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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing and Oral Argument

July 23, 2018

Jefferson City, Missouri

Volume 3

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

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

REPORTED BY:
Lisa M. Banks, CCR
TIGER COURT REPORTING, LLC

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1 JUDGE WOODRUFF: All right. We're ready to
2 get started again. Welcome back for Monday morning. This
3 has been a difficult case in that we had both Friday
4 afternoon and now Monday morning. We'll deal with it as we
5 can.

6 This is the second day of the hearing in
7 ER-2018-0366, which is a proceeding under Section 393.137 to
8 adjust the electric rates of the Empire District Electric
9 Company. In a moment we'll go to the next witness, which is
10 Sarah Lange for Staff.

11 Before we do that I want to take up a motion
12 that was made -- or actually a request from Public Counsel
13 that was made on Friday as we were concluding, which was to
14 take notice of various -- take administrative notice of
15 various items. There was a list provided by counsel for the
16 Public Counsel.

17 I'm going to go ahead and make a ruling on
18 that at this point. There are really a couple of categories
19 of documents here. The first category are orders from other
20 commission cases. I'm not sure that administrative notice
21 is absolutely necessary on this, taking the notice of these
22 other Commission orders, but I don't see any harm in doing
23 so.

24 So the Commission will take administrative
25 notice of order opening a working proceeding in

1 AW-2018-0174, as well ER-2016-0023 and the order of
2 approving compliance tariffs, and in ER-2018-0228 the order
3 opening a rate case and a notice acknowledging dismissal of
4 application and closing case.

5 There was -- the other category were
6 responses filed by other parties. The responses that were
7 from Ameren Missouri and KCP&L and GMO they would be hearsay
8 in this case. The Commission will not take administrative
9 notice of those documents. That does not, however, mean
10 that they cannot be referenced by Public Counsel's witness
11 or any other witness, possibly even offered as an exhibit,
12 but We'll deal with those as they come in at that time.

13 The same thing for the orders -- or the
14 responses to orders that were filed by Empire. Again, they
15 can be referenced by the witness, possibly offered as an
16 exhibit, but we will not take administrative notice of them.

17 All right. Let's go ahead and get the first
18 witness up here, if you would call Ms. Lange up.

19 MR. THOMPSON: Staff calls Sarah Lange.

20 JUDGE WOODRUFF: Good morning.

21 THE WITNESS: Good morning.

22 (Witness sworn.)

23 SARAH LANGE having been first duly sworn testified as
24 follows:

25 DIRECT EXAMINATION BY MR. THOMPSON:

1 Q. State your name, please.

2 A. Sarah Lange.

3 Q. And how are you employed?

4 A. As a Regulatory Economist III in the Tariff
5 and Rate Design Department of the commission staff.

6 Q. Do you have any changes or corrections to
7 your prefiled testimony?

8 A. Yes, a minor correction on Page 1 of strike
9 Operational Analysis, Tariff Rate Design Unit Commission
10 Staff Division at Lines 12 and 13 and replace that with
11 Tariff and Rate Design Department.

12 Q. Okay. And you did prepare this testimony or
13 cause it to be prepared; is that correct?

14 A. Yes.

15 Q. And do you have -- if I were to ask you the
16 same questions today, would your answers be the same?

17 A. Yes.

18 MR. THOMPSON: At this time, I move the
19 admission of Exhibit 4.

20 JUDGE WOODRUFF: Exhibit 4 has been offered.
21 Any objection to its receipt? Hearing none, it will be
22 received.

23 (WHEREIN; Exhibit 4 was received into
24 evidence.)

25 BY MR. THOMPSON:

1 Q. Now, you prepared a rate design whereby to
2 distribute or to return the tax benefit to the ratepayers;
3 is that correct?

4 A. Yes. One method of doing so.

5 Q. And has anyone else, to your knowledge in
6 this case, offered such a rate design?

7 A. I believe there is a reference in the
8 testimony of OPC witness Riley to dispersal of certain
9 classes through the customer charge.

10 Q. And do you believe it would be appropriate
11 to do it through the customer charge?

12 A. There are certain classes at certain
13 magnitudes of refunds where I don't believe it would be
14 unreasonable. I believe my recommendation would be the most
15 reasonable. For example, at the \$17 million or \$17.8
16 million figure that Staff and the Company have been
17 discussing, that would be about a \$4.5, I believe, bill
18 credit. I would say that's the upper bound of
19 reasonableness. If you go to a larger figure, I don't -- I
20 don't think that would be reasonable. And if you talk about
21 expanding that beyond the residential class, I would
22 question the reasonableness of that.

23 Q. Now, were you present during the testimony
24 on Friday?

25 A. Generally.

1 Q. And you are aware, are you not, that there's
2 different numbers that have been proposed by different
3 parties for the amount of money to be flowed back to
4 ratepayers?

5 A. Yes.

6 Q. And is the rate design that you have
7 proposed, is it equally applicable regardless of the
8 magnitude of the refund?

9 MR. WILLIAMS: I objective to that as going
10 beyond the scope of rebuttal.

11 JUDGE WOODRUFF: Overruled.

12 THE WITNESS: It would certainly come into
13 question on a doubling or near doubling of Staff -- the
14 amount that I contemplated when I prepared my testimony. If
15 it was doubling or near doubling of that amount, I would
16 probably look at things differently. What exactly that
17 would look like, I would have to run some scenarios to see.

18 BY MR. THOMPSON:

19 Q. So your design was prepared to flow back the
20 lower amount; is that correct?

21 A. It would be reasonable in the range that was
22 discussed of the 17.8 million. It may be reasonable at
23 somewhat larger numbers. I would -- I would want to look at
24 it more closely before applying it to a figure around \$40
25 million.

1 Q. Thank you.

2 MR. THOMPSON: No further questions, Judge.

3 JUDGE WOODRUFF: All right. For cross we
4 begin with in Empire.

5 MS. CARTER: No questions. Thank you.

6 JUDGE WOODRUFF: All right. MECG?

7 MR. WOODSMALL: Very briefly, Your Honor.

8 CROSS-EXAMINATION BY MR. WOODSMALL:

9 Q. Good morning.

10 A. Good morning.

11 Q. The rate design proposal that you have, is
12 that based upon the billing determinants from the last case?

13 A. The KWH determinants, yes.

14 Q. Okay. And the last case was in 2016?

15 A. It was a 2016 denominated case. I'm
16 struggling to recall the effective date of tariff, if that
17 is your question.

18 Q. Yeah. That answers it. Why didn't you --
19 in a typical rate case, general rate proceeding, do you
20 issue data requests?

21 A. Sometimes, not often.

22 Q. Not often. Do you issue data requests in a
23 rate case?

24 A. Personally on class cost of service and rate
25 design, I did tend to issue very few data requests.

1 Correct.

2 Q. Okay. Do you recall whether you issued data
3 requests in that 2016 Empire case?

4 A. I don't think I did. I don't recall what
5 they would have been if I did, on the issue of class cost of
6 service rate design. If I handled EDR or other issues in
7 that case, it's likely I did on those issues.

8 Q. How do you receive billing determinants and
9 other information necessary for your class cost of service
10 if you don't issue data requests?

11 A. Those are developed by others in my group
12 who work on revenues.

13 Q. Gotcha. Okay. So in a typical rate case
14 others in your department would issue data requests; is that
15 correct?

16 A. Yes.

17 Q. Okay. And did anybody in your department
18 that you know of issue data requests regarding billing
19 determinants for this case?

20 A. I don't think so, but I don't recall with
21 absolute certainty.

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

23 JUDGE WOODRUFF: Public Counsel?

24 MR. WILLIAMS: No questions.

25 JUDGE WOODRUFF: Questions from the bench.

1 Mr. Chairman?

2 CHAIRMAN HALL: No questions. Thank you.

3 JUDGE WOODRUFF: I do have a question.

4 QUESTIONS BY JUDGE WOODRUFF:

5 Q. You mentioned that you thought a large
6 reduction in the customer charge would unreasonable. What
7 is the reason for that?

8 A. Sure. If you give me a moment, I have a
9 reference paper I prepared for myself. Right. So Empire's
10 current residential customer charge, I believe is in the \$11
11 range and the refund of the 17.8 million as allocated to the
12 residential class is about 8.5 million. Empire collects
13 about 1.5 million residential customer charges a year and so
14 that would result in a credit of approximately \$5.60.
15 That's going to cut into the return, but it's not -- it
16 would surprise me if that would cut into their actual
17 expense of administering -- of having a customer; you know,
18 the mailings, billings, that kind of thing.

19 If we move that up to the 11 or \$12 range,
20 that could cut into what it actually costs them to prepare a
21 bill and they would, you know, then be losing money on the
22 customer charge portion. Obviously, they would still be
23 recouping money on the energy base itself, but we wouldn't
24 want to create the impression that there is no cost to
25 having a customer on the system in and of itself.

1 Q. Now, you reference simply the customer -- or
2 the residential customer class. What's the effect on other
3 classes?

4 A. Other classes tend to be billed very
5 differently than the residential customer class. The
6 commercial and small heating classes aren't that different.
7 The residential class consists really only of two charges
8 for regular tariff rates. Of course, there's FAC and other
9 riders. Actually, there is just FAC with Ameren.

10 So there's a customer charge and then
11 there's a blocked energy charge, but there's no demand
12 charge or other facilities charges that are recurring
13 charges.

14 Q. You just mentioned Ameren. Did you mean
15 Empire?

16 A. I did. I'm sorry.

17 JUDGE WOODRUFF: All right. That's all the
18 questions I have. Any recross based on those questions from
19 the bench?

20 MS. CARTER: I had just one question.

21 JUDGE WOODRUFF: Go ahead.

22 RE CROSS EXAMINATION BY MS. CARTER:

23 Q. Ms. Lange, there's also a low income pilot
24 program for Empire; is that correct?

25 A. It is. I apologize for that oversight.

1 Q. And that effects the -- that goes to the
2 customer charge. Correct? The credit is on the customer
3 charge only?

4 A. The credit is sized to the customer charge.
5 Now that you say that, it would in my mind create some
6 uncertainty. I'd want to look at the tariff, whether or not
7 the way that that is referenced within the tariffs
8 themselves, if you reduced the customer charge with the bill
9 credit for the tax, whether or not that would, you know,
10 also reduce the low income offset.

11 MS. CARTER: Thank you.

12 JUDGE WOODRUFF: Redirect?

13 MR. THOMPSON: I have no redirect. Thank
14 you.

15 JUDGE WOODRUFF: You may step down.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: Then we will move to Public
18 Counsel's witness.

19 (Witness sworn.)

20 JUDGE WOODRUFF: You may inquire.

21 JOHN RILEY having been first duly sworn testified as
22 follows:

23 DIRECT EXAMINATION BY MR. WILLIAMS:

24 Q. Please state your name and spell it.

25 A. My name is John Riley, R-I-L-E-Y. I am a

1 Regulatory Accountant III with the Office of Public Counsel.

2 Q. You anticipated my next question.

3 Mr. Riley, did you prepare a corrected direct testimony
4 that's been marked for identification as Exhibit Number 5
5 and two exhibits, one that has at the top of it the words
6 protected and another one that has the word unprotected,
7 which have been marked respectively as Exhibits 8 and 9?

8 A. Yes, sir.

9 Q. Are those -- are Exhibits 5, 8 and 9 your
10 testimony here today?

11 A. Yes, they are.

12 Q. Would you explain briefly what 8 and 9 are?

13 A. 8 and 9, when I put my testimony together --
14 of course, it looks really nice on a computer screen -- once
15 you try and print out the exhibits at the end, especially
16 Page 2 of 3 and 3 of 3, it was really, really hard, really
17 small and really hard to read. So in an effort to make it
18 legible, I expanded it out and just made it bigger so people
19 could read it.

20 Q. You reference Pages 2 of 3 and 3 of 3. Were
21 those two Schedules JSR-D-4?

22 A. I believe they are.

23 MR. WILLIAMS: I offer Exhibits 5, 8 and 9.

24 JUDGE WOODRUFF: 5, 8, and 9 have been
25 offered. Any objections to their receipt? Hearing none,

1 they will be received.

2 (WHEREIN; Exhibits 5, 8, and 9 were received
3 into evidence.)

4 BY MR. WILLIAMS:

5 Q. Mr. Riley, do you have any corrections to
6 any of those exhibits, for them to be your testimony here
7 today?

8 A. Yes, I do. I -- I -- when I did the
9 spreadsheets, I didn't include the corrected gross up
10 number, so -- the gross up factor, so it would change some
11 of my numbers in testimony.

12 Q. Would you step through what and where those
13 changes are?

14 A. Okay. With the corrected direct testimony,
15 Page 5, Lines 2 of the 197,417,172 should be 197,418,178.
16 And on Page -- on Line 3 the 22,884,547 should be
17 22,825,553. And to go on with the corrections Page 6, Line
18 21, 22,884,547 should be 22,825,553. On Page 7, Line 4 the
19 22,884,547 should be 22,825,532. Line 7, the 22,884,547
20 should be 22,825,532. And on that same line the 2,288,5--
21 excuse me -- 2,288,455 should be 2,282,553. And on the next
22 page that would be 228-- or the next line, excuse me --
23 88-- 22,825,532. And on Page 8, the 22885-- excuse me,
24 2,288,455 should be 2,282,553.

25 MR. THOMPSON: What line is that?

1 THE WITNESS: I'm sorry, Line 8. And
2 continuing --

3 MR. THOMPSON: And could you repeat the
4 number?

5 THE WITNESS: 2,282,553.

6 MR. THOMPSON: Thank you.

7 THE WITNESS: And further down that same
8 Line 28,487,357 should be 28,481,454. That is all my
9 corrections.

10 MR. WILLIAMS: Thank you. I tender the
11 witness for examination.

12 JUDGE WOODRUFF: All right. For cross we
13 would begin with the MEEG.

14 MR. WOODSMALL: Very briefly.

15 CROSS-EXAMINATION BY MR. WOODSMALL:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. Do you know if Staff issued any data
19 requests either in the 0228 or 0366 case?

20 A. As far as checking on EFIS, I didn't find
21 any data requests from Staff or anybody else except you.

22 MR. WOODSMALL: Okay. No further questions.
23 Thank you.

24 JUDGE WOODRUFF: All right. For Staff?

25 CROSS-EXAMINATION BY MR. THOMPSON:

1 Q. Good morning, Mr. Riley?

2 A. Good morning, sir.

3 Q. I notice that this, your testimony, is
4 denominated corrected direct testimony; is that correct?

5 A. Yes, sir.

6 Q. And is it true that you have corrected your
7 direct testimony because of errors in the first version
8 thereof?

9 A. Yes, sir.

10 Q. And now this morning we've corrected
11 additional errors; is that correct?

12 A. Yes, sir.

13 Q. Okay. You also participated, did you not,
14 in Case EO-2018-0092?

15 A. Yes, sir.

16 Q. The application of Empire District Electric
17 Company's for the approval of its customer savings plan?

18 A. Yes, sir.

19 Q. Are you familiar with the Commission's
20 report and order in that case?

21 A. I would -- a little bit.

22 MR. THOMPSON: Okay. May I approach, Your
23 Honor?

24 JUDGE WOODRUFF: You may.

25 BY MR. THOMPSON:

1 Q. I'm going to ask you to read an excerpt from
2 footnote 34. Please read the highlighted portion?

3 A. The testimony of OPC witness and any
4 exhibits that are based on that testimony are not reliable
5 or credible because of his testimony at the hearing
6 demonstrated that his initial and revised analysis contained
7 material errors.

8 Q. Thank you.

9 MR. THOMPSON: I have no further questions.
10 Thank you, Judge.

11 JUDGE WOODRUFF: All right. And then for
12 Empire?

13 MS. CARTER: Yes, thank you.

14 CROSS-EXAMINATION BY MS. CARTER:

15 Q. Mr. Riley, OPC agrees that Section 393.137,
16 which was enacted by Senate Bill 564, does not apply to any
17 electric utility that had a quote "general rate proceeding"
18 unquote before the Commission on June 1, 2018; is that
19 correct?

20 A. I believe that is what the -- what was
21 discussed Friday, yes.

22 Q. And does OPC also agree that Section
23 393.137, if it applies, the Commission may proceed under
24 Subpart 3, 4, under Subpart 4 of the statute?

25 A. I would guess they can -- they can move

1 under 3 or 4, yes.

2 Q. Do you agree that is OPC's position that
3 393.137 does not apply to KCP&L because KCP&L had a general
4 rate proceeding pending before the Commission on June 1st,
5 2018?

6 A. That is my understanding.

7 Q. And then the same also for GMO, the statute
8 does not apply because GMO had a general rate proceeding
9 pending before the Commission on June 1, 2018?

10 A. That's my understanding.

11 Q. Is it also OPC's position that when the
12 Commission says rate case, the Commission does not
13 necessarily mean general rate proceeding?

14 MR. WOODSMALL: Your Honor, I object. The
15 phrase "general rate proceeding" is a term in the statute.
16 To the extent she is asking him to render a legal opinion
17 about the applicability of the statute, is certainly beyond
18 his expertise.

19 JUDGE WOODRUFF: Your response?

20 MS. CARTER: My questions was specifically
21 is that OPC's position.

22 JUDGE WOODRUFF: Overruled.

23 MS. CARTER: And he is the only witness for
24 OPC.

25 JUDGE WOODRUFF: I'll overrule the

1 objection.

2 THE WITNESS: Could you go ahead and repeat
3 the question?

4 BY MS. CARTER:

5 Q. Is it OPC's position that when the
6 Commission says "rate case", the Commission does not
7 necessarily mean general rate proceeding?

8 A. I'm not really sure.

9 Q. Do you believe "rate case" has the same
10 meaning as "general rate proceeding"?

11 A. I don't believe so, no.

12 JUDGE WOODRUFF: Number 11.

13 MS. CARTER: These don't necessarily need to
14 be exhibits yet. Thank you.

15 CHAIRMAN HALL: Thank you.

16 BY MS. CARTER:

17 Q. Mr. Riley, I'm going to hand you three
18 documents. I will represent to you were printed off of the
19 Commission's website. For identification purposes, we can
20 mark the one that starts, With the ratemaking process, Page
21 1 of 1, as Exhibit 11. And then the document that says at
22 the top, When are rate case is filed, we can mark as Exhibit
23 12 for identification purposes.

24 (WHEREIN; Exhibits 11 and 12 were marked for
25 identification.)

1 MS. CARTER: And then the sheet that says,
2 What happens when a utility rate case is filed, we can mark
3 as Exhibit 13 for identification purposes.

4 (WHEREIN; Exhibit 13 was marked for
5 identification.)

6 BY MS. CARTER:

7 Q. Looking at Exhibit 11 --

8 MR. WILLIAMS: Are you going to share?

9 MS. CARTER: I'm so sorry. I had copies for
10 everybody. I just wanted to kill the trees for fun,
11 apparently.

12 MR. THOMPSON: Thank you.

13 BY MS. CARTER:

14 Q. We'll look at all three exhibits there, 11,
15 12, and 13. Let me know when you have a second to look
16 through those.

17 MR. THOMPSON: You gave me two of this one.

18 BY MS. CARTER:

19 Q. Mr. Riley, have you had a chance to look at
20 those three documents?

21 A. Yes, ma'am.

22 Q. Have you seen those before at rate case
23 public hearings?

24 A. They don't look familiar.

25 Q. None of the three documents look familiar to

1 you?

2 A. No, they don't.

3 Q. Looking at Exhibit 11, titled The ratemaking
4 process.

5 A. Yes, ma'am.

6 Q. Do you agree that is what's being discussed
7 there is what OPC would refer to as a general rate
8 proceeding?

9 MR. WOODSMALL: Your Honor, I'd object. I
10 don't believe the proper foundation has been laid for these
11 documents yet. He's never seen them.

12 JUDGE WOODRUFF: I'll sustain the objection.

13 BY MS. CARTER:

14 Q. Mr. Riley, have had an opportunity to read
15 Exhibit 11?

16 A. The first few lines.

17 Q. If you'll take a minute then to review
18 Exhibit 11, please.

19 MR. WOODSMALL: The fact that she hands him
20 a document and asks him to read it, doesn't establish the
21 foundation for the document. He's never seen this before.

22 MS. CARTER: I haven't asked for the
23 admission of Exhibit 11. I'm not asking Mr. Riley to lay a
24 foundation for its admission. I'm asking him if he agrees
25 with what is stated in the document.

1 JUDGE WOODRUFF: Proceed.

2 THE WITNESS: Okay. I have read through it.

3 BY MS. CARTER:

4 Q. Assuming my representation is accurate, that
5 that is from the Commission's own website --

6 MR. WOODSMALL: Your Honor, I don't believe
7 that an attorney trying to establish a foundation and
8 representing that it's from a PSC website -- she's
9 attempting to play lawyer and witness at the same time here.

10 JUDGE WOODRUFF: I'll sustain the objection.

11 MS. CARTER: I still haven't asked for the
12 admission of the document. I'm not sure what foundation has
13 to do with this. I'm not asking for the document to be
14 admitted.

15 MR. WOODSMALL: She is attempting --

16 MS. CARTER: I'm asking a question about it.

17 MR. WOODSMALL: She's attempting to question
18 on a document for which no foundation has been laid yet.

19 JUDGE WOODRUFF: My problem with the
20 question is that you are representing that it's from the
21 Commission. There is no basis for that finding. If you
22 just want ask him about the process that is described in the
23 document, I will allow that.

24 BY MS. CARTER:

25 Q. Mr. Riley, if you'll read the section,

1 Two-step process?

2 A. Yes, ma'am.

3 Q. Do you agree that that is the process that
4 would be followed and what OPC would call a general rate
5 proceeding?

6 A. I would believe so.

7 MS. CARTER: Judge Woodruff, I would ask
8 that the Commission take administrative notice of the
9 document that may be found on the PSC's website at the
10 information that is shown at the bottom of what has been
11 marked as Exhibit 11.

12 JUDGE WOODRUFF: Any objection? Hearing no
13 objection, we will do so.

14 BY MS. CARTER:

15 Q. And then Mr. Riley, if you will look at
16 Exhibit 12 that is titled, When a rate case is filed.

17 A. Yes, ma'am.

18 Q. Are you familiar with that publication of
19 the Missouri Public Service Commission?

20 A. No, not really. I don't think I've seen it
21 before.

22 Q. And then also Exhibit 13, which I believe is
23 the same information as Exhibit 12, but in more of a
24 pamphlet form. Are you familiar with it maybe in that
25 format?

1 A. It's not ringing any bells. It doesn't look
2 familiar to me, but the information may not be unfamiliar to
3 me, but I don't recall reading these forms.

4 Q. If you'll take a minute then to review
5 Exhibits 12 and 13. My question for you is if what is
6 discussed in those two documents describes what OPC would
7 call a general rate proceeding?

8 A. I believe that would follow -- it seems to
9 follow the process that I am familiar with.

10 MS. CARTER: I would ask the Commission take
11 administrative notice of their publication, When a rate case
12 is filed, and also, What happens when a utility rate case is
13 filed.

14 JUDGE WOODRUFF: Any objection? Hearing
15 none, we will take administrative notice of those documents.

16 (WHEREIN; Exhibit 14 was marked for
17 identification.)

18 BY MS. CARTER:

19 Q. I hand you what has been marked as Exhibit
20 14 for identification purposes. Can you tell us what
21 Exhibit 14 purports to be?

22 A. I've not seen Exhibit 14 before.

23 Q. Is it there in your hand?

24 A. I mean, I have it now, yes.

25 Q. Okay. Can you tell us what it purports to

1 be on its face?

2 A. It is a press release acknowledging that PSC
3 establishes cases to determine impact of federal tax cut on
4 customer rates.

5 MS. CARTER: I would ask for the Commission
6 to take administrative notice of its press release that has
7 been marked as Exhibit 14, dated February 22, 2018.

8 JUDGE WOODRUFF: Any objection? Again,
9 hearing none, the notice will be taken.

10 BY MS. CARTER:

11 Q. Mr. Riley, if you'll please read Paragraph
12 3, it begins with, Kansas City.

13 MR. WOODSMALL: Do you want him to read this
14 out loud or read it to himself because I think we're getting
15 into the same problem we got into last time. That it's --
16 never mind. You took official notice. Sorry.

17 MS. CARTER: That's why I did in that order.

18 BY MS. CARTER:

19 Q. Mr. Riley, if you could please read out
20 Paragraph 3 from Exhibit 14.

21 A. Kansas City Power and Light, Kansas City
22 Power and Light Company, electric, KCP&L Greater Missouri
23 Operations Company, Liberty Utility, natural gas, and the
24 Missouri American Water Company, currently have rate cases
25 before the Commission and the federal tax cut issue will be

1 addressed in those cases. The Commission recently decided a
2 natural -- natural gas rate cases filed by Spire, Incorp--
3 Spire Missouri, Incorporated in the Commission's decision
4 reflect customer savings associated with the federal tax cut
5 issue.

6 Q. Thank you. Are you familiar with Commission
7 Regulation 4 CSR 240-20.090?

8 A. Not off the top of my head, ma'am.

9 Q. Were you here for the discussion on Friday
10 -- and I should say the statement by Mr. Hampton Williams
11 for the Office of the Public Counsel regarding that
12 regulation and its definition of general rate proceeding?
13 Are you familiar with that?

14 A. I realize he'd, in opening statements, he
15 gave the definition.

16 Q. But you're not familiar with that
17 regulation?

18 A. No.

19 Q. Are you familiar with the surveillance
20 reports that are filed by the utilities that have fuel
21 adjustment clauses?

22 A. I am familiar with them, yes, ma'am.

23 Q. Are you familiar with the specific form that
24 is provided in the Commission's regulations?

25 A. I couldn't describe it to you, I'm sorry.

1 No.

2 Q. I didn't make copies of this, not planning
3 to use it as exhibit, but perhaps this will refresh your
4 recollection. Does that look like the form that is in the
5 regulations?

6 A. Yes, ma'am.

7 Q. And does the form that is provided by the
8 Commission use the words "rate case" for referring to
9 certain numbers that should be included on that form?

10 A. Other items from prior rate cases per rate
11 case method, four lines from the bottom. It refers to prior
12 rate case including offsets. I mean, this is a rate base
13 rate of return form.

14 Q. In your opinion, that form in the
15 Commission's regulations when it uses rate case, does it
16 mean general rate proceeding?

17 A. I am not quite sure I would say that, but --

18 Q. What do you believe it means instead?

19 A. Well, what you have here is a form that they
20 would use in a general rate case, but I mean, to determine
21 rate base.

22 Q. Okay. Thank you. Mr. Riley, you are
23 familiar with the phrase "all relevant factors"?

24 A. Yes, ma'am.

25 Q. In your opinion, does "all relevant factors"

1 mean all factors that may affect utilities cost?

2 A. I believe so, yes.

3 Q. That it doesn't -- that the relevant doesn't
4 have meaning?

5 A. All relevant factors would, to me, would
6 mean that all revenues and expenses that should be included
7 in the ratemaking process.

8 Q. Often in a rate case there are cost items
9 that are not discussed in testimony. Correct?

10 A. That would be correct, I would guess.

11 Q. And that would be cost items that affect a
12 utilities ultimate cost of providing services, not every
13 cost is disgusted in testimony. Correct?

14 A. I am not quite sure what you would call
15 testimony. Staff assembles schedules and rate-based
16 calculations and revenue requirement. I'm not sure what all
17 that -- it would not be included in those schedules.

18 Q. You believe there is prefiled testimony on
19 literally every cost incurred by a utility, generally in a
20 rate case?

21 A. I would guess that some things would not be
22 included.

23 Q. You prepared and filed direct testimony on
24 July 11th. Correct?

25 A. That's correct.

1 Q. And initially -- excuse me -- initially, OPC
2 said the only workpapers for your direct testimony was a
3 two-page PDF that consisted of a Empire filing, a Missouri
4 supplement to Empire's FERC Form 1; is that correct?

5 A. That's correct.

6 Q. Eventually you produced two Excel
7 spreadsheets as workpapers; is that also correct?

8 A. I believe those two Excel spreadsheets were
9 my schedules.

10 Q. The initial two-page PDF that you produced
11 as workpapers for your direct testimony that you filed on
12 July 11th, do you believe that was all the workpapers for
13 your testimony?

14 A. Yes.

15 Q. You had no other documents that you would
16 label workpapers that you used in preparing your testimony
17 that you filed on July 11th?

18 A. Other than anything that was in answers to
19 data requests. Should I have put data request answers in as
20 workpapers?

21 Q. I am not sure what you mean. Whose data
22 requests?

23 A. I asked Company for -- I asked company data
24 requests and I had answers for that. Should I have included
25 that as workpapers?

1 Q. I'm sorry, Mr. Riley, I am not able to
2 answer your questions. Is that an answer to my question?
3 Do you believe there were additional workpapers for the
4 testimony that you filed on July 11th?

5 A. I used schedules provided by the Company to
6 come up with my determinations of protected and unprotected
7 accumulated deferred income tax and I included them as
8 schedules.

9 Q. And did you make changes to the schedules?

10 A. I -- yes, I did.

11 Q. But you did not provide those as workpapers
12 with your testimony?

13 A. Changes were on the schedules.

14 Q. Do you agree with me that a utility
15 maintains a total accumulated deferred income tax balance, a
16 total ADIT balance, with various components on its records
17 at all times?

18 A. I would believe so, yeah.

19 Q. Do you agree that a regulated utility
20 computes excess ADIT only when there is a tax rate
21 reduction?

22 A. I am not quite sure if they do or not.

23 Q. Is there another circumstance when you would
24 compute excess ADIT?

25 A. If there is some sort of error in original

1 calculations, that might -- might cause and excess to be
2 incurred later.

3 Q. So are those the only two situation when
4 excess ADIT would result in a tax rate reduction or
5 discovery of an error?

6 A. That's the only ones I can think of right
7 now.

8 Q. Would you agree that a regulated utility
9 only determines protected versus unprotected excess ADIT
10 then when there has either been a tax rate deduction or an
11 error as you just described?

12 A. Repeat that question again, please.

13 Q. Would you agree that a regulated utility
14 only determines protected versus unprotected excess ADIT
15 only with there has either been a tax rate reduction or a
16 correction for an error as you just described?

17 A. Well, if there was some sort of change in
18 Internal Revenue Service rules and regs there might be a
19 change that might cause them to have to make a change in
20 something.

21 Q. Change what?

22 A. Whether it was protected or unprotected or
23 if there's some sort of change in depreciation.

24 Q. Could you please describe what you are
25 referring to? What circumstance would a utility need to do

1 to know protected versus unprotected excess ADIT, if there
2 wasn't a tax rate deduction?

3 A. They probably wouldn't need to refer to
4 anything as protected or unprotected, no.

5 Q. To properly compute excess ADIT you have to
6 value all components of ADIT. Correct?

7 A. Yes.

8 Q. You agree with me that you start with the
9 total excess ADIT and then pull out what is a protected
10 under IRS regulations?

11 A. No, more than likely you would -- you would
12 refer to total accumulated deferred income tax to determine
13 what is protected and unprotected and then -- and then as
14 you compute your excess accumulated deferred income tax, you
15 would already have it labeled as protected or unprotected.

16 Q. I'm sorry. I think we mismatched on our
17 question and answer there. Once the utility has created
18 their excess ADIT, they have total excess ADIT on their
19 books. Correct?

20 A. Yep.

21 Q. Do you agree with me that you would pull out
22 what is protected under IRS regulations from that total?

23 A. You would, yes.

24 Q. And that everything else that's left by
25 definition is unprotected. Correct?

1 A. That's about -- that's correct.

2 Q. And the utility only needs to determine that
3 pot of protected excess ADIT in order to return the excess
4 amounts collected to customers consistent with normalization
5 rules. Correct?

6 A. If I understand you correctly, yes.

7 Q. The only reason to determine protected ADIT
8 is so you can return money consistent with the IRS
9 regulations. Correct?

10 A. That's my understanding.

11 Q. Do you agree with me that on Empire's books
12 and records they have total excess ADIT at this point and
13 nothing has been pulled out and a journal entry made as
14 protected at this point?

15 A. That is not my understanding. The answers
16 to my data request had a column at the bottom -- on the
17 right side that identified certain portions of accumulated
18 deferred income tax as either protected or unprotected.

19 Q. You believe those were journal entries from
20 Empire on their books and records as opposed to a response
21 that was prepared for the OPC data request?

22 A. I believe Charlotte North on the stand said
23 that these were -- these lines were taken from the journals.

24 Q. You believe that was her testimony, that
25 Empire has recorded journal entries to identify protected

1 and unprotected --

2 A. This came from -- excuse me. She noted that
3 it came from the general ledger. I asked -- I asked if
4 you'd had a -- separated it from protected and unprotected
5 and I've got the spreadsheets that list things as
6 unprotected and lists things as protected.

7 Q. Let's see. On Page 6 of your direct
8 testimony -- I'm sorry, I don't have the line offhand
9 because I used your original direct testimony -- you state
10 that Empire indicated that Empire cannot sufficiently
11 identify the asset lives to follow the ARAM method. Do you
12 see that on Page 6 of your testimony?

13 A. Yes, ma'am.

14 Q. What is the basis for that statement?

15 A. The reviewing answers to data requests, the
16 -- I believe Mr. Williams pointed out in a data request that
17 they weren't -- they had not identified the lives of their
18 -- they couldn't identify everything in the -- with ARAM
19 method yet.

20 Q. In response to a data request, you pointed
21 to Page 7 of 10 of your Schedule 3 as the words you were
22 relying on. Do you recall that?

23 A. Yes, ma'am.

24 Q. And are you looking at Page 7 of 10 of her
25 Schedule 3?

1 A. Yes, ma'am.

2 Q. What words in that email are you relying on
3 to make your statement that Empire cannot sufficiently
4 identify the asset lives to follow the ARAM method?

5 A. Our depreciation software, Power Tax, will
6 eventually be able to separate the two, but it will be an
7 arduous process to get everything configured correctly.
8 Dwight will be helping us with this.

9 Q. So nothing in there says they are not able
10 to sufficiently identify asset lives in order to follow
11 ARAM?

12 A. Nothing in here indicates that you've
13 identified them, no.

14 Q. I'm sorry, that wasn't responsive to my
15 question.

16 A. Can you repeat your question?

17 Q. Is there anything in what you just read that
18 supports your statement that Empire is not able to
19 sufficiently identify the asset lives in order to follow
20 ARAM?

21 A. Well, the sentence indicates that the
22 process wasn't complete yet, so I guess your answer is it
23 indicates to me that they -- they don't have it separated
24 yet.

25 Q. Do you believe that Empire's saying they are

1 not yet able to determine protected portion of total excess
2 ADIT means that they are unable to use ARAM?

3 A. Yes.

4 Q. Do you recall when the Commission opened
5 case number ER-2018-0228?

6 A. I'm familiar with the case. I can't tell
7 you the exact date.

8 Q. Do you recall it was opened in February
9 2018?

10 A. I'm going to have to take your word for it.

11 Q. Do you recall that in March of 2018 Empire
12 reached out to all of the parties to schedule a conference
13 to discuss how best to proceed in that docket?

14 A. I don't recall.

15 Q. You don't recall OPC being invited to a
16 meeting shortly after the docket was opened?

17 A. My photographic memory is not working at
18 this moment, no.

19 Q. Do you recall that meeting being scheduled?

20 A. No.

21 Q. How many data requests has OPC served in
22 Case Number ER-2018-0228?

23 A. Without checking, I couldn't tell you.

24 Q. Did you prepare any data requests in that
25 docket?

1 A. I'm not really sure. I would venture that I
2 can't recall them, so I probably haven't.

3 Q. The non-unanimous tax stipulation that was
4 filed in this docket and also in the 228 docket, that would
5 have new rates for Empire take effect October 1, 2018.
6 Correct?

7 A. I believe that is what the stipulation calls
8 for.

9 Q. And that would be about nine months after
10 the case was opened?

11 A. I will take your word for it.

12 Q. About how long between the start of rate
13 case is it before new rates take effect?

14 A. My understanding, is it's 11 months.

15 Q. You filed corrected direct testimony on July
16 17th; is that correct?

17 A. Yes, ma'am.

18 Q. And at that time also filed a redline
19 version showing corrections from your initial testimony; is
20 that right?

21 A. I would guess that is what you call it, yes.

22 Q. And July 17th, when he filed your corrected
23 testimony, that was after the final date for data requests
24 to be served in this case?

25 A. That -- I'll guess so.

1 Q. You didn't move for admission of your
2 original testimony; is that right?

3 A. I would guess not.

4 MS. CARTER: I would asked to have marked as
5 an exhibit the redline corrected version, which I believe I
6 passed out copies on Friday, but didn't complete the
7 process, so I don't think it has gotten a number yet.

8 JUDGE WOODRUFF: This will be 15.

9 (WHEREIN; Exhibit 15 was marked for
10 identification.)

11 BY MS. CARTER:

12 Q. Exhibit 15, is that what you filed as a
13 redline version of your corrected direct testimony?

14 A. Yes, ma'am.

15 MS. CARTER: I would move for admission of
16 Exhibit 15.

17 CHAIRMAN HALL: 15 is offered. Any
18 objection to its receipt? Hearing none, it will be
19 received.

20 (WHEREIN; Exhibit 15 was received into
21 evidence.)

22 BY MS. CARTER:

23 Q. You did not provide any workpapers for your
24 corrected testimony. Correct?

25 A. I didn't provide any new workpapers, no.

1 Q. There was nothing provided as workpapers
2 after you served and filed your corrected testimony; is that
3 right?

4 A. You mean as far as anything new or --

5 Q. Or anything?

6 A. Or was it not -- or was it not -- or was it
7 not filed originally, my workpapers? Were they not put on
8 the case?

9 Q. OPC didn't provide any workpapers when you
10 filed your corrected testimony; is that correct?

11 A. I'm not really sure.

12 Q. Did you have workpapers for your corrected
13 testimony?

14 A. I -- well, other than the original two pages
15 of workpapers, no. I didn't have any more. Are you meaning
16 that I didn't file the two pages of workpapers with the
17 corrected -- it's not on the record? Is that what you're
18 trying to tell me?

19 Q. Mr. Riley, I was just asking for
20 confirmation that OPC did not serve any workpapers when you
21 filed your corrected testimony?

22 A. I can neither confirm nor deny because I
23 don't know if they got filed.

24 Q. And I'm not asking anything about filing.
25 You didn't prepare and serve any workpapers with your

1 corrected testimony; is that right?

2 A. I'm not sure.

3 Q. And there were no new or revised schedules
4 with your corrected testimony; is that right?

5 A. No, there was not.

6 Q. If you'll look please at Page 3 of your
7 Schedule 4.

8 JUDGE WOODRUFF: To clarify, is that Exhibit
9 10? Excuse me, Exhibit 9, that you are referring to?

10 MS. CARTER: It would be attached to Exhibit
11 5. It is a schedule to his testimony.

12 JUDGE WOODRUFF: Okay.

13 THE WITNESS: Yes, ma'am.

14 BY MS. CARTER:

15 Q. At the bottom you have total unprotected
16 excess ADIT?

17 A. Yes, ma'am.

18 Q. What balances from above make up your total?

19 A. The calculated balances of Line 38, Column K
20 and 38, Column M.

21 Q. Just those two numbers?

22 A. Well, that is where the balance that you
23 spoke of is calculated from.

24 Q. And what my question is, what numbers from
25 above total to your total unprotected excess ADIT that you

1 show at the bottom of Page 3 of Scheduled 4?

2 A. Are you talking about the above spreadsheet?

3 Q. Yes. The numbers that are above the total?

4 A. Starting with Line 1 and on down or are you
5 talking about the calculations below?

6 Q. It might be easier --

7 MS. CARTER: May I approach?

8 JUDGE WOODRUFF: You may.

9 BY MS. CARTER:

10 Q. Do you have open your Page 3 of your
11 Schedule 4.

12 A. Uh-huh.

13 Q. You have a total here identified as
14 unprotected?

15 A. That's correct.

16 Q. Which numbers from this schedule, from above
17 that total, comprise your total?

18 A. Okay. Line 4, deferred Fed tax, assets,
19 miscellaneous, Missouri Column K, that would be 237,883.

20 Q. And Mr. Riley I might be able to make a
21 little easier for you. I believe these are all of your
22 subtotals?

23 A. Right.

24 Q. Which four numbers or which numbers of your
25 subtotals comprise your total?

1 MR. WILLIAMS: Are you changing your
2 question?

3 MS. CARTER: No.

4 MR. WILLIAMS: Well, you asked him which
5 numbers he used --

6 MS. CARTER: I'm sorry. I will narrow that.

7 BY MS. CARTER:

8 Q. From your subtotals, what numbers make up
9 your total?

10 A. 663,799 in Column K, the 16,353,036 in
11 Missouri Column M. Those two with the gross up would carry
12 it down to Line 38, which would be the 8922-- excuse me
13 892,689 in Column K and the 21,991,859 in Column M.

14 Q. So the number that you recommend for
15 unprotected excess ADIT includes Empire's FERC jurisdiction
16 wholesale customers?

17 A. Well, that's been pointed out in testimony,
18 but at the time that I put this together I wasn't sure that
19 is what that was.

20 Q. So in your corrected testimony, the number
21 that you recommend for unprotected excess ADIT includes the
22 wholesale number. Correct?

23 A. Well, at the time I did these calculations,
24 I didn't know what it was, so it was included.

25 Q. You would agree that excess ADIT related to

1 FERC regulated service should not be included in this case.
2 Correct?

3 A. That is my understanding, yes.

4 Q. And you just noted for us that your total
5 unprotected ADIT includes a gross up for taxes for both the
6 Missouri retail customers and also the wholesale FERC
7 regulated customers. Correct?

8 A. That is what the schedule has, yes.

9 Q. And your testimony is based on that
10 schedule?

11 A. My testimony was based on the schedule at
12 the time that I wrote my testimony.

13 Q. If you look at Page 2 of your Schedule 4,
14 that's your total protected excess ADIT; is that right?

15 A. Yes, ma'am.

16 Q. And would we take the same four subtotals to
17 make your total?

18 A. Yes, it would.

19 Q. So again, you've included a gross up for
20 taxes?

21 A. Yes.

22 Q. And you've included the FERC wholesale
23 customers?

24 A. At the time, yes, ma'am.

25 Q. On the bottom of your schedule it refers to

1 company determined?

2 A. Company considered protected.

3 Q. What's the basis for saying the company
4 considered it to be protected?

5 A. Column Q. It says protected, unprotected 2,
6 and then it went on to list possibly partially protected,
7 possible partially protected and on down the line. I asked
8 in my data request for the Company to separate protected and
9 unprotected. It came in three tabs and one was listed as
10 protected; one was listed as unprotected. The unprotected
11 we just reviewed and it is my assumption that this protected
12 would be what the Company considered protected at the time
13 or at least partially -- possibly partially protected.

14 Q. OPC deposed Steve Williams in this case.
15 Correct?

16 A. Yes, ma'am.

17 Q. And you present for that deposition?

18 A. Yes, ma'am.

19 Q. And Mr. Williams explained that Empire had
20 not made the determinations of protected versus unprotected.
21 Correct?

22 A. I believe he did.

23 Q. And that was before you filed your corrected
24 testimony; is that right?

25 A. That's correct.

1 Q. That was before you filed your original
2 testimony. Correct?

3 A. That would be the Friday before. Yes. That
4 would be five days before I filed testimony.

5 Q. Before you filed your first testimony?

6 A. Correct.

7 Q. If we add the totals on Pages 2 and 3 of
8 your Schedule 3, that is your recommended total excess ADIT.
9 Correct?

10 A. Well, once you consider the corrected
11 portion of the unprotected. And if in fact the wholesale
12 figures in Missouri Column K are in fact FERC and they
13 should not be included, that number would be -- would be
14 less. However, at that time when I filed this I did not --
15 I wasn't explained to by the Company as to what I was
16 looking at. So my testimony includes them both. If in
17 fact, Column K shouldn't be in there, then we would probably
18 have to reduce the number.

19 Q. If you'll look for me at Page 1 of your
20 Schedule 4. What does that page show?

21 A. I believe it was the total amount of
22 accumulated deferred income tax accounts that the Company
23 sent me on the first tab of the answer to Data Request 1301.

24 Q. So you didn't prepare Page 1 of your
25 Schedule 4?

1 A. No, ma'am. I did not.

2 Q. Is there any reason to have that included in
3 your testimony. Do you use that for any purpose?

4 A. I included it because it was the first tab
5 of the three. It was -- it was -- it was something to look
6 at and review the unprotected and protected is down the far
7 right column. The actual calculations I used are on Line 2
8 and 3 -- or Page 2 and 3, excuse me.

9 Q. Those four subtotals that you gave us from
10 Pages 2 and 3 of her Schedule 4 --

11 A. Yes, ma'am.

12 Q. -- if we take those four -- those same four
13 numbers on Page 1 of your Schedule 4, that doesn't match
14 your recommended total excess ADIT. Correct?

15 A. No. I made some changes to the spreadsheets
16 that I used on 2 and 3.

17 Q. Is there any documentation showing what you
18 started with as total excess ADIT?

19 A. I believe the first page was the total, but
20 what I was interested in what was protected and unprotected.

21 Q. Is there any --

22 A. -- in 2 and 3.

23 Q. -- documentation to show your starting
24 excess ADIT total?

25 A. Other than what was on the answers to data

1 requests. To be honest, I'm not sure if there is any
2 changes to Number 1, so there is some documentation in the
3 data request I'm sure. But I based -- I based all mine on
4 taking the protected and unprotected from the two other
5 tabs.

6 Q. So there is no Excel spreadsheet or any
7 other document that you can show us that is your starting
8 point, the calculation of total excess ADIT by you?

9 A. Probably not -- not in evidence, no.

10 Q. There are only two buckets for excess ADIT.
11 Correct? Protected and then everything else?

12 A. This's a good of an explanation is I could
13 use.

14 Q. And some of Empire's Missouri jurisdictional
15 ADIT accounts aren't included in either your protected or
16 your unprotected sheets. Correct?

17 A. I think so.

18 Q. You think that's right, that some are
19 excluded?

20 A. Some are excluded.

21 Q. Empire's account Number 282100 -- or FERC
22 account 282100 is Empire's account for total excess ADIT; is
23 that correct?

24 A. Yes, ma'am. That was my understanding, yes.

25 Q. Would you agree with me that you didn't have

1 the records to properly determine which part of that total
2 excess ADIT is protected versus unprotected because Empire
3 doesn't have that information yet?

4 A. It wasn't provided to me. Whether you have
5 the information or not, I don't know.

6 Q. You agree you didn't have the information to
7 make a proper determination of protected versus unprotected.
8 Correct?

9 A. That's correct.

10 Q. You already agreed with me that the utility
11 determines the pot of protected excess ADIT so that they can
12 return the excess amounts collected consistent with IRS
13 normalization rules?

14 A. Go ahead and repeat the question, please.

15 Q. You agreed with me earlier, correct, that
16 the utility determines the pot of protected excess ADIT in
17 order to return the excess amounts collected to customers
18 consistent with the IRS normalization rules?

19 A. That would be the -- that would be the
20 Company's responsibility, yes.

21 MS. CARTER: Thank you. That's all the
22 questions I have.

23 JUDGE WOODRUFF: Questions from the bench,
24 Mr. Chairman?

25 CHAIRMAN HALL: Good morning.

1 THE WITNESS: Good morning.

2 QUESTIONS BY CHAIRMAN HALL:

3 Q. Could you turn to Page 7 of your corrected
4 direct testimony?

5 A. Yes.

6 Q. And between Lines 12 and 16 on that page,
7 you are referring to what some people at this hearing have
8 referred as the stub period. Correct?

9 A. Yes, sir.

10 Q. Okay. So what you're describing between
11 Lines 12 and 16 is the amount of money that -- the amount of
12 money that would equal the reduction in tax rates between
13 January 1 and the effective date of new rates. I'm sorry.
14 Between January 1 and the effective date of rates that come
15 out of this hearing; is that correct?

16 A. Well, I took the 90 days from the SB 564 and
17 determined them as August 30th, so yes, I calculated from
18 January 1 to August 30th for this stub period amount.

19 Q. And so you -- it was just simple division?
20 You took the amount, you took the reduction in rates over
21 the annual reduction in rates and divided it by -- by
22 between January 1 and August 30; is that correct?

23 A. Yes, sir.

24 Q. Has any party that you are aware of taken
25 issue with that calculation?

1 A. Not that I am aware of. I did start out
2 originally taking the 17 million and dividing it by 12, 12
3 months and multiplying it by eight. But then, I went ahead
4 and took the number of days and divided it by 365. So I
5 mean, it's a little different, but I haven't had anybody
6 question either calculations that I did.

7 Q. And am I correct to believe that under IRS
8 normalization rules the Company must flow back the excess
9 ADIT as of January 1? And the question is: When to flow
10 that back, whether to do that through a regulatory asset or
11 to do it through new rates out of this case?

12 A. If the IRS requires that they must flow it
13 back from January 1, I believe that -- the IRS would
14 consider that the calculation should start from January 1.
15 Whether you must or not, I'm not really sure. It's just
16 that they -- the IRS requires that you flow it back under
17 the remaining life of the assets in the ARAM method. I
18 would interpret that it would -- it would start January 1.

19 Q. But is that required by IRS normalization
20 rules or other IRS rules?

21 A. I -- it's not necessarily required. It is
22 not necessarily re-- I don't -- I'm not -- okay. I'm not
23 sure that it's required to be flowed back. I'm not sure if
24 the IRS rules say that it must be flowed back. However, I
25 am saying that if it is flowed back, it is flowed back by

1 the ARAM method if it's at all possible. I'm not going to
2 sit here and tell you I'm a scholar on the IRS, know word
3 for word what their statutes mean.

4 Q. Okay. Let's move on to a different topic.
5 Are you familiar with the standards for an accounting
6 authority order?

7 A. I'm familiar, yes.

8 Q. That -- so that standard is -- in order for
9 an AAO to be appropriate, the money at issue must be -- the
10 event must be unique, extraordinary, and nonrecurring and
11 the amount of money at issue must be material?

12 A. That's my understanding, yes.

13 Q. So looking at the excess ADIT flow back, do
14 you believe that the AAO standard that we just described has
15 been met or would be met based on the facts?

16 A. Yes. The tax rate changes substantially, 40
17 percent tax rate. We're talking more than \$150 million.
18 It's not going to happen again, you know, until somebody
19 changes the tax rates, which hadn't happened in, you know,
20 40 years. So it's -- you would considered it nonrecurring.
21 I would believe it will be rather substantial, so yes.

22 Q. What amortization period is OPC recommending
23 for the excess EDIT flow back?

24 A. As I stated in testimony, the Company is
25 indicating that they can't flow it back in the ARAM method

1 at this time. However, I don't think that should slow down
2 the beginning of the process and we've -- our suggestion is
3 that the protected start to flow back in the 20 year
4 amortization. The unprotected flow back in 10.

5 Q. And what is -- what is the basis for that
6 recommendation?

7 A. We suggested that in the Spire case and
8 that's -- and we weren't sure in the Spire case exactly what
9 the proper flow back was, so -- you know, how it was
10 actually come up with that it be 20 and 10, but we decided
11 that that would be the fair start to the process with a
12 tracker because we were aware that if they are going to end
13 up -- 20 years, of course is a guess. And if the 20 years
14 was going to not cover the ARAM method or it was going to,
15 you know, return it too fast, that with a tracker you would
16 be able to make that adjustment to keep from them from being
17 in violation with the IRS.

18 Q. Do you -- what is the appropriate standard
19 or principle that the Commission should employ when setting
20 and amortization period for the protected and the
21 unprotected excess ADIT?

22 A. Well, the standard should be to go ahead and
23 follow the ARAM. The unprotected as most people have
24 mentioned that is -- I believe it was at the whim of the PSC
25 Commission. We consider -- 10 years for the unprotected

1 because we find that's a -- I guess, a balance that it's not
2 too punitive period. You know, if you said, you know, to
3 give back the unprotected in two or three years, that would
4 be quite a dip in the cash flow, so 10 years we kind of feel
5 a fair time frame to pay back the unprotected.

6 Q. So you didn't do any kind of analysis as to
7 the useful life of the assets at issue to determine whether
8 -- to determine what amortization period should be employed.
9 Instead, you took the 10 and 20 year periods that the
10 Commission employed in the Spire case and decided that that
11 would be a fair approach for cash flow purposes --

12 A. Well --

13 Q. -- perspective?

14 A. Lack of -- lack of being able to identify
15 assets now that the protected portion -- if I'm correct, is
16 based on depreciation plant, so we have some sort of time
17 frame there. As unprotected is, as counsel has pointed out
18 to me and several others, that we have protected and
19 everything else. And everything else the time frames would
20 be rather hard. I would -- to be -- I would guess though
21 that anything unprotected would not be a 10-year lifespan.
22 So the protected portion of eventually I would hope after
23 they employ the software that they have, that we'll be able
24 to identify the protected portions because of their
25 remaining life. Unprotected I seriously doubt that any of

1 it's 10-year -- it's going to have a 10-year lifespan left,
2 so 10 years, I think would be a generous time frame for the
3 unprotected.

4 Did that answer your question?

5 A. No. I mean, I think maybe you took the 10
6 and the 20 that the Commission employed in the Spire case
7 and thought that that would be a fair result here?

8 A. Yes, sir.

9 Q. Moving on to a new topic. And I'm sure you
10 can answer this, but since you are the only OPC witness, I'm
11 going to go ahead and ask: Mr. Hampton (sic) in his
12 opening, I think indicated that if the Commission were to
13 employ Section 4 of the statute and defer a portion of the
14 one-time rate change, I believe he stated that we would be
15 unable under the statute to employ Section 3, that either
16 you defer a portion under Section 4 or you take advantage of
17 the Section 3 one-time authority. Is that your
18 understanding?

19 A. Well, my understanding on Section 3 is that
20 the stub period has to be deferred to the next rate case. I
21 haven't had many conversations on Section 4.

22 Q. And if you don't -- if you can't answer the
23 question, just simply say that and that's fine.

24 A. I shouldn't answer the question.

25 Q. I don't want you to delve into something

1 you're not prepared to discuss. That's what I thought
2 Mr. Hampton said and I thought you might be able to shed
3 some light on whether that is OPC's position. But if you're
4 familiar with the section with this issue, then simply say
5 so.

6 A. I'll pass.

7 CHAIRMAN HALL: I think that's all I have.
8 Thank you.

9 JUDGE WOODRUFF: I have a question for you.
10 QUESTIONS BY JUDGE WOODRUFF:

11 Q. Early I asked Ms. Lange about reductions in
12 the customer charges.

13 A. Yes.

14 Q. Whether that would be reasonable.
15 Generally, she said a large reduction might be unreasonable
16 for the customer class. I'll give you an opportunity to say
17 why it's reasonable?

18 A. Well, I haven't taken pen to paper to
19 actually know exactly what the reduction would be in the
20 customer charge. However, we are more interested in it in
21 the surety of it going back to the customers, which is why
22 we -- we make the suggestion that it come out of the
23 customer charge. Like I said though, I haven't taken pen
24 and paper to it. That large, as Sarah had pointed out, it
25 might be -- it seemed to me that what she was trying to

1 describe is it might be a little bit too big a hit in the
2 actual charge. But what we're really interested in is that
3 the payback be more assured in that coming out of the
4 customer charge is much more expected results than out of
5 the volumetric charge.

6 JUDGE WOODRUFF: That's all I have. Any
7 recross based on questions from the bench?

8 MR. THOMPSON: Yes, Judge, very briefly.

9 JUDGE WOODRUFF: Let's begin with MECG.

10 RECROSS EXAMINATION BY MR. WOODSMALL:

11 Q. You were asked some questions by the
12 Chairman about amortization periods for excess ADIT. Do
13 recall that?

14 A. Yes, sir.

15 Q. And just so I'm clear, would you agree that
16 protective excess ADIT is primarily associated with the use
17 of accelerated depreciation and bonus depreciation that is
18 allowed by the IRS?

19 A. Yes, sir.

20 Q. And so to that degree since it is related to
21 depreciation, it is actually tied to a physical asset; is
22 that correct?

23 A. That is my understanding, it's tied to
24 plant.

25 Q. Okay. And unprotected excess ADIT is not

1 necessarily tied to plant or physical assets; is that
2 correct?

3 A. That is -- the bucket is kind of protected
4 and everything else. So yes, it could be repairs, could be
5 losses, it -- change in -- change in repair lives and that
6 sort of thing.

7 Q. And for protected ADIT, which is related to
8 plant, you're required to the extent possible use the ARAM
9 method, which attempts to determine the remaining life of
10 the underlying asset; is that correct?

11 A. That's correct.

12 Q. Now the point of my question: The
13 unprotected excess ADIT you were asked questions about
14 standards for the amortization period. Do you recall that?

15 A. Yes.

16 Q. Are you familiar with the concept of
17 intergenerational equity?

18 A. I'd have to say no.

19 Q. Okay. Well, will short-circuit that line of
20 questioning. Last question then, would you agree that in
21 addition to using 10 years for Spire that Ameren settlement
22 used the 10 year amortization period for unprotected assets
23 -- for unprotected excess ADIT?

24 A. That is my understanding, yes.

25 MR. WOODRUFF: Thank you. No further

1 questions.

2 JUDGE WOODRUFF: Staff?

3 MR. THOMPSON: Thank you, Judge.

4 RECROSS EXAMINATION BY MR. THOMPSON:

5 Q. The Chairman asked you some questions about
6 the calculation of the stub period amount. Do you recall
7 that?

8 A. Yes, sir.

9 Q. And we took a look at Page 7, Lines 12
10 through 16 of your corrected direct testimony. Are you
11 there?

12 A. Yes, sir.

13 Q. My question for you is this: Does the
14 Company earn its revenue evenly throughout the year?

15 A. No, it does not.

16 Q. So the revenue that it earns in April might
17 be different from the revenue it earns in, say, July?

18 A. I'm quite certain it would be.

19 Q. So isn't that seasonality something you
20 should take into account when calculating the amount of the
21 stub period revenues?

22 A. That's possible. However, the Company is a
23 dual peaking company where they have a peak in January and
24 they have a peak in late July or early August. So the
25 calculations here would include both peaks.

1 Q. Okay. And the Chairman also asked you some
2 questions about the standards for accounting authority
3 orders. Do you recall that?

4 A. Yes, sir.

5 Q. And are you familiar with Section 393.140.8?

6 A. Not of the top of my head.

7 MR. THOMPSON: May I approach?

8 JUDGE WOODRUFF: You may.

9 BY MR. THOMPSON:

10 Q. I was wondering if you can read could that?
11 Do you see the number 8 there?

12 A. Yes, sir.

13 Q. Could you read that?

14 A. Have power to examine that accounts, books,
15 contracts, records, documents and papers of any such
16 corporation or person and have power after hearing to
17 prescribe by order the accounts in which particular outlays
18 and receipts shall be entered, charged, or credited.

19 Q. Thank you. Was there anything in there
20 about materiality?

21 A. No.

22 Q. Was there anything in there about
23 extraordinary?

24 A. No, sir.

25 Q. Was there anything in there about

1 nonrecurring?

2 A. No, sir.

3 MR. THOMPSON: Thank you. I have no further
4 questions.

5 JUDGE WOODRUFF: Any redirect?

6 REDIRECT EXAMINATION BY MR. WILLIAMS:

7 Q. Thank you. You were asked a number of
8 questions about your Schedule JSR-D-4. Do you recall that?

9 A. Yes, sir.

10 Q. What information did you rely on for
11 preparing that schedule?

12 A. Answers to data request 1301, 1302, where I
13 was provided some spreadsheets.

14 MR. WILLIAMS: May I approach?

15 JUDGE WOODRUFF: You may.

16 BY MR. WILLIAMS:

17 Q. I'm handing you what has been marked as
18 Exhibit 6 and 7. What are Exhibits 6 and 7?

19 A. 6 is a copy of my Data Request 1302. The
20 answers and the spreadsheets that the company, that answer.
21 Schedule 7 is a copy of my Data Request 1301 with Charlotte
22 North's calculations of -- it looks like Charlotte North's
23 schedule breaking down revenue requirement and tax changes,
24 to come up with the Company's 17 million -- 17.8 million
25 dollars.

1 Q. And when did you request the information
2 that's shown in those responses?

3 A. Let's see, June 15th.

4 Q. And when did you receive the responses?

5 A. I received them on July 6th. However, the
6 official reception date was July 5th.

7 Q. And can you identify which schedules --
8 which of that information you relied upon specifically for
9 your -- let's start with Page 3 of your schedule JSR-D-4?

10 A. I would have relied -- I believe it looks
11 familiar -- Page 6.

12 Q. Of which exhibit?

13 A. Of Exhibit 6, the answer to the Data Request
14 1302. That was the spreadsheet that on the right-hand
15 column had possibly partially protected on down and 10 -- 10
16 rows of accounts and their breakout between Missouri and
17 Kansas, Oklahoma, and Arkansas.

18 Q. Is you Page 1 of your Schedule JSR-D-4 the
19 same as Page 6 of Exhibit 6 or are they different?

20 A. Did you say Page 1 of mine?

21 Q. Yes.

22 A. Page 6 is separated. It's not -- it's not
23 the all-inclusive that you see on Page 1 of 3 of my schedule
24 D-4.

25 Q. Is there a schedule in exhibit -- or page in

1 Exhibit 6 that is all-inclusive like your Page 1 of your
2 Schedule JSR-D-4?

3 A. Without doing a complete analysis, it looks
4 like Page 3, 4 -- 3, 4, and 5 look very similar to my Page 1
5 of 3.

6 Q. Well, I believe you testified earlier that
7 your testimony is based on your Pages 2 and 3 of schedule
8 JSR-D-4. Correct?

9 A. That is correct. That's where I calculated
10 the numbers.

11 Q. Okay. So starting with Page 2 of 3 of
12 Schedule JSR-D-4, what was the source that you used for
13 creating that schedule or the original information you
14 relied on for creating that schedule?

15 A. What page were you referring to?

16 Q. Page 2 of 3?

17 A. 2 of 3 would have been --

18 Q. The protected?

19 A. That would have been 6 -- Page 6 and 7 of
20 the --

21 Q. Of which exhibit?

22 A. Of your -- of your Exhibit 6.

23 Q. And did you just pull that information
24 directly over? Did you make changes to it?

25 A. I deleted top line of the -- well, I didn't

1 -- I didn't delete the line. I made some changes to -- when
2 you move over to the columns Missouri Column K and Missouri
3 Column M, I would have deleted out some of the totals and
4 put in n/a to indicate that it was -- it was not part of the
5 calculations on my schedule.

6 Q. So if someone wanted to look at what
7 information you relied on, what changes you made, they can
8 do a comparison between Page 6 of Exhibit 6 and your Page 2
9 of your Schedule JSR-D-4?

10 A. Yes, sir.

11 Q. Okay. Now, let's turn to Page 3 of Schedule
12 JSR-D-4, which is your schedule addressing unprotected,
13 excess accumulated deferred income tax?

14 A. Yes, sir.

15 Q. And what was the source information you
16 relied on for creating that schedule?

17 A. That would be the same as Page 8 and 9 of
18 your Schedule 6.

19 Q. Are you talking about Exhibit 6?

20 A. Exhibit 6, excuse me. My schedule, your
21 exhibit.

22 Q. And if someone wanted to look at -- find the
23 differences between -- well, someone can look at Pages 8 and
24 9 of Exhibit 6 and compare them to your schedule -- Page 2
25 -- 3 of your schedule JSR-D-4 to find what -- what you did

1 with the source information. Correct?

2 A. Yes, they could, except for the -- the first
3 line of the protected was a line -- a line that was titled,
4 Ozark Beach Lost Generation and I had excluded the numbers
5 with n/a and I copied that line over and put it in as Line
6 31 on the unprotected because I moved it off -- I felt the
7 description of it indicated that it wasn't plant and
8 accelerated depreciation, so I moved it from the protected
9 page down to Line 31 on the unprotected page and included it
10 on those calculations.

11 Q. Why did you rely on the information in
12 Exhibit 6 for calculating protected and protected excess
13 accumulated deferred income taxes for Empire?

14 A. Well, it was the answer to my data request
15 and listed on the far right side was the explanations of
16 protected and unprotected.

17 Q. Well, you testified earlier in response to
18 Commissioner questions or in cross-examination that ARAM
19 would be the best method for using to find the protected
20 excess accumulated deferred income tax and that the
21 difference between the protected excess deferred income tax
22 and the total excess deferred income tax would be the
23 unprotected excess deferred income tax, did you not?

24 A. I said ARAM would be the best way to flow
25 back the protected portion of the excess accumulated

1 deferred income tax.

2 Q. But didn't you use ARAM. Correct?

3 A. No. I didn't ARAM.

4 Q. And why was that?

5 A. The Company indicated they didn't -- they
6 didn't have the -- they didn't have the information to do
7 ARAM.

8 Q. Did you have any better information
9 available to you than what you relied on?

10 A. No, I didn't.

11 Q. Commissioner -- I mean Chairman Hall asked
12 you some questions about the Internal Revenue Service
13 normalizations rules. Do you recall that?

14 A. Yes, sir.

15 Q. What do you know about the Internal Revenue
16 Service normalization rules with regard to excess
17 accumulated deferred income tax?

18 A. That the Internal Revenue Service requires
19 any flow back to follow that ARAM method, which is to, you
20 know, basically find every remaining life of every asset and
21 to flow it back off of the remaining life. And judging from
22 some articles that I have read that have explained how this
23 is supposed to happen, that if you cannot identify, you
24 know, the ARAM method, the reverse South Georgia method was
25 acceptable. I think a lot companies used that back in 1987,

1 that which is basically a composite rate of all of the
2 assets that are left. But that's how they require it to be
3 flowed back.

4 Q. Why does it matter?

5 A. It is what the IRS requires, but they don't
6 believe that the flow back should take -- should go any
7 faster than the, I guess, the remaining life. So they don't
8 -- they don't expect it to go back any faster or any slower
9 than -- that it would normally come back.

10 Q. What repercussions, if any, are there to a
11 taxpayer who does not comply with an normalization
12 requirement?

13 A. It's my understanding that there'd be a loss
14 of -- of the ability to use accelerated depreciation in the
15 future if they are flowing it back at a too -- basically a
16 too fast of rate for ARAM or South Georgia method.

17 Q. Is that always the resort for a
18 normalization violation and could there be other results?

19 A. I am not quite sure if there's other
20 results, but I -- I'm not sure how -- how punitive that is
21 or how strict it is, when those penalties actually come in
22 to play. I'm not sure how soon that would happen.

23 Q. Do you have any opinion about what the IRS
24 might do if it was an inadvertent violation?

25 MR. THOMPSON: Objection; calls for

1 speculation.

2 JUDGE WOODRUFF: I'll sustain the objection.

3 MR. WILLIAMS: No further questions.

4 JUDGE WOODRUFF: All right. You can step
5 down. And I believe that concludes the testimony.

6 MR. WILLIAMS: I would like to ask the
7 Commission to take official notice of one of its own rules.

8 JUDGE WOODRUFF: All right.

9 MR. THOMPSON: Which rule are we talking
10 about?

11 MR. WILLIAMS: 4 CSR 240-20.090(1)(D).

12 JUDGE WOODRUFF: And since that is a
13 Commission rule, why do we need to take notice of it?

14 MR. WILLIAMS: It won't be in the record
15 itself for review unless we do.

16 MR. THOMPSON: What was the number again?

17 MR. WILLIAMS: It's the fuel adjustment
18 clause of a general rate case.

19 MR. THOMPSON: What is the number?

20 MR. WILLIAMS: 20.090(1)(D).

21 JUDGE WOODRUFF: Any objection?

22 MS. CARTER: I'm confused on if Mr. Williams
23 is asking literally for that one definition to be included?

24 MR. WILLIAMS: I'm okay with putting in the
25 whole rule in if you like.

1 MS. CARTER: I think if we're going to do
2 it, we need to include the entire rule.

3 JUDGE WOODRUFF: We'll take the entire rule.

4 MR. WILLIAMS: Thank you.

5 JUDGE WOODRUFF: All right. By the
6 procedural schedule that was established in the case, the
7 briefs are due on July 30th. We'll need to have the
8 transcript expedited. I'd like to have them by July 25th,
9 which would be Wednesday of this week. Anything else while
10 we're on the record?

11 CHAIRMAN HALL: Yes.

12 JUDGE WOODRUFF: Mr. Chairman?

13 CHAIRMAN HALL: When are the briefs going to
14 be due?

15 JUDGE WOODRUFF: July 30th. That's a week
16 from today.

17 CHAIRMAN HALL: There's one issue that I
18 would like briefed. And that is if the Commission were to
19 determine that the Statute Senate Bill 564 was not
20 applicable to Empire, I'd like to know the parties positions
21 both on the law and the facts as to whether and AAO would be
22 appropriate for the excess ADIT January 1 going forward and
23 for the reduction in revenues during the stub period. And I
24 will entertain questions if there is --

25 MR. WOODSMALL: I guess, my only question,

1 we've talked about three buckets; perspective, stub period
2 and ADIT. Are you talking about a AAO for the excess ADIT
3 and the stub period --

4 CHAIRMAN HALL: I'm not asking for
5 additional briefing on the prospective change in rates. I
6 assume that's going to come regardless.

7 MR. WOODSMALL: Okay.

8 MS. CARTER: Chairman, what would be the
9 ending date -- I'm not sure if I heard that on the AAO, to
10 defer it until --

11 CHAIRMAN HALL: The next rate case.

12 MS. CARTER: Okay.

13 CHAIRMAN HALL: Thank you. That's an
14 important clarification.

15 JUDGE WOODRUFF: Anything else while we're
16 on the record? All right. With that then, we are
17 adjourned.

18 (WHEREIN; the hearing has concluded.)
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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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