

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 On-the-Record Presentation  
8 November 5, 2002  
9 Jefferson City, Missouri  
10 Volume 3  
11  
12 In the Matter of the Empire District )  
13 Electric Company of Joplin, Missouri, )  
14 for Authority to File Tariffs ) Case No. ER-2002-424  
15 Increasing Rates for Electric Service )  
16 Provided to Customers in the Missouri )  
17 Service Area of the Company. )  
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VICKY RUTH, Presiding,  
SENIOR REGULATORY LAW JUDGE.

KELVIN SIMMONS, Chair,  
SHEILA LUMPE,  
CONNIE MURRAY,  
STEVE GAW,  
BRYAN FORBIS,  
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR, CCR  
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1 P R O C E E D I N G S

2 JUDGE RUTH: Good morning. We are here today  
3 for an on-the-record presentation in Case ER-2002-424, in  
4 the matter of the Empire District Electric Company of  
5 Joplin, Missouri, for authority to file tariffs increasing  
6 rates for electric service provided to customers in the  
7 Missouri service area of the company.

8 My name is Vicky Ruth, and I'm the  
9 Regulatory Law Judge assigned to this case. It is Tuesday,  
10 November 5th, 2002, and it is 1:45.

11 This on-the-record presentation was scheduled  
12 to give the Commissioners an opportunity to have a  
13 question-and-answer session with the parties. The counsel  
14 will also be given the opportunity to have an opening  
15 statement. If you want to explain anything you think the  
16 Commissioners might have questions about or just give an  
17 overview or your client's suggestions regarding this  
18 stipulation, that would be an appropriate place to do so.

19 The Commissioners may ask you questions during  
20 your opening statements or they may reserve their questions  
21 for the end. They may jump around a bit.

22 I do not anticipate the need for any  
23 additional filings after today's presentation, any briefs.  
24 If you-all feel that that's necessary, please let me know at  
25 the conclusion of the hearing, but I do not plan on ordering

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1 that.

2                   Let's begin with entries of appearance.

3 Empire, would you please go first?

4                   MR. SWEARENGEN: Thank you, your Honor.

5                   Let the record show the appearance of James C.

6 Swearengen and Dean Cooper of Brydon, Swearengen & England,

7 P.C. Our address is 312 East Capitol Avenue, Jefferson

8 City, Missouri, and we are appearing on behalf of the Empire

9 District Electric Company.

10                  Thank you.

11                  JUDGE RUTH: Thank you.

12                  Staff?

13                  MR. FREY: Thank you, your Honor.

14                  On behalf of the Staff of the Missouri Public

15 Service Commission, Robert Franson, David Meyer, Keith

16 Krueger, Eric Anderson, Dennis Frey, Bruce Bates and Nathan

17 Williams.

18                  JUDGE RUTH: Thank you.

19                  Public Counsel?

20                  MR. COFFMAN: Let the record reflect the

21 appearance of John B. Coffman on behalf of Office of the

22 Public Counsel, P.O. Box 7800, Jefferson City, Missouri

23 65102.

24                  JUDGE RUTH: Okay. Thank you.

25                  And Praxair?

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1                   MR. CONRAD: Stewart W. Conrad of the law firm  
2 of Finnegan, Conrad and Peterson, 3100 Broadway, Suite 1209,  
3 Kansas City, Missouri 64111.

4                   JUDGE RUTH: Okay. Thank you.

5                   Before we started today's hearing, I premarked  
6 the testimony that had previously been filed by the parties.  
7 I marked Empire's testimony as Exhibits 1 through 14 and  
8 Exhibits 68 and 69. I'm going to very quickly run through  
9 those. I handed out a list to the parties where I noted  
10 this initial draft.

11                   What I have as No. 1, Brad Beecher's direct;  
12 2, Beecher's supplemental direct; 3, Beecher's rebuttal; 4  
13 Gibson direct; 5, Gibson rebuttal; 6, Gipson direct; 7,  
14 Gipson rebuttal; 8, Murry's direct; 9, Murry rebuttal; 10,  
15 Murry surrebuttal; 11, Walters direct; 12, Walters  
16 supplemental direct; 13, Walters rebuttal; 14, Walters  
17 surrebuttal; 68, Beecher surrebuttal; 69, Tietjen rebuttal.

18                   Is that correct, Empire?

19                   MR. SWEARENGEN: Yes.

20                   MR. COOPER: Yes.

21                   JUDGE RUTH: Are there any objections to these  
22 documents being admitted into the record?

23                   MR. CONRAD: Your Honor, on our behalf, we  
24 have no objections to any of those, subject to the  
25 acceptance by the Commission of the stipulation.

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1                   If that does not happen, then we'll be back at  
2 ground zero, it's my understanding.

3                   JUDGE RUTH: Mr. Coffman?

4                   MR. COFFMAN: Yes. I'd like to add that we,  
5 again, have -- if we're offering the Staff's suggestions at  
6 this time?

7                   JUDGE RUTH: No. I'm just going through  
8 Empire at this time.

9                   MR. COFFMAN: Okay. All right. No objection.

10                  JUDGE RUTH: With Mr. Conrad's comment noted,  
11 there appear to be no objections to the exhibits, and they  
12 will -- Empire's exhibits. They will be admitted into the  
13 record, Nos. 1 through 14 and 68 through 69.

14                  (EMPIRE EXHIBIT NOS. 1 THROUGH 14 AND 68  
15 THROUGH 69 WERE RECEIVED INTO EVIDENCE.)

16                  JUDGE RUTH: We are going to take a  
17 five-minute break. I suggest you not go far.

18                  (A BREAK WAS TAKEN.)

19                  JUDGE RUTH: Before we took a break, I had  
20 indicated that Empire's Exhibits 1 through 14 and 68 and 69  
21 are admitted into the record.

22                  Staff, I premarked your testimony and  
23 accounting schedules as Exhibits 15 through 48, and also  
24 Exhibit 70. Those are -- and as I mentioned before, I have  
25 passed out a list. But 15 is Staff's accounting schedules;

1 16, Adam direct; 17, Bax proprietary direct; 18, Bax HC  
2 direct; 19, Campbell direct; 20, DeVore direct; 21, Eaves  
3 direct; 22, Elliot proprietary direct; 23, Elliot HC direct;  
4 24, Elliot proprietary rebuttal; 25, Elliot HC rebuttal; 26,  
5 Elliot surrebuttal; 27, Featherstone direct; 28, Harris  
6 direct; 29, Hyneman direct; 30, Lucus direct; 31, Mantle  
7 direct; 32, David Murray direct; 33, Murray rebuttal; 34,  
8 Murray surrebuttal; 35, Patterson direct; 36, Pyatte direct  
9 on rate design; 37, Pyatte direct on sales and revenues; 38,  
10 Pyatte rebuttal; 39, Rahrer proprietary surrebuttal; 40,  
11 Rahrer HC surrebuttal; 41, Vesely proprietary direct; 42,  
12 Vesely HC direct; 43, Vesely surrebuttal; 44, Watkins  
13 direct; 45, Watkins rebuttal; 46, Watkins surrebuttal; 47,  
14 Williams direct; 48, Williams rebuttal; and then 70 is Cary  
15 Featherstone surrebuttal.

16                   Are there any objections to these exhibits  
17 being admitted into the record?

18                   MR. FREY: Your Honor, I believe we need to  
19 make some corrections here --

20                   JUDGE RUTH: Okay.

21                   MR. FREY: -- to the designations of these  
22 testimonies.

23                   For example -- and I'm only giving you an  
24 example of what would be exhaustive, obviously.

25                   Alan Bax, HC direct --

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1 JUDGE RUTH: Slow down. Tell me where you're  
2 at.

3 MR. FREY: No. 18, Alan Bax HC direct, and 17  
4 ought to be NP direct.

5 JUDGE RUTH: Oh, yeah.

6 MR. FREY: And I think that's repeated in the  
7 testimonies of several of these individuals.

8 JUDGE RUTH: Yes. That would be on 17, 22,  
9 24, 39, 41.

10 That's all I see for yours.

11 MR. FREY: I believe that's correct, your  
12 Honor.

13 JUDGE RUTH: Are there any objections to these  
14 exhibits being admitted into the record?

15 MR. CONRAD: Your Honor, we have no objection  
16 for Praxair, subject again to the acceptance by the  
17 Commission of the Stipulation and Agreement.

18 JUDGE RUTH: Okay. Your comment is noted for  
19 the record, and seeing no objections, Staff's Exhibits 15  
20 through 48 and Exhibit 70 are received into the record.

21 (EXHIBIT NOS. 15 THROUGH 48 AND 70 WERE  
22 RECEIVED INTO EVIDENCE.)

23 JUDGE RUTH: Okay. Public Counsel, I have  
24 marked your exhibits as 49 for Bolin direct; 50, Bolin  
25 rebuttal; 51, Bolin surrebuttal; 52, Burdette direct; 53,



1 Burdette rebuttal; 54, Burdette surrebuttal; 55, Busch  
2 direct; 56, Hu direct; 57, Hu rebuttal; 58, Hu surrebuttal;  
3 59, Kind rebuttal; and 60, Robertson direct.

4 MR. COFFMAN: That is correct.

5 JUDGE RUTH: Okay. Are there any objections  
6 to Exhibits 49 through 60 being received into the record?

7 MR. CONRAD: I hate to be redundant, but  
8 Praxair has no objection to the admission of those items,  
9 subject to the acceptance by the Commission of the  
10 Stipulation and Agreement.

11 JUDGE RUTH: Thank you, Mr. Conrad. Your  
12 comment is again noted for the record.

13 Staff, did you have something?

14 MR. FREY: I'd just like to endorse what  
15 Mr. Conrad has been saying on the part of the Staff. We  
16 take the same view.

17 JUDGE RUTH: Understood.

18 Okay. These Exhibits 49 through 60 are  
19 received into the record.

20 (EXHIBIT NOS. 49 THROUGH 60 WERE RECEIVED INTO  
21 EVIDENCE.)

22 JUDGE RUTH: I have also marked Praxair's  
23 prefiled testimony. 61 is Brubaker direct on cost of  
24 service and rate design; 62, Brubaker direct on revenue  
25 requirement; 63, Brubaker rebuttal; 64, Brubaker

1 surrebuttal.

2 Any objections to these exhibits being  
3 admitted into the record?

4 MR. COFFMAN: I suppose I will note that I  
5 have no objection, provided only that the Unanimous  
6 Stipulation and Agreement is approved by the Commission.

7 JUDGE RUTH: So you weren't going to make  
8 Mr. Conrad object to his own comments or comment on his own  
9 exhibits, huh?

10 Okay. That comment or clarification is noted  
11 for the record.

12 Seeing no objections, Exhibits 61 through 64  
13 are received into the record.

14 (PRAXAIR EXHIBIT NOS. 61 THROUGH 64 WERE  
15 RECEIVED INTO EVIDENCE.)

16 JUDGE RUTH: Exhibit 65 is the Unanimous  
17 Stipulation and Agreement filed by all parties. 66 is  
18 Staff's suggestions in support of that agreement, and 67 is  
19 Staff's amendment to the suggestions.

20 Are there any objections to these three  
21 documents being admitted into the record?

22 MR. COFFMAN: Your Honor, I would just like to  
23 note that, although I would have no objection to Exhibit 66  
24 and 67 being made exhibits in evidence in the record of the  
25 Staff's opinions regarding the settlement, I just think the

1 record should reflect that those opinions do not necessarily  
2 reflect all the parties' opinions about the settlement.

3 JUDGE RUTH: Okay. Your comment is noted, and  
4 the exhibits are actually sponsored by the Commission, but  
5 they will be received into the record if there are no  
6 objections.

7 Mr. Conrad, did you --

8 MR. CONRAD: Again, these are -- my comments  
9 shouldn't be taken, I think, as objections in a classic  
10 sense, but all three of those documents are, as I understand  
11 it, part of the record already.

12 JUDGE RUTH: Uh-huh.

13 MR. CONRAD: The question is whether we should  
14 take the additional step of assigning them exhibit numbers  
15 and admitting them and placing them in the same class as  
16 though they are testimony, and I don't -- I'm not really  
17 clear as to why we find it necessary to do that.

18 The Stipulation and Agreement is the document  
19 signed by or with the authorization of all parties, and  
20 that's in the record. It would be a case paper if it went  
21 to the court.

22 The Staff suggestions and their amendment, by  
23 the way, to which we have no objection because it's their  
24 statement, are also part of the record but not exhibits in  
25 the same sense. So if we're marking them for purposes of

1 identification, for the edification of the record and the  
2 convenience of the Commission, I don't have any problem with  
3 that, but I would like to note that they should not be  
4 received in the same sense as though they're evidence.

5               None of those documents are sworn.

6               JUDGE RUTH: Your comment is well taken and I  
7 should have clarified. The Commissioners, perhaps by  
8 tradition, but they do want them marked for identification  
9 purposes and identified as 65, 66 and 67. And I believe the  
10 Commission is well aware that they are not evidence in the  
11 traditional sense, but they will be received into the record  
12 with those comments noted.

13               (EXHIBIT NOS. 65, 66 AND 67 WERE RECEIVED INTO  
14 EVIDENCE.)

15               JUDGE RUTH: While we are discussing the  
16 exhibits, I wanted to move on to the pending motion, which  
17 is Staff's amendment to suggestions in support. They had  
18 actually filed yesterday, November 4th, leave to amend their  
19 suggestions.

20               Are there any objections to any of the parties  
21 to the motion? The ten days will not run until next week,  
22 so I want to ask you now.

23               MR. COFFMAN: No objection, your Honor.

24               MR. CONRAD: No objection.

25               MR. SWEARENGEN: The company has no objection.

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1 JUDGE RUTH: Okay. Thank you.

2 Seeing no objection, Staff's motion is

3 granted, and their amendment is made part of the record.

4 Do the parties have any other preliminary

5 matters that need to be addressed?

6 (No response.)

7 JUDGE RUTH: Okay. Seeing none, we will take

8 a very brief six-minute break to give the Commissioners time

9 to get down here. I will go back on the record promptly at

10 six minutes after two.

11 Thank you. We'll break.

12 (A BREAK WAS TAKEN.)

13 JUDGE RUTH: Let's go back on the record,

14 please.

15 Okay. Before we took a quick break, we did

16 admit the exhibits into the record, and now we are ready for

17 the opening statements. I'm going to give each party an

18 opportunity to either make oral suggestions in support of

19 the stipulation, clarify anything they might want to about

20 the Stipulation and Agreement.

21 The Commissioners may or may not interrupt you

22 and ask questions during your opening statements. Then

23 after all the parties have had an opportunity to give

24 opening statements, the Commissioners will ask questions of

25 counsel. However, if a witness needs to be called in order

1 to answer one of the Commissioners' questions, I will ask  
2 that the witness come up front and be sworn in, sit at the  
3 witness table, and then that question will be asked.

4 Are there any questions on the procedure?

5 (No response.)

6 JUDGE RUTH: Okay. Then let's begin with  
7 Empire's opening statement.

8 And Empire, I will need you to come up to the  
9 front, please.

10 MR. SWEARENGEN: Thank you, your Honor. And  
11 may it please the Commission, I have just a couple of brief  
12 comments and I'll let Mr. Frey on behalf of the Staff carry  
13 the laboring oar.

14 First of all, we would on behalf of the  
15 company urge that the Commission approve the Stipulation and  
16 Agreement which has been filed in this case. I think it's a  
17 pretty clear and straightforward document. I would take the  
18 position that it essentially speaks for itself.

19 One thing I would call to your attention is  
20 the fact that the company is requesting that the new rates  
21 take effect on December 1 of this year, and that is a very  
22 critical element from the company's standpoint and a key  
23 part of this stipulation. It's the major inducement for the  
24 company to enter into it.

25 I'm glad to tell you that the agreement does

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1 include as an exhibit the tariffs which will implement the  
2 settlement. And those of you who were here until late  
3 yesterday evening, I think, can appreciate that. There  
4 should not be any dispute as to what is needed to put this  
5 agreement into effect. The tariffs that are attached to the  
6 document will be filed exactly as they are, with the  
7 possible exception of the issue date changing, but the  
8 effective date is December 1, 2002.

9               The parties have all agreed that those tariffs  
10 do, in fact, implement the settlement that we have agreed  
11 to. So there will not be any compliance tariff filing  
12 issue.

13               With that, I will attempt to answer any  
14 questions you may have at this point in time. I'll try to  
15 answer them later. Mr. Gibson, Mr. Beecher and Ms. Kelly  
16 are -- Kelly Walters are here from the company, and they can  
17 answer any questions that you might have.

18               Thank you.

19               JUDGE RUTH: Okay. Commissioners, it's your  
20 choice whether you want to hear from each party or go ahead  
21 and ask counsel a question now.

22               Mr. Chairman?

23               COMMISSIONER SIMMONS: Judge, I just want  
24 to -- one thing for clarification purposes.

25               Mr. Swearingen, I'd like to ask you, as you

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1 talk about the December 1st, 2002 date as the date that this  
2 would take effect, was there any dispute about another date  
3 or could you refresh my memory on the other date that may  
4 have been proposed?

5                   MR. SWEARENGEN: Well, obviously, if we  
6 litigated this case, then I think the operational law date  
7 would have fallen sometime in March. From the company's  
8 standpoint, one of the inducements to settle the case was  
9 the understanding that we would get the rates into effect  
10 early, and obviously that's worth some additional revenue to  
11 the company.

12                   So that was a date that the company suggested  
13 and the parties agreed to. We felt like that was a date  
14 that was certainly achievable under the circumstances. We  
15 filed this agreement a short time ago. Here we are the 5th  
16 of November with the presentation.

17                   I think the way things normally would work, we  
18 would hope you would issue an Order approving it with an  
19 effective date, say, of the 19th or 20th, or an issue date  
20 of the 19th or 20th of this month, which would allow for the  
21 ten-day period and rates to take effect on December 1.

22                   So that's basically how we arrived at that  
23 date. We'd have liked to have something a little bit  
24 earlier, but we thought it probably wasn't practical, given  
25 the circumstances.



1                   COMMISSIONER SIMMONS: Judge, my follow-up  
2 question would be, then, to the parties in terms of whether  
3 there is any dispute over that date of December 1 being an  
4 effective date.

5                   So I'm going to keep my question straight to  
6 the opening statement of the company, and so I guess I'd  
7 like to know from the parties whether there was any dispute.

8                   JUDGE RUTH: Okay. Staff, can you answer that  
9 first?

10                  MR. FREY: Yes.

11                  JUDGE RUTH: And speak into your microphone,  
12 please.

13                  MR. FREY: Yes, your Honor.

14                  Staff supports fully the December 1st  
15 implementation date of these tariffs, of the stip.

16                  JUDGE RUTH: Thank you.

17                  And Public Counsel?

18                  MR. COFFMAN: Yes. It's my understanding that  
19 is the bargain contained in the Stipulation and Agreement.

20                  JUDGE RUTH: Okay. And Mr. Conrad?

21                  MR. CONRAD: Yes, that's -- that's understood  
22 and that's part of the package, Judge.

23                  COMMISSIONER SIMMONS: Thank you. That's the  
24 only question I have for you.

25                  Thank you, sir.

1 JUDGE RUTH: Did any of the other  
2 Commissioners wish to ask Mr. Swearengen a question now?  
3 Commissioner Lumpe?  
4 COMMISSIONER LUMPE: Mr. Swearengen, there was  
5 some concern last time about an error. Is this one error  
6 free?  
7 MR. SWEARENGEN: I would certainly hope so,  
8 your Honor. I can't swear to it, but I would certainly hope  
9 so.  
10 COMMISSIONER LUMPE: Thank you.  
11 MR. SWEARENGEN: Thank you.  
12 JUDGE RUTH: Commissioner Murray?  
13 COMMISSIONER MURRAY: I just have one quick  
14 follow-up to the answer that Staff gave just a minute ago.  
15 I think Mr. Frey said, has no objection to  
16 the implementation of the agreement, the December 1  
17 implementation of the agreement. I just want to clarify  
18 that you're saying you have no objection to the December 1  
19 effective date of the tariffs.  
20 MR. FREY: That's correct, Commissioner. If I  
21 misspoke, I apologize. I think I said that Staff fully  
22 supports it as well.  
23 COMMISSIONER MURRAY: I just wanted to make  
24 sure that was clear. Thank you.  
25 JUDGE RUTH: Commissioner Gaw?

1 COMMISSIONER GAW: I'll wait.

2 MR. SWEARENGEN: Thank you.

3 JUDGE RUTH: Thank you. You may be seated.

4 Staff, let's have an opening statement from

5 you. And move up to the podium, please.

6 MR. FREY: Thank you, your Honor. May it

7 please the Commission?

8 First of all, the Staff would like to thank

9 the Commission, and I'm sure the rest of the parties would

10 join with me. Thank you for your responsiveness in

11 promptly scheduling this on-the-record presentation. As

12 Mr. Swearngen indicated, the December 1st date is of

13 interest, and this should help preserve and make it

14 achievable in the event the Commission should decide to

15 adopt this Unanimous Stipulation and Agreement.

16 For its part, the Staff is prepared to quickly

17 review the tariff sheets that are ordered as they come in

18 and to make sure that they are identical to the illustrative

19 tariff sheets with the exception, of course, of the issue

20 date. But as Mr. Swearngen indicated, all parties agree

21 that those illustrative tariff sheets submitted attached to

22 the Stipulation and Agreement are accurate.

23 Staff is pleased to support this Unanimous

24 Stipulation and Agreement. We think it's in the public

25 interest. It's a reasonable and balanced settlement of the

1 issues, and we believe that all parties will benefit from  
2 this agreement.

3               We would note that the agreement was not  
4 hastily put together at the last minute. Probably beginning  
5 with the prehearing conference that was held during the week  
6 of September 9th, parties have been involved in discussions  
7 along the way and, of course, at the same time, in  
8 compliance with the procedural schedule in this case, were  
9 busily filing their round of testimony in the event that  
10 this case went to hearing. But they always held open the  
11 possibility of a global settlement of this case.

12              The agreement calls for an \$11 million  
13 increase in the company's revenue requirement. The interim  
14 energy credit would terminate at the same time, which is  
15 some ten months earlier than was originally contemplated  
16 under the agreement, the original agreement in the previous  
17 permanent rate case, ER-2001-299.

18              As noted in Staff's suggestions at its high  
19 end of its recommended range of return, its case was at a  
20 level of \$10 million, and the Staff reached the agreement.  
21 In deciding to agree to the \$11 million, Staff was mindful  
22 of the risk associated with -- that's always associated with  
23 trying the issues in the case, as well as many of the other  
24 features of this particular agreement.

25              One suggestion -- excuse me. One

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1 consideration that was not in the suggestions in support,  
2 but nevertheless that Staff finds relevant, is the fact that  
3 a lion's share of the company's customers are represented  
4 here by counsel who are willing to become signatories to  
5 this agreement. The Staff finds that relevant.

6           The Staff was prepared to sign the agreement  
7 on its own merits, but nevertheless, knowing that the others  
8 are prepared to sign as well provides further validation of  
9 its comfort level in this case.

10           The -- a key ingredient in this settlement was  
11 the termination of the interim energy credit. The IEC, as  
12 it's known, was a highly useful solution to the conditions  
13 that prevailed at the time in which the IEC was proposed,  
14 back in the middle of last year.

15           In particular, we had high volatility and  
16 unprecedented extremely high natural gas prices, as well as  
17 high purchase power prices. These conditions no longer  
18 prevail, and the Staff thinks it's time, as do the other  
19 parties by agreement in any event, that the IEC now live up  
20 to its interim nature and leave the stage.

21           Absent the agreement, the company would keep a  
22 portion of the amount -- I should say -- let me back up a  
23 minute and say, pursuant to the agreement, the company will  
24 refund all of the money that it collected under the IEC.  
25 Absent the agreement, the company would be entitled under

1 the IEC to keep a portion of those monies, and that's  
2 roughly -- that amount is roughly estimated at \$400,000.  
3 But the entire amount under the agreement will be refunded  
4 to customers by March 15th.

5           As a result of the agreement, during the first  
6 year, the customers will actually be paying less on their  
7 bills than they would be under the current IEC. Moreover, a  
8 refund in the total amount of about approximately  
9 \$18 million, including that \$400,000 that I just mentioned,  
10 will be returned to the customers by March 15th of next  
11 year.

12           So the customers, ratepayers, the company's  
13 customers will have use of their money sooner, and this is  
14 especially true because of the company's agreement to refund  
15 the entire amount of the IEC. And I say that because that  
16 agreement means that there will be no need for a true-up  
17 process, as again was provided for in the original agreement  
18 regarding the interim energy credit.

19           Let me be clear by what I mean by that.  
20 Certainly the Staff will still be engaged in verifying the  
21 validity, confirming the value of the IEC to make sure that  
22 there's agreement as to how much money is being refunded.  
23 However, the original Stipulation and Agreement had a  
24 prudence provision that would require the Staff to audit and  
25 look at the decisions that the company made in incurring

1 fuel and purchase power costs.

2                   This process could easily take a period of  
3 weeks. It involves a lot of detailed analysis and, of  
4 course, if there are any follow-on disputes, that would mean  
5 the filing of testimony conceivably and perhaps a hearing  
6 and so on. So all of this is eliminated by the company's  
7 agreement to return the entire amount of the IEC to the  
8 customers.

9                   The agreement also provides for a moratorium  
10 on new rate cases. The parties have agreed not to initiate  
11 either a rate increase or a rate decrease from the time of  
12 implementation until September 1st, 2003. Empire is  
13 currently installing new capacity to new combustion  
14 turbines, and the Staff thought there was a strong  
15 likelihood that the company would be in for an additional  
16 rate increase as soon as possible.

17                   Under the agreement that is, absent  
18 extraordinary circumstances, not the case. There will be  
19 no such filing, as I say, until at least September 1st,  
20 2003. The result is that Empire's customers can look  
21 forward to a considerable period of rate stability of one --  
22 some one-and-three-quarter years before any new rate hike  
23 would be implemented.

24                   Another benefit, sort of a side benefit is  
25 that, given that the company is installing new capacity, we

1 shouldn't have -- be faced with something like a rerun of  
2 the situation we faced in connection with their installation  
3 of the Stateline combined-cycle plant where we have a very  
4 tight timeline in which to get certification of the new unit  
5 for inclusion into rate base. That should be a more  
6 deliberate process. Now we'll just have more time and it  
7 should work out better for all concerned.

8                   I would just say briefly with respect to rate  
9 design, again, the Staff finds its level of comfort  
10 validated by the fact that the majority of Missouri  
11 customers represented by counsel are signatories to this  
12 agreement.

13                   The agreed-to rate design maintains present  
14 distribution of revenues among customer classes. Within the  
15 residential class, revenues have been modestly increased for  
16 the four winter months -- excuse me -- for the eight winter  
17 months relative to the four summer months, in order to more  
18 closely assign seasonal revenues with seasonal costs.

19                   Finally, I would note that the agreement  
20 provides for the --an experimental low-income program.  
21 We're calling it by the acronym ELIP. At this point the  
22 parties have agreed to the basic contours of the program,  
23 essentially along the lines proposed by the company in its  
24 original filing.

25                   The program will be funded through a monthly



1 customer charge with the company matching customer  
2 contributions dollar for dollar. Some of the details of the  
3 program are to be worked out in a collaborative committee  
4 composed of interested parties, and the agreement provides  
5 that the Commission will have an opportunity to rule on the  
6 final program or final package following that process.

7           Again, the Staff urges and recommends that the  
8 Commission approve this Unanimous Stipulation and Agreement  
9 in settlement of all issues in this case.

10           Thank you very much.

11           JUDGE RUTH: Okay. Thank you.

12           Commissioners, do you have any questions for  
13 counsel at this time?

14           Mr. Chairman?

15           COMMISSIONER SIMMONS: I do not.

16           JUDGE RUTH: And Commissioner Murray?

17           COMMISSIONER MURRAY: I do not. Thank you.

18           JUDGE RUTH: Commissioner Lumpe?

19           COMMISSIONER LUMPE: Mr. Frey, you talk about  
20 the termination of the IEC on March 15th. Is that to be a  
21 one-time credit or refund given or will it be spread over  
22 time?

23           MR. FREY: First of all, Commissioner Lumpe,  
24 the IEC will terminate as of the date of the implementation  
25 of the new rates, which we're hoping will be December 1st of

1 this year.

2 COMMISSIONER LUMPE: So they will terminate on  
3 December 1st, not March 15th?

4 MR. FREY: That's correct. The company has  
5 agreed to have completed the refund process by March 15th.

6 COMMISSIONER LUMPE: Okay.

7 MR. FREY: If you need more detail on that,  
8 I'm sure --

9 COMMISSIONER LUMPE: No. I was confused.  
10 I thought you were saying it was going to --  
11 it was going to terminate on March 15th, and I needed that  
12 clarification, but you're saying it will terminate  
13 December 1st along with --

14 MR. FREY: That's correct.

15 COMMISSIONER LUMPE: -- the implementation of  
16 the tariffs, and then by March 15th it will be distributed?

17 MR. FREY: That's correct.

18 COMMISSIONER LUMPE: Okay. Thank you.

19 JUDGE RUTH: Commissioner Gaw?

20 COMMISSIONER GAW: I'll just wait.

21 JUDGE RUTH: Okay. Then at this time,  
22 Mr. Frey, you may sit down.

23 And we will have the opening statement from  
24 Public Counsel, please.

25 MR. COFFMAN: Thank you, your Honor.

1                   John Coffman.  
2                   I won't belabor any more of the details except  
3 to say we think this is a fair deal for everyone involved.  
4 The consumers of Empire District Electric Company will  
5 receive significant benefits out of this agreement. Namely,  
6 the -- No. 1, the termination of the interim energy charge.  
7 This was a unique creation of the settlement in the last  
8 case. I think it was a useful tool given the very unusual  
9 situation that we were in, in a kind of rather unprecedented  
10 time of uncertainty about what was going to happen to  
11 natural gas prices particularly, and it's a tool that may be  
12 useful again if we have another period of uncertainty like  
13 that again.

14                  But, again, it was always envisioned to be an  
15 interim tool, and at this point gas prices are much more  
16 stable and the company has adopted management of its risk in  
17 the area of fuel procurement that should prevent any future  
18 volatility from impacting as much as it appeared they were  
19 being impacted in the last case.

20                  So, happily, we are proposing an end to this  
21 particular interim tool, and fortunately the gas prices were  
22 much closer to what my office predicted than others.

23                  And so we are looking at a good, sizeable  
24 refund for consumers that will, at least during the next  
25 year, almost completely offset what they would otherwise

1 experience as a rate increase. And we're happy that the  
2 settlement calls for a refund of all -- virtually all that  
3 would have been refunded anyway, but now we've simplified  
4 the process of truing it up and all of it should get back  
5 into the hands of consumers by March.

6           The moratorium is also significant, given  
7 other things that we anticipate that this company -- as has  
8 been said, no case could be filed before December 1st.  
9 You'll note that there is an out clause there for  
10 extraordinary situations, but even in that case, the  
11 stipulation provides that there would be the provision for  
12 an emergency rate case. The Commission's traditionally  
13 stringent emergency or near-emergency standard would then  
14 still apply in that extraordinary case.

15           The opportunity to experiment with a  
16 low-income program is interesting. We have not had a  
17 program yet before an electric company that experimented  
18 with the low-income rates, and we're happy to support this  
19 stipulation, whereby 50 percent would be funded by  
20 shareholders and details to be worked out later in a  
21 collaborative whereby we can all sit down and flesh this out  
22 a little better, see if there aren't some details that we  
23 might do differently, say, than the one that is currently  
24 being experimented with, the Missouri Gas Energy in the  
25 Joplin area. Perhaps an electric company might have some

1 different characteristics that we can look at.

2                   But we don't anticipate any problems with  
3 that. We do have in here specific provisions that there  
4 will be an outside contractor, a third party who will  
5 perform an evaluation. So there will be an independent  
6 party that will provide to the Commission after some  
7 experience with this experiment, and we think that it is  
8 important that you -- that you see if some of the benefits  
9 that are anticipated actually occur and that there's actual  
10 time to reevaluate it.

11                   The actual rate design is broken out for you.  
12 We have the tariffs, and you'll notice the Exhibit B breaks  
13 out every component of every rate class for you. Of course,  
14 that does not show you exactly what the typical customer  
15 would see on their bills. And I wasn't necessarily going  
16 to offer this, but if the Commission's interested, I do  
17 have a couple of exhibits that would show what we believe  
18 would be the typical impact on a bill at various usage  
19 levels for residential customers, taking into account both  
20 the energy -- the interim energy charge and --

21                   COMMISSIONER GAW: I was going to ask for it  
22 anyway, Judge.

23                   MR. COFFMAN: Okay. I think I distributed  
24 copies of these to all the other parties. Does anyone else  
25 need a copy here of these two documents?

1                   The first one that I'm going to give you shows  
2 the change in the base rates based on the stipulation.

3                   JUDGE RUTH: Okay. Initially for  
4 identification purposes, I'll mark the first one Exhibit 71.

5                   Do they have different titles or are they the  
6 same?

7                   MR. COFFMAN: I'm afraid I did not title  
8 these. We could call this bill comparison of change in base  
9 rates. Does that make --

10                  JUDGE RUTH: The one that you just handed out  
11 I'll mark as bill comparison of change in base rates for  
12 identification purposes. It's marked as Exhibit 71.

13                  MR. COFFMAN: And then the second one shows --  
14 the second one, which would be marked as Exhibit 72, shows  
15 what residential consumers would experience in their bill as  
16 a result of this settlement, taking into account the rate  
17 increase but netting out the reduction of the interim energy  
18 charge.

19                  So you'll see that at some usage levels there  
20 will actually be a decrease in what the bill coming to your  
21 home would show.

22                  JUDGE RUTH: So give me the title for this one  
23 again, please.

24                  MR. COFFMAN: Bill comparison showing effect  
25 of the elimination of the interim energy charge, unless

1 someone else has a better title.

2 JUDGE RUTH: That one's fine.

3 For identification purposes, I'll mark  
4 Exhibit 72 the bill comparison showing the effect of the  
5 elimination of the IEC.

6 MR. COFFMAN: I might add, this document,  
7 these two documents were originally from schedules put  
8 together by the company, and I guess Exhibit 72, I believe,  
9 was from -- produced by Empire, and Exhibit 71 was done by  
10 my office to show the effect without the interim energy  
11 charge being taken into account.

12 (EXHIBIT NOS. 71 AND 72 WERE MARKED FOR  
13 IDENTIFICATION BY THE REPORTER.)

14 JUDGE RUTH: At this point Exhibits 71 and 72  
15 have been identified for the record. They have not been  
16 offered or admitted.

17 Mr. Coffman, do you intend to offer them or  
18 were you just using them for your discussion?

19 MR. COFFMAN: I would offer Exhibits 71 and 72  
20 into the record.

21 JUDGE RUTH: Are there any objections to  
22 Exhibit 71 or Exhibit 72 being admitted?

23 MR. CONRAD: No objection.

24 JUDGE RUTH: No caveat?

25 MR. CONRAD: Do you want one?

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1 JUDGE RUTH: I was expecting it, sir.

2 MR. SWEARENGEN: I think he ought to be sworn  
3 and undergo cross-examination.

4 MR. COFFMAN: You will note that there is a  
5 change in the customer charge in this case that is greater  
6 than system average, but not by much. The average increase  
7 for about any customer is going to average around 5 percent,  
8 and then again, you will see the -- for some customers a  
9 different usage level netting out the interim energy charge  
10 elimination, actually no impact or just a very slight  
11 increase or slight decrease.

12 And also the differential between the winter  
13 and summer rates, that is the block of bill comparisons on  
14 the top compared with the bottom, the December rate reflects  
15 the slight change that was agreed upon through negotiation,  
16 which I don't think anyone's mentioned yet, but which  
17 decrease the differential winter and summer rates slightly,  
18 very slightly increasing the amount that winter rates  
19 account for the total cost. And I believe that that change  
20 is from 59 percent to 59.6 percent.

21 JUDGE RUTH: Did you have a question,  
22 Commissioner Lumpe?

23 COMMISSIONER LUMPE: Thank you.

24 Is there a lowering of the summer rate and an  
25 increase of the winter rate? Is that --



1                   MR. COFFMAN:  Relatively speaking, I think  
2 that's correct.

3                   COMMISSIONER LUMPE:  Okay.  Thank you.

4                   MR. COFFMAN:  In the usage block.

5                   JUDGE RUTH:  Let me note for the record, then,  
6 Exhibits 71 and 72 have been offered.  It's my understanding  
7 there are no objections to these being admitted.

8                   Seeing no objections, Exhibit 71 and  
9 Exhibit 72 are received into the -- I'm sorry.  Yes, 71 and  
10 72 are received.

11                   (EXHIBIT NOS. 71 AND 72 WERE RECEIVED INTO  
12 EVIDENCE.)

13                   JUDGE RUTH:  Okay.  Are there any additional  
14 questions from the Bench for Mr. Coffman at this time?

15                   COMMISSIONER SIMMONS:  I don't have any.

16                   JUDGE RUTH:  Okay.  Seeing none, you may step  
17 down.  Thank you.

18                   Mr. Conrad?

19                   MR. CONRAD:  Thank you, your Honor.  I, too,  
20 will be brief, just to try to pick up a couple of things.

21                   Commissioner Lumpe, I think the question that  
22 you had asked and which Mr. Frey confirmed would be found at  
23 the bottom of page 2, carrying over to the top of page 3 of  
24 the stipulation, where the parties agree that the IEC last  
25 line shall terminate on 12:01 a.m. -- getting pretty precise

1 here -- the Commission-ordered effective date of the new  
2 rates that are the subject of this agreement. So I think  
3 that's where your question that you had asked is addressed.

4           Thereafter, the discussion goes on to talk  
5 about the March refund date. And to the point on the --  
6 that Mr. Swearengen made, page 4, last sentence at  
7 paragraph 8, parties agree that the illustrative tariff  
8 sheets attached as Exhibit A incorporate the agreed-to rate  
9 design.

10           My client supports the agreement. It's a fair  
11 package, and beyond that, I'll take one additional step and  
12 say it was fairly arrived at. In that regard, since I'm  
13 occasionally perceived as being critical, let me take this  
14 opportunity to at least extend some commendations.

15           By virtue of the fact that we're in Kansas  
16 City and not down here, it's sometimes difficult for us to  
17 stay on top of things. Counsel Frey on behalf of the  
18 Commission Staff, Mr. Coffman on behalf of his office, and  
19 Mr. Swearengen have all been exceptionally professional in  
20 their communication with us and in attempting to keep us  
21 advised of where the discussions were, so that we were able  
22 to participate and be involved in them.

23           I also want to lift up Cary Featherstone who,  
24 with Mr. Frey's agreement -- I'm entrusted there, but I'm  
25 sure I know Cary well enough to know that he wouldn't do

1 what his own lawyer tells him not to do -- he has been very,  
2 very helpful in explaining some of the accounting  
3 adjustments and the issues that he was comfortable with, so  
4 that we could become comfortable with them, too.

5               So on behalf of all that, we're happy to make  
6 this a unanimous agreement for once.

7               Thank you, Judge.

8               JUDGE RUTH: Okay. Thank you.

9               Are there any questions from the Bench at this  
10 time?

11              Mr. Chairman?

12              COMMISSIONER SIMMONS: No, I don't have any.

13              JUDGE RUTH: Commissioner Murray?

14              COMMISSIONER MURRAY: No.

15              JUDGE RUTH: Commissioner Lumpe?

16              COMMISSIONER LUMPE: No.

17              JUDGE RUTH: That will be everyone, but then I  
18 was going to open it up to general questions.

19              MR. CONRAD: I should have said, by the way,  
20 too, that we have Mr. Brubaker here if there are technical  
21 questions about any of this that he can answer.

22              So thank you.

23              JUDGE RUTH: Thank you. Then at this time I  
24 will start with Mr. Chairman and see if he wishes to ask any  
25 questions of any of the parties.

1                   COMMISSIONER SIMMONS: I think I'll come back  
2 around. I'll pass on this one.

3                   JUDGE RUTH: Commissioner Murray?

4                   COMMISSIONER MURRAY: Thank you.

5                   I suppose this question would be directed at  
6 Staff's counsel, and if he can't answer it, to perhaps your  
7 witness. Paragraph 13, under outstanding Data Request, that  
8 seemed like an unusual inclusion in the Stipulation and  
9 Agreement, that information requested in a Data Request  
10 agree to be provided following the effective date of the  
11 agreement.

12                  Can you tell me why that is?

13                  MR. FREY: Are you -- are you asking,  
14 Commissioner, why that is present in the Stipulation and  
15 Agreement? Why that provision?

16                  COMMISSIONER MURRAY: I guess I'm curious as  
17 to why information would be being sought following the  
18 entering into the agreement.

19                  MR. FREY: Commissioner Murray, the Staff has  
20 a continuing interest in receiving this information in order  
21 to discharge its ongoing regulatory responsibilities. And  
22 as I'm sure you're aware, the Staff has been endeavoring to  
23 acquire this information over some time now and simply has a  
24 continuing need for it.

25                  The language has been structured in such a

1 way that the company was willing to agree to it, and we're  
2 confident and believe that the company will make a  
3 good-faith effort to honor its agreement in this instance  
4 with regard to the production of the information that is  
5 requested.

6 COMMISSIONER MURRAY: As I recall, there was  
7 some dispute on that, quite a bit of dispute as to that Data  
8 Request.

9 MR. FREY: There certainly was some dispute  
10 with regard to the third party, A.G. Edwards.

11 COMMISSIONER MURRAY: And what, in fact, is  
12 being agreed to be supplied here is the -- that analyst's  
13 work papers?

14 MR. FREY: Well, yes, that's correct, your  
15 Honor. Research reports primarily are an interest that we  
16 have, and we believe that those reports are publicly  
17 available -- are made available, I should say, publicly, and  
18 that's of primary interest -- a primary interest of the  
19 Staff.

20 COMMISSIONER MURRAY: Why would such research  
21 reports not just be readily available for Staff to get from  
22 A.G. Edwards for any reason, not related to a case even?

23 MR. FREY: I think at this point I would need  
24 to turn it over to, perhaps, our witness on this case or  
25 maybe Mr. Krueger to take us a little further.

1                   Would that be okay?

2                   COMMISSIONER MURRAY: That would be fine.

3                   JUDGE RUTH: Which witness or --

4                   MR. FREY: The witness is David Murray.

5                   JUDGE RUTH: Or is this something

6 Mr. Krueger -- I see him in the audience.

7                   MR. FREY: Can we have a moment, please?

8                   JUDGE RUTH: Yes.

9                   MR. FREY: Thank you.

10                  JUDGE RUTH: Okay. For the record, I believe

11 that at the beginning of the hearing Mr. Krueger's entry of

12 appearance was noted.

13                  Mr. Krueger, please go ahead.

14                  MR. KRUEGER: Okay. Can you restate the

15 question, please?

16                  COMMISSIONER MURRAY: I'll try. Paragraph 13,

17 regarding the outstanding Data Request, I'm just trying to

18 pursue this because it appears to me to be an unusual thing

19 to include in a Stipulation and Agreement. And it's my

20 understanding that there was a fairly significant Data

21 Request dispute as to whether that Data Request was even

22 relevant.

23                  And I'm curious as to why it was considered

24 important enough that the parties set it forth in the

25 Stipulation and Agreement?

1                   MR. KRUEGER: The Staff sent the Data Request  
2 and there was not any objection to it, any timely objection  
3 to it, and so we believed that the company was required to  
4 comply with that. The company was not able to provide the  
5 information that we had requested from A.G. Edwards.

6                   A.G. Edwards is not a party in the case, and  
7 so we could not compel them to do that. However, we believe  
8 that since they did not object to the Data Requests, that  
9 we're entitled to receive that information, and as a result  
10 of this Stipulation and Agreement, the company agreed to  
11 attempt to obtain that information from A.G. Edwards and to  
12 either provide it or provide a written explanation as to why  
13 it could not be provided.

14                  COMMISSIONER MURRAY: I'm just trying to  
15 remember what I felt was a controversy about the issue at  
16 the time, and as I recall -- and you can correct me if I'm  
17 wrong -- because the company cited to A.G. Edwards'  
18 analyst's reports, the Staff was trying to compel either the  
19 presence of that A.G. Edwards analyst or the submission of  
20 documents.

21                  Was that at all accurate?

22                  MR. KRUEGER: What the Staff sought to do was  
23 take the deposition of the person at A.G. Edwards who  
24 prepared those reports. We asked for a subpoena, and a  
25 subpoena was issued, enabling us to take the deposition of

1 that person, whose name was Timothy Winter. However, we  
2 were not able to effect service on Mr. Winter, and so,  
3 therefore, we weren't able to take his deposition at the  
4 time originally scheduled.

5                   We did seek a second subpoena to take the  
6 deposition, but by that time the case hadn't been settled  
7 and it was so near the hearing date that the Commission  
8 decided not to grant the subpoena at that time.

9                   In addition, as part of the settlement  
10 agreement, the company agreed to make efforts to obtain the  
11 documents that the Staff was interested in, which were the  
12 research report, which are not, in fact, actually work  
13 papers, I think, but they're the end product that the --  
14 that A.G. Edwards produces.

15                   COMMISSIONER MURRAY: Are they not publicly  
16 available?

17                   MR. KRUEGER: I don't know whether they're  
18 publicly available or not. We believe that SEC requirements  
19 require the company -- require A.G. Edwards to maintain  
20 those documents, and it's possible that we may be able to  
21 get them from some other means. But we thought the most  
22 expeditious way was for the company to seek those documents  
23 from A.G. Edwards.

24                   COMMISSIONER MURRAY: And in that you  
25 considered it important enough to negotiate to put in the



1 stip and agreement, I guess I'm just curious, what are  
2 you -- why do you consider that important?

3                   MR. KRUEGER: We were -- they were important  
4 from the point of view of the return on equity, and we were  
5 interested in knowing why there were changes in -- what we  
6 felt were changes in the substance of the research reports  
7 that A.G. Edwards had submitted on the company. And we  
8 thought that an explanation of those -- of the reason for  
9 the changes was important.

10                   COMMISSIONER MURRAY: And those reasons were  
11 not stated in the analyst's report?

12                   MR. KRUEGER: I don't think there was any  
13 explanation in the analyst's report as to why its  
14 recommendation at a particular time was different than a  
15 previous time.

16                   One of the things that was of particular  
17 interest to us was that generally A.G. Edwards research  
18 reports are presented when there's been some significant  
19 development with regard to the company, such as an earnings  
20 report or a dividend declaration of a dividend or some  
21 action by the Commission.

22                   The most recent one, however, was issued, I  
23 believe, about September 25th of this year, and the one  
24 previous to that was issued about July, seems like 26th  
25 or sometime shortly after that. And during this period of

1 time between these last two reports, we did not know of  
2 any -- we did not know of any significant development that  
3 had occurred in that time, and yet the recommendation was  
4 somewhat different. And we wanted to investigate to find  
5 out the reason why that recommendation was different.

6 COMMISSIONER MURRAY: Is this an unusual  
7 request, the Data Request itself? Is that an unusual type  
8 of information for the Staff to seek?

9 MR. KRUEGER: I don't think so.

10 COMMISSIONER MURRAY: So it's not uncommon to  
11 go after the reasoning behind an analyst's report?

12 MR. KRUEGER: The Data Request, I think, was  
13 just that they provide the research reports. And they  
14 weren't able to do that, they said, because they were not  
15 available. The -- going into the reason or the background  
16 or the rationale for the research reports may not be usual,  
17 but the Data Request itself, I think, was not unusual.

18 COMMISSIONER MURRAY: But the Data Request was  
19 to determine the explanation of the reason; is that right?

20 MR. KRUEGER: I believe that the Data Request  
21 only asked for the research report, which the company did  
22 not provide, because they said they could not obtain them  
23 from A.G. Edwards.

24 COMMISSIONER MURRAY: Just on that subject,  
25 does any party have anything to add?

1                   MR. SWEARENGEN: The only thing I would like  
2 to add, your Honor, is to make it clear that while we did  
3 not object to the Data Request, we did respond and we said  
4 these documents are not under our control, custody or  
5 possession. It's not that we refused to turn them over. We  
6 could not turn them over because we did not have them.

7                   COMMISSIONER MURRAY: And, Mr. Swearengen, is  
8 it common in a rate case for a company to cite to financial  
9 analyst reports?

10                  MR. SWEARENGEN: Yes, your Honor, it is. It's  
11 common for a company to cite to financial analyst reports.  
12 It's common for the Staff to do so. It's common for other  
13 parties to do so. However, I'm not aware of any instance  
14 where the author of that report has ever appeared and  
15 testified or been deposed.

16                  COMMISSIONER MURRAY: Thank you.

17                  Does anyone else have any?

18                  MR. COFFMAN: Commissioner, yes.

19                  Our office was also, I guess, independently --  
20 and I'm not sure we were aware of the discovery Staff was  
21 conducting, but we were also conducting considerable  
22 discovery in that area. We were -- without getting into too  
23 much detail, we were interested in exactly the relationship  
24 between A.G. Edwards and Empire, communications that had  
25 gone back and forth between them and exactly how certain

1 reports came about and when and why.

2                   We didn't get to the end of our discovery  
3 quest, and when we reached a settlement, I guess, stopped  
4 pursuing that. But it was a -- it seemed like a fairly  
5 relevant inquiry and could have been a matter of contention  
6 at the hearing.

7                   COMMISSIONER MURRAY: And are you aware of any  
8 other instance in the past in which such information has  
9 been sought?

10                  MR. COFFMAN: Yes.

11                  COMMISSIONER MURRAY: From the analyst, by  
12 deposing the analyst?

13                  MR. COFFMAN: I can think of other instances  
14 where third parties have been deposed. I can also think of  
15 instances when this type of document has been subject of  
16 controversy. I don't think -- I'm like Mr. Swarengen. I'm  
17 not sure I can remember exactly when the analyst of the  
18 particular nature of Mr. Winter was deposed or called as a  
19 witness, but it would not seem inappropriate necessarily or  
20 beyond the scope of what was at issue with regard to rate of  
21 return.

22                  COMMISSIONER MURRAY: Does Office of the  
23 Public Counsel cite to analyst reports from time to time?

24                  MR. COFFMAN: Yes.

25                  COMMISSIONER MURRAY: And have any of the

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1 analyst reports that Office of the Public Counsel has cited  
2 to, have they ever been the subject of a deposition of an  
3 analyst, to your knowledge?

4 MR. COFFMAN: Not that I can recall.

5 COMMISSIONER MURRAY: Thank you. Is there any  
6 other party who wants to comment on that issue?

7 I don't believe I have any other questions.  
8 Thank you.

9 JUDGE RUTH: Commissioner Lumpe?

10 COMMISSIONER LUMPE: Can I briefly discuss  
11 with Public Counsel the ELIP? Is that what you called it?

12 MR. COFFMAN: Yes, to be distinguished from  
13 the ELIR which we have with Missouri Gas Energy, that is  
14 the -- Missouri Gas Energy has the experimental low-income  
15 rate. If this stipulation is approved, Empire would have  
16 the experimental low-income program.

17 COMMISSIONER LUMPE: And there was a  
18 suggestion that it's similar to. Are there differences  
19 from?

20 MR. COFFMAN: Well, as it was proposed, it  
21 would have been very similar. There would have been a  
22 surcharge on the bills, different levels for different  
23 customers, and money would be collected to provide a  
24 discount for income-eligible customers.

25 The stipulation, our office and I believe the

1 Staff also commented that the proposal had perhaps not been  
2 as fleshed out as maybe we would have liked to begin an  
3 experiment, although we -- I guess I'm speaking for Public  
4 Counsel.

5                   We were interested in perhaps trying an  
6 experiment of this nature with an electric company. Through  
7 the settlement, we are able to hopefully do that, and also  
8 have the additional time to kind of flesh out the details  
9 and make sure everyone is okay with exactly where we're  
10 going. So we're going to begin with about the same amount  
11 of money that that program would have collected, plus an  
12 equal amount of money that would be put into the program  
13 funds from Empire shareholders.

14                   So then we would have twice as much money.  
15 The collaborative will then work over the next few months to  
16 put forth a program.

17                   COMMISSIONER LUMPE: The money that -- instead  
18 of the surcharge, which I think is what you said, the money,  
19 then, is included somewhere in that \$11 million; is that  
20 correct?

21                   MR. COFFMAN: That's correct.

22                   COMMISSIONER LUMPE: And does it all come from  
23 the residential class or is it spread throughout all of the  
24 customers?

25                   MR. COFFMAN: I guess theoretically it's

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1 coming from all customers, because it's not designated  
2 towards any particular rate. It's just considered to be  
3 part of the \$11 million without any real pigeonholing it in  
4 any particular rate.

5                   And I might note that the stipulation says  
6 that the experiment may be reevaluated in the next rate  
7 case, which may come around September, be filed around next  
8 September.

9                   But in any event, an evaluation of the  
10 first two years shall be initiated no later than 30 months  
11 from this date. So no later than 30 months. So we would  
12 have at least two years of experience, at that point,  
13 two-and-a-half years, there would be an evaluation put forth  
14 to you, and at that point you -- I guess any party or the  
15 Commission itself could say, this program, this experiment  
16 isn't working out, this experiment needs to be changed, or  
17 anyone could initiate some change.

18                   COMMISSIONER LUMPE: In effect, that's the  
19 termination date then, 30 days or 30 months?

20                   MR. COFFMAN: This doesn't have a termination  
21 date. The stipulation says it can be reevaluated, changed,  
22 eliminated, I guess, in the next rate case, which is likely  
23 to occur before 30 months hence. But in no event later than  
24 30 months hence, it will -- an evaluation will be performed.  
25 And there's provision for an independent evaluator.

1 COMMISSIONER LUMPE: Okay. But it doesn't  
2 have a termination date in effect?

3 MR. COFFMAN: No.

4 COMMISSIONER LUMPE: No. Thank you. That's  
5 all I have.

6 MR. COFFMAN: In that way it is different from  
7 the Missouri Gas Energy ELIR.

8 JUDGE RUTH: Commissioner Gaw?

9 COMMISSIONER GAW: Thank you.

10 If I can just continue along that vein for a  
11 moment, what is -- how much of the 11 million is  
12 attributable to this program again?

13 MR. COFFMAN: As I understand it, the amount  
14 would be approximately \$150,000. These are based on  
15 estimates, I think, that the Staff has calculated, that  
16 pursuant to the stipulation we would attempt to collect the  
17 same amount of money that would have been generated by the  
18 proposed surcharges, based on how many customers we have at  
19 the point that we count those customers, which I presume  
20 would be December 1st.

21 COMMISSIONER GAW: Okay.

22 MR. COFFMAN: But it's give or take just a  
23 couple of thousand dollars from \$150,000, I believe.

24 COMMISSIONER GAW: All right.

25 MR. COFFMAN: That's the estimate. And that



1 amount, whatever that precise amount is, would be matched  
2 dollar for dollar by Empire shareholders. So we're talking  
3 about approximately \$300,000 of program funds.

4 COMMISSIONER GAW: All right.

5 If I could ask Staff about the net salvage  
6 issue, on the resolution of net salvage in this stipulation,  
7 how does it compare with the resolution of net salvage in  
8 other cases? And if you want to compare it to the past, I  
9 think that it's -- if I understood it correctly, this is the  
10 same resolution as in the last rate case with Empire; is  
11 that correct?

12 MR. FREY: That's correct, Commissioner Gaw.

13 COMMISSIONER GAW: And what does that mean as  
14 far as the treatment again?

15 MR. FREY: The net salvage is not included in  
16 depreciation rates. Rather, it's expense based on  
17 historical experience.

18 COMMISSIONER GAW: All right. So when you  
19 added the last part on there, it may be throwing me a little  
20 bit. Based on historical experience, what do you mean by  
21 that?

22 MR. FREY: I believe -- and maybe this is time  
23 to call in an expert witness. But as I recall, it was based  
24 on the -- on a five year -- was it five year?

25 I'm going to turn this over to

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1 Mr. Featherstone at this point, if I could.

2 COMMISSIONER GAW: That's fine.

3 JUDGE RUTH: Is Mr. Featherstone in the

4 audience?

5 COMMISSIONER GAW: He's back there. I see

6 him.

7 JUDGE RUTH: I need you to go ahead and go

8 over to the witness stand.

9 (Witness sworn.)

10 JUDGE RUTH: Okay. Could you speak into the

11 microphone and state your name and position?

12 THE WITNESS: I'm Cary G. Featherstone. I'm a

13 regulatory auditor with the Commission.

14 CARY G. FEATHERSTONE testified as follows:

15 QUESTIONS BY COMMISSIONER GAW:

16 Q. Mr. Featherstone, did you hear my question a

17 little bit ago?

18 A. Yes.

19 Q. Can you explain to me what that -- what the

20 tail of that language means when it talks about based on

21 historical experience, how does that work with expensing of

22 net salvage?

23 A. It is exactly the way the Commission

24 authorized it in the last case. It was a five-year average

25 of actual costs of removal, consideration of the salvage

1 piece. So the net salvage was a five-year average that was  
2 put in the income statement as an expense item.

3 Q. All right. Give me an example of how it would  
4 work.

5 A. Well, we took -- we took -- we looked at it  
6 over a period of time, but we took the actual cost of  
7 removal and we, of course, deducted the salvage piece as a  
8 deduction, came up with a net salvage component of actual  
9 dollars expended by the company over the period of time.  
10 Times -- we basically looked at over a five year -- it was  
11 actually in excess of five years. But we settled on a  
12 five-year average, which was consistent with the way the  
13 Commission found it in the last case and consistent with the  
14 way the company filed its direct case.

15 Q. All right. And that was the figure, then,  
16 that's utilized in regard to calculating the revenue  
17 requirement?

18 A. Yes. And just so it's clear, the traditional  
19 way or the way that was once done was part of the  
20 depreciation rate. Of course, the depreciation department  
21 has -- has presented that issue before you several times,  
22 and they've removed that component from the rate itself, and  
23 so it excluded -- the depreciation rates in this case  
24 excluded the cost of removal piece.

25 Q. All right. And I don't want to get too far

1 into this, but if the company experiences a retirement of a  
2 large plant in the next -- in the next year, which I suspect  
3 we're not talking about that, but if hypothetically that  
4 occurred, would -- how would -- how would that be treated if  
5 there was -- if there was a large expense incurred in  
6 removing that property?

7           A.       That did not occur. I want to point that out.

8           Q.       Yes.

9           A.       So this is a hypothetical.

10          Q.       It's a hypothetical about the future. I'm  
11 talking about something in the next year.

12          A.       I would think we may not be wedded to just a  
13 five-year average. We could be looking at perhaps even  
14 doing a ten-year average of some sort. We would have to  
15 look at it on a case-by-case basis. We'd have to look at  
16 the significance of the retirement.

17          Q.       And what does that mean?

18          A.       It may be that another averaging method would  
19 be warranted. It might be a ten-year average as opposed to  
20 a five-year average.

21          Q.       Your attempt to try to figure out what  
22 actually has been occurring and try to utilize that as a  
23 stability factor when you're averaging it out to come up  
24 with the amount to determine your appropriate rate of  
25 return?

1           A.       Yes, we try to come up with a normalized  
2 level.

3                   COMMISSIONER GAW:  Yes.  I'm sorry.  Okay.  
4 Anybody else have any questions while he's up here?

5                   I think that's all I have of this witness.  I  
6 want to ask some more questions.

7                   COMMISSIONER MURRAY:  I can just follow  
8 quickly on that.

9                   JUDGE RUTH:  Yes, please.

10 QUESTIONS BY COMMISSIONER MURRAY:

11           Q.       Mr. Featherstone, if there were an expense  
12 that came up for retirement within the next year, as you  
13 just went through with Commissioner Gaw, and you said that  
14 on a case-by-case basis the cost of that removal might have  
15 to be averaged over the next several years, that would, in  
16 fact, be averaging the cost of removal of the asset that had  
17 been used in the past over future years, would it not?

18           A.       We would look at that.  Say that it occurred  
19 next year, within the next two years, whenever there would  
20 be a rate case, we would see what the actual cost of removal  
21 was and we would consider that in our calculation.

22           Q.       And when an asset is removed, it's obviously  
23 something that's been used in the past --

24           A.       Yes.

25           Q.       -- correct?

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1                   So it would be averaged for the ratepayers in  
2 the future against their expense, is that right, if they did  
3 an average over time?

4           A.       I think what we're trying to do is to attempt  
5 to look at a -- at a normal level of cost.

6           Q.       I'm just asking, is that the way it would be  
7 upon the ratepayers in the following years?

8           A.       It would be in future rates.

9                   COMMISSIONER MURRAY: Okay. That's -- I just  
10 wanted to clarify that. Thanks.

11           JUDGE RUTH: Are there any more Commission  
12 questions for this witness?

13           COMMISSIONER SIMMONS: No.

14           JUDGE RUTH: Okay. You may step down,  
15 Mr. Featherstone.

16           COMMISSIONER GAW: Thank you,  
17 Mr. Featherstone.

18           JUDGE RUTH: Commissioner Gaw, did you have  
19 any?

20           COMMISSIONER GAW: Yes. I'm not done. I've  
21 got more questions. I'll try to move closer to the mic.

22                   I want to ask Staff, if I could, in regard to  
23 the \$11 million, I would like to have an explanation as to  
24 what the Staff found that they believe justifies the  
25 increase in \$11 million since the last rate case last --

1 last year.

2                   What change of circumstances did the Staff  
3 find that justifies that increase?

4                   MR. FREY: May I have a minute, Commissioner?

5                   COMMISSIONER GAW: Sure. Sure.

6                   MR. FREY: Thank you.

7                   COMMISSIONER GAW: Mr. Swearengen might be  
8 able to help me out with that.

9                   MR. SWEARENGEN: Obviously we have experienced  
10 increased costs over the spectrum and cost of capital is  
11 one, plant, so forth, just everything since the last rate  
12 case has increased.

13                  COMMISSIONER GAW: I had anticipated that  
14 would be the argument.

15                  MR. SWEARENGEN: That is the answer.

16                  COMMISSIONER GAW: I was wondering if there  
17 was a little more specific information that I could get out  
18 of Staff.

19                  MR. FREY: Commissioner Gaw, there have been  
20 some changes in the treatment of pension costs, which I'm  
21 hardly an expert on, and I would have to refer you to our  
22 expert witnesses, but those are in excess of \$4 million  
23 probably, 5 million, and then I would -- I would say the  
24 rest is due to a somewhat higher rate of return that is  
25 authorized or recommended in this case.

1 COMMISSIONER GAW: Could you explain that for  
2 me?

3 MR. FREY: Explain the higher rate of return?

4 COMMISSIONER GAW: Who can explain those two  
5 things that you just categorized?

6 MR. FREY: We have a couple of witnesses here.  
7 I guess Mr. Featherstone.

8 COMMISSIONER GAW: Oh, he's back?

9 MR. FREY: Possibly --

10 COMMISSIONER GAW: He has a brother somewhere  
11 he's looking for.

12 MR. FREY: That's on the pensions issue. And  
13 then with regard to rate of return would be David Murray,  
14 who's our witness.

15 COMMISSIONER GAW: Maybe we can get  
16 Mr. Featherstone just briefly.

17 MR. FREY: Mr. Hyneman is also available on  
18 pensions.

19 COMMISSIONER GAW: That's fine. Whoever you  
20 want.

21 JUDGE RUTH: Let me make sure, your name is  
22 Mr. Hyneman?

23 THE WITNESS: Hyneman, yes.

24 JUDGE RUTH: And your first name?

25 THE WITNESS: Charles.



1 JUDGE RUTH: And your position with the  
2 Commission?  
3 THE WITNESS: I'm an auditor with the Missouri  
4 Public Service Commission.  
5 (Witness sworn.)  
6 JUDGE RUTH: Thank you. Please be seated.  
7 Do you remember the question?  
8 THE WITNESS: Yes.  
9 JUDGE RUTH: Okay. Proceed.  
10 THE WITNESS: Commissioner Gaw, the Staff has  
11 changed its position on how to calculate annualized pension  
12 expense.  
13 CHARLES HYNEMAN testified as follows:  
14 QUESTIONS BY COMMISSIONER GAW:  
15 Q. And that's true not just with this case; is  
16 that right?  
17 A. Yes, sir. We've done it in a couple previous  
18 cases.  
19 Q. And in doing that, in this case does it result  
20 in an additional revenue requirement or additional revenue  
21 requirement set for the company?  
22 A. Yes, sir, it does.  
23 Q. All right. Just if you want to briefly  
24 explain that, that would be good.  
25 A. Okay. First piece would be we -- prior we

1 used to account for pension expense on Financial Accounting  
2 Standards Statement No. 87, or FAS 87, and that results in a  
3 negative pension expense or a credit. We changed to a  
4 position we've taken in the past which is called minimum  
5 ERISA method, which is an IRS method, and that amount was  
6 zero. So we went from a negative to a zero, and that amount  
7 was approximately \$2.3 million.

8                   Also, tied to the switch from the financial  
9 accounting standards method to the IRS method, the company  
10 will be receiving an amortization of a prepaid pension  
11 asset, and that amortization is approximately \$2.1 million.  
12 So that's the dollar impact of the change.

13           Q.       I add those together?

14           A.       Yes, sir.

15           Q.       And the -- if I understood you correctly, when  
16 you make that change from one standard to another, you have  
17 to make an adjustment because of the change itself. Is that  
18 part of the calculation?

19           A.       Yes. The adjustment -- the company recorded  
20 on its books and records a negative pension expense. To get  
21 that to zero to our method, we make a positive adjustment.

22           Q.       Yeah. And that's part of the calculation?

23           A.       Yes, sir.

24           Q.       Okay. And Staff feels this is a better way to  
25 do the accounting on this, on pensions?

1           A.       It's a better way to do it under the current  
2 conditions in the financial market.

3           Q.       And explain that, if you would.

4           A.       When the Staff in -- I guess in the early --  
5 late '80s, early '90s used to account for both pensions and  
6 OPEB, which is similar retirement benefits, medical  
7 benefits, on a cash basis, the pensions was referred to the  
8 minimum ERISA, which means the minimum tax deductible amount  
9 that the company can make. And it was on the other method,  
10 the post retirement method, it was referred to as a pay as  
11 you go. So ratemaking was set on a cash basis.

12                   The Legislature decided to require the  
13 Commission to set rates based on an accrual, an accounting  
14 accrual method, which was Financial Accounting Statement  
15 106, so the Commission was forced to allow that, which --  
16 which was a method that's very similar and it's almost exact  
17 to Financial Accounting Statement No. 87 for pensions.  
18 Okay?

19                   So the Staff thought to be consistent we  
20 should use both methods for ratemaking purposes, and we've  
21 been on that since the early '90s, I believe.

22           Q.       When you say both methods, what do you mean?

23           A.       FAS 106 for retirement benefits, medical, life  
24 insurance, and FAS 87 for just pension benefits.

25           Q.       All right.

1           A.       So for consistency we decided we'd use both  
2 methods for ratemaking purposes, and the Commission agreed  
3 to that.

4           Q.       All right.

5           A.       But the recent changes in the financial  
6 markets has caused financial -- the pension expense, the  
7 amount the company recognizes on an annual basis to be  
8 extremely volatile. And we've taken steps to try to  
9 mitigate that volatility with different methods of  
10 calculating, but we think the best method is to go to a  
11 method that doesn't have any vola-- that has very limited  
12 volatility, which would be the cash basis.

13                   We did not expect when we recommended the  
14 adoption of FAS 87 to have continuous negative pension  
15 expenses, and that's -- you know, it's just something that  
16 happened. So we've reevaluated the method and decided that  
17 it would be better for ratemaking purposes to mitigate that  
18 constant fluctuation in annual pension.

19                   So we're recommending a minimum ERISA amount,  
20 which is zero for this company for the last several years.

21           Q.       Okay. And that change does not contravene the  
22 statutory provisions that you said were passed by the  
23 Legislature?

24           A.       No, sir. The Legislature just required that  
25 accrual or FAS 106 for post-retirement benefits for medical

1 and life insurance. It had no impact on pension benefits.

2 COMMISSIONER GAW: Thank you for that

3 explanation. That was very helpful to me. I think -- I

4 think that's all I have on the pension issue.

5 Does anybody else?

6 JUDGE RUTH: While this witness is at the

7 stand, do the Commissioners wish to follow up?

8 COMMISSIONER GAW: Do you have any information

9 on the other part of the question I have, that change in

10 circumstances since the last rate case, or was it just

11 pensions that you're dealing with?

12 THE WITNESS: Yes, sir, just pensions.

13 COMMISSIONER GAW: I'm done, then. Thank you.

14 JUDGE RUTH: You may step down.

15 Commissioner Gaw, are you wishing that another

16 witness be called?

17 COMMISSIONER GAW: Does Mr. Frey have somebody

18 that can help me on the rest of it?

19 MR. FREY: I believe I --

20 COMMISSIONER GAW: Mr. Swearengen is raising

21 his hand. Not really.

22 JUDGE RUTH: I'm sorry. I couldn't hear you

23 Mr. Swearengen.

24 MR. SWEARENGEN: I can put some witnesses on

25 if you'd like me to.

1 JUDGE RUTH: I think -- Commissioner Gaw, you  
2 have a question, correct?

3 COMMISSIONER GAW: Yes.

4 JUDGE RUTH: Who do you think it's for?

5 COMMISSIONER GAW: Mr. Frey has somebody, I  
6 think.

7 MR. FREY: I was going to offer David Murray  
8 to talk about rate of return.

9 COMMISSIONER GAW: That will be fine, and then  
10 I'll ask Mr. Swearengen if he wants some other explanation  
11 when we get done.

12 JUDGE RUTH: Mr. Murray, would you state your  
13 name and position for the record.

14 THE WITNESS: David Murray, public utility  
15 financial analyst.

16 (Witness sworn.)

17 JUDGE RUTH: Okay. Thank you. Please be  
18 seated.

19 Commissioner Gaw?

20 DAVID MURRAY testified as follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Good afternoon.

23 A. How are you doing?

24 Q. I'm doing good.

25 I am wanting to understand the reasons for the

1 additional need for revenue for the company from Staff's  
2 perspective that you identify to justify the \$11 million. I  
3 heard about part of it through the pension, but there's  
4 still a significant amount left, and I want to -- I'm  
5 interested in knowing what has changed since the last rate  
6 case that Staff has identified to justify the \$11 million.

7       A.       I can't speak to the specific dollar amount  
8 because that -- with the rate of return with this case, the  
9 actual rate of return is only three basis points -- it's  
10 actually three basis points lower in this case versus last  
11 case. Although the ROE was higher, there was short-term  
12 debt included in the capital structure, and short-term debt  
13 was at a cost of somewhere in the 3 percent range.

14               So that actually -- because you can do the  
15 weighted cost of capital calculation, brought the overall  
16 rate of return down. Where the -- where the dollars were  
17 shifted as far as rates of return is concerned is because  
18 Empire issued -- had two rounds of equity issuances; one in  
19 December and one in May, which boosted --

20       Q.       December of?

21       A.       2001.

22       Q.       '01 and May of '02?

23       A.       Of '02.

24       Q.       Okay. Go ahead.

25       A.       And that was included in the updated capital

1 structure as of June 30th, 2002.

2                   As a result, with more equity being in the  
3 capital structure, the accounting -- they have to gross  
4 that -- that equity up for taxes because the -- the  
5 recommended ROE that I have in my testimony is an after-tax  
6 ROE, and they have to gross that up for taxes, which they  
7 don't do for debt.

8           Q.       Okay. So if I were looking at how much that  
9 would impact the revenue requirement, have you got any idea?

10          A.       I don't prepare the reconciliations, so I  
11 don't know if -- if accounting has a specific dollar amount  
12 on that or not. All I know is there's a difference between  
13 the company and Staff as far as the ROE in -- in this  
14 specific case, the dollar difference. But as far as how  
15 much additional has been grossed up for taxes in this case  
16 versus last case, I'd have to refer to accounting on that.

17          Q.       Okay. Is there anything else that you'd like  
18 to note?

19          A.       No. It's just -- I mean, obviously the cost  
20 of capital changes over time, and even though there's been,  
21 you know, some discussion about them having a higher ROE,  
22 it's very important to note that capital structure plays a  
23 very big part in what the overall rate of return is. And  
24 that's why it's actually even lower in this case, because of  
25 use of short-term debt.



1                   COMMISSIONER GAW: Okay. All right. Thank  
2 you.  
3                   Anybody else?  
4                   JUDGE RUTH: Okay. You may step down.  
5 Mr. Murray.  
6                   COMMISSIONER GAW: Mr. Frey, he's encouraging  
7 another witness.  
8                   MR. FREY: Yes, Commissioner Gaw, the Staff  
9 would offer Phil Williams to make some comment with respect  
10 to this question as well.  
11                  COMMISSIONER GAW: Just so I can clarify, all  
12 I'm after here -- all I'm after is to have something that is  
13 clearly there that says this isn't just renegotiation of  
14 last year's case.  
15                  I just want to know what Staff's -- how Staff  
16 believed this case changed from last year to this year, so I  
17 can understand why this is an appropriate settlement this  
18 year. That's all I'm after.  
19                  MR. FREY: I understand.  
20                  COMMISSIONER GAW: So if you need to help me  
21 ask the right questions, feel free.  
22                  MR. FREY: I think you're doing fine, sir.  
23                  COMMISSIONER GAW: That's debatable.  
24                  JUDGE RUTH: Mr. Williams, would you state  
25 your full name and your position for the record?

1                   THE WITNESS: Phillip K. Williams. I'm a  
2 regulatory auditor to the Missouri Public Service  
3 Commission.

4                   (Witness sworn.)

5                   JUDGE RUTH: Thank you. Please be seated.

6 PHILLIP WILLIAMS testified as follows:

7 QUESTIONS BY COMMISSIONER GAW:

8           Q.       Good afternoon.

9           A.       Good afternoon, sir.

10          Q.       Go ahead, Mr. Williams, if you can help.  
11 You've heard what I've been asking about?

12          A.       We looked at all revenues and expenses and  
13 updated those through the test year December 31st, which  
14 would take into account what you were looking at, which  
15 would be past what was in the last case, and then we updated  
16 those for known and measurable changes through June 30th.

17                   Those took into account additional costs that  
18 were incurred on the O&M contracts for the Stateline plant  
19 and also for the -- for the combined-cycle combustion  
20 turbine. Also took into account the O&M contracts on the  
21 Stateline Unit 1 turbine and the Turbine 1 and 2 at the  
22 Energy Center. Those were additional costs.

23                   There was additional \$500,000 water contract  
24 for Stateline combustion cycle to cool, because when they  
25 started using the cycle or using the combustion turbine, the

1 water table that they were drilling -- had drilled into with  
2 the wells was not supporting what they needed without  
3 drawing down the table too much, so they had to go out and  
4 enter into a contract for that.

5                   The current case takes into account the  
6 property taxes on the new combustion turbine going into  
7 effect that would not have been fully recognized in the last  
8 case, which was probably -- I think we adjusted property  
9 taxes for like \$1.8 million, \$1.9 million, something like  
10 that. There was additional O&M cost for -- the average  
11 during the test year was down. We averaged that over four  
12 years. That increased. There was additional payroll taken  
13 into account in the case because of raises or whatever that  
14 went into effect with the union contract.

15                   I believe that would be most of it.

16           Q.       Okay. Do you have any idea how much that  
17 totals up to when you plug it in and --

18           A.       When we took all the things into effect, the  
19 last revenue requirement I believe I saw was \$9,970,000,  
20 approximately.

21           Q.       That was Staff -- that's where Staff's  
22 position would have been basically?

23           A.       On the high end of rate of return, that's  
24 correct.

25           Q.       On the high end of it. Okay.

1                   Of course, the company would have liked  
2 another position?

3           A.       The company's position, I believe, was -- when  
4 they refiled theirs was 23 and a half mill -- \$23.5 million  
5 is what their case supported when we got it during the  
6 prehearing.

7           Q.       All right. What was your low end on your rate  
8 of return? What would that have been?

9           A.       I think low end rate of return -- Denny, have  
10 you got that sheet I gave you? Excuse me.

11                   The low end rate of return would have  
12 been \$5.7 million, and the mid point would have been  
13 \$7.77 million.

14                   COMMISSIONER GAW: All right. I think that's  
15 all I've got of this witness.

16                   JUDGE RUTH: Commissioners have any other  
17 questions for Mr. Williams?

18                   (No response.)

19                   JUDGE RUTH: You may step down. Thank you.

20                   COMMISSIONER GAW: Thank you, Mr. Williams.

21                   THE WITNESS: You're welcome.

22                   COMMISSIONER GAW: Mr. Swearengen, do you want  
23 to add anything to this?

24                   MR. SWEARENGEN: I think Mr. Williams fairly  
25 well covered it, and the other witnesses.

1                   COMMISSIONER GAW: Yeah, I thought so, too,  
2 but I just wanted to --

3                   MR. SWEARENGEN: Thank you very much for the  
4 opportunity.

5                   COMMISSIONER GAW: -- give you the  
6 opportunity.

7                   I want to just -- I want to touch on this Data  
8 Request Commissioner Murray was asking about earlier. I'm  
9 confused about how that Data Request is of relevance after  
10 this case is settled. You lost your person.

11                  Go ahead, Mr. Frey.

12                  MR. FREY: Commissioner Gaw, as I indicated  
13 earlier, at least my understanding is that the Staff has a  
14 need for this information and certainly in its continuing  
15 evaluation of Empire and analysis of Empire's financial  
16 condition in future rate cases.

17                  COMMISSIONER GAW: What I'm concerned about is  
18 if you have that much concern about needing to have it for  
19 future cases, why isn't it important that you have it before  
20 you get this case resolved?

21                  MR. FREY: In this particular case, sir, it's  
22 the Staff's position that, as I indicated before, the high  
23 end rate of return, we were at \$10 million, and we were  
24 looking at a potential settlement here of \$11 million, and  
25 in consideration of all the elements of this case.

1 COMMISSIONER GAW: I understand what you're  
2 saying. I guess what I'm asking you is, did you anticipate  
3 the possibility that that information would have lowered the  
4 rate of return amount that you had calculated?

5 MR. FREY: I guess -- I guess I would defer  
6 again to our witnesses on this case, and I'm not -- are they  
7 gone or --

8 COMMISSIONER GAW: They're just wishing I  
9 would quit. That's all.

10 JUDGE RUTH: Okay. Staff, I believe you're  
11 bringing Mr. Murray back to the stand; is that correct?

12 MR. FREY: Yes, Judge Ruth.

13 JUDGE RUTH: Okay. Mr. Murray, you are still  
14 sworn, so if you could please be seated and attempt to  
15 answer Commissioner Gaw's questions.

16 THE WITNESS: I'm sorry. Could you repeat the  
17 questions? I was talking to my lawyer over there.

18 COMMISSIONER GAW: There's a few of them in  
19 this room.

20 DAVID MURRAY testified as follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Do you have one that's designated for you?

23 A. Yes. Mr. Krueger.

24 Q. Here's what I -- I just was asking about, on  
25 this Data Request that is -- evidently there's still some

1 contemplation that some information may be produced for some  
2 future use.

3           My question was whether or not that Data  
4 Request had -- whether it was relevant to this case, and if  
5 so, if Staff anticipated the possibility that some  
6 information that might be given to Staff as a result of that  
7 Data Request would have lowered the rate of return that  
8 Staff had believed was appropriate?

9           A.       I don't think it would -- it wouldn't have  
10 lowered the rate of return. As far as the relevance of  
11 receiving a response to a Data Request, it's been my  
12 position that this shouldn't have even been put into a  
13 Stipulation and Agreement. The discovery is very important  
14 to the investigation in any rate case, and if -- as has been  
15 pointed out by every party here, rate-of-return witnesses do  
16 rely on on the projection of analysts.

17           And if this is going to be something that is,  
18 you know, going to be attached to the testimony in the  
19 future, then we need to have unhindered access to all  
20 reports, and that because we weren't able to do the  
21 deposition, which the deposition -- the reason why we backed  
22 off on requesting this is because in the deposition is when  
23 we were going to request Timothy Winter to provide those  
24 reports.

25           And let me make it clear that the April -- I

1 issued the Data Request 3808 April, and it wasn't until I  
2 issued a follow-up Data Request, DR3813 after rebuttal that  
3 I realized that not all reports were attached to DR3808. So  
4 that's why it was at such a late time that we started  
5 pursuing this, because of the fact that this report was  
6 attached to a witness of the company's testimony. And --

7 Q. I'm not -- I'm not really concerned about the  
8 timing on it. My only real concern is whether or not you or  
9 anyone on the Staff anticipated that something in -- that  
10 could be contained there would have an impact on Staff's  
11 estimates of rate of return.

12 A. For this case?

13 Q. Yes.

14 A. No. The rate of return has already been set  
15 for this case.

16 Q. Well, before the stipulation. Before the  
17 stipulation was entered.

18 A. Before the stipulation was entered, the need  
19 for those -- for those reports was to establish how  
20 objective is this analyst being in evaluating his analysis  
21 over time, which I did the best I could with what I had.

22 Q. All right. But does that impact more the  
23 credibility of -- of the company's projections and  
24 calculations of rate of return than it does what you had  
25 already calculated?



1           A.       I don't know if it would if it -- if it  
2 refutes their projections. Dr. Murry is the witness that  
3 wrote testimony for Empire. Mr. Gibson is the witness that  
4 attached that report as a response to my testimony, trying  
5 to attack the credibility of my testimony. And so as far as  
6 affecting their rate of return, I don't know, and the  
7 company would have to answer for that.

8                   I don't know.

9           Q.       Well, I'm trying to understand the importance  
10 of this information to the settlement in this case -- in  
11 this particular case, and whether the Staff felt it was  
12 important in evaluating the appropriate value to give to  
13 this case for settlement purposes.

14                   And I think what you told me earlier is that  
15 it did not, but I'm just trying to see if that is what  
16 you're saying or not.

17           A.       Actually, if this had gone to hearing, it  
18 would have been -- like I said, it was something that we  
19 were continuing to pursue and, like I said, I was  
20 disappointed that it had to be put into the Stipulation and  
21 Agreement. I thought it was something that should have been  
22 resolved without having to put in the Stipulation and  
23 Agreement.

24                   As far as -- like I said, as far as having an  
25 impact on this settlement, obviously we've already -- it's

1 unanimous.

2           Q.       I understand. That's not my -- that's not the  
3 answer that I'm looking for. Maybe someone else might have  
4 an analysis of that, if you want.

5                   All I'm asking is whether or not there is any  
6 anticipated information that could have been given from that  
7 Data Request that would have changed Staff's opinion about  
8 whether this was a good settlement.

9                   That's all I want to know, whether you did not  
10 have all the information necessary to evaluate whether or  
11 not this was a settlement that was in the public interest.

12                  COMMISSIONER GAW: Mr. Frey, do you want to --  
13 you guys have switched. Don't do that to me, Mr. Krueger.  
14 I'm sorry. Would you like to inquire of him or just make a  
15 statement? I don't care which.

16                  MR. KRUEGER: Mr. Murry, if we had been able  
17 to take that deposition, would it have affected our  
18 recommendation regarding rate of return?

19                  THE WITNESS: No.

20                  COMMISSIONER GAW: You did that a lot better  
21 than I.

22                  MR. KRUEGER: Thank you. No further  
23 questions.

24                  JUDGE RUTH: Commissioner Gaw, does that  
25 answer your question?

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1                   COMMISSIONER GAW: Are you trying to push me  
2 along here, Judge?

3                   JUDGE RUTH: No, I'm not. I can't see you. I  
4 can't tell if you're --

5                   COMMISSIONER GAW: If you were, it would be  
6 appropriate probably.

7                   I think that's -- I think that's all, except  
8 does anyone have any disagreement with anything that's been  
9 said?

10                  (No response.)

11                  COMMISSIONER GAW: Silence I take to be an  
12 affirmation. All right.

13                  JUDGE RUTH: One of the other parties, of  
14 course, is free to call your own witness if you want to  
15 address this issue also.

16                  MR. SWEARENGEN: You're looking at me like you  
17 want me to say something. I just want to reiterate the  
18 point that on this discovery dispute, we gave the Staff  
19 everything that we had in our possession and control. We  
20 can't make A.G. Edwards turn over materials that they have.  
21 At the same time, the Staff through the subpoena process was  
22 pursuing discovery, and we anticipated the deposition, and  
23 those documents being produced at that time. That didn't  
24 happen.

25                  The Staff asked that this be included in the

1 stipulation, and we said we would be perfectly willing to  
2 ask A.G. Edwards to give us these materials, and -- and  
3 we're going to do that, assuming that the stipulation is  
4 approved.

5                   And what happens from that point on, I don't  
6 know.

7                   COMMISSIONER GAW: I appreciate the statement.  
8 I think that's all I have, Judge. Thank you.

9                   COMMISSIONER MURRAY: May I?

10                  JUDGE RUTH: Commissioner Murray?

11                  COMMISSIONER MURRAY: Briefly, I hope.

12 QUESTIONS BY COMMISSIONER MURRAY:

13           Q.       I guess I'm still trying to understand what it  
14 was you thought you would get from the deposition.

15                   Why did you think it was necessary to depose  
16 the analyst because a report had been cited?

17           A.       Actually, it was getting at the credibility of  
18 the report. I can only point out the inconsistencies  
19 through the information I had, but as far as going to the  
20 source itself, that's really the only way to know for sure  
21 what his reasoning or rationale was, based on questions we  
22 had.

23           Q.       And you -- you would not disagree, would you,  
24 that it's commonplace to cite analysts' reports in rate  
25 cases by various parties?

1           A.       No. Staff quite often uses -- almost every  
2 case uses S&P, ValueLine, Zachs, and various other  
3 projections from an analyst. In this case, we actually had  
4 the analysis of the analyst. We were privy to that  
5 information. We were able to evaluate it. And when the  
6 most recent report was issued, based on previous reports, I  
7 was very concerned about the objectivity of that report.

8                   And like I said, as far as if this case would  
9 have went to hearing, I think it was very important for us  
10 to determine how objective is this analyst being in his  
11 analysis of Empire's situation.

12                   And as far as the timing of the release of  
13 report, that was something that we were not sure about, and  
14 by deposing this analyst, we could at least get an answer  
15 from him whether -- I mean as far as what he -- what his  
16 rationale was and why he did release a report at the time he  
17 did.

18           Q.       Now, experts normally frequently disagree  
19 about their subjects to which they're experts, do they not?

20           A.       Yes.

21           Q.       And if a party cites an expert that the other  
22 party disagrees with, particularly if you're looking at  
23 financial analyst reports, isn't the common -- the most  
24 ordinary thing to do in a rate case to cite your own analyst  
25 reports that might differ from that?

1           A.       Well, I think -- I think in any case it  
2 appears that every witness is criticizing various  
3 projections of every analyst. You know, there's times when  
4 the projections are very high. There's times when, you  
5 know, the company witnesses will disagree with historical  
6 growth rates. So they're called into question in every  
7 case.

8                   As far as this analyst is concerned, there was  
9 very specific comments made within his report, a more  
10 detailed report than just looking at a projected growth  
11 rate, which with -- with ValueLine, there may be some  
12 comments from their analyst in their tear sheet, which is a  
13 sheet that lists all the financial information of the  
14 company and then their comments on that.

15                  But like I said, in this case there were --  
16 there were very specific comments about my testimony within  
17 that report, which I must admit I've not seen before in an  
18 analyst's report.

19           Q.       You've not seen analysts cite to either State  
20 Commission or Federal Commission decisions affecting the  
21 company's earnings potential?

22           A.       I think they do comment. I know they comment  
23 on decisions, but as far as commenting very specifically on  
24 a witness' testimony during the proceeding at hand, no, I  
25 have never seen that, in my experience.

1           Q.       So you were in -- you were directly  
2 questioning whether that analyst had an axe to grind with  
3 you personally?

4           A.       I said, I hate to speculate. We didn't --  
5 we weren't able to do the deposition. That's what the  
6 point of the deposition was, was to try to uncover some of  
7 the reasons why this analyst is commenting on my testimony  
8 very specifically, when I -- you know, based on previous  
9 reports that he has commented on, I think, the legislation  
10 that Empire was trying to put through with more -- a  
11 permanent fuel adjustment clause.

12                   But I had not seen anything as far as  
13 specifically commenting on the analysis that's being done by  
14 Staff, and in the deposition was one way to find out exactly  
15 what this analyst was -- his thought process was.

16          Q.       You wouldn't have an objection to an analyst  
17 being thorough in reading the record, though, would you?

18          A.       I'm sorry. Can you -- I don't understand.

19          Q.       Your objection is not that an analyst might be  
20 thorough and actually read the record at a State Commission?

21          A.       No, I don't object to an analyst looking at  
22 what is occurring within, you know, the specific testimony  
23 of any given case. It's public documents.

24          Q.       Just that you want them to be there in person  
25 to answer questions if they do cite to the testimony?

1           A.       Objectivity is very important, and I think it  
2 is very important in this case. And as far as coming up  
3 with the fair and reasonable rate of return, when a company  
4 witness is attaching that very specific report that cites  
5 things about Missouri regulation, that -- that are  
6 questionable, I think it is very important to -- for me to  
7 make my case stronger and attack the credibility of their  
8 position.

9                   COMMISSIONER MURRAY: I believe that's all I  
10 have.

11                  Thank you.

12                  JUDGE RUTH: Okay. Any additional questions  
13 for Mr. Murray?

14                  COMMISSIONER GAW: I've just got one other  
15 follow-up, but not of this witness.

16                  JUDGE RUTH: Not of this witness?

17                  Then you may step down.

18                  COMMISSIONER GAW: Mr. Coffman, you may have  
19 said this; it may be in your documents. The added amount of  
20 revenue necessary for the ELIP?

21                  MR. COFFMAN: Yes, the experimental low-income  
22 program.

23                  COMMISSIONER GAW: Thank you. About how much  
24 does that add -- I know it's not directly in here. At least  
25 I don't think it is.



1                   How much does that add to a residential  
2 customer's bill, average customer's bill a month? Did  
3 anybody calculate that?

4                   MR. COFFMAN: No, although we are --

5                   COMMISSIONER GAW: I can probably come to it  
6 here based on what you've given me.

7                   MR. COFFMAN: We -- even though we're not  
8 attributing the amount to any particular rate component of  
9 any customer class --

10                  COMMISSIONER GAW: Right.

11                  MR. COFFMAN: -- the amount would be -- is  
12 going to be generally consistent with an amount that would  
13 have been --

14                  COMMISSIONER GAW: Because it's added to the  
15 revenue requirement, right?

16                  MR. COFFMAN: Ten cents times the number --

17                  COMMISSIONER GAW: So it will be the same as  
18 what the rest of the revenue requirement is, how it's  
19 distributed, I would assume, among the classes?

20                  MR. COFFMAN: Yes.

21                  COMMISSIONER GAW: I just wondered if anybody  
22 had done the math to come up with the figure.

23                  MR. COFFMAN: It's my understanding the  
24 amount --

25                  COMMISSIONER GAW: It doesn't look like it

1 would be very much.

2                   MR. COFFMAN: Right. Like I said, it's  
3 somewhere in the neighborhood of \$150,000. And I believe  
4 generally it would be calculated by the -- by using the  
5 original proposal of a surcharge times the number of  
6 customers that that would have produced in coming to that  
7 amount.

8                   COMMISSIONER GAW: Anybody got anything else  
9 to add to that?

10                  It's okay if you don't. I'm just curious.

11                  (No response.)

12                  COMMISSIONER GAW: That's all I have, then.

13                  Judge, thank you very much. And thank the  
14 parties for your patience on this. I appreciate it.

15                  JUDGE RUTH: Okay. Commissioner Forbis?

16                  COMMISSIONER FORBIS: Just one observation  
17 maybe which could be a question. I'll direct it to Staff.

18                  In -- in documents I've seen like this in this  
19 state and other states, there's often some acknowledgement  
20 of demand-side management, demand-side generation,  
21 conservation efforts, and I didn't notice any of that in  
22 this particular document.

23                  I wondered if there is a reason for that. Was  
24 it discussed? Is it covered by one of the prior agreements  
25 or just wasn't brought up?

1                   Anybody want to take a shot at that, OPC or  
2 Staff?  
3                   MR. COFFMAN: I don't believe it was raised as  
4 an issue in this particular case.  
5                   MR. FREY: Commissioner Forbis, James Watkins  
6 from the Staff would be prepared to respond to that  
7 question.  
8                   COMMISSIONER FORBIS: Okay.  
9                   JUDGE RUTH: I need to call you up to the  
10 front, please.  
11                  Mr. Watkins, would you please state your full  
12 name and title for the record.  
13                  THE WITNESS: My name is James C. Watkins.  
14 I'm a regulatory economist with the Commission.  
15                  JUDGE RUTH: Thank you.  
16                  (Witness sworn.)  
17                  JUDGE RUTH: Thank you. Do you understand the  
18 question?  
19                  THE WITNESS: Yes, I believe so. I tried to  
20 feed him the answer to give you.  
21 JAMES C. WATKINS testified as follows:  
22 QUESTIONS BY COMMISSIONER FORBIS:  
23                  Q.       It's hard to do that back and forth.  
24                  A.       From the Staff's perspective, there are a  
25 number of pilot programs or experimental programs going on

1 on a fairly large scale that we're working in the  
2 collaborative committees on with Union Electric Company.

3 Q. I'm aware of those.

4 A. Pretty big demand side time of use type  
5 programs with Union Electric.

6 From our perspective, those are consuming  
7 quite a bit of Staff resources and resources of the other  
8 parties and are pretty good size programs with sizeable  
9 commitment in funding from the company. We thought probably  
10 it would spread Staff and maybe Public Counsel, other  
11 parties, pretty thin.

12 And Empire's a fairly small company. I think  
13 they've made a significant commitment to this experimental  
14 program that they have proposed.

15 Q. The ELIP --

16 A. ELIP.

17 Q. -- on the low income folks? Okay.

18 A. I think the absence of anything on demand  
19 side, time of use, demand response is more a function of our  
20 commitments elsewhere, determining what we can find out  
21 there before we proceed anywhere else, and the company's  
22 commitment to the ELIP program, because that really is  
23 unique for electric companies.

24 Q. So it's not a function of Staff -- Staff is  
25 obviously interested in the notion?

1           A.       Very.

2           Q.       And wants to pursue it through other means and  
3 then, kind of like you're doing with the ELIP, this is an  
4 experiment, if you will, for maybe statewideness later on?

5           A.       Correct.

6           Q.       Okay. Assuming that the outgrowth, outcome of  
7 this experiment with other companies would be successful,  
8 you might envision, then, folding some of those into other  
9 utility companies in future rate cases and so on as we move  
10 down the line, future agreements?

11          A.       Absolutely.

12                   COMMISSIONER FORBIS: Okay. Thanks.

13                   Mr. Coffman, do you have any thoughts on that?

14                   MR. COFFMAN: Yeah. I don't think I have  
15 anything else to add. Obviously our office has done a lot  
16 of work in demand side management, and we believe it's  
17 something worth promoting, but no, we did not propose  
18 anything or address any issues in that area for this  
19 particular case.

20                   COMMISSIONER FORBIS: I'm through with this  
21 witness. Anybody else want to --

22                   JUDGE RUTH: Any other parties want to respond  
23 to this topic?

24                   (No response.)

25                   JUDGE RUTH: I see none. Do the Commissioners

1 have any questions for Mr. Watkins before he steps down?  
2 Okay. Thank you.

3 COMMISSIONER FORBIS: That's all of my  
4 questions.

5 JUDGE RUTH: All of your questions.

6 COMMISSIONER FORBIS: All of my question, I  
7 guess I should say.

8 JUDGE RUTH: Are there any additional  
9 questions from the Bench at this time?

10 COMMISSIONER LUMPE: At the risk of prolonging  
11 this, Mr. Frey, maybe you -- maybe you can tell me this. As  
12 one of the witnesses testified, the high end of the ROR for  
13 Staff was 9.9; is that correct?

14 MR. FREY: I believe that's what Mr. Williams  
15 said.

16 COMMISSIONER LUMPE: Somewhere in there. Did  
17 that include the ERISA amounts or would that have been on  
18 top of?

19 MR. FREY: No, that did include the ERISA  
20 amounts.

21 COMMISSIONER LUMPE: It would have included  
22 the ERISA amounts.

23 Okay. Thank you. That's all I need to know.

24 MR. COFFMAN: I believe that may have been the  
25 return on equity, not the rate of return overall.

1                   MR. SWEARENGEN: Revenue requirement.

2                   COMMISSIONER LUMPE: I wasn't talking about

3 the revenue requirement. I was talking about the ROR, and I

4 thought that was said to be 9.9, but it isn't? It was the

5 revenue requirement that was 9.9?

6                   MR. FREY: The increase in the revenue

7 requirement --

8                   COMMISSIONER LUMPE: The revenue requirement.

9 Okay.

10                  MR. FREY: -- is about 9.9 million. My

11 understanding is that does include the ERISA change that

12 you --

13                  COMMISSIONER LUMPE: That's what wasn't clear

14 to me, because I thought I heard rate of return at 9.9 and

15 that was -- okay. Thank you. That clarifies it. Thank

16 you.

17                  JUDGE RUTH: Any other questions from the

18 Bench? I have a quick question. I'll ask Staff and then

19 give other parties --

20                  COMMISSIONER GAW: I have a question, too.

21                  JUDGE RUTH: You go first, Commissioner.

22                  COMMISSIONER GAW: Are you sure?

23                  JUDGE RUTH: Yes.

24                  COMMISSIONER GAW: Did Staff review this

25 tariff and absolutely check every number that's in there?

1 MR. FREY: Yes.

2 COMMISSIONER GAW: And the numbers and the  
3 methodology that's used in that tariff, absolutely Staff  
4 agrees that that's the right calculation by this  
5 stipulation?

6 MR. FREY: Yes, sir.

7 COMMISSIONER GAW: That's so nice to hear.  
8 That's all I have, I think.

9 JUDGE RUTH: Okay. My question for Staff is,  
10 in the Unanimous Stip & Agreement on page 5, paragraph 10,  
11 halfway down, it states, The benefits of continuing this  
12 experiment may be evaluated in the company's next rate case  
13 or complaint case and so on.

14 I have a question about the evaluated. Since  
15 there is no termination date for that program and the  
16 parties have all agreed to that, the evaluation -- is it  
17 clear to all the parties that the evaluation could modify  
18 the program and that the modifications could include  
19 terminating it?

20 Staff, was that the parties' understanding, to  
21 the best of your belief?

22 MR. FREY: Your Honor, the evaluation -- it's  
23 Staff's belief that the evaluation would involve an  
24 assessment by a third party and that, based on that, we  
25 would bring -- or it would be -- a case might be brought or



1 the issue might be raised in a subsequent rate case, but not  
2 that it would terminate as a result immediately of the  
3 evaluation.

4 JUDGE RUTH: But it could be raised in a rate  
5 case or a complaint case after the evaluation by the third  
6 party; is that correct?

7 In other words, if the company does not bring  
8 a rate case but there's an evaluation and Staff feels a  
9 complaint case is appropriate, Staff would bring a complaint  
10 case?

11 MR. FREY: That's an option.

12 JUDGE RUTH: Okay. Was that the company's  
13 understanding, Mr. Swearengen?

14 MR. SWEARENGEN: Yes, your Honor. I think  
15 that fairly well gets to it. The idea was we didn't want  
16 this program to run indefinitely without somebody taking a  
17 look at it. That's why we agreed to have it evaluated.

18 The evaluation itself won't do anything, but  
19 the parties might as a result of that come to some agreement  
20 that the program ought to be modified in some fashion, in  
21 which case they would bring it to the Commission to do that,  
22 or maybe one party would be unhappy with it for some reason  
23 or another and then file some sort of an appropriate  
24 pleading to modify it or terminate it.

25 But the evaluation itself won't terminate the

1 program.

2 JUDGE RUTH: Exactly, and that's why I think  
3 it's appropriate to make sure it's on the record what the  
4 parties expect would happen, because having an evaluation  
5 but no action available to be taken is probably not the  
6 avenue the Commission would want to go.

7 MR. SWEARENGEN: Well, there would be  
8 appropriate action to be taken. I mean, any party's free at  
9 any point in time to raise this in some fashion before the  
10 Commission. It could be an issue in a rate case. It could  
11 be an issue in a complaint case or some other vehicle.

12 JUDGE RUTH: Public Counsel, you want to  
13 respond?

14 MR. COFFMAN: Yeah. I think I agree with  
15 Mr. Swearengen. The evaluation as -- the word evaluation  
16 and evaluated as used in the Stipulation I was not reading  
17 to mean some sort of review that would determine exactly  
18 what happens, but it's my understanding that in a general  
19 rate case that could be filed, say, next September, that  
20 that throws every tariffed rate and provision into play and  
21 that, as a result of that case, the Commission has the  
22 opportunity to do whatever it wishes, continue, modify,  
23 eliminate if it wants at that point.

24 And then we have the language in addition that  
25 in any event, perhaps if there isn't another case in

1 September, that at no date later than 30 months would the  
2 Commission have an evaluation in its hands, and everyone I  
3 assume would be served a copy on that, and that would serve  
4 as a reminder to anyone who wanted to propose a change at  
5 that point that a change could be -- could be made.

6                   But I imagine that it would likely be  
7 discussed in whatever general rate case or complaint comes  
8 before the Commission next.

9                   JUDGE RUTH: So if this is next evaluated in  
10 30 months from the date that the tariff sheets are  
11 implemented and all parties agree that the program is  
12 working well and does not need to be changed, do you  
13 anticipate that a report would be filed with the Commission  
14 stating that?

15                  MR. COFFMAN: Yes.

16                  JUDGE RUTH: So in 30 months, approximately 30  
17 months the Commission would hear something, either that it's  
18 been evaluated and working well or been evaluated and  
19 something may need to be done?

20                  MR. COFFMAN: I would anticipate that after 30  
21 months there would be an evaluation filed, and then it would  
22 be up to whatever party that wanted to suggest a change that  
23 wanted to to say so.

24                  I mean, perhaps -- and perhaps the  
25 collaborative could work out more details about what

1 collectively the parties or members of this collaborative  
2 would want to anticipate as far as an experiment goes.

3               Frankly, I think for a good experiment of this  
4 sort, which may have variables that depend on different  
5 weather, that you might want to look at two years. I think  
6 two years is a good time to look at, because one particular  
7 year may have factors that make it unique.

8               JUDGE RUTH: Now, the Stipulation provides  
9 that that evaluation will be initiated no later than 30  
10 months after the date. Do you anticipate how long such an  
11 evaluation would take since you'll be using an outside  
12 party?

13              MR. COFFMAN: No. Of course, the provision is  
14 that in no later than 30 months, but, I mean, my own  
15 personal opinion is that after two years of experience would  
16 be a good time to begin a -- after 24 months would be a good  
17 time to start an evaluation.

18              JUDGE RUTH: And Mr. Conrad, did you have  
19 anything to add on this question?

20              MR. CONRAD: We -- your Honor, we didn't have  
21 a large white horse in that race, and while it's not an  
22 issue that is of no concern, we were comfortable with the  
23 arrangement that the parties -- the other parties have  
24 worked out, particularly that there needed to be some time  
25 for the program to go forward to be evaluated, but that it

1 not just be there forever.

2                   My understanding of that is that it would  
3 become a matter of tariff. So it would not be implemented  
4 ultimately until the Commission had approved a specific  
5 package. So at that time, as would be the case with any  
6 tariff that was approved by the Commission, it would be at  
7 the Commission's discretion on its own motion or on the  
8 motion of some other party to move to modify.

9                   JUDGE RUTH: Right, if someone was proposing a  
10 modification.

11                  MR. CONRAD: Right.

12                  JUDGE RUTH: Mr. Swearengen, I'm not sure if I  
13 gave you an adequate opportunity to make your comments. Did  
14 you have anything else to add?

15                  MR. SWEARENGEN: I really have nothing else to  
16 add. Thank you.

17                  JUDGE RUTH: Thank you.

18                  Any other questions for the Bench?

19                  COMMISSIONER GAW: Just real quickly. I  
20 failed to ask Mr. Coffman and Mr. Conrad, when I was asking  
21 Staff earlier about the additional revenue since the last --  
22 additional revenue requirement since the last rate case, if  
23 you agreed with what Staff witnesses had said about their  
24 evaluation of what was -- what the increase need was --

25                  MR. COFFMAN: Although --

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1                   COMMISSIONER GAW:  -- or if you have your own  
2 statement.

3                   MR. COFFMAN:  With the understanding that  
4 positions taken by some of my witnesses differed from some  
5 of the positions taken by Staff witnesses, statements they  
6 made about where their position was in the case appeared to  
7 be accurate and, with some differences, they were relatively  
8 close to where we were evaluating our case.

9                   We obviously had some difference on rate of  
10 return, but -- and understanding that we felt the case  
11 justified something less than \$11 million, we were -- we  
12 felt that we got a good bargain in the settlement, in the  
13 moratorium and the elimination of the interim energy charge.  
14 I can say with complete confidence it's a fair deal.

15                  COMMISSIONER GAW:  Mr. Conrad, do you want to  
16 add anything?

17                  MR. CONRAD:  Judge, as I said before -- or  
18 rather Commissioner -- we felt this was a fair deal.  
19 There's -- I think it's been said that a settlement has no  
20 mother or father, and it's difficult obviously --

21                  COMMISSIONER GAW:  Sometimes it has many  
22 offspring, though.

23                  MR. CONRAD:  Well, let's hope that they're  
24 all -- that they all appear within lives being 21 years.

25                  We were not -- we were not unhappy.  As I had

1 mentioned when I was up before the panel, we felt that  
2 particularly the Staff witnesses and several other of the  
3 technical witnesses have been very cooperative in filling us  
4 in and getting us to a level of comfort with the numbers,  
5 Judge.

6 COMMISSIONER GAW: But you don't feel that  
7 this is just a renegotiation of last year's settlement?  
8 Indeed, this settlement --

9 MR. CONRAD: This is particularly --

10 COMMISSIONER GAW: -- for additional revenue  
11 is justified by changes since that settlement?

12 MR. CONRAD: Particularly in view of the  
13 elimination of the energy charge, the interim energy charge.  
14 I think that's a -- that's a very important feature. We  
15 haven't discussed that here, but that should not -- should  
16 not be missed.

17 COMMISSIONER GAW: I'll leave it alone. Thank  
18 you.

19 JUDGE RUTH: Okay. I believe there are no  
20 further questions from the Bench.

21 I just have a housekeeping matter before we  
22 adjourn. As I stated before, Exhibits 1 through 64 and 68  
23 through 72 were received into the record. Exhibits 65, 66  
24 and 67 were marked for identification purposes.

25 I do not anticipate the need for any

1 additional briefings. Do the parties have any matters that  
2 need to be brought up at this time?

3 MR. FREY: Yes, your Honor. I have one, just  
4 a clarification. I believe we may have misstated. Exhibits  
5 No. 18 -- excuse me -- 17 and 18 referring to Alan Bax.

6 JUDGE RUTH: Okay. Exhibits 17 and 18?

7 MR. FREY: Right. I think I want to -- I'd  
8 just like to clarify for the record that Exhibit 17 should  
9 be Alan J. Bax proprietary direct, and No. 18 should be  
10 Alan J. Bax nonproprietary direct.

11 JUDGE RUTH: Okay. So you're putting the  
12 first one is the proprietary, 17, and 18 is the NP  
13 nonproprietary?

14 MR. FREY: Right. That's correct.

15 JUDGE RUTH: Okay. Any party have an  
16 objection to the clarification?

17 (No response.)

18 Seeing none. Staff, do you have anything  
19 else?

20 MR. FREY: No, your Honor.

21 JUDGE RUTH: Any other party have an  
22 additional housekeeping measure?

23 (No response.)

24 Okay. Seeing none, this hearing is adjourned.  
25 Thank you very much for your time.



1	EXHIBITS INDEX	
2		RECEIVED
3	EXHIBIT NO. 1	
4	Direct Testimony of Brad P. Beecher	13
5	EXHIBIT NO. 2	
6	Supplemental Direct Testimony of	
7	Brad P. Beecher	13
8	EXHIBIT NO. 3	
9	Rebuttal Testimony of Brad P. Beecher	13
10	EXHIBIT NO. 4	
11	Direct Testimony of David W. Gibson	13
12	EXHIBIT NO. 5	
13	Rebuttal Testimony of David W. Gibson	13
14	EXHIBIT NO. 6	
15	Direct Testimony of William L. Gipson	13
16	EXHIBIT NO. 7	
17	Rebuttal Testimony of William L. Gipson	13
18	EXHIBIT NO. 8	
19	Direct Testimony of Donald A. Murry	13
20	EXHIBIT NO. 9	
21	Rebuttal Testimony of Donald A. Murry	13
22	EXHIBIT NO. 10	
23	Surrebuttal Testimony of Donald A. Murry	13
24	EXHIBIT NO. 11	
25	Direct Testimony of Kelly S. Walters	13
26	EXHIBIT NO. 12	
27	Supplemental Direct Testimony of Kelly S.	
28	Walters	13
29	EXHIBIT NO. 13	
30	Rebuttal Testimony of Kelly S. Walters	13
31	EXHIBIT NO. 14	
32	Surrebuttal Testimony of Kelly S. Walters	13
33		

1	EXHIBIT NO. 15	
	Staff Accounting Schedules	15
2		
	EXHIBIT NO. 16	
3	Direct Testimony of Paul W. Adam	15
4	EXHIBIT NO. 17P	
	Direct Testimony of Alan J. Bax	15
5		
	EXHIBIT NO. 18NP	
6	Direct Testimony of Alan J. Bax	15
7	EXHIBIT NO. 19	
	Direct Testimony of Richard J. Campbell	15
8		
	EXHIBIT NO. 20	
9	Direct Testimony of Sean T. DeVore	15
10	EXHIBIT NO. 21	
	Direct Testimony of Dana Eaves	15
11		
	EXHIBIT NO. 22P	
12	Direct Testimony of David Elliott	15
13	EXHIBIT NO. 23HC	
	Direct Testimony of David Elliott	15
14		
	EXHIBIT NO. 24P	
15	Rebuttal Testimony of David Elliott	15
16	EXHIBIT NO. 25HC	
	Rebuttal Testimony of David Elliott	15
17		
	EXHIBIT NO. 26	
18	Surrebuttal Testimony of David Elliott	15
19	EXHIBIT NO. 27	
	Direct Testimony of Cary G. Featherstone	15
20		
	EXHIBIT NO. 28	
21	Direct Testimony of V. William Harris	15
22	EXHIBIT NO. 29	
	Direct Testimony of Charles R. Hyneman	15
23		
	EXHIBIT NO. 30	
24	Direct Testimony of Leslie L. Lucas	15
25		

1	EXHIBIT NO. 31	
	Direct Testimony of Lena M. Mantle	15
2		
	EXHIBIT NO. 32	
3	Direct Testimony of David Murray	15
4	EXHIBIT NO. 33	
	Rebuttal Testimony of David Murray	15
5		
	EXHIBIT NO. 34	
6	Surrebuttal Testimony of David Murray	15
7	EXHIBIT NO. 35	
	Direct Testimony of Dennis Patterson	15
8		
	EXHIBIT NO. 36	
9	Direct Testimony on Rate Design of	
	Janice Pyatte	15
10		
	EXHIBIT NO. 37	
11	Direct Testimony on Sales & Revenues of	
	Janice Pyatte	15
12		
	EXHIBIT NO. 38	
13	Rebuttal Testimony of Janice Pyatte	15
14	EXHIBIT NO. 39NP	
	Surrebuttal Testimony of Michael L.	
15	Rahrer	15
16	EXHIBIT NO. 40HC	
	Surrebuttal Testimony of Michael L.	
17	Rahrer	15
18	EXHIBIT NO. 41NP	
	Direct Testimony of Graham A. Vesely	15
19		
	EXHIBIT NO. 42HC	
20	Direct Testimony of Graham A. Vesely	15
21	EXHIBIT NO. 43	
	Surrebuttal Testimony of Graham A.	
22	Vesely	15
23	EXHIBIT NO. 44	
	Direct Testimony of James C. Watkins	15
24		
	EXHIBIT NO. 45	
25	Rebuttal Testimony of James C. Watkins	15

1	EXHIBIT NO. 46	
	Surrebuttal Testimony of James C. Watkins	15
2		
	EXHIBIT NO. 47	
3	Direct Testimony of Phillip K. Williams	15
4	EXHIBIT NO. 48	
	Rebuttal Testimony of Phillip K. Williams	15
5		
	EXHIBIT NO. 49	
6	Direct Testimony of Kimberly K. Bolin	16
7	EXHIBIT NO. 50	
	Rebuttal Testimony of Kimberly K. Bolin	16
8		
	EXHIBIT NO. 51	
9	Surrebuttal Testimony of Kimberly K. Bolin	16
10		
	EXHIBIT NO. 52	
11	Direct Testimony of Mark Burdette	16
12	EXHIBIT NO. 53	
	Rebuttal Testimony of Mark Burdette	16
13		
	EXHIBIT NO. 54	
14	Surrebuttal Testimony of Mark Burdette	16
15	EXHIBIT NO. 55	
	Direct Testimony of James A. Busch	16
16		
	EXHIBIT NO. 56	
17	Direct Testimony of Hong Hu	16
18	EXHIBIT NO. 57	
	Rebuttal Testimony of Hong Hu	16
19		
	EXHIBIT NO. 58	
20	Surrebuttal Testimony of Hong Hu	16
21	EXHIBIT NO. 59	
	Rebuttal Testimony of Ryan Kind	16
22		
	EXHIBIT NO. 60	
23	Direct Testimony of Ted Robertson	16
24	EXHIBIT NO. 61	
	Direct Testimony of Cost of Service and	
25	Rate Design of Maurice Brubaker	17

1	EXHIBIT NO. 62	
2	Direct Testimony of Revenue Requirement	
	of Maurice Brubaker	17
3	EXHIBIT NO. 63	
	Rebuttal Testimony of Maurice Brubaker	17
4		
	EXHIBIT NO. 64	
5	Surrebuttal Testimony of Maurice Brubaker	17
6	EXHIBIT NO. 65	
	Unanimous Stipulation and Agreement	19
7		
	EXHIBIT NO. 66	
8	Staff's Suggestions in Support	19
9	EXHIBIT NO. 67	
	Staff's Amendment to Suggestions in	
10	Support	19
11	EXHIBIT NO. 68	
	Surrebuttal Testimony of Brad Beecher	13
12		
	EXHIBIT NO. 69	
13	Rebuttal Testimony of Jill Tietjen	13
14	EXHIBIT NO. 70	
	Surrebuttal Testimony of Cary	
15	Featherstone	15
16	EXHIBIT NO. 71	
	Bill Comparison of Change in Rate Base	40
17		
	EXHIBIT NO. 72	
18	Bill Comparison Showing Effect of	
	Elimination of IEC	40
19		
20		
21		
22		
23		
24		
25		