BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
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Salt Lake City, Utah

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TIME: 8:02 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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WITNESSES

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WITNESSES, CONTINUED

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EXHIBITS

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

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NOVEMBER 1, 2010 8:02 A.M.

P R O C E E D I N G S

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

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

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

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

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

MR. MONSON: No, I --

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

MR. MONSON: Yeah, the only difference would be Dr. Hadaway would go before Dr. McDermott. But I think we can get them in today. And if Dr. McDermott needs to stay over tomorrow morning, he can.

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

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

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

CHAIRMAN BOYER: Thank you.

Mr. Proctor, welcome back.

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

CHAIRMAN BOYER: Ms. Schmid?

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

CHAIRMAN BOYER: Mr. Dodge?

MR. DODGE: Gary Dodge with UAE.

MR. MICHEL: Steven Michel, Western Resource Advocates.

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

CHAIRMAN BOYER: Oh.

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

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

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

CHAIRMAN BOYER: Very well.

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

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

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

MR. MONSON: Our first witness is Gregory Duvall.

CHAIRMAN BOYER: Good morning Mr. Duvall.

MR. DUVALL: Morning.

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

MR. DUVALL: Yes, I have.

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

MR. DUVALL: I think several times.

GREGORY N. DUVALL,

called as a witness,

having previously been duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MONSON:

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

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

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

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

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

A. That's roughly right.

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

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

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

A. Yes.

Q. And rebuttal testimony filed September 15, 2010?

A. That's correct.

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

A. That's correct.

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

A. No, I do not.

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

CHAIRMAN BOYER: Thank you. Are there any objections to the admission of Mr. Duvall's supplemental direct testimony, rebuttal testimony, and surrebuttal testimony?

MS. SCHMID: No objection.

CHAIRMAN BOYER: Seeing none, they are admitted.

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

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

A. Yes, I do.

Q. You can go ahead, please.

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

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

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

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

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

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

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

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

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

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

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

The second issue is the treatment of RECs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN BOYER: If I start with the Division

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

MR. PROCTOR: Yes, I am.

CHAIRMAN BOYER: Very well. Proceed.

CROSS EXAMINATION

BY MR. PROCTOR:

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

A. Yes, I do.

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

A. His direct, or rebuttal, or?

Q. All three.

A. I believe I have all three.

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

A. Okay.

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

A. Yeah, line 121.

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

A. Thank you.

Q. And this particular part of your rebuttal

testimony is referencing deadbands and sharing bands that parties have recommended; is that correct?
A. Yes.
Q. One of the things that you said there on line 21 (sic) is:

> "Cost disallowances based on artificial percentages are not effective in influencing the conduct of the decision makers."

What artificial percentages were you referring to?
A. Well, these are the 70 percent/30 percent that the various parties have proposed in this proceeding.
Q. And why do you believe that they're artificial?
A. Well, I don't recall having read anything about the basis for why 70/30 is the right level of incentives. And I think the evidence in the case shows that across the country -- Mr. McDermott has provided all this information -- that there's either no sharing bands or very small sharing bands.
Q. So it's the Company's proposal, however, to place a hundred percent of those ECAM differentials on ratepayers, is it not?

A. That's correct.

Q. So isn't 100 percent equally artificial?

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

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

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

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

A. I, I guess so.

Q. Well, so under the current system the Company gets an opportunity to make its case in a general rate case. And then between that order and the next general rate case the Company essentially assumes a hundred percent of the prudently-incurred costs. And it covers it out of the rates that were determined to be just and reasonable, correct?

A. That's the intent, yes.

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

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

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

A. That's correct.

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

> "...in this instance are the power traders and fuel negotiators who must fulfill the obligation to serve customers."

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

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

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

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

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

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

A. No, it won't.

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

A. They're affected by making sure that they operate in a prudent manner. It's not only, you know, the regulatory overview, it's also our own management overview, in terms of making sure that we are doing the best thing for customers all the time.

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

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

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

A. That's correct.

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

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

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

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

Q. And doesn't that bargain also recognize that you're a monopoly and therefore must be regulated?
A. Yes.
Q. Next I want you to turn, please, to page 18. It's the dialogue beginning on line 407. Do you have it there, sir?
A. Yes, I do.
Q. Thank you. The question is: How do you respond to the concerns that Utah customers should not be exposed to hydro risk when the base rates do not include all of the hydro benefits?
When you use the term "hydro risk," to what are you referring?
A. The hydro risk I think has been termed in this docket as the actual hydro being passed through, through the ECAM. The risk of the actual hydro being higher or lower than some kind of normal level.
Q. Why would that pose a question in the parties' minds that perhaps the hydro benefits are not also in base rates? In Utah.
A. Well, I, I would look to their testimony as to why that is. But I think it was a -- that the statements that were made was that we -- that the Utah customers should not be exposed to the risk of hydro absent getting the benefits of hydro.

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

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

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

Q. Within a reserve do they receive any benefit?

A. Not to my knowledge.

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

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

Q. Purely reserves?

A. -- the existing MSP protocol.

Q. No hydro benefit for actual energy produced?

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

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

A. Yes, I do.

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

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

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

A. That's correct.

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

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

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

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

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

A. Yes.

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

A. No.

Q. What is the mismatch as you've defined it in your testimony?

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

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

A. They certainly have.

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

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

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

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

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

A. Yes, we are.

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

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

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

A. I did.

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

A. That's correct.

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

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

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

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

Q. So in the proposal that the Company has set forth in the filing in Docket 02-035 -- and you're right, now I've suddenly forgotten it. The mismatch will remain, will it not?

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

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

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

Is that side agreement now before the Commission?

A. No, it's not.

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

A. No, it's not.
Q. So we don't know what this side agreement proposal will be from the Company?
A. Well, I think it's, you know. You don't know specifically how it's written, but I think conceptually it's laid out in Ms. Kelly's testimony.
Q. Will the proposal, as made in the September 2010 filing, have an impact upon the ECAM in Utah?
A. Well, I, you know, it will have an impact on this hydro issue, because I think the characterization of the mismatch is because the base rates are not set on rolled in.
Q. Will the side agreement have an impact on the ECAM in Utah?
A. I think my last answer goes to that as well.
Q. Will the impact be the same whether or not there's a side agreement or not?
A. Well, I don't know.
Q. Isn't your proposal for an MSP at least for a temporary period -- six years, I believe -- simply to place a fixed additional amount on Utah ratepayers rather than the percentage difference that has been assessed Utah ratepayers under the existing MSP?
A. I don't understand the question. I don't

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

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

A. I don't understand what you mean.

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

A. Yes, it would.

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

A. That's correct.

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

A. I think that's a fair statement.

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

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

CHAIRMAN BOYER: You may.

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

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

A. Okay.

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

A. Yes, I have.

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

A. You mean have I reread it before today?

Q. Yeah.

A. I've read it a couple times.

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

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

Q. And I believe you stated in your surrebuttal testimony that you felt that you and the other parties on behalf of the Company had adequately addressed them; is that correct?

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

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

A. Prior to him filing his testimony?

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

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

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

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

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

A. No, I don't.

Q. What about No. 6, that the ECAM reconciliation is not cost reflective and doesn't send proper price signals to customers?

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

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

A. No, I did not.

(Pause.)

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

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

A. I have his exhibits.

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

A. Yes.

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

A. I believe I reviewed those.

Q. Well --

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

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

A. Yes.

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

A. No, I did not.

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

A. No.

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

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

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

Do you have any knowledge about how that surcharge will be assigned to the customers?

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

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

A. No, I don't.

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

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

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

A. No, I did not.

MR. PROCTOR: Thank you, Mr. Duvall.

THE WITNESS: You're welcome.

CHAIRMAN BOYER: Thank you, Mr. Proctor.

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

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

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

CHAIRMAN BOYER: Thank you, and welcome.

Ms. Schmid, any cross examination for Mr. Duvall?

MS. SCHMID: Just a few.

CROSS EXAMINATION

BY MS. SCHMID:

Q. Good morning.

A. Good morning, Ms. Schmid.

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

A. I do.

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

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

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

A. I have.

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

A. That's correct.

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

A. That's correct.

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

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

Q. And then equally you are aware that in 2020, if adopted by the Commission, the Division's ECAM proposal provides an opportunity for the Company to increase its sharing percentage from 80 percent to 90 percent; is that correct?

A. That's my understanding, yes.

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

A. That's currently the methodology, yes.

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

A. Sure.

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

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

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

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

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

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

Q. Under the Division's proposed ECAM, if adopted by the Commission, would the Company have the opportunity and indeed a method to recover those actual net power costs that exceeded the base net power costs?
A. I believe you asked if under the Company's proposed ECAM.
Q. I'm sorry, under the Division's.
A. Under the Division's, no.
Q. Under the Division's proposal the Company would not have an opportunity to recover?
A. No. The Division's proposal has a 2 percent deadband and a 70/30 sharing band.
Q. Okay, thank you. Sorry. If it's outside that, I'm sorry.
A. After the Company --
Q. After -- from 2 percent to 30.
A. After the 2 percent?
Q. Yes.
A. Then the Company still would not have an opportunity to recover its net power costs because of the sharing band.
Q. But wouldn't the Company have the opportunity to recover some of the excess net power costs, which is more than the Company has right -- which is a

greater opportunity than the Company has right now?

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

Q. Seventy percent is just a little bit?

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

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

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

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

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

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

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

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

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

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

A. I believe so. I believe the Company has shown that the current regime or current paradigm has resulted in under-recovery. I think that, according to the regulatory compact, the Company has the right to recover its prudently-incurred net power costs.

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

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

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

MS. SCHMID: Thank you.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

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

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

CROSS EXAMINATION

BY MR. EVANS:

Q. Good morning, Mr. Duvall.

A. Good morning, Mr. Evans.

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

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

A. Do you have a line number there?

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

A. I've got it, thank you.

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

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

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

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

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

A. Yeah, I believe that's right.

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

A. Yes, I do.

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

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

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

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

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

A. Correct.

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

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

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

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

A. Right.

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

A. That's correct.

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

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

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

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

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

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

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

A. That would certainly be a reference.

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

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

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

A. Yes, it does.

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

A. We wouldn't use that. The other parties that would be auditing the Company would use those sorts of tools.

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

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

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

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

A. No.

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

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

I think that the, you know, and some of these I think different parties have pointed out is that the historic averages of, you know, wind, or hydro, or your fuel aren't necessarily indicators of what's prudent in the current set of actual net power costs.

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

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

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

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

A. Yes, it would.

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

understand it?
A. Well, I think where I'm having a problem is Mr. Brubaker is looking at the past five-year average and then concluding that that is an under-performance. And that's not necessarily the case.
Q. All right. But you understand that the under-performance doesn't preclude cost recovery, right?
A. That's correct.
Q. Let's look at your surrebuttal testimony for just a minute, if you would. And on page 7 at line 142 you have a section here in which you address load growth adjustment mechanisms. Do you see that?
A. Yes.
Q. The first couple of questions are responsive to the Division's witness. And then over on page 8 there's a question -- there's a series of questions and answers addressing Mr. Brubaker's proposal. Do you see that?
A. Yes.
Q. The question on 161 is: Does Mr. Brubaker comment on load growth adjustments.
And your answer is, can you read that for us?
A. "Yes. On page 19 of Mr. Brubaker's
testimony he proposes that any load

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

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

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

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

A. Yes.

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

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

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

A. Well, I think that's, you know, up to the reader. But it certainly could be.
Q. So what you're calling is, you know, equitable would result in a form of decoupling?
A. Well, the Company does not support the load growth adjustment. We don't think it should be there. It shouldn't work in either direction.
Q. Okay. But if it is there, is it the Company's position it should work in both directions?
A. Absolutely.
Q. So that would amount to decoupling when there's a declining load?
A. That's, you know, up to the reader's opinion as to whether it's decoupling or not.
Q. What's your opinion?
A. Well, I'm not a decoupling expert.
Q. Does it look like decoupling to you?
A. It certainly could be.
Q. Let's talk about changes in weather due to -- changes in load due to weather. The Company now has a future test year, right? In its base rates?
A. It's a forecast test year.
Q. All right. And part of the Company's purpose for advocating for a forecast test year was that it could more accurately reflect net power costs in the

rate effective period, rather than a historic year?

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

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

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

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

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

"RMP has an interest in recovering its prudently-incurred net power costs, and is willing to abandon forecasts of net power costs in favor of allowing the Commission to determine if net power costs incurred by RMP are prudent."

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

Q. Do you stand by that?

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

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

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

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

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

Q. Okay. Let's continue in your surrebuttal. On the next page, which is page 9, you address cost allocation issues in response specifically to Mr. Brubaker's testimony on cost allocation. Do you see that?

A. Yes, I do.

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

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

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

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

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

A. That's correct.

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

A. There's no allocation factors used in the methodology. It's simply a dollar per megawatt hour of -- in rates, a dollar per megawatt hour of actuals, and then the difference between those two dollar-per-megawatt-hour figures is multiplied by Utah loads.

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

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

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

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

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

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

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

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

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

MR. MONSON: Object, that's argument.

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

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

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

A. No, they aren't.

Q. Third, I'm a little confused with those numbers. This makes it sound like the difference between allocating costs as they are in the rate case versus how the Company proposes to allocate them in the ECAM is negligible, or *de minimis*, or doesn't really matter. Is that the point?

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

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

A. That's correct.

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

A. That's right.

Q. What comprises that number?

A. That's the overall net power costs.

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

A. That's correct.

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

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

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

A. No, I don't.

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

A. That sounds about right.

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

A. That sounds fine.

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

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

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

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

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

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

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

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

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

A. I haven't looked at that.

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

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

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

large in any given month, couldn't it?
A. I haven't reviewed that.
Q. You don't know, then?
A. I don't know.
Q. Let's look at the fourth bullet and see what you've done here. The difference between the Utah SE and SG factors in the Company's last Utah -- I'm quoting, sorry. I'm quoting from your testimony at line 216, and you can tell me if I've read it correctly:

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

Right?
A. That's correct.
Q. And then you're saying allocating that to the 98 million you get a pretty small number, right?
A. That's correct.
Q. And so is the gist of this testimony that it doesn't matter whether you use the 75/25 allocator in developing actual NPCs?
A. That would be my conclusion.
Q. All right.
MR. EVANS: May I approach and hand out a

cross exhibit here?

CHAIRMAN BOYER: You may, Mr. Evans.

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

A. I've never seen it before.

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

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

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

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

A. Yes, I do.

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

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

Q. Okay. I'm sorry. Let's back up just a little bit. And do you recall what the individual numbers were? The SG factor was?

A. I don't have those with me.

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

A. Forty-one point thirteen for the SG?

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

A. I'll accept those subject to check.

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

A. That's correct.

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

A. These are done on a system basis.

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

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

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

Q. Well, if the, if the source of your .13 percent is the difference between SG and SE I'd like to look at that in classes. In this -- on line F30 at column I it shows the SE factor for Schedule 9 at .16639. Do you see that?

A. I see that.

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

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

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

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

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

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

Q. Well, but it's you who's offered testimony that says there's very little difference between ignoring the 75/25 allocator, so I'm trying to probe that. Who's the witness that can help us understand what that will do to each class's rates?

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

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

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

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

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

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

A. What was the question?

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

A. Yes, it is.

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

A. No, I do not.

MR. EVANS: No further questions, thank you.

CHAIRMAN BOYER: Thank you, Mr. Evans.

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

THE REPORTER: I'm good, thanks.

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

Mr. Dodge, cross examination?

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

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

CHAIRMAN BOYER: Okay. It is so marked.

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

CHAIRMAN BOYER: You may.

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

MR. EVANS: Well, I would move for admission into the record of UIEC Cross-1, simply to support Mr. Griffith's testimony that he doesn't know anything about it. And then if we can get Mr. Brubaker to help us, we'll reintroduce this later. Or we'll come back to it.

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

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

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

MR. MONSON: You said Griffith.

MR. EVANS: Mr. Duvall.

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

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

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

MR. EVANS: Okay, thank you.

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

MR. DODGE: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. DODGE:

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

A. Okay.

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

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

What's the basis for that statement?

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

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

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

Q. Than a direct, at-the-time financial incentive? Where the Company loses or gains money at the time a transaction is done. You're saying that's a less-effective incentive than a review that may come a year and-a-half later and be buried in hundreds of thousands of daily transactions?

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

A. Yes, it is.

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

Do those traders and fuel negotiators care about their jobs?

A. Yes, they do.

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

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

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

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

Q. And not withstanding all that, your position is that the fact that the traders and fuel negotiators making day-to-day decisions where there may be a loss or a gain to the Company is -- has no effect on those traders or negotiators?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. No. I think that's just semantics with the word "matching." I think what we're talking about is making sure that we match cost increases with the proper revenue increases.

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

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

A. Absolutely not. That --

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

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

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

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

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

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

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

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

A. That's reasonable.

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

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

Q. Let's go back to the last general rate case. Was there a net revenue for the incremental -- for every incremental hour that the Company sold? I mean, can we go back to the rate case and calculate what the profit was on incremental load growth? Do you -- would you be able to do that?

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

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

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

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

Q. Let me try my question again. Are you saying you wouldn't have the ability to go back and test that hypothesis and determine, from data in a rate case or data available to the Company, whether there was or was not a net margin to the Company for additional sales?

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

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

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

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

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

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

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

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

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

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

A. Yes, I am.

Q. And to this point has any party expressed support for the 2010 protocol in the State of Utah as it's proposed by the Company without the rolled in for Utah?

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

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

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

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

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

A. No.

Q. So if Utah ratepayers take the risk of hydro variation without the full benefit of the value of the energy produced by the hydro, you understand that's still a risk to Utah ratepayers embedded in the current allocation scheme, do you not?

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

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

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

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

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

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

Q. And let's assume that the MSP standing committee does not come to terms with a rolled-in allocation methodology. Is it your view that the ECAM should continue, notwithstanding that?

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

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

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

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

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

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

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

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

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

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

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

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

Q. I can refer you either to --

A. I got it here.

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

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

"There is a direct and necessary relationship between NPC and REC revenues because both RECs and energy are generated from the same source."

Is that a correct quotation of your answer?

A. Yes, that's correct.

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

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

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

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

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

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

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

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

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

A. I have.

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

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

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

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

A. It's a wholesale revenue.

Q. So all wholesale revenues should go into the

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

A. I believe that the language allows that.

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

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

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

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

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

A. No, we haven't.

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

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

Q. Related in what sense? They're generated by the same thing?

A. They're generated by the same thing.

Q. And SO2 credits are not?

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

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

A. That's a fair statement.

Q. Let me hand you an exhibit.

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

(Pause.)

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

A. No, I did not.

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

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

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

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

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

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

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

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

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

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

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

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

A. From when? February --

Q. Beginning in February 2010. And I told you

right now to focus on July 2010.
A. Right. They range from seven --
Q. No, I would caution you not to give the numbers, they're confidential.
A. Got it. Okay.
CHAIRMAN BOYER: You can perhaps talk in terms of percentages or something like that.
MR. DODGE: Right, yeah.
THE WITNESS: They're, they're relatively equal across those months, give or take.
Q. (By Mr. Dodge) Do you have any reason to know why those numbers dropped in August and September?
A. No, I don't.
Q. Would you agree with me that the real volatility in REC revenues, at least that the Company recognized, occurred in the months of November, December, and January? November and December of '09 and January of 2010?
A. No, I would not.
Q. You don't see those as being particularly volatile, given the -- for example, the jump from October to November has what kind of range of magnitude?
A. You mean?

Q. What's the rough percentage?
A. It would be, what, 20 times?
Q. Twenty-plus times? Do you know what happened around November of 2009 to cause this precipitous jump in REC revenues recognized by the Company?
A. I believe that was the start of some particular contract -- deliveries under particular contracts.
Q. But do you know what caused, about that time, the precipitous run up in cost -- in price, excuse me, the value of REC revenues?
A. I don't know exactly what it was. But I, you know, it had to do with, with the California utilities and their need for RECs.
Q. And was there a California Commission ruling in approximately this time that allowed RECs to be brought in from out of state up to a certain percentage, and it set a cap on the price of about $50 per REC? There was a proposed order? Do you have any knowledge of that?
A. I'm not real clear on the details of that, but it's -- I think it's been known for a long time that the cap in California was the $50, and so that a run up could occur.
Q. And when did it occur, according to your

numbers?

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

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

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

Q. Say it one more time?

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

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

(Pause.)

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

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

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

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

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

CHAIRMAN BOYER: Overruled. You may proceed.

MR. DODGE: Thank you.

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

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

Q. Mr. Duvall, I believe your testimony is that you believe these -- the deferred REC revenues that the Commission ordered to be deferred following an application by UAE earlier this year should be returned to customers only if there's also a true up, in your words I believe, for net power costs deferred revenues; is that correct?

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

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

A. Yes.

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

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

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

A. They're larger.

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

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

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

A. I am that witness, yeah.

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

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

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

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

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

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

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

MR. MONSON: 54-7-13.5.

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

But if they're not prepared to make a showing that these NPC revenues -- I'm talking about now -- are extraordinary and unforeseeable, then I believe that a motion to strike any testimony seeking to recover them in this docket is appropriate. Because they have to make that showing at some time.

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

MR. MONSON: May I respond?

CHAIRMAN BOYER: Yes.

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

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

We believe we were entitled to have the ECAM go into effect at the conclusion of the last general rate case. So we aren't asking to have this recovery based upon normal deferral accounting standard. We're saying, If you approve an ECAM let's take it back to when it should have been put into effect, which was February 2010.

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

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

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

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

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

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

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

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

CHAIRMAN BOYER: -- extraordinariness and foreseeability.

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

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

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

A. I would classify it more as unpredictable than unforeseeable. I think we knew that there were requirements in California, especially. We knew that there was a $50 sort of penalty for non-compliance.

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

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

MR. DODGE: Again it has a confidential attachment.

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

MR. DODGE: That would be fine.

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

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

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

MR. DODGE: Thank you, Mr. Chairman.

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

Have you seen that document before?

A. I don't recall seeing it.

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

MR. MONSON: That's right.

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

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

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

And in Utah specifically, at the time of rebuttal, the Commission has found that rebuttal was too late for updates. So in this, in this particular circumstance we adopted the Office's position.

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

A. I believe that's correct.

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.

Q. So your testimony is that you believe that the Commission's rulings on updating precluded you from telling the Company that that $18.6 million was way low in terms of what the Company was actually projecting for REC revenues for the test period. Is that a fair statement?

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

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

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

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

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

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

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

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

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

Q. Mr. Duvall, in your surrebuttal on page 4 -- oh, excuse me. Before I go to that. Given the timing that we've seen on this UAE CROSS No. 3 would you accept, subject to check, that the hearings in the 2009 rate case took place in -- from December 14th to December 17th of 2009? The revenue requirement hearings?

A. Yeah, I believe that's correct.

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

A. I believe that's correct.

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

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

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

Where, from the statute or otherwise, do you get the notion that the Commission's precluded from looking at anything in an MPA case but the impacts of the major plant addition?

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

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

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

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

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

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

A. I'm not directly involved in that, but I believe that that was the case.

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

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

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

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

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

A. That's up to the Commission.

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

A. In -- not in this docket.

Q. What docket was that in?

A. That was --

Q. I'm sorry, in the -- I'm sorry, wrong case. In the MPA II docket, thank you. You updated the BPA transmission costs in that filing, did you not?

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

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

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

(Pause.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. That's correct.

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

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

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

A. I don't know.

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

A. I'll accept that.

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

A. I'll accept that.

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

A. No, I don't.

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

A. I'll accept that subject to check.

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

A. I think I follow your logic.

Q. Mr. Duvall, let's talk just a moment about your view that the REC revenue should be subject to the same sharing percentage as the ECAM numbers. You understand, do you not, that the Company's view -- or excuse me, the other parties' view -- whether you accept it or not -- is that Company incentives are enhanced by having a direct financial stake in the outcome of net power cost decisions? Do you accept that that's their view?

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

Q. Correct. Correct.

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

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

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

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

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

Q. Unless --

A. That's through February '09.

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

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

CHAIRMAN BOYER: That is sustained.

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

MR. MONSON: Objection. Same objection.

MR. DODGE: I was trying to be nice.

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

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

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

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

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

A. I, I'm unaware of that.

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

A. That there were forecasts for that, yes.

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

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

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

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

A. It accepted the Office's proposal.

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

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

Q. I'll withdraw it then.

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

CHAIRMAN BOYER: Thank you, Mr. Dodge.

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

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

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

CHAIRMAN BOYER: Same objection?

MR. MONSON: That you overruled already.

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

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

CHAIRMAN BOYER: Mr. Michel, any questions for this witness?

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

CROSS EXAMINATION

BY MR. MICHEL:

Q. Good morning Mr. Duvall.

A. Morning.

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

(The reporter asked Counsel to speak up.)

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

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

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

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

Q. Not necessarily your energy?

A. That's correct.

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

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

A. I, I would agree with that.

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

A. I agree with that.

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

A. Which lines are you looking at?

(Pause.)

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

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

A. It does line up.

Q. Pardon?

A. Those line up with mine.

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

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

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

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

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

A. No, there isn't.

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

A. That was part of a stipulation.

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

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

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

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

A. I think negligence would be considered imprudent.

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

A. That's correct.

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

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

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

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

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

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

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

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

Q. Okay. And I know you've discussed this with Mr. Dodge a little bit, but would you agree that revenue growth could allow the Company to over-earn, or earn greater than its prudently-incurred costs? On a total company cost-of-service basis?

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

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

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

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

A. Well, that opportunity may exist, but it's not been realized for a long time.

Q. Could you answer the question?

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

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

A. Well, I'm not an accountant but I believe that depreciation goes on.

Q. Okay. So it's possible that the Company's rate base declines from rate case to rate case?

A. I'm not sure. We're making significant investments on the system, so I don't know what the relationship of those new investments to the depreciation is.

Q. My question is whether it was possible that that was occurring.

A. Theoretically possible, yes.

Q. And the Company's earnings in a rate case are driven by the level of rate base that's in the test year, right?

A. Among other things, in terms of all the costs and revenue levels.

Q. So to the extent that rate base depreciates, the Company is earning the same amount of profitability, everything else being equal, as it was higher -- is earning more on its rate base than it would had that rate base not declined in between those cases?

A. Well, I think the answer to your hypothetical would be yes. But everything else is not equal.

Q. Okay. I'm just trying to get to the symmetry issues that we're grappling with in this case. You have -- the Company's position has been that a load growth adjustment mechanism is not appropriate here. Is there a load growth adjustment mechanism that would be acceptable to the Company in this case?

Are there features of what's been proposed that the Company particularly disputes that could be fixed? Is there a lack of symmetry, for example, that needs to -- I know you mentioned that with regard to, I think Mr. Brubaker.

Are there other features that the Company could modify to make this an acceptable part of this ECAM?

A. Well, I think the answer would be no. I think that what the Company has proposed, to match net power costs with net power cost revenues, is really the only thing that we'd be agreeable to.

Q. Okay. So with regard to this load growth adjustment mechanism we've talked about sort of a mismatch. Or the issue is whether or not there is a mismatch of what's in your ECAM and what's out of your ECAM.

And you've drawn sort of a bright line -- or at least a line saying that a load growth adjustment mechanism should not be part of an ECAM, right?

A. For revenues outside of the net power costs, that's correct.

Q. Okay. And would you agree that there are operational things, capital investment-type activities and so on, that the Company could perform outside of an ECAM that would affect its net power costs?

A. Yeah, that's true.

Q. Okay. Things like maintenance on a power plant that could presumably increase that plant's efficiency, but that the Company may or may not perform because it's outside of that ECAM and its cost recovery? Or its ECAM cost recovery?

A. I don't think the Company would take those actions. I think the Company's driven by prudence. And if we're not prudently maintaining or generating resources we'd be subject to disallowances on that.

Q. Putting the prudence issue to the side, would you agree there's a financial incentive in that instance to the Company to forego maintenance, and incur those additional fuel costs, and pass those through?

A. The financial incentive is driven by prudence.

Q. Well, I'm asking you to, other than prudence, is there any reason why the Company wouldn't be driven towards that type of activity or lack of activity?

A. Well, I think it's -- that the hypothetical is assuming the Company's not reviewed for prudence. And I have a hard time addressing that hypothetical.

Q. Do you agree that incentives will affect the Company's actions?

A. Well, incentives will affect the Company's actions to the extent that the incentives can be acted upon. And I think what we've found is that in net power costs there's not a lot that the Company can actually do to address the changes.

Q. So there's no need for any prudence review, then, because the Company's stuck with what it's doing?

A. That's not the Company's testimony. We think a prudence review is the -- needs to be done. And is very effective at kind of, you know, managing the Company from a regulatory perspective.

Q. And I believe you just testified one of the reasons for a prudence review is because it incentivizes the Company to act appropriately? In the best interest of its customers?

A. That's correct. The Company does -- is incentivized to do the right thing.

Q. Okay. And that prudence review is a financial incentive of some sort, would you agree?

A. I would say that's right.

Q. And that's the incentive we're talking about is how much money the company makes. Fair enough?

A. Or how many -- how much cost the Company recovers.

Q. At the end of the day, though, it's the bottom line that's what's driving the Company's actions, right?

A. That's correct.

Q. So then the Company's not disputing that financial effect -- financial incentives will affect the Company's behavior and can affect it in a positive way? You're just disputing the type of financial incentives that there should be?

A. Yeah, I think that's correct.

Q. And it's the Company's position that a prudence review is a satisfactory or sufficient financial incentive to the Company?

A. It's the Company's position that a prudence review is the appropriate incentive. And that the Company is very concerned about making sure it does the right thing. And that any other of the proposed incentive mechanisms -- the DIP and the sharing band -- would have little effect on the Company because they address costs that can't be controlled.

Q. Well, if they can't be controlled then the Company shouldn't be advocating any kind of prudence review, right? Because they can never be imprudent?

A. That doesn't follow.

Q. Well, does the Company have any control at all over these costs?

A. Well, the Company is in control of how it, how it acts, how it reacts and all that. And that's what a prudence review looks at.

Q. So the Company's actions can determine the level of its net power costs to some extent? I mean, the Company could go out and do something really stupid and raise net power costs, right? By the same token, it could do something really cutting edge and lower those costs?

A. I think the, really the standard is that the Company will do the right thing. And if the Commission finds that the Company didn't do the right thing, that it was imprudent, then there's disallowances.

There's really no opportunity under a prudence review for the Company to, you know, get more than its actual prudently-incurred costs.

Q. Now, the prudence review that the Company has proposed, that would be conducted by at least the DPU?

A. Yeah.

Q. Or would it be -- I'm sorry, go ahead.

A. Yeah. I think at least by the DPU. In fact, I recall back in the days when the EPA -- EBA was functioning the Division had a dedicated person whose full-time job was to review the energy balancing account.

That happened to be Ron Burrup. He would review it every month and work with the company to understand the actual power costs. And we had a full-time person at the Company that worked with Ron to make sure all that got done.

Q. He would do that monthly?

A. He would look at the costs every month, yes.

Q. What would he look at?

A. All of the actual fuel costs, purchase power costs and such that were included in the energy balancing account.

Q. Would he look at every front office transaction?

A. I, you know, to the extent that there were -- there weren't anything called "front office transactions" back then. But if there were wholesale sales involved, those would certainly be looked at.

Q. And he would evaluate -- well, let's just talk generally about what would need to be done today. Would the price that was paid or received be evaluated based on some standard?

A. I think that would -- that wouldn't be up to the Company to determine. I mean, that would be up to the Commission, and the Division, and the staff --

Q. Is that something that could affect -- that could be prudent or imprudently performed?

A. Certainly. The incurrence of any of the net power costs could be determined to be imprudent.

Q. Okay. What about the Company's hedging practices, could that be something that could be prudent or imprudently performed?

A. I believe that's -- that could be.

Q. Resource acquisitions?

A. Well, those are, each, each one of these are already being audited in the general rate case because all of those costs associated with resource acquisitions, and hedging, and all that are already included in our general rate cases.

This is just a different forum which gives a, really a second bite at the apple.

Q. What about resource acquisitions in between rate cases, and the fuel costs that they effectuate?

A. Well, I think that would probably vary. Those in some case would be reviewed in -- under the SB 26. In other cases it would be reviewed under a major plant addition. In other cases it would be reviewed in a general rate case.

Q. So there wouldn't be -- any resource acquisitions would not be part of this audit?

A. The -- they could be. That is if the -- if a new, a new plant came online and the energy was going through the ECAM, I think the question would be raised as to whether the prudence would be dealt with -- that resource would be dealt with in the ECAM itself before, you know, before -- if that were first in time versus a general rate case.

Q. What about the Company's utilization of energy efficiency? Do you agree that that could affect the Company's net power costs?

A. It could. And I'm -- it's, I believe, reviewed in the context of a general rate case.

Q. Well, to the extent it was deployed in between rate cases would that be something that the audit could look at as well?

A. I suppose it could.

Q. Okay. What about plant maintenance and plant outages? Those would have to be looked at also, right?

A. To the extent they affect net power costs, yeah, they'd be looked at.

Q. Okay. And a judgment would have to be derived as to whether that maintenance was necessary or foregone, and whether those outages were beyond the control of the Company or could have been avoided? Those are the types of issues that the Division would need to look at?

A. I think the Division and other parties would look at that sort of stuff.

Q. And the Company's fuel procurement practices? How much it paid for coal and how much it paid for gas?

A. That's right. And these are, you know, everything that has been mentioned are the things that are already reviewed by the Division and others during the course of, you know, the regulation.

Q. But we're talking about a situation where these costs are being recovered monthly, as opposed to in a general rate case where there's an opportunity to look comprehensively at all the Company's activities.

I'm asking about on a month-to-month basis, or even a year-to-year basis, those are the kinds of things that would need to be looked at because there is not a rate case determination; isn't that right?

A. Well, first of all, it's -- they're not recovered monthly. And they would, they would be looked at, but they're really the types of things that the Division and others are familiar with looking at today.

Q. Okay. Fuel transportation costs, is that something the Company incurs?

A. Yes, it is.

Q. And presumably the Company enters into agreements to -- for how much that transportation service would cost?

A. Yes.

Q. Okay. Would you agree there are a whole lot of things that go into the Company's net power costs? A whole lot of issues, determinations, actions the Company undertakes that can affect net power costs one way or the other?

A. Well, there are a number of things that are not new.

Q. And it's a pretty heavy burden to comprehensively and deeply look at each of these items and figure out whether or not the Company acted prudently, wouldn't you agree?

A. Well, I think that's certainly your opinion. I think that audits are, like I mentioned before, audits have been successively and obviously conducted in other states. They're successively conducted by this Commission with regard to Questar Gas.

These are not insurmountable deals. They were conducted by the Division during the energy balancing account. You don't need to look at each and every transaction. There are methods, statistical sorts of methods that can be used to look through the actual net power costs to determine whether they're just and reasonable.

MR. MICHEL: May I have one moment, Mr. Chairman?

(Pause.)

MR. MICHEL: That's all I have, Mr. Duvall. Thank you very much.

THE WITNESS: You're welcome.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Ms. Hayes, any cross examination?

MS. HAYES: No, thanks.

CHAIRMAN BOYER: Now Ms. Smith and Mr. Lacey, should you change your mind you'll give me the signal, right? If you wish to ask any questions?

Okay. Let's turn now to the Commissioners, Commissioner Allen?

COMMISSIONER ALLEN: Thank you, Mr. Chairman.

I have a question for you, Mr. Duvall, a couple of them here, that were borne out of some questions that Mr. Proctor asked you earlier. And probably the football analogy here is I'm interested in looking at the secondary defense.

Lot of dialogue and testimony pertaining to the market incentives or lack thereof, or how incentives might change. But I'm interested also in knowing a little bit more about the management practices.

You indicated that management overview -- which I think implies for instance in your purview of jurisdiction -- that management is looking at, with your employees, with your staff, with your training, with your operations, that you're going to have to stand up to a prudency review at some point. Or it could happen at just about anytime. Would that be a fair statement?

THE WITNESS: That would be a fair statement.

COMMISSIONER ALLEN: Now, in the process of doing that do you have a training program or do you have policies in place that incentivize your employees? For instance, do you have annual performance reviews for your managers in which potential of prudency in their actions is one or more of the issues that you address with them?

THE WITNESS: Yeah. We have the annual reviews, and I -- I'm not sure quite how to specifically answer that. But we certainly have goals on operational efficiency, regulatory integrity, and doing the right thing in an environmental respect, those sorts of things, so.

COMMISSIONER ALLEN: As far as you know have you ever had, in your history with the Company, have you ever had a situation where employees have been disciplined? Because they may have created, inadvertently or advertently, situations that could fail a prudency review or put you on the spot?

THE WITNESS: You know, I don't know of anything personally. But certainly, you know, if there's, if there's some impropriety or some, you know. We tend to, you know, plan out what we do, execute it, and then we look back and see, you know, how we did. And we make corrections to that.

So, you know, we're continuously trying to improve. Obviously there's gonna be human errors along the way. But we try to identify those and correct them so they don't happen again.

COMMISSIONER ALLEN: And do you have incentives for positive performance in this area? Someone notes something, somebody discovers. Do you have incentive bonuses, anything like that, that have been a result of someone not staying on top of prudency issues?

THE WITNESS: I don't know that it's that specific. But I think if folks have not performed well based on, you know, imprudent actions, that that would be reflected in their, in their annual incentive.

COMMISSIONER ALLEN: So if I'm hearing you right, you train for prudency potential reviews. I mean it's part of your corporate culture. But you can't necessarily remember, for our purpose in this hearing, specific examples of rewards, incentives, or discipline that would help inform that process?

THE WITNESS: I don't personally know of any of those.

COMMISSIONER ALLEN: That's fine. Thank you.

CHAIRMAN BOYER: Commissioner Campbell?

COMMISSIONER CAMPBELL: My first question deals with, do you know what the current balance is of the deferred account? Or the latest number that you've seen?

THE WITNESS: I do not. Of the deferred net power costs?

COMMISSIONER CAMPBELL: Right.

THE WITNESS: I do not know what that is. But certainly could confer with others at the break and -- or some other witness could provide that information.

COMMISSIONER CAMPBELL: And I guess I'm curious what the level of it is, and whether the trend that -- or the past experience of the last several years has continued in the current year. Do you know that?

THE WITNESS: Yes, I believe it has. That the actual net power costs have exceeded in rates, yes.

COMMISSIONER CAMPBELL: And do you know why? What drives that? What's been driving that?

THE WITNESS: I don't know specifically what's been driving that.

COMMISSIONER CAMPBELL: Let me talk about prudence -- or ask you a few questions about prudence. Under our current regulatory environment does the Company have the incentive to operate prudently as it manages net power costs?

THE WITNESS: We do.

COMMISSIONER CAMPBELL: And does this incentive to operate prudently change under an ECAM?

THE WITNESS: No, it does not.

COMMISSIONER CAMPBELL: So it's the same?

THE WITNESS: It is the same.

COMMISSIONER CAMPBELL: Is it fair to say -- well, let me ask you this. In the current regulatory environment I think it's your testimony that the Company has been adversely impacted financially because the actual net power costs are larger than what you said in a rate case. That's right, isn't it?

THE WITNESS: That is correct.

COMMISSIONER CAMPBELL: And so the question is, under an ECAM does that financial incentive get eliminated?

THE WITNESS: The financial incentive? The --

COMMISSIONER CAMPBELL: Meaning the Company will no longer be impacted in that manner?

THE WITNESS: That's true for, you know, that the Company, under the proposed ECAM, would recover its prudently-incurred net power costs.

COMMISSIONER CAMPBELL: So independent of your analysis or your answer to Mr. Dodge's question as it relates to what you think is a stronger incentive.

You are agreeing that with prudence itself, the prudence incentive itself remaining the same, that there is an elimination of an incentive we currently have in place that is not being replaced with anything under the Company's proposal?

THE WITNESS: That's correct. The -- that's correct.

COMMISSIONER CAMPBELL: All right.

CHAIRMAN BOYER: A couple of questions, Mr. Duvall. Sort of a practical question on, on prudence. You mention there are statistical techniques that could be used in looking at trend lines and those sorts of things so that one wouldn't have to audit every single -- for example, every single front office transaction.

But it is a -- wouldn't you agree that it's a formidable task to perform these audits on a monthly basis?

THE WITNESS: I, I think it's, it is a formidable task that -- but I think much of it is already being done. I think it's bigger than what's currently being done. But it's -- a lot of it, you know, should be being done under the current regime.

CHAIRMAN BOYER: You mentioned Mr. Burrup having that assignment when the EBA was in effect up until the '90s, I think. Mr. Burrup is now retired and moved on to some other activities.

Are you aware that the -- or do you know if the Division of Public Utilities is currently staffed at the same levels as it has been historically, say for the last five or ten years?

THE WITNESS: I don't know anything about the staffing.

CHAIRMAN BOYER: Well, would it surprise you to understand that they may have a couple of open positions that haven't been filled because of budgetary concerns?

THE WITNESS: It would not surprise me.

CHAIRMAN BOYER: When the EBA was in effect back in the -- up until the early '90s, now that was a mechanism that the Company -- under prior management that was a mechanism that the Company sought after and it was adopted; is that correct?

And then at some point in time the Company became less enchanted with that, shall we say. Is that correct?

THE WITNESS: That's, that's --

CHAIRMAN BOYER: It sought to --

THE WITNESS: -- correct.

CHAIRMAN BOYER: -- remove it? What were the reasons for that?

THE WITNESS: Well, I think there were several reasons, and I think they're outlined in some of the earlier testimony. But that we were, you know, heading into what everybody thought was gonna be direct access.

And, you know, I think that was a fairly big driver. Costs were fairly stable and fairly manageable. As was presented -- shown in my -- I think it was in my direct testimony or my supplemental direct. This chart that showed the power costs --

CHAIRMAN BOYER: Uh-huh.

THE WITNESS: -- very level through the '90s and then just becoming very erratic after that. So it was real different times at that point than it is now.

CHAIRMAN BOYER: And indeed, costs declined part of that period of time, did they not?

THE WITNESS: I think they declined in some parts, but not a whole lot. They were really fairly stable.

CHAIRMAN BOYER: You mentioned in your testimony today and in your written testimony that the Company would not object to a pilot. What type of length do you think would be appropriate if an ECAM were adopted?

THE WITNESS: Yeah. I believe that we indicated that it would go through, through 2013.

CHAIRMAN BOYER: Three year?

THE WITNESS: Yeah. And the Company would file for a review of that I believe in early 2013.

CHAIRMAN BOYER: Do you think a three-year pilot would be an appropriate length? Is that sufficient in order to actually see how it's operating under different scenarios, and different weather conditions, and so on and so forth?

THE WITNESS: I think it's fairly -- a bit arbitrary as to what's appropriate. But I think that would be, you know, a reasonable length of time. I don't think the Company would pose a different length of time.

CHAIRMAN BOYER: Would you say that that would be a minimum, a minimum pilot time frame, three years?

THE WITNESS: Yeah. I think it could be a little longer.

CHAIRMAN BOYER: Now, part of the reason the Company brought this ECAM application forward is a failure to timely recover net power costs; is that correct?

THE WITNESS: That is correct.

CHAIRMAN BOYER: To what extent is the Company's problem a result of forecasting errors?

THE WITNESS: Well, I think that certainly contributes to it. I don't know that that's how to judge how much. But we certainly have, you know, have -- it's difficult to forecast net power costs, given all the uncertainties from day to day in the volumometric changes and the prices.

CHAIRMAN BOYER: Do you recall how far off those net power costs forecast have been in the last couple of years? Talking thousands, millions, tens of millions?

THE WITNESS: Yeah, mil -- tens of millions. Hundred, you know, over a hundred million.

CHAIRMAN BOYER: And is that a forecasting error, or what's going on there?

THE WITNESS: Well, I think the -- it's more of the paradigm that we're, with a forecast model we are in the situation of modeling a known net position. So that we, you know, the loads don't vary. The forced outage timing is predetermined.

The wind doesn't vary from the overall annual amounts. It will obviously have a pattern to it. The hydro doesn't vary. So all of these volumetric changes are predetermined. And that's not the way that the world works.

Is that every day our loads, our hydro, our wind, what plants are broken and what are not broken can vary day to day. And at the time that our -- these volumetric changes occur we have no idea what the price is gonna be. Whether it's gonna be higher or lower. Whether it's gonna increase our net power costs over what we forecast or decrease it.

So that it's -- the modeling cannot pick up the complexities of the actual situation that we face.

CHAIRMAN BOYER: Do you find it interesting or troubling that the, at least in recent years the forecasting has always cut against the Company, from its perspective? They're always underestimated?

THE WITNESS: You know, and that may be, you know, partly because we really -- because of all the things I just mentioned. Partly because of the, you know, the test period convention in terms of the matching of the forecast with the time that the rates will be in effect. You know, that obviously has an effect as well.

But even if that were synchronized, the inability to capture all the vagaries of the changes that occur day by day. We just can't capture those in a model.

CHAIRMAN BOYER: Turning now to another subject. Earlier on in this proceeding there was discussion about controllable versus non-controllable net power cost elements. And we seem to have gotten away from that at this point in time.

What's your take on that? What kinds of things are controllable by the Company and which are not?

THE WITNESS: Well I think, you know, there are certain things that the Company has control over. Which would be the, for example, the performance of the different thermal units, those sorts of things. The availability of, you know, wind plants or hydro plants.

That, you know, those sorts of things the Company has some management discretion about. But those aren't the big drivers of changes in net power costs. The big drivers are changes in our loads, in our wind hydro. All the volumetric changes that occur not knowing what the changes in prices are gonna be.

So in terms of the overall net power costs, the things that we can control don't really drive the overall net power costs to any great extent, as far as I can see.

CHAIRMAN BOYER: That leads to my last area of inquiry. There's a concept in the law that risk should be allocated to the party or parties who cause the risk or who are most able to mitigate that risk.

And in terms of net power costs, what kinds of things can consumers do to mitigate this volatility and unpredictability in net power costs? I mean, we've got usage that we consumers could scale back on, I guess. Turn the heat off --

THE WITNESS: Right.

CHAIRMAN BOYER: -- turn the lights off, that sort of thing. But what can consumers do?

THE WITNESS: Well, that's true. In the short term there's not a whole lot you can do except turn off the lights and turn down the thermostat. But over time, you know, replacing equipment stock with more efficient equipment. You know, the whole energy efficiency sorts of things.

From an industrial perspective, you know, there's the possibility of putting in, you know, on-site generation, which a number of customers in Utah have. As you've seen the qualified facility contracts come before you.

You know, there's -- there are some things that, you know, customers can do to control their usage of electricity.

CHAIRMAN BOYER: But it's pretty much limited to a reduction in usage, isn't it, for customers?

THE WITNESS: It is. And it's fairly limited on the, on the utility side as well on a daily basis. You know, obviously we have some control of what plants we bring into the mix over time. In that -- but on a daily basis a lot of the things are outside of our control. And we're simply reacting to changes in our load and resource balance on a daily basis, doing the best we can to keep our costs down.

CHAIRMAN BOYER: Okay, thank you. Commissioner Campbell has a follow-up question.

COMMISSIONER CAMPBELL: It's not a question. I do want to accept the Company's offer to find out what the most current level of the deferred account is.

THE WITNESS: Okay.

CHAIRMAN BOYER: Okay. Mr. Monson, redirect?

MR. MONSON: Thank you.

REDIRECT EXAMINATION

BY MR. MONSON:

Q. You were talking with one of the Commissioners about auditing burdens. And you were talking in terms of monthly audits. You were referring to the EBA; is that right?

A. That's correct.

Q. Would you expect there would be monthly audits under the ECAM as proposed by the Company?

A. I think that would be up to the Division. But I -- it would certainly -- we'd be open to that.

Q. How often were you gonna file under the ECAM we're proposing?

A. The filing is once a year.

Q. You were also asked some questions about forecasts, and whether those -- whether there's forecast error. First of all, is the Company's forecast accepted in general rate cases as the amount of net power costs included in setting rates?

A. No, it's not.

Q. What happens?

A. Well, the Company makes a proposal. Other parties come in contesting the Company's proposal with, you know, I think every time they come in with lower net power costs. And at the end of the day there's either a stipulation, or it goes to a fully-contested hearing and the Commission makes a determination on what the net power costs will be.

Q. Mr. Dodge asked you a series of questions about the increases in REC revenues. Have there been increases in net power costs during the period of time, for example, shown on your exhibit that are similar or greater in magnitude than the increase in REC revenues that's shown on the exhibits that Mr. Dodge passed out?

A. Yes, there are.

Q. You've been asked some questions about Idaho, the Idaho ECAM. Are you aware of whether other utilities in -- other electric utilities in Idaho have ECAM-like mechanisms?

A. Yes. The other two major utilities, both Avista and Idaho Power, have ECAM-like mechanisms.

Q. And when they compute -- in their mechanisms do they compute their net power costs --

MR. MICHEL: I'm gonna object. Mr. Chairman, Commissioners, this is beyond the scope of any cross that I did of the witness. I was just asking him to describe their ECAM mechanism in Idaho, not every utility in Idaho.

CHAIRMAN BOYER: Well, I think Mr. Michel is correct, Mr. Monson.

MR. MONSON: The reason I'm asking is because Mr. Michel was trying to explore why the Company agreed to certain things in Idaho, I believe. And why it was acceptable in Idaho. And I'm trying to explain why -- I'm trying to have the witness answer the question as to why Idaho is different than Utah.

MR. MICHEL: I don't believe I was asking why the Company agreed. I simply confirmed that it was a stipulated outcome and that there was no justification provided for the 90/10.

CHAIRMAN BOYER: And I think he was restricted in his remarks to RMP's ECAM there.

MR. MONSON: Okay.

Q. (By Mr. Monson) When the audit takes place that people have been talking about is the subject of the audit the full scope of net power costs, or is it the difference between the net power costs that have already been reviewed in the general rate case and those that have actually been incurred?

A. It focuses on the difference between the actual net power costs and the in-rates net power costs.

MR. MONSON: That's all.

CHAIRMAN BOYER: Okay. Thank you, Mr. Duvall, you are excused.

Mr. Monson, shall we proceed with your next witness? We'll break about noon, okay?

MR. MONSON: About when?

CHAIRMAN BOYER: About noon.

MR. MONSON: Okay.

CHAIRMAN BOYER: About 12:00.

MR. MONSON: Great, yeah. Our next witness is Mr. Griffith.

MR. PROCTOR: Excuse me, Mr. Chairman. May I? I think -- I would ask that the Commission explore whether or not there's a witness that we could possibly complete between now and the break, just to make things more efficient.

I know that Mr. Griffith likely will not be completed. And I just wonder if it would be more efficient if there was a witness that perhaps would be.

CHAIRMAN BOYER: Well, that is a good suggestion. I was thinking about the two witnesses that have scheduling difficulties. So I guess Dr. McDermott you've said you could stay over, if necessary?

MR. MONSON: He can.

CHAIRMAN BOYER: Would it make sense to --

MR. MONSON: I think it's really up to the other parties as to whether somebody can be completed. But the other witness who I would expect -- I actually would have expected Mr. Griffith to be one of our shorter witnesses, since there was hardly any testimony devoted to what he said other than one witness. But Dr. Hadaway is also one who hasn't had much response to his testimony, so.

CHAIRMAN BOYER: And I have no way of knowing.

MR. PROCTOR: Well, I have very few questions of Mr. Bird. I don't believe I would have any questions -- likely any questions of Dr. Hadaway.

MR. MICHEL: At this time I don't have anything for Dr. Hadaway.

CHAIRMAN BOYER: Well, would you mind taking Dr. Hadaway out of order?

MR. MONSON: No, that's fine if you want to do that.

CHAIRMAN BOYER: Let's do that then.

Good suggestion, Mr. Proctor.

MR. PROCTOR: Thank you.

CHAIRMAN BOYER: Dr. Hadaway, have you been sworn in this proceeding yet?

DR. HADAWAY: No, I have not.

(Dr. Hadaway was sworn.)

CHAIRMAN BOYER: Will you please be seated?

THE WITNESS: Thank you.

SAMUEL C. HADAWAY,

called as a witness, having been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MONSON:

Q. Dr. Hadaway, could you please state your name, and your employer, and who you have been retained by in this case, for the record?

A. My name is Samuel C. Hadaway. I'm a principal in the financial analysis consulting firm Financo, Inc. And I'm retained by Rocky Mountain Power.

Q. And did you prepare rebuttal testimony in this phase of the case that was filed on September 15 --

A. Yes.

Q. -- 2010? And it included an Appendix A and one exhibit; is that right?

A. Yes.

Q. Do you have any corrections you wish to make to that testimony?

A. Yes, sir. On page 4 of the testimony I refer to Dr. McDermott's rebuttal exhibit in this phase. And I referred to, I believe, 1R. That should be 3R.

Q. Okay. So that's on line 75?

A. Yes, sir.

Q. Okay. Any other corrections?

A. No.

MR. MONSON: We would offer Dr. Hadaway's testimony, his rebuttal testimony, and its accompanying appendix and exhibit.

CHAIRMAN BOYER: Thank you. Are there any objections to the admission of Dr. Hadaway's rebuttal testimony, together with exhibits and attachments?

Seeing none, they are admitted.

(Samuel Hadaway rebuttal testimony with attached appendix and exhibit was admitted.)

Q. (By Mr. Monson) Dr. Hadaway, do you have a summary of your testimony?

A. Yes, I have a very brief summary.

Good morning Mr. Chairman, Commissioners. Thank you for the opportunity to be here again. My testimony responds to two of the other witnesses: Mr. Peterson, for the Division, and Mr. Higgins for UAE. They offer brief recommendations that ROEs should be adjusted if the Company's ECAM is adopted.

I understand also that Mr. Chriss, on behalf of Wal-Mart, in the previous phase had made such a recommendation. I didn't see that testimony but I've been told that he did. And my comments apply equally, because it's exactly the same issue.

Mr. Peterson mentions the reduction to ROE possibly in a footnote on page 22 of his testimony. And Mr. Higgins has a brief final Q&A on pages 37 and 38 of his testimony where he makes that recommendation.

I disagree with their statement -- statements because the companies that I, Mr. Lawton for OCS, and Mr. Peterson for the Division, all used during the ROE hearing all had ECAM-type mechanisms already in place.

Today I provide with this testimony my Exhibit SCH-1R, that is a summary table that shows the cost recovery mechanisms that the ROE comparable companies already have. To the extent that such mechanisms reduce the operating risks of these comparable companies, then the effect of ECAM risk reduction is already taken into account in our ROE estimation process.

As I have testified on several occasions before, to further reduce Rocky Mountain Power's ROE for the adoption of its ECAM would therefore double count any risk effect that might result from the ECAM. In this regard the Commission should not accept Mr. Peterson's, or Mr. Higgins', or Mr. Chriss's recommendation on this issue. That's all I have, thank you.

MR. MONSON: Dr. Hadaway is available for cross examination.

CHAIRMAN BOYER: Thank you, Mr. Hadaway.

Mr. Proctor, any cross examination?

MR. PROCTOR: Just very, very brief.

CROSS EXAMINATION

BY MR. PROCTOR:

Q. Dr. Hadaway, in your exhibit of those companies "with ECAM like," I believe that's your phrase?

A. Yes.

Q. Okay. Do you know, of those, were any as a result of a negotiated resolution to an ECAM proposal between the electric utility and regulators, or other customer groups?

A. Mr. Proctor, I would expect that they were, but we simply reviewed the companies' 10-Ks. In their segment information they all tell about those things. And all of them do have cost recovery mechanisms like this ECAM.

Q. But the 10-K description of those mechanisms would not include a description of other compromises or solutions to other proposals or problems that were presented in the course of the ECAM proceedings?

A. No, sir, I don't think so.

MR. PROCTOR: Thank you very much, sir.

CHAIRMAN BOYER: Thank you, Mr. Proctor.

Ms. Schmid?

MS. SCHMID: Could we have just one moment?

CHAIRMAN BOYER: Please.

(Pause.)

MS. SCHMID: No questions.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

Mr. Evans?

MR. EVANS: No questions, thank you.

CHAIRMAN BOYER: Mr. Dodge?

MR. DODGE: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. DODGE:

Q. Dr. Hadaway you'll acknowledge, will you not, that the -- one of the main purposes of the ECAM is to reduce the Company's exposure to power cost volatility?

A. I believe I would agree with that, yes.

Q. And that exposure is risk to the Company, correct?

A. Yes.

Q. And you agree conceptually that a lower risk, all other things being equal, should produce a lower return on equity? A reduction in risk should -- compared to the status quo should reduce the authorized return on equity as well?

A. It depends on how the status quo is established.

Q. Assuming that the rate currently is just and reasonable. So make that assumption. And that, all other things being equal, the risk goes down for the utility. You don't disagree, do you, that the Commission ought to consider reducing the ROE if it can be demonstrated how much --

A. I entirely disagree with that. And it's because the way the benchmarks, or the status quo that you're talking about, was established for this Company and is for all the companies that I work for.

We use a comparable group. We very specifically limit that group to be single-layer higher-rated companies. Every one of them has an ECAM-type mechanism in place. In fact, Dr. McDermott's testimony demonstrates that almost all of them have no sharing and no deadbands.

Q. So is it your position that the current authorized return on equity is unjust and unreasonable for this company because it did not have an ECAM before?

A. It is not.

Q. So if it was just and reasonable before when compared to those companies and then the risk goes down, all other things being equal, the ROE should go down with it, should it not?

A. The process is simply not that precise. As you well know, we debate all these issues. The Commission did not grant the rate of return the Company requested in the last rate case. It considered all the evidence, including my testimony that ECAMs existed for those companies, and it made a decision that 10.6 percent was the right ROE.

Q. And if you accept that that is a just and reasonable ROE, all things considered, including no ECAM. Then, if the only thing that changed were an ECAM and a reduction in risk, the Commission ought to consider whether a lower ROE would be appropriate in light of the reduction in risk?

A. Certainly the Commission can consider whatever it wants to. It is simply not that precise a process to say that 10.6 percent didn't consider the difference in the risk of PacifiCorp and Rocky Mountain Power at that time relative to the companies in the comparable group.

There's no discussion of that issue that I know of in the record, but there certainly was in the hearing.

Q. So you don't even agree conceptually that a reduced risk should bring with it reduced ROE?

A. Of course I do. And --

Q. Okay.

A. -- I'm simply saying that that's not the way the ROE was set in this case, as you sort of hypothesized.

Q. Well, I asked you to assume that it was set at a just and reasonable rate and you said you weren't challenging that, so. All I needed was, conceptually, reduced risk should lead to lower return on equity? Authorized return on equity?

A. In a pure hypothetical world, if that had not already been considered in setting the rate. Simply because you want to say that it was just and reasonable, that doesn't mean that that risk wasn't considered when the 10.6 percent was set.

Q. I didn't ever say I considered it just and reasonable, I said our Commission did. Now, let me move on.

How many of the companies in your exhibit also have a major plant addition statute that allows them immediately upon putting a new facility in place to begin recovering the net power cost -- I mean the net revenue impacts of that major plant addition?

MR. MONSON: I'm gonna object. Are we now gonna make a recommendation that the ROE be reduced based upon the major plant addition statute, which has nothing to do with this case?

CHAIRMAN BOYER: Well, I don't know what his intention is, but I think the question is appropriate and.

MR. DODGE: Certainly legitimate. He's claiming these are all comparable, and I'm saying, Are they?

Q. (By Mr. Dodge) Do they all have the major plant addition component as well, Dr. Hadaway?

A. Well, Mr. Chairman, many of the companies -- and I haven't studied this because it's not an issue raised by anybody until now. But many of the companies in my comparable group do, indeed.

And some of them even have pre-completion opportunities for construction work in progress in rate base prior to completion of the plants. In

Missouri and in Kansas.

I know that Kansas City Power & Light Company, who's another client of ours, they have had a regulatory plan in place for their just-completed Iatan 2 plant that required maintenance of their bond rating. So yes, those kinds of clauses are very common.

Q. So you've named two, and how many companies do you have?

A. I believe there were 19 in that initial group.

Q. I think you've got more than 22 that you put -- more than 25 on your exhibit --

A. No. In that exhibit that we're referring to, those are the operating companies of the various ones. The comparable group that we used to estimate ROE was 19 companies.

Q. It is not your testimony, is it, that every one of them has a major plant addition-type procedure like this company does?

A. No.

Q. So if we ignore that and just say, Well, they all have ECAMs, each incremental risk reduction element that this Company gets always produces no return on equity reduction, does it not?

Isn't that how you go around testifying? They should always leave the ROEs the same, no matter how they draw the risk?

A. That's entirely a mischaracterization of my testimony. These companies are all single-A rated companies. The rating agencies look at all of these kinds of issues. And they've determined that these companies, from their objective opinion, are of comparable risk at that level.

Now, you can go down the line and you can pick different things for each company in different jurisdictions in the way they're treated. To do that in an ROE proceeding I don't think is at all justified, because you can always find one thing that goes one way and one that goes the other.

Q. But Dr. Hadaway, that's just what you did in your exhibit. You picked one issue, the ECAM, and said they're all the same, therefore no reduction in ROE. And now you've said you shouldn't look at just one issue. What do we look at? How do --

A. Excuse me, Counsel, that is not at all what I said. I do --

Q. That's how I --

A. This is an ECAM proceeding --

(The speakers were talking over one another and had to be interrupted by the reporter.)

THE WITNESS: Excuse me, I'm sorry. This is an ECAM proceeding, where other witnesses have made the recommendation that you're saying that I am now bringing up. I'm simply responding to their recommendation.

Q. (By Mr. Dodge) And you're saying, Look at all these other states that have ECAMs, therefore there should be no reduction in ROE. You're looking at one item and saying therefore there should be no reduction in ROE, are you not?

A. On that particular item, exactly.

Q. But on the item I raised you said it's not appropriate to just look at whether they have major plant addition type --

A. I did not say that, Counsel.

Q. Okay. Well, the Commission can hear what they heard. Dr. Hadaway, have you ever gone on the stand and testified that a utility ought to have a lower ROE because it's gone through some risk-reducing element?

A. Yes.

Q. Name it. When was that?

A. In Texas in many cases, because we've always had construction work in progress there, we've often reduced the ROE to consider the cash flows that were allowed there.

Q. On whose behalf were you testifying?

A. On behalf of the staff. On behalf of the industrial customers at one time.

Q. Aha.

A. And to some extent on behalf of some of the companies where we've put rate plans in place to get large plant additions done.

Q. So when you represented customers you did argue for a reduced ROE when the risk went down, but not when you represent utilities --

A. Counsel, I said just now that when we were representing the companies and we had rate plans in place that we were trying to get done we often considered the ROE construction work in progress on behalf of the companies in that same proceeding.

Q. And you're testifying under oath here that you have recommended in one of those dockets that the utility's ROE go down as a result of that?

A. I have not explicitly recommended it should go down. Neither have I explicitly recommended that it should go up for Utah Power when these things weren't taken care of.

MR. DODGE: That's all I asked, thank you.

No more questions.

CHAIRMAN BOYER: Mr. Michel?

CROSS EXAMINATION

BY MR. MICHEL:

Q. Just a clarification, because I think in one of your answers there were a couple negatives and I'm not sure how they all worked their way through.

In that exhibit that Mr. Dodge was asking you about with the 19 or 22 comparable utilities I understood your testimony to say that many of those utilities -- I forgot what the issue was.

Thanks. That many of the -- that many of those utilities did not have a major plant addition capability ratemaking -- major plant addition opportunity similar to what Rocky Mountain Power has here. And you --

A. No, no. Excuse me. I don't believe that's what he asked me, and that's certainly not what I said.

Q. Okay.

A. He asked me did I know if all of them did, and I said no.

Q. Okay. And you only know of two that do have a similar-type of provision available to them?

A. I read about these things all the time. I think Pleeco (phonetic) is probably finished, and I'm not sure they're part of that group. But there are many companies around the country. I wasn't asked about that issue at all in any data request or anything else, so as I sit here I can't go down that list of 19 companies and explain that to you.

Q. Okay. But you're aware of two that do have it, and you don't know about the others; is that --

A. I'm not saying that I don't know about them. I simply was asked that a couple minutes ago, and as I sit here I can't name them off and swear that I know how they work, because I haven't looked at them. But I do know that they exist all around the country.

Q. Right. But I'm focused -- and I think Mr. Dodge was focused -- on the comparable group that you were using, and how many of those utilities do have a major plant addition provision available to them.

A. As I sit here, I don't know.

MR. MICHEL: Okay. Thank you. That's all I have.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Ms. Hayes?

MS. HAYES: Thank you, no questions.

CHAIRMAN BOYER: Commissioner Allen?

COMMISSIONER ALLEN: Thank you, Mr. Chairman.

Quick question for you, Mr. Hadaway. It's been a while since we've heard from you, so I'm wondering if there's been any change in the state of the econometrics of the risk in calculating ROE. I know you have some expertise there, and you've testified before.

Has anything changed, since we last saw you or heard from you, in terms of metrics? Refined methods for determining the cost or the value of rate -- excuse me, of risk increases or decreases?

Are we seeing people sharing their proprietary formulas or their metrics? Or telling us that if we have a reduction of risk of X percent, or of a certain type, that it's worth a more specific type of -- or a very specific level of reduction or increase in ROE?

THE WITNESS: No, sir. I don't know of any additional ones. There have been some suggestions that you can look at the difference between a single-A bond rating and a triple-B bond rating.

Mr. Coleman on behalf of the industrials has testified here, I believe. I don't know if he testified to that 30 basis points in this particular hearing, but he has in some PacifiCorp cases.

But I don't know of more refined models to do that.

COMMISSIONER ALLEN: As far as you know, no one's taken the ECAM cases from the other states and come up with some sort of weighted average and said this many of them reduce their ROE, or -- by this much money, or?

THE WITNESS: No. To some extent, really, I haven't seen that issue raised as often as it is in the Northwestern part of the country. I have seen this issue about do the comparable companies have ECAM-type mechanisms in place.

And I have seen, for example in Missouri, the Commission there say because the comparable companies have that, then the ROE should not be reduced. But now that was just in one particular case, and what they might say in another case I don't know.

COMMISSIONER ALLEN: So as far as the Commission goes in how we make decisions on these rate of returns -- or return on equity, we're pretty much still faced with everything in front of us and then going from there? Okay, thank you.

CHAIRMAN BOYER: Commissioner Campbell has no questions, nor do I.

Any redirect, Mr. Monson?

MR. MONSON: No. No questions.

CHAIRMAN BOYER: Very well.

Thank you, Dr. Hadaway. You are excused.

THE WITNESS: Thank you, Mr. Chairman.

CHAIRMAN BOYER: Let's take an hour and-a-half recess for lunch. And we will convene back here in 90 minutes.

(A luncheon recess was taken from 11:46 a.m. to 1:14 p.m.)

CHAIRMAN BOYER: Okay, let's go back on the record. Mr. Monson, I see you've already called Mr. Griffith to our chair.

And you have been sworn in this proceeding, have you not?

THE WITNESS: No, I have not.

(Mr. Griffith was sworn.)

CHAIRMAN BOYER: Thank you. Please be seated.

Mr. Monson?

WILLIAM R. GRIFFITH,

called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MONSON:

Q. Please state your name, employment, and business address for the record.

A. My name is William R. Griffith. I am employed with PacifiCorp. I am director of pricing, cost of service, and regulatory operations. My address is 825 Northeast Multnomah, Portland, Oregon, Suite 2000.

Q. Okay. And did you prepare and file in this case direct testimony dated March 16th of 2009, with one exhibit?

A. Yes.

Q. And surrebuttal testimony dated October 13, 2010, with two exhibits?

A. Yes, that's correct.

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

A. No.

MR. MONSON: We would offer Mr. Griffith's direct testimony and his surrebuttal testimony, together with the exhibits.

CHAIRMAN BOYER: Are there any objections to the admission of Mr. Griffith's direct and surrebuttal testimony, together with exhibits?

Seeing none, they are admitted.

(William R. Griffith direct and surrebuttal testimony with attached exhibits was admitted.)

Q. (By Mr. Monson) Mr. Griffith do you have a summary of your testimony?

A. Yes, I do.

Q. Would you present that?

A. Good afternoon Chairman Boyer, Commissioner Campbell, and Commissioner Allen. I present two pieces of testimony in this design phase of the hearing: My direct testimony, filed on March 16, 2009. My surrebuttal, filed on October 13, 2010.

In my direct testimony I presented the Company's proposed Tariff Schedule 94, energy cost adjustment, and the Company's proposed rate spread and rate design for the ECAM.

For rate spread the Company proposed to spread the ECAM adjustment, based on an equal-cents-per-kilowatt-hour basis, after adjusting for voltage level losses across all customer classes.

As I indicated, the proposed rate spread is simple. And directly applies changes in net power costs to customers' energy charges, which will send clear signals to customers of changes in energy costs.

For rate design the Company proposed that Schedule 94 would be applied as an equal-cents-per-kwh rate to all tariff schedules. And that for time-of-day schedules, Schedules 6A, 8, 9, and 9A, the rate would be shaped to mirror the structure of the seasonal time-of-day base energy charges in those tariffs.

In my surrebuttal testimony I responded to UIEC's witness, Mr. Morris Brubaker, his issues concerning the structure of Schedule 94. And I prepared an example showing the ECAM rate spread and rate design.

I indicated that the proposed tariff reflected seasonality for customers and for large customers, that the tariff was supported by UAE witness Mr. Higgins, and that it is reasonable.

Q. Does that conclude your summary?

A. Yes, it does.

Q. Before the break for the lunch hour Commissioner Campbell asked a question to Mr. Duvall, I believe, regarding the current balance, the deferred account balance for the net power costs. Do you have that information?

A. Yes, I do. The current balance in the deferred account for net power costs not in rates from March 1, 2010, through September 30, 2010, is $38.8 million.

MR. MONSON: Is that what you needed?

Okay. Mr. Griffith is available for cross examination.

CHAIRMAN BOYER: Thank you, Mr. Griffith.

Mr. Proctor, cross examination?

MR. PROCTOR: Mr. Chairman, with your permission, could I go second? I, I'm still struggling with confidential documents filed as non-confidential documents with the Commission and sent to me on -- last night at 10:30, pertaining to Mr. Griffith's testimony. Would --

CHAIRMAN BOYER: Absolutely.

MR. PROCTOR: I'm trying to figure those out.

CHAIRMAN BOYER: Absolutely. Work that out.

MR. PROCTOR: Thank you.

CHAIRMAN BOYER: We'll turn to Ms. Schmid. And I'm sure you'll remind me If I overlook coming back to you, Mr. Proctor.

MS. SCHMID: Unfortunately, Mr. Proctor, I won't be any help. I have no questions for this witness.

CHAIRMAN BOYER: Okay.

Mr. Evans?

Ms. Smith, I'm not even asking --

MR. EVANS: I can help. I can help Mr. Proctor.

CHAIRMAN BOYER: I'm not even asking Ms. Smith because you promised to give me the signal if you wished to change your -- Same with Mr. Lacey.

Mr. Evans?

MR. EVANS: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. EVANS:

Q. Good afternoon, Mr. Griffith.

A. Good afternoon, Mr. Evans.

Q. I wonder, were you in the hearing room this morning during my cross examination of Mr. Duvall?

A. Yes.

Q. When I attempted to get some information from him on this UIEC Cross-1 that's been proposed? Did you get a chance to see what that document was?

A. Yes, I think I took a quick -- I have a copy of it.

Q. Are you familiar with this?

A. I've seen it before. I don't know what you mean by "familiar."

Q. Well, you know what it is, and you know that it was --

A. Well, it says it's a Cost of Service By Rate Schedule. It's a summary of cost of service factors.

Q. Okay. And I have represented that it was filed as Mr. Paice's Exhibit CCP-3R in the last rate case, 09-035-23. Let -- if you wouldn't mind, let me ask the questions to you and we'll see if you -- if you can't answer them, that's all right too.

We were looking at Mr. Duvall's testimony -- at his surrebuttal testimony at the fifth bullet point. Do you have that in front of you?

A. No.

Q. Okay. Well, maybe I can have it -- you won't need it because I can read you the question. We're looking at his surrebuttal testimony on page 10. And he seems to think -- the issue is the effect of ignoring the 75/25 factor in allocating net power costs, I think was the issue we were discussing.

And his testimony says this: The difference between the Utah SE and SG factors in the Company's last general rate case was .13 percent. Allocating that cost to 98 million on an allocation factor that is .13 percent different than the SE factor would likely produce a small number.

And so my inquiry, for which I intended to use this cross exhibit, was whether that .13 percent difference between allocating on SE and SG holds true across the classes. Do you know the answer to that question?

A. No, I don't.
Q. You don't know whether the difference between SG and SE allocator would hold the same across all classes? Would be the same difference?
A. No, I do not. I haven't prepared -- I don't work with allocation factors. I work with customer rates and rate design issues in each of the six states.
Q. If I asked you if you were able to identify the SE factor on this US -- UIEC Cross-1, could you find what line that was?
A. No.
Q. Would you look at the first line, F10, where it says split 75/25?
A. That's the second line?
Q. That's the second line, right. First line is blank all the way across, isn't it?
A. I see that.
Q. And do you know what that factor is?
A. That's the 75/25 coincident peak allocation factor.
Q. So that would --
A. Across the classes.
Q. So that would be the SG factor? Okay. If I asked you to find --

A. I didn't say that, but you did.
Q. What did you say then? I'm sorry, I misunderstood your response.
A. I didn't say it was the SG factor. I, again, I don't deal with the allocation factors, so I don't know which ones are SG and which ones are SE.
Q. Okay. Describe to me what F10 is.
A. I'm describing what I read across the sheet. It's the 75/25 allocation factor, spread across the customer classes. It shows it adds up to a hundred percent. And shows an allocation of 34 percent to residential, 14 percent to Schedule 9.
Q. Okay. And look at line F30. What data do you draw from that line as to residential and Schedule 9?
A. Well, I see each of the factors are slightly different than one --
Q. Yes.
A. -- for Schedule 9.
Q. Well, there's different --
A. Because there's different allocation factors.
Q. Right. There's a difference between the system energy and system generation factors in all classes, isn't there? It's just separate -- when you break them out, each class has its own difference

between F10 -- line F10 and line F30?

A. And those are based on different class loads and the underlying load characteristics of the classes in determining the factors.

Q. Okay. So if we were to take the difference between F10 and F30 under Schedule 9, I've done the math, and it is .0193. That would be 1.93 percent. Do you accept that, subject to check?

A. It would be a difference in the percentages of .19.

Q. Right. It would be -- no. It would be -- the difference is .0193.

A. That's the factor difference, yes.

Q. I'm sorry. The factor difference would be -- I've misplaced the decimal. The factor difference is 1.93 percent. See, we're reading --

A. It's, it's .166 minus .147 is .019.

Q. Okay. So that expresses a percentage that would be 1.93 percent?

A. That's the difference in the two percentage amounts.

Q. Correct. So when we're looking at Mr. Duvall's testimony and he's saying that the difference in allocating on SE and SG is .13 percent, for Schedule 9 it turns out to be 1.93 percent, right?

A. That's the difference in these tables for these two allocation factors, yes.

Q. And so the way I calculate that, that's almost 15 times greater difference for Schedule 9 than it is for the system as described in Mr. Duvall's testimony.

A. Is there a question?

Q. Would you agree?

A. I agree that there are different numbers. I'm not sure that they're comparable, or that the -- what we're looking at here would directly relate to what Mr. Duvall said.

Q. Okay. Do you agree that the effect of ignoring the 75/25 allocator in the way we're calculating these actual net power costs has different effects across different classes?

A. Well, I think when we look at actual net power costs we're looking at actual costs. I'm, you know, I'm not sure how those are being allocated.

Q. Okay.

A. Those are actual the costs. And then costs that are set in rates are set based on the allocation factors.

Q. But the allocation factors in rates include a 75/25 allocator for generation and purchase power, right?

A. Yes, I believe that's the case.

Q. And that's not what's proposed in the ECAM, right? You're --

A. Well --

Q. -- allocating -- I'll let you answer.

A. What's proposed in the ECAM is the rate spread proposal that I have across the customer classes. Which applies a uniform cents-per-kilowatt-hour rate, adjusted for losses, and adjusted for time-of-day shaping for Schedules 6A, 8, 9, and 9A.

Q. Yes.

A. And that's very similar to the Company's energy balancing account that was in place approximately 20 years ago, except it's been improved in that we now do adjust for system losses or for distribution losses.

Q. But it's very different than the way the Company allocates its base rates, isn't it? Its base net power costs?

A. I think it's, it's similar to past power cost adjustments. And it's meant to be a simple way to allocate these costs. And to fairly recover the changes in energy costs across classes.

Q. Well, I understand that, but that wasn't the question. It's different than the way you've built up the base NPC, right? Which is by using a 75/25 allocator?

A. I think that, if I understand the methodology, I think that this is the allocation across customer classes. It's not the allocation of the base and the actual net power costs.

Q. I don't think that was responsive to the question.

A. You want to ask the question again, then?

Q. The way you've just described to build up the -- to allocate the actual net power costs is different than the way you allocate base net power costs in the rate case because it ignores, in the actual NPCs, the 75/25 allocator?

A. At this point I'm limited to what I can explain, because I'm -- I don't know.

Q. Okay. Let's go to maybe what you do know. In your surrebuttal testimony this is mainly, as I read it, for the purpose of responding to Mr. Brubaker's criticism that ECAM design doesn't effectively track the cause of the excess power costs and -- right?

This is in response to Mr. Brubaker's testimony?

A. Yes, primarily, yes. And also to provide an explanation to all the parties to understand how this would work.

Q. And in your response, beginning at line 28, you state the basis of your disagreement there. And then you state that:

"...Schedules 6A, 8, 9, and 9A would be 'shaped to mirror the structure of the time-of-day base energy charges for these schedules'...."

Do you see that?

A. Yes.

Q. Why is that phrase in quotes?

A. It's in quotes to reflect that I stated it in my direct testimony.

Q. Okay. You didn't cite where in your direct testimony it was?

A. Well, I said -- the sentence starts:

"...as indicated in the Company's proposal in my direct testimony...."

Q. Okay. These Schedules 6A, 8, 9, and 9A currently have time-of-day and seasonal rates, right?

A. That's correct.

Q. And the Commission currently has ordered a work group to look at these rates among other cost-of-service issues. Are you aware of that?

A. I'm aware that the Commission has ordered a work group to look at cost-of-service issues. I'm not aware that the Commission has ordered a work group to look at these rates. These rates are approved by the Commission and are in service for service to our customers.

Q. Well, I -- maybe I mis -- maybe I misheard you. The Commission is looking at, in their cost-of-service work group, whether the time-of-use and seasonal allocations are -- could be improved. Are adequate. Isn't that part of the cost-of-service work group?

A. I agree that part of the cost-of-service work group is to look at the differentials in rates and the allocation of costs.

Q. And that the goal would be to set time-of-day and seasonal adjustments to more accurately reflect the cause of the seasonal costs. Is that the goal?

A. I'm not aware that's the goal.

Q. Isn't the goal generally, in regulatory ratemaking, to allow -- to have rates reflect costs?

A. I think that's one of the goals of rates, yes.

Q. Well, what do you mean when you say that the

ECAM surcharge mirrors the structure of these rate schedules?

A. That's shown on my exhibit with the rebuttal testimony that's Exhibit -- long title here. WRG Phase II-2-1SR, page 1 of 1. And it shows -- if you want -- if you would like me to explain it?

It shows that the present rates for Schedule 9 are contained in column 2. And those show that the on-peak kilowatt hour charge in the summer months is about approximately 3.46 cents per kilowatt hour. The on-peak rate in the winter months, the non-summer months, is 2.6 cents. And in the off-peak period year round it's 2.18 cents.

What I then show is, with a proposed ECAM, a rate change of $10 million overall. And that's -- that amount is shown in the second exhibit, the total rate spread for the ECAM.

Q. Excuse me, let me interrupt. What is shown in the second exhibit?

A. The second exhibit shows the rate spread of a hypothetical $10 million ECAM adjustment across the customer classes.

Q. And you're bringing that, that hypothetical adjustment back in to your first exhibit; is that the idea?

A. Yes, that is. In hindsight I probably would have switched the two exhibits.

Q. Maybe.

A. So that the targeted revenue change for Schedule 9 is approximately $1.798 million. Which corresponds with row 11 on Exhibit 2, where it shows $1.8 million.

But what this shows is that our proposed ECAM surcharge rate is contained in column 4. And it would be shaped -- the energy charge values would be shaped in the same way as the base rate Schedule 9 rates are shaped.

So that the on-peak ECAM rate would be 0.697 cents per kilowatt hour, or approximately 43 percent higher than the overall rate that Schedule 9 customers are paying. The -- that's the summer rate.

Q. I see. And then you --

A. So forth through the other rates.

Q. And so the proposed ECAM price in column 4 is just proportional to that ratio in column 3?

A. Yes, which is based on the actual rates in column 2.

Q. Which are based on base net power costs, right?

A. Which are, which are based on --

Q. Based on net --

A. -- base Schedule 9 rates.

Q. Are base Schedule 9 rates?

A. Right. So that the structure of the Schedule 9 rates continues to flow through into the net power costs, the ECAM surcharge rate.

Q. And the structure of the Schedule 9 rates are made in a rate case where the 75/25 allocator is used and all these other things, right?

A. Correct.

Q. Let's look at your Exhibit 2 for just a second and see if you can help me understand this. Well, these are annual numbers, right, that you've used here?

A. These numbers come from the Company's last general rate case test period, the 12 months ending June 2010.

Q. Okay. There's nothing here that shows revenues from sales month by month?

A. No.

Q. And column 9 shows the -- shows what?

A. Column 9 is a -- what we have done in column 9 is we have taken the megawatt hour forecast that's contained in column 4 and grossed that up by the appropriate loss factors for those kilowatt hours that are served at secondary voltage, that's column 6, primary voltage, column 7, transmission voltage, column 8, to get total kilowatt hour sales at the -- or total kilowatt hours generated at the generator, rather than kilowatt hour sales at the meter.

Q. Okay.

A. And that is then used to determine the overall ECAM rate.

Q. Well.

A. Overall average --

Q. Let's back up for a second. It's been used, yes, but what have you done? You've taken each class's contribution to the total generation to come up with each class's responsibility, right? For the -- for this hypothetical 10 million that you're trying to recover?

A. Can you repeat that, please?

Q. You have taken each class's contribution to the total generation to come up with their portion of responsibility for the 10 million that you're trying to recover?

A. That's the allocation across the rows. The total kilowatt hours are based on the kilowatt hour sales by voltage, regardless of class.

Q. Right. But each class has a different generation in column 9, so they're contributing differently to the bottom-line generation. And it's that proportion that lets you allocate across the classes. Grossed up for, as you say, losses from transmission -- or from voltage?

A. Well, each class's usage is grossed up for losses. There's an overall average 4.72 -- .0472 cents-per-kilowatt-hour amount that is applied to all generation kilowatt hours. Those are then grossed up for the losses.

And based on the class, how many kilowatt hours it has at different voltage losses will determine its total kilowatt hour allocation and its total rate allocation.

Q. Right, okay. And there's no seasonal distinction here in this allocation, is there?

A. These are annual numbers. The seasonal distinction is in the rate design.

Q. There's no seasonal -- well, there's no seasonal data here, is there?

A. These are annual numbers that came from the Company's last general rate case.

Q. Okay. Well, so but in it you are devising rates to recover monthly deviations in net power costs, aren't you? And this kind of thing doesn't pick up the monthly deviations, it's just annual?

A. The ECAM mechanism looks at the annual amount of net power costs in rates, and then the annual actual amounts, and computes the deviation.

Q. Annually? Does, does it accrue it monthly?

A. I believe the ECAM filing, the proposal is to file the annual changes.

Q. And you --

A. Which are based on daily, or monthly, or any other period.

Q. Okay. Well, let's talk about how that's done for just a minute. You're aware that the Commission's order in this docket allowing deferred accounting requires the Company to record net power cost data in sufficient detail and granularity to permit whatever ratemaking treatment may ultimately be awarded by the Commission.

So is the Company accruing that daily?

MR. MONSON: So you're asking in a deferral account as opposed to in our proposed ECAM; is that what you're referring to?

MR. EVANS: I'm asking how the Company is tracking the NPC data.

Q. (By Mr. Evans) What we have here in this Table A is a annual gross. And you say that somehow it's gonna reflect seasonality, but it doesn't. It does -- I mean, I'm saying -- I'm asking you, where is the seasonality reflected in this? Where is the monthly change in net power costs?

A. The seasonality is reflected in Exhibit 1.

Q. Yeah, but that's from base rates.

A. No, that's for the ECAM adjustment. It shows --

Q. You --

A. -- that there are seasonal rate differentials.

Q. It shows that there are seasonal rate differentials which are those that were worked up in the rate case. They're not reflective of the monthly actual net power costs they're reflective of the base net power costs, aren't they?

A. They reflect the allocation in Schedule 9 of the annual net power cost differential that's applied to Schedule 9, and then is shaped by the Schedule 9 rate design to reflect the seasonality in rates for Schedule 9.

Q. Yeah, but that was from the rate case. If the seasonality next year is different, this won't pick it up. If in, if in the ECAM cost recovery the seasonality is -- of costs is different than it was in the rate case you don't intend to pick it up through this, do you?

A. We intend to pick it up through customer usage. When customers -- these rates are designed with seasonal component in them.

When customers then go forward and use energy, if they are using more energy in the summer months they are paying the higher ECAM rate in the summer months. If they're using more energy in the winter months they're paying a lower ECAM in the winter months.

Q. But you're not even tracking the difference month by month. You're just --

A. I don't agree with that. I know we just provided to the Commission the first six months of ECAM deferral. So I, I don't do the tracking, but I'm certain that we're tracking it at least month by month.

Q. Okay. But then what you're proposing here is that you accrue the actual net power costs, the deviation from what's in the rates each month, right?

Do you accrue the deviation from what's in rates every month?

A. I believe we do, yes.

Q. And you put it in a bucket?

A. And at the end of a 12-month period we make a filing to recover --

Q. And you pull it out of the bucket.

A. -- that amount. Which is --

Q. But when it comes out, when it comes out of the bucket it has lost all -- any aspect of seasonality that it had because it's just one number, isn't it? It does not reflect what happened month by month by month as it went into the bucket?

A. I mean, this, this is true the same for any other kind of rates. General rates, if we have a test period of data that we use to design rates and customers don't use energy in the way that the test period shows, we are also not recovering those costs from those customers that were put in the rates.

It's true for any type of rate, and ECAM is just one of the same type. It's an overall -- it's a fairly simple rate. It's meant to be simple and easy to administer and understand by customers. And it's intended to capture those costs and reflect them in rates.

It's not going to be perfect for each customer or each account holder month by month. It's intended to be an overall rate designed to reflect the seasonal rates that are -- that the Company has, and to implement the ECAM through that mechanism.

Q. But there is no attempt, even, to calculate what has caused the costs month by month when you pull the costs out of the bucket at the end of the year, is there?

MR. MONSON: Objection, asked and answered.

MR. EVANS: Okay.

Q. (By Mr. Evans) So is that a no? There's no attempt?

MR. MONSON: Objection, asked and answered.

CHAIRMAN BOYER: Let's let him answer this one, if he can.

THE WITNESS: As I indicated, I believe the attempt to reflect the cost is reflected through the rate design.

(Pause.)

Q. (By Mr. Evans) Mr. Griffith, I have just handed you what we will call, I guess, UIEC Cross Exhibit 2. Do you know what this is?

A. It appears to come from the last general rate case. It's the monthly weighted factors by rate schedule by month.

Q. Okay. I've handed this out to illustrate what the difference will be in smearing the net power cost deviation annually versus monthly. Let's look at sales, kilowatt hour sales for the residential class in July.

Let's just pick a month, July. Because there should be some difference in usage in that month. Residential total is what?

A. Eight hundred and ten thousand megawatt hours.

Q. Okay. Out of how many total for the month of July, about 2 million 279? Would you accept, subject to check, that's about 35 percent, residential, of the total?

A. Sure.

Q. So the residential -- so during the month of July the residential class had 35 and-a-half percent of the sales. And then if we were to do the same with Schedule 9, which is 327, 328 over the total, that works out to be about 14.4 percent. Would you accept that subject to check?

A. Yes.

Q. And then go to the end, the Total column, and let's do the same percentages and see what the annual is. For residential it would be that 7,265,127 number, over the annual total of 23,161,584. Do you see that?

A. Yes, I do.

Q. And that would be about 31.4 percent, would you accept?

A. Yes.

Q. And let's do the same for Schedule 9. That would be the 3,853,000 -- 854,000 over the same annual total. Which would be about 14.4 percent of the total, would you agree, subject to check?

A. Yes.

Q. So if you collect for these costs on an annual basis, Schedule 9 would be paying -- I'm sorry, I gave you the wrong number.

Schedule 9, last column, 3,853,880 over 23,161,584 is 16.6 percent. So if you collect annually they're paying 16.6 percent of the costs of the energy sold in July; wouldn't that be true?

A. They're paying?

Q. You are collecting from Schedule 9 customers, for July energy, 16.6 percent of July's energy comes from Schedule 9?

A. Well, this clearly shows that residential load is more seasonal than Schedule 9.

Q. That wasn't the question. What I asked was, isn't it true that if you use the annual numbers to design rates, that in this example you would be collecting from Schedule 9 customers 16.6 percent of the energy in the month of July?

A. That, that could be the case.

Q. When they only caused 14.4 percent of that cost?

A. I think if you look at the rate spread proposal you see that Schedule 9 is paying a lower average rate than sched -- than residential class is in our rate spread proposal.

Q. Well, what I'm -- the point I'm trying to make, I think, is that the Company has not done this month by month, have they?

A. The Company --

Q. They haven't worked up costs month by month -- or rates to follow the cost causation?

A. The Company's proposal is for an annual change.

Q. So you total up the annual NPC deviation and you just smear it across base rates without regard to what caused the deviation month to month, correct?

A. And most likely the deviation month to month could cut both ways. If July is a cool month it could go one way, and if July is a warm month it could go the other way.

Q. Exactly. But wouldn't it be better to be accurate than just to smear the whole thing across the year? Why not?

A. Our proposal was, was one that's similar to setting overall rates that customers pay, base rates. We don't do these on a monthly basis. We don't track monthly costs for distribution and transmission costs. We allocate these costs and we design them on an annual basis, and that's what we're doing here.

Q. But you can track them monthly, can't you? In fact, you told the Commi -- the Comission ordered you, in the deferred accounting order, to do it.

A. You could track all rates monthly.

Q. Well, this is all we're doing is ECAM. All we're doing is the deviation from base NPC. You could track that every month, couldn't you? And you could track it by schedule, couldn't you?

A. I think at some point these become administratively burden.

Q. But Mr. Griffith --

A. Burdensome.

Q. -- can you answer the question?

A. You could track them.

Q. Yes.

A. You could track them -- with unlimited resources you could track costs by any time period.

Q. Or with smart meters, maybe, it might be cheaper. But we don't have them here, right?

A. We aren't paying the cost of smart meters here.

Q. Right. But it is possible to track these costs month by month and allocate them more accurately than the annual method you proposed, right?

A. It's possible to track them over any time period with the right amount of resources.

Q. Well, if you don't -- and isn't it true the more accurately you track these the better you are able to separate to give proper price signals?

A. I think that's true for all rates.

Q. Okay. So why wouldn't it be better -- a better price signal and also more true to real cost-based pricing to charge for excess power in the month that the costs were incurred, based on the class usage during that month, rather that smear it over the whole year?

A. I didn't know we were smearing things.

Q. Well --

A. But I, I think, again, this is in line with other types of rates that the Company has in place for its customers. It's in line with other tracking mechanisms, other ECAMs in other states. And we believe it's a reasonable way to track these costs.

Again, as I indicated through the rate design, customers who are paying the -- Schedule 9 customers pay lower rates in months where they have more usage in the winter months than they would in the summer months.

Q. Well, that, that's what you keep saying. But as we point out here, it's really not the case. If you have a customer that's not using in July at all, if you have a customer that's off -- a Schedule 9 customer that's off the system in July, they're gonna be paying a lot.

Because they'll be paying 16.6 percent of the July cost of power when they didn't draw any power in July. Because you have allocated the -- because your allocation allocates July across the whole year, so that they're paying for July deviations in power costs in December and January, aren't they?

A. If the customer is off the system in July they wouldn't pay 12 month -- for 12 months worth of usage.

Q. Well --

A. So they wouldn't pay 12 months worth of costs.

Q. They -- if they were off the system last July and didn't incur any costs they'd be paying for the deviation from NPC in their December rate?

A. That's true for any customer who was off the system in July. Who was on vacation or anything else.

Q. Right.

MR. EVANS: Okay. No more questions, thanks.

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

Are you prepared now, Mr. Proctor?

MR. PROCTOR: I am. However you'd like to do it.

CHAIRMAN BOYER: All right. Well, let's continue with Mr. Dodge. I know he's ready to go.

MR. DODGE: I have no questions.

CHAIRMAN BOYER: Okay. See how well that worked?

Mr. Michel?

CROSS EXAMINATION

BY MR. MICHEL:

Q. Just a quick question. There was a little discussion just now about price signals. Even if you collected these and adjusted the ECAM charges monthly instead of annually there'd still be a couple months lag between when costs were incurred and when they were charged through, right?

A. I'm not really sure how we would implement monthly pricing. If we would implement it two months after, or we'd file with the Commission each month to implement the ECAM price two months later, or how we would do that. I don't --

Q. But --

A. I really don't know. And I don't see any proposal for that either.

Q. Well, I guess my question is, it does take you some time from the time that those costs are incurred to have them accounted for and, and to develop a cost adjustment for them to recover them, right?

I mean, I think at some point I saw 90 days or something from the time that there was an order in this case to when you could start collecting?

A. Yes, it clearly takes time to adjust it. I don't think -- we're certainly not -- wouldn't want to propose that we would be changing rates on a monthly basis to reflect costs of two or three months ago. If that's what you're asking.

Q. Well, my only question is, because of the lag that there would be if you did have a monthly adjustment, it's not gonna be sending an appropriate price signal, even if you could do a monthly adjustment instead of an annual?

A. That's correct. It wouldn't be

instantaneous.

Q. So July usage might be sending a price signal in --

A. October.

Q. -- September or October?

MR. MICHAEL: That's all I have, thank you.

CHAIRMAN BOYER: Thank you, Mr. Michel.

Ms. Hayes?

MS. HAYES: Thank you, no questions.

CHAIRMAN BOYER: Okay, thank you.

Back to you, Mr. Proctor.

MR. PROCTOR: Thank you. And thank you for giving me the time, because I think it might go much smoother. Which I'm sure everyone will be pleased about. May I approach?

CHAIRMAN BOYER: You may.

CROSS EXAMINATION

BY MR. PROCTOR:

Q. Mr. Griffith, what I'm handing you is a copy of Mr. Brubaker's rebuttal and surrebuttal testimony and. I've marked with -- it's on both sides. I'm trying to save the planet.

And I put a yellow sheet at the separation between the two, and in particular to mark data responses that Mr. Brubaker included in his rebuttal testimony. Do you see that?

A. Yes.

Q. I have some questions first about the data requests that are in the testimony. And in particular 14.7? It's UIEC Exhibit 5 is the way it's listed at the top right-hand corner.

A. I see that.

Q. Did you assist in preparing the answer to that data request?

A. Yes.

Q. In the response, the first paragraph, the last sentence, it says:

> "The Company's proposed ECAM structure is on a monthly basis, reflecting changes from one month to another."

Am I correct that you would, for example, compare the actual January 2010 net power costs with the base 2010 net power costs?

A. For January?

Q. For January.

A. Yes.

Q. And when base rates are set I assume it would be by a general rate case?

A. That's correct.

Q. And so that specific base rate that was forecasted for that month is available and it's part of the ultimate base rate? That's a bad question.

Do you basically calculate that based on the forecast load times the price?

A. I believe so. And there's an amount of base net power costs in rates for each month.

Q. And so as the year progresses, February is compared to the base in Feb -- the expected in February, and so forth?

A. Right. And these are all on a dollar-per-megawatt-hour basis.

Q. Okay. And from that amount you get a total differential between base and actual. And that would be across all classes; is that correct?

A. It's a total amount.

Q. Okay. And you stated that you then would apply that as an ECAM adjustment as a cents per kilowatt. And that would be --

A. Hour.

Q. Per, per kilowatt hour, over all classes; is that correct?

A. Yes.

Q. So the cents per kilowatt is -- well, let's say it's 2-cents-per-kilowatt adjustment. So it's gonna be 2-cents-per-kilowatt adjustment whether you're a residential customer or Schedule 9 customer; is that correct?

A. No.

Q. Explain that.

A. That is contained in, again, my exhibit -- rebuttal exhibit -- which was another reason I prepared this -- Exhibit 2, Exhibit 1 and 2.

Two shows the actual rate values proposed for a $10 million ECAM adjustment across rate schedule classes and by voltage level. The actual rates are shown in columns 12, 13, and 14 for the respective classes. They're -- "S," "P," and "T" stand for voltage levels. Those are secondary, primary, and transmission.

Residential customers receive service at secondary voltage off the distribution system. And their rate would be .0514 cents per kilowatt hour in this example. A primary voltage customer, such as Schedule 6 customers, rate would be .05 cents per kilowatt hour. And these are pretty small dollar amounts -- I mean small rate values also. And then Schedule 9 would be .0489 cents per kilowatt hour.

These are all based on the same underlying rate, which is .0472. Which is at the generator, before voltage losses have been applied to reflect the differences in loss values for secondary, primary, and transmission voltage.

Q. So on a -- well, going down to Schedule 17, I believe, Electric Furnace. It's on your Exhibit SR2. Or 2SR, pardon me. Do you see that? It's 7 -- line number --

A. Schedule 21? Right.

Q. Yeah. You've got three rates: .0514, which is for residential, .05, and then .0489. So does that mean that, to the extent that electric furnace has an office and runs a fan and air conditioner, they're gonna pay .0514?

A. What it means is that there -- we have electric furnace customers, some of whom receive actually primary voltage service, so they would pay .05 cents. Some of whom receive their -- so the amount of service, or kilowatt hours, is in columns 6, 7, and 8.

So if you look at row 17, column 7, you'll see 472 megawatt hours are at primary voltage, 2,897 megawatt hours are at transmission voltage. And then those customers who receive service at those levels would pay either the primary or the transmission voltage rate.

Q. Okay. Now, and on 1SR to your surrebuttal testimony, page 1 -- the only one -- you reflected the ECAM adjustment for Schedule 9. You've separated that out from your Exhibit 2, correct?

A. Yes. I use the data from Exhibit 2 to reflect the $1.8 million proposed rate increase that would occur for Schedule 9 if a $10 million ECAM adjustment occurred. And then showed how the rate design would work based on the shaping of on and off peak usage.

Q. Now, the current Schedule 9 provides for the shaping that you've listed in the far left-hand column, does it not? On peak May to September, on peak October to April, and then off peak on all months during the year?

A. That's right.

Q. And is that where the seasonal adjustment is -- appears in the Company's ECAM proposal?

A. In rate design that's where the seasonal adjustments occur, are through the May through September and October through April on-peak rates and the different values that are shown there.

Q. And so the proposed ECAM price, which is in column 4, is an adjustment to the price -- is that the amount of the adjustment to the price that would have been paid as a base rate?

A. That's the actual ECAM surcharge rate that would be charged.

Q. So it still reflects, however, that on peak April to -- October to April is less than on peak May to September, even with the ECAM adjustment?

A. Yes. And in fact, the rev -- the percentage differences are shown in column 9. So that the summer on-peak rate is 43 percent higher than the off-peak rate.

The October-through-April on-peak rate is 7 percent higher -- well, I'm sorry, that's actually higher than the average rate. And then the off-peak rate is 10 percent lower than the average rate.

Q. But it still steps down with respect to peak summer months --

A. Correct.

Q. -- peak non-summer months, and then off peak under anytime of the year, correct?

A. Yes.

Q. All right. As a side question, if due to load changes, load reduction, the $1.798 million is not recovered in -- with that ECAM adjustment, what happens to the difference?

A. The difference is retained in the balance.

Just the same as if loads were higher, the balance would be reduced sooner. If loads are lower, the balance is reduced more slowly.

Q. If you could please turn to page 3 of Mr. Brubaker's rebuttal testimony. It's the first testimony you've got in that package I gave to you. The very top, beginning -- it's his bullet point 5.

The last phrase in that bullet point 5 accuses the Company of completely ignoring:

"...the varying responsibility of customer classes for consumption in individual months."

Do you see that?

A. Yes.

Q. In the present rate structure do those rates account for the responsibility of customer classes for consumption in individual months?

A. Yes and no. They don't for individual months. We certainly do for summer and winter months. We have seasonal rate structures which charge residential customers, and, as we indicated, the time-of-use customers.

And all our customers in the major rate schedules are charged higher rates in the summer months than in the winter months. Higher or the same.

Q. Were you the primary witness who responded to Mr. Brubaker, or was it you and Mr. Duvall combined?

A. I don't recall. I know I responded to what I responded to.

Q. Well, in your judgment, sir, what do you believe Mr. Brubaker is intending to layer upon the Company's propose -- ECAM proposal with respect to assigning responsibility to various customer classes?

A. I think he's proposing to layer on a degree of complexity that we did not propose in this filing, which would make it very difficult to administer and to apply to our customers.

We propose what we, what we indicated, Mr. Duvall indicated, is a pretty -- fairly simple mechanism to reflect the differences in net power costs between what's allowed in rates and what we are actually paying. And to recover those differences, or refund those differences to customers through the ECAM.

Q. Do you believe that Mr. Brubaker is attempting to persuade this Commission to assign a greater portion of the ECAM adjustment to residential class in the summer months because they contribute more to the overall load that the Company serves in the summer months?

A. Well, I'll let Mr. Brubaker speak for himself on that. I think that's one interpretation, yes.
Q. If you could turn to page 10 of Mr. Brubaker's testimony, please. On line 12. There's that "smearing" word again. Do you understand what --
A. I'm sorry. What page, please?
Q. That would be page 10 of rebuttal. Line --
A. Line 10?
Q. Line 10 uses the word "smearing." Do you know what Mr. Brubaker means by the term "smearing"?
A. Well, it doesn't sound very good.
MR. EVANS: Well, you know Mr. Chairman, I'm gonna have to object to Counsel asking this witness what Mr. Brubaker thinks.
MR. PROCTOR: Well, let me ask it this way then. Please. I'm sorry, Mr. Evans.
Q. (By Mr. Proctor) Mr. Evans asked you a question as to whether or not the Company was smearing all the costs over all classes. What do you understand the term "smearing" to mean?
A. Smearing is making things unclear or making them -- fogging them over.
Q. He says that in connection, on line 12, with the direction of the deviations, i.e. above or below

the base amount. Do you see that?

A. Yes.

Q. Do you know what Mr. Brubaker intends as a solution to his --

MR. EVANS: Objection. Objection, asking this witness what Mr. Brubaker intends is improper. He's not gonna get an answer that the Commission can rely on.

Q. (By Mr. Proctor) Do you know, from reading Mr. Brubaker's testimony, what his solution to that smearing of the direction of deviations would be?

A. No.

Q. If you could turn to page 11? The question is asked: "How could this problem be addressed?"

And it's -- the answer you see there: Breaking the year into three segments -- summer, winter, and spring and fall -- deviations would be accumulated by season. Let's stop there.

Would that be consistent with the present ratemaking method that the Company employs in its general rate cases?

A. No.

Q. And what would be the problem with adopting that into the ECAM adjustments?

A. I think it, again, starts to increase the level of complexity of the, the ECAM. I think it could create perhaps unintended consequences.

But rates are set on an annual basis. They have a seasonal shape to them. And what we're proposing for the ECAM is that the ECAM be set on an annual basis and that it have that same seasonal shape.

Q. Now Mr. Griffith, I don't want you, or the Commission, or anyone to think that by asking these questions the Office agrees that an ECAM should be adopted. I'm sure you understand that's the Office's position.

But in the event that it was -- and I want you to assume that there is some sharing mechanism adopted by this Commission in some percentage, in some proportion, for the ECAM adjustment. Would it be possible to have such a sharing arrangement and still maintain these seasonal separations and month-to-month calculations as Mr. Brubaker has proposed?

A. I think, as I mentioned to Mr. Evans, anything is possible, but it would certainly make it much more difficult. We would have to track the sharing mechanism by month. And I'm not sure how that would work even, so.

But at the end of the day I believe you would still come up with an amount of dollars that would be allocated and would be spread back to customers based on a rate spread proposal. I think that something very similar to what the Company proposed would be a reasonable way to do that.

But it would be very difficult on a month-by-month basis with sharing mechanisms and what other -- whatever other calculations would need to occur to these. Particularly if there were sharing in some months and not in other months, and that would be different than sharing throughout the year, and so forth.

Q. If you -- do you still have the UIEC Exhibit 2? It is the, it's from the 2009 general rate case. It's entitled: "Rocky Mountain Power Cost of Service By Rate Schedule." Do you see that?

A. Yes.

Q. And Mr. Evans asked you a number of questions about the July '09 loads for residential compared to Schedule 9. I'm gonna ask you to do the same thing. Look at April 2010, where the residential total for that month was 489,758. And is that megawatts?

A. It's megawatt hours.

Q. Megawatt hours? And Schedule 9 is 328,721. Would there be -- is that a month, for example, where the -- it could be said that the residential ratepayers would be paying more than the causally costs -- causally caused NPC costs?

A. It appears it could be, yes.

Q. And that would also be true in October of 2009, would it not? Where the residential total is 505,000 and the, again, the Schedule 9 is 336,000?

A. It could be. But however, as I've argued, each month the usage is multiplied times the ECAM rate for that month. So in a month of low usage for any class the amount of ECAM revenues that are recovered are multiplied times that usage amount.

Q. So if a customer drops off the system, as Mr. Evans described, that customer pays nothing in that month?

A. That's correct.

Q. And they pay for what they use in the later months?

A. That's correct.

Q. As an adjust -- adjusted as per the ECAM; is that correct?

A. They pay the ECAM rate for that month of usage.

MR. PROCTOR: Mr. Griffith, thank you very much.

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

Mr. Evans, before we hear from the Commission questions do you wish to move admission of exhibits -- Cross Exhibits 1 and 2?

MR. EVANS: I do. Thank you, Mr. Chairman.

CHAIRMAN BOYER: Are there objections to the admission of UIEC Cross Exhibits 1 and 2?

Very well, they are admitted.

(UIEC Cross Exhibit Nos. 1 and 2 were admitted.)

CHAIRMAN BOYER: Thank you. Commissioner Allen?

COMMISSIONER ALLEN: No questions.

CHAIRMAN BOYER: Commissioner Campbell?

COMMISSIONER CAMPBELL: I just want to clarify, I have a clarifying question on the 38.8 million that you mentioned right at the end of your summary. Is that a Utah-allocated number or is that a total company number?

THE WITNESS: That's a Utah-allocated number.

CHAIRMAN BOYER: And I have no questions so thank you, Mr. Griffith. You are excused.

Your next witness, Mr. Monson?

MR. MONSON: Mr. Bird.

CHAIRMAN BOYER: Mr. Bird, you have not been sworn yet in this proceeding?

THE WITNESS: I have not.

(Mr. Bird was sworn.)

CHAIRMAN BOYER: Thank you. Please be seated.

STEFAN A. BIRD,

called as a witness, having been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MONSON:

Q. Mr. Bird, can you please state your name and position for the record?

A. Stefan Bird, senior vice president PacifiCorp Energy.

Q. And did you prepare rebuttal testimony in this case that was -- which contained two exhibits and was filed on September 15, 2010?

A. Yes.

Q. Do you have any corrections you wish to make to that testimony?

A. No, I do not.

MR. MONSON: We would offer Mr. Bird's rebuttal testimony and exhibits.

CHAIRMAN BOYER: Any objections to the

admission of Mr. Bird's rebuttal testimony, together with exhibits?

They are admitted.

(Stefan Bird rebuttal testimony and attached exhibits were admitted.)

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

A. Yes, I do.

Q. Could you please provide that?

A. Good afternoon Chairman Boyer, Commissioner Campbell, and Commissioner Allen. My rebuttal testimony is provided from my perspective as the executive responsible for overseeing the Company's net power cost risk management activity, the dispatch of the Company's generation fleet, wholesale and electricity and natural gas purchases and sales, and sales of renewable energy credits.

So in short, I see -- oversee a significant portion of the operations that will be impacted by your decision in this proceeding, so I'm well positioned to speak to the practical implications of our mechanisms we propose.

The primary question before the Commission is whether or not the Company's proposed ECAM is in the public interest. That decision hinges on whether or not the Company's proposed ECAM provides the best incentive for the Company to manage net power costs, and whether or not the Company's proposed ECAM allows for recovery of prudently-incurred costs and an opportunity to earn its authorized rate of return.

The Company's testimony in this proceeding demonstrates that both of these conditions are satisfied and that the ECAM is, therefore, in the public interest.

The Company's proposed ECAM, as other witnesses have discussed, is founded on prudence. A very simple and powerful incentive which is in the public interest and achieves the regulatory compact.

In regard to the concept of risk transfer, as some have alluded, it's my opinion it does not transfer risk to customers as long as we assume that the current forecast that's used in setting rates is presumed to represent the cost that the Company would incur if it operated and managed the portfolio prudently.

I would agree that a forecast budget limit is certainly a powerful incentive. But I would also say that only makes sense and works if there are enough levers to pull to offset the uncontrollable factors that are otherwise inherent in that forecast.

And as Greg Duvall's testimony has shown, the record is pretty clear that we haven't been able to pull that off. And thus we're here proposing an ECAM to better align customer interest for prudence.

In contrast, other parties' proposed ECAM designs incorporate what I would call "perverse" or "meaningless" incentives that are not in the public interest, and violate the regulatory compact by simply assuring that the Company cannot recover its prudently-incurred costs.

What are things that all parties seem to agree on? It appears to me that everyone agrees that it's beyond reasonable debate the large aspect of net power costs are volatile, that are unpredictable, and are largely outside the Company's control.

All parties acknowledge the significant hedging activity of the Company. And I'll agree it is correct to recognize that the Company's hedging activity mitigates a significant amount of risk associated with volatile prices for a given forecast volume.

This benefit is largely transferred to customers today through rates, based on a forecast that incorporate a significant amount of hedging activity for a given forecast test period.

However, where parties seem not to fully appreciate -- and what is critical to understand in order to design an appropriate and effective regulatory mechanism -- is that it is impossible to accurately predict the volume of many net power cost components in advance.

For example, wind, rain, temperatures, load, are all good examples. And therefore the forecast costs associated with these unpredictable volumes are necessarily wrong, and moreover, cannot be hedged. So it is generally pointless to introduce the idea of an incentive, other than prudence, to manage these variables.

The Company's ECAM proposal is founded on this core principle of prudence. Now, I'd personally be in favor of incentive mechanisms in cases where two basic requirements could be met. One requirement would be that the Company has the ability to control or heavily influence the outcome.

And two, the individuals making decisions can internalize that incentive when they're making decisions. For example is when a trader is making a decision to purchase power, sell power, buy gas, or sell natural gas.

However, neither of those two requirements are met in regard to the Company's post-rate case decision making to manage volatile and unpredictable net power costs.

As an example, on any given day or hour a trader will simply transact at the market cost to serve customer load, irrespective of whether the cost to serve that customer is higher, and whether or not the customer load is higher than what was forecast in rates many months prior.

Similarly, the trader will dispatch plants when they're more economic than the alternative to purchase power. So it should be apparent that the only decision driver for that trader is prudence. A sharing band or deadband is simply no incentive at all, and would only serve the purpose of disallowing prudently-incurred costs.

Now, why else should the Commission have confidence in the incentive of imprudence on this company? First of all I would highlight the Company's willingness to invite focus on its activity.

And an after-the-fact review demonstrates we have nothing to hide. And we in fact welcome proper scrutiny and heightened focus on actual results, instead of the abstracts that occur around complex model forecasts in the current environment and approach.

The evidence of the prudence incentive and our company's management culture to aggressively achieve results for customers is particularly evident also in the facts surrounding major resource additions.

As an example, the Company originated and closed the Chehalis acquisition in 2008 instead of just relying on a regulatory approved RFP process. This resulted in a huge savings for customers. This Commission supported that transaction and granted a solicitation waiver, a pre-approval, and rapid order. Other parties challenged the Company's decision.

Shortly thereafter, the Company terminated the Lakeside II transaction in February of 2009 because the Company believed it was very likely to be high cost versus future alternatives. Despite this project passing several regulatory tests, including a rigorous RFP, independent evaluative support, and was consistent with the most recent IRP.

And, as the Division noted in this docket, that decision to terminate was strangely against the Company's natural incentive to earn a return on assets.

MR. DODGE: Mr. Chairman, I apologize, I need to object here. I thought this was a summary, and I don't believe anywhere in Mr. Bird's testimony did he address anything he's summarized so far. It appears to be live surrebuttal. And I don't believe the Commission typically allows that.

CHAIRMAN BOYER: Well, that may be partially true and partially not true. But could you restrict yourself to a summary of the testimony you've already filed?

THE WITNESS: Sure. And my purpose there was simply to provide context for the prudence incentive. But in regard to certain parts of my testimony, I did comment in my testimony about the Company's hedge activity. There's been much attention on that throughout this case.

And while my rebuttal testimony emphasizes that the purpose of hedging is to mitigate the risk of adverse price movement and it's not particularly important after the fact whether the Company's hedge results for a particular period of time were favorable or unfavorable, my rebuttal testimony nonetheless corrects the Division's initial report of the Company's hedging results from 2006 to May 2010 to demonstrate that the Company's hedges resulted in a gain of $305 million as opposed to a loss in this period.

And it was important to correct this calculation because the Division's concern about hedging, based on its initial misunderstanding, seemed to fuel other parties' recommendations that an ECAM should not be implemented until hedging and market reliance were explored more thoroughly.

Perhaps this correction will impact their view, although again I would emphasize that the focus on whether or not hedge results are favorable or unfavorable is misplaced.

So in summary, the Company's proposed ECAM is a mechanism that provides as an extremely strong and effective incentive to the Company to manage its power costs. And allows the Company to recover its prudently-incurred costs; no more and no less.

And provides customers with 100 percent of the benefits of renewable energy credit sales and other upsides that the Company may be able to deliver post to a general rate case.

Q. (By Mr. Monson) Does that conclude your summary?

A. Yes.

MR. MONSON: Mr. Bird is available for cross examination.

CHAIRMAN BOYER: Thank you, Mr. Bird.
Mr. Proctor?
MR. PROCTOR: Yes.

CROSS EXAMINATION

BY MR. PROCTOR:
Q. Mr. Bird, on page 9 at line 193-194 of your rebuttal testimony you made the statement:

"There is no proposed or anticipated change to the hedge program."

Is there anything within any Commission order that would preclude you from changing that program?
A. Not to my knowledge.
Q. Is there a Commission order approving your hedging program?
A. Not to my knowledge explicitly on the program, no.
Q. If you could turn -- and I believe this is your Exhibit 1R. The PacifiCorp Energy January 2006 to May 2010 Gains and Losses on Hedges. Am I correctly referring to that as 1R?
A. Yes.
Q. Okay. Um --
A. Or is it?
MR. MONSON: I think it's 2R.
THE WITNESS: Yeah, 2R, yeah.

Q. (By Mr. Proctor) It doesn't say, that's why I wanted to know.

A. Yeah.

Q. You referred to -- in your testimony, actually, on Page 7 you referred to the 3.4 -- or $304.8 million benefit as indicating that your hedging -- the Company's hedging program was effective. That's on Page 7 of your testimony, correct?

A. Could you refer to a particular line?

Q. Oh, you bet. I'm sorry. Line 193 and 194. I thought I did. Oh, excuse me. No, I'm sorry, I -- it's line 155-156.

A. My testimony says, Does this gain of $304.8 million indicate that the program was effective? And my answer is no.

Q. So it's not an effective program?

A. No. The fact that we had a gain of $305 million is not the indication that the program was effective.

Q. Is there any indication in the amount of your total gains and losses in the last -- since 2006 that would indicate either it's effective or not effective?

A. No, that would not be the right question to ask for effectiveness.

Q. But one of the things that we do know is that in that same period of time you -- the Company reported a gain of $706 million on your electricity hedging; is that right? Am I classifying that correctly?

A. I don't recall what the number was, but it would --

Q. Well, look on 1R.

A. Okay.

Q. Two-R, pardon me.

A. Okay. And you're referring to what number, I'm sorry?

Q. The May 2010 cumulative gain --

A. Yep.

Q. -- or loss from January 2006.

A. Yeah, 706.8 million.

Q. Point 8 million dollars. And a loss of 401.9 million on natural gas hedging, correct?

A. Correct.

Q. So we have a swing of $1.1 billion on your electricity and natural gas hedging since January 2006 to May 2010, correct?

A. Correct.

Q. All without the benefit of any order from this Commission approving your hedging program; is that correct?

A. I don't know if that's a fair characterization or not. We provide our hedge policy, you know, every year, I believe, in numerous states as part of these rate cases.

And my understanding is the hedges that the Company has entered into are loaded into the net power costs that are filed and become part of rates. And so as part of that I would expect parties would be reviewing all those contracts as part of that standard review.

Q. Well, it may not be fair, but it is in fact true that all that's taken place without benefit of a Commission order approving your hedging program, correct?

A. I'm not aware if there has been a specific order. I'm not aware of one.

MR. PROCTOR: Thank you very much, Mr. Bird.

CHAIRMAN BOYER: Thank you, Mr. Proctor.

Ms. Schmid?

MS. SCHMID: Thank you, I have a few questions.

CROSS EXAMINATION

BY MS. SCHMID:

Q. Good afternoon.

A. Good afternoon.

Q. Just to clear a couple things up. You understand, of course, that ratemaking is more than the simple pass through of costs and then recovery of those costs, correct?

A. Yes, that's a fair statement.

Q. And that a company, a regulated utility, is not guaranteed cost recovery. But instead, through the regulatory compact, has the opportunity to recover prudently-incurred costs; is that correct?

A. I don't know what the precise, you know, words are. I understand we're allowed to recover our prudently-incurred costs and we have an opportunity to earn an authorized ROE.

Q. There's no guarantee, though, that you'll be able to recover all costs; is that correct?

A. I understand there's no guarantee we'll achieve our authorized ROE.

Q. Let's talk about things that go into net power costs for a moment. You said there are things that the Company and -- PacifiCorp said that there are things the Company can't control. Is the cost of coal, of purchasing coal, in net power costs?

A. Coal is one of the net power cost components, yes.

Q. To the extent that it is not confidential, can you give us a percentage of how much of the coal purchased is Company-Owned coal?

A. I don't know what that percentage is off the top of my head. I mean, a large percentage is mined by the Company's mines, and a large portion is contracted with third parties.

Q. So the Company voluntarily entered into contracts to purchase that coal; is that correct?

A. Yes.

Q. With regard to plant planned outages, does the Company have control over when those planned outages will occur?

A. Yes, it has generally a fair bit of discretion on planning outages.

Q. And what sort of factors does the Company consider when it determines when a planned outage should be scheduled?

A. There are lots of factors. You know, economics would be one factor. We want to time the outage at the lowest alternative cost of replacing that power. Oftentimes, though, you don't have the luxury to park it exactly there.

You have numerous outages that have to happen in a defined period of time. And you may also have parts warranties and so forth that particularly affect combustion turbines, for example. A certain number of hours go by and then they must be replaced.

And so you need to time the outage to ensure that you stay within the, at least the authorized and recommended manufacturer parts limitations. As a couple examples.

Q. So you can -- within those constraints you can influence when the planned outages are, correct?

A. Yes, to a degree.

Q. And so hence you can influence, to a degree, the impact on net power costs; is that correct?

A. That is correct.

Q. Can the Company control which plants dispatch on a given day?

A. Yes, it does.

Q. Is there a different cost for the power dispatched from the different plants, or is it a universal cost? I know that sounds like a dumb question, but I don't know.

A. Could I ask you to restate the question? I'm not sure I understand the question.

Q. Is there a different cost for power produced from different plants?

A. Yes, there is a different cost for the power produced from different plants. And it's largely driven by the fuel and the efficiency or heat rate of the resource that's generating the electricity.

Q. So we've talked a little bit about things that the Company can control and things that the Company cannot control with regard to net power costs. What plans does the Company have currently in place to increase its control over net power costs over time?

A. I think directionally the Company has less control looking forward than the amount of control we had over net power costs looking backwards. The amount of volatile, uncontrollable, unpredictable resources that are in our system have increased dramatically from where they were, say, back certainly in the '90s. Even in the first part of this decade.

In particular, the amount of wind resources in our system, and not only in our system but in the market overall, has a dramatic impact. Not only on just when the wind blows and when the wind is generating, but when that happens and there's a lot of it, and the rain -- say the rain all comes at once, at the same time.

The hydro -- sorry, the wind comes. That may depress power prices to such a degree that the coal plants are not in the money, which then means I may burn less fuel. Which would push up the cost of -- per-unit fuel cost of the coal facilities, for example.

So everything is highly interrelated. And looking ahead, we have less control as opposed to more.

Q. And agreeing with -- or understanding that. The demands on the system are more complex than they were in the early 1990s when there was the prior pass through; is that correct?

A. Maybe I could "ask demands on the system," so what do you mean by that?

Q. Have changes in the market occurred? Have there been increases, such as, in Utah in particular, forced air, air conditioning, and things like that, so things have changed since then?

A. Yes, certainly things have changed and continue to change very rapidly. The environmental requirements, the market constraints, and how the markets have evolved in general. The demand side programs that we've implemented.

Energy efficiency, and trying to guess at how much of that voluntary activity will come into play. A lot more complication.

Q. So all these seem -- all these things should add up to the fact that the Company has a greater incentive to determine how better to manage its net power costs; is that correct?

A. I wouldn't agree with that relative to, again, I think what seems to be missed is there's a starting point of when we set rates for a forecast period. And, you know, as has been discussed, we're largely hedged for that forecast volume, for that forecast test period.

And we assume everything else is normal. We assume the wind will operate at a historical median. We assume hydro will be at normal median. And we normalize outages very smoothly across the system. And what we know for certain is that's remotely far away from how the world really behaves. And so there's this missing gap on this amount that we talked about what the deferral amount is for the last six months.

That's probably a fair representation of what I would expect the variance to be, typically. Depending on the volatility, again, of all the resources, that we can't predict, and can't forecast, and no one can. So I think it's just a simple way to address the basic issue we have.

But it's a very -- relatively speaking, of the total net power costs, you know, we're not talking about, you know, huge numbers out of a billion or, you know, billion three, whatever things have grown to. You know, something less than a hundred million is probably more typical of what we're talking about in trueing up.

Q. Given that, is the Company engaging in activities to improve the accuracy of its forecasts, or is there no way to do that?

A. If something is inherently unpredictable, I guess by definition then I don't know how you improve the accuracy of a forecast. If I were to go to a third-party supplier and say, Hey, would you supply me with a firm price to take on all this risk? Then I would very much expect them to put a very significant risk premium on that price.

That is not part of our grid net power cost forecast in rates. There is no risk premium embedded in that number. And we don't, you know, incorporate any sort of stochastics. Which you could arguably do and say, Here's a bell curve of possible outcomes. But what we know is we don't know which one of those outcomes is going to occur.

And so again, the Company's proposal is move away from that sort of game theory and simply look at what's really important, which is did we operate in the most prudent way possible. And that's easily auditable after the fact.

And we're not afraid of that. We welcome, you know, focused review on how well we managed and operated the system. And I'm very proud of our team, and we will hold up well in that sort of review.

Q. Are you saying that you can't gain anything from past performance? Or any insight or any trends from past performance?

A. Well, I guess I could put the question back to you, perhaps. I mean, 2009 was one of the worst wind and hydro years on record, and 2010 started out that way.

And so, you know, one person could say, Well, what'd you learn from that? You know, should we forecast a lower hydro, lower wind for the next year? Well, you know, what happened the previous 70 years is kind of what we look at, and we just pick the middle. Not knowing, you know, where it's gonna go.

And you know how good the weatherman is for tomorrow, take a gander how good they are a year in advance. Not so hot. You hear a lot of talk about *El Niño/La Niña*, these sorts of conditions.

It's possible that under a *La Niña* scenario that we're in now -- and we've seen that in September and October, for example -- hydro results might be favorable. Maybe we're on the upswing. If it is, then all that value will pass through to customers.

And again, we're proposing that they should get the full benefit of that. In the same fashion that, you know, we shouldn't be unfairly rewarded or penalized for something out of our control.

Q. And sort of scooting a little bit. Utah doesn't really get hydro benefit, does it? Doesn't that go to Oregon and then, to some extent, Wyoming?

A. I'm honestly not real familiar with how the revised protocol mechanism works. I think other witnesses would do a better job of answering that question.

Q. Okay. Um --

A. And again, hydro is just one easy example because it's into a -- you know. Wind, certainly, you know, Utah participates in all of that. I'm fully familiar -- I haven't heard anybody mention wind as not being part of a protocol.

And that's, you know, trouble. The volatility that we see on the wind -- on the hydro side.

Q. A moment ago you spoke about asking people to assume risk and things like that. With the uncertainty surrounding the Company's forecasts and the unpredictability of net power costs, isn't it true that the Company's ROE reflects that uncertainty?

A. Again, I'm -- I would just be speaking on what I've heard. I think --

Q. Okay.

A. -- Mr. Hadaway, you know, is probably the expert for asking that question to -- relative to how ROEs are established, and, you know, what is the representative pool, and what's gone into the Commission's review in that regard.

Q. Okay. Moving on, then. If the Company's ECAM were approved how do the Company's incentives to manage its net power costs improve?

A. Personally, I think the incentive likely grows, because there will be a much more heightened focus on prudence. You know, today I don't know how that really happens when we're talking about a forecast and dealing with, you know, all the things that we've just talked about that are moving.

So I think the benefit this brings to all parties is there will be an actual review of that to say, Well, how did we perform?

And parties can make comments and say, Well, I think you should have done this, or should have done that. We can have an open, you know, healthy debate on those subjects. And it may that be that, you know, the Company is pushed to improve, you know, whereas today there is no review of that.

Q. So we've talked a little bit about things like hydropower and wind. Let's turn now to natural gas. Does the Company purchase natural gas to use for fuel stock?

A. Yes.

Q. Does the Company purchase natural gas and store that natural gas to use at some later point?

A. We have a very small storage contract, but it's not terribly material for all of our natural gas use. Which all of that is for the purpose of generating electricity.

Q. And just to fill out the facts, where is that storage contract? Where is the storage basin located, if you can tell us?

A. Clay Basin. I don't know precisely where it's located. Again, it's very small.

Q. Wyoming.

A. Yeah.

Q. Off the highway.

A. Yeah.

Q. Okay. So does the Company plan its natural gas purchases?

A. Yes.

Q. Are these natural gas purchases done at fixed costs?

A. We filed quite a bit of testimony, I think, on our natural gas purchasing and hedging program. So it's a combination of physical and swap products in order to lock in our total cost in terms of price as well as the physical supply itself.

Q. So if the Company had more storage could the Company purchase natural gas when the price is lower, and then store it to use at a time when natural gas prices are higher?

A. Yes, it could.

Q. What sort of plans does the Company have to improve its control over natural gas costs?

A. Well, to your first question regarding storage, there's a very limited amount of storage in the West, off the Kern River pipelines and Questar system, that we primarily rely on. We also have projects that bring gas largely out of Canada on the west side of our system.

But there are projects that have been proposed recently. We're looking at those storage proposals. And again, it comes down to the economics and whether or not it's in the interest of customers whether or not we would transact and support any of those projects.

But in terms of managing our net power cost risks, a lot of discussion, again, on this. We believe it's critical, because it's correlated and interrelated within our entire portfolio risk management.

The proper and intelligent way to manage those risks is on a portfolio basis, which is the nature of our risk management program. Which has, again, largely been the same over the past many years. With, you know, simple improvements that we incorporate. Best practices every year, and reviews of our risk oversight committee, and so forth.

But I do not foresee any fundamental material changes in the way we procure gas and manage that net power cost risk going forward. We have a very effective hedging program.

Q. Turning back sort of to where we started. Is it true that the Company's net power forecasts are consistently low?

A. If you mean they're consistently lower than what actual net power costs have been, I think the record does show that, yes.

Q. What does that say about the Company's forecast process?

A. I think, again, it just confirms what I would think is, you know, obvious. You know, you can't predict the weather. We don't know what temperatures are gonna be for every day, every hour for the next, you know, year.

I don't know when the rain's gonna fall. I don't know how much wind is gonna blow. And when all those things are happening together I don't know where power prices and natural gas prices are gonna be. So I think, you know, at a simple intuitive level, no surprise that the forecast is wrong.

I know that no matter what model you put in front of me, I know it's wrong. That's the world we live with. So the question is then, in light of that inability to forecast accurately, you know, what is the best way to establish rates and have, you know, customer and Company interests aligned?

And we believe that's with the mechanism that we've proposed.

Q. So why isn't the forecast -- if things are so unpredictable why isn't the forecast consistently high?

A. Well, I think you would expect maybe intuitively that it would fall out on both sides, right? Assuming that medium hydro --

Q. Yes.

A. -- and that, that every other year or something you had a good year and a bad year. And if you look back at the last ten years of hydro, for example, they've generally been lower.

You know, it's like the roulette wheel. You know, it doesn't mean that just because it came up red 3 times that the next 3 times are gonna be black. You might get 30 in a row. You might get one or the other, flipping a coin.

And I don't know that it's that arbitrary, but there's tremendous volatility, you know, in the weather. And again, I think any rational person just naturally understands that. But how do you then forecast better for next year? You know, that's what goes into rates.

You know, is it reasonable to assume that it's gonna be the average of the last 7, or the average of the last 20? That feels reasonable, you know, off the cuff. But it delivers the results that we've been showing, you know, in Mr. Duvall's testimony, you know, over a year ago.

And so that's the problem that we're here to fix. Not to try to make a profit, that's not what our mechanism is about. It's simply recover what we've prudently incurred if we've done a prudent job of managing it.

MS. SCHMID: Thank you.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

Mr. Evans, do you have much cross examination?

MR. EVANS: I have none for Mr. Bird, thank you.

CHAIRMAN BOYER: That's not very much.

THE WITNESS: Thank you.

CHAIRMAN BOYER: Well, I'm trying to determine when we should take a break and give our reporter a break.

MR. DODGE: I have very limited cross.

CHAIRMAN BOYER: Well, let's hear your very limited cross, Mr. Dodge.

CROSS EXAMINATION

BY MR. DODGE:

Q. I just want to clarify, Mr. Bird. In your prefiled rebuttal testimony you address hedging and REC revenues as being included, and no other topic; is that correct?

A. I know those were the main topics. There's, I think, a lot of other discussion in my testimony about, you know, prudence, and customer benefits, and the old structure, and the new structure. And so --

Q. In the context of --

A. -- I don't characterize it exactly that way.

Q. In the context of hedging, correct? Your entire discussion in your testimony is hedging, correct?

Now, I invite you to look at it. If you want to take a break, if that's necessary. I've read it. It talks about hedging and REC revenues and nothing else. If you maintain it talks about something else, I would like you to read it and show me where that's at.

MR. MONSON: Can I help speed this up? Look at page 10.

Q. (By Mr. Dodge) Okay. Do you agree it's necessary to include all the components of NPC in an ECAM to avoid perverse incentives. Okay, if that's not part of the hedging discussion -- it is part of the natural gas hedging. You say in all elements including -- hedging should be included.

But you did not address anywhere the issue of incentives of management to make proper decisions, or whether the prudence review is an adequate incentive, or anything along that line, did you?

A. To give you a precise answer I'd need to read my testimony line by line and give you a hard answer. I mean, I would certainly grant that the bulk of my testimony is about hedging, you know, incentives and RECs.

Q. I'm just focused on what's the right level of cross for you, because I didn't read anything about what you've just been talking about all afternoon in your prefiled.

MR. DODGE: So given what I believe is the correct testimony before this Commission, I have no further questions on the two issues he addressed in his testimony.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Mr. Michel?

MR. MICHAEL: No questions.

CHAIRMAN BOYER: Ms. Hayes?

MS. HAYES: No, thank you. And I just -- sorry to bring this up so late. But since WRA and Utah Clean Energy filed joint testimony I won't have additional questions to what Mr. Michel asks.

CHAIRMAN BOYER: Okay, very well. Thank you for that heads up.

Commissioner Allen? Commissioner Campbell?

COMMISSIONER CAMPBELL: I'd like to ask you a few questions related to your response to Mr. Peterson. When did the Company begin its involvement with swap transactions?

THE WITNESS: I think as soon as the -- in general I would say when the market made them available. The, on the natural gas side that's been the primary tool that, you know, hedging entities like ourselves have used for the last several years.

On the electric side those are not as prevalent. And so there's more fixed price physical and index physical -- sorry, fixed price physical on the electric side.

COMMISSIONER CAMPBELL: And can we get closer to a year than that? I mean, Mr. Peterson starts his analysis in 2006. How many years further back do we need to go?

THE WITNESS: I'd say roughly speaking, the last five years that's been a, I think pretty commonly-used product.

COMMISSIONER CAMPBELL: Okay. Last five years?

THE WITNESS: Yeah.

COMMISSIONER CAMPBELL: When did the Company begin its involvement with fixed price physical transactions?

THE WITNESS: '90s? I've only been here since 2007, but I think those products were generally the way the world worked in the '90s, to the best of my knowledge.

COMMISSIONER CAMPBELL: Okay. Certainly since I started in utility regulation I think the Company's been doing that.

THE WITNESS: Yeah.

COMMISSIONER CAMPBELL: Do you know when the Company began labelling the fixed price physical transactions as part of a hedging program?

THE WITNESS: I'm not precisely sure of the question. In terms of our hedging program it would just be one of the products in order to fix price. And so the core risk in terms of net power costs on the financial side you would either have to use a fixed price physical product or a swap that would swap the floating side of an index physical with a fixed price. Those are the only two ways to hedge the financial exposure looking ahead.

COMMISSIONER CAMPBELL: Well, let me ask it this way. I mean, as I've watched utility regulation over the years the Company certainly has long-term investment, and they want to sell excess. And certainly there's solar power and there's buying and selling that goes on. That's been going on forever.

I guess I'm coming to the point that the swaps is a new hedging activity, relatively, if you want to say within the last five years. And my question is, would customers have been better off if the Company never engaged in swaps?

And if -- am I wrong in assuming that, according to Mr. Peterson's testimony, that the answer would be, if the Company had never started that hedging activity -- because they were already doing the fixed physical price stuff long before the Company started doing the swaps -- that customers would have been better off by $173 million?

THE WITNESS: And the answer to that is no, because we would have then been forced to use fixed price physical products in place of the swaps.

So it's sort of nonsensical to, you know, look at just the swaps in isolation or fixed price physical products in isolation. That's not a meaningful separation. They just happen to be two of the products that we use to accomplish the end goal of mitigating price exposure.

And so if someone said, I don't want you to do swaps for some reason -- and I couldn't come up with a good reason why anybody would make that argument -- then the Company would be forced to transact solely with fixed price physical to hedge its forward position.

And given the lack of liquidity on that -- on the gas front, for example, my guess is today that would be a more expensive solution because the bid ask would be more expensive and it would be a more expensive hedging tool.

But I think the facts that we've shown are that -- as my Exhibit 2R -- a, you know, tremendous amount of savings have resulted from our hedging activity. I'd like to take credit for that, but it's just how things played out.

I don't think the Company knew, you know, that prices were gonna move unfavorable, you know, which is apparently what happened. And so had it not been for the Company's hedges, net power costs would have been substantially higher. You know, to the tune of 304 point -- million.

So it's, it's nice that the number came out that way. But you would expect on average, again, that it would, you know, come closer to zero. You know, but our actual results, turns out for this period those hedges were deep in the money.

COMMISSIONER CAMPBELL: Okay, help me out here. So that 300 million, I mean, the Company was doing that already. I mean, the Company was already engaging in those transactions, those type of transactions, where you got your positive 300 million. So I don't understand how the hedging program delivered that.

THE WITNESS: That is the hedging program. So if we hadn't hedged anything, then the opposite result would have occurred. And the 305 million wouldn't have, you know, been a result. So we saw a favorable gain on all those hedges.

That is exactly what this measures, is what's the difference. To hedge or not hedge for this period accumulated the 305 million.

CHAIRMAN BOYER: You've given some illustrations today, Mr. Bird, of elements of net power costs that are beyond the Company's control: Weather, hydro, wind, and those sorts of things. What kind of controls do ratepayers have over net power costs?

THE WITNESS: I'm not aware that customers have any control, other than their representation in a rate case setting. I think my reaction to the general comment I think I heard you say, you know, risks should be managed by those who have the best ability to manage them.

And that is the Company's job. You know, we're faced with delivering service to customers. And again, what's different for us is we're obligated to make that product available at the lowest reasonable cost.

If I were a business that had the ability to set my own prices, or I was a business that could choose to serve some customers and not others, then I would have tools in my tool kit to deal with the volatilities of my business. And I would be able to manage and create my, you know, rate of return, as a result, by using those tools.

But because I'm regulated and I have this obligation to serve, and as I understand it the quid pro quo is I get to recover my prudently-incurred costs, well, I'm gonna do everything possible to deliver those services to customers and give them reliable service, you know, even if the cost goes up, but I'm gonna do it at the lowest then-available cost.

And so that is the, you know, the core understanding and what our ECAM proposal achieves. So it's not a profit mechanism for us, it's simply just recovering our prudently-incurred costs.

COMMISSIONER CAMPBELL: So are you saying that the Company then has the very same incentives or equivalent incentives under an ECAM as it does under the existing system where actually they have to bear the cost of their interactive forecast for a period of time, at least, until another rate case?

THE WITNESS: Yes.

CHAIRMAN BOYER: Okay, thank you.

Any redirect, Mr. Monson?

MR. MONSON: I do have a couple of questions. Shall we do them now?

REDIRECT EXAMINATION

BY MR. MONSON:

Q. First one. You were asked some questions by Ms. Schmid about the Company's forecasting ability and whether it can be improved.

Does the Commission, to your knowledge, rely on the Company's forecast in setting rates? The Company's forecast for net power costs in setting rates; do you know?

A. I know that the process begins with the Company's proposal. That comes out of a forecast model that sets rates. And I know that that's not where rates ultimately end.

Q. Thank you. And you were just asked questions by the Chairman about if customers can manage costs, or have -- can manage the risk of net power costs. And you talked about what the Company can do.

Can customers control, at least to some extent, their costs through their choice of usage?

A. Certainly if the question was, you know, can customers affect their costs, absolutely. They can choose to use more or less power, and they have complete control over that decision.

But in terms of affecting the Company's net power costs, certainly if they used less that would also result in less total net power costs. But I don't think they have any incentive, necessarily, in making that decision, you know, for all customers.

MR. MONSON: That's all I have.

CHAIRMAN BOYER: Thank you, Mr. Bird, you are excused.

We're gonna take a ten-minute-or-so recess now, then we'll hear from Dr. McDermott and get him winging his way back to Illinois. This afternoon, hopefully. Thank you.

(A recess was taken from 3:03 to 3:23 p.m.)

CHAIRMAN BOYER: Okay, we are back on the record.

And Dr. McDermott, you were sworn in in the earlier phase, were you not?

THE WITNESS: Yes, I was.

CHAIRMAN BOYER: Okay. We'll just remind you that you're still under oath.

Mr. Monson?

KARL A. McDERMOTT,
called as a witness,
having previously been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MONSON:

Q. Dr. McDermott, in connection with this portion of the hearing you -- well, first of all state your name for the record and your position and so forth, sorry.

A. Karl, with a "K," middle initial A., McDermott, M-c-D-e-r-m-o-t-t. And I'm the Ameren Professor of Government and Business at the University of Illinois, Springfield. And a special consultant with National Economic Research Associates, Inc.

My business address is 875 North Michigan Avenue, Suite 3650, Chicago, Illinois 60611.

Q. And as the Chairman just asked, you've previously testified in this case in Phase I, right?

A. Yes, I did.

Q. But in connection with this phase of the case you've prepared rebuttal testimony, with four exhibits, that was filed on September 15, 2010?

A. That is correct.

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

A. No, I do not.

Q. Do you have a summary of your test -- oh.

MR. MONSON: First of all we'd like to offer Dr. McDermott's rebuttal testimony and his four exhibits.

CHAIRMAN BOYER: Are there any objections to the admission of Dr. McDermott's rebuttal testimony together with exhibits?

They are admitted.

(Karl McDermott rebuttal testimony and attached exhibits was admitted.)

Q. (By Mr. Monson) Dr. McDermott, do you have a summary of your testimony that you could present to the Commission?

A. Yes, I do.

Good afternoon, Commissioners. As I stated in the first phase of this case, I believe that this case is really about structuring a fair regulatory process. A process where customers pay only the prudent actual costs of serving them, and the Utility has a fair opportunity to recover its prudently-incurred costs.

Under a traditional regulatory bargain a rate case assumes that all categories of cost are relatively stable over time, such that a normalization process would provide a fair opportunity to recover costs.

In that case the fair process was subsumed under the traditional rate case proceeding. However, when costs no longer conform to the normalization assumptions, an ECAM or a fuel adjustment clause is a reasonable substitute for the normalization process in order to address these problems.

Indeed, many other commissions around the country have found that an ECAM resolves these problems. How have they come to this conclusion? By asking if the costs that no longer conform to the normalization assumptions meet at least three thresholds tests.

And these are: Are the costs a large component of the Company's and the customers' cost of service, are these cost components volatile, and are they outside the control of management?

After reviewing this three-prong test nearly every commission has found that ECAMs are in the public interest, and I believe this Commission should find that as well.

The proposed ECAM design relies on one of the most powerful incentives available to commissions, namely, prudence reviews. This is an incentive that regulators around the country have employed to discipline utility purchasing practices once fuel adjustment mechanisms became a standard tool of regulation.

Moreover, commissioners apply the prudence standard in reviewing Rocky Mountain Power's capacity choices, base rate setting cases, and, if approved, in ECAM reviews in the future.

As my testimony has shown, deadbands and sharing mechanisms are not a standard approach taken by regulators around the United States. Rather, these mechanisms are the exception. Where evidence exists regarding a specific problem or pattern of behavior, then commissions could either make a prudent disallowance or revisit the necessity of an incentive mechanism as part of an ECAM.

In the case of Rocky Mountain Power there has been no evidence provided of problems that would warrant the use of deadbands and sharing rates. There is simply no evidence that these designs would be in the public's interest.

Moreover, for incentives to be truly effective they have to be applied to matters that the Company would have control over. And be designed so that they would affect those decisions, like a traditional incentive regulation would have.

The proposed deadbands and sharing bands in this case, in this context, fail these tests because NPC is largely outside management's control, and therefore the sharing and deadbands are not designed to influence costs over which management has control.

A second concern raised by the parties in the case is that an ECAM would unduly shift risks to customers that the Company should bear. First, as I pointed out in Phase I, under the regulatory bargain the Company should have an opportunity to recover it's legitimate prudent costs, however we define them.

When the bargaining breaks down, as it does when NPC becomes large, volatile, and outside of management's control, the use of an ECAM is simply repairing the regulatory bargain and reestablishing the risk sharing arrangements that were encompassed under the original bargain.

It does not shift risk relative to the traditional regulatory bargain. In fact, by focussing on paying the actual costs with a true-up mechanism the current proposal is not a risk-shifting mechanism, it is a risk-mitigating mechanism.

Both parties benefit by paying actual costs and receiving actual costs, with the power of the prudence review serving as a means of ensuring efficiency.

While some parties have voiced concern that the academic literature provides evidence of incentives actually being distorted, I believe in our testimony we've shown that that's not actually the case and that that literature is not applicable.

Recognizing that the proposed ECAM approach utilizes an ex-post prudence review that allows the Commission and the parties to understand and review the Company's operations provides the Commission with a far greater control over costs included in ECAM charges.

That is generally presumed in the literature. As we noted in the testimony, this literature is not on point with the characteristics of the proposed ECAM in this situation.

Third -- and this is probably the most

important empirical evidence -- virtually all the state commissions have employed an ECAM process of one shape or form around the United States. And while they may differ in design, they all recognize the need for a mechanism to address the volatile net power costs.

In adopting the proposed ECAM the Commission could be creating a regulatory process that will, in effect, break cost recovery into two components: The base rate and the NPC prudence review. I believe that you gain greater control, and the opportunity to focus resources more effectively, in evaluating both the non-NPC costs in the traditional rate case and the NPC costs through the ECAM review.

As I stated in Phase I, I believe the ECAM is in the public interest. And particularly this ECAM design is in the public interest as it properly restores the balance between customers and shareholders by reestablishing the elements of their original regulatory bargain.

And I would encourage the Commission to acknowledge that an ECAM is in the public interest and move to approve the ECAM designed by Rocky Mountain Power in this proceeding. Thank you.

MR. MONSON: Dr. McDermott is available for cross.

CHAIRMAN BOYER: Thank you, Dr. McDermott.

Mr. Proctor, cross examination?

MR. PROCTOR: No questions, thank you.

CHAIRMAN BOYER: Ms. Schmid?

MS. SCHMID: Yes.

CROSS EXAMINATION

BY MS. SCHMID:

Q. Good afternoon.

A. Good afternoon.

Q. I'd just like to clarify a couple of things. Earlier today I asked some questions about opportunity and guaranteed recovery through the regulatory process.

Is it your testimony that an ECAM provides an opportunity for a utility to recover costs?

A. It should give you a recovery of your prudent costs in order to reestablish the bargain. What you have an opportunity to do is earn your allowed rate of return.

And if costs and revenues fluctuate over time, in the traditional regulatory process you may or may not earn that return. You may actually over return. And if there's a pattern of over return over time, the Commission would call you in for a rate case.

Q. If I turn now to the specific issue of net power costs themselves -- and could you turn with me to page 18 of your supplemental direct? And this is in Phase I.

A. Oh.

Q. Would you like a copy?

A. Yes, please.

Q. Okay. Let's see which one I have that I haven't drawn all over. Okay, just one moment.

MS. SCHMID: May I approach?

CHAIRMAN BOYER: You may, Ms. Schmid.

THE WITNESS: Thank you.

MS. SCHMID: You're welcome.

Q. (By Ms. Schmid) And I'll represent to you that that's a true and accurate copy of your supplemental direct in Phase I. Will you accept that, subject to check?

A. Yes.

Q. If we turn now to page 18, line 363. Can you take just a moment and review your testimony stated therein from 363 to 376?

(Pause.)

THE WITNESS: All right.

Q. (By Ms. Schmid) Thank you. And turning now specifically to line 369, I'm going to read just a sentence. In your testimony you state, beginning at 369 and ending at 373:

"If the forecasted level of net power costs could be set such that, on average, the Utility would be expected to recover its costs from the rate-case approach, a fundamental premise of ratemaking, then the rate-case approach and the ECAM approach will produce, on average, the same rates."

Did I read that correctly?

A. Yes, you did.

Q. So then does that bring us to the issue being that at issue is the precision and bias of the Company's forecasts?

A. No.

Q. Why not? And I hate to ask that, but I must.

A. Well, that would all depend. See, the forecasting of net power, so what we would have to agree to is that the forecasting process that we would use in setting the base rate case is a fair forecast with a normal distribution.

It's not something that's been fought over, you know. We have a, we have a different forecast and you have a different forecast.

If there were some objective third-party agency who could provide that forecast for us and set it up in that fashion, then what I'm saying here is that the forecasted level of net power costs could be set such that, on average -- because you're gonna have that variation around -- and so your expected value of the costs would establish that fundamental notion that we have under traditional regulation.

Which is -- if you think about the rate case process -- when all costs can be forecast and normalized, then we come up with an accurate rate based on costs. And then all the cost elements fluctuate through time. Some of those are offsetting one another. And over time you have a fair opportunity to earn that expected value that's been forecasted.

Q. Are you saying, then, that a third-party forecast would be better than a forecast from the Company that the parties challenge and question the merits of?

A. Well, I'm saying that in, in the process of, of going through all those arguments, and fighting about and choosing pieces out of all the forecasts, and, you know, making decisions about components of the forecast and how we forecast? That all of that becomes, in some sense, a political battle.

Some groups want to argue that the forecast should be low, right? Because that protects the customer from having to pay those costs in the base rates. And others would want the costs to be accurate based on their prudent costs.

And so we get into this kind of debate over what the forecasts are, and we lose sight of the fact that what we're trying to do is predict the prudent cost of service for the customers going forward.

Q. But shouldn't the Commission be able to weigh the validity of those challenges to the forecasts and give the testimony and the changes thereto the appropriate weight?

A. I think that's a really hard thing to do. And so when you substitute that type of a process for an actual true up, then you can come closer to the truth.

And in the prudence reviews, looking back over time to look at the costs that have been incurred, if you find a problem then you can disallow those costs. And you should disallow those costs.

MS. SCHMID: Thank you.

CHAIRMAN BOYER: Thank you, Ms. Schmid.

Mr. Evans?

MR. EVANS: No questions, Mr. Chairman. Thank you.

CHAIRMAN BOYER: Thank you. Mr. Dodge?

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

CROSS EXAMINATION

BY MR. DODGE:

Q. Mr. McDermott, it's true, is it not, that your position on the effectiveness of prudence reviews basically assumes that that, in fact, will result in imprudently-incurred costs being ferreted out and only the proper costs being passed on to ratepayers. Is that essentially implicit in your position?

A. I believe that that is exactly what I'm arguing, is that the Commission, staff, and the process will have an opportunity to identify imprudent costs.

Q. And if the staff primarily tasked with that job expresses some reservations about their ability to do that, that should give someone a little bit of pause, should it not?

A. Well, I think that they -- what we need to do is make sure that the staff has adequate resources to be able to do this.

Q. Before we adopt an ECAM, right?

A. I think that the review process, if you may -- or -- yeah. When we set up the review process -- when you set up the review process, you have to remember, there's two parts to this.

In the base rate case you're going to be arguing about the performance of power plants, and the availability of power plants, and a whole number of factors that influence the cost of providing service going forward.

And when you have vetted the prudence of those actions, then that's information that you carry forward with you to review the next -- the end of the year's ECAM adjustment. So I don't know that you need to go back through all of that again.

You've now got a chance to focus on the prudence questions associated with the balancing functions that the Company plays in trying to meet that obligation to serve. Which is the fact that, that load is varying all around the forecasted load that was going to exist, and you have to have the resources to cost effectively meet that load for the customers.

So when we start looking at a review of the decisions, and the actions, and the costs that were incurred in the ECAM proposal, what you can right up front do is ask the question: In the base rate case you are operating at 85 percent capacity factors for your power plants. Is there anything that's changed since then that we ought to know about?

If not, then some of those issues that might have been a problem for you are taken off the table. Staff won't have to review all the details around that.

If it turns out that, you know, hydro and water resources that were predicted to exist didn't exist because of nature, then the Company had to undertake certain actions to try to address that. And so you can look at those actions and see that they tried to address that in a prudent fashion. But that's what you're trying to focus on.

Q. And if we assume that the agency in the State of Utah that will be tasked with that understands its job but it still expresses reservations about its ability with current staffing, that ought to be a concern, should it not?

A. It's something you should take under consideration, but I don't think it should stop you.

Q. As evidence of your view that -- and in fact, I think on page 11 of your rebuttal, on line 232, you say it's undeniable that prudence reviews provide utilities with a strong incentive. And as evidence of that you reference several examples that you provided in your supplemental direct.

I believe you actually meant your rebuttal, because I couldn't find any examples in your supplemental direct. But in your rebuttal in the first phase, on page 30, you list seven examples of ECAM disallowances in the years 2004 and '5; is that right?

A. That is correct.

Q. And just so I understand, that's the sum total of the evidence you've placed before this Commission on the effectiveness of prudence reviews in actual practice?

A. Those were examples that I could bring right forward to testify to that, in fact, prudence reviews are being conducted by state commissions. And they are being effective in identifying and disallowing certain costs when there is evidence that there's been a problem.

Q. At least in seven cases?

A. At least in those seven cases.

Q. Yeah. Basically, Mr. McDermott, I read your testimony as being that Utah is out of step with the rest of the country, because everybody has ECAMs and so of course we should too. Is that somewhat fair?

A. Well, you don't just do something because everybody's done it. You have to ask why has everybody done it.

And in this case what we've shown is that when other state commissions are confronted with the same kinds of problems of having, you know, cost components that are large, variable, and outside the control of management, they've realized that that endangers the basic regulatory compact or bargain and they've taken actions to address that problem.

Q. And let's look at the consequences. How does Rocky Mountain Power's Utah rates compare with the average rates of all the other utilities in the country that have ECAMs; do you have any idea?

A. You generally have fairly low rates.

Q. And at the same time are you aware of the bond ratings of the Utah utility? Or at least its parent?

A. I haven't checked those lately.

Q. Are you aware those are pretty darn good? Probably about where a commission wants them to be?

A. Just shows how good you regulate here.

Q. That's what I mean. Maybe there's an

argument that all those other states ought to be looking at Utah for how to do it. Do you think that's a possibility?

A. Well, everybody always strives to be better.

MR. DODGE: All right, I accept that. Thank you, Mr. McDermott, no more questions.

CHAIRMAN BOYER: Thank you, Mr. Dodge.

Mr. Michel?

CROSS EXAMINATION

BY MR. MICHEL:

Q. Good afternoon, Mr. McDermott.

A. Good afternoon.

Q. See if I can bring this closer. You say you're currently the Ameren Distinguished Professor of Business and Government at the University of Illinois?

A. Springfield, yes.

Q. What does it mean -- I've just wondered this for years and never bothered to ask. What is a "distinguished professor" as opposed to a regular professor?

A. It's just a nice, glorified title.

Q. Nothing distinguishes you from other professors, other than --

A. Well, I mean, I have been brought in and asked to try to set up a research organization on campus to research public utility issues. To conduct educational forums and that. To try to be a leader on public policy issues in the state and the region.

Q. Is that funded by Ameren?

A. The way this is funded is Ameren -- this position occurred when Ameren took over Central Illinois Public Service Company. And as part of that merger criteria the Ameren company created an endowment at the University, which it just gives the money to, and then the University manages it.

So my selection as the Ameren professor was done completely by the University and not by Ameren.

Q. What is Ameren?

A. Ameren is a combined electric and gas utility serving in Missouri and Illinois now, since they've taken over Illinois Power -- Central Illinois Public Service and Central Illinois Light Company.

Q. Okay. Something you said in response to questions from Ms. Schmid struck me. You said that customers want -- in a rate case, in a general rate case customers want forecasts to be low, but others want it to be accurate to reflect prudent costs.

A. And others would even want it to be higher, if possible.

Q. Who might those others be?

A. Um, there could be someone who would actually want it that way. But I -- you know, in this case the companies I don't believe want to do that, because they're under a regulatory obligation to serve the customers.

They are being reviewed through prudence reviews and other review processes. So I don't believe that companies want to have the cost to be higher.

Q. Okay. You'd agree that if they recover more than their prudent costs they financially benefit from that?

A. And again, if we have a regulatory process that is reviewing the Company on a regular basis and it finds that you've over-earned, then they can ask you to lower your rates.

Q. Prospectively?

A. Prospectively. But likewise, when you lose money you would only raise your rates prospectively.

Q. But getting back to my question. The Utility does financially gain from an over-forecast of its prudent costs? Or of its costs in a rate case?

A. Well, if it -- it's either expended its costs or it hasn't. And if it's -- and it doesn't make any profit on fuel. These costs are not part of its profit making.

Q. Could you just answer the question? Can a utility benefit from an over-forecast of its costs in a rate case?

A. If it over-forecasts its costs and then doesn't expend those costs, then that will show up as an excess in earnings that the Commission can see and lift.

Q. You had talked about how one of the justifications -- and this is in your summary -- one of the justifications for an ECAM-type mechanism is that net power costs are no longer normal -- or normalizable, as they have been historically. Is that a fair summary of what you had said?

A. That's correct.

Q. So would you agree that any cost that is not normalized or normalizable should be subject to a separate adjustment mechanism?

A. It depends on the degree to which that is the case.

Q. Would you agree that the weather has been fairly erratic and unpredictable?

A. And states have adopted weather normalization clauses.

Q. Okay. Well, I -- to adjust for weather?

A. To adjust for weather.

Q. Would you recommend that for this Commission, that revenues be adjusted to reflect exceptionally-hot or exceptionally-cold summers?

A. Well, you would have to go through the process of choosing a proper normalization program for that. You get -- I mean, if that is a problem for your system, then that's something you could look at.

Q. Have you recommended that in any commission proceedings?

A. As a commissioner in Illinois we had weather normalization.

Q. Well, I'm not talking about weather normalization in a rate case. I'm talking about adjustments outside of a rate case --

A. Oh, I'm sorry.

Q. -- to reflect weather patterns --

A. I'm sorry, I thought you were talking about weather adjustment inside a normal rate case.

Q. No. I'm talking about an extraordinary adjustment to reflect weather that's different than what the Utility or the Commission forecast in a rate case.

A. No. I think if you already have a weather normalization process then you should stick with that.

Q. What if it's not working very well?

A. Then you may revisit the, the data you're using for weather normalization.

Q. Okay. You think weather can be normalized now, today? That the weather patterns are consistent enough that utilities are protected, through a normalization process in a rate case, against aberrations in weather?

A. I think if you have the right data for your -- if you're using a 30 weather you can, you know -- year weather normalization versus a 10 year. I mean, we found in some cases in -- and actually in Illinois, where a 30-year normalization was not forecasting well what was actually happening. And the Commission has since shrunk that down to, I believe it's a 10-year weather normalization.

Q. So if this Commission used a 10-year weather normalization in a rate case there would be no need to make any extraordinary adjustments to the Utility's cost of service and revenue recovery based on weather, right?

A. That's the approach.

Q. Okay. You indicate in your testimony -- and I'm not sure which, which round. It's part of this proceeding, Phase II, Part 2, but I'm not sure -- probably your rebuttal. But you indicate the customer should pay the prudent costs, no more no less. Do you recall that testimony?

A. Yes.

Q. Okay. Do you believe that incentives have a place in utility regulation?

A. Yes, they can, if designed appropriately.

Q. Okay. And incentives can drive desired behavior?

A. Again, if designed appropriately. They can also be very dangerous if designed inappropriately.

Q. Okay. And would you also agree that to the extent the Utility recovers incentives, that could result in the Company recovering greater than its prudently-incurred costs?

A. Again, I would have to know what type of design you're talking about in order to evaluate that.

Q. Well, let's talk about off-system sales. Let's say the Utility is provided an incentive that it gets to retain a certain portion of the margins on off-system sales that it makes, okay?

A. All right.

Q. Is that something that you've endorsed anywhere? That type of incentive mechanism?

A. It depends on what problem you're trying to solve.

Q. Well, you're trying to encourage the Utility to maximize the margins on off-system sales.

A. And if, and if they're shared 50/50 and they increase the margins, then 50 percent of that is going back to the customer to help offset their costs.

Q. Well, that's not my question. My question was the portion that's retained by the Utility, that's the portion over and above what the Utility expended to make those sales, right? And it exceeds the Company's prudent costs?

A. And in -- and depending upon how the Company's costs have moved over time, that will either show up as a slightly higher return to the Company, or it may have offset other costs that are going on during the interim of the case.

Q. Okay. The only point I'm making is that there are instances where it's appropriate for the Company to perhaps earn more or less than its prudent costs, right?

A. If we feel that traditional regulation, again, isn't providing the incentives correctly and we want to have a different form of regulation.

MR. MICHEL: I believe that's all I have. Thank you, Professor.

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

Commissioner Allen, any questions?

COMMISSIONER ALLEN: Yes. Thank you, Mr. Chairman.

Dr. McDermott, in your illustrious travels it looks like you've had some experience with the actual prudence reviews in some cases in some states; is that correct?

THE WITNESS: Yes.

COMMISSIONER ALLEN: And I'm just curious how those are conducted. Is this a monumental feat for staff and for the regulators? Or are there such -- or is there such a thing as a small, quick review that can be conducted by a few people that can spot test for reasonableness?

Have they been ongoing? Do they take weeks, months, or years? Just kind of give me a sense of, when they've taken place, how much effort has gone into them.

A. That is a -- all good questions. Depending upon the type of problem you're trying to deal with -- and let's use fuel adjustment in this case, since that's what we're talking about. What typically is happening in the auditing process is the auditing staff would use statistical, you know, models to say, you know, What should our sampling be of all the different types of transactions.

And when they go through and then examine those transactions, that's sampled. So when somebody says there's 10,000, you know, transactions that occurred, do you need to actually look at all 10,000 transactions? No.

Then the auditing staff, the accountants, have come up with some very nice mechanisms to try to define, what do we have to look at to get a good statistical sample? And then if we find that there's a problem revealed in that statistical sample, then we act on that.

And so depending upon the size of the issues that we're trying to audit, it can be a couple of staff people working really full time all year on that. And they're monitoring this all the time.

Now, depending upon how the data is going to be presented to the, to the staff, if it's monthly data then you're sampling out of those monthly data that are coming in. And then you're making a judgment at the end.

But you've got all that tracking that you're doing as you're going along. And then when the final

ECAM reconciliation is coming on you have a pretty good feel for what's been happening, every month, as the data is coming in and you've sampled through that.

And so then you can make judgements about, well, where are the issues that we've got to ask about in this reconciliation case to try to focus on? And maybe at that point even do focused audits on some of the issues that you think may be problematic.

Or if there is no issue that's problematic then you're basically validating that those were -- the actual costs were prudent.

Q. And are you aware of any states where the prudency test process or the auditing process has kind of, for lack of a better term, blown up on them, they've had to hire a bunch of new staff and hire consultants, or has it generally been manageable?

A. Well, for example in Illinois -- and this -- I'm going back 20 -- almost 20 years, when I was a commissioner. We were auditing, say, a company like Commonwealth Edison, who had in fact thousands of tons of coal that was remaining in mines.

We were paying them to keep it in the ground. Because they had bought take-or-pay contracts when they thought they were gonna build more power plants that were coal-fired power plants, but then ended up building a nuclear fleet. And so we ended up having a lot of issues. Coal transportation costs, all sorts of things.

So we had quite a few staffers working on that. And the disallowances in those cases would often be greater than any disallowances that were, that were occurring in the base rate cases.

COMMISSIONER ALLEN: Anything more recent, in the last year or two, as far as a state that finally got behind the eight ball with their prudence reviews?

THE WITNESS: I cannot think of any offhand, but I, I will look. And to the extent that I can respond to your question with an email to the Company that would find any of that and provide it to you.

COMMISSIONER ALLEN: That might be useful, thank you.

THE WITNESS: You're welcome.

CHAIRMAN BOYER: Dr. McDermott, just a couple of questions. Picture, if you will, a hypothetical ideal, or -- let's say an ideal ECAM. Would it only include non-controllable cost elements?

THE WITNESS: I mean, that's, that's our concern. Those are the costs that are typically what we're trying to focus on, because it's those issues that are, they are large, and they're volatile, and outside the Company's control.

CHAIRMAN BOYER: And assume, if you will, that a regulated utility -- well, one of the costs that can be volatile are fuel costs, right?

THE WITNESS: Right.

CHAIRMAN BOYER: Particularly natural gas. Although they're rele -- the prices are relatively stable now. Not too many years ago they were very volatile --

THE WITNESS: Very volatile.

CHAIRMAN BOYER: -- and they could return to that at some point in time. If a company can control that cost by hedging a hundred percent of their natural gas costs have they not controlled that cost?

THE WITNESS: To a certain extent you've controlled that cost, but now you have to ask is when is it -- when it's being used. Because what you're looking at here is all of the, I'll call it "fussing around the margins," right?

It's the balancing of the system where the day-to-day actions are taking place, all right? We can line up a cost for the coal for the base load unit. And if it's running 24/7 we pretty much know what those costs are. And that's in your base rates because you can forecast that kind of thing.

But what we're really worried about is at the peak. We forecasted the peak would be 100. Turns out to be 110. And the water isn't available like we thought it would, so I have to go out and burn more gas than I would have planned. So there's a different amount of gas cost going in than you had planned.

And so there's all these different activities that are being managed around the edge, all to meet your obligation to serve. So that's what's driving it. That's what makes it uncontrollable, because you have --

I mean, we don't want them to be in a situation where we say, Okay, I could be disallowed $30 million for doing this through the ECAM, or I could interrupt people and only suffer a cost -- associative cost of $10 million.

I mean, I don't want people getting into those kinds of decisions, I don't think. We've actually said, You have an obligation to serve, so do the prudent actions to make sure that the lights stay on.

CHAIRMAN BOYER: I have one last question. You mentioned your familiarity with other ECAMs in other states --

THE WITNESS: Yes.

CHAIRMAN BOYER: -- or regulatory environments. Generally speaking, do those ECAMs include only the non-controllable costs that we've been talking about?

THE WITNESS: Well, they'll, they will vary. And it depends upon some of the Commission's interests. It can vary. It just depends on the policy questions they're trying to solve.

CHAIRMAN BOYER: Can you make any general conclusions, though, or trends -- do more have non-controllable costs than don't?

THE WITNESS: Yeah, that's the focus that everybody has.

CHAIRMAN BOYER: Okay. Thank you, Dr. McDermott.

Redirect, Mr. Monson?

MR. MONSON: Thank you.

REDIRECT EXAMINATION

BY MR. MONSON:

Q. Dr. McDermott, you were talking to Mr. Michel about weather normalization.

A. Yes.

Q. And I wanted to ask you, is it your view that weather normalization takes care of the issues of wind and hydro variability that go into net power costs?

A. No. Again, what you're doing is you're forecasting normal weather and trying to deal with that. And most of those kinds of variations are taking place at the margin.

Q. And you talked to Ms. Schmid about forecasting. What's your view of the ability of the Company to forecast its net power costs?

A. Well, it knows the net fore -- power costs better than anybody else and it's gonna probably provide the best forecast that, that anybody can. Will it be always right? No. It won't be. But I think they probably have a lower error term than most.

Q. Have you looked at the history of the forecasts in Utah -- probably more in Phase I than in this phase -- and has the Company been able to forecast very accurately?

A. Well, obviously no. There's a lot of dollars at stake as a result of the ECAM.

Q. And do you think they could correct that by --

A. By having a better model?

Q. -- somehow getting a better model or something?

A. No.

MR. MONSON: Thank you.

CHAIRMAN BOYER: Very well. Thank you, Dr. McDermott.

THE WITNESS: Thank you.

CHAIRMAN BOYER: You are excused. Safe journey.

THE WITNESS: I'll -- I've got all night now.

CHAIRMAN BOYER: Oh. Enjoy Salt Lake City then.

THE WITNESS: I will.

CHAIRMAN BOYER: Okay, it's 4:00. I know the parties had anticipated hearing from the other witnesses tomorrow. Do you wish to proceed a little longer today? Or adjourn and rest up, collect your thoughts, and commence tomorrow?

Our concern would be that we complete the testimony tomorrow because we have other commitments in another case later this week. It seems like it's Groundhog Day, we wake up and we have a hearing. Any preferences?

MR. DODGE: Let's ask for volunteers to go next. My witness isn't here or I'd volunteer him.

MR. MONSON: I think it's up to you. We can proceed if you want.

CHAIRMAN BOYER: Well, I don't want to put -- I don't want to inconvenience anyone who's not prepared.

MR. PROCTOR: Could we -- somebody tell me who's left?

CHAIRMAN BOYER: Yeah. Charles Peterson, Dan Gimble, Kevin Higgins, who's not here, Mr. Brubaker, Nancy Kelly, who is here, and Steve Chriss, who probably isn't here, or?

MS. SMITH: Not here.

CHAIRMAN BOYER: Not here?

MR. PROCTOR: I don't think Mr. Chriss is gonna -- I think everyone waived on his.

CHAIRMAN BOYER: Ms. Smith, is that correct? Maybe that could -- I do remember hearing something about that.

MS. SMITH: I have not heard -- well, I think everyone who's told me has told me they have no questions for Mr. Chriss.

CHAIRMAN BOYER: Well, let's ask right now. Does anyone have questions for Mr. Chriss?

Apparently not. Okay. So that leaves us with Messrs. Peterson, Gimble, Higgins, Brubaker, and Ms. Kelly.

No one is jumping up and down, so. I mean, I'm happy to adjourn till tomorrow morning.

MR. MICHEL: We'll volunteer anyone except

Ms. Kelly.

MR. MONSON: That's who we want, then. So.

CHAIRMAN BOYER: All right. Let's adjourn until tomorrow morning at 8:00, then. Thank you all.

(The hearing was adjourned at 4:04 p.m., to reconvene at 8:00 a.m. on Tuesday, November 2, 2010.)

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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