

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Hearing  
8 December 16, 2004  
9 Jefferson City, Missouri  
10 Volume 15  
11  
12 In the Matter of the Tariff Filing )  
13 of The Empire District Electric )  
14 Company to Implement a General ) Case No. ER-2004-0570  
15 Rate Increase for Retail Electric )  
16 Service Provided to Customers in )  
17 Its Missouri Service Area )  
18  
19 KEVIN A. THOMPSON, Presiding,  
20 DEPUTY CHIEF REGULATORY LAW JUDGE.  
21  
22 STEVE GAW,  
23 ROBERT M. CLAYTON,  
24 JEFF DAVIS,  
25 LINWARD "LIN" APPLING,  
COMMISSIONERS.  
  
26 REPORTED BY:  
27  
28 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
29 MIDWEST LITIGATION SERVICES  
30

1 APPEARANCES:

2 W.R. ENGLAND III, Attorney at Law  
JAMES C. SWEARENGEN, Attorney at Law

3 DEAN L. COOPER, Attorney at Law  
Brydon, Swearngen & England, P.C.  
4 312 East Capitol  
P.O. Box 456  
5 Jefferson City, MO 65102-0456  
(573) 635-7166

6 FOR: Empire District Electric Company.

7 BRIAN T. MCCARTNEY, Attorney at Law  
8 Brydon, Swearngen & England, P.C.  
312 East Capitol  
9 P.O. Box 456  
Jefferson City, MO 65102-0456  
10 (573) 635-7166

11 FOR: Aquila, Inc.

12 STUART CONRAD, Attorney at Law  
Finnegan, Conrad & Peterson  
13 3100 Broadway  
1209 Penntower Officer Center  
14 Kansas City, MO 64111  
(816) 753-1122

15 FOR: Praxair, Inc.  
16 Explorer Pipeline Company.

17 THOMAS BYRNE, Attorney at Law  
P.O. Box 66149  
18 1901 Chouteau Avenue  
St. Louis, MO 63103  
19 (314) 554-2237

20 FOR: Union Electric Company,  
d/b/a AmerenUE.

21 RUTH O'NEILL, Assistant Public Counsel  
22 200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
23 (573) 751-4857

24 FOR: Office of the Public Counsel  
and the Public.

25

1 STEVEN DOTTHEIM, Chief Deputy General Counsel  
KEITH R. KRUEGER, Deputy General Counsel  
2 THOMAS R. SCHWARZ, JR., Deputy General Counsel  
DENNIS L. FREY, Senior Counsel  
3 NATHAN WILLIAMS, Associate General Counsel  
DAVID A. MEYER, Associate General Counsel  
4 MARY WESTON, Associate General Counsel  
P.O. Box 360  
5 200 Madison Street  
Jefferson City, MO 65102  
6 (573) 751-3234  
  
7 FOR: Staff of the Missouri Public  
Service Commission.  
8  
9  
10  
11  
12  
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Okay. Mr. Roff, good  
3 morning. How are you?

4 THE WITNESS: Good morning. I'm /fine.  
5 Thank you, sir.

6 JUDGE THOMPSON: I will remind you you're  
7 still under oath.

8 THE WITNESS: Yes.

9 JUDGE THOMPSON: Now, we're still -- we're  
10 going to complete questions from the Bench for you, and  
11 then we'll go to recross and redirect and you're out of  
12 here.

13 THE WITNESS: Fine.

14 JUDGE Thompson: Commissioner Appling, do  
15 you have questions for this witness?

16 DONALD ROFF testified as follows:

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. I don't know whether I'm having a question  
19 or whether I'm having trouble trying to understand what  
20 has been said so far, so maybe we can tap around with this  
21 just for a few minutes.

22 A. I will certainly try.

23 Q. Go back to your direct testimony, and take  
24 in consideration what you're recommending for  
25 depreciation, what OPC is recommending. I assume that you

1 read and know what OPC has recommended in this case --

2 A. Yes.

3 Q. -- briefly, and what Staff has recommended?

4 A. Yes, sir.

5 Q. Can you tell me what you have recommended

6 and then kind of summarize the other two? And I know it's

7 been done before, but I'm trying to get my arms around

8 this so that I can render a vote that won't hurt all of

9 you. Understand what I'm saying. Sir, the best that you

10 can, summarize that for me in kind of a sound bite. Don't

11 go all the way to Kentucky and back.

12 A. I will try.

13 Q. Okay.

14 A. I think there are probably four separate

15 areas or issues, if you will, and some of those are

16 differences of opinion and some of those are differences

17 in depreciation practice. So I'll start with generation.

18 And in the case of generation I have

19 recommended a procedure known as a lifespan approach where

20 we attempt to estimate the retirement date for those

21 facilities and determine a depreciation life and rate

22 based upon that period of depreciation or recovery, if you

23 will.

24 And that differs from both the Staff and

25 OPC in that they are proposing essentially the same type

1 of analysis that was used for the mass assets, historical  
2 review of retirement activity, mortality experience, and  
3 applying that to the production units, which is a much  
4 smaller sample -- obviously there's only a couple  
5 plants -- and derive some service life statistics that  
6 they propose, which are dramatically different from the  
7 service life that I developed. So that would be, I guess,  
8 area No. 1.

9                   In concert with that, the lifespan approach  
10 is essentially a remaining life technique process as  
11 opposed to a whole life process. And the difference --  
12 and I think I explained this yesterday, but I'll try to  
13 say it again. Whole life deals with gross plant spread  
14 allocated over the entire life of the asset. There's no  
15 consideration of past accumulations of depreciation.  
16 Remaining life takes into account the accumulated  
17 depreciation balance and effectively allocates the net  
18 plant over the future life. So that contributes to part  
19 of the difference, both for generation and for the mass  
20 assets.

21                   The third area would be just life estimates  
22 of the various mass properties. And in that regard, there  
23 really isn't a lot of difference between the Staff and, in  
24 fact, OPC accepted my recommendations in that area.

25                   And then the final issue would be net

1 salvage, and I'm sure you're intimately familiar with that  
2 whole process, at least in the history of the recent  
3 history of the Commission in that area. We are proposing  
4 or recommending -- I am recommending traditional, what's  
5 been referred to as a traditional approach, kind of what  
6 Empire utilized prior to the 2001 Order or case.

7                   Staff is proposing to expense costs of  
8 removal through an operating account, which is clearly a  
9 violation of the rules. OPC is including the same basic  
10 net salvage allowance but running it through accumulated  
11 depreciation, so it stays on the balance sheet as it were  
12 in part.

13                   But that differs from the traditional  
14 approach, what I call an accrual approach. And that  
15 probably is the single largest difference in this case is  
16 the net salvage issue. I don't know if I've covered that  
17 to your satisfaction or --

18                Q.     I think so. I was just trying to -- I'm  
19 trying to get my arms around this so that I can, as I said  
20 earlier, to render my 20 percent of this dollar, so that  
21 we can get to a point so that we can move on when that  
22 issue is up.

23                   So the net salvage issue is the ROE point?

24                A.     I believe that is correct. It's the most  
25 significant dollar amount by far.

1           Q.       How far -- how far are we off?

2           A.       Well, if you were to take the depreciation  
3 rates that were included in the company's filing that  
4 produce approximately a \$10 million increase in  
5 depreciation expense, probably somewhere in the range of  
6 three quarters to 80 percent of that difference is net  
7 salvage, somewhere close to 7 or \$8 million on an annual  
8 basis.

9           Q.       Is there a mechanism in this process to  
10 tell exactly what Empire -- what Empire has spent that  
11 money on, what they said they're going to spend it on? Is  
12 there something in the system that --

13          A.       Well, yes.

14          Q.       -- we can go back and check to make sure  
15 that that's done?

16          A.       First, from a historical accounting  
17 perspective, we have examined those transactions and the  
18 basis for those transactions and the source of cost of  
19 removal and related it to the retirements that caused that  
20 cost of removal. So there's the historical relationships  
21 that exist, and that won't change. That will continue to  
22 be Empire's accounting going forward, as retired by the  
23 chart of accounts.

24                   COMMISSIONER APPLING: Thanks.

25                   THE WITNESS: You're very welcome.



1 JUDGE THOMPSON: Thank you, Commissioner.

2 QUESTIONS BY JUDGE THOMPSON:

3 Q. In your response to Commissioner Appling, I  
4 thought I heard you say that there's a difference of  
5 approach between the company and perhaps Staff and OPC  
6 with respect to the method of depreciation to use for  
7 generation versus other types of assets; is that correct?

8 A. Yes.

9 Q. And they want to use the whole life  
10 approach, is that it, or is this a different difference?

11 A. To me whole life is a depreciation  
12 calculation terminology that the difference from the  
13 determination of service life is the difference between  
14 the company and Staff and OPC, the difference between the  
15 use of a lifespan approach --

16 Q. I see. Okay.

17 A. -- and the mortality determination of  
18 service life similar to what's used for the mass assets.

19 Q. And what is the approach that you advocate  
20 with respect to the generation assets?

21 A. I am proposing the use of a lifespan  
22 approach, one where we identify an estimated retirement  
23 date for those assets and, therefore, first determine an  
24 end point for the depreciation on those facilities, but  
25 also determine a service life associated with those assets

1 over which the costs would be allocated. So I think it's  
2 merely a difference in how you estimate service life.

3 Q. Okay. That is how long the asset can be  
4 expected to remain in service before it's retired?

5 A. Yes.

6 Q. And what is the approach that Staff is  
7 recommending?

8 A. Well, it's actually OPC. Staff has not  
9 changed the --

10 Q. Okay. Whoever it is.

11 A. -- existing rates for generation.

12 OPC has examined the historical activity  
13 for the generating stations and attempted to fit these  
14 Iowa curves, these retirement dispersions, mortality  
15 dispersions to those -- to that limited amount of activity  
16 and derive a service life, then, which is then inputted  
17 into the whole life rate formula.

18 Q. Okay. So if I understand, you view that as  
19 a methodological error because the sample size is so much  
20 smaller?

21 A. Absolutely. We're dealing with --

22 Q. So it's not because of the nature of the  
23 assets but rather because of the size of the sample?

24 A. Well, actually both. I think that that  
25 methodology might be more accurate or more predictive if

1     there were a larger sample, but also there has to be some  
2     conditions of retirement that have occurred.  If you're  
3     trying to estimate the service life of an asset that  
4     effectively all dies at one point in time, it would seem  
5     that that sample should have occurred -- should have had  
6     similar transactions that occurred in the past, and that's  
7     not the case with Empire.

8             Q.       Okay.  Now, with the difference between the  
9     remaining life technique and the whole life technique,  
10    would you agree that the remaining life technique is  
11    essentially self correcting?

12            A.       I believe that's a way you could describe  
13    it, yes.

14            Q.       Okay.  When you talk about mass properties,  
15    do you mean transmission and distribution assets?

16            A.       We classified rather loosely transmission  
17    distribution and the general plant assets as well,  
18    separate from generation.

19            Q.       So it's basically everything but  
20    generation?

21            A.       Correct.

22            Q.       Now, with respect to the net salvage issue,  
23    it seems to me that perhaps this could be compared  
24    somewhat to customer deposits.  Obviously the scale is  
25    much different, but the customer deposit money is

1 available to the company to be used while the company is  
2 holding the deposit, and when it's returned to the  
3 customer, as I think you testified yesterday, money is  
4 fungible; it doesn't have to be the same money?

5 A. I believe that was Mr. Knapp.

6 Q. Was that? Okay. But would you agree that  
7 there's --

8 A. Cash is certainly fungible. I can't  
9 disagree with that.

10 Q. Okay. So as long as the money the  
11 customers get back -- this is in the areas of deposit  
12 obviously -- is the right amount, they don't care what the  
13 company did with it in the interim?

14 A. I would think that that's true, and I would  
15 be surprised if the customer even knew what the company  
16 did with those deposits.

17 Q. They probably think it's buried out in the  
18 backyard somewhere.

19 A. I have no comment.

20 Q. Okay. I have some questions for you from  
21 Commissioner Gaw, if I haven't lost them already. Here we  
22 are. In your testimony you state that retirement dates  
23 for generating units were provided by Empire planning  
24 personnel. Do you recall that?

25 A. Yes.

1           Q.       Who were these people?

2           A.       The primary person was Brad Beecher, vice  
3 president of energy production. I don't know his exact  
4 title. I don't recall his exact title.

5           Q.       Okay. And how was the information provided  
6 to you, in written form or verbally or otherwise?

7           A.       We actually had a rather lengthy discussion  
8 at the company's offices. So there was no written  
9 communication regarding that.

10          Q.       Okay. Did you engage in any process to  
11 determine whether or not those retirement dates were  
12 reasonable?

13          A.       I had looked at the lifespans and resulting  
14 average service lives based upon our approach and  
15 determined that the effect of those retirement dates were  
16 reasonable average service lives. So I would say yes.

17          Q.       Did you review any documents in making that  
18 determination?

19          A.       I don't recall specific documents that were  
20 reviewed.

21          Q.       Okay. With respect to the Iatan plant that  
22 is evidently operated by Kansas City Power & Light, did  
23 you communicate with any KCP&L person with respect to  
24 their view of the retirement date for that plant?

25          A.       I did not speak with anyone at Kansas City

1 Power & Light.

2 Q. Do you recall testifying in a 1997 Aquila  
3 proceeding before this Commission?

4 A. It wasn't called Aquila at that time, but  
5 yes, I do. Yes, I do.

6 Q. UtiliCorp United. The case was ER-97-394.  
7 And I'm told that you said this: These retirement dates  
8 produce lifespans which are reasonable and consistent with  
9 my experience. It is my understanding that these dates  
10 reflect the current best estimate of when the generating  
11 units will retire, giving due consideration of each unit's  
12 age, location, operating characteristics and expected  
13 future usage.

14 A. I will accept that quotation.

15 Q. Okay. Now, in that case, I'm told you  
16 provided retirement dates or used retirement dates for the  
17 Nevada or Nevada combustion turbine of 1999, KCI Units 1  
18 and 2, 2000, and Greenwood Units 1 through 4, 2004. Do  
19 you recall those?

20 A. I recall the names.

21 Q. Don't recall the specific dates?

22 A. I don't recall the specific dates, yes.

23 Q. It's not like you haven't done any  
24 depreciation work since then, right?

25 Okay. Are you aware of the current status

1 of those three facilities?

2 A. I am not.

3 Q. Okay. Would you be surprised if I told you

4 they're all still operating?

5 A. I would not be surprised.

6 Q. These retirement dates are an estimate, are

7 they not?

8 A. Yes, they are.

9 Q. So sometimes the estimate's wrong?

10 A. Absolutely. And just let me qualify the

11 answer a little bit.

12 Q. Sure.

13 A. There are a number of factors that we have

14 discussed that influence those dates, and over time

15 circumstances change. And I would hazard a guess that the

16 price of natural gas in 1997, for example, was

17 dramatically different from what it is today.

18 Q. Okay.

19 A. That would be one factor that would

20 influence the potential retirement date of an asset.

21 Q. So in depreciation accounting, what happens

22 if the asset continues in service after the end date

23 that's been projected?

24 A. If that were to occur, and obviously it

25 does occur, there would be an adjustment made on a

1 periodic basis to those depreciation rates. If, in fact,  
2 that situation had produced an occurrence where the asset  
3 had become fully depreciated, there are mechanisms within  
4 the property accounting systems of the company to cease  
5 depreciation when that occurs.

6 Q. Okay. Were you here for the testimony on  
7 Tuesday?

8 A. No, sir.

9 Q. On Tuesday Mr. Gipson, who I think is the  
10 CEO of Empire, testified that the company is undertaking  
11 capital expenditures for Iatan and Asbury in order to keep  
12 them operational. Would that surprise you?

13 A. I would be surprised if that were not the  
14 case.

15 Q. Okay. In addition, Mr. Gipson indicated  
16 that an ideal fleet fuel mix would include probably  
17 50 percent coal capacity and 80 percent coal energy. Are  
18 you aware of any replacement plans that would allow Empire  
19 to meet these goals if Asbury and Iatan were both retired  
20 in 2014?

21 A. I haven't reviewed in great detail the  
22 replacement plans, but I'm sure they are in place. That's  
23 all I can say on that.

24 Q. Okay. With respect to net salvage for  
25 production accounts, can you isolate the increase in



1 depreciation rates associated with, first, retirement  
2 dates provided by Empire?

3 A. Would you repeat that, please?

4 Q. You understand this is Woodsmall's  
5 questions, so if it doesn't make sense, you look at him.  
6 For production accounts, can you isolate the increase in  
7 depreciation rates associated with, first, retirement  
8 dates provided by Empire?

9 A. I guess I will say yes.

10 Q. Okay.

11 A. I mean, I don't have that number in front  
12 of me, but --

13 Q. I understand.

14 A. -- it's a calculation that could be made.

15 Q. Okay. In other words, you could isolate  
16 the effect of just the life dates, right?

17 A. Yes.

18 Q. What the effect of that would be. And  
19 secondly, terminal net salvage treatment?

20 A. Similarly.

21 Q. That calculation could be made?

22 A. Right.

23 Q. And again, you don't have those figures at  
24 your fingertips?

25 A. No.

1           Q.       And finally net salvage associated with  
2   interim retirement?

3           A.       Yes.   And that's a fairly small piece of  
4   the total.

5           Q.       Okay.   Now, with respect to terminal net  
6   salvage, can you provide any information regarding the  
7   last time that a Missouri electric utility retired a  
8   generating unit?

9           A.       I have not done an extensive evaluation of  
10   each and every Missouri electric utility as to when they  
11   have retired facil-- for example, I know that Empire has  
12   retired some of the earlier Riverton units at some point  
13   in time.

14          Q.       Okay.   There actually have been  
15   retirements?

16          A.       To my knowledge, yes.

17          Q.       Do you know, if you know, when was the last  
18   time that a coal-burning generating facility was retired?

19          A.       I just don't have that information in my  
20   mind right now.   There have been retirements of coal  
21   generating facilities in this country.

22                   JUDGE THOMPSON:   Okay.   That's all the  
23   questions that I have for you from Commissioner Gaw,  
24   Chairman Gaw.

25                   THE WITNESS:   Thank you.

1 JUDGE THOMPSON: Do you have any additional  
2 questions, sir?

3 COMMISSIONER APPLING: I don't think so.

4 JUDGE THOMPSON: Okay. Well, then, let's  
5 move on at long last to recross based on questions from  
6 the Bench. And I believe, Mr. Byrne, that you are first  
7 up.

8 MR. BYRNE: Wonderful. Thank you, your  
9 Honor.

10 RECROSS-EXAMINATION BY MR. BYRNE:

11 Q. Good morning, Mr. Roff.

12 A. Good morning.

13 Q. A couple of questions about questions from  
14 the Bench from yesterday. Do you recall that Commissioner  
15 Murray asked you a little bit about safeguards under the  
16 company's proposed treatment of net salvage?

17 A. I do recall that discussion.

18 Q. And let me ask you this: Would it -- with  
19 regard to safeguards, my understanding is under the  
20 company's approach net salvage is credited to depreciation  
21 reserve; is that right?

22 A. Credited, debited, I'll --

23 Q. It's accounted for?

24 A. It goes into accumulated depreciation,  
25 yeah.

1           Q.       Okay.  And that affects the depreciation  
2   reserve?

3           A.       Correct.

4           Q.       So it's kept track of; is that fair to say?

5           A.       In a sense, yes.

6           Q.       And my understanding in a sense that  
7   depreciation reserve is sort of a balancing account, that  
8   ultimately balances everything?

9           A.       I suppose you could look at it that way.  
10   It's the -- the place where depreciation entries and the  
11   related transactions go.

12          Q.       Okay.  As opposed to the Staff and Public  
13   Counsel's proposed method of treating net salvage, which  
14   is as an expense item; is that correct?

15          A.       Well, I have to think you would have to  
16   differentiate the Staff approach from OPC approach.

17          Q.       Okay.

18          A.       And I think Staff is -- would treat it as  
19   an operating expense.  I believe OPC would also run it  
20   through accumulated depreciation.

21          Q.       Well, then, just at least compared to the  
22   Staff method, if -- in other words, if an expense is too  
23   high or too low and it's set in the ratemaking process,  
24   you know, would it be fair to say there's no way to  
25   correct for that in the future?

1           A.       Under the Staff approach, I don't believe  
2     there's any way to track that, to balance it as you've  
3     described.

4           Q.       Okay. And would it be -- would it be fair  
5     to say that keeping track of the net salvage through the  
6     depreciation reserve is a safeguard that protects  
7     ratepayers from either underpaying or overpaying for net  
8     salvage?

9           A.       I would say that that's true. It probably  
10    also protects the company to some degree as well, for the  
11    same reason.

12          Q.       Okay. But it makes sure the right amount  
13    is ultimately collected rather than possibly the wrong  
14    amount?

15          A.       I'm not sure that's true. I think it  
16    allows you to adjust if there are differences.

17          Q.       Okay. Whereas the expense approach doesn't  
18    allow you to adjust?

19          A.       Correct.

20          Q.       Okay. How about as a safeguard, in your  
21    opinion, in the long run, will it cost ratepayers more or  
22    less under the standard approach?

23          A.       I think if you were to look at the total  
24    life revenue requirements under the traditional approach  
25    versus expensing, I think that customers pay less over the

1 long term because of the rate base effect.

2 Q. Okay. And could that be considered a  
3 safeguard that protects customers?

4 A. I would certainly think so, yes.

5 Q. Okay. Just recently Chairman Gaw submitted  
6 some questions about if an asset was fully depreciated but  
7 remained in service. Do you remember that?

8 A. Yes.

9 Q. And just a follow-up on that. My  
10 understanding is -- and you said you'd stop the  
11 depreciation once the asset was fully depreciated; is that  
12 correct?

13 Q. I said there were processes in place in  
14 most of the property accounting systems that allow you to  
15 do that.

16 Q. Okay. And it's my understanding -- correct  
17 me if I'm wrong, though -- that the amount of depreciation  
18 that's been collected still is part of the depreciation  
19 reserve so long as the unit or the piece of property  
20 remains in service; is that true?

21 A. I might disagree with the term collected,  
22 but --

23 Q. Okay. Recorded?

24 A. What's been reported in accumulated  
25 depreciation reserve would remain there, yes.

1           Q.       Okay. And since it's part of the  
2 depreciation reserve, that serves as an offset to rate  
3 base, doesn't it?

4           A.       Under most traditional ratemaking  
5 approaches, yes.

6           Q.       Okay. So while that fully depreciated  
7 piece of property is still in service, the ratepayers are  
8 getting a return on the money that they've paid for  
9 depreciation; isn't that correct?

10          A.       Well, if we exclude the net salvage piece,  
11 I would think rate base would be zero for a fully accrued  
12 asset.

13          Q.       Okay. But there are other items of rate  
14 base that would be positive, right?

15          A.       Certainly.

16          Q.       And that would offset those positive rate  
17 base items?

18          A.       To that extent, yes.

19          Q.       You were asked about whether there are any  
20 coal units that have been retired in Missouri. Do you  
21 recall that question from --

22          A.       I do.

23          Q.       -- Chair Gaw?

24                    Are you aware of whether Kansas City  
25 Power & Light has retired any coal units?

1           A.       I don't recall. I don't have the memory of  
2   that right now.

3           Q.       Okay. You don't have any familiarity with  
4   the Hawthorn units of Kansas City Power & Light?

5           A.       I have heard of the Hawthorn units.

6           Q.       Okay. Yesterday you were asked some  
7   questions by one of the Commissioners -- I forget which  
8   one -- about the possibility that shareholders might have  
9   to pay twice for net salvage.

10          A.       Yes.

11          Q.       I mean, is it your understanding that the  
12   Missouri Public Service Commission would have the -- and I  
13   think the scenario was something like if the utility  
14   collects the net salvage through the depreciation rate and  
15   then it comes time to retire the unit and, you know,  
16   they've squandered the money or for some reason they don't  
17   have the money, you know, the possibility is out there, I  
18   guess, that they -- that they try to collect it twice. Do  
19   you remember that line of questioning?

20          A.       A little bit.

21          Q.       Okay. Is it your understanding that the  
22   Missouri Public Service Commission has the power to  
23   prevent utilities from collecting net salvage twice on the  
24   same piece of property?

25          A.       I'm fairly certain that they do.



1           Q.       I mean, do you think that the Missouri  
2   Public Service Commission would allow utilities to collect  
3   the same costs twice?

4           A.       I would certainly think that that would be  
5   unintentional.

6           Q.       Have you ever run into a situation where a  
7   Missouri utility has not had enough money to retire  
8   property when it's come time to retire the property?

9           A.       To the best of my knowledge, no, that  
10   situation has not yet occurred.

11                   MR. BYRNE:   Okay.   That's all the questions  
12   I have.   Thank you, Mr. Roff.

13                   THE WITNESS:   Thank you.

14                   JUDGE THOMPSON:   Thank you, Mr. Byrne.  
15   Mr. McCartney?

16                   MR. MCCARTNEY:   No questions.

17                   JUDGE THOMPSON:   I see Mr. Conrad is still  
18   absent.   Mr. Williams?

19                   MR. WILLIAMS:   Thank you, Judge.

20   RE CROSS-EXAMINATION BY MR. WILLIAMS:

21           Q.       Mr. Roff, do you recall the other day when  
22   Commissioner Gaw asked you about, I believe it's Schedule  
23   DSR-4, where you had a list of companies, and he was  
24   asking you about which companies had nuclear?

25           A.       Yes, I do recall that.   I suspect I

1     probably had a few errors in that discussion.

2             Q.     Are you familiar with Wolf Creek?

3             A.     I am.

4             Q.     Do you know if Kansas City Power & Light

5     has an ownership interest in it?

6             A.     It was brought to my attention that they

7     do.

8             Q.     And do you know if ownership of Central

9     Illinois Public Service Company's changed?

10            A.     Yes. And I'm trying to recall who has

11     merged with. I don't recall who's merged with those or

12     purchased them.

13            Q.     Might it have been AmerenUE?

14            A.     It might well be.

15            Q.     You don't recall, though?

16            A.     I think that's correct, yeah.

17            Q.     Do you know when that transfer occurred?

18            A.     I do not.

19            Q.     In response to some questions regarding the

20     retirement of plants in Missouri, you indicated that

21     Empire's had some plants that have been retired, did you

22     not, generation plant?

23            A.     Generation units.

24            Q.     Which units would those have been?

25            A.     I think the early Riverton units were --

1 have been retired. As I recall visiting that place, there  
2 were facilities that were no longer there.

3 Q. Is there a distinction between retirement  
4 and dismantlement?

5 A. I think so.

6 Q. Have those units also been dismantled?

7 A. Portions of those units have been  
8 dismantled, yes.

9 MR. WILLIAMS: No further questions.

10 JUDGE THOMPSON: Thank you, Mr. Williams.  
11 Ms. O'Neill?

12 MS. O'NEILL: Thank you, your Honor.

13 RECROSS-EXAMINATION BY MS. O'NEILL:

14 Q. Good morning, Mr. Roff.

15 A. Good morning.

16 Q. I believe that you responded this morning  
17 to some questions from, I believe it was maybe  
18 Commissioner Appling regarding the percentage of the  
19 increase in depreciation rates being sought by Empire that  
20 would be attributable to net salvage. Do you recall that?

21 A. Yes.

22 Q. And the -- and you did say you thought it  
23 was between three-fourths to 80 percent; is that right?

24 A. That's what I said. That may not be the  
25 exact number.

1           Q.       Okay.  Would it be -- yeah.  And I think  
2   that's probably pretty close.

3                    When you did your initial proposal, the net  
4   salvage component of your proposal -- well, your proposal  
5   was originally to increase by \$25.6 million, right?

6           A.       Yes.

7           Q.       And the component-- net salvage component  
8   of that was \$20.8 million, correct?

9           A.       I believe that is the number.

10          Q.       Which would be 81 percent?

11          A.       Okay.

12          Q.       So under the proposal that Empire's  
13   currently filed in their -- the portion of the increase  
14   filed in the tariffs for Empire that they're saying's  
15   attributable to depreciation is \$10.2 million, correct?

16          A.       Yes.

17          Q.       And so 81 percent of that would be  
18   \$8.26 million; is that correct?

19          A.       Well, that's correct, but I think that's  
20   not the right relationship, because some of those net  
21   salvage percentages were reduced as part of that  
22   alternative approach, and therefore, the portion  
23   attributable to net salvage would be a little bit less.

24          Q.       Is it your understanding now that -- well,  
25   let me rephrase that.

1                   Can you split off for us exactly how much  
2   of this 10.2 million is net salvage and tell us how much  
3   that is specifically?

4           A.       I don't have that number in front of me,  
5   but that can be done.

6           Q.       Okay.

7                   MS. O'NEILL: Your Honor, I have for  
8   demonstrative purposes a demonstration of what 81 percent  
9   of both of those numbers are. I'd like to have that  
10   marked as an exhibit for the record.

11                  JUDGE THOMPSON: Absolutely. This would be  
12   Exhibit 134. What shall we call it?

13                  MS. O'NEILL: Net salvage included in  
14   Empire proposal.

15                  JUDGE THOMPSON: Okay. Net salvage  
16   included in Empire proposal.

17                  (EXHIBIT NO. 134 WAS MARKED FOR  
18   IDENTIFICATION BY THE REPORTER.)

19                  MS. O'NEILL: And, your Honor, I would move  
20   for admission of Exhibit 134 for demonstrative purposes.

21                  JUDGE THOMPSON: Do I hear any objection to  
22   the receipt of Exhibit 134?

23                  MR. ENGLAND: Yes, your Honor.

24                  JUDGE THOMPSON: What's your objection?

25                  MR. ENGLAND: Well, as the witness

1 indicated, he doesn't believe that the 81 percent is  
2 appropriate based on the \$10.2 million number. So while I  
3 don't have a problem with Ms. O'Neill's 81 percent  
4 calculation, it's based on no facts in evidence and has no  
5 evidentiary or meaningful value to this proceeding.

6 JUDGE THOMPSON: Where's the 81 percent  
7 come from?

8 MS. O'NEILL: The 81 percent is the  
9 percentage of the net salvage component in his original  
10 proposal.

11 JUDGE THOMPSON: In his study?

12 MS. O'NEILL: In his study.

13 JUDGE THOMPSON: That's the 25 million?

14 MS. O'NEILL: The \$20.8 million of the  
15 \$25.6 million was attributable to his net salvage  
16 calculations.

17 JUDGE THOMPSON: Well, it's certainly in  
18 evidence, Mr. England.

19 MR. ENGLAND: Not with respect --

20 JUDGE THOMPSON: I understand the company's  
21 asking for less, but it's in evidence in his direct  
22 testimony.

23 MR. ENGLAND: Well, that's fine, your  
24 Honor, and I didn't expect I would get this sustained, but  
25 I want the record to reflect the fact that the 81 percent

1    when applied to the 10.2 million is not supported by the  
2    evidence in this record, and, in fact, this witness said  
3    that's incorrect.  It's something less than that.  He  
4    doesn't know what it is, but it's something less than  
5    that.

6                   JUDGE THOMPSON:  And I appreciate you  
7    bringing that out, and I'm sure on redirect you can bring  
8    that out several more times.  Thank you.

9                   I will overrule the objection.  Exhibit 134  
10   is received for demonstrative purposes.

11                   (EXHIBIT NO. 134 WAS RECEIVED INTO  
12   EVIDENCE.)

13   BY MS. O'NEILL:

14           Q.       Mr. Roff, if Empire were to retire a  
15   generation plant on one of the dates that you've  
16   estimated, wouldn't it also need to have an equivalent  
17   generation source, either purchased power or another  
18   plant, ready to go online in order to continue to provide  
19   service for its customers?

20           A.       To the extent that that power was an  
21   absolute need, I would say yes.

22           Q.       And what information did you receive from  
23   Mr. Beecher or other sources at Empire that would give you  
24   assurance of the reliability of those retirement dates in  
25   connection with alternative sources of power?

1           A.       That wasn't part of the considerations that  
2 we had.

3           Q.       So you didn't have any information from  
4 them regarding that?

5           A.       That's correct.

6           Q.       And again, we've talked about the fact that  
7 these dates are estimates. As far as you can tell, has  
8 Empire made any commitment to require any of those  
9 generation dates that are listed in your statements?

10          A.       Not to my knowledge.

11          Q.       Now, I think you had some discussion about  
12 the fact in response to questions this morning that  
13 generation assets come fully depreciated and still  
14 operational, it may longer be subject to depreciation, is  
15 that right, or is there some other -- how is that  
16 accounted for on the books?

17          A.       Well, I think the discussion that we had  
18 was that situation, and it's my understanding that there  
19 are checks and balances, I guess, within the accounting  
20 system that would allow for the stopping or stoppage of  
21 depreciation when an asset becomes fully depreciated.

22          Q.       Okay. So if they're stopping depreciation,  
23 the customers receiving services from those plants don't  
24 pay anything in their rates toward depreciation; is that  
25 right?



1           A.       Well, I think that depends upon when those  
2   rates were established. So to the extent that the  
3   customer rates include a component for depreciation of all  
4   assets, that would continue to be part of the revenue  
5   stream.

6           Q.       But to be --

7           A.       We don't have instantaneous regulation.

8           Q.       But certainly the next rate case at the  
9   very latest, they would no longer be paying for that --

10          A.       Correct.

11          Q.       -- even if that facility remained used and  
12   useful?

13          A.       I believe that's correct.

14          Q.       Even if it remained used and useful through  
15   several rate cases?

16          A.       I would be surprised if that would be the  
17   case, but --

18          Q.       But if it happened?

19          A.       -- hypothetically, yes.

20          Q.       Now, you indicated in response to some  
21   questions from the Bench this morning that it is possible  
22   to isolate depreciation rates associated with the  
23   retirement dates in your study or the portion of the  
24   depreciation rate that's associated with that?

25          A.       What I said was we could, I think,

1 distinguish the portion of the depreciation expense or  
2 depreciation rate that was attributable to the differences  
3 between that approach and the other parties' approach.

4 Q. But you could make some kind of calculation  
5 regarding the terminal net salvage component in your  
6 depreciation rate?

7 A. Yes, that's equally true.

8 Q. And some sort of calculation where you  
9 could separate out interim net salvage as well?

10 A. Equally true.

11 Q. You have not done that?

12 A. I believe that we have. I just don't have  
13 that information in my possession.

14 Q. If those numbers were separated out, it  
15 would allow for some tracking to see whether or not the  
16 estimates match up with experience; would that be true?

17 A. I'm not sure I follow that that would  
18 necessarily be the case. What we would be identifying is  
19 sort of the difference in parameters at this time. So I'm  
20 not sure that allows for tracking of that on a  
21 going-forward basis. It depends on what decisions are  
22 made by this Commission.

23 Q. But it could be done? I'm not asking  
24 whether it's going to be done. I asked whether it's  
25 possible.

1           A.       If the parameters were specifically  
2 identified, yes, that's possible.

3           Q.       Now, in response to question from Judge  
4 Thompson this morning, you had some testimony regarding  
5 the composite average service lives resulting from your  
6 lifespan approach. Do you recall that?

7           A.       I don't recall that specific terminology.

8           Q.       You talked about composite and service  
9 lives, lifespan approach.

10          A.       I just don't recall saying composite life.  
11 I'm sorry.

12          Q.       Okay. Do you have any composite average  
13 service lives in your, for example, steam production  
14 plants?

15          A.       I have calculations of that in my work  
16 papers, yes.

17          Q.       And what is your composite average service  
18 life for the steam production plants?

19          A.       I don't have that number. I would --

20          Q.       Is it in your --

21          A.       -- estimate in the mid 30s, 35, 36,  
22 something like that.

23          Q.       35 or 36 years?

24          A.       Yes, ma'am.

25          Q.       And is that in your testimony somewhere?

1           A.       I do not believe so.

2           Q.       I just want to follow up a little bit

3 further on some of your responses to Commissioner Murray

4 yesterday regarding the safeguards. In connection with

5 safeguards that you've attributed to the method that

6 includes net salvage and depreciation rates, aren't those

7 safeguards that you discussed dependent on the estimated

8 service life and the estimated cost of removal being

9 accurate?

10          A.       I don't believe those safeguards are

11 dependent on those factors only.

12          Q.       But they would be important in those

13 safeguards having effect?

14          A.       Well, we have made every attempt to develop

15 parameters that are accurate, so I would say that that's

16 true.

17          Q.       Okay. And wouldn't those -- some of the

18 safeguards that you've discussed regarding your proposed

19 method, wouldn't they also depend on the company actually

20 incurring all the potential costs of removal that are

21 contained in those future net salvage estimates?

22          A.       I don't believe the safeguards are

23 dependent upon those occurrences developing exactly as

24 estimated. I think those safeguards are in place

25 regardless, and that's why they are safeguards.

1           Q.       Those safeguards would make your proposal  
2 more attractive than expensing, however, only if the  
3 company actually incurred the costs of removal that were  
4 estimated?

5           A.       No. I think those safeguards are in place  
6 regardless, and they're not in place by expensing net  
7 salvage.

8           Q.       At the time that net salvage is expensed,  
9 we'll have actual numbers to look at in determining what  
10 costs the company incurs; is that correct?

11          A.       I'm having difficulty with -- we have that  
12 situation today. We know what actual net salvage has  
13 occurred.

14          Q.       In the past?

15          A.       I don't see -- yeah. I don't see that  
16 being any different.

17          Q.       You had some discussion with Commissioner  
18 Murray yesterday about what financial analysts look at,  
19 but you're not a financial analyst, are you?

20          A.       No, I'm not.

21          Q.       And you're not aware of all the aspects  
22 that a financial analyst will look at in making  
23 recommendations?

24          A.       I am not aware of their craft, no.

25          Q.       Okay. You also -- I think this was

1 yesterday's questioning by Judge Thompson -- made  
2 reference to cash accounting. Do you recall that?

3 A. I do.

4 Q. Do you agree that under the method that  
5 Staff has proposed, whether you call it cash -- Empire  
6 will be kept whole on a cash basis as far being able to  
7 recover their actual cost of removal?

8 A. I don't believe that's true at all.

9 Q. You don't?

10 A. No.

11 Q. Under your method, Empire collects cash on  
12 an annual basis that far exceeds what their current outlay  
13 per customer was, correct?

14 A. I keep getting troubled by using the word  
15 "collects," first of all, but the accrual for depreciation  
16 including net salvage is different from the actual cost of  
17 removal that is incurred, that is a fact.

18 MS. O'NEILL: No further questions.

19 JUDGE THOMPSON: Thank you, Ms. O'Neill.

20 Redirect?

21 MR. ENGLAND: Yes, your Honor.

22 REDIRECT EXAMINATION BY MR. ENGLAND:

23 Q. Good morning, Mr. Roff.

24 A. Good morning, Mr. England.

25 Q. Let's take Public Counsel's Exhibit 134

1 first, please. It's the last one we dealt with.

2 A. Yes, sir.

3 Q. If I read that exhibit correctly, the

4 middle column under original proposal has a

5 \$25.6 million figure, I believe, increase. Do you see

6 that?

7 A. I do.

8 Q. And where does this exhibit tell you that

9 number came from?

10 A. Exhibit 134 says that that \$25.6 million

11 figure comes from my direct testimony, Exhibit 18,

12 Schedule 1 of Exhibit DSR-3.

13 Q. Thank you.

14 With respect to the net salvage component

15 of approximately \$20.8 million, where does that figure

16 come from?

17 A. According to Exhibit 134, that comes from

18 Mr. Majoros' direct testimony at page 49.

19 Q. Have you made that calculation? Is that

20 your number, somewhere either in your study or in your

21 work papers?

22 A. I don't believe I've made that exact

23 calculation.

24 Q. Okay. With respect to the 10.2 million

25 alternative proposal, again, where did that number come

1 from?

2 A. Exhibit 134 states that that number came

3 from my rebuttal testimony.

4 Q. And with respect to the \$8.26 million net

5 salvage component, where did that number come?

6 A. Apparently that's a calculation that's made

7 on this exhibit.

8 Q. And do you agree that that's an appropriate

9 calculation or comparison?

10 A. It is not.

11 Q. And why not, sir?

12 A. Because I -- as I stated earlier, the

13 alternative proposal, if we refer to it that way,

14 represented some reductions in net salvage allowances for

15 some mass accounts, and therefore, the relationship

16 between net salvage and the total change is different.

17 It's something less than this amount.

18 Q. Okay. The alternative proposal is the one

19 that the company is pursuing for purposes of this case in

20 its rate increase filing, correct?

21 A. That's my understanding.

22 Q. Let's back up and try to put in perspective

23 the original study results that you prepared compared to

24 this alternative proposal. Okay?

25 A. Okay.



1           Q.       And this follows up on, I believe, the  
2     question from Commissioner Appling. With respect to your  
3     original proposal that would produce roughly an additional  
4     25 million in depreciation expense, I believe you  
5     indicated to Mr. Appling that that was attributable to  
6     four areas, generally speaking?

7           A.       I think there was four differences between  
8     my recommendations and the other parties' recommendations.

9           Q.       And the other parties' recommendations are  
10    roughly close to the status quo?

11          A.       That's true.

12          Q.       The four issues were lifespan analysis that  
13    you performed on the generation plant or power production  
14    plant, correct?

15          A.       That was one.

16          Q.       Remaining life?

17          A.       That was two.

18          Q.       The average service lives for mass  
19    property, which I believe you indicated to Mr. Thompson or  
20    Judge Thompson were transmission, distribution and general  
21    plant?

22          A.       That's the third item.

23          Q.       And then finally net salvage?

24          A.       Fourth, correct.

25          Q.       Now, with respect to your alternative

1     proposal of 10.2 million and the one the company's  
2     pursuing in this case, what differences remain between you  
3     and the parties, or between the company and the parties?  
4             A.     Okay. Let me write these down. Lifespan.  
5     Remaining life was the second one.  
6             Q.     Correct. Average service life for mass  
7     property.  
8             A.     Service lives of mass, and net salvage.  
9             Q.     Correct.  
10            A.     Okay. To begin with, the lifespan method  
11     still is at issue, although there was a revision to one of  
12     the retirement dates in the alternative calculation.  
13            Q.     And that revision was what?  
14            A.     I want to say it was the Iatan. Excuse me.  
15     The Asbury plant.  
16            Q.     Did you extend the estimated retirement  
17     date?  
18            A.     I changed the estimated retirement date.  
19            Q.     Okay. Which had the effect of lengthening  
20     the life?  
21            A.     Lengthening the life, lowering the rate.  
22            Q.     What about remaining life?  
23            A.     Remaining life goes away. The alternative  
24     proposal is strictly whole life determination. Service  
25     lives of mass assets still exist, although that's a

1 relatively minor difference, as I recall, and there was  
2 some adjustments to certain net salvage factors for I  
3 believe it was four mass accounts. So the net salvage  
4 issue also still exists.

5 Q. And you modified the net salvage somewhat  
6 from your original proposal; is that right?

7 A. Yes.

8 Q. Could you explain that briefly, please?

9 A. Yes. There were certain asset categories  
10 that had rather large net salvage allowances. In an  
11 effort to mitigate the effect of the depreciation expense  
12 change, we placed a limit on for those accounts and  
13 limited that net salvage ratio to negative 100 percent.

14 Q. Thank you, sir.

15 Now, both your study and your alternative  
16 proposal, whether it's 25 million or 10.2 million, deal in  
17 total company dollars, if you would; is that right?

18 A. Yes. I did not have a Missouri  
19 jurisdictional segregation, if that's the way to describe  
20 it.

21 Q. If -- and I understand, was that your  
22 responsibility for purposes of this case --

23 A. It was not.

24 Q. -- to make the allocations?

25 A. No, it was not my responsibility.

1           Q.       Do you have an idea, a rough estimate of  
2   what the Missouri jurisdictional intrastate portion of  
3   those two numbers would be, the 25 million and the 10.2?

4           A.       It's my understanding that the Missouri  
5   jurisdictional base is about 80 percent. That's my  
6   understanding.

7           Q.       Okay. So for purposes of this case and the  
8   alternative proposal, if it's a 10.2 million on total  
9   company for purposes of this case, for purposes of this  
10   revenue requirement established by this Commission, am I  
11   correct in saying that would be roughly be an \$8 million  
12   difference?

13          A.       If those percentages apply proportionately,  
14   correct.

15          Q.       Okay. And then of that 8 million, if I  
16   understand your testimony, the primary differences between  
17   you and Staff and Public Counsel would be the lifespan  
18   analysis for power production plants and the net salvage  
19   issue?

20          A.       Those would be the two biggest components,  
21   yes.

22          Q.       And are those the two that are identified  
23   in the position statement that was filed by the company in  
24   this case?

25          A.       My recollection is yes.

1           Q.       Okay. In the position statement filed by  
2     the company, I believe we reflected the value of the net  
3     salvage issue at approximately 4.6 million.

4           A.       I recall that.

5           Q.       And that would be Missouri intra --  
6     intrastate jurisdictional amounts or total company?

7           A.       It's my understanding that's Missouri  
8     number.

9           Q.       Okay. And is that inclusive or exclusive  
10    of the roughly 1.6 million that Staff has allowed for net  
11    salvage as an expense component?

12          A.       I believe that that is the net of that  
13    number.

14          Q.       So that would be the total difference  
15    between you and staff, if you will, in the case?

16          A.       Approximate, for that issue, for that.

17          Q.       But the total amount of the net salvage  
18    issue based on the alternative proposal would be  
19    4.6 million, which is the difference between you and Staff  
20    plus the 1.6 million that Staff has built into this case  
21    or 6.2 million?

22          A.       I think that -- I think that's correct.

23          Q.       Thank you.

24                    Let me switch gears on you. We also talked  
25    about a -- or I'm sorry. You talked with several

1 attorneys and Commissioners about your comparative  
2 analysis.

3 A. Yes, sir.

4 Q. And I believe it was Chairman Gaw that  
5 noted a difference in the composite rate that you had  
6 calculated for Empire based upon existing rates versus the  
7 composite rate that was contained in that last schedule  
8 attached to your direct testimony. Do you recall that?

9 A. Yes, I do.

10 Q. And I believe your explanation was that  
11 there were two reasons for the difference. One was the  
12 analyses were done at different points in time, so you  
13 were looking at different plant values; is that right?

14 A. That's one of the reasons for the  
15 difference.

16 Q. And the second was that the schedule  
17 attached to your testimony included non-depreciable  
18 amounts that are apparently included in the FERC reporting  
19 schedules?

20 A. Yes, that's correct.

21 Q. Okay. In Empire's case, the composite rate  
22 that you calculated was around 2.5 percent versus what you  
23 calculated from the FERC reporting of about 2.27 percent;  
24 is that right?

25 A. That's correct. 2.2, yeah, something.

1 Yes.

2 Q. Would you imagine that all of the other  
3 composite rates on the schedule that is contained in your  
4 testimony would similarly increase because of those two  
5 discrepancies that you mentioned?

6 MS. O'NEILL: Your Honor, I'm going to  
7 object, speculation.

8 JUDGE THOMPSON: Read back the question,  
9 please.

10 THE REPORTER: "Question: Would you  
11 imagine that all of the other composite rates on the  
12 schedule that is contained in your testimony would  
13 similarly increase because of those two discrepancies that  
14 you mentioned?"

15 JUDGE THOMPSON: I don't think that is  
16 speculative. He's asking how the numbers on his schedule  
17 would change if certain characteristics or factors  
18 changed. So I'm going to overrule the objection. You may  
19 answer if you're able.

20 THE WITNESS: It's my understanding of how  
21 those FERC reports were developed that they include the  
22 total plant in service amount, and therefore, if Empire is  
23 any indication, then there are non-depreciable amounts  
24 included in all those balances, and the composite rates  
25 would therefore be similarly understated.

1 BY MR. ENGLAND:

2 Q. For purposes of an apples to apples  
3 comparison, if you will, what is the right number to use  
4 for Empire when comparing it with the other composite  
5 rates on your schedule? Is it the 2.27 or 29.5?

6 A. Well, at least on that exhibit that  
7 contains all the companies, that comparison is on a  
8 comparable basis, but the real composite rate for the  
9 depreciable assets for Empire on an existing basis is  
10 2.53 percent.

11 Q. I believe you indicated to Chairman Gaw  
12 that the composite depreciation rate under your  
13 \$25 million proposal, if we can refer to that in that way,  
14 was approximately 4.7 percent?

15 A. Something in that range, yes.

16 Q. And does that number compare with the 2.5  
17 you calculated for Empire, or the 2.27 you've calculated  
18 from the FERC report?

19 A. 2.5.

20 Q. Okay. Now, for purposes of my next  
21 question I want you to assume the alternative proposal of  
22 10.2 million increase in existing depreciation. What  
23 would be the composite rate, if you know?

24 A. I believe that composite rate is  
25 approximately 3.3 percent, 3.35 perhaps.



1           Q.       In response to a question from Commissioner  
2 Murray, I believe you were asked something to the effect  
3 that with reference to the Commission's 2001 decision,  
4 where would you be today if you hadn't or if Empire hadn't  
5 been required to eliminate net salvage from its  
6 depreciation rate in '01?

7                   Can you quantify on an annualized basis  
8 what that impact would be?

9           A.       I did a little research last night on the  
10 composite depreciation rate that Empire had in place prior  
11 to the 2001 time frame.

12          Q.       And what was that, sir?

13          A.       And that number was in the range of about  
14 3.2 percent. So if we have roughly a 70 basis point  
15 difference, 3.5 to 3.2.

16          Q.       I'm sorry. You mean. 2.5?

17          A.       Excuse me. 2.5 to 3.2. And I'm going to  
18 use really gross broad numbers, but Empire has a  
19 depreciable base of roughly a billion dollars, and then  
20 that would suggest that the difference on an annual basis  
21 is approximately \$7 million. So over the last two and a  
22 half years approximately, somewhere in the range of 17,  
23 18, \$20 million, we would have accrued more depreciation  
24 than what's been reflected in the past.

25          Q.       I want to switch gears on you. This has to

1 do with some questions I believe you received from  
2 Mr. Williams regarding the definition of accurate, and  
3 given those -- his definitions at least as he recited to  
4 you, is it your opinion that the determination of average  
5 service lives are any more accurate than the determination  
6 of future net salvage?

7 A. We have made an attempt to develop both of  
8 those in a similar manner, so yes, they would be equally  
9 accurate.

10 Q. Or equally inaccurate --

11 A. Or equally inaccurate.

12 Q. -- from Mr. Williams' perspective?

13 Thank you. In answer to a question from  
14 Mr. Byrne yesterday, I believe you attempted to quantify  
15 the amount of the \$4.6 million difference between us and  
16 Staff on net salvage that's contained in our statement of  
17 position that is attributable to most property accounts on  
18 the one hand versus power production plants on the other  
19 hand. And if I recall your answer was roughly one-half;  
20 is that right?

21 A. Yeah. And I guess I would like to correct  
22 that. I have gone back and looked at some work papers  
23 last night, and the majority of that amount relates to  
24 mass assets. There's maybe something like, I don't know,  
25 5-to-1 relationship between mass and generation. So I

1 will correct that now.

2 Q. So roughly 5/6 Of that \$4.6 million number  
3 is attributable to mass property accounts, and 1/6  
4 would be roughly attributable to power plants; is that  
5 correct?

6 A. Yes, that's a more appropriate  
7 relationship.

8 Q. Let's see. You were asked a question, I  
9 believe by Judge Thompson, but it was on behalf of  
10 Commissioner Gaw, regarding a 1997 UtiliCorp case and some  
11 final dates of retirement for certain plants?

12 A. Yes.

13 Q. Do you know if there have been any  
14 subsequent depreciation studies for UtiliCorp since 1997?

15 A. I believe UtiliCorp has filed a subsequent  
16 depreciation study since 1997. It would seem to me that's  
17 seven years ago, that's kind of within the range of time  
18 to do it.

19 Q. Do you know if those dates were changed in  
20 those subsequent studies?

21 A. I do not know.

22 Q. You were asked some questions regarding a  
23 hypothetical situation where a dep-- an asset rather is  
24 fully depreciated I guess between rate case filings. Do  
25 you recall that?

1           A.       I -- I do.

2           Q.       And I guess how that would be handled from  
3   an accounting perspective and from a customer impact, if  
4   you will, perspective. Let me ask you this question: Is  
5   it unusual for a utility to add new assets between rate  
6   case filings?

7           A.       Very normal practice to add assets between  
8   rate cases.

9           Q.       Is Empire -- is Empire's rate base  
10   increasing or decreasing?

11          A.       I would say that Empire's rate base is  
12   increasing. I believe they are adding plant more quickly  
13   than they are depreciating those assets.

14          Q.       So is it fair to say that between rate  
15   cases, to the extent assets retire, there are probably  
16   more new assets value-wise being brought online?

17          A.       Absolutely.

18          Q.       Now, between rate cases, is the company's  
19   investment base for purposes of rates to subscribers  
20   increased to reflect those two new assets?

21          A.       Would you repeat that?

22          Q.       It wasn't very articulate, was it?

23                    In between rate cases when a company adds a  
24   new asset, is its investment base increased such that  
25   rates are increased to customers to reflect that new

1     asset?

2             A.       No, not to my knowledge. Not without some

3     special mechanism.

4             Q.       But does the company begin accruing

5     depreciation on those new assets between rate cases?

6             A.       They do.

7             Q.       And is that reflected on their books?

8             A.       Absolutely.

9             Q.       And is that accrued in their depreciation

10    reserve?

11            A.       Yes.

12            Q.       And are those accruals taken into account

13    in the next rate case for purposes of determining a net

14    rate base?

15            A.       Yes, they would be.

16            Q.       One last question with respect to these

17    safeguards. Is it fair to say that safeguards are only

18    necessary in the event actual experience deviates from

19    estimates and adjustments to those estimates have not been

20    made on a periodic basis?

21            A.       I believe that statement is correct.

22                    MR. ENGLAND: Okay. Thank you, sir. I

23    have no other questions.

24                    JUDGE THOMPSON: Well, I hate to do this

25    because it starts the whole thing over again, but there's

1 something that's not cleared up for me.

2 FURTHER QUESTIONS BY JUDGE THOMPSON:

3 Q. Why is it that remaining life versus whole  
4 life is no longer an issue?

5 A. Because the -- I guess there's two reasons.  
6 Because the alternative proposal, what was filed by the  
7 company was reduced to mitigate the effects of the  
8 depreciation change. One of the variables or factors that  
9 was built into that change was the elimination of  
10 remaining life techniques. So the proposed rates under  
11 the company's filing are whole life rates. That would  
12 eliminate that.

13 Q. So this was done to avoid rate shock to  
14 mitigate the effect to ratepayers?

15 A. That's certainly one aspect of it.

16 Q. Not because you've changed your opinion  
17 that remaining life is a better technique than whole life?

18 A. Not at all.

19 Q. Okay. One last question. I understand  
20 that you don't think this 81 is the right number here.  
21 I'm looking at Exhibit 134.

22 A. I knew what you were referring to.

23 Q. What number do you believe is the correct  
24 number in that spot?

25 A. I believe that number is closer to

1 60 percent.

2 JUDGE THOMPSON: That's all the questions.

3 Now we get to go through the whole recross cavalcade once

4 again.

5 Mr. Byrne, do you have any additional

6 recross based on my questions?

7 MR. BYRNE: No, your Honor.

8 JUDGE THOMPSON: Mr. McCartney?

9 MR. MCCARTNEY: No, your Honor.

10 JUDGE THOMPSON: Mr. Williams?

11 MR. WILLIAMS: Yes.

12 JUDGE THOMPSON: Very well.

13 FURTHER RECROSS-EXAMINATION BY MR. WILLIAMS:

14 Q. Mr. Roff, as I recall you had two

15 alternatives for how to reduce the results of your study

16 to the level of depreciation that Empire was asking the

17 Commission to grant it in this case in terms of an

18 increase; is that correct?

19 Wasn't one proposal to do an

20 across-the-board reduction and the other proposal to make

21 specific changes in specific aspects of your depreciation

22 study?

23 A. I don't believe the first one was an actual

24 proposal. It was a suggestion that would be as to how you

25 could get to \$10.2 million. I don't think it was an

1 actual proposal per se.

2 Q. So Empire is not proposing that the  
3 Commission accept that suggestion that you made here in  
4 this case?

5 A. I don't believe so.

6 MR. WILLIAMS: No further questions.

7 JUDGE THOMPSON: Thank you, Mr. Williams.

8 Ms. O'Neill?

9 MS. O'NEILL: Thank you.

10 FURTHER RECROSS-EXAMINATION BY MS. O'NEILL:

11 Q. Mr. Roff, you said you believe that the  
12 percentage of net salvage in the alternative proposal  
13 should be 60 percent?

14 A. I believe I said it was closer to  
15 60 percent.

16 Q. What's the source of that? What's your  
17 source?

18 A. I had looked at some of the work papers  
19 last night relative to that calculation, but also just  
20 based upon the knowledge of what was changed to get to  
21 that alternative calculation.

22 Q. You -- in your rebuttal testimony in this  
23 case, Exhibit 19, do you have that with you?

24 A. I do.

25 Q. Turn to page 37, please.



1           A.       Okay.

2           Q.       This is a question that -- well, would you  
3   agree with me this is a question that starts on line 9  
4   that follows up some explanations you placed in the record  
5   for the difference between your original proposal and the  
6   company's filing; is that right?

7           A.       Yes.

8           Q.       Okay. And in your rebuttal, you have a  
9   question that asked why, after all of your explanation,  
10   you're still not to the 10.2 million; is that right?

11          A.       Something to that effect.

12          Q.       Okay. And in your answer that starts on  
13   line 14 -- your answer is from line 14 to line 21; is that  
14   right?

15          A.       That's correct.

16          Q.       And at line 15 you state, while you've  
17   tried to isolate the impact of each singular adjustment,  
18   when depreciation rates and related annual depreciation  
19   expenses are determined, they're developed in combination  
20   with each underlying parameter and methodology. Quite  
21   simply the differences cannot be completely segregated.  
22   Is that your testimony?

23          A.       That's correct.

24          Q.       Does that remain your testimony?

25          A.       Absolutely.

1           Q.       So you can't completely segregate out what  
2   level, what percentage of this 10.2 million is  
3   attributable to net salvage?

4           A.       You can calculate an amount for that  
5   parameter. What we've said here is that the sum of the  
6   parts doesn't equal the whole.

7                   MS. O'NEILL: Okay. No further questions.

8                   JUDGE THOMPSON: Thank you, Ms. O'Neill.  
9   Additional redirect?

10                  MR. ENGLAND: No, thank you.

11                  JUDGE THOMPSON: Mr. Roff, thank you for  
12   your testimony. You may step down. You are excused.

13                  THE WITNESS: Thank you, your Honor.

14                  JUDGE THOMPSON: We're going to take a  
15   recess until 10 o'clock, and then Mr. Knapp will return to  
16   the stand. We are in recess.

17                  (A BREAK WAS TAKEN.)

18                  JUDGE THOMPSON: Okay. Let's go back on  
19   the record.

20                  Mr. Knapp, I'll remind you that you're  
21   still under oath. There's no need to swear you again.  
22   Recross based on questions from the Bench. Anyone seen  
23   Mr. Byrne?

24                  MR. ENGLAND: I don't think Tom has any  
25   questions.

1 JUDGE THOMPSON: Mr. McCartney, you're  
2 here.

3 MR. McCARTNEY: No, thank you.

4 JUDGE THOMPSON: Mr. Williams?

5 MR. WILLIAMS: No questions.

6 JUDGE THOMPSON: Ms. O'Neill?

7 MS. O'NEILL: No questions.

8 JUDGE THOMPSON: Redirect?

9 MR. ENGLAND: Thank you, your Honor. I'll  
10 try to be brief.

11 GREGORY A. KNAPP, being previously sworn, testified as  
12 follows:

13 REDIRECT EXAMINATION BY MR. ENGLAND:

14 Q. Good morning, Mr. Knapp.

15 A. Good morning.

16 Q. I believe you were asked some questions or  
17 at least a question yesterday on the escrowing of funds.  
18 Do you recall that?

19 A. Yes.

20 Q. Does an escrowing of funds in your opinion  
21 help your cash flow?

22 A. No. If the funds were escrowed, we  
23 wouldn't have that cash available for company operations.

24 Q. Would that in turn help or hinder your  
25 perception by the credit rating agencies?

1           A.       As they would look at cash available to us,  
2   that would not be something they would be able to add in,  
3   so it would not be a positive. It would be a hinderance.

4           Q.       Does the ratepayer, in your opinion,  
5   benefit from escrowing?

6           A.       No. I believe of the options, the  
7   ratepayer would benefit by the rate base treatment of the  
8   standard methodology.

9           Q.       And why is that?

10          A.       In that standard methodology with the rate  
11   base treatment, the customers are going to be able to earn  
12   a return on the amount of money that's been collected that  
13   hasn't yet been expended.

14          Q.       Okay. And in an escrowing arrangement,  
15   there have been a number of hypotheticals where people  
16   were concerned, at least some of those asking you  
17   questions, where the company did not spend as much on  
18   retirement and removal as they've collected. Let me  
19   reverse that hypothetical and assume an escrow arrangement  
20   where the escrow funds are insufficient to cover the cost  
21   of removal, future cost of removal. Does the escrow  
22   arrangement help in that regard?

23          A.       No, it does not help the company at all.

24                   MR. ENGLAND: Thank you, sir. No other  
25   questions.

1 JUDGE THOMPSON: Thank you for your  
2 testimony, Mr. Knapp. You may step down, and you are  
3 excused.

4 Is Mr. Rooney in the house?

5 MR. MCCARTNEY: Yes.

6 (Witness sworn.)

7 JUDGE THOMPSON: Do you understand that if  
8 you were to give false testimony in this proceeding, you  
9 could be prosecuted for the crime of perjury?

10 THE WITNESS: Yes.

11 JUDGE THOMPSON: Please take your seat.  
12 Spell your last name for the reporter.

13 THE WITNESS: My last name is Rooney,  
14 R-o-o-n-e-y.

15 JUDGE THOMPSON: Thank you, sir.  
16 Mr. McCartney, you may inquire.

17 DAVIS ROONEY testified as follows:

18 DIRECT EXAMINATION BY MR. MCCARTNEY:

19 Q. Would you please state your name for the  
20 record.

21 A. My name is Davis Rooney.

22 Q. And by whom are you employed and in what  
23 capacity?

24 A. I'm employed by Aquila. I'm a director of  
25 financial management.

1           Q.       Would you state your business address there  
2   at Aquila?

3           A.       It's 10750 East 350 Highway in Raytown.

4           Q.       Did you cause to be prepared and filed the  
5   testimony that's -- rebuttal testimony that's been  
6   premarked as Exhibit 108 in this case?

7           A.       Yes, I have.

8           Q.       Do you have any corrections to that  
9   testimony?

10          A.       No, I do not.

11          Q.       Are the answers true and correct to the  
12   best of your knowledge and belief?

13          A.       Yes, they are.

14                   MR. McCARTNEY: I would offer that exhibit  
15   to be entered into the record and tender this witness for  
16   cross-examination.

17                   JUDGE THOMPSON: Thank you, Mr. McCartney.  
18   Do you recall the number of that exhibit?

19                   MR. McCARTNEY: 108.

20                   JUDGE THOMPSON: Do I hear any objections  
21   to the receipt of Exhibit 108?

22                   (No response.)

23                   JUDGE THOMPSON: Hearing none, the same is  
24   received and made a part of the record of this proceeding.

25                   (EXHIBIT NO. 108 WAS RECEIVED INTO

1 EVIDENCE.)

2 JUDGE THOMPSON: Cross-examination,

3 Mr. Byrne?

4 MR. BYRNE: No questions, your Honor.

5 JUDGE THOMPSON: Mr. England?

6 MR. ENGLAND: No questions, your Honor.

7 JUDGE THOMPSON: Mr. Williams?

8 MR. WILLIAMS: No questions.

9 JUDGE THOMPSON: Ms. O'Neill?

10 MS. O'NEILL: No questions.

11 JUDGE THOMPSON: Very well. You may step

12 down, sir. I'm not going to excuse you because I do not

13 know whether any of the Commissioners have any questions

14 for you, but I will endeavor to learn that as quickly as I

15 can, and if there are no Commissioner questions, then I

16 will excuse you and you may leave. Thank you.

17 Is Mr. Macias in the house? I assume

18 you're the next.

19 THE WITNESS: That's my understanding.

20 JUDGE THOMPSON: It's up to your lawyer

21 whatever order he wants to put you on. We've established

22 that earlier in the proceeding.

23 THE WITNESS: Then yes.

24 (Witness sworn.)

25 JUDGE THOMPSON: Do you understand that if

1     you were to give false testimony in this proceeding, you  
2     could be prosecuted for the crime of perjury?

3                     THE WITNESS:   Yes, I do.

4                     JUDGE THOMPSON:  Take your seat and spell  
5     your last name for the reporter, if you would.

6                     THE WITNESS:  My last name is spelled  
7     M-a-c-i-a-s.

8                     JUDGE THOMPSON:  Thank you, sir.  You may  
9     inquire, Mr. Williams.

10                    MR. WILLIAMS:  Thank you, Judge.

11     GREGORY E. MACIAS testified as follows:

12     DIRECT EXAMINATION BY MR. WILLIAMS:

13             Q.       Good morning, Mr. Macias.

14             A.       Good morning.

15             Q.       Would you please state your name and your  
16     business address.

17             A.       My name is Gregory E. Macias.  My business  
18     address is P.O. Box 360, Jefferson City, Missouri 65102.

19             Q.       By whom are you employed and in what  
20     capacity?

21             A.       I'm employed by the Missouri Public Service  
22     Commission as a Utility Engineering Specialist 2.

23             Q.       Did you prepare direct testimony of  
24     Gregory E. Macias that was prefiled in this case and has  
25     been marked for identification as Exhibit No. 54?



1           A.       Yes, I did.

2           Q.       Are there any changes that you would like  
3 to make to that testimony here today?

4           A.       None that I'm aware of.

5           Q.       If I were to ask you the questions that are  
6 contained in that exhibit, would your answers today be the  
7 same as they are set forth in that exhibit?

8           A.       Yes.

9                   MR. WILLIAMS: Staff offers Exhibit No. 54.

10                  JUDGE THOMPSON: I have a list that  
11 includes a 55 and a 56 as well.

12                  MR. WILLIAMS: We'll get there.

13                  JUDGE THOMPSON: Very well. Pardon me,  
14 Mr. Williams. Do I hear any objections to the receipt of  
15 Exhibit 54?

16                  MR. ENGLAND: No objections, your Honor.

17                  MS. O'NEILL: No.

18                  JUDGE THOMPSON: Very well. The same is  
19 received and made a part of the record of this proceeding.

20                   (EXHIBIT NO. 54 WAS RECEIVED INTO  
21 EVIDENCE.)

22                  JUDGE THOMPSON: Please proceed,  
23 Mr. Williams.

24 BY MR. WILLIAMS:

25           Q.       Mr. Macias, did you also prepare in written

1     format the rebuttal testimony of Gregory E. Macias that  
2     was prefiled in this case and has been marked for  
3     identification as Exhibit No. 55?

4             A.     Yes, I did.

5             Q.     Do you have any changes to that exhibit?

6             A.     Yes. I'd like to make one typographical  
7     change. On page 2, line 10, near the end of the sentence,  
8     that should be changed to than, t-h-a-n, and that's the  
9     only correction that I'm aware of.

10            Q.     If I were to ask you the questions that are  
11     set forth in Exhibit No. 55 as you've corrected it, would  
12     your answers today be the same?

13            A.     Yes, they would.

14            Q.     And did you also cause -- did you also  
15     prepare and cause to be prefiled surrebuttal testimony of  
16     Gregory E. Macias that's been marked for identification as  
17     Exhibit No. 56?

18            A.     Yes.

19            Q.     Do you have any changes to that exhibit?

20            A.     No, I do not.

21            Q.     And if I were to ask you the questions set  
22     forth in Exhibit No. 56, would your answers be the same as  
23     set forth therein?

24            A.     Yes, they would.

25                   MR. WILLIAMS: Staff offers Exhibit No. 55

1 and 56 as corrected.

2 JUDGE THOMPSON: Do I hear any objections  
3 to the receipt of Exhibits 55 or 56?

4 MS. O'NEILL: No, your Honor.

5 MR. ENGLAND: No.

6 JUDGE THOMPSON: Hearing none, the same are  
7 received, 55 as corrected, and made a part of the record  
8 in this proceeding.

9 (EXHIBIT NOS. 55 AND 56 WERE RECEIVED INTO  
10 EVIDENCE.)

11 JUDGE THOMPSON: Thank you, Mr. Williams.

12 MR. WILLIAMS: Thank you.

13 JUDGE THOMPSON: Cross-examination,  
14 Ms. O'Neill?

15 MS. O'NEILL: No questions.

16 JUDGE THOMPSON: Mr. Byrne?

17 MR. BYRNE: Yes, your Honor, just a few.

18 CROSS-EXAMINATION BY MR. BYRNE:

19 Q. Good morning, Mr. Macias.

20 A. Good morning, Mr. Byrne.

21 Q. I just have a few questions for you this  
22 morning. One question I have is, how long have you been  
23 doing depreciation work for the Staff?

24 A. Since about December of 2001.

25 Q. December of 2001. And how many

1 depreciation studies have you done in your tenure as a  
2 depreciation expert for the Staff?

3 A. This study was the second one that I was  
4 responsible for.

5 Q. Okay.

6 A. I assisted on others.

7 Q. What was the other one that you were  
8 responsible for, if you know?

9 A. It was in the Missouri-American Water case.  
10 I think it was WR-2003-500.

11 Q. Okay. And how many cases have you filed  
12 depreciation-related testimony in?

13 A. I believe that's listed in my direct  
14 testimony, and if you don't mind, I'll refer to that.

15 Q. Sure. I guess I just didn't know -- on  
16 Schedule 1, are you talking about?

17 A. Yes.

18 Q. I just didn't know if -- are all three of  
19 those cases de-- okay. The issues are depreciation.  
20 Okay.

21 A. Yes, they are.

22 Q. Okay.

23 A. So this would be the fourth case.

24 Q. Okay. And I see from your resume you're a  
25 civil engineer, and I was wondering, you know, in your

1 training as a civil engineer, did you receive, like, in --  
2 at the University of Missouri - Columbia, did you take any  
3 courses related to depreciation?

4 A. That -- no. None of the courses I had were  
5 titled regulatory depreciation, no.

6 Q. Okay. And you've also got some training,  
7 and I'm referring on page 2 of your testimony, you've  
8 listed some training classes that you've taken starting on  
9 line 10, the NERUC utility rate school and the basic NERUC  
10 course. Do you see those?

11 A. Yes.

12 Q. Did any of the classes in those training  
13 courses specifically address depreciation?

14 A. Depreciation was discussed as it relates to  
15 setting of rate base, but as far as conducting a --  
16 depreciation studies, no.

17 Q. How about even more specifically the issue  
18 of net salvage, were there any classes on net salvage?

19 A. No, there were not.

20 Q. Okay. Have you had any other training  
21 besides in college and these NERUC courses on -- that  
22 would relate to net salvage?

23 A. Sure. You know, here at the Commission my  
24 supervisor and the senior engineers of the department, you  
25 know, gave me instruction and a mentoring and those types

1 of things.

2 Q. Okay. That makes sense. Outside the --

3 outside of that, though, is there any other training that

4 you've had besides the training that's listed that we've

5 already talked about?

6 A. With relation to depreciation?

7 Q. Yeah. And specifically net salvage.

8 A. No.

9 Q. Looking at your rebuttal testimony, I'm on

10 page 4, line 20, and you have a sentence there that says,

11 the currently ordered depreciation rates are appropriate

12 because they are designed to recover the company's

13 investment in plant over the average used and useful life

14 of the various plant accounts.

15 And I guess I was wondering what the source

16 of that explanation of what depreciation should do is.

17 Where did you get that from, that that's what depreciation

18 should do?

19 A. I guess I don't understand the question.

20 Q. Well, let me rephrase that. It was kind of

21 awkwardly phrased. Let me try again.

22 Why do you believe that depreciation rates

23 should be designed to recover the company's investment in

24 plant over the average used and useful life of the various

25 plant accounts?

1           A.       That -- I guess the answer to your question  
2       would be the reason I -- the reason that I believe that  
3       the depreciation rates should recover the company's  
4       investment in their plant is -- I mean, that's the goal of  
5       depreciation. I guess I don't -- you know, I think most  
6       depreciation professionals and depreciation texts would  
7       indicate that, you know, the company's investment in plant  
8       should be recovered through the depreciation rate.

9           Q.       Well, do you have a specific depreciation  
10       text or -- that's the source of that?

11          A.       Do I have a text that states -- okay. I  
12       just want to make sure I understand the question. Is  
13       there a source that require -- that states the company  
14       should return?

15          Q.       That depreciation rates should be designed  
16       to recover the company's investment in plant over the used  
17       and useful life of the various plant accounts? Is there a  
18       text that says that?

19          A.       I think there are several.

20          Q.       Well, I mean, and here's where I'm getting  
21       at. Maybe this will make it a little clearer. For  
22       example, are you familiar with NERUC's depreciation  
23       manual?

24          A.       Yes.

25          Q.       And my understanding -- correct me if I'm

1     wrong -- is that NERUC's depreciation manual refers to the  
2     recovery of service value over the life of the plant;  
3     isn't that correct?

4             A.     I believe that that's in the NERUC  
5     definition, yes.

6             Q.     And my further understanding is service  
7     value encompasses not only the original cost of the  
8     plant -- and again this is referring to the NERUC  
9     manual -- but also the net salvage that will be incurred  
10    at the end of the plant's life; is that correct?

11            A.     I believe that's in the NERUC's definition  
12    of service value.

13            Q.     Okay. And doesn't NERUC refer to the  
14    recovery of service value as what's appropriate for  
15    depreciation?

16            A.     Well, I think that NERUC, they do discuss  
17    that, and they also offer alternatives to that particular  
18    method that I think you're advocating here. If I'm  
19    reading between the lines, I apologize.

20            Q.     Okay. Are there any other texts that you  
21    know about that are the basis of your depreciation  
22    recommendations?

23            A.     I mean, we refer to Depreciation Systems.  
24    It's a text by Wolfe and Fitch.

25            Q.     Okay. And isn't it true that Depreciation



1 Systems also refers to the recovery of service value over  
2 the life of the asset, rather than just the original cost?

3 A. I believe it uses service value in the  
4 definition.

5 Q. Okay. Looking at page 6 of your rebuttal  
6 testimony, you know, one of the criticisms of estimating  
7 future net salvage you have is -- well, the question's on  
8 line 12 and the answer -- well, the question says, are you  
9 saying that applying this formula to the company's  
10 historical records can't possibly accurately predict  
11 future cost of removal net of salvage?

12 And the answer you give is, yes, distant  
13 future events such as the compound rate of inflation,  
14 environmental regulations and technological advances  
15 cannot be predicted, nor can it be assumed that historical  
16 patterns will be consistently repeated.

17 And I guess my question to you is, couldn't  
18 those same criticisms be levelled at predicting average  
19 service lives for long-lived accounts?

20 A. I guess there's the distinction that I  
21 would like to point out, and I have tried to do so in my  
22 testimony, is that the average service lives are estimated  
23 using an empirically derived model. So in other words, we  
24 take what we know and we apply it to this model, okay,  
25 that's proven, and then from that we extrapolate our

1 estimation.

2 Q. But I guess my question is, couldn't things  
3 like technological advances affect the average service  
4 life just like it could affect the net salvage cost?

5 A. I'd say to a different degree.

6 Q. Okay.

7 A. So maybe not just like, but they could both  
8 be affected by --

9 Q. I mean, couldn't the average service life  
10 of a piece of utility property be extended because some  
11 new way of maintaining the existing plant is developed?

12 A. Yes.

13 Q. And I mean, doesn't that actually happen in  
14 real life sometimes?

15 A. Yes.

16 Q. And aren't you looking when you're looking  
17 at average service lives, you know, how long are these  
18 average service lives? Aren't they sometimes 40 or  
19 50 years in the case of utility assets?

20 A. Sure.

21 Q. I mean, isn't that a long time horizon to  
22 be looking out and predicting what's going to happen in  
23 the future?

24 A. Yes, it's a long time.

25 Q. Okay. In your direct testimony on another

1 subject on page 4, you're talking about -- and  
2 specifically I'm starting on line 17 -- you're talking  
3 about the overaccrual of Empire's depreciation reserve.  
4 Do you see that?

5 A. Yes.

6 Q. And it's \$46 million is my understanding;  
7 is that correct?

8 A. I think that just relates to the  
9 transmission distribution in general accounts with mass  
10 property accounts.

11 Q. Okay. And --

12 A. That's a correct figure from my testimony.

13 Q. And you give a number of reasons for this  
14 overaccrual, and one of the reasons is basing depreciation  
15 rates solely on recovery of original costs. Do you see  
16 that on line 20 and 21?

17 A. Yes.

18 Q. And I guess by that you mean when the net  
19 salvage was pulled out of the depreciation rate a couple  
20 of years ago; is that right?

21 A. Yeah. I mean, no. The reason that -- the  
22 portion of the \$46 million that is attributable to the  
23 cost of removal is from before the company switched to the  
24 cash basis.

25 Q. Okay.

1           A.       Expensing that cost of removal. So they  
2 collected some cost of removal money, I'm assuming, in the  
3 past, but I can't put my finger on the amount.

4           Q.       Okay. That was going to be my next  
5 question. Do you know how much of the \$46 million is --  
6 of supposed overaccrual is due to the fact that the  
7 Commission changed the way net salvage is collected a  
8 couple of years ago?

9           A.       I do not know how much money the company  
10 collected for cost of removal.

11          Q.       I mean, do you think it's probably most of  
12 the \$46 million, or do you just not have any idea?

13          A.       I do not have any idea.

14                   MR. BYRNE: Okay. Those are all the  
15 questions I have. Thank you, Mr. Macias.

16                   THE WITNESS: Thank you.

17                   JUDGE THOMPSON: Thank you, Mr. Byrne.  
18 Mr. McCartney?

19                   MR. McCARTNEY: No questions.

20                   JUDGE THOMPSON: Mr. England?

21                   MR. ENGLAND: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. ENGLAND:

23          Q.       Good morning, Mr. Macias.

24          A.       Good morning, Mr. England.

25          Q.       I think Mr. Byrne asked some of my

1 questions and I was back there furiously trying to scratch  
2 them from my yellow tablet. So some of my questions may  
3 be a little disjointed as I jump around from what I  
4 originally had prepared.

5                   Following up on a question I believe you  
6 were -- question and answer that you and Mr. Byrne engaged  
7 in a minute ago regarding -- I think it's the difference  
8 between the theoretical reserve, is that right, and the  
9 actual reserve that creates either a reserve excess or a  
10 reserve deficiency?

11           A.       Yes, that's true.

12           Q.       My understanding is the existence of that  
13 excess or deficiency, whatever it may be, is dependent in  
14 large part upon the assumptions that go into the  
15 depreciation rate?

16           A.       That's true also.

17           Q.       So if you're assuming a higher depreciation  
18 rate, for example, one that includes net salvage, your  
19 theoretical reserve is going to be greater than if you  
20 assume a lower depreciation rate, one that doesn't include  
21 net salvage; is that right?

22           A.       If you have a high depreciation rate, then  
23 you could calculate a reserve that would reflect having  
24 that higher depreciation rate throughout history. So it  
25 would, in fact, be higher if you calculate a theoretical

1     reserve with a lower depreciation, yes.

2             Q.       Would you agree with me that a lot of the  
3     reason for a reserve deficiency or excess, particularly as  
4     we talked about it in this case, is going to be dependent  
5     upon whether the Commission deems it appropriate or not to  
6     include a certain value of net salvage in the depreciation  
7     accrual rate?

8             A.       Absolutely.

9             Q.       Okay. Thank you. I believe you indicated  
10    to Mr. Byrne that you began your work here at the Public  
11    Service Commission, at least in the area of depreciation,  
12    in December of '01?

13            A.       Yes.

14            Q.       Okay. And my understanding is that the  
15    watershed date, if you will, for the change in Staff's  
16    position regarding depreciation as it relates to net  
17    salvage was a Laclede Gas rate case in approximately 1999;  
18    is that your understanding?

19            A.       I think I'm having trouble with the  
20    watershed.

21            Q.       Point in time when things changed, if you  
22    will, as far as Staff was concerned.

23            A.       I think that the -- we had evolved to where  
24    we are now at that point.

25            Q.       At least as far as --

1           A.       Excuse me. We were close to where we are  
2   now.

3           Q.       Okay.

4           A.       I apologize.

5           Q.       My understanding, in the Laclede case even  
6   though you calculated net salvage based on a five-year  
7   historic average, you still included a component in the  
8   depreciation rate; is that right?

9           A.       Staff did.

10          Q.       I'm sorry. Yes. And since then it's been  
11   eliminated entirely from the depreciation rate and allowed  
12   in the revenue requirement as a line item expense?

13          A.       Yes.

14          Q.       Okay. Is it fair to say that since your  
15   tenure with the Staff's depreciation department, that the  
16   only position that you have been subjected to is the  
17   current position of the Staff with regard to net salvage?

18          A.       I don't understand the question. I  
19   apologize. Subjected to?

20          Q.       For purposes of your entire professional  
21   career here at the Commission as it relates to the  
22   development of appropriate depreciation rates, the only  
23   position or policy that you've known with respect, for  
24   example, to net salvage is the one that the Staff adopted  
25   and has evolved from the Laclede case?

1           A.       That has been the Staff's policy. I have  
2       been exposed to Empire's presentation and various other  
3       company depreciation proposals which were quite different  
4       from Staff's.

5           Q.       Right. But at least as far as the entity  
6       that pays your paycheck, that's been its proposal or its  
7       policy if you will since you've been on the Staff?

8           A.       Yes, that's true.

9           Q.       Okay. Is it also fair to say that you had  
10      no involvement in the decision by Staff to make that  
11      change that began with the Laclede case in '99 and has  
12      evolved to where it is today?

13          A.       That's correct.

14          Q.       Okay. Is it also fair to say that  
15      essentially you were given a position by your superiors  
16      and told to be consistent with it for purposes of your  
17      testimony in rate cases?

18          A.       I don't think I would characterize it quite  
19      like that.

20          Q.       Okay. How would you characterize it?

21          A.       Well, you know, when I started in the  
22      department, we were -- we would have, you know, general  
23      discussions, and I was being educated by other Staff  
24      members, and, you know, we discussed the different methods  
25      of handling things, and how the Staff was treating it



1     differently than the company was in whatever case happened  
2     to be being considered at the time.

3                     And, you know, it was a learning process,  
4     and, you know, when I was in school, just like anyone  
5     else, if we had accounting questions, you know,  
6     depreciation included the cost of removal. But when we  
7     analyzed it, the way that Staff has and recognized the  
8     risks involved by doing it that way, it was -- the  
9     conclusion, you know, was clear to myself.

10            Q.     Let me ask you the question this way: If  
11     you in your own professional judgment felt that an accrual  
12     for net salvage was appropriate, consistent with the way  
13     in which the company was proposing it, would you have been  
14     permitted to file that testimony?

15            A.     I don't believe that I would have been  
16     allowed to file an accrual method because the Staff's  
17     policy is to expense net salvage.

18            Q.     To date -- and I don't want to plow ground  
19     Mr. Byrne went over, but I think this is a little  
20     different. As I understand, you have presented testimony  
21     on the issue of depreciation in three cases; is that  
22     right?

23            A.     Excluding this one?

24            Q.     Yes.

25            A.     Okay. So four total.

1           Q.     I'm sorry. Yeah, however you want to  
2 clarify it, that's fine.

3           A.     Okay. Let me reference in my --

4           Q.     I was working off your Schedule 1.

5           A.     Okay. There's three listed on Schedule 1.

6           Q.     Okay.

7           A.     And this case makes four.

8           Q.     And two of those you performed the  
9 depreciation study, is that right, or one of those?

10          A.     Two out of four.

11          Q.     Okay.

12          A.     Is that okay?

13          Q.     That's fine. I think we're going to get  
14 there, but we're just taking different paths. Tell me the  
15 two that you've performed studies for.

16          A.     WR-2003-500, and then this case,  
17 ER-2004-0570 --

18          Q.     Okay.

19          A.     -- for Empire District.

20          Q.     So essentially a study for  
21 Missouri-American Water Company, and then the one here  
22 today that we're talking about for Empire District  
23 Electric Company?

24          A.     That I was responsible for and filed  
25 testimony, yes.

1           Q.       And it's fair to say that the study that  
2     you've presented in the Missouri-American case and now in  
3     the Empire case is consistent with the Staff's policy  
4     regarding net salvage that we've been discussing?

5           A.       Yes.

6           Q.       Now, I'm assuming this is the first  
7     electric case for which you've performed or had primary  
8     responsibility of performing a depreciation study?

9           A.       That is true.

10          Q.       Okay. Have you had any work experience in  
11     the design, construction or operation of an electric  
12     utility?

13          A.       No, I have not.

14          Q.       Are you a member of the Society of  
15     Depreciation Professionals?

16          A.       No.

17          Q.       Are you a certified depreciation  
18     professional?

19          A.       No.

20          Q.       With regard to your work in this case, my  
21     understanding is you were the one primarily responsible or  
22     perhaps solely responsible for the depreciation study; is  
23     that right?

24          A.       That's true.

25          Q.       Were any other Staff members or did any

1 other Staff members assist you in your work on the study?

2 A. Yeah. I mean, yes, the senior engineers,  
3 you know, provided some assistance and reviewed work  
4 papers.

5 Q. Okay. Can you be specific and tell me who  
6 assisted you in your study in this case?

7 A. Well, Guy Gilbert is the senior engineer.  
8 However, you know, he -- throughout the duration of most  
9 of the duration of my study, he had not yet begun  
10 employment here. So I guess mostly we talked about some  
11 -- you know, we discussed some issues related to the  
12 study, and I provided him my work papers for review.

13 Q. Do you know when he joined the -- rejoined  
14 the Commission, roughly, months?

15 A. I want to say first of September maybe or  
16 middle of September.

17 Q. And your testimony was filed on  
18 September 20th, right, at least your direct case with your  
19 study?

20 A. Yeah.

21 Q. Is it fair to say that Mr. Gilbert did not  
22 have any involvement at least in the preparation of that  
23 study?

24 A. No, he did not.

25 Q. Okay. But I assume since he's been with

1 the Commission since September, you've consulted with him,  
2 is that right, and of course he's a witness in this case?

3 A. Yes.

4 Q. Okay. Who else would have participated in  
5 the development of your original study that was filed with  
6 your September 20th direct testimony?

7 A. I would say that's -- that's about it.

8 Q. Okay. My understanding is you did perform  
9 an onsite inspection of Empire's facilities; is that  
10 correct?

11 A. The generation facilities, yes.

12 Q. When was that?

13 A. End of August. I don't know the exact  
14 dates.

15 Q. How long did that take?

16 A. I believe I was there for two days in  
17 total.

18 Q. Did you visit all of the production plant  
19 facilities at Empire?

20 A. I think we went to all of them with the  
21 exception of the Ozark Beach facility on that trip.

22 Q. Would that include all of the units that  
23 were listed on Mr. Roff's Schedule 4.2 and that  
24 Mr. Williams asked him about yesterday?

25 Excuse me. I think it's Schedule 5.

1           A.       It would include -- with the exception of  
2   the Ozark Beach units and also the Iatan unit.

3           Q.       You did, then, personally visit all of the  
4   others on that schedule?

5           A.       I believe so, yes.

6           Q.       Did you consult with or interview Empire  
7   management personnel to discuss their plans for retirement  
8   of these plants?

9           A.       I was -- you know, I had discussions with  
10   operations personnel. And Darrell Coit, the company  
11   controller, went along with me on the tours.

12          Q.       Did you specifically address plans for  
13   retirement?

14          A.       I think we talked about retirement dates,  
15   but I don't know that I had a questionnaire about that.

16          Q.       Were you given any different information by  
17   company personnel than what's been indicated by Mr. Roff  
18   in his study and work papers?

19                    What I'm getting at is, did we tell you one  
20   thing and tell Mr. Roff something else?

21          A.       I think I understand what you're saying,  
22   and the dates that were quoted to me are consistent with  
23   Mr. Roff. Then there was, you know -- I think that the  
24   dates that the company has suggested are, you know,  
25   worst-case scenarios. The earliest possible date that if

1 a laundry list of environmental regulations get passed,  
2 that they believe it will no longer be economic to operate  
3 these plants. But they won't -- I don't believe they're  
4 going to discontinue or retire these plants until it's no  
5 longer economical to run them.

6 Q. Okay. That's not quite my question. My  
7 question is, do you know if we told you something  
8 different than we told Mr. Roff for purposes of this  
9 study?

10 A. The dates that I was told were consistent  
11 with what is on Mr. Roff's schedule here.

12 Q. Did you take the time to talk with the  
13 company personnel to express your concerns, if you will,  
14 with respect to those dates and the fact that they're  
15 based on worst-case assumptions?

16 A. No, I don't believe so.

17 Q. So you don't know what the company's  
18 response would be to your critique?

19 A. No, I don't know what the company would  
20 say.

21 Q. It's my understanding that for purposes of  
22 your study you developed average service lives for various  
23 depreciable accounts; is that right?

24 A. That's true.

25 Q. Okay. And you're going to have to bear

1 with me because I'm coming at this at about a 20,000 foot  
2 view. But my understanding is that somewhere in that  
3 process of developing average service lives you use or  
4 apply Iowa curves; is that right?

5 A. Yes.

6 Q. And can you -- keep in mind my subject  
7 matter knowledge is not that great. Keep it at a pretty  
8 high level. Can you kind of explain to me how the  
9 application of Iowa curves fit into your analysis in  
10 determining an appropriate average service life?

11 A. I think so. What we do is we take the data  
12 provided from the company and its, you know, placements or  
13 additions and retirement, and we will, you know, generate  
14 from the data a survivor curve or an original survivor  
15 curve or a pattern of how the plant is retiring.

16 And then we take that original curve,  
17 compare to the set of Iowa curves, which as I mentioned to  
18 Mr. Byrne have been developed off of industrial property  
19 and have been, you know, proven to be relatively accurate.  
20 And when we find -- then we compare the original survivor  
21 curves to the set of Iowa curves and the best fitting --  
22 the -- you know, then we match that, you know,  
23 mathematically.

24 Q. Okay.

25 A. The original to a -- to several Iowa



1 curves, with, you know, various lives and shapes.

2 Q. Let me say something and tell me if I'm  
3 wrong, I understand this. You take the actual data from  
4 the company and sort of plot it on a graph, if you will,  
5 and develop a curve from that or at least some sort of  
6 trend; is that right?

7 A. Sounds much more eloquent than how I put  
8 it.

9 Q. Flattery will get you everywhere,  
10 Mr. Macias.

11 A. Excellent.

12 Q. And then you attempt to compare that to a  
13 set of -- not just one, but a set of Iowa curves to  
14 determine which one of those Iowa curves best fits your  
15 actual data?

16 A. With the aid of the computer, we can  
17 compare it to all of them.

18 Q. That was going to be my next question. Is  
19 that a visual fitting or is that a computer, if you will,  
20 fitting?

21 A. Well, it's both. The computer will  
22 calculate a mathematical fitting, and then with -- you  
23 know, we still use a computer as a tool, but we have the  
24 ability to plot the curve and then overlay the various  
25 Iowa curves that, you know, are close to what we believe

1 the most accurate one would be.

2 Q. This may not be a very artful question, and  
3 tell me if it's not. But in any instance when the  
4 computer told you one curve, did you determine to use a  
5 different curve based on your visual or other engineering  
6 background?

7 A. I -- I guess without my work papers here, I  
8 can't for sure answer, but I would guess that I probably  
9 did.

10 Q. In -- in a minority, majority or how many?

11 A. I would assume it to be a minority of the  
12 accounts. In other words, when the mathematical fit is  
13 the greatest mathematical fit is generally a good fit  
14 also.

15 Q. Do you recall which if any account might  
16 have been one where you went with your visual, as opposed  
17 to the computer?

18 A. I'm sorry. I cannot recall.

19 Q. I'm going to jump back to service lives and  
20 get off Iowa curves for a minute.

21 A. Okay.

22 Q. Once you've determined an appropriate  
23 average service life, does it remain fixed or static over  
24 the life of the plant?

25 A. No, not generally.

1           Q.       And why is that?

2           A.       Well, you know, the property -- in the  
3   accounts, they can and often do -- I would say usually do  
4   change their behav-- their retirement behavior. And when  
5   that happens, you adjust the average service life and the  
6   curve time.

7           Q.       And I think you'd agree with me that it's  
8   not uncommon for companies as well as staff to do periodic  
9   reviews of depreciation; is that right?

10          A.       I agree.

11          Q.       Am I correct also in understanding that  
12   there may be a Commission rule that requires that every  
13   five years that depreciation be reviewed, at least for  
14   electric utilities?

15          A.       Yes.

16          Q.       Okay. Are there any empirical studies that  
17   you can do to test the accuracy of your average service  
18   life?

19          A.       I would have to answer that the empirical  
20   studies have already been done for creating the Iowa  
21   curves. Maybe I don't understand your question.

22          Q.       Let me try this way. Do you do any other  
23   empirical studies other than the up front Iowa curve  
24   analysis to test the accuracy of the average service life  
25   as determined by the Iowa curve?

1           A.       If I -- if I understand the question, I  
2       don't think so.

3           Q.       Okay. Do you as a depreciation  
4       professional here at the Staff attempt to go back and  
5       reconcile average service lives that you have determined  
6       with actual results for any particular utility?

7           A.       No, we don't believe that that's necessary.

8           Q.       Let's talk a little bit about net salvage  
9       if we can.

10          A.       Okay.

11          Q.       My understanding is Staff's proposal is to  
12       expense net salvage versus accruing it as a component of  
13       depreciation rate?

14          A.       That's correct.

15          Q.       And Staff's net salvage expensed amount is  
16       based on a historical analysis of the last five years of  
17       actual net salvage and simply taking a mathematical or a  
18       simple average; is that right?

19          A.       That's my understanding of how the  
20       adjustment was calculated.

21          Q.       Okay.

22          A.       I didn't make that adjustment.

23          Q.       Now, and again I'm not trying to plow  
24       ground that Mr. Byrne did, but I'm not sure that I  
25       understood your answer, because we've had this discussion

1 in the Missouri-American case. But my understanding is  
2 you were not aware of any authoritative texts or treatises  
3 that advocate this type of approach, this expensing of net  
4 salvage; is that right?

5 A. Well, I don't know about -- well, the NERUC  
6 text -- the NERUC advocates it, I suppose. It recognizes  
7 it.

8 Q. It recognizes that some jurisdictions may  
9 have done it, doesn't it?

10 A. And it recognizes that some jurisdictions  
11 do not.

12 Q. My understanding is, again, based on my  
13 cross-examination of you in the Missouri-American case,  
14 that you were aware of only two other states who have  
15 adopted the method advanced by Staff, is that a fair --  
16 well, first of all, is that a fair recollection of your  
17 testimony a year ago?

18 A. Yes, it is.

19 Q. And has that changed, to your knowledge?

20 A. No.

21 Q. Now, Mr. Roff has developed a net salvage  
22 ratio or percentage by comparing net salvage costs to the  
23 original cost of the plant that's being retired. Is that  
24 your understanding of how he does it?

25 A. Yes, that's how I believe he does it.

1 Q. Okay. Would you also agree with me that  
2 that is an industry standard way of doing it?

3 A. It's a common way of doing it, yes.

4 Q. In fact, that's the way Staff used to do it  
5 prior to the Laclede case, was it not?

6 A. I believe that is how Staff used to do it  
7 when it treated it that way.

8 Q. So Mr. Roff in developing his net salvage  
9 ratios is not performing any unique, untried, untested  
10 salvage analysis, is he?

11 A. I would disagree that it's untested.

12 Q. Okay.

13 A. But it's not unique.

14 Q. It's not unique. It's been accepted in the  
15 industry, even accepted by this Staff at one point in  
16 time.

17 A. I don't know that it's been questioned by  
18 the rest of the industry, but the answer to your question  
19 is yes.

20 Q. And as far as we know, the 48 other states  
21 approach it in that regard?

22 A. 47.

23 Q. Fair enough.

24 A. But I don't know exactly how they approach  
25 it.

1           Q.       At page 6 of your rebuttal testimony -- it  
2     would help if I had the right testimony -- lines 18  
3     through 20, you have a statement that says, there is no  
4     assurance that plant will, in fact, be removed or that the  
5     company will actually experience any cost of removal  
6     expense. Do you see that?

7           A.       Yes.

8           Q.       Now, my understanding is that Staff's own  
9     calculation in this case, the simple average of the last  
10    five years of the cost of removal has produced a  
11    \$1.6 million figure, which tells me that the company has  
12    incurred actual cost of removal costs for the last five  
13    years. Is that your understanding?

14          A.       That's my -- well, the average has turned  
15    out to be 1.6 million. I don't really know if there was a  
16    year in that five-year average where gross salvage  
17    exceeded costs of removal. I don't know that. It could  
18    have happened. But cost of removal was incurred in that  
19    year, whether it was overshadowed by salvage or not.

20          Q.       And have you seen Mr. Roff's surrebuttal  
21    exhibit DSR-1SR where he shows salvage costs, I believe,  
22    or cost of removal for a 15-year historic period of time?

23          A.       I have seen it.

24          Q.       Would you agree with me that both Staff's  
25    analysis and Empire's analysis would indicate that Empire

1 has experienced cost of removal for --

2 A. Yes.

3 Q. -- some period of time prior to this case?

4 A. Yes.

5 Q. And is it -- and is it still your testimony

6 that it's unlikely that they will experience that in the

7 future?

8 A. I don't believe I stated it's unlikely.

9 Q. Okay.

10 A. I mean, it's not 100 percent certain.

11 Q. So you --

12 A. But it's likely that they will in the

13 future experience it.

14 Q. Okay. Thank you, sir.

15 Let me ask you a couple of questions about

16 remaining life. You would agree with me that remaining

17 life technique is a valid industry accepted depreciation

18 technique, would you not?

19 A. I would agree with that.

20 Q. And you would agree that this Commission

21 has adopted remaining life at least for the telephone

22 industry in this state?

23 A. They adopted -- my understanding is that

24 was a special circumstances, but they adopted it.

25 Q. Are you aware of any other states that have



1     adopted remaining life for utility electric companies?

2             A.       I'm sure there are several.  The only one

3     that I can think of -- I can only think of one off the top

4     of my head.

5             Q.       In other words, it's not some untried

6     unique technique, is it?

7             A.       No.

8             Q.       In fact, it does enjoy some acceptance,

9     perhaps not here, but in other jurisdictions?

10            A.       Correct.

11            Q.       I'm going to switch gears on you a little

12     bit here.  Your rebuttal, page 7, pages -- or excuse me --

13     lines 3 and 4.  In supporting the Staff proposal you say,

14     quote, the Staff method currently in place reduces the

15     risk that customers will overpay for the future unknown

16     cost of removal that may or may not be experienced,

17     unquote.  Do you see that?

18            A.       Yes.

19            Q.       I think we've established just a minute ago

20     that it's likely we will incur cost of removal, it's just

21     the amount that in your opinion is unknown; is that right?

22            A.       Yes.

23            Q.       Okay.  I want to talk about the risk of

24     overpayment for a minute.  As customers pay for the cost

25     of removal or net salvage under the company's proposal,

1     you would agree with me that there is an equal and  
2     concurrent increase in the accumulated reserve for  
3     depreciation, correct?

4             A.       If I follow your question -- could you ask  
5     it again?

6             Q.       Sure. As customers pay for the net salvage  
7     cost under the company's proposal, which is to accrue it  
8     as part of the depreciation rate --

9             A.       The future net salvage cost?

10            Q.       Yes.

11            A.       Okay.

12            Q.       -- there is an equal and concurrent  
13    increase in the reserve for depreciation on the company's  
14    books?

15            A.       Yes.

16            Q.       Okay. And in -- and in turn, that reserve  
17    is deducted from gross plant in service to arrive at a net  
18    rate base upon which rates are set and returns are  
19    authorized, right?

20            A.       At the next rate proceeding, yes.

21            Q.       So to the extent customers overpay in your  
22    situation for future cost of removal, they also receive a  
23    commensurate reduction in their rate case, correct?

24            A.       They receive a reduction in their rate  
25    case, yes.

1           Q.       And it's commensurate with the amount that  
2 they pay, correct?

3           A.       Their rates aren't reduced by the amount  
4 that they've paid, but the rate base is.

5           Q.       They will be in the next rate case, they've  
6 established that?

7           A.       Right. The rates, no. If the customers  
8 pay \$10,000, the rate base will be reduced by \$10,000.  
9 However, their rates will not be reduced by \$10,000 at the  
10 next rate case.

11          Q.       No.

12          A.       The rates that they pay for electricity. I  
13 want to keep it clear.

14          Q.       The rates that they pay based upon the rate  
15 base, all other things being equal, will be less because  
16 the rate base will be less?

17          A.       It will be less by I believe the authorized  
18 rate of return. I think that's how it works.

19          Q.       Applied to the amount they paid?

20          A.       Correct. But the authorized rate of return  
21 is not 100 percent.

22          Q.       Okay. I'm going to flip the coin and say  
23 what if future cost of removal exceeds Staff's expense of  
24 1.6 million a year, how does Staff's proposal reduce the  
25 risk that investors will have to fund cost of removals in

1 excess of Staff's allowance?

2 A. I -- the Staff, the Staff's position is to  
3 treat the cost of removal just like any other expense,  
4 such as, you know, payroll or other O&M expenses. So, you  
5 know, it's -- the risk is the same for both.

6 Q. But that's not quite my question. My  
7 question is, how does the Staff's proposal reduce the risk  
8 that investors will have to fund cost of removal in  
9 expense of the 1.6 million annual allowance?

10 A. I don't know that it does. There's -- you  
11 know, the ratemaking process puts a lot of expenses at  
12 risk like that, such as payroll, is what I was trying to  
13 convey to you.

14 Q. But in an ever-increasing rate base  
15 environment, the risk is greater on the shareholders or  
16 the investors than it is on the ratepayers, correct?

17 A. I don't know.

18 Q. Following up on that, kind of changing the  
19 question, though, if plant is retired when the company  
20 predicts -- let's say it's retired on the date that we  
21 have in our lifespan analysis, those final dates of  
22 retirement, yet rates to customers are based upon your  
23 depreciation rates in your average service lives for that  
24 power plant, would you agree with me that at the  
25 retirement date there will be unrecovered investment in

1 those plants?

2 A. I agree.

3 Q. Would you agree with me that the company

4 and its investors are entitled to recover that

5 undepreciated or unrecovered investment in its plants?

6 A. Yes.

7 Q. How do you propose they would get that?

8 A. We make an adjustment to the depreciation

9 reserve at that time should that happen.

10 Q. Could you be a little more specific and

11 explain that adjustment to me?

12 A. Well, I guess what we would propose is to

13 a-- to amortize the amount that wasn't depreciated. In

14 other words, the depreciable amount less the amount

15 retired, whatever's left over, we would recommend that

16 that be amortized over a period of time.

17 Q. And that would be fair and appropriate in

18 your opinion?

19 A. It would be more fair -- it would be more

20 fair than should the plant live 10 years longer than what

21 the company has selected as its final retirement dates,

22 yes.

23 Q. Well, if rates are set at the point in time

24 when the company retires the plant -- or excuse me. If

25 rates are set before that point in time but after the

1 company's retirement date has come and gone, there will be  
2 an adjustment in the ratemaking process to reflect that,  
3 will there not?

4 A. Yes. I thought that's what I said.

5 Q. Let me get back to your proposal to recover  
6 the undepreciated investment in the plant after it's taken  
7 out of service.

8 A. Okay.

9 Q. My question sort of presupposed the answer.  
10 In fact, it would be recovered from ratepayers, even  
11 though the plant was no longer in service and providing  
12 service to the customers, correct?

13 A. Yes. If there was an amount left to be  
14 collected after plant retired, just like any other piece  
15 of plant, it would have to be recovered after it's out of  
16 service.

17 Q. And the longer that plant is amortized into  
18 the future, the more likely it is future generations of  
19 customers who didn't receive service from that plant will  
20 have to pay for it?

21 A. Correct.

22 MR. ENGLAND: I have no other questions.  
23 Thank you, your Honor.

24 JUDGE THOMPSON: Thank you, Mr. England.

25 QUESTIONS BY JUDGE THOMPSON:

1           Q.       Mr. Macias, you testified that it's Staff's  
2 policy to expense net salvage?

3           A.       Yes.

4           Q.       How do you know that? How did you learn  
5 that that is Staff's policy?

6           A.       I was told that.

7           Q.       Who told you?

8           A.       Who? I mean, I probably first was told by  
9 Paul Adam, who used to be the senior engineer in our  
10 department. And when we file testimony, we don't file an  
11 adjustment, we don't sponsor an adjustment for net  
12 salvage. That's handled by the Staff auditors. So, you  
13 know, I wouldn't have sponsored a -- an adjustment for net  
14 salvage and the auditors also sponsor. In other words,  
15 that adjustment has been given to them.

16          Q.       When you say that adjustment has been given  
17 to them, do you mean that Staff's accounting schedules  
18 include an expense item for net salvage?

19          A.       I think they do. I believe they do.

20          Q.       So you were told this by Paul Adam. As far  
21 as you know, is there a document of any kind?

22          A.       I don't know of any document.

23          Q.       Okay. So it's Staff's policy and it's an  
24 oral policy, is that correct, an unwritten policy?

25          A.       Yeah. If you have a problem with the word

1 "policy," I apologize.

2 Q. I have no problem with it. I'm simply  
3 trying to explore how Staff developed this approach to net  
4 salvage.

5 A. Okay. It's not written.

6 Q. It's not?

7 A. That I know of.

8 Q. Very well. And if you know, who sets or  
9 who establishes Staff's policies?

10 A. I don't -- I don't know if there's an  
11 individual who's charged with that, but I would assume  
12 that that policy would have been set by the division  
13 director because it's, you know, crossing over  
14 departments.

15 Q. And the divisional director concerned is  
16 who?

17 A. Bob Schal-- Robert Schallenberg.

18 Q. Okay. Now, if you know, does this  
19 policy -- with respect to expensing net salvage, does this  
20 reflect a significant change from past Staff practice, if  
21 you know?

22 A. I don't believe what I have proposed here  
23 is a significant change.

24 Q. But I thought I heard -- have heard  
25 testimony that prior to 2001 Empire accrued an amount for



1 net salvage in the manner that 47 other states permit.  
2 Isn't that correct?

3 A. That was -- that was the discussion. I  
4 can't confirm that 47 other states allow it, but it's  
5 different than that, than -- yes.

6 Q. I guess what I'm aiming at is, would you at  
7 least agree that at some point Staff seems to have changed  
8 its policy with respect to the treatment of net salvage?

9 A. Yes.

10 Q. Okay. Very good. If you know, was that  
11 change in policy ever presented to the Commission for its  
12 approval?

13 A. I don't know.

14 Q. Thank you. Do you know what the other  
15 states are that permit expensing of net salvage?

16 A. Pennsylvania and Kentucky is what I'm aware  
17 of at this point.

18 JUDGE THOMPSON: Thank you. I have no  
19 further questions.

20 I think there will be Commissioner  
21 questions from this witness, so I'm not going to be able  
22 to excuse you at this point, nor will we be able to go on  
23 to recross, so I will go ahead and ask you to step down  
24 and to remain available to come back when the  
25 Commissioners are available.

1                   And I think our next witness then is  
2   Mr. Gilbert; is that correct?

3                   MR. WILLIAMS:   Yes, Judge.

4                   JUDGE THOMPSON:   Thank you.

5                   THE WITNESS:   Thank you, Judge.

6                   JUDGE THOMPSON:   Thank you, Mr. Macias.  
7   Good morning, Mr. Gilbert.

8                   THE WITNESS:   Good morning, sir.  
9                   (Witness sworn.)

10                  JUDGE THOMPSON:   You understand that if you  
11   were to give false testimony in this proceeding, you could  
12   be prosecuted for the crime of perjury?

13                  THE WITNESS:   I do.

14                  JUDGE THOMPSON:   Take your seat, please,  
15   and spell your last name for the reporter.

16                  THE WITNESS:   Gilbert, G-i-l-b-e-r-t.

17   GUY C. GILBERT testified as follows:

18   DIRECT EXAMINATION BY MR. WILLIAMS:

19                  Q.       Would you please state your name and your  
20   business address.

21                  A.       My name is Guy C. Gilbert.   I'm here to  
22   testify on the subject of depreciation.

23                  Q.       By whom are you employed?

24                  A.       Missouri Public Service Commission.

25                  Q.       In what capacity?

1           A.       Regulatory Utility Engineer 2.

2           Q.       And what is your business address?

3           A.       P.O. Box 360, Jefferson City, Missouri.

4           Q.       Did you prepare in written format rebuttal

5 testimony of Guy C. Gilbert that's been marked for

6 identification as Exhibit 78 and prefiled in this case?

7           A.       I did.

8           Q.       Do you have any changes to that exhibit?

9           A.       Yes. At page 6, I would insert the word --

10 line 13, insert the word "steam" before production.

11          Q.       Do you have any other changes?

12          A.       Not that I'm aware of at this time.

13          Q.       And does that testimony include some highly

14 confidential information?

15          A.       Yes, it does.

16          Q.       Have you also caused to be prepared a

17 companion exhibit that's also marked as Exhibit No. 78

18 that contains -- that has highly confidential materials

19 redacted?

20          A.       I have.

21          Q.       If I were to ask you the questions that are

22 contained in exhibits -- or what's been marked for

23 identification as Exhibit No. 78 here today, with the

24 changes you just gave, would your answers be the same as

25 changed?

1           A.       I believe so.

2                   MR. WILLIAMS: Staff offers Exhibit 78,  
3 which again has both HC and NP versions.

4                   JUDGE THOMPSON: Any objections to the  
5 receipt of Exhibit 78HC and NP?

6                   MR. ENGLAND: No objection.

7                   MS. O'NEILL: No, your Honor.

8                   JUDGE THOMPSON: Hearing none, the same is  
9 received and made a part of the record of this proceeding.

10                  (EXHIBIT NO. 78HC AND 78NP WERE RECEIVED  
11 INTO EVIDENCE:

12                  JUDGE THOMPSON: Thank you very much,  
13 Mr. Williams.

14                  MR. WILLIAMS: Thank you, Judge.

15                  JUDGE THOMPSON: Ms. O'Neill?

16                  MS. O'NEILL: No questions.

17                  JUDGE THOMPSON: Thank you. Mr. Byrne?

18                  MR. BYRNE: Yes, your Honor.

19 CROSS-EXAMINATION BY MR. BYRNE:

20 Q.       Good morning, Mr. Gilbert.

21       A.       Good morning, Mr. Byrne.

22 Q.       My understanding from looking at your  
23 testimony is this is sort of your second tour of duty as a  
24 Commission staff; is that correct?

25       A.       It is.

1           Q.       And can you tell me a little bit about your  
2   history at the Commission, like when were you -- the first  
3   time you worked at the Commission, when were you hired?  
4           A.       I believe it was March 22nd, 1994.  
5           Q.       Okay. And then when did you leave the  
6   Commission that first time?  
7           A.       September 30th, 2000.  
8           Q.       Okay. And -- and then when were you  
9   rehired this time?  
10          A.       August 16th, 2004.  
11          Q.       Okay. And in between what did you do?  
12          A.       I was chair of the civil construction  
13   engineering management technology department at Linn State  
14   Technical College and director of the Material and Safety  
15   Institute. Both were new organizations to that school.  
16          Q.       Okay. And that interim, the job in between  
17   the two times you were at the Commission, that didn't have  
18   anything to do with public utility regulation, I assume;  
19   is that true?  
20          A.       I provided work in the -- for certification  
21   in the highway area. To the extent that that would relate  
22   to utilities, I don't know.  
23          Q.       Like relocations and things were part of it  
24   or not?  
25          A.       I had students that did relocate some and

1     worked for planning and routing for utilities at times,  
2     yes.

3                     MR. BYRNE:   Okay.   I'd like to mark an  
4     exhibit if I could, your Honor.

5                     JUDGE THOMPSON:   This will be Exhibit 135.  
6     How shall we describe this exhibit, Mr. Byrne?

7                     MR. BYRNE:   This is the direct testimony of  
8     Mr. Gilbert in Case ER-97-394.

9                     JUDGE THOMPSON:   Very well.

10                    (EXHIBIT NO. 135 WAS MARKED FOR  
11     IDENTIFICATION BY THE REPORTER.)

12                    MR. BYRNE:   Thank you, sir.

13     BY MR. BYRNE:

14             Q.       Okay.   Mr. Gilbert, I've given you a copy  
15     of a document that's been marked as Exhibit 135.   Can you  
16     tell me what that document is?

17             A.       It appears to be my direct testimony in the  
18     Case No. ER-97-394.

19             Q.       Okay.   And do you recall that case?

20             A.       I do.

21             Q.       Okay.   And I guess my understanding is you  
22     were the depreciation witness in that case; is that  
23     correct?

24             A.       For the Staff, I was.

25             Q.       Okay.   And I guess I'd like to talk a

1 little bit about your recommendation in that case on net  
2 salvage, and specifically I think it's set out on page 4,  
3 and I'm looking at -- I'm looking at starting on line 16.  
4 It says, quote, I analyzed past retirements and net  
5 salvage dollars recorded on the books of the utility and  
6 computed the percentage of net salvage by calculating the  
7 ratio of net salvage dollars to dollars retired. I used  
8 these percentages in the calculation of depreciation  
9 rates, which are applied to the surviving plant investment  
10 contained in the company's books.

11 Is that an accurate reading of those  
12 sentences?

13 A. Yes, it is.

14 Q. And obviously where I'm getting -- where  
15 I'm going with this is, you know, it looks to me like your  
16 recommendation in that case is consistent with Empire's  
17 proposed treatment of net salvage in this case; is that  
18 fair to say?

19 A. Yes, with the difference being that I would  
20 probably recommend something different in this case based  
21 on the theoretical reserve accrual.

22 Q. Okay. But -- okay. But just in terms of  
23 simply calculating the net salvage, it's the same  
24 methodology that Empire is proposing; is that fair to say?

25 A. Yes.

1 Q. Okay.

2 A. Now, there is a difference on the rolling

3 bands if you look at 3 years, 5 years, 10 years.

4 Q. Okay. You used a 5-year rolling band in

5 the UtiliCorp case, is that correct, in that next

6 sentence?

7 A. Yeah. I believe that's what's stated in

8 line 20.

9 Q. And did Empire use a different rolling band

10 in this case?

11 A. I believe in Mr. Roff's testimony he spoke

12 about 3 and 5-year rolling bands.

13 Q. Okay. But aside from the difference in

14 which rolling band was used, other than that, is the

15 methodology the same that Empire is using to calculate net

16 salvage as you used in this UtiliCorp case?

17 A. It appears to be so, yes.

18 Q. Okay. And you also talk in this UtiliCorp

19 case testimony -- and now I'm looking on page 5 -- you

20 talk about how your proposed methodology for calculating

21 net salvage is a change from the way Staff had previously

22 calculated net salvage. And specifically I'm looking at

23 line 4 on page 5. The question is how had Staff

24 previously determined the net salvage percent? And the

25 answer says, previously in Case No. ER-93-37, Staff had



1     calculated the ratio of net salvage dollars to total plant  
2     in service dollars by account to derive a percentage of  
3     net salvage for inclusion in a depreciation cal-- rate  
4     calculation. This did not reflect net salvage properly as  
5     the ratio of net salvage to the book value of plant  
6     retired.

7                     And I was just wondering if you could -- I  
8     don't completely understand that. If you -- can you  
9     explain what the Staff was doing before this case?

10            A.     Prior to this case, that 93-37, that would  
11     have been before I was here. As I looked back at the  
12     rates and tables, people earlier within the department  
13     were either ze-- either assessing salvage as zero or were  
14     doing an aggregate of the salvage wherein they might look  
15     at a number of accounts, as I understand it, so --

16            Q.     I mean, when they assessed the salvage as  
17     zero, were they then including it as an expense, like the  
18     Staff is in this case?

19            A.     I don't know.

20            Q.     Okay. But at least similar to this case  
21     they were in those cases putting zero in the depreciation  
22     rate for net salvage?

23            A.     In some instances as I look back at the old  
24     ordered rates, yes.

25            Q.     And at least in that case you thought that

1 was the wrong thing to do and -- and that it should be --

2 A. Based upon the shortfall in the theoretical

3 reserve for this company, yes, I felt it was necessary,

4 some means to accrue additional dollars to make up for

5 that shortfall.

6 Q. Okay. And did you file any testimony on

7 net salvage, if you recall, after this ER-97-394

8 testimony, but before you left the Commission for the

9 first time?

10 A. I would actually have to go back and

11 review. I know that during about the last year I was

12 employed here, I spent quite a bit of time on a FERC case.

13 Q. Okay. So do you know if you filed any

14 testimony after the 1999 Laclede case when the Staff

15 started advocating its new methodology?

16 A. I see I've got some cases listed in

17 Schedule 1-1 of my rebuttal testimony, and I would have --

18 actually have to review those filings that were made after

19 that '97 date.

20 Q. Let me ask you this. Maybe this is an

21 easier way to ask it. Do you know if you ever filed

22 testimony in your first tour of duty at the Commission

23 that advocated zero net salvage in the depreciation rate

24 and treating net salvage as an expense?

25 A. Not in treating it as an expense, but I'm

1     sure that there were a number of accounts where I would  
2     have applied a zero for net salvage in the computation of  
3     the depreciation rate for that account.

4             Q.       But I guess my point is, if in your mind at  
5     least during your first tour of duty at the Commission,  
6     net salvage, if it was to be included at all in rates, was  
7     to be included in the depreciation rate according to your  
8     testimony during that period of time?

9             A.       At whatever level it was determined to be.  
10    Like I said, sometimes it was zero, sometimes it was  
11    whatever percent.

12            Q.       Sure.  Whatever the data showed it should  
13    be, right?

14            A.       That, and in conjunction with consideration  
15    for the theoretical reserve.  When you had companies that  
16    had an overaccrual in the reserve, there's lots of methods  
17    and techniques that can be used in determination of the  
18    depreciation rate.  So you may look at other lives,  
19    different amounts of net salvage.

20            Q.       Sure.  But it was never your testimony the  
21    first time you were at the Commission that it was an  
22    expense item that should be removed from consideration in  
23    developing depreciation rates and should be removed from  
24    consideration with regard to --

25            A.       I don't believe I've ever written testimony

1 with respect to that, or submitted testimony.

2 Q. You haven't submitted testimony that it  
3 should be treated as an expense; is that correct?

4 A. Correct.

5 Q. Okay. And to the extent you've written any  
6 testimony dealing with net salvage, it's included or not  
7 included, depending on what the data shows in the  
8 depreciation calculation; is that true?

9 A. It's reflected as a zero in the  
10 calculation, yes.

11 Q. Or as a number?

12 A. Or a number.

13 Q. Or a number, depending on what the data  
14 shows; is that right?

15 A. (Witness nodded.)

16 Q. Okay. So now let's move forward in time.  
17 You're interviewing for -- well, what's your current  
18 position at the Public Service Commission?

19 A. Regulatory Utility Engineer 2.

20 Q. Okay. And are you in charge of the  
21 depreciation function at the Commission?

22 A. I'm senior engineer.

23 Q. Okay. And who do you report to?

24 A. Lisa Kremer.

25 Q. Okay. And do the other depreciation

1 engineers report up through you or does everyone report to  
2 Lisa Kremer?

3 A. We're a lateral organization.

4 Q. Okay. But you're the senior depreciation  
5 engineer?

6 A. Right.

7 Q. Okay. When -- when you were interviewing  
8 to come back to the Commission, who did you interview  
9 with?

10 A. Ms. Kremer and Mr. Schallenberg.

11 Q. Okay. And during the course of those  
12 interviews, did they -- did this issue ever come up? Did  
13 the issue of your prior testimony on net salvage ever come  
14 up?

15 A. While I was here, we were formulating our  
16 methods for determining depreciation, and as part of that  
17 net salvage was a real concern because the majority of  
18 companies that we looked at, we saw tremendous  
19 overaccruals in the theoretical reserve.

20 Q. Yeah, but that's not my question.

21 A. I'm sorry.

22 Q. My question is, when you interviewed with  
23 Mr. Schallenberg and Ms. Kremer for your current position,  
24 you know, when you --

25 A. Oh, yeah. Okay.

1           Q.     -- did the subject of your prior testimony  
2     on net salvage come up?

3           A.     No, I don't believe it did.

4           Q.     Okay.  And then since you've been back,  
5     it's my understanding you have not filed testimony on net  
6     salvage?

7           A.     This is the first time I've filed since  
8     I've come back.

9           Q.     Okay.  And let me ask you this:  Today, do  
10    you support the Staff's position that net salvage should  
11    be treated as an expense item and removed from the  
12    depreciation calculation?

13          A.     That's the method that's been adopted in  
14    this case.

15          Q.     I understand that, but do you believe it is  
16    the correct method or is it the incorrect -- or is it an  
17    incorrect method?

18          A.     Given the overaccrual in the theoretical  
19    reserve and the fact that the \$61 million that sits there  
20    provides a buffer, I think expensing is appropriate at  
21    this time.

22          Q.     Wouldn't it be better -- in your opinion,  
23    wouldn't it be better to address the overaccrual through  
24    the depreciation rate or through amortization of the  
25    overaccrual and still leave net salvage in the

1 depreciation calculation? Just personally. I understand  
2 the Staff's position, but personally, what do you believe?

3 A. Personally, I can remember advocating the  
4 expensing of it in conversations that we had.

5 Q. Okay. So personally, you believe that  
6 expensing of it is the better way to treat it than  
7 amortization of the overaccrual or --

8 A. It's a known and measurable if you expense  
9 it.

10 Q. Is that the better way to treat it, in your  
11 opinion?

12 A. I think any time we can work with known  
13 amounts or actuarial data, we're going to get a higher  
14 confidence level in our result.

15 Q. Is that the more appropriate way to treat  
16 it from a depreciation standpoint, though?

17 A. I mean, there's a bunch of -- there are a  
18 number of methods to be used in the calculation of  
19 depreciation.

20 Q. Let me ask you about your testimony. Let  
21 me just make sure. My understanding is you are not -- but  
22 correct me if I'm wrong. My understanding is you're not  
23 providing testimony supporting the Staff's treatment of  
24 net salvage for mass property accounts. It seems to me  
25 like your testimony is more limited to sort of the

1 production plant account issues. Is that fair to say?

2 A. I have addressed at page -- well, I -- of

3 my testimony that I would -- my testimony addressed the

4 estimated lifespans for the production accounts, the

5 remaining life procedure issue, which would incorporate a

6 level of salvage computation, if you will, I guess, and

7 depreciation parameters.

8 Q. Okay. But it seems like you're talking

9 about the production plant and the interim retirements and

10 the terminal salvage costs for production plant; is that

11 true?

12 A. What page?

13 Q. Well, I'm looking at really just sort of

14 the -- the titles, the headings that you put things under.

15 Like on page 6, you've got a heading that says terminal

16 net salvage, and then on page 9 you've got a heading that

17 says interim retirements. And my understanding is those

18 topics are related to, like, electric plants, as opposed

19 to mass property accounts.

20 A. The interim salvage would be related to

21 mass asset accounts.

22 Q. Okay.

23 A. As well as the production accounts. The

24 terminal net salvage is unique to the production assets.

25 Q. Okay. I asked Mr. Macias, you know, if he



1 had any idea of how much of the supposed overaccrual of  
2 depreciation reserve was related to the Commission's  
3 change in position on net salvage for Empire, and he  
4 didn't know. Do you happen to know how much of the  
5 overaccrual will be attributable or alleged overaccrual  
6 would be attributable to that factor?

7 A. I did some analysis based upon the costed  
8 expense for -- the expense for cost of removal, and it was  
9 sufficiently small in comparison to theoretical reserve  
10 overaccrual that I haven't done that calculation.

11 MR: BYRNE: Okay. Your Honor, I don't have  
12 any other questions. I would offer Exhibit 135, I believe  
13 it is.

14 JUDGE THOMPSON: Any objections to the  
15 receipt of Exhibit 135?

16 MR. WILLIAMS: No objection.

17 MR. ENGLAND: No objection.

18 MS. O'NEILL: No objection.

19 JUDGE THOMPSON: The same is received and  
20 made a part of the record of this proceeding. Thank you,  
21 Mr. Byrne.

22 (EXHIBIT NO. 135 WAS RECEIVED INTO  
23 EVIDENCE.)

24 JUDGE THOMPSON: Mr. McCartney?

25 MR. MCCARTNEY: No questions.

1 JUDGE THOMPSON: Mr. England?

2 MR. ENGLAND: Thank you, your Honor.

3 The good news is he did some of my work for

4 me. Again, hopefully I won't replot that ground, but if I

5 do, I'm sure people here will remind me of it, pull me up

6 short.

7 CROSS-EXAMINATION BY MR. ENGLAND:

8 Q. Good morning, Mr. Gilbert.

9 A. Good morning, Mr. England.

10 Q. And as with Mr. Macias, I may jump around

11 here, as I was trying to frantically scratch questions off

12 my list.

13 Getting back to your prior life as a

14 teacher at Linn State Technical College --

15 A. Yes.

16 Q. -- I think on Schedule 1.2 you sort of list

17 some of your responsibilities. And following up again on

18 Mr. Byrne's examination, is it fair to say that of all of

19 the things you did as a teacher there at Linn State, it

20 did not include or involve the determination of

21 appropriate depreciation rates for utility companies?

22 A. That is correct.

23 Q. Okay. I asked Mr. Macias this, but I

24 thought in fairness I'll ask you the same question. What

25 involvement, if any, did you have in the preparation of

1 his original study that was filed with his direct  
2 testimony in August of -- or excuse me -- in September of  
3 this year?

4 A. I reviewed it rather briefly. I just  
5 wasn't here to be with him for the whole study and  
6 analysis, so I basically, you know, read his direct and  
7 offered some comments.

8 Q. So it's fair to say you didn't have a very  
9 active or substantive role in helping him with his study;  
10 is that right?

11 A. I'd say that's a fair characterization.

12 Q. Is it also fair to say that you did not  
13 participate in his onsite review of the Empire facilities?

14 A. That's correct.

15 Q. Okay. You did not participate in any  
16 interviews with company management regarding their plans  
17 for retirement?

18 A. That's correct.

19 Q. Are you a member of the Society of  
20 Depreciation Professionals?

21 A. No, I'm not.

22 Q. Are you a certified depreciation  
23 professional?

24 A. No, I am not.

25 Q. At page 1, lines 9 through 12 of your only

1 testimony, rebuttal testimony in this case, you indicate  
2 the purpose of your testimony, and you indicate that  
3 purpose is, quote, to offer the Staff's position in  
4 response to the company's filed direct testimony by  
5 Donald S. Roff of Deloitte and Touche, LLP, in this case  
6 regarding salvage of plant accounts, the Empire District  
7 Electric Company depreciation study and that study's  
8 recommendations. Do you see that?

9 A. Yes, I did.

10 Q. Now, as I understand, Mr. Macias also  
11 presented rebuttal testimony in this case and that was to  
12 present Staff's rebuttal to Empire District Electric  
13 Witness Mr. Don Roff. Is that your understanding?

14 A. Yes.

15 Q. I guess the question I have is, why did you  
16 feel or Staff feel it was necessary to have two Staff  
17 witnesses responding to Mr. Roff's study?

18 A. Well, I felt there was an efficiency to be  
19 gained in that a number of the issues I addressed in this  
20 case I had briefly addressed with Mr. Roff in a prior  
21 case.

22 Q. That prior case being MoPub or --

23 A. ER-97 -- let's see. We've got the direct  
24 here. ER-97-394.

25 Q. The MoPub, UtiliCorp, Aquila, whatever?

1           A.       Missouri Public Service.

2           Q.       Okay. Thank you. Is it fair, then, to say

3       that you -- your testimony in this case was not an

4       admission or concession on Staff's part that you felt

5       Mr. Macias maybe did not possess the necessary credentials

6       or expertise to address this issue?

7           A.       Could you restate?

8                   MR. ENGLAND: Sure. Can I have it reread,

9       because I didn't follow my notes very carefully.

10                  THE REPORTER: "Question: Is it fair,

11       then, to say that you -- your testimony in this case was

12       not an admission or concession on Staff's part that you

13       felt Mr. Macias maybe did not possess the necessary

14       credentials or expertise to address this issue?"

15                  THE WITNESS: I guess if you're asking did

16       Mr. Macias do an adequate job in this case, a good job, I

17       would say yes. I took the data sets that he had and

18       conducted a partial review of the information myself, just

19       to bring me back up to speed with how the depreciation

20       model actually works.

21       BY MR. ENGLAND:

22           Q.       Do you believe because of Mr. Macias'

23       relatively short tenure here at the Commission and his

24       educational background, which admittedly did not include

25       necessarily depreciation, that he may be a little green,

1 if you will, to address this subject as an expert?

2 A. I don't think I can say that, no.

3 Q. I didn't think you could, but I was kind of

4 surprised it took you that long to say it.

5 A. Worth a try, huh.

6 Q. Let me switch gears on you and ask about

7 remaining life for a few questions. I think it's on

8 page 5, lines 10 through 11 of your rebuttal testimony. I

9 believe you state something to the effect that the PSC's

10 historically determined life group, whole life method of

11 depreciation is appropriate for energy utilities. Do you

12 see that?

13 A. I'm sorry?

14 Q. Page 5, lines 10 and 11.

15 A. Yes, I do.

16 Q. Okay. I believe you would agree with me,

17 however, that the remaining life technique is a valid and

18 industry accepted depreciation technique?

19 A. I would.

20 Q. Would you also agree with me that the

21 Missouri Public Service Commission has adopted the

22 remaining life technique for at least the telephone

23 industry in this state?

24 A. I believe that's the case, yes.

25 Q. Okay. Have you personally ever performed a

1 remaining life depreciation study?

2 A. I have.

3 Q. And when would that have been and on what  
4 type of property?

5 A. I believe it was in this UtiliCorp -- or  
6 Missouri Public Service Case No. ER-97-394, I conducted a  
7 remaining life analysis.

8 Q. Did you sponsor a remaining life analysis?

9 A. I did not.

10 Q. Okay. Is -- any other cases in which  
11 you've performed a remaining life analysis?

12 A. I'm sure there's a number. Part of my  
13 methods for conducting a depreciation study is to run a  
14 series of analyses, one of which is try to match the  
15 results of company's study. It just provides a  
16 verification or validation of the data sets.

17 Q. You did not do a remaining life in this  
18 case; is that right?

19 A. In this case, I simply did a statistical  
20 analysis of the curve shapes to represent average service  
21 lives, and that was -- that and the data set verification  
22 were the limits of what I explored with respect to  
23 depreciation. I also did other reviews that I felt were  
24 pertinent.

25 Q. But none of them included a remaining life

1 calculation, if you will?

2 A. Not in this case.

3 Q. Okay. I want to talk a little bit

4 following up on some questions and answers with Mr. Byrne

5 on this over or underaccrual of the reserve. Do you

6 recall that line of questioning?

7 A. Yes.

8 Q. Okay. Would you agree with me that whether

9 or not you have an over or underaccrual is determined by

10 comparing the theoretical reserve to the actual reserve?

11 A. Correct. And the basis for the theoretical

12 reserve can be a number of parameters, depending upon the

13 type of depreciation methodology and techniques chosen.

14 Q. Right. And essentially the theoretical

15 reserve that Mr. Macias developed in this case, the

16 roughly \$61 million you were talking about, was -- was

17 calculated based on his depreciation rates, which include

18 his parameters, which don't include an allowance for net

19 salvage; is that correct?

20 A. That's correct.

21 Q. Okay. And now you said, I think, in

22 response to some questioning from Mr. Byrne that if there

23 is an existence of an overaccrual, that one of the things

24 you would look at would be eliminating a net salvage

25 allowance from the depreciation rate to correct that on a



1 go-forward basis, if I understood your testimony  
2 correctly?

3 A. Among other parameters, yes.

4 Q. Okay. It seems to me that it's somewhat  
5 circular, sir, that you create a theoretical reserve by  
6 assuming one set of rates without a -- an allowance for  
7 net salvage, and then because it exists, justify taking  
8 the net salvage out. It seems sort of self-fulfilling, if  
9 you will.

10 A. Well, one of the analyses I did, you know,  
11 as I reviewed the information in this case was to note  
12 that in Mr. Roff's study, the one he advocated in this  
13 hearing, that he conducted a study using remaining life.  
14 And in the remaining life technique he also incorporated  
15 amounts for terminal salvage or cost of removal of the  
16 power plants in the future.

17 He also advocated interim retirements for  
18 the production plants. He advocated lifespan, and those  
19 are all based on estimates and assumptions which then go  
20 back into the amounts needed to be accrued to the  
21 depreciation reserve and, in turn, reflect the amount of  
22 over or underaccrual in the theoretical reserve. So to  
23 the extent that you have these assumptions and estimates,  
24 you may have what would appear to be circular referencing,  
25 yes.

1           Q.       You mentioned a lot of things in response  
2   to that answer, and let me try to follow up on a couple of  
3   them. First of all, in a whole life study, my  
4   understanding is one way, maybe not the only way, but one  
5   way to handle a potential for -- or a perceived over or  
6   underaccrual of the reserve is through an amortization of  
7   that amount, correct?

8           A.       That's true.

9           Q.       Okay. So to the extent you're overaccrued,  
10   you might amortize that back over a 5 or 10-year period of  
11   time to bring yourself back into balance, right?

12          A.       That's true.

13          Q.       And would not that involve tinkering with  
14   the depreciation rate?

15          A.       You like to determine -- or I would expect  
16   part of your analysis would be to determine what in your  
17   analysis may have been flawed that resulted in that over  
18   or underaccrual, and then to true things back up so that  
19   you won't have these inequities in the future.

20          Q.       Yeah, but my question is, if you -- if you  
21   address that overaccrual through an amortization, you can  
22   do it without tinkering with the depreciation rate, can  
23   you not?

24          A.       I don't know that that's the most equitable  
25   solution, especially on a going-forward basis, yes.

1           Q.       Okay. I understand that may not be your  
2 preferred method, but you can do it that way?

3           A.       It's been done. I've actually in previous  
4 cases advocated for an amortization to recover an  
5 underaccrual in the reserve.

6           Q.       Right. We'll get to that in a minute.

7           A.       Okay.

8           Q.       My understanding also is that -- and I  
9 think you indicated this in your prior answer -- that  
10 remaining life technique is a way in which to address over  
11 or underaccruals as part of the development of the  
12 depreciation rate; in other words, it sort of self adjusts  
13 for any over or underaccrual through the development of a  
14 remaining life depreciation rate, is that correct?

15          A.       Right. That's correct. And it also has  
16 additional estimated quantities in it that you don't have  
17 in the whole life, average service life.

18          Q.       Let me talk with you a little bit about net  
19 salvage. My understanding is that the company has done a  
20 salvage study to develop a net salvage ratio or percent by  
21 comparing actual net salvage costs to the original cost of  
22 the plants being retired?

23          A.       I'm sorry. I kind of lost track there for  
24 a minute.

25          Q.       My understanding for purposes of

1 determining its net salvage ratio or percent, the company  
2 has compared actual net salvage costs to the original cost  
3 of the plant being retired?

4 A. To the extent that the company has adopted  
5 a FIFO convention for recording retirements, that may or  
6 may not necessarily be true.

7 Q. Well, whether they've adopted FIFO or LIFO,  
8 that's the way they've done it, have they not? They've  
9 taken an annual amount of net salvage cost as actually  
10 reported on their books and they've compared it to the  
11 plant that was retired in that same way, the original  
12 cost -- excuse me -- of that plant that was retired in the  
13 same year, whether they assume that plant was last in,  
14 first out or first in, first out?

15 A. I'm not sure I understand.

16 Q. Okay. The LIFO or FIFO convention has  
17 nothing to do with the comparison. I mean, it affects the  
18 ultimate calculation, but it has nothing to do with the  
19 generic, if you will, comparison of a net salvage cost as  
20 occurred in year one versus the removal of plant and its  
21 original cost in that same year, right?

22 A. If you're just looking at dollars?

23 Q. I was hoping I wasn't going to have to get  
24 into this FIFO/LIFO business, but you do address that at  
25 page 9 of your testimony, right?

1           A.       That's correct.

2           Q.       And you say company's use of a first in,  
3 first out or FIFO method of retiring assets acts to  
4 upwardly bias its net salvage percents, and then you give  
5 an example. Am I correct so far?

6           A.       I believe so.

7           Q.       Okay. You take two, as I understand, units  
8 of property, one that was placed in service in 1950 at an  
9 original cost of a buck and another placed in service in  
10 2000 at an original cost of \$10, right?

11          A.       Yes.

12          Q.       The plant -- or excuse me -- then you look  
13 at the cost of removal or determine a hypothetical cost of  
14 removal or net salvage in 2003 at, say, \$2 I think was  
15 your example, right?

16          A.       Yes.

17          Q.       And you show that if you assume the first  
18 in, first out convention, you would match that to the  
19 original cost of the 1950 unit, right?

20          A.       Correct.

21          Q.       If you assume a last in, first out, you  
22 would match it to the 2000 or the unit that was installed  
23 in 2000?

24          A.       If that's the last unit set in that  
25 account, yes.

1           Q.     Well, I'm taking your example, sir --

2           A.     Okay.

3           Q.     -- so let's stay with it.

4                     Now, whether you take the 1950 account or

5     you take the 2000 -- excuse me -- you take the 1950 unit

6     or you take the 2000 unit doesn't have any effect on the

7     ratioing or the dividing, if you will, of the net salvage

8     costs by the original cost of plant to determine your net

9     salvage percent. The formula is still the same; it's just

10    what numbers -- whether you're going to use a 1950 plant

11    or a 2000 plant unit for your -- for plugging into your

12    formula.

13           A.     The example I was trying to make here is

14    whether the denominator is going to be small or large is

15    going to affect what the percentage will be.

16           Q.     I understand, but the formula itself

17    remains the same?

18           A.     That it's a ratio, yes.

19           Q.     Okay. Thank you.

20                     And while we're on that, if you use the

21    last in, first out LIFO method and assume that the -- it

22    was the 2000 unit that was retired in 2003, your study's

23    going to show a service life of only three years for that

24    unit, right?

25           A.     Yes, it would.

1           Q.       Okay. And that's going to affect your  
2       determination essentially of average service lives,  
3       tending to bias it downward?

4           A.       Exactly.

5           Q.       Thus increasing the depreciation rate?

6           A.       That would be the effect in that construct,  
7       yes.

8           Q.       Shorter life, higher depreciation rate, all  
9       else being equal, right?

10          A.       Uh-huh.

11          Q.       Okay. Now let's get back to what the  
12       company did, LIFO/FIFO aside. What they did was compare  
13       net salvage costs to original cost of plant removed,  
14       right, and I believe you indicated to Mr. Byrne that this  
15       was a traditional way of doing that, of developing those  
16       percents?

17          A.       One of the methods, yes.

18          Q.       In fact, you had done something like that  
19       in the case that you were discussing with him, that 1997  
20       MoPub case?

21          A.       That's correct.

22                   MR. ENGLAND: Your Honor, I'd like to have  
23       an exhibit marked, if I may.

24                   JUDGE THOMPSON: You may. This will be  
25       136, and how do we describe it, Mr. England?

1                   MR. ENGLAND: This will be Mr. Gilbert's  
2 direct testimony in St. Louis County Water Company rate  
3 case WR-95-145.

4                   JUDGE THOMPSON: Very well.

5                   (EXHIBIT NO. 136 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. ENGLAND:

8               Q.       Mr. Gilbert, do you have Exhibit 136 in  
9 front of you?

10              A.       I do.

11              Q.       And I'm hoping you're going to tell me that  
12 that's a true and accurate copy of the testimony that you  
13 filed in the St. Louis County Water rate case WR-95-145  
14 back in April of 1995.

15              A.       I don't have any reason to believe that it  
16 isn't.

17              Q.       Fair enough. If you see something that  
18 doesn't ring true, then by all means bring it to my  
19 attention, please.

20                   The first thing that I note is that this  
21 was not one of the testimonies that you indicated that you  
22 had been responsible for preparing and filing in your  
23 schedule attached to your testimony in this case. Any  
24 reason why it was omitted?

25              A.       Probably because it didn't show up in the



1 computer system. This was before we had all of the  
2 testimonies computerized.

3 Q. So no reason other than just an oversight?

4 A. No. In fact, I think earlier in my  
5 testimony here today I cited that I'd advocated an  
6 amortization at one time, and this would be one of those  
7 instances.

8 Q. This is the case, is it not, or at least  
9 one of the cases?

10 A. Yes, it is.

11 Q. I'd like to take you to page 2, lines 23  
12 and 24 of that testimony, where you indicate, quote, the  
13 depreciation rates I am recommending were formulated on  
14 the basis of traditional depreciation methods, end quote.  
15 Do you see that?

16 A. Yes, I do.

17 JUDGE THOMPSON: What page is this?

18 MR. ENGLAND: Page 2, lines 23 and 24.

19 BY MR. ENGLAND:

20 Q. And then on page 3 at lines 10 through 14,  
21 you say, the purpose of depreciation is to recover  
22 original cost of fixed capital assets less net salvage  
23 from customers over the useful life of the property. Do  
24 you see that?

25 A. From consumers, yes. The consumers,

1 uh-huh.

2 Q. I'm sorry. I used the word "customers."

3 Same, though, are they not?

4 A. They are.

5 Q. Okay. That is a standard definition of

6 depreciation, is it not?

7 A. As they instructed at the depreciation

8 classes I went to. I don't know that the term "standard"

9 was used, but that's the term I used here.

10 Q. Okay.

11 A. I don't know that there really is a

12 standard or set method. There's a whole suite of tools

13 available for determination of depreciation.

14 Q. At least at this point in time, this was

15 your idea of a traditional depreciation study?

16 A. Right, and that position's been

17 evolutionary.

18 Q. And that process has -- that process at

19 least in '95 and apparently in '97 included an allowance

20 or an accrual for net salvage, correct?

21 A. In these two cases.

22 Q. Okay. And then at the top of page 4,

23 lines 4 through 8, and I assume you're still talking about

24 the traditional method, that the depreciation rate for

25 each account is calculated by subtracting the average net

1 salvage percent from one and dividing a result by the  
2 calculated average service life?

3 A. Correct.

4 Q. Okay. Later you go on to discuss net  
5 salvage there at the middle or the bottom middle of  
6 page 4. Over to the next page, and I'm particularly  
7 interested, I believe it's on page 5, where you discuss  
8 how the net salvage percent is derived. And basically you  
9 indicate there at lines 8 through 10 that the net salvage  
10 dollars realized due to retirement of plant items,  
11 positive or negative, are divided by the original plant  
12 cost of those same items?

13 A. Yes.

14 Q. That's the same formula that we were  
15 talking about just a minute ago, right?

16 A. Uh-huh.

17 Q. Still part of the traditional method of  
18 calculating depreciation rates, correct?

19 A. Traditional in the sense used in this case,  
20 yes.

21 Q. And apparently in most, if not all, of the  
22 cases you participated in, in your -- as Mr. Byrne would  
23 call it -- first tour of duty here at the Commission? I  
24 need an audible.

25 A. Oh, yes.

1           Q.       Thank you. This is also the way Mr. Roff  
2       calculated his net salvage, correct?

3           A.       I think I go into a little more discussion  
4       on banding, 5, 7, 10 and 20-year band analysis.

5           Q.       But the gen-- and I think you did say that  
6       in response to Mr. Byrne, but generally speaking, the  
7       formula that you used is the same formula that Mr. Roff  
8       used, a comparison of net salvage costs versus original  
9       cost of plant retired?

10          A.       Correct.

11          Q.       Now, Schedule 1-2 attached to this  
12       testimony, you display or list the various net salvage  
13       ratios or percents by account. Actually it's on  
14       Schedule 1.1, but I was more interested in some of the  
15       accounts on Schedule 1.2 -- or dash 2, and I note that  
16       there are four accounts that have rather high negative net  
17       salvage percents. Do you see those?

18          A.       Yes.

19          Q.       For example, Account 343.12 transmission  
20       mains-lock joint, you have a negative 410 percent net  
21       salvage percent, do you not?

22          A.       Yes, I do.

23          Q.       343.21 distribution mains, cast iron less  
24       than 10 inch, I guess that's the date of installation 1900  
25       to 1928?

1           A.       Correct.

2           Q.       A negative 314 percent?

3           A.       Uh-huh.

4           Q.       Account 343.22 distribution mains, cast  
5 iron less than 10 inch, date of installation 1929 to 1956,  
6 negative 154 percent; is that right?

7           A.       Yes.

8           Q.       And finally, account 343.24 distribution  
9 mains asbestos cement, a negative net salvage percent of  
10 185; is that right?

11          A.       Yes.

12          Q.       And if I'm understanding this concept of  
13 salvage percents, that means that the negative -- or  
14 excuse me -- the net salvage costs associated with the  
15 retirement of these various categories of plant could be  
16 as much as four times their original cost, three times  
17 their original cost or 1.5 to 1.8 times their original  
18 cost; is that right?

19          A.       Yes. As I recall, and I'm going to -- I  
20 would have to look back in the record, but some of these  
21 pipes that had these very high costs were underneath  
22 Interstate 40, and I called and spoke with the Missouri  
23 Department of Transportation, and they informed me that if  
24 those pipes were to come out of service, they would need  
25 to be filled with gravel. So the costs there would be

1 exceptional.

2 Q. And it was -- it was the use of the  
3 traditional depreciation method in this case which  
4 included an allowance for net salvage based on a  
5 comparison of net salvage costs to original cost of plant  
6 retired that you developed your theoretical reserve,  
7 correct?

8 A. Yes.

9 Q. That resulted in an underaccrual of the  
10 reserve for St. Louis County; is that right?

11 A. That's correct.

12 Q. And then you proposed an amortization over  
13 a period of years to increase that depreciation reserve,  
14 right?

15 A. That's correct.

16 Q. Why didn't you simply beef up the negative  
17 net salvage amounts to do that, as you indicated earlier  
18 today?

19 A. Well, I think you can see that the negative  
20 salvage amounts are indeed large here.

21 Q. So you didn't feel like you could increase  
22 them any more than they already are; is that right?

23 A. Well, we had 125 year life, and 410 percent  
24 salvage. I would say that that 4.08 percent rate would  
25 reflect that.

1           Q.       That's not my question, sir. My question  
2   is, you felt that because it was already a negative  
3   410 percent, you couldn't increase that particular  
4   account's negative net salvage any more than the actual  
5   dollars already showed; is that right?

6           A.       Based on 125 year life and 410 percent  
7   negative net salvage, it appears to me that 4.08 percent  
8   comes close to reflecting that amount of salvage in the  
9   depreciation rate.

10          Q.       Well, my understanding was that in your  
11   prior answer I asked you why you didn't simply tinker with  
12   the net salvage percents to address this underaccrual of  
13   the reserve, and I thought your answer was because they  
14   were already too high or high enough as indicated by the  
15   schedule; is that right?

16          A.       This schedule represents a net salvage rate  
17   based upon a study. It also represents an average service  
18   life based upon a study, which were then used by the  
19   method outlined in this to arrive at an average life rate  
20   of 4.08 percent. In addition to that, when we looked at  
21   those salvage rates and those lifespans, we determined  
22   that these rates are appropriate on a going-forward basis,  
23   but for the years that had already passed by since this  
24   was put into place, we needed to amortize to catch up.

25          Q.       Again, that's not, Mr. Gilbert.

1           A.       Okay. I'm sorry. I don't understand.

2           Q.       My question was for you to confirm if you

3 will that your prior answer was, the reason you proposed a

4 specific amortization in this case to address reserve

5 deficiency -- reserve deficiency as opposed to tinkering

6 request the negative net salvage values was that the

7 negative net salvage values were already high enough.

8                   Is that a fair characterization of your

9 testimony or was there some other reason why you didn't

10 tinker with these?

11          A.       These are recommendations as a result of my

12 study.

13          Q.       Right.

14          A.       I mean, they're changed from whatever the

15 rates were in the previous study, I would imagine.

16          Q.       A study -- traditional study of negative

17 net salvage versus plant retired; is that right?

18          A.       In this case I believe there were

19 additional factors, as I mentioned earlier.

20          Q.       Isn't it a more straightforward way to deal

21 with a revenue -- or excuse me -- an accrual excess or

22 deficiency the way you've proposed in this case, an

23 amortization, as opposed to tinkering with elements of

24 your depreciation rate that have some basis, before you

25 start tinkering at least, in fact?



1                   MS. O'NEILL: Your Honor, I'm going to -- I  
2     want to voice an objection just to the form of the  
3     question, because I'm not sure what Mr. England was  
4     asking.

5                   MR. ENGLAND: With all due respect, it  
6     doesn't matter what Ms. O'Neill understood my question to  
7     be. I'm talking to the witness.

8                   JUDGE THOMPSON: Could you please read back  
9     the question?

10                  THE REPORTER: "Question: Isn't it a more  
11     straightforward way to deal with a revenue -- or excuse me  
12     -- an accrual excess or deficiency the way you've proposed  
13     in this case, an amortization, as opposed to tinkering  
14     with elements of your depreciation rate that have some  
15     basis, before you start tinkering at least, in fact?"

16                  JUDGE THOMPSON: I wouldn't call that the  
17     most eloquent question that I've ever heard, but I think  
18     that it's allowable. The -- if the witness doesn't  
19     understand it, I'm sure the witness will tell us.

20                  I'll overrule the objection. You may  
21     answer if you're able.

22                  THE WITNESS: And perhaps I'm not making  
23     myself clear here, but I believe if we go back and look at  
24     the depreciation rates that St. Louis County Water had  
25     prior to this rate case, they would show different amounts

1 for the percent net salvage, different amounts for the  
2 average life and different amounts for the average life  
3 rate. So I have used a number of the tools in my bag to  
4 make depreciation rates, if you will, to try and true  
5 things up in addition for the failure of the past rates to  
6 have been adequate in light what the Missouri Department  
7 of Transportation was going to require in part.

8 We also needed to have an amortization for  
9 the theoretical reserve. So we were using -- I'm looking  
10 at four different variables here or four different things  
11 to try and true it up.

12 JUDGE THOMPSON: Let me break in here, if I  
13 may. We've reached the noon hour and we're certainly all  
14 going to be coming back after lunch, so I think we will  
15 take the lunch recess at this time. We'll be back at  
16 1:15.

17 We are in recess.

18 MR. ENGLAND: Thank you, your Honor.

19 (A BREAK WAS TAKEN.)

20 JUDGE THOMPSON: As I recall, Mr. England  
21 was crossing Mr. Gilbert, but before we return to that, I  
22 have some questions from Commissioner Gaw on the  
23 reconciliation that Staff has produced, so I'm going to  
24 need somebody that I can ask those questions to. Okay.  
25 And I'll allow you to find -- you don't have to have them

1 here right now, but I'm just saying before we're done with  
2 this hearing, somebody's going to have to answer some  
3 questions about the reconciliation, all right, if only so  
4 that we can understand how it works.

5 Then I have some other questions here that  
6 have to do with fuel and purchased power, and I know  
7 you're not the lawyer for the fuel and purchased power  
8 part, right?

9 MR. WILLIAMS: That's correct.

10 JUDGE THOMPSON: But it's my understanding,  
11 it's my memory that Staff did not provide a recommendation  
12 for a number to plug in the revenue requirement in the  
13 event that there is no IEC. The Commission wants such a  
14 number. Okay. So I don't know who you're going to find  
15 to come up with it, but that's what we need, and we also  
16 need an answer to this question: Does Commission merely  
17 need to specify a gas price and then Staff runs it through  
18 its model and everything else comes out, or does the  
19 Commission need to specify more?

20 Okay. And this is with respect to the fuel  
21 and purchased power issue. Okay. And it's better that we  
22 get answers to these things now while the hearing's still  
23 going on and it can all be done on the record rather than  
24 that orders directing filing have to go out afterward. So  
25 I guess, Mr. England, you are at bat.

1                   MR. ENGLAND: Before we begin, your Honor,  
2    may I inquire your last line of advice, were you  
3    anticipating information to be submitted to the record in  
4    written form or were you anticipating some give and take  
5    in the hearing room?

6                   JUDGE THOMPSON: Well, I think it's going  
7    to have to be the latter, because we may finish this  
8    hearing today, in which case we're going to have to have a  
9    live body up there under oath who can answer these  
10   questions.

11                  MR. ENGLAND: I just need to know to  
12   determine who I need to get down here, because I know it's  
13   not me. I can tell you that, it's not me.

14                  JUDGE THOMPSON: Fair enough. Okay.

15                  MR. ENGLAND: Thank you.

16                  MR. ENGLAND: Thank you, your Honor. I've  
17   determined over the lunch hour that I don't need to ask  
18   this witness any more questions on cross-examination, but  
19   before I relinquish the podium would offer Exhibit 136,  
20   which I believe was his testimony in the St. Louis County  
21   water case, WR-94-145.

22                  JUDGE THOMPSON: Any objection to the  
23   Exhibit 136?

24                  (No response.)

25                  JUDGE THOMPSON: Okay. Hearing none, the

1 same is received and made a part of record of this  
2 proceeding.

3 (EXHIBIT NO. 136 WAS RECEIVED INTO  
4 EVIDENCE.)

5 JUDGE THOMPSON: We're now ready for  
6 questions from the Bench. I have a message from my  
7 technician that he did not press all the necessary buttons  
8 to get us back on the air, and I know that our viewers in  
9 Germany want to be able to see what's going on as well as  
10 hear it.

11 This is a question from Chairman Gaw.  
12 Okay. So treat it with a respect you might give a  
13 question that I would not.

14 QUESTIONS BY JUDGE THOMPSON:

15 Q. Isn't it true that Staff's position  
16 advocates treating net salvage differently with respect to  
17 plant accounts, as opposed to the mass accounts, or is  
18 that not true?

19 A. Well, with the plant accounts there's  
20 actually two types of cost of removal or salvage, if you  
21 will. One is the terminal amount that is estimated in  
22 Mr. Roff's testimony, and then the other is the interim,  
23 which is the same as the salvage associated with the mass  
24 asset accounts.

25 Q. Okay. And are they treated differently?

1           A.       I'm sorry?

2           Q.       Are they treated differently?

3           A.       Staff's position in this case is that

4 salvage expense as realized or cost of removal as realized

5 are expensed regardless of what account it occurs under.

6           Q.       It's always difficult to ask someone else's

7 questions. Now I'm going to ask my questions.

8                   Now, in traditional depreciation accounting

9 where this net salvage accrued rather than expensed, the

10 company receives depreciation expense spread over the life

11 of each asset as estimated, that's intended to return to

12 the investors the money they invested in that asset; isn't

13 that correct?

14          A.       That is.

15          Q.       And then there's an additional component,

16 is there not, which is -- see, he's laughing at me because

17 I didn't ask his question very well. There's an

18 additional component, isn't there, which is the cost of

19 removal?

20          A.       That's correct. There may be that cost,

21 yes.

22          Q.       And that's accrued as well?

23          A.       It is.

24          Q.       And that may be big or small compared to

25 the initial cost of the asset, based on the estimate of

1     what it would cost to actually remove it?

2             A.       That is true.

3             Q.       Okay. Then subtracted from that is the

4     salvage value the estimated value of the asset after

5     removal, correct? That's why we're talking net salvage?

6             A.       You've got, for example, a piece of pipe

7     you pull out of the ground and it costs you \$100 to pull

8     it out of the ground and you can sell it for scrap steel

9     for \$10. That's the salvage value.

10            Q.       Now, in some cases the cost of removal

11    exceeds the salvage value; that true?

12            A.       That's true.

13            Q.       And is there a difference to the accounting

14    when that's the case? You simply just don't deduct

15    anything, I suppose? In other words, if the amount you're

16    giving to the investors is the original cost of the asset

17    plus what it's going to cost to remove it, and if the cost

18    of removing it exceeds any salvage value, then the

19    investors get that much more; is that correct?

20            A.       Over their original investment, yes.

21                    JUDGE THOMPSON: Putting it in layman's

22    terms.

23                    Well, I see Chairman Gaw has joined us, so

24    I will pass the questioning over to him.

25                    CHAIRMAN GAW: Judge, thank you very much.

1 I very much appreciate you delving into that matter for  
2 me. And I would like to maybe start anew here with this  
3 concept and see if I can -- see if I can get a better  
4 understanding of Staff's position.

5 QUESTIONS BY CHAIRMAN GAW:

6 Q. Let me ask a question this way: Staff has  
7 in this case in regard to mass accounts and in regard to  
8 plant removal taken the same position in regard to  
9 expensing the net salvage or not?

10 A. Yes. We expense the interim salvage on the  
11 production accounts and on the mass asset account and do  
12 not believe it's appropriate at this time to collect any  
13 terminal or ultimate cost of removal for taking down a  
14 power plant.

15 Q. All right. Now, what I -- I'd like for you  
16 to do for me is help me to understand whether or not it is  
17 possible for this Commission to reasonably treat those two  
18 accounts differently in regard to whether or not you  
19 expense or approve net salvage. And I'm not asking  
20 whether that's your position, but whether or not there is  
21 a difference in the rationale that could account for  
22 different treatment by the Commission. And I can ask that  
23 differently if that's not clear.

24 A. Okay. I'll try and answer it, and if I  
25 don't hit the target, please ask me additional questions.



1                   We have traditionally not offered any  
2     ultimate cost of removal or retirement for major assets.  
3     For the mass asset accounts, as it's been noted in this  
4     case, there have been times in the past where we would  
5     observe what the net salvage amounts were. One of the  
6     things we noticed over time was that these theoretical  
7     reserve imbalances were growing, so we investigated the  
8     parts of the equation if you will to find out what was  
9     throwing it off, how are we getting this growth. And it  
10    appeared to be the cost of removal associated with the net  
11    salvage computation that was causing these excesses to the  
12    theoretical reserve.

13           Q.     Now, when you're talking about theoretical  
14    reserve, are you referring to the mass accounts issue or  
15    the plant removal or both?

16           A.     Both.

17           Q.     All right.

18           A.     Without any discussion of the ultimate  
19    retirement or taking down of a production plant, that's  
20    kind of a separate issue.

21           Q.     Okay. Tell me how that's a separate issue.  
22    What do you mean by that?

23           A.     We look at what the salvage is as  
24    components are retired from and added to a power plant,  
25    but we don't look at the ultimate dismantlement of the

1 entire power plant.

2 Q. And why is that?

3 A. We haven't had any real experience or  
4 reason to believe that what it's going to truly cost and  
5 when it's going to truly occur. There's quite a bit of  
6 plant life extension that goes on and modification, and  
7 while you may have a boiler or turbine that's removed or  
8 replaced, you will see new assets placed in and among  
9 those same facilities.

10 Q. All right. Does Staff -- has Staff in the  
11 past supported using accrual for rehabilitation,  
12 rejuvenation or -- of a site for purposes of continued use  
13 on accrual basis?

14 A. I don't recall ever having done that, no,  
15 or seen that done.

16 Q. Okay. Tell me -- help me to understand in  
17 regard -- let's just deal with plant for a minute. Stay  
18 away from the mass accounts for me for the moment.

19 A. Okay.

20 Q. Has the Commission to your knowledge ever  
21 taken the position that that if there should be an accrual  
22 rather than an expense on net salvage in plant when you're  
23 talking about major plan? I know I'm being very awkward  
24 with the question.

25 A. Is it replacement costs that you're

1 referring to or --

2 Q. You have to help me with the terminology

3 here.

4 A. Okay. We --

5 Q. You've separated it -- separated it out, as

6 I understood it, into two categories; is that correct?

7 A. Yes.

8 Q. One is replacement cost, and the other is

9 actually rehabilitating a site to green field?

10 A. Correct.

11 Q. Tearing the plant completely down and

12 leaving in its place lots of grass and trees --

13 A. Yes.

14 Q. -- for lack of better words.

15 Okay. Help me understand the difference in

16 treatment between those two and what has happened

17 historically here at the Commission, if you know.

18 A. Okay. To my knowledge, we have never taken

19 into account any costs associated with green fielding.

20 Q. All right. And I want to know why, if you

21 know, that that's been the case.

22 A. We don't know that that will occur or how

23 much it would cost if it did occur.

24 Q. Why is that? Because you haven't seen it

25 happen before historically?

1           A.       In large part, yes. There are very few  
2 power plant sites; only one that I'm aware of where that  
3 site is no longer used as a spot on the planet to generate  
4 electricity, aside from these little turbo diesels at  
5 hospitals and stuff like that.

6           Q.       So you just don't see any anything  
7 historically that would lend you to believe that that is  
8 going to be likely to occur?

9           A.       Correct.

10          Q.       All right. Now, what about replacement?  
11 Talk me through that.

12          A.       Okay. The utility has power plants. For  
13 example, I think Riverton has a number of units. Some  
14 have been removed. Some are still operating. New units  
15 have been placed there. And we expect to continue to see  
16 that going. Along with that, you're going to have, then,  
17 what are known as interim retirement. You may have --  
18 you've got eight boilers there. You retired one. That's  
19 an interim retirement of a boiler.

20          Q.       All right. And then there may be some new  
21 boiler put in or --

22          A.       Or at Riverton I believe they've been  
23 replacing the boilers with combustion turbines, and I  
24 could tell you specifically if that's correct or not, but  
25 yes.

1           Q.       What does Staff -- what is Staff's position  
2   in regard to accounting for that going forward?  How  
3   should that be done?

4           A.       On a going-forward basis, from the amounts  
5   of dollars we've seen across the company -- let me just  
6   stay on production.  Those have been negligible amounts of  
7   dollars.  Now in the conventional --

8           Q.       I don't know what you mean by negligible  
9   amounts of dollars.

10          A.       Very small amounts.  Cost of removal for  
11   the entire, I believe I heard mentioned earlier was  
12   \$1.6 million dollars and original for the past five years.  
13   The amount of assets --

14          Q.       Per year?

15          A.       Per year.

16          Q.       Thank you.  Go ahead.

17          A.       I'm sorry.  The amount of assets that the  
18   company has in place in total is about \$1.3 billion.  So  
19   if we look at net salvage or cost of removal as a  
20   percentage of what they have in place, if we aggregate it  
21   all back together, it's less than 2/10ths of 1 percent,  
22   which is very small.  If we were to look at an individual  
23   account and the sparse number of retirements that have  
24   taken place there, we would get -- and in the salvage  
25   analysis I've looked at, you'd retire \$10,000 and it's

1     what I would call an outlier, an unusual retirement, and  
2     it would have maybe \$10,000 cost of removal associated  
3     with it. Well, that's 100 percent cost of removal. It  
4     costs as much to remove it as the unit cost.

5                     Now we're going to say based upon that  
6     experience, this whole \$100 million worth of equipment  
7     that we've got in this building in that account is going  
8     to cost -- have a 100 percent cost of removal associated  
9     with it. And so we multiply 100 times the 100 million  
10    that's on the books, whoops, and have \$200 million to  
11    accrue depreciation against.

12            Q.     Whose position is that?

13            A.     The company's.

14            Q.     Okay. I want to know Staff's position,  
15    though. What's Staff believe it ought to be?

16            A.     Staff believes that given the small amounts  
17    of cost of removal, they should be expensed.

18            Q.     Okay.

19            A.     On a current basis.

20            Q.     All right. And if there were something  
21    returned to a green field, is that an -- Staff would  
22    support expensing that if it ever did occur?

23            A.     If it ever did occur, I think it would be  
24    something that may require some ratemaking on the part of  
25    the Commission. I might note, though, that in the

1 overaccrual of the theoretical reserve, at this time we're  
2 looking at in Mr. Macias' testimony, about \$61 million. I  
3 believe that provides enough of a cushion to give the  
4 company an opportunity to come before the Commission and  
5 say, look, we'll really beginning to incur some major  
6 costs here and we need to either seek an adjustment in our  
7 rates or an amortization or by some way or means recoup  
8 these dollars that we're beginning to incur that's eating  
9 into this cushion that we have in the reserve.

10 Q. Well, on plant removal, and I'm not talking  
11 about replacement now, is it Staff's position that if you  
12 did start seeing that kind of -- of development on facts,  
13 that it would be appropriate to look at building something  
14 in on accrual basis going forward if you started seeing  
15 that?

16 A. Yes. On -- based on facts, if we began to  
17 experience such an inequity, it would be Staff's  
18 responsibility to all parties involved, that the company  
19 be made whole for those excessive costs.

20 Q. But with an accrual method of handling it  
21 rather th an expense method?

22 A. Yes, probably, if they're very large  
23 dollars. I know we've -- I've advocated accruals in the  
24 past to make up for some theoretical shortfalls.

25 Q. All right.

1           A.       Whereas what you've mentioned, your example  
2   is preferable because it would be based on fact.

3           Q.       Okay.  So is Staff's main objection to  
4   plant removal -- and I'm sorry.  I know this is testimony.  
5   I want that clear so I understand it better -- that the  
6   main reason on plant removal to oppose company's position  
7   is that there is no sufficient evidence in Staff's mind to  
8   support accruing any costs for cost of removal because you  
9   haven't seen it occur?

10          A.       That's correct.  In large enough dollars to  
11   be of any concern.  Their total cost of removal, total for  
12   the whole company on a 5-year average has just been  
13   1.6 million.

14          Q.       Well, and does that include the other  
15   category that you mentioned earlier or not?

16          A.       The total cost of removal of the plant?

17          Q.       Does that also include replacement when you  
18   mention that number?

19          A.       That's involved in the cost of removal  
20   associated with replacements.

21          Q.       Yes.  Okay.

22          A.       But in looking at what you have seen in  
23   regard to reducing something to green field, not doing  
24   replacement, you haven't seen anything occur?

25          A.       That's correct.



1           Q.     At all?

2           A.     We don't have any experience that with type  
3     thing.  There's one plant in Pekon (ph. sp.), and I  
4     believe it was green field.  It was held by Soco, and that  
5     was I believe due to real estate valuations.

6           Q.     And when you say we haven't had any  
7     experience with that, I understand what you're saying, but  
8     there's a dual interpretation that could be made of that  
9     in my mind about whether you're saying Staff hasn't had  
10    any experience, as opposed to it hasn't happened.  So I'm  
11    trying make sure that when you're telling me Staff hasn't  
12    had any experience with that, you mean it hasn't happened  
13    or it hasn't happened except for these cases in Missouri?

14          A.     Right, it hasn't happened except for a very  
15    few cases nationally.  I'm -- I can't recall every power  
16    generation site in the state, but with a fair level of  
17    certainty except for the very first power generation  
18    sites, they're all pretty much still used as power  
19    generation sites on the map.

20          Q.     Is there a reason for that?

21          A.     They're integral to the transmission and  
22    distribution system of the electric grid.

23          Q.     So in other words, once you have a site  
24    established, you probably have the interconnections  
25    already there at that site?

1           A.       Right. That's -- that's correct. And  
2   there's also --

3           Q.       You may have transportation for coal, if  
4   it's a coal plant, already available?

5           A.       Yes.

6           Q.       May have cooling for a coal plant at that  
7   site already?

8           A.       Yes.

9           Q.       You already own the real estate or --

10          A.       Yes.

11          Q.       -- have some ownership rights of some sort  
12   to it, correct?

13          A.       That is correct.

14          Q.       You also -- if it were gas plant, you would  
15   assume they would already have the gas line to that site?

16          A.       Those are all very good examples.

17          Q.       Okay. And I may be leaving others out, if  
18   have you anything else to add to it?

19          A.       The railroads are an extremely expensive  
20   asset to have in place for coal-fired generation.

21          Q.       So you have the intersection of the cooling  
22   needs if it's a coal plant, the transportation needs such  
23   as rail or -- if it's coal plant, the gas if it's a gas  
24   plant and the transmission lines all hooked together in  
25   one spot?

1           A.       That's correct.

2           Q.       Now, if this Commission has -- makes a  
3 policy decision or if it -- that for mass accounts that  
4 the accrual method should be used instead of the  
5 expensing, expensing those accounts, is a different  
6 treatment such as what Staff is recommending for -- for  
7 plant defensible? Or in other words, is there a rational  
8 reason to treat those two things differently, mass  
9 accounts as opposed to the issues on plant?

10          A.       With the mass accounts, you are going to  
11 have more statistical data to work with, you're going to  
12 have more additions and retirement, which those are living  
13 accounts. They're growing, living accounts. There's  
14 stuff coming in and going out. So you would be able to  
15 have a more firm analytical basis for your arguments.

16          Q.       Okay. And when you say more firm  
17 analytical basis for your arguments, arguments for what  
18 purpose?

19          A.       For actuarial analysis.

20          Q.       If you used accrual methods on mass  
21 accounts, is that what your assumption was in your  
22 analysis?

23          A.       Now, I'm not sure I understand --

24          Q.       Well, I'm just trying to say, you say there  
25 would be a more firm basis or something like that for

1 doing it that way. I'm just trying to say -- clearly  
2 understand for doing it which way with which category that  
3 you were discussing.

4 A. For the mass asset accounts, we have more  
5 addition and retirement experience on which to conduct an  
6 actuarial analysis, as opposed to the production assets.

7 Q. Now, it is Staff's position, however, on  
8 mass accounts that they should be expensed?

9 A. Yes, based upon the -- again, the small  
10 amounts of cost of removal dollars we've seen. Again --  
11 and I don't mean to belabor the point --

12 Q. That's okay.

13 A. -- with \$1.3 billion worth of assets  
14 experiencing \$1.6 million cost of removal on a -- on a  
15 5-year averaged annual basis, that figures out to 2/10ths  
16 of 1 percent cost of removal expense.

17 Q. Are mass accounts separately held and  
18 accounted for? Is a mass account separate from the plant  
19 account?

20 A. Yes, there are -- let me just look here  
21 real quick. There are a number -- there's transmission,  
22 distribution, your general plant accounts that you're  
23 going to have, your automobiles, tools and equipment. See  
24 if I can just -- okay. Your transmission account, you've  
25 got structures and improvement, station equipment, towers

1 and fixtures, poles and fixtures, overheads conductors and  
2 devices, and each of those is an account with a given  
3 dollar amount of assets in it.

4 Q. So they fall under the category of mass  
5 accounts?

6 A. Yes.

7 Q. Okay. And what would fall under the other  
8 category?

9 A. The plant accounts?

10 Q. Uh-huh.

11 A. That would be things like Riverton power  
12 plant, Asbury power plant, Iatan, and then just for an  
13 example, there's sub accounts under each of those which  
14 would be again structures and improvements, boiler and  
15 plant equipment, turbo generator units, accessory  
16 electrical equipment and so forth.

17 Q. Well, when you refer to the 1.6 million,  
18 where is that -- which side is that coming out of? I  
19 heard you say --

20 A. That's if you add it all up, everything the  
21 company has.

22 Q. I'm wanting you to separate it out for me  
23 into either being into a mass account category or in the  
24 in the plant account. Have you done that?

25 A. I have not done that analysis. I almost

1 want to say I've heard -- and I might be misspeaking, so  
2 I --

3 CHAIRMAN GAW: You might check on it for  
4 me. If you could come up with that number, let me know  
5 later. I think that's all I have, Judge, thanks. If he  
6 gets that number, maybe he can provide it, or if someone  
7 else has it.

8 JUDGE THOMPSON: I have a question here for  
9 you from Commissioner Murray.

10 FURTHER QUESTIONS BY JUDGE THOMPSON:

11 Q. In the past has any company in Missouri  
12 been given accrual treatment for retirement of the type of  
13 plant that Chairman Gaw was asking you about?

14 A. Not that I'm aware of.

15 Q. Is Empire asking for accrual treatment of  
16 assets in this case that have never been given accrual  
17 treatment in the past?

18 A. I would have to look at the historical  
19 rates. They've not been given terminal salvage; in other  
20 words, green fielding the plant monies. At one time and  
21 in some instances they may have been given interim net  
22 salvage for the plant accounts.

23 JUDGE THOMPSON: Thank you. Additional  
24 questions, sir?

25 CHAIRMAN GAW: Just to follow up on that, I

1 appreciate Commissioner Murray's question because it sheds  
2 a little more light on this.

3 FURTHER QUESTIONS BY CHAIRMAN GAW:

4 Q. On the interim -- the question on the  
5 interim, if that -- if that's the -- if that's the case,  
6 how is it handled to adjust if there is -- if there  
7 appears to be overaccrual? Is it adjusted at some point  
8 in time from rate case to rate case? What happens with  
9 that?

10 A. There's an opportunity if it's over or  
11 underaccrual to be adjusted in a rate case.

12 Q. And again the reason for not doing an  
13 accrual on the -- on that portion of it, on an interim  
14 basis from Staff's standpoint is, what, just because there  
15 isn't enough in it to really make that much of a  
16 difference?

17 A. To make an accrual for the ultimate retire  
18 of the -- ultimate retirement of the power production  
19 assets, there is not enough -- it just hasn't occurred  
20 very often. There's not the experience out there to base  
21 any dollars on. It's not known and measurable.

22 Q. Again, there you're talking about the  
23 ultimate green fielding of the plant?

24 A. Yes.

25 Q. And I am talking about -- I guess I'm

1     trying to see if you can split that up -- pardon me -- if  
2     you can split that up or not in dealing with replacements  
3     or if they're wed together so that -- so that there is  
4     no -- it's either one way or the other.

5             A.       Okay.  There was a separate study done by  
6     the company's witness on -- on an estimate -- estimated  
7     number for an ultimate cost of removal or retirement of  
8     the power production facility.  We have annual numbers on  
9     net salvage cost of removal by production account.  So the  
10    one, I'm not aware that there's ever been any accruals  
11    granted by the Commission for the ultimate retirement of  
12    the power plant.

13            Q.       Right.

14            A.       And I've got some historical depreciation  
15    rates here just going back.  Well, '94 it was just a  
16    straight rate.  It looks in 94-174 there were some net  
17    salvage negative and positive rates considered for some of  
18    the accounts.  But those would not take into account the  
19    ultimate retirement of the power plant.  Those would just  
20    be for the interim retirement, changing out a pump motor,  
21    something like that.

22            Q.       Okay.  But the argument in regard to the  
23    interim accounts or the interim amount on plant accounts  
24    from Staff's standpoint is there's just not enough really  
25    accruing or going on, rather, to make it worthwhile to



1 actually place it in and accrue it?

2 A. It's -- well, it's not a representative  
3 amount of dollars. I have in my testimony at the end,  
4 Schedule 2-1, and it's an illustra-- it's an illustrative  
5 construct, more than anything. What I've done is I've  
6 taken -- I'm sorry. Are you there?

7 Q. Yes, I am.

8 A. Okay. I've taken the plant balances,  
9 summed up from the salvage study data, what the average  
10 annual retirements were and the total retirements, and  
11 then looked at that as a percent of the annual balance and  
12 a percent of the total balance as far as what's -- the  
13 numbers that are retiring compared to what's in place  
14 there. And it doesn't -- it just kind of gives you an  
15 idea of how much data there is or what amounts of  
16 retirements we're seeing with which to, you know, make  
17 salvage determinations and that's why we've chosen to  
18 expense it, because it's -- it's so small as to not what I  
19 would believe to be truly representative.

20 CHAIRMAN GAW: Okay. Thanks, Judge.

21 JUDGE THOMPSON: I have another question  
22 for you from Commissioner Murray.

23 THE WITNESS: Yes.

24 FURTHER QUESTIONS BY JUDGE THOMPSON:

25 Q. Aren't the plant accounts the very ones

1     that would be likely to cause the greatest removal costs?

2             A.       Certain vintages of these plant accounts  
3     would indeed have larger bulk dollar costs at the time of  
4     their retirement; however, the earlier and later design  
5     systems that have taken into account a number of  
6     environmental considerations that may not have been  
7     considered when some of the older plants were built will  
8     be more environmentally benign and likely cost less than  
9     what would be represented by the retirement of some older  
10    plants.

11            Q.       Well, either way, isn't it important to  
12    include these assets in current rates so that the people  
13    who enjoy the generation are going to pay for the  
14    retirement?

15            A.       They are being depreciated and the costs of  
16    retirement, as they're being operated, are being expensed.

17            Q.       Are being expensed. Well, let's take the  
18    Asbury plant as an example.

19            A.       Okay.

20            Q.       Let's say that in 2010 for whatever reason  
21    Empire decides to retire that plant and remove them.

22            A.       Okay.

23            Q.       Now if it's expensed -- which is a cash  
24    accounting system, correct?

25            A.       Yes.

1           Q.       -- then all of that would go on to the  
2 books in 2010, right?

3           A.       There's \$60 million excess accrual in the  
4 theoretical reserve that has been provided by ratepayers  
5 to cover the retirement of assets throughout the company,  
6 and hopefully that would act as a cushion until more facts  
7 were determined as to what would actually be required as  
8 far as say an amortization to retire that asset.

9           Q.       So if I understand your position, it is,  
10 we've paid in advance for retirement and perhaps too much,  
11 and so until you've spent what you've already got on hand,  
12 we're not going to give you any more; is that basically  
13 the position?

14          A.       No, that's not entirely true, because as I  
15 mentioned, once we realize the activity was underway,  
16 there's opportunities to make adjustments through an  
17 amortization, for example, that would allow the company to  
18 recoup those expenses.

19          Q.       Well, let's say that they retired that  
20 plant in 2010 and it cost \$120 million to retire it. Now,  
21 I have no idea if that's a realistic number or not, but  
22 let's just take that number because it's roughly double  
23 this overage or cushion that's sitting in the depreciation  
24 account. What happens then? How do they recover that  
25 other 60 million?

1           A.       There should be some planning in advance of  
2   an expenditure of that size for which the Commissioners,  
3   the Commission would need to be made aware, and as soon as  
4   that decision is made and that planning commences, actions  
5   should be taken to account for an accrual of dollars in  
6   that amount.

7           Q.       Well, isn't -- I mean, when they come in  
8   here and ask to have retirement money added into rates so  
9   that it will start accruing, isn't that advance planning  
10  of the sort you're talking about? In other words, isn't  
11  that exactly what they're doing now?

12          A.       To this point in time, we've seen more or  
13  less piecemeal retirements and not one of these windfall  
14  events.

15          Q.       So in other words, what you would have to  
16  see is what a certain -- a commitment, we will retire this  
17  plant on this date?

18          A.       I would like to see plans, notifications,  
19  adjustments for it in resource planning with the Southwest  
20  Power Pool, let them know that we're going to be taking  
21  power out of system. And what if --

22          Q.       What if there's another plant that's coming  
23  in to replace that?

24          A.       That's just where I was going.

25          Q.       Okay. So they're not just going to throw

1 capacity away, right?

2 A. Right. So we should have some idea that  
3 it's going to occur.

4 Q. Well, that's very interesting. Is there --  
5 among the Commission's regulations, is there a regulation  
6 that requires this company to provide that information to  
7 Staff, and if so, what is the number of that regulation?

8 A. As part of the HC component of my  
9 testimony, I have noted documentation from the company as  
10 part of their integrated resource plan that details out  
11 to some date in the future what their generation mix is  
12 going to be, where it's going to come from.

13 Q. And I don't want to get into the HC  
14 material, but does the information that the company  
15 presently provides, does that include retirement plans?

16 A. It should if they're going to fall below  
17 their capacity needs and requirements.

18 Q. But I'm talking just about depreciation  
19 planning, because I think that's what I heard you say. In  
20 other words, that the company overaccrued funds for  
21 removal in the past under the traditional accounting  
22 regime, and that it was the existence of this overaccrual  
23 that was at least one of the factors that spurred Staff to  
24 suggest a changed depreciation accounting method, where  
25 there will not be accrual, but instead retirements are

1 expensed as they occur. Right?

2 A. For that component of the depreciation  
3 calculation, yes.

4 Q. And then I set up this hypothetical, and  
5 you told me that you would expect to know in advance that  
6 there was going to be a major retirement and that  
7 adjustments could then be made. And what I'm asking you  
8 is, is there a regulation that requires this kind of  
9 advance notice?

10 A. Outside of integrated resource planning,  
11 not that I'm aware of.

12 Q. And integrated resource planning is aimed  
13 rather at where are you going to get the generation that  
14 you need, isn't it?

15 A. Yes, it is.

16 Q. It's not really planned around when are you  
17 going to retire these assets, or is it?

18 A. It's one of the indicators when I'm  
19 conducting a depreciation study that I use to verify the  
20 validity of any lifespans or average service lives, is it  
21 reasonable to expect that what has been portrayed as a  
22 generation mix in one sense is likely to continue to be  
23 that generation mix.

24 JUDGE THOMPSON: Thank you. Further  
25 questions, Chairman?

1                   CHAIRMAN GAW: Yeah. I'm sorry, Judge.

2   FURTHER QUESTIONS BY CHAIRMAN GAW:

3                   Q.     I thought that you inferred to the witness

4   and that he agreed with you that Staff is recommending a

5   change in regard to plant retirements and how -- how those

6   are handled on the accounting scheme. And I'm not sure if

7   I followed that. Is Staff proposing a change by Empire in

8   how they're handling that?

9                   A.     No, I'm sorry. If I implied that, I was in

10 error.

11                  Q.     Well, I may have misheard, but I just

12 wanted to make sure I -- that it was clarified. Empire

13 currently is not -- is Empire currently accruing money for

14 retirement of plant?

15                  A.     No.

16                  Q.     So Staff isn't proposing a change in that?

17                  A.     No, sir.

18                  Q.     The company is?

19                  A.     Yes.

20                  Q.     And in fact there has not been, to your

21 knowledge, in regard to retirement and accrual by other

22 companies in the state, has there, for plant retirement?

23                  A.     For ultimate retirement?

24                  Q.     Yes.

25                  A.     No. No one's doing that that I'm aware of.

1           Q.       Yeah.  So the only issue if we're dealing  
2   with plant itself, that would be -- where there's been  
3   perhaps some variation would have to do with the interim  
4   replacement --

5           A.       Yes.

6           Q.       -- issue?

7           A.       That's correct.

8           Q.       Okay.  And that one may be some others can  
9   help us on the consistency of the treatment of that over  
10  time by the Commission.

11                   CHAIRMAN GAW:  All right.  That's all.  
12  Thanks.

13                   JUDGE THOMPSON:  Another question from  
14  Commissioner Murray.

15                   THE WITNESS:  Yes.

16  FURTHER QUESTIONS BY JUDGE THOMPSON:

17           Q.       Prior to the last rate case, isn't it true  
18  that Empire was recording accruals?

19           A.       You wouldn't happen to have that case  
20  number handy, would you?

21           Q.       No, I don't.

22                   MR. WILLIAMS:  Judge, I believe that case  
23  may have been ER-2002-424.

24                   THE WITNESS:  Okay.  I have the rate table  
25  for that case, and in that net salvage is set at zero for



1 all accounts, it's looking like.

2 BY JUDGE THOMPSON:

3 Q. Isn't there a time when Empire -- Empire's  
4 depreciation accounting was of the traditional sort where  
5 there was an accrual for retirement for at least mass  
6 accounts?

7 A. For mass accounts, and I believe production  
8 accounts, and I mentioned that case a little bit earlier,  
9 but that was for interim retirements, not ultimate  
10 retirement and taking down of the power station.

11 Q. Okay. So there's never been an accrual for  
12 terminal?

13 A. Not that I'm aware of.

14 Q. For Empire or for any other company?

15 A. Not that I'm aware of.

16 Q. Okay. And at some point there was a  
17 change, so that now there's not accrual even for the  
18 interim accounts, is that correct, they're just simply  
19 expensed?

20 A. That's correct.

21 JUDGE THOMPSON: Okay.

22 CHAIRMAN GAW: Okay. One more question  
23 that has three answers.

24 FURTHER QUESTIONS BY CHAIRMAN GAW:

25 Q. How much money is at issue in regard to

1 those three -- and I'm sure it's in here somewhere -- to  
2 those three categories; mass accounts, interim on plant  
3 and terminal on plant?

4 A. In Staff's statement of position, there is  
5 not a dollar amount stated with those three items that I  
6 can give to you right now.

7 Q. Okay. is that something that could be  
8 calculated, though?

9 A. Yes, a lot of the rates and things tend to  
10 be interrelated, but --

11 Q. Yes.

12 A. -- we can give you some sense.

13 CHAIRMAN GAW: Sure. Thanks.

14 JUDGE THOMPSON: Thank you, Mr. Chairman.  
15 I believe there's another question coming from  
16 Commissioner Murray, but it's not here yet. Do you have  
17 any questions, Commissioner Appling?

18 COMMISSIONER APPLING: Judge, I have to  
19 apologize. I've been at the Boys and Girls Club, so I  
20 don't have any questions. My mind is on two different  
21 things already, so thank you.

22 JUDGE THOMPSON: That's quite all right,  
23 sir. Here's a question from Commissioner Murray for you.

24 FURTHER QUESTIONS BY JUDGE THOMPSON:

25 Q. Prior to the last rate case, Staff's

1 position is that there was an overaccrual occurring.  
2 Hence the recommendation to change to expensing. If  
3 terminal accounts were never included in the accrual  
4 method, where did the overaccrual come from?

5 A. The interim salvage rates and the mass  
6 account rates, salvage rates.

7 JUDGE THOMPSON: Thank you. Okay. I think  
8 we're ready for recross at this time. Ms. O'Neill?

9 MS. O'NEILL: No questions.

10 JUDGE THOMPSON: Mr. Byrne?

11 MR. BYRNE: I can't resist, your Honor.

12 RECROSS-EXAMINATION BY MR. BYRNE:

13 Q. Good afternoon. Just a couple of questions  
14 about the topic that Commissioners Murray and Gaw were  
15 asking you about a few minutes ago. My understanding from  
16 your testimony is none of the electric utilities have  
17 accrued anything for terminal salvage costs for electric  
18 plants; is that true?

19 A. Not that I'm aware of, with the exception  
20 of nuclear plants.

21 Q. Other than nuclear plants, but just a  
22 non-nuclear electric plant, there's been nothing accrued  
23 and nothing collected by electric utilities, to your  
24 knowledge; is that correct?

25 A. For green fielding.

1           Q.       For green fielding.  There's interim  
2 salvage that sometimes has been collected, there's mass  
3 property salvage that sometimes has been collected, but  
4 terminal salvage in electric plant has not been collected,  
5 right?

6           A.       Right.

7           Q.       Okay.  So are utility -- and the reason is  
8 because there hasn't been experience -- the experience of  
9 having those plants torn down and green fielded; is that  
10 the logic or the reason, or one reason at least?

11          A.       Right.  For a number of reasons is where  
12 they're located and the various infrastructure connections  
13 that they're connected with; trains, roads, power lines,  
14 gas lines, heat sinking capacity.

15          Q.       Okay.  Let's say that what the Judge  
16 suggested happens, and all of a sudden a big power plant  
17 is retired, so -- and those costs that the -- that have  
18 not been accrued that the utility has not been collected  
19 -- has not been collecting for, those costs are incurred,  
20 they tear down a plant and they green field it, and that  
21 sometimes happens, doesn't it, in the country?

22          A.       There's only one that I can think of, of a  
23 large power plant actually being taken down.

24          Q.       Okay.  Well, let's say it happens, okay?  
25 Even though it only happened once, let's say it happens.

1 And to my mind there would be some depreciation  
2 ramifications of that. One thing is the power plant and  
3 the items in it might not be fully depreciated at the time  
4 it's retired and torn down. So that's one kind of cost  
5 that might not have been recovered by the utility, is that  
6 fair to say, if the items weren't fully depreciated at the  
7 time the plant was retired?

8 A. Right. You're going -- you're going to  
9 have interim additions during the life of that power  
10 plant.

11 Q. That might not be physically depreciated?

12 A. Uh-huh.

13 Q. So that's one set of costs that haven't  
14 been recovered. Then the other set of costs that haven't  
15 been recovered is the cost of literally tearing down the  
16 plant and green fielding, is that true? Is that another  
17 set of costs that haven't been recovered?

18 A. In your hypothetical.

19 Q. Okay. How does the Staff propose that the  
20 utility recover those costs when a plant -- if and when a  
21 plant is torn down like that?

22 A. Well, I think it was discussed earlier with  
23 Commissioner Murray's hypothetical that it would be  
24 necessary to come to the Commission for some sort of  
25 treatment, possibly an amortization.

1           Q.       Well, yeah. I guess what I'm getting to  
2   is, what does the Staff think the appropriate treatment  
3   should be in that situation? Is it -- I mean, is an  
4   amortization an appropriate treatment, do you think?

5           A.       That may be one solution.

6           Q.       I mean, do you think the -- do you think  
7   the utility should be entitled to interest or a return on  
8   the unamortized portion of that if -- say, there's a  
9   10-year amortization, should the utility have to front  
10   that money for free or do you think -- or do you think  
11   there should be interest on the unamortized portion of  
12   that balance?

13          A.       That gets into some accounting issues that  
14   I'm not really --

15          Q.       Go ahead.

16          A.       I haven't really seen other than mentions  
17   of inflation where we're working with the time value of  
18   money in these computations.

19          Q.       Well, one of the things that troubled me  
20   about your answer is I think you suggested that if -- if  
21   there was an overaccrual of the depreciation reserve,  
22   maybe that could count against it. Did you say that?

23          A.       It could provide some short-time cushioning  
24   until the company could get before the Commission for  
25   appropriate relief.

1           Q.       But since the company in my hypothetical  
2       has never collected any of the money, that -- that -- the  
3       reserve has -- you know, whether it's overaccrued or  
4       underaccrued doesn't have anything to do with those  
5       particular costs, does it? I mean, it's a separate issue  
6       whether they have an overaccrual of reserve for the mass  
7       property accounts, isn't it?

8           A.       Are we talking power plants or mass asset  
9       accounts?

10          Q.       I'm saying the costs we're incurring that  
11       I'm talking about are from dismantling a power plant.

12          A.       Uh-huh.

13          Q.       And to my mind whether there's an  
14       overaccrual in the depreciation reserve has nothing to do  
15       with that, does it? Whether the depreciation reserve is  
16       overaccrued or underaccrued only relates to the  
17       depreciation rates that have been set for mass property  
18       accounts or interim retirement, not those terminal costs;  
19       isn't that right?

20          A.       No, the over or underaccrual of the  
21       theoretical reserve can be based upon any of the number of  
22       the parameters that are used in the computation of the  
23       depreciation rates, whether it was average service life,  
24       remaining life, whether or not net salvage was part of  
25       that computation in your hypothetical, has the plant

1     undergone plant life extension, you know, so that where at  
2     one time it might have been accruing for a 40-year life,  
3     it now needs to accrue for a 60-year life and there's an  
4     overaccrual in the reserve.

5             Q.       Okay.

6             A.       So -- I mean, there's so many variables  
7     there.

8             Q.       Maybe I feel a little bit better about what  
9     you said before. Are you saying any overaccrual of the  
10    reserve could be a cushion just to -- just to help the  
11    company along until the proper ratemaking for the costs  
12    that have never been accrued is figured out? Is that what  
13    you're saying? I mean, eventually we're going to have to  
14    recover all costs of terminating the plant and dismantling  
15    it, aren't we?

16            A.       And all of those costs would go through  
17    account 108?

18            Q.       I'm not an accountant. I don't know.

19            A.       Because that's where the reserve accrual  
20    and that's where the theoretical reserve imbalance would  
21    exist.

22            Q.       Okay.

23            A.       So and when items are retired, that's where  
24    the balance comes from for the retirement. So it would be  
25    my assumption to the extent that there is a positive



1    imbalance, extra monies advanced by the ratepayers, that  
2    it only seems appropriate for the interim at least that  
3    the company could lean on those excess dollars until they  
4    can get before the Commission for the appropriate relief.

5            Q.        Okay.    Okay.    But it would be appropriate  
6    one way or another for them to recover those costs later  
7    on?

8            A.        I wouldn't deny that, or it's not my  
9    position to deny it.    It's the Commission's position to  
10   decide how that's treated.

11           Q.        Okay.    So leaning on the overaccrual of the  
12   reserve is just sort of an interim solution until you can  
13   get before the Commission?

14           A.        Appropriate relief.

15           MR. BYRNE:    Okay.    Thanks.    That's all I  
16   have.

17           JUDGE THOMPSON:    Well, I hate to break in  
18   here, but your answer for Mr. Byrne gave me an additional  
19   question that I'm just going to have to ask, at the risk  
20   of being unemployed by the end of the day.

21   FURTHER QUESTIONS BY JUDGE THOMPSON:

22           Q.        Isn't there a serious problem with  
23   intergenerational equity here?    Let's say you have a power  
24   plant that's been operating for a 100 years, for 100 years  
25   it's provided power to the ratepayers within the service

1 area, and then it's taken out of service and green  
2 fielded. Nothing, not one penny has been paid in rates  
3 against the cost of that retirement by the people who used  
4 that power. Instead, the company according to your  
5 scenario is now going to come to the Commission and ask  
6 ratepayers who are not using that power to pay for that  
7 retirement over a period of amortization. Is that the  
8 scenario that I -- do I understand that correctly?

9 A. In that hypothetical, that would be the  
10 case, and we've actually had examples of that with some of  
11 the old coal gasification facilities where they gas fired  
12 the coal for street gas, took the sludge material and just  
13 buried it in landfills, and then later on it was  
14 determined that those were hazardous sites and needed to  
15 be recovered, and future ratepayers, you and me, have had  
16 to pay some of those costs.

17 Q. And so we should feel good that we're going  
18 to inflict this on our children?

19 A. No, no. The system isn't perfect, and we  
20 try and be as equitable as possible, but given your  
21 hypothetical --

22 Q. Well, I'm just trying to understand. In  
23 other words, what I seem to be grasping, if I'm grasping  
24 anything, is that nationally and in Missouri there's been  
25 very little actual experience with the retirement and

1 green fielding of a power generation facility?

2 A. That is correct. And work I've done in the  
3 past with the Department of Energy would tend to indicate  
4 that they very much want to see those sites in -- into the  
5 future, much like the highway system, continue to reside  
6 there and provide service to the citizens.

7 Q. So in other words, what you're saying is  
8 it's not likely that we're going to see it in the future  
9 either?

10 A. Unless we would move to some other power  
11 source, say distributed generation or some technology that  
12 I can't even imagine.

13 Q. So in other words, if the green fielding of  
14 a generation plant is unlikely to occur, then in fact it's  
15 reasonable not to accrue money against this eventuality;  
16 is that your testimony?

17 A. Until such time as we have better  
18 information, some facts.

19 JUDGE THOMPSON: Thank you. Chairman?

20 FURTHER QUESTIONS BY CHAIRMAN GAW:

21 Q. And to reverse the great judge's  
22 hypothetical, wouldn't have you an intergenerational  
23 funding problem if those -- if in fact you were accruing  
24 money from ratepayers for a plant that never was green  
25 fielded?

1           A.       That's absolutely the case, and that's why  
2     the Staff is in opposition to accumulating reserves for  
3     such an activity.

4           Q.       And based upon your current experience,  
5     would you say that's more likely to be the actual case,  
6     that hypothetical than the one the Judge proffered?

7           A.       Yes, I believe that to be true.

8                   CHAIRMAN GAW:   Thanks.

9                   JUDGE THOMPSON:  Thank you, sir.

10    Additional recross, Ms. O'Neill?

11                   MS. O'NEILL:   I tried not to, but --

12                   JUDGE THOMPSON:  I have another question  
13    from Commissioner Murray.

14                   MS. O'NEILL:   Okay.

15    FURTHER QUESTIONS BY JUDGE THOMPSON:

16           Q.       How much is Empire requesting for green  
17    fielding in this case?

18           A.       In Mr. Roff's direct testimony at  
19    Schedule 2, he presents terminal net salvage rates by  
20    production plant and account, which depending upon the  
21    lifespan he's assumed for each of those plants, would then  
22    be need -- would need to be used across the current plant  
23    balance, so that's -- while that's not a number that I can  
24    just say to you, it's something that's readily  
25    discernible, I can calculate.

1           Q.       In his direct testimony, he's talking about  
2   25 or \$26 million; isn't that correct?

3           A.       In total for --

4           Q.       For depreciation?

5           A.       For depreciation, yes.

6           Q.       Can you eyeball those rates and tell us how  
7   much of that is likely to be for green fielding?

8           A.       Not with any level of accuracy at this  
9   time. It's millions.

10          Q.       I mean, as much as half?

11                 MR. WILLIAMS: Judge, I've been advised  
12   that the parties are working on an -- an additional  
13   reconciliation that's going to provide the information  
14   that you are seeking here, as well as what was requested  
15   earlier.

16                 MR. ENGLAND: I was going to say it  
17   occurred to me that maybe if there's specific numbers that  
18   you-all want, it might be better if we get together and  
19   find one that we can agree upon.

20                 JUDGE THOMPSON: Perhaps that's unfair, but  
21   that is a question. Do you want to have a break now and  
22   come up with it or when can we expect that?

23                 MR. ENGLAND: I think it's going to take  
24   some time, your Honor. You tell us exactly what you want.  
25   It's going to take several days, I think, but if you -- if

1     you can articulate the numbers, we will do our best to  
2     produce them for you, and if we can't, we'll produce I  
3     guess our own individual numbers and you can come back --  
4     we will come back -- excuse me -- and you can ask us how  
5     we got them and why we differ.

6                     JUDGE THOMPSON:  Very good.  Well, thank  
7     you for your efforts there.  Any additional questions from  
8     the Bench?

9                     (No response.)

10                    JUDGE THOMPSON:  Okay.  Additional recross,  
11     Ms. O'Neill?

12                    MS. O'NEILL:  I'm trying to move.  I really  
13     am.

14     RE CROSS-EXAMINATION BY MS. O'NEILL:

15                    Q.       Mr. Gilbert, if an extraordinary event  
16     like green fielding a power plant should ever occur, does  
17     the Commission have methods in place that would -- so that  
18     they could consider how to allow recovery of those costs?

19                    A.       I believe they do.

20                    MS. O'NEILL:  Nothing further.

21                    JUDGE THOMPSON:  Thank you, Ms. O'Neill.

22     Mr. Byrne?

23                    MR. BYRNE:  I give up.

24                    JUDGE THOMPSON:  Mr. McCartney?

25                    MR. MCCARTNEY:  No, thank you.

1 JUDGE THOMPSON: Mr. England?

2 MR. ENGLAND: Thank you, your Honor.

3 FURTHER RECROSS-EXAMINATION BY MR. ENGLAND:

4 Q. Good afternoon, Mr. Gilbert.

5 A. Good afternoon, Mr. England.

6 Q. Early on I think you had a question and

7 answer or series of questions and answers with Judge

8 Thompson regarding removal costs and then salvage costs,

9 and I think you gave an example of a cost perhaps \$100 to

10 remove a length of pipe, but you could turn around and

11 sell that on the salvage market or whatever for \$10. Do

12 you recall that?

13 A. Yes, I made that analogy.

14 Q. Okay. It is the net of those two figures

15 or the \$90 that the company seeks to recover, correct?

16 A. That's correct.

17 Q. It doesn't seek to recover \$100 cost of

18 removal plus the \$90 net that we're talking about. It's

19 just one figure we're trying to recover and that's the 90,

20 or the net of the two?

21 A. The net of the two, that's correct.

22 Q. Okay. Thank you, in response to a question

23 from Mr. Byrne regarding whether it would be appropriate

24 in the situation where the company retired a plant,

25 incurred the costs, significant costs, and you were going

1 to amortize them say for 10 years in the future, Mr. Byrne  
2 asked if it would be appropriate to put the unamortized  
3 balance in rate base and you said you didn't know,  
4 correct? That wasn't your area of responsibility or  
5 something like that?

6 A. I believe it was with respect to whether or  
7 not the company was entitled to a percentage of interest  
8 on those dollars.

9 Q. Okay. Let me try to put it in terms that  
10 you might understand. I've got a proposition for you.  
11 You give me \$1,000 today and I promise to pay you \$100  
12 each year over the next 10 years. Would you be willing to  
13 do that?

14 A. I don't believe so.

15 Q. Why not?

16 A. I'd look for better economic opportunities  
17 for my investment.

18 Q. You'd like for interest on that money,  
19 wouldn't you, at the very least?

20 A. At a minimum.

21 Q. Okay. So if the company's -- all they're  
22 going to be allowed is a straight line amortization over  
23 10 years, even though they've up fronted the cost of  
24 removal costs in year one, they're really not being made  
25 whole, are they?



1           A.       By the same token when there's an  
2   overaccrual in the reserve, I'm not aware that the -- that  
3   the ratepayers are -- are gaining interest on the  
4   overaccrued dollars that will help offset future payments.

5           Q.       Sure they are. They're earning the same  
6   return on those dollars that the company --

7                   MS. O'NEILL:  Objection to testifying by  
8   the attorney.

9                   JUDGE THOMPSON:  Objection overruled.

10   BY MR. ENGLAND:

11          Q.       They're earning a return on those dollars,  
12   just like the company's earning a return on its dollars on  
13   net rate base to the extent their dollars are being  
14   accrued in the depreciation reserve, and that reserve is  
15   being reduced or being used to reduce rate base. So they  
16   do receive a return on that money they up front, if you  
17   will, for cost of removal, correct?

18          A.       It is used to offset rate base.

19          Q.       And they -- and in essence, they're getting  
20   the same return that the company's authorized to return by  
21   this Commission, correct?

22          A.       I believe that's the way it works.

23          Q.       Okay. Thank you.

24                   Now, in response to some questions from  
25   Chairman Gaw, you talked about an actual cost of removal

1     that Empire is experiencing that averages \$1.6 million a  
2     year over the last five years, correct?

3             A.     I believe that's correct.

4             Q.     And you compared that to a total plant in  
5     service number of approximately \$1-plus billion for  
6     Empire, correct?

7             A.     Yes.   Yes.

8             Q.     And you compared those two?

9             A.     I just took a simple ratio.

10            Q.     Okay.   Now, does that ratio have any  
11     significance in your mind?

12            A.     Yes.

13            Q.     And what's that significance?

14            A.     It's the percentage of the plant in service  
15     or the cost of the percentage of the plant in service.  
16     The cost of the retirements is a percentage of the plant  
17     in service.

18            Q.     And do you believe that's an appropriate  
19     way to view net salvage?

20            A.     I believe that's an appropriate way, one of  
21     the ways to view the weight of the cost of removal against  
22     the company's assets.

23            Q.     Do you still have Exhibit 135, which was  
24     your testimony in the MoPub case in front of you?

25            A.     I do.

1           Q.       Turn to page 5, if you would, please.

2           A.       Okay.

3           Q.       Beginning with line 5 through line 8, would

4   you read that answer?

5                   MS. O'NEILL:  Your Honor, I'm going to

6   object.  This is beyond the scope of questions from the

7   Bench, beyond the scope of recross.

8                   JUDGE THOMPSON:  Mr. England?

9                   MR. ENGLAND:  Not at all, your Honor.  This

10   witness has testified in response to questions from

11   Chairman Gaw that it's an appropriate comparison to make

12   between net salvage incurred versus total plant in

13   service, and I believe if he's allowed to read this

14   testimony, you will see that he expressed an opinion in

15   this case it was not a proper comparison.

16                  JUDGE THOMPSON:  Overruled.  Please

17   proceed.

18                  THE WITNESS:  Previously in Case ER-93-37

19   Staff had calculated the ratio of net salvage dollars to

20   total plant in service dollars by account to derive a

21   percentage of net salvage for inclusion in a depreciation

22   rate calculation.  This did not reflect net salvage

23   properly as the ratio of net salvage to the book value of

24   the plant retired.

25                  MR. ENGLAND:  Thank you, sir.  No other

1 questions.

2 JUDGE THOMPSON: Thank you, Mr. England.

3 Redirect?

4 MR. WILLIAMS: Thank you, Judge.

5 REDIRECT EXAMINATION BY MR. WILLIAMS:

6 Q. Mr. Gilbert, the passage you just read --

7 A. Yes.

8 Q. -- can you differentiate your response in

9 that testimony to your response that you've given here

10 today that Mr. England was contrasting?

11 A. Well, as I mentioned earlier in my

12 testimony, it's been an evolutionary process for myself,

13 as well as Commission Staff to arrive at the position

14 we're at today with regards to the treatment of net

15 salvage. One of the things we noticed was that we were

16 seeing ever-increasing overaccruals to the reserve

17 imbalance, the theoretical reserve imbalance with respect

18 to depreciation, and so we wanted to determine where those

19 inaccuracies were.

20 As time went by and cases were studied, we

21 determined that that imbalance was primarily being

22 reflected in an overestimation of future costs of removal.

23 A lot of this cost of removal was driven by the

24 environmental movement which required remediation that had

25 not been previously experienced. One example would be

1   PCBs and transformers, which for a time boosted the cost  
2   of removal for transformers, but as those were eliminated  
3   from the systems, we expected to see the costs go down.  
4   And things are now generally designed and built with more  
5   regard to their impact on the environment.

6           Q.       You spoke about an evolution of the Staff's  
7   position over time. Can you put a time frame on that?

8           A.       When I came on board with the Commission  
9   back in March of '03, they were in the process of --  
10   they'd had a couple of gentlemen here who had done  
11   depreciation, and as I look back at their rates I can see  
12   where for a large number of accounts they would assess net  
13   salvage as zero. We had a supervisor who was an  
14   experienced depreciation professional, David Bierenbaum  
15   (ph. sp.), from the telephone industry came and took over  
16   the department. And we went to depreciation school in  
17   Grand Rapids, Michigan, Depreciation Systems, Inc., I  
18   believe, and there we were instructed in methods and  
19   techniques of depreciation determination, as well as how  
20   to conduct a salvage analysis.

21                   I might add at that time when I was up  
22   there taking that course I noted to them that I didn't  
23   think things were quite right with the salvage  
24   calculation, given the consideration for environmental  
25   remediation and that I'd just been working in that area,

1 but it was our training and guidance at that time that we  
2 should do a net salvage analysis in the method that's been  
3 detailed in my testimony from previous cases.

4                   However, with experience and observation of  
5 the imbalances growing rather rapidly in the theoretical  
6 reserve, we sought to, No. 1, determine why it was  
7 occurring and, 2, how to correct the inaccuracies in the  
8 imbalance.

9           Q.       And has Commission Staff obtained any  
10 feedback from the Commissioners as to the evolution of  
11 Staff's position on the treatment of depreciation?

12           A.       I believe from the rulings in past cases  
13 that the Commission has been in agreement with the Staff  
14 and actually, as has been pointed out in the Laclede case  
15 ER-99-315, that was actually an evolutionary step in this  
16 process. I mean, it was kind of like, well, we're going  
17 to -- we're going to account for it on a current basis,  
18 but run it through 108. And finally just to keep things  
19 clear and simple, they went to a straight expensing of  
20 cost of removal based on a 5-year rolling average.

21           Q.       And your reference to GR-99-315, was that  
22 the Commission's first Report and Order in that case?

23           A.       I'm sorry. I couldn't --

24           Q.       That would have been the original decision  
25 by the Commission?

1           A.       Yes.  Yes.

2           Q.       And has there been any subsequent decisions  
3 by the Commission in addressing depreciation, that you're  
4 aware of?

5           A.       In other cases.  I don't have any of those  
6 case numbers with me at this time.

7           Q.       Were there -- did any of those cases  
8 involve Empire?

9           A.       There have been subsequent cases with  
10 Empire that do reflect an adoption of expensing of net  
11 salvage or an expensing of cost of removal -- excuse me --  
12 and the Commission has adopted that methodology in that  
13 case.  If you wait just a minute, that would be  
14 Case ER-2002-424.

15          Q.       Was there any preceding Empire case or do  
16 you know?

17          A.       I have a rate schedule here for an  
18 ER-2001-299.

19          Q.       And do you know if the Commission approved  
20 the Staff's approach in that case?

21          A.       I believe they did.  I did not go back to  
22 the case work.  I took these out of a reference manual,  
23 but it's -- yes.

24          Q.       When Commissioner Gaw was asking you about  
25 siting issues if a plant were to be -- a plant site was to

1 be green field and someone were to have to build a plant  
2 at a new site, and there were a number of considerations  
3 for why that probably wouldn't be the best option raised,  
4 would there be any governmental issues that might be  
5 involved as well?

6 A. Yes, most likely environmental and  
7 permitting issues.

8 Q. And then I believe there's some questions  
9 relating to retirement and cost of removal. Would a  
10 company necessarily incur cost of removal at the time it  
11 retired a plant?

12 A. Not necessarily, no.

13 Q. And would it necessarily incur salvage at  
14 the time it retired a plant?

15 A. Not necessarily. I've been to power plants  
16 where they have -- Fisk station, for example, with  
17 Commonwealth Edison and it was very interesting. They had  
18 power plants built on very old units and sections that  
19 were roped off and not to be entered due to lead paint,  
20 asbestos and other things. But they were 90-year-old  
21 facilities that had just been literally walked away from  
22 and the door closed.

23 Q. Would retirement ever follow cost --  
24 recognition of cost of removal or salvage value?

25 A. I'm sorry. I missed the first part of



1     that.

2             Q.       Would you ever have a retirement after the  
3     company received terminal -- would cost of removal or  
4     salvage value ever precede a retirement date for final  
5     retirement?    Would a company ever incur cost of removal  
6     costs and net salvage value before it retired a plant,  
7     finally retired?

8             A.       No, but you could, for example, with a  
9     power plant, if you had to on your boiler replace a pump,  
10    that would be an interim retirement followed by an interim  
11    addition so that you could keep the plant in operation.

12            Q.       Mr. Gilbert, in light of the fact that  
13    credit card interest rates approach 20 percent and the  
14    fact that some customers are unable to get a loan at any  
15    cost, would you characterize a rate base return of 10 or  
16    11 percent as adequate compensation for providing a  
17    company money up front for the cost of removing plant  
18    20 to 40 years in the future?

19                   MR. ENGLAND:  Objection, assuming facts not  
20    in evidence.  I didn't know we were getting 10 or  
21    11 percent on rate base.

22                   MR. WILLIAMS:  It's a hypothetical.

23                   MR. ENGLAND:  I thought maybe it was an  
24    offer.  I'll withdraw the objection.

25                   JUDGE THOMPSON:  You may answer if you're

1     able.

2                     THE WITNESS:   I would find such a rate of  
3     return attractive at this time.   And maybe I missed the  
4     question.

5     BY MR. WILLIAMS:

6             Q.       I think the answer may have been Empire  
7     would find it to be attractive.   What I'm getting at is  
8     that because a lot of cus-- given that interest rates are  
9     in the range of 20 percent for customers for credit card  
10    usage and that some customers are even unable to obtain a  
11    loan under any -- with any interest rate, do you think a  
12    rate base return of 10 or 11 percent even would be  
13    adequate compensation for those customers providing money  
14    in advance of the time whenever a company would incur the  
15    cost net cost of removal some 20 to 40 years into the  
16    future?

17            A.       Given that for -- in that hypothetical, if  
18    I understand it correctly, given that a dollar paid today  
19    to the depreciation reserve is going to save me 10 cents  
20    in rates today based on 10 percent, I think I'd rather  
21    keep my dollar.

22                     MR. WILLIAMS:   No further questions.

23                     JUDGE THOMPSON:   You may step down,  
24    Mr. Gilbert.   You are excused.   Thank you for your  
25    testimony.

1                   It's a little early for a break for the  
2   reporter, but we'll take one anyway. Why don't we come  
3   back at exactly 15 minutes to the hour, and I believe the  
4   next witness is Leasha Teel. Is that correct,  
5   Mr. Williams?

6                   MS. O'NEILL: Your Honor, also, I -- I've  
7   only kind of briefly talked with other counsel about this,  
8   but my witness Mr. Majoros is available all day, but his  
9   scheduled flight out is early tomorrow morning, and if we  
10  could --

11                  JUDGE THOMPSON: Do you want do take him  
12  out of order?

13                  MS. O'NEILL: If we could take him out of  
14  order, that might be --

15                  JUDGE THOMPSON: That will be fine. We'll  
16  come back to Mr. Majoros.

17                  MR. MCCARTNEY: The Aquila witness is also  
18  waiting to see if there are any.

19                  JUDGE THOMPSON: I don't believe there are  
20  any questions for your witness. He is excused.

21                  (A BREAK WAS TAKEN.)

22                  (Witness sworn.)

23                  JUDGE THOMPSON: Do you understand that if  
24  you were to give false testimony in this proceeding, you  
25  could be prosecuted for the crime of perjury?

1 THE WITNESS: Yes, sir, I do.

2 JUDGE THOMPSON: Please take a seat and

3 spell your last name for the reporter, if you would.

4 THE WITNESS: My name is Michael J.

5 Majoros, Junior, M-A-J-O-R-O-S.

6 JUDGE THOMPSON: Thank you. You may

7 inquire, Ms. O'Neill.

8 MS. O'NEILL: Thank you, your Honor,

9 MICHAEL J. MAJOROS, JR. testified as follows:

10 DIRECT EXAMINATION BY MS. O'NEILL:

11 Q. Would you please state your full name for

12 the record?

13 A. My name is Michael J. Majoros, Junior.

14 Q. And, Mr. Majoros, could you also give us

15 your business address?

16 A. 1220 L Street Northwest, Washington, D.C.,

17 20005.

18 Q. And how are you employed?

19 A. I'm vice president of the economic

20 consulting firm of Snively, King, Majoros, O'Connor and

21 Lee, Incorporated.

22 Q. And, Mr. Majoros, did you prepare and cause

23 to be filed in this matter some direct testimony which has

24 been marked for identification as Exhibit 89?

25 A. Yes.

1           Q.       And have you -- did you also prepare and  
2     cause to be filed in this case rebuttal testimony that's  
3     marked for identification as Exhibit 90?

4           A.       Yes, I did.

5           Q.       And also marked as Exhibit 90 was there a  
6     schedule that was not -- is there also a schedule?

7           A.       Yes, there is.

8           Q.       Turning first to Exhibit 89, the direct  
9     testimony you prefiled, are there any corrections to that  
10    document that you'd like to make note of?

11          A.       Yes, there are several schedules attached  
12    to that, to Exhibit No. 89 as well. Please turn to  
13    page 66, line 21. The reference to Schedule MJM-5 should  
14    be MJM-6. And then turn to page 67, line 4, the reference  
15    to Schedule MJM-6 should be MJM-7.

16          Q.       Okay. Is that on direct or is this on  
17    rebuttal?

18          A.       That is on my direct.

19          Q.       Mr. Majoros --

20                 MR. ENGLAND: I'm lost. I'm sorry.

21                 MS. O'NEILL: I think we've got -- I think  
22    we've got a PDF issue. Your Honor, I've handed  
23    Mr. Majoros a copy of his testimony as it is filed in EFIS  
24    and there appears to be a major difference from the copy  
25    he has, so if he can have a moment, I think he can give us

1 corrections.

2 JUDGE THOMPSON: Okay.

3 THE WITNESS: Forget the corrections.

4 BY MS. O'NEILL:

5 Q. Mr. Majoros, have you taken a look at the

6 difference in pages and --

7 A. Yes, and I can't -- I can't find -- so I'm

8 not going to make any corrections.

9 Q. Okay. To 89?

10 A. Yes.

11 Q. Okay. And regarding Exhibit 90, there was

12 a schedule that --

13 A. There was a schedule attached.

14 Q. Okay. And it appears that the schedule

15 that's included with 90 is designated as Schedule MJM-1.

16 Did you have a correction to make to that?

17 A. Yes. That should be MJM-8.

18 Q. All right. Okay. Other than that

19 correction and to the extent they become relevant, some

20 minor typographical errors that you may be able to address

21 during the course of your testimony, is there any other

22 corrections you'd like to make at this time?

23 A. No.

24 Q. And if I were to ask you the questions

25 contained in Exhibits 89 and 90 today on the witness

1 stand, would your answers today be the same as they are in  
2 these documents?

3 A. Yes.

4 MS. O'NEILL: I'd offer into evidence  
5 Exhibit 89 and 90.

6 JUDGE THOMPSON: Do I hear any objections  
7 to the receipt of Exhibits 89 or 90?

8 MR. WILLIAMS: Staff has no objection.

9 MR. ENGLAND: No objection.

10 JUDGE THOMPSON: Hearing none, the same are  
11 received and made a part of the record of this proceeding.

12 (EXHIBIT NOS. 89 AND 90 WERE RECEIVED INTO  
13 EVIDENCE.)

14 JUDGE THOMPSON: Thank you, Ms. O'Neill.

15 MS. O'NEILL: I would tender the witness  
16 for cross-examination.

17 JUDGE THOMPSON: Thank you. Mr. Williams?

18 MR. WILLIAMS: No questions.

19 JUDGE THOMPSON: Mr. Byrne?

20 MR. BYRNE: Yes, your Honor, just a few.

21 CROSS-EXAMINATION BY MR. BYRNE:

22 Q. Good afternoon, Mr. Majoros.

23 A. Good afternoon.

24 Q. I wanted to ask you a little bit about your  
25 resume, if I could. Would it be fair to say that you

1 generally represent consumer advocacy organizations in  
2 Commission proceedings related to depreciation?

3 A. My clients have ranged from consumer  
4 advocates to commissions to companies like AT&T and MCI.

5 Q. Okay. And I guess -- I mean. The reason I  
6 ask the question, I'm looking at in your direct testimony,  
7 Schedule MJM-1, page 8 of 8, that has, I think, a list of  
8 all your clients, or at least a lot of your clients on  
9 there?

10 A. Yes.

11 Q. And if I just go down the page, it looks  
12 like there's a lot of consumer advocates, like the first  
13 one's New Jersey Rate Council Advocate. Is that like a  
14 consumer advocacy group in New Jersey?

15 A. Yes.

16 Q. And second one's West Virginia Consumer  
17 Advocate. I assume that's a consumer advocate in West  
18 Virginia?

19 A. Yes.

20 Q. How about Pennsylvania OCA?

21 A. Same thing.

22 Q. Same thing. How about the next one,  
23 Florida Office of Public Advocate?

24 A. Same thing.

25 Q. Here's the one next one's Tom's River Fire



1 Commissioners?

2 A. Yes.

3 Q. That's not a consumer advocate?

4 A. No, it isn't. It's a user.

5 Q. Okay. It's a user of utility services?

6 A. Yes.

7 Q. And were they in -- was Tom's River Fire

8 Commissioners advocating a reduction in depreciation rates

9 for the utility?

10 A. I did a revenue require -- an overall

11 revenue requirement case for them.

12 Q. And I assume they were recommending a lower

13 revenue requirement than the utility was?

14 A. Yes, I think they were.

15 Q. Okay. Next one, Iowa Office of Consumer

16 Advocate, consumer advocate?

17 A. Yes.

18 Q. And the next one and the next one. Looks

19 like about -- well, on No. 9 you get to the Idaho Public

20 Service Commission, but it looks like 7 of the first 8 are

21 consumer advocate groups?

22 A. Yes, and then the 10th one is the Western

23 Burglar and Fire Alarm Association. The next one is the

24 U.S. Department of Defense. The next one is the New

25 Mexico State Corporation Commission. I mean, there's a

1 pretty big spread of clients.

2 Q. Okay. Are a lot of them -- when you start  
3 getting into companies like the fire alarm one, is that  
4 kind of the same deal as the Tom's River Fire  
5 Commissioner, like they're -- you represent them as you a  
6 user of the utility service?

7 A. That's correct.

8 Q. Okay. And I guess again maybe -- correct  
9 me if I'm wrong, but I would think generally when  
10 you're -- to the extent that you're representing clients  
11 in testifying on utilities depreciation rates, I would  
12 assume you're generally recommending reductions in the  
13 depreciation rates?

14 A. Yes.

15 Q. And I mean, if you got a list of cases, a  
16 long list of cases as part of MGM-1, since you've been at  
17 Snavely King, can you think of any cases where you've  
18 recommended increases in depreciation rates for utilities?

19 A. I think I'm recommending an increase in  
20 depreciation expense in this case.

21 Q. Okay. Other than that?

22 A. I'm sure I have recommended increases in  
23 several instances.

24 Q. Okay.

25 A. Relative to the current rates. I mean,

1 it's rare that I ever wind up recommending the same thing  
2 that the company asks for.

3 Q. Okay. Got you.

4 MR. BYRNE: Your Honor, I'd like to mark an  
5 exhibit, if I could.

6 JUDGE THOMPSON: I think we can do that.  
7 This will be Exhibit 137.

8 (EXHIBIT NO. 137 WAS MARKED FOR  
9 IDENTIFICATION BY THE REPORTER.)  
10 BY MR. BYRNE:

11 Q. Have you had a chance to at least glance  
12 over that, Mr. Majoros, and can you tell me what it is, if  
13 you know?

14 A. This is a decision in an Indiana case in  
15 which I advocated something similar to what I'm proposing  
16 here, and I lost the case. The Commission decided against  
17 me.

18 Q. And it looks like, is it May 18th, 2004;  
19 would that be the date of the decision?

20 A. Yes, that's correct.

21 Q. And it's not -- the exhibit's not the whole  
22 decision, but it's the depreciation part of it?

23 A. The point is I lost.

24 Q. Okay. And of it the same -- yeah.

25 A. Right.

1           Q.       Same position that you have in this case.  
2    Okay.  And I guess --  
3           A.       It wasn't just me that lost, by the way.  
4    The ratepayers of Indiana.  
5           Q.       Okay.  
6                    JUDGE THOMPSON:  Let's try to stick to the  
7    yes or no and see if we can move this along so we finish  
8    while I'm alive.  
9    BY MR. BYRNE:  
10          Q.       And I noticed if you turn to page -- it's  
11   page 10 of 11 on that sheet, the second to last paragraph,  
12   if you could -- it looks like Missouri is cited as one of  
13   the few cases or one of the few jurisdictions -- well, can  
14   you just read that paragraph that begins "based on our  
15   review"?  
16          A.       I'm reading from depreciation excerpts from  
17   PSI Energy case, something called schedule WLB-1, quote,  
18   based on our review of the decision cited by Mr. Majoros  
19   and Mr. Selecki, we note that the only one state -- that  
20   only one state commission, the Pennsylvania Public Service  
21   Commission, following the directive in, and it looks like  
22   a footnote 200, a decision by the Pennsylvania Supreme  
23   Court has implemented the historical average approach.  
24                    While Missouri and Kentucky Public Service  
25   Commissions have utilized the historical approach to set

1 net salvage approach to net salvage values in some cases  
2 or on a trial basis, subsequent decisions have adopted the  
3 approach advocated by Mr. Stanos, end quote.

4 Q. Could you just read the next sentence, too?  
5 I'm sorry.

6 A. Quote, we believe that there is a sound  
7 basis for the traditional approach on this issue, that is  
8 utilized by a majority of the states, end quote.

9 Q. Okay. Have there been any other -- can you  
10 think of any other jurisdictions where you've presented  
11 this argument besides Indiana where you've lost the  
12 argument?

13 A. Yes.

14 Q. What jurisdictions might those be?

15 A. Originally in Kentucky was an small  
16 utilities. The Commission seemed to approve it. In the  
17 most recent case with KU and Louisville Gas and Electric,  
18 they rejected this approach. In three or four -- three  
19 New Jersey cases, the Commission accepted the approach. I  
20 mean, I'm sure you know.

21 Q. I really don't. I honestly don't know.  
22 For example, I think -- I think but I'm not sure, was  
23 Kansas a case that you testified in where it was rejected?

24 A. There were a couple of Kansas cases, that  
25 one case the Commission rejected it -- the approach. On

1 the other hand, the same commission that came back were  
2 contemplating a generic proceeding about that issue. So I  
3 don't think that that's a good one.

4 Q. I mean, I guess I really don't know. Can  
5 you tell me if you know of any?

6 A. This is the major one.

7 Q. Okay.

8 A. This one and that last Kentucky one.  
9 They're big.

10 Q. Okay. My last question is, why didn't you  
11 file surrebuttal testimony?

12 A. I wrote surrebuttal testimony and we  
13 decided not to file. I'll tell you what I was going to  
14 say.

15 MR. BYRNE: No, that's okay.

16 Thank you very much. That's all I have.

17 JUDGE THOMPSON: Mr. McCartney?

18 CROSS-EXAMINATION BY MR. MCCARTNEY:

19 Q. Good afternoon, Mr. Majoros. I have just a  
20 few questions, and I'd like to mark an exhibit, please.

21 MR. BYRNE: Your Honor, I forgot to offer  
22 Exhibit 137.

23 JUDGE THOMPSON: I was just going to point  
24 that out. Any objections to the receipt of 137?

25 MS. O'NEILL: Your Honor, I haven't had a

1 chance to actually read through all 11 pages of 137. It's  
2 pretty small type. I am glad that Mr. Byrne is no longer  
3 concerned about reading out of documents that haven't been  
4 entered into evidence, but I would like to withhold or  
5 have the opportunity to object to this on a later basis,  
6 if it appears that it's necessary after I've had a chance  
7 to actually look at the entire exhibit.

8 JUDGE THOMPSON: You may. This will be  
9 138, Mr. McCartney. How should we describe it?

10 MR. McCARTNEY: This is comments of  
11 National Association of State Utility Consumer Advocates  
12 filed in RM-02.

13 JUDGE THOMPSON: National Association of  
14 what?

15 MR. McCARTNEY: NASUCA might be the simpler  
16 way to do it. NASUCA comments in RM-02-7.

17 JUDGE THOMPSON: Very good.

18 (EXHIBIT NO. 138 WAS MARKED FOR  
19 IDENTIFICATION BY THE REPORTER.)

20 BY MR. McCARTNEY:

21 Q. I will apologize, I think the staple might  
22 be on the wrong side of these copies.

23 A. I'd like to apologize, too, when you see my  
24 glasses on my head, it's because I don't have bifocals  
25 yet.

1           Q.       Have you had a moment to take a look at  
2   this?

3           A.       Yes.

4           Q.       Do you believe this is a true and correct  
5   copy of the NASUCA comments that were filed in the -- in  
6   the docket that led to FERC Order 631?

7           A.       I have no reason to believe that this is  
8   not -- this is not a true copy of the comments NASUCA  
9   wrote. If you're saying that this alone led to FERC  
10   Order 631 --

11          Q.       I'm sorry. I'll withdraw that part of it.  
12   But you did participate through your group Snavelly King  
13   Majoros?

14          A.       My partner and I wrote these.

15          Q.       Okay. Great. Would you please flip over  
16   to the back and take a look at.

17          A.       Yes.

18          Q.       And beginning just with summary of status,  
19   would you read how that attachment is entitled?

20          A.       Summary of status of electric generating  
21   units 50 megawatt or better retired during 1982 through  
22   2001.

23          Q.       Thank you. Would you agree that this is a  
24   summary of units that have been put back in service or  
25   retired in place, partially dismantled, green fielded and



1     whatnot?

2             A.       Yes.

3             MR. MCCARTNEY:   Thank you.   That's all I

4     have.   I'd like to offer this into evidence.

5             JUDGE THOMPSON:   Any objections?

6             MS. O'NEILL:   Your Honor, subject to once I

7     actually get a chance to read this, if something comes up,

8     I don't have an objection.

9             JUDGE THOMPSON:   Okay.   Very well.   Thank

10    you.   Mr. England?

11            MR. ENGLAND:   Thank you, your Honor.

12    CROSS-EXAMINATION BY MR. ENGLAND:

13            Q.       Good afternoon, Mr. Majoros.

14            A.       Good afternoon.

15            Q.       I've been trying to strike some of these

16    questions, as either they've been asked or as the time

17    becomes short.   Pardon me if I seem to be jumping around.

18    I need to follow up on a question you had or an answer

19    with Mr. Byrne.   Hold on a second.   I believe you

20    indicated that one of or a couple of your clients in the

21    context of depreciation testimony or studies were AT&T and

22    MCI.   Do you recall that?

23            A.       Yes.

24            Q.       What type of proceeding would that have

25    been in, pricing ever unbundled network elements?

1           A.       Yes, that is correct.

2           Q.       And would the focus then for -- excuse me.

3   My tongue is getting ahead of my brain or vice versa.

4   Would the purpose of that proceeding be -- or the purpose

5   of AT&T and MCI in that proceeding be generally to seek

6   unbundled network elements from regional Bell operating

7   companies, RBOCs, at a price lower than what the RBOCs are

8   going to want to sell them to them at?

9           A.       Generally, I think that's true.

10          Q.       Okay. Thank you, sir. So they'd be

11   interested probably in lower depreciation rates, as

12   opposed to higher depreciation rates for the RBOC?

13          A.       They were interested in longer lives, to be

14   accurate.

15          Q.       Which everything else being equal would

16   result in lower depreciation expense?

17          A.       Well, yes.

18          Q.       Thank you. In your performance of your

19   study in this case, did you perform any onsite inspections

20   of Empire's facilities?

21          A.       No.

22          Q.       Did you have the opportunity to engage in

23   any discussions with Empire management regarding

24   retirement plans or anything of that nature?

25          A.       I submitted Data Requests in that regard

1 and received a response. My Exhibit No. MJM-5 is a Data  
2 Request No. 812 in which I asked Empire District Electric  
3 Company that for all accounts and locations for which Mr.  
4 Roff is proposing the lifespan methods, provide the  
5 following information to support the final retirement  
6 dates. Please respond to each item: Economic studies,  
7 retirement plans, forecasts, studies of technological  
8 obsolescence, studies of adequacy of capacity, studies of  
9 competitive pressure, relationship of the type of  
10 construction to the remaining lifespan, relationship of  
11 attained age to the remaining lifespan, relationship of  
12 observed features and conditions at the time of field  
13 visits to the remaining lifespan, and relationship of  
14 specific plans of management to the remaining lifespan.

15 So I asked about that.

16 Q. I understand that. But you didn't have the  
17 opportunity of a give-and-take face-to-face-type meeting  
18 with Empire's management as Mr. Roff did, correct?

19 A. I did not have a give and take, but I also  
20 relied on what Mr. Roff reported in his direct testimony  
21 and his study about these lifespans, and which -- in which  
22 he relayed what the operating and management personnel  
23 told him about those lifespans. I relied on that. In  
24 fact I think I point it out in my testimony that there  
25 are --

1           Q.       That's not --

2           A.       Yeah.   Basically there are no commitments

3   to retire those plants on those dates, there are no

4   promises, they're merely used to the calculate lifespan

5   depreciation.

6           Q.       Thank you, sir.   I think you've answered my

7   question.   With respect to remaining life, would you agree

8   that it is a valid depreciation technique?

9           A.       It is a valid technique, yes.

10          Q.       And I believe you've indicated in response

11   to one of our Data Requests to Office of the Public

12   Counsel that you yourself have performed depreciation

13   studies using the remaining life technique?

14          A.       Yes.

15          Q.       I think you indicate most of studies that

16   you performed and attached or summarized in your testimony

17   for 2004 were remaining life studies; is that correct?

18          A.       I may have said that, but that's --

19          Q.       And I think you went on to say that

20   typically where a utility has been awarded or authorized

21   remaining life rates, your tendency is to continue to use

22   that technique when you develop your own depreciation

23   rates; is that right?

24          A.       Yes.

25          Q.       So that leads me to my next question.

1     There are obviously other state commissions that have  
2     adopted remaining life as an appropriate technique for  
3     developing depreciation rates for utility plant.

4             A.       That's true, and you took my answer out of  
5     context, though. Do you recall that? My response to you  
6     was, yes, I recommended remaining life depreciation rates  
7     when it's already been approved or it's a continuation of  
8     the existing technique, but I've always felt that whole  
9     life depreciation as I explain in my direct testimony is a  
10    preferred method.

11            Q.       Fair enough.

12            A.       And that is because a remaining life rate  
13    where there is a depreciation reserve imbalance is exactly  
14    the wrong depreciation rate for the next addition to  
15    plant.

16            Q.       How many jurisdictions in which you've  
17    appeared would you estimate use the remaining life  
18    technique?

19            A.       Many.

20            Q.       Thank you, sir. At page 21 -- and I didn't  
21    write in my note whether it's your director rebuttal, so  
22    bear with me. It looks like it's your rebuttal. Yes, it  
23    is.

24            A.       Yes.

25            Q.       You quote from the NERUC manual there in I

1 think a couple of places, and based upon those quotes, we  
2 sent you another Data Request, 013, if you've got that  
3 with you. Do you have that in front you?

4 A. Let me just -- I have a big binder here  
5 with a lot of stuff. Which one was it?

6 Q. I think it was 013. We asked you a  
7 question about these quotes.

8 A. Okay.

9 Q. And essentially we asked you to provide a  
10 listing of state commissions that have, including the case  
11 and the docket number, et cetera.

12 A. Yes.

13 Q. And I believe -- and this is sort of a  
14 follow-up on some questions that you got from Mr. Byrne.  
15 You indicated that, at least to your knowledge, New Jersey  
16 and Pennsylvania were the only two jurisdictions that have  
17 abandoned this inclusion of net salvage?

18 A. Yes.

19 Q. Okay.

20 A. Of course, Missouri for, you know, in the  
21 last couple of cases.

22 Q. I understand, that's part of the group.  
23 Bouncing back to your direct testimony,  
24 pages 40 and 41, I believe, you discuss how Mr. Roff  
25 calculates net salvage ratios or percents by comparing the

1 cost of removal to the original cost of the retired asset.

2 A. Yes.

3 Q. And my first question is, in reviewing

4 Mr. Roff's work papers, you did not find any errors in the

5 respective inputs or the amounts that he put into his

6 study that he received from the company, did you?

7 A. No, not that I recall.

8 Q. As far as you know, the amounts he used for

9 cost of removal and retirements were accurate numbers that

10 he obtained from the company?

11 A. Yeah. I'm not challenging the numbers.

12 Q. And you're not challenging his calculation,

13 are you?

14 A. I'm challenging the approach.

15 Q. Okay. So the answer then is no, you're not

16 challenging the calculation, the actual derivation of the

17 percents?

18 A. I'm not challenging the calculation. I'm

19 chall-- well, I don't know. I don't want to misinterpret

20 that. I'm opposed to his approach and his calculation.

21 I'm not challenging the arithmetic.

22 Q. Okay. Fair enough. Is it nevertheless

23 fair to characterize this type of net salvage study that

24 Mr. Roff has performed as a traditional net salvage study?

25 A. That's what you called it earlier today.

1 Q. Is it -- would you agree with me?

2 A. This is an approach that has been

3 traditionally used, and it's in my opinion wrong.

4 Q. And you, in fact, in other testimonies and

5 prior testimonies have performed this type of study, have

6 you not?

7 A. Well, yes, I have.

8 Q. Thank you.

9 MR. ENGLAND: Oh, my goodness. I've run

10 out of questions. Thank you, sir.

11 JUDGE THOMPSON: Questions from the Bench?

12 COMMISSIONER APPLING: No questions.

13 JUDGE THOMPSON: Redirect?

14 REDIRECT EXAMINATION BY MS. O'NEILL:

15 Q. Mr. Majoros, before we get started with

16 redirect, we had some page issues when we were looking at

17 corrections. If you could look at the filed version of

18 your direct testimony, pages 64 and 65.

19 A. Okay.

20 Q. Are those the pages where the schedule

21 numbers were --

22 A. Yes.

23 Q. -- with the schedule numbers you're wanting

24 to correct?

25 A. Yes.



1           Q.       Just so the record is clear, could you tell  
2   us what those corrections would be?

3           A.       On page 64, line 17, MJM-5 should be MJM-6.  
4   And on page 65, line 1, MJM-6 should be MJM-7.

5           Q.       Thank you.

6                    Now, when Mr. Byrne was talking to you, he  
7   was asking you about your client list for a while and  
8   asking you about the types of recommendations you may have  
9   made regarding depreciation rates. When you testify in  
10   proceedings regarding depreciation rates, do you attempt  
11   to provide accurate information for the decisionmaker?

12          A.       Yes.

13          Q.       And is there -- and in this case, have you  
14   attempted to provide accurate information for this  
15   Commission?

16          A.       I've -- yes. I've attempted to provide  
17   accurate information and as full a discussion about the  
18   major issues involved in this case as I can.

19          Q.       And he also was asking you some questions  
20   about times where you weren't successful in putting forth  
21   your proposals, but have there been situations where  
22   you've made proposals where your recommendations have been  
23   adopted?

24          A.       My recommendations have been adopted many  
25   times. My recommendations about this net salvage issue

1 have been adopted a few times.

2 Q. And has your -- has your position regarding  
3 the net salvage issue evolved over time?

4 A. My position regarding net salvage began in  
5 1983. I objected to the same things that this Staff  
6 objects to. It's paying money to a public utility that  
7 they're not going to spend for future cost of removal.  
8 I've one way or another attempted to maintain that  
9 position for the last 20 years. It was not -- I'll tell  
10 you a story, a Missouri story about that.

11 MR. BYRNE: Your Honor, I'm going to  
12 object. I don't think this question was even related to  
13 any of the questions that anybody asked him.

14 JUDGE THOMPSON: I don't think it was  
15 either.

16 MS. O'NEILL: Actually, I think we may be  
17 able to tie that in to questions that have been asked, if  
18 I'm allowed to move on.

19 BY MS. O'NEILL:

20 Q. Mr. England asked you questions regarding  
21 the fact that you had recommended different types of  
22 depreciation methodology in some jurisdictions, correct?

23 A. Yes.

24 Q. And one of the things that you told him  
25 was, although you had on occasion recommended continuing

1 with a non-whole-life method of depreciation, you did not  
2 believe that that was the best way of setting depreciation  
3 rates?

4 A. I think that -- I think the superior way is  
5 the whole life method, that's correct.

6 Q. And could you clarify that? Because it  
7 appeared that you had some more to say that did not --  
8 could not be encompassed with the brief answers that  
9 you're allowed on cross-examination.

10 A. In the primary --

11 MR. ENGLAND: Excuse me. My question was  
12 limited -- objection, I guess, first. My question was  
13 limited to jurisdictions that had approved remaining life,  
14 and the witness gratuitously said that he did concur with  
15 me that several jurisdictions had approved it, many I  
16 think he said, but he still preferred the whole life.

17 Now, bootstrapping that into an opportunity  
18 on redirect to talk about the virtues of whole life, I  
19 believe goes beyond the scope of cross-examination.

20 MS. O'NEILL: I can rephrase my question.

21 JUDGE THOMPSON: No, I don't think it does.  
22 I'm going to overrule the objection. I think that it's  
23 perfectly fair for him to give us a brief discourse on the  
24 virtues of whole life. So you may answer.

25 THE WITNESS: As briefly as possible, and I

1 explained this in my -- in the fundamentals portion of my  
2 direct testimony. The reason that remaining life  
3 depreciation is used is to correct for reserve imbalances  
4 that have -- either excesses or deficiencies that have  
5 occurred in the past. Those relate to plant that exists  
6 today. That's a fine rate for plant that exists today,  
7 but it is exactly the wrong rate for the next addition to  
8 plant, and that's what I said to Mr. England earlier. So  
9 a whole life rate is a superior rate.

10 BY MS. O'NEILL:

11 Q. You also in your discussions with  
12 Mr. England talked about your representation of some  
13 telecommunications companies. Do you recall that?

14 A. Yes, I do.

15 Q. And you were having some discussion about  
16 service lives and recommendations. In your opinion, is  
17 the way service lives are calculated important to the  
18 issue of depreciation?

19 A. Yes, it is.

20 Q. And regarding -- and that's one factor in  
21 several factors, but that was the main issue in some of  
22 those cases; is that right?

23 A. In the telephone cases?

24 Q. Yeah.

25 A. Well, lives and net salvage values were

1 issues in those cases as well.

2 Q. And net salvage values in those cases,  
3 through your work with those telecommunications cases, did  
4 that help you gain any clarity regarding those net salvage  
5 issues that came up?

6 A. Well, yes. Yes, it did.

7 Q. What kind of clarity did that give you?

8 A. Well, I contrasted, Mr. England asked me  
9 what kind of cases they were. He said, are they unbundled  
10 network element cases? And he said, aren't depreciation  
11 rates important there, or something like that, and I  
12 clarified that it was lives as opposed to rates.

13 And the reason for that is because those  
14 calculations are slightly different than the way that the  
15 telephone companies calculated rates in the past. Earlier  
16 today Mr. England also asked Mr. Gipson -- was that the  
17 right --

18 Q. Mr. Gilbert?

19 A. Gilbert I mean -- if the -- if this  
20 Commission hadn't already adopted remaining life for the  
21 telephone industry, and Mr. Gilbert said yes. And again,  
22 I think that I want to point out that another thing that  
23 the telephone industry did was include cost of removal  
24 ratios in their depreciation rates, just as Mr. Roff is  
25 proposing and Empire is proposing right here.

1                   Now I'm going to tell my Missouri story. I  
2   used to go to those depreciation meetings, and one of my  
3   heroes was a guy from this Commission by name of John  
4   Richey. Mr. England smiles, so he must know him. John  
5   Richey and I -- these are in Southwestern Bell meetings  
6   that had hundreds of people, and we would negotiate  
7   depreciation parameters. And John Richey was -- I didn't  
8   know him well, but he was one of the two people, and I was  
9   the other, who was pounding on the table the whole time,  
10  those negative cost of removal ratios are too high, the  
11  lives are too short. So I know John Richey, and as I  
12  said, he was sort of one of my heroes.

13                  Now, here's what happened: This Commission  
14  can approve -- after the FCC approved, this Commission  
15  approved the remaining life method and those cost of  
16  removal ratios, and then what happened was that the  
17  telephone industry got deregulated, and they took  
18  \$11.5 billion dollars, and one of those companies was  
19  Southwestern Bell right in this state, that was 6 million  
20  of the 11.5, they took into income.

21                  All of that money they say they're going to  
22  spend on future cost of removal, not going to spend it.  
23  They took that money into income. Earlier you talked  
24  about intergenerational inequities. I consider that to be  
25  a huge inequity.

1                   So I urge you to think carefully before you  
2   allow this company to start collecting what they admit are  
3   liabilities to ratepayers for future money that they're  
4   not going to spend.

5           Q.       And when you say they're not going to  
6   spend, you mean they're not going to spend it on cost of  
7   removal?

8           A.       They're not going to spend it on cost of  
9   removal.

10          Q.       And this is a position that you've had, it  
11   sounds like for quite a while, you've been pretty emphatic  
12   about it, but maybe you've tried different approaches --

13                 MR. BYRNE: I'm going to object to the  
14   question. It doesn't apply to any cross-examination, like  
15   so much of this testimony.

16                 JUDGE THOMPSON: Ms. O'Neill?

17                 MS. O'NEILL: I don't think I had the  
18   question done, but I was just trying to clarify his answer  
19   briefly.

20                 JUDGE THOMPSON: Could you read back the  
21   question, Kellene?

22                 THE REPORTER: "Question: And this is a  
23   position that you've had, it sounds like for quite a  
24   while, you've been pretty emphatic about it, but maybe  
25   you've tried different approaches --" and then there was

1 the objection.

2 JUDGE THOMPSON: I'll let you finish your  
3 question, and then you can object if when she finishes the  
4 question you don't think it ties to any of the testimony.

5 MS. O'NEILL: -- before coming to the  
6 proposal that you made here in this case?

7 MR. BYRNE: I object. It doesn't tie to  
8 any of the cross-examination.

9 JUDGE THOMPSON: Which cross-examination  
10 does that tie to?

11 MS. O'NEILL: It ties to the discussion he  
12 had with Mr. England about his disagreement regarding  
13 Mr. Roff's methodology.

14 JUDGE THOMPSON: I'll allow the question.  
15 You may answer.

16 THE WITNESS: Now I can't remember the  
17 question.

18 BY MS. O'NEILL:

19 Q. I'm not sure I can remember.

20 A. I've had this position for quite a while.  
21 It has evolved over time. It became clarified in my mind,  
22 crystalized with the issuance of SFAS 143 and FERC  
23 Order 631. When I say they're not going to spend the  
24 money, it is by definition. If they were going to spend  
25 the money, these things would be treated as AROs. The



1 fact that they're not treated as AROs means that by  
2 definition they're not promising to spend the money, they  
3 don't have any obligation to spend the money, there's no  
4 conditional obligation to spend the money, there's no  
5 constructive obligation to spend the money.

6                   You heard yesterday from Mr. Platte and  
7 Roff, no promise. In fact, there are no promises to even  
8 retire those plants. That's in Mr. Roff's testimony. So  
9 they're not going to spend the money on cost of removal.

10                   MR. ENGLAND: Your Honor, I move to strike  
11 the answer. One, it's not responsive to the question; and  
12 two, it's clearly not responsive to any of the  
13 cross-examination. The witness has now introduced the  
14 concepts of SFAS 143 and FERC Order 631 that I don't  
15 recall anyone explored with him on cross-examination, and  
16 I don't recall that being part of the question either.

17                   JUDGE THOMPSON: I think that objection is  
18 well taken, Ms. O'Neill.

19                   MS. O'NEILL: I can probably follow that  
20 up. My order of redirect is probably not the most  
21 organized.

22                   MR. ENGLAND: My point is I don't think any  
23 question along that lines before or after the answer is  
24 appropriate if it's supposed to be limited to  
25 cross-examination.

1 JUDGE THOMPSON: Okay. I'm going to grant  
2 the motion to strike with respect to that answer. Now, I  
3 allowed the question over objection. Would you read back  
4 the question, Kellene, and if we have a narrowly tailored  
5 response that directly responds to the question, I will  
6 allow that.

7 THE REPORTER: "Question: And this is a  
8 position that you've had, it sounds like for quite a  
9 while, you've been pretty emphatic about it, but maybe  
10 you've tried different approaches" -- and then when she  
11 finished the question -- "before coming to the proposal  
12 that you made here in this case?"

13 THE WITNESS: And that is correct.

14 BY MS. O'NEILL:

15 Q. When you were answering questions from  
16 Mr. England, he asked you about some questions regarding  
17 Mr. Roff's estimates of future net salvage ratios. Do you  
18 recall that?

19 A. Yes.

20 Q. Why does Mr. Roff's approach result in  
21 excessive depreciation rates?

22 MR. ENGLAND: Objection, your Honor. This  
23 is clearly an opportunity to restate his testimony. If  
24 it's not redundant, it's certainly beyond the scope of  
25 cross-examination.

1 JUDGE THOMPSON: Sustained.

2 BY MS. O'NEILL:

3 Q. Do you have problems with the way Mr. Roff  
4 calculated an estimated future net salvage?

5 MR. ENGLAND: Same objection, your Honor.

6 JUDGE THOMPSON: Sustained.

7 BY MS. O'NEILL:

8 Q. Mr. England asked you whether or not you  
9 had an opportunity for give and take in face-to-face  
10 meetings with members of the -- with people from Empire.  
11 Do you recall that?

12 A. Yes.

13 Q. And while you didn't have face-to-face  
14 meetings, you did -- did you have some interaction with  
15 them through the discovery process?

16 A. Yes, I did.

17 Q. What kind of interaction did you have with  
18 them?

19 A. As I said, I have that response to Data  
20 Request No. 812.

21 Q. And did you use the Data Request process to  
22 ask questions or get further information that you may need  
23 to properly evaluate Mr. Roff's testimony?

24 A. Yes, I did.

25 Q. And although that wasn't done face-to-face,

1 was there interaction there?

2 A. Yes.

3 Q. And as a result of that interaction, were

4 you able to obtain information that helped you in

5 preparing your testimony?

6 A. Yes.

7 Q. And were there more Data Requests than the

8 ones that helped you prepare your testimony than the ones

9 that you've described to Mr. England?

10 A. Yes. All my Data Requests and responses

11 helped me.

12 Q. As a result of the give and take of the

13 Data Request and response process, were you able to -- as

14 a result of your give and take from the Data Request

15 process, do you believe that you were able to come to an

16 understanding of Empire's position regarding depreciation?

17 A. Yes.

18 Q. And as a result of that, were you able to

19 receive information that you believe was relevant that

20 they should have considered in deciding what they should

21 do regarding depreciation rates?

22 A. Yes, I did.

23 Q. And was that information that you also

24 relied on in formulating your own opinion?

25 A. Yes.

1           Q.       Was that also information that you had --  
2   you presented to the Commission rather -- initially rather  
3   than Empire?

4           A.       That is correct.

5           Q.       What information was that?

6                   MR. ENGLAND:  Objection, your Honor.

7   Again, clearly beyond the scope of cross-examination.  I  
8   simply asked the witness if he had had any face-to-face  
9   meetings with the company.  He volunteered that he --  
10  excuse me.  He responded that he did not, volunteered that  
11  he had Data Request responses, and now we bootstrap that  
12  into a discussion that goes beyond the cross-examination.

13                  JUDGE THOMPSON:  What's the point of this  
14  redirect?

15                  MS. O'NEILL:  Mr. England asked a question  
16  suggesting that Mr. Majoros may have had inferior  
17  information on which to base his study because he didn't  
18  have this face-to-face colloquy with members of the Empire  
19  team.  However, he's had -- he has had interaction.

20                  I'm trying to establish that he had enough  
21  interaction to show that there was information that he  
22  felt was important to bring into the record and that he  
23  did have sufficient information to provide this Commission  
24  with good information, contrary to the implication of the  
25  question.

1                   MR. ENGLAND: And if he did have sufficient  
2 information, I'm sure it's in his prepared rebuttal  
3 testimony. To ask him to elaborate on that, which  
4 essentially was the question, in my opinion goes beyond  
5 the scope of cross-examination.

6                   JUDGE THOMPSON: I think you've shown that  
7 he had adequate information. Please move on.

8 BY MS. O'NEILL:

9               Q.       In response to questions from Mr. England,  
10 you said you didn't have a problem with Mr. Roff's  
11 arithmetic but you had a problem with his approach. What  
12 problem was that?

13              A.       It results in -- it result in charges to  
14 ratepayers for costs that don't exist. As I explained in  
15 my testimony, the very table that he referred me to in his  
16 question is the method and procedure that Mr. Roff used to  
17 generate these 200-- one case of 250 percent negative  
18 salvage ratio, but there's no obli-- they're not going to  
19 spend that money.

20                       So the problem is that the procedure is  
21 accurate, precise and results in felon-- or erroneous  
22 charges to ratepayers, and that's why I disagree with it  
23 and always have.

24              Q.       Okay. Why are those erroneous charges to  
25 ratepayers?

1           A.       Because the company is not going to spend  
2   that money on cost of removal.

3           Q.       That's because they don't have any legal  
4   obligation to do so?

5                   MR. ENGLAND:  Objection.

6                   MR. BYRNE:  Object to the question.

7                   MR. ENGLAND:  Leading.

8                   MR. BYRNE:  Outside the scope of  
9   cross-examination.

10                  JUDGE THOMPSON:  Sustained.

11  BY MS. O'NEILL:

12           Q.       Why don't they have any obligation to do  
13   so?

14           A.       How do I know they're not going to spend  
15   the money?

16           Q.       Uh-huh.

17           A.       I know they're not going to spend the money  
18   because history tells me they're not going to spend the  
19   money.  Since 1980 I think that their average annual  
20   expenditure on cost of removal, and this is for all  
21   functions of plant, production, transmission, distribution  
22   and general, has only been about a little less than  
23   2 million.  Their forecast for the next five years is  
24   2 million per year.

25                   And they by definition, I'll say it again,

1 do not have an obligation. They will not promise you  
2 they're going to spend that money. The fact that it shows  
3 up as a regulatory liability -- which will increase, by  
4 the way, if you approve it. There'll be a higher  
5 regulatory liability that will be imposed by the  
6 regulators because they're not -- a liability to  
7 ratepayers because they're not going to spend the money on  
8 cost of removal.

9 MS. O'NEILL: No further questions.

10 JUDGE THOMPSON: Thank you, Ms. O'Neill.  
11 You may step down, Mr. Majoros. You are excused.

12 MR. WILLIAMS: Judge, I've been told by  
13 Staff that it's prepared to respond to some of those  
14 questions that the Commission had regarding fuel and  
15 purchased power when we take a break. It may take a few  
16 minutes to get people down here.

17 JUDGE THOMPSON: Why don't we talk for a  
18 moment about where we go from here. We have Mr. Macias to  
19 finish, and then we have Ms. Teel, is that correct, and  
20 that would complete all of the scheduled witnesses. And  
21 then we have the information that I've been requested to  
22 request concerning Staff position on fuel and purchased  
23 power, revenue requirement. You indicated Staff's  
24 prepared to put that on now. Is that in the form of  
25 testimony?



1                   MR. WILLIAMS: I don't know if it's in the  
2 form of testimony. Mr. Dottheim indicated that --  
3                   MR. ENGLAND: Are we off the record?  
4                   JUDGE THOMPSON: We can go off the record.  
5 Why don't we go off the record.  
6                   (AN OFF-THE-RECORD DISCUSSION WAS HELD.)  
7                   JUDGE THOMPSON: First of all, let's take  
8 up the issue of the complete copy of FAS 71. This will be  
9 marked as Exhibit 139.  
10                  (EXHIBIT NO. 139 WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.  
12                  JUDGE THOMPSON: Sponsored by the company.  
13 I assume you want to offer that?  
14                  MR. ENGLAND: Yes, I do.  
15                  JUDGE THOMPSON: Any objection to the  
16 receipt of Exhibit 139?  
17                  MS. O'NEILL: No objection.  
18                  JUDGE THOMPSON: Hearing none, the same is  
19 received and made a part of the record of this proceeding.  
20                  (EXHIBIT NO. 139 WAS RECEIVED INTO  
21 EVIDENCE.)  
22                  JUDGE THOMPSON: Second, we will take up  
23 Mr. Dottheim.  
24                  MR. DOTTHEIM: Judge, I was advised earlier  
25 this afternoon that you had raised the matter of

1     requesting that the Staff place in the record a number  
2     related to fuel, if I understand correctly, and I'd ask  
3     you to repeat what you asked. But if I understood  
4     correctly, you were looking for --

5                     JUDGE THOMPSON: Let me repeat what I  
6     asked, and then you can tell me all the ways in which it's  
7     improper.

8                     Chairman Gaw, speaking on behalf of himself  
9     and at least one other Commissioner, indicated that he  
10    felt the record needed to be supplemented with a  
11    recommendation from the Staff as to revenue requirement  
12    for fuel and purchased power in the event that the  
13    Commission does not order an IEC.

14                    And he further queried whether the  
15    Commission need only suggest or adopt a gas price estimate  
16    or forecast. In other words, just how extensive a set of  
17    numbers do the parties require from the Commission with  
18    respect to the fuel and purchased power issue in the  
19    Report and Order.

20                    MR. DOTTHEIM: On the matter of a Staff  
21    recommendation on fuel and purchased power if the  
22    Commission were not to adopt an IEC, the Staff doesn't  
23    have a number. I have Steve Rackers and James Watkins who  
24    could take the stand. John Cassidy, who was one of the  
25    Staff witnesses on fuel, is not here.

1                   The Staff did not adopt a position that  
2 covered fuel minus or devoid of an IEC, so there is no  
3 number that the Staff could readily provide. Judge, you  
4 had also mentioned that you thought I might address the  
5 matter of the appropriateness of going in --

6                   JUDGE THOMPSON: You certainly may address  
7 that.

8                   MR. DOTTHEIM: And when I was advised  
9 earlier this afternoon -- and Mr. Frey, who is the Staff  
10 counsel on the fuel issue, was out of the office, so that  
11 is the reason for my involvement at the moment.

12                   When I was advised of your request from the  
13 Bench, I happened to be in the Office of Public Counsel in  
14 the presence of Mr. Coffman and Mr. Stuart Conrad. And  
15 Mr. Conrad was on his way out of town, had just evidently  
16 dropped by to address some other matters, and when he  
17 heard what was requested and what we surmised was  
18 requested, had expressed great concern.

19                   And I really don't want to speak for him,  
20 but I think I should convey something of what occurred.  
21 He expressed great concern about going into this item  
22 after the issue had been heard by the Commission. Also,  
23 too, he would not be present for this matter, whether  
24 addressed by counsel or if a member of the Staff involved  
25 in the case took the stand.

1                   I also spoke a short while ago with counsel  
2   for the company, one of the counsel for the company, Jim  
3   Swearengen, and he -- and I hope I don't misstate anything  
4   that he indicated. I'm not intending to speak for him.  
5   But he indicated that the two counsel for the company who  
6   had addressed the fuel issue, Mr. Keevil and Mr. Stewart,  
7   were not present, not available to address this item as  
8   has been requested this afternoon.

9                   So in addition to attempting to answer your  
10   question substantively that the Staff has no number to  
11   provide, I also thought I'd address it from the procedural  
12   perspective as has been raised by at least one counsel in  
13   the case other than the Staff.

14                  JUDGE THOMPSON: I appreciate that,  
15   Mr. Dottheim. Anyone else want to weigh in on this  
16   issue? Mr. Coffman?

17                  MR. COFFMAN: Only to state that I think  
18   Mr. Dottheim has accurately reflected what I understand  
19   Mr. Conrad's concerns to be. I think it is -- if the  
20   entire issue of fuel and purchased power is to be reopened  
21   and we're to take additional testimony, that some manner  
22   of notice to the parties needs to be provided and some due  
23   process notice is in order.

24                  JUDGE THOMPSON: Thank you. Anyone else?

25                  MR. DOTTHEIM: Judge, you had mentioned, I

1 think, a second question as far as gas price, what items  
2 needed to be decided possibly by the Commission. I'm not  
3 sure that that was conveyed to us. I'm not sure I  
4 possibly am understanding you're suggesting. I take it  
5 it's maybe a separate -- it's a separate question unto  
6 itself.

7 JUDGE THOMPSON: This was Chairman Gaw's  
8 query to me and his direction that I ask this question.  
9 And, of course, the problem with someone else's questions  
10 is that you may not -- I may not understand it myself. So  
11 whatever it's worth, there it is.

12 MR. DOTTHEIM: Could we have a moment,  
13 please?

14 JUDGE THOMPSON: Perhaps that's something  
15 that could be addressed in the Briefs.

16 MR. DOTTHEIM: Very possibly as we  
17 understand it. I don't know if the Commission will issue  
18 an Order setting the briefing schedule or may issue  
19 another Order identifying what items it would like to see  
20 addressed by the parties in the Brief and, as a  
21 consequence, the parties may have some indication with  
22 greater clarity or detail if there is any as to what  
23 the -- what the Commissioners and the Regulatory Law Judge  
24 would like to see addressed.

25 JUDGE THOMPSON: We'll try to provide that

1 guidance.

2 Mr. Coffman?

3 MR. COFFMAN: I think I could attempt to  
4 provide a brief answer to what I understand the question  
5 to be, and that is whether or not the --

6 JUDGE THOMPSON: Come up to the podium,  
7 please, so that our listeners in Europe can enjoy your  
8 answer.

9 MR. COFFMAN: My answer is I think that it  
10 would be acceptable and lawful and appropriate if the  
11 Commission does wish to adopt a projection regarding  
12 natural gas prices and place that input into a fuel model  
13 run. My understanding, there is testimony and evidence in  
14 the record regarding the Empire fuel run as well as  
15 substantial testimony regarding the Staff fuel run and  
16 that there isn't a significant amount of difference with  
17 their fuel runs.

18 JUDGE THOMPSON: And there's also a Public  
19 Counsel fuel run, corrected, conducted by Staff but using  
20 your number?

21 MR. COFFMAN: Yes. Public Counsel is  
22 recommending that the natural gas projected price be input  
23 into the Staff fuel run number, which was done and is in  
24 the record as well. So I think it is appropriate that a  
25 natural gas projection could be placed into that fuel run

1 model. That's my opinion. I believe it has been done in  
2 other cases as well.

3 JUDGE THOMPSON: But more normally what you  
4 would expect from the Commission, what the parties would  
5 expect from the Commission in its Report and Order would  
6 be a revenue requirement figure for this issue; is that  
7 correct? I see Mr. Watkins agreeing at least.

8 MR. COFFMAN: I'm not sure I could tell you  
9 what I expect anymore.

10 JUDGE THOMPSON: Fair enough. Thank you.  
11 Anything else we need to address before we put Mr. Macias  
12 back on the stand?

13 MR. DOTTHEIM: And, Judge, you may not be  
14 able to answer this, but we perceive that what may be  
15 requested is what decisions, components the parties need  
16 from the Commission possibly in the way of a scenario in  
17 order for the parties to run a fuel run and provide the  
18 Commission with a revenue requirement number.

19 If you're looking or if the Bench, if the  
20 Commissioners are looking for what components are  
21 necessary given the present stance of the case in order to  
22 decide the fuel area, I think the parties probably can  
23 provide that information to the Commissioners.

24 JUDGE THOMPSON: That would be helpful.  
25 Why don't the parties cooperatively provide that guidance.

1 Be sure to get Mr. Conrad's input.

2 MR. DOTTHEIM: Yes, most definitely.

3 JUDGE THOMPSON: Thank you. Anything

4 further? Then let's have Mr. Macias back up here.

5 Good afternoon, Mr. Macias.

6 THE WITNESS: Good afternoon.

7 JUDGE THOMPSON: You're still under oath.

8 There's no need to swear you again. There are no further

9 questions from the Bench. I think there were some asked

10 the first time you were up here; isn't that correct?

11 THE WITNESS: I believe that you asked

12 some.

13 JUDGE THOMPSON: Okay. Shame on me.

14 Ms. O'Neill, recross based on questions from the Bench?

15 MS. O'NEILL: No questions.

16 JUDGE THOMPSON: Thank you. Mr. Byrne?

17 MR. BYRNE: I can't remember what the

18 questions from the Bench were; consequently, I have no

19 recross.

20 JUDGE THOMPSON: Thank you. Mr. McCartney?

21 MR. McCARTNEY: No questions.

22 JUDGE THOMPSON: Mr. England?

23 MR. ENGLAND: I actually have a note here

24 from one of the questions that you asked, Judge. I don't

25 think I need to ask any further questions.



1 JUDGE THOMPSON: Very good. Redirect?

2 MR. WILLIAMS: Thank you, Judge.

3 GREGORY MACIAS testified as follows:

4 REDIRECT EXAMINATION BY MR. WILLIAMS:

5 Q. Mr. Macias, do you recall stating that it

6 was Staff policy to treat depreciation the way it's

7 been -- that Staff's treated it in this case? Do you

8 remember the question and answer regarding that?

9 A. I remember fielding questions about Staff's

10 having a policy.

11 Q. Has the Staff gotten guidance from the

12 Commission that has affected what the Staff's policy has

13 been in the treatment of net salvage and depreciation in

14 cases such as this one?

15 A. The only guidance that I can think of

16 having been given by the Commission is the fact that they

17 have accepted similar proposals to what I proposed here in

18 the past, and, in fact, I don't believe I've proposed a

19 change in how we approach depreciation from the last

20 Empire case.

21 Q. Which case was that you're referring to?

22 A. The last contested case, 2001-299,

23 ER-2001-299.

24 Q. Do you remember being asked, I believe by

25 Mr. Byrne and Mr. England, about average service life and

1 net salvage cost of removal being estimates?

2 A. Yes.

3 Q. And what is it that average service life

4 estimates?

5 A. Average -- the average service life is an

6 estimation of the useful life of plant in particular

7 accounts.

8 Q. And what data do you rely on to estimate an

9 average service life?

10 A. The data is mortality data provided by the

11 company.

12 Q. And what is mortality data?

13 A. It's just a database of placements and

14 retirements. It's basically what amounts to dollars.

15 Q. Are those actual placements and

16 retirements?

17 A. Yes. They're placements by year and

18 retirements per vintage.

19 Q. And what is a vintage?

20 A. A vintage is property placed in a year

21 would be, say, 1980 would be 1980 vintage plant. So it's

22 the year of placement is the vintage.

23 Q. And what does cost of removal estimate?

24 A. What does cost of removal estimate? I

25 don't believe I understand quite what you mean by that.

1 The Staff's recommended cost of removal is estimating, you  
2 know, what the company's going to experience here in the  
3 next few years while these rates are in effect.

4 Q. And what is the company's cost of removal  
5 estimate? Is it a present --

6 A. It's purported to be what they expect the  
7 cost of removal to be at some date far into the future, I  
8 suppose.

9 Q. Well, both estimates are of a future  
10 occurrence, correct? Cost of removal is being estimated  
11 as in the future?

12 A. We're not estimation the costs of removal  
13 that has already occurred. We know that. Is that your  
14 question?

15 Q. Well, the point I was trying to get at is  
16 that cost of removal by how the parties have done it is  
17 estimating what a cost of removal will be in the future.

18 A. Okay. Yes.

19 Q. You agree with that?

20 A. I agree with that, yes.

21 Q. Has the accuracy of Mr. Roff's net salvage  
22 formula ever been confirmed by an empirical study, to your  
23 knowledge?

24 A. Not to my knowledge, no.

25 Q. For a particular vintage, has anyone

1 provided you with a reconciliation of amounts that have  
2 been collected using the formula to amounts that have  
3 actually been expended?

4 A. I haven't seen anything like that.

5 MR. WILLIAMS: No further questions.

6 JUDGE THOMPSON: Thank you very much. You  
7 may step down, Mr. Macias. You are excused. Thank you  
8 for your testimony.

9 Leasha Teel.

10 (Witness sworn.)

11 JUDGE THOMPSON: Do you understand that if  
12 you were to give false testimony in this proceeding, you  
13 could be prosecuted for the crime of perjury?

14 THE WITNESS: Yes, I do.

15 JUDGE THOMPSON: Please spell your last  
16 name for the reporter.

17 THE WITNESS: T-e-e-l.

18 JUDGE THOMPSON: Thank you. You may  
19 inquire, Mr. Williams.

20 LEASHA TEEL testified as follows:

21 DIRECT EXAMINATION BY MR. WILLIAMS:

22 Q. Please state your name and business  
23 address.

24 A. My name is Leasha S. Teel, and my business  
25 address is 1845 Borman Court, Suite 101, St. Louis,

1 Missouri 63146.

2 Q. By whom are you employed and in what  
3 capacity?

4 A. I'm employed by the Missouri Public Service  
5 Commission as a regulatory auditor.

6 Q. Did you prepare and cause to be prefiled in  
7 testimony format what's been marked -- labeled direct  
8 testimony of Leasha S. Teel and marked for identification  
9 in these proceedings as Exhibit No. 71?

10 A. Yes.

11 Q. Do you have any changes that you would like  
12 to make to that exhibit?

13 A. I do. I have one. It's on page 13,  
14 Line 10, and I state that salvage values are based upon a  
15 five-year average for the year of 1999 through 2003, and I  
16 need to change that to 1998.

17 JUDGE THOMPSON: This is your direct?

18 THE WITNESS: Direct.

19 JUDGE THOMPSON: Thank you.

20 BY MR. WILLIAMS:

21 Q. Do you have any other changes to your  
22 direct testimony?

23 A. No.

24 Q. Did you also prepare and cause to be filed  
25 rebuttal testimony of Leasha S. Teel that's been marked

1 for identification as Exhibit No. 72 and surrebuttal  
2 testimony of Leasha S. Teel that's been marked for  
3 identification as Exhibit No. 73?

4 A. Yes.

5 Q. Do you have any changes to either  
6 Exhibit No. 72 or Exhibit No. 73?

7 A. No.

8 Q. If I were to ask you the questions that are  
9 contained in Exhibit Nos. 71, 72 and 73 as you've  
10 corrected them today, would your answers be the same as  
11 set forth in those exhibits?

12 A. Yes, they would.

13 MR. WILLIAMS: Staff offers Exhibits 71, 72  
14 and 73.

15 JUDGE THOMPSON: Do I hear any objections  
16 to the receipt of Exhibit 71, 72 or 73, HC and NP?

17 MR. ENGLAND: No objection.

18 MS. O'NEILL: No objection.

19 JUDGE THOMPSON: Hearing no objections, the  
20 same are received and made a part of the record of this  
21 proceeding.

22 (EXHIBIT NOS. 71, 72 AND 73 WERE RECEIVED  
23 INTO EVIDENCE.)

24 JUDGE THOMPSON: Do you tender?

25 MR. WILLIAMS: Yes.

1 JUDGE THOMPSON: Thank you. Ms. O'Neill?  
2 MS. O'NEILL: No questions.  
3 JUDGE THOMPSON: Mr. Byrne?  
4 MR. BYRNE: Thank you, your Honor.  
5 CROSS-EXAMINATION BY MR. BYRNE:  
6 Q. Good afternoon, Ms. Teel.  
7 A. Good afternoon.  
8 Q. I just have a couple questions. It's my  
9 understanding that what you're providing is the five-year  
10 average, the calculation of the five-year average of net  
11 salvage costs that's built into the rates; is that  
12 correct?  
13 A. Yes.  
14 Q. And my understanding is you're not a  
15 depreciation engineer; is that right?  
16 A. No, I'm not.  
17 Q. And so would it be fair to say the  
18 treatment of net salvage, the witnesses that are  
19 supporting the Staff's position on net salvage being  
20 excluded from depreciation are basically the two  
21 depreciation witnesses, Mr. Gilbert and Mr. Macias?  
22 A. Yes.  
23 MR. BYRNE: Okay. That's all I have.  
24 Thanks.  
25 JUDGE THOMPSON: Thank you. Mr. McCartney?

1 MR. MCCARTNEY: No questions.

2 JUDGE THOMPSON: Mr. England?

3 MR. ENGLAND: No questions. Thank you.

4 JUDGE THOMPSON: There are no Bench

5 questions for Ms. Teel. Redirect?

6 MR. WILLIAMS: No redirect, your Honor.

7 JUDGE THOMPSON: You may step down. You

8 are excused.

9 Okay. We have received Exhibits 1, 2, 5,

10 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 26,

11 28, 29, 34, 35, 36, 45, 54, 55, 56, 62, 63, 64, 71 through

12 78, 81, 82, 83, 85, 86, 87, 89 and 90, 105, 106, 107, 108,

13 112, 113, 114, 115, 117 through 123, 126, 127, 128, 129,

14 130, 131, 132, 134, 135, 136. 137 and 138 were offered

15 but not yet received, pending Ms. O'Neill's opportunity to

16 read those documents. And we have received 139.

17 There are quite a few exhibits that have

18 been neither offered nor received. Counsel have any sort

19 of proposal to make with respect to those, or are they

20 simply going to go by the wayside. Mr. England?

21 MR. ENGLAND: Would it be possible to get a

22 copy of your master schedule of offered and either

23 received or not received exhibits?

24 JUDGE THOMPSON: Yes, you may.

25 MR. ENGLAND: Perhaps have overnight and



1     maybe come back tomorrow. Are we coming back tomorrow? I  
2     don't know that we need to.

3                     JUDGE THOMPSON: At this point I don't  
4     think so. I think that Staff -- as I understand  
5     Mr. Dottheim, Staff has declined to supplement the record  
6     in the manner requested by Chairman Gaw. And we've been  
7     told that Mr. Conrad would have a great deal of problems  
8     with it procedurally. Therefore, I think that if the  
9     Commission decides that the record needs to be  
10    supplemented, we will simply set an additional hearing  
11    period and order the parties to appear and provide that  
12    information.

13                    MR. ENGLAND: Then let me suggest the  
14    parties get together and determine what additional  
15    exhibits can be admitted by agreement of the parties, and  
16    to the extent there's a disagreement, we'll bring it back  
17    to your attention.

18                    JUDGE THOMPSON: That would be fine. We  
19    also need to put together a briefing schedule. Let me  
20    take a look here.

21                    MR. BYRNE: Your Honor, could I ask, on the  
22    subject of the exhibits, if by chance Ms. O'Neill might  
23    have had a chance to read either of those two exhibits, if  
24    one or both of them could be admitted at this time. I'm  
25    just leaving, and I'd like to --

1 JUDGE THOMPSON: I appreciate that. Please  
2 direct your question to Ms. O'Neill.

3 MS. O'NEILL: I have finished reading 138,  
4 and I don't have any objection to it. I'm trying to get  
5 through 137. I'll let you know.

6 MR. BYRNE: Okay. Thanks.

7 MR. MCCARTNEY: Does that mean we can let  
8 138 in?

9 MS. O'NEILL: Yes.

10 JUDGE THOMPSON: Okay. I'm sorry. I'm  
11 also receiving e-mails as I'm attempting to deal with the  
12 hearing. What did you tell him?

13 MS. O'NEILL: I've had a chance to review  
14 138 and I will not be objecting.

15 JUDGE THOMPSON: Very good. Anyone else  
16 have an objection to the receipt of Exhibit 138?

17 MR. WILLIAMS: No objections.

18 JUDGE THOMPSON: Very good. Exhibit 138 is  
19 received and made a part of the record of this proceeding.

20 (EXHIBIT NO. 138 WAS RECEIVED INTO  
21 EVIDENCE.)

22 JUDGE THOMPSON: 137, this was the Indiana  
23 decision, I believe, having to do with a case Dr. Majoros  
24 testified in.

25 MS. O'NEILL: Like I said, I'm trying to

1 get -- I have not been able to finish reading that. I  
2 have read the two pages that were referenced with  
3 Mr. Majoros. If those are the pages that they want in and  
4 i don't have to read the rest of it, I can probably do  
5 that.

6 MR. BYRNE: The other thing is, Judge, it  
7 is a reported case.

8 JUDGE THOMPSON: You're going to have to  
9 speak up since you're not being amplified.

10 MR. BYRNE: I'm sorry. It is a reported  
11 case. So if there's anything that -- if there's anything  
12 that deviates from what the reported case is, you know --

13 MS. O'NEILL: My only concern is if there's  
14 anything in there that -- I mean, it's not being offered  
15 as legal authority, I take it, it's being offered as some  
16 kind of factual evidentiary item; is that correct?

17 MR. BYRNE: Yeah. I cross-examined  
18 Mr. Majoros using it, so that's --

19 JUDGE THOMPSON: Is it being offered simply  
20 to show that another commission somewhere else at another  
21 time didn't like what he had to say?

22 MR. BYRNE: Well, I mean, it's offered for  
23 the specific language that's in that order that I asked  
24 him questions about on cross-examination. That's why --

25 JUDGE THOMPSON: And you can cite that in

1 your Brief, can't you, since it's a --

2 MR. BYRNE: I thinks his answers don't --

3 you know what I mean? The answers on cross-examination

4 only make sense if the document's in the record.

5 JUDGE THOMPSON: Okay. Ms. O'Neill?

6 MS. O'NEILL: Like I said, the two pages he

7 referred to, I think they were 10 and 11, you know --

8 JUDGE THOMPSON: Mr. England has already

9 proposed that counsel discuss the many exhibits that

10 haven't been either offered or received --

11 MS. O'NEILL: We'll talk about that one.

12 JUDGE THOMPSON: -- and doubtless you could

13 decide finally on 137 at that time.

14 MS. O'NEILL: Sure.

15 JUDGE THOMPSON: Very good. Let's do that.

16 Okay. Now, with respect to a briefing schedule, the

17 operation of law date in this case is March 27. Okay? I

18 guess the first thing we need to know is when the

19 transcript will be available.

20 THE REPORTER: Monday.

21 JUDGE THOMPSON: Okay. The transcript's

22 going to be available Monday. Do the parties want -- I

23 assume you want two rounds, and I can tell you that I want

24 Proposed Findings of Fact and Conclusions of Law.

25 Okay. This order will have to go to agenda

1 no later than March 15th. Okay. The transcript's going  
2 to be available on Monday. That is December 20th. Can  
3 you give me Initial Briefs and Proposed Findings of Fact  
4 and Conclusions of Law by January 20th? I know we have  
5 the holidays in there.

6 MS. O'NEILL: Judge, I probably need to  
7 talk to Mr. Coffman, because I don't know what else is  
8 going into this Brief other than depreciation. I didn't  
9 participate in the rest of the case at all.

10 JUDGE THOMPSON: I understand. So your  
11 suggestion is that it's just not appropriate to make a  
12 briefing schedule at this time?

13 MS. O'NEILL: I would need to talk to him  
14 about whether or not the 20th is going to work. I can do  
15 that and get back with you today.

16 JUDGE THOMPSON: Well, let me do this,  
17 then. Let me have from each party a pleading no later  
18 than this coming Monday with a proposed briefing schedule.

19 MR. ENGLAND: I suppose you'd be amenable  
20 to a joint pleading if the parties could agree between now  
21 and Monday?

22 JUDGE THOMPSON: Assuming the parties can  
23 agree, I would, you know -- well, in the Christmas spirit,  
24 I would certainly accept it cheerfully.

25 MR. BYRNE: But there's timing problems in

1 terms of when the case has to get to the Commission.  
2 There's limitations given it's got to go to the agenda.

3 JUDGE THOMPSON: That's why I have told you  
4 when it has to go to agenda. And as Mr. Dottheim can tell  
5 you, I take a long time to read and write. So the sooner  
6 that we get these Briefs in, the happier everyone's going  
7 to be.

8 MR. DOTTHEIM: But, Judge, you read and  
9 write very well.

10 JUDGE THOMPSON: I do appreciate that.

11 MR. ENGLAND: Oh, for goodness sakes.

12 MR. BYRNE: I move to strike that comment.

13 JUDGE THOMPSON: That one I'm not going to  
14 strike.

15 Anything else we need to do here today?  
16 Mr. Dottheim? Then we'll get to you, Mr. England.

17 MR. DOTTHEIM: Judge, there's a matter of  
18 two Stipulations & Agreements that are being worked on.  
19 There have been a number of issues that were settled in  
20 the case.

21 JUDGE THOMPSON: I understand that. I  
22 assume they'll just be filed.

23 MR. DOTTHEIM: Yes. In fact, there's even  
24 a possibility that the rate design Stipulation & Agreement  
25 will be filed today yet. The hope is that the other

1 Stipulation & Agreement, which will address the  
2 miscellaneous revenue requirement issues that would have  
3 gone at the very beginning of the hearing that settled  
4 out, and the Department of Natural Resources issues will  
5 be addressed in that other Stipulation & Agreement.

6 That other Stipulation & Agreement will  
7 provide language that the parties have agreed to  
8 respecting the DNR initiatives, and what both  
9 Stipulations & Agreements will indicate is -- it will read  
10 that the Staff will provide a memorandum to the Commission  
11 in both -- in both instances. It reads the standard  
12 boilerplate as a global settlement. The Staff can do  
13 that. That's covered.

14 Also, too, the Stipulations & Agreements  
15 will indicate that if the Commissioners have any questions  
16 of the witnesses that would have been offered, the  
17 witnesses would be made available at a convenient time, if  
18 the Commissioners would feel a need to address or inquire  
19 into any of the settled issues.

20 JUDGE THOMPSON: Very good. I appreciate  
21 that. Thank you.

22 Mr. England?

23 MR. ENGLAND: I was only going to ask, and  
24 it's not critical, whether or not we might postpone the  
25 filing of recommended Findings of Fact, Conclusions of Law

1 to the reply brief to the extent we want to incorporate  
2 maybe additional findings or conclusions based on what we  
3 see in the Initial Briefs of the parties.

4 MS. O'NEILL: I think that would be  
5 appropriate also because things evolve.

6 JUDGE THOMPSON: That's fine with me.

7 MR. ENGLAND: I know you're going to be  
8 under the gun once you get it in your lap, and I can't  
9 understand if you want them sooner as opposed to later.

10 JUDGE THOMPSON: No. That's fine. I think  
11 we want the best product we can get. So if you believe  
12 the later date will provide a better product, then by all  
13 means the later date is fine.

14 MR. ENGLAND: I don't know that it'll be  
15 better, but maybe it will be more comprehensive.

16 JUDGE THOMPSON: Well, that's better. That  
17 is a better thing.

18 Anything else we need to take up today?  
19 Hearing nothing, we will adjourn this hearing. Thank you  
20 all very much. We are adjourned.

21 WHEREUPON, the hearing of this case was  
22 concluded.

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