

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT:	Public Service Commission 160 East 300 South Salt Lake City, Utah
DATE:	November 1, 2010
TIME:	8:02 a.m.
REPORTED BY:	Kelly L. Wilburn, CSR, RPR

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1 NOVEMBER 1, 2010

8:02 A.M.

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

3 CHAIRMAN BOYER: On the record in Docket
4 No. 09-05 -- or rather 09-035-15. And it's captioned:
5 In the Matter of Rocky Mountain Power -- can't speak
6 today. In the Matter of the Application of Rocky
7 Mountain Power For Approval of Its Proposed Energy
8 Cost Adjustment Mechanism.

9 And just so that the record will reflect
10 this, we understand that the intention of the parties
11 is to hear from the Rocky Mountain Power witnesses
12 today and then all other witnesses tomorrow. Of
13 course, we can be a little bit flexible there.

14 And we understand that Dr. McDermott and
15 witness Hadaway need to get their testimony completed
16 today; is that correct? By the end of today?

17 MR. MONSON: (Moves head up and down.)

18 CHAIRMAN BOYER: Okay. Do you want to take
19 them in a different order?

20 MR. MONSON: No, I --

21 CHAIRMAN BOYER: Because the order I have is:
22 Duvall, Griffith, Bird, McDermott, and Hadaway.

23 MR. MONSON: Yeah, the only difference would
24 be Dr. Hadaway would go before Dr. McDermott. But I
25 think we can get them in today. And if Dr. McDermott

1 needs to stay over tomorrow morning, he can.

2 CHAIRMAN BOYER: Okay. Very well, we'll just
3 do this in the traditional way. We'll let Rocky
4 Mountain go first. And then we'll just work our way
5 around the room so that I can kind of keep track of
6 who has participated and who hasn't.

7 We will allow for cross examination and
8 questioning from the Commissioners, and then redirect.
9 And with that let's take appearances then, beginning
10 with you, Mr. Monson.

11 MR. MONSON: Gregory Monson and Yvonne Hogle
12 for Rocky Mountain Power.

13 CHAIRMAN BOYER: Thank you.

14 Mr. Proctor, welcome back.

15 MR. PROCTOR: Thank you, Mr. Chairman. Paul
16 Proctor on behalf of the Utah Office of Consumer
17 Services.

18 CHAIRMAN BOYER: Ms. Schmid?

19 MS. SCHMID: Patricia Schmid, with the
20 Attorney General's Office, for the Division of Public
21 Utilities.

22 CHAIRMAN BOYER: Mr. Dodge?

23 MR. DODGE: Gary Dodge with UAE.

24 MR. MICHEL: Steven Michel, Western Resource
25 Advocates.

1 MS. HAYES: And Sophie Hayes with Utah Clean
2 Energy.

3 CHAIRMAN BOYER: Oh.

4 MS. SMITH: I'm Holly Rachel Smith. I'm here
5 to enter an appearance on behalf of Wal-Mart Stores,
6 Inc. and Sam's West, Inc. Thank you very much.

7 CHAIRMAN BOYER: Thank you. Would you like
8 to sit at the bar, or? I mean, you're welcome --

9 MS. SMITH: I don't have questions for
10 witnesses today, so I thought I'd leave those seats
11 open for those who do.

12 CHAIRMAN BOYER: Very well.

13 MR. LACEY: Eric Lacey here for Nucor.
14 Likewise I don't think I'll have any questions today,
15 so I'll sit back here.

16 CHAIRMAN BOYER: Okay. Can I sit back there
17 too?

18 Okay. Well, let's begin, Mr. Monson, with
19 your first witness.

20 MR. MONSON: Our first witness is Gregory
21 Duvall.

22 CHAIRMAN BOYER: Good morning Mr. Duvall.

23 MR. DUVALL: Morning.

24 CHAIRMAN BOYER: Have you been sworn in this
25 proceeding already?

1 MR. DUVALL: Yes, I have.

2 CHAIRMAN BOYER: I thought so. I thought you
3 looked familiar.

4 MR. DUVALL: I think several times.

5 GREGORY N. DUVALL,

6 called as a witness,

7 having previously been duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MONSON:

11 Q. Mr. Duvall, would you please state your name
12 for the record?

13 A. Yes. My name is Gregory N. Duvall.

14 Q. What's your position and -- the usual
15 introduction.

16 A. I'm the director of long-range planning and
17 net power costs for PacifiCorp. I'm located at 825
18 Northeast Multnomah, Suite 600, in Portland, Oregon.

19 Q. And you have prepared testimony in this case.
20 I think actually nine pieces of testimony throughout
21 the entire case. Is that roughly right?

22 A. That's roughly right.

23 MR. MONSON: And Mr. Chairman, we weren't
24 sure, I mean, all the other testimony has been
25 admitted in the other phases for Mr. Duvall.

1 We did list on our exhibit list his direct
2 testimony which was originally filed in the case,
3 simply because it was dealing with design issues and
4 this is the design phase. But it's already been
5 admitted. But --

6 Q. (By Mr. Monson) So I'll just go to your
7 testimony in this phase, Mr. Duvall. Did you prepare
8 supplemental direct testimony in Phase II Part 2 of
9 this case which was filed on August 4, 2010?

10 A. Yes.

11 Q. And rebuttal testimony filed September 15,
12 2010?

13 A. That's correct.

14 Q. And surrebuttal testimony filed on
15 October 13, 2010?

16 A. That's correct.

17 Q. And do you have any corrections you wish to
18 make to any of that testimony?

19 A. No, I do not.

20 MR. MONSON: We would offer the testimony of
21 Mr. Duvall, the supplemental direct testimony, the
22 rebuttal testimony, and the surrebuttal testimony
23 filed in this phase of this docket.

24 CHAIRMAN BOYER: Thank you. Are there any
25 objections to the admission of Mr. Duvall's

1 supplemental direct testimony, rebuttal testimony, and
2 surrebuttal testimony?

3 MS. SCHMID: No objection.

4 CHAIRMAN BOYER: Seeing none, they are
5 admitted.

6 (Gregory N. Duvall supplemental direct,
7 rebuttal, and surrebuttal testimony
8 was admitted.)

9 Q. (By Mr. Monson) Mr. Duvall, do you have a
10 summary of your testimony?

11 A. Yes, I do.

12 Q. You can go ahead, please.

13 A. Okay. Good morning, Commissioners. As
14 Mr. Monson identified, I've had four pieces of
15 testimony I'd like to just summarize that deal with
16 the -- specifically address the ECAM design. I
17 believe the Company's proposed ECAM design is in the
18 public interest because it's simple to understand and
19 sets up a fair regulatory process.

20 In my direct testimony I describe the
21 Company's energy cost adjustment mechanism, or ECAM.
22 Like the energy balancing account, or EBA, that was in
23 effect in Utah until the early '90s, it does not
24 include any deadbands or sharing bands but relies on
25 prudence audits to ensure that customers only pay

1 prudently-incurred costs.

2 The ECAM is based on an annual true up of
3 forecast net power costs to actual net power costs
4 based on the 12 months ended September 30th each year.
5 With the Company filing December 15th of each year,
6 and rates becoming effective on February 15th of the
7 following year.

8 The Company proposes these rates to become
9 effective subject to refund, allowing parties
10 sufficient time to conduct a prudence review.

11 I show that general rate cases are no longer
12 adequate to capture net power costs. And history
13 shows the Company has consistently under recovered net
14 power costs. The ECAM is a simple and straightforward
15 mechanism to allow the recovery of prudently-incurred
16 net power costs. Nothing more, nothing less.

17 The Company suggests the ECAM could be put in
18 place as a pilot program, with a process to review the
19 ECAM prior to making it permanent.

20 In my supplemental direct testimony I address
21 renewable energy credits revenues, or REC revenues,
22 and wheeling revenues. I demonstrate that REC
23 revenues should be included in the ECAM, since RECs
24 and energy are generated from the same resources at
25 the same time.

1 With regard to the timing, I recommend that
2 the REC revenues that have been deferred since
3 February 2010 should be included in the ECAM along
4 with REC revenues going forward. I also indicate the
5 Company would not oppose inclusion of wheeling
6 revenues in the ECAM if the Commission so desired.

7 In my rebuttal testimony I address a number
8 of issues, but will limit my summary to the issues
9 that are contested issues and are not addressed by
10 Dr. McDermott or Mr. Bird.

11 The first issue is the load growth adjustment
12 mechanism proposed by various parties. The Company's
13 proposed ECAM offsets net power costs with increases
14 in net power cost revenues. This is consistent with
15 the matching principle, where costs are matched with
16 revenues.

17 Various parties propose offsetting net power
18 cost increases with increases associated with non-net
19 power cost revenue increases. Net power cost
20 increases should not be offset with generation,
21 transmission, distribution, or any other revenue
22 increases. The load growth adjustment mechanism
23 proposed by the other parties violates the matching
24 principle.

25 The second issue is the treatment of RECs.

1 My testimony shows that REC revenues should be
2 afforded the same treatment as net power costs, as
3 I've previously described.

4 I point out that passing through 100 percent
5 of REC revenues to customers while only passing
6 through 70 percent of net power costs is inequitable.
7 They are both based on forecasts in rate cases, and
8 they are also of similar magnitude.

9 The third issue is a concern over passing
10 through the risk of hydro through the ECAM without
11 passing through the benefits of hydro in base rates,
12 given the use of the revised protocol instead of roll
13 in.

14 I show that the revised protocol does not
15 preclude all of the hydro benefits to flow through to
16 Utah. In fact, Utah benefits from reserves provided
17 from the hydro that's located in the West balancing
18 area under the revised protocol.

19 I also note that no party has demonstrated
20 that there is any harm to Utah customers as a result
21 of including hydro in the ECAM. And that this
22 perceived concern is temporary, given that the Company
23 has filed the -- modified the revised protocol in a
24 manner that will potentially result in Utah
25 effectively receiving rolled in for the next six

1 years.

2 The final issue I will address is auditing.
3 First, auditing is a primary expertise of the
4 Commission and parties and is done today.

5 Second, spending less time on modeling issues
6 should allow the parties to spend more time on
7 auditing. Just and reasonable rates should not be a
8 function of contests over modeling, they should be a
9 function of prudence.

10 Third, prudence is a powerful driver of
11 Company behavior and should not be underestimated as a
12 means of incenting the Company to do the right thing.

13 It is not reasonable to assume that the
14 Company's traders and resource planners will
15 cavalierly stop trying to achieve least-cost power
16 supply if an ECAM is adopted without deadbands or
17 sharing mechanisms.

18 Even if you assume they would not continue to
19 do so out of a sense of duty, they certainly will
20 continue to do so because they know their decisions
21 are subject to prudence reviews.

22 Finally, I would note that the auditing of
23 actual net power costs was effectively implemented as
24 a control mechanism under the EBA, and is apparently
25 still adequate in the case of Questar Gas's gas

1 balancing account.

2 In my surrebuttal I further respond to the
3 unfairness of the load growth adjustment mechanism,
4 and the proposed treatment of REC revenues in a manner
5 that is inconsistent with the treatment of net power
6 costs. As well as cost allocation issues raised by
7 Mr. Brubaker for the first time in his rebuttal
8 testimony.

9 In summary, I would note that the Company's
10 proposed ECAM is a simple, straightforward mechanism
11 designed to fulfill the regulatory compact of
12 providing low-cost service to customers in return for
13 the Company recovering its prudently-incurred net
14 power costs. Thank you.

15 MR. MONSON: Mr. Duvall is available for
16 cross examination.

17 CHAIRMAN BOYER: Okay. Thank you,
18 Mr. Duvall.

19 I'm tempted to go to the Division first, but
20 then I'll lose track. So I'm thinking we'll just hear
21 from Mr. Proctor first, if you have any cross
22 examination of this witness.

23 MR. PROCTOR: Losing track, your Honor, I'm
24 sorry?

25 CHAIRMAN BOYER: If I start with the Division

1 I'm afraid I'll lose track and swing all the way
2 around the room, as I typically do. So are you
3 prepared to do your cross examination now?

4 MR. PROCTOR: Yes, I am.

5 CHAIRMAN BOYER: Very well. Proceed.

6 CROSS EXAMINATION

7 BY MR. PROCTOR:

8 Q. Mr. Duvall, do you have your testimony there,
9 I'm certain?

10 A. Yes, I do.

11 Q. Do you also have Mr. Brubaker's testimony
12 there with you at the?

13 A. His direct, or rebuttal, or?

14 Q. All three.

15 A. I believe I have all three.

16 Q. Okay. I just didn't want to interrupt later
17 on. I wanted to make certain you have it.

18 A. Okay.

19 Q. If you could turn to your rebuttal testimony,
20 page 6? It's the first full paragraph, that begins
21 with the word "Third"?

22 A. Yeah, line 121.

23 Q. One twenty -- yeah, you're correct.

24 A. Thank you.

25 Q. And this particular part of your rebuttal

1 testimony is referencing deadbands and sharing bands
2 that parties have recommended; is that correct?

3 A. Yes.

4 Q. One of the things that you said there on
5 line 21 (sic) is:

6 "Cost disallowances based on
7 artificial percentages are not effective
8 in influencing the conduct of the
9 decision makers."

10 What artificial percentages were you
11 referring to?

12 A. Well, these are the 70 percent/30 percent
13 that the various parties have proposed in this
14 proceeding.

15 Q. And why do you believe that they're
16 artificial?

17 A. Well, I don't recall having read anything
18 about the basis for why 70/30 is the right level of
19 incentives. And I think the evidence in the case
20 shows that across the country -- Mr. McDermott has
21 provided all this information -- that there's either
22 no sharing bands or very small sharing bands.

23 Q. So it's the Company's proposal, however, to
24 place a hundred percent of those ECAM differentials on
25 ratepayers, is it not?

1 A. That's correct.

2 Q. So isn't 100 percent equally artificial?

3 A. Well, it's consistent with, you know, a fair
4 allocation method, where the Company receives its
5 prudently-incurred costs for providing reliable and
6 low-cost service to customers.

7 Q. A fair allocation method. Now, under the
8 current method the Company files the general rate
9 case. The Commission determines the rates that are
10 necessary to pay your costs -- prudently-incurred
11 costs and to give you an opportunity to earn your
12 authorized return. Is that a fair statement?

13 A. That is a fair statement of what's intended
14 to happen. I think the evidence that we've provided
15 in this case shows that that's not the results that
16 have been occurring.

17 Q. Well, let's talk about the intended result,
18 because the hundred percent to ratepayers under the
19 ECAM, or the 70/30, is an intended result, isn't it?

20 A. I, I guess so.

21 Q. Well, so under the current system the Company
22 gets an opportunity to make its case in a general rate
23 case. And then between that order and the next
24 general rate case the Company essentially assumes a
25 hundred percent of the prudently-incurred costs. And

1 it covers it out of the rates that were determined to
2 be just and reasonable, correct?

3 A. That's the intent, yes.

4 Q. And so now your intent is to simply shove all
5 those costs, at least as to net power costs, over to
6 ratepayers on a pass-through basis; is that correct?

7 A. That is absolutely not correct. It's -- I
8 think the term that's confusing here is a
9 "pass-through basis." This is not a pass through.
10 It's a fully audited set of actual net power costs
11 that the Commission has the ultimate ability to
12 disallow if they find imprudence.

13 Q. The Company's proposal for an audit is a
14 prudence review, correct?

15 A. That's correct.

16 Q. The next sentence down you state that those
17 artificial percentages would not be effective in
18 influencing the conduct of the decision makers who:

19 "...in this instance are the power
20 traders and fuel negotiators who must
21 fulfill the obligation to serve
22 customers."

23 Is there a wall between the Company and its
24 rate structure and net power costs and prudence, and
25 the power traders and fuel negotiators?

1 A. I don't understand what you mean by a "wall."

2 Q. Well, are they making these decisions without
3 regard to the general rates that are set, and the
4 ratemaking policies that exist, and the rates spread,
5 for example, and the rate design; are they making
6 these decisions totally independent of those issues?

7 A. Well, I, I'm not a trader, so I don't know
8 how they particularly think. But they're making
9 decisions on a daily basis, based on the loads and
10 resources that they see coming at them.

11 And, you know, they have markets they can go
12 to. They have generators they can go to. And they,
13 you know, given the circumstance they will strive to
14 meet the loads at the lowest cost at the time, given
15 all of the variables that are in front of them.

16 Q. Will the ECAM change the way that they --
17 that those power traders and fuel negotiators conduct
18 their business?

19 A. No, it won't.

20 Q. Well, if they're not affected by the
21 artificial percentages, would that be fair to state
22 that they're not affected by any percentage of who
23 gets -- who has to pay?

24 A. They're affected by making sure that they
25 operate in a prudent manner. It's not only, you know,

1 the regulatory overview, it's also our own management
2 overview, in terms of making sure that we are doing
3 the best thing for customers all the time.

4 Q. So you wouldn't need an ECAM, then, to modify
5 the way that they are conducting their business?

6 A. That's correct. The ECAM is really for
7 making sure that the prudently-incurred costs are
8 recovered.

9 Q. So it's a recovery mechanism. It's not an
10 issue whether or not you would -- it will change the
11 conduct of the Company in any way?

12 A. That's correct.

13 Q. So it just shifts the burden from a
14 company -- which in a general rate case you're given a
15 rate and you have to work within it or pay those
16 costs -- and shifting it to the ratepayers, so that
17 outside of a general rate case they have to pay the
18 difference in costs. That's all you're doing with an
19 ECAM, isn't it?

20 A. Well, I would consider it restoring the
21 regulatory bargain.

22 Q. What is the "regulatory bargain," Mr. Duvall?

23 A. It's providing low-cost reliable service to
24 customers in return for recovery of prudently-incurred
25 costs.

1 Q. And doesn't that bargain also recognize that
2 you're a monopoly and therefore must be regulated?

3 A. Yes.

4 Q. Next I want you to turn, please, to page 18.
5 It's the dialogue beginning on line 407. Do you have
6 it there, sir?

7 A. Yes, I do.

8 Q. Thank you. The question is: How do you
9 respond to the concerns that Utah customers should not
10 be exposed to hydro risk when the base rates do not
11 include all of the hydro benefits?

12 When you use the term "hydro risk," to what
13 are you referring?

14 A. The hydro risk I think has been termed in
15 this docket as the actual hydro being passed through,
16 through the ECAM. The risk of the actual hydro being
17 higher or lower than some kind of normal level.

18 Q. Why would that pose a question in the
19 parties' minds that perhaps the hydro benefits are not
20 also in base rates? In Utah.

21 A. Well, I, I would look to their testimony as
22 to why that is. But I think it was a -- that the
23 statements that were made was that we -- that the Utah
24 customers should not be exposed to the risk of hydro
25 absent getting the benefits of hydro.

1 And what I've pointed out in my testimony is
2 there's pretty significant benefits of hydro that flow
3 to the total system because the reserves associated
4 with the Pacific Northwest hydro are not precluded
5 from benefitting the total system.

6 Q. Other than as a reserve, do the Utah
7 ratepayers receive a benefit?

8 A. In my mind it's primarily the reserves.

9 Q. Within a reserve do they receive any benefit?

10 A. Not to my knowledge.

11 Q. And that's not under the existing MSP
12 protocol, correct?

13 A. What I'm describing is under the existing MSP
14 protocol. The benefits of reserves flow through --

15 Q. Purely reserves?

16 A. -- the existing MSP protocol.

17 Q. No hydro benefit for actual energy produced?

18 A. No. There is hydro benefit associated with
19 the reserves.

20 Q. Later on in that paragraph you've described
21 one benefit as lower costs if actual hydro generation
22 exceeds the normalized hydro generation included in
23 the grid model. Do you see that? It's lines 411 and
24 412?

25 A. Yes, I do.

1 Q. What is the impact in the ECAM if the hydro
2 generation is less than normalized?

3 A. If it's less than normalized, then power
4 costs would go up.

5 Q. And that would be power costs to Utah as
6 well?

7 A. That's correct.

8 Q. And you referred to a mismatch. What
9 mismatch are you referring to? That's on line 413.

10 A. This is the mismatch that was identified by
11 other parties in terms of the -- bearing the risks of
12 hydro through the ECAM without retaining the full
13 benefits of hydro through base rates.

14 Q. Now, in the very beginning on line 409 you
15 say:

16 "To date, no party has identified
17 any damage of allowing hydro in the
18 ECAM, other than conceptually."

19 Is this the conceptual damage that people
20 have described in their testimony? The mismatch?

21 A. Yes.

22 Q. And that mismatch is you're paying for
23 something and getting nothing for it?

24 A. No.

25 Q. What is the mismatch as you've defined it in

1 your testimony?

2 A. The mismatch was between bearing the risk of
3 the hy -- the fluctuations in hydro without getting
4 the benefits -- all -- the full benefits through base
5 rates under the revised protocol.

6 Q. And parties have certainly described that as
7 being an issue for them here in Utah, have they not?

8 A. They certainly have.

9 Q. Now, you also mentioned that that mismatch
10 could be temporary and can be remedied, or did you
11 mean to say "may" be remedied? I want -- that's the
12 first question. And that's line 413 and 414.

13 A. I think "can" or "may." Either one works
14 fine with me.

15 Q. At the end of the next general rate case.
16 And then you state:

17 "At this time, it appears that
18 parties in Utah and other states are
19 supportive of a change to the revised
20 protocol to deliver Utah an outcome that
21 is very close to rolled-in, thereby
22 making this concern moot."

23 Is Rocky Mountain Power one of the parties
24 that's supportive of the change to the revised
25 protocol?

1 A. Yes, we are.

2 Q. And that's the recent filing that you made in
3 September in Docket No. 02-035-04, correct?

4 A. I'll take your word for it on the docket
5 number, I don't have that memorized.

6 Q. You filed testimony in that case, did you
7 not?

8 A. I did.

9 Q. And on September 15th your testimony
10 accompanied the Company's application, correct?

11 A. That's correct.

12 Q. Now, under the Company's proposal in that
13 docket the identification of state resources will --
14 and regional resources will remain the same as it is
15 under the existing MSP, will it not?

16 A. You know, I don't have that in front of me.
17 I know there's at least one addition -- one additional
18 category to state resources. There's also a deletion
19 to the state resources. So I could not agree with
20 that statement.

21 Q. Can you agree with that if we limit it to the
22 hydro endowment?

23 A. Yes. I -- the hydro endowment remains as it
24 was in the revised protocol.

25 Q. So in the proposal that the Company has set

1 forth in the filing in Docket 02-035 -- and you're
2 right, now I've suddenly forgotten it. The mismatch
3 will remain, will it not?

4 A. Well, I think in that filing the intent of
5 the Company -- I believe it's laid out in the
6 filing -- is to enter into a separate agreement or
7 stipulation with the Utah parties.

8 I mean, that's the intent, is to -- since the
9 outcome of the revised protocol under the new proposal
10 is essentially at the rolled-in level, the Company has
11 suggested it would work with the parties to enter into
12 a stipulation that allowed the use of roll in for the
13 next six years.

14 Q. Well, in fact you -- that filing -- and that
15 would be in particular the testimony of Ms. Kelly,
16 lines 247 to 254: In Utah this cost allocation
17 methodology produces results close to rolled in, so a
18 side agreement between the Company and Utah parties
19 will allow Utah to utilize rolled-in cost methodology
20 for ratemaking purposes.

21 Is that side agreement now before the
22 Commission?

23 A. No, it's not.

24 Q. Has the side agreement been provided to the
25 parties?

1 A. No, it's not.

2 Q. So we don't know what this side agreement
3 proposal will be from the Company?

4 A. Well, I think it's, you know. You don't know
5 specifically how it's written, but I think
6 conceptually it's laid out in Ms. Kelly's testimony.

7 Q. Will the proposal, as made in the
8 September 2010 filing, have an impact upon the ECAM in
9 Utah?

10 A. Well, I, you know, it will have an impact on
11 this hydro issue, because I think the characterization
12 of the mismatch is because the base rates are not set
13 on rolled in.

14 Q. Will the side agreement have an impact on the
15 ECAM in Utah?

16 A. I think my last answer goes to that as well.

17 Q. Will the impact be the same whether or not
18 there's a side agreement or not?

19 A. Well, I don't know.

20 Q. Isn't your proposal for an MSP at least for a
21 temporary period -- six years, I believe -- simply to
22 place a fixed additional amount on Utah ratepayers
23 rather than the percentage difference that has been
24 assessed Utah ratepayers under the existing MSP?

25 A. I don't understand the question. I don't

1 think there's any intent to place an additional amount
2 of whatever you said on Utah ratepayers.

3 Q. It's fixed rather than the percentage; isn't
4 that your proposal?

5 A. I don't understand what you mean.

6 Q. We'll go on. Well, let me ask one more
7 question about that, Mr. Duvall. Would the proposal
8 that the Company has filed with the Company -- or with
9 the Commission in September, would that impact, in
10 Utah, calculation of the base rate?

11 A. Yes, it would.

12 Q. And may I assume, or may the Commission also
13 assume that this side agreement would also impact the
14 calculation of the base rate?

15 A. That's correct.

16 Q. So to that extent, then, the ECAM
17 differential above or below the base rate, at least
18 for net power costs, would be affected by this new
19 proposal, whether it be the Company's proposal or side
20 agreement?

21 A. I think that's a fair statement.

22 Q. Mr. Duvall, if you could -- let's see. Let
23 me see if I can make this easy for you.

24 MR. PROCTOR: Just give me a moment if I may,
25 Mr. Chairman.

1 CHAIRMAN BOYER: You may.

2 MR. PROCTOR: I guess I'm trying to make it
3 easier for me, rather than Mr. Duvall. Okay.

4 Q. (By Mr. Proctor) Mr. Duvall, I hate to ask
5 you to do this, but could you locate Mr. Brubaker's
6 September 15th rebuttal testimony?

7 A. Okay.

8 Q. And on page 3, at the top of the page, there
9 are points 5 and 6 of a total of 16. Have you
10 reviewed Mr. Brubaker's testimony in the course of
11 this proceeding?

12 A. Yes, I have.

13 Q. And have you reviewed this testimony
14 particularly in anticipation of your testimony here
15 today?

16 A. You mean have I reread it before today?

17 Q. Yeah.

18 A. I've read it a couple times.

19 Q. Well, and in fact in your surrebuttal
20 testimony filed just weeks ago you referenced these
21 16 points, did you not?

22 A. I did, I think, in a general sense. And some
23 of them specifically, yes.

24 Q. And I believe you stated in your surrebuttal
25 testimony that you felt that you and the other parties

1 on behalf of the Company had adequately addressed
2 them; is that correct?

3 A. There were a number of them that had already
4 been addressed, yes.

5 Q. Did the Company specifically address points 5
6 and 6 to Mr. Brubaker's testimony? Rebuttal
7 testimony?

8 A. Prior to him filing his testimony?

9 Q. No, no, no. At any time.

10 A. You know, I'm not sure. I think that's
11 probably best directed to Mr. Griffith.

12 Q. Well, let me ask you. What do you understand
13 UIEC's proposal to be with respect to point 5? That
14 the Rocky Mountain Power proposal is blind to
15 deviations in costs on seasonal basis and ignores
16 varying responsibility of customer classes for
17 consumption in individual months?

18 A. I personally didn't focus on these two. I
19 believe that Mr. Griffith would be the right one to
20 address those.

21 Q. So you have no thoughts upon that particular
22 matter?

23 A. No, I don't.

24 Q. What about No. 6, that the ECAM
25 reconciliation is not cost reflective and doesn't send

1 proper price signals to customers?

2 A. Again, that's for Mr. Griffith.

3 Q. So you didn't consider that particular point
4 at all?

5 A. No, I did not.

6 (Pause.)

7 Q. (By Mr. Proctor) Mr. Brubaker's rebuttal
8 testimony referred to -- just give me one minute.

9 Three individual data requests. And they're
10 attached to his testimony I believe as exhibits --
11 well, it's UIEC-4, 5, and 6. Do you have those there?

12 A. I have his exhibits.

13 Q. And it's Data Requests 14.5, 14.7, and 14.15.

14 A. Yes.

15 Q. Do you see them? Did you assist in answering
16 those data requests?

17 A. I believe I reviewed those.

18 Q. Well --

19 A. It just -- at least the 14.5 is the one I
20 just read. And it just talks about the mechanism --
21 the mechanics of how the ECAM would work.

22 Q. The data response actually summarizes your
23 testimony. Is that an accurate summary of your
24 testimony with respect to how the ECAM will operate?

25 A. Yes.

1 Q. Did you have any involvement, either as
2 consulting, or reviewing, or discussing with
3 Mr. Griffith in particular the data responses to Data
4 Requests 14.7 and 14.15?

5 A. No, I did not.

6 Q. Did you ever have any discussions at any
7 point during your participation in this matter where
8 seasonal differences in the Rocky Mountain proposal
9 were discussed?

10 A. No.

11 Q. Going back to the answer -- or response to
12 Data Request 14.5, Mr. Duvall. May the Commission
13 presume that in making adjustments under Rocky
14 Mountain Power's ECAM proposal the differences between
15 base and actual, both actual exceeding and actual
16 being less than the base, will, on an annual basis, be
17 spread equally across all customer classes?

18 A. Again, the rate spread is Mr. Griffith's
19 issue.

20 Q. Well, you've described a balancing account,
21 and the way -- and interest earned, and the increase
22 will be recovered through a surcharge adjusted
23 annually and not through base rates. That's in your
24 response.

25 Do you have any knowledge about how that

1 surcharge will be assigned to the customers?

2 A. Well first, this is not my response, this is
3 the Company's response. And so it would cross, you
4 know, what's included in my testimony and what's
5 included in Mr. Griffith's. So anything dealing with
6 how the surcharge is applied to customers should be
7 addressed to Mr. Griffith.

8 Q. Well, I'm asking you, sir. If you have no
9 knowledge of it then you should say so. I would ask
10 you to. Do you have any knowledge of how that's going
11 to be assessed to the customer classes?

12 A. No, I don't.

13 Q. What is your title again, Mr. Duvall?

14 A. I'm the director of long-range planning and
15 net power costs.

16 Q. Mr. Duvall, did you have any involvement or
17 participate in any way with the negotiation of the
18 electric service agreement between Rocky Mountain
19 Power and Kennecott Copper that was filed with this
20 Commission last month, and the date of the contract is
21 18 October 2010?

22 A. No, I did not.

23 MR. PROCTOR: Thank you, Mr. Duvall.

24 THE WITNESS: You're welcome.

25 CHAIRMAN BOYER: Thank you, Mr. Proctor.

1 I notice that Mr. Evans has joined us.
2 Mr. Evans, would you like to enter your appearance for
3 the record, please?

4 MR. EVANS: Yes. Thank you, Mr. Chairman.
5 And I apologize for my lateness. This was on my
6 calendar at nine. That's when we usually begin these.

7 I'm William Evans with Parsons, Behle &
8 Latimer for the Utah Industrial Energy Consumers.

9 CHAIRMAN BOYER: Thank you, and welcome.
10 Ms. Schmid, any cross examination for
11 Mr. Duvall?

12 MS. SCHMID: Just a few.

13 CROSS EXAMINATION

14 BY MS. SCHMID:

15 Q. Good morning.

16 A. Good morning, Ms. Schmid.

17 Q. A little earlier you were speaking with
18 Mr. Proctor about the regulatory compact and what the
19 utility provides and what the utility is provided. Do
20 you recall that?

21 A. I do.

22 Q. Is it fair to say that what the utility is
23 provided is the opportunity to recover prudently-
24 incurred costs?

25 A. That's correct. If I left that out, I'm

1 sorry.

2 Q. Thank you. Let's turn now to the Division's
3 ECAM proposal. Have you reviewed the Division's ECAM
4 proposal in preparation for your testimony today?

5 A. I have.

6 Q. So you're aware that in the Division's
7 proposed ECAM the Division is not recommending any
8 changes right now to the Company's front office
9 transactions; is that right?

10 A. That's correct.

11 Q. And so you're equally aware that the Division
12 right now is not recommending any changes to the
13 Company's hedging targets; is that right?

14 A. That's correct.

15 Q. And are you aware that the Division's
16 proposed changes are not mandates but provide an
17 opportunity, if adopted by the Commission, for the
18 Company to increase its sharing percentage from
19 approximately 70 percent to 80 percent in 2015, if the
20 Division's ECAM proposal is adopted by the Commission?

21 A. That's my understanding of the Division's --
22 the mechanics of the Division's proposal.

23 Q. And then equally you are aware that in 2020,
24 if adopted by the Commission, the Division's ECAM
25 proposal provides an opportunity for the Company to

1 increase its sharing percentage from 80 percent to
2 90 percent; is that correct?

3 A. That's my understanding, yes.

4 Q. Let's turn now to a few other issues. Let's
5 talk about net power costs in a rate case proceeding.
6 Am I correct that the Commission determines the
7 Company's recoverable net power costs through a rate
8 case proceeding?

9 A. That's currently the methodology, yes.

10 Q. And so as you -- and as the Company said in
11 its data responses, can we call those the "base NPCs"?

12 A. Sure.

13 Q. Okay. So the base NPCs are used by the
14 Commission to design rates, correct?

15 A. They're used by the Commission as part of the
16 revenue requirement.

17 Q. Right. Now what happens if the actual net
18 power costs exceed the base net power costs?

19 A. Well, under the current paradigm there's no
20 effect on customer rates.

21 Q. So what would the Company do if, right now,
22 if it had a spike in net power costs?

23 A. Well, it would under-recover its net power
24 costs, as I've shown in my testimony that it's
25 happened over and over for the last several years.

1 Q. Under the Division's proposed ECAM, if
2 adopted by the Commission, would the Company have the
3 opportunity and indeed a method to recover those
4 actual net power costs that exceeded the base net
5 power costs?

6 A. I believe you asked if under the Company's
7 proposed ECAM.

8 Q. I'm sorry, under the Division's.

9 A. Under the Division's, no.

10 Q. Under the Division's proposal the Company
11 would not have an opportunity to recover?

12 A. No. The Division's proposal has a 2 percent
13 deadband and a 70/30 sharing band.

14 Q. Okay, thank you. Sorry. If it's outside
15 that, I'm sorry.

16 A. After the Company --

17 Q. After -- from 2 percent to 30.

18 A. After the 2 percent?

19 Q. Yes.

20 A. Then the Company still would not have an
21 opportunity to recover its net power costs because of
22 the sharing band.

23 Q. But wouldn't the Company have the opportunity
24 to recover some of the excess net power costs, which
25 is more than the Company has right -- which is a

1 greater opportunity than the Company has right now?

2 A. Well, I would characterize it as that we
3 would not recover -- we would -- let's see. Not
4 recover less, or we would -- we'd cov -- we'd recover
5 a little bit more, but we'd still be under-recovering
6 substantially.

7 Q. Seventy percent is just a little bit?

8 A. Well, you know, if you look at what the
9 fluctuations in net power cost actuals versus in rates
10 have been over the past few years, I think in my
11 testimony I identified -- what was it? '08 and '09
12 where the fluctuations were up to 150 million.

13 So 30 percent of 150 million is 45 million.
14 So that's a pretty big number. I think I got that
15 right.

16 Q. In your rebuttal testimony at line 74 you --
17 and thereabouts you discuss Professor Bonbright's
18 theories or statements; is that correct?

19 A. I have a quote from Professor Bonbright about
20 what reasonable costs are.

21 Q. So a balancing mechanism, such as the
22 Division's proposed ECAM, helps the utility recover
23 costs when the net power costs are greater than those
24 used by the Commission in calculating rates; isn't
25 that right?

1 A. Well, if you're referring to the quote it's
2 talking about that the reasonable rates are based on
3 the total cost incurred for prudently-incurred costs.
4 And the statute that follows says that prudently-
5 incurred actual costs should be recovered as a bill
6 surcharge.

7 Q. Let's focus on the no-more-than-clearly-
8 sufficient language, okay? So -- maybe I can ask this
9 in a more clear manner. So the Commission has
10 designed rates -- let's do this as a hypothetical.

11 So the Commission has designed rates. Then
12 the actual net power costs exceed the net power costs
13 that were used in designing rates. And then wouldn't
14 the Division's ECAM provide the Company with an
15 opportunity to recover at least some of those greater
16 net power costs?

17 A. It would allow an opportunity to recover
18 some, but not all.

19 Q. So is an opportunity to recover some but not
20 all, does that result in unjust and unreasonable
21 rates?

22 A. I believe so. I believe the Company has
23 shown that the current regime or current paradigm has
24 resulted in under-recovery. I think that, according
25 to the regulatory compact, the Company has the right

1 to recover its prudently-incurred net power costs.

2 That's not happening. We proposed a very
3 simple mechanism to address that issue.

4 Q. But -- so the Company's current rates are
5 unjust and unreasonable?

6 A. They're under-recovering our actual net power
7 costs.

8 MS. SCHMID: Thank you.

9 CHAIRMAN BOYER: Thank you, Ms. Schmid.

10 Mr. Evans, any cross examination for
11 Mr. Duvall?

12 MR. EVANS: Yes. Thank you, Mr. Chairman.

13 CROSS EXAMINATION

14 BY MR. EVANS:

15 Q. Good morning, Mr. Duvall.

16 A. Good morning, Mr. Evans.

17 Q. I missed the first part of your testimony, so
18 if I go over something that you've already testified
19 to, I apologize.

20 But I'd like to ask you specifically this
21 morning about your response to Mr. Brubaker's
22 proposal. And I think it might help us to refer to
23 your rebuttal testimony. I'm looking at page 19,
24 where you comment on Mr. Brubaker's proposed minimum
25 performance standards.

1 A. Do you have a line number there?

2 Q. Yeah. It's the Q&A that begins at line
3 426 --

4 A. I've got it, thank you.

5 Q. -- in your rebuttal. How do you understand
6 Mr. Brubaker's performance standards to work?

7 A. Well, I think they're laid out in his
8 testimony. And that they are intended to set some
9 benchmarks based on -- for our low-cost resources,
10 which I believe were coal -- coal, and hydro, and
11 wind.

12 And that he would look at the last five years
13 of performance as some kind of basis for whether those
14 were -- they were performance standards that he
15 suggested we should meet. And if we didn't then we
16 had a, kind of a higher burden of proof, I believe.

17 We could still argue that those costs were
18 prudent, but we would have to probably -- I think the
19 way I read it was we would have to meet a higher
20 burden of proof.

21 Q. Or that those costs might warrant a closer
22 look? A deeper audit, as it were? With the Company
23 coming forward in the first instance with the evidence
24 to support those costs?

25 A. Yeah, I believe that's right.

1 Q. Okay. And then over on the next page. At
2 page 20 you have a Q&A that begins with line 450 is
3 asking you to comment on whether there are
4 alternatives to those performance standards. Do you
5 see that?

6 A. Yes, I do.

7 Q. And I'm curious about your response that
8 begins at line 456. It says:

9 "By allowing parties the time
10 necessary to review and audit the actual
11 NPC data to assess the prudence of the
12 Company's actions in operating the
13 system, the need for performance
14 standards, sharing bands, and deadbands
15 would be eliminated."

16 Is this prudent -- when does this prudence
17 review occur, in your mind?

18 A. It occurs after the Company makes its filing
19 in December 15th of each year.

20 Q. Its ECAM filing, not a rate case filing?

21 A. Correct.

22 Q. Okay. And do you propose that an audit would
23 be done on all of the elements that go into making up
24 the actual net power costs during that prudence
25 review?

1 A. Well, I think that an audit covers all of the
2 elements. It can be done with, you know, statistical
3 sorts of methods so that it -- you don't have to look
4 at each and every transaction. You can look at things
5 from a sampling sort of basis to find out if there's
6 any concerns or not.

7 Q. Okay. And I believe that's reflected in your
8 testimony over on line 465, where you say:

9 "One can look at totals, averages,
10 general trends, and samples" --

11 A. Right.

12 Q. "To determine if it's necessary to
13 look deeper"?

14 A. That's correct.

15 Q. And when looking at those totals, averages,
16 and trends to determine whether it's necessary to look
17 deeper, how would you use those?

18 A. Well, I'm suggesting this is what the, the
19 Division and others would do to analyze our case.

20 Q. Well, and when you look at a trend don't you
21 look at current conditions versus past conditions to
22 maybe look forward to -- I mean, aren't you really
23 comparing current to what has happened in the past?

24 A. That would be a way to think about trends,
25 yes.

1 Q. So the same with totals and averages. I
2 mean, you don't just look at those in a vacuum, do
3 you?

4 A. I'm not sure I understand the question.

5 Q. Well, if you spent -- if you had a hundred
6 million dollars in a certain coal expense, say, in the
7 year in which you are looking at the ECAM costs,
8 wouldn't you want to know what the expenses were for
9 that same resource last year? Or the year before?

10 A. That would certainly be a reference.

11 Q. So isn't it -- how is that different than
12 what Mr. Brubaker is proposing to use the past
13 performance as a benchmark for the prudence review?

14 A. Well, I think it's -- the difference is using
15 it as a benchmark versus using it as a way to audit
16 the utility.

17 Q. Well, you say here one can look at those
18 averages and trends to determine whether it's
19 necessary to look deeper. I presume that refers to
20 the audit, doesn't it?

21 A. Yes, it does.

22 Q. So you would use those trends, and averages,
23 and totals to determine how deep you're gonna audit
24 those costs?

25 A. We wouldn't use that. The other parties that

1 would be auditing the Company would use those sorts of
2 tools.

3 Q. I'm sorry, you would propose that that's how
4 they would be used? That's what you're saying in your
5 testimony, right?

6 A. Well, I'm not proposing any specific
7 approaches. I think the, like I said, one of the
8 primary expertises of the Commission, and the DPU, and
9 the Commission staff is to audit a utility for prudent
10 operation.

11 This is done across the, across the United
12 States, as Mr. McDermott -- or Dr. McDermott has
13 testified. It's done by this Commission in looking at
14 Questar Gas. It's pretty common sort of things that
15 go on with -- in a regulatory review.

16 Q. But you don't understand Mr. Brubaker's
17 proposal to preclude an audit, do you?

18 A. No.

19 Q. It's just to focus the inquiry? To select
20 those things that we're gonna probe deeper?

21 A. Well, I think it's the notion of that they're
22 performance standards, and that I don't think there's
23 a need for performance standards.

24 I think that the, you know, and some of these
25 I think different parties have pointed out is that the

1 historic averages of, you know, wind, or hydro, or
2 your fuel aren't necessarily indicators of what's
3 prudent in the current set of actual net power costs.

4 That they're, you know, it's just not a
5 standard. It's certainly a piece of data that's
6 worthy of looking through, but it shouldn't be used as
7 a performance standard.

8 Q. Well, let's make sure we understand what the
9 performance standard would do. Do you understand
10 Mr. Brubaker's proposal to be that the failure of a
11 resource to meet a performance standard doesn't result
12 in denial of cost recovery, right?

13 A. Well, it's a bit hard to understand his
14 proposal. I think in the first instance it would
15 result in a cost under-recovery, unless the Company is
16 able to explain why that is appropriate.

17 Q. Well, and the Com -- the Company would have
18 to offer that same explanation in response to an audit
19 anyway, wouldn't it?

20 A. Yes, it would.

21 Q. Okay. Well then, Mr. Brubaker's proposal is
22 simply that the Company would come forward initially
23 as to those items that were under-performing and focus
24 the inquiry to make it unnecessary to audit closely
25 every one of the Company's costs. Is that how you

1 understand it?

2 A. Well, I think where I'm having a problem is
3 Mr. Brubaker is looking at the past five-year average
4 and then concluding that that is an under-performance.
5 And that's not necessarily the case.

6 Q. All right. But you understand that the
7 under-performance doesn't preclude cost recovery,
8 right?

9 A. That's correct.

10 Q. Let's look at your surrebuttal testimony for
11 just a minute, if you would. And on page 7 at
12 line 142 you have a section here in which you address
13 load growth adjustment mechanisms. Do you see that?

14 A. Yes.

15 Q. The first couple of questions are responsive
16 to the Division's witness. And then over on page 8
17 there's a question -- there's a series of questions
18 and answers addressing Mr. Brubaker's proposal. Do
19 you see that?

20 A. Yes.

21 Q. The question on 161 is: Does Mr. Brubaker
22 comment on load growth adjustments.

23 And your answer is, can you read that for us?

24 A. "Yes. On page 19 of Mr. Brubaker's
25 testimony he proposes that any load

1 growth adjustment mechanism should be
2 one-sided by only working to offset
3 increases in costs tracked through the
4 ECAM. This proposal fails any equity
5 test and should be rejected by the
6 Commission for that reason alone."

7 Q. Why do you say it fails the equity test
8 there? What does that mean?

9 A. Because it's a one-sided adjustment. It only
10 offsets cost increases with revenue increases, but it
11 doesn't offset cost decreases with revenue decreases.

12 Q. Okay. And in the next, in the next question
13 you say that for a decline in revenues due to economic
14 downturn or normal weather this isn't -- it's not
15 reasonable to compensate the Company for a decline in
16 sales revenue due to economic downturn. Do you see
17 that?

18 A. Yes.

19 Q. And you say this is a form of decoupling?

20 A. I say presumably this is due to a concern
21 that the load growth adjustment is a form of
22 decoupling.

23 Q. Right. And if the change in company revenue
24 from a declining load is picked up in actual NPCs
25 through an ECAM, isn't that a form of decoupling?

1 A. Well, I think that's, you know, up to the
2 reader. But it certainly could be.

3 Q. So what you're calling is, you know,
4 equitable would result in a form of decoupling?

5 A. Well, the Company does not support the load
6 growth adjustment. We don't think it should be there.
7 It shouldn't work in either direction.

8 Q. Okay. But if it is there, is it the
9 Company's position it should work in both directions?

10 A. Absolutely.

11 Q. So that would amount to decoupling when
12 there's a declining load?

13 A. That's, you know, up to the reader's opinion
14 as to whether it's decoupling or not.

15 Q. What's your opinion?

16 A. Well, I'm not a decoupling expert.

17 Q. Does it look like decoupling to you?

18 A. It certainly could be.

19 Q. Let's talk about changes in weather due to --
20 changes in load due to weather. The Company now has a
21 future test year, right? In its base rates?

22 A. It's a forecast test year.

23 Q. All right. And part of the Company's purpose
24 for advocating for a forecast test year was that it
25 could more accurately reflect net power costs in the

1 rate effective period, rather than a historic year?

2 A. You know, I wasn't involved in the test
3 period discussions. But I think that was -- that is a
4 fair statement.

5 Q. And you've said in this docket, haven't you,
6 that the Company would be willing to give up a
7 forecast test year for setting net power cost rates in
8 favor of allowing the Commission to determine whether
9 net power costs incurred by the Company are prudent?

10 A. Can you point me to the testimony you're
11 looking at?

12 Q. Sure. This was in your direct filed in
13 Phase I on December 10, 2009. No, I'm sorry, it's
14 your rebuttal testimony filed in Phase I. And it
15 appears at line 57. I'll be glad to read that for you
16 if you like.

17 I don't have copies, but I can read into the
18 record what the testimony says. Although I believe
19 it's already in the record. You said, beginning at
20 line 57:

21 "RMP has an interest in recovering
22 its prudently-incurred net power costs,
23 and is willing to abandon forecasts of
24 net power costs in favor of allowing the
25 Commission to determine if net power

1 costs incurred by RMP are prudent."

2 A. I'll trust that's what it says.

3 Q. Do you stand by that?

4 A. Well, I think -- you know, I don't have that
5 piece of testimony with me, and that was from the
6 Phase I. I believe that was in the context of
7 certainly an alternative. And we prefer setting a --
8 base net power costs on a what we think best forecast
9 is, and then trueing up to that.

10 But I think that was a, you know, even if --
11 you know, that it's more important for us to get that
12 true up than it is to get the forecast, is what that
13 was saying. And that's only in the context of having
14 a dollar-for-dollar true up.

15 Q. We'll let the record determine whether that's
16 what the context was, okay?

17 But that was in response I think, wasn't it,
18 to complaints of parties that the Company ought not to
19 have an ECAM to recover net power costs when it
20 already had a forecasted test year for the same costs,
21 right?

22 A. I don't recall. I don't have that testimony
23 with me. I didn't prepare for that for this hearing.

24 Q. Okay. Let's continue in your surrebuttal.
25 On the next page, which is page 9, you address cost

1 allocation issues in response specifically to
2 Mr. Brubaker's testimony on cost allocation. Do you
3 see that?

4 A. Yes, I do.

5 Q. And the concern is about the failure to take
6 account of the 75 percent demand and 25 percent energy
7 allocator, right?

8 A. That was the concern brought up by
9 Mr. Brubaker, yes.

10 Q. Well, do you acknowledge there's an
11 inconsistency there?

12 A. I don't think -- I lay out in my testimony
13 why that's really not a problem at all.

14 Q. Okay. And those would be the bullet points
15 that appear on the following page, beginning at, you
16 know, line 199?

17 A. That's correct.

18 Q. Let's look at the bullet points now. You say
19 first Mr. Brubaker is mistaken because the Company's
20 ECAM proposal does not allocate costs. I don't
21 understand what you mean there. Isn't the Company
22 proposing to allocate the deviation between base NPC
23 and actual NPC? In the ECAM mechanism here?

24 A. There's no allocation factors used in the
25 methodology. It's simply a dollar per megawatt hour

1 of -- in rates, a dollar per megawatt hour of actuals,
2 and then the difference between those two dollar-per-
3 megawatt-hour figures is multiplied by Utah loads.

4 Q. Well, but that may be part of the problem
5 because it fails to take account of the 75/25
6 allocator. So -- but you are allocating costs, you're
7 just not allocating them on the same basis that you
8 are basing these fees, right?

9 A. Well, the whole issue of the 75/25 is
10 discussed in those bullets points. That, you know, if
11 you look at the overall net power costs, that the vast
12 majority of them -- of the pieces of net power costs
13 that are allocated on the SG cancel out.

14 And that the -- pretty much the full level of
15 net power cost is then allocated on the energy factor,
16 the SE factor. And so the concern that's raised by
17 Mr. Brubaker here does -- it would not have, in my
18 mind, any kind of material impact on the energy -- on
19 the ECAM.

20 Q. Well, and that's reflected in your third,
21 fourth -- third and fifth bullet point, I think, isn't
22 it? But I don't want to get there yet.

23 What I'm asking, I mean, you're criticizing
24 him for saying -- for his proposal because you say the
25 ECAM doesn't allocate costs. And it does, doesn't it?

1 A. Well, let me correct that. First, he doesn't
2 have a proposal.

3 Q. His -- that's right. He has a criticism of
4 the Company's proposal, and that is that it doesn't
5 properly allocate it?

6 A. That's his criticism. I don't agree. And he
7 doesn't make any alternative proposal.

8 Q. Okay. Well, let's follow -- that's right, he
9 doesn't. It's the Company's case, isn't it? It's not
10 the UIEC's case? You need to show that these -- that
11 this proposed mechanism is in the public interest.

12 MR. MONSON: Object, that's argument.

13 Q. (By Mr. Evans) But I think it says in the
14 last line -- let's look at the second bullet, I mean,
15 that says it all:

16 "The Company does not propose to
17 change the allocation of base NPC."

18 Is anyone suggesting in this case that the
19 Company change the allocation of base NPC in this ECAM
20 docket?

21 A. No, they aren't.

22 Q. Third, I'm a little confused with those
23 numbers. This makes it sound like the difference
24 between allocating costs as they are in the rate case
25 versus how the Company proposes to allocate them in

1 the ECAM is negligible, or *de minimis*, or doesn't
2 really matter. Is that the point?

3 A. Well, I think when, when you look at the
4 facts, the difference -- or the amount of the base net
5 power costs that on net were allocated on the SG were,
6 in this case, \$98 million out of about a billion
7 dollars.

8 Q. Okay. Let's look at how you got to that
9 \$98 million for a minute. Let's drill down into that,
10 if you wouldn't mind. It looks like you have expenses
11 here allocated on energy. That would be the 1.097
12 million, right?

13 A. That's correct.

14 Q. And then there's another number, 999 million.
15 Do you see that?

16 A. That's right.

17 Q. What comprises that number?

18 A. That's the overall net power costs.

19 Q. Well, that's a net of the power purchases
20 allocated on 75/25, right? And the revenue from power
21 sales also allocated on 75/25?

22 A. That's correct.

23 Q. What are the two numbers that you combined to
24 net to that 98? What, in other words, what where the
25 power purchases allocated on 75/25 that you used in

1 this example?

2 A. I don't have that data in front of me. The
3 98 million was the difference between the amount that
4 was allocated on energy only, which was a billion
5 97 million, and the total net power costs, which was
6 999 million.

7 Q. Right. But that's, but that is a net of two
8 numbers. The power purchases, which were -- do you
9 have any idea?

10 A. No, I don't.

11 Q. Would you accept, subject to check, that it
12 was around 670 million?

13 A. That sounds about right.

14 Q. Okay. And about -- the revenue from power
15 sales, against which that is an asset, would you
16 accept, subject to check, that was around 770 million?

17 A. That sounds fine.

18 Q. Those are big numbers, aren't they?

19 A. I guess you have to know the context to
20 answer that question.

21 Q. Right. But when you're netting numbers that
22 size, as they diverge from each other you could get a
23 very large number, very much larger than that
24 98 million, couldn't you?

25 A. I don't, I don't agree.

1 Q. You don't agree? If your power purchases are
2 up and your power sales are down, wouldn't that number
3 get bigger?

4 A. The numbers that we're looking at here are
5 static. They're not changing.

6 Q. Why do you say they're static? They change
7 every -- they -- why are they static?

8 A. They're from the last general rate case. And
9 they're just to identify how much of the overall, you
10 know, 999 million of net power costs was allocated on
11 the SG factor on a net basis. And that was only
12 98 million.

13 Q. But when we're looking at ECAM we're doing
14 this month, by month, by month. And there could be
15 wide swings between those numbers monthly, couldn't
16 there?

17 A. I haven't looked at that.

18 Q. Do you deny that it's possible that there
19 could be wide swings?

20 A. I think the -- I'm not sure. I was thinking
21 the SG and SE factors were developed annually.

22 Q. Well, the factors may be. But when we're
23 talking about ECAM, when we're talking about netting
24 power purchases against power sales that are usually
25 done on a 75/25 allocator, that number could get very

1 large in any given month, couldn't it?

2 A. I haven't reviewed that.

3 Q. You don't know, then?

4 A. I don't know.

5 Q. Let's look at the fourth bullet and see what
6 you've done here. The difference between the Utah SE
7 and SG factors in the Company's last Utah -- I'm
8 quoting, sorry. I'm quoting from your testimony at
9 line 216, and you can tell me if I've read it
10 correctly:

11 "Fifth, the difference between the
12 Utah SE and SG factors in the Company's
13 last general -- last Utah general rate
14 case was .13 percent."

15 Right?

16 A. That's correct.

17 Q. And then you're saying allocating that to the
18 98 million you get a pretty small number, right?

19 A. That's correct.

20 Q. And so is the gist of this testimony that it
21 doesn't matter whether you use the 75/25 allocator in
22 developing actual NPCs?

23 A. That would be my conclusion.

24 Q. All right.

25 MR. EVANS: May I approach and hand out a

1 cross exhibit here?

2 CHAIRMAN BOYER: You may, Mr. Evans.

3 Q. (By Mr. Evans) Can you identify this
4 document that I've just handed out, Mr. Duvall?

5 A. I've never seen it before.

6 Q. All right. I'll represent to you that this
7 is from Mr. Paice's testimony in the 09-035-23 rate
8 case. It's entitled: "Cost of Service By Rate
9 Schedule - Cost of Service Factor Summary." It
10 appeared at Exhibit CCP-3R Tab 3, page 1 and 2, in the
11 last general rate case.

12 And I think this is where you got the .13,
13 isn't it? The .13 percent?

14 A. No, I did not get it from here.

15 Q. Okay. Well, it appears here. Let me --
16 let's walk through this. Look at line F30. Do you
17 see that?

18 A. Yes, I do.

19 Q. Oh, I'm sorry. You didn't get the .13 here.
20 Where did you get the .13?

21 A. Those were out of the general rate case.
22 Those were the two allocation factors, the SG and the
23 SE.

24 Q. Okay. I'm sorry. Let's back up just a
25 little bit. And do you recall what the individual

1 numbers were? The SG factor was?

2 A. I don't have those with me.

3 Q. Would you accept, subject to check, that the
4 SG factor was 41.13, and the SE factor was 41.0? For
5 the Utah jurisdiction?

6 A. Forty-one point thirteen for the SG?

7 Q. Uh-huh. And 41.0 for the SE.

8 A. I'll accept those subject to check.

9 Q. And it's the difference between those, isn't
10 it, that gives you that .13 percent?

11 A. That's correct.

12 Q. But that .13 percent isn't the same for every
13 class of customer, is it?

14 A. These are done on a system basis.

15 Q. Right. So the exhibit I've just handed out
16 will help us see what that does on a class basis.
17 This is -- what I've just handed out is a Cost of
18 Service By Rate Schedule. And it shows the SE and SG
19 factors developed in the last general rate case.

20 If you look at line F30? That's the SE
21 factor, right?

22 A. I have no idea. I've never seen this before.

23 Q. Well, if the, if the source of your
24 .13 percent is the difference between SG and SE I'd
25 like to look at that in classes. In this -- on

1 line F30 at column I it shows the SE factor for
2 Schedule 9 at .16639. Do you see that?

3 A. I see that.

4 Q. And on line -- down toward the bottom at
5 line F105G, that's system gross generation plant.
6 That's the SG factor, isn't it?

7 A. I have no idea. These don't look like the 41
8 and 41 sort of range of SG factors. There's 16 and...

9 Q. Correct, because they broken down by class.
10 We're looking at Schedule 9, under column I. We're
11 only looking at -- we're looking at your .13, how
12 that's gonna impact classes.

13 MR. MONSON: Your Honor, I object to the
14 question. I think he's asking this witness to verify
15 facts that he can't verify, and he's therefore
16 testifying instead of asking the witness to testify.

17 Q. (By Mr. Evans) Mr. Duvall, who would know
18 about how the SG and SE factors are developed by
19 class -- according to class?

20 A. Well, this is the exhibit of Craig Paice, so
21 this was part of the general rate case. These -- I
22 think Craig Paice would be the right person.

23 Q. Well, but it's you who's offered testimony
24 that says there's very little difference between
25 ignoring the 75/25 allocator, so I'm trying to probe

1 that. Who's the witness that can help us understand
2 what that will do to each class's rates?

3 A. I don't know. Again, this is Craig Paice's
4 exhibit. Craig Paice is not a witness in this case.

5 Q. So you don't have any idea what this
6 .13 percent difference in the SG and SE factor would
7 do to rates among the classes, do you?

8 A. That's -- no, I do not.

9 Q. So the 75/25 mismatch between the base NPC
10 allocation and the ECAM NPC allocation could be huge
11 as it impacts the classes, couldn't it?

12 A. I, I really don't know. But I think it's
13 important to know that if you, if you did use a break
14 out of the SE and SG you would apply it to both the
15 base rates and the actual rates. So it wouldn't be a
16 mismatch between base and the actual using one method
17 for one and one method for the other.

18 Q. And it is currently applied to base rates,
19 isn't it?

20 A. What was the question?

21 Q. The 75/25 factor is currently applied to
22 develop base NPC rates?

23 A. Yes, it is.

24 Q. Okay. And you don't have any idea how that's
25 gonna translate across classes, do you?

1 A. No, I do not.

2 MR. EVANS: No further questions, thank you.

3 CHAIRMAN BOYER: Thank you, Mr. Evans.

4 Let's check with our reporter. How are you
5 doing?

6 THE REPORTER: I'm good, thanks.

7 CHAIRMAN BOYER: Okay. Well, let's go a
8 little longer, then.

9 Mr. Dodge, cross examination?

10 Oh. Mr. Evans, did you wish to enter this
11 exhibit into evidence? Or save it for another
12 witness?

13 MR. EVANS: Well, if the Company -- if there
14 is a company witness who can help us with this, I'll
15 save it. Otherwise I would like it at least marked as
16 UIEC Cross-1.

17 CHAIRMAN BOYER: Okay. It is so marked.

18 MR. EVANS: May I ask whether there is a
19 witness available that could tell us -- testify as to
20 this exhibit?

21 CHAIRMAN BOYER: You may.

22 MR. MONSON: I don't know. I don't know who
23 you want to ask. Mr. Griffith may be able to respond
24 to it.

25 MR. EVANS: Well, I would move for admission

1 into the record of UIEC Cross-1, simply to support
2 Mr. Griffith's testimony that he doesn't know anything
3 about it. And then if we can get Mr. Brubaker to help
4 us, we'll reintroduce this later. Or we'll come back
5 to it.

6 MR. MONSON: I think he meant Mr. Duvall.

7 CHAIRMAN BOYER: I think you meant
8 Mr. Duvall's lack of knowledge about it.

9 MR. EVANS: I'm sorry, what did I say?

10 MR. MONSON: You said Griffith.

11 MR. EVANS: Mr. Duvall.

12 CHAIRMAN BOYER: Okay. Are there any
13 objections to the admission of UIEC Cross Exhibit 1?

14 MR. MONSON: Yeah, we object. There's no
15 foundation for it. There's no relevance to it. And
16 this witness knows nothing about it. So I think he
17 has to know something about it before it does any good
18 to have it in the record.

19 CHAIRMAN BOYER: Well, we can take
20 administrative notice of it anyway. But let's wait
21 and reintroduce it when Mr. Griffith testifies then,
22 Mr. Evans.

23 MR. EVANS: Okay, thank you.

24 CHAIRMAN BOYER: Okay. Now, Mr. Dodge, cross
25 examination?

1 MR. DODGE: Thank you, Mr. Chairman.

2 CROSS EXAMINATION

3 BY MR. DODGE:

4 Q. Mr. Duvall, I'm -- if you'll turn for a
5 moment to page 5 of your rebuttal testimony?

6 A. Okay.

7 Q. On line 107, in response to a question about
8 deadbands and sharing bands your answer is:

9 "First, the most effective incentive
10 is a prudence review...."

11 What's the basis for that statement?

12 A. Well, I think it's just that that's the
13 primary driver that the Company sees in terms of its
14 everyday operations. That we're always concerned
15 about our actions that we take and making sure those
16 are prudent.

17 Q. But you said the most effective in contrast
18 to a sharing mechanism. So your testimony is the
19 Company is more incented by an after-the-fact prudence
20 review than by a direct financial incentive. Is that
21 your testimony?

22 A. Well, the prudence review is a direct
23 financial incentive.

24 Q. Than a direct, at-the-time financial
25 incentive? Where the Company loses or gains money at

1 the time a transaction is done. You're saying that's
2 a less-effective incentive than a review that may come
3 a year and-a-half later and be buried in hundreds of
4 thousands of daily transactions?

5 Is that your testimony? Or over the year,
6 hundreds of thousands of transactions. Is it your
7 testimony that's more effective in incenting the
8 Company correctly?

9 A. Yes, it is.

10 Q. Okay. I'll take that. Let's move to 121.
11 Excuse me, 121 through 123. You say that cost
12 disallowances are not effective on the traders and
13 fuel negotiators. You said, I believe in response to
14 an earlier question, that they're just out trying to
15 help the customers.

16 Do those traders and fuel negotiators care
17 about their jobs?

18 A. Yes, they do.

19 Q. Do they care about management being happy
20 with them?

21 A. I don't know if "happy" is the right term.
22 But they're very concerned about making sure they do
23 the best job they can on each transaction they make.

24 Q. And does the management care about making
25 money or losing money?

1 A. The -- I think we've made it clear that the
2 Company's interested in recovering its net power
3 costs. Nothing more, nothing less.

4 Q. And notwithstanding all that, your position
5 is that the fact that the traders and fuel negotiators
6 making day-to-day decisions where there may be a loss
7 or a gain to the Company is -- has no effect on those
8 traders or negotiators?

9 A. On a day-to-day basis -- and I think this
10 goes back to the fact that, you know, the Company
11 doesn't have control over the weather, over loads,
12 over hydro operations, over the wind operations. And
13 so there's volumetric changes that go on throughout
14 the operations every day, every hour.

15 When those changes happen, the Company has to
16 go to the market either to buy or sell. And the
17 traders at that point, you know, they can't really
18 influence the market. They just look for the best
19 deal at the time, based on the needs that have been
20 created at that point in time.

21 Q. And do those traders have more than one
22 option at any given time, on a daily, weekly, a
23 monthly, an annual basis, what kind of contracts to
24 enter into, how long, what terms, what risks to take,
25 et cetera?

1 A. I think those questions are better directed
2 to Mr. Bird, who's over that group.

3 Q. But you're the one who testified it has no
4 impact on them, so I think I'm entitled to explore
5 that with you. Is it not true that those traders and
6 negotiators have multiple options at any given time in
7 terms of length of contracts, types of contracts,
8 types of risks that will be taken, et cetera?

9 A. They, they may have. But I don't think they
10 really have a whole lot of option on the prices, you
11 know, that the -- the market price is what the market
12 price is. And of course you have to buy or sell power
13 at the points of delivery that make sense, given your
14 current situation with your loads and resources.

15 Q. Mr. Duvall, on page 9 you testified that --
16 actually it's at the bottom of page 8 and onto 9.
17 That a load growth adjustment would violate the
18 principle of matching. Is it your understanding that
19 any single-item rate case violates the principle of
20 matching to a certain extent?

21 A. The ECAM is not a single-item rate case.

22 Q. You don't see adjusting power costs but
23 nothing else as a form of single-item ratemaking?

24 A. In the statute it says that the ECAM is not a
25 single-item rate case, so I'm just going by what the

1 statute says.

2 Q. But use a different term, then. You'll
3 accept, will you not, that in the ECAM docket there
4 isn't a trueing up, there isn't a matching of all
5 other costs that influence a utility. It's only net
6 power costs, correct?

7 A. Well, under the Company's proposal it's net
8 power costs, it's REC revenues. And it's offset by
9 revenue increases associated with load growth for that
10 portion of retail rates that are collecting net power
11 cost revenues.

12 Q. And no other costs that go into a general
13 rate case, correct? So there's no matching, in an
14 ECAM docket, between the net power costs and other
15 costs you've chosen to try to throw into the mix and
16 all the other costs that would normally go into a rate
17 case, correct?

18 A. It's -- it has certain cost elements. It's
19 not a general rate case, if that's what you're asking.

20 Q. That's what I mean. So arguing, then, that a
21 load growth adjustment doesn't match looks a little
22 inconsistent in an ECAM that also doesn't match all
23 costs and revenues. Wouldn't you agree with that?

24 A. No. I think that's just semantics with the
25 word "matching." I think what we're talking about is

1 making sure that we match cost increases with the
2 proper revenue increases.

3 And that is making sure that cost increases
4 and net power costs are matched with revenue increases
5 associated with net power costs, not with revenues
6 associated with generation, transmission, and
7 distribution.

8 Q. You accept, do you not, that in the event
9 that the Company is growing and there are margins
10 associated with that growth, that that will be a
11 windfall to the Company in an ECAM if there's no load
12 growth adjustment?

13 A. Absolutely not. That --

14 Q. Let me start with the assumption -- I'm
15 sorry, were you not done?

16 A. Well, I think that's just the -- that's under
17 the assumption that no other costs are increasing.

18 Q. And maybe you didn't listen to my
19 hypothetical. Let me try again. You accept, do you
20 not, that in the event load is growing and there are
21 margins from that, that means that revenues will
22 offset costs and will -- that there will be a windfall
23 to the Company if there's no load growth adjustment?

24 A. I guess I don't understand the hypothetical,
25 because everything else is not constant.

1 Q. Let me try again. If load is growing from --
2 when we do an ECAM and adjust rates. And if load has
3 grown since the last general rate case. And if that
4 load growth produces a net positive revenue to the
5 Company, meaning that all other costs are less than
6 the revenues generated by those additional costs.

7 In that scenario you don't agree that there's
8 a windfall to the Company? Excess profits that won't
9 be offset against the ECAM?

10 A. I don't agree that it's a reasonable
11 hypothetical.

12 Q. You don't -- well, let's probe it. You don't
13 agree that it's reasonable to assume load might grow
14 after a rate case at the time an ECAM adjustment is
15 made? Is that reasonable?

16 A. That's reasonable.

17 Q. And is it reasonable to assume that
18 in sell -- that the Company typically, absent having
19 to incur new fixed costs, will sell power at a higher
20 price than it cost it to buy? Is that unreasonable to
21 assume?

22 A. That it will sell it to, what, retail
23 customers?

24 Q. Let's go back to the last general rate case.
25 Was there a net revenue for the incremental -- for

1 every incremental hour that the Company sold? I mean,
2 can we go back to the rate case and calculate what the
3 profit was on incremental load growth? Do you --
4 would you be able to do that?

5 A. I really don't understand the question. I
6 don't think there's a profit on incremental load
7 growth in the, in the general rate case.

8 Q. A margin. Are you telling me that there's no
9 way to go back and test the hypothesis that if the
10 Company sold, say, an extra hundred thousand megawatt
11 hours of power over and above what the Company
12 forecast and used in the rate case, that that would
13 produce a margin, a net positive margin, as opposed to
14 a loss to the Company? You're saying you don't know
15 how to test that hypothesis?

16 A. Well, I think, you know, it depends on what's
17 happened between the general rate case and the time of
18 the, the measurement in an ECAM proceeding.

19 I mean, the Company is continuously adding
20 additional costs to its rate base. It's incurring
21 additional expenses. So I think it's all
22 circumstantial in terms of knowing how much the costs
23 have grown versus how much the revenues have grown.

24 Q. Let me try my question again. Are you saying
25 you wouldn't have the ability to go back and test that

1 hypothesis and determine, from data in a rate case or
2 data available to the Company, whether there was or
3 was not a net margin to the Company for additional
4 sales?

5 A. I'm saying that it's -- it would be a very
6 complicated exercise, if I understand the question
7 right, because you'd have to look at how everything
8 changed from the time of what's included in the rates
9 from the general rate case.

10 Q. Complicated or not, are you saying you would
11 or would not know how to do that?

12 A. Personally I would not know how to do that.

13 Q. Thank you. Let's talk for a minute about
14 your objection to the rolled in -- to the positions in
15 this case that as a condition to the Company
16 accepting -- or getting an ECAM the Company agree to
17 use the rolled-in methodology.

18 If you've agreed as a company to move to that
19 in this state in any event, what is your objection to
20 having that added as a condition to an ECAM in this
21 docket?

22 A. Well, I think it's, you know, like any other
23 issue it needs to go through really the due process
24 and have all the evidence presented to the Commission.
25 We can't assume what the Commission's outcome is gonna

1 be from the MSP filing.

2 Q. Let me probe that just a bit. Let's say that
3 the outcome from the MSP filing is something other
4 than a rolled-in allocation methodology. Is it your
5 view that notwithstanding that, the ECAM should go
6 forward, and Utah customers simply take the risk of
7 hydro variability and yet not have the full benefits
8 of the hydro production; is that your testimony?
9 Assuming rolled in is not the outcome of the MSP
10 docket.

11 A. I think it would depend on what the outcome
12 was. I think the revised protocol, or the proto --
13 2010 protocol, as we call it, that's in front of the
14 Commission gets results to Utah that are similar to
15 rolled in.

16 So whether the Company -- whether the -- Utah
17 would go to rolled in through a side agreement or
18 would accept the revised protocol that gives the
19 equivalent of rolled in, I think the issue of whether
20 the hydro runs through the ECAM is moot.

21 Q. Let's assume current allocation. You're
22 involved in the MSP process, are you not?

23 A. Yes, I am.

24 Q. And to this point has any party expressed
25 support for the 2010 protocol in the State of Utah as

1 it's proposed by the Company without the rolled in for
2 Utah?

3 A. Without the side agreement, I don't believe
4 so.

5 Q. So let's talk about the current allocation
6 methodology. Let's assume the Commission, for
7 whatever reason, determines to stay with the current
8 allocation methodology.

9 Is it your position that it would be just and
10 reasonable to Utah ratepayers to be exposed to the
11 entire volatility, the downside volatility of hydro,
12 and yet not have the full benefit of the upside of
13 hydro, given the embedded cost differential
14 calculation under a revised protocol?

15 A. I don't necessarily agree that that would be,
16 you know, a problem. I think running the hydro
17 through the ECAM, you know, it's the -- it could turn
18 out better than what's in base rates.

19 Q. You understand risk -- what's the concept of
20 risk to you? Does the fact that the risk can go in
21 your favor and be a positive mean there is no risk?

22 A. No.

23 Q. So if Utah ratepayers take the risk of hydro
24 variation without the full benefit of the value of the
25 energy produced by the hydro, you understand that's

1 still a risk to Utah ratepayers embedded in the
2 current allocation scheme, do you not?

3 A. Yeah, I would agree that's a risk embedded in
4 the current allocation scheme. I don't know that it's
5 a show stopper.

6 Q. You understand that most of the parties in
7 this docket, other than the Company, feel like it is a
8 show stopper, though, don't you?

9 A. Yeah. Most of the parties in this docket are
10 concerned about the matching of the hydro costs with
11 the risk. But make proposals on RECs and on the load
12 growth mechanism that create mismatches.

13 Q. Mr. Duvall, you've stated, I think, that your
14 belief is that -- I don't know if you've characterize
15 it as a "belief" -- but that your notion is that in
16 the context of the MSP docket there will be an
17 agreement to go to rolled in for six years.

18 Is it your -- what's your understanding
19 happens at the end of that six-year period?

20 A. Well, under the revised protocol there's the
21 MSP standing committee. And at that point, given
22 whatever the circumstances are at that time, I'm sure
23 the MSP standing committee would review, again, the
24 situation.

25 Q. And let's assume that the MSP standing

1 committee does not come to terms with a rolled-in
2 allocation methodology. Is it your view that the ECAM
3 should continue, notwithstanding that?

4 Let's say we move to the rolled-in allocation
5 methodology and in six years it ends, is that the
6 Company's view. Is it your view the ECAM should still
7 continue, even though the rolled-in allocation
8 methodology stops?

9 A. It would depend on what went forward after
10 the six years.

11 Q. You're unable to say right now what your --
12 whether your position would be the ECAM should
13 continue?

14 A. Well, it's -- I'm unable to know what the
15 circumstances will be at the time.

16 Q. So you'd agree with me then, I assume, that
17 the Commission ought to make the ECAM last no longer
18 than the six-year term that the Company is going to
19 propose, apparently, for the rolled-in methodology.
20 And it ought to be reviewed at that time in light of
21 what happens in the interstate allocation docket?

22 A. Well I think, you know, I would not recommend
23 that. We've recommended a pilot to where it's
24 reviewed after, I believe after 2013. But I would not
25 recommend that it have a sunset on it.

1 Q. But you said you'd have to know what happened
2 to the interstate in six years to make a
3 recommendation. So shouldn't the Commission have the
4 same luxury? Once they know what happens, decide then
5 what happens to the ECAM?

6 A. We're not proposing that. I don't think it's
7 necessary.

8 Q. Mr. Duvall, let's turn to the issue of REC
9 revenues. It's your position, as I understand your
10 testimony, that REC revenues have a significant -- or
11 excuse me, a direct and necessary relationship to an
12 ECAM; is that correct?

13 A. That's correct. The REC revenues and energy
14 arrives from the same resource at the same time.

15 Q. My -- your language was a direct and
16 necessary relationship; is that correct?

17 A. I believe that's correct. Are you --

18 Q. I can refer you either to --

19 A. I got it here.

20 Q. -- your rebuttal, page 12, or your
21 surrebuttal, page 3. I think you use similar terms.

22 Let's go to rebuttal, page 12, line 270:

23 "There is a direct and necessary
24 relationship between NPC and REC
25 revenues because both RECs and energy

1 are generated from the same source."

2 Is that a correct quotation of your answer?

3 A. Yes, that's correct.

4 Q. Did you propose that REC revenues be included
5 in the ECAM when you filed your direct case in 2009?

6 A. They weren't in the direct case in 2009. But
7 they were introduced in the supplemental direct, which
8 was the proper time to look at the design -- we were
9 invited to address that by the Commission.

10 Q. You didn't see the direct and necessary
11 relationship in 2009, when you filed your direct case.
12 Is it that a fair statement?

13 A. The, I think the volatility of the REC
14 revenues was not an issue then, so it really didn't
15 play into the design at that point.

16 Q. So it's the volatility that makes it a direct
17 and necessary relationship, not the fact that they're
18 both generated from the same source, correct?

19 A. It's all of the above. I mean, they're
20 generated from the same source. They're large,
21 they're volatile, unpredictable. And there's really
22 no way to distinguish them from net power costs.

23 Q. Are they a net power cost? Let's talk about
24 it. What goes into net power costs? Is it a fuel
25 cost? REC revenues?

1 A. Well, the REC revenues have not traditionally
2 been part of net power costs. However, it makes sense
3 to include them in an energy cost adjustment mechanism
4 or an energy balancing account as an offset to costs.

5 Q. Well, let's talk about that. Have you ever
6 read the Utah statute that allows energy balancing
7 accounts?

8 A. I have.

9 Q. Section 54-7-13.5. I'll read -- if you have
10 had, fine. If not, I'll read it for you.
11 Section (1)(b) says:

12 "'Energy balancing account' means an
13 electrical corporation account for some
14 or all components of the electrical
15 corporation's incurred actual power
16 costs, including:

17 "(A) fuel; (B) purchased power; (C)
18 wheeling expenses; and (ii) the sum of
19 the power costs described above, less
20 wholesale revenues."

21 Which of those does net power -- the net
22 revenue credits fall into? Is it a fuel, a purchase
23 power, a wheeling expense, or a wholesale revenue?

24 A. It's a wholesale revenue.

25 Q. So all wholesale revenues should go into the

1 NPC? Regardless of whether it's SO₂, whether it's
2 net -- whether it's REC revenues, anything that you
3 sell at wholesale should go into the net power cost
4 calculation. Is that your testimony?

5 A. I believe that the language allows that.

6 Q. But you haven't proposed that, have you?

7 A. We've proposed that wholesale power sales,
8 wholesale REC sales be included. And we've, we've not
9 opposed including the wholesale wheeling revenues.

10 Q. But you didn't propose it, did you? You
11 didn't propose wholesale wheeling revenues, did you?

12 A. We have not proposed them directly. We've
13 indicated we would not oppose them.

14 Q. Nor have you proposed the inclusion of SO₂ or
15 other environmental credits, have you? Revenue from
16 those, from those things which are also generated by
17 the generators, have you?

18 A. No, we haven't.

19 Q. And therefore what I'm getting at is it's
20 because all of a sudden they became big, and in your
21 testimony volatile, that you decided to propose it
22 here; is that true?

23 A. Well, I think that, and then it's just --
24 it's clear that they're related to net power costs.

25 Q. Related in what sense? They're generated by

1 the same thing?

2 A. They're generated by the same thing.

3 Q. And SO2 credits are not?

4 A. SO2 credits, well, I would -- I guess I
5 wouldn't be opposed to including SO2 revenues as well.
6 I think we have those in our Idaho ECAM. We have not
7 proposed those here. I don't know that they'd make a
8 big difference.

9 Q. Now, I believe your testimony is that REC
10 revenues, in your testimony, are large, volatile, and
11 unpredictable. Is that a fair statement?

12 A. That's a fair statement.

13 Q. Let me hand you an exhibit.

14 MR. DODGE: And I'll reference for the
15 Commission and the reporter's sake that this is a
16 confidential attach -- it has a confidential
17 attachment. And I will attempt, as per the rule, to
18 avoid direct reference to the confidential
19 information. If that becomes necessary I will ask the
20 Commission to take appropriate steps.

21 (Pause.)

22 Q. (By Mr. Dodge) If you'll look for a moment
23 at what I would like to have marked UAE Cross Exhibit
24 No. 1? Did you have anything to do with the Company's
25 response to UAE Data Request 5.1?

1 A. No, I did not.

2 Q. I'll represent to you that this is a Company
3 response to a UAE data request in this docket where we
4 asked for an accounting of the amount and timing of
5 all REC revenues received by the Company in '09 and
6 '010.

7 If you'll turn to the exhibit. And again, my
8 understanding is that this is based upon the SAP
9 system the Company maintains. And this is what went
10 in each month -- at least at this point this is what
11 the SAP system reflects for the monthly REC revenues.

12 If you'll look from January '09 through
13 October '09, at those numbers, would you agree with me
14 that those are not particularly large, unpredictable,
15 or volatile?

16 MR. MONSON: We object to the question. We
17 believe this is irrelevant to this proceeding. The
18 amount of REC revenues, when they were realized, we
19 believe is irrelevant.

20 MR. DODGE: Your Honor, if I may respond.
21 I'm asking him specifically on the issue of whether
22 these kinds of revenues are large, unpredictable, and
23 volatile, which he has testified to. I certainly have
24 the right to probe his testimony on that issue. And
25 this exhibit goes exactly to that point.

1 CHAIRMAN BOYER: Overruled. You may proceed,
2 Mr. Dodge.

3 Q. (By Mr. Dodge) Would you agree with me that
4 the REC revenues from January '09 through October '09
5 were neither particularly large, nor particularly
6 unpredictable, nor particularly volatile?

7 A. I think relative to the later numbers they're
8 not, you know, particularly large. I think that they
9 were -- have always been unpredictable. And I think
10 the, certainly the volatility picked up later.

11 And these numbers reflect contracts that
12 were, you know, entered into at different points in
13 time, among other things.

14 Q. I understand that. But you did a pretty good
15 job of predicting those in prior cases, did you not,
16 up until about the 2009 time frame?

17 A. I don't know, because I don't sponsor those
18 predictions.

19 Q. Then let's look at the period beginning in
20 February 10 through, well, July 10, at least. We'll,
21 for right now, ignore the last two months. We'll talk
22 about that in a minute. Those are not particularly
23 volatile either, are they?

24 A. From when? February --

25 Q. Beginning in February 2010. And I told you

1 right now to focus on July 2010.

2 A. Right. They range from seven --

3 Q. No, I would caution you not to give the
4 numbers, they're confidential.

5 A. Got it. Okay.

6 CHAIRMAN BOYER: You can perhaps talk in
7 terms of percentages or something like that.

8 MR. DODGE: Right, yeah.

9 THE WITNESS: They're, they're relatively
10 equal across those months, give or take.

11 Q. (By Mr. Dodge) Do you have any reason to
12 know why those numbers dropped in August and
13 September?

14 A. No, I don't.

15 Q. Would you agree with me that the real
16 volatility in REC revenues, at least that the Company
17 recognized, occurred in the months of November,
18 December, and January? November and December of '09
19 and January of 2010?

20 A. No, I would not.

21 Q. You don't see those as being particularly
22 volatile, given the -- for example, the jump from
23 October to November has what kind of range of
24 magnitude?

25 A. You mean?

1 Q. What's the rough percentage?

2 A. It would be, what, 20 times?

3 Q. Twenty-plus times? Do you know what happened
4 around November of 2009 to cause this precipitous jump
5 in REC revenues recognized by the Company?

6 A. I believe that was the start of some
7 particular contract -- deliveries under particular
8 contracts.

9 Q. But do you know what caused, about that time,
10 the precipitous run up in cost -- in price, excuse me,
11 the value of REC revenues?

12 A. I don't know exactly what it was. But I, you
13 know, it had to do with, with the California utilities
14 and their need for RECs.

15 Q. And was there a California Commission ruling
16 in approximately this time that allowed RECs to be
17 brought in from out of state up to a certain
18 percentage, and it set a cap on the price of about \$50
19 per REC? There was a proposed order? Do you have any
20 knowledge of that?

21 A. I'm not real clear on the details of that,
22 but it's -- I think it's been known for a long time
23 that the cap in California was the \$50, and so that a
24 run up could occur.

25 Q. And when did it occur, according to your

1 numbers?

2 A. It occurred -- well, the numbers, I can just
3 point out the numbers jumped in November '09, and
4 that's when they first jumped.

5 Q. And then again precipitously in January of
6 2010, correct?

7 A. Well, I -- yeah, I'm not sure. I think there
8 may be some accounting issues here, because I think
9 the January numbers really get reported in '09.

10 Q. Say it one more time?

11 A. I think the January numbers for, you know,
12 what our financial reports are get reported in '09.
13 So I think that if you added the January number to the
14 '09 total you'd get to the number that we typically
15 report with our '09 results.

16 Q. Thank you for that, and let me go to that
17 next. I'll hand you what is a response to UAE Data
18 Request 2.12 in this docket. Also with a confidential
19 attachment. One confidential and one non-confidential
20 attachment.

21 (Pause.)

22 MR. DODGE: I'd request that this be marked
23 UAE Cross Exhibit No. 2.

24 Q. (By Mr. Dodge) And ask you to turn to -- and
25 represent that this is a Company data response to UAE

1 Data Request 2.12. I'll note at the top of this it
2 says "July 23, 2009." I believe that's wrong. I
3 believe it's actually 2010, because I believe that's
4 when we asked the data request. But that's my
5 understanding at least.

6 But if you'll turn to the attachment, which
7 is Confidential Attachment UAE-2.12a it shows in bold
8 below the table: "2009 REC Sales Accrued in SAP."
9 And it shows a number there, correct?

10 MR. MONSON: We have the same objection to
11 this exhibit. And questions about it.

12 CHAIRMAN BOYER: Overruled. You may proceed.

13 MR. DODGE: Thank you.

14 Q. (By Mr. Dodge) Mr. Duvall, the number there
15 is much larger for 2009 than the comparable number on
16 what I handed you as UAE Cross No. 1 for 2009. And is
17 it your understanding that difference is because under
18 your system you accrue the January REC revenues in
19 December? The January 2010 ones in December?

20 A. Yeah. The January number off the other
21 sheet, when added to the annual number, comes up, I
22 believe, to the number that's shown on this other
23 exhibit.

24 Q. Mr. Duvall, I believe your testimony is that
25 you believe these -- the deferred REC revenues that

1 the Commission ordered to be deferred following an
2 application by UAE earlier this year should be
3 returned to customers only if there's also a true up,
4 in your words I believe, for net power costs deferred
5 revenues; is that correct?

6 A. Well, I think my testimony is they should be
7 treated the same.

8 Q. And in this docket, is your testimony,
9 correct?

10 A. Yes.

11 Q. Regardless of the ECAM, whether one is
12 approved or whether, whether the design the Company
13 wants is adopted, whether a sharing mechanism is
14 adopted, take all of those out of the equation. Do
15 you agree that the amount of REC revenues received by
16 the Company beginning in about 2009 -- excuse me, in
17 about November 2009 relative to prior periods was
18 extraordinary?

19 A. No. I would agree they're larger.

20 Q. A 20 -- a 2,000 percentage increase, in your
21 view, is not extraordinary?

22 A. They're larger.

23 Q. So you would say the same about a similar
24 magnitude of net power costs that are deferred; that
25 it's not extraordinary, correct?

1 A. I, I mean, we presented the evidence. I'm
2 not here to try to categorize or tag movements in net
3 power costs or REC revenues as extraordinary or under
4 any other type of explanatory words.

5 Q. Well then, Mr. Duvall, I think we have a
6 problem. I believe you're the Company witness here to
7 testify on the issue of whether the Company ought to
8 be recover -- be able to recover the deferred NPC
9 revenues. Are you not that witness?

10 A. I am that witness, yeah.

11 Q. And I will represent to you that at least my
12 version, my understanding of Utah law, is that you can
13 recover those kinds of deferred costs only if they're
14 both unforeseeable and extraordinary. Those are
15 factual findings, not legal ones.

16 Are you not the witness who's prepared to
17 testify whether the deferred net power costs that the
18 Company incurred since February of 2010 are both
19 extraordinary and unforeseeable?

20 MR. MONSON: I have an objection, and it
21 goes -- Mr. Dodge anticipated it, I think, in his
22 question. But I think whether something's
23 unforeseeable or extraordinary is a legal conclusion.
24 And I don't know that this witness is qualified to
25 give an opinion on that.

1 MR. DODGE: And Mr. Chairman, I am prepared
2 to accept that and withdraw the question. I will then
3 move to strike any testimony asking for the Company to
4 recover the deferred NPC because there has to be a
5 factual basis for the Commission's determination.

6 And I believe that the Company isn't prepared
7 to put on a witness to even claim that they're
8 extraordinary and unforeseeable. They have not made a
9 prima facie showing of their right to recover those,
10 because that is required by Utah law.

11 MR. MONSON: Except for the new statute,
12 which expressly authorizes this kind of recovery
13 mechanism without any showing that they're unforeseen
14 and extraordinary.

15 MR. DODGE: What statute is that? We're
16 talking about the --

17 MR. MONSON: 54-7-13.5.

18 MR. DODGE: Doesn't say anything about
19 deferred revenues. It says nothing about deferred
20 revenues. That's covered by a very different set of
21 legal principles. And we can argue this with a motion
22 if you'd like, your Honor.

23 But if they're not prepared to make a showing
24 that these NPC revenues -- I'm talking about now --
25 are extraordinary and unforeseeable, then I believe

1 that a motion to strike any testimony seeking to
2 recover them in this docket is appropriate. Because
3 they have to make that showing at some time.

4 This Commission deferred that for later
5 ratemaking treatment. If this is not the docket where
6 we're considering this, that's fine. But they purport
7 to make this the docket where we're considering it.

8 MR. MONSON: May I respond?

9 CHAIRMAN BOYER: Yes.

10 MR. MONSON: Two points. First of all, we
11 can put on evidence of how something changed, which
12 Mr. Dodge has just done with the REC revenues. That
13 doesn't mean the witness has to draw a conclusion as
14 to whether it's extraordinary, because that is a legal
15 test.

16 But secondly, we're proposing to recover the
17 increment in NPC and to offset it with the increment
18 in REC revenues as part of this docket because we
19 proposed an ECAM prior to the end of the last general
20 rate case. We asked for a deferral order simply to
21 hold that in place.

22 We believe we were entitled to have the ECAM
23 go into effect at the conclusion of the last general
24 rate case. So we aren't asking to have this recovery
25 based upon normal deferral accounting standard. We're

1 saying, If you approve an ECAM let's take it back to
2 when it should have been put into effect, which was
3 February 2010.

4 MR. DODGE: And if that's the Company's
5 position, I will accept that, because I believe as a
6 matter of law they cannot recover it. There's no law
7 that says they can go retroactive just because they
8 think they should have got a different order than they
9 got in the case.

10 The law is very clear on what can and cannot
11 be recovered retroactively from customers. And if
12 they're not prepared to make that showing we'll take
13 that issue up with the Commission at the appropriate
14 time.

15 But I guess what I want to do, if this
16 company is saying they have no witness prepared to
17 testify that the net power cost revenues that were
18 deferred are extraordinary or unforeseeable, then I
19 will withdraw my question and accept that lack of
20 evidence on the Company's part.

21 CHAIRMAN BOYER: Well, I don't think they've
22 said they don't have such a witness. But Mr. Duvall
23 appears reluctant to classify these kinds of changes
24 as extraordinary, or un -- or infeasible, or
25 unforeseeable. So they may have a problem downstream.

1 But if that's Mr. Duvall's position, I think
2 it's been asked and answered.

3 MR. DODGE: Okay. Then I'll withdraw --

4 CHAIRMAN BOYER: Maybe we ought to break it
5 up and look at the two elements --

6 MR. DODGE: I'll try the other --

7 CHAIRMAN BOYER: -- extraordinariness and
8 foreseeability.

9 MR. DODGE: Thank you. In fact, I was going
10 to do that. And I would just note, no other witness
11 from the Company purported to testify on this, so I
12 will object if they bring in a new witness to try and
13 address it now. He was the only one that addressed
14 the deferral of net power costs in his testimony.

15 Q. (By Mr. Dodge) Let me turn now -- I'll
16 withdraw that question, or I'll accept that it was
17 asked and answered.

18 Let me turn to unforeseeable. Do you agree
19 that the run up that you've characterized as 20 times
20 plus in REC revenues beginning in late '09 was
21 unforeseeable, at least to the other parties to this
22 docket, at the time they took their positions in the
23 general rate case, the 2009 general rate case?

24 A. I would classify it more as unpredictable
25 than unforeseeable. I think we knew that there were

1 requirements in California, especially. We knew that
2 there was a \$50 sort of penalty for non-compliance.

3 So it wasn't that it was unforeseeable. I
4 believe it's, you know, it's fairly unpredictable,
5 just like net power costs.

6 Q. Let me hand you one other exhibit. This is a
7 response to UAE Data Request 5.2 in this docket.

8 MR. DODGE: Again it has a confidential
9 attachment.

10 CHAIRMAN BOYER: You know, Mr. Dodge, maybe
11 this would be an appropriate time to give our reporter
12 a short break.

13 MR. DODGE: That would be fine.

14 CHAIRMAN BOYER: Let's take a 10-or-15-minute
15 recess, then.

16 (A recess was taken from 10:02 to 10:19 a.m.)

17 CHAIRMAN BOYER: Okay, we are back on the
18 record. Mr. Dodge?

19 MR. DODGE: Thank you, Mr. Chairman.

20 Q. (By Mr. Dodge) Mr. Duvall, I've handed you
21 what I'd request be marked as UAE CROSS No. 3. And
22 represent that it is -- the second page of that is a
23 Confidential Attachment UAE-5.2 1st Revised, which is
24 a Company data response in this docket to UAE.

25 Have you seen that document before?

1 A. I don't recall seeing it.

2 Q. I'll represent to you that this purports to
3 be both publicly-stated projections of REC revenues
4 for various times in 2009, plus two Company budget
5 numbers. And I don't think that -- the publicly-
6 stated ones are probably confidential, but I think the
7 budget numbers are.

8 MR. MONSON: That's right.

9 Q. (By Mr. Dodge) So again, I think we should
10 refrain from using numbers on the record. If you'll
11 look at the 5.2 1st Revised. My question, I guess, is
12 you look at the third line down, the 2009 Utah Rate
13 Case, Rebuttal position filed November 12, 2009, of
14 18.6 million.

15 It's correct, is it not, that as of
16 December 12, 2009, the Company, in its rebuttal
17 testimony in the 2009 rate case, took the position
18 that 18.6 million was a fair representation of the
19 Company's expected REC revenues through June -- from
20 July 2009 through June 2010?

21 A. In, in the context of the rate case, as I
22 recall, in its rebuttal testimony the Company adopted
23 the position of the Office, Ms. Ramas, who had
24 proposed the 18.6 million.

25 And in Utah specifically, at the time of

1 rebuttal, the Commission has found that rebuttal was
2 too late for updates. So in this, in this particular
3 circumstance we adopted the Office's position.

4 Q. But at that time the Company knew that 18.6
5 was going to be very low for either that test period
6 or any actual 2009 or 2010 period, did it not?

7 A. I believe that's correct.

8 Q. In fact, if you move down to the fifth
9 line -- and again, this is a confidential number --
10 the 2010 budget approved that next month,
11 December 2009. It shows a much higher number for the
12 2010 calendar year; is that correct?

13 A. That's correct.

14 Q. And then in January, one month after that, it
15 shows the Wyoming rate case -- and I don't believe
16 this is confidential -- of roughly 84 million for the
17 calendar year 2010; is that right?

18 A. That's correct.

19 Q. And then in Idaho, filed -- when using -- in
20 May it had gone up even further, to 91, correct?

21 A. That's correct.

22 Q. So your testimony is that you believe that
23 the Commission's rulings on updating precluded you
24 from telling the Company that that \$18.6 million was
25 way low in terms of what the Company was actually

1 projecting for REC revenues for the test period. Is
2 that a fair statement?

3 A. Well, I think we were -- I, I don't know that
4 that's a fair statement. But I think it's -- in the
5 context of how the rate case, and the rules, and the
6 feedback that we have received from this Commission on
7 updates at the time of rebuttal, we had been -- the
8 Commission has found that the time of rebuttal is too
9 late for updates. So.

10 Q. And you think that's true even when something
11 has gone through a substantial change? Had this gone
12 the other way you don't think the Company would have
13 raised that there's been a significant change? The
14 world's changed, the numbers have changed, the Company
15 will under-recover if you don't update this?

16 A. Well, this would be no different than overall
17 net power costs. And we're -- we don't update the
18 overall net power costs at the point of our rebuttal
19 filing.

20 Q. Why is it no different than net power costs?

21 A. Well, the -- in terms of REC revenues and net
22 power costs? They're -- I think my testimony has been
23 that they're very similar. They're both large,
24 unpredictable, and largely outside the control of the
25 Company.

1 Q. What happened in or about November of 2009 to
2 make a dramatic change in the Company's projected net
3 power costs for the test period in the last rate case?
4 Did something happen, I should say?

5 A. Well, I think -- I don't know that I can
6 provide details. But I think if we would have updated
7 our net power costs completely for changes in loads,
8 and coal prices, and all of those thing in our
9 rebuttal testimony, that the power costs, you know.
10 I'm -- I don't know what would have happened, but we
11 don't do those kind of updates that late in the
12 filing.

13 Q. My question is, did anything, to your
14 knowledge, happen in or about November of 2009 that
15 could be characterized as an extraordinary or -- what
16 were your words? Unforeseen or unpredictable. Did
17 something happen? Did an event happen in or about
18 November 2009, as to net power costs, that made the
19 Company's view of the test period June 2010 net power
20 costs significantly understated?

21 A. I don't know of any specific event. But the,
22 you know, the net power costs in general are very hard
23 to predict. As we have seen from past experience.

24 Q. Mr. Duvall, in your surrebuttal on page 4 --
25 oh, excuse me. Before I go to that. Given the timing

1 that we've seen on this UAE CROSS No. 3 would you
2 accept, subject to check, that the hearings in the
3 2009 rate case took place in -- from December 14th to
4 December 17th of 2009? The revenue requirement
5 hearings?

6 A. Yeah, I believe that's correct.

7 Q. And that the Commission order came out in
8 February? February 18th of 2010?

9 A. I believe that's correct.

10 Q. If you'll turn to your surrebuttal, page 4.
11 You're responding at this point to Mr. Higgins'
12 testimony in this docket that he believes the
13 appropriate place to deal with UAE's application for
14 deferred accounting of the incremental REC revenues is
15 in the major plant addition case currently pending.

16 And I believe you respond on line -- or on
17 page 4 of your surrebuttal, on line -- in line 71. It
18 starts on 70. You say:

19 "The alternative mechanism
20 authorizes a single-item rate case
21 dealing solely with the rate effects of
22 major plant additions...."

23 Where, from the statute or otherwise, do you
24 get the notion that the Commission's precluded from
25 looking at anything in an MPA case but the impacts of

1 the major plant addition?

2 A. Well, that's, that's, I guess, my
3 understanding of the major plant addition cases.

4 Q. And so, for example, it would be
5 inappropriate, in your view, for anyone to interject
6 in a major plant addition case the issue of interstate
7 allocations; is that your view?

8 A. Well, I don't have a particular view. I
9 think it's -- I think anybody can introduce anything
10 they want in a major plant addition case. And the
11 Commission is the one who would rule whether those are
12 applicable or not.

13 Q. So you acknowledge you have no basis for
14 saying that it deals solely with a major plant
15 addition than your own opinion; is that correct?

16 A. Yeah, I think that was really more
17 definitional, so I don't -- I didn't mean to have it
18 taken that other issues could not be introduced.

19 Q. And for example you're aware, are you not,
20 that the Commission itself interjected the issue of
21 interjurisdictional allocations in the very next case
22 when rates were going to be changed sometime in 2009,
23 which affected your filing in the first MPA and the
24 second MPA docket, did it not?

25 A. I'm not directly involved in that, but I

1 believe that that was the case.

2 Q. And therefore the Company filed with rolled
3 in rather than with the, the protocol, correct?

4 A. I frankly don't know the answer to that
5 question.

6 Q. Is it your view that the Commission shouldn't
7 worry itself with the standard of whether the
8 resulting rates will be just and reasonable in an MPA
9 case?

10 A. No. The Commission should always be
11 concerned about whether the rates are just and
12 reasonable.

13 Q. And if factors outside of the specific
14 impacts of the MPA, the major plant addition, affect
15 that, the Commission should take note of those, should
16 it not?

17 A. That's up to the Commission.

18 Q. And in fact, in your rebuttal testimony you
19 updated the BPA transmission cost in this docket,
20 didn't you?

21 A. In -- not in this docket.

22 Q. What docket was that in?

23 A. That was --

24 Q. I'm sorry, in the -- I'm sorry, wrong case.
25 In the MPA II docket, thank you. You updated the BPA

1 transmission costs in that filing, did you not?

2 A. I don't recall that we did. That's the
3 testimony of Dr. Hui Shu.

4 Q. You don't recall an update to the BPA
5 transmission cost number?

6 A. I don't believe there was in the major plant
7 addition case.

8 (Pause.)

9 MR. DODGE: Sorry, I should have Mr. Higgins
10 ask this question.

11 THE WITNESS: But he's not an attorney. I
12 read his testimony.

13 Q. (By Mr. Dodge) I apologize. In the general
14 rate case you, in rebuttal testimony, updated the BPA
15 transmission cost number, even though you said you
16 don't generally update in rebuttal, correct?

17 A. That's correct. And that was a fairly unique
18 circumstance that the Commission recognized that it
19 was already included in the case. But I think
20 generally, looking at the response of the Commission
21 to updates in rebuttal, it's far and few between that
22 any updates are accepted that are introduced in the
23 rebuttal phase.

24 Q. And of course you saw those as unique because
25 the costs went against you, right? Costs to increase?

1 A. Well, they were unique because they linked to
2 issues that had already been addressed in the case.

3 Q. But this, what I consider very significant
4 run up in defer -- in rev -- in REC revenues was not
5 unique or significant enough to warrant any kind of
6 mention; is that correct?

7 A. I really can't comment on that. I mean, I
8 wasn't making the decision as to what to do with that.
9 But I think in general the Commission's policy on
10 updates is that rebuttal is too late.

11 Q. Let's go back to your rebuttal, page 19. You
12 testify on lines 420 and 421 that your recommendation
13 to include incremental REC revenues in the ECAM could
14 help mitigate any cost increase that materialized as a
15 result of including hydro risk in the ECAM.

16 When will customers recognize -- get the
17 benefit, I should say, of the deferred REC revenues if
18 the Commission follows your recommendation to
19 recognize it in this ECAM docket?

20 A. Well, I guess it depends on the order. And I
21 think that would be up to the Commission. I think the
22 general procedure, once the ECAM were in place, would
23 be to look at the September -- the 12 months ending
24 September, file in December, and put the rates in
25 February.

1 I think starting out, the Commission could
2 decide what to do with the deferrals and the timing of
3 that, separate from sort of the general schedule going
4 ahead.

5 Q. What is the Company's proposal for when there
6 actually ought to be a rate adjustment in recognition
7 of the ECAM? If -- let's assume this Commission
8 enters an order adopting an ECAM of some sort. What
9 is the Company's view as to when rates ought to be
10 adjusted to reflect anything from this docket?

11 A. Well, other than the February 15th dates, I
12 don't recall that we have any other specific proposal.

13 Q. And the February 15th date assumes that you
14 will make a filing on December 15th asking -- with the
15 data necessary for the Commission to look at what the
16 adjustment ought to be -- or what the rate change
17 ought to be; is that right?

18 A. That's correct.

19 Q. Does the Company currently plan to make that
20 filing on December 15th?

21 A. Well, if we had a -- I, I don't -- we
22 probably won't, I mean, because of the timing.

23 Q. When do you understand rates will change as a
24 result of the MPA dockets?

25 A. I don't know.

1 Q. Are you not aware that the Company has asked
2 for and the Commission has indicated it's inclined to
3 grant a rate increase effective January 1, assuming
4 that we finish that docket by a certain date?

5 A. I'll accept that.

6 Q. And February 1 if we don't finish it by a
7 certain date; is that your understanding?

8 A. I'll accept that.

9 Q. So if the Commission's concerned about
10 mitigate -- and secondly, do you know approximately
11 the rate increase the Company is requesting in the
12 combined MPA dockets, effective January 1 or
13 February 1?

14 A. No, I don't.

15 Q. Would you accept, subject to check, that that
16 range is, for various rate schedules, as high as
17 8 percent?

18 A. I'll accept that subject to check.

19 Q. And you accept -- you would agree, I assume,
20 that if the Commission's anxious to mitigate a
21 significant price increase, one way to do it is in the
22 MPA docket, correct? And sooner than it would happen
23 in the ECAM docket?

24 A. I think I follow your logic.

25 Q. Mr. Duvall, let's talk just a moment about

1 your view that the REC revenue should be subject to
2 the same sharing percentage as the ECAM numbers. You
3 understand, do you not, that the Company's view -- or
4 excuse me, the other parties' view -- whether you
5 accept it or not -- is that Company incentives are
6 enhanced by having a direct financial stake in the
7 outcome of net power cost decisions? Do you accept
8 that that's their view?

9 A. I guess you're speaking of the deadband and
10 the sharing bands?

11 Q. Correct. Correct.

12 A. Yeah, I understand that's their view.

13 Q. So if the Commission were to accept that
14 rationale and say, We like that incentive for the
15 Company, and apply it to the ECAM, what would be the
16 comparable reason for subjecting the deferred REC
17 revenues to a similar sharing band?

18 Would it be to incent the Company to not
19 reveal that the REC revenues had gone up so
20 significantly in November, December, and January? Is
21 that what you would like that incentive to be?

22 A. Well, I don't, I don't think there's any
23 difference between REC revenues and net power costs.
24 They're both large, volatile, and outside the control
25 of the Company, and they should get similar treatment.

1 They, as I said, they -- the RECs and energy
2 arise from the same source at the same time. There's
3 really no reason to treat them differently. And I
4 think it should be clear that the Company's proposal
5 is to return a hundred percent of the REC revenues to
6 customers through its proposed ECAM.

7 Q. Unless --

8 A. That's through February '09.

9 Q. Unless the Commission adopts a sharing
10 proposal, and then your pro -- your proposal is to
11 keep a higher percentage of the REC revenues that you
12 chose not to disclose to this Commission during the
13 last rate case. Is that a fair statement?

14 MR. MONSON: I'm gonna object to the -- just
15 the argumentative tone of the question, we chose not
16 to disclose. I think that if he wants to just ask his
17 question, that's fine. But to imply that we did
18 something improper I think is inappropriate.

19 CHAIRMAN BOYER: That is sustained.

20 Q. (By Mr. Dodge) I -- well, then that you
21 concealed from the Company -- from the Commission.

22 MR. MONSON: Objection. Same objection.

23 MR. DODGE: I was trying to be nice.

24 Q. (By Mr. Dodge) What was your testimony? You
25 use your words. I used chose not reveal to the

1 Commission that there was a significant run up in REC
2 revenues.

3 You testified that you thought, given the
4 rules, you weren't supposed to. But did you not chose
5 not to reveal it? The Company?

6 A. Well, if there were any decision along that
7 line, I was not involved in it. I'm not the witness
8 in the general rate case that deals with REC revenues.

9 Q. But you understand that someone within the
10 Company knew of the significant run up and elected,
11 for whatever reason, not to reveal it, correct?

12 A. I, I'm unaware of that.

13 Q. You did recognize that the Company understood
14 the REC revenues were increasing significantly by
15 November and December of '09, correct?

16 A. That there were forecasts for that, yes.

17 Q. Not only forecasts, there were actual numbers
18 by that time, were there not?

19 A. I'm not sure what you're referring to.

20 Q. Well, we can go back through the exhibits,
21 but I won't make you.

22 You also testified that the Company did not
23 update the REC revenue projections when it filed its
24 revenue -- its rebuttal testimony in the rate case,
25 correct?

1 A. It accepted the Office's proposal.

2 Q. Okay. So whatever you want to call that, is
3 that the incentive -- is that the behavior you want
4 this Commission to incent by choosing a sharing
5 percentage of REC revenues, as you've testified, if
6 they also adopt a sharing percentage of net power
7 costs?

8 A. I don't understand the question. I don't
9 follow the question.

10 Q. I'll withdraw it then.

11 MR. DODGE: I have no further questions,
12 thank you.

13 CHAIRMAN BOYER: Thank you, Mr. Dodge.

14 MR. DODGE: Oh, I would move the admission of
15 UAE Cross Nos. 1, 2, and 3.

16 CHAIRMAN BOYER: Any objection to the
17 admission of UAE Cross Exhibits 1, 2, and 3?

18 MR. MONSON: Same objection that we've made.

19 CHAIRMAN BOYER: Same objection?

20 MR. MONSON: That you overruled already.

21 CHAIRMAN BOYER: They will be admitted, then.
22 Thank you.

23 (UAE Cross Exhibit Nos. 1, 2, and 3
24 were admitted.)

25 CHAIRMAN BOYER: Mr. Michel, any questions

1 for this witness?

2 MR. MICHEL: I do. Thank you, Mr. Chairman.

3 CROSS EXAMINATION

4 BY MR. MICHEL:

5 Q. Good morning Mr. Duvall.

6 A. Morning.

7 Q. We'll find the limit of how far you have to
8 swing to look at the lawyer. Or maybe not.

9 (The reporter asked Counsel to speak up.)

10 Q. (By Mr. Michel) Just following up a little
11 bit on some of the questions Mr. Dodge was asking you.
12 Would you agree that there are differences between
13 energy and RECs?

14 A. Well, they're, they're different products,
15 but they arise from the same source.

16 Q. Do they have to arise from the same source?
17 Can the Company buy RECs independent of energy, or
18 sell RECs independent of energy?

19 A. The Company can buy RECs, unbundled RECs, but
20 those would have been created by the creation of
21 energy.

22 Q. Not necessarily your energy?

23 A. That's correct.

24 Q. Would you agree that RECs have a different
25 nature than energy? In other words, you can store

1 RECs, they have a shelf life, whereas energy has to be
2 disposed of immediately?

3 A. I, I would agree with that.

4 Q. The Company can accumulate, hold, speculate
5 on RECs differently than it can with energy, right?

6 A. I agree with that.

7 Q. Could you turn to your rebuttal at pages 9
8 and 10, where you talk about the mechanism for net
9 power costs that you have in Idaho?

10 A. Which lines are you looking at?

11 (Pause.)

12 Q. (By Mr. Michel) Let me just make sure I've
13 got the right testimony. There are too many pieces of
14 testimony here.

15 Oh, I'm sorry. Pages 9 and 10. At lines --
16 I'm sorry. At line 200 on page 9, going on to
17 line 209 on page -- you know, my line numbers may be
18 different than yours. But the question --

19 A. It does line up.

20 Q. Pardon?

21 A. Those line up with mine.

22 Q. Oh, they do? Okay. And my question is,
23 could you describe in a little more detail what
24 exactly the mechanism is that you negotiated in Idaho
25 as part of that settlement?

1 For example, you say that it includes a
2 renewable energy investment adjustment. Could you
3 talk about what that is?

4 A. Yeah. That was a, a temporary adjustment
5 that was basically that there were some renewable
6 energy resources -- some wind, wind resources that
7 would be included in the actual net power costs whose
8 capital costs were not included in rates in Idaho.

9 And the parties agreed to exclude that energy
10 from the ECAM, using a dollar-per-megawatt-hour value,
11 until such time that the Company's next general rate
12 case went into effect. It was a matching issue.

13 Q. Is there a major plant provision in Idaho
14 similar to what there is here in Utah?

15 A. No, there isn't.

16 Q. Okay. One of the other features that you
17 described is a 90/10 sharing mechanism. Was that a
18 negotiated outcome?

19 A. That was part of a stipulation.

20 Q. Okay. Was there a justification provided for
21 that sharing in Idaho?

22 A. It was basically the Company proposed exactly
23 what -- in Idaho exactly what it proposed here. And
24 through negotiation with the party and the staff that
25 we ended up with a package that included a 90/10

1 sharing.

2 Q. There was a little bit of discussion earlier
3 today about the prudence of the Company's incurrence
4 of net power costs. And the audit that the Company is
5 proposing, or the audit mechanism the Company is
6 proposing.

7 Let me just begin, would you agree that a
8 negligent action on the part of the Company -- or let
9 me ask it this way. Is a negligent action on the part
10 of the Company that results in higher costs equivalent
11 to an imprudent action?

12 A. I think negligence would be considered
13 imprudent.

14 Q. And it's the Company's position that it
15 should recover its prudently-incurred net power costs,
16 no more, no less? I think I've read that a couple of
17 times?

18 A. That's correct.

19 Q. And the Company has drawn a bright line
20 between net power costs and other costs of service
21 items in terms of what gets included within this
22 proposed ECAM?

23 A. Well, there's a number of -- a few other
24 things that are included. Which is -- I guess the REC
25 revenues is the biggest piece.

1 Q. Okay. But the company has resisted any kind
2 of load growth adjustment mechanism?

3 A. Well, the Company's proposal includes a load
4 growth adjustment for the revenues that are received
5 from net power costs. Or the revenues that result
6 from load growth as they apply to net power costs.
7 We're resisting any additional revenue credits that
8 have nothing to do with net power costs.

9 Q. So cost associated with -- or revenues
10 associated with fixed costs, for example, or
11 additional profits to the Company, you'd exclude
12 those?

13 A. I don't know what you mean by "additional
14 profits." Just revenues assoc -- that are built into
15 base rates that are associated with other parts of the
16 business.

17 Q. Well, to the result -- to the extent those
18 additional revenues result in additional profits or
19 earnings for the Company, those would not be a part of
20 this proposed mechanism?

21 A. They, they would not. Nor would the -- if
22 there's losses because the cost growth has exceeded
23 revenue growth.

24 Q. Okay. And I know you've discussed this with
25 Mr. Dodge a little bit, but would you agree that

1 revenue growth could allow the Company to over-earn,
2 or earn greater than its prudently-incurred costs? On
3 a total company cost-of-service basis?

4 A. Well, it could or it could not. It depends
5 on whether it covers costs. It's really no different
6 than without an ECAM today. If load growth occurs
7 those revenues aren't credited back to customers, nor
8 are additional costs charged to customers.

9 Q. Okay. So as far as cost of service items
10 outside of net power costs, the Company doesn't have
11 any problem with the Company earning more than its
12 prudently-incurred costs if its revenues drive that
13 kind of outcome?

14 A. Well, the Company obviously is, you know,
15 would like to earn its authorized rate of return. And
16 so as we look at other non-net power cost items
17 outside of net power costs we have to deal with those
18 in a general rate case, both the revenues and the
19 costs.

20 Q. So the Company's okay with over-earning as
21 long as it's not related to net power costs? Or
22 earning more than its prudently-incurred costs so long
23 as it's not related to net power costs? The Company's
24 not proposing anything to fix that opportunity, right?

25 A. Well, that opportunity may exist, but it's

1 not been realized for a long time.

2 Q. Could you answer the question?

3 A. Well, we're not, we're not proposing anything
4 to deal with over-earnings.

5 Q. Okay. Now, in between rate cases the Company
6 depreciates its assets, right?

7 A. Well, I'm not an accountant but I believe
8 that depreciation goes on.

9 Q. Okay. So it's possible that the Company's
10 rate base declines from rate case to rate case?

11 A. I'm not sure. We're making significant
12 investments on the system, so I don't know what the
13 relationship of those new investments to the
14 depreciation is.

15 Q. My question is whether it was possible that
16 that was occurring.

17 A. Theoretically possible, yes.

18 Q. And the Company's earnings in a rate case are
19 driven by the level of rate base that's in the test
20 year, right?

21 A. Among other things, in terms of all the costs
22 and revenue levels.

23 Q. So to the extent that rate base depreciates,
24 the Company is earning the same amount of
25 profitability, everything else being equal, as it was

1 higher -- is earning more on its rate base than it
2 would had that rate base not declined in between those
3 cases?

4 A. Well, I think the answer to your hypothetical
5 would be yes. But everything else is not equal.

6 Q. Okay. I'm just trying to get to the symmetry
7 issues that we're grappling with in this case. You
8 have -- the Company's position has been that a load
9 growth adjustment mechanism is not appropriate here.
10 Is there a load growth adjustment mechanism that would
11 be acceptable to the Company in this case?

12 Are there features of what's been proposed
13 that the Company particularly disputes that could be
14 fixed? Is there a lack of symmetry, for example, that
15 needs to -- I know you mentioned that with regard to,
16 I think Mr. Brubaker.

17 Are there other features that the Company
18 could modify to make this an acceptable part of this
19 ECAM?

20 A. Well, I think the answer would be no. I
21 think that what the Company has proposed, to match net
22 power costs with net power cost revenues, is really
23 the only thing that we'd be agreeable to.

24 Q. Okay. So with regard to this load growth
25 adjustment mechanism we've talked about sort of a

1 mismatch. Or the issue is whether or not there is a
2 mismatch of what's in your ECAM and what's out of your
3 ECAM.

4 And you've drawn sort of a bright line -- or
5 at least a line saying that a load growth adjustment
6 mechanism should not be part of an ECAM, right?

7 A. For revenues outside of the net power costs,
8 that's correct.

9 Q. Okay. And would you agree that there are
10 operational things, capital investment-type activities
11 and so on, that the Company could perform outside of
12 an ECAM that would affect its net power costs?

13 A. Yeah, that's true.

14 Q. Okay. Things like maintenance on a power
15 plant that could presumably increase that plant's
16 efficiency, but that the Company may or may not
17 perform because it's outside of that ECAM and its cost
18 recovery? Or its ECAM cost recovery?

19 A. I don't think the Company would take those
20 actions. I think the Company's driven by prudence.
21 And if we're not prudently maintaining or generating
22 resources we'd be subject to disallowances on that.

23 Q. Putting the prudence issue to the side, would
24 you agree there's a financial incentive in that
25 instance to the Company to forego maintenance, and

1 incur those additional fuel costs, and pass those
2 through?

3 A. The financial incentive is driven by
4 prudence.

5 Q. Well, I'm asking you to, other than prudence,
6 is there any reason why the Company wouldn't be driven
7 towards that type of activity or lack of activity?

8 A. Well, I think it's -- that the hypothetical
9 is assuming the Company's not reviewed for prudence.
10 And I have a hard time addressing that hypothetical.

11 Q. Do you agree that incentives will affect the
12 Company's actions?

13 A. Well, incentives will affect the Company's
14 actions to the extent that the incentives can be acted
15 upon. And I think what we've found is that in net
16 power costs there's not a lot that the Company can
17 actually do to address the changes.

18 Q. So there's no need for any prudence review,
19 then, because the Company's stuck with what it's
20 doing?

21 A. That's not the Company's testimony. We think
22 a prudence review is the -- needs to be done. And is
23 very effective at kind of, you know, managing the
24 Company from a regulatory perspective.

25 Q. And I believe you just testified one of the

1 reasons for a prudence review is because it
2 incentivizes the Company to act appropriately? In the
3 best interest of its customers?

4 A. That's correct. The Company does -- is
5 incentivized to do the right thing.

6 Q. Okay. And that prudence review is a
7 financial incentive of some sort, would you agree?

8 A. I would say that's right.

9 Q. And that's the incentive we're talking about
10 is how much money the company makes. Fair enough?

11 A. Or how many -- how much cost the Company
12 recovers.

13 Q. At the end of the day, though, it's the
14 bottom line that's what's driving the Company's
15 actions, right?

16 A. That's correct.

17 Q. So then the Company's not disputing that
18 financial effect -- financial incentives will affect
19 the Company's behavior and can affect it in a positive
20 way? You're just disputing the type of financial
21 incentives that there should be?

22 A. Yeah, I think that's correct.

23 Q. And it's the Company's position that a
24 prudence review is a satisfactory or sufficient
25 financial incentive to the Company?

1 A. It's the Company's position that a prudence
2 review is the appropriate incentive. And that the
3 Company is very concerned about making sure it does
4 the right thing. And that any other of the proposed
5 incentive mechanisms -- the DIP and the sharing
6 band -- would have little effect on the Company
7 because they address costs that can't be controlled.

8 Q. Well, if they can't be controlled then the
9 Company shouldn't be advocating any kind of prudence
10 review, right? Because they can never be imprudent?

11 A. That doesn't follow.

12 Q. Well, does the Company have any control at
13 all over these costs?

14 A. Well, the Company is in control of how it,
15 how it acts, how it reacts and all that. And that's
16 what a prudence review looks at.

17 Q. So the Company's actions can determine the
18 level of its net power costs to some extent? I mean,
19 the Company could go out and do something really
20 stupid and raise net power costs, right? By the same
21 token, it could do something really cutting edge and
22 lower those costs?

23 A. I think the, really the standard is that the
24 Company will do the right thing. And if the
25 Commission finds that the Company didn't do the right

1 thing, that it was imprudent, then there's
2 disallowances.

3 There's really no opportunity under a
4 prudence review for the Company to, you know, get more
5 than its actual prudently-incurred costs.

6 Q. Now, the prudence review that the Company has
7 proposed, that would be conducted by at least the DPU?

8 A. Yeah.

9 Q. Or would it be -- I'm sorry, go ahead.

10 A. Yeah. I think at least by the DPU. In fact,
11 I recall back in the days when the EPA -- EBA was
12 functioning the Division had a dedicated person whose
13 full-time job was to review the energy balancing
14 account.

15 That happened to be Ron Burrup. He would
16 review it every month and work with the company to
17 understand the actual power costs. And we had a
18 full-time person at the Company that worked with Ron
19 to make sure all that got done.

20 Q. He would do that monthly?

21 A. He would look at the costs every month, yes.

22 Q. What would he look at?

23 A. All of the actual fuel costs, purchase power
24 costs and such that were included in the energy
25 balancing account.

1 Q. Would he look at every front office
2 transaction?

3 A. I, you know, to the extent that there were --
4 there weren't anything called "front office
5 transactions" back then. But if there were wholesale
6 sales involved, those would certainly be looked at.

7 Q. And he would evaluate -- well, let's just
8 talk generally about what would need to be done today.
9 Would the price that was paid or received be evaluated
10 based on some standard?

11 A. I think that would -- that wouldn't be up to
12 the Company to determine. I mean, that would be up to
13 the Commission, and the Division, and the staff --

14 Q. Is that something that could affect -- that
15 could be prudent or imprudently performed?

16 A. Certainly. The incurrence of any of the net
17 power costs could be determined to be imprudent.

18 Q. Okay. What about the Company's hedging
19 practices, could that be something that could be
20 prudent or imprudently performed?

21 A. I believe that's -- that could be.

22 Q. Resource acquisitions?

23 A. Well, those are, each, each one of these are
24 already being audited in the general rate case because
25 all of those costs associated with resource

1 acquisitions, and hedging, and all that are already
2 included in our general rate cases.

3 This is just a different forum which gives a,
4 really a second bite at the apple.

5 Q. What about resource acquisitions in between
6 rate cases, and the fuel costs that they effectuate?

7 A. Well, I think that would probably vary.
8 Those in some case would be reviewed in -- under the
9 SB 26. In other cases it would be reviewed under a
10 major plant addition. In other cases it would be
11 reviewed in a general rate case.

12 Q. So there wouldn't be -- any resource
13 acquisitions would not be part of this audit?

14 A. The -- they could be. That is if the -- if a
15 new, a new plant came online and the energy was going
16 through the ECAM, I think the question would be raised
17 as to whether the prudence would be dealt with -- that
18 resource would be dealt with in the ECAM itself
19 before, you know, before -- if that were first in time
20 versus a general rate case.

21 Q. What about the Company's utilization of
22 energy efficiency? Do you agree that that could
23 affect the Company's net power costs?

24 A. It could. And I'm -- it's, I believe,
25 reviewed in the context of a general rate case.

1 Q. Well, to the extent it was deployed in
2 between rate cases would that be something that the
3 audit could look at as well?

4 A. I suppose it could.

5 Q. Okay. What about plant maintenance and plant
6 outages? Those would have to be looked at also,
7 right?

8 A. To the extent they affect net power costs,
9 yeah, they'd be looked at.

10 Q. Okay. And a judgment would have to be
11 derived as to whether that maintenance was necessary
12 or foregone, and whether those outages were beyond the
13 control of the Company or could have been avoided?
14 Those are the types of issues that the Division would
15 need to look at?

16 A. I think the Division and other parties would
17 look at that sort of stuff.

18 Q. And the Company's fuel procurement practices?
19 How much it paid for coal and how much it paid for
20 gas?

21 A. That's right. And these are, you know,
22 everything that has been mentioned are the things that
23 are already reviewed by the Division and others during
24 the course of, you know, the regulation.

25 Q. But we're talking about a situation where

1 these costs are being recovered monthly, as opposed to
2 in a general rate case where there's an opportunity to
3 look comprehensively at all the Company's activities.

4 I'm asking about on a month-to-month basis,
5 or even a year-to-year basis, those are the kinds of
6 things that would need to be looked at because there
7 is not a rate case determination; isn't that right?

8 A. Well, first of all, it's -- they're not
9 recovered monthly. And they would, they would be
10 looked at, but they're really the types of things that
11 the Division and others are familiar with looking at
12 today.

13 Q. Okay. Fuel transportation costs, is that
14 something the Company incurs?

15 A. Yes, it is.

16 Q. And presumably the Company enters into
17 agreements to -- for how much that transportation
18 service would cost?

19 A. Yes.

20 Q. Okay. Would you agree there are a whole lot
21 of things that go into the Company's net power costs?
22 A whole lot of issues, determinations, actions the
23 Company undertakes that can affect net power costs one
24 way or the other?

25 A. Well, there are a number of things that are

1 not new.

2 Q. And it's a pretty heavy burden to
3 comprehensively and deeply look at each of these items
4 and figure out whether or not the Company acted
5 prudently, wouldn't you agree?

6 A. Well, I think that's certainly your opinion.
7 I think that audits are, like I mentioned before,
8 audits have been successively and obviously conducted
9 in other states. They're successively conducted by
10 this Commission with regard to Questar Gas.

11 These are not insurmountable deals. They
12 were conducted by the Division during the energy
13 balancing account. You don't need to look at each and
14 every transaction. There are methods, statistical
15 sorts of methods that can be used to look through the
16 actual net power costs to determine whether they're
17 just and reasonable.

18 MR. MICHEL: May I have one moment,
19 Mr. Chairman?

20 (Pause.)

21 MR. MICHEL: That's all I have, Mr. Duvall.
22 Thank you very much.

23 THE WITNESS: You're welcome.

24 CHAIRMAN BOYER: Thank you, Mr. Michel.

25 Ms. Hayes, any cross examination?

1 MS. HAYES: No, thanks.

2 CHAIRMAN BOYER: Now Ms. Smith and Mr. Lacey,
3 should you change your mind you'll give me the signal,
4 right? If you wish to ask any questions?

5 Okay. Let's turn now to the Commissioners,
6 Commissioner Allen?

7 COMMISSIONER ALLEN: Thank you, Mr. Chairman.

8 I have a question for you, Mr. Duvall, a
9 couple of them here, that were borne out of some
10 questions that Mr. Proctor asked you earlier. And
11 probably the football analogy here is I'm interested
12 in looking at the secondary defense.

13 Lot of dialogue and testimony pertaining to
14 the market incentives or lack thereof, or how
15 incentives might change. But I'm interested also in
16 knowing a little bit more about the management
17 practices.

18 You indicated that management overview --
19 which I think implies for instance in your purview of
20 jurisdiction -- that management is looking at, with
21 your employees, with your staff, with your training,
22 with your operations, that you're going to have to
23 stand up to a prudency review at some point. Or it
24 could happen at just about anytime. Would that be a
25 fair statement?

1 THE WITNESS: That would be a fair statement.

2 COMMISSIONER ALLEN: Now, in the process of
3 doing that do you have a training program or do you
4 have policies in place that incentivize your
5 employees? For instance, do you have annual
6 performance reviews for your managers in which
7 potential of prudence in their actions is one or more
8 of the issues that you address with them?

9 THE WITNESS: Yeah. We have the annual
10 reviews, and I -- I'm not sure quite how to
11 specifically answer that. But we certainly have goals
12 on operational efficiency, regulatory integrity, and
13 doing the right thing in an environmental respect,
14 those sorts of things, so.

15 COMMISSIONER ALLEN: As far as you know have
16 you ever had, in your history with the Company, have
17 you ever had a situation where employees have been
18 disciplined? Because they may have created,
19 inadvertently or advertently, situations that could
20 fail a prudence review or put you on the spot?

21 THE WITNESS: You know, I don't know of
22 anything personally. But certainly, you know, if
23 there's, if there's some impropriety or some, you
24 know. We tend to, you know, plan out what we do,
25 execute it, and then we look back and see, you know,

1 how we did. And we make corrections to that.

2 So, you know, we're continuously trying to
3 improve. Obviously there's gonna be human errors
4 along the way. But we try to identify those and
5 correct them so they don't happen again.

6 COMMISSIONER ALLEN: And do you have
7 incentives for positive performance in this area?
8 Someone notes something, somebody discovers. Do you
9 have incentive bonuses, anything like that, that have
10 been a result of someone not staying on top of
11 prudence issues?

12 THE WITNESS: I don't know that it's that
13 specific. But I think if folks have not performed
14 well based on, you know, imprudent actions, that that
15 would be reflected in their, in their annual
16 incentive.

17 COMMISSIONER ALLEN: So if I'm hearing you
18 right, you train for prudence potential reviews. I
19 mean it's part of your corporate culture. But you
20 can't necessarily remember, for our purpose in this
21 hearing, specific examples of rewards, incentives, or
22 discipline that would help inform that process?

23 THE WITNESS: I don't personally know of any
24 of those.

25 COMMISSIONER ALLEN: That's fine. Thank you.

1 CHAIRMAN BOYER: Commissioner Campbell?

2 COMMISSIONER CAMPBELL: My first question
3 deals with, do you know what the current balance is of
4 the deferred account? Or the latest number that
5 you've seen?

6 THE WITNESS: I do not. Of the deferred net
7 power costs?

8 COMMISSIONER CAMPBELL: Right.

9 THE WITNESS: I do not know what that is.
10 But certainly could confer with others at the break
11 and -- or some other witness could provide that
12 information.

13 COMMISSIONER CAMPBELL: And I guess I'm
14 curious what the level of it is, and whether the trend
15 that -- or the past experience of the last several
16 years has continued in the current year. Do you know
17 that?

18 THE WITNESS: Yes, I believe it has. That
19 the actual net power costs have exceeded in rates,
20 yes.

21 COMMISSIONER CAMPBELL: And do you know why?
22 What drives that? What's been driving that?

23 THE WITNESS: I don't know specifically
24 what's been driving that.

25 COMMISSIONER CAMPBELL: Let me talk about

1 prudence -- or ask you a few questions about prudence.
2 Under our current regulatory environment does the
3 Company have the incentive to operate prudently as it
4 manages net power costs?

5 THE WITNESS: We do.

6 COMMISSIONER CAMPBELL: And does this
7 incentive to operate prudently change under an ECAM?

8 THE WITNESS: No, it does not.

9 COMMISSIONER CAMPBELL: So it's the same?

10 THE WITNESS: It is the same.

11 COMMISSIONER CAMPBELL: Is it fair to
12 say -- well, let me ask you this. In the current
13 regulatory environment I think it's your testimony
14 that the Company has been adversely impacted
15 financially because the actual net power costs are
16 larger than what you said in a rate case. That's
17 right, isn't it?

18 THE WITNESS: That is correct.

19 COMMISSIONER CAMPBELL: And so the question
20 is, under an ECAM does that financial incentive get
21 eliminated?

22 THE WITNESS: The financial incentive?
23 The --

24 COMMISSIONER CAMPBELL: Meaning the Company
25 will no longer be impacted in that manner?

1 THE WITNESS: That's true for, you know, that
2 the Company, under the proposed ECAM, would recover
3 its prudently-incurred net power costs.

4 COMMISSIONER CAMPBELL: So independent of
5 your analysis or your answer to Mr. Dodge's question
6 as it relates to what you think is a stronger
7 incentive.

8 You are agreeing that with prudence itself,
9 the prudence incentive itself remaining the same, that
10 there is an elimination of an incentive we currently
11 have in place that is not being replaced with anything
12 under the Company's proposal?

13 THE WITNESS: That's correct. The -- that's
14 correct.

15 COMMISSIONER CAMPBELL: All right.

16 CHAIRMAN BOYER: A couple of questions,
17 Mr. Duvall. Sort of a practical question on, on
18 prudence. You mention there are statistical
19 techniques that could be used in looking at trend
20 lines and those sorts of things so that one wouldn't
21 have to audit every single -- for example, every
22 single front office transaction.

23 But it is a -- wouldn't you agree that it's a
24 formidable task to perform these audits on a monthly
25 basis?

1 THE WITNESS: I, I think it's, it is a
2 formidable task that -- but I think much of it is
3 already being done. I think it's bigger than what's
4 currently being done. But it's -- a lot of it, you
5 know, should be being done under the current regime.

6 CHAIRMAN BOYER: You mentioned Mr. Burrup
7 having that assignment when the EBA was in effect up
8 until the '90s, I think. Mr. Burrup is now retired
9 and moved on to some other activities.

10 Are you aware that the -- or do you know if
11 the Division of Public Utilities is currently staffed
12 at the same levels as it has been historically, say
13 for the last five or ten years?

14 THE WITNESS: I don't know anything about the
15 staffing.

16 CHAIRMAN BOYER: Well, would it surprise you
17 to understand that they may have a couple of open
18 positions that haven't been filled because of
19 budgetary concerns?

20 THE WITNESS: It would not surprise me.

21 CHAIRMAN BOYER: When the EBA was in effect
22 back in the -- up until the early '90s, now that was
23 a mechanism that the Company -- under prior management
24 that was a mechanism that the Company sought after and
25 it was adopted; is that correct?

1 And then at some point in time the Company
2 became less enchanted with that, shall we say. Is
3 that correct?

4 THE WITNESS: That's, that's --

5 CHAIRMAN BOYER: It sought to --

6 THE WITNESS: -- correct.

7 CHAIRMAN BOYER: -- remove it? What were the
8 reasons for that?

9 THE WITNESS: Well, I think there were
10 several reasons, and I think they're outlined in some
11 of the earlier testimony. But that we were, you know,
12 heading into what everybody thought was gonna be
13 direct access.

14 And, you know, I think that was a fairly big
15 driver. Costs were fairly stable and fairly
16 manageable. As was presented -- shown in my -- I
17 think it was in my direct testimony or my supplemental
18 direct. This chart that showed the power costs --

19 CHAIRMAN BOYER: Uh-huh.

20 THE WITNESS: -- very level through the '90s
21 and then just becoming very erratic after that. So it
22 was real different times at that point than it is now.

23 CHAIRMAN BOYER: And indeed, costs declined
24 part of that period of time, did they not?

25 THE WITNESS: I think they declined in some

1 parts, but not a whole lot. They were really fairly
2 stable.

3 CHAIRMAN BOYER: You mentioned in your
4 testimony today and in your written testimony that the
5 Company would not object to a pilot. What type of
6 length do you think would be appropriate if an ECAM
7 were adopted?

8 THE WITNESS: Yeah. I believe that we
9 indicated that it would go through, through 2013.

10 CHAIRMAN BOYER: Three year?

11 THE WITNESS: Yeah. And the Company would
12 file for a review of that I believe in early 2013.

13 CHAIRMAN BOYER: Do you think a three-year
14 pilot would be an appropriate length? Is that
15 sufficient in order to actually see how it's operating
16 under different scenarios, and different weather
17 conditions, and so on and so forth?

18 THE WITNESS: I think it's fairly -- a bit
19 arbitrary as to what's appropriate. But I think that
20 would be, you know, a reasonable length of time. I
21 don't think the Company would pose a different length
22 of time.

23 CHAIRMAN BOYER: Would you say that that
24 would be a minimum, a minimum pilot time frame, three
25 years?

1 THE WITNESS: Yeah. I think it could be a
2 little longer.

3 CHAIRMAN BOYER: Now, part of the reason the
4 Company brought this ECAM application forward is a
5 failure to timely recover net power costs; is that
6 correct?

7 THE WITNESS: That is correct.

8 CHAIRMAN BOYER: To what extent is the
9 Company's problem a result of forecasting errors?

10 THE WITNESS: Well, I think that certainly
11 contributes to it. I don't know that that's how to
12 judge how much. But we certainly have, you know,
13 have -- it's difficult to forecast net power costs,
14 given all the uncertainties from day to day in the
15 volumetric changes and the prices.

16 CHAIRMAN BOYER: Do you recall how far off
17 those net power costs forecast have been in the last
18 couple of years? Talking thousands, millions, tens of
19 millions?

20 THE WITNESS: Yeah, mil -- tens of millions.
21 Hundred, you know, over a hundred million.

22 CHAIRMAN BOYER: And is that a forecasting
23 error, or what's going on there?

24 THE WITNESS: Well, I think the -- it's more
25 of the paradigm that we're, with a forecast model we

1 are in the situation of modeling a known net position.
2 So that we, you know, the loads don't vary. The
3 forced outage timing is predetermined.

4 The wind doesn't vary from the overall annual
5 amounts. It will obviously have a pattern to it. The
6 hydro doesn't vary. So all of these volumetric
7 changes are predetermined. And that's not the way
8 that the world works.

9 Is that every day our loads, our hydro, our
10 wind, what plants are broken and what are not broken
11 can vary day to day. And at the time that our --
12 these volumetric changes occur we have no idea what
13 the price is gonna be. Whether it's gonna be higher
14 or lower. Whether it's gonna increase our net power
15 costs over what we forecast or decrease it.

16 So that it's -- the modeling cannot pick up
17 the complexities of the actual situation that we face.

18 CHAIRMAN BOYER: Do you find it interesting
19 or troubling that the, at least in recent years the
20 forecasting has always cut against the Company, from
21 its perspective? They're always underestimated?

22 THE WITNESS: You know, and that may be, you
23 know, partly because we really -- because of all the
24 things I just mentioned. Partly because of the, you
25 know, the test period convention in terms of the

1 matching of the forecast with the time that the rates
2 will be in effect. You know, that obviously has an
3 effect as well.

4 But even if that were synchronized, the
5 inability to capture all the vagaries of the changes
6 that occur day by day. We just can't capture those in
7 a model.

8 CHAIRMAN BOYER: Turning now to another
9 subject. Earlier on in this proceeding there was
10 discussion about controllable versus non-controllable
11 net power cost elements. And we seem to have gotten
12 away from that at this point in time.

13 What's your take on that? What kinds of
14 things are controllable by the Company and which are
15 not?

16 THE WITNESS: Well I think, you know, there
17 are certain things that the Company has control over.
18 Which would be the, for example, the performance of
19 the different thermal units, those sorts of things.
20 The availability of, you know, wind plants or hydro
21 plants.

22 That, you know, those sorts of things the
23 Company has some management discretion about. But
24 those aren't the big drivers of changes in net power
25 costs. The big drivers are changes in our loads, in

1 our wind hydro. All the volumetric changes that occur
2 not knowing what the changes in prices are gonna be.

3 So in terms of the overall net power costs,
4 the things that we can control don't really drive the
5 overall net power costs to any great extent, as far as
6 I can see.

7 CHAIRMAN BOYER: That leads to my last area
8 of inquiry. There's a concept in the law that risk
9 should be allocated to the party or parties who cause
10 the risk or who are most able to mitigate that risk.

11 And in terms of net power costs, what kinds
12 of things can consumers do to mitigate this volatility
13 and unpredictability in net power costs? I mean,
14 we've got usage that we consumers could scale back on,
15 I guess. Turn the heat off --

16 THE WITNESS: Right.

17 CHAIRMAN BOYER: -- turn the lights off, that
18 sort of thing. But what can consumers do?

19 THE WITNESS: Well, that's true. In the
20 short term there's not a whole lot you can do except
21 turn off the lights and turn down the thermostat. But
22 over time, you know, replacing equipment stock with
23 more efficient equipment. You know, the whole energy
24 efficiency sorts of things.

25 From an industrial perspective, you know,

1 there's the possibility of putting in, you know,
2 on-site generation, which a number of customers in
3 Utah have. As you've seen the qualified facility
4 contracts come before you.

5 You know, there's -- there are some things
6 that, you know, customers can do to control their
7 usage of electricity.

8 CHAIRMAN BOYER: But it's pretty much limited
9 to a reduction in usage, isn't it, for customers?

10 THE WITNESS: It is. And it's fairly limited
11 on the, on the utility side as well on a daily basis.
12 You know, obviously we have some control of what
13 plants we bring into the mix over time. In that --
14 but on a daily basis a lot of the things are outside
15 of our control. And we're simply reacting to changes
16 in our load and resource balance on a daily basis,
17 doing the best we can to keep our costs down.

18 CHAIRMAN BOYER: Okay, thank you.
19 Commissioner Campbell has a follow-up question.

20 COMMISSIONER CAMPBELL: It's not a question.
21 I do want to accept the Company's offer to find out
22 what the most current level of the deferred account
23 is.

24 THE WITNESS: Okay.

25 CHAIRMAN BOYER: Okay. Mr. Monson, redirect?

1 MR. MONSON: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. MONSON:

4 Q. You were talking with one of the
5 Commissioners about auditing burdens. And you were
6 talking in terms of monthly audits. You were
7 referring to the EBA; is that right?

8 A. That's correct.

9 Q. Would you expect there would be monthly
10 audits under the ECAM as proposed by the Company?

11 A. I think that would be up to the Division.
12 But I -- it would certainly -- we'd be open to that.

13 Q. How often were you gonna file under the ECAM
14 we're proposing?

15 A. The filing is once a year.

16 Q. You were also asked some questions about
17 forecasts, and whether those -- whether there's
18 forecast error. First of all, is the Company's
19 forecast accepted in general rate cases as the amount
20 of net power costs included in setting rates?

21 A. No, it's not.

22 Q. What happens?

23 A. Well, the Company makes a proposal. Other
24 parties come in contesting the Company's proposal
25 with, you know, I think every time they come in with

1 lower net power costs. And at the end of the day
2 there's either a stipulation, or it goes to a
3 fully-contested hearing and the Commission makes a
4 determination on what the net power costs will be.

5 Q. Mr. Dodge asked you a series of questions
6 about the increases in REC revenues. Have there been
7 increases in net power costs during the period of
8 time, for example, shown on your exhibit that are
9 similar or greater in magnitude than the increase in
10 REC revenues that's shown on the exhibits that
11 Mr. Dodge passed out?

12 A. Yes, there are.

13 Q. You've been asked some questions about Idaho,
14 the Idaho ECAM. Are you aware of whether other
15 utilities in -- other electric utilities in Idaho have
16 ECAM-like mechanisms?

17 A. Yes. The other two major utilities, both
18 Avista and Idaho Power, have ECAM-like mechanisms.

19 Q. And when they compute -- in their mechanisms
20 do they compute their net power costs --

21 MR. MICHEL: I'm gonna object. Mr. Chairman,
22 Commissioners, this is beyond the scope of any cross
23 that I did of the witness. I was just asking him to
24 describe their ECAM mechanism in Idaho, not every
25 utility in Idaho.

1 CHAIRMAN BOYER: Well, I think Mr. Michel is
2 correct, Mr. Monson.

3 MR. MONSON: The reason I'm asking is because
4 Mr. Michel was trying to explore why the Company
5 agreed to certain things in Idaho, I believe. And why
6 it was acceptable in Idaho. And I'm trying to explain
7 why -- I'm trying to have the witness answer the
8 question as to why Idaho is different than Utah.

9 MR. MICHEL: I don't believe I was asking why
10 the Company agreed. I simply confirmed that it was a
11 stipulated outcome and that there was no justification
12 provided for the 90/10.

13 CHAIRMAN BOYER: And I think he was
14 restricted in his remarks to RMP's ECAM there.

15 MR. MONSON: Okay.

16 Q. (By Mr. Monson) When the audit takes place
17 that people have been talking about is the subject of
18 the audit the full scope of net power costs, or is it
19 the difference between the net power costs that have
20 already been reviewed in the general rate case and
21 those that have actually been incurred?

22 A. It focuses on the difference between the
23 actual net power costs and the in-rates net power
24 costs.

25 MR. MONSON: That's all.

1 CHAIRMAN BOYER: Okay. Thank you,
2 Mr. Duvall, you are excused.

3 Mr. Monson, shall we proceed with your next
4 witness? We'll break about noon, okay?

5 MR. MONSON: About when?

6 CHAIRMAN BOYER: About noon.

7 MR. MONSON: Okay.

8 CHAIRMAN BOYER: About 12:00.

9 MR. MONSON: Great, yeah. Our next witness
10 is Mr. Griffith.

11 MR. PROCTOR: Excuse me, Mr. Chairman. May
12 I? I think -- I would ask that the Commission explore
13 whether or not there's a witness that we could
14 possibly complete between now and the break, just to
15 make things more efficient.

16 I know that Mr. Griffith likely will not be
17 completed. And I just wonder if it would be more
18 efficient if there was a witness that perhaps would
19 be.

20 CHAIRMAN BOYER: Well, that is a good
21 suggestion. I was thinking about the two witnesses
22 that have scheduling difficulties. So I guess
23 Dr. McDermott you've said you could stay over, if
24 necessary?

25 MR. MONSON: He can.

1 CHAIRMAN BOYER: Would it make sense to --

2 MR. MONSON: I think it's really up to the
3 other parties as to whether somebody can be completed.
4 But the other witness who I would expect -- I actually
5 would have expected Mr. Griffith to be one of our
6 shorter witnesses, since there was hardly any
7 testimony devoted to what he said other than one
8 witness. But Dr. Hadaway is also one who hasn't had
9 much response to his testimony, so.

10 CHAIRMAN BOYER: And I have no way of
11 knowing.

12 MR. PROCTOR: Well, I have very few questions
13 of Mr. Bird. I don't believe I would have any
14 questions -- likely any questions of Dr. Hadaway.

15 MR. MICHEL: At this time I don't have
16 anything for Dr. Hadaway.

17 CHAIRMAN BOYER: Well, would you mind taking
18 Dr. Hadaway out of order?

19 MR. MONSON: No, that's fine if you want to
20 do that.

21 CHAIRMAN BOYER: Let's do that then.
22 Good suggestion, Mr. Proctor.

23 MR. PROCTOR: Thank you.

24 CHAIRMAN BOYER: Dr. Hadaway, have you been
25 sworn in this proceeding yet?

1 DR. HADAWAY: No, I have not.

2 (Dr. Hadaway was sworn.)

3 CHAIRMAN BOYER: Will you please be seated?

4 THE WITNESS: Thank you.

5 SAMUEL C. HADAWAY,

6 called as a witness, having been duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MONSON:

10 Q. Dr. Hadaway, could you please state your
11 name, and your employer, and who you have been
12 retained by in this case, for the record?

13 A. My name is Samuel C. Hadaway. I'm a
14 principal in the financial analysis consulting firm
15 Financo, Inc. And I'm retained by Rocky Mountain
16 Power.

17 Q. And did you prepare rebuttal testimony in
18 this phase of the case that was filed on
19 September 15 --

20 A. Yes.

21 Q. -- 2010? And it included an Appendix A and
22 one exhibit; is that right?

23 A. Yes.

24 Q. Do you have any corrections you wish to make
25 to that testimony?

1 A. Yes, sir. On page 4 of the testimony I refer
2 to Dr. McDermott's rebuttal exhibit in this phase.
3 And I referred to, I believe, 1R. That should be 3R.

4 Q. Okay. So that's on line 75?

5 A. Yes, sir.

6 Q. Okay. Any other corrections?

7 A. No.

8 MR. MONSON: We would offer Dr. Hadaway's
9 testimony, his rebuttal testimony, and its
10 accompanying appendix and exhibit.

11 CHAIRMAN BOYER: Thank you. Are there any
12 objections to the admission of Dr. Hadaway's rebuttal
13 testimony, together with exhibits and attachments?

14 Seeing none, they are admitted.

15 (Samuel Hadaway rebuttal testimony with
16 attached appendix and exhibit was admitted.)

17 Q. (By Mr. Monson) Dr. Hadaway, do you have a
18 summary of your testimony?

19 A. Yes, I have a very brief summary.

20 Good morning Mr. Chairman, Commissioners.
21 Thank you for the opportunity to be here again. My
22 testimony responds to two of the other witnesses:
23 Mr. Peterson, for the Division, and Mr. Higgins for
24 UAE. They offer brief recommendations that ROEs
25 should be adjusted if the Company's ECAM is adopted.

1 I understand also that Mr. Chriss, on behalf
2 of Wal-Mart, in the previous phase had made such a
3 recommendation. I didn't see that testimony but I've
4 been told that he did. And my comments apply equally,
5 because it's exactly the same issue.

6 Mr. Peterson mentions the reduction to ROE
7 possibly in a footnote on page 22 of his testimony.
8 And Mr. Higgins has a brief final Q&A on pages 37 and
9 38 of his testimony where he makes that
10 recommendation.

11 I disagree with their statement -- statements
12 because the companies that I, Mr. Lawton for OCS, and
13 Mr. Peterson for the Division, all used during the ROE
14 hearing all had ECAM-type mechanisms already in place.

15 Today I provide with this testimony my
16 Exhibit SCH-1R, that is a summary table that shows the
17 cost recovery mechanisms that the ROE comparable
18 companies already have. To the extent that such
19 mechanisms reduce the operating risks of these
20 comparable companies, then the effect of ECAM risk
21 reduction is already taken into account in our ROE
22 estimation process.

23 As I have testified on several occasions
24 before, to further reduce Rocky Mountain Power's ROE
25 for the adoption of its ECAM would therefore double

1 count any risk effect that might result from the ECAM.
2 In this regard the Commission should not accept
3 Mr. Peterson's, or Mr. Higgins', or Mr. Chriss's
4 recommendation on this issue. That's all I have,
5 thank you.

6 MR. MONSON: Dr. Hadaway is available for
7 cross examination.

8 CHAIRMAN BOYER: Thank you, Mr. Hadaway.
9 Mr. Proctor, any cross examination?

10 MR. PROCTOR: Just very, very brief.

11 CROSS EXAMINATION

12 BY MR. PROCTOR:

13 Q. Dr. Hadaway, in your exhibit of those
14 companies "with ECAM like," I believe that's your
15 phrase?

16 A. Yes.

17 Q. Okay. Do you know, of those, were any as a
18 result of a negotiated resolution to an ECAM proposal
19 between the electric utility and regulators, or other
20 customer groups?

21 A. Mr. Proctor, I would expect that they were,
22 but we simply reviewed the companies' 10-Ks. In their
23 segment information they all tell about those things.
24 And all of them do have cost recovery mechanisms like
25 this ECAM.

1 Q. But the 10-K description of those mechanisms
2 would not include a description of other compromises
3 or solutions to other proposals or problems that were
4 presented in the course of the ECAM proceedings?

5 A. No, sir, I don't think so.

6 MR. PROCTOR: Thank you very much, sir.

7 CHAIRMAN BOYER: Thank you, Mr. Proctor.

8 Ms. Schmid?

9 MS. SCHMID: Could we have just one moment?

10 CHAIRMAN BOYER: Please.

11 (Pause.)

12 MS. SCHMID: No questions.

13 CHAIRMAN BOYER: Thank you, Ms. Schmid.

14 Mr. Evans?

15 MR. EVANS: No questions, thank you.

16 CHAIRMAN BOYER: Mr. Dodge?

17 MR. DODGE: Thank you, Mr. Chairman.

18 CROSS EXAMINATION

19 BY MR. DODGE:

20 Q. Dr. Hadaway you'll acknowledge, will you not,
21 that the -- one of the main purposes of the ECAM is to
22 reduce the Company's exposure to power cost
23 volatility?

24 A. I believe I would agree with that, yes.

25 Q. And that exposure is risk to the Company,

1 correct?

2 A. Yes.

3 Q. And you agree conceptually that a lower risk,
4 all other things being equal, should produce a lower
5 return on equity? A reduction in risk should --
6 compared to the status quo should reduce the
7 authorized return on equity as well?

8 A. It depends on how the status quo is
9 established.

10 Q. Assuming that the rate currently is just and
11 reasonable. So make that assumption. And that, all
12 other things being equal, the risk goes down for the
13 utility. You don't disagree, do you, that the
14 Commission ought to consider reducing the ROE if it
15 can be demonstrated how much --

16 A. I entirely disagree with that. And it's
17 because the way the benchmarks, or the status quo that
18 you're talking about, was established for this Company
19 and is for all the companies that I work for.

20 We use a comparable group. We very
21 specifically limit that group to be single-layer
22 higher-rated companies. Every one of them has an
23 ECAM-type mechanism in place. In fact,
24 Dr. McDermott's testimony demonstrates that almost all
25 of them have no sharing and no deadbands.

1 Q. So is it your position that the current
2 authorized return on equity is unjust and unreasonable
3 for this company because it did not have an ECAM
4 before?

5 A. It is not.

6 Q. So if it was just and reasonable before when
7 compared to those companies and then the risk goes
8 down, all other things being equal, the ROE should go
9 down with it, should it not?

10 A. The process is simply not that precise. As
11 you well know, we debate all these issues. The
12 Commission did not grant the rate of return the
13 Company requested in the last rate case. It
14 considered all the evidence, including my testimony
15 that ECAMs existed for those companies, and it made a
16 decision that 10.6 percent was the right ROE.

17 Q. And if you accept that that is a just and
18 reasonable ROE, all things considered, including no
19 ECAM. Then, if the only thing that changed were an
20 ECAM and a reduction in risk, the Commission ought to
21 consider whether a lower ROE would be appropriate in
22 light of the reduction in risk?

23 A. Certainly the Commission can consider
24 whatever it wants to. It is simply not that precise a
25 process to say that 10.6 percent didn't consider the

1 difference in the risk of PacifiCorp and Rocky
2 Mountain Power at that time relative to the companies
3 in the comparable group.

4 There's no discussion of that issue that I
5 know of in the record, but there certainly was in the
6 hearing.

7 Q. So you don't even agree conceptually that a
8 reduced risk should bring with it reduced ROE?

9 A. Of course I do. And --

10 Q. Okay.

11 A. -- I'm simply saying that that's not the way
12 the ROE was set in this case, as you sort of
13 hypothesized.

14 Q. Well, I asked you to assume that it was set
15 at a just and reasonable rate and you said you weren't
16 challenging that, so. All I needed was, conceptually,
17 reduced risk should lead to lower return on equity?
18 Authorized return on equity?

19 A. In a pure hypothetical world, if that had not
20 already been considered in setting the rate. Simply
21 because you want to say that it was just and
22 reasonable, that doesn't mean that that risk wasn't
23 considered when the 10.6 percent was set.

24 Q. I didn't ever say I considered it just and
25 reasonable, I said our Commission did. Now, let me

1 move on.

2 How many of the companies in your exhibit
3 also have a major plant addition statute that allows
4 them immediately upon putting a new facility in place
5 to begin recovering the net power cost -- I mean the
6 net revenue impacts of that major plant addition?

7 MR. MONSON: I'm gonna object. Are we now
8 gonna make a recommendation that the ROE be reduced
9 based upon the major plant addition statute, which has
10 nothing to do with this case?

11 CHAIRMAN BOYER: Well, I don't know what his
12 intention is, but I think the question is appropriate
13 and.

14 MR. DODGE: Certainly legitimate. He's
15 claiming these are all comparable, and I'm saying, Are
16 they?

17 Q. (By Mr. Dodge) Do they all have the major
18 plant addition component as well, Dr. Hadaway?

19 A. Well, Mr. Chairman, many of the companies --
20 and I haven't studied this because it's not an issue
21 raised by anybody until now. But many of the
22 companies in my comparable group do, indeed.

23 And some of them even have pre-completion
24 opportunities for construction work in progress in
25 rate base prior to completion of the plants. In

1 Missouri and in Kansas.

2 I know that Kansas City Power & Light
3 Company, who's another client of ours, they have had a
4 regulatory plan in place for their just-completed
5 Iatan 2 plant that required maintenance of their bond
6 rating. So yes, those kinds of clauses are very
7 common.

8 Q. So you've named two, and how many companies
9 do you have?

10 A. I believe there were 19 in that initial
11 group.

12 Q. I think you've got more than 22 that you
13 put -- more than 25 on your exhibit --

14 A. No. In that exhibit that we're referring to,
15 those are the operating companies of the various ones.
16 The comparable group that we used to estimate ROE was
17 19 companies.

18 Q. It is not your testimony, is it, that every
19 one of them has a major plant addition-type procedure
20 like this company does?

21 A. No.

22 Q. So if we ignore that and just say, Well, they
23 all have ECAMs, each incremental risk reduction
24 element that this Company gets always produces no
25 return on equity reduction, does it not?

1 Isn't that how you go around testifying?
2 They should always leave the ROEs the same, no matter
3 how they draw the risk?

4 A. That's entirely a mischaracterization of my
5 testimony. These companies are all single-A rated
6 companies. The rating agencies look at all of these
7 kinds of issues. And they've determined that these
8 companies, from their objective opinion, are of
9 comparable risk at that level.

10 Now, you can go down the line and you can
11 pick different things for each company in different
12 jurisdictions in the way they're treated. To do that
13 in an ROE proceeding I don't think is at all
14 justified, because you can always find one thing that
15 goes one way and one that goes the other.

16 Q. But Dr. Hadaway, that's just what you did in
17 your exhibit. You picked one issue, the ECAM, and
18 said they're all the same, therefore no reduction in
19 ROE. And now you've said you shouldn't look at just
20 one issue. What do we look at? How do --

21 A. Excuse me, Counsel, that is not at all what I
22 said. I do --

23 Q. That's how I --

24 A. This is an ECAM proceeding --

25 (The speakers were talking over one another

1 and had to be interrupted by the reporter.)

2 THE WITNESS: Excuse me, I'm sorry. This is
3 an ECAM proceeding, where other witnesses have made
4 the recommendation that you're saying that I am now
5 bringing up. I'm simply responding to their
6 recommendation.

7 Q. (By Mr. Dodge) And you're saying, Look at
8 all these other states that have ECAMs, therefore
9 there should be no reduction in ROE. You're looking
10 at one item and saying therefore there should be no
11 reduction in ROE, are you not?

12 A. On that particular item, exactly.

13 Q. But on the item I raised you said it's not
14 appropriate to just look at whether they have major
15 plant addition type --

16 A. I did not say that, Counsel.

17 Q. Okay. Well, the Commission can hear what
18 they heard. Dr. Hadaway, have you ever gone on the
19 stand and testified that a utility ought to have a
20 lower ROE because it's gone through some risk-reducing
21 element?

22 A. Yes.

23 Q. Name it. When was that?

24 A. In Texas in many cases, because we've always
25 had construction work in progress there, we've often

1 reduced the ROE to consider the cash flows that were
2 allowed there.

3 Q. On whose behalf were you testifying?

4 A. On behalf of the staff. On behalf of the
5 industrial customers at one time.

6 Q. Aha.

7 A. And to some extent on behalf of some of the
8 companies where we've put rate plans in place to get
9 large plant additions done.

10 Q. So when you represented customers you did
11 argue for a reduced ROE when the risk went down, but
12 not when you represent utilities --

13 A. Counsel, I said just now that when we were
14 representing the companies and we had rate plans in
15 place that we were trying to get done we often
16 considered the ROE construction work in progress on
17 behalf of the companies in that same proceeding.

18 Q. And you're testifying under oath here that
19 you have recommended in one of those dockets that the
20 utility's ROE go down as a result of that?

21 A. I have not explicitly recommended it should
22 go down. Neither have I explicitly recommended that
23 it should go up for Utah Power when these things
24 weren't taken care of.

25 MR. DODGE: That's all I asked, thank you.

1 No more questions.

2 CHAIRMAN BOYER: Mr. Michel?

3 CROSS EXAMINATION

4 BY MR. MICHEL:

5 Q. Just a clarification, because I think in one
6 of your answers there were a couple negatives and I'm
7 not sure how they all worked their way through.

8 In that exhibit that Mr. Dodge was asking you
9 about with the 19 or 22 comparable utilities I
10 understood your testimony to say that many of those
11 utilities -- I forgot what the issue was.

12 Thanks. That many of the -- that many of
13 those utilities did not have a major plant addition
14 capability ratemaking -- major plant addition
15 opportunity similar to what Rocky Mountain Power has
16 here. And you --

17 A. No, no. Excuse me. I don't believe that's
18 what he asked me, and that's certainly not what I
19 said.

20 Q. Okay.

21 A. He asked me did I know if all of them did,
22 and I said no.

23 Q. Okay. And you only know of two that do have
24 a similar-type of provision available to them?

25 A. I read about these things all the time. I

1 think Pleeco (phonetic) is probably finished, and I'm
2 not sure they're part of that group. But there are
3 many companies around the country. I wasn't asked
4 about that issue at all in any data request or
5 anything else, so as I sit here I can't go down that
6 list of 19 companies and explain that to you.

7 Q. Okay. But you're aware of two that do have
8 it, and you don't know about the others; is that --

9 A. I'm not saying that I don't know about them.
10 I simply was asked that a couple minutes ago, and as I
11 sit here I can't name them off and swear that I know
12 how they work, because I haven't looked at them. But
13 I do know that they exist all around the country.

14 Q. Right. But I'm focused -- and I think
15 Mr. Dodge was focused -- on the comparable group that
16 you were using, and how many of those utilities do
17 have a major plant addition provision available to
18 them.

19 A. As I sit here, I don't know.

20 MR. MICHEL: Okay. Thank you. That's all I
21 have.

22 CHAIRMAN BOYER: Thank you, Mr. Michel.

23 Ms. Hayes?

24 MS. HAYES: Thank you, no questions.

25 CHAIRMAN BOYER: Commissioner Allen?

1 COMMISSIONER ALLEN: Thank you, Mr. Chairman.
2 Quick question for you, Mr. Hadaway. It's
3 been a while since we've heard from you, so I'm
4 wondering if there's been any change in the state of
5 the econometrics of the risk in calculating ROE. I
6 know you have some expertise there, and you've
7 testified before.

8 Has anything changed, since we last saw you
9 or heard from you, in terms of metrics? Refined
10 methods for determining the cost or the value of
11 rate -- excuse me, of risk increases or decreases?

12 Are we seeing people sharing their
13 proprietary formulas or their metrics? Or telling us
14 that if we have a reduction of risk of X percent, or
15 of a certain type, that it's worth a more specific
16 type of -- or a very specific level of reduction or
17 increase in ROE?

18 THE WITNESS: No, sir. I don't know of any
19 additional ones. There have been some suggestions
20 that you can look at the difference between a single-A
21 bond rating and a triple-B bond rating.

22 Mr. Coleman on behalf of the industrials has
23 testified here, I believe. I don't know if he
24 testified to that 30 basis points in this particular
25 hearing, but he has in some PacifiCorp cases.

1 But I don't know of more refined models to do
2 that.

3 COMMISSIONER ALLEN: As far as you know, no
4 one's taken the ECAM cases from the other states and
5 come up with some sort of weighted average and said
6 this many of them reduce their ROE, or -- by this much
7 money, or?

8 THE WITNESS: No. To some extent, really, I
9 haven't seen that issue raised as often as it is in
10 the Northwestern part of the country. I have seen
11 this issue about do the comparable companies have
12 ECAM-type mechanisms in place.

13 And I have seen, for example in Missouri, the
14 Commission there say because the comparable companies
15 have that, then the ROE should not be reduced. But
16 now that was just in one particular case, and what
17 they might say in another case I don't know.

18 COMMISSIONER ALLEN: So as far as the
19 Commission goes in how we make decisions on these rate
20 of returns -- or return on equity, we're pretty much
21 still faced with everything in front of us and then
22 going from there? Okay, thank you.

23 CHAIRMAN BOYER: Commissioner Campbell has no
24 questions, nor do I.

25 Any redirect, Mr. Monson?

1 MR. MONSON: No. No questions.

2 CHAIRMAN BOYER: Very well.

3 Thank you, Dr. Hadaway. You are excused.

4 THE WITNESS: Thank you, Mr. Chairman.

5 CHAIRMAN BOYER: Let's take an hour
6 and-a-half recess for lunch. And we will convene back
7 here in 90 minutes.

8 (A luncheon recess was taken from
9 11:46 a.m. to 1:14 p.m.)

10 CHAIRMAN BOYER: Okay, let's go back on the
11 record. Mr. Monson, I see you've already called
12 Mr. Griffith to our chair.

13 And you have been sworn in this proceeding,
14 have you not?

15 THE WITNESS: No, I have not.

16 (Mr. Griffith was sworn.)

17 CHAIRMAN BOYER: Thank you. Please be
18 seated.

19 Mr. Monson?

20 WILLIAM R. GRIFFITH,
21 called as a witness, having been duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MONSON:

25 Q. Please state your name, employment, and

1 business address for the record.

2 A. My name is William R. Griffith. I am
3 employed with PacifiCorp. I am director of pricing,
4 cost of service, and regulatory operations. My
5 address is 825 Northeast Multnomah, Portland, Oregon,
6 Suite 2000.

7 Q. Okay. And did you prepare and file in this
8 case direct testimony dated March 16th of 2009, with
9 one exhibit?

10 A. Yes.

11 Q. And surrebuttal testimony dated October 13,
12 2010, with two exhibits?

13 A. Yes, that's correct.

14 Q. And do you have any corrections you wish to
15 make to that testimony?

16 A. No.

17 MR. MONSON: We would offer Mr. Griffith's
18 direct testimony and his surrebuttal testimony,
19 together with the exhibits.

20 CHAIRMAN BOYER: Are there any objections to
21 the admission of Mr. Griffith's direct and surrebuttal
22 testimony, together with exhibits?

23 Seeing none, they are admitted.

24 (William R. Griffith direct and surrebuttal
25 testimony with attached exhibits

1 was admitted.)

2 Q. (By Mr. Monson) Mr. Griffith do you have a
3 summary of your testimony?

4 A. Yes, I do.

5 Q. Would you present that?

6 A. Good afternoon Chairman Boyer, Commissioner
7 Campbell, and Commissioner Allen. I present two
8 pieces of testimony in this design phase of the
9 hearing: My direct testimony, filed on March 16,
10 2009. My surrebuttal, filed on October 13, 2010.

11 In my direct testimony I presented the
12 Company's proposed Tariff Schedule 94, energy cost
13 adjustment, and the Company's proposed rate spread and
14 rate design for the ECAM.

15 For rate spread the Company proposed to
16 spread the ECAM adjustment, based on an equal-cents-
17 per-kilowatt-hour basis, after adjusting for voltage
18 level losses across all customer classes.

19 As I indicated, the proposed rate spread is
20 simple. And directly applies changes in net power
21 costs to customers' energy charges, which will send
22 clear signals to customers of changes in energy costs.

23 For rate design the Company proposed that
24 Schedule 94 would be applied as an equal-cents-per-kwh
25 rate to all tariff schedules. And that for

1 time-of-day schedules, Schedules 6A, 8, 9, and 9A, the
2 rate would be shaped to mirror the structure of the
3 seasonal time-of-day base energy charges in those
4 tariffs.

5 In my surrebuttal testimony I responded to
6 UIEC's witness, Mr. Morris Brubaker, his issues
7 concerning the structure of Schedule 94. And I
8 prepared an example showing the ECAM rate spread and
9 rate design.

10 I indicated that the proposed tariff
11 reflected seasonality for customers and for large
12 customers, that the tariff was supported by UAE
13 witness Mr. Higgins, and that it is reasonable.

14 Q. Does that conclude your summary?

15 A. Yes, it does.

16 Q. Before the break for the lunch hour
17 Commissioner Campbell asked a question to Mr. Duvall,
18 I believe, regarding the current balance, the deferred
19 account balance for the net power costs. Do you have
20 that information?

21 A. Yes, I do. The current balance in the
22 deferred account for net power costs not in rates from
23 March 1, 2010, through September 30, 2010, is
24 \$38.8 million.

25 MR. MONSON: Is that what you needed?

1 Okay. Mr. Griffith is available for cross
2 examination.

3 CHAIRMAN BOYER: Thank you, Mr. Griffith.
4 Mr. Proctor, cross examination?

5 MR. PROCTOR: Mr. Chairman, with your
6 permission, could I go second? I, I'm still
7 struggling with confidential documents filed as
8 non-confidential documents with the Commission and
9 sent to me on -- last night at 10:30, pertaining to
10 Mr. Griffith's testimony. Would --

11 CHAIRMAN BOYER: Absolutely.

12 MR. PROCTOR: I'm trying to figure those out.

13 CHAIRMAN BOYER: Absolutely. Work that out.

14 MR. PROCTOR: Thank you.

15 CHAIRMAN BOYER: We'll turn to Ms. Schmid.
16 And I'm sure you'll remind me if I overlook coming
17 back to you, Mr. Proctor.

18 MS. SCHMID: Unfortunately, Mr. Proctor, I
19 won't be any help. I have no questions for this
20 witness.

21 CHAIRMAN BOYER: Okay.

22 Mr. Evans?

23 Ms. Smith, I'm not even asking --

24 MR. EVANS: I can help. I can help
25 Mr. Proctor.

1 CHAIRMAN BOYER: I'm not even asking
2 Ms. Smith because you promised to give me the signal
3 if you wished to change your -- Same with Mr. Lacey.

4 Mr. Evans?

5 MR. EVANS: Thank you, Mr. Chairman.

6 CROSS EXAMINATION

7 BY MR. EVANS:

8 Q. Good afternoon, Mr. Griffith.

9 A. Good afternoon, Mr. Evans.

10 Q. I wonder, were you in the hearing room this
11 morning during my cross examination of Mr. Duvall?

12 A. Yes.

13 Q. When I attempted to get some information from
14 him on this UIEC Cross-1 that's been proposed? Did
15 you get a chance to see what that document was?

16 A. Yes, I think I took a quick -- I have a copy
17 of it.

18 Q. Are you familiar with this?

19 A. I've seen it before. I don't know what you
20 mean by "familiar."

21 Q. Well, you know what it is, and you know that
22 it was --

23 A. Well, it says it's a Cost of Service By Rate
24 Schedule. It's a summary of cost of service factors.

25 Q. Okay. And I have represented that it was

1 filed as Mr. Paice's Exhibit CCP-3R in the last rate
2 case, 09-035-23. Let -- if you wouldn't mind, let me
3 ask the questions to you and we'll see if you -- if
4 you can't answer them, that's all right too.

5 We were looking at Mr. Duvall's testimony --
6 at his surrebuttal testimony at the fifth bullet
7 point. Do you have that in front of you?

8 A. No.

9 Q. Okay. Well, maybe I can have it -- you won't
10 need it because I can read you the question. We're
11 looking at his surrebuttal testimony on page 10. And
12 he seems to think -- the issue is the effect of
13 ignoring the 75/25 factor in allocating net power
14 costs, I think was the issue we were discussing.

15 And his testimony says this: The difference
16 between the Utah SE and SG factors in the Company's
17 last general rate case was .13 percent. Allocating
18 that cost to 98 million on an allocation factor that
19 is .13 percent different than the SE factor would
20 likely produce a small number.

21 And so my inquiry, for which I intended to
22 use this cross exhibit, was whether that .13 percent
23 difference between allocating on SE and SG holds true
24 across the classes. Do you know the answer to that
25 question?

1 A. No, I don't.

2 Q. You don't know whether the difference between
3 SG and SE allocator would hold the same across all
4 classes? Would be the same difference?

5 A. No, I do not. I haven't prepared -- I don't
6 work with allocation factors. I work with customer
7 rates and rate design issues in each of the six
8 states.

9 Q. If I asked you if you were able to identify
10 the SE factor on this US -- UIEC Cross-1, could you
11 find what line that was?

12 A. No.

13 Q. Would you look at the first line, F10, where
14 it says split 75/25?

15 A. That's the second line?

16 Q. That's the second line, right. First line is
17 blank all the way across, isn't it?

18 A. I see that.

19 Q. And do you know what that factor is?

20 A. That's the 75/25 coincident peak allocation
21 factor.

22 Q. So that would --

23 A. Across the classes.

24 Q. So that would be the SG factor? Okay. If I
25 asked you to find --

1 A. I didn't say that, but you did.

2 Q. What did you say then? I'm sorry, I
3 misunderstood your response.

4 A. I didn't say it was the SG factor. I, again,
5 I don't deal with the allocation factors, so I don't
6 know which ones are SG and which ones are SE.

7 Q. Okay. Describe to me what F10 is.

8 A. I'm describing what I read across the sheet.
9 It's the 75/25 allocation factor, spread across the
10 customer classes. It shows it adds up to a
11 hundred percent. And shows an allocation of
12 34 percent to residential, 14 percent to Schedule 9.

13 Q. Okay. And look at line F30. What data do
14 you draw from that line as to residential and
15 Schedule 9?

16 A. Well, I see each of the factors are slightly
17 different than one --

18 Q. Yes.

19 A. -- for Schedule 9.

20 Q. Well, there's different --

21 A. Because there's different allocation factors.

22 Q. Right. There's a difference between the
23 system energy and system generation factors in all
24 classes, isn't there? It's just separate -- when you
25 break them out, each class has its own difference

1 between F10 -- line F10 and line F30?

2 A. And those are based on different class loads
3 and the underlying load characteristics of the classes
4 in determining the factors.

5 Q. Okay. So if we were to take the difference
6 between F10 and F30 under Schedule 9, I've done the
7 math, and it is .0193. That would be 1.93 percent.
8 Do you accept that, subject to check?

9 A. It would be a difference in the percentages
10 of .19.

11 Q. Right. It would be -- no. It would be --
12 the difference is .0193.

13 A. That's the factor difference, yes.

14 Q. I'm sorry. The factor difference would be --
15 I've misplaced the decimal. The factor difference is
16 1.93 percent. See, we're reading --

17 A. It's, it's .166 minus .147 is .019.

18 Q. Okay. So that expresses a percentage that
19 would be 1.93 percent?

20 A. That's the difference in the two percentage
21 amounts.

22 Q. Correct. So when we're looking at
23 Mr. Duvall's testimony and he's saying that the
24 difference in allocating on SE and SG is .13 percent,
25 for Schedule 9 it turns out to be 1.93 percent, right?

1 A. That's the difference in these tables for
2 these two allocation factors, yes.

3 Q. And so the way I calculate that, that's
4 almost 15 times greater difference for Schedule 9 than
5 it is for the system as described in Mr. Duvall's
6 testimony.

7 A. Is there a question?

8 Q. Would you agree?

9 A. I agree that there are different numbers.
10 I'm not sure that they're comparable, or that the --
11 what we're looking at here would directly relate to
12 what Mr. Duvall said.

13 Q. Okay. Do you agree that the effect of
14 ignoring the 75/25 allocator in the way we're
15 calculating these actual net power costs has different
16 effects across different classes?

17 A. Well, I think when we look at actual net
18 power costs we're looking at actual costs. I'm, you
19 know, I'm not sure how those are being allocated.

20 Q. Okay.

21 A. Those are actual the costs. And then costs
22 that are set in rates are set based on the allocation
23 factors.

24 Q. But the allocation factors in rates include a
25 75/25 allocator for generation and purchase power,

1 right?

2 A. Yes, I believe that's the case.

3 Q. And that's not what's proposed in the ECAM,
4 right? You're --

5 A. Well --

6 Q. -- allocating -- I'll let you answer.

7 A. What's proposed in the ECAM is the rate
8 spread proposal that I have across the customer
9 classes. Which applies a uniform cents-per-kilowatt-
10 hour rate, adjusted for losses, and adjusted for
11 time-of-day shaping for Schedules 6A, 8, 9, and 9A.

12 Q. Yes.

13 A. And that's very similar to the Company's
14 energy balancing account that was in place
15 approximately 20 years ago, except it's been improved
16 in that we now do adjust for system losses or for
17 distribution losses.

18 Q. But it's very different than the way the
19 Company allocates its base rates, isn't it? Its base
20 net power costs?

21 A. I think it's, it's similar to past power cost
22 adjustments. And it's meant to be a simple way to
23 allocate these costs. And to fairly recover the
24 changes in energy costs across classes.

25 Q. Well, I understand that, but that wasn't the

1 question. It's different than the way you've built up
2 the base NPC, right? Which is by using a 75/25
3 allocator?

4 A. I think that, if I understand the
5 methodology, I think that this is the allocation
6 across customer classes. It's not the allocation of
7 the base and the actual net power costs.

8 Q. I don't think that was responsive to the
9 question.

10 A. You want to ask the question again, then?

11 Q. The way you've just described to build up
12 the -- to allocate the actual net power costs is
13 different than the way you allocate base net power
14 costs in the rate case because it ignores, in the
15 actual NPCs, the 75/25 allocator?

16 A. At this point I'm limited to what I can
17 explain, because I'm -- I don't know.

18 Q. Okay. Let's go to maybe what you do know.
19 In your surrebuttal testimony this is mainly, as I
20 read it, for the purpose of responding to
21 Mr. Brubaker's criticism that ECAM design doesn't
22 effectively track the cause of the excess power costs
23 and -- right?

24 This is in response to Mr. Brubaker's
25 testimony?

1 A. Yes, primarily, yes. And also to provide an
2 explanation to all the parties to understand how this
3 would work.

4 Q. And in your response, beginning at line 28,
5 you state the basis of your disagreement there. And
6 then you state that:

7 "...Schedules 6A, 8, 9, and 9A would
8 be 'shaped to mirror the structure of
9 the time-of-day base energy charges for
10 these schedules'...."

11 Do you see that?

12 A. Yes.

13 Q. Why is that phrase in quotes?

14 A. It's in quotes to reflect that I stated it in
15 my direct testimony.

16 Q. Okay. You didn't cite where in your direct
17 testimony it was?

18 A. Well, I said -- the sentence starts:

19 "...as indicated in the Company's
20 proposal in my direct testimony...."

21 Q. Okay. These Schedules 6A, 8, 9, and 9A
22 currently have time-of-day and seasonal rates, right?

23 A. That's correct.

24 Q. And the Commission currently has ordered a
25 work group to look at these rates among other

1 cost-of-service issues. Are you aware of that?

2 A. I'm aware that the Commission has ordered a
3 work group to look at cost-of-service issues. I'm not
4 aware that the Commission has ordered a work group to
5 look at these rates. These rates are approved by the
6 Commission and are in service for service to our
7 customers.

8 Q. Well, I -- maybe I mis -- maybe I misheard
9 you. The Commission is looking at, in their
10 cost-of-service work group, whether the time-of-use
11 and seasonal allocations are -- could be improved.
12 Are adequate. Isn't that part of the cost-of-service
13 work group?

14 A. I agree that part of the cost-of-service work
15 group is to look at the differentials in rates and the
16 allocation of costs.

17 Q. And that the goal would be to set time-of-day
18 and seasonal adjustments to more accurately reflect
19 the cause of the seasonal costs. Is that the goal?

20 A. I'm not aware that's the goal.

21 Q. Isn't the goal generally, in regulatory
22 ratemaking, to allow -- to have rates reflect costs?

23 A. I think that's one of the goals of rates,
24 yes.

25 Q. Well, what do you mean when you say that the

1 ECAM surcharge mirrors the structure of these rate
2 schedules?

3 A. That's shown on my exhibit with the rebuttal
4 testimony that's Exhibit -- long title here. WRG
5 Phase II-2-1SR, page 1 of 1. And it shows -- if you
6 want -- if you would like me to explain it?

7 It shows that the present rates for
8 Schedule 9 are contained in column 2. And those show
9 that the on-peak kilowatt hour charge in the summer
10 months is about approximately 3.46 cents per kilowatt
11 hour. The on-peak rate in the winter months, the
12 non-summer months, is 2.6 cents. And in the off-peak
13 period year round it's 2.18 cents.

14 What I then show is, with a proposed ECAM, a
15 rate change of \$10 million overall. And that's --
16 that amount is shown in the second exhibit, the total
17 rate spread for the ECAM.

18 Q. Excuse me, let me interrupt. What is shown
19 in the second exhibit?

20 A. The second exhibit shows the rate spread of a
21 hypothetical \$10 million ECAM adjustment across the
22 customer classes.

23 Q. And you're bringing that, that hypothetical
24 adjustment back in to your first exhibit; is that the
25 idea?

1 A. Yes, that is. In hindsight I probably would
2 have switched the two exhibits.

3 Q. Maybe.

4 A. So that the targeted revenue change for
5 Schedule 9 is approximately \$1.798 million. Which
6 corresponds with row 11 on Exhibit 2, where it shows
7 \$1.8 million.

8 But what this shows is that our proposed ECAM
9 surcharge rate is contained in column 4. And it would
10 be shaped -- the energy charge values would be shaped
11 in the same way as the base rate Schedule 9 rates are
12 shaped.

13 So that the on-peak ECAM rate would be 0.697
14 cents per kilowatt hour, or approximately 43 percent
15 higher than the overall rate that Schedule 9 customers
16 are paying. The -- that's the summer rate.

17 Q. I see. And then you --

18 A. So forth through the other rates.

19 Q. And so the proposed ECAM price in column 4 is
20 just proportional to that ratio in column 3?

21 A. Yes, which is based on the actual rates in
22 column 2.

23 Q. Which are based on base net power costs,
24 right?

25 A. Which are, which are based on --

1 Q. Based on net --

2 A. -- base Schedule 9 rates.

3 Q. Are base Schedule 9 rates?

4 A. Right. So that the structure of the
5 Schedule 9 rates continues to flow through into the
6 net power costs, the ECAM surcharge rate.

7 Q. And the structure of the Schedule 9 rates are
8 made in a rate case where the 75/25 allocator is used
9 and all these other things, right?

10 A. Correct.

11 Q. Let's look at your Exhibit 2 for just a
12 second and see if you can help me understand this.
13 Well, these are annual numbers, right, that you've
14 used here?

15 A. These numbers come from the Company's last
16 general rate case test period, the 12 months ending
17 June 2010.

18 Q. Okay. There's nothing here that shows
19 revenues from sales month by month?

20 A. No.

21 Q. And column 9 shows the -- shows what?

22 A. Column 9 is a -- what we have done in
23 column 9 is we have taken the megawatt hour forecast
24 that's contained in column 4 and grossed that up by
25 the appropriate loss factors for those kilowatt hours

1 that are served at secondary voltage, that's column 6,
2 primary voltage, column 7, transmission voltage,
3 column 8, to get total kilowatt hour sales at the --
4 or total kilowatt hours generated at the generator,
5 rather than kilowatt hour sales at the meter.

6 Q. Okay.

7 A. And that is then used to determine the
8 overall ECAM rate.

9 Q. Well.

10 A. Overall average --

11 Q. Let's back up for a second. It's been used,
12 yes, but what have you done? You've taken each
13 class's contribution to the total generation to come
14 up with each class's responsibility, right? For
15 the -- for this hypothetical 10 million that you're
16 trying to recover?

17 A. Can you repeat that, please?

18 Q. You have taken each class's contribution to
19 the total generation to come up with their portion of
20 responsibility for the 10 million that you're trying
21 to recover?

22 A. That's the allocation across the rows. The
23 total kilowatt hours are based on the kilowatt hour
24 sales by voltage, regardless of class.

25 Q. Right. But each class has a different

1 generation in column 9, so they're contributing
2 differently to the bottom-line generation. And it's
3 that proportion that lets you allocate across the
4 classes. Grossed up for, as you say, losses from
5 transmission -- or from voltage?

6 A. Well, each class's usage is grossed up for
7 losses. There's an overall average 4.72 -- .0472
8 cents-per-kilowatt-hour amount that is applied to all
9 generation kilowatt hours. Those are then grossed up
10 for the losses.

11 And based on the class, how many kilowatt
12 hours it has at different voltage losses will
13 determine its total kilowatt hour allocation and its
14 total rate allocation.

15 Q. Right, okay. And there's no seasonal
16 distinction here in this allocation, is there?

17 A. These are annual numbers. The seasonal
18 distinction is in the rate design.

19 Q. There's no seasonal -- well, there's no
20 seasonal data here, is there?

21 A. These are annual numbers that came from the
22 Company's last general rate case.

23 Q. Okay. Well, so but in it you are devising
24 rates to recover monthly deviations in net power
25 costs, aren't you? And this kind of thing doesn't

1 pick up the monthly deviations, it's just annual?

2 A. The ECAM mechanism looks at the annual amount
3 of net power costs in rates, and then the annual
4 actual amounts, and computes the deviation.

5 Q. Annually? Does, does it accrue it monthly?

6 A. I believe the ECAM filing, the proposal is to
7 file the annual changes.

8 Q. And you --

9 A. Which are based on daily, or monthly, or any
10 other period.

11 Q. Okay. Well, let's talk about how that's done
12 for just a minute. You're aware that the Commission's
13 order in this docket allowing deferred accounting
14 requires the Company to record net power cost data in
15 sufficient detail and granularity to permit whatever
16 ratemaking treatment may ultimately be awarded by the
17 Commission.

18 So is the Company accruing that daily?

19 MR. MONSON: So you're asking in a deferral
20 account as opposed to in our proposed ECAM; is that
21 what you're referring to?

22 MR. EVANS: I'm asking how the Company is
23 tracking the NPC data.

24 Q. (By Mr. Evans) What we have here in this
25 Table A is a annual gross. And you say that somehow

1 it's gonna reflect seasonality, but it doesn't. It
2 does -- I mean, I'm saying -- I'm asking you, where is
3 the seasonality reflected in this? Where is the
4 monthly change in net power costs?

5 A. The seasonality is reflected in Exhibit 1.

6 Q. Yeah, but that's from base rates.

7 A. No, that's for the ECAM adjustment. It
8 shows --

9 Q. You --

10 A. -- that there are seasonal rate
11 differentials.

12 Q. It shows that there are seasonal rate
13 differentials which are those that were worked up in
14 the rate case. They're not reflective of the monthly
15 actual net power costs they're reflective of the base
16 net power costs, aren't they?

17 A. They reflect the allocation in Schedule 9 of
18 the annual net power cost differential that's applied
19 to Schedule 9, and then is shaped by the Schedule 9
20 rate design to reflect the seasonality in rates for
21 Schedule 9.

22 Q. Yeah, but that was from the rate case. If
23 the seasonality next year is different, this won't
24 pick it up. If in, if in the ECAM cost recovery the
25 seasonality is -- of costs is different than it was in

1 the rate case you don't intend to pick it up through
2 this, do you?

3 A. We intend to pick it up through customer
4 usage. When customers -- these rates are designed
5 with seasonal component in them.

6 When customers then go forward and use
7 energy, if they are using more energy in the summer
8 months they are paying the higher ECAM rate in the
9 summer months. If they're using more energy in the
10 winter months they're paying a lower ECAM in the
11 winter months.

12 Q. But you're not even tracking the difference
13 month by month. You're just --

14 A. I don't agree with that. I know we just
15 provided to the Commission the first six months of
16 ECAM deferral. So I, I don't do the tracking, but I'm
17 certain that we're tracking it at least month by
18 month.

19 Q. Okay. But then what you're proposing here is
20 that you accrue the actual net power costs, the
21 deviation from what's in the rates each month, right?

22 Do you accrue the deviation from what's in
23 rates every month?

24 A. I believe we do, yes.

25 Q. And you put it in a bucket?

1 A. And at the end of a 12-month period we make a
2 filing to recover --

3 Q. And you pull it out of the bucket.

4 A. -- that amount. Which is --

5 Q. But when it comes out, when it comes out of
6 the bucket it has lost all -- any aspect of
7 seasonality that it had because it's just one number,
8 isn't it? It does not reflect what happened month by
9 month by month as it went into the bucket?

10 A. I mean, this, this is true the same for any
11 other kind of rates. General rates, if we have a test
12 period of data that we use to design rates and
13 customers don't use energy in the way that the test
14 period shows, we are also not recovering those costs
15 from those customers that were put in the rates.

16 It's true for any type of rate, and ECAM is
17 just one of the same type. It's an overall -- it's a
18 fairly simple rate. It's meant to be simple and easy
19 to administer and understand by customers. And it's
20 intended to capture those costs and reflect them in
21 rates.

22 It's not going to be perfect for each
23 customer or each account holder month by month. It's
24 intended to be an overall rate designed to reflect the
25 seasonal rates that are -- that the Company has, and

1 to implement the ECAM through that mechanism.

2 Q. But there is no attempt, even, to calculate
3 what has caused the costs month by month when you pull
4 the costs out of the bucket at the end of the year, is
5 there?

6 MR. MONSON: Objection, asked and answered.

7 MR. EVANS: Okay.

8 Q. (By Mr. Evans) So is that a no? There's no
9 attempt?

10 MR. MONSON: Objection, asked and answered.

11 CHAIRMAN BOYER: Let's let him answer this
12 one, if he can.

13 THE WITNESS: As I indicated, I believe the
14 attempt to reflect the cost is reflected through the
15 rate design.

16 (Pause.)

17 Q. (By Mr. Evans) Mr. Griffith, I have just
18 handed you what we will call, I guess, UIEC Cross
19 Exhibit 2. Do you know what this is?

20 A. It appears to come from the last general rate
21 case. It's the monthly weighted factors by rate
22 schedule by month.

23 Q. Okay. I've handed this out to illustrate
24 what the difference will be in smearing the net power
25 cost deviation annually versus monthly. Let's look at

1 sales, kilowatt hour sales for the residential class
2 in July.

3 Let's just pick a month, July. Because there
4 should be some difference in usage in that month.
5 Residential total is what?

6 A. Eight hundred and ten thousand megawatt
7 hours.

8 Q. Okay. Out of how many total for the month of
9 July, about 2 million 279? Would you accept, subject
10 to check, that's about 35 percent, residential, of the
11 total?

12 A. Sure.

13 Q. So the residential -- so during the month of
14 July the residential class had 35 and-a-half percent
15 of the sales. And then if we were to do the same with
16 Schedule 9, which is 327, 328 over the total, that
17 works out to be about 14.4 percent. Would you accept
18 that subject to check?

19 A. Yes.

20 Q. And then go to the end, the Total column, and
21 let's do the same percentages and see what the annual
22 is. For residential it would be that 7,265,127
23 number, over the annual total of 23,161,584. Do you
24 see that?

25 A. Yes, I do.

1 Q. And that would be about 31.4 percent, would
2 you accept?

3 A. Yes.

4 Q. And let's do the same for Schedule 9. That
5 would be the 3,853,000 -- 854,000 over the same annual
6 total. Which would be about 14.4 percent of the
7 total, would you agree, subject to check?

8 A. Yes.

9 Q. So if you collect for these costs on an
10 annual basis, Schedule 9 would be paying -- I'm sorry,
11 I gave you the wrong number.

12 Schedule 9, last column, 3,853,880 over
13 23,161,584 is 16.6 percent. So if you collect
14 annually they're paying 16.6 percent of the costs of
15 the energy sold in July; wouldn't that be true?

16 A. They're paying?

17 Q. You are collecting from Schedule 9 customers,
18 for July energy, 16.6 percent of July's energy comes
19 from Schedule 9?

20 A. Well, this clearly shows that residential
21 load is more seasonal than Schedule 9.

22 Q. That wasn't the question. What I asked was,
23 isn't it true that if you use the annual numbers to
24 design rates, that in this example you would be
25 collecting from Schedule 9 customers 16.6 percent of

1 the energy in the month of July?

2 A. That, that could be the case.

3 Q. When they only caused 14.4 percent of that
4 cost?

5 A. I think if you look at the rate spread
6 proposal you see that Schedule 9 is paying a lower
7 average rate than sched -- than residential class is
8 in our rate spread proposal.

9 Q. Well, what I'm -- the point I'm trying to
10 make, I think, is that the Company has not done this
11 month by month, have they?

12 A. The Company --

13 Q. They haven't worked up costs month by
14 month -- or rates to follow the cost causation?

15 A. The Company's proposal is for an annual
16 change.

17 Q. So you total up the annual NPC deviation and
18 you just smear it across base rates without regard to
19 what caused the deviation month to month, correct?

20 A. And most likely the deviation month to month
21 could cut both ways. If July is a cool month it could
22 go one way, and if July is a warm month it could go
23 the other way.

24 Q. Exactly. But wouldn't it be better to be
25 accurate than just to smear the whole thing across the

1 year? Why not?

2 A. Our proposal was, was one that's similar to
3 setting overall rates that customers pay, base rates.
4 We don't do these on a monthly basis. We don't track
5 monthly costs for distribution and transmission costs.
6 We allocate these costs and we design them on an
7 annual basis, and that's what we're doing here.

8 Q. But you can track them monthly, can't you?
9 In fact, you told the Commi -- the Comission ordered
10 you, in the deferred accounting order, to do it.

11 A. You could track all rates monthly.

12 Q. Well, this is all we're doing is ECAM. All
13 we're doing is the deviation from base NPC. You could
14 track that every month, couldn't you? And you could
15 track it by schedule, couldn't you?

16 A. I think at some point these become
17 administratively burden.

18 Q. But Mr. Griffith --

19 A. Burdensome.

20 Q. -- can you answer the question?

21 A. You could track them.

22 Q. Yes.

23 A. You could track them -- with unlimited
24 resources you could track costs by any time period.

25 Q. Or with smart meters, maybe, it might be

1 cheaper. But we don't have them here, right?

2 A. We aren't paying the cost of smart meters
3 here.

4 Q. Right. But it is possible to track these
5 costs month by month and allocate them more accurately
6 than the annual method you proposed, right?

7 A. It's possible to track them over any time
8 period with the right amount of resources.

9 Q. Well, if you don't -- and isn't it true the
10 more accurately you track these the better you are
11 able to separate to give proper price signals?

12 A. I think that's true for all rates.

13 Q. Okay. So why wouldn't it be better -- a
14 better price signal and also more true to real
15 cost-based pricing to charge for excess power in the
16 month that the costs were incurred, based on the class
17 usage during that month, rather than smear it over the
18 whole year?

19 A. I didn't know we were smearing things.

20 Q. Well --

21 A. But I, I think, again, this is in line with
22 other types of rates that the Company has in place for
23 its customers. It's in line with other tracking
24 mechanisms, other ECAMs in other states. And we
25 believe it's a reasonable way to track these costs.

1 Again, as I indicated through the rate
2 design, customers who are paying the -- Schedule 9
3 customers pay lower rates in months where they have
4 more usage in the winter months than they would in the
5 summer months.

6 Q. Well, that, that's what you keep saying. But
7 as we point out here, it's really not the case. If
8 you have a customer that's not using in July at all,
9 if you have a customer that's off -- a Schedule 9
10 customer that's off the system in July, they're gonna
11 be paying a lot.

12 Because they'll be paying 16.6 percent of the
13 July cost of power when they didn't draw any power in
14 July. Because you have allocated the -- because your
15 allocation allocates July across the whole year, so
16 that they're paying for July deviations in power costs
17 in December and January, aren't they?

18 A. If the customer is off the system in July
19 they wouldn't pay 12 month -- for 12 months worth of
20 usage.

21 Q. Well --

22 A. So they wouldn't pay 12 months worth of
23 costs.

24 Q. They -- if they were off the system last July
25 and didn't incur any costs they'd be paying for the

1 deviation from NPC in their December rate?

2 A. That's true for any customer who was off the
3 system in July. Who was on vacation or anything else.

4 Q. Right.

5 MR. EVANS: Okay. No more questions, thanks.

6 CHAIRMAN BOYER: Okay. Thank you, Mr. Evans.

7 Are you prepared now, Mr. Proctor?

8 MR. PROCTOR: I am. However you'd like to do
9 it.

10 CHAIRMAN BOYER: All right. Well, let's
11 continue with Mr. Dodge. I know he's ready to go.

12 MR. DODGE: I have no questions.

13 CHAIRMAN BOYER: Okay. See how well that
14 worked?

15 Mr. Michel?

16 CROSS EXAMINATION

17 BY MR. MICHEL:

18 Q. Just a quick question. There was a little
19 discussion just now about price signals. Even if you
20 collected these and adjusted the ECAM charges monthly
21 instead of annually there'd still be a couple months
22 lag between when costs were incurred and when they
23 were charged through, right?

24 A. I'm not really sure how we would implement
25 monthly pricing. If we would implement it two months

1 after, or we'd file with the Commission each month to
2 implement the ECAM price two months later, or how we
3 would do that. I don't --

4 Q. But --

5 A. I really don't know. And I don't see any
6 proposal for that either.

7 Q. Well, I guess my question is, it does take
8 you some time from the time that those costs are
9 incurred to have them accounted for and, and to
10 develop a cost adjustment for them to recover them,
11 right?

12 I mean, I think at some point I saw 90 days
13 or something from the time that there was an order in
14 this case to when you could start collecting?

15 A. Yes, it clearly takes time to adjust it. I
16 don't think -- we're certainly not -- wouldn't want to
17 propose that we would be changing rates on a monthly
18 basis to reflect costs of two or three months ago. If
19 that's what you're asking.

20 Q. Well, my only question is, because of the lag
21 that there would be if you did have a monthly
22 adjustment, it's not gonna be sending an appropriate
23 price signal, even if you could do a monthly
24 adjustment instead of an annual?

25 A. That's correct. It wouldn't be

1 instantaneous.

2 Q. So July usage might be sending a price signal
3 in --

4 A. October.

5 Q. -- September or October?

6 MR. MICHAEL: That's all I have, thank you.

7 CHAIRMAN BOYER: Thank you, Mr. Michel.

8 Ms. Hayes?

9 MS. HAYES: Thank you, no questions.

10 CHAIRMAN BOYER: Okay, thank you.

11 Back to you, Mr. Proctor.

12 MR. PROCTOR: Thank you. And thank you for
13 giving me the time, because I think it might go much
14 smoother. Which I'm sure everyone will be pleased
15 about. May I approach?

16 CHAIRMAN BOYER: You may.

17 CROSS EXAMINATION

18 BY MR. PROCTOR:

19 Q. Mr. Griffith, what I'm handing you is a copy
20 of Mr. Brubaker's rebuttal and surrebuttal testimony
21 and. I've marked with -- it's on both sides. I'm
22 trying to save the planet.

23 And I put a yellow sheet at the separation
24 between the two, and in particular to mark data
25 responses that Mr. Brubaker included in his rebuttal

1 testimony. Do you see that?

2 A. Yes.

3 Q. I have some questions first about the data
4 requests that are in the testimony. And in particular
5 14.7? It's UIEC Exhibit 5 is the way it's listed at
6 the top right-hand corner.

7 A. I see that.

8 Q. Did you assist in preparing the answer to
9 that data request?

10 A. Yes.

11 Q. In the response, the first paragraph, the
12 last sentence, it says:

13 "The Company's proposed ECAM
14 structure is on a monthly basis,
15 reflecting changes from one month to
16 another."

17 Am I correct that you would, for example,
18 compare the actual January 2010 net power costs with
19 the base 2010 net power costs?

20 A. For January?

21 Q. For January.

22 A. Yes.

23 Q. And when base rates are set I assume it would
24 be by a general rate case?

25 A. That's correct.

1 Q. And so that specific base rate that was
2 forecasted for that month is available and it's part
3 of the ultimate base rate? That's a bad question.

4 Do you basically calculate that based on the
5 forecast load times the price?

6 A. I believe so. And there's an amount of base
7 net power costs in rates for each month.

8 Q. And so as the year progresses, February is
9 compared to the base in Feb -- the expected in
10 February, and so forth?

11 A. Right. And these are all on a dollar-per-
12 megawatt-hour basis.

13 Q. Okay. And from that amount you get a total
14 differential between base and actual. And that would
15 be across all classes; is that correct?

16 A. It's a total amount.

17 Q. Okay. And you stated that you then would
18 apply that as an ECAM adjustment as a cents per
19 kilowatt. And that would be --

20 A. Hour.

21 Q. Per, per kilowatt hour, over all classes; is
22 that correct?

23 A. Yes.

24 Q. So the cents per kilowatt is -- well, let's
25 say it's 2-cents-per-kilowatt adjustment. So it's

1 gonna be 2-cents-per-kilowatt adjustment whether
2 you're a residential customer or Schedule 9 customer;
3 is that correct?

4 A. No.

5 Q. Explain that.

6 A. That is contained in, again, my exhibit --
7 rebuttal exhibit -- which was another reason I
8 prepared this -- Exhibit 2, Exhibit 1 and 2.

9 Two shows the actual rate values proposed for
10 a \$10 million ECAM adjustment across rate schedule
11 classes and by voltage level. The actual rates are
12 shown in columns 12, 13, and 14 for the respective
13 classes. They're -- "S," "P," and "T" stand for
14 voltage levels. Those are secondary, primary, and
15 transmission.

16 Residential customers receive service at
17 secondary voltage off the distribution system. And
18 their rate would be .0514 cents per kilowatt hour in
19 this example. A primary voltage customer, such as
20 Schedule 6 customers, rate would be .05 cents per
21 kilowatt hour. And these are pretty small dollar
22 amounts -- I mean small rate values also. And then
23 Schedule 9 would be .0489 cents per kilowatt hour.

24 These are all based on the same underlying
25 rate, which is .0472. Which is at the generator,

1 before voltage losses have been applied to reflect the
2 differences in loss values for secondary, primary, and
3 transmission voltage.

4 Q. So on a -- well, going down to Schedule 17, I
5 believe, Electric Furnace. It's on your Exhibit SR2.
6 Or 2SR, pardon me. Do you see that? It's 7 -- line
7 number --

8 A. Schedule 21? Right.

9 Q. Yeah. You've got three rates: .0514, which
10 is for residential, .05, and then .0489. So does that
11 mean that, to the extent that electric furnace has an
12 office and runs a fan and air conditioner, they're
13 gonna pay .0514?

14 A. What it means is that there -- we have
15 electric furnace customers, some of whom receive
16 actually primary voltage service, so they would pay
17 .05 cents. Some of whom receive their -- so the
18 amount of service, or kilowatt hours, is in columns 6,
19 7, and 8.

20 So if you look at row 17, column 7, you'll
21 see 472 megawatt hours are at primary voltage,
22 2,897 megawatt hours are at transmission voltage. And
23 then those customers who receive service at those
24 levels would pay either the primary or the
25 transmission voltage rate.

1 Q. Okay. Now, and on 1SR to your surrebuttal
2 testimony, page 1 -- the only one -- you reflected the
3 ECAM adjustment for Schedule 9. You've separated that
4 out from your Exhibit 2, correct?

5 A. Yes. I use the data from Exhibit 2 to
6 reflect the \$1.8 million proposed rate increase that
7 would occur for Schedule 9 if a \$10 million ECAM
8 adjustment occurred. And then showed how the rate
9 design would work based on the shaping of on and off
10 peak usage.

11 Q. Now, the current Schedule 9 provides for the
12 shaping that you've listed in the far left-hand
13 column, does it not? On peak May to September, on
14 peak October to April, and then off peak on all months
15 during the year?

16 A. That's right.

17 Q. And is that where the seasonal adjustment
18 is -- appears in the Company's ECAM proposal?

19 A. In rate design that's where the seasonal
20 adjustments occur, are through the May through
21 September and October through April on-peak rates and
22 the different values that are shown there.

23 Q. And so the proposed ECAM price, which is in
24 column 4, is an adjustment to the price -- is that the
25 amount of the adjustment to the price that would have

1 been paid as a base rate?

2 A. That's the actual ECAM surcharge rate that
3 would be charged.

4 Q. So it still reflects, however, that on peak
5 April to -- October to April is less than on peak May
6 to September, even with the ECAM adjustment?

7 A. Yes. And in fact, the rev -- the percentage
8 differences are shown in column 9. So that the summer
9 on-peak rate is 43 percent higher than the off-peak
10 rate.

11 The October-through-April on-peak rate is
12 7 percent higher -- well, I'm sorry, that's actually
13 higher than the average rate. And then the off-peak
14 rate is 10 percent lower than the average rate.

15 Q. But it still steps down with respect to peak
16 summer months --

17 A. Correct.

18 Q. -- peak non-summer months, and then off peak
19 under anytime of the year, correct?

20 A. Yes.

21 Q. All right. As a side question, if due to
22 load changes, load reduction, the \$1.798 million is
23 not recovered in -- with that ECAM adjustment, what
24 happens to the difference?

25 A. The difference is retained in the balance.

1 Just the same as if loads were higher, the balance
2 would be reduced sooner. If loads are lower, the
3 balance is reduced more slowly.

4 Q. If you could please turn to page 3 of
5 Mr. Brubaker's rebuttal testimony. It's the first
6 testimony you've got in that package I gave to you.
7 The very top, beginning -- it's his bullet point 5.

8 The last phrase in that bullet point 5
9 accuses the Company of completely ignoring:

10 "...the varying responsibility of
11 customer classes for consumption in
12 individual months."

13 Do you see that?

14 A. Yes.

15 Q. In the present rate structure do those rates
16 account for the responsibility of customer classes for
17 consumption in individual months?

18 A. Yes and no. They don't for individual
19 months. We certainly do for summer and winter months.
20 We have seasonal rate structures which charge
21 residential customers, and, as we indicated, the
22 time-of-use customers.

23 And all our customers in the major rate
24 schedules are charged higher rates in the summer
25 months than in the winter months. Higher or the same.

1 Q. Were you the primary witness who responded to
2 Mr. Brubaker, or was it you and Mr. Duvall combined?

3 A. I don't recall. I know I responded to what I
4 responded to.

5 Q. Well, in your judgment, sir, what do you
6 believe Mr. Brubaker is intending to layer upon the
7 Company's propose -- ECAM proposal with respect to
8 assigning responsibility to various customer classes?

9 A. I think he's proposing to layer on a degree
10 of complexity that we did not propose in this filing,
11 which would make it very difficult to administer and
12 to apply to our customers.

13 We propose what we, what we indicated,
14 Mr. Duvall indicated, is a pretty -- fairly simple
15 mechanism to reflect the differences in net power
16 costs between what's allowed in rates and what we are
17 actually paying. And to recover those differences, or
18 refund those differences to customers through the
19 ECAM.

20 Q. Do you believe that Mr. Brubaker is
21 attempting to persuade this Commission to assign a
22 greater portion of the ECAM adjustment to residential
23 class in the summer months because they contribute
24 more to the overall load that the Company serves in
25 the summer months?

1 A. Well, I'll let Mr. Brubaker speak for himself
2 on that. I think that's one interpretation, yes.

3 Q. If you could turn to page 10 of
4 Mr. Brubaker's testimony, please. On line 12.
5 There's that "smearing" word again. Do you understand
6 what --

7 A. I'm sorry. What page, please?

8 Q. That would be page 10 of rebuttal. Line --

9 A. Line 10?

10 Q. Line 10 uses the word "smearing." Do you
11 know what Mr. Brubaker means by the term "smearing"?

12 A. Well, it doesn't sound very good.

13 MR. EVANS: Well, you know Mr. Chairman, I'm
14 gonna have to object to Counsel asking this witness
15 what Mr. Brubaker thinks.

16 MR. PROCTOR: Well, let me ask it this way
17 then. Please. I'm sorry, Mr. Evans.

18 Q. (By Mr. Proctor) Mr. Evans asked you a
19 question as to whether or not the Company was smearing
20 all the costs over all classes. What do you
21 understand the term "smearing" to mean?

22 A. Smearing is making things unclear or making
23 them -- fogging them over.

24 Q. He says that in connection, on line 12, with
25 the direction of the deviations, i.e. above or below

1 the base amount. Do you see that?

2 A. Yes.

3 Q. Do you know what Mr. Brubaker intends as a
4 solution to his --

5 MR. EVANS: Objection. Objection, asking
6 this witness what Mr. Brubaker intends is improper.
7 He's not gonna get an answer that the Commission can
8 rely on.

9 Q. (By Mr. Proctor) Do you know, from reading
10 Mr. Brubaker's testimony, what his solution to that
11 smearing of the direction of deviations would be?

12 A. No.

13 Q. If you could turn to page 11? The question
14 is asked: "How could this problem be addressed?"

15 And it's -- the answer you see there:
16 Breaking the year into three segments -- summer,
17 winter, and spring and fall -- deviations would be
18 accumulated by season. Let's stop there.

19 Would that be consistent with the present
20 ratemaking method that the Company employs in its
21 general rate cases?

22 A. No.

23 Q. And what would be the problem with adopting
24 that into the ECAM adjustments?

25 A. I think it, again, starts to increase the

1 level of complexity of the, the ECAM. I think it
2 could create perhaps unintended consequences.

3 But rates are set on an annual basis. They
4 have a seasonal shape to them. And what we're
5 proposing for the ECAM is that the ECAM be set on an
6 annual basis and that it have that same seasonal
7 shape.

8 Q. Now Mr. Griffith, I don't want you, or the
9 Commission, or anyone to think that by asking these
10 questions the Office agrees that an ECAM should be
11 adopted. I'm sure you understand that's the Office's
12 position.

13 But in the event that it was -- and I want
14 you to assume that there is some sharing mechanism
15 adopted by this Commission in some percentage, in some
16 proportion, for the ECAM adjustment. Would it be
17 possible to have such a sharing arrangement and still
18 maintain these seasonal separations and month-to-month
19 calculations as Mr. Brubaker has proposed?

20 A. I think, as I mentioned to Mr. Evans,
21 anything is possible, but it would certainly make it
22 much more difficult. We would have to track the
23 sharing mechanism by month. And I'm not sure how that
24 would work even, so.

25 But at the end of the day I believe you would

1 still come up with an amount of dollars that would be
2 allocated and would be spread back to customers based
3 on a rate spread proposal. I think that something
4 very similar to what the Company proposed would be a
5 reasonable way to do that.

6 But it would be very difficult on a
7 month-by-month basis with sharing mechanisms and what
8 other -- whatever other calculations would need to
9 occur to these. Particularly if there were sharing in
10 some months and not in other months, and that would be
11 different than sharing throughout the year, and so
12 forth.

13 Q. If you -- do you still have the UIEC
14 Exhibit 2? It is the, it's from the 2009 general rate
15 case. It's entitled: "Rocky Mountain Power Cost of
16 Service By Rate Schedule." Do you see that?

17 A. Yes.

18 Q. And Mr. Evans asked you a number of questions
19 about the July '09 loads for residential compared to
20 Schedule 9. I'm gonna ask you to do the same thing.
21 Look at April 2010, where the residential total for
22 that month was 489,758. And is that megawatts?

23 A. It's megawatt hours.

24 Q. Megawatt hours? And Schedule 9 is 328,721.
25 Would there be -- is that a month, for example, where

1 the -- it could be said that the residential
2 ratepayers would be paying more than the causally
3 costs -- causally caused NPC costs?

4 A. It appears it could be, yes.

5 Q. And that would also be true in October of
6 2009, would it not? Where the residential total is
7 505,000 and the, again, the Schedule 9 is 336,000?

8 A. It could be. But however, as I've argued,
9 each month the usage is multiplied times the ECAM rate
10 for that month. So in a month of low usage for any
11 class the amount of ECAM revenues that are recovered
12 are multiplied times that usage amount.

13 Q. So if a customer drops off the system, as
14 Mr. Evans described, that customer pays nothing in
15 that month?

16 A. That's correct.

17 Q. And they pay for what they use in the later
18 months?

19 A. That's correct.

20 Q. As an adjust -- adjusted as per the ECAM; is
21 that correct?

22 A. They pay the ECAM rate for that month of
23 usage.

24 MR. PROCTOR: Mr. Griffith, thank you very
25 much.

1 CHAIRMAN BOYER: Okay. Thank you,
2 Mr. Griffith.

3 Mr. Evans, before we hear from the Commission
4 questions do you wish to move admission of exhibits --
5 Cross Exhibits 1 and 2?

6 MR. EVANS: I do. Thank you, Mr. Chairman.

7 CHAIRMAN BOYER: Are there objections to the
8 admission of UIEC Cross Exhibits 1 and 2?

9 Very well, they are admitted.

10 (UIEC Cross Exhibit Nos. 1 and 2
11 were admitted.)

12 CHAIRMAN BOYER: Thank you. Commissioner
13 Allen?

14 COMMISSIONER ALLEN: No questions.

15 CHAIRMAN BOYER: Commissioner Campbell?

16 COMMISSIONER CAMPBELL: I just want to
17 clarify, I have a clarifying question on the
18 38.8 million that you mentioned right at the end of
19 your summary. Is that a Utah-allocated number or is
20 that a total company number?

21 THE WITNESS: That's a Utah-allocated number.

22 CHAIRMAN BOYER: And I have no questions so
23 thank you, Mr. Griffith. You are excused.

24 Your next witness, Mr. Monson?

25 MR. MONSON: Mr. Bird.

1 CHAIRMAN BOYER: Mr. Bird, you have not been
2 sworn yet in this proceeding?

3 THE WITNESS: I have not.

4 (Mr. Bird was sworn.)

5 CHAIRMAN BOYER: Thank you. Please be
6 seated.

7 STEFAN A. BIRD,

8 called as a witness, having been duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MONSON:

12 Q. Mr. Bird, can you please state your name and
13 position for the record?

14 A. Stefan Bird, senior vice president PacifiCorp
15 Energy.

16 Q. And did you prepare rebuttal testimony in
17 this case that was -- which contained two exhibits and
18 was filed on September 15, 2010?

19 A. Yes.

20 Q. Do you have any corrections you wish to make
21 to that testimony?

22 A. No, I do not.

23 MR. MONSON: We would offer Mr. Bird's
24 rebuttal testimony and exhibits.

25 CHAIRMAN BOYER: Any objections to the

1 admission of Mr. Bird's rebuttal testimony, together
2 with exhibits?

3 They are admitted.

4 (Stefan Bird rebuttal testimony and attached
5 exhibits were admitted.)

6 Q. (By Mr. Monson) Mr. Bird, do you have a
7 summary of your testimony?

8 A. Yes, I do.

9 Q. Could you please provide that?

10 A. Good afternoon Chairman Boyer, Commissioner
11 Campbell, and Commissioner Allen. My rebuttal
12 testimony is provided from my perspective as the
13 executive responsible for overseeing the Company's net
14 power cost risk management activity, the dispatch of
15 the Company's generation fleet, wholesale and
16 electricity and natural gas purchases and sales, and
17 sales of renewable energy credits.

18 So in short, I see -- oversee a significant
19 portion of the operations that will be impacted by
20 your decision in this proceeding, so I'm well
21 positioned to speak to the practical implications of
22 our mechanisms we propose.

23 The primary question before the Commission is
24 whether or not the Company's proposed ECAM is in the
25 public interest. That decision hinges on whether or

1 not the Company's proposed ECAM provides the best
2 incentive for the Company to manage net power costs,
3 and whether or not the Company's proposed ECAM allows
4 for recovery of prudently-incurred costs and an
5 opportunity to earn its authorized rate of return.

6 The Company's testimony in this proceeding
7 demonstrates that both of these conditions are
8 satisfied and that the ECAM is, therefore, in the
9 public interest.

10 The Company's proposed ECAM, as other
11 witnesses have discussed, is founded on prudence. A
12 very simple and powerful incentive which is in the
13 public interest and achieves the regulatory compact.

14 In regard to the concept of risk transfer, as
15 some have alluded, it's my opinion it does not
16 transfer risk to customers as long as we assume that
17 the current forecast that's used in setting rates is
18 presumed to represent the cost that the Company would
19 incur if it operated and managed the portfolio
20 prudently.

21 I would agree that a forecast budget limit is
22 certainly a powerful incentive. But I would also say
23 that only makes sense and works if there are enough
24 levers to pull to offset the uncontrollable factors
25 that are otherwise inherent in that forecast.

1 And as Greg Duvall's testimony has shown, the
2 record is pretty clear that we haven't been able to
3 pull that off. And thus we're here proposing an ECAM
4 to better align customer interest for prudence.

5 In contrast, other parties' proposed ECAM
6 designs incorporate what I would call "perverse" or
7 "meaningless" incentives that are not in the public
8 interest, and violate the regulatory compact by simply
9 assuring that the Company cannot recover its
10 prudently-incurred costs.

11 What are things that all parties seem to
12 agree on? It appears to me that everyone agrees that
13 it's beyond reasonable debate the large aspect of net
14 power costs are volatile, that are unpredictable, and
15 are largely outside the Company's control.

16 All parties acknowledge the significant
17 hedging activity of the Company. And I'll agree it is
18 correct to recognize that the Company's hedging
19 activity mitigates a significant amount of risk
20 associated with volatile prices for a given forecast
21 volume.

22 This benefit is largely transferred to
23 customers today through rates, based on a forecast
24 that incorporate a significant amount of hedging
25 activity for a given forecast test period.

1 However, where parties seem not to fully
2 appreciate -- and what is critical to understand in
3 order to design an appropriate and effective
4 regulatory mechanism -- is that it is impossible to
5 accurately predict the volume of many net power cost
6 components in advance.

7 For example, wind, rain, temperatures, load,
8 are all good examples. And therefore the forecast
9 costs associated with these unpredictable volumes are
10 necessarily wrong, and moreover, cannot be hedged. So
11 it is generally pointless to introduce the idea of an
12 incentive, other than prudence, to manage these
13 variables.

14 The Company's ECAM proposal is founded on
15 this core principle of prudence. Now, I'd personally
16 be in favor of incentive mechanisms in cases where two
17 basic requirements could be met. One requirement
18 would be that the Company has the ability to control
19 or heavily influence the outcome.

20 And two, the individuals making decisions can
21 internalize that incentive when they're making
22 decisions. For example is when a trader is making a
23 decision to purchase power, sell power, buy gas, or
24 sell natural gas.

25 However, neither of those two requirements

1 are met in regard to the Company's post-rate case
2 decision making to manage volatile and unpredictable
3 net power costs.

4 As an example, on any given day or hour a
5 trader will simply transact at the market cost to
6 serve customer load, irrespective of whether the cost
7 to serve that customer is higher, and whether or not
8 the customer load is higher than what was forecast in
9 rates many months prior.

10 Similarly, the trader will dispatch plants
11 when they're more economic than the alternative to
12 purchase power. So it should be apparent that the
13 only decision driver for that trader is prudence. A
14 sharing band or deadband is simply no incentive at
15 all, and would only serve the purpose of disallowing
16 prudently-incurred costs.

17 Now, why else should the Commission have
18 confidence in the incentive of imprudence on this
19 company? First of all I would highlight the Company's
20 willingness to invite focus on its activity.

21 And an after-the-fact review demonstrates we
22 have nothing to hide. And we in fact welcome proper
23 scrutiny and heightened focus on actual results,
24 instead of the abstracts that occur around complex
25 model forecasts in the current environment and

1 approach.

2 The evidence of the prudence incentive and
3 our company's management culture to aggressively
4 achieve results for customers is particularly evident
5 also in the facts surrounding major resource
6 additions.

7 As an example, the Company originated and
8 closed the Chehalis acquisition in 2008 instead of
9 just relying on a regulatory approved RFP process.
10 This resulted in a huge savings for customers. This
11 Commission supported that transaction and granted a
12 solicitation waiver, a pre-approval, and rapid order.
13 Other parties challenged the Company's decision.

14 Shortly thereafter, the Company terminated
15 the Lakeside II transaction in February of 2009
16 because the Company believed it was very likely to be
17 high cost versus future alternatives. Despite this
18 project passing several regulatory tests, including a
19 rigorous RFP, independent evaluative support, and was
20 consistent with the most recent IRP.

21 And, as the Division noted in this docket,
22 that decision to terminate was strangely against the
23 Company's natural incentive to earn a return on
24 assets.

25 MR. DODGE: Mr. Chairman, I apologize, I need

1 to object here. I thought this was a summary, and I
2 don't believe anywhere in Mr. Bird's testimony did he
3 address anything he's summarized so far. It appears
4 to be live surrebuttal. And I don't believe the
5 Commission typically allows that.

6 CHAIRMAN BOYER: Well, that may be partially
7 true and partially not true. But could you restrict
8 yourself to a summary of the testimony you've already
9 filed?

10 THE WITNESS: Sure. And my purpose there was
11 simply to provide context for the prudence incentive.
12 But in regard to certain parts of my testimony, I did
13 comment in my testimony about the Company's hedge
14 activity. There's been much attention on that
15 throughout this case.

16 And while my rebuttal testimony emphasizes
17 that the purpose of hedging is to mitigate the risk of
18 adverse price movement and it's not particularly
19 important after the fact whether the Company's hedge
20 results for a particular period of time were favorable
21 or unfavorable, my rebuttal testimony nonetheless
22 corrects the Division's initial report of the
23 Company's hedging results from 2006 to May 2010 to
24 demonstrate that the Company's hedges resulted in a
25 gain of \$305 million as opposed to a loss in this

1 period.

2 And it was important to correct this
3 calculation because the Division's concern about
4 hedging, based on its initial misunderstanding, seemed
5 to fuel other parties' recommendations that an ECAM
6 should not be implemented until hedging and market
7 reliance were explored more thoroughly.

8 Perhaps this correction will impact their
9 view, although again I would emphasize that the focus
10 on whether or not hedge results are favorable or
11 unfavorable is misplaced.

12 So in summary, the Company's proposed ECAM is
13 a mechanism that provides as an extremely strong and
14 effective incentive to the Company to manage its power
15 costs. And allows the Company to recover its
16 prudently-incurred costs; no more and no less.

17 And provides customers with 100 percent of
18 the benefits of renewable energy credit sales and
19 other upsides that the Company may be able to deliver
20 post to a general rate case.

21 Q. (By Mr. Monson) Does that conclude your
22 summary?

23 A. Yes.

24 MR. MONSON: Mr. Bird is available for cross
25 examination.

1 CHAIRMAN BOYER: Thank you, Mr. Bird.
2 Mr. Proctor?

3 MR. PROCTOR: Yes.

4 CROSS EXAMINATION

5 BY MR. PROCTOR:

6 Q. Mr. Bird, on page 9 at line 193-194 of your
7 rebuttal testimony you made the statement:

8 "There is no proposed or anticipated
9 change to the hedge program."

10 Is there anything within any Commission order
11 that would preclude you from changing that program?

12 A. Not to my knowledge.

13 Q. Is there a Commission order approving your
14 hedging program?

15 A. Not to my knowledge explicitly on the
16 program, no.

17 Q. If you could turn -- and I believe this is
18 your Exhibit 1R. The PacifiCorp Energy January 2006
19 to May 2010 Gains and Losses on Hedges. Am I
20 correctly referring to that as 1R?

21 A. Yes.

22 Q. Okay. Um --

23 A. Or is it?

24 MR. MONSON: I think it's 2R.

25 THE WITNESS: Yeah, 2R, yeah.

1 Q. (By Mr. Proctor) It doesn't say, that's why
2 I wanted to know.

3 A. Yeah.

4 Q. You referred to -- in your testimony,
5 actually, on Page 7 you referred to the 3.4 -- or
6 \$304.8 million benefit as indicating that your
7 hedging -- the Company's hedging program was
8 effective. That's on Page 7 of your testimony,
9 correct?

10 A. Could you refer to a particular line?

11 Q. Oh, you bet. I'm sorry. Line 193 and 194.
12 I thought I did. Oh, excuse me. No, I'm sorry, I --
13 it's line 155-156.

14 A. My testimony says, Does this gain of
15 \$304.8 million indicate that the program was
16 effective? And my answer is no.

17 Q. So it's not an effective program?

18 A. No. The fact that we had a gain of
19 \$305 million is not the indication that the program
20 was effective.

21 Q. Is there any indication in the amount of your
22 total gains and losses in the last -- since 2006 that
23 would indicate either it's effective or not effective?

24 A. No, that would not be the right question to
25 ask for effectiveness.

1 Q. But one of the things that we do know is that
2 in that same period of time you -- the Company
3 reported a gain of \$706 million on your electricity
4 hedging; is that right? Am I classifying that
5 correctly?

6 A. I don't recall what the number was, but it
7 would --

8 Q. Well, look on 1R.

9 A. Okay.

10 Q. Two-R, pardon me.

11 A. Okay. And you're referring to what number,
12 I'm sorry?

13 Q. The May 2010 cumulative gain --

14 A. Yep.

15 Q. -- or loss from January 2006.

16 A. Yeah, 706.8 million.

17 Q. Point 8 million dollars. And a loss of
18 401.9 million on natural gas hedging, correct?

19 A. Correct.

20 Q. So we have a swing of \$1.1 billion on your
21 electricity and natural gas hedging since January 2006
22 to May 2010, correct?

23 A. Correct.

24 Q. All without the benefit of any order from
25 this Commission approving your hedging program; is

1 that correct?

2 A. I don't know if that's a fair
3 characterization or not. We provide our hedge policy,
4 you know, every year, I believe, in numerous states as
5 part of these rate cases.

6 And my understanding is the hedges that the
7 Company has entered into are loaded into the net power
8 costs that are filed and become part of rates. And so
9 as part of that I would expect parties would be
10 reviewing all those contracts as part of that standard
11 review.

12 Q. Well, it may not be fair, but it is in fact
13 true that all that's taken place without benefit of a
14 Commission order approving your hedging program,
15 correct?

16 A. I'm not aware if there has been a specific
17 order. I'm not aware of one.

18 MR. PROCTOR: Thank you very much, Mr. Bird.

19 CHAIRMAN BOYER: Thank you, Mr. Proctor.

20 Ms. Schmid?

21 MS. SCHMID: Thank you, I have a few
22 questions.

23 CROSS EXAMINATION

24 BY MS. SCHMID:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Just to clear a couple things up. You
3 understand, of course, that ratemaking is more than
4 the simple pass through of costs and then recovery of
5 those costs, correct?

6 A. Yes, that's a fair statement.

7 Q. And that a company, a regulated utility, is
8 not guaranteed cost recovery. But instead, through
9 the regulatory compact, has the opportunity to recover
10 prudently-incurred costs; is that correct?

11 A. I don't know what the precise, you know,
12 words are. I understand we're allowed to recover our
13 prudently-incurred costs and we have an opportunity to
14 earn an authorized ROE.

15 Q. There's no guarantee, though, that you'll be
16 able to recover all costs; is that correct?

17 A. I understand there's no guarantee we'll
18 achieve our authorized ROE.

19 Q. Let's talk about things that go into net
20 power costs for a moment. You said there are things
21 that the Company and -- PacifiCorp said that there are
22 things the Company can't control. Is the cost of
23 coal, of purchasing coal, in net power costs?

24 A. Coal is one of the net power cost components,
25 yes.

1 Q. To the extent that it is not confidential,
2 can you give us a percentage of how much of the coal
3 purchased is Company-Owned coal?

4 A. I don't know what that percentage is off the
5 top of my head. I mean, a large percentage is mined
6 by the Company's mines, and a large portion is
7 contracted with third parties.

8 Q. So the Company voluntarily entered into
9 contracts to purchase that coal; is that correct?

10 A. Yes.

11 Q. With regard to plant planned outages, does
12 the Company have control over when those planned
13 outages will occur?

14 A. Yes, it has generally a fair bit of
15 discretion on planning outages.

16 Q. And what sort of factors does the Company
17 consider when it determines when a planned outage
18 should be scheduled?

19 A. There are lots of factors. You know,
20 economics would be one factor. We want to time the
21 outage at the lowest alternative cost of replacing
22 that power. Oftentimes, though, you don't have the
23 luxury to park it exactly there.

24 You have numerous outages that have to happen
25 in a defined period of time. And you may also have

1 parts warranties and so forth that particularly affect
2 combustion turbines, for example. A certain number of
3 hours go by and then they must be replaced.

4 And so you need to time the outage to ensure
5 that you stay within the, at least the authorized and
6 recommended manufacturer parts limitations. As a
7 couple examples.

8 Q. So you can -- within those constraints you
9 can influence when the planned outages are, correct?

10 A. Yes, to a degree.

11 Q. And so hence you can influence, to a degree,
12 the impact on net power costs; is that correct?

13 A. That is correct.

14 Q. Can the Company control which plants dispatch
15 on a given day?

16 A. Yes, it does.

17 Q. Is there a different cost for the power
18 dispatched from the different plants, or is it a
19 universal cost? I know that sounds like a dumb
20 question, but I don't know.

21 A. Could I ask you to restate the question? I'm
22 not sure I understand the question.

23 Q. Is there a different cost for power produced
24 from different plants?

25 A. Yes, there is a different cost for the power

1 produced from different plants. And it's largely
2 driven by the fuel and the efficiency or heat rate of
3 the resource that's generating the electricity.

4 Q. So we've talked a little bit about things
5 that the Company can control and things that the
6 Company cannot control with regard to net power costs.
7 What plans does the Company have currently in place to
8 increase its control over net power costs over time?

9 A. I think directionally the Company has less
10 control looking forward than the amount of control we
11 had over net power costs looking backwards. The
12 amount of volatile, uncontrollable, unpredictable
13 resources that are in our system have increased
14 dramatically from where they were, say, back certainly
15 in the '90s. Even in the first part of this decade.

16 In particular, the amount of wind resources
17 in our system, and not only in our system but in the
18 market overall, has a dramatic impact. Not only on
19 just when the wind blows and when the wind is
20 generating, but when that happens and there's a lot of
21 it, and the rain -- say the rain all comes at once, at
22 the same time.

23 The hydro -- sorry, the wind comes. That may
24 depress power prices to such a degree that the coal
25 plants are not in the money, which then means I may

1 burn less fuel. Which would push up the cost of --
2 per-unit fuel cost of the coal facilities, for
3 example.

4 So everything is highly interrelated. And
5 looking ahead, we have less control as opposed to
6 more.

7 Q. And agreeing with -- or understanding that.
8 The demands on the system are more complex than they
9 were in the early 1990s when there was the prior pass
10 through; is that correct?

11 A. Maybe I could "ask demands on the system," so
12 what do you mean by that?

13 Q. Have changes in the market occurred? Have
14 there been increases, such as, in Utah in particular,
15 forced air, air conditioning, and things like that, so
16 things have changed since then?

17 A. Yes, certainly things have changed and
18 continue to change very rapidly. The environmental
19 requirements, the market constraints, and how the
20 markets have evolved in general. The demand side
21 programs that we've implemented.

22 Energy efficiency, and trying to guess at how
23 much of that voluntary activity will come into play.
24 A lot more complication.

25 Q. So all these seem -- all these things should

1 add up to the fact that the Company has a greater
2 incentive to determine how better to manage its net
3 power costs; is that correct?

4 A. I wouldn't agree with that relative to,
5 again, I think what seems to be missed is there's a
6 starting point of when we set rates for a forecast
7 period. And, you know, as has been discussed, we're
8 largely hedged for that forecast volume, for that
9 forecast test period.

10 And we assume everything else is normal. We
11 assume the wind will operate at a historical median.
12 We assume hydro will be at normal median. And we
13 normalize outages very smoothly across the system.
14 And what we know for certain is that's remotely far
15 away from how the world really behaves. And so
16 there's this missing gap on this amount that we talked
17 about what the deferral amount is for the last six
18 months.

19 That's probably a fair representation of what
20 I would expect the variance to be, typically.
21 Depending on the volatility, again, of all the
22 resources, that we can't predict, and can't forecast,
23 and no one can. So I think it's just a simple way to
24 address the basic issue we have.

25 But it's a very -- relatively speaking, of

1 the total net power costs, you know, we're not talking
2 about, you know, huge numbers out of a billion or, you
3 know, billion three, whatever things have grown to.
4 You know, something less than a hundred million is
5 probably more typical of what we're talking about in
6 trueing up.

7 Q. Given that, is the Company engaging in
8 activities to improve the accuracy of its forecasts,
9 or is there no way to do that?

10 A. If something is inherently unpredictable, I
11 guess by definition then I don't know how you improve
12 the accuracy of a forecast. If I were to go to a
13 third-party supplier and say, Hey, would you supply me
14 with a firm price to take on all this risk? Then I
15 would very much expect them to put a very significant
16 risk premium on that price.

17 That is not part of our grid net power cost
18 forecast in rates. There is no risk premium embedded
19 in that number. And we don't, you know, incorporate
20 any sort of stochastics. Which you could arguably do
21 and say, Here's a bell curve of possible outcomes.
22 But what we know is we don't know which one of those
23 outcomes is going to occur.

24 And so again, the Company's proposal is move
25 away from that sort of game theory and simply look at

1 what's really important, which is did we operate in
2 the most prudent way possible. And that's easily
3 auditable after the fact.

4 And we're not afraid of that. We welcome,
5 you know, focused review on how well we managed and
6 operated the system. And I'm very proud of our team,
7 and we will hold up well in that sort of review.

8 Q. Are you saying that you can't gain anything
9 from past performance? Or any insight or any trends
10 from past performance?

11 A. Well, I guess I could put the question back
12 to you, perhaps. I mean, 2009 was one of the worst
13 wind and hydro years on record, and 2010 started out
14 that way.

15 And so, you know, one person could say, Well,
16 what'd you learn from that? You know, should we
17 forecast a lower hydro, lower wind for the next year?
18 Well, you know, what happened the previous 70 years is
19 kind of what we look at, and we just pick the middle.
20 Not knowing, you know, where it's gonna go.

21 And you know how good the weatherman is for
22 tomorrow, take a gander how good they are a year in
23 advance. Not so hot. You hear a lot of talk about
24 *El Niño/La Niña*, these sorts of conditions.

25 It's possible that under a *La Niña* scenario

1 that we're in now -- and we've seen that in September
2 and October, for example -- hydro results might be
3 favorable. Maybe we're on the upswing. If it is,
4 then all that value will pass through to customers.

5 And again, we're proposing that they should
6 get the full benefit of that. In the same fashion
7 that, you know, we shouldn't be unfairly rewarded or
8 penalized for something out of our control.

9 Q. And sort of scooting a little bit. Utah
10 doesn't really get hydro benefit, does it? Doesn't
11 that go to Oregon and then, to some extent, Wyoming?

12 A. I'm honestly not real familiar with how the
13 revised protocol mechanism works. I think other
14 witnesses would do a better job of answering that
15 question.

16 Q. Okay. Um --

17 A. And again, hydro is just one easy example
18 because it's into a -- you know. Wind, certainly, you
19 know, Utah participates in all of that. I'm fully
20 familiar -- I haven't heard anybody mention wind as
21 not being part of a protocol.

22 And that's, you know, trouble. The
23 volatility that we see on the wind -- on the hydro
24 side.

25 Q. A moment ago you spoke about asking people to

1 assume risk and things like that. With the
2 uncertainty surrounding the Company's forecasts and
3 the unpredictability of net power costs, isn't it true
4 that the Company's ROE reflects that uncertainty?

5 A. Again, I'm -- I would just be speaking on
6 what I've heard. I think --

7 Q. Okay.

8 A. -- Mr. Hadaway, you know, is probably the
9 expert for asking that question to -- relative to how
10 ROEs are established, and, you know, what is the
11 representative pool, and what's gone into the
12 Commission's review in that regard.

13 Q. Okay. Moving on, then. If the Company's
14 ECAM were approved how do the Company's incentives to
15 manage its net power costs improve?

16 A. Personally, I think the incentive likely
17 grows, because there will be a much more heightened
18 focus on prudence. You know, today I don't know how
19 that really happens when we're talking about a
20 forecast and dealing with, you know, all the things
21 that we've just talked about that are moving.

22 So I think the benefit this brings to all
23 parties is there will be an actual review of that to
24 say, Well, how did we perform?

25 And parties can make comments and say, Well,

1 I think you should have done this, or should have done
2 that. We can have an open, you know, healthy debate
3 on those subjects. And it may be that, you know,
4 the Company is pushed to improve, you know, whereas
5 today there is no review of that.

6 Q. So we've talked a little bit about things
7 like hydropower and wind. Let's turn now to natural
8 gas. Does the Company purchase natural gas to use for
9 fuel stock?

10 A. Yes.

11 Q. Does the Company purchase natural gas and
12 store that natural gas to use at some later point?

13 A. We have a very small storage contract, but
14 it's not terribly material for all of our natural gas
15 use. Which all of that is for the purpose of
16 generating electricity.

17 Q. And just to fill out the facts, where is that
18 storage contract? Where is the storage basin located,
19 if you can tell us?

20 A. Clay Basin. I don't know precisely where
21 it's located. Again, it's very small.

22 Q. Wyoming.

23 A. Yeah.

24 Q. Off the highway.

25 A. Yeah.

1 Q. Okay. So does the Company plan its natural
2 gas purchases?

3 A. Yes.

4 Q. Are these natural gas purchases done at fixed
5 costs?

6 A. We filed quite a bit of testimony, I think,
7 on our natural gas purchasing and hedging program. So
8 it's a combination of physical and swap products in
9 order to lock in our total cost in terms of price as
10 well as the physical supply itself.

11 Q. So if the Company had more storage could the
12 Company purchase natural gas when the price is lower,
13 and then store it to use at a time when natural gas
14 prices are higher?

15 A. Yes, it could.

16 Q. What sort of plans does the Company have to
17 improve its control over natural gas costs?

18 A. Well, to your first question regarding
19 storage, there's a very limited amount of storage in
20 the West, off the Kern River pipelines and Questar
21 system, that we primarily rely on. We also have
22 projects that bring gas largely out of Canada on the
23 west side of our system.

24 But there are projects that have been
25 proposed recently. We're looking at those storage

1 proposals. And again, it comes down to the economics
2 and whether or not it's in the interest of customers
3 whether or not we would transact and support any of
4 those projects.

5 But in terms of managing our net power cost
6 risks, a lot of discussion, again, on this. We
7 believe it's critical, because it's correlated and
8 interrelated within our entire portfolio risk
9 management.

10 The proper and intelligent way to manage
11 those risks is on a portfolio basis, which is the
12 nature of our risk management program. Which has,
13 again, largely been the same over the past many years.
14 With, you know, simple improvements that we
15 incorporate. Best practices every year, and reviews
16 of our risk oversight committee, and so forth.

17 But I do not foresee any fundamental material
18 changes in the way we procure gas and manage that net
19 power cost risk going forward. We have a very
20 effective hedging program.

21 Q. Turning back sort of to where we started. Is
22 it true that the Company's net power forecasts are
23 consistently low?

24 A. If you mean they're consistently lower than
25 what actual net power costs have been, I think the

1 record does show that, yes.

2 Q. What does that say about the Company's
3 forecast process?

4 A. I think, again, it just confirms what I would
5 think is, you know, obvious. You know, you can't
6 predict the weather. We don't know what temperatures
7 are gonna be for every day, every hour for the next,
8 you know, year.

9 I don't know when the rain's gonna fall. I
10 don't know how much wind is gonna blow. And when all
11 those things are happening together I don't know where
12 power prices and natural gas prices are gonna be. So
13 I think, you know, at a simple intuitive level, no
14 surprise that the forecast is wrong.

15 I know that no matter what model you put in
16 front of me, I know it's wrong. That's the world we
17 live with. So the question is then, in light of that
18 inability to forecast accurately, you know, what is
19 the best way to establish rates and have, you know,
20 customer and Company interests aligned?

21 And we believe that's with the mechanism that
22 we've proposed.

23 Q. So why isn't the forecast -- if things are so
24 unpredictable why isn't the forecast consistently
25 high?

1 A. Well, I think you would expect maybe
2 intuitively that it would fall out on both sides,
3 right? Assuming that medium hydro --

4 Q. Yes.

5 A. -- and that, that every other year or
6 something you had a good year and a bad year. And if
7 you look back at the last ten years of hydro, for
8 example, they've generally been lower.

9 You know, it's like the roulette wheel. You
10 know, it doesn't mean that just because it came up red
11 3 times that the next 3 times are gonna be black. You
12 might get 30 in a row. You might get one or the
13 other, flipping a coin.

14 And I don't know that it's that arbitrary,
15 but there's tremendous volatility, you know, in the
16 weather. And again, I think any rational person just
17 naturally understands that. But how do you then
18 forecast better for next year? You know, that's what
19 goes into rates.

20 You know, is it reasonable to assume that
21 it's gonna be the average of the last 7, or the
22 average of the last 20? That feels reasonable, you
23 know, off the cuff. But it delivers the results that
24 we've been showing, you know, in Mr. Duvall's
25 testimony, you know, over a year ago.

1 And so that's the problem that we're here to
2 fix. Not to try to make a profit, that's not what our
3 mechanism is about. It's simply recover what we've
4 prudently incurred if we've done a prudent job of
5 managing it.

6 MS. SCHMID: Thank you.

7 CHAIRMAN BOYER: Thank you, Ms. Schmid.

8 Mr. Evans, do you have much cross
9 examination?

10 MR. EVANS: I have none for Mr. Bird, thank
11 you.

12 CHAIRMAN BOYER: That's not very much.

13 THE WITNESS: Thank you.

14 CHAIRMAN BOYER: Well, I'm trying to
15 determine when we should take a break and give our
16 reporter a break.

17 MR. DODGE: I have very limited cross.

18 CHAIRMAN BOYER: Well, let's hear your very
19 limited cross, Mr. Dodge.

20 CROSS EXAMINATION

21 BY MR. DODGE:

22 Q. I just want to clarify, Mr. Bird. In your
23 prefiled rebuttal testimony you address hedging and
24 REC revenues as being included, and no other topic; is
25 that correct?

1 A. I know those were the main topics. There's,
2 I think, a lot of other discussion in my testimony
3 about, you know, prudence, and customer benefits, and
4 the old structure, and the new structure. And so --

5 Q. In the context of --

6 A. -- I don't characterize it exactly that way.

7 Q. In the context of hedging, correct? Your
8 entire discussion in your testimony is hedging,
9 correct?

10 Now, I invite you to look at it. If you want
11 to take a break, if that's necessary. I've read it.
12 It talks about hedging and REC revenues and nothing
13 else. If you maintain it talks about something else,
14 I would like you to read it and show me where that's
15 at.

16 MR. MONSON: Can I help speed this up? Look
17 at page 10.

18 Q. (By Mr. Dodge) Okay. Do you agree it's
19 necessary to include all the components of NPC in an
20 ECAM to avoid perverse incentives. Okay, if that's
21 not part of the hedging discussion -- it is part of
22 the natural gas hedging. You say in all elements
23 including -- hedging should be included.

24 But you did not address anywhere the issue of
25 incentives of management to make proper decisions, or

1 whether the prudence review is an adequate incentive,
2 or anything along that line, did you?

3 A. To give you a precise answer I'd need to read
4 my testimony line by line and give you a hard answer.
5 I mean, I would certainly grant that the bulk of my
6 testimony is about hedging, you know, incentives and
7 RECs.

8 Q. I'm just focused on what's the right level of
9 cross for you, because I didn't read anything about
10 what you've just been talking about all afternoon in
11 your prefiled.

12 MR. DODGE: So given what I believe is the
13 correct testimony before this Commission, I have no
14 further questions on the two issues he addressed in
15 his testimony.

16 CHAIRMAN BOYER: Thank you, Mr. Dodge.
17 Mr. Michel?

18 MR. MICHAEL: No questions.

19 CHAIRMAN BOYER: Ms. Hayes?

20 MS. HAYES: No, thank you. And I just --
21 sorry to bring this up so late. But since WRA and
22 Utah Clean Energy filed joint testimony I won't have
23 additional questions to what Mr. Michel asks.

24 CHAIRMAN BOYER: Okay, very well. Thank you
25 for that heads up.

1 Commissioner Allen? Commissioner Campbell?

2 COMMISSIONER CAMPBELL: I'd like to ask you a
3 few questions related to your response to
4 Mr. Peterson. When did the Company begin its
5 involvement with swap transactions?

6 THE WITNESS: I think as soon as the -- in
7 general I would say when the market made them
8 available. The, on the natural gas side that's been
9 the primary tool that, you know, hedging entities like
10 ourselves have used for the last several years.

11 On the electric side those are not as
12 prevalent. And so there's more fixed price physical
13 and index physical -- sorry, fixed price physical on
14 the electric side.

15 COMMISSIONER CAMPBELL: And can we get closer
16 to a year than that? I mean, Mr. Peterson starts his
17 analysis in 2006. How many years further back do we
18 need to go?

19 THE WITNESS: I'd say roughly speaking, the
20 last five years that's been a, I think pretty
21 commonly-used product.

22 COMMISSIONER CAMPBELL: Okay. Last five
23 years?

24 THE WITNESS: Yeah.

25 COMMISSIONER CAMPBELL: When did the Company

1 begin its involvement with fixed price physical
2 transactions?

3 THE WITNESS: '90s? I've only been here
4 since 2007, but I think those products were generally
5 the way the world worked in the '90s, to the best of
6 my knowledge.

7 COMMISSIONER CAMPBELL: Okay. Certainly
8 since I started in utility regulation I think the
9 Company's been doing that.

10 THE WITNESS: Yeah.

11 COMMISSIONER CAMPBELL: Do you know when the
12 Company began labelling the fixed price physical
13 transactions as part of a hedging program?

14 THE WITNESS: I'm not precisely sure of the
15 question. In terms of our hedging program it would
16 just be one of the products in order to fix price.
17 And so the core risk in terms of net power costs on
18 the financial side you would either have to use a
19 fixed price physical product or a swap that would swap
20 the floating side of an index physical with a fixed
21 price. Those are the only two ways to hedge the
22 financial exposure looking ahead.

23 COMMISSIONER CAMPBELL: Well, let me ask it
24 this way. I mean, as I've watched utility regulation
25 over the years the Company certainly has long-term

1 investment, and they want to sell excess. And
2 certainly there's solar power and there's buying and
3 selling that goes on. That's been going on forever.

4 I guess I'm coming to the point that the
5 swaps is a new hedging activity, relatively, if you
6 want to say within the last five years. And my
7 question is, would customers have been better off if
8 the Company never engaged in swaps?

9 And if -- am I wrong in assuming that,
10 according to Mr. Peterson's testimony, that the answer
11 would be, if the Company had never started that
12 hedging activity -- because they were already doing
13 the fixed physical price stuff long before the Company
14 started doing the swaps -- that customers would have
15 been better off by \$173 million?

16 THE WITNESS: And the answer to that is no,
17 because we would have then been forced to use fixed
18 price physical products in place of the swaps.

19 So it's sort of nonsensical to, you know,
20 look at just the swaps in isolation or fixed price
21 physical products in isolation. That's not a
22 meaningful separation. They just happen to be two of
23 the products that we use to accomplish the end goal of
24 mitigating price exposure.

25 And so if someone said, I don't want you to

1 do swaps for some reason -- and I couldn't come up
2 with a good reason why anybody would make that
3 argument -- then the Company would be forced to
4 transact solely with fixed price physical to hedge its
5 forward position.

6 And given the lack of liquidity on that -- on
7 the gas front, for example, my guess is today that
8 would be a more expensive solution because the bid ask
9 would be more expensive and it would be a more
10 expensive hedging tool.

11 But I think the facts that we've shown are
12 that -- as my Exhibit 2R -- a, you know, tremendous
13 amount of savings have resulted from our hedging
14 activity. I'd like to take credit for that, but it's
15 just how things played out.

16 I don't think the Company knew, you know,
17 that prices were gonna move unfavorable, you know,
18 which is apparently what happened. And so had it not
19 been for the Company's hedges, net power costs would
20 have been substantially higher. You know, to the tune
21 of 304 point -- million.

22 So it's, it's nice that the number came out
23 that way. But you would expect on average, again,
24 that it would, you know, come closer to zero. You
25 know, but our actual results, turns out for this

1 period those hedges were deep in the money.

2 COMMISSIONER CAMPBELL: Okay, help me out
3 here. So that 300 million, I mean, the Company was
4 doing that already. I mean, the Company was already
5 engaging in those transactions, those type of
6 transactions, where you got your positive 300 million.
7 So I don't understand how the hedging program
8 delivered that.

9 THE WITNESS: That is the hedging program.
10 So if we hadn't hedged anything, then the opposite
11 result would have occurred. And the 305 million
12 wouldn't have, you know, been a result. So we saw a
13 favorable gain on all those hedges.

14 That is exactly what this measures, is what's
15 the difference. To hedge or not hedge for this period
16 accumulated the 305 million.

17 CHAIRMAN BOYER: You've given some
18 illustrations today, Mr. Bird, of elements of net
19 power costs that are beyond the Company's control:
20 Weather, hydro, wind, and those sorts of things. What
21 kind of controls do ratepayers have over net power
22 costs?

23 THE WITNESS: I'm not aware that customers
24 have any control, other than their representation in a
25 rate case setting. I think my reaction to the general

1 comment I think I heard you say, you know, risks
2 should be managed by those who have the best ability
3 to manage them.

4 And that is the Company's job. You know,
5 we're faced with delivering service to customers. And
6 again, what's different for us is we're obligated to
7 make that product available at the lowest reasonable
8 cost.

9 If I were a business that had the ability to
10 set my own prices, or I was a business that could
11 choose to serve some customers and not others, then I
12 would have tools in my tool kit to deal with the
13 volatilities of my business. And I would be able to
14 manage and create my, you know, rate of return, as a
15 result, by using those tools.

16 But because I'm regulated and I have this
17 obligation to serve, and as I understand it the quid
18 pro quo is I get to recover my prudently-incurred
19 costs, well, I'm gonna do everything possible to
20 deliver those services to customers and give them
21 reliable service, you know, even if the cost goes up,
22 but I'm gonna do it at the lowest then-available cost.

23 And so that is the, you know, the core
24 understanding and what our ECAM proposal achieves. So
25 it's not a profit mechanism for us, it's simply just

1 recovering our prudently-incurred costs.

2 COMMISSIONER CAMPBELL: So are you saying
3 that the Company then has the very same incentives or
4 equivalent incentives under an ECAM as it does under
5 the existing system where actually they have to bear
6 the cost of their interactive forecast for a period of
7 time, at least, until another rate case?

8 THE WITNESS: Yes.

9 CHAIRMAN BOYER: Okay, thank you.

10 Any redirect, Mr. Monson?

11 MR. MONSON: I do have a couple of questions.
12 Shall we do them now?

13 REDIRECT EXAMINATION

14 BY MR. MONSON:

15 Q. First one. You were asked some questions by
16 Ms. Schmid about the Company's forecasting ability and
17 whether it can be improved.

18 Does the Commission, to your knowledge, rely
19 on the Company's forecast in setting rates? The
20 Company's forecast for net power costs in setting
21 rates; do you know?

22 A. I know that the process begins with the
23 Company's proposal. That comes out of a forecast
24 model that sets rates. And I know that that's not
25 where rates ultimately end.

1 Q. Thank you. And you were just asked questions
2 by the Chairman about if customers can manage costs,
3 or have -- can manage the risk of net power costs.
4 And you talked about what the Company can do.

5 Can customers control, at least to some
6 extent, their costs through their choice of usage?

7 A. Certainly if the question was, you know, can
8 customers affect their costs, absolutely. They can
9 choose to use more or less power, and they have
10 complete control over that decision.

11 But in terms of affecting the Company's net
12 power costs, certainly if they used less that would
13 also result in less total net power costs. But I
14 don't think they have any incentive, necessarily, in
15 making that decision, you know, for all customers.

16 MR. MONSON: That's all I have.

17 CHAIRMAN BOYER: Thank you, Mr. Bird, you are
18 excused.

19 We're gonna take a ten-minute-or-so recess
20 now, then we'll hear from Dr. McDermott and get him
21 winging his way back to Illinois. This afternoon,
22 hopefully. Thank you.

23 (A recess was taken from 3:03 to 3:23 p.m.)

24 CHAIRMAN BOYER: Okay, we are back on the
25 record.

1 And Dr. McDermott, you were sworn in in the
2 earlier phase, were you not?

3 THE WITNESS: Yes, I was.

4 CHAIRMAN BOYER: Okay. We'll just remind you
5 that you're still under oath.

6 Mr. Monson?

7 KARL A. McDERMOTT,
8 called as a witness,
9 having previously been duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MONSON:

13 Q. Dr. McDermott, in connection with this
14 portion of the hearing you -- well, first of all state
15 your name for the record and your position and so
16 forth, sorry.

17 A. Karl, with a "K," middle initial A.,
18 McDermott, M-c-D-e-r-m-o-t-t. And I'm the Ameren
19 Professor of Government and Business at the University
20 of Illinois, Springfield. And a special consultant
21 with National Economic Research Associates, Inc.

22 My business address is 875 North Michigan
23 Avenue, Suite 3650, Chicago, Illinois 60611.

24 Q. And as the Chairman just asked, you've
25 previously testified in this case in Phase I, right?

1 A. Yes, I did.

2 Q. But in connection with this phase of the case
3 you've prepared rebuttal testimony, with four
4 exhibits, that was filed on September 15, 2010?

5 A. That is correct.

6 Q. Do you have any corrections or changes you
7 wish to make to that testimony today?

8 A. No, I do not.

9 Q. Do you have a summary of your test -- oh.

10 MR. MONSON: First of all we'd like to offer
11 Dr. McDermott's rebuttal testimony and his four
12 exhibits.

13 CHAIRMAN BOYER: Are there any objections to
14 the admission of Dr. McDermott's rebuttal testimony
15 together with exhibits?

16 They are admitted.

17 (Karl McDermott rebuttal testimony and
18 attached exhibits was admitted.)

19 Q. (By Mr. Monson) Dr. McDermott, do you have a
20 summary of your testimony that you could present to
21 the Commission?

22 A. Yes, I do.

23 Good afternoon, Commissioners. As I stated
24 in the first phase of this case, I believe that this
25 case is really about structuring a fair regulatory

1 process. A process where customers pay only the
2 prudent actual costs of serving them, and the Utility
3 has a fair opportunity to recover its prudently-
4 incurred costs.

5 Under a traditional regulatory bargain a rate
6 case assumes that all categories of cost are
7 relatively stable over time, such that a normalization
8 process would provide a fair opportunity to recover
9 costs.

10 In that case the fair process was subsumed
11 under the traditional rate case proceeding. However,
12 when costs no longer conform to the normalization
13 assumptions, an ECAM or a fuel adjustment clause is a
14 reasonable substitute for the normalization process in
15 order to address these problems.

16 Indeed, many other commissions around the
17 country have found that an ECAM resolves these
18 problems. How have they come to this conclusion? By
19 asking if the costs that no longer conform to the
20 normalization assumptions meet at least three
21 thresholds tests.

22 And these are: Are the costs a large
23 component of the Company's and the customers' cost of
24 service, are these cost components volatile, and are
25 they outside the control of management?

1 After reviewing this three-prong test nearly
2 every commission has found that ECAMs are in the
3 public interest, and I believe this Commission should
4 find that as well.

5 The proposed ECAM design relies on one of the
6 most powerful incentives available to commissions,
7 namely, prudence reviews. This is an incentive that
8 regulators around the country have employed to
9 discipline utility purchasing practices once fuel
10 adjustment mechanisms became a standard tool of
11 regulation.

12 Moreover, commissioners apply the prudence
13 standard in reviewing Rocky Mountain Power's capacity
14 choices, base rate setting cases, and, if approved, in
15 ECAM reviews in the future.

16 As my testimony has shown, deadbands and
17 sharing mechanisms are not a standard approach taken
18 by regulators around the United States. Rather, these
19 mechanisms are the exception. Where evidence exists
20 regarding a specific problem or pattern of behavior,
21 then commissions could either make a prudent
22 disallowance or revisit the necessity of an incentive
23 mechanism as part of an ECAM.

24 In the case of Rocky Mountain Power there has
25 been no evidence provided of problems that would

1 warrant the use of deadbands and sharing rates. There
2 is simply no evidence that these designs would be in
3 the public's interest.

4 Moreover, for incentives to be truly
5 effective they have to be applied to matters that the
6 Company would have control over. And be designed so
7 that they would affect those decisions, like a
8 traditional incentive regulation would have.

9 The proposed deadbands and sharing bands in
10 this case, in this context, fail these tests because
11 NPC is largely outside management's control, and
12 therefore the sharing and deadbands are not designed
13 to influence costs over which management has control.

14 A second concern raised by the parties in the
15 case is that an ECAM would unduly shift risks to
16 customers that the Company should bear. First, as I
17 pointed out in Phase I, under the regulatory bargain
18 the Company should have an opportunity to recover it's
19 legitimate prudent costs, however we define them.

20 When the bargaining breaks down, as it does
21 when NPC becomes large, volatile, and outside of
22 management's control, the use of an ECAM is simply
23 repairing the regulatory bargain and reestablishing
24 the risk sharing arrangements that were encompassed
25 under the original bargain.

1 It does not shift risk relative to the
2 traditional regulatory bargain. In fact, by focussing
3 on paying the actual costs with a true-up mechanism
4 the current proposal is not a risk-shifting mechanism,
5 it is a risk-mitigating mechanism.

6 Both parties benefit by paying actual costs
7 and receiving actual costs, with the power of the
8 prudence review serving as a means of ensuring
9 efficiency.

10 While some parties have voiced concern that
11 the academic literature provides evidence of
12 incentives actually being distorted, I believe in our
13 testimony we've shown that that's not actually the
14 case and that that literature is not applicable.

15 Recognizing that the proposed ECAM approach
16 utilizes an ex-post prudence review that allows the
17 Commission and the parties to understand and review
18 the Company's operations provides the Commission with
19 a far greater control over costs included in ECAM
20 charges.

21 That is generally presumed in the literature.
22 As we noted in the testimony, this literature is not
23 on point with the characteristics of the proposed ECAM
24 in this situation.

25 Third -- and this is probably the most

1 important empirical evidence -- virtually all the
2 state commissions have employed an ECAM process of one
3 shape or form around the United States. And while
4 they may differ in design, they all recognize the need
5 for a mechanism to address the volatile net power
6 costs.

7 In adopting the proposed ECAM the Commission
8 could be creating a regulatory process that will, in
9 effect, break cost recovery into two components: The
10 base rate and the NPC prudence review. I believe that
11 you gain greater control, and the opportunity to focus
12 resources more effectively, in evaluating both the
13 non-NPC costs in the traditional rate case and the NPC
14 costs through the ECAM review.

15 As I stated in Phase I, I believe the ECAM is
16 in the public interest. And particularly this ECAM
17 design is in the public interest as it properly
18 restores the balance between customers and
19 shareholders by reestablishing the elements of their
20 original regulatory bargain.

21 And I would encourage the Commission to
22 acknowledge that an ECAM is in the public interest and
23 move to approve the ECAM designed by Rocky Mountain
24 Power in this proceeding. Thank you.

25 MR. MONSON: Dr. McDermott is available for

1 cross.

2 CHAIRMAN BOYER: Thank you, Dr. McDermott.
3 Mr. Proctor, cross examination?

4 MR. PROCTOR: No questions, thank you.

5 CHAIRMAN BOYER: Ms. Schmid?

6 MS. SCHMID: Yes.

7 CROSS EXAMINATION

8 BY MS. SCHMID:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. I'd just like to clarify a couple of things.
12 Earlier today I asked some questions about opportunity
13 and guaranteed recovery through the regulatory
14 process.

15 Is it your testimony that an ECAM provides an
16 opportunity for a utility to recover costs?

17 A. It should give you a recovery of your prudent
18 costs in order to reestablish the bargain. What you
19 have an opportunity to do is earn your allowed rate of
20 return.

21 And if costs and revenues fluctuate over
22 time, in the traditional regulatory process you may or
23 may not earn that return. You may actually over
24 return. And if there's a pattern of over return over
25 time, the Commission would call you in for a rate

1 case.

2 Q. If I turn now to the specific issue of net
3 power costs themselves -- and could you turn with me
4 to page 18 of your supplemental direct? And this is
5 in Phase I.

6 A. Oh.

7 Q. Would you like a copy?

8 A. Yes, please.

9 Q. Okay. Let's see which one I have that I
10 haven't drawn all over. Okay, just one moment.

11 MS. SCHMID: May I approach?

12 CHAIRMAN BOYER: You may, Ms. Schmid.

13 THE WITNESS: Thank you.

14 MS. SCHMID: You're welcome.

15 Q. (By Ms. Schmid) And I'll represent to you
16 that that's a true and accurate copy of your
17 supplemental direct in Phase I. Will you accept that,
18 subject to check?

19 A. Yes.

20 Q. If we turn now to page 18, line 363. Can you
21 take just a moment and review your testimony stated
22 therein from 363 to 376?

23 (Pause.)

24 THE WITNESS: All right.

25 Q. (By Ms. Schmid) Thank you. And turning now

1 specifically to line 369, I'm going to read just a
2 sentence. In your testimony you state, beginning at
3 369 and ending at 373:

4 "If the forecasted level of net
5 power costs could be set such that, on
6 average, the Utility would be expected
7 to recover its costs from the rate-case
8 approach, a fundamental premise of
9 ratemaking, then the rate-case approach
10 and the ECAM approach will produce, on
11 average, the same rates."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. So then does that bring us to the issue being
15 that at issue is the precision and bias of the
16 Company's forecasts?

17 A. No.

18 Q. Why not? And I hate to ask that, but I must.

19 A. Well, that would all depend. See, the
20 forecasting of net power, so what we would have to
21 agree to is that the forecasting process that we would
22 use in setting the base rate case is a fair forecast
23 with a normal distribution.

24 It's not something that's been fought over,
25 you know. We have a, we have a different forecast and

1 you have a different forecast.

2 If there were some objective third-party
3 agency who could provide that forecast for us and set
4 it up in that fashion, then what I'm saying here is
5 that the forecasted level of net power costs could be
6 set such that, on average -- because you're gonna have
7 that variation around -- and so your expected value of
8 the costs would establish that fundamental notion that
9 we have under traditional regulation.

10 Which is -- if you think about the rate case
11 process -- when all costs can be forecast and
12 normalized, then we come up with an accurate rate
13 based on costs. And then all the cost elements
14 fluctuate through time. Some of those are offsetting
15 one another. And over time you have a fair
16 opportunity to earn that expected value that's been
17 forecasted.

18 Q. Are you saying, then, that a third-party
19 forecast would be better than a forecast from the
20 Company that the parties challenge and question the
21 merits of?

22 A. Well, I'm saying that in, in the process of,
23 of going through all those arguments, and fighting
24 about and choosing pieces out of all the forecasts,
25 and, you know, making decisions about components of

1 the forecast and how we forecast? That all of that
2 becomes, in some sense, a political battle.

3 Some groups want to argue that the forecast
4 should be low, right? Because that protects the
5 customer from having to pay those costs in the base
6 rates. And others would want the costs to be accurate
7 based on their prudent costs.

8 And so we get into this kind of debate over
9 what the forecasts are, and we lose sight of the fact
10 that what we're trying to do is predict the prudent
11 cost of service for the customers going forward.

12 Q. But shouldn't the Commission be able to weigh
13 the validity of those challenges to the forecasts and
14 give the testimony and the changes thereto the
15 appropriate weight?

16 A. I think that's a really hard thing to do.
17 And so when you substitute that type of a process for
18 an actual true up, then you can come closer to the
19 truth.

20 And in the prudence reviews, looking back
21 over time to look at the costs that have been
22 incurred, if you find a problem then you can disallow
23 those costs. And you should disallow those costs.

24 MS. SCHMID: Thank you.

25 CHAIRMAN BOYER: Thank you, Ms. Schmid.

1 Mr. Evans?

2 MR. EVANS: No questions, Mr. Chairman.

3 Thank you.

4 CHAIRMAN BOYER: Thank you. Mr. Dodge?

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

7 CROSS EXAMINATION

8 BY MR. DODGE:

9 Q. Mr. McDermott, it's true, is it not, that
10 your position on the effectiveness of prudence reviews
11 basically assumes that that, in fact, will result in
12 imprudently-incurred costs being ferreted out and only
13 the proper costs being passed on to ratepayers. Is
14 that essentially implicit in your position?

15 A. I believe that that is exactly what I'm
16 arguing, is that the Commission, staff, and the
17 process will have an opportunity to identify imprudent
18 costs.

19 Q. And if the staff primarily tasked with that
20 job expresses some reservations about their ability to
21 do that, that should give someone a little bit of
22 pause, should it not?

23 A. Well, I think that they -- what we need to do
24 is make sure that the staff has adequate resources to
25 be able to do this.

1 Q. Before we adopt an ECAM, right?

2 A. I think that the review process, if you
3 may -- or -- yeah. When we set up the review
4 process -- when you set up the review process, you
5 have to remember, there's two parts to this.

6 In the base rate case you're going to be
7 arguing about the performance of power plants, and the
8 availability of power plants, and a whole number of
9 factors that influence the cost of providing service
10 going forward.

11 And when you have vetted the prudence of
12 those actions, then that's information that you carry
13 forward with you to review the next -- the end of the
14 year's ECAM adjustment. So I don't know that you need
15 to go back through all of that again.

16 You've now got a chance to focus on the
17 prudence questions associated with the balancing
18 functions that the Company plays in trying to meet
19 that obligation to serve. Which is the fact that,
20 that load is varying all around the forecasted load
21 that was going to exist, and you have to have the
22 resources to cost effectively meet that load for the
23 customers.

24 So when we start looking at a review of the
25 decisions, and the actions, and the costs that were

1 incurred in the ECAM proposal, what you can right up
2 front do is ask the question: In the base rate case
3 you are operating at 85 percent capacity factors for
4 your power plants. Is there anything that's changed
5 since then that we ought to know about?

6 If not, then some of those issues that might
7 have been a problem for you are taken off the table.
8 Staff won't have to review all the details around
9 that.

10 If it turns out that, you know, hydro and
11 water resources that were predicted to exist didn't
12 exist because of nature, then the Company had to
13 undertake certain actions to try to address that. And
14 so you can look at those actions and see that they
15 tried to address that in a prudent fashion. But
16 that's what you're trying to focus on.

17 Q. And if we assume that the agency in the State
18 of Utah that will be tasked with that understands its
19 job but it still expresses reservations about its
20 ability with current staffing, that ought to be a
21 concern, should it not?

22 A. It's something you should take under
23 consideration, but I don't think it should stop you.

24 Q. As evidence of your view that -- and in fact,
25 I think on page 11 of your rebuttal, on line 232, you

1 say it's undeniable that prudence reviews provide
2 utilities with a strong incentive. And as evidence of
3 that you reference several examples that you provided
4 in your supplemental direct.

5 I believe you actually meant your rebuttal,
6 because I couldn't find any examples in your
7 supplemental direct. But in your rebuttal in the
8 first phase, on page 30, you list seven examples of
9 ECAM disallowances in the years 2004 and '5; is that
10 right?

11 A. That is correct.

12 Q. And just so I understand, that's the sum
13 total of the evidence you've placed before this
14 Commission on the effectiveness of prudence reviews in
15 actual practice?

16 A. Those were examples that I could bring right
17 forward to testify to that, in fact, prudence reviews
18 are being conducted by state commissions. And they
19 are being effective in identifying and disallowing
20 certain costs when there is evidence that there's been
21 a problem.

22 Q. At least in seven cases?

23 A. At least in those seven cases.

24 Q. Yeah. Basically, Mr. McDermott, I read your
25 testimony as being that Utah is out of step with the

1 rest of the country, because everybody has ECAMs and
2 so of course we should too. Is that somewhat fair?

3 A. Well, you don't just do something because
4 everybody's done it. You have to ask why has
5 everybody done it.

6 And in this case what we've shown is that
7 when other state commissions are confronted with the
8 same kinds of problems of having, you know, cost
9 components that are large, variable, and outside the
10 control of management, they've realized that that
11 endangers the basic regulatory compact or bargain and
12 they've taken actions to address that problem.

13 Q. And let's look at the consequences. How does
14 Rocky Mountain Power's Utah rates compare with the
15 average rates of all the other utilities in the
16 country that have ECAMs; do you have any idea?

17 A. You generally have fairly low rates.

18 Q. And at the same time are you aware of the
19 bond ratings of the Utah utility? Or at least its
20 parent?

21 A. I haven't checked those lately.

22 Q. Are you aware those are pretty darn good?
23 Probably about where a commission wants them to be?

24 A. Just shows how good you regulate here.

25 Q. That's what I mean. Maybe there's an

1 argument that all those other states ought to be
2 looking at Utah for how to do it. Do you think that's
3 a possibility?

4 A. Well, everybody always strives to be better.

5 MR. DODGE: All right, I accept that. Thank
6 you, Mr. McDermott, no more questions.

7 CHAIRMAN BOYER: Thank you, Mr. Dodge.

8 Mr. Michel?

9 CROSS EXAMINATION

10 BY MR. MICHEL:

11 Q. Good afternoon, Mr. McDermott.

12 A. Good afternoon.

13 Q. See if I can bring this closer. You say
14 you're currently the Ameren Distinguished Professor of
15 Business and Government at the University of Illinois?

16 A. Springfield, yes.

17 Q. What does it mean -- I've just wondered this
18 for years and never bothered to ask. What is a
19 "distinguished professor" as opposed to a regular
20 professor?

21 A. It's just a nice, glorified title.

22 Q. Nothing distinguishes you from other
23 professors, other than --

24 A. Well, I mean, I have been brought in and
25 asked to try to set up a research organization on

1 campus to research public utility issues. To conduct
2 educational forums and that. To try to be a leader on
3 public policy issues in the state and the region.

4 Q. Is that funded by Ameren?

5 A. The way this is funded is Ameren -- this
6 position occurred when Ameren took over Central
7 Illinois Public Service Company. And as part of that
8 merger criteria the Ameren company created an
9 endowment at the University, which it just gives the
10 money to, and then the University manages it.

11 So my selection as the Ameren professor was
12 done completely by the University and not by Ameren.

13 Q. What is Ameren?

14 A. Ameren is a combined electric and gas utility
15 serving in Missouri and Illinois now, since they've
16 taken over Illinois Power -- Central Illinois Public
17 Service and Central Illinois Light Company.

18 Q. Okay. Something you said in response to
19 questions from Ms. Schmid struck me. You said that
20 customers want -- in a rate case, in a general rate
21 case customers want forecasts to be low, but others
22 want it to be accurate to reflect prudent costs.

23 A. And others would even want it to be higher,
24 if possible.

25 Q. Who might those others be?

1 A. Um, there could be someone who would actually
2 want it that way. But I -- you know, in this case the
3 companies I don't believe want to do that, because
4 they're under a regulatory obligation to serve the
5 customers.

6 They are being reviewed through prudence
7 reviews and other review processes. So I don't
8 believe that companies want to have the cost to be
9 higher.

10 Q. Okay. You'd agree that if they recover more
11 than their prudent costs they financially benefit from
12 that?

13 A. And again, if we have a regulatory process
14 that is reviewing the Company on a regular basis and
15 it finds that you've over-earned, then they can ask
16 you to lower your rates.

17 Q. Prospectively?

18 A. Prospectively. But likewise, when you lose
19 money you would only raise your rates prospectively.

20 Q. But getting back to my question. The Utility
21 does financially gain from an over-forecast of its
22 prudent costs? Or of its costs in a rate case?

23 A. Well, if it -- it's either expended its costs
24 or it hasn't. And if it's -- and it doesn't make any
25 profit on fuel. These costs are not part of its

1 profit making.

2 Q. Could you just answer the question? Can a
3 utility benefit from an over-forecast of its costs in
4 a rate case?

5 A. If it over-forecasts its costs and then
6 doesn't expend those costs, then that will show up as
7 an excess in earnings that the Commission can see and
8 lift.

9 Q. You had talked about how one of the
10 justifications -- and this is in your summary -- one
11 of the justifications for an ECAM-type mechanism is
12 that net power costs are no longer normal -- or
13 normalizable, as they have been historically. Is that
14 a fair summary of what you had said?

15 A. That's correct.

16 Q. So would you agree that any cost that is not
17 normalized or normalizable should be subject to a
18 separate adjustment mechanism?

19 A. It depends on the degree to which that is the
20 case.

21 Q. Would you agree that the weather has been
22 fairly erratic and unpredictable?

23 A. And states have adopted weather normalization
24 clauses.

25 Q. Okay. Well, I -- to adjust for weather?

1 A. To adjust for weather.

2 Q. Would you recommend that for this Commission,
3 that revenues be adjusted to reflect exceptionally-hot
4 or exceptionally-cold summers?

5 A. Well, you would have to go through the
6 process of choosing a proper normalization program for
7 that. You get -- I mean, if that is a problem for
8 your system, then that's something you could look at.

9 Q. Have you recommended that in any commission
10 proceedings?

11 A. As a commissioner in Illinois we had weather
12 normalization.

13 Q. Well, I'm not talking about weather
14 normalization in a rate case. I'm talking about
15 adjustments outside of a rate case --

16 A. Oh, I'm sorry.

17 Q. -- to reflect weather patterns --

18 A. I'm sorry, I thought you were talking about
19 weather adjustment inside a normal rate case.

20 Q. No. I'm talking about an extraordinary
21 adjustment to reflect weather that's different than
22 what the Utility or the Commission forecast in a rate
23 case.

24 A. No. I think if you already have a weather
25 normalization process then you should stick with that.

1 Q. What if it's not working very well?

2 A. Then you may revisit the, the data you're
3 using for weather normalization.

4 Q. Okay. You think weather can be normalized
5 now, today? That the weather patterns are consistent
6 enough that utilities are protected, through a
7 normalization process in a rate case, against
8 aberrations in weather?

9 A. I think if you have the right data for
10 your -- if you're using a 30 weather you can, you
11 know -- year weather normalization versus a 10 year.
12 I mean, we found in some cases in -- and actually in
13 Illinois, where a 30-year normalization was not
14 forecasting well what was actually happening. And the
15 Commission has since shrunk that down to, I believe
16 it's a 10-year weather normalization.

17 Q. So if this Commission used a 10-year weather
18 normalization in a rate case there would be no need to
19 make any extraordinary adjustments to the Utility's
20 cost of service and revenue recovery based on weather,
21 right?

22 A. That's the approach.

23 Q. Okay. You indicate in your testimony -- and
24 I'm not sure which, which round. It's part of this
25 proceeding, Phase II, Part 2, but I'm not

1 sure -- probably your rebuttal. But you indicate the
2 customer should pay the prudent costs, no more no
3 less. Do you recall that testimony?

4 A. Yes.

5 Q. Okay. Do you believe that incentives have a
6 place in utility regulation?

7 A. Yes, they can, if designed appropriately.

8 Q. Okay. And incentives can drive desired
9 behavior?

10 A. Again, if designed appropriately. They can
11 also be very dangerous if designed inappropriately.

12 Q. Okay. And would you also agree that to the
13 extent the Utility recovers incentives, that could
14 result in the Company recovering greater than its
15 prudently-incurred costs?

16 A. Again, I would have to know what type of
17 design you're talking about in order to evaluate that.

18 Q. Well, let's talk about off-system sales.
19 Let's say the Utility is provided an incentive that it
20 gets to retain a certain portion of the margins on
21 off-system sales that it makes, okay?

22 A. All right.

23 Q. Is that something that you've endorsed
24 anywhere? That type of incentive mechanism?

25 A. It depends on what problem you're trying to

1 solve.

2 Q. Well, you're trying to encourage the Utility
3 to maximize the margins on off-system sales.

4 A. And if, and if they're shared 50/50 and they
5 increase the margins, then 50 percent of that is going
6 back to the customer to help offset their costs.

7 Q. Well, that's not my question. My question
8 was the portion that's retained by the Utility, that's
9 the portion over and above what the Utility expended
10 to make those sales, right? And it exceeds the
11 Company's prudent costs?

12 A. And in -- and depending upon how the
13 Company's costs have moved over time, that will either
14 show up as a slightly higher return to the Company, or
15 it may have offset other costs that are going on
16 during the interim of the case.

17 Q. Okay. The only point I'm making is that
18 there are instances where it's appropriate for the
19 Company to perhaps earn more or less than its prudent
20 costs, right?

21 A. If we feel that traditional regulation,
22 again, isn't providing the incentives correctly and we
23 want to have a different form of regulation.

24 MR. MICHEL: I believe that's all I have.
25 Thank you, Professor.

1 CHAIRMAN BOYER: Okay. Thank you,
2 Mr. Michael.

3 Commissioner Allen, any questions?

4 COMMISSIONER ALLEN: Yes. Thank you,
5 Mr. Chairman.

6 Dr. McDermott, in your illustrious travels it
7 looks like you've had some experience with the actual
8 prudence reviews in some cases in some states; is that
9 correct?

10 THE WITNESS: Yes.

11 COMMISSIONER ALLEN: And I'm just curious how
12 those are conducted. Is this a monumental feat for
13 staff and for the regulators? Or are there such -- or
14 is there such a thing as a small, quick review that
15 can be conducted by a few people that can spot test
16 for reasonableness?

17 Have they been ongoing? Do they take weeks,
18 months, or years? Just kind of give me a sense of,
19 when they've taken place, how much effort has gone
20 into them.

21 A. That is a -- all good questions. Depending
22 upon the type of problem you're trying to deal with --
23 and let's use fuel adjustment in this case, since
24 that's what we're talking about. What typically is
25 happening in the auditing process is the auditing

1 staff would use statistical, you know, models to say,
2 you know, What should our sampling be of all the
3 different types of transactions.

4 And when they go through and then examine
5 those transactions, that's sampled. So when somebody
6 says there's 10,000, you know, transactions that
7 occurred, do you need to actually look at all 10,000
8 transactions? No.

9 Then the auditing staff, the accountants,
10 have come up with some very nice mechanisms to try to
11 define, what do we have to look at to get a good
12 statistical sample? And then if we find that there's
13 a problem revealed in that statistical sample, then we
14 act on that.

15 And so depending upon the size of the issues
16 that we're trying to audit, it can be a couple of
17 staff people working really full time all year on
18 that. And they're monitoring this all the time.

19 Now, depending upon how the data is going to
20 be presented to the, to the staff, if it's monthly
21 data then you're sampling out of those monthly data
22 that are coming in. And then you're making a judgment
23 at the end.

24 But you've got all that tracking that you're
25 doing as you're going along. And then when the final

1 ECAM reconciliation is coming on you have a pretty
2 good feel for what's been happening, every month, as
3 the data is coming in and you've sampled through that.

4 And so then you can make judgements about,
5 well, where are the issues that we've got to ask about
6 in this reconciliation case to try to focus on? And
7 maybe at that point even do focused audits on some of
8 the issues that you think may be problematic.

9 Or if there is no issue that's problematic
10 then you're basically validating that those were --
11 the actual costs were prudent.

12 Q. And are you aware of any states where the
13 prudency test process or the auditing process has kind
14 of, for lack of a better term, blown up on them,
15 they've had to hire a bunch of new staff and hire
16 consultants, or has it generally been manageable?

17 A. Well, for example in Illinois -- and this --
18 I'm going back 20 -- almost 20 years, when I was a
19 commissioner. We were auditing, say, a company like
20 Commonwealth Edison, who had in fact thousands of tons
21 of coal that was remaining in mines.

22 We were paying them to keep it in the ground.
23 Because they had bought take-or-pay contracts when
24 they thought they were gonna build more power plants
25 that were coal-fired power plants, but then ended up

1 building a nuclear fleet. And so we ended up having a
2 lot of issues. Coal transportation costs, all sorts
3 of things.

4 So we had quite a few staffers working on
5 that. And the disallowances in those cases would
6 often be greater than any disallowances that were,
7 that were occurring in the base rate cases.

8 COMMISSIONER ALLEN: Anything more recent, in
9 the last year or two, as far as a state that finally
10 got behind the eight ball with their prudence reviews?

11 THE WITNESS: I cannot think of any offhand,
12 but I, I will look. And to the extent that I can
13 respond to your question with an email to the Company
14 that would find any of that and provide it to you.

15 COMMISSIONER ALLEN: That might be useful,
16 thank you.

17 THE WITNESS: You're welcome.

18 CHAIRMAN BOYER: Dr. McDermott, just a couple
19 of questions. Picture, if you will, a hypothetical
20 ideal, or -- let's say an ideal ECAM. Would it only
21 include non-controllable cost elements?

22 THE WITNESS: I mean, that's, that's our
23 concern. Those are the costs that are typically what
24 we're trying to focus on, because it's those issues
25 that are, they are large, and they're volatile, and

1 outside the Company's control.

2 CHAIRMAN BOYER: And assume, if you will,
3 that a regulated utility -- well, one of the costs
4 that can be volatile are fuel costs, right?

5 THE WITNESS: Right.

6 CHAIRMAN BOYER: Particularly natural gas.
7 Although they're rele -- the prices are relatively
8 stable now. Not too many years ago they were very
9 volatile --

10 THE WITNESS: Very volatile.

11 CHAIRMAN BOYER: -- and they could return to
12 that at some point in time. If a company can control
13 that cost by hedging a hundred percent of their
14 natural gas costs have they not controlled that cost?

15 THE WITNESS: To a certain extent you've
16 controlled that cost, but now you have to ask is when
17 is it -- when it's being used. Because what you're
18 looking at here is all of the, I'll call it "fussing
19 around the margins," right?

20 It's the balancing of the system where the
21 day-to-day actions are taking place, all right? We
22 can line up a cost for the coal for the base load
23 unit. And if it's running 24/7 we pretty much know
24 what those costs are. And that's in your base rates
25 because you can forecast that kind of thing.

1 But what we're really worried about is at the
2 peak. We forecasted the peak would be 100. Turns out
3 to be 110. And the water isn't available like we
4 thought it would, so I have to go out and burn more
5 gas than I would have planned. So there's a different
6 amount of gas cost going in than you had planned.

7 And so there's all these different activities
8 that are being managed around the edge, all to meet
9 your obligation to serve. So that's what's driving
10 it. That's what makes it uncontrollable, because you
11 have --

12 I mean, we don't want them to be in a
13 situation where we say, Okay, I could be disallowed
14 \$30 million for doing this through the ECAM, or I
15 could interrupt people and only suffer a cost --
16 associative cost of \$10 million.

17 I mean, I don't want people getting into
18 those kinds of decisions, I don't think. We've
19 actually said, You have an obligation to serve, so do
20 the prudent actions to make sure that the lights stay
21 on.

22 CHAIRMAN BOYER: I have one last question.
23 You mentioned your familiarity with other ECAMs in
24 other states --

25 THE WITNESS: Yes.

1 CHAIRMAN BOYER: -- or regulatory
2 environments. Generally speaking, do those ECAMs
3 include only the non-controllable costs that we've
4 been talking about?

5 THE WITNESS: Well, they'll, they will vary.
6 And it depends upon some of the Commission's
7 interests. It can vary. It just depends on the
8 policy questions they're trying to solve.

9 CHAIRMAN BOYER: Can you make any general
10 conclusions, though, or trends -- do more have
11 non-controllable costs than don't?

12 THE WITNESS: Yeah, that's the focus that
13 everybody has.

14 CHAIRMAN BOYER: Okay. Thank you,
15 Dr. McDermott.

16 Redirect, Mr. Monson?

17 MR. MONSON: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. MONSON:

20 Q. Dr. McDermott, you were talking to Mr. Michel
21 about weather normalization.

22 A. Yes.

23 Q. And I wanted to ask you, is it your view that
24 weather normalization takes care of the issues of wind
25 and hydro variability that go into net power costs?

1 A. No. Again, what you're doing is you're
2 forecasting normal weather and trying to deal with
3 that. And most of those kinds of variations are
4 taking place at the margin.

5 Q. And you talked to Ms. Schmid about
6 forecasting. What's your view of the ability of the
7 Company to forecast its net power costs?

8 A. Well, it knows the net fore -- power costs
9 better than anybody else and it's gonna probably
10 provide the best forecast that, that anybody can.
11 Will it be always right? No. It won't be. But I
12 think they probably have a lower error term than most.

13 Q. Have you looked at the history of the
14 forecasts in Utah -- probably more in Phase I than in
15 this phase -- and has the Company been able to
16 forecast very accurately?

17 A. Well, obviously no. There's a lot of dollars
18 at stake as a result of the ECAM.

19 Q. And do you think they could correct that
20 by --

21 A. By having a better model?

22 Q. -- somehow getting a better model or
23 something?

24 A. No.

25 MR. MONSON: Thank you.

1 CHAIRMAN BOYER: Very well. Thank you,
2 Dr. McDermott.

3 THE WITNESS: Thank you.

4 CHAIRMAN BOYER: You are excused. Safe
5 journey.

6 THE WITNESS: I'll -- I've got all night now.

7 CHAIRMAN BOYER: Oh. Enjoy Salt Lake City
8 then.

9 THE WITNESS: I will.

10 CHAIRMAN BOYER: Okay, it's 4:00. I know the
11 parties had anticipated hearing from the other
12 witnesses tomorrow. Do you wish to proceed a little
13 longer today? Or adjourn and rest up, collect your
14 thoughts, and commence tomorrow?

15 Our concern would be that we complete the
16 testimony tomorrow because we have other commitments
17 in another case later this week. It seems like it's
18 Groundhog Day, we wake up and we have a hearing. Any
19 preferences?

20 MR. DODGE: Let's ask for volunteers to go
21 next. My witness isn't here or I'd volunteer him.

22 MR. MONSON: I think it's up to you. We can
23 proceed if you want.

24 CHAIRMAN BOYER: Well, I don't want to put --
25 I don't want to inconvenience anyone who's not

1 prepared.

2 MR. PROCTOR: Could we -- somebody tell me
3 who's left?

4 CHAIRMAN BOYER: Yeah. Charles Peterson, Dan
5 Gimble, Kevin Higgins, who's not here, Mr. Brubaker,
6 Nancy Kelly, who is here, and Steve Chriss, who
7 probably isn't here, or?

8 MS. SMITH: Not here.

9 CHAIRMAN BOYER: Not here?

10 MR. PROCTOR: I don't think Mr. Chriss is
11 gonna -- I think everyone waived on his.

12 CHAIRMAN BOYER: Ms. Smith, is that correct?
13 Maybe that could -- I do remember hearing something
14 about that.

15 MS. SMITH: I have not heard -- well, I think
16 everyone who's told me has told me they have no
17 questions for Mr. Chriss.

18 CHAIRMAN BOYER: Well, let's ask right now.
19 Does anyone have questions for Mr. Chriss?

20 Apparently not. Okay. So that leaves us
21 with Messrs. Peterson, Gimble, Higgins, Brubaker, and
22 Ms. Kelly.

23 No one is jumping up and down, so. I mean,
24 I'm happy to adjourn till tomorrow morning.

25 MR. MICHEL: We'll volunteer anyone except

1 Ms. Kelly.

2 MR. MONSON: That's who we want, then. So.

3 CHAIRMAN BOYER: All right. Let's adjourn
4 until tomorrow morning at 8:00, then. Thank you all.

5 (The hearing was adjourned at 4:04 p.m., to

6 reconvene at 8:00 a.m. on Tuesday,

7 November 2, 2010.)

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C E R T I F I C A T E

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

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 290, inclusive.

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

SIGNED ON THIS **15th** DAY OF **November**, **2010**.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

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