BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	))))))	Docket No: 09-035-15 Vol. II of II

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
160 East 300 South
Salt Lake City, Utah

DATE: November 2, 2010

TIME: 8:01 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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WITNESSES, CONTINUED

For the Utah Association of Energy Users

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For Western Resource Advocates and Utah Clean Energy

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EXHIBITS

No.	Description	Page
DPU-3.0 and 3.1 to 3.8, and DPU-3.0R and 3.1R to 3.2R, and DPU-3.0SR and 3.1SR to 3.2SR	Charles E. Peterson Direct, Rebuttal, and Surrebuttal testimony and attached exhibits	301
UIEC-1 and 1.1 to 1.3, and UIEC-1R and 1.1R to 1.3R, and UIEC-1SR and 1.1SR to 1.3SR	Maurice E. Brubaker Direct, Rebuttal, and Surrebuttal testimony and attached exhibits	429
(Unknown)	Steve W. Chriss Direct testimony	454

-oOo-

EXHIBITS, CONTINUED

No.	Description	Page
OCS-5D, and OCS-5R, and OCS-5SR	Daniel E. Gimble Direct, Rebuttal, and Surrebuttal testimony	456
UAE-1D and 1.1D to 1.4D, and UAE-1D-R, and UAE-1D-SR	Kevin C. Higgins Direct, Rebuttal, and Surrebuttal testimony	505
WRA&UCE II.2-1.0D, and WRA&UCE II.2-1.0R, and WRA & UCE II.2-1.0SR	Nancy L. Kelly Direct, Rebuttal, and Surrebuttal testimony	543

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(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed at the Commission.)

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NOVEMBER 2, 2010 8:01 A.M.

P R O C E E D I N G S

CHAIRMAN BOYER: Let's go back on the record. I believe this morning we're going to hear from Mr. Peterson first.

This is Docket No. 09-035-15 In the Matter of the Application of Rocky Mountain Power For Approval of Its Proposed Energy Cost Adjustment Mechanism.

Ms. Schmid?

MS. SCHMID: Good morning. The Division would like to present as its witness Mr. Charles Peterson. I believe that Mr. Peterson has been sworn in this docket. Is that right, Mr. Peterson?

THE WITNESS: At least once.

CHAIRMAN BOYER: At least once?

THE WITNESS: And maybe twice.

CHAIRMAN BOYER: You look familiar to us all.

CHARLES E. PETERSON,
called as a witness,
having previously been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SCHMID:

Q. Mr. Peterson, could you please state by whom you are employed, in what capacity, and your business address?

A. I'm employed by the Division of Public Utilities as a technical consultant. And my business address is the fourth floor in this building.

Q. Thank you. On behalf of the Division have you prepared or caused to be prepared the following exhibits that have been prefiled with the Commission -- an exhibit list has been passed out to all the parties, the Commission, and the reporter, to aid in this process -- DPU Exhibit No. 3.0, the prefiled direct --

A. Yes.

Q. -- Phase II Part 2, DPU Exhibit No. 3.1, which is presented in a confidential and redacted fashion, DPU Exhibit No. 3.2, again presented in confidential and redacted fashion, the same for DPU Exhibit 3.3, 3.4, DPU Exhibit No. 3.5 that was presented in confidential and redacted, the same with 3.6a, same with 3.6b, same with 3.6c, and then Exhibit No. 3.7 and 3.8 that were just presented, there was no need for a redacted form?

A. That's correct.

Q. Did you also prepare and cause to be filed Exhibit No -- - DPU Exhibit No. 3.0R, your prefiled rebuttal testimony, with accompanying exhibits 3.1R and 3.2R? These were filed on September 15th of this year?

A. Yes.

Q. Finally, did you prepare and cause to be filed DPU Exhibit No. 3.0SR, in both confidential and redacted versions, with accompanying Exhibits No. 3.1SR and 3.2SR, also presented in confidential and redacted versions?

A. Yes.

Q. Do you have any changes or corrections to that testimony?

A. Yes, one that I know about. In DPU Exhibit 3.0SR, filed on October 13th, on page 9. At the bottom of the page is a Footnote No. 10. The original version has a number of 192 million. It should be 42 million.

Q. With that correction, if I were to ask you the same questions as presented in your testimonies described here today would your answers be the same?

A. Yes.

MS. SCHMID: The Division moves the admission of the identified exhibits.

CHAIRMAN BOYER: Thank you. Is there any objection to the admission of the direct testimony, rebuttal testimony, surrebuttal testimony, together with exhibits, of Mr. Peterson?

Okay, they are admitted.

(Charles Peterson direct, rebuttal, surrebuttal, and attached exhibits were admitted.)

MS. SCHMID: Thank you.

Q. (By Ms. Schmid) Mr. Peterson, do you have a summary of your testimony to present today?

A. Yes, I do.

Q. Please proceed.

A. Thank you for the opportunity to emphasize a few of the points of my testimony in this case. There's been many issues and arguments made in the prefiled testimony.

The Division has understood that the main purpose of this phase of the docket was to propose some form of cost adjustment -- power cost adjustment mechanism for PacifiCorp if one would be found to be in the public interest.

The parties were also tasked with dealing with the Office's two issues regarding front office transactions and the Company's hedging program. The Division has proposed a mechanism that it believes is in the public interest and has dealt with the Office's two issues within its ECAM proposal.

The Division has supported an ECAM in concept because the Company has been unable to earn its allowed rate of return for several years running. It is plausible that this is partly due to the net power costs being unexpectedly high.

The Division believes that there are some power costs that are largely beyond the Company's short-term control, and cannot be easily mitigated or hedged away. In this regard it is the Division's view that to a certain extent the Company's arguments that it should recover the costs it prudently incurs because of its mandatory requirement to serve customers has merit.

Specifically, the Company witnesses Mr. Duvall and Mr. Graves have previously identified system balancing purchases and sales involving both energy directly and natural gas as a portion of the Company's system costs that are not easily controllable by the Company.

The Division also believes that power cost fluctuations may become large enough that the Company could be financially damaged if it were not able to reasonably recover costs from large fluctuations.

Avoiding such financial damage would, in the long run, be in the interest of ratepayers and the public, as well as the Company, therefore it is reasonable that such a mechanism be put in place to protect the Company from such an eventuality.

In this phase of the case the Division has backed away from specifying specific net power cost expense items as being unpredictable and uncontrollable because, upon further review, the Division believes that specifying particular items would create an incentive for the Company to focus its net power costs on those items, to the detriment of the more predictable and controllable items that would not be subject to the ECAM.

Instead, the Division has opted for an all-in approach with net power costs. "All in" being, as originally defined by the Company in Phase I, coupled with the deadband and other sharing bands.

The Division proposes that an ECAM be constructed with a 2 percent deadband, after which a 70/30 sharing band be implemented. And what we've been referring to as an "outside band" of a hundred percent. The outside band would kick in if net power costs were to exceed 30 percent of the forecast net power costs.

The Division also proposes the differences between actual and forecast net power costs be further refined by differences in actual and forecast revenues. To address the Office's two special issues, front office transactions and hedging, the Division has made the proposal that the Company be allowed to modify the sharing bands in a way it considers favorable if it meets certain conditions.

Front office transaction targets are several years in the future and should be assessed based upon the conditions as they exist at the time. The Division wants to encourage the Company to seek approval of its hedging strategy for future years.

The Division believes that its proposal meets the criteria for being just and reasonable and in the public interest. And that completes my opening statement.

MS. SCHMID: Thank you.

Mr. Peterson is now available for cross examination and questions from the Commissioners.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

And thank you, Mr. Peterson.

Where to begin? Well, let's begin with -- we've been beginning with Mr. Proctor, but let's begin with the Company.

Mr. Monson?

MR. MONSON: Thank you.

CROSS EXAMINATION

BY MR. MONSON:

Q. Good morning, Mr. Peterson.

A. Good morning.

Q. You've got -- in Exhibit 3.7 you've provided a table of ECAMs from other states, right?

A. Yes.

Q. And you list 33 companies on that exhibit; is that right?

A. I haven't counted the number, but that would sound about right.

Q. Okay. And of those you have either left a blank or stated "not mentioned" in the sharing column for nine of the companies. Does that sound about right also?

A. It sounds about right.

Q. So we have 24 companies for which you've listed a sharing ratio. That would be 33 minus 9. Does that sound about right?

A. Well, I have a summary. Well, what -- which column are you looking at specifically?

Q. It's the "Sharing Ratio" column. Which is the fourth column.

A. I've got -- you say there's about nine where it says either "not mentioned" or they're blank?

Q. Right.
A. And that would appear to be approximately correct.
Q. Okay. And actually if you look at Exhibit 3.8 for the question I was just asking you. You list there under Sharing Ratio: Western companies frequency 11, other companies frequency 13, total frequency 24. Do you see that?
A. Yes.
Q. So that means there was -- does that mean there was 24 companies that listed -- that you have listed a sharing ratio on Exhibit 3.7?
A. I believe that's the case. And it also includes those that have full sharing or full -- a hundred percent.
Q. Right. And that's what I wanted to explore just for a second. So you consider a full recovery or a hundred/zero as a sharing ratio; is that right, or?
A. Well, for purposes of this exhibit I believe that's correct.
Q. Okay. I mean, you don't -- I was gonna ask you where you went to kindergarten. I mean, you don't really believe a hundred/zero is sharing, do you?
A. Well, I guess you could argue that, yes.
Q. Okay. But anyway, so of those companies, as

you -- well, excuse me. Of the companies that you've listed, of the 24 companies for which you've shown a sharing ratio, 11 of them show a full recovery; is that right?
A. That's probably correct.
Q. Okay. So of the -- so you've got 13 more companies for which you show a sharing ratio. Would you agree with me that none of them show a sharing ratio that's as broad as 70/30 for -- at least for the initial increment?
A. Well, it looks to me like there's, the Puget Sound there's some ratios that are in that range. For Rocky Mountain Power in Wyoming there's sharing ratios in that range. Avista appears to have some sharing ratios in that range.
So I would agree that there are a few that are in that range.
Q. Okay. And Avista was 90/10, right?
A. Oh, did I say -- no, Avista in Washington.
Q. Okay, I'm looking at Idaho. Okay. But at least for the initial sharing bands, were any of them as great as 70/30?
A. I'm not -- right now I'm not sure what Avista in Washington is. It appears that it could be.
Q. Doesn't it say 75/25?

A. Well, or it says 50/50, depending on deadbands.

Q. Okay. Okay. Anyway, so the largest single group for a sharing ratio, or an indication of sharing, is actually the 11 companies that show full recovery? If you take -- if you're looking for one single result. Is that right?

A. Well, if you're talking about what the statistical mode might be, then that's probably true.

Q. Okay. And of those that don't have -- of those that are -- do have a sharing ratio, the next largest group are ones that have either 95/5 or 90/10; would that be correct?

A. That's probably correct, yes.

Q. Okay. So half your -- nearly half your companies have a full recovery. Eleven out of 24; is that right?

A. Yes.

Q. And nearly three-fourths either have no sharing or have a sharing ratio that's 90/10 or 95/5?

A. Well, in rough numbers that's probably correct.

Q. So if Utah were to adopt your proposal for 70/30 it would be well out of the mainstream, wouldn't it?

A. I wouldn't characterize that. I think it's within the range of what companies are getting and receiving in states.

Q. Okay. But you've picked out 33 companies. You haven't examined every company yet in the whole country, right?

A. No.

Q. But on your example three-fourths of them are 90/10 or better. And most -- almost half of them are no -- are full recovery. So wouldn't it be out of the mainstream with your own sample?

A. Well, "mainstream" is your word. I think these companies that are -- the other 25 percent are in the mainstream too. They're not strange outliers.

Q. Okay. So you're quibbling with my use of the word "mainstream." I mean, you'd agree that three-fourths of them -- it would be different than three-fourths of the companies, right?

A. Well, the data I compiled is what it is.

Q. Okay. Now, you also are aware that Dr. McDermott compiled some information showing the companies that were comparables in the Company -- in Rocky Mountain Power's last general rate case in Utah, right?

A. I know he put together some data, yes.

Q. Okay. And he also examined the companies that you put on your exhibit; is that right?
A. I believe so.
Q. And in his Exhibit 2.R he shows that eight of the companies which you listed as blank actually do have full recovery. Do you recall that?
A. Well, I recall that he had some differences, but I did not verify those.
Q. Okay. Assuming he's correct, then -- oh, I'm sorry. He showed for -- he showed eight companies with full sharing, but six of those were ones where you didn't indicate on your table -- on your exhibit whether they had sharing or not. You had them blank or you said "not mentioned."
A. Well, we were unable to determine what was going on in those cases.
Q. Okay. So if you take those 6 and add them to your 24, then you've got 30 companies that -- for which sharing ratios are shown -- or known, right?
A. Presumably, yes.
Q. Okay.
MS. SCHMID: And I would object, I believe the exhibits speak for themselves.
CHAIRMAN BOYER: Well, I think it's an appropriate question. You may proceed, Mr. Monson.

MR. MONSON: Thank you.

Q. (By Mr. Monson) And so of those 30 companies 19 would have full recovery, based on Dr. McDermott's update to your exhibit, right?

A. I'm accepting your numbers. I haven't checked them.

Q. Okay. And so nearly two-thirds would have full sharing now, right?

A. About that, I guess.

Q. Okay. But you don't think that if this Commission goes to 70/30 it's gonna be -- I guess I gotta be careful what word I use. But it's gonna be in the small minority of states that have sharing ratios that are as high -- or that are as broad as 70/30; is that right?

A. Well, it would be true that there are more, apparently, from the samples that have been drawn that would have -- I don't know whether you would call them "higher" or "narrower" sharing ratios than the 70/30. But there are examples of 70/30 out there. So the Commission would not have to worry about plowing new ground in this regard.

Q. The Commission wouldn't be the only one in the country, but it would be one of just a few; is that right?

A. Well, I don't know about the whole country. Out of the sample of -- the samples that have been looked at, that may be true that it would be in the minority. But not -- it wouldn't be (speaking too softly.)

(The reporter asked the witness to repeat the answer.)

THE WITNESS: It wouldn't be the *Lone Ranger* is what I said.

Q. (By Mr. Monson) And you also are recommending a deadband, right?

A. Yes.

Q. How many of the companies on your exhibit showed deadbands?

A. I calculated eight total.

Q. Well, okay. I got seven, but whatever. That would be a counting error, probably, on one part or the other. So, and that's of all 33, right?

A. Yes.

Q. Okay. And Dr. McDermott's exhibit for the companies that were comparable -- used as comparables in the last rate case show only three had deadbands; is that right?

A. I don't have his exhibit in front of me, I'll -- but I'll accept your representation for the sake of moving things along.

Q. Okay. So that would be only 7 percent of the companies that were used as comparables in the last rate case that had deadbands, right? Less than 7 percent?

A. I guess.

Q. Okay. And I just want to ask you in conclusion, do you believe that electric utilities that have no sharing, or sharing ratios of 90/10 or 90 -- or 95/5, and no deadbands, do not have a sufficient incentive to keep their net power costs reasonably low?

A. Well, I really don't know the answer to that because I'm not familiar with the whole breadth and depth of the regulatory processes that they're facing. But as a *prima facie* evidence I would wonder about it.

Q. So does that indicate that you think that, what, that other states aren't doing the job of regulating these utilities properly? Or does it indicate that -- I'm not sure. What do you mean by that? You're not sure that?

A. Well, it would be a question that would be raised in my mind. Ninety-five/five doesn't leave a lot of room for automatic incentives, as we're proposing.

But on the other hand, I don't know the exact situation of all those companies and the regulatory processes that they face. So I can't really say -- it would be premature, at best, for me to say that the regulators in those other states aren't doing their job.

Q. Okay. Would you agree with me that the goal in setting rates is to set rates that will cover the prudent costs of providing service to customers?

A. The oppor -- yeah. Ultimately the opportunity to recover costs and have the opportunity to earn a fair rate of return.

Q. Okay. And so if rates are set properly and accurately, and barring abnormal circumstances and events, then the rates paid by customers would be expected to cover the prudent costs that the Utility's incurred in providing service to them, right?

A. That would be the expectation.

Q. And do you believe in that context it's reasonable for customers to pay less than the net power costs that are incurred in serving them?

A. Well, I guess that it depends. The Company also has the obligation to run its business as a for-profit business, taking risks that may end up meaning that they incur costs that are higher than anticipated and consequently do not earn their allowed rate of return.

And that goes hand in hand. I do not understand regulation to be an automatic pass through of all costs.

Q. I understand. And so you say that -- in fact, you say in your surrebuttal testimony that the companies are being compensated for assuming the risk of variability in costs, right? Do you remember that?

A. They're -- they are assuming -- they are being compensated to assume a certain amount of risk, due to the fact that they receive a return on equity that is a risky -- a return on risky assets. Otherwise they shouldn't be allowed to earn more than their bond rating. Or their bond yield.

So there is -- the Company is assuming risk. Or the regulators are expecting them, the Company, to assume risk by granting them a return on equity that is noticeably higher than their debt rate. So the answer is yes, the Company is expected to assume the risk that some of those costs that they have built into rates will vary from what was expected during the rate case.

Q. And the rate of return on equity is a component of what we call the "cost of capital," right?

A. Yes.

Q. And so really that's just another cost of doing business, the cost of acquiring capital to make investments?

A. Well, that's the way it's viewed in the regulatory process as it's the -- the other way of looking at it is it constitutes the mechanism that gives the shareholders an opportunity to earn a fair return.

Q. Which is commensurate with the cost of capital, right?

A. Well, that's how it's estimated, yes.

Q. Okay. Would you agree with me that the Company has every incentive to manage its net power costs?

A. Right now I would agree with that, yes.

Q. Okay. And yet, as your evidence shows, the Company has consistently had actual net power costs that have been much higher than their forecasts in rate cases?

A. Well, that's been the data the Company has provided.

Q. And you did an analysis of it, right?

A. I've done an analysis of it.

Q. And you agree that that's what it shows?
A. Well, that's what the data shows.
Q. Okay. Does the Company have any incentive to under-forecast net power costs when it's preparing a rate case?
A. Well, it's hard for me to think why it would, under the current circumstances especially. But it is a bit of a mystery to me that it consistently has --
Q. Okay.
A. -- for a number of years running.
Q. But isn't one of the justifications for an ECAM that net power costs are highly volatile and unpredictable?
A. Well, that's a stated justification, yes.
Q. So if the Company has an incentive to forecast net power costs accurately and to manage them between rate cases consistently, but yet incurs net power costs that are higher than the forecast net power costs, doesn't this indicate that traditional ratemaking isn't working for net power costs?
A. It possibly does. And the Division agrees that there is a -- appears to the Division to be a justification for some recovery of those variable costs.
Q. Appreciate that. You are concerned, though,

about the Com -- you still have this kind of lingering concern about whether this would be something the Company could fix with better forecasting; is that right?

A. Well, better forecasting would be one possibility. As I said a moment ago, it is kind of a mystery to me that the Company has been consistently under-forecasting for, it looks like eight or nine years in a row.

You would normally expect, as was at least hinted at in Dr. McDermott's testimony, that on average they're -- they would under-forecast and over-forecast. Which would mean on average they would recover their costs.

Improved forecasting may be one solution. Other solutions the Company could look at long term have been -- or has been alluded to in my testimony -- and yesterday we asked Mr. Bird about that -- is, for example, the Company could seek to increase its natural gas storage ability so that it wasn't buying at the spot market to cover its peak loads.

And I realize they can't go out and immediately acquire millions or billions of cubic feet of gas storage. But over time that may be something that could be done to help the Com -- that would allow the Company to control its gas costs better than they're doing with hedging. Or better than they can do with hedging.

That's just one example of an approach the Company could take in the intermediate to long term to help mitigate these variable costs. There may be others. And I can't pretend to be an expert at running an electric company, but hopefully there would be somebody thinking about these things. Thinking about different possibilities.

Q. Did you understand from Mr. Bird's testimony yesterday that the Company is looking at that?

A. Well, I'm pleased to hear that they are. I hope they pursue that further.

Q. And that they already own some storage, right?

A. Well, I knew they owned some storage. But as he indicated, I also knew that it was quite limited. And it may not end up costing out, but I would at least hope that they would look at expanding that storage over time. That storage capability.

Again, that is just an example of something that I've been able to think of. But -- an approach they may be able to do over time to mitigate some of these costs.

Q. And you recognize that there's costs associated with that kind of approach and other kinds of approaches, right?
A. Well, almost everything costs something.
Q. So you have to consider those costs as you consider whether those are viable alternatives; is that right?
A. Of course.
Q. Are rates typically set based on the Company's forecast in general rate cases?
A. That is certainly the basis that the Division and intervenors look at. And then it's of course analyzed to see if it appears reasonable. So the exact forecast may not turn out to be the same as the -- or the final accepted net power cost amount may not be the same as what the Company proposed.
On the other hand, it would seem to me that if it's grossly in error, the Company should litigate and not settle. And the Company has stipulated a number of times in the last few years. So to the extent that there were differences in net power costs in those settlements, the Company tacitly agreed with those differences.
Q. Are you aware of any case where the Division has recommended that the Commission accept the

Company's forecast net power costs, or maybe even recommended a higher forecast? Are you aware of any case where the Division has ever done that?

A. No.

Q. In most cases don't the parties, as you said, come in, take the Company's forecast as a -- as the high point, and then start chipping away and knocking it down?

A. That seems to be the process all right. And to some extent, it's unfortunate. I really do wish that the Company would present a forecast that would be accepted.

Q. But yet you acknowledge the Company's forecasts, at least in the past eight years, have been too low, haven't they? Already?

A. Well, that clearly indicates that the starting point has been too low, too. And, so some of the assumptions that go into these forecasts -- and again, the regulators and the intervening parties look to the Company to make an initial forecast based upon its best guess of what's going to happen when we're in a forecast test year. And there is a natural propensity of the interveners to want to lower costs.

Q. So I guess what I'm getting at is, doesn't it seem in this circumstance that maybe, maybe it really is just impossible to forecast net power costs accurately?

A. Well, there's a difference between having an accurate forecast and an unbiased forecast. An unbiased forecast would be wrong high as often as it's wrong on the low side. I would agree that it's extremely unlikely, that it'd be wild coincidence in fact, if your forecast turned out to be exactly right.

It's going to be off by some amount almost certainly. The question is, is why is it always so wrong on the low side? And that's something that I have trouble understanding.

Q. I think we do too.

A. Well, I would hope that someday we figure it out.

Q. Well, if it can be figured out. That's what I'm asking you. Do you think -- isn't it possible that the reason that almost every other state has an ECAM or fuel adjustment clause is because they've all come to the conclusion that you really can't accurately forecast this element of rates?

A. Well, I don't know why --

MS. SCHMID: I --

THE WITNESS: -- the other states have engaged in ECAMs. But in the literature the variability of fuel costs is certainly one of the issues that is put forth as a justification.

Q. (By Mr. Monson) Now, you say something in your surrebuttal testimony. It's actually lines 360 to 366. And I just want to make sure I understand it. Let's turn to that. You're talking here about:

"The Company itself has made a decision to run rate cases based on forecast test periods, which necessarily rely upon forecasts made by the Company."

Are you suggesting by that that the problem here is we're using forecast test periods?

A. Well, certainly as we've just been discussing, whenever you make a forecast it's probably going to end up being wrong to some degree or another. Now, there's the idea of precision in a forecast. That is, how close does it actually, on average, come to reality? And then there's the issue of bias.

And I think we all agree that whenever you do a forecast it's likely to be wrong. The question is, is it going to be approximately right on average? In other words, over several years period are the -- when it's wrong on the high side is it gonna be wrong on the low side and approximately wash out?

And then of course you would like the forecast to be close to the actual answer, and not wrong by 50 or a hundred percent. Might be only wrong by 1 or 2 percent, if possible.

Q. So I guess what I'm trying to get at, are you suggesting that if the Company were using historical test periods that we wouldn't have a problem?

A. No. I'm just saying that the use of -- I mean, historical test periods I know raises its own problems, especially in an inflationary environment. But all I'm saying is, is that part of the -- a lot of the problems inherent in doing a forecast for a future test period is that you're relying on forecasts. Which you know are going to typically be wrong.

Q. Well, if you use a historic test period aren't you using that as the forecast for the rate effective period?

A. Yeah -- yes, I believe that's essentially the way it's viewed. But at least it's a forecast that you know approximately what the right answer is.

Q. Well, you did an analysis, didn't you, to test the Company's forecast. And you -- and one of the -- I can't remember what you call them. But one -- I call it the "dummy" or the --

MS. SCHMID: Perhaps naive?

MR. MONSON: Naive, that was the word.

Q. (By Mr. Monson) One of the naive tests you used was to just use the actuals, right? From a prior period for the same month in the future period; is that right?

A. Right. Naive one is -- at least it used to be the term for forecasting the next period to be the same as the last period.

Q. Right. And in that test that wasn't any better than the Company's forecast, was it? In fact it was better sometimes, but usually worse?

A. Well, you'd hope that the Company's forecast would be able to beat that, otherwise they should give up forecasting.

Q. Well, what I'm getting at, though, is you said a minute ago that if you use the historical period at least you'd think your forecast was more likely to be accurate.

A. No, I didn't --

Q. Did I misunderstand you?

A. Yes, you misunderstood. Or I probably didn't explain it very well. What I meant to say -- what I meant was that with the historical period the starting numbers are a little bit more known and reliable. Now, whether it makes for a good forecast or not is another question.

But supposedly with a historical period you're just compiling accounting numbers to come up with your forecast, as opposed to making a number of assumptions.

Q. Are you familiar with Alfred Kahn?

A. Oh, sort of. I know that he's written a regulation some years ago that -- I'm not intimately familiar with him, but I've heard of him.

Q. Okay. Do you know he's a recognized expert on utility regulation?

A. I believe that's correct.

Q. He was a former chair of the New York Public Service Commission. Were you aware of that?

A. I'll accept your representation.

Q. And are you -- I may have asked you this before in cross examination. Are you aware of what he said about use of historical test periods versus forecast test periods?

A. Well, you'll have to refresh my memory.

Q. Okay. Well, let me read it to you and then -- and I'll let you see it if you want. He said:

"The fact is, regulatory commissions have always been in the business of projecting, whether they knew it or not.

When they used historic test year statistics -- fully verifiable and verified, graven in stone -- as the basis for future rates they were, in fact, projecting.

"They were assuming that the future would be similar to the past. It's no more speculative, then, to make the best possible estimates of future costs when setting future rates. And honesty compels it."

Do you agree with that?

A. I would say I would largely agree with it, yes.

Q. Okay. So whether the Company uses a forecast test period or a historical test period really doesn't have any bearing on whether sharing in an ECAM is appropriate, does it?

A. No. And I don't think I've said that it does.

Q. Well, I thought you said on lines 364 to 366 with its proposed ECAM the Company management is essentially transferring to ratepayers all the risks associated with the Company's own forecasts, NPC forecasts, and management of its NPC accounts?

A. Well, that's true. It's -- the Company is making forecasts that are largely the basis for the net power cost estimates in general rate cases. And in the ECAM, as the Company has proposed it, the ratepayers will take upon them the risk for the forecast errors.

Q. Okay. But so you weren't tying that -- I guess I was tying your statements on lines 360 to 366 together, and you weren't tying them together. You weren't saying because they're using a forecast test period that shifts risk to the ratepayer?

A. No, that wasn't my intention.

Q. Okay. And you're aware that when the Company does forecast it starts with historical base periods and then uses them as the basis for its forecast, right?

A. Well, I understand just about everybody does start with history. But then, you know, somewhere along the line judgment should come into play. And try to figure out why you've been under-forecasting consistently.

Q. You've recommended that if the Company meets certain conditions it be allowed to have the sharing ratio reduced or narrowed to 85/15 in 2015, and 90/10 in 2000 -- is it 2019 or 2020?

A. I think in my assumptions it would go into effect potentially in 2020.

Q. Okay. Was that recommendation based at all on your consideration of what the sharing ratios are in other states?

A. I, well, I think those would have influenced it, yes.

Q. So you're saying -- are you saying that if the Company gets its hedging program approved, and if it reduces its reliance on market, on market resources, on front office transactions, that it can then be more like other states and have a smaller sharing band; is that right?

A. Well, not quite as you phrased it. Yes, we think that it is important that the Company get an approved hedging plan. Which would also have the benefit that maybe the Division of Public Utilities would finally understand exactly what the hedging plan is -- or hedging program is.

The -- with respect to front office transactions, while we have set it up for the Company to reduce, initially, front office transactions as a percentage of their whole -- of their whole system generation, we've also left it open for the Company to demonstrate that it's appropriate for them to keep or increase that percentage.

So the review in three or four years would include, I would hope, the Company demonstrating -- I hate to use the word "optimal" but, you know, an optimal mix of front office transactions. In any case, I want to emphasize that the Division is in no way recommending that the Company necessarily do away with front office transactions. Even -- neither immediately nor in the future.

We recognize that there's, there may well be a place for front office transactions. And leave the -- give the Company the flexibility it needs to make decisions whether to purchase front office transactions -- or front office -- power through what's called "front office transactions." And -- or have a plant of its own.

Q. So -- but you've said in your testimony that if they reduce -- if the Company reduces it to 7 percent by 2015 it can have a smaller sharing band. And if it reduces it to 5 percent by 2019 or 2020 it can have even a smaller sharing band, right?

A. Well, that's the proposal. But -- you know, to put some concreteness in it. But we've also left open the door that all of that can change in terms of the percentages of the sharing band -- I mean of the front office transactions. For reasons that I just explicated.

Q. Okay. So my point though is, if you're recommending 70/30 unless the Company does those things, then aren't you effectively penalizing the Company because you don't think it's -- because you think it's been too reliant on market purchases, or it hasn't had its hedging program approved by the Commission?

A. Well, that isn't the way the Division looks at -- considered it. We looked at it as, in the first instance, that the ECAM is going to be a pilot program. And there may be things good or bad that comes out of it.

Maybe everyone agrees in three years that, assuming -- and this is assuming one's put into place, of course. But in three years maybe everyone's completely satisfied with the way things are operating. And, you know, then we just carry on from there.

We also wanted to give the Company some incentives to tie down their hedging program, at least with respect to getting an approval from the Commission. Whether it's -- whether the Commission ends up approving the exact same hedging program that the Company currently has, or whether there's -- it recommends some modifications, that remains to be seen.

So we wanted to reward the Company, in a sense, that if the ECAM continues, that we do move it toward, as you correctly point out, what is more typical sharing bands.

Now again, after the pilot project is reviewed thoroughly, you know, the sharing bands going forward may change one way or another anyway, based upon the satisfaction or dissatisfaction with the ECAM.

Q. You're familiar with the IRP process, I assume?

A. I almost want to say "unfortunately." But yes.

Q. And in that process the -- everyone's made a big point in this proceeding the Commission doesn't approve the Company's plan, it just acknowledges whether it's met some standards in filing its program; is that right, its IRP?

A. That's my understanding.

Q. Do you really expect the Commission would do more than that with regard to a hedging program or policy of the Company?

A. Well, I wouldn't -- right now I wouldn't expect the Commission to do more than give broad guidelines to the Company that it might operate in. But I don't know what the Commission may or may not do. It's possible that it would end up just doing what you said, they acknowledge it.

But at least that would mean that the policy -- the program had been vetted before the Commission and before all the parties. And there was some general consensus -- or I would expect that there would be some general consensus that what the Company was doing was appropriate.

Q. Do you know how many commissions around the country have actually approved a hedging program for an electric utility in their jurisdiction?

A. Not offhand. I know that there's been a move -- at least a move in that direction in the State of Nevada. But beyond that, I don't have any knowledge of that.

Q. Do you know if Idaho has approved a hedging program, or Wyoming, or any of the Company's jurisdictions?

A. Well, none of the Company's -- none of the states that the Company operates in has approved or disapproved of the Company's hedging program. I think, if the other states are like Utah, they only became really aware of it in the last two or three years.

And so it's something that, in Utah at least, we're still -- I think I've said this before. We're still trying to get our arms around it.

Q. Okay. So, I mean, you suggested goals for reduced market reliance of 7 percent and 5 percent. Do you know what the Company's level of market reliance in 2012 would have been if it had gone ahead with the Lakeside II project?

A. Well, it should have been less.

Q. Would you accept that it would have only been -- in its IRP, I mean, it's a plan. But it would have only been 2.3 percent? Does that seem reasonable?

A. Possibly.

Q. So if the Company had built Lakeside II, and based on the bid it got had approached the Commission for approval, it would have been at a level that's less than half the amount that you recommended initially would have maybe justified a 90/10 sharing band; is that right?

A. Well, we're very generous in the Division.

Q. Okay. And yet it would have had higher rates in 2012, wouldn't it? If it had gone ahead and built Lakeside II?

A. Yes, but it would have assuaged some of the concerns that some parties have that the Division -- the Company needs to put steel in the ground.

Q. And if it had done that -- we have an exhibit in this case, it's not in this phase, but an Exhibit in Phase II Part 1 that actually shows how much the Company projects it saved by not building Lakeside II; is that right?

A. I've seen that, and I believe I critiqued it.

Q. Okay. And that's the -- just so everybody knows what we're talking about, it's the pink -- it's on a pink exhibit; is that right?

A. Well, I don't know it's color.

Q. You don't remember if it was on pink paper?

A. I don't remember it on pink paper, but anyway.

Q. All right. But you aren't suggesting that the Company ought to be rewarded with a smaller sharing band, even if it does something that achieves a lower level of front office transactions but costs ratepayers more money?

A. Would you repeat the question, please?

Q. Would you suggest that the Company be rewarded with a lower sharing band, a smaller sharing band, if it takes an action that reduces its reliance on front office transactions but actually ends up costing customers more for power?

A. It's possible that I would, depending on the exact circumstances. The 2014 or 2015 time frame was selected because at the present time it seems unlikely that the Company will have a major plant in place before that time.

So we are left, as near as I can tell, to the vagaries of the front office transactions until that time period.

Q. Would you want to look at -- look after the fact at whether the Company's decision was a prudent decision?

A. To do what?

Q. To either build or not build a facility, or to continue to rely on front office transactions?

A. Well, the Commission, in one forum or another, will review the prudency of building or not building. Or at least the parties will have the opportunity to present to the Commission whether they believe there's been improvements.

Q. And that will require someone on the staff -- the Division or somewhere -- to make an analysis of

whether it was a prudent decision, right?
A. Well, someone would have to do an analysis and find some basis that something was imprudent. Otherwise I don't think the Commission would appreciate, or the Company would appreciate people just making up things.
Q. And so that's -- and that's part of the regulatory process, isn't it? To make those decisions and make those reviews?
A. Yes.
Q. You're aware the Company is required to engage in many short-term balancing transactions to meet its load requirements for its customers; is that right?
A. That's my understanding.
Q. And those transactions are performed by traders in the market; is that right?
A. That's my understanding.
Q. Do you understand the objective of those traders is to acquire the needed power supplies at the lowest cost currently available, or to sell excess power supplies at the highest cost currently available?
A. I would hope that's what they're trying to do.

Q. Assuming they're doing their jobs, would a deadband or a 70/30 sharing ratio affect their performance?

A. It probably wouldn't on a day-to-day basis. But the effect of the incentives is not on -- is not necessarily intended to be on the frontline employees in the trenches. That, I think, has been an incorrect assumption all along.

The effect of incentives is something that's long term. Or intermediate term. You know, for example, if one of these traders were to retire or otherwise leave the company, does the Company replace that person?

And if not, they could save the person's salary. And therefore justify non-replacement by lowering costs. But they may also, in some increment, lower the efficiency of the trading process.

Similarly, if a new software program became available that might slightly improve the efficiency of the trading office, management may elect not to replace -- not to buy the $2 million trading program. And -- because what they're doing now is good enough, and they're not -- they have no motivation to make slight incremental improvements since they recover their costs.

So the thing that the Division is worried about is the, sort of the death by a thousand cuts. That over time -- and I'm not claiming this would be immediate. That over time management would have a relaxed attitude toward keeping razor sharp at their net power costs because they have no incentive to.

Q. Is the cost -- the salary of a trader, does that go into net power costs?

A. Well, I don't know. This is one of the questions that we don't know where the costs are all buried on these things.

Q. Would you accept, subject to check, that it doesn't? That it just includes fuel costs, and electricity purchases, and market trades, and so forth?

A. But the scenario I brought up -- and I agree that it's strictly hypothetical -- does affect net power costs. And it affects the costs of the Company generally.

Q. And does the cost of the computer program go into net power costs?

A. Well, it would go into some plant and equipment. But again, the point of my hypothetical is is that it could, at the margin, affect the efficiency of managing the net power costs. And the Company can say, Well, we saved this much money, but then the hidden cost is a reduction in efficiency. And that's the concern that the Division has.

Q. And you don't think that, in a review of the prudence of net power costs after the fact, that failure to buy the state-of-the-art program and use it or to have an understaffed trading desk would be issues that couldn't possibly be caught, or would escape the attention of people auditing the function?

A. Well, number one, it could possibly escape the attention of people auditing the trading function. Auditors from the Division or wherever may not even know that there's a program available to be purchased. We would have to know that to begin with.

In the case of not replacing an employee, it would be -- the auditor would have the burden of proof to show that management was being imprudent in saving a hundred thousand dollars a year in salary. And there may only be slight, almost imperceptible changes in the efficiency of the Office. It may be real and cumulative, but it would be hard to prove before a commission.

So I think yes, the possibilities are very real that those kinds of things would not even come to the attention of auditors. And even if they did, they would have an uphill battle of proving imprudency.

Q. So the auditor who was watching the Company's program would know that they had four traders last year and now they only have three. He'd also know the number of trades that those traders did last year and the number they did this year. He'd know things like that, wouldn't he?

A. He'd know things like that, but would he be able to prove that the trades were inefficient? That they were not -- or that there were trades that were being missed. That would require almost an insider to pick up on small details on like that.

And again, the auditor would be faced with opposition from the management that made the decision. He'd come in and say, Hey we, we figured that with almost no -- we can still do as many trades each year with three traders as we were doing with four and we're saving a hundred thousand a year, or whatever it is.

And there's going to be, necessarily, some deference to management if they have a reasonable argument. And all, and all I'm saying is, is that the Company loses its incentive to keep itself razor sharp. And, and incrementally, over time, the efficiency and the costs of operations go up needlessly.

And since it wouldn't happen all at once, in one big explosion, it's unlikely that commissions and auditors can do very much about it.

Q. Wouldn't this be true of any aspect of a utility's business?

A. Yes, but ultimately the program -- ultimately there's the measurement of what the Company is earning. And if it starts earning significantly more than its allowed rate of return, then there would be some issues that would be looked at there. But they'd probably be more like big hammer kinds of things rather than the more nitpicky things, as I would envision it.

So there's always going to be the ability of commissions to do a sort of rough justice. But what we're talking about here is introducing a program where the Company does not lose its incentives to be as sharp as it possibly can be.

And then claiming that, Oh, we can just rely on a couple of auditors coming in once in a while and they'll find everything. That is something that the Division is at least concerned about.

Q. But don't you believe the fact that the Company knows there's gonna be auditors coming in

would be an incentive to try to do the best they can?
A. Well, it has -- it is an incentive for the Company. But as I indicated, it's not necessar -- a better incentive is to have the Company on the hook in realtime, rather than having to be incentivized in realtime to make decisions in its own selfish interest to be as efficient as it can be. Rather than to rely on a couple of auditors coming in a year or two years later and trying to figure out what happened.
Q. If you were the owner of the Company how would you feel about acquiring additional power to serve customers when loads are greater than forecast, when you're guaranteed that you're only gonna get 70 percent of the cost of acquiring that power?
A. Well, I would feel that that's one of the risks I face as being a regulated monopoly.
Q. So you'd just be happy about the fact that you're gonna pay a buck and only get 70 cents?
A. I may not be happy about it, but that's the world we live in. And -- or may live in. Right now you don't get even the 70 cents.
Q. Okay. You also recommend the Commission adopt a load growth adjustment; is that right?
A. Well, that's the term that's been applied to an adjustment for additional revenues that the Company

receives for selling additional power.

Q. Okay. And your load growth adjustment would offset differences in actual and forecast revenues against differences in net power costs, right?

A. Yes.

Q. And you're intending to do this on a total-system basis?

A. Yes.

Q. And I just wondered as a matter of curiosity, how would you determine the total system forecast load?

A. How would you determine the total system forecast load?

Q. (Moves head up and down.)

A. I believe the Company forecasts that all the time. In fact, they've provided it in a data request.

Q. Okay. So you'd use the forecast load, for example, from the Utah rate case, or something like that, for the total company?

A. Well, that would be one source, yes.

Q. Okay. So if load decreases in other states such that actual total revenues are less than forecast revenues, your recommendation would be that Utah customers would pay a higher net power cost adjustment; is that right?

A. It could conceivably cut that way. It could cut the other way.

Q. Okay. And you're aware that when the Company has to serve greater load it typically has to make investments and increase its expenses to serve that load? Typically?

A. Well, okay. Investments, you mean they buy or build additional plant? Or are you talking about a different investment?

Q. Well, they might have to add additional distribution lines. One way to -- one reason they increase load is because they're serving new customers, right?

A. That's correct.

Q. And so in that case they have to put in some additional distribution facilities, right?

A. Yes.

Q. And the Company can't recover that between general rate cases, can it?

A. Well, it re -- it certainly recovers the additional distribution plant that it anticipated and had budgeted for. And that's -- at the margin I think there's little change in the budgets from year to year, from what I've seen.

Q. We're talking about load, though, in excess of what it forecast in the rate case, right?

A. Well, we're also talking about balancing accounts that are short-term purchases and sales that are happening over an hour, or a day, or something on that order. And distribution plants do not expand very much in excess of the budgeted amount over an hour. Neither do other capital costs. Neither do -- does employment or other costs the Company incurs.

Q. Isn't the basis for your -- oh, I'm sorry. Were you finished?

A. No, go ahead. Ask your question.

Q. Isn't the basis for your adjustment, your load growth adjustment, that if the Company is required to serve additional load it will receive revenues from serving that load, right?

A. Yes.

Q. And so to receive those revenues the Company's gonna probably make some investment to get those additional revenues; isn't that right?

A. Well, we're talking about short-term balancing accounts. The only "investment" that they're making is that they may have to go out and buy power from the wholesale market, or run their natural gas plant more, incurring additional natural gas fuel costs.

So at the margin, the only marginal costs are their net power costs. The other costs can be considered fixed. And Mr. Duvall appeared to essentially agree with that over the short term.

Q. So --

A. I would agree --

Q. Oh, I'm sorry. Go ahead.

A. I would agree that as we get out a year or two -- months or years down the road from the original rate case, that departures will start to become noticeable. And that's why the Division's recommending that at least every three years we have a rate case so we can recalibrate these things.

Q. Okay. So, but the Company's proposing a dollar-per-megawatt-hour factor in its ECAM, right?

A. Yes.

Q. So with regard to those changes, those balancing changes, they're already taking into account that load change, right? Because they're doing it on a dollar-per-megawatt-hour basis?

A. To some extent they are, yes.

Q. And so the additional revenues you're picking up are revenues associated with other things, like transmission, and generation, and distribution, right?

A. Yes.
Q. And do you think it's fair to have those revenues offset against changes in net power costs?
A. Yes.
Q. Why?
A. I just explained why. Because those other costs, the Company is receiving that revenue. They receive a hundred percent of their tariff. And I agree with you that the tariff was built up out of net power costs, and plant in service, and all of them, and net profit and all these other things.
But at the margin the only variable cost is their net power cost. And they are not incurring additional costs when they sell additional power. But they sell the additional power not at their marginal cost, they sell it at their tariff rate.
And so I think it's completely appropriate for the Com -- for those additional revenues to offset the additional costs that they're incurring.
Q. So aren't you effectively taking what is a, sort of a pass-through item, or a single-item rate case if you want to term it that way, and changing it into a, almost like a general rate case? You're considering all increased revenues from all sources?
A. Well, the increased revenues come from the

tariff customers of the Company, just like any other revenues. All I'm saying is, is that the Company, if this adjustment were not made -- let's look at it in reverse.

If this adjustment were not made, what would happen? The Company would collect the tariff revenue. And it would collect, through the ECAM, the net power cost. And the only cost that they incurred was the net power cost, so the revenue becomes just free money to the Company.

Q. Aren't you assuming that there's no increase in costs when you say that?

A. No increase in what costs?

Q. In other costs, other than net power costs.

A. Of course I'm assuming that. That's what I've argued all along. When you're making these balancing account purchases and sales, which are the only purchases and sales that have been brought to my attention that could be the cause or the justification for an ECAM -- all of these other costs are fixed.

They've been fixed in the Company's budgets. The Company does not go out and on an hourly basis make adjustments to its size of its distribution plant. Does not go out and issue new long-term debt. Does not go out and hire 50 new employees.

All of those costs are largely fixed at this margin. And so it's completely appropriate to offset the marginal revenue that the Company -- or the marginal costs, which are almost a hundred percent net power costs, with the marginal revenue that the Company receives.

Q. You've expressed concern about the Division's ability to audit the ECAM, right?

A. Yes, I have.

Q. And that's one of the reasons why you don't think performance audits would be effective in assuring that the Company's managers -- that the Company manages its net power costs in a least-cost manner with an ECAM; is that right?

A. Well, that's one of the concerns. And as we discussed earlier, I'm not convinced, at least at this point, that even if we had two or three full-time auditors that we would necessarily be able to effectively audit the ECAM program such that these small incremental changes over time could be discovered.

Q. You're aware that almost every other state has ECAM-type mechanisms, right?

MS. SCHMID: I would object to the "almost every other state" characterization. Mr. Peterson's exhibit and his knowledge seems to be specifically tailored.

CHAIRMAN BOYER: Sustained. He's already enumerated his familiarity with other states and companies.

Q. (By Mr. Monson) Well, you checked 33 companies, right?

A. Right.

Q. And you're aware there's others?

A. Right.

Q. And in fact, reviewing Dr. McDermott's exhibits you saw there was 47 companies that were comparables that were used in the last rate case? There were 19 holding companies which had 47 utilities, right?

A. Yes.

Q. Okay. And so I just want to ask you with regard to any number of other states, have you contacted any other states to find out how they manage this very difficult burden of auditing these ECAMs?

A. No.

Q. And so you are aware that Idaho has an ECAM, Wyoming has an ECAM?

A. Yes.

Q. Have you contacted those states, our

neighboring states?
A. No.
Q. Do you know if the staffs in those states are bigger or smaller than the Utah Division staff?
A. No.
Q. Now, let's assume the Commission accepts your proposal to adopt a 70/30 sharing mechanism. You're still gonna audit the ECAM results, aren't you?
A. Well, we'll do what we can with the resources we have. I may add that the Division's concern is based upon our current known resources that we have, coupled with our experience with Questar Gas Company, which has been alluded to from time to time.
And even Dr. McDermott hinted, at least, yesterday that we would need two guys working full time on it. We don't have two people that can work full time.
Q. And you --
A. So that's one of our concerns.
Q. Are you aware of how big the Illinois commission staff is?
A. Well, no, I'm not. But Dr. McDermott seemed to imply that that would be what it would take to audit PacifiCorp.
Q. Yeah. I'm afraid, I'm afraid his intent

might -- was misunderstood by you, because he was suggesting two auditors was nothing. Not that it was a lot. You didn't understand it that way, apparently?

MR. MICHEL: I'm gonna object to Counsel providing testimony.

CHAIRMAN BOYER: Sustained.

MR. MICHEL: I think Mr. McDermott's testimony was Mr. McDermott's.

CHAIRMAN BOYER: Sustained.

Q. (By Mr. Monson) You don't know whether, whether two auditors on the Illinois staff is a lot or very little, do you?

A. I don't, but it's a lot for us.

Q. Okay. And you heard Mr. Duvall's testimony that Mr. Burrup used to audit the EBA, right?

A. Well, that was 20-some-odd years ago, and in a -- with a much smaller and less complex company.

Q. And do you know how many people were on the Division staff 20 years ago, when Mr. Burrup was auditing the EBA?

A. That's before my time.

Q. Would you accept, subject to check, that it was a lot less than today?

A. I, well, you've made that representation.

MR. PROCTOR: Excuse me, Mr. Chairman, but objection. I don't think you can even check "a lot less."

MR. MONSON: Maybe Commissioner Campbell can help us out. But anyway. All right. But anyway --

CHAIRMAN BOYER: I can tell you, Mr. Monson, that the Commission staff is the same as it was in 1996.

MR. MONSON: I believe that. But I think the Division staff's changed. But anyway.

Q. (By Mr. Monson) But you're still gonna audit? When the Company makes a filing for an ECAM surcharge or refund you're still gonna audit it, right?

A. We'll do what we can, yes.

Q. Right. And I just want to understand how that would work in connection with the 70/30 sharing band. Let's suppose the Company brings in a result that says our net power costs were 10 million higher than we projected in the rate case. So they want a surcharge of $10 million. How will your mechanism work?

And let -- well, let me ask one more. And suppose that in your audit you decide that 1 million of those 10 million were imprudent. How would it work?

A. Well, we're -- can we further assume, then, that the 9 or 10 million is higher than the deadband?

Q. You want to do that freeze of calculation?

A. Well, if it's not -- if it's within the deadband then there wouldn't be any -- nothing would happen.

Q. Okay. So first you'd look at the deadband?

A. Yes.

Q. Okay. And then -- okay, now go ahead. After you look at the deadband.

A. Okay. And so we will assume that there is an amount that has now been determined to be $9 million higher, or outside the deadband. Then the Company would receive 70 percent out of the $9 million. It would be approximately around 6.3.

Q. So first you apply the deadband. Then you eliminate anything you claim is imprudent. And then you take 70 percent of the reduced amount. Is that how it works?

A. That's how I would think it would work, yes.

Q. Okay. Is the 70/30 sharing band proposed because you don't believe the Division has the capability of auditing accurately?

A. No, that isn't the specific consideration. The specific consideration has to do more with having -- with assuring that there are incentives in place for the Company management to continue to work towards improving their control over net power costs to the extent they can.

Q. And you agree that these incentives only are beneficial if management can control factors? They don't -- they can't affect performance if management doesn't have any control over those matters; is that right?

A. Well, that's right. And that's why we are -- the Division is supporting that the Company receive some ECAM.

Q. Because you recognize they don't have control?

A. They don't have complete control over some of the items.

Q. Okay. Isn't it the Division's duty to conduct audits of matters that are within the jurisdiction of the Commission?

A. Generally, yes.

Q. And are you aware that the statute says that the Division's budget is required by law to be set at a level sufficient to allow the Division to perform its duties?

A. I know I've read the statute at some point, but it's probably been several years.

Q. Does that sound familiar?

A. Frankly, no. But.

Q. Would you like to look at it?

A. Sure. I'll take a look at it.

MR. MONSON: May I approach the witness? I'm sorry, I'm asking after I did it.

MS. SCHMID: I'm sorry, could Counsel also please have a copy of what you handed to the witness?

Q. (By Mr. Monson) Look at 54-4a-3. Do you see that?

A. Yes.

Q. Can you read the item, subsection 1?

A. "The annual budget of the Division of Public Utilities shall provide sufficient funds for the Division to hire, develop, and organize a technical and professional staff to perform the duties, powers, and responsibilities committed to it by statute."

Q. And where does the Division's budget come from?

A. The actual funding?

Q. Yes.

A. Or --

MS. SCHMID: Objection, I would think that this would be beyond the scope of Mr. Peterson's testimony.

CHAIRMAN BOYER: I agree. Let's, let's move along a little bit.

MS. SCHMID: And --

MR. MONSON: He said they don't have authority -- they don't have the capacity to audit. Isn't this directly relevant to that?

MS. SCHMID: If I may respond?

CHAIRMAN BOYER: You -- regardless of what the law says, the legislature appropriates the budget.

MR. MONSON: Don't they do it from the regulatory fee?

CHAIRMAN BOYER: They collect -- yes, they take it from the regulatory fee, the PURF fee, that is correct.

MR. MONSON: And so can't the regulatory fee be changed if it needs to be changed?

CHAIRMAN BOYER: And if it is changed the legislature still has to appropriate that money to the various agencies in the Department of Commerce.

MS. SCHMID: And along this line, just a foundational question. Could Counsel please state whether or not -- and I'm sure that Counsel is representing this accurately -- but are these the most current statutes?

MR. MONSON: I got them off the website, the legislative website. So I believe they are, yeah.

MS. SCHMID: Thank you.

MR. PROCTOR: Mr. Chairman, as a matter of personal privilege could we take a five-or-ten-minute break?

CHAIRMAN BOYER: I was going to do that in two minutes, but.

How much more do you have, Mr. Monson?

MR. MONSON: I only have -- I don't have -- I just have like one more question. Well, I don't have any, given your sustaining of the objection.

CHAIRMAN BOYER: Yeah. We understand your point. I mean, it just seems like this morning you're belaboring a lot of points that we, you know, we get them, and then you go on for another 20 minutes, and so on and so forth.

MR. MONSON: I apologize.

CHAIRMAN BOYER: We understand the points you've made here today. And believe me, we understand how the budgeting process works.

MR. MONSON: No, I don't mean -- I wasn't being facetious. I am at the end of my questions.

And I had like two more questions, but they're related to the statute, and the funding, and the regulatory fees, so.

CHAIRMAN BOYER: So do you have any more questions?

MR. MONSON: No. No, I'm done.

CHAIRMAN BOYER: Okay, thank you.

Let's take a ten-minute recess.

(A recess was taken from 9:28 to 9:42 a.m.)

CHAIRMAN BOYER: Okay, we're back on the record. I may have been a little blunt with Mr. Monson, and if so, I apologize. But the point I was trying to make, for example, earlier this morning you were making the point that the sharing bands proposed by the Division are broader than those in most of the cases cited by them. And we got that within a question or two, but you went on for another 20 minutes about the same thing.

And we have read all of the pleadings and we've listened to all the arguments. We don't want to cut anybody off, but we do need move with a little more alacrity if we're gonna get to all five witnesses today. So that's what drove my comments there.

All right. Mr. Peterson, you're still on the stand. Let's turn now to Mr. Proctor.

MR. PROCTOR: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. PROCTOR:

Q. Mr. Peterson, in connection with the evidence that you and others have given in this case about the decisions made by other Public Service Commissions or utility regulators, should this Commission make a decision based upon a desire to match some other jurisdiction, or should this decision be based upon the public interest of the citizens of the State of Utah?

A. I would certainly hope it would be the latter. The information was compiled only to show that within the range of other types of ECAMs or PCAMs what we're proposing here is not outside of that range. It's not completely unusual.

Q. And it's not so much a range, is it Mr. Peterson, as it is there are certain regulatory elements to ECAMs, such as sharing bands, that this Commission should consider as they relate to this company in this state, correct?

A. Yes.

Q. One of those issues that you raised in your direct testimony in this phase is the rolled-in methodology that this jurisdiction has been living with for some time. And on page 3 at line 57 you state that:

"The Division supports the resolution of this issue" -- and that is the rolled-in methodology -- "as a condition of implementing an ECAM and suggests that the Commission order the use of 'rolled-in' methodology for interstate allocation of the ECAM costs."

When you say a condition of implementing it, do you mean to ask this Commission to require rolled-in methodology for the ECAM and for the development of the base rates?

A. Well, the testimony I think as written was aimed at the ECAM itself. As has been discussed before, there is an anticipation that we will effectively go to rolled in pretty soon anyway as a general rule. However, I was arguing that, at least for the ECAM, it should be rolled in.

Q. Well, can you consistently utilize rolled-in methodology to calculate ECAM adjustments but not the base rates from which those adjustments stem?

A. Well, okay, I see where you're getting on this. Of course the, the base rates would have to be on a comparable basis.

Q. Now, you were in the room yesterday, I believe, when Mr. Duvall testified about the new proposal the Company has made, were you not?

A. Which is?

Q. Concerning MSP. The 2010 proposal I believe is the way it's phrased.

A. I'm aware of that.

Q. And did you hear Mr. Duvall state that in fact at this point in time the hydro endowment as proposed by the Company is the same as the hydro endowment that we're living with now under MSP?

A. I believe that is correct.

Q. And did you also hear him state that at this point in time there is no proposal to do anything differently than that?

A. Well, within the MSP agreement proper I think that is more or less correct. What we are relying on is that the -- is this side agreement that was also talked about and which no one has seen as yet.

Q. All right, thank you. I have a few questions to ask you about the hedging. Because one of the comments that you made in your -- responding to Mr. Monson was that if the hedging is part of the ECAM but nevertheless there's the expectation that the

Commission will provide guidance, that at that point in time maybe the Division might understand what hedging is. Do you recall having said that?

MS. SCHMID: I would object to the characterization of the testimony. The testimony would speak for itself. And if needed, we could ask the reporter to read that back.

MR. PROCTOR: Well, I think my question was, Do you recall saying that. And I think he can say yes or no.

CHAIRMAN BOYER: You can answer that, Mr. Peterson.

THE WITNESS: Okay. I recall at least saying something similar to that.

Q. (By Mr. Proctor) Now, you pointed out that the swaps in the 2008 rate case increase net power costs by $42 million. That was in your footnote that you corrected this morning?

A. Yes.

Q. And you also stated on page 5 of your direct testimony in this phase, line 107, that:

"Since 2006 through May 2010, the Company has paid out a net $173 million as a result of being on the wrong side of its electric and natural gas swaps."

Do you recall that?

MR. MONSON: Can I object? I think we're having some friendly cross here. I don't think he's challenging this witness on his conclusions, I think he's trying to make his case through friendly cross.

CHAIRMAN BOYER: Well, we won't know until we hear his next question, I guess.

Q. (By Mr. Proctor) Is that correct? You -- that's what you mentioned, is they're on the wrong side of electric and natural gas swaps?

A. Yes.

MR. PROCTOR: Here it comes, Mr. Monson.

Q. (By Mr. Proctor) Yet you are -- the Division is recommending that you include within the ECAM adjustments hedging, about which you know nothing, and which can result in $173 million negative or underwater expense?

A. Well, that --

MS. SCHMID: Objection, I would again object to the characterization that the Division knows nothing about hedging.

CHAIRMAN BOYER: Well, Mr. Peterson can answer for himself what he knows or doesn't know.

THE WITNESS: Well, I, I think it is incorrect that we know nothing about it. Our understanding is incomplete at this point.

And as to leaving it in the NPC, as the Company witnesses have pointed out, what they consider to be their hedging program is broader than the swaps. And at this point the Division does not have a firm opinion on what to do with the rest of what they consider hedging.

Yesterday I think it was Commissioner Campbell asked the question, or raised the issue at least, that wouldn't we be better off using without any swaps.

And, you know, on the surface that certainly appears to be the case. But until we can understand the relationships between swaps and the physical hedges I'm not in a position to say that they should be excluded.

Because often, my understanding of swaps and hedging practices generally -- which is also limited -- but it can involve a number of complex transactions which individually may not make sense, but are part of a larger strategy which has an end result in mind.

Q. And the Division does not understand that larger strategy?

A. At this point we are not clear on it, that's correct.

Q. And that particular program -- hedging program has not been vetted by this Commission?

A. That's correct.

Q. And yet you're including that hedging program in your ECAM. And you are, however, conditioning your -- any ECAM on this Commission adopting the rolled-in methodology, which you do understand and you have a reason for doing that.

So why would you include something that is uncertain, not vetted by the Commission, and has a large financial consequence, into an ECAM where you're -- right now the Company accepts those costs -- the difference between those forecasted costs and base rates, and giving them now, 70 percent of them, to the ratepayer? Why is the Division doing that?

A. Well, the reason is, is because the hedging program has also been included in the general rate cases of the Company. And no one, to this point, has made a frontal assault on including, or excluding, or partially excluding hedging costs in general rate cases.

And if the hedging program -- or if the ECAM goes into place, it should go into place to reflect what the last general rate case had. Now, it's possible, and indeed likely, that before any true ups to an ECAM occurs we will have another general rate case.

And at that point the parameters for what the base ECAM -- or the base factors for the ECAM will be set, or can be. And it's still possible the parties could bring that issue up regarding hedging costs.

But at this point in time the Division is saying whatever is in net power costs in the rate case should be in the hedging -- or should be in the ECAM. That is our basic position.

Q. We have a rate case anticipated beginning in January, correct?

A. That's my understanding.

Q. And the schedule for the rolled-in methodology issue now anticipates a resolution perhaps in March, correct?

A. I would think that's about right, yes.

Q. So wouldn't it make a great deal of sense, even if the Division's ECAM is the one that is selected by the Commission, to exclude hedging and require the rolled in, resolve these matters in the next general rate case and in the rolled-in methodology case, and then and only then design the ECAM -- or the ECAM such that it takes into account --

MS. SCHMID: Objection, is Counsel testifying?

MR. PROCTOR: Excuse me, but Counsel seems to be interrupting in the middle of a question several times now.

CHAIRMAN BOYER: Your questions tend to be a little complicated, however, Mr. Proctor.

MR. PROCTOR: They always are.

CHAIRMAN BOYER: Maybe if you could break it down into smaller bites, maybe Ms. Schmid would not.

MR. PROCTOR: Thank you, Mr. Chairman.

Q. (By Mr. Proctor) Would it not be a lot more wise to first resolve the issue of the hedging, this frontal assault, in the next general rate case, which is beginning in January, and resolve the rolled-in methodology before this Commission adopts any ECAM?

A. I don't think there's a necessary connection between adopting an ECAM mechanism and the exact parameters that go into it. What I just said is, is that the Division conceptualizes the ECAM as including those costs that are included in net power costs in the last rate case.

Now, if the next general rate case changes what is included, then the ECAM -- what goes into the baseline of the ECAM for net power costs would change as well. This is why the Divi -- this is -- from this perspective the Division does not believe that it's necessary to resolve all of these issues within the ECAM itself. We just need to have a structure put in place.

Q. You described the Company as not having complete control over some of the items that make up the net power costs. Do you recall that testimony?

A. Yes.

Q. And the Division has chosen to include everything in its ECAM proposal. You've described the reasons why. But if there was an item that was within -- plainly within the Company's control that is a component of net power costs but, like hedging, is uncertain, not truly understood, and has a large financial impact, wouldn't it be best to separate that out from the ECAM?

A. Well, you could deal with it separately. But what the Division started to worry about in picking and choosing which accounts to take -- to leave in and take out -- which we initially considered doing -- is that the incentive would then shift for the Company to focus its attention on those items that are out of its control.

In other words, since they can get full

recovery or potentially full recovery in -- under their scenario, that those would be the items that they would tend to do. They would be incented to, you know, make short-term purchases rather than engage in long-term contracts and planning, just as a hypothetical example, because of the certainty or near certainty of recovery.

So the Division did not want to necessarily incent the Company away from those parts of its net power costs that are at least more in control -- such as coal purchases and those items that the Company has fairly tight control over, we believe, at least on a relative basis -- to those items that are more uncertain, more volatile, just because they had an ECAM that would guarantee or assure substantial recovery.

Q. Well, I can understand that, sir, with respect to coal purchases, because coal fuel is at the core of your net power costs; would you agree?

A. They're a large portion of it.

Q. Are hedging losses and hedging gains at the core of net power costs?

A. Well, they tend to be relatively small when -- in the forecasts. Like $42 million, as you pointed out, out of the roughly billion dollars in net power costs. So we're talking about 4 percent. And that's not -- I won't say that's small, but it's not a major portion.

Q. Well, are you familiar with Mr. Bird's testimony, and in particular his Exhibit 2R? It's entitled: "PacifiCorp Energy January 2006 to May 2010 Gains and Losses on Hedges"?

A. I think I'm familiar with that.

Q. Do you recall my cross examination of Mr. Bird yesterday where he acknowledged that between January 2006 and May 2010 the swing between electricity and natural gas hedges, gains and losses, is $1.1 billion?

A. Well, I don't know how that ex -- that exhibit is -- from my understanding is designed to show that the Company's hedging program is just doing a bang-up job for all of us.

Q. Well, let me --

A. But it doesn't necessarily --

Q. My question, sir --

A. -- equate directly to --

Q. My question, sir, was, Do you recall that testimony and Mr. Bird's acknowledgment?

A. Yes.

Q. On page 6 to your direct testimony in this phase, at line 124, you stated:

"The hedging losses are the result of the Company's own actions."

Is that correct?

A. Yes. The Company, by its own management choices, engages in hedging. And in particular, swaps.

Q. Mr. Peterson, I'd like you to turn, if you have it in front of you -- I'm sure you do -- page 19 to your surrebuttal testimony?

A. Okay.

Q. You state under -- at line 405:

"The primary concern of the Division is that under existing mechanisms, absent an ECAM, it is difficult for the Company to receive recovery retroactively."

Do you see that?

A. Yes.

Q. And then you go on to state in a crisis the Company could be in a significant financial hole. Could you describe what type of crisis you're talking -- you're referring to there?

A. Well, I guess the most recent actual example of such a crisis was the so-called California energy crisis of 2000 and 2001. But there are other conceivable things that could go wrong that would be nearly catastrophic for the Company.

Q. Could you describe one that has occurred in the last ten years? Other than the California instance?

A. Well, I know that, I think it was the Hunter plant blew up or went down about that same time. But I think that was eventually determined to be due to maintenance issues of the Company.

But if you take a similar situation where a major plant goes down for some reason other -- that was completely outside the Company's control, then the Company potentially could run up immediate and significant losses before it could begin to get recovery under the normal mechanisms that are currently available.

Q. But the one instance that you do cite that has happened is the California energy crisis. You speak about that in your direct testimony. And you note that this company applied for relief in a number of jurisdictions, and for the most part got it, don't you?

A. It got some relief.

Q. So the crisis response really doesn't require an ECAM. In fact, there are provisions within the current system -- regulatory system that permits the Company to seek relief?

A. But generally not retroactively.

Q. Well, going forward?

A. Going forward.

Q. Is forecasting errors, in your judgment, the Division's judgment, considered a crisis?

A. No.

Q. You have spoken a great deal in your testimony and on cross examination about the fact that forecasts from this company the last several years have not been accurate. Is that a fair summary of your testimony?

A. Well, the accuracy per se isn't the primary issue. The problem is, is that they've been inaccurate on the low side on a consistent basis for several years. And -- so that, that's the main issue. Why aren't there at least one or two years out of eight or nine where they've over-forecast net power costs?

Q. Well, there are two parts to your ECAM. One is you -- a base rate, which is derived from this Commission's decision looking at forecasts, correct?

A. Yes.

Q. Then there's the actual costs.

To what extent did the Division consider whether its ECAM proposal should take into account the management and control exerted by the Company over those actual costs?

A. I don't think I understand your question.

Q. Have you proposed any performance measures?

A. No, not specifically. But also, the intent of the sharing band is to give enough incentive to management that they -- that the Company has significant dollars at risk that they will maintain the mode of patience that they now have to operate as efficiently as possible, because they still are putting substantial shareholder funds at risk.

Q. So is the Division's proposal absolutely contingent upon the Commission ordering a sharing band, as you've described?

A. I think so. I think that in the Division's view, at least, it wouldn't be prudent at this point in our process to not have sharing bands.

Q. And I believe it was in your rebuttal testimony -- well, excuse me. In your surrebuttal testimony, page 3, line 50, that at this point in time the Division is not persuaded by the Company's argument for its proposed ECAM?

A. Right.
MR. PROCTOR: Thank you, Mr. Peterson.
CHAIRMAN BOYER: Thank you, Mr. Proctor.
Mr. Evans?
MR. EVANS: Thank you.

CROSS EXAMINATION

BY MR. EVANS:
Q. Good morning, Mr. Peterson.
A. Hello.
Q. Mr. Monson covered a lot of what I was going to ask you about, so I'll make it short, knowing that the Commission will not want to hear us belabor the point.
But I want to ask you a little bit about the audit. About how we can practically -- if the Commission were to authorize an ECAM, what kind of regulatory process would occur to fulfill the prudence audit. Have you ever done one; a prudence audit of an electric ECAM?
A. Of an electric ECAM, no.
Q. And how would you envision that would work? For example, would the, would the Company deliver information to the Division along with its cost recovery filing?
A. We would anticipate that there would be a

certain amount of information delivered with the filing or otherwise made readily available to us. We would probably need to develop a master data request list of some sort like we have in the general rate cases.

And work that out with what the Company would -- work out with the Company what they would deliver up front to us. And maybe we would have an A and B part, like we do in the general rate cases, where they deliver some information up front and then they have another 30 days or something to provide the rest of it.

Q. And would you require monthly filings, possibly?

A. I think there would need to be some monthly filings and ongoing review, otherwise the auditors would likely get way behind the curve.

Q. And I assume you would want to see data on power purchases and sales, right?

A. Yes, we would want the basic information.

Q. Would you want to see information on all the transactions?

A. Well, that would depend on the auditors themselves as to what use they -- whether they wanted to wait on that or whether they wanted -- and do a sample ongoing on a monthly basis, or wait till it's all done.

At this point I'm not prepared to design an audit program for the Division.

Q. Okay. But in general you'd be looking at those transactions, whether in summary form or individually. And maybe, depending on circumstances, there might be a reason to look into it in greater detail or not. Is that a fair statement?

A. I would say so, yes.

Q. And you'd be looking at fuel expenses?

A. Yes.

Q. And coal and natural gas?

A. We would be looking at whatever goes into the net power cost.

Q. Would that include the Company's low-cost generation resources?

A. What do you mean?

Q. I mean to see whether they've been operating wind and coal prudently. Operating and managing their low-cost resources prudently. Isn't that a part of what they're recovering through this ECAM?

A. That would be part of what they're recovering. We probably wouldn't be looking at that on a monthly basis, but we'd undoubtedly be running some tests and raising questions on the annual -- during the annual true up if anything appeared to be out of the ordinary.

Q. So you would be looking at operation maintenance, management of coal plants, and wind generation annually?

A. I would expect so, yes.

Q. Okay. Let's take a look at -- it's a daunting task, isn't it? As you say. Let's take a look at -- I'm sorry. Let's take a look at your rebuttal testimony, at page 4?

Beginning at page 4 you respond to Mr. Brubaker's proposal about performance -- beginning at page 3, actually. You respond to Mr. Brubaker's testimony about performance standards. And I'd like to -- you evidently disagree that they're necessary.

One of the reasons you give, beginning on page 4, line 74, is that because the performance standards require -- are based on an average of resource performance, your comment is these facilities would fail the performance standards half the time, right? Half the time they'd be above, and half the time they'd be below?

A. That would seem to be a mathematical result, yes.

Q. But you're gonna audit them every year, right?

A. Well, when you say "audit" them, I -- again, I'm not prepared to design an audit plan for the Division. Those would be issues that could be looked at on a year -- on an annual basis. And I would imagine that intervening parties would also be interested in seeing what has happened.

Certainly if, if two or three coal plants are operating at 30 percent of capacity instead of 80 percent, then we would want to know why.

Q. Well, if they were operating -- and otherwise you would audit them all?

MS. SCHMID: Again, asked and answered. Mr. Peterson has stated --

MR. EVANS: Okay. Let me ask what this means, then.

Q. (By Mr. Evans) On line 92 you say it's not appropriate to carve out one resource or group of resources from the system and look at their output in isolation. You'd have to look at them all, wouldn't you?

A. Well, yes. You don't -- you'd want to see how the system as a whole was operating to see if it makes sense to you. There may be reasons in any given year why you have more or less wind, or why you operate your coal plants more or less.

But the question is, on a system that's operated as an integrated whole, whether there appears to be general prudency in the operations.

Q. I see. And so you think that if the plant were operating at 30 percent maybe it would trigger a closer review, but at 45 percent it wouldn't?

A. I didn't mean to imply that. I just meant that if there's something that's clearly operating outside of normal parameters, that that would raise a red flag for further investigation. And that would be true whether it's natural gas, or wind, or anything else.

Q. And as a practical matter, that's about the only way you can accomplish this audit, isn't it? By giving an overview and looking at the resources or costs that jump out at you, and then giving them a closer look?

A. That would be one approach. As I said, I'm not here to design the Division's auditing program. There would undoubtedly be an attempt to just audit accounts just for compliance.

Q. But in your testimony -- I'm looking at 95 now -- Mr. Brubaker has proposed -- and I don't mean to characterize his testimony, so if I've missed it then you can correct me.

That if the resource isn't operating up to its performance target that the Company would be required to come forward with an explanation in the first instance, when it makes its filing, to provide an explanation and the information behind that explanation as to why the resource under-performed. Is that how you understand it?

A. More or less.

Q. Why would this be punishing the Company? I don't understand.

A. Well, it has to do in the first instance with the standard that Mr. Brubaker proposes. The five-year rolling average. The Company would -- as we've suggested, the Company would have to come in every year it had an ECAM true up and explain, in some detail presumably, why half of its plants under-performed.

Q. And --

A. Now, if it's just -- now, if all that is contemplated is that -- in Mr. Brubaker's proposal, and I don't know this to be the case. But if it's all that's contemplated is that Jeff Larsen, for example, writes a one-page letter saying, We moved the longwall in one of the mines, and that's -- that would be sufficient, then it probably won't be too burdensome.

But if we're going to end up digging -- drilling down, and the Company is going to have to provide numerous documents, then that becomes somewhat burdensome, in my view.

Q. But as your -- as you have yet to design that process, wouldn't that be a reasonable way to approach it? Is make the Company come forward with the one-page letter from Jeff Larsen explaining why. And then, if the auditors want more information, they can go back and ask for it. But at least they know where to focus the next data request to the Company.

MS. SCHMID: Again, asked and answered. The witness has stated repeatedly that he's not here or prepared to design the audit program.

MR. EVANS: I'm asking him -- I understand. But we're discussing it, and I'm asking him whether he thinks that might be a reasonable approach as they do design it.

CHAIRMAN BOYER: And I think that's a fair question.

THE WITNESS: Well, again, the standard is relatively loose as proposed. And all I'm suggesting is, is that the -- if the data would be available for the Division or other parties who have an interest to review. And if the result of the data indicated an abnormal, unexpected result, then as a matter of course people should inquire.

But if we're just talking about normal fluctuations, then, then I don't think the Company should have to be burdened with explaining everything that went on.

Q. (By Mr. Evans) Even if it's just to say, It was a normal fluctuation and here's why? They shouldn't be required to do that?

A. Well, you're -- again, it depends on what the fluctuation is. If we're talking about --

Q. Right.

A. -- something that's on a five-year rolling average, then I'm -- I think they shouldn't have to report that.

Q. Okay.

A. On the other hand, if it is something like they had a mine shut down for six months because they were -- or a year, or whatever it takes, because they were moving the longwall, then I would expect the Company to be forthright and say, Hey, this mine was down because of X. You know? And then we can decide whether or not we need to investigate it further.

But to just say that because it was on the low side of a five-year rolling average that they need to report, I think that's a little bit extreme.

Q. Okay. Let's look at -- let me ask you one other thing. You understand that, that Mr. Brubaker's proposal wouldn't result in cost recovery denial --

A. Right.

Q. -- if the explanation were satisfactory?

A. I understand that.

Q. Do you have -- whose burden is it to show prudence in the first instance, the Company or some intervener in the Division? Who must prove prudence?

MS. SCHMID: Objection, calls for a legal conclusion.

MR. EVANS: I think it's a view of the process. I think it goes to how this auditing process is gonna work.

Q. (By Mr. Evans) Who must show prudence in the first case?

CHAIRMAN BOYER: Well, I think it does call for a legal conclusion. So you don't have to answer that, Mr. Peterson.

MR. EVANS: Okay. We'll let the question hang in the air now.

Q. (By Mr. Evans) Let's go back to your

rebuttal testimony, at page 5, and look at the comments you make about wind resources in light of Mr. Brubaker's testimony. You point out -- it's at the end of page 5.

And of course Mr. Brubaker, as to wind, realizing the vagaries of the resource and you can't make the wind blow when you want it to, has proposed that if the resource achieves 90 percent of its average performance that that would be good enough to pass muster and there wouldn't be additional reporting required.

And then you say that -- part of your rebuttal, I'm curious about what you say on line 111:

"Mr. Brubaker's 90 percent proposal ignores the fact that cost recovery for these plants were approved in a commission proceeding...."

And then over the page you say again that the Commission has approved cost recovery for these plants, for a variety of reasons. And that Mr. Brubaker's proposal is a second attempt at a prudence review, which is blatantly unfair.

Do you see that?

A. Yes.

Q. Is it your view that once cost recovery has been approved there's no need for a further look at prudence in the operation and management of a generation plant?

A. No, that's not what I'm saying. It gets back, again, to the standard that Mr. Brubaker is proposing. In the first instance the Commission has approved, either in a special docket or at least implicitly through a general rate case, a wind plant with say 35 percent capacity factor.

Now the understanding is, is that that 35 percent capacity factor is an average. And an expectation. And that expectation may not -- may or may not come to fruition. And certainly it can't be expected to occur every year.

Q. Well, and if it doesn't occur, and the answer is -- the reason is the wind didn't blow as hard last year, that's a pretty simple burden for the Company to bear in establishing prudence, isn't it?

A. But they shouldn't have to do it just because it was 10 percent below the estimate. If you wanted to argue --

Q. But --

A. -- broadly -- the data that I've put together shows that almost every year the Company's going have to come in under the 90 percent and prove something.

Now --

Q. Yeah. Which makes you wonder how the Company got cost approval with those capacity factors. It was the Company that represented those capacity factors to the Commission in seeking cost approval, wasn't it?

A. Well, in one form or another, yes.

Q. So why shouldn't they be held to what they represented the capacity factor would be on the wind plant?

A. I'm not saying that they shouldn't. However, the question then be -- part of the question then becomes, was the basis for the Company's representation a reasonable basis and a reasonable expectation?

Q. Right. But then you seem to say here that it's blatantly unfair to make them explain to the Commission why they didn't achieve the capacity factor that they represented they would achieve.

A. Because --

Q. That's not unfair, is it?

A. It is unfair in the sense that the wind variation is greater than 10 percent from year to year, which my exhibit attempted to show for the limited, for the limited data. Now, and if you want to go back and say some other lower limit --

Q. Well, we've said 90 percent.

A. Well, the Division doesn't accept that as being reasonable.

Q. All right. But there may be a reasonable number that it would accept as?

A. Well, conceivably. But the point is, is that we think it's unreasonable for the Company to have to explain itself basically every time it does something.

Q. Well, if the Company doesn't explain itself then the Division has to ferret it out in an audit, don't they?

A. Not necessarily.

Q. Are you gonna just let it go?

A. No.

MS. SCHMID: Again, asked and answered with regard to the audit and the process.

CHAIRMAN BOYER: Well, it is verging on argumentative, but I think it's a fair question.

THE WITNESS: So what's the question, please?

Q. (By Mr. Evans) The question is, if the Company doesn't come forward in the initial filing and identify under-performing resources and explain why, then the burden is back on the Division to discover the under-performing resources and ask why, isn't it?

A. Well, first of all the, again, the 90 percent level that's proposed the Division feels is unreasonable and would not consider that to be a threshold for determining under-performing assets. And so -- and that's the response I was making in my testimony.

Q. So the argument is more with the level that triggers that kind of process, rather than the process itself?

A. Well, conceptually I can't argue with the fact that if the Company said 35 percent and for 20 years running -- probably not even that long. But for a number of years running it barely made 20 percent, then there would be some questions raised.

Q. Okay. Look down at your response that begins on line 127 there, if you would? And that's, I think in response in generally -- in general to Mr. Brubaker's proposal.

And your -- beginning with line 131 you say the problem with this requirement is that appropriate -- because what we're saying is that we'd have to look and see whether the Company managed its resources appropriately.

And your criticism is to say, We don't know what "appropriate" means. It's not defined. It could result in much second-guessing of the Company's actions, and protracted analysis and litigation just within the context of an ECAM. Have I read that correctly?

A. I think generally, yes.

Q. But isn't the task of a prudence review to second-guess?

Isn't that what it's all about?

A. I, I don't know if I would characterize it as to -- as a second-guess. It's an attempt to uncover whether or not reasonable information was available and was reasonably applied.

When you're second-guessing, if you think, if you think your research comes up with something else due to that they did not have adequate information or it wasn't reasonably applied, then you might second-guess.

Q. All right. Well now, what if you substituted the word "prudently" for "appropriately" in that paragraph, would you still disagree?

If the Company has to establish that it operates, maintains, and manages its resources prudently, instead of appropriately, then would we have an argument about this? Or would you accept that that would be a reasonable statement from Mr. Brubaker?

MS. SCHMID: Again, objection to the extent that that is not what Mr. Brubaker testified. Mr. Brubaker used the word "appropriately."

MR. EVANS: Right. And I'm asking him, had Mr. Brubaker substituted the word "prudently" for "appropriately," would that make a difference in Mr. Peterson's criticism of the statement.

He's quibbling about the meaning of the word "appropriately." I'm asking him, let's substitute "prudently," and do you still have a quibble?

THE WITNESS: If I may substitute a word that I agree with, we substituted "appropriate" with "reasonable."

Q. (By Mr. Evans) I think we're splitting hairs here. We're talking about prudence reviews. You can use the word you want. But it needs to be looked at, right? Wouldn't you agree?

Plant performance needs to be looked at, based on past plant performance?

A. Well, it would be hard for me to disagree with that general concept.

Q. All right.

A. So I would agree with it.

Q. All right, let's move on.

During Mr. Monson's cross you were asked a series of questions about how the DPU's sharing proposal would provide incentives for the Company to be efficient, for example in the operation of its front office trading. Do you recall that?

A. Yes.

Q. And he asked you a question about computer systems. Would it be prudent to buy a computer system to help manage the trading or not.

And your response -- and I -- don't let me mischaracterize you, correct me if I'm wrong -- was, Well, it would be hard for the Division to know whether there was even a computer system or program out there that would assist in the front office trading.

Have I got that right?

A. Well, I think that was an example that I brought up --

Q. Yes.

A. -- about the computer as a, as a hypothetical situation.

Q. But your comment was something like -- and I don't mean to put words in your mouth. But it would require -- there's certain things that the Company could do to improve its efficiency that would almost require that an insider bring those to the attention, because the Division wouldn't even know that they're possible.

Like, for example, they wouldn't know that maybe you could run the floor with three traders instead of four. But an insider would know that, right?

A. Yes.

Q. And so there's information out there that the Division doesn't even know to ask for that may bear on whether the Company is prudently managing its resources and coming up with a prudent net power cost, correct?

A. Well, it's a truism almost that the Company always knows more about its company than any regulators do.

Q. And so doesn't it make sense to require the Company in the first instance to come forward with information, rather than have the Division ask for it?

A. I think we discussed earlier that when the Company files, that we would probably develop some sort of master data request.

Q. Okay. Let me ask you one last question. Is it your under -- you understand that this performance standard is intended to be an incentive to the Company to manage its resources prudently?

A. I understand that's the incentive -- or that's the intent, is to particularly make sure the Company operates relatively low cost power units. I understand that's the intent.

Q. And likewise with its physical and financial transactions as well, right? Not just the steel and the plant? Fuel costs, all of the elements of net power costs, this performance standards is meant to see that those are manage -- those are prudently managed?

A. You mean the performance standards that Mr. Brubaker proposed? I didn't know they were all inclusive.

Q. I'm sorry, maybe I misspoke. We're talking about managing and operating the resources, okay?

A. As a general?

Q. As a general matter.

A. Okay.

Q. Do you understand them to -- and he's proposed them instead of the deadband and sharing but they could be applied in addition to, couldn't they?

A. They could be, yes.

MR. EVANS: No further questions. Thank you, Mr. Peterson.

CHAIRMAN BOYER: Thank you, Mr. Evans.

Mr. Dodge?

MR. DODGE: Thank you, Mr. Chairman. Just a few.

CROSS EXAMINATION

BY MR. DODGE:

Q. Good morning, Mr. Peterson. Before we publish the final postmortem on accurate net power cost forecasting I'd like to ask you a couple questions to, I hope, put it in context.

If you were to start flipping a coin and the first 8 times it came up heads, would that color your perception of the odds that the next hundred flips would be 50 percent heads and 50 percent tails?

A. As a statistician it shouldn't, assuming you have a fair coin.

Q. Now, when we forecast net power costs what do we assume, for example, about hydro conditions?

A. That they're normal.

Q. And over how many years do we look at that; do you have a rough idea?

A. I'm thinking like 30, but it may be longer. I'm not sure.

Q. And I'm not a net power cost expert either, but I believe it's much longer than that. But whatever that number is, if in the last six years, or eight years, or ten years water has been lower than normal, does that mean that that portion of the deviation in net power costs from the forecast was caused by a faulty forecast, or by the fact that the odds are going one way for a while and will likely return over time? How would you characterize that?

A. Well, like an economist I would characterize it as it depends. But assuming that the weather regime hasn't changed, then from one year to the next you couldn't assume that last year will continue to be the same as next year.

Q. And for example, if hydro conditions are normalized over a 60 -- 50/60-year time period it may not be inconsistent with that that there might be even a decade of very-different-than-normal water conditions, correct?

A. Conceivably, yes.

Q. And so at least insofar as water conditions drive the deviation in net power costs we're talking about, you can't look back eight years. You'd have to look back the whole period of the normalization to get a sense whether something significant has changed, or whether it's just the odds coming down the way they are. Would you agree with that?

A. That's possible, yes.

Q. And to the extent we normalize other aspects of net power costs it would be a similar analysis, would it not? That a very short-term analysis won't tell you whether it's broken as opposed to simply a time period where it's under-performing the norm as opposed to over-performing the norm. Would you agree with that?

A. That's possible, yes.

Q. Turning to your testimony, Mr. Peterson, let me make sure I understand the Division's proposal. As I understand it, your proposal is that an ECAM should begin January 1, 2011. You know, assuming that it's designed in a way that you find appropriate. Is that right?

A. Well, whether it's designed in a way that I think is appropriate or not, it -- the accounting for it could begin that soon.

Q. And then the first time the Division would contemplate a filing to true up would be about a year later, January of 2012-ish; is that correct?

A. Sometime in early 2012, yes.

Q. And at this point am I correct in assuming the Division has not performed an audit on the deferred net power cost balance that has been deferring, by Commission order, since February?

A. I am not aware of any Division audit on that.

Q. The Division's not in a position to tell this Commission right now, at least, whether those dollars ought or ought not to be flowed through to the Company; is that correct?

A. That's correct.

Q. And it won't be in a position to do that in the very near term, I'm assuming; is that correct?

A. Well, I'm not sure what you mean by "very near term." But if you mean before the end of the year, probably not.

Q. And your proposal is that those deferred dollars be considered in the rate case; is that correct?

A. Yes. I'm not proposing to ignore them. But I want, I want to -- or my conception is, is that the ECAM will be a structure put in place and have a definite beginning point, preferably 1/1/2011. And these other issues -- deferred net power costs, deferred RECs -- should be dealt with and amortized, if they are to be amortized, in a different forum.

Q. Thank you. Turning briefly to ROE. If I understand your testimony correctly -- and I acknowledge I'll be characterizing it, and if unfairly, let me know.

Your view is that you acknowledge conceptually that a reduced risk like an ECAM should have implications for ROE, but so far you haven't come up -- or seen a way to measure it precisely enough to your satisfaction. Is that a fair summary?

A. Yes, I think that's fair.

Q. Has the Division made an attempt to come up with its own way to measure the impact on ROE?

A. We investigated it in a Questar Gas rate case. I think it was the 2007 Questar Gas rate case where that issue came up. And we concluded that there wasn't a way that would be reliable.

It appeared there were different opinions about what kind of a range it should be in, but there was no way of reliably quantifying it.

Q. And in a rate case typically is it not true that the parties, and ultimately often the Commission, identify a reasonable range of acceptable or reasonable ROE outcomes?

A. Yes.

Q. And might factors like the adoption of an ECAM or some other risk-mitigating function properly be considered by those parties and by the Commission in selecting the point in that range where -- that reasonable range of ROE outcomes that they adopt --

that the Commission adopts as the authorized ROE?

A. Yes, that could be done, as long as we understand that it's a judgment call as opposed to something resembling a precise calculation.

Q. And at least within that reasonable range of ROE outcomes that very much is a judgment call this Commission's called upon to make, is it not?

A. Primarily, yes.

Q. And then finally, Mr. Peterson, today when the Division looks at the test period net power cost transactions does the Commission -- or excuse me, does the Division rely in any significant way on its knowledge that the Company, at the time it incurred all of those historic test period transactions -- base period transactions, had a direct and powerful financial incentive between the rate cases to minimize its costs and maximize its profit?

A. Well, that's, that would be one of the concepts that we would be relying on. That -- the understanding that the Company is incented to minimize costs.

Q. And going forward without a sharing mechanism would you be able to rely upon that incentive in your auditing?

A. That would definitely be a concern.

MR. DODGE: Thank you. No further questions.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Mr. Michel?

CROSS EXAMINATION

BY MR. MICHEL:

Q. Morning Mr. Peterson.

A. Hello.

Q. Long morning, I guess. Maybe it's going fast for you.

A. No, I don't know about that.

Q. Just a quick question. How would you compare, when we're talking about an audit or potential audit, the complexity of having to audit a company like Questar, or a gas utility, versus an electric utility like Rocky Mountain Power? Are they comparable, or is there?

A. Well, mostly no. I mean, conceptually we're supposed -- we're auditing the net power costs. But this is one of the difficulties or the issues we've had.

We thought long and hard about what it takes for us to adequately audit Questar Gas and tried to extrapolate into what it would take us to do an equivalent level of work -- or audit work for PacifiCorp.

And that's where our concerns started to kick in, because PacifiCorp is much larger than Questar Gas and it engages in far more transactions of various kinds. Whereas Questar Gas is, rather simply they're just buying natural gas and putting it in their pipeline.

But, you know, and their hedging program is relatively simple and understandable. They come in two or three times a year and explain what they're going to do in about 20 minutes. And everyone says, Well, that seems reasonable. And away we go. Because they're only talking about a couple of dozen transactions, really.

But with PacifiCorp we're look at coal resources, we're looking at natural gas resources, wind resources, purchases, sales. And we're looking at those in a much larger, more complex system. And more complex interactions in that system.

So the upshot of it is, is that we would agree with the number that Dr. McDermott threw out yesterday that it would likely be two, and possibly three full-time equivalents, perhaps, to do an adequate audit.

And as I said earlier, that's a lot of people for the Division.

Q. One of the suggestions in this case is that there be some benchmarks, performance standards, whatever you call them, whereby if the Company came in and, and their net power costs related to a particular aspect of their operations was within that benchmark, you wouldn't need to look any deeper.

My question to you is, if such a mechanism was deployed, isn't it true that there would be situations that would be overlooked -- opportunities to reduce costs that would be overlooked?

For example, let's say you've got a coal plant standard. And the Company had an opportunity to renegotiate some coal contracts, some coal supply contracts. Neglected that opportunity, for whatever reason. And continued on its merry way with its current coal costs.

Under a benchmark scheme you would see that the coal costs had not deviated, and basically there would be no further look; isn't that right? And isn't that a problem associated with that type of mechanism?

A. Well, there's, there's that problem. And also the other problem, that the Company would tend to manage to the benchmarks -- which may or may not be, in any given instance, the least-cost production of power -- because they would be interested in meeting the benchmark, even if something else would be a better -- would be better for ratepayers and maybe even the Company in the long run.

Q. I wanted to ask you a little bit about some of the, some of the discussion you had with Mr. Monson and I think even Mr. Dodge a little bit. But relating to an historic base period for net power costs.

And my question is, I'd like you to assume that the Commission, instead of adopting projected power costs, net power costs in a rate case, committed that it would always use historic unadjusted but prudent base period fuel costs. And that those would be the costs going forward.

Isn't it true that in such an instance the Company could always, by filing a rate case every year, essentially catch up, but for the time value of money? I don't know if you followed what I said, but.

A. Well, there would be the time value of money, but also the possibility of changes in price that may have, in principle, been known and knowable at the historical period. I mean, there are --

Q. But wouldn't those get caught up in the following rate case? In other words, if you're always looking back, and committing to always look back one year and allow those costs, to the extent they were prudent, the Company could always be whole but for the time value of money, right?

A. More or less, yes.

Q. And if you had a two-year average the Company would only need to come in every two years to be made whole, except for the time value of money?

A. Well, you would -- if you wanted to make the Company whole you would have to take -- make some kind of an adjustment to the historical base period. Unless you wanted to just assume that that made it -- made the Company whole.

Q. Okay. And the time value of money could serve as an incentive to the Company to manage its fuel costs, because it would win or lose depending on whether it was over- or under-recovering?

A. Well, if you assume that there was a formula where the Company automatically got last year's net power costs plus 5 percent, then there would be an incentive, potentially, for them to come in with last year's net power costs plus 2 percent and keep the difference. If I'm understanding what you're saying.

Q. I think I lost, I think I lost you or you lost me somewhere in there on the 5 percent.

A. Okay. Maybe you should --

Q. I was just asking sort of a scenario

drawn -- you know, following up on a conversation you had with Mr. Monson that if the Commission was always awarding exactly -- and let's assume, let's assume -- let's take the issue of prudence off the table -- the Commission always committed that it was going to allow in a rate case the actual base period fuel costs, you know, and allow those to be recovered in the next period.

Essentially the Company could always come in every year and make itself whole, or every two years if the Commission agreed to a two-year average instead of a one-year average?

A. Well, that sounds to me like a flavor of ECAM.

Q. That's, well, that's sort of what I'm getting at, although maybe a simpler approach.

A. Well, other than the regulatory lag of a year, then the Company would be made whole. If I understand your scenario correctly.

Q. Okay. And the Company could, of course, opt to not come in if it was over-recovering its fuel or if it was beating its fuel costs. And that's an incentive similar to what's currently in place for the Utility to manage its fuel -- or its net power costs, right?

A. Well, it's your scenario, so.
Q. Yeah, I guess. All right, I'll quit testifying.
Let me ask you this. The concern, as you've gathered from Ms. Kelly's testimony, that we have with part of the Division's proposal has to do with the complexity of the proposal. And as I understand it -- well, let me just ask you initially.
Would you agree that, other things being equal, a simple mechanism is preferred to a more complex mechanism?
A. Well, yes.
Q. Okay. And then --
A. All things being equal, of course.
Q. And some of the issues with complexity is sometimes they present opportunities for mischief, or conceive -- or can compromise the transparency of a mechanism and how it works?
A. Those are possibilities.
Q. So as I understand the Division's proposal there is a 2 percent deadband around whatever net power costs the Commission determines should be used going forward. And then beyond that there's a 30/70 percent sharing, at least initially, that ratchets down, depending on the activity -- actions of

the Company?

A. Yes. Potentially, yes.

Q. And then to the extent net power costs exceed 30 percent, plus or minus that target level, then there would be no sharing and customers would bear the entire burden of those overages or underages, right?

A. Yes.

Q. So just to put it in perspective, let's assume a hundred dollars per megawatt hour is your fuel cost. I know that's high, but it's an easy number to deal with.

A. I like easy.

Q. So then if actual fuel costs came in between 98 and 102 dollars per megawatt hour there'd be no -- nothing would happen, right? The Company would absorb the entire difference, underage or overage?

A. Well, I'll accept your scenario. Although the Division complicates it by saying the net -- the total net power cost is a dollar value, rather than dollars per megawatt hour. But.

Q. Well, let's use a hundred million, then, as the total fuel cost. So between 98 million and 102 million there would be no, no sharing, right?

A. Right.

Q. Okay. And then between -- from 102 to 130 and from 98 to 70 there would be a 30 percent -- 70/30 sharing, at least initially?

A. Yes.

Q. Okay. And then below 70 million and above 130 million, again there would be no -- then it would be the customer that would be bearing the full brunt of the, of the difference?

A. Well, the excess above 130.

Q. Right. So it's just the incremental portion?

A. Just the incremental portion.

Q. Okay.

A. And in the event that it goes below 70, then the customer would get full recovery.

Q. Okay. So one of the concerns that we have is that, you know, if the Company is near one of those thresholds where the mechanism changes and essentially the deal changes. In other words, they either win more or lose more. And they're near a threshold.

Is there -- one of the fears we have is that with creative contracting or creative accounting, costs might be able to be shifted from one period into another and could allow for some gaming opportunities that would be very difficult to police. Is that a concern that you've considered?

MS. SCHMID: Objection, it seems like Counsel is testifying and putting forth very complicated hypotheticals that indeed resemble testimony.

MR. MICHEL: I think this is a pretty simple hypothetical, actually.

CHAIRMAN BOYER: Let's see if Mr. Peterson understands the hypothetical.

THE WITNESS: I think I understand what you're getting at. And yes, there have been discussions, not only internally but with other parties. And our -- and we've discussed it. The idea that the Company could in some sense game the system, if I may use that term.

And while it is possible, it was felt that, since you're doing an annual true up, that mitigates against one quarter -- the possibility of shifting accounting around from one quarter to the next.

Q. It would have to be an annual --

A. It would have to be an annual basis. And on an annual basis then you start to get independent auditors involved looking at the Company reports to the FCC that we could reconcile back to the regulatory reports.

And so there becomes a little bit more confidence that it's less likely that accounting tricks might be employed.

Q. Well --

A. But you can't ever eliminate -- if you're going to have any kind of mechanism you're not going to guarantee that it isn't possible for somebody to figure out some way of, of getting an edge out of it.

Q. And that's actually the whole purpose of incentives, is to try and align the Company's actions with the actions that customers or the Commission would like to see, right?

A. That's right. That's why the Division (speaking too softly.)

(The reporter asked the witness to speak up and repeat the answer.)

THE WITNESS: Yes. In the first instance we would prefer that the Company have the incentives to police itself. Because that, then that avoids the issues about whether or not the Division or any other auditors can go in and discover something that perhaps the Company doesn't want discovered.

I mean, and I'm not, I'm not saying that the Company would deliberately intend -- or is intending to hide anything, but there's always the possibility.

Q. (By Mr. Michel) The Company will do what's in its financial best interest?

A. Yeah, which hopefully is in our best interest long-term too. But we want incentives in place that we feel comfortable with that the Company is incented to police itself in the first instance.

Q. Okay.

MR. MICHEL: That's all I have. Thank you, Mr. Peterson.

CHAIRMAN BOYER: Okay. Thank you, Mr. Michel.

Commissioner Allen?

COMMISSIONER ALLEN: Thank you, Mr. Chair. Oh, I'll turn my mic on. Is that better? Thank you, Mr. Chair.

Mr. Peterson, I'd like to get some clarity on how this 2 percent deadband might actually work, because early in the testimony when we started reading this some time ago I remember I was a lot younger than I am now.

It appeared to me that we were just talking about a trigger. And the purpose of that trigger may have been just to make certain that there weren't a lot of entries, a lot of activity into the balancing account or potential balancing account; is that true?

THE WITNESS: That would be one of the uses of a deadband, in that it would minimize the -- or tend to minimize how many entries we'd have to look at.

COMMISSIONER ALLEN: Got you.

THE WITNESS: That would be the whole purpose.

COMMISSIONER ALLEN: As the testimony progressed, and then as we received later some rebuttal testimony from Mr. Gimble -- who you may want to speak to later, I don't know -- they applied the formula that you've suggested. And now I'm left looking at this 2 percent deadband and I see that it looks like in the formula it's been applied so that the 70 percent actually gets reduced by 2 percent and we get to 68.6.

And you make a comment in your surrebuttal testimony that for simplicity you would just apply that then to the rest of the band. So I guess what I'm really asking is, is the 2 percent deadband a trigger with no recovery in the band, a trigger with the same recovery in the band that you would have over the low, or have we got a 2 percent deadband and a 2 percent reduction in the other calculations? I'm a little confused.

THE WITNESS: Well, I hope I can explain at least how I conceptualize it. Of course, if the deviation occurs within the deadband, whether the

Company makes a little bit of money or is a little bit over, then nothing happens with the ECAM.

Then, once the deadband threshold is breached, then the formula is applied. Which effectively applies, in a multiplicative way, the differences between net power costs and also that revenue adjustment factor. And they're all reduced by 2 percent to reflect the deadband.

So it's similar to the idea -- and you could redo the formula to be an additive. But in essence what I'm saying is, is that the amount outside the deadband is what you're adjusting to 70 percent, not the whole amount.

So the deadband, whether it's positive or negative, remains in the, in the deadband. It's not brought out. I don't know -- you seem puzzled still, so.

COMMISSIONER ALLEN: No, no. I think I understand what you're getting at. I'm -- just now my next question then is, with this level of complexity, when we look at this -- and certainly I can do the math and sell your formula, but -- and it can be built into any spreadsheet or calculation.

But nonetheless, how important is the deadband then? If we're going to be reconciling this potential -- assuming that we were to approve some sort of ECAM and we end up with a balancing account, I think the proposals are to balance it annually.

Given the case, how important is the deadband? How important is it to minimize those interests if there's an annual reconciliation anyway?

THE WITNESS: Well, it will be booked monthly. But the Division's purpose in having a deadband was, in the first instance, to have the Company be trying to get as close to the forecast amount as it could -- or have the forecast be as accurate as it could. Because then it keeps a hundred percent or it loses a hundred percent. Preferably it would be right on.

But in answer to your question, in the larger scheme of things I would say a deadband is probably one of the lesser important points of the Division's proposal.

COMMISSIONER ALLEN: Okay, great. Thank you.

THE WITNESS: Oh, I have one other thing, if I may?

COMMISSIONER ALLEN: Sure.

THE WITNESS: Sometimes I don't remember everything all at -- immediately. One of the other factors that we were thinking about has to do with the idea of ROE adjustments. And if the Company is at risk for a reasonable amount of, of its ongoing net power costs, then that reduces the need to consider an ROE adjustment.

And that was also part of the purpose of a deadband, was to keep the Company at risk for a certain amount of its net power costs that, arguably, could reflect some of the business risk that we think is already implicit in the ROE.

So that was part of our thinking too. We're not claiming 2 percent is a perfect number or not, but that was also part of our thinking.

COMMISSIONER ALLEN: Okay. So I think I have -- I think that's helped. The Division sees the deadband as not just a helpful management tool, but it's also a partial incentive. But it's also not one of the most important aspects of your proposal. Would that all be fair?

THE WITNESS: Well, it's important in the sense that we think it helps mitigate the need -- or the argument that we need to consider ROE adjustments, which we think will be difficult to do.

COMMISSIONER ALLEN: Great. Thank you.

CHAIRMAN BOYER: Commissioner Campbell?

COMMISSIONER CAMPBELL: Let me start with understanding how you intend to use revenues. In the discussion of your load growth mechanism you identified retail revenues. It wasn't clear to me whether you were looking also at wholesale revenues. In your formula are you looking at total revenues, or are you looking just at retail revenues?

THE WITNESS: The answer is that we're looking at the revenues that the Company reports -- at least this is the way we conceptualized it -- the revenues the Company reports on its semiannual -- I think the primary accounts are 440 and 442. In any case, we're considering retail tariff revenues.

COMMISSIONER CAMPBELL: Okay. Do you know, based on your exhibit that Mr. Monson questioned you about, do you know if this sharing band of the 70/30 in Wyoming was the result of a stipulation, or was it a litigated outcome?

THE WITNESS: I believe it was a stipulation settlement initially.

COMMISSIONER CAMPBELL: And I think you -- in a response to someone I think you anticipated that I'd probably have a question about hedging, or two. And like you, I'm trying to understand -- I'm trying to increase my understanding of what the Company is doing in this area.

But I think I'll just limit it maybe to just one basic question. And that is, can you identify -- and once again, let me preface this with my -- I mean, I understand that the Company labels fixed-price physical transactions that they've been doing for decades now as part of their hedging program.

I mean, they've been doing that for decades and that's really not, in my mind, what's at issue here. What's at issue is the new introduction of their transactions and swaps. And so let me just ask you related just to swaps. Can you identify how customers have benefited by the Company engaging in swap transactions?

THE WITNESS: Well, on the surface we haven't been able to identify how swaps by themselves have benefited customers. We've at this point had to rely on Company representations that somehow in the whole mix of their swaps and physical purchases that somehow we're better off than we would have been. That prices have been more stable.

But at this point frankly, if I'm perceiving your question correctly, I also wonder why it's beneficial to lose money on swaps and then -- but then come back and say, Well, we made money on these other things and so everything's fine.

So I -- that's one of the issues that the Division at least needs to drill down into and get comfortable with, if we ever get comfortable with the Company's explanation.

COMMISSIONER CAMPBELL: I noticed in your direct testimony that you did some back testing. And we get your monthly reports related to the Company's returns. And its certainly a concern of the Commission that they're not earning their returns year after year after year.

The question I guess is, in your back testing that you've done would your proposed ECAM have allowed the Company to earn its return?

THE WITNESS: Not by itself. It would, of course, significantly -- make a significant improvement. And if you went to a hundred percent sharing then it would even help them more, of course.

I do recall back in Phase I I did an analysis where I took the Company's own numbers and plugged them into a financial model that showed that the Company would over-earn on its allowed rate of return, based upon the numbers they said that they should recover for net power costs.

You know, it's like $230 million in 2008. And of course there would be some tax -- income taxes that you'd have to deduct from that. But you'd still be adding about $150 million to the bottom line. And that boosted the, boosted the return on equity to the 11 or 12 percent range.

So that was one of the problems that the Division identified with the Company's proposal if we were to just accept it on face value.

COMMISSIONER CAMPBELL: My final question deals with auditing. And let me preface this by saying I think as the Company develops a forecast of net power costs certainly they're beginning with actual net power costs is my understanding is the starting point.

And if actual net power costs are a billion dollars of expense for the Company, why would the Division not set that as a priority and be auditing that today?

We keep talking about this new audit. I'm curious why a billion dollars of expense is not -- I mean doesn't, doesn't rise to the level of being a huge priority for the Division. Why aren't there already one or two auditors on this year round anyway?

THE WITNESS: Well, I guess that question is better asked to -- directed at Division management. But my non-managerial answer is that the Division does not have the manpower/person power to have somebody auditing full time as you suggest.

We look at it in the annual rate case, but we don't have anyone doing it full time, year round.

COMMISSIONER CAMPBELL: And I guess that I asked that in the context that I sit through rate cases and we, you know, get $50,000 adjustments for airplane expenses and -- in such, such small detail that wouldn't it be -- wouldn't it serve better to put some of those auditors on larger items? That was just -- that was the basis of my question.

THE WITNESS: Thank you, Commissioner, but I don't do the audit designs.

CHAIRMAN BOYER: Okay. I'm gonna forego my questions in the interest of time now, and we'll let Ms. Schmid do redirect.

But is it my understanding that we need to complete Mr. Brubaker's testimony by noon today?

MR. EVANS: Well, or at least before we break for lunch, Mr. Chairman. I think we could go late, 12 --

As late as 12:30, or even up to 1?

We could go until 1:00 if we needed to. But we must -- he has to be on a plane at 2.

CHAIRMAN BOYER: So Ms. Schmid, redirect?

MS. SCHMID: Very, very few.

REDIRECT EXAMINATION

BY MS. SCHMID:

Q. Earlier today do you recall that Mr. Proctor asked you some questions about hedging and swaps?

A. Yes.

Q. Do you recall that he suggested swaps should be out of an ECAM?

A. I believe I do, yes.

Q. Let's take a quick hypothetical. If there was an ECAM that excluded swaps, would that ECAM presumably include natural gas costs?

A. Well, if you're just excluding swaps then it would include the physical natural gas purchases necessarily.

Q. What is your understanding of the purpose of gas swaps?

A. Well, the general purpose of swaps is that the Company wants to stabilize or assure a price for its natural gas.

Q. If gas costs were in an ECAM and swaps were not, would gas price changes flow directly through to ratepayers?

A. Well, they would flow directly through to ratepayers in the sense that that would be the basis of the Company's forecast in a forecast test year.

Q. And so thusly would gas price volatility flow directly through to ratepayers?

A. Conceivably, yes.

Q. One last question. There were many questions concerning why the Division supports an ECAM. Some of them were directed at under the Division's ECAM the Company wouldn't necessarily recover dollar for dollar.

Could you speak as to why you believe the amount that the Division's ECAM proposal would allow the Company to recover is a good thing?

A. Well, first of all it allows them to recover substantially more than they are currently. But it also leaves them the incentives to try to improve their control over time of ECAM costs. The Company has the incentive to search for different ways of mitigating the volatility.

And just as an example, we've discussed gas storage. We want them to continue to look at things like that. If there are ways of improving their forecast we want them to continue to look at that. And there are undoubtedly other things that I can't think of that an expert in electric utility operations might consider.

Q. Is it your testimony that the Company would be better off under the Division's ECAM than it would be today?

A. Certainly to the extent that net power costs continue to be under-recovered through normal general rate case filings, then certainly yes.

MS. SCHMID: Thank you. Those are all my redirect questions.

CHAIRMAN BOYER: Okay. Thank you, Ms. Schmid.

And thank you, Mr. Peterson, you're excused. Let's take a five-minute break, and we'll come back and hear from Mr. Brubaker.

(A recess was taken from 11:18 to 11:27 a.m.)

CHAIRMAN BOYER: Okay, we're back on the record.

Mr. Brubaker have you been sworn in this particular proceeding?

MR. BRUBAKER: I have not.

(Mr. Brubaker was sworn.)

CHAIRMAN BOYER: Thank you, please be seated.

Mr. Evans?

MAURICE E. BRUBAKER,

called as a witness, having been duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVANS:

Q. Mr. Brubaker, would you state your name, and your firm, and your position at your firm, please?

A. Yes, Maurice Brubaker. I'm president of Brubaker & Associates, Inc., in St. Louis, Missouri.

Q. And are you the same Maurice Brubaker that prepared and caused to be filed testimony and exhibits in this docket?

A. Yes.

Q. And that would include your direct testimony as UIEC-1, with accompanying Exhibits UIEC-1.1 through 1.3 as your direct testimony, UIEC-1R as your rebuttal, with accompanying Exhibits 1.1R through 1.3R, and UIEC-1SR, with accompanying Exhibits UIEC-1.1SR through 1.3SR?

A. Yes.

Q. And do you have any corrections to make to your testimony?

A. I have one. It's in the direct testimony. And it's on page 8.

(The reporter asked the witness to speak up.)

THE WITNESS: I'm sorry. It's in the direct testimony, page 8, on line 22. Failure to completely edit the draft. The first word that says "cap" should be "target," t-a-r-g-e-t. And that's the only change that I have.

MR. EVANS: Okay. I would offer the testimony and exhibits of Maurice Brubaker into the record.

CHAIRMAN BOYER: Any objection to the admission of Mr. Brubaker's direct --

MR. MONSON: In the in --

CHAIRMAN BOYER: -- rebuttal, and surrebuttal?

MR. MONSON: Sorry. Excuse me for interrupting you.

In the interest of saving time, we do object to the admission of his rebuttal testimony and surrebuttal testimony on the grounds that they raise issues that were not raise -- that should have been raised his direct testimony, were held, and were not -- are not proper rebuttal and surrebuttal but are, in fact, direct testimony.

CHAIRMAN BOYER: Do you have specific examples of that, Mr. Monson?

MR. MONSON: I don't. I could provide that but I don't have it ready right now.

MR. EVANS: Well, may I respond that it would be completely inappropriate to strike his rebuttal and surrebuttal for the objection that maybe there was some topic that was addressed for the first time under rebuttal.

Especially when the Company noted that and had the opportunity to respond in surrebuttal and has offered testimony from the stand. I think the issue has been completely vetted, so.

CHAIRMAN BOYER: Well, I'd -- in the absence of any specific objection to it, we'll admit it.

(Maurice Brubaker direct, rebuttal, surrebuttal, and attached exhibits were admitted.)

MR. EVANS: Thank you.

Q. (By Mr. Evans) Mr. Brubaker, have you prepared a summary of your testimony that you'd like to present?

A. I have. I've prepared a brief summary.

And Commissioner -- Chairman Boyer, Commissioner Campbell, Commissioner Allen, I thank you and the parties all for allowing me to appear here this morning. And in the interest of time, I will be brief. I only intend to highlight two aspects of what I filed.

The first is, if there's an ECAM, one of the things that we don't want to happen is that the

Utility's performance on its low-cost assets deteriorates.

So to aid in that and also to aid in the audit process I have suggested establishing some performance standards for the coal-fired generation, the output of the owned and controlled mines, and for the output of the wind farms. And for each of those these are on a fleet-wide basis. Not individual asset by asset, but out of the whole totality of the fleet in each category operates.

And it's been talked about quite a bit this morning already, but the idea is that if the Company falls below that benchmark then it has an affirmative obligation to include, with its prudency filing, an explanation of why that is. And maybe it's as simple as the coal was down because we had a wonderful hydro year. Or maybe it is that the wind didn't blow very much.

Those things are just satisfactory explanations in my mind. But when you think about how are you gonna do an audit, and all the transactions and all the invoices and everything that are out there that go into making up the annual power costs, it just seemed to me that it would be helpful to the Division, the auditors, and anybody else looking at it to have some kind of a focus on that straight out of the box so you didn't have to spend a lot of time digging around to find particular problems.

Now, that doesn't ameliorate the need for an audit, but at least it gives some focus to it and hopefully will simply the process.

The second point I wanted to highlight is the seasonal tracking and charging of classes. I think we know well from yesterday that it's only seasonal to the extent that -- within individual customer classes or rate schedules that have seasonal or time-of-day rates where it's seasonal. There is no seasonality between rate schedules, even though the responsibility of individual classes for consumption in any month varies considerably across the year.

So my suggestion was to break the year into three segments: Summer, winter, and then spring/fall. And collect the differences into those three categories. And then go -- in the forward year, when their reconciliation has been done and the deviations have been collected or refunded, to do that in the same corresponding period as you found those differences to occur in the period when you compared actual to forecasted net power costs.

I think that's a practical way to resolve that issue. And how it affects individual customer classes depends upon whether the actual net power cost in any particular month or season actually incurred compared to the forecast.

For example, if it turned out that the summer loads were down or summer prices were down and they were actually below the forecast, then doing what the Company has done would not give the residential class as much refund as they should. On the other hand, if it was in excess of the base, then it would charge too much of that excess to the customer classes that have more of their consumption in the non-summer period.

So it's just really an attempt to be fair about it and to give the refunds or collect the extra costs the same way that those costs were put into net power costs in the first place. It just lets us have a more precise and more granular tracking of those deviations from net power costs, up or down, regardless of which way it cuts.

The only other thing I wanted to mention is the issue that 75/25 is used to allocate power purchase -- long-term power purchases, power sales, and wheeling expense. And this is a little different problem. It's more difficult to deal with.

But the responsibility for the 75/25 factor is quite a bit different than the responsibility for the energy factor for many customer classes. And doing this just on a kilowatt hour basis I think has a great potential to mischarge customers.

I have not figured out a way to deal with that in the context of the ECAM. It's probably the first utility I've seen that has that kind of an allocation in its power costs. And certainly one of the very few that would have demand charges in the ECAM-type factor at all. But I discuss now, I mentioned I think that needs to be resolved before putting an ECAM in place.

The only other point I wanted to make is just to say that the other issues that I addressed and the positions I take are summarized on pages 11 through 13 of my surrebuttal testimony. Thank you.

MR. EVANS: Thank you, Mr. Brubaker.

Mr. Brubaker is available for cross examination.

CHAIRMAN BOYER: Thank you, Mr. Brubaker.

Let's go to Mr. Proctor first, and then we'll just go around the room this time.

CROSS EXAMINATION

BY MR. PROCTOR:

Q. Mr. Brubaker, could you turn to your rebuttal

testimony, page 11?
A. Yes.
Q. Beginning at page 3 -- or excuse me, line 3: "How could this problem be addressed?" Is that where you describe your calculation in order to adjust the ECAM for class consumption within a season?
A. It is.
Q. Is it described anywhere else within your testimony, either rebuttal or surrebuttal?
A. I don't know, without looking, whether it is.
Q. Well, would you look, please, and tell me whether it is described anywhere else within that testimony?
A. Yes.
I don't believe that it is.
Q. Was it discussed at all in your direct testimony?
A. No.
Q. Was it discussed at all in any other party's direct testimony to which you were filing your rebuttal?
A. I think we -- I don't know that it was. I think we had observed in the direct testimony that was filed that there were a number of pending data responses from the Company which were not received

until after the direct was filed.

Q. Did those data requests relate directly to your proposal that's found on page 11 at line 3?

A. Yes, they did. Because they --

Q. And which data requests were they?

A. They explained how the Company process was going to work. They are --

Q. Are those the ones that you attached to your rebuttal testimony?

A. They are, yes. We were seeking to determine what the Company meant by "seasonal," because it wasn't clear. Seasonal normally would have a broader context than how it was used, so. Until we really had an understanding of what the proposal was, it was difficult to come up with an alternative.

Q. Is there any analysis, spreadsheet, modeling, data, anything that you attached to your rebuttal testimony that explains precisely how this class consumption adjustment would be made?

A. I don't believe that there is. It doesn't seem to me that, that difficult, if you're collecting the differences by month just to, instead of averaging it over the year, parse it into three different segments. Doesn't seem to me like it required any further explanation.

Q. So you would not change, then, the calculation of the kilowatt hour -- cents-per-kilowatt-hour adjustment at the end of the ECAM year? You don't challenge that, do you?
A. I'm not sure I follow your question.
Q. Well, the description of the Company that Mr. Griffith in particular gave described that it -- they calculate month-to-month changes base to actual. And at the end of the year they calculate the kilowatt -- the cents-per-kilowatt-hour adjustment that the ECAM would require. Do you remember that testimony?
A. Yes.
Q. Does your system also allow for that annual calculation of a cents-per-kilowatt-hour adjustment?
A. No. There would be no need for it if it's done seasonally.
Q. So would you calculate the cents-per-kilowatt-hour adjustment on a seasonal basis?
A. Yes.
Q. So for example -- well. Do you have before you UIEC Cross Exhibit 2, Rocky Mountain Power Cost of Service By Rate Schedule? It's --
A. Yes.
Q. Looks like tab 3, page 16?

A. I have it.
Q. Are we looking at the same thing?
A. Yep.
Q. Go to July of 2009, if you would? And this was the example that your counsel spent quite some time discussing with Mr. Griffith. Do you recall that?
A. I do.
Q. How then would the -- your system calculate the cents-per-kilowatt-hour ECAM adjustment for the residential total class and Schedule 9?
A. Okay. It would start with the base net power costs on a system-wide basis in the month of July that's in base rates. And the next step would be to calculate -- to determine the actual net power costs in July in the period when the comparison was being made.
The same way that is explained in the attachment to Mr. Duvall's direct testimony, I believe. He shows the actual calculations month by month.
Q. I'm asking how you would do that with respect to July 2009. So you're gonna take the base net power --
A. I'd do it the same way he did.

Q. -- for that cost -- for that month?

A. Correct.

Q. And then you're gonna calculate the actual power costs for that month?

A. Right.

Q. Then what?

A. Then you adjust for line loss differences, and -- if you're gonna do it month by month. If you're gonna do it by season then you would do it for the rates that you put in the summer.

Q. So July 2009 now, so would the amount of the cents-per-kilowatt adjustment for residential class be the same cents-per-kilowatt-hour adjustment for the Schedule 9 class?

A. Before you --

Q. On the way you've described it?

A. Before you add line losses, it would be.

Q. And line losses would apply to only Schedule 9?

A. No. They are line losses at all classes. The same way that Mr. Griffith illustrated in his surrebuttal exhibit. Recall, first we're doing this at a system level, but then we have to collect it at the class level.

And because there are losses in delivery, and they're different by voltage level, we have to take that gross system level difference and then apply the line loss factor to get what goes to each class.

Q. So for example, you would do that calculation for the summer months. And those are, in this state, generally May through August, or September?

A. I don't recall what it is. There's no need -- there's no necessary -- there's no requirement that the months that you would use for net power costs would have to be the same as the seasonal rates. They could be, or they might be different.

But whatever they are, you could just total up the dollars of difference each -- in each category instead of months.

Q. So you could do it on a monthly basis?

A. You could, yes.

Q. And so let's say July '09 the cents-per-kilowatt-hour adjustment -- ECAM adjustment would be let's say 2 cents, just as a hypothetical. Let's say that's what the calculation is.

A. That's really vague, but okay. It won't matter for the mathematics.

Q. Well, did you do any mathematics to actually try to create a *pro forma* application of your proposal?

A. No. I didn't really think I needed to, because Mr. --
Q. You're talking about raising rates, sir --
A. No, can I finish my response?
Q. -- did you not think that that was important?
A. No. It's the same, it's the same way the Company does it, except it's done monthly or seasonally rather than annually.
Q. So you didn't do any of that analysis to determine what the, what the actual results might be under certain scenarios or certain circumstances?
A. I did not.
Q. For your proposal?
A. I did not. It would be the same as the Company's work, except on a monthly or seasonal basis rather than annual.
Q. Well, let's assume that you find that there's going to be an ECAM adjustment of 2 cents per kilowatt hour.
A. Okay.
Q. That would then be charged to the customers -- all customers in July of 2009?
A. Right.
Q. Or excuse me, July 2010?
A. Presume -- yes. Presumably July 2010.

Oops. May I recover here?

(Pause.)

THE WITNESS: Sorry.

Q. (By Mr. Proctor) Did you calculate or perform any analysis to try to match your seasonal class system to Mr. Duvall's calculations in his testimony?

A. I didn't push the calculations forward to calculating the individuals. You can see from Mr. Duvall's testimony what the individual factors would be by line.

Q. But you didn't determine what difference your method would cause, as opposed to the Company's method, using the same data and information that they used?

A. No.

MR. PROCTOR: Thank you, Mr. Brubaker.

CHAIRMAN BOYER: Ms. Schmid, cross examination?

MS. SCHMID: No questions.

CHAIRMAN BOYER: Mr. Monson?

CROSS EXAMINATION

BY MR. MONSON:

Q. Mr. Brubaker, Mr. Proctor asked you about your testimony in your rebuttal testimony on page 11;

is that right? About seasonality. I'm just...

A. I think so.

Q. Okay.

A. I don't remember the page number.

Q. Okay. I didn't mean to get you caught up in that. But you said --

A. Yes.

Q. You said that you were waiting for some answers?

A. Yes.

Q. To some data requests, right?

A. Yes.

Q. You aren't claiming those answers were late, are you?

A. No.

Q. That -- you actually sent those data requests on July 26th, when your testimony was due on August 4th, right?

A. I didn't send them, but I, but I think they were with -- they were responded to within the time allowed.

Q. Okay. And when did the Company first testify regarding its, its rate design for the ECAM?

MR. EVANS: Mr. Chairman, I'm gonna object to this. His testimony has been admitted over his objection. This line of questioning seems to go to excluding the testimony that the Commission has already admitted.

If there's other -- some other purpose that I've missed, then I'll withdraw the objection. But if this is to say that this testimony ought not to be put in because it was offered in rebuttal, we've already had the argument. The Company's had the chance to respond in surrebuttal and on the stand, and I would object to this line.

CHAIRMAN BOYER: Well, let's let Mr. Monson proceed.

Q. (By Mr. Monson) Do you remember the question?

A. I do not. Sorry.

Q. The question was, When did the Company first provide testimony -- when did it provide its only testimony, until this point in the case, about its -- how the ECAM would be spread and collected? Do you remember?

A. If I'm looking at the right document, it was March 2009.

Q. March 16, 2009, right?

A. I don't know the date of the -- day of the week.

Q. Okay, but it was March?
A. That's what my records would indicate.
Q. And then you sent a data request in July of 2010; is that right? I mean the Com --
A. That's --
Q. -- your client did?
A. That's when the data request was sent. That's about the --
Q. Okay.
A. -- the time frame when I became more actively engaged in the case.
Q. You testified that it would be much more difficult to audit an ECAM than a gas balancing account, right?
A. Yes.
Q. So I assume that means you have some experience with auditing gas balancing accounts?
A. I've never done one myself. I've seen the results of the audits that the Commission staff people, for example, have conducted.
Q. And you --
A. And I know that the number of transactions is way smaller than in the case of a complex, large, multi-state electric utility that has a wide variety of generation and purchase power resources.

Q. Have you had experience auditing, or have you seen audits done of electric balancing accounts?

A. Yes, I've done some audits of electric balancing accounts.

Q. And have you had experience in the State of Illinois?

A. Actually, I have.

Q. Do you know how big the Illinois staff is?

A. At this point in time I don't know. I have not been actively involved in proceedings in Illinois since about 1997.

Q. Would you recall from that period that it was well over 250 individuals?

A. I don't know. I know they have a wide variety of things that they regulate, but I don't know. I couldn't make a guess on the stand.

Q. Okay. But you recommend that the Commission -- that if the Commission approves an ECAM it hire an independent auditor to do this audit; is that right?

A. Yes.

Q. Would that be somebody like you?

A. No. It wouldn't be me. I don't think it would be appropriate for someone who typically appears for parties in the proceeding. But it would be a third party that the Commission felt comfortable with.

Q. I understand you used to be a witness in Questar Gas rate cases many years ago?

A. Many years ago.

Q. So are you familiar with Questar Gas's Wexpro settlement agreement?

A. No.

Q. Are you familiar with its gas balancing account?

A. I haven't had any real look at Questar for 20 years, probably, so the answer would have to be no.

Q. Okay. You just talked about the fact that a difficulty in auditing an electric balancing account, or an ECAM, is the large number of transactions; is that right?

A. That's part of it. And the complexity of the transactions. And the options available to an electric utility to either meet its load or to sell surplus power that it has.

Q. In auditing performance of a utility it's not really necessary to look at every transaction, is it?

A. Not every transaction.

Q. Don't auditors typically select a statistical sample that's determined to be a valid sample so they can determine if there's something that they need to look at further?

A. I think that's part of it. That's suitable for some of the things that you're auditing. For other things it's more on a planning and an execution-type basis, rather than what are the dollars and were they faithfully reported.

Q. Can you turn to your surrebuttal testimony, page 5, please?

A. Yes.

Q. And look at lines 20 to 23. There you say:

"With or without my proposal, an auditor certainly would be expected to examine the operation of all the Company's mines and coal-fired plants, at least at a high level. The extent of further scrutiny will depend upon what the preliminary review reveals."

So even if the Commission accepts your performance standards, you still think an audit will be required; is that right?

A. I do.

Q. And in fact, in response to a criticism of your performance standards from Mr. Gimble, if you'll look at page 9 of your surrebuttal. Lines 18 and 19. Let's see. I'm sorry. That's the wrong reference.

But -- oh.

Okay, you say on -- yeah. You say:

"Also, the correct actions in the examples given by Mr. Gimble would be relatively easy to defend."

Is that right?

A. Yes.

Q. So are you suggesting then that, in an audit, that it would be relatively easy to determine whether something was improper or not?

A. No. I'm not.

Q. Okay.

A. The high level here was did we, did we under-produce the coal because we had hydro? I mean, that's pretty much easy to figure out.

Now, you still want to know if the plants were available. If the coal plants were available and just not run because there were cheaper resources. Or whether they weren't run because there were outage problems.

Q. But you're still determining whether the Company took prudent actions given the circumstances?

A. You are, yes.

Q. Okay. Now, you've recommended performance standards for coal plants, coal mines, and wind resources, right?

A. Correct.

Q. And the standards are based on the average production from coal plants and coal mines for the past five years, and 90 percent of projected projection -- production from wind resources; is that right?

A. Correct.

Q. Would you agree with me the Company has some ability to control the production from coal plants and coal mines?

A. Yes.

Q. Does it have any ability to control the output of wind resources?

A. Yes.

Q. How?

A. It can't change when the wind can blow, but how it maintains those resources --

Q. Okay.

A. -- has an impact on what the output is.

Q. All right. Would that have a major impact on the capacity factor of a wind plant?

A. It could.

Q. Does it normally?

A. I don't know what "normal" is with wind. I think we're still learning an awful lot about how wind resources perform.

Q. And you propose if the Company meets these standards it be allowed recovery of 70 percent of its incremental net power costs, right?

A. I haven't taken a position on the sharing.

Q. Okay. Thank you for that clarification.

If the Company fails to meet your standards it would be denied recovery unless it can prove that it nonetheless acted prudently, right?

A. Correct.

Q. So if the Company exceeds the standards it isn't allowed a higher percentage of recovery than it is if it doesn't meet the standards; is that right?

A. Correct.

Q. So what incentive would that create for the Company then?

A. To not fall below the standard.

Q. How about not -- and also not exceed them, right?

A. There's no reason not to exceed the standards, because then that just improves your performance going forward and makes it more likely that you'll meet the standard next time.

Q. But you don't recover any more of your net power costs by exceeding the standards?

A. No. Correct.

Q. You also talk about the load growth adjustment. But you -- I can't tell -- it's not clear to me whether you actually support or oppose the load growth adjustments proposed by the parties.

A. I didn't recommend a load growth adjustment. I pointed out one of the problems I saw from the downside. So I'm not really saying any more than I don't think that's reasonable. And if you do it, I would limit the recovery to -- I would limit the use of it to offsetting any positive excursions in net power costs.

Q. Okay. And that's what I wanted to get at. You're saying that a load growth adjustment should only be used on one side, not on both sides; is that right?

A. I'm only saying it should be -- to the extent that you use it, it should only be to offset increases in power costs. For example, if power costs went up 5 million and the load grew 10 million, under that scenario you would only use 5 million of it to offset the power costs, and the other 5 would be just savings to the Company.

Q. Right. And if power costs increased

5 million but load went down 5 million, you wouldn't use it at all?

A. Correct.

Q. So it's just one sided. That's what I meant by that.

A. Okay.

MR. MONSON: That's all I have.

CHAIRMAN BOYER: Thank you, Mr. Monson.

Mr. Dodge?

MR. DODGE: No questions.

CHAIRMAN BOYER: Mr. Michel?

MR. MICHEL: No questions.

CHAIRMAN BOYER: Very well. Commissioner Allen? Nor I.

You can catch your plane, Mr. Brubaker. You are excused.

THE WITNESS: Thank you very much.

CHAIRMAN BOYER: Oh, redirect. Yeah, that's right.

MR. EVANS: No, I have none. We'll let Mr. Brubaker get his plane.

CHAIRMAN BOYER: All righty. Well, let's take a 90-minute recess for lunch, and then we'll come back.

Now, be thinking about whether, Ms. Kelly, you need to go out of order. I understood that you had to today, but not into the evening hours.

MS. KELLY: No. I can go as late as necessary.

MR. PROCTOR: We only have, we have two left?

CHAIRMAN BOYER: We have Gimble, Higgins, and Kelly.

MR. MICHEL: But our plan is to finish today, no matter what.

CHAIRMAN BOYER: Okay, excellent. That would be our plan as well.

MS. SMITH: Mr. Chairman?

THE REPORTER: Are we still on the record?

CHAIRMAN BOYER: Yeah.

MS. SMITH: Mr. Chairman?

CHAIRMAN BOYER: What?

MS. SMITH: I just wanted to let you know that Mr. Criss is here in case you wanted him to give his summary. And, you know, otherwise I would move to admit his testimony. I thought you might have questions for him.

CHAIRMAN BOYER: I don't know that we do. I do have the testimony out and I was going to ask you if you wanted to move its admission. While Counsel is here why don't you just move his admissions?

MS. SMITH: At this time I'd like to have a motion to admit the testimony -- the direct testimony of Steve W. Chriss that was prefiled on August 4th.

CHAIRMAN BOYER: Any objection to the admission of Mr. Chriss's testimony? Direct testimony?

MR. MONSON: No objection.

CHAIRMAN BOYER: Okay, it's admitted.

(Steve W. Chriss direct testimony was admitted.)

CHAIRMAN BOYER: And I don't think we have questions of Mr. Chriss.

MS. SMITH: Okay, thank you.

CHAIRMAN BOYER: So thank you very much, Ms. Smith.

All right, 90 minutes.

(A luncheon recess was taken from 11:59 a.m. to 1:33 p.m.)

CHAIRMAN BOYER: Well, I'm guessing we're gonna hear from Mr. Gimble now.

Let's go back on the record.

MR. GIMBLE: You need to turn on the system.

MR. MONSON: The mic's not on.

CHAIRMAN BOYER: Oh, I thought that -- the mic is not on?

MR. GIMBLE: Is it this switch right here?

CHAIRMAN BOYER: Yep.

COMMISSIONER ALLEN: Now that's a versatile witness.

(Pause.)

CHAIRMAN BOYER: Maybe catch the windows on your way out. Do a little vacuuming.

MR. GIMBLE: Little dusting.

CHAIRMAN BOYER: Okay. Mr. Proctor?

MR. PROCTOR: Thank you, Mr. Chairman.

DANIEL E. GIMBLE,

called as a witness, having previously been duly sworn (on August 17, 2010), was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PROCTOR:

Q. Mr. Gimble, would you state your name and tell the Commission on whose behalf you are appearing today?

A. Daniel E. Gimble, appearing on behalf of the Office of Consumer Services.

Q. Have you filed testimony as described on the exhibit list in this docket, consisting of direct, rebuttal, and surrebuttal testimony?

A. I have.

Q. Do you have any corrections that you wish to make to any of those versions of those testimonies?
A. I do.
Q. Yeah? What is it?
A. I do. Direct testimony. Let's see. Get the page here for you. Fifteen. Line 416. The word is "increased," should be "increases."
Q. Do you have any other corrections?
A. I do not.
Q. If you were today asked the same -- the questions that are answered in your written testimony, would your answers remain the same?
A. They would.
MR. PROCTOR: The Office would move to admit OCS-5D, 5R, and 5SR.
CHAIRMAN BOYER: Any objection to the admission of Mr. Gimble's direct, rebuttal, and surrebuttal testimony?
It is admitted.
(Daniel E. Gimble direct, rebuttal, and surrebuttal testimony was admitted.)
Q. (By Mr. Proctor) Will you please summarize your testimony, Mr. Gimble?
A. Sure. Good afternoon. The Office's overall case recommendation is as follows: First, the

Commission should deny the Company's petition. The Company has failed to meet that evidentiary standards support the ECAM proposal. Every other party opposes the design as presented by the Company.

The Commission should not grant the Company any type of ECAM until the threshold issues of the appropriateness of the Company's market reliance strategy and hedging program are resolved. You heard testimony in the first part of this phase of the case on that.

Any attempt to go back and establish a market reliance baseline or hedging parameters after an ECAM has been implemented would not be in the public interest. If and when these threshold issues are addressed in a manner that puts appropriate customer protections in place, then an ECAM should be designed to maintain these protections and address a number of key design issues.

The Office believes a reasonable ECAM design should include the following key components and considerations: First, and maybe perhaps paramount, is cost sharing. You've heard a lot of testimony on that thus far in the hearings.

We believe significant cost sharing is necessary to ensure management has proper incentives to control costs and make investment, operational, maintenance decisions that benefit customers.

I think it's critical that the Company has an economic stake in the outcomes of its planning and operating decisions. Four parties in this case recommend a 70/30 cost sharing approach -- including the Office -- be adopted by the Commission to address incentive concerns. And you heard a lot of testimony about incentive concerns in the first phase of the case.

Load growth adjustment. The Office supports the load growth adjustment proposed by UAE to appropriately recognize generation and transmission revenue margins between rate cases. Absent this adjustment the Company would over-collect revenue during periods of growth, while passing on increases in net power costs to customers.

Third, matching of hydro benefit and risk. We believe that the implementation of an ECAM should correspond in timing and in effect to using a rolled-in IJA method to determine Utah revenue requirement. If you do otherwise, we believe you would expose customers to hydro risk without a matching hydro benefit, and it would not be in the public interest.

Renewable energy credit revenue. The Office's position -- and this is really two pieces. The Office's position is the REC revenue and the deferral account, that you've -- I think has been going on since last February, should be fully credited to the benefit of customers, independent and irrespective of the Commission decision on whether to implement an ECAM or include REC revenue in the design going forward.

If an ECAM is implemented we believe that future variations in REC revenue from base levels determined in the next rate case should be included in the design.

Wheeling revenues and costs. Inclusion -- we think this is an important issue as well. Inclusion of the incremental wheeling revenue in costs we believe is required to ensure symmetrical ratemaking treatment of these items.

Given the significant transmission expansion underway associated with the Gateway project -- and that's a huge project that has two or three phases -- wheeling revenue may be more difficult to predict and ascertain both the levels of revenues and costs. And we think those should be included -- variations should be included in the ECAM.

The revenue that you're gonna get from wheeling associated with the expansion of the Gateway system will be used to offset costs charged to retail customers.

Carrying charge, I don't think there's really a dispute there. The Company, Division, Office, and UAE agree that the interest applied to ECAM balances should not exceed the Company's long-term cost of debt.

Pilot program, there's been a little bit of discussion on that so far in the hearing. If an ECAM is approved by the Commission, the Office recommends that it be implemented on a pilot basis and run through January 1, 2015. Which is long -- about a year longer than I think what the Company is proposing.

And our reason -- one of our reasons for that, that's approximately when PacifiCorp's next major generation resource is expected to be operational. That's included in their 2008 IRP update. That means that up, until that point, front office transactions are gonna be heavily relied on to meet incremental load growth.

Let me just turn my attention briefly to FOT and hedging targets. There's been some discussion on that in the hearing already. And I want to talk about the Division's proposal there and respond to it.

The Office opposes the Division's proposal to adjust any approved cost sharing if certain FOT and hedging targets are met. The Division's proposal to set arbitrary FOT levels based on the 2000 IRP update we believe should be rejected. That update hasn't been fully analyzed or vetted.

The Office recommends that the Commission instead take an analytical approach and require the Company to present evidence in support of its FOT levels. If the evidence shows a liquid and low-cost market, the Division's recommendation to set FOT targets could actually raise rates.

Also, if the Commission subsequently determined that the parameters of the hedging program needed to be significantly altered or were inappropriate in an ECAM regime, then customers would incur hedging costs in an ECAM without receiving any potential benefits from changes to hedging parameters for a number of years. It will take some time to unwind -- as I understand it, some time to unwind the Company's hedges.

In summary, the Office opposes modifying whatever cost sharing percentages the Commission adopts, because the cost sharing is intended to address broader incentive issues.

Lastly I'd like to speak to the issue of the REC revenue currently being accrued in the deferral account. The Office's primary position is that the disposition of that revenue should not be determined in this design proceeding, but is more appropriately determined in another proceeding. In my testimony we're proposing a general rate case.

UAE's proposal in the MPA proceeding to address the amount, the recovery, and the spread of the REC revenue we think should be considered on its merits in that proceeding, and the Office will respond accordingly. And that concludes my summary.

Q. Mr. Gimble, you used an acronym, IJA, in your summary. What does "IJA" stand for?

A. Interjurisdictional allocation.

Q. And finally, sir, you referenced a 2000 IRP update. Was that the proper date?

A. 2008, thank you.

MR. PROCTOR: Thank you, Mr. Gimble.

And Mr. Gimble is available for cross.

CHAIRMAN BOYER: Thank you, Mr. Gimble.

Ms. Schmid, cross examination?

MS. SCHMID: Just a few questions.

CROSS EXAMINATION

BY MS. SCHMID:

Q. Good afternoon.

A. Good afternoon.

Q. Are wheeling revenues in net power costs now?

A. They are not.

Q. But the Office is suggesting that they be factored into an ECAM; is that right?

A. I'm not sure I would say "factored" in. I would say -- you want to re-ask the question?

Q. Certainly, thank you. It was a bad question.

How is the Office proposing that wheeling revenues be treated?

A. We propose that they be set in base rates based on the forecasts at that time. And any variations in wheeling revenues be included -- if an ECAM is approved, number one. That if it is approved, that it be included in the ECAM.

Q. Thank you, that was helpful. Are you aware that the Division's ECAM proposal is designed as a pilot program?

A. I think most parties are recommending that the ECAM, if adopted, be adopted as a pilot program.

Q. With a pilot program, specifically the pilot program recommended by the Division, is there an opportunity for continued evaluation and adjustment of front office transactions and hedging?

A. I think that's not real clear in the Division's testimony.

MS. SCHMID: Could we have just one moment?

CHAIRMAN BOYER: You could.

Q. (By Ms. Schmid) Rather than take more time finding the specific page I will just ask if you recall Mr. Peterson's testimony pertaining to changing the sharing band from 70/30 to 80/20 and 90/10. Do you recall that in his testimony?

A. If you could point me to the page and line, that would help.

Q. Just one moment.

A. And you're talking about direct?

Q. I believe so. Can you hold for just one moment?

(Pause.)

THE WITNESS: I have his direct.

MR. MONSON: Page 16.

Q. (By Ms. Schmid) Could you please look at pages 16 and 17 of Mr. Peterson's testimony and see if that refreshes your memory?

A. Line starting 342?

Q. Yes. Yes.

A. It says:

"When an application is made to increase the sharing percentage, the Company or intervening party may propose an alternative level of FOTs...."

Is that what you are referring to?

Q. Yes.

A. It appears that the Division is giving the parties some flexibility. And that the targets may be more soft than hard. But the targets were set and they are based on a 2008 IRP update that hasn't been really fully examined by parties.

Q. Is it the Office's position now that if an ECAM is adopted, natural gas hedging and fuel costs would be excluded?

A. The Office's position is -- I think it's pretty clear that we view these as threshold issues. The Commission held a one-day hearing I guess back in the middle of August, I think it was around August 17th, to vet those issues and take evidence on those issues.

And our position is the Commission needs to provide baselines related to market reliance, FOTs, and guidance related to the Company's hedging strategy before those costs are included. Or before it makes a deter -- in terms of making its determination whether or not an ECAM is in the public interest.

Q. So at this point if an ECAM were implemented now, the Office would recommend -- if the Commission chose to implement an ECAM now, the Office would recommend excluding the natural gas hedging and fuel costs?

A. Our position is what it is. I mean, it's -- we think that the Commission needs to consider the Company's FOTs, its market reliance strategy, and its hedging practices and parameters as part of the process of determining whether an ECAM can be -- is in the public interest.

Q. Do you have an estimate of how long that investigation and study might take?

A. I don't.

MS. SCHMID: Thank you. Those are all my questions.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

Mr. Monson?

CROSS EXAMINATION

BY MR. MONSON:

Q. Good afternoon, Mr. Gimble.

A. Good afternoon.

Q. In your summary today you said that you oppose the Division's fixed front office transaction targets because they were arbitrary and didn't have an analytical basis; is that right?

A. That's right.

Q. What's the analytical basis for a 70/30 sharing band?

A. I think -- I shouldn't say "I think." The 70/30 sharing band, the first of it --

MS. SCHMID: Objection. I think that this would have been better asked of Mr. Peterson, since it is Mr. Peterson's proposal to have the 70/30 sharing band.

MR. PROCTOR: Well, excuse --

CHAIRMAN BOYER: Well, but he testified that he supports -- if there is an ECAM approved, he supports a sharing band. I think it's a fair question.

THE WITNESS: Would you restate the question, please?

Q. (By Mr. Monson) I just want to know what the analytical basis for the 70/30 sharing ratio is.

A. We think -- we believe that the Company needs to have an economic stake in terms of making sure that it makes reasonable decisions in terms of the way it operates, maintains, upgrades its plant -- plants, in order, you know, to promote efficient operations. That's the main basis. And we think it needs to have an economic stake in the outcome.

Seventy/thirty, it was a bit of a judgment call. We looked at -- you know, the Division had a list of utilities with different sharing percentages, all the way from no sharing down to approximately 70/30. It's a judgment call.

Q. And there's no analytical basis to say that 70/30 would create the right incentive, any more than 80/20, or 60/40, or whatever, right? I mean --

A. Well, we think that there needs to be significant sharing. We think the more -- the greater the stakes that the Company has in terms of the performance of the system, the better it's going to be focused on efficiency.

Q. Okay. It's your testimony that the ECAM shouldn't -- should not be approved because the Company hasn't met its burden of showing it's in the public interest, right?

A. Yeah. That was the Office's testimony in the first phase of the case.

Q. Okay. And I thought you said that in your summary, too. But if you didn't, I'm sorry.

But anyway, you're aware that Rocky Mountain

Power has an ECAM in Idaho, because you refer to it in your surrebuttal testimony?

A. I am aware that they do have an ECAM in Idaho.

Q. And do you know when Rocky Mountain Power filed its application for the ECAM in Idaho?

A. I do not.

MR. MONSON: I don't know whether it's better just to ask the Commission to take notice of the Idaho order, or if it's better to ask him some questions subject to check. How would you prefer to do that?

MR. PROCTOR: Well, perhaps -- I would object to anything other than if you have questions of this witness about a particular order, they should be asked.

MR. MONSON: I'll, I'm happy to ask them. I just -- I was -- you know. I'll try not to drag it out too much.

CHAIRMAN BOYER: Well, and I'm wondering about exceeding the scope of direct as well. I don't think he testified as to the particulars of the Idaho ECAM, just that they have one. I think you're wrong on that.

MR. MONSON: Let's see. I think he said -- let's turn to page -- well, line 88 of your surrebuttal testimony. And let's see what you said about it.

Q. (By Mr. Monson) So here you were talking about the load growth adjustment, right?

A. Correct.

Q. In Idaho. So at least you've studied the order sufficiently to know about the load growth adjustment, right?

A. My understanding is there is a load growth adjustment in Idaho that's similar to the one proposed here. It's not exactly the same.

Q. Did you look at the Idaho order?

A. Not recently.

Q. But you have looked at it?

A. If -- I looked at it months ago.

Q. I'm gonna ask you a couple of questions about it. Would you like a copy of it, or?

A. I don't have one with me.

MR. MONSON: May I?

CHAIRMAN BOYER: You may.

MR. MONSON: Thank you.

Q. (By Mr. Monson) So this order was issued in September of 2009; is that right?

A. Correct.

Q. Okay. And do you know whether or not there were evidentiary hearings where other parties submitted evidence in this case?

MR. PROCTOR: Excuse me, Mr. Chairman. The question is whether he knows?

CHAIRMAN BOYER: That was the question.

MR. MONSON: That's right. That was the question.

THE WITNESS: I do not.

Q. (By Mr. Monson) Okay. Can you look at the second paragraph of the order? It refers to a stipulation?

A. I see that.

Q. Okay. And so you understand the parties in that case entered into a stipulation?

A. I understand that, right.

Q. Okay. And do you know whether or not that was done without separate studies being done on market reliance and hedging?

A. I don't know the context.

Q. Okay. And do you know whether or not there's been any audits conducted under the Idaho ECAM?

A. I do not.

Q. Okay. But you oppose adoption of an ECAM because -- before market reliance and hedging issues are addressed in a separate proceeding; is that right?

A. I'm sorry, could you restate it?

Q. Sure. You oppose adoption of an ECAM before market reliance and hedging transactions -- the hedging program are addressed in a separate proceeding; is that right?

A. Well, the Office's overall case recommendation is that the Commission should deny the Company's petition. And that comes from Phase I. So that's the Office's primary position.

If the Commission decides to proceed with an ECAM, in the context of proceeding with the ECAM we think, in terms of a public interest determination, it still needs to go and make an assessment of whether or not the FOT levels proposed by the Company and the hedging parameters are in the public interest.

Q. Okay. And in this case you oppose the Division's recommendation that these ratios be modified, as we've just discussed -- as you discussed a little bit in your summary and with the Division counsel.

And you do so because you say a comprehensive analysis of the depth and liquidity of the Western market may demonstrate that the Company's market reliance levels fall within an acceptable range based on cost and risk considerations. Do you recall that?

A. I recall that.

Q. And you also say that although the Office is concerned about this market reliance, the Company may be over -- the Office is concerned that the Company may be over-reliant, it does not suggest that fewer FOTs, by definition, is better. Do you remember that?

A. I remember that.

Q. So although the Office is concerned, it's not necessarily saying the Company is over-reliant on market purchases, is it?

A. No. We are saying that the Commission should take an analytical approach in terms of determining the reasonableness of the Company's reliance on front office transactions.

I mean, that reliance is -- in the next round of the IRP is expected to -- based on what was presented on October 5th, is expected to grow by 90 megawatts. The open position is -- in the last -- in the IRP update I believe is 1,264 megawatts. And I think that's gonna go up to around 1,350.

So the reliance is actually on the upswing.

Q. Okay. And the Office participates in all -- in the Company's general rate cases, right?

A. Correct.

Q. And it has an opportunity to question the

Company's resource mix and its net power costs that's presented in the Company's general rate cases?

A. It has that opportunity, if it likes, to do so.

Q. And I think you said in your testimony that it retains an outside expert to help it with that analysis, right?

A. To examine net power costs.

Q. Right. And that --

A. Typically.

Q. Right. And that's Mr. Falk -- recently at least that's been Mr. Falkenberg; is that correct?

A. Correct. For the last few rate cases I think Mr. Hayet's been retained as well in certain cases.

Q. Okay. You also mentioned the IRP. You've participated in the IRP cases, right? The Office?

A. The Office participates in the public IRP meetings. And we've submitted comments on numerous -- on a number of IRPs.

Q. Right. And you've had an opportunity to express your views about the Company's planned resource mix in those cases, right?

A. We've presented the Committee's analysis and conclusion based on the Company's IRP.

Q. And you had an opportunity in this case, in

Phase II Part 1 to express your views about hedging and market reliance; is that right?

A. We do. We put -- for example, in hedging we put on the testimony of two expert witnesses.

Q. Right. In the IRP process has the Office ever been willing to agree that if a proposed resource mix were adopted it would not challenge the prudence of that resource mix in a future rate case?

MR. PROCTOR: Objection, it's irrelevant to the questions that are presented here. Whether the Office would or would not accept a recommendation is really quite -- it's speculative, but it's, in particular it's irrelevant.

CHAIRMAN BOYER: Sustained.

MR. MONSON: Maybe I said my question wrong. I asked him if they had ever done so. I thought.

MR. PROCTOR: No. I don't --

MR. MONSON: I didn't ask him to speculate.

CHAIRMAN BOYER: I think you said would they under these circumstances, but maybe I misheard.

MR. MONSON: No.

Q. (By Mr. Monson) Well, let me try that question. Has the Office ever indicated in the IRP process that it would -- that if its resource mix were accepted it would not challenge the Company's resource mix in a general rate case if it followed the recommended resource mix?

MR. PROCTOR: Objection, it's irrelevant insofar as it's asking this witness to review a decision and a position taken in another case, at another time, under different circumstances.

CHAIRMAN BOYER: Well, again I get back to the scope of direct. But he just asked you if you had.

MR. MONSON: Yeah.

CHAIRMAN BOYER: You can say what you did.

MR. MICHEL: Mr. Chairman? My understanding is that unaccepted settlement offers are not admissible anyway. Those discussions -- what the Department might or might not agree to in the context of an IRP outcome I don't think is appropriate for this proceeding unless there was an agreement.

CHAIRMAN BOYER: Yeah, I think -- I agree with you, Mr. Michel and Mr. Proctor.

MR. MONSON: Okay. Incidentally, I wasn't asking about a settlement offer, so. I was just asking if that had ever happened. But I'll move on.

Q. (By Mr. Monson) Did you -- are you aware of the Office's position in the Chehalis case, under the Energy Resource Procurement Act?

MR. PROCTOR: Objection, it's beyond the scope of direct. It's also irrelevant.

CHAIRMAN BOYER: Sustained.

Q. (By Mr. Monson) Let me just ask it this way, then. And I guess it's a little bit what Ms. Schmid was just asking.

Would you expect, in this proceeding that you say the Commission should have about market reliance and hedging, that the Office would take a position on a certain level of market reliance being acceptable or a certain hedging program being acceptable, and that it wouldn't challenge rates set on the basis -- rates collected on the basis of those programs in the future?

MR. PROCTOR: Objection, it's speculative. It's asking this witness to determine what the position would be in a proceeding that has not yet taken place and the evidence that hasn't been gathered.

CHAIRMAN BOYER: Sustained.

Q. (By Mr. Monson) What I'm trying to find out is, Mr. Gimble, what good will this proceeding do? This proceeding where the Commission's gonna hear more evidence about things it's already been hearing about? What's the point of this proceeding?

MR. PROCTOR: Objection, it's argumentative. What good is the proceeding and what's -- that's argumentative. This witness needn't be -- have to answer such questions.

CHAIRMAN BOYER: Well --

MR. MONSON: I'll change the wording.

CHAIRMAN BOYER: I'm gonna sustain that, but I'll give you a suggestion. Why don't you ask Mr. Gimble why they've taken the position that the Commission should look at hedging and front office transactions prior to doing the -- prior to deciding whether or not to approve an ECAM? I mean, isn't that the gist of your question?

MR. MONSON: My -- it's almost. But my real, my real question is, What purpose would be served by this proceeding that hasn't already been served? Is that -- that's not argumentative, is it?

CHAIRMAN BOYER: No.

MR. PROCTOR: Well, it assumes a fact not in evidence, and that is that this proceeding is exactly the -- accomplishes the same purpose as the one with respect to hedging.

CHAIRMAN BOYER: No, I think the question is fair. You might want to have the reporter read it back, but I think it's a fair question.

MR. MONSON: I can say it again. Do you --

MR. PROCTOR: Mr. Gimble, do you understand that question?

THE WITNESS: I need it read back.

MR. PROCTOR: Okay.

MR. MONSON: I can give it or you can read it back, whichever.

CHAIRMAN BOYER: If you've got it committed to memory, go ahead.

Q. (By Mr. Monson) What purpose would be served by this proceeding that you say the Commission should have that hasn't already been served by the various proceedings we've talked about?

A. Number one, the Company hasn't defended, in an analytical way, the level of the front office transactions that it proposes in its IRP. We have had, in the last two or three IRPs, concerns about the level of market risk, have commented on that, and have done some analysis on that.

So we think there needs to be -- before variations in market purchases be -- flow through an ECAM we think that the Commission has to have more information and have an in-depth analysis of the reasonableness of, you know, the exposure, the market exposure to the Utah customers.

Q. And you agreed in -- your testimony in Phase II Part 1 was that these are dynamic issues, they change over time; is that right?

A. Markets can be dynamic, but we still believe that an in-depth detailed analysis needs to be performed.

Q. We talked a minute ago about Mr. Falkenberg. Are you aware, from your interactions -- I assume you have some interaction with him?

A. My interactions with Mr. Falkenberg are limited.

Q. Are you aware from those interactions that he does a similar type of work that he does for the Office in Utah for industrial customer groups in Wyoming, Washington, and Oregon?

MR. PROCTOR: Objection, it's irrelevant. And there's no foundation for what Mr. Falkenberg has been doing in another jurisdiction for another client.

CHAIRMAN BOYER: Sustained.

Q. (By Mr. Monson) Are you familiar with the Company's ECAM in Wyoming?

A. Not the specific details. All I'm familiar with is that they have one. It has sharing bands.

MR. MONSON: I'm trying to think if I can ask a question. I'll try the question and it may be subject to an objection.

Q. (By Mr. Monson) Have you ever discussed with Mr. Falkenberg whether he participates in audits of the ECAM in Wyoming?

MR. PROCTOR: Objection, same objection.

CHAIRMAN BOYER: Well, I don't see the relevance.

MR. MONSON: Okay.

Q. (By Mr. Monson) You oppose the Division's recommendation that there be full recovery if net power costs ever deviate by 30 percent or more from the net power costs that are in rates, right?

A. Correct. We put out an alternative.

Q. Right. And you say that if that occurs --

A. Different view on that.

Q. Oh, I'm sorry.

A. Sorry. We have an alternative -- or a different view on that.

Q. Okay. And you say that if that happens, recovery shouldn't be automatically granted to the Company. Right?

A. Correct.

Q. And rather you say there should be a separate filing, and consideration should occur; is that right?

A. It should go through different processes.

Q. And would this separate filing, this separate filing that you're talking about involve an after-the-fact review of what happened with this extraordinary event?

A. Based on my experience, that's what would happen. Going back to that -- I think it was the Hunter Unit 1 outage.

Q. Okay. And so in that kind of proceeding wouldn't there be a prudence review of how the Company acted given the circumstances presented?

A. Yeah, there would be likely a review of the Company's actions. And the reasons for, for example the Hunter unit, or a major unit going out.

Q. You support load growth adjustment, right?

A. Correct.

Q. Go back just a second to the issue of prudence. What would prevent the Commission and the Office from challenging the prudence of power purchases through an ECAM if it felt that market reliance was too high or hedging was not prudent?

A. I'm sorry, I'm having trouble shifting. I was -- I'm on the load.

Q. What would prevent the Commission -- or the Office from challenging prudence of prior --

A. The Commission -- did you say the Commission?

Q. Uh-huh.
A. The Commission's -- go ahead.
Q. Okay. What would prevent the Office from challenging the prudence of power purchases through an ECAM if it felt that market reliance was too high or hedging was not prudent?
A. I think it could challenge that in the context of an ECAM. But what we're saying is, before an ECAM is approved or endorsed by the Commission on a pilot basis, that it needs more information in terms -- and more analysis of the Company's -- the reasonableness of the level of the Company's front office transactions, and its hedging practices and parameters.
We think it needs to make that analysis in order to determine whether an ECAM can be in the public interest.
Q. Okay. We are back -- we were on the load growth adjustment, I think. And you note in your testimony that load growth increases sales revenues, net power costs, and the need for new investment, or it could; is that right?
A. It could, yes.
Q. And you note that the Company can seek recovery from major plant investments in between rate

cases; is that right?

A. And it has.

Q. Okay. But aren't many investments associated with load growth not involved in major plant cases?

A. I think it's unlikely that distribution investment won't be included. And we're not recommending that margins on distribution investment be, be part of this load growth adjustment.

Q. Okay. So you're not supporting including revenues associated with distribution?

A. No.

Q. How about generation?

A. Yeah, margins on -- revenue margins on generation, we are.

Q. And transmission?

A. Correct.

Q. Okay. Isn't it true that the -- as the Company's revenues increase it's also possible that its costs might increase? Other than net power costs?

A. Can you give me an example of costs?

Q. Operation and maintenance expenses. That could increase, couldn't it?

A. Subsequent to a rate case?

Q. Yes.

A. Or test period?

Q. Yes.
A. They could.
Q. And there could be increases in generation and transmission investment, couldn't there? After a test period?
A. There could be. And you -- and now you have a vehicle, through the MPA, to at least deal with major plant investments.
Q. At least big ones. But it wouldn't necessarily cover all of them, right?
A. Perhaps not all.
Q. Okay. You support inclusion of REC revenues in the ECAM going forward, but not for the amount currently being accrued, right?
A. Correct. We make a distinction.
Q. Right. And the basis for the distinction I think that you offer in your testimony is that the REC revenues being accrued result from a missed forecast. Do you remember using those words?
I can give you a reference to your testimony if you would like.
A. Well, go ahead. Give me the reference.
Q. It's in your surrebuttal, lines 161 and 162.
A. I see that.
Q. Do you see that? And you've got the word

"missed forecast" in quotes. Won't the incremental REC revenues in the future also be the result of a missed forecast?

A. Maybe that terminology "missed forecast" isn't as accurate as it should be. I mean, what would -- based on the information I reviewed it looks like what we had here is an extraordinary event at the end of 2009 in terms of the REC, the REC sales that will -- I think it started around November, something like that. November/December into the early part of January 2010. It looks like that was an extraordinary circumstance.

Q. So wouldn't any incremental net power costs also be the result of a missed forecast?

A. That's what I understand the intent of the -- your ECAM proposal to be, is to essentially true up based on -- true up forecasts based on actuals, if that's what you're asking me.

MR. MONSON: That's all my questions.

CHAIRMAN BOYER: Thank you, Mr. Monson.

Mr. Evans?

MR. EVANS: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. EVANS:

Q. Good afternoon, Mr. Gimble.

A. Hello. Turn a little bit here.
Q. That'll be good. I just have a couple questions for you. We'll keep it real short this afternoon. I'm looking at your rebuttal testimony at page 11?
A. Line number, if you've got one?
Q. Line number 301. It's the Q&A that we're gonna talk about.
A. Okay.
Q. And it follows from line 291 on the preceding page, in which you address Mr. Brubaker's proposal to establish performance standards.
A. Okay.
Q. And you say you don't agree with those standards. And then -- but the Q&A at 301 is asking whether you propose an alternative to those. Do you see that?
A. Can I clarify what you just said?
Q. Sure.
A. Or attempt to?
Q. Please.
A. We didn't say we don't agree, we just don't think they're needed at this time.
Q. Yes.
A. We're -- the Office and others are proposing

a sharing band.

Q. Okay. I may have --

A. To deal with those issues.

Q. Okay. Thank you for clarifying that. So not necessarily you disagree, you're saying not at this time; is that right?

A. Correct.

Q. Okay. And then you proposed an alternative. And the alternative is essentially that -- make sure I understand. The Commission would monitor key plant performance indicators, you say there at line 304, and set a specific time within the pilot period to evaluate whether there has been a pattern of decline in plant efficiency, availability, and maintenance under an ECAM compared to historic levels. Have I read that correctly?

A. You have.

Q. What kind of key plant performance indicators did you have in mind there?

A. Basically the plant efficiency indicators. The availability. Whether maintenance protocols have changed under an ECAM. Whether the Company's doing less maintenance of plants. Those kinds of indicators.

Q. Okay. And would those kind of indicators be the subject of an ECAM audit when the Company comes in to apply for ECAM recovery? Anyway?

A.   I think that could be up to the, the audit design that the Division puts in place, assuming that an ECAM is approved by the Commission.

Q.   Okay. And then you say --

A.   I assume they're going to be interested in that kind of data.

Q.   It's the kind of data that ordinarily one might look at in doing an audit, right?

A.   Correct.

Q.   And then in the last sentence in that paragraph you say:

> "If the data indicate deterioration in plant performance that is contrary to the public interest, the Commission could consider implementing performance standards in the ECAM design."

And that's meant to be in the future, right?

A.   Correct. It can look at the -- gather this information in the pilot period. See what it looks like for -- you know, we're proposing it goes out to January 1, 2015.

Q.   Okay.

A.   Assuming an ECAM is approved.

Q. And then if the -- it shows deterioration, then it could implement performance standards later as a result of that?
A. It could go in that direction if it found it to be in the public interest.
Q. Okay. And what would indicate deterioration? What do you mean by that?
A. If the -- going to maintenance, if the Company was slack on their maintenance it would probably show up in terms of plant availability, outages, those types of things. So you'd want to compare that kind of data. The historical.
Q. And is --
A. Time series data.
Q. Okay. And is deterioration a trend, or is it an event?
A. I don't think you want to look at a single, a single year. You know, you're gonna need to accumulate this over time.
Q. Well, you had a discussion with Mr. Monson about the Hunter outage, right? Would the Hunter outage indicate deterioration?
A. Depends on what the analysis --
Q. It might?
A. -- of that outage.

Q. But it might?
A. It could.
Q. And other similar events of lesser magnitude might also indicate deterioration, although they -- would that be true?
A. Give me an example, or examples, if you would.
Q. Something less dramatic than the Hunter outage. Like some generation resource that's less important, or goes partially out, or has different kinds of problems but are still of some noticeable magnitude. Doesn't have to be a complete outage of the plant, does it, to be deterioration?
MR. PROCTOR: Objection, it calls for speculation on --
MR. EVANS: Well --
MR. PROCTOR: -- based on terms such as "more important" or "less important" and that sort of thing.
MR. EVANS: Well, Mr. Proctor, he's asked me to give an example, and I --
MR. PROCTOR: Mr. Chairman, I just have an objection to the question in its entirety. And the example that he asked for was not one which is subjective, well, what's more important.
CHAIRMAN BOYER: Well --

MR. PROCTOR: The question is --

MR. EVANS: All right. Let me withdraw the question and I'll try another one.

Q. (By Mr. Evans) If a wind resource, for example, during the entire time period failed to hit the capacity factor that was presented to the Commission when that resource was approved for cost recovery, would that indicate deterioration?

A. You may have other wind resources going the other way. I think you'd have to take a look at the full array of wind on the system. It may be that you have pockets of trouble. In terms of, you know, a certain farm not being maintained the way another wind farm is.

Q. Okay.

MR. EVANS: No more questions, thank you.

CHAIRMAN BOYER: Thank you, Mr. Evans.

Mr. Dodge?

MR. DODGE: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. DODGE:

Q. Mr. Gimble, just to make clear. Was it your testimony that you do or do not see a difference between deviations in net power costs from the Company's forecast in the last rate case, on the one hand, and the run up in REC revenues that are being deferred on the other hand? Do you see a distinction between those two?

A. We do.

Q. And explain briefly what distinction you see between the two.

A. The distinction is, the REC revenue that's in the deferral account appears to result from extraordinary, extraordinary circumstances. Where the RECs that were in the test -- the REC revenues that were put in the test year are significantly different than what the REC actuals were for that period of time.

Q. And is it on that basis, then -- well, let me ask the question directly. Does the Committee -- the Office support any kind of sharing of that deferred REC revenue with the Company?

A. Absolutely not. We basically think that those revenues should -- hundred percent should go to customers.

Q. And is it partly on that basis you object to it being considered in this docket? Or is it on other -- another basis?

A. We don't think it's appropriate to be part of the design consideration.

Q. And if I understood your summary right, although your testimony suggested that the REC revenue deferral be considered in the rate case, you don't object to UAE proposing that it be considered in the MPA II docket. Is that what you said?

A. It's in my surrebuttal testimony. I think it's in a footnote that UAE has proposed that the REC revenue issue be vetted there. We just in that footnote said it should be considered on its merits. And the Office will consider what -- UAE proposals on its merits and respond accordingly.

Q. And --

A. I mean, there's three issues there. I mean, there's the amount, the recovery, and an important issue that I think is gonna be for a few parties in here at least is the spread.

Q. And you're saying those issues you can address -- the Office can address in the MPA docket?

A. Well, the UAE has testimony in that docket. And like I said in my testimony, the Office will respond accordingly to that testimony.

MR. DODGE: Thank you. No further questions.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Mr. Michel, any questions for this witness?

MR. MICHEL: No questions, thank you.

CHAIRMAN BOYER: Okay. Commissioner Allen?

COMMISSIONER ALLEN: Thank you again, Mr. Chairman.

Mr. Gimble, earlier today you may have heard me ask Mr. Peterson some questions about how the proposal for the deadband that they have -- the DPU's proposal for a deadband might work.

And I have referred to some of your analysis and formula as having caused some of my questioning as far as the complexity goes.

Do you have anything to add to that, as far as whether or not you're still neutral -- the Office is still somewhat neutral on a deadband? How practical is it if -- have the suggestions become too complex, or is it a noteworthy incentive?

THE WITNESS: A deadband isn't a significant issue for the Office. We recommended that if you do use a deadband it should be limited, 1 to 3 percent. I guess the Division's proposal falls right in the middle of that.

Our bigger issue, of course, is the sharing bands. The cost sharing. The 70/30 cost sharing. Which we think the Commission should adopt as part of the entire design if it moves forward with an ECAM and makes the decision that an ECAM is in the public interest.

Going to your specific question, I guess you were asking -- I mean, it appeared to me I had the same concern, I guess, that you had that the formula looks like it results in, I think 68.6 percent. And I think Mr. Peterson clarified that on the record today, so I accept that clarification.

COMMISSIONER ALLEN: Great. Thank you.

CHAIRMAN BOYER: Commissioner Campbell?

COMMISSIONER CAMPBELL: I'm gonna start at a very high level. And I guess my first question is, does the Office have any objections to the Company earning its authorized ROE?

THE WITNESS: I think the way that -- you are starting at a high level. I think the Company always has -- part of the regulatory compact is that the Company has an opportunity, based on the rates that the Commission sets, based on the cost structure of the Company, to earn its -- and the return authorized by the Commission, to earn its authorized ROE.

COMMISSIONER CAMPBELL: Do you have an opinion whether the Company has been consistently underearning over the past five years or so?

THE WITNESS: I don't have an opinion on that.

COMMISSIONER CAMPBELL: If -- let's just assume then for, for this question, let's assume they have been. Let's assume that the Commission receives monitoring reports from the Division that shows consistent underearning.

Is there somewhere else the Commission should look for the cause of that underearning than net power costs? Are you aware of any other area that might be causing that?

THE WITNESS: Well, I think that probably happens every time the Commission has a rate case filed before it that it is looking at the various areas other than net power costs in terms of what's going on.

For example, in loads -- are the load forecasts reasonable. O&M, A&G, in terms of trends there. From my standpoint, I haven't looked at it that closely.

COMMISSIONER CAMPBELL: Okay. I'd like to ask a couple questions on page 9 of your direct testimony. Starting with line 257. And you talk about how hedging can reduce the variation, perhaps, of costs if borne by customers. And you say it's important that hedging practices and policy reflect the risk tolerance and preference of customers.

In redirect Mr. Peterson was asked about the value of natural gas, natural gas hedging, so I'm just trying to get your opinion. The -- on this record we show that the natural gas hedging -- leaving aside the physical once again, I'm just sticking to the new stuff -- that that costs $400 million to customers.

Do you think it's worth -- do you think the reduced -- the reduction in volatility is worth $400 million from a customer preference?

THE WITNESS: It seems like a lot of money, but we've made no assessment of that. And that's why we think the Commission really needs to take an in-depth detailed look at the Company's hedging practices and its parameters. And based on the evidence --

COMMISSIONER CAMPBELL: Do you --

THE WITNESS: -- provide some guidance.

COMMISSIONER CAMPBELL: Do you have any sort of range of what would be reasonable to pay for reduced volatility?

THE WITNESS: I don't. The Office's hedging experts -- we retained hedging experts in the -- Part 1 of Phase II, and they may be able to better answer that question.

COMMISSIONER CAMPBELL: Do you have --

THE WITNESS: I'm not, I'm not a hedging expert.

COMMISSIONER CAMPBELL: Right. I still am a little confused on your testimony based on questions Ms. Schmid asked you. I understand that you want these issues addressed before the Commission were to implement an ECAM.

Let's say the Commission was going to implement an ECAM. I'm looking at your answer on 265 and it's still kind of fuzzy to me. If the Commission were to implement an ECAM, is it your testimony that natural gas swaps should not be part of the ECAM?

I'm trying to read your answer on 265 to figure out if that addresses the question I just asked you, or if it still just kind of deals with the issues --

THE WITNESS: Yes.

COMMISSIONER CAMPBELL: -- before we decide whether there should be an ECAM.

THE WITNESS: The Office's position is that the Commission needs to, in a proceeding, some focused proceeding, take a look at the Company's hedging practices, their parameters, their entire hedging program, and ascertain the reasonableness of that program.

And provide guidance in making a determination that the ECAM is in the public interest before you -- basically, you know, camel in the tent.

COMMISSIONER CAMPBELL: So that's what line 265 is referring to?

THE WITNESS: Yeah, if you go forward and -- our position is that if you move forward without doing that analysis, that wouldn't be in the public interest to do that.

CHAIRMAN BOYER: Just a follow up or two, Mr. Gimble. You were just discussing with Commissioner Campbell hedging and volatility. Are fuel costs volatile to consumers under the current regulatory system? Do they go up and down every month? Rates -- do rates change --

THE WITNESS: No.

CHAIRMAN BOYER: -- in the short term? They don't?

THE WITNESS: No.

CHAIRMAN BOYER: Is there a difference between controlling fuel costs and controlling fuel cost volatility, in your mind?

THE WITNESS: Definitely.

CHAIRMAN BOYER: And how do those play out, those two concepts play out with an ECAM/without an

ECAM?

THE WITNESS: Well, first -- the first place you gotta start is in a general rate case. Where you're addressing -- you know, the Company comes in with a proposed level of fuel based on, you know, coal, gas, et cetera.

In terms of volatility, they basically have a hedging strategy related particularly to their, you know, gas purchases. So. I'm not sure I'm getting to the essence of your question.

CHAIRMAN BOYER: Well, I guess I wondered which constrains costs -- fuel costs best, in your opinion: The current regulatory scheme, in which we have rate cases periodically and try to true things up to -- you know, based on forecasts, and so on and so forth. Or an ECAM, that flows it right on through --

THE WITNESS: Well, I think the current, the current way is -- in the Office's view, from the Office's perspective, the Office is opposing the ECAM. We don't believe it's in the public interest.

And you should keep the -- basically fuel costs and things that the -- or the accounts that the Company wants to put in the, the pass-through account, the ECAM account, keep it in base rates, keep it in general rates.

CHAIRMAN BOYER: Okay, thank you.

Redirect, Mr. Proctor?

MR. PROCTOR: Yes, thank you.

REDIRECT EXAMINATION

BY MR. PROCTOR:

Q. Mr. Gimble, right now, with respect to hedging and market reliance, is there any Commission-approved standard against which one could test the prudence of this company's hedging program, hedging transactions, and its market reliance?

A. Not that I'm aware. Not that I'm aware of.

MR. PROCTOR: Thank you, Mr. Gimble. That's all.

CHAIRMAN BOYER: Okay. Thank you, Mr. Gimble. You are excused.

THE WITNESS: Thank you.

CHAIRMAN BOYER: I guess now we will hear from Mr. Higgins. Is that correct, Mr. Dodge?

MR. DODGE: Yes, thank you.

CHAIRMAN BOYER: Mr. Higgins, have you been sworn in this proceeding?

MR. HIGGINS: Yes, I have, Mr. Chairman.

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KEVIN C. HIGGINS,
called as a witness,
having previously been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODGE:

Q. Mr. Higgins, will you please tell us who you are?

A. That's an essential question. My name is Kevin Higgins. And I'm a principal in the firm of Energy Strategies.

(The reporter asked the witness to turn his microphone on and repeat the answer.)

THE WITNESS: Is that on? In the firm of Energy Strategies.

CHAIRMAN BOYER: There you go.

Q. (By Mr. Dodge) And you're appearing in this docket on behalf of the Utah Association of Energy Users; is that correct?

A. Yes, I am.

Q. Mr. Higgins, the Commission has before it prefiled direct testimony that we marked, in an effort to be clear --

MR. DODGE: But we may have failed, Mr. Chairman.

Q. (By Mr. Evans) But we marked it 1D, "D" meaning "Design," as well as 1.1D through 1.4D, for Mr. Higgins' direct testimony. Rebuttal, which we marked 1D-R. And surrebuttal, which we marked 1D-SR.

Is that your testimony in this proceeding, Mr. Higgins?

A. Yes, it is.

Q. And do you have any corrections to the prefiled testimony?

A. Yes, I have one. In UAE Direct Exhibit 1.1 (KCH-1), which is a table showing mechanisms in other states. In the line listed as New Mexico, under "Deadband/Cap," please strike the commentary in that box. The cap being described in that exhibit has expired. That's my only correction.

Q. Thank you. And with that correction then this is your testimony before the Commission; is that correct?

A. Yes.

MR. DODGE: Mr. Chairman, I move the admission of the exhibits that I referenced.

CHAIRMAN BOYER: Are there objections to the admission of Mr. Higgins' direct, rebuttal, and surrebuttal testimony?

They are admitted.

(Kevin C. Higgins direct, rebuttal, and surrebuttal testimony and attached exhibits was admitted.)

MR. DODGE: Thank you, Mr. Chairman.

Q. (By Mr. Dodge) And Mr. Higgins, will you provide a brief summary for the Commission, please?

A. Yes, thank you. Good afternoon.

CHAIRMAN BOYER: Afternoon.

THE WITNESS: As I explained in my Phase I testimony, I do not believe that adoption of an ECAM for Rocky Mountain Power in Utah is in the public interest in light of all relevant considerations at this time.

However, if an ECAM is adopted in Utah then I am recommending several changes to the Company's proposal, to address several significant deficiencies. Number one, the Company's proposal does not provide for any risk sharing between the Company and customers.

Instead, Rocky Mountain Power's proposed ECAM would simply pass through 100 percent of changes in net power costs in between rate cases to customers. This type of 100 percent cost pass through seriously reduces the Company's incentive to manage its fuel and purchase power costs as well as it would manage them if the Company remained fully responsible for the energy cost risk.

To remedy this problem, as well as to provide an equitable balance between customer and shareholder interests, I recommend adoption of a 70/30 sharing mechanism. In which 70 percent of the difference between base net power cost and actual net power cost is allocated to customers, and 30 percent is allocated to Rocky Mountain Power.

I believe this weighting establishes a reasonable threshold of materiality to ensure sufficient management incentive to control costs. As well as to take into consideration the magnitude of change that is reasonable if Utah is to migrate from the status quo, in which the sharing weight is effectively 0 percent customer and 100 percent Rocky Mountain Power.

This 70/30 weighting also bears some general correspondence to the sharing provisions the Company agreed to in Wyoming in 2006.

Rocky Mountain Power opposes a sharing mechanism and claims that the threat of a prudence review is sufficient incentive to ensure sound cost management practices.

I disagree. In my view, the threat of a

finding of imprudence following an after-the-fact audit is not a good substitute for the Company having skin in the game when it comes to managing its net power costs.

A finding of imprudence essentially requires a determination that the Company acted unreasonably in its power cost management. In contrast, a risk sharing mechanism, structured such that each and every power cost action undertaken by the Company affects its bottom line, provides an incentive for the Company to get the best possible result from every action taken.

In the real world, trying to get the best possible result is different from not behaving unreasonably and getting caught. Getting the best possible result is a more exacting and efficient aspiration.

A well-crafted sharing mechanism allows the Commission to harness the natural economic self-interest of the Company to incentivize the desired behavior of ensuring sound utility cost management performance.

Number two, in determining the appropriate amount of any ECAM revenue requirement the incremental margins attributable to load growth should be credited to customers as an offset. Rocky Mountain Power's Idaho ECAM recognizes such a credit, but the Company's Utah ECAM proposal does not.

Recognition of such a credit is particularly important in Utah because Rocky Mountain Power has been awarded and continues to seek single-issue ratemaking treatment for major plant additions without any recognition of incremental revenues from load growth. And now seeks to follow up with single-issue ratemaking treatment for net power costs, also without any recognition of incremental revenues from load growth.

Taken in tandem, this combination produces a one-sided result, to the detriment of customers. If this combination of single-issue ratemaking treatment is to be implemented in Utah then some recognition of incremental revenues from load growth is warranted, either in the MPA proceedings or in the ECAM.

If an ECAM is adopted in Utah then I recommend the inclusion of a load growth adjustment factor, value of which would be multiplied by each megawatt hour of Utah load change that occurs relative to the test period load used for setting rates in the most recent general rate case, but is applicable only to ECAM measurement periods that occur after the close of that test period.

The resulting amount would then be credited against the ECAM balancing account and be subject to the 70/30 sharing mechanism. If the ECAM becomes effective before the conclusion of the next general rate case, I recommend that the load growth adjustment factor be set equal to $27.86 per megawatt hour.

Number three, the Company's ECAM proposal subjects Utah to hydro-related risk, despite the fact that the Company's current jurisdictional cost allocation methodology does not provide Utah with the full benefits of the Company's hydro resources.

If an ECAM is adopted in Utah I recommend that as a condition of such adoption inter-jurisdictional costs allocated to Utah should be based on the rolled-in allocation methodology. Which apportions to Utah a system hydro benefit that is proportionate to Utah's load.

With this change the system hydro benefits credited to Utah would be consistent with the hydro risk allocated to Utah through an ECAM.

Four, the adoption of an ECAM would reduce Rocky Mountain Power's shareholder risk, all other things being equal. Consequently, the adoption of an ECAM should result in a lower authorized return on equity than it would otherwise obtain.

And five, in its supplemental filing Rocky Mountain Power amended its original ECAM proposal to include REC revenues in the ECAM calculation. I recommend an alternative course of action. I respectfully request that the Commission defer making any determination regarding the inclusion of REC revenues in an ECAM at this time.

Instead, I recommend that the Commission first consider on its merit the proper ratemaking treatment of the incremental REC revenues identified in UAE's application for a deferred accounting order in Docket No. 10-035-14. In which UAE contends that REC values increased in a manner that was dramatic, unprecedented, unforeseeable, and extraordinary.

I believe that the current MPA proceeding is the appropriate venue for addressing this issue. In that proceeding customers are facing a substantial potential rate increase January 1, 2011, which can be partially offset by properly crediting to customers 100 percent of the deferred REC revenues through a sur-credit that would take effect on the same date.

Determining the dispositions of the deferred RECs in the MPA docket, rather than in this docket, will allow the Commission the opportunity to provide customers with the full measure of their deserved rate relief sooner rather than later.

If the Commission determines that as a matter of ECAM design it is appropriate to include REC revenues in an ECAM, then I recommend that such inclusions be initiated following the next general rate case. After the proper crediting of 100 percent of the deferred REC revenues to customers -- as described in my testimony, and in my testimony in the MPA docket -- has run its course. That concludes my summary.

MR. DODGE: Thank you, Mr. Higgins.

Mr. Chairman, Mr. Higgins is available for cross.

CHAIRMAN BOYER: Thank you, Mr. Higgins.

Mr. Proctor, cross examination?

MR. PROCTOR: Well, I can hardly rehabilitate this witness through friendly cross if I go first, so I have no questions.

CHAIRMAN BOYER: Ms. Schmid?

MS. SCHMID: No questions.

CHAIRMAN BOYER: Mr. Monson?

MR. MONSON: I have some questions.

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CROSS EXAMINATION

BY MR. MONSON:

Q. Mr. Higgins, you are aware that Rocky Mountain Power filed an application for an ECAM in Idaho?

A. Yes, I am.

Q. And in fact, you refer to that proceeding and the results of that proceeding in your testimony; is that right?

A. Yes, I have.

Q. And you participated in that proceeding in behalf of Monsanto; is that right?

A. I was not participating in the proceeding *per se*, in that I did not file any testimony. However, I was an advisor to Monsanto and did participate in settlement discussions.

Q. And Monsanto did join in the stipulation that was approved by the Idaho Commission; is that right?

A. That is correct.

Q. What's the sharing ratio to which the parties stipulated in Idaho?

A. It's 90 percent customer, 10 percent company.

Q. Do you believe that sharing ratio gives the Company sufficient incentive to manage its net power costs?

A. I believe that the sharing percentage agreed to in Idaho is -- provides more incentive than would occur at 100 percent pass through, as the Company's proposed in Utah. However, I do not believe that it is of sufficient materiality as to be optimal.

Q. Do you believe that the parties, in entering into that stipulation, took into consideration the sharing ratios that were used for the other two electric utilities in Idaho in their ECAMs?

A. Yes.

Q. Do you know what those are?

A. My recollection is that they are in the range of 90, 90 percent or so.

Q. Isn't it correct that Idaho Power has 95/5?

A. It may be 95 percent, yes.

Q. Now, in your testimony you state that an unintended consequence of the MSP revised protocol is that its made applicability of an ECAM in Utah conceptually and practically more difficult. Do you recall that?

A. Yes.

Q. And Idaho is also an Eastern control area of the Company's service area just like Utah, isn't it?

A. Yes.

Q. And so the revised protocol would be applied

in the same manner in Idaho as it is in Utah?
    A.   Yes.
    Q.   So the parties, including Monsanto, stipulated to approval of an ECAM in Idaho, even though the same interjurisdictional allocation issues are present in Idaho that are present here; is that right?
    A.   That's correct.
    Q.   And there was no -- what do you call that? Hydro adjustment, or whatever, in Idaho in the stipulation?
    A.   That is correct.
    Q.   Okay. Now, you also appear in behalf of, I think it's called WIEC? WIEC, is that how you say it?
    A.   WIEC, yes.
    Q.   WIEC, in the Company's general rate cases in Wyoming, right?
    A.   That's true.
    Q.   And you also are appearing in the current proceeding in Wyoming as a witness for WIEC on the Company's proposal to modify its ECAM -- or PCAM in Wyoming; is that right?
    A.   That is correct.
    Q.   The Company already has a PCAM in effect in Wyoming; is that right?

A. Yes.
Q. And you refer to that in your exhibit -- in your testimony, right?
A. Yes.
Q. Prudence reviews are conducted in connection with that PCAM in Wyoming; is that right?
A. That's my understanding, yes.
Q. And are you also aware that the -- that WIEC regularly raises issues regarding the Company's operation of its generation plants in Wyoming?
A. Yes.
Q. And the Wyoming Commission addresses and deals with those issues; is that right?
A. Yes.
Q. Are you aware that the -- well. And in the Wyoming ECAM case WIEC has another witness, Mr. Falkenberg; is that right?
A. That is true.
Q. And so I assume you've reviewed his testimony in that case?
A. Yes, I have.
Q. Are you aware that he's recommending that REC revenues should be included in the ECAM in Wyoming?
A. Yes, I am aware of that.
Q. And are you also aware that the Wyoming

commission has already issued an order stating that it will include the REC revenues in the ECAM in Wyoming?

A. I did not see that order.

Q. Okay. Now, Mr. Falkenberg also recommends that wheeling revenues be included in Wy -- in the ECAM in Wyoming; is that right?

A. That's true.

Q. So in this case you agree with his recommendation on wheeling revenues, but not with respect to REC revenues?

A. In which case?

Q. In this case. In Utah.

A. Well, I didn't testify in this case as to wheeling revenues.

Q. Oh, you didn't?

A. No, I did not.

Q. Okay, I'm sorry.

A. And of course in Wyoming, Rocky Mountain Power projected in its rate case $84 million worth of REC revenues when they set rates. Unlike Utah, where the projection was $18.6 million.

And so I think that that experience in Wyoming probably colored the view of parties as to the appropriateness of including RECs in an ECAM relative to Utah, where I think we have an initial issue to address coming out of the last rate case and the way RECs were projected in that case.

Q. Okay. The original projection in Wyoming wasn't $84 million, was it?

A. No, it was, it was lower than $84 million. It was --

Q. Thirty-six million?

A. Yes, uh-huh.

Q. Okay. And the test period in the Wyoming case was different than the test period in the Utah rate case?

A. The test period in the Wyoming case was six months later than the test period in the Utah case. However, it turns out that that does not really affect the accrual of REC revenues in terms of the magnitude.

In other words, the actual accruals in the test period used in Utah are comparable to the 2010 test period used in Wyoming. As it turns out.

Q. Okay. You note in your testi -- in your direct testimony that because Rocky Mountain Power is proposing to measure the difference between base NPC and actual NPC on a per-unit basis -- that is, on a dollar-per-megawatt-hour basis -- and then multiply the difference by the actual amount of Utah load in the ECAM measurement period, the measurement in recovery of NPC will automatically be adjusted for load growth?

A. For net power costs, yes, uh-huh.

Q. Okay. So you say no further adjustment is needed on that score?

A. On that score, correct.

Q. Okay. You propose, nonetheless, that there be a load growth adjustment. And that it include transmission and generation revenues; is that right?

A. Yes. The incremental margins associated with transmission and generation.

Q. In the Idaho case there is a load growth adjustment that just includes generation; is that right?

A. That is correct.

Q. Okay. Now, if -- you say that load growth during the period following the test period provides new margin; is that right?

A. Yes.

Q. Now, that's currently the case also, right?

A. Yes.

Q. Without any -- with or without an ECAM?

A. Correct.

Q. Okay. And the way that's dealt with now is if the Utility begins to earn in excess of its authorized rate of return, then presumably a rate case would be commenced to take care of that; is that right?

A. Not necessarily. I mean, if the Utility earned above its authorized rate of return I imagine there would only be a hearing held on that if someone filed a show cause motion or something to that effect.

Q. And we haven't had any experience with that in Utah, have we?

A. Not to my knowledge, no.

Q. Because the Company hasn't even come close to earning its authorized rate of return in Utah; is that right?

MR. DODGE: I'm gonna object to the vagueness of the question. I don't think that's an accurate statement of all time. Do you have a -- unless there's a time frame on that I object to the vagueness.

MR. MONSON: Okay. I'll put a time frame on it.

Q. (By Mr. Monson) During the past ten years.

A. Well, I haven't analyzed each and every year the past ten years, but what I do know is that Utah -- Rocky Mountain Power measures its authorized rate of return using the MSP revised protocol interjurisdictional allocation.

And yet rates in Utah are set based on the rolled-in plus one percent as a result of the rate mitigation cap. And so even when Rocky Mountain Power is awarded a rate increase that sets rates to fully recover the Company's authorized return, because the Company measures its return using the MSP revised protocol, from the first minute that rates have been approved the Company's going to be underearning its return by that measure.

Now, I'm not saying that's the only cause of underearning, but I do believe that that is a factor that's played a role ever since the revised protocol has been dealt with.

Q. So in connection with Commissioner Campbell's questions of other witnesses, are you saying that the Company's reports that it files in Utah are based on a different, a different protocol or interjurisdictional allocation than its rates are set on in Utah?

A. Yes. Certainly, per my review of what the Company's filed in the past, unless they've -- the Company has changed that, the return on -- the return has been measured using the, the MSP revised protocol. And the rates are set using a different basis.

Q. And have you ever quantified how much difference that makes in terms of how close they come to earning their authorized rate of return?

A. Well, I think you'd -- I haven't converted it to return on equity but I, you know, you would get a feel for it by looking at the difference between what the revenue requirement would be in Utah using MSP revised protocol and what it is using the one percent rate mitigation cap.

The difference between those two numbers would tell you -- converted to an ROE would give you a feel for that.

Q. Okay. Do you agree that there -- after the end of the test period there could be increases in costs associated with serving the additional load that might increase after the test period?

A. I agree with that. And I agree with Mr. Gimble's earlier testimony that I would expect that that would primarily be distribution-related expenses. Primarily.

Q. I get the impression from reading your testimony in this case that you don't like single-item rate cases. Is that a fair statement?

A. That's, I think that's a fair statement.

Q. And -- but would you agree with me that by including a load growth adjustment that includes revenues associated with -- that are associated with factors other than net power costs, that you're kind of turning this single-item rate case for net power costs into a kind of a blend between a single-item case and a general rate case?

A. I will agree with you that it -- the load growth adjustment that I'm recommending does bring in non-net power cost considerations. I would agree with you on that.

And, you know, it stems from the dilemma, I think, that one faces in being in a situation in which there are two different sets of single-item rate cases that take place in Utah, neither one of which recognizes this other factor.

So it's -- but I don't disagree with you that it brings in an element outside the single-item rate case.

Q. And you cite Idaho as a basis for your proposition that a load growth adjustment would be appropriate in Utah; is that right?

A. I think, yeah, that's a -- Idaho provides a good template for that.

Q. The other two utilities in Idaho have load growth adjustments in their ECAMs; is that right?

A. That is true.

Q. But they don't compute their net power cost adjustment on the basis of a per-unit -- on a per-unit basis as is proposed in Utah; is that right?

A. That's true.

Q. So there's at least more justification for it in Idaho with those utilities than there is in Utah?

A. Not necessarily. I mean, the -- in Rocky Mountain Power's Idaho ECAM the calculation is adjusted to take account of the fact that Rocky Mountain Power uses a dollar-per-megawatt-hour basis. And so it's a different calculation than is used for the other two Idaho utilities.

Moreover, I would say that since Idaho does not have major plant addition cases and Idaho customers don't face rate increases based on that entire set of single-issue ratemaking, I think the argument for use of a load growth adjustment in Utah is more compelling than Idaho.

Q. So part of your basis, then, for justifying the load growth adjustment is that the -- is that there's an opportunity to recover when-put-in-service costs associated with major plant additions in Utah?

A. Correct. And that -- the fact that those adjustments, those adjustments to rates now do not take into account this -- the incremental margins from load growth.

So it's the combination of the major plant addition cases and the prospect for an ECAM, neither one of which recognizes the incremental revenues from load growth or the margins from load growth. That's what causes me to conclude that I believe it's a reasonable remedy.

Q. Now, do you know what's happened as a result of the load growth adjustment in Idaho with respect to Rocky Mountain Power's ECAM adjustments?

A. I believe load fell in Idaho and it led to an adjustment favorable to the Company.

Q. Right. So are you aware that the Idaho Commission has directed its staff to review whether load growth adjustments are really appropriate for any of the three major electric utilities in Idaho?

A. I have not been informed of that.

Q. Okay. In your surrebuttal testimony you discuss Mr. Duvall's testimony that the sharing mechanism is inconsistent with the Utah statute authorizing energy balancing accounts. Do you remember that?

A. Yes, I do.

Q. And you made it clear that you're not an attorney, and neither is Mr. Duvall, so you don't intend to debate the meaning of the statute?

A. Correct.

Q. But you do note that the statute requires the Commission to make a finding that an ECAM is in the public interest; is that right?

A. That is true.

Q. Okay. And you state your conclusion that an ECAM can't be in the public interest unless it has a sharing mechanism; is that right?

A. Or words to that effect, yes.

Q. Okay. Can you point to any language in the statute that supports your position that the Commission is authorized to allow only a partial recovery or refund of deviations in the components of net power costs that are included in an ECAM if it adopts one?

A. The -- if you give me a moment, I'd like to.

Q. Sure.

A. I have the statute.

Q. Do you have it?

A. I do, uh-huh.

Q. Okay.

A. I can tell you without looking that there's no express language that indicates that a sharing mechanism could or could not be adopted. It's silent on a sharing mechanism. It does, however, give the Commission -- it does require that the Commission find that the energy balancing account is in the public interest.

And so I believe -- I guess the Commission will take under its own advisement what the public interest consists of, and whether or not a sharing mechanism is a requirement to fulfill this obligation of the statute.

Q. But it also says, doesn't it, that prudently-incurred actual costs in excess of revenues collected shall be recovered in a bill surcharge?

A. Certainly. And I would say that 70 percent of prudently-incurred actual costs is -- consists of prudently-incurred actual costs. As opposed to fictitious costs or imprudently-incurred costs.

Q. Are you opposed to the major plant addition statute in Utah?

A. I have no personal opposition to the statute or, you know, warm and fuzzy feelings for the statute. It's just, it's the law.

Q. Did your client oppose the passage of that statute?

A. No.

Q. Did they support it?

A. They participated in the discussions surrounding it, and my understanding is agreed to it going forward.

Q. Okay. There's an issue in this case whether adoption of an ECAM is appropriate ratemaking because it allows the Company to recover its actual net power costs; is that right?

A. I'm -- I don't -- I honestly don't follow your.

Q. Okay.

A. The premise of your question, Mr. Monson.

Q. Let me see if I can say it differently.

Are you -- do you believe that an ECAM is not in the public interest because it allows the Company to recover its actual net power costs?

A. No. No, I don't believe that. I don't believe that that disqualifies an ECAM from being in the public interest, no.

Q. Okay. But you do say that recovery of actual net power costs is not the goal of ratemaking, right?

A. You must be paraphrasing me.

Q. If you want to refer to your surrebuttal testimony, lines 34 to 36?

A. Uh-huh.

Q. And yeah, I wasn't quoting you, but I want you to be able to see it.

A. I labored over each and every one of those words, Mr. Monson.

Q. Yeah. Well, you didn't say that part. You said -- but I think you were saying that. I think that's what you were intending.

A. Let me -- so in?

Q. Thirty-four and 36.

A. Thirty-four and 36? Okay.

Q. Yeah.

A. Yes.

Q. You say:

"...rates are established in a general rate case at a level that provides the utility a reasonable opportunity to earn its authorized return and to recovery prudently-incurred costs, including NPC, based on test period parameters."

So you're saying what rates ought to do is allow a reasonable opportunity to recover costs; is that right?

A. Yes, exactly.

Q. Okay. And then you go on to state:

"...once rates are set, except for

extraordinary circumstances that may
give rise to deferred accounting
treatment, the utility is expected to
operate within the framework of those
approved rates...."

A. Yes.

Q. Is that right?

A. Uh-huh.

Q. "...and its management is expected to
cope with normal business risks and the
operation of economic forces."
Is that correct?

A. Yes.

Q. And you go on to state:
"Failure of a utility to achieve the
authorized earnings does not constitute
a disallowance of prudently-incurred
costs."

A. Yes.

Q. Right? And then I think I'm skipping just a little bit here, but you say:
"...rates are set to give the
utility the opportunity to earn its
authorized return and to fully recover
prudently-incurred costs, but it is up

to the utility to manage its business to
achieve (or even exceed) this
objective."
Is that right?
A. Yes.
Q. Okay. So, so just and reasonable rates are rates that will allow an opportunity for the Utility to recover its prudently-incurred costs. Do you agree with that?
A. Yes, I do.
Q. And so in setting just and reasonable rates isn't it necessary to establish a reasonable estimate of the prudent costs that will be incurred during the rate effective period?
A. Yes. And that is done through the establishment of a test period in a rate case.
Q. Okay. And if that can't be done because costs are highly volatile and unpredictable then that premise is not satisfied, is it?
A. Well, the premise may or may not be satisfied. I mean, there may be times in which the outcome, once one is in the rate effective period, results in revenues that either exceed or are less than what was projected.
And similarly with costs. I mean, the --

that doesn't mean that rates, when established, were not prudent and that the -- or were not reasonable and didn't give the Utility the opportunity to fully recover its prudently-incurred costs.

But it may turn out, after the fact, that the Utility does not recover all of its costs. Or conceivably could recover more than its costs, certainly.

Q. Right. But if we can't -- in setting those rates if we can't predict, with any degree of accuracy, what those prudently-incurred costs will be, then we can't set just and reasonable rates on that premise, can we?

A. Well, I think -- that's where I think it's important, you know, to bring some judgment to bear. I -- what costs, exactly, are the ones that are difficult to predict and cause these problems? I've heard it alleged that it's commodity-related costs, when in fact the Company really hedges away a lot of that risk.

I will agree that there are operational circumstances that occur on a month-to-month basis that fall outside what was predicted or what was modeled. And I believe that it is a judgment call as to whether those operational divergences from month to month from what was predicted constitute a reasonable basis for an ECAM. Or whether or not it falls within the range of what is -- what the Utility is com -- the risk the Utility is compensated for in its return on equity.

So I don't believe that, you know, to your question, I don't believe that the inability to perfectly foresee the future requires that there be a cost reimbursement mechanism established.

Q. Okay. And I guess I just want to clarify. I wasn't trying to suggest you have to perfectly foresee the future. Because in all of our ratemaking for all aspects of our costs and revenues we're just making a prediction, right?

A. Yes.

Q. But if it's inherently unpredictable, in other words, you can't make a reasonable prediction of the future for these costs, then is it possible to set just and reasonable rates?

A. Well, I mean, the premise of your question leads to the conclusion that you can't set just and reasonable rates, because the premise of your question is we can't predict any of this. We have -- we're hapless, in essence, is the -- that's the premise.

So I would say that if the premise is that we're completely hapless about predicting the future, then I would tend to agree that maybe you need some other kind of mechanism. Although I don't believe that we are, you know, without the ability to make informed judgments about what we think costs are going to be.

I mean, that's the premise under which, you know, rates are set.

MR. MONSON: Thank you. That's all my questions.

CHAIRMAN BOYER: Thank you, Mr. Monson.

I want to give our reporter a short break here pretty soon. How much cross examination will you have, Mr. Evans and Mr. Michel?

MR. MICHEL: I don't have any.

MR. EVANS: I have one question that I'm gonna try. I'm not sure I'm gonna ask it correctly, but it will be really short.

CHAIRMAN BOYER: All right. Let's hear that, Mr. Evans. Thank you.

MR. EVANS: I'll give it a shot.

CROSS EXAMINATION

BY MR. EVANS:

Q. Hello Mr. Higgins.

A. Good afternoon, Mr. Evans.

Q. You're proposing a load growth adjustment factor that works both on the upside and the downside, right?

A. Yes.

Q. So that when there's increasing load there will be an adjustment, but also when there's declining load there will be an adjustment?

A. Yes.

Q. And in reading your testimony, I guess it's your direct, at line 492 you say in your view it would be equitable for the adjustment to be applied symmetrically. I'd like to ask you just for a minute what that might mean.

A. Okay.

Q. Is it your view that if, in a time of declining load, sales decreased by 10 million and costs increased by 5, how much would the Company accrue in the balancing account in that situation?

A. Well, the -- you're, you're positing your question in terms of total dollars.

Q. Yes.

A. When in fact the ECAM mechanism the Company proposes a dollar-per-megawatt-hour mechanism. And unfortunately that causes a bit of a translation problem trying to, you know, fairly answer your question.

Q. All right.

A. So the -- let me make sure I understand directionally what -- where you're going with this. So in terms of the cost, they went in what direction?

Q. Well, in times of declining load --

A. Uh-huh, declining load.

Q. -- the Company's gonna have fewer sales.

A. Uh-huh.

Q. Fewer dollars coming in. And you're saying because this is a dollar-per-kilowatt-hour adjustment that may not make a difference. But it also could have declining expenses, couldn't it?

A. Yes.

Q. And so under what circumstances -- you say here that the ECAM -- you're saying that the ECAM balancing account would increase if load declined. Under what circumstances would it increase if load declined?

A. Well, the, the notion here is that there is a recognition of incremental margins from growth. And the symmetry is a situation in which there is a reduction in load. And it is really just the inverse of recognizing the incremental margins from growth.

That is, there would be -- if load has fallen there has been a reduction in the Company's ability to recover the costs that had been anticipated in terms of fixed-cost recovery for generation and transmission. And there is a -- the adjustment works in the other direction, basically out of simple fairness.

And I would say that in Utah I would expect that, on the whole, growth is gonna occur more often than declining load is going to occur. But certainly there's that possibility.

Q. So what you're saying is that you would limit the amount that would go into the ECAM in time of declining load to the fixed-cost increment of the lost sales?

A. The load growth adjustment that I proposed would simply work in reverse. That is, in a declining-load situation the dollars-per-megawatt-hour load factor adjustment would be applied to the decline in load. And would be -- and it would be credited to the Company in the ECAM.

Just as it -- just as during times of growth that same factor would be credited to customers in the ECAM.

MR. EVANS: All right. No more questions, thank you.

CHAIRMAN BOYER: Thank you.

Mr. Michel, you have no questions?

Commissioner Allen? Commissioner Campbell?

COMMISSIONER CAMPBELL: Since two witnesses -- two non-attorneys got involved in the statute I think I'll join you with a question or two related to the statute. Acknowledging that the word "component" is not defined, let me read this and see if that could cover the 70/30 issue:

"'Energy balancing account' means an electrical corporation account for some or all components of the electrical corporation's incurred actual power costs."

Does that -- is that a potential avenue to talk about the permissibility of 70/30?

THE WITNESS: I believe so. Can you cite me to the?

COMMISSIONER CAMPBELL: Yeah, it's right there at the very beginning. In the definition of energy balancing account.

THE WITNESS: Uh-huh.

COMMISSIONER CAMPBELL: One (d.)

THE WITNESS: Yes, I see that. And yes, I would agree. As a non-attorney, that word in English to me means that you could probably assign a percentage.

COMMISSIONER CAMPBELL: And let me ask another non-legal question. Are you aware that Questar's balancing account does not fall under the energy balancing account statute that the Supreme Court said that the Commission, maybe known or unknown to them, created it under their general powers?

THE WITNESS: I'm not aware of that.

COMMISSIONER CAMPBELL: You're not? If that were the case, if the Questar balancing account were created under our general powers for the gas company, couldn't we do the same thing for the electric company, and then not be bound by any strict reading of statute here?

THE WITNESS: As a non-attorney, just following the logic of what you said, it would certainly seem to fall within the purview of the Commission's overall authority.

COMMISSIONER CAMPBELL: It's my hope that this gets briefed, hopefully we'll get briefs and get some legal definition around this for us.

Maybe I'll ask you a question as far as RECs. Yeah, I understand it's your position that those get addressed in the MPA account. Or I mean the MPA docket that we have.

My question is -- and based on the discussion that -- or a few comments that you've made, it's unclear to me whether it's UAE's position that the amount of REC revenue that can go back to customers is limited by the accounting entries that the Company's made in the deferral account, or if the Commission, under the unforeseen and extraordinary standard, could go back to the month in which the extraordinary event occurred.

THE WITNESS: I've -- this also seems to be something of a legal question. And I have discussed this somewhat with counsel. And my impression from discussing it with counsel is that potentially there could be a reach back further beyond the initial date of the deferral, I think depending on the determinations the Commission makes in the case.

COMMISSIONER CAMPBELL: If we were to address that issue in the MPA case, how would you see -- would you see a need for legal briefing -- or how would you see the Commission addressing unforeseen and extraordinary potential claim and resolution as part of that case?

THE WITNESS: I think that perhaps legal briefing would be in order. The -- I suppose it depends on what other parties represent occurred during that period. The, you know, I suppose it's possible that parties could agree that the events were unforeseen -- or unforeseeable and extraordinary.

However, if there are differences of opinion about that, and if there are differences of opinion about the proper recognition of these revenues, I suppose briefing the issue may be in order.

CHAIRMAN BOYER: Okay. Thank you, Mr. Higgins.

Any redirect, Mr. Dodge?

MR. DODGE: No, thank you.

CHAIRMAN BOYER: Thank you very much. You are excused.

THE WITNESS: Thank you.

CHAIRMAN BOYER: We'll take a 10-or-15-minute recess, and then we'll hear from Ms. Kelly.

(A recess was taken from 3:20 to 3:38 p.m.)

CHAIRMAN BOYER: Let's go back on the record.

Ms. Kelly, I don't think you've been sworn in this proceeding, have you? Or have you?

MS. KELLY: Yes.

CHAIRMAN BOYER: You have? Okay.

MS. KELLY: Yes, thank you.

CHAIRMAN BOYER: Well then, you're still

sworn.

MS. KELLY: I am. All right.

CHAIRMAN BOYER: Please be seated.

MS. KELLY: Thank you.

CHAIRMAN BOYER: Ready when you are, Mr. Michel.

NANCY L. KELLY,
called as a witness,
having previously been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MICHEL:

Q. Ms. Kelly, would you please state your full name and by whom you are employed?

A. Nancy Lynn Kelly, and I'm employed by Western Resource Advocates as a senior policy advisor.

Q. And did you prefile testimony in this case?

A. I did.

Q. And has that testimony been marked as WRA & UCE Exhibits II.2-1.OD, R, and SR, the three exhibits?

A. That's my understanding.

Q. Okay. And that's your direct, rebuttal, and surrebuttal testimony?

A. Yes.

Q. And those were filed August 4th,

September 15th, and October 13th of this year?
A. Yes.
Q. Do you have any changes or corrections to make to that testimony?
A. Yes, to my direct.
Q. Okay.
A. On page 8, line 152, second word, the word "adjustment" should be "compliance."
And then on page 11 --
Q. What line was that, again? The first change? Line 152?
A. Page 8, line 152.
Q. Okay.
A. And then on page 11, line 208, the word "not" should be inserted between "could" and "get" at the sentence that begins at the end of that line.
And on row 209 strike the word "appropriate."
Q. Okay. Is that it?
A. That's it.
Q. If I were to ask you the same questions today as are reflected in these testimonies would your answers be the same?
A. They would.
MR. MICHEL: Mr. Chairman, I'd move the admission of WRA & UCE Exhibits II.2-1.OD, R, and SR.

CHAIRMAN BOYER: Any objection to the admission of Ms. Kelly's direct, rebuttal, and surrebuttal testimony?

They are admitted.

(Nancy Kelly direct, rebuttal, and surrebuttal testimony was admitted.)

Q. (By Mr. Michel) And Ms. Kelly, could you provide a summary of your testimony?

A. Yes. Good afternoon. Throughout this proceeding my fundamental point has been the determination of recovery mechanisms is intertwined with the financial incentive structure of the Company. When the recovery mechanism changes, the incentive structure changes.

The two areas in which incentives change that have been identified in this proceeding is the effect on operations, which affects current net power costs, and resource acquisition, which affects future net power costs.

The role of risk is significant to this discussion for two reasons: First, it is through changes in the risk structure to the Company that financial incentives are changed. Second, who bears risk has an equity component. It is considered most equitable for those who are most able to manage risk to do so.

In the first phase of this proceeding I opposed an ECAM as not in the public interest. My fundamental concern then, as now, was the effect of an ECAM on incentives, particularly resource acquisition, because an ECAM shifts the financial incentives towards relying more heavily on market and fossil fuel resources and less heavily on energy efficiency and renewable resources. I also considered it inequitable to shift the risks of Company management decisions and Company actions to those who have the least control.

In the second phase of this proceeding I worked diligently to address my issues through ECAM design, as you requested. I conclude that my concerns regarding operational incentives and issues of equity may be mitigated through significant sharing bands, an ECAM that trues up revenues to the base revenue forecast, and other design elements.

However, the effect of an ECAM on the incentives for resource acquisition continues to trouble me. Given the current economic conditions and climate crossroads, a recovery mechanism that disincents energy efficiency and renewables while incenting market purchases and fossil fuel cannot be in the public interest.

Therefore, mitigation measures outside of the ECAM design to assure that long-run resource acquisition is undertaken consistent with the public interest, as well as safeguards in the ECAM design, is necessary.

I therefore recommend that if you determine to adopt an ECAM you first open a new docket to examine and put in place resource acquisition mitigation measures prior to the implementation of the ECAM. This docket would consider energy efficiency and renewable resources as mitigation measures, in addition to examining levels of front office transactions and the Company's hedging program.

In order to address the operational disincentive that an ECAM causes I also believe that a strong sharing mechanism is essential, and that an ECAM cannot be in the public interest without it. I don't believe that a prudence review is sufficient. It appears to me to be a relatively weak incentive mechanism compared to the financial mechanisms that are in place today.

In addition, I recommend that there be -- if actual net power costs are gonna be trued up to forecasts there should be a true up of revenues to revenue forecast as well. In order to assure that

Utah customers receive the -- are -- I also would recommend a rolled-in allocation method that REC revenues and SO2 costs should be tracked and accounted for outside of the ECAM.

And that if at any time there was a desire to change the cost components within an ECAM, the Company should file with the Commission before changing any component. And we would just request that that be explicit in the order. And that ends my summary.

MR. MICHEL: Pass the witness.

CHAIRMAN BOYER: Okay. Thank you, Mr. Michel.

Mr. Proctor, any questions?

MR. PROCTOR: No questions.

CHAIRMAN BOYER: Ms. Schmid?

MS. SCHMID: Just one.

CROSS EXAMINATION

BY MS. SCHMID:

Q. In your summary you mentioned a desire to have a new docket opened concerning resource acquisition and things like that. Any idea how long such a study and docket would take before a conclusion was reached?

A. I think it would -- could depend on the time frame set by the Commission. I think something like this could stretch out, or if there was a will to get it done we could probably have it done in four to six months.

MS. SCHMID: Thank you very much.

CHAIRMAN BOYER: Okay, thank you.

Mr. Monson?

MR. MONSON: Thank you.

CROSS EXAMINATION

BY MR. MONSON:

Q. Good afternoon, Ms. Kelly. Your testimony is filed on behalf of both UCE and WRA in this case; is that right?

A. That is correct.

Q. Do those two com -- do those two entities have identical positions on all issues in this case?

A. Close.

Q. Okay. Isn't it true that, while WRA opposes the adoption of an ECAM, that UCE actually supports the adoption of an ECAM if it does contain the compliance mechanism that you recommended?

A. You would have to -- could -- ask UCE whether they support or not. I can say this: That without the mitigation measures that I recommend, UCE believes that an ECAM cannot be in the public interest.

MR. MICHEL: Mr. Chairman, I'm not going to object. I'm just going to remind the Commission that UCE did not join in the Phase I testimony that Ms. Kelly submitted.

WRA was the sponsor of that testimony. UCE has joined in sponsoring the Phase II testimony. That may help clarify --

CHAIRMAN BOYER: Thank you.

MR. MICHEL: -- the record.

Q. (By Mr. Monson) Your fundamental concern with an ECAM is that you believe it creates a bias in favor of market purchases in natural gas resources; is that right?

A. Yes, and it changes the incentive structure for the Company. And so in this -- and whether that's in the public interest or not depends on the situation at the time.

And because it does incent market purchases and fossil fuel, given climate concerns, given that energy efficiency and renewables are shown, through the Company's IRP planning studies, to be good hedges against economic risk as well as climate concerns, incenting fossil fuel and market purchases and disincenting energy efficiency and renewables does not seem to be wise.

Q. Okay. And so you're also concerned that an

ECAM would create a bias against adding renewable resources or demand-side management resources, right?

A. In terms of incentives yes.

Q. Yeah. And you say that would be less of an issue if the Company is implementing a resource acquisition strategy that best protects the customers over the long run?

A. Yes.

Q. And you believe that acquisition of resources such as wind plants, with zero fuel costs, and demand-side management best protect the customers' interest over the long-term; is that right?

A. A diversity of resources best protect customers. Those are critical components. And IRP planning studies have shown that those resources mitigate risk.

Q. And would you agree with me that the Company has acquired a significant amount of wind resources over the past several years?

A. I would agree with you that the Company has met its merger commitments and then some.

Q. In modeling net power costs for a general rate case the Company has to forecast how much it's gonna receive -- how much energy it's gonna receive from the wind resources that are available to it; is that right?

A. That's right.

Q. And so, based on expected wind conditions, it assumes that -- what contribution to load will be provided in, really in each hour of the year; is that right?

A. I consider the wind to be a resource that brings the benefits of energy. And it's not a capacity resource in the same way as, say, a gas plant. And as -- not being a capacity resource, being an energy resource, it is a free fuel that mitigates the risk of the resources with fuel.

Q. Okay. And so my question was -- I guess I should ask a preliminary question. Are you familiar with the Company's grid modeling, that uses an entire --

A. Woefully I've never actually participated in a rate case, so I don't have that firsthand experience.

Q. Okay. And don't they use the same model in connection with IRP processes?

A. No, they do not.

Q. Oh, okay. Do you know if, when they make their -- do their modeling, do they actually predict sources of load -- sources to meet load for each hour during the year? Do you know that?

A. I'm not familiar with the grid model.

Q. Okay. But you do know that if the Company doesn't -- well, let's assume for a minute they do that. That they do predict what sources of power will be available for their predicted load each hour during the year. So will you assume that with me for a minute?

A. I'm aware that wind generation is one of the items that you've identified in your filing as creating variability. I'm familiar with your filing.

Q. Okay. So can you accept my hypothetical for the purposes of a question or two?

A. What is the hypothetical?

Q. That the Company models the amount of energy it will receive from, from all of its resources, but including wind resources for each hour during the year?

A. Okay.

Q. Do you agree that we can't predict with any accuracy when the wind will blow and when it won't? Is that right?

A. At a specific site, I agree with that.

Q. And for a specific hour?

A. I would agree with that.

Q. Okay. And so if the wind ends up not blowing during the hours the Company has modeled that it will receive energy from wind resources, what does the Company do? Do you know?

A. I'm, I'm sorry, I'm having a difficulty moving from a hypothetical model to -- in which you're -- as I understand it, estimating average costs over the year, to operating in realtime.

Q. Okay. And that's why --

A. So I think we need to be talking on an annual basis instead of in a particular hour.

Q. Well, but the Company modeled that the wind would blow during a particular hour and that it would receive so much energy during that hour from wind resources. That was the hypothetical, right?

A. Okay, let's proceed.

Q. Okay. And so then you get to that hour and the wind's not blowing. So I'm just asking, isn't it true the Company would then have to replace that load -- assuming the load's the same. It might be different, too.

But assuming the load on the system is the same, the Company would have to replace that with some other source of power; is that right?

A. Well, so then in -- would you also agree, then, that in some other hour where you weren't planning to have the wind blowing, it could be blowing, offsetting. So don't we have to be looking at what's going on on average?

Q. I'm just asking you a hypothetical question. And fortunately I'm the one who gets to ask the questions, so.

A. All right. If we limited our look to one hour.

Q. Right.

A. And it was the only hour in the year that we were examining. And in that particular hour your model was -- showed that there was supposed to be wind generation. And if that was the entire universe and there wasn't wind generation, then you would go to the market and you would purchase. And you would increase net power costs. Am I, am I following?

Q. Yeah. You'd either purchase electricity on the market or you'd purchase natural gas to run a natural gas plant, right?

A. Agreed. And if, if that was the only hour we were considering.

Q. Right. And so don't you think that allowing the Company to acquire -- or to recover the cost, the prudent cost of replacing the wind resource in that hour would actually give the Company an incentive to want to add more intermittent renewable resources?

A. I think I will object to the implication in the question, which is that if I don't agree with your hypothetical the way it's structured that I am stating that I don't want the Company to recover its prudently-incurred costs. And I've never said that, and I don't agree that that hypothetical sets that up.

Q. Okay. That's fine. I guess what I'm trying to get at is, we're surprised that you oppose the ECAM, because we think it incents addition of renewable resources. You think it doesn't, obviously; is that right?

A. I obviously don't.

Q. Yeah. You say that if the Company takes the actions identified in its action plan from the IRP process in the two years prior to the year in which it's seeking recovery through an ECAM it would be considered compliant and allowed to recover.

A. You know, I think I should probably address that, because my position has become refined as this proceeding has gone on. And what I am currently recommending, from my rebuttal testimony and my surrebuttal testimony, is that a new proceeding needs to be opened to examine these issues in detail.

I just don't think that we have the record. I think that I offered something that if parties worked on together we might get there together. Maybe not. Maybe there would be other ideas. But I don't believe we have established the record in this proceeding to support my attempt to be creative in problem solving.

So my current position is that we need a new docket to examine risk mitigation measures that would include targets for energy efficiency and renewable resources, as well as look at front office transactions and natural gas hedging.

Q. Okay. And so would your surrebuttal testimony reflect your most -- your current position?

A. I believe it does.

Q. Okay. You mention in your surrebuttal testimony that the Company wouldn't necessarily have to have the plan, this risk mitigation plan, accepted in all of its states; is that right?

MR. MICHEL: Could you provide a reference on that?

MR. MONSON: Sure.

Q. (By Mr. Monson) It's in your surrebuttal testimony, lines 342 to 345.

(Pause.)

THE WITNESS: Yes. I state:

"Finally, I do not agree that this Commission's decision to require the Company to mitigate long-run resource risk prior to allowing the implementation of an ECAM in Utah would require quote" --

This be -- I, I don't remember who I was rebutting. I'd have to go -- Mr. Duvall.

"...would require 'acceptance of the plan by all states receiving generation service from the Company,' since the states currently do not 'accept' the Company's plan."

Q. (By Mr. Monson) Okay. And so in the IRP process the Commission doesn't approve the Company's IRP, does it?

A. No, it acknowledges -- or, or does not acknowledge.

Q. So if the Commission doesn't approve of the Company's IRP, how would the Company know whether it's complying with the risk mitigation plan that was accepted by the --

A. That was left to be considered, evaluated, determined, agreed upon in the new docket that I'm recommending.

Q. So, but that docket would then require the Commission to approve a plan; is that right?

A. Yes. And it might be something similar to the merger commitments. And I think what struck me, as I read the IRP update and as I read testimony in this case, is that the IRP planning results that I've been reviewing over the years I believe unrefutably demonstrate the benefit of energy efficiency and wind resources, far in excess of what the Company has been willing to do.

But when the Company is justifying the level of renewables that it has acquired, it doesn't point to those studies and show -- it doesn't point to its IRP planning studies. And it's starting to look to me like IRP is becoming another regulatory exercise in not achieving real results.

And so I thought to myself, Okay -- excuse me, I've been talking to him instead of to you.

CHAIRMAN BOYER: We're listening.

THE WITNESS: Okay. So I thought to myself, All right. So what has caused the renewables to be added? And it seems to be the merger commitments. And so my current thinking is, we need a docket in which the Company commits to those resource targets that are shown to mitigate risk, both financial risk and climate risk for customers, prior to implementing an ECAM.

And it wouldn't -- it could be a one-time thing. Parties in the process could determine -- and Company could be part of that -- determine how those levels should be determined.

And I actually think that you would get buy ins from your -- you know, if it was a, if it was a plan that you had good analytics to support that it mitigated risk, I think you could get buy ins from your other states. So that's, that's my thinking.

Q. (By Mr. Monson) Okay, thank you. The Company doesn't currently have an EBA -- or an ECAM, does it?

A. No, it doesn't. It requested termination in 1990 of its EBA.

Q. Right. And so it doesn't have the biases that you're afraid an ECAM would give it; is that right?

A. Well, no. I disagree with that. This Company has ECAMs, as we've heard earlier today, in other states. And they're active. And this Company has been before this Commission, beginning in 2001, requesting an ECAM.

And I think this is maybe the fourth time and we're, we're at hearing. One of the issues that really concerned stakeholders/intervenors in the past was the concern that the Company did not have an effective IRP in place that was gonna protect customers. And was asked not to file an ECAM until there was an effective IRP in place.

But I believe the Company has continued to have hopes of an ECAM for a long time. So I -- you, you know, I think that there are many financial incentives going on here. And I think the biggest one is concern for cost recovery and interjurisdictional allocation risk is something that certainly drives the Company as well.

And so there are a number of different financial incentives that are playing off one another. And so this is not -- this is certainly not the only financial incentive. But I disagree that today the Company does not, not have some of that financial disincentive.

Q. Okay.

A. Especially based on behavior.

Q. I mean, what I was getting to is, you aren't happy with the Company's current resource acquisition -- resource mix -- resource portfolio mix, are you?

A. The Company's preferred portfolios have not reflected planning studies for several IRP rounds. The results of planning studies. They have not reflected the portfolios that best mitigated risk and uncertainty.

Rather, they have had high upper tail risk, but lower capital. And you can -- I had an exhibit that showed the performance metrics for two different portfolios in my surrebuttal from Phase I which demonstrated that effect.

Q. Okay. I want to ask you about the correction -- one of the corrections you made to your testimony. It was on lines 208 and 209 of your direct testimony. Do you remember that correction?

A. I'd have to go back and see which one it was. Was it the page 8 or the page 11 one?

Q. Page 11.

A. Okay.

Q. Okay. You changed the sentence -- you really turned it 180 degrees around, didn't you? From what it said before?

A. Yes.

Q. And it doesn't --

A. It was incorrect.

Q. And it doesn't appear to me that that's a typographical type of change, although adding the word "not" could be. But changing -- taking out the word "appropriate" seems like you changed your view?

A. I didn't change my view.

Q. Okay. You just, you just -- it was a typographical clerical error?

A. Yes.

Q. Okay, fine. Now, you're proposing that, even if the Company complies with the risk mitigation strategies that are set in this other docket, that it would still only get 70 percent of its --

A. I am addressing two different financial disincentives with two different approaches, so I still recommend strong sharing bands. And the purpose for the strong sharing bands is to address exactly what Mr. Peterson discussed with you earlier today about the potential for operational efficiency to erode over time. And that is the purpose of my recommendation for strong sharing bands.

Q. Okay. And you've said you don't think the Commission has a sufficient record yet to determine these risk mitigation strategies that you want to have addressed in this other docket; is that correct?

A. That's correct.

Q. Okay. And you're aware this docket's been in place for 19 months at this point in time; is that right?

A. I'll take your word for it.

Q. Okay. And there's been three, three separate testimony rounds, and --

A. Yes, I filed in all three.

Q. Okay. And has the Commission limited, in any way, the ability of any party to provide any evidence it wished to on risk mitigation strategies or other issues incidental to adoption of an ECAM during the course of this proceeding?

A. No, the Commission has not.

Q. And so is it fair to say the reason you haven't brought this up till the final rounds of your testimony is because you didn't think of it before now, or what?

MR. MICHEL: I'm going to object. This is going to the scope of this proceeding, which I don't think is, you know, within Ms. Kelly's testimony, or something that she is -- it's a legal issue as to what the scope of this proceeding is and how broadly the testimony could have been addressing the issues.

CHAIRMAN BOYER: Do you want to try to reframe your question, Mr. Monson?

MR. MONSON: Yeah.

Q. (By Mr. Monson) Why did you bring the risk mitigation strategy up, and this new proceeding --

A. Well, if --

Q. -- in your final rounds of testimony?

A. Sorry. If you remember, WRA was the only party in Phase I. I opposed, opposed an ECAM as not in the public interest, on the grounds that the Company had not met its evidentiary burden of need for the ECAM.

That there were disincentive effects, both on operations and on long-run resource planning. And that risk was shifted, I thought inappropriately, from shareholders to customers.

And I provided, I provided quotations from Mr. Topham's and Mr. Duvall's testimony when termination of the EBA was requested. So my perspective has been that an ECAM is not in the public interest.

In the Commission's Phase II order that, as I recall, was issued in February, they requested a further exploration of a number of issues. And starting in February I've worked to think through how to address my concerns with the, with the ECAM so that there could be an ECAM that could be in the public interest.

So I don't agree that I've had 19 months to do this. I did the work requested in Phase I. And in Phase II I've tried to do the work that's been requested. And at the conclusion of Phase II I still do not believe that an ECAM can be in the public interest without long-run resource acquisition mitigation measures.

And so I have -- I am recommending, along with the Office, that there be a proceeding opened up to explore those rate mitigation measures that would be expanded to include energy efficiency and renewable resources as risk mitigation measures.

MR. MONSON: Thank you. That's all my questions.

CHAIRMAN BOYER: Thank you, Mr. Monson.

Mr. Evans, any cross examination?

MR. EVANS: No. Thank you, Mr. Chairman.

CHAIRMAN BOYER: Mr. Dodge?

MR. DODGE: No questions, thank you.

CHAIRMAN BOYER: Okay. Commissioner Allen? Commissioner Campbell?

COMMISSIONER CAMPBELL: I just have one question. And that is, as you talk about mitigation measures including energy efficiency and renewable energy targets I guess my question is, haven't those already been established? Insofar as the legislature has a renewable energy goal as well as an energy efficiency target of one percent per year?

I mean, aren't those already in place? Do you expect the Commission to do something above and beyond that?

THE WITNESS: The IRP planning studies would suggest that it's in the customers' interest to do so.

CHAIRMAN BOYER: Any redirect, Mr. Michel?

MR. MICHEL: Just a couple of questions.

REDIRECT EXAMINATION

BY MR. MICHEL:

Q. Ms. Kelly, you were asked about why WRA is not supporting an ECAM because of the notion or the claim, if you will, that an ECAM would incentivize renewables.

Let's assume the Company doesn't have any renewables on its system and has an estimated fuel expenditure for a given year, okay? What happens to the Company's fuel expenditure expectations or actual expenditures if the Company then adds a renewable resource?

A. It goes down.

Q. And in the absence of an ECAM what happens to the Company's earnings when those fuel costs go down?

A. They keep, they keep it in between rate cases.

Q. Okay. And if there is an ECAM and the Company adds renewables and lowers its fuel costs, what happens to its earnings? If there's an ECAM without any sharing. Does the Company get an earnings benefit from that?

A. No.

Q. And if there is a sharing mechanism does the Company then get some earnings benefit from reducing its fuel costs?

A. Yes.

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

CHAIRMAN BOYER: Okay. Thank you, Ms. Kelly. You are excused.

Is there anything further?

MR. MONSON: There was a discussion about briefing in some questions from Commissioner Campbell. And we thought that, given the way this proceeding has developed, briefing would be helpful. Do you want to talk about that now, or later, or?

CHAIRMAN BOYER: Yeah, let's talk about it now, actually. We're think -- typically we don't ask for briefing, but for a variety of reasons we think it might be useful to us in this case. It's a complicated case. It's drug out over many, many months, in different kinds of hearings and three rounds of testimony. There's some legal questions that have arisen.

So we were thinking that briefing might be helpful. Our current schedule, I mean, it would be helpful for someone to organize their thoughts and their very best arguments, cases, and citations, and so on for us.

What were you thinking in terms of timing and length of post-hearing briefs?

MS. SCHMID: Chair Campbell?

CHAIRMAN BOYER: Boyer.

MS. SCHMID: Boyer.

CHAIRMAN BOYER: Close enough.

MS. SCHMID: Okay. Obviously I need an extended briefing schedule because I need to hit myself on the head.

Could you please provide some additional guidance concerning the issues that you would like briefed? I think that that would help us to determine and provide information concerning the briefing schedule.

CHAIRMAN BOYER: We were thinking in terms of a traditional post-hearing brief. Where you would simply lay out your best case, and facts, and apply the facts to the law, and let us decide.

MS. SCHMID: And then also address the question that Commissioner Campbell asked regarding the statute and the ability to support a sharing mechanism through that, perhaps?

CHAIRMAN BOYER: Correct.

Mr. Evans?

MR. EVANS: Yes. We're in Phase II Part 2. Part 1 was hedging and front office transactions, do you want briefing on that as well? Or are we just talking about the mechanism that we've been discussing in Part 2?

CHAIRMAN BOYER: That's a very good question.

COMMISSIONER ALLEN: We'll leave that up to you.

CHAIRMAN BOYER: If you think we -- it would be helpful, include it.

MR. EVANS: Well, if it's -- well, maybe it would be -- and it depends on, really, where the Commission is with its deliberations on the hedging issue, because that was submitted quite some time ago. We've had those hearings.

So it may be -- maybe it's helpful just to summarize, in a brief way, the parties' positions on that part of this docket. And go into a little more detail on the mechanism that we've just had hearings on over the last two days.

CHAIRMAN BOYER: I think that would be useful. I mean, the issue was revisited here repeatedly over the last couple of days.

MR. EVANS: But in terms of the burden on the parties to produce it this is, as you say, a huge docket. And maybe I'm thinking we should go light on the hedging issue, just summarize where we all stand on it, and then go into a little more detail on the mechanism that we've been hearing about.

CHAIRMAN BOYER: That's acceptable to us if it is to the parties.

MR. PROCTOR: Well, I -- from my perspective first I want to, after the fact, object to Mr. Higgins' suggestion that briefs were a good idea.

And second, if Mr. Evans, on behalf of his client, wishes to have a light brief, then he certainly should be permitted to do that. But that ought not to restrict anyone else in exploring a brief the full gamut of the issues that have been raised for the last 19 months, since this would be the first brief that we have filed in this matter, I believe.

MR. EVANS: But don't we have a decision on Part 1 already? We're not going back to 19 months are we, Mr. Proctor?

MR. PROCTOR: Well, there is -- I think an argument could be made, with all due respect, that indeed we do not have a decision on the Phase I of this case.

MR. EVANS: Except to proceed to Phase II.

CHAIRMAN BOYER: Well, our idea was to -- the first -- Phase I was to decide whether under any circumstances an ECAM could be in the public interest. And we decided, based on the evidence presented to us at that time, that possibly it could be.

Now we're at that stage looking at those possibilities, the whole range of possibilities. We don't want to put too many restrictions on you, but on the other hand we probably wouldn't appreciate getting a 500-page brief --

MR. EVANS: Would you mind --

CHAIRMAN BOYER: -- to put with our other 500.

MR. EVANS: Would you mind getting a brief at the end of February?

CHAIRMAN BOYER: Well, we were thinking at least 30 days. At least 30 days for briefing. But, you know, tell us what you think.

MS. SCHMID: I believe that it would be helpful to have the transcript from this hearing available prior to the clock either starting, or allow an extra period of time for that.

And I know our court reporter is very busy because she has been here, as many of us have, for innumerable hearings over the last few days.

CHAIRMAN BOYER: Yeah, I think she is busy. But, you know, maybe she has children in college, or Christmas is coming or something.

MR. PROCTOR: What's the Commission's time frame that you would like? Because that's what we'll do.

CHAIRMAN BOYER: Well, I was thinking just off my -- top of my head, 30 days. But --

MR. MONSON: We think that sounds good.

CHAIRMAN BOYER: We could extend that if necessary.

MR. MONSON: I assume the transcript will be available, what, in a couple of weeks, won't it?

THE REPORTER: Two weeks from today.

MR. MONSON: Yeah. So that would give us -- we could start writing the legal parts or whatever we want, and then we'd have the transcript for a couple weeks to summarize the evidence.

CHAIRMAN BOYER: I know a lot of the people in this room are gonna be busy in our next case.

MR. DODGE: Which is the 6th. My suggestion would be after the 6th.

MR. PROCTOR: Well, actually it's the 18th.

MS. SCHMID: Or tomorrow for some -- or Thursday for some of us.

CHAIRMAN BOYER: Yeah, some of us will be here tomorrow -- or Thursday. Would it make sense to have the briefs 30 days after the record has been transcribed? Thirty days after that? That puts it out about six weeks.

MR. PROCTOR: Puts it just before Christmas. Let's do it then.

CHAIRMAN BOYER: Then you could go home and drink toddies or whatever your preference is.

MR. PROCTOR: Well, actually I prefer not, but.

MR. MICHEL: Mr. Chairman?

CHAIRMAN BOYER: Yes, Mr. Michel?

MR. MICHEL: Could I just suggest that, you've identified -- or the Commission's identified one particular issue -- one particular legal issue that they wanted -- that you wanted briefed.

I'm thinking that, you know, if over the next week or so if the Commission identifies other issues, it could notify the parties. And by the same token, if there are issues that the Commission is pretty clear on what direction it's going, you know, that would be helpful, too, to sort of narrow the scope.

So, you know, if -- any guidance that the Commission can provide would be --

CHAIRMAN BOYER: No, we're not prepared to give you any hints today. We have to reconnoiter with our staff and.

MR. MICHEL: Okay.

CHAIRMAN BOYER: At least I will. And have them explain what I've just heard over the last few days.

MR. MONSON: If I can make one comment on the schedule. We were very anxious, as you may recall -- and maybe you don't recall, because I guess you weren't at the scheduling conferences.

We're very anxious that, if possible, a decision is made before the end of the year. And that would put it kind of tight on you if we file briefs in the middle of December, but I don't know if that can be --

CHAIRMAN BOYER: It's gonna be tight on us without the briefs as well.

MR. MONSON: Okay.

CHAIRMAN BOYER: Because we have orders that are time limited that we're struggling with at the moment.

MR. MONSON: Okay. And then --

CHAIRMAN BOYER: Major plant addition is also time limited, so. Yeah, it's.

MR. MONSON: There's one other thing for the record. Dr. McDermott was asked a question by Commissioner Allen about -- I think it was -- I think the term was "blow ups" in other states. Audits, I think it was on audits; is that right? And I've got an email from Dr. McDermott here and he says:

"After looking back over the past three to four years my people say there were no blowups in audit processes that they're aware of."

So.

CHAIRMAN BOYER: He's lucky to have people.

MR. MONSON: He does have people. That's.

CHAIRMAN BOYER: Shall we do that? Let's say then briefs will be due 30 days after the recorder has transcribed the record of this case. If we think of other legal issues we would wish addressed we will certainly advise all of the parties in that respect.

And we'll look forward to -- something else, Mr. Powlick?

MR. POWLICK: Any size guidance on the briefs, Mr. Chairman?

CHAIRMAN BOYER: Well, again, Mr. Proctor seems to be arguing for full-blown briefs. I was thinking 50 pages, but.

MR. MONSON: We'll go less than 500 pages. We would like -- actually, I did want to raise an issue on that. And that is -- and this happens in a lot of cases, and I'm not sure what your feelings are.

But the Company tends to be responding to every other party. And most parties are generally, not a hundred percent, but are focussing their comments on the Company.

So it seems like it might be appropriate to allow, if you do set a page limit, allow the Company a few more pages, since it has to deal with five other parties instead of just one or two other parties. But.

CHAIRMAN BOYER: There is some sense of fairness in that.

MR. MONSON: So, but if you don't set a hard page limit. I mean if you, you know, then we're okay with that too, so.

CHAIRMAN BOYER: Well again, I mean, we're novices, because we don't typically ask for briefs. It's just that under the circumstances that we find ourselves in today we thought it would be helpful and useful.

Anyone else have a thought on the length?

MR. PROCTOR: Well, I guess --

CHAIRMAN BOYER: How many, Mr. Dodge?

MR. DODGE: I said 50 pages is plenty.

CHAIRMAN BOYER: That's a lot of writing.

MS. SCHMID: Seems very generous, perhaps overly so. Perhaps 35 or --

CHAIRMAN BOYER: This is not a minimum, this is the max.

MR. EVANS: And just for clarification, everything in this docket is fair game for the brief if the parties want to put it in, Phase I and Phase II, right?

CHAIRMAN BOYER: That's true, although, I mean, you don't need to rehash the fact that we've decided we're in Phase II and all of the facts relating to that.

MR. EVANS: Exactly, okay.

CHAIRMAN BOYER: Okay. Well probably as

clear as mud, but we'll see how the briefing goes in this case. And we may never do this again.

MR. EVANS: Fifty page limit, then?

CHAIRMAN BOYER: Fifty page limit.

MR. MONSON: So does that mean we can have a few more pages than 50? If necessary. If necessary, yeah.

CHAIRMAN BOYER: If you have a particular problem, let us know.

MR. MONSON: Okay.

MR. MICHEL: Mr. Chairman, could I make one more suggestion? It sounds like the transcript's gonna be ready in about two weeks. Could we just set up dates certain for the briefs so that -- because I'm not sure how else it's gonna be, it's gonna work through that we know --

CHAIRMAN BOYER: How will you find out when --

MR. EVANS: Well, we do get a notice of transcript.

MR. MICHEL: But then, you know, the 30 days might have done it. Seems like we could just say 45 days from today and probably be pretty comfortable. And maybe want to be certain that we're all -- just a suggestion.

CHAIRMAN BOYER: I don't mind that. I think it would be wise to get it completed, for everyone's sake. And if you have friends or family's sake, get it done before Christmas.

MR. MONSON: How about December 15th? Or 16th?

CHAIRMAN BOYER: December 16th.

MS. SCHMID: Okay.

CHAIRMAN BOYER: Well, very well. Thank you all. See you at the next hearing.

(The hearing was concluded at 4:26 p.m.)

C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 292 through 578, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS **15th** DAY OF **November**, **2010**.

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Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

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