BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

On-the-Record Presentation

July 26, 2004
Jefferson City, Missouri
Volume 2

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

KEVIN A. THOMPSON, presiding,
Deputy Chief Regulatory Law Judge
STEVE GAW, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON, III,
JEFF DAVIS,
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:
Jennifer L. Leibach, RPR, CCR(T)
MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

JAMES C. SWEARENGEN, Attorney at Law
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capital Avenue
Jefferson City, Missouri 65101
(573) 635-7166

FOR: The Empire District Electric Company

CHARLES BRENT STEWART, Attorney at Law
STEWART & KEEVIL
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635

FOR: The Empire District Electric Company

STUART CONRAD, Attorney at Law
FINNEGAN, CONRAD & PETERSON, L.C.
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 713-1122

FOR: Praxair, Inc. and Explorer Pipeline

SHELLEY A. WOODS, Attorney at Law
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 899
Jefferson City, Missouri 65102
(573) 751-8795

FOR: Missouri Department of Natural Resources

A P P E A R A N C E S (con't)

MICHAEL DANDINO, General Counsel
P.O. Box 2230
Jefferson City, Missouri 65102
(573) 751-5565

FOR: Office of the Public Counsel

DENNIS FREY, General Counsel
STEVEN DOTTHEIM, General Counsel
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-8700

FOR: Staff of the Public Service Commission

PROCEEDINGS

JUDGE THOMPSON: We'll go on the record. Good morning, ladies and gentlemen. We are here in the matter of the tariff filing of the Empire District Electric Company to implement a general rate increase for retail electric service provided to customers in its Missouri service area. This is Case No. ER-2004-0570. My name is Kevin Thompson, I'm the Regulatory Law Judge assigned to preside over this matter.

We will take oral entries of appearance at this time, beginning with Empire.

MR. SWEARENGEN: Thank you, Judge. Let the record show the appearance of James C. Swearengen and Brent Stewart on behalf of the Empire District Electric Company.

JUDGE THOMPSON: Thank you. Staff.

MR. FREY: Thank you, your Honor. Representing the staff, the Missouri Public Service Commission, Dennis L. Frey and Steve Dottheim, Post Office Box 360, Jefferson City, Missouri, 65102.

JUDGE THOMPSON: Thank you. Public Counsel.

MR. COFFMAN: Appearing on behalf of the Office of the Public Counsel, John B. Coffman, P.O. Box 2230, Jefferson City, Missouri, 65102.

JUDGE THOMPSON: Very well. Interveners, Mr. Conrad.

MR. CONRAD: On behalf of Praxair, Inc. and

Explorer Pipeline, Judge, please enter the appearance of Stuart W. Conrad, Finnegan, Conrad, and Peterson, 3100 Broadway, Suite 1209, Kansas City, Missouri, 64111.

JUDGE THOMPSON: Thank you, sir. Ma'am.

MS. WOODS: And on behalf of the Missouri Department of Natural Resources, Shelly A. Woods, Assistant Attorney General, Post Office Box 899, Jefferson City, Missouri, 65102.

JUDGE THOMPSON: Thank you. Are there any other interveners present? Okay. Mr. Swearengen.

MR. SWEARENGEN: Yes, thank you, your Honor. May it please the Commission, James C. Swearengen attorney on behalf of the Empire District Electric Company.

First, we'd like to thank the Commission for affording us the opportunity today to visit with you about our motion to put into effect immediately Empire's interim energy charge, which was filed as a part of the company's general rate case back on April 30 of this year. We are here today to address that motion in accordance with your Order. And we hope the presentation will be of some value to the Commission in understanding the circumstances which caused the company to seek the relief that it is requesting by its motion.

We understand that, based on your Order setting this hearing, that the Commission is interested in the factual and legal circumstances and matters surrounding this request. And to accomplish that, we are prepared to do two things this morning.

First of all, we have in the hearing room today and available to make a brief presentation, Bill Gipson, who is Empire's President and Chief Executive Officer, and Brad Beecher, who is Empire's Vice-President of Energy Supply. These two gentlemen can briefly lay out the factual background behind the motion and answer any questions that the Commission or the other parties might have with respect to that.

Then we would be prepared to move to a brief presentation by counsel concerning what we believe to be the legal authority that the Commission has to grant this request. As we have said in our motion and the accompanying suggestions, we believe that the Commission does, in fact, have the legal authority to grant our request and lift the suspension of the interim energy charge, the IEC, immediately.

And based on our reading of the Staff's pleading, we think that the Staff agrees that the Commission does have the legal authority to grant the request that we have made. Based on that, from our standpoint, the only real question that the Commission is going to have to deal with at the end of the day is whether under the facts and circumstances of this case, namely, the circumstances surrounding natural gas prices, and Empire's dependancy on that fuel to generate electricity, whether under those facts and circumstances the Commission should exercise its lawful authority and grant the relief that we have requested.

With that, your Honor, I'm prepared to call Mr. Beecher, who would be Empire's first witness to discuss this issue. Thank you.

JUDGE THOMPSON: Very well, Mr. Swearengen. Mr. Beecher.

(THE WITNESS WAS SWORN.)

JUDGE THOMPSON: Thank you. Please state your name for the recorder and spell it, if you would.

THE WITNESS: My name is Brad Beecher, B-R-A-D, B-E-E-C-H-E-R.

MR. SWEARENGEN: Your Honor, I'm handing out copies of a Powerpoint presentation that Mr. Beecher will make, and perhaps for the record, this could be marked as an exhibit.

JUDGE THOMPSON: Absolutely.

MR. SWEARENGEN: He will briefly run through this document and be in a position to answer questions about it.

JUDGE THOMPSON: We'll go ahead and call this Exhibit No. 1, and Mr. Swearengen, would you make sure there's enough copies for all the Commissioners, even those who aren't here?

MR. SWEARENGEN: Mr. Beecher, why don't you just be seated wherever will be convenient for you and go ahead and make your presentation, please.

THE WITNESS: With your permission, Judge, I'd like to use the podium.

JUDGE THOMPSON: Yes, go ahead.

MR. CONRAD: Judge, before we proceed with this, let me get clarification of this. Was there notice sent out for a hearing?

JUDGE THOMPSON: There was an Order setting this on-the-record presentation.

MR. CONRAD: Is this a hearing?

JUDGE THOMPSON: This is an on-the-record presentation, Mr. Conrad.

MR. CONRAD: You swore a witness. Are you taking evidence?

JUDGE THOMPSON: Yes, sir.

MR. CONRAD: Was it noticed as to taking of evidence or was it noticed as an on-the-record presentation?

JUDGE THOMPSON: Mr. Conrad, I've already told you how it was noticed.

MR. CONRAD: All right. Well, then, for the benefit of the record, I will object --

JUDGE THOMPSON: Very well.

MR. CONRAD: -- to the process of a hearing going forward without notice and without opportunities to the parties to have their experts present.

If you want to have a hearing on this case, my suggestion to you would be to notice it up as a hearing and proceed it with that type of process. If you want to have an on-the-record presentation, we're all familiar with what that involves. And it involves arguing, not evidence.

JUDGE THOMPSON: Thank you. You may proceed.

THE WITNESS: Well, thank you very much for giving you us the opportunity to present our case today. It would be easier if we could just think about Missouri alone and about Empire alone, but we can't. And I want to give you a little background about how Empire got here today and why we had such gas exposure. And to do that, I want to reflect on the energy usage in the United States clear back to 1949. This chart comes from the energy --

MR. CONRAD: Well, I'll object to the witness giving a narrative, then. If we're having a hearing and we're having an on-the-record presentation, there's no question for me to object to. So I expect that there will be questions asked and responses made to the witness. Otherwise, I continue to object to the narrative statement from the witness that does not permit me to make an objection other than a general nature.

MR. COFFMAN: Your Honor, I would join that objection. And also, if it would be appropriate inquire as to exactly what procedure we'll be using for cross-examination or other -- this is a type of proceeding that I've -- I'm unfamiliar with. And although I did understand, I guess, as late as last Friday, that there would be witnesses, I guess, offering testimony on Friday, or that at this proceeding, there would be witnesses, my understanding this would be a more traditional situation where direct and cross-examination would occur.

JUDGE THOMPSON: You will have an opportunity to cross-examine Mr. Beecher.

MR. CONRAD: Judge, Mr. Coffman made reference to information on Friday. What form was that information assimilated?

JUDGE THOMPSON: Mr. Coffman called me on the telephone.

MR. CONRAD: There was no notice of witnesses then?

JUDGE THOMPSON: Mr. Conrad, I've already told you what sort of notice there was.

MR. CONRAD: Judge, I'm making my objection and I'm making my record. I'm sorry if you don't like it, but if there's an ex parte communication going on, I want that document.

JUDGE THOMPSON: Well, as far as --

MR. CONRAD: When did that conversation occur, sir?

JUDGE THOMPSON: Friday afternoon.

MR. CONRAD: What time?

JUDGE THOMPSON: I don't know.

MR. CONRAD: Who initiated it?

JUDGE THOMPSON: Mr. Coffman.

MR. CONRAD: And what information did you provide to him, sir?

COMMISSIONER CLAYTON: Hey, Judge, I don't believe you are under cross-examination here. You're not a witness in this case, and I think we need to get a handle on exactly why we are here.

It was my understanding that we were here for an on-the-record preparation, that this is not a full-blown hearing to determine whether or not we are going to -- whether or not we are actually going to suspend this particular tariff sheet. And I think what we need to do is get an idea of where we actually are in this process before things get carried away here.

So perhaps we should take a recess and figure that out for the Commission or I'm not sure where we should go from here, but before accusations are made against people up on this bench, I'm thinking maybe we should take a recess.

MR. SWEARENGEN: Could I make a comment just at this point before we do that, your Honor?

JUDGE THOMPSON: Yes, sir.

MR. SWEARENGEN: My reading of the Commission's Order setting the on-the-record presentation indicated that the parties shall be prepared to present legal and factual arguments in support of their positions on Empire's motion and to respond to questions from the bench.

Now, obviously counsel cannot be a fact witness in a proceeding. It's only logical for me to assume, given this Order, that the parties have the opportunity to present fact witnesses. And that's what we're attempting to do. I can take Mr. Beecher and ask him one question. Explain Exhibit 1 and he can walk through it page by page, and then counsel can cross-examine on that or the Commission can ask questions. I don't think there's anything unusual about that or out of the ordinary.

MR. CONRAD: Well, to the contrary, Judge, I think it is quite unusual. And No. 2, with all respect to your Honor, the tariff has already been suspended by Order of the Commission. So it's not a question as to whether you suspend the tariff. You already have.

COMMISSIONER CLAYTON: Thank you for correcting me, counsel. Maybe I should have rephrased it whether or not we were going to lift the suspension. Would that make you feel better?

MR. CONRAD: That does, but then the other aspect of it is are we in a hearing for that purpose or are we in a hearing to determine whether a technical conference is to be had?

MR. SWEARENGEN: Well, Judge, if I can speak again, when I see an Order from the Commission that says be prepared to present factual and legal arguments in support of the motion, I take it from that that that's a hearing, and that's where we are, the witness has been sworn. He's prepared to go forward. I mean, I think everybody ought to understand it that way.

MR. CONRAD: Well, again, if we're -- I object, then, again, if we're taking evidence on the record in what is a hearing. This proceeding this morning has not been so noticed, and it also appears from the discussion that has proceeded that individual parties were made aware that witnesses were going to be presented and were going to be presented under oath and exhibits were going to be marked, but that was not generally known.

JUDGE THOMPSON: Thank you, Mr. Conrad. Please proceed.

THE WITNESS: Back to my chart. The chart is data from Energy Information Administration and it shows the continued increase in energy usage in the United States from 1949 to present. It shows, really, the prosperity of the United States as we grew in increased electrical usage.

MR. CONRAD: Objection, hearsay.

JUDGE THOMPSON: Mr. Swearengen.

MR. SWEARENGEN: Well, your Honor, this is -- this witness is an expert on this topic and he's entitled to rely on this sort of information in reaching his opinion, and that's what he's doing.

JUDGE THOMPSON: Objection is overruled, please proceed.

THE WITNESS: The next chart, I have personally researched that Energy Information Administration shows how we built capacity to serve that energy load. And in the '49 through '65 time frame, we built a pretty balanced mix of coal and gas. From '65 to about 1985, most of that is coal and nuclear capacity. It includes units like Wolf Creek, Callaway, Lacine 1 and 2, Hawthorn 5, Iatan, Jeffrey 1, 2, 3, and 4, Sibley Thomas Hill, New Madrid, Lawrence 5, all the units that we consider low cost energy resources were built in that time frame.

MR. CONRAD: Objection, irrelevant, and I move to strike. And I also restate any objection that I had no opportunity to object to this witness' testimony, which you've sworn and indicated it is, before it is placed in the record.

JUDGE THOMPSON: Mr. Swearengen.

MR. SWEARENGEN: Well, this evidence is certainly relevant with respect to the circumstances which led to where Empire finds itself today concerning its fuel cost and that's the basis for the IEC and the basis for our request to lift the suspension on the IEC, so it's certainly relevant.

JUDGE THOMPSON: Objection is overruled, please proceed.

THE WITNESS: It's important to note the last coal fire generated unit with Southwest Power Pool was built in 1986. It was Dolay Hills' joint unit between Cleco and Swebco. Post-1986 on the right side of that chart, most of the capacity that was built in the country was natural gas, including units like State Line 1 and State Line 2 constructed by Empire, Aries, which is now Calpine Plant, Kansas City Power and Light's gas turbines, the Hawthorn combined cycle.

The next chart shows the prosperity and Empire Service territory under the period 1984 through 2003. And you'll see much like the total US Empire's load has continued to grow year after year.

The point I want to make off this chart is from 1986, when the last coal-fired power plant was built in the Southwest Power Pool, Empire's load has approximately doubled since the last coal-fired power plant was built in the Southwest Power Pool.

This next slide shows a slow shift in the risk profile that Empire has seen from 1992 through 2003. As we built only gas-fired units and Empire built State Line 1 in '95, State Line 2 in '97, state-lined combined cycle in 2001, all of those units came before this Commission. They were the low cost options for our customer.

Energy Center 3 and 4 is the subject of this proceeding. We've seen a slow but steady change from a mix that was almost all coal based to one of now that includes about 30 percent of gas and spot purchase power. I wanted to give you a -- try to give you a graphical picture of the exposure we have on natural gas and what this chart represents is our actual loads from July of 2003.

On the left side is demand in megawatts. On the bottom is the daily date and so you'll see we have a peak every afternoon. And so this was our actual loads from July of '03. This first piece I put across the bottom is what we served with Asbury. It's our coal-fired unit that came on in 1970. It's coal fired, very stable cost.

The next unit is Iatan, again, low cost, very stable, and you'll see, for instance, Iatan had an outage up here at the end of the month.

The next unit is Riverton 7 and 8. The yellow piece I just put up, built in 1949 and '54, also coal-fired. The next slide is the Jeffrey Purchase that we currently purchase from Western Resources. Those units came on the last one in the '82-'83 time frame. And that fills that.

All of the rest of the blue on this chart in July of 2003 was served by either gas-fired generation and/or spot purchase power. And I'm going to go ahead and fill in the rest of that chart for you. The pink piece was state lined combined cycle. The blue piece that just came on top of that was our simple cycle gas turbines. And the blue that's still left was met by spot purchase power.

If you take all those ups and downs and sort them from high to low, which is what I did on this chart, this will give you a little bit easier graphical comparison. The blue, being all of the energy that we either meet by gas-fired generation or spot purchase power. If you take that same concept and expand it to the entire year, this is our peak load from high to low, all the peaks ups and down sorted.

This piece right here, which is state lined combined cycle and spotted purchases up is that 29 percent of our energy that is source from natural gas or spot purchase power.

This chart represents our on system costs.

The main thing I want to point out here, as we had a low of about $20 including demand charges, and the first part 12 month ending '03, we are now up in the $22.50 range. That represents about a $10 million increase in our cost structure during that time.

How do we serve and how do we hedge that gas? How do we protect ourselves from cost changes? We own no gas, we own no pine lines. We are completely dependent on what the market does. What I have here is the NYMEX prices, so this is the spot price as it closed at NYMEX. And you'll see from '97 until about 2000, we were in the $2 to $3 range. We had a big spike up to $9. We promptly fell back to $2. And the pink line is the futures market as of January 2nd of '02 as we looked forward.

The futures market has a lot of contracts traded in the front end, not as much traded in the back end. The points I want to point out here, what I call our 2001 rate case, was filed in November of 2000 when gas was about $4.50. Prices went up to $9, and in this area, we worked with Staff, office Of public Counsel, And the interveners to come up with an IEC concept that we could all live with.

We began our hedging program and finally rates went into effect with the IEC back about the time gas got to $3. We invented a solution. By the time we worked through the process, the $9 crisis was over, our shareholders had already taken the hit, and I think we ended up with $.59 earnings that year.

Another point I want to point out on this chart, we purchased some gas from Enron for '03 and -- '02 and '03 delivery in the $3.80 range, right in here. About July of 2001, Enron declared bankruptcy on July of 2003 when the market had fell to about $3. We were able to replace those Enron contracts with lower price gas because Enron went bankrupt.

The IEC had gas prices in the base charge at that time about $3.50 per million BTU. We began our hedging program with three goals; one was to reduce volatility, one was to have a fair price for our customers, and one was to have a predictable price that we could utilize in rate proceedings.

Historically speaking, Staff had used a 12-month ending approach, Staff had used a three-year average approach. We had changed our methodologies, the reality was none of this was doing a very good job of predicting where natural gas prices were going to go. As part of our risk management policy, we set out specific targets that we were going to hedge to. And when I say hedge, try to make prices known.

We might do that with a physical purchase, we might do that with a NYMEX contract, we might do that with an over-the-counter contract with somebody like British Petroleum. But we set up targets that said in '02 -- by the end of '02, we would have 60 to 80 percent of our 2003 gas needs hedged, 40 to 60 of our '04, 20 to 40 of '05, and 0 to 20 of '06. That was our policy that we were living by during 2002. That policy was filed as rebuttal testimony in our next case. Contrary to some of the statements made in the pleadings opposing our filing, we could not have hedged more and still remain within policy.

This next slide shows spot prices going out a little bit further. We're now looking at a picture as of 12/31/02, and you'll see now we've bottomed out and we're having a new spike. We filed a 2002 case in March. We reduced the IEC through a joint stipulation and Commission approval in June of '02, and the new case went effective in December of '02.

This 2002 case was not driven by fuel. It was driven by a new capital structure. The reason it wasn't driven by fuel is we hedged a lot of our gas. We began our hedging program when gas was between $2.50 and $3.50, and we hedged a lot at that time frame. And so this next spike really didn't effect us. We had 80 percent or so hedged of the next years burn.

As we went forward, we did change or policy. We looked back and said, boy, we wished he we would have bought more when it was $2.50 to $3.50, so we changed our policy in August of '03 to allow us to buy a higher percentage so that we could buy up to 80 percent of the fourth year out. And that change was made in August of '03.

This chart now looks out to the end of the next year, and I have two corrections to make on this slide. Where it says 12 of '01 under the 2002 case, that should state 12 of '02. And on the right side where it says actual 12/31/0, it should say 12/31/03. Again, you see the spike, you see in 2003 that we began about $4 per million.

We had a peak of about $7 per million, and we ended about $4.50 a million. Empire's actual expense for gas during calendar year 2003 was about $3.02 a million BTU because we were able to hedge in the low value that occurred in January through July of '02.

The next slide jumps forward through the futures market as of April 2nd of '04, and actual through June of '04, and you see this spike now has continued. It's persistent. It's ran out past where we had large hedged positions when we started our program. You'll see prices above $6.20 in the front part of this curve. Because we haven't got that much hedged, our shareholders are now feeling harm.

The futures line on the bottom on the right side is the futures that existed as of the time we filed our case. The pink line futures on the right is where the futures market moved to by the time we filed our IEC tariff. There are hints in some of the reply brief that the timing of our interim filing was due only to lack of action on fuel adjustment clause in the legislature. What is failed to be recognized is there's a full $.50 to $.75 increase in natural gas cost in that same month period.

The next chart shows the futures market on the right side on July the 9th and that's not too terrible far from where it is today. Notice that we're seeing spikes clear up in the $7 range, so gas prices have continued to stay high.

I want to point you to the left side of this chart now and talk about that whole section that's between $2 and $3. And I want to again point out the second drop between $2 and $3 after the spike to $9 before we did a majority of our merging. And as I look back, it's real easy to say, boy, I wish I would have hedged more.

But if you look at July 8th of 2002, the bottom left-hand number shows I had 20 million MMBTU gas hedged at $3.26. I had over a $60 million position in the market, and I was looking back going, God, if gas stays at $2, what's this Commission going to do? And so it's very easy now with 20/20 hindsight to look back and say I should have bought more at $3.26.

At that time, I was looking backwards at $2 -- $2 to $3 saying how is this Commission going to react to $3.26. By July 9th of '03, we've continued to take more positions, and by this time, we have 14,285,000 MMBTU hedged at an average price of $3.50. As time has marched on and we've taken smaller positions in the climbing markets, our average cost has continued to increase.

By July 9th of '04, I had 13.8 million hedged at an average price of $4.21. Once again, time has marched on, average prices has continued to go up. When you look at the balance of 2004, I've got 2.6 million MMBTU of gas hedged at an average price of $3.27. In today's market, that makes -- that's around $6, that makes me feel really good.

The unfortunate thing is I have about four million -- 3,977,506 expected demand between August and the end of the year, so that difference between 3.9 and 2.6 is the amount of gas that I have to buy on the spot market. When you look on out at 2005, what you're going to see is a continued decline in how much I have hedged and a continued increase in the average price of that hedged product.

In 2005, I've got four million two hedged at an average price of $4.15 with an expected demand of ten million five. In 2006, I have 2.2 million hedged at an average price of $4.21 out of an expected demand of 11.1. And if I was going to hedge more in 2006 today, the average price would be someplace around $5.50. As you go out to 2007, I have 3 million hedged at an average price of $4.53. And again, by '08, a little bit further drop to a million eight hedged at an average price of $4.569.

All of this hedging doesn't come without risk. And through the 2002 time frame, credit risks became paramount, and we were able to manage this risk, and to this date, the Commission hasn't seen this type of information from us.

What's not on this chart, and let's's go back to in November '01, we would have showed a contract with Enron on this slide. And it would have showed that we owed Enron about $6 million if Empire defaulted or if Empire went bankrupt or defaulted. We would have owed $6 million. So it would have showed credit exposure to Enron.

By July of '02, our positions had mostly all flipped. Meaning that the contract values that we had contracted for were all better than the current market. So in this case, and the first one the example is BP, or British Petroleum, we had contracted for gas at sixteen million seven.

If we had to replace that in the market as of July 1 of '02, we would have had to spend $461,000 more. And as I look through that, Duke was recently downgraded at that time and in trouble, Williams price had dropped to less than a dollar fifty. E Prime was a subsidiary of Excel and was in trouble. Aquila had their troubles that you all know about. Western Resources share price had dropped to less than $10 a share. As I looked at my counter party risk, again, it's real easy to say I would have hedged more, but I just pray I wouldn't have hedged more with Enron or practically anybody else on that list.

As you go on to July of '03, you see our counter party list has shrunk. We now have more exposure with British Petroleum and Morgan Stanley. Should Morgan Stanley Default as of July 1 of '03, we would have had to take new positions in the market as of $12.1 million more. This starts to show the low prices that we hedged at versus where the market went to.

I still got a lot of exposure with Western Resources at that time and I'm still significantly concerned about Western's ability to perform to their contracts. Through that time, we worked through a netting agreement with Western Resources such that we would net out bills on the Jeffrey contract with this swap that we did in the hedge -- in the natural gas market.

By July 1 of '04, you'll see that we virtually got the same counter parties as before. We still have a lot of credit exposure with British Petroleum, and a lot of credit exposure with Morgan Stanley.

In order to implement the IEC tariff, I think we all have to figure out a way to figure out what is in our base rates today. And we all know there was a black box settlement surrounding our last case. What I do know, in rebuttal testimony, I presented evidence of $18.09 per megawatt hour without demand charges. Staff witness Elliot, in what he referred to as around 28 had a base case of $17.45 per megawatt hour. So what is in rates should logically be in that range.

That concludes my testimony. I appreciate your time and would stand for --

JUDGE THOMPSON: Why don't you step over to the chair, sir. Cross-examination from Staff.

MR. FREY: Your Honor, at this point, given you might say the surprised nature of the company's presentation in this case, we would ask for a 15-minute recess before we attempt to cross-examine this witness.

JUDGE THOMPSON: Very well. We'll take 15 minutes.

MR. FREY: Thank you.

(A BREAK WAS HAD.)

JUDGE THOMPSON: We'll go back on-the-record, then. Please proceed.

MR. FREY: Is the purpose of my appearance at this point simply to cross-examine the witness? Do I understand that correctly?

JUDGE THOMPSON: Is there something else you'd like to do?

MR. FREY: Well, I just -- at some point, I would like to offer some comments into the record, but it doesn't have to be at this point.

JUDGE THOMPSON: You will certainly have that opportunity, sir.

MR. FREY: Thank you.

CROSS-EXAMINATION

QUESTIONS BY MR. FREY:

Q. Good morning, Mr. Beecher.

A. Good morning, Mr. Frey.

Q. I have just a few questions for you. First of all, is Empire District -- the Empire District Electric Company providing safe and adequate service at this time?

A. It would be my opinion we are.

Q. Do you project that Empire will be providing safe and adequate service on April 21st of next year -- excuse me, April 1st of next year?

A. We will do all in our power to provide safe and adequate service. Continued high gas prices without rate relief may not make that possible.

Q. Do you know whether, in the past, Empire has filed for interim rate relief?

A. Yes, we have.

Q. And can you name the cases in which Empire filed for interim rate relief?

A. Not off the top of my head.

Q. Is it fair to say, for example, that the company filed for interim rate relief in connection with its permanent rate case in 2001, I believe, Case No. ER-2001-299?

A. My recollection is that we probably did, and I think that's the year we ended up with $.59 earnings and we did not get rate relief.

Q. And is it fair to say that the company also filed for interim rate relief in connection with its last permanent rate case, which was ER-2002-424, I believe, and the interim filing, as I recall, was ER-2002-425?

A. I can't recall exactly, but there was a case where the revenue from the off-system sales was left out of the case, in the permanent case, and we filed to try to get that back because of the mistake in the calculation of the tariffs.

Q. And you're not sure, then, that the company also asked for -- that that request was in connection with its request for interim rate relief?

A. I just can't recall which cases had interim relief and which did not.

Q. Do you know in any instance -- do you know of any instance where the Commission has granted Empire interim rate relief?

A. It's my understanding that in the 1982 case, interim rate relief was granted.

Q. Do you have the case number on that?

A. I do not.

Q. Do you know what standard the Commission applied in each of these instances of Empire's request for interim rate relief?

A. I have read most of the Orders over time. They apply -- they have, in the past, especially recently, applied some sort of an emergency standard with the terms of the emergency being prescribed by the Commission.

Q. Do you know whether Empire can finance in order to meet its capital needs at this time?

A. The next presenter from Empire, Bill Gipson, is far more qualified to answer that than I. And I think to answer your question can we finance today and can we finance in '05 and '08 and '09, I think all have different answers. Today, I think we're fine.

Q. Thank you. Can you tell me what prevented you from filing on April 30th, the presentation that you made today? April 30th, of course, being the date in which the company filed its permanent rate case.

A. The presentation wasn't prepared on April

30th.

Q. Is there a reason for that?

A. No.

Q. What prevented you from filing this -- on May 20th, the presentation you made today?

A. It wasn't prepared on May 20th.

Q. And is there a reason?

A. We didn't have an on-the-record presentation scheduled.

Q. You -- were copies of Exhibit 1, which you've presented today and offered into evidence, were they provided to the parties in advance of today's presentation to any of the parties?

A. They were provided by attorneys right before the presentation began.

Q. Do you know why Empire did not file a rate case before April 30th of this year?

A. We consider a variety of factors, including our rates, including our rates of return, including fuel costs, fuel costs projections, projected earnings, past earnings. We try to consider all relevant factors before we decide to file a case. We don't take filing a case lightly and we try to make sure that the case is warranted before we file.

Q. So it was your opinion, then, that the concern

with respect to, let's say, protecting both the company and ratepayers, was not sufficient -- sufficiently compelling at that time to file a rate case; is that correct?
A. Weighing all relevant factors, when we filed in April was the time we felt to be correct.
Q. Do you know whether Empire could have filed its rate case as early as September 1st, 2003?
A. Referring to Page 23 of my slides, which is evolution of gas markets since '97 and it says actual through June of '04, gas prices in September of 2003 were going to be on the order of $5 per million. Our need for rate relief was not as significant. And as a matter of fact, our 12-month ending cost December of '03 was only $3.02 per million because we had been able to successfully hedge earlier in time. So our need for rate relief in September of '03 was not as prevalent.
Q. Does the September 1st, 2003, date have any significance regarding Empire being able to file a rate case, do you know?
A. There may have been a moratorium in the previous case from new filings, but I don't specifically recall a date.
Q. I believe you said that Empire could not hedge further and still remain within its policy; is that correct?
A. That's true at varying points in time and we

have different hedge targets at different points in time.

Q. And what do you mean by remaining in policy?

A. We have a risk management policy that lays out our goals and objectives for our hedging, which includes a fair price for the consumers, a predictable price. And within that policy, it's laid out what instruments we can utilize to hedge, which is physical contracts, financial swaps, futures contracts, combination of call options and put options. The policy very specifically lays out what tools we can use.

Those tools are approved through our resolution with our Board of Directors. The policy lays out specific targets year by year. We have a monthly risk management oversight committee meeting to make sure that we are hedging according to our policy. The policy is revised about once a year. At least one and maybe two versions have been filed -- a version was filed with my direct testimony in this case, and a version was filed with my rebuttal testimony in the previous case.

Q. Is it correct to say, then, that the Board of Directors sets the policy that Empire adheres to regarding this policy?

A. The risk management oversight committee really has the authority and responsibility for setting the policy. The Board of Directors simply approves the instruments which we use to hedge.

Q. And can you state who exactly sits on that committee?

A. The risk management oversight committee is chaired by Greg Knapp, our CFO. Dave Gibson, our Vice-President of Regulatory and General Services, myself, Vice-President of Energy Supply, Rick McCord, who is our Director of Wholesale Energy, Daryl Coyt, our controller. We then also have non-voting members, which include Bill Gipson, our CEO, and Carol Spriggs, our Director of Auditing.

Q. Thank you. The decision regarding policy is a management decision, is it not, and it does not require Commission authorization? Is that correct?

A. I think -- yes.

Q. And I just have a question by way of clarification on your series of charts in this exhibit you've presented today. Toward the end of the exhibit, where you talk about the balance of the 2004 position August through December --

A. Yes.

Q. Do you have that?

A. Yes.

Q. And is it the case, then, for the balance of the year 2004 that the company is hedged to the extent of 66 percent?

A. That's correct, we have 2.6 -- 2,620,000 MMBTU hedged at an average price of $3.27 with an expected amount of 3,977,506 MMBTUs.

Q. Okay. And you've indicated on the next page, I believe, that for 2005, you're going to be -- expect to be hedged at a level of 40 percent, and I guess an average cost of four dollars -- about $4.15 per MMBTU; is that correct?

A. That's correct, we have 4.2 million hedged out of an expected value of 10.5.

Q. Do you happen to know if those values would look any different for, say, just the first half of 2005 or even the first quarter of 2005?

A. The position report, which these came from, has monthly values in it, but I do not have them with me, so I cannot directly answer that.

Q. Okay. Thank you, Mr. Beecher.

MR. FREY: May I have a moment, your Honor?

JUDGE THOMPSON: You may.

Q. (By Mr. Frey) Just a couple more questions, Mr. Beecher. Isn't it true that you added over $50 million to rate base when you bought -- when you brought on Energy Center 3 and 4 in 2003, after the rates were effective in the last case?

A. This may be a technicality, but I don't think we've had a case since those units came on, so I'm not sure they've been added to our rate base, and therefore, our cost of service, we did spend $55 million to install Energy Center 3 and 4.

Q. Those units burn gas, do they not?

A. Yes, sir, they do.

MR. FREY: Thank you very much. That's all I have.

JUDGE THOMPSON: Thank you, Mr. Frey. Mr. Coffman.

MR. COFFMAN: Thank you.

CROSS-EXAMINATION

QUESTIONS BY MR. COFFMAN:

Q. Good morning, Mr. Beecher.

A. Good morning, John.

Q. Is it your understanding that the scope of this proceeding, the subject matter, that is, is limited exclusively to what rate increase this Commission might order prior to the ultimate permanent rate decision in the rate case?

A. My understanding was I was supposed to present facts about why we have gas exposure and what kind of exposure we have today.

Q. Okay. And is it your understanding that Empire is asking for interim rate relief during the pendency of the permanent rate case?

A. Again, it's probably a question of semantics. What we're asking for is the suspension of the IEC tariff to be lifted early and the IEC tariff, I suppose, the background is that's an interim tariff and that is not permanent.

Q. Okay. And what standard do you think the Commission should apply in deciding whether or not to do that?

A. I think the Commission has a responsibility to try to balance the issues and balance the circumstances between the customers and the shareholders.

Q. And in granting some rate increase in the middle of this case, you're not suggesting that this Commission apply the traditional emergency or near emergency standard?

A. I'm suggesting that the Commission have the -- use the judgment that they've been empowered with to the extent that they can use that judgment within the realms of the law.

Q. Okay. And you have not alleged that Empire would have any difficulty in providing safe and adequate service during the pendency of this case, have you?

A. I have not alleged that.

Q. Do you believe that there's any possibility that Empire would not be able to provide safe and adequate service prior to the conclusion of the rate case?

A. We have a line of credit that is virtually unused, and to the extent that gas prices stay high and we have to end up drawing on that significantly, it would take a pretty significant decline in order to put us in default under that line. I'm not the -- not the one that knows all the details in that line, but I can tell you just because you're out of a job and you have a credit card doesn't mean you should go borrow against it.

Q. Are you aware of any possible significant decline that you can identify?

A. There's significant amount of exposure. We've got, again, about 2.6 million MMBTUs of gas hedged for the balance of the year, about 4 million that we're expecting to burn at cost, so about 1.4 million MMBTUs of exposure at cost or about $3 per cost MMBTU more that in our currently rates.

Q. That's simply exposure, not necessarily the benefit would cause some significant decline, correct?

A. Continued poor financial performance causes decline.

Q. Let me ask a question about your presentation handout. You went through several pages, and these aren't numbered, but I'll try to identify them. You went through several pages that had risk management status at the top and the chart has aggregate 2002-2006 position.

A. Yes, sir.

Q. I believe you had --
A. That's the 24th slide in the packet.
Q. And you have a slide with the aggregate 2003 and 2007 position and a slide that shows the aggregate 2004-2008 position. Is it true that the unhedged positions that are shown in those pie charts are primarily in the distant future and outside the period that this rate case will be pending?
A. The only chart that's current today is the one that says aggregate 2004 through 2008, which shows about 50,096,530 MMBTUs expected over the next five years. That is about 10 million MMBTUs a year. So 4 million of that is within this calendar year and about 10 million of it is within the calendar year 2005.
Q. I understand that. So I assume the answer to my question is yes, that most of this is in the distant future.
A. The answer is 4 million of it is in 2004, 10 million each in each year 2005, 6, 7, and 8.
Q. And with the exception of that 4 million some-odd number, is outside of the time period that this rate case will be pending, correct?
A. I believe the operational law day on this case is sometime in March of '05.
Q. Okay. And the information contained in these

-- these aggregate position charts, was this information known to you as of September, 2003?

A. The chart titled aggregate 2002 through 2006, as of July 8th, was known September 2003. The aggregate 2003 through 2007, as of July 9th, was known as of September 2003. The aggregate 2004 through 2008 was not in existence as of September 2003.

Q. Was a substantial portion of the data there known as of September 2003?

A. All the data, all the positions that we had taken as of August 31, 2003, would have been known.

Q. Okay. You made a statement about the percentage of energy that Empire District Electric Company derives from natural gas, and I believe you said approximately 29 percent of our energy; is that correct?

A. If you will refer back to the Page No. 5 that says Empire sources of energy, the pie chart on the right shows 2003 and 29 percent of our mix in 2003 was natural gas and spot purchase power.

Q. Will that change substantially if you were to show a pie chart of 2004? That is, would that 29 percent figure change substantially?

A. Without adding any additional coal-fired or renewable energy generation, that pie continues to grow as most of our incremental energy is served from natural gas.

Q. Okay. Now, I -- I was interested to hear you make a statement that I believe you said that some of the statements in some of the pleadings regarding whether Empire could have hedged more were not correct. Did I hear you correctly?

A. I did not say that we could not hedge more. I said given what I was looking at the time, if you consider all factors, there are reasons I did not hedge more.

Q. Okay. Well, I thought I heard could not, but your answer makes more sense now that I hear you state it this way.

A. If I said that, that was incorrect.

Q. Is there any specific statement in any specific pleading regarding Empire's hedging practices that you would describe as inaccurate? I just want to make sure that the Commission is not left with some --

A. The statements in the pleadings, the way I remember them, said we could have hedged more. And without the context of everything else that was going on, including the problems that we were having with credit partners, including the amount of hedged position we already had, including looking back at gas between $2 and $3 only a year earlier, without those contexts, the statement that we could have hedged more is not whole.

Q. Okay. Well, is it true that your risk management policy requires or allows you to hedge 60 to 80 percent of your 2004 natural gas needs?

A. Our risk management policy required us to hedge between 60 and 80 percent by the end of calendar year 2003.

Q. And is it true that your actual hedging was closer to the minimum 60 percent than the higher 80 percent?

A. That is true, and it boils down to how many positions at $5 and $6 did you think was the right position to take.

Q. All right. Although, I mean, it is true that you could have hedged up to 80 percent, you just didn't think it was wise at the time.

A. And we would have hedged at prices much higher than what we currently have.

Q. Okay. I look at your prepared sworn direct testimony, and on Page 9, you make a statement that if Empire had been able to effect a quick rate proceeding, customers would have paid more, and I assume that would have been a rate case in -- filed in 2003. Am I understanding that testimony correctly?

A. The testimony says if we could have, and it would have had to be a case that was filed in -- do you have a copy of my testimony I can read?

Q. I do.

A. Thank you. The statement refers to our hedging practices, and that if we had purchased all on the spot market, the cost would have been about $13 and a half million more had we not hedged, and if we could have effected a rate proceeding, and that would have been deemed prudent, that would have been passed on to the customers.

Q. And nothing would have prevented Empire District Electric Company from filing a rate case as early as September of 2003, correct?

A. When we considered all relevant factors, we didn't think to September of 2003 was the appropriate time to file a case.

Q. But nothing prevented the company, correct?

A. Not to my knowledge.

Q. Okay. And do you understand when new rates could have been in effect if the company had filed in September of 2003?

A. My understanding is operational law dates in Missouri are usually 11 months for fully contested cases.

Q. So the minimum time frame would have required a rate change by August of 2004, correct, had the company filed a rate case in September of 2003?

A. With an 11-month time frame, I believe that's 11 months from September to August.

Q. Thank you. I have two more questions.

Referring back to your handout, you expect approximately 10.5 million MMBTUs to be of natural gas to be burned in 2005. How much of that is expected to be used in the period from January to March of 2005, do you know?

A. I do not know specifically.

Q. I want to refer to one more slide, and this is the -- they're not numbered. It's the slide that says risk management setting balance of 2004 position August through December.

A. That will be the 27th slide in the packet.

Q. We'll call that Page 27 of your handout.

COMMISSIONER DAVIS: Which page is that?

MR. COFFMAN: 2004 position paren August through December.

Q. (By Mr. Coffman) Mr. Beecher, on -- according to this pie chart, nearly 60 percent of your August through December 2004 position is hedged financially and it is hedged at approximately $3.27, correct?

A. The average price of the 6 percent physical and the 60 percent financial is $3.27.

Q. So 66 percent is hedged at an average of $3.27?

A. Correct.

Q. Would that be correct? And is this rate below the natural gas price that you actually believe is embedded in current rates?

A. It's very close. I actually believe someplace around $3.30 was used to set rates in the last case.

Q. Okay.

A. Black box settlement, my opinion.

Q. So it's actually locked in lower than what you believe is embedded in current rates?

A. By $.03.

Q. And you understand that there may be some disagreement about what exactly is embedded in current rates?

A. I agree with that.

MR. COFFMAN: Okay. I think that's all I have. Thank you.

JUDGE THOMPSON: Thank you, Mr. Coffman. Mr. Conrad.

CROSS-EXAMINATION

QUESTIONS BY MR. CONRAD:

Q. Good morning, sir.

A. Good morning.

Q. I seem to recall that there was a 250-megawatt purchase power contract in Empire's history. Do you recall that? Was that before your time?

A. We had a contract with Associated Electric that got up over 200 megawatts sometime in the mid-90's, but I don't know if it went to 230.

Q. Was that before your time, Mr. Beecher?

A. No, sir.

Q. You had a gap in service with Empire, didn't you, sir?

A. Yes, I did.

Q. What was that gap?

A. I left Empire in August of '99; I believe I returned in February of 2001.

Q. And where did you go during that gap?

A. I went to work for Black & Veech in Kansas City, Missouri -- or Kansas.

Q. Doing what?

A. Two jobs. I was a Service Area Leader for the consulting arm of Black & Veech, and later, I was Assistant Director of Marketing and Strategic Planning in the Energy E&C Business.

Q. But you were with Expire during the period of time this 200-some-odd megawatt purchase power was in place, weren't you, sir?

A. I came for work in Empire in 1988 and left in 1999. We had a variety of purchase contracts through the 90's.

Q. And the custom and practice, to your knowledge, sir, of doing purchase power contracts is -- hasn't fallen out of style, has it?

A. There has been a tremendous change in the type of purchase power contracts --

Q. Just answer my question, sir. Are they still being done? Are purchase power contracts still being done?

A. Short-term purchase power contracts are not as prevalent as they were in the mid-90's. There are much more long-term life of asset --

Q. Are they still being done, sir?

A. Yes.

Q. Thank you. You talked about an IEC that Empire had. How many IECs has Empire had?

A. One, to my knowledge.

Q. What was the duration of that IEC as agreed?

A. The IEC first went effective in October of '01. We reduced the IEC in June of '02, and I believe the IEC became no more when the rates from the 2002 case went effective in December of '02.

Q. Let me ask the question again. As originally agreed, what was the duration of that IEC?

A. It was a period longer than a year, and I can't remember whether it would be two or three. I really don't know.

Q. But the period that you described was shorter than two, and certainly shorter than three years, correct?

A. The period is shorter, the prices were falling, and we were able to be fair to our consumers.

Q. Nevertheless, Empire basically asked that that be terminated; is that correct?

A. We asked, and the other parties agreed, and the Commission ultimately approved, a reduction in the IEC between when we filed the permanent case and when new rates went effective for the '02 case.

Q. And in the course of the 2002 case, you did not ask for that IEC to be continued; is that correct?

A. I don't remember what was in direct testimony in that case.

Q. Do you recall that you came out of that case with an IEC?

A. Out of the 2002 case?

Q. Yes, sir.

A. I do not recall that we did.

Q. But had the IEC been left in place as it was originally designed, it would have been in effect during that period. Would it not?

A. I don't remember the expiration date on the original.

Q. Well, you've indicated you couldn't remember, but the lowest period of time that you indicated you could remember was two years. Two years would have comprehended the 2002 case, would it not?

A. If, in fact, it was two years and it went in effect in October of '01 and would have went until October of '03.

Q. The next to the last sheet of your little packet this morning is where I'd like for you to look, Mr. Beecher, for just a moment. Are you there?

A. I'm there, sir.

Q. What natural gas cost is comprehended in $18.09 per megawatt hour?

A. At the time that run was put together, our hedged price was included at whatever hedge position we have, and the futures market was used for the balance of the year.

Q. And what was that price, sir?

A. I do not know.

Q. Would you agree with me that there were other components in that $18.09 megawatt hour than just the cost of natural gas at a particular point in time?

A. There was natural gas, natural gas transportation, natural gas losses, coal, coal transportation, heat rate components, purchase power costs and availability, a plethora of other variables.

Q. Looking at Mr. Elliot's, you may have answered this question with Mr. Coffman, what price was -- for natural gas was comprehended in $17.45 per megawatt hour price?

A. There were significant differences in the

Staff's run and the company's run between the gas cost, the amount of gas burned, the purchase power prices, non-contract purchase power prices and the amount of non-contract purchase power availability, and they are intertwined and they do make a difference on each other. I cannot tell you specifically the cost that the Staff used in that run.

Q.   You used the term intertwined. What do you mean?

A.   If you will turn to the slide that says buildup of load duration curve, and this is the 12th slide in the packet that has the peaking units being the second -- second down in the legend. Specifically, if you'll look in the September -- or sorry, July 22nd time frame, you'll see hourly demand that's much in excess of what we generated. And in that case, we gen -- we purchased that energy to fill that load on July 22nd with a lot of non-contract purchase energy.

The Staff has a methodology they go through where they -- if you bought a certain amount of energy on a Monday on hour two, that they assume that that certain amount of energy is available every Monday on hour two throughout the month. And for instance, if you go back to July 3rd, you'll see there wasn't any purchase energy that we bought that day.

And so if you make a lot of non-contract purchase energy available at a price less than gas, you can put a real high price for gas in, and the model won't burn any, so the model dispatches the gas resources against the purchase power resources, and so they're intertwined.

Q. Would it then be fair to say that both the $18.09 price and the $17.45 per megawatt hour price are also intertwined?

A. The Staff's run and the company's run were completely independent.

Q. What software do you use?

A. We were using ProSim.

Q. What software did the Staff use?

A. They were using Realtime.

Q. Are both of them intended to be dispatch models or whatever they're called, Mr. Beecher?

A. They are both dispatch models.

Q. Now, is the difference just the software?

A. No.

Q. So it also has to do with assumptions, including assumptions about down time for particular units, scheduled outages, unscheduled outages, track records of that nature, isn't it?

A. It includes all variables relating to unit performance, including outages, including heat rates, including non-contract purchase power price and assumed availability, natural gas prices, transportation costs, all costs that end up in our fuel accounts.

Q. So the natural gas cost is really just one of several intertwined components in the $17.45 and $18.09 megawatt hour price; is that correct?

A. That's correct.

Q. Now, while you're on that load duration curve, I think you said it was Page 12.

A. Uh-huh.

Q. How many interruptible customers do you have?

A. I believe we have one right now.

Q. Is your company aggressively marketing interruptible service?

A. No.

Q. Would the ability to curtail or to interrupt load allow you to limit your hourly demands on those days?

A. Which days?

Q. Well, pick a day. Let's pick your 7/22 day.

A. If we, in fact, interrupted on that day, and it's a 7 megawatt customer, so it's less than one-half of one percent, there's also been a disagreement with our interruptible customer about whether we can interrupt on non-peak days.

Q. We'll talk about that disagreement in a few minutes, Mr. Beecher. I want to assure you of that. But my question was if you have the ability to interrupt load for your customers, would that reduce those peaks that we see there, for example, on July 22?

A. As a matter of fact, less load means less load.

Q. And why are you not aggressively marketing interruptible service, Mr. Beecher?

A. At this point, we have more capacity -- we have capacity above the 12 percent minimum reserve margin requirement of the SPP.

Q. Now, going back to the IEC that you did have, that came out of the negotiated package. Am I correct?

A. It was a joint stipulation agreement filed with the Commission that the Commission approved.

Q. That included setting base rates, did it not?

A. In that case, I believe we tried ROE and some issues surrounding state line combined cycle, but I can't remember when the settlement came in reference to the time.

Q. So it was not a complete settlement of the case as you recall?

A. It's just been too long, I don't recall.

Q. Was there a particular adjustment in the agreement that was there that addressed Praxair's concerns?

A. There was an adjustment made to Praxair in order for Praxair to agree to the settlement, that the other parties to the case would not agree to and Empire had to pay for that out of stockholder funds.

Q. So in order to get that entire package put together, there had to be an address to Praxair's concerns. Is that what you're saying?

A. In order to get a joint stipulation among all the parties.

Q. Now, did you subsequently have discussions with Praxair personnel, Mr. Beecher, about that adjustment?

A. Many times.

Q. Did you, in their presence, accuse me of extorting that agreement?

A. I don't believe I used the word extortion.

Q. You're under oath, Mr. Beecher. Did you not use the term extortion?

A. I might -- I did use the term blackmail, but not extortion.

Q. Do you understand what blackmail is, Mr. Beecher?

A. Yes, I do.

Q. Do you consider blackmail to be a crime?

A. Again, in the context of the conversation --

Q. Do you consider blackmail to be a crime?

MR. SWEARENGEN: Your Honor, I'm going to object to that, it calls for a legal conclusion.

MR. CONRAD: I asked him what he considered.
JUDGE THOMPSON: I will allow the question, you may answer if you're able.
THE WITNESS: I can't draw a legal conclusion. And in the -- but in the context of the -- you need to understand the context of the conversation we were having. His customer was --
Q. (By Mr. Conrad) This is not responsive to my question. He's already indicated if he doesn't know the answer to the question, you say you don't know, sir. Do you know?
A. In the context that I used --
Q. Do you know?
A. No.
MR. CONRAD: Judge, I think that's all that I have for this witness at this particular time.
JUDGE THOMPSON: Thank you, sir. We are overdue for a break for the reporter, so we'll go ahead and take ten minutes now.
(A BREAK WAS HAD.)
JUDGE THOMPSON: We'll go ahead and go back on-the-record. Ms. Woods.
MS. WOODS: I have nothing for this witness, your Honor.
JUDGE THOMPSON: Very well. Questions from

the bench, Commissioner Clayton.

QUESTIONS BY COMMISSIONER CLAYTON:

Q. Mr. Beecher, what is your position with Empire?

A. I'm Vice-President of Energy Supply.

Q. And what does that mean?

A. That means I'm responsible for the operations and maintenance of our power plants. I'm responsible for construction of new power plants. I'm responsible for fuel procurement of natural gas and coal, and for natural -- or for power marketing.

Q. Can you move one way or the other?

A. I'm sorry. Either one, I'm sorry. My fault.

Q. I couldn't see you there, I'm having a conversation and can't see your face. So you're Vice-President of an entire division, I guess. Is that a fair statement?

A. That's a fair statement.

Q. Okay. And in terms of energy supply, you've got to find where you're going to get the electricity and the fuel that runs the plants, correct?

A. That's correct.

Q. The discussion that you had earlier with one of the attorneys inquiring made reference to a previous IEC. Do you recall that conversation?

A. Yes, I do.

Q. And was that also an interim energy charge?

A. Yes, it was.

Q. And what was the nature of that IEC?

A. The nature was --

Q. How did it work, what was it, where did it come about?

A. Natural gas prices were about $4.50 to --

Q. I don't need the facts behind it, I just want to know what it was, how it worked, and when it came about. Maybe I should have asked that in the first place.

A. It came about in a settlement in our 2001 rate case. Prices had spiked to over $9. Nobody knew where gas prices were going to go, and so we worked out a compromise whereby we set a floor for fuel and purchase power charges. We put an IEC on top of it that we collect until such time as the collection period is over. We do a true-up, and we refund to actual prices, unless actual prices were more than the top of the IEC, in which case there was no mechanism.

Q. Okay. So basically you set a floor and a ceiling for what natural gas would possibly cost, correct?

A. We developed a floor and a ceiling for total fuel and purchase power cost. So the floor used a low gas price number, the ceiling used a higher gas price number, but we developed a total fuel and purchase power number that included all of the factors that one of the other attorneys was questioning me about.

Q. Okay. Now, that was at the conclusion of your 2001 rate case?

A. That's correct.

Q. And have you had any rate cases between the end of that one and the beginning of this one?

A. Yes, we had a case, which I would call our 2002 case.

Q. Okay. And was there any IEC as a part of that rate case?

A. There was no IEC as a result of that rate case.

Q. Did Empire seek an IEC in that case?

A. I don't recall, but I know by the end of the case, we were not asking for an IEC.

Q. Was it a settlement?

A. It was a settlement.

Q. Okay. Now, is the IEC that you're seeking in this case the same type of mechanism or is it different?

A. It's the exact same type of mechanism with different floors and ceilings.

Q. Okay. And a significant difference, also, that you're asking for that IEC to take effect immediately rather than waiting to the conclusion of the case?

A. That's correct.

Q. Did the floor and the ceiling that was developed -- that were developed in the 2001 rate case include provisions beyond the price of natural gas? Did they include other -- other cost items in that -- in those figures?

A. Each party agreed to that floor and ceiling for their own reasons. From our perspective, from Empire's perspective, yes, we included a lot of other variables in determining that was the right floor and ceiling.

Q. Did the stipulation and agreement set out any -- any items of cost that were included in those floor and ceiling amounts?

A. It specifically said costs that are accrued in fuel accounts, and I don't remember the numbers, but it gave specific accounts where costs are charged.

Q. And do those accounts include other items than just the wholesale price of natural gas?

A. Yes.

Q. They do. Okay. And although you can't testify to what the position of the other parties are, it's your understanding that Staff, OPC, and interveners are suggesting that the prices suggested in the floor and the ceiling do not include sufficient costing items for other aspects other than just the price of natural gas. Is that a fair statement? Did that even make sense?

A. A little bit.

Q. A little bit?

A. The only other party in our '01 case in a ran a total fuel model was the Staff, fuel and purchase power model. To my knowledge, Office of Public Counsel and our interveners had not ran total fuel purchase power models, and so Staff is really the only other party that runs an entire model that includes all factors.

Q. Okay. How long have you been with Empire?

A. I went to work for Empire in May of '88 until my departure in August of '99. I then came back to the company in February of 2001 to present.

Q. And there's only been one IEC in -- during the time of your employment since 1988?

A. Only the one in 2001 is the one I'm aware of.

Q. Okay. The only one that you're aware. What were the circumstances -- I think you've already said this, but what were the circumstances in 2001 which required different treatment than in prior years?

A. First, Empire has probably a greater mix of natural gas than anybody else in any --

Q. You mean a higher percentage?

A. A higher percentage of use of natural gas than any other utilities in the state, which made us somewhat unique. Our state line combined cycle plan had just came on and we didn't have any fuel hedged. And then at the same time, as the case was going on, if you will look at Slide No. 16, which is the chart called evolution of gas market, the very first chart.

Q. Okay.

A. In the middle of that case, gas prices spiked to over $9, or right at $9, and all parties to the case realized that if gas prices sustained at that level, that it would be disastrous for the stockholders of our company. At the same time, nobody felt comfortable with setting permanent rates at $5 or $6 or $7, given what the history liked like between $2 and $3. So the IEC was a compromise to try to get us through what we thought at that was a one-time unusual price spike.

Q. In 2002, as I'm not sure as I look at your chart, prices for natural gas were not high enough to warrant Empire seeking an IEC in that rate case?

A. It was a combination of two things, and if you'll look two slides later from the one you just looked at to what would be Slide 15 with the yellow line on the right side. Prices had just begun to increase. We had just hedged a significant amount of our gas in the $3 range, and so even though prices were going up, they weren't anyplace close to $7, and we had a significant piece of our natural gas hedged that kept us from having significant worries at that time.

Q. Okay. And in this case, the price of gas has gone up again. At the time of this filing and your -- Empire is seeking an IEC in this case, correct?

A. That's correct.

Q. All right. Is there a threshold amount that Empire would look to seeking such rate treatment for -- is there a price of gas at which you all will seek an IEC or do you look at the volatility of the market, do you look at the amounts that you've hedged? Where is the cutoff from where you're going to ask for an IEC and where you're not going to? If you can answer that, you may not be able to.

A. I can't say that we've got a strategy or policy with a specific number in it. We try to look at all relevant factors, past earnings, future earnings, where the current gas market is, how much position we have hedged. You know, if we have 80 percent of the number hedged and gas prices go up to $6, that may not -- that may not make enough exposure to matter. If we don't have anything hedged and gas prices go to $9, that makes it an immediate impact to us. So there's a lot of factors that would go into that.

Q. Okay. So there are a lot more factors than just the simple price of natural gas, correct?

A. Correct.

Q. Okay. Now, in this discussion whether or not we will lift the suspension on the tariff sheets for this IEC on a temporary basis until the conclusion of the case, how are we to fully evaluate each of those factors in making that decision?

A. One way that the Commission could do that would be to look at our 12-month ending rate of return and see that it's as of the -- as of the end of June is about 6.6 percent, which is well below the Commission authorized return and includes all relevant factors in our business.

Q. So it's your suggestion that we should just look at your actual rate of return and that should -- that should determine whether or not we grant a temporary IEC in the next rate case?

A. No, that's one mechanism, one thing you can use to try to consider all relevant factors. I think you also need to consider impacts on customers and impacts on shareholders and try to balance the interest of both.

Q. Okay.

A. I thought you had asked me how you could consider all factors, and that would be the only way I know without completion of the full audit.

Q. Okay. Well, but there could be a lot of reasons behind whether or not the company's earning at its authorized rate of return, couldn't it be? It's not just because of higher gas prices or --

A. That's true. There are lots of reasons -- all revenue and expense items make up that total.

Q. This is may be a difficult question, but how is it possible to fully evaluate each of those on such a short-term basis when we will actually review each of those items over the course of this case, which will take several months?

A. Even through a full audit, and as many data requests as we have, not everything is audited. Not everything is ever audited. They pick out big items, they pick out items of interest, but my experience has been even with all the hundreds of data requests, we never get every item audited.

Q. Over the course of the 11-month life of the case?

A. That's correct.

Q. I guess it would be a fair statement that you don't get every item audited in three months since your case was filed either, correct?

A. That's correct.

Q. You were asked earlier about whether or not the company was providing safe and adequate service, and I believe you answered that that was in the affirmative, that Empire is providing safe and adequate service?

A. We are today, yes.

Q. Is there any type of emergency or an extraordinary concern in this year in this case that would require or suggest a need for this type of temporary rate treatment?

A. Empire's next witness is going to talk more to this, but.

Q. Just from what you do, from energy supply, I mean, do your best to answer the question.

A. As long as the financial side of the house can get me credit to hedge gas, as long as they can get me credit to build new plants, as long as they can get me credit and payroll to pay my folks, I won't have an emergency.

Q. In the last six months, have you ever not been able to have the credit to buy energy or have you ever not been able to meet payroll?

A. Not in my area.

Q. Have they ever failed? Have the financial people ever failed you in the requests that you made in keeping the company going?

A. Not historically.

Q. Okay. Is there, in this place in time, is there anything different that is going on than in past years since 1988 that would suggest a need for this type of rate treatment, in your opinion?

A. The financial markets are much more adverse, risk adverse, than they were in 1988 or the middle 90's. We've went through one year of extremely low earnings, $.59. We never saw gas spikes to $9 or $7 in the past. We didn't have 30 percent gas exposure in the past. Today is very much different than even five years ago.

Q. Okay. As part of the IEC that has been filed as part of this tariff that has been suspended, is there -- you suggest a floor and a ceiling in is this filing; is that correct?

A. Yes, we do.

COMMISSIONER CLAYTON: Okay. I don't think I have any other questions. Thank you Mr. Beecher?

THE WITNESS: Thank you, Commissioner.

JUDGE THOMPSON: Thank you, Commissioner. Commissioner Davis.

QUESTIONS BY COMMISSIONER DAVIS:

Q. I believe you testified earlier that you were not intimately familiar with what happened in Empire's last rate case, but you did know -- you know some of the basics, correct?

A. I was involved in the case, very involved in the fuel side, but it's not my primary responsibility as Vice-President of Energy Supply to know the details.

Q. Let me, okay, as Vice-President -- in your capacity as Vice-President of Energy Supply, case was filed in '01; is that correct?

A. I believe the case was filed ten of -- I have it on a slide. Just one moment. The case was filed in November of 2000.

Q. Okay. And then was the decision '01 or '02?

A. The decision -- the 2001 rates were effective with an IEC October of '01.

Q. Okay. Now, at some point, did the -- did the various credit rating companies come in and opine on Empire's bond rating or creditworthiness?

A. We have a -- a pretty much constant review of our credit ratings and we have credit ratings on our trust preferred stock, which was downgraded to double B plus which is actually lower than investment grade. Our unsecured bonds were downgraded to triple B minus, which is the lowest investment grade. Our corporate credit rating was around triple B, which is the middle lower portion of investment rate, and those are S&P ratings.

Q. And approximately when did that happen?

A. I'm going to say late 2001 or early 2002, but that's a -- that's not recallable instantly to my mind.

Q. And where was that in relation in time to the decision of the last rate case that was handed down?

A. And you're talking about the 2002 rate case?

Q. Actually, I guess it would be -- there was a

2002 rate case, and I guess there was a 2000 rate case, and now we're back here in '04 again. Are there any other rate cases out there in the past five years that I'm missing? It's all right if you don't know.

A. I don't know. I don't believe there are.

Q. Okay.

A. There might have been one in '97.

Q. Okay. What was the proximity between Empire's rating downgrading by S&P and the final decision in the 2000 rate case? Do you remember?

A. I can't speak directly for what S&P considers in their analysis. They do, in almost every write-up, talk about natural gas cost volatility and our ability to recover those costs, and that being a negative as it reflects in our bond rating.

Q. Okay. Now you've got -- I believe I saw in one of your slides here, you've got approximately 2.6 million, is it MMBTU, is that correct or is it 2.6 million MBTU or?

A. It's 2.6 million, million MMBTU, so 2.6.

Q. Okay. And that's what you've got hedged for this year and that's at approximately $3.20 or something, $3.27?

A. That's correct.

Q. Okay. So now let me ask you, and I believe we heard some testimony that it was actually part of the last rate case, you were allowed $3.30 in the last rate case, approximately?

A. The number, I believe -- the number I believe that was embedded Empire's fuel modeling was $3.30.

Q. Okay. So what is the -- the -- I mean, what is the total financial impact? I mean, help me do the math here.

A. Okay.

Q. You know, 2.6 times $.03 is what kind of --

A. It's virtually nothing. Three cents and 2.6 million is $60,000, $70,000.

Q. Okay.

A. Our real exposure is --

Q. -- on the 1.4 million --

A. -- that we have left, and it's about $3 more than in current rates, which is -- it's right at $4.1 million.

Q. Right. So now let me get this straight. So, like, if I -- the gas -- current gas price right now is approximately -- was at $6 and something per -- is it MMBTU or MBTU?

A. It's MMBTU.

Q. Okay.

A. And current months prices are in the $6.20

range as of last Friday, and then they fall a little bit in the summertime and they're back very high, near $7 by December.

Q. And December, January, February, March, that's when you're most likely to have your peak demand; is that correct?

A. We are kind of a dual peaking utility in that we -- we peak and burn the most gas in June, July, August.

Q. Right.

A. We then have a winter peak, which is typically within 90 percent of our summer peak, that happens in December, January, February, time frame.

Q. Okay. Just looking at the -- based on your expertise and your position, do you see the price of natural gas going down below $6 the remainder of this year beginning next year?

A. The futures market would suggest that it's not going to fall. There's lots of contracts traded in the front end. There's good price liquidity in the front end, but I think all you have to do is look back at Slide 16, which is the first slide.

Q. Okay.

A. And see the spike to $9 and then the fall back to $2 or $3. And you can see the unpredictability. There's a lot of discussion in the industry about declining gas fields in the mid-continent. There's lots of discussion about L&G is going to have to make an impact in the United States before we see long-term price declines. There's discussion about new pipelines from the Colorado basin to bring more cost supplies into the mid-continent.

Most of what you read suggests we're going to have high prices for some time to come. And then I think a lot of the prevailing opinion says liquefy natural gas or L&G is going to start making an impact to the market sometime in the late 2000 time frame -- 2007, '08 time frame, and we might see some moderation in pricing. But I think the one thing that really makes an IEC make sense to me, I can't predict where natural gas is going, and I don't think there's very many experts in this room that would tell you they think exactly predict where natural gas is going and say it honestly.

Q. Let me ask you this. Your projected use is about 4 million MMBTU. Is that assuming we have a mild winter, a normal winter as measured by an average of the last five years, is that, you know, where does that fall in the spectrum of --

A. On an average 20-year normal year, so average temperatures over 20 years.

Q. 20 years.

A. Our modeling would suggest we're going to use about 10 million MMBTU across an entire year. That 4 million that you're looking at is the balance that we expect to use from August through December.

Q. Okay.

A. And so that anticipates a normal summer and a normal winter, and normal meaning the average ever 20 years.

Q. The average of 20 years. So it's likely that ten of those years could be -- could be worse and ten could be milder, correct?

A. That's correct, that's correct.

Q. Because we're not taking the most frequently occurring number, we're just adding them all up and dividing them; is that correct?

A. In general, we take temperatures and develop equations that says if a temperature is this, your energy use is some -- it derives an energy use.

Q. Uh-huh. Now, what you are here -- I mean, correct me if I'm wrong, but what you're here asking nor today is Empire is not asking for an interim energy charge; is that correct?

A. We are asking you to lift the suspension on the tariff that we filed in the permanent case. We know to do that we have to agree what the base charges are in our current rates, and we'd ask for a technical conference to ask us all to sit down and determine what that value is so that the Commission can implement that interim energy charge earlier, before significant financial harm happens to our shareholders.

Q. Okay. And is the significant financial harm the approximately -- the $4 million that your shareholders will have to eat, you know, for the 1.4 million MMBTU or is that a --

A. That's the value between August and December. There's a similar -- that's slightly smaller value between January and March when permanent rates might go into effect. And there's already been probably between one and two million that's already came and gone between when we filed for this and when this hearing finally took place.

Q. Is -- and let me just ask you a little bit about your rationale for a moment. Is the reason why you were asking for the lifting of the suspension of this particular tariff, is that a preferred method as opposed to the asking for an interim energy charge because, you know, it's more certain -- I mean, you're seeking -- I mean, are you seeking more certainty in that you won't have to refund money to the consumers or, I mean, what's the advantage of -- of going this route as opposed to asking for an IEC, I guess is what I'm getting at?

A. Well, and it's semantics, but we are asking for an IEC. The tariff that we're asking for the suspension to be lifted on is an IEC tariff.

Q. Okay. Okay. Now, let me ask you this. What is the difference between the IEC, what you're seeking right now, and the fuel adjustment clause that has been floating around out there at various incarnations, legislations before the general assembly the last two or three years?

A. The IEC, as it was utilized in our 2001 case, is no longer in effect. So the old IEC is no longer in effect. You recently utilized a very similar tool in the Aquila case. The IEC that we've asked for in this case and asked for you to lift the suspension on early has a different base and it has a different IEC amount than was used previously and different than what you used in the Aquila case.

But in essence, we set a top price, we charge our customers that top price. At the end of a period, we do an audit and we refund back to whatever our actual costs were assuming they're below the cap, and above the floor.

Fuel adjustment clause legislation would be more like the PGA that's used for gas companies where after the fact an adjustment is made -- to my understanding is after the fact an adjustment is made to the rates to reflect what actual cost were paid for gas.

Q. Okay. And let me -- I mean, let me ask you this. Why is this so important that Empire be granted this relief?

A. Mr. Gipson's going to talk to that more fully, but the financial community values stable earnings, they value stable cash flow, and part of our ability to provide safe and reliable service into the future depends on our financial health. We've got capital expenditures coming for SAR's and scrubbers for new generation that we're going to have to raise money for in the capital markets. And if the capital markets doesn't believe that we're going to make earnings, at minimum, the cost for that capital is going to be higher.

Q. Can you refresh for my recollection, did Empire investigate building a coal-fire plant in conjunction with city utilities or someone else or something of that nature?

A. Empire has, and I personally have been investigating coal-fire generation projects pretty much since the day I got back to Empire in 2001. We've got a Jeffrey contract that expires in May 31 of 2010. We've talked with city utilities in Tenaska. We've talked with Sansage, which is a now a project owned and being developed by DTE, which is Detroit Edison in southwest Kansas. We've had discussions with Associated Electric Cooperative. We had discussions with Kansas City Power and Light.

But in essence, all those -- all those

projects are looking of 600 megawatts of subscription, meaning that somebody has to buy a purchase power agreement for the whole term of the financing, unlike what we had in the 90's when you could buy one year or two. And nominally speaking, you're talking 800 million or a billion dollars for a 600 megawatt coal-fired power plant, and not enough people, including Empire, have been able to shake our heads at the same time to make a bigger coal plant go up until this point.

Q. Has capital been a problem obtaining capital for an undertaking like this? Has this been a problem for Empire?

A. It's definitely one of the considerations that we have. We've talked with rating agencies about a huge capital program like this, and just to put things in perspective, our market capitalization is about $500 million, meaning the value of our stock in the marketplace. If we added 200 megawatts at $2000 a kilowatt, that's $400 million.

So as a percentage of our market capitalization, a new coal-fired power project in the 200 megawatt size range is just huge. And when you look at that, when you're not financially healthy, you've got a 12-month ending ROE in the 6 percent range, it makes -- it's a large portion in what you think about.

Q. Does one of your slides in here show your base load growth? I'm just asking?

A. Yes, it does. The fourth slide, which is titled Empire's demand and energy forecast --

Q. Okay. So --

A. -- that is our peak load and our energy usage has been going up at a similar rate across that whole time frame. Our load factor is around 50 percent, meaning our average load on a thousand megawatts, our average load is around 500 megawatts.

Q. And I mean, can you just give me a ballpark of what -- how that base load is increasing? I mean, is it increasing 2 percent a year more or less?

A. We have new customers coming on to our system in the 1.6 to 1.7 percent range per year, and then we have total energy growth of around two and a half percent a year. And so that above the 1.7 is just made up of our existing customers utilizing more energy.

Q. Okay. So --

Q. Just help me here. So is your total demand, is it growing at, you know, 1.6, 1.7 a year or is it more kin to 2.7 percent a year?

A. It's more kin to the 2.6 to 2.7.

Q. Okay. So -- so for instance, I guess, say, on a -- on a thousand megawatts, that's, what --

A. 25, 26 --

Q. -- 26?

A. -- megawatts per year.

Q. So basically, every eight years, you'd need another 200 megawatt power plant or 200 megawatt supply of electricity?

A. And theoretically, you're going to add that in some mix of base load and peaking to get the right economic mix. Our issue is further the Jeffrey purchase power contract expires in 2010, which is 160-megawatt coal-fired purchase that goes away in 2010. And to this date, we do not have a proposal that would replace that.

Q. Let me ask you this. I mean, in your discussions with, you know, potential suppliers about electricity, have you encountered problems with regards to transmission?

A. At every term. For instance, we applied for transmission service from the Sansage Power Plant in Southwest Kansas. And at one point, we got, for 100 megawatts, over $30 million in upgrade costs that was -- came out of the first stage of the Southwest Power Pool study, just for transmission upgrades.

Q. Okay. So I mean, it's -- you know, is it -- is it -- is it fair to say that you can find people who -- who will sell you power on the spot market and transmit that power to you with no problem; however, it is extremely more difficult to contract for the purchase of power and transmission for, you know, a long-term continuous basis?

A. Even short-term spot power is not the given that it used to be. We can -- we can schedule transmission service and get transmission land loading relief curtailed. We can try to schedule service and not get it granted, but in essence, most of the time, we can buy and sell from some of our neighbors on a short-term basis. On a longer term basis, and we've asked for transmission service requests from some of the combined cycle gas-fired plants in Oklahoma. We've asked from the Sansage plant, getting longer term transmission service has been very expensive up until this point.

COMMISSIONER DAVIS: No further questions at this time.

JUDGE THOMPSON: Thank you, Commissioner. Commissioner Appling.

QUESTIONS BY COMMISSIONER APPLING:

Q. Brad, I'm going to ask just one question, if you will. And I've been reserving a lot of questions for Mr. Gipson, this might be a better question for Mr. Gipson. If it is, I'll hold on to it. But anyway, think of an example if your request is denied, how would that, just briefly, how would affect Empire, your consumers, and your investors. Can you briefly tell me?

You've probably been talking about that all morning, but I would like to hear you summarize that. If your request here, you're requesting today is denied, how will that affect your company, your consumers, and your investors? Can you just briefly summarize that for me?

A. Yes, I can. If the request is not approved --

Q. Right.

A. -- Our shareholders will continue to suffer significant harm. Our 12-month ending earnings are in the range of a dollar per share. Our return on equity is in the 6 percent per share range, and high gas prices can only have a negative affect. Continued high gas prices that we're not recovering, and in essence, or consumers are paying less than what it's costing us to generate the power. And so from our consumers' standpoint, they're getting a wail of a bargain.

COMMISSIONER APPLING: Okay. Judge, that's all the questions I have.

JUDGE THOMPSON: Thank you. Commissioner Clayton.

QUESTIONS BY COMMISSIONER CLAYTON:

Q. Just to follow-up on that question. If you don't know the answer, please tell me and we'll move on. If this -- and forgive me, I see this as two issues; one, as having a temporary IEC by lifting the suspension now and then making a full decision at the end and then discussion of full rate treatment at the conclusion. But if we do not grant this suspension immediately, to the best of your knowledge, will Empire's credit rating be downgraded?

A. To the best of my knowledge, probably not, but I'm not -- I don't know what's going to happen with S&P.

Q. That's fine. Will capital improvements needed by Empire be placed in jeopardy if, on a temporary basis, this IEC is not allowed to go through?

A. I think our long-term capital investment, depending on how the capital market views dips in cash flows, dips in earning, and what the capital market does with our ratings over time, relative to our gas exposure and other things, those things could be put in jeopardy depending on how the capital market judges the outcome.

Q. Okay. And I'll reserve exploring that with the later witness. My last question is this. You have suggested that what Empire is requesting is that we -- that the Commission make some sort of determination that we want to pursue this angle and that a technical conference will be convened. Is that a fair statement? An accurate statement?

A. An accurate statement in which case we would have to agree to what the base case of power is in our rates.

Q. What happens if you couldn't come to some agreement between Staff, OPC, interveners? What happens if that technical conference does not achieve a settlement?

A. I would assume the Commission would have to make a choice among the evidence that was presented.

Q. On a temporary basis?

A. I would believe you could do that.

Q. How would we do that in this short amount of time considering that this case is now set for hearing, at least I think it's set for hearing, in a few months down the road, December?

JUDGE THOMPSON: I believe so.

THE WITNESS: Time would be of the essence in order to make that happen.

Q. (By Commissioner Clayton) Okay. Have you participated in rate cases in the past?

A. Yes, I have.

Q. All right. How many witnesses for the company do you think would be necessary just to establish a case for this one particular issue in the interim? How big of a case are we talking about in the short-term if there's no settlement?

A. If we're just talking about what's in base fuel charges, myself and maybe one other.

COMMISSIONER CLAYTON: Okay. Okay. Thank you very much.

JUDGE THOMPSON: Other questions from the bench? Okay. I have some questions that Commissioner Murray left for me to ask you. She's unable to be here today.

QUESTIONS BY JUDGE THOMPSON:

Q. What was the significance of the June 15th date by which the company requested completion of any hearing on this issue?

A. The majority of our gas usage and exposure happens during the summer months, and we were simply trying to get a solution put in place before that big gas burn hit and before our shareholders suffered the consequences.

Q. Was there a technical conference scheduled to coincide with the June 3rd prehearing conference?

A. I was not intimately involved in the details, but my -- what I heard was there was a technical conference, but some of the parties did not want to attend because they did not want to discuss the matter at all.

Q. Now, the last IEC for Empire, is that similar to what you're requesting in this case?

A. Similar mechanism, different base and ceiling.

Q. I just want to make sure I understand how the mechanism is supposed to work. If gas prices are below the base, what happens?

A. The base and ceiling are total fuel and purchase power costs, not just gas.

Q. Okay.

A. But to the extent that we operate below the collar, then the company would retain that reduction expenses below the collar. Similarly, if costs are above the top of the collar, then the company would -- would withstand the higher expenses to the benefit of the customers.

Q. And what happens if it's in the middle?

A. If it's in the middle, then we have a true-up and audit at the end of the IEC proceeding and refund from the top ceiling of the IEC back to what actually prudently incurred costs were.

Q. Okay. And there was a previous IEC, you testified?

A. That's correct.

Q. Was it by agreement of all parties?

A. It was a -- by agreement of all parties.

Q. Okay. Was is it cancelled early?

A. It was reduced early. When we filed our 2002 case, fuel costs were lowering. We had hedged a lot of gas in a relatively low time, and so we jointly agreed with all parties to lower the IEC before all the evidence was gathered in that case.

Q. Okay. Now, I think you addressed the purpose of the technical conference; is that correct, is that to establish the base?

A. I believe in order to implement the IEC, we need to establish what costs are in base rates.

Q. Okay. Was there any other purpose to that conference?

A. No.

Q. Commissioner Murray wants to know why we're so far behind the suggested schedule. That's probably a question for me, not for you.

A. Thank you.

Q. Are we running out of time for the Commission to grant any meaningful relief?

A. Most of our exposure is in the summertime, but to the extent -- there's a long time between now and March. There's about $4 million of exposure left between now and the end of the year, between August 1st and the end of the year.

Q. So if I understand your answer correctly, you wished we'd acted sooner, but we can still do something?

A. You can still do some good and I think it sends a positive message to the capital markets that you're concerned about your utility's financial health.

Q. Finally, is the company still advocating that a technical conference be convened?

A. We're still advocating that we need a technical conference to establish base rates, but as long as all parties are opposed to the early lifting of that tariff, I don't think we can have any substantive discussion without a Commission Order that says go establish the base rates.

Q. What if the Commission doesn't grant interim relief, do you still need a technical conference?

A. No.

JUDGE THOMPSON: Okay. Thank you. Any other questions from the bench? Very well. Recross based on questions from the bench. Staff.

MR. FREY: Thank you, your Honor.

RECROSS-EXAMINATION

QUESTIONS BY MR. FREY:

Q. Just a few questions, Mr. Beecher. And I hope I'm not going to repeat any here, but we may need to get just a couple of clarifications. When did the IEC go into effect in the other Empire rate case?

A. Slide 16, which is entitled evolution of gas markets, shows that to be October of '01.

Q. Thank you. And was that after a stipulation and agreement was approved by the Commission in that case?

A. Yes.

Q. Do you recall how long it took the parties to negotiate, and I mean, approximately, the IEC in that prior Empire rate case?

A. Once we all agreed that we couldn't predict what natural gas was from the time we had a settlement conference, I guess is what we called it, and we all sat in the big room down there on the first floor, and it was probably three or four weeks.

Q. With regard to -- let me ask you this first. In this case, the permanent rate case, what is the duration of the IEC that the company has proposed?

A. I don't recall, but relatively long.

Q. Do you recall whether it took the company into the year 2009?

A. My memory is -- my memory is it could be five years.

Q. Does the date April 27th, 2009, ring a bell, by any chance?

A It's been a long time since we filed testimony.

Q. Okay. And what was the duration of the IEC that was agreed to in a prior case? And I believe you testified earlier in response to Mr. Conrad that you thought it was perhaps two years or possibly three; is that correct?

A. I testified that I thought it was two or three years, and I could not recall.

Q. Okay. And you agree, do you not, that you need to have a base number for fuel and purchase power established in order to execute the proposed plan for the interim IEC; is that correct?

A. I testified to that fact.

Q. And why is that? Would you agree that it's so you can true-up --

A. So you can true-up, that's correct.
Q. -- to actual? Do you know if the IEC authorized in the recent Aquila rate case as a result of parties reaching a stipulation and agreement in that case?
A. It's my understanding that it was.
Q. With regard to the IEC proposed in this case, in the permanent rate case, no discussions have occurred with all the parties as we stand here today regarding that interim energy charge; is that correct?
A. No discussions have changed -- or we have not exchanged any discussions on this matter in this case. There are -- there are data requests that's been issued by Office of Public Counsel and Staff relating to fuel expenses.
Q. You mentioned, of course, your hedging programs. Can you state exactly when Empire began its hedging program? I'm sorry if that's in your presentation.
A. Again, it's on Page 16.
Q. Okay. I read everything but Page 16.
A. In the late summer, early fall of 2001.
Q. Thank you. And in response to, I believe it was Commissioner Davis' question, you indicated that you're planning the addition of scrubbers. Do you recall that?
A. I said we have environmental expenditures looking at us for SCR's, scrubbers, bag houses, the timing of all of those are uncertain relative to where environmental

laws and policy go in regulation.

Q. Okay. So they're -- basically you don't necessarily even have a time frame when you would need to install those -- that equipment; is that correct?

A. The mercury regulations are due to be finalized in March of this upcoming year. They could be effective as early as December 15th of '07, which might require bag houses, depending on how -- as early as December 15 of '07. SCR is more likely to be driven by regional haze or a new Missouri knock sip call and/or a clear skies initiative that would regulate all pollutants. And the timing of all that is uncertain.

Q. Okay. Thank you Mr. Beecher.

MR. FREY: That's all I have, your Honor.

JUDGE THOMPSON: Thank you Mr. Frey. Mr. Coffman.

RECROSS-EXAMINATION

QUESTIONS BY MR. COFFMAN:

Q. Good morning again. You were asked a question about normal weather by Commissioner Davis.

A. Yes.

Q. Can you tell me if we are currently experiencing in 2004 a colder than normal or a warmer than normal weather year?

A. No, I cannot.

Q. Assuming that it is a cooler than normal year, would that mean that Empire is burning less natural gas than normal, all other things being equal than the weather?

A. We keep track of weather on a monthly basis, and for instance, we all know it's cold today in July. A lot depends on the purchase power market. For instance, you wouldn't think we would burn more gas in May than we did in June, but we did.

Q. But all things being equal --

A. All things being --

Q. -- than the weather.

A. It also depends on what other unit outages are going on around us. If there are -- if it's cooler, less severe, cooler in the winter means more severe, but in the summer if it's cooler, we have less demand and we should have less fuel expense, but that doesn't mean we necessarily burn less natural gas because we trade off the natural gas versus purchase power every hour.

Q. I'm just asking you to consider all things being equal, natural gas and purchase power, if the weather is cooler than normal, you don't need as much natural gas or purchase power. Would that be --

A. If the weather is cooler than normal, then we don't need it to serve as much energy.

Q. Okay. You were also asked some questions about, I guess, comparing the interim energy charge mechanism to the fuel adjustment clause. And you, I believe, stated some comparison between a fuel adjustment clause and the purchase gas adjustment, which is used by natural gas companies in the state. Roughly, do you see the interim energy charge as closer to a fuel adjustment charge or a purchase adjustment?

A. I'm not legally into any of the details on the PGA or the fuel adjustment clause. I know and understand the IEC very well and that it's a proven regulatory tool. My understanding of the PGA is after the fact, you see what you spent and then you make a price adjustment and that's not how the IEC works.

Q. Okay. Fair enough. Would it be fair to say that both the fuel adjustment clause and an interim energy charge shift risk from shareholders to ratepayers?

A. A fuel adjustment clause, we don't have one with language written in Missouri right now, so subject to how that language would be written and where it places risk. In essence, what those tools are designed to do is pass through the actual costs, actually prudently incurred costs on to the customers.

Q. Which relieves the shareholder risk, correct?

A. It changes the shareholder risk, correct.

Q. And I believe in response to questions from

Commissioner Clayton, you said that the Commission in response to this particular request that we're here to discuss, that the Commission should try to look at all relevant factors. Is that a fair restatement of your testimony?

A. Yes.

Q. Now, you're asking only for, you know, in position of an interim energy charge on consumers, and not any of the other rate changes on an interim basis, correct?

A. We're only asking for the suspension of the IEC tariff, lifting the suspension.

Q. Well, I'm assuming that since your growth has been constant, that your customer base has increased, your revenue numbers would be up. This particular interim rate request wouldn't take into account your increased customer base, would it?

A. No, but our 12-month ending rate of return that's in the six and a half percent range does take into account all factors that's going on in our business.

Q. Well whatever this Commission decides on rate of return, this interim rate return wouldn't reflect that, would it, it wouldn't reflect rate of return either?

A. It would not reflect the Commission setting a new authorized rate of return, not until the permanent case.

Q. And it wouldn't reflect any increase in any particular expense or any decrease in any particular expense item other than the fuel and purchase power.

A. The tariff is only designed around fuel and purchase power. The return on equity calculation encompasses everything.

Q. So how exactly does the interim rate -- the lift -- the lifting of the suspension of the IEC take into account all your relevant factors?

A. Lifting of the suspension by itself does not, but looking at the ROE and seeing that there is relative to what a reasonable authorized rate of return is, we're well below that. They can consider all relevant factors.

Q. So are you asking this Commission to dig into evidence regarding rate of return before it makes a decision on an interim rate request?

A. This Commission needs to do what it feels is appropriate. And if that's what they feel, then that's what they should do.

Q. And I'm not exactly familiar with exactly -- you know, the level of expertise that you have in financial planning and analysis, but you did state certain credit rating letters and numbers in your answers to some questions.

A. Uh-huh.

Q. And I believe -- do you monitor the credit ratings of various agencies on a regular basis?

A. As an officer of the company, I am very familiar with what our credit ratings are. Our Chief Financial Officer, Greg Knapp, is actually the one who generally has all the conversations with the rating agencies. He presents numbers at our board meetings. I just saw them a few days ago, so I am very familiar with where we're at.
Q. And are you aware that Standard and Poors, that is S&P, has currently given your company an overall rating that is, quote, stable?
A. Yes.
Q. Okay. And do you know what that term means as S&P uses that term?
A. That would suggest that they don't anticipate, I believe, any ups or downward movement in any of the various ratings that they give us.
Q. So in reference to Commissioner Clayton's question about whether credit ratings would be downgraded if you don't receive an interim rate increase, does that provide some evidence or some suggestion, at least, that the -- there would not be a downgrade, that the markets are not anticipating any upgrade or downgrade regardless of what happens here?
A. You would think that S&P understands our business and knows exactly where we're going. Enron went bankrupt within a month after they got downgraded to junk,

and there was no -- no indication that that was coming, so you know, S&P can wake up tomorrow and put a different rating on us.

Q. And isn't it true that Empire just announced its second quarter earnings and those earnings were positive?

A. Meaning above 0?

Q. Yes.

A. They were much lower the same quarter last year and put our 12-month ending rate of return in the six and a half percent range.

Q. Two million dollars, correct?

A. They were above 0.

Q. And would it be fair to say that most credit rating agencies expect your earnings to increase in the next year?

A. I don't know what the credit rating agencies expect.

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

JUDGE THOMPSON: Thank you, Mr. Coffman. Mr. Conrad.

RECROSS-EXAMINATION

QUESTIONS BY MR. CONRAD:

Q. Commissioner Clayton asked you about the 2001 rate case and the IEC there. Do you recall that?

A. I recall a question about that.

Q. I want to unpack just a little bit of that. You seem to suggest in your testimony and response to him that the problem that you saw was that parties could not agree that gas prices could not -- could or could not be predicted, I think your phrase was, agreement that people could not predict gas prices; is that right?

A. That's my interpretation of why everybody agreed to it.

Q. What is the futures market?

A. Today?

Q. No, what is the futures market generally?

A. NYMEX, the New York Mercantile Exchange, has a standard contract for natural gas that trades at the Henry Hub in Louisiana. And in general, it's a -- a -- it's a contract that is transparent in price so that NYMEX basically puts buyers and sellers together and absorbs the credit risk.

Q. Is that occasionally used to predict the markets for various types of products, commodity-type products that do fluctuate in price?

A. By who?

Q. Well, in the case of NYMEX, do they -- is the only thing that they buy and sell in futures contract natural gas?

A. Definitely not, there are lots of commodities.

Q. Okay. And isn't that customarily used as a means of price discovery by price disclosure and price prediction?

A. It's generally used, I believe, for price stability, so either buyers know what they're going to get or sellers know what they're going to pay. It's used for price development.

Q. In the future?

A. In the future.

Q. Okay. So if you had a stable price in the future, would that price be predictable or unpredictable?

A. I'm not sure I understand your question.

Q. I thought you wouldn't, but I think the thrust of it is pretty clear. Now let's also look back at 2001 for a moment. As -- were you privy to negotiations there, Mr. Beecher?

A. I was privy to negotiations around IEC. I may not have been present in all the other meetings and most likely was not.

Q. As I recall the original filing of the company there, they wanted to have some kind of adjustment that just simply singled out the cost of natural gas. Do you remember that?

A. No.

Q. Do you remember that some of the discussions that parties had in connection with that was, in fact I think it was your terminology, and I can find it here, that you used, yeah. That the price of natural gas was intertwined with some other things.

A. That's correct.

Q. Now, do you recall who was it that suggested in the context of those negotiations that maybe the focus should be shifted to the total generation cost of the megawatt hour cost?

A. I believe it was you.

Q. Same guy that you accused of blackmail, right?

A. The same guy who accused me of bribery.

Q. When was that, Mr. Beecher?

A. When Mr. Gipson and I met with you in the same room as we had the IEC conference.

Q. And in that conversation, did I tell you along with Mr. Ruebaker, who was also there, that the law of defamation in Missouri covers an attorney of law when they're accused of a crime, it's called defamation per se. Do you recall that discussion?

A. I remember lots of discussion at that point, and again, we need to talk about the context of the conversation and that was going on perhaps there at the time for that to be fully understood.

Q. Commissioner Davis asked you a couple of questions about the MMBTU price. Would I be correct you do occasionally buy natural gas, don't you?

A. I personally do not buy natural gas today.

Q. But someone under your direction or supervision does?

A. They buy lots of natural gas.

Q. And would I be correct that the MMBTU expression is roughly equivalent to MCF?

A. At 1000 BTU per cubic foot, that's a decotherm which is a million BTU.

Q. So an MBTU that I think the Commissioner was referring to would correspond under the same scenario to a CCF of natural gas, would it not?

A. Five dollars per million BTU would be equivalent to $5 per thousand cubic feet.

Q. Per MCF?

A. Yes.

Q. Okay. Now, also in response to, I think, a question from Commissioner Davis, you indicated, and I'll just ask, something about the financial health. Do you consider your company to be financially healthy or unhealthy?

A. My experience in the industry would suggest a 12-month ending six percent rate of return is substandard.

Q. Do you consider your company to be healthy or unhealthy financially?

A. I would not consider us healthy.

Q. Would you consider yourself unhealthy?
A. Unhealthy being defined by rates of return less than the average, yes.
Q. And that takes us to rate of return. Now, rate of return as you're using it was the six or six and a half percent number that you're talking about, correct?
A. That's correct.
Q. And you indicate that that takes into account both fuel costs and all, as I think you used the term, all relevant factors.
A. It takes into account everything on our income statement.
Q. It takes into account all expenditures that your company made, period.
A. That's correct.
Q. No investigation of prudence.
A. Is that a question?
Q. Is there an investigation of prudence before you could expend?
A. No.
MR. CONRAD: Thank you. That's all.
JUDGE THOMPSON: Thank you, Mr. Conrad. Ms. Woods.
MS. WOODS: I have nothing, your Honor.
JUDGE THOMPSON: Very well. Do you have much

redirect, Mr. Swearengen?

MR. SWEARENGEN: Just a few minutes, I can probably finish.

JUDGE THOMPSON: Why don't you go ahead.

MR. SWEARENGEN: Thank you.

REDIRECT EXAMINATION

QUESTIONS BY MR. SWEARENGEN:

Q. Mr. Beecher, I think you said earlier that you thought you could prove up what fuel costs, what power costs are embedded in your current permanent rates with one or two witnesses. Is that true?

A. That's correct.

Q. And how soon could that testimony be filed with the Commission?

A. I could file testimony within a week.

Q. With respect to rate of return, would it be possible to prove up what the company's current rate of return was with one witness?

A. I would believe so.

Q. And how soon could that testimony be filed?

A. Not before tomorrow morning, within a week.

Q. Okay. Thank you. Mr. Coffman was asking you about rating agencies and how Empire was rated. Does Moody's rate Empire?

A. That's correct.

Q. And what is the current rating that Moody's has for Empire, do you know?
A. Again, there's multiple ratings on multiple -- either first mortgage debt or unsecured or trust preferred, but generally speaking B double A two.
Q. And how does that compare in the overall scheme of ratings, B double A two?
A. That's in investment grade in the lower half.
Q. In response to a question from Commissioner Clayton, he was asking what would happen if the Commission does not grant the relief that you're requesting, that the Commission does not authorize lifting of the IEC. And you mentioned the possible capital market reaction. Do you recall that?
A. Yes, I do.
Q. What did you mean by that?
A. I don't know how the capital markets will react to a negative decision from this Commission. But in general, I know they look at us having higher risk, not being able to recover our natural gas costs and they would look at a decision to put this in place positively.
Q. Would an adverse capital market reaction to a Commission decision not to implement the IEC early have any kind of an impact on your customers?
A. In the short run, tomorrow probably not. But

in the long run, it can affect the cost of our debt, the cost in our ability to issue equity, and in the long run may actually increase the cost to customers.

Q. You were also asked a question about the difference between the interim energy charge and the fuel adjustment charge. Do you recall that?

A. Yes.

Q. Am I correct in understanding that the interim energy charge that you have in front of this Commission is -- could be called a surcharge?

A. Yes.

Q. It's a fixed rate?

A. It's a fixed rate.

Q. The rates don't go up and down?

A. They stay the same for the term.

Q. And when you say the term, what do you mean by that?

A. The term of the IEC. In the interim basis, if we've suggested a true-up at the time permanent rates go into effect in this case.

Q. Could a customer look at Empire's tariffs if the IEC was a part of those tariffs and determine what the charge would be for service?

A. They would know exactly what the charge would be.

Q. Is the IEC that you have proposed in this case, and I think you've answered this, similar to the one you had previously?

A. It's very similar, with the only difference being the base charge and IEC charge and the term.

Q. Are you familiar with the current IEC that Aquila has in place?

A. I have read all the testimony surrounding the Aquila case.

Q. Is your proposed tariff similar in nature to the existing Aquila IEC tariff?

A. To me, it looks very similar in that there's a base, there's a ceiling, and a defined term.

Q. Now, you, I think, testified that you filed a general rate case that started this proceeding back in April of this year, April 30, to be exact; is that correct?

A. I believe that's correct.

Q. And then on May 20 of this year, you filed a motion to lift the IEC tariff. Is that true?

A. That's correct.

Q. Can you tell us why you decided -- why Empire decided at that particular point in time in May of this year to request that the IEC tariff be lifted?

A. If you'll look at Page 22, which is evolution of gas markets since 1997, and it's got a pink and maroon

line on the right side of the chart.
Q. That's Page 22 of your Exhibit 1?
A. Page 22 of Exhibit 1.
Q. What does that show?
A. What that shows is the maroon line is the futures as of 4/2 of '04, which is normally the prices we were looking at at the time we were putting together our case. The pink line that's on $.50 to $.75 higher is the line that shows what the futures market was 5/14 of '04 or just before we filed the request for early lifting of the suspension on the IEC. And so again, looking backwards at the volatility, the continued upward movement's really what drove us to file the interim request, lifting the suspension on the IEC tariff.
Q. So one could look at that page of the schedule and see the circumstances that led you to make the decision to request lifting the IEC at that time?
A. Very easily you can see how prices continue to increase.
Q. Now there's been some testimony, some questions about whether or not Empire can right now provide continue to provide safe and adequate service. Do you recall those questions?
A. Yes, I do.
Q. And I think early in response to one of

Mr. Coffman's questions, you said that it might be possible in the future, before this case is resolved, that the company could have difficulties in that regard. Do you recall that?

A. Yes, I do.

Q. Could you give the reasons for that, please?

A. Continued decay in financial performance can only result in one thing. How the capital markets react. If gas goes to $15, there's a lot of things that can happen in the next six months before permanent rates would go into effect that I just don't know what the outcome of those might be.

Q. You tried to quantify that in terms of dollars earlier, and could -- what dollar impact do you forecast might potentially be there for the company between now and the time that the permanent case is decided, which would not be perhaps until sometime in March of next year?

A. In August through December, we've got about 1.3 million MMBTU of gas that is not hedged. At $3 more than in current rates, that's about $4 million, assuming gas prices stay where they're at today. I don't have the numbers for January through March in front of me, but 3 million MMBTU is not a bad estimate.

And again, 3 million MMBTU, we've probably got about 40 percent of that hedged, so 1 million that's not hedged at, again, $3 increase in prices is another $3 million impact by March when permanent rates would go into effect.

Q. And those would be dollars that the company could not recover at that point. Is that true?

A. That would be dollars that the company and our shareholders could never recover.

Q. Now, the original IEC that you had two rate cases ago, and you indicated that at some point during the processing of a subsequent case that you reduced that IEC. Is that true?

A. That's correct.

Q. And was that done on Empire's own initiative?

A. Empire initiated the reduction, other parties to the case agreed, and we worked out a joint stipulation, presented it to the Commission, and got it approved to reduce the IEC pretty quickly.

Q. And that was during the pendency of the ongoing permanent case at that time; is that correct?

A. That's correct, that's between when we made our direct filing and before permanent rates went into effect in the case.

Q. There was a question, I think, from Mr. Conrad about purchase power contracts and whether or not they're still in effect. Do you recall that?

A. Yes.

Q. Have any circumstances changed in recent times with respect to purchase power contracts?

A. Yes, they have. Historically, in the early-90's, mid-90's, Empire had a lot of purchase power contracts with our neighbors; like Associated Electric, Kansas Gas and Electric, Public Service of Oklahoma. And in general, we were buying excess capacity and energy from those companies on a short-term basis. Through the late-90's most of those regulated utilities and co-ops grew into that capacity and didn't have a lot for sale, and in fact, the merchant boom took off.

During the merchant boom, there were plants built without contracts. We know many times refer to as stranded assets in this country. There are many, today, I believe, for a new plant to be built, they're looking for contracts commensurate of the terms of their financing, which may be 20 to 30 years. So the term of the contracts have really extended.

The other thing that's happened is we were paying low prices in the mid-90's, relative to basically cost that the market base costs were very low. Today, costs for capacity and energy are much higher.

Q. Just a couple of other questions. The information that's contained in your Exhibit 1 and that's been the subject of your testimony this morning, have the other parties in this case requested information from the company with respect to these matters, fuel costs and what have you, through data requests or other discovery?

A. We've had data requests from both Staff and Office of Public Counsel as it relates to fuel related issues, natural gas related issues. Most of the charts in the back that say the balance of 2004 position, the 2005 position, 2006 position, 2007 position, and 2008 position, as well as the slide that's entitled July 1, 2004 counter party risk, I recently, middle of last week, had discussions with Staff on what we call our gas position report on those very type of numbers.

Q. Fine. Thank you.

MR. SWEARENGEN: That's all I have, and I would offer into evidence Exhibit 1. Thank you.

JUDGE THOMPSON: Any objections to receipt of Exhibit 1?

MR. COFFMAN: Um --

MR. CONRAD: Well, yeah, go ahead, John.

MR. COFFMAN: I was just going to note that we were, I guess, unaware that I guess this was going to be an evidentiary hearing, and we, not to doubt any of the particular information in here specifically, but we've not received the work papers that back this up. And I guess on that basis, I guess would object to the admission at this time until we've had sufficient opportunity to investigate the underlying calculations.

JUDGE THOMPSON: Objection is overruled. Any other objections?

MR. FREY: Staff would just note that we also would be -- would want all of the work papers backing up this presentation.

JUDGE THOMPSON: Have you asked for them?

MR. FREY: We've just now seen the presentation, your Honor.

JUDGE THOMPSON: Okay. Well, I note that you want the work papers. I suggest you tell Mr. Swearengen behind you. Any other objections?

MR. CONRAD: Well, I would just join in despite the fact you've already overruled, I'll just join in this objection. We didn't see this until this morning either, so I would join in Mr. Coffman's objection despite the fact that I know what your ruling is going to be.

JUDGE THOMPSON: Thank you. We're going to adjourn for lunch.

COMMISSIONER DAVIS: Your Honor, can I ask a question?

JUDGE THOMPSON: In general, what does an on-the-record presentation mean? When we say we're going to have an on-the-record presentation here, don't you expect people to come and put things in the record? Wouldn't you be expecting? I mean, I don't know whose responsibility it is to provide information to who here, but I mean what did you expect that they are just going to show up and twiddle their thumbs?

MR. CONRAD: Do you want a response to that? I'll give you one.

COMMISSIONER DAVIS: Stu, I am breathless in anticipation.

MR. CONRAD: The response, sir, is that if we're going to have a hearing, due process requires notice of a hearing. If we're going to have an on-the-record presentation, that frequently has been reserved, and in my experience, has been exclusively reserved for presentations of stipulations where parties are in agreement and the Commission wants explanation of aspects of their agreement. It is not used to be a shortcut to a contested proceeding, which this is.

Now, I don't --

COMMISSIONER DAVIS: You'll have to forget the ignorance of some of us who have only been here for two months and aren't familiar with the intricacies of what orders specifically mean. I mean, when this was brought up before the agenda meeting, then this was the way it was -- it was proffered and that's the way -- the reason why we went down this road. But for future reference, from now on, we will schedule a full-blown hearing.

MR. COFFMAN: Your Honor --

JUDGE THOMPSON: Mr. Coffman.

MR. COFFMAN: Yes, I would just join in, I guess, the misunderstanding that I had when I saw the order saying that arguments would be had, I initially thought that that was going to be -- was typically presentations, arguments by attorneys, and it -- to clarify the record found out that only I guess late Friday afternoon when I called you to ask about the general order of proceedings and was, I guess, surprised to hear at that time that there would be witnesses taking the stand, so forth.

I just have, I guess, one other request to ask if there are going to be any other presentations offered into the record as exhibits, and we are going to be asked to, perhaps, respond to them, if we could -- if the other parties could see those in advance, you know, maybe have a chance to review them over the lunch period, at least, that would be some additional time to prepare.

MR. SWEARENGEN: We would be glad to do that, your Honor, more than happy. Mr. Bill Gipson is going to make a presentation. Hopefully it will be a little shorter than Mr. Beecher's.

But once again, as I indicated when we started this morning, the order says the parties shall be prepared to present legal and factual arguments in support of their positions, and I've not been here when a lawyer gets up and offers fact testimony or evidence.

That's why I thought it would be a good idea to bring along a couple witnesses and have them explain our story, and I don't know how you can read that any other way. I don't know how someone can look at that and say they were surprised that I showed up here this morning with two witnesses. Thank you.

MR. CONRAD: Legal and factual argument is not factual evidence. This is testimony. It's supposed to be evidence, or apparently is presented as such, and that, with all respect, is not argument.

COMMISSIONER CLAYTON: Well, if we're all going to have a discussion about what an on-the-record presentation is supposed to be about, for those of us who sit up in the agenda room and have to make decisions on a week-to-week basis or a day-to-day basis about very important issues, these on-the-record presentations are our only opportunity to hear exactly what issues are out there, what the evidence is supposedly going to look like.

I will say that I anticipated hearing factual evidence here today, and I anticipated hearing some sort of legal argument on how we are going to proceed. Now, I think due process would dictate that all the parties would have the ability to offer witnesses in response, most likely in the negative, on whether or not this IEC would be able to go into effect on a short-term basis.

But as we look at this, these Commissioners up here, we each have been on the Commission less than 13 months, we don't have the vast years of experience as many of those sitting out there, and since this is the first time that we've heard it, I know from my perspective, we need to have that education and hearing this evidence is very helpful. Now where we go from here, I have no idea, but I appreciate what's gone on so far, and I look forward to the rest of this afternoon.

JUDGE THOMPSON: Thank you, Commissioner. Mr. Swearengen.

MR. SWEARENGEN: I'm just going to say we'll hand out the slides that will accompany Mr. Gipson's presentation right now. Thank you.

JUDGE THOMPSON: Thank you. We'll be adjourned until 1:30. Thank you.

(A BREAK WAS HAD.)

JUDGE THOMPSON: Okay. We'll go back on-the-record. Chairman Gaw asked me to provide a clarification of the opening of this afternoon's session, which is that the question before the Commission is not whether or not to grant the motion filed by Empire with respect to the tariff sheet in question, but rather whether or not to set a full hearing on the motion. Okay. Mr. Swearengen.

MR. SWEARENGEN: Yes.

JUDGE THOMPSON: Please proceed.

MR. SWEARENGEN: Oh, thank you. I would call Mr. Gipson at this time.

JUDGE THOMPSON: Very well.

MR. SWEARENGEN: Thank you.

(THE WITNESS WAS SWORN.)

JUDGE THOMPSON: Would you please state your name and spell it for the Reporter?

THE WITNESS: Bill Gipson, G-I-P-S-O-N.

JUDGE THOMPSON: Plead proceed.

THE WITNESS: Thank you.

MR. CONRAD: And before you do, just for the benefit of the record, your Honor, I will make the same objections -- the same series of objections that I made in advance of the prior witness' testimony.

JUDGE THOMPSON: Yes, sir.

MR. CONRAD: And just to save time, I'll incorporate those from the record. And to save time, you can incorporate your ruling.

JUDGE THOMPSON: Yes, sir. Same ruling. Thank you, Mr. Conrad. Please proceed, Mr. Gipson.

MR. SWEARENGEN: Judge, before he does that, we've handed out the slides that go with his presentation, if we could have that marked as Exhibit 2, like we did this morning, with respect to Mr. Beecher, that would be helpful.

JUDGE THOMPSON: Very well. We will mark that as Exhibit No. 2.

MR. SWEARENGEN: Thank you.

JUDGE THOMPSON: Now you may proceed.

THE WITNESS: Thank you. I want, you know, this morning we focused quite a bit on natural gas and hedging policy and our position and what it looks like going forward. And I'd like to take a different tactic on this, and that is to put that in a bigger perspective, maybe a bigger picture, and take a look at the future.

And I think one of the best ways to demonstrate that is to take a look at our expected capital expenditures over the next five years. I've broken this down into several different areas. The top is what we anticipate spending over this time period for new generation. And that would be a combustion turbine to become commercially operational -- commercially operational in 2007, and then the beginning of some base load coal-fired generation principally at our Asbury power station and this would be something on the 80 to 100 megawatts. And that would be to become commercially operational in 2010.

Now, the second grouping is new customers, and this represents about $100 million over this time frame for extension of services to new customers. And by the way the new generation piece is about 175 million. And I'm going to talk in a minute about what we see in terms of customer growth and what we're experiencing and what we have experienced.

The next section is reliability, and that's been $160 million, and that is the standard upgrades to our system, upgrades and substations, transformers, new lines, reconductor lines things of that nature, in order to provide the kind of reliability that we need to in southwest Missouri. These are the dollars that are necessary there. And that amounts to about 160 million.

And then finally, is -- and that should say plant environmental, not environmenta, and that's about $37 million, and that's what we anticipate spending principally at our Asbury station for the control of nitrous oxide, sulfur dioxide and mercury. And that's just the beginning of those expenses.

Now, if we could take a look at the next slide, where does that money come from? And the top -- or let me focus on the bottom blue bars, and that's what our model would suggest we can generate internally. And this would be based on our current depreciation rates, and a ten percent return on common equity. The red bar -- the red sections of the bars are what we would anticipate in having to go to the market and borrow in order to conclude -- to bring about this -- these capital expenditures, and that amounts to about $200 million in this time frame.

Now what's driving all of these capital expenditures? It's really the growth in southwest Missouri. You know, southwest Missouri is one of the few regions in the state that's experiencing real growth, at least that's our understanding. And, you know, for a fact, our service area, our Missouri service area, has grown about 23 percent in the decade of the 1990's.

And if you take a look at the next slide, that's our customer growth for the last five years, you see a dip in 2001, and that's really the effects of the terrorist attacks in 2001. We saw significant decline in customer growth at that time, but we've averaged 1.6 percent over the past five years. We're projecting one and a half percent this year and we're projecting 1.6 percent going forward. Twelve months into June of 2004, we're standing at 1.8 percent.

This is the look over the past ten years at the number of our customers that's grown from about 132,000 to about 157,000. That's 19 percent over that time frame. And that corresponds pretty closely to what we've seen on our annual customer growth.

And then taking a look at -- Brad talked a bit about this, he talked about these next two slides and this is -- this is the energy consumption over the past ten years, that's grown about a third, and we're projecting 2.4 percent going forward. And then the peak demand has grown by nearly 40 percent over that same ten-year time frame. So what I'm -- all that said, you know, there's -- I hope this demonstrates that -- that the demand for the expense on the capital expenditure side is there and it's not going away.

And finally, Brad mentioned a couple of times the high impact of the high natural gas prices in 2001, and I've provided a graph here that shows you how it affects the bottom line. And if you look at 2001, that was at 3.9 percent return on common equity in 2001.

And then the last slide is just to confirm how we calculated that return on common equity. In closing, I'd like to thank you for the opportunity to present our case to you today. The Empire District Electric Company has been in business since 1990 -- or pardon me, 1909 of -- we're approaching a century in the business of providing service to our customers and presenting challenging and rewarding opportunities for our employees and stable and adequate returns for our shareholders in our business, and that's both bondholders and shareholders.

You know, we regularly survey our customers. In fact, we very recently concluded another customer opinion survey. We found that the overall favorable opinion of our customers about their electric service provider is holding pretty steady at about 80 percent. We pay close attention to two specific factors. And that is the opinion about reliability and the opinion about cost.

This year was virtually unchanged from previous years' results. About 90 percent of our customers consider their service to be reliable, and about 80 percent consider the cost of that service to be reasonable. Further, our customers depend on Empire to be responsive at times when nature deals us a bad hand.

The tornadic events of May 4th of last year received much publicity in our locale and even nationally. As a result of those events, over 35,000 of our customer base was left without power. We marshalled all of our resources, we called on our neighbors and contractors, and I'm proud to say we restored electric power service to all customer who could safely take service in six days. In that particular situation, it wasn't just poles and wires. We lost four critical substations, one of which was completely rebuilt in four days.

Then earlier this month, on Sunday morning, July 4th, nature dealt us a fireworks display of our own, when a destructive straight-line windstorm swept across the western portion of our area. Again, turning the lights out on about 35,000 of our customers. Restoration efforts were completed in five days. And I'm told the Staff at the Commission received only one informal complaint with respect to our restoration efforts.

I say all this to bring your attention to the good job that we're doing in the southwestern corner of this state. But really the focus of this proceeding needs to be on the investors in our business, of which 30 percent are Missourians. We know, and I don't think a reasonable person would argue, that investors, both bond and shareholders, are judging investment alternatives based on stability in cash flow, earnings, and dividends. These investors cannot be ignored.

I trust we've demonstrated to you today that we have significant capital expenditures in the very near future, so the motion before you is not about second or third quarter earnings, or even 2004 earnings. It's about telegraphing to investors that you understand the need to continue to provide electric power service to our growing base. A customer base that relies on us to make those investments.

With respect to the interim energy charge, it's a proven, regulatory tool. Aquila is using it now and we used it beginning in October 2001 for about 14 months. In fact, because of our aggressiveness on gas procurement, we voluntarily lowered, and then subsequently terminated early, the IEC tariff.

You have my word we will do everything within our capacity to do right by our customers. It is not and it never will be our intent to come away from this process with an IEC in hand and then lay down. Some of our opponents will argue that we simply could have hedged more. That's an easy conclusion when you have the benefits of 20/20 hindsight. In fact, in hindsight, we modified our gas procurement policy and practices to take full advantage of lower prices for natural gas should they ever return.

I trust you understand we're not coming to you today with just our hand out. We're working diligently to mitigate and control our exposure to volatile and high cost of natural gas. Just last Thursday, our Board of Directors authorized management to proceed with an agreement to purchase about ten percent of our energy needs from wind resources.

With the renewal of the production tax credit by Congress, our models show that the addition of this resource will be cost neutral for our customers, but more importantly, not subject to the volatility and increases in natural gas or natural gas influence purchase power cost.

We're also aggressively pursuing the addition of more coal-fired resources to our mix. I believe our keen interest in Iatan Unit 2 is well known. We have also hired Burns & McDonald to assist us in the assessment of smaller coal-fired resources at our current Asbury power station. We believe you have the capacity both from the factual and legal viewpoints to grant our motion, and our intent today is to demonstrate that. Simply put, it's in your hands.

Will you find our arguments are compelling, will you join us, join with us to continue to provide safe, reliable, and competitively priced electric power service to our corner of the state? I sincerely hope so. Thank you again for your time and attentiveness and I'm prepared to take questions.

JUDGE THOMPSON: Thank you, Mr. Gipson. Will you please step over and take a seat? Mr. Frey.

MR. FREY: Yes, your Honor.

CROSS-EXAMINATION

QUESTIONS BY MR. FREY:

Q. Good afternoon, Mr. Gipson.

A. Mr. Frey, how are you?

Q. Fine. Thank you.

A. Good.

Q. I'm going to ask you a couple of the same questions I asked Mr. Beecher. The first is is Empire

District Electric Company providing safe and adequate service at this time?

A. Yes, sir, we are.

Q. And do you project that Empire will be providing safe and adequate service on -- as of and up to April 1st, 2005?

A. Well, I hope we don't have a storm like what we had on July 4th on April 1st of next year. Some of our customers might question whether we were providing adequate service on that day. But you know, in answer to your question, our business model is to provide safe and adequate electric power service to our consumers at a competitive price, so that, you know, absent, you know, something significant, some significant event, yes, we intend to provide safe and adequate service on April 1st of next year.

Q. Okay. So that's your expectation?

A. It is.

Q. Do you know whether, in the past, Empire has filed for interim rate relief?

A. Yeah, I do know that.

Q. And do your know when and what cases Empire made those filings?

A. Yeah, I put together some research, actually before we came in today, and in 1987, we had a case that was the tax -- result of the Tax Reduction Act. In 1990, we had a case that was no interim filed in that case. Also, one in the '94 and one in '95, and there were no interims filed in that case.

Then in '81, we filed and also -- no, I'm sorry. That was in '97 as well. We filed and asked for interim relief and that was denied. In 2001, following the termination of the merger with UtiliCorp, now Aquila, we filed an interim case principally due to the increase in natural gas prices, and that was denied. And that's the year that you saw the 3.9 percent return on common equity.

And then in 2002, we filed a case, but that was the -- or we filed interim along with that case, but that was a result of the off system -- cost of off system sales being excluded from the final case determinants in -- from the 2001 case. And that interim was denied as well.

Q. In each of these instances, then, is it fair to say that the Commission granted -- denied interim rate relief?

A. You know, my understanding is there was a case back in the 19 -- early 1980's that I don't have on this list where there was some interim relief granted, but our recent history is no interim relief granted.

Q. Thank you. Do you know what standard the Commission applied in each of the cases you've discussed?

A. I am generally familiar with the Commission's standard for emergency.

Q. What standard was that -- oh, standard for emergency, I'm sorry.

A. I'm generally familiar with that.

Q. Okay. And is that the one they've applied -- the Commission has applied?

A. Historically, the Commission has applied that standard of emergency in the cases that we discussed, yes.

Q. And do you know whether Empire can finance to meet its capital needs at the present time?

A. At the present time?

Q. Yes.

A. Today?

Q. Well, let's say for the next six months.

A. Yes, sir, we anticipate that we can.

Q. How about the next nine months?

A. Yeah, we anticipate that we think over the next nine months. As I said in my remarks a few minutes ago, it's in the about this year, it's not about 2004 earnings, it's about what kind of signals do we send to the capital markets, and the capital markets will react at some point in time.

My view is that, you know, there's been enough press about -- from the rating agencies and the equity analysts with respect to the inability to recover prudently incurred fuel and purchase power cost that time is of the essence.

Q. Can you state the, if you know, what the earnings were for the 12 months ending June 30th of this year?

A. Twelve months ending June 30, '04?

Q. Right.

A. A dollar and two cents. You wanted earnings per share?

Q. Total dollars.

A. I believe that's on the -- it's on the last slide, $24,555,442.

Q. Mr. Beecher spoke his testimony about the exposure to gas costs amounting -- I think it was for the rest of this year amounting to some 4 million, $4 million based on what he expects to occur. And that assumes that the Commission does not lift the suspension as requested by the company, as I understand it; is that correct?

A. Yes. Is the $4 million correct or is --

Q. Is all of it correct?

A. Oh, maybe you ought to repeat it because I didn't think that was going to be your question.

Q. Okay. Do you recall Mr. Beecher mentioning $4 million, which is the exposure, I believe, he indicated for the rest of this year?

A. Yeah, I believe that's August through December, and I think it's about $4 million.
Q. Okay.
A. At current gas prices.
Q. Okay. Can you translate that to earnings after taxes?
A. Well, when we -- you know, I don't know that I could -- let's see. Let me think about it. If I had a calculator, I could.
Q. Could we have a calculator? Thank you, Mr. Conrad.
A. You know the last time I was -- where's the on button, Stu?
MR. CONRAD: It's the button that says on.
THE WITNESS: Oh, Stu's already got the answer in here, it's $3.69.
MR. CONRAD: No, that's the New York hourly rate.
THE WITNESS: I don't see it. Is there another calculator in the house? You know, I think the last time I was on the stand I had to use a calculator. I think I'm ready, roughly $.10 a share.
Q. (By Mr. Frey) Okay. And in total dollars, what would that be?
A. Two point six million.

Q. Thank you for your persistence. And now just a couple more questions that I had asked Mr. Beecher. What prevented you from filing on April 30th the presentation you made today?

A. I think Mr. Beacher pretty adequately explained that. You know, we -- before we file any case, we take a look at all the factors in the business, what are the, you know, what are the hot button risk issues that we think could be problematic in a case or what are the expectations of our shareholders, what are the expectations in the capital market, what is our expected capital expenditure over the next few years, what has it been.

You know, one of the things that played a role in this case was the -- two significant issues that played a role in this case were fuel and purchase power, and then the additions of the Energy Center 3 and 4 units. And it was our conclusion, you know, we study that pretty routinely in our organization and it was our conclusion, basically, you know, in mid-March that we needed to get a case together and the filing came on April 30th.

Q. And what would your answer be if I changed the date to May 20th? What prevented you from filing the presentation on May 20th?

A. The presentation?

Q. This presentation which would then coincide with your --

A. This presentation?

Q. Yes.

A. Well, that was the day we filed the motion to lift the suspension. Certainly we had some of this data, but we didn't have it in presentation format.

Q. Do you know why -- or could you state why Empire did not file its rate case before April 30th?

A. I think I -- I think I did. I think I said that, you know, we study all factors and the issues that we have before us, and you know, routinely look at that on a -- generally, a month-by-month basis, and make a determination. And as I said, it became clear that, you know, mid to late-March, that we needed to start putting a case together. And those don't come together just over night.

Q. Okay. Thank you. A couple of questions on your presentation, Mr. Gipson. First of all, the graph on the Page 3.

A. Yes, capital expenditure funding.

Q. Yes. What dividend payment ratio is assumed in this graph?

A. Unchanged from today.

Q. Do you know what that is?

A. A dollar and twenty-eight cents annually.

Q. Annually? And if we could go to the graph on

Page 9, the return on common equity graph. Do you have that?

A. I do.

Q. Does an Empire public offering of its common stock dilute Empire's earnings per share?

A. Yes, it does.

Q. And what revenues and expenses of Empire does this graph contemplate?

A. All revenues and expenses.

Q. Is it possible that the ROE's may reflect experience that Staff does not believe to be reasonable?

A. Are you asking me to conclude what Staff thinks?

Q. Not conclude, just state whether you think it's possible.

A. Well, could you repeat the question?

Q. Is it possible that the Staff would develop a position in which it does not believe these costs are reasonable?

A. I'd say the probability of that are about 100 percent.

Q. Are there ROE's from -- excuse me. Are these ROE's from the consolidated operations?

A. Yes, they are.

Q. Okay. And then with regard to this graph on Page 9, again, second to the last page. Were you able to provide safe and adequate service during the period covered by this graph?

A. Yes, sir, we were.

Q. And during a portion of that time period, you earned less than four percent return on equity; is that correct?

A. In 2001, that is correct.

Q. On the graph prior to that, there's a -- I guess the title is managed peak.

A. Yes.

Q. Could you describe briefly what a managed peak is, then?

A. I think generally, in our case, that would be the -- the peak less any impact from, like, interruptible customers, like Mr. Conrad's client. In other words, the peak would have been higher had we not had that kind of customer on our system.

Q. I see. Thank you. Do you know whether a party in this case could seek a stay of a Commission decision adopting an IEC?

A. Sir, I'm not an attorney.

Q. Could you give your opinion?

A. It would be totally without basis.

Q. Do you know what the effect of a stay of a Commission decision adopting an IEC would have on a rating agencies view of Empire?

A. I am not a rating agency analyst as well.

MR. FREY: That's all the questions I have, your Honor.

JUDGE THOMPSON: Thank you, Mr. Frey.

MR. FREY: Thank you, Mr. Gipson.

THE WITNESS: Thank you.

JUDGE THOMPSON: Mr. Coffman.

MR. COFFMAN: Thank you.

CROSS-EXAMINATION

QUESTIONS BY MR. COFFMAN:

Q. Good afternoon, Mr. Gipson.

A. Mr. Coffman, how are you?

Q. I'm doing fine.

A. Good.

Q. Let me just first ask you what standard do you think this Commission should use in reviewing your request for interim rate relief to an IEC?

A. Whether it's justified, both from a factual and legal standpoint.

Q. Do you believe that this Commission should abandon the standard it's used over the years that's the so-called emergency slash near emergency standard?

A. I believe that the Commission should take a look at the evidence before it. I believe that it should consider the facts that we've laid out. I think it should consider the effort that we have demonstrated in the past in terms of providing safe and adequate service for our customers.

I think it should consider the capital expenditures and what's driving those capital expenditures going forward, and I think it should consider what impact the Commission rulings has on a company's capacity to borrow -- borrow money both from bondholders and shareholders in the future in order to finance the business going forward and meet the expectations of our customers.

Q. The subject matter that we're here talking about today is just interim relief, whatever would go into effect sometime here soon until the end of the permanent rate case, correct?

A. That is correct.

Q. Do you think that the Commission should actually consider in whether to impose some sort of rate increase or IEC surcharge during that time period what has happened in the past as far as your company's performance or what financial needs the company might have after that date or should they focus simply on that time period that would be the subject of the increase?

A. I think time is of the essence. I'm a firm believer that the equity analysts and the data analysts have given us significant signals in terms of what their expectations are from companies like Empire, and their expectation is that we find a means by which we can cover our prudently incurred fuel and purchase power costs.

Q. But let me just go ask you about a couple pages in your presentation. Here on the first page, you talk about your five-year capital expenditure plan.

A. That's correct.

Q. And for all of these expenditures, except for maybe the first few months of 2005, would be after a permanent rate change came out of the permanent rate case, correct?

A. That's true, but I think one of the things that you have to keep in -- keep in mind is analysts are still looking at performance over the last ten years, and they don't look at simply what your capacity is to earn. They look at your experience and being able to earn your authorized return.

Q. So is this interim rate request driven more by what's coming down the road in future years than actually what is your company's need in the next few months before the permanent rate case is decided?

A. I think it's both. I think that it certainly what we've tried to demonstrate is that we have significant capital expenditures coming forward. Certainly, we are in tune with what investors expect from companies like ours, but I don't think you can turn your back on the immediacy either. The sooner you get -- the sooner you get a cut sutured, the sooner it stops bleeding.

Q. You talked about being downgraded.

A. I did?

Q. I suppose you did. You talked at least about the potential for analysts.

A. No, I don't think I did.

Q. Sorry if I misinterpreted.

A. I hope we're not being downgraded. I may not have been listening closely.

A. Okay.

Q. There are a lot of credit rating agencies out there that are monitoring your company.

A. There are two that we -- S&P and Moody's.

Q. Doesn't Stiefel Nicholas?

A. That is equity analysts. You said rating agencies.

Q. Debt rating agencies.

A. Debt rating agencies, yeah.

Q. Okay. What about equity?

A. Equity, I believe there are five analysts that cover us.

Q. Okay. And out of the two credit rating and five equity rating agencies, what, of those agencies that you've seen in, say, this calendar year, have made some sort of downward adjustment or downgrade to your company's performance as to the next year?

A. In 2004?

Q. Yes.

A. I'm not aware of any equity or debt rating service that has made a change -- a downward change in any of our ratings in 2004.

Q. Would it be fair to say that the general consensus of these agencies are that your company will be doing better in 2005 than it has been in 2004?

A. I think the -- the equity analysts in particular are looking for a much brighter 2005 than certainly the dismal results we've had in the first half of 2004.

Q. Okay. Let me point you to another page in your presentation. I'm not sure I counted the pages, but the one --

A. There are ten.

Q. Next to the last page, maybe the one entitled return on common equity. And for clarification, and I think you clarified this in your presentation, but this is actually -- this is showing your actual return on common equity; is that correct?

A. Yeah, that's been our return on common equity since 1994 through 2003, actual results.

Q. And that is not your allowed rate of return from the Missouri Commission or any other Commission, correct?

A. That is correct, and I didn't intend to imply otherwise.

Q. Right. And your actual return on common equity can be impacted by a variety of factors. Would that be correct, sir?

A. I believe Mr. Frey put it all revenue and expenses, and I concur with that.

Q. Okay. And the -- I guess you used some colorful terms, but your less than desirable earnings from your perspective in 2004 --

A. I think I used the word dismal.

Q. Yes, I think dismal, I think, was your word. There were factors other than gas -- natural gas prices that led to that, wouldn't you say?

A. Yeah, there was the impact of the energy center. We had a blade failure on a unit on -- the morning of January 7th, I believe. That what we've expensed to date is pretty much just reflects what we anticipate the insurance deductible to be, but.

Q. And your healthcare?

A. Beyond that --
Q. Your healthcare expense was up more than expected.
A. It's up more than we budgeted.
Q. Okay.
A. But in terms of -- in terms of impact, the largest single impact on the earnings in 2004 has been an increase in natural gas prices and its impact on purchase power cost.
Q. Would you agree also that there are some other items impacting your bottom line that went in a favorable direction?
A. Why, certainly.
Q. Okay. But you're asking --
A. One of those would be interest costs as compared to last year. You know, we -- we refinanced about $160 million in debt last year when interest rates were at an all-time low and we're proud of that effort and proud that once we get through those general case, that's going to be reflected in our cost of service.
Q. Okay. But despite all these impacts in both directions, you're asking only that some fuel related IEC be approved on an interim basis?
A. That's exactly right. This is one of those expense items that we have no direct control over. We can --

we can and do hedge our position to try to mitigate its impact, but we own no gas in the ground, we own no gas pipelines, we own no gas storage, we own no drill rigs. We're not in the gas E&P business. We're in the electric power service business.

Q. You do acknowledge that you have a variety of hedging tools that you do use.

A. We do use those, and we've done a darn good job with them, but there comes a point time when you've got, you know, how much more -- I mean, do you hedge more at that significantly higher price?

Q. And that's a management decision.

A. It is a management decision, but again, it's, you know, I don't want anyone to leave here believing that we can control the price of natural gas. We can't.

Q. But you're not saying that you -- the management doesn't have tools available to it to mitigate the impact on rates?

A. I think -- I think Mr. Beecher has in his testimony illustrated that we use a variety of tools to mitigate that exposure, but it is not fail safe. No hedging plan, no hedging policy, no risk managing policy that I've ever seen, and we hired one of the nation's leading consultants to help us develop ours, can guarantee that we're going to get the absolute very least cost natural gas at any point in time. It's a means by which you try to control the volatility and mitigate the exposure, but it is not a guarantee to get you the lowest price.

Q. Well, let me go back to the standard, which is where I think we ought to be focusing here. I know you're not asking the Commission to use the standard that it's used over many years, but if it -- if it were to apply its emergency/near emergency standard, do you believe that Empire would meet that standard at the current time?

A. I don't believe that the standard, as I understand it, which is, you know, are you going to be able to meet payroll next week, are you going to be able to continue to provide safe and adequate and reliable electric power service, if you judge it based on that kind of standard, then no, we're not going to meet that standard. But I think Mr. Beecher said earlier, you know, if you're out of a job and you've got a credit card, do you continue to run up the bills?

Q. You --

A. I do believe time is of the essence. It may not be an emergency under that standard, but certainly the, you know, this is -- this is an incident that cannot be -- it cannot be fixed in the context of the general case.

Q. Can I ask you a question now about I guess it would be Page 2 of your handout, the page entitled capital expenditure funding.

A. Yes, that's Page 3.

Q. Okay. Page 3. If you count the cover page as one.

A. Yes.

Q. You have there some bar charts and you show internal sources of funding and new financing. Could you explain to me briefly what is available to you for the internal sources of funding, the blue portion of that graph?

A. Yeah, that will basically add up to net income plus depreciation.

Q. Okay.

A. There's a few more ins and outs, but that's pretty much it.

Q. Okay. And as far as an interim rate relief would go, only the first few months of 2005 would even potentially be relevant for the rate relief period you're requesting here today?

A. I think I answered that question earlier. I don't think it is just the first few months of 2005.

Q. That's because you want to send a message. You want the Public Service Commission to send a message that it's willing to --

A. A message is going to be sent one way or the other.

Q. Okay. Well, are you aware of any -- any agency, data or equity related, that would -- change its -- its ratings of your company based on a decision on this interim rate relief? Do you have any reason to believe?

A. I've not had that conversation with either of the rating agencies that cover us. They are certainly -- we have had conversation with them with respect to the Commission's -- with respect to this on-the-record presentation today. They are keenly aware of the issue that's before the Commission. They're keenly aware of the exposure that we have, and they'll be expecting a report from us as soon as some conclusion is known. Now, whether they take action on that, I don't know.

Q. Okay.

A. I'm not a rating agency analyst.

Q. You've decided to focus this interim rate relief on natural gas prices primarily.

A. And the impact of natural gas on purchase power prices.

Q. Okay. I understand. What -- what do you think was known -- what is known now that was not known in September 2003 when a rate case could have been filed at the end of your last rate moratorium?

A. Well, I don't have those numbers in front of me, but I believe Mr. Beecher's -- had some graphs that depicted what the futures market looked like at various points in time. One of the ones that is most relevant is how that futures graph changed between the time that we filed for the general case and when we filed to lift the -- lift the suspension on the IEC tariff. It jumped by $.75 or a dollar.

Q. Okay.

A. Specifically to your question, Mr. Coffman, I don't recall how it looked at September 1, 2003. I don't know -- I don't know the relevance of that.

Q. Well, your actual return on equity in 2003 is shown on your chart then, and --

A. Eight percent.

Q. -- and I'm assuming that that wasn't dire enough or dismal enough to justify a rate case being filed September of 2003. Would that be fair to say?

A. No, I think I answered that question for Mr. Frey. We consider all of the factors that -- at some point, and along the way, and, you know, consider what, you know, costs have been and what they're projected to be. You know, I guess you could draw a conclusion from that. I don't have anything in front of me that we anticipated that the natural gas costs were going to remain fairly stable going forward on September 1 of 2003.

Q. Are you saying that that was your thinking then or you just --

A. I don't know.
Q. Don't recall?
A. I'm speculating.
Q. Just a second. Now, you -- you stated earlier that you believe that analysts look at both past and future performance.
A. I do.
Q. And that's why you thought it was relevant to talk about the past and the future in this presentation because you're wanting to, I guess, impact what those analysts think.
A. I think it's important to -- to understand what analysts are looking at. I mean, they're the ones that pin opinions. They're the ones that many investors look to for advice on whether or not to invest in a particular organization.
Q. Now, you wouldn't ask this Missouri Commission to simply base rates on what analysts think?
A. Absolutely not.
Q. Now you said there were -- you thought five equity rating firms that cover Empire.
A. That's correct.
Q. Can you recall those off the top of your head?
A. Yes, Jeffries & Company in New York City, AG Edwards in St. Louis, Stiefel Nicholas in St. Louis,

Missouri, Val-U-Line, and Leman Brothers.

MR. COFFMAN: Okay. That's all I have. Thank you very much.

THE WITNESS: Thank you.

JUDGE THOMPSON: Thank you, Mr. Coffman. Mr. Conrad.

CROSS-EXAMINATION

QUESTIONS BY MR. CONRAD:

Q. Good afternoon, sir.

A. Good afternoon, Mr. Conrad. and how are you? I've asked everyone else, I should ask you.

Q. Well, I'm getting along. I'm convinced, however, that my rates are too low.

A. I don't believe this is the appropriate proceeding for that.

Q. Well, you asked. I wanted to talk to you again about this managed peak. I think that's third from the last sheet. And you indicated that took into account interruptions to Praxair, correct?

A. Yeah, I believe -- actually, I believe in 2003, we might have had one other interruptible customer at that time, but it does include your client.

Q. But it does reflect the impacts from whatever interruptible customers you had?

A. Yes, sir. I think that was my testimony.

Q. I ask at this time there is only one; is that correct?

A. I believe that's correct as well.

Q. Now, on the second page, counting the title page as the Page 1, the blue parts of those columns are fairly significant, wouldn't you agree?

A. Yes, I would. That's why I put them on top.

Q. Is there several ways that the need for new generation could be addressed?

A. There are a number of ways that the need for new generation can be addressed.

Q. Other than building?

A. Yes.

Q. Is one of those interruptible?

A. It is.

Q. Looking at 2005 on through 2009, was your company actively marketing interruptible service?

A. We're in close contact with all of our industrial consumers. It takes, as you know, a deal of sophistication and a deal of interest on behalf of a industrial consumer in order to manage their business through potential interruptions.

Q. Let me ask the question again. Are you actively marketing interruptible service?

A. If we had need for capacity in that time frame, yes, we would. Now, we looked at 2007, which is the commercial operation date for the next unit, and determined that there was not sufficient capacity to buy, if you will, from the existing customer base to avoid building that new generation in 2007.

The generation that you see beyond 2007 is the start of some base load additions to our portfolio to make up for the loss of the contract with Western Resources out of the Jeffrey units that will expire on May 31st, 2010. But regardless of how much, you know, any dreams we might have of being able to find 160 megawatts of interruptible load from our existing industrial customers would be -- well, that just wouldn't be a prudent thing to do.

Q.   Let me try it one more time. Are you actively marketing --

A.   I believe I've answered that question.

Q.   No, sir, you haven't. You've answered lots of things, but you haven't answered that one. Have you answered are you actively marketing interruptible service at this point?

A.   Today?

Q.   Yes.

A.   No.

Q.   Is interruptible service the only means of load control that is known to you?

A. You mean control in the -- there are a number of programs out there that -- that can be used for load control, provided you have, you know, customer -- customers that are willing to do it.

Q. Are you actively today marketing any of those programs?

A. No, sir.

Q. Now turn, please, to the very last page of your packet. I believe you confirmed for Mr. Frey that those numbers were consolidated numbers.

A. Yes.

Q. What does that mean?

A. That means the impacts of all of our various business units, like the water business, like our fiberoptic business, like our -- any of the businesses -- business units.

Q. Does it also encompass your Kansas operations?

A. Yes, it does.

Q. Does it also encompass your Arkansas --

A. And Oklahoma as well, sir.

Q. That was my next question. Thank you. So what we're looking at here is, in some instances, well beyond the reach of anything that this Commission could do. Wouldn't you agree?

A. I --

Q. Well, let me ask it another way.
A. Okay. Thank you.
Q. Can this Commission set the rates for Kansas?
A. Oh, no, sir.
Q. Can it set the rates for Oklahoma?
A. Nor Arkansas.
Q. Thank you. Is this a proceeding to set your water rates?
A. No, sir, it's not.
Q. Is this a proceeding, or for that matter, are your fiberoptic rates regulated?
A. No, sir, they're not.
Q. Okay. Now, you used the phrase if you're out of a job but still have a credit card, you'd be poorly advised to use it. Do you recall that expression?
A. I do, and I believe it.
Q. Was that an analogy that you wanted to make?
A. No, I'm not suggesting that if we're not successful in this proceeding that I'm going to lose my job. Is that what --
Q. Well, that's what I was wondering. Are you out of a job?
A. No, sir, I'm not.
Q. Okay. Is Empire out of a job?
A. Is Empire out of a job?

Q. Yeah.
A. Oh, absolutely not, sir.
Q. Okay. And if you don't get the relief that you're asking for here, will Empire be out of a job?
A. You know, I don't believe so.
MR. CONRAD: Thank you. That's all I have.
JUDGE THOMPSON: Thank you, Mr. Conrad. Ms. Woods.
MS. WOODS: I have nothing, thank you.
JUDGE THOMPSON: Questions from the bench, Commissioner Clayton.
QUESTIONS BY COMMISSIONER CLAYTON:
Q. Good afternoon, Mr. Gipson.
A. Good afternoon.
Q. I've got a handful of questions that I'll try to get through. We've been here for a while today. You made a comment recently under cross-examination from one of the attorneys here relating to a message being sent by this Commission. Do you recall the context of that question and answer?
A. Yes.
Q. And I believe from that you were suggesting that this Commission would be sending a message one way or the other on the decision that we make. Do you recall that?
A. I do.

Q. Is that message that you're referring to a decision that we make on the temporary IEC between -- that would take effect between now and the end of the rate case when a full determination would be made or is it a different issue?

A. You know, I think it is -- I think it is both. I think it is at the conclusion of the full case, and I think it's in the interim here. And I -- you know, the issue with the analysts is the timely recovery of fuel and purchase power expense. In particular, that that is impacted by natural gas costs. One of the questions that we get quite regularly is, you know, this takes 11 months to get this -- get this issue resolved, so I think it is both because of the protracted nature of general cases in Missouri.

Q. Now this Commission has made decisions in the past to, I guess, with regard to settled rate cases, that it would be willing to approve an interim energy charge at the conclusion of a rate case.

A. That's correct, it did so in our 2001 case that was settled or rates went into effect in October of 2001, and just recently with the Aquila.

Q. Now, would that be a positive message of -- sent by this Commission to the analysts?

A. I think it would be a positive message. I think it's -- I think then we're back to the timeliness issue.

Q. But I guess what I'm asking is this Commission has already sent a message that it is willing to consider those types of clauses or rate setting mechanisms at the conclusion in total; isn't that correct?

A. That's correct, and I think that has been positively received. I know that in our particular case, the Standard and Poors evaluation that was issued right after the conclusion of our '01 case commended the Commission for making that decision in that case. But also, you know, throw in a little jab because it was not permanent in nature, and of course, they're looking for something that's more permanent in nature.

Q. I understand. I understand. Now, that is still starkly different than implementing a short-term for a time certain interim energy charge, is it not? Isn't it significantly different than having one, have a three-year life versus a six-year life?

A. Yeah, I think -- yes, I think it is substantially different. I think that the -- that investors are going to look upon this Commission as, you know, if our motion is granted to lift the suspension on this, I think they're going to look at this Commission as one that will take appropriate action when presented with the necessary facts and do it in a timely fashion. I think that will be positive for Missouri.

Q. Perhaps I didn't ask the question.

A. Okay. Perhaps I answered it wrong.

Q. I'm trying to understand the significance between an interim energy charge that has a life of only six months versus a life, perhaps, over two or three years, over a longer period of time. And I guess what I'm trying to get at is for this short-term decision that we have to make, how big of a message is it being sent to the analysts and to the equity markets and the like?

A. I think it's -- I think it is a big one, and it's for the reasons that I just spoke. It tells them that this Commission is willing to take the steps necessary to do this on a timely basis. You know, the other thing is you have to understand the magnitude of this. You know, we're a -- we're a consolidated, we're a $300 million revenue company, so, you know, $4 million this year, $3 million next year doesn't sound like a lot of money for a company of that size.

But if you take a look at, you know, prior to our issuance of common equity in December of last year, we had common equity that totaled something on the order of 33, $34 million, so an after tax return of ten percent would have put that at about, you know, 33, $34 million. Today, we're at $25 million, 12 months ended. Three -- three or four million dollars before the end of the year is going to take that -- is going to -- is going to be yet another significant impact on what -- what one would presume would be the authorized rate of return that has generally been delivered by this Commission.

Q. I believe you have suggested that there is not an emergency quote-unquote for your company in the determination of this Commission to grant an IEC.

A. Yeah, if we look at the emergency standard as it has been historically used -- you know, I think the best evidence of that, Commissioner, was you know we were paying $6 a unit for natural gas on Sunday morning, July 4th, and that didn't stop us from doing our job.

Q. Okay. Is there a standard that you propose to this Commission that we should determine in receiving petitions or motions of this sort for interim rate relief while a case is pending?

A. You know, that was not a question I was anticipating, and you know, I don't have a standard in my hip pocket to propose. What I would suggest is, you know, the consideration and due process, consideration of all the evidence before you, and you know, it's -- it's -- and it's more than, as I said in my statement, it's more than just second quarter earnings or third quarter earnings or even this year's earnings. It's the performance of the organization over the long-term.

Q. Were you in the room when Mr. Beecher testified?

A. I was.

Q. I assumed that you were. I believe I asked him some questions regarding the reasons behind the requests for an interim energy charge, and I believe his response was that there were a number of variables that go into the decision of whether to request this type of rate-making treatment. Do you agree with that statement?

A. Yes, I do.

Q. Now, if gas prices were not as high as they are right now, all things being equal, would Empire be requesting this type of rate-making treatment?

A. You know, I think if gas prices were in the $2 to $3 range and had stayed in the $2 to $3 range for a significant period of time before we filed a case, and were expected to say in the $2 to $3 a unit range for a significant period of time after we filed a case, then probably the -- the need for an interim energy charge would be -- would be pretty -- would be pretty low, frankly.

Q. Is there a dollar threshold, a dollar amount threshold on natural gas prices where we can draw a line or is there -- is there some point where we could set a standard in whether we consider these types of charges?

A. It wasn't just but just a few years ago that we considered $3.50 gas to be the standard upon which we would base all of our models going forward, you know, when we're comparing, you know, different generation units and trying to determine what the least cost alternatives are. I believe that -- that floor has moved.

I believe that floor has moved between somewhere between $4.50 and $5, so, I -- although it would be an easy fix to say, okay, if gas prices are $4 or greater, we're going to allow interim relief for companies like Empire. I don't believe that would be -- I don't think that's a prudent means by which to approach it.

Q. In looking through your presentation, looking at the different pages, you have expected capital expenditures, capital expenditure funding, you have growth, customers, load growth. Is there anything in these numbers that is especially extraordinary that would suggest a need for this IEC?

A. Well, I think when you look at our growth, certainly compared to the national norm for electric utilities, and I'm getting my data from the Edison Electric Institute. The EEI claims that the average is something on the order of three-quarters of a percent to eight-tenths of one percent is the norm for electric utilities across the country.

Now, our particular service area is -- is a fast growing service area. We serve Christian County, which is the fastest growing county in the state of Missouri.

Q. I've heard that many times from a former speaker of the House. Many, many times. But isn't that a good thing from the company?

A. Yeah, growth is a two-edge sort, just to be frank about it.

Q. Explain to me why it's such a bad thing.

A. Because we don't have the internal sources of cash necessary to fund that growth, and we never will given the depreciation rates, given the returns on equity that have been typically granted by this Commission, that's going to keep the cash available for funding capital expenditures at a fairly low level, which is going to cause us to finance anything above that externally.

Q. Is that a condition unique to your company?

A. I don't believe it's unique to our company. It is unique to our company maybe in this state because of the growth in our service area. We serve more than just Christian County, by the way.

Q. I'm sure you have quite a few counties. Do you have an interim energy charge or anything like this in any of your other state operations?

A. We have traditional fuel adjustment clauses in

Oklahoma, and in Arkansas, and for our FDRC regulated accounts. Those are accounts like the city of Monnett, the city of Mount Vernon, the city of Lockwood, Missouri, and some other communities outside of -- but those are regulated by the FDRC, and those traditional fuel adjustment clauses. We have the capacity to implement a fuel adjustment clause in Kansas. It is not prohibited in Kansas.

We settled a case in Kansas in August of 2002. I see some heads shaking back there, so I know that I must be in the ballpark, and we chose not to implement a fuel adjustment clause at that time. But the answer to your question is yes, we do utilize fuel adjustment clauses which are, you know, much -- much more timely than the interim energy charge in our other jurisdictions.

Q. Are you aware of the amount of time that rate cases take in your other states; Oklahoma, Arkansas, Kansas?

A. Yes, I believe Oklahoma is a six-month time period. I believe Kansas is eight, and Arkansas is ten.

Q. Now, in Oklahoma, where you would only have a six-month period for completing a rate case, you still -- or Empire still needs the interim energy charge or fuel adjustment determination despite that lesser time period?

A. It is a standard in Oklahoma for utilities to utilize fuel adjustment clauses. The Commission there believes that it is -- it is the right policy.

Q. But time isn't the issue for that, or not so much as it would be here?

A. The Commission has taken a position in Oklahoma that although companies can manage and companies can mitigate the cost of fuel, the companies aren't in the business of producing fuel, and so it is virtually out of their control.

Q. Do you anticipate if, on the short-term, on the decision on whether or not we lift the suspension while this case is pending on this interim energy charge, would you anticipate on that short-term decision that Empire's credit rating would be reduced or injured in any way?

A. You know, I -- I'm pretty much in line with what Mr. Beecher said about, you know, what rating agents -- the action that rating agencies take. It would depend on what else was happening in the sector at the same time. If we had another instance that looked a lot like the Enron, Excel, Aquila, and other issues all energy companies were being painted with a broad brush during that time frame. If this was the only issue, I don't believe they'll take any action.

If it is coupled with some other kind of action beyond our control, I believe -- I believe that might give them cost.

Q. If we decide not to implement this short-term

IEC, will any capital projects be delayed or cancelled?

A. We haven't -- we haven't come to that conclusion, frankly. We have presented our Board of Directors a capital expenditure budget for 2005, and they approved that. It's the number that you have on this sheet. We have not come to that conclusion. I would say the chances are pretty darn slim that we would -- that we would modify our capital expenditures if you do not grant this motion. And the reason for that is because we take seriously our obligation to serve those customers.

We will continue to provide extensions and services to those customers. We will take all the necessary steps to provide the kind of reliability that we believe this Commission and the customers expect us to provide and we will continue to build a new generation that we believe is necessary to meet the growth of that service area.

Q. Would dividends be cancelled or curtailed or modified in any way if we do not implement it?

A. Management makes a recommendation to the Board of Directors on a quarterly basis given consideration to all factors and factors including past earnings, quarterly earnings, expected regulatory treatment, new -- new issues that are facing the organization. What investors expect, what the expected capital expenditures are going forward, what our expected need to finance with equity is going forward.

We make a recommendation to the Board on a quarterly basis, and we'll continue to do that and the Board will make their decision on a quarterly basis. It's important to note that management does not -- does not set the dividends. It is our Board of Directors that does.

Q. Is there a -- is there an amount of money -- can we quantify a dollar amount of what this sur charge or what this interim energy charge would be valued at between sometime before the end of this case and, say, January? I mean, is there an amount that with you're -- a total amount that your company is looking for?

A. I believe it amounts to something on the order of $6 million between June 15th and the end of the year. I don't know what it would be August through December.

Q. That's okay. I mean, that gives me --

A. But it's basically four-tenths of a cent per kilowatt hour, and we're going to push through about four million megawatt hours, so $4 times four.

Q. If we were to grant this temporary interim energy charge, would you not agree that this would be an extraordinary remedy? And I say extraordinary, it would be something that has never been done before.

A. It's certainly been a long time since we've received interim relief from this Commission.

Q. Was there a time when interim relief was granted since 1990 when your company was --

A. It's 1909.

Q. 1909,

A. Sorry about that.

Q. No, that's --

A. I believe there was a case in the early 1980's. I don't have any direct -- direct memory of that. I've been with the company since 1981, but I wasn't -- certainly wasn't working in this capacity at the time.

Q. Are you aware of whether that was attached to high natural gas prices or some other --

A. I doubt it. I believe it was -- it was with respect to the -- to the commercial operation of the Iatan Unit 1 where there was a -- the case is -- Kansas City case and the Empire case were a bit misaligned. In other words, they didn't have the same -- the timing was off a bit, and so our case was implemented on an interim basis, and then subject to true-up after the Kansas City case was concluded, I believe that's the circumstance surrounding that.

Q. Would you agree that if the Commission were to grant this interim energy charge, that we would have to establish some sort of standard so that utilities would see if they -- other utilities would be eligible?

A. I don't know if the standard is necessary. I believe the Commission has the capacity to judge each individual case on its merits.

Q. I doubt any other company would want this anyway.

COMMISSIONER CLAYTON: Thank you.

JUDGE THOMPSON: Thank you, Commissioner. Commissioner Davis.

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Gipson, it appears, just based on the evidence presented by yourself and Mr. Beecher here today, that your company is very dependent on natural gas for -- as a means of generation, et cetera. And do you have a long-term strategy for diversification of your -- your sources or anything?

A. Yes, sir, we do. And I mentioned that in my -- in my statement that, you know, we're not coming here with just our hand out. We have last week received approval from our Board to -- for management to proceed with contracting for about ten percent of our energy needs from renewable resources from wind, and we believe that's going to be at worst cost neutral for our customers.

We are keenly interested in Iatan Unit 2. We chased a project with Tenaska and city utilities to the point where both city utilities and Empire walked away from it. We are active in discussions with -- with -- as Mr. Beecher said, a group in Fulcom, Kansas.

We are also pursuing building our own smaller coal-fired resources, not the 600 or 700 megawatt size that costs a billion dollars, but something more on the order of maybe $150, $175 million. Something that we believe we could finance, but yes, sir, we are taking steps to mitigate that.

Q.   I believe one of the attorneys previously questioned you regarding whether or not you were marketing, quote, interruptible service and my recollection was that you were not. Are you aware of any other utilities that are out there who are, quote, marketing this interruptible service plan for industrial users?

A.   No, I am not aware of any. That's just not something I follow.

Q.   I mean, is it -- do you think it's feasible to -- to -- I mean, I don't know, I mean -- can you explain how interruptible service works for your one customer that has it?

A.   On days when the -- when we're at a peak condition or the economics are such that it is -- well, it depends on how the contracts are written. Some contracts are written where there's an economic balance that it is -- that is looked at.

In other words, are you paying more to generate the power than you're receiving from that customer.

Some contracts are written that way. Some are written just based on whether or not there is -- whether you're approaching peak conditions on your system. And some contracts are written as a combination of both.

And so you call the customer, and you tell them we're going to, you know, the contract is written, giving sufficient notice of whatever those notice requirements are in the contract. I don't know the terms of ours specifically, but it's sometime in the morning we call that customer and say this afternoon, we want you off between the hours of 2:00 and 6:00.

You know, in order to -- in order for a customer to be able to -- to do that, there has to be a certain degree of sophistication on behalf of the customers. We've got a number of our industrial customers have refrigeration load. Hot August afternoons are not when you interrupt a customer that has significant refrigeration load.

We have a significant amount of our customers that are poultry processers. You don't want to shut off a chicken plant in the middle of a hot August afternoon. So it takes a specific -- a certain kind of customer that can -- that can accommodate those kinds of -- and frankly, most of the time, they're win-win situations.

As we look at our customer base, taking a look specifically at 2007, we don't believe that there is adequate customer demand that we could essentially buy back from that customer to avoid building the 2007 combustion turbine. At best, if we could, it would delay it for one year.

Q. So it's not really feasible, then, to go out and market -- market such a plan to the masses where?

A. Well, like, as I responded to the question, we are in -- we maintain pretty good contacts with our industrial consumers. We know which ones would be interested in such a proposition. We know which ones have the sophistication and capacity to do it. It's not a matter of marketing the program. It's a matter of maintaining those relationships with your customers so you know those that could take advantage of it and would be interested.

Q. Can you refresh, for my recollection, what your market capitalization is?

A. We've got about 25 million shares outstanding, and I think Friday we closed in the $19.50 range, so that's roughly half a billion dollars.

Q. And --

A. Five hundred million.

Q. And your estimate, what do you think it would cost to build a 150-megawatt, coal-fired generation plant?

A. Probably on the order of 300 million.

Q. And let me ask you if you were going to enter into a -- in lieu of building a coal-fired plant, let's say you were going to enter -- enter into a long-term contract with someone for the purchase of approximately 150 megawatts a year, would that be, you know -- would that be a similar expense in terms of liability?

A. Yes, as a matter of fact it would, because the rating agency, specifically Standard and Poors, takes a look at the -- frankly the debt that is -- that is incurred, that has been incurred by the other organization and imputes that debt on your balance sheet by a means, and they've got a particular formula that they use to do that.

But if you have agreed to take the capacity and pay for the capacity out of that plant, they're going to impute the debt on your balance sheet, and they do that prior to -- that is one of the factors they take into consideration on their ratings, so it can -- even though your actual debt to cap ratio may be fairly low, after they've done their exercise, you may become quite leveraged as a result.

Q. And let me ask you this. When you, hypothetically speaking, if you are going -- or when you have a contract for power or when your contracting out into the future when you're purchasing power from someplace in Kansas or Oklahoma, who bears the risk of the transmission of that power from point A to point B?

A. Anytime that we want to purchase firm transmission capacity, we have to submit a request to

Southwest Power Pool, and they will, in due time, it generally takes some time, but in due time, they'll tell us how much money we have to pay to other transmission owners in order to make upgrades to the system to ensure that that capacity can be delivered on a firm basis.

Now, we've seen numbers that range from, you know, $100 million for firm transmission of 150 megawatts to $30 million to -- I understand that there was one cooperative in Kansas that had a nine megawatt transfer request that was $30 million. So it's all over the map.

Q. In your opinion, do we have a transmission problem in this country?

A. Yeah, I think what we've got to decide, I mean this isn't -- I don't know that it's pertinent to this --

Q. Right.

A. -- Case, but certainly we have to decide in this country whether or not we're going to use the transmission system as a common carrier. And if we decide that we're going to use the transmission as a common carrier across this country, then the second thing we've got to decide is who is going to pay for those upgrades to the system because it is not prepared to do that today.

Q. Okay. I'm about to wrap this up here. Mr. Gipson, are you familiar with what happened, I believe it was out east approximately January, either this year or last year, where they had a huge natural gas spike? I think it was Maryland or Connecticut or somewhere up there. What -- I guess my question to you is, you know, what happens to -- what would happen to Empire if the price hits, you know, if we have a -- what happens if the price hits $9 for a period of a week?

A. A week?

Q. Uh-huh.

A. Probably -- probably not a lot for a week. You know, if we thought this, you know, $6 and $7 gas that we're seeing was going to last a week or two weeks or something like that, we would not have filed this motion.

What we see is the sustained long-term, as I said, I believe it was in response to Commissioner Clayton's question that really the base for natural gas has increased. Right now, what we're into is a time when, you know, crude oil prices are high, another thing we can't control. And there's not a lot of demand destruction on the natural gas side, so the price is free to move into that $6 and $7 range.

COMMISSIONER DAVIS: No further questions.

JUDGE THOMPSON: Thank you. Commissioner Appling.

QUESTIONS BY COMMISSIONER APPLING:

Q. Mr. Gipson, how are you doing?

A. I'm doing well, thank you.

Q. I'm a country boy who likes to try to boil things down to the bottom line, so what I want you to do in four or five sentences, something that I can take away to remember when I'm doing something else tonight or tomorrow, why should this Commission grant or lift this suspension and grant Empire interim surcharge here? Frame it for me so that I can walk away in a few sentences in my mind of what happened here today, okay?

A. You know, I think you've got to put into context what the company's responsibilities are, providing that safe and adequate service at a reliable -- reliable competitive price, and I believe we're doing that. That's the first thing I would like you to take away.

The second is, you know, the regulatory model would suggest that a company should recover its cost to deliver service, and that the net income available for distribution to shareholders or retained in the organization is derived from the after-tax return on that common equity that is granted by the Commission.

This particular issue that we have before you is about recovering our costs. And therefore, having an honest to goodness chance of achieving that authorized rate of return, so it's not about -- it is about -- well, it's that. I've already said it. And responding to the concerns of the general public, the general public of investors in terms of the capacity for a company like ours to recover those costs in a timely fashion.

Q. What happens if we don't grant it. Frame that for me.

A. Well, counsel was afraid that I was going to say this all along. Babies will still be born naked.

Q. That's pretty country, isn't it.

MR. SWEARENGEN: You understand why I had concerns.

COMMISSIONER APPLING: Country answer for a country boy.

Q. (By Commissioner Appling) But anyway, you understand I want to walk away, because I'm going to have the thumbs up thumbs down.

A. I understand.

Q. And so I want to be able to walk away with something framed in my mind that I can say yes or I can say no and still have some justification.

A. Regardless of your decision, our company is not going to deter from its business model. Our business model has been a solid one for nearly 100 years. We're proud of the culture we have in the organization. We're proud of the service that we deliver to those customers.

We will continue that until we absolutely can't anymore. Your decision here is -- is not going to impact what we do as a business. We'll continue to do that. I don't want to -- I don't want to -- I don't want you to presume otherwise. It's more about, you know, what kind of -- what is the future look like for this organization in terms of our ability to continue to borrow money to finance the business at a reasonable rate, responding to our investors, our investor's concerns.

Q. Thank you very much, sir.

COMMISSIONER APPLING: I believe that's all I have.

JUDGE THOMPSON: Thank you, Commissioner. We're ready for another break for the Reporter. We'll take ten minutes now. When we return, you'll still be on the stand, sir. Thank you.

(A BREAK WAS HAD.)

JUDGE THOMPSON: Okay. We'll go back on the record. Do we have any further questions from the bench?

QUESTIONS BY JUDGE THOMPSON:

Q. Okay. I have some questions for you, sir, from Commissioner Murray. What was the significance of the June 15th date?

A. Similarly to what Mr. Beecher testified, that's the beginning of our summer heating -- or summer cooling season, and the bulk of our natural gas is burned in those summer months.

Q. Very well. Was there a technical conference scheduled to coincide with the June 3rd prehearing conference, if you know?

A. I believe that we made some entrees to the other parties about a technical conference and there wasn't any interest.

Q. With respect to the last IEC for Empire, did it function similarly to the one that's proposed here?

A. Almost identically.

Q. Okay. And it was established by agreement of the parties?

A. It was established as -- there were two stipulations in that case and then there were a number of other issues that were taken to trial, but the IEC was a result of one of those stipulations.

Q. You testified that it was terminated early. Why was that?

A. The -- well, first it was lowered early. We found that the, as Mr. Beecher pointed out in his testimony, that cost of natural gas decreased substantially after the implementation of the IEC. We were pretty aggressive when we -- when we saw that move. Filled out our positions up according to our policy. We first offered to lower it in terms of its cost to the customers. We did that. And as a result of the rates that went into effect in, I believe it was December of '02, we terminated that instrument early.

Q. Okay. You heard Mr. Beecher describe the purpose for the technical conference. Do you concur in his description?

A. I do. In order to effect an accurate true-up, there has to be a base fuel and purchase power dollar per megawatt hour that has to be derived.

Q. In your opinion, is the Commission still labeled a grant meaningful relief given that June 15th has come and gone?

A. Yes, I believe so. As I said earlier, the sooner -- the sooner you suture the wound, the sooner the bleeding stops.

Q. And finally, is the company still requesting a technical conference?

A. We believe a technical conference is in order in order to establish that base fuel and purchase power number.

Q. What if the Commission doesn't grant interim relief, is a technical conference still necessary?

A. No, it would not be.

Q. Okay. Thank you, sir.

JUDGE THOMPSON: Recross, Staff.

MR. FREY: Yes, thank you, your Honor.

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RECROSS-EXAMINATION

QUESTIONS BY MR. FREY:

Q. Just a couple of follow-up questions, Mr. Gipson. I believe just a minute or two ago in response to a question from Judge Thompson regarding the technical conference, you indicated that there was no interest in that. Do I have that correct?

A. That is my understanding, sir.

Q. Okay. Are you aware that the Staff in its responsive pleading to the company's motion recommended --

A. I thought it was on the -- there was a technical -- I misspoke. Staff did -- did agree that a technical conference was in order, and I apologize for that.

Q. Okay. Thank you. And I -- I think Commissioner Clayton -- I think it was Commissioner Clayton who was asking you some questions with respect to filing of rate cases in the other three states that you serve. Do you recall that?

A. Yes.

Q. And I would just like to ask you that prior to the case you filed a couple of weeks ago in Arkansas, can you tell me when you filed previously in that state?

A. In Arkansas?

Q. Yes.

A. 19 -- the case was concluded in 1998.

Q. And how about Oklahoma?
A. We concluded a case in Oklahoma last year in 2003.
Q. And Kansas?
A. Kansas was in August of 2002, I believe.
Q. Returning just briefly to your ROE graph that we discussed.
A. Yes.
Q. I believe, and again, I think it was Commissioner Clayton who asked the question regarding the company possibly having to cut its dividend. Do you recall that?
A. I don't remember the question about cutting the dividend. I thought there was a question about what kind of dividend was assumed in these projections.
Q. Okay. I would just like to ask you if in this --
A. I remember the question, and I explained how the company -- I remember the question.
Q. Okay. Thank you. I would just like to ask you in the year 2001, when you return on equity dipped below four percent, did Empire cut its dividend at that time?
A. No, sir, we did not. We have not changed the dividend from it current rate since 1992.
Q. Thank you. And in response to a question from

Commissioner Clayton, you indicated that your internal sources of financing consisted of or were limited to net income and load depreciation. Do you recall that? Doesn't your high dividend payment ratio also limit your internal financing?

A. The inability to earn our authorized rate of return does cause one to have a dividend ratio higher than one would like to have, and that's driven primarily because of our inability to recover, on a timely basis, our fuel and purchase power cost.

Q. Would you agree, though, that if you were to cuts your dividend, that that would free up some cash for --

A. You know, I think the --

Q. -- capital projects?

A. I think the thing to keep in mind is as we look at this chart, there is some $485 million worth of new capital expenditures over this five-year period. Our dividend amounts to about $30 million a year. That's not going to cut it.

Once we -- if we were to reach that conclusion that a -- you know, even if we -- what I'm trying to say is even if we eliminated the entire dividend, it's not sufficient to meet this capital expenditure budget, and that would -- that would -- as a consequence, in my opinion, cut off a very valuable means by which we finance the business, and that would be the issuance of new equity beyond what we already have in market.

MR. FREY: May I have a moment, your Honor?

JUDGE THOMPSON: You may.

MR. FREY: That's all I have, Mr. Gipson. Thank you, your Honor.

JUDGE THOMPSON: Thank you, Mr. Frey. Okay. Commissioner Gaw has advised me that he has some questions so we're going to go to him, and we'll have to start the train over again with recross. So proceed, Mr. Chairman.

QUESTIONS BY CHAIRMAN GAW:

Q. Hopefully I won't take very long. I want to -- and I apologize if this has been discussed, and I'll try not to go through it too long, Mr. Gipson. In -- in the document that was prepared by Mr. Beecher, there is -- there's one slide that is demonstrating the difference between the generation make-up in 1992 as compared to 2003.

A. I don't have a copy of his presentation with me.

Q. We'll be glad to give you a copy, I'm sure. I think it's in -- it's close to the front, probably five, maybe five or six pages back.

A. Sources of energy, 1992-2002.

Q. That's it.

A. Yes, I have that.

Q. And it shows that -- I'm trying to see, can you tell me in the red area there in '92, it's showing coal slash spot purchase power. I'm assuming that's what that PP stands for.

A. That's correct.

Q. And then in the graph in 2003, and that's shown as 95 percent, excuse me, in '92, right?

A. Ninety-five percent in 1992.

Q. In 2003, it's showing coal --

A. The purchase power was not 95 percent. Coal and the spot purchase power of availability from coal-fired resources totaled 95 percent.

Q. That's what I assumed it meant.

A. Okay.

Q. In 2003, it just says coal on the red portion.

A. Yeah, and that is --

Q. Can you tell me why that -- is that -- is the red in '92 in the red and '03 the same or different in regard to what makes it up?

A. No, it -- it is made up of our resources, the resources we own.

Q. Well, first of all, is it the same? Is what's in the red in the '92 portion of the graph the same in regard to what falls into that category as what's in the '03 graph in red?

A. It is the same in the sense that it is -- it is energy that is either produced or that is purchased that is coal-fired in nature.

Q. So if -- could I -- do you understand why I'm asking the question?

A. I think so.

Q. You have in the graph, if you look at it, here it says coal slash spot purchase power, 95 percent in '92.

A. I think what Mr. Beechers --

Q. But over in '03, it just says coal, 70 percent, and I'm trying to understand if those -- if that's the same -- if I could have put coal slash spot purchase power over on '03 and it still be accurate.

A. Yeah, and I think what Mr. Beecher is trying to depict there and he talked about this during cross, was that in 1992, there was -- there was available on the spot market coal-fired energy that you could purchase. Today, all of those utilities, our neighbors, that we bought that kind of energy from ten years ago, 12 years ago, have grown into their coal-fired capacity.

Q. So are you telling me that the KCPL doesn't sell any of its base load generation into the open markets?

A. Not on a -- well, I don't know. I don't know what their -- I don't know what their business model would show, but what I'm telling you is the -- the energy that we see for purchase on the spot market is energy generally that is produced from natural gas, certainly at peak times.

Q. I think I better delve into this a little more than I thought now because earlier I understood, I was just trying to see whether or not that was just a typo, but if I look at -- if I look at that coal in '03, does that include any purchase power from coal-base generation?

A. Well, it certainly includes the long-term purchase contract that we have with Western Resources for coal-fired energy.

Q. Okay. All right.

A. But I do not believe that it includes any purchase power that at least we can identify that comes from a coal-fired resource.

Q. Does that mean you don't have any that comes from coal generation that's purchased power?

A. Nothing other than the Jeffrey agreement.

Q. Well that's long-term.

A. Right.

Q. You don't purchase coal generated -- electricity generated by coal on the spot market?

A. Well, I don't know that we don't purchase coal-fired energy from the -- from the spot market, because, you know, it's, you know, you can't identify the electrons that are produced by gas and the electrons that are produced by --

Q. I'm not talking about physically coming over the wires, Mr. Gipson, I'm asking you what you're purchasing.

A. Generally, when we purchase on the spot market, either for, you know, the next day or for a week or whatever, that is generally a gas-fired resource.

Q. I'm trying to understand. There is no spot purchase power shown that is -- that in the coal portion of that graph; is that correct, in the '03 graph?

A. And what I'm trying to tell you is that the contracts that we exercise are not generally for the purchase of coal-fired resources in the spot market.

Q. Yeah, but that's not answering my question.

A. I don't know how to answer your question.

Q. I want to know whether or not you move purchase power from the red portion of the '92 graph to the green portion of the '03 graph.

A. Oh, and I don't -- I didn't prepare these graphs.

Q. So you wouldn't have any idea?

A. I'd have to defer to Mr. Beecher.

Q. Did you -- so you don't want to know whether or not there would be coal purchase power in the green portion of this spot purchase power portion of the '03 graph?

A. If I understand your question, no,

Commissioner, I don't know.

Q. Okay.

MR. SWEARENGEN: Excuse me, Judge, we do have the witness here who prepared this and he could answer the question.

CHAIRMAN GAW: I guess we could get to that, I thought that was probably an easy question, but I'd be glad to ask him later.

MR. SWEARENGEN: Okay.

Q. (By Chairman Gaw) On this shift from '92 to '03, it appears, although I can't tell for sure because I don't know what that factor is that I was just discussing, it appears that there is a significant shift away from the use of coal as -- as your fuel for generation to natural gas. Would you say that that was a correct representation of the shift from '92 to '03?

A. Yeah, and I think Mr. Beecher's discussion of this and the graphs that surround this verify that, that during that time period, I believe his testimony was the last coal-fired resource built in the Southwest Power Pool was in 1986.

Q. And you wouldn't know in '92 what portion of the red 95 percent coal spot purchase power was actually from owned generation, would you?

A. Mr. Beecher will know the answer to that question.

Q. Can you tell me whether or not the company made conscious decisions not to keep the fuel mix in the similar position between '92 and '03?

A. I can tell you the company made a conscious decision to install what was -- what was at that time believed to be the least cost alternative between purchase power, coal-fired resources, and natural gas-fired resources.

Q. And how many -- what plants were added between '92 and '03 to the owned resources of Empire?

A. The plants that are listed there in the center, the '95 combined -- or simple cycle, the '97 simple cycle, the conversion to combined cycle in '01, and simple cycle CTs in '03.

Q. Okay. And how many of those, and I already know the answer to this, but how many of those are gas-fired plants?

A. All of them are.

Q. All right.

A. Some of them are dual fuel, oil and gas.

Q. Some of them can burn oil in addition to gas?

A. That's correct.

Q. And how many additional generation resources were added between '92 and '03 that used coal as the fuel?

A. On Empire service area?

Q. Yes.

A. None.

Q. Has Empire given any assurance to the Commission today that it intends to add generation that is not naturally fired or fuelled by natural gas in the foreseeable future?

A. Yes, I made a statement as part of my statement earlier that just last week our Board of Directors authorized management to contract for the purchase of renewable energy, from wind, for about ten percent of our energy needs. That's a significant piece. Given the renewal to production tax credit by Congress, we think that's at worst cost neutral for our customers.

In addition to that, we have a keen interest in Iatan Unit 2. The capital expenditure budget that I shared with the audience earlier today includes a -- the start of the construction of a new unit at our Asbury fire station that would be coal-fired, and that would be a unit that would be something on the order of 80 to 100 megawatts in size.

And we've hired Burns & McDonald to do some critical assessment of that site to determine if we have the necessary water resources in order to -- in order to pull that off. The reason we're choosing a size, you know, something on the order of 80 to 100 megawatts is to get away from that billion dollar capital cost, something that we think is more appropriate for a company our size, and something that we can finance.

And we've seen, frankly, some success in other parts of the country, particularly in the, I think it was Black Hills Power Corporation that has pretty successfully built some smaller units over the past few years. We're in the midst of -- we're going to spend a few dollars to see what that -- see what the -- see what the real costs are.

Q. I assume you're explaining the rationale to look into the Asbury expansion because of the fact that general -- it is generally considered the case that you lose efficiency on coal if you build a smaller plant.

A. Yeah, that's -- that's a general assumption, although that's the reason we hired Burns & McDonald is to -- to vet that issue completely. We have some common facilities already in place that -- at the Asbury Power Station, which may neutralize the impact of, you know, trying to build a Greenfield six or seven hundred megawatt unit.

Q. Isn't it true -- is it accurate to say that the wind generation that you referred to would not be generation that would be able to be utilized for base load?

A. We have modeled the wind generation from the particular developers that we've talked to, and believe that it -- it will displace, to a large degree, about ten percent of our natural gas exposure. The wind doesn't blow on hot days in August, but it is -- it is a resource that we believe we can integrate into our system up to about ten percent of our -- ten percent of our NSI, and do it pretty effectively.

Q. Did you answer my question?

A. You asked if it was base load.

Q. Yes.

A. It is -- we will not be able to claim or very little capacity from the wind resource. It's a non-firm resource, but given our dispatch model and what we understand about, you know, when the wind blows and when we can expect to receive the energy produced off of those wind units, we think we can integrate it into our system pretty effectively.

Q. Let's just speculate for a moment. I don't want to go too much farther with this because it's really borderline whether it's within the scope of this procedure or not. If you look at where you are, and if this is HC material, just tell me before you answer it.

A. We have not stamped this HC.

Q. I mean, if I ask something that's going to -- I'm prefacing my question --

A. Okay.

Q. -- in the middle of it. The -- the fuel mix that you would anticipate from your plans, if you add the Asbury generation, and if you were to add the wind generation, and if you were to also be a part of some contemplated portion of a new coal plant in with -- at Iatan, what's your fuel mix going to look like?

A. Well, we've done that out to about 2012, and wind would represent, at that time, because of growth in the system, which is demonstrated in both Mr. Beecher's charts and my charts, would be reduced in that eight or nine percent range. We've contemplated the addition of about 160 megawatts of new coal-fired resources, and that would keep our gas mix down to about 25, 30 percent.

Q. So --

A. I guess what I'm trying to tell you --

Q. So really not moving any gas from where it is currently on your percentage.

A. Except that the pie gets a lot bigger.

Q. I understand, but your percentage doesn't change, does it?

A. That's correct.

Q. So I'm still having this problem that you all are saying that you have now with gas causing major fluctuations in -- causing significant fluctuations.

A. Absent any effort on the wind side or on the coal addition side, it could get a heck of a lot worse.

Q. How much did this financial issue that you all are dealing with right now is a result of the -- well, let me ask you this. There was a merger contemplated at one point in time between '92 and 2003, wasn't there?

A. Yes, there was a merger contemplated beginning in May of 1999 that was terminated by what is now Aquila on January 2nd, 2001.

Q. And was -- did the -- did that merger and its subsequent abandonment have an impact on Empire's financial condition?

A. It did.

Q. In what way?

A. Particularly on the balance sheet. While we were engaged, so to speak, with UtiliCorp, part of the agreement prohibited us from issuing any new common equity, and we had to redeem our preferred stock under the terms of the agreement. We were, at the same time, building the state line combined cycle plant, which was at that time, the largest single construction project in the state of Missouri, bigger than the TWA dome or what is now the Jones dome, I guess.

Q. For now.

A. For now. We issued a significant amount of debt during that time frame. So coming out of the -- following the termination of the merger, we had a balance sheet that was in a terrible shape. We were far more leveraged than what we would prefer and I believe this

Commission would prefer. And so we set about to change that. And I'm proud to say that today we stand right squarely in the range of where we believe that is appropriate for our company.

We targeted a range of 45 to 50 percent common equity as a percent of total capitalization. We ended the year at about 47 percent. That's about where we stand today. Our short-ter debt, although we've got a significant line of credit, we're only drawn into that short-term debt at this point about $8 million. We're proud of the work that we've done on the balance sheet side.

You know, we've got total capitalization on the 800 million line or so, something on that order. And I've personally been involved in either the refinance or issuing of new securities of about 400 million over the last three years. So we've taken that seriously.

On the net income side, on the income side, probably the biggest single impact was at the conclusion of the merger with UtiliCorp. UtiliCorp, at that time, had a business model that they were gas traders. I don't know if you remember that, and they were pretty insistent that we not engage in any forward purchases of natural gas. And so when they terminated the deal on January 2nd, 2001, we did not have a decathon of gas purchased for February, and we subsequently filed for interim relief based on those facts and were denied. And you see, in large part, the results of that in our earnings for 2001 at 3.9 percent return on common equity. It was a tough year.

Q. Yeah, what happened to the market that year, natural gas market?

A. It went to $9, $10, it was ugly.

Q. And that was -- and you say you did not hedge because of the agreements you had with UtiliCorp?

A. That is correct, sir.

Q. Okay. I guess they're called Aquila now.

A. They are.

Q. Is there -- I've been listening upstairs to -- to some of the discussions. You might tell me, because I'm not clear on it, the interim energy charge that was put into place, I think in '01; is that correct?

A. October, 2001, yes.

Q. And then it was subsequently reduced at some point.

A. Yes.

Q. Do you know the date, approximately?

A. Sometime in the , I believe, it was the spring to early summer of '02.

Q. Uh-huh. And then at some point, was it -- was it just terminated?

A. We terminated it early.

Q. When was that, do you recall?
A. December of 02.
Q. And when was the rate case -- the subsequent rate case to the '01 rate case, when was that decided?
A. December of '02.
Q. Was that done at the same time, then, the termination of the interim charge?
A. That was coincident.
Q. Was that case settled?
A. It was a black box settlement.
Q. Was the interim energy charge issue a part of that settlement or not?
A. We had filed -- it's my memory we had filed on direct testimony in that case to implement or to continue the interim energy charge. And then subsequently, you know, in negotiations, did not -- did not pursue it any further.
Q. Do you know whether or not you filed testimony abandoning your request for that charge at any point in that process prior to the settlement?
A. Mr. Chairman, I don't recall any testimony surrounding the abandonment of the interim energy charge.
Q. And I don't know the answer to it, I'm just asking.
A. I just don't recall it.
Q. Okay. Was there a reason why the company

chose not to pursue it further? Was it because -- was it as a result of the negotiation or was it as a result of the company's conclusion that it wasn't needed?

A. It was a result of our conclusion that it was not needed.

Q. All right. And why -- why did the company come to that conclusion?

A. We believed that the -- that the base rate for fuel approached, in other words, it was very close, the base rate in fuel for natural gas approached what we were seeing both on a current basis and on a forward-looking basis. In other words --

Q. Yeah, please, I'm not sure I understood the last part of your sentence.

A. In other words, you know, given our dispatch model, and you know there's a lot of variations in dispatch models, but given our dispatch model, we believe that what was captured in fuel costs as a part of our overall rates was about $3.30 or $3.50 a unit for natural gas. And that's what we were experiencing at the time, and that's what the forward market at that time looked like, was something that -- that approached what our cost recovery was.

Q. Was it -- was it the company's belief at that point that it was unlikely that gas prices would hit an escalation again in the near term or medium term?

A. What I've learned about natural gas is to never guess what it's going to because I've been wrong every time. What I know is what the future strip looks like, and that tells me to -- that the conclusion I've come to is that the base for natural gas has changed from that $3.00 to $3.50 a unit to something between $4.50 and $5.00 dollars a unit. I think the days of $2 and $3 natural gas are behind us. I don't know what the -- I don't know what the top looks like. I wish my crystal ball were a lot clearer.

Q. I was thinking that maybe, if you were always wrong, Mr. Gipson, that it would be a pretty good crystal ball to rely on, but I don't think you're probably telling me that we can count on you being always wrong in the future.

A. Well, on natural gas, I think I'll probably always be wrong.

Q. Okay.

A. But I hope we're right on some other things.

Q. All right.

A. That's the first rule of forecasting, Commissioner, is you're always wrong.

Q. Okay.

A. Second rule is look at rule one.

Q. All right. I'm glad to know that.

CHAIRMAN GAW: That's all I have, Judge, thank you. Thank you, Mr. Gipson.

THE WITNESS: Thank you.

JUDGE THOMPSON: Any further questions from the bench? Okay.

MR. FREY: No questions, your Honor, thanks.

JUDGE THOMPSON: Very well. Mr. Coffman.

MR. COFFMAN: Just a couple.

RECROSS-EXAMINATION

QUESTIONS BY MR. COFFMAN:

Q. Back to the discussion you had, Mr. Gipson, about the dividends and internal financing. Is it approximately correct that you had $30 million of earnings in the year 2003?

A. Yeah, I think our -- well, I know our earnings in 2003 was $1.29 a share and our dividend was $1.28 a share.

Q. So by what I've seen, it appears that out of approximately $30 million of earnings, you paid out all but, say, roughly $1 million in dividends.

A. I've not done the math.

Q. Does that sound in the ballpark?

A. Penny a share, about 25 million shares.

Q. Do you know off the top of your head what your percentage of earnings paid out in dividends has been in the last year or two?

A. The -- the year 2001 earnings was at $.59 a share. The year 2002 was $1.19 a share.

Q. I'm asking percentage of earnings paid out in dividends, percentage.

A. Well, 2003 was nearly 100 percent and 2001 and 2002 were over 100 percent.

Q. Okay. Do you know how this -- how those percentages compared to the industry average?

A. Not very well.

Q. In other words, the industry average is much lower?

A. That's correct.

Q. Do you know what the industry average might be?

A. No, sir, I don't.

Q. Okay. And we've already gone over the fact that -- how well this company at the current time might match up to the Commission's traditional near emergency standard. Would you -- would you say it would be fair, as we were discussing 2001, that the situation in 2001, when Empire was asking for interim relief, was more dire than the situation currently?

A. I don't think a reasonable person would disagree with that, Mr. Coffman.

Q. Okay. But you still believe the Commission should apply a different standard this time?

A. I think I've -- I think I've explained that.

Q. A lower standard.
A. I wouldn't call it a lower standard.
Q. I guess it depends on your perspective.
A. It does.
MR. COFFMAN: Thank you.
JUDGE THOMPSON: Thank you, Mr. Coffman. Mr. Conrad.
MR. CONRAD: Just a couple.

RECROSS-EXAMINATION

QUESTIONS BY MR. CONRAD:
Q. Mr. Gipson, Commissioner Davis asked you if you were aware of any other companies that were marketing interruptible and those types of products. You indicated that you were not.
A. That's correct.
Q. Are you familiar with a company to your north called Mid-American Energy?
A. I'm generally familiar with Mid-American Energy, yes.
Q. Are you familiar with a company to your north called Alliant?
A. I know the CEO at Alliant.
Q. Well, since you know him, you might want to call him and ask him about those programs.
A. Okay.

Q. They're also doing more, I think, you'll find, that to go back to the questions, you indicated in response to Commissioner Davis' question that it might delay or defer the construction of one of these plants, and I think what year was t, 2007 or 2008?

A. It was 2007.

Q. Okay. Is that not one of the purposes of using interruptible?

A. It is, and as I explained to Commissioner Davis, we've analyzed that and believe that there's not sufficient -- sufficient demand, if you will, that we can buy back from the customer to avoid building that unit in 2007 and still meet our capacity obligations to the pool.

Q. And the way you answered that question right there wasn't exactly the way I asked it, which was the question of deferring the construction cycle for a year.

A. I'm sorry, I don't know your question, sir.

Q. You indicated just a moment ago, you said that you couldn't avoid building.

A. Or defer.

Q. You couldn't avoid deferring for a year.

A. That's our conclusion, yes.

Q. And that conclusion is supported, sir, where?

A. In evidence today? It's not supported in evidence today.

Q. When, again, sir, recalling Commissioner Gaw's questions, when again was that merger aborted?
A. January 2nd, 2001, my birthday.
Q. I was going to ask you why you were so solid on that.
A. Three o'clock in the afternoon.
Q. Was that when you were born or when it was aborted?
A. When it was aborted.
Q. 1/2/01, excuse me or two?
A. 1/2/01, January 2nd, 2001.
Q. Had you also, as a result of gearing up for that merger, had some layoffs?
A. No, sir, we did not have any layoffs. Quite to the contrary. We had significant number of our employee base that was -- that departed because, you know, we felt very strongly during the engagement, if you will, that it was important to inform our employee base of their continuing job opportunities, and many of our employees saw that they were not going to have continuing job opportunities and chose to leave the organization and go on to -- to other -- to other job opportunities.
We did not have any layoffs. The fact of the matter is we worked diligently to try to hire individuals on a -- even on a temporary basis in order to continue to

provide service to our customers. It was a very trying time.

Q. And do I recall testimony, perhaps, even in that 2001 rate case that a lot of the mid-level, or indeed, even some senior management people chose that option?

A. Following the termination of the merger, we had some senior level management that chose to retire. There were some in the mid-level management positions that chose to exit the organization, Mr. Beecher is one of them, during the engagement. I don't have the demographics on that off the top of my head, Mr. Conrad.

Q. Well, I guess in a general sense, what I'm kind of trying to circle in on, it's been awhile since I've looked in the record of that merger case, but that created, as I recall, quite a dislocation for your company when that was cancelled.

A. I'd say that's -- I'd agree, quite a dislocation. It was tough. I lived it.

Q. It was unexpected, it was not something you all expected?

A. Absolutely not. We expected to get married.

Q. And my recollection was that that, and I think you animated this in your discussions with Commissioner Gaw, that that left you in something of a precarious position, vis-a-vis the gas purchase, did it not?

A. Gas was an issue, the balance sheet was an issue, restoring the employment levels was an issue. There were a lot of issues, Mr. Conrad.

Q. And with some degree of specificity on the gas, how long had that merger been discussed or you talked about getting married, how long was the engagement?

A. That's what I refer to it as. I believe it was something on the order of 17 or 18 months. It was May of -- May 10th, 1999, to January 2nd, 2001.

Q. Let me ask, then, a question. To what extent did that proposed merger with a gas purchaser have any impact on your company's decisions to go forward with the selection of generation assets that it has now?

A. None.

Q. None. Can you expand on that very quickly?

A. We analyzed those decisions independently of UtiliCorp management and came to our conclusions that those were the least cost alternatives for the construction to provide the capacity and in the case of combined cycle energy to our customers.

Q. Do you have any materials that would document that?

A. I think the decision by our Board of Directors and not Aquila's or UtiliCorp's Board of Directors would be pretty conclusive evidence.

Q. That would be their review. Do you have any other documentation, obviously not with you, I'm not asking that today, but do you have -- would you have documentation as to how that decision-making process was taken care of so that those of us who are concerned about that would have comfort that that was not somehow infected, if you will, by that Aquila connection?

A. Well, you have my word today, and we certainly would provide the work papers that led to our decision, our management's decision, and our Board of Directors' decision to proceed with those facilities, and I don't believe you'll find any tracks in there that would lead back to UtiliCorp or Aquila.

Q. And I probably should have asked you --

A. In fact, the construction of that combined cycle facility, if my memory is correct, was on the order of 30 months. It was -- it became commercially operational in June of 2001, so if I back up two and a half years from June of 2001, that, I think that's going to get me to before the engagement took place, before we got a ring on our finger.

Q. You mentioned in response to, again, I think Commissioner Gaw's questions, that you had, and you used the term several times, so I'll allow you to stress it one more, a keen interest, in Iatan 2. How long has Iatan 2 been on the drawing board?

A. Ever since the conclusion of the construction of Iatan 1.

Q. Which was when?

A. 1981, I believe.

Q. At that's been deferred several times, hasn't it?

A. It has.

Q. Thank you, sir, that's all.

JUDGE THOMPSON: Thank you, Mr. Conrad. Ms. Woods.

MS. WOODS: I have nothing, thank you.

JUDGE THOMPSON: Mr. Swearengen.

MR. SWEARENGEN: A few, yes, thank you.

REDIRECT EXAMINATION

QUESTIONS BY MR. SWEARENGEN:

Q. Mr. Gipson, you still have the Exhibit 1, that Brad Beecher exhibit, in front of you?

A. I do.

Q. If you turn to what I believe is Page 5 of that exhibit, Empire sources of energy. Do you have that?

A. Yes.

Q. There in the center part of that document, there are five -- excuse me, four different units listed, the 1995 state line 1 CT, '97 state line, 2001 state line, the 2003 EC 3 and 4 CT, correct?

A. That is correct.

Q. Can you tell us when the decisions were made by the Empire Board with respect to each of those units, approximately?

A. The construction -- I believe the construction cycle on state line 1 required a decision in either late '93 or early 1994. State line unit 2 would have had the same kinds of -- same kind of lead time. I think I've already talked about combined cycle that that was a 30 or 36-month construction time, I think I said 30, and I think that's pretty accurate, so that would have been a two and a half year decision in advance.

Q. So those three would have been prior to the agreement to merge with UtiliCorp?

A. Absolutely, and then of course the '03 CT's came after the termination with -- of the merger with UtiliCorp.

Q. Fine. Thank you. Earlier, you were asked some questions about the rating agencies, Moody's and Standard and Poors. Do you recall those?

A. I do.

Q. Do either of those rating agencies have an outlook for Empire?

A. Both agencies have an outlook. Standard and Poors' outlook is stable, which my understanding is that there's no immediate issue that would cause either a change

-- a change up or down in a company's overall corporate rating. Moody's has us on a negative outlook, which means the converse, that you're subject to a -- you know, some significant event could cause an immediate downgrade.

Q. Are those recent outlooks or have they been at that status for some time?

A. No, the Standard and Poors put us on a stable outlook I believe in July of 2002 is my memory. Moody's has had us on a negative outlook once -- once the merger was terminated, and has kept us there principally because of the issue on our timely recovery of fuel and purchase power.

Q. Well, that was going to be my question. What are the rating agencies said, if anything, about your inability to recover your fuel and purchase power costs on a timely basis?

A. They've said we need to do it.

Q. And I assume you compete for capital with other buyers. Would that be a fair statement?

A. It's a big market out there, yes.

Q. And would that include other electric utilities?

A. I think it includes other electric utilities all across the country and probably foreign utilities as well.

Q. With respect to --

A. Other dividend -- frankly, other dividend-paying entities.

Q. With respect to the domestic electric utilities, would you have any idea how any of those would have the opportunity to timely recover their fuel and purchase power costs?

A. It's my understanding there was some research done, oh, just about a year, maybe 18 months ago, that would indicate that there are -- that the utilities in all but three states have the capacity to -- to more timely recover their fuel and purchase power costs, specifically through the -- through the use of fuel adjustment clauses, like we use in Arkansas and Oklahoma.

Q. There was a question about the drivers behind your general rate case filing. Could you tell us what those are, what were the causes of the filing of your general rate case?

A. Well, as I said earlier, the two principle issues were, you know, the -- what we anticipated on fuel and purchase power costs and what our history had been on fuel and purchase power costs, and then the addition of energy center units 3 and 4.

Q. And that would be a plant addition energy center?

A. Yeah, we spent about $55 million installing

100 megawatts of new capacity.

Q. And when did that capacity come on line?

A. Came on line in April of 2003, April of 2003.

Q. Has the company ever been criticized in the past by the Staff for filing a rate case too early when it comes to plant additions?

A. I think there's been some issues with, you know, trying to determine, if you will, at the 11th hour, what the plant and service criteria are, and has caused some frustration, certainly with Staff, I believe.

Q. And --

A. Whether that's a -- I don't know that that rises to the level of criticism in testimony. I don't recall testimony that -- that -- that went that far, but I know there was certainly some frustration.

Q. Would that be something you would take into account with respect to the timing of a rate case filing with this Commission?

A. Absolutely. Now, what we tried to do in the combined cycle case was time the -- the true-up period and the commercial operation of the plant coincidently, and that led to, you know, you know, 30 months away from construction of the plant, it's hard to say that you're going to have that plant on line and providing energy on June 1, 2001. We said that, and it was June 25, 2001, I believe.

Q. Earlier, I think it was in response to a question from Mr. Frey, you indicated that the company has a $4 million exposure to gas costs for the rest of the year, the August to December period; is that correct?
A. Yeah, I think that's -- you know, without including the exposure of natural gas-influenced purchase power, I think if you look at the natural gas alone and the way that -- and what we intend to burn, I think that's pretty accurate.
Q. And then did I hear you say that that calculates out to be about $.10 per share on earnings?
A. That's correct.
Q. Or about $2.6 million on earnings?
A. That's correct.
Q. Okay. And then in addition to that, there would be some exposure for the period in 2005 from January until whenever the rates in this case take effect. Is that true?
A. That's correct. And I believe Mr. Beecher testified that would be something in the $3 million range, if gas prices hold to where they are today.
Q. Now, if -- if it turns out that that's the case, that the Commission doesn't allow you to implement an interim energy charge early in this proceeding and you have to wait until the case is concluded, is there any way that

you can recover those -- those costs?

A. No, sir.

Q. Is that what you meant -- I wrote this down, you said that this was a problem that can't be fixed within the context of a general case?

A. That's what I meant.

Q. What period of time of your business, approximately, comes from your Missouri jurisdictional electric operations, do you know?

A. About 90 percent. I think 88, 90 percent, something in that range.

Q. And I think you said that you have, in your other jurisdictions, you have a means to recover timely your fuel and purchase power expense; is that right?

A. We do, with our FERC regulated accounts, with our Oklahoma and Arkansas jurisdictions, we use fuel adjustment clauses in all three of those jurisdictions.

Q. You had a question, I think from Commissioner Clayton, about what you think the proper standard ought to be for this Commission when it considers granting interim relief, and my question is do you recall that in at least one prior case involving Empire, the Public Service Commission adopted what they called a good clause standard? Do you have any recollection of that?

A. No, sir, I don't.

Q. Okay. With respect to your situation involving your dependancy on natural gas as a fuel source, now what other Missouri electric utilities are in that same circumstance, do you know?

A. I believe that both Ameren and Kansas City Power and Light, their exposure on the natural gas front is five percent or less, and Ameren may be less than that on its Missouri jurisdiction. Aquila has a similar profile in their Missouri Public Service -- service area, they have a similar profile to us.

Q. Similar to you?

A. Yes.

Q. You mentioned in response to a question from Mr. Coffman, I think, that there are several equity analysts that follow the company.

A. That's correct.

Q. And can you tell us who those are, again, please?

A. Jeffries & Company out of New York, Leman Brothers out of New York, Stiefel Nicholas out of St. Louis, AG Edwards out of St. Louis, and Val-u-Line.

Q. Have any of those equity analysts provided earnings expectations for 2004 for the company?

A. They have.

Q. And which ones and what are their expectation?

A. Generally, they're about a dollar.
Q. A dollar?
A. A dollar a share.
Q. Okay.
A. Some may be a little less, some may be a little more, but they're generally a buck.
Q. Mr. Conrad has asked you some questions about load curtailment. Do you have any idea, with respect to his client, Praxair, approximately what percentage of your peak load Praxair represents?
A. Well, our peak load is 1041 megawatts that we set last year. We have not surpassed that this year, and Mr. Praxair's -- Mr. Conrad's, excuse me, Mr. Conrad's client, Praxair, is about a seven or maybe 8 megawatt client customer of ours.
Q. Okay. Mr. Praxair.
A. I apologize, Mr. Conrad.
Q. Well, I don't.
A. It was not intentional.
Q. You mentioned Oklahoma.
MR. CONRAD: It used to be Mr. Armco.
Q. (By Mr. Swearengen) I think this was a recross question from the Staff counsel about the Oklahoma case, perhaps. I have a note here. What -- you had a case in Oklahoma last summer; is that right?

A. Yes.
Q. And you have a fuel adjustment clause down there; is that right?
A. Yes.
Q. In connection with the Oklahoma case, do you recall what return on equity was authorized by that Commission?
A. Yes.
Q. And what was it?
A. Eleven point two seven.
Q. And how does that compare with the last authorized return that you had from this Commission, do you recall?
A. I believe our last authorized return from this Commission was as a result of the case that concluded in October, 2001, and my memory tells me, and my memory is it was about ten and a quarter percent.
Q. And that was some time prior to the Oklahoma decision?
A. The Oklahoma decision was July -- July of last year.
MR. SWEARENGEN: Thank you. That's all I have. Thank you. And I would offer into evidence Exhibit No. 2, please.
JUDGE THOMPSON: Objections?

MR. CONRAD: Well, not to disappoint you, Judge, but I make the same set of objections that we made before.

JUDGE THOMPSON: Very well.

MR. CONRAD: And I expect the same ruling.

JUDGE THOMPSON: Mr. Coffman.

MR. COFFMAN: I continue my objection.

JUDGE THOMPSON: Very well.

MR. COFFMAN: And my objections were based on the fact that we had not seen the underlying --

JUDGE THOMPSON: I recall that it was.

MR. COFFMAN: Thank you.

JUDGE THOMPSON: Mr. Frey.

MR. FREY: Just note that we would like backup work papers, your Honor.

JUDGE THOMPSON: Very well. Objections are overruled, Exhibit No. 2 is received. You may step down, sir. Any further witnesses?

MR. SWEARENGEN: That's all we have, your Honor.

JUDGE THOMPSON: Anyone else have any witnesses?

CHAIRMAN GAW: Judge, I had the question about those graphs.

JUDGE THOMPSON: Bring Mr. Beecher back up.

MR. SWEARENGEN: Call Mr. Beecher.

JUDGE THOMPSON: I'll remind you, Mr. Beecher, you're still under oath. Go ahead and take your seat. Chairman Gaw.

QUESTIONS BY CHAIRMAN GAW:

Q. Good afternoon?

A. Good afternoon.

Q. I want to direct you back to that page that I was referring to with Mr. Gipson that shows the Empire sources of energy in a graph for '92 and the graph for 2003. Do you have that in front of you?

A. Yes, sir, I do.

Q. Okay. Would you please explain to me what's in the red in '92 and what's in the red in 2003 on that page?

A. Yes, sir, I can. And I will say up front there's a little bit of art and a little bit of science in these graphs, and that relates to a change in our industry. If you go back to '92, what's included in that red is generation from Asbury, Iatan, and Riverton, which are our coal-fired generation assets.

Also included in that red is a purchase from Associated Electric Cooperative and the Associated contract was priced on an incremental cost of energy out of Associated system. And we would argue a lot about whether we should about $12 or $13 or $14 per megawatt hour in the budget.

Obviously, a coal-fired resource. We also would have between three-quarters of a million and a million megawatt hours at a 4 million spot purchase energy in that budget.

Q. Say it again for me, I'm sorry.

A. We had some places between three-quarters of a million and a million megawatt hours of spot purchase energy in that budget in 1992 in our expected. And we would argue about whether we ought to put $14 or $15 in there or $16. And from a reality standpoint, we bought a lot of energy in the $14 or $15 range. It was cost-based energy bought and sold among our neighbors. It was cost plus ten percent or cost plus $2 or $3. It was cost based. And if we saw $25 in the summertime, we were about to have a heart attack.

By 2003, all of those cost-based tariffs are gone, and the spot purchase power that we buy is now closer to 300,000 megawatt hours, so within this green box at this point, there's non-contract spot purchase power of about 300 to 400,000 megawatt hours. And that comes at costs that range from, typically speaking, at low of 18 and maybe as high as 80 or 90. And $40 and $50 are prevalent.

And at $40 and $50, that's being priced off the natural gas market, so what's in the red in 2003 is our coal-fired generation from Asbury, Riverton, Iatan, just like before. We have entered into a Jeffrey purchase power contract that is also in the red at this point in time.

And so what's changed is we buy a lot less economy energy in 2003 than we did in 2002, and that energy is now market-priced instead of cost-based priced. And so for purposes of this chart, spot purchase power, which shows up in the green now, I put that there because it seems to us to be priced off of natural gas-fired units. It doesn't mean it's not generated at Hawthorn, but they're sure not pricing it at $12.

Q. Okay. A couple of follow ups. Does the -- do the graphs on this page represent volume or price?

A. They represent volume.

Q. All right. And if -- so would it be accurate to say that you have moved the spot purchase price -- purchase power from the coal portion of the graph in '92 to the natural gas or green portion of the graph in '03?

A. It's accurate, but there was about three-quarters of a million to a million spot purchase power megawatt hours in a pie that was 4 million megawatt hours big in '92, and there's about 300,000 megawatt hours that's about 5 million megawatt hours --

Q. You're giving me reasons why you might have moved it around. I just want to know what the graph says right now. Is it accurate to say, and I think you answered this question.

A. Yes, but there's more behind it.

Q. Well, there's a rationale about why you did it, right?

A. Well, the pies are different size, No. 1, the '92 is about 4 million megawatt hours and 2003 is about 5 million megawatt hours.

Q. That's for the whole pie?

A. For the whole pie.

Q. Okay.

A. In the '92 spot purchase was 20 to 25 percent of the total pie, in '03, the spot purchase is only seven to eight percent of the total pie. There's about three or four hundred thousand megawatt hours in the '03 pie that is spot purchase power.

Q. Why didn't you just break the spot purchases out and put it in a separate color? Is there a reason why you didn't do that?

A. No, and 20/20 hindsight I wish I would have.

Q. It would have been easier for me to understand at this point. Okay. So what -- if you were to do that, do you know what those percentages are?

A. Not off the top of my head, but we can create that chart and distribute it to parties if you want.

Q. And again, I don't know how big of a deal it is right now. I'm just trying to understand this material that you gave us, and it would be -- it would probably be easier for me to understand if it were broken down that way.

A. The reason I presented the chart this way, the red is what I consider stable price that I know what it's going to cost. And in 1992, 95 percent of what was going on, we felt was stable cost, we knew what it was going to be. Today, that 29 percent slice, I don't feel is stable and that's -- and I don't know what it's going to be, and that's the reason I broke it out like that.

Q. But it doesn't say that on this page, does it? It doesn't say -- it doesn't give an explanation about why it's included in one -- one part under coal and then the under part under gas?

A. No, it does not, and I tried to put titles on the graph that shows the spot purchase power. I wasn't trying to hide it, it wasn't typos, the spot purchase power is listed.

Q. I see that it's listed there, but it's moved its position.

A. That's correct.

Q. Okay. Well, perhaps at some point in time, that might be able to be supplied, but I don't know that it's critical to this. It would be helpful for me to see it.

CHAIRMAN GAW: That's all I have, Judge, thank you.

JUDGE THOMPSON: Thank you, Chairman Gaw.

Other questions from the bench? Very well. Redirect, or excuse me, recross based on Chairman Gaw's questions, staff

MR. FREY: One second, please, your Honor.

JUDGE THOMPSON: One second. That's about how long we got for you.

MR. FREY: No questions, your Honor.

JUDGE THOMPSON: Very well. Mr. Coffman.

MR. COFFMAN: No, thank you.

JUDGE THOMPSON: Mr. Conrad.

MR. CONRAD: Judge, I would just have one, and I hope maybe by your leave, I could just handle it from here.

JUDGE THOMPSON: You may.

FURTHER RECROSS-EXAMINATION

QUESTIONS BY MR. CONRAD:

Q. You asked before about work papers for what has been designated as Exhibit 1.

A. Yes, sir.

Q. My question to the witness would be will the work papers that you have have committed to supply detail for each of the charts Chairman Gaw was asking about, the volumes underlying each one of those pie slices?

A. We will create those charts and the underlying data and supply them.

Q. Okay. I thought it was going to be one question. I'm sorry. There are two things going on here, Mr. Beecher. One is the work papers that you had when you created these charts, that's -- that's a forensic document. Now, another question is what you want to create to justify what you've done here. That's an entirely separate document.

Now, what I'm asking for is the work papers that underlie this. If you want to go ahead and supply something else to justify, that's fine, but there are two different -- two different documents here. One should understand that.

A. This slide has been used for many purposes, including our Board of Directors, and I don't know if I can double click on this one and the data will be behind it. I may have to go back a little bit in time and double click on it to get to your data.

Q. You agree with me, though, that there is data somewhere?

A. Yes, I would.

Q. Okay. And that's the data -- that's the work paper that would underlie these charts?

A. Yes, sir.

Q. What Chairman Gaw may be asking for is something else that you're telling me you're going to create that does not now exist, therefore it's going to be created. What is that?

A. If we took the source document -- documents and added spot purchase power and natural gas and put one number in the spreadsheet, I'm going to have to split it out in order to get it to Commissioner Gaw.

MR. CONRAD: Okay. That's all.

JUDGE THOMPSON: Thank you, Mr. Conrad. Mr. Swearengen.

MR. SWEARENGEN: Yes. No, I have no questions. I'm still here though.

JUDGE THOMPSON: Thank you. I'm glad to see that you're still here and awake. You may step down, sir. Okay. We're going to go ahead and take ten minutes. Does anyone else have any witnesses?

MR. COFFMAN: Based on the understanding that this is, I guess, a hearing to determine if an interim rate relief evidentiary hearing may be needed, I don't think we have a need to put anyone on the record today.

JUDGE THOMPSON: Very well. Anyone else?

MR. CONRAD: Given that understanding that you came back after lunch with, Judge, I'm willing to go forward without any further witnesses. There would be one person here that I would call.

JUDGE THOMPSON: There is one person here you're going to call?

MR. CONRAD: Well, maybe -- let's just do it and be done with it. I call James C. Swearengen to the stand.

JUDGE THOMPSON: Very well, Mr. Swearengen.

COURT REPORTER: Judge, I need a minute to change my paper.

JUDGE THOMPSON: We are going to have to take a break for the reporter, and then we'll come back with the next exciting chapter of this hearing. We'll take ten minutes at this time.

(A BREAK WAS HAD.)

JUDGE THOMPSON: Okay. We'll go on the record. We have, yet, another development. Our reporter is going to have to leave because our reporter, who is pregnant, is experiencing contractions, and her doctor has advised her to go home. And I can assure you that we want no part of being part of the precipitation of any kind of difficulty for our reporter.

There is another reporter who can be here in 20 minutes coming from Linn. The question that I have is whether you all want to wait for this reporter coming from Linn or whether you just want to reconvene tomorrow at, say, 10 o'clock?

MR. STEWART: Well, Judge, I was planning on attending the agenda meeting tomorrow.

JUDGE THOMPSON: Well, you know, that's a good point. I guess we would have to reconvene after agenda, so maybe more like 2 o'clock, because the main thing on the program tomorrow would be the legal arguments of counsel, which of course, Commissioners are going to want to hear.

MR. COFFMAN: Two o'clock may work for me. I have a couple conflicts for the morning.

JUDGE THOMPSON: Well, don't worry about the morning. We've already set aside the morning. The morning is no longer on the table.

MS. WOODS: And I have some childcare problems that are going to start in approximately half an hour.

JUDGE THOMPSON: Okay. I can almost guarantee we can't be done in a half an hour.

MR. SWEARENGEN: Well, for what it's worth, I'll vote for tomorrow.

JUDGE THOMPSON: Okay. I see nodding of heads.

MR. CONRAD: Our choice is 2:00 tomorrow or --

JUDGE THOMPSON: Or wait 20 minutes.

MR. CONRAD: Well, 2:00 tomorrow or earlier in the afternoon tomorrow?

JUDGE THOMPSON: Well, 2:00 is what occurred to me because I want to give agenda every opportunity to be done.

MR. DOTTHEIM: Given how the agenda looks for tomorrow, does 2 o'clock sound reasonable? I know that's a difficult question.

JUDGE THOMPSON: There you are. What can I say?

COMMISSIONER CLAYTON: Most of the things are stipulations and agreements. There are some tough cases, but it's not as long. Famous last words.

MR. DOTTHEIM: Understood.

JUDGE THOMPSON: I thought setting this at 9 o'clock this morning, we would certainly have this done today, so you can see things don't always pan out the way things expect. Well, I think what we'll do adjourn until 2 o'clock tomorrow afternoon or soon thereafter as the agenda meeting is completed. We're done.

WHEREUPON, the recorded portion of the on-the-record presentation was concluded.

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