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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

SEPTEMBER 14, 2006

Jefferson City, Missouri

Volume 18

In the Matter of The Empire District)
Electric Company of Joplin, Missouri,)
for Authority to File Tariffs)Case No.
Increasing Rates for Electric Service)ER-2006-0315
Provided to Customers in the Missouri)
Service Area of the Company)

COLLEEN M. DALE, Presiding
CHIEF REGULATORY LAW JUDGE.
CONNIE MURRAY,
LINWARD "LIN" APPLING,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE DALE: I suppose I should say my usual
3 introductory remarks, that we are resuming Case ER-2006-315.
4 There has been a Non-Unanimous Stipulation and Agreement
5 regarding rate design issues filed that allows for submission
6 of testimony I believe without objection or cross.

7 Let's go ahead and make sure that those are
8 all admitted and then see if any Commissioners come with
9 questions.

10 MR. MILLS: Your Honor, I certainly have no
11 objection to proceeding that way. We have a couple of minor
12 corrections to one of the testimonies.

13 JUDGE DALE: This would be a good time.

14 MR. MILLS: Okay.

15 JUDGE DALE: Ms. Meisenheimer, I'll just
16 remind you you're under oath and you can stay where you are.

17 MS. MEISENHEIMER: Thank you.

18 BARBARA MEISENHEIMER testified as follows:

19 MS. MEISENHEIMER: In Rebuttal Testimony, I
20 followed a schedule that corrects something in my Direct
21 Testimony and I need to make one more change to that.

22 The schedule is marked Schedule BAM-RD-REB1.
23 And on line 25 in footnote 3, after the word "requirement"
24 there is a subscript "NV" that needs to just be V. So I need
25 to delete the "N."

1 JUDGE DALE: Any others?

2 MS. MEISENHEIMER: No.

3 JUDGE DALE: Thank you.

4 MR. WILLIAMS: Judge, Staff has a witness who
5 has a correction to his testimony. And I believe he's not
6 been called as a witness yet. That would be David Roos and
7 it's Exhibit No. 65.

8 (Witness sworn.)

9 JUDGE DALE: Thank you.

10 MR. WILLIAMS: Do you want me to inquire?

11 JUDGE DALE: Yes, please.

12 DAVID C. ROOS testified as follows:

13 DIRECT EXAMINATION BY MR. WILLIAMS:

14 Q. Would you please state your name?

15 A. My name is David C. Roos.

16 Q. And did you prepare rate design Direct
17 Testimony that was pre-filed in this case and has been marked
18 for identification as Exhibit No. 65?

19 A. Yes, I have.

20 Q. And do you have any changes to that exhibit?

21 A. There is one correction. It's in the text on
22 page 4, line 18. The No. 216484410 should be 261484410. And
23 this does not affect the schedules.

24 Q. Do you have any other revisions?

25 A. No, I do not.

1 MR. WILLIAMS: Is that sufficient for purposes
2 of this?

3 JUDGE DALE: I think so.

4 MR. WILLIAMS: Thank you.

5 JUDGE DALE: So if one of you can walk me
6 through which testimony is to be admitted.

7 MR. WILLIAMS: I think I can.

8 JUDGE DALE: Okay.

9 MR. WILLIAMS: Under the agreement, it would
10 be Exhibit No. 20, which is the Direct Testimony of Empire
11 Witness W. Scott Keith.

12 JUDGE DALE: Okay.

13 MR. WILLIAMS: It would be the Rebuttal
14 Testimony, Exhibit 25, of Empire Witness Jayna R. Long. It
15 would be the Direct and Rebuttal Testimony of James Busch and
16 that would be rate design Direct, Exhibit 60 and 62. It would
17 be the Rebuttal Testimony which has been pre-marked as
18 Exhibit No. 70 of Staff Witness Janice Pyatte.

19 It would be the Direct Testimony of Staff
20 Witness David Roos, which has been marked for identification
21 as Exhibit No. 65. And I believe Mr. Brubaker's testimony has
22 already been entered into evidence, but it would be Maurice
23 Brubaker Direct Testimony on rate design, which may not have
24 been admitted, that's Exhibit No. 86. And then his Rebuttal
25 and Surrebuttal Testimonies which have been pre-marked as

1 Exhibit Nos. 87 and 88 respectively.

2 And there would be the Direct Testimony of
3 Office of Public Counsel Witness Barbara Meisenheimer and the
4 Rebuttal Testimony of Office of the Public Counsel Witness
5 Barbara Meisenheimer, which have been marked as Exhibit
6 Nos. 76 and 77 respectively.

7 MR. MILLS: And just to clarify,
8 Ms. Meisenheimer has two Direct Testimonies. This is the
9 latter of the two, the one filed June 30th on rate design.

10 JUDGE DALE: Is there any objection?

11 MR. CONRAD: Just to clarify, from our
12 perspective, I believe counsel has correctly listed the items
13 of Mr. Brubaker's testimony that pertain directly to this
14 issue and I do agree with him that I think the rest of
15 Mr. Brubaker's testimony has been, in pieces or parts,
16 admitted. And I think -- unless my memory is incorrect, which
17 sadly it grows dimmer as the years go by --

18 JUDGE DALE: I'm there with you.

19 MR. CONRAD: -- but I believe that that would
20 complete the offer that's the pieces as I mentioned of all of
21 Mr. Brubaker's various pieces of testimony.

22 MR. WILLIAMS: Judge, I guess the only other
23 thing I would note is that as to the company witnesses, under
24 the Stipulation and Agreement, it was only portions of their
25 testimonies that were referenced as exhibits as opposed to the

1 entire exhibits.

2 MR. CONRAD: And that is correct, because they
3 would be portions I think -- I don't know about Ms. Long, but
4 I do know that there had been portions of Mr. Keith's
5 testimony that had earlier been struck.

6 MR. SWEARENGEN: That's what I wanted to
7 inquire about, if I could. I think I heard Mr. Williams
8 mention Exhibit 20, which is Mr. Keith's Direct Testimony, but
9 he also had Rebuttal Testimony which I believe was marked as
10 Exhibit 21, both non-proprietary and highly confidential
11 versions, and Surrebuttal Testimony, Exhibit 22, was
12 non-proprietary and highly confidential versions. And I'm not
13 sure of the status of that. I had thought perhaps that had
14 already been received.

15 JUDGE DALE: Well, we talked about it and then
16 there was an attempt to receive it and then we didn't
17 because -- I can't remember why. But --

18 MR. SWEARENGEN: He's here this morning and
19 this is the last time he would be on the witness stand with
20 respect to this issue or any other issue, for that matter.

21 JUDGE DALE: Well, is there any objection to
22 taking 21 and 22 as we receive the rest of these?

23 MR. SWEARENGEN: And I recognize that some of
24 it had been stricken, and I'm assuming that at that time a
25 request was made to preserve the stricken portions pursuant to

1 the rule; is that correct?

2 JUDGE DALE: I have it down, yes.

3 MR. SWEARENGEN: Okay. Well, then I would
4 request that all three pieces of his testimony, Exhibits 20,
5 21 and 22 be received.

6 JUDGE DALE: Is there any objection to that?

7 MR. CONRAD: Well, as counsel just mentioned,
8 this, of course, pertains to the issues that were settled
9 before hearing this morning. And I can't opine as to the rest
10 of it except that we would retain our objection to the
11 portions that have been previously stricken by the Commission.
12 I don't have obviously any objection to counsel seeking to
13 preserve that pursuant to the Commission's rules, but we would
14 maintain that objection.

15 JUDGE DALE: Okay.

16 MR. CONRAD: It is my understanding, Judge,
17 that none of the materials that are referenced in that short
18 list on page 4 and which Staff counsel earlier recited are
19 subject to that. That's my understanding. They pertain
20 solely to the rate design, class cost of service issue.

21 MR. SWEARENGEN: Well, my only point is this
22 is the last time this witness is scheduled to be here, so --

23 JUDGE DALE: Once we go through this, I would
24 like to take this opportunity to go through and make sure we
25 have everything admitted that should be admitted, at least to

1 date.

2 MR. SWEARENGEN: And I was under the
3 impression that his testimony had been admitted previously.

4 JUDGE DALE: Well, I had it check marked and
5 then I had that scribbled out because apparently something
6 happened that -- and I don't remember what, so --

7 MR. WILLIAMS: Judge, except for the portions
8 identified in the Stipulation and Agreement pertaining to rate
9 design, Staff would want to reserve its right to object to any
10 other portions of Mr. Keith's testimony when the attorney who
11 was involved in those other issues is available to respond.

12 JUDGE DALE: Well, first, let's take the stip
13 issues.

14 MR. SWEARENGEN: I have one other witness as
15 well, Ms. Long. She has three pieces of testimony and I
16 understand what Mr. Williams said this morning only pertained
17 to Exhibit 25, which is her Rebuttal Testimony. She also has
18 Direct and Supplemental Direct Testimony. She's here today.
19 This is the last time she would be scheduled to appear as
20 well, so I would request that all three pieces of her
21 testimony be received into evidence.

22 JUDGE DALE: Let's do it in two steps.
23 Exhibit 20, the Direct Testimony of Mr. Keith -- and I don't
24 believe -- he just had a regular P version of that. Right?

25 MR. SWEARENGEN: That's right. That's

1 correct.

2 JUDGE DALE: Or, no, NP. Exhibit 25,
3 Ms. Long's Rebuttal, Exhibit 60, Mr. Busch's Direct;
4 Exhibit 62, Mr. Busch's Rebuttal; Exhibit 65, Mr. Roos's
5 Direct; Exhibit 70, Ms. Pyatte's Rebuttal; Exhibit 76,
6 Ms. Meisenheimer's rate design Direct, and 77,
7 Ms. Meisenheimer's Rebuttal; Exhibit 86, Mr. Brubaker's rate
8 design Direct; 87, his Rebuttal; and 88, his Surrebuttal have
9 all been offered.

10 MR. CONRAD: Sorry to interrupt, but 88 has
11 both HC and P.

12 JUDGE DALE: Yes. Right you are. So 88 both
13 HC and NP. And it's my understanding then that none of this
14 is subject to the previous order striking -- well, okay. Let
15 me just say if it is, it's not admitted and preserved. And
16 all of those are admitted into evidence.

17 (Exhibit Nos. 20, 25, 60, 62, 65, 70, 76, 77,
18 86, 87 and 88 were received into evidence.)

19 MR. CONRAD: I think that would be direct --
20 that order would be directed to testimonies of Mr. Keith and
21 Ms. Long if it was directed to anything on that list. I do
22 not recall right now -- I've searched here this morning and
23 I'm not placing hands on that Commission order. I do not
24 recall whether Ms. Long had anything that was in that list,
25 so --

1 MR. SWEARENGEN: I do not believe that any of
2 her testimony was ordered stricken prior to it being offered.

3 JUDGE DALE: So we then have before us
4 Ms. Long's testimony, 23 and 24, Direct and Supplemental
5 Direct. Is there any objection?

6 Hearing none, then 23 and 24 will be admitted.
7 (Exhibit Nos. 23 and 24 were received into
8 evidence.)

9 MR. WOODSMALL: Did you admit 25, your Honor?

10 JUDGE DALE: Yes. Thank you.

11 MR. SWEARENGEN: And then I guess the question
12 with respect to Mr. Keith's Exhibits 21 and 22?

13 JUDGE DALE: Are there any objections?

14 MR. CONRAD: Except as previously noted.

15 JUDGE DALE: Then with the exception of the
16 stricken parts, which are preserved for appeal, Exhibits 21
17 and 22 are admitted.

18 (Exhibit Nos. 21 and 22 were received into
19 evidence.)

20 MR. SWEARENGEN: Thank you. That leaves
21 Mr. King, who's calling in later by phone. And with that
22 exception and Mr. Murray's testimony, I believe everything
23 else has been admitted -- all the other testimony has been
24 admitted.

25 MR. CONRAD: And, your Honor, with respect to

1 the Non-Unanimous Stipulation, I think since that is not at
2 this point in time subscribed to by all the parties in the
3 case, we don't know where some of us will land on this, it
4 would be my intention that if Ms. Meisenheimer from Public
5 Counsel's office, Mr. Busch and Ms. Pyatte from Staff and
6 Mr. Roos from Staff were called to the stand, we would not
7 have cross-examination for them on the issues covered by the
8 stipulation conditioned upon the acceptance of the stipulation
9 by the Commission pursuant to its terms. So I just would
10 like, your Honor, for that to be clear.

11 I'm not sure that we might -- we might or
12 might not have cross for Mr. Keith or Ms. Long, but if you're
13 going to handle it that way, I suspect that is -- you know,
14 their material on this particular issue is very brief and we
15 probably would let it alone, in any event.

16 But they are here -- well, I say -- I'm not
17 prepared to offer somebody else's stuff, but Mr. Brubaker is
18 here if anybody who is not on the signatory list wishes to
19 query him with respect to any of the matters in his testimony
20 covered by these issues. And we would, at your call, offer
21 him.

22 JUDGE DALE: Do you have questions for any of
23 these witnesses, Mr. Swearingen?

24 MR. SWEARENGEN: Well, I certainly don't have
25 any questions for my witnesses, but the company is not really

1 in a position yet to respond one way or the other on the
2 Non-Unanimous Stipulation and Agreement, but I could --
3 perhaps it would help in that regard if I would have the
4 opportunity this morning to ask Mr. Brubaker a few questions
5 about that. And that may assist our ability to take a
6 position on that pleading.

7 JUDGE DALE: Then we'll recall Mr. Brubaker to
8 the stand.

9 MR. MILLS: Before we do that, can I raise a
10 housekeeping matter?

11 JUDGE DALE: Certainly.

12 MR. MILLS: Before we got into this issue of
13 who had questions for whom, I think you made the statement
14 that other than Mr. Murray's and Mr. King's testimony, that
15 all the other testimony of all the other witnesses had been
16 admitted.

17 And I wanted to be sure that you didn't mean
18 to overrule your earlier rulings on some of the testimony.
19 The ones that spring to mind are Mr. Fetter's Rebuttal
20 Testimony, which I believe was stricken in its entirety, and
21 his Supplemental Direct Testimony, which was largely not
22 admitted as well.

23 JUDGE DALE: No. I did not intend to overrule
24 myself. Thank you for pointing that out.

25 MR. MILLS: Thank you.

1 MR. CONRAD: We would call Maurice Brubaker to
2 the stand, your Honor. I believe he's previously sworn.

3 JUDGE DALE: Yes. I'll remind you you're
4 still under oath.

5 THE WITNESS: Yes.

6 MR. CONRAD: And since Mr. Brubaker has
7 previously been to the stand and we've gone through the
8 foundation questions, I won't burden the record with that
9 again unless there is objection to proceeding in that way and
10 tender the witness for such questions as Mr. Swearengen
11 appears to have.

12 MR. SWEARENGEN: Thank you, Judge.

13 MAURICE BRUBAKER testified as follows:

14 CROSS-EXAMINATION BY MR. SWEARENGEN:

15 Q. Good morning, Mr. Brubaker. Good to see you
16 back here again today.

17 A. Good morning. It's a pleasure as always.

18 Q. I'd assume you're familiar with the
19 Non-Unanimous Stipulation and Agreement that I think was filed
20 late yesterday afternoon in connection with this case, the
21 Non-Unanimous Stipulation and Agreement regarding rate design
22 issues?

23 A. Yes, I am.

24 Q. Can you tell me just briefly, how does the
25 position that the industrial Intervenors in this case -- how

1 does the position that they are now taking in this
2 Non-Unanimous Stipulation and Agreement differ from the
3 position that you had been advancing to the Commission in your
4 prepared testimony in this case?

5 A. Certainly. In the prepared testimony, the
6 recommendation that I made was to spread the increase equal
7 percent across the board regardless of whether the IEC was
8 terminated or not, which essentially was Empire's position, I
9 believe. We also took the position that in spreading the
10 revenue, the revenues to be used for Praxair should be netted,
11 their interruptible credit.

12 For purposes of the settlement, the
13 stipulation, we have agreed to utilize the revenue spread
14 methodology in Staff Witness Busch's testimony.

15 Q. And what is the revenue impact to your client
16 or clients as a result of going to the Staff's position on
17 that point?

18 A. That would really depend upon how much revenue
19 increase the company receives in this matter.

20 Q. Can you give me an example?

21 A. On the -- let's just take the Praxair credit
22 issue. At a 5 percent overall increase, the difference to
23 Praxair is about 18- to 20,000 dollars a year. I have not
24 calculated the difference between equal percent base rates
25 regardless and equal percent under Mr. Busch's approach that

1 we've stipulated to.

2 If the IEC continues in effect, it would be
3 the same as I had advanced. If the IEC is preserved, it would
4 be slightly different, but I've not made that calculation. It
5 would be adverse to us.

6 Q. So you're talking about adverse to you in
7 approximately the amount of \$20,000 annually to Praxair?

8 A. That's just from the credit issue. If we have
9 the -- if the IEC is terminated and we follow Mr. Busch's
10 recommendation for revenue spread, it would be considerably
11 more than that, but I've not quantified that.

12 Q. Okay. Do you have any idea approximately what
13 that would be, ballpark order of magnitude?

14 A. I've just not done the quantification.

15 Q. That's fine. That was for Praxair. What
16 about the other industrial client in this proceeding?

17 A. The credit issue is not really an issue for
18 Explorer. They would be impacted in the same way if the IEC
19 should be terminated. It would be adverse to my original
20 position.

21 Q. And when you say "credit issue," just so the
22 record is clear, what do you mean by that?

23 A. The interruptible credit that Praxair receives
24 for subjecting most of its load to interruptions.

25 Q. Is Praxair advancing this position about

1 revenues net of interruptible credit in any other proceedings
2 before this Commission that you're aware of?

3 MR. CONRAD: I'm going to object to that,
4 because we're talking here about a stipulation that is
5 specific to the case before us and to the issues as presented
6 in that case. It can be dealt with, if at all, in some other
7 proceeding.

8 MR. SWEARENGEN: Well, I think the -- I think
9 in trying to analyze the company's position on this, I think
10 we need to find out what ramifications this issue may have in
11 other proceedings, as well as I think the Commission would be
12 very interested in knowing that fact as well.

13 MR. CONRAD: Well, you can speculate as to
14 what you think the Commission would be interested in, but I've
15 observed that there are no Commissioners present. This
16 stipulation is limited to the facts of its case by its terms
17 and does not speak beyond that. And beyond the terms of the
18 stipulation which you're inquiring into, I would object to
19 going beyond that.

20 JUDGE DALE: And that objection will be
21 sustained.

22 BY MR. SWEARENGEN:

23 Q. Other than the credit issue that you have just
24 described, what other differences are there in the position
25 that your clients are now taking with respect to rate design

1 as compared to the positions you initially advanced on behalf
2 of them through your testimony?

3 A. I don't believe there are any other
4 differences.

5 Q. That would be the only issue?

6 A. Yes.

7 Q. Okay. With respect to Empire, does this
8 agreement, in your judgment, have any impact on any of the
9 other special contracts or other arrangements that Empire may
10 have with your clients?

11 A. I'm not clear with your question.

12 MR. CONRAD: Yeah. I would object until
13 that's clarified because, again, it seems to be reaching
14 beyond the terms of the stipulation.

15 BY MR. SWEARENGEN:

16 Q. Other than the credit issue that you've just
17 discussed, does Empire, with respect to either Praxair or
18 Explorer, have any special contracts or service arrangements?

19 MR. CONRAD: Once again, I think we're
20 straying beyond the four corners of the document and I would
21 respectively object.

22 MR. SWEARENGEN: Well, I don't think we are --

23 MR. CONRAD: Let's stay within the four
24 corners of the document and you're fine.

25 MR. SWEARENGEN: I'm trying to find out what

1 the impact of the four corners of the document may be and he
2 said it has an impact on this credit issue and I'm trying to
3 find out if he thinks it has an impact on any of the other
4 arrangements, tariff, contract or otherwise, that Empire
5 District Electric Company has with either Praxair or Explorer.

6 MR. CONRAD: And, your Honor, with respect to
7 that, as Mr. Swearngen has so ably pointed out in previous
8 portions of this hearing, the document speaks for itself, it
9 is limited and that's the only issues that it speaks to.

10 MR. SWEARENGEN: I'm certainly allowed to
11 cross-examine about that document. We're not a signatory to
12 it.

13 JUDGE DALE: If you ask your question the way
14 you framed it to me about why you're asking it, then I think
15 it would be permissible.

16 MR. SWEARENGEN: Why don't you just have the
17 reporter read it back to the witness, please.

18 THE COURT REPORTER: "Question: I'm trying to
19 find out what the impact of the four corners of the document
20 may be and he said it has an impact on this credit issue and
21 I'm trying to find out if he thinks it has an impact on any of
22 the other arrangements tariff, contract or otherwise, that
23 Empire District Electric Company has with either Praxair or
24 Explorer."

25 JUDGE DALE: Okay. That's the question.

1 THE WITNESS: In responding to that, let me
2 say first that the spread issue doesn't have an effect on the
3 credit itself. There is no impact or change in the credit.
4 The only impact was on how the dollars were spread between
5 classes.

6 It -- to my understanding, there is no other
7 issue with respect to any of the other special contracts or
8 arrangements that Empire may have with Explorer or with
9 Praxair.

10 BY MR. SWEARENGEN:

11 Q. You say no issue. Does it have any impact
12 with respect to those?

13 A. I don't believe it does.

14 MR. SWEARENGEN: Thank you. That's all I
15 have.

16 JUDGE DALE: While he's up here, does anyone
17 else have any questions for him?

18 MR. MILLS: Not any relevant to this issue.

19 JUDGE DALE: Then Mr. Brubaker, thank you.
20 You may step down.

21 THE WITNESS: Thank you.

22 JUDGE DALE: Well, it does not look to me like
23 we're going to get any questions from Commissioners concerning
24 this matter. And in light of the fact that they go into
25 agenda in 10 minutes, I think the likelihood is diminishing as

1 we speak.

2 I would like to take this moment to advise you
3 all that a notice in this case was issued early this morning.
4 I have copies of it for you and we will be e-mailing it to the
5 parties who are not present. These are essentially questions
6 from the Bench that we would like answered by noon,
7 September 20th. So if I can get -- would you approach,
8 please, and hand those out?

9 MR. SWEARENGEN: Do we all get the same
10 questions?

11 JUDGE DALE: For you, Mr. Swearengen, we have
12 more.

13 MR. MILLS: Should I try to contact Mr. King?

14 JUDGE DALE: I think that we should probably
15 go ahead and find out when he can be available.

16 MR. MILLS: He can be available pretty much
17 any time. I think what we discussed yesterday is we would
18 decide when we were ready to move on to that and we would give
19 him an hour's notice and then we would dial him up. So if you
20 want to do it an hour from now or if you want to do it after
21 lunch, it doesn't matter to me.

22 JUDGE DALE: Why don't we do it an hour from
23 now. That will give us time to get Mr. Thompson in here. And
24 I'm not sure if we -- we were so very close to finished with
25 Mr. Murray, but what I think we probably should do is call

1 him, start up at 10:30. That way if Commissioners have
2 questions, they can be down here for rate -- or that ROE
3 discussion. And we can either take -- we can just take him
4 out of order and then finish up with Mr. Murray and then have
5 Mr. Oligschlaeger so that he's not just hanging around on the
6 phone.

7 MR. MILLS: That would be great. I don't know
8 if it was on the record or not, but the other day Commissioner
9 Chairman Davis mentioned that he did have questions for
10 Mr. King.

11 JUDGE DALE: Okay. Let's do it at 11:00.
12 I've seen the agenda.

13 MR. MILLS: Okay. Thank you. We'll plan on
14 that.

15 JUDGE DALE: One more thing?

16 MR. CONRAD: On another matter, this question
17 is directed to this notice which was distributed. I don't
18 have before me the schedule of the case which had a date I
19 think for pre -- or post-hearing briefs.

20 JUDGE DALE: I don't think post-hearing briefs
21 had a date.

22 MR. CONRAD: Well, that kind of pertains to my
23 question. Is this intended to either be comprehended by or --
24 I mean, how does this fit in your understanding with
25 post-hearing brief issue?

1 JUDGE DALE: Unrelated. These are just
2 questions from the Bench that one of the Commissioners gave to
3 me and would like to have answered. The transcript, I'm given
4 to understand, is due the 29th. I was hoping to have
5 post-hearing briefs by October 15th.

6 MR. CONRAD: So your sense -- and I'm not --
7 you know, I'm not trying to argue with you. I'm just trying
8 to understand. This is, I would take it of necessity, must be
9 directed to legal argument.

10 JUDGE DALE: Yes.

11 MR. CONRAD: So as opposed to briefs on the
12 record and it shouldn't be -- yeah, but -- yeah, and my
13 co-counsel here points me to Question No. 4 which goes to
14 evidence in the case. I guess I'm kind of questioning where
15 this -- where this fits in the context of the evidence and
16 briefs on the evidence and briefs on the record as
17 distinguished from legal argument, which I'm not questioning
18 the Commission is entitled to the legal argument. Some of
19 it's already been provided, in fact. But where do you see
20 this --

21 JUDGE DALE: I see this as -- well, it may be
22 sort of a mixed bag of fact in law, but the presumption is
23 using the testimony on fuel that's already in evidence. So it
24 is assumed that these will be essentially legal arguments
25 based on the evidence as presently in the record. Much the

1 same way that a post-hearing brief would be, but this is not
2 technically part of your post-hearing brief.

3 MR. CONRAD: It's not intended -- I'm sorry.
4 Go ahead.

5 MR. MILLS: I was going to say, even though
6 some of these do ask questions about not just legal stuff, but
7 factual stuff, is the Commission not soliciting additional
8 testimony in response to these?

9 JUDGE DALE: Right.

10 MR. MILLS: So the Commission would not be
11 accepting additional testimony in response to these questions;
12 is that correct?

13 JUDGE DALE: No. It's presuming the facts
14 that are already in evidence.

15 MR. MILLS: Okay. Good. Thank you.

16 MR. WOODSMALL: Your Honor, I guess having
17 done the IEC issue, I'm a little concerned in that some of our
18 response would necessarily be based upon answers that we
19 elicited in cross-examination of Mr. Gibson. That would not
20 be -- even though it is in evidence, it is not available to us
21 until, as you said, the transcript is done the 29th.

22 I don't know how to access that evidence for
23 purposes of answering these questions given that this is due
24 before the transcript is. Our responses cannot be complete,
25 in that they rely upon the evidence in the transcript, until

1 that transcript is done. So I certainly have no problems
2 answering these prior to or outside of the post-hearing
3 briefs. I would ask if we could get the date moved back so at
4 least we have a couple days after the transcript so that my
5 response can be complete.

6 MR. MILLS: Or another alternative would be to
7 move the transcript up.

8 JUDGE DALE: I can tell you that the
9 transcript is already -- they're already starting to be
10 returned so it may not be an issue. What I would -- what I
11 would like to do -- since these were questions from a
12 Commissioner and I don't really have a lot of authority to
13 fool with it -- is that if there are portions of your answer
14 that you cannot give, that you file what you can on the 20th
15 and say, We're waiting for the transcripts to get an actual
16 number for Question No. 4 or whatever.

17 MR. WOODSMALL: As I understand it then, for
18 the questions -- for instance, No. 1 is purely a legal
19 analysis. I can provide that. For the other questions such
20 as Question 2 talks about evidence, Question 4 certainly
21 evidentiary in nature, we would postpone our answer to that
22 until the transcript is done, but we will provide our legal
23 analysis as requested on the 20th.

24 JUDGE DALE: I think No. 2 is directed to the
25 sufficiency of the evidence.

1 MR. WOODSMALL: I'm missing something.

2 JUDGE DALE: Is there enough evidence in the
3 record is what the question --

4 MR. WOODSMALL: And part of that record is the
5 transcript.

6 JUDGE DALE: If you can't answer the question
7 about the sufficiency of the evidence without the transcript,
8 then you'll have to do something supplemental.

9 MR. WOODSMALL: Okay. Thank you, your Honor.

10 MR. MILLS: And with respect to Question
11 No. 3 which actually has several subparts, I mean, the gist of
12 the question is talking about other changes to the Stipulation
13 and Agreement. And certainly, you know, I could propose many
14 changes.

15 I assume that if any party wants to propose
16 certain changes to the Stipulation and Agreement, they need to
17 point to specific cites in the evidence in the record in this
18 case that would support making those changes. Is that your
19 understanding?

20 JUDGE DALE: Yes. And also the reason why the
21 question is there is that it is not fully understood whether
22 or not just changing the collar may alter other parties'
23 rights under that Stipulation and Agreement that the Bench has
24 not connected together. If we change the collar, are we
25 changing something else that we don't understand that we're

1 changing?

2 MR. CONRAD: Yeah.

3 JUDGE DALE: To put it very bluntly.

4 MR. WOODSMALL: I guess to an overarching
5 matter -- and I don't know where the Commission is headed with
6 this, but if this in any way signals some belief, some thought
7 about changing the terms of the IEC, none of the parties have
8 suggested that.

9 And to the extent that that came up after the
10 hearing, obviously it would run afoul of due process concerns
11 for all parties to be able to present evidence and cross on
12 the nature of those changes. And no one's had that
13 opportunity yet. So just -- I read this as a signal as to at
14 least where one Commissioner may be thinking and I just wanted
15 to raise that concern.

16 JUDGE DALE: Okay. And you should raise those
17 concerns in your response so that if there is some question
18 about the propriety of doing that -- it should be in the
19 response.

20 MR. WOODSMALL: I will do that. Thank you.

21 MR. MILLS: And just one more clarifying
22 question. And I think you suggested this, but I'm not sure
23 I'm entirely clear. Are we to read essentially all four of
24 these questions as driven by the thought that the Commission
25 may consider making changes simply to the collar of the IEC?

1 JUDGE DALE: Yes.

2 MR. MILLS: And that's the thought behind all
3 four questions?

4 JUDGE DALE: Yes.

5 MR. MILLS: Okay. Thank you.

6 JUDGE DALE: Inquiring minds want to know.

7 On that happy note, we will recess until
8 eleven o'clock and begin with rate design -- not rate design.
9 ROE.

10 (A recess was taken.)

11 (Exhibit No. 140 was marked for
12 identification.)

13 JUDGE DALE: We're going to go back on the
14 record.

15 MR. CONRAD: Judge, I had forgotten at the end
16 of the discussion earlier this morning to seek the excusal, if
17 you will, or to seek to ask you to release Mr. Brubaker so he
18 can go on about other affairs.

19 JUDGE DALE: And is there any objection to
20 Mr. Brubaker going ahead?

21 MR. THOMPSON: No objection.

22 JUDGE DALE: In that case, Mr. Brubaker is
23 excused.

24 MR. CONRAD: Thank you very much.

25 JUDGE DALE: At this time, yes, we'll connect

1 with Mr. King on the telephone.

2 THE WITNESS: Morning, Charlie King.

3 MR. MILLS: Charlie, this is Lewis Mills.

4 We've got you on the speakerphone in the hearing room.

5 THE WITNESS: All right.

6 MR. MILLS: Can you talk for just a second to
7 give us a sound check?

8 THE WITNESS: Sure. Can you hear me?

9 MR. MILLS: Oh, yeah.

10 THE WITNESS: I'm coming through? Okay.

11 Good.

12 MR. MILLS: Okay. I think we got it set now.
13 Can you hear us okay?

14 THE WITNESS: Yes, indeed. I can hear you
15 very well.

16 JUDGE DALE: Mr. King, I can't see you, but
17 this is the presiding officer, Cully Dale. And if you'll
18 please raise your right hand.

19 THE WITNESS: It's raised.

20 JUDGE DALE: Okay.

21 (Witness sworn.)

22 CHARLES KING testified as follows:

23 DIRECT EXAMINATION BY MR. MILLS:

24 Q. Mr. King, I don't know if you can recognize
25 all of our voices. This is Lewis Mills. I am your counsel in

1 this proceeding and I'm going to be asking you a few leading
2 questions about your testimony and then we will tender you for
3 cross-examination.

4 A. All right.

5 Q. Could you please state your name for the
6 record?

7 A. Charles W King, K-i-n-g.

8 Q. And are you the same Charles King who has
9 caused to be filed in this case -- and I will tell you that
10 the exhibits that you have pre-filed have been marked as
11 Exhibits 72 for your Direct Testimony, Exhibit 73 for your
12 Rebuttal Testimony, and Exhibit 74 for your Surrebuttal
13 Testimony. Are those pieces of testimony that you prepared?

14 A. Yes, I -- yes, they are.

15 Q. And on whose behalf did you prepare them?

16 A. I submitted those testimonies on behalf of the
17 Office of Public Counsel.

18 Q. Okay. And if I were to ask you the same
19 questions that are contained in that testimony here this
20 morning, would your answers be the same?

21 A. They would, with one exception, which I can
22 discuss.

23 Q. Okay. Let's go ahead with that.

24 A. Schedule CWK-1 was revised in my -- in
25 connection with my Rebuttal Testimony to exclude short-term

1 debt. In that testimony, I indicated that the numbers
2 probably would have to be updated. I don't know whether they
3 have been updated, but one of the numbers should be, in any
4 case. And that is the long-term debt number.

5 The figure that I showed in my Exhibit CWK-1
6 of 7.04 percent was drawn from the company's exhibit -- or
7 yes, it's Exhibit H-1 that failed to include the effect of the
8 trust preferred stock, which in their 10-Q filing, the company
9 classified as long-term debt.

10 So it was necessary -- or it should be
11 necessary -- or appropriate to fold in the cost of that trust
12 preferred stock. I have done so on a schedule that I believe
13 you should have. The new rate for long term debt is
14 7.28 percent and the new composite rate is 8.43 percent.

15 Q. Okay.

16 A. And that's the only change that I would have.

17 Q. Okay. And because you're not here, I will
18 tell you that that revised sch-- it's actually labeled
19 Schedule CWK-1, parens, revised two, closed parens. And that
20 has been marked for identification as Exhibit 140 here this
21 morning. And it's been distributed to the Commissioners, the
22 Judge and all the parties.

23 A. All right.

24 Q. Okay. With that revision, if I were to ask
25 you the questions that are contained in your testimony today,

1 would your answers be the same?

2 A. Yes, they would.

3 Q. And are those answers true and correct to the
4 best of your knowledge, information and belief?

5 A. They are.

6 MR. MILLS: Thank you. With that, your Honor,
7 I would offer Exhibits 72, 73, 74 and 140 and tender the
8 witness for cross-examination.

9 JUDGE DALE: Are there any objections to the
10 testimony or exhibit?

11 MR. SWEARENGEN: No objection from the
12 company.

13 MR. THOMPSON: No objection.

14 JUDGE DALE: In that case, Exhibits 72, 73, 74
15 and 140 are admitted into evidence.

16 (Exhibit Nos. 72, 73, 74 and 140 were received
17 into evidence.)

18 MR. THOMPSON: Staff has no cross of this
19 witness, your Honor.

20 MR. WOODSMALL: No cross from Praxair, your
21 Honor.

22 JUDGE DALE: Empire?

23 MR. SWEARENGEN: Yes, I have a few questions.

24 CROSS-EXAMINATION BY MR. SWEARENGEN:

25 Q. Mr. King, can you hear me?

1 A. Yes, I can.

2 Q. My name is Jim Swarengen. I'm the attorney
3 for the Empire District Electric Company. And I have a couple
4 of questions for you.

5 Do you have your Surrebuttal Testimony there
6 with you today?

7 A. Yes, I do.

8 Q. Thank you. If you could turn to page 5,
9 please. Do you have that page in front of you?

10 A. I have it.

11 Q. I'm looking at lines 16 through 18 on page 5
12 where you state, Gas distribution companies are not similar to
13 Empire because they are in a different business and, thus,
14 have different business risks.

15 And is that still your testimony?

16 A. Yes, it is.

17 Q. Would you agree that natural gas distribution
18 companies are regulated by public service utility commissions
19 in much the same way that those commissions regulate electric
20 companies?

21 A. Yes, I do.

22 Q. And would you agree that the rates of return
23 on equity that utility commissions authorize for natural gas
24 distribution companies are very similar, if not virtually
25 identical, to the allowed rates of return that they authorize

1 for electric companies?

2 A. I've not made that study, but I know they're
3 in the same general range of -- probably they are, if
4 anything, slightly lower because of the lower business risk.

5 Q. Now, let me ask you that. When you say the
6 "same general range," could you just quantify that for me,
7 please?

8 A. Well, I had a survey that Public Utilities
9 Fortnightly had performed. Unfortunately, it's a bit out of
10 date, but it covered the periods of 2004 to 2005. And the
11 bottom of the range was in the high 9's, like 9.5 or 9.6 --
12 well, it may be 9.8 and the top of the range was up about
13 12 percent. Now, that covered both electric and gas. It --
14 it listed every company and every finding and it mixed
15 electric and gas. So that's the range we're talking about.

16 Q. Okay. Thank you. And then you said, I
17 believe, one was less risky than the other. Were you
18 referring to gas companies being less risky than electric
19 utility companies?

20 A. Well, generally gas companies are less risky
21 than electric companies. Vertically-integrated electric
22 companies are less risky than pure electric distribution
23 companies.

24 Q. Okay. Thank you. On page 7 of your
25 Surrebuttal Testimony, if you could turn to that, please.

1 A. Yes, sir.

2 Q. And I believe -- I think it's on line 4 you
3 say, By limiting my narrow group to regulated companies, I
4 render irrelevant Dr. Vander Weide's final subjective
5 adjustment for the allegedly higher financial risk of Empire
6 vis-a-vis the proxy group of companies.

7 Do you see that?

8 A. Yes.

9 Q. And I can assume that's still your testimony?

10 A. It is.

11 Q. And the first part of that statement suggests
12 that you limited your narrow group to regulated companies; is
13 that true?

14 A. That's true, yes.

15 Q. Okay. And then do you have your Direct
16 Testimony there with you?

17 A. I -- I do.

18 Q. If you could take a minute and turn to page 7
19 of that, please, page 7 of your Direct.

20 A. Yes, I have it.

21 Q. Okay. There at lines 3 to 5, you state, I,
22 therefore, established a threshold of 75 percent regulated
23 electric utility revenue as the basis for establishing what I
24 will call -- excuse me, what I call the narrow group of
25 electric utilities whose revenues are primarily determined by

1 regulation.

2 A. Yes.

3 Q. And that's still your testimony?

4 A. Yes.

5 Q. Let me ask you this question. Would you agree
6 that by establishing a threshold of 75 percent regulated
7 electric utility revenue, you may have eliminated companies
8 that had 100 percent regulated revenues but some of those
9 regulated revenues may have come from gas service as well as
10 electric service?

11 A. No, no. I don't believe that that would --
12 that's the case. If you look at my Schedule CWK-2, it breaks
13 down the revenues by whether they're regulated electric or gas
14 and then non-regulated. I don't believe I have eliminated any
15 companies that were less than 72 percent electric regulated
16 but 100 percent overall regulated by reason of gas.

17 Q. On I think it's page 6 of your Direct
18 Testimony, you mention Value Line's electric utility
19 companies; is that true?

20 A. Yes.

21 Q. And you're familiar with that group?

22 A. Yes.

23 Q. Would it be true that your so-called narrow
24 group does not include all of the companies in Value Line's
25 electric utility group?

1 A. Yes. I've eliminated a number of them for two
2 reasons. One is, it appears they have included some
3 companies -- or one company that's heavily unregulated,
4 although arguably what they do in the unregulated area is
5 tangentially related to electric and gas service. And that's
6 NDU Resources. I also eliminated from the narrow group,
7 companies that had a large amount of unregulated merchant
8 power service.

9 Q. Okay. Thank you. Have you eliminated from
10 your narrow group any Value Line electric utility group
11 companies that have greater than 75 percent of their revenues
12 from regulated services?

13 A. I looked at -- went over my Schedule CWK-2 and
14 it appears that I did eliminate one company that should have
15 been included and that's the N-Star. If you look at that
16 exhibit, you'll find that it is 78.4 percent electric utility
17 regulated.

18 Q. So other than that one company you just
19 mentioned, is it your testimony that your narrow group does
20 include all of the companies in Value Line's electric utility
21 group that have greater than 75 percent of their revenues from
22 regulated services?

23 A. First of all, I didn't start with Value Line's
24 total list. I started with Dr. Vander Weide's list.

25 Q. That wasn't my question.

1 A. Yes.

2 Q. My --

3 A. He had apparently eliminated a number of
4 companies based on the five criteria that he discusses --

5 JUDGE DALE: Excuse me.

6 BY MR. SWEARENGEN:

7 Q. Could you answer my question yes or no? And
8 then if you want to explain, that's okay.

9 A. Okay. I'm sorry. Well, the answer is no as
10 phrased.

11 Q. Okay.

12 A. And then the explanation is that I didn't
13 start with Value Line's list. I started with Dr. Vander
14 Weide's list, which presumably had already reflected the
15 calling out of companies based on his five criteria.

16 Q. Are you familiar with Value Line's electric
17 utility group?

18 A. Only that I viewed the list, yes.

19 Q. Okay. And, once again, just to make sure I
20 understand, other than the one company you mentioned, are you
21 testifying that you have included all of the companies in
22 Value Line's electric utility group that have greater than
23 75 percent of revenues from regulated services?

24 A. Well, on review of this -- this Schedule
25 CWK-2, it appears there are three companies that are slightly

1 under 75 percent that I did include. And they are Alliance,
2 Consolidated Edisons and Puget Electric.

3 Q. My question was regulated revenues greater
4 than 75 percent from regulated --

5 A. I do -- your question is do I have every
6 company other than -- in my narrow list --

7 Q. Yes.

8 A. -- that has a proportion of revenues subject
9 to regulation -- electric revenues subject to regulation --

10 Q. No, no.

11 A. -- greater than 75 percent? And I believe the
12 answer is yes.

13 Q. That wasn't the question.

14 A. All right. I'm sorry. Let's please restate
15 the question.

16 Q. The 75 percent does not relate solely to
17 regulated electric revenues. It relates to revenues from
18 regulated services which would include both electric and gas.

19 A. No. That's not my criterion. My criterion is
20 75 percent of revenues must be regulated electric revenues.

21 Q. So your narrow group then does not include all
22 companies in Value Line's electric utility group that have
23 greater than 75 percent of the revenues -- of their revenues
24 from regulated services?

25 A. From regulated services, if you include both

1 electric and gas, the answer is probably not. I have not
2 examined to see which ones would qualify if I had just said
3 regulated services as opposed to electric regulated services.

4 MR. SWEARENGEN: Thank you very much. That's
5 all I have.

6 JUDGE DALE: Are there any questions from the
7 Bench?

8 COMMISSIONER MURRAY: No questions. Thank
9 you.

10 JUDGE DALE: Redirect?

11 MR. MILLS: No. I have no redirect. Thank
12 you.

13 JUDGE DALE: Well, I'm so glad that you did
14 not travel all this way for that.

15 THE WITNESS: Well, I'd like to thank the
16 Commission and all the parties for extending me the courtesy
17 of this remote appearance. It would have been very difficult
18 for me to travel with a leg that has a brace that keeps it
19 straight out. As you know, airplanes are not particularly
20 accommodating to that sort of thing.

21 JUDGE DALE: Well, we hope that you feel
22 better soon and you are excused.

23 THE WITNESS: Well, thank you very much.

24 MR. MILLS: Thank you, Mr. King.

25 THE WITNESS: Yes. Bye now.

1 (A recess was taken.)

2 JUDGE DALE: We're back on the record. And as
3 I recall, we are at Commissioner questions for Mr. Murray. Is
4 that --

5 MR. THOMPSON: Either that or redirect, but
6 whichever you want, Judge.

7 But before we do that, if I could bring to
8 your attention, Commissioner Appling had distributed some
9 questions, had given Mr. Murray some homework and he has done
10 his assignment and I have it here. And how do you want to
11 handle that? Do you want to have that marked?

12 JUDGE DALE: It actually already has a number.
13 It is 105.

14 MR. THOMPSON: This is just the answers. If
15 you didn't save your list of questions, I can't help you.

16 JUDGE DALE: I have a few questions from --
17 you don't need to stand up -- I'll remind you that you're
18 under oath.

19 MR. MURRAY: Okay.

20 JUDGE DALE: Chairman Davis had a couple
21 questions.

22 DAVID MURRAY testified as follows:

23 QUESTIONS BY JUDGE DALE:

24 Q. One is a question about your comparables and
25 your opinion about whether or not such a small sample size is

1 statistically valid, because if one of the samples for some
2 reason isn't right, you've only got 80 percent. So that was
3 his question. Why such a small sample size?

4 A. One of the things that you have to be fairly
5 careful about when you're looking at statistical significance
6 of a sample size is, is the sample that you're drawing, is it
7 from a truly representative comparable group. And there are
8 many electric utility companies that are labeled as such by
9 Value Line and I think that -- to the tune of maybe 60. But
10 many of those companies are diversified energy companies and
11 also have some gas operations along with them.

12 So if you look at it in terms of what is the
13 population group, in my opinion, the population group of
14 vertically -- of predominantly integrated electric utility
15 companies is very, very small. So the sample sample size that
16 I drew was based on the vertically-integrated electric utility
17 companies that were classified as such by Standard and Poor's.
18 And I selected as many companies as possible from that
19 population.

20 So we have a difference in opinion as to what
21 population should be used to draw a sample from. In my mind,
22 I believe that I have picked the appropriate population, which
23 is companies that have business risk as similar to Empire as
24 possible because they are predominantly vertically-integrated
25 electric utility companies.

1 For example, with Dr. Vander Weide's proxy
2 group, he has TXU in there. And TXU is known to have -- is
3 known to profit actually from the high natural gas prices that
4 we've had, the exact opposite of what's going on with Empire.
5 Because Texas is a deregulated state. And TXU has quite a bit
6 of generation from coal and nuclear. And as a result, they're
7 profiting from the higher market prices in their deregulated
8 state.

9 So there is -- I would not consider that to be
10 part of the population I want to draw my sample from. And as
11 far as statistical significance, I'm not aware of any rate of
12 return witness that has actually calculated, the way you're
13 supposed to, statistical significance of their group as to
14 whether or not -- you know, such as looking at the -- you
15 know, the degree of confidence you're going to have that this
16 is a -- this is a sample group large enough to represent the
17 population.

18 I've never seen any rate of return witness do
19 that. It's always just vague references to, I believe it's
20 more statistically significant to have more companies. Well,
21 you can have more companies, but if they don't represent the
22 business risk of the subject company, what good are you doing?

23 Q. So is it your testimony then that as nearly as
24 you can tell, even though you only have five companies, you
25 have as many comparable companies as you could identify?

1 A. Relying on S&P's categorization, that's
2 correct. There is -- it's very -- the electric utility
3 industry is very hard to sift through and try to figure out
4 which companies are in restructure states or at least have
5 some operations in restructure states where, say -- such as
6 Illinois where they have controversies about how they're going
7 to auction off the generation.

8 It is very hard to -- to find pure play
9 companies. There's no doubt about that. But there is a
10 tradeoff of trying to go with the largest sample size
11 possible. Just like with Dr. Vander Weide's comparable --
12 what he believes to be his comparable group, the growth rates
13 are all over the place.

14 And if you're looking at a regulated utility
15 operation, there is no reason, in my mind, that the expected
16 growth should be much over 3 percent -- 3, 4 percent, a
17 perpetual growth rate. It's a mature industry. Regulated
18 electricities are a very mature industry and it is commonly
19 understood that the investors do not expect high growth with
20 those types of companies.

21 So if you're selecting the right companies,
22 you're going to have growth rates that are somewhat similar to
23 that.

24 JUDGE DALE: Okay. The other question that I
25 had was for everyone who had a return on equity witness, if

1 you would please e-mail to me the working papers of that
2 witness in an Excel format.

3 MR. WOODSMALL: Your Honor, are you going to
4 make that an exhibit or will everybody get a copy of that?

5 JUDGE DALE: I can make them available to you.
6 I can e-mail it then on to any of you who would like it, but
7 because it's in an Excel format, I don't know that we want --
8 well, it would be difficult to put into EFIS and I would have
9 concerns about the propriety of getting those formulas and
10 things out.

11 MR. WOODSMALL: I guess, your Honor, at this
12 point I would object to the extent that you're asking for
13 information that's not going to be an exhibit, not going to be
14 accepted into the record. The relevance of that information,
15 it couldn't be relied upon in making decision.

16 Now, if you want to make that an exhibit
17 somehow so that all the parties can have it, I have no
18 objection, but --

19 JUDGE DALE: If there's a way to make it -- I
20 don't have a problem making it an exhibit, but it can't be put
21 into EFIS.

22 MR. THOMPSON: Well, that's two different
23 things.

24 MR. WOODSMALL: I just want -- I don't care so
25 much about EFIS. I just believe that if you are going to use

1 it as evidence, that it needs to be given an exhibit number,
2 provided to counsel and preserved for the record in the event
3 of an appeal.

4 JUDGE DALE: Well, that makes sense. So we're
5 at 141. We should probably give each a different one. So
6 we'll give 141 to Murray, 142 to Vander Weide, 143 to --

7 MR. MILLS: Mr. King.

8 JUDGE DALE: -- Mr. King and 144 to
9 Mr. Brubaker; is that correct?

10 MR. WOODSMALL: We did not have any testimony
11 on ROE, your Honor.

12 JUDGE DALE: Oh, okay.

13 MR. WOODSMALL: Can you tell me for purposes
14 going forward, I guess each counsel will provide that to
15 opposing counsel?

16 MR. MILLS: Well, if we're talking about the
17 work papers that support the various pieces of testimony,
18 those have already been provided to counsel. And what we
19 would -- by agreement. And what we would be providing in
20 response to this request is the same work papers that we've
21 already provided to all the parties.

22 MR. WOODSMALL: Okay. Typically work papers,
23 since they're not filed, are treated as confidential. Are
24 these going to be confidential exhibits or --

25 JUDGE DALE: Yes. And they won't even be --

1 as I've indicated, I'll just have to put some entry into EFIS
2 that this is a non-- was a confidential work paper document.

3 MR. CONRAD: Why would it not be on EFIS?

4 JUDGE DALE: It has to do with the inclusions
5 of the -- yes, Mr. Thompson.

6 MR. THOMPSON: It's my understanding that the
7 copies of the work papers that have been provided to counsel
8 are not necessarily in Excel form.

9 MR. MILLS: Yeah. There's all kind of stuff
10 that make up the work papers. There may be some schedules
11 that are supported with Excel spreadsheets, but much of it is
12 going to be source materials, calculations and stuff like that
13 that's not really an Excel spreadsheet.

14 JUDGE DALE: Well, what the specific request
15 that I received was specifically a request for the
16 calculations in Excel form.

17 MR. MILLS: So you only want the worksheets
18 that are Excel spreadsheets?

19 JUDGE DALE: Yes.

20 MR. MILLS: Well, that would be much less than
21 what was provided to the other parties.

22 JUDGE DALE: Okay. And now in answer to your
23 question, the Excel spreadsheets, because of their volume,
24 EFIS simply can't handle them. Moreover, there may be --

25 MR. CONRAD: There are Excel spreadsheets

1 filed all the time in EFIS. Parties file them all the time,
2 perhaps in this case. Just file --

3 JUDGE DALE: Then the answer is I don't know.

4 MR. CONRAD: If you're talking about -- if it
5 exceeds the size requirements, that's something -- I mean,
6 that's something else, but I'm not aware of -- I mean, I've
7 seen stuff on EFIS that's in XLS format, Judge. I'm just
8 not --

9 JUDGE DALE: I've not seen these kind of
10 calculations in EFIS. I don't know

11 MR. THOMPSON: You've seen the data request
12 stuff. They don't see that.

13 JUDGE DALE: I have seen some spreadsheet
14 format, but it's not -- it's just charts that happen to be in
15 Excel form.

16 MR. MILLS: And typically what we will do is
17 we will printout an Excel spreadsheet into print form, convert
18 it into Adobe and file that. It may be a Excel spreadsheet.

19 MR. THOMPSON: But it's not going to have an
20 XLS extension.

21 MR. MILLS. Right. That's what we file.

22 JUDGE DALE: And the request that has been
23 given to me is that they be in actual Excel format.

24 MR. WOODSMALL: Despite all that, your Honor,
25 just so that we all have a common understanding of what

1 Exhibit 141, 142 and 143 will be, I would ask that when those
2 are transmitted to your Honor, that opposing counsel be copied
3 as well. I don't want to have to go through the worksheets
4 that I've received and guess which ones counsel is providing.
5 I think we all ought to have a common understanding as to what
6 those exhibits are.

7 JUDGE DALE: Is that acceptable to everyone?

8 MR. MILLS: Absolutely.

9 JUDGE DALE: And the other thing is that just
10 occurred to me to mark these as 141-HC, 142-HC and 143-HC
11 since these are clearly highly confidential. Do you not think
12 they're highly confidential? Well, I thought the work papers
13 always were.

14 MR. MILLS: The work papers typically -- well,
15 because they're not -- they're not intended to be filed. I
16 mean, they're really just sort of supporting information and
17 we treat them more or less as discovery. They're not
18 necessarily highly confidential according to the terms of the
19 protective order, but they're not expected to be divulged.
20 But I'm thinking that --

21 MR. THOMPSON: Is that sort of confidential?

22 MR. MILLS: Well, I'm kind of guessing what
23 we're doing here because I'm not really sure what is you want
24 to know or why, but I think what you're likely to get at least
25 from me is the Excel spreadsheet, for example, that leads to

1 Exhibit 140, which really just has, you know, a dozen cells in
2 it and, you know, that -- the embedded calculations are one
3 plus this other one divided by this third one and they're not
4 terribly complex. So I don't think you're going to get
5 something that's really horribly complicated as a result of
6 this request. I'm hoping that that's what you have in mind.
7 Okay. Well, we will provide this stuff and if it's not what
8 you want, you can let us know.

9 JUDGE DALE: And as I said, I'll just be
10 forwarding it to the Commissioner who wants it.

11 MR. CONRAD: Sorry to prolong this, but does
12 that make it part of the decision of record in this case?

13 MR. THOMPSON: They're going to be an exhibit,
14 Stu.

15 JUDGE DALE: Yeah. They'll be available to
16 all the Commissioners.

17 MR. CONRAD: Well, that's what I'm --

18 JUDGE DALE: Yes.

19 MR. MILLS: And I assume that once you get
20 them and all counsel gets them, there will be some opportunity
21 to object if there is something some party believes is
22 objectionable before they're admitted into the record.

23 MR. SWEARENGEN: Makes sense to me.

24 JUDGE DALE: Yeah.

25 MR. THOMPSON: Me too.

1 JUDGE DALE: So approximately when do you
2 believe these could be provided?

3 MR. MILLS: I expect that we can get ours to
4 you early next week. I mean, our witness is out of town and
5 so communication may be somewhat of an issue, but it should
6 be -- you know, assuming I can get ahold of him, it may be as
7 early as this afternoon but certainly no later than early next
8 week.

9 MR. THOMPSON: Early next week for us, Judge.

10 JUDGE DALE: Then let's just assume that
11 anyone who has an objection to raise will raise it next week,
12 the end of which I believe is the 22nd. So just to be really,
13 really specific, if you have an objection, you must raise it
14 by 4:00 p.m. on September 22nd.

15 MR. SWEARENGEN: And then we'll file our work
16 papers on the 23rd. Would that be okay?

17 MR. THOMPSON: So is there a deadline for the
18 work papers?

19 JUDGE DALE: Early next week.

20 MR. SWEARENGEN: I have no idea when my
21 witness will be able to do that, but we'll get them filed just
22 as soon as we can and I would hope we could do so by the 21st.

23 MR. CONRAD: I guess, Judge, what I'm sitting
24 here kind of puzzled about is because this is something
25 seemingly unique. I'm presuming the reason the person wants

1 to have this material supplied in Excel spreadsheet form is so
2 that they can plug in whatever numbers they think they want to
3 plug into and purportedly perform the calculations on
4 spreadsheets which they did not design and which they may or
5 may not understand the intricacies of the formulas in them.

6 And I'm kind of wondering how we could cover
7 that in the context of what the decision of record in the case
8 is, which goes back to Lewis's question about, you know, when
9 you provide that in the past, you've converted it to PDF,
10 which is, you know, here's the contents of the cells. Not the
11 formula, but what the values themselves are.

12 Because there really isn't any way then that
13 somebody can cross-examine or even know what's going on when
14 you plug numbers into a spreadsheet sheet that they didn't
15 build and they look at that result and say, well, that's
16 interesting, but that doesn't take into account some other
17 part of your spreadsheet.

18 I'm just -- I'm really scratching my head
19 about this one, because this seems a little bit off the --
20 somewhat off the beaten path.

21 MR. WOODSMALL: Well, and to expand upon that
22 further --

23 MR. THOMPSON: I'm going to object, Judge. I
24 think they need to pick which lawyer is talking about this
25 point and stick to that one.

1 MR. WOODSMALL: Well, I'm not objecting. I'm
2 just trying to get an understanding. I guess my concern is to
3 the extent that --

4 MR. THOMPSON: Can I get another couple
5 lawyers down here?

6 MR. CONRAD: Sure. Get as many as you want.

7 MR. MILLS: Can I get another lawyer?

8 MR. CONRAD: I'll make it real formal. I'll
9 make an objection right now to that process. And that can be
10 logged because we're on the record now and then we'll amplify
11 that when we see what comes. If that's what you want, Kevin,
12 that's what you got.

13 JUDGE DALE: That objection will be overruled.
14 We'll ask the parties to do that. Once again, it's my
15 expectation that they can be filed by early next week. If
16 they cannot be filed by early next week, if someone will
17 please notify me and then we'll change the objection deadline.

18 Is there any cross based on those questions
19 from the Bench?

20 MR. WOODSMALL: I have just one brief
21 question.

22 JUDGE DALE: Certainly

23 MR. WOODSMALL: Or I hope just one.

24 CROSS-EXAMINATION BY MR. WOODSMALL:

25 Q. Mr. Murray, you were provided -- or you

1 provided some figures in response to some questions from the
2 Bench, Exhibit 105. Do you recall that?

3 A. I need to look and see -- look at Exhibit 105.
4 Oh, exhibit -- okay. Sorry. Yes.

5 Q. Can you tell me whether those numbers that you
6 provided have any effect one way or another on your belief as
7 to the appropriateness of your comparable companies?

8 A. No.

9 Q. You still believe that the five companies that
10 you use are appropriate comparable companies for your
11 analysis?

12 A. Yes.

13 MR. WOODSMALL: Thank you.

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. And another one also about 105 and just very
16 briefly. The very last question had to do with
17 exchange-traded options. And Pinnacle West doesn't seem to be
18 filled out. It doesn't say yes, no, maybe, I don't know. And
19 I was just wondering what the word is on Pinnacle West.

20 A. Looks like I need to revise that. I'll join
21 Mr. King.

22 Q. But you don't know the answer right now?

23 A. It's yes.

24 Q. It's a yes. Okay.

25 MR. MILLS: Thank you. That's all I had.

1 JUDGE DALE: Is there any objection to
2 Exhibit 105 as corrected?

3 MR. WOODSMALL: No, your Honor.

4 JUDGE DALE: Then it's admitted with the
5 addition of a yes by Pinnacle West.

6 (Exhibit No. 105 was received into evidence.)

7 JUDGE DALE: Redirect? Oh, I'm sorry. Did
8 you have cross based on questions?

9 MR. SWEARENGEN: I had no cross. But you know
10 what? I think we're going to get our Excel spreadsheet filed
11 before anybody else.

12 JUDGE DALE: There you go. That might be
13 easier.

14 THE WITNESS: That way I can't look at his
15 questions anyway.

16 JUDGE DALE: And if I didn't remember this
17 last time, let me remind you that you're still under oath.

18 MR. THOMPSON: You did remember it last time.

19 REDIRECT EXAMINATION BY MR. THOMPSON:

20 Q. Mr. Murray, do you remember that Mr. Sweargen
21 asked you whether you agreed that Mr. Vander Weide's testimony
22 using a beta of .6 was, in fact, in error? Do you remember
23 that question?

24 A. Yes, I do.

25 Q. Now, you don't know if Mr. Vander Weide was in

1 error, do you?

2 A. Yes.

3 Q. You do know that?

4 A. Yes.

5 Q. It's not possible he had changed his mind?

6 A. No, it's based on a publicly available source.

7 And I -- Empire's beta -- this is something I'm almost
8 99 percent sure -- would not have changed that much within the
9 short amount of change when he did his analysis and when we
10 were asking and answering those questions last week.

11 Q. Very well. And Mr. Swearngen also asked you
12 about your testimony in the last Empire rate case. Do you
13 remember that?

14 A. Yes.

15 Q. And I believe he asked you if you used a
16 company-specific discounted cash flow analysis at that time?

17 A. Yes.

18 Q. Did you happen to perform a company-specific
19 discounted cash flow analysis of Empire for this case?

20 A. Yes.

21 Q. And what was your result?

22 A. For the record, this is reflected on revised
23 Schedule 67 -- or excuse me, Revised Schedule 16 in my
24 Rebuttal Testimony. I had a Empire company-specific growth of
25 796 to 896 using the growth rate range that I estimated in the

1 last rate case.

2 Q. Okay. There were also some questions from
3 Mr. Swearingen, as I recall, about interest rates. Do you
4 remember that?

5 A. Yes.

6 Q. Do you happen to know whether changes in
7 interest rates have an impact on utility bonds?

8 A. They -- they tend to, yes. It may not be a
9 one-for-one change, but -- but there is eventually some change
10 to public utility bond yields as well.

11 MR. THOMPSON: That's all my questions. Thank
12 you.

13 Thank you, Mr. Murray.

14 THE WITNESS: Thank you.

15 JUDGE DALE: Thank you, Mr. Murray. You may
16 step down.

17 THE WITNESS: Thanks.

18 JUDGE DALE: And you're excused.

19 MR. THOMPSON: Staff calls Mark Oligschlaeger.

20 JUDGE DALE: I'll remind you that you're still
21 under oath Mr. Oligschlaeger. Thank you.

22 MARK OLIGSCHLAEGER testified as follows:

23 DIRECT EXAMINATION BY MR. THOMPSON:

24 Q. Mr. Oligschlaeger, you've testified already in
25 this case, haven't you?

1 A. Yes, I have.

2 Q. And are you the same Mark Oligschlaeger that
3 caused to be prepared and filed Exhibit No. 56?

4 A. Yes, I am.

5 Q. I think that's marked as your Rebuttal
6 Testimony; is that correct?

7 A. Yes.

8 Q. And part of that has been admitted; isn't that
9 correct?

10 A. I believe so.

11 Q. The part having to do with regulatory plan
12 amortizations?

13 A. Correct.

14 Q. Well, the other part of that testimony has to
15 do with return on equity; is that correct?

16 A. Yes.

17 Q. If I were to ask you those return on equity
18 questions today, would your answers be the same?

19 A. Yes, they would.

20 Q. And as far as you know, are they still true to
21 the best of your knowledge, information and belief?

22 A. They are.

23 MR. THOMPSON: At this time, your Honor, I
24 would move for the admission of whatever portion of Exhibit 56
25 has not yet been admitted.

1 MR. SWEARENGEN: No objection from the
2 company.

3 JUDGE DALE: Hearing no objection, the
4 remainder of Exhibit 56 is admitted into evidence.

5 (Exhibit No. 56 was received into evidence.)

6 MR. THOMPSON: And I tender Mr. Oligschlaeger
7 for cross-examination.

8 MR. WOODSMALL: No questions, your Honor.

9 MR. MILLS: No questions.

10 MR. SWEARENGEN: Empire has no questions.
11 Thank you.

12 JUDGE DALE: Questions from the Bench? I have
13 none.

14 Thank you, Mr. Oligschlaeger. You may step
15 down and you're excused.

16 There was a request that before we adjourn, we
17 double check what's admitted and what's not. According to my
18 list, all of the pre-filed testimony has been admitted.

19 MR. WOODSMALL: Subject to stricken portions
20 and offers of proof.

21 JUDGE DALE: Right.

22 MR. MILLS: And we had this conversation this
23 morning. What about Mr. Fetter's testimony? His Rebuttal
24 Testimony was not admitted at all and only a very limited
25 portion of his Supplemental Direct was admitted. That's

1 Exhibits 12 and 11.

2 MR. SWEARENGEN: That's not how I remember it,
3 but I'm sure the record will reflect the ruling.

4 MR. THOMPSON: Could we go through the
5 numbers, Judge?

6 JUDGE DALE: Certainly. But let me go back to
7 11 and 12 and deal with that first. Mr. Fetter's testimony
8 was stricken with the exception of I believe the introductory
9 question and answer and self-identification and the last
10 question of, Does that conclude your Rebuttal, which I think
11 Mr. Conrad graciously left in.

12 MR. CONRAD: We didn't have an objection to
13 that question and answer.

14 JUDGE DALE: So it is, for all intents and
15 purposes, substantively stricken. And then the Rebuttal was
16 stricken in its entirety.

17 MR. SWEARENGEN: But was it preserved under
18 the rule as --

19 JUDGE DALE: Oh, yes.

20 MR. SWEARENGEN: Okay. Thank you.

21 JUDGE DALE: Okay. So going through the
22 numbers, 1, 2 -- 2 had some exceptions, as I recall; is that
23 right? The Direct of -- Vander Weide Direct? Was there --

24 MR. WOODSMALL: There was a portion there,
25 your Honor, towards the end of his Direct -- and I don't have

1 it with me -- that had been stricken because of a reference to
2 a fuel adjustment clause.

3 JUDGE DALE: I think probably page 54, lines 1
4 through 7.

5 MR. SWEARENGEN: But it was preserved under
6 the rules.

7 JUDGE DALE: Yes. And I'm making sure that
8 I'm marking preserved next to all these.

9 Rebuttal and Surrebuttal of Vander Weide was
10 accepted. Mr. Gibson's was admitted with a few exceptions and
11 preserved.

12 MR. THOMPSON: Are you talking his Direct?

13 JUDGE DALE: His Direct. I'm sorry. And his
14 Supplemental Direct and Rebuttal were received entirely.
15 Mrs. McCormack, Direct, Rebuttal and Surrebuttal were admitted
16 in their entirety. We've just discussed 11 and 12. 13 and 14
17 were admitted in their entirety. 15, Mr. Tarter's Direct HC
18 and NP, there was a partial strike and preservation for
19 appeal. And 16, 17 and 18, his subsequent testimony, was
20 admitted in its entirety.

21 Mr. McCord's Supplemental Direct was admitted
22 in its entirety. Mr. Keith, it looks like his Direct was
23 admitted in its entirety, but the Rebuttal HC and NP and
24 Surrebuttal HC and NP were stricken in part and preserved for
25 appeal.

1 MR. WOODSMALL: Your Honor, at this point I'd
2 note before we go any further, that there is a standing
3 objection to many pieces of this testimony due to the fact
4 that it was received under a stipulation -- order approving
5 stipulation, it was received without cross-examination. So we
6 still have a standing objection on that matter.

7 JUDGE DALE: Okay. Ms. Long's Direct was
8 admitted in its entirety as was the Supplemental Direct.
9 Rebuttal Testimony was admitted in its entirety subject to the
10 stipulation objection. Ms. Delano's Direct and Rebuttal and
11 Mr. Lentz's Rebuttal were accepted in their entirety.

12 MR. THOMPSON: When you say "accepted in their
13 entirety," what do you mean?

14 JUDGE DALE: Admitted.

15 MR. THOMPSON: Admitted. Okay.

16 JUDGE DALE: Yeah. 29, 30, 31 and 32 all were
17 admitted in their entirety. 29 had HC and NP. And if you can
18 point out which ones were -- which ones, as we go along, have
19 the stipulation objection.

20 MR. WOODSMALL: Your Honor, I don't have that
21 with me. I'm sorry. I can provide it later.

22 JUDGE DALE: No. I've got it upstairs.
23 Because I did not mark that on the Staff ones, but I will go
24 through and so mark those.

25 And just for the record, for all those ones

1 who were admitted pursuant to that Stipulation and Agreement,
2 your objection is preserved.

3 MR. WOODSMALL: Thank you, your Honor.

4 JUDGE DALE: 33, 34, 35, 36, 37, 38 were all
5 admitted in their entirety. 39, Janis Fischer's Direct HC and
6 NP was -- a portion of hers was admitted under the stipulation
7 and the rest was admitted pursuant to her corrections. 40-HC
8 and NP, 41-HC and NP, 42-HC, NP, 43, 44, 45, 46, 47, 48-HC and
9 NP, 49, 50-HC and NP were all admitted in their entirety.

10 51, 52 and 53 -- 52 is HC and NP and 53 is HC
11 and NP -- were all admitted in their entirety. 54, 55 and 56
12 and 57 were all admitted in their entirety. 58 and 59 were
13 admitted. 60 I have marked as being pursuant to the stip and
14 admitted in its entirety with the reservation of the stip
15 objection. 61 was admitted in its entirety. 62 over the
16 stsip objection was admitted.

17 63 was admitted in its entirety and 64. 65 is
18 admitted in its entirety pursuant to stip. 66, 67, 68 and 69
19 were all admitted in their entirety and 70 was admitted
20 pursuant to stip. Now, these stips through -- 60 through 70
21 were pursuant to the second Stipulation and Agreement.

22 MR. WOODSMALL: The rate design stipulation
23 filed yesterday.

24 JUDGE DALE: Yes.

25 MR. WOODSMALL: That's my understanding.

1 JUDGE DALE: And you still are preserving a
2 objection to those as well?

3 MR. WOODSMALL: No. We were a signatory to
4 that. We never objected to that.

5 JUDGE DALE: Oh, sorry.

6 MR. CONRAD: To be clear, I don't think my
7 colleague was down there. We had said that we did not have
8 objection to those conditioned on the acceptance of the
9 stipulation that we're talking about the rate design stuff.

10 JUDGE DALE: Okay. OPC's testimony 71, 72,
11 73, 74, 75 were all accepted in their entirety. 76 and 77
12 were at least partially accepted pursuant to the first
13 stipulation, but were admitted in their entirety. 78, 79 and
14 80 were all admitted in their entirety. 81, 82 -- 81-NP and
15 HC, 82, 83 and 84 were all admitted in their entirety.

16 85 was NP and HC, was admitted in its
17 entirety. 86, 87 and 88 were admitted in their entirety, but
18 were the subject of stip.

19 MR. THOMPSON: What was the subject of the
20 stip? I'm sorry.

21 JUDGE DALE: 86, 87 and 88 partially.

22 MR. WOODSMALL: The portions of 86, 87 and 88
23 dealing with rate design were the subject of the stip filed
24 yesterday.

25 JUDGE DALE: Oh, okay. And even 88?

1 MR. WOODSMALL: Correct, your Honor.

2 JUDGE DALE: Because it has rate design and
3 fuel and purchased power.

4 Okay. 89 in its entirety and 90 in its
5 entirety. 91 was the proxy statement, it was admitted. 92 --

6 MR. WOODSMALL: I believe, your Honor, that 91
7 only pages 13 through 15.

8 JUDGE DALE: Yes. I think that's all we had.

9 MR. WOODSMALL: I can't recall if -- I know
10 there was more at one time and I don't know what, but it's
11 pages 13 through 15.

12 JUDGE DALE: Yeah. My list does comport with
13 that it's only pages 13, 14 and 15. 92, which is the New York
14 Stock Exchange Manual, which is -- I think after all of the
15 backing and forthing, it has just been admitted.

16 MR. THOMPSON: I show that as not received.

17 MR. MILLS: It was not received and there was
18 a lot of back and forth. And this is the one there was
19 discussion and you explicitly said it's not received into
20 evidence but somehow the company could cite to it in their
21 brief. But --

22 JUDGE DALE: Refer to it. Citing to it is --
23 this is -- we got into the whole discussion yesterday of how
24 that was my polite way of saying it had no probative value
25 whatsoever.

1 MR. WOODSMALL: Well, if it has no probative
2 value, it's completely irrelevant and should not be accepted
3 into the record.

4 JUDGE DALE: Well, okay. So it's not
5 admitted.

6 MR. WOODSMALL: Thank you.

7 JUDGE DALE: 93, which was a charter is
8 admitted. 94-HC, an incentive plan metric was admitted.
9 95-HC, a performance planning and revenue perform-- something
10 about performance planning, admitted. 96-HC, lightning bolts,
11 was admitted.

12 MR. WOODSMALL: I believe on that one, your
13 Honor, there was a portion regarding 2004 that was not
14 admitted because it was prior to the test year. And that was
15 stipulated by the company, Mr. Mitten.

16 JUDGE DALE: I also have a note on that one
17 that the company was going to go back and see whether or not
18 all of that was HC or whether it was simply P.

19 97, the updated Vander Weide charges was
20 admitted. 98, the RRA 7606 regulatory study was admitted.
21 99 was an Illinois case, which was not admitted. 100 was a
22 Kansas case that was admitted. 101 was an Arkansas case that
23 was admitted. 102 and 103 were Value Lines from 7/7/06 and
24 8/25/06 respectively, both admitted.

25 104 was an exhibit chart which was admitted.

1 105 was the question and answer from Commissioner Appling,
2 which has been admitted. 106, the tariff sheets for the ELIP
3 tariff were admitted. 107, order approving those tariff
4 sheets was admitted. 108-HC was a portion of DR response 269.
5 It was admitted.

6 MR. THOMPSON: My note says not admitted.

7 JUDGE DALE: It was later admitted because
8 I've got the "not" very definitely scratched out.

9 MR. WOODSMALL: Yes. Originally it was not
10 admitted but then on another issue on the IEC continuation it
11 was brought back up and then admitted.

12 MR. THOMPSON: Very well. Thank you.

13 JUDGE DALE: Exhibit 109, which was a Standard
14 and Poor's document entitled Buy Versus Build was admitted.
15 110 which was the errata sheet of Mr. Smith was admitted.
16 111-HC, OPC run No. 1, natural gas futures was admitted.
17 112, Empire tariff sheet IEC rider was not admitted.

18 113, April 2004 testimony of B. Beecher was
19 admitted; 114, April 30th, 2004 tariff filing, three pages,
20 was admitted; 115, April 2004 testimony of W.L. Gipson was
21 admitted; 116, transcript of a December 7th, 2004 presentation
22 was not admitted; 117, the stipulation for ER-2004-0570,
23 administrative notice was taken of that; 118 was the tariff
24 filing 317-2005 was admitted; 119, DR -- the response to
25 DR 276 which was going to be subject to review for

1 completeness, which I assume has been done since we are now at
2 the end of the hearing, was admitted. The Response to DR 278,
3 which was Exhibit 120, was also similarly admitted.

4 121 was 10-K for fiscal year 2004, admitted;
5 122 was the 10-Q that was the response to DR 247, which was
6 admitted; 123, another 10-Q responding to DR 248 was admitted;
7 and 124 is another 10-K responding to DR 249, which was
8 admitted.

9 125, 17 CFR 229.303 was not admitted; 126, all
10 I have is it's a DR response. Does anybody have the number?

11 MR. WOODSMALL: I don't have the number, but
12 it was a list of board meetings.

13 MR. MILLS: It was Praxair DR 1.

14 JUDGE DALE: It was admitted. 127-HC were
15 board minutes, April 27th and 28th, not admitted although
16 there was an offer of proof.

17 MR. WOODSMALL: Thank you.

18 JUDGE DALE: 128-HC, board meetings of
19 July 27th and 28th, also not admitted but subject to an offer
20 of proof. 129-HC was a presentation entitled Bill Gipson,
21 UCU, which was admitted. 130-HC was a presentation entitled
22 Greg Knapp, Finance 7/2005 presentation, which was admitted.
23 131-HC was a presentation entitled Gipson EPS, which was
24 admitted.

25 132, part 1, HC was a presentation to Standard

1 and Poor's April 6, 2005, which was admitted; 132, part 2, HC,
2 financial assumptions relating to that presentation which was
3 admitted; 133-HC is another portion of the response to DR 269,
4 presentation for Standard and Poor's and Moody and it was
5 admitted into evidence.

6 134 was the earnings call 7/25/05 transcript
7 in part which was admitted; 135 was DR -- the response to
8 DR 19 supplement in part, which was admitted. Administrative
9 notice was taken of ER-2002-1074 and ER-2002-0424. 136 --

10 MR. WOODSMALL: Your Honor, on that
11 administrative notice, it was not only the two orders, but
12 also the --

13 JUDGE DALE: The underlying stips.

14 MR. WOODSMALL: Yes. The stipulation in the
15 1074 case.

16 MR. THOMPSON: Could you give me those case
17 numbers again, Judge?

18 MR. WOODSMALL: ER -- I'm sorry.

19 JUDGE DALE: ER-2002-1074 and ER-2002-0424.

20 MR. THOMPSON: Thank you.

21 JUDGE DALE: 136, which was e-mail responses
22 was admitted; 137-HC, which was a supplemental response to DR
23 269 was admitted.

24 MR. COOPER: Judge, I apologize, but on 136
25 we've got a note about just the cover page and last page on

1 136.

2 JUDGE DALE: Oh, yes, that's right. I ripped
3 out the middle. So that what I have for Exhibit 136 is only
4 the first and last page.

5 Let me stop the court reporter here and ask if
6 you did the same thing with your exhibit.

7 (Off the record.)

8 JUDGE DALE: Where am I?

9 MR. WOODSMALL: 137 I believe.

10 JUDGE DALE: 137-HC was the supplemental
11 response to DR 269 and it was admitted; 138 is the Staff rec
12 in ER-2004-0570, which was admitted; 139 is the company's
13 supplemental response to DR-229, which was admitted; 140 is
14 the updated King schedule, which was admitted; 141-HC, 142 --
15 well, 141-HC, Murray; 142-HC Vander Weide; and 143-HC King
16 will be ask the Excel spreadsheets which will be admitted.

17 MR. WOODSMALL: And a pending objection to
18 those, your Honor.

19 JUDGE DALE: Yes. And I'm just making a note
20 to myself about the special treatment of those exhibits. I
21 believe that's the entirety of the exhibits.

22 Mr. Cooper?

23 MR. COOPER: Yes, Judge. Could we go back for
24 a minute to the testimony of Mr. Scott Keith? I was listening
25 from afar when you made mention of that testimony and I think

1 you said that Direct had been admitted in its entirety,
2 Rebuttal and Surrebuttal subject to the Commission's earlier
3 order.

4 I actually think that ought to be reversed. I
5 think that Rebuttal and Surrebuttal were supposed to have been
6 admitted in their entirety and his Direct was the one that was
7 treated by the Commission's earlier order.

8 MR. MILLS: Just based on the calendar, it has
9 to be that way.

10 MR. COOPER: And I'm hoping there's no
11 disagreement about that, because I --

12 MR. WOODSMALL: I know there was a portion of
13 the Direct that had been stricken. I'm not aware at this time
14 of anything in the Rebuttal or Surrebuttal, but I'm sure the
15 record would reflect that appropriately.

16 JUDGE DALE: Yes. I believe that's true,
17 because I do show strikes in his Direct. And I don't see any
18 strikes in his Rebuttal. I'll save you all me flipping
19 through his Surrebuttal and assume I got those exactly
20 backwards.

21 So for Exhibit 20, it was stricken in part,
22 preserved for appeal; and 21 and 22 were admitted in their
23 entirety both HC and NP subject to the objection.

24 MR. WOODSMALL: And subject to pending
25 objection regarding the testimony coming in pursuant to the

1 stipulation.

2 JUDGE DALE: That is right. And I did have
3 these marked as coming in with the stip. Is that it for
4 objections -- or for exhibits?

5 The transcript of this proceeding will be in
6 no later than the 29th. I would like to ask that
7 prehearing -- that post-hearing briefs be filed on or before
8 October 15th.

9 If you will kindly incorporate by reference in
10 your post-hearing brief your pre-hearing brief. And for those
11 of you who wish to do so, I would be delighted to receive
12 draft Findings of Fact and Conclusions of Law, but you are not
13 required to file them.

14 MR. CONRAD: Did we have a date set for reply
15 briefs?

16 JUDGE DALE: I was under the impression that
17 there was a single round of post-hearing briefs. Am I
18 misremembering? That would be October 15th.

19 MR. CONRAD: So I can say whatever I want in
20 my 10/15 brief without fear of refutation?

21 JUDGE DALE: Yes. Unless someone has read
22 your mind.

23 MR. CONRAD: Now, the topic of page limits
24 comes up, which we presently have at least two unruled
25 applications for rehearing pending on.

1 JUDGE DALE: Do you have a request for a
2 waiver of the --

3 MR. CONRAD: However it is -- it is
4 characterized, I'm not sure that there's anything to waive,
5 but I think in the context of all that has gone on, we can
6 probably work within the confines of 80 pages. And I'm going
7 to endeavor to hold it below that.

8 JUDGE DALE: On the strength of my confidence
9 in your ability to be piffy and concise, you may have
10 80 pages. And I will hope --

11 MR. CONRAD: Now, does the company get 80 or
12 do they get something less?

13 JUDGE DALE: They have to ask.

14 MR. COOPER: Well, I would hope that whatever
15 limitation we have would apply to all parties, so --

16 JUDGE DALE: No. It's actually per request.
17 If you think you need 80 pages --

18 JUDGE THOMPSON: We'd like 100, Judge.

19 MR. COOPER: We would like to be included on
20 whatever the max is.

21 JUDGE DALE: Mr. Thompson, if you request
22 100 pages, you will be required to file 100 pages.

23 MR. CONRAD: Pertinent or not.

24 JUDGE DALE: Pertinent. Do you really want
25 100 pages?

1 MR. THOMPSON: Absolutely.

2 JUDGE DALE: I will look forward to seeing
3 your 100-page brief.

4 MR. THOMPSON: Thank you, Judge.

5 JUDGE DALE: Please don't forget to
6 incorporate by reference your pre-hearing brief.

7 MR. THOMPSON: I'll be sure to.

8 JUDGE DALE: Apparently editing is a lost art
9 not just in the movie business. Mr. Cooper?

10 MR. COOPER: Ma'am? What's the question?
11 Whether I want 100 pages if I have to use 100 pages?

12 JUDGE DALE: If you want 100 pages, you have
13 to use 100 pages. If you only want 80 pages, you can be
14 briefer. It's a tough choice.

15 MR. CONRAD: How about door No. 2?

16 MR. COOPER: Judge, why don't we just make a
17 filing as to where we would like to be on that issue.

18 JUDGE DALE: That would be delightful instead
19 of predicting.

20 Mr. Mills?

21 MR. MILLS: Oh, I'm pretty sure I don't have
22 time to write 100 pages on any one case, so I don't think I
23 want to be obligated to fill 100 pages on this particular
24 case.

25 JUDGE DALE: If you exceed the 30 pages --

1 MR. MILLS: Well, I'll take the 80 if the
2 80 is free. I'll go there.

3 JUDGE DALE: The 80 is free and you can go
4 with less.

5 MR. MILLS: That's what I want. Thank you.

6 JUDGE DALE: Is there anything else I need to
7 mention before we finally, utterly, totally adjourn?

8 MR. CONRAD: I guess I would -- if you think
9 it is -- and it's my understanding that we'll have transcript
10 by 9/29, I guess I won't ask the next question but if for
11 whatever reason it is delayed --

12 JUDGE DALE: We will delay proportionately.
13 But I have been advised that the 29th is the drop-dead date.

14 MR. CONRAD: Who drops?

15 JUDGE DALE: The court reporters drop dead.
16 And as I have mentioned before, some of the transcript is
17 already in so I don't expect that there will be any
18 significant delay.

19 Mr. Dottheim?

20 MR. DOTTHEIM: Yes. There's the matter of the
21 additional amortizations -- the regulatory plan amortizations
22 issue. The Staff submitted to the other parties several
23 documents yesterday and we're going to meet at the conclusion
24 of the proceedings today. And the plan is to, after we meet,
25 to report to you as to where we are on that item.

1 JUDGE DALE: Okay. That would be lovely.

2 MR. DOTTHEIM: Thank you.

3 MR. CONRAD: Before Mr. Dottheim leaves, am I
4 correct, Judge, that that issue has been tried and that the
5 materials there, whatever they may be, are in the list of
6 materials that you had previously worked through?

7 JUDGE DALE: Are they?

8 MR. DOTTHEIM: No. We haven't tried the full
9 amortizations issue.

10 MR. COOPER: What was the question,
11 Mr. Conrad?

12 MR. CONRAD: Well, whether all of the --
13 whether that issue had been --

14 MR. COOPER: No.

15 MR. CONRAD: -- was in the can, as it were.

16 MR. COOPER: I think the people actually took
17 the stand and their testimony was admitted, but I don't know
18 whether we went further than that.

19 MR. DOTTHEIM: No. I don't think we did,
20 other than Mr. Gipson I think was cross-examined by Mr. Conrad
21 some on the --

22 MR. CONRAD: That's me.

23 MR. DOTTHEIM: -- on the additional
24 amortization of the regulatory plan amortizations issue. And
25 I think -- I don't know if it was on additional amortizations,

1 but Mr. Conrad had a question or two for Mr. Fetter. But I
2 think the other -- the other witnesses --

3 MR. CONRAD: No. Basically I was asked -- I
4 think the questions that I had for Mr. Fetter pertained to his
5 compensation or lack thereof.

6 MR. DOTTHEIM: Yes. But as far as the
7 calculation of the additional amortization, that was on
8 abeyance on the basis that there was some thought that we had
9 that resolved in principle, but we needed to further talk, the
10 Staff was going to get to all the parties various documents
11 for the parties to review, which the Staff has now done and
12 we're going to meet at the conclusion of the proceedings and
13 then report back to you later this afternoon.

14 MR. CONRAD: And that reminds me -- thank you
15 for that -- there are some other dates on the procedure
16 schedule, mainly the true-up hearing.

17 JUDGE DALE: Yes.

18 MR. CONRAD: And there are some -- I think
19 some ramp-up issues on that. So we're not -- as it were,
20 we're not done with this. I don't have that procedural
21 schedule order in front me, but I can probably dig the dates
22 out. I thought it might be useful, Mr. Dottheim, to very
23 quickly just touch on those.

24 MR. DOTTHEIM: Certainly. If we are not able
25 to resolve the regulatory plan amortizations issue, I don't

1 know that all the parties would suggest that we would put that
2 off until the true-up hearings that have been scheduled which
3 I think are in October.

4 MR. CONRAD: If my magic machine here is
5 correct, I am showing, Judge, true-up direct due 9/27. Is
6 that consistent with everybody's and your calendar?

7 MR. DOTTHEIM: I don't have my calendar with
8 me, but I think the hearings are scheduled in October so that
9 would sound correct without trying --

10 MR. CONRAD: According, again, to this
11 machine, I have the true-up hearing scheduled to commence
12 October 2 and run through that week. Now, the reason I was
13 kind of questioning that was while we had -- I'm sorry that I
14 did not bring that procedural order in, but perhaps somebody
15 has it in their file available.

16 Was there any further testimony filings in
17 connection with the true-up other than that thing on the 27th?

18 MR. DOTTHEIM: I think, but -- I'm sorry, I
19 don't recall in this proceeding, but in other proceedings
20 there have been dates set for rebuttal testimony for true-ups
21 so there would be possibly a second date. At least I know in
22 other -- other rate cases there have been rebuttal dates.

23 MR. CONRAD: And I may have missed it here and
24 that's why I was -- why I was kind of questioning because it
25 seems unusual that we'd just have direct and no follow up.

1 There would certainly be time for that, but I don't -- have
2 you -- Judge, have you been able to lay hands on the
3 scheduling order? And I apologize. I can dig it up on my
4 computer if we want, but --

5 MR. DOTTHEIM: Mr. Conrad's date of October 2
6 for the hearing is my recollection that that is the date that
7 that has been scheduled.

8 MR. COOPER: Judge, I would ask this question.
9 If we're just talking scheduling here, do we need to continue
10 on the record?

11 MR. CONRAD: I don't know that we do.

12 JUDGE DALE: Is there anything else we need to
13 discuss on the record? Then we'll go off the record.

14 WHEREUPON, the hearing was concluded.

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