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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Hearing

6
7

November 20, 2006
Jefferson City, Missouri
Volume 20

8
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10 In the Matter of the Empire)
District Electric Company of)
11 Joplin, Missouri, for Authority)
to File Tariffs Increasing) Case No. ER-2006-0315
12 Rates for Electric Service)
Provided to Customers in the)
13 Missouri Service Area of the)
Company,)
14

15

COLLEEN M. DALE, Presiding
CHIEF REGULATORY LAW JUDGE
16 JEFF DAVIS, Chairman,
17 CONNIE MURRAY,
18 STEVE GAW,
ROBERT M. CLAYTON, III
19 LINWARD "LIN" APPLING,
COMMISSIONERS
20

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

2 JUDGE DALE: It is 9:00 on November 20th --
3 9:30. Sorry. November 20th. We're going back on the
4 record in the matter of the tariff filing of the Empire
5 District Electric Company of Joplin, Missouri, to
6 implement a general case increase -- general rate increase
7 for retail electric service provided to customers in the
8 Missouri service area of the company, Case No.
9 ER-2006-0315.

10 We will begin with entries of appearance
11 starting with Staff.

12 MR. FREY: Thank you, your Honor. Appearing on
13 behalf of the Staff, Kevin Thompson, Steven Dottheim,
14 Nathan Williams and Dennis Frey, Post Office Box 360,
15 Jefferson City, Missouri, 65102, representing the Staff of
16 the Missouri Public Service Commission.

17 JUDGE DALE: Thank you.

18 MR. COOPER: Dean L. Cooper and L. Russell
19 Mitten from the Law Firm of Brydon, Swearngen & England,
20 PC, P.O. Box 456, Jefferson City, Missouri, 65102,
21 appearing on behalf of the Empire District Electric
22 Company.

23 MR. MILLS: Lewis Mills, appearing on behalf of
24 the Office of Public Counsel and the public. My address
25 is Post Office Box 2230, Jefferson City, Missouri, 65102.

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1 JUDGE DALE: Mr. Conrad or Mr. Fischer?

2 MR. FISCHER: Yes, your Honor. If you'd like
3 for me to go next, James Fischer, Fisher & Dority, PC, 101
4 Madison Street, Suite 400, Jefferson City, Missouri,
5 65102, appearing on behalf of Intervenor Kansas City Power
6 & Light Company.

7 JUDGE DALE: Thank you.

8 MR. CONRAD: And, your Honor, please, I am
9 Stuart W. Conrad, and my associate with me here is David
10 L. Woodsmall of the firm of Finnegan, Conrad & Peterson.
11 And we are appearing specially this morning for Praxair
12 and Explorer Pipeline.

13 JUDGE DALE: Thank you. Are there any other
14 counsel present from any of the other parties? Hearing
15 none, then we will begin with the true-up testimony --
16 sorry.

17 COMMISSIONER CLAYTON: That's all right. You're
18 fine.

19 JUDGE DALE: And I believe our first witness is
20 from the company.

21 MR. WOODSMALL: Your Honor, are we going to mark
22 exhibits first? Or how do you propose to handle that?

23 JUDGE DALE: We'll just mark them as we go
24 along.

25 MR. WOODSMALL: Okay.

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1 MR. MITTEN: The company calls Scott Keith to
2 the stand.

3 SCOTT KEITH,
4 being first duly sworn to testify the truth, the whole
5 truth, and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MITTEN:

8 JUDGE DALE: Thank you. Please be seated.

9 MR. CONRAD: Your Honor, please, I had indicated
10 when we entered an appearance that we were appearing
11 specially, and I need to, at least for the benefit of the
12 record, make a short statement.

13 We understand that the Commission this morning,
14 although I haven't seen it, entered an Order rejecting or
15 denying, until the word comes out to characterize it, a
16 pending application which we had under the statute to
17 disqualify the presiding officer on the basis that a
18 re-hearing had or de facto been granted.

19 It's my understanding that that has been -- has
20 been rejected. But, nevertheless, for the record, I need
21 to lodge an objection and a protest to that. When we have
22 an opportunity to review the Order, we will in due course
23 review it. I don't expect that you will do anything
24 differently this morning.

25 But I need to lodge that and make that protest

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1 and suggest to you that to save time that we make that as
2 a continuing objection to the -- the proceedings this
3 morning under your -- under your presiding's ship,
4 whatever that may be.

5 JUDGE DALE: Are there any responses -- excuse
6 me -- to Mr. Conrad's statement? Then thank you,
7 Mr. Conrad. We will proceed.

8 MR. CONRAD: Is that objection noted, and is --

9 JUDGE DALE: It's noted.

10 MR. CONRAD: And it will be regarded as a
11 continuing objection and protest?

12 JUDGE DALE: I -- I don't have any problem with
13 your continuing objection.

14 MR. CONRAD: Okay.

15 MR. MILLS: And I --

16 MR. CONRAD: Thank you very much.

17 MR. MILLS: On a related note, I also have not
18 seen the order that was issued this morning. Was there
19 anything in it that affects the proceeding this morning?
20 I mean, anything procedurally that would have an impact on
21 what we're doing today?

22 JUDGE DALE: No.

23 MR. MILLS: Okay. Thank you.

24 MR. MITTEN: Your Honor, Mr. Keith's true-up
25 testimony has not been marked as an exhibit yet.

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1 JUDGE DALE: Oh. We are at Exhibit 144.

2 (Exhibit No. 144 was marked for identification.)

3 Q (By Mr. Mitten) Mr. Keith, you have in front
4 you a document that's been marked for identification as
5 Exhibit No. 144 consisting of ten questions and answers
6 and one attached schedule.

7 Is that the prepared true-up schedule that your
8 schedule -- testimony that you prepared for this hearing?

9 A Yes, it is.

10 Q And did -- and was that prepared by you or at
11 your direction and under your supervision?

12 A Yes, it was.

13 Q Do you have any changes or corrections to make
14 to that testimony at this time?

15 A I do have one correction. On page 9, line 11,
16 the number \$819,916 is indicated in the current testimony.
17 That number should be \$839,916.

18 Q Are there any other changes or corrections?

19 A No.

20 Q With that change, if I asked you the questions
21 that are contained in your pre-filed true-up testimony,
22 would your answers today be the same as are reflected
23 there?

24 A Yes, they would.

25 Q And are those answers true and correct to the

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1 best of your knowledge and belief?

2 A Yes, they are.

3 MR. MITTEN: I have no further questions for
4 Mr. Keith. I would tender him for cross-examination at
5 this time and offer Exhibit 144 into evidence.

6 JUDGE DALE: Are there any objections?

7 MR. FREY: Pending cross-examination, your
8 Honor, no.

9 MR. CONRAD: Subject to the to the earlier --

10 JUDGE DALE: Then unless a portion is later
11 objected to and sustained, Mr. Keith's true-up testimony
12 will be admitted into evidence. Mr. Fischer?

13 MR. FISCHER: No questions.

14 JUDGE DALE: Thank you. Praxair?

15 MR. WOODSMALL: Yes, your Honor. As an
16 introductory matter, I would note that Mr. Keith testifies
17 on a number of issues in this case. And I'll be crossing
18 him on some issues, but Mr. Conrad will also be crossing
19 him on another issue, just to let everybody be aware of
20 that.

21 JUDGE DALE: As long as your questions are
22 related to the subject of his true-up testimony.

23 MR. WOODSMALL: I believe they will be.

24 CROSS-EXAMINATION

25 BY MR. WOODSMALL:

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1 Q Good morning,, Mr. Keith.

2 A Good morning.

3 Q Turning to the cover page of your true-up
4 testimony, Exhibit 144, you list several issues, which
5 your -- which your testimony is designed to address. Will
6 you read those issues for me, please?

7 A Under the Issue line, they're labeled as Cost
8 Allocation, Off-System Sales, Fuel and Energy Costs and
9 Amortization, which is related to regulatory amortization.

10 Q Okay. As I understand it, cost allocation was
11 not an issue prior to the true-up; is that correct?

12 A That's correct.

13 Q Okay. And the other three issues, off-system
14 sales, fuel and energy costs and regulatory amortizations
15 were issues previously; is that correct?

16 A Yes.

17 Q Okay. Of those three issues, can you tell me
18 which ones have you previously filed testimony on?

19 A Off-system sales.

20 Q Okay. Who was the company's witness on fuel and
21 energy costs?

22 A Todd Tarter.

23 Q And who was the company's witness on regulatory
24 amortizations?

25 A We had limited testimony dealing with the income

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1 tax gross-up, and I believe it was Jay Williams.

2 Q Did Mr. Gipson file testimony on that as well?

3 A Yes, he did. He certainly underwent
4 cross-examination on that issue.

5 Q Do you know if any of those individuals are
6 going to testify here today?

7 A No, I don't believe they are.

8 Q Okay. You mentioned previously that you were
9 not the company's witness on fuel and energy costs prior
10 to this proceeding. Can you tell me how it was decided
11 that you would be the new witness on this issue?

12 A Basically, the only change that was made from
13 Mr. Tarter's earlier run was the increase in sales that
14 took place through June of -- June 30, 2006.

15 So, basically, he had to go back and re-run the
16 model to reflect the increased sales levels. Otherwise,
17 none of the costs such as gas costs or any of the other
18 inputs were changed.

19 Q Turning to the company's true-up position, can
20 you tell me how you calculated Empire's position on fuel
21 and energy costs?

22 A Yes. We used the Pro-Sim (ph.) model and
23 increased the sales levels to equal that of the Staff in
24 their true-up case.

25 Q When you say we, was that conducted under your

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1 direction or supervision?

2 A Yes.

3 Q Okay. Who -- who actually ran that model?

4 A Todd Tarter.

5 Q And he is within your supervision?

6 A Yes, he is.

7 Q He -- he reports to you?

8 A Yes.

9 Q Okay. Did you -- he -- he actually ran the
10 model?

11 A That's correct.

12 Q Okay. Can you tell me what type of input you
13 provided him as far as the preparation and running of that
14 model?

15 A We provided him with the Staff -- Staff's new
16 annualized sales number, and he had to increase the
17 generation and fuel model to reflect that increase in
18 sales.

19 MR. WOODSMALL: Your Honor, I'd like to mark an
20 exhibit, please.

21 JUDGE DALE: Certainly. That will be --
22 certainly. That will be Exhibit 145.

23 (Exhibit No. 145 was marked for identification.)

24 Q (By Mr. Woodsmall) Can you identify this
25 document?

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1 A Yes, I can.

2 Q What is it?

3 A It's a summary output of the updated fuel model
4 run. And it --

5 Q To your knowledge, were --

6 A It shows total company fuel and energy costs
7 updated \$166,956,600.

8 Q I want to discuss some of the inputs that went
9 into this fuel run that was prepared under your
10 supervision. Can you tell me what the force outage rate
11 was for all of the units listed on this worksheet?

12 A No. Not off the top of my head. I can tell you
13 that they didn't change. The only change that was made to
14 this model run was the overall sales levels that had to be
15 updated for the staff annualized sales totals.

16 Q So you don't know the forced outage rate?

17 A No, I don't.

18 Q Can you tell me the scheduled outage for each of
19 the units that went into this fuel run?

20 A No.

21 Q Do you know, was the average heat rate as
22 reflected in the one column, AVGHR, was that the average
23 heat rate that was used, or was there a different heat
24 rate for different months of the years for each unit?

25 A I don't know.

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1 Q Can you tell me the fuel type for each of the
2 units? Is it indicated in any way?

3 A On this particular sheet?

4 Q Uh-huh.

5 A I don't think it's indicated on this sheet. But
6 in general, I know what each of the fuel types are --

7 Q Okay.

8 A -- by unit.

9 Q Do you -- and let's just take Asbury 1. Can you
10 tell me the fuel for it?

11 A It's coal, and we burn some tire fuel in it.

12 Q Okay. Do you -- do you know if you burn any oil
13 or gas in that for start-up or anything?

14 A I don't recall.

15 Q Okay. You don't know?

16 A I don't know.

17 Q Okay. Can you tell me anywhere on here where it
18 indicates the amount, the quantity of each fuel burned?

19 A I don't believe this sheet shows that.

20 Q Do you know that -- what that number would be
21 for each of these units?

22 A I'm sure within the model, there's -- there's
23 probably some supporting schedules that come out that
24 would -- that indicate the type of fuel and the amount
25 used.

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1 Q But you don't know what that is?

2 A No, not -- I don't.

3 Q Okay. There's a column entitled Starts. Do you
4 see that?

5 A Yes.

6 Q Can you tell me what that refers to?

7 A No, I don't. I don't know.

8 Q You don't know?

9 A No.

10 Q Do you -- can you tell me who would know?

11 A Mr. Tarter would know.

12 Q Do you know if he's going to testify here today?

13 A I -- I don't believe he's scheduled to.

14 Q Okay.

15 MR. MITTEN: Your Honor, maybe we can
16 short-circuit this. I'm going to object to this ongoing
17 line of questioning. The witness has already testified
18 that the only change he made in fuel and purchase power
19 costs for the purposes of his true-up testimony related to
20 increased sales. All of the other values that were used
21 to calculate that number in the case in chief remain as
22 they were in the case in chief.

23 Praxair, Explorer had an opportunity to
24 cross-examine Mr. Tarter on those issues at the previous
25 hearings. If it did so or didn't do so, that's a

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1 historical matter for -- for now.

2 Again, the only change that was made for
3 purposes of the true-up was the increased sales, and I
4 think that counsel should be limited in his cross-
5 examination to those changes.

6 MR. WOODSMALL: I'd note that I'm finished with
7 those questions. But my response would be while the
8 witness says he didn't change -- there were no other
9 changes to inputs, I'm allowed to cross-examine on that to
10 determine if that statement is correct.

11 And the responses to that are that we have no
12 idea whether inputs changed because the person that ran
13 the model is not here and this witness doesn't know. So
14 while we attempted to subpoena that person so that we
15 could cross-examine on that matter, we were denied that
16 right to subpoena.

17 And, clearly, this witness doesn't know enough
18 about the inputs to make such broad statements. But
19 besides that matter, I'm finished with those questions,
20 and I'll move on.

21 JUDGE DALE: Thank you. Please cross him only
22 on those subjects that he knows about. When he says he
23 doesn't know, he means he doesn't know. Don't repeat the
24 question.

25 MR. WOODSMALL: Well, your Honor, when you say

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1 the subjects he knows about, he filed testimony in this
2 matter on fuel and energy costs. When you file testimony
3 on an issue, I presume it means you know something about
4 it. So all my questions are on an issue that he portrays
5 to know something about.

6 JUDGE DALE: The objection is sustained.

7 Proceed.

8 Q (By Mr. Woodsmall) Are you familiar with the
9 IEC, sir?

10 A Yes, I am.

11 MR. MITTEN: I'm going to object to any
12 questions regarding the IEC because that term doesn't
13 appear anywhere in Mr. Keith's true-up testimony.

14 JUDGE DALE: Sustained.

15 MR. WOODSMALL: Your Honor, I would note that
16 fuel and energy costs, which is listed as an issue on this
17 man's true-up testimony, is intimately related with the
18 IEC and the company's request to terminate the IEC.

19 I don't think that you can limit questions to
20 fuel and energy costs without allowing questions about the
21 IEC. The two are one in the same. We've handled them in
22 this case.

23 JUDGE DALE: Are you asking about the fuel and
24 purchase power costs included in the IEC?

25 MR. WOODSMALL: I'm asking -- I'm going to ask

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1 about fuel and purchase power costs.

2 JUDGE DALE: You may ask about fuel and purchase
3 power costs specifically.

4 MR. WOODSMALL: And then I'm going to ask about
5 how it compares to the IEC level. But I'm going to ask
6 fuel and purchase power costs.

7 JUDGE DALE: Then ask.

8 MR. WOODSMALL: Okay. Just -- mark another
9 exhibit, your Honor.

10 JUDGE DALE: Certainly. It will be 146.

11 MR. WOODSMALL: I'd also offer Exhibit 145 into
12 the record.

13 JUDGE DALE: Are there objections? Then Exhibit
14 145 will be admitted.

15 COMMISSIONER CLAYTON: 145?

16 JUDGE DALE: 145. That's admitted.

17 COMMISSIONER CLAYTON: and this is 144?

18 JUDGE DALE: That's 145, his testimony.

19 COMMISSIONER CLAYTON: Okay.

20 (Exhibit No. 145 was admitted into evidence.)

21 (Exhibit No. 146 was marked for identification.)

22 MR. CONRAD: Sorry.

23 MR. THOMPSON: Do you have an easy reading
24 version?

25 MR. MILLS: Yeah. We're not going to be able to

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1 see this anyway.

2 MR. COOPER: We'll take another one.

3 MR. WOODSMALL: And I'll apologize for the small
4 type in this. I wanted to print it in the same format as
5 it was provided by Empire, so I didn't want to change any
6 anything, but --

7 JUDGE DALE: I note that it says Highly
8 Confidential. Should this be 146 HC?.

9 MR. WOODSMALL: This says Highly Confidential,
10 but a cover page provided with this does not denote it as
11 Highly Confidential. So there's some confusion, as least
12 in the documents provided by Empire, whether this is
13 Highly Confidential.

14 MR. MITTEN: Could I have a moment to confer
15 with my client?

16 JUDGE DALE: Certainly.

17 (Pause in proceedings.)

18 MR. MITTEN: Your Honor, there may have been
19 some confusion on the cover page as to whether or not this
20 is Highly Confidential, but I will note that it is
21 identified as Highly Confidential on the pages that
22 Counsel intends to -- has marked for identification, so
23 we'd like it treated that way.

24 JUDGE DALE: Thank you.

25 MR. WOODSMALL: I have no problems with that.

1 JUDGE DALE: Thank you. Then it will be marked
2 146-HC.

3 MR. WOODSMALL: And I believe I can limit my
4 questions in such a fashion that we don't have to go in
5 camera.

6 JUDGE DALE: Excellent.

7 Q (By Mr. Woodsmall) Are you familiar with any of
8 the reports prepared by Empire pursuant to the stipulation
9 and agreement in ER-2006-0470?

10 A Some of them. I -- I believe I have seen this
11 particular report from time to time.

12 Q And could you tell me what this document --
13 well, in the cover page, this document was called Revenue
14 Recognition for IEC Subject to Refund. Would you agree
15 with that characterization of the title?

16 A Yes.

17 Q Okay. Thank you. Again, I apologize for the
18 small type. Turning to page 3 of this document -- the
19 column entitled -- I guess it's Column 18, and it's for
20 September 2006. Do you see that column?

21 A Yes, I do.

22 Q Do you see down at the bottom the indication
23 Within Collar Current Month?

24 A Yes.

25 Q Can you tell me what that refers to?

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1 A It would refer to the amount of money that we
2 were -- that the IEC revenue over-collected in terms of
3 variable fuel and energy costs.

4 Q Okay. So for the month of September 2006, the
5 IEC collected more than your prudently incurred fuel and
6 purchase power costs; is that correct?

7 A Yes.

8 Q Okay. Would you look at the month of May 2006?
9 It's on page 1.

10 A I have.

11 Q Would you agree that the IEC collected more than
12 Empire's prudently incurred fuel and purchase power costs
13 in that month?

14 A Yes. That's what it indicates.

15 Q And the same characterization for April 2006; is
16 that correct?

17 A Yes.

18 Q And for November 2005; is that correct?

19 A Yes.

20 Q And for August 2005; is that correct?

21 A Yes.

22 Q And, finally, for April 2005; is that correct?

23 A Is what correct with respect to April?

24 Q That the IEC collected more than the prudently
25 incurred fuel and purchase power costs.

1 A Yes. That's what it indicates.

2 MR. WOODSMALL: Your Honor, I'm finished with
3 Exhibit 146-HC. Move for its admission.

4 JUDGE DALE: Are there any objections?

5 MR. MITTEN: I have no objection.

6 MR. THOMPSON: Your Honor, I think the rule
7 requires that a redacted NP version be provided of every
8 HC exhibit, and I don't see such a redacted version. I
9 would inquire of counsel whether they plan to provide
10 such.

11 MR. WOODSMALL: As It's labeled Highly
12 Confidential by the company, I can't redact it. I mean, I
13 could provide six blank pieces of paper, but I'm not in a
14 position to redact the company's documents.

15 And prior to this hearing, I would note that the
16 cover page didn't indicate that this was Highly
17 Confidential, so I had no intentions or need to treat it
18 as such. So I have no problems with a redacted version
19 being filed. I'm just not in a position to do that.

20 JUDGE DALE: Mr. Mitten, are all of the numbers
21 on all of these pages Highly Confidential?

22 MR. MITTEN: Your Honor, preliminarily, I'd have
23 to say yes. But if I could have some time after the
24 hearing is concluded to see if we can provide a redacted
25 copy which would eliminate only the numbers that are

1 Highly Confidential, we'd be happy to do so.

2 JUDGE DALE: Thank you. If -- if you'll
3 undertake to do that, then I will reserve an NP version of
4 146 as well.

5 MR. WOODSMALL: And, your Honor, did you
6 indicate that that was accepted into the record?

7 JUDGE DALE: Hadn't gotten there yet.

8 MR. WOODSMALL: Okay. I'm sorry.

9 JUDGE DALE: When these reports are filed by
10 Empire, could you please indicate on them that they are
11 filed on behalf of Praxair?

12 MR. MITTEN: The redacted version?

13 JUDGE DALE: Yes.

14 MR. MITTEN: Yes. I'll be happy to do that.

15 JUDGE DALE: Thank you. Are there any objection
16 -- is there any objection to the redacted version? Then
17 hearing no objections, I will admit both 146-HC and
18 146-NP.

19 (Exhibit Nos. 146-HC and 146-NP were admitted
20 into evidence.)

21 MR. WOODSMALL: Thank you, your Honor. One
22 final exhibit and a brief line of questions.

23 JUDGE DALE: Thank you. This will be Exhibit
24 147.

25 (Exhibit No. 147 was marked for identification.)

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1 Q (By Mr. Woodsmall) Sir, can you tell me who
2 Angela Cloven is?

3 A Angela works for me. She's our Administrative
4 Assistant and handles a lot of paperwork, especially data
5 request responses.

6 Q She reports to you, you said?

7 A Yes, she does.

8 Q And do you agree that this document indicates
9 that -- it shows at the bottom it was signed by her and an
10 attachment was provided?

11 A Yes.

12 Q Do you recognize that document?

13 A Yes, I do.

14 Q Okay. Can you tell me what that document is?

15 A It's a summary of major rate case decisions that
16 was put out by Regulatory Research Associates. And we --

17 Q Would you agree that this document is for the
18 third quarter of 2006? I believe at the top it says
19 January through September of 2006.

20 MR. MITTEN: Your Honor, could I ask counsel to
21 try and tie this into any of the issues that Mr. Keith has
22 testified to before he asks him any further questions of
23 identification?

24 JUDGE DALE: Yes. Mr. Woodsmall?

25 MR. WOODSMALL: Your Honor, I believe that any

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1 attempt to limit my cross-examination of any subject would
2 be improper at this point. I note Section 536.070(2),
3 Each party shall have the right to call and examine
4 witnesses, to introduce evidence, to cross-examine
5 opposing witnesses on any matter relevant to the issues,
6 even though that matter was not the subject of the direct
7 examination.

8 And so I believe that that is what I am doing.
9 I am cross-examining on matters clearly contemplated by
10 Section 536.070. Even though this isn't a subject of his
11 direct examination, it is within my rights under cross
12 examination in this statute.

13 MR. MITTEN: Your Honor, rate of return is not
14 an issue that this witness has testified to in either the
15 case in chief or in his true-up testimony.

16 And while counsel may have had the right to
17 examine witnesses regarding the rate of return, I think
18 you have to look at the totality of the case and not just
19 this hearing in isolation.

20 I think this is clearly beyond the scope of the
21 witness's true-up testimony, and I would object to any
22 further questions on rate of return or on this document
23 for those reasons.

24 MR. WOODSMALL: Your Honor, I'd note that while
25 Counsel's right, he had not previously filed testimony on

1 rate of return, he also had never filed testimony on fuel
2 and purchase power expense or on regulatory amortizations.

3 I am, by the terms of the statute, permitted to
4 cross-examine him on any matter, not just the matters that
5 are the subject of his direct examination.

6 JUDGE DALE: I'll allow you to proceed, but I
7 may cut it off.

8 MR. WOODSMALL: I'll be very brief. Thank you,
9 your Honor.

10 Q (By Mr. Woodsmall) Turning to page -- page 4 of
11 the report and page 5 of the packet, the title is Electric
12 Utility Decisions. Are you there?

13 A Yes.

14 Q Going down to close to the bottom, it says 2006,
15 Third Quarter Averages Total. Do you see for the Column
16 ROE Percent, it indicates 10.06 percent?

17 A Yes, I do.

18 Q Would you agree that it also says the number of
19 observations for that quarter is seven?

20 A Yes.

21 Q And, finally, turning the page, one question on
22 page 5 of that report, For gas utility decisions, third
23 quarter average, 9.60 percent. Do you see that?

24 A Yes, I do.

25 Q Would you agree that subject to following its

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1 purchase of the Missouri Public Service Gas Properties,
2 Empire is both now an electric and gas utility provider?

3 A Yes, I would.

4 MR. WOODSMALL: Your Honor, I'd move for the
5 admission of Exhibit 146. I'm sorry. 147. And that's
6 all of my cross-examination.

7 MR. MITTEN: Your Honor, could I conduct a brief
8 voir dire examination of this witness before I determine
9 whether or not I want to object?

10 JUDGE DALE: Certainly.

11 VOIR DIRE EXAMINATION

12 BY MR. MITTEN:

13 Q Mr. Keith, focusing your attention on Exhibit
14 147, the data that appears in that exhibit, was that --
15 were those data prepared by you or anybody at Empire?

16 A No, they weren't.

17 Q Can you verify the accuracy of any of the data
18 that are in this exhibit?

19 A I haven't. I don't know whether I could or not,
20 given the time. But I haven't done it.

21 MR. MITTEN: Okay. That concludes my voir dire
22 examination. I would object on the basis of the fact that
23 this exhibit was not prepared by Mr. Keith or anybody at
24 Empire.

25 It's simply a photocopy of a document that was

1 prepared by a third party, and Mr. Keith is not able to
2 verify the accuracy of any of the data that are contained
3 in this exhibit.

4 MR. WOODSMALL: Your Honor, I'd certainly note
5 that that may possibly go to the weight of this evidence.
6 But Exhibit 98, which is the same thing through the second
7 quarter, has already been received. It was offered by
8 Empire's witness in response to questions.

9 This document was also provided by Empire. It's
10 a document that this witness recognizes, that this witness
11 reviews and was provided by someone under his supervision.
12 While he may not have prepared the document, it's
13 certainly something they use in their course of business,
14 and it has already been found by the Commission, given
15 that Exhibit 98 was accepted, to be relevant.

16 Finally, I'm certain that if the number had been
17 higher, been around 11 percent or so, the company would be
18 here offering it today.

19 JUDGE DALE: for the limited purpose of updating
20 Exhibit 98, I will allow it into evidence.

21 (Exhibit No. 147 was admitted into evidence.)

22 MR. WOODSMALL: Thank you, your Honor. I have
23 no further questions.

24 MR. CONRAD: And, your Honor, as -- as Counsel
25 mentioned, I do have some questions in a different area

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1 for this witness, by your leave.

2 JUDGE DALE: Proceed.

3 CROSS-EXAMINATION

4 BY MR. CONRAD:

5 Q Good morning, Mr. Keith.

6 A Good morning.

7 Q We have before us this morning, among other
8 things, the consideration of an opposed --

9 JUDGE DALE: Excuse me. Mr. Conrad, could you
10 move the microphone closer to your mouth? Thank you.

11 Q (By Mr. Conrad) We have before us this morning
12 the matter of an opposed Non-unanimous stipulation
13 concerning amortization. Are you aware of that, sir?

14 A I wasn't exactly aware of it. But now I am.

15 Q Okay. Are you familiar with that non-unanimous
16 stipulation?

17 A I have -- I've read it, yes.

18 Q Do you have a copy of it, or could one be
19 provided to you?

20 A I don't believe I have it with me.

21 Q Have you got an extra?

22 MR. CONRAD: David, do we have an extra?

23 MR. WOODSMALL: (Mr. Woodsmall shakes head.)

24 MR. MILLS: I've got it.

25 Q (By Mr. Conrad) Mr. Keith, what was your

1 involvement, if any, in the negotiation of the
2 stipulation?

3 A I was involved in several meetings with some
4 early versions of this agreement and talked about it with
5 my supervisor, Kelly Walters.

6 Q Would you agree with me that Empire's original
7 position on the question of the amorization was that it
8 would not and should not apply in this case?

9 A I don't believe that's accurate. I think our
10 position was that if it -- if it was going to be used, it
11 shouldn't be used to recover legitimate fuel costs or an
12 adequate rate of return on equity.

13 MR. CONRAD: Permission to approach?

14 JUDGE DALE: Certainly.

15 MR. CONRAD: Your Honor, I have shown the
16 witness a copy -- I'm not sure I have the exhibit number
17 on it -- of Mr. Gipson's original direct testimony, and I
18 do have a question or two to ask him about that.

19 MR. COOPER: Your Honor, we'd object to any
20 questions regarding Mr. Gipson's testimony. Mr. Gipson
21 has stood cross-examination on that testimony, has been
22 excused from this hearing, and we see no reason that
23 Mr. Keith is somehow the proper witness suddenly to -- to
24 ask those questions of.

25 MR. CONRAD: One of the purposes of

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1 cross-examination is, among other things, to test the
2 witness's perceptions of -- and their powers of
3 observation.

4 The witness has testified as to what Empire's
5 position on this issue was, and I'm simply wanting to
6 either confirm or refute that. I'm not going to ask him
7 about specific questions or to attempt to cross-examine
8 Mr. Gipson through him.

9 You have denied us the ability to cross-examine
10 Mr. Gipson.

11 JUDGE DALE: How does this relate to his true-up
12 testimony?

13 MR. CONRAD: It does not relate to his true-up
14 testimony. It relates to the question of the amorization
15 Non -- non-unanimous stipulation.

16 JUDGE DALE: Then in that case, the objection is
17 sustained.

18 Q (By Mr. Conrad) Well, would you agree with me,
19 Mr. Keith, that both Mr. Gipson and Mr. Fedder, I believe,
20 discussed the amorization question in their respective
21 testimonies?

22 A Yes.

23 Q Do you understand those positions to represent a
24 rejection of the amorization adjustment that was
25 originally proposed by Staff?

1 MR. COOPER: I would enter an objection at this
2 point in time because I think the reference to
3 Mr. Fedder's testimony probably assumes facts not in --
4 not in evidence.

5 And I believe most, if not all, of Mr. Fedder's
6 testimony was -- was stricken and not admitted into the
7 evidence in this case.

8 MR. CONRAD: I believe that -- that actually is
9 correct, I think. So I will withdraw as to Mr. Fedder's
10 question.

11 Q (By Mr. Conrad) But it would stand, then, as to
12 Mr. Gipson's testimony that he did indicate that they were
13 -- you -- your company was rejecting the amorization
14 adjustment proposed by the Staff?

15 MR. COOPER: I'd object to that characterization
16 of Mr. Gipson's testimony. I believe that Mr. Gipson's
17 testimony speaks for itself and has been discussed
18 extensively in hearings in this matter before today.

19 MR. CONRAD: I --

20 JUDGE DALE: And --

21 MR. CONRAD: Go ahead.

22 JUDGE DALE: Once again, how does that relate to
23 his true-up testimony?

24 MR. CONRAD: It relates, ma'am, to the
25 non-unanimous stipulation as to which we have objected and

1 requested a hearing.

2 JUDGE DALE: In that case, the objection is
3 sustained.

4 Q (By Mr. Conrad) Do you understand, Mr. Keith,
5 that this non-unanimous stipulation and agreement
6 represents a change in the position in that Empire is now
7 willing to accept an amorization adjustment as proposed by
8 Staff?

9 MR. COOPER: Same objection, your Honor.

10 JUDGE DALE: Sustained.

11 Q (By Mr. Conrad) Was the earlier position wrong?

12 MR. COOPER: Same objection, your Honor.

13 JUDGE DALE: Sustained.

14 MR. CONRAD: If I'm not going to be permitted to
15 cross-examine this witness on the content of the
16 amorization stipulation that we have contested and as to
17 which we have insisted and requested that a hearing be
18 held, then I'm -- I'm not sure that we're going to be able
19 to go very much further, and we're just probably going to
20 stop very quickly.

21 MR. COOPER: Your Honor, I would point out that
22 a stipulation and agreement that's non-unanimous that has
23 been objected to, under the Rules of the Commission,
24 becomes a party. It's not evidence. And, in fact, it's
25 not something that the Commission has a hearing. I

1 believe that the Fisher case says that -- that what we
2 have a case about is the underlying issue of amorization.
3 And we have tried that issue.

4 MR. CONRAD: But you --

5 JUDGE DALE: The parties will have an
6 opportunity after the discussion of the true-up testimony
7 to make any arguments they wish to make on the
8 amorization. If you have no further questions --

9 MR. CONRAD: Are you going to -- is the Chair or
10 the Bench going to preclude me from asking questions and
11 cross-examining this witness as to the terms and
12 conditions of the amorization stipulation which we have
13 opposed, and which we have requested a hearing as to?

14 JUDGE DALE: Yes. You have already had that
15 hearing.

16 MR. CONRAD: Very well, your Honor. Then that
17 concludes what we're able to do with that today. Thank
18 you.

19 JUDGE DALE: Thank you. Public Counsel?

20 MR. MILLS: I have no questions. Thank you.

21 JUDGE DALE: Staff?

22 MR. FREY: No questions.

23 JUDGE DALE: Redirect?

24 MR. MITTEN: I have a brief redirect, your
25 Honor. And this pertains to Exhibit 146-HC, but I'm going

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1 to attempt to do this in such a way that we will not need
2 to go in camera.

3 JUDGE DALE: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. MITTEN:

6 Q Mr. Keith, Mr. Woodsmall asked you some
7 questions during his cross-examination with respect to
8 Exhibit 146-HC in which he identified two or three months
9 and asked you if during those months the revenues that
10 Empire had collected under the IEC exceeded the company's
11 prudently incurred fuel costs during those months. Do you
12 recall those questions?

13 A Yes, I do.

14 MR. WOODSMALL: Your Honor, at -- at this point,
15 I want to raise an objection. I believe, as you've noted,
16 this is merely a continuance of the previous hearing. And
17 Mr. Swearngen was the attorney on the issue of fuel and
18 purchase power expense.

19 I think it's inappropriate for them to
20 substitute counsel on an issue that's already been tried
21 by another attorney. If Mr. Swearngen wants to come in
22 as the issue -- as the attorney on this issue, I'm
23 certainly willing to allow that.

24 MR. THOMPSON: Your Honor, lawyers make
25 appearances for the each other all the time. The

1 objection is clearly without merit.

2 JUDGE DALE: It is overruled. Please proceed,

3 Mr. Mitten.

4 Q (By Mr. Mitten) Mr. Keith, could you turn to
5 page 4 of Exhibit 146-HC? Do you have that in front of
6 you?

7 A Yes. I believe I have page 4.

8 Q Now, let me direct your attention to what I
9 believe is Column No. 18. And I'm having difficulty
10 reading the numbers on this exhibit, so if I'm in error,
11 it's the third column from the left side of the paper.

12 A I -- I have it.

13 Q And do you see the number that appears directly
14 below the bolded line on that column?

15 A Yes.

16 Q Now, without disclosing the number, could you
17 tell me what that number reflects?

18 A It reflects how far fuel costs have exceeded the
19 ceiling in the IEC over the term of the IEC.

20 Q So that's the cumulative under-collection of
21 fuel costs under the IEC?

22 A Yes.

23 Q I have no -- and that's not including the gain
24 on the unwinding; is that correct?

25 MR. WOODSMALL: Your Honor -- never mind. I'm

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1 sorry.

2 A That number would include the gain. Without the
3 gain being reflected, it would have been even greater.

4 MR. MITTEN: I have no further questions for
5 Mr. Keith. Thank you.

6 JUDGE DALE: Other questions from the Bench for
7 this witness? Commissioner Appling?

8 COMMISSIONER APPLING: No questions.

9 JUDGE DALE: Commissioner Murray?

10 COMMISSIONER APPLING: I don't have any. Thank
11 you.

12 JUDGE DALE: Commissioner Gaw?

13 COMMISSIONER GAW: Thank you.

14 CROSS-EXAMINATION

15 BY COMMISSIONER GAW:

16 Q Good morning, sir.

17 A Good morning.

18 Q I'm going to try to clear up something for my
19 benefit, if you would. Can you -- would you tell me
20 whether any of your testimony in any way touches upon the
21 non-unanimous stipulation that the parties entered into
22 subsequent to the earlier part of this proceeding?

23 Is it in any way relevant, material? Does it
24 touch upon any of the issues that are dealt on -- dealt
25 with in that non-unanimous stipulation?

1 A Are you speaking of the non-unanimous on
2 regulatory amorization?

3 Q How many of them are there that were entered
4 into subsequent to the first part of this proceeding?

5 A I believe there are two. There's a
6 non-unanimous stipulation of corporate overhead between
7 the electric gas jurisdictions and this regulatory
8 amorization stipulation.

9 Q Okay. And I'm talking about both of them.

10 A My -- my update testimony would reflect our
11 position on the corporate overhead allocation issue prior
12 to our agreement entering into the non-unanimous
13 stipulation on that issue.

14 And my testimony briefly touched amorization --
15 the amorization issue. But it only speaks to the fact
16 that we were still in discussions with the parties about
17 settling the issue.

18 Q So the answer to the question is yes, it does --

19 A Yes.

20 Q -- does have to do with those non-unanimous --
21 issues that are in the non-unanimous situation, both of
22 them?

23 A Briefly, with both of them. It's -- it's in
24 more detail on the corporate overhead issue. There is a
25 -- one question and answer on the fact that the regulatory

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1 amorization issue, we were still in discussions with the
2 parties. It -- it really -- that's all it says. We're
3 still talking.

4 COMMISSIONER GAW: All right. Thank you. No
5 further questions.

6 JUDGE DALE: Commissioner Appling?

7 COMMISSIONER APPLING: No questions.

8 JUDGE DALE: Thank you. Any cross based on
9 questions from the Bench?

10 MR. FREY: If I may, your Honor, have just a
11 moment?

12 JUDGE DALE: KCPL?

13 MR. CONRAD: Your Honor, if I may have a moment
14 while staff is off line?

15 JUDGE DALE: Certainly.

16 MR. FREY: No.

17 MR. CONRAD: I believe we will have a couple.

18 JUDGE DALE: You can -- you can either use the
19 podium or stay where you are.

20 MR. CONRAD: It might be easier here. I'm
21 getting old.

22 RE CROSS EXAMINATION

23 BY MR. CONRAD:

24 Q Let's look, Mr. Keith, to Exhibit 144, the very
25 last page. I believe it's page 10. Do you have that?

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1 A Yes, I do.

2 Q Is the question, Is the company addressing
3 amorization update filing? The answer begins, Not at this
4 time, and then the reference to continuing to work. Is
5 that what you were discussing with Commissioner Gaw about
6 relative to the regulatory amorization stipulation?

7 A Yes.

8 Q How did those discussions conclude?

9 A The discussions concluded with the stipulation
10 and agreement with the OPC and the Staff.

11 Q And is that the same stipulation to which we
12 objected?

13 A Yes. I believe it is.

14 Q Do you still have that in front of you?

15 A What are you referring --

16 Q The document -- the regulatory amorization
17 non-unanimous stipulation.

18 A Yes, I do.

19 Q Look with me, if you would, to paragraph 1.

20 A I have it.

21 Q Are you there, sir?

22 A Yes.

23 Q And the second line, there is a word there that
24 I had circled on my copy, Resolves. Do you see that?

25 A Yes.

1 Q Then it goes on, Among them, the issue should,
2 Empire's revenue requirement, to include regulatory plan
3 amortizations. So far, so good?

4 A Yes.

5 Q What does resolve mean?

6 A Satisfy, reach agreement, does away with the
7 issues.

8 Q And the issue that was resolved is what?

9 A I think this document resolved a number of
10 issues. The primary one we were interested in was the
11 income tax gross-up issue. And it took care of that
12 issue.

13 Q Okay. Well, let's look back to that sentence.

14 MR. COOPER: Your Honor, I would object to this
15 line of questioning. I think it's consistent with what
16 was -- with my objection that was sustained earlier in the
17 proceeding.

18 Continues to -- or moves towards cross-examining
19 Mr. Keith about a document, a position of the party here
20 as to the regulatory plan amorization. And as Mr. Conrad
21 pointed out earlier in regard -- in Mr. Keith's testimony
22 as to whether he was addressing amorization in his true-up
23 or his update filing, he answered not at this time.

24 MR. CONRAD: Well, he's already, your Honor,
25 answered the question that he's aware of how the material

1 and the matter that he referenced on page 10 of Exhibit
2 144, the company continues to work with the parties to
3 determine the appropriate method to calculate the
4 amorization called for.

5 And he's already testified that the
6 non-unanimous stipulation and agreement to which we have
7 objected and requested a hearing on involves the
8 resolution of that issue.

9 I'm simply attempting to inquire as to what the
10 scope and terms and conditions of the agreement that three
11 of the parties have reached, not including our clients.

12 MR. COOPER: Your Honor, the document should
13 speak for itself. It -- -- the terms of the document are
14 what's important, not Mr. Keith's understanding of that
15 document.

16 MR. CONRAD: Well, unfortunately, I can't put
17 the document on the stand. And if I were to do that and
18 put that in the witness chair and ask the document a
19 series of questions, it would probably not make an audible
20 response.

21 So the only person that I can really
22 cross-examine with respect to this document is the witness
23 that the company has deemed fit to offer.

24 Now, they have other witnesses that might be
25 able to respond in this area, but they didn't choose to

1 bring them. And you've rejected our attempt to bring
2 forward a witness that might know something about the
3 policy of the company toward these issues. So I believe,
4 once again, I'm -- you're either -- either in a problem, I
5 think, because under the Fisher case, I am entitled to
6 inquire about this.

7 This is the agreement that's before the
8 Commission. The Commission has to decide whether it is a
9 just and reasonable and we'll use the term in a different
10 context, resolution among them of the issues should come
11 -- should the revenue requirement include the regulatory
12 plan amortizations and, in that same sentence, the
13 gross-up.

14 Now, and is a con -- is a conjunctive. That
15 means A and B. So I -- I want to look at A and B. That's
16 what this document deals with. And I'm entitled to go
17 into this because this is before the Commission.

18 JUDGE DALE: Mr. Thompson?

19 MR. THOMPSON: Your Honor, I would just echo
20 Mr. Cooper's objection of some moments ago in which he
21 correctly stated the holding of Fisher, which that is upon
22 objection, the non-unanimous stipulation and agreement no
23 longer exists other than as a suggestion by the parties
24 that entered into it.

25 The Commission no longer has that document in

1 front of it. The Commission can't approve it. The
2 Commission can only resolve the issues that the document
3 encompassed by reference to the evidence that has been
4 adduced in the underlying case.

5 MR. CONRAD: And that is partly correct, your
6 Honor. But it also stands as a joint recommendation of
7 these parties, and it purports to indicate a change in
8 position.

9 And I would -- I would indicate that the
10 Commission's rules, 4 CSR 240-2.115(2)(d), dealing with
11 non-unanimous Stipulations provides that a Non-Unanimous
12 stipulation and agreement to which a timely objection has
13 been filed shall be considered to be merely a position of
14 the signatory parties, except that no parties shall be
15 bound by it and all issues shall remain for determination
16 after hearing.

17 So the question here now is, what is the change
18 in position that is represented by this document? I,
19 again, cannot put this document on the stand. I cannot
20 ask what Empire's position is from this document. I have
21 to ask Mr. Keith.

22 JUDGE DALE: And once again, I will ask you, how
23 does this relate to Mr. Keith's true-up testimony in which
24 he says he is not addressing the amorization issue?

25 MR. CONRAD: Well, at this point, Commissioner,

1 we're in -- in the phase of this proceeding this morning
2 in which I'm going into matters which Commissioner Gaw
3 raised in his question.

4 So he has correctly pointed out and the witness
5 has previously answered that he did address amorization
6 here. And I'm simply trying to find out what -- what is
7 the nature of the address that has been made.

8 If this is a joint recommendation and it's a
9 change in position on the part of the parties, then I'm
10 entitled to inquire as to what those positions are.

11 JUDGE DALE: Then Mr. Keith may answer the
12 question what is the nature of his testimony on the
13 amorization.

14 MR. CONRAD: I beg your pardon?

15 JUDGE DALE: You said you were inquiring as to
16 the nature of his testimony on the amorization.

17 MR. CONRAD: Yeah.

18 JUDGE DALE: You may ask.

19 MR. CONRAD: Well, we're back to page 10, then.
20 And he has indicated that this document purports to be a
21 resolution between these three parties.

22 Now, I'm seeking to inquire as to the resolution
23 between the three parties.

24 MR. COOPER: Object to the characterization
25 because I don't -- I don't think that Mr. Keith

1 represented anything other than the words that Mr. Conrad
2 cited to him in that document.

3 MR. CONRAD: He indicated, your Honor, in his
4 testimony, and the record will stand as to what it says,
5 that the company continues to work with the parties in the
6 case to determine the appropriate method to calculate.

7 He then indicated in further cross-examination
8 that this document represented where those discussions had
9 led. So I'm -- and if it -- if it is not a non-unanimous
10 stipulation suddenly and is, in fact, only joint
11 recommendations of the parties, then it is a change in
12 their position, and I'm attempting to inquire what the
13 change in the position is because this animal is still
14 before the Commission for its consideration.

15 JUDGE DALE: The objection originally made is
16 sustained.

17 MR. CONRAD: Well, then I would ask then to
18 proceed as an offer of proof, and we'll find out then in
19 that -- in that context what, if anything, this witness
20 knows about this document.

21 Q (By Mr. Conrad) Mr. Keith, I had asked you a
22 question about material in paragraph 1. What, to your
23 understanding, is the issue about the -- whether Empire's
24 revenue requirement should include regulatory plan
25 amortizations?

1 A I'm sorry. Could you state that again?

2 Q What is the issue that is resolved with respect
3 to in the third line of paragraph 1, should Empire's
4 revenue requirement include regulatory plan amortizations?

5 A The issue Empire had all along in this area was
6 really related to the income taxes in the gross-up effect,
7 whether or not the amorization should include some
8 additional income tax and expense if it applied.

9 And this document includes that additional
10 income tax gross-up.

11 Q And that, would you agree, is the second part of
12 that sentence that follows the word "and?" Is that the
13 part you're referring to, the tax gross-up issue?

14 A Yes.

15 Q Okay. What's the first part of that, Should
16 Empire's revenue requirement include regulatory plan
17 amortizations?

18 A Whether or not the cash flow that comes out of
19 the initial decision in this case is sufficient enough to
20 produce the required financial ratios. If -- if it's --
21 if there are not, then regulatory amorization comes into
22 play.

23 Q All right. Then what was -- with respect to
24 that first part of that issue, what was Empire's position
25 that was resolved by your negotiations and your now joint

1 recommendation with Staff and OPC?

2 A Our point all along was regulatory amorization
3 should not be used to recover fuel costs, prudently
4 incurred fuel costs or a reasonable rate of return. Those
5 two particular items aren't specifically addressed in this
6 document.

7 The -- the other main item that we had a problem
8 with in the Staff recommendation and in the OPC original
9 recommendation was the income tax impact of regulatory
10 amorization that was specifically addressed in this
11 document and resolved.

12 Q How does that change the position, then, affect
13 Empire's revenue requirements?

14 MR. COOPER: I object to the characterization
15 that it is a change of position. I think that that
16 question can be established by -- by a look to prior
17 evidence in this -- in this case and comparing it to the
18 position taken.

19 MR. CONRAD: Well, your Honor, once again, the
20 witness has already testified as to what -- what their --
21 their position was. And I would also point out that we
22 are in the middle of an offer of proof.

23 JUDGE DALE: In light of the fact that you are
24 in the middle of an offer of proof, I will allow you to
25 continue your questions to the extent the witness can

1 answer them.

2 Q (By Mr. Conrad) Well, then, let's go back to
3 that question, if you can and if you know, Mr. Keith.
4 Does that change in position and resolution of this have
5 an effect on Empire's revenue requirement? And if so,
6 what?

7 A I'm not sure what change in position you're
8 referring to.

9 Q Well, I think the record will stand that you
10 have indicated that your -- what the company's position
11 with respect to regulatory plan amortizations was.

12 Now, my question is -- now it is between three
13 parties to the case. Empire is now saying, Okay, we'll
14 take a revenue and possession, we'll take this additional
15 money. What effect does that have on your revenue
16 requirement, if you know?

17 A Regulatory amorization wouldn't really do
18 anything to the revenue requirement. It would result in
19 additional cash flow, but it wouldn't result in additional
20 net income to the company.

21 Q Now, the resolution that you've reached with two
22 other parties refers in paragraph 4, that's on page 2 of
23 the document that I believe you have before you, that this
24 agreement is subject to various provisions of the
25 regulatory plan stipulation and agreement. Do you see

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1 this reference?

2 A Yes, I do.

3 Q What are the various provisions that are
4 referenced there?

5 A There appear to be several.

6 Q And in that text line, it says Such As. Is that
7 an exhaustive list?

8 A I don't know if it is exhaustive or not.

9 Q Who would know?

10 A Well, it refers, I believe, to an agreement
11 reached in the regulatory plan case, specific paragraphs,
12 so you could look to those paragraphs to see what's in it.

13 Q Well, who would know from Empire's perspective?

14 A Probably Kelly Walters would be the person that
15 would know.

16 Q Had you planned to put her on the stand today as
17 far as you're aware?

18 A No.

19 Q Would Mr. Gipson know?

20 A I don't know.

21 Q But he is your senior CEO, correct?

22 A Yes. That's correct.

23 Q Now, I -- moving on down through paragraph 4,
24 and draw your attention there to a number, I think it's
25 the next to the last line, at least ten years, can you

1 identify to me if there is an expiration date in this
2 joint recommendation that you are making to the Commission
3 together with Office of Public Counsel and the Staff?

4 A No. I don't believe there is a specific
5 expiration date.

6 Q Now, would 12 years be less than ten?

7 A No.

8 Q Would 12 years be at least ten?

9 A It would be two years more than ten years, yes.

10 Q And would you agree with me that the same answer
11 would be true with respect to 15 or 20 years?

12 A Yes.

13 Q All of those would be less than ten?

14 A It would be at least ten.

15 Q Okay. Now, I'd like for you to -- in the
16 context of our offer of proof here, Mr. Keith, I want you
17 to assume with me that there is a -- a determination that
18 \$30 million of additional amorization is needed to
19 preserve Empire's credit metrics. Do you understand what
20 I mean when I ask that?

21 A Yes.

22 Q Is it -- is it something that you would agree
23 with -- or would you agree that the purpose of that
24 additional amorization is to give Empire, in my example,
25 \$30 million of additional cash flow?

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1 A Yes. I'd agree with that.

2 Q Now, I take it, then, that the issue of the
3 resolution that Empire is proposing here and the tax
4 gross-up part of that issue addresses how to get that
5 \$30 million actually to Empire, doesn't it?

6 A The income tax impact is part of the
7 calculation, yes.

8 Q And that Empire's position is that -- and that
9 you're representing here that the amount of amortization
10 would have to be grossed up for taxes so that \$30 million
11 is actually available for cash flow; is that fair?

12 A That's correct.

13 Q So if you were to assume a 60 percent overall
14 tax rate -- is that fair?

15 A Yes. I can accept that.

16 Q And if you needed \$30 million in additional cash
17 flow, that would work out -- and I don't think you -- you
18 may not need a calculator for this -- \$18 million of
19 additional money?

20 A I might have been too quick to agree with you
21 last time. When you say 60 percent, are you talking about
22 a 40 percent effective tax rate?

23 Q Okay. If you want to have 40, that's fine with
24 me because it's less money. What's four times three?

25 A Twelve.

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1 Q Okay. So that would be an additional 12 million
2 instead of 18, right?

3 A It -- it doesn't quite work that way. You'd
4 have to take the reciprocal of the effective tax rate. So
5 you would divide the 30 million by -- by 60.

6 Q Okay. And that would give you what number?

7 A It would give you --

8 Q What's three times six?

9 A Eighteen.

10 Q So now we're back to 18 million again. And you
11 would add that to the 30 million, so the total regulatory
12 adjustment -- excuse me -- regulatory amortization
13 adjustment that you're recommending here would have to be,
14 then, 48 million on that little simple example?

15 A Conceivably, if you added net to \$30 million of
16 additional cash, yes.

17 Q And by the way, Mr. Keith, what would happen if
18 the tax rate changed?

19 A The income taxes would change.

20 Q I vaguely recall a couple of weeks ago, we had
21 lunch, right?

22 A That's correct.

23 Q And at least with respect to the federal side of
24 it, come January, there will be kind of a little shift
25 going on. Do you agree?

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1 A Yes.

2 Q Do you know who Charlie Rangle (ph.) is?

3 A I've heard of him, yes.

4 Q Okay. Does this recommendation that you're
5 making to the Commission jointly with OPC and Staff, does
6 it address the issue of what would happen if tax rates
7 change?

8 A I don't know that it specifically does. But to
9 the ex -- it -- it does have an illustration of how the
10 calculation is made. To the extent the income tax rates
11 do change in the future, those new rates could be plugged
12 into the calculation.

13 Q And if the tax rate were to increase by virtue
14 of -- of Mr. Rangle and whatever work he did, the gross-up
15 would also increase in my example?

16 A Yes. It could. But I -- I'd like to add that
17 there's -- any regulatory amortization that comes into play
18 has to be authorized by the Commission. And so to the
19 extent new factors were involved, such as a new income tax
20 rate, they would certainly be displayed at -- at hearing
21 that covered that new calculation.

22 Q Okay. But you've indicated to me that you don't
23 locate an expiration date in this -- in this joint
24 recommendation that you're making?

25 A There -- no. There's no specific expiration

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1 date.

2 Q Okay. And you've also just indicated to me that
3 there wasn't any explicit address to a change in tax
4 revenues?

5 A I don't believe there is. I don't recall any.

6 Q Now, in the first year following -- I want you
7 to add a little bit to -- to my hopefully still simple
8 example that in the first year following -- and let's --
9 let's hypothesize that your joint recommendation is
10 accepted.

11 The first year following that, let's say that
12 you add a hundred million dollars of rate base. And since
13 you're not working for Aquila anymore, you can also add to
14 that that you'll do it in compliance with local zoning
15 regulations.

16 A Okay.

17 Q So far, so good?

18 A Yeah.

19 Q Now, in the first year after that, would that
20 \$30 million that we talked about be offset against that
21 hundred million?

22 A Yes.

23 Q What about the 18 million?

24 A Defer to income taxes and the impact of deferred
25 income taxes. That particular balance that offsets rate

1 base would also be affected by this calculation.

2 Q Okay. So using my example, again, total of
3 48 million regulatory amortization, would it be 30, 18 or
4 48 that gets offset from the hundred million?

5 A I think that might be addressed in the
6 illustration. I think it is. If you turn to -- it's
7 labeled as page 1. There's a hypothetical amount here.
8 You can see there's \$20,733,000.

9 Q Uh-huh.

10 A Additional taxes of basically 13 million -- 13
11 million that bring it to 33,653,000. That entire amount
12 is used to reduce rate base, but there is also a reduction
13 in deferred income taxes which would tend to increase rate
14 base.

15 Q Now, I understand there you're looking at page 1
16 of the attachment to what we've been referring to here as
17 the non-unanimous stipulation or joint recommendation,
18 whatever.

19 A Right.

20 Q And if I notice in paragraph 6, there's a little
21 bit more precise number that we were using on our 40
22 percent example, correct?

23 A Yes.

24 Q Yeah. .3839. But close enough maybe if we got
25 them in order -- or maybe for Charlie. It's a 40 percent.

1 So I'm trying to understand, though, what -- how much out
2 of my example -- well, first of all, Mr. Keith, there's no
3 argument, I take it, that using my example, in order to
4 give the company the \$30 million that I had hypothesized
5 in cash flow, you'd have to gross that up by the --
6 roughly the reciprocal of the 40 percent, right?

7 A That's correct.

8 Q And that -- that gave us, just for rough
9 numbers, 18 million?

10 A Right.

11 Q And we added the 30 and the 18, and that gives
12 us 48 million. And rates would go up enough to recover
13 that 48 million, right?

14 A That's correct.

15 Q So the ratepayers would pay you the 48, you
16 being Empire, the 48 million, right?

17 A That's correct.

18 Q Okay. Now then, how much of my example gets off
19 set from rate base?

20 A I believe the 48.

21 Q Okay. And over what period is that offset to
22 occur, as you've recommended here?

23 A Basically, as long as the plant that's related
24 to the amortization is in rate base.

25 Q So to be clear, then, you're -- you're speaking

1 here today as Empire District Electric Company. And this
2 additional amortization, which we've characterized in my
3 example as 48, is to be offset from rate base as set out
4 in this agreement; is that correct?

5 A That's correct.

6 Q Now, are there any grounds in this joint
7 recommendation or agreement or whatever that would excuse
8 Empire from those offsets?

9 A No. Not -- not that I see, unless the plant
10 were retired. One thing to keep in mind is you -- as
11 these units are built, there will be different retirements
12 over the years.

13 And to the extent there were retirements, some
14 of this amortization reserve may be also retired.

15 Q Now, let me direct you to -- I think it would be
16 paragraph 5 of your joint recommendation on non-unanimous
17 stipulation. And, actually, the -- the sentence, Mr.
18 Keith, that I wanted you to look at is on page 3. It's
19 the very last sentence of the paragraph. Are you there?

20 A I have it.

21 Q Such reduction in rate base is understood and
22 accepted by Empire without reservation. Do you see that?

23 A Yes, I do.

24 Q What does it mean, without reservation?

25 A Without exception.

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1 Q So no exceptions?

2 A No.

3 Q So I just want to be sure and just put a little
4 finer point on this in our offer of proof here that I
5 understand you. You're saying on behalf of Empire that
6 we're not going to find ourselves in 2010 or 2011 or
7 thereabouts and find Empire coming back in and arguing
8 that these amounts in my example, my 48 million, including
9 the 18 million gross-up, is somehow not properly offset
10 from rate base?

11 A The only thing can I think of, Mr. Conrad, is if
12 this was some dispute as to the amount.

13 Q So to put a still finer point on it, there are
14 already, in your understanding, on behalf of Empire today
15 any implicit understandings that Empire has that there's
16 some understanding or some provision in your joint
17 recommendation that would defeat the rate base offset that
18 you're indicating is understood and accepted by Empire
19 without reservation?

20 A Could you repeat that?

21 Q It might be easier to have the court reporter
22 read it back.

23 MR. CONRAD: If it would help, Ms. Reporter, I
24 think I started with, To put a still finer point.

25 (The previous question was read back.)

1 A There's nothing in the document that would
2 enable us to dispute the rate base offset.

3 Q And look with me on page 5 of the document and
4 paragraph 11. Would you agree with me that that language
5 seems to preclude an argument about some unstated
6 understanding or something like that coming back in at a
7 later time?

8 A Yes. In -- in theory, we -- we agree to the
9 theory of the rate base offset. All I was trying to get
10 at, really, was there may be a dispute down the road as to
11 the amount of the regulatory amortization so that you would
12 have a dispute over the dollars but not the theory.

13 Q And you believe you're here today authorized to
14 make that statement for Empire? And you look out to
15 Counsel.

16 MR. COOPER: Yeah. And I -- I would object to
17 that question. I think Mr. -- Mr. Keith described earlier
18 what his testimony was and what he was authorized to say
19 in regard to amortization. And we've gone through this --
20 this last section of question and answers as -- as an
21 offer of proof. So we would object to that question.

22 MR. CONRAD: Well, it's -- is this offer of
23 proof, is it -- am I questioning somebody here who is
24 authorized and believes he's authorized to speak for
25 Empire?

1 MR. COOPER: I think Mr. -- Mr. Keith stated
2 earlier, his -- the extent of his knowledge in regard to
3 this issue. And in light of that, you chose to go ahead
4 and ask him questions.

5 MR. CONRAD: Well, this question comes up
6 because I'm not able to -- to query your Chief Executive
7 Officer who, in theory, makes policy.

8 Q (By Mr. Conrad) So I'm going to again ask this
9 question of this witness is, does he -- is he able to
10 speak for Empire today at this time and this place?

11 A I'm able to speak as to my understanding of this
12 agreement, yes.

13 Q But you don't -- you don't make policy for the
14 company?

15 A That's correct.

16 Q You -- Mr. Gipson says to you, Jump, and you
17 say, How high?

18 A I guess you could put it that way.

19 Q Did you make the decision to enter into this
20 joint recommendation or, in time, turns out to be a
21 non-unanimous stipulation?

22 A No.

23 Q Who did?

24 A Probably Kelly Walters along with Mr. Gipson.

25 Q And are either of those persons to be on the

1 stand today?

2 A No.

3 Q Okay. Now, back to -- just for one quick thing,
4 Mr. -- Mr. Keith. Because of how the calculation works,
5 the ultimate rate level that Empire ends up with in this
6 case, while dependent on the automated level of relief the
7 Commission gives, because of the regulatory amortization
8 ends up pretty much the same, doesn't it?

9 A I'm sorry. I -- I don't follow that.

10 Q Let me -- that wasn't very well-asked. I would
11 agree with you. Taking into account that there is a
12 dispute about -- that you're familiar with about whether
13 the IEC applies whether the IEC doesn't apply and so on
14 and so forth, you'd agree with me that the -- the
15 implications of whether the IEC is terminated or left to
16 run its -- its full length, that's -- that's an issue
17 that's still out there, right?

18 A That's correct.

19 Q Okay. But because of how the regular
20 amortization works and how Staff has approached it and how
21 you, collectively with Staff and OPC, have submitted this
22 joint recommendation, whether the IEC is terminated early
23 or allowed to run on, it doesn't really make a lot of
24 difference to how much revenue -- how much revenue Empire
25 gets out of this case. Would you agree?

1 A Well, it would make -- that issue is a major
2 issue in this case, and it would certainly have a lot of
3 impact on Empire in terms of what the customer would see
4 on his bill.

5 Your question -- you're probably correct in your
6 question. Rates will go up substantially. Whether it's a
7 general revenue increase just on -- based on our cost of
8 service or what, we have a lot of additional revenue
9 associated with regulatory amorization.

10 Q Now, one further question, I hope, just to
11 pursue that line. But as to the amount of additional
12 amorization, if the existing IEC is terminated, as you
13 request, and which we oppose, then the amount of
14 additional amorization needed will be less. Would you
15 agree?

16 A I would agree. Yes.

17 Q And, thus, in the future, the amount that would
18 be offset from rate base would be less, correct?

19 A Yes.

20 MR. CONRAD: That concludes my offer of proof.

21 JUDGE DALE: Thank you. Is there anything --
22 any other cross or redirect based on questions from the
23 Bench? Seeing none --

24 MR. WOODSMALL: Your Honor, maybe at this time,
25 before you accept this into evidence, I would move to

1 strike a portion of his testimony. And that would be
2 starting on page line -- page 9, line 16 and continuing
3 through page 10, line 4 on the issue of fuel and purchase
4 power expense.

5 Mr. Keith testifies as to the true-up level of
6 purchase power expense. But when I attempted to
7 cross-examine him on the inputs that went into the model
8 that resulted in that level, he could not answer questions
9 regarding those inputs.

10 He stated that they were the same, but we were
11 not permitted to determine whether that's a fact.
12 Mr. Keith indicated that the model was run by Mr. Tarter
13 and Mr. Tarter would know those inputs.

14 But as you're aware, we were precluded from
15 calling him and questioning him. Mr. Keith was unable to
16 answer those questions. He has no firsthand knowledge of
17 fuel and purchase power expense. And I would move to
18 strike his testimony on those two pages.

19 MR. MITTEN: Your Honor, first of all,
20 Mr. Keith's testimony has been already been accepted into
21 evidence in its entirety.

22 MR. WOODSMALL: It was accepted subject to my
23 cross-examination.

24 JUDGE DALE: It was accepted subject to that.

25 MR. MITTEN: Secondly, the purpose of the

1 true-up testimony is to bring the level of, in this case,
2 fuel and purchase power expense, up to an appropriate
3 level as of -- I believe it's June 30th, 2006.

4 As Mr. Keith testified, the only change that was
5 necessary to do that was a change in sales. All of the
6 other inputs that the company used to calculate fuel and
7 purchase power expense were the same as were used in the
8 case in chief.

9 Praxair, Explorer had the opportunity to
10 cross-examine the company's witnesses, including
11 Mr. Tarter, regarding those inputs in previous hearings.
12 So to assert that because Mr. Keith is unable to answer
13 questions that should properly have been put to another
14 witness at another hearing and use that as a basis for
15 keeping out his true-up testimony is unfounded.

16 He was able to answer questions regarding the
17 changes that were made for purposes of the true-up. And
18 that's the only standard that should be used in
19 determining whether or not the true-up testimony goes into
20 evidence.

21 JUDGE DALE: In light of the fact that Mr. Keith
22 has testified that the only input that was changed was the
23 one that was specifically known to him, I will overrule
24 that objection and admit the entirety of his testimony,
25 true-up testimony, into the record.

1 At this time, we will take a ten-minute recess.

2 And, Mr. Keith, you are excused.

3 MR. KEITH: Thank you.

4 (Break in proceedings.)

5 JUDGE DALE: Okay. Let's go back on the record.

6 We are back on the record on -- in Case No. ER-2006-0315

7 and ready for Staff to call its witness.

8 MR. FREY: Thanks, your Honor. Staff calls

9 Mark L. Oligschlaeger. And I believe we have to mark this
10 testimony.

11 JUDGE DALE: Yes. It will be Exhibit 148.

12 THE COURT REPORTER: Could you spell your last
13 name for me?

14 MR. OLIGSCHLAEGER: Sure.

15 O-l-i-g-s-c-h-l-a-e-g-e-r. I'm sorry.

16 JUDGE DALE: Oh, I'm sorry.

17 MARK OLIGSCHLAEGER,
18 being first duly sworn to testify the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FREY:

22 JUDGE DALE: Thank you. You may proceed.

23 Q (By Mr. Frey) Please state your name for the
24 record.

25 A Mark L. Oligschlaeger.

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1 Q And by whom are you employed and in what
2 capacity?

3 A I'm employed as a Regulatory Auditor by the
4 Missouri Public Service Commission.

5 Q And did you prepare and cause to be filed in
6 this proceeding what has been marked for purposes of
7 identification as Exhibit 148, the true-up testimony of
8 Mark Oligschlaeger?

9 A Yes, I did.

10 Q And do you have any changes or corrections to
11 that testimony at this time?

12 A I do not.

13 Q If I were to ask you the same questions today as
14 are asked in that testimony, would your answers be the
15 same?

16 A Yes, they would.

17 Q And are those answers true and correct to the
18 best of your knowledge, information and belief?

19 A They are.

20 MR. FREY: With that, your Honor, I would offer
21 Exhibit 148 into evidence and tender the witness for
22 cross.

23 JUDGE DALE: Are there any objections? Hearing
24 none, then Exhibit 148 will be admitted into evidence.
25 Mr. Fischer?

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1 MR. FISCHER: No thank you, your Honor.

2 JUDGE DALE: Mr. Conrad or Mr. Woodsmall?

3 MR. CONRAD: Yes, ma'am. I do have just a
4 couple.

5 CROSS-EXAMINATION

6 BY MR. CONRAD:

7 Q Mr. Oligschlaeger, let me ask you to refer,
8 please, to page 11 of Exhibit 148. And let me know when
9 you're there.

10 A I am there.

11 Q Would you agree with me that the impact of the
12 IEC decision that the Commission has yet to make has an
13 effect on the amount of regulatory amorization you have
14 recommended, and I believe Staff, if I am not correct, is
15 a party to what we've been talking about here, this
16 non-unanimous stipulation and agreement or joint
17 recommendation?

18 A Yes.

19 Q What is the nature of that effect?

20 A To the extent that the Commission were to
21 determine that the IEC continuation scenario that had been
22 advocated by your party and other parties to this case was
23 appropriate, then that would increase the amount of the
24 regulatory plan amorization that should be granted to the
25 company above the levels under the so-called IEC

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1 termination scenario.

2 Q And correspondingly, if the Commission in its
3 infinite discretion should decide not to accept our view
4 of that and allow the IEC to be -- to be terminated,
5 though we might object to that, the opposite would be
6 true?

7 A Yes.

8 Q Now, would you agree with me that the amount of
9 the -- or the total amount of the regulatory amortization
10 that you are recommending here would and should end up
11 being an offset to rate base?

12 A In future rate proceedings, yes.

13 Q And so the amount of rate base offset in the
14 future is dependent upon the Commission's decision
15 regarding the continuation or the termination of the
16 interim energy charge?

17 A I would agree with that.

18 MR. CONRAD: Thank you. That, I believe, is
19 all.

20 JUDGE DALE: Thank you.

21 MR. WOODSMALL: I have a couple questions on a
22 different issue, your Honor, very briefly.

23 CROSS-EXAMINATION

24 BY MR. WOODSMALL:

25 Q I believe it may be offered later, but Staff

1 also filed in its true-up testimony Staff Accounting
2 Schedules. Are you aware of that?

3 A Yes.

4 Q And can you tell me, are you the witness
5 supporting those accounting schedules?

6 A Probably.

7 Q Okay. Can -- can you tell me if those -- can
8 you tell me if those accounting schedules are still
9 accurate and that they reflect Staff's current position on
10 this case?

11 A They are not accurate. And to the extent that
12 they do not reflect the non-unanimous stipulation and
13 agreement, or I've also heard it referred to as joint
14 recommendation concerning corporate allocations.

15 Q Okay. And the accounting schedules that were
16 submitted -- Mr. Conrad was asking questions about the
17 IEC. But can you tell me if the accounting schedules that
18 were submitted, do they reflect the termination or the
19 continuation of the IEC?

20 A The actual accounting schedules reflect the
21 termination scenario. I have attached as a schedule to my
22 true-up testimony a listing of the differences between
23 those schedules and those schedules that would support the
24 IEC continuation scenario.

25 Q Okay. But other than the corporate allocation

1 stipulation, the accounting schedules would be an accurate
2 recitation of Staff's position with the IEC termination;
3 is that correct?

4 A I believe so.

5 MR. WOODSMALL: Thank you. No other questions,
6 your Honor.

7 JUDGE DALE: I think you're next. I've lost my
8 list. Here it is.

9 MR. MILLS: I have no questions.

10 JUDGE DALE: Thank you. Are there -- well,
11 let's ask if there's any redirect based on that cross so
12 far? Wait a minute. Do you guys --

13 MR. MITTEN: Company has no cross.

14 JUDGE DALE: Okay.

15 MR. FREY: Redirect, your honor?

16 JUDGE DALE: Yes. Do you have redirect based on
17 these questions so far?

18 MR. FREY: This might be an appropriate time to
19 offer the accounting schedules. Mr. Woodsmall has
20 reminded me.

21 JUDGE DALE: Those will be Exhibit 149.

22 (Exhibit No. 149 was marked for identification.)

23 MR. FREY: Thank you. Is there any objection?

24 Then Exhibit 149 will be admitted into evidence.

25 (Exhibit No. 149 was admitted into evidence.)

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1 JUDGE DALE: Mr. Dottheim, did you have
2 redirect?

3 MR. DOTTHEIM: Yes.

4 CROSS-EXAMINATION

5 BY MR. DOTTHEIM:

6 Q Mr. Oligschlaeger was asked a question by
7 Mr. Woodsmall as far as the -- the accounting schedules,
8 the -- the accuracy respecting them as they exist
9 presently right now.

10 Mr. Oligschlaeger, do the -- the accounting
11 schedules, as they exist presently right now, reflect the
12 -- the stipulation and agreement on additional
13 amortizations reflecting the additional net balance sheet
14 investment amount of \$30 million?

15 A No, they do not. The accounting schedules just
16 reflect the revenue requirement based upon traditional
17 methods of calculating the regulatory requirement. The
18 regulatory amortization and revenue requirements are
19 calculated separately.

20 JUDGE DALE: Are there any questions from the
21 Bench?

22 CHAIRMAN DAVIS: No questions.

23 COMMISSIONER GAW: Just briefly.

24 CROSS-EXAMINATION

25 BY COMMISSIONER GAW:

1 Q Mr. -- Mr. Oligschlaeger, would -- would you
2 tell me in your -- in your true-up testimony that you have
3 given, do you -- do you address any of the issues that are
4 also addressed in the non-unanimous stipulations that were
5 filed subject to the first part of this proceeding?

6 A Yes. I believe my testimony addresses all
7 issues covered in the non-unanimous stipulation agreements
8 for corporate allocations and regulatory plan
9 amortizations.

10 Q And -- and it does or does not reflect a portion
11 or some degree of rationale that would be supportive of
12 the non-unanimous stipulation in that regard, in regard to
13 the allocation question?

14 A For the corporate allocations question, my
15 true-up testimony reflects an initial position on the
16 appropriate amount to allocate over to gas. The
17 non-unanimous stipulation and agreement calls for a
18 different number, a different amount to be allocated for
19 that purpose.

20 Q All right. And is there any part of that
21 testimony in the -- in the true-up that could be pointed
22 to in regard to how -- whether -- as -- as support of or
23 nonsupport of the recommendation in the non-unanimous
24 stip.?

25 A I would say that my testimony, in conjunction

1 with the company's testimony, that of Mr. Keith.

2 Mr. Keith pointed out some conceptual problems with the
3 Staff's method -- initial method of allocating corporate
4 costs to the gas operations and in response to those
5 points made in Mr. Keith's testimony that entered into our
6 decision to reach a different number result for that
7 issue.

8 Q So it -- it is relevant and material to --
9 arguably, to the -- to the non-unanimous stip.
10 justification?

11 A I would say so. Yes.

12 Q And -- and same questions in regard to the
13 amorization -- amorization issue.

14 A Well, for the amorization issue, I think my
15 true-up testimony lays out why it is, in essence, the
16 position of those parties that entered into the
17 non-unanimous stipulation and agreement.

18 COMMISSIONER GAW: Okay. Not being sure how far
19 I should go with regard to this line of questioning in
20 regard to the previous ruling of the Commission Judge, I
21 would have more questions. But I don't know whether that
22 would be appropriate.

23 JUDGE DALE: If it's related to his true-up
24 testimony. If it -- if it does.

25 COMMISSIONER GAW: If it relates to the true-up

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1 testimony, you think it's -- it's appropriate in your
2 opinion that I could ask questions?

3 JUDGE DALE: Yes.

4 Q (By Commissioner Gaw) All right. In that
5 regard, then, Mr. Oligschlaeger, would you -- would you
6 just point out to me the sections of your true-up
7 testimony that have to do with the -- with the
8 non-unanimous stip. on amorization?

9 A Well, the section of my testimony that pertains
10 to the corporate allocations issue starts at the bottom of
11 page 6, line 21 and goes to page 10, line 13. And perhaps
12 of particular note would be the last Q and A on page 10
13 pursuant to corporate allocations where I note that we
14 were in the process of obtaining additional information
15 from the company concerning corporate allocations and that
16 discussions on this topic would continue past the true-up
17 filing date.

18 For regulatory plan amortizations, that section
19 of my testimony begins on page 11, line 6 and continues to
20 page 15, line 8.

21 Q Okay. Okay. And in regard to -- and is that
22 all --

23 A I believe so.

24 Q -- in your true-up testimony? And in regard to
25 amorization -- the amorization -- amorization issue, this

1 specifically -- this testimony specifically is supportive
2 of the non-unanimous stip. on amortizations?

3 A I believe it is. Yes.

4 Q Now, are you familiar with the other testimony
5 that's been filed in regard to the true-up in this case?

6 A Yes, I am.

7 Q And do you know if other witnesses have filed
8 testimony that you would consider to be supportive of or
9 evidence of a rationale why the non-unanimous stip. should
10 be approved?

11 A I believe, and, obviously, he'll be up here to
12 speak for himself, that Mr. Trippensee of Public -- Office
13 of Public Counsel also filed testimony that I believe
14 would be supportive of the non-unanimous stipulation
15 agreement on regulatory plan amortizations.

16 Q Okay. Anyone else?

17 A That is all that comes to mind.

18 Q So it would be accurate to say that there is
19 testimony in the record that has been filed during the
20 true-up phase that could be utilized to -- to be -- as
21 support for the non-unanimous stip.?

22 A I believe so.

23 COMMISSIONER GAW: That's all the questions I
24 have. Thank you, Judge.

25 JUDGE DALE: Is there any re-cross based on

1 questions from the Bench?

2 MR. CONRAD: Briefly.

3 JUDGE DALE: Let's let Mr. Fischer go.

4 CROSS-EXAMINATION

5 BY MR. FISCHER:

6 Q Mr. Oligschlaeger, you were asked some questions
7 about testimony that is in the record that would support
8 the non-unanimous stip. on the amorization. Is it also
9 true that during the primary rate case hearing there was
10 some testimony that both address the gross-up of tax issue
11 filed by J. Williams of Empire and Brian Beas (ph.) of
12 Kansas City Power & Light?

13 A That pertain to the issue, yes.

14 MR. FISCHER: Okay. Thank you.

15 JUDGE DALE: Yes.

16 CROSS-EXAMINATION

17 BY MR. CONRAD:

18 Q Mr. Oligschlaeger, Commissioner Gaw asked you to
19 identify the areas in your true-up in which you had
20 addressed regulatory plan amortizations. Do you recall
21 that?

22 A Yes, I did.

23 Q And included within that, I believe, is a
24 question and an answer at the bottom of page 14 beginning
25 at line 18. Let me know when you're there.

1284

1 A I am there.

2 Q Would you agree with me that the -- you use the
3 term "minimal difference" on lines 22 and 23 between the
4 Staff's total revenue requirement recommendation under the
5 IEC termination or for the IEC continuation scenario?

6 A When taking into account both the traditional
7 revenue requirement calculation and the regulatory plan
8 amorization plan calculation, the difference between the
9 two scenarios is, I would agree with, minimal or perhaps
10 immaterial. There is a difference.

11 Q In the total scope of the size here?

12 A Yes.

13 Q The difference would be nice if it was left in
14 your Christmas stocking, wouldn't it?

15 A Certainly.

16 Q It wouldn't be minimal in that sense?

17 A No. It's all from -- depends on your
18 perspective.

19 Q But on those same two lines, we had talked a few
20 moments ago, I think, and then in -- in response to
21 Commissioner Gaw's question the amount of the regulatory
22 plan -- excuse me -- regulatory amorization, the
23 additional amorization, and that terminology has been used
24 in one scenario as 20 million seven, and in the other
25 scenario is 43.009 million, correct?

1285

1 A That is correct.

2 Q And that would make a fair amount of difference
3 basically just in rough -- rough numbers here, 22,
4 \$23 million difference in how much was offset from rate
5 base in the future, wouldn't it?

6 A I would agree, it would.

7 Q And in both those scenarios, the ratepayers
8 would pay back to this twenty-seven eight and twenty seven
9 seven under Staff's approach?

10 A That would be the total amount paid in by
11 customers on an annual basis under the Staff's
12 recommendations.

13 Q Now, moving back up and again within the area
14 that Commissioner Gaw identified, the question and answer
15 that begins on that same page at line 7 and ends on line
16 13. You refer there to a settlement in principle. Do you
17 see that?

18 A Yes, I do.

19 Q Now, that -- that had not occurred and had not
20 been filed at the time this testimony was put together; is
21 that correct?

22 A Yes.

23 Q Yes, that is correct.

24 A Okay.

25 Q The very last sentence of that answer, line 15,

1 This matter is quite complex. Does that refer to
2 settlement or to something else?

3 A I think it refers to the subject matter of the
4 non-unanimous stipulation and agreement.

5 Q And why is it so complex?

6 A In my mind, it's complex because of the
7 different ramifications not only in the depreciation
8 expense area, both for broken tax purposes, but also in
9 the income tax areas and the interplay between current and
10 deferred income taxes.

11 Q Looking again, Mr. Oligschlaeger, at that
12 question and answer that begins at line 7 on page 14, in
13 the first and carrying into the second line, the issue of
14 the regulatory plan amortization gross-up -- now, your
15 recommendation -- Staff's recommendation, joint
16 recommendation, here also addresses the applicability of
17 the regulatory plan. Said it again. The additional
18 amortization, does it not? It's not just -- it's not just
19 limited to the gross-up. It's -- it's saying this is --
20 this is the total amount, isn't it?

21 A The stipulation itself?

22 Q Or the joint recommendation, as the terminology
23 may be appropriate.

24 A If I understand your question, no, I don't
25 believe it addresses the total amount because there is

1 still some issues before the Commission to be litigated
2 regarding to the amount of the amortization.

3 Q Would you agree with me, though, in the
4 beginning of this case that the original issue was broader
5 than just gross-up?

6 A There were -- yes. I would agree with that.

7 Q Okay. And the breadth of that issue encompassed
8 whether or not additional amortization should be provided
9 at all or should even be accepted by the company or
10 requested by the company. Am I correct?

11 A In my reading of the testimony, yes, that
12 appeared to be at issue.

13 MR. CONRAD: I think that's all, your Honor.
14 Thank you.

15 JUDGE DALE: Thank you. Is there any additional
16 redirect?

17 MR. FREY: Yes, your Honor. Just a couple of
18 questions, if I might.

19 CROSS-EXAMINATION

20 BY MR. FREY:

21 Q Mr. Oligschlaeger, Mr. Woodsmall asked you a
22 question about the accounting -- Staff accounting
23 schedules. Do you recall that?

24 A Yes, I do.

25 Q And I believe Mr. -- Commissioner Gaw also had

1 some questions regarding the Staff's position regarding
2 this stipulation and agreement, non-unanimous stipulation
3 and agreement. Do you recall those questions?

4 A Yes, I do.

5 Q Could you turn, please, to page 10 in your
6 true-up testimony?

7 A I am there.

8 Q And could you read the question and answer
9 beginning on line 8?

10 A Question: Is the issue of A&G allocations a
11 continuing subject of discussion between the company and
12 the Staff?

13 Answer: Yes, it is. The Staff will obtain
14 additional information from the company after this
15 testimony is filed to gain a more complete understanding
16 of Empire's plans to allocating A&G costs to its business
17 lines in the future. Based upon this information, it is
18 possible that the Staff may modify its position on this
19 issue, if appropriate.

20 Q And I believe in your answer to Mr. Woodsmall's
21 question you indicated that the Staff accounting schedules
22 did not reflect the non-unanimous stipulation and
23 agreement as corporate allocations, correct?

24 A That is correct.

25 Q And has the Staff modified -- modified its

1 position on this issue?

2 A Yes, it has.

3 Q Is it -- can you state what that position is?

4 A That position is -- and there are two pieces to
5 this issue. One is proper allocation of administrative
6 and general costs. And the other is proper allocation of
7 what's called general plant among all the business
8 operations of Empire.

9 In the area of A&G B expense allocations and
10 response to some of Mr. Keith's critiques of the Staff's
11 position taken in its true-up direct testimony, the Staff
12 believes it appropriate to look at the company's total
13 allocation of A&G costs to its gas operations for June
14 2006, the last month of the true-up period, and modify
15 that in several respects, primarily, most importantly, to
16 include an appropriate allocation of A&G pension costs to
17 be spread among all of the different divisions of Empire
18 so that, for example, Mr. Gipson's pensions along with his
19 salary should be allocated in part to its new gas
20 operations on the company's books as well as its electric,
21 water and non-regulatory operations.

22 The other modification I made to their purpose
23 of June 2006 expense allocation A&G expenses was to also
24 include a piece of A&G plant or general plant maintenance
25 cost to be allocated to the gas operations because a

1 portion of the general plant was also to be allocated over
2 to the gas operations.

3 For the plant, general plant itself, again,
4 reviewing Mr. Keith's true-up testimony, he had some
5 pertinent comments about the initial position we took in
6 our true-up direct testimony.

7 In response to those critiques, the Staff took
8 -- narrowed its focus, looked up on some specific elements
9 of general plant such as their corporate headquarters in
10 Joplin, their parking garage, their entire complex of
11 buildings in the Joplin area that served it, the general
12 corporate overhead staff as well as their call centers,
13 and calculated what an appropriate allocation of those
14 purely common functions over to the gas operations would
15 be in the non-unanimous stipulation on corporate
16 allocation reflects that approach and revenue.

17 In revenue requirement terms, it was around
18 150,000 allocation of general plant to gas and away from
19 electric. For the expenses to go back to that, that was
20 around a \$500,000 shift of A&G expenses from electric to
21 gas from that approach.

22 Q And so the total effect on revenue requirement
23 would be how much?

24 A To add the two numbers together, it was
25 650,000.

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1 Q And is that as is reflected in the non-unanimous
2 stipulation and agreement?

3 A That is correct.

4 MR. FREY: Thank you. No further questions.

5 COMMISSIONER GAW: Judge, I have a
6 question.

7 CROSS-EXAMINATION

8 BY COMMISSIONER GAW:

9 Q Mr. Oligschlaeger, the testimony that you just
10 gave to your counsel, the information in regard to the
11 numbers that you were dealing with, was that included in
12 your true-up testimony that was pre-filed?

13 A The 500,000 and the 150,000?

14 Q Any of the numbers that you just mentioned.
15 When would -- if you would, go through and tell me which
16 ones were in the true-up previously -- in your testimony
17 for the true-up previously and which ones -- which --
18 which numbers, which information is new that you just gave
19 to -- on the record.

20 A All of the numbers that related to the approach
21 that the Staff took in response, among other things, to
22 Mr. Keith's true-up testimony would not be found in my
23 true-up testimony, which was filed concurrently with this.

24 Q And so that would be new information that you
25 just put in the record?

1 A I believe so.

2 JUDGE DALE: In light of that, is there any
3 additional cross?

4 COMMISSIONER GAW: Just a moment, Judge.

5 JUDGE DALE: Oh, I'm sorry.

6 COMMISSIONER GAW: I think I'm done, but just --
7 if you wouldn't mind.

8 JUDGE DALE: That's -- that's fine.

9 COMMISSIONER GAW: If you'll give me another
10 chance if I need it, that will be fine, Judge.

11 JUDGE DALE: Okay. In light of the fact that we
12 have just had new testimony, is there anyone who has
13 cross-examination on the information that just came to
14 light in Staff's redirect?

15 COMMISSIONER GAW: I don't have anything
16 further, then, Judge.

17 JUDGE DALE: Okay. Thank you. Then, having
18 nothing further, you are excused. Thank you. Would you
19 like to call another witness?

20 MR. FREY: Oh, surely. Thank you, your Honor.

21 MR. MILLS: Shirley?

22 MR. FREY: Staff calls --

23 JUDGE DALE: I thought his name was Jim.

24 MR. FREY: Staff calls James M. Busch.

25 MR. THOMPSON: Also known as Shirley.

1 JAMES BUSCH,
2 being first duly sworn to testify the truth, the whole
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FREY:

6 JUDGE DALE: Please be seated. Thank you. You
7 may inquire.

8 MR. FREY: I believe we need to mark Mr. Busch's
9 testimony as Exhibit 150.

10 (Exhibit No. 150 was marked for identification.)

11 JUDGE DALE: Yes.

12 Q (By Mr. Frey) Please state your name for the
13 record.

14 A My name is James A. Busch.

15 Q And by whom are you employed and in what
16 capacity?

17 A I'm a Regulatory Accountant III with the
18 Missouri Public Service Commission's Staff.

19 Q And did you prepare and cause to be filed in
20 this proceeding what's been marked for purposes of
21 identification as Exhibit 150, which is James A. Busch's
22 true-up testimony?

23 A That is correct.

24 Q And are there any corrections or additions to
25 that testimony?

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1 A No.

2 Q If I were to ask you the same questions today as
3 are in that testimony, would your answers be the same?

4 A Yes.

5 Q And are those answers true and accurate to the
6 best of your information, knowledge and belief?

7 A Yes.

8 MR. FREY: With that, your Honor, I would offer
9 Exhibit 150 into the record and tender the witness for
10 cross.

11 JUDGE DALE: Are there any objections? Hearing
12 none, Exhibit 150 will be admitted.

13 (Exhibit No. 150 was admitted into evidence.)

14 MR. FISCHER: No questions.

15 JUDGE DALE: Praxair?

16 MR. CONRAD: Just a couple, Judge.

17 CROSS-EXAMINATION

18 BY MR. CONRAD:

19 Q Mr. Busch, look with me, please, at page 2 of
20 Exhibit 150.

21 A I'm there.

22 Q Lines 1 through 6?

23 A Yes.

24 Q And I'm not going to ask you to give a legal
25 opinion because you wouldn't be able to do that, and that

1 would require the Commission to increase your salary
2 dramatically, wouldn't it?

3 A I would hope so.

4 Q But subject to that limitation, it is your
5 understanding under the rules that you're familiar with
6 that because no party has filed an opposition to that
7 stipulation and agreement to which you refer, it is
8 treated by the Commission as a unanimous stipulation and
9 agreement. Is that correct with your understanding? Or
10 to your understanding?

11 A That is my understanding.

12 Q Now, should I then look at 150, the exhibit, as
13 being submitted in support of that unanimous, you now
14 treat it as a unanimous stipulation and agreement?

15 A It would be in support of that stipulation and
16 agreement.

17 Q And it would be your position that they now
18 treat it as unanimous stipulation and agreement regarding
19 rate design is just, reasonable, and should be approved by
20 the Commission?

21 A Yes.

22 MR. CONRAD: That's all, your Honor. Thank you.

23 MR. MILLS: No questions.

24 JUDGE DALE: Thank you. Empire?

25 MR. MITTEN: Company has no questions.

1 JUDGE DALE: Thank you. Are there any questions
2 from the Bench?

3 COMMISSIONER DAVIS: No questions.

4 COMMISSIONER GAW: No questions.

5 JUDGE DALE: Any redirect? Thank you,
6 Mr. Busch. You may step down. You're excused.

7 JUDGE DALE: I believe Mr. Brubaker is next.

8 MAURICE BRUBAKER,
9 being first duly sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CONRAD:

13 JUDGE DALE: Thank you. Please be seated. You
14 may inquire.

15 MR. CONRAD: Your Honor, this would concern
16 Mr. Brubaker's true-up direct testimony that was filed on
17 or about September 27. I don't know if an exhibit number
18 has yet been assigned to that.

19 JUDGE DALE: This should be 151.

20 (Exhibit 151 were marked for identification.)

21 MR. CONRAD: Thank you.

22 Q (By Mr. Conrad) And armed with that completely
23 relevant knowledge, Mr. Brubaker, I now direct you to what
24 has been marked for identification as Exhibit 151. Would
25 you agree with me that that is a copy of your September 27

1 true-up direct testimony?

2 A Yes.

3 Q And you are the same Maurice Brubaker that
4 previously filed testimony in this proceeding, are you
5 not?

6 A I am.

7 Q If I were to ask you the questions contained
8 therein, would your answers thereto be the same?

9 A They would.

10 Q Did you prepare the attached schedules, or were
11 they prepared under your direction and supervision?

12 A Combination of the two.

13 Q So the answer would be yes?

14 A Yes.

15 MR. CONRAD: Your Honor, with that, we would
16 move for the admission of Exhibit 151 subject to any
17 cross-examination or motion to strike and tender
18 Mr. Brubaker for cross-examination on the subjects of his
19 direct testimony.

20 JUDGE DALE: Are there any objections? Hearing
21 none, then Exhibit 151 will be admitted into evidence.

22 (Exhibit No. 151 was admitted into evidence.)

23 MR. COOPER: Your Honor, I would like to make
24 one matter of clarification, if we could. It looks to me
25 like a portion of Mr. Brubaker's -- well, I take that

1 back. I think a portion of his testimony is Highly
2 Confidential, isn't it, Mr. Conrad?

3 MR. WOODSMALL: Yes.

4 MR. CONRAD: Well, let's verify with the
5 witness.

6 MR. BRUBAKER: Two -- two versions.

7 MR. CONRAD: He's holding up a V sign. It's
8 either two or victory.

9 JUDGE DALE: Maybe it means peace.

10 MR. CONRAD: Let's inquire. Well, I didn't --

11 JUDGE DALE: I realize that's a stretch.

12 MR. CONRAD: I didn't think you were that old,
13 Judge, but I'll defer.

14 Q (By Mr. Conrad) Mr. Brubaker, as prompted by
15 Counsel, is there any portion of Exhibit 151 which makes
16 reference to any material that the company has designated
17 as Highly Confidential?

18 A Yes, there are. In the HC version. There's
19 also an NP version that has redacted those portions.

20 JUDGE DALE: Then we will have both --

21 MR. CONRAD: Yes.

22 JUDGE DALE: -- 151-NP and 151-HC.

23 MR. CONRAD: We will. To direct the
24 Commission's attention to that, I think it appears on
25 Schedule 1.

1 Q (By Mr. Conrad) Am I correct, Mr. Brubaker? or
2 is there also a reference elsewhere?

3 A Only -- only Schedule 1 contains the
4 confidential information.

5 MR. COOPER: I think that Schedule 2 is also
6 identified in that fashion. I haven't independently
7 verified whether it should be or not, but --

8 MR. CONRAD: I do see, your Honor --

9 A You're correct.

10 MR. CONRAD: -- on the top of Schedule 2 that
11 the information on this sheet is Highly Confidential.

12 A Thank you. That is correct.

13 MR. CONRAD: And we have no desire to offend
14 either through that mechanism or any other, so we will
15 provide redacted copies. And I think 151, it's already
16 been done?

17 JUDGE DALE: It -- it has been filed as a
18 redacted version. I have in front of me a redacted
19 version.

20 MR. CONRAD: Okay. And it -- and I'm advised
21 that the court reporter has both versions, so --

22 JUDGE DALE: Excellent.

23 MR. CONRAD: -- I think we're done.

24 JUDGE DALE: Mr. Fischer?

25 MR. FISCHER: No questions.

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1 MR. MILLS: No questions.

2 MR. FREY: No questions, your Honor.

3 MR. MITTEN: No questions from the company.

4 JUDGE DALE: Thank you. Questions from the
5 Bench?

6 COMMISSIONER DAVIS: No questions of
7 Mr. Brubaker.

8 COMMISSIONER GAW: no, thank you.

9 JUDGE DALE: All right. Thank you,
10 Mr. Brubaker.

11 MR. BRUBAKER: Thank you.

12 JUDGE DALE: You are excused.

13 MR. MILLS: Your Honor, we -- we have two Public
14 Counsel witnesses, I believe, are the only two remaining
15 witnesses. It's my informal pool of the parties that none
16 of them have questions for those witnesses.

17 If we can dispense with the formalities, I --
18 with the stipulation from counsel, I would just offer that
19 I would mark and offer their true-up testimony. And, of
20 course, I'd make them available if there are questions
21 from the Bench.

22 But if there are no questions, I think we can
23 save time and not go through all the -- the rigormorole
24 about if this is your testimony and whatnot. But in any
25 event, I'd like to have them both marked, and we can take

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1 it from there.

2 JUDGE DALE: Are there NP and HC versions or
3 just --

4 MR. MILLS: No, they're not. They're just
5 public versions only.

6 JUDGE DALE: Then Mr. Trippensee will be --

7 MR. MILLS: I stand corrected. There is an HC
8 version Mr. Robertson's testimony.

9 JUDGE DALE: Okay. Mr. Trippensee will be 152,
10 and Mr. Robinson -- Robertson will be 153 NP and HC.

11 (Exhibit Nos. 152, 153-NP and 153-HC were marked
12 for identification.)

13 MR. MILLS: If you would like me to put them on
14 the stand and go through the typical direct examination
15 or --

16 JUDGE DALE: No. I was just going ask aloud is
17 there any counsel who objects to admitting these into
18 evidence without the usual foundation questions? Is there
19 any counsel who has any questions for either of these
20 witnesses?

21 Hearing none to both of those, then the answer
22 -- or -- then these items of testimony, Exhibits 152 and
23 153-NP and 153-HC will be admitted into evidence.

24 Are there any questions from the Bench?

25 COMMISSIONER DAVIS: No questions.

1 COMMISSIONER GAW: I think I'll pass at this
2 point. I could ask some questions, but I think they would
3 be similar to the ones I've already asked, so I'll leave
4 it alone. I think that -- I think the record probably can
5 speak for itself. Thank you.

6 JUDGE DALE: It is now just about noon. We have
7 oral arguments on the true-up testimony in lieu of
8 briefing, and we have oral arguments on the altered
9 position statements on corporate allocations and
10 regulatory plan amortizations.

11 So if we reconvene at 1:15 -- did you -- 1:30?
12 1:30 seems to have a -- a happier look about it. Then we
13 will reconvene at 1:30 for the oral arguments. We are off
14 the record.

15 (Lunch recess.)

16 JUDGE DALE: Let's go back on the record. I
17 have 1:30 by the courtroom clock, so we will now move on
18 to oral arguments concerning the true-up testimony in lieu
19 of briefs.

20 We're using the order of opening that was agreed
21 to in the procedural schedule. That starts with Empire.

22 MR. WOODSMALL: Your Honor, before we commence,
23 I'd like to ask if the Commission would reconsider and
24 allow for briefs. I would note Section 536.080 that
25 requires each Commissioner either to read briefs or in

1 lieu thereof to sit in on all the evidence and read the
2 transcript -- or read the transcript.

3 Given that the Commissioners aren't here, I
4 would ask that we be allowed to do briefs, and we could
5 endeavor to do that very quickly to meet whatever schedule
6 you're under.

7 Finally, I'd note for the record that not all
8 the Commissioners were here through the entire true-up
9 hearing, so they're going to be required to read a
10 transcript. I think a short brief following that
11 transcript may be easier than -- for the Commissioners
12 than having them read that entire transcript.

13 JUDGE DALE: Or watching the --

14 MR. WOODSMALL: Well, I don't believe that the
15 statute would allow them to watch because it doesn't allow
16 them to gauge a witness's demeanor. Where the General
17 Assembly has seen fit to allow them to participate, as in
18 agenda session, via communication devices, the General
19 Assembly hasn't done that. They haven't done that with
20 regard to 536.080.

21 So I believe they would have to read the
22 transcript in this case, and I believe it would be more of
23 a convenience for them, though not for me, to write a
24 brief.

25 JUDGE DALE: There isn't time to wait for a

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1 transcript and then allow for briefing. If --

2 MR. WOODSMALL: We would endeavor to do it --
3 you know, if the brief came out by the end -- or the
4 transcript came out by the end of this week, we could have
5 it to you the middle this next week. But whatever you
6 decide.

7 JUDGE DALE: There's just not time for that. We
8 are now 30 days away from when the Commission has to
9 decide this case, and they have this case to decide on
10 that time frame. They have the KCP&L case to decide in
11 that time frame.

12 MR. WOODSMALL: If they'd rather --

13 JUDGE DALE: At most, that starts next week.

14 MR. WOODSMALL: If they'd rather read the
15 transcript, that's fine.

16 JUDGE DALE: Yeah. And I have my instructions,
17 so --

18 MR. WOODSMALL: I would note for the record that
19 Commissioners aren't present. Commissioners have not been
20 here. All the Commissioners have not been here for the
21 entire proceeding. I'm just making that note for the
22 record for purposes of 536.080.

23 JUDGE DALE: Fine. Mr. Cooper or Mr. Mitten?

24 ORAL ARGUMENT

25 BY MR. MITTEN:

1 MR. MITTEN: Your Honor, with regard to the
2 true-up issues, we think that the testimony that the
3 company has filed on those issues speaks for itself. We
4 really have a very limited number of issues that were
5 subject to true-up.

6 Mr. Keith addressed the issue of fuel and
7 purchase power costs and a limited true-up adjustment that
8 was required for that. We have stipulations covering
9 regulatory plan amortization and the issue of allocations.
10 And we believe, in combination, the testimony, the
11 stipulations provide an adequate basis for the Commission
12 to -- to adjudicate the limited issues that have been
13 presented in this latter phase of the hearing.

14 JUDGE DALE: Thank you. Staff?

15 ORAL ARGUMENT

16 BY MR. DOTTHEIM:

17 MR. DOTTHEIM: May it please the Commission. On
18 the -- on the amortization, the additional amortization
19 regulatory plan, amortization --

20 JUDGE DALE: Are you talking about the -- the
21 true-up issues?

22 MR. DOTTHEIM: Oh, I'm sorry. If you're going
23 to address just the --

24 JUDGE DALE: This is just true-up.

25 MR. DOTTHEIM: -- true-up issues, even though

1 the -- the amortization was addressed in the true-up
2 testimony, that -- that is not necessarily denominated a
3 true-up issue.

4 JUDGE DALE: It's -- yeah. It's your choice
5 whether you wanted to address it now or -- or we talk
6 about those separately.

7 MR. DOTTHEIM: We can address that separately.

8 MR. FREY: Okay. May it please the Commission,
9 your Honor. We -- we have briefed these true-up issues
10 and the Staff stands by its brief as to these issues, with
11 the exception of the remarks that Steve's going to --
12 Mr. Dottheim's going to make as well as the evidence
13 that's been adduced in this -- in this proceeding. Pardon
14 me for a moment. Pardon me.

15 JUDGE DALE: Sure.

16 MR. FREY: That's all I have, your Honor.
17 That's all I have, your Honor. Thank you.

18 JUDGE DALE: Thank you. Mr. Mills?

19 ORAL ARGUMENT

20 BY MR. MILLS:

21 MR. MILLS: With respect to the -- to the
22 contested issues in the true-up, really, the only one that
23 -- that I have testimony on is the off-balance sheet
24 obligations, and I think the testimony speaks for itself.

25 I'd be happy to answer questions if there are

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1 questions about it, but I don't have any argument
2 prepared. Thank you.

3 JUDGE DALE: Praxair?

4 ORAL ARGUMENT

5 BY MR. WOODSMALL:

6 MR. WOODSMALL: Thank you, your Honor. In its
7 case, Empire seeks to terminate the IEC. Empire bases its
8 termination request on the belief that, quote, the IEC
9 does not and will now allow the company to recover its
10 reasonably and prudently incurred fuel and purchase power
11 costs.

12 The evidence presented today does not support
13 such a broad finding. While there is no question that
14 Empire has to date probably lost some amount of money
15 under the IEC, those losses are not due to any inherent
16 problem in the structure or operation of the IEC.

17 Rather, as reflected in pre-filed testimony of
18 Mr. Brubaker, those losses are more likely due to the
19 timing of the implementation of the IEC immediately prior
20 to two catastrophic hurricanes in the Gulf of Mexico.

21 Last month, Empire's fuel and purchase power
22 expense was below the ceiling of the IEC. Five other
23 months during the term of the IEC, the fuel and purchase
24 power expense was below the ceiling.

25 There is nothing in the record to support a

1 forward-looking finding that the IEC will not allow the
2 company to recover its reasonable and prudently incurred
3 fuel and purchase power costs.

4 Regarding return on equity, Praxair Explorer
5 notes that immediately following the filing of briefs in
6 this matter and before the receipt of all evidence, the
7 Commission began deliberating the issues in this case.

8 Among the issues discussed was the issue of
9 return on equity. Praxair/Explorer was present at some of
10 this discussion among the Commissioners regarding the
11 credibility of Empire witness on this issue.

12 Specifically, comments were made that, I can't
13 believe this was the same witness from the last case, and,
14 He looked like a deer in the headlights. Given the lack
15 of credibility of Empire's witness, Praxair/Explorer
16 suggests that its position of a 10.0 ROE is further
17 buttressed. Praxair's score of 10.0 percent ROE was based
18 upon DCF analysis conducted by Staff, OPC and Empire's
19 questionable witness.

20 In addition, Praxair/Explorer considered recent
21 ROE determinations from states bordering on Missouri. As
22 was shown here today, the national average ROE
23 determination for the third quarter of 2006 was 10.06
24 percent.

25 Praxair/Explorer continues to submit that its

1 position is the only position in the record that is
2 supported by expert DCF determinations, as well as
3 recognizes national average ROE authorizations as well as
4 the determinations of states in the same geographic area.
5 Thank you, your Honor.

6 JUDGE DALE: Okay. Mr. Fischer?

7 MR. FISCHER: I have no -- I have no closing.

8 Thank you.

9 JUDGE DALE: Thank you. Are there any questions
10 from the Bench concerning any of these?

11 COMMISSIONER DAVIS: No questions, Judge.

12 JUDGE DALE: Pardon me while I work my -- okay.
13 Sorry about that. Thank you. Then moving on to
14 regulatory -- oh, wait. Corporate allocations is the next
15 issue on which people may make oral argument. Empire?

16 ORAL ARGUMENT

17 BY MR. MITTEN:

18 MR. MITTEN: If it please the Commission. The
19 stipulation that has been reached by the company, the
20 Staff and the Office of Public Counsel with regard to
21 corporate allocations needs to be viewed in the context in
22 which it was reached.

23 As of June 1st of this year, Empire acquired
24 Missouri Gas Operations that previously had been owned and
25 operated by Aquila. And the problem that presented --

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1 that the parties faced is they all recognized that an
2 equitable means of allocating corporate overheads and
3 common plants needed to be devised, but there was a posity
4 of historical data to use to appropriately allocate those
5 costs.

6 As of today, Empire has only owned and operated
7 those gas properties for five months. But more
8 importantly, as of the cutoff date for true-ups, which was
9 June 30 of this year, the company had only owned and
10 operated the property for 30 days.

11 The parties -- Staff and the company filed
12 true-up testimony reflecting their respective positions on
13 how the Commission ought to treat the issue of allocations
14 for purposes of this rate case. Subsequent to that
15 testimony, through discussions that have taken place
16 between the company and Staff, they were able to reach a
17 common position.

18 And if I understand -- understood Mr.
19 Oligschlaeger's testimony earlier this morning, the
20 position that is represented in the stipulation now is or
21 is very close to what Staff believes is the appropriate
22 allocation number for purposes of this case.

23 I would note that in establishing an appropriate
24 allocation for purposes of this case, the methodology that
25 was utilized is -- is going to be a fairly short duration.

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1 In previous testimony, the company indicated
2 that it is in the process of putting together a cost
3 allocation manual. That will cover how plant and common
4 costs are going to be allocated going forward. But that
5 cost allocation manual will not be completed until the end
6 of this month.

7 By the time the company is next in for rate,
8 there will be more historical data available that the
9 parties can then use to determine what the appropriate
10 methodology for allocating costs is going to be.

11 But for purposes of this case, I believe that
12 the stipulation reflects a good common position, that the
13 Commission can and should rely on for setting rates in
14 this case. Thank you.

15 JUDGE DALE: Thank you. Staff?

16 MR. FREY: I have nothing to add to Mr. Mitten's
17 comments, your Honor. Thank you.

18 JUDGE DALE: Mr. Mills?

19 MR. MILLS: I have nothing further. Thank you.

20 JUDGE DALE: Praxair?

21 MR. WOODSMALL: Nothing, your Honor. Thank you.

22 MR. FISCHER: No, thank you.

23 JUDGE DALE: All right. Then we will move on to
24 regulatory plan amortizations.

25 COMMISSIONER GAW: Well, that's -- let me

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1 clarify something just for my own benefit. Just so I'm
2 completely clear on this, this stipulation on the
3 allocation issue is not objected to; is that correct?

4 MR. CONRAD: Let me respond to that. No. That
5 is not correct.

6 COMMISSIONER GAW: Okay. Clarify the status of
7 it for me.

8 MR. CONRAD: It has been objected to. It is not
9 -- the -- the type of thing that we had asked for to do --
10 be done about it because the adjustment, the settlement
11 appears to go, frankly, in the customer's direction. I
12 would tell you -- and since the record is running, I don't
13 really have a problem with that, that part of the reason
14 why we objected to that in the first instance, maybe not
15 the entirety -- which I can't go into because it deals
16 with client communications.

17 COMMISSIONER GAW: Okay.

18 MR. CONRAD: But the part that I can go into
19 bears on the question that I've had for a long time,
20 Commissioner Gaw, I thought I understood the rules. When
21 we started doing things a different way, I came to the
22 conclusion very quickly that I either had not understood
23 the rules beforehand or that the rules without -- without
24 my knowing it had changed.

25 And since I didn't know what the new rules were,

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1 out of an abundance of caution and in order to be sure
2 that my clients' interests were protected, I felt I had no
3 choice ethically but to object to that and run the process
4 through to the ground.

5 COMMISSIONER GAW: Okay.

6 MR. CONRAD: But to be clear, the -- the
7 substance, if I can distinguish it that way, appears to us
8 to go in favor of the -- of the customer. And thus, our
9 -- our objection to it is -- is, to a large extent, except
10 as I mentioned that I can't go into, driven by our -- lack
11 of understanding of what the -- the new rules of the game
12 are.

13 I mean, whether we have -- whether we have four
14 innings in the -- in the game or 17, it makes me a little
15 bit concerned when I have to sign off on things.

16 COMMISSIONER GAW: So the bottom line here is --
17 in regard to corporate allocations, this is still of the
18 -- and has always been of the status of a non-unanimous
19 stipulation that has been objected to?

20 MR. CONRAD: Yes, sir.

21 COMMISSIONER GAW: It is merely a position of
22 the parties, correct?

23 MR. CONRAD: Yes, sir. That would be correct.
24 And as was discussed earlier, that makes it -- it suddenly
25 transmits in a joint recommendation of the signatory

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1 parties.

2 COMMISSIONER GAW: And then am I also of the
3 understanding -- can I -- can I also be of the other --
4 understanding that if the Commission were to conclude to a
5 position that was the same as the position in a joint
6 recommendation on this issue that part of the rationale in
7 -- for that decision could be based upon record evidence
8 that was adduced in the true-up part of this hearing?
9 Whoever wants to take that.

10 MR. MITTEN: That's correct, Commissioner Gaw,
11 because, I believe, again, I understood Mr. Oligschlaeger
12 to testify earlier today that the Staff's position on the
13 allocation issue is or is very close to the numbers that
14 are reflected in the stipulation on that issue.

15 COMMISSIONER GAW: And then I guess my next
16 question is Praxair. Was any of the information that
17 Praxair intended to -- to elicit from witnesses that it
18 attempted to subpoena relevant or material potentially to
19 this particular issue?

20 MR. CONRAD: If I correctly understand your
21 question, Commissioner Gaw, the answer is no.

22 COMMISSIONER GAW: Okay. Okay. That's all I
23 have on this particular one. Except, Mr. Dottheim, did
24 you want to say something?

25 MR. DOTTHEIM: Yes, Commissioner Gaw. And I

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1 think this may be responsive to a question you asked and
2 Mr. Mitten responded to. I think Mr. Oligschlaeger's
3 testimony from the stand today on corporate allocations
4 would constitute evidence in the record for the Commission
5 to adopt the stipulation and agreement on corporate
6 allocations.

7 COMMISSIONER GAW: That's a statement?

8 MR. DOTTHEIM: Yes. Yes, it is. Yes, that you
9 would have the evidentiary basis I think as of this
10 morning to adopt that stipulation and agreement.

11 COMMISSIONER GAW: So, in essence, part of the
12 hearing today, at least on this issue, has been toward the
13 non-unanimous stip. on corporate allocation, correct?

14 MR. DOTTHEIM: Yes. Yes. That -- that joint
15 recommendation, the non-unanimous stipulation and
16 agreement.

17 COMMISSIONER GAW: Yes. Okay.

18 MR. DOTTHEIM: Yes. The testimony wasn't
19 objected to, and it was received. And I think it's
20 competent and substantial evidence --

21 COMMISSIONER GAW: Okay.

22 MR. DOTTHEIM: -- in support of the stipulation
23 and agreement.

24 COMMISSIONER GAW: Okay. Thank you.

25 JUDGE DALE: Are there any other questions from

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1 the bench? Then we will move on to regulatory plan
2 amortization argument.

3 ORAL ARGUMENT

4 BY MR. COOPER:

5 MR. COOPER: Your Honor, the subject of the
6 amortization stipulation on which Empire previously filed
7 testimony is what was known as the amortization gross-up
8 issue.

9 That issue was described in the list of issues
10 in this case as follows: Should the amortized amount be
11 subject to an income tax gross-up?

12 Empire filed the testimony of J. Williams
13 concerning this subject, provided its opening statement in
14 the -- in the main part of the -- the hearing of this case
15 on that issue and has also addressed this issue in its --
16 in its brief that's been filed with the Commission.

17 Empire's position in all those documents has
18 been that the income tax effect must be addressed in the
19 amortization calculation and that, otherwise, the
20 amortization will not be sufficient to satisfy the
21 identified ratios found in the -- the regulatory plan
22 stipulation.

23 We believe that that position is -- is confirmed
24 through that non-unanimous stipulation. We believe it's
25 now also consistent with both the current testimony and

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1 the positions of Staff and the Office of the Public
2 Counsel.

3 I would ask that the Commission find that --
4 that, indeed, if any amort -- regulatory amortization is
5 called for by this case that such amount be grossed up for
6 the income tax effect. Thank you.

7 JUDGE DALE: Thank you. Staff?

8 MR. DOTTHEIM: Yes. Thank you.

9 ORAL ARGUMENT

10 BY MR. DOTTHIEM:

11 MR. DOTTHEIM: First, I think Mr. Mills referred
12 to earlier this afternoon that there -- there is part of
13 the regulatory amortization issue that still remains to be
14 decided by the -- the Commission that has been heard by
15 the Commission and has been briefed before the Commission.
16 The off-system obligations, the operating leases,
17 uni-train and the purchase power agreement, the Windform,
18 and that's the -- the -- the one issue in particular that
19 has been presented to the Commission in the context of --
20 of the proceedings.

21 The -- the Staff and the -- the company have
22 taken the -- the same position and the -- the Office of
23 Public Counsel has taken a -- a different position.

24 As far as the -- the -- the other issues, a
25 stipulation and agreement has been presented to the

1 Commission. The tax gross-up issue has been referred to.
2 The Staff has submitted testimony to the Commission. Mr.
3 Oligschlaeger, in the form of his true-up testimony. His
4 true-up testimony was filed before the stipulation and
5 agreement was -- was filed.

6 The Staff has altered its position. If there
7 were not a stipulation and agreement in this -- in this
8 proceeding, the Staff's position would have been altered
9 via the Staff's position as reflected in the true-up
10 testimony of Mr. Oligschlaeger is the Staff's position
11 regardless of whether there's a stipulation and agreement
12 or -- or not.

13 The tax issue was an issue that was left
14 unresolved in the regulatory plan, stipulations and
15 agreements. It was left unresolved in both the Empire and
16 the Kansas City Power & Light regulatory plans.

17 The -- the Staff ultimately has -- has altered
18 the -- its position, in particular, in relating to -- as
19 the Staff characterizes its position, relating to deferred
20 taxes, increasing the deferred taxes to -- to meet the
21 cash flow needs of, in this case, Empire.

22 And the Staff filed that testimony in -- in its
23 true-up testimony. There is also another piece to the
24 Staff's true-up testimony on -- on amortization as an
25 issue that -- that arose in the context of true-ups that,

1 again, reflected in the true-up testimony that's related
2 to Empire's acquisition of the Aquila gas properties. And
3 it's reflected as an additional net balance sheet
4 investment issue, an issue relating to the quantification
5 of Empire's amount of long-term debt associated with its
6 Missouri jurisdictional retail electric operations.

7 The -- Mr. Oligschlaeger's testimony reflects a
8 number of \$61.9 million. Mr. Trippensee, who also
9 addresses in his true-up testimony, the regulatory plan
10 amortizations issue, also addresses that -- that component
11 of the issue. He has a number of \$31.7 million.

12 In the stipulation and agreement, the Staff, the
13 Office of Public Counsel and the company have reached
14 agreement on a number of \$30 million. So although in
15 testimony there's not reflected literally the \$30 million
16 figure, Mr. Trippensee's testimony contains the figure
17 \$31.7 million, which is very close to the \$30 million
18 figure that's -- that's reflected in the -- in the
19 stipulation and agreement.

20 So the Staff believes that the stipulation and
21 agreement on additional amortizations is supported in the
22 true-up testimony that's been filed by the Staff and by
23 the Office of the Public Counsel.

24 And if you give me a moment, I -- I think that
25 concludes what I -- what I have to say on the amortization

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1 issue.

2 Oh, on the -- the stipulation and agreement, I
3 -- I might -- I -- I might add that I've attempted to
4 address any number of -- of -- of assurances regarding the
5 reduction to rate base. In fact, I -- I think Mr. Conrad
6 earlier today in making -- in doing some -- conducting
7 some cross-examination made references to the -- the
8 stipulation and agreement, various sentences, language
9 contained therein about, for example, the sentence, Since
10 reduction to rate base is understood and accepted by
11 Empire without reservation, the stipulation and agreement
12 is -- is an effort to -- amongst other things, to obtain
13 certain assurances and in certain instances to obtain some
14 language that's reflected in the -- the Kansas City Power
15 & Light regulatory plan.

16 That's not reflected in the Empire regulatory
17 plan. And that came about through a concatenation of
18 events of timing, even though we do believe that that is
19 what I say we, the Staff, believes that the -- the two
20 stipulations and agreements are really the same on those
21 points.

22 One is more explicit. That is, Kansas City
23 Power & Light stipulation and agreement. But with the
24 Stipulation and agreement in this proceeding with -- with
25 -- with Empire, we think that there is now a certain

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1 explicitness regarding the offset to rate base from the
2 amortization that previously was not there. Thank you.

3 JUDGE DALE: Thank you. Mr. Mills?

4 ORAL ARGUMENT

5 BY MR. MILLS:

6 MR. MILLS: I don't know that I really have much
7 to add. I -- I will know that I believe Mr. Copper
8 suggested that the stipulation and agreement provides for
9 a tax gross-up.

10 While -- while this issue has been denominated
11 as an issue having to do with -- with a tax gross-up, the
12 stipulation and agreement itself does not provide that the
13 amortization amounts be grossed up for taxes.

14 Through the iteration of the calculation of --
15 of the -- of the amortizations, there is an impact on
16 taxes, deferred taxes from the depreciation standpoint and
17 the amortized -- amortization amounts need to be increased
18 for that.

19 But Public Counsel does not agree that this
20 constitutes a tax gross-up, so I just wanted to clarify
21 that. Thank you.

22 JUDGE DALE: Thank you. Praxair?

23 ORAL ARGUMENT

24 BY MR. CONRAD:

25 MR. CONRAD: May it please the Commission with

1 respect to the issue of what seems to be off again and on
2 again referred to as a stipulation or a joint
3 recommendation. Just depends on who is referring to it.

4 When I refer to it, it's a -- as the
5 stipulation, it's -- you know, fireworks go off. When
6 counsel for company refers to it as a stipulation, which
7 he did several times as the record will make clear, that's
8 apparently okay. I'll refer to it probably variously.

9 It is, without question, clear in the record
10 that does exist prior to today, that the Staff's position
11 with respect to regulatory amortization was that if it was
12 necessary, it was a two-step process.

13 First, you set the revenue requirement on a
14 traditional basis. And then you test whether that revenue
15 will result in this company meeting its credit metrics as
16 specified in the regulatory plan stipulation.

17 If it does not, then in addition to
18 amortization, it's to be awarded in order to assure that
19 that happens. And Staff's position was, I think from the
20 outset in this case, that it was necessary because I think
21 the truth is they are still in a position of having a
22 negative -- or negative revenue requirement, i.e., a
23 reduction in rates but for the application of the
24 additional amortization.

25 Empire seems to be somewhat parapetetic with

1 respect to its position. However, in the testimony of
2 William Gipson, which you precluded me from inquiring
3 about -- but since it is in the record, I will reference
4 it. At page 10 in his direct testimony, lines 8 through
5 16, Question, Are you requesting any amortization that
6 meets financial ratio targets as provided for in Case No.
7 EO-2005-0263, that being the regulatory plan case?
8 Answer, No, not in the initial rate filing.

9 In Exhibit 6, the supplemental direct testimony
10 of W.L. Gipson, at page 4, line 12 through line 18.
11 Question, would you view some sort of an amortization as
12 an alternative? Answer, no. The amortization vehicle
13 which resulted is designed to maintain Standard & Poors
14 ratios, not designed as a replacement for timely recovery
15 of prudently incurred costs and on.

16 Finally, in Mr. Gipson's rebuttal testimony --
17 and I'm sorry. I don't have an exhibit number to
18 reference you to that. But it's page 2, line 11 and
19 concluding through the end of the answer on line 20.
20 Question, Did you think -- how do you think the financial
21 community will react to an amortization in this case?
22 Answer, As I stated in my supplemental direct, the
23 amortization method designed to maintain certain S&P
24 ratios, dot, dot, dot, therefore, I do not believe that
25 the financial community will react favorable to an

1 amortization as a substitute for prudently incurred
2 expense. This will be discussed further.

3 And then he makes reference to Mr. Fedder's
4 testimony, as we discussed this morning has been struck.
5 It leaves me with the belief, I think, which is basically
6 uncontrovertible on the basis of Mr. Gipson's testimony,
7 who is supposed to be the policy maker for the company,
8 that this company did not want and did not think that it
9 needed a -- an amortization.

10 Thus, when we talk as counsel for Empire did and
11 as counsel for Staff did about a -- a joint recommendation
12 that deals with tax gross-up, it also deals -- and the
13 language that I pointed you to in the discussion that we
14 were able to have, what limited extent it was, that it's
15 conjunctive.

16 There were two issues that are resolved.
17 The company now apparently thinks that money is still
18 money and would like to have as much of it as it can get.
19 And from the ratepayers' perspective, I would submit to
20 you that it makes no difference whether it is called an
21 expense recovery or an amortization recovery. It still
22 comes out of their pocket.

23 It's not just a tax gross-up issue. That said,
24 there is not, in my view, sufficient evidence in this
25 record to support the approval of that package. Let me

1 tell you why: Article 5, Section, I believe it's 22 now.
2 When I started practice, it was 18. Or I may have them
3 changed around. It requires that there be competent and
4 substantial evidence to support a Commission decision on
5 the whole record.

6 Fortunately, this process is not one where one,
7 two or three parties get up and -- and laterally,
8 bilaterally or multi-laterally state their position in --
9 in a vacuum.

10 Ordinarily, we would have had an opportunity to
11 inquire into those -- those issues. And if you'll recall,
12 I asked to be permitted to cross-examine the only witness
13 that we had about what he knew about the terms and
14 conditions of that joint recommendation or stipulation, or
15 whatever you want to call it.

16 However, the Commission decided that we were
17 not, in fact, entitled to call witnesses that we wanted to
18 have on the stand to undergo cross-examination with
19 respect to those issues.

20 We had asked that they be subpoenaed, that they
21 be brought here since they're not under our beck and call
22 otherwise. And you denied that. You quashed those. And
23 throughout this hearing this morning, you successfully
24 denied me the ability to cross-examine the sole witness
25 that was offered.

1 And I have no one here that speaks
2 authoritatively, even as that witness finally admitted,
3 albeit under an offer of proof, that he could not speak
4 authoritatively for Empire.

5 So you have not made a record on the whole
6 record. In fact, what you have done is put your mouth --
7 your hand over one party's mouth and listened only to the
8 -- the evidence from really one party, or possibly two
9 about the content of this -- of this document and this
10 joint recommendation.

11 That's basically unfair. In my view, it
12 violates due process. It takes away from me the right
13 that we have under the statute and it takes away from our
14 clients the rights that they have under the Missouri
15 Constitution, and, for that matter, under the U.S.
16 Constitution to due process.

17 I would conclude with one other comment.
18 Commission decisions are reportedly said to not be
19 precedential. Now, we all know since we've played in this
20 ballpark for a while, that that's literally not true. It
21 certainly is true with respect to a particular case
22 because if the Commission makes a determination the
23 utility needs extra amount of revenue, that's not
24 precedential as to their -- their future revenue needs. So
25 they're not estopped to ever ask for a rate increase again

1 or for somebody else to ask for a rate reduction.

2 However, when you do things the way that this
3 has been done and takes us back to the IEC, and since I
4 wasn't able to inquire technically on the record about the
5 impact that that had -- that that has, it comes back in at
6 this point that I would think if I were sitting up there,
7 I would think long and hard about whether I want to move
8 away from contractual commitments that utilities make.

9 The problem that -- that others are going to
10 have, this Commission, utilities, although they probably
11 would have to be pressed somewhat to admit it, and
12 customers have profited greatly over the years from being
13 able to settle cases.

14 But if settlements are not honored, if
15 contractual commitments are not respected and if we cannot
16 depend upon the Commission enforcing its own orders that
17 it found a package to be just and reasonable and
18 consistent with public interest, I frankly don't -- don't
19 hold out a lot of hope for the future process.

20 And I think that's going to hurt all of us. I
21 think that's going to hurt my clients, my clients
22 generally, not just Praxair and Explorer, but generally
23 ratepayers. I think it's going to hurt utilities because
24 they -- of anybody in this room that ought to be concerned
25 about certainty, the utilities are far more concerned

1 about it. Or should be.

2 And if we cannot depend on agreements we make
3 openly and present them to you and you approve them, if we
4 cannot depend on those things being upheld, I, frankly,
5 have some -- have some concerns about where the process as
6 a whole is headed.

7 Now, I've heard it said -- somebody made the
8 comment, Well, can we do this? Can the Commission cancel
9 an agreement? Well, I think probably the answer that I
10 would give you, as we made in our initial brief, is yes.
11 You probably can in an appropriate set of circumstances.

12 If to comply with that agreement causes them to
13 jeopardize their ability to render safe and adequate
14 service to the public at large, then that places them in a
15 conflict. They either have to -- to comply with the terms
16 of the agreement or run afoul of their commitments and
17 their certificate.

18 And since my clients' plants aren't built on
19 railroad cars, we're as interested as anybody in them
20 having the ability to render safe and adequate service,
21 whether it's this utility, KCP&L, you name it.

22 But at the same time, I think that becomes the
23 standard. And -- and if you go beyond that and just say,
24 Well, all I have to do is just file a sheet of paper and
25 that's all that -- that's all that I have that -- that

1 stands between me and cancelling the agreement that I no
2 longer like -- I think we put into the record this morning
3 Exhibit 146-HC, which came to us from Empire. You will
4 note that it goes well out beyond the current month.
5 It goes out for the full three years, even in the columns
6 that they have designed.

7 And, of course, they could argue and say, Oh,
8 well, you know, it was easy to do that, just replicate the
9 columns out on Excel rather than take it one month at a
10 time.

11 That -- that, to me, is -- is evidence that they
12 had every intention of fulfilling this -- this thing for
13 the full year -- full three years. That makes a
14 difference. It makes a difference on the amortization.
15 It makes a difference on the amount. It makes a
16 difference on how the amortization is played in the
17 future. It makes a difference on who ends up paying for
18 it and whether it gets offset and how much.

19 So these are things that I -- I -- I really, as
20 a practitioner before this Commission for a few years, I
21 -- I have some concerns about -- about approaching an
22 agreement like that in a cavalier basis. It is important
23 -- it is important that commitments that are made be
24 upheld.

25 Certainly, there are bases to -- to go in and

1 abrogate. And that's -- that's made amply clear in our
2 brief. But no showing has been made to that. I -- I
3 would -- I would encourage you to think long and hard
4 about -- about that step before you go that way.

5 You know, we have a saying in the law that's
6 older than I am, which makes it pretty old, that hard
7 cases make bad law. This may be a hard case, but you
8 ought not to let it make bad law. Thank you.

9 JUDGE DALE: Mr. Fischer?

10 MR. FISCHER: Your Honor, I have no closing on
11 the true-up issues.

12 JUDGE DALE: Thank you. Are there Commissioner
13 questions?

14 COMMISSIONER DAVIS: Judge Dale, can I ask a
15 couple questions?

16 JUDGE DALE: Certainly.

17 COMMISSIONER DAVIS: Mr. Conrad?

18 MR. CONRAD: Yes, sir.

19 COMMISSIONER DAVIS: In your -- I guess your
20 closing argument on the true-up issues, I mean -- and in
21 your briefs, you repeatedly reference the -- the IEC
22 agreement as a contract. Did you get snookered?

23 MR. CONRAD: Did we get snookered?

24 COMMISSIONER DAVIS: Did you get snookered?

25 MR. CONRAD: No.

1 COMMISSIONER DAVIS: No, you didn't. Well, I
2 mean, looking at the terms of that agreement, I don't read
3 anywhere in that agreement that the only reason that this
4 Commission can terminate that agreement is in the name of
5 safe and adequate service. I mean, if it's in there, you
6 can -- I would appreciate it if you'd point that out to me
7 right now.

8 MR. CONRAD: Do you want an answer, or are
9 you --

10 COMMISSIONER DAVIS: I'd like an answer.

11 MR. CONRAD: Nor will you find that in almost
12 any other stipulation. I don't think you will find that,
13 for example, Mr. Chairman, in the regulatory plan
14 stipulation. That is -- that is unquestionably an
15 inference from my part.

16 But it is based on what I believe the law to be,
17 that when this company or any other utility comes in and
18 says, Not only are we filing a rate case, but we've got to
19 have permanent relief, we want to have interim relief, and
20 we have -- we are prepared to make a showing in order to
21 obtain interim relief on a -- on an accelerated basis that
22 our ability to continue to render safe and adequate
23 service -- or I think the law probably also includes their
24 ability to continue to finance their operations, which is
25 wrapped up in -- in adequate service, continuing that.

1 Here, that issue is kind of taken away because
2 we have the amortization, which steps in. But if -- if
3 that's the argument and if that's the only argument, that,
4 to me, is a little like saying that a contract by a cow
5 also includes a horse because it doesn't exclude a horse.

6 I don't -- I don't need to say everything in
7 everything in the world. You know, if you want to buy my
8 wrist watch, I don't need to say, Here's -- Here's my
9 wrist watch. But I'm not going to -- I'm not going to put
10 on the block Mr. Mills' wrist watch or anybody else's
11 wrist watch.

12 That's what we're talking about. It's just one
13 item.

14 COMMISSIONER DAVIS: Right. And, Mr. Conrad,
15 isn't that part of the problem with some of these stipulations
16 that are getting filed here with the Commission that,
17 ultimately, you know, parties are agreeing to some
18 specific phraseology within the context of these
19 stipulations like the IEC agreement in the previous Empire
20 case but, in fact, you know, they're agreeing to an
21 interpretation that leaves them free to make, you know,
22 whatever legal arguments they want to make to the future
23 dates? Isn't -- isn't that part of the problem?

24 MR. CONRAD: Well, that could be. But it's also
25 replicated by the Commission itself, which in its order

1 approving that package said that it shall be. That --
2 that instrument, mechanism, whatever you want to call it
3 shall be in effect to three years. So if -- you know, if,
4 in your terminology, if somebody got snookered, I'm not
5 alone because the rest of us all got snookered, too.

6 And I kind of wonder, then, if that's the basis
7 to let somebody down. Now, I -- I'm not -- I'm not here
8 to argue that one side or the other got snookered. I think
9 Mr. -- your General Counsel made a statement in the
10 opening of this hearing, which he characterized from
11 Empire's part, as simply a bad bet.

12 The -- the level of the cap was negotiated.
13 That means it was negotiated. That means somebody was
14 above. That means somebody was below. And somehow,
15 somewhere, we met in the middle, and people supposedly
16 shook hands. And that was the deal.

17 Now, it has turned out that it worked against
18 them. But had it gone the other way, I -- I don't think
19 you all would give me much credibility to come in here and
20 pound the table and yell and say, Oh, they're way below
21 the floor.

22 In fact, the very -- the very essence of that
23 mechanism, which I think actually you, Mr. Chairman,
24 although at that -- at that precise moment were not
25 Chairman, got us restarted on that in the 0570 case and

1 said you wanted us to think out of the box, but you were
2 not interested in some mechanism that took away
3 incentives.

4 And so we preserved the incentive in that floor,
5 which all the parties at least were agreeable that it was
6 -- it was there. And, in fact, at least in one of the
7 months, if you look at Exhibit -- Exhibit 146, they were
8 below the floor.

9 Now, had that continued, then we might have been
10 a refund situation. The problem, I think, that I have
11 with this is that back in the beginning, we said we're
12 going to play the game nine innings. Well, in the fifth
13 game of the World Series, the Tigers were ahead on the
14 fourth inning and maybe the fifth, if I remember. But the
15 game didn't end up that way.

16 Now, not to make a sports analogy, and I'm sure
17 everybody's happy in -- in Jefferson City and certainly in
18 St. Louis that it didn't stay that way, now, we have --
19 well, I'll look back to 1985 in Kansas City on that game,
20 and we can -- we can replay who was out at home plate
21 several times.

22 But the point is that we -- that we don't just
23 chop it off in the middle. You know, I -- I had somebody
24 make an analogy to me another time that if you go to
25 change -- if you have a flat tire out on the road and go

1 to change your -- your tire and somebody comes along with
2 a Polaroid right at the right instance, they could make a
3 pretty good argument based on the photo. Well, he's
4 trying to disable this car. He's taking a wheel off.
5 Yeah, because it's -- that's one step in the process.

6 And this was an entire process that was laid
7 out. There's been no -- there's been no address if this
8 was terminated about -- about a true-up, about what kind
9 of -- what kind of prudent review, which is clearly called
10 for in that agreement. Maybe that's not -- maybe that's
11 no longer binding.

12 But I would submit to you this: If all it takes
13 is one party to simply say, I'm out of here, what prevents
14 me from saying with respect to the regulatory plan, I'm
15 out of here?

16 COMMISSIONER DAVIS: Now, Mr. Conrad, was it
17 back in -- was it 2001 that Empire Electric had -- had a
18 similar IEC and they came back to the Commission and said,
19 We don't need this IEC anymore?

20 MR. CONRAD: I think you've -- you have read an
21 interesting spin. That was in the context of the a rate
22 case, and it was brought back and put on the table as a
23 part of a settlement. And the parties that had
24 participated in that -- that earlier IEC package all
25 agreed to the cancelation because the only one there that

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1 was -- that was being harmed was Empire.

2 And they were being harmed because they were
3 accumulating all these -- these funds in a refund account
4 and they couldn't do anything with them. So their --
5 their accountants got on their tail.

6 And so we thought when we said, Okay, we'll do
7 you a favor. You know, you want out of this, it's -- we
8 can cancel the -- the -- the whole process because it's
9 below the level. You just send all the money back that
10 you got. And they were willing to do that. So that was a
11 negotiated -- again, a negotiated deal, Mr. Chairman.

12 That was -- that was negotiated on the front end
13 and it was negotiated on the back end. The implementation
14 and the exit strategy were both negotiated. And I -- I
15 know that because I was -- I was on the -- I was on the
16 front end.

17 COMMISSIONER DAVIS: Well, I -- you were there
18 -- you were there --

19 MR. CONRAD: I was on the front end and the back
20 end. Now you're asking me to remember what was in 2001,
21 and I can barely remember what I had for breakfast this
22 morning. So, you know, I think it's progressively worse
23 that way. But there's one thing about that is you get to
24 see new people every day.

25 COMMISSIONER DAVIS: All right. Mr. Conrad, I

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1 want to ask you one question, last question.

2 MR. CONRAD: Yes.

3 COMMISSIONER DAVIS: Now, without violating the
4 sanctity of any settlement talks --

5 MR. CONRAD: Yeah.

6 COMMISSIONER DAVIS: -- that may have occurred
7 in the previous Empire case --

8 MR. CONRAD: The 0570 case.

9 COMMISSIONER DAVIS: The 0570 case. Was
10 Mr. Woodsmall present in any of those?

11 MR. CONRAD: I do not recall him being there.
12 I -- I recall the -- the parties who were there at the
13 final closure of that package, and he was not there. That
14 -- that much, I can -- I can testify -- I could, but for
15 your restriction and the ethical problem that it would
16 present to me, name the people that were there.

17 COMMISSIONER DAVIS: I'm not asking you to name
18 -- name the people that were there. I'm just asking you
19 to name someone who --

20 MR. CONRAD: Not there.

21 COMMISSIONER DAVIS: I'm just trying to
22 establish --

23 MR. CONRAD: If I were to name the people that
24 were there, he would not be on the list.

25 COMMISSIONER DAVIS: Okay. So is he really in a

1 position, then, to make an opening argument or talking
2 about whether or not someone was, quote -- and I'm going
3 to paraphrase here, quote, going back on their deal?

4 MR. CONRAD: Well, you're going to have to
5 probably blame me. And if you need -- if you want to
6 blame somebody or the Commission wants to blame somebody
7 or the Law Judge wants to blame somebody, my shoulders are
8 big, they're old, but they're big. And I'll take
9 responsibility for my associate.

10 COMMISSIONER DAVIS: Well, not that it
11 constitutes probative evidence or anything else. I just
12 wanted to see if we could establish that. Thank you,
13 Mr. Conrad.

14 MR. CONRAD: I mean, the buck stops here on that
15 one because I -- I -- you know, and I would add very
16 briefly that I -- I am, was and -- and continue to be
17 profoundly offended by the -- the cavalier way with which
18 that agreement has been dealt.

19 COMMISSIONER DAVIS: Point taken, Mr. Conrad.
20 No further questions, Judge.

21 JUDGE DALE: Other questions from the Bench?
22 Commissioner Murray?

23 COMMISSIONER MURRAY: No questions.

24 JUDGE DALE: Thank you.

25 COMMISSIONER GAW: In -- in regard to the record

1 that has any relevance or materiality to the amortization
2 issue, is there any testimony in the true-up portion of
3 this proceeding that is relevant to the non-unanimous
4 stipulation or position of the parties as whatever you
5 wish to call it in -- in the true-up portion?

6 MR. COOPER: I think --

7 MR. MILLS: Yes.

8 MR. COOPER: Commissioner Gaw, I believe that
9 Mr. Oligschlaeger this morning in direct testimony had
10 described both portions of his testimony. And then I
11 think he also referred to portions of OPC witness
12 Trippensee's testimony that would also, he believed,
13 provide basis for the -- the outcome reflected in that --
14 that non-unanimous document.

15 COMMISSIONER GAW: Okay. So this Commission has
16 taken evidence today that's relevant to the non-unanimous
17 stip. on the amortization issue; is that correct?

18 MR. DOTTHEIM: Yes, commissioner. Yes. The --
19 the Commission has received Mr. Oligschlaeger's true-up
20 testimony, which is relevant to the -- the amortization,
21 stipulation agreement, and I believe it's -- it's received
22 via any other testimony of Mr. Trippensee, the true-up
23 testimony of Mr. Trippensee.

24 COMMISSIONER GAW: And this is testimony that
25 was pre-filed?

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1 MR. DOTTHEIM: Yes.

2 COMMISSIONER GAW: Is that correct?

3 MR. DOTTHEIM: Yes. If my memory serves me
4 correctly, it was -- it was filed on -- both Mr.
5 Oligschlaeger and Mr. Trippensee's testimony was filed on
6 September 27th.

7 COMMISSIONER GAW: And, Mr. Conrad, is it your
8 view that you were precluded from offering testimony in
9 the true-up regarding the corporate or the amortization
10 issue today?

11 MR. CONRAD: Yes. In two ways.

12 COMMISSIONER GAW: Go ahead.

13 MR. CONRAD: We had identified witnesses that we
14 wanted to call. Subpoenas for those witnesses were
15 quashed.

16 We were also attempting to cross-examine the
17 only witness that I could that's from the company, and I'm
18 blocked off on doing that. So the answer to your question
19 is yes on at least two grounds.

20 MR. COOPER: Mr. -- oh, I'm sorry.

21 COMMISSIONER GAW: Yes. Go ahead, Mr. Cooper.

22 MR. COOPER: Commissioner Gaw, I would like to
23 point out and I think it came out earlier today, that by
24 the Commission's own rule, and I think this is consistent
25 with case law as well, that non-unanimous stipulation

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1 agreement, once it was objected, which it was, was to be
2 considered merely a position of the signatory parties to
3 the stipulation -- stipulated position. No party shall be
4 bound by it, says the Commission's rule. All issues shall
5 remain for determination after a hearing.

6 I think what that means is that the issues --
7 the issues are the issues as they existed prior to the
8 filing of that document. Those issues were outlined in --
9 in the initial list of -- of issues in this case. Parties
10 filed testimony at that time in regard to a variety of --
11 of amortization issues.

12 Some of those -- I think all of those were
13 tried. Some of those continue to be very much in dispute
14 amongst various parties. I think there was ample
15 opportunity to file testimony in regard to the underlying
16 issues, which are what is -- is left for the Commission's
17 decision.

18 COMMISSIONER GAW: I -- and I appreciate that.
19 I guess -- I guess my -- my concern -- and I'll only say
20 it as a concern, is that it -- it appears that once the
21 door was opened to allow testimony that was relevant or
22 material to the matters that are -- are in the
23 non-unanimous stips that the Commission at that point may
24 have had some responsibility to ensure that all the
25 parties had an adequate opportunity to introduce evidence

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1 that was relevant or material to that.

2 If there had been no allowance of further
3 record, then the argument, it seems to me, would be
4 somewhat different. I'm -- I'm not suggesting that the --
5 that the conclusion would be different, but the argument,
6 it seems to me, changes once additional evidence is
7 allowed in in this portion of the proceeding.

8 And I'm trying to in my own mind, at this point,
9 sort through how that due process argument changes. So
10 that's the reason I'm inquiring.

11 MR. DOTTHEIM: Commissioner Gaw, and I want to
12 be clear in response also to a point you're making, but,
13 otherwise, I want to be clear, and Mr. Mills made this
14 point and I would want to make it, too, that I think
15 Mr. Cooper either stated or implied that the -- the Staff
16 has adopted the company's position on the -- on
17 amortizations, and that is -- that is not the case.

18 The Staff has its -- its own position and is not
19 a mirror image, by any means, of -- of the company's own
20 amortizations.

21 MR. MILLS: And in response to -- I think the --
22 the point that you're concerned about, and I'm not sure
23 this clears anything up, but perhaps even muddies it
24 further, but I believe that the true-up testimony was
25 actually filed before the stip. -- the true-up testimony

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1 that deals with the amortization was actually filed before
2 the non-unanimous stipulation agreement, sort of
3 opportunistically addressed that question in anticipation
4 of a stipulation and agreement being filed eminently. But
5 it's not what you would typically consider a true-up issue
6 in the -- in the purer sense of a true-up issue in the
7 sense that we're simply taking numbers that were on June
8 30th and updating through September 30th, for example.

9 It was a -- it was a live issue. And because
10 there was the testimony filing date, we took the
11 opportunity to address it.

12 COMMISSIONER GAW: Yeah.

13 MR. COOPER: And I don't mean to imply and
14 didn't mean to imply that -- that testimony exists
15 specifically to address the stipulation and agreement.
16 What I meant to imply or to state is that there is
17 testimony in the record that I believe supports the result
18 or the positions that are outlined in that non-unanimous
19 stipulation and agreement, joint recommendation, statement
20 of position, whatever you want to call it, and that that
21 testimony exists in the record that parties were free to
22 address that, that they knew that those were issues
23 throughout this case, and, in fact, they did address those
24 -- those through testimony.

25 And I think, as it plays out, it's not entirely

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1 different from how a normal case would -- would -- would
2 operate in the absence of any stipulation and agreement.

3 We commonly file testimony. We have the list of
4 issues, and we provide a statement of position after the
5 testimony has been filed. And no one files testimony in
6 response -- most of the time in response to a statement of
7 position. That's what I think we're dealing with here is
8 -- is no more than a statement of position that's come
9 before the Commission post-filing of testimony.

10 COMMISSIONER GAW: And -- and I understand that
11 part of it. I -- I -- it would be -- I don't think this
12 is the first time that we have had -- maybe someone can
13 correct me. If there's been an occasion in the past where
14 there's been a -- a proposal for a stip. filed after the
15 hearing portion dealing with the test year and then prior
16 to true-up.

17 MR. COOPER: Well, I think --

18 COMMISSIONER GAW: I don't know.

19 MR. COOPER: The one that comes to my mind is --
20 I don't know whether it was -- I can't remember whether it
21 was non-unanimous or not, but the last Missouri American
22 Water Company rate case was settled by a stipulation and
23 agreement that was filed after that case had been tried.
24 So --

25 COMMISSIONER GAW: But you don't remember

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1 whether it was unanimous or non-unanimous, objected to?

2 MR. COOPER: I -- I suspect ultimately it was
3 some form of unanimous agreement, be it if not unanimous
4 on the face, I --

5 COMMISSIONER GAW: I can't recall, so -- and --

6 MR. CONRAD: Commissioner, if -- if it helps
7 any --

8 COMMISSIONER GAW: Yes.

9 MR. CONRAD: -- the IEC stipulation that was
10 involved in litigation in this case but came out of the
11 0570 case --

12 COMMISSIONER GAW: Yes.

13 MR. CONRAD: -- was proposed to the Commission.
14 And I -- I could go back here, you know, if you gave me
15 enough time to look on the -- in the transcript, which
16 I've got here in my computer, and I believe we had gone
17 almost all the way through the trial and hearing on the
18 question of fall costs.

19 And the witnesses were all over the -- the
20 place. And I remember then -- then Commissioner, now
21 Chair Davis, not necessarily physically, but -- but making
22 a somewhat frustrated statement asking me and -- and I
23 believe John Coffman at that time who was sitting in
24 Mr. Mills' chair, Can't you guys, you know, come up with
25 something on this?

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1 Well, unbeknownst, you know, there had been
2 discussions before, but those -- that got that process
3 restarted. And I believe that was filed as a tri-party,
4 quote, joint recommendation, adopt their terminology.
5 Maybe we should just call it a banana and go on.

6 But that was -- that was accepted by the
7 company, by -- by our parties, by Public Counsel. Staff
8 did not get on board as a signatory, but ultimately
9 indicated that they did not oppose. And so I believe that
10 was all the parties in that case. There might have been
11 DNR or somebody else in that, and they -- they took no
12 position on it.

13 COMMISSIONER GAW: So it was not objected to in
14 that case?

15 MR. CONRAD: That --

16 COMMISSIONER GAW: And it became, under our
17 rules, to be treated as a unanimous stipulation?

18 MR. CONRAD: But in that process, we nonetheless
19 went through a hearing of sorts on that -- on that
20 document, whatever it was --

21 COMMISSIONER GAW: To explain it?

22 MR. CONRAD: -- at that point in time. It was
23 to explain the answers -- questions that your Honor has
24 had.

25 COMMISSIONER GAW: Yes.

1 MR. CONRAD: To basically be here. I -- I would
2 have to go back and check because I don't remember this
3 that crisply, but I believe there was somebody -- I think
4 there was the -- may have been from the Staff, but it may
5 have been others, maybe it was somebody from the company
6 who essentially got up and said, I've looked at this and
7 this is just and reasonable and -- and nobody challenged
8 that.

9 And because it wasn't challenged or opposed,
10 there wasn't any attempt to put evidence in to say, no,
11 it's not and then that sailed on through. Plus, because
12 the Commission accepted it, that triggered the provisions
13 in -- in the contract that -- that the stipulation or
14 settlement agreement like that represents, it says, you
15 know, if this is accepted, then we -- we waive this and we
16 waive that and we don't challenge it and so on and so
17 forth.

18 JUDGE DALE: Just to clarify, since I have it
19 right in front of me, the stipulation in that case was
20 filed on February 22nd. On March 1st, the Staff filed a
21 response to the non-unanimous stipulation agreement.
22 Filed suggestions in support on March 4th. On March 7th,
23 Empire replied. And on March 10th, the report and order
24 was issued.

25 COMMISSIONER GAW: So I guess back to my other

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1 question that -- that started this portion. And that is,
2 do you all recall a case where there was a non-unanimous
3 stip. after the fact that remained because of an
4 objection? If you -- if you don't, that's okay. I'm just
5 curious.

6 MR. CONRAD: Well, I think the point that would
7 be obvious was the way the factual parameters of the
8 Fisher case, which Mr. Fischer is here and his -- his
9 memory may be -- may be more ample than mine in that
10 regard.

11 COMMISSIONER GAW: Okay. And --

12 MR. MILLS: Commissioner, I --

13 COMMISSIONER GAW: Yes.

14 MR. MILLS: One thing that I -- I think may --
15 may fit the bill is the KCP&L regulatory plan,
16 EO-2005-0328, in which I believe a large number of parties
17 agreed to and filed a stipulation and agreement.

18 A few parties, notably concerned citizens of
19 Platte County and Sierra Club, objected. And I believe a
20 -- a hearing of several days in length took place.

21 COMMISSIONER GAW: Yes. I -- I believe it did,
22 too.

23 MR. MILLS: Because -- because there were
24 certain parties that did not sign on to the stipulation a
25 and agreement and, in fact, opposed it.

1 JUDGE DALE: What were the last three digits?

2 MR. MILLS: EO-2005-0329. I think that
3 factually procedurally fits the question you were asking.

4 COMMISSIONER GAW: Well, not exactly, but it is
5 -- because that was not a case where there was the initial
6 stage of the case on a rate case was started and then a
7 non-unanimous stip. occurred after that portion of the
8 proceeding.

9 MR. MILLS: Okay.

10 COMMISSIONER GAW: But it is -- it is a case
11 that involves an objected to non-unanimous stip. and
12 perhaps even some that -- that might still be at the Bench
13 might have been concerned about the lack of a record that
14 was contemplated by the parties at that part and might
15 have contributed to the extensive record that was held.

16 JUDGE DALE: Filed concurrence in part and
17 dissent or --

18 COMMISSIONER GAW: I don't recall for sure, but
19 that's possible.

20 MR. DOTTHEIM: Oral argument in that case was
21 before the Western District Court of Appeals on December
22 20th.

23 COMMISSIONER GAW: Yes. So I'm sure we'll hear
24 more at some point.

25 MR. DOTTHEIM: Yes.

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1 COMMISSIONER GAW: But in regard to the -- the
2 question that -- of -- of -- the record that we have,
3 again, my -- my concern is -- is relating to the question
4 of whether we have developed now a new record that is
5 intended to support the non-unanimous stip. and then that
6 perhaps puts more of a question in my mind on whether or
7 not all the parties have been given an equal, fair
8 opportunity to present their positions in an evidentiary
9 fashion.

10 To the extent that you all are going to deal
11 with this in any way, if you have additional legal -- are
12 they going -- excuse me. Let me stop. Are they going to
13 file additional briefing on this? Is that contemplated or
14 not?

15 JUDGE DALE: There's no additional briefing
16 required. They can always file whatever they want.

17 COMMISSIONER GAW: Well, I'm not trying to add to
18 this, but -- because I -- I realize that time frame is --

19 JUDGE DALE: Well --

20 COMMISSIONER GAW: -- is bearing down here. But
21 -- so -- but in any event, there is -- let me ask -- let
22 me ask a couple of other questions in regard to -- to the
23 record on this -- this -- this portion, and it could
24 relate to the corporate allocation.

25 I want to be clear about it as I look at this.

1 There was a reference in Staff's memorandum in support in
2 one place, and I'm not exactly sure if I can point this
3 out directly, about there being basically a splitting of
4 the differences mathematically on one of the issues. Do
5 you recall that?

6 And I believe -- and it may be out of -- I could
7 be incorrect. No one is acknowledging that. I thought I
8 saw that in one portion of the -- of the memo in support.

9 MR. DOTTHEIM: Commissioner, I -- I don't know.
10 You may be referring to the -- what I was referring to as
11 the additional net balance sheet investment item, the --
12 the capital structure, the long-term debt, the issue that
13 arose in the true-up phase of the case.

14 Because of -- of -- of Empire's acquisition of
15 the Aquila gas properties where -- where Mr. Oligschlaeger
16 in his true-up testimony put in testimony and had a -- a
17 number of 61.9 million and Mr. Trippensee put in testimony
18 and had the number 31.7 million and the company, the Staff
19 and OPC settled upon the number 30 million. That --

20 COMMISSIONER GAW: Well, and that is, I think,
21 what I'm referring to. I think it's on page 5 of your
22 memo. And -- and I just would ask specifically, is there
23 anything in the record that specifically supports the
24 calculation of that number?

25 MR. DOTTHEIM: The -- literally, the 30 million

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1 number figure, no, other than it is less than the 31.7
2 million.

3 COMMISSIONER GAW: So there really isn't
4 anything in the record that specifically supports that
5 figure? That is a -- an agreement and --

6 MR. DOTTHEIM: That the company was in
7 particular --

8 COMMISSIONER GAW: -- number?

9 MR. DOTTHEIM: -- willing to accept even --
10 well, all the parties were willing to accept. Yes.

11 COMMISSIONER GAW: Is Staff, in its position
12 now, supporting the calculation made by Public Counsel?

13 MR. DOTTHEIM: That -- that number is -- is only
14 solely for purposes of settling this case. So that is not
15 a -- that is not a number that -- the Staff is accepting
16 that number, yes. But it is not --

17 COMMISSIONER GAW: Now, I'm not saying that this
18 is a bad thing or making any judgment on it. But how
19 would the Commission take that number -- how would it
20 arrive at that number in a decision that was based upon
21 the record in this case?

22 How could the Commission go from the record and
23 arrive at a \$30 million figure and support it?

24 MR. DOTTHEIM: Again, the -- the \$31.7 million
25 number was supported by --

1 COMMISSIONER GAW: By testimony from Public
2 Counsel's witnesses.

3 MR. DOTTHEIM: Yes. Yes.

4 COMMISSIONER GAW: And is Staff supporting
5 counsel's witness's analysis as a change in its position
6 of this case?

7 MR. DOTTHEIM: And going from -- and I think --
8 well, in the -- the Staff's suggestions in support, I
9 think it was going from the Staff's \$61.9 million number
10 down to the \$30 million number reduces the -- the -- the
11 amortization \$4 million.

12 So it -- and the company accepted that, so it
13 lowers revenue requirements.

14 COMMISSIONER GAW: And -- and, Mr. Conrad, this
15 is a -- it seems to me that -- would it not be true that
16 that \$30 million, from your clients' standpoint, is better
17 than the 60-plus million or the -- even the \$31.7 million
18 dollars figure.

19 MR. CONRAD: If I'm understanding your question,
20 I was looking here at the transcript in the 0570 case, but
21 if I'm understanding your question, would my clients
22 rather pay a lower number than a higher number? I think
23 the answer is yes. Without -- I'm --

24 COMMISSIONER GAW: But do you have any idea how
25 this Commission could get to the \$30 million figure from

1 the record in this case without it being a unanimous
2 stip.?

3 MR. CONRAD: No. And in -- in point, not to --
4 not to prolong this, but as a personal aside, I was
5 somewhat saddened to see what had happened and how Judge
6 Brown had been dealt with.

7 But be that as it may, on a case that he had, I
8 think, involving -- I want to say it was perhaps a
9 telephone case, some couple three years ago, the
10 Commission had brought over a -- a stipulation, whether it
11 was a settlement document, whatever you want to call it
12 where there was like one number, and let's just
13 hypothetically say one party said five and the other party
14 said ten, and that was their -- that was their testimonial
15 positions and their litigation positions.

16 And then they settled at like seven or
17 something. And there was nothing in the record that
18 supported seven. And Judge Brown said, No dice. There's
19 no -- no evidence that supports that. And I think, you
20 know, candidly, he was right.

21 That's why often when we try to do these things,
22 we try to do them in a way that says, If this is
23 acceptable, nobody's going to -- nobody's going to
24 challenge it.

25 COMMISSIONER GAW: Mr. Cooper, do you want to

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1 answer my question in that regard from your position?

2 MR. COOPER: Well, let me think about that.

3 This is a -- is an issue that I think all the testimony
4 that's -- that's in the record is either from the Staff or
5 the Office of the Public Counsel. Empire doesn't have any
6 testimony as to this issue.

7 So I probably should -- should leave this to --
8 to Mr. Dottheim and Mr. Mills.

9 COMMISSIONER GAW: It's okay if you want to. I
10 just want -- didn't want to leave you out of the cock
11 fight.

12 MR. COOPER: Opportunities. Yes.

13 COMMISSIONER GAW: Anybody else?

14 MR. DOTTHEIM: Commissioner Gaw, and I think you
15 were referring -- I have got now in front of me the
16 Staff's suggestions, and you're referring to page 5.

17 COMMISSIONER GAW: Yes, sir.

18 MR. DOTTHEIM: Yes. And I think about the
19 middle of that page or a little bit lower than that, I
20 think is where I have the -- the calculation of going from
21 the \$61.9 million down to the 30 million lowers the -- the
22 amortization \$4 million.

23 COMMISSIONER GAW: Yes.

24 MR. DOTTHEIM: Show that for both the IEC
25 continuation scenario and the IEC termination scenario,

1 so --

2 COMMISSIONER GAW: Yes.

3 MR. MILLS: Um --

4 COMMISSIONER GAW: Mr. Mills, if you want --

5 MR. MILLS: I was just going to -- there's
6 somewhat of a conflict. 536, and I forgot the exact cite,
7 allows the Commission to resolve -- resolve the contested
8 matters on the basis of agreement among the parties.

9 It doesn't specifically say whether those have
10 to be unanimous or non-unanimous. The Commission's rules,
11 on the other hand, have sort of a restrictive position
12 where if not all the parties agree to it, the Commission
13 essentially throws it out.

14 But I don't think that that precludes you from
15 taking a number that the parties have agreed to that is
16 reasonably close to the testimony in -- of one of the
17 parties. I think you can say that the record establishes
18 that -- that 31.7 is a valid number. And you can rely on
19 that record, and I think you can go from there to the
20 third.

21 I don't know that you could go to zero from
22 there, but I think you can take an agreement that is
23 relatively close to -- to one party's position as a
24 reasonable resolution of that portion of the issue,
25 particularly, since that is -- although the agreement in

1 which it is contained is non-unanimous and by the
2 Commission's rules is essentially -- well, it's treated
3 however the Commission's rule is treated. I guess -- the
4 I guess the phrase is it's treated as a statement of
5 position or a joint recommendation.

6 But I think particularly since that particular
7 number is not contested and it's not likely to be
8 contested, I think the Commission can accept it regardless
9 of what you do with the rest of the agreement.

10 COMMISSIONER GAW: Okay. Does Praxair think we
11 can't go to zero?

12 MR. CONRAD: Again, if --

13 COMMISSIONER GAW: If you can't answer that
14 fast, I'll move on.

15 MR. CONRAD: Okay.

16 COMMISSIONER GAW: Let me ask on a different set
17 of questions, Judge, and I -- this will be fairly short.
18 On page 4 of your recommendations, Staff, you -- there is
19 a -- there's a sentence that's towards the top of the
20 page, in between the top and the middle.

21 "The amount added to Empire's rate base includes
22 construction work in progress and net regulatory assets."
23 Would you explain that to me, please, put that -- what
24 that sentence is referring to?

25 MR. DOTTHEIM: That -- that is referring to the

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1 61.9 million. And -- and Public Counsel has a different
2 calculation. Public Counsel uses construction work in
3 progress, but -- but reduces construction work in progress
4 by short term interests, which comes up with the \$31.9
5 million.

6 Mr. Oligschlaeger could go into greater detail
7 regarding that, but -- but Mr. Oligschlaeger uses a
8 different calculation, different components. He does use
9 the construction work in -- in progress, but he and Mr.
10 Trippensee do not concur on all components.

11 And, in essence, for purposes of resolution, the
12 Staff was willing to go to, in essence, with Public
13 Counsel's number.

14 JUDGE DALE: In the --

15 COMMISSIONER GAW: In the -- in the original
16 regulatory plan case for Empire, was it explicitly made
17 clear? Help me -- am I rec -- my recollection that --
18 that construction work in progress was something is that
19 could be included?

20 MR. DOTTHEIM: My recollection and
21 understanding, this was -- was not addressed.

22 COMMISSIONER GAW: So this is something that is
23 -- was specifically new to this case, this explicit
24 reference to construction work in progress?

25 MR. DOTTHEIM: Yes.

1 COMMISSIONER GAW: Is that -- is that everyone
2 else's understanding as well?

3 MR. MILLS: Yeah. I think so.

4 COMMISSIONER GAW: And --

5 MR. DOTTHEIM: This --

6 COMMISSIONER GAW: Go ahead. I'm sorry.

7 MR. DOTTHEIM: I'm sorry. I'm sorry.

8 Commissioner -- no. Go ahead. I'm sorry.

9 COMMISSIONER GAW: Well, the reason I'm raising
10 it is because it raises another issue to this -- to this
11 matter. If it's resolved based upon some -- something
12 other than a unanimous stipulation that there is, albeit
13 on a -- perhaps a secondary level a direct specific
14 reference to the inclusion of construction work in
15 progress in rates, and I -- I guess what I'd like to know
16 is whether or not there is any concern that -- that that
17 may be problematic under Missouri law. I'd note, Judge,
18 that everyone is taking a moment.

19 (Pause in proceedings.)

20 MR. DOTTHEIM: It's -- it's debt supporting
21 construction work in progress that the credit rating
22 agencies would be looking at, so that's why we added it.

23 COMMISSIONER GAW: Okay. And explain to me how
24 -- the importance of that statement that you just made, as
25 distinguishing it from a violation of Missouri law on

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1 construction work in progress being included in rates.

2 MR. DOTTHEIM: On -- on the basis as far as
3 whether Empire would meet its ratios as a consequence?

4 COMMISSIONER GAW: Would it be true to say that
5 if -- if there were rates added for construction -- that
6 -- for construction work in progress in -- in one fashion
7 that that could be illegal in Missouri?

8 MR. DOTTHEIM: Well, I don't -- I don't think we
9 view it as literally a placing in rates, dollars to
10 recover construction work in progress. I think we -- we
11 view it, again, as -- as attempting to see that the -- the
12 company recovers cash flow to meet the ratios necessary to
13 support an investment grade rating.

14 COMMISSIONER GAW: But if you could, explain to
15 me when it is a violation of Missouri law in regard to
16 rates from Staff's viewpoint.

17 MR. DOTTHEIM: Well, something much more direct
18 than that.

19 COMMISSIONER GAW: Okay. Such as?

20 MR. DOTTHEIM: Such as -- as literally placing
21 in rates the recovery of construction work in progress.

22 COMMISSIONER GAW: Okay. And in this case, the
23 difference is that number -- half that number is -- if
24 it's X, we'll say, is not being placed in rate as -- as a
25 recovery of money expenditure?

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1 MR. DOTTHEIM: It is attenuated.

2 COMMISSIONER GAW: But that number is duplicated
3 and placed in this additional amount that consumers will
4 pay for what?

5 MR. DOTTHEIM: Because -- as far as -- as far as
6 meeting the -- the cash flow necessary to meet the ratios
7 to maintain the investment grade rating. Again, the --
8 the -- the ratios that are -- that are out in the -- the
9 regulatory plan.

10 MR. MILLS: If I --

11 COMMISSIONER GAW: Public Counsel?

12 MR. MILLS: If I may. This amount is not
13 included in rate base, and it's not something on which the
14 company will earn a return that the Commission will
15 calculate. In this case, the Commission will calculate
16 rate base, rate of return, expenses, the whole traditional
17 regulatory approach and separates based on that.

18 But in addition to that, pursuant to the
19 regulatory plan, the Commission will provide additional
20 cash flow. And one of the things that that cash flow has
21 to address is the debt burden that -- that Empire faces.

22 And this is simply a way to calculate the debt
23 burden in order to be able -- for Empire to be able to
24 meet the cash flow metrics that are part of the regulatory
25 plan.

1 COMMISSIONER GAW: Well, without going into
2 what's -- what's included in rate base, will consumers pay
3 additional -- an additional amount of money because of
4 this construction work in progress being included in the
5 calculation of what the additional amortization rates will
6 be?

7 MR. MILLS: There -- there will be an additional
8 interest expense that Empire faces because of the
9 financing of projects that are not yet in rate base. And
10 the regulatory plan provides for cash flow to cover that
11 interest as well as other interest expenses.

12 COMMISSIONER GAW: Well, let me just ask you
13 this: How much additional revenue or how much additional
14 expense will consumers pay as a result of the construction
15 work in progress being included in the amortization
16 advance? How much a year?

17 MR. MILLS: It's -- it's my understanding if you
18 calculate this out and if you put in zero instead of the
19 30 million that the -- the annual revenue requirement
20 impact would be \$4 million.

21 COMMISSIONER GAW: So an additional 4 million
22 per year?

23 MR. MILLS: There's an additional \$4 million
24 worth of amortization if you include the \$30 million as
25 opposed to zero.

1 COMMISSIONER GAW: And is all of that
2 construction work in progress, that 4 -- that 4 million or
3 some portion or is some portion of it something else?

4 MR. MILLS: Yes. It's all construction work in
5 progress.

6 COMMISSIONER GAW: Okay.

7 MR. MILLS: The -- the -- the interest on the
8 debt supporting the construction work in progress.

9 MR. DOTTHEIM: Commissioner, that would be
10 reflected on that page 5.

11 COMMISSIONER GAW: Okay. Yes. That's a
12 continuation of what -- of the discussion, correct, from
13 4.

14 MR. DOTTHEIM: Yes.

15 COMMISSIONER GAW: Anyone else want to have any
16 piece of that issue? Okay. Thank you, Judge.

17 JUDGE DALE: Does any -- does anyone else have
18 anything that needs to be brought up at this time? Speak
19 now or forever hold your peace.

20 As I indicated, you're not required to file
21 anything else. If you want to file anything else, and I'm
22 sure some of you will, you are welcome to do so. With
23 that, this is --

24 COMMISSIONER DAVIS: And, Judge, let me just --
25 there's no page limit on that, is there?

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1 JUDGE DALE: No, no. Feel free to prod along to
2 your heart's content. With that, we will stand adjourned.
3 Have fun, everyone.

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