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2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 December 9, 2004
9 Jefferson City, Missouri
Volume 10

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12 In the Matter of the Tariff Filing)
of The Empire District Electric)
13 Company to Implement a General) Case No. ER-2004-0570
Rate Increase for Retail Electric)
14 Service Provided to Customers in)
Its Missouri Service Area)

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17 KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.
18 ROBERT M. CLAYTON,
JEFF DAVIS,
19 LINWARD "LIN" APPLING,
COMMISSIONERS.

20

21 REPORTED BY:

22 TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

23

24

25

1 APPEARANCES:

2 W.R. ENGLAND III, Attorney at Law
3 JAMES C. SWEARENGEN, Attorney at Law
4 DEAN L. COOPER, Attorney at Law
5 Brydon, Swearengen & England, P.C.
6 312 East Capitol
7 P.O. Box 456
8 Jefferson City, MO 65102-0456
9 (573) 635-7166

10 CHARLES BRENT STEWART, Attorney at Law
11 JEFFREY A. KEEVIL, Attorney at Law
12 Stewart & Keevil
13 Southamptton Village at Corporate Lake
14 4603 John Garry Drive, Suite 11
15 Columbia, MO 65203
16 (573) 499-0635

17 FOR: The Empire District Electric Company.

18 BRIAN T. MCCARTNEY, Attorney at Law
19 Brydon, Swearengen & England, P.C.
20 312 East Capitol
21 P.O. Box 456
22 Jefferson City, MO 65102-0456
23 (573) 635-7166

24 FOR: Aquila, Inc.

25 RONALD MOLTENI, Assistant Attorney General
P.O. Box 899
Supreme Court Building
Jefferson City, MO 65102
(573) 751-3321

FOR: Missouri Department of Natural
Resources Energy Center.

STUART CONRAD, Attorney at Law
Finnegan, Conrad & Peterson
3100 Broadway
1209 Penntower Officer Center
Kansas City, MO 64111
(816) 753-1122

FOR: Praxair, Inc.
Explorer Pipeline Company.

1 JOHN B. COFFMAN, Public Counsel
200 Madison Street, Suite 650
2 Jefferson City, MO 65102-2230
(573) 751-4857
3

FOR: Office of the Public Counsel
and the Public.
4

5 STEVEN DOTTHEIM, Chief Deputy General Counsel
KEITH R. KRUEGER, Deputy General Counsel
6 THOMAS R. SCHWARZ, JR., Deputy General Counsel
DENNIS L. FREY, Senior Counsel
7 NATHAN WILLIAMS, Associate General Counsel
DAVID A. MEYER, Associate General Counsel
8 MARY WESTON, Associate General Counsel
P.O. Box 360
9 200 Madison Street
Jefferson City, MO 65102
10 (573) 751-3234

11 FOR: Staff of the Missouri Public
Service Commission.
12
13
14
15
16
17
18
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20
21
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23
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25

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

2 JUDGE THOMPSON: Okay. I have 8:30. Let's go
3 ahead and go on the record.

4 We are ready this morning for opening
5 statements on IEC rate design. And I believe we will start
6 with the company.

7 MR. FREY: Judge, could we deal with a
8 procedural matter before we start opening statements?

9 JUDGE THOMPSON: We could.

10 MR. FREY: Yesterday the Office of the Public
11 Counsel and Intervenors, Praxair and Explorer Pipeline, filed
12 a joint recommendation regarding structure for an interim fuel
13 and purchased power mechanism and then a revised pleading
14 dealing with the same subject.

15 This, as I say, was filed yesterday. We have a
16 procedural schedule set out here and have -- respectfully
17 request that the filing was -- given that the filing was
18 untimely made, we respectfully request that it -- for purposes
19 of this proceeding, that it be not dealt with in
20 cross-examination or opening statements. In other words, that
21 this be set aside until after today's proceeding so that the
22 Staff could then have time in which to respond to this
23 document.

24 JUDGE THOMPSON: Well, I'm sure someone would
25 like to respond to that. Mr. Coffman?

1 MR. COFFMAN: Yes, your Honor. I'm not sure I
2 understand the concern. What was filed yesterday was a joint
3 recommendation that contains some concepts regarding an
4 interim energy charge and I guess rate design and some of the
5 structures of how you might do that.

6 JUDGE THOMPSON: Now, you're still opposed to
7 an IEC; is that correct?

8 MR. COFFMAN: That is correct.

9 JUDGE THOMPSON: But if there's going to be
10 one, you have some suggestions as to what it might look like?

11 MR. COFFMAN: That's a fair characterization of
12 the document. And the document is not a stipulation, it is
13 not a legal pleading other than I guess a statement of
14 position.

15 JUDGE THOMPSON: Okay.

16 MR. COFFMAN: And to that regard, it does not
17 suggest, you know, anything with regards to evidence in this
18 proceeding or any pleading that would necessarily require a
19 responsive pleading necessarily.

20 Now, I guess I would understand and appreciate
21 if witnesses wanted more time to look at that and then testify
22 at some later date about it, but changing positions is
23 something that I believe parties have a right to do and do
24 throughout or clarify their positions, you know, sometimes
25 even into reply briefs.

1 JUDGE THOMPSON: That certainly seems to be the
2 way law is practiced here before the PSC, you're right.

3 MR. COFFMAN: So I don't understand, I guess,
4 the request that such a recommendation or statement of
5 position would be somehow not permitted during an opening
6 statement or, you know, for that matter even a question -- but
7 I certainly I guess would appreciate the fact that witnesses
8 wanted more time to look at it and file some supplemental
9 testimony or to cross-examine on it later on.

10 JUDGE THOMPSON: Okay.

11 MR. COFFMAN: But I don't see anything
12 inappropriate with the process of stating a position or
13 clarifying a position at this point.

14 JUDGE THOMPSON: I gather you're opposed to
15 what he just suggested?

16 MR. COFFMAN: Yes.

17 JUDGE THOMPSON: Mr. Conrad?

18 MR. CONRAD: I'm not entirely clear what it is
19 he suggested, but that's entirely another matter and that's
20 not unique in this proceeding.

21 I would like to have some clarification from
22 Staff counsel as to what authority he has that I have a time
23 limit in which I can file a joint recommendation or a change
24 of position since Staff has repeatedly changed its position
25 with respect to the cost of gas in this proceeding. And which

1 of those should we rely on, Counsel?

2 MR. FREY: I wasn't aware that the Staff had
3 changed its position with regard to the cost of gas.

4 MR. CONRAD: Oh, I see. Then all of your
5 testimony is consistent?

6 MR. FREY: I believe it is.

7 MR. CONRAD: Okay. Great. That explains a
8 number of questions that have come from the Bench as to what
9 Staff's position is.

10 But since you've been so clear on that, I still
11 would like to have some authority as to what it is that you
12 find in the procedural schedule that limits me as to when I
13 can make a statement of position.

14 MR. FREY: We regard this document as a
15 Non-unanimous Stipulation and Agreement.

16 MR. CONRAD: If so, that's fine, Counsel. Then
17 you can respond to it within five days and tell us whether you
18 want a hearing or not. And I'll take that statement on the
19 record as far as your position that you regard it as a
20 non-unanimous stipulation.

21 And then there are steps -- there are rules in
22 the Commission's procedure for dealing with such. So if
23 that's your position, I expect you to follow that. But that
24 has absolutely nothing to do with what we might say in our
25 opening statement, Counsel, since you don't have a clue what

1 we're going to say in our opening statement.

2 JUDGE THOMPSON: Anyone else? Mr. Keevil?

3 MR. KEEVIL: Well, I guess I should chime in at
4 this point, Judge. First of all, we don't really -- we got
5 the document via -- I believe there were two documents filed,
6 if I'm not mistaken. We didn't get the first one, but we got
7 the second one about seven o'clock last night by e-mail. And
8 my client -- I got the document at seven o'clock last night by
9 e-mail. I don't know what time my clients got it.

10 I do know they haven't had a chance to fully
11 review it and really we don't have a position as to -- you
12 know, regarding it. At this time aren't prepared to address
13 it today, that's certainly for sure.

14 Mr. Coffman I heard say it's not a
15 non-unanimous stipulation. I'm not sure what Mr. Conrad's
16 position is regarding that. I believe --

17 JUDGE THOMPSON: I thought Mr. Conrad was quite
18 clear.

19 MR. KEEVIL: Whether it is or is not a
20 non-unanimous stipulation?

21 JUDGE THOMPSON: I believe that was the
22 position he took was that it was.

23 MR. KEEVIL: Was that it was? All right.
24 Mr. Coffman I think said it was not. So I believe the rule is
25 there's a seven day -- I think Mr. Conrad said five, I think

1 it's seven days under the rule to respond and to file an
2 objection if it is a non-unanimous stip. But, like I said, my
3 clients haven't had a chance to evaluate it fully and really
4 we don't know what position we're going to take regarding it
5 today, so --

6 JUDGE THOMPSON: Well --

7 MR. FREY: I would add, your Honor, that the
8 Commission has set a date for filing of statement of positions
9 and that it has passed.

10 JUDGE THOMPSON: Thank you, Mr. Frey.

11 I appreciate the comments that everyone has
12 made. These documents have been filed with the Commission's
13 Data Center. If you're assuming that anyone on this side of
14 the Bench has seen either of them, I think you're wrong.
15 Certainly I have not.

16 As far as I'm concerned, I think the parties
17 can say anything they want in their opening statements and,
18 Mr. Frey and Mr. Keevil, you have every opportunity to file
19 whatever you feel you need to file in response to these
20 filings, any sort of motion or response. Obviously it's up to
21 you to do what you think is necessary to protect the interests
22 of your clients.

23 And with that said, I think we'll go ahead and
24 start opening statements.

25 MR. FREY: Okay. Thank you, your Honor.

1 MR. KEEVIL: In that regard, Judge, if it's
2 being treated as a non-unanimous stipulation today for
3 purposes of this hearing, are you receiving additional
4 evidence regarding it today? I mean, because like I said,
5 we're not certainly prepared to go forward on that.

6 JUDGE THOMPSON: I haven't seen it. I don't
7 know what it says. Mr. Coffman tells me it's a statement of
8 position, Mr. Conrad tells me it's a Non-unanimous Stipulation
9 and Agreement.

10 MR. CONRAD: With respect, Judge --

11 JUDGE THOMPSON: Sir?

12 MR. CONRAD: -- that's what Staff counsel
13 characterized it as and I was happy to let his
14 characterization stand.

15 MR. COFFMAN: I have copies for anyone who's
16 not seen it.

17 MR. KEEVIL: Do you have copies of the first
18 one?

19 MR. COFFMAN: No.

20 JUDGE THOMPSON: Could we start with the
21 opening statements, please? Mr. Keevil?

22 MR. KEEVIL: That I am prepared to do, your
23 Honor.

24 JUDGE THOMPSON: Great. Let's do it.

25 MR. KEEVIL: Good morning, Judge Thompson and

1 Commissioners Clayton and Davis. May it please the
2 Commission.

3 My name is Jeff Keevil and I think you probably
4 know that by now, appearing on behalf of Empire District.
5 Since this statement is only to address the issue of IEC rate
6 design, I will keep this very brief. Also, I will not address
7 the IEC legal matters and IEC litigation risk matters, which
8 you heard about in Empire's opening statement on Tuesday and
9 in the course of the hearing over the past few days, again,
10 since this only addresses the rate design of an IEC in the
11 event that an IEC is authorized. Suffice it to say that those
12 litigation risks, concerns you heard about over the past few
13 days remain.

14 Now, regarding the rate design of an IEC,
15 Empire's position is that the IEC charge, if one is
16 authorized, should be selected on a per kilowatt hour basis
17 and be equal for all rates. However, we would emphasize that
18 Empire should be allowed to recover its actual prudently
19 incurred fuel and purchased power costs and that the rate
20 design adopted must allow Empire to fully recover these costs.
21 That's all I have on this issue. Thank you very much.

22 JUDGE THOMPSON: Commissioner Clayton has a
23 question for you, Mr. Keevil.

24 COMMISSIONER CLAYTON: Just for clarification,
25 we heard some testimony on this yesterday. I just want to

1 make sure that we're clear on this. Empire's position on rate
2 design -- on IEC rate design should we order that, is the same
3 position advocated by Staff?

4 MR. KEEVIL: It is essentially the same,
5 Commissioner. There may be a few minor differences. To be
6 honest with you, I think there have been some discussion
7 between the rate design people. And when Mr. Overcast,
8 Empire's rate design person, is up here, he can more directly
9 address that, but for all practical purposes, I believe
10 Empire -- or yes, Empire and Staff are in agreement on this
11 issue.

12 COMMISSIONER CLAYTON: And so to simply state
13 it, it would be -- the IEC would be collected on a per
14 kilowatt hour basis and equal in all rates I think is what you
15 said. Correct?

16 MR. KEEVIL: Correct.

17 COMMISSIONER CLAYTON: Thank you.

18 JUDGE THOMPSON: Other questions?

19 Thank you, Mr. Keevil.

20 Mr. Frey?

21 MR. FREY: Thank you, your Honor.

22 Very briefly, the issue that we're opening on
23 is -- the question is if the Commission approves an IEC, how
24 shall the revenues be collected, and if warranted, refunded
25 from the different customer classes.

1 The Staff's position, since we're talking about
2 incremental variable fuel and purchased power costs as part of
3 that IEC band, that is, costs that are a function of energy
4 consumption, is that the most reasonable approach is to
5 collect and to refund, if necessary, the IEC money on an equal
6 cents per kilowatt hour basis across all classes.

7 This is the same approach that was used in
8 connection with Empire's previous IEC. The Intervenors,
9 Praxair and Explorer Pipeline, are recommending that the IEC
10 dollars be recovered as an equal percentage base rate revenues
11 across all of the classes.

12 And the Staff believes that the evidence will
13 show that the Staff's position is more consistent with cost
14 causation principles; that is, marrying the cost with --
15 assigning costs to the customers that cause those costs.
16 That's all I have to say. Thank you.

17 JUDGE THOMPSON: Thank you, Mr. Frey.

18 Questions, sir? Could you return?

19 COMMISSIONER CLAYTON: You can't escape that
20 easily, Denny.

21 MR. FREY: Yes.

22 COMMISSIONER CLAYTON: Staff agrees that this
23 method is the same method proposed by Empire?

24 MR. FREY: Yes, I believe so. It's my
25 understanding from their statement of positions that they're

1 basically in accord with the Staff's approach.

2 COMMISSIONER CLAYTON: Okay. Are you all
3 filing a joint recommendation of any type between you two?

4 MR. FREY: Not that I'm aware of, your Honor.

5 COMMISSIONER CLAYTON: Okay.

6 MR. FREY: Commissioner, sorry.

7 JUDGE THOMPSON: Mr. Coffman?

8 MR. COFFMAN: Good morning. Addressing the
9 interim energy charge rate design is difficult given my firm
10 belief that such a mechanism is illegal. It places those of
11 us who believe so in an awkward position knowing that both
12 Staff and Empire wanting to test the matter and the
13 possibility that this Commission might choose to take it -- to
14 adopt it and place us in court.

15 I don't know how much that you do know. We
16 talked about the UCCM case, but that essential consumer
17 victory included relief for ratepayers, included some refund
18 of the money that was overcharged them through those charges.
19 And most of that money has yet to go back to those consumers
20 in the 1970's who were overcharged. So I understand that even
21 if we were ultimately victorious in court on this charge, does
22 not mean that even an unlawful charge might not wind up
23 harming consumers and that there might not yet be the money
24 equitably returned to those who deserve it.

25 And, frankly, there are things that are less

1 harmful to consumers than other things. I would say that an
2 interim energy charge is probably less harmful to consumers
3 than what's generally called a full fuel adjustment clause.
4 And there are interim energy charge proposals that I've seen
5 that would probably be more fair than others.

6 And so it puts us -- me in an awkward position,
7 but with the full understanding that I still believe that such
8 a charge is illegal and that if approved, may yet be
9 challenged in court, there are some things that I think we
10 could recommend.

11 And some of these are included in a document
12 that the Intervenor -- the industrial Intervenors and I had
13 both come to terms with. And if you'd like to, I could
14 provide copies now that --

15 JUDGE THOMPSON: These are the same pleadings
16 have that already been filed?

17 MR. COFFMAN: Yes. It's called Revised Joint
18 Recommendation because there was one filed 10 minutes earlier
19 that had a typographical error. And anyone else in the
20 courtroom that would like a copy, there's a stack there right
21 behind my chair.

22 Essentially -- and I would simply say if an
23 interim energy charge is to be done, it would be better that
24 the band be narrow, and that is that there be a ceiling and a
25 floor around where you believe the fuel cost to be to provide

1 some incentive. Even though there would be less incentive for
2 the company to prudently procure its fuel and purchased power,
3 that is a ceiling that they might bump up against and a floor
4 that they might attain. And that is the floor -- if they go
5 below the floor, they would be able to keep the savings and if
6 they go above the ceiling, they would have to eat those costs.
7 And so the more narrow the band, the better. So that is one
8 principle.

9 The other is that the term should be reasonably
10 short. The idea is that it be an interim period to get over
11 supposedly a period of volatility that is short lived and not,
12 by any means, a five-year term as Empire is suggesting. So in
13 that respect, we would fall along the lines that Staff is
14 recommending of a two-year as opposed to a five-year
15 recommendation.

16 And then there is a rate design component in
17 there that I believe would be fair and that both the
18 industrial consumers and I in this case agree is fair. And it
19 is similar to that which was agreed upon in the Aquila IEC
20 Stipulation and Agreement.

21 And then, of course, there should be interest
22 on refunds and there should be a reasonable attempt to try to
23 return the monies that need to be refunded if it is to be
24 done.

25 So I think that covers the main points that I

1 think any illegal IEC could -- should be structured as to rate
2 design. Thank you very much.

3 JUDGE THOMPSON: Thank you, Mr. Coffman.

4 Mr. Conrad?

5 COMMISSIONER CLAYTON: Whoa, whoa.

6 JUDGE THOMPSON: Questions?

7 COMMISSIONER CLAYTON: No, no, no, no, no, no.

8 Okay. I was under the impression that this joint
9 recommendation was going to be relating to just the rate
10 design portion of the IEC and it's actually quite more than
11 that, isn't it?

12 MR. COFFMAN: It does include things that I
13 guess I would call structure --

14 COMMISSIONER CLAYTON: Okay.

15 MR. COFFMAN: -- the term and the --

16 COMMISSIONER CLAYTON: It has dollar amounts,
17 proposed dollar amounts?

18 MR. COFFMAN: Yes. Yes.

19 COMMISSIONER CLAYTON: It has provisions for
20 variable costs and fixed costs. Correct?

21 MR. COFFMAN: Yes.

22 COMMISSIONER CLAYTON: Has some sort of
23 prudence or audit review?

24 MR. COFFMAN: Yes.

25 COMMISSIONER CLAYTON: Has provisions for

1 Empire would post some sort of bond?

2 MR. COFFMAN: Yes.

3 COMMISSIONER CLAYTON: Now, I didn't see in
4 here -- if the Commission were to adopt this, is there a
5 statement where the Office of Public Counsel would waive its
6 right to appeal if we were to adopt this recommendation?

7 MR. COFFMAN: No, sir.

8 COMMISSIONER CLAYTON: Okay. Is there a
9 statement in here that the Intervenors would waive their right
10 to appeal if we adopt this mechanism?

11 MR. COFFMAN: No, sir.

12 COMMISSIONER CLAYTON: What good is this? What
13 does this do for us then?

14 MR. COFFMAN: Simply a statement of position
15 that if you do something over --

16 COMMISSIONER CLAYTON: We think it's illegal,
17 but if you're going to do it, do it this way and we're still
18 going to take it up on appeal and try to get it thrown out?

19 MR. COFFMAN: Possibly, yes.

20 COMMISSIONER CLAYTON: How do you sleep at
21 night?

22 MR. COFFMAN: As I said, it was a difficult --
23 it's difficult coming up with a recommendation. It was my
24 hope that this would provide the Commission with --

25 COMMISSIONER CLAYTON: You can't have it both

1 ways. You can't say it's illegal, it's inappropriate, it's
2 wrong, wrong, wrong and then say, but if you're going to do
3 it, do it this way and we'll still attack it. Can you have it
4 both ways? I mean, I appreciate the work. I just -- I'm
5 confused on exactly what your position is. I don't think I'm
6 confused, but --

7 MR. COFFMAN: You can take it for what it's
8 worth and disregard it.

9 COMMISSIONER CLAYTON: Okay.

10 MR. COFFMAN: But it was certainly not meant to
11 put the Commission in an awkward position. It certainly is
12 not meant to be -- to play any games. It was simply to state
13 what -- among what I believe would not be lawful, what would
14 be more fair and --

15 COMMISSIONER CLAYTON: So you, in your
16 recommendation, are making, according to your own position, an
17 unlawful proposal that you're not even going to agree to.

18 Okay. What is Office of Public Counsel's
19 position on rate design? Do you agree with Staff and Empire
20 that it should be collected and refunded on a per kilowatt
21 hour basis and equal in all rates?

22 MR. COFFMAN: The rate design that I believe
23 would be appropriate would be the one that was adopted in the
24 Aquila Stipulation and Agreement.

25 COMMISSIONER CLAYTON: Which is?

1 MR. COFFMAN: Which essentially treats smaller
2 customers on a per kilowatt hour basis and treats larger
3 customers on essentially a more revenue equal percentage
4 basis.

5 COMMISSIONER CLAYTON: Okay. I want to pursue
6 that just a little bit to make sure I understand. For smaller
7 customers, it would be on a -- collected and refunded on a per
8 kilowatt hour basis. And for larger customers, how would it
9 be collected and refunded?

10 MR. COFFMAN: Essentially on a -- I guess would
11 what would be called an equal percentage revenue basis. And
12 the specifics would be essentially similar to what the parties
13 recommended and was adopted by the Commission in the last
14 Aquila --

15 COMMISSIONER CLAYTON: I understand. You
16 needn't describe those to me. I mean -- I mean, if you don't
17 know, you don't know. Do you have a witness on this issue?

18 MR. COFFMAN: I do not.

19 COMMISSIONER CLAYTON: Oh, you do not.

20 MR. COFFMAN: Mr. Brubaker for the industrials
21 I believe was involved in that case and could probably address
22 that. I believe he's here today to address that.

23 COMMISSIONER CLAYTON: So will your position be
24 addressed by the Intervenor? I mean, is your position the
25 same as the Intervenor?

1 MR. COFFMAN: Yes. On rate design, yes. On
2 rate design.

3 COMMISSIONER CLAYTON: On rate design it is.
4 Well, I don't know enough about rate design, but that's
5 curious that you represent the small customers and he
6 represents the large customers and that you're both in favor
7 of doing it that way, but somebody's going to get burned on
8 this deal too. But you all are in --

9 MR. COFFMAN: Rate design is indeed a zero sum
10 game, but on this we've come to terms on what we believe would
11 be fair.

12 COMMISSIONER CLAYTON: So in your
13 recommendation is there -- the rate design --

14 MR. COFFMAN: Yes.

15 COMMISSIONER CLAYTON: -- agreement is in this
16 also?

17 MR. COFFMAN: Yes.

18 COMMISSIONER CLAYTON: I did want to ask one
19 other question since you did go to the effort. You were
20 probably up all night working on this. The specific annual
21 amount to be included in rates is \$120 million with a
22 \$10 million IEC rider?

23 MR. COFFMAN: Yes. Essentially the point would
24 be that the -- the band between the floor and the ceiling
25 would be \$10 million. And I don't know that I can tell you

1 myself whether that is the right number, but I think I can
2 tell you that I believe that the -- that a small band that is
3 like a \$10 million band is by far better than a larger band as
4 has been recommended by Staff and --

5 COMMISSIONER CLAYTON: So you're in favor of a
6 narrower band --

7 MR. COFFMAN: Yes.

8 COMMISSIONER CLAYTON: -- than a broadband?

9 Okay. Now, one thing I'm confused about is
10 that these are just the variable costs and not the fixed
11 costs. You agree that the fixed costs that you've come to
12 agreement should be included in base rates. So the \$120
13 million isn't an accurate figure to reflect the total power
14 and fuel costs on this -- on this issue. Wouldn't it be the
15 120 plus the fixed costs, which I think I had calculated as --
16 I had it calculated somewhere -- 20 -- it was some \$25
17 million, wasn't it?

18 MR. COFFMAN: I think you may be right.

19 COMMISSIONER CLAYTON: So does that mean that
20 you believe that the base rate amount should be \$145 million
21 with a \$10 million rider?

22 MR. COFFMAN: No, I don't.

23 COMMISSIONER CLAYTON: We may be able to cut a
24 deal on this today. That's higher than what Empire --

25 MR. COFFMAN: I'm surprised Empire's not

1 already adopted this.

2 COMMISSIONER CLAYTON: I understand. But
3 explain how that works because that position is now higher --
4 I think. Unless Empire's position at 137 1/2 doesn't include
5 fixed costs.

6 MR. KEEVIL: No. The 137 1/2 for Empire would
7 include --

8 COMMISSIONER CLAYTON: Everything.

9 MR. KEEVIL: -- fuel and purchased power. And
10 that would be the -- remember the 137 1/2 that we have
11 proposed is our permanent --

12 COMMISSIONER CLAYTON: Base rate.

13 MR. KEEVIL: Right. Permanent rate.

14 MR. COFFMAN: And perhaps the wording in the
15 document that was filed yesterday is somewhat confusing and
16 open to different interpretations. I would say that the
17 attachment that is on the back, as an example, would be
18 perhaps more illustrative.

19 COMMISSIONER CLAYTON: The attachment does
20 what?

21 MR. COFFMAN: Show exactly where these variable
22 and fixed costs would go.

23 COMMISSIONER CLAYTON: Well, I guess what would
24 be the -- what would -- I'm confused as to what -- given this
25 new -- this non-unanimous stipulation OR this statement of

1 position, whatever it is, what would be -- according to using
2 these numbers, what would be the base rates amount that Office
3 of Public Counsel -- and I'll ask Mr. Conrad this too, but
4 what would be the base rates to avoid the whole IEC issue?

5 MR. COFFMAN: The base rate with regard to fuel
6 and purchased power would be \$120 million and -- with
7 \$10 million interim energy charge.

8 COMMISSIONER CLAYTON: So the 120 includes
9 fixed costs?

10 MR. COFFMAN: I believe it would include both
11 variable and fixed. And maybe the wording of that
12 recommendation is ambiguous. The -- the -- but --

13 COMMISSIONER CLAYTON: Anything else? Go
14 ahead.

15 MR. COFFMAN: The point was Public Counsel's
16 stated position on fuel and purchased power and -- which is
17 supported by its testimony, is \$126 million. And if you were
18 to do an interim energy charge and you believed that
19 \$126 million was the right number, the point would be that if
20 you're going to do an interim energy charge over -- over --

21 COMMISSIONER CLAYTON: So you have --

22 MR. COFFMAN: -- that you would --

23 THE COURT REPORTER: I can only get one of you
24 at a time.

25 COMMISSIONER CLAYTON: Well, you get me.

1 MR. COFFMAN: Okay.

2 COMMISSIONER CLAYTON: The band would then
3 be -- you've got 126 million, so basically you went roughly
4 5 million each way?

5 MR. COFFMAN: Right.

6 COMMISSIONER CLAYTON: Okay. Well, that makes
7 sense. I mean, that's --

8 MR. COFFMAN: That's the concept. If you're
9 going to do it.

10 COMMISSIONER CLAYTON: But we're opposed to
11 it --

12 MR. COFFMAN: Yes.

13 COMMISSIONER CLAYTON: -- don't do it, but if
14 you're going to do it, do it this way. Okay. Thank you.

15 MR. COFFMAN: The point was to provide some
16 helpful information. Sorry that -- sorry that if in doing so,
17 I've stepped on some toes.

18 COMMISSIONER CLAYTON: Haven't stepped on my
19 toes. I'm not -- that's okay. Thank you.

20 JUDGE THOMPSON: Commissioner Appling?

21 COMMISSIONER APPLING: Mr. Coffman, one
22 question, please.

23 MR. COFFMAN: Yes.

24 COMMISSIONER APPLING: If I'm following you, I
25 don't think you are supporting a fuel adjustment clause. And

1 if we adopt an IEC, you said you go along with Staff for two
2 years. You don't give the company very much room for
3 maneuvering here over the next 24 to 36 months. So the
4 question I have is, if we adopted an IEC, could you support
5 three years?

6 MR. COFFMAN: We have not yet -- twice before
7 we have reached a settlement. In those cases they were global
8 settlements that involved a variety of things involving the
9 companies at that time. And in those cases, you know, we only
10 were able to stomach two years.

11 That's not to say that given a different
12 package, if there was other consideration given -- in other
13 words, if the ceiling was low enough, perhaps we could live
14 with three years.

15 And I would have to say that if this Commission
16 goes down the route of some fuel mechanism like this, you
17 know, a decision of whether or not to take it to court would
18 be based on probably the overall structure of the entire
19 order. I think that what I'm hoping to leave with you is that
20 from a consumer perspective, the shorter the better when it
21 comes to these type of --

22 COMMISSIONER APPLING: I understand. But you
23 understand it's difficult for us with the volatility and
24 nobody able to predict. And I started to bring in the -- you
25 know, the --

1 MR. COFFMAN: You know, with the first -- the
2 first interim energy charge that was agreed upon for Empire in
3 2001, you know, that was ended early because it went too far.
4 You know, the longer you set this mechanism out, the more
5 concern I have that the rates might not be in line and that
6 the burden would then be on me to file an earnings complaint
7 rate case to bring rates back into compliance.

8 COMMISSIONER APPLING: It's not a problem that
9 I don't understand where you're coming from. I'm probably
10 very understanding. I'm just trying to figure out a way, when
11 I make a decision here, how to give this company some relief
12 and also protect the people that you work for also.

13 MR. COFFMAN: Well, frankly, I think that the
14 traditional method that has been used over the last 25 years
15 has served Missouri very well. All the electric utilities in
16 the state have been fairly healthy, our rates have been
17 reasonably good and -- and it's all been without any type of
18 flow-through fuel mechanism. I really don't think it's
19 necessary.

20 It may mean that we have more frequent rate
21 cases, may mean we have rate cases every couple of years. But
22 that gives me some comfort to know that there is a review by
23 the Commission on a fairly frequent period and that all the
24 parties are treated fairly in the end and that it's not set on
25 auto pilot through some sort of a mechanism that may or may

1 not work out to be fair.

2 COMMISSIONER APPLING: Thank you.

3 MR. COFFMAN: Thank you.

4 JUDGE THOMPSON: Thank you, Mr. Coffman.

5 Mr. Conrad?

6 MR. CONRAD: I will have a go at it. And like
7 Mr. Keevil, I'm going to try to limit at least my initial
8 remarks to the question of the IEC rate design.

9 Actually, with respect, Mr. Frey misstates his
10 own client's position. Mr. Watkins yesterday testified that
11 he was not proposing a kWh charge that was equal on all rate
12 categories. He at least recognized that losses are different
13 between classes. Losses at the transmission level where my
14 clients live, 2.3 percent. Losses on the secondary system,
15 which is where residential customers live behind numerous
16 step-down transformers, 7.5 percent. But there are also other
17 differences.

18 And Mr. Frey also misstates my client's
19 position. Our client's recommendation is that there would be
20 in all categories and all classes of customers a kWh charge, a
21 per kWh charge. The question is how is that calculated.

22 We need to take into account losses. That, I
23 believe, is what Mr. Watkins was saying when he says that he
24 wants them to be equal at the generator. That he wants to
25 take into account the lost factors that I've mentioned. But

1 his mechanism, as he preferred to call it yesterday, starts on
2 a base of the existing rates. And the existing rates do not
3 identify a component as to fuel and purchased power. They
4 were settled. They were a black box settlement. There was no
5 breakout in that prior case.

6 And energy costs do not equate across all 8,760
7 hours of the year. There are seasonal variances, which this
8 company has historically recognized in its seasonal rate
9 structure and they've talked about some adjustments to that,
10 but that's still there. And generation costs and fuel costs
11 vary, as we talked yesterday, depending on which units are
12 used by hour.

13 Peak hours are more costly because more people
14 are on the system, that's what makes it a peak. Off-peak
15 hours are far less costly. Primarily secondary customers,
16 residential, small commercials who also have a higher loss
17 factor are on primarily at peak hours and off or reduced usage
18 at other times. That's, again, what makes the peak.

19 Our clients run 7 hours -- 7 days, 24 hours.
20 They have high load factors. Praxair's is over 90 percent.
21 So they consume power over all 8,760 hours of the year. And
22 to simply apply the same cost per kWh is not equitable and not
23 fair. And that is what Public Counsel is recognizing with
24 their agreement with us.

25 This is, despite Mr. Watson's -- or

1 Mr. Watkin's kevlung about it yesterday, this is the mechanism
2 that's used in Aquila. We learned something from the past
3 time that we did it with this company. And just as we learned
4 some things about how to word the mechanism coming from Empire
5 into Aquila, we also learned some things about how to fine
6 tune it and make it more firm. So that's what our -- that's
7 what our proposal is.

8 And how we get there is we apply that same
9 percentage to the classes and then that is expressed then as a
10 kWh charge for each class and for each rate category. So
11 everybody has a kWh charge, but the kWh charges will differ
12 slightly depending on what class and so on is there.

13 Now, that's our position. I don't want to
14 consume more than five minutes. Mr. Brubaker will be here and
15 he can, I'm sure, more than adequately explain it, but I'm
16 given to understand that Commissioner Clayton may have some
17 questions.

18 JUDGE THOMPSON: Commissioner Clayton?

19 COMMISSIONER CLAYTON: Would that be okay?

20 MR. CONRAD: Sure. Absolutely, sir.

21 COMMISSIONER CLAYTON: Rate design is not
22 something that will work -- that the Commissioners actually
23 work on. This is something that requires more expertise and
24 more technical knowledge, so it's something that I want to try
25 to make sure I get a handle on before we get into the

1 testimony and just understand the positions so when your
2 witness starts working on it, I know where he's going and I'll
3 be able to understand how he gets there.

4 Your proposal or your client's proposal in rate
5 design is to take -- to assign a percentage per class of
6 customer for how this extra rider is going to be collected and
7 refunded rather than just on a purely -- on a pure kilowatt
8 hour basis; is that correct?

9 MR. CONRAD: Yeah.

10 COMMISSIONER CLAYTON: Now, how is that -- how
11 are those percentages set up? Is that on an overall usage?

12 MR. CONRAD: No. Equal percentage on revenue.
13 I should -- part of the problem that I think you're having and
14 a problem that we're having in dealing with this document that
15 has been both appropriately and inappropriately
16 mischaracterized this morning is that it's -- you're looking
17 at this in a vacuum.

18 There is another package that I really can't
19 get into, but it is in the process of being put together, it
20 has been referenced already. That's why the rate design --
21 the permanent rate design part of it, Judge, was taken off
22 the -- off the desk. And -- and that is essentially -- I
23 don't -- I don't want to try to characterize it, but in broad
24 brush terms, there's some revenue neutral adjustments that are
25 made to that that are acceptable to the parties participating

1 in that. And, thereafter, once that revenue neutral basis is
2 established, then there's essentially an equal percentage
3 spread within the classes for the permanent rate design.
4 That needs to be -- we can't right now, but that kind of needs
5 to be laid side by side.

6 But it's the same methodology, Commissioner
7 Clayton, that would be used here, then that captures an amount
8 for each customer class. Then that is expressed down to the
9 rate schedules as a kWh amount based on what the send out to
10 that class was based on the billing determinants that Staff
11 had, some of which are mentioned on that very last page of
12 this package.

13 COMMISSIONER CLAYTON: Okay. The amount
14 collected and refunded, all other things being equal, between
15 your proposal and the -- and Staff Empire proposal would be
16 revenue neutral? I mean, there's no difference in the amount
17 collected and refunded, is there? Or is there?

18 MR. CONRAD: No. I think that -- I think if
19 I'm understanding your question, it would be revenue neutral.

20 COMMISSIONER CLAYTON: Okay. So we're talking
21 the same amount of money, it's just how it's allocated?

22 MR. CONRAD: Exactly. The pie is the same
23 size, the slices are different.

24 COMMISSIONER CLAYTON: So in your method,
25 theoretically, the higher -- the higher users in a class or

1 larger users would have a reduction in the amount that was
2 collected from them?

3 MR. CONRAD: No. They would still pay on a kWh
4 usage basis, but that kWh amount that would be charged as a
5 part of this charge, should you choose to impose one, would be
6 different than the charge per kWh for a customer that was not
7 on that was primarily a peak customer, was not a high-load
8 factor customer, was a seasonal customer and was behind a
9 secondary distribution system where the losses --

10 COMMISSIONER CLAYTON: So does this design
11 shift more cost to a different class?

12 MR. CONRAD: That --

13 COMMISSIONER CLAYTON: It has to. I mean,
14 there has to be a shifting of cost here.

15 MR. CONRAD: Well, it produces a different
16 allocation. As I tried to say before, the pie --

17 COMMISSIONER CLAYTON: Different is a more
18 political term, I suppose.

19 MR. CONRAD: Sure.

20 COMMISSIONER CLAYTON: It's still going to be
21 higher for somebody and lower for somebody?

22 MR. CONRAD: Sure, than equal. But the
23 question is just and reasonable rates and rates that are
24 not -- that are not tracking costs.

25 COMMISSIONER CLAYTON: I understand. I just

1 want to understand if we were to pick your design, who's going
2 to pay more? How many classes of customers do we have?

3 MR. CONRAD: Well, you have I think four or
4 five on this system.

5 COMMISSIONER CLAYTON: Okay. If we shift -- I
6 assume that this would -- your industrial customers would see
7 some reduction -- I'm not saying it's not just and reasonable,
8 but there would be some reduction, but that money's got to go
9 somewhere?

10 MR. CONRAD: That's right. But they also --

11 COMMISSIONER CLAYTON: Is it going to go to
12 his --

13 MR. CONRAD: They also buy many hundreds of
14 millions --

15 COMMISSIONER CLAYTON: I'm not saying it's
16 wrong.

17 MR. CONRAD: All right.

18 COMMISSIONER CLAYTON: No commentary here. I
19 just want to know where it goes. Is it going to go to his
20 clients? Is it going to go to commercial customers? Is it
21 going to go to --

22 MR. CONRAD: Well, I think the problem that I'm
23 having is if you posit the base case as being just, you know,
24 everybody pays, you know, a penny per kWh, if you posit that
25 as base case, then when you shift from that, it's going -- it

1 will have some impact to Mr. Coffman's people. In a positive
2 sense, they will pay slightly more. Those who are high-load
3 factor customers will pay slightly less per kWh because of the
4 factors that I've mentioned.

5 COMMISSIONER CLAYTON: So it will shift some
6 cost to --

7 MR. CONRAD: Yeah. When you use that base.
8 When you say shift, you're assuming from something.

9 COMMISSIONER CLAYTON: Well, it's going to move
10 some cost -- it's going to move some amount of money that's
11 paid by somebody to somewhere else? If you don't like
12 shift --

13 MR. CONRAD: Well --

14 COMMISSIONER CLAYTON: -- how about move?

15 MR. CONRAD: Okay. But if you start with my
16 method, then I would say that an equal percentage is the
17 shift.

18 MR. COFFMAN: May I say something? I --

19 JUDGE THOMPSON: Don't mind me. Mr. Coffman?

20 MR. COFFMAN: Thank you. Well, I'm not sure
21 exactly who my people are when that's been said, but --

22 MR. CONRAD: Yeah.

23 COMMISSIONER CLAYTON: Well, who do you
24 represent?

25 MR. COFFMAN: I think in most instances I

1 represent all of the regulated customers in rate design, a
2 special emphasis on smaller customers, certainly residential,
3 small business. I think probably all those who don't have
4 their own special representation perhaps.

5 But that aside, if you want to understand the
6 relationship between who's paying more and who's paying less
7 under the rate design here, you can turn to Attachment A in
8 the revised joint recommendation and you look at the bot--
9 look at the bottom part of that under IEC rate and you can
10 see -- you can compare.

11 COMMISSIONER CLAYTON: Direct me to what line
12 you're --

13 MR. COFFMAN: I guess under step -- step 3, the
14 middle column there.

15 COMMISSIONER CLAYTON: Okay.

16 MR. COFFMAN: You can compare the various rates
17 amongst the parties. And I guess as Mr. Conrad says, if you
18 were to assume that everyone was paying the same rate and then
19 compare that, you could see what might be a shift, but --

20 COMMISSIONER CLAYTON: Okay. That middle
21 column, the IEC rate, is what we're talking about. This is
22 the rider. What would be the IEC -- do we have an attachment
23 like this from Staff or Empire that would point out what the
24 IEC rate would be in comparison to these rates?

25 MR. KEEVIL: Commissioner, when Empire filed

1 its case, it filed an IEC tariff. And in it Empire proposed
2 .004 per kilowatt. And then as we've indicated, that would be
3 equal for all rates under Empire's proposal. Kilowatt hour.
4 I may have said kilowatt. I'm sorry.

5 MR. CONRAD: And while they -- Judge, while
6 you're looking for that, while they may not recognize, the
7 proposal that Mr. Watkins testified to yesterday would not be
8 that.

9 COMMISSIONER CLAYTON: Would not?

10 MR. CONRAD: Would not be that. So there's
11 even disagreement between these parties as to what they're in
12 agreement on. The differences are not -- in order of
13 magnitude when you look at the mill rate, they're not very
14 large. But Staff is saying, as I heard Mr. Watkins testify
15 yesterday, that he wanted to make the charges equal at the
16 generator and wanted to take into account losses.

17 So there would need to be a -- as you're
18 characterizing, it a slight shift that would increase, let's
19 say, residential, commercial, small -- I'm looking at lines
20 24, 25, 26.

21 COMMISSIONER CLAYTON: Okay. Oh, okay.

22 MR. CONRAD: Under step 2. I think the rate --
23 I think the numbers are the same. That would move that up
24 from the four mills -- well, is it four mills or even a tenth
25 of a mill. It's not 4 cents. I think it is 4 -- 4.227 mills

1 is what that number is.

2 COMMISSIONER CLAYTON: Is that four-tenths of a
3 cents?

4 MR. CONRAD: A mill would be, I recall, a tenth
5 of a cent. Used to have the red things.

6 COMMISSIONER CLAYTON: Well, the simple
7 question, under the Empire proposal, if they're proposing
8 four-tenths of a cents per kilowatt hour, this rate design
9 would see an increase for residential, commercial and small
10 heat of I guess 227--

11 MR. CONRAD: Slightly over 200ths of a million
12 or --

13 COMMISSIONER CLAYTON: So there is an increase
14 there. And then your client would see a reduction down to 2.4
15 mills?

16 MR. CONRAD: That's right. On this method.
17 But the -- there would not be equal -- it would not be .004,
18 .004, .004 and so on, even on Staff's method.

19 COMMISSIONER CLAYTON: Even on Staff's method.
20 Okay.

21 MR. CONRAD: I don't know what their precise
22 method would be. And obviously this is an example calculation
23 and I think this is -- you know, I'd have to go through and
24 dissect to see what it's based on so far as the assumption of
25 the amount of the IEC.

1 COMMISSIONER CLAYTON: Okay.

2 MR. CONRAD: But it gives you -- it gives you a
3 feel for the movement.

4 COMMISSIONER CLAYTON: Okay. Thank you for
5 everybody's indulgence on this. Sometimes -- and I know there
6 are a lot of people that won't agree with this, but sometimes
7 I can get a straighter answer out of the lawyers than I can
8 out of the witnesses.

9 MR. CONRAD: I'm trying.

10 COMMISSIONER CLAYTON: I guess you just have to
11 speak the same language. So I appreciate everyone's
12 indulgence.

13 Now, I do want to ask you from your client's
14 perspective, if we were to order the IEC recommendation in
15 this joint recommendation, are the Intervenors willing to
16 waive their rights to appeal?

17 MR. CONRAD: Let me -- let me -- I anticipated
18 that question. In fact, you talked about this actually
19 yesterday.

20 COMMISSIONER CLAYTON: Made him be the guinea
21 pig.

22 MR. CONRAD: I'm not as dumb as I look. Maybe
23 dumber.

24 The way I've approached that, Judge, is my two
25 clients are business customers. They write checks, they are

1 interested in what the amount of the check that they write is.
2 They are more interested in that -- to be totally candid with
3 you, they're more interested in that than in some grand
4 principle.

5 We have agreed in two cases in the past, this
6 Praxair in the first Empire case, other clients that I
7 represented in the Aquila case, to not challenge the mechanism
8 that was put together and agreed upon in both those cases
9 because we felt at that time and those clients felt that it
10 was an acceptable result and they did not want to pay me
11 N thousand dollars to go challenge it.

12 I cannot tell you, since you cannot tell me in
13 all honesty, what mechanism you would approve. But if the
14 mechanism is approved -- methodology or mechanism, I don't
15 know -- that is consistent with what we attempted to do in
16 Aquila, that is going to have a very significant effect on my
17 client's decision as to what steps they take.

18 COMMISSIONER CLAYTON: I understand. I
19 appreciate that and I understand, I think, your position.

20 My last question, this has a -- this has a
21 floor and a ceiling and the floor is \$120 million, the
22 ceiling's \$130 million, which I think is \$10 million on the
23 whole more than what Mr. Brubaker's position was in his Direct
24 Testimony --

25 MR. CONRAD: That's correct.

1 COMMISSIONER CLAYTON: -- any way. Will his
2 testimony here today reflect this position or the Direct
3 Testimony position?

4 MR. CONRAD: I think his testimony will start
5 from his -- his direct position, but indicate to you,
6 particularly if you ask him the question, can we, with
7 certainty, predict what the gas prices are going to do and
8 should we make some recognition of the fact that on 9/20 when
9 that testimony was filed gas prices were here and they appear
10 to have moved upward. At the same time, you know, the
11 trendline seems to be -- to be going down.

12 That's honestly the best answer I can give you.
13 I think he will try to interpolate what those numbers mean, if
14 that's helpful.

15 I would add one thing. You asked yesterday and
16 I think actually on Monday maybe -- Monday or Tuesday you
17 asked me what our gas cost was in that. We have not really
18 addressed it in that way. We've addressed it as the total.
19 And I think even Mr. Cassidy the day before yesterday said he
20 felt that was the way to -- to approach it because there's so
21 many things moving.

22 Ms. Tietjen yesterday, I believe, testified to
23 a long list of variables that are in that model and they --
24 they have a tendency to be interdependent, so --

25 COMMISSIONER CLAYTON: Thank you.

1 JUDGE THOMPSON: Other questions from the
2 Bench?

3 Thank you, Mr. Conrad.

4 MR. CONRAD: Thanks.

5 JUDGE THOMPSON: Okay. That concludes opening
6 statements. The agenda meeting begins in about seven minutes
7 and I believe that what we're going to do is recess and then
8 go back on the record when the agenda is completed, which we
9 anticipate will be before lunch some time.

10 COMMISSIONER CLAYTON: Agenda won't take very
11 long -- I don't anticipate that agenda's going to take very
12 long. Gaw's gone so we ought to be done in half the time and
13 so --

14 MR. COFFMAN: Is there a time that we should
15 gather around?

16 COMMISSIONER CLAYTON: I'd say upon adjournment
17 of agenda, if that's all right with you, which it could be
18 ten o'clock, 10:15. It may not be that quick.

19 JUDGE THOMPSON: I'm told agenda will probably
20 run about a half hour to 45 minutes. Therefore, why don't we
21 just take a recess and we will reconvene as soon as agenda is
22 over. I'm sorry I can't give you a more exact time, but
23 there's a very nice waiting area and cafe just outside the
24 waiting area. We are adjourned.

25 (A recess was taken.)

1 MR. FREY: Judge, before we get started --

2 MR. CONRAD: How about let me go first?

3 JUDGE THOMPSON: Let's let him go first.

4 MR. FREY: Fine.

5 JUDGE THOMPSON: Mr. Conrad, I notice that
6 there has been filed a second revised joint recommendation
7 regarding structure for an interim fuel and purchased power
8 mechanism. Perhaps you could explain how this differs from
9 the first revised.

10 MR. CONRAD: I will be happy to do so.

11 COMMISSIONER APPLING: Should we throw away the
12 first one?

13 MR. CONRAD: First --

14 JUDGE THOMPSON: He wants to know if he can
15 throw away the first one.

16 MR. CONRAD: Yes. Even though it is on -- it
17 is on EFIS, but it would be superseded.

18 The story on this is that after Mr. Brubaker
19 got here and we showed him the revised one and we looked at
20 the numbers, and he -- and I was able to get him up -- revive
21 him and get him up off the floor, we decided that -- well,
22 Commissioner Clayton said that he got straight answers from
23 the lawyers and not from the witnesses, but when you're
24 dealing with the lawyers, you may get straight answers, but
25 they're not always right.

1 So my consultant told us that we had cut our
2 foot when we put that 120 in there and that's on page 3 --
3 one, two, three, four, five, six, seven, eight lines down.
4 It's now been changed to an Xed out number. And, frankly, the
5 problem that we had was that was really intended as
6 illustrative anyway, so it's not so much of a lockin as the 10
7 as a band was.

8 And the only other change, Judge, which I think
9 you've already picked up, was the additional word "second".
10 So I'm hopeful that the third time is a charm here.

11 JUDGE THOMPSON: What's the point of the Xed
12 out number? Is it your suggestion that -- let me see if I
13 understand this -- just that the ban should simply be
14 \$10 million wide --

15 MR. CONRAD: Ten, yes.

16 JUDGE THOMPSON: -- whatever the permanent
17 amount is?

18 MR. CONRAD: There was a problem with how
19 the -- the wording that preceded the 120 was being
20 characterized. I think actually Commissioner Clayton put a
21 finger on part of it this morning, whether there was fixed
22 charges in there or not and that was not the right number.

23 So rather than try to go through and extend the
24 calculation and get back into the arguments about what the
25 right number is, we just Xed it out and said this is intended

1 to be a methodological, whereas, Mr. Watkins proposes a
2 mechanism which is really what we were trying to propose. Is
3 that helpful?

4 JUDGE THOMPSON: Yes, sir.

5 MR. COFFMAN; If I might add, your Honor, the
6 attachment to the back, of course, is intended also to be as
7 an example or illustrative and so those numbers don't --
8 aren't necessarily intended to be a recommendation as to those
9 specific rates or those specific numbers.

10 And the point was that this recommendation go
11 to a position as to the issue we're trying today, not the
12 issue we were trying yesterday. In other words, putting
13 legalities aside, whether or not you're doing one, if you're
14 going to do one, what's your opinion about how it should be
15 done. And the point on the X number is that if there is to be
16 a range, the floor and the ceiling should be narrow, i.e.,
17 \$10 million apart.

18 JUDGE THOMPSON: I believe I understand. And I
19 think Commissioner Clayton is here, so I'm not going to let
20 you sit down, Mr. Conrad.

21 MR. CONRAD: While he's looking at that, may I
22 raise one other thing and then come back?

23 JUDGE THOMPSON: You've now received the second
24 revised. And I know you're going to be particularly
25 interested in this. Have at it.

1 COMMISSIONER CLAYTON: Did you withdraw the
2 first recommendation?

3 MR. CONRAD: Yeah. This is intended to
4 supersede the first two. The first one is a typo and this --
5 as I was saying earlier and you weren't here, you were on your
6 way down, but you made the statement that you got straight
7 answers from the lawyers rather than the witnesses.

8 COMMISSIONER CLAYTON: I'll regret I said that.

9 MR. CONRAD: But not always the correct --

10 JUDGE THOMPSON: Straight but wrong he's trying
11 to say.

12 MR. CONRAD: -- answers. And when I was able
13 to peel our consultant up off the floor, we got -- you know, I
14 think actually you had put your finger in when --

15 COMMISSIONER CLAYTON: I beg your pardon?

16 MR. CONRAD: You'd put your finger on the issue
17 before when Mr. Coffman was up here about what was the fixed
18 charge inclusion. And that was -- that was part of the
19 problem because the way the wording was, it didn't -- that
20 wasn't the right number.

21 COMMISSIONER CLAYTON: Okay. So now --

22 MR. CONRAD: That's the long and short of it.

23 COMMISSIONER CLAYTON: -- now --

24 MR. CONRAD: What we're saying is \$10 million
25 band.

1 COMMISSIONER CLAYTON: So now you're saying is
2 that you're still not agreeable to an IEC and now there's even
3 less guidance in this one then there was in the first one?

4 MR. CONRAD: I'm sorry. You can -- when
5 Mr. Brubaker's up, I think --

6 COMMISSIONER CLAYTON: I understand.

7 MR. CONRAD: -- he can clarify some of that,
8 but I'll have to take responsibility for the numbers. We're
9 doing a lot of things in short periods of time, so -- Judge,
10 the second thing was that we had, the day before yesterday, I
11 think, marked Mr. Majoros' testimony as Exhibit No. 111. I'm
12 advised now by Mr. Swearingen for the company and Mr. Frey for
13 the Staff and I've talked to Mr. Coffman earlier and I don't
14 believe there are questions for him from any parties that are
15 active on these issues. So I would suggest that we waive him
16 into the record at this point if that would be appropriate.

17 JUDGE THOMPSON: That's fine with me. I don't
18 know if there's any Commissioner questions for him. We will
19 endeavor to find that out.

20 MR. CONRAD: That would be fine.

21 JUDGE THOMPSON: Anything else?

22 MR. CONRAD: That's it. Thank you.

23 JUDGE THOMPSON: Very good. Thank you. Now,
24 Denny, you had something?

25 MR. FREY: Yes, I'd just like to make a

1 correction for the record. I believe I may have indicated in
2 response to a comment that Mr. Conrad made earlier that the
3 Staff had not moved in its position.

4 The Staff did move in its position on the
5 matter of its position on fuel and purchased power during the
6 pre-filed testimony phase of this proceeding. I was speaking
7 of the -- I was thinking of the fact that we had not changed
8 our position with regard to the ceiling gas price and the
9 floor gas price. So I just want to make that correction.

10 JUDGE THOMPSON: Very well. Thank you.

11 MR. FREY: Thank you.

12 MR. KEEVIL: Judge, if I can just get a
13 clarification from Mr. Coffman and Mr. Conrad or perhaps
14 you're the one to do it, I don't know, but are all previous
15 versions of this joint recommendation withdrawn or are they
16 still on the table or -- I mean --

17 JUDGE THOMPSON: It's my understanding that the
18 second revised joint recommendation supersedes both the first
19 revised joint recommendation and the joint recommendation.
20 They are now trash, to be discarded.

21 MR. KEEVIL: Thank you, your Honor.

22 MR. CONRAD: And for not held.

23 JUDGE THOMPSON: And for not held. Thank you,
24 Mr. Conrad.

25 MR. CONRAD: Whatever that means.

1 JUDGE THOMPSON: Now, one last thing, let me
2 tell you, Mr. Keevil, I am one of those people who would like
3 a hard copy of Mr. Beecher's revised corrected testimony
4 that's just been filed.

5 MR. KEEVIL: Okay.

6 JUDGE THOMPSON: Thank you. So if you can get
7 that to me, I would appreciate that.

8 MR. KEEVIL: Probably won't be able to get it
9 to you today, but will that be a problem?

10 JUDGE THOMPSON: Whenever is okay. Whenever
11 works for me.

12 I believe our first witness today is
13 Mr. Overcast. Am I correct?

14 MR. KEEVIL: Yes, your Honor.

15 JUDGE THOMPSON: Very well. Where is
16 Mr. Overcast? Come forward, sir.

17 (Witness sworn.)

18 JUDGE THOMPSON: Mr. Overcast, you understand
19 that if you should give false testimony in this proceeding,
20 you could be prosecuted for the crime of perjury?

21 THE WITNESS: Yes, I do.

22 JUDGE THOMPSON: Please take your seat, spell
23 your name for the reporter, if you would.

24 THE WITNESS: My name is H. Edwin Overcast.
25 Edwin is E-d-w-i-n, Overcast Is O-v-e-r-c-a-s-t.

1 JUDGE THOMPSON: Thank you, sir.

2 You may inquire, Mr. Keevil.

3 MR. KEEVIL: Thank you.

4 H. EDWIN OVERCAST testified as follows:

5 DIRECT EXAMINATION BY MR. KEEVIL:

6 Q. Mr. Overcast, by whom are you employed and in
7 what capacity?

8 A. I'm employed by RJ Rudin Associates,
9 Incorporated as a vice president.

10 Q. And you have filed testimony in this proceeding
11 on behalf of the Empire District Electric Company; is that
12 correct?

13 A. Yes, I have.

14 Q. In that regard, sir, are you, in fact, the same
15 H Edwin Overcast that has caused to be prepared and filed in
16 this case Direct Testimony, Rebuttal Testimony and Surrebuttal
17 Testimony, which I believe has been premarked as Exhibits 24
18 for the Direct Testimony, 25 for the Rebuttal Testimony, and
19 26 for the Surrebuttal Testimony? Is that your understanding,
20 sir?

21 A. Yes, it is.

22 Q. Do you have any changes or corrections you
23 would like to make to any of those exhibits?

24 A. None that I'm aware of.

25 Q. Given that then, if I were to ask you the

1 questions that appear in Exhibits No. 24, 25 and 26, would
2 your answers be the same as contained therein?

3 A. Yes, they are.

4 Q. And are those answers true and correct, to the
5 best of your knowledge and belief?

6 A. Yes, they are.

7 MR. KEEVIL: Now, Judge, I have a question for
8 you at this point.

9 JUDGE THOMPSON: I'm not here to answer
10 questions.

11 MR. KEEVIL: It's a procedural question.
12 Mr. Overcast has filed testimony, a substantial amount, on the
13 general rate design issues, which I believe as Mr. Conrad
14 mentioned earlier, the parties believe to have a settlement,
15 although it has not been filed yet as to that. Only a minor
16 portion -- or not minor but in terms of length of pages, much
17 smaller portion of Mr. Overcast's testimony addresses the IEC.
18 How do you want to handle all of these exhibits?

19 JUDGE THOMPSON: I want the exhibit offered and
20 received as a whole. So if anybody has objections or problems
21 with a part of that, then now is the time to raise it.

22 MR. KEEVIL: Okay.

23 JUDGE THOMPSON: I'm not planning to tear the
24 exhibit into two pieces, if that's what you're asking.

25 MR. KEEVIL: Should I offer it now or wait -- I

1 guess I should since this will be the only time he's taking
2 the stand.

3 JUDGE THOMPSON: This would be the time.

4 MR. KEEVIL: With that then, Judge, I would
5 offer Exhibits 24, 25 and 26 into evidence and tender the
6 witness for cross on the issue of IEC rate design.

7 JUDGE THOMPSON: Thank you, Mr. Keevil. Do I
8 hear any objections to the receipt of Exhibits 24, 25 or 26?

9 MR. CONRAD: No.

10 JUDGE THOMPSON: Hearing none, the same are
11 received and made a part of the record of this proceeding.

12 (Exhibit Nos. 24, 25 and 26 were received into
13 evidence.)

14 JUDGE THOMPSON: Thank you, Mr. Keevil.

15 I believe that first up for cross-examination
16 would be Mr. Frey.

17 MR. FREY: No questions, your Honor.

18 JUDGE THOMPSON: Thank you, Mr. Frey.

19 Mr. Conrad?

20 MR. CONRAD: No questions, your Honor.

21 JUDGE THOMPSON: Thank you, Mr. Conrad.

22 Mr. Coffman?

23 MR. COFFMAN: I'll pass as well.

24 JUDGE THOMPSON: Very well.

25 Questions from the Bench, Commissioner Clayton?

1 QUESTIONS BY COMMISSIONER CLAYTON:

2 Q. Would you just briefly state -- briefly state
3 the positions you advocate in your testimony for us?

4 A. Certainly. With respect to the IEC, I point
5 out the extreme volatility associated with gas prices and
6 purchased power prices and the fact that those prices really
7 are inherently unpredictable. It revolves around things like
8 do we know what the weather is going to be because the weather
9 will affect gas prices, it will also affect --

10 Q. I understand that. So you're advocating for
11 the IEC. What about the rate design portion?

12 A. And with respect to the rate design, I have
13 supported a flat charge applicable to all customer classes.

14 Q. What is the problem with the proposal that has
15 been offered by the Intervenor and Office of Public Counsel?

16 A. Well, there -- there are several problems with
17 it. The easiest way to explain it may be to -- if you don't
18 mind, to let me draw a picture.

19 Q. I'd love a picture.

20 JUDGE THOMPSON: Are you going to --

21 COMMISSIONER CLAYTON: Don't write on that yet.

22 THE WITNESS: Okay.

23 COMMISSIONER CLAYTON: Maybe we could get some
24 help moving this over because that's not a -- that's for the
25 computer thing.

1 JUDGE THOMPSON: That will do what you want it
2 to do, but --

3 THE WITNESS: I'm better off --

4 JUDGE THOMPSON: -- I don't know how to play my
5 part to get it to do what you want it to do.

6 COMMISSIONER CLAYTON: We've had instructions
7 not to write on it.

8 THE WITNESS: Okay.

9 JUDGE THOMPSON: You can write on it with those
10 special non-writing pens.

11 COMMISSIONER CLAYTON: That assessment would be
12 pretty rough, so --

13 THE WITNESS: All right. In essence, what we
14 have is -- for IEC there's a pot of dollars. I don't know if
15 that one's going to write. Let's try this one.

16 And let's just call this the pot of dollars.
17 Okay? And there's -- there's various proposals on how to
18 spread those dollars. And with respect to the proposal that
19 was made today, there are three kinds of groups of customers.
20 In this -- in this first group, there's residential and small
21 commercial. In the second group for -- for their proposal,
22 there's large power and Praxair. And in the third group,
23 there's everybody else. And this everybody else would include
24 all electric buildings, street lighting, outdoor lights, I
25 don't remember all of them just off the top of my head.

1 Now, under the proposal of the -- of the
2 company, they said let's take the kilowatt hours associated
3 with everybody and spread this pie on a per kilowatt hour
4 basis. Okay? And so let's just for our purposes assume that
5 this piece of the pie is group one under that proposal, this
6 piece of the pie is group two and that piece is group three.
7 Everybody gets the same charge.

8 And the Staff -- the Staff's modified their
9 proposal a little bit to adjust for losses. And just let me
10 give you an idea of the difference in losses between
11 transmission and secondary distribution is about 5 percent.
12 If you assume that this interim energy charge is .004, that
13 means the maximum differential, the maximum spread between
14 these two groups should be .0002.

15 Okay. So we're talking about -- I mean, the
16 company just said, you know, this is sort of within rounding
17 and let's just have a flat rate for everybody because the
18 losses, although should be taken into account theoretically,
19 the number's really small.

20 So what they've said in their proposal and if I
21 can use their exact numbers, they said let's go through and
22 divide -- for residential, small commercial and these other
23 classes, we'll divide the total dollars by total sales and
24 they get a number for the IEC of .0-- 0042. Okay. And
25 that's, in essence, the same -- I mean, we can say for all

1 practical purposes, group one is the same under everybody's
2 proposal.

3 Now, they've said for group two, let's --
4 instead of using this cent per kilowatt hour, let's take the
5 percent that these total dollars represent of total dollars
6 and apply it to this group. And when you do that, what
7 happens is they're -- they're, in essence, saying let's take a
8 piece of group two's money -- this piece, out of group two.
9 And you can see that by looking at their group two prices are
10 .003 and for Praxair, .0024.

11 Now, it's obvious that's not losses, because,
12 remember, the only difference -- I mean, we've got a full
13 mill -- a full mill difference here and almost two mill
14 difference in the -- the loss effect is two-tenths of a mill.
15 So that -- it can't just be all losses.

16 But they're saying, now, let's take that piece
17 and now for group three, since they're all that's left, let's
18 make this all new -- new group three and give them a new price
19 and their new price under this proposal was .005.

20 JUDGE THOMPSON: You're talking about the
21 proposal made by Mr. Coffman, Mr. Conrad --

22 THE WITNESS: Yes.

23 JUDGE THOMPSON: -- under the second joint
24 revised?

25 THE WITNESS: Right. I'm looking right at the

1 second revised.

2 JUDGE THOMPSON: Thank you.

3 THE WITNESS: So basically what they're saying
4 is, let's take and reduce the amount of energy costs that get
5 allocated to these customers. And their argument is these are
6 high-load factor customers, these are customers who are less
7 responsible for the factors that cause the interim energy
8 charge.

9 Now, it turns out that there's some problems
10 with that argument. Let's just look, for example, at street
11 lighting customers. All right. Street lighting customers, we
12 know exactly how much energy they're going to use. We know
13 with certainty. I mean, there's no -- there's no forecast
14 error here, it's all a function of how many lights are there,
15 what's their wattage and the burning hours. And the burning
16 hours are basically the same.

17 So you know -- you know that they're not going
18 to be causing any excess load or any -- none of the -- none of
19 the factors that enter into the IEC calculation affect them
20 disproportionately higher than anybody else. Okay?

21 The second thing is most of the reason for the
22 IEC has to do with the fact that at the margin, this system
23 meets all changes in load with gas-fired generation or
24 purchased power. And you can sort of think of the load on the
25 system as this is load and this is time (indicating). This is

1 the piece that's represented by coal and it's pretty much -- I
2 mean, you're running them flat out anyway. Okay? And so all
3 the -- any changes in load are going to be up in here
4 (indicating) and they're going to be either met with
5 additional gas-fired generation or purchased power. Okay?

6 And so we ask now, how does this affect street
7 lighting? Well, street lighting for the most part isn't even
8 on when these units are running except maybe a few hours a
9 day. I mean, if you think about the typical gas-fired cycling
10 unit, it may run 16 hours a day, 5 days a week. Okay? What's
11 16 hours? Well, it's not running in the middle of night. It
12 starts running early in the morning and runs until early
13 evening. That's its 16-hour period and it's off at night.
14 And yet, their proposal says allocate more of this cost to
15 street lighting.

16 Let's look at all electric buildings. Their
17 argument was these guys are high-load factor customers. Well,
18 an all electric building is a high-load factor customer too,
19 because they're running electric heat to match their air
20 conditioning load in the summer. So these would be higher
21 load factor customers. So they didn't really -- they weren't
22 consistent in their logic.

23 And, in fact, if you think about it, the only
24 difference -- I mean, we're allocating energy costs. And the
25 only difference in energy costs between groups of customers is

1 this adjustment for losses. Under the way the Staff has
2 allocated -- under the way the consumer advocate allocated
3 their cost and their cost of service, they took total kilowatt
4 hours, divided it into total dollars and said it's a flat rate
5 per kilowatt hour for everybody. So even consistent with
6 their own positions -- they haven't been consistent with their
7 own positions in allocating this IEC portion of the fuel
8 costs.

9 So if you -- it seems to me that if you're
10 looking at a difference bigger than .002, it's got to be
11 something more than losses. And the logic for -- the logic
12 for this doesn't -- doesn't support this kind of difference.
13 I mean, they said, we want it to be more cost based. Well,
14 there's two -- two examples that prove that it's not cost
15 based at all.

16 BY COMMISSIONER CLAYTON:

17 Q. How did you compute the .0002?

18 A. Okay. They -- the evidence is that losses at
19 transmission level are 2 1/2 percent, the losses at the
20 secondary distribution level are 7 1/2. That's a 5 percent
21 difference. .004 times .05 should be .0002, if I did my math
22 right. Since I'm doing it in my head, I can always slip a
23 decimal place, but I think that's right.

24 So what you would expect -- what you would
25 expect is if you adjusted for losses, you would expect these

1 classes that are served as secondary voltage to be two-tenths
2 of a mill higher than the transmission voltage customer and
3 that the large power, since I'm assuming they're served at
4 primary voltage, they're somewhere in between. And I don't
5 know what their losses are, but just intuitively their losses
6 fall somewhere in this range and so the difference should be
7 even smaller.

8 And as a practical matter, I think when you
9 look at this, if you make that distinction, .0042, if you made
10 that the rate for the typical residential customer,
11 500 kilowatt hour bill, that doesn't even round up to money.
12 I mean, if you think about it, it just doesn't make any
13 difference.

14 Now, when you're multiplying it by -- as you've
15 done here, 1 1/2 billion kilowatt hours, it -- it's real
16 dollars. But when you -- when you take decimal places for
17 residential rates out too far, depending on the level of use,
18 it may or may not even round up to any money in actually.

19 Q. Even in total? Even across the entire --

20 A. Because you're billing -- let's say you billed
21 every customer for 500 kilowatt hours in a month. You may
22 have billed -- you may have billed 50 million kilowatt hours.
23 That would be real money if you multiplied it by .0002, but
24 since you only billed 500, you know, the rounding of the bill
25 calculation -- and I don't know how they round.

1 Q. So the rounding never catches up totally?

2 A. It could never catch up in total.

3 Q. So the company loses money; is that right?

4 A. Well, I don't know that the company actually
5 loses money in this sense, because this is the interim energy
6 charge and has to do with refunds. So they couldn't refund
7 what they don't collect. But, yeah, it is possible if you
8 make the rates -- the residential rates, for example, and
9 small commercial rates go out too many decimal places, the
10 company never really collects that money.

11 Q. Well, maybe I misunderstood. I got funny faces
12 out there with what my question was. Maybe I don't
13 understand. I mean, this figure is a per kilowatt hour rider
14 that goes -- this is the IEC that is addition to base rates?

15 A. Right.

16 Q. And if you are moving that .0-- if you add the
17 .0002 onto the residential rate and then never realize any
18 money from that while at the same time you reduce someone
19 else's rider suggests to me that it's not a revenue neutral
20 shift in cost. So I don't understand --

21 A. Well, that's --

22 Q. -- because the bigger customers you do realize
23 it because the usage is so great.

24 A. Right. Right. If you -- if you take a
25 customer whose uses a million kilowatt hours a month, that's

1 real money, you know. When you get out this far, it's still
2 real money. My point was not so much that -- that -- that --
3 I mean, you're absolutely right, they would collect less
4 revenue than you expect them to collect because you're
5 multiplying it times a billion kilowatt hours and that turns
6 out to be real money. But when you actually bill it, you
7 won't collect it.

8 My thought was because this is a refund
9 mechanism, if you over-recover, you're going to actually
10 know -- you're going to record how much you actually collect
11 here. And you will collect some from some residential
12 customers. If this customer uses 4,000 kilowatt hours in the
13 summer, you're going to get, you know -- you're going to get
14 some money there.

15 But the -- but as I understand the IEC, what
16 they do is they collect and then -- and then there's a true-up
17 and the true-up will take what the actual collection is minus
18 the cost and so -- and that's the refund. So whether they
19 actually get it all or not may or may not really be an issue.

20 Q. In your example with your class one, two and
21 three and with the rates that are set out to the side, what is
22 the position of the company? It's .004 for each class?

23 A. That's the company's proposal, yes.

24 Q. Well --

25 A. And they're willing to accept adjusting it for

1 losses if --

2 Q. Well, if you were to adjust for losses at
3 that -- the 2 1/2 percent, 7 1/2 percent, 5 percent
4 difference, whatever it would be, what would it be? What
5 would be the rate for the three classes?

6 A. Well, the -- what we know -- I don't know,
7 because I don't have all the information necessary to
8 calculate it.

9 Q. So it's not -- well, in this example with these
10 figures can you do it?

11 A. Well, I can give you close. This one would be
12 probably -- this would be up just a little bit. These two
13 would be -- let's say this one was .0043 -- and I'm making
14 this up because I don't know exactly. Then these classes
15 would be .0041 for Praxair, LP should probably be 0042 if this
16 were 43. These classes down here would be -- some would be
17 0042 and some would be 0043 because some of these are serving
18 primary and some of these are at secondary.

19 Q. Okay.

20 A. And so all -- what you're looking at is you'd
21 be looking at a range. And the range should not be bigger
22 than .002 if this charge figures out to be 004.

23 Q. Okay. Can we --

24 COMMISSIONER CLAYTON: Judge, can we have that
25 marked as an exhibit number?

1 JUDGE THOMPSON: We sure can.

2 COMMISSIONER CLAYTON: I don't know how we're
3 going to reproduce it, but at least we can have a reference to
4 the example. Just leave it up there, sir, if that's all right
5 with everybody.

6 JUDGE THOMPSON: We will mark that as Exhibit
7 No. 117.

8 COMMISSIONER CLAYTON: I have no further
9 questions.

10 JUDGE THOMPSON: We'll describe that -- is it
11 Dr. Overcast?

12 THE WITNESS: Yeah. I go by Ed, but
13 formally --

14 JUDGE THOMPSON: Dr. Ed Overcast's chart. And
15 this is offered by the company. Do I hear any objections to
16 the receipt of Exhibit No. 117 requested by Commissioner
17 Clayton?

18 Hearing none, the same is received and made a
19 part of the record of this proceeding.

20 (Exhibit No. 117 was received into evidence.)

21 JUDGE THOMPSON: Additional questions from the
22 Bench, Commissioner Davis?

23 COMMISSIONER DAVIS: No questions at this time.

24 JUDGE THOMPSON: Thank you, Commissioner.

25 Commissioner Appling?

1 COMMISSIONER APPLING: No questions.

2 QUESTIONS BY JUDGE THOMPSON:

3 Q. Dr. Overcast, I wonder if you are familiar with
4 changes in the regime of natural gas prices since 1979?

5 A. Yes, I am.

6 Q. I wonder if you could give me a brief summary
7 of how prices have changed since that date, if, in fact, they
8 have?

9 A. Well, there's -- if we think of that period,
10 there are several factors that -- that have changed over that
11 period. And let's start with the passage of the National
12 Energy Policy Act in 1978.

13 And as part of that was something called the
14 Fuel Use Act. And the Fuel Use Act said basically that gas is
15 so valuable, it should not be burned in boilers to generate
16 electricity or anything else. And they also said that if
17 you -- if you're already burning gas, you're going to pay for
18 it based on something known as incremental pricing, which
19 meant you would pay for that gas -- regardless of what the
20 price actually was, you were going to pay for the gas as if it
21 were priced at oil.

22 And there was a short period where incremental
23 pricing was in effect for gas. The Fuel Use Act was
24 ultimately repealed and that permitted gas-fired generation --
25 new gas-fired generation to be constructed. That's later on

1 in this process.

2 But during the period of '79 to about '8--
3 well, depends on exactly when, but somewhere in the mid-'80s,
4 basically the price of gas was regulated under -- under -- for
5 end-use customers was regulated under FERC rules; that is, the
6 pipelines purchased the gas, they transported and they
7 delivered it under -- under a mechanism that rolled in all the
8 prices of gas into -- into the rate that they sold it to the
9 LDC making the delivery.

10 When -- when gas prices were allowed to move
11 with the market, certain large customers were allowed to
12 purchase their gas direct. And those purchases, in fact --
13 well, let me back up.

14 One thing that did happen was that wellhead gas
15 prices were deregulated in this process. And when wellhead
16 gas prices were deregulated, we had a market for gas. And the
17 market works like a market's supposed to, price goes up and
18 down.

19 Q. Did that deregulation occur after 1979?

20 A. Yes.

21 Q. Okay. Please proceed.

22 A. Gas prices were relatively stable until -- at
23 least for end-use customers until the mid-'80s and even after
24 that for smaller end-use customers because they had fuel
25 adjustment clauses that -- or purchased gas adjustment, the

1 equivalent thereof that held those prices relatively constant.

2 Market prices have fluctuated for wellhead gas
3 purchases substantially depending on what's going on in the
4 economy. Those fluctuations -- I can remember February -- I
5 believe it was February must have been about 1994, '95 where
6 wellhead gas price was a dollar. That's in the middle of the
7 winter, and wellhead price is a dollar.

8 I can also remember when wellhead prices have
9 been 7, 8 and 9 dollars for gas. I can remember in the '90s
10 one period when the price at the City Gate in Chicago was over
11 \$10. So gas prices, because they are market based, reflect
12 the laws of supply and demand. And they -- the laws of supply
13 and demand are moderated somewhat by the existence of storage.

14 So in order to understand the dynamics of the
15 gas market today, which is very different than it was when --
16 when all of this subsumed into the pipeline price and you
17 bought gas from the pipeline as an LDC or as a direct service
18 customer, you bought gas at their rolled-in price. And that
19 rolled-in price was an average of some \$2 gas and some gas
20 that was much higher.

21 And, in fact, in the '70s, lots of people had
22 long-term gas price contracts that locked in those prices for
23 20 years. To get a 20-year gas price contract today -- well,
24 probably nobody would undertake to do that because the
25 variability in the market price.

1 So if you -- if you're thinking of the period
2 1979 going forward, you really need to say -- drop out the
3 first 10 years because they're not really reflective of what's
4 going on today. The environment is very different now that
5 you have open access. Now that most of the contracts that
6 people enter into are index based, you -- you have very
7 different transportation options, there's -- there's -- the
8 world is just very different. And as you --

9 Q. Would you agree that it's different in such a
10 way that the task that a rate-making body faces in 2004 with
11 respect to utility fuel costs is quite different than the task
12 it faced in 1979?

13 A. Yeah. It's -- it's extremely different. I
14 mean, you -- you're looking at -- you're looking at gas being
15 the margin of fuel for one thing. Remember, coal -- in this
16 example, coal is all used up. Coal prices don't vary near as
17 much as gas prices.

18 And to forecast gas prices, you would have to
19 forecast a bunch of things. You'd have to forecast the
20 weather, you'd have to forecast storage levels, you have to
21 forecast the demand for gas in the summer associated with
22 power generation. You have to -- which means you have to
23 forecast the outage rates of base-load units like nuclear and
24 coal plants.

25 And it's not sufficient for you to just worry

1 about the plants in Missouri because you can have -- you could
2 have, for example, a nuclear plant or a coal plant that trips
3 off in, let's say, Texas, and it could raise the delivered
4 price of gas in Missouri because you're buying at a base in
5 Texas and having it delivered. And so when the demand goes up
6 in Texas -- and with some exceptions, you know, there are some
7 interconnections and you can buy from other hubs and things
8 like that, but in general, if demand for gas increases because
9 of these events, the price of gas is going to go up. And it's
10 become much more volatile.

11 Q. Thank you, sir.

12 JUDGE THOMPSON: Commissioner Appling, you have
13 a question?

14 COMMISSIONER APPLING: Yeah. Two questions.

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. The first one is a simple one and I'm sure you
17 can answer it quickly. Since I was born and raised in
18 Georgia, how about tell me where Snellville, Georgia is
19 located?

20 A. It's right outside of Atlanta.

21 Q. So you're a part of Atlanta. I was down there
22 a couple of weeks ago so that's a pretty good-sized place.

23 The second question was -- and I think I've
24 kind of slipped there. Maybe I can get back to it before you
25 get off the stage there.

1 Give me a snapshot -- just a sound byte of your
2 prediction of what the price is going to have on gas over the
3 next six months. Since you've got this big economy behind you
4 and aim and all that and you're this man from Georgia, give me
5 the best guess on that.

6 A. If I knew what that was --

7 Q. You wouldn't be here today?

8 A. -- I wouldn't be here today. Let me just tell
9 you this. In Georgia, you don't -- as a residential customer,
10 you don't buy gas from the gas company anymore. It's
11 completely deregulated. And you have a choice of buying at
12 the market or locking in at a fixed price and I've locked in a
13 fixed price. Knowing that -- knowing that there's a premium
14 associated with locking in the fixed price, I've locked in the
15 fixed price.

16 Q. Now, one of the things I saw on TV when I was
17 down in Georgia over Thanksgiving was there's a lot of
18 commercials on TV and I think the utility companies is paying
19 for this, is educating the average citizen about
20 conservatives, conserving energy, which I don't see in a lot
21 of other places. Would you care to comment on that?

22 A. Well, yeah. It's always valuable to understand
23 how your usage affects the system and to do everything that
24 you can do that makes economic sense to conserve energy. And
25 when you've got people, for example, on the gas system who use

1 gas space heaters and you know they're either full on or full
2 off, you know, that's not real efficient.

3 And you've got people in -- particularly in
4 certain parts of Georgia where they don't have any insulation
5 in their house, they may not even have weather stripping on
6 their doors. So all -- anything they do in terms of reducing
7 their energy bill is beneficial to them. And that's why
8 you've got promoting -- both gas and electric promoting
9 conservation

10 COMMISSIONER APPLING: Thank you.

11 JUDGE THOMPSON: Other questions from the
12 Bench? Commissioner Davis?

13 QUESTIONS BY COMMISSIONER DAVIS:

14 Q. Just out of idle curiosity, what price for your
15 natural gas did you lock in at?

16 A. Well, remember now it includes pipeline
17 transportation and storage, but it's 89 cents a therm.

18 COMMISSIONER DAVIS: Okay. Thank you.

19 JUDGE THOMPSON: Okay. Recross based on
20 questions from the Bench, Mr. Frey?

21 MR. FREY: No questions, your Honor. Thank
22 you.

23 JUDGE THOMPSON: Mr. Conrad?

24 RECROSS-EXAMINATION BY MR. CONRAD:

25 Q. Good morning, Dr. Overcast.

1 A. Good morning.

2 Q. Dr. Ed, as you prefer. You calculated the

3 .0002. That's a fraction of a dollar. Correct?

4 A. Yeah, it is.

5 Q. Okay. And that was your calculation of the

6 accounting for losses. Correct?

7 A. That was the differential --

8 Q. Yeah.

9 A. -- between the losses and -- the effect of the

10 difference in losses between transmission and secondary

11 distribution.

12 Q. Would you agree that an average residential

13 customer could potentially use about 1,000 kilowatt hours in a

14 month?

15 A. The average residential could be 1,000, yes.

16 Q. And 1,000 kilowatt hours times .0002 equals 20

17 cents?

18 A. Yes.

19 Q. Do you have a copy of what was filed this

20 morning and identified as a revised joint recommendation with

21 you?

22 A. Yes, I do.

23 Q. Would you please look at the last page, which

24 is an illustration of IEC rate design charge?

25 A. Yes.

1 Q. And I'd like to direct your attention to
2 line 9, total Missouri normalized kWh. And that line belongs
3 to Praxair?

4 A. Yes.

5 Q. Do I see there 67,387,032 kWh?

6 A. Yes.

7 Q. Would you except, subject to check or you can
8 do the math, that if you multiply that number by .0002, you
9 get over \$13,000?

10 A. Sure. It's real money for the big guys. It's
11 not necessarily real money if you're a small customer.

12 Q. And that takes -- that, again, is just your
13 accounting for losses. Correct?

14 A. Yes.

15 Q. Dr. Overcast, are you familiar with the concept
16 of system lambda?

17 A. Yes.

18 Q. What is system lambda, as you use that term?

19 A. System lambda is the marginal running cost used
20 in the dispatch of a power system.

21 Q. Is system lambda constant for an electric
22 utility 8,760 hours a year or does it vary?

23 A. No. It varies every hour.

24 Q. Now, you mentioned that you had locked in a
25 fixed price for gas. I presume that's Atlanta Gas Light; is

1 that correct?

2 A. No. I -- my -- my gas provider is Walton EMC.

3 Q. Okay. Were you able to do that in 1979?

4 A. No.

5 Q. Were you able to do that prior to 1985?

6 A. No.

7 Q. Do you know of anything that occurred in 1985

8 that might be relevant to the supply of natural gas? Try

9 October 10th of 1985.

10 A. I believe that's Order 436.

11 Q. You are correct, sir. Do you know the date for

12 Order 636?

13 A. No. I confess, I don't know the exact --

14 Q. Try January 1992.

15 A. Yes.

16 Q. Is that acceptable?

17 A. Yes.

18 Q. What did Order 436 do?

19 A. 436 gave certain customers the right to

20 purchase their own gas.

21 Q. Gave certain customers. Did it give open

22 access to all customers under a particular interstate

23 pipeline?

24 A. Yes.

25 Q. Do you recall the term "open access"?

1 A. Yes.

2 Q. On a nondiscriminatory basis?

3 A. Yes.

4 Q. That occurred in 1985. Correct?

5 A. Yes.

6 Q. What happened in Order 636?

7 A. I think the difference -- and I'm doing this
8 from memory. No, I don't remember exactly.

9 Q. Would you accept my characterization of it that
10 it took the interstate pipelines out of the merchant business?

11 A. Yes.

12 Q. And those things all occurred subsequent to
13 1979?

14 A. Yes

15 MR. CONRAD: Thank you, sir. That's all.

16 JUDGE THOMPSON: Thank you.

17 Mr. Coffman?

18 RECROSS-EXAMINATION BY MR. COFFMAN:

19 Q. Good morning, Mr. Overcast.

20 A. Good morning.

21 Q. In your time line in response to Judge
22 Thompson's questions, you did mention that I guess early on in
23 that time frame there were some fuel adjustment clauses
24 generally applied. Isn't it true towards the end of this time
25 frame that more states have repealed their fuel adjustment

1 clauses than states that have adopted ones, say, in the last
2 10 years?

3 A. I know very few states that don't have a fuel
4 clause. There are just a handful of states that don't have a
5 fuel adjustment clause. And there's some reasons why some of
6 them don't.

7 Q. As to my question, are you aware of any state
8 that has adopted a fuel adjustment clause in the last
9 10 years?

10 A. I think because most states have them, it would
11 be relatively rare to know -- I mean, if you already have one,
12 to adopt a new one.

13 Q. Do you know how many states have repealed their
14 fuel adjustment clause in the last 10 years?

15 A. Not right off the top of my head, but I do know
16 that many states have -- have created the competitive supply
17 of electricity, and as a result, repealed their fuel clauses
18 under that regime.

19 Q. And just so that I -- that we're talking about
20 the same thing, I know in your Direct Testimony on page 28 you
21 list three options or alternatives to adjustment clauses. And
22 I guess these are not -- okay, these three items in your
23 opinion are not fuel adjustment clauses? The first one
24 being --

25 A. They are -- they are not fuel adjustment

1 clauses, yes.

2 Q. You would not consider a formal rate to be a
3 fuel adjustment clause?

4 A. No.

5 Q. Okay. And you would not consider competitive
6 bidding process to be a fuel adjustment clause. I guess I
7 would agree with you there.

8 The third -- the third option there you talk
9 about ensuring against the price of -- energy price volatility
10 through a financial hedge. Do you believe that that is
11 something that is done now with Empire District Electric's
12 rates in Missouri?

13 A. No, they do not do that against -- with their
14 electric rates. They do have some hedges in terms of gas
15 supply.

16 Q. And so this electric utility does engage in
17 hedging against adverse natural gas price movement?

18 A. Yes.

19 Q. Yes. And do customers have that same
20 ability --

21 A. No.

22 Q. -- or at least --

23 A. Not because --

24 Q. -- most?

25 A. -- you don't have -- you don't have open access

1 so there's -- the customer can't do that. And that's --
2 that's why -- that's why you -- when you look at the gas
3 business, you have to -- you have to say when -- when do
4 customers realistically have a chance to hedge their gas
5 prices.

6 I mean, even today unless you have open access,
7 residential customers aren't allowed to hedge their gas price.
8 The company may enter into a hedge on behalf of the customers
9 so they could pass through other gas costs. And the typical
10 LDC passes through actual gas costs, whatever they are,
11 without markup subject to prudence.

12 Q. Okay.

13 MR. COFFMAN: Thank you very much.

14 JUDGE THOMPSON: Thank you, Mr. Coffman.

15 Redirect?

16 REDIRECT EXAMINATION BY MR. KEEVIL:

17 Q. Working backward in terms of the order in which
18 you were asked these questions, I think, Dr. Overcast,
19 Commissioner Appling asked you a question regarding the price
20 of natural gas in the future. And you responded that you have
21 locked in a fixed price for your residential gas. I believe
22 that's what you said; is that correct?

23 A. Yes.

24 Q. Why did you do that?

25 A. Because I believe the prices -- price for

1 natural gas in this market environment is extremely volatile
2 and very hard to predict. And that kind of volatility is --
3 makes it very difficult to even manage your budget. I mean,
4 the first year when gas was open, I didn't lock in and I had a
5 \$400 bill in the middle of winter compared to the historic
6 bills of \$125. So, you know, you take -- you take pretty
7 substantial revenue risks when you don't lock in.

8 And that's why -- that's why sort of -- if
9 you're designing a portfolio for gas, you use a mixture of
10 fixed prices and market prices, which is exactly what Empire's
11 done. They've done exactly the right thing to have some mix
12 of -- of hedge prices and market prices.

13 Q. I have to admit I don't know the Georgia
14 natural gas scheme down there, but does the program allow you
15 to lock in for different terms or is it a yearly basis or how
16 does it work?

17 A. Well, this --

18 Q. Company by company?

19 A. Remember, this is a competitive market. Okay?
20 People -- competitors can offer anything they want. Initially
21 there were some competitors in Georgia who offered a
22 three-year lockin period. Typically now the lockin period is
23 a year because the marketers themselves recognize that the
24 volatility is so large, to lockin for longer periods could
25 expose you to some pretty substantial losses.

1 In fact, the one company that offered a
2 three-year lockin initially locked in at I believe 39 cents a
3 therm for three years and the last two years the wellhead
4 price of gas was above 39 cents a therm. So they lost a -- I
5 mean, they lost all their transportation revenue plus
6 something on the actual commodity cost of gas over that period
7 by locking prices in, if they didn't hedge it all themselves.

8 So, I mean, we're talking about a very volatile
9 market price. And, you know, it's not only the price that's
10 volatile. And this is really important when you look at
11 trying to approve a just and reasonable rate. Not only is the
12 price volatile, but the level of use of those gas-fired
13 resources is volatile because they're at the margin.

14 And it's really an asymmetric risk in the sense
15 that you set coal at really operating as much as it can
16 possibly operate. So you know you're not going to get any
17 more coal-fired generation out of the systems. And so the
18 only thing that can happen is you get less coal, which means
19 you buy more gas. Whenever you buy more gas, you know the
20 prices are going to be higher because of supply and demand.

21 When it's warmer than normal, you know that
22 purchased power prices are -- warmer than normal in the summer
23 and cooler than normal in the winter, you know that purchased
24 power prices are going to be higher. So, I mean, the cost of
25 estimating what the cost of fuel is going to be for a company

1 like Empire and getting it right and putting it in base rates
2 is extremely complex and not something that is in the -- is
3 really in the best interest of anybody.

4 Because I can tell you, if you look at the
5 interim energy charge, I believe this number here says it's
6 \$16 million. If you didn't adopt that, they couldn't collect
7 that, let's say. That's almost half of their equity earnings.
8 And if you lose half your equity earnings and you're already a
9 triple B rated and on credit watch, you can almost be assured
10 that you're going to be downgraded. And if you're downgraded,
11 that raises the cost of debt component of financing the
12 utility system.

13 So ratepayers ultimately pay for these -- these
14 regulatory policies that cause them to -- or that exposes the
15 company to substantial risks of under-recovery of earnings.

16 Q. Commissioner Clayton asked a question, and I'm
17 paraphrasing here, but I believe it was to the effect of
18 what's -- in your opinion, what's wrong with the joint
19 recommendation which has been filed by Mr. Coffman and
20 Mr. Conrad's clients and which led you to the creation of
21 Exhibit -- I believe it's 117.

22 And during that discussion you were having with
23 Commissioner Clayton, I believe I heard you say that -- you
24 said something about refunds and then the Commissioner was
25 asking you whether the company could lose money because of

1 rounding on the residential and small commercial. And I'm not
2 sure that came clear because there was some refund discussion
3 there, but if the company doesn't collect enough, there is no
4 refund. Right?

5 A. That is correct. And they can under-recover
6 and would be exposed to losses in that case.

7 Q. Okay.

8 A. And when you look at the proposed rev-- I mean,
9 you know, we talked about the fourth decimal place, but they
10 carry their out to six in the proposal. So you know even
11 at -- if the fourth decimal place is 20 cents, the fifth one
12 is 2 and the sixth one is nothing on 1,000-kilowatt hour bill.

13 Q. So the company stands at risk for those -- for
14 having --

15 A. Yes.

16 Q. -- the losses?

17 MR. KEEVIL: Thank you, Dr. Overcast. That's
18 all I have.

19 JUDGE THOMPSON: Thank you, Mr. Keevil. You
20 may step down, Dr. Overcast, and you are excused.

21 Mr. Brubaker -- is it Mister or Doctor?

22 MR. BRUBAKER: It's not Doctor. It's Mister.
23 If it has to be one or the other, it's Mister.

24 (Witness sworn.)

25 JUDGE THOMPSON: Do you understand if you give

1 false testimony in this proceeding, you could be prosecuted
2 for the crime of perjury?

3 THE WITNESS: I do.

4 JUDGE THOMPSON: Please take your state, state
5 your name for the record, spell your last name for the
6 reporter.

7 THE WITNESS: My name is Morris Brubaker,
8 B-r-u-b-a-k-e-r.

9 JUDGE THOMPSON: Thank you, sir.
10 You may inquire, Mr. Conrad.

11 MR. CONRAD: Thank you, Judge.

12 MORRIS BRUBAKER testified as follows:

13 DIRECT EXAMINATION BY MR. CONRAD:

14 Q. Mr. Brubaker, are you the same -- I'm going to
15 ask a long question here. Are you the same Morris Brubaker
16 who on September 20 caused to be filed Direct Testimony on
17 recovery fuel and purchased power cost on behalf of Explorer
18 Pipeline and Praxair and on September 27th -- which by the way
19 has been marked for identification as Exhibit 115, and on
20 September 27th filed Direct Testimony on cost of service and
21 rate design for the same parties marked as Exhibit 105, and on
22 November 4 filed Rebuttal Testimony for the same parties on
23 cost of service rate design marked as Exhibit 106, and on
24 November 24 filed Surrebuttal Testimony on cost of service and
25 rate design for the same parties marked as Exhibit 107?

1 A. Yes, I am.

2 Q. Do you have any corrections or changes that you
3 wish to make to any of those items of testimony?

4 A. I have no corrections to make to the number --
5 to the testimony or the numbers.

6 Q. As far as you know, they are true and correct?

7 A. Yes.

8 Q. And were I to ask you those questions today now
9 that you have been sworn, would your answers thereto be the
10 same?

11 A. In the same context. I would indicate that the
12 fuel and purchased power cost recovery figures that I filed in
13 the Direct Testimony were not updated by me in the course of
14 the proceeding. Rather we focused on more conceptual issues
15 from that point forward.

16 So I am not today advocating the specific level
17 of fuel and purchased power cost recovery numbers that were
18 included in my original September 20th testimony, but instead,
19 my testimony should be read for the procedures and the
20 concepts that go behind IEC structure and class cost recovery.

21 Q. So it would be understood -- and the exhibits
22 that are attached respectively to those testimonies were
23 prepared by you and under your direct supervision?

24 A. They were,

25 MR. CONRAD: Your Honor, with that, I would

1 move admission of Exhibits 115, 105, 106 and 107 and exhibits
2 attached thereto.

3 JUDGE THOMPSON: Do I hear any objections to
4 the receipt of Exhibits 105, 106, 107 or 115?

5 Hearing none, the same are received and made a
6 part of the record of this proceeding.

7 (Exhibit Nos. 105, 106, 107 and 115 were
8 received into evidence.)

9 MR. CONRAD: And by your leave, your Honor, I
10 would tender the witness for cross-examination.

11 JUDGE THOMPSON: Thank you, Mr. Conrad.

12 Mr. Keevil?

13 MR. KEEVIL: Judge, first of all, let me
14 mention something that I think I mentioned previously. After
15 Mr. Frey raised the question this morning of whether the now
16 second revised joint recommendation of the Intervenor and
17 Public Counsel constitutes a stipulation or not, you indicated
18 that parties will have opportunity to present to the
19 Commission's rule and their own evaluation of the rule and the
20 filing to determine what, if anything, they need to do
21 regarding that stipu-- or that pleading, whether it is a
22 stipulation or not.

23 As I indicated also this morning, we received
24 the first revised stipulation some time last night by e-mail.
25 My clients have not had a chance -- or adequate chance to

1 review it. I honestly don't know what our position is going
2 to be on it, don't know if we will need to cross-examine
3 Doctor -- excuse me, not Doctor, you made that clear --
4 Mr. Brubaker about it or not.

5 In the event that we determine we do, I assume
6 that will be done at the appropriate time. But I just wanted
7 to make that clear. I'm certainly not here today prepared to
8 cross-examine Mr. Brubaker on that document, if it turns out
9 to be necessary to do so. It may not be necessary. I just
10 wanted to make that point.

11 JUDGE THOMPSON: I will bear your disclaimer in
12 mind.

13 CROSS-EXAMINATION BY MR. KEEVIL:

14 Q. With that disclaimer, Mr. Brubaker, let me ask
15 you one question that I asked Mr. Busch of OPC yesterday. If
16 the Commission were to approve an interim energy charge for
17 Empire in this case, would Praxair and Explorer Pipeline
18 Company seek judicial review of that Commission determination?

19 A. I'm not in a position to answer that question.
20 I do not know.

21 Q. Don't know?

22 A. I have not consulted with them and presume that
23 counsel would have to address that.

24 MR. KEEVIL: Okay. Thank you very much.

25 That's all.

1 JUDGE THOMPSON: Thank you, Mr. Keevil.
2 Mr. Coffman?
3 MR. COFFMAN: Let me see. I may.
4 On second thought, I have no questions of
5 Mr. Brubaker on IEC rate design.
6 JUDGE THOMPSON: Thank you, Mr. Coffman.
7 Mr. Frey?
8 MR. FREY: No questions, your Honor. Thank
9 you.
10 JUDGE THOMPSON: Thank you, Mr. Frey.
11 Questions from the Bench, Commissioner Clayton?
12 COMMISSIONER CLAYTON: Judge, can I ask you a
13 question?
14 JUDGE THOMPSON: Yes, sir, you may.
15 COMMISSIONER CLAYTON: Mr. Brubaker is here not
16 just for rate design, but also for overall power cost, fuel
17 cost issue. Is this the appropriate time or is there another
18 time?
19 JUDGE THOMPSON: This is the time for both of
20 those issues.
21 COMMISSIONER CLAYTON: So we're doing more than
22 just the rate design --
23 JUDGE THOMPSON: Yes, sir.
24 COMMISSIONER CLAYTON: -- bit on this? Okay.
25 QUESTIONS BY COMMISSIONER CLAYTON:

1 Q. Mr. Brubaker, you haven't been here the last
2 couple of days --

3 A. That's correct.

4 Q. -- for all the fun that we've had?

5 A. I've been having similar fun elsewhere, sir.

6 Q. Where have you been?

7 A. I've been in Utah.

8 Q. Utah. All right. Okay. I reviewed your
9 testimony and we've gone over a lot of things. I wanted you
10 to clarify the position of your clients with regard to fuel
11 cost and purchased power cost. Do you advocate for an IEC or
12 do you advocate for just a base amount of revenue requirement
13 for purchased power and fuel?

14 A. Let me answer it carefully here because it's --
15 I think more than a nuance.

16 Q. If I asked the question the wrong way,
17 certainly tell me if I asked a bad question.

18 A. The question was fine. I just want to be
19 careful with the answer because the -- the position of my
20 clients, which I'm not testifying about because I'm not an
21 attorney, is that an IEC cannot be imposed without --

22 Q. I'm asking what you advocate for, not what the
23 lawyers are advocating. What are you proposing in your
24 testimony?

25 A. If we were putting aside that condition or that

1 reservation, I believe it's preferable to have a form of IEC
2 that allows for a refund of amounts to customers in the event
3 that there is an over-collection by the utility.

4 Q. Okay. So you're proposing an IEC type of
5 mechanism?

6 A. I believe that's the most logical mechanism,
7 subject to the reservation that I just expressed.

8 Q. Okay. I understand. But we've been through
9 this. I understand.

10 A. Yeah.

11 Q. And what is the -- do you advocate for a floor
12 and a ceiling --

13 A. Yes.

14 Q. -- of revenue requirement for power and fuel?

15 A. In concept, yes, sir. As I tried to indicate
16 when I first took the stand, I had put some specific numbers
17 of fuel and purchased power cost recovery in my Direct
18 Testimony, but I did not -- did not update those as the other
19 witnesses have done.

20 So at this point, I'm not advocating for a
21 particular number, but I believe that a range with a band
22 width of \$10 million or so makes -- makes sense.

23 Q. So all you're advocating is for an IEC with a
24 band of \$10 million and that's it?

25 A. In addition to the rate design, that's correct.

1 Q. No proposed gas price, no -- no base amount
2 power? You're just saying, well, just do an IEC with a band
3 of \$10 million?

4 A. Yes, sir. That's correct at this point.

5 Q. Okay. Where are you from?

6 A. St. Louis.

7 Q. Okay. Well, you didn't come that far to just
8 tell us that.

9 A. We're more focused on the policy and
10 principles, quite honestly, Commissioners. We saw that other
11 parties were making a very extensive record on the fuel cost
12 levels and purchased power cost levels so we thought the
13 Commission would have plenty of information and evidence to
14 make a judgment as to the specific levels.

15 And once we saw that, we focused our attention
16 more on other issues in the case, including the cost of
17 service and rate design that we've settled. So we wanted our
18 princ-- we wanted to continue to advocate for the principle.

19 Q. Well, okay. Well, so let me understand exactly
20 what the position of your client is. You are advocating no
21 position for the base cost of purchased power and fuel.
22 Correct?

23 A. I am not --

24 Q. Okay.

25 A. -- as a witness advocating a specific number.

1 Q. Okay. And you are not advocating -- you have
2 no recommendations for us for a floor or a ceiling in an IEC
3 type of mechanism, but you do propose that an IEC be utilized?

4 A. With a \$10 million difference between the base
5 and the ceiling.

6 Q. Except counsel for your clients say that they
7 don't think that's legal?

8 A. That's correct.

9 Q. This makes absolutely no sense. This makes --
10 this whole exercise makes absolutely no sense. So you're just
11 advocating for this \$10 million band?

12 A. Yes. And the rate design should the Commission
13 choose --

14 Q. Might as well cover the rate design. What are
15 you advocating on rate design?

16 A. We're advocating that whatever the amount of
17 IEC is, that it be spread to the classes in the same manner as
18 illustrated in the schedule attached to the second revised
19 joint recommendation.

20 Q. Okay. And what methodology is it based upon?

21 A. It's based essentially upon an equal percentage
22 approach to spreading the fuel cost recovery basically that --
23 which is the same approach that Empire had included in its
24 direct filing, was the amount of money that it filed in its
25 base tariffs was inclusive of its fuel amount and that was

1 spread equal percent adjusted to reflect the same methodology
2 for recovery from classes as was adopted in the stipulation in
3 the Aquila case.

4 Q. Your position on the rate design is it -- the
5 primary difference is due to losses on the transmission and
6 distribution system should be reflected in some way? Is that
7 the primary difference or primary purpose behind the
8 difference?

9 A. That is one of the dimensions of the
10 difference. The other dimension of the difference is, in a
11 broad sense, a recognition that not all customers use power at
12 the same intensity during on peak and off peak hours either
13 daily, weekly or seasonal.

14 And if you are able to do the refinement, you
15 would find that the average cost of serving customers with
16 high-load factors and fairly flat seasonal characteristics is
17 lower than the average cost on the system. The approach we've
18 taken here, while not a perfect reflection of that, is, in
19 general, a recognition of that characteristic.

20 COMMISSIONER CLAYTON: What is this exhibit
21 number?

22 JUDGE THOMPSON: 117.

23 BY COMMISSIONER CLAYTON:

24 Q. On Exhibit No. 117, were you in the room when
25 Dr. Outcast -- Over-- I'm sorry, Overcast. For some reason I

1 had the band in my hand. There's a band called OutKast. I
2 apologize on record for that.

3 Exhibit 117, do you disagree with the analysis
4 that's been put forward on that exhibit by Dr. Overcast?

5 A. I agree in --

6 Q. Ed. Why don't we just call him Ed?

7 A. My old friend, Ed. We go back a long way.

8 Q. Okay.

9 A. I don't disagree with his analysis of the
10 difference due just to losses. I think he understates the
11 differences due to the pattern of usage of the different
12 customers. Even on a marginal cost basis, there are lots of
13 times in the evenings and at night when the marginal cost --
14 the system lambda is going to be lower than it's going to be
15 during the very high peak load hours, particularly if you're
16 comparing summer weekdays to spring, fall or winter evenings.
17 And there's a tremendous difference in usage patterns.

18 Praxair, for example, is using probably about
19 the same amount of kilowatt hours every hour of the year
20 because they have a 98 percent load factor. They are
21 essentially flat but for small variations in their production
22 process or maybe minor equipment outages.

23 Residential customers like us and commercial
24 customers are much heavier users in the summertime when system
25 loads are high and power prices are high and combined cycle

1 unit is running to the greatest extent. So if you were to --
2 able to go through and do an hour by hour comparison, you
3 would see a difference between those classes more than just
4 the 5 percent difference due to losses.

5 So that's why -- that part I disagree with.
6 And that -- that's -- it's probably even an larger difference
7 if you look at the difference between the average cost at
8 night and the average cost during the day.

9 Q. So --

10 A. So I would disagree with his conclusion that
11 it's basically loss, because I think there's a lot more to it
12 than just losses.

13 Q. And your recommendations take into
14 consideration all --

15 A. Yes.

16 Q. -- of those other factors?

17 Could you give me some suggestions of what
18 those other factors are? I think you suggested seasonal
19 usage?

20 A. Yes, sir. It's sum-- summer, winter, spring,
21 fall differences in usage for a customer class between those
22 periods. And then also day to night, daytime/nighttime usage.
23 Most residential/commercial usage drops down at night.
24 Praxair and the larger -- large power customers tend to keep
25 going at pretty much the same level or at least they don't

1 have as much variation.

2 And then the third time-related variation is
3 between weekdays and weekends where you have a similar --
4 similar phenomenon, although not quite as pronounced as
5 between daytime and nighttime.

6 Q. Do you disagree with his characterization of --
7 that his group three in his analysis was a very similar user
8 of power as one that would be categorized in number two? Does
9 that make -- does that question make sense?

10 A. I think group three was street lighting and
11 total electric buildings; is that correct?

12 Q. Yeah, I think so.

13 A. I think he's certainly right about street
14 lighting. I'm not sure about the total electric buildings.
15 If that's true, we have no objection to reflecting that in
16 here. It could be a refinement.

17 As I said, we basically started with the
18 framework of the Aquila stipulation, that it was at least
19 something that the Commission had seen before and was familiar
20 with. But in concept, I certainly agree with street lighting.

21 Q. Okay.

22 A. It's a relatively minor -- very, very minor
23 part of the sales, so it wouldn't make much difference in the
24 other class impacts, but would certainly have no objection.

25 Q. Lastly, could you address whether there is a

1 potential with -- as the decimal point -- as the numbers move
2 further from the decimal point, could you address whether or
3 not you believe there is a greater risk for less collections
4 for lower users due to rounding errors that was suggested,
5 especially with regard to numbers on residential and small
6 commercial users?

7 A. I think you would have to get down to extremely
8 low, almost abnormally low usage levels for that to be a
9 problem. At 100 -- 1,000 kilowatt hours a month, which is
10 fairly typical residential, I think we saw the difference was
11 20 cents in the bill. That's certainly collectible. It's --
12 it shows up and is collectible. At 100 kilowatt hours a
13 month, it's still 2 cents, and that's within the dimension of
14 the billing.

15 Below that, you have to get, you know, below
16 100 kilowatt hours, maybe down to 10 kilowatt hours before you
17 have less than a penny -- or 50 kilowatt hours before you have
18 less than a penny.

19 Q. Well, I think --

20 A. I would think that would be at the outer
21 stretches of what you would see. It would be very abnormal.
22 So I don't share the same concern that Dr. Overcast mentioned.

23 Q. So if you had an average usage of 1,000
24 kilowatt hours per month, once you get past .0002 at 1,000,
25 you would lose any other monies beyond that because there

1 would not be a rounding -- for 1,000 -- if you had everyone
2 using 1,000 kilowatt hours. You don't see that as a risk of
3 having under-collections or it's just a minuscule amount?

4 A. I'm sorry. When you say get past 1,000, I'm
5 not sure which direction. You're going up or down in the
6 usage?

7 Q. Well, say usage is 1,000 kilowatt hours on a
8 monthly basis. Once you get past -- once you get past the
9 10,000ths column beyond the decimal point, how would the
10 company ever recover the remaining numbers in the hundredths,
11 millionths that are suggested further out?

12 A. Well, let me suggest that at the -- step three
13 at the bottom of the schedule shows the IEC factors that we
14 developed multiplied times the kilowatt hours. And it -- it
15 exactly recovers the target revenue requirement that's used in
16 this illustration. In other words, line 45 matches line 20,
17 which was the objective to be recovered.

18 And it's rare -- it's -- I just don't see it as
19 a problem. If there is a problem, I think it would be
20 minuscule. Maybe that's -- maybe you had the right question
21 in the first place and I just didn't understand it.

22 Q. What did you testify about in Utah?

23 A. Oh, in Utah we were actually beginning
24 settlement discussions.

25 Q. In what type of utility?

1 A. Electric utility.

2 Q. Electric utility. And do they generate their
3 own power, that utility?

4 A. They generate a fair amount and also purchase
5 quite a bit.

6 Q. And what fuel do they use in generating that
7 power?

8 A. They use coal and natural gas.

9 Q. Okay. Did you provide any expert testimony on
10 what you estimated the natural gas price to be over the next
11 couple years?

12 A. I did not address that issue.

13 Q. Was that part of your client's case -- whoever
14 your client was? I'm not sure who you testified on behalf of.

15 A. No, sir, it was not.

16 Q. It was not. Was that issue even addressed in
17 the case, the forward-looking estimate of price of natural
18 gas?

19 A. It was addressed by the Division, which is the
20 equivalent of the Staff here, and the Committee of Consumer
21 Services, which is equivalent to Mr. Coffman's office.

22 Q. What price were they looking at for natural
23 gas?

24 A. I couldn't tell you, sir.

25 Q. You can tell me.

1 A. I don't know because the filing was just made
2 and we were just having preliminary discussions. So I have
3 not had a chance to get into the guts of it. The main -- I
4 will tell you from -- my perception is the main issue there
5 was the differences in the price of coal.

6 Q. Have you testified in any cases in the last
7 four months in which you estimated the price of natural gas
8 looking forward in the next few years?

9 A. I have not.

10 Q. You have not. Does your expertise and regular
11 research provide for you being in a position to estimate the
12 price of natural gas in the coming months?

13 A. It's something that we follow and evaluate as
14 necessary for the projects that we're working on. We don't
15 make a regular habit of publishing forecasts or doing
16 forecasts of natural gas for some of the reasons I expressed
17 in my testimony, the difficulty of doing that on -- on any
18 consistently reliable basis.

19 COMMISSIONER CLAYTON: Okay. Thank you.

20 JUDGE THOMPSON: Thank you, Commissioner.

21 Commissioner Davis?

22 QUESTIONS BY COMMISSIONER DAVIS:

23 Q. Mr. Brubaker, we've heard testimony from
24 Empire, we've heard testimony from you regarding the
25 difference, I think -- you're at 10 million in terms of, like,

1 the spread?

2 A. Correct.

3 Q. And I think they're at 20 million. Correct?

4 A. That's correct.

5 Q. And I asked this to your counsel there, I guess
6 it was yesterday or the day before, whenever. Is there --
7 just hypothetically speaking, is there any way that there
8 could be some sort of sharing grid developed or anything
9 where -- you know, to incentivize them to be prudent, you
10 know, with regard to their gas purchases and to make costs low
11 where we could, you know, maybe resolve this, you know, gap in
12 the IEC?

13 A. Commissioner, I -- I, in concept, would like to
14 have something like that myself. We've not been able to -- or
15 I've not been able to come up with a mechanism that I'm
16 comfortable with that would do that other than setting an
17 realistic band width and giving Empire a chance to actually
18 get down into -- into -- or I should say below the amount
19 that's set in base rates.

20 If you do -- if you set it -- and I think a
21 \$20 million band width is way too high. I think a \$20 million
22 band width if your -- your upper number is realistic given the
23 amount of natural gas they've already hedged, I don't see
24 that --

25 Q. Now, did you see you'd give them I think

1 5 million more at the low end of the band width? Wasn't their
2 number like 105 million and wasn't yours 110?

3 A. Yes. Going in. I'd probably have to shift all
4 those up now if I were redoing them, but looking -- looking
5 now at where they are, just as an example, the -- there's a
6 number out there of base rates of \$3.20 natural gas.

7 The company has locked in 40 to 30 to 50
8 percent of its requirements already and I think the cost of
9 the incremental requirements would have to be acquired for
10 less than \$3 in order to be able to get 20 million below the
11 upper end that would be in the IEC.

12 And I just don't see -- I just don't see that
13 happening in the next couple of years. I mean, anything is
14 possible, but it's unrealistic. The fundamentals don't point
15 to \$3 natural gas.

16 So it just seems to me that if you want to give
17 the company a real incentive, you should give them an
18 opportunity -- a realistic opportunity to, by judiciously
19 purchasing and managing their affairs, reduce the cost of fuel
20 and natural gas to a level below what's in base rates so they
21 could actually retain some of that benefit. To me, that's the
22 most straightforward kind of incentive that -- that you could
23 provide. It may well be possible to do something in between
24 there with a sliding scale. I haven't been able to come up
25 with something that I'm satisfied with.

1 Q. Well, I don't think anyone else has been able
2 to come up with anything either, but let's just keep thinking
3 about it.

4 A. Exactly.

5 COMMISSIONER DAVIS: No further questions.

6 JUDGE THOMPSON: Thank you, Commissioner Davis.
7 Commissioner Appling?

8 COMMISSIONER APPLING: No questions.

9 JUDGE THOMPSON: Very well. We will recess now
10 for the lunch recess.

11 This is our last witness. Very well.

12 COMMISSIONER CLAYTON: Why don't we finish this
13 one up and then everybody's done.

14 JUDGE THOMPSON: Mr. Keevil, recross?

15 MR. KEEVIL: Just a second, Judge, if I could.

16 It occurred to me after I was up here last time
17 that since Public Counsel and Praxair, Explorer have filed a
18 joint recommendation, that I don't know how I'm going in front
19 of Mr. Coffman on cross of Mr. Brubaker, but I think that
20 reflects the pre-joint recommendation order.

21 RE-CROSS-EXAMINATION BY MR. KEEVIL:

22 Q. Mr. Brubaker, just a quick question. In
23 response to some questions from Mister -- or Commissioner
24 Clayton, you referred to that Attachment A to your second
25 revised joint recommendation. And, sir, I still haven't had

1 and my client hasn't had ample opportunity to examine that,
2 but I believe you pointed -- this was in regard to the
3 question of the rounding of the bills out too many decimal
4 places. And you referred to the stipulate three there for the
5 proposition that there would be no lost money to the company.

6 And I just want to clarify, those total kWh
7 figures that are shown there in your step three as well as the
8 IEC revenue figures that are shown on step three, those are
9 aggregate yearly figures, are they not, sir?

10 A. That's correct.

11 Q. So they're not monthly figures?

12 A. No.

13 Q. And they're not broken down by customer.

14 Correct?

15 A. Correct.

16 Q. So when you do that, I mean, that -- break it
17 down customer by customer, there could be some change there
18 between what you receive from one customer versus what you
19 would theoretically receive from the class in aggregate.

20 Correct?

21 A. Yes. And I went onto condition my answer and
22 further explain that we had gone through the exercise of even
23 down to 100 or 50 kilowatt hours a month, the rounding would
24 still not fall off the table. So I didn't think it was -- it
25 should be much of an issue.

1 Q. But those are, I believe, aggregate yearly
2 figures?

3 A. That is correct

4 MR. KEEVIL: That's all.

5 JUDGE THOMPSON: Thank you, Mr. Keevil.

6 Mr. Coffman?

7 RE-CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. Mr. Brubaker, you've testified in numerous rate
9 design proceedings over the years; is that not correct?

10 A. That's correct. That's correct.

11 Q. And have you ever encountered a concern where
12 the rounding of a particular charge or component of the rate
13 has been so far out that the utility company has not been able
14 to recover its total revenue requirement?

15 A. I don't remember that being an issue, but in
16 all fairness, it's probably not something that I ever focused
17 on.

18 Q. And wouldn't the nature of rounding go both
19 ways in order --

20 MR. FREY: Your Honor, I'm going to object to
21 this line of questioning on the basis that it's friendly
22 cross.

23 MR. COFFMAN: I don't know whether it's --

24 JUDGE THOMPSON: Well, you know, Denny,
25 friendly cross was forbidden in the hearing memorandum when

1 that was produced by your office. The hearing memorandum is
2 no longer produced by your office and no longer includes a
3 prohibition on friendly cross. Therefore, I am going to
4 overrule the objection.

5 MR. COFFMAN: Okay. I guess a prop-- an
6 objection could be made if someone thought it improper direct
7 examination was going on, but I don't know.

8 JUDGE THOMPSON: I'm assuming, Mr. Coffman,
9 that you're asking questions in order to elicit information
10 that will help this Commission understand the proposal that
11 you have filed and to reach a determination in this case; is
12 that correct?

13 MR. COFFMAN: That is correct. Quite frankly,
14 I don't know --

15 JUDGE THOMPSON: With that goal in mind --

16 MR. COFFMAN: -- the answers I'm going to
17 receive and I don't --

18 JUDGE THOMPSON: -- proceed.

19 MR. COFFMAN: I'm merely asking out of
20 curiosity. This rounding issue is new to me and I know
21 Mr. Brubaker has a great deal of rate design knowledge.

22 JUDGE THOMPSON: Please proceed.

23 BY MR. COFFMAN:

24 Q. I don't know that I need to go any further,
25 unless --

1 A. I thought I had responded to the question you
2 had posed to me. If there's one pending, I've forgotten.

3 Q. I think you have.

4 MR. COFFMAN: I'll end here and hopefully we
5 can go to lunch.

6 JUDGE THOMPSON: Thank you, Mr. Coffman.

7 Mr. Frey, friendly or unfriendly, it's your
8 turn.

9 MR. FREY: No questions.

10 JUDGE THOMPSON: Thank you.

11 Redirect?

12 MR. CONRAD: In the interest of lunch, I will
13 advise the Bench that I have no questions on redirect.

14 JUDGE THOMPSON: Thank you.

15 Thank you for your testimony today,

16 Mr. Brubaker. You are excused.

17 We are in recess until Monday morning at 9:00
18 a.m. Thank you.

19 (Exhibit No. 117 was marked for
20 identification.)

21 WHEREUPON, the hearing was recessed until
22 December 13th, 2004 at 9:00 a.m.

23

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