BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedule and Electric Service Regulations	)	TRANSCRIPT OF HEARING Volume VI Docket No.: 09-035-23

Thursday, December 17, 2009 - 9:03 a.m. to 11:47 a.m.

Location: PUBLIC SERVICE COMMISSION
160 East 300 South
Fourth Floor, Room 403
Salt Lake City, Utah 84111

Before: Chairman Ted Boyer
Commissioner Ron Allen
Commissioner Ric Campbell

A P P E A R A N C E S

FOR THE ROCKY MOUNTAIN POWER:

Paul J. Hickey, Esq.
HICKEY & EVANS, LLP.
1800 Carey Avenue, Suite 700
Cheyenne, Wyoming 82003
Telephone: 307.634.1525
Email: phickey@hickeyevans.com

Yvonne R. Hogle, Esq.
201 South Main, Suite 2300
Salt Lake City UT 84111
Telephone: 801.220.4050
Email: yvonne.hogle@pacificorp.com

FOR UIEC:

F. Robert Reeder, Esq.
PARSONS BEHLE &, LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Email: bobreeder@parsonsbehle.com

FOR UAE INTERVENTION GROUP:

Gary A. Dodge, Esq.
HATCH JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Email: gdodge@hjdlaw.com

FOR THE STATE OF UTAH, DIVISION OF PUBLIC UTILITIES:

Patricia Schmid
ASSISTANT ATTORNEY GENERAL
UTAH DIVISION OF PUBLIC UTILITIES
Heber M. Wells Bldg., Fifth Floor
160 East 300 South
Salt Lake City, Utah 84111
Email: Mginsberg@utah.gov
Email: Pschmid@utah.gov

A P P E A R A N C E S (continued)

FOR THE STATE OF UTAH, OFFICE OF CONSUMER SERVICES:

Paul Proctor, Esq.
UTAH COMMITTEE OF CONSUMER SERVICES
Heber M. Wells Bldg., Fifth Floor
160 East 300 South
Salt Lake City, Utah 84111
Email: pproctor@utah.gov

FOR THE FARM BUREAU:

Dale F. Gardiner
VANCOTT, BAGLEY, CORNWALL & MCCARTHY
36 South State Street
Suite 1900
Salt Lake City, Utah 84111
Email: dgardiner@vancott.com

I N D E X

E X H I B I T S

DECEMBER 17, 2009; 9:03 A.M.

P R O C E E D I N G S

* * *

CHAIRMAN BOYER: So we are back on the record in Docket No. 09-035-23. We have discussed before going on the record in a couple of preliminary matters. One is Ms. Schmit had delivered to us copies of replacement pages to exhibits yesterday that were admitted into evidence. And we have just assumed that they are part of the admitted evidence because they were admitted as corrected.

And then secondly, Mr. Hickey, has in his possession the identity of the index referenced the other day by one of the witnesses under cross-examination by Mr. Reeder.

MR. HICKEY: Yes, Mr. Chairman. Thank you and good morning to you and to the Commission, to the parties.

Mr. DeVal has advised me that the name of the index is the Inter Continental Exchange Index. He has also advised me that it can be found in Megawatt Daily, which is not confidential.

CHAIRMAN BOYER: Thank you, Mr. Hickey.

Does that satisfy --

MR. REEDER: I think that would give the Commission the -- the place to find the value for the index referred to in contracts, so you can find them and they are included.

CHAIRMAN BOYER: Great. Thank you, Mr. Reeder and

thank you, Mr. Hickey.

Okay, with that, I think we are now at that point in the hearing where we're going to hear from the Office witness, Mr. Chernick; is that correct?

MR. PROCTOR: That's correct, Mr. Chairman.

CHAIRMAN BOYER: Mr. Chernick is sitting up here.

MR. PROCTOR: He is. He will be needed to be sworn. I have supplied everyone with a corrected exhibit list which says OSC rather than DPU.

CHAIRMAN BOYER: Thank you.

MR. PROCTOR: Mr. Chernick does need to be sworn.

CHAIRMAN BOYER: Please stand, Mr. Chernick, and raise your right hand, if you would.

* * *

PAUL L. CHERNICK,

Having been duly sworn,

is examined and testifies as follows:

* * *

CHAIRMAN BOYER: Please be seated.

DIRECT EXAMINATION

BY MR. PROCTOR:

Q. Mr. Chernick, if you could state your name and the name of your consulting service and on whose behalf you're appearing here today.

A. My name is Paul Chernick. C-H-E-R-N-I-C-K. I'm

president of Resource Insight Incorporated of Arlington, Massachusetts. And I'm appearing on behalf of the Office. Did that get all the parts of your question?

Q. I think so. Mr. Chernick, you have prefiled direct testimony that has been marked OCS Exhibit No. 6.0D with one exhibit 6.1D, rebuttal testimony marked as OCS Exhibit No. 6.0R. And finally, surrebuttal testimony marked OCS Exhibit No. 6.0SR. Do you have any corrections to that prefiled testimony?

A. I do not.

Q. If I were to ask you the questions today that were asked of you in that written testimony your answers remain the same?

A. Yes.

MR. PROCTOR: The Office would offer the testimony, direct, rebuttal, and surrebuttal that we referred to above.

CHAIRMAN BOYER: Are there any objections to the admission of Mr. Chernick's direct, rebuttal, surrebuttal testimony in one exhibit?

MS. SCHMID: No objection.

CHAIRMAN BOYER: Seeing none, they are admitted.

Q. (BY MR. PROCTOR) Mr. Chernick, have you prepared a summary of that testimony to provide to the Commission?

A. I have.

Q. Would you please proceed.

A. My testimony covers five or six issues. The first one, not necessary in the order of importance or in presentation in my direct, but perhaps the first one in terms of the importance at the moment in the case has to do with the load data.

In my direct testimony commenting on the Company's original load data analysis and forecast of peaks, I pointed out that the irrigation data is unreliable and that no real conclusions can be drawn regarding the cost of service for the irrigation load from those data.

Following my direct testimony, the Company filed rebuttal that completely changed their approach to modeling load, cost of service purposes. And in my surrebuttal I pointed out some problems with those data, with the Company's revised filings. There are changes in the class allocators and total Utah load in every month, even for April, for which the peak occurred on the same day and date in both data sets. So it's -- it's not clear how the Company produced that result given its' description of what it did, in changing from the old -- they filed original filing load data and the rebuttal load data.

Secondly, it was clear from our review that 2008 was not a typical year, in terms of load shapes. Where the test year data originally filed by the Company had reasonably typical relationships among monthly loads, the base year, 2008

was, very unusual with peaks that were higher in October than in September. And higher in October than May. And higher in October than in November. Higher in November than December, which is backwards from what you would usually see. And also higher in October than January or February, the couple of winter peak months. And higher in June, which is a peak summer month but not as peaky as the other months. Higher in June than in July or August. Normally, all those relationships are reversed. And it's just a very unusual year in terms of loads. Which raised real questions about using it for cost of service purposes.

Finally, in terms of load data the Company's revised filing was very perplexing in that in addition to changing all of the coincident peaks, the peaks coincident with -- the Utah peaks coincident with the coincident system peak, they also changed all the non-coincident peaks loads, the class non-coincident peaks and the distribution peaks, which has to do only with the loads in Utah.

And regardless of what day you assign that to, the loads for the various customer classes on that Utah peak day would be the same. It has nothing to do with what's going in the system as a whole. And the Company provided no explanation of how any of the update that they say they did in terms of aligning Utah loads with the system loads, how that would effect the distribution peak or the non-coincident

peaks. Which raised a question about whether other things changed in the low data, but we just haven't had a chance to look at it. And while we did what we could with the very limited in terms of getting out a fast set of discovery based on our understanding of what the Company said it was doing in its rebuttal testimony, there was too little time and, particularly, too few rounds of discovery to really get to the bottom of what the Company did and be able to analyze it in any detail.

And basically, the Company's idea that it's more appropriate to use a specific historical year with all of its peculiarities about when peaks occurred rather than some kind of a normalized year, strikes me as being suspect.

The second topic that I would like to touch on is the allocation of service props. In my direct I pointed out that residential customers on average use less than one service drop per customer because a significant number of customers share service drops in multi-family homes.

And I provide an estimate of effect based on census data, and use census data for the specific counties served by PacifiCorp weighted by the number of residential customers in each county. I used the census data because the Company was unwilling or unable to provide any data relevant to the question.

In response, in rebuttal, the Company basically said

that my data might be perfect because it was from the 2000 census and I was using county data rather than data specifically for the parts of the counties that the Company serves. And they didn't indicate that there would be any particular bias one way or another.

In fact, since 2000 the tendency may have been to build more multi-family homes and therefore, the service drop ratio to customer number may have dropped. But they point out that maybe my data is not absolutely up-to-date. And they point out that maybe some adjustment would be appropriate for other classes with small customers, small commercial. And maybe some adjustment would be appropriate because you have a larger, slightly more expensive service to serve a 50 customer apartment building than you do to serve a single family home.

But the Company didn't provide any of those computations or even rough adjustments based on any of these complaints. And basically, takes the position that -- the completely unrealist assumption that each residential customer has a dedicated server should be used until somebody, not the Company, 'cause the Company won't provide any data, until somebody comes up with perfect data that's Company specific, but not from the Company because the Company can't find it or won't. And until then we should just stay with what we have got, which is obviously wrong.

The third topic that I touch on is the allocation of

generation plant. And in my direct testimony I conclude that more than 25 percent and at least 50 percent of PacifiCorp's generation investment was incurred for energy saving. And hence, at least 50 percent of generation plants should be classified as energy related.

On rebuttal I got a fair amount of criticism for having suggested this. And I think the critics mostly do one of maybe three things. First of all, there is just a lot of confusion about what I was saying. A couple of people say that I relied on data on the way the costs are allocated in competitive markets in reaching this conclusion. Which isn't the truth at all.

I mean, I relied almost entirely on the peaking -- the peaker method to do that classification. And I included some observations about the competitive market as an aside. And for some reason people just jumped on that and said this is the only reason, we don't have competitive markets, we can throw out the whole idea.

A number of witnesses also observed that other analysis could be conducted that might produce different results. But without showing that more complicated analysis would produce results that would differ significantly from what I have proposed.

And thirdly, I think there is a lot of testimony that basically says the 75 percent demand classification should be

used because it's traditional, it's what's been done for a long time, it was result of settlements among the states in terms of interclass -- interjurisdictional allocation. And therefore we should just stick with it and don't ask too many questions.

Sort of as a corollary to the allocation of generation plant, I observed in my direct testimony that transmission investment is driven significantly in part by the energy related locational decisions for generation that you build coal plants in convenient places to build coal plants, rather than building them next to load like you do for peakers.

You want to bring in cheap hydro during the summer. You want to bring in excess coal from the Southwest during the winter, you build transmission to do that. And therefore transmission should be allocated in some significant part on energy.

And that's a complicated analysis that I'll get into in this testimony, but it should be addressed in the future cost of the service studies.

The -- I guess, I'm up to my forth topic, the allocation of firm nonseasonal purchase power. The Company allocates all of those purchases as if they were generation plant, which is allocated 25 on energy. Although the purchase is substitute for both plant and fuel, and some of them may

really only substitute for fuel, depending upon the load shape.

And all of the Company's generation resources are allocated more than 25 percent on energy when you include the full cost of the resource including the fuel and working from the IRP cost estimates --

MS. HOGLE: Objection. Your Honor, I think it is beyond the scope of the summary.

MR. PROCTOR: Well, excuse me. But I believe it is a summary and there is no real scope other than that.

CHAIRMAN BOYER: I think we'll overrule that, Ms. Hogle. He said at the outset that he had five areas he was going to cover and I think we're at number four now.

A. That using the IRP cost assumptions and the Company's existing methodology, the cost of a new combined cycle or CT would be allocated about 65 to 80 percent on fuel, a new coal plant 50 to 55 percent. And those are for new plants. For older existing plants built with cheaper dollars and depreciated the ratios would be even higher. But you could think of the purchases as avoiding new resources so maybe looking at the IRP numbers makes sense.

And I also point out in my testimony that over 80 percent of the purchase's costs are charged to PacifiCorp as energy charges rather than capacity. And based on this analysis I find that at least half and probably more of those

firm nonseasonal purchase power costs should be allocated on energy rather than the 25 percent that the Company does now.

My fifth topic is the allocation of the distribution capacity. There really only seems to be one point that's in issue. In my direct I pointed out that energy use affects the sizing and useful life of distribution equipment. The Company's witness, Mr. Alt, agrees with me in substance and on the basic facts, but basically differs from you on a semantic issue, insisting that -- he says load factor effects the equipment costs in life, duration of the peak, other ventures of energy. But he says that those need to be called demand rather than energy. And whether you call it negligent or part of a more calculated demand measure, the load throughout the peak day, throughout the peak week, around peak, other high load hours that don't quite reach the peak, all those effect the sizing and the lifetime of distribution plant. And that really isn't disputed in the record. And somehow the allocation should reflect the effect of those energy load factor duration issues.

And also, I just want to point out that there were some other areas in which I urged the commission to encourage the Company to improve its cost allocators but didn't really get into any detail. And that concludes my summary.

MR. PROCTOR: Mr. Chernick is available for cross-examination.

CHAIRMAN BOYER: Thank you, Mr. Chernick.

Ms. Hogle, are you ready with cross-examination?

MS. HOGLE: Yes.

CROSS-EXAMINATION

BY MS. HOGLE:

Q. I want to talk about the distribution cost allocation issue. Can you look at your direct testimony, page 25.

A. I'm sorry I have a paper control problem here. Let me get this.

CHAIRMAN BOYER: Ms. Hogle, where are you referencing in his testimony?

MS. HOGLE: Lines 532 through lines 534.

MR. PROCTOR: Mr. Chernick -- excuse me, Mr. Chairman. I have hard copy paper copies of your testimony that would be --

THE WITNESS: Yes, I had copies yesterday, but somehow they didn't make it to the hearing.

MR. PROCTOR: Sorry.

THE WITNESS: Thank you.

My apologies for that. I'm sorry which page are we looking at?

Q. (BY MS. HOGLE) Page 25 lines 523 through lines 534, approximately.

A. Yes.

Q. Now, there you state that the number of high load

hours determines risk of load loss following equipment failure and therefore drives investment in redundant equipment to improve distribution system reliability, correct?

A. Yes.

Q. Isn't that just your opinion? In fact, it's an assertion about the very issue that we are trying to answer for the Commission today?

A. Well, that's based on my experience with utility planning. They -- the utilities are much more likely to loop distribution systems, put in additional transformers.

Q. So it is just your opinion?

A. No, it's based on my experience with what utilities have done.

Q. And you provided no reference to support or check the validity of your statement; is that correct?

A. I don't site any documents, no.

Q. Can you turn to page -- the next page line 549 to 552?

A. Yes.

Q. In there you state, "UP&L's October 1989's Distribution Cost Allocation Study recognizes that 'energy-related' distribution investments are made to reduce energy load losses, namely, certain increases in the sizing of conductors and transformers." Do you see that?

A. Yes.

Q. Then you provide a specific reference. Do you see that?

A. Yes.

Q. So can you show me where I can find the word "transformer" in that footnote?

A. I say that that's a quote about conductors.

Q. No. You also say that it's a quote about transformers.

A. Well, the footnote says, "In the case of conductors, the UP&L study specifies" etc.

Q. Exactly --

A. That's a footnote about conductors.

Q. Exactly. No. But you use that footnote to support your statement about transformers. Do you see that? Do you see your statement, you say -- at the end you say, "namely, certain increases in the sizing of conductors and transformers."

A. I'm not sure what your question is.

Q. My question is: Isn't it true that the reference that you have provided does not support your statement in regard to certain increases in the sizing of transformers?

A. It does not purport to. It is not intended to. It's -- it is about the conductors.

Q. Okay. Page 26 line 553.

A. Yes.

Q. Okay. Question is asked as follows: Do the Company's distribution design guidelines indicate that periods of high energy use and duration of peak load are driving factors in distribution costs?" Do you see that?

A. Yes.

Q. Can you tell me what distribution design guidelines you're referring to?

A. Well, I didn't bring them with me. I couldn't really answer that question. I certainly couldn't answer it on discovery. Are you saying that you don't -- you don't know what guidelines have a figure four, is that --

Q. I'm just wondering if you are referring to the current company guidelines. I'm wondering if you are -- you have even reviewed the Company's current guidelines that you're referring?

A. Oh, I don't remember whether they were brand new or whether they came from the previous rate case. They might be a year or two old.

Q. In your discovery process did you ask for those, for the most current design guidelines? Do you recall?

A. I don't recall. We could check that if you are really interested.

Q. I think we should probably.

MS. HOGLE: May I approach the witness, Your Honor?

CHAIRMAN BOYER: You may.

MR. PROCTOR: Mr. Chairman, I know that you're being handed a number of items and told what they are, but unfortunately, I can't hear what's being described. Could counsel perhaps do that as she proceeds to provide documents to the Commission?

CHAIRMAN BOYER: And for the record, she hasn't identified them to us. She was talking to herself as she distributed these. But they appear to be --

MR. PROCTOR: I withdraw my objection.

Q. (BY MS. HOGLE) Mr. Chernick, do you recognize the documents that I have handed to you?

A. Yes. They seem to be the Office's Discovery to the Company.

Q. Subject to check, will you agree with me that that -- that those were the Discovery Requests that you served on the Company?

MR. PROCTOR: Excuse me, Mr. Chairman. Could you ask counsel to identify by number, date, some information what it is that she's handed him? I have a number of duplicates that I'm trying to figure out what it is?

CHAIRMAN BOYER: I think that would be helpful for the record, as well, Ms. Hogle.

Q. (BY MS. HOGLE) Mr. Chernick, would you mind looking at each of those handouts that I handed to you and reading the date and the set of that discovery?

A. I think you gave me a number of copies of set seven from July 20th. I think I'm up to about eight or nine.

MS. HOGLE: May I approach the witness, your Honor?

CHAIRMAN BOYER: Yes, go ahead. It appears that we have some duplicates, as well.

MS. HOGLE: Bear with me. I apologize. I provided to Mr. Chernick the Office of Consumer Service's Cost of Service and Rate Design Phase 10 data Request, dated July 21, 2009. The Office of Consumer Services Cost of Service Rate Design phase, 17th data request dated August 10th 2009. The Office of Consumer Service's 25th data request dated August 10, 2009. And the Office of the Consumer Service's 25th data request dated November 18, 2009. And Office of Consumer Service's 20th data request dated December 2nd 2009.

MR. PROCTOR: Mr. Chairman, I do not have the 25th set.

CHAIRMAN BOYER: The November set?

MR. PROCTOR: Yeah, I don't have that.

CHAIRMAN BOYER: Neither do we.

MS. HOGLE: I can provide those copies to you after I have finished questioning him. If that's okay, Your Honor?

MR. PROCTOR: Hold on just one second. I think that Ms. Schmit may have everybody's copies of the 25th set.

MS. SCHMID: I have different copies of different things but I will share with you.

CHAIRMAN BOYER: Let's ask if Mr. Chernick has the November 25th discovery request.

MS. HOGLE: Here they are.

CHAIRMAN BOYER: You should have -- Mr. Chernick, you should have four data requests, I believe, July 21st, August 10th --

THE DEPONENT: Yes, I have four.

CHAIRMAN BOYER: -- September 2nd and November 25th.

THE WITNESS: I believe the questions were about the November 18th and 25th set.

CHAIRMAN BOYER: November 18th, I don't have it before me.

THE WITNESS: There are a lot of numbers.

Q. (BY MS. HOGLE) Now that we have established that, do those look familiar to you, Mr. Chernick?

A. Yes.

MS. HOGLE: Okay. I would like to move to admit the four sets of data requests that I have handed to Mr. Chernick, Mr. Chairman, into the record.

MR. PROCTOR: Objection, Your Honor. There is -- there are the questions not the answers. And so it's only a partial document and would be -- the question would be irrelevant, it's the answer that's important.

MS. HOGLE: Your Honor, I offered them --

MR. PROCTOR: These are not --

CHAIRMAN BOYER: Well, I think the point she's trying to make, if I'm not mistaken here, are these all of the data requests he asks and then did he ask a specific question regarding transformer sizing, I guess.

MS. HOGLE: Correct.

CHAIRMAN BOYER: I think that's where she is going.

MS. HOGLE: Well, it's actually in regard to whether he had requested the most current design guidelines of the Company.

CHAIRMAN BOYER: Well, I think that's an appropriate line of questions. But what I'm trying to find is Rocky Mountain Power's last exhibit.

MR. HICKEY: Mr. Chairman, I believe we did 24 if my calculations are correct.

CHAIRMAN BOYER: That sounds right.

MR. HICKEY: I'm showing that the last exhibits that went in through -- this is your first --

THE CLERK: It's 24.

MR. HICKEY: It should be 24 then, Mr. Chairman.

CHAIRMAN BOYER: So we will label these starting with July and then in chronological order, 24 -- RMP Cross Exhibits 24, 25, 26, and 27.

MR. GARDINER: Mr. Chairman, Farm Bureau also objects on the simple basis that we only have two out of the four documents. I can't tell whether to object to the admission of

the documents without a copy and I don't think anybody else can either.

CHAIRMAN BOYER: Well, we can take time if you would like and circulate copies of each of them.

MS. HOGLE: Thank you, Mr. Chairman.

CHAIRMAN BOYER: Or at least show parties a copy of each.

MS. HOGLE: That's one.

CHAIRMAN BOYER: Yes. And my colleagues as well, but I will share with them. So we rule on both objections here after everybody has had a chance to review all four data requests.

MR. PROCTOR: May we, Mr. Chairman, I think there is a question outstanding to the witness.

MR. GARDINER: I withdraw my objection, Chairman.

CHAIRMAN BOYER: Thank you, Mr. Gardiner.

MR. PROCTOR: And Mr. Chairman, I think I have renewed mine based upon the Chairman's description of what counsel was seeking to find out. And, again, if you have the question that's one thing, if you have the answer now we know what was the basis of the testimony filed by Mr. Chernick. And those guidelines could very well have been referenced in the answers. So it's only giving the Commission part of the pieces to the puzzle.

I think under those circumstances, admitted only that

part would not be -- it would be irrelevant and misleading to some extent. And so therefore, they should not be admitted into evidence.

CHAIRMAN BOYER: Okay. We are going to admit them into evidence. You'll have an opportunity to ask your witness on redirect what he based his opinions on. But for the point Ms. Hogle is trying to make I think we'll let them in.

Q. (BY MS. HOGLE) I will ask my question again, Mr. Chernick. Did you review the most current design guidelines of the Company.

A. Well, I think I told you before that I'm not sure whether they are the most current or not.

Q. Did you ask the Company for the most current design guidelines based on evidence before you?

A. I haven't reviewed all of these discovery questions but I assume the answer to your question is in the exhibit that you just marked.

Q. Yes. And the answer would be that you did not, subject to check?

A. I think we can all check it given enough time, but I haven't.

Q. Okay. If you can turn to your surrebuttal testimony, Line 595 through about 598?

A. Yes.

Q. This is in answer to your statement: "Mr. Alt

concludes from his exhibit that since ambient temperature has a greater effect on sizing, pre-loads should be ignored in allocations." And then you say, "Mr. Alt's comparison is misleading. Ambient temperature is not within the customers' control and therefore irrelevant to cost allocation and the relative importance of duration of peak on transformer costs." Do you see that?

A. Yes.

Q. Mr. Chernick, don't customers have control over ambient temperatures by virtue of the choices they make about where they live and use electricity?

A. You mean, before they decide that they are going to be a customer to that particular location, they could decide to build a house in the mountains or they build it down in the valley and they would have different ambient temperatures, that's correct. I don't know that the Company has ever allocated geographically based on ambient temperature. And I can't think of a utility that's done that.

MS. HOGLE: Thank you, Mr. Chernick.

That's all I have, Your Honor.

CHAIRMAN BOYER: Thank you, Ms. Hogle.

Let's turn now to Ms. Schmit for the DPU.

MS. SCHMID: No questions.

CHAIRMAN BOYER: Okay. Thank you.

Mr. Dodge, questions for Mr. Chernick?

MR. DODGE: Thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. DODGE:

Q. Mr. Chernick, you testified that in your opinion the load data for the irrigation class is unreliable. And I believe your statement was that no conclusions can be reached by it.

A. Yes.

Q. You would agree therefore that if this Commission were to find that other load data used in the case is unreliable, similarly no conclusions can be drawn from it; is that correct?

A. Well, I guess there is a continuum of unreliability from this data. I'm not each sure what units you would use exactly, but these -- these data are -- are 2 percent unreliable or 50 percent unreliable or 100 reliable. And my point was that the irrigation data is so far off from the loads that it's trying to estimate, that it's of no value and is essentially 100 percent unreliable.

Q. How far up? You said 100 percent unreliable. Certainly it's not 100 percent inaccurate?

A. Well, I said I didn't know what units to describe that problem in. But my -- if you read my direct testimony, the relationship between the class load shape estimated from the sample data and the actual metered data -- bear little

relationship to one another. And he indicates that the -- that the sampling data is really not representative of the class in any meaningful way, that's not just off a little bit, it is way off.

Q. Mr. Chernick, if you'll turn to page three of your surrebuttal. You indicate on line -- beginning on line 55 that you haven't had time to review the information reflecting -- relating to the new peak load data. How much time would that take?

A. Well, it certainly would have helped if we had another week or so to get our first set of discovery and then got -- after we got that back, have three weeks or so to formulate a second set, get that back, have maybe a couple more weeks to do additional follow-up. So we're talking a couple months, two months, three.

Q. And the purpose of that would be to validate what the Company said, that is that the old -- that original data didn't properly capture peak day class responsibility?

A. Well, what I was thinking about specifically was trying to understand what the Company's new data was supposed to mean and how it was calculated and what the Company changed from the old data to the new data.

Q. And did you do anything to validate the Company's original data in terms of -- in terms of the issue I just mentioned, the relative class contributions, the peak day

loads?

A. I reviewed the load data, as you can see from my discussion the irrigation load data, in terms of how the forecast of peak days for the test year were derived. I don't recall that being an issue that we got into.

Q. So you didn't feel the need to confirm that the original data properly captured peak day class load responsibility? But you do feel the need to validate their adjustment, their new date, is that what you're basically telling us?

A. Well, I would say at that the time that I was doing my direct testimony I didn't have any reason to believe that that issue would be in serious question. And therefore, it just wasn't something that we paid attention to. We usually only review that subset of issues that are most likely to be the major issues under -- dispute in the case.

Q. You recognize, of course, and I believe your testimony reflects and I can point you to it if you would like, that it's the relative class contributions to those 12 peak days in a test period that is relevant in a cost of service analysis, correct?

A. Yes, that's certainly part of what's relevant.

Q. And in fact, those relative contributions to those 12 day peaks drives a lot of dollars, does it not?

A. Yes, it does.

Q. And so if one wanted to be careful in cost of service analysis, one would want to know whether, in fact, that the relative class contributions to peak in the 12 test period months reflected what was a reasonable reflection of those same relative contributions in prior years, correct?

A. Ideally given the budget, you want -- in reviewing the Company's cost to service study, you'd want to start with the raw load data and work all the way through the end. We have to pick and choose and that's not something we chose to focus on in direct.

Q. In the rebutted testimony in this docket, is it not, that by the only company that sponsored the original peak load relative class contribution data is that data does not properly capture the historical contributions to peak loads and that the new data much better captures it? Have you heard that testimony?

A. Well, it doesn't model the test year. And the new data, according to company, is essentially for the test year. So when you say "historical" you're correct in that sense if by "historical" you mean sort of typical patterns. I don't think the Company addressed that. And what I said earlier, sort of summarizes my view that 2008 was not typical and is not a good representative of historical norms.

Q. Historical norms is one thing. I'm talking what you, I believe, acknowledge is one of the more important issues and

that is relative class contributions on 12 peak days. And my question is simply: There is no other evidence in the record that you are aware of, is there, that the revised peak load data does not do a better job of capturing historical -- and I don't mean one historical test rate, I mean, the historical peak day relative class contributions to peak than did the original data? I hope that question made sense by the time I finished it.

A. Well, I agree with you that -- and, again, we can't -- we can't figure out why so much things changed in the cost of service study that shouldn't have changed in the Company's description, so we don't really know what the Company did. But given the Company's description, it appears that what they have done models 2008 and -- a particular historic year much more are closely than the original analysis did. Whether it's the class distribution of -- or the distribution of peak responsibility among classes, is more or less typical given updated load data and typical system load patterns, I don't think we can answer.

Q. Again, my question has nothing to do with typical load patterns. It has to do with relative class contributions on the 12 peak days in prior year.

A. I was using those two terms the same -- to be the same. You're talking about relative class system coincident peak on 12 peak days. Historically more than just 2008 but

meaning what we would expect normally. If that's what you mean, I don't think we can say that a new load data is improvement over the original load data. If by historic you mean 2008, if the Company did more or less what it's witnesses say they did, then it should be modeling 2008.

Q. I believe the witness has testified, did they not, that it was not capturing what they would expect based on history for the peak day relative class contributions and so they elected to use 2008 because they believed it did capture those relationships? Did you not hear that from the witnesses?

A. They were using 2008 load data in both studies. The questions is: Do you use the actual system peak from 2008 or do you use a normal peak condition? And if you do the latter, which is what they were trying to do in their forecasted test year, in the original version as I understand it, if you're trying to come up with a normal version and the question is: How do you select the class composition of that normal peak? And the Company's opinion, as I understand it, is that the original study didn't do that very well.

Q. Let's be careful with terms we are using. You suggested that the Company attempted to use -- I think your word was "a normal peak contribution." Were you here to hear Mr. Nunes testify that one of the sources of disparity between the jurisdictional peak data and the class peak data was that they did not use a normal approach, meaning take the average

numbers reached of the peak years and use that for class purposes even though they did it for jam purposes. The question is: Did you hear that testimony?

A. Yes, I did hear that testimony.

Q. Did you disagree with what Mr. Nunes stated about the difference between the --

A. I do. I have to say that as I was listening I wasn't quite following the distinctions he was making and I would have to go back and look at the documentation. I didn't really pay a lot of attention to the jurisdictional allocation methods so I'm not sure exactly how they did that.

Q. On page three of your surrebuttal I believe you said a similar thing to what I was just asking you about now. And that is you suggest that forecast of peak loads are based on data from the past 10 to 20 years, almost suggesting as I read it, that you think that is normalized data, normalized peak data, but do you have Mr. Eelkema's testimony to which you refer in front of you?

A. I do not.

Q. Let me read to you what he says about -- on the pages -- I'll only read eight because that's the only one that talks about peak loads. I'm going to read one sentence from him. I can show you the rest of it if you would like, but he says, "The peak" --

CHAIRMAN BOYER: Mr. Dodge, for the record, why don't

you identify, is this Mr. Eelkema's direct testimony, a page and line?

Q. (BY MR. DODGE) Oh, I'm sorry. Direct testimony on page eight and I will read, at least right now, from line 162 to 164. And it says, "The peak forecast is based on average monthly historical peak producing weather for the period of 1990 to 2007." That's the extent of the quote normalization of the peak load projection, correct?

A. Yes, I -- I take that to mean what I was saying here.

Q. But it does not mean that they've gone back for the 20 year period that he referenced -- not 20, 17 or 18 year period that they referenced and capture the relative class contributions to peak on peak day and project that into the new test period, correct?

A. You wouldn't want to do that directly because the class fundamental underlying load shapes may be changing, not just because of the particular weather and economic conditions in 2008, but because the mix of commercial equipment, residential equipment, residential housing stock, building types, industrial processes are all different over time. Seventeen years ago things may have been somewhat different.

Q. So you may want to do something else. But my point is: I thought you were suggesting that they did something along that line and normalizing, you are acknowledging that isn't what you meant? You just meant --

A. No, they are trying to come up with a typical system peak day for each month.

Q. Okay.

A. And I -- your -- I guess your question is: Am I saying they do some rigorous normalization for weather and some other factors. And that's not understanding that they do that but they do try and come up with typical conditions.

Q. And, again, my focus is on the relative class contributions to peak because as we've established that's what drives a lot of dollars.

A. Yeah.

Q. You heard the Company testimony that the way they projected -- they went through the process that Mr. Eelkema and others described and projected the peak days in the forecast test period, then they would align Mondays with Mondays, which had the effective shifting the projected peak day away from those relative class contributions they'd expect to see on the page. You would agree that that is a problem, would you not? If what they said is true, than that is a problem.

A. That if in the test year the sort of arbitrarily selected peak day happens to be a Monday -- second Monday of the month and they line that up with the second Monday of the month in 2008, and that Monday was not a particularly high load day, then the class load patterns would probably be different than they would at a system peak where Utah is

contributing its typical share to the system peak.

Q. And isn't that essentially what the Company testified they recognize was happening when they went back and looked at the data? I'm not asking you to agree with it, isn't that what they said was happening?

A. I think you fairly characterize their testimony.

Q. Let's turn briefly, Mr. Chernick, to your proposal to use the peaking method to allocate production and I assume transmission. You said you didn't propose it for now.

A. No. The issue with transmission has to do with the location of those base load plants and the transmission that's built for energy purposes to -- both for imports or exports for connection to remote low energy cost sources.

Q. I believe in your summary you characterize responses to your peaker method as kind of saying always pointed market data and that's wrong and blindly dismissing it. There were also some very substantive criticisms or responses to the fairness and the appropriateness of the peaker method being used in this state and under the circumstances that the -- this utilities production fleet was developed. Did you read that?

MR. PROCTOR: Well, objection, your Honor. I believe, Mr. Chairman, I believe that's argumentative. A long statement of what Mr. Dodge's view of the evidence or the criticism and then, well, did you read that? That's inappropriate.

MR. DODGE: Well, did you understand that? Let me rephrase it. Was that your understanding of -- well, let me rephrase it.

Q. (BY MR. DODGE) Did you not read any testimony that you believe was a rebuttal of your peaker proposal based upon the fairness and appropriateness of that method for use for this utility's production fleet?

A. Yes. I think in my summary I noted that there were witnesses that said, well, if you are going to do that then you have to do other complicated things. I think Mr. Brubaker specifically said and that would be too calculated and therefore you have to do what I say you should do. So, yes, there were -- there were other comments on how the peaker method interacts with the Company's cost.

Q. Let's turn to page 18 of your surrebuttal, if you would, please. I'm going to start on 18 on the very top line, 408 and then I will go back to the question that we are referring to. But your answer to the question on the prior page was, no, his errors include the following. I will represent to you that "his" is Mr. Higgins.

A. That's correct.

Q. And when you talk about errors you are referencing the question was "Is his historical analysis correct?" Okay. And would you do us the benefit of providing his part of his testimony on that issue so we don't have to pull out his

testimony.

A. I try to be helpful.

Q. Thank you. Let's start on line 402 with the first error that you point out that he made. You said, "As he admits PIFUA" -- I won't say the whole thing. "was adopted in 1978, and had no effect on plants" -- "at that time." So where is the error in that statement?

A. Well, he says that because of PIFUA -- he said, let me quote him. "Prior to the repeal of the Power Plant and Industrial Fuel Use Act in 1987, electric utilities could not" -- his emphasis -- "just as easily install combustion turbines as other technology."

Q. And in your first error, what was the error in that?

A. Well --

Q. In your first bullet point what was the error?

A. His error is that he should have said between 1978 and 1987 the PIFUA was in effect, not prior to 1987.

In his previous sentence he said "The coal fleet came on line between 1954 and 1979." Actually, I think some on them came on later. But he sets out this period that barely overlaps with the effectiveness of the PIFUA and then says, well until 1987 you could barely build a combustion turbine and that's just not true.

Q. Well, we'll get to that. I think we'll have a little disagreement on that. But let's look on line at 395. He

acknowledges that it was a docket in 1978. So your quibbling with having to look down to see that the 11 years -- or 10 year period that the act was in place, is that your quibble? Is that his error?

A. Well, that he said something that's not true and then in the next paragraph undermines himself, I point that out.

Q. And the part that you say is not true is that -- it could not as easily have been built, that's the part that you are saying is not true?

A. Yes.

Q. You don't say anything about that in your first bullet point. My point is that it is not an error, you are admitting that he acknowledged it. The second bullet point you admit --

A. Okay. I'm sorry. I guess if I had had more time to write this more elegantly I would have explained that his first paragraph is misleading because of this problem. And that as he admits, the law didn't even exist until 1978. I was a little pressed for time on my surrebuttal. I was spending a lot more time on the load data than I excepted. And my apologies if the way I wrote this is in any way offensive to Mr. Higgins.

Q. I think Mr. Higgins has a pretty tough personality. The point is, when you claim someone is making an error, you better be ready to back it up. So let's move on. Your next

error is that PIFUA never -- he admits that it never prohibited use of gas beakers, that's an error?

A. Yes, it's an error -- well, again, if --

Q. If you will retrack the word "error" and say these aren't errors we can go on.

A. How about if we -- yeah. I guess your point is, is that errors should be something like, errors in confusions or something like that. That these -- I mean, on those first two points I make the point that he admits these things. So that I'm not saying he's completely unaware of it, I think he's misrepresented the situation by making a claim. And then he's acknowledging that, well, and it's not really that big of a deal.

Q. Well, I won't quibble with your characterization. I don't think that's at all what he did. But let's talk about what you are claiming. Let's talk about whether you have any errors.

A. Okay.

Q. You claim -- you claim that he is wrong in saying that you -- you could have just as easily have built a peaking plant as an internal combustion turbine, right, in the -- in the years prior to 1978?

A. I'm sorry. That we could just as easily have built a combustion turbine as a coal plant?

Q. Yes.

A. Yes.

Q. You are arguing it would have been just as easy in 1987 --

A. Yes.

Q. -- prior to that?

A. Yes.

Q. Let's assume in 1980 you wanted to build a plant and you concluded you needed some capacity. What would have -- and you decided a combustion turbine was a right way to go, A: What would you have had to do to do that? Let's start with that. Could you just go do it? Let's say the Commission approved it, could you just go do it or what would you have to do?

A. You need to get air quality permits. You need -- you might need land use permits. You need to get permits for whatever transmission you were building. You'd have to acquire the land. If you wanted to use gas you'd have to file with the Department of Energy for a waiver. They are a lot of permits involved. If you have a stack you have to get FAA approval of the height of the stack.

Q. Let me concentrate what you just blithely walked over. On all plants you have to do most of those. The difference --

A. Well, on a coal you have to do a lot more.

Q. Well, environmental and other things. In 1978 that

may or may not have been true. But let's not argue about that -- or in 1980.

In 1980 if you wanted to build a gas plant in addition to all the other permits and Commission approvals etc, you had to get over the blanket prohibition with certain exceptions in federal law building combustion turbines that relied on petroleum or natural gas, correct? There was a blank prohibition with some temporary and permit exceptions that allowed you to petition the Department of Energy for a waiver or for permission to do that, if you could demonstrate that it fit in certain categories, correct? I got the whole act here, we can walk through it if you want. It may take awhile.

A. You are saying that there was one additional permit that was required for a gas fired plant that would not have been required for a coal fire plant and is, as I said earlier, there are probably a lot of permits and much more complicated permitting required for a coal fire plant given it's air emissions and waste disposal than for a gas fire plant. So I think that the process of getting approval for a combustion turbine in 1980 would have been easier than the process of getting approval for a coal fire power plant.

Q. How many power plants did you actually permit during that period?

A. I wasn't -- I wasn't involved in permitting them but I was involved in the review of power plant applications.

Q. You referenced just another permit, the application to Secretary of Energy. In fact, the national energy policy at that time prohibited the use of gas and oil unless you could convince them otherwise. It was intended to discourage the use of natural gas and petroleum products to generate electricity, is that not a fair statement?

A. You know, I was in the business at that time.

Q. As was I.

A. And in New England where utilities were building gas and oil fired peaking and combine cycle points, and I never encountered a situation in which the deal requirement was a serious calculation. Now, there may have been someplace in the country where it was, but I have never heard of it.

Q. You've never heard of it?

A. It was a routine waiver.

Q. That's an astonishing admission, Mr. Chernick.

MR. PROCTOR: Mr. Chairman, excuse me. Objection.

MR. DODGE: Okay. I will withdraw the comment.

MR. PROCTOR: Editorial comments are absolutely unnecessary.

CHAIRMAN BOYER: I agree, we'll strike that.

MR. DODGE: Mr. Proctor never does that. But I will withdraw.

MR. PROCTOR: Thank you for recognizing that.

CHAIRMAN BOYER: I'd have to strike that now right.

MR. HICKEY: I think we are in the 12th inning now, Mr. Chairman.

CHAIRMAN BOYER: It feels like it.

Q. (BY MR. DODGE) Mr. Chernick, again, we are talking about what you consider to be Mr. Higgins' inappropriate argument that you couldn't just as easily build a gas plant back -- prior to 1987 as you could with coal. Let's talk about how many were there --

A. I'm sorry. Let me just put this in context because --

Q. No, I'm sorry. Let me ask the question.

A. You have asked this question a number of times --

Q. Sir, could --

MR. DODGE: Your Honor, could I ask him to shut up? Could I ask him to shut up until there is a question?

CHAIRMAN BOYER: No, because then I would have to strike my request. But let me instruct though, Mr. Chernick, to listen to the question and answer it. You will have an opportunity to elaborate on your answers during redirect.

Q. (BY MR. DODGE) In your testimony on page 18, Mr. Chernick, you talk about some 6500 megawatts of combustion turbines built between '78 and '87. And then another 4700 megawatts that they are now part of combined cycle plants. How many total megawatts were built during that same period in the United States?

A. Well, if you'd like I can check that at the break. I don't have that number with me.

Q. You don't know, do you, or at least you choose not to share it?

A. I don't think it's relevant.

Q. What percentage of the capacity added in that period represented natural gas and petroleum?

Q. Do you have any idea?

A. Oh, my guess would be it would be in the, you know, 5 percent range, maybe. It was a small part of the total. This is when the nuclear plants may have -- delayed for a long time were coming on. So they were -- and there were also coal plants being built.

Q. Mr. Chernick, the peaker method relies on an assumption that a utility has the ability to use a peaker plant to meet all of its capacity needs, correct?

A. That's correct.

Q. Can you name one utility anywhere west of the Mississippi -- let's start there -- that relies solely on natural gas peaker plants to meet all of its capacity?

A. No, they all had energy loads.

Q. I said to meet all of its capacity.

A. Right. So they -- since they had energy loads they built other things or contracted for them.

Q. I said to meet of all its capacity, not all of the

energy needs.

A. I don't understand what distinction you're making. I said, no, they don't build -- meet all their capacities with peakers because it won't be economical because of the energy.

Q. In the -- at the period you were in New England that you testified to, utilities out west were building largely coal plants, correct?

A. Yes, not entirely, but largely.

Q. And I assume you have never researched the question of whether or not the -- this utility, Utah Power and Light in that period was building coal plants to meet its capacity needs as well as it's energy needs? Or if it was driven primarily by capacity at that time?

A. It was building megawatts to build -- to meet capacity. The choice of the kind of megawatts was driven by energy.

Q. And that's based on what Mr. Chernick said. Were you here --

A. Economics.

Q. No. You are assuming it is based on economics. You have no idea what the utility was -- the decisions the utility was making, do you? You don't have any idea what was driving their planning decisions about building a coal plant; isn't that correct? You are making wild assumptions.

A. You mean, as opposed to -- they owned a coal mine and

they wanted to get a return on it or some other -- something not driven by the economics of the plant?

Q. No, I'm just asking you if you have any idea what the Company actually used as its decision matrix in deciding to build coal plants rather than gas? Do you have any -- well, you seem to think you know everything. Do you have any basis for knowing what the Company made its decisions on? In that period of time, when you were in New England.

CHAIRMAN BOYER: Mr. Dodge, are you asking him about Rocky Mountain Power or its predecessor --

MR. DODGE: Utah Power and Light, yes.

Q. (BY MR. DODGE) That's too hard of a question, so let me withdraw it. I will withdraw it. Let me move on.

A. Thank you.

Q. Mr. Chernick, up until -- are you aware that up until roughly 1990 this Commission allocated 100 percent of production plant on capacity?

A. Yes.

Q. Or classified 100 percent of production plant capacity?

A. Yes.

Q. Suggesting that at least this Commission believed that there was a large capacity component to the coal fire gas plants that this utility built prior to that time, will you --

A. Are you saying the coal fire plants?

Q. Did you say gas?

A. You said both.

Q. Thank you for correcting me. The coal fired plants they built during that prior to that period?

A. The tradition for many years was to allocate all fixed costs as being demand related. Original -- I think first in the regions used hydro and realized that a lot of their investments were to get -- to keep energy from the hydro-plants. And then later in other parts of the country it came to be realized that -- no, the dollars were spending even though they are fixed for year to year are being incurred for energy purposes.

Q. And finally, Mr. Chernick, you complain that Mr. Higgins points out that it's actually the industrial class growing the least that you proposed to dump -- you know, hundreds -- tens and tens of millions of dollars on to -- in your proposal for revising the costs of service approach. And then you point out, do you not, that the change in peak load data transfers some $22 million in the cost of service study to the residential class?

MR. PROCTOR: Objection, Your Honor -- or Mr. Chairman. You are Your Honor. It's a compound question. The first being a statement, an argument, using the term that's already been addressed as being pejorative and that's the dumping issue. And then he proceeds to ask a second

question within the same. The question --

CHAIRMAN BOYER: I think that's a fair criticism.

MR. DODGE: I'll restate it. It was one question. I don't know what you heard in the first part that was a question. The first part was: In your rebuttal testimony you criticize Mr. Higgins for pointing out that the industrial class is a class growing the least and therefore contributing the least to the peak growth needs of this utility and yet your approach would shift significant amounts of money, is that a fair statement?

A. Mr. Higgins said that?

Q. You criticized him for saying that?

A. Yes, I criticized him for arguing that basely this InterGen could be used to penalize a megawatt or a megawatt hour of residential load because residential load had been growing faster than industrial.

Q. And I challenge you to find anywhere in Mr. Higgins' testimony where he suggested any such thing. His comment -- isn't it true that his comment was once the Commission should be aware they should to take into account in deciding spread, was it not in response to the Division's spread proposal that he said the Commission should take into the account that the class that's growing the least and contributing the least to the new load growth is being penalized by that kind of a spread?

A. You are suggesting that rates spread based on the vintage of the classes load is different than vintaging?

Q. No. There is no mention of vintaging. It's a non-cost of service based comment that the Commission should take into account, is that not much like the comment you made?

A. I'm sorry. Can --

MR. DODGE: I'll withdraw the question and ask a new question.

Q. (BY MR. DODGE) In your testimony you pointed out that the change in peak load transferred million of dollars to one class, did you not?

A. I think I talked about peak load and I believe Mr. Higgins talked about the dollars. Well, I believe you did, too -- or at least you talked -- yeah, you did actually, point out the dollars, did you not? In any case, I don't believe that I mentioned the dollars, but I may have. I'm sorry. This is a matter of clarity. I'm not arguing that the effect of the new load data is to shift dollars as well as megawatts --

MR. DODGE: No further questions.

CHAIRMAN BOYER: Thank you --

MS. HOGLE: Mr. Chairman --

CHAIRMAN BOYER: -- Mr. Dodge.

Ms. Hogle?

MS. HOGLE: Excuse me. I'm sorry for interrupting

and for -- I apologize, in my haste in passing out the data requests I have now seen that I have left one off. And the reason being is because one of them was dated July 21st and the other one was July 20th. And at this time I would like to ask you if I can also -- in the interest of having a complete record, make sure that the July 20th data request also gets into the record. So I move to have that.

CHAIRMAN BOYER: Do we have copies of that?

MS. HOGLE: Yes, I will give them to you.

CHAIRMAN BOYER: Why don't you pass them out and then we'll consider their admissibility.

While she is doing that, Mr. Reeder, we wish to give our reporter a break here about 10:30. Do you expect to take longer than a few minutes with cross-examination?

MR. REEDER: I have elected to argue with Mr. Chernick in brief and to pass in cross-examination.

CHAIRMAN BOYER: Okay. I'm not sure what that means but I like the fact that you are not crossing him. Okay.

Now, we have before us, which -- what we will mark as Rocky Mountain Power Cross Exhibit --

MS. HOGLE: Twenty-eight, Your Honor.

CHAIRMAN BOYER: Twenty-eight. Which is nominated seventh data request to Rocky Mountain Power dated July 20, 2009. And ask if there is any objections to the admission of this additional exhibit?

MR. PROCTOR: If the record could note the same objections as given before.

THE DEPONENT: So noted. Mr. Proctor's objected to its admission because there is the question and not the question and answer. And with that we will admit that into the evidence, as well.

MS. HOGLE: Thank you very much, Your Honor.

CHAIRMAN BOYER: So now I will ask the same question to Mr. Gardiner. Have you cross-examination for Mr. Chernick?

MR. GARDINER: My microphone is on and I have just a couple of questions, Mr. Chairman.

CHAIRMAN BOYER: Let's do that right now, Mr. Gardiner. Thank you.

CROSS-EXAMINATION

BY MR. GARDINER:

Q. It's your opinion that the Commission should reject the rebuttal cost of service study as a basis for rates spread, correct?

A. Yes.

Q. And that includes the rebuttal load data, right?

A. Well, that's principally the rebuttal, the rebuttal load data.

Q. I just want to make sure I understand. I don't have the same knowledge of everyone else here.

A. I don't believe that they are any other really

substantive changes identified in the rebuttal.

Q. Other than what you previously testified to either in written form or here at the hearing today, do you have any other reasons why the rebuttal cost of service study should be rejected as a basis for rate spread?

A. I think I have covered it pretty throughly.

Q. One of the reasons you recommended rejecting it is because it was given to you approximately 34 days before the hearing; is that correct?

A. Yes. And only about two weeks before our testimony was given.

Q. Specifically, what problems did it cause in receiving a cost of service study 34 days before the hearing?

A. Well, as I pointed out, you need some time to read the utilities testimony to look at the numbers used on the cost of service study and figure out just what it was that happened and what are the issues you need more clarification on. Draft discoveries. And then you have to get the discovery and have enough time to do something with it in drafts and surrebuttal testimony. And that takes considerably more than the two weeks or so that we have.

Q. You do all that so you can form an opinion as to whether you can trust it; is that correct?

A. Whether, I guess -- whether it realistically remodels the -- what it's trying to model, which is the -- a fair and

realistic contribution to -- of classes to the system.

Q. How many years have you been giving testimony before this Commission on behalf of the Office of Consumer Services or it's predecessor, the Committee of Consumer Services?

A. I think I filed my first testimony in connection with the Scottish Power merger case, which takes us back into the 80s, I guess.

Q. In that time have you ever seen the Company file a cost of service study within 34 days of the projected hearing before?

A. Well, I --

Q. Have you seen --

A. I'm not sure about the exact timing, but it's not uncommon to get updates based on -- for example, the other things the Company was responding to, where Mr. Mancinelli suggested that a particular cost item should be allocated differently a number of small items were changed in that way, it's probably --

Q. I don't want to quibble with words. What I want to know is, in your experience in testifying before this Commission, have you ever seen the Company file a rebuttal cost of service study like it has done here on the eve of the hearing?

A. Well, and I was going to say, in terms of something so substantively different than had been presented previously,

I can't recall a situation where cost of service study or any comparable analysis came in that close to the testimony date and the hearing date.

Q. I believe you testified in your direct testimony that you described the process today as suspect. Have you made any -- have you tried to determine any motive for filing the cost of service study so late? Have you tried to figure out why the Company did that?

A. I haven't. And I'm not really sure what context I would have used the term "suspect" in. I think I was probably talking about the data rather than the process.

Q. But your aware, aren't you, that the Company has stated it has done it because the forecast peak data didn't necessarily align with historical peak data, correct?

A. That's a fair summary of what the Company said, yes.

Q. That's why they said they did this?

A. Yeah. And that -- that's why they changed it in terms of your question about why it came in so late. I hadn't really reviewed the prudence and the timing of it's -- change in it's proposal load data.

Q. And Mr. Dodge didn't ask you whether you believed that, but I will. Do you believe that's the reason for the updated cost of service study, because they realized they were losing relationship between the classes that would be excepted under a true peak day scenario?

A. I don't have any real reason to doubt the Company's explanation of their motivation in deciding that their original filing didn't meet their criteria.

Q. Isn't it true than that this Commission is faced with a Hopkins Choice? They could either accept the rebuttal cost of service study that was given, you know, 34 days before the hearing and other parties didn't have sufficient time to respond to it or they can use the old cost of service statement which didn't necessarily align with historical peak data, right, that's the choice?

A. Yes. And I would add and I think I did earlier. I did add a number of other concerns about the new cost of service study in its load data. There are certainly arguments on both sides about flaws in the load data. Fortunately, I don't think the Commission really has the awful choice ahead of it that you -- the front of it that you portray because they don't necessarily have to pick a particular study and rely entirely on that.

MR. GARDINER: Thank you. I don't have any other questions.

CHAIRMAN BOYER: Thank you, Mr. Gardiner.

Commissioner, Mr. Allen?

I don't either. I assume you do have redirect, Mr. Proctor?

MR. PROCTOR: I do. Would now be a good time to take

a break?

CHAIRMAN BOYER: I think it would.

MR. PROCTOR: Thank you.

CHAIRMAN BOYER: Let's take a 10 or 15 minute recess. And we'll pick up redirect at that point.

(A recess was taken from 10:32 am. to 10:47 a.m.)

CHAIRMAN BOYER: Let's go back on the record.

Are you ready for redirect, Mr. Proctor?

MR. PROCTOR: I am, Mr. Chairman, but for one item. And if you will just bear with me just a moment.

MS. SCHMID: It appears while Mr. Proctor is looking for something, I can ask a question, a second question?

CHAIRMAN BOYER: You can and may.

MS. SCHMID: Thank you. The Division has its response to the Commissions data request. The response is quite lengthy and needs to be burned on a CD. Can we ask for guidelines on how many we need to burn? It would just be distributed in the -- like regular discovery.

CHAIRMAN BOYER: Among the parties you mean?

MS. SCHMID: Yeah.

CHAIRMAN BOYER: Well, I think you just have to give it to the mailing list.

MS. SCHMID: Okay. Thank you.

CHAIRMAN BOYER: We are not into saving plastic, just trees.

Mr. Gardiner.

MR. GARDINER: While we are waiting I turned on my microphone. And I remembered that I too, have made a mistake, somewhat like Ms. Hogle. I would move to admit the testimony of the Farm Bureau's witness but not attached exhibits. May I move to submit the attached exhibits also?

CHAIRMAN BOYER: You may, Mr. Gardiner. Thank you. I guess, we'll say that you have already done that.

Any objection to the Farm Bureau's witness exhibits being admitted into evidence?

They are also admitted, Mr. Gardiner, thank you.

Redirect, Mr. Proctor?

MR. PROCTOR: Thank you, Mr. Chairman.

REDIRECT EXAMINATION

BY MR. PROCTOR:

Q. Mr. Chernick, if you would please turn to page 27 of your direct testimony. In its answer that begins at the top line 556. And references a contribution guideline. Sir, you also reference in that answer that line 564 "a study." Could you describe what that study is?

A. Yes. That's the study referred to on the previous page, on line 549 UPNL's October 1989 distribution costs allocation study.

Q. And what is the relationship between the guidelines -- distribution guidelines and the 1989 distribution

cost study?

A. The specific guidelines that I was referring to here were guidelines on which that study relied. That's the study that was -- that's used by the Company -- referred to by the Company as the basis for its current allocation methodology.

Q. Okay. Do you know --

A. The specific distribution guidelines I refer to in that answer at the top of page 27 refer to the distribution guidelines that were attached to and referenced in the study.

Q. Do you know whether the utility has redone that study or is this continuing to rely on the October 8th 1989 distribution cost allocation study?

A. As far as I know that study has not been redone and the company continues to rely on it.

Q. Now in your analysis scrutiny of Mr. Alt's testimony, do you know whether Mr. Alt also relied upon that study?

A. He refers to it extensively as being the source of the Company's current distribution allocations.

Q. Thank you. Next I have some questions to ask you about the load study. First of all, did you prepare -- did you analyze the Company's cost of service study and rate spread recommendations in the 2007 general rate case?

A. Yes.

Q. And that was also on behalf of the office?

A. Yes.

Q. Did you perform the same function in connection with the 2008 rate study or -- excuse me, cost of service study in a general rate case?

A. Yes, we've -- we have been doing this almost continually for a few years now.

Q. Okay. Based upon that experience, sir, did you observe -- in analyzing this particular case, did you observe any unusual deviation from the prior years with respect to the load data supplied for the residential class, for example?

A. No, the data -- the relative class load contributions seem to be consistent with the trend that had been evident in the Company's analysis for the last few years, anyway. And it didn't seem particularly surprising that the load shapes were working out where they were.

Q. Now, in the 2007 and 2008 case, did you single out for particular scrutiny the irrigation load study?

A. Yes.

Q. And did you also do that in this case?

A. Yes.

Q. And on page five to your direct testimony, beginning at line 105, there is a table entitled "Errors in RMP's Irrigation Load Reconstruction." Could you describe what that table represents?

A. That's looking at the differences between the estimated total sales for the month for the irrigation class

based on the sampled load that is the -- the customers that had hourly meters and were the basis for the Company's estimate of contributions of irrigation load to various measures of peak, most importantly, the system coincident peak. The comparison of the monthly energy from that analysis with the build energy to the class.

Q. What was your conclusion from that table?

A. The differences were very dramatic and well beyond the differences seen for other classes.

Q. That would be --

A. And I then on the figure one on the next page I display the comparable error data for residential schedule 6 and schedule 23 and compare that to the irrigation errors. The irrigation data is clearly fitting much worse with the actual sales to the class then for any of the other load research classes.

Q. I want to ask you some questions then about the impact of changes in load data as were seen between the Company's direct testimony and the rebuttal testimony. I would like you to turn to page three of your surrebuttal testimony, table one at the top.

A. I have that.

Q. Now, in the course of cross-examination you pointed out there was -- or excuse me, actually in your summary you pointed out that for April the coincident peak day in April

between the rebuttal testimony and the initial direct testimony, it was precisely the same, same hour, same day.

They are others. For example, immediately below May 2010 the rebuttal testimony was at 1700 on the 19th, the application or direct testimony was at 1600 hours on the 19th, one hour difference in the coincident peak. Does that have -- an hour difference does that actually make a significant difference to the class allocations?

A. It can depending upon what's happening with loads. As you move from 4:00 to 5:00 in the afternoon on a particularly hot May day, the commercial loads are reducing and the residential loads are increasing as people get back from school and work and start to turn on their various appliances. So you can have a very different effect at -- for the load at 5:00 than at 4:00.

Q. If you'll look up further up the table on October 2009, the direct testimony identified the coincident peak day and hour as the -- October 30th at 900 hours, and yet the rebuttal testimony had it 29 days earlier -- 29 days eight hours earlier -- or well, I can't do that. Military time doesn't do me.

A. A lot.

Q. A 29 day difference, what kind of difference does that make?

A. Well, that can be the difference between -- for a

shoulder month it could be the difference a day that's driven by heating load and one is driven by cooling load.

Q. And is that the source of your criticism that, in fact, you have some exact opposite results between months that want -- than what one would except? You provided that in your summary.

A. That certainly could be one reason. I haven't had the time to look at the weather hour by hour in Utah for the -- each of these dates and see whether these differences are weather driven, or just time of use driven. Trying to understand how the load mixes changing from hour to hour it take a fair amount of time.

Q. Would you essentially have to perform a new cost of service study or try to replicate the Company's cost of service study?

A. Well, this -- this is one of the inputs, the cost of service study is the -- the load data analysis. There are couple parts here. There is the sort of the raw load data manipulation. What I was criticizing in terms of the gathering of the data primarily for the irrigation load.

And then the way in which you take your historical year as you built it up and tried to correct it in various ways. How do take those data and map it onto your test year? And how do you line up the peaks? Especially, given the questions you raised about what are -- what's typical in terms

of the weather conditions at peak hours and so on. That would require a lot of effort. And at the end of that you then wind up with your input, your load shape inputs to the cost of service study.

Q. And would that have been necessary in order to adequately or examine the rebuttal load data and load study?

A. To really understand why the change was having the effects that did it, yes. And they are other things that would be necessary. As I pointed out, we still don't understand why some of the load measures changed. They shouldn't have been effected by the choice of days.

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

CHAIRMAN BOYER: Thank you, Mr. Proctor.

Mr. Chernick, you are excused.

That brings us now to UIEC witness, Mr. Brubaker.

MR. REEDER: Mr. Chairman, I have handed out an exhibit list for the testimony of Mr. Brubaker consisting of the exhibits numbers for his direct testimony, his rebuttal testimony and his surrebuttal testimony. Attached to it are several exhibits that are included in Mr. Brubaker's testimony. These are simply duplicated for your convenience for summary.

CHAIRMAN BOYER: For our convenience, thank you.

* * *

MORRIS BRUBAKER,

Having been duly sworn,

is examined and testifies as follows:

* * *

CHAIRMAN BOYER: Please be seated.

DIRECT EXAMINATION

BY MR. REEDER:

Q. Mr. Brubaker, it's going to be uncomfortable as I talk to your back. But please feel free to talk to the Commission. Would you state your name, your business address and by whom you are employed.

A. It's Morris Brubaker. My business address is 16690 Swingly Ridge Road, Chesterfield, Missouri. I'm employed by the consulting firm of Brubaker & Associates.

Q. For whom do you appear in this proceeding?

A. For UIEC.

Q. Have you cause to be prepared and file in this proceeding direct testimony and attached exhibits?

A. Yes.

Q. Rebuttal testimony and attached exhibits?

A. Yes.

Q. And surrebuttal testimony attached to exhibits?

A. Yes.

Q. Is there a list of those immediately to your left?

A. There is.

MR. REEDER: Mr. Chairman, we have asked this his

testimony, direct testimony, rebuttal testimony, and supplemental testimony be marked as described in the exhibit list.

CHAIRMAN BOYER: Thank you. They are no corrections to any of the --

Q. (BY MR. REEDER) Mr. Brubaker, are there any corrections or additions to your testimony that we need to make?

A. There are not.

CHAIRMAN BOYER: Okay. Thank you. They are any objections to the admission of Mr. Brubaker's direct, rebuttal and surrebuttal testimony together with the pertinent exhibits?

MS. SCHMID: No objection.

CHAIRMAN BOYER: They are admitted.

Q. (BY MR. REEDER) Mr. Brubaker, have you prepared a summary of your direct testimony, rebuttal testimony, surrebuttal testimony and the exhibits attached there to?

A. I have.

MR. REEDER: We have cause to be distributed for the record copies of the -- of the some but not all of the exhibits attached to his testimony for the parties to use in the summaries so they can follow more conveniently.

Q. (BY MR. REEDER) Please proceed, Mr. Brubaker.

A. Thank you. Members of the Commission, good morning.

What I would like to do is just walk through some of the presentation that appears in my exhibits. I certainly don't intend to take a long time or to go through every one. But I think there are some things that are very important in it. But particularly, the load data issue into perspective. And so to that end there are some copies of the exhibits attached to the exhibit list that's been distributed.

I want to start with load data. And then I'm going to talk about jurisdictional allocations. And finally, class allocations and what is our recommendation at the end of the day. But first starting with the graphs.

The first one is from Docket 01-035-01 September 2000 data year. And the reason I start here is because this is when people, including us, first started comparing what we were getting in terms of jurisdictional peaks and the sum of the class peaks that the Company was calculating for purposes of its class cost of service study. These are the differences in loads back in 2000. In my testimony I've got this case and all the prior six cases.

And I'm not going to take time with all of them but the point is: If you look at the data back in 2000 there was a pretty good correspondence between what we call the top down jurisdictional determination of peak and the bottom up determination of class loads.

Since the jurisdiction is composed of the class loads

you would think that the sum of the class demands at the time of the jurisdictional peaks that the company uses in its class cost study would be pretty close to the jurisdictional numbers that it calculates for purposes of allocating cost to Utah.

If there are unexplained differences of significance, at least over the longterm you have to call into question either, A: the class load data and the cost study is wrong. Or there is too much cost being allocated to Utah because the jurisdictional are numbers of wrong.

So we have always thought it very important to compare those two numbers and try to understand what might be the cause for any differences. And it's not my testimony that they will always have to be equal because there will be some issues like differences in loss factors and minor classes that are not in the class cost of service study. But overall, we think they would be fairly close. So as you can see in 2000 they were fairly close and there wasn't a huge issue.

If you go to the next graph which is for 12 months into December 2009, which is the last year's case, effectively. You can see that those differences have grown substantially. And in particular, in the summer months the class loads were far short of the jurisdictional peaks that the Company has calculated and used to allocate cost to Utah. These differences are about eight times or more than 10 times, actually, in magnitude from what they were back in the 2000

timeframe.

So we have been raising this issues in the last several cases and repeatedly been told, well, we decided back in 2000 that it wasn't worth reconciling the jurisdiction in the class loads. Well, in 2000, I guess I would have to agree those differences are not anything to get too exited about. But today they have grown to the proportion where I think we need to get excited about them.

And I'm happy to see that the -- that Rocky Mountain has taken a second look at this and come to the conclusion that there were some problems. Those problems started in 2004 when we first went to a forecasted test year and had a difference between the base year and the test year for revenue requirements.

And the issues that the Company has talked about that caused differences to occur in this case occurred in the last case. There's a six month overlap. So the data problems, including in the summer, that were -- are present now, evident in the Company's direct case were there in the Company's preceding rate case. So I take no comfort out of the fact that the two are the same. What it does, I think, it says that they were both wrong.

The next graph is this case, the 2010 data. And, again, the differences are quite significant, particularly in the summer months. Significant short falls appear. It says

the 12 months into June 2010. And then the final graph on this subject is from the Company's rebuttal case. And there are two sets of bars on this graph. The solid bars are the same as on the preceding grafts and the bars with the diagonals or slanted lines are from the Company's rebuttal.

And you can see that the realignment that the Company did improved the match in most months, but still leaves rather significant unexplained differences in the -- even in the very critical summer months where in July they were only able to reduce the difference from 496 megawatt to 423 megawatts.

And one of the reasons given for why we had 423 was that there were some load that wasn't counted. While -- that's only 25 megawatts so we're still -- have 400 megawatts or so difference that it still not explained and a similar thing occurs in August where only 30 megawatts of the 352 is explained by load that was admitted. So there are a whole lot of other things happening in there.

Some months the match got worse, which is particularly notable in October, where the difference went up quite a bit. The Company says that's due to whether it's a summer month or a winter month. But at the end of the day, why doesn't it line up with assumptions made for the jurisdictional allocation study?

So I think that there are remaining a lot of residual questions about the Company's last load data. And I like

Mr. Nune and other witness who have appeared, really don't have a lot of confidence in this load data. What we would ask you to do is to direct Rocky to continue to evaluate its load data sampling, to engage or to evaluate how it adjusts base year data to the test year data and to engage the parties in a meaningful process or discussion to develop an approach that is reliable. Because at the end of the day the differences between class and jurisdiction should either be minimal or explainable. And we are not at either point here.

Perhaps, when we have the next case and we have 12 months worth of data from the new load samples instead of two or three, maybe that will help bring the two into convergence. But there is no reason why either these numbers should not be same or that there should a rational explanation for the difference.

So there has been a lot of talk about what should you do with this load data problem and other issues. And I think, you know, what we would ask that you do is decide that the load data problem is unreliable and it's not really possible to make judgments about cost of service conclusions. And instead, allocate whatever revenue adjustment you find proper equally -- as equal percentage across the board while the existing schedules in order to maintain the current relationships, which I understand are presumed to be just and reasonable. I think that's the most prudent course of action

and that's the action that we would hope that we would take.

Second, I want to talk a little bit about the jurisdictional allocation method and whether it should apply to the class cost of service. I think the first point I would make is that the jurisdictional allocations are essentially a comprise among multiple states, multiple interests.

I guess, I've been involved in one degree or other with the interjurisdictional allocation issues since back whenever it was that Utah Power and Light and Pacific Power and Light merged together. And as anybody that's been close to the process knows, it's a lot -- a lot of discussion, a lot of issues, a lot of competing issues. And at the end of the day you hope that all the difference states resolve their differences enough, they give enough, one particular angle and everybody else does, that we can agree on something that's okay for jurisdictional purposes, may not be perfect for any other purpose, but at least it's within the range of reason. It gives the Company a half decent chance to collect a hundred percent of its costs when you add up the results from all of the jurisdictions.

And certainly, cost of service, cost causation principals are involved in some of the elements of the jurisdictional. But at the end of the day, it really is a comprise and I ask that you view it in that context.

The second note I would point out that the

differences between classes within a jurisdiction, in terms of load characteristics, load factors, seasonality, particularly, are much greater between jurisdictions. So what kind of a comprise might have a really small impact on the state at the jurisdictional level could have a really huge impact within the state between classes, say between a class that has a relatively steady use year around, such as schedules 8 and 9 than a class that's much more peaky like the residential class or schedule 6.

So keep that in mind, I ask you as you evaluate that and don't apply the jurisdictional allocation method, whatever it is, automatically to the class cost of service study.

And then I would finally note for background that in Docket No. 02-035-04, this Commission explicitly said it was not adopting the jurisdictional allocation method for purposes of class cost of service studies and that those issues would be dealt with separately.

And finally, that the Commission recently expressed a concern about the jurisdictional allocation method and its fairness. So I would ask if you have those concerns in your mind for jurisdictional purposes, don't apply that same method that causes you pause at that level to the class cost of service study at this point in time but rather wait until those issues, those concerns can be resolved.

And the final aspect I want to talk about is the

class loads and the allocation. And that's the remaining three drafts that are in the package before you. The purpose of this is just to highlight the differences in load characters among the classes and to point out why I think that the 12 CP needs to be revisited and why the 25 percent component is problematic.

The first page shows the major customer classes and how their contributions to the monthly peaks vary over time, over the 12 months of the year, and what the overall Utah jurisdictional load shape is. I want to point out that this is -- this is not the jurisdictional data that has been forecasted and questions have been raised about it. This is the basis year data, the actual 2008 data including whatever load sampling occurred in 2008. So we don't have that time shift issue with this data. And this looks like the same data we have seen in prior years so I'm confident that this is an accurate and good representation of what the different classes look like.

And obviously, some classes contributed a lot more to the July and August summer peaks than others. Some like eight and nine that you see down across the bottom of the draft are fairly constant to month to month and are not contributing to that load shape. Obviously, residential class in schedule 6 are contributing to that load shape by taking a lot more power in the summer months than they do in other months.

And as we all know the -- you know, the Company itself has shifted from a winter peaker way back when to a summer peaker now. And summer peaks are continuing to be the fastest growing peaks on the system, as the data from the last couple of cases have clearly demonstrated.

And I want to out point also as I did in testimony, that Dr. Abdella for the division did a statistical analysis of the monthly peaks and concludes that the summer loads -- summer peaks were statistically significantly different than the loads in the other months of the year. I certainly agree with that. We have been believing that to be the case for some time now.

The second draft simply highlights what happens on a typical summer day for the major classes. And as you progress across from midnight one day to the next day, the load starts out around 2000 megawatts in the middle of the night and almost doubles to 4000 megawatts in the middle of the afternoon when it is peak time. And company has to stand ready to serve that load, it takes capacity in place or purchase power contracts in place that have pretty much fixed capacity costs, we take our pay obligations to them and the purchase of that is to serve that kind of a load shape as opposed to a steady load shape.

Then the third graph just shows the cycle on a seven day -- seven-day week. Again, you can see it's pretty much

repeated. I've shown here schedule 9 and the jurisdiction in total. Obviously, they are wide differences among blue characteristics from one customer class to another. And when I look at all of that and consider the kinds of costs that are incurred to meet those varying loads, I can conclude that the 12 CP versus summer peak doesn't accurately or adequately captures those load shapes.

And second, that the 25 percent energy component has the effect of shifting a lot of the costs that's incurred to meet the -- these almost, not quite, needle peaks but are very pronounced. Peak -- daily peaks, weekly peaks, and seasonal peaks for other classes that has the effective shifting a lot of the costs onto the high load factors classes who are fairly steady users.

So I think this is another reason not to adopt the jurisdictional 12 CP's 75.5 for class purposes and not to really adopt any particular cross of service methodology in this case. But rather to recognize that there is no really valid cost data -- or load data that I think most parties seem to be in that camp, that can be reliably used for that purpose.

So we ask at the end of the day that what happens in this case is that there be an equal percentage spread applied to the current schedules which presumably are just and reasonable. Thank you.

MR. REEDER: That includes your summary?

THE DEPONENT: It does.

MR. REEDER: The witness is available for cross-examination.

CHAIRMAN BOYER: Thank you, Mr. Brubaker. Let's turn to Ms. Hogle first.

CROSS-EXAMINATION

BY MS. HOGLE:

Q. Just have a few questions. Mr. Brubaker, can you turn your direct testimony on page 21?

A. Okay.

Q. Lines 23 and page 22 and lines two and three.

A. Yes.

Q. You state that reliance on interjurisdictional allocation study is not appropriate because there is not necessarily a cost causation basis to the study anymore; is that correct?

A. Yes, that's part of it. Yes.

Q. And you're proposing instead that instead of using a 75 percent demand 25 percent energy classification and a 12 coincident peak cost allocation method, it is now appropriate considering the summer peaking months, to use a 100 percent demand classification and 3 coincident peak cost allocation method, is that true?

A. Yes. We can hear about the class cost of service allocations.

Q. So if you were up to you alone, Mr. Brubaker, would you recommend that a 3 coincident peak cost allocation method with 100 percent demand factor be used for interjurisdictional allocation of costs giving your cost causation argument?

A. If I were looking strictly as cost causation I think I would be inclined in that direction. But I realize there are lots of other factors that go -- as I said, determining the jurisdictional allocation factor that make sense for the utility.

Q. Now, subject to check, would you agree with me that assuming it were possible to use your recommendation for interjurisdictional allocation of costs, the cost to Utah rate payers in this case would increase by approximately $70 million?

A. I haven't done those calculations.

Q. I understand that. Subject to check is what I said.

A. Well, I don't know how I would check it at this point in time.

MS. HOGLE: Okay. Well, thank you very much.

CHAIRMAN BOYER: Thank you, Ms. Hogle.

Ms. Schmid, any questions for Mr. Brubaker?

MS. SCHMID: Yes.

CROSS-EXAMINATION

BY MS. SCHMID:

Q. Good morning.

A. Good morning.

Q. Can you please describe the operational characteristics of a wind turbine?

A. Turns when the wind blows, basically, that's what I would say.

Q. Do you have any thoughts as to the capacity factor for a wind turbine?

A. Typically -- well, it depends on location and design. I would say what we typically say is 20 percent to 30, maybe 35 percent, on good locations.

Q. Is a wind turbine a good substitute a combine turbine?

A. No, it's not.

Q. Because -- and why?

A. Well, they are serving different purposes. To a large extent the windmills wind turbines are taking advantage of existing meteorological conditions to generate energy. It takes very a high capitol cost to build those turbines, of course, but it -- and you get energy when the wind blows.

Q. And since you only get energy when the wind blows, they were not what would consider dispatchable and -- dispatchable?

A. They are not dispatchable in the normal sense of the word that you think of for utility grade fossil fired units.

Q. Better answer than my question. Thank you. So do

the combined turbines provide a good service of dependable capacity on the system?

A. Yes.

Q. Are they used to firm up wind resources?

A. They may be. But in general, I think that when resources get firmed up with what resources the Company has available at the time to make that happen there are a variety of things that go into that. The integration of wind turbines or wind power into any utility system is an evolving science and lots of things we need to learn about that to be confident about all those issues.

Q. Turning now to another topic, am I correct that you testified that all fixed production costs should be classified as demand related?

A. Yes.

Q. Is the justification for your position founded in cost accounting principals?

A. No, I think it's founded in cost caution principals.

Q. Am I correct that you testified demand related cost should be allocated on the three CP or average and excess demand method?

A. That was my conclusion after reviewing the data in this case.

Q. Does the AED method allocate a portion of demand related costs on average command?

A. It allocates a small part on average demand and the balance on the difference between each classes share of the difference between its not coincident peak and its average. They turn out to be quite enclose for the major classes.

Q. From a cost of service perspective, is average demand mathematically equivalent to energy?

A. I think you have to ask that question in the context of the allocation factor that you are using. And so it's not -- not a single answer in all cases.

Q. Are you familiar with NERC's electric utility cost allocation manual?

A. Yes.

Q. What I'm handing out is -- they are not stapled. I apologize. The cover sheet from the NERC manual and then page 49.

MR. REEDER: Counsel, could you represent which manual this is? Is this '78 manual? '92 manual? Or a more recent manual?

MS. SCHMID: I'm getting there. Thank you very much. It is the '92, January '92 manual.

Q. (BY MS. SCHMID) Mr. Brubaker, could you turn to page 49 which is the text page in the group of papers I passed out.

A. Yes.

Q. Are you aware that NERC has -- categories that the ADE method as an energy waiting method for class identifying

and allocating producing plant?

A. Yeah, they do put it in that category.

MS. SCHMID: Okay. Thank you. Could the Division -- actually. Okay. I was unable for determine exactly where my cocounsel, Mr. Ginsburg's, exhibits stopped. So I'm wondering if to avoid confusion, if we could perhaps mark this as DPUCOS Cross Exhibit 1.

CHAIRMAN BOYER: Yeah, I can't find where Mr. Ginsburg left off either. So we will mark it as DPUCOS Cross Exhibit 1.

Q. (BY MS. SCHMID) Could you describe the 3CP method?

A. Sure. The 3CP method uses the average of the contributions of each customer class to the three highest summer peak demands on the system. For an allocation case factor for demand related generation and transmission.

Q. Does the 3CP method take into consideration class load responsibility during other months of the year?

A. It does not consider class loads during other months of the year in developing the allocation, but it recognizes that having allocated capacity sufficient to meet the summer peak loads that capacity is available for customers to meet their loads in other months of the year.

Q. So with regard to the PacifiCorp generation fleet, would you agree that it has been stained to meet the Rocky Mountain Power summer peak?

A. Sure.

Q. Why would PacifiCorp build base load units to meet Rocky Mountain Power summer peak?

A. Because the objective of system planning is to meet the total load using the Company's resources that produces the lowest overall total cost taking into account both fixed and variable costs.

Q. Why would PacifiCorp build wind farms to meet that 3-month summer peak?

A. Well, I think -- a lot -- maybe a lot of wind farms are built because you have renewable standards. But beyond that, it produces a displacement ability whenever the wind blows.

Q. So it displaces traditional fossil fuels?

A. You hope that it does, yeah.

Q. Why would PacifiCorp build hydro-units to meet Rocky Mountain's 3-month summer peak.

A. They haven't built any recently. The ones that we built originally were because they were natural resources that could be tapped that what was then determined to be a reasonable cost.

Q. Just one moment. Keeping in our line of questions concerning coincident peaks, I would like to discuss class coincident peaks and jurisdictional peaks. Could you please turn to page 16 of your direct testimony.

A. Okay.

Q. In that section of your testimony do you describe a retrospective comparison of the differences between class and jurisdictional loads over several rate cases?

A. Yes.

Q. And your the rate cases you discuss go back to the to 2001 case; is that correct?

A. Correct. Yes.

Q. Is it correct that your conclusion is that the differences have been growing?

A. Yes.

Q. Are you aware of any differences among these rate cases, the ones that you discuss on page 16 of your testimony, other than their timing, particularly, in 2001 and 2003 rate cases versus the more recent cases?

A. In the more recent cases starting in the 2004 case that's when there was a change from the historic test year for a forecasted test year. And when the problems of the mismatch -- I think clearly is demonstrated from the graphs got a lot bigger.

Q. Since we are looking at forecast test years and historical test years, is it possible that the much smaller differences between class coincident and coincident jurisdiction peaks evident in these two rate versus the more recent cases, is a function of this difference rather than

trends in electric use in the rate classes subject to load sampling?

MR. REEDER: Could you restate that question? I'm not sure I understand it.

CHAIRMAN BOYER: I'm not sure I did either.

MR. REEDER: I was trying to listen and I think I lost it.

Q. (BY MS. SCHMID) So we've discussed and established that the 2001 and 2003 rate cases were based on historical test years and the more recent ones have been based on forecasted test years, right?

A. Correct.

Q. So turning to the smaller differences between class coincident and jurisdictional peaks in the 2001 and 2003 cases, and comparing them to the more recent cases, could the differences be a function of the historical versus forecasted test years rather than trends in electricity use?

A. Let me try it this way.

Q. Okay.

A. Stop me if I'm going in the wrong direction. I think that the differences between the top down bottom up appear to a substantial extent to be due to the test year issue forward versus backward and the ability to line those up. I think it also is influenced by the growing summer load and the fact that the existing load research samples may not be captures

those differences.

Q. Now, turning to class coincident peaks. Is it correct that you believe that the class coincident peaks used in the Company's rebuttal testimony are more reasonable for cost of service in this case than those used in the Company's initial filing?

A. I think they are. They explain more of the difference. They reduce the gaps but I'm not satisfied if they are accurate enough to use.

Q. Have you performed analysis to arrive at your conclusion?

A. Well, I think one of the exhibits that I talked about during my summary was from my surrebuttal testimony and then I supplemented the draft itself with the observations about the fact that loads omitted from the class cost of service study only explain a very small portion of the difference. I mean, that's the analysis that I did and that's my basis of those statements. The remaining substantial unexplained differences.

But I do think if you are going to choose one or the other, that the ones in the rebuttal testimony are more logically determined and should be more accurate than the ones that were originally filed.

Q. So turning to that initial filing, when were you aware that the initial filed class loads had -- well, I'll just

call it a problem.

A. Pretty after we started evaluating the filing of the case we knew that this was susceptible to problems because we have been seeing these growing differences in prior cases and at least in some cases when we didn't have settlements we had testimony questioning those departures and asking Rocky Mountain what's going on.

Q. Did you address the problem in your direct or rebuttal testimony?

A. I addressed it in my direct testimony for the first time.

Q. And what analysis did you perform to check the reasonableness of the class loads presented by the Company in its initial filing?

A. The analysis that I did is what I presented in my direct testimony, which was to compare the top down with the bottom up numbers and point out that historically they didn't used to be much of a difference but today the differences are extraordinarily large. And we asked data request back to Rocky Mountain Power Company about those issues.

Q. And so that relates back to the exhibits that you passed out this morning --

A. Yes.

Q. -- that were in your direct testimony?

A. Yes.

Q. Do you -- last line of questions. Do you believe that rates should be cost based?

A. Yes.

Q. Within what limits? 5 percent? 10 percent? 2 percent?

A. I never try to put a specific bandwidth on them. In any case you have to evaluate, do I have a good or enough data to move from where I am to where I think is a better place? Is the load data good? Is the cost study good? What are the impacts that we would achieve that we would have to the various classes by moving there?

Because gradualism has to always be a -- play a role in the rate design and revenue allocation process. So I mean, over time I think I would like to see getting to whatever the cost study says is where we go. But, obviously, going to have some -- some concerns about data which may temper that.

Q. What do you think about the Company's 5 percent position with regard to -- they used to have a 10 percent plus or minus and now, I believe, it has a 5 percent if I'm characterizing it.

A. Honestly, I can't remember what the 5 percent is on. So I really haven't -- I really rather not comment on that at this point.

MS. SCHMID: Could I have just one moment?

CHAIRMAN BOYER: Yes.

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

Could I please move for the admission of DPUCOS Cross 1, which consists of the title page from the Electric Utility Cost Allocation Manual 1992 and then page 49 from that manual.

MR. REEDER: No objection.

CHAIRMAN BOYER: Any objection from any other parties? It's admitted. Thank you Mr. Schmid.

Mr. Proctor?

MR. PROCTOR: No questions. Thank you.

CHAIRMAN BOYER: Mr. Dodge, any questions of Mr. Brubaker?

MR. DODGE: Just one, Mr. Chairman, thank you.

CROSS-EXAMINATION

BY MR. DODGE:

Q. Mr. Brubaker, are you aware of another event that happened in July of -- following the July of 2002 task force report, the decision made by the Company to stop calibrating the class loads to the jurisdictional loads?

A. I'm aware that took place. Is there another -- is that the question or am I wearing out?

Q. Is that something else that occurred from the -- say the 2001 to -- 2000, 2001 time period --

A. Yes.

Q. -- to the current?

A. Yes.

MR. DODGE: Okay. Thank you. No further questions.

CHAIRMAN BOYER: Thank you Mr. Dodge.

Mr. Gardiner, any questions?

MR. GARDINER: As usual I have two or three, Mr. Chairman.

CHAIRMAN BOYER: Go ahead.

CROSS-EXAMINATION

BY MR. GARDINER:

Q. Your opinion, isn't it, that the class load data is not sufficiently reliable to use in a class cost of service study, correct?

A. Correct.

Q. And by that you mean both through load data filed originally and then the supplemental load data filed in November?

A. Correct.

Q. In fact, would you take a look at Exhibit 1.1SR, that's the draft that shows both of those?

A. Yes.

Q. If you look at the month of October, you see the blue striped column?

A. Yes.

Q. So that would be the class load -- the class load exceeding jurisdictional load for October. It says 999 megawatts, right?

A. Correct.

Q. That's impossible, isn't it?

A. I don't know that's impossible. That's what the measurement said.

Q. Well, isn't it fair to say that at a minimum, you can't explain it, why it would be like that?

A. Certainly that's true.

Q. Likewise, if you look down at the bottom columns where you see the original filing, class total exceeds is less than the total jurisdiction?

A. Yes.

Q. Of the original filing is 3590 megawatts?

A. Right.

Q. In then rebuttal filing it's only 318 megawatts. It's fair to say that you can not explain why the difference between those numbers either, can you?

A. It's mostly due to the October number, which is why I put line 14, which is looking at the sum of the absolute figures and not letting that odd 999 megawatt number in October cancel out the under determination of loads in the summary. So in that case it's 4400 megawatts and the original 3000 in the revised.

Q. Isn't it fair to say that Rocky Mountain Power's class load data analysis is bad?

A. Certainly suspect. I'm not satisfied with it and not

confident in using it in any cost of service study.

Q. And when you say it's -- not confident, it should be used in any cost of service study, you include both the original cost of service study filed by Rocky Mountain Power and the more recent cost of service study filed in November, correct?

A. Correct.

Q. Would you take a look at the Exhibit UICA 1.6D. That's the one where you attempt to graph out the hourly load from a system peak day. It looks like this. It looks like a rainbow. I believe you said that this shows the effect of a major customer classes; is that correct?

A. That is correct.

Q. And schedule ten, the irrigators, isn't listed on the chart, is it?

A. That's correct.

Q. Is that because they are not a major class?

A. Certainly not because they are not important. But it's because in terms of the load characteristics is much smaller than these others.

Q. It doesn't have much of an effect on the system peak day?

A. Not in terms of absolute megawatts.

Q. If you would have, you would have put it on the graph?

A. Correct.

MR. GARDINER: I don't have any other questions for this witness.

CHAIRMAN BOYER: Thank you, Mr. Gardiner.

Commissioner Allen? Any questions Mr. Campbell?

Nor I.

Redirect, Mr. Reeder?

MR. REEDER: May I confer for just a minute?

CHAIRMAN BOYER: You may.

MR. REEDER: We have conferred and I have no questions.

CHAIRMAN BOYER: Thank you, Mr. Reeder.

And thank you, Mr. Brubaker. Always a pleasure to have you in our hearing room.

THE WITNESS: Thank you, sir. Always a pleasure to be here.

CHAIRMAN BOYER: Thank you. They all say that in Missouri. We'll take it as a compliment.

MR. HICKEY: Actually, there are some places where it's not pleasure to be.

CHAIRMAN BOYER: Well, that will conclude our hearing in this portion of the case then. On behalf of the Commission I would like to thank you-all for your participation and wish you-all happy holidays. We'll wait to see your briefs, your post-hearing briefs. And in due course we'll issue an order.

Thank you-all very much.

MS. HOGLE: Mr. Chairman, I'm sorry. I think a few of the parties who are here now were not at the hearing when you announced due date for the briefs and so I want --

CHAIRMAN BOYER: I would have done that but I could not find my notes. I think that I was so busy driving the bus that I didn't jot it down. I don't even know what the date was.

MR. PROCTOR: January 11th was my recollection.

MR. HICKEY: January 11th was my recollection.

MR. PROCTOR: That sounds right.

MR. REEDER: We were going to set it Sunday but we choose not to set it.

CHAIRMAN BOYER: That's exactly so. Okay. For Mr. Gardiner's benefit thank you. Well, thank you-all again. Travel safely.

(End of Proceedings at 11:47 a.m.)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) Ss.
COUNTY OF SALT LAKE)

IS TO CERTIFY that the hearing was taken before me, Katie A. Harmon, Certified Shorthand Reporter in the State of Utah, residing in Salt Lake City.

That the testimony of said witness was by me reported in Stenotype, and thereafter caused to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages, numbered from 980 to 1069, inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 21st day of December, 2009.

_____

KATIE A. HARMON, RPR