

A F T E R N O O N S E S S I O N

(Whereupon the remainder of the day's proceedings were stenographically reported by Cheryl A. Davis.)

(Whereupon **NewEnergy** Exhibits 1 and 2 and Staff Cross Exhibit 1 - Hastings were marked for identification.)

EXAMINER ALBERS: Okay.

Back on the record.

Resuming today's hearing, I believe our next witness is David Hastings for IP.

MR. LAKSHMANAN: Yes, and I believe Mr. Hastings has already been sworn in earlier this morning.

EXAMINER ALBERS: Okay.

MR. LAKSHMANAN: IP calls David Hastings as its first witness.

1 DAVID W. HASTINGS
2 called as a witness on behalf of Illinois Power
3 Company, having been first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LAKSHMANAN:

7 Q. Please state your name and address.

8 THE WITNESS:

9 A. David W. Hastings. My business address is
10 500 South 27th Street, Decatur.

11 Q. What is your position with Illinois Power
12 Company?

13 A. Currently I work for the Business
14 Development Services Department.

15 Q. Have you prepared certain testimony and
16 exhibits to offer in this docket?

17 A. Yes, I have.

18 Q. Do you have before you a copy of a
19 document that's been marked for identification as IP
20 Exhibit 1.1 bearing the caption Prepared Direct
21 Testimony of David W. Hastings?

22 A. Yes, I do.

1 Q. Does that document consist of four pages
2 of questions and answers in written form?

3 A. Yes, it does.

4 Q. Is IP Exhibit 1.1 the prepared direct
5 testimony you wish to offer in this docket?

6 A. Yes.

7 Q. Do you have any corrections or changes to
8 make to IP Exhibit 1.1?

9 A. Yes, I do. On page 3, line 63, the word
10 "are" should be changed to "is".

11 Q. With that revision inserted, if I were to
12 ask you the questions shown on IP Exhibit 1.1 at this
13 hearing, would you give the same answers as shown on
14 that exhibit?

15 A. Yes, I would.

16 Q. Do you also have before you a copy of an
17 exhibit that has been marked as IP Exhibit 1.2?

18 A. Yes.

19 Q. Was that exhibit prepared under your
20 supervision and direction?

21 A. Yes, it was.

22 Q. Is that exhibit identified in your

1 prepared direct testimony, IP Exhibit 1.1?

2 A. Yes, it is.

3 Q. Do you have any corrections or changes to
4 make to IP Exhibit 1.2?

5 A. **No**, I do not.

6 Q. Is the information set forth in IP Exhibit
7 1.2 true and correct to **the best** of your knowledge?

8 A. Yes, it is.

9 Q. Do you also have before you a copy of a
10 document that's been marked for identification IP
11 Exhibit 1.3 bearing the caption Prepared Rebuttal
12 Testimony of David W. Hastings?

13 A. Yes, I do.

14 Q. Does that document consist of six pages of
15 questions and answers in written form?

16 A. Yes.

17 Q. Is IP Exhibit 1.3 the prepared rebuttal
18 testimony you wish to offer in this docket?

19 A. Yes, it is.

20 Q. Do you have any corrections or changes to
21 make to IP Exhibit 1.3?

22 A. No.

1 Q. If I were to ask you the questions shown
2 on IP Exhibit 1.3 at this hearing, would you give the
3 same answers as shown on that exhibit?

4 A. Yes, I would.

5 MR. LAKSHMANAN: IP would move the admission of
6 IP Exhibits 1.1, 1.2, and 1.3.

7 EXAMINER ALBERS: **Any objection?** Hearing none,
8 then IP Exhibits 1.1, 1.2, and 1.3 are admitted.

9 (Whereupon IP Exhibits 1.1,
10 1.2, and 1.3 were received
11 into evidence.)

12 MR. LAKSHMANAN: Mr. Hastings is tendered for
13 cross-examination.

14 EXAMINER ALBERS: Who would like to begin?

15 MR. FEELEY: I'll go first.

16 EXAMINER ALBERS: Mr. Feeley, go ahead.

17 MR. FEELEY: Mr. Examiner, I've had the Court
18 Reporter mark for identification Staff Cross Exhibit
19 1 - Hastings, which is a two-page document. It
20 consists of Illinois Power's response to Staff Data
21 Request BAL 1 and BAL 2, and I've previously provided
22 a copy to the parties. If anyone does not have that,

1 I have a copy.

2 At this time I move to admit Staff Cross
3 Exhibit 1 - Hastings, Illinois Power's response to
4 BAL 1 and 2, into evidence.

5 MR. ANDERSON: Excuse me, John. Do you have an
6 extra copy of that?

7 MR. FEELEY: Sure, . . .

8 EXAMINER ALBERS: I'm going to review that right
9 quick.

10 MR. FEELEY: I'm sorry?

11 EXAMINER ALBERS: I'm just going to read through
12 that right quick.

13 MR. FEELEY: Okay.

14 EXAMINER ALBERS: Anybody have any objection?
15 If there's no objection, then Staff Cross Exhibit 1 -
16 Hastings is admitted.

17 (Whereupon Staff Cross
18 Exhibit 1 - Hastings was
19 received into evidence.)

20 MR. FEELEY: That's all I have.

21 EXAMINER ALBERS: Okay. Anyone else?

22 Mr. Townsend.

1 MR. TOWNSEND: Thank you.

2 Chris Townsend appearing on behalf
3 NewEnergy Midwest, L.L.C.

4 CROSS EXAMINATION

5 BY MR. TOWNSEND:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Mr. Hastings, are you familiar with
9 Illinois Power's PPO contract?

10 A. Somewhat.

11 Q. Are you aware that the PPO contract is a
12 year long contract?

13 A. Yes.

14 Q. Thus, if Illinois Power loses money on
15 summer sales, is it possible that Illinois Power
16 could make up that money in the winter sales?

17 A. I suppose it's possible.

18 Q. Given the assumptions that are contained
19 in your testimony at pages 1 to 2 of your rebuttal
20 testimony, that is that the market value is under-
21 priced for the summer and overpriced for the winter,
22 would you agree that under that scenario that

1 Illinois Power would make up money on winter sales?

2 A. I would agree that that seems to be a
3 possibility.

4 Q. Would you agree that that's a probability
5 and, in fact, that's an actuality with those
6 assumptions?

7 A. Based, on **my** response'; '-yes.'

8 Q. What is the purpose of the mitigation
9 factor?

10 A. Well, as I understand it, the mitigation
11 factor is effectively a portion that the utility
12 would have otherwise been able to recover through the
13 transition charge that it is not allowed to.

14 Q. Would you agree that the mitigation factor
15 represents the amount to be attributed to new revenue
16 sources and cost reductions by the electric utility?

17 MR. LAKSHMANAN: I would object in general as to
18 what the General Assembly may have thought different
19 components of the bill did or did not represent. If
20 there's a foundation as to Mr. Hastings having been
21 there, knowing exactly what was in the mind of the
22 legislators, then I believe he can answer.

1 MR. TOWNSEND: I suppose I need to hear the
2 question back because I didn't think I talked about
3 the minds of the General Assembly.

4 MR. LAKSHMANAN: You were asking what the
5 mitigation factor represented.

6 MR. TOWNSEND: That's correct, not in the minds
7 of the General Assembly, but isn't that by statute
8 what the mitigation factor represents.

9 EXAMINER ALBERS: Mr. Hastings can answer the
10 question based on his understanding.

11 A. Can you repeat the question, please?

12 Q. Would you accept that the mitigation
13 factor represents the amount to be attributed to new
14 revenue sources and cost reductions that the electric
15 utility has realized or should realize?

16 A. I seem to recall that that sounds like
17 some of the wording that appears in the law, but I
18 think there's also some sort of time frame that goes
19 along with that.

20 Q. Has Illinois Power instituted cost
21 reductions since the passage of the 1997 Act?

22 A. I guess I wouldn't know for sure.

1 Q. Has Illinois Power recognized any new
2 revenue sources as a result of the 1997 Act?

3 A. Again, I believe that it is difficult to
4 say, based on how you would define new revenue
5 sources.

6 Q. You don't know if Illinois Power has any
7 retail contracts outside of its service territory?'

8 A. Yes, I do.

9 Q. Does Illinois Power have such contracts?

10 A. It's my understanding that at one time
11 Illinois Power entered into what would be retail
12 contracts outside of their territory.

13 Q. Would you view those as new revenue
14 sources that are only available as a result of the
15 1997 Act?

16 A. Yes, that's correct.

17 Q. I'd like to turn your attention to lines
18 28 through 33 in the version that I have of IP
19 Exhibit 1.3.

20 A. Okay.

21 Q. What is the amount of Illinois Power's
22 retail marketing costs that are subtracted when the

1 PPO is assigned to an ARES?

2 A. I don't know.

3 Q. You have no idea whether that amount is
4 large or small or de minimis?

5 A. No, other than to say I believe it
6 exists.

7 Q. Turning to question and answer 7 in your
8 rebuttal testimony, I'd like you to focus on the last
9 paragraph of that answer, if you would, please.

10 A. Okay.

11 Q. Is load following service more expensive
12 than 100 percent load factor blocks?

13 A. I wouldn't know for sure.

14 Q. Do you know if Dynegy sells load following
15 service to any ARES?

16 A. No, I do not know that.

17 Q. Assuming that they did, would you think
18 that that charge would be more or less than if the
19 ARES were simply to buy block power?

20 MR. LAKSHMANAN: I would just for my own
21 purposes or the record, is that a per unit basis or
22 is that a total dollar basis?

1 MR. TOWNSEND: I don't know why that's necessary
2 for that question.

3 EXAMINER ALBERS: Are you objecting or are you
4 just --

5 MR. LAKSHMANAN: If the witness understands the
6 question, then --

7 A . I'm sorry. Could you repeat that
8 question?

9 Q. Assuming that Dynegy did sell load
10 following service, would you think that that service
11 would cost more or less than buying 100 percent load
12 factor blocks?

13 A. I would say purchasing -- I believe; I
14 don't know -- that purchasing any sort of additional
15 load following product or what have you would be less
16 expensive than actually having to purchase the power
17 and energy to serve that customer's load I guess.

18 Q. You mean the incremental additional cost
19 would be less than the bulk cost. Is that what
20 you're saying?

21 A. I believe that was the spirit of what I
22 was trying to say, correct.

1 Q. Okay. You testified that ARES buy load
2 following or dispatchable supplies from generators.
3 Is that correct?

4 A. That's correct.

5 Q. Are you aware whether such contracts
6 extend into 2001?

7 'A.' " No, I'm not. I, **have** no specific knowledge
8 of any specific contracts like that.

9 Q. Would you agree that it's more likely than
10 not that such contracts end before the non-winter
11 period this year?

12 A. I'd say that's hard for me to say. I
13 don't really know.

14 Q. What's the basis for your opinion that
15 ARES do purchase what is known as dispatchable
16 capacity or load following?

17 A. The basis arises out of having an
18 opportunity to work with other professionals who have
19 a lot more experience in that area than I do, and it
20 is my understanding that that's the type of thing
21 that is possible -- or that that does occur. I'm
22 sorry.

1 Q. But you have no specific knowledge with
2 regards to those contracts.

3 A. Not direct, no.

4 Q. If there are contracts that are submitted
5 to the NFF that include load following service, would
6 you oppose the NFF using that information to adjust
7 the price of other contracts that may be for block
8 power?

9 A. Well, it's my position that any such
10 adjustments that may be made based on different load
11 shapes are accounted for outside of the NFF process.

12 Q. And if they aren't presently accounted
13 for, they should be accounted for. Is that correct?

14 A. If they aren't presently accounted for,
15 they should be accounted for --

16 Q. In the market value.

17 A. They should be accounted for according to
18 how the instructions stipulate now which means
19 they're outside of the NFF process.

20 Q. Where should they be accounted for?

21 A. They should be accounted for where they
22 currently are, outside.

1 Q. Should they be accounted for in the
2 translation tariff? Is that your testimony?

3 A. That's correct.

4 MR. TOWNSEND: No further questions. Thank
5 you.

6 EXAMINER ALBERS: Mr. Robertson.

7 MR. ROBERTSON: I guess **it's** my turn.

8 EXAMINER ALBERS: Sure.

9 MR. ROBERTSON: Thank you.

10 CROSS EXAMINATION

11 BY MR. ROBERTSON:

12 Q. How are you doing, Mr. Hastings?

13 A. Good. How are you?

14 Q. Pretty darn good.

15 I want to make sure I understand.

16 Mr. Townsend covered some of the issues that I intend
17 to cover, but I want to make sure I understand
18 something. Is it your position that you do not know
19 whether or not Illinois Power has obtained sufficient
20 new revenues and sufficient cost reductions to offset
21 the mitigation factor specified in Section 16-102 of
22 the definition of transition charge?

1 A. It's my position that I have not
2 undertaken any analysis, any specific analysis that
3 would allow me to make any such conclusions.

4 Q. All right. One way or the other. Is that
5 correct?

6 A. Exactly.

7 Q. Therefore, would it be true to say that
8 you don't know whether or not Illinois Power has
9 actually lost the revenue associated with the 5
10 mils?

11 A. Because I haven't -- again, haven't
12 performed any specific analysis, I wouldn't be able
13 to make any certain conclusions.

14 Q. Do you know whether or not any other
15 utility in the State of Illinois who is charging a
16 transition charge has recovered, sufficient new
17 revenues or achieved sufficient cost reductions to
18 offset the 5 mil mitigation factor?

19 A. No.

20 Q. Is the revenue lost a function of the
21 number of customers who take either delivery service
22 or a PPO option?

1 A. The revenue lost to what?

2 Q. To the mitigation factor.

3 A. Go ahead and repeat the question.

4 Q. All right. Is the revenue lost or the
5 revenue that you assumed would be lost due to the
6 mitigation factor, is that, in part, a function of
7 the number of customers who decide to take delivery
8 service or the PPO option?

9 A. That would seem to make sense, yes.

10 Q. Do you know how many customers on the
11 Illinois Power system have decided to take delivery
12 service or the PPO option?

13 A. No, I do not.

14 Q. If you were correct that the utilities or
15 Illinois Power loses money as a result of the
16 application of the mitigation factor to the PPO
17 option, would it also be true to say that Illinois
18 Power loses money as a result of the application of
19 the delivery service option?

20 A. Well, first of all, when I made those
21 comments, they were more in response to some comments
22 that Dr. O'Connor had made. I felt compelled to

1 provide some further information based on some
2 comment I believe. I forget exactly what the comment
3 was or what line he made it in his direct, something
4 along the lines of the ARES will be experiencing
5 substantial losses, and my rebuttal was merely along
6 those lines to point out that for that specific time
7 frame I could make the same statement for the
8 utility.

9 Q. Mr. Hastings, I'm sorry. I'm going to
10 have to move to strike your answer as nonresponsive.

11 Could I have the question read back,
12 please?

13 MR. LAKSHMANAN: I believe he was attempting to
14 put what you said into context.

15 MR. ROBERTSON: Could you read the question
16 back?

17 EXAMINER ALBERS: Yes, let's hear the question
18 back.

19 (Whereupon the requested
20 portion of the record was
21 read back by the Court
22 Reporter.)

1 MR. ROBERTSON: He began to tell me something
2 about the genesis of his testimony, and I didn't
3 really ask him about the genesis of the testimony. I
4 asked him whether it was true that Illinois Power
5 would also lose revenue as a result of the
6 application of the delivery service tariff because it
7 **also requires application of the 5 mil mitigation**
8 factor.

9 EXAMINER ALBERS: Do you want to respond to
10 that, Mr. Lakshmanan?

11 MR. LAKSHMANAN: I believe he was attempting to
12 put what Mr. Robertson was asking him into context.

13 EXAMINER ALBERS: Okay. I won't strike the
14 answer, but I will direct the witness to go ahead and
15 answer the question that was asked.

16 A. Okay. Based on the rephrasing of the
17 question that just occurred, I think I have a better
18 idea of what **he's** trying to **get at**, and my answer is
19 yes.

20 Q. And does Illinois Power necessarily lose
21 any or all of the mitigation factor for power
22 supplied pursuant to discretionary competitive

1 service contracts?

2 A. Can you repeat the question, please, or
3 have it read back?

4 MR. ROBERTSON: If you would read it back for
5 him. I don't think I could say it again.

6 (Whereupon the requested
7 portion of the record was
8 read back by the Court
9 Reporter.)

10 A. That would be -- I suppose it would be
11 entirely dependent on the individual contracts in
12 question.

13 Q. And what that means is the customer, as a
14 result of negotiating a competitive service contract
15 with Illinois Power, may or may not get all or some
16 of the 5 mils that he would have been entitled to had
17 he elected the PPO option or the delivery service.
18 Isn't that correct?

19 A. That's correct.

20 Q. Could you please turn to page 5, and I
21 think it's lines 102 and 104 of your rebuttal
22 testimony, if my copy is equivalent to what was

1 actually filed.

2 A. Okay.

3 Q. It's question and answer number 10.

4 A. Okay.

5 Q. Okay. You make a statement there in the
6 answer to the effect that no party to the contract
7 agreed or presumably even contemplated the use of
8 such valuation. Do you see that statement?

9 A. Yes, I do.

10 Q. Now you made that statement in reference
11 to the testimony of Mr. Koby Bailey. Isn't that
12 correct?

13 A. I believe that's correct.

14 Q. Is it your understanding that Mr. Bailey
15 would use the day-ahead historic data to develop a
16 proxy transition charge for use in unbundling retail
17 contracts?

18 A. That's my recollection, based on reading
19 his testimony, that he does suggest utilizing the
20 historic day-ahead number.

21 Q. Is it your testimony that every party to
22 an Illinois Power contract agreed to the use of

1 market forward information for developing a proxy for
2 the transition charge to be used in unbundling retail
3 contracts in this docket?

4 A. No, definitely not.

5 Q. To your knowledge did any party to a
6 contract with Illinois Power agree to the use of
7 market forward information **for any** kind of valuation
8 associated with the NFF process?

9 A. No, not that I know of, but I don't know
10 that it would matter, to be honest.

11 MR. ROBERTSON: Move to strike I don't know --
12 everything that appears after the words I don't know
13 that it would matter, including those words.

14 MR. LAKSHMANAN: Again, I would say he was
15 intending to put his answer, which he did give you
16 the answer to your question and then attempted to
17 explain further context.

18 EXAMINER ALBERS: We'll strike it. If you want
19 to pursue that on redirect, you can do that.

20 MR. ROBERTSON:

21 Q. Now, are you proposing to use the market
22 forward information that you describe in your

1 rebuttal testimony in the same manner that Mr. Bailey
2 would use day-ahead historic information in reporting
3 to the NFF?

4 A. I can't say that I have reviewed
5 Mr. Bailey's testimony enough to say that it exactly
6 equates to what I would be suggesting as far as
7 methodology goes.

8 Q. Now would it be true to say that your
9 proposal does not require any unbundling of the
10 retail contracts in which these market forwards were
11 used?

12 A. **That's** correct.

13 Q. And it is my understanding that you would
14 simply report the market forward prices that were
15 used in the contract to the NFF. Is that correct?

16 A. As well as the customer specific usage
17 that applied to that contract at the time.

18 Q. Is it your position that that is
19 consistent with the requirements of the law in
20 Illinois or do you know?

21 A. It's my position that the law states that
22 we are to unbundle contracts as the law states.

1 Q. All right. And the law states that it
2 requires that the CTC applicable to -- or the
3 delivery service charges including transition charges
4 applicable to the customers in the -- applicable to
5 the customer -- strike that.

6 The law requires the use of the transition
'7 charge and the delivery service charge applicable to
8 the customer, does it not?

9 A. That is what I recollect it being,
10 correct.

11 Q. And are there any other transition charges
12 applicable or delivery service charges applicable to
13 customers in the Illinois Power service territory
14 other than those which are specified in Illinois
15 Power's tariffs?

16 A. No. I wouldn't see why there would be.

17 Q. Are market forwards specified in Illinois
18 Power's tariffs?

19 A. No, not that I recall.

20 Q. Now with regard to your proposal to use
21 market forwards, how many contracts did Illinois
22 Power enter into in which Illinois Power used market

1 fforwards?

2 MR. LAKSHMANAN: I would object on the grounds
3 of relevance. How many there are has no relevance to
4 whether it should be used or not used. We're going
5 to report what we have to report.

6 MR. ROBERTSON: It goes to auditability,
7 Mr. Examiner, which is an issue that the Staff raised
8 in their data request.

9 EXAMINER ALBERS: I'll overrule the objection.

10 MR. ROBERTSON: If we've got 6 million of these,
11 they are not going to be very auditable.

12 EXAMINER ALBERS: I'll overrule the objection.

13 A. I would say around 100.

14 Q. All right. And you also propose in the
15 context of your rebuttal that certain contracts in
16 which market forwards -- well, strike that.

17 It wasn't clear to me how you would treat
18 the contracts in which market forwards were not used
19 in the context of your proposal here for the purpose
20 of reporting to the NFF.

21 A. Okay. The suggestion I was making was
22 that for those contracts for which there was no

1 specific market forwards, that those contracts would
2 be thrown out or not considered.

3 Q. All right. Were you suggesting that they
4 would not -- they simply would not be reported by
5 Illinois Power?

6 A. No, absolutely not.

7 Q. And --

8 EXAMINER ALBERS: Can I clarify something? They
9 would not be reported by Illinois Power or would not
10 be --

11 A. They would definitely be reported because
12 that is what the law states. However, my suggestion
13 was that --

14 EXAMINER ALBERS: They not be considered.

15 A. Exactly.

16 EXAMINER ALBERS: Okay. I just wanted that to
17 be clarified. Thank you.

18 Q. Now, in reporting the contracts, would you
19 unbundle them?

20 A. We would unbundle them according to the
21 rules and wording and so forth that I expect would
22 come out of this proceeding.

1 Q. Okay. I'm not asking you what's going to
2 happen after this is over. I'm asking you in the
3 context of your proposal, if your proposal were
4 adopted, would you or would you not unbundle those
5 contracts?

6 A. Until the law was changed that told me I
7 didn't have to unbundle them, I would continue to
8 unbundle them.

9 Q. All right.

10 A. Even as I've suggested at different --
11 even as I've suggested in my testimony.

12 Q. For those contracts in which no market
13 forwards were used, are you saying that you would use
14 market forwards to unbundle those?

15 A. No.

16 Q. All right. What would you use?

17 A. I'm not sure. I'd have to give it some
18 more thought, other than I would have to figure out a
19 way to report them that followed the law.

20 Q. Are you the person who would be in charge
21 of that process, Mr. Hastings?

22 A. What do you mean by in charge of?

1 Q. Would you be responsible for preparing the
2 data for submittal to the NFF and the completion of
3 the summary forms?

4 A. That's correct.

5 Q. And is it your testimony as you sit there
6 today you don't know how you would unbundle those
7 contracts?

8 A. If I were to do it today?

9 Q. Uh-huh.

10 A. If I were to --

11 Q. Without considering -- considering what --
12 let me qualify it. If Mr. Bishop's recommendation in
13 his direct testimony for instructions to the NFF were
14 adopted in total, including the provisions regarding
15 the unbundling, how would you unbundle those
16 contracts?

17 A. I would take a copy of his testimony or
18 whatever it was that was submitted and I would get
19 that out and set it down and I would follow it
20 exactly.

21 Q. Do you see any difference in calculating
22 transition charges between a customer who is on a

1 contract -- strike that.

2 Now, would you look at page 3, line 42 and
3 44 of your direct.

4 A. Okay.

5 Q. You state that you are concerned where the
6 unbundling calculation derives the market value as
7 the residual amount remaining after subtracting
8 delivery service revenues, including transition
9 charges, from the bundled contract price. Is that
10 correct?

11 A. That's correct.

12 Q. Would you agree or disagree that under
13 Section 16-112(c) alternative retail electric
14 suppliers and electric utilities are required to
15 deduct from the contract price the charges for
16 delivery services, including transition charges,
17 applicable to the delivery service customers in the
18 utility's service area?

19 A. That sounds familiar. I would agree.

20 Q. Could you please look at your direct
21 testimony, lines 68 and 69?

22 A. Okay.

1 Q. Are you referring to actual market
2 forwards used by Illinois Power or the customer in
3 the negotiations?

4 A. Illinois Power.

5 Q. Is it possible that a customer might have
6 made its own market value assumptions in negotiating
7 that contract?

8 A. I would assume that's a possibility.

9 Q. Wouldn't it be logical for them to do so?

10 A. I would think so.

11 Q. Now in your position as the person
12 responsible for filling out these wonderful forms, in
13 determining -- in making your unbundling of contract
14 prices, do you see any difference between contracts
15 that were entered into and whose rates were in effect
16 prior to October 1, 1999 and contracts that were
17 entered into and whose rates became effective after
18 October 1, 1999?

19 A. Definitely, yes.

20 Q. What is that difference?

21 A. The difference is that for calculating the
22 transition charge the base rate should be based on

1 the tariffed rate the customer was on or if they were
2 on any special or negotiated contract rate that
3 occurred twelve months prior to the customer's
4 eligibility for access.

5 Q. So if I negotiated a contract with
6 Illinois Power prior to October 1, 1999 and the rate
'7 specified in that contract went into effect prior to
8 October 1, 1999, then my transition charge should be
9 based on that contract price. Is that correct?

10 A. The base revenue portion would be based on
11 that price. That's correct.

12 Q. If Illinois Power's position on market
13 forwards is not accepted by the Commission in this
14 proceeding, is it your intent to present to the
15 Neutral Fact Finder information regarding transition
16 charges applicable to customers who had a contract in
17 effect prior to October 1, 1999 based on the base
18 revenue in that contract?

19 A. It's my intention to follow the law, which
20 my last question answered. I will follow the law
21 which says that -- do I need to repeat myself?

22 Q. No. You agree with me that that's what

1 the law requires.

2 A. That's correct.

3 MR. ROBERTSON: I think I'm done, Mr. Hearing
4 Examiner, if I can just have a second.

5 EXAMINER ALBERS: Sure.

6 (Brief pause in the proceedings.)

7 MR. ROBERTSON: Thank you, Mr. Hastings.

8 THE WITNESS: Thank you.

9 EXAMINER ALBERS: Mr. Munson, did you have
10 questions.

11 MR. MUNSON: I have no cross for this witness.

12 EXAMINER ALBERS: Anyone else have any cross for
13 this witness? No? Okay. Do you have any redirect?

14 MR. LAKSHMANAN: If I could have a minute.

15 EXAMINER ALBERS: Sure.

16 MR. LAKSHMANAN: That would be helpful.

17 EXAMINER ALBERS: Why don't we take five then
18 while you're doing that.

19 (Whereupon a short recess was
20 taken.)

21 EXAMINER ALBERS: Back on the record.

22 Mr. Lakshmanan, I believe you had a couple

1 questions for your witness.

2 MR. LAKSHMANAN: Yes. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. LAKSHMANAN:

5 Q. Mr. Hastings, do you recall when both
6 Mr. Townsend and Mr. Robertson were asking you about
7 the statutory mitigation factor?

8 A. Yes.

9 Q. Based on your understanding of the
10 statute, does the statute permit -- strike that.,
11 Does the statute guarantee that the cost savings and
12 new revenue sources will offset any revenue losses
13 based on the mitigation factor that a utility will
14 incur?

15 A. No, it does not.

16 MR. LAKSHMANAN: That's all the questions I
17 have.

18 EXAMINER ALBERS: Okay. Any recross?

19 MR. TOWNSEND: We'll let that one go.

20 EXAMINER ALBERS: Okay. Thanks.

21 Okay. Thank you, sir.

22 (Witness excused.)

1 EXAMINER ALBERS: I believe next we have
2 Mr. Miller.

3 MR. ANDERSON: Mr. Miller has been sworn in.

4 EXAMINER ALBERS: Okay.

5 WADE A. MILLER

6 called as a witness on behalf of the Central Illinois
7 Public Service Company d/b/a AmerenCIPS and Union
8 Electric Company d/b/a AmerenUE, having been first
9 duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ANDERSON:

12 Q. Would you please state your full name and
13 business address for the record?

14 THE WITNESS:

15 A. Wade Miller, Ameren Services, 1901
16 Chouteau Avenue, St. Louis, Missouri 63166.

17 Q. And what is your position with Ameren
18 Services?

19 A. I'm Pricing Director.

20 Q. In the course of your duties have you
21 caused certain direct testimony to be prepared?

22 A. Yes, I have.

1 Q. I now refer you to an exhibit entitled
2 Direct Testimony of Wade A. Miller to which is
3 attached four schedules and which has been marked as
4 Ameren Exhibit 1.0 and ask if this is the testimony
5 and schedules which you caused to be prepared?

6 A. Yes.

7 Q. Is the information contained in Ameren
8 Exhibit 1.0 true and correct to the best of your
9 knowledge?

10 A. It is correct.

11 Q. Did you also cause certain rebuttal
12 testimony to be prepared?

13 A. Yes.

14 Q. I refer you to a document entitled
15 Rebuttal Testimony of Wade A. Miller which has been
16 marked as Ameren Exhibit 2.0 and ask if this is a
17 copy of the rebuttal testimony which you caused to be
18 prepared?

19 A. Yes.

20 Q. And is the testimony contained in Ameren
21 Exhibit 2.0 true and correct to the best of your
22 knowledge?

1 A. Yes.

2 MR. ANDERSON: At this time I would move for the
3 admission into evidence of Ameren Exhibit 1.0, which
4 consists of the Direct Testimony of Wade Milier and
5 the four schedules referred to in that testimony, and
6 Ameren Exhibit 2.0.

7 EXAMINER ALBERS: Any objection? Hearing none,
8 then Ameren Exhibit 1.0 with Schedules 1, 2, 3, and 4
9 and Ameren Exhibit 2.0 are admitted.

10 (Whereupon Ameren Exhibits
11 1.0 and 2.0 were received
12 into evidence.)

13 MR. ANDERSON: At this time Mr. Miller is
14 available for cross-examination.

15 EXAMINER ALBERS: Any questions for Mr. Miller?

16 MR. TOWNSEND: Yes.

17 EXAMINER ALBERS: Okay. Go ahead,
18 Mr. Townsend.

19 MR. TOWNSEND: Thank you.

20 CROSS EXAMINATION

21 BY MR. TOWNSEND:

22 Q. Good afternoon, Mr. Miller. Chris

1 Townsend appearing on behalf of **NewEnergy** Midwest
2 **L.L.C.**

3 You're critical of the suggestion by
4 Dr. O'Connor that parties submitting contracts to the
5 Neutral Fact Finder provide additional explanation of
6 the nuances associated with their contracts. Is that
7 correct?

8 A. I don't believe that that's perfectly
9 correct. I believe that we expressed that or that I
10 expressed that additional information is available or
11 can be provided. The specific nature of the
12 information that he suggested, we question whether
13 that fell within the context of the NFF process.

14 Q. So it's not that you believe that the data
15 is irrelevant. You just think that it might be
16 contrary to the law?

17 A. That is correct. I don't think we made a
18 judgment as to the relevance of the data.

19 Q. Assuming that it's legal to submit
20 subjective analyses with regards to the contracts, do
21 you believe that such information should be provided?

22 MR. ANDERSON: I'm going to object on the

1 grounds that it's vague. What do you mean by
2 subjective analyses? I'm not sure how the witness
3 can answer that question. If there's something
4 specific in Mr. O'Connor's testimony or Mr. Miller's
5 testimony to which you would like to refer, that
6 might be helpful.

7 EXAMINER ALBERS: Sustained.

8 Q. Turning to your rebuttal testimony, at
9 line 48 you use the phrase subjective data. Do you
10 see that?

11 A. Yes.

12 Q. Okay. Do you believe that such subjective
13 data should be submitted to the NFF?

14 A. I believe that in my testimony I indicated
15 that it is my understanding that it is not within the
16 realm or not within the ability or capability of the
17 NFF to consider that data. I didn't make a judgment
18 as to whether it should or shouldn't.

19 Q. Assuming that it is legal for the NFF to
20 consider such information, should such information be
21 provided?

22 MR. ANDERSON: I'm going to object as being

1 beyond the scope of Mr. Miller's testimony.
2 Mr. Miller is testifying as to the NFF process as it
3 currently exists, and I believe that's asking for
4 speculation and goes beyond the testimony to ask what
5 should be done if -- depending on a different state
6 of the law.

7 MR. TOWNSEND: And we may disagree with regards
8 to the interpretation of the law as to whether that's
9 allowable.

10 EXAMINER ALBERS: Okay. I'll overrule the
11 objection. The parties can argue in their briefs
12 about the whys. It's a hypothetical.

13 A. Can you repeat the question, please?

14 Q. Assuming that the NFF is allowed to
15 consider such subjective data, do you believe that
16 such subjective data would serve a useful purpose?

17 MR. ANDERSON: May I ask a clarification?

18 A. I don't know the answer to that.

19 MR. ANDERSON: Withdraw.

20 Q. If there are contracts submitted to the
21 NFF that include load following service, are you
22 opposed to the NFF using that information to adjust

1 the price of other contracts that may be for block
2 power?

3 A. Again, I'm not -- I don't believe in my
4 testimony that I made any judgments as to what other
5 issues should or should not be considered or would be
6 worthy of consideration. I believe I just stated
7 that, **based on my understanding,** I did not feel that
8 those considerations were part of the NFF process or
9 able to be part of the NFF process as part of the
10 statute.

11 Q. You understand that there may be some
12 contracts that are submitted to the NFF that in those
13 contracts themselves contain something addressing the
14 issue of load following service, don't you?

15 MR. ANDERSON: I guess I'm going to object at
16 this point to the questions regarding the load
17 following service on the grounds that **it's** beyond the
18 scope of the testimony. If there's a specific
19 reference to the testimony, either the direct or
20 rebuttal testimony of Mr. Miller that you have a
21 question about, you know, that's fine, but I'm not
22 sure I can see the reference to the testimony **that's**

1 been submitted.

2 EXAMINER ALBERS: Mr. Townsend.

3 MR. TOWNSEND: We can continue to go back to
4 specific line references and all, but I think that
5 this, again, goes to the essence of his testimony.
6 Question 6 though talks about load shaping and load
7 following in his rebuttal testimony.

8 EXAMINER ALBERS: I'll overrule the objection.

9 Do you remember the question, sir?

10 A. No, I do not. If I could have the
11 question again.

12 Q. Do you understand that some of the
13 contracts that are submitted to the NFF may contain
14 information that specifically addresses the costs
15 associated with load following?

16 A. I'm not sure exactly what you mean by load
17 following. Can I ask what the context of load
18 following means?

19 Q. You do testify about Dr. O'Connor's use of
20 the term load following. Correct?

21 A. Relative to adjustments, I believe I
22 testify on adjustments that he would like to make.

1 Q. Okay. So in the context of Dr. O'Connor's
2 testimony he explains what load following is, and you
3 had a sufficient understanding of that concept in
4 order to be able to prepare your rebuttal testimony?

5 A. Yes.

6 Q. For purposes of this cross-examination
7 let's assume that the definition of load following is
8 the ability to schedule the day before for each hour
9 of the following day. Okay?

10 A. Okay.

11 Q. Do you understand that some of the
12 contracts that are submitted to the NFF may include
13 specific costs associated with load following
14 service?

15 A. I understand that contracts may include
16 that service. I do not have any knowledge as to
17 whether any specific costs for providing that service
18 were attributed to those contracts or not.

19 Q. Assuming that there are contracts that do
20 have specific costs that are associated with that
21 load following service that are submitted to the NFF,
22 how should the NFF use that information?

1 A. Can you please ask the question again?

2 Q. Assuming that there are contracts that are
3 reported to the NFF that contain costs associated
4 with load following service, what should the NFF do
5 with that information vis-a-vis analyzing blocks of
6 power in wholesale contracts?

7 A . I do not know: I do not know what the
8 appropriate -- what costs you're referring to, what
9 might be appropriate and what's not. My
10 understanding is that items to be reported to the NFF
11 are directly related to contract prices, not costs.
12 I'm not sure what the load following costs are within
13 the context of prices reported to the NFF.

14 Q. If the NFF receives contracts that have
15 prices associated with the load following service,
16 what should the NFF do with that piece of information
17 vis-a-vis wholesale blocks of power?

18 MR. ANDERSON: I guess, again, I'm going to
19 object. The testimony that's been presented is not
20 testimony advising or commenting on what the NFF
21 should do with data. It's commenting on what the
22 scope of the form and the instructions for the form

1 for which the electric suppliers will need to provide
2 to the NFF. It doesn't go to the issue of how the
3 NFF --

4 MR. TOWNSEND: I'll withdraw the question.

5 EXAMINER ALBERS: Okay.

6 Q. Your basic position is that the NFF
7 process should be replaced. Is that correct?

8 A. Correct.

9 Q. However, you identify a number of specific
10 problems that are inherent in the current NFF
11 process. Is that correct?

12 A. That's correct.

13 Q. For example, you recognize that the prices
14 that are reported for the year 2000 may be higher or
15 lower depending on the prices that are associated
16 with other out years for a given contract. Correct?

17 A. Correct.

18 Q. Do you have a proposal as to how this
19 information should be brought to the NFF, assuming
20 that we're stuck with the NFF process?

21 A. I in my direct testimony as Exhibit 4
22 suggested some modifications to clarify and add

1 uniformity to certain aspects of the reporting
2 process. I did not attempt to address every single
3 concern that we raised because some of them are not
4 correctable through any amount of manipulation or
5 through anybody's best efforts. So I believe the
6 answer to your question is yes, I did make some
7 recommendations as to changing the form and the
8 process.

9 Q. And the changes that you propose mitigate
10 some of the problems that you've identified but not
11 all of them. Correct?

12 A. That's correct.

13 Q. Assuming that we're stuck with the NFF
14 process, should the other factors that aren't
15 addressed in your revisions to the form impact the
16 market value calculation at all?

17 A. I think that they do. Those factors
18 either impact the process or don't impact the process
19 to the extent that the process results in the wrong
20 answer or they're not considered.

21 Q. So to the extent that they're not
22 considered by the NFF or the translation tariff,

1 these are problems that would remain in the market
2 value of power.

3 A. Presumably.

4 Q. Is there some qualification there that I'm
5 missing?

6 A. I have not attempted to quantify in any
7 way the relative' significance of each of these. Some
8 of these -- some might not be considered to be a
9 problem.

10 MR. TOWNSEND: No further questions. Thank
11 you.

12 EXAMINER ALBERS: Anyone else? No? I'm sorry.
13 Mr. Robertson. Go ahead.

14 CROSS EXAMINATION

15 BY MR. ROBERTSON:

16 Q. Mr. Miller, in response to some questions
17 by Mr. Townsend you suggested or at least I
18 understood you to suggest that there were certain
19 information that could be provided to the NFF
20 consistent with the law and that information which
21 was suggested be provided by Mr. O'Connor -- **strike**
22 that. Information which Mr. O'Connor suggest be

1 provided was not necessarily, in your opinion,
2 consistent with the law. Is that correct?

3 A. That is correct.

4 Q. What type of information do you believe
5 the law permits **RESs**, retail electric suppliers,
6 electric utilities, alternative retail electric
7 suppliers to **provide to the NFF?**

8 A. It is not clear to me. I do not know the
9 answer what -- there is a location on the proposed
10 form to allow for additional information that
11 submitters deem to provide value. It is not clear to
12 me what information that might be reported is
13 actually able to be considered by the NFF and what is
14 not able to be considered. I don't know the answer
15 to that.

16 Q. Now in the answer you just gave am I
17 correct in assuming that this so-called additional
18 information as to whether or not **it's** relevant and as
19 to what exactly it is is something that's within the
20 discretion of the ARES, the RES, or the electric
21 utility to provide to the NFF?

22 A. That is my understanding.

1 Q. Now are you familiar with or can you -- to
2 the extent that you know, can you identify for me any
3 provision in Section 16-112 that says that the
4 provider of the information has any discretion about
5 the information he is to provide, he or she or it is
6 to provide to the NFF?

7 A . In reference to specific statute language,
8 I can't point to anything that would either support
9 or reject my comment.

10 Q. Do you agree or would you agree or
11 disagree with the statement in -- a statement in the
12 instructions which state, which provide the
13 respondent should also provide an indication as to
14 whether or not in the opinion of the respondent the
15 price reflects true market value or some other
16 value?

17 A. I recall that being part of the
18 instructions.

19 Q. Do you agree? Do you think that's a good
20 thing or not?

21 A. In my view, no.

22 Q. Why not?

1 A. In the context of the NFF process and the
2 strive for uniformity, I don't know how the NFF could
3 use information provided inconsistently by the
4 parties and use it effectively.

5 Q. Do you know of any provision in the law
6 that allows the NFF to determine of his own accord
7 whether a particular price in a particular contract
8 is or is not reflective of market value?

9 A. I do not know.

10 MR. ROBERTSON: I don't have anything further.
11 Thank you.

12 EXAMINER ALBERS: Mr. Walsh.

13 MR. WALSH: Can I ask two questions?

14 EXAMINER ALBERS: Sure.

15 CROSS EXAMINATION

16 BY MR. WALSH:

17 Q. As a follow-up to Mr. Robertson's
18 question, based on your knowledge of the law, is
19 there anything that forbids an entity from providing
20 subjective or additional information for the NFF to
21 consider?

22 A. Not that I'm aware of.

1 Q. And is there anything in the statute that
2 forbids an entity from stating whether the price
3 they're providing is reflective of the market value?

4 A. Not that I'm aware of.

5 MR. WALSH: Thank you.

6 EXAMINER ALBERS: Anyone else?

7 MR. ROBERTSON: Is it all right to ask a
8 question?

9 EXAMINER ALBERS: What's that?

10 MR. ROBERTSON: Is it all right to ask a
11 follow-up question?

12 MR. ANDERSON: No.

13 (Laughter)

14 EXAMINER ALBERS: I think you had your chance,
15 Mr. Robertson.

16 MR. ROBERTSON: Okay.

17 EXAMINER ALBERS: No other questions for
18 Mr. Miller?

19 I just had one follow-up, just a clarifying
20 question.

21

22

EXAMINATION

BY EXAMINER ALBERS:

I want to refer to your rebuttal testimony, question and answer number 11, and I just wasn't sure exactly what your position was in this particular question. It's concerning what Mr. Geraghty proposed, and basically are suggesting that the Commission reject Mr. Geraghty's proposal or somehow incorporate off-peak hours into the proposal?

A. No. In fact, the suggested revisions that we made in Exhibit 4 support Mr. Geraghty's methodology. I was not making a judgment that the example that I was demonstrating was either good or bad, but that a possible result of the implementation of that process would be that you could have in certain circumstances on-peak prices less than off-peak prices.

Q. Okay. So you just wanted to point that out and to be aware of it.

A. Yes.

EXAMINER ALBERS: Okay. That's all.

And it sounds like you did have some

1 redirect, Mr. Anderson?

2 MR. ANDERSON: I'm not sure. Can we take a
3 minute?

4 EXAMINER ALBERS: Sure.

5 (Whereupon a short recess was
6 taken.)

7 EXAMINER ALBERS: Okay. We are on the record
8 again, and it looks like Mr. Anderson has no
9 redirect.

10 MR. ANDERSON: Yes. We have no redirect.

11 (Witness excused.)

12 EXAMINER ALBERS: And I believe next was
13 Mr. Voytas, but no one has any cross-examination of
14 Mr. Voytas.

15 MR. ANDERSON: Correct. We have submitted,
16 distributed the rebuttal testimony of Mr. Voytas
17 which is marked as Ameren Exhibit 3.0. We've also
18 distributed and had marked as Exhibit 3.1 Mr. Voytas'
19 affidavit supporting his rebuttal testimony, and at
20 this time I would move for the admission into
21 evidence of Ameren Exhibits 3.0 and 3.1.

22 EXAMINER ALBERS: Any objection? Hearing none,

1 then Ameren Exhibit 3.0 and 3.1 are admitted.

2 (Whereupon Ameren Exhibits
3 3.0 and 3.1 were received
4 into evidence.)

5 EXAMINER ALBERS: And our next witness is Koby
6 Bailey on behalf of **Nicor**.

7 (Whereupon **Nicor** Energy LLC
8 Exhibit 1 and 2 were marked
9 for identification.)

10 EXAMINER ALBERS: Mr. Bailey, could you please
11 stand and raise your right hand.

12 (Whereupon the witness was
13 sworn by Examiner **Albers**.)

14 EXAMINER ALBERS: Thank you.

15 KOBY A. BAILEY
16 called as a witness on behalf of **Nicor** Energy, LLC,
17 having been first duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MUNSON:

21 Q. Would you please state your name and
22 business address for the record?

1 THE WITNESS:

2 A. Koby A. Bailey, 1844 Ferry Road,
3 Naperville, Illinois 60563.

4 Q. On whose behalf are you testifying in this
5 proceeding?

6 A. **Nicor** Energy, LLC.

7 Q. You have before you what's been marked for
8 purposes of identification as **Nicor** Energy Exhibits 1
9 and 2. I ask you if this is your prefiled testimony
10 submitted in this proceeding?

11 A. Yes, it is.

12 Q. Is it correct that Exhibit 1 contains six
13 pages and Exhibit 2 contains five pages?

14 A. That is correct.

15 Q. Was this testimony prepared by or under
16 your direction and supervision?

17 A. Yes, it was.

18 Q. Do you have any corrections or
19 modifications to make to either exhibit?

20 A. **No**, I do not.

21 Q. If I were to ask you these same questions
22 that are set forth in **Nicor** Energy Exhibits 1 and 2,

1 would your testimony be the same?

2 A. Yes, they would.

3 MR. MUNSON: At this time, Mr. Hearing Examiner,
4 I move for admission --

5 EXAMINER ALBERS: Stop for a second. We have
6 rebuttal testimony for Mr. Bailey?

7 MR. MUNSON: Yes.

8 EXAMINER ALBERS: I don't think I got that.

9 MR. MUNSON: You don't have that?

10 EXAMINER ALBERS: I don't think I got that, no.

11 MR. MUNSON: I apologize for that.

12 EXAMINER ALBERS: I think I'm just going to take
13 a minute to look through this, so we're off the
14 record.

15 (Whereupon at this point in
16 the proceedings an
17 off-the-record discussion
18 transpired, and IIEC Cross
19 Exhibit 1 - Bailey and IIEC
20 Cross Exhibit 2 - O'Connor
21 were marked for
22 identification.)

1 EXAMINER ALBERS: Back on the record.

2 I will have to take an opportunity to look
3 at Mr. Koby Bailey's rebuttal testimony since I
4 hadn't received it earlier.

5 In the meantime, Dr. O'Connor is going to
6 be joining us by phone.

7 MR. TOWNSEND: , We'd like to call Dr. Philip R.
8 O'Connor and ask him to be sworn.

9 EXAMINER ALBERS: Okay. Dr. O'Connor, would you
10 please stand and raise your **right hand**.

11 DR. O'CONNOR: Yes. I am standing and my right
12 hand is raised.

13 EXAMINER ALBERS: I'll take your word for that.

14 (Whereupon the witness was
15 sworn by Examiner Albers.)

16 EXAMINER ALBERS: Okay. Thank you.

17 DR. O'CONNOR: Thank you.

18 EXAMINER ALBERS: You may be seated.

19 DR. O'CONNOR: I am sitting down now.
20
21
22

1 PHILIP R. O'CONNOR, PH.D.
2 called as a witness on behalf of **NewEnergy** Midwest,
3 L.L.C., having been first duly sworn, was examined
4 and testified telephonically as follows:

5 DIRECT EXAMINATION

6 BY MR. TOWNSEND:

7 Q. Dr. O'Connor, do you have before you a
8 copy of what has been now marked as **NewEnergy** Exhibit
9 1 entitled the Direct Testimony of Philip R.
10 O'Connor, Ph.D. on Behalf of **NewEnergy** Midwest
11 L.L.C.?

12 A. Yes, I do.

13 Q. And is that 15 pages and an Attachment A
14 and an Attachment B?

15 A. Yes. I have Attachment A and Attachment
16 B.

17 Q. And do you intend for that to be your
18 direct testimony in this proceeding?

19 A. Yes, it is.

20 Q. Was that prepared by you or under your
21 direction and control?

22 A. Yes, it was.

1 Q. Do you have before you what has now been
2 marked as **NewEnergy** Exhibit 2 entitled Rebuttal
3 Testimony of Philip R. O'Connor, Ph.D. on Behalf of
4 **NewEnergy** Midwest L.L.C. consisting of seven pages of
5 testimony and an attachment?

6 A. Yes.

7 Q. And do you intend for that to be your
8 rebuttal testimony in this proceeding?

9 A. Yes, it is.

10 Q. And was that prepared by you or under your
11 direction and control?

12 A. Yes, it was.

13 MR. TOWNSEND: We move for the admission of
14 **NewEnergy** Exhibits 1 and 2.

15 EXAMINER ALBERS: Well, at this point I will
16 note there is at least one objection to a least
17 certain parts of Mr. O'Connor's rebuttal testimony.
18 Are there any other objections to his testimony being
19 admitted?

20 MR. LAKSHMANAN: We would join the **ComEd** motion
21 to strike for the reasons stated in it.

22 EXAMINER ALBERS: Okay. For the benefit of

1 Dr. O'Connor, that was Mr. Lakshmanan on behalf of
2 IP.

3 Anyone else? No?

4 Mr. Townsend, have you had a chance to look
5 over the motion?

6 MR. TOWNSEND: Yes, we have.

7 EXAMINER ALBERS: Would you like to respond to
8 it orally today?

9 MR. TOWNSEND: Just briefly.

10 The portion of the testimony that's been
11 identified in the attachment serves at least three
12 purposes.

13 First, it provides an example of the
14 alternatives that are being discussed. A number of
15 the witnesses to this proceeding have identified
16 alternatives to the NFF process. In fact, even
17 Edison witness Crumrine discusses that alternatives
18 exist, and today he admitted that that is relevant to
19 this proceeding. Dr. O'Connor merely describes what
20 that process is. So the first purpose is to provide
21 an example of an alternative to the NFF.

22 The second reason why the testimony at

1 issue is clearly relevant is that it highlights the
2 importance of load following. The attachment
3 explains the impact that load following would have
4 upon the auction, and by having day-ahead prices, why
5 that would be a better process, something that's
6 missing from the NFF process. It's an elaboration of
7 Dr. O'Connor's testimony.

8 Finally, it illustrates the impact that
9 load following puts -- load following would have on
10 the actual calculations. Nowhere else in the record
11 does anything actually describe the dollar impact
12 that load following would have on an adjustment to
13 the NFF, and this provides that type of illustration
14 for the Commission.

15 In addition, no where in the motion to
16 strike is there any explanation of why this testimony
17 would be prejudicial to anyone. Certainly he's being
18 offered today for cross-examination, and the
19 witness's reliance upon the attachment can be
20 explored by counsel.

21 EXAMINER ALBERS: Would you care to reply to
22 that response?

1 MS. READ: Yes, I would care to reply to that
2 response.

3 First of all, Mr. Townsend's remarks
4 indicate that this is not proper rebuttal. It
5 doesn't rebut anyone. It expounds on Dr. O'Connor's
6 direct testimony, and given the schedule in this
7 proceeding, the first status hearing **being** January
8 **20**, all parties working closely to try to develop
9 issues and limit them, testimony due February **25th**,
10 rebuttal testimony due less than a week before
11 today's hearing, I would say it was incumbent on NEV,
12 if they wanted to highlight the importance of load
13 following or provide examples, to do that in direct
14 testimony and give at least two weeks for data
15 requests and opportunity to respond.

16 We got this testimony late Friday. In
17 terms of analyzing it and looking at it, it took even
18 till yesterday to do a motion to strike. We believe,
19 and I'll say this in the nature of an offer of proof,
20 given adequate time, we would be able to prove that
21 there are such flaws in the design of these analyses
22 that they would definitely bias the bid price, open

1 **the proposed** auction process to manipulation, and
2 create significant complications for the translation
3 process.

4 We could also I think prove that the
5 analysis incorrectly applies some of the data on the
6 face of the analysis. This is not something I can
7 simply respond to through cross-examination;
8 particularly when the witness isn't present.

9 So **it's** inappropriate rebuttal, doesn't
10 respond to anyone, and particularly in light of the
11 schedule in this case **it's** a violation of our due
12 process rights.

13 But more importantly, it's completely
14 irrelevant to this proceeding. There need not be an
15 example of an alternative. The Commission cannot
16 adopt an alternative in this proceeding. The parties
17 have acknowledged there are potential options for
18 parties to pursue in other places. There's, in fact,
19 a confidential workshop **process** that the parties have
20 been pursuing, and there are other proposals that are
21 made in that process. It serves no purpose in this
22 process to have just one of those proposals floating

1 around, particularly a proposal that purports to
2 comment on other proposals that aren't before the
3 Commission and relates to an issue that this
4 Commission can't decide. It's irrelevant, it's
5 immaterial, and it's prejudicial to the extent it
6 tries to get one proposal before the Commission in
7 this proceeding without the Commission having the
8 benefit of a full discussion and other alternatives
9 which will only occur through the workshop process
10 and any filings that are ultimately made as a result
11 of that process, and I think that supports our view
12 that this is highly prejudicial to include in this
13 proceeding and is also irrelevant and immaterial.

14 EXAMINER ALBERS: Okay. Thank you.

15 In light of the response and the reply, let
16 me say I'm fully aware of what the scope of this
17 proceeding is for. I'm prepared to deny the motion
18 to strike but will note that I will give the
19 testimony and attachment in question the weight that
20 it's due.

21 MS. READ: Thank you.

22 EXAMINER ALBERS: And with that, I assume that

1 your objection is still -- you still make your
2 objection, and I should note your objection for the
3 record, and any other objections then in addition to
4 that?

5 MS. READ: No. We have an ongoing objection.
6 I'll just leave it at that.

7 EXAMINER ALBERS: The ongoing objection is
8 noted, and NewEnergy Exhibit 1 with Attachments A and
9 B and NewEnergy Exhibit 2 with Attachment A are
10 admitted.

11 (Whereupon NewEnergy Exhibits
12 1 and 2 were received into
13 evidence.)

14 EXAMINER ALBERS: And I presume you're going to
15 offer him for cross now.

16 MR. TOWNSEND: We tender the witness for
17 cross-examination.

18 EXAMINER ALBERS: Okay. Do you have any
19 questions?

20 MS. READ: Yes, I do.
21
22

1 CROSS EXAMINATION

2 BY MS. READ:

3 Q. Dr. O'Connor, it's correct, is it not,
4 that **NewEnergy** has its own trading floor in Boston
5 that it uses to buy and sell electricity?6 A. There is a trading floor in Boston. It is
7 not responsible exclusively, however, for supply
8 acquisition by the various **NewEnergy** regions.9 Q. Is it correct that **NewEnergy** advertises
10 that this independent trading function sets it
11 apart?12 MR. TOWNSEND: I request clarification. That
13 **NewEnergy** Midwest has advertised that?

14 EXAMINER ALBERS: Ms. Read?

15 MS. READ: That's a fine clarification, if he
16 wants that.17 EXAMINER ALBERS: Okay. Did you hear that,
18 Dr. O'Connor?

19 A. If you could just repeat that, Sarah.

20 Q. In New Energy's, for example, Internet
21 site, does it advertise that hosting that independent
22 trading function is one of the things that sets

1 **NewEnergy** apart from other suppliers?

2 A. Are you referring to the May 25, 1999 date
3 Internet update?

4 Q. I am talking about -- if you have it in
5 front of you, I wasn't going to put it in.

6 A. Yes, I have it in front of me. That's the
7 **May 25th of 1999**, right?

8 Q. That's when it was updated, and if you
9 look at the bottom right-hand corner, it was printed
10 off your Internet site yesterday.

11 A. Right, but I want to make sure we're
12 talking about the same thing.

13 Q. Yes.

14 A. Okay. Yes, that's on the Web page there.

15 Q. Okay. Is it also correct that **NewEnergy**
16 advertises on its Internet site that it purchases
17 electricity from a diversified range of suppliers?
18 Unlike the utilities, we have no predetermined source
19 of power. We have the freedom to shop for the lowest
20 price available. Our supply team monitors the market
21 to obtain maximum profitability for our customers by
22 procuring long-term, seasonal, excess capacity, and

1 spot market power.

2 A. Depending upon which region you're talking
3 about, it has various applicability.

4 Q. Okay. But is it correct that that appears
5 on your **Website**?

6 A. It is on the **Website** right there.

7 Q. Okay.

8 Is it correct that **NewEnergy** currently
9 serves over 500 megawatts of load?

10 A. We believe that we have about 500 plus
11 megawatts of non-coincident peak load, yes, in the
12 **ComEd** territory.

13 Q. Okay. Thank you for adding that
14 clarification about where. That was my next
15 question.

16 Isn't it correct that in obtaining those
17 customers **NewEnergy** surpassed its original business
18 targets for the first three months of competition in
19 Illinois?

20 A. Yes, that's right.

21 Q. Okay. Is it correct that **NewEnergy**
22 Ventures Midwest is an affiliate of AES Corporation?

1 A. Our name is **NewEnergy** now. The Ventures
2 **s** gone, but, yes, we are a wholly-owned subsidiary
3 **of** AES Corp.

4 Q. And is it correct that AES Corp. bills
5 **itself** as the world's largest global power company?

6 A. I believe that's correct.

7 Q. Is it correct that, you issued a **press**
8 **release** on November 2, 1999 in which you were quoted
9 **as** saying the overwhelming reason for our success in
10 **Illinois** is our simple and favorable pricing and the
11 **level** of service and attention we are offering not
12 **only** large customers but the medium-sized electricity
13 **users** as well?

14 A. Yes, that's right.

15 MR. TOWNSEND: Objection. What's the relevance
16 **of** the press release as of October [sic] **2nd**? The
17 **witness** is here today. If she wants to ask him a
18 **question** about what his beliefs are today or what's
19 **contained** within his testimony, she's free to do so.

20 MS. READ: I believe I have an answer, but I
21 **will** also state that Dr. O'Connor makes statements in
22 **his** testimony, particularly on page 4 of his direct,

1 about the ability for competition to develop, and he
2 makes numerous other statements about competition.
3 These are all relevant, and the only reason to
4 reference the press release, which I have previously
5 forwarded to Dr. O'Connor today, was to make this
6 phone cross-examination easier so that we didn't have
7 to ask the statement; see if he recalled it or said
8 something inconsistent, and then try to work through
9 impeachment. So I'm trying to move through this as
10 quickly as possible. It is certainly relevant.

11 EXAMINER ALBERS: Okay. The objection is
12 overruled.

13 MS. READ: And I believe the Court Reporter got
14 the witness's answer.

15 A. Yeah, I believe I already answered your
16 question, but the answer is yes.

17 Q. Absolutely. Right. Thank you.

18 And in that same press release were you
19 also quoted as saying because **NewEnergy** has its own
20 wholesale supply unit, we are able to provide a
21 unique level of discounts to our customers, in some
22 cases significantly greater than what they would

1 receive from another competitor or by opting for
2 ComEd's PPO?

3 A. Yes.

4 Q. Did NewEnergy Midwest report contracts to
5 the NFF last year?

6 A. No, we did not, and that's because we did
7 not have any contracts at that time and therefore
8 were not covered by the requirement.

9 Q. I'd like you to turn to -- oh, sorry.
10 Before I turn you to that, could you give me your
11 definition of load following?

12 A. Yes. For the purposes of our discussion
13 we have treated load following for retail purposes as
14 being the ability on the day before to schedule for
15 the next day deliveries on an hourly basis, so that
16 for each of the 24 hours of the following day you
17 would specify the deliveries from the wholesale
18 supplier to, in this case, the ComEd system.

19 Q. And when you use load following in that
20 sense, are you referring to full requirements
21 scheduling?

22 A. It needn't be full requirements, but in

1 the particular example of our case it is full
2 requirements.

3 Q. And when you use load following in your
4 direct testimony, did you have a full requirements
5 contract in mind?

6 A. Yes. That is the model. That's right.

7 Q. How would you distinguish your use of the
8 word load following from your use of the word load
9 shaping? Or phrase; I'm sorry. How would you
10 distinguish the use of the phrase load following in
11 your testimony from the phrase load shaping?

12 A. Well, load shaping is simply an average of
13 the aggregate of load classes or for that matter the
14 average of a load class over let's say a month,
15 whereas load following is the issue of treating the
16 day-to-day differences as well as the hour-to-hour
17 differences in any given day. So they're quite
18 distinct from one another.

19 Q. Okay. I would like you to look at
20 Attachment A to NewEnergy's Exhibit 2. That's your
21 rebuttal testimony.

22 A. Okay.

1 Q. And I would like you to look at the first
2 page of the data that follows the narrative in
3 Attachment A.

4 A. Okay. This is the illustrative data?

5 Q. Yes. It's titled Illustrative.

6 A. It's titled Illustrative For July (Many
7 Assumptions)?

8 Q. I'm looking at the page that says ComEd
9 System Average Load Profile - Illustrative, Month of
10 July, Based on Powerpath Website Info and Multiple
11 Assumptions.

12 A. Okay. Hold on for just a moment.

13 MR. TOWNSEND: I believe that that's the last
14 page?

15 A. Last page. Okay.

16 MS. READ: Well, it's the first page of my copy,
17 so.

18 A. Right, that's labeled Illustrative.

19 Q. Okay. I want to refer you to the phrase
20 multiple assumptions. Can you tell me as you stand
21 there today or sit, whatever you're doing, what those
22 multiple assumptions are?

1 A. We had to assume two things. One is that
2 the powerpath **Website** information provided by **ComEd**
3 that for these illustrative purposes would help to
4 show the differences among the classes and thereby
5 really begin to start the process of understanding
6 what the load following issue was about.

7 Q. That's one assumption: **What other**
8 assumptions are reflected in this?

9 A. Well, first of all, one of the things we
10 did was to treat simply the ten general service rate
11 classes and did not deal with others. We did not
12 deal with the above -- I mean we did not deal with
13 the non -- how should I put that? With the rate
14 classes outside the ten general delivery service rate
15 classes.

16 Q. What other assumptions were made?

17 A. If you look at the Maximum and Minimum
18 figures, do you see that? Over on the right-hand
19 side?

20 Q. I see columns labeled as that, yes.

21 A. Okay. We simply assumed, based on the
22 powerpath **Website** information from **ComEd** for the load

1 profiles of these classes, we were able to make a
2 calculation that these were the maximum and minimum
3 loads for those classes. So we had to assume, for
4 instance, that all of the work that ComEd did was
5 correct, but also even if not precisely correct,
6 adequate for purposes of the illustration.

7 Q. What else-did you simply assume?

8 A. I would say those are the major
9 assumptions.

10 Q. Let me direct you to the column that's
11 titled Assumed Auction Value. Those numbers you
12 simply assumed?

13 A. Just repeat that, if you could, on the
14 Assumed Auction Value.

15 Q. You see that column?

16 A. Yes. It's right in front of me.

17 Q. Yes. By labeling it Assumed Auction Value
18 am I to understand that those are numbers you simply
19 assumed?

20 A. Yes. It was just for illustration
21 purposes.

22 Q. Let me refer you to the page, which is my

1 last page, I guess it was your first page of this,
2 titled **ComEd Powerpath Website**, Generic Load
3 Profiles, Month of July, and off on the right-hand
4 side it says Illustrative for July (Many
5 Assumptions).

6 A. That's right.

7 Q. Are those many assumptions the same as the
8 multiple assumptions on the prior page or are there
9 additional assumptions that were made?

10 A. They would be the same as the ones we've
11 talked about but merely boiled down for the month of
12 July where, you know, you may have more peakiness or
13 whatever, but we simply assumed that the data we had
14 for the ten classes was adequate for this purpose.

15 EXAMINER ALBERS: Dr. O'Connor?

16 A. Yes.

17 EXAMINER ALBERS: We didn't catch one of the
18 words you used there. Was, that peakiness?

19 A. Well, you know, in July there's a great
20 deal of peakiness, as we've all seen, and we are
21 assuming that for this illustrative purpose that the
22 powerpath **Website**, which is an aggregation of better

1 data that the company has, was adequate for this
2 purpose. We have to remember the only people who
3 have this information --

4 EXAMINER ALBERS: Dr. O'Connor, we just wanted
5 to clarify that one word you used there.

6 A. All right.

7 EXAMINER ALBERS: ~~Could you spell peakiness~~ for
8 us?

9 A. Peak, P-E-A-K-I-N-E-S-S.

10 Q. Would this type of analysis with many
11 assumptions or multiple assumptions be one that you
12 would be comfortable basing your business decisions
13 on?

14 A. Well, in fact, we do have to base many of
15 our decisions on incomplete information. As I was
16 about to say a moment ago, the underlying information
17 is possessed only by ComEd, and in that respect, of
18 course, it's a slight disadvantage at least for
19 everybody else.

20 Q. Okay. That's --

21 A. So we do, from a business **standpoint**, have
22 to make judgments based on incomplete information.

1 However, more complete information that would flush
2 out and make concrete these mere illustrations could
3 come from the company.

4 Q. Okay. Dr. O'Connor, we disagree,
5 obviously, about your views on what data is only
6 available to ComEd or others, and I'm not going to
7 move to strike, but I would ask you to try to --
8 we'll move along more quickly if you try to respond
9 to the question I asked, and the question --

10 A. I responded precisely to your question,
11 Sarah. You asked me, if you want to read it back --

12 EXAMINER ALBERS: All right. We're not going to
13 get into that.

14 Q. Let me reask it and see if --

15 A. Yes.

16 Q. Okay. Would you base a business decision
17 of NEV -- strike that.

18 Would you base a business decision of
19 NewEnergy Midwest today on this analysis which you
20 have presented for the record labeled many
21 assumptions, illustrative, multiple assumptions?

22 A. And my answer, which I will repeat, is

1 every day we do make business decisions necessarily
2 on incomplete information.

3 Q. Do you simply -- well, I'd still like my
4 question answered which was to this particular
5 analysis, would you be comfortable buying and selling
6 power today based on this analysis which you
7 presented in Attachment A?

8 MR. TOWNSEND: Objection, argumentative.

9 EXAMINER ALBERS: The witness has not answered
10 that question, so I'm going to allow the question
11 again.

12 A. If I understand it correctly, would I
13 simply take this information and rely exclusively on
14 this and go to the market and pay this price?

15 Q. Yes.

16 A. Well of course not. You know the answer
17 to that.

18 Q. So you would not base a business decision
19 on that analysis.

20 A. I didn't say that. I told you earlier
21 that we do base business decisions on information
22 similar to this and that is incomplete. You were

1 asking me then a different question which is would I
2 go to the market with presumably this information
3 exclusively, which I asked you to clarify, and I
4 said, well, no, there would be other information as
5 well, and these prices are meant strictly as an
6 illustration of the wide range of demand or usage in
7 any given hour within **any given class**.

8 EXAMINER ALBERS: Okay.

9 Q. Dr. O'Connor, in the conduct of **NEV's**
10 business, does it make business decisions committing
11 dollars and cents on the basis of illustrative
12 analyses in which various numbers are simply
13 assumed?

14 A. Yes.

15 Q. Okay.

16 A. Now wait a minute. You're beginning to
17 twist things, Sarah. We didn't merely assume the
18 numbers. We took numbers from the powerpath
19 **Website**. We then had to make certain assumptions
20 about the extent to which there was various
21 similitude with the real world, and we live with that
22 information all the time.

1 Q. And this is the --

2 A. The answer is yes, we do make business
3 decisions on the incomplete information on the
4 powerpath Website.

5 Q. But **that's** not what I'm asking. For the
6 type of analysis you've presented in Attachment A,
7 would you **make** a business decision **relying** on **that**
8 analysis?

9 A. I have told you several times, we do it
10 every day.

11 Q. Okay. So if that's your testimony, that's
12 the way you conduct your business, that's fine.

13 A. **It's** one of the ingredients.

14 EXAMINER ALBERS: There's no question pending.

15 MR. TOWNSEND: Objection, argumentative. We're
16 not here to listen to Sarah testify. **I'm** sorry:
17 Ms. Read testify.

18 MS. READ: I could certainly move to strike
19 multiple of his answers.

20 EXAMINER ALBERS: We've got the witness being
21 just as argumentative with the counselor, so.

'22 A. Yeah. I mean --

1 EXAMINER ALBERS: Dr. O'Connor, there's no
'2 question pending.

3 A. Okay. I didn't hear it. Go ahead.

4 Q. Dr. O'Connor, as a former regulator, would
5 you recommend that the Commission make decisions
6 based on analyses in which data is simply assumed?

7 A. No. I would hope that what the Commission
8 would do would then take this as an illustration and
9 then ask the only party who possesses the real
10 information to come forward with it, and that would
11 be ComEd.

12 Q. Do you believe that as a former regulator
13 it is advantageous to the Commission in considering
14 proposals for parties to have adequate opportunity to
15 analyze and respond?

16 A. Well, of course.

17 MS. READ: Okay. I have no further questions.

18 EXAMINER ALBERS: Thank you.

19 Does anyone else have any questions for
20 Dr. O'Connor? Mr. Robertson.

21 MR. ROBERTSON: I do -- with permission of
22 Dr. O'Connor's counsel, I do intend to introduce into

1 evidence what the reporter should have marked or is
2 marked as IIEC Cross Exhibit Number 2 which is
3 Dr. O'Connor and **NewEnergy** Midwest L.L.C.'s response
4 to **IIEC's** First Set of Data Requests, Request Number
5 5.

6 THE WITNESS: Okay. I'm afraid, Eric, that I've
7 got to dig that out here. Hold on for just a moment,
8 please. I wasn't quite ready for that. Just a
9 moment, please.

10 MR. TOWNSEND: Dr. O'Connor, I don't believe
11 that we're going to actually have cross-examination
12 with regards to that.

13 THE WITNESS: Oh, I'm sorry. I misunderstood.

14 MR. ROBERTSON: I just want to put it in as a
15 cross exhibit, Dr. O'Connor.

16 EXAMINER ALBERS: Do you have a copy of that for
17 me?

18 MR. ROBERTSON: Yes, sir.

19 EXAMINER ALBERS: And did you want to admit any
20 of the documents you were referencing there?

21 MS. READ: I was only going to admit those if
22 there was a problem in reading it, but we have

1 everything we need.

2 EXAMINER ALBERS: Okay. Did you move to admit
3 this? I'm sorry.

4 MR. ROBERTSON: I would move to admit IIEC Cross
5 Exhibit 2 - O'Connor.

6 EXAMINER ALBERS: Any objection?

7 MR. ANDERSON: I have **no objection**, but ' I missed
8 what was Cross-Examination Exhibit 1?

9 MR. ROBERTSON: Well, it's because I expected
10 Mr. Bailey to be on first. That will be Cross
11 Exhibit Number 1.

12 MR. ANDERSON: Oh, I see. I'm sorry. Thank
13 you.

14 EXAMINER ALBERS: Well, if there's no objection'
15 then to IIEC Cross Exhibit 2 - O'Connor, it is
16 admitted.

17 (Whereupon IIEC Cross Exhibit
18 2 - O'Connor was received
19 into evidence.)

20 EXAMINER ALBERS: And **does** anyone else have any
21 questions for Dr. O'Connor? No?

22 Dr. O'Connor, this is the Examiner. I have

1 one question for you myself.

2 THE WITNESS: Yes.

3 EXAMINATION

4 BY EXAMINER ALBERS:

5 Q. If the Neutral Fact Finder produced a
6 retail market value, how would that retail market
7 value be used?

8 A. Well, the retail market value would be
9 used to produce both the CTC and to provide the
10 market value that would be charged to PPO customers.

11 Q. As utility tariffs exist now, they only
12 take into account the wholesale market value. Is
13 that a correct understanding?

14 A. Actually not.

15 Q. Do you believe any revisions to the
16 utilities' delivery services tariffs have to be made
17 to accommodate a retail market value and a wholesale
18 market value from the NFF?

19 A. No. No, that would not be necessary.

20 EXAMINER ALBERS: Okay. Thank you.

21 Do you have any redirect, Mr. Townsend?

22 MR. TOWNSEND: Just a few questions.

1 EXAMINER ALBERS: Okay. Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. TOWNSEND:

4 Q. Dr. O'Connor, do you recall Ms. Read's
5 cross-examination with regards to the **NewEnergy**
6 **Website**?

7 A. Yes.,

8 Q. And she specifically was referring to
9 quotes from a page that was updated on May 25th of
10 1999.

11 A. I believe that that's right.

12 Q. Is that date relevant?

13 A. Well, **it's** relevant to the extent that the
14 discussion of certain procedures and products aren't
15 necessarily applicable to the central region and to
16 Illinois because the products and the acquisition of
17 supply for the Illinois market did not commence until
18 well after May 25th of '99.

19 Q. Do you recall cross-examination with
20 regards to the November 2, 1999 press release of
21 **NewEnergy**?

22 A. Yes, I do.

1 Q. Do you believe that that press release
2 contradicts anything that you've said in this
3 proceeding?

4 A. No, no. It was updated by subsequent
5 press releases as well.

6 Q. What did those subsequent updates
7 provide?'

8 A. In one case, the January **25th**, for
9 instance, it reported on the 500 megawatt level that
10 Sarah had asked about and also though went on to
11 point out some of the difficulties related to the
12 calculations of the CTC and market value and the
13 likelihood of remonopolization in the summer because
14 of problems with the market value.

15 Q. And are all of those press releases
16 available on New Energy's **Website**?

17 A. Yes. They're direct links to the press
18 releases.

19 Q. Referring to the questions regarding
20 Attachment A to your rebuttal testimony, could you
21 please provide a definition of the term peakiness?

22 A. Well, the issue there is the relativity of

1 the peak on, you know, very heavy peak days relative
2 to the average load even in that given month or, for
3 that matter, even for that given day over any number
4 of years, so that in the summertime, while you can't
5 predict any given day or any given summer, there
6 could be peak usage and therefore peak prices given
7 certain conditions that, you know, might be quite
8 different than one would expect to have occur, and
9 that's really the issue of peakiness and load
10 following in the discussion that we're trying to
11 have.

12 Q. And can you relate the concept of
13 peakiness to the average of peak?

14 A. If you could repeat that, please.

15 MS. READ: Your Honor, I'm going to object.

16 This I think goes beyond the scope of the cross.

17 He's drawing on additional testimony that the witness
18 offered which was nonresponsive to questions raised.

19 EXAMINER ALBERS: Can you tie this back to the
20 cross?

21 MR. TOWNSEND: It goes back to all of the
22 discussion with regard to peakiness and the way in

1 which -- I'm trying to put that into the context of
2 his testimony.

3 MS. READ: And all of that discussion was raised
4 in nonresponsive answers, and I do believe redirect
5 is limited to the scope of the actual **cross-**
6 examination.

7 EXAMINER ALBERS: I'll sustain the objection.

8 MR. TOWNSEND: No further questions. Thank
9 you.

10 THE WITNESS: I understand the question. Should
11 I answer it?

12 EXAMINER ALBERS: No.

13 THE WITNESS: No?

14 EXAMINER ALBERS: Do you have any recross?

15 MS. READ: Yes, but I'm going to pass.

16 EXAMINER ALBERS: Okay.

17 All right. I believe that is everything
18 for Dr. O'Connor then.

19 (Witness excused.)

20 I just want to thank Ms. Read and
21 Mr. Townsend for working together to make this as
22 painless as possible. It still did entail some

1 pain.

2 In the future, I'll just note for the
3 record, please check in advance to make sure there is
4 no cross for a witness.

5 DR. O'CONNOR: Mr. Hearing Examiner, we actually
6 did and were given to understand that there wasn't,
7 but maybe I misunderstood somebody.

8 EXAMINER ALBERS: Well, I can think of one
9 person that wasn't asked if they had any cross for
10 Dr. O'Connor.

11 DR. O'CONNOR: Okay. Well, then we missed that
12 person.

13 EXAMINER ALBERS: That was me.

14 DR. O'CONNOR: Okay. Well, we apologize.

15 EXAMINER ALBERS: Thank you.

16 Do you wish to stay on the line for the
17 remainder of the hearing?

18 DR. O'CONNOR: No, I don't think so.

19 EXAMINER ALBERS: Okay.

20 DR. O'CONNOR: Okay. Thank you.

21 EXAMINER ALBERS: All right. Thank you.

22 DR. O'CONNOR: Bye.

1 EXAMINER ALBERS: Do we want to take care of
2 Mr. Stephens now?

3 MR. MUNSON: Should we finish Mr. Bailey?

4 EXAMINER ALBERS: Well, I want to take a break
5 and look at his rebuttal before we go back to him,
6 but there's no cross for Mr. Stephens?

7 MR. ROBERTSON: That's my understanding,
8 Mr. Examiner.

9 EXAMINER ALBERS: Okay.

10 MR. ROBERTSON: I would then move the admission
11 of IIEC Exhibit Number 1, which is the affidavit of
12 Mr. Stephens, his direct testimony, and Appendix A to
13 his direct testimony -- or rebuttal testimony. I'm
14 sorry. It should be 2, his rebuttal testimony.

15 EXAMINER ALBERS: Did you give me his
16 affidavit?

17 MR. ROBERTSON: Say again?

18 EXAMINER ALBERS: Did you give me his
19 affidavit?

20 MR. ROBERTSON: I attached it to the -- I can
21 give you a copy.

22 EXAMINER ALBERS: Okay. And did you have that

1 affidavit and testimony marked as Exhibit 1
2 together?

3 MR. ROBERTSON: Yes.

4 EXAMINER ALBERS: Okay. That's fine. I just
5 wanted to be clear.

6 MR. ROBERTSON: Okay.

7 EXAMINER ALBERS: And there is just the Appendix
8 A?

9 MR. ROBERTSON: That is correct.

10 EXAMINER ALBERS: Okay. Any objection to this
11 exhibit and appendix? Hearing none, then IIEC
12 Exhibit 1 with Appendix A is admitted.

13 (Whereupon IIEC Exhibit 1 was
14 received into evidence.)

15 EXAMINER ALBERS: Okay. Why don't we take a
16 little break, say ten minutes. I'll take a look at
17 Mr. Bailey's rebuttal testimony, and at that time we
18 can come back and address any cross there is for
19 him.

20 MR. TOWNSEND: Mr. Examiner, did your prior
21 ruling also -- on the motion to strike include a
22 ruling that said that Dr. O'Connor's testimony was

1 admitted into the record?

2 EXAMINER ALBERS: Actually it did, yes. It
3 did. I had to think about it for a second, but yes.

4 MR. TOWNSEND: Okay. Thank you.

5 (Whereupon a short recess was
6 taken.)

7 EXAMINER ALBERS: Okay; **Back on the record.**

8 We will pick up with Mr. Bailey.

9 I had an opportunity to look at his
10 rebuttal testimony, and I believe when I interrupted
11 Mr. Munson he was moving to admit **Nicor Energy**
12 Exhibits 1 and 2.

13 MR. MUNSON: That is correct. I move to admit.

14 EXAMINER ALBERS: Okay. Any objection to **Nicor**
15 Energy Exhibits 1 and 2? Hearing none, then those
16 exhibits are admitted.

17 (Whereupon **Nicor Energy, LLC**
18 Exhibits 1 and 2 were
19 received into evidence.)

20 EXAMINER ALBERS: Does anyone have any
21 cross-examination for Mr. Bailey? No?

22 MR. ROBERTSON: I have a cross exhibit.

1 EXAMINER ALBERS: Oh, that's right. Go ahead,
2 sir.

3 MR. ROBERTSON: Mr. Examiner, I would move the
4 admission of IIEC Cross Exhibit Number 1 - Bailey
5 which is Nicor Energy, LLC's response to IIEC's First
6 Data Request, Item Number 5.

7 EXAMINER ALBERS: Could you give me a copy of
8 that, please?

9 MR. ROBERTSON: Yes, sir.

10 EXAMINER ALBERS: Thank you.

11 Any objection? Hearing none, then IIEC
12 Cross Exhibit 1 - Bailey is admitted.

13 (Whereupon IIEC Cross Exhibit
14 1 - Bailey was received into
15 evidence.)

16 EXAMINER ALBERS: Did you have any questions for
17 Mr. Bailey?

18 MR. ROBERTSON: No, sir.

19 EXAMINER ALBERS: Does anyone else have
20 questions for Mr. Bailey? No? Okay. I guess you
21 got off easy, Mr. Bailey. All right. Thank you.

22 THE WITNESS: Thank you.

1 (Witness excused.)

2 EXAMINER ALBERS: And I believe that takes care
3 of all the witnesses today and all the testimony for
4 those who weren't here.

5 Well, as far as I know the only thing left
6 is to establish dates for briefs and reply briefs.
7 Everyone assured me they were aware of the tight
8 frame in this, so hopefully no one will be too
9 alarmed when I throw out these dates.

10 Initial briefs will be due April 16th.
11 That's one week from today, and reply briefs --

12 MR. ROBERTSON: March 16th.

13 EXAMINER ALBERS: I'm sorry; March 16th.

14 MR. ROBERTSON: But we'll take April 16th.

15 EXAMINER ALBERS: Yes, initial briefs will be
16 due March 16th and reply briefs will be due March
17 22nd.

18 MR. REVETHIS: Could you live with the 17th and
19 the 24th? I mean for reply that's really --

20 EXAMINER ALBERS: Well, I believe Mr. Flynn of
21 Ameren spoke to everyone at one of our prior status
22 hearings and assured me that everyone was thoroughly

aware of the time frames we're under.

2 MR. REVETHIS: Well, you know, of course we
3 understand it's very tight.

4 EXAMINER ALBERS: Well, you can have less time
5 with the briefs or less time with exceptions.

6 MR. REVETHIS: I mean to do replies with
7 multiple parties in **two business days or three**
8 business days I guess is really incredibly tight.

9 EXAMINER ALBERS: I'm going to be writing the
10 order on a tight time frame too.

11 MR. REVETHIS: No, I understand that. I
12 understand that.

13 EXAMINER ALBERS: Why don't we go off the
14 record.

15 (Whereupon at this point in
16 the proceedings an
17 off-the-record discussion
18 transpired.)

19 EXAMINER ALBERS: After some discussion, initial
20 briefs will still be due on March 16th and reply
21 briefs will be due on March 23rd. That's one more
22 day from what we originally proposed.

1 Does anybody have anything else or want to
2 voice any objections to the dates for their briefs?

3 MR. MUNSON: I have something else.

4 EXAMINER ALBERS: Okay. Go ahead, Mr. Munson.

5 MR. MUNSON: I have some outstanding data
6 requests that I'd like -- well, actually it's one
7 data request per utility or per reporting entity.
8 Please serve those on me as soon as possible.

9 MS. READ: I don't think you -- (interrupted)

10 MR. SEIDEL: We didn't get one.

11 MR. MUNSON: You complied; Commonwealth Edison
12 did.

13 MR. SEIDEL: I don't remember getting one. Did
14 you send one to Central Illinois?

15 MR. MUNSON: No, Central Illinois. I'm sorry.

16 MR. LAKSHMANAN: Illinois Power Company is not
17 aware of any being served on it. I'm being quite
18 serious. I did not received any. I have received
19 data requests from two other parties, and we have
20 responded to both of those.

21 MR. MUNSON: All it was is please provide me
22 copies of those responses. That's it.

1 MR. LAKSHMANAN: Oh, I didn't see that either.

2 We'll be happy to do that.

3 MR. MUNSON: I believe you and Ameren are the
4 only ones who have not complied.

5 MR. ANDERSON: You just want copies of our
6 responses to other data requests?

7 MR. MUNSON: Yes.

8 MR. LAKSHMANAN: We haven't received any. We
9 would be happy to comply with that. I just never
10 received it.

11 EXAMINER ALBERS: Okay. Are we all clear on
12 that?

13 MR. SEIDEL: I have a matter off the record.

14 EXAMINER ALBERS: Okay. Off the record.

15 (Whereupon at this point in
16 the proceedings an
17 off-the-record discussion
18 transpired.)

19 EXAMINER ALBERS: All right. Back on the
20 record.

21 One clarification that was requested be
22 made is that the dates for initial briefs and reply

1 briefs are in-hand dates and that at least for my
2 purposes if I can get it electronically on those
3 dates, served by hard copy after that, that's fine
4 with me.

5 Is there anything else to note today?

6 MR. REVETHIS: I'm sorry. So electronic filing
7 on the date it's due is acceptable.

8 EXAMINER ALBERS: That's acceptable for my
9 purposes, yes.

10 MR. REVETHIS: Okay.

11 EXAMINER ALBERS: However you want to work it
12 out with the other parties, it's up to you guys.

13 MR. REVETHIS: I thought that was agreeable to
14 everyone. Is it?

15 MS. READ: Electronic service.

16 MR. REVETHIS: Electronic service to all
17 parties.

18 EXAMINER ALBERS: Okay.

19 MR. REVETHIS: With hard copy to follow.

20 EXAMINER ALBERS: No one is objecting to
21 electronic service on the due dates, so it's my
22 understanding that everyone accepts it.

1 MR. REVETHIS: I'm sorry.

2 EXAMINER ALBERS: And if there's nothing further

3 --

4 MR. REVETHIS: Well, and it's next day hard
5 copy. Is that correct?

6 MR. SEIDEL: On the next day hard copy, if you
7 have it electronically, why wouldn't ordinary mail be
8 okay?

9 MS. READ: Because I can tell you at least for
10 going to the clerk, we often have to call and say who
11 did you get copies from to find out who left us off
12 their electronic filing lists, so I would like to
13 have next day hard copy.

14 EXAMINER ALBERS: Next day it will be then.
15 Next day it will be.

16 MR. REVETHIS: Right. That's probably best.

17 EXAMINER ALBERS: If there's nothing further,
18 then I'll mark the record Heard and Taken.

19 MR. REVETHIS: That's fine. Thank you,
20 Mr. Examiner.

21 HEARD AND TAKEN

22

1 STATE OF ILLINOIS)
2 COUNTY OF SANGAMON) SS
3 CASE NO.: 00-0007
4 TITLE: ILLINOIS COMMERCE COMMISSION
5 On Its Own Motion
6

7 CERTIFICATE OF REPORTER

8 We, Carla J. Boehl and Cheryl A. Davis, do
9 hereby certify that we are court reporters contracted
10 by Sullivan Reporting Company of Chicago, Illinois;
11 that we reported in shorthand the evidence taken and
12 proceedings had on the hearing on the above-entitled
13 case on the 9th day of March, 2000; that the
14 foregoing 170 pages are a true and correct transcript
15 of our shorthand notes so taken as aforesaid and
16 contain all of the proceedings directed by the
17 Commission or other persons authorized by it to
18 conduct the said hearing to be so stenographically
19 reported.

20 Dated at Springfield, Illinois, on this 9th day
21 of March, A.D., 2000.
22

Carla J. Boehl

Certified Shorthand Reporter
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Cheryl A. Davis

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