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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing and Oral Argument

July 20, 2018

Jefferson City, Missouri

Volume 2

In The Matter Of A Proceeding)
Under Section 393.137 (SB 564))
To Adjust The Electric Rates Of) File No. ER-2018-0366
The Empire District Electric)
Company)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
DANIEL Y. HALL, Chairman
COMMISSIONER

REPORTED BY:
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TIGER COURT REPORTING, LLC

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1 JUDGE WOODRUFF: We're here today in File
2 Number ER 2018-0366, which is a Proceeding Under
3 Section 393.137 To Adjust The Electric Rates Of The
4 Empire District Electric Company. We'll begin today
5 by taking entries of appearance beginning with Staff.

6 MR. THOMPSON: Thank you, Judge. Kevin
7 Thompson for the Staff of the Missouri Public Service
8 Commission, Post Office Box 360, Jefferson City,
9 Missouri 65102.

10 JUDGE WOODRUFF: And for the Office of
11 Public Counsel.

12 MR. H. WILLIAMS: Thank you, Judge.
13 Hampton Williams and Nathan Williams for the Office of
14 the Public Counsel, and my information's been provided
15 to the court reporter.

16 JUDGE WOODRUFF: Thank you. And for
17 Empire.

18 MS. CARTER: Diana Carter with Brydon,
19 Swearengen and England, 312 East Capitol Avenue,
20 Jefferson City, Missouri for the Empire District
21 Electric Company.

22 JUDGE WOODRUFF: Thank you. And for
23 MECG?

24 MR. WOODSMALL: David Woodsmall on behalf
25 of MECG.

1 JUDGE WOODRUFF: The other parties in the
2 case are Missouri Joplin, City of Joplin, and Division
3 of Energy. All three have contacted me and requested
4 to be -- leave to be excused from today's hearing and
5 I will grant that request.

6 We also have a pending motion from Public
7 Counsel for leave to file their Corrected Direct
8 Testimony of John Riley. That was filed on July 17th.
9 Anyone object to that request? I see no indications
10 of opposition so it will be granted. And I assume
11 that would be a substitution of that testimony for the
12 previous --

13 MR. N. WILLIAMS: Yes.

14 JUDGE WOODRUFF: -- testimony from
15 Mr. Riley.

16 There was -- of course, there's also a
17 Motion to Dismiss that was filed by Empire that's been
18 the subject of numerous pleadings back and forth. The
19 Commission's not going to make a ruling on that from
20 the bench today. It will be taken along with the rest
21 of the case.

22 There was a suggestion -- when this
23 hearing was scheduled, there was also the idea that
24 there would be oral argument on that motion. I don't
25 plan to make any separate oral argument time for that.

1 If you want to address it, address it in your opening
2 statements.

3 Also, this is just a little bit of a
4 hurried-up procedural schedule in that we didn't have
5 time for Rebuttal and Surrebuttal Testimony on all the
6 issues. As agreed by the parties, that will be --
7 there will be an opportunity for live Rebuttal,
8 Surrebuttal Testimony.

9 Just procedurally, I would anticipate
10 that would be during what would normally be called
11 Direct of your witness when you present your pre-filed
12 testimony. Then you can go on forward and present
13 your Rebuttal Testimony if you've got Rebuttal
14 Testimony to that witness. I believe there's one
15 witness for Empire who didn't do pre-filed testimony
16 so we'll just do him entirely live.

17 And I believe that's everything that's --
18 as far as pending motions. Let's go off the record
19 for a moment and we'll mark testimony.

20 (Exhibits 1 through 5 were marked for
21 identification.)

22 JUDGE WOODRUFF: All right. Let's go
23 back on the record then and we're ready for opening
24 statements. For opening we'll begin with Empire.

25 MS. CARTER: Good morning. So as Judge

1 Woodruff noted just a minute ago, there is a Motion to
2 Dismiss or for Summary Determination pending before
3 the Commission that was filed by Empire.

4 As detailed in that motion and the
5 initial and reply supporting suggestions, that motion
6 should be granted in -- because the entirety of the
7 new statute, RSMo 393.137, which was enacted by Senate
8 Bill 564, does not apply to Empire. The Commission,
9 therefore, lacks authority or jurisdiction to proceed.

10 Subsection 1 of the statute provides that
11 the statute applies only to electrical corporations
12 that do not have a general rate proceeding pending
13 before the Commission as of the later of February 1,
14 2018 or the effective date of this section of the
15 statute.

16 There are two material facts. Empire was
17 the subject of a general rate proceeding on June 1 and
18 the statute took effect on June 1. Only OPC responded
19 to the Motion for Summary Determination. OPC admitted
20 fact two and OPC did not present a genuine dispute
21 regarding fact one. No party to the case asserted
22 that there were any additional material facts.

23 When the Commission closed its initial
24 working docket regarding the Tax Cuts and Jobs Act,
25 Staff filed a motion to open rate case and to require

1 Company to show cause. The Commission then issued its
2 order titled Order Opening Rate Case, Directing
3 Notice, Establishing Time to Intervene and Requiring
4 Company to Show Cause Why Its Rates Should Not be
5 Adjusted. That was in Case Number ER-2018-0228
6 captioned In the Matter of the Propriety of the Rate
7 Schedules for Electric Service of the Empire District
8 Electric Company.

9 The order of the Commission opening that
10 rate case noted that Staff asked the Commission quote,
11 To open a rate case because, quote, Empire's existing
12 rate schedules may no longer be just and reasonable.

13 OPC, the only party again who responded
14 to the motion, their own argument that 228 case is not
15 a general rate proceeding is that the Commission did
16 not intend to consider all relevant factors in that
17 case. Essentially OPC's argument is that the
18 Commission intended to violate the statutory
19 requirement that the Commission consider all relevant
20 factors in setting rates.

21 It's unreasonable for OPC to rely on an
22 anticipated unlawful action on the part of the
23 Commission as a basis for denying that the 228 case is
24 not a general rate proceeding within the meaning of
25 the new statute.

1 OPC also contends that the 228 case was
2 closed prior to June 1, but that simply doesn't match
3 with what actually happened. Staff filed withdrawal
4 of the case, a dismissal, and then it withdrew its
5 dismissal the same day. It also wasn't Staff's case
6 to dismiss. It was a Commission-initiated rate case.

7 Filings continued to be made in the case.
8 There was oral argument held in the case before Judge
9 Woodruff with OPC present, and Judge Woodruff
10 acknowledged at that oral argument that the case was
11 open.

12 Two parties to this case argue that the
13 new statute applies to Empire; OPC and MECG. No
14 testimony was filed by MECG and MECG doesn't have any
15 witnesses to provide Rebuttal or Surrebuttal live
16 today. MECG's counsel, however, did file a detailed
17 position statement advocating for action to be taken
18 under the new statute.

19 But Mr. Woodsmall, the counsel for MECG,
20 had this to say previously about the 228 case: This
21 case, as applies to Empire District, is a general rate
22 case. We have a general rate case here. So the
23 provisions of Senate Bill 564 don't apply. So I
24 believe Staff had it right initially by dismissing
25 this case. Dismiss this case. Get rid of the general

1 rate case. That way, if you reflect the settlement in
2 the Empire wind case, you can still make the one-time
3 change under Senate Bill 564, but right now, you've
4 really boxed yourself. There's a predicament as it
5 applies to Empire Electric.

6 I very much agree with those statements
7 of Mr. Woodsmall that were made in the argument in the
8 228 case.

9 So with Empire's motion pending, the
10 Commission may feel like you're faced with two
11 extremes; claw everything back to January 1 and make
12 determinations about excess ADIT now without the
13 necessary information, or possibly do nothing.

14 But that's not what we have. If you
15 decide that 393.137 doesn't provide the Commission
16 with any additional authority over Empire, you still
17 have the 228 case, the Commission-initiated rate case.
18 The tax stipulation that was executed by Empire, Staff
19 and Joplin was filed in the 228 case and also this
20 case. The provisions of the stipulation provide a
21 fair and reasonable result for Empire and its
22 customers.

23 Empire's rates will be adjusted
24 prospectively with October 1, 2018 as the effective
25 date of the 17,837,022 dollar annual rate reduction

1 and all excess ADIT will be tracked back to January 1,
2 2018, or technically December 31, 2017, and deferred
3 to a regulatory liability account for consideration in
4 Empire's next general rate case.

5 But even if the Commission decides
6 393.137 does apply to Empire, approval of the tax
7 stipulation provisions is still the right result.
8 First, we have Empire Witnesses Charlotte North and
9 Steve Williams and Staff Witness Mark Oligschlaeger
10 and they'll explain why OPC's recommendations
11 regarding excess ADIT simply cannot be made in this
12 case.

13 Then also, OPC appears to be looking only
14 at subpart 3 of the new statute, but subpart 4
15 provides the Commission with discretion. When the new
16 statute was enacted -- enacted, it did not replace the
17 Commission's discretion to be exercised in the setting
18 of just and reasonable rates.

19 If the Commission grants Empire's motion,
20 either as dismissal or for summary determination,
21 approval and adoption of the provisions of the tax
22 stipulation would be an appropriate, lawful and reas--
23 excuse me, and reasonable resolution of the 228 case,
24 the Commission-initiated rate case.

25 But if the Commission denies Empire's

1 motion, subsection 4 of 393.137 allows for approval
2 and adoption of the provisions of the tax stipulation
3 to be the appropriate, lawful and reasonable
4 resolution of the 228 case and this case that we are
5 on here today.

6 With approval of the stip provisions,
7 only the rate design issue remains to be decided. And
8 Empire is fine with the proposal of Staff that is in
9 Ms. Lange's Rebuttal Testimony.

10 Do you have any questions for me? That
11 is all I had to start.

12 CHAIRMAN HALL: Good morning. Well, let
13 me start with what happened in 0228. Is it not true
14 that -- that after Staff filed its dismissal of that
15 case, that the Commission issued an order?

16 MS. CARTER: Yes. The Commission --

17 CHAIRMAN HALL: And -- and that order
18 acknowledged dismissal and closed the file; is that
19 correct?

20 MS. CARTER: Yes.

21 CHAIRMAN HALL: And has the Commission
22 issued any other order in that case?

23 MS. CARTER: There has not been a written
24 order of the Commission in the case.

25 CHAIRMAN HALL: Well, then why does it

1 matter what other parties said and did? There's a
2 Commission order closing the case. Isn't that all --
3 isn't that all that's relevant?

4 MS. CARTER: No. Not -- not in my
5 opinion and I don't believe legally. It is common
6 practice here at the Commission that any filing opens
7 a case. The case is open. It is open right now. You
8 show it as open on your records. It is an open
9 Commission proceeding. And if you look at the
10 Commission's records, it was open on June 1st.

11 CHAIRMAN HALL: So there -- so can you
12 point -- can you show me some case law that indicates
13 that the manner with which this Commission runs its
14 filing system supersedes an order of the Commission?

15 MS. CARTER: Closing a case?

16 CHAIRMAN HALL: Correct.

17 MS. CARTER: No. I can't say that I'm
18 aware of any time this situation has come up such that
19 we would have case law on this point. I would like to
20 address though whether or not that order of the
21 Commission closing case could be effective to actually
22 close the case.

23 CHAIRMAN HALL: Okay. I would be
24 intrigued to hear that discussion.

25 MS. CARTER: It was effective upon

1 issuance with no fuse to allow Empire to appeal that
2 dismissal. It was also issued with no opportunity for
3 Empire to respond to Staff's motion. There's been no
4 opportunity yet to appeal that order because, again,
5 there was no opportunity to apply for rehearing on
6 that order. It would need to be a matter of
7 reconsideration that then would be taken up on appeal
8 at the close of the entire case. Right now we can't
9 appeal that case because there is no final order
10 closing the docket.

11 CHAIRMAN HALL: Other than the one on
12 May 17th.

13 MS. CARTER: Yes. And then the judge
14 conducted oral argument in the case and said the case
15 was open. I don't -- I think honestly if we went to
16 the Court of Appeals, they would tell us we do not
17 have a final judgment on which to appeal.

18 CHAIRMAN HALL: Well, we may find that
19 out.

20 MS. CARTER: We -- we may.

21 CHAIRMAN HALL: Yeah.

22 MS. CARTER: Also, and if we just want to
23 go with technicalities, which I think this would be at
24 this point, if we are looking at whether or not Staff
25 filing a voluntary dismissal and then withdrawing that

1 dismissal after the Commission had recognized it and
2 then proceeding in the case, if we're going to the
3 technicality of whether or not that was a closed case,
4 even though right now it remains open on the
5 Commission's records, then we need to also look at
6 other -- Empire's other rate case that was open on
7 June 1st.

8 CHAIRMAN HALL: Well, before doing that,
9 let's turn to the -- to the other issue as to whether
10 028 [sic] was, in fact, a general rate case because it
11 doesn't seem to me like it was. It seems to me that
12 all of the parties acknowledged that there was going
13 to be a single issue investigated.

14 In fact, didn't -- didn't -- in Staff's
15 motion didn't Staff specifically say that there are --
16 there are instances where single issue analysis is
17 appropriate and there would not be an all relevant
18 factor analysis? Isn't that specifically what was
19 said in the motion opening up 0228?

20 MS. CARTER: I don't have Staff's motion
21 in front of me so I don't recall whether or not those
22 exact words were in there. What -- what I do know is
23 their motion is to open, quote, a rate case, end
24 quote. They -- they asked to have a rate case opened.
25 And the Commission's order specifically states that it

1 is opening a rate case.

2 CHAIRMAN HALL: But aren't there --
3 aren't there lots of cases that are called rate cases
4 that are not the -- the typical all relevant factor
5 rate case?

6 MS. CARTER: Not that I'm aware of

7 CHAIRMAN HALL: Not that you're aware of.
8 We'll have to do a little more analysis of that.

9 MS. CARTER: I'm not aware of us calling
10 them rate cases when -- when they're just about rates.
11 Like a tariff filing. I don't recall that being
12 called a rate case or an AAO filing or a CCN
13 application. I have not -- I'm not aware of that ever
14 being referred to as a rate case.

15 CHAIRMAN HALL: And then isn't there also
16 the -- the -- the argument that even if -- even if SB
17 564 doesn't apply to Empire, that the Commission has
18 authority to look at this issue under its general
19 authority?

20 MS. CARTER: Most definitely. And that's
21 what we're asking you to do. You have the 228 case
22 there. Empire has been asking basically since it
23 opened for the Commission to use that rate case to
24 adjust rates prospectively as a result of the Tax Cuts
25 and Jobs Act in 2017.

1 CHAIRMAN HALL: So then -- then -- then
2 in a nutshell are we here fighting about January 1 to
3 October 1? Isn't that, in essence, what we're
4 fighting about?

5 MS. CARTER: That is certainly a big part
6 of it. There's also excess ADIT, which is 40 million
7 dollars in difference, I believe approximately for the
8 calculations and -- and much more significantly in
9 terms of normalization violations and -- and all
10 things that Mr. Williams will explain to us later when
11 he is on the stand.

12 The two excess ADIT recommendations from
13 OPC just simply cannot be accepted in this case. And
14 that is very significant and separate from the
15 claw-back back to -- back to January 1 that OPC
16 recommends.

17 CHAIRMAN HALL: How did the Ameren
18 resolution handle that?

19 MS. CARTER: It's my understanding -- and
20 I was not in the Ameren case. It's my understanding
21 from filings that have been made in this case, excuse
22 me, that Ameren went completely under the new statute
23 and subsection 3 of the new statute, which is what OPC
24 contends should be done here. Certainly as a legal
25 argument and factual, Empire and Ameren are very

1 different companies and in very different positions.

2 CHAIRMAN HALL: How so?

3 MS. CARTER: Excuse me. In terms of size
4 and also what was intended with the statute. I'm
5 sorry. I find it a bit --

6 CHAIRMAN HALL: Well, so why -- why does
7 the size of the company matter in -- on -- on this
8 issue?

9 MS. CARTER: In whether or not you can
10 absorb that change. It also has to do with planning.

11 CHAIRMAN HALL: But isn't the change --
12 isn't the amount of the change somewhat commensurate
13 with the size of the company?

14 MS. CARTER: Somewhat, yes. Ameren was
15 planning for it and Empire was not. I think most of
16 us here today -- and again, this isn't evidence. This
17 is just argument. Ameren wanted to make the trade for
18 that legislation for Senate Bill 564.

19 CHAIRMAN HALL: But isn't that exactly
20 why there was additional language put in the statute,
21 to allow for deferral for Empire?

22 MS. CARTER: Possibly, yes. And that's
23 our alternative argument in this case. If the statute
24 applies, then you go to subsection 3 -- subsection --
25 excuse me subsection 4, which does not match with what

1 OPC is recommending in this case.

2 CHAIRMAN HALL: Subsection 4 allows --

3 MS. CARTER: I'm sorry. We're pretending
4 I'm not sick. So this is not happening.

5 JUDGE WOODRUFF: Go ahead and grab your
6 drink at the table, if you'd like.

7 MR. THOMPSON: This issue is really
8 affecting you.

9 MS. CARTER: I've been saying for about
10 four days now it's an allergy. Sorry.

11 CHAIRMAN HALL: Well, I mean, it was
12 certainly my understanding that I believe it was
13 subsection 4 was put in place in order to address some
14 of Empire's concerns. How does Section 4 work?

15 MS. CARTER: Okay. That one is a little
16 different -- in fact, is quite a bit different from
17 subsection 3.

18 CHAIRMAN HALL: Actually before you do
19 that, could someone get me a copy of the bill or the
20 statute, whatever? Thank you.

21 MS. CARTER: Subsection 3, which OPC has
22 focused on in this case, speaks in terms of a one-time
23 adjustment and a deferral of all impacts perhaps -- I
24 don't have the wording in front of me -- of the tax
25 act.

1 Subsection 4 is quite different. It
2 presents, for good cause shown, a complete alternative
3 to subsection 3. And depending on which paper copy
4 you're holding there, the bill originally had a
5 mistake and referred to subsection 2, but the actual
6 statute has corrected that to refer back to
7 subsection 3.

8 CHAIRMAN HALL: Okay.

9 MS. CARTER: So subsection 4 is a
10 complete alternative to subsection 3. If you're under
11 4, you don't even look at 3. And if there is good
12 cause shown and the statute applies, you can go under
13 subsection 4, which allows the Commission discretion
14 then to defer, in whole or in part, the effects of the
15 act until -- and this is quite significant -- the
16 utility's next rate case.

17 CHAIRMAN HALL: Yeah. And let me -- I
18 mean, the way I interpreted that was that it -- you
19 would -- you would -- you could put all -- you could
20 put -- you could put the one-time rate change and
21 deferral in whole or in part into a regulatory asset.

22 So you would still be going back to
23 January 1, but you wouldn't -- but you would -- you
24 could put any portion of that into an -- into a
25 regulatory asset at the next rate case for application

1 in rates in the next rate case. Is that -- is that
2 not an accurate interpretation of the statute?

3 MS. CARTER: That is not my
4 interpretation of the statute and that is not how we
5 read it or believed it was intended.

6 CHAIRMAN HALL: Okay. So what is your
7 interpretation of the statute then?

8 MS. CARTER: That the reason for the
9 difference between comparing with until the date of
10 the one-time adjustment, which is subsection 3, and
11 then the deferral in subsection 4 is until the
12 electric utility's next rate case.

13 The distinction there is between in
14 subpart 3 they're looking at the deferral of the stub
15 period between January 1, 2018 and whenever the
16 one-time adjustment is made, but in -- excuse me,
17 under subpart 4 we're dealing with excess ADIT.
18 Empire, unlike Ameren, cannot divide excess ADIT into
19 the protected bucket as of right now.

20 CHAIRMAN HALL: Okay. But in terms of
21 the January 1 to October 1 amounts, the -- the -- the
22 35 to 22, 21, that amount under this section could be
23 put into a regulatory asset for -- for -- for
24 application in rates in the next general rate case?

25 MS. CARTER: I don't believe subsection 4

1 is contemplating any sort of one-time adjustment. And
2 that's why Mr. Woodsmall, I believe, may have said
3 what he said about losing the opportunity to make that
4 one-time adjustment for Empire.

5 Empire is offering up the one-time
6 adjustment and believes that should be done in the 228
7 Commission-initiated rate case. Empire wants to make
8 that going-forward adjustment to make their rates in
9 line with what should be going forward because of the
10 Tax Cuts and Jobs Act.

11 Subsection 4 of the statute I believe is
12 about deferral of excess ADIT back to -- we all keep
13 saying January 1, 2018. I'm told that is not tech--
14 technically accurate from an accounting standpoint
15 because it's at the close of 2017 that you actually
16 have to go back to for excess ADIT.

17 And the fact that Empire is offering up
18 this one-time adjustment, is offering up a rate change
19 most certainly constitutes the good cause to go under
20 subsection 4, if the Commission wishes to proceed that
21 way and deny Empire's motion. If you want to resolve
22 the tax issues in this docket as opposed to 228,
23 Empire offering up the one-time adjustment is most
24 certainly sufficient good cause for the only action to
25 be a deferral of excess ADIT under subsection 4.

1 You then get -- customers then get the
2 one-time adjustment going forward and a complete
3 return of all excess ADIT.

4 CHAIRMAN HALL: So you believe Section 4
5 only -- only refers to ADIT?

6 MS. CARTER: It doesn't expressly say
7 that, no.

8 CHAIRMAN HALL: But that's your
9 interpretation of it?

10 MS. CARTER: That's how it makes sense.
11 It never refers to a one-time adjustment and speaks
12 for the deferral period going until the next general
13 rate case as opposed to the language used in
14 subsection 3.

15 CHAIRMAN HALL: Okay.

16 MS. CARTER: I will completely admit that
17 it is an oddly worded statute. For example, they
18 speak in terms only of regulatory assets being
19 created. And everyone here will tell us you'd have to
20 create a regulatory liability if you want anything to
21 be done, but yet they never authorize that.

22 CHAIRMAN HALL: There were a lot of
23 lawyers looking at this during the process.

24 MS. CARTER: I was not one of them.

25 CHAIRMAN HALL: Do -- do you believe that

1 there are factual issues in dispute or relevant to --
2 other than your Motion to Dismiss, putting that aside
3 for a moment, are there -- are there factual issues
4 that need to be resolved in order to resolve this case
5 or is it really just policy issues that need to be
6 resolved?

7 MS. CARTER: Excess ADIT is very fact
8 dependent. So if the Commission wants to take action
9 on excess ADIT in this case, other than going under
10 subsection 4 and just deferring it for consideration
11 in the next rate case, yes, there -- there's
12 significant facts that need to be presented regarding
13 whether or not that is possible and those
14 calculations. And there's -- we're miles apart.

15 CHAIRMAN HALL: All right. Thank you.

16 MS. CARTER: Thank you.

17 JUDGE WOODRUFF: Thank you. And opening
18 for Staff.

19 MR. THOMPSON: Thank you, Judge. May it
20 please the Commission. Staff is here in the somewhat
21 unusual position of finding itself in alignment with
22 the Company on each of the issues. We have two
23 witnesses that have provided pre-filed testimony
24 today, Mark Oligschlaeger and Sarah Lange. We also
25 have Natelle Dietrich available to answer questions if

1 you happen to have any questions that fall within her
2 special knowledge of expertise. Thank you.

3 You see I didn't sit down.

4 CHAIRMAN HALL: Do you agree that
5 Section 4 of the statute only relates to ADIT?

6 MR. THOMPSON: No, I don't.

7 CHAIRMAN HALL: Can you explain to me
8 what you think it does?

9 MR. THOMPSON: Well, here in Missouri
10 we're a plain language state. And the plain language
11 of this statute says that as an alternative to a
12 one-time change in deferral under subsection 3, as an
13 alternative to that, you can instead allow a deferral
14 in whole or in part of such federal act's financial
15 impacts. So whatever the federal act's financial
16 impacts are, that's what you can allow a deferral of
17 in whole or in part. So I don't think it's just ADIT.

18 CHAIRMAN HALL: So you're -- so Staff's
19 pos-- interpretation of Section 4 was closer to my
20 interpretation?

21 MR. THOMPSON: That's correct.

22 CHAIRMAN HALL: So you believe that it
23 gives the Commission discretion to put that portion of
24 the impact of the tax cut into rates immediately and
25 the remainder to defer as a regulatory asset for the

1 next rate case?

2 MR. THOMPSON: Yes, sir.

3 CHAIRMAN HALL: Is there anything else in
4 the -- in the statute that would conflict with that
5 from your --

6 MR. THOMPSON: No, I don't think so. In
7 subsection 4 where it talks about a deferral in whole
8 or in part, naturally you have to consider, well, if
9 you only defer part of the impact, what happens to the
10 rest of the impact? And I think the answer is that
11 the rest of the impact is applied immediately.

12 CHAIRMAN HALL: So Staff -- Staff filed a
13 Notice of Dismissal or filed a dismissal of the -- of
14 the 0228 case on May 16th or 17th; is that correct?

15 MR. THOMPSON: Yes, sir.

16 CHAIRMAN HALL: And Mrs. Carter --
17 Ms. Carter makes an interesting point that that really
18 wasn't Staff's case to dismiss. How do you respond to
19 that?

20 MR. THOMPSON: Well, I think she's
21 absolutely right. The Staff moved the Commission to
22 open a rate case to consider the continued propriety
23 of the rates of Empire District Electric Company. The
24 Commission, in response, did so and issued a show
25 cause order, as Staff had requested. So certainly it

1 was the Commission's case.

2 CHAIRMAN HALL: So when -- so when Staff
3 filed its dismissal, that essentially, for all intents
4 and purposes, was a Motion to Dismiss as opposed to --

5 MR. THOMPSON: Yes, sir.

6 CHAIRMAN HALL: -- to an actual
7 dismissal?

8 MR. THOMPSON: Yes, sir.

9 CHAIRMAN HALL: So then -- then when the
10 Commission filed its -- or issued its Notice of
11 Dismissal, was that essentially an order closing the
12 case?

13 MR. THOMPSON: I think it was a notice,
14 just like it said it was. Should it have been an
15 order? I think I would say it probably should have
16 been an order rather than a notice. Because if it
17 wasn't Staff's case to dismiss, then the appropriate
18 response by the Commission would be an order granting
19 Staff's Motion to Dismiss.

20 CHAIRMAN HALL: Is that dispositive, the
21 word "notice" as opposed to "order" from Staff's
22 perspective?

23 MR. THOMPSON: It's not dispositive, but
24 it's an indication. It's -- it's one of several
25 pieces of evidence or indications that you would

1 consider in deciding what happened and what the nature
2 of that case was and what the nature of the action the
3 Commission took in response to Staff's motion was.

4 CHAIRMAN HALL: Is it relevant that the
5 notice was -- was effective immediately as opposed to
6 providing time for a motion for reconsideration?

7 MR. THOMPSON: I believe it was.

8 CHAIRMAN HALL: So what is the effect of
9 that from -- from Staff's perspective?

10 MR. THOMPSON: It is possible that the
11 company could go to the Court of Appeals and get a
12 writ requiring the Commission to reopen the case, as
13 Mr. Mills did in a previous event some years ago where
14 an order -- in that case an order was issued with a
15 very short period of time between the time of issuance
16 and the effective date.

17 And Mr. Mills, then the Public Counsel,
18 argued successfully that his right to have a due
19 opportunity to review the decision and pursue an
20 application for rehearing had been denied.

21 CHAIRMAN HALL: Which would have the
22 effect of making the case open on June 1, the
23 effective date of 564?

24 MR. THOMPSON: I believe it would have
25 that effect.

1 CHAIRMAN HALL: What is Staff's position
2 as to whether or not 0228 was a general rate
3 proceeding?

4 MR. THOMPSON: I believe it was and is a
5 general rate proceeding given the nature of Staff's
6 motion requesting that it be opened to consider the
7 propriety of rates and the Commission's order doing
8 just -- establishing a docket to do just that.

9 And if I could explain, a general rate
10 case is not a rate case where all relevant factors are
11 considered. A general rate case is a rate case in
12 which the rates charged to each class of customer is
13 adjusted. The factors that are considered in a rate
14 case depend on many circumstances.

15 That's why the language is all relevant
16 factors. Sometimes there's a lot of factors that are
17 relevant. Sometimes, as in the case of Hotel
18 Continental that Staff pointed to in its motion,
19 there's only one factor that's relevant. That doesn't
20 change whether it's a general rate case or not.
21 General rate case has to do with the change of rates
22 for all classes of customer.

23 CHAIRMAN HALL: Didn't the motion filed
24 by Staff requesting that the case be open specifically
25 say that it was not an all relevant factor general

1 rate proceeding, that there were times when single
2 issues could be explored outside of a general rate
3 case? Isn't there language to that effect in your
4 motion?

5 MR. THOMPSON: Absolutely there is. And
6 the reason is, is that Staff -- Staff was interested
7 in getting the benefit of the tax rate reduction to
8 customers as quickly as possible. And it appeared to
9 me then, and, frankly, continues to appear to me now,
10 that the quickest way to do that would be to follow
11 the lines of the Hotel Continental decision, which was
12 thoroughly discussed in Utility Consumers' case, UCCM
13 that we all consider the gospel distinguished, but not
14 overturned, not overruled. So the Hotel Continental
15 class of action is still available in an appropriate
16 circumstance.

17 When you're calculating rates and you
18 establish the revenue requirement, the very last step
19 in establishing the revenue requirement is to gross it
20 up for taxes. That is to multiple that number by a
21 factor that will then include in it the amount of
22 additional money that has to be collected from
23 ratepayers in order to pay for the tax liability.
24 So that's the very last step, multiply the revenue
25 requirement figure by a factor.

1 So from the point of view of Hotel
2 Continental in which a gross receipts tax rate had
3 changed, to me it seems very applicable. You simply
4 gross the revenue requirement back down and then
5 multiple it by a new gross-up factor reflecting the
6 reduced tax rate and you have a difference. And that
7 difference then is the amount that goes back to the
8 ratepayers.

9 Now --

10 CHAIRMAN HALL: Going forward?

11 MR. THOMPSON: On a prospective basis,
12 that's right. And -- and I have told you previously
13 that I have serious questions as to the
14 constitutionality of requiring any of these companies
15 to unwillingly surrender what they have collected
16 during the so-called stub period. There are several
17 Missouri Supreme Court decisions, including UCCM, that
18 say it can't be done. And I continue to believe that
19 a Court of Appeals would look at those decisions
20 saying -- and simply say, yep, can't be done.

21 CHAIRMAN HALL: Unless 564 applies to
22 Empire. Because there isn't it very crystal clear
23 that we could do that?

24 MR. THOMPSON: That's what the statute
25 says. But statutes have crashed on the rocks of due

1 process before.

2 CHAIRMAN HALL: You think that even if
3 564 applies to Empire, that there is a due process
4 claim that Jan. 1 to October 1st is untouchable?

5 MR. THOMPSON: I believe that to be true.

6 CHAIRMAN HALL: Okay. Thank you.

7 MR. THOMPSON: Thank you.

8 JUDGE WOODRUFF: All right. Let's move
9 over to MECG.

10 MR. WOODSMALL: Good morning. David
11 Woodsmall on behalf of Midwest Energy Consumers Group.
12 Through this opening statement I'm hoping to
13 accomplish a couple things. First, I'm hoping to
14 provide some background on the dispute being heard
15 today. I will address the requirements of Section
16 393.137, also known as part of SB 564, and Empire's
17 argument that these provisions do not apply to it.

18 Second, I will provide a summary of
19 MECG's positions in this case. I will discuss the
20 various benefits associated with tax reform that
21 should flow back to customers and I will address the
22 appropriate allocation of those benefits to customer
23 classes and the method that the rates should be
24 designed in order to implement each class's rate
25 reduction.

1 As most of you know, the issue of utility
2 regulation was a closely watched issue in the General
3 Assembly this year. Initially Empire sought, within
4 the context of Senate Bill 642, to implement a revenue
5 stabilization mechanism. Prior to that bill being
6 heard by the Senate, it was rolled into SB 564 and was
7 considered alongside the PISA proposal of Ameren and
8 KCP&L.

9 Ultimately SB 564 was enacted by the
10 General Assembly. As passed, utilities received their
11 regulatory reforms that they wanted. The quid pro quo
12 for this regulatory change was that the utilities had
13 to return all aspects of tax benefit associated with
14 the enactment of the Tax Cuts and Jobs Act.

15 Ultimately SB 564 was signed by the
16 Governor on June 1. As a result of the emergency
17 clause attached to that bill, the tax provision became
18 effective on Jul-- on June 1. Amazingly, less than
19 three weeks after getting the benefits that it wanted
20 from the legislation, Empire was here trying to renege
21 on the deal and take back the quid pro quo.

22 After securing the authorization for the
23 desired revenue stabilization mechanism, three weeks
24 later, Empire moved on and tried to eliminate the tax
25 benefits that was the quid pro quo in the deal.

1 Specifically, after the Commission opened this docket,
2 Empire filed a Motion to Dismiss, which would have
3 eliminated any mandate that it return the tax savings
4 to customers.

5 Ultimately Empire has executed a
6 stipulation which would return some benefits to
7 ratepayers. Noticeably, however, that stipulation
8 allows Empire to pocket a large amount of the benefits
9 for itself. As such, the stipulation is in direct
10 violation of SB 564. This stip-- stipulation deviates
11 from the dictates of SB 564 in several ways.

12 First, the return on any benefits are
13 delayed from the mandate -- mandated deadline
14 contained in SB 564; that is, SB 564 said that you had
15 90 days from June 1, so August 30th. The stipulation
16 allows them to not make a change until October 1. So
17 that's in -- that's in contravention of the statute.

18 Second, contrary to SB 564, the
19 stipulation allows Empire to keep all tax benefits for
20 the period of January 1 through September 30th.

21 Finally, the stipulation allows Empire to
22 defer the return of excess accumulated deferred income
23 taxes. By failing to require the return of this money
24 to ratepayers, the stipulation effectively provides
25 Empire a tax-free loan from its ratepayers without any

1 compensation or interest.

2 So how is Empire effectuating this
3 blatant violation of SB 564? The effective provision
4 in SB 564, as I mentioned, is Section 393.137. That
5 provision provides the Commission with the authority
6 to order a single issue reduction in a utility's rates
7 to account for the reduction in the federal corporate
8 income tax rate.

9 Recognizing that KCPL and GMO had filed
10 rate cases on January 30th, 2018, which would also
11 effectuate the return of these tax benefits, the
12 statute auth-- the statute provided authority to order
13 a single issue reduction in rates only applies to
14 utilities that did not have, quote, a general rate
15 proceeding, unquote, pending on February 1st -- or on
16 June 1st when the legislation was signed.

17 Once the bill came law and it had secured
18 the benefits sought in the legislation, Empire
19 immediately began to maneuver and scheme so they did
20 not have to return these benefits to its customers.

21 Specifically, like KCP&L and GMO, Empire
22 argued that it had a general rate proceeding pending.
23 Not only did it argue that it had one, Empire now
24 argues that it had two general rate proceedings
25 pending before the Commission.

1 So let's talk about those two cases.
2 First, Empire argues that Case Number ER-2018-0228
3 was, quote, a general rate proceeding within the
4 meaning of the statute. Empire's reliance on that
5 case as a general rate proceeding is misplaced. As
6 OPC has pointed out repeatedly, general rate
7 proceeding is a phrase that has been defined in
8 certain PSC regulations.

9 Recognizing that the General Assembly
10 chose to use this exact term that has already been
11 defined, it is likely that they used that term
12 consistent with the Commission's existing definition.
13 So what is that definition? The definition routinely
14 used by the Commission is that, quote, General rate
15 proceeding means a general rate increase proceeding or
16 complaint proceeding before the Commission in which
17 all relevant factors that may affect the cost or rates
18 and charge of the electric utility are considered by
19 the Commission, end quote. All relevant factors are
20 considered.

21 JUDGE WOODRUFF: What's the citation for
22 that?

23 MR. WOODSMALL: That -- I can get it for
24 you. It's in Public Counsel's responses and it cites
25 to the FAC stat-- regulations.

1 JUDGE WOODRUFF: Okay. Thank you.

2 MR. WOODSMALL: Given the statutory
3 limitations for filing a general rate proceeding, that
4 case can only be created by a utility application or
5 tariffs or through a complaint proceeding. Certainly
6 Staff's initiating pleading in 390-- or in
7 ER-2018-0228 did not meet any of these statutory
8 mechanisms.

9 Furthermore, Staff's pleading itself did
10 not contemplate a, quote, All relevant factors review
11 required to initiate general rate proceeding. In
12 fact, Staff's initiating pleading in that case, as
13 well as the Commission's subsequent order, clearly
14 indicates that the case was never contemplated to be
15 an all relevant factors review but a single issue
16 review.

17 That fact is also demonstrated by the
18 fact that Staff never staffed the case with any
19 auditors, financial analysts or engineers to conduct
20 the all relevant factors review. Furthermore, Staff
21 never issued a single Data Request in those cases
22 necessary to conduct an all relevant factors review.

23 Clearly then, recognizing that
24 ER-2018-0228 was not an all relevant factors review,
25 it could not be a general rate proceeding within the

1 definition of SB 564. Not only was ER-2018-0228 not
2 an all relevant factors review such that it became a
3 general rate proceeding, it also wasn't pending before
4 the Commission on June 1, 2018.

5 Much as it had in a similar Ameren
6 docket, Staff had moved to dismiss that docket on
7 May 17th. Immediately after it voluntarily moved to
8 dismiss that docket, the Commission issued its notice
9 acknowledging the voluntarily dismissal.

10 Suddenly, without any explanation, Staff
11 reversed itself and tried to dismiss its dismissal,
12 but the Commission never acknowledged that. The
13 Commission never took any step. If Staff wanted to do
14 that, what it properly should have done was file it in
15 a new case. Therefore, ER-2018-0228 was not a general
16 rate proceeding.

17 Now, there's been some questions as to
18 whether the fact that the Commission made it effective
19 on issuance. I don't believe that's a problem.
20 Certainly in rate cases, you have that problem because
21 you're deciding parties' rights.

22 This was a case that the Commission
23 initiated. That -- the Commission had the right to
24 dismiss that case. In fact, the Commission's
25 dismissal was largely consistent with the actions that

1 Empire actually requested in its responses in that
2 case. So I don't believe the fact that you
3 dismissed -- you dismissed it without allowing any
4 time for an application for rehearing is problematic.

5 Therefore, given that ER-2000--
6 ER-2018-0228 was not an all relevant factors review
7 and was not pending on June 1st, 2018, I don't believe
8 that that case is a general rate proceeding within the
9 meaning of 393.137.

10 The other case that Empire argu-- this is
11 an interesting part and counsel didn't talk about
12 this, but it's in their testimony and their pleadings.
13 The other case that Empire argues was a general rate
14 proceeding that was pending before the Commission on
15 June 1st, 2018 was Case Number ER-2016-0023. That was
16 Empire's last general rate proceeding.

17 In that case, the Commission approved
18 Empire's rate schedules on September 6th, 2018. It
19 appears, however, that the case remained open in order
20 to consider Empire's compliance in implementing the
21 PAYS program. Tariffs approved, no one filed an
22 appeal. There were some compliance matters in the
23 case and it stayed open. Nevertheless, the fact that
24 the case remained open to consider compliance did not
25 mean that it was still a general rate proceeding.

1 Those matters had been completed on September 6th,
2 2016.

3 If the Commission believes, however --
4 this is important. If the Commission chooses to
5 believe that ER-2016-0023 is a general rate
6 proceeding, then the customers nevertheless believe
7 the Commission can follow the clear goal of the
8 legislation in that case.

9 If Case Number ER-2016-0023 is a general
10 rate proceeding for Empire's purpose of avoiding the
11 statute, why can't it be the vehicle for you to return
12 the tax benefits? They're saying it's a general rate
13 proceeding. Use that case. Tell them to immediately
14 flow back the benefits in that case. All relevant
15 factors review, that's what they told you you needed
16 to do it. They say it's a general rate case. If
17 they're trying to use that to avoid the statute, then
18 use that to give back the tax benefits.

19 This is a classic case of what is good
20 for the goose is also good for the gander. If
21 ER-2016-0023 is a general rate proceeding, then just
22 like the pending KCP&L and GMO rate cases, it provides
23 the exact vehicle necessary to return tax benefits to
24 customers.

25 Either Empire should return the tax

1 benefits through the single issue mechanism contained
2 in SB 564 or it should return them through the general
3 rate proceeding that Empire claims was pending in
4 ER-2016-0023.

5 Now, I will candidly --

6 CHAIRMAN HALL: I'm sorry. I want to
7 interrupt just for a second. Mr. Thompson, could you
8 respond to that?

9 MR. THOMPSON: Respond to his invitation
10 that you use the 0023 case as the vehicle?

11 CHAIRMAN HALL: 0023, yeah. Then I'm
12 going to ask Ms. Carter to respond as well.

13 MR. THOMPSON: I would -- I would prefer
14 you use the 0228 case as the vehicle. I think --

15 CHAIRMAN HALL: Well, putting -- putting
16 preferences aside, is he -- is he right that if that
17 case is, in fact, still open, that it does provide a
18 vehicle?

19 MR. THOMPSON: I don't believe it does.
20 The reason is, is that the work of determining the
21 prospective revenue requirement and distributing that
22 in rates, developing tariffs to charge the various
23 classes those rates, that work has all been done.

24 CHAIRMAN HALL: But isn't -- isn't that
25 just a factor that we should take into account when

1 determining whether or not that case is open? And
2 it -- if it's open, it's open; if it's not, it's not.

3 MR. THOMPSON: It is open. But cases
4 change during the course of their life, particularly
5 rate cases. For example, the -- the traditional file
6 and suspend case is an uncontested case when it's
7 originally filed. It becomes a contested case when
8 it's -- the tariffs are suspended. And then after the
9 tariffs are rejected and the company is directed to
10 file compliance tariffs, it's a non-contested case
11 again. So cases change as they progress through their
12 life.

13 Personally I do not believe that the 0023
14 case is the appropriate vehicle. The reason is, if
15 you do have to do an all relevant factors
16 determination, leaving aside my Hotel Continental
17 argument, then the information in that case is now
18 stale. You would have to collect new information in
19 order to determine what those factors are.

20 CHAIRMAN HALL: But under -- but under
21 Hotel Continental, couldn't we simply do exactly what
22 he described a moment -- moment ago, take --

23 MR. THOMPSON: Yes. Yes, you could.

24 CHAIRMAN HALL: -- take the revenue
25 requirement and apply the new tax rate?

1 MR. THOMPSON: Yes, sir, you could.

2 CHAIRMAN HALL: But you'd say only going
3 forward, not going backwards?

4 MR. THOMPSON: Yes, sir.

5 CHAIRMAN HALL: Ms. Carter?

6 MS. CARTER: I would love a turn. Thank
7 you.

8 CHAIRMAN HALL: And I'm sorry, Counsel,
9 for interrupting.

10 MR. WOODSMALL: No, that's fine. I
11 assume I'm going to get to rebut them here in a
12 second.

13 MS. CARTER: I would just like to point
14 out a couple things so we're all on the same page
15 factually. The 0023 case, the 2016 rate case wasn't
16 open all of the time. It didn't remain open from when
17 the tariffs were done in that case.

18 Empire made a filing regarding its PAYS
19 study in that docket number pursuant to the
20 resolution -- the initial resolution of that rate case
21 and that automatically reopened the case. Per
22 Commission procedure, when a filing was made in the
23 docket, it reopened the case. And that was on -- I
24 believe I made that filing on May 31st of 2013, the
25 PAYS study.

1 The Commission then issued its order
2 closing case in the 223 case on June 14, 2018 stating
3 that since Empire does not request any action from the
4 Commission, the Commission will close this general
5 rate case.

6 So it was open on June 1st, but then it
7 was closed by Commission order on June 14th.

8 CHAIRMAN HALL: Was that -- was that
9 Commission order effective immediately?

10 MS. CARTER: I assume so.

11 CHAIRMAN HALL: And so there was no
12 chance for Motion for Reconsideration of that order?

13 MS. CARTER: That is correct. In this
14 case --

15 CHAIRMAN HALL: And so a -- so a writ
16 could be filed to reopen that case?

17 MS. CARTER: I believe quite
18 distinguishable in that no relief was being requested
19 in that case at that time and it's customary for the
20 notice clo-- closing case to be issued, there was
21 nothing pending in the case. But -- but yes, if we
22 want to go through all that, we can. That's the
23 distinction there.

24 I would say though what Mr. Woodsmall
25 said about -- all of his arguments about you should

1 use the 2016 rate case to reflect a change, that is
2 exactly what Empire is asking the Commission to do
3 with the Commission-initiated rate case. That -- that
4 is Empire's ask in this case is for you to use the
5 rate case you opened to effectuate a change effective
6 October 1st in Empire's rates.

7 CHAIRMAN HALL: Okay. Thank you.

8 MR. WOODSMALL: So a couple points.
9 Empire wants to say the case was closed. So it wasn't
10 open and then reopened later. That's exactly the
11 situation we had in 0228. It was closed by the
12 Commission, it remained closed and somehow opened
13 later. But on June 1st, it was closed. Might have
14 reopened at some point later, but on June 1st the case
15 was closed.

16 Finally, the Commissioner is right on
17 point. The order, just like here, was effective on
18 issuance. So they seem to want to pick and choose
19 which arguments they apply to whichever case, but I
20 agree. 2016-0223 is not the best way to do this. But
21 they want to point to that as a case that was open.
22 And if it was a general rate proceeding, then it
23 provides a vehicle for these changes.

24 Going back, I will candidly admit that I
25 made misstatements in the Commission's oral argument

1 on May 24th, 2018. I chalk those up to several
2 things. First, SB 564 had not yet been enacted. We
3 were guessing as to what the final version of the bill
4 would look like, what the language would be and so I
5 made statements based upon my understanding at the
6 time.

7 The oral argument focused on the
8 Commission's existing authority and I negligently --
9 I'll give it to you, I negligently allowed myself to
10 discuss pending legislation before it had even been
11 voted out of the General Assembly.

12 Secondly, I had not fully conducted
13 research as to the scope of the Commission's
14 definition of, quote, a general rate proceeding. My
15 comments in response to those made by others were
16 misinformed and were not consistent with the
17 Commission's regulations.

18 Finally, my goals were made with the goal
19 of getting the Commission to approve the non-unanimous
20 stip in the wind case. As such, they were focused on
21 other goals. The Commission's now rejected or not
22 approved that stipulation, so we're here today trying
23 to get the tax benefits.

24 CHAIRMAN HALL: Counsel, I have a
25 question. How does the non-unanimous stipulation in

1 this case compare to the non-unanimous stipulation in
2 the customer savings plan case?

3 MR. WOODSMALL: It -- it is identical
4 with two changes -- or a couple changes, if you will.
5 There are some signatories missing from it, but the
6 provisions are identical except for one thing. And I
7 believe this was an oversight.

8 There are three parts to any rate case;
9 revenue requirement, revenue allocation, rate design.
10 The original non-unanimous stipulation in the wind
11 case had all three components. Somehow in this case,
12 it -- no, I'm sorry, the stipulation in the wind case
13 had both a revenue requirement component and a revenue
14 allocation component.

15 I believe the parties indicated an
16 intention for this one to be identical but somehow it
17 left out the revenue allocation component. And I'm
18 going to ask some questions later. But as far as the
19 revenue requirement, it's identical.

20 CHAIRMAN HALL: Why did you -- you
21 were -- you were a signatory in the customer savings
22 plan.

23 MR. WOODSMALL: Uh-huh.

24 CHAIRMAN HALL: Okay. Why -- why was it
25 appropriate in that case but not this one?

1 MR. WOODSMALL: The biggest reason is
2 that I was opposing 564 in the General Assembly. And
3 if I was successful there in preventing it from being
4 enacted, then 393.137 would have never been in place.
5 In which case how do I get the tax benefits from
6 Empire? So I was willing to do that then because
7 393.137 wasn't in effect.

8 The Commission didn't approve the
9 stipulation. All bets are off. Now I need to take
10 advantage of the benefits in 564. So it's just the
11 timing and the intervening events.

12 Getting to the Chairman's questions
13 before, it is my belief and Public Counsel's belief
14 from their pleadings that a general rate proceeding
15 isn't the same thing as a rate case. If you will, a
16 general rate proceeding is a subset of a rate case.
17 You have rate cases that aren't general rate
18 proceedings.

19 For instance, a fuel adjustment clause
20 change. It changes rates, but not a general rate
21 proceeding. MEEIA, ISRS, RESRAM all affect rates but
22 aren't general rate proceedings. So when the
23 Commission opens a docket for a rate case, it didn't
24 say, We're opening a general rate proceeding.

25 We're opening a rate case. Not a rel--

1 all relevant factors review. So it's not within the
2 scope. By say-- by calling it a rate case, I don't
3 believe the Commission was trying to make it equate to
4 all general -- a general rate proceeding within the
5 meaning of 564.

6 CHAIRMAN HALL: Let me stop you again for
7 a second. Is there anything in statute that defines
8 general rate proceeding?

9 MR. WOODSMALL: I don't believe so.

10 CHAIRMAN HALL: So where the General
11 Assembly used that language in 564, it -- it used that
12 term for the first time?

13 MR. WOODSMALL: No. I took your question
14 to mean is there anything in statute that defines
15 general rate proceeding. They use that --

16 CHAIRMAN HALL: That was my question,
17 but --

18 MR. WOODSMALL: Okay.

19 CHAIRMAN HALL: -- but your -- your
20 answer here I think is what I was looking for.

21 MR. WOODSMALL: They have used the phrase
22 "general rate proceeding" other places in the statute,
23 including the FAC and I don't --

24 MR. H. WILLIAMS: 386.266

25 MR. WOODSMALL: Yeah, 386.266, which is

1 the FAC statute. And I don't know if they've used it
2 any place else, but certainly in the FAC statute they
3 use the exact phrase "general rate proceeding." No
4 definition.

5 They give the Commission in that case
6 authority to define and do a rulemaking to implement
7 the terms of the FAC. And that's when the Commission,
8 using that authority, included the phrase "all
9 relevant factors." So I don't believe there's a
10 definition anywhere, but the Commission has used that
11 phrase other places.

12 There was a question about what
13 Section 4 -- subsection 4 does allow. I agree with
14 Staff, I agree with the Chairman that subsection 4
15 does allow for a deferral. But it's important that it
16 allows for a deferral for good cause shown. We have
17 yet to see what the good cause shown is. And -- and
18 I'm willing to consider that, if I can see the good
19 cause shown.

20 The other part is subsection 4 --

21 CHAIRMAN HALL: I'm sorry. Could good
22 cause be the effect -- the financial effect on -- on
23 the utility?

24 MR. WOODSMALL: Absolutely. If there is
25 something out there -- it's fact dependent. If

1 there's something out there that Empire comes forward
2 and says, We do not have the cash flow necessary to
3 return this money now, I believe that's a good cause
4 shown. But in that situation they don't get to keep
5 it. They defer it to a future time period.

6 And it also allows for deferral in whole
7 or in part. So you could give the prospective effect
8 to customers now, as Staff said, but defer the stub
9 period Sept-- or January 1 through August 30th, defer
10 that, defer the ADIT as they want to do in the
11 stipulation. But it has to be for good cause shown
12 and they haven't done that. And it has to preserve
13 all the benefits to give back to customers at some
14 point in the future.

15 So now that I'm done discussing the
16 applicability of SB 564, I want to talk about my
17 positions in this case. MECG's positions; I'm just
18 their lawyer. I need to go back. I'm sorry.

19 They say now in response to OPC's
20 testimony, they -- they make the comment in their
21 opening statement that they can't quantify and
22 segregate the excess ADIT. That's interesting because
23 in their pleading on March 19th, 2018, Empire said
24 they could.

25 The directive from the Commission:

1 Empire shall quantify and track all impacts of the Tax
2 Cuts and Jobs Act of 2017 potentially affecting
3 electric service rates from January 1, 2018 going
4 forward.

5 Empire's response, quote, EDE has the
6 ability to evaluate, quantify and calculate the
7 impacts of the act potentially affecting the Company's
8 cost-of-service.

9 They said they could do it on March 19th.
10 Now in response to Public Counsel, they say they can't
11 segregate the ADIT balances. So something's wrong
12 there.

13 So our positions in this case. SB 564
14 contemplates the return to ratepayers of all benefits
15 associated with the enactment of the Tax Cuts and Jobs
16 Act. These benefits take three forms. First there
17 are the direct benefits associated with reducing the
18 income tax from 35 percent to 21 percent.

19 Second, there are the more indirect
20 benefits associated with the fact that the valuation
21 of accumulated deferred income taxes are suddenly
22 overstated and need to be restated at the 21 percent
23 income tax rate. And I can explain to you ADIT, but I
24 don't think it's necessary at this point.

25 Finally, recognizing that this could not

1 be done coincident with the implementation of the Tax
2 Cut and Jobs Act on January 1, SB 564 specifically
3 contemplates the return of benefits that occur between
4 January 1, 2018 and when the Commission gets rates
5 changed, the stub period.

6 Talking about each of those separately,
7 the non-unanimous stipulation properly quantifies the
8 first bucket. The prospective effect of decreasing
9 from 35 percent to 21 percent, Mr. Oligschlaeger
10 discusses that. It's roughly 17.5 million. That's
11 the prospective effect.

12 Now I'll tell you, to be consistent with
13 SB 564, that has to be done by August 30th. Not
14 October 1st as the stipulation wants to do. But the
15 amount, the quantification has been done. Public
16 Counsel, Mr. Riley's, is just barely off, but probably
17 rounding or something.

18 The second bucket, the return of the
19 accumulated deferred income taxes. The statute
20 provides for that to be returned immediately. The
21 stipulation, however, just says, Let's defer it. It
22 doesn't provide the good cause shown for why they
23 should defer it. And it's big money. Mr. Riley, in
24 his testimony, has been able to go back, quantify
25 those amounts, provide the proper amortization periods

1 and provide a mechanism for getting it back to
2 customers.

3 So absent good cause shown, I believe you
4 should follow Mr. Riley's guidance, the only one in
5 this case that quantifies and returns the ADIT. Other
6 utilities have all been able to do it. You just
7 approved the Ameren stipulation yesterday or two days
8 ago. I don't remember. And it provided for a return,
9 a quantification, a segregation of ADIT and an
10 amortization back into rates.

11 KCP&L and GMO in their rate case, they're
12 in the process of doing it as well. Westar just filed
13 a settlement last week that does the same thing. It
14 can be done. It's not that big a deal. Mr. Riley has
15 done it. Absent good cause shown, let's get it back
16 to customers.

17 As I mentioned, this represents a
18 cost-free loan to the utility. They're keeping
19 customer money. If you want to defer it, put a
20 carrying cost on there like you do on the FAC.

21 Finally, the stub period. There's a --
22 there is an explicit provision in SB 564 that calls
23 for the return of stub period benefits. It's easy to
24 calculate. You just take the annual amount and you
25 prorate it based upon the number of days. The

1 stipulation inexplicably allows Empire to keep all of
2 that, not defer it. It allows them to keep it.
3 That's in direct violation of SB 564 and it should be
4 returned to customers consistent with Mr. Riley's
5 testimony.

6 The last thing I want to do talk about,
7 in the non-unanimous stipulation in the wind case,
8 there was a provision for how to allocate between the
9 classes. The stipulation left that out. There's no
10 evidence here today about how to do that.

11 I'm going to ask some questions later. I
12 hope there is a agreement that it be done consistent
13 with how the wind stipulation was, but that would be
14 our preference. There is a table of the classes and
15 the percent to each of them so I believe that's a
16 clean method to do it.

17 Finally, once you get it allocated to the
18 classes, how do you design the rates? Ms. Lange on
19 behalf of Staff proposed a method that is identical to
20 the method used for Ameren. You put a line item on
21 the bill called tax cuts benefit, whatever, and you
22 apply it on a kWh basis within each class. That's
23 fine within MCEG. We signed the Ameren stipulation.
24 That stipulation had the support of Public Counsel,
25 had the support of the utility, Staff, everybody. So I

1 believe that mechanism as provided in Ms. Lange's
2 testimony is an appropriate way to flow back the
3 benefits. Thank you.

4 CHAIRMAN HALL: Do you think that it --
5 there's an argument that Staff's initial pleading in
6 0228 could be considered a complaint?

7 MR. WOODSMALL: I would say no. Staff
8 knows how to file complaints. Staff has done it.
9 There are particular -- there are rules for the
10 contents of a complaint and that pleading is not a
11 complaint. So I would say no.

12 CHAIRMAN HALL: Didn't the substance of
13 that pleading indicate that current rates were not
14 just and reasonable and needed to be adjusted?

15 MR. WOODSMALL: Sure.

16 CHAIRMAN HALL: Which is essentially the
17 basis of a complaint opening a rate case. Correct?

18 MR. WOODSMALL: Right. I don't believe
19 it complies with the Commission rules. Even if it
20 does, the Staff dismissed it. So there's that. The
21 second part is there has been a question for years and
22 years and years as to whether Staff can even file a
23 complaint. The statute says that municipalities,
24 Board of Aldermen, a group of customers -- 25 or more
25 customers, or the Commission on its own motion.

1 It doesn't say Staff can do it. And I
2 haven't seen anything that says that the Commission
3 has delegated that authority. The case -- that issue
4 has never been tried. I think it's silly that Staff
5 should not be able to file a complaint, but there is a
6 question as to whether Staff could even file that
7 complaint absent delegation of the authority from the
8 Commission. But I don't think it is a complaint.
9 I think it is, at best, an investigation pleading.

10 CHAIRMAN HALL: How do you respond to
11 Mr. Thompson's arguments about what all relevant
12 factors means?

13 MR. WOODSMALL: As I heard Mr. Thompson
14 state it, that a general rate proceeding is not a
15 proceeding that looks at all relevant factors, but a
16 proceeding that provides for, quote, a change for all
17 classes.

18 CHAIRMAN HALL: Well, and also that all
19 relevant factors might mean one factor or two factors
20 if that's all that's relevant.

21 MR. WOODSMALL: Well, the Commission has
22 specifically found against that and Staff agreed with
23 them. In the Noranda case, you'll recall this two or
24 three years ago, MIEC filed a complaint alleging --
25 well, MIEC -- it was Noranda filed a complaint

1 alleging that Ameren was over-earning. Staff said no,
2 you can't -- that's not the basis of a complaint
3 because you didn't look at all relevant factors and
4 pointed out --

5 CHAIRMAN HALL: I think what they said is
6 that there were other factors that were relevant.

7 MR. WOODSMALL: Right. And they said it
8 should be dismissed.

9 CHAIRMAN HALL: And that -- and that's
10 different -- well, but that's different than saying in
11 a rate case, you have to look at everything. You
12 just -- you have to look at everything that's
13 relevant.

14 MR. WOODSMALL: Well, based upon the fact
15 that Staff said it didn't look at everything --

16 CHAIRMAN HALL: That was relevant.

17 MR. WOODSMALL: -- the Commission
18 dismissed the complaint. So the Commission, at least
19 in that case, seemed to indicate that all relevant
20 factors wasn't just one or two. It had to be pretty
21 extensive.

22 But along those lines, I would tell you
23 if you bas-- if you take the Company's income
24 statement and financials, which includes all relevant
25 factors, and make one change to it, isn't that an all

1 relevant factors analysis? You've made one change,
2 but the number of pencils, the computers, the payroll,
3 it's all already built into the Company's financials.
4 But the Commission has wanted more than simply one
5 change. It wanted everything to be looked at.

6 CHAIRMAN HALL: Thank you.

7 MR. WOODSMALL: Thank you.

8 JUDGE WOODRUFF: Public Counsel.

9 MR. H. WILLIAMS: Good morning. May it
10 please the Commission. My name's Hampton Williams,
11 representing the Office of the Public Counsel. First,
12 I'm going to discuss the applicability of 393.137 and
13 the definition of general rate proceeding.

14 Second, I'm going to talk about the
15 analysis of Sect-- subsection 3 and 4 of that statute.
16 OPC in this case represents -- pardon me -- recommends
17 application of subsection 3. I'll continue to discuss
18 OPC's recommendations for the costs under subsection 3
19 that should be flowed back to customers. I'll also
20 discuss the Non-unanimous Stipulation and Agreement
21 filed by Staff, Empire and the City of Joplin.

22 And then I'll conclude by briefly
23 responding to the Motion to Dismiss and Summary for
24 Determination.

25 To start with this case, I think the

1 easiest way to begin is to make a determination as to
2 whether or not 393 applies in this case. 393 states
3 that the section applies to electrical corporations
4 that did not have a general rate proceeding pending
5 before the Commission as of June 1st, 2018.

6 General rate proceeding is a specific
7 term. It's intended to mean something other than
8 cases adjusting rates, such as fuel adjustment
9 clauses, ISRS cases or other interim rate adjustments.

10 By illustration in the statute that was
11 discussed during Mr. Woodsmall's section on the FAC,
12 386.266, that statute states that the Commission can
13 initiate a fuel adjustment clause in a general rate
14 proceeding after consideration of all relevant factors
15 and then subsequent to those general rate proceedings,
16 make interim rate adjustments outside of the general
17 rate proceeding.

18 To clarify what that meant, the
19 Commission initiated a rule which defined that term's
20 general rate proceeding as a, quote, Proceeding in
21 which all relevant factors that may affect costs or
22 rates or charges of an electric utility are considered
23 by the Commission. And that's Commission rule 20.090.
24 And I believe that that contradicts Mr. Thompson's
25 proposed definition.

1 All relevant factors is not only -- as a
2 term, is not only found in Commission rules. It's
3 been applied by courts for nearly 40 years. In the
4 Utility Consumers' Council case versus Public Service
5 Commission, 585 S.W. 2d 41, the Missouri Supreme Court
6 in interpreting 393.150 states, quote, All the quoted
7 section of the statute refers to complaints. The
8 requirement that all relevant factors be considered
9 is, of course, applicable under the file and suspend
10 method also, end quote.

11 So in discussing the general rate
12 authority under 393.150, the Supreme Court identified
13 that that would include an all relevant factors
14 determination.

15 The Western District in Kansas City Power
16 & Light versus Public Service Commission, 509 S.W. 3d
17 757 stated that, When a proposed rate schedule is
18 suspended pursuant to Section 393.150, the PSC must
19 provide notice to affected parties, hold a full
20 hearing, and consider all relevant factors before
21 approving any new rate, end quote.

22 In State versus Office of Public --
23 pardon me. Office of Public Counsel versus PSC 331
24 S.W. 3d 677, the Western District held, quote, The
25 General Assembly understood that the role of a full

1 rate case proceedings is to set base rates upon
2 consideration of all relevant factors, end quote.

3 In AG Processing versus Public Service
4 Commission, 311 S.W. 3d 361, the Western District
5 held -- pardon me, the Western District quoted a
6 Commission order that an interim rate adjustment
7 mechanism must be established in a general rate
8 proceeding, quote, Considering all relevant factors.

9 Now, Empire argues that File Number
10 ER-2018-0228 is a general rate case and as a result,
11 they are excluded from applicability under that
12 statute. So let's test the argument against the
13 Commission's definition.

14 Was the proceeding in the 0228 case
15 intended to consider all relevant factors? The
16 answer's no. The file was only intended to consider
17 the impact of the Tax Cuts and Jobs Act. And no other
18 cost or revenue factors were considered.

19 The Commission's order opening the file
20 states that its purpose is to explore its authority to
21 change rates, quote, without considering all relevant
22 factors in an extended general rate case, end quote.
23 That's the Commission's order. Because the file was
24 never intended to consider all relevant factors, the
25 0228 case --

1 CHAIRMAN HALL: Do you have a copy of the
2 order?

3 MR. H. WILLIAMS: I don't have a copy of
4 the initiating order, but I can certainly provide one.
5 I don't know if I can make John -- hold on one second.

6 We'll provide that for you shortly.
7 Whenever Mr. Williams returns, we can review the
8 document.

9 So because the file was never intended to
10 consider all relevant factors, the 0228 file should
11 not be determined to be a general rate proceeding. It
12 should be noticed that Ameren Missouri had a companion
13 case, which was 0226, which also had the show cause
14 order, and that did not preclude the applicability of
15 the statute under the agreement.

16 The second thing to keep in mind is that
17 not all rate cases are general rate proceedings.
18 There are multiple interim rate adjustment mechanisms
19 that are litigated as rate cases other than general
20 rate proceedings. Commission rule, Chapter 3161
21 identifies a fuel adjustment clause; Chapter 2100,
22 renewable energy standard rate adjustment mechanisms;
23 Chapter 3162 and Chapter 20.091, the environmental
24 cost recovery mechanisms; Chapter 20.092, demand-side
25 programs, investment mechanisms such as MEEIA; Chapter

1 3.260, the natural gas infrastructure replacement
2 surcharges; and Chapter 3650, water utility
3 infrastructure replacement surcharges. All of these
4 mechanisms adjust the utility's rates based off of a
5 specific cost or revenue factor, unlike general rate
6 proceedings.

7 If you accept Empire's argument that all
8 rate cases are general rate cases, then that means
9 that every interim rate adjustment mechanism should be
10 subject to a full procedure of a general rate case and
11 must consider all relevant factors. Such
12 interpretation would lead to an absurd result and
13 would be contrary to statute.

14 In fact, Empire Witness Chris Krygier
15 argues that point in his testimony where he asserts
16 that Empire's general rate proceeding from two years
17 ago, ER-2016-0023 is an active general rate
18 proceeding. Since the rates of that case were set in
19 2016, since its rates went effective, the Company
20 continued to use that case file to submit several
21 demand-side management program tariffs such as the
22 interim rate mechanisms that do not require a general
23 rate proceeding and they've also filed some compliance
24 reports.

25 In ER-- in the 02-- pardon me, the 0023

1 case from 2016, the Commission ordered effective
2 compliance tariffs on September 14th -- that went into
3 effect on September 14th, 2016. After those general
4 rates were approved and went into effect,
5 qualitatively the rate case concludes.

6 If that were not the case and if
7 ER-2016-0023 is still opened and has not been
8 concluded, then Empire questionably has been operating
9 a unlawful fuel adjustment clause, which would have
10 been authorized in that rate case. If this rate case
11 were still open, we would be on month 33 of that rate
12 proceeding. Certainly that's not the case.

13 And I would disagree with Mr. Woodsmall's
14 recommendation that that case can be used as a vehicle
15 to address the matter before the Commission today.

16 There's a second argument against
17 Empire's position regarding the dismissal of the 0228
18 case. I'm going to discuss that when responding to
19 the motion before the Commission. Mr. Williams has
20 just delivered the document titled Order Opening Rate
21 Case, Directing Notice, Establishing Time to
22 Intervene.

23 If, in fact, the Commission were to
24 determine that the 0228 case does not qualify as a
25 general rate proceeding, then that means that the

1 statute applies. And in applying the statute, we're
2 presented with two subsections. Excuse me one second.

3 Now, once the Commission, again,
4 determines it applies, the Commission has to determine
5 how to reflect the impact of the Tax Cut and Jobs Act.
6 There are two operative sections. Subsection 3.
7 Under subsection 3, the Commission has a one-time
8 authority to adjust rates to reflect the impact of the
9 tax cuts, as well as establish a regulatory account to
10 book the financial impact of the tax cuts beginning
11 January 1st through the implementation of the new
12 rates.

13 The second subsection, subsection 4, says
14 that, For good cause shown by the electrical
15 corporation, as an alternative to the one-time rate
16 change under subsection 3 and to allow the utility to
17 defer the impacts of the financial -- the financial
18 impacts of the tax cut to an account in total.

19 It's important to note that in this
20 proceeding, Empire has argued that the statute does
21 not apply and has not filed testimony to support a
22 showing of cause that would substantiate good cause
23 under subsection 4 and for the Commission to direct
24 the deferral of the excess tax calculation instead of
25 the rate reduction.

1 The statute sets out in a manner to make
2 subsection 3 the default and subsection 4 is upon a
3 showing of the company. And they've not substantiated
4 that in this case. Empire has, however, filed a
5 Stipulation and Agreement proposing to lower its rates
6 by 17.8 million dollars, which is an admission of its
7 ability to adjust its rates under subsection 3.

8 Empire's offering that stipulation in
9 this case, not the 0228 case. I should say I guess as
10 well as the 0228 case, but they filed that agreement
11 in this case as well.

12 In Empire's position statement, not in
13 testimony or anything under -- admissible as evidence,
14 but in its position statement, it asserts good cause
15 to apply subsection 4 for two reasons. The first one
16 being the terms of the Non-unanimous Stipulation and
17 Agreement. As I'll discuss further later, there are
18 terms in that agreement that violate the application
19 of this statute and should not be used as a basis to
20 determine good cause.

21 The second contingent that the -- that
22 Empire raises is -- for good cause is because of,
23 quote, the potential disparity of treatment of various
24 Missouri utilities. First, the statute itself only
25 applies to electric utilities. So while Empire

1 laments that other utilities have not had to address
2 the tax issue, that's irrelevant. The statute was not
3 designed to apply to other utilities.

4 Second, Ameren Missouri has already filed
5 its new rates under the statute. And KCPL and GMO are
6 legitimately engaged in a general rate proceeding,
7 which I believe they filed in February of this year,
8 so certainly by the June 1st exemption. Empire is the
9 outlier.

10 Finally, the argument ignores that Spire
11 West and East, Missouri American Water and Liberty
12 Natural Gas have all addressed the tax issue in their
13 respective cases. Other utilities have had to address
14 this issue. And neither the first nor the second
15 point should be basis to find good cause under
16 subsection 4. Since Empire has failed to properly show
17 good cause, therefore, the Commission should apply
18 Section 3.

19 In applying Section 3, it addresses the
20 impact of the tax rate reduction in two ways. First
21 by lowering the customers' rates and then second, by
22 deferring what the Company has collected beyond the
23 21 percent tax rate, from January 1st to the effective
24 date of the new rates, into an account to be dealt
25 with in a subsequent general rate proceeding.

1 I think contrary to Mr. Thompson's
2 arguments, I do not believe that there are legal
3 concerns or this is relatable to the refund case
4 because the way that this statute functions is not to
5 use the over-collection from January 1st to the
6 implementation of the new rates and refund those rates
7 outside of a rate case. It instead defers that amount
8 to be dealt with in a subsequent rate case, just like
9 an AAO or other accounting treatment. What the
10 statute though -- it directly dire-- I should say it
11 directs the Commission's action on the account itself.

12 So exploring those two sections of
13 subsection 3, the first of the statute says, To adjust
14 the electrical corporation's rates prospectively so
15 that the income tax component of the revenue
16 requirement used to set the electrical corporation's
17 rates is based upon other provisions -- pardon me, is
18 based on the provisions of such federal act without
19 considering any other factor.

20 So this is the express authority for the
21 single issue rate-making.

22 Now, to determine the impact of the
23 federal tax rate, you have to consider two components.
24 First is the amount of the tax rate reduction, which
25 is simply the difference between a 35 percent tax rate

1 and a 21 percent tax rate applied to the revenue
2 requirement. The last rate case was ER-2016-0023.
3 And rates were set in that case assuming a 35 percent
4 tax rate.

5 The Office of Public Counsel believes
6 that the difference between the 21 and the 35 percent
7 tax rate, as testified to by John Riley, is 17,469,270
8 dollars. Empire and Staff in this case have filed
9 testimony in support of a number which is 17,837,022
10 dollars.

11 The difference between the position of
12 Staff and Empire and Public Counsel arises from the
13 applicability of a composite tax rate applied to
14 Empire's revenue requirement. John Riley will be
15 available to answer any questions about the basis for
16 the application of the -- his composite tax rate.

17 The second component that has to be
18 included when considering the impact of the tax act is
19 the -- dealing with the excess accumulated deferred
20 income tax. Determining the application of the excess
21 ADIT, for short, for reducing rates should really be
22 the focus of this proceeding.

23 This case marks the third proceeding
24 regarding the impact of the Tax Cut and Jobs Act. And
25 this is the third proceeding where Empire has failed

1 to submit to the Commission an ADI figure -- an ADIT
2 figure in testimony. On January 1st in AW-2018-0174
3 when asked to determine the annual revenue requirement
4 impact of the Tax Cut and Jobs Act, Empire failed to
5 identify any ADIT. Compare that to Ameren Missouri,
6 KCPL and GMO whose responses did include the impact of
7 excess ADIT and the rest of it.

8 On March 19th, in the 0228 case, when
9 asked to quantify and track the excess protected and
10 unprotected ADIT, Empire again to failed -- failed to
11 report figures. Compare that to the companion case
12 for Ameren Missouri in 0226 where the Company succeed
13 in complying with the Commission's order. And by that
14 time, KCPL and GMO had already commenced their general
15 rate proceeding and were not subject to a companion
16 order.

17 Finally, in this proceeding the hearing
18 to provide the benefits of the Tax Cut and Jobs Act to
19 ratepayers, Empire Witness Charlotte North's testimony
20 does not identify or quantify an excess ADIT amount.

21 Without identifying an amount of excess
22 ADIT, there's no way to reflect the flow back in
23 rates. However, just because A-- Empire did not
24 report excess ADIT to the Commission doesn't mean they
25 didn't have an estimate for the figure. Through the

1 course of this proceeding, OPC's discovery shows that
2 Empire's been developing excess ADIT calculations as
3 early as December 6th, 2017.

4 E-mails attached to John Riley's
5 testimony marked as Schedule 3 show that throughout
6 January, Empire had developed excess ADIT figures on
7 spreadsheets but had not reported those in the filings
8 in the AW-0174 or 0226 cases and in this proceeding.

9 OPC's excess ADIT figures are based on
10 Empire's previously undisclosed work papers. From
11 Empire's work papers, John Riley was able to determine
12 amounts for both protected and unprotected excess
13 ADIT. Mr. Riley made a few adjustments as to whether
14 an account should be protected or unprotected based
15 off the sufficiency of information provided by Empire.
16 When he's on the stand, I encourage you to inquire
17 about his adjustments.

18 The second question that the Commission
19 has to determine is what the proper flow back period
20 is for both the excess ADITs protected and unprotected
21 amounts. While Empire did not identify ADIT in their
22 testimony, in the deposition that's going to be
23 offered of Stephen Williams of Liberty Utility Service
24 Corporation, he estimated that a vast majority of
25 excess ADIT is likely protected.

1 Now, the difference between protected and
2 unprotected ADIT matters. As Mr. Williams explains in
3 a January 23rd e-mail, the protected piece will be
4 amortized as the timing differences reverse, and that
5 the unprotected piece will amortize at the whim of the
6 PSCs of the various states. He continues to say, So
7 negotiate something good for us, please.

8 For the protected ADIT amount, the IRS
9 requires the use of a means called ARAM if the utility
10 is capable of performing the calculation. If not, the
11 IRS permits the Company to use a reverse South Georgia
12 method, which applies a composite depreciation rate to
13 a set of assets.

14 In this case, Empire has not submitted
15 any testimony on this issue. In this case -- pardon
16 me, in the 0226 case, on March 19th Empire stated that
17 Empire will need to acquire new software estimated at
18 129- to 165,000 dollars to follow the ARAM method.
19 So the Company has already admitted that they are not
20 presently capable of performing the ARAM analysis.

21 In his deposition, Steve Williams stated
22 that Empire has a license to use -- a license to use
23 necessary software which it's had for a couple of
24 years, but has never implemented it. So they've had
25 the capability but they've not done it.

1 In an e-mail dated January 23-- 23rd
2 indicates that Empire would attempt to work with
3 Deloitte to implement this software; however, it's six
4 months later and Empire has not either proven or even
5 testified that it's capable of following ARAM.

6 So this scenario where we have a -- an
7 amount of what the excess ADIT is but we're uncertain
8 as to the specific apportionment between protected and
9 unprotected classes, and those specific flow back
10 periods, it's very similar to what the Commission
11 faced in its recent Spire rate case.

12 In that case, the Commission authorized a
13 ten-year flow back period for the unprotected ADIT and
14 a 20-year flow back period for the protected ADIT and
15 also authorized a tracker that would serve to prevent
16 any potential normalization violations for refund of
17 the protected ADIT.

18 Based off of the estimates of the total
19 amount of the ADIT, there was a 50/50 split assessed
20 between the protected and unprotected balances. And
21 the Commission ultimately authorized a rate reduction
22 based off those ADIT figures of 11.5 million dollars.

23 In this case, John Riley proposes similar
24 treatment on the terms of the flow back, the 10-year
25 and the 20-year period. Also, he recommends the use

1 of a tracker to prevent normalization violation. For
2 protected excess ADIT, Mr. Riley took the total
3 protected amount and amortized that figure over
4 20 years for an annual rate adjustment or rate impact
5 of 8,729,631 dollars. For unprotected excess ADIT,
6 Mr. Riley took a calculation of unprotected amount,
7 amortized that figure over ten years and estimates an
8 annual rate impact of 2,282,553 dollars.

9 Now, that figure is going to be
10 identified again when Mr. Riley takes the stand.
11 There is an adjustment based off of a tax factoring
12 error that is in Mr. Riley's testimony that results in
13 a 5,900 dollar reduction on an annual basis based off
14 its excess ADIT. That figure will be updated on
15 testimony.

16 Now, the total amount is approximately
17 10.9 million dollars reflecting from the ADIT, which
18 is in the ball park with what was estimated in the
19 Spire case based off of estimates.

20 Now, using the estimates with a tracker,
21 it also mitigates concerns of shifting classifications
22 between protected and unprotected balances. In the
23 deposition of Stephen Williams, he explains that if an
24 asset is pulled out of service, then it's treated as a
25 disposition of that asset and it triggers a release of

1 any excess accumulated deferred income tax associated
2 with that asset.

3 So if a protected balance were -- related
4 to a coal plant had accumulated and then the coal
5 plant shuts down early, then the accrued excess
6 balances would then become unprotected and available
7 for quicker recovery.

8 So if the Commission actually has based
9 off these 10 and 20 year estimates with the tracker,
10 that would not only serve to provide refunds back to
11 customers, but it would also provide a means through
12 the tracker to account for any adjustments between the
13 protected or unprotected properties and the taxes
14 applied to them. The total reduction that -- annual
15 reduction that OPC is proposing under this first
16 section of subsection 3 is 28,481,454 dollars.

17 The second component for subsection 3,
18 which is the deferral account to record the financial
19 impact of the tax cuts for the period of January 1st,
20 2018 through the date of the new rates are in effect.
21 This amount -- the amounts deferred under this
22 subsection will be included in the revenue requirement
23 used in the electric corporation's rates -- pardon me,
24 applied against the rates in the subsequent general
25 rate proceeding and then amortized over a period as

1 determined by the Commission.

2 The time period that John Riley testifies
3 to for his calculation runs from January 1st through
4 August 30th, which was the last day by statute new
5 rates must go into effect. If the Commission were to
6 authorize rates prior to Oct-- August 30th, this
7 figure would be subject to a change.

8 OPC Witness John Riley testifies that
9 that amount from January 1st through August 30th on
10 the impact of the Tax Cut and Job Act is 11,582,365
11 dollars. And that would be deferred into a regulatory
12 liability account. He also recommends that a
13 four-year amortization period be ordered on that
14 account in the subsequent rate case. Those are the
15 recommendations on the amounts.

16 Also, we have -- Mr. Riley recommends the
17 manner in which the refunds should be implemented are
18 against the customer charges. The only two
19 individuals providing testimony on the method to
20 provide the refund would be Sarah Lange and John
21 Riley.

22 Earlier I alluded to concerns regarding
23 some terms of the Non-unanimous Stipulation and
24 Agreement filed by Empire, Staff and the City of
25 Joplin in this proceeding. First, the effective date

1 of the new rates under the Stipulation and Agreement
2 would be October 1st, 2018, not August 30th. The
3 statute requires that rates go into effect within
4 90 days of June 1st. American Heritage Dictionary
5 defines "within" as inside the limits or extent of
6 time, degree, or distance.

7 The month differential between August
8 30th and October 1st, based off of Mr. Riley's
9 calculations, would be approximately 1.5 million
10 dollars that the ratepayers would not see the benefit
11 of.

12 The second and larger issue is that the
13 Stipulation and Agreement only applies the excess ADIT
14 from -- or it only captures the excess ADIT from the
15 amount of January 1st through the effective dates of
16 the new rates and not the direct 21 percent rate
17 impact.

18 Now, if you recall on both subsection 3
19 and 4, it requires this amount to be deferred. And
20 that's approximately 11.5 million dollars. So for
21 both these terms alone, the Stipulation and Agreement
22 is unlawful because it fails to accomplish the
23 requirements of Section 393.137. Legal issues --
24 issues aside, ratepayers would lose out on
25 approximately 13 million dollars from those issues

1 alone.

2 The other concern I have regarding the
3 Stipulation and Agreement is located in paragraph 11,
4 which reads, quote, The signatories agree that any and
5 all discussions, suggestions or memoranda reviewed or
6 discussed related to this tax stipulation shall be
7 privileged and shall not be subject to discovery,
8 admissible in evidence, or in any way used, described
9 or discussed, end quote.

10 It reminds me of the first rule of fight
11 club, which is you never talk about fight club.
12 Neither Empire, Staff or the City of Joplin have the
13 det-- have the ability to determine the admissibility
14 of evidence.

15 In EO-2018-0092, the Empire wind case,
16 there were work papers prepared from a Stipulation and
17 Agreement filed by parties in that proceeding that
18 were not actually filed with the agreement and -- or
19 provided as work papers with affidavits filed in
20 support of that agreement. Lena Mantle's May 4th
21 affidavit in that case, page 6 and 7, details the
22 circumstance. The Stipulation and Agreement was filed
23 on April 24th.

24 The Public Counsel's office did not
25 receive the Excel documents which substantiated many

1 terms until May 1st as a result of a Data Request.
2 Included in those spreadsheets that arrived apart from
3 the stipulations were work papers regarding the
4 proposed market protection provisions; estimates of
5 when project outputs, revenues, operations and
6 maintenance costs; and details on the replacement of
7 current wind PPAs. Instead of having ten days to
8 review the materials, my staff only had three days
9 before filing our testimony.

10 Under the -- under the terms of this
11 Stipulation and Agreement, it would appear that
12 parties such as mine would have no access to such work
13 papers. The purpose of these proceedings is to
14 develop a factual record sufficient for the Commission
15 to develop just and reasonable rates. And I question
16 the propriety of the terms that appear to seek to
17 conceal material facts from the Commission and from
18 the public.

19 The Commission's rules already provide
20 protections for prehearing and settlement conferences.
21 Rule -- Chapter 2.090, sub 7, provides that, quote,
22 Facts disclosed in the course of pre-hearing
23 conferences and settlement offers are privileged,
24 except by agreement and shall not be used against
25 participating parties unless fully substantiated by

1 other evidence, end quote.

2 Chapter 2.125 sub 1C already states that,
3 quote, Negotiations and settlements of the parties or
4 attorneys made at a settlement conference shall be off
5 the record and shall not be made part of official use,
6 end quote.

7 The term of the stipulation is in excess
8 of what's already protected under Commission rule.
9 And I'm concerned that if the Commission does not
10 condemn the fight club clause, the term will begin to
11 appear with increasing frequency in Stipulations and
12 Agreements.

13 I will now quickly respond to the two
14 outstanding motions. There is a -- not only is there
15 a motion for good cause to dismiss the proceeding,
16 which I've already discussed under the de-- or under
17 my analysis on the applicability of the general rate
18 proceeding. The -- the other bit that OPC filed in
19 the -- in its response to Empire's Motion to Dismiss
20 was regarding whether or not the 0228 case was in
21 effect on January -- pardon me, on June 1st.

22 On May 17th, the Commission issued an
23 order noticing -- titled Notice Acknowledging
24 Dismissal and Closing the File by Order subsequent to
25 the order fath-- pardon me, Staff filed an untimely

1 withdrawal of its motion as the order had already been
2 granted. Neither Staff nor Empire moved to reopen the
3 file. Parties continued to file documents in that
4 section, but the -- but that fact does not actually
5 initiate a rate case.

6 Section 386.280 states that every order
7 of the Commission has to be in writing and entered
8 into the record of the Commission. So whether or not
9 parties continue to make filings through the filing
10 system does not actually -- particularly after a rate
11 is -- a case is closed, does not initiate the case
12 again. Now, those points are expounded on and we'll
13 include it in the brief.

14 The only other thing I would like to add,
15 I think there was a question regarding -- earlier
16 about whether or not the 0228 case could be defined as
17 complaint. Under the Commission Rule 2.070, it
18 details the standards for filing a rate case through a
19 complaint. Valid complaints must identify some
20 utility act done, quote, In violation of any provision
21 of law or any rule or order or decision of the
22 Commission, end quote.

23 There -- there was no assertion that a
24 company was -- had done anything unlawful in the
25 applicability of the rates. I don't think that

1 through any case it has been asserted that enactment
2 of its Commission-authorized rates is an act of
3 unlawfulness and the purpose of having these
4 proceedings is to instead reflect the new rates under
5 the new tax plan. But yeah, those provisions were not
6 identified in the filings which initiated that
7 proceeding. I'm available for any questions you may
8 have.

9 CHAIRMAN HALL: Do you believe that
10 Section 4, 393.137 would authorize the Commission
11 to -- to determine that good cause has been shown to
12 defer the stub period and the ADIT flow back to a
13 regulatory liability to be included in rates in the
14 next general rate case?

15 MR. H. WILLIAMS: I'm going to ask you to
16 repeat the question

17 CHAIRMAN HALL: Okay.

18 MR. H. WILLIAMS: As far as what
19 components that you're looking to defer.

20 CHAIRMAN HALL: Assume that good cause
21 has been shown.

22 MR. H. WILLIAMS: Yes.

23 CHAIRMAN HALL: Does Section 4 authorize
24 the Commission to defer the stub period and the ADIT
25 flow back to a regulatory liability to be included in

1 rates in the next rate case and simply order going
2 forward that the revenue requirement be reduced by the
3 17.5 million dollars or -- or the amount that equals
4 the difference between 35 to 21?

5 MR. H. WILLIAMS: I don't. And -- and
6 here's why: Subsection 4, the term is upon good cause
7 shown by the electrical corporation, the Commission
8 may -- and here's the operative terms -- as an
9 alternative to requiring a one-time rate change and
10 deferral under subsection 3. American Heritage
11 defines "alternative" as to take the place of another.

12 The authority for the Commission to make
13 the rate change is under subsection 3.

14 CHAIRMAN HALL: Right. But you didn't
15 keep reading where it says, In whole or in part.

16 MR. H. WILLIAMS: Well, and I think
17 that -- that what Section 4 contemplates is permitting
18 the establishment of deferral accounts, but I do not
19 believe that Section 4 contemplates allowing for a
20 one-time rate reduction under subsection 3. And
21 that's -- that's the concern. It goes back to
22 Mr. Woodsmall's --

23 CHAIRMAN HALL: Well, then what does in
24 whole or in part mean then?

25 MR. H. WILLIAMS: Well, I -- I think that

1 if -- if -- your -- your question was can you defer
2 the stub period, the ADIT and then authorize a rate
3 reduction for the other part -- for the -- for the tax
4 differential.

5 I believe that subsection 4 would allow
6 you to defer the stub period. It would allow you to
7 defer the ADIT. And it would allow you to defer the
8 tax differential. I do not read subsection 4 as
9 authorizing the Commission to defer the -- pardon me,
10 to permit a one-time rate change for a portion of the
11 tax impact.

12 CHAIRMAN HALL: So what does in whole or
13 in part mean?

14 MR. H. WILLIAMS: I -- I think the
15 Commission has the discretion to determine what amount
16 of the deferrals it wants to include in the -- in the
17 amount itself.

18 CHAIRMAN HALL: And so what does -- and
19 so what should the Commission do with the re-- do with
20 the balance?

21 MR. H. WILLIAMS: I do not believe that
22 the statute speaks to how the Commission should treat
23 the balance of the impact of the Tax Cut and Jobs Act.

24 CHAIRMAN HALL: Well, it would seem like
25 your argument is that the Company should keep it.

1 MR. H. WILLIAMS: Well, my argument is
2 that --

3 CHAIRMAN HALL: Well, no, but --

4 MR. H. WILLIAMS: -- the Commission
5 should -- should apply it, but what I -- what my
6 argument is, is regarding the Commission's authority
7 under the statute. I -- my argument is, is that if
8 subsection 4 is applied, the recourse is a deferral.

9 That it does grant the Commission the
10 ability to determine the amount of what is deferred.
11 And should the Commission exclude some proportion,
12 then I do not believe that there is another mechanism
13 under 137 which allows for the disposition of the
14 remainder. Now, that doesn't mean that the Commission
15 doesn't have authority elsewhere, but -- but under
16 this statute, I -- and the application of subsection
17 4, I -- I don't know if that -- that is present.

18 And I would also point out -- I mean
19 under subsection 3 as -- as we've identified in this
20 case, on the establishment of cause, the Company's
21 already -- is affirmatively arguing that it is seeking
22 to reduce its rates by 17.8 million dollars.

23 And between our figures on what are the
24 annual impacts for approximately the excess ADIT, the
25 difference between Staff -- pardon me, OPC and Staff

1 and Empire is approximately 10 million dollars.
2 So that's really -- when we talk about cause and
3 ability, that's got to be what's considered.

4 CHAIRMAN HALL: Yeah. If the Commission
5 were to determine that 393.137 was not applicable to
6 Empire, do you think that it is legal for the
7 Commission to put the stub period into a regulatory
8 liability?

9 MR. H. WILLIAMS: We had filed comments
10 in the -- might have even been in the -- in the 0228
11 case file, which had supported Staff's position that
12 the Commission would have authority separate from the
13 operation of the statute to consider some costs. And
14 I believe that was the position that we took.

15 CHAIRMAN HALL: Okay.

16 MR. H. WILLIAMS: The operative issue
17 being, of course, whether or not you were trying to
18 provide a refund of that amount or whether or not you
19 were trying to put it in a deferred asset or deferred
20 liability account.

21 CHAIRMAN HALL: I have no further
22 questions. Thank you.

23 MR. H. WILLIAMS: Thank you.

24 JUDGE WOODRUFF: Thank you. That's all
25 the openings. We'll take a break before we come back

1 with testimony. Come back at 10:45.

2 (A recess was taken.)

3 JUDGE WOODRUFF: We'll begin with
4 Empire's witness.

5 MS. CARTER: And Chris Krygier is our
6 first witness

7 JUDGE WOODRUFF: If you'd please raise
8 your right hand, I'll swear you in.

9 (Witness sworn.)

10 JUDGE WOODRUFF: Thank you. You may
11 inquire.

12 CHRISTOPHER D. KRYGIER, having been first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION BY MS. CARTER:

15 Q. If you'll please state your full name.

16 A. Chris Krygier.

17 Q. By whom are you employed?

18 A. I am employed by Liberty Utilities
19 Services Corp. where I serve as the director of Rates
20 and Regulatory Affairs for the Central Region. And in
21 that region that includes the Empire District Electric
22 Company.

23 Q. You prepared and pre-filed Direct
24 Testimony in this case that has been marked as
25 Exhibit 1; is that correct?

1 A. That is correct.

2 Q. Do you have any corrections to that
3 Direct Testimony?

4 A. I have one correction and one update.
5 The correction is on page 3, line 17. There's a
6 reference there that says subsection 2. That should
7 read subsection 3.

8 Q. What is the reason for that change?

9 A. It relates to a typographical error in
10 the statute that was later corrected once the final
11 law was passed and finalized.

12 Q. With that one correction, if I asked you
13 the questions from your Direct Testimony today, would
14 your answers be substantially the same?

15 A. I have one more update. And that is --
16 it's not really a correction, but at the time that I
17 wrote this testimony, the -- there's reference to the
18 customer savings plan order; as an example, page 7,
19 lines 16 and 17. Since then, the Commission has
20 issued an order in that docket. So that's more of an
21 update than a correction.

22 Q. And then with that, would your answers be
23 substantially the same if I asked them today?

24 A. Yes.

25 MS. CARTER: And this is the point where

1 I would normally ask for the admission of
2 Mr. Krygier's testimony and tender him for cross, but
3 he's also providing Rebuttal Testimony on the stand.

4 JUDGE WOODRUFF: All right.

5 BY MS. CARTER:

6 Q. Mr. Krygier, did you review the Direct
7 Testimony of John Riley filed on July 11, 2018?

8 A. Yes. And the corrected version.

9 Q. That was filed on July 17th; is that
10 correct?

11 A. Yes.

12 Q. In Mr. Riley's testimony, he states that
13 four adjustments are required to be made in this case.
14 Do you agree that the four adjustments proposed by OPC
15 must be made in this case?

16 A. No, I don't.

17 Q. The first adjustment proposed by OPC is
18 to reflect the federal tax rate reduction going
19 forward. Do you believe there should be a rate
20 reduction going forward?

21 A. Prospectively, yes. We differ on that
22 amount. We have -- Empire has calculated an amount of
23 approximately 17.8 million.

24 Q. And what is the date that Empire proposes
25 for the effectiveness of the new rates?

1 A. October 1st of this year.

2 Q. The second adjustment proposed by OPC a
3 rate reduction related to protected excess ADIT and
4 the third adjustment proposed by OPC is a rate
5 reduction related to unprotected excess ADIT. Does
6 Empire agree with these two proposed adjustments?

7 A. No, we do not. The testimony of
8 Ms. North and Mr. Steve Williams will go into further
9 detail, but conceptually, we do not agree with that
10 adjustment -- those two adjustments.

11 Q. And then the final adjustment proposed by
12 OPC is a claw back to January 1, 2018 for the federal
13 tax rate reduction from 35 percent to 21 percent.
14 Does Empire agree with this claw back adjustment?

15 A. No, we do not.

16 Q. And why is that?

17 A. Part of it has the legal questions
18 surrounding it that have been much discussed this
19 morning. The second piece is that we think the
20 Stipulation and Agreement filed in this docket and the
21 0228 docket resolves both of those issues in a
22 reasonable way.

23 Q. And you're referring to subsection 4 then
24 of 393.137 --

25 A. Yes.

1 Q. -- as an alternative means of resolving
2 the case?

3 A. Yes.

4 Q. What is your understanding of
5 subsection 4 of the statute?

6 MR. N. WILLIAMS: I'm going to object to
7 that. Mr. Krygier is not an attorney. I don't know
8 what probative value his understanding of what the
9 statute is has in this case. I don't see any.

10 JUDGE WOODRUFF: Response?

11 MS. CARTER: I believe his understanding
12 of that statute is relevant to his alternative
13 proposal and the good cause.

14 JUDGE WOODRUFF: I'll overrule the
15 objection.

16 THE WITNESS: Can you please restate the
17 question?

18 BY MS. CARTER:

19 Q. Yes. What is your understanding of the
20 subsection -- of subsection 4 of the new statute?

21 A. I believe subsection 4 -- and it's even
22 captured in the title -- refers to allowing for good
23 cause a different outcome than what's contemplated in
24 the much-discussed subsection 3 this morning and
25 primarily OPC's position. And I think that it allows

1 for that -- something like the Stipulation and
2 Agreement to be approved as that good cause.

3 Q. So what is Empire proposing for this
4 alternative deferral?

5 A. That we would make it what I'll call an
6 interim rate adjustment. Meaning starting October 1st
7 prospectively we'll file for a rate reduction and then
8 we'll start tracking for the excess ADIT as it relates
9 to refunding and dealing with in the next rate case.

10 Q. The deferral portion of subsection 3 of
11 the statute provides for a deferral for the period of
12 January 1 through the date the electric corporation's
13 rates are adjusted on a one-time basis. Is that same
14 language used in subsection 4?

15 MR. N. WILLIAMS: Judge, I'm going to
16 object to that question too. I mean the statute
17 speaks for itself.

18 JUDGE WOODRUFF: Again, I'll overrule.

19 THE WITNESS: I believe the language is
20 different in subsection 4 and 3.

21 MS. CARTER: And I have no further
22 rebuttal questions for Mr. Krygier and would move for
23 the admission of Exhibit 1 and tender him for
24 cross-examination.

25 MR. N. WILLIAMS: The Office of Public

1 Counsel objects to Exhibit 1.

2 JUDGE WOODRUFF: What's the basis of your
3 objection?

4 MR. N. WILLIAMS: Mr. Krygier's
5 expressing legal opinions and he's -- admits that he's
6 not an attorney. Part of the -- a good part of the
7 testimony deals with a Stipulation and Agreement that
8 was objected to and that the Commission has rejected
9 in another case so not -- it's to-- it's irrelevant at
10 this point and probably was irrelevant all -- all
11 along. And his testimony about the statute, the
12 Commission's already deemed to know the statute so
13 it's cumulative.

14 JUDGE WOODRUFF: I'm going to overrule
15 the objection. Exhibit 1 will be received.

16 (Exhibit 1 was received into evidence.)

17 JUDGE WOODRUFF: For cross-examination
18 then, we'll begin with the Staff.

19 MR. THOMPSON: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. THOMPSON:

21 Q. Morning, Mr. Krygier.

22 A. Good morning, Mr. Thompson.

23 Q. With respect to subsection 4 of the
24 statute, over objection, you've done a little
25 discussion of that. I wonder if you could tell me in

1 your words your understanding of the good cause that
2 Empire relies on for treatment under that subsection?

3 A. While I'm the first to admit I'm not an
4 attorney, I think that the stipulation that we filed
5 presents an opportunity that balances all of the
6 different stakeholder perspectives in the proceeding
7 and would be justification to proceed forward as we've
8 contemplated in the stip.

9 Q. Thank you. No further questions.

10 JUDGE WOODRUFF: MECG?

11 MR. WOODSMALL: Thank you.

12 CROSS-EXAMINATION BY MR. WOODSMALL:

13 Q. Along the same lines about good cause, if
14 the Commission determines that the statute provides
15 for a return to customers of not only the prospective
16 piece, the ADIT and the stub period treatment, is the
17 Company financially capable, have the cash flow, of
18 returning that money to customers?

19 A. Are you asking if essentially the
20 Commission were to side with OPC and MECG's
21 perspective in the case?

22 Q. Yes.

23 A. I haven't done any analysis to say that
24 definitively, but generally speaking, I would assume
25 yes.

1 Q. Okay. No further questions.

2 JUDGE WOODRUFF: Public Counsel?

3 MR. N. WILLIAMS: Thank you.

4 CROSS-EXAMINATION BY MR. N. WILLIAMS:

5 Q. During part of your Rebuttal Testimony,
6 you testified that you anticipate that if the
7 agreement is approved, that Empire would make -- and
8 you I think called it an interim adjustment in rates
9 to reflect the prospective rate relief, did you not?

10 A. Alluding to the October 1st, 17.8 million
11 approximately, that was the adjustment I was referring
12 to.

13 Q. What would be Empire's authority for
14 doing that on an interim -- or what would be Empire's
15 authority, to your understanding, for being capable of
16 doing that without doing a full general rate case?

17 A. Are you asking what would be our legal
18 authority to make a rate change like that?

19 Q. Why do you think it would be legal, or do
20 you know?

21 A. My understanding of the rules, that a
22 company can file a rate change at any time potentially
23 and if it's not contested and there aren't any --
24 there's no opposition, a change in rates can occur.

25 Q. So you could have filed some tariff

1 sheets to implement the reduction already?

2 A. Potentially, yes.

3 Q. And that's your understanding?

4 A. Yes. But what our -- to that end, we've
5 obviously been on a procedural schedule in the various
6 dockets, whether it's the rate case 0228 or this
7 procedural schedule. So obviously we've been
8 following how that path has been charting.

9 Q. Has there been some particular reason why
10 Empire has not filed rate schedules that would
11 implement that -- I think it's about 17.8 million
12 dollar reduction?

13 A. Well, we have obviously made an attempt
14 to resolve it once earlier in April with a
15 Non-unanimous Stipulation and Agreement there. But
16 generally speaking, we've been following the course
17 outlined by the Commission and working our way through
18 those various procedural schedules.

19 Q. Do you know what Empire's excess
20 accumulated deferred income tax is as of 12/31/17?

21 A. I could approximate it, but I'd have to
22 defer to either Ms. North or Mr. Steve Williams on
23 that amount.

24 MR. N. WILLIAMS: May I have an exhibit
25 marked?

1 JUDGE WOODRUFF: Sure. This will be
2 Number 6.

3 MR. N. WILLIAMS: And I may not have
4 brought enough exhibits.

5 JUDGE WOODRUFF: That's all right.

6 (Exhibit 6 was marked for
7 identification.)

8 MR. N. WILLIAMS: May I approach?

9 JUDGE WOODRUFF: You may.

10 BY MR. N. WILLIAMS:

11 Q. Mr. Krygier, I'm handing you what's been
12 marked for identification as Exhibit Number 6. Have
13 you seen at least the content of that exhibit before,
14 perhaps in a different form, electronically if not
15 hard copy?

16 A. At some point, yes.

17 Q. And does it reflect an estimate of
18 Empire's excess accumulated deferred income tax as of
19 12/31/17?

20 A. What page are you looking at? And the
21 other question is, these are -- looks like Data
22 Requests answered by Ms. North. I wasn't sure if
23 these were intended for her or for me.

24 Q. I'm starting with you.

25 A. Okay. And what page are you looking at?

1 Q. Look at line 45 on page 4.

2 A. I'm there.

3 Q. And that -- that's not excess. That's an
4 estimated -- Empire's estimate of its balance of
5 accumulated deferred income tax, is it not?

6 A. It's described here as estimated balance
7 of ADIT after reform. It looks like the excess is
8 further down.

9 Q. That would be on line 46, would it not?

10 A. Yes.

11 Q. And if you look at the columns, column M
12 is Missouri retail.

13 A. Just trying to match up this one. It
14 doesn't have headers on it, so I think I --

15 Q. It was a trade-off between legibility and
16 headers.

17 A. Do you have it as the fourth column from
18 the right if you start column one being the numbers as
19 column M?

20 Q. I believe that's correct.

21 A. I'm with you.

22 Q. And that number is 120 million roughly?

23 A. Yes.

24 Q. Is there any dispute between -- material
25 dispute, I should say, between Public Counsel and

1 Empire as to that number?

2 A. I don't know. And the reason I'd have to
3 defer to Ms. North or Mr. Williams is I know that
4 there are some significant differences on the excess
5 ADIT from our analysis of Mr. Riley's calculations,
6 but I just don't know where -- where -- if that's the
7 starting point or the ending point of it.

8 Q. I think what you're telling me is that
9 you have a high level understanding but not in the
10 weeds, so to speak?

11 A. I think that's a fair description of
12 excess ADIT.

13 Q. Do you know when Empire first estimated
14 its excess accumulated deferred income tax balance and
15 that balance being as of 12/31/2017?

16 A. I don't know when we have the first
17 estimate. It's obviously a pretty complicated and
18 detailed issue. I'd probably recommend that either be
19 a Mr. [sic] North or Mr. Williams' question.

20 Q. Do you recall -- do you know -- or when
21 did you first see an estimate of Empire's excess
22 accumulated deferred income tax as of 12/31/2017?

23 A. I couldn't give you an exact date. I
24 would estimate some time in the first quarter of 2018,
25 but I don't -- I don't recall. And the other piece

1 was I know that there have been a number of moving
2 parts as it relates to potential accounting
3 ramifications and the differences of protected and
4 unprotected. So I know those initial estimates have
5 the -- were estimates and works in progress.

6 Q. Do you know if from the first quarter of
7 2018, which is when you believe you first saw an
8 estimate -- or that you recall, whether the estimate
9 of excess accumulated deferred income tax for Empire's
10 electric operations in Missouri has changed materially
11 from that date till the current date?

12 A. That I don't know because I don't recall
13 what the initial estimates may have been, but I think
14 that's probably a Mr. Steve Williams' question.

15 Q. Have you had an opportunity to see Public
16 Counsel Witness John Riley's Direct Testimony?

17 A. The initial and corrected, yes.

18 Q. And have you had an opportunity to review
19 the schedules attached to it?

20 A. Some of them at a very high level, but
21 most of that review is done by Ms. North and
22 Mr. Williams.

23 Q. Well, would you take a look at Schedule
24 JSR-3, which consists of ten pages?

25 A. I'm there.

1 Q. On some of those e-mails there's a Chris
2 Krygier identified. Correct?

3 A. Yes.

4 Q. Are you the Chris Krygier who's
5 identified on these e-mails as a sender or a
6 recipient?

7 A. I am the same.

8 Q. And if you turn to page 8 of Schedule
9 JSR-D-3.

10 A. I'm there.

11 Q. Do you see the date of that e-mail?

12 A. Yes, I do.

13 Q. Would that have been the first time that
14 you received an estimate of -- or saw an estimate of
15 Empire's -- saw Empire's -- first saw Empire's
16 estimate of excess accumulated deferred income tax?

17 A. I can't say for certain. If it wasn't
18 that date, it might have been generally around that
19 date roughly since the act had passed a few weeks
20 before that.

21 Q. And I'm glad you said that, because I
22 intended to limit it to the impacts of the Tax Cut and
23 Jobs Act. I recognize there can be excess accumulated
24 deferred income tax from other things.

25 Do you know if Empire books protected

1 accumulated deferred income tax separately from
2 unprotected accumulated deferred income tax?

3 A. As it relates to this -- this tax act
4 implications?

5 Q. No. More generally.

6 A. I don't know more generally. And the
7 reason I don't know is I don't know how it was
8 captured in the 1986 act and those underlying details.
9 In this case I don't -- I know we've done some
10 preliminary estimates and have been working with the
11 accounting firm that's assisting us, but I don't
12 believe any entries have been actually recorded for
13 protected versus unprotected. But Mr. Williams could
14 confirm that.

15 Q. And that would be in connection with the
16 Tax Cut and Jobs Act of 2017?

17 A. Correct.

18 Q. Do you know if Empire has licensed
19 software that will allow it to determine its protected
20 accumulated deferred income tax separately from its
21 unprotected accumulated deferred income tax?

22 A. I know we're looking into it, but
23 Mr. Williams could tell you the stage of where that
24 process is as relates to getting it either purchased
25 or installed.

1 Q. So you're not aware of whether or not
2 Empire actually has the software that's capable -- or
3 the rights to the software that's capable of doing
4 this?

5 A. I don't recall whether we do or do not.
6 We might. But Mr. Williams would be able to give
7 further details into that.

8 Q. So at this point it's your understanding
9 that if you have it, it hasn't been implemented yet?

10 A. I don't believe it's been implemented,
11 but I know that it's being discussed.

12 Q. Turning back to the e-mails on JSR-D-3,
13 your name I think appears on those that -- or on pages
14 7 to 8 only; is that correct?

15 A. I believe my name appears on page 9 and
16 then on page 10 as well.

17 Q. Well, on the e-mails where your name
18 appears, did you either author the e-mail or read it,
19 the content?

20 A. I assume I would have read the content,
21 yes. It looks like these are from other senders on
22 those pages 7 through 10.

23 Q. So you didn't author any?

24 A. I don't believe so. My name's not on
25 them from a -- in the "from" field.

1 Q. And on those e-mails who's Steve
2 Williams?

3 A. I'm assuming the same Mr. Steve Williams
4 that's here today.

5 Q. And some of those e-mails identify a
6 Charlotte North. Who is she?

7 A. The same Charlotte North that's here
8 today.

9 Q. And I believe some of those e-mails also
10 identify a Rob Sager. Who is he?

11 A. He is the former vice president of
12 finance for the Central Region, which includes Empire.

13 Q. Turning to page 7 of JSR-D-3.

14 A. I am there.

15 Q. What does that first paragraph say?

16 A. Which part of the e-mail are you looking
17 at? There's -- it looks like there's two e-mails on
18 page 7 of 10.

19 Q. The very top of the page where it's from
20 Steve Williams to Charlotte North and Chris Krygier,
21 Subject, regarding the tax reform impact workbook.

22 A. The protected piece will be amortized as
23 timing differences reverse, which could be 40-, 50
24 years. The unprotected piece will amortize at the
25 whim of the PSCs of the various states, so negotiate

1 something good for us, please.

2 Q. And what is your understanding of what
3 Steve Williams was requesting when he said, So
4 negotiate something good for us, please?

5 A. I'd have to defer you to Mr. Williams.

6 Q. Well, I'm not asking what he meant.
7 I'm -- what did you understand him to mean?

8 A. What did I -- are you asking what did I
9 understand what Steve put in his e-mail to me? Is
10 that what you're asking?

11 Q. I'm asking you to tell us what your
12 understanding of what Mr. Williams was saying when he
13 said, So negotiate something good for us, please

14 MR. THOMPSON: Objection, irrelevant.

15 JUDGE WOODRUFF: Overruled.

16 THE WITNESS: My understanding would be
17 to negotiate a reasonable outcome. It's a very
18 technical subject and to find a balance that strikes
19 all of the parties' interest that everyone could
20 hopefully agree to.

21 BY MR. N. WILLIAMS:

22 Q. And then at the first sentence of the
23 next paragraph it says, We will move out the protected
24 piece when we can determine how much it is. What is
25 he referring to there?

1 A. I would assume, but I would ask that you
2 confer with Mr. Williams, that the protected piece is
3 referring to the discussion we've been having today
4 about protected ADIT and unprotected ADIT.

5 Q. Well, what was your understanding of what
6 he meant by saying, We will move out the protected
7 piece? Move it out from what?

8 A. I'm assuming the total ADIT balances,
9 trying to sort between protected and unprotected.

10 Q. What do you know about composite tax
11 rates for regulatory purposes?

12 A. Generally speaking, that they're a blend
13 of the federal and state tax rates.

14 Q. Do you know if there's only one way to
15 calculate the composite tax rate for a given state and
16 federal?

17 A. It varies state to state. And I believe
18 it depends on rate-making purposes how state portions
19 of the tax rates are deductible for federal purposes
20 or vice-versa and that can have an impact on how
21 composite tax rates are calculated, but I believe that
22 varies state to state.

23 Q. Well, let's limit it to Missouri. Is
24 there only one way to come up with a composite tax
25 rate for an entity operating in Missouri, or are there

1 different ways it can be approached?

2 A. I don't know if there's Commission
3 precedent, per se, or something like that, but my
4 experience through rate cases has been as we evolve
5 through the process, parties generally conform or get
6 agreement on some number. Even if they have
7 differences in how it's calculated, my experience has
8 been, generally speaking, the parties start to align
9 on what they think the value is.

10 Q. All I'm really trying to get out from you
11 is, is for Missouri can there only be one composite
12 tax rate or are there different ways of calculating it
13 so that you might have different -- I'll use the words
14 "experts" with different opinions about what a
15 composite tax -- appropriate composite tax rate should
16 be?

17 A. I'd have to defer to my tax folks. I'm
18 generally used to -- like I said, we start a rate case
19 with different values and we all, generally speaking,
20 start to move towards each other over time, but I'd
21 have to defer to the tax experts on that one.

22 Q. Well, I don't know the prospective
23 financial.

24 Does Empire agree if Empire's rates are
25 changed in this case, the starting point for

1 implementing those changes is an Empire annual revenue
2 requirement -- and this is for the electric
3 operations -- of 489,566,812 dollars?

4 A. I believe you're pulling that value from
5 a schedule that's attached to Ms. North's testimony.

6 Q. Not necessarily. I'm just trying to find
7 out if we have a dispute.

8 A. The revenue requirement calculation, that
9 489 million, is based on different assumptions because
10 it was a black box settlement. I don't believe
11 there's a material dispute as to what that value is at
12 a minimum between our calculation and the Staff's
13 calculation. I don't recall offhand what Mr. Riley's
14 calculation was, but there could be minor differences
15 due to assumptions, but I know at a minimum we're not
16 materially different from the Staff.

17 Q. What I'm asking you is if that number's
18 an acceptable starting point if the Commission ends up
19 in this case ordering rate changes?

20 A. I believe it is, yes.

21 Q. Thank you.

22 MR. N. WILLIAMS: No further questions of
23 this witness at this time.

24 JUDGE WOODRUFF: Move to questions from
25 the Bench.

1 QUESTIONS BY CHAIRMAN HALL:

2 Q. Good morning.

3 A. Good morning.

4 JUDGE WOODRUFF: I -- go ahead. I'm
5 sorry. I'm sorry. I got confused for a moment. Go
6 ahead.

7 BY CHAIRMAN HALL:

8 Q. Did I understand your response to
9 Mr. Woodsmall correctly that if this Commission were
10 to order a reduction in Empire's revenue requirement
11 in line with MECG's and OPC's arguments, that that
12 would have no adverse impact on ratepayers?

13 A. My understanding of his question was I
14 don't -- short answer is yes, but I haven't done any
15 material modeling to go through those scenarios.

16 Q. Well, I think his question is -- actually
17 is a little different. His question concerned cash
18 flow and -- and -- and whether the cash flow was there
19 to -- to cover that reduction in rates.

20 A. Yes, I believe it was.

21 Q. So I guess my question is different. And
22 I'm wanting to know if you think there would be any
23 adverse impact on ratepayers if the Commission were to
24 order a 28 million dollar reduction in the annual
25 revenue requirement?

1 A. I haven't done that modeling from the --
2 so I couldn't tell you definitively. I don't believe
3 so, but I haven't done the actual modeling to say
4 here's how that flows through.

5 Q. Are there other -- other witnesses
6 that -- that will be providing testimony for the
7 Company in this case that might have more insight on
8 potential impact on ratepayers from a 28 million
9 dollar reduction in rates?

10 A. We don't have anyone readily available,
11 but if that's an important question, we can absolutely
12 turn the crank, so to speak, to start those
13 calculations and -- and provide something that's a
14 definitive answer to that question. I apologize for
15 not having a snappy answer, but we don't have anyone
16 here that can provide that.

17 Q. Okay. Thank you.

18 JUDGE WOODRUFF: Anyone wish to recross
19 based on questions from the Bench?

20 MR. THOMPSON: No, thank you.

21 JUDGE WOODRUFF: Any redirect?

22 MS. CARTER: Thank you.

23 REDIRECT EXAMINATION BY MS. CARTER:

24 Q. Mr. Krygier, Mr. Thompson for Staff asked
25 you about good cause to support the Commission taking

1 action under subsection 4 of the statute. Do you
2 recall that?

3 A. Yes.

4 Q. Is there also a Q and A in your pre-filed
5 Direct Testimony that's been admitted as Exhibit 1
6 where you explain good cause for the Commission?

7 A. Yes. It starts at the bottom of page 3,
8 line 24 and then goes on to page 20 -- pardon me,
9 starts at the bottom of page 3, line 24 and then
10 continues on to page 4.

11 Q. And do you have Staff Witness Mark
12 Oligschlaeger's Rebuttal Testimony with you?

13 A. Yes, I do.

14 Q. If you could look beginning on line 17 of
15 page 6.

16 A. I'm there.

17 Q. And then continuing through line 6 on
18 page 7.

19 A. I'm there.

20 Q. You can either read that to yourself or
21 read it aloud. My question is, do you agree with that
22 testimony from Mr. Oligschlaeger?

23 A. I've read it. Can you restate the
24 question?

25 Q. Do you agree with that testimony?

1 A. Yes, I do.

2 Q. Subsection 4 of the statute, do you have
3 that statute with you?

4 A. Yes, I do.

5 Q. Subsection 4, as you heard us discuss
6 already today, is -- provides for a deferral as an
7 alternative to a one-time rate change and a deferral
8 under subsection 3. Is that your understanding?

9 A. Yes, it is.

10 Q. And what is Empire proposing to have done
11 or to do in addition to the deferral under subsection
12 4 if the Commission were to order that?

13 A. Proposing a rate adjustment effective
14 October 1st for a reduction in rates of approximately
15 17.8 million dollars.

16 Q. And would that also constitute good cause
17 for the Commission proceeding under subsection 4 of
18 the statute?

19 MR. N. WILLIAMS: I object to the
20 question, calling for a legal conclusion.

21 JUDGE WOODRUFF: I'll sustain that
22 objection.

23 MS. CARTER: Perhaps I -- I could
24 rephrase. I believe he was asked that -- a very
25 similar question already.

1 JUDGE WOODRUFF: Well, you asked him -- I
2 believe you asked him for the -- what exactly was your
3 objection again?

4 MR. N. WILLIAMS: That it calls for a
5 legal conclusion.

6 JUDGE WOODRUFF: Yeah. And the question
7 was about what the Commission could find.

8 MS. CARTER: No, I asked if he believed
9 that would be good cause.

10 MR. N. WILLIAMS: I don't recall the word
11 "believe" being in the question.

12 JUDGE WOODRUFF: Okay. Well, go ahead
13 and rephrase your question. We'll see what happens.

14 BY MS. CARTER:

15 Q. Do you believe that one-time adjustment
16 that Empire is offering to make, that rate reduction
17 would constitute good cause?

18 A. I believe it does.

19 Q. That's all I have.

20 JUDGE WOODRUFF: Thank you. Then you can
21 step down. You can call your next witness.

22 MS. CARTER: Charlotte North.

23 JUDGE WOODRUFF: Raise your right hand,
24 I'll swear you in.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may inquire.

2 CHARLOTTE NORTH, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MS. CARTER:

5 Q. If you'll please state your name.

6 A. Charlotte North.

7 Q. And who is your employer?

8 A. Liberty Utility Service Corp.

9 Q. And what is your role at Empire?

10 A. I am the supervisor in the Rates and
11 Regulatory Affairs Department for the Central Region,
12 which encompasses the Empire District Electric
13 Company.

14 Q. You prepared and pre-filed Direct
15 Testimony in this case that has been marked Exhibit 2;
16 is that correct?

17 A. Yes.

18 Q. Do you have any corrections to that
19 testimony?

20 A. More of an update. I have provided two
21 additional testimonies in Ar-- one in Arkansas and one
22 in Kansas.

23 Q. With that clarification, if I asked you
24 the questions from your Direct Testimony today, would
25 your answers be substantially the same?

1 A. Yes.

2 MS. CARTER: And, again, this is where I
3 would normally tender for cross, but Ms. North is also
4 a rebuttal witness for Empire.

5 BY MS. CARTER:

6 Q. Ms. North, did you review the Direct
7 Testimony of John Riley filed on July 11, 2018?

8 A. Yes.

9 Q. Did you also review the Corrected Direct
10 Testimony filed on July 17, 2018?

11 A. Yes.

12 Q. Mr. Riley's testimony states that four
13 adjustments are required to be made in this case. The
14 first adjustment proposed by OPC is to reflect the
15 federal tax rate reduction going forward.

16 Do you agree that there should be a rate
17 reduction going forward?

18 A. Yes.

19 Q. And did you perform those calculations
20 for Empire?

21 A. Yes, I've performed those calculations.
22 The amount that we came up for in Missouri amount on
23 an annual basis is 17,837,022 dollars.

24 Q. And is that shown on Schedule 1 to your
25 Direct Testimony?

1 A. Yes, it is.

2 Q. The second adjustment proposed by OPC is
3 a rate reduction related to protected excess ADIT.
4 And the third adjustment proposed by OPC is a rate
5 reduction related to unprotected excess ADIT. Where
6 do you and Mr. Riley agree on excess ADIT?

7 A. Mr. Riley and I agree that there are two
8 buckets that excess ADIT needs to be put into; one
9 being the protected, the other being the unprotected.
10 We also are in agreement that the protected portion of
11 the excess regulatory liability is mandated by some
12 IRS normalization rules and the unprotected portion
13 can be amortized back to our customers through the
14 Commission's discretion. And -- yeah. Sorry.

15 Q. And then you disagree at that point?

16 A. Yes, we -- yes.

17 Q. And I have used, for page references, the
18 red line copy of Mr. Riley's Corrected Direct
19 Testimony. I am looking at page 5, line 4 of that red
20 line Corrected Direct Testimony. He states that
21 Empire's total excess ADIT is 197,477,172. Do you
22 have that there?

23 A. I do.

24 Q. Is this Empire's current total excess
25 ADIT balance?

1 A. That is not what we have calculated, no.

2 Q. How different is that from what Empire's
3 records show as your current excess ADIT balance?

4 A. We have estimated this balance to be
5 120,170,706 dollars.

6 Q. What account of Empire's books and
7 records contains excess ADIT?

8 A. We've recorded this amount to track
9 excess ADIT through Account Number 254430, which is a
10 regulatory liability.

11 Q. And I believe you stated for us the
12 number already. Is that the account that corresponds
13 with the number you gave us, the 120 million?

14 A. It is a component that's in that number.

15 Q. Why is Mr. Riley's number incorrect?

16 A. I believe there's a few reasons why
17 Mr. Riley's number is incorrect. The first being that
18 he has included in his calculations portions that
19 should be attributed to FERC jurisdictional tariffs,
20 our customers for FERC. The second one being that he
21 has also included an amount for a gross-up and we have
22 not in that calculation. And finally, it -- he
23 doesn't appear to have included all -- and valued all
24 of the ADIT balances in his revaluation of the excess
25 ADIT.

1 Q. And will Mr. Williams then address those
2 errors in more detail?

3 A. Yes, he will.

4 Q. On page 9, lines 15 through 16 of the red
5 line copy of Mr. Riley's Corrected Direct Testimony,
6 he states that Empire has been working on calculating
7 excess ADIT since as far back as October of 2017; is
8 that correct?

9 A. Yes.

10 Q. Discussions had begun at that point; is
11 that right?

12 A. Yes. General discussions, yes.

13 Q. When did you make those first early
14 calculations of excess ADIT?

15 A. There was preliminary estimates done in
16 October roughly. However, it wasn't until after the
17 Tax Cuts and Jobs Act was signed into the law and
18 become effective January 1st were we able to really
19 understand the components of it and start
20 understanding that and applying it to our 12/31
21 balances.

22 Q. Did you ever claim that you weren't able
23 to estimate your -- your total excess ADIT balance?

24 A. Not to my knowledge, no.

25 Q. On page 9 at line 17 through 18 of the

1 red line copy of Mr. Riley's Corrected Direct
2 Testimony, he states that Empire has not provided its
3 excess ADIT balance to the Commission. Is that
4 correct, that Empire has not made a filing with the
5 Commission with the excess ADIT?

6 A. That is correct.

7 Q. Mr. Riley notes that Empire did not
8 provide the excess ADIT balances to the Commission in
9 response to the order in AW-2018-0174 or in response
10 to the show cause order in ER-2018-0228. Do you have
11 both of those orders with you?

12 A. I believe I do, yes.

13 Q. Do you believe Empire honestly and
14 completely answered the five questions, subparts A
15 through E, that the Commission asked in the AW docket?

16 A. Yes.

17 Q. And do you believe Empire timely
18 responded to the order in that other docket mentioned
19 by Mr. Riley, the 228 case, the Commission rate case?

20 A. Yes.

21 Q. Has Empire since provided its excess ADIT
22 calculation to OPC and Staff?

23 A. Yes. We provided that estimate through a
24 Data Request response.

25 Q. And is that DR 1301?

1 A. Yes. I believe so.

2 MS. CARTER: How many copies would you
3 like?

4 JUDGE WOODRUFF: Just me and the
5 Commissioner.

6 (Exhibit 7 was marked for
7 identification.)

8 BY MS. CARTER:

9 Q. Did you prepare that Data Request
10 response?

11 A. Yes, I did.

12 Q. And what does that show?

13 A. This Data Request response shows the
14 annual impact and it also has another calculation
15 where we have an estimate of our excess regulatory
16 liability calculation. And we also further attempted
17 to split that balance between protected and
18 unprotected.

19 Q. If I asked you this Data Request right
20 now while you were on the stand and you were able to
21 prepare the answer while we were sitting here, would
22 it be the same as what is the response to Data Request
23 1301 that's been marked as Exhibit 7?

24 A. I believe so, yes.

25 MS. CARTER: I move for the admission of

1 Exhibit 7.

2 JUDGE WOODRUFF: Seven has been offered.
3 Any objections to its receipt?

4 Hearing none, it will be received.

5 (Exhibit 7 was received into evidence.)

6 BY MS. CARTER:

7 Q. What can you do with the total excess
8 ADIT balance?

9 A. Well, we -- in accordance to what we have
10 been ordered to do by the Commission, we can track the
11 balance of the excess regulatory liability and that's
12 what we have done. However, anything further than
13 that we can't do until we get the proper amortization
14 period for that.

15 Q. And is that then making that next step of
16 protected versus unprotected?

17 A. Yes.

18 Q. And will Mr. Williams provide testimony
19 on that?

20 A. Yes.

21 MS. CARTER: That is all the questions I
22 have for Ms. North.

23 JUDGE WOODRUFF: All right. Did you wish
24 to offer Number 2?

25 MS. CARTER: Yes. I would move for the

1 admission of Exhibit Number 2.

2 JUDGE WOODRUFF: Number two has been
3 offered. Any objections to its receipt?

4 Hearing none, it will be received.

5 (Exhibit 2 was received into evidence.)

6 JUDGE WOODRUFF: For cross-examination
7 then, beginning with Staff.

8 MR. THOMPSON: Thank you, Judge.

9 CROSS-EXAMINATION BY MR. THOMPSON:

10 Q. Good morning, Ms. North.

11 A. Good morning.

12 Q. Now, you testified that you reviewed and
13 are familiar with the testimony and schedules provided
14 by Mr. Riley?

15 A. Yes.

16 Q. So Mr. Riley proposes four buckets, is
17 that not correct, to use the term that seems to be
18 accounting lingo?

19 A. I think he proposes four adjustments.

20 Q. Four adjustments. Okay. I apologize.

21 A. That's okay.

22 Q. I don't mean to demean them by calling
23 them buckets. So adjustment number one, would you
24 agree, would be a prospective rate adjustment with an
25 annual value of 17,469,270 dollars?

1 A. For Mr. Riley's adjustment?

2 Q. Mr. Riley's adjustment, that's correct.

3 A. Yes.

4 Q. Okay. And do you agree with that number?

5 A. No.

6 Q. What do you believe the correct number
7 should be?

8 A. And my number is also an estimate, but --

9 Q. Okay.

10 A. -- I believe that that number should
11 be -- and that's reported on my Schedule 1 of my
12 testimony. I have that that number should be
13 17,837,022 dollars.

14 Q. Okay. So your number, would you agree,
15 is slightly larger than Mr. Riley's number?

16 A. Yes.

17 Q. But you do not disagree that that first
18 adjustment should be made?

19 A. Yes. Correct. Going forward.

20 Q. Okay. And I -- am I correct that the
21 Company has entered into a Stipulation and Agreement
22 with some of the parties to make that adjustment as of
23 October 1st going forward?

24 A. Yes.

25 Q. Okay. Now, the second adjustment that

1 Mr. Riley proposes, am I correct in understanding that
2 that is an annual adjustment of 8,729,631 dollars to
3 continue for 20 years?

4 A. That is my understanding of his
5 adjustment, yes.

6 Q. Okay. And do you believe that that
7 number is correct?

8 A. No.

9 Q. What number do you believe would be the
10 correct number for that adjustment?

11 A. Well, I have a number for what I believe
12 the excess regulatory liability estimate is now. I
13 somewhat disagree on the 20 year, but if we want to
14 just state at this point that amount is okay, with
15 that premise. But my balance is 120,170,706 dollars.

16 Q. Okay. So that figure, that 120,170,706,
17 that is the amount that you believe would -- would be
18 subject to return to the ratepayers as protected ADIT?

19 A. Let me just verify that that's not my
20 total balance that I gave you.

21 The number I gave you, I apologize, is
22 the total excess regulatory liability. If you want
23 the un-- or the protected version of that number, that
24 number is 121,457,659 dollars.

25 Q. Okay. Let me make sure I got that

1 correct. 121,457,659; is that correct?

2 A. Yes. That's --

3 Q. And that's your figure for the correct
4 total of the protected ADIT --

5 A. Yes.

6 Q. -- or protected excess ADIT?

7 A. Yes.

8 Q. Okay. And you don't -- do you agree or
9 disagree with the length of the amortization period
10 proposed by Mr. Riley?

11 A. I disagree.

12 Q. Okay. And what do you believe the
13 appropriate amortization period to be?

14 A. I do not know.

15 Q. You do not know. Why don't you know?

16 A. We don't have the ability to know that
17 number at this point in time.

18 Q. What does it depend on?

19 A. It depends on varying reasons. And
20 Mr. Williams would be happy to explain that to you,
21 but it's my understanding we don't have the software
22 installed and available yet to determine that
23 appropriate amortization period at this time.

24 Q. Am I correct in characterizing that as a
25 complicated matter of tax depreciation?

1 A. Yes.

2 Q. And am I further correct in understanding
3 that that is at least one of the reasons that Empire
4 does not believe it is appropriate to begin that flow
5 back now?

6 A. Yes.

7 Q. Because that amortization period simply
8 cannot yet be known precisely?

9 A. Correct.

10 Q. Okay. Now, Mr. Riley also proposed a
11 third adjustment, which is unprotected ADIT; is that
12 correct?

13 A. Yes.

14 Q. And he proposed that 2,288,455 dollars be
15 flowed back annually for a period of ten years. Do I
16 understand that correctly?

17 A. And that's my understanding as well.

18 Q. And do you agree or disagree with that
19 proposal?

20 A. I disagree.

21 Q. You disagree. What do you believe the
22 correct number is?

23 A. We have estimated that our unprotected
24 excess regulatory liability for Missouri is actually a
25 debit balance of 1,286,953 dollars.

1 Q. When you say it is a debit balance and
2 understanding that I'm a layperson, what does that
3 mean?

4 A. That actually means that instead of going
5 back to the customers, we've really incurred costs on
6 behalf of our customers that we need to collect from
7 them.

8 Q. So as compared to the protected ADIT
9 balance we were talking about a moment ago, this would
10 be a negative number; is that correct?

11 A. The -- the protected number is -- would
12 be a credit negative number, yes.

13 Q. So based on that belief that you have, it
14 would not be appropriate then to flow anything back to
15 the customers; is that correct?

16 A. Correct.

17 Q. I think you said you would need to
18 collect money from the customers?

19 A. Yes.

20 Q. Okay. And finally, I believe Mr. Riley
21 proposed a fourth adjustment; is that correct?

22 A. Yes.

23 Q. And this would refer to excess rates
24 collected during what has been referred to as the stub
25 period; is that correct?

1 A. I believe so.

2 Q. Starting January 1, 2018 up to the date
3 of whenever rates are changed. Correct?

4 A. His proposed change of August 30th.

5 Q. Right. And he proposes a change as of
6 August 30th. You don't agree with that, do you?

7 A. No.

8 Q. Okay. And he has proposed to flow back
9 2,895,591 dollars annually for a period of four years;
10 is that correct?

11 A. Yes. I believe that is correct.

12 Q. And you don't agree with that proposal,
13 do you?

14 A. No.

15 Q. Do you disagree with the number?

16 A. I think it's materially correct.

17 Q. You believe the number is correct?

18 A. Uh-huh.

19 Q. More or less?

20 A. Yeah.

21 Q. Okay. But you don't agree that that
22 amount should be flowed back to customers?

23 A. Correct.

24 Q. And what is your reason for that belief?

25 A. It's -- it's my understanding we have a

1 stipulation agreement or a proposal to change our
2 rates effective October 1st going forward.

3 Q. Okay. And so is the existence of that
4 stipulation the only reason you're aware of why that
5 amount should not be flowed back?

6 A. No. It's also my understanding that the
7 rates that we're charging are authorized and that's
8 what we're doing.

9 Q. Okay. So there's at least two reasons
10 why you believe that shouldn't be flowed back?

11 A. Yes.

12 Q. Okay. Now, were you here when I inquired
13 of Mr. Krygier?

14 A. Yes.

15 Q. Okay. And I inquired of him quite
16 briefly. I asked him what his understanding was of
17 the good cause that Empire would rely upon for
18 treatment under subsection 4 rather than under
19 subsection 3. Do you remember me asking him that?

20 A. Yes.

21 Q. And what is your understanding of
22 Empire's good cause?

23 A. Good cause would be that we are changing
24 our rates moving forward effective October 1st.

25 Q. Okay. And is that all of the good cause

1 so far as you know?

2 A. That comes to mind at this point, yes.

3 Q. Very good. Thank you so much.

4 A. Yeah.

5 Q. No further questions.

6 JUDGE WOODRUFF: MEGG?

7 MR. WOODSMALL: Thank you.

8 CROSS-EXAMINATION BY MR. WOODSMALL:

9 Q. Working backwards, you were asked about
10 the reasons for not flowing the stub period back. Do
11 you recall that?

12 A. Yes.

13 Q. Do you believe that Empire's belief that
14 it should not flow the stub period benefits back
15 complies with SB 564?

16 MR. THOMPSON: I'm going to object that
17 that calls for a legal conclusion.

18 MR. WOODSMALL: I asked for her belief.
19 I think we've been through this with several
20 witnesses.

21 JUDGE WOODRUFF: We have. I'll overrule
22 the objection.

23 MR. THOMPSON: Thank you, Judge.

24 THE WITNESS: Could you restate the
25 question, please?

1 BY MR. WOODSMALL:

2 Q. Do you believe that Empire's belief that
3 it should not have to flow back stub period benefits
4 complies with SB 564?

5 A. My belief would be based on the fact that
6 we filed a motion that Senate Bill 564 does not apply
7 to us.

8 Q. If SB 564 is found to apply to you, do
9 you believe that you should flow those benefits back
10 for the stub period?

11 A. No.

12 Q. So you believe that Empire should not
13 have to comply with SB 564?

14 MS. CARTER: I'm going to object to the
15 question. That is not what her testimony was.

16 JUDGE WOODRUFF: I'll sustain that
17 objection. If you want to rephrase your question.

18 BY MR. WOODSMALL:

19 Q. Okay. Do you believe that if SB 564 is
20 found to apply to Empire, that it should have to flow
21 back the stub period benefits?

22 A. If I'm understanding correctly, I believe
23 we -- we are proposing that the good cause be shown
24 going forward effective October 1st and so then the
25 stub period would not be subject to that.

1 Q. But your good cause is essentially based
2 on the belief that SB 564 does not apply to you; is
3 that correct?

4 A. I --

5 MS. CARTER: I'm going to object to these
6 questions that are a legal argument at this point.

7 MR. WOODSMALL: I think we have a problem
8 in that they want to -- it's like the sheriff in the
9 movie Little House -- or Best Little Whorehouse in
10 Texas. They're hiding behind the -- the post. It's
11 at some point SB 564 doesn't apply to us, but for good
12 cause, SB 564 does apply to us. Where are they?

13 You know, and -- and I'm trying to get at
14 what is their good cause if SB 564 does apply.
15 They're pointing to the stipulation, but that
16 stipulation doesn't comply with S-- SB 564.

17 BY MR. WOODSMALL:

18 Q. So if SB 564 does apply, which requires
19 the flow back of stub period benefits, what is your
20 good cause?

21 MR. THOMPSON: Judge, I'm going to join
22 in that objection. I think that the witness can speak
23 to facts that might constitute good cause as she
24 understands it, but I don't believe she can speak to
25 legal arguments --

1 MR. WOODSMALL: And that's fine.

2 MR. THOMPSON: -- that constitute good
3 cause.

4 JUDGE WOODRUFF: I'll -- I'll -- I'll
5 agree she can't -- she's not a lawyer so I'm not going
6 to expect legal arguments from her. I think the
7 second question was -- was appropriate in -- from her
8 layperson's aspect of representing the Company.

9 MS. CARTER: And, Judge, I'm sorry. I
10 also need to have on the record that we object to that
11 question in that the question says the stipulation
12 violates the law. And that's Mr. Woodsmall's legal
13 argument. That is not a fact.

14 JUDGE WOODRUFF: Well, I don't want to
15 get legal arguments from this witness. If you want to
16 rephrase your question or repeat it -- what exactly is
17 your question, Mr. Woodsmall?

18 BY MR. WOODSMALL:

19 Q. What is your factual good cause that
20 exists for not returning stub period benefits if SB
21 564 is found to comply -- to apply to Empire?

22 A. I believe -- I'm not an attorney and I'm
23 probably not understanding what you're -- you're
24 trying to ask me. I believe the good -- show -- can
25 you say that -- good cause is -- is we're wanting to

1 do that going forward and we're willing to do that
2 going forward. But outside of that, I'm not for sure
3 I -- I'm understanding what you're wanting me to say.

4 Q. SB 564 -- is it your understanding SB 564
5 requires you to flow back tax benefits going forward?

6 MS. CARTER: I'm going to object to -- to
7 the question that -- although he's asking for her
8 understanding, it's on legal details at this point
9 that we have argued for hours.

10 JUDGE WOODRUFF: I'm going to sustain the
11 objection. Let's move along. We're not going to get
12 legal opinions from this witness.

13 MR. WOODSMALL: Okay. So after we went
14 through Chris Krygier and he could do it, this witness
15 can't is what you're saying?

16 JUDGE WOODRUFF: Well, it's apparent that
17 this witness can't.

18 MR. WOODSMALL: Okay. If -- if she
19 can't, I'm happy with her telling me she can't.

20 JUDGE WOODRUFF: Yeah. Let's try and
21 move a little differently on this. If you -- you can
22 say "I don't know."

23 THE WITNESS: Okay.

24 JUDGE WOODRUFF: Okay. Ask your
25 question.

1 MR. WOODSMALL: Okay. And that's fine.

2 Yeah.

3 JUDGE WOODRUFF: Do you want --

4 BY MR. WOODSMALL:

5 Q. Is it your understanding that SB 564
6 requires Empire -- if it's found to apply to Empire,
7 requires you to flow back tax payer -- tax benefits
8 going forward?

9 A. I don't know.

10 Q. Okay. If SB 564 is found to apply to
11 Empire, what is your factual good cause for not
12 flowing back the stub period benefits?

13 MS. CARTER: I will object to the
14 question in that it's already been asked of Ms. North
15 and she answered it. Mr. Thompson asked her what the
16 good cause is, she provided a complete answer at --
17 and Mr. Krygier has also already provided testimony of
18 that good cause.

19 MR. WOODSMALL: She could say she doesn't
20 know.

21 JUDGE WOODRUFF: I'll allow the question.
22 You can respond as best you can.

23 THE WITNESS: I don't know.

24 BY MR. WOODSMALL:

25 Q. Okay. Let's move on. What is your

1 understanding of what deferred taxes represents?

2 A. My understanding is it's taxes that
3 you've either paid ahead of time --

4 Q. "You" being who?

5 A. I'm sorry. A company. A company -- the
6 taxpayer. Has paid ahead or behind. It's -- you take
7 what -- because the IRS rules are slightly different
8 than what GAAP rules would be. So then you're always
9 going to have some timing differences between what you
10 have to pay in taxes currently and what you've
11 recorded through your books.

12 Q. So if there's a credit balance in your
13 deferred income taxes, then ratepayers have paid money
14 that the company has not yet paid to the IRS; is that
15 correct?

16 A. That is my understanding, yes.

17 Q. Okay. This is money that is essentially
18 fronted by the ratepayers; is that true?

19 A. It is cash we have received, yes.

20 Q. Okay. Do you pay any type of carrying
21 costs or interest on that credit balance?

22 A. I'm unaware if we do or not. I don't
23 believe we do.

24 Q. You don't believe you do. And if -- do
25 you know if the stipulation -- the stipulation

1 provides for a deferral of the ADIT balances until
2 some point in the next general rate case; is that
3 correct?

4 A. Yes.

5 Q. Does the stipulation provide for any
6 carrying costs on that amount that the Company is
7 going to keep for some additional period of time?

8 A. I don't believe it speaks to that.

9 Q. Okay. Do you think it's appropriate,
10 given that the ratepayers have fronted this money to
11 the Company, that the Company should have to pay
12 carrying costs like any other cash working capital?

13 A. I don't --

14 MS. CARTER: I would object to the
15 question that includes a fact not in evidence, that
16 carrying costs are included on all other accounts.

17 BY MR. WOODSMALL:

18 Q. Okay. If -- do you understand what cash
19 working capital is?

20 A. Yes.

21 Q. And if there is a cash working capital
22 balance, money provided by the ratepayers, the Company
23 essentially pays the carrying costs through the
24 rate-base calculation; is that correct?

25 A. I -- I would believe that's how it works,

1 yes.

2 Q. Okay. And so ADIT is another form of
3 money that the ratepayers have paid similar to the
4 Company, similar to cash working capital; is that
5 correct?

6 A. Yes.

7 Q. Does the Company believe that it is
8 appropriate to pay carrying costs on the ADIT credit
9 balances just as it does for the cash working capital
10 balances?

11 A. I am not the appropriate person probably
12 to make that decision on whether or not carrying
13 charges need to be put to certain balances within our
14 accounts.

15 Q. Do you have an independent reason for why
16 carrying costs should be applied to cash working
17 capital but not to ADIT balances?

18 A. No, I do not.

19 Q. Okay. Finally, on page -- your
20 calculation of the amount to be in the stipulation,
21 17.8 million dollars, you're the person that
22 calculated that; is that correct?

23 A. Yes.

24 Q. And just so we're real clear, that number
25 is only the prospective piece of the -- that

1 represents only the prospective change associated with
2 moving from 35 percent to 21 percent; is that correct?

3 A. If -- if you're asking me does that
4 contain excess ADIT amortization of any form, I would
5 say it does not.

6 Q. Okay. It doesn't represent any
7 amortization of protected, unprotected, net operating
8 losses, any type of ADIT; is that correct?

9 A. That's correct.

10 Q. Okay. And it does not represent any flow
11 back of stub period benefits; is that correct?

12 A. Correct.

13 Q. Okay. But as I understand it, you agree
14 that the stub period benefits can be calculated and
15 that Mr. Riley has calculated those materially
16 correctly, I think is the word you used?

17 A. I would agree the amounts can be
18 calculated, yes.

19 Q. Okay. And so if the Commission believes
20 that it is appropriate to flow those stub periods back
21 to the ratepayers, the amount has been calculated,
22 it's easy to do that math; is that correct?

23 A. I would agree.

24 Q. Okay. No further questions. Thank you.

25 JUDGE WOODRUFF: Public Counsel?

1 MR. N. WILLIAMS: Thank you. May I
2 approach?

3 JUDGE WOODRUFF: You may.

4 CROSS-EXAMINATION BY MR. N. WILLIAMS:

5 Q. I'm handing you what's been marked for
6 purposes of this hearing as Exhibit Number 6.

7 A. Thank you.

8 Q. I'll give you a few minutes to look at
9 it, if you need them.

10 A. Okay.

11 Q. Do you recognize Exhibit Number 6?

12 A. Yes, I do.

13 Q. And what is it?

14 A. It's a Data Request Response prepared in
15 this docket.

16 Q. And who prepared that response?

17 A. Myself.

18 Q. Is that copy true and accurate?

19 A. It looks -- looks accurate, yes.

20 MR. N. WILLIAMS: At this point I'd like
21 to offer -- I'm offering Exhibit 6.

22 JUDGE WOODRUFF: And Exhibit 6 has been
23 offered. Any objections to its receipt?

24 MS. CARTER: No objection subject to
25 check that this is the complete DR response. Pa--

1 pages are numbered beginning with 3 and I'm not -- oh,
2 I'm sorry. I see that. Is that somehow -- our copy
3 maybe is just flipped back and forth?

4 MR. N. WILLIAMS: I can tell you this,
5 that the response referred to another Data Request
6 Response, which is why it's actually -- the response
7 to 1302 is a portion of the response to 1301. So it
8 is -- I'll represent it is a complete response.

9 MS. CARTER: No objection.

10 JUDGE WOODRUFF: Number 6 then has been
11 offered. No objection. It will be received.

12 (Exhibit 6 was received into evidence.)

13 BY MR. N. WILLIAMS:

14 Q. And what is shown on Exhibit Number 6?

15 A. Is there a specific page you're wanting
16 me to state? Just in general?

17 Q. Well, generically what is it?

18 A. Okay. It's essentially a Data Request
19 Response separating the balances of protected and
20 unprotected excess ADIT.

21 Q. This is something Empire prepared in
22 response to a request by Public Counsel asking it to
23 give its estimates of excess accumulated deferred
24 income tax and breaking it into -- the excess into
25 protected and unprotected balances; is that correct?

1 A. Yes.

2 Q. Earlier you were asked to compare a
3 number in Mr. Riley's testimony of some 197 million?

4 A. I believe so, yes.

5 Q. Isn't that a grossed-up number?

6 A. Are you referring to the 197 million
7 that's stated on page 5 of his red line, line 4?

8 Q. I'm not sure where it's on the red line,
9 but yes, I'm referring to the number that's on page 5.

10 A. Okay. Then yes, it appears to be grossed
11 up.

12 Q. And the 120 million you referred to, is
13 that a grossed-up number?

14 A. No, it's not.

15 Q. So part of the difference can be
16 accounted for because of the gross-up factor, can it
17 not?

18 A. I would defer this specific question in
19 more detail to Mr. Williams, but it's my understanding
20 if I read this, it says excess ADIT balance, if I'm
21 reading Mr. Riley's testimony correctly. And so we
22 make a distinction that the excess regulatory
23 liability itself should not have a gross up, but then
24 you go about -- and then you have to perform another
25 gross-up calculation. And so it appears that

1 Mr. Riley's testimony has included both of those and
2 he is deeming both of those as the excess regulatory
3 liability.

4 Q. Well, let's go to page 2 of -- do you
5 have a clean version of his corrected?

6 A. I do, yes.

7 Q. Please refer to that. Page 2, line 22.

8 A. I'm there.

9 Q. And actually -- give me a moment.

10 MR. N. WILLIAMS: May I have a couple
11 more exhibits marked, please?

12 JUDGE WOODRUFF: Sure. The next one
13 would be Number 8 then.

14 MR. N. WILLIAMS: Let's make Number 8 the
15 enlarged version of Schedule JSR-D-4 page 2 of 3.

16 MR. THOMPSON: I'm sorry. What was that
17 again?

18 MR. N. WILLIAMS: Schedule JSR-D-4 page 2
19 of 3.

20 MS. CARTER: Is that Mr. Riley's Schedule
21 4?

22 MR. N. WILLIAMS: Yes. Just the second
23 page of that schedule. And then Number 9 is an
24 enlarged version of his Schedule JSR-D-4, page 3 of
25 the three pages with some additional changes that he

1 will make on the stand.

2 (Exhibits 8 and 9 were marked for
3 identification.)

4 MR. THOMPSON: So which of these is 8 and
5 which is 9?

6 MR. N. WILLIAMS: Protected is 8 and
7 unprotected is 9.

8 MR. THOMPSON: Thank you.

9 MR. N. WILLIAMS: May I approach?

10 JUDGE WOODRUFF: You may.

11 BY MR. N. WILLIAMS:

12 Q. Handing you what have been marked as
13 Exhibits 8 and 9.

14 A. Okay.

15 MS. CARTER: And, Mr. Williams, just to
16 clarify, when I'm looking at these Exhibits 8 and 9,
17 it shows Empire information at the top, but these are
18 Mr. Riley's schedules that were previously marked on
19 the bottom with page 1 of 3, 2 of 3 and 3 of 3; is
20 that correct? It just maybe is not showing on these
21 exhibits.

22 MR. N. WILLIAMS: What they don't show on
23 them are the schedule number that they're an
24 enlargement of.

25 MS. CARTER: Okay.

1 MR. N. WILLIAMS: But it's Schedule
2 JSR-D-4, page 2, Schedule JSR-D-4, page 3 of 3
3 respectively.

4 MS. CARTER: Thank you.

5 BY MR. N. WILLIAMS:

6 Q. You had an opportunity to review them?

7 A. Yes.

8 Q. Looking at Schedule 8 that shows
9 protected, if you go down to line 16 --

10 A. Yes. I'm there.

11 Q. Is that line -- and then looking on --
12 that's roughly 125 million. Correct?

13 A. Are you referring to column M?

14 Q. Yes. I'm sorry. Line 16, column M.

15 A. Okay. Yes.

16 Q. And then on the unprotected, which is
17 schedule -- Exhibit Number 9, you go to line --
18 line 36, again under column M, that number is about
19 16.4 million?

20 A. Yes. I see that.

21 Q. Based on what's shown on these
22 spreadsheets, are those numbers a better comparison to
23 the 120 million that you said before than the 197
24 million?

25 A. Well, I may need you to help me

1 understand because I was thinking he is taking the 197
2 and wanting to amortize that over the 20 years, so.

3 Q. I don't believe that's the case.

4 A. Okay. Can I -- do you mind if I check
5 his calculations then?

6 Q. No, I do not.

7 A. And I --

8 Q. Let me rephrase the question too because
9 what I'm really is asking is, is the sum of the 16 --
10 roughly 16 million and the 120 million a better
11 comparison to your hundred -- let me get my numbers
12 right.

13 The 16.4 million plus the 125 million a
14 better comparison of the position of Public Counsel
15 with -- a better comparison to the 120 million number
16 that you had referred to earlier?

17 A. It was my understanding earlier the
18 197 million that is being discussed in Mr. Riley's
19 testimony captures the total excess ADIT. And that's
20 where -- that's different than the amount of the 120
21 that I -- approximate million that I was discussing
22 earlier.

23 Q. Is the difference gross up?

24 A. It -- it does consider the difference of
25 the gross up, but if you look at his testimony on

1 page 6 --

2 Q. Well, let's assume that the 197 million
3 has been grossed up. The 120 million is not.
4 Correct?

5 A. Okay. Okay.

6 Q. So if you divided the 197 million by the
7 gross-up factor that's shown in the parenthetical,
8 1.313 -- 1 point -- let me try this again. The
9 gross-up factor 1.34135, the 197 is a grossed-up
10 figure. If you divided it by the gross-up factor,
11 then would that number be a better comparison of what
12 Mr. Riley stated as total excess accumulated deferred
13 income tax in comparison to the 120 million dollar
14 figure that you referred to?

15 A. So perhaps a better way -- just make sure
16 I am understanding and we might be able to clear this
17 up. The 197 million I do agree is the gross-up
18 version of the amount of excess regulatory liability
19 that Mr. Riley has calculated. He used that 197
20 million to form the amortization amount that he's
21 wanting to amortize over the 20 years.

22 Instead of using the 130 that he had
23 previously calculated out to not be the gross-up
24 amount, he used the 197. So I just want to make
25 sure -- I'm in agreement that the 197 definitely is

1 the gross-up amount of his amount; however, when he
2 goes to amortize that 20 -- over 20 years, he's using
3 the gross up and not the excess regulatory liability.
4 So there is a distinction there that I want to make
5 sure we're on the same page.

6 Q. I'm not sure about that. I'm just trying
7 to get a comparison that you made between the
8 grossed-up number and a number on a schedule that I
9 believe is not grossed up.

10 A. Okay. So maybe would it -- would it help
11 you if I -- if I gave the number of our excess
12 regulatory liability and then in addition, the amount
13 that we have in a FERC account for our gross up and
14 add those two numbers so we could get that comparison?

15 Q. What I think would really be helpful --
16 and I'm not sure if you're the witness who can do
17 it -- is if you can explain your understanding of the
18 differences between what Mr. Riley has done for
19 protected excess -- estimated protected excess
20 accumulated deferred income taxes and unprotected
21 excess deferred income taxes.

22 A. I believe Mr. Riley would be the best to
23 explain that to you. Or if you want a customer
24 witness, Steve Williams would work as well.

25 Q. Customer witness?

1 A. Sorry. Company witness. Sorry.

2 Q. Okay. I only have so many witnesses and
3 so many opportunities.

4 A. I understand.

5 Q. Referring to pages 3 to 5 of your Direct
6 Testimony, there you refer to a Settlement Agreement
7 that was filed in Case Numbers EO-2018-0092 and
8 ER-2018-0228. Parties, including the Office of the
9 Public Counsel, opposed that agreement, didn't they?

10 A. Yes.

11 Q. And the Commission did not order in
12 either of those cases for Empire to comply with the
13 terms of that agreement with regard to the Tax Cuts
14 and Jobs Act of 2017, did it?

15 A. That's my understanding, yes.

16 MR. N. WILLIAMS: Ask the Commission to
17 take official notice of its Report and Order in File
18 Number EO-2018-0092 issued July 11th of 2018, in
19 particular pages 22 and 23. If you'd like, I can read
20 the portion I'm referring to.

21 JUDGE WOODRUFF: Why don't you go ahead
22 and do that?

23 MR. N. WILLIAMS: Remaining unresolved
24 issues. The parties identified a number of additional
25 issues for the Commission's determination, including

1 the Federal Tax Cuts and Jobs Act of 2017 and the
2 necessity of requirements for additional filings, tax
3 equity financing, conditions on the closing of Asbury
4 and impacts on wildlife.

5 New paragraph. With regard to the
6 reduction in federal taxes, the joint position calls
7 for Empire to make a tariff filing proposing new
8 electric rates to be effective October 1, 2018
9 reflecting a reduction in base rate revenue associated
10 with the Tax Cuts and Jobs Act of 2017.

11 The Commission will decline the
12 opportunity to order a change in rates in this case
13 and will consider that issue in one of two proceedings
14 where Empire's taxes are at issue, File Number
15 ER-2018-0228 or File Number ER-2018-0366.

16 As a result of the Commission's
17 conclusions stated in this Report and Order, the
18 Commission finds that the remaining unresolved issues
19 identified by the parties are moot and need not be
20 addressed further.

21 JUDGE WOODRUFF: And Commission will take
22 note of the fact that that's in that order.

23 MR. N. WILLIAMS: And the effective date
24 is August 10th of 2018.

25 BY MR. N. WILLIAMS:

1 Q. What's your understanding of the
2 composite tax rate for utility rate-making purposes?

3 A. My understanding it's used to gross up
4 revenue requirement.

5 Q. To gross what up for revenue requirement?

6 A. The required -- it's just a component of
7 the revenue requirement. Sorry.

8 Q. And do you know how composite tax rates
9 are calculated?

10 A. Generally, yes.

11 Q. Is there only one way to skin the cat?

12 A. I've -- I don't believe so, no.

13 Q. Have you seen different composite tax
14 rates for operations in Missouri?

15 A. Actually, yes, I have.

16 Q. Have you seen different -- well, for
17 estimating the revenue requirement impacts of
18 flowing -- I'll back up.

19 Did you use a composite tax rate when you
20 calculated the prospective -- the amount to
21 prospectively flow back to customers as a result of
22 the Tax Cuts and Jobs Act of 2017, that roughly
23 17.8 million per year?

24 A. Yes, I did.

25 Q. And did you personally derive that

1 composite tax rate?

2 A. I can't recall if I personally did it or
3 if I had Mr. Williams provide that data point for me
4 when doing that.

5 Q. Is there a material difference between
6 the composite tax rate that Mr. Riley used and the
7 composite tax rate that Empire is using?

8 A. I don't feel it's material, no.

9 Q. What is Empire's excess accumulated
10 deferred income tax as of 12//31/17 at this point in
11 time, to the best of your knowledge? And if you're
12 referring to something, please tell us what.

13 A. Sure. I'm going to refer to the Data
14 Request Response 1301, which I believe was exhibit --
15 well, it's a component of Exhibit 6 that you handed me
16 earlier.

17 JUDGE WOODRUFF: 1302 is 6. 1301 is 7.

18 THE WITNESS: Sorry. I --

19 MR. N. WILLIAMS: They're -- they overlap
20 in content.

21 THE WITNESS: Yeah. Sorry.

22 BY MR. N. WILLIAMS:

23 Q. So you're looking at Exhibit 6?

24 A. Yes.

25 Q. Thank you.

1 A. I have the excess regulatory liability
2 amount in total to be 120,170,706 dollars.

3 Q. And where are you looking? Where on that
4 exhibit are you looking?

5 A. It's page 4 and it's on the column that
6 has an M above it, handwritten M, line number 46.

7 Q. You have Mr. Krygier's copy I think and
8 he put that M there, but --

9 A. Oh, sorry.

10 Q. It's the -- is it the fourth column over
11 where the numbers are appearing from the right --

12 A. Yes.

13 Q. -- or from the left, I guess?

14 And that's Missouri retail according to
15 your calculation?

16 A. Yes.

17 Q. And then you used the -- your current
18 composite tax rate, what did you use for that -- is
19 that what appears on line 44?

20 A. Of 25.64 percent?

21 Q. Yes.

22 A. Yes.

23 Q. And using that composite tax rate, that's
24 how you came up with a gross-up factor of 1.3448; is
25 that correct?

1 A. Yes.

2 Q. And those are rounded numbers. They may
3 not be the actual numbers that were used?

4 A. There is potential there's rounding, yes.

5 Q. And then after you grossed it up, is that
6 what appears on line 48 in column M?

7 A. After the gross up is -- that balance is
8 on line 48.

9 Q. And this reflects both protected and
10 unprotected accumulated deferred income tax?

11 A. Yes.

12 Q. Then if we were to look at the -- let's
13 start with the protected excess accumulated deferred
14 income tax. Where does that appear on this exhibit?

15 A. I believe it's on page 6.

16 Q. And where on page 6?

17 A. Under the column M. If you look at line
18 16, that's the estimated excess ADIT liability.

19 Q. Excess protected?

20 A. Yes.

21 Q. Or protected excess?

22 A. Yep.

23 Q. And then you use the same composite tax
24 rate as what you testified to before?

25 A. Correct.

1 Q. So in terms of a revenue requirement
2 would be -- total amount for -- before amortization or
3 anything, it would be this 163,338,456?

4 A. The 163 represents the reg liability
5 grossed up, yes.

6 Q. And then for unprotected, where would we
7 go to see those numbers?

8 A. We go to page 8. And I believe if you go
9 to -- it's the 1.286 million roughly.

10 Q. Where are you --

11 A. That's on line -- sorry, that's actually
12 on page 9. I had to flip.

13 Q. What line number is that?

14 A. Line 36.

15 Q. And that 1.286 point -- or I'm sorry,
16 1,286,953 shown in the middle column?

17 A. Yes.

18 Q. And then did you use the same composite
19 tax rate of 25.64 rounded?

20 A. Yes.

21 Q. So the estimated revenue requirement
22 impact would be which number?

23 A. The gross up of the excess ADIT
24 regulatory liability would be the 1.7-- 1,730,718
25 dollars.

1 Q. So line 38 on column M?

2 A. Correct.

3 Q. And I notice that you state with column
4 M -- there is another column that refers to Missouri
5 that's wholesale. Did you not include that column
6 because it's wholesale?

7 A. I did not include that column because
8 that's FERC regulated jurisdiction.

9 Q. And did you decide what was included and
10 not included or did someone else do that?

11 A. Can you explain what you mean by that?

12 Q. Well, on this -- this is actually an
13 Excel file, is it not?

14 A. Yes, it is.

15 Q. Did you decide what parameters were to be
16 entered into the Excel file or did someone else do
17 that?

18 A. I'm not understanding that. Is there a
19 particular component?

20 Q. Well, what's the source of the balances
21 that are shown on -- looks like they're all on
22 probably column C.

23 A. Our general ledger.

24 Q. So you pulled information over into a
25 file?

1 A. Yes. I took the balances out of our
2 general ledger account for each one of our ADIT
3 accounts and went from there.

4 Q. You did that personally or someone else
5 did that?

6 A. I did that personally.

7 Q. And then who -- I may have asked this
8 before, but who determined the composite tax rate you
9 used?

10 A. I -- I can't recall if I personally
11 pulled it from another file or if I had Mr. Williams
12 provide that number to me.

13 Q. And did that number change at different
14 points in time?

15 A. Not to my recollection, but it could have
16 at some point.

17 Q. Who determined which of these general
18 ledger accounts the balances were pulled over into
19 this file?

20 A. Well, I -- I suppose I did.

21 Q. And what was your criteria for pulling it
22 over?

23 A. I pulled all the balances that
24 represented ADIT according to the guidelines that
25 Mr. Williams gave me.

1 Q. Turning to -- have you seen Mr. Riley's
2 corrected -- well, it doesn't matter which one it
3 is -- the schedules attached to Mr. Riley's Direct
4 Testimony?

5 A. Yes.

6 Q. And have you seen, in particular, the
7 e-mails that are in Schedule JSR-3 that comprises ten
8 pages?

9 A. Yes.

10 Q. And there's a name Charlotte North that
11 appears on a number of those e-mails as the sender or
12 the recipient. Is that you?

13 A. Yes.

14 Q. And if you received e-mail, did you, in
15 fact, read it?

16 A. Made every attempt, yes.

17 Q. Well, did you read all of these e-mails
18 at the time you received them -- at or near the time
19 you received them?

20 A. I believe so.

21 Q. Do you know when Empire first estimated
22 its excess accumulated deferred income taxes as of
23 12/31/17 related to the Tax Cuts and Jobs Act of 2017?

24 A. I don't know the specific date, but it
25 would be somewhere in January.

1 Q. Was there an estimation performed for the
2 impacts of the 2017 -- or the Tax Cuts and Jobs Act of
3 2017 before January of 2018?

4 A. I'm sure there was.

5 Q. Do you have any idea as to when?

6 A. Could be -- you know, I believe they
7 started looking at it in the fourth quarter of 2017.

8 Q. Was Em-- prior to the Tax Cuts and Jobs
9 Act of 2017, was Empire tracking protected excess
10 deferred income tax -- accumulated deferred income tax
11 due to the 1986 Tax Act?

12 A. To my knowledge, no, but you may want to
13 confirm that with Mr. Williams.

14 Q. Do you know if Empire has a software
15 license that allowed -- that will enable it to
16 perform -- I'm going to use a term ARAM on the -- to
17 come up with an amortization period for its protected
18 excess accumulated deferred income tax?

19 A. I understand that they are working on
20 getting that software installed and implemented to do
21 just that calculation.

22 Q. Does Empire currently have the software?

23 A. I am not aware if they do or not. That
24 would be Mr. Williams that needs to answer that.

25 Q. And do you know when Empire licensed the

1 software that has that capability?

2 A. As I mentioned, I'm not for sure. You'd
3 have to ask Mr. Williams.

4 Q. Do you know anything about when Empire
5 licensed the software?

6 A. No, I do not.

7 Q. Does Empire book its protected
8 accumulated deferred income tax separately from its
9 unprotected accumulated deferred income tax?

10 A. As I mentioned earlier, I don't believe
11 they do, but please ask Mr. Williams.

12 Q. It's not doing so currently?

13 A. Not to my knowledge, but I would ask that
14 you ask him.

15 Q. Going back to Schedule JSR-D-3, the
16 e-mails, there are some other -- there are some people
17 identified as senders or recipients in those e-mails
18 aside from you, and you already identified yourself as
19 Charlotte North. On some of those e-mails there's a
20 Steve Williams?

21 A. Uh-huh.

22 Q. Who is that Steve Williams?

23 A. He's here today.

24 Q. And Chris Krygier identified on e-mails,
25 who would that be?

1 A. He's also here today.

2 Q. And there's a Rob Sager on some of those
3 e-mails. Who is he?

4 A. Rob was the -- I believe the vice
5 president of finance for the Central Region.

6 Q. There's a Jeff Lee. Who is he?

7 A. He was the former director of finance for
8 the Central Region of accounting. Sorry.

9 Q. There's a Travis Gray who's identified --
10 or named on some of those e-mails. Who is he?

11 A. He's a personnel in our Property Tax
12 Department.

13 Q. There's a Jeff Johnson that appears on
14 some of the e-mails. Who is he?

15 A. Can you specify -- point to which one
16 that is? That name doesn't sound familiar.

17 Q. Give me a moment or two. On page 6 I
18 believe is where he shows up.

19 A. Okay. I'm not familiar with who Jeff
20 Johnson is, but the e-mail came from Steve Williams so
21 I would ask that you may ask him.

22 Q. And there's also a Richard T-i-w-a-l-d.
23 Do you know who he is?

24 A. No, I do not.

25 Q. And who is Julie -- there's a Julie Maus.

1 Do you know who she is?

2 A. Yes. She was a former director of
3 communications, I believe, for Empire.

4 Q. There's a David Swain. Who is he?

5 A. He's our president for the Central
6 Region.

7 Q. And there's someone named Blake Mertens.
8 Who is he?

9 A. Vice president of operations for Central
10 Region.

11 Q. There's a Brent Baker. Who is he?

12 A. He's also vice president for the Central
13 Region.

14 Q. There's a Peter Eichler. Who is he?

15 A. Peter works in Oakville, and I apologize,
16 I don't know his exact title.

17 Q. There's a Jillian Campbell. Who is that
18 person?

19 A. Can you point me to which one that one
20 is? I'm not familiar with who Jillian Campbell is.

21 Q. Are you familiar with who Jill Schwartz
22 is?

23 A. Yes, I am.

24 Q. And who is she?

25 A. She's my boss. But she's the senior

1 manager in the Rates and Regulatory Affairs
2 Department.

3 Q. And there's an Elizabeth Dumm. Do you
4 know who she is?

5 A. Yes, I do.

6 Q. And who is she?

7 A. Again, I don't know her name -- or her
8 title, but she -- she does work for Liberty Utilities,
9 I believe.

10 Q. I think this is the last one. There's a
11 Mike Beatty. Who is he?

12 A. A Mike Beatty.

13 Q. Sorry.

14 A. That's okay. He's a vice president of
15 gas operations in Central Region.

16 Q. Has Empire started amortizing excess
17 accumulated deferred income taxes on its financial
18 books?

19 A. Not to my knowledge, but I would ask
20 Mr. Williams.

21 Q. I asked Mr. Krygier this. I'm going to
22 ask you too. Does Empire agree if Empire's rates are
23 changed in this case, the starting point for
24 implementing those changes is an Empire annual revenue
25 requirement of 489,566,812 dollars?

1 A. I believe that's correct.

2 Q. Thank you.

3 JUDGE WOODRUFF: All right. Before we
4 come up for questions from the break -- questions from
5 the Bench, we'll break for lunch. Let's come back at
6 1:45.

7 (A recess was taken.)

8 JUDGE WOODRUFF: All right. We're back
9 from lunch and ready to get started again. Just
10 before we stopped, cross-examination for Charlotte
11 North finished so now we're ready for questions from
12 the Bench.

13 QUESTIONS BY CHAIRMAN HALL:

14 Q. Good afternoon.

15 A. Hi.

16 Q. You indicated I believe in direct
17 testimony here today that you could not determine the
18 appropriate amortization period for the excess ADIT;
19 is that correct?

20 A. At this time, yes.

21 Q. Why is that?

22 A. We do not have the technology currently
23 available to us to be able to make that calculation
24 yet.

25 Q. Can you explain that to me?

1 A. Sure. I'll do my best.

2 Q. Okay.

3 A. It's a -- it's the calculation --

4 Q. I misheard that. What -- what is the
5 appropriate amortization period -- based on what
6 principle are we to determine the amortization period?

7 A. We feel at this time that we have the
8 records to support the ARAM method, which is required.
9 And so in order for us to do that though we need to
10 install the software and go in and look at it by asset
11 by asset to determine at what point our book
12 depreciation finally catches up with our tax
13 depreciation.

14 Q. Okay. So you're lacking software to do
15 that at this --

16 A. At this moment, but --

17 Q. Has that software been ordered?

18 A. It's my understanding that we should have
19 those calculations by the fourth quarter of this year.
20 Whether or not the software's been ordered or not, I'm
21 not positive. Mr. Williams would be able to answer
22 that for you.

23 Q. So wouldn't -- wouldn't the -- wouldn't
24 that fact be a good reason why we shouldn't require
25 ADIT, both protected it and unprotected, to be

1 included in rates going forward? We don't -- we don't
2 know what it should be.

3 A. Correct.

4 Q. Why is that not good cause?

5 A. It could very well be.

6 Q. Okay. Are you familiar with Accounting
7 Authority Orders?

8 A. Somewhat, yes.

9 Q. Are you familiar with the standard that
10 this Commission employs to determine whether or not an
11 AAO is appropriate?

12 A. Generally.

13 Q. So the -- have you had an opportunity to
14 look at those factors in connection with the excess
15 ADIT in this case?

16 A. I have not, no.

17 Q. Are you familiar enough with the books
18 that you could pontificate on whether or not the
19 amount at issue is material?

20 A. The amount of the excess ADIT is
21 material?

22 Q. Correct.

23 A. I would say it is material, yes.

24 Q. And why do you say that?

25 A. Just because of the estimated value that

1 we have of it now. It's a -- it's 120 million
2 roughly.

3 Q. Is there a standard that is -- that is
4 sometimes employed to determine materiality?

5 A. I've seen that employed. I don't know
6 if -- like if Empire specifically has a threshold for
7 materiality.

8 Q. Do you think that the amount of excess
9 ADIT at issue in this case is an extraordinary event
10 or is it something that happens every other day?

11 A. It does not happen every other day. I
12 don't know if I would -- I don't know the specific
13 definitions of extraordinary, but it is not an every
14 day event, no.

15 Q. And -- and you would agree that it's
16 non-recurring, the requirement to adjust an ADIT
17 balance?

18 A. I would imagine the only time it would
19 occur again is if there is another change in taxes.

20 Q. And the last time that occurred at
21 this -- at this level was around 1986; is that
22 correct?

23 A. That's my understanding.

24 Q. I have no further questions. Thank you.

25 JUDGE WOODRUFF: All right. Any recross

1 based on those questions from the Bench?

2 MR. N. WILLIAMS: Yes.

3 MR. THOMPSON: No, thank you, Judge.

4 MR. WOODSMALL: Briefly, Your Honor.

5 RECROSS-EXAMINATION BY MR. WOODSMALL:

6 Q. You were asked some questions by the
7 Chairman about the amortization period and using ARAM.
8 Do you recall that?

9 A. Yes.

10 Q. Just so it's clear, the requirement to
11 use ARAM only applies to the protected portion of the
12 excess ADIT; is that correct?

13 A. That is my understanding, yes.

14 Q. Okay. And for the unprotected portion,
15 using Empire's words, that amortization period is at
16 the whim of the Commissions; is that correct?

17 A. It is at their discretion, yes.

18 Q. Okay. So the Commission -- that --
19 that's not dependent on getting the software, is it?

20 A. Actually, I think it is dependent on
21 that.

22 Q. The amortization period for the
23 unprotected --

24 A. Oh, the amortization period, no. But the
25 software would allow us to get the balance of that

1 amount.

2 Q. Okay. And also then, you were asked
3 about whether getting this software is good cause for
4 deferring. This software is not necessary for
5 treating and determining the stub period amount; is
6 that correct?

7 A. The -- can you clarify what you mean by
8 the stub period?

9 Q. The stub period is the portion between
10 January 1 and the date that rates change
11 prospectively.

12 A. And are you referring to the excess ADIT
13 portion?

14 Q. No. I'm just referring to the revenue
15 requirement change associated with lowering corporate
16 income taxes.

17 A. No. We would not need the software to do
18 that portion.

19 Q. Okay. So good cause being obtaining the
20 software would be applicable to the protected ADIT,
21 but that same good cause wouldn't apply to unprotected
22 or for the stub period; is that correct?

23 A. I would agree with the stub period
24 statement, but again, the -- the balance of the
25 unprotected excess ADIT needs to have that software.

1 Q. Fair enough. Thank you.

2 A. Uh-huh.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. N. WILLIAMS: Thank you.

5 RECROSS-EXAMINATION BY MR. N. WILLIAMS:

6 Q. Going to the questions you received from
7 Commissioner -- or Chairman Hall regarding the excess
8 accumulated deferred income tax and the amortization
9 period, has Empire estimated an amortization period
10 for the protected excess accumulated deferred income
11 tax?

12 A. I believe we've used -- in some e-mails
13 I've seen some correspondence that it's between 40 to
14 50 years potentially.

15 Q. If we assume it's 120 million dollars and
16 use the 40 million -- or I mean the 40-year period,
17 then that would be about 3 million per year. And then
18 if you were going to roll that into rates, you would
19 gross it up; is that correct?

20 A. I don't think I understand the gross-up
21 portion, but the for-- first portion of your statement
22 I would agree with.

23 Q. The cash impact, if you were to use a
24 40-year amortization period, would be something over
25 3 million dollars a year?

1 A. So the 120 divided by 40?

2 Q. Yes.

3 A. Sorry. I'm -- let me check that out for
4 you.

5 Yes.

6 Q. And then you used a combined tax factor
7 of some -- or composite tax factor of 25.64 percent?

8 A. I believe that sounds correct.

9 Q. And if you were then to apply that
10 factor, it would increase the amount by something like
11 a third, so 4 million dollars a year, correct,
12 roughly?

13 A. If you're applying that. But I believe
14 Mr. Williams -- Steve Williams from Empire's going to
15 explain why that -- that particular portion is not
16 what actually flows through a revenue requirement.

17 Q. And when is it that Empire initiated
18 steps to acquire the software that it needs to do the
19 ARAM?

20 A. That part I'm -- I wasn't part of that
21 discussion on whether -- when they made that decision
22 or if they've made the decision to do that. I've seen
23 some e-mails stating that they needed to obtain the
24 software.

25 Q. Do you know if there is a witness who's

1 testifying today who does know?

2 A. Yes. It's Mr. Williams.

3 Q. And you said you have the records to
4 conduct ARAM. As of what date did you have those
5 records?

6 A. It's my understanding we would have had
7 those records when we purchased assets, but there's no
8 reason to -- to keep it in a protected and unprotected
9 portion unless there is a tax change like this.

10 Q. Well, if we're doing it for purposes of
11 the Tax Cut and Jobs Act of 2017, you would have
12 needed records through the close of 12/31/17, would
13 you not?

14 A. I would assume so, but I would ask that
15 you verify that with Mr. Williams.

16 Q. Well, let's assume that you do.

17 A. Okay.

18 Q. When would you have had that information?

19 A. The records to support the balances at
20 12/31/2017?

21 Q. When you would have ha-- you pulled
22 information out of your general ledger, did you not?

23 A. Yes.

24 Q. And that was as of 12/31/17. Correct?

25 A. Yes.

1 Q. When would there have been -- when would
2 that information first have been in there in terms of
3 balances as of 12/31 in your general ledger --
4 12/31/17, I'm sorry?

5 A. It's a cumulative balance. Those
6 balances have built and added and subtracted for
7 years, so I'm not for sure which balances you're
8 referring to.

9 Q. Well, I'm saying if you do a cut-off as
10 of 12/31/17 in terms of the information content, when
11 would that information have been present in your
12 general ledger for a cut-off of that date, if you
13 know?

14 A. I don't think I'm understanding the
15 question.

16 Q. Okay. You post -- you get information,
17 some documentation, some event occurs, an invoice
18 comes in and then it gets post to your books and
19 records.

20 A. Yes.

21 Q. When would your books and records have
22 been closed -- all the information as of that 12/31/17
23 cut-off date have been present in your accounting
24 system?

25 A. I'm not in the Accounting Department, but

1 I believe they -- they have a cut-off process for
2 their 12/31 financial statements that's March-ish
3 maybe of 2018. But that's just a guess. I'm not
4 involved in the closing process of our books at
5 12/31/17.

6 Q. Well, Empire a Data Request Response
7 providing estimated excess accumulated deferred income
8 taxes as of 12/31/17. It was provided on July 5th of
9 this year.

10 A. Uh-huh.

11 Q. Were the books closed before then?

12 A. Yes.

13 Q. And how do you know that?

14 A. Well, various other regulatory filings
15 that I've had to make would have -- I've had -- would
16 have had to request from the financial team those
17 closed or finalized trial balances.

18 Q. And when was the date -- the earliest
19 date you recall where you obtained those closed
20 finalized balances for 12/31 of '17?

21 A. To my recollection, there -- there --
22 those balances didn't close until the end of first
23 quarter, maybe even the beginning of second quarter of
24 2018.

25 Q. But before May of this year?

1 A. Yes. I believe so.

2 Q. No further questions.

3 JUDGE WOODRUFF: Any redirect?

4 MS. CARTER: No. I have no redirect.

5 Thank you.

6 JUDGE WOODRUFF: If you would call your
7 next witness.

8 MS. CARTER: Steve Williams.

9 JUDGE WOODRUFF: Please raise your right
10 hand.

11 (Witness sworn.)

12 JUDGE WOODRUFF: Thank you. You may
13 inquire.

14 STEPHEN WILLIAMS, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MS. CARTER:

17 Q. If you would, please state your name.

18 A. My name is Stephen C. Williams.

19 Q. Who is your employer?

20 A. I'm employed by Liberty Utility Service
21 Corp.

22 Q. What is your role at Empire?

23 A. My role is domestic -- excuse me, manager
24 of tax planning.

25 Q. You didn't prefile testimony in this

1 case. Correct?

2 A. That's correct.

3 Q. But you are testifying as a rebuttal
4 witness in response to John Riley's testimony; is that
5 right?

6 A. That's correct.

7 Q. Did you review the Direct Testimony of
8 John Riley filed on July 11, 2018?

9 A. Yes, I did.

10 Q. Did you review the schedules attached to
11 that July 11th testimony?

12 A. Yes, I did.

13 Q. And did you review the work papers that
14 were provided for that July 11th testimony?

15 A. Yes, I did.

16 Q. Did you also review the Corrected Direct
17 Testimony filed on July 17?

18 A. Yes, I did.

19 Q. And with that corrected testimony, was
20 there a red line version provided showing the changes
21 from the original filing?

22 A. Yes, there was.

23 Q. Were there any new schedules or work
24 papers provided for the corrected testimony?

25 A. No, there were not.

1 Q. If you could briefly describe your
2 education and professional experience for us?

3 A. I'm a graduate of Missouri Southern State
4 University with bachelor's degrees in history and
5 accounting. I sat for the CPA exam in November 1979
6 and passed on the first sitting. I was employed by a
7 regional public accounting firm for 17 years after --
8 as -- primarily in the tax area, after which I went to
9 work for a publicly traded trucking company for two
10 years where I did financial budgeting projection work
11 and tax work.

12 After that, I went to a Fortune 500
13 manufacturing company and I served as -- started as
14 assistant tax manager and moved eventually to director
15 of domestic taxes. I spent 14 years there. I came to
16 Empire District about six years ago. I spent the
17 first four years of that doing financial planning,
18 revenue projections primarily. And then two years
19 ago, I became tax -- tax planning manager.

20 Q. If you look at the red line version of
21 Mr. Riley's corrected testimony -- do you have that
22 with you?

23 A. I don't believe so. No, I don't.
24 Thank you.

25 Q. Do you have that in front of you now?

1 A. Yes, I do.

2 Q. And did you review that?

3 A. Yes, I did.

4 Q. Prior to giving your rebuttal testimony
5 here today?

6 A. Yes.

7 Q. And that was prepared by Mr. Riley and
8 provided to the parties; is that correct?

9 A. As far as I know, yes. Uh-huh.

10 Q. Looking at, let's see, page 6, lines 9
11 through 10 of that red lined version, Mr. Riley says
12 that the Company indicated that it cannot sufficiently
13 identify the asset lives to follow ARAM, the average
14 rate assumption method, for flowing back excess ADIT.
15 Do you agree with this statement by Mr. Riley?

16 A. No, I do not.

17 Q. Does Empire believe it must use ARAM?

18 A. Yes, we do.

19 Q. And why is that?

20 A. The use of ARAM is mandatory if a
21 taxpayer possesses the book and tax vintages or years
22 of -- that assets were placed in service. The
23 objective of that is to be able to match depreciation
24 deductions for booked and tax purposes on each
25 individual asset over the course of history. And that

1 determines when the excess deferred income taxes
2 associated with that asset are released for refund to
3 customers.

4 Q. And so I think did that also cover what
5 ARAM requires? Was that -- or is that a separate
6 question?

7 A. Well, ARAM requires the -- that tax -- a
8 taxpayer have the sufficient records or the fixed
9 asset information for both book and tax purposes to be
10 able to perform those calculations.

11 Q. And did you answer an OPC DR on that
12 subject? 1304, I believe it was.

13 A. I don't believe I answered an OPC DR.
14 May have.

15 Q. Yeah. Let me show you this one. Served
16 by OPC on Empire.

17 MS. CARTER: What's our next exhibit
18 number?

19 JUDGE WOODRUFF: We're up to Number 10.

20 MS. CARTER: I'll have this marked as
21 Exhibit 10.

22 THE WITNESS: Yes, I did respond to that.
23 Excuse me.

24 BY MS. CARTER:

25 Q. And so the DR response there to OPC DR

1 1304, you personally prepared that response?

2 A. Yes, I did.

3 Q. If I asked you that same question here
4 today and had you prepare the response if we had the
5 time, would it be the same?

6 A. Yes, it would.

7 MS. CARTER: Would move for the admission
8 of Exhibit 10.

9 JUDGE WOODRUFF: 10 has been offered.
10 Any objections to its receipt?

11 Hearing none, it will be received.

12 (Exhibit 10 was received into evidence.)

13 BY MS. CARTER:

14 Q. So ARAM is about flowing back the excess
15 ADIT; is that correct?

16 A. That's correct.

17 Q. What is excess ADIT?

18 A. Excess ADIT occurs when there's been a
19 change in tax rates between when the original ADIT was
20 determined and when the ADIT will subsequently be--
21 become payable taxes.

22 Q. When is ADIT -- excess ADIT correct--
23 created as opposed to your ADIT balances? When do you
24 create excess ADIT balances?

25 A. Excess ADIT would be created upon the

1 enactment of a lower tax rate.

2 Q. And did that happen recently?

3 A. Yes, it did. December 22nd, 2017 with
4 the enactment of the Tax Cuts and Jobs Act.

5 Q. So any excess ADIT on Empire's books
6 wouldn't have existed until after January 1st or as of
7 January 1st, 2018; is that correct?

8 A. We wouldn't have had an accurate balance
9 on the books as of January 1st, 2018 because the
10 activity for the month of December had not been
11 processed and posted to the general ledgers.

12 Q. But an excess ADIT account isn't even
13 created until after January 1; is that correct?

14 A. No. Technically the account was created
15 upon enactment and we did have a balance recorded as
16 of 12/31/17. We're required under Generally Accepted
17 Accounting Principles to re-value deferred income
18 taxes at -- whenever a tax rate change is enacted, and
19 that was on December 22nd.

20 Q. And I'm sorry. I apologize. Yes, delay
21 between enactment and effective date. So that is the
22 difference there?

23 A. Yes. The effect -- the rates were
24 effective December -- excuse me, January 1st, but
25 the -- it's considered enactment when it's signed by

1 the President, and that was the 22nd.

2 Q. So the excess ADIT was created by the
3 enactment of the Tax Cuts and Jobs Act?

4 A. That's correct.

5 Q. And then what happens next with this
6 total excess ADIT amount?

7 A. The total excess ADIT is then divided
8 into two buckets, term that's been used already today.
9 One bucket is a protected bucket. The protected
10 bucket is governed under the reguliz-- regu--
11 normalization regulations 1.168-L -- or -- and it
12 requires that de-- excess ADIT with regard to
13 differences between book and tax depreciation related
14 to methods and lives -- differences in methods and
15 lives is -- is the term protected ADIT and it is
16 subject to the requirements if a taxpayer meets the --
17 the record requirements, that it can only be refunded
18 using the ARAM method.

19 Q. Is it possible for Empire to accurately
20 determine the protected and unprotected excess ADIT
21 balances at this time?

22 A. Not at this time.

23 Q. And why is that?

24 A. We lack the technological resources to
25 perform the very complex computations, which involve

1 matching book and tax assets, stripping out the
2 differences in depreciation that are not related to
3 methods and lives and then projecting those balances
4 forward to see when and what point in time in future
5 years the book depreciation begins to exceed the tax
6 depreciation.

7 Q. I think I took out of that that there are
8 annual calculations that may need to be made over
9 decades?

10 A. Yes. The excess ADIT cannot be returned
11 any faster than -- or it's returned over the remaining
12 life of the as-- book life of the asset. And
13 considering public utility property may have asset
14 lives of between 40 to 50 years for book purposes and
15 also considering that we made a major addition a
16 couple of years ago with our Riverton 12 facility,
17 it's very likely that this computation will stretch
18 out for 40 or 50 years.

19 Q. When will Empire be able to accurately
20 make the determinations of protected versus
21 unprotected?

22 A. We are estimating -- we will need to have
23 the information by the fourth quarter of this year.

24 Q. Is Empire's estimated total excess ADIT
25 balance a final number that you know is correct at

1 this point?

2 A. It's not a final number given -- based on
3 the way that income taxes and tax provisions are
4 computed at year end under Generally Accepted
5 Accounting Principles. At year end, we're -- we don't
6 have all the necessary facts. We make our best
7 estimates of what is our tax liability and that's
8 recorded.

9 During the summer we get into the weeds
10 and actually prepare the tax returns. And those will
11 generally result in adjustments. For example, you
12 know, we have estimated what our depreciation expense,
13 our tax depreciation, booked depreciation will be for
14 2018 based on the best information that we had at that
15 time.

16 Over the summer we will actually make the
17 computations and also take a look at the fixed asset
18 activity to make -- to apply IRS repair regulations to
19 make sure we capitalize only the property -- the
20 proper amount of equipment and depreciate that. So
21 there could be some substantial variances between what
22 the balance that was booked at the end of the year and
23 the balance that ends up being what was truly as of
24 December 31st.

25 Q. When should Empire have the true excess

1 ADIT balance as of December 31st, 2017?

2 A. Our director of tax wants to have the
3 returns filed by September 15th and a true-up booked,
4 it's called a provision to actual adjustment. It's
5 very com-- it's -- well, it's required on publicly
6 traded companies. And we plan on having that by
7 September 15th of this year.

8 Q. So you should have, around September, the
9 final excess ADIT amount and then shortly thereafter
10 you should have the protected and unprotected amounts?

11 A. Correct.

12 Q. On page 3 of Mr. Riley's red line
13 corrected testimony, he states that Empire's current
14 protected excess ADIT is 130,161,870. Then also on
15 page 3 he states that Empire's current unprotected
16 excess ADIT is 17,160,835. Might those numbers be
17 correct?

18 A. It would be a million-to-one shot that
19 they would be correct.

20 Q. And why do you say that?

21 A. Because there hasn't been -- we -- Empire
22 hasn't had the -- doesn't have the technical resources
23 to compute those two balances yet based on the
24 tremendous amount of detail that is involved in the
25 computations. And it -- you know, it is unreasonable

1 to expect somebody to be able to make a high-level
2 computation, especially one that, you know, involves
3 actual cash payments out to customers or what could
4 have to be money taken back from customers.

5 Q. And that's my next question. What would
6 be the consequences for Empire's customers if the
7 Commission were to accept OPC's recommended protected
8 and unprotected excess ADIT balance and adjust
9 Empire's revenue requirement at this time?

10 A. If an incorrect balance was ordered, then
11 it could create a situation where taxpayers had been
12 over-refunded ADIT, excess ADIT, in which case that
13 would have to be recovered through a subsequent case
14 and taxpayer -- or customer rates would go up.

15 Q. And is there a penalty for a
16 normalization violation?

17 A. Yes. Normalization violation --
18 normalization is the tax terminology for -- or the
19 regulatory terminology for a deferred income tax
20 system. It's -- the theory behind it is to smooth out
21 and not benefit one generation over another with the
22 benefits of tax incentives which are designed to spur
23 investment.

24 The penalty for violation of
25 normalization -- and violation of normalization would

1 occur if we did not use the ARAM method when we had
2 the information to do so -- is that the utility would
3 lose the ability to use accelerated depreciation in
4 the future, plus would have to pay, as a penalty tax,
5 the amount that had been over-refunded to customers.

6 Q. And that could all be the result of using
7 those incorrect excess ADIT numbers?

8 A. Yes. If the funds -- the excess ADIT
9 were returned to customers any faster than is
10 determinative of the ARAM method, that would
11 constitute a normalization violation under both IRS
12 regulations and I believe it's Section 13.001 of the
13 TCJA.

14 Q. On page 10, line 10 of Mr. Riley's red
15 line corrected testimony, he said that Empire has been
16 dragging its feet. Do you agree?

17 A. No, I do not.

18 Q. Why hasn't Empire been making
19 determinations of protected versus unprotected all
20 along?

21 A. Protected versus unprotected is a very
22 complex computation. The only time it becomes
23 pertinent is if there is a situation where excess ADIT
24 is created. And that occurs only when there's been a
25 decrease in a tax rate. The last decrease in federal

1 tax rates was in 1986.

2 In the intervening time, I believe in
3 1993 there was a 1 percent increase in tax rates,
4 which would not have triggered excess ADIT. And until
5 2017, there were no other reductions in federal tax
6 rates.

7 Q. So between 1986 and then the end of 2017,
8 beginning of 2018, there have been no reason for
9 Empire to be making those calculations between
10 protected and unprotected?

11 A. That is correct.

12 Q. Do you have Empire's response to OPC DR
13 1301 there in front of you?

14 A. 1301.

15 Q. It's been marked Exhibit 7, but what's up
16 there probably wouldn't have it on there.

17 A. I have Exhibit 6.

18 Q. Well, and you might not need it. We'll
19 see.

20 A. All right.

21 Q. I would like you to look at Mr. Riley's
22 Schedule JSR-D-4.

23 A. Yes.

24 Q. And is there anything you would like to
25 point out about that schedule?

1 A. Yes. I took a look at the schedule. The
2 schedule is composed of three pages. The first page
3 is a page that was prepared by Empire and it has what
4 we believe to be our calculation of excess ADIT based
5 on the information available as the -- early in 2018.
6 Pages -- page 2 is Mr. Riley's computation of the
7 protected portion as he determined it to be. And page
8 3 is his computation of the unprotected portion.

9 In looking over the schedules and
10 comparing them to the schedules prepared by Empire, I
11 noted several differences in those, which I believe to
12 be erroneous. First one, Mr. Riley's estimates of
13 excess ADIT include both the Missouri wholesale
14 allocations, which are subject to FERC jurisdiction
15 and retail allocations, and thereby overstate the
16 balances that are subject to the jurisdiction of the
17 Commission.

18 The second point, Mr. Riley listed
19 Account 190112, which is a deferred tax asset,
20 relating Ozark Beach lost generation on both his
21 unprotected and protected schedules and he double
22 counted the balance.

23 Mister -- number three, Mr. Riley's
24 protected worksheet assumes that all the account
25 balances appearing to relate to depreciation

1 differences would be protected. In fact, these
2 accounts are used to record accumulated deferred
3 income taxes from all differences between book and tax
4 depreciation and -- and the treatment of fixed assets.

5 And, you know, as we mentioned before, we
6 had no reason to do the computations to split
7 protected from unprotected out during the 30-plus
8 years since enactment of the Tax Reform Act of '86.

9 Fourth item, on Account 190230, which is
10 a net operating loss carry forward, our position was
11 that it should be netted against Account 282100, which
12 is the primary fixed asset, deferred liability account
13 since the net operating loss came about as a result of
14 bonus depreciation on the heavy capital investment
15 required by utility companies.

16 Since it was depreciation related and a
17 tax -- a deferred tax asset provides no cash benefit
18 at this point in time, could possibly never, then
19 it -- we thought it would be more appropriate to net
20 it against the depreciation that brought it about.

21 Mr. Riley's worksheet he agreed with our
22 reclassification which eliminated the NOL, but he did
23 not net it against Account 282100 and that overstates
24 his assumed estimated excess deferred income tax by
25 5.4 million dollars.

1 Number five, in comparing the amounts for
2 the pre-TCJA composite tax rate, post-tax reform tax
3 rate and the gross-up conversion factor from schedules
4 prepared by Empire, he was -- he used different rates,
5 but we did not receive any details of his computations
6 where we could ascertain, you know, why there were any
7 changes.

8 Six, Mr. Riley's unprotected worksheet
9 doesn't include nine of our general ledger accumulated
10 deferred tax asset income tax accounts. And those
11 accounts total 31.4 million dollars of deferred tax
12 assets. And the omission increases his computation of
13 the unprotected excess ADIT. And using the -- his
14 computed unprotected excess ADIT would result in too
15 large a reduction in customer rates and would have to
16 be recaptured through higher future rates to customers
17 to their detriment.

18 Account Number 283123, the hedge
19 transaction losses, was partially excluded from
20 rate-base in prior cases. And our computations remove
21 that excluded portion from excess ADIT. Mr. Riley's
22 schedule includes our taking it out, but he makes
23 another adjustment that puts it back in, the excluded
24 portion, and restored the entire account balance to
25 the amount included in rate-base and computed excess

1 ADIT upon it. That adjustment was in excess of a
2 million dollars, so that would be another item.

3 And finally, Account 283915, the deferred
4 tax liability FAS 109 is an account that contains
5 deferred tax -- the deferred tax side of tax
6 gross-up -- prior tax gross-up adjustments. On
7 Empire'S schedules we eliminated this account as a
8 non-cash item because it's offset by a corresponding
9 regulatory asset account.

10 Mr. Riley's schedules do not eliminate
11 the account and it has a 1 -- or 13.3 million dollar
12 credit balance. As it flows through his worksheet, it
13 overstates the amount of ADIT being re-valued and
14 overstates his estimate of unprotected excess ADIT.

15 Q. Mr. Riley's testimony has total excess
16 ADIT of approximately 197 million that he says should
17 be amortized; is that correct?

18 A. I -- yes, that's what his statement says.

19 Q. And that 197 includes a gross up for
20 taxes in it; is that correct?

21 A. That's correct.

22 Q. Is -- if you were going to get a number
23 to be amortized for excess ADIT, would you include
24 gross up for taxes?

25 A. No, I wouldn't. The -- the gross-up

1 computation is a bit strange in that it creates a
2 deferred tax asset and an offsetting deferred
3 regulatory liability. You know, for example, if we
4 had 100 dollars in excess ADIT that would be refunded
5 to customers in the fu-- in future rate reductions or
6 reductions of tax expense that go into rates, then the
7 tax effect on that would be 21 dollars, assuming just
8 the federal tax rate.

9 We have a tax benefit of that 21 dollars
10 which we record, so that becomes a deferred tax asset.
11 We have a corresponding regulatory liability for the
12 same amount because that will have to be refunded to
13 customers in future rates.

14 As the excess ADIT is released through
15 the ARAM method or through amortization as prescribed
16 by the Commission, the regul-- the deferred tax asset
17 and the regulatory liability are armo-- amortized in
18 tandem so that activity remains on the balance sheet,
19 does not hit the income statement.

20 The customer -- the excess ADIT that's
21 refer-- refunded to customers is -- goes in as a
22 credit income tax -- deferred income tax expense which
23 lowers the cost-of-service and in determining rates,
24 it's then grossed up and that's where the gross up is
25 benefited to the customers. They get it, but not

1 through the amortization like is shown.

2 Q. Thank you.

3 MS. CARTER: That's all the questions I
4 have for Mr. Williams so he will be available now for
5 cross-examination and Commissioner questions.

6 JUDGE WOODRUFF: Let's take about a
7 five-minute break and we'll come back at 2:35.

8 (A recess was taken.)

9 JUDGE WOODRUFF: All right. We're back
10 from our break. And I'm going to change up the
11 schedule a little bit here because of Chairman Hall's
12 schedule. I'm going to let him ask his questions on
13 cross first and then we'll go to parties for cross.
14 Very well, Chairman.

15 QUESTIONS BY CHAIRMAN HALL:

16 Q. I believe these should be relatively
17 brief. I'm looking at Senate Bill 564, which -- in
18 Statute 393.137 and there's a term in Section 3 that
19 says, One-time authority to adjust rates prospectively
20 so that the income tax component of the revenue
21 requirement is based on the provisions of -- of the
22 new federal act.

23 And I'm wondering when it says "income
24 tax component," does that include, in your view and
25 professional experience, does that include the ADIT

1 flow back?

2 A. The excess ADIT, A-D-I-T flow back?

3 Q. Yes.

4 A. I believe it would.

5 Q. And why do you say that?

6 A. Just based on th-- it flows into income
7 tax expense and then which it is a reduction in income
8 tax expense and determines cost-of-service.

9 Q. Okay. I'm sorry.

10 A. Oh, I finished.

11 Q. Later in the section in -- the statute
12 also refers to the requirement that the Commission
13 defer to a regulatory asset the financial impact of
14 such federal act for the period of January 1, 2018
15 through the date rates are effective.

16 And when it says "the financial impact of
17 such federal act," would that -- would that also
18 include the -- the excess ADIT flow back?

19 A. I believe it would if you determine a
20 financial impact as being, We had provided for it --
21 ADIT at one rate, at a higher rate, the rate's been
22 lowered from what it will be paid. One could
23 interpret that to be a financial impact.

24 Q. Is there any other way to interpret it?

25 A. It -- it -- well, the term "financial

1 impact" is not necessarily an accounting term. It
2 could be subject to I suppose different
3 interpretations.

4 Q. But is the most reasonable interpretation
5 that it would include both the tax rate deduction and
6 the creation of excess ADIT?

7 A. I believe that would be the most
8 reasonable interpretation.

9 Q. I have no further questions. Thank you.

10 A. Thank you.

11 JUDGE WOODRUFF: Then we'll go back for
12 cross beginning with Staff.

13 MR. THOMPSON: Thank you, Judge.

14 CROSS-EXAMINATION BY MR. THOMPSON:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. You indicated you were familiar with
18 Mr. Riley's testimony and schedules?

19 A. Yes.

20 Q. And he recommended four adjustments. Do
21 you recall that?

22 A. I didn't really concentrate on his four
23 adjustments. I looked mostly at the schedule
24 comparing it to our schedule, what we had determined
25 to see if it matched and where differences were.

1 Q. Okay. So if I told you that his first
2 recommended adjustment was to reduce rates on a going
3 forward basis by 17,469,270 dollars on an annual
4 basis, would you have any reason to disagree with
5 that?

6 A. I believe that's materially in line with
7 what Empire has determined, so I would not disagree
8 with it.

9 Q. And the number that I believe Empire came
10 up with was 17,837,022 dollars?

11 A. That's correct.

12 Q. Okay. The second and third adjustments
13 he recommended had to do with the protected ADIT and
14 the unprotected ADIT. He recommended flowing back
15 protected ADIT over 20 years at a rate of 8,729,631
16 dollars annually. Are you familiar with that
17 recommendation?

18 A. Yes, I am.

19 Q. And do you agree with it or disagree with
20 it?

21 A. I disagree with it.

22 Q. Do you believe that the number that he
23 recommends is the correct number?

24 A. I believe it's highly unlikely that that
25 is the correct number.

1 Q. Now, when I was talking to Ms. North
2 earlier, she indicated that in her opinion, the total
3 number is actually 121,454,659 dollars. Were you here
4 when she testified?

5 A. Yes, I was.

6 Q. And did you hear her give that testimony?

7 A. I was thinking she said like 120 million,
8 but --

9 Q. Well, she said the total -- the total
10 amount of excess ADIT was 120,170,706. Is that
11 perhaps the number you're referring to?

12 A. Yes. That's the Missouri retail
13 jurisdictional excess ADIT.

14 Q. And you -- now, do you believe that that
15 number is correct or that future researches will
16 result in a change to that number?

17 A. I believe future events, the preparation
18 of the income tax return and finalization of the
19 provision to accrual adjustment will change that
20 amount. I don't know by how much or which way it
21 would change it, but I do believe that the number will
22 change.

23 Q. So that's simply an interim value?

24 A. That is correct.

25 Q. Okay. And do you recall she also

1 testified that it was wasn't possible at this time to
2 know what the appropriate amortization period is?

3 A. That is correct.

4 Q. And do you believe that is the case?

5 A. Yes, I do.

6 Q. And would you agree with me that the fact
7 that the amount is as yet uncertain and that the
8 amortization period is at -- as yet unknowable, that
9 those constitute good reasons not to order the flow
10 back now?

11 JUDGE WOODRUFF: If I can interrupt for
12 just a moment. Mr. Thompson, you need to get closer
13 to your microphone.

14 MR. THOMPSON: I apologize, Judge. I
15 thought I was screaming loud enough not to need it.

16 JUDGE WOODRUFF: That is much better.
17 Thank you.

18 THE WITNESS: I think that would be good
19 cause not to refund anything at this time pending the
20 determination of the final balance and the
21 amortization, which will be in this calendar year.

22 BY MR. THOMPSON:

23 Q. And she also testified, as I recall, that
24 the interim value for the unprotected ADIT is, in
25 fact, a negative figure of 1,286,953 dollars.

1 A. Yes, she did.

2 Q. And now that figure might change in the
3 future as well; isn't that correct?

4 A. That is correct.

5 Q. If it remains negative, however, then
6 none of that would be flowed back; isn't that correct?

7 A. That's correct. It would increase
8 cost-of-service -- or increase tax expense and result
9 in higher rates to customers.

10 Q. Now, in working with these numbers, is it
11 appropriate to use the grossed-up version or the
12 non-grossed-up version?

13 A. I would -- I believe it's appropriate to
14 use the non-grossed-up version.

15 Q. That's all the questions I have. Thank
16 you.

17 JUDGE WOODRUFF: All right. For MECG.

18 MR. WOODSMALL: Thank you.

19 CROSS-EXAMINATION BY MR. WOODSMALL:

20 Q. Briefly just so I understand what's going
21 on here. So the -- you're talking about the software
22 that's necessary. As I understand, that software will
23 accomplish two things. It will allow you to segregate
24 the total excess ADIT between protected and
25 unprotected; is that correct?

1 A. Yes.

2 Q. Okay. And the other thing it will allow
3 you to do is calculate the ARAM period for purposes of
4 amortizing the protected portion back; is that
5 correct?

6 A. Yes.

7 Q. Okay. And you said that you anticipate
8 having the segregation between protected and
9 unprotected done by September 15th. Do you recall
10 that?

11 A. No. The -- we -- September 15th will be
12 the due date -- or when we plan to file the 2017 tax
13 return and make the provision to actual adjustments.
14 That would be the date when we firm up the excess ADIT
15 balance in total.

16 We expect to have the software
17 implemented by the fourth quarter or sometime during
18 the fourth quarter. And the software would be able to
19 determine the breakdown between protected and
20 unprotected ADIT.

21 Q. So will your ability to calculate the
22 ARAM period happen at the same time as the segregation
23 of protected and unprotected?

24 A. Yes. It will be simultaneous.

25 Q. Okay. But you have every belief that

1 that will be done by the end of the year?

2 A. Yes. If nothing else, for financial
3 reporting requirements we'll need to have that done by
4 the end of the year.

5 Q. Okay. Are you familiar with the term
6 that we've been using "stub period" here today?

7 A. Yes.

8 Q. Okay. Does this software in any way
9 affect your ability to calculate the stub period
10 quantification of benefits?

11 A. It shouldn't because the software deals
12 with the excess ADIT which was created at enactment.
13 And my understanding of the -- of the stub period is
14 it's the period since the rates become effective
15 January 1st through the date that the rates --
16 customer rates change and that it deals with the fact
17 that what has been billed to customers during 2018
18 contains a tax provision at 35 percent rather than
19 21 percent federal rate. So I don't believe those are
20 integrated with the software.

21 Q. Okay. And similarly, the software isn't
22 necessary to determine appropriate amortization period
23 for the stub period benefits; is that correct?

24 A. That's correct.

25 Q. Okay. Simple question. We've gone

1 through cases with Ameren and they've been able to
2 handle the ADIT stuff. KCP&L was able to handle it.
3 I just -- Westar in Kansas. Why are they able to do
4 this -- not only segregate but calculate ARAM -- and
5 Empire's not?

6 A. I checked with tax managers at KCP&L and
7 Ameren. My -- when I heard that this was -- had been
8 a question that had been raised, I thought -- I -- I
9 believe that both companies use the same type of
10 software, the Power Plant Software Suite that we do,
11 which is the industry standard for utility fixed asset
12 management. My thought was I'll bet they have def--
13 they have implemented the Deferred Tax module and are
14 using it in their processes already.

15 I checked with tax managers there and
16 both of them have. And that's -- so, you know, they
17 had the software that we need to implement already in
18 place and so they were able to produce quick
19 calculations.

20 Q. Do you know if they had this software
21 because it has value in the course of business
22 day-to-day or did they just -- did they just procure
23 it quicker than Empire did?

24 A. Well, the deferred tax software works
25 in -- in conjunction -- it's one of three pieces of

1 Power Plant -- well, one of four pieces of Power
2 Plant's tax-related software. The first is a -- is
3 Power Tax, which is a depreciation software. The
4 second is a Provision software which performs tax
5 accruals. The third is the deferred tax software.

6 My -- in talk-- in just e-mail
7 correspondence with those -- those managers, they use
8 the Power Plant -- or the Power tax pro-- Deferred Tax
9 module for managing fixed asset DIT (phonetic) related
10 items. So to answer your question, it provides them
11 some benefit in that it is what they're using to track
12 their deferred income taxes from plant.

13 Q. So it had some value to them prior to a
14 tax change and they were able to use it to take care
15 of this tax change --

16 A. That's --

17 Q. -- and Empire didn't?

18 A. Right.

19 Q. Okay. Second-to-the-last question, has
20 Empire done anything -- you're -- you operate in four
21 states; is that correct?

22 A. That is correct.

23 Q. Have you done anything for taxes in any
24 of your other three states?

25 A. Anything for taxes or --

1 Q. For returning tax benefits associated
2 with the tax reform.

3 A. Personally I haven't. I think the
4 Regulatory Department has -- has done -- been in
5 negotiations or dealt with the -- the Commissions in
6 those states to address the issue.

7 Q. But if anything was done along the lines
8 of ADIT, you would be involved, wouldn't you?

9 A. I would hope so, yes.

10 Q. Okay. Last question. Do you know if
11 Empire has started amortizing any of its ADIT -- any
12 of the buckets to -- on its financial books?

13 A. I do not believe so -- any of the excess
14 ADIT that -- at 12/31 17? I don't believe so because
15 the -- the issue hasn't been addressed. I'll -- I'll
16 step back a second and -- and clarify in my prior
17 comment. I think when regulatory has dealt with
18 Commissions in -- in some other states, that's been on
19 the prospective change rather than the refund of
20 excess ADIT.

21 I don't believe anything -- any orders
22 have been issued by those jurisdictions. And without
23 orders, we can't amortize any balances. And we
24 can't -- the Commissions really can't issue the orders
25 until we give them the facts and the amounts of

1 amortization and they can audit those and assure
2 themselves that they're reasonable and just.

3 Q. So you don't believe that you can
4 unilaterally start amortizing that on your financial
5 books?

6 A. I don't believe we can without an order
7 from the Commission.

8 Q. Okay. No further questions. Thank you,
9 sir.

10 JUDGE WOODRUFF: Public Counsel.

11 MR. N. WILLIAMS: Thank you.

12 CROSS-EXAMINATION BY MR. N. WILLIAMS:

13 Q. Are you familiar with the composite tax
14 rate that Mr. Riley has on his -- in his testimony?

15 A. I'm familiar that he does have a
16 composite tax rate in his testimony.

17 Q. Was it materially different from the one
18 that Empire employed?

19 A. I don't believe the amounts were very
20 much off on a percentage basis when you -- you can
21 apply a small percentage change to a very large
22 balance and get quite a number of dollars. I've not
23 done those computations to see how many dollars were
24 involved in the differences.

25 Q. Well, you looked at the prospective tax

1 balances, didn't you?

2 A. The prospective tax balances?

3 Q. The 17 point -- what is it? Something
4 like 17 million versus the 17.4, said that wasn't
5 material in your view?

6 A. I did not review those. Those were
7 developed by the regulatory team. And that should be
8 an easy computation, just taking the revenue
9 requirements, changing the tax rates and seeing what
10 the difference would be.

11 Q. Isn't the concern with protected excess
12 accumulated deferred income tax flowing the money back
13 to customers faster than the remaining life of assets?

14 A. Yes.

15 Q. So if the Commission -- if the Commission
16 ordered a flow of money back, you earlier testified
17 that if it was too much or protected ADIT, that it
18 would mean then you would have to raise rates to
19 recover that money, did you not?

20 A. That and it would constitute a
21 normalization violation which would destroy our
22 ability to use accelerated depreciation. The effect
23 of that would be in the future we wouldn't have as
24 much ADIT.

25 Q. I think you testified as to all the

1 ramifications earlier so --

2 A. Okay.

3 Q. How much do you anticipate that the
4 estimate of excess accumulated deferred income tax,
5 which you've estimated around I believe 121 million,
6 how much do you expect that number will change
7 percentage-wise?

8 A. I don't know at this point in time since
9 we -- the major difference between this year and prior
10 years is the repairs analysis that we're doing. We
11 had made the proper elections to be able to implement
12 IRS repair regulations regarding safe harbor treatment
13 of repairs with transmission distribution property.
14 We've never executed that study before. This year we
15 are executing it. It's being done by Ernst & Young.
16 And that would -- that could significantly change the
17 excess ADIT that existed as of the end of 2017.

18 Q. What's significant? 10 percent,
19 5 percent, 20 percent, 50 percent?

20 A. It could be -- and this is just a wild
21 guess based on some of the results that they've gotten
22 from other studies they've done. That 30 percent of
23 the basis of those properties could be treated as
24 repairs rather than capital items.

25 Q. And how significant is the total number

1 for those properties?

2 A. It's fairly significant. I haven't
3 roughed anything out on it that I, you know, would
4 really think would be of any benefit to forming
5 judgments, but it could vary by several million
6 dollars.

7 Q. Well, how much of an impact would it have
8 on excess ADIT if you had that 30 percent change?
9 Let's assume it's a reduction.

10 A. If it's a reduction that -- for book
11 purposes, those assets are capitalized. For tax
12 purposes, we would be expensing 30 percent of what's
13 been capitalized. The bonus -- we've pr-- previously
14 taken bonus depreciation on most of that or it would
15 be covered by bonus depreciation. So, you know, it
16 would increase ADIT by, you know, several million
17 dollars would be my guess.

18 Q. Oh, so it would increase the excess of
19 accumulated deferred income tax --

20 A. Yes.

21 Q. -- not lower it?

22 A. It would increase it -- it would reduce
23 current income -- current taxable income, which would
24 increase ADIT.

25 Q. Well, what's the risk of a normalization

1 violation if the Commission were to accept or bas--
2 use the 120 million, use a 40-year amortization period
3 and then take that resulting 3 million and flow it
4 back to customers through rates?

5 A. The risk would be -- the primary risk
6 would be starting to flow the benefits back sooner
7 than the ARAM computations would allow, especially
8 since we put the Riverton 12 assets into service in
9 2016. They, you know, still have quite a long life.
10 So depreciation differences might not be turning and
11 it wouldn't be turning yet and it wouldn't be
12 estimable what would be refundable, especially in the
13 earlier years.

14 Q. What's the expected life of the Riverton
15 asset?

16 A. I think it's between 40 and 50 years.

17 Q. In the hypothetical I gave you, I was
18 using a 40-year life.

19 A. Right. Yeah. The way it -- the way ARAM
20 works though is that you match on an asset-by-asset
21 in-- basis when the book and tax depreciation start to
22 reverse. Normally tax depreciation -- for tax
23 purposes, assets depreciate faster than for book
24 purposes. At the point in time when book depreciation
25 starts exceeding the tax depreciation, that's what

1 triggers the refund of excess ADIT.

2 If we started -- if -- you know, in a
3 hypothetical situation if we took the longest possible
4 life and treated all the differences as protected on a
5 belts and suspenders approach, to be conservative, we
6 would still risk a normalization violation if we
7 started refunding that sooner than the ARAM
8 computations said we could start refunding it.

9 Q. Does Empire have a software license for
10 the module that will permit it to determine the life
11 for ARAM -- ARAM purposes and segregate or separate
12 protected and unprotected excess accumulated deferred
13 income tax?

14 A. Yes. We have a license that covers the
15 Power tax and the Deferred Tax module and the
16 Provision module. And I believe we've had that since
17 at least 2016. We've implemented the Power -- or had
18 implemented the Power tax module years before and the
19 Provision module years before I started in the Tax
20 Department.

21 I wasn't involved in the decision not to
22 implement the Deferred Income Tax module. Just
23 talking with some other members, there was some curr--
24 concern with management about kind of over -- that we
25 had already managed the area, the deferred tax

1 tracking adequately and that we didn't need to bring
2 this additional level of complexity in. At that point
3 in time, nobody really anticipated that there would be
4 a reduction in corporate tax rates, especially as
5 significant as did occur.

6 Q. When did Empire take steps to start
7 implementing the software module that will allow it
8 to -- for ARAM purposes, come up with appropriate life
9 and separate the protected and unprotected excess
10 accumulated deferred income taxes?

11 A. We started talking with Deloitte early on
12 in 2018 when, you know, it became apparent to us that
13 we thought we had the information to -- that would
14 be -- we would be required to use the ARAM method.
15 And we started looking for a solution to be able to
16 compute, make the computations.

17 Deloitte's provided tax services to the
18 company for quite a number of years. The team that we
19 worked with, which includes utility experts, most --
20 several of which are also technical es-- experts who
21 worked for Power Plant for several years before
22 joining Deloitte, you know, took -- did an analysis of
23 our system to see if we had enough information to be
24 able to implement the Deferred Tax software and
25 determined that it is.

1 And it's been a process of getting the
2 project moved through. It hadn't been budgeted.
3 We're getting it moved through and approved by IT --
4 or our Information Technology Management Systems or --
5 at the company and the parent company to -- you know,
6 they have to assure themselves for internal control
7 and Sarbanes-Oxley purposes that there is not a
8 substantial risk to the company by implementing the
9 software.

10 Q. Has pursuing implementation of the
11 software been a high priority project at Empire --

12 A. Yes.

13 Q. -- or Liberty's?

14 A. Yes, it has. Our director has been per--
15 personally pushing the project to get it through and
16 implemented.

17 Q. If I understand what you've testified to,
18 you're saying that Empire has the underlying raw data
19 that's necessary in order to come up with an
20 amortization period for protected and unprotected
21 excess accumulated deferred income tax and to -- I
22 should say -- I'm sorry -- has the information ne--
23 data necessary in order to come up with the proper
24 amortization period for protected excess accumulated
25 deferred income tax and to determine what is protected

1 and unprotected accumulated deferred income tax, as
2 well the total excess accumulated deferred income tax,
3 but it needs software in order to actually obtain
4 those results?

5 A. Yes. It's a -- we have a mound of raw
6 data as far as doing the ARAM computations. The most
7 prudent approach, especially given the fact that it
8 has to be monitored year-by-year for retirements of
9 assets is to implement a software solution rather than
10 to try and manually compute something, which I don't
11 even think would be feasible given the size of the
12 company.

13 Q. And where is the raw data?

14 A. The raw data is in the Power Plant and
15 Power tax systems.

16 Q. You said you have some familiarity with
17 Mr. Riley's Direct Testimony?

18 A. Yes.

19 Q. Are you familiar with the schedules to
20 that testimony?

21 A. Yes.

22 Q. Do you recall there's some e-mails that
23 appear in Schedule JSR-D-3?

24 A. Yes.

25 Q. And there's a Steve Williams who either

1 is shown as a sender or a recipient of e-mails that
2 are within that schedule?

3 A. Yes.

4 Q. Are you that Steve Williams?

5 A. I am.

6 Q. And if you were the recipient, did you
7 read the e-mail?

8 A. Yes, I did.

9 Q. I had Mr. Krygier read the first
10 paragraph of an e-mail that appears on page 7 of
11 Schedule JSR-D-3. Do you recall -- were you present
12 when that happened?

13 A. Yes, I was present. I don't require --
14 recall the quote.

15 Q. Well, did you author the first paragraph
16 of -- I guess best way to do it is just to have you --
17 or I'll read it. What I'm referring to is Schedule
18 JSR-D-3, page 7 of 10 at the top. There's a
19 reproduction of an e-mail and at the beginning of it
20 it says, The protected piece will be amortized as
21 timing differences reverse, which could be 40 to
22 50 years. The unpro-- unprotected piece will amortize
23 at the whim of the PSCs of the various states so neg--
24 negotiate something good for us, please.

25 A. Yes.

1 Q. Did you author that?

2 A. Yes, I did.

3 Q. And what were you requesting by, So
4 negotiate something good for us, please?

5 A. That was in regard to the unprotected
6 piece. The protected piece would have to, as I stated
7 in the e-mail -- and I, you know, tried to avoid too
8 many technical terms since I wasn't communicating with
9 tax people is that they -- the protected piece would
10 reverse as timing differences reverse following the
11 ARAM method.

12 As to the unprotected piece, which is,
13 you know, subject to the discretion of the Commission
14 on the period of time that it's returned to customers,
15 it was more of an admonition that, you know, there --
16 they should negotiate something in the interest of all
17 parties involved and protecting the interest of the
18 company on how fast the unprotected piece would be
19 returned.

20 At that point in time we anticipated that
21 the unprotected piece would be as deferred tax asset
22 still. That practically all of the excess ADIT would
23 be protected given that it's fixed asset related. So,
24 you know, that dealt only with the unprotected piece,
25 which was subject -- they're not required or there's

1 no prescribed, by IRS regulation, schedule for its
2 return.

3 Q. So "us" is not just referring to Empire?

4 A. Not necessarily.

5 Q. Who else would it be referring to?

6 MS. CARTER: I'm sorry. I'm going to
7 object to the relevance of this line of questioning
8 about this e-mail and a statement Mr. Williams may
9 have made about negotiations in a hypothetical case
10 that may or may not happen at some point in the
11 future.

12 JUDGE WOODRUFF: Mr. Williams, what's
13 your response?

14 MR. N. WILLIAMS: I'm -- it's -- actually
15 it's going to be my pr-- hopefully my last question
16 and I'm trying to get at interest bias.

17 JUDGE WOODRUFF: I'll allow the question.

18 THE WITNESS: Us would primarily refer to
19 the Company, pursuing the Company's interests, but the
20 Company's interests are subject to review by the
21 Commission and the Commission will establish fair and
22 reasonable rates regardless of, you know, what the
23 preference of any party is.

24 MR. N. WILLIAMS: May I have a moment?

25 JUDGE WOODRUFF: Sure.

1 MR. N. WILLIAMS: No further questions.

2 QUESTIONS BY JUDGE WOODRUFF:

3 Q. I do have one question and it's for the
4 benefit of the record when I'm going to try to write a
5 decision on this case. Can you briefly explain the
6 difference between protected and unprotected ADIT?

7 A. Yes. Protected ADIT is de-- is
8 differences in -- or ADIT differences in book and tax
9 treatment of depreciation on assets that is related
10 only to the differences in depreciable lives and
11 methods used.

12 So, for example, a piece of plant
13 equipment could have a book life -- straight line book
14 life of 50 years. For tax purposes it would be
15 depreciated over a 150 percent declining balance under
16 the Maker's system over a life of 20 years.

17 So to the extent that there is a
18 difference that's attributable to a book tax life,
19 that's a protected difference. There could be other
20 differences in the cost of fixed assets such as
21 overhead rates capitalized. There are, you know,
22 specific rules for tax capitalization under Section
23 263, cap A, different rules for book depreciation or
24 book capitalization. That would be an unprotected
25 difference.

1 To -- in the most simple -- simplified
2 terms, if you take ADIT and you subtract out the
3 protected portion, everything else is unprotected.

4 Q. I think that helps a little bit. Thank
5 you.

6 JUDGE WOODRUFF: Any recross based on
7 those qu-- question? Any redirect?

8 MS. CARTER: No. Thank you.

9 JUDGE WOODRUFF: Mr. Williams, you can
10 step down.

11 THE WITNESS: Thank you.

12 JUDGE WOODRUFF: Nathan, you had some
13 exhibits that hadn't been -- 8 and 9 haven't been
14 offered. Do you want to offer them?

15 MR. N. WILLIAMS: I will eventually.

16 JUDGE WOODRUFF: Okay.

17 MR. N. WILLIAMS: They're Mr. Riley's is
18 why I have not yet.

19 JUDGE WOODRUFF: Mr. Oligschlaeger.

20 (Witness sworn.)

21 JUDGE WOODRUFF: Thank you.

22 MARK OLIGSCHLAEGER, having been first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION BY MR. THOMPSON:

25 Q. State your name, please.

1 A. My name is Mark L. Oligschlaeger.

2 Q. And how are you employed?

3 A. I am employed as the manager of the
4 Auditing Department for the Missouri Public Service
5 Commission.

6 Q. Are you the same Mark Oligschlaeger that
7 prepared or caused to be prepared Rebuttal Testimony
8 marked as Exhibit 3?

9 A. I am.

10 Q. Do you have any corrections to that
11 testimony?

12 A. I do not.

13 Q. If I were to ask you the same questions
14 today, would your answers be the same?

15 A. They would.

16 Q. And are they true and correct to the best
17 of your knowledge and belief?

18 A. They are.

19 MR. THOMPSON: I would move the admission
20 of Exhibit 3.

21 JUDGE WOODRUFF: Three has been offered.
22 Any objections to its receipt?

23 MS. CARTER: No objection.

24 MR. N. WILLIAMS: No.

25 JUDGE WOODRUFF: Hearing none, it will be

1 received.

2 (Exhibit 3 was received into evidence.)

3 BY MR. THOMPSON:

4 Q. Were you present during the testimony of
5 Mr. Williams?

6 A. I was.

7 Q. Did you hear his explanation of a
8 possible normalization violation in the event that
9 Empire were required to flow back protected and
10 unprotected ADIT prior to determining the precise
11 amounts and precise amortization period required?

12 A. I was here, yes.

13 Q. Do you have any reason to disagree with
14 that testimony?

15 A. Generally, no. I mean what exactly would
16 constitute a normalization violation I think somewhat
17 depends on the facts and circumstances of how the
18 benefits are flowed back and whether there's a true-up
19 mechanism and other factors. But in general, no, the
20 concern is valid.

21 Q. Well, as an auditor for the PSC, do you
22 accept Mr. Williams' explanation and rationalization
23 of why those flow backs should not be ordered at this
24 time?

25 A. I agree with the Empire witnesses that

1 that would not be, in my view, a prudent course of
2 action at this time.

3 Q. Thank you. No further questions.

4 JUDGE WOODRUFF: All right. And for
5 cross-examination, we begin with Empire.

6 MS. CARTER: Empire does not have any
7 questions for Mr. Oligschlaeger. Thank you.

8 JUDGE WOODRUFF: Okay. MECG

9 MR. WOODSMALL: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MR. WOODSMALL:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. You were involved in Staff's
14 consideration of various pieces of legislation this
15 year; is that correct?

16 A. I was.

17 Q. And was one of those pieces that you
18 reviewed SB 564?

19 A. It was.

20 Q. Would you agree that SB 564 only applies
21 to electric corporations? The -- I'm sorry, the tax
22 portion 393.137 only applies to electric corporations?

23 A. That's my recollection.

24 Q. Okay. And so MAWC, Laclede, Liberty
25 Utilities Gas, they're not electric utilities, are

1 they?

2 A. They are not.

3 Q. Okay. So any treatment of their tax
4 benefits was just because they had a rate case and not
5 because of something in SB 564; is that correct?

6 A. That's true.

7 Q. Okay. Based upon your review of SB 564,
8 what is your understanding of how it handles tax
9 provisions?

10 A. I think in my recollection the only
11 specific topics in the bill related to income taxes
12 are in 393.137 relating to treatment of the Tax Cuts
13 and Jobs Act impacts on electric utility rates.

14 Q. And what is your understanding of that
15 specific provision?

16 A. Well, broadly speaking, I think the act
17 states that qualifying electric utilities shall -- or
18 the Commission shall, within 90 days of the law's
19 enactment, perform a one-time rate adjustment to
20 handle the prospective financial impacts of the Tax
21 Cuts and Jobs Act, as well as a deferral of those
22 impacts from January 1st to the date the rates go into
23 effect enacting the one-time rate action.

24 There's further language in the bill
25 which allows the Commission, for good cause shown, to

1 not reflect some amount in a immediate rate reduction
2 but instead order its deferral.

3 Q. So we've talked at various points during
4 this hearing today about benefits being in three
5 different buckets; the prospective portion, the stub
6 period, and the ADIT portion. Are you comfortable
7 with those buckets?

8 A. Yes.

9 Q. Are you familiar with an Ameren
10 stipulation that was approved by the Commission
11 earlier this week?

12 A. Yes.

13 Q. Okay. Were you involved in that in any
14 way?

15 A. Yes, I was involved.

16 Q. Okay. Are you comfortable discussing
17 that or do you need a copy of that stipulation? If
18 you do, just holler.

19 A. I actually have a copy, so.

20 Q. Okay. Would you agree that the Ameren
21 stipulation included a provision for customers to
22 receive the benefit associated with all three buckets?

23 A. Okay. And the three buckets being the
24 prospective rate reduction, the stub period
25 amortization, and some flow back of excess ADIT?

1 Q. Correct.

2 A. I would agree.

3 Q. Okay. And Ameren didn't have a rate
4 proceeding pending on either February 1st, 2018 or
5 June 1st, 2018; is that correct?

6 A. I don't believe they did.

7 Q. Okay. Would you agree that KCP&L and GMO
8 both had a general rate proceeding pending before the
9 Commission on February 1 and June 1st, 2018?

10 A. I would agree.

11 Q. Okay. Are you familiar with that case at
12 all?

13 A. The KCPL/GMO rate case?

14 Q. Right.

15 A. Somewhat.

16 MR. WOODSMALL: May I approach the
17 witness?

18 JUDGE WOODRUFF: You may.

19 MR. THOMPSON: What piece are you going
20 to ask him to read?

21 MR. WOODSMALL: G and Q.

22 BY MR. WOODSMALL:

23 Q. I'm going to hand you a piece of
24 testimony from that case and ask you if you can
25 identify that?

1 A. Yes. This is the Direct Testimony of
2 Darrin R. Ives testifying on behalf of Kansas City
3 Power & Light Company.

4 Q. Would you turn to page 14 of that
5 testimony and let me know when you're there?

6 MS. CARTER: And -- and David, are you
7 going to have him read Mr. Ives' testimony from
8 another case?

9 MR. WOODSMALL: Yes.

10 MS. CARTER: I would object to the
11 relevance of Mr. Ives' testimony in a different rate
12 case being read as evidence in this current case --

13 MR. WOODSMALL: Well --

14 MS. CARTER: -- for Empire.

15 MR. WOODSMALL: -- I'm asking him to read
16 it to show what another utility is doing to handle tax
17 benefits.

18 MR. THOMPSON: I think that would be
19 hearsay.

20 JUDGE WOODRUFF: I was going to say, it's
21 hearsay too. I haven't actually heard the question
22 yet, but --

23 BY MR. WOODSMALL:

24 Q. Well, I'm asking him first to turn -- are
25 you on page 14?

1 A. I'm there.

2 Q. Okay. I was going to ask him to read --
3 well, you don't have to read. Read it to yourself and
4 then I'll ask a question.

5 A. Is there a particular part of page 14?

6 Q. The question and answer lines 1 through
7 10.

8 A. Okay. I have read it.

9 Q. Okay. Would you agree that based upon
10 what Mr. Ives says there, that KCP&L and GMO customers
11 will receive the benefits associated with all three
12 buckets created?

13 A. I would interpret that -- this as
14 expressing that intent by Mr. Ives.

15 Q. And when Staff filed testimony a couple
16 weeks ago in that case, Staff agreed that all three
17 buckets of benefits should return to customers; is
18 that correct?

19 A. I'm not totally sure whether we expressed
20 a definite opinion that said the stub period should be
21 reflected in the case. I don't know whether we
22 commented on that, were silent on that or whatever. I
23 don't recall.

24 Q. Do you believe that in the KCP&L and GMO
25 cases, the stub period benefits should flow back to

1 customers?

2 A. Well, I'll probably have to explain that
3 answer a little bit. As I explained in my testimony
4 in this case, to the extent a company can --
5 cooperates and you are able to reflect some benefits
6 of the tax rate ch-- or the benefits of the tax rate
7 change prospectively within a reasonably fast period
8 of time, we don't necessarily think a stub period
9 amortization or deferral on top of that is
10 appropriate. And we've taken that position in most of
11 the cases that have occurred to date.

12 Now, KCPL and GMO, obviously they will
13 not have new rates from their cases probably until the
14 end of this year and that will be a full year from the
15 time the TCJ-- JA was passed and became law. I would
16 say that's probably around the dividing line I would
17 suggest be used as a rule of thumb. If they can get
18 new rates in effect within a year, they don't need to
19 do that. If it takes longer than that, then they
20 should defer back.

21 Now, to the extent the Company's position
22 in the KCPL/GMO case is to reflect the stub period
23 anyway, of course we would not object to that.

24 Q. Okay. And that -- your response is the
25 same regardless of whether it's an electrical

1 corporation falling under SB 564 or a water or gas
2 corporation?

3 A. Well, I mean if -- if an electric
4 corporation is -- qualifies under SB 564, you follow
5 the provisions of the act and that supersedes anything
6 I said.

7 Q. Okay. So do you then believe -- do you
8 believe that Empire is a qualifying electric
9 corporation within the meaning of SB 564?

10 A. Well, obviously I'm not going to express
11 a legal opinion as to what a --

12 Q. Fair enough.

13 A. -- general rate proceeding is as defined
14 in that law. My -- I guess my common sense
15 understanding what's going on, yes, I would consider
16 they have a -- an open general rate case.

17 Q. You believe they have an open general
18 rate case?

19 A. Yeah.

20 Q. Okay. Let's -- let's delve into that.
21 So you were assigned to Case Number ER-2018-002 --
22 0228; is that correct?

23 A. I think so.

24 Q. And what was the scope of your assignment
25 in that case?

1 A. In general, to handle the ear-- probable
2 early phases of our review and investigation which
3 would focus on income tax impacts. Now, to the extent
4 the case would develop into more of a review of all
5 relevant factors and it becomes more like, you know,
6 the normal rate case process we're aware of and then
7 other people would likely be assigned to help out.

8 Q. Okay. Did you, as manager of auditing,
9 assign anybody else to that case?

10 A. Not formally. There's several people in
11 the Jefferson City Auditing Office that I think is --
12 has aided and assisted me over time, but I -- I've
13 been the main player.

14 Q. Okay. Did you issue any Data Requests in
15 that case?

16 A. No, we did not.

17 Q. Okay. In a general rate case, doesn't
18 the Auditing Department typically have a list of
19 standard Data Requests that it issues?

20 A. In a typical general rate case, yes.

21 Q. And did any of those standard Data
22 Requests get issued in this case?

23 A. No. Because, again, we were focusing on
24 specific Tax Cuts and Job -- Jobs Act impacts.

25 Q. So it's fair to say then Staff at least

1 initially never intended to look at all relevant
2 factors unless Empire became uncooperative with taxes?

3 A. Well, I think it is true to say our hope
4 and perhaps expectation was to reach voluntary
5 agreements with as many electric, gas and water
6 companies as possible in regard to flowing the tax
7 impacts into rates.

8 Having said that, it would not -- would
9 not and has not surprised me that companies may raise
10 other non-income tax factors as arguments against full
11 reflection. And in that case, then my understanding
12 was we would have -- need to review and analyze all
13 relevant factors in order to pursue a rate change.

14 Q. But to date, no all relevant factors
15 analysis has occurred by Staff; is that true?

16 A. Well, obviously in the general rate cases
17 that were filed by the utilities, yes and --

18 Q. I'm sorry. Let me rephrase that.

19 A. Right.

20 Q. To date in this case, no all relevant
21 factors review of Empire's rates has occurred by
22 Staff; is that correct?

23 A. I would agree.

24 Q. Okay. Let's talk about excess ADIT for a
25 second. First off, are you familiar with cash working

1 capital?

2 A. Yes, I am.

3 Q. And cash working capital, tell me if
4 generally I get this right. Cash working capital
5 tends to determine -- is designed to determine whether
6 customers are fronting the utility some capital needs
7 or vice-versa; is that correct?

8 A. With the caveat based on the company's
9 cash needs -- daily cash needs, are they getting the
10 funds in aggregate from their customers or are they
11 getting it from other sources; debt holders,
12 shareholders.

13 Q. And if -- and cash working capital flows
14 through the rate-base calculation; is that correct?

15 A. That's correct.

16 Q. So if there is a cash working capital
17 balance, meaning that the customers have fronted money
18 to the utility, since it flows through rate-base, it
19 essentially gets a carrying cost equal to the weighted
20 average cost of capital?

21 A. It gets a return -- rate of return equal
22 to the weighted cost of capital. You can call that a
23 carrying cost, yes.

24 Q. Okay. Now, would you agree that excess
25 ADIT is comparable to cash working capital; that is,

1 it is money that has been fronted by the ratepayers to
2 the -- to the utility?

3 A. Well, ADIT in general is excess.
4 Certainly is, yes. The excess piece of that is, yes.

5 Q. And to the extent there is a deferral of
6 the excess ADIT as provided in the stipulation that
7 Staff executed, will there be a carrying cost for that
8 deferred amount?

9 A. I believe so. All amounts of excess ADIT
10 have been reflected in Empire's rate-base in prior
11 cases and has reduced the overall return that
12 customers are -- are -- need to provide to the
13 Company. And for that reason, yeah until -- even as
14 we speak now, excess ADIT customers are earning a
15 return on that.

16 Q. Okay. So then let's take it a step
17 further. Are you familiar with what we've called the
18 stub period?

19 A. Yes.

20 Q. Okay. And to the extent -- if the
21 Commission orders a deferral -- if the Commission goes
22 beyond the stipulation and orders a deferral of the
23 stub period benefits, wouldn't that be comparable to
24 cash working capital?

25 A. I'd probably disagree with that. If the

1 Commission were to order that, that would be an amount
2 that ultimately would be intended to flow back to
3 customers. Cash working capital isn't like that.

4 Q. Okay. So when a utility has an
5 amortization of some cost --

6 A. Uh-huh.

7 Q. -- that amount is intended to flow in
8 some portion -- in some method, but they seek to get
9 capital -- carrying costs on that. Do you believe
10 that carrying costs there are appropriate?

11 A. Stated generally in the context of
12 deferrals, I think Staff has opposed most carrying
13 cost proposals. We believe the deferral itself and
14 the fact the Company -- or the customers or the
15 Company will be made whole over the long term is
16 sufficient compensation and you don't have to go to
17 the length of applying carrying costs to those amounts
18 as well.

19 Q. Okay. So given that rule of thumb, if
20 you will, if you don't allow carrying costs in those
21 instances, you shouldn't allow carrying costs of the
22 stub period benefits while they're being deferred?

23 A. That would be my argument, yes.

24 Q. Okay. Final line -- I believe final --
25 yeah, final line of questions, Staff initially

1 executed the tax -- the tax provisions that are
2 contained in this stipulation in the wind case; is
3 that correct?

4 A. That's correct.

5 Q. And -- and that wind case -- that
6 stipulation was executed approximately the end of
7 April?

8 A. April 24th.

9 Q. Okay. And the exact identical provision
10 is now contained in the stipulation today; is that
11 correct?

12 A. Substantively I believe there's no --
13 there's no differences. And maybe there's no wording
14 differences. I can't testify to that.

15 Q. But substantively you believe they're the
16 same?

17 A. Certainly in my area, which is more the
18 revenue requirement piece and not the rate design.

19 Q. Okay. It returns the same prospective --
20 not returns. It provides for the same prospective
21 rate reduction, 17.8 million; is that correct?

22 A. That's correct.

23 Q. It provides for the deferral of ADIT; is
24 that correct?

25 A. It does.

1 Q. And it doesn't provide for any treatment
2 of stub period benefits; is that correct?

3 A. That's correct.

4 Q. Okay. So it is substantively the same.
5 Given -- can you tell me if anything has happened over
6 the intervening time between April 24th and today that
7 you believe affects taxes and how taxes should be
8 handled by electrical corporations in Missouri?

9 A. I'm sure some parties would consider the
10 passage of SB 564 pertinent to the whole question of
11 how income taxes should be treated for Empire and
12 other companies.

13 The only other thing that might have
14 changed is with the passage of an additional two or
15 three months, I guess it's theoretically possible that
16 a utility could be further along the road in terms of
17 the necessary quantifications, particularly in regard
18 to excess ADIT amortization. But as we've heard
19 today, I don't believe Empire is far enough along as
20 of today to -- that it would be wise to reflect that
21 amortization in current rates.

22 Q. And you don't believe that the passage
23 and enactment of SB 564 should in any way reflect on
24 Staff's position on how taxes should be handled for
25 Empire?

1 A. Well, if it is determined that Empire
2 qualifies under SB 564, 393.137, then that statutory
3 treatment should prevail. Again, our assumption at
4 this point is it -- they are not a qualifying utility.

5 Q. Okay. So let's delve into that then
6 briefly. If the Commission determines that 393.137
7 should apply to Empire --

8 A. Right.

9 Q. -- would you agree that the stub period
10 benefits should flow back to customers?

11 A. That would be my interpretation of what
12 the SB 564 calls for.

13 Q. And would you believe that those should
14 flow back immediately to customers?

15 A. The stub period benefits?

16 Q. Yes.

17 A. I think SB 564 says you defer them until
18 the next rate case.

19 Q. Okay. Even though Ameren began to
20 amortize them immediately; is that correct? And I may
21 be wrong there.

22 A. I don't know off the top of my -- or I
23 don't remember off the top of --

24 Q. Okay. That's fair enough. Let me just
25 check and make sure I got everything.

1 No further questions.

2 MR. WOODSMALL: Thank you, Your Honor.

3 Thank you, sir.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. N. WILLIAMS: Thank you.

6 CROSS-EXAMINATION BY MR. N. WILLIAMS:

7 Q. Good afternoon, Mr. Oligschlaeger.

8 A. Good afternoon.

9 Q. Does Staff agree that if Empire's rates
10 are changed in this case, the starting point for
11 implementing those changes is an Empire annual revenue
12 requirement of 489,566,812 dollars?

13 A. Our analysis of the Tax Cuts and Jobs
14 impact did not lead us to compute the actual
15 cost-of-service from the last rate case. Having said
16 that, I have no reason to dispute your figure.

17 Q. If it's good enough for Empire, is it
18 good enough for Staff?

19 A. Well, no. I don't think you need to know
20 the cost-of-service from the last case to model the
21 impacts of the Tax Cuts and Jobs Act. I think you
22 take a cost-of-service -- a revenue requirement
23 calculation that is representative of -- reasonably
24 representative of the stipulation in the last case and
25 you simply substitute the new tax rate for the old

1 one.

2 Q. Turn your attention to page 5 of your
3 Rebuttal Testimony starting on line 20. And I'm going
4 to try to paraphrase it a bit. Hopefully get it
5 accurate.

6 You say that it appears that there's
7 uncertainty at this time regarding the average rate
8 assumption method calculations that are necessary to
9 determine the period of time protected accumulated
10 deferred income tax balances must be amortized for
11 flowing them to Empire's customers and comply with the
12 tax normalization requirements of -- I think you mean
13 the Internal Revenue Service code and you're probably
14 talking about excess accumulated deferred tax
15 balances. But is that the gist of what you're saying?

16 A. Yes.

17 Q. What did Empire disclose in the
18 discussions you refer to that led you to the
19 conclusions that you reached?

20 A. Well, we've had ongoing discussions with
21 them at least since April and possibly even before
22 that. And I think from the start, they were up front
23 that they did not currently have the accounting ca--
24 capability to fully run through all of the ARAM number
25 calculations that are necessary to comply with that

1 particular method. So just in general, it was
2 Empire's representations that they were not in a
3 position to give a definitive amount of excess
4 deferred taxes protected versus unprotected or ARAM,
5 period.

6 Q. Did Empire provide any estimated --
7 estimates?

8 A. I don't believe so.

9 Q. Did Staff request Empire to provide any
10 estimated figures?

11 A. I don't think we directly did, no.

12 Q. Were you aware from the discussions that
13 Empire had licensed the software that it had not yet
14 implemented?

15 A. I -- if you're talking about what was
16 earlier testified today, I was not aware of the
17 current status of that until hearings today. Maybe
18 I'm not understanding your question.

19 Q. Well, there was testimony earlier about
20 Deloitte, I believe it is, accounting module that
21 would allow Empire to calculate -- or come up with the
22 amortization period necessary for the excess protected
23 accumulated -- accumulated deferred income tax and to
24 separate protected and unprotected excess accumulated
25 deferred income tax and that that software had been

1 licensed by Empire at least for the past two years.

2 A. Okay. That was new information to me.

3 Q. You just learned that today?

4 A. Yes.

5 Q. Then on the concern about normalization
6 violations for return -- flowing protected excess
7 accumulated deferred income tax back to customers
8 faster than the remaining life of the asset, what
9 mechanisms can be employed to avoid triggering IRS
10 action as a result of -- or to avoid those kinds of
11 normalization issues?

12 A. Well, probably the primary method would
13 be to wait until you have a complete and accurate ARAM
14 calculation so you know the period of time it has to
15 go over and rates can reflect that.

16 Absent complete 100 percent information
17 as to what those balances and what that period should
18 be, if you think you're fairly close, at least in one
19 other case before the Commission earlier this year,
20 you put in what you consider to be a close estimate of
21 what that amount will be, but make sure there are
22 adequate true-up provisions so that over time
23 customers do not receive more -- more of the benefit
24 than what they were -- would be entitled to under the
25 final ARAM calculations.

1 Q. You don't have any opinion about the
2 accuracy of the 120 million dollar estimate that
3 Empire's provided, do you?

4 A. We have not reviewed it in detail.

5 Q. Does that mean no?

6 A. If you need a yes or no, that would be a
7 no.

8 Q. I think earlier you said -- testified
9 that part of your answer was based on your common
10 sense understanding of the term "general rate case."

11 A. Right.

12 Q. What is your common sense understanding
13 of the phrase "general rate case"?

14 A. Well, to me -- and again, I'm not trying
15 to make any kind of legal pronouncement. To me, a
16 general rate case is a case in which a utility's
17 general rates are at issue. And I would think
18 normally that would also involve, in most cases at
19 least, a review of all relevant factors.

20 Q. What do you mean by the term "general
21 rates"?

22 A. The rates customers pay every month as
23 part of their utility bill that aren't denoted through
24 a separate line item or -- you know, such as the FAC
25 or the RES or the MEEIA mechanism.

1 MR. N. WILLIAMS: I have no further
2 questions.

3 QUESTIONS BY JUDGE WOODRUFF:

4 Q. Okay. I have some -- as you know, the
5 Chairman had to leave, but he left some questions for
6 me to ask so I'm going to ask them now.

7 First question is whether the excess ADIT
8 flow back meets the AAO standard of mat-- materiality,
9 extraordinary recurring need?

10 A. Okay. Does -- maybe I'll try to attack
11 it this way. The passage of the Tax Cuts and Job Act
12 in general and its impact on utility income tax
13 expense I think can be car-- fairly characterized as
14 meeting the unique, unusual -- or unusual, unique and
15 nonrecurring standard that I understand is normally
16 used here at the Missouri Commission to assess AAO
17 requests.

18 If the further question is excess ADIT
19 specifically, I would say as part of the overall
20 impacts of the -- of the Tax Reform Act, yes, I
21 believe it does.

22 Q. Okay. And is the excess ADIT an income
23 tax component as that term as used in Section 3 of
24 SB 564?

25 A. Is it one of the financial impacts of tax

1 reform that are required to be taken into account
2 under 137? I believe it is, yes.

3 Q. Okay. And is the excess ADIT a part of
4 the financial impact? Well, you just answered the
5 financial impact of such federal act in the same
6 section. You said that was -- you believed there was?

7 A. Yes.

8 Q. Okay. Well, let me go back to the one I
9 asked earlier about the income tax component. Is
10 there -- because the Chairman asked two separate
11 questions about it, so I'm -- whether the excess ADIT
12 is an income tax component as that term is used in
13 section 3 of SB 564. Do you have a copy of the
14 statute there?

15 A. I'm there.

16 Q. Okay. Does it talk about the financial
17 impact of such federal act? What is the context of
18 that in that section, Section 3?

19 A. Right.

20 Q. What -- what does it say?

21 A. About the financial impacts?

22 Q. Yes. Can we go ahead and read it?

23 A. Okay. To paraphrase to start off with --
24 well, if the rates of any electrical corporation to
25 which this section applies have not already been

1 adjusted to reflect the effects of the Federal 2017
2 Tax Cuts and Jobs Act, then it gives a cite, the
3 Commission shall have one-time authority that shall be
4 exercised within 90 days of the effective date of this
5 section to adjust such electrical corporation's rates
6 prospectively so that the income tax component of the
7 revenue requirement used to set such an electrical
8 corporation's rates is based upon the provisions of
9 such federal act without considering any other factor
10 as would otherwise be required by Section 393.270.

11 And there's more if you want me to read
12 it.

13 Q. Particularly section -- Section 3.

14 A. Well, I did read from Section 3.

15 Q. That was Section 3? Okay.

16 A. Well, not the whole thing. If you would
17 like me to read the whole thing, I can.

18 Q. Does the term "financial impact of such
19 federal act" show up in that section?

20 MR. THOMPSON: It's in Section 4.

21 JUDGE WOODRUFF: Is it Section 4?

22 MR. THOMPSON: Yeah.

23 BY JUDGE WOODRUFF:

24 Q. All right. I'm --

25 A. Well, and actually it shows up in Section

1 3 too.

2 MR. THOMPSON: Yeah, it does. Sorry.

3 THE WITNESS: And do you want me to read
4 the sentence that contains that phrase or --

5 BY JUDGE WOODRUFF:

6 Q. Yes. If you would, please.

7 A. Okay. The Commission shall also require
8 electrical corporations to which this section applies
9 as provided for under subsection 1 of this section to
10 defer to a regulatory asset the financial impact of
11 such federal act on an electrical corporation for the
12 period of January 1st, 2018 through the date the
13 electrical corporation's rates are adjusted on a
14 one-time basis as provided for in the immediate
15 preceding sentence.

16 Q. Now, that sentence you just read talks
17 about the financial impact of such federal act as
18 being something that the Commission is supposed to be
19 looking at. Right?

20 A. Right.

21 Q. And I -- the Chairman's question is
22 whether -- is the excess ADIT something that the
23 Commission would be looking at under that -- under
24 that section?

25 A. I would interpret it as including both

1 the changes to the corporate tax rate as well as an
2 amortization of excess ADIT.

3 Q. Okay. Now, the next question then is
4 assuming that SB 564, specifically 393.137, applies to
5 Empire, do you believe good cause exists to defer a
6 portion of the one-time rate change as set forth in
7 Section 4, the excess ADIT? Examples good cause such
8 as Empire's inability at the time to determine the
9 amount of excess ADIT for the appropriate amortization
10 period. Is that good cause under the terms of the
11 statute?

12 A. As it relates to the excess ADIT piece, I
13 do consider the fact that we don't, right as we sit
14 here today, have a solid and accurate number for what
15 that -- those -- that -- those amortizations should be
16 to be good cause to choose to defer those impacts as
17 opposed to immediately reflect them as -- in Empire's
18 rates.

19 Q. Thank you. Next question then, would
20 there be any adverse impact on ratepayers if the
21 Commission were to require the excess ADIT flow back
22 to be put in rates immediately rather than deferred?

23 A. The only adverse impact would be in the
24 event some -- that would cause a normalization
25 violation to occur and then --

1 Q. What -- what would be the impact of a
2 normalization violation?

3 A. Well, the -- as I understand it, the
4 offending utility would no longer be able to take
5 certain accelerated depreciation deductions.

6 Q. And would that have an adverse impact on
7 ratepayers?

8 A. Well, they would pay -- ratepayers would
9 pay higher -- or let me put it this way. I'm not sure
10 it would change the amount of income tax expense
11 customers would have to pay in rates in aggregate, but
12 they would get less of a rate-base offset to reflect
13 that payment. So yes, I would say they would be
14 adversely impacted.

15 Q. Again, assuming that 393.137 applies,
16 would there be any other reason to defer excess ADIT
17 flow back such as good public policy, something like
18 that?

19 A. To -- is there any other reason to
20 defer -- choose to defer excess ADIT?

21 Q. Yes.

22 A. I mean in an ideal world, obviously you'd
23 want to reflect that impact in rates as soon as
24 possible. I think the policy aspect of it is do you
25 have enough information, do you have adequate

1 information to do that.

2 Q. Okay. That's all the Chairman's
3 questions.

4 I had a question too. When you were
5 talking about carrying costs with -- with
6 Mr. Woodsmall, you mentioned the customers are
7 returning on -- currently earning a return on ADIT.
8 Can you explain how that works?

9 A. Well, sure. Rate-base is simply all of
10 the -- measures all of the capital the Company
11 receives from various sources. To the extent they
12 receive capital from shareholders and debt holders,
13 then -- such as how plant assets are financed, that's
14 an increase to rate-base and the Company receives a
15 return from customers to compensate those investors.

16 However, there is some capital received
17 by a utility that is not contributed by third parties.
18 They're contributed directly by the customers and
19 probably the primary source of those funds is
20 collection of accumulated deferred income taxes in
21 rates. To reflect --

22 Q. Which -- which actually reduces
23 rate-base?

24 A. And that reduces rate-base. If you go to
25 the rate-base schedule, you'll see -- the top section

1 usually is additions to rate-base, the bottom section
2 is subtractions. That's where you will find defer--
3 accumulated deferred taxes showing an overall
4 deduction to rate-base and it is material for major
5 utilities.

6 Q. So the fact that the rate-base is reduced
7 means customers are paying lower rates?

8 A. Well, that -- it reduces the return they
9 would otherwise have to pay, so yes, their rates are
10 lower to reflect that they need to receive a return as
11 well.

12 Q. The customers are receiving a return.

13 A. Well --

14 Q. I think I under-- I think I've got it.

15 A. Okay.

16 JUDGE WOODRUFF: Okay. That's all the
17 questions I had and all the questions the Chairman
18 had. Anyone wish to recross based on those questions
19 from the Bench?

20 MR. N. WILLIAMS: Yes

21 HEARING OFFICER WOODS: Go ahead.

22 RECROSS-EXAMINATION BY MR. N. WILLIAMS:

23 Q. You testified that norm-- normalization
24 violation could require the loss of some benefits, I
25 believe, accelerated depreciation maybe?

1 A. The ability of the Company to take
2 certain deductions on their tax return.

3 Q. Is that a -- if there is a normalization
4 violation, will it -- is that a potentially result or
5 is it a definitive result, the loss of the ability to
6 take accelerated depreciation?

7 A. Well, because this is an event that very
8 seldom or ever happens, I'm not sure exactly how the
9 process works. Is there some kind of due process
10 rights to the Company where they can argue before the
11 IRS, no, don't -- don't take away our deductions? I
12 don't know how that works. It's very least a
13 potential loss of the deductions. And I think the
14 statutes themselves say companies that violate this
15 will lose their tax deductions.

16 Q. Is your answer you don't know whether or
17 not it's a definitive result or a potential result?

18 MR. THOMPSON: I'm going to object. He
19 gave his answer. It speaks for itself.

20 MR. N. WILLIAMS: I'm just trying to get
21 him to clarify.

22 JUDGE WOODRUFF: I'll allow you to
23 clarify. Overruled.

24 THE WITNESS: I guess it could be both,
25 depending on the circumstances.

1 MR. N. WILLIAMS: Thank you.

2 JUDGE WOODRUFF: Any redirect?

3 MR. THOMPSON: No redirect. Thank you.

4 JUDGE WOODRUFF: All right then,

5 Mr. Oligschlaeger. You can step down.

6 And with that, we're going to end for the
7 day. I apologize to Ms. Lange, but we'll take up --

8 MR. N. WILLIAMS: Judge, before we do --

9 JUDGE WOODRUFF: Sure.

10 MR. N. WILLIAMS: -- may I request the
11 Commission to take notice of some of its filings in
12 some of its cases?

13 JUDGE WOODRUFF: Yes.

14 MR. N. WILLIAMS: Go ahead?

15 JUDGE WOODRUFF: Go ahead.

16 MR. N. WILLIAMS: The Public Counsel
17 requests that the Commission take notice from Case
18 Number AW-2018-0174, the order Opening a Working
19 Proceeding Regarding the Effects Upon Missouri
20 Utilities of the Tax Cuts of -- Act of 2017 and
21 Directing Response that was filed by the Commission on
22 January 3rd, 2018; the response to the order filed by
23 the Empire District Electric Company, it's a
24 confidential exhibit on January 31, 2018; Ameren
25 Missouri's response to that Commission order that was

1 filed by Ameren Missouri on January 31 of 2018; the
2 initial responses of Kansas City Power & Light Company
3 in KC-- KCPL/Greater Missouri Operations Company filed
4 by Kansas City Power & Light Company and KCP&L/Greater
5 Missouri Operations Company on January 31, 2018; in
6 Case Number ER-2016-0023 the Commission's order
7 approving compliance tariffs that was filed by the
8 Commission on September 6th, in; and Case Number
9 ER-2018-0226 the Commission's order Opening Rate Case,
10 Directing Notice, Establishing Time To Intervene and
11 Requiring Company To Show Cause Why Its Rates Should
12 Not Be Adjusted that was filed by the Commission on
13 February 21, 2018; Ameren Missouri's response to the
14 Commission's show cause order, public and
15 confidential, that Ameren Missouri filed on March 19,
16 2018 in that case; and Case Number ER-2018-0228, the
17 Commission's order Opening Rate Case, Directing
18 Notice, Establishing Time To Intervene And Requiring
19 Company To Show Cause Why Its Rates Should Not Be
20 Adjusted that the Commission filed on -- issued
21 actually February 21, 2018; the re-- Empire -- the
22 Empire District Electric Company's response to show
23 cause, motion and order that it filed on March 19,
24 2018; the Commission's notice acknowledging dismissal
25 of application enclosing the case that the Commission

1 issued on May 17th, 2018.

2 JUDGE WOODRUFF: Anyone object to taking
3 notice of those documents?

4 MR. THOMPSON: Yes. Staff does. I
5 object to taking notice of Ameren Missouri's response
6 and the response of Kansas City Power & Light and GMO
7 in AW-2018-0174 as irrelevant. I object to taking
8 notice of the order opening case and Ameren's response
9 in ER-2018-0226.

10 MS. CARTER: I would make those exact
11 same objections, I believe. To be honest, I couldn't
12 go through that list fast enough that Nathan was
13 reading off, especially without knowing what those
14 case numbers are as he was reading them. But most
15 certainly I would object to filings from other
16 companies being brought into this case.

17 JUDGE WOODRUFF: All right.

18 MR. THOMPSON: If he wants to argue
19 something in his brief, Judge, referring to one of
20 those items from a different case with a different
21 company, I think he can do that. But if you take
22 notice of it, it becomes evidence in this case and I
23 object to that.

24 MS. CARTER: It would all -- all be
25 hearsay. It's their out-of-court statements in

1 another matter and those witnesses are not taking the
2 stand in this case.

3 JUDGE WOODRUFF: Mr. Williams, do you
4 have a response?

5 MR. N. WILLIAMS: Well, a number of them
6 are Commission orders. I'm sure the Commission can
7 take notice of their orders.

8 MS. CARTER: And we didn't object to
9 any -- we didn't object to the Commission orders.

10 MR. THOMPSON: I did.

11 MS. CARTER: For the Ameren case -- for
12 the Ameren case, but -- yes, I don't believe that --

13 JUDGE WOODRUFF: Since -- since we'll be
14 back on Monday, share a copy of that with the other --
15 with counsel so we can know exactly what documents
16 we're talking about. And if you can get to me a copy
17 as well, we'll take it up again on Monday morning.
18 Okay.

19 MR. WOODSMALL: Your Honor, if I'm not
20 here on Monday, may I be exuded?

21 JUDGE WOODRUFF: You certainly may.

22 All right. With that then, we are
23 adjourned for the day and we'll resume on Monday
24 morning at 8:30.

25 (Exhibit 10 was marked for

1 identification.)

2 (Whereupon, the hearing was adjourned
3 until July 23, 2018 at 8:30 a.m.)

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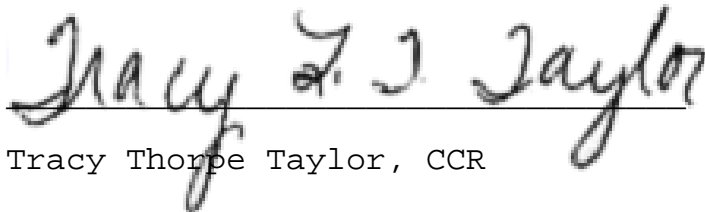
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Tracy Thorpe Taylor, CCR

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