STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

December 7, 2004
Jefferson City, Missouri
Volume 8

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

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DEPUTY CHIEF REGULATORY LAW JUDGE.

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P R O C E E D I N G S

JUDGE THOMPSON: We're 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 hearing.

We've taken entry of appearances and marked most exhibits yesterday. I think we have some preliminary matters to take up.

The first thing I will tell you is that I misspoke yesterday when I indicated that Ameren was not excused. In fact, I recall I did excuse Ameren from attending yesterday, and I have since excused them from attending until we take up depreciation. So to the extent anyone cares, the record will show that they are excused as I have stated.

Mr. Conrad, I believe you had a couple of preliminary matters?

MR. CONRAD: Yes, your Honor. Thank you. Yesterday I neglected to mark and submit to the reporter one additional piece of testimony.

JUDGE THOMPSON: Yes, sir.

MR. CONRAD: From Emil Mosora, this will be rebuttal testimony. If my count is correct, I believe this will be 111.

JUDGE THOMPSON: Yes, sir, 111. Could you spell the last name of the witness?

MR. CONRAD: M-o-s-o-r-a.

JUDGE THOMPSON: Very well, rebuttal of Mosora, Exhibit 111.

(EXHIBIT NO. 111 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

MR. CONRAD: And then, your Honor, the second thing, and this is also probably brief -- I don't have but one copy of this today. We did have copies that evening, but your Honor will recall at the public hearing that a gentleman from Explorer Pipeline offered testimony and brought with him a one-page map of Explorer's pipeline where it begins and ends as it winds its way from the Gulf Coast up to the Chicago and Hammond, Indiana area where it terminates.

That was offered at that time, but an objection was raised by counsel for the company, and I just simply wanted to see if we could close that out, whether they have reviewed that and whether they intend to maintain that objection and what it was.

To be fair, I think it was Mr. Boudreau, and I believe the substance of his objection was not to foundation of the exhibit, but rather to something about how it was just being taken in a public hearing, and he indicated he needed to check with lead counsel.

I would presume that that's done. I believe that hearing was on the 22nd of November.

JUDGE THOMPSON: Yes, sir. Mr. Swearengen?

MR. SWEARENGEN: Yes, sir. Mr. Boudreau has authorized me to withdraw that objection at this time, and we will do that.

JUDGE THOMPSON: Very well. In that case we will receive the map tendered at the local public hearing in Joplin on November 22nd, 2004 into the record of this proceeding.

(EXHIBIT NO. 112 WAS RECEIVED INTO EVIDENCE.)

JUDGE THOMPSON: I don't recall physically where the map is at this point, whether we left it with the reporter or -- but we will let it be Exhibit No. 112.

MR. CONRAD: If your Honor please, however you wish to handle it is certainly fine. We can either mark this as Exhibit 112 in this proceeding today. I think we had assigned No. 1 at the public hearing, and so there's not a confusion, whatever you choose to do.

JUDGE THOMPSON: You're correct. I think I'll go ahead and mark it 112 since we're taking it up here.

MR. CONRAD: And I will be able to have copies of this later on today or tomorrow for counsel. I have just the one. If anybody wants to look at it, they're welcome to.

JUDGE THOMPSON: Thank you very much, Mr. Conrad.

MR. CONRAD: And that's all I had, your Honor. Thank you.

JUDGE THOMPSON: Anyone else have any preliminary matters, something we need to take up before we start?

(No response.)

JUDGE THOMPSON: Okay. In that case, I believe we're going to be starting with fuel and purchased power/interim energy charge; is that correct?

And we're going to have opening statements, and I believe company is starting; is that correct?

MR. STEWART: That's correct.

JUDGE THOMPSON: And I believe you've all agreed to stay in the neighborhood of about five minutes, please.

MR. STEWART: I'll certainly try to do so.

Judge Thompson, may it please the Commission? Good afternoon. I'm Brent Stewart, and with my partner, Mr. Keevil, we're here today representing the Empire District Electric Company with respect to the fuel and purchased power issue.

When I first addressed the Commission in this case last July, Empire was urging the Commission to permit Empire to collect additional fuel and purchased power revenues through the early implementation of an interim energy charge, which was then necessary in Empire's view due to significant increases in natural gas costs far above and beyond what Empire had built into its current rates in its last rate case.

The Commission subsequently denied Empire's request, and since that time Empire has continued to under-recover its prudently incurred fuel and purchased power costs. Well, as I mentioned then, those dollars are gone forever, but hopefully all the parties today will agree with the fundamental ratemaking principle that the rate set by this Commission must be compensatory, and that at least as a result of this full-blown general rate proceeding Empire should finally be allowed to recover its prudently incurred fuel and purchased power cost in its rates on a going-forward basis.

It is important to note that Empire now has undergone a full and complete audit within the context of this general rate case, now that the audit has been completed and you can see from the prefiled testimony that none of the parties here today disagree with the fundamental reality that the level of Empire's fuel and purchased power costs need to be increased above the level provided for in current rates. In fact, no party has prefiled any testimony criticizing Empire's fuel and purchased power procurement or management practices or Empire's hedging program, and unlike in past cases, there is even no significant disagreement between the run results of Staff and Empire's production cost models.

The only disagreement among the parties is, one, over the cost of natural gas and therefore the total amount of fuel and purchased power expense to be allowed in rates, and two, the most appropriate method of recovering that expense.

In terms of the cost of natural gas, the Commission is well aware that we've recently seen natural gas prices go well above the $8 per MMBtu level. Empire will be presenting two witnesses, Mr. Brad Beecher and Ms. Jill Tietjen, whose testimony will show and support that under the traditional ratemaking method Empire should be allowed to recover just over 137.5 million in annual fuel and purchased power expense. I think that translates into approximately $5.69 per MMBtu in gas costs.

Or in the alternative, they will support an

IEC, an interim energy charge, with a range of 120 million to 140 million, which there translates into a natural gas price of in the neighborhood of roughly $4 to $6 per MMBtu. None of the parties other than Empire have updated their fuel numbers since they filed direct testimony. Empire also is the only party which has filed a complete case under the traditional method.

Staff did not file a traditional fuel number, and in its statement of position states that Staff does not have a position on what natural gas prices should be used in determining permanent rates. The Public Counsel, which claims to support only the traditional method, only filed a gas cost number, and I believe it was $4.68, and has no fuel run nor total fuel and purchased power expense to set before the Commission for its and the other parties' review.

The evidence will show that the Public Counsel's gas price of 4.68 is unreasonably low since the market has trended dramatically upward since the filing of direct testimony. And I would note that the OPC witness Busch in his direct testimony expressed confidence that the market would decline, which of course it did not do.

Praxair and Explorer Pipeline filed a fuel number, but like Public Counsel, it is not based on an actual fuel run and is likewise unrealistic and we believe not supported by the evidence.

Recognizing the shortcomings of the traditional approach during times of volatile ga-- of volatile gas market, the Staff has proposed that the Commission order an IEC. Because a properly crafted IEC not only allows Empire to recover its prudently incurred fuel and purchased power expense but also permits customers to benefit should natural gas prices actually decline, Empire as an alternative to the traditional approach is supporting an IEC in the $120 million to $140 million range.

Public Counsel filed no IEC proposal and has flatly stated in its position statement that the IEC is simply illegal, at least presumably unless Public Counsel agrees to it as part of a global settlement, as it did in the Aquilla case.

Staff's IEC proposal would set a range of approximately 110 to 134 million, but we believe the evidence will show that Staff's proposed IEC floor is simply not realistically attainable and its IEC ceiling is lower than Empire's currently expected gas costs.

As the Commission should be well aware, setting an IEC ceiling too low invites the same problem that we've recently seen with Aquila, and that's a mistake hopefully the Commission would not want to see repeated.

Moreover, if Staff's IEC proposal is adopted as filed, due to the short two-year term of the IEC, Empire would most certainly be filing another general rate case within 13 months.

It would appear that Praxair agrees with Public Counsel that an IEC is illegal without a unanimous stipulation & agreement, but proposed one anyway with a range there of 110 to 120 million. Like Staff's proposal, Praxair's range does not reflect the realities of the natural gas market, and to even achieve Praxair's top end figure would mean a lower gas price than even OPC recommended for the traditional method of setting rates.

Empire, like the Staff, intends to address the question of the legality of the IEC in its Brief as that's a legal question. Suffice it to say here that Empire believes that an IEC is legal, and the legality or illegality of an IEC does not turn on whether the Public Counsel or the other parties agree to an IEC as part of a settlement.

I must, however, be very candid with the Commission about the real world practicalities should the Commission order an IEC and the Public Counsel or the other parties contest the matter and challenge the Commission in court, especially if the Commission adopts Staff's or Praxair's proposed IEC.

Even if the IEC ultimately is found to be legal, it is entirely possible that Empire would be forced to pay its IEC revenues into court pending the outcome of the appeal, which, of course, could take up to two years. Given the significance of the revenues involved, this in and of itself not only would create a serious cash flow problem for Empire, but also would seriously threaten Empire's financial coverage and could lead to a downgrade by the rating agencies.

The point simply is, an IEC of whatever makeup carries a significant and real risk for Empire, given OPC's threat of litigation. If the Commission ultimately determines that an IEC is lawful and appropriate but believes, like Empire, that OPC or others nevertheless will take the matter to court, the Commission should make sure that Empire's base fuel number is high enough, that is at least 120 million, to give Empire a fighting chance while the court case is decided.

If on the other hand the Commission has any doubts about the IEC, then the Commission should simply set permanent rates based on $137 million in fuel and purchased power costs and be done with it.

Like OPC Witness Busch, all of us wish that natural gas prices were lower and would stay low in the future. Unfortunately, wishing does not make it so. The rates set by this Commission as a result of this case should reflect reality and should allow Empire to recover finally its prudently incurred costs on a going-forward basis, whether through the traditional approach or through a properly crafted IEC.

Thank you.

JUDGE THOMPSON: Thank you, sir. Mr. Frey?

MR. FREY: Thank you, your Honor. May it please the Commission?

As Mr. Stewart has pointed out, this issue is driven primarily by recent volatility in the higher prices prevailing in the market for natural gas. The Staff believes that in this environment an attempt to peg a natural gas price for Empire on a single price for inclusion in permanent rates is fraught with peril for both Empire and for its ratepayers.

This is not only because of the market uncertainties that Mr. Stewart spoke of, but also because Empire's heavily dependent upon gas-fired generation. Over half the company's total generation capacity is based on national -- natural gas. The evidence will show that a $1 change in the price of natural gas can amount to well over $6 million, and perhaps as much as $8 million to $10 million.

So if fuel costs are underestimated and

included in permanent rates, shareholders could be significantly adversely affected, and -- I'm sorry. I said that in reverse. If fuel costs are overestimated and included in permanent rates, shareholders could be -- excuse me. I had that right. I'm sorry. If they're underestimated, shareholders could be adversely affected significantly. If they're overestimated, of course, the customers would be on the hook for that amount.

In view of the considerable uncertainty over the natural gas prices that Empire faces at this time and the sensitivity of the costs to these fuel prices, the Staff is supporting an interim energy charge to be implemented in this case. The evidence will show that the circumstances are such that an IEC is definitely the way to go. It simply makes good sense to implement a mechanism that will provide considerable protection to both the customers and the company during these uncertain times in the natural gas market.

Instead of trying to thread the needle by building a single number into permanent rates, implementation of an IEC will allow both the company and the shareholders -- and the customers to enjoy the protection of substantial portion of the charges that will be subject to refund -- subject to true-up and refund if warranted at the end of the period of the IEC.

Staff Witness John Cassidy has filed testimony setting out the specifics of the IEC calling for a ceiling amount based on a natural gas price of $5.62 per million MMBtus and a floor of $3.20 per million MMB, so that if the company's actual comes in above the ceiling, the company would be required to absorb the difference between the actual and the amount charged to customers. If they come in in the band between the floor and the ceiling, then they would have to refund the amount by which the ceiling exceeds their actual. And if they come in below the floor, they would refund all of the IEC back down to the floor and would be able to retain the amount by which they come in under the floor.

As in Case No. ER-2-- in the last IEC rate case, ER-2001-299, Staff's proposal is for a two-year IEC. It's important to note that the Staff regards this as an interim energy charge. It does not believe that the IEC mechanism is appropriate over a long term for use under normal economic circumstances. During such time the Staff would certainly revert to the traditional approach of setting a point estimate and including that in permanent rates, a single number for the cost of fuel and purchased power.

Indeed, in the last rate case we saw that the IEC was indeed terminated. That was ER-2002-424. It was done away with precisely because prevailing conditions at that time did not warrant implementation of another IEC.

Although both Staff and Empire have proposed an IEC, the two parties part company, as Mr. Stewart suggested, when it comes to the manner in which they arrive at the natural gas price to be included. The company relies on the New York Mercantile Exchange futures prices, and the Staff will present evidence showing why that is an inappropriate index to use.

Staff has used an estimate provided by the Energy Information Agency, a government agency that does statistical research and analysis in this area and provides a substantial database in coming up with their forecast. The Staff has used that for the ceiling number, which is also referred to sometimes as the forecast number, but for the base number which is to be included in permanent rates the Staff has used historical data.

The only other matter I was going to cover was the legal issue here, and I'm sure we'll be hearing more from Mr. Conrad and Mr. Coffman on that matter. And certainly Mr. Stewart has covered it as well, so I won't mention that.

That's all I have. Thank you.

JUDGE THOMPSON: Step back up, Mr. Frey,

real quick. We have a question.

COMMISSIONER CLAYTON: You're not getting off that easily. What is Staff's position on the legality of the IEC?

MR. FREY: Staff believes it's lawful.

COMMISSIONER CLAYTON: It is lawful even without an agreement?

MR. FREY: Yes. And again, we will set forth our arguments in Briefs.

COMMISSIONER CLAYTON: Yeah, but that's 30 days down the road. I want to make sure that we're talking about the issue while we've got everyone here. Thank you.

JUDGE THOMPSON: Thank you, Commissioner. Mr. Coffman?

MR. COFFMAN: Good afternoon. May it please the Commission?

We're pleased here today to present our recommendation regarding the fuel and purchased power expense, which of course is one of the three big issues that make up the differences between the electric company and the other parties in this case, and is obviously a difficult issue.

As with the other two issues, we believe that the evidence simply does not support Empire's position, and although we do agree that overall a rate increase is necessary and do agree with the recent reconciliation that was filed as to the calculations, we simply think the evidence does not support it.

I might just note without explaining any of the details that the parties did work very hard and should all be given credit for attempting to resolve this case and to reach some settlement that everyone found to be fair. It just simply was not possible on these issues. We certainly did discuss some sort of fuel mechanism, but simply were too far apart on the terms.

The first issue as to fuel and purchased power is of course the natural gas component of the fuel run. We did not present -- that is Public Counsel did not present an entire fuel run, but we do agree that the fuel run that the Staff has put together is fair and that our natural gas price should be included in that calculation. That is a price of $4.68, as Mr. Stewart noted

Whereas Empire in its calculations regarding the natural gas prices used a rather single-minded approach of looking only at the futures market, Public Counsel uses what it has recommended in several past cases I think effectively and that is a balanced hybrid approach between historical prices and what some of the future prognosticators are looking at.

This balances the extreme approaches of either relying solely on historical or the futures market to set a level for fuel expense.

And I think the unreasonable nature of relying only on the futures market can be partly seen in the recent, I guess what they're calling a typographical error that occurred the day before Thanksgiving, regarding a mistake in reporting storage withdrawals. This particular incident caused a $1 run-up in the natural gas price, and if the price had been picked at that day, it would have been extremely off of what futures markets reflect.

Staff and Empire, as you've just heard, are asking for a mechanism that we've all come to call an interim energy charge, and this is a charge that I believe is not legally authorized and join in with the industrials and with the Attorney General, DNR, in stating the opinion that this is not consistent with the Missouri Supreme Court pronouncement in the UCCM case.

I think the case is very clear that a formula placed into tariffs which retroactively adjust one component of electric rates is simply not permitted. And despite heavy lobbying by electric companies such as Empire, the Missouri State Legislature has not seen fit to authorize any flow-through fuel rider such as an interim energy charge.

A key distinction that has been made by the Supreme Court and by the Court of Appeals in the Midwest Gas Users case is that electric gas utilit-- or rather electric utilities are different from natural gas LDCs. The flow through of the commodity that is actually consumed by the consumers is very different from the flow through of the inputs to an electric company, which has a multitude of fuel options and resource planning choices.

There are good policy rationales which support this legal principle. Flow-through mechanisms weaken the incentive to prudently procure fuel and purchased power. Empire is one company that I can honestly say I believe has responded to pressures in the natural gas market since around the year 2001 and has taken positive steps to hedge and to look to the future and has made good management choices.

I worry about what would happen if the incentives that are currently in place were to be weakened or removed. Consider for a moment exactly how hard you would negotiate for the price of a new car if you knew that somebody else would be paying the price of that car.

Ratemaking in its most basic theory is supposed to stand as a surrogate for the competitive marketplace. In such an environment, there's a direct incentive to cut costs. There are few truly competitive companies that have the luxury of simply passing onto its customers one of its fluctuating expenses.

The interim energy charge was designed to address what did, I guess, turn out to be a sharp spike over a short period. It was conceived in the settlement of the 2001 Empire rate case. We never got around to completing that mechanism and actually evaluating its effectiveness because Empire asked to end the interim energy charge early and the other parties reached an agreement that allowed that to work out. Essentially all of the money of that original interim energy charge were refunded.

The sky did not turn out to be -- did not turn out to be falling at that time, and after a while some of the market fundamentals did return.

The only other interim energy charge was established in a unanimous settlement in the last Aquila electric rate case. That has just begun, and we -- so we have yet to really have an experience of truing up through how the mechanism worked to see exactly how that mechanism works. Although only a few months into the Aquila interim energy charge did we have some dispute about actually how it worked, but that has since been resolved by the Commission.

This interim energy charge is not conceived to be a long-term crutch, and I think that Empire's request before you now for a five-year mechanism as opposed to a two-year mechanism certainly runs contrary to the original policy concerns that led to that agreement. If you consider an interim energy charge of $20 million on top of permanent rates on an annual basis over five years, we're talking about $100 million or something in that neighborhood, something that certainly should be considered before jumping into it.

All stakeholders I think are much better served with actually more frequent rate cases that look at all relevant factors, ensuring that all sides are treated fairly. If expenses and revenues deviate significantly, Empire can file a new rate case or other parties can file a rate complaint case. Emergency relief is actually available on a short-term basis, if it can actually be proved that a financial emergency exists.

And please remember this as you consider this issue: An electric company and its shareholders are compensated with a return on equity premium for managing business risk. The risks associated with managing fuel choices are part of this business risk, as are the decisions regarding to what degree a utility will become dependent upon natural gas for its fuel.

Remember who makes these resource planning decisions. It's not the consumers. Remember who makes the decisions regarding how much an electric utility will hedge its natural gas purchases. It's not the consumers. In fact, they don't even have the capability of hedge against the volatility in rates. That is most of the captive customers served by this monopoly are small enough that they don't have the ability to seek those kind of financial resources.

And if you still believe that this risk of managing fuel options should be transferred to consumers, keep that in mind when you are determining how much consumers should pay in the return on equity premium which we're going to discuss next week.

Thank you.

JUDGE THOMPSON: Thank you, Mr. Coffman.

COMMISSIONER CLAYTON: I may come back and ask Mr. Stewart some questions, too, but to get through the opening statements, I just wanted to clarify, OPC's position is basically a straight -- a straight line item for total fuel costs, I believe is the way to phrase this, without any interim energy charge; is that correct?

MR. COFFMAN: That's correct.

COMMISSIONER CLAYTON: And that's based on $4.59 per MMBtu?

MR. COFFMAN: It's been updated to $4.68.

COMMISSIONER CLAYTON: Getting generous. Okay. Is there a total dollar amount that goes with that figure?

MR. COFFMAN: Yes. I think you could find that if you received the recent reconciliation that the Staff has done today. I don't know if that's been filed.

COMMISSIONER CLAYTON: I have a reconciliation. It has a difference between the company and OPC position of roughly 12 million.

MR. COFFMAN: Yes.

COMMISSIONER CLAYTON: But what is the total amount? How does this -- I believe Empire, their total fuel cost at a base amount was 140 million roughly. I think that's adjusted down a little bit.

MR. COFFMAN: This is -- and our recommendation would be 12 million less than that essentially.

COMMISSIONER CLAYTON: Okay.

MR. COFFMAN: And to be clear, I think in the -- in Empire's position statement they described our position as a base amount, and I think it's probably more accurate to call what we're saying a permanent rate, because we don't think anything should be added on top of that.

COMMISSIONER CLAYTON: But lastly it's your position that, absent an agreement, this is not a lawful way -- the Commission does not have the power to implement an IEC absent an agreement among all the parties?

MR. COFFMAN: In the two previous agreements, we have waived our right to challenge that in court. I think obviously only a court could say whether it was or was not illegal.

COMMISSIONER CLAYTON: Okay. Thank you.

JUDGE THOMPSON: Any other questions?

(No response.)

JUDGE THOMPSON: Mr. Conrad?

MR. CONRAD: Good afternoon. May it please the Commission?

I will be mercifully brief because much of what has been covered or needs to be said has already been said by others. I would simply point out that with respect to one comment that Mr. Stewart made, we have not for Praxair and Explorer taken a specific position on the amount or the value of natural gas that should be included.

Maurice Brubaker, our consultant, in his direct testimony that was filed in September on page 8 at line 11 simply stated as follows: Empire has included, that's Empire has included 123 million of fuel and purchased power total company basis in deriving its proposed revenue requirement. So I'm not sure where the numbers that Mr. Stewart was referring to are coming from, but we simply were referring to what Empire had included in its own initial filing.

The question of the amount of fuel and purchased power is driven for this company primarily by the gas price, because that is -- that is a function of the fact that this company is seemingly primarily dependent right now on natural gas for fuel for generation. But it has other overtones in the sense of the total purchased power price, where you hit the dispatch points for particular units and so on. So it's a more complicated problem.

Fortunately, the fuel runs that have been done here seem to be in pretty tight agreement, and that's unique. But the problem remains of where you put the pin in the map. It is a tough problem. Mr. Coffman refers to the incentive, and I couldn't do that better than he said, so I'll leave that there.

But it is very clear that if you remove that incentive, there is really little pressure on the company other than a post hoc audit of prudence which may or may not help the ratepayers very much. They will have already paid the money, and there may be two or three years of reviews and appeals before they can even hope to get some portion of it back.

On the other side, if the number is too low, unquestionably the company is financially stressed. So it is a difficult, challenging position. The problem is exacerbated with the fact that nobody can predict what the natural gas market is going to do. I was reminded on the way coming down in the elevator -- in fact, I was speaking to somebody about it -- a number of years ago, I think a cub reporter for the New York times happened to be at the right point, the right time and asked the great J.P. Morgan what the stock market was going to do. And J.P. Morgan simply looked down his nose at the young cub reporter and said disdainfully, it will fluctuate.

And the gas market is sadly in that mode. It seems to be driven up and down by things over which we have little control, including things that go on in the Mideast and things that are decided, and even as Mr. Coffman made reference to, mistypes in some of the reporting services. So the choice that you have to make is a challenging one.

I will comment because it was my understanding we were really going to focus on the fuel and purchased power numbers today rather than on the IEC, but since the question comes up from Commissioner Clayton about the legality of it, my client's position is that, absent an agreement, that it is unlawful under Missouri law to do this. I understand there can be arguments made, and I think the argument that I've seen is based around the Midwest Gas Users case, which if you pull that case report and look at it you'll see that I had something to do with. So I'm not unfamiliar with that case.

But unlike Mr. Stewart, I draw the line a little bit differently. It is not the fact that the parties agree to something that confers legality or illegality upon that mechanism. It is the fact to which Mr. Coffman referred that the parties agreeing choose not to raise the issue in a subsequent appeal, and so it simply goes unreviewed. An analogy might be if the speed limit on Highway 50 is 65 between here and California and I go 75 but nobody catches me, it doesn't mean that I have not broken the law. It just happens to be that there was not a policeman there to blow the whistle.

Beyond that I think the topic has been pretty well explored, and we wait -- we wait to see what the right -- what the right number is. Thank you very much.

JUDGE THOMPSON: Thank you, Mr. Conrad.

COMMISSIONER CLAYTON: I just had a few questions, just quickly. I'm sorry if I asked a question that was out of line. My schedule said that we were going to talk about the IEC today.

MR. CONRAD: I'm probably the one that had misunderstood.

COMMISSIONER CLAYTON: I just wanted to make sure I was clear on the position. Since there is a question of whether, absent an agreement, the Commission can order an IEC and we will focus on the total amount of fuel and purchased power revenue requirement that would be necessary, what is your client's position?

Because there's a range in Mr. Brubaker's testimony, and he makes reference to a range which I thought was a reference to an IEC. So I guess just as we move forward in the testimony, I wanted to be able to identify what your position is, your client's position.

MR. CONRAD: First of all, let me respond to the last point that you made, because I think in his rebuttal and surrebuttal he is responding primarily to the proposal from Mr. Watkins rather than making a specific proposal of his own. But I can understand why that in the context when you just pick up the particular piece of testimony, that may not be --

MR. KEEVIL: Commissioner, are you referring to Mr. Brubaker's direct filed on September 20th where he has a range of 110 to 120 million?

COMMISSIONER CLAYTON: I was referring to his direct testimony.

MR. KEEVIL: Right. You're right, I think. There seems to be some confusion about what Mr. Brubaker has recommended.

MR. CONRAD: Well, let's look at page 8, then, counsel.

MR. KEEVIL: Yeah, that's what we're looking at.

MR. CONRAD: Line 19, let me respond by using round numbers in a straightforward example. For purposes of illustration. Do you see those words, Counsel?

MR. KEEVIL: At line 19, page 8?

MR. CONRAD: And line 20, page 8.

MR. KEEVIL: Are you looking at the September 20th version, Mr. Conrad?

MR. CONRAD: I'm looking at September 27 direct testimony.

MR. KEEVIL: I'm looking at September 20 direct testimony of Mr. Brubaker. He filed two versions of direct testimony.

MR. CONRAD: All right. Well, I'll check with you later.

The second part of your question is, I

think we have lined up if you were going to do that, if you were going to pick a number, we have felt that the range is a reasonable range that has been suggested perhaps by Staff. If we had -- if we had to pick a number, your Honor, I'm not sure that we could do it, because it would involve -- would involve the projections, and you just have to weigh the relative numbers.

COMMISSIONER CLAYTON: So your client's position would be picking a total --

MR. CONRAD: Yes.

COMMISSIONER CLAYTON: -- a total purchased power fuel cost without the figure without the IEC within the range that has been suggested?

And I know in the direct testimony -- and I apologize. I'm not even sure if I brought down the rebuttal and surrebuttal, but I believe it was 110 to 120 million adjusted for some fixed costs, as I recall. And is that your client's position, so anywhere in there you'd be happy? Okay.

MR. CONRAD: And I suppose if we had to -- if we had to say, well, you know, which way would you tilt, if you think about it, if the number is slightly too low, the company does have the option to come back in. I know that's not easy.

But by the same token, if you go the other direction, the ratepayers have no chance to recover because as recently here, I think, as a couple of weeks ago, Judge Brown has reminded us that if there is no obligation of refund, no stay or something like that, when the money is collected it belongs to the utility. So it's gone.

COMMISSIONER CLAYTON: Is that range of 110 to 120 million, is that based on any particular range of price of natural gas, do you know?

MR. CONRAD: To be honest, Judge, I'd have to go back and check. I don't remember what his number is. We've had Mr. Coffman made reference to the fact the parties have been trying to work on this, and to be quite honest I've had so many numbers in my head in looking at that, if I quoted one I'm almost certain to be wrong.

COMMISSIONER CLAYTON: Believe me, we've been talking telephones all day. Believe me, I understand. Okay.

MR. CONRAD: I should say on that while the topic is there and if I have 10 seconds more, I think the parties are continuing to discuss that issue, and I don't know that it is absolutely foreclosed that there may not be something come down, but I -- you know, as I said yesterday in another context, hope springs eternal. Thank you.

JUDGE THOMPSON: Thank you, Mr. Conrad. Mr. Molteni?

MR. MOLTENI: I, too, will be brief since the DNR issues are actually settled out, but let me just explain, the question on the issue statement asked about whether the DNR took a position on the legality of the IEC, and DNR's position was no. DNR didn't provide any testimony in this case on fuel or purchased power expense, and so I'm not even going to go into that.

The position on the IEC was no because of the Utility Consumer Council's case that Mr. Coffman referred to. The IEC in this case looks too similar to the fuel adjustment charge that is the subject of the UCCM case, and that case, of course, rejected the fuel adjustment charge based on the fact that it was single-issue ratemaking and retroactive ratemaking.

As I think Mr. Coffman and also Mr. Conrad referred to the Midwest Gas Users case does seem to -- expressly allows purchased gas adjustments, but also distinguishes itself from the UCCM case based upon the inherent differences between an electric company and an LDC.

From a public policy perspective, DNR participated in the Attorney General's investigation of the natural gas price spike, and that was with respect to the purchased gas adjustments. And one of the problems with respect to that natural gas spike was that ratepayers bore the entire brunt of the volatility in the marketplace because of the purchased gas adjustment. So that's from a public policy perspective.

From a legal perspective, the UCCM case is as close to a case on all fours with respect to the IECs as you can get, and it is the law of the State of Missouri. It is the Missouri Supreme Court decision, whether the Commission agrees or disagrees with either the legal analysis contained in that case or the public policy behind it.

If the parties to the case disagree, they have the luxury, and I would hope they could do it in a transparent way, that they would take appeal of a PSC decision and take to the courts and say that they would like the UCCM case to be expressly overturned, but I don't think the Commission as a creature of statute has the luxury of being able to take a legal issue that's so similar to the case that was decided in the UCCM case and say, we're going to ignore what the Missouri Supreme Court has said is the law that binds the Commission.

Thank you.

JUDGE THOMPSON: Thank you, Mr. Molteni.

COMMISSIONER DAVIS: I have a question.

JUDGE THOMPSON: Yes, sir.

COMMISSIONER DAVIS: Mr. Molteni, I don't pretend to understand the intricacies of the UCCM case as well as some of those people that were actually here back in the stone ages, but wasn't that a rulemaking case? Didn't they include some language in there that did sort of leave the door open that if it was part of a rate case or a contested proceeding?

MR. MOLTENI: You know, Commissioner Davis, I don't recall the specific language that you're referring to.

COMMISSIONER DAVIS: Okay.

MR. MOLTENI: Thank you.

JUDGE THOMPSON: Thank you. I know that Ameren is not here. I assume that Mr. McCartney is not here as well? Very well.

Mr. Swearengen, do you want to call your first witness?

COMMISSIONER CLAYTON: Before we go to that, I just want to be clear, whoever wants to answer for Empire, who would that be? Attorney, counsel?

MR. STEWART: I may have to defer, but we'll try.

COMMISSIONER CLAYTON: I was going to wait until the end, and since I'm the only one causing problems here, quickly get through this. I wanted to be clear on what amount -- if we avoid the whole issue of the IEC, I want to know what the dollar -- total dollar amount that Empire is asking in the base rate cost, first of all, so if you could answer that.

MR. STEWART: That would be 137.5 million, and that's found in the surrebuttal testimony of Mr. Beecher.

COMMISSIONER CLAYTON: Okay. The testimony that was filed stated an issue originally that had a base rate of 123 million. As an alternative -- it asked for a fuel adjustment clause. As an alternative, you wanted the IEC with a range. Then the rebuttal came in and there were two or three fresh positions. And then the surrebuttal came in, and the position of Empire changed again. So is this going to change again, I guess is my question?

MR. STEWART: I hope not. Mr. Beecher -- you're referring to the testimony of Mr. Beecher. And in the direct testimony filing which was filed in April of last year, I believe he had -- he set forth some numbers, and I think that's -- I think that's right. I think you're in the 125 range.

By the time we got to filing rebuttal testimony, I believe his number for the base for the traditional number was about 140 million, based on the NYMEX prices. By the time we filed in November for surrebuttal, there had been a slight decrease, so we adjusted the number back down to 137.5. And that's my understanding of how those numbers changed. It was based on changes in the market.

COMMISSIONER CLAYTON: What is the price of gas that is included in that figure?

MR. STEWART: I believe the -- that should be approximately $5.69 per MMBtu. In other words, if the Commission was going to use the traditional method, that would be the gas number we would -- we would recommend.

COMMISSIONER CLAYTON: Okay. So if -- speaking for myself, if we want to avoid the whole controversy that an IEC is not possible, Empire's position is 137.5 million, and that's based on $5.69 gas. OPC is at $4.68 gas for a total of 128 million, maybe a little less than that frankly, if it's 12 million off. And we're going to hear from Praxair, we'll I guess hear from them from what that position is. And then Staff does not set a base amount either.

MR. STEWART: That's my understanding.

COMMISSIONER CLAYTON: Is that correct?

MR. STEWART: That's my understanding.

COMMISSIONER CLAYTON: I would assume that for certainty's sake Empire would prefer to have an Order that's not on its face legally challengeable, I suppose?

MR. STEWART: And that's what I mention in my opening statement, the concern we have that if Public Counsel or one of the other parties would take us to court, take the Commission to court after the Commission ordered an IEC, there's some very real risk to Empire, and I wanted the Commission to be aware of that. So, yeah, in terms of certainty, we prefer the 137.5.

COMMISSIONER CLAYTON: And as of right now, we only have the two options?

MR. STEWART: That's correct.

MR. KEEVIL: The 5.69 is correct, but that's the after-hedge number.

MR. STEWART: Right. That is calculating the hedging. That's how you get to the $5.69.

MR. COFFMAN: I believe that is comparable to the Public Counsel number, which also considers the hedging.

COMMISSIONER CLAYTON: So that both those figures take into consideration --

MR. STEWART: The hedging.

COMMISSIONER CLAYTON: -- the hedged price, the prepurchased gas?

MR. STEWART: That is correct.

MR. COFFMAN: Comparable numbers.

COMMISSIONER CLAYTON: Okay. Thank you.

JUDGE THOMPSON: Mr. Conrad?

MR. CONRAD: Just to follow up, I think on I believe it was Commissioner Davis' question about the UCCM case, I don't know if I fall under the heading of Neanderthal or Cro-Magnon, but I was also involved in that case, too. That, sir, wasn't a rulemaking. It was a direct challenge that had been made by the then Public Counsel -- I believe it was Mr. Barvick, but I'm not positive -- to the fuel adjustment clause, and there were two parts of it. There was a challenge directly to the fuel adjustment clause itself that had been used by the Commission up until then, and then there was a surcharge that the particular -- I believe it was Kansas City Power & Light, because that was why we were involved -- had used with Commission permission to recover a shortfall that had occurred in the fuel adjustment clause.

And that when you sort all that out, that's where you get the two aspects or the three aspects of that decision: One, that you had to -- have to look at all relevant factors, that you can't just seize on one thing; two, that the concept of retroactive ratemaking; and three, the concept that I referred to earlier that absent something like the subject to refund when the money is collected by the utility, it belongs to the utility.

So I don't know if that helps. It's a '79 case. Like you, I have some difficulty in recalling with precision all the facts. But it was not, sir, a rulemaking. I hope that helps. I don't want to just leave it.

COMMISSIONER DAVIS: Stu, let me ask you one more question.

MR. CONRAD: Sure.

COMMISSIONER DAVIS: Do you think there -- I'm just trying to think outside the box here.

MR. CONRAD: Sure.

COMMISSIONER DAVIS: Do you think it is conceivable that there is any way that we could develop some sort of -- I mean, this would probably require the unanimous consent of all parties concerned, but that some sort of sharing grid could be developed or something like that?

I know we -- I mean, it's never been used in this context before, but would something like that be feasible?

MR. CONRAD: That's an interesting --

COMMISSIONER DAVIS: Obviously I want to encourage Empire to be prudent and would like to find some way to reward them for purchasing cheaper gas, you know. I don't know. I'm just --

MR. CONRAD: It's harder to do. We have -- Judge, we had applied that very concept, I think, that you're talking about at one point in time in concept, a name that some people will remember here, Paul Phillips, who now works for the Department of Energy, but at that time was with the General Counsel's Office, and I tried to work to a point of crafting a band-type incentive for the purchased gas adjustment clause, where a target would be set by the Commission and then if the company was able to beat that, you know, progressively more and more, then they could realize more and more to a bottom line.

COMMISSIONER DAVIS: Right.

MR. CONRAD: If they went the other way, the ratepayers were protected and so on. It's harder to do on the electric side when you look, Judge, at the bus bar cost because it is a function not only of the cost of gas, which is predominant for this utility, but it's a function of all the other mix of fuels. It's a function of the efficiency of the units that are being used. It's a function of loading order of them, it's -- that's why those -- that's why it's so interesting in this case that the fuel runs that the company did and Staff did are so closely together, because they obviously have modeled the same incentive. But it's an interesting concept.

It's certainly one that I, you know, for my folks, we'd be willing to sit down and explore with somebody. I don't know what the context of how to do that within a case like this, but like you, I share the concern that if you just take -- you know, just pick a number and say go at it, that you have a tendency of putting the company in the box of having a subjective after-the-fact review, which they don't like, or having -- or having no prudence review at all. So it's a challenging question.

COMMISSIONER DAVIS: I'm just looking for a way that we can create a box where neither the company nor the ratepayers would be on the hook, so to speak. Thank you.

MR. CONRAD: Sure.

JUDGE THOMPSON: Further questions?

(No response.)

JUDGE THOMPSON: Mr. Beecher?

(Witness sworn.)

JUDGE THOMPSON: Do you understand, Mr. Beecher, if you give false testimony in this proceeding, you'll be subject to prosecution for perjury?

THE WITNESS: Yes, I do.

JUDGE THOMPSON: Please take your seat. State your name for the record.

THE WITNESS: My name is Brad P. Beecher.

JUDGE THOMPSON: You may proceed, Mr. Keevil.

MR. KEEVIL: Thank you, Judge Thompson.

BRADLEY P. BEECHER testified as follows:

DIRECT EXAMINATION BY MR. KEEVIL:

Q. Mr. Beecher, are you the same Brad or Bradley P. Beecher who has caused to be prepared and filed in this case direct testimony which has been premarked as Exhibit 5, highly confidential and nonproprietary, rebuttal testimony which has been premarked as Exhibit Nos. 6HC and 6NP respectively, and highly confidential and nonproprietary surrebuttal testimony which has been premarked Exhibit Nos. 7HC and 7NP respectively?

A. Yes, I am.

Q. Do you have any changes or corrections you need to make to -- let's start with your direct testimony, Exhibit No. 5?

A. Yes, I do.

Q. Would you please go over those on the record, please?

A. On page 5, line No. 5, 6.4 should read 6.5, and the words "before tax" should be inserted after 6.5 million. The word "in" should be scratched, and towards the last of line 5 it should also read 6.5 instead of 6.4. That's all I have for direct.

Q. All right. Thank you. Turning to your rebuttal testimony, numbers -- Exhibit No. 6HC and 6NP, do you have any changes or corrections you need to make to that testimony?

A. Yes, sir, I do. On page 2, line 8, we should scratch the word "base," we should scratch the word "of," and replace the word "of" with the words "based upon." After -- on line 9, after 140,000,180, we should insert the words "for 5,092,000 megawatt hours," so that the sentence now reads, the last half, Empire supports rates based upon 140,840,180 for 5,092,000 megawatt hours.

Also on page 2, Footnote No. 2 at the bottom of the page, the word "not" needs inserted after the word "did" in the second sentence. Also on page 2, Footnote No. 4, after the word "expenses," the words "for 5,042,000 megawatt hours" needs to be inserted.

On page 10, line 17, the words "for 5,092,000" needs to be inserted after the number 136,789,050.

Q. So it would read then -- line 17 would read, this run was 136,789,050 for 5,092,000 megawatt hours?

A. That's correct. On page 11, line 2, after the number 140,840,180, we need to insert the words "for

5,092,000 megawatt hours." On page 12, line 8, we need to scratch the word "base, " or delete the word "base."

On page 15, line 3, after the number 140,840,180 we need to insert the words "for 5,092,000 megawatt hours." Also on line 3, we need to delete the word "base" and replace it with the word "setting," s-e-t-t-i-n-g.

On line 15, page 15, we need to delete the word "base" at the end of the sentence and replace it with the word "permanent." On line 16, we need to delete the words "base" and "rate." On line 23 on page 15, we need to delete the word "base."

Q. What was that last one again, page 15, line 23, is that what you said?

A. Page 15, line 23.

Q. All right.

A. On page 16, line 2, we need to delete the word "base." On page 16, line 3, after the number 140,840,180, we need to insert the words "for 5,092,000 megawatt hours."

That's all I have on my rebuttal.

Q. All right. Turning then to your surrebuttal, exhibits -- well, before I do that, the corrections, changes you just made to your rebuttal would apply to both the highly confidential and nonproprietary versions, correct?

A. That's correct.

Q. And turning to your surrebuttal then, 7HC and 7NP.

A. On page 5, line No. 17, after the number 137,548,710, we need to insert the words "for 5,092,000 megawatt hours." On line 18, page 5, we need to delete the word "base." On line 23, page 5, after the number 140,840,180, we need to insert the words "for 5,092,000 megawatt hours." Also on line 23, we need to delete the word "base" and replace it with the word "setting."

On line 7, page 6, we need to delete the -- on page 6, line 7, we need to delete the word "base." On page 6, line 21, we need to insert the word "of" before 120. On page 22 -- or page 6, line 22, we need to insert the words "for 5,092,000 megawatt hours" after the word "million."

On line 23 on page 6, we need to insert the words "for 5,092,000 megawatt hours" after the word "ceiling." On page 6, line 24, after the word "futures," we need to insert "and our hedged position."

On line 28, after the number 130,888,272, we need to insert the words "for 5,092,000 megawatt hours." On page 7, line 3, after 135 million, we need to insert the words "for 5,092,000 megawatt hours."

On line 4, after 140 million, we need to insert the words "for 5,092,000 megawatt hours." On line 15, we need to delete the word "of," replace it with the words "based on"; delete the word "in" and replace it with "for 5,092,000 megawatt hours as a basis for." Scratch the word "base" on line 15.

Q. So go ahead and read line 15.

A. Line 15 now reads, expense based on 137,548,710 for 5,092,000 million megawatt hours as a basis for Empire's rates.

Q. Thank you. Are those all the changes you have to your surrebuttal testimony?

A. Yes, sir.

Q. And those would apply to both the NP and HC versions, correct?

A. That's correct, sir.

Q. So with those changes or corrections, if I were to ask you the questions that appear in Exhibits No. 5, 6HC, 6NP, 7HC and 7NP, would your answers be the same as contained in those exhibits?

A. Yes, sir, they would.

MR. KEEVIL: All right. Judge, with that I would offer Exhibits No. 5, 6HC, 6NP, 7HC and 7NP into evidence and tender the witness for cross-examination on the issue of fuel and purchased power and interim energy charge.

JUDGE THOMPSON: Thank you, Mr. Keevil.

Do I hear any objections to Exhibits 5, 6 or 7 in NP or HC versions?

(No response.)

JUDGE THOMPSON: Hearing none, those exhibits are received and made a part of the record in this proceeding as amended today.

(EXHIBIT NOS. 5, 6HC AND NP, AND 7HC AND NP WERE RECEIVED INTO EVIDENCE.)

JUDGE THOMPSON: Cross-examination. Let's see, Mr. Molteni, I believe you're first.

MR. MOLTENI: None, sir.

JUDGE THOMPSON: Mr. Conrad?

CROSS-EXAMINATION BY MR. CONRAD:

Q. Good afternoon, Mr. Beecher.

A. Good afternoon.

Q. Mr. Beecher, if I told you I was going to pick up the tab regardless of what it cost, what kind of car would you buy?

A. I'd probably drive a Z71 pickup just like I'm driving today.

Q. Wouldn't look at a Jag?

A. Wouldn't serve my needs.

Q. I want you to assume that the Commission picked a number $5.50 for gas -- just work with me for a moment -- and that was factored in through your process of hedging. And after that process was over, for a period of time in question the actual cost you had was $6. What happens to the 50 cents, multiplied of course by the volumes?

A. Assuming we have an IEC in place, or assuming we do not?

Q. No, I didn't ask you to assume that. Just assume the Commission picks a number.

A. If it -- if we have $5.50 baked into our rates and we spend $6, then that shortfall is absorbed by the shareholders in the form of the higher fuel and purchased power expense.

Q. And if it got up to the $6, 6.25 range, at some point the company would come in with a rate case, I presume; would that be a safe assumption?

A. Yes.

Q. Now, let's start with the same 5.50 and kind of the same set of assumptions, but assume that the actual cost was $5. No IEC, nothing. What happens to the 50 cents multiplied by the volumes?

A. In that case, it would result in lower fuel and purchased power cost.

Q. Would the rates go down?

A. The rates to our customers? Absent another rate case, no.

Q. And if it went to 4.50 or 4.75, something like that, same answer?

A. Rates to my knowledge are always set in proceedings like this.

Q. Now, I understand that you're not testifying here as a lawyer. Do you have any sense as a person who's worked in the rate area for a utility in that latter case with the -- could the ratepayers come back and get that money?

A. I think it's true, much like was said in opening remarks, the fuel money we spent this year is already gone and our shareholders have eaten it, and to the extent that it's already gone, the customers probably couldn't get it back either.

Q. So to be fair, on the other side of the equation where we had 5.50 and the cost was $6, the shareholders wouldn't be able to go back and recover that because that would be past cost; am I right?

A. That's my general understanding of the regulatory process.

MR. CONRAD: Okay. Thanks. That's all.

JUDGE THOMPSON: Thank you, Mr. Conrad. Mr. Frey?

MR. FREY: Thank you, your Honor.

CROSS-EXAMINATION BY MR. FREY:

Q. Good afternoon, Mr. Beecher.

A. Good afternoon, Mr. Frey.

Q. Sir, could you briefly describe the two approaches to recognizing fuel and purchased power costs in rates that are at issue in this proceeding?

A. The first approach is the traditional approach where we would pick fuel cost, heat rates, availability of units, we would run them through a fuel model and we would come up with a single number based on a certain number of megawatt hours that would be used in the calculation of our rates. In this case, based on my surrebuttal testimony, that amount is around $137.5 million from the company's perspective.

The second method which Staff and company both support is the interim energy charge method where we set a floor and a ceiling, with the ceiling meant to reflect currently -- current prices in the market. The floor has been -- has been set in Staff's case based on our historical hedged cost, the idea being that prices are high now. If they stay high and we set prices based on a high number and the prices fall, then the consumers do not get to benefit in that falling of prices.

So the general thought process is the

market is high today. We all hope and pray that it goes down, but we don't know that it will, and it causes significant harm to the shareholders if we set a low number and the prices stay where they're at.

Q.   Thank you. Now, do you have your direct testimony with you?

A.   Yes, I do.

Q.   Okay. Turning to page 3, your first answer, you describe the traditional approach that you've just discussed here, the single point estimate if you will as the less desirable alternative and the most unsatisfactory of the approaches the company originally filed in this case. Do you see that?

A.   On line 5, it says up there the less desirable alternative, yes.

Q.   Do you see where it says it's the most unsatisfactory as well?

A.   Yes, I do.

Q.   Okay. Would you agree, then, that according to your direct testimony, you would prefer an IEC to a point estimate?

A.   At the time we filed direct testimony, I don't think the threat of litigation on an IEC was present. Today, with the threat of litigation, that needs to be weighed in that answer.

Q. So that -- so you're saying at the time you -- that was your preference?
A. That's correct.
Q. Okay. And you're not prepared to say at this point that that's still the company's position?
A. I think in my rebuttal and surrebuttal a properly crafted IEC is still our preferred methodology, absent the threat of litigation.
Q. Okay. Then if we set aside the litigation concern, which I would concede is not an unsubstantial concern, but if we were to set that aside, then is it fair to say you would rather have an IEC crafted as specified in your surrebuttal testimony than that point estimate of 137.5 million?
A. With the exception of the litigation risk, my customers shouldn't have to pay any more than our actual prudently incurred fuel and purchased power costs, and if prices fall they should be able to benefit with that.
Q. Which position -- again, just looking at the -- setting aside this legal concern, which position, your single point estimate or your IEC, puts the company at a less risky position with regard to the recovery of its fuel and purchased power expenses?
A. That depends where that base number is set,

and it depends on the level of the IEC, the floor and ceiling.

Q. Okay. For purposes of this question, let's just look at your numbers. Which one then would you say puts you in a less risky position?

A. The base fuel number of 137.5 million built into rates puts us in a slightly more risky position than an IEC set with a top of 140 million, because the IEC at 140 million gives us $2.5 million more coverage.

Q. Thank you.

Now, Mr. Beecher, in your surrebuttal testimony -- do you have that in front of you?

A. Yes, I do, Mr. Frey.

Q. You indicate that you believe that an IEC should have a floor of about -- or of $120 million and a $140 million ceiling, do you not?

A. Yes, I do.

Q. And you also state that this floor and ceiling are based on gas prices of approximately $4 and $6 per million MMBtu respectively; is that correct?

A. That's correct.

Q. You further state on page 6 of your surrebuttal that the ceiling with the $6 natural gas is consistent with where natural gas futures were on October 27, 2004, correct?

A. That's what the testimony says.
Q. Can you explain what you mean by the words "consistent with"?
A. The run that was -- the fuel run that was attached to my testimony actually had an average 6.02, and so $140 million came from my rebuttal testimony. It was based on our hedged position in the gas futures market as of October 27th, and $6 is almost the 6.02 that was in the -- at the basis of $140 million.
Q. So it's the futures weighted along with the hedged position?
A. That's correct.
Q. Futures as of October 27th?
A. That's correct.
Q. Okay. And what is the $4 floor consistent with?
A. We originally proposed a $20 million IEC in our direct testimony, and I've tried to keep that amount the same as we go through this process. The way the IEC has been structured in the past, that's very expensive money for us to hold if we end up having to refund it. So we didn't feel it appropriate to make it any larger than that. And a $4 per million MMBtu gas run in Empire's model approximates the $120 million.
Q. Is there a reason that your ceiling for the

IEC in your surrebuttal is tied to futures prices as of October 27th and your point estimate in your surrebuttal reflects November 17 futures?

A. We have tried to -- well, we have been forced to update our testimony from our direct testimony because of the continued increase in gas prices. On October 27th when I filed my rebuttal testimony, the futures market prices I used were the actual prices. I also recognized our customers shouldn't pay any more than they absolutely have to for our prudently incurred fuel and purchased power expenses, so I updated my surrebuttal to the prices that were prevalent at the day I filed my surrebuttal.

As it relates to the IEC, it is I think indisputable that, based on October 27th prices, that what -- if they had stayed there for the year combined with our hedged position that's what we would have paid. And I think Empire is pretty stalwart in the fact the regulatory model says that we should have the opportunity to recover our prudently incurred fuel and purchased power costs.

Q. I'm not sure I heard the answer in there, but let me try it -- let me just try to ask it one more time. You use October 27th data for your IEC in your surrebuttal, and yet you use November 17th for your point estimate. So I'm not sure I caught the rationale in your answer.

A. The IEC in my mind should be designed to recover the prudently incurred fuel and purchased power expenses that Empire could see. Based on October 27th, we could see prices as high as $140 million. By the time I filed my surrebuttal, when we were updating to a point based on prices prevalent at the time I filed my surrebuttal, that was $137.5 million.

Q. Did you take that approach when you made your direct filing? That is, you used the same date in establishing both those numbers, did you not? I think it was April 21st.

A. I'm not certain the date. I can open my testimony and look, but in general terms, I filed $123 million in anticipated costs at that time and we proposed an IEC range of 105 to 125.

Q. Does April sound right?

A. April 16th.

Q. Okay. Thank you. Now, with respect to the $137 million for fuel and purchased power which you've founded in your surrebuttal testimony, that price is based on NYMEX futures prices as of November 17th of $6.79 per million Btu, is it not?

A. That's correct.

Q. And does that represent an average futures price for the years 2000 and 2006 combined?
A. Did you say 2000 and 2006?
Q. 2005 and 2006 combined.
A. I believe that may only be 2005. I don't have that documentation in front of me.
Q. Can you -- can you make an observation as to whether the 2006 average is higher or lower than the 2005 number, to the best of your knowledge?
A. To the best of my knowledge, it's slightly lower.
Q. The 2006 is slightly lower than 2005?
A. That's right, in general terms, but I have the futures market data from last Friday's close in front of me, and January '05 was 6.79 and January 7.096, so in that particular month it was higher. But pick July for instance, and July of '05 was 6.292, but July of '06 was 6.006, but I would believe the average in '06 to be slightly lower.
Q. Okay. Thank you. Would you agree, then, that traders believe that gas prices -- strike that.
Do you know why NYMEX expects prices to decrease, however modestly, from 2005 levels in 2006?
A. I don't think NYMEX can expect. It's not a being.

Q. Okay. Why the market reflects that?

A. There are lots of things that affect gas prices, and I think OPC Witness Busch and myself, potentially even Staff, have listed a lot of those common features in our testimony; storage, weather, unit outages, oil prices, war in the Middle East. There are lots of things that the futures market takes into account and counterparties -- counterparties take into account when they're utilizing the futures market. And on a whole, they expect the market to be slightly lower in '06 than '05.

Q. Okay. And I believe you state in your deposition that the trend is downward in succeeding years, do you not?

A. I'm sure I do.

Q. And again, if I were to ask you why the trend then over several years would be down, your answer would be the same; is that correct?

A. Yes.

Q. What is your best estimate regarding the relationship of 2005 gas prices to those in 2006, 5 percent lower or I should say 5 percent higher or 10 percent or --

A. Based on?

Q. Based on your knowledge.

A. If I were to hedge gas today, they would be 5 to 10 percent lower probably than '05.

Q. Okay. Thank you. Turning to your surrebuttal testimony, do you have that?

A. I still do.

Q. On page 6 -- I'm sorry -- page 6, line 13 you state that anything less than the three-year term would be -- would not be acceptable, do you not?

A. Yes, I do.

Q. If the Commission were to authorize an IEC. I'm curious as to what you mean by that. Would you explain what you mean by unacceptable?

A. We're trying to run our business in a fashion that is beneficial to safe, reliable service for our customers. We're trying to run a business that provides proper return to our shareholders. And I think as the word "interim energy charge implies," it's only interim, and when the capital markets look at us, they don't look at us for today. They look at us over a period of time.

And for us to properly plan our capital expenditures, for instance, we're working today on capital expenditures for 2007 for a gas turbine. So this is a long-run base. We plan to be here for a long time and we expect our customers to be here a long time. And so we believe it's important that we be able to run our business with a long-term outlook, as well as have the outside world look at us and understand we're running our business with a longer-term outlook.

I think secondly, and it relates to the efficiency or lack of efficiency with this proceeding, I don't like sitting in this chair. I don't think any of us do, and I think it's -- it's not a good use of resources if we have a two-year term for us to be back here litigating all these issues and, you know, filing a case in 13 months. If we have one-year IEC, especially with a low floor, we'd have to file another case next month, and I just don't think that's a good use of resources.

Q. Well, I guess what I'm trying to get to is, if you find it unacceptable, what action does that suggest that you're contemplating, if anything?

A. If the Commission approves an IEC with two years, we would contemplate no action, other than continue to run our business.

Q. Okay.

A. Let me -- a properly crafted IEC with a floor and ceiling that allows us the opportunity to recover our fuel and purchased power expenses.

Q. Okay. Then I'll reask the question, but say -- state if you do not regard it as a properly crafted

IEC, what action would you anticipate?

A. You know, that's going to be beyond my call. I would have input to it, but we believe the regulatory compact should allow for us to have a chance to recover our prudently incurred fuel and purchased power expenses.

Q. Is it fair to say that there could be another set of parameters of an IEC not quite as attractive to Empire as the one it has most recently proposed that the company would nevertheless find acceptable, let's say?

A. I think the Staff, when they filed their rebuttal testimony, made a very fair shot at what they thought gas prices were going to be, the $6.60 EIA forecast. I think that was at the time it was filed a very fair number, and I think that ends up at that 135 million on the top.

I think that still exposes the company to risk, a lot of risk based on current gas prices, based on gas prices October 27th. And if we set that ceiling too high -- or sorry -- set that ceiling too low we could have an issue like you had in the Aquila case.

If you set the floor too low, and I think the Staff's number right now is about 110 million, if we only burn 8 million MMBtus of gas, I think we have to buy gas on the order of 24 cents a million MMBtu to hit the floor. Just can't happen.

So are there other -- besides my 120 to 140 million range, is there another range that we can find acceptable? Yes, but there's a lot of factors you have to weigh as you set that range.

Q. Following -- following on your answer, then, does the company consider Staff's proposal then to be unreasonable? I mean, what I think I'm hearing from you is that you don't, but I need to hear it from you.

A. Starting with the term of two years, we do not think that's reasonable. We think the floor is low, because we don't think it can be achieved. The ceiling, if gas -- if gas prices will fall a little bit, we won't have an issue like we had -- you guys had with Aquila, but they're going to have to fall slightly from where they're at today in order for us to achieve that number.

Q. Okay. When you say we won't have an issue, I assume you mean a situation where the company feels it's not recovering what it needs to recover; is that what you're referring to when you talk about an issue?

A. A situation where the company does not believe they're actually recovering or have a chance to recover their prudently incurred fuel and purchased power expenses.

Q. Okay. Are you suggesting, then, that if the Staff's proposal was for a three year -- had a three-year duration, you would regard it as reasonable?
A. With a three-year duration, and we haven't talked about true-ups, whether we do them annually or one true-up in three years. One true-up at three years does provide for some up and down, so that if you undercollect in some years, you might be able to overcollect in others.
Q. Is that it?
A. That's it.
Q. Thank you.
I believe in your deposition, Mr. Beecher, you characterized NYMEX gas futures as -- prices as volatile. Do you recall that?
A. Yes, I do.
Q. And they can change on a daily basis, can't they?
A. I think I even testified they change instantaneously.
Q. Okay. Certainly your testimony filings demonstrate how different days can produce significantly different outcomes. In your direct, I believe we had a number like 5.44, and then it went to $7.50, and then I believe on -- in October and then in November on the 17th $6.79. Do those numbers sound correct?

A. Yes, they do.
Q. If you check NYMEX prices on December 2nd it turns out that they have declined again since your surrebuttal position; isn't that true?
A. I don't have NYMEX December 2nd in front of me.
MR. FREY: Request permission to approach the witness, your Honor.
JUDGE THOMPSON: You may.
BY MR. FREY:
Q. I have handed you a copy of the gas industry report of NYMEX prices for the years, among other years, 2005 and 2006?
A. You've handed me page 5 from Gas Daily.
Q. I'm sorry. Gas Daily, yes.
A. Dated Friday, December 3rd.
Q. Okay. Are those the prices as of December 3rd?
A. They appear to be the prices as of December 2nd.
Q. Okay. Thank you. Are those prices -- do they show -- well, you wouldn't know what the average was, but could you -- do you have a calculator with you?
A. Of course.
Q. Could you compute an average for 2005 and

2006?

A. Together or separately?

Q. Separately and together.

JUDGE THOMPSON: Is that going to take you a little while, sir?

THE WITNESS: Yes, sir, it is.

JUDGE THOMPSON: We're just at the point where we need to recess for the court reporter. So we'll take about 10 minutes. I'm afraid you're going to have homework to do during the break.

COMMISSIONER DAVIS: Judge, I'd like to make one request. If there's going to be lots of figuring, I'd like to see this piece of paper he's put before the witness.

MR. FREY: I'll make copies available during the break.

JUDGE THOMPSON: Thank you, sir. We are in recess.

(A BREAK WAS TAKEN.)

JUDGE THOMPSON: Mr. Frey, you were inquiring.

MR. FREY: Thank you, Judge.

BY MR. FREY:

Q. Just to kind of recapitulate a little bit here, have I handed you a copy of the Gas Daily sheet as

of Friday, December 3rd?
A. Yes, sir, you have.
Q. And have you completed your calculations of the settlement prices for the years 2005 and 2006?
A. Yes, I have.
Q. And as well as averaging those across -- doing an overall two-year average?
A. Yes, I have.
Q. And what is that overall two-year average price?
A. The price for 2005 average is 6.5385. The price for 2006 average is 6.3862. Which brings me to a correction from earlier. I said that prices in '06 were probably 5 to 10 percent lower, and in fact, '06 prices are only 2.3 percent lower. But the average for '05 and '06 together are $6.46 per million Btu.
Q. Thank you. Now, this is significantly lower than your October 27th price, is it not, the $7.50?
A. How do you define significant?
Q. The difference between 6.69 and 7.50?
A. It's $1.04 less.
Q. Okay. Thank you. And it's lower as well than your November 17, 2004 price, which I believe showed an average of $6.79, wouldn't you agree?
A. It's lower than 6.79, but significantly

higher than the nominal $3 that's in our current rates.

Q. And in light of the 6.46, you now propose to move your position based on the December 2, 2004 NYMEX futures prices?

A. I don't have any testimony to that effect.

Q. So it is not your position that the most recent NYMEX gas price represents the best estimate of future natural gas costs for purposes of setting rates?

MR. KEEVIL: I'm going to object to that as a mischaracterization of Mr. Beecher's prior testimony. Like Mr. Beecher said, the time for filing of testimony has now come and gone, and he did the best he could to update it at the time under the schedule that we had, but for them to come in here on the first day of actual hearing and attempt to update the thing seems to me to be uncalled for and certainly mischaracterizes what he's previously testified to.

BY MR. FREY:

Q. I will rephrase the question, and simply ask, if the December 2nd number had been timely with respect to the filing of your surrebuttal testimony, would you have used that number?

A. You know, I updated my testimony in rebuttal; I updated it in surrebuttal. Had there been another round and this would have been the day I was preparing my testimony, I would have used it. Unlike Staff who did not update their run, unlike OPC who did really not update to new futures prices, and so, yes, I would have used it had there been another round of testimony and I could have prepared it.

Q. Thank you. Beyond recovering Empire's actual and prudently incurred fuel and purchased power costs, does Empire wish to profit from the implementation of an IEC?

A. It's not my understanding of the IEC that we can profit from it, and it's not our intention to do that. Our intention is to recover our actual prudently incurred fuel and purchased power costs.

Q. Okay. When you say it's not your understanding that you can profit from it, are you suggesting that the IEC was set up last time in Case No. ER-2001-299 such that it would not permit the company to profit?

A. If the company were to operate below the floor, then we would over-recover fuel costs, as it was set up in the 2001 case.

Q. In case -- in that case, ER 2001-299, which was the previous -- the rate case which implemented the previous IEC, the parties reached a Stipulation & Agreement with regard to the IEC, did they not?

A. Yes, they did.
Q. And do you recall the floor and ceiling gas rates that were included in those -- in the floor and ceiling of that IEC?
A. Not exactly. Subject to somebody telling me I'm wrong later, I believe it to be 3.50 to 5.50, but that's been several years.
Q. That's what I was going to suggest to you.
A. Better memory than I thought.
Q. That's very good. And -- but if it's not 3.50 and 5.50, would you say that those numbers are close?
A. That's what I remember.
Q. And what ultimately happened to natural gas prices after the company implemented the IEC back in the fall of 2001?
A. The prices fell below 3.50. The company came in and voluntarily worked out a methodology to end the IEC early. We did not try to take advantage of the fact that an IEC was in place.
Q. And I think that's a fair point. Nevertheless, do you know what Empire's actual gas price was in 2002?
A. No, I don't.
Q. I'm going to refresh your memory with a DR response.

A. Okay.

MR. KEEVIL: Mr. Frey, can I see what you've handed my witness?

THE WITNESS: Can I read it first?

MR. FREY: Sure.

MR. KEEVIL: No.

MR. FREY: It's a response to Staff DR 264.

MR. CONRAD: Judge, while that's going on, we had reference to this NYMEX exhibit. Was that marked?

JUDGE THOMPSON: No.

MR. CONRAD: Was it counsel's intention to do so?

MR. FREY: No.

MR. CONRAD: Because I remember Commissioner Davis was wanting that, and perhaps that should be in the record if it's going to be spread through the answer.

JUDGE THOMPSON: Well, you can so move, Stu, if Mr. Frey is not planning to.

MR. FREY: I'm happy to offer it in as an exhibit, your Honor.

JUDGE THOMPSON: Okay. This will be Exhibit No. 113. How do we describe this exhibit, Mr. Frey?

MR. FREY: Gas Daily sheet, December 3rd, 2004.

JUDGE THOMPSON: And do you offer that?

MR. FREY: Yes, I offer Exhibit 113 into the record.

JUDGE THOMPSON: Exhibit 113, any objections?

MR. CONRAD: No objection.

JUDGE THOMPSON: Same is received and made a part of the record of this proceeding. Thank you.

(EXHIBIT NO. 113 WAS MARKED AND RECEIVED INTO EVIDENCE.)

BY MR. FREY:

Q. Are we ready, Mr. Beecher?

A. I don't have the exhibit anymore.

Q. Ready?

A. Yes, sir.

Q. Okay. Do you know -- I'm going to just simply reask the question. Do you know what Empire's actual gas price was in 2002 based on that DR response?

A. The commodity -- the commodity price reported on that DR response for 2002 is $2.70 per million Btu.

Q. So that's the commodity price and not the price that the company actually paid?

A. I don't know whether it includes

transportation or not. It's not spelled out on this sheet.

Q. Well, if it were to include transportation, what would that do to the price?

A. Increase it.

Q. By? Can you give us a ballpark?

A. A dollar per million Btu, based on today's transportation -- fixed transportation charges. I don't know, I don't recall what the transportation charges were in 2002.

Q. Okay. Thank you. I'll ask you this. Do you know overall if Empire's actual natural gas costs were below the 3.50 level that was in the base?

A. I believe they were, and that's why we were able to terminate the IEC early.

Q. So even though -- and as I say, I take your point as a very fair point, that there was no intention to take advantage of the IEC. Nevertheless, you did profit -- did earn a profit as a result of the natural gas costs?

A. I don't know when we -- the IEC ended relative to the calendar year 2002 that you showed me. So I have no way to tell you what happened on that individual rate component.

Q. I believe the IEC ended somewhere around

November 30, December 1st of 2002, did it not? You don't know?

A. I don't know.

Q. Do you recall Empire's last rate case, ER-2002-424?

A. I recall Empire's last rate case in Missouri.

Q. Okay. And did you testify in this proceeding in July with respect to that issue of the interim energy charge, if you will?

A. I believe it was July that we had an on-the-record presentation and testimony before the Commission.

Q. And I believe you stated at that time that you were using a gas price in your modeling of 3.30 per million Btus. Do you recall that?

A. That's what we believe was the basis for our rates in the last case.

Q. Do you know if Staff was also using a number like 3.30?

A. I don't know what Staff was using. As you know, it was a settlement, so I don't know what Staff used.

Q. Now, according to your Schedule 3 attached to your direct testimony, do you have that?

A. Yes, I do.

Q. Strike that. Forget that.

Suppose that the Commission does not approve an IEC. Suppose instead that the Commission adopts the inclusion -- for inclusion in permanent rates your latest point estimate of $137.5 million. And then let's assume that the gas prices drop as they did after the IEC was last implemented in your last -- back in October 2001, and let's assume they drop dramatically to the level more reminiscent of what we historically remember. In fact, let's assume they return to the test year level of approximately $105 million.

That would mean a profit to Empire of some $30 million a year, would it not?

A. Based on our current hedged gas costs, gas would have to fall to less than a quarter million Btu for us to get to 105 million. So I'm not sure that's even a fair representation of what could happen.

Q. But it's certainly possible, isn't it? I mean, don't we all hope?

A. I don't think gas can drop to a quarter, no.

Q. In any event, for purposes of my hypothetical here, what would be -- what would be the Staff's recourse in addressing this windfall profit to

Empire?

MR. KEEVIL: I'm going to object to that. Calls for legal conclusions.

JUDGE THOMPSON: Read back the question, Kellene.

THE REPORTER: "Question: In any event, for purposes of my hypothetical here, what would be -- what would be the Staff's recourse in addressing this windfall profit to Empire?"

MR. FREY: What would be one option for Staff? I think --

JUDGE THOMPSON: Excuse me, Denny. I --

MR. FREY: Okay. I'm sorry, your Honor. I think that --

JUDGE THOMPSON: I get an opportunity to rule, but first I'm going to give you an opportunity to defend your question.

MR. FREY: Yes. Mr. Beecher is very familiar with the regulatory process, and I think he's certainly capable of giving his opinion as to what the Staff might do in this instance with the $30 million overearnings on an annual basis.

JUDGE THOMPSON: Okay. I will overrule the objection. You may answer the question if you're able. Please proceed.

THE WITNESS: I would assume Staff, OPC, Mr. Conrad, any party could probably bring a case against Empire to reduce our rates to be decided before this Commission.

BY MR. FREY:

Q. And how long would the company continue to reap those windfall profits if that was done?

A. The exact same amount of time it takes, I believe, 11-month process to decide a case, as determined by solely by this Commission.

Q. Well, you would agree, then, that the process could very likely take many months?

A. You know, we -- the procedural schedules are established and we live to whatever this Commission asks us to do.

Q. Okay. Thank you.

Mr. Beecher, on another matter, can you define the term "physical hedge"?

A. A physical hedge would be -- and I'll use a for instance -- if we entered into a contract for natural gas for 100,000 MMBtu in August of 2006 from British Petroleum where the contract is actually for the physical delivery of gas, that would be a physical hedge.

Q. And then what --

MR. KEEVIL: Before we get too far afield, that's not confidential, is it?

THE WITNESS: That was a hypothetical transaction.

MR. KEEVIL: Okay.

BY MR. FREY:

Q. And then what would be meant by a financial hedge?

A. A financial hedge could take two forms at least. One form would be for us to utilize the NYMEX market and buy or sell contracts on the NYMEX market. We utilize those types of transactions where the NYMEX, the New York Mercantile Exchange really manages your counterparty credit risks, and by that I mean counterparties have to post margin whenever their positions get too far away from the market.

Another type of financial hedge would be a swap, which for instance we might enter into with a counterparty like Morgan Stanley, in which case a strike price is defined, and then when it settles at the later date, then we either pay the counterparty or the counterparty pays us to get back to the strike price. In that case, we're managing our own counterparty risk with the entity like Morgan Stanley.

There are also variations of puts and calls and collars that would fall within that same definition.

Q. Can you de-- specifically define a call option?

A. A call option would give us the right to buy at a specific price for a premium. So for -- and this is hypothetical -- today we might pay 50 or 60 cents for the right to buy at $10 next winter, and if the price doesn't go to $10, then we wouldn't call on the call option and the call option expense would be wasted. If it went to $11, we would call on the call option and buy gas for $10 plus the cost of the call.

Q. So if I understand you, call option gives the buyer a right but not the obligation to buy a futures contract for a specific price, then, within a specified period of time?

A. You didn't say a call option for the future market, but in general, it would work on the futures market and/or on a bilateral transaction with somebody like Morgan Stanley.

Q. Well, have I -- have I described it correctly for futures contracts?

A. It gives you the right but not the obligation, yes.

Q. Okay.

A. For a premium.

Q. Right. A one-time payment?

A. A one-time premium.

Q. Okay. So in other words, you can get out of the agreement by simply not exercising your call option in that specified time frame?

A. We do not have call options in place at this time, so I don't have anything to get out of.

Q. Did you -- so you didn't secure any gas for 2005 and '06 using a call option?

A. I do not believe we did.

Q. Okay. Just one more question. And that is in the event that an IEC is implemented in this case, as a result of this proceeding, is the company prepared to absorb any undercollection of fuel and purchased power costs that may not -- that may result during the term of the IEC? I think that has been answered before, but I'm not sure so I wanted to get it on the record.

A. We are here to live with whatever this Commission decides is right and prudent and fair. We believe this Commission's going to give us the opportunity to recover our prudently incurred fuel and purchased power charges, and that's their discretion to make that decision.

And if the IE -- if we have an IEC -- and you can't ignore the legal risk, though you've asked me to several times today. You can't ignore it. It's an overriding factor. This Commission -- you know, we're not here to -- we're here to live by what this Commission decides, and if they set the top at a level that we can't achieve and the IEC is structured such that we're supposed to absorb everything above the top of the IEC, then that's what we're going to do.

Q.   Okay. So Empire has no plans to seek recovery from ratepayers for such undercollection? And I'm talking about an IEC that's authorized by the Commission that, at least at the time it's authorized, the company is pleased with.

A.   We would have -- to my knowledge, we have no mechanism to go back -- as you explained to me earlier, we have no mechanism to go back and recover money once we haven't collected it. We would reserve the right to file another rate case, other rate proceedings as we always would.

Q.   So it would be absorbed by the shareholders, is what you're saying?

A.   I believe it would.

MR. FREY: Okay. Thank you, Mr. Beecher. Appreciate it.

JUDGE THOMPSON: Thank you, Mr. Frey.

MR. FREY: Thank you, your Honor.

JUDGE THOMPSON: Mr. Coffman?

MR. COFFMAN: Thank you.
CROSS-EXAMINATION BY MR. COFFMAN:
Q. Good afternoon, Mr. Beecher.
A. Good afternoon, Mr. Coffman.
Q. You've been with Empire District Electric Company for quite a period, I guess for two stints over the last, say, 15 years; is that right?
A. Two stints since 1988.
Q. And have you participated in resource planning decisions beyond fuel procurement?
A. I have participated in resource planning recommendations. I think ultimate decisions probably weren't made by me until I got to be an officer, and even then it's a collaborative among all of our officer group and subject to approval by the board of directors.
Q. Who makes the ultimate decision about, for instance, whether to build a natural gas plant or some other type of electric generation plant?
A. I think the way the process has worked, we did internal studies. We've shared them through IRP process in Missouri in, I believe, 1995 or '6. That then is brought before a board of directors, they approve it. Those things are brought back in to this Commission.
For instance, State Line 1, State Line combined cycle were approved by this Commission, and I

don't think anybody at the time that we brought those before the Commission said they were the wrong thing to build. So it's really a process that is -- that starts from studies through board approval, and then finally approval in rates by this Commission.

Q. And by approval, you mean a certain amount of rate recovery has been recognized as prudent and reasonable in your current rates?

A. Yes, sir.

Q. Okay. What percentage of Empire's expected natural gas burn is already hedged for 2005? Do you have that number handy?

A. I'm going to have to add it up. It won't take me very long.

Q. I believe you were asked this question in your deposition. I just want to make sure I have a more current --

A. It might have changed. If I punched all the numbers on my calculator right, about 60 percent.

Q. 60 percent of Empire's expected natural gas burn is hedged for 2005?

A. That's correct.

Q. And can you give me a percentage for 2006 that Empire is --

A. We have 35 percent hedged.

Q. 35 percent hedged for 2006. Can you tell me, Mr. Beecher, what are the factors that determine the amount of gas that Empire will burn in a given time frame?

A. They are numerous, and they've been laid out in a lot of testimony, but heat rates, fuel cost, both coal and gas, availability of generating units, which can be affected by both forced and planned outages, availability of both Empire's units and other utilities' units around us, transmission line constraints, the ability to buy non-contract purchased power, market psyche, if you will, that prices non-contract purchased power. That's a few of the variables that affect what our costs are.

Q. Would changes in gas prices be another factor?

A. I think I said they were.

Q. Okay. And it is your opinion, is it not, that the current prevailing natural gas prices are somewhat out of line with market fundamentals?

A. They're outside of line for what we'd expect given the look at storage, given the fact we had a mild summer and that we've had a mild winter so far. They're probably not out of line given the fact that we've had high crude oil prices and uncertainty in the Middle East.

Q. Okay. Well, assuming that these gas prices remain higher than you would otherwise expect, could that be a factor in Empire burning less natural gas going forward?

A. In general terms, higher prices, higher natural gas price also mean that we run our gas-fired resources less and buy more off the market. And I think in my rebuttal testimony I expressed a range of 8 to 10 million MMBtu. I think your witness even said our 12-month ending number is like 7.2 million.

But in general terms, higher prices typically push us more towards purchased power when it's available, when there's transmission available.

Q. When you make a decision about whether to hedge, haven't you indicated that you rely at least in part on what's happened historically with gas prices?

A. We run a fuel model much like the Staff and company use in this case to come up with an expected amount of natural gas that we're going to burn for our native load customers in the upcoming years. We then go to our risk management policy, which I filed with my direct testimony, and in general terms that policy outlines the minimum quantities of natural gas that we need to hedge in the upcoming years, and we will use that risk management policy whether we have an IEC or we do not.

Q. But in answer to my question, isn't it true that you look at historical fluctuations in past natural gas prices in making your -- in trying to make reasonable decisions about when to hedge and when not to hedge?

A. We have studied historical futures. April and October are typically the lower times when the futures market hits lower points. So we look real hard around that time about, is that the right time to place hedges. So yes, we do use history as somewhat of a guide, but it's only one variable that we consider.

Q. Great. In your deposition, I believe you stated that your understanding of the regulatory model is, quote, we're supposed to recover our costs and expenses. I think maybe you've stated it in a way that I think might be more accurate here in answer to some earlier cross-examination. But would you agree with me that it might be more accurate to say that the regulatory model provides you an opportunity to recover your costs and a profit as well, that it is an opportunity as opposed to a guarantee?

A. I think -- and my deposition has been quite a while ago as well, but my understanding of the premise of the regulatory model is we should have an opportunity to recover our prudently incurred expenses plus a profit on our investment.

Q. Are you familiar with the philosophy and the rationale that utility regulation is intended to mimic competitive forces?

A. I think in this hearing room is the only time I've ever heard that, but I've heard it several times.

Q. Are you aware of any competitive industry that has a guarantee of recovering certain expenses?

A. No, and I'm also not aware of a competitive industry that has an obligation to sell kilowatt hours.

Q. If Empire finds a way to lower its operating costs below a level that is built into permanent rates, holding all other factors equal, wouldn't Empire be able to keep the excess revenues until a subsequent rate case?

A. In my history with the company, which I think you pointed out goes back to 1988, I don't know that we've ever approached our -- what we consider to be our authorized allowed rate of return, so -- but in theory, if you set rates and they fall, then the shareholder benefits. If you set rates and costs rise, then the shareholder eats it.

Q. Wouldn't you agree with me that the traditional method of setting rates at a set amount does provides some incentive to lower costs?

A. It's the way the process works. I'm not sure that it provides us incentive. You know, we come to work every day trying to provide safe, reliable service to our customers and earn a fair rate of return for our shareholders, and we're driven by safety and reliability, and we're driven by trying to create a return for our shareholders.

Q. Okay. In this case, at least in your initial testimony, you have requested an interim energy charge for a five-year period. Now, did I hear you say earlier that you weren't sure whether that would include true-ups during that five-year period or whether there would just be one adjusting true-up at the end of that five-year period?

A. I think the Commission is free to determine whether there's one true-up or five true-ups, at their discretion.

Q. Okay. Do you have any knowledge of what the average turnover of customers on the Empire electric system is in Missouri?

A. You've asked me that question before, and I do not know.

Q. You haven't learned anything about that?

A. No, I did not.

Q. But you understand the concept that there is some churn in ratepayers, some of your customers are likely to leave the system in any given year?

A. I understand people move.

Q. And that if there was a rate that they were paying that was subject to refund, that there may be some issues regarding how you would find that customer and then get any refund that was due to them in their hands?

A. I understand that was an issue in the last IEC, and I think we came up with some charitable organization should we not be able to find the customers, but I'm not aware of the specifics of that.

Q. And would you agree with me that the longer that an interim rate of that sort were in effect, the more difficult that those issues might become?

A. It's probably harder to find somebody that moved five years ago than it is somebody that moved last month.

Q. In your direct testimony, you make a statement on page 5, line 13, that without an IEC or an FAC, which I assume you referred to an interim energy charge or fuel adjustment class, the parties to the case are forced to stake out positions. In other words, I assume what you're saying is that without some sort of flow-through fuel mechanism, parties have to guess at what a fair level of fuel expense is?

A. I think that's probably in retrospect even true of an IEC or an FAC.

Q. That's where I was going, Mr. Beecher. Even with an IEC, it is true that you have to pick a ceiling and you have to pick a floor and you have to pick a variety of terms that are fair, based on what you would guess fuel prices to be in the future; is that not fair?

A. That's fair. The vein of my statement was with an IEC, much like a black box settlement, we can all assume slightly different things and come up with a similar answer. And I think there's a statement in my rebuttal testimony about Staff's purchased power quantity, and though they have more purchased power and we have more combined cycle generation, those differences are not that much because the prices are similar. So an IEC makes some of those differences less apparent.

Q. Would you agree that the presence of some flow-through fuel mechanism or the lack of one sends certain policy signals to the -- would send a policy signal to your company one way or the other regarding how you might operate or procure fuel?

MR. KEEVIL: I'm going to object to that as being compound. I think he said the presence and then the absence, so I'm not even sure what the question is, but it's compound.

MR. COFFMAN: I'll ask it in two parts then.

BY MR. COFFMAN:

Q. Would the presence of an interim energy charge send certain policy signals to your company?

A. I think it sends a policy signal to the capital markets that this Commission believes it's important for this company to actually recover our fuel and purchased power expenses, and that's a very important signal. I think it will also signal because I -- I filed my -- our risk management policy with my testimony, we've had plenty of opportunity to talk about it, that the policy that we've undertaken is a prudent policy, and that we're managing our fuel and purchased power costs correctly.

Q. But in your opinion, it would not send any different incentives to your company one way or the other about how you manage your fuel costs?

A. You know, my job is to try to get my guys to make the plants run as well as they can, to do it in a safe manner. It's to try to get our folks to buy the cheapest purchased power, to look in the marketplace, to try to procure gas according to our policy. That's not going to change what I do when I go to work every day.

Q. Now, do you participate in regulatory proceedings in other states where Empire provides electricity?

A. I participate.

Q. Okay. And you're aware of the energy cost adjustment that's used by some gas -- or some electric companies in Kansas?

A. Yes, I am.

Q. And would you agree with me that there are a whole set of issues and complexities that need to be addressed when you're dealing with fuel -- flow-through fuel mechanisms such as an energy cost adjustment that you don't have in a typical rate case?

A. I've never testified, I don't believe, about an energy cost adjustment factor in Kansas, Oklahoma or Arkansas.

Q. By any chance would you be aware of a current case involving Aquila before the Kansas Corporation Commission and issues about the energy cost adjustment there?

A. I'm aware they have a case going on, because our Kansas attorney and our -- one of our Missouri regulatory attorneys have been over there trying the case, but I don't know any details.

Q. Are you aware of contentions being made in that case that cheaper generation was diverted to Missouri and more expensive contracts were diverted to Kansas because it had a flow-through fuel mechanism?

A. No.

Q. Would you recognize that being a multi-jurisdictional electric company, that the presence of a flow-through mechanism might create some issues about interexchange sales and issues about how energy flows between different states?

A. What I am aware of is Missouri is an oddity in this nation, not having a flow-through mechanism, and if we can overcome it in the majority of states in the nation, I don't know why we can't overcome it here.

Q. I'm going to ask you a question that I asked in your deposition, and I just want to make sure I understand. What percentage of Empire's total energy load is generated from its natural gas plants?

A. Can you refer me to the page number of my deposition?

Q. Page 100.

A. Okay. I found page 100. Can you reask the question?

Q. Yes. I was wanting to know how much of your total electric load on an energy basis is generated from your natural gas plants?

A. In my deposition, I say between 30 and 35 percent of our energy was either natural gas or non-contract purchased energy, which is consistent with the testimony that we provided in July to this Commission.

Q. And that's still the case?

A. It's still the case.

Q. I have a couple more questions about your surrebuttal testimony. I believe you testified here just earlier that you do trust this Commission to balance the interests and give a fair rate to Empire. And I assume that you would agree that in a rate case, as uncomfortable as it may be to go through the process in some points, the end result is generally one that does balance the interests and produce a result that is at least based on some evidence and treat shareholders and ratepayers fairly?

A. I trust that this Commission is going to provide a fair balance in this case.

Q. You have stated some, I guess, reluctance to I guess have rate cases as frequently as every two years, and I just wondered if, as provided that you were receiving what you thought was fair treatment, is there any reason to believe that that isn't a good approach? I mean --

A. These cases do take a lot of resources.

They take a lot of effort from all parties involved, but -- and it also provides uncertainty as the capital markets look at us about our financial performance. So, you know, if a case is justified either from overearnings or underearnings every two years, then that's -- that's what it will be.

Q. Isn't it true that the longer you wait between cases, the more expense that is usually involved in digging up information and providing everything that's needed for the parties to perform audits?

A. I guess that depends on the extent of your audit.

Q. Is it true that to -- well, I don't know if you can answer that.

You would agree with me, though, that the law regarding whether an interim energy charge can be authorized by this Commission is something that would ultimately have to be determined through a court of law?

MR. KEEVIL: Judge, I guess I should object to that. We're calling for a legal conclusion, but understand I may be overruled.

MR. COFFMAN: That may be a fair objection. Let me just refer you to your last --

JUDGE THOMPSON: Are you withdrawing the question?

BY MR. COFFMAN:

Q. I will withdraw that question and simply refer you to the next to last question in your surrebuttal testimony on page 7. If the Commission determines that an IEC is lawful under Missouri law, it may utilize an IEC in this case, as it has in a previous case, regardless of OPC's opinion. And I just wanted to ask you, has your legal counsel informed you as to --

MR. KEEVIL: John, I'm going to object to that one, I know, before -- before you even finish, I know I'm going to object to that one, John.

JUDGE THOMPSON: And I'm going to sustain it.

MR. COFFMAN: Then I will be done.

JUDGE THOMPSON: Very well. Questions from the Bench, Commissioner Murray?

COMMISSIONER MURRAY: Thank you.

QUESTIONS BY COMMISSIONER MURRAY:

Q. Good afternoon, Mr. Beecher.

A. Good afternoon, Commissioner Murray.

Q. Is it accurate that the company's first choice would be a fuel adjustment clause?

A. That's accurate.

Q. And what is the difference between a fuel adjustment clause and an interim energy charge as you've proposed here?

A. Mechanics of the fuel adjustment clauses can vary state to state, but in essence a rate is set beforehand, much like you have a fuel adjustment clause in Missouri for gas utilities, and then you adjust the rates later based on the actual costs that were incurred. With the IEC -- and with the fuel adjustment clause, really no risk is passed on other than prudency to the utility.

With an IEC, there is still risk on the company because we're going to set a ceiling and if we operate outside of the ceiling, then it's risk to the company, but with an opportunity to refund to the customers if prices in fact fall.

Q. Is there any risk to the customer left with an IEC?

A. There is risk that we could fall below the collar, below the bottom. There is risk that customers could move away, but in whatever time value of money there is effect to the customer, but I think that's allowed for to be compensated at a pretty healthy interest rate the way the IEC has been implemented before.

Q. Well, it seems in evaluating these different methods that the fuel adjustment clause is the one that would provide the most accuracy in terms of fuel costs to customers.

A. We believe it provides the most accuracy and it's the quickest response time, don't have to worry about customers leaving as much and that kind of thing. I would agree with you.

Q. Is that the method that the financial community prefers?

A. I believe it's the method that the financial company -- financial community prefers and, you know, in fact, it's my understanding that most states in the nation operate with some sort of fuel adjustment clause mechanism.

Q. When Staff attorney was discussing with you the interim energy charge that was set for Empire back in 2001, he asked you about the rates changing after the range was set. Do you recall that?

A. Yes, I do.

Q. And you said that because prices fell below the 3.50, the company came back in to voluntarily end the IEC early; is that correct?

A. That's correct.

Q. Is that somewhat the opposite of what occurred after the Aquila interim energy charge was stipulated to?

A. My understanding was prices went above the collars and Aquila wasn't able to recover their what they felt to be prudently incurred costs.

Q. So that was kind of the opposite situation?

A. Yes.

Q. The range was set, and instead of falling below the range, the prices actually ended up above the range; is that correct?

A. I think that's correct, ma'am.

Q. And then did Staff or OPC suggest voluntarily ending the IEC early to prevent that under-recovery by Aquila, or do you know?

A. I do not know.

Q. The Office of Public Counsel attorney was asking you about a case going on in Kansas regarding Aquila. Do you recall that?

A. Yes, I do.

Q. And I believe he was trying to establish that the presence of a flow-through mechanism creates an incentive for a company to not be as concerned about the fuel costs or to divert higher costs to a state that doesn't have a flow-through mechanism.

A. I believe that's what he was insinuating.

Q. Well, assuming that such an incentive might exist, would that incentive disappear if all of the states had a flow-through mechanism?

A. Yes.

Q. And Missouri is one of three that does not; is that your understanding?

A. Arkansas has a fuel adjustment clause which we use. Oklahoma has a fuel adjustment clause which we use. Kansas legally authorizes a fuel adjustment clause but is not approved in our current rate structure. And Missouri does not authorize a fuel adjustment clause.

COMMISSIONER MURRAY: Thank you. Thank you, Judge.

JUDGE THOMPSON: Thank you, Commissioner. Commissioner Clayton?

QUESTIONS BY COMMISSIONER CLAYTON:

Q. Have you reviewed all the testimony regarding this issue filed by Staff, by OPC and by all the intervenors?

A. I believe that I have.

Q. So you're reasonably familiar with the positions of each of the parties?

A. Yes.

Q. It was stated earlier that the methodology used in determining a base rate cost or just a flat amount of revenue requirement necessary for the company to provide power, the methodology used by the Office of the Public Counsel and by Empire is the same or very similar; is that an accurate statement?

A. I don't -- I don't believe I'd characterize it quite that way.

Q. How would you characterize it?

A. Empire has a model run and a model that we utilize, and Staff has a model that they utilize. I think it's OPC's position that it's -- that Staff should utilize 4.68 in their model run and whatever that number is, then I think that's what they support, though I couldn't find any place in testimony where OPC's number is spelled out. And I think you asked Mr. Coffman that early on, and he referred to the schedule that shows a $12 million difference, but I can't find it any place in their testimony what that number really is.

Q. Well, let's look at it this way: Their price for gas is a dollar and a penny less in their testimony than yours. Does $12 million sound right for a dollar difference?

A. Most of the fuel runs have between 8 and 10 million MMBtu of gas in them, so between 8 and 10 million would seem to me to be the right number, and I think part of their 12 million may be they have not adjusted for Missouri jurisdictional share. That might be the difference. I don't know.

Q. Okay. Okay. And what is your understanding of the price of gas that Staff uses?

A. Staff used our actual hedged position as of June 30th and combined that with an EIA forecast of $6.60 per million at the time they filed their testimony.

Q. And that is? What was that range? I have written down $3.20 to $5.62. Does that sound accurate?

A. That sounds very accurate.

Q. Okay. Now, if we use Staff's figure of $5.62 and the Empire position of $5.69, what other differences are there in coming up with a dollar amount difference between the positions of those -- of Empire and Staff?

A. I think Staff's model run at 5.62 gas is $135 million. Empire's model run with the slightly higher gas is $137 million, so there's about $2 million of difference between those numbers.

Q. And Staff files their position not as a base rate amount but as a ceiling as part of an IEC package?

A. That's correct.

Q. Does the intervenor -- I think there's only one intervenor that has filed testimony on this issue. Does the intervenor use a price of gas in determining its cost of providing power, fuel cost, power purchase agreement cost?

A. And this is going to go back to some more confusion, but in the direct testimony of Mr. Brubaker in the version that we had at our table, Staff -- or Praxair Witness Brubaker suggests a range of 110 million to 120 million. In my rebuttal testimony, we -- we attempted to back calculate what that meant for gas price, and we back calculated a range of 3.20 to 4.20.

Q. Okay. If -- for argument's sake, if we were to make the assumption that an IEC was impermissible absent an agreement of the parties, then in comparing the positions of parties, is it a better way to track the actual dollars in total of revenue requirement or would it be better to track the actual price of the gas as the way to measure the positions of the parties?

A. I think with or without an IEC, the right way to look is the total cost.

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

A. Okay.

Q. Everybody keeps coming back to the IEC.

A. All right.

Q. So let's drop that in your answer, please.

A. All right. Then total dollars, fuel and purchased power, and then to quantify for rate purposes, we need to say for in this case 5,092,000 megawatt hours to quantify the rate per kilowatt hour that goes into the calculation.

Q. Quantify the rate per kilowatt hour is the best way of doing it?
A. I believe so. And that's so the revenues can be matched with the expenses. So there's got to be kilowatt hour number that's associated.
Q. At one point in Empire's testimony -- and I don't know what round of testimony it is, it was -- the ceiling amount of high end was $25.72 per megawatt hour. Is that different from your final position, because that may have been in your direct testimony?
A. The 137.5 million divided by 5,092,000 megawatt hours comes out to $27 per megawatt hour.
Q. It's an accurate statement that without an IEC, then, there would be no time issue and -- in setting just the actual dollars that's been referenced in the IEC debate, correct?
A. I don't believe so.
Q. If we just set a flat amount -- and I guess the way it's been phrased, described is the traditional method of setting rates with regard to this power cost -- there would never be any reconciliation; is that correct?
A. There would be no reconciliation and true-up and we would be subject to the same rate case procedures that we always are.
Q. So this would be -- by just setting a flat

amount would be -- there would still be risk borne by the ratepayer and the company if we just set a base amount?

A. Yes.

Q. Would you agree or disagree that there is less risk to the company if a base rate amount is set than if we did an IEC, an interim energy charge?

A. If you set it at $137.5 million, there is slightly more risk -- I don't want to answer IEC if -- I didn't listen to your question very well, sir, but at --

Q. Well, we are an oddity around here, so --

A. At $140 million, if there was no risk of litigation, we would have less risk with a ceiling of 140 than we have with a -- one cost of 137.

Q. You would have less risk?

A. Because the ceiling is higher, so we could have more cost. But if the Commission determines that the single price is 120 million, like Praxair proposes, and our costs actually end up being $137 million, then we've got a inordinate amount of risk.

Q. But there would be a range. I mean, how do you calculate the risk that the company would actually have to refund money back to the ratepayer because there is that range on the interim energy charge?

A. On the interim energy charge within the band it's designed so there really is no risk within the band. If we operate within the band, we're going to refund the excess money back to the customer.

Q. If you operate within the band?

A. That's correct.

Q. But we don't know for sure whether you'd be able to operate in the band; is that correct?

A. That's correct.

Q. So there's risk there, too?

A. That's correct.

Q. So there's risk on both methods?

A. Yes.

Q. And you're saying that it's just slightly less risk to have a firm certain $137.5 million?

A. Versus a $140 million ceiling. If we adopted Staff's position with $135 million ceiling, then we would have less risk with the firm fixed $137 million price.

Q. In Arkansas and in the progressive states of Arkansas and Kansas, Oklahoma --

A. We're an oddity, too.

Q. Are you from Arkansas?

A. No. I'm from Kansas, even more odd.

Q. It's all becoming clear now.

MR. CONRAD: Things evolve, Judge.

JUDGE THOMPSON: Sure.

BY COMMISSIONER CLAYTON:

Q. In those systems where a fuel adjustment clause is permitted, would you describe the prudency review in those instances? Is there a prudency review at all done by the commissions in those respective states?

A. I believe that there is, but I have not participated personally in any of those processes.

Q. So you're not familiar at all with the level of prudence?

A. No, I'm not.

Q. You're not familiar at all with the level of review of fuel costs in those fuel adjustment clauses in those states?

A. I am somewhat familiar with what's going on with Arkansas right now. There's direct and will be rebuttal and surrebuttal testimony, just like there is in this case surrounding all of the issues. So I wouldn't think it's any less scrutiny than we get in Missouri.

Q. Okay. How about with regard to the portfolio of fuels used by a utility? Do they make reviews of Empire or other companies in Arkansas or Kansas or -- I'm not sure if you-all are in Oklahoma or not.

A. Yeah, we're in Oklahoma as well. I believe Missouri is the only state where we come have integrated resource planning meetings with the Commission Staff and

Office of the Public Counsel. I do not believe we have that type of planning meeting in the other states right now.

Q. So there's no review of the fuels associated with the fuel adjustment clauses?

A. Well, there's a review during the rate case.

Q. But only on the prudency of the purchasing of the fuel, not on the actual portfolio?

A. That would be my limited understanding what's going on, yes.

Q. What is the -- and I don't know if this is highly confidential or not, but can you tell me the price of gas that is hedged right now, quantity and the price? If that's HC, then I'm not going to go there.

A. It is not HC. If I can find it, I'll read it to you here. We have 5,300,000 MMBtu of gas hedged in 02/20/05 that's going to be close to an average price of 4.80. And I can take a second here and calculate it if you want.

Q. No. That's okay. That's okay. And how much for 2006? And that's all I'm going to ask for.

A. For 2006, we have 2,600,000 MMBtus hedged at an average price of 4.65.

Q. Okay. If we were to grant Empire the

$137.5 million for this -- for this item in rates, and prices stayed the same, then Empire would do quite well at those prices?

A. Well, we'd have to buy the remainder of gas at market, which is much higher, and if prices stayed as they were today, we would expend $137 million and recover our expenses.

COMMISSIONER CLAYTON: Okay. I don't have any further. Thank you.

JUDGE THOMPSON: Thank you, Commissioner Clayton. Commissioner Davis?

COMMISSIONER DAVIS: I'll pass for the moment.

JUDGE THOMPSON: Thank you, sir. Commissioner Appling?

QUESTIONS BY COMMISSIONER APPLING:

Q. Mr. Beecher, how are you doing?

A. Just fine. How are you, sir?

Q. I have one question. I wasn't going to ask this question, but Commissioner Murray opened up the door for me, so I will go and ask it. You say Oklahoma and Kansas have a fuel adjustment clause that you take advantage of in those two states, right?

A. Arkansas and Oklahoma have fuel adjustment clause that we take advantage of. Kansas authorizes it, but it is not authorized for Empire at this current time.

Q. Okay. Just briefly, please describe the fuel adjustment clause that you envision if you got one in the State of Missouri. What would it look like? Let me give you a little prompting about what I mean. The notice, disclosure customers -- to your customers, frequency of audit -- audits and tune-ups -- true-ups, I mean, Commission ability to suspend, any party's ability to appeal,kind of what you go through in Oklahoma and also in --

A. I think the way we envision today is a fuel adjustment clause being enabled by the Legislature in the best-case sense, and then a rulemaking by this Commission that would establish those details so that you could establish them with the frequency that you would desire, much so you could establish them like the gas rules today in Missouri or you could establish them differently.

But each state that I am aware of has slightly different true-up proceedings, slightly different time frames, and I would think that that could be left to this Commission's discretion.

Q. Have that process worked very well for Empire in those two states?

A. I believe that it has.

COMMISSIONER APPLING: That's all the

questions I have.

JUDGE THOMPSON: Thank you, Commissioner. Commissioner Davis?

QUESTIONS BY COMMISSIONER DAVIS:

Q. I think you've done a pretty good job of explaining what the lay of the land in Arkansas and Oklahoma is. Now, can you briefly tell me a little bit more about the situation in Kansas as to why you don't have the use of the fuel adjustment clause in Kansas?

A. I don't know exactly when Empire agreed not to use the fuel adjustment clause in Kansas, but it was, I believe, in the 1980s in a period of when we had a lot of coal-fired energy and it was very non-volatile prices. In our last rate case in Kansas, which I believe was 2002, happened to be a time when gas prices were low, and we settled that case, settling a lot of issues without an ECA or without an energy cost adjustment factor.

I can tell you that when we do file in Kansas, we are going to ask for re-implementation of the energy charge adjustment factor in Kansas. So there's a lot of history that led us to where we're at.

Q. When you talked to analysts and people who, you know, watch the industry from an investor perspective, do you find that -- find that they prefer utilities in Oklahoma and Arkansas as opposed to utilities doing business in Missouri?

A. I don't talk to the analysts and rating agencies as much as Mr. Knapp or Mr. Gipson would, but in my conversations, the first question out of their mouth after hello is, what's the status of fuel adjustment clause in Missouri? It's the uppermost question on their mind.

Q. So in your opinion, the lack of a fuel adjustment clause in Missouri is a hinderance to investment in your company?

A. They look at us at much higher risk because we do not have it, so it is a hinderance in that respect, yes.

Q. Earlier I believe one of the counsels asked you some questions about if you hypothetically owned a business. If you owned a business and you were making widgets, and say the price of steel went up, would it be reasonable to assume that you could pass those costs on to the customers?

A. If everybody's price of steel went up, I would expect everybody's prices to go up, and then hence pass it on to the consumer.

COMMISSIONER DAVIS: Just a second here. No further questions at this time.

JUDGE THOMPSON: Thank you, Commissioner.

COMMISSIONER APPLING: Judge, could I add one additional question, please?

JUDGE THOMPSON: Absolutely, Commissioner. Please proceed.

FURTHER QUESTIONS BY COMMISSIONER APPLING:

Q. You have said that the crediting agencies favor the fuel adjustment clause. That's what you said a couple times here. Mr. Beecher, do you have any evidence that shows how much customers can expect to save if there is a fuel adjustment clause?

A. I don't have any evidence, Commissioner. I think fuel is one thing that the -- you know, the rating agencies are looking at cash flow in order to make sure that bond payments are made. So part of that equation is are you really recovering all your expenses, not just your fuel and purchased power, but are you really recovering your expenses, are you getting cash through depreciation and what kind of ROE are you making? And so it's not a single issue with the bond rating analysts.

Q. But you see where I'm coming from, there's two sides?

A. I understand. I don't have that evidence, sir.

COMMISSIONER APPLING: Thank you very much, sir.

COMMISSIONER MURRAY: Judge?

JUDGE THOMPSON: Yes, Commissioner, please.

COMMISSIONER MURRAY: A couple follow-ups, please.

FURTHER QUESTIONS BY COMMISSIONER MURRAY:

Q. This is pretty basic, but the 5,092,000 megawatt hours, $27 a megawatt hour number that you cited earlier, is that based on a historic test year?

A. The 5,092,000 megawatt hours is the Staff's weather normalized adjusted to the end of the test year number. Empire had filed at 5,042,800 and we adjusted based on a 12/31 test year and we adjusted to the Staff's number of 5,092,000, which is a weather adjusted normalized number.

Q. For the test year?

A. At the end of test year, yes.

Q. And the $27 number, does that come from test year numbers as well?

A. The 137 million, $137.5 million is derived from the costs that it takes our units to serve that 5,092,000 megawatt hours of energy.

Q. During the test year?

A. No. As ran in a normalized model. So it's not an adjusted test year. It's the kilowatt hours are adjusted, and then in the fuel model we put heat rates of all our units, normalized outages, gas costs, coal costs, and the 137 million is derived from a normalized look at all those variables.

Q. But it's a going-forward look; is that what you're telling me?

A. It's based on costs today, based on some historical averages for forced outage rates and heat rates and coal costs, for instance, adjusted to the most current number that we have at the time.

Q. Through the --

A. Really through -- the kilowatt hour number, I believe, was adjusted through June 30th, 2004.

Q. Okay. In that markets hate uncertainty, if --

A. So do I.

Q. -- if we were to give an IEC in this case and then it were appealed, would that create more uncertainty, do you think, than if we were just to set the fuel costs in the basic rates like we have in the past, or would that depend on the level at which we set them?

A. Well, it depends on both. I think an appeal process would create a large amount of uncertainty. To the extent that we set the floor at $110 million like the Staff has and we collected the entire IEC under bond and couldn't recognize the revenue, that could cause a serious cash flow and interest coverage problem as the rating agencies look at us going forward.

Q. And that costs the ratepayers?

A. Yes, it would.

Q. Okay.

A. If our bonds are downgraded and we have to pay more in interest costs, yes, it would.

COMMISSIONER MURRAY: And I think that's all. Thank you.

JUDGE THOMPSON: Thank you, Commissioner. Further questions from the Bench?

COMMISSIONER DAVIS: I've got one, Judge.

JUDGE THOMPSON: Please proceed, Commissioner.

FURTHER QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Beecher, if you're not familiar with this, that's fine. Can you refresh for my recollection one more time, I think the range of the -- was it the interim energy clause or the fuel adjustment clause you suggested should be what, between 110 or 140 or 120 and 140?

A. 120 and 140 in my surrebuttal testimony.

Q. Okay. And I believe one of the other parties had recommended that it be capped at 120; is that correct?

A. Praxair Witness Brubaker recommended a range of 110 to 120 in his direct.
Q. Okay. And so that's difference of about -- I mean, from his top number to your top number, there's a difference of approximately $20 million?
A. On a total company basis, that's correct.
Q. On a total company basis. Now, I'm trying to think. Based on the numbers that are out there for, you know, return on equity, I mean, assuming all factors, all other factors to be equal, I mean, what is the difference for you between, say, a 9 percent return on equity and an 11 percent return on equity? How many million dollars would that be roughly?
A. We have about $315 million of Missouri jurisdictional common equity, and 2 percent of that 315 million is 6.3. That would be before any tax effect. Which gets you up to about $10 million grossed up for taxes.
Q. So roughly the difference between, you know, the maximum, Praxair's maximum, your maximum, and then the return on equity, and then using some of the top numbers out there would probably be, you know, actually the ROE amount would probably be less than the difference?
A. I think if you will look at the -- there's a reconciliation run. The value of the fuel difference

between Staff and company is listed on there as 22 million, and I think the value of the ROE difference is 12 million.

Q. You'll have to forgive me. My accounting skills are somewhat limited, and I've seen at least three or four reconciliations here in the past couple of days, so if you have --

A. On the version that I have it shows a fuel and purchased power permanent rate difference of 22 million and ROE of 11.6.

COMMISSIONER DAVIS: Okay. No further questions.

JUDGE THOMPSON: Any other questions from the Bench?

(No response.)

JUDGE THOMPSON: Okay. Recross based on questions from the Bench. Mr. Molteni is gone, so we'll start with you, Mr. Conrad.

RECROSS-EXAMINATION BY MR. CONRAD:

Q. I'm going to enter the electronic age here. Mr. Beecher, we were talking -- and I believe you spoke with a couple of the Commissioners here, I think most recently Commissioner Davis -- about that 120 to 140 million figure. You recall that discussion?

A. Yes, sir.

Q. What gas burn did that assume?
A. The fuel runs all have between 8 and 10 million MMBtu. My -- and I don't have the exact number in front of me, but the higher number is going to have closer to the 8 million MMBtu number in it, and the lower number is going to have closer -- well, I say that. I do have the numbers. Just a second.
The $137 million number has 10,217,000 million MCF.
Q. Okay.
A. The $140 million number has 10,078,000 MCF.
Q. But both over 10 million?
A. Both in the range of 10 million.
MR. CONRAD: Judge, I don't have -- I don't have a hard copy of this today, but I will get you one, get one for the record.
BY MR. CONRAD:
Q. Mr. Beecher, do you recall working with Ms. -- I believe and I don't want to mispronounce her name, Ms. Tietjen?
A. Yes, I do.
Q. On her estimate?
A. I have her testimony here someplace.
Q. And do you recall working with her on a response to data -- Staff Data Request 440?

A. I don't know what Staff Data Request 440 looks like.

MR. CONRAD: Well, if I could -- I don't know how to do this one, judge.

JUDGE THOMPSON: You may approach.

BY MR. CONRAD:

Q. I should have asked.

A. Can I keep this copy?

Q. I'm going -- I'm showing you what actually is an Excel spreadsheet, and I want to bounce, Mr. Beecher, if I can, if I can manage the clicker here, to the actual Data Request and the response. And you can run the buttons and run it down. Just don't hit control/alt/delete, or we'll all be in terrible trouble.

A. Okay. This is --

Q. I guess you can get there this way.

THE WITNESS: Would you like to see this, Mr. Keevil?

MR. KEEVIL: E-mail me.

MR. CONRAD: I'm sorry, Jeff, I didn't know we were going to get into this today.

MR. KEEVIL: It's a page that shows gas costs.

MR. CONRAD: What I was showing your witness before, here's the --

MR. KEEVIL: From Angela Cloven by Roberta McKiddy, supposedly.

MR. CONRAD: Comes off the Staff's website. We circled all the Data Requests.

THE WITNESS: I didn't prepare this response, and I haven't seen it until today.

MR. CONRAD: Well, is -- let me just ask counsel, is Ms. Clovin going to be -- since she has responded to a large number of these Data Requests from everyone, is she going to be on the stand to authenticate them?

MR. KEEVIL: No, she -- Ms. Cloven is not testifying. For all -- I don't know what that is, Stu, that you showed me there. You've got an e-mail.

THE WITNESS: Depending on --

MR. CONRAD: I'll print the thing out, Jeff.

THE WITNESS: And depending on your question, I might be able to answer it.

BY MR. CONRAD:

Q. Let's just see. The spreadsheet that was attached to her response to which she responded to Ms. McKiddy, and then we get all of this, do you know what a TME cost would stand for?

A. That would stand for 12-month ending.

Q. 12-month ending. The MMBtu burn according to this for 12-month ending December 31st, 1999, 6,869,203 MMBtu. For the next year, 6,003,385. The next year, 7,421,879. For the year end of 2002, 7,000,775. TME 12/31/2003, 6,449,607 MMBtu.

Now, if you modeled gas costs on something smaller than 10 million, would you agree with me that that would have impact on that 137 million number?

A. Changing gas costs would change the unit dispatch characteristics and change the number. In this case, it would force it to non-contract purchased power, which we really don't know what it's going to be priced at either.

Q. But that is the historic -- I'm not asking you to admit it. I'll -- I will provide that as an exhibit.

A. You know, I think especially in '99 and 2000, since that time frame we've added 300 megawatts of combined cycle. We've added 100 megawatts of FTA, simple cycle gas programs. We've had added 400 megawatts since that time.

Q. And TME June 3, 2004, 7,655,451?

A. If that's what it says, I think that to be in the right range.

Q. But that's some 2.5 million MMBtu less than

the 10 million that you modeled on, right?
A. I didn't model on. The model predicts usage based on inputs.
Q. But you do agree with me that if you multiply whatever gas costs by fewer units, it's going to have an impact and it's going to have a downward impact on the total cost, am I correct?
A. It depends what you replace it with.
Q. Sure.
A. If you replace it with non-contract purchased energy at the same cost, it won't change it at all.
Q. But all other things being equal, Mr. Beecher.
A. All other things aren't equal. As soon as you change one variable, everything changes.
Q. Okay. But if the -- if there was contract purchased power or non-contract purchased power out there that was available at a lower cost, wouldn't it be prudent to purchase that?
A. We have people that that's their job every day to balance the dispatch.
Q. I understand that's what their job is. Now answer my question. Wouldn't it have been prudent to purchase that?

A. In an actual day-to-day period, we try to prudently purchase the lowest cost alternative for our customers. In the model you don't know whether it's actually there or not. It's non-contract assumption.

MR. CONRAD: Well, I think, Judge, I'll discontinue this at this point until we can get this reduced to paper, find somebody to acknowledge it, because there's obviously some breakdown in communication here. We get Data Requests and we've gotten sev-- you know, hundreds of responses back from Ms. Clovin. Now, I don't know who Ms. Clovin is, but --

JUDGE THOMPSON: Certainly I don't know who she is. Are you requesting an opportunity to take up your recross of this witness tomorrow?

MR. CONRAD: We may need to just for a moment just simply to get this in, so he has a fair opportunity and his counsel has a fair opportunity to see it.

JUDGE THOMPSON: Okay.

MR. CONRAD: As I said, I would have had this if I had known we were going to get into this today.

JUDGE THOMPSON: Do I hear any objections?

MR. KEEVIL: To that?

JUDGE THOMPSON: Yes, to that.

MR. KEEVIL: I have none.

COMMISSIONER DAVIS: Can I ask another question?

JUDGE THOMPSON: You may.

COMMISSIONER DAVIS: Okay.

FURTHER QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Beecher, your estimate was 120 million to 140 million for an IEC charge, correct?

A. Yes, sir.

Q. And in that estimate, how many MM -- what was the range of MMBtus being consumed?

A. In my rebuttal testimony, I go to quite a little bit of work to explain the ranges that the models predict are in the 8 to 10 million range. In the 140 million run, it's close to 10 million MMBtu, but there are several model runs that we've made that would encompass numbers between the 120 and 140 that might only have 8 million MMBtu in there, which is close to the number especially adjusted for growth and the fact that we have more units now that Mr. Conrad just presented.

COMMISSIONER DAVIS: Well, all right. Thank you.

JUDGE THOMPSON: Other questions from the Bench? Of course, you get a new crack since there's been a new question, but we'll take that up tomorrow.

Mr. Frey?

MR. FREY: Thank you, Judge.

JUDGE THOMPSON: And I'll just warn you, we're a now at 25 after 4, and I plan to recess promptly at 5.

MR. FREY: Okay. I have just one question. Thank you.

RECROSS-EXAMINATION BY MR. FREY:

Q. Mr. Beecher, I believe Commissioner Davis asked you with respect to the latest reconciliation about the difference between Staff and the company on fuel and purchased power in permanent rates. Do you recall that?

A. Yes, I do.

Q. And the number was $22,134,119?

A. Yes.

Q. That number is offset by the interim energy charge of 19,587,103, is it not?

A. I believe the 22,134,119 is associated with your floor of your IEC that is around 110 million, and with the IEC that takes you -- and that's the Missouri jurisdictional piece of that that's listed on this page -- it takes you to ceiling on a total company basis of about 134 to 135 million.

Q. Okay. And so that difference would be how much, approximately?

A. Difference between?

Q. Between the ceiling and the floor.
A. About $24 million total company, probably 19,000,587 Missouri jurisdictional.
MR. FREY: Right. Thank you very much.
JUDGE THOMPSON: Thank you, Mr. Frey. Mr. Coffman?
MR. COFFMAN: Thank you.
RECROSS-EXAMINATION BY MR. COFFMAN:
Q. Mr. Beecher, I have a clarifying question. I believe in response to Mr. -- or rather Commissioner Clayton's inquiry, you gave a number regarding your hedged positions in 2005?
A. Yes.
Q. Did I hear you say you had an -- you've hedged an average price of $4.80?
A. And I said I have four numbers I checked on the calculator. What we have in front of me, I have in January of 2005, I have 450,000 hedged at 4.964.
Q. Okay.
A. In February, I have 450,000 hedged at 4.84.
Q. Okay.
A. In March, I have 150,000 hedged at $3.76, and in April through December, I have 4,250,000 hedged at an average price of 4.795.
Q. Okay. My question relates to your rebuttal

testimony on page 5, where you state that for the year 2005 you've hedged at an average price of 4.71. What I want to know, is that still accurate, and are the numbers that you gave average out to that or did I hear you update the 4.71 number?

A. Since my rebuttal testimony, which was filed November 4th, we've probably taken some additional '05 positions, so I'm looking at our position report as of December 3rd, 2004.

Q. So does your rebuttal testimony need to be revised?

A. It was correct as of the date it was filed.

Q. Okay. And are you telling me now that your av-- did I hear you right about an average price of $4.80 for the year or was that --

A. I said that's what I eyeballed it at. I can calculate it exactly if you want me to.

Q. How long would that take you?

A. 30 seconds.

Q. Okay. Yes, I would be interested in that.

A. 4.78.

Q. Wonderful. Thank you. Mr. Beecher, you were asked a question regarding the recently authorized interim energy charge for Aquila, and are you familiar with the controversy that came out in an application for an Accounting Authority Order subsequent to that case?

A. I am vaguely familiar with it, but I did not participate in that case. I did not read a lot of the testimony. Just vaguely familiar with what was going on.

Q. Are you familiar with the contention that the ceiling for that interim energy charge was lowered in response and in consideration for other things in the overall settlement?

A. I'm not privy to details of your settlement.

Q. Well, then it's not fair to ask you.

In your -- to your knowledge has Empire ever been unable to obtain financing when it needed it?

A. That question would be probably more appropriate for our CFO or CEO, but to my knowledge we've been able to this point to obtain financing when we needed it.

MR. COFFMAN: Thank you.

JUDGE THOMPSON: Thank you, Mr. Coffman.

Mr. Beecher, you'll be back tomorrow at nine, and Mr. Conrad will complete his recross at that time. And then we'll have redirect by Mr. Keevil. Okay. So you may step down now, sir, and we will proceed, I believe, to Mr. Cassidy.

We have half an hour. Let's see how much we can get done.

Good afternoon, Mr. Cassidy. Raise your right hand, please.

(Witness sworn.)

JUDGE THOMPSON: Do you understand, Mr. Cassidy, if you give false testimony in this matter, you could be prosecuted for perjury?

THE WITNESS: Yes.

JUDGE THOMPSON: Thank you. State your name for the record.

THE WITNESS: John Cassidy.

JUDGE THOMPSON: You may inquire, Mr. Frey.

MR. FREY: Thank you, Judge.

JOHN CASSIDY testified as follows:

DIRECT EXAMINATION BY MR. FREY:

Q. By whom are you employed, Mr. Cassidy, and in what capacity?

A. I'm employed by the Missouri Public Service Commission as a regulatory auditor.

Q. And are you the same John Cassidy who caused to be filed in this proceeding what have been marked for purposes of identification as Exhibits 34 and 35, John Cassidy direct and surrebuttal respectively?

A. Yes.

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

A. I do not.

Q. If I were to ask you the same questions as are in those documents, would your answers be the same today?

A. Yes, they would.

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

A. Yes.

MR. FREY: Your Honor, I would offer Exhibits 34 and 35 into the record and tender the witness for cross.

JUDGE THOMPSON: Thank you, Mr. Frey.

Any objections to the receipt of Exhibits 34 and 35?

(No response.)

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

(EXHIBIT NOS. 34 AND 35 WERE RECEIVED INTO EVIDENCE.)

JUDGE THOMPSON: Cross-examination, Mr. Conrad?

MR. CONRAD: Your Honor, I have no questions for Mr. Cassidy. Thank you.

JUDGE THOMPSON: Thank you, sir. Mr. Coffman?

MR. COFFMAN: Thank you.

CROSS-EXAMINATION BY MR. COFFMAN:

Q. Good afternoon, Mr. Cassidy. In your testimony you address the risk that Empire has to manage when natural gas prices fluctuate, and you do recognize, don't you, that Empire does have the ability to hedge to some degree against potentially adverse price movements in the natural gas market?

A. Yes.

Q. And are you -- have you studied the degree to which Empire has hedged in the next couple of years?

A. Yes, I've studied that.

Q. Are you -- have you taken into account the most recent information that Empire has given about its hedges for 2005 and 2006 in making your recommendations?

A. My recommendation is based on information that was available at the time of my surrebuttal testimony filing.

Q. Do you have an opinion about the revisions that have just recently been placed into the record regarding their hedged position about whether that protects Empire even further?

A. The more hedging that Empire has done also

further protects them in their gas futures position.
Q. Do you have an opinion about how many of Empire's customers have the ability to protect themselves against potentially adverse price movements in rates?
A. I'm sorry.
Q. To what degree do most of Empire's ratepayers have the ability to seek financial hedge against price changes?
A. I'm not aware that they have any procedure.
Q. To the extent that an interim energy charge would be approved and -- would you agree with me that that transfers risk that Empire would otherwise have to manage onto customers?
A. I believe an interim energy charge attempts to balance the risks between the customers and the company.
Q. Would you agree with me that more risk is placed on ratepayers under an interim energy charge than under the current ratemaking method?
A. I don't agree with that based on what I have proposed in my interim energy charge.
Q. Would you agree with me that there is greater uncertainty for customers under an interim energy charge about what they would ultimately be paying to the company?

A. No, I would not.

Q. Is it not true that if an interim energy charge were approved in this case, customers would not know in the next couple of years how much of their hard-earned money winds up in staying with Empire company and how much would be refunded to them?

A. Customers would not receive a refund of their funded money for the interim energy charge until the duration of the interim energy charge expired, whatever term that was. The Staff has proposed a two-year term.

Q. And even after a report and order became final, it would not be certain whether or if or how much they with receive back; is that not correct?

A. Not until the true-up of the interim energy charge was conducted.

Q. How many audits had the Staff performed relating to interim energy charges or other -- the Staff hasn't performed any audit on an interim energy charge yet, has it?

A. No. Of the two interim energy charges that have been put in place, no audit has been performed yet, other than Empire proposing to end their interim energy charge early.

Q. How familiar are you, Mr. Cassidy, with the type of true-ups or audits that are performed with purchased gas adjustment and actual cost adjustment tariffs?

A. I have a general knowledge about PGA and ACA.

Q. Do you perform audits yourself, PGA/ACA audits?

A. The audit department does not. We have a department, a procurement analysis department that does.

Q. Do you have an opinion about how easy it is for Staff to isolate and identify whether a natural gas company has acted imprudently in -- through those audits?

A. Not having performed those types of audits, I don't have a feel for all the difficulties that go into that prudency-type review.

Q. Would you agree with me that the prudency review that would be necessary under an interim energy charge or a fuel adjustment clause would be considerably more difficult?

A. I don't know.

Q. Do you know who -- what department at the Staff would be conducting the audit or prudency review at the conclusion of an interim energy charge were one to be approved in this case?

A. I would envision that to involve the audit department, and also maybe members of the procurement analysis department.

Q. Do you know who would bear the burden of proof in such an imprudence review -- or prudence review?

A. I believe the Staff would.

Q. Or any other I guess entity who wanted to do one would bear the burden --

A. Correct.

Q. -- of trying to prove imprudence?

A. Correct.

Q. Is there disagreement between Empire and the Staff regarding what would happen to a potential refund were there a disagreement about how much was to be refunded? In other words, is there an -- do you have an opinion under your recommendation what would happen to the amount of money in dispute? Would that be -- would that be refunded under your procedure or would that -- or do you know?

A. Regarding the true-up in an IEC, I would envision that if the Commission was to consider the IEC as the option that they wanted to pursue, that the Commission would -- a good option for them would be to order the parties to work in a collaborative effort to sit down and hammer out a true-up procedure, much in the same fashion as has been done in the stipulation and agreements that were completed in Empire's ER-2001-299 case and also in

Aquila's most recent rate case. And I believe that if that was provided to the Commission during their time of deliberation, that that would assist them in making an IEC determination.

Q. Would all potential refunds be held while that matter was litigated, or do you know?

A. I don't know.

Q. You state around pages beginning -- on page 10 you discuss the fact that --

A. Page 10 of my direct?

Q. Of your direct testimony. I'm not sure I have the exact exhibit number, but your direct testimony you filed in September, you state that the current natural gas market is in your opinion volatile. Would that be a fair assessment of your testimony?

A. Yes, the gas market certainly is volatile currently.

Q. Is -- do you believe -- is there a time period when it became volatile? Would you agree that the natural gas market has always to some degree been volatile?

A. I would say that there was a time period when gas prices became volatile. I think that gas prices have been -- there's been a historic level of gas prices that have stayed within a reasonable range that has allowed the Staff in the past to set gas prices into rates by using traditional ratemaking method and examining historic prices. But I believe in this case, that gas prices have become volatile sometime during late 2002, and that volatility has continued until today.

Q. Is it your opinion that before late 2002, natural gas prices were not volatile?

A. There was a period of time between the 2001 Empire case and this case that is the 2002 case, where gas prices tended to return to more historic levels, and in that case the parties were able to make a single point base inclusion because of that factor.

Q. Let me direct you to page 9 of your direct testimony, and I guess page 8 where the question is asked, are there additional benefits associated with the use of an IEC for Empire? And you begin the answer, yes, on page top of page 9, quote, because any amounts overcollected through an IEC are subject to refund with interest, the pressure to precisely estimate price increases for fuel components at Empire is significantly reduced.

When you say the word "overcollected" in that answer, are you referring to amounts above and beyond what's built into a base rate or are you talking about amounts that are above and beyond the ceiling?

A. I'm talking about any amounts that are overcollected above the floor of the base rate.

Q. So that's -- and that's what you're referring to when you say overcollected. There you state that the pressure to precisely estimate price increases is significantly reduced. Isn't that -- that pressure or that need to precisely estimate or simply defer to a later time, to the true-up period?

A. No, I don't agree with that. I believe that -- what I'm trying to indicate with that statement is that during periods of high gas volatility and the fact that Empire is heavily reliant on natural gas as a fuel source, that it's very risky to try to set the base point into permanent rates. I believe it's been established on the record that $1 of MMBtu difference in what is put into rates and what actually occurs is worth close to $8 million, and if we miss by a dollar or two, that can significantly impact Empire's earnings if it's set too low or Empire could reap substantial windfall profits if it's set too high.

Q. You proceed in your answer then to describe your approach as a safety net for Empire and its customers. Now, I understand how it's a safety net for Empire. Can you explain to me how it's a safety net for customers when they have to go ahead and pay the highest expected price up front and simply wait for a refund later?

A. The floor represents their safety net. The floor is based on actual historic price levels during this period of volatile gas prices, and that's what protects the customer. Also --

Q. How does the --

A. Can I finish?

Q. Yes, please.

A. Also, the customer is allowed a refund with interest, so the money that he fronts will be ultimately returned to him with some earnings on it.

Q. You described the floor as a protection for consumers. Isn't that actually a protection for Empire or incentive for Empire?

A. It represents more of an incentive for Empire to try to beat in order to earn profit. That's what Empire's in business for, is to make a profit.

Q. I want to ask you about the reconciliation between various parties on this issue. Are you familiar with how that reconciliation document was calculated?

A. Yes.

Q. And there have been questions about reconciling the OPC position with the company's position and with Staff's position. I want to know if you could explain that to the extent that you understand how that was calculated.

A. Your question's about Public Counsel's position?

Q. Yes. As it -- as it relates to Empire's position, the roughly $12 million that are indicated on that reconciliation.

A. That is based on Public Counsel's $4.68 gas price as having been run through Staff's fuel model, but that price does not take into account the issues that Mr. Beecher has raised in his rebuttal testimony regarding gas transportation that went into effect September 1 that totaled approximately $2.4 million, and losses associated with gas, which approximated about $1 million. So Public Counsel's position in this reconciliation does not address those two variables.

Q. And those are adjustments that Staff has made to what you call your base fuel number?

A. Those are adjustments Staff has made since its direct filing in its surrebuttal filing.

Q. And those are roughly -- those are adjustments that you adjusted upward to your base number?

A. Those adjustments were made to Staff's base filing and ceiling filing. They affected both -- both sides of the issue.

Q. And when you say adjusted, the effect of them as you adjusted them upwards?

A. Right. If you turn to my surrebuttal testimony, I explain the dollar impact of making those adjustments.

Q. Okay. Do you have a -- are there any work papers or calculations that back up that what you describe as going into the reconciliation number?

A. I have work papers that show what the Staff's fuel run and what -- how that would play out in terms of an off-system fuel and purchased power level would be for Public Counsel's 4.68 price.

MR. COFFMAN: Hopefully that answers that question. Thank you. That's all I have.

JUDGE THOMPSON: Thank you, Mr. Coffman. Who's next?

Empire, who's questioning for Empire?

MR. KEEVIL: That would be me, your Honor.

JUDGE THOMPSON: Do you have more than 10 minutes worth?

MR. KEEVIL: I think that's a safe assumption.

JUDGE THOMPSON: Very well. Then we will continue tomorrow. We will be in recess now until nine o'clock tomorrow morning, and we will start with Mr. Beecher on the stand and Mr. Conrad's recross of

Mr. Beecher.

Thank you very much.

WHEREUPON, the hearing of this case was Recessed until December 8, 2004 at 9 a.m.

I N D E X

FUEL AND PURCHASED POWER/INTERIM ENERGY CHARGE

EXHIBITS INDEX

	MARKED	RECEIVED
EXHIBIT NO. 5 Direct Testimony of Brad P. Beecher		490
EXHIBIT NO. 6NP Rebuttal Testimony of Brad P. Beecher		490
EXHIBIT NO. 6HC Rebuttal Testimony of Brad P. Beecher, Highly Confidential		490
EXHIBIT NO. 7NP Surrebuttal Testimony of Brad P. Beecher		490
EXHIBIT NO. 7HC Surrebuttal Testimony of Brad P. Beecher, highly Confidential		490
EXHIBIT NO. 111 Rebuttal Testimony of Emil Mosora	446	
EXHIBIT NO. 112 Explorer Pipeline Map		447
EXHIBIT NO. 113 Page from 12/03/04 Gas Daily	514	514
EXHIBIT NO. 34 Direct Testimony of John P. Cassidy		573
EXHIBIT NO. 35 Surrebuttal Testimony of John P. Cassidy		573