is your language intended to say that there is a
5 compliance with the resource -- excuse me, through the IRP
6 process and it is more than just doing the filings, I take it?

7 A. Yes. Well, I mean, I went over --

8 Q. What is it actually -- just very quickly,
9 what's it requiring of the utility in regard to compliance
10 with some resource planning?

11 A. It's really just the broad statement that they
12 are in compliance. And so I read the portion of the IRP rule
13 that requires the Commission to make determinations to make
14 findings about compliance. And specifically the Commission is
15 required to say that the resource acquisition strategy either
16 does or does not meet the requirements stated in 4 CSR
17 240-22.010(2)(A) through (C).

18 And so that -- that's the link to compliance
19 is that there's a requirement for this Commission that are
20 making that determination. And so basically if the Commission
21 has made an order that determines that they are not in
22 compliance as a result of making that -- you know, finding
23 they're required to make, then we -- you know, we would think
24 they should not be eligible for a fuel adjustment clause.

25 Q. Now, is the Integrated Resource Planning

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1 process forward-looking only, or does it assess current
2 generation capability in mix and would that be a factor in
3 determining whether, under your proposal, to grant a fuel
4 adjustment?

5 A. I think the resource planning rule really is
6 just forward-looking. It looks over a time horizon that's I
7 think a minimum of 20 years. And so you're really starting
8 from tomorrow and up through the next 20 years.

9 The only way that it includes sort of an
10 assessment of existing generation resources is that it
11 requires utilities to -- to make assessments of
12 refurbishments, retirements, things like that as part of the
13 process to determine whether those type of activities would be
14 economical.

15 Q. Well, I'm not saying whether it is or is not
16 the case, but if a utility were already afield from, in a
17 significant way, an appropriate generation mix for its load,
18 should they be entitled to receive a fuel adjustment clause?

19 A. Well, I think Public Counsel would feel like
20 we -- we are, you know, entitled to make the argument that
21 they shouldn't be as part of their application process. I
22 don't think that that type of situation is explicitly spelled
23 out in the rule to --

24 Q. Would Public Counsel be supportive of some
25 language to that extent?

1 A. Well, we would, of course, have to see the
2 language, but I think it -- you know, it -- it's something
3 that we probably would be supportive of, yeah.

4 Q. Is it possible that you would have some
5 language that you would be supportive of that you could
6 submit?

7 A. We could certainly try and do that, yes.

8 COMMISSIONER GAW: Thank you. That's all I
9 have. QUESTIONS BY COMMISSIONER APPLING:

10 Q. Mr. Kind, just one quick question for you.
11 When I came in -- and I apologize for returning late from
12 lunch there, but you was speaking very highly of the soft cap.
13 Is that what I understood from you, that you were saying that
14 you believe in the soft cap and that we should start one right
15 away?

16 What were you saying? I didn't catch what
17 were you saying. What did you have to say about the soft cap?
18 Because I thought Mr. Conrad did an excellent job this morning
19 of explaining that situation. Would you care to just recap
20 what you said?

21 A. Sure. I think Mr. Conrad did an excellent job
22 of explaining how it would be beneficial perhaps for one of
23 his clients. But our view is that, you know, there are other
24 representatives here of -- of large customers so we're looking
25 out for the interests of smaller customers.

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1 And we think for smaller customers, that it
2 just really doesn't provide any benefits. It's just a matter
3 of, you know, you pay now or you pay later, you're going to
4 pay the same in the end except for the additional interest
5 that builds up overtime as -- to finance you being able to pay
6 it later off.

7 And I don't mean interest that benefits the
8 consumer. I mean an additional, you know, interest that piles
9 up on the deferred charges that would have to be paid later.

10 COMMISSIONER APPLING: Okay. Thank you very
11 much.

12 MR. KIND: You're welcome.

13 JUDGE DALE: Thank you, Mr. Kind.

14 MR. KIND: Thank you.

15 JUDGE DALE: I think we're ready to move onto
16 Mr. Coffman.

17 MR. COFFMAN: Good afternoon. May it please
18 the Commission.

19 I am going to speak today at least briefly on
20 behalf of the Consumers Council of Missouri and then get into
21 a little more detail on behalf of my client, AARP.

22 I have with me -- I've not filed anything in
23 through the EFIS system and as far as written comments, I have
24 something that you have seen before, which were the informal
25 comments submitted informally back in May. And although they

1 cover -- they are still valid comments in that the proposed
2 rule has not addressed any of the concerns raised there.

3 And so I would like to -- I guess, first of
4 all, would like to submit these informal comments in a formal
5 way. And if that would be permissible to do so without the
6 EFIS, can I submit that here, your Honor?

7 JUDGE DALE: It would be my preference that
8 you take it down before the end of the day to the Data Center.

9 MR. COFFMAN: Okay.

10 JUDGE DALE: They can scan it in for you.

11 MR. COFFMAN: Okay. I will do that. I have
12 copies here, although I know you probably have them already.

13 JUDGE DALE: That's fine.

14 MR. COFFMAN: And then I have also some
15 language which I'll discuss here later, which is the draft of
16 the 50/50 suggestion, the idea of requiring 50 percent and no
17 more -- or 50 percent of any fuel and purchased power to be
18 embedded in the base rates. And I will give you copies of
19 that as well and I guess would add that through the records
20 department in some way later today.

21 Let me first say that this is, in my opinion,
22 one of the most important issues that has come before this
23 Commission in many years. This is, I believe, a defining
24 moment, important time and that there are many members of the
25 public that are going to be watching this Commission closely

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1 to see how fairly it treats consumers in the final rule.

2 The position of both my clients are that we
3 would rather this Commission simply reject the rule. And this
4 is the absolute position of the Consumers Council of Missouri.
5 We believe that this is a mechanism that is extremely unfair
6 and will do doubt lead to higher electric rates and higher
7 rates in a way that is unfair.

8 And it is something that AARP has fought
9 against here in Missouri and in other states for many years.
10 We have seen considerable controversy and issues with how fuel
11 adjustment clauses are implemented in our neighboring states
12 and throughout the country, do not think it is a consumer
13 friendly concept in general.

14 And moving onto AARP, AARP does understand
15 that there is a lot of pressure on the Commission and that
16 there is a -- the utilities exert a lot of political influence
17 in this state and that there is probably enough pressure that
18 this Commission is going to feel that it does have to have
19 some rule.

20 And obviously it has proposed a rule that, in
21 my opinion, is weighted very heavily towards the rule that I
22 think that the utilities would like to see as opposed to one
23 that really takes into concern some of the serious issues
24 we've been talking about through the morning and so far this
25 afternoon.

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6 And the number one being, of course, the
7 incentive, which is the fact that a fuel adjustment clause
8 significantly reduces the incentive to keep costs low and to
9 do the best possible job for the utility and then ultimately
10 for the ratepayers.

17 It is a system that's worked fairly well in
18 Missouri without a lot of deviations to keep rates reasonably,
19 you know, below average, to keep -- for the most part,
20 shareholders of investor-owned utilities healthy. Certainly
21 our utilities, on the whole, have been healthier than other
22 electric utilities around the company that have experimented
23 with other -- you know, of course, with restructuring as well
24 with other riders and surcharges and so forth.

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1 there's in doubt that the reason is that the current system of
2 simply setting a flat rate for the overall cost of service
3 based on all expenses, investments and financial conditions
4 sets the best possible incentive. It's the best thing that
5 has been devised thus far to replicate the marketplace.

6 These are monopolies that really have no
7 competition for the customer base, much of their business risk
8 is already taken care of, but which now have a goal. And they
9 know that if we can do better, they can find savings, they put
10 that in their pocket. If they don't, they're at risk.

11 And obviously there are some things that are
12 out of the control, but a great many things for electric
13 utilities -- and electric utilities, much more than natural
14 gas companies, have a wide range of decisions that they can
15 make.

16 And so what you're talking about with these
17 single-issue surcharges is taking a system that puts in place
18 the incentives that are similar to those that you find in the
19 competitive marketplace and replacing them with basically the
20 ability to, you know, audit. You're taking that and the only
21 real significant incentive that's left is the fear of the PSC
22 auditing Staff.

23 And even then the auditing is done on sort of
24 an annual basis and looking at these contracts and that and
25 they don't take into account the larger resource planning

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1 issues at heart.

2 So I know this is rather basic, but that's why
3 it's important that if you go forward with the fuel adjustment
4 clause, that you alter what you've proposed in some way to
5 retain part of the incentive.

6 And we have talked about a variety of things.
7 Early on in the workshop process, there was something called
8 incentive by design and there have been other proposals made.
9 The -- the best idea that I've -- have seen or come up with is
10 this idea of simply requiring a percentage of the fuel and
11 purchased power cost to be embedded in the base rates.

12 In other words, don't go all the way to
13 this -- to this new fuel surcharge method. Require that you
14 still have some costs recovered in the old way or the
15 traditional way. And it could be a different percentage than
16 50/50, but this has many benefits. This proposal would to
17 the -- depending on what percentage you do require to remain
18 in the base rate, you address the incentive, there's still
19 that much incentive that remains, there's still some skin in
20 the game.

21 It also mitigates the volatility because --
22 for instance, at 50/50, only 50 percent of the increases and
23 50 percent of the decreases would be fluctuating. It also has
24 the benefit of being relatively simple. And my experience in
25 seeing many ideas floated around here is that the more

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1 complicated it is, the more temptation there is to monkey
2 around with it and try to game the system and try to get a
3 benefit here and there and lead to litigation and a whole lot
4 of problems. So I think that it would be relatively simple.

5 It's even-handed in that one -- if the fuel
6 increases in a particular period are, say, \$10 million,
7 only -- of an increase, the rate -- the fuel adjustment clause
8 would go up 5 million, one half. Conversely, if rates were to
9 lower, if the overall fuel and purchased power cost was, say,
10 \$20 million less, a \$20 million decrease, they would only have
11 to lower their rates 10 million. One half of the decrease
12 they would get to essentially put in their pocket because that
13 is reflected in the base rates.

14 It's absolutely fair, it's clearly lawful in
15 the sense that the -- the law now allows you to either accept
16 or reject a fuel adjustment clause or modify, accept anything
17 in between.

18 Let me just mention, I guess, the other
19 concerns -- broad concerns that are -- there are with a fuel
20 adjustment clause and that I think ought to be addressed, if
21 possible.

22 The next would be the possibility of an
23 over-earning. That is certainly a possibility. In fact, it
24 has happened with a single-issue surcharge before in
25 relatively recent memory and that is with the

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1 Missouri-American Water Company ISRS surcharge, the I-S-R-S
2 surcharge.

3 In that situation, there was an increase based
4 on actual infrastructure replacement costs that were charged
5 to consumers during the very same period that it was later
6 found that the overall cost to the utility was less than their
7 base rates. And that surcharge recovered essentially a
8 million dollars from consumers. And that's a million dollars
9 that will not ever be refunded, will not go back. And we now
10 know that was really higher than what that utility should
11 lawfully have been allowed to charge.

12 And so despite the fact that you have true-ups
13 and audits of the fuel clause, the problem is really the
14 overall cost. So even if you audit and scrutinized to the --
15 you know, the nth degree, the fuel costs, their overall costs
16 could be going down. And with a couple of the utilities in
17 this state, I think that's a real risk.

18 Thirdly, the volatility of a fuel adjustment
19 clause will lead to less predictable rates. You know the
20 consumers hate that. The public hearing testimony certainly
21 brought that out. And I think you have to consider whether --
22 you know, in determining the fairness of that, which side of
23 this equation has the resources and the ability to manage this
24 volatility or this risk for that matter. The utility or the
25 average consumer?

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1 And I'm here today representing those
2 consumers with the least means, the residential consumers,
3 generally older consumers, many consumers on fixed and low
4 incomes. These are not individuals that can go out and hedge
5 against natural gas prices. These are not the kind of
6 consumers that can easily find a way to deal with dramatically
7 changing rates from one period to another.

8 I mean, the bottom line is that you are
9 considering making a change now that will shift one of the
10 major risks of running an electric utility business and
11 transferring that onto the backs of consumers. I put forth to
12 you that if you transfer 100 percent of that risk or permit
13 through this rule to have 100 percent of that risk
14 transferred, that is extremely unreasonable.

15 The law of this state, the law that set up the
16 Public Service Commission clearly tasked you with protecting
17 the public foremost, and in doing that, balancing the
18 interests of the shareholders and the ratepayers.

19 And so I think that the decision that comes
20 out of this final order of rulemaking should be judged by the
21 percentage that you permit these fuel and purchased power
22 costs to be transferred. I submit that it would be reasonable
23 for you to suggest that only 50 percent of these costs be
24 permitted through the fuel adjustment clause, the other
25 50 percent to be recovered or reflected in the normal

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1 traditional cost of service embedded in the base rates, if you
2 will.

3 And I'm not saying necessarily that a
4 50 percent -- it has to be a 50 percent requirement. It could
5 be another percentage, but something significant. And I think
6 that -- I've now read through today the comments of the Office
7 of the Public Counsel and also those comments filed by the
8 Attorney General's office and they each touch on this as well.

9 I think this concept that I'm talking about
10 would be consistent with the recommendation on page 4 of the
11 Attorney General's office recommendations which would suggest
12 that you put into the rule at least a provision that says some
13 percentage -- they would not pick a particular number, but
14 just say that in any particular rate case you would make a
15 decision about some percentage, but would make it clear that
16 was an issue in each case, that in each case you would pick a
17 percentage to put in the base rates if you were to do a fuel
18 adjustment clause. And I think that is clearly the most
19 important.

20 And I have to say that neither one of my
21 clients is interested in the least in the -- what I think I
22 hear being discussed and labeled the soft cap. Not interested
23 in the soft cap.

24 At least as I've seen it proposed thus far in
25 these workshops, meetings and so forth, the soft cap simply

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1 delays an increase to another period, adds interest on top of
2 it. Does not significantly reduce the volatility and in the
3 end the ratepayer winds up paying more.

4 Now, maybe I'm not understanding exactly the
5 details of this, but no idea of that type that I've seen
6 floated would do consumers any good. And, you know, would be
7 possibly interested in I guess a hard cap. And that -- again,
8 if I'm understanding what's being discussed as a hard cap, is
9 something where you put a -- you know, a range or a ceiling in
10 where above a certain amount the utility would have to bear
11 the risk and, you know, below a certain point, a floor, the
12 ratepayers would bear a certain risk.

13 I think if -- if things are simply passed
14 through -- and this includes a soft cap, which ultimately
15 let's anything pass through, you've lost the incentive and you
16 don't have that real requirement to do the very best you can.

17 I also have to -- have to mention the veto
18 provision. The one thing that these AARP comments do not
19 address and that is the veto provision, which was added after
20 the informal comment phase, was added into the proposed rule.
21 I think that it's extremely unreasonable to suggest that after
22 this Commission has considered what parameters and what terms
23 would go into a fuel adjustment clause, that you would then
24 give the utility the unilateral absolute right to simply
25 reject it if they don't like it, if it's not quote/unquote

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1 acceptable.

2 I think that it is terrible policy. It really
3 brings into question about who is really the regulator here
4 and who's really making the policy decisions. It seems to
5 disregard the comments of every other party. It certainly
6 isn't balanced.

7 I think it violates the SB 179 law itself,
8 which gives the Commission the sole authority to accept,
9 reject or modify. I think it also violates Missouri law in
10 that the Missouri Commission has the authority to constantly
11 monitor rates and does not have the authority to -- the
12 ability to cede its authority because it has to always be able
13 to respond to changing conditions. It cannot give that
14 authority away, delegate that away to a utility.

15 It furthermore, raises significant issues
16 about due process in that this would probably be, I guess, an
17 option offered to a utility late in a rate case. If the
18 utility doesn't take that option, you know, where are we then?

19 The only thing that I can think of that seems
20 even remotely similar is something along the lines of
21 modernization plans that were en vogue about 15 years ago
22 where Southwestern Bell and other utilities were offered
23 options to the rate plan. Those things always wound up in
24 court. There were numerous legal issues about whether that
25 was proper and it almost became a negotiation between the

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1 utility and the Public Service Commission with other parties
2 cut out of the picture.

3 So strongly opposed to granting utilities a
4 veto right. I believe that that was a -- a proposal that had
5 been made in previous versions of this fuel adjustment clause
6 legislation. They attempted to get this through the
7 legislation. It was not added in the ultimate law and I am
8 really surprised that they would now try to get that through
9 the rule.

10 And addressing the so-called consumer
11 protections that were listed earlier, I don't necessarily
12 disagree with Warren Wood that some of those -- three or four
13 of the things that he listed were things I guess that
14 protected consumers, but I have to say that except for maybe
15 the reporting data in the rule, every other thing that was
16 mentioned and labeled as a consumer protection is something
17 that's already in the law, simply repeated from the law.

18 I still do not think that you can point to
19 anything in the proposed rules that is a consumer protection
20 added based on this Commission's rulemaking process. And
21 during the legislative process, the proponents repeatedly said
22 over in that Capitol building, We simply want to give the
23 Public Service Commission a tool. We want to give them
24 something -- an option for them to use.

25 They may -- I heard this over and over again.

1 They may not even decide to do it. It will be completely to
2 their discretion. They may do it, they may not do it.
3 Certainly they will never do it unless they have added in all
4 the consumer protections that would be necessary to balance
5 the interest. And by that time, it's going to be so fair it
6 will probably lead to lower rates. And I heard that.

7 And now I hear people saying, Well, gosh, now
8 we're here at the rulemaking process, we don't need to put any
9 consumer protections into the rule that aren't already there.
10 Why, heck, you can wait until the rate case. Why don't you
11 argue that in the rate case? And I know what I'll hear in the
12 rate case. I'll hear, Well, gosh, you had your chance back in
13 the rulemaking.

14 And, you know, I just feel as if consumers
15 have not been given a seat at the table. I don't know how
16 many times we've had meetings to sit and discuss this thing,
17 but at no point have any of the real significant issues that
18 the consumers here have been belaboring all day long so far
19 really ever been addressed in this language.

20 And so I would ask you to please take a hard
21 look at that. And please live up to the promise that we were
22 made back in the legislature when we were told that this would
23 not go into effect without some significant protections. And
24 I think that primarily it needs to address the retention of
25 some incentive in a meaningful way.

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1 I think that covers all the main points. I'll
2 answer any questions if you have any.

3 JUDGE DALE: Commissioner Gaw.

4 COMMISSIONER GAW: Well, I'm going to pass for
5 the moment. Maybe Commissioner Appling has a question or two.

6 JUDGE DALE: Going to buy me some time here?

7 COMMISSIONER APPLING: I wouldn't want to pass
8 Commissioner Gaw's chance to strut his stuff here this
9 afternoon, but how are you doing Mr. Coffman?

10 MR. COFFMAN: I'm doing fine.

11 COMMISSIONER APPLING: In the latest draft
12 here you talked all around significant protection for
13 consumers. What is some of the items that you would like to
14 see in this rule that is not already there in the draft rule?

15 MR. COFFMAN: I would consider it a
16 significant consumer protection to add something essentially
17 similar to what I handed out. And this is the one sheet here.
18 The language that would require 50 percent of the fuel
19 purchased power costs to be embedded in rates, no more than
20 50 percent of the fuel and purchased power costs to be in the
21 fuel adjustment clause. That would be -- that would make me
22 relatively happy.

23 COMMISSIONER APPLING: How would you -- how
24 have the utilities and all that felt about that? Have they
25 talked around it?

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1 MR. COFFMAN: They want 100 percent. They
2 want it all.

3 COMMISSIONER APPLING: They want it all, huh?

4 MR. COFFMAN: Yeah.

5 COMMISSIONER APPLING: Is there anything else
6 you want to add to this?

7 MR. COFFMAN: You know, there have been
8 proposals along these lines, you might call it incentive by
9 design, you might call it aligning the interest. I mean, to
10 have the issues -- there have been several proposals to
11 address the earnings test, the over-earnings risk and so
12 forth. There's a variety of proposals that been made to
13 address the volatility.

14 Unfortunately, none of those -- utilities have
15 not bitten on any of those. I mean, the only thing that --
16 you know, the only thing they had attempted to offer was some,
17 I guess, variation of what you might call as a soft cap. And
18 that just was really of no benefit to my clients or for most
19 of the consumer advocates that was not something that really
20 they --

21 COMMISSIONER APPLING: So where do we think
22 that the thousand little old ladies with tennis shoes are
23 going to get the money to pay their utility bills?

24 MR. COFFMAN: Well, I mean, I don't know. I
25 mean, I -- I mean, I have no doubt that if you pass this rule

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1 as it's drafted, their rates will go up higher than they
2 otherwise would.

3 Now, you know, sure there will be increases
4 and decreases, you know, as the fuel adjustment clause
5 fluctuates perhaps for some utilities, but the problem is what
6 that does to the overall rate and the fact that you're taking
7 away the incentive that has worked so well over the years to
8 keep the rates low and that they had skin in the game, they
9 had a real reason to pay attention to those costs.

10 And the main worry is that now they will not
11 have that same incentive. They -- this business risk -- this
12 is one of the biggest business risks, they want to transfer
13 100 percent -- as much as they possibly can, they want to dump
14 on the consumer, which of course, begs the question, what are
15 we -- what is the ordinary consumer paying that utility for?

16 That rate of return that we fight about in
17 every rate case, what is that for if it's not to compensate
18 the utility for managing that business risk? If that business
19 risk is going to be transferred to the consumer, why are we
20 paying those significant rates of return? Does that make
21 sense?

22 So I mean, there's several ways to look at
23 this and I think express the problem, but the way I would
24 put -- the simplest way I could put it to you is don't give
25 them 100 percent. If you feel that you must do this, please

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1 be fair with the consumers and try to balance this percentage
2 and try to make it a percentage that's somewhat more fair.

3 COMMISSIONER APPLING: I think that my
4 colleague has probably found more than he needs to ask you at
5 least a dozen questions here this afternoon, so I yield the
6 floor to him.

7 COMMISSIONER GAW: Okay. Thank you,
8 Commissioner Appling. Although I don't know that I've located
9 what I was looking for.

10 But let me -- I'm curious about -- are you
11 familiar with the ISRS, Infrastructure System Replacement
12 Surcharge, that was adopted by the legislature?

13 A. I'm fairly familiar with it. I haven't read
14 it recently, but --

15 Q. Well --

16 A. Is there a particular question?

17 Q. -- you may not know. I'm looking -- was there
18 any language in there in regard to that particular legislation
19 that had to do with earnings? Do you recall? I may just have
20 to look for it.

21 A. I don't recall. Does anyone have --

22 Q. Well, if you don't know, that's okay. I'll --

23 A. I don't remember specifically

24 JUDGE DALE: Actually, this would be a good
25 time for a five-minute break.

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1 COMMISSIONER GAW: That would be great for me.

2 JUDGE DALE: While Commissioner Gaw is looking
3 for that, we'll take a five-minute break and go off the
4 record.

5 (A recess was taken.)

6 JUDGE DALE: Go ahead.

7 COMMISSIONER GAW: I won't take very long, I
8 don't think.

9 Mr. Coffman, in regard to your position for
10 your clients -- and you need to distinguish between them if
11 there is a difference.

12 MR. COFFMAN: Right.

13 COMMISSIONER GAW: First of all, is there a
14 difference in their positions on any particular issue?

15 MR. COFFMAN: The Consumer Council of Missouri
16 is adamantly opposed to a fuel adjustment clause in any form,
17 period.

18 COMMISSIONER GAW: And --

19 MR. COFFMAN: But --

20 COMMISSIONER GAW: -- AARP?

21 MR. COFFMAN: As to AARP, I think we simply
22 want there to be some significant consumer protections added
23 to the rule. And thus far, nothing that has been proposed has
24 been incorporated from the last I don't know how many meetings
25 we've had.

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1 And I can say that AARP's position is
2 consistent with the comments that you will find in the Office
3 of Public Counsel's comments and also consistent with the
4 comments that you will find in the Attorney General's office
5 comments. They've both made detailed comments and specific
6 draft language changes that I think are very good.

7 COMMISSIONER GAW: And have you made the
8 recommendations that you would like to see in regard to
9 consumer protections in written comments?

10 MR. COFFMAN: Yes. In that that I've handed
11 out to you.

12 COMMISSIONER GAW: So those are all -- those
13 are there?

14 MR. COFFMAN: Very soon I will go down and
15 make sure that they are entered into some records center
16 method.

17 COMMISSIONER GAW: Okay. And you also, I
18 think, said that you are in agreement with the position that
19 Public Counsel has stated?

20 MR. COFFMAN: There's nothing I would disagree
21 with that I read in their comments that they've filed nor with
22 the comments of the Attorney General. They are all consistent
23 with the goals of AARP in this proceeding.

24 COMMISSIONER GAW: Okay. Now, I want to ask
25 you just for purposes of clarification, in the Infrastructure

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1 System Replacement Surcharge legislation that was passed I
2 think in 2003 --

3 MR. COFFMAN: That was the first of the
4 single-issue surcharges.

5 COMMISSIONER GAW: The first of --

6 MR. COFFMAN: What now may be many.

7 COMMISSIONER GAW: The first of -- how many
8 can I count? Let's see. This applied to gas and it applied
9 to water and so -- and then there are four or five times
10 however many utilities are in there. It's getting close to
11 double digits maybe. I don't know.

12 So in this particular provision, 393.1015,
13 sub 2, which is -- this is the gas portion of the ISRS, there
14 is a sentence that says, No other revenue requirement or
15 rate-making issues may be examined in consideration of the
16 petition or associated proposed rate schedules filed pursuant
17 to the provisions of Sections 393.1009 to 393.1015. Have you
18 seen that?

19 MR. COFFMAN: Yes. Yeah. I looked at that
20 over the break and my memory is refreshed. And I do remember
21 that that provision was added by the legislature at the behest
22 of the utilities to make sure that that was a single-issue
23 rate-making surcharge and that -- that all relevant factors
24 could not be taken into account with regard to.

25 COMMISSIONER GAW: I don't know how -- is that

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1 language or language similar to that included in the
2 legislation that was Senate Bill 179?

3 MR. COFFMAN: No. I don't think that
4 provision is in the new law that resulted from SB 179.

5 COMMISSIONER GAW: So the legislature saw fit
6 to put this language that I just read in the ISRS and saw fit
7 not to put that language in 179?

8 MR. COFFMAN: Right. And so --

9 COMMISSIONER GAW: In fact, is there not some
10 additional language or is there any language at all in
11 reference to your knowledge to looking at other factors, do
12 you know?

13 MR. COFFMAN: Yeah. The new law which
14 authorizes you to consider a fuel adjustment clause does also
15 give you the option of adjusting the rate of return
16 accordingly to reflect lower business risk, I believe.

17 COMMISSIONER GAW: Okay. And there is, in
18 particular, no restriction such as there is -- just to be
19 clear, no restriction in the 179 legislation that would match
20 or be similar to what is placed in the ISRS provisions?

21 MR. COFFMAN: No. I guess compared to the
22 ISRS, the legislature has given you, the Commission, great
23 latitude in making sure that the rules on the fuel adjustment
24 clause are fair. So you really have the discretion to design
25 this in pretty broad terms.

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1 COMMISSIONER GAW: Okay.

2 MR. COFFMAN: And I would again reiterate that
3 the proposed rule is a very, very utility friendly rule and I
4 think it could certainly be changed significantly to become
5 more fair.

6 COMMISSIONER GAW: Okay. Or fair.

7 MR. COFFMAN: Yes. If that's grammatically
8 correct.

9 COMMISSIONER GAW: That's all I have.

10 MR. COFFMAN: It could certainly be balanced
11 in a way that treated ratepayers more even-handedly.

12 COMMISSIONER GAW: Okay. Thank you.

13 JUDGE DALE: Thank you, Mr. Coffman.

14 Mr. Micheel.

15 MR. MICHEEL: May it please the Commission.
16 I'm here on behalf of the Attorney General. We have filed
17 comments already and I'm sure they're up on EFIS because it's
18 an award-winning system and I'm sure they're right there.

19 JUDGE DALE: They are right here.

20 MR. MICHEEL: As a matter of public policy and
21 regulatory policy, the Attorney General continues to believe
22 the use of fuel adjustment clauses or any other rate
23 mechanisms is inappropriate and unfairly tilts the playing
24 field in this case to electric utilities.

25 Want to make a few comments about some of the

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1 comments made today. Mr. Wood, Warren Wood, on behalf of the
2 Staff started us off and he had his top 10 consumer
3 protections. And I thought for a moment I was at The David
4 Letterman Show because that had to be a joke. And I just want
5 to go through all of them.

6 You know, the first one he said was that the
7 RAMs are only allowed in a rate proceeding. Well, of course.
8 If they were allowed outside of the rate proceeding, at least
9 initially the utilities would get double recovery because
10 every single electric utility is recovering fuel costs in base
11 rates right now.

12 So that's not a consumer protection. That's a
13 necessity to get these fuel -- these fuel adjustment clauses
14 or these rate adjustment mechanisms. So that's not really a
15 consumer protection. That's a necessity.

16 The second consumer protection is that the
17 Commission can approve, modify or reject any proposed RAM.
18 Yeah, of course. I mean, the law in this state is that
19 utilities file tariffs that propose ideas and this Commission
20 either accepts, modifies or rejects them. That's not a change
21 from what you already had authority to do. In fact, that's
22 your statutory mandate. That's not a consumer protection.

23 Although I will say and I'm going -- and I've
24 provided comments on it -- Section 2, E, of the rule provides
25 the utility a veto power over what you all do. If they don't

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1 like how you modify their RAM, they just take their ball and
2 go home. And we've commented on that and I think Mr. Conrad
3 has and Mr. Coffman has, but I don't think that squares with
4 the law and I think that's a bad idea.

5 Secondly, or thirdly, with respect to the
6 second consumer protection, nothing requires the Commission to
7 approve a RAM. I mean, I think we all come in here -- or at
8 least some people have come in here believing that it's a
9 foregone conclusion we're going to get a rate adjustment
10 mechanism. This Commission does not have to do that. This is
11 enabling legislation only. It is not prescriptive.

12 The third consumer protection is there are
13 going to be rate cases every four years. All that does is
14 guarantee that the utilities are going to be required to come
15 in for rate increases every four years. Our largest electric
16 utility hasn't been in in two decades. I don't see that as a
17 consumer protection necessarily.

18 The fourth consumer protection was, well, you
19 know, these rates are going to be subject to true-up. Well,
20 of course they're going to be subject to true-up. Certainly
21 the legislature would not pass a law that would allow, by
22 necessity, the company to over-earn or under-earn. I mean,
23 that would be patently unfair. That's not a consumer
24 protection.

25 The fifth consumer protection is the infamous

1 surveillance reporting. Okay, they already do that now.
2 That's nothing new or unique. We already get those -- or I'm
3 assuming they still -- this Commission still gets them. They
4 got them when I worked here. So you can do that without the
5 rate adjustment mechanism rule.

6 Seventh one was, you know, you can do
7 alternative rate regulation and alternative mechanisms. And
8 what I'll tell you about the incentive mechanism -- I've had
9 some experience with that in the gas world -- is all things
10 remaining equal, all the incentive mechanism means are that
11 the utilities make more money, profit, than they otherwise
12 would have.

13 And making more money is -- is not really a
14 consumer protection because what an incentive mechanism does,
15 it says, well, we'll share 10 percent. So if we do X, so all
16 things equal, rates are 10 percent higher than they would
17 otherwise be.

18 Also on that alternative mechanism, in our
19 comments we talk about how the utility can reject the
20 Commission if they don't like the incentive. And the other
21 flip side of that is the law and the rule seems to lock this
22 Commission in. If you adopt an incentive plan, you have no
23 chance to get out of it until it's run its course.

24 In the natural gas world, we had an incentive
25 plan with Laclede Gas Company, we had \$10 gas, highest ever.

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1 They were making millions of dollars. Under the SB 179
2 legislation and this rule, this Commission is powerless to do
3 anything about that.

4 So I posit a situation where you have an
5 electric utility over-earning as a result of an incentive RAM
6 that's been issued by this Commission. What can consumers do?
7 Nothing. You, as a Commission, are powerless to change that
8 so consumers have to sit by until that plan has run its course
9 before rates can be altered. I submit to you that's of
10 questionable legality.

11 I've talked about it in our comments, I've
12 cited some cases to support that proposition. I think that's
13 a cra-- wrong word. I think that's the incorrect
14 manifestation for incentives and the Commission should have
15 continuing power to regulate the utilities as changing facts
16 and circumstances posit.

17 As Commissioner Davis pointed out, Chairman
18 Davis pointed out in questioning to Mr. Kind, what we thought
19 was the case the couple years ago might change. But with
20 these rules and SB 179 as written, if you all issue an
21 incentive RAM, there's nothing you can do about it until it's
22 run its course. I think that's bad regulatory policy, I think
23 it's of questionable lawfulness.

24 Number eight consumer protection,
25 unprecedented discovery rights. I don't think it's consumer

1 protection. The RAM goes into effect unprecedentedly quick.
2 And if you don't lower the traditional discovery time frames
3 that you have before the Commission, nobody can get the
4 information to make an informed decision on whether or not the
5 company's proposed RAM is a good or a bad thing.

6 That's not a consumer protection. That is a
7 basic requirement so that other parties, interested
8 stakeholders, can know and understand whether or not it's a
9 good policy.

10 Number nine, there are guidelines and a
11 timeline for the complaint case. So what? A timeline -- I
12 would think this Commission already has an obligation, after a
13 complaint has been issued, to issue a procedural order. But
14 what these rules do not include is a requirement that this
15 Commission rule on a complaint in a timely manner.

16 When a utility -- the electric utility comes
17 in for an electric rate increase, the law says you have
18 11 months to do that. This rule is unclear. It says you
19 issue a timeline. Doesn't say you're going to issue a
20 decision within 11 months. Nothing of the kind. That is not
21 a new consumer protection. Consumers deserve that now when
22 there's a complaint filed. That's nothing new.

23 Number ten, effectiveness. We're going to
24 look at these rules in 2010. Look, I have the right, parties
25 here have the right to file a rulemaking saying these rules

1 should be changed. Now, whether or not the Commission accepts
2 that, that's up to the decision maker. I won't take that
3 decision out of your hands. I, unfortunately, don't have a
4 veto power over that. So that's not really a consumer
5 protection because we can do that now. So I just wanted to
6 answer those.

7 And in light of that, quite frankly, I think
8 the proposed rules are devoid of any consumer protections that
9 we don't already have or don't exist.

10 In our comments, we've suggested three
11 possible consumer protections, although as I said at the
12 outset, we don't have any buy-in for these adjustment clauses,
13 but we do have some proposed language. And I won't belabor
14 it. You all can read it and reasons why.

15 I have some problems with some of the
16 definitions. The definition that's included in fuel and
17 purchased power, I think we need to add another definition
18 again. It's in our -- it's in our comments that says
19 something to the extent that prudent fuel and purchased power
20 costs aren't going to be cost increases caused by the utility.

21 And the example I posit is, you know, the
22 infamous South Harper case. I mean, obviously, you know,
23 Aquila, for whatever reason, built a plant without a
24 Commission certificate, without zoning authority and they had
25 to shut it down.

1 Well, sure it was prudent for Aquila to
2 purchase power to replace the power they lost. That's a
3 prudent decision. But was it prudent that they didn't have a
4 certificate? Was it prudent that they didn't get zoning
5 authority? And my proposed changes to the rule make it clear
6 that if that's the cause of the increased fuel, you're not
7 getting it.

8 The other thing the rule doesn't do -- we talk
9 about prudence. Nowhere in the rule does this Commission tell
10 us what the prudence standard that they're going to apply is.
11 I assume -- and you know what happens when you assume -- that
12 it's going to be the prudence standard that we use -- that
13 this Commission has long-standingly used in the natural gas
14 area and I've set that out in the comments.

15 But I think we need to make it clear so
16 everybody knows going in what the standard's going to be and
17 what we're going to use.

18 I've recommended a change in 1C, definition of
19 general rate case, general rate proceeding. I think we should
20 just be specific. There are only two ways you can set rates
21 in Missouri, the file and suspend and the complaint method.
22 Let's just put file and suspend and complaint method. I mean,
23 that's it. The law is pretty clear on that. Let's just be
24 specific.

25 In 2E, again, the section that has the veto

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1 power, obviously, you know, I think that's of questionable
2 legal and certainly bad regulatory policy. There's also a
3 term in that section called "alternative base rate recovery
4 mechanism" that's undefined. And I'm not going to take a stab
5 at defining that because I just don't know what it is, what it
6 means. But that needs to be tightened up. And I don't know
7 if you all talked about it in your roundtables or not, but
8 that's a problem.

9 Again, the prudence review issue. Another
10 important thing on the notice section, which is subsection 11
11 of the proposed rule -- and I'm in 090 -- is with respect to
12 the notice. I've proposed another notice part, if indeed the
13 Commission does do an incentive RAM, because I think the
14 consumer has a right to know when an incentive RAM is in
15 place, what portion of that fuel cost is going right to the
16 company's bottom line.

17 In other words, if my fuel cost is \$100 and
18 I'm under an incentive, is 10 percent of that 100 bucks going
19 or is it -- you know, some sort of insert or flier so the
20 consumer knows what the true fuel cost is. Because an
21 incentive mechanism -- you know, the true fuel cost could be
22 9 bucks, but the consumer's paying 10. And so I think that's
23 a recommendation that I have made for notice. I think notice
24 is important. It's obviously something that the legislature
25 thought was important because they put it in the body of

1 SB 179.

2 Again, in that same section it seems like, you
3 know, the Commission is going to be bound if it -- if it
4 accepts an incentive RAM. And I just think that's wrong and
5 of questionable lawfulness and I've set that out in my
6 comments.

7 And I think it also conflicts with subsection
8 13 of the proposed rule in 090 that says, Nothing in this rule
9 shall preclude a complaint from being filed as provided by law
10 on the ground that the utility's earning more than its fair
11 return on equity.

12 Because, again, the example I posit, you have
13 an incentive RAM, you're over-earning because you're making,
14 you know, money from the incentive RAM. I file a complaint
15 and the utility says, Ha, ha, ha, you can't change that
16 because you're locked in on the incentive. I don't think
17 they'd say ha, ha, ha. I mean, they'd make legal arguments,
18 but that would be the result. So I think there's apparent
19 conflict between that.

20 You know, the final troubling part of this
21 rule is the transition portions of the rule. And I hadn't
22 followed this rulemaking closely and I just read through the
23 rule and I was shocked and amazed when I read that, the
24 transition sections.

25 Because, you know, it says right in the rule

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1 that the electric utility files a general rate case proceeding
2 30 days or more after the Commission issues notice of the
3 proposed rulemaking respecting the initial RAM rules, which
4 the Commission did, the provisions of this section shall
5 apply. And I said, Huh?

6 So we have proposed rules -- proposed rules --
7 not final rules, proposed rules and in the proposed rules is a
8 statement that the proposed provisions of this rule shall
9 apply, shall apply. I think that's unlawful. I think it
10 violates Chapter 336 and I've set that out.

11 And I'm involved in the AmerenUE case and
12 Ameren and apparently Aquila also are asking that that be
13 done. And it seems to me that any utility that files 30 days
14 or more after the Commission issues notice shall --
15 prescriptive, required to do it -- apply those rules.

16 And those rules have to apply, okay, during
17 the proposed rule period because after the rule is made final,
18 there's no need for a transition because you have a final
19 rule. It boggles my mind. I don't understand it. And, you
20 know, perhaps it's because I'm just not sharp enough to get
21 it. And that might be it, but I don't understand it.

22 And, of course, we are opposed to using those
23 transitional rules. I think the better thing to do is say,
24 Look, until we get these rules in place, no fuel adjustment
25 clauses. Because what you're going to get, you're going to

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1 get a rate case filed, could be on file five or six months,
2 and all of a sudden the game changes. Fuel costs were in base
3 rates. Now they're out. Now we have to scramble around and
4 change this or that.

5 Or I posit the idea that the Commission's made
6 a decision. Well, we don't like that RAM or, you know -- or
7 the rule's completely different. Brings up all sorts of
8 horrors. And I've kind of listed those in my comments.

9 That's kind of a brief overview. I would urge
10 this Commission to please put in some meaningful consumer
11 protections. I'd try to answer any questions that you all
12 have.

13 JUDGE DALE: Questions from the Bench?

14 CHAIRMAN DAVIS: Always a pleasure to hear
15 from you, Mr. Micheel.

16 MR. MICHEEL: It's always good to be here.
17 It's almost like coming home, Commissioner.

18 CHAIRMAN DAVIS: Welcome back.

19 JUDGE DALE: Commissioner Gaw?

20 COMMISSIONER GAW: Just real briefly. In your
21 experience, Mr. Micheel, in a case on a natural gas matter
22 where the purchased gas amount is being challenged for
23 prudence reasons, give me a concept of how long it can take to
24 resolve that in litigation from the time frame where the
25 charges --

1 MR. MICHEEL: I worked for the Office of
2 Public Counsel for 14 years. I believe that there is still an
3 MGE ACA proceeding that has been going on for half of that
4 time, at least. It's the Mid-Kansas mess.

5 And, you know, and believe me -- and if I may,
6 Commissioner, I mean, I've talked to consumers. They dislike
7 adjustment clauses. And you have a real opportunity here as a
8 Commission to make it fair.

9 And the language that I have proposed in terms
10 of -- we've talked about skin in the game, you know, the
11 gambling vernacular here. What I've said, what the Attorney
12 General has said is we're going to leave it up to you,
13 Commission, to determine, what, if any, percentage of costs
14 should be in base rates and should be subject to the
15 incentive. Not set you at 50 percent or set you at
16 10 percent.

17 Because, again, as the Chair pointed out,
18 conditions change. I think as you pointed out, Commissioner
19 Gaw, the utilities are different, they have different
20 generating capabilities and needs. And so that would allow
21 the Commission in a rate case to determine, hey, Utility X has
22 a lot of base load capacity and isn't really subject to all
23 these fluctuations, they only need 2 percent in, you know,
24 fuel clause where Utility Y has, you know, a lot of
25 fluctuating capacity, they need 20 percent. I mean, I don't

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1 think we should limit a percentage.

2 And by the same token, I don't think this
3 Commission as it has -- as it appears to have done in this
4 rule, should foreclose its ability and should make it clear on
5 the face of the rule that we may say, no, put it all in base
6 rates.

7 I mean, let's face facts. Since 1913, okay,
8 with the exception of that little portion in the '70s before
9 it was invalidated, we didn't have a fuel adjustment clause.
10 We didn't have a fuel adjustment clause for the last 20 years
11 and the largest electric utility wasn't in. The second
12 largest electric utility wasn't in for a long, long time.

13 So, I mean, obviously they have, you know, the
14 ability to manage these costs. And these costs that -- the
15 fuel costs for an electric utility are completely different,
16 okay, than the fuel -- than the purchased gas adjustment
17 clause.

18 And I have a brief in my file written by the
19 Missouri Public Service Commission where that particular
20 Commission said the only time it would be appropriate to have
21 a fuel -- a single-issue clause is the PGA because gas is very
22 unique. Unlike electric where you have all these different
23 inputs and you've got people making a decision run this
24 generator, fill this water dam up, you know, and keep it
25 running. And you've got all these different generation mixes.

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1 It's a different world. Different.

2 COMMISSIONER GAW: Thank you. That's all I
3 have.

4 JUDGE DALE: Commissioner Appling?

5 CHAIRMAN DAVIS: Mr. Micheel, I've got one set
6 of comments that you filed today. Is there another -- are
7 there more comments than just this document that was filed
8 today, which is approximately three pages?

9 MR. MICHEEL: Yes, there are Commissioner. I
10 filed comments to the 090 rule that's 17 pages and that's what
11 I've been talking about, the 090 rule.

12 I mean, the 161 rule, that's just definitional
13 stuff. And I had some issues with the definition, but the
14 meat of the rule --

15 CHAIRMAN DAVIS: Is 090?

16 MR. MICHEEL: -- is the cost recovery. And
17 you don't have those, but I'll just read you my language if
18 that's what you're -- maybe I'm reading your mind.

19 CHAIRMAN DAVIS: Go ahead. Go ahead.

20 MR. MICHEEL: I say, The Commission shall, in
21 a general rate case, set the percentage of the fuel and
22 purchased power costs the electric utility will be allowed to
23 recovery pursuant to a RAM, if any.

24 And that allows you the complete latitude and
25 puts the utilities on notice it may be buckeye, zero, which I

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1 think is the best way to do it, because I think that's the way
2 you get the best rates. And I'm --

3 CHAIRMAN DAVIS: Thank you.

4 JUDGE DALE: Thank you, Mr. Micheel.

5 Ms. Vuylsteke?

6 MS. VUYLSTEKE: May it please the Commission.

7 I'm here today on behalf of the Missouri Industrial Energy
8 Consumers. And as you know, that organization includes many
9 of the state's largest consumers.

10 This rule is a very significant change in
11 policy for the state. It's going to change the balance
12 dramatically between consumers and utilities. We think for
13 that reason, it's essential that the Commission put some, as
14 Mr. Micheel said, meaningful consumer protections in the rule.

15 I have today Mr. Maurice Brubaker here as our
16 witness to discuss the substance of the recommendations that
17 we have for consumer protection to the rule. We have been --
18 the MIEC has been intricately involved at every stage in
19 development of both the legislation and the rules. We
20 participated in negotiations that resulted in a legislative
21 compromise that this legislation represents.

22 We believed that the compromise was acceptable
23 because it gave the Commission the discretion and the tools to
24 do exactly what we're asking you to do here today, to protect
25 consumers, to not implement any fuel adjustment for a utility

1 that it thinks an adjustment is inappropriate for.

2 This legislation truly is enabling in the
3 broadest sense. You have the freedom to do nothing. You
4 certainly have the freedom to put some meat on the bones of
5 the protections that the legislation contains implicitly in
6 it.

7 There are two areas of the legislation that I
8 wish to draw to your attention before Mr. Brubaker testifies.
9 Two areas where I think the proposed rules are truly
10 inconsistent with the enabling legislation. The first area is
11 the part of the statute that discusses return on equity.

12 The legislation says that the mechanism is to
13 be designed to allow the utility an opportunity to earn a fair
14 return on equity. The Commission's statutory responsibility
15 is to set just and reasonable rates and excessive return on
16 equity is not just and reasonable and it is violative of the
17 provision of the statute in subsection 4 that only a fair
18 return on equity should be permitted by the mechanism.

19 The other area where the rules are
20 inconsistent with the legislation is the much discussed veto
21 provision. The legislation specifically provides the
22 Commission with the ability to accept, modify or reject the
23 utility's proposal. The Commission has continuing authority
24 over its ability to make a decision on a utility proposal and
25 we think that is in direct violation of the statute to include

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1 the veto provision that META had proposed.

2 I just wanted to comment on those two legal
3 aspects of our objections to the rules and I would certainly
4 answer any questions the Commission has, if need, but I would
5 like to call at this time Mr. Maurice Brubaker to the stand as
6 our witness.

7 JUDGE DALE: Thank you.

8 (Witness sworn.)

9 MAURICE BRUBAKER testified as follows.

10 QUESTIONS BY MS. VUYLSTEKE:

11 Q. Could you please state your name and business
12 address for the record?

13 A. Yes. My name is Maurice Brubaker. My
14 business address is 1215 Fern Ridge Parkway, St. Louis,
15 Missouri 63141.

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

18 A. Brubaker and Associates, as a president and
19 managing principal.

20 Q. Mr. Brubaker, have you been involved in the
21 development of SB 179 and the rules that have been enacted
22 under -- the proposed rules that have been proposed under that
23 legislation?

24 A. Yes, I have.

25 Q. Could you discuss your recommendations and

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1 proposed changes to that rule at this time?

2 A. Yes. Mr. Chairman, Commissioners, Judge Dale,
3 appreciate the opportunity and I'll try to be brief, mindful
4 of the hour. We will be submitting some written comments that
5 provide more detail here.

6 The first issue I wanted to address was the
7 veto power provision that's been talked about quite a bit
8 already. And there are legal and also policy aspects to this
9 and I will talk about the policy aspects of it.

10 I just think it's -- it's bad policy to give
11 the regulated entity the veto power over how it's going to be
12 regulated and what kind of fuel adjustment mechanism is
13 beneficial and appropriate. I don't think the Commission
14 should cede that power.

15 And in that connection, I think it's important
16 to recognize that Section 11 in the proposed rule is the
17 section that deals with incentive provisions and incentive
18 clauses. This is where I think you could adopt something that
19 embodies a sharing of increases or decreases in costs between
20 utilities and consumers, where you could adopt performance
21 standards for generating units, where you could do all kinds
22 of things that would be designed to incent performance and to
23 align the interest of the utility with that of the consumers.

24 The -- I guess the colloquial reference to
25 that was having the utility having some skin in the game. And

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1 just to make sure the connection is there, I'll refer to it in
2 that way. We do think that's important, that that be
3 preserved.

4 If you allow the utility to have veto power
5 over the form of the clause, that totally eviscerates that
6 concept entirely. You could design the most fair and
7 reasonable and balanced incentive mechanism in a fuel clause
8 and the utility could say, no, not interested, we don't want
9 that, we'll just take it in base rates.

10 And we think that would be a very negative
11 outcome and would not want to see that happen. Certainly
12 would not be consistent with our view of what we thought we
13 were getting with the legislation or what we think is good
14 regulatory policy.

15 Second issue is over-earnings or potential
16 over-earnings. And as several have said, we've had long
17 periods of time here where some of the major utilities have
18 not been in for rate increases but, in fact, have made refunds
19 and given -- provided rate decreases as a result of either
20 voluntary action or Commission proceedings.

21 So we don't believe that that was a one-time
22 circumstance. We believe that circumstance can continue just
23 by virtue of the structure of the regulatory process. As you
24 know, when a utility puts in new capital, it goes fully in
25 rate-base, it then depreciates overtime so the return

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1 requirement drops.

2 The utilities have been very good at keeping
3 up with new technology, improved work practices and reducing
4 head count and doing all kinds of other things that have
5 effectively resulted in reduced costs. We don't see that as a
6 one-time phenomenon.

7 Some will argue that we have large
8 construction programs coming up and that will be a period of
9 time at least when we don't face that phenomenon because costs
10 will generally be increasing. While that may be true for some
11 utilities for some period of time, once those capital assets
12 are absorbed into rates at full cost, we'll be back in what I
13 used to call the post nuclear era, which happened subsequent
14 to Callaway and subsequent to Wolf Creek.

15 We put all the capital's assets in rate-base,
16 they depreciated, return requirements came down, returns on
17 equity rose significantly and produced the need for rate
18 reductions and refunds.

19 That will only grow to be a bigger problem if
20 we have single-issue rate-making and allow utilities to pass
21 along increases in fuel costs, certain forms of purchased
22 power costs and perhaps, if the environmental clause is
23 developed into a rule, increases in those kinds of costs as
24 well. So we see that as a very significant peril.

25 We will be proposing in the language -- or in

1 the comments that we submit some specific language which would
2 require the Commission to consider whether the presence of a
3 fuel clause is likely to allow the utility to earn in excess
4 of its authorized return on equity and to allow the Commission
5 to give it permission, if it finds that to be the case, to
6 include some kind of an earnings mechanism in the fuel clause
7 that would allow that situation to be -- to be remedied.

8 I would mention that the utilities, of course,
9 don't like this provision and will say and have said that this
10 takes away from the fuel clause and makes Missouri less
11 attractive.

12 I would only point out that one of the states
13 that utilities often refer to and mention and laude as being
14 progressive on the regulatory scene and doing a good job in
15 keeping utilities healthy is Indiana.

16 State of Indiana has, by statute, an earnings
17 adjustment clause that requires the Commission to take into
18 account offsetting decreases and other kinds of costs in
19 deciding whether and how much to allow to go through a fuel
20 adjustment clause to recover additional cost of fuel and
21 purchased power.

22 The only other remedy that's been pointed out
23 is a complaint case. And for all the reasons that have been
24 mentioned previously, I will simply note that a complaint case
25 from a consumer's perspective is not a satisfactory vehicle to

1 resolve and remedy an over-earnings situation.

2 Two other quick points. We agree that line
3 losses in the delivery of electricity are a physical
4 phenomenon and believe that the rule should require
5 recognition of line losses in the fuel adjustment clause.

6 The final comment I wanted to make was about
7 the rate cap or so-called soft cap. The purpose of such a cap
8 is to just smooth out variations in fuel adjustment levels.
9 You've seen some of the volatility already in other clauses.
10 Although the volatility in fuel adjustments is likely to be
11 much less, they can still trigger consumer complaints and
12 negative regulatory publicity.

13 The key point and what I want to emphasize is
14 that giving the Commission in the rule permission to implement
15 a soft cap does not in any way harm the utility provided the
16 utility is provided with carrying charges on the deferred
17 balance. It's really a no-cost solution to the utility.

18 To the extent that the Commission at times may
19 find this to be reasonable, we think it's a good arrow to have
20 in the quiver. It may not be necessary or desirable in all
21 circumstances or for all utilities or even for all rate
22 classes in a given utility.

23 I think it's clear from the comments of
24 Noranda that they find that very important to them. The
25 clients that I represent in this proceeding find it to be much

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1 less important to them. However, I think one of the -- one of
2 the things that we should strive for is a fuel clause that can
3 accommodate the interest of a broad range of consumers and
4 give the Commission that tool that it needs to address those
5 circumstances if, as and when they arise.

6 With that, I'll stop and we will be submitting
7 written comments later.

8 CHAIRMAN DAVIS: Go ahead, Commissioner
9 Appling.

10 QUESTIONS BY COMMISSIONER APPLING:

11 Q. You was like an individual that was doing his
12 dissertation performance there that ended up and you were
13 waiting for everybody to say is it good or bad. But thank you
14 for your comments.

15 There's one question that I did have and I've
16 kind of lost it because it was back in the earlier -- in your
17 earlier presentation or part of your presentation.

18 A. Veto power, earnings test?

19 Q. Well, I don't want you to go through it all
20 again.

21 A. No, no, i won't. Unless you insist.

22 Q. If I think of any in a few minutes, I'll come
23 back to you.

24 COMMISSIONER APPLING: Okay. Thank you.

25 THE WITNESS: Thank you, sir.

1 QUESTIONS BY MR. CHAIRMAN DAVIS:

2 Q. Mr. Brubaker, you talked about some sort of
3 analysis that related to the company's return on equity.
4 Could you refresh for my recollection what language you used
5 again?

6 A. Oh, sure. And this would be in our submitted
7 comments, but I said we would be proposing that there be
8 language in the rule that the Commission would or shall
9 consider whether the presence of the FAC, or RAM now, is
10 likely to allow the utility to earn in excess of its
11 authorized return on equity.

12 If the Commission finds this to be the case,
13 it may include in the fuel adjustment clause a mechanism
14 designed to periodically examine the utility's earnings and
15 appropriately limit the collection of charges under the FAC or
16 RAM to the extent necessary to prevent the utility from
17 earning in excess of its authorized return on equity as a
18 result of revenues received through the RAM.

19 Q. Okay. I think I'm following. Because I was
20 just recalling that the statute says something to the effect
21 that the mechanism has to be reasonably designed --

22 A. Correct.

23 Q. -- you know, to help the company earn its
24 return on equity. So obviously if it's allowing them to
25 over-earn, it may not be reasonably designed?

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1 A. Correct. That's our -- that's our view --

2 Q. And --

3 A. -- in our world.

4 Q. And unless it contains some -- unless there's
5 some provision that says, you know, if a company does
6 over-earn, than this is what happens --

7 A. Correct.

8 Q. -- this is what happens. These over-earnings
9 immediately get funneled back through the fuel clause?

10 A. That's correct.

11 Q. Okay. All right.

12 A. To the extent that the -- the revenues through
13 the fuel clause cause that to happen. A utility could still
14 earn above their authorized rate of return, but if they were
15 not getting any revenues through the fuel clause, nothing
16 would happen. It would only be if the presence of revenues
17 through the fuel clause pushed them above the authorized rate
18 of return and they would not otherwise be above it would there
19 be any corrective action taken.

20 Q. Okay. All right. I think I understand that
21 point.

22 CHAIRMAN DAVIS: All right. That was the only
23 question I had, Judge Dale.

24 JUDGE DALE: Okay. Thank you, Mr. Brubaker.

25 THE WITNESS: Thank you.

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1 JUDGE DALE: Mr. Lowery I believe is next.

2 MR. LOWERY: Your Honor, as I indicated,
3 Mr. Lyons is going to be providing comments on behalf of
4 AmerenUE and I may provide some brief comments after his are
5 done. So if it pleases the Commission, I'll introduce him and
6 let him make his comments.

7 JUDGE DALE: Okay. If these are just
8 comments, he needn't be sworn.

9 MR. LOWERY: Well, I'm not sure what the
10 distinction between testimony and comments is.

11 JUDGE DALE: There really is none.

12 MARTIN J. LYONS testified as follows:

13 QUESTIONS BY MR. LOWERY:

14 Q. Mr. Lyons, would you state your name for the
15 record, please?

16 A. My name is Martin J. Lyons.

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

19 A. I'm employed by AmerenUE as vice president and
20 controller.

21 Q. Mr. Lyons, I'll ask you a couple of questions
22 that have been asked of a couple of the other witnesses. You
23 too have been involved, I believe, in all or nearly all of the
24 workshops that were moderated by the Staff's Commission
25 relating to these rules; is that correct?

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1 A. That is correct.

2 MR. LOWERY: With that, your Honor, I'll
3 tender Mr. Lyons. Thank you.

4 JUDGE DALE: Please proceed with your
5 comments.

6 MR. LYONS: Thank you, Judge. Good afternoon.
7 As I just stated, my name is Marty Lyons. I am vice president
8 and controller for AmerenUE.

9 First, I want to say that we appreciate the
10 opportunity to appear here this afternoon and provide comments
11 on the rules the Commission has proposed to implement the
12 provisions of Senate Bill 179 relating to fuel adjustment
13 clause of FAC in Missouri.

14 I'd first like to acknowledge, as many others
15 have, the tremendous amount of work that have gone into
16 developing those rules, particularly on the part of the
17 Commission Staff.

18 As Mr. Wood noted this morning, the Staff
19 moderated more than 15 workshops relating to the development
20 of the fuel adjustment clause rules. AmerenUE actively
21 participated in these workshops, along with a large number of
22 other stakeholders, including other utilities, members of the
23 Staff, consumer advocates and industrial customers.

24 Overall, we believe that the rules as proposed
25 are a positive step toward making available to the Commission

1 the tools the legislature created when it enacted Senate
2 Bill 179 by a vote of 179 to 7 back in the spring of 2005.

3 The proposed rules do not mirror that which
4 AmerenUE would have proposed. However, we acknowledge that
5 the proposed rules reflect the substantial time and attention
6 as well as compromise of the many parties that participated in
7 the workshop process.

8 In particular, we would have liked to have had
9 the option of making monthly adjustments to the FAC factors if
10 warranted. But the proposed rules are prescriptive in this
11 regard and in all cases would allow only one to four
12 adjustments per year. We would have also preferred that FAC
13 adjustments be based on projected, rather than historic, costs
14 like the vast majority of FACs in other states around the
15 country.

16 However, recognizing that the regulatory
17 process, including the development of these rules, generally
18 involves some give and take, we are not asking that the rules
19 be changed to allow monthly adjustments or the use of
20 projected costs.

21 The rules as proposed contain substantial,
22 perhaps unprecedented, filing and reporting requirements that
23 will require a significant amount of time and effort on the
24 part -- on the part of utilities utilizing an FAC. In some
25 respects, these requirements are burdensome and arguably

1 unnecessary.

2 However, in general terms, we are not
3 concerned with our ability to comply with the requirements of
4 the rules as proposed and for the most part, we are not asking
5 for any changes in the administrative provisions of the rules
6 as proposed.

7 With that said, we do have some specific
8 comments on the rules, but before summarizing those comments,
9 I want to discuss briefly the context for the enactment of
10 Senate Bill 179 and the resulting development of these
11 proposed rules.

12 Senate Bill 179 brings Missouri into the
13 mainstream of public utility regulation. With the adoption of
14 appropriate rules, this Commission will possess the same tools
15 possessed by Commissions in 27 of the other 29 states with
16 similar regulatory processes. Indeed, nearly every state in
17 the country has a fuel adjustment mechanism.

18 Senate Bill 179 provides the Commission with a
19 tool for the electric utilities under its jurisdiction similar
20 to that which has been used in the gas utility business for
21 decades, the PGA. By providing this tool, Senate Bill 179
22 will help put Missouri electric utilities on the same footing
23 as the vast majority of similarly situated utilities by
24 helping to protect the credit quality of utilities, thus,
25 lowering borrowing costs and ultimately by lowering rates due

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1 to these lower borrowing costs, particularly given the heavy
2 environmental and other capital investments Missouri electric
3 utilities are facing over the coming years.

4 Indeed, FACs are considered to be a key
5 regulatory tool by the rating agencies that determine utility
6 debt credit ratings and ultimately utility borrowing costs.

7 Senate Bill 179 contains a host of components
8 and consumer protections that are more extensive than
9 typically seen in the fuel adjustment clauses in the 27 other
10 similarly regulated states with such clauses.

11 Among those consumer protections are the
12 following: A fuel adjustment clause can only be established
13 in a full-blown general rate proceeding where all relevant
14 factors are considered. Once established, the utility must
15 then do something that to our knowledge no other utility with
16 a fall adjustment clause must do. It must file another
17 general rate case 37 months later where, again, the FAC will
18 be reviewed along with all other relevant factors, including
19 the utility's entire financial in-earnings picture.

20 Senate Bill 179 places no limit of any kind on
21 the Commission's investigatory powers, power to initiate a
22 complaint or entertain a complaint from others if it is
23 believed that a utility is indeed over-earning.

24 Senate Bill 179 mandates that only prudently
25 incurred costs can be recovered via the fuel adjustment

1 clause. A prudence review must take place no less frequently
2 than every 18 months. True-up fuel adjustment clause revenues
3 and expenses must occur no less frequently than every
4 12 months. If amounts must be refunded as a result of either
5 true-up or prudence review, interest must be paid at the
6 utility's short-term borrowing rate.

7 Unlike more than 20 of the similarly situated
8 rates with fuel adjustment clauses, the proposed rules would
9 require that adjustments must be based on historic rather than
10 projected costs. The proposed rules include a specific
11 provision that would prevent the utility from
12 opportunistically discontinuing its fuel adjustment clause in
13 times of declining fuel prices.

14 The proposed rules require no less than one
15 FAC adjustment filing each year, ensuring that rates will go
16 down in times of declining fuel prices. As previously noted,
17 the proposed rules contain extremely detailed surveillance,
18 monitoring and reporting requirements allowing other parties
19 to very closely monitor the operation of the FAC and the
20 utility's financial picture, including its overall earnings.

21 At the end of the day, the quantity and
22 quality of the consumer protections embedded in Senate
23 Bill 179 and reflected in the rules as proposed, particularly
24 when considering the mandated periodic rate case requirement,
25 makes Missouri's FAC under these proposed rules among the

1 most, if not the most, consumer protective in the country.

2 I mentioned earlier that while we believe the
3 proposed rules are a good step toward making this important
4 tool available in Missouri, there is some room for improvement
5 and we have some specific comments which I'd like to touch on
6 briefly before concluding. More detail on these particular
7 points as well as other comments I've made this morning are
8 included in the written comments filed on behalf of AmerenUE
9 in the docket created for this rulemaking.

10 First, regarding the Chapter 3 rules, as
11 proposed, the rules require complete explanations of
12 19 separately enumerated items that would basically comprise
13 the minimum filing requirements for an FAC.

14 We raise no objection to providing fair
15 information on those 19 items, but we believe requiring a
16 so-called complete explanation is probably not what the
17 Commission intends in adopting the rules. As I understand it,
18 the term "complete" means absolutely perfect. The rule should
19 not create a situation where a utility asking for an FAC does
20 not achieve absolute perfection in providing explanations of
21 various aspects of the FAC and then be precluded from
22 utilizing an FAC on that technicality.

23 Rules, as I understand, carry the force of
24 law. So the Commission should use language that means what is
25 intended, that reasonable explanations or explanations in

1 reasonable detail be provided. That means an explanation that
2 is fair, just and suitable under the circumstances.

3 Although we are not objecting to be required
4 to provide very extensive surveillance reporting, it does not
5 seem necessary to divert utility staff and other party
6 resources to reporting and analyzing this information every
7 single month. We believe surveillance reporting should be
8 required quarterly, not monthly, with the data in those
9 quarterly reports to be presented by month.

10 One provision of the proposed rules appears
11 intended to prevent the utility from recovering its fuel or
12 purchased power cost as they are incurred if there might be
13 some possibility in the future of an insurance recovery or of
14 a later prudence disallowance.

15 We believe recovery should not be precluded
16 unless and until insurance proceeds are received or imprudence
17 is indeed found by the Commission. If that happens, the
18 statute mandates that full refunds be given with interest and
19 the rule should reflect that.

20 We agree to the extensive provisions that make
21 it easier for those who are a party in the rate case where the
22 FAC was established to automatically be involved in periodic
23 adjustment true-up and prudence review dockets regarding the
24 same FAC.

25 However, we do not believe such parties should

1 be granted automatic intervention into each subsequent rate
2 case without each such party applying to intervene so that all
3 parties, including the company and Commission, can determine
4 if intervention is appropriate in that particular future rate
5 case at that particular future point in time.

6 Regarding the Chapter 20 rules, we believe
7 that if and only if a utility comes in and asks for an FAC,
8 should others be able to propose alternative FACs. We believe
9 this is what the statute requires -- excuse me -- and we are
10 suggesting that this point be clarified in one place in the
11 proposed rules.

12 Chapter 20 contains a provision that under
13 certain circumstances would require the payment of interest at
14 the utility's short-term borrowing rate plus 1 percent. We
15 believe this is unlawful because, as I understand it, the
16 Commission has no power, except if and given by statute, to
17 require such a payment. Senate Bill 179 allows interest at
18 the utility's short-term borrowing rate, not at that rate plus
19 1 percent.

20 We believe the incentive provisions of the
21 proposed rules go beyond addressing the kind of incentives
22 that should be addressed in the FAC rules, which are those
23 relating to improving fuel and purchased power procurement.
24 Consequently, references to performance-based programs
25 generally should be deleted.

1 Moreover, if the Commission allows an FAC to
2 be discontinued, there is no authority in Senate Bill 179 for
3 the Commission to impose some kind of incentive on the utility
4 prospectively. This requires that the reference to or
5 discontinuation in this section of the rules on incentives be
6 deleted.

7 Finally, there are two procedural mechanisms
8 built into the rules that are unwarranted and potentially
9 unwise. First, the proposed rules would require that the
10 Commission adopt a procedural schedule within 60 days of the
11 filing of an over-earnings compliant case.

12 The problem with this deadline is that it
13 fails to take into account the circumstances of a given case
14 and will prove difficult, if not impossible, to meet. Indeed,
15 it is challenging to meet this kind of time frame even in
16 general rate increase cases.

17 Yet, in general rate increase cases, extensive
18 data, testimony, tariffs, cost of service studies, etc., are
19 filed at the inception of the case. In a complaint case,
20 there is no assurance that all of the necessary data will be
21 filed or even availability at the inception of the case.

22 Today, the Commission is free to set a
23 schedule when it is appropriate to do so whether that be in
24 less than 60 days, at 60 days or more than 60 days. In our
25 view, the Commission should not tie its own hands in this fuel

1 adjustment clause rule-making by setting an arbitrary and
2 artificial deadline for setting such a schedule.

3 Second, we believe it is unnecessary and,
4 again, potentially unwise to set an arbitrary deadline just
5 four years from now for a formal review of these FAC rules.
6 All stakeholders need to have a reasonable assurance that
7 these rules will remain in effect.

8 Further, a rule provision that might be viewed
9 as a scheduled date for reconsideration will not be welcomed
10 by the rating agencies that have a profound effect on debt
11 cost for utilities.

12 We recognize that the Commission always has
13 the power to review and indeed revise its rules, but we do not
14 believe it is necessary or helpful to pre-schedule such a
15 review in this rule.

16 Those are my prepared remarks. Again, I
17 appreciate the opportunity to provide comments on the proposed
18 rules. I think Jim Lowery may want to make a few comments and
19 then we'd both be available to answer questions.

20 MR. LOWERY: May it please the Commission.

21 I just wanted to touch on a few things that
22 came up during the comments that were made today and hit four
23 or five points. And then, as Mr. Lyons said, we'd be happy to
24 try to answer any other questions the Commission might have.

25 First, I wanted to discuss the proposal that

1 the Office of the Public Counsel has made to, in effect,
2 condition the ability to use a fuel adjustment clause on
3 having an approved resource plan under Chapter 22 of the
4 Commission's rules.

5 To my knowledge, this Commission has never
6 approved a resource plan under Chapter 22 of the Commission's
7 rules and there's probably a good reason for that. That is
8 because the Commission's rules under Chapter 22 simply do not
9 provide a process or contemplate approval of a resource plan.

10 Indeed, I'm not sure that the Commission
11 itself wants to get into the business of approving an entire
12 resource plan at a particular point in time and the rules have
13 never contemplated that that be done. The rules are all about
14 process. They're about whether or not the utility has in
15 place a robust resource planning process, an important
16 objective of which is essentially least cost planning.

17 And I think words of the rule are the
18 minimization of the present value of the revenue requirement.
19 But that's what the rules are about. And Staff agrees with
20 that. That's always been how the rule has been interpreted
21 and applied.

22 And to condition the use of a fuel adjustment
23 clause on approval of a plan that has never been approved,
24 isn't something that the Commission approves, isn't something
25 the Commission probably wants to be in the business of

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1 approving is, in effect, to disable the FAC entirely.

2 I mean, that will be the result. The result
3 will be that the tool the legislature has given you cannot
4 effectively be used because it's just not practical to do
5 that, particularly in light of the fact, as Staff itself has
6 recognized, there are some issues in those rules -- they were
7 developed 12 or 14 years ago -- that need to be changed. And
8 to disable the use of the fuel adjustment clause on the basis
9 of that we think is unwarranted and unwise.

10 I wanted to address secondly what folks have
11 referred to as the veto provision. It's not a veto provision.
12 What it amounts to is this. The first time and only the first
13 time the utility says, all right, we have a new statutory
14 scheme, we have new rules in place that allow that scheme to
15 be used, we want to ask for the establishment of a fuel
16 adjustment clause.

17 That very first time only, as long as a record
18 has also been developed in that case to allow base rate
19 treatment of fuel -- of fuel and purchased power costs, the
20 utility would have the ability to withdraw its tariff --
21 withdraw its FAC tariff and say, We're operating under a new
22 scheme, new statute, new regulatory scheme.

23 So that the utility is in a position that it
24 feels like it can sort of open the FAC door and step into that
25 world without being in a position where it can have imposed

1 upon it a proposal or consequences that it never contemplated
2 that might prevent it from recovering all of its prudently
3 incurred fuel and purchased power costs.

4 And as we've talked about or heard in some of
5 the proposals today, that seems to be a proposal that some
6 folks want to make. And at that point what would happen is,
7 is fuel and purchased power would be treated in base rates.

8 And I'm puzzled by the objection of the
9 utility's ability to withdraw that proposal and have these
10 costs treated in base rates because I've heard a lot today
11 from several parties about the virtues of base rate
12 regulation, the admiration they have for how it preserves the
13 correct incentives and those things. And that would be the
14 result.

15 The result would be what I think a number of
16 folks in this room actually would prefer, and that is that we
17 simply have base rate regulation and that we not bring
18 Missouri into the twentieth -- twenty-first century, so to
19 speak, and have a fuel adjustment clause at all.

20 The third point I wanted to make is that a
21 comment I think was made by Mr. Micheel which is that the
22 Commission would be powerless to exercise control or oversight
23 over a utility if a fuel adjustment clause -- I think he
24 called it an incentive FAC mechanism was established.

25 I think Mr. Micheel is confusing subsection 1

1 of Senate Bill 179 or 386.266.1 with subsection 8.

2 Subsection 1 recognizes that the Commission can include
3 incentives to improve fuel and purchased power procurement as
4 part of a fuel adjustment clause.

5 Subsection 8 is an entirely separate section
6 that simply says, If the Commission adopts the
7 performance-based regulation plan, something akin to the
8 experimental alternative regulation plan that AmerenUE had for
9 two different EARPs over a six-year period. If an overall
10 performance-based plan is adopted, that then plan is going to
11 be binding on everybody for the term of the plan.

12 But that is not -- that provision does not
13 speak to subsection 1, which simply talks about including
14 incentives in an FAC mechanism. The rules specifically
15 recognize that if -- that nothing in the rules or in the
16 statute limits the Commission's investigatory power, the power
17 to bring a complaint, the power to entertain a complaint if
18 indeed people believe that we're over-earning over a sustained
19 period of time, that a complaint is warranted because rates
20 are not just and reasonable.

21 I also want to make a factual correction to
22 something that -- I believe it's a factual correction to
23 something Mr. Micheel said. He indicated that these FAC
24 adjustments go into effect, you know, lightning quick. I
25 think he might have said it was unprecedented how quickly they

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1 go into effect.

2 I believe that the PGA mechanisms in place in
3 Missouri, typically those adjustments occur after 10 days
4 after the adjustment is filed. Under the proposed rules, an
5 FAC adjustment is not going to occur for 60 days. So I don't
6 think it's an unprecedented time frame and, in fact, it's
7 quite a bit longer than the time frames we see with PGAs.

8 Finally, I wanted to direct your attention to
9 something that's in our comments in particular. And these are
10 Exhibits 1, 2 and 3 that are a part of the comments that --
11 and I don't believe I mentioned this before. We filed
12 comments earlier today as well, written comments in the
13 docket.

14 And I believe, Judge Dale, you're shaking your
15 head and indicating that they are there indeed.

16 But I wanted to particularly direct your
17 attention to Exhibits 1, 2 and 3. This exhibit shows -- see
18 all those green states? All those green states are the 27 out
19 of the 29 other non-restructured states in the country that
20 have fuel adjustment clauses. Many of them have had them for
21 a very long time. And most of them are lacking a number of
22 the features that are included in Senate Bill 179 and that are
23 also includes in the proposed rule.

24 This is a similar chart that shows the
25 Midwest. And if you look at the Midwest, you can see we are

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1 the only state in the Midwest that does not have one of these
2 mechanisms. And I think the legislature recognized that and
3 when Senate Bill 179 was enacted, wanted to bring Missouri
4 into the mainstream of public utility.

5 I'd also point out -- and I won't go through
6 each one of these, but Mr. Micheel took issue with some of the
7 so-called consumer protections that he indicated were
8 so-called consumer protections.

9 If you look at Exhibit 3, you're going to see
10 that it's almost unheard of that fuel adjustment clauses have
11 to be established in an initial rate case. Most of the time
12 they can be established in a vacuum separately. And that is
13 an important consumer protection.

14 It is unheard of that there must be another
15 periodic rate case just -- that commences just 37 months later
16 in order to review the fuel adjustment clause operation and
17 all of the other aspects of the utility's earnings.

18 And so Senate Bill 179 clearly is different.
19 It is a very consumer protective statute. It has features
20 most fuel adjustment clauses or statutes or rules do not have
21 in other states. And I'd encourage you not to allow
22 yourselves to miss the mark in terms of why we are here today.
23 And I think why we're here today is to address rules to
24 implement Senate Bill 179, not to, in effect, fork the will of
25 the legislature when 179 legislators out of 186 legislators

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1 enacted this legislation.

2 Thank you for your time. And, again, either
3 one of us would be happy to answer any questions you might
4 have.

5 JUDGE DALE: Chairman Davis?

6 CHAIRMAN DAVIS: Mr. Lowery, okay, on the
7 issue of right of first refusal, I mean everybody gets to come
8 in and make their pitch. Why should a utility, you know -- if
9 the Commission adopts an alternative proposal, why should this
10 Commission be allowed, you know, at that point to give the
11 utility one last bite at the apple?

12 And assuming that that -- assuming that one
13 last bite at the apple, I mean, if the company truly felt that
14 the Commission's decision was unconscionable, couldn't that
15 issue just be raised in a Motion for Rehearing?

16 MR. LOWERY: Well, Commissioner, when you say
17 "right of first refusal," I assume you mean what others have
18 referred to as the veto provision.

19 CHAIRMAN DAVIS: Yes.

20 MR. LOWERY: The reason that's an important
21 feature for utilities, Senate Bill 179 it's new, it's unique.
22 As I indicated before, it contains features and provisions
23 that we don't typically see in other fuel adjustment clauses,
24 statutes and rules.

25 And the way the statute is drafted and the way

1 these rules are drafted is once the utility asks for a fuel
2 adjustment clause and has one in place, then the utility is
3 going to have that fuel adjustment clause in effect forever
4 unless the utility asks to discontinue it and those who oppose
5 this provision we're talking about, also, in effect, don't
6 want to allow the utility to ever have an opportunity to
7 discontinue the fuel adjustment clause.

8 And I want to point out the discontinuation
9 provision in the proposed rules is very specific. The utility
10 can't come in and seek to discontinue it at a time when fuel
11 costs are declining in order to avoid passing those on or if
12 off-system sales are included in the mechanism, which they may
13 very well be -- the rule accommodates that -- in times when
14 off-system sales margins are increasing in order to avoid
15 passing those on.

16 But because we are entering what really is a
17 new world under a new statute and with new rules, it seems
18 very reasonable that the utility ought to have an ability if
19 they open that door, if the proposal is changed in a way that
20 is just -- it's unacceptable, it puts -- you have situations
21 where not all of the costs may be recovered as the mechanism
22 has modified, that the utility ought to be able to say, Okay,
23 we'll just treat this in base rates, which again, is what
24 we've heard many people really would prefer in the first
25 place. Nobody is harmed in that situation.

1 Now, after that first rate case, there is no
2 right of first refusal, as you call it, provision at all.
3 Once that happens, once that fuel adjustment clause has been
4 in place, we have that next rate case later, whatever
5 modifications the Commission were to order or whatever kind of
6 fuel adjustment clause the Commission would order, the
7 Commission -- the utility would have to implement that fuel
8 adjustment clause.

9 The only limit on that would be is if there
10 was something actually unlawful about what the Commission did
11 just like any other Commission order. But presuming it's
12 lawful, that decision would stand and that fuel adjustment
13 clause would continue to roll over from case to case.

14 CHAIRMAN DAVIS: Do you think it is lawful to
15 give the utility that -- I guess I'll call it that one free
16 bite at the apple?

17 MR. LOWERY: I do, Commissioner. Because all
18 that is really happening is the Commission is withdrawing
19 their FAC tariff. And utilities can withdraw tariffs in other
20 contexts in a similar fashion.

21 CHAIRMAN DAVIS: But if this Commission is
22 charged with setting just and reasonable rates and we adopt a
23 mechanism that's just and reasonable, then why would we want
24 to -- why would we want to let you say, Oh, well, we don't
25 think that's just and reasonable to us so we want to go -- we

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1 want to go back to this other?

2 MR. LOWERY: Well, Commissioner, I think one
3 of the things you touched on is important to keep in mind.
4 The Commission's charged with setting just and reasonable
5 rates.

6 An FAC mechanism is a mechanism. It's a tool
7 that's available that later, if there are changes in those
8 fuel and purchased power costs, may have some dollars
9 associated with it. It's a way of handling fuel and purchased
10 power costs that are different than handling them in base
11 rates.

12 All we're saying is, is that the costs would
13 simply be handled in base rates. And the utility would have
14 to develop an appropriate record, there would have to be
15 substantial and competent evidence of record just like there
16 would have to be for any other decision the Commission makes,
17 to allow base rate treatment of those costs.

18 And if there wasn't, then the utility wouldn't
19 be able to withdraw its proposal in that first rate case. But
20 presuming that there is, then we are exactly in the position
21 in terms of treatment of fuel and purchased power costs that
22 we're hearing from a number of folks that they would rather be
23 in in the first place. So the objection to the provision is a
24 little bit puzzling to me.

25 CHAIRMAN DAVIS: Okay. Moving right along

1 here, we've heard a lot of discussion here today about the,
2 quote, interim rules. Assuming that there are three votes on
3 this Commission to put out a final rule of some sort and that
4 final rule is put out, do you believe that we would need
5 interim rules after that final rule is put out?

6 And then obviously you've got the rule, it
7 goes to JCAR, then it would be published. Then assuming it
8 makes it through JCAR -- maybe there are a lot of ifs in this
9 scenario, but eventually it would be final, you know,
10 hypothetically speaking possibly at the end of January or
11 sometime at that time. So, you know, would those interim
12 rules need to be there?

13 MR. LOWERY: And if I can just ask a
14 clarifying question. Are you talking about -- I think they've
15 been referred to as transition provisions?

16 CHAIRMAN DAVIS: Yes. The transition
17 language. I'm sorry. I'm not using the nomenclature that
18 some of the parties are using.

19 MR. LOWERY: That's okay. I just want to make
20 sure I'm answering the question that you're asking me.

21 CHAIRMAN DAVIS: Yes.

22 MR. LOWERY: Commissioner, I believe that
23 while the transition rules -- I don't believe there would be a
24 problem with the transition rules continuing to exist, I don't
25 think they're are an essential part of the rule.

1 As you know -- and I don't want to -- I'm not
2 going to get into rate case issues because I don't think this
3 is the appropriate forum to do it, but I think, as you know,
4 we've simply suggested the Commission, based upon really
5 comments Commissioners made before the rules were proposed at
6 all, that the same terms as are contained in those transition
7 rules simply be adopted by order in our rate case so that
8 there are rules of the game, so to speak, that will apply
9 during this period when we don't have FAC rules.

10 And that's really been necessitated by another
11 pretty unique feature of Senate Bill 179; and that is, number
12 one, the fact that you've got to adopt rules before you can
13 use the statute at all. That's fairly unusual.

14 And, number two, the fact that the statute is
15 very express in indicating that even though you can't drop the
16 gavel, so to speak, and approve fuel adjustment clause until
17 you have rules in place, the statute expressly provides that
18 the utility can ask for a fuel adjustment clause before you
19 have rules at all.

20 And so are they an essential part of the
21 rules? No. I'd have to say that they're not an essential
22 part of the rules given the way the process has played out.

23 CHAIRMAN DAVIS: Okay.

24 MR. LOWERY: I hope that answered your
25 question.

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1 CHAIRMAN DAVIS: I think that did answer my
2 question. No further questions at this time.

3 JUDGE DALE: Thank you.

4 COMMISSIONER APPLING: How are you doing,
5 Mr. Lowery?

6 MR. LOWERY: I'm doing fine, Commissioner
7 Appling. How are you?

8 COMMISSIONER APPLING: You know, I heard a lot
9 about this veto power the other day and I want to pick up
10 where Chair Davis left off here.

11 Which one of you all sat through the whole
12 hearing? You did, I understand?

13 MR. LYONS: We both did.

14 MR. LOWERY: Both of us did.

15 COMMISSIONER APPLING: You all have seen as
16 much of Warren as you want to see.

17 MR. LOWERY: We're always happy to see Warren.

18 COMMISSIONER APPLING: Let me be up front and
19 direct with you. Is META trying to corral this Commission by
20 being able to take your marbles and go home when you don't
21 agree with what we say?

22 MR. LOWERY: Absolutely not, Commissioner.
23 The concern that we have is this is a new statute that has
24 features that really there's really no other -- there's no
25 other FAC statute in the country that has anything like it and

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1 the rules are new.

2 And there are a great number of really,
3 frankly, unresolved legal questions that are undoubtedly going
4 to come up in our rate case and every other rate case the
5 first time these fuel adjustment clauses are established.
6 What's the scope of these incentives? And can you impose them
7 on the utility? And can you have an incentive that, in
8 effect, says you can't recover all of your fuel costs or
9 perhaps other of your costs?

10 And we don't have any idea, to be honest, how
11 the Commission may resolve some of those tough questions. And
12 there are questions that are not resolved in the proposed
13 rules and really can't be resolved in the proposed rules
14 because every utility's different.

15 And as the last 18 months have proven, to
16 resolve everything up front when you're not considering
17 particular utility circumstances, something -- we would
18 probably never accomplish a rulemaking if we were to try to do
19 that.

20 And so until utilities have an opportunity to
21 have this statute and these rules applied and understand what
22 the resolution of some of those issues are going to be, I have
23 a tough time, as a lawyer, advising my client that you should
24 open that door and just throw it out there not knowing how any
25 of these costs are going to be treated and having no ability

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1 to do anything about it, particularly in a situation where
2 once -- once that happens, we're in the so-called fuel
3 adjustment clause world possibly forever. As a lawyer
4 advising my client, I think that's a concern.

5 And the mechanism that -- that has been
6 crafted in the rules leaves you in a position where the
7 utility's got to develop a record, there's got to be a record
8 to support what an appropriate level of fuel and purchased
9 power costs would be in base rates so that it can be treated
10 in base rates.

11 It's not a situation where you're not going to
12 have to have that, essentially the parallel information. And
13 we will have base rate treatment like we've always had, like
14 we would have if the utility had never asked for the fuel
15 adjustment clause in the first place.

16 And so the remedy -- I mean, it doesn't gain
17 some advantage for the utility. We're not getting something
18 we didn't have before. We simply are going to have it treated
19 in base rates if the way the fuel adjustment clause mechanism
20 in that case of first impression is resolved is simply
21 something that the utility in good conscience doesn't think is
22 appropriate or something that it can live with. And that's
23 not going to apply in later cases, just in that first one.

24 COMMISSIONER APPLING: Do you actually believe
25 all of these guys on the right side of this room over here,

1 specifically Mr. Brubaker, who is, you know, a seasoned man
2 like I am, got a lot of age and wisdom behind him. Do you
3 believe that he's confused about this veto that he come up and
4 said that he doesn't believe in? Is he confused and doesn't
5 understand as well as you do about this system?

6 MR. LOWERY: And I don't think I indicated
7 that anybody was confused about how it works or what it does
8 at all. And certainly I don't think that about any of them.
9 I have a great deal of respect for all of these people in the
10 room. I work with just about all of them often.

11 It's not a matter of confusion. It's simply a
12 matter of creating an FAC mechanism that utilities feel like
13 in good conscience that they can use and is on a playing field
14 that that will be effective.

15 MR. LYONS: Commissioner, one comment on
16 Mr. Brubaker's comments. And I would share Mr. Lowery's view
17 with respect to all the parties and his respect to all the
18 parties.

19 Mr. Brubaker commented that in some respects
20 he would prefer rate-making void of use of an FAC. And he
21 said that what he called the veto clause would provide us the
22 opportunity that in a situation where an incentive mechanism
23 or FAC was designed in a perfectly fair way, that we would
24 reject it and go back to base rates.

25 And I would submit that if it was perfectly

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1 fair, I can't imagine why we would, you know, seek not to have
2 it. And if we did -- again, I think we fall back, as
3 Mr. Lowery's pointed, is back to, you know, rate -- you know,
4 having fuel costs in base rates as they have been in the past,
5 which again, I think is what Mr. Brubaker contended was a
6 preference.

7 So I guess I'm just trying to amplify what
8 Mr. Lowery said, but I guess -- I guess, you know in some
9 respects what I'm saying is I'm not sure I see the harm in
10 having the clause in there.

11 COMMISSIONER APPLING: I understand. But when
12 the eleventh hour strikes, I'm going to have to be -- I'm
13 going to have to lay my two dimes down on the table to try to
14 be fair to the utilities as well as the consumer in this
15 state. That's what I'm charged to do here.

16 And I'm trying to get through the -- as we say
17 down in Georgia, through the high cotton to just figure out
18 what is right and what is wrong here. That's the
19 responsibility that lies at this Bench here.

20 And I'm not running away from that, but I just
21 want to make sure that we're being fair to the consumers in
22 this state. Because everywhere I go, everybody's talking
23 about 179. Even somebody cornered me at twelve o'clock in
24 Wal-Mart the other night. Hell, I go there now just to shop
25 because I don't want to be out there in the daytime.

1 But anyway, I hope you understand what we're
2 getting to here. We're going to have to talk about this a
3 little more because it's not ringing with me right now, you
4 know. It's not sitting well with me right now, you know.
5 It's beginning to make me sweat around my ears and I don't
6 usually sweat very easily.

7 MR. LOWERY: I understand.

8 COMMISSIONER APPLING: But you need to go back
9 and we need to go back and make sure that we are proposing the
10 right thing here and something that is fair to yourself and
11 also to the consumers of this state. Enough is said. Thank
12 you very much. Not preaching, just warming up to preach.

13 MR. LOWERY: I understand. Thank you.

14 JUDGE DALE: Thank you both.

15 Mr. Williams.

16 (Witness sworn.)

17 JUDGE DALE: Thank you. Please proceed.

18 DENNIS WILLIAMS testified as follows:

19 MR. WILLIAMS: Thank you. My name is Dennis
20 Williams. I am the vice president of electric regulatory
21 services for Aquila.

22 Over the lunch hour, I had the opportunity to
23 read the comments of AmerenUE. And given the time and in
24 light of brevity, I think I will dispense from my original
25 planned comments and say that I agree with those comments

1 almost in their entirety with a couple of exceptions, which
2 I'll get into. And so I thought maybe I could just
3 extemporaneously speak for just a couple of minutes on what
4 I've heard spoken today.

5 It seems like most of the discussion the
6 concern has been upon consumer protection. And perhaps I look
7 at things too simplified, but I look at, okay, creation of a
8 fuel adjustment clause, does that take away any consumer
9 protection that currently exists? And I don't see how it
10 does. In fact, I would argue that the fuel adjustment clause
11 in and of itself is a fair and reasonable way to provide
12 additional consumer protection.

13 What is more fair and reasonable than paying
14 the costs that are actually incurred by the utility? With the
15 caveat that those costs should prudently incurred, of course.

16 And I think as an example of that, there was a
17 discussion between Chairman Davis and I believe Mr. Trippensee
18 that just touched upon what happened in the late '70s when the
19 Office of Public Counsel successfully challenged the
20 lawfulness of the then existing fuel adjustment clauses.

21 Almost immediately after that successful
22 challenge, the market price of coal dropped. It dropped
23 substantially, 10 to 20 percent, and transportation costs
24 associated with that dropped substantially. The consumers
25 received no immediate benefit of that drop in fuel costs

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1 because the fuel adjustment clause had been eliminated. In my
2 mind, they were not well served by the elimination of the fuel
3 adjustment clause.

4 Along that same line, I would say even though
5 that was a substantial drop in cost, I think we also have to
6 look too -- there's been a lot of discussion today about
7 incentives. And the question is, to what extent can a utility
8 company control fuel costs? Fuel costs are considerable.
9 They amount to 40 to 50 percent of a typical utility's cost
10 that it incurs.

11 Most of those costs though are market driven.
12 Certainly the company has some control over costs, but as
13 demonstrated by that, even a major drop was only 10 to 20
14 percent and none of was because of any utility actions.
15 It was the market.

16 There are other -- you know, there's been a
17 recent discovery of an oil field or perhaps potential oil
18 field. How is that going to impact ultimately the cost of
19 fuels that the utilities -- will it have any? I don't know.
20 To what extent? Could it be substantial? Yes, it could. To
21 what extent does management of a utility play in that?
22 Certainly not 50 percent, like some people with their sharing
23 mechanism would perhaps lead you to believe. So I think we've
24 got to be a little bit careful.

25 Now, why are people endorsing sharing

1 mechanisms? They say because we want to give incentives to
2 the utilities. I would submit that the utilities already have
3 substantial incentives to try to keep costs as low as
4 possible.

5 And I think this fuel adjustment clause, as
6 it's designed, provides an additional substantial incentive
7 through the required annual prudence review. I've heard some
8 people say, well, prudence reviews don't do anything.

9 I've participated in -- directly in fuel
10 adjustment mechanisms in 10-plus states. And in those states
11 where there is a required annual prudence review, there is a
12 definite incentive to the company, to the utility to control
13 those costs.

14 In fact, there are times when perhaps in those
15 prudence reviews you almost go too far with hindsight because
16 everybody gets in mind, well, our job here is to cut the costs
17 that the utility -- there's got to be some kind of
18 disallowance and that's what you get to. You just -- in an
19 annual prudence review, that temptation can take over. So
20 that's just kind of a little warning from experience, I guess.

21 A couple of other things that more directly
22 pertain to Aquila from comments that were made today.
23 Mr. Conrad mentioned the steam fuel adjustment mechanism that
24 we have. And I -- just to clarify, that's -- there is a
25 sharing mechanism there, and I can't remember if it's 80/20

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1 or 85/15. Excuse me.

2 But I think one thing that we also have to
3 consider, it is a very complicated mechanism and it requires a
4 lot of time. The reason it is practicable is because we have
5 16 customers. I am not sure that that mechanism would work.
6 It would be difficult to make that mechanism work as it's
7 currently designed for -- for 100,000 or more customers.

8 And then there was also a statement made that
9 a fuel adjustment clause could encourage more reliance on
10 purchased power at -- at market. And I guess I just don't
11 understand that statement at all.

12 A fuel adjustment clause allows recovery of
13 fuel dollar for dollar. When a company purchases on the
14 market, it makes no money. There is more of an incentive for
15 a company to put investment in the ground. So -- and I don't
16 really see how a fuel adjustment clause could incent a utility
17 to do otherwise.

18 Finally, I just wanted to -- the two items
19 that -- I don't really take disagreement with, but if I were
20 filing the Ameren filing -- I've said I accepted most
21 everything that they have said; however, on their page 13 they
22 talk about an interpretation of subsection A1F of subsection 7
23 and that they appear -- that they believe it's calculated to
24 prevent inclusion of certain costs.

25 My interpretation of that subsection was that

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1 in certain events, it required the utility to provide
2 testimony as to how it was going to treat these costs, but it
3 did not necessarily exclude recovery.

4 Now, just the fact that two parties with
5 similar interests have interpreted that section differently,
6 perhaps that is an argument in and of itself to add the
7 clarity that Ameren has proposed. But I just wanted to
8 mention that my own interpretation of the existing language is
9 not the same as Ameren's.

10 And then also Ameren refers to, on page 15,
11 their belief that subsection 1A is unlawful. I am not an
12 attorney and I've not sought legal counsel on that specific
13 issue so I'm not in a position to say whether I believe it is
14 lawful or not. I do note that I think the legislation stands
15 on its own and can be easily interpreted as to what was meant.
16 And beyond that, that concludes my ask testimony posterior
17 rain I couldn't say comments.

18 JUDGE DALE: Are there any questions from the
19 Bench?

20 QUESTIONS BY CHAIRMAN DAVIS:

21 Q. I've just got one question. I mean,
22 Mr. Williams, now you've been -- you are a party to the -- I
23 guess you'd call it the Iatan 2 plan proposal, or your company
24 is. Correct?

25 A. Yes. That's correct.

1 Q. You know, when you've been out there talking
2 about attracting capital or whatever, I mean, did the issue
3 of, you know, investing in that plant, did it ever come up
4 that potential investors or any bonds or any type of financing
5 used to pay for Aquila's portion of that plant, that they were
6 concerned about whether, you know, timely recovery of fuel
7 costs would impact Aquila's ability to pay that debt?

8 A. Yes, there -- there were certainly
9 discussions. Now, in Aquila's -- with Aquila's being below
10 investment grade already, this is -- the discussion was a
11 little different applied to Aquila than it might have been to
12 other utilities.

13 The discussion in Aquila was the absence of a
14 fuel adjustment mechanism is going to make it more difficult
15 for you to return to investment grade; whereas, I think the
16 discussion for the other utilities was that the absence of a
17 fuel adjustment mechanism may put your investment grade
18 ratings either at risk or certainly raise the cost of capital
19 due to perhaps not a downgrade to below investment grade like
20 we already were, but certainly a potential downgrade if -- if
21 they did not see clear -- a clear path to achieving a fuel
22 adjustment mechanism in Missouri.

23 CHAIRMAN DAVIS: Thank you, Mr. Williams.

24 JUDGE DALE: Thank you, Mr. Williams.

25 Last, but not least Mr. Fischer.

1 MR. FISCHER: Thank you, Judge. Last but not
2 least, but hopefully the briefest. I don't have any witnesses
3 on behalf of Kansas City Power & Light Company today. They
4 would concur, I think, in the comments of Ameren's witnesses
5 and Mr. Williams that just spoke.

6 I do though want to take another shot at the
7 questions that I heard from the Bench a little bit ago about
8 what was described as the veto provision or the right of last
9 refusal. There is what's called a constitutional prohibition
10 against retroactive rate-making.

11 It's discussed I think in a Lightfoot case and
12 a lot of other places. And Mr. Coffman actually mentioned it
13 in his remarks, that this concept was a concern whenever I
14 happened to be sitting in your chair when the first incentive
15 plan for Southwestern Bell was developed.

16 It was a profit-sharing plan where if -- if
17 the company's profits exceeded a certain level, they agreed to
18 voluntarily give back a portion of those profits to the
19 consumers. It was subsequently implemented in a Union
20 Electric plan as well.

21 The thought at the time was that a utility
22 could not be required to give back retroactively a portion of
23 its profits -- that would be a violation of the retroactive
24 rate-making doctrine -- but the utility could voluntarily
25 agree to enter into such a plan.

1 And, of course, Southwestern Bell, having
2 gotten an order from the Commission adopting a profit-sharing
3 plan, accepted that plan. Similarly, I think Ameren or Union
4 Electric did as well.

5 I think in this case, a similar concept would
6 apply, where a utility could not be required to enter into a
7 fuel adjustment clause mechanism that would require
8 retroactive refunds unless it was agreeing to do that. And I
9 think that could be the primary purpose of that provision that
10 you're talking about to avoid that kind of a concept.

11 Be happy to answer questions about that.

12 CHAIRMAN DAVIS: No, I'm sorry, Mr. Fischer.
13 No questions at this time.

14 COMMISSIONER APPLING: I keep thinking about
15 the veto program. Maybe I need to sleep on that tonight.
16 Something might come to me --

17 MR. FISCHER: I'd just ask you to look back at
18 those other incentive plans that were adopted. And the
19 rationale at that time was to get around that concept of
20 retroactive rate-making.

21 COMMISSIONER APPLING: We are really at a
22 tough time in this economy right now. Like I said earlier,
23 people are concerned about what they are paying. And I know
24 the utilities are concerned about the cost of fuel. I know
25 that. And I think my record stands on its own trying to be

1 fair to the utilities as well as the consumers on the past two
2 years I've been here.

3 But it's important that we bear in mind that
4 it is not always what we are doing, it's the perception of
5 what we are doing. And people out there got it mixed up.
6 They're not perceiving us as being fair to them. You know
7 what I mean? All I hear out there lately is the utility's
8 making a lot of money on the back of the poor people, you
9 know.

10 And I'm not preaching to you. Don't get me
11 wrong. I'm not lecturing you, Mr. Fischer, in no way. Don't
12 go away thinking that I am. I'm just taking out a little of
13 my frustration on the last person up here. So I appreciate
14 that.

15 MR. FISCHER: That's what I'm here for Judge.

16 COMMISSIONER APPLING: I know. But you keep
17 bringing up something here that's already stinging me and
18 that's that veto program.

19 MR. FISCHER: That's the reason I wanted to
20 address it. I wasn't going to mention it, but I think that's
21 the background, that we've dealt with those kind of issues in
22 the past, that retroactive rate-making.

23 And I think you can make an argument that
24 those kind of concepts are also something that could be -- we
25 don't know what the proposal will be in the future. I hear

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1 some, you know, people talking out there. There may be
2 differences of opinion but certainly --

3 COMMISSIONER APPLING: I think there is a few
4 differences of opinion.

5 MR. FISCHER: Certainly I think the Commission
6 could not waive the retroactive rate-making doctrine without
7 the agreement of the utility.

8 COMMISSIONER APPLING: I understand. And I
9 have a lot of respect for you and your way of putting things,
10 so thank you and good to see you as the last person this
11 afternoon.

12 MR. FISCHER: Thank you.

13 CHAIRMAN DAVIS: Commissioner Appling, I've
14 asked Judge Dale to -- well, first of all, to ask if there are
15 any more witnesses who are here wishing to testify, give them
16 the opportunity.

17 And then I've also asked for a short amount of
18 rebuttal time for everyone that's appearing here if they would
19 like to take that opportunity or as some people might
20 affectionately refer to it in game show technology, as the
21 lightning round to give them one last opportunity here to
22 rebut any of the comments that they might have heard.

23 JUDGE DALE: The lightning round rules --

24 CHAIRMAN DAVIS: Wait. You need to ask if
25 there's anyone else here wishing to testify.

1 JUDGE DALE: Is there anyone else here --

2 MR. MICHEEL: Could I know what the lightning
3 round rules are before --

4 JUDGE DALE: Before you decide?

5 MR. MICHEEL: Yes.

6 JUDGE DALE: The lightning round rules will be
7 since there are -- since there are 30 minutes left in the
8 working day and we have 10 parties, I, you know, with my
9 limited math skills have determined that it's three minutes
10 each. So if you want to speak for 3 minutes, at 2 minutes and
11 30 seconds, I'll give you a 30-second warning. It's just like
12 moot court. So if you want to get a last word in --

13 MR. MILLS: Can I ask a question about that?
14 Do the utilities get to go last again? Because at this point
15 they have spoken last.

16 JUDGE DALE: I'll tell you what --

17 MR. MILLS: Why don't we go to utilities next
18 and then have the consumer representatives go after the
19 utilities?

20 JUDGE DALE: With the exception of poor
21 Mr. Fischer, who I'm going to randomly put in the middle --

22 MR. FISCHER: I'll waive the lightning round,
23 Judge.

24 JUDGE DALE: Then in that case, we will go in
25 the order of Lowery, Staff and then pick up Mills, Coffman,

1 Micheel, Vuylsteke, Conrad, Conrad. Did I get everybody?

2 MR. LOWERY: Do we have to have two Conrads in
3 one day?

4 JUDGE DALE: Well, technically be four Conrads
5 in one day.

6 MR. CONRAD: There's under consideration the
7 anti-cloning legislation.

8 JUDGE DALE: In light of those constraints, is
9 there anybody who would like to seize the opportunity for a
10 three-minute rebuttal? I think Mr. Micheel is chomping at the
11 bit.

12 MR. MILLS: I certainly would, but --

13 MR. MICHEEL: I'm happy to go first. The
14 utilities can have the last say. That's all right. It's all
15 in the record.

16 JUDGE DALE: Go for it.

17 MR. MICHEEL: I just have a couple of comments
18 here and part of it is about the organic law, 386.266, and
19 Union Electric's interpretation of that law. And I want to
20 understand something.

21 I heard Mr. Lowery say that it is his client's
22 interpretation or perhaps his interpretation of subsection 8
23 of that rule that that allows general overall incentive plans,
24 not just incentive plans that are specifically tailored to
25 these rate adjustment mechanisms. And he said, you know,

1 that's -- that's kind of where I got off the path.

2 And I mean, I guess if that's true, then this
3 legislation has some real problems. Because the title of the
4 bill had nothing to do with overall incentive plans on SB 179.
5 It talked only about rate adjustment mechanisms. And you
6 can't have, you know, a whole lot of different topics in
7 bills.

8 And I think that it is abundantly clear in
9 386.266 that it's talking about incentive mechanisms as it
10 relates to the RAM. It is certainly clear in the proposed
11 rule 090(11), incentive mechanisms and performance plans, that
12 it is talking specifically about the RAM. So, you know,
13 there's some disconnect there. And, you know, what we've
14 talked about that the problems that I had seem to apply.

15 Again, going back to the veto power section,
16 and we've talked a lot about that, I would just ask each
17 Commissioner to go and read subsection E and decide for
18 yourself what it says. But it says, Any party to the general
19 rate case proceeding may oppose the establishment,
20 continuation or modification of the RAM.

21 There is no language in there, as Union
22 Electric says, it's the first time. And if it is the first
23 time, if that's how you come down, I'd like my mulligan too.
24 I'd like to be able to step up and say, Hey, consumers don't
25 think that's good, let's go to base rate.

1 And I raise this issue in my filed comments,
2 but I want to raise it here. What does this mean? Does this
3 mean the Commission -- and I've had a lot of experience with
4 rate cases and it's a tough decision and a lot of information
5 that you all have to do.

6 You generally get it ordered by a couple weeks
7 before the operation of law date. How long do they get to say
8 they don't want it? And then after they don't want it, are we
9 scrambling to figure out what the fuel costs are? Does that
10 mean in a general rate case that I have to try the fuel
11 adjustment clause part and the base rate part? Because that's
12 a difference. And there would be different strategies that
13 you would do. It's simply unworkable.

14 The final thing I would say is either SB 179
15 is mainstream or it's unprecedented and new. I mean,
16 Mr. Lowery was all over the map on that.

17 CHAIRMAN DAVIS: Give Mr. Micheel a break and
18 if he wants to say anything else --

19 MR. MICHEEL: I'm going to abide by the
20 lightning round rules, your Honor.

21 JUDGE DALE: It's good practice for them.

22 CHAIRMAN DAVIS: Mr. Micheel, did you have
23 anything else you wanted to add?

24 MR. MICHEEL: No, that's fine, your Honor.

25 CHAIRMAN DAVIS: Are you sure? I certainly

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1 want to give you the opportunity to have a free and fair
2 hearing on all the issues here today.

3 MR. MICHEEL: That -- I'm going to abide by
4 the rules, your Honor.

5 CHAIRMAN DAVIS: Do you have anything else you
6 wish to add?

7 MR. MICHEEL: Not at this time, your Honor.

8 CHAIRMAN DAVIS: Okay. Thank you,
9 Mr. Micheel.

10 JUDGE DALE: Who wishes to go next?
11 Mr. Mills?

12 MR. MILLS: I guess that's me then. First, I
13 want to know note that our written comments were filed either
14 right at or right after the beginning of the proceedings this
15 morning, so maybe the other parties haven't had a chance to
16 read them.

17 But I did want to point out that Mr. Lowery
18 badly mischaracterized our position on the IRP filings. I
19 think he used the words "approve" "approval" and "approving"
20 in terms of our proposal. Not one of those words appear in
21 our proposed amendment to the rule.

22 Our amendments talk about Commission making
23 findings, utilities being in compliance with the rules. It
24 never talks about a standard of approval that doesn't exist in
25 the current rules. So that sort of catch-22 situation that

1 Mr. Lowery referred to is nowhere in our proposal and never
2 has been.

3 I think the concept of requiring efficient and
4 effective resource planning in conjunction with a fuel
5 adjustment clause is absolutely critical. That's the proposal
6 we're trying to make.

7 And I think in terms of the -- I'm going to
8 touch on the veto clause. And I think Mr. Micheel makes the
9 critical point. And Mr. Lowery alluded to this. He said if
10 the utilities opt out of the fuel adjustment clause that the
11 Commission approves at the last minute, they will, of course,
12 have had to have proved up their fuel costs in the course of
13 the rate case, which is something that perhaps AmerenUE can do
14 because they have deep pockets and lots of resources.

15 But what it means for the rest of us is that
16 we have to be fighting an unprecedented, brand-new fuel
17 adjustment clause in the same case that we're fighting
18 \$100 million dollars fuel cost issue at the exact same time,
19 not knowing which one of those is going to end of being
20 important at the end. So we have to devote our resources to
21 both of those all the way through, not knowing until the very
22 end which game the utility is going to be playing.

23 I think that's patently unfair and I think
24 from the questions from the Bench, I think a couple of the
25 Commissioners have recognized that. That's all I have.

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1 JUDGE DALE: You're 40 seconds under.

2 MR. MILLS: I'll give mine to another consumer
3 advocate.

4 MR. LOWERY: I think that violates the
5 lightning round rules, doesn't it?

6 JUDGE DALE: Mr. Conrad?

7 MR. CONRAD: Yeah, I'll take a shot. Why not?
8 Not surprisingly, Judge, I'm going to talk about very briefly
9 the same point.

10 JUDGE DALE: Which client are we on?

11 MR. CONRAD: I'm just going to be on the SIEUA
12 group. And I guess I would make two points on that. One
13 quickly for my client Ag Processing.

14 With respect to the steam process that I
15 mentioned and Mr. Williams referred to, they do the same
16 operations. They do the same operations and it doesn't matter
17 whether it's 6 customers or 600,000 or 6 million. The
18 operations would be done the same. So that that -- I think
19 that argument at least is specious.

20 But back to our friendly veto provision. I
21 guess I would quickly amplify the comments that Mr. Mills
22 makes because as I read this, there is no first time thing in
23 it.

24 And, number two, if the Commission modifies
25 the electric utility's proposed RAM in manner and accept it,

1 how would you modify? You would modify it by Report and
2 Order. That comes, as I recall, kind of toward the end part
3 of the case. I mean, that's kind of one of the very last
4 things that gets done.

5 So -- and there is no time limit, there is no
6 nothing. The case is over, the case is closed. The Judges,
7 when we close the record, say, This is closed subject to
8 briefing. So the briefs come in, then you all percolate up
9 there on the ninth floor and do whatever you do. And it's
10 over. And you issue a Report and Order and in the Report and
11 Order you modify the RAM. And then yank. Now, where does
12 that leave the rest of the parties? Thank you.

13 JUDGE DALE: Oh, my goodness. Well --

14 MR. CONRAD: All sorts of time.

15 JUDGE DALE: Well under time. Although I
16 would just like to say that really the end is the denial of
17 the Motions for Rehearing.

18 MR. CONRAD: Oh, they're already denied --
19 already they've --

20 JUDGE DALE: No. That's when the case
21 actually ends.

22 MR. CONRAD: Well, I could go you one more
23 because if that's the end point, that might not be quite the
24 end.

25 JUDGE DALE: Once it leaves this building,

1 it's out of our hands.

2 MR. CONRAD: Because occasionally, just once
3 in a great while, they come back. Kind of like bad pennies,
4 you know.

5 JUDGE DALE: Well, that's true.

6 The next taker on the lightning round?

7 MR. LOWERY: Two quick points, your Honor.
8 The language that I was referring to that applies to this
9 provision, the right of first refusal provision only in the
10 initial case, is that language that says, Where a utility
11 proposes to establish a RAM.

12 You only establish a RAM once. It's going to
13 be a continuation of the RAM in the next rate case and in the
14 next rate case, but you only establish it once. So that was
15 our interpretation, that was our understanding of the
16 language, that it only applies in the initial rate case.

17 In terms of Mr. Mills's comment that I used
18 the word "approving" or "approval," I haven't had a chance,
19 Lewis -- or hadn't had a chance to read your comments since I
20 did just get them today.

21 But I think the substance of what is written
22 here is exactly the same thing as approve, approved, approval
23 or whatever you want to call it. This language says that the
24 Commission has to make a determination -- you can call it
25 determination, you can call it approval, you can call it a

1 finding -- but a determination that the utility has -- read
2 the language -- that includes a reasonable portfolio of supply
3 and demand resources.

4 Well, there's no mechanism in Chapter 22 for
5 the Commission to do that. And the Commission has never
6 historically done such a thing. And so regardless of what
7 term we want to use, what they're asking for is the
8 Commission, in effect, approve an integrated resource plan
9 because we're talking about a portfolio of supply and demand
10 resources, and what that is, is a finding, a determination, an
11 approval -- we can use any synonym we want to use that -- we
12 have an approved resource plan.

13 So the substance of it is exactly as I
14 characterized it, even if the exact words that are used may be
15 slightly different. Thank you.

16 JUDGE DALE: Any other takers?

17 MS. VUYLSTEKE: Yes. Oh, I'm sorry.

18 MR. MILLS: Can I use just like 10 seconds of
19 my last --

20 JUDGE DALE: Your unexpired time? Yes. But
21 can you wait and let other people speak?

22 MR. MILLS: Yes, I'd be happy to.

23 JUDGE DALE: That way you get to clean up.

24 Ms. Vuylsteke, Mr. Coffman.

25 MS. VUYLSTEKE: Yes. I just have one brief

1 comment in response to Mr. Fischer's point about retroactive
2 rate-making. We don't see how the fuel adjustment is
3 retroactive rate-making. It's really going forward. It's
4 forward-looking. And retroactive rate-making applies to rates
5 for past use of electricity. So I don't know that that really
6 answers the question about whether or not it's appropriate for
7 the utility to be able to unilaterally withdraw its proposal.
8 That's my only comment.

9 JUDGE DALE: Thank you.

10 MR. MILLS: This is why I wanted to go last,
11 because I'm going to go back to the IRP language and our
12 proposed modification and, once again, disagree with
13 Mr. Lowery that the language that we drafted was explicitly
14 designed to not imply approval because that was a topic that
15 was raised in discussions. It's designed to be consistent
16 with the Commission's rules as they currently exist and as
17 they may be modified in the future. Thank you.

18 MR. COFFMAN: I've got a couple comments. And
19 I'm hoping that we have finally beat the veto provision like a
20 dead horse, but I do have to say I'm confused about the
21 characterization of that provision as a first time. Now, it's
22 obviously -- I think it's been intended here in this wording,
23 whoever wrote this, to apply to the establishment. But as I
24 understand the law, we -- there would be an establishment
25 proceeding every four years. And so I guess it would be a

1 first time every four years.

2 At least with that -- you know, if that's
3 it -- but even if it is just one time, it's clearly unfair.
4 It's not symmetrical. The only way I could see something like
5 this working is if every party had the right to say, you
6 know -- that's the only way to be fair, to let consumers also
7 say, This doesn't seem acceptable to us as well.

8 Which brings me to, I guess, the final point
9 that I'd like to give the broader context to this whole
10 proceeding. This is obviously something for which there is
11 significant disagreement. I think fair to say impossible to
12 reach consensus amongst consumers and utilities.

13 And so if the Commission is truly going to
14 present a rule that is balanced, they're going to have to do
15 it in a way that makes one side unhappy at least. And, you
16 know, some may say -- I don't always ascribe to this theory,
17 but perhaps have to be something that makes both sides
18 unhappy.

19 Now, obviously consumers would like
20 generally -- or many of us would like no rule. That would be
21 the preference. No fuel adjustment clause. But assuming that
22 there's going to be a rule, I think there need to be
23 significant modifications, significant adjustments to this
24 rule to make it more fair to consumers, to make some incentive
25 stay in place and not allow it to go all the way.

1 Now, although it wouldn't be my preference, I
2 think -- I, again, would direct you to the Attorney General's
3 comments, I think page 4 of their 090 rules where they also
4 suggest some percentage of fuel and purchased power costs be
5 embedded in base rates but would not adopt a -- so if the
6 Commission is feeling uncomfortable with the idea of picking
7 50 percent and feeling as if there may be a different
8 percentage that would be appropriate for each particular
9 electric utility, I think that would be one way to look at it.

10 And I apparently have just a few seconds left,
11 but that --

12 CHAIRMAN DAVIS: You take as much time as you
13 want, Mr. Coffman.

14 MR. COFFMAN: No, I think that's really my
15 last point. Just that I would urge you -- hopefully bring
16 you -- I'd like to bring you back to the actual operational
17 mechanism, what is this thing going to do. Is it going to
18 simply allow pass-through of 100 percent of the cost or is
19 there going to be some built-in protection that keeps the
20 utility with something at risk, something that is still being
21 recovered in the traditional way?

22 And in that way, I mean, I think that is the
23 simplest and most straightforward and fair way to strike a
24 balance. Not that that would be something if I got a veto, I
25 would accept, but I think some way that the Commission could

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1 attempt to strike some balance. That's all.

2 JUDGE DALE: Mr. Lyons, did you want to say
3 something?

4 MR. LYONS: Yes, I could. It just occurred to
5 me that I failed to comment on something I'd intended to when
6 I was up there before.

7 Earlier today -- and Mr. Conrad threw out an
8 example of a potential sort of 50/50 split of cost in base
9 rates, cost in the fuel adjustment clause and other folks have
10 commented on that concept today.

11 And I just wanted to say, you know, for the
12 record, AmerenUE is not opposed to incentives. In fact, you
13 know, we would -- we certainly think incentives have their
14 place and can be appropriate and we've proposed an off-system
15 sales sharing mechanism in our current rate case.

16 The 50/50 mechanism that was discussed today,
17 while I haven't been able to read the details on that yet
18 myself, you know, strikes me as being half a fuel adjustment
19 clause. It -- you know, when 50 percent of the costs are in
20 base rates and 50 percent of it in the FAC and 50 percent of
21 the increases or decreases in costs go through the rider and
22 50 percent don't, I think that's a half a fuel adjustment
23 clause.

24 I don't feel like that -- me speaking
25 personally, I don't feel like that was probably the intent of

1 Senate Bill 179 and I don't think it necessarily moves us into
2 the mainstream of fuel adjustment clauses around the country.

3 I think you probably can find a couple of
4 examples of states of those 27 states that have the fuel
5 adjustments clauses where something similar exists, but I
6 don't believe it's mainstream.

7 And, you know, just speaking from a financial
8 point of view, from a credit rating agency's standpoint, you
9 know, I don't think that they would see that as being as
10 positive a step as moving toward a fuel adjustment clause
11 with, you know, full pass-through of the fuel and purchased
12 power costs. That's all I wanted to add. Thank you.

13 JUDGE DALE: Thank you.

14 MS. VUYLSTEKE: Judge Dale, can I make a brief
15 response and use a little bit of my time, just a minute or so?

16 JUDGE DALE: Sure.

17 MS. VUYLSTEKE: It reminds me also something I
18 forgot to raise. Mr. Lowery also made this point about SB 179
19 reflecting the mainstream of the country as far as
20 implementation of a fuel adjustment clause.

21 I don't agree with that characterization of
22 the legislative intent. I think that the legislature placed a
23 vote of confidence in the Commission not endorsing fuel
24 adjustment clauses per se as a legislature, but saying we
25 trust the Commission to make the appropriate decision on

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1 whether that tool should be used in the state in the first
2 instance; and secondly, whether it's appropriate for any
3 individual utility.

4 Some utilities made a case before the
5 legislature that they needed it for financial integrity.
6 There are other utilities in the state that do not need a fuel
7 adjustment clause for their financial integrity and actually
8 may be stronger if they don't have it.

9 So I think it's very important for the
10 Commission not to take it as a foregone conclusion that the
11 legislature wanted it to implement fuel adjustment clauses for
12 any particular utility or as a matter of general policy.

13 I think, you know, if you are going to enact
14 rules, they would be best applied on a case-by-case basis.
15 And whatever rules you do enact should be as strong as
16 possible to preserve the good balance that this state has
17 achieved between utility shareholders and ratepayers.

18 JUDGE DALE: Thank you.

19 We're at the speak now or forever hold your
20 peace point.

21 Hearing nothing, we will then be adjourned.
22 Anybody wishing to file written comments that you haven't
23 already filed, midnight.

24 WHEREUPON, the hearing was adjourned.

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