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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Public Hearing  
  
December 10, 2003  
Jefferson City, Missouri  
Volume 1  
  
In the Matter of a Proposed Rule to )  
Establish Procedures for Natural Gas )  
Utilities to Establish an ) Case No. GX-2004-0090  
Infrastructure System Replacement )  
Surcharge )  
  
RONALD D. PRIDGIN, Presiding,  
REGULATORY LAW JUDGE.  
  
CONNIE MURRAY,  
BRYAN FORBIS,  
ROBERT M. CLAYTON, III,  
COMMISSIONERS.  
  
REPORTED BY:  
  
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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: Good morning. This is the  
3 rulemaking hearing for Case No. GX-2004-0090, in the matter  
4 of a proposed rule to establish procedures for natural gas  
5 utilities to establish an infrastructure system replacement  
6 surcharge.

7 I am Ron Pridgin. I'm the Regulatory Law  
8 Judge assigned to preside over this hearing. It's being  
9 held on December 10th, 2003 at the Commission's offices at  
10 the Governor Office Building in Jefferson City, Missouri.  
11 The time is about five minutes after ten in the morning. If  
12 I could at this time, I would like to get oral entries of  
13 appearance, starting with Staff, please.

14 MR. SCHWARZ: Tim Schwarz, P.O. Box 360,  
15 Jefferson City, Missouri, appearing for the Staff of the  
16 Public Service Commission.

17 JUDGE PRIDGIN: Mr. Schwarz, thank you. On  
18 behalf of the Office of the Public Counsel, please.

19 MR. COFFMAN: John B. Coffman, P.O. Box 2230,  
20 Jefferson City, Missouri 65102.

21 JUDGE PRIDGIN: Mr. Coffman, thank you.  
22 Anyone here on behalf of Missouri gas utilities?

23 MR. PENDERGAST: Your Honor, I think we have  
24 several people on behalf of Missouri gas utilities.

25 JUDGE PRIDGIN: Do we have to split them up

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1 into the different companies?

2 MR. PENDERGAST: My name is Mike Pendergast,  
3 and I'm here on behalf of Laclede Gas Company, 720 Olive  
4 Street, St. Louis, Missouri 63101.

5 JUDGE PRIDGIN: Mr. Pendergast, thank you.  
6 Anyone here on behalf of Atmos Energy?

7 MR. FISCHER: Yes, your Honor. James M.  
8 Fischer, Fischer & Dority, PC, 101 Madison Street,  
9 Suite 400, Jefferson City, Missouri 65101, appearing today  
10 on behalf of Atmos Energy Corporation, as well as Union  
11 Electric Company, doing business as AmerenUE.

12 JUDGE PRIDGIN: Mr. Fischer, thank you.  
13 Anyone here on behalf of Missouri Gas Energy?

14 MR. MCCARTNEY: Yes, your Honor. Brian T.  
15 McCartney, Brydon, Swearngen & England, P.C., 312 East  
16 Capitol Avenue, Jefferson City, Missouri 65101, appearing on  
17 behalf of Missouri Gas Energy.

18 JUDGE PRIDGIN: Mr. McCartney, thank you. Any  
19 other counsel wishing to enter an appearance?

20 MR. COOPER: Yes, your Honor. Dean L. Cooper  
21 P.O. Box 456, Jefferson City, Missouri 65102, appearing on  
22 behalf of Aquila, Inc., doing business as Aquila Networks  
23 MPS and Aquila Networks LMP.

24 JUDGE PRIDGIN: Mr. Cooper, thank you. Any  
25 other counsel?

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1 (No response.)

2 JUDGE PRIDGIN: All right. Hearing none. Let  
3 me remind the parties that this is not a contested case, so  
4 I will not allow cross-examination from parties, but the  
5 Commission may have questions for the witnesses.

6 I will take testimony first from Staff, then  
7 from the Office of the Public Counsel. I will then ask if  
8 anybody would like to testify in support of the rule, and  
9 finally if anyone would like to testify in opposition to the  
10 rule. Any questions or anything anybody needs to bring to  
11 my attention before we begin?

12 (No response.)

13 JUDGE PRIDGIN: All right. Hearing none.

14 Mr. Schwarz, do you have any witnesses?

15 MR. SCHWARZ: Staff has Warren Wood.

16 JUDGE PRIDGIN: Mr. Wood, if you could come  
17 forward and be sworn, I'll swear you in in just a moment.

18 (Witness sworn.)

19 JUDGE PRIDGIN: Thank you very much, Mr. Wood.  
20 Please have a seat.

21 Mr. Schwarz, would you like to lay a  
22 foundation, or if you just want to testify?

23 MR. SCHWARZ: I think, given the nature of the  
24 hearing, he can just testify.

25 JUDGE PRIDGIN: That's fine. Mr. Wood, any

1 comments, sir?

2 WARREN WOOD testified as follows:

3                   THE WITNESS: Yes, sir. House Bill 208 was  
4 passed by the 92nd General Assembly and was signed into law  
5 by Governor Holden, making House Bill 208 effective on  
6 August 28, 2003. HB 208, Sections 393.1009 to 393.1015  
7 Missouri Revised Statute Supplement 2003 describes the  
8 definitions, parameters and procedures relevant to the  
9 filing and processing of petitions pertaining to  
10 infrastructure system replacement surcharge, or ISRS.

11                   House Bill 208, subsection 393.1015.11 and  
12 Sections 386.250 and 393.140 Missouri Revised Statutes  
13 provide rulemaking authority for implementation of sections  
14 393.1009 to 393.1015.

15                   The proposed rule that is the subject of this  
16 public hearing was developed based on the statutory  
17 provisions of HB 208, including the complaint case and  
18 prudence review provisions of Section 393.1015. Staff  
19 provided the draft language of this proposed rule to the  
20 natural gas utilities of Missouri and asked for their fiscal  
21 impacts to implement the rule.

22                   The responses to this request for the basis  
23 for fiscal impact associated with this rule --

24                   THE REPORTER: I'm sorry. Could you please  
25 slow down?

1                   THE WITNESS: I'm sorry. No effort was made  
2 to review the reasonableness of these estimated fiscal  
3 impacts.

4                   The Staff has received suggested changes to  
5 the proposed rule from several natural gas utilities. Staff  
6 reviewed these suggested changes to the rule and they were  
7 the basis for the majority of changes Staff suggested in its  
8 December 4th, 2003 filings.

9                   The deadline for public comments on this rule  
10 was December 4, 2003. Staff has reviewed all comments  
11 received and has prepared its responses to each of these  
12 suggested changes in an exhibit. Staff would like to enter  
13 this exhibit into evidence in this case and hopes it will  
14 help the Commission in its determination of final language  
15 that this proposed rule will reflect.

16                  That concludes my comments.

17                  JUDGE PRIDGIN: Mr. Wood, let me make sure we  
18 get the exhibit. Mr. Schwarz, I'm sorry. We have an  
19 exhibit that's been offered?

20                  MR. SCHWARZ: Copies have been provided to  
21 counsel.

22                  JUDGE PRIDGIN: Mr. Schwarz, thank you. I'm  
23 going to label this as Exhibit No. 1. I show this as --  
24 what is numbered as a ten-page document, also followed by  
25 five pages of attachments, four pages of Attachment A, one

1 page of Attachment B, and it is Staff's suggested changes to  
2 the proposed rule, and comments on Staff responses offered  
3 by Warren Wood. And that is Exhibit 1 entered into the  
4 record.

5 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

6 JUDGE PRIDGIN: Let me see if we have any  
7 questions from the Bench. Commissioner Murray, any  
8 questions?

9 COMMISSIONER MURRAY: Thank you, Judge.

10 QUESTIONS BY COMMISSIONER MURRAY:

11 Q. Good morning.

12 A. Good morning.

13 Q. Can you tell -- can you summarize briefly what  
14 this rule does that the statute does not do?

15 A. I would say that this rule implements House  
16 Bill 208, Sections 393.1009 to 1015, including the  
17 references that it makes to 386.390 and complaint  
18 procedures, and the mentions that it makes of prudence  
19 review provisions. I don't believe that it incorporates  
20 provisions that are not permitted by statute.

21 Q. Well, I'm asking you what it does that -- why  
22 we need the rule. What does the rule do that we couldn't  
23 look to the statutes for?

24 A. Your question comes to the need for a rule at  
25 all. Is that -- am I understanding you correctly?

1           Q.       Yes. I'd like you to explain how this rule is  
2 necessary to implement the statute, if you think it is.

3           A.       Okay. I do believe the rule is necessary to  
4 implement the statute, and the reasons are -- there's  
5 several. Two primary ones I would probably come to, one  
6 would be that the rule -- or the statute points to the need  
7 for the Public Service Commission Staff to complete its  
8 examination within 60 days, and the Commission to issue an  
9 Order no longer than -- no later than 120 days from the  
10 filing of the petition.

11                   Staff has a number of obligations in its  
12 review for that examination report that's due within 60 days  
13 that will likely involve Data Requests, receiving their  
14 petition, Data Requests, reviewing those Data Requests,  
15 potentially a secondary round of Data Requests for  
16 incomplete responses or new questions that are developed.

17           Q.       Stop just a moment and tell me where the rule  
18 addresses that.

19           A.       Oh, where the Staff examination comes in?

20           Q.       Yes.

21           A.       Okay. Certainly. Under 393.1015.2, sub 2,  
22 and if you'd like me, I can read that portion.

23           Q.       All right. Go ahead, please.

24           A.       The Staff of the Commission may examine  
25 information of the gas corporation, confirm that the



1 underlying costs are in accordance with the provisions of  
2 Section 393.1009.

3 Q. Stop there. Doesn't the statute say you can  
4 do that?

5 A. Yes. I'm reading from the statute.

6 Q. Okay. I'm asking you to read from the rule.

7 A. Oh, okay. Certainly.

8 Q. That -- you're saying you need the rule to do  
9 your investigation; is that right?

10 A. Let me find the rule here real quick.  
11 Section 11 of the rule references the -- says the Staff of  
12 the Commission may examine the information the natural gas  
13 utility provided pursuant to this rule in Sections 393.1009  
14 to 393.1015 to confirm -- and I'm now reading from Staff's  
15 Exhibit 1, the modified version of the rule -- to confirm  
16 the underlying cost and proper calculation of the proposed  
17 ISRS, and may submit a report regarding examination of the  
18 Commission no latter than 60 days.

19 Q. And how does that expand upon the rule -- I  
20 mean upon the statute?

21 A. It points to a number of issues that Staff  
22 believes are important for its review of the prudence of the  
23 incurred costs and potentially any overearnings, if any such  
24 evidence is available.

25 Q. I don't see how it points to anything that the

1 statute doesn't say, unless I'm missing something.

2           A.       You mean that the rule points to something  
3 that the statute doesn't point to? There is the additional  
4 provi-- where we say provided pursuant to this rule, as  
5 opposed to simply reflecting Sections 393.1009 to 393.1015.

6           We do put in the provision of information  
7 provided pursuant to the rule, and we do that per the  
8 statute 393.1015.10, that says nothing contained in Sections  
9 393.1009 to 393.1015 shall be construed to impair in any way  
10 the authority of the Commission to review the reasonableness  
11 of the rates or charges of a gas corporation, including  
12 review of prudence of eligible infrastructure system  
13 replacements made by gas corporation, pursuant to the  
14 provisions of Section 386.390 or the PSC's complaint  
15 provisions.

16          Q.       I'm sorry. You're going to need to slow down  
17 a little bit. Would you go back to the section of the  
18 statute you just read from, tell me what that is.

19          A.       That is -- it's basically the last page of the  
20 statute. It's 393.1015.10. It's the second to the last  
21 subsection of the statute.

22          Q.       All right. So that section of the statute  
23 really is saying -- is pointing out that this new ISRS  
24 legislation is in no way impairing the current powers of the  
25 Commission. Do you read it that way?

1           A.       Yes, I do.

2           Q.       But the ISRS statute also, when it gives the  
3 Commission authority to promulgate rules, it's very clear  
4 about Section 11 only to the extent such rules are  
5 consistent with provisions of 393.1009 to 1015. And the  
6 things that you're setting out for Staff to examine are --  
7 to examine for purposes of the ISRS, not for other purposes  
8 like prudence review or --

9           A.       The rule not only asks for the information  
10 specific to an ISRS filing, it also asks for -- well, it's  
11 still related to the ISRS filing, but not necessarily  
12 related to Staff's specific recommendation as to what ISRS  
13 amount is appropriate.

14                   But we're also asking for information that  
15 would be necessary to assess if there was prudence and/or  
16 potentially an overearnings situation associated with the  
17 incurring of those costs related to an ISRS.

18                   And I recognize that the statute's very  
19 specific in that what Staff may -- may make its  
20 determination of what an ISRS amount can be based on. We  
21 can't assess an imprudence of the incurred cost in our  
22 60-day assessment to the Commission, but we still have  
23 obligations outside of that 60-day Staff report to the  
24 Commission regarding if we believe there are issues with  
25 imprudence in the costs incurred and/or an overearnings

1 situation associated with those costs.

2           We may not be able to address those until the  
3 next general rate case, but nonetheless it's part of our  
4 obligation under the statute.

5           Q.       And at 393.1015.1 -- rather .2, paren 2, the  
6 statute states clearly that the Staff of the Commission may  
7 examine information of the gas corporation to confirm that  
8 the underlying costs are in accordance with the provisions  
9 of 393.1009 to 393.1015, et cetera, but then it states no  
10 other revenue requirement or ratemaking issues may be  
11 examined in consideration of the petition or associated  
12 proposed rate schedules.

13          A.       Agreed.

14          Q.       And you're saying that this is not examining  
15 any other revenue requirement or ratemaking issues, this is  
16 examining only the ISRS prudence issue?

17          A.       Our Staff report to the Commission in terms of  
18 what an appropriate ISRS amount would be would be based  
19 specifically, as the statute says, on 393.1009 to 393.1015  
20 provisions. But under Section 10 or the 1015.10, and in  
21 terms of -- I'm trying to find the other reference here --  
22 1015.8, so 393.1015.8 and .10 point to our obligation to  
23 review the prudence of such a cost and potential  
24 overearnings associated with such surcharges.

25               Now, in Staff's report that would be due

1 within 60 days of the petition filing, we wouldn't have a  
2 recommendation for a disallowance, but potentially notice to  
3 the Commission that such a concern is there, but nonetheless  
4 the statute only permits the surcharge as permitted in  
5 393.1009 to 1015.

6           Basically, to recap, we are -- we have an  
7 obligation to calculate the ISRS per the statute, which is  
8 quite specific to what is in that calculation, but we do,  
9 during general rate cases, have an obligation to point out  
10 prudence issues. And under 386.390, if we believe there's  
11 an overearnings situation, we would have an obligation to  
12 report that to you as well.

13       Q.     Okay. Now I'm going to go back to my original  
14 question, because I'm still having difficulty seeing why  
15 there would be a necessity for the rule, that section of the  
16 rule, that states -- and here I'm reading from your Staff's  
17 Exhibit 1, at 11, that the Staff may examine the  
18 information. The only -- the only thing that's being added  
19 there, that I see, to the statute is provided pursuant to  
20 this rule and the statute. So there must be other places  
21 then that the rule varies from the statute.

22       A.     The rule does detail what -- it basically  
23 provides the Data Request that Staff would likely send in  
24 upon the filing of the petition, and --

25       Q.     Where is that found in the rule?

1           A.       Largely that is under -- if you're looking  
2 under Exhibit 1, it's the new Section 20 in the rule. It  
3 used to be Section 18, but we've added two sections in  
4 response to some parties' comments. So now it's Section 20,  
5 basically A through O or -- yeah, A through P, and much of  
6 that details information that Staff would send out in its  
7 first round of Data Requests for two objectives.

8                   One, the petition needs to come in with  
9 information necessary for Staff to perform its review and  
10 likely have responses to its first round of Data Requests in  
11 order to have time to actually perform a meaningful  
12 examination and get a report to the Commission in 60 days.

13                   It also provides consistency in the  
14 information Staff will be asking for from the utilities and  
15 advance notice to the utilities in terms of what information  
16 we are hope -- we are hopeful will be gathered for filing of  
17 the petition.

18           Q.       Okay. And that was the first thing I wanted  
19 to establish was whether there was an actual need for the  
20 rule, and you're supporting the need based upon your thought  
21 that it -- there needs to be a rule as to the types of  
22 information that Staff will request when an ISRS is filed?

23           A.       The types of information when it will be  
24 needed, and I think the statute there are some areas where  
25 the rule provides -- and I couldn't point to them right

1 here, but there were some efforts to clarify some of the  
2 language in the statute in the rule, such as the two filings  
3 per year and things like that, in how that's clarified in  
4 the rule.

5           Q.       Okay. Now, I want to go back to probably what  
6 is the heart of the disagreement, and about -- about the  
7 rule, and that is the determination of the net original cost  
8 of eligible infrastructure system replacement. And it's  
9 somewhat embarrassing to me that it took me this many times  
10 to read the statute that I think I finally understand what  
11 the statute means, and I don't -- I don't see it meaning  
12 what the rule interprets it to mean. Because as the  
13 comments point out, it seems very clear what that eligible  
14 infrastructure system replacement means.

15                   How do you apply your calculations to  
16 infrastructure that is being retired and that is in service  
17 and used and useful and it was included in the corporation's  
18 rate base in its last general rate case?

19           A.       For questions regarding depreciation, original  
20 cost, things along those lines, that aspect of the rule?

21           Q.       Yes.

22           A.       I'll probably have to refer to Tim Schwarz.  
23 There was an exhibit -- or an Attachment B -- it's the last  
24 page of our Exhibit 1 -- prepared with the assistance of Tim  
25 Schwarz and a number of other Staff, and I believe Tim is

1 better -- in a better position to answer those specific  
2 questions.

3 Q. All right. I don't know if I want to pursue  
4 that right now or see if I want to ask you any more  
5 questions.

6 A. Okay.

7 COMMISSIONER MURRAY: Okay. I think that's  
8 all I have for you. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank  
10 you.

11 Commissioner Forbis?

12 COMMISSIONER FORBIS: Yes.

13 QUESTIONS BY COMMISSIONER FORBIS:

14 Q. Good morning, Mr. Wood.

15 A. Good morning.

16 Q. At this point I have a process question,  
17 trying to, in part, listen to Commissioner Murray and in  
18 part look at Exhibit 1. Is Exhibit 1 identical to what's in  
19 your December 4th position statement that was filed with the  
20 Commission, comments of the PSC Staff in support of? Are  
21 there changes in the exhibit from what the counsel for the  
22 other parties were already aware of that Staff is  
23 recommending?

24 A. Let me see if I can -- are you asking is  
25 Attachment A to Exhibit 1 the same as the markup of the rule



1 we proposed?

2 Q. As what's applied in this filing, yes.

3 A. Our December the 4th filing provided a subset  
4 of the recommended changes that are now included as part of  
5 Attachment A of Exhibit 1. There were additional changes  
6 made -- additional recommended changes made to our markup of  
7 the rule, based on comments received on December the 4th,  
8 basically the same day we turned in our changes. There were  
9 a number of other suggested changes that Staff didn't have  
10 any concerns with and have recommended for implementation.

11 Q. So there are changes noted in Exhibit 1 that  
12 have not been noted in other Staff filings to this point?

13 A. That is true.

14 Q. Okay.

15 A. Basically as responses to suggested changes  
16 from other parties. It's basically -- I could either  
17 provide Exhibit 1 or I could have prepared a written  
18 document and read it all into the record here. It's the  
19 same type of information. It basically provides a written  
20 form of response to all suggested changes we noticed on  
21 December 4th.

22 Q. Okay. I'm trying to consume all this. It's a  
23 bit of a challenge right here.

24 A. We were make changes this morning. I  
25 apologize for it not having been sooner.

1                   COMMISSIONER FORBIS: I understand. At this  
2 point, I think I'll wait and see what kind of response we  
3 get to the Exhibit 1. Thank you, Judge.

4                   JUDGE PRIDGIN: Commissioner Forbis, thank  
5 you.

6                   I don't believe I have any questions,  
7 Mr. Wood. Thank you very much for your testimony. We  
8 appreciate it.

9                   Mr. Schwarz, will you have any other  
10 witnesses?

11                  MR. SCHWARZ: Other than myself to address any  
12 questions, no.

13                  JUDGE PRIDGIN: Mr. Schwarz, if you would,  
14 please come forward to be sworn.

15                  (Witness sworn.)

16                  JUDGE PRIDGIN: Thank you very much, sir. If  
17 you would please have a seat. Mr. Schwarz, any comments  
18 that you have?

19 TIM SCHWARZ testified as follows:

20                  MR. SCHWARZ: I don't have any particular  
21 comments to add to what Mr. Wood has provided. I would be  
22 pleased to answer any questions that the Commission might  
23 have.

24                  JUDGE PRIDGIN: Mr. Schwarz, thank you.  
25 Commissioner Murray, any questions?

1 COMMISSIONER MURRAY: Yes, I do. Thank you.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Mr. Schwarz, when you look at the language of  
4 the statute, specifically 393.1009, subsection 3, the  
5 definition of eligible infrastructure system replacement,  
6 would you agree that eligible infrastructure system  
7 replacements, for example, were not included in the gas  
8 corporation's rate base in its most recent general rate  
9 case?

10 A. That's certainly part of the definition of  
11 eligible infrastructure system replacements.

12 Q. And to be an eligible infrastructure system  
13 replacement, it has to include everything in the  
14 definitions, does it not?

15 A. That's correct.

16 Q. And at 393.1009, 1A, the statute talks about  
17 the net original cost of eligible infrastructure system  
18 replacements, including recognition of accumulated deferred  
19 income taxes and accumulated depreciation associated with  
20 eligible infrastructure system replacements, which are  
21 included in the currently effective ISRS. Would you agree  
22 that that's what that says?

23 A. Absolutely.

24 Q. But under the rule, it appears that there  
25 would be a calculation of accumulated deferred income taxes

1 and depreciation associated with infrastructure that is  
2 being retired?

3           A.       I would say yes. The -- the Staff's  
4 understanding of the statute greatly -- the overall purpose  
5 of the statute greatly affects that. That is, Staff starts  
6 with -- from the proposition that this is a remedial statute  
7 enacted by the General Assembly to address the issue of  
8 regulatory lag as it affects the infrastructure -- eligible  
9 infrastructure system replacement. That is, it's not  
10 intended and the General Assembly clearly understands the  
11 limitations against single issue ratemaking and says, this  
12 is to be an exception to it.

13                   It is -- it is single issue ratemaking  
14 procedure to remedy the regulatory lag experienced by the  
15 util-- by, in this case, natural gas utilities for that  
16 infrastructure replacement investment.

17                   Staff believes that -- well, Staff believes  
18 that regulatory lag affects not only the company and reduces  
19 the company's earnings, but also affects consumers. That  
20 is, once the depreciation expenses that are set in a rate  
21 case occur, the depreciation expenses and the changes to  
22 accumulated deferred income taxes start working against the  
23 company, just as the company's investment in property works  
24 against the company.

25                   Staff does not see anything in the legislation

1 that indicates that, although the issue is the regulatory  
2 lag affecting this narrow band of property, this is a  
3 ratemaking procedure, and the Commission needs to address  
4 all factors that are relevant to setting the rate on this  
5 single issue.

6           And in dealing with regulatory lag, the Staff  
7 believes that it -- the Legislature intended to address not  
8 only that regulatory lag that works in favor of the company,  
9 but also the regulatory lag -- or strike that -- the  
10 regulatory lag that works in favor of the consumers, but  
11 also the regulatory lag that works in favor of the company,  
12 and that is the reason that the Staff considers factors that  
13 affect regulatory lag as they touch upon the narrow issue of  
14 the appropriate ratemaking treatment for this property.

15           That is, the General Assembly has identified  
16 the issue of an appropriate return on the investment to  
17 avoid regulatory lag, the income tax effect, the property  
18 tax effect, and the depreciation effect. And in addressing  
19 those issues, you need -- the Commission needs to consider  
20 all relevant factors that bear on those issues.

21           Q.       From your -- in your legal opinion, what would  
22 be the purpose of the language in 393.1009 A -- 1A, rather,  
23 that says, associated with eligible infrastructure system  
24 replacements which are included in the currently effective  
25 ISRS?

1           A.       I think that that addresses -- well, I think,  
2 to begin with, that it affects ISRS filings after the  
3 initial one for a particular period. That is, you can have  
4 ISRS filings in effect as long as three years, depending on  
5 the timing of company's general rate cases. They're  
6 entitled to file them every six months, not to exceed twice  
7 in a 12-month period.

8                   So if you have an ISRS in effect and the  
9 company makes a subsequent ISRS filing before it files a  
10 general rate case or rates go into effect from a general  
11 rate case, then the Staff believes that's what that language  
12 means. And I note that it uses the word "including, but not  
13 exclusively or limited to." I think that that's the purpose  
14 of that clause, to recognize the interim accruals.

15           Q.       Let's think through that a minute. If a  
16 company were coming in and applying for a second ISRS, under  
17 your interpretation, the Commission would then look at the  
18 accumulated deferred income taxes and accumulated  
19 depreciation that was associated with the ISRS property that  
20 was already in effect?

21           A.       I think that language makes that explicit,  
22 yes.

23           Q.       And how would that relate to the net original  
24 cost of the eligible infrastructure replacements? It  
25 wouldn't be that ISRS property that would be being replaced?

1           A.       No. I think that -- I think that you would  
2 have property that had been in the rate base in the last  
3 case that has been retired, and the replacement property  
4 being sought -- recovery for which is being sought in the  
5 second ISRS filing, you still need to determine the net  
6 original cost of that subset of property, but you also take  
7 into account the additional accumulated depreciation and  
8 deferred income taxes on the property that is already the  
9 subject of an ISRS.

10          Q.       And you're saying you would do that in order  
11 to determine the net original cost of the property that  
12 would be the subject of the second ISRS?

13          A.       No. Well, I think you have the same  
14 considerations for the new ISRS property as you did for the  
15 original. In addition, you have the deferred income taxes  
16 and depreciation that have accumulated on the first round of  
17 ISRS property in the intervening period.

18          Q.       Now, would the first ISRS property have  
19 been -- have gone through a true-up at that point?

20          A.       Depends on the timing. It may have or it may  
21 not have, depending on the timing of events. It's not -- I  
22 will say that's not something that I've sat down and done a  
23 process of elimination on, but I know that it would depend  
24 on the timing of the true-up, and I -- just given the nature  
25 of the beast, I would assume that you could get two filings

1 before you had a true-up of the first filing.

2 Q. And if there were a true-up, that would take  
3 care of any accumulated deferred income taxes and  
4 accumulated depreciation?

5 A. No.

6 Q. It would not?

7 A. No. The true-up for the ISRS is a true-up of  
8 the billed revenues. That is, the Commission when it sets  
9 the ISRS rate says, utility, you're entitled to collect  
10 \$1.8 million in billings to your customers. If, in fact, at  
11 the true-up period they have only billed customers  
12 1.5 million, they're entitled to bill another 300,000 under  
13 the original ISRS. If they have billed 2.1 million, they  
14 have to essentially refund that \$300,000 overcollection. So  
15 the true-up involves the company's billing of the revenues  
16 the Commission has approved.

17 Q. And at that time, the ISRS becomes no longer  
18 in effect and the company goes into rate base; is that  
19 right?

20 A. No. The property doesn't go into rate base  
21 until the next general rate case.

22 Q. So the true-up can occur before the next  
23 general rate case?

24 A. The true-up can occur -- well, the true-up  
25 occurs every 12 months.



1           Q.       All right.  And then at the next general rate  
2 case, the property --  
3           A.       Right, goes into rate base.  
4           Q.       -- no longer is in ISRS but goes into rate  
5 base?  
6           A.       Correct.  
7           Q.       As usual, statutory language is not easy to  
8 interpret, and it's -- I think the general -- it appears  
9 that the General Assembly was being very careful to  
10 delineate exactly the limitations on the Commission and what  
11 the Commission could look at in approving an ISRS.  
12                   And I understand that Staff would like to  
13 interpret it to be able to include the accumulated  
14 depreciation of the property that's being retired in order  
15 to calculate the net original cost of the replacement, which  
16 intuitively makes sense that that's -- you know, that's part  
17 of the original cost, but it appears to me that the statute  
18 is written in a way that does not allow the Commission to  
19 consider anything except the accumulated deferred income  
20 taxes and accumulated depreciation that is associated with  
21 the ISRS currently in effect.  And if there's not one  
22 current -- if there has not been one previously in effect,  
23 then the one that we're looking at approving would be -- I  
24 would think would fit the definition of the currently  
25 effective ISRS.

1           So that as the commenters have commented, we  
2 look back to the accumulated depreciation and the deferred  
3 income taxes on that piece of property at that point in time  
4 in order to determine the net original cost for definitions  
5 of the statute?

6           A.       I certainly think that -- well, as I said  
7 earlier, this is, I think, in Staff's view a remedial  
8 statute. Remedial statutes are to be liberally but  
9 reasonably construed to cure the harm that the remedy has  
10 provided for. In Staff's view, that harm is regulatory lag.  
11 That is, the General Assembly says, well, we know that the  
12 Commission can grant accounting authority orders to deal  
13 with regulatory lag, but we don't -- for this particular  
14 ratemaking issue, we don't like the remedy of an accounting  
15 authority order. We want to provide an additional remedy to  
16 cure, to address the regulatory lag that cuts against the  
17 company in circumstances where they make this kind of  
18 improvement.

19           And that's the -- that's the purpose the  
20 General Assembly had in mind. The ill that the General  
21 Assembly was trying to cure was the regulatory lag  
22 associated with this particular ratemaking issue. Staff  
23 sees nothing in the statute that would suggest that the  
24 General Assembly was intending to provide a windfall to the  
25 utilities, to provide the utilities with a recovery that was

1 greater than they needed specifically to deal with the  
2 regulatory lag involved in this infrastructure.

3           And if you -- if you consider all of the  
4 factors that affect regulatory lag, you have to consider the  
5 factors that cut both ways, in Staff's view of this  
6 particular ratemaking issue. That is, there's a single  
7 issue, but it has many factors in arriving at the cure for  
8 the ill the Legislature perceived, and that's -- that's the  
9 thrust of the proposals that Staff has made in the rule.

10          Q.       Mr. Schwarz, we're generally not subject to --  
11 our rules are generally not subject to the provisions of  
12 Chapter 536; is that correct?

13          A.       I don't -- no, I don't believe so. That is,  
14 the Commission has to follow the procedures that are  
15 specified in Chapter 536. I mean, that's something you  
16 routinely send them to the department director for his  
17 approval and follow then to the Secretary of State. You  
18 have to observe the comment periods. You hold hearings and  
19 so forth, all in accord with the provisions of Chapter 536.

20                 I would also suggest that -- and this is  
21 something that you touched on with Mr. Wood earlier. This  
22 is not a self-executing statute. For instance, the -- the  
23 only example of a self-executing law that I can think of  
24 right now is the law against nepotism. That is, if you  
25 hire -- if a public office holder hires someone within four

1 degrees relation, he forfeits the office. And it's the very  
2 act of hiring that does the trick. There's no excuses,  
3 there's no further steps to be taken except perhaps an  
4 ouster action to actually get him to leave office.

5               This is not a self-executing statute. The  
6 definitions of Chapter 536 provide that a rule is a  
7 statement of general policy and, for instance, in the  
8 statement of how you measure the twice-a-year filings,  
9 that's a statement of general policy. It's also in keeping  
10 with the provision of Chapter 536 that requires that  
11 procedures that will be binding on private parties have to  
12 be promulgated as a rule.

13              So yes, I think that you'll -- to get back to  
14 your original questions, I think that there are many aspects  
15 of the Chapter 536 rulemaking that apply to the Commission.  
16 The -- the provisions for review of the Commission's  
17 rulemakings, as the Supreme Court has said recently, proceed  
18 according to Chapter 386. But as far as the process itself,  
19 I think that's under 536.

20              Q.       And the reason I asked you that question is  
21 that, in this particular statute, the General Assembly  
22 explicitly set out the very last part of the statute, this  
23 section and Chapter 536 RSMo are nonseverable.

24              Well, let me begin before that, because the  
25 relevant portion here is, any rule or portion of a rule as

1 that term is defined in 536.010 that is created under the  
2 authority delegated in this section shall become effective  
3 only if it complies with and is subject to all of the  
4 provisions of Chapter 536 RSMo, and, if applicable, Sections  
5 536.028 RSMo.

6                   And then it goes on to state that this section  
7 in Chapter 536 are nonseverable and if any powers vested  
8 with the General Assembly -- and I'm thinking they're  
9 talking about the powers of review -- well, it says, to  
10 review to delay the effective date or to disapprove and --  
11 and annul a rule are subsequently held unconstitutional,  
12 then the granted rulemaking authority and any proposed rule  
13 adopted shall be invalid and void.

14                   And it appears that the General Assembly was  
15 clearly wanting to limit the Commission's rulemaking  
16 authority under this statute, and certainly to preserve to  
17 itself the power to review it, to annul it, whatever, if we  
18 went beyond what the statute says, which the General  
19 Assembly very clearly told us, don't do that.

20                   Now, is it Staff's opinion, is it your legal  
21 opinion that this rulemaking complies with all of the  
22 statutory requirements?

23           A.       Yes.   Yes.   I think that the -- the  
24 limitations specific -- well, to be honest, let me say that  
25 the provisions that you read, I think, are fairly commonly

1 included by the General Assembly ever since the Supreme  
2 Court basically denied to the Joint Committee on  
3 Administrative Rules the right to retroactively annul an  
4 administrative rule, saying that that violated separation of  
5 powers.

6                   I don't know of any state agency that has  
7 challenged that language since then, and I know that in a  
8 number of instances that the Joint Committee on  
9 Administrative Rules has indicated they don't particularly  
10 want to see all the Commission rules.

11                   I think that the -- however, that the critical  
12 language here is in the first sentence, that the Commission  
13 shall have authority to promulgate rules, but only to the  
14 extent such rules are consistent with and do not delay the  
15 implementation of the provisions of 393.1009 to 393.1015.  
16 That is, the Commission could not by rule say that they were  
17 suspending an ISRS tariff for 180 days.

18                   I don't believe that the Commission could, by  
19 rule, say we are going to offset against increases in ISRS  
20 costs the lower telephone bills that the company might be  
21 receiving. That is, I don't think you can expand the -- I  
22 don't think you can expand the ratemaking issue either to  
23 include more than the General Assembly intended or to  
24 include less than the General Assembly intended, and I'm  
25 comfortable that the proposed rule, as attached to the

1 exhibit, is consistent with the provisions of the ISRS  
2 statute, as I have described my understanding of what the  
3 General Assembly was intending to correct or address when it  
4 adopted this.

5                   COMMISSIONER MURRAY: Okay. I think that's  
6 all I have, Mr. Schwarz. Thank you.

7                   JUDGE PRIDGIN: Commissioner Murray, thank  
8 you. Commissioner Forbis?

9 QUESTIONS BY COMMISSIONER FORBIS:

10           Q.       Just one question, I think. I've got to ask  
11 this, Mr. Schwarz. A lot of folks in this room have made a  
12 career of trying to define legislative intent, and we all  
13 know how clearly the statutes are written, particularly in  
14 this case, so you have a very strong impression of what this  
15 is intending to do with regard to regulatory lag and that it  
16 should work both ways. I just would like to know where  
17 you're getting that.

18           A.       Well, I --

19           Q.       The crystal ball. I want to know how this  
20 works.

21           A.       Well, what does it do? I mean, it sets up a  
22 ratemaking process between general rate cases to deal with a  
23 single limited issue, and to provide a surcharge, a change  
24 in rate. I mean, there have been two -- I don't want to --  
25 these are rate cases, and the General Assembly is saying

1 that there's a general proscription. You cannot generally  
2 consider just single issues. We're -- the General Assembly  
3 is carving out an exception to do this, and I -- there's no  
4 doubt in my mind that they're doing it to provide a remedy  
5 that the general rate cases don't provide.

6           And just from the structure of the ratemaking  
7 process, it is to put into effect rates based on rate base  
8 changes that would ordinarily be recognized only in general  
9 rate cases. And given the Commission's own experience,  
10 given the General Assembly's experience, given the court's  
11 experience, I mean, regulatory lag is a concept that has  
12 been around almost since the inception of the regulatory  
13 process, and I mean it just appears to me that the -- that  
14 from the procedures that the General Assembly is providing  
15 that the issues that they're dealing with is the regulatory  
16 lag effect of investment between rate cases.

17           Now, they've narrowed it to consider just  
18 infrastructure replacement property, so they're not going to  
19 consider the cost of buying a new computer or buying new  
20 computer software or trucks or buildings or anything of that  
21 nature. They've narrowed the focus, but it's -- it's still  
22 to address the problem of regulatory lag.

23           Q.     I've still got to ask, just for my own  
24 edification, is there anything from -- that we took out of  
25 discussions during the hearings when this bill was being



1 reviewed, were there -- were there notes -- was there any  
2 other indication than our -- than Staff's general impression  
3 of the Legislature's approach to regulatory lag that's  
4 driving this interpretation?

5           A.       I don't recall. I mean -- well, to begin  
6 with, the fiscal notes that would address these particular  
7 sections weren't in House Bill 208. They're in some other  
8 bill, and I don't recall offhand what it was.

9                   Yes, I recall working on fiscal notes on  
10 things, but the only specific thing I remember commenting on  
11 -- and I haven't gone back and checked the fiscal notes that  
12 are in the Commission's records somewhere, because you send  
13 them over -- would be the location of the word average in  
14 that section that talks about if there's no -- if the  
15 Commission didn't decide capital structure and rate of  
16 return in the last case, people seem to be taking that to  
17 mean that you add up the three positions -- if there were  
18 three positions, you add them up and divide by three.

19                   That's not where the word average is placed.  
20 It needed to be placed somewhere else, and I remember making  
21 fiscal note comment on that, which, of course, were ignored.  
22 I assume they were ignored. Maybe not read, and I'm -- I  
23 would suspect that they are somewhere, but I have not  
24 reviewed those.

25                   COMMISSIONER FORBIS: I appreciate it. Thank

1 you for the discussion.

2 JUDGE PRIDGIN: Commissioner Murray?

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Yes. Mr. Schwarz, I'd like to go back to your  
5 statement about 393.1009.1A, and the meaning of eligible  
6 infrastructure system replacements which were included in  
7 the currently effective ISRS. You indicated earlier that  
8 that would affect an ISRS that was in effect during a  
9 subsequent ISRS filing?

10 A. Yes.

11 Q. Now, let's take that scenario, that there is  
12 one ISRS in effect and there's a second filing. At that  
13 time, under your interpretation of the statute, you would  
14 include accumulated deferred income taxes and accumulated  
15 depreciation associated with which assets?

16 A. Under that particular provision, it would be  
17 the assets that were the subject of the first ISRS filing.

18 Q. And that's all?

19 A. Well --

20 Q. Or you would also go back and take in the  
21 accumulated depreciation and accumulated deferred income  
22 taxes on the property that is being replaced by the second  
23 ISRS?

24 A. I think that the real driver there is, what do  
25 you mean by net original cost? I think that if you take a

1 look at the first clause of that subsection or subdivision,  
2 whatever they call it, that that's -- that's where you pick  
3 up the idea that the general -- the General Assembly is  
4 trying to net the effects of the regulatory lag caused by  
5 the ISRS investments.

6 Q. So would the property that's being retired by  
7 the second ISRS be relevant?

8 A. Yes.

9 Q. So would you include the accumulated deferred  
10 income taxes, accumulated depreciation associated with the  
11 property being retired at that time?

12 A. Yes. I think -- I think you need to look at  
13 the effect of regulatory lag at the time that you're setting  
14 the rate, and I think you look at all fact -- each time you  
15 make that.

16 Q. I understand you're saying that, and I just  
17 want to be clear on what you would include in the second  
18 ISRS filing. You would include accumulated deferred income  
19 taxes and accumulated depreciation associated with the  
20 currently effective ISRS property associated with the  
21 property being retired by the second ISRS. Didn't you just  
22 say that?

23 A. I'm not -- I'm not sure that I followed  
24 exactly the -- if you could repeat.

25 Q. Well, one, you said you would include

1 accumulated deferred income taxes and accumulated  
2 depreciation associated with the infrastructure that was the  
3 subject of the first ISRS?

4           A.       Correct.

5           Q.       Then I believe I heard you say you would also  
6 include accumulated deferred income taxes and accumulated  
7 depreciation associated with any property that was being  
8 retired at the time of the second ISRS or being replaced by  
9 the infrastructure in the second ISRS.

10          A.       I -- I'm not sure how the words match the  
11 mathematical calculation. Staff has included a calculation  
12 on Attachment B on the rate of -- or the recovery of the  
13 rate base effect of the ISRS, and it would be the same  
14 calculation for the second ISRS as it would be for the  
15 first. But I'm not sure that -- I apologize. I can't --  
16 if -- on this kind of stuff, I'm a visual learner. I have a  
17 harder time following.

18          Q.       I may not be asking the question  
19 appropriately, but an infrastructure replacement --  
20 infrastructure system replacement surcharge is to be in  
21 effect because there is some property that is being replaced  
22 with new property; is that correct?

23          A.       That's correct.

24          Q.       So at the time there is a second ISRS, there  
25 is additional property that is being replaced?

1           A.       That's correct.

2           Q.       And in the first ISRS, you're saying that  
3 replaced property, you look at its accumulated deferred  
4 income taxes and accumulated depreciation to calculate the  
5 net original cost of this property that is replacing it,  
6 correct?

7           A.       I think that's one of the elements. I think  
8 there are more. I think it's -- I did think that the best  
9 way to explain that is -- is by way of the example, and I --  
10 I think that the key, however, is that at the time of the  
11 filing of the second ISRS, the issue that the Commission  
12 addresses is, at that point in time, what is the amount  
13 required to deal with the regulatory lag effects of the  
14 additional rate base, the income tax effect of the  
15 additional revenues that are going to be generated, the  
16 property tax expense caused by the increase in the  
17 depreciation expense caused by the increase.

18                   And so that at the second, third, fourth,  
19 fifth ISRS filing, sixth ISRS filing that could occur  
20 between rate cases, the Commission's task is -- in each of  
21 those filings is the same. It's to address the regulatory  
22 lag attributable to the additional investments, and --

23           Q.       Can you just answer the question? Would you  
24 include accumulated deferred income taxes and accumulated  
25 depreciation associated with the property that would be

1 retired at that time?

2           A.       That is one element of consideration, yes.

3           Q.       And you would include all accumulated deferred  
4 income taxes and accumulated depreciation of the ISRS that  
5 was currently effective?

6           A.       Yes.

7           Q.       And would you also include accumulated  
8 deferred income taxes and accumulated depreciation  
9 associated with the infrastructure that was being the  
10 replacement infrastructure in the second ISRS?

11          A.       Yes.

12          Q.       So you would include three things there in  
13 order to determine the net original cost of the eligible  
14 infrastructure system replacement in the second ISRS?

15          A.       And I want to attach all kinds of -- my  
16 present understanding, without having gone through the cal--  
17 you know, calculations for subsequent ISRSs, my  
18 understanding is the calculation for the second ISRS will be  
19 essentially the same as they were for the first. That is,  
20 because what we're trying to do is set a rate which on a  
21 going-forward basis until the next general rate case will  
22 correct the regulatory lag, so I think that that what we  
23 would do would be pretty much the same calculation, taking  
24 into account the property that was placed in the first ISRS,  
25 as well as the property placed in the second ISRS.

1           Q.       And yet the General Assembly only set out  
2 accumulated depreciation -- or accumulated deferred income  
3 taxes and accumulated depreciation associated with eligible  
4 infrastructure system replacement which are included in a  
5 currently effective ISRS. That's the only thing -- would  
6 you agree that's the only thing the language references  
7 here?

8           A.       Well, that's what it references, but it says  
9 including. It does not say only or exclusively or limited  
10 to. It's clear that that must be, it is not clear that  
11 anything else cannot be, and I think that particularly when  
12 you look at the problem that this statute addresses, that I  
13 think the General Assembly intended to address a revenue  
14 shortfall. I do not believe they intended to provide a  
15 revenue windfall.

16          Q.       So it would be your position that if we were  
17 limited to only the infrastructure system replacement that  
18 are in the currently effective ISRS, it would have said  
19 limited to, rather than including?

20          A.       I think they certainly could have used that  
21 language, yes, and I -- I mean, given time, you can look  
22 through the statutes and they do, in fact, use such language  
23 when they so intend.

24                   COMMISSIONER MURRAY: Thank you.

25                   JUDGE PRIDGIN: Commissioner Murray, thank

1 you.

2                   Mr. Schwarz, thank you. I don't believe I  
3 have any questions. Thank you very much.

4                   Mr. Schwarz, does Staff have any further  
5 witnesses?

6                   MR. SCHWARZ: No, sir.

7                   JUDGE PRIDGIN: Thank you very much.

8 Mr. Coffman on behalf of OPC?

9                   MR. COFFMAN: Yes, I would just make a couple  
10 comments.

11                   (Witness sworn.)

12                   JUDGE PRIDGIN: Mr. Coffman, thank you very  
13 much. Please have a seat.

14 JOHN COFFMAN testified as follows:

15                   MR. COFFMAN: Thank you. It's not my intent  
16 to go over everything that we put in our comments. I think  
17 I can be fairly brief. There are a couple of of comments  
18 that we did make that may or may not be agreed to by Staff.

19                   I guess initially I should say that I think  
20 the Staff did an incredible job simply of producing the  
21 document which is Exhibit 1 in this hearing and really lays  
22 out the comments of all the parties and responds to them. I  
23 think they did a very good job, and that's a document that  
24 makes it easy to read. I know in these rulemakings it often  
25 gets very difficult when people continue to make different



1 proposals and paragraph numbers change.

2               First, I would just point you to a couple of,  
3 I think, outstanding issues, things that I think would  
4 clarify how the ISRS process would work, and Staff either is  
5 not opposed or doesn't think it's necessary. They're really  
6 kind of just implementation points in Public Counsel's  
7 initial comments. They are found on pages 4 and 5.

8               With regard to Staff's Exhibit 1, their  
9 comments on those comments, their responses are on pages 7  
10 and 8, and they have -- they are subparagraphs, in Exhibit  
11 1, lower case C, D and E.

12              The first C and D refer to the references in  
13 the rule -- or the references in the statute which clarify  
14 that the Commission can make prudence adjustments in a  
15 subsequent rate case and that there will be adjustments  
16 made. There isn't any reference in the proposed rule.  
17 Staff does not oppose reproducing or referencing those  
18 statutory provisions.

19              We think that's important so that it's clear  
20 that if some infrastructure replacement was made and later  
21 found to some degree to be imprudent, that that adjustment  
22 could be made and recognized.

23              The second point that we made, which is  
24 referenced here as Staff's subparagraph E, there is  
25 nothing in the rule that specifically addresses how the

1 reconciled amount will be dealt with. When an ISRS is  
2 zeroed out in a rate case, what happens to any overrecovery  
3 or underrecovery, we think there should be specific language  
4 making it clear as to what happens, if the money's held over  
5 and modifies a later amount or -- and then if there's any  
6 refund or collection made to correct that either over or  
7 underrecovery. We think that's important to lay out.

8                   Staff has said that they think their rule is  
9 sufficient and that it's not necessary to make these  
10 changes. So these are two points I think are still  
11 outstanding between Public Counsel and Staff.

12                   I wanted to also comment on the utility  
13 comments, specifically those of Laclede, Missouri Gas Energy  
14 and Atmos, who seem to take some offense at the rule  
15 requiring certain notification and the rule requiring a  
16 separate line billing. That really kind of took me as --  
17 took me by surprise.

18                   I think that I certainly disagree that it  
19 would be a direct violation of the statute to set out  
20 certain notice requirements and to require a separate line  
21 item to be put on the bill.

22                   I think that the Commission has clear  
23 authority to require notification. I think as far as a  
24 separate line item, that perhaps may be a matter of  
25 Commission discretion, but to me the use of the word

1 "surcharge" was always in my mind throughout any -- the  
2 legislative process and any debate clearly intended to be a  
3 separate line item. I think that's what the word  
4 "surcharge" has always implied in any regulatory setting. I  
5 think that if you look in a dictionary definition, it means  
6 something that's in excess of regular rates or something in  
7 addition to general rates, and I think that consumers have a  
8 right to see it and to understand it.

9           As to notices, I would hope that the  
10 Commission would at least require notice, you know, to each  
11 consumer individually that a proposal is being made so that  
12 each consumer has the opportunity to comment on the process,  
13 and that I would hope that there would also be individual  
14 notice once a rate was added.

15           The utilities have referred to, I guess in a  
16 footnote, the experimental low income rate, and they refer  
17 to the purchased gas adjustments, and those are rate  
18 adjustments. The low income rate that is referred to is a  
19 -- incorporated in a rate case into the expense in the cost  
20 of service.

21           The ISRS by comparison is set up based on an  
22 entirely new type of ratemaking, and it is clearly made set  
23 out apart from the general rate case, and is a separate  
24 matter.

25           And I think it's -- it's really amazing that

1 these gas utilities would suggest that -- first of all, that  
2 the surcharge would not be a notable change. I'm quoting  
3 from -- their comments on page 5 are that it would increase  
4 costs or inconvenience consumers by requiring utilities to  
5 devote more of their customer service resources to answering  
6 the increase in customer inquiries that typically occurs  
7 when there is a notable change, resources that could be more  
8 productively used in helping consumers with real problems.

9               Well, I would like to suggest that, in my  
10 experience talking to consumers almost every day, fielding  
11 calls from consumers, that there are a good number of  
12 consumers that look at their bill every day, get out their  
13 calculator and check it, and if it's not clear why their  
14 bill has changed, it is a very serious problem for them and  
15 it's a real important matter. And I think that I would just  
16 urge the Commission to use the most sufficient customer  
17 notice that is possible, and I think that that would  
18 actually reduce customer confusion rather than increase it.

19               And as to the separate line item, I think  
20 surcharge implies that it is a separate charge on the bill.  
21 I know that Missouri Gas En-- I know that it's possible, I  
22 am skeptical of some of the claims about how much it might  
23 be. I know Missouri Gas Energy has just recently proposed  
24 another tax adjustment as another separate line item on  
25 their bill. I know it can be done.

1                   This legislation, whereas maybe earlier  
2 versions had -- were more specific about setting it out in  
3 the bill, it certainly doesn't prohibit it. It's not like  
4 legislation that I've seen recently passed in Kansas which  
5 as to security costs specifically prohibit items to be set  
6 out on the bill, which I think is -- is really outrageous.  
7 But that's not what the Missouri Legislature did here, and I  
8 would urge that the Commission go ahead with the proposed  
9 rule on the notice and line item matters.

10                   That covers the comments that I thought were  
11 important, and would be happy to answer any questions.

12                   JUDGE PRIDGIN: Mr. Coffman, thank you.  
13 Commissioner Murray, any questions?

14                   COMMISSIONER MURRAY: Thank you.

15 QUESTIONS BY COMMISSIONER MURRAY:

16           Q.       Good morning, Mr. Coffman.

17           A.       Good morning.

18           Q.       Refresh my memory, if you would. The comments  
19 that you were reading from and the footnote on page 5 said  
20 that Missouri Gas Energy's ongoing experimental low income  
21 rate was funded by means of a monthly surcharge on the bills  
22 of its residential customers. Was there a monthly surcharge  
23 on the bills?

24           A.       I don't recall the term "surcharge" being  
25 used. I think it was a rate adjustment.

1 Q. Was there an additional charge to the  
2 residential customers to pay for that --  
3 A. Yes.  
4 Q. -- experimental program?  
5 A. Yes. But it was part of a general rate case  
6 and incorporated in the general cost of service.  
7 Q. But the residential customers received that  
8 additional charge, correct?  
9 A. Yes.  
10 Q. Would it be Office of Public Counsel's  
11 position that those customers should have been notified that  
12 they were receiving that charge and why?  
13 A. I think it was part of the notification of the  
14 general rate case when it was -- the Report and Order came  
15 out in the general rate case, and it was based on a  
16 settlement that that was a component that -- I mean, there  
17 wasn't a -- it wasn't a separate notice on -- to each  
18 consumer of the rate change, but there was a -- there was  
19 notice that that was something that was being included in  
20 the overall change in rates.  
21 Q. Okay. And you're saying they could have gone  
22 to the Commission and read the Order and figured out that it  
23 was there?  
24 A. Yes.  
25 Q. And that same -- if we established an ISRS,

1 they could either go to the General Assembly and read this  
2 or go to the law books and read the statutes or they could  
3 go to our rules and read or they could read the Order; is  
4 that correct?

5 A. That's correct.

6 Q. So what's the difference? Why would you think  
7 that there has to be a notice on individual bills for this  
8 surcharge, but not the experimental low income rate?

9 A. Notice is something that the Commission does  
10 now typically of general rate cases, and the experimental  
11 low income rate was part of that general rate case. So I  
12 contend they did receive notice there.

13 As to being a -- the issue as to whether it's  
14 a separate line item or not, I think that's probably  
15 discretionary with the Commission, whether it is set out  
16 separately, but I would -- I would interpret the word  
17 "surcharge" to mean separate line item, whereas the  
18 experimental low income rate was part of an overall general  
19 rate increase and was described as a rate adjustment, not a  
20 surcharge.

21 Q. But wouldn't you admit that there's not much  
22 difference? The customers are being charged an additional  
23 amount in either case; is that right?

24 A. Yes. There are two different rate  
25 proceedings. One is a general rate proceeding and one's a

1 special new type of ratemaking proceeding.

2 Q. Does it really matter to the customer what  
3 type of proceeding it was that established that new charge  
4 they're receiving? Isn't the point that you're saying the  
5 customers should know that they're being charged for  
6 something?

7 A. Yes, I think the more information the better  
8 from a consumer perspective.

9 Q. So in the future when we do something that's  
10 suggested by Office of the Public Counsel or our Staff, you  
11 would like the customers to know that they're getting an  
12 additional charge for us agreeing with you; is that right?

13 A. That can be done typically. I mean, obviously  
14 at some point it could become excessive to break everything  
15 out.

16 Q. And at what point would that be?

17 A. I don't know if I could say at this point, but  
18 it's -- I think it's rational to interpret from the statute  
19 that you have -- that you have separate line items for each  
20 type of ratemaking, and there's two -- there's now two  
21 different ways to increase rates.

22 Q. So if we do something in a general rate case  
23 and we establish all kinds of new surcharges in that general  
24 rate case, it would be your position that the customers  
25 don't need to know that in their bills that they receive?



1           A.       I'm not aware of too many things that are  
2 dealt with in a general rate case that are called  
3 surcharges. To me, the term "surcharge" implies a separate  
4 item in a separate thing. Often there are adjustments made.  
5           Q.       Okay. Now the experimental low income rate,  
6 though, was a separate item, right, separate charge?  
7           A.       It was just one component of overall cost of  
8 service.  
9           Q.       But was it done as a separate charge --  
10          A.       No.  
11          Q.       -- to the ratepayers?  
12          A.       No.  
13          Q.       It was not?  
14          A.       No.  
15          Q.       It was included?  
16          A.       Just like every other expense in the cost of  
17 service.  
18          Q.       That's what I was trying to get at, because I  
19 couldn't remember how that was set out, if it was in the --  
20          A.       There was a separate -- it was a special  
21 component of the stipulation as to how that would be  
22 calculated, but it was put in the overall, you know,  
23 accounting run, revenue requirement run, and included in the  
24 rates charged to residential consumers.  
25          Q.       And that was something that the residential

1 ratepayers would not ordinarily be required to pay; is that  
2 correct? I mean, it's not a part of their cost of service;  
3 is that right?

4 A. Well, it is based on that in that case. But  
5 yes, it's a type of --

6 Q. Is it a --

7 A. It's an item that has never been approved in  
8 prior cases that way.

9 Q. And it is a type of subsidy for one type of  
10 customer, is it not?

11 A. It could be viewed that way.

12 Q. So why would the fact that it's rolled into  
13 rates and done in a general rate case make it any less  
14 important for the customers to know that they were providing  
15 some sort of a subsidy?

16 A. Well, in my view that the -- that the general  
17 rate case procedure that the Commission uses gives customers  
18 the confidence that all relevant factors have been examined  
19 and that overall what results from a general rate case is an  
20 examination of all investments and financial considerations  
21 and expenses and so forth, and the end result of a general  
22 rate case is a wholistic result.

23 Whereas, the new ISRS ratemaking procedure is  
24 clearly designed to be something that is separate and apart  
25 from that, and is maybe an interim step to address

1 regulatory lag that is in addition.

2           I think that's what the phrase "surcharge"  
3 implies, and that this is something in addition to the  
4 process that looks at all relevant factors and by that  
5 nature, and by the term "surcharge," I think should be  
6 separately set out. But, I mean, you may be correct that  
7 the Legislature is -- is not mandating that. That may be  
8 something that's within the Commission's discretion.

9           Q.       And in terms of notice for the PGA  
10 adjustments, is it accurate that that's not on the  
11 customers' monthly bill?

12          A.       I certainly wouldn't oppose additional  
13 notification to consumers for that, but again, that's been  
14 described and is considered an adjustment and not a  
15 surcharge. The Commission could consider that a surcharge  
16 and -- or a surcredit and separately set it out. I don't  
17 think that's necessary.

18          Q.       If we were to do so, would it not create a lot  
19 of confusion, generate a lot of calls to your office and  
20 perhaps to --

21          A.       Generating a lot of calls, probably, but my  
22 position is that more information is better, and that more  
23 people would understand better with more information.

24          Q.       So you would welcome the opportunity to  
25 explain in detail the PGA clause and how it works to

1 consumers?

2           A.       I would. I would.

3           COMMISSIONER MURRAY: I'll keep that in mind.

4 Thank you.

5           JUDGE PRIDGIN: Commissioner Murray, thank

6 you. Commissioner Forbis?

7           COMMISSIONER FORBIS: None.

8           JUDGE PRIDGIN: Mr. Coffman, I don't believe I

9 have any questions for you. Thank you very much.

10          MR. COFFMAN: Thank you.

11          JUDGE PRIDGIN: Mr. Coffman, any further

12 witnesses on behalf of OPC?

13          MR. COFFMAN: No, sir.

14          JUDGE PRIDGIN: What I'd like to do, since

15 we have so many different parties here who may wish to

16 comment, let me take Laclede Gas first, because I believe

17 Mr. Pendergast has come from out of town, and because of

18 conditions of the road that might give him a chance to get

19 back out of town.

20          MR. PENDERGAST: Your Honor, I very much

21 appreciate the courtesy, but we're here for the duration and

22 it's actually Mr. McCartney who has another commitment this

23 afternoon, so if he could go before me, I would appreciate

24 it.

25          JUDGE PRIDGIN: I assume we have no objections

1 from counsel.

2 (No response.)

3 JUDGE PRIDGIN: Hearing none. Very good.

4 Mr. McCartney, do you wish to testify, sir?

5 MR. McCARTNEY: Yes, please.

6 JUDGE PRIDGIN: If you would please come

7 forward to be sworn. I'll note that your right hand is

8 raised.

9 (Witness sworn.)

10 JUDGE PRIDGIN: Please have a seat.

11 Mr. McCartney, if you could restate who your clients are and

12 then proceed whenever you're ready.

13 BRIAN McCARTNEY testified as follows:

14 MR. McCARTNEY: Thank you. And may it please

15 the Commission, my name is Brian McCartney and I'm appearing

16 today on behalf of Missouri Gas Energy. Mr. Rob Hack was

17 unable to make it here because of the weather, but MGE did

18 want to take the opportunity to present some comments at

19 this hearing. To the extent that the Bench may have some

20 questions that I'm unable to answer, MGE is happy to provide

21 written comments in response.

22 At the outset, I'd like to say that since the

23 initial issuance of the proposed emergency rules on this

24 topic, MGE has had a number of discussions with the

25 Commission Staff regarding the content of the proposed rule,

1 and although we are pleased that a number of our suggestions  
2 have been incorporated into Staff's comments, we believe  
3 that significant work needs to be done to make the rule  
4 consistent with both the spirit and the letter of the  
5 provisions of HB 208, and I'd like to briefly touch on three  
6 points that are of particular concern to MGE.

7           The first point is that, although Staff has  
8 suggested removing the phrase "line item" from Section 8C,  
9 continuing to require that each bill identify the existence  
10 and the amounts of the ISRS is, in fact, a line item  
11 requirement. And as explained in our comments, this is  
12 contrary to the legislative intent, as can be seen by  
13 examining an earlier version of the bill, SB 125, as  
14 originally introduced and as I think was referred to by  
15 Mr. Coffman earlier.

16           May I hand the Bench a copy of that?

17           JUDGE PRIDGIN: You may.

18           MR. MCCARTNEY: Thank you.

19           JUDGE PRIDGIN: And, Mr. McCartney, I'm going  
20 to identify that as Exhibit No. 2 for the record, if you  
21 could briefly identify that, please.

22           MR. MCCARTNEY: Certainly. This is Senate  
23 Bill No. 125, which was the original ISRS proposed  
24 legislation. And I would just like to refer the Commission  
25 on page 2 there, you'll see that originally as proposed, the

1 legislation did point to a separate line billing item. That  
2 provision was not included in the final version of the  
3 legislation that was passed as HB 208, and I think that may  
4 also go to Commissioner Forbis' question about legislative  
5 intent.

6           My second point, although Staff has suggested  
7 another rewrite to the definition of net original cost of  
8 eligible infrastructure replacements in Section 18-0, this  
9 third rewrite is no more consistent with the legislative  
10 intent apparent from the statutory language itself than its  
11 earlier attempts to rewrite that definition.

12           MGE's initial comments addressed this point  
13 adequately, but MGE does want to echo the point made by  
14 Laclede that the most recent Staff rewrites of the  
15 definition of net original cost of eligible infrastructure  
16 replacement is simply not capable of being done, in addition  
17 to being contrary to the plain language of the statute.

18           Like almost all utilities, MGE uses mass asset  
19 accounting. Facilities relocations have never been  
20 separately identified on the company's books historically,  
21 and MGE is unable to go back in time to reconstruct those  
22 items to derive the accumulated depreciation on these items,  
23 as the Staff's most recent rewrites of the definition  
24 apparently seeks.

25           And even though the SLRP, which stands for

1 safety line replacement program, additions were initially  
2 tracked for accounting authority purposes, once they go into  
3 rate base, they become a part of the mass asset accounting  
4 process and lose their identifiability.

5           Also, the ISRS process is quite similar to the  
6 AAO process -- that stands for Accounting Authority Order --  
7 in the sense that it separately tracks cost items associated  
8 with specific plant items, except instead of creating a  
9 deferral to be reckoned with in the next general rate  
10 proceeding, a discrete rate element is implemented which is  
11 zeroed out in the next general rate proceeding.

12           A component of the AAO process has always been  
13 the calculation of the return, carrying costs on the net  
14 value of SLRP additions, meaning the original cost of those  
15 SLRP plant additions minus accumulated depreciation specific  
16 to those items. It has never been argued that a broader  
17 view of accumulated depreciation should be captured in the  
18 AAO process and it is similarly inappropriate in these  
19 circumstances.

20           Finally, the Staff's proposed rewrite appears  
21 to be premised on the notion that depreciation expense is  
22 intended to provide for the replacement of facilities. This  
23 is simply not so, and this is plainly stated in the text of  
24 Accounting for Public Utilities. This is a learned treatise  
25 on the subject of accounting of public utilities.



1                   May I approach the Bench and just provide a  
2 brief excerpt from that text?

3                   JUDGE PRIDGIN: You may.

4                   MR. MCCARTNEY: Thank you.

5                   JUDGE PRIDGIN: Mr. McCartney, I will label  
6 that as Exhibit No. 3. If you could, please briefly  
7 identify that.

8                   MR. MCCARTNEY: Yes. This is an excerpt from  
9 the text Accounting for Public Utilities. The title page,  
10 the first page of the text, and then Section 6.03, an  
11 excerpt from that section on the purpose of book  
12 depreciation accounting.

13                   And I would just ask to point the Commission's  
14 attention to the sentence that says, it should be remembered  
15 that book depreciation is provided for the purpose of  
16 recovering the original investment in the assets concerned  
17 and not for providing for their replacement. And I think  
18 that may go to some of the questions that Commissioner  
19 Murray had about the depreciation and recovery questions.

20                   Finally, my third point is that, as to the  
21 data requirements that are contained in the proposed rule  
22 which MGE has pointed out are beyond the scope of the ISRS  
23 proceeding, even Public Counsel admits in paragraph K,  
24 pages 5 through 6 on Attachment A of Public Counsel's  
25 comments that these additional data requirements are only

1 necessary to assess prudence, something that can occur only  
2 in the course of a general rate case proceeding.

3           Therefore, requiring production of this  
4 information in the course of an ISRS filing is contrary to  
5 Section 393.1015.2, which provides that, quote, no other  
6 ratemaking or revenue requirement issues may be examined in  
7 the course of the ISRS filing, end quote, as well as Section  
8 393.1015.11 which provides that any Commission rules  
9 regarding the ISRS must be consistent with the provisions of  
10 Sections 393.1009 through .1015.

11           So in conclusion, MGE would ask that -- to  
12 bring more certainty to the ISRS process and to prevent any  
13 further tinkering with the statute that is already quite  
14 clear on its face, MGE would ask that the Commission issue  
15 the rule as proposed by the Missouri Gas Utilities. Thank  
16 you.

17           JUDGE PRIDGIN: Mr. McCartney, thank you.  
18 Commissioner Murray?

19           COMMISSIONER MURRAY: Thank you.

20 QUESTIONS BY COMMISSIONER MURRAY:

21           Q. Mr. McCartney, I'd like you to address, if you  
22 would, Staff's interpretation of 393.1009.1A that says,  
23 including recognition of accumulated deferred income taxes  
24 and accumulated depreciation associated with infrastructure  
25 replacement which are included in the currently effective

1 ISRS is not limiting language, but it's -- it just means  
2 that you can include that. Would you agree that more can be  
3 included in determining the -- in making that calculation?

4           A.       I'm afraid that's one of the questions that I  
5 would have to discuss with MGE, because I can't answer that  
6 question right now. I can get you an answer.

7           Q.       All right. Let me go beyond that and just say  
8 hypothetically you did agree that it would include -- could  
9 include more than that.

10          A.       Okay.

11          Q.       Your objection to the accumulated depreciation  
12 on retired -- property that's being retired, would you  
13 explain that a little bit more as to why, in your view, it  
14 is inappropriate to include that? And I guess it goes back  
15 to your reference to the Accounting for Public Utilities and  
16 the purpose of providing for depreciation, the purpose of  
17 depreciation was provided in the assets that are being  
18 retired was to recover the original investment in those  
19 assets; is that right?

20          A.       I'm sorry. I'm just -- I'm not very familiar  
21 with the depreciation issue, and I would ask to defer to --  
22 to speak with Mr. Hack and make sure I get you the best  
23 answer to your question.

24          Q.       Do you agree that there is a legitimate  
25 purpose for a rule and not -- I know you don't agree with

1 the rule as it's written, but for a rule to give some  
2 guidance as to the implementations of the statute?

3           A.       In this case, I'm not sure I believe that the  
4 rule is necessary. The statute is quite clear, MGE  
5 believes, on its face, and I'm not sure that a rule is, in  
6 fact, necessary. So we may disagree with Staff on that  
7 point.

8           Q.       Do you think there's any value in clarifying  
9 up front what kind of documentation or information that the  
10 Staff would request to investigate the application of an  
11 ISRS?

12          A.       Are you talking about in discussions with  
13 Staff prior to an ISRS filing or in --

14          Q.       In a rulemaking.

15          A.       -- as set forth in a rulemaking?

16                   I'm not sure. I know that MGE has been  
17 discussing both the rulemaking and ISRS issues with the  
18 Staff. I don't know that it -- that it adds much to  
19 actually have that set forth in a rule.

20                   COMMISSIONER MURRAY: All right. Thank you.

21                   JUDGE PRIDGIN: Commissioner Murray, thank  
22 you.

23                   Commissioner Forbis?

24 QUESTIONS BY COMMISSIONER FORBIS:

25          Q.       Good morning.

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1           A.       Good morning.

2           Q.       How far are you going?  Hope it's not going to  
3 be a nasty drive.

4           A.       No.

5           Q.       Good.  I know I have at least one question on  
6 something you said, so I'll start with that.  On the line  
7 item billing question --

8           A.       Yes.

9           Q.       -- I did note that Staff had recommended  
10 deleting the word "line item," but not the entire clause or  
11 phrase as you did, as you suggested.  So could you explain  
12 to me again why you think that's not going to address your  
13 concerns?

14          A.       MGE believes that even though Staff has agreed  
15 to take out that initial use of the word "line item," that  
16 what, in fact, is contained in the rule would still be a  
17 line item requirement.  So even though that one use of the  
18 word "line item" or the phrase "line item" that was removed,  
19 Staff still seeks a line item.

20          Q.       I'm trying to figure out what taking out the  
21 term "line item" -- I was trying to think in my own mind  
22 what that would mean.  For example, on a bill for your  
23 company that you're representing or others, do you sometimes  
24 find maybe a paragraph at the bottom that says there are  
25 other charges included in your bill which are?  And so say

1 there was a paragraph that already existed on the bill and  
2 what -- for example, one approach would be you would just  
3 add in ISRS to that paragraph, would that not be acceptable  
4 to the company?

5           A.       I think MGE objects to the line item, and I  
6 think --

7           Q.       In any way?

8           A.       Yes. But -- and when I think of line item,  
9 I'm a little more familiar with the telephone side of  
10 regulation, and when I get a bill from my cellphone company  
11 or my telephone company, there is a list where they  
12 delineate a number of different charges such as the E911  
13 charge, the Federal Universal Service Fund charge and so  
14 forth. Those are line items that are set forth separately.

15          Q.       And so the company you're representing would  
16 not like that -- is not supportive of a like concept on  
17 their part?

18          A.       That's correct. And again, I'm a little more  
19 familiar with the telephone bills, but I understand that MGE  
20 objects to the line item requirement in Staff's proposed  
21 rule.

22          Q.       Could you elaborate on why?

23          A.       It's -- initially it's not required by the  
24 rule, as I mentioned before.

25          Q.       I got that. Is that the only issue with it?

1           A.       In MGE's filed comments, they also add that  
2 that may add some confusion. It may also tax their consumer  
3 service resources with questions about that, as opposed to  
4 more pressing --

5           Q.       You're right. Thank you for reminding me of  
6 that. So there's a -- they have a concern that, by pointing  
7 it out separately, it would generate too many calls that  
8 would overwhelm their consumer services section?

9           A.       That's just one of the concerns that MGE has.

10          Q.       They haven't attempted any kind of estimate as  
11 to how many calls they think might be generated or how many  
12 people they have answering the phones?

13          A.       Not that I'm aware of. That's certainly a  
14 question that I can check with MGE on, if you'd like me to  
15 do so.

16          Q.       I might like to know that, yeah. I was trying  
17 to figure out, then -- I thought I had a question on your  
18 point 3 on the data requirements. At first I thought I  
19 heard you say that you weren't interested in providing  
20 anything which might be used at some point, even in the  
21 eventual ratemaking prudence review process, but that's not  
22 what you're saying, is that correct? You're talking about  
23 the data requirements on the scope of an ISRS, even though  
24 some of the information -- the information that might be  
25 requested would be relevant at some point, perhaps, or

1 appropriate?

2           A.       I believe so, in a prudence review, yes, in  
3 the general rate case.

4           Q.       So the company would rather wait until that  
5 point to submit that information, rather than perhaps along  
6 the way, if you will, throughout the intervening months as  
7 ISRS charges are assessed and that sort of thing?

8           A.       I believe so, your Honor. I would want to  
9 check that, but I believe that's correct. And there are a  
10 number of other companies.

11          Q.       To talk about that?

12          A.       Yeah, that can also address that issue.

13                   COMMISSIONER FORBIS: Thank you. I appreciate  
14 it.

15                   JUDGE PRIDGIN: Commissioner Forbis, thank  
16 you.

17                   I don't believe I have any questions.  
18 Mr. McCartney, thank you very much, and while you're there,  
19 will MGE have any further witnesses?

20                   MR. McCARTNEY: No, your Honor.

21                   JUDGE PRIDGIN: Mr. McCartney, thank you very  
22 much. You may step down.

23                   This looks to be a real reasonable time to  
24 break for lunch. We would like to resume at approximately  
25 1:15 unless anybody can voice any serious objections.



1 (No response.)

2 JUDGE PRIDGIN: All right. Hearing none, we  
3 will go in recess, then, until 1:15. We are off the record.

4 (A BREAK WAS TAKEN.)

5 JUDGE PRIDGIN: We're back on the record. The  
6 time is approximately 1:20 in the afternoon. I believe we  
7 last heard from Brian McCartney. Let me see if we have any  
8 witnesses from Laclede Gas Company.

9 MR. COOPER: I think on the record it was  
10 mentioned that Mr. McCartney had another engagement this  
11 afternoon. However, I don't know that we formally excused  
12 him from this afternoon's proceeding. So I would like to  
13 ask on his behalf that he be excused this afternoon.

14 JUDGE PRIDGIN: I understand you're with the  
15 same firm as Mr. McCartney?

16 MR. COOPER: I am.

17 JUDGE PRIDGIN: I see no problem with that.  
18 Any objections?

19 (No response.)

20 JUDGE PRIDGIN: All right. Mr. McCartney is  
21 excused.

22 Mr. Pendergast, any witnesses for Laclede Gas?

23 MR. PENDERGAST: We have two, your Honor,  
24 beginning with me.

25 JUDGE PRIDGIN: If you would come forward to

1 be sworn.

2 (Witness sworn.)

3 JUDGE PRIDGIN: If you would please have a  
4 seat and, Mr. Pendergast, if you'll just briefly identify  
5 yourself for the record and then give your comments.

6 MICHAEL PENDERGAST testified as follows:

7 MR. PENDERGAST: My name is Mike Pendergast,  
8 and I'm vice president and attorney with Laclede Gas  
9 Company.

10 Should I continue?

11 JUDGE PRIDGIN: Yes, sir, whenever you're  
12 ready.

13 MR. PENDERGAST: I appreciate the opportunity  
14 to be here today and comment on the proposed rule. This is  
15 the first time I've had an opportunity to sit in this chair,  
16 and decided to mark the occasion by ruining yet another  
17 white shirt by inexplicably putting my ballpoint pen in  
18 without a cap on it, so I'll try to do better if I can.

19 I want to go ahead and echo some of the  
20 comments that were made by Mr. McCartney. Staff has made a  
21 number of changes to the proposed rule or suggested a number  
22 of revisions to the proposed rule in response to discussions  
23 we had and material we sent them and we're appreciative of  
24 that fact. Despite that movement, however, we do believe  
25 that there are some additional changes that still need to be

1 made to the proposed rule in order to make it consistent  
2 with the ISRS provisions of House Bill 208.

3           We've addressed what we think those revisions  
4 are in fairly significant detail in our comments that were  
5 submitted by Laclede and several other gas utilities, and I  
6 don't want to belabor the record by going through each of  
7 those again. I think I'd like to just go ahead and make a  
8 few general observations, and then have Mr. Buck come up and  
9 perhaps answer some questions in more detail about the  
10 depreciation and accounting areas that have been discussed  
11 somewhat today.

12           We've also made some concessions, I think, in  
13 what we've done with our rule. For example, on the notice  
14 provision, the statute itself technically requires and  
15 mandates the Commission publish notice whenever there's an  
16 ISRS filing. Although that's the only kind of notice that's  
17 provided for in the rule, we do think it makes sense to go  
18 ahead and try and inform customers about this charge and  
19 inform them about what it's designed to do. So we've  
20 indicated our concurrence with, at the time you make an  
21 initial ISRS filing, sending something out to each  
22 individual customer advising them of what the ISRS is and  
23 what it's designed to do, and also providing the kind of  
24 annual notice that Staff has referenced in its comments, and  
25 it's also included in the proposed rule.

1                   But like anything else, you know, I think you  
2 have to go ahead and approach these things with a certain  
3 degree of reasonableness, and certainly by sending  
4 individual notices to customers, not just when you make an  
5 initial ISRS filing but on an annual basis, explaining what  
6 you're doing, you're really providing significantly more  
7 notice than what customers generally get, for example, with  
8 respect to a PGA change. And a PGA change can involve a  
9 significantly greater change in rates than anything that you  
10 would contemplate being affected by an ISRS.

11                   We're going, obviously, not just one step  
12 better than that, but two steps better than that by  
13 providing individual notice to customers, as opposed to just  
14 a press release by the Commission, and doing it not just  
15 once but doing it on an annual basis. And we think that  
16 that's more than sufficient and, quite frankly, goes beyond  
17 what the Commission requires right now for changes like the  
18 PGA.

19                   And there is a concern there that if what you  
20 do is just show a charge on the customer's bill that really  
21 doesn't say what it's about and what it's for and, quite  
22 frankly, we have limitations on what we can do in that  
23 regard because we have a postcard bill that only has a  
24 limited amount of space, that it doesn't really encourage  
25 customers becoming more advised of what's really going on,

1 but is the kind of thing, because you're not giving them an  
2 explanation like you can on the initial notice.

3                   And on the annual notice, it is simply going  
4 to go ahead and cause confusion and cause phone calls and,  
5 you know, that's something that would happen whether what  
6 you were putting on the bill was something that said ISRS  
7 notice or ISRS charge or you put something on the bill that  
8 said low income weatherization charge or you put something  
9 on the bill that said low income program charge. All of  
10 those kind of things would engender those kind of calls.

11                   And I don't really know that when you have  
12 customer service people who are working to go ahead and try  
13 and have service restored to people or have service  
14 initiated for people and that sort of thing, that using  
15 their time in that fashion is the most productive thing you  
16 can do, particularly when you have other avenues that are  
17 being used for explaining to them what's going on.

18                   On the regulatory burden, Commissioner Murray  
19 asked a number of questions about that, and obviously there  
20 is a lot more detailed information that's being required in  
21 the proposed rule than what is referenced in the  
22 legislation. And I think today Mr. Wood indicated that a  
23 significant amount of that information, at least, is being  
24 asked for so that Staff can go ahead and perhaps conduct a  
25 prudence review which, of course, they're entitled to do in

1 a general rate case proceeding under the legislation.

2                   Our view is that if and when those issues  
3 arise in a general rate case, we have Data Request  
4 procedures established that can be used to gather that  
5 information, but requiring that they be provided each and  
6 every time that you file an ISRS just doesn't make a whole  
7 lot of sense to us and tends to complicate the proceeding.

8                   Once again, I'd reference the PGA process  
9 where, when you file for a PGA change or even file for an  
10 ACA change, you provide information sufficient to allow  
11 Staff to determine that you've calculated in compliance with  
12 your tariff, but you don't at that time also file reams of  
13 information that's designed to go ahead and show whether  
14 those costs were prudently incurred or not.

15                   It's understood that those kind of  
16 examinations will be made later on, and that avenues will be  
17 available for asking those questions later on, and you're  
18 not to go ahead and complicate the process by asking for  
19 that information now. So I think there's good precedent  
20 for -- not to mention what's in the statute for not  
21 requiring that kind of information to be provided up front.

22                   And finally, and as I said, Mr. Buck will  
23 address these issues in greater detail, but we do have a  
24 concern with the net original cost definition that is  
25 included both in the original proposed rule, as well as the

1 one that is included in the revision that Staff has gone  
2 ahead and proposed.

3           Everybody has their different interpretations  
4 of what the Legislature may or may not have meant, and  
5 there's been some discussion today by Staff and it's also in  
6 their comments about the Legislature meant to address  
7 regulatory lag and do it in a way that would be fair to both  
8 the customer and the consumer.

9           We all have our ideas of what fairness is. We  
10 also have our ideas of what other things the Legislature may  
11 have intended. For example, making sure that there are  
12 adequate resources for timely recovery of the kind of costs  
13 that the utility really has very little control over,  
14 because they're either mandated by statute or mandated by  
15 the Commission or by federal authorities or local  
16 authorities, and that it wanted to go ahead and provide a  
17 different kind of vehicle for allowing those costs to be  
18 recovered.

19           But what I would say is that whatever you  
20 think the Legislature's intent is concerned, as Mr. Schwarz  
21 indicated, they have provided a remedy and they have been  
22 very specific about what that remedy is, and they've been  
23 very specific about how that remedy is to be applied.

24           And I think the biggest issue we have is that,  
25 contrary to what we think the Legislature has very clearly

1 said and very clearly  
2 outlined in language that's more exact and precise and  
3 comprehensive than any other statute that involves rates  
4 I've ever seen is that it's supposed to be the net original  
5 cost of facility plus any accumulated depreciation of the  
6 facilities that were included and affected by ISRS.

7                   And I've been in the business for about  
8 20 years, and net original cost, to me, has always meant  
9 it's the original value of the facility or original cost of  
10 the facility less any depreciation that you've accrued on  
11 that facility at the time that you seek to put it in rates  
12 or at the time you include it in a filing.

13                   For example, if I have a \$100 plant item and  
14 it has a 2 percent depreciation rate and there's a six-month  
15 lag between the time you put it in service and the time you  
16 reflect it in rates, that's going to be half of 2 percent,  
17 \$100 or \$1, so the net original cost of that's going to be  
18 \$99.

19                   And you can call that net original cost or you  
20 can call it net book value, but that's the term that I am  
21 familiar with and have always been familiar with. And I've  
22 never been familiar with net original cost being defined as  
23 the net original cost of this facility less either the  
24 retirement value of other facilities that's being replaced  
25 or less the accumulated depreciation on facilities that are



1 different.

2                   And I think when you add that to the fact that  
3 the legislation specifically says the net original cost of  
4 eligible facilities, and eligible facilities are very  
5 specifically defined as facilities that haven't been  
6 included in rates and as facilities that don't produce new  
7 revenue, saying that that allows us to go ahead and also  
8 take into consideration facilities that are included in  
9 rates, I just really don't think you can go ahead and square  
10 that with the specific language of the statute. I think  
11 that's particularly true when you look at other provisions  
12 of the statute that say the Commission can only consider  
13 current depreciation rates on eligible infrastructure  
14 replacement.

15                   If you're going to take into consideration  
16 accumulated depreciation on facilities that are already  
17 included in rates, you necessarily have to look at what  
18 depreciation rates have been on facilities that aren't  
19 eligible infrastructure facilities. And once again, that's  
20 another indication that the Legislature did not mean for the  
21 Commission to take that into consideration.

22                   So I think that needs to go ahead and probably  
23 be addressed no matter what you do with the proposed rule.  
24 I think it's fair to say that this is the first -- or this  
25 is the third instance where Staff has proposed an

1 alternative way of trying to deal with this issue. In the  
2 original rule it was, let's try and make the determination  
3 by subtracting the net book value of retired facilities from  
4 whatever the original cost of those facilities.

5           In the Missouri-American case, it was a case  
6 of using some ratio of accumulated depreciation that's  
7 accrued since the last rate case compared to all your plant  
8 additions that have accrued since the last rate case. And  
9 now we have a third way of doing it in this case, or being  
10 proposed in this case, which is accumulated depreciation of  
11 ISRS like facilities that were included in rates.

12           And given the fact that we've been looking at  
13 different ways of doing this in different contexts, I think  
14 it is important for the Commission to make some kind of  
15 determination of what that rule means.

16           And that's all I have, and I appreciate the  
17 opportunity to address.

18           JUDGE PRIDGIN: Mr. Pendergast, thank you.  
19 Let me see if we have questions from the Bench.

20           Commissioner Murray?

21           COMMISSIONER MURRAY: Thank you.

22 QUESTIONS BY COMMISSIONER MURRAY:

23           Q.     Good afternoon, Mr. Pendergast.

24           A.     Good afternoon, Commissioner.

25           Q.     Is it correct that you're saying that even if

1 we were -- even if the language in the statute which says  
2 including recognition of accumulated deferred income taxes  
3 and accumulated depreciation associated with eligible  
4 infrastructure system replacement, et cetera, did not limit  
5 us because it uses the word "including," but even if that is  
6 the case, that to consider the accumulated depreciation that  
7 Staff is wanting to include and determining the net original  
8 cost of eligible infrastructure system replacement, that  
9 that is not an accurate way to calculate the net original  
10 cost?

11           A.       Yes. I think that's correct, Commissioner. I  
12 mean, the focus throughout the statute in virtually every  
13 provision that you look at is always on eligible  
14 infrastructure facilities, which have a very specific  
15 definition and which, under that definition, very explicitly  
16 preclude anything that's already reflected in rates.

17                   And so I think if -- if you take those  
18 provisions into account and you take into account the great  
19 care with which the Legislature went to say what eligible  
20 infrastructure facilities were, that the only conclusion you  
21 can reach is that you look at the depreciation on those  
22 eligible infrastructure replacement and that's all you look  
23 at.

24                   You don't look at the depreciation that's  
25 accrued or been incurred on ineligible infrastructure

1 replacements that, by their very nature, are the kind of  
2 facilities that Staff is proposing be taken into account.

3 Q. And let's say you were trying to determine the  
4 net original cost of some other property unrelated to the  
5 ISRS. Would you look at anything in making that  
6 determination other than the accumulated depreciation and  
7 deferred income taxes for that particular property?

8 A. No, no. I think that that's all you would  
9 look at is, what is the original cost of that facility minus  
10 the depreciation, if you will, that has accumulated on that  
11 facility since it was first placed in service; in other  
12 words, the undepreciated value of it or undepreciated cost  
13 of it.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE PRIDGIN: Commissioner Murray, thank  
16 you.

17 Commissioner Forbis?

18 QUESTIONS BY COMMISSIONER FORBIS:

19 Q. How are you doing?

20 A. Pretty good, thank you, Commissioner.

21 Q. Sorry about your shirt.

22 A. Thank you.

23 Q. We're excited to have you here today. I took  
24 my pen out of my pocket.

25 I'm going to ask you a question on the

1 notification issue, and just get your opinion or your  
2 impression to date. Do you think that the Commission has  
3 the authority to direct how those notices should be crafted  
4 and/or sent out and how often?

5           A.       You know, I think that's sort of an open  
6 question. I mean, I think you could have a view of the law  
7 which would say the Legislature said publish a notice when  
8 it's first filed, and the Legislature meant that to be the  
9 sole and exclusive kind of notice that would go ahead and be  
10 given. You know, we're not taking the position that that's  
11 all the Commission should do.

12                   As I said, we've agreed that having the  
13 utility instead of the Commission provide notice and not  
14 only -- not do it by publication but send it to individual  
15 customers is a reasonable thing to do. And so we're not  
16 going to go ahead and fight that. But I do think that the  
17 more you ingraft onto it and the more kinds of notices you  
18 require, the further it strays from the legislation.

19                   So my view would be that by the time you add  
20 the surcharge onto it, particularly since that's an item  
21 that was specifically removed from an earlier version of the  
22 legislation, that you do reach that point.

23           Q.       Does your company have any sense of how many  
24 extra phone calls might be generated through these messages  
25 on the bills, even as part of some sort of a generic monthly

1 paragraph, for example?

2           A.       The honest answer to that, Commissioner, is  
3 no. We haven't tried to go ahead and do that kind of  
4 analysis. Our sense of it is just based on experience that  
5 we've had before that it would not be insignificant, but  
6 we -- we did not attempt to go ahead and do a calculation on  
7 that.

8           Q.       On the information that might be relevant for  
9 prudence reviews, the company is not concerned with --  
10 you're not saying you wouldn't submit it at the appropriate  
11 time. You just don't want to submit it during an ISRS  
12 process. And again, is your concern there just that you  
13 don't have to or that you're afraid that the Staff will use  
14 it somehow? I mean, what's the rationale behind wanting to  
15 wait to submit it until the rate case?

16          A.       Yeah. I think the rationale is -- aside from  
17 whatever technical things we want to say about the statute,  
18 I think the rationale really is that the Staff is going to  
19 have an opportunity to obviously ask this information and  
20 have it be provided at the appropriate time.

21                   The ISRS really was designed to be a  
22 streamlined process for allowing timely recovery of these  
23 particular costs without a lot of extraneous issues being  
24 interjected into the process. And one of the things it did  
25 was to go ahead and say, yes, ratepayers will be protected,

1 we will have the mechanism for prudence reviews, and that  
2 will be done in the context of a rate case.

3           And it just seems to me that under those  
4 circumstances, burdening the ISRS process by having us have  
5 to go ahead and explain what sort of RFP process, if any, we  
6 used for doing relocation projects or other kind of projects  
7 that are eligible for recovery, having us go ahead and talk  
8 about what sort of funds were used for purposes of funding  
9 the ISRS, particularly when the legislation says, this is  
10 how you're going to go ahead and calculate it, and those  
11 kind of things that might be relevant perhaps to a prudence  
12 review at some later time, there's just no reason to require  
13 that all that information be gathered, that it all be  
14 provided and it be provided each time you make an ISRS  
15 filing.

16           It does tend to complicate both the  
17 informational requirements that you have to go ahead and  
18 provide and impose a burden that I don't think was  
19 contemplated. But certainly I think Staff is entitled to  
20 receive that information and at the appropriate time when  
21 there's a rate case, you ask for it.

22           Q.       So the burden on the company in cost of  
23 gathering the data, submitting it, that sort of thing, is  
24 that the kind of burden you're talking about?

25           A.       Yeah, I think it's that kind of burden, and I

1 think it's also, you know, the sort of burden that comes  
2 with having additional information just sitting around that,  
3 you know, quite frankly, I don't know what the purpose of it  
4 would be.

5                   But it would seem to me that if the  
6 Legislature has specifically said, this is not the type of  
7 examination that needs to be made at this time, it just  
8 strikes me as kind of strange that you would nevertheless  
9 provide that kind of information at this time.

10                   COMMISSIONER FORBIS: Okay. I think I'll stop  
11 there. Thank you.

12                   JUDGE PRIDGIN: Commissioner Forbis, thank  
13 you.

14                   Commissioner Clayton?

15 QUESTIONS BY COMMISSIONER CLAYTON:

16           Q.       Good afternoon. If you would bear with me, I  
17 wasn't able to be here this morning due to a number of  
18 domestic issues that kept me from making it to the hearing  
19 today. So if I repeat some things that came up, I apologize  
20 for that.

21                   But I'd like talk about this depreciation  
22 issue, because as we move forward in this, I'm still  
23 learning about it. First of all, do you have a copy of the  
24 rule in front of you?

25           A.       I do.



1           Q.       Can you -- with regard to your comments on the  
2 net original cost --

3           A.       Yes.

4           Q.       -- of the ISRS, could you direct me in the  
5 rule to the provisions that you're referring to?

6           A.       Yes. And I -- I would direct your attention,  
7 I actually have a red-line version, but it's section --  
8 subsection O of Section 18. And I do not have the Staff's  
9 revised revision on that. I have the original one in the  
10 proposed rule.

11                    Thank you, Jim.

12                    And as you can see there, Commissioner, it's  
13 now -- if you are looking at Staff's revised one, I think  
14 it's now Section 20, because they've added a few sections,  
15 and it's still subsection O, though.

16           Q.       I'm glad you mentioned that because I was  
17 already looking at the wrong document.

18           A.       Yes. Yes.

19           Q.       I want to make sure that we're on the same  
20 page here.

21           A.       It's 20. Subsection O would be the relevant  
22 language.

23           Q.       Okay. And could you just walk me through,  
24 because I think some of the comments are -- assume perhaps  
25 more knowledge that what some of us have coming into these

1 sort of rate cases. Can you walk me through subsection O  
2 and explain to me the concerns that Laclede has within this  
3 language?

4           A.       Certainly. And I think the concerns all  
5 originate with the language that's in the parentheses in O,  
6 which purports to go ahead and, I think, define how net  
7 original cost is supposed to be considered. And it says,  
8 the original cost of eligible infrastructure system  
9 replacements, net of the accumulated deferred income taxes  
10 and the accumulated depreciation associated with the types  
11 of property listed below that are currently included in  
12 rates and for property included in the currently effective  
13 ISRS, the accumulated deferred taxes and the accumulated  
14 depreciation associated with the projects included in that  
15 ISRS.

16                   And I think the language that gives particular  
17 concern here is when it starts talking the accumulated  
18 deferred income taxes and accumulated depreciation  
19 associated with the types of properties listed below that  
20 are currently included in rates. Essentially what that does  
21 is it says, let's look at the depreciation that has  
22 accumulated on property that's currently reflected in rates,  
23 and let's use whatever that amount is as an offset to the  
24 original cost of that property for purposes of calculating  
25 ISRS revenues.                   And in our view, when the

1 legislation says look at the net original cost of the  
2 eligible infrastructure replacements, and it says, including  
3 the accumulated depreciation on any eligible infrastructure  
4 replacements or infrastructure replacements that are  
5 reflected in a current ISRS, it did not mean to go ahead and  
6 include facilities that are included in rates, because  
7 that's specifically defined as not being an ISRS eligible  
8 facility.

9                   And I don't think the legislation could have  
10 been any clearer on that. Obviously the impact of this is  
11 to substantially decrease the amount that you can go ahead  
12 and recover by taking this cost item associated with  
13 ineligible facilities and having that used to net against  
14 what you can recover.

15           Q.       So your concern would be this offset from the  
16 infrastructure that existed prior to the replacement  
17 infrastructure --

18           A.       That's correct.

19           Q.       -- is that an accurate statement?

20                   I'll tell you what. I lost one of my contacts  
21 this morning so I was looking at you with one eye behind the  
22 screen and it was like looking at you behind a swimming  
23 pool, so I apologize for that.

24                   Back to this property, can you explain -- I  
25 mean, I'm not sure how much of an accounting background that

1 you have. Can you explain to me the concept of having such  
2 an offset? I guess I'm asking you because I wasn't here to  
3 ask these questions of Staff. What would be the rationale  
4 of having that offset for the accumulated depreciation on  
5 the other property?

6           A.       Well, you know, just speculating as to what  
7 Staff's purpose for providing that might be, I think that  
8 their view would probably be that you had included in rates  
9 over the years depreciation that has accumulated on these  
10 facilities that have been in the ground, and that for some  
11 reason it's appropriate to use that depreciation that is  
12 accumulated over that period of time as a net offset to  
13 whatever you're trying to recover on unrelated facilities  
14 today. And quite frankly, I'm not sure that I understand  
15 why that's appropriate.

16                   I think MGE, Mr. McCartney gave you some  
17 materials earlier that talked about, really, the purpose of  
18 depreciation being to go ahead and return to a utility the  
19 value, if you will, or the investment it's made in a  
20 facility that's in the ground, as opposed to being used to  
21 fund new investment that's being made.

22           Q.       Can you tell me whether that accumulated  
23 depreciation on the removed infrastructure, that offset  
24 would come up in a general rate case or would it ever come  
25 up in any sort of ratemaking purpose in the future, if not

1 in an ISRS?

2           A.       I think -- I think in a general rate case, you  
3 look at where you are on everything, and everything gets  
4 incorporated together and -- and then you make some, you  
5 know, kind of determination of what the rates should be,  
6 based on those various factors.

7                   And -- but once again, I -- you would also in  
8 a rate case have other items that were taken into  
9 consideration that were increasing and had increased since  
10 the last case that aren't being taken into account in this  
11 ISRS filing, and those are items that obviously affect the  
12 utility adversely financially.

13          Q.       Do you have a concern about the accumulated  
14 deferred income taxes language that was in that section?

15          A.       Yes.

16          Q.       Or just accumulated depreciation?

17          A.       I think both.

18          Q.       Can you explain to me how the accumulated  
19 deferred income taxes would apply in this instance?

20          A.       I could only explain that very poorly, and so  
21 I'd like to go ahead and allow my other witness to.

22                   COMMISSIONER CLAYTON: I'll leave it at that.  
23 I'll leave you alone. I just love having lawyers under  
24 oath. So thank you.

25                   JUDGE PRIDGIN: Mr. Clayton, thank you.

1                   Mr. Pendergast, I don't have any questions for  
2 you. Thank you very much. You may step down. And do you  
3 have another witness to call?

4                   MR. PENDERGAST: Glen Buck.

5                   JUDGE PRIDGIN: Mr. Buck, if you'd come  
6 forward and be sworn, please.

7                   (Witness sworn.)

8                   JUDGE PRIDGIN: Thank you very much, sir. If  
9 you would please have a seat.

10                  THE WITNESS: Thank you.

11                  JUDGE PRIDGIN: Mr. Buck, if you'll briefly  
12 identify yourself and then give your comments, please.

13 GLEN BUCK testified as follows:

14                  THE WITNESS: Certainly. My name is -- or  
15 good afternoon, by the way. My name is Glen Buck. I work  
16 for Laclede Gas Company and I'm the manager of financial  
17 services. I've been working for Laclede for approximately  
18 17 years and have been involved with rate matters generally  
19 over probably about 15 of those 17.

20                  Like I said, I am the manager of financial  
21 services for Laclede, and in that capacity, I'm generally  
22 familiar with expenditures made by Laclede on projects that  
23 are eligible for recovery under ISRS. I'm also familiar  
24 with the requirements of HB 208. Our position on the  
25 original version of the proposed rules, together with our

1 suggested revisions, has been discussed at length in the  
2 joint comments that were submitted by Laclede, as well as  
3 several other gas utilities. Accordingly, I'll limit my  
4 comments to just a few of the further revisions that are  
5 being proposed by the Commission Staff and other parties.

6           In at least one major area, the Staff has  
7 recommended a revision of the proposed rule that goes  
8 entirely in the wrong direction, in my opinion.  
9 Specifically the revision would be even more financially  
10 detrimental to utilities and less consistent with what I  
11 believe HB 208 requires and what was originally included in  
12 the proposed rule. I'm referring to the Staff's proposed  
13 revision to subsection -- I believe it's now 20 of  
14 Exhibit 1, of their revision of the proposed rule, in which  
15 it defines the net original cost of eligible infrastructure  
16 facilities to include the accumulated depreciation  
17 associated with ISRS-like facilities in order to reflect in  
18 the rates. I strongly disagree with that revision and do  
19 not believe that this revision should be adopted for several  
20 reasons.

21           First, such a definition is completely  
22 unworkable in that it would require the determination of  
23 what portion of our accumulated depreciation is associated  
24 with ISRS-like facilities that have previously been included  
25 in rates. However, we simply do not have nor are we

1 required to track over time the historical data that defines  
2 what plant was associated for replacements or relocations  
3 versus what plant that was installed to serve new customers.  
4 Moreover, in my view it would be virtually impossible to go  
5 back and reconstruct this information.

6           I'd like to, perhaps, frame this with an  
7 example. Assuming we put some service in the ground in  
8 1957, that service may have been replacement for previous  
9 service, it may have been a new service that goes in to  
10 serve a new customer. Now we're going to replace it. We  
11 have to determine the net value. Well, in 1947 we -- first  
12 off, is it a replacement, so it's eligible to be covered  
13 under the ISRS or not?

14           Okay. If we determined that it is a  
15 replacement for a previously installed piece of pipe, then  
16 we have to sit there and look since 1957, what were the  
17 depreciation rates on that piece of property or that plant  
18 over time? The depreciation rates have changed virtually  
19 many -- in many cases, case by case, period by period. So  
20 in 1957 it may have been 2 percent; in 1959 it may have been  
21 3 percent; in 1964 it may have gone back down to  
22 2 percent. It's administratively very difficult, very  
23 burdensome to do and may be pretty much unrealistic to be  
24 able to quantify that.

25           The second point I'd like to make about that



1 1947 or 1957 piece of property is that if depreciation rates  
2 had been set correctly over time, that plant when we take it  
3 out of the ground should be fully depreciated at that point;  
4 in other words, net book value should be zero. If it's not  
5 zero, the odds are just as likely that it will be  
6 overdepreciated as it would be underdepreciated.

7                   And where this is important is utility  
8 companies work under what's known as mass property formula  
9 depreciation. We don't look at property specific plant and  
10 try to figure out what the net value is, because the  
11 difference between what the depreciated cost of that is  
12 versus another piece of property all works into this thing  
13 that's known as a theoretical reserve. And when you set  
14 depreciation rates in every rate case, the over and under  
15 recoveries of a specific piece of property are all taken  
16 into consideration in determining what that mass property  
17 depreciation rate would be.

18                   Second, I think the definition is inconsistent  
19 with what my understanding is of what the Legislature  
20 requires by its plain terms and intent, as set out in the  
21 language of this legislation and that mandates accumulated  
22 depreciation be determined and apparently reflected in the  
23 rates based on plant that is ineligible for ISRS inclusion  
24 under the express language of HB 208.

25                   There's simply nothing in the statute that I

1 can see that would indicate that the depreciation associated  
2 with noneligible plant, and that is specifically defined as  
3 plant that is not included in the ISRS rates, can be taken  
4 into account when establishing ISRS revenues. In fact, the  
5 statutes indicate just the opposite.

6               Third, such a definition is inappropriate  
7 because it would be using effective -- or excuse me -- let  
8 me start that over.

9               Third, such a definition is inappropriate  
10 because it would use -- effectively eliminate, depending on  
11 one's interpretation of the somewhat ambiguous language of  
12 the Staff's proposed revision, much or even all of the cost  
13 recovery that we would otherwise be entitled to under the  
14 ISRS mechanism.

15              In fact, given the amount of accumulated  
16 depreciation that would be associated with our historical  
17 ISRS-like plant, assuming it could ever be determined, I'm  
18 quite certain that, in strict adherence to the wording of  
19 Staff's proposed revision, recognition of depreciation  
20 potentially wipe out the entire ISRS charge. I don't  
21 believe such a result was intended by the Legislature.

22              Fourth, for my years of experience in  
23 ratemaking, I am unaware of anyone defining the net original  
24 cost of facility in either the manner set forth in the  
25 proposed rule or in the revised manner that Staff has

1 proposed in its comments.

2           To the contrary, the net original cost of  
3 facility or item plant has always meant the net original  
4 cost of that specific facility, net of any depreciation it  
5 has accrued on that specific facility. It has never, to my  
6 knowledge, been defined as meaning the original cost of one  
7 facility, net of the depreciation that's accumulated on some  
8 other facility or alternatively the net book value of  
9 associated facilities that have been retired.

10           Staff brought up in their comments the concept  
11 of an AAO, and I think the Accounting Authority Order AAO  
12 example referred by Staff -- or referred to by Staff in  
13 their comments is a good illustration of this point. In its  
14 comments, Staff states that the purpose of HB 208 was to  
15 provide relief to utilities for regulatory lag that would  
16 otherwise be provided through AAOs. I don't agree with nor  
17 does the language address this characterization of the  
18 purpose of HB 208.

19           Let's accept that at face value. Let's assume  
20 that it was meant to address regulatory lag. If you do  
21 accept this at face value, that the ISRS mechanism was to be  
22 a substitute for AAOs, I don't think there's any way you can  
23 conclude that either proposed rule or Staff's revised  
24 definition of net original cost is appropriate. If you look  
25 at what the Staff says about AAOs at page 2 of its comments,

1 you'll see that the Staff's analysis that an AAO permits a  
2 utility to defer for future recovery carrying costs for, and  
3 I quote, new plant investment, as well as depreciation  
4 expense and property taxes for such, and I quote again, new  
5 investment.

6                   In other words, just like the ISRS mechanism,  
7 as is spelled out in the tariff or in the statute, the  
8 entire focus of the AAO is on the new plant investment.  
9 Accordingly, nowhere in the AAO process have utilities  
10 typically been required to offset their deferred amount to  
11 reflect net book values of old plant that may have been  
12 retired, or any other property for that matter, nor has the  
13 utility been required to offset the amount of such deferrals  
14 that is -- by accumulated depreciation that's accrued each  
15 year between rate cases on plant that was already included  
16 in rates, as Staff's revised definition would require.

17                   Instead, what's been reflected in the deferral  
18 is the net original cost of the facility as we see it's  
19 defined for purpose of ISRS, which is original cost less  
20 accumulated depreciation on that specific property. So if  
21 you want to use AAO as a guidepost, I don't see how you can  
22 reconcile that mechanism with the definition of net original  
23 cost --

24                   THE REPORTER: I'm sorry. You need to slow  
25 down.

1 THE WITNESS: I'm sorry.

2 So if you want to use the AAO as a guidepost,  
3 I don't see how you can reconcile that mechanism with the  
4 definition of net original cost either the rule or the Staff  
5 is proposing.

6 And to touch for one moment on the concept of  
7 regulatory lag, it's important to note that the provisions  
8 of HB 208 will only partially mitigate, but not ameliorate,  
9 the effects of regulatory lag. Because of the requirements  
10 for a six-month delay and, thereafter, a four-month review  
11 process of ISRS eligible plant, by the time an ISRS  
12 surcharge goes into effect, the first dollar spent on the  
13 day after the ISRS was filed will not start -- or will not  
14 be recovered, the first penny, for at least ten months after  
15 the ISRS plant went into place.

16 And please remember that no ISRS eligible  
17 revenues or ISRS investments will generate any incremental  
18 additional revenues. These are only costs that are done for  
19 safety purposes, and not attached to new customers. If the  
20 legislation is going to be a cure for regulatory lag, both  
21 positive and negative for the company, a more efficient rule  
22 could have and would have presumably been enacted.

23 Finally, when we question whether the rule was  
24 even necessary, given the specificity to which the ISRS  
25 process had been spelled out in the statute, we do think

1 that it's important the Commission bring some consistency to  
2 this area, as Mr. Pendergast had previously spoken to.  
3 While the language -- excuse me one second.

4           I will also say that in an effort to address  
5 some of the concerns addressed by Staff related to this  
6 regulatory lag, Laclede and several other utilities were  
7 willing to live with and, in fact, suggested the revised  
8 language that Staff has reflected in section -- I believe  
9 it's still 1E of the comments to allay Staff's fears  
10 concerning overcollection of ISRS facilities.

11           While that language, which offsets  
12 depreciation and property taxes recovered through an ISRS by  
13 the depreciation of property taxes that was being incurred  
14 on the retired plant, is not in technical compliance with  
15 the statute, we nevertheless are willing to accept that  
16 approach if it will help resolve this matter.

17           I appreciate your time and I look forward to  
18 answering any questions you may have. Thank you.

19           JUDGE PRIDGIN: Mr. Buck, thank you. Let me  
20 see what questions we have from the Bench.

21           Commissioner Murray?

22 QUESTIONS BY COMMISSIONER MURRAY:

23           Q.     Yes. The last thing that you were talking  
24 about, that you said you're willing to accept?

25           A.     Section 1E.

1 Q. Okay. So there, there's some inclusion of the  
2 annual depreciation expenses and property taxes on related  
3 facility retirements?

4 A. And again, the concept behind -- if the  
5 concept was to deal with regulatory lag, take a picture at a  
6 point in time. The ISRS plant, depreciation's calculated on  
7 gross plant. So let's say you had a \$1,000 facility that  
8 was in the ground and the current rates -- and the  
9 depreciation rate was 2 percent. The current rates are  
10 providing -- I hope I'm doing my math okay, since my  
11 calculator died -- would be \$20 a year.

12 Now, you take that facility out of the ground,  
13 a \$1,000 facility, and put a \$2,000 facility in. What your  
14 calculation of depreciation rates at that point in time  
15 would be \$2,000 times 2 percent or \$40 a year. We're  
16 already receiving the \$20 a year on depreciation on plant  
17 related to the facility that was in the ground, and all  
18 we've done is we've taken one pipe and said, you used to be  
19 worth \$1,000 and now you're worth \$2,000, so the correct  
20 amount of depreciation we should be receiving is \$40 at that  
21 point.

22 So what this language is trying to accommodate  
23 is to make sure that we're not picking up the \$40 plus the  
24 \$20, that we're only picking up the \$40 on plant that exists  
25 currently in place.

1           Q.       That property that was worth \$1,000  
2 originally, that's not retired when the \$2,000 property is  
3 put in place under your scenario?

4           A.       Yes, it is, ma'am. And that's what my point  
5 would be, is that if there is concern that we're going to be  
6 recovering the depreciation expense on plant that was in the  
7 ground that's not there anymore and on the new plant that  
8 replaced it, this language will accommodate that. It will  
9 make it so we're really only recovering the depreciation  
10 expense related to plant investments that we have as of that  
11 day.

12                   COMMISSIONER MURRAY: Okay. I appreciate your  
13 explanation of these things, because it is pretty  
14 complicated for nonaccountants to understand, but thank you.

15                   THE WITNESS: Thank you.

16                   JUDGE PRIDGIN: Commissioner Murray, thank  
17 you.

18                   Commissioner Forbis?

19                   COMMISSIONER FORBIS: No.

20                   JUDGE PRIDGIN: Commissioner Clayton?

21                   COMMISSIONER CLAYTON: Thank you, Judge.

22 QUESTIONS BY COMMISSIONER CLAYTON:

23           Q.       I'd like to try something, and I don't know if  
24 this is going to work. You have a copy of the rule in front  
25 of you, do you not?



1           A.       The rule and the statute, yes, sir.

2           Q.       The new Section 20, sub O, which I was talking  
3 earlier to Mr. Pendergast, and the concerns that you-all  
4 have, I would like to talk about the concerns in this net  
5 original cost of ISRS, infrastructure system replacements.  
6 What I'd like, if possible, if you're able to do this, if  
7 you could give me an example with some numbers and walk me  
8 through what happens under subsection O with some examples,  
9 as you mentioned here five minutes ago with, you know,  
10 existing infrastructure in the ground and then replacing it.  
11 If you could give me an example, and then give me an example  
12 of what should happen under what -- under your  
13 interpretation of what the law is. Can you do that for me?

14          A.       Sure. Could you give me just one moment to  
15 read this?

16          Q.       Sure.

17          A.       Okay. Thank you. Our biggest investment is  
18 mains and services. We also have some cars and computer  
19 equipment, et cetera, but our biggest equipment is mains and  
20 services. This language specifically, as I read it and as  
21 it relates to ISRS, is primarily related to the replacement  
22 of those mains and services. Well, since we have a  
23 distribution system that has 23,000 miles worth of pipe and  
24 700,000 service lines, that's once again where our major  
25 investment is.

1                   Okay. Over time, we probably accumulated --  
2 and I'm making a number up here --let's say \$600 million  
3 worth of investment in mains and services that have existed  
4 in previous rates, so they currently sit on our books, and  
5 that depreciation expense on that is maybe approximately --  
6 in fact, I may actually have this number, if you hold on one  
7 moment.

8           Q.       And I don't want you to feel like you have to  
9 be tied in with that. I'm more looking toward --

10          A.       You're looking for --

11          Q.       -- your reflection.

12          A.       Okay.

13          Q.       And I'd like to walk through a sample  
14 calculation under what is proposed in this rule and what you  
15 think is supposed to be under the statute.

16          A.       Okay.

17          Q.       So don't feel like you have to come up with  
18 exact figures or anything even remotely close to what's out  
19 there.

20          A.       Okay. I'll give this -- I'll give it my best  
21 shot.

22          Q.       Sure.

23          A.       Okay. Let's go back to assume \$600 million  
24 worth of investment and assume a 2 percent depreciation  
25 rate. Okay. So that \$600 million was included in rates in

1 our last case, and so if we'd been out of rates for -- let's  
2 once again assume two years, that would be \$60 million,  
3 which is \$600 million times 2 percent times two years,  
4 \$60 million of accumulated depreciation on the previously  
5 existing non-ISRS-eligible plant that would be used as an  
6 offset under Staff's proposed rules or proposed revision to  
7 the rule to any new investment we've put in in plant.

8 Q. I want to stop you right there. I want to go  
9 back. You said 60 million in accumulated depreciation in  
10 non-ISRS plant?

11 A. \$600 million worth of mains and services,  
12 which is ISRS-like plant. So if you take \$600 million times  
13 the 2 percent per year --

14 Q. You get \$60 million.

15 A. -- is \$60 million.

16 That's the amount of accumulated depreciation  
17 since the last case that we've had in ISRS-like plant, but  
18 that includes -- that includes the new services that were in  
19 the ground to support customers, that includes a main that  
20 was put into place in 1923, that includes a service that was  
21 placed in the ground in 19 -- or in the year 2003 that was  
22 actually used to serve a new customer, which by its nature  
23 is defined as non-ISRS plant. It includes all that  
24 different types of property that was not covered nor will it  
25 ever be covered in an ISRS calculation.

1                   So you've got \$60 million of non-ISRS  
2 accumulated or non-ISRS depreciation in those two years. If  
3 we had gone out and invested \$60 million in service line  
4 renewals --

5           Q.       New money?

6           A.       New money in service line renewals,  
7 relocations, for example, where we're doing a major  
8 relocation for the airport expansion, service line renewals,  
9 main replacement programs, main relining programs, service  
10 replacement programs, we've invested \$60 million over the  
11 last two years --

12          Q.       In ISRS?

13          A.       -- in eligible property.

14                   Under the wording that the Staff has and their  
15 revisions to the proposed rules, the net ISRS investment  
16 that the company would be receiving a return on would be  
17 zero, because we've invested \$60 million and we've had  
18 accumulated depreciation on all of this other main in  
19 service that was in the ground never was considered for  
20 ISRS. 60 million minus 60 million is zero.

21                   You have the net effect to the company is  
22 that we've invested another \$60 million since the last rate  
23 case that we've gone and had to go out and finance, and we  
24 need -- essentially we're having trouble paying for that.  
25 We've had \$60 million now that we've invested for other --

1 that we've had to go out to the capital markets and has a  
2 return requirement. Yet under the Staff's scenario, our net  
3 investment would be zero.

4                   Okay. Under the way we would interpret the  
5 ISRS rules, we don't even look at the accumulated  
6 depreciation related to all that mains -- all the mains and  
7 all the services that were there previously. What we would  
8 do, is we would take the \$60 million and you would assume,  
9 once again, this 2 percent depreciation rate. That would  
10 be -- it's a lot easier, for some reason, on the \$60  
11 million. That would be \$600,000 per year, or for two years  
12 \$300,000 each year of accumulated depreciation on the new  
13 eligible ISRS plant.

14                   So you take \$60 million and you subtract off  
15 \$600,000 for a net \$59,400,000 that would be ISRS eligible  
16 plant for purposes of generating return on it. So the  
17 difference in that case -- and I realize I took a very  
18 extreme example, and I hope that's all right -- but the net  
19 effect on that would be a difference on -- in return, which  
20 is approximately 10 percent, on \$59,400,000.

21           Q.       Other than the language in subsection O on  
22 this net of accumulated -- excuse me -- this net cost of  
23 eligible construction system replacement, is there any other  
24 language in the rule outside of subsection O that mentions  
25 this or with which you have concerns on this issue?

1           A.       On this particular issue, no. I don't believe  
2 so. In fact, that's -- I believe what the Staff was trying  
3 to do was -- the concept of net original cost was referred  
4 to in the statutes. And I believe what the Staff is trying  
5 to do was say, well, we don't -- there wasn't a definition  
6 in there. Let's create a definition for net original cost.  
7 And I'm just afraid, in my opinion, they went a little far  
8 afield. General accounting parlance has always been net  
9 original cost is the original cost of an asset less the  
10 depreciation on the asset.

11          Q.       Where would that be written? Is that in the  
12 textbooks, in history books?

13          A.       I couldn't cite an authority on it. I just  
14 know -- again, I've been in this -- been doing this for  
15 about 17 years.

16          Q.       General accounting standards?

17          A.       General accounting standards, yes, sir.

18          Q.       What's the board called, the --

19          A.       The Financial Accounting Standards Board,  
20 FASB.

21          Q.       FASB is what it's called. Okay.

22          A.       Yes, sir.

23          Q.       Is there a definition by them for what net  
24 original cost is?

25          A.       Frankly, I'm pretty sure that there is. I

1 couldn't cite it right off the top of my head. One caution  
2 I should give you-all is I'm really not an accountant.

3 Q. What?

4 A. I'm actually a finance person. I said the  
5 same thing. In 1998 I also led the placement of a new  
6 accounting system at Laclede Gas Company, and I questioned  
7 then, I said, you realize I'm not an accountant. Anyway,  
8 they've dragged me kicking and screaming into the accounting  
9 world.

10 Q. Well, don't tell me you're a lawyer then?

11 A. I'm certainly not a lawyer.

12 Q. Let's not get too aggressive with that. What  
13 is your -- what is your background? You say finance?

14 A. It's a degree in business administration. I  
15 obviously have had a lot of accounting course work. My --  
16 my degree specialty was in finance, however. That said,  
17 with the experience that I've had and the responsibilities  
18 I've had over time -- please don't tell my boss this -- I  
19 probably actually --

20 Q. That's all right. It's on the record and on  
21 the Internet. Don't worry. You're safe here.

22 A. I believe I probably qualify as an accounting  
23 executive under -- I would qualify as accounting executive  
24 under the new rules related to financial disclosure.

25 Q. Do you-all have an accountant that will be

1 testifying today?

2           A.       No, we don't.

3           Q.       Have any accountants testified today?

4           A.       I'm about as close as you're going to get, I'm  
5 afraid.

6           Q.       All right. They don't let them out of the  
7 office, I suppose. Can you explain to me how accumulated  
8 deferred income taxes play into this?

9           A.       Sure.

10          Q.       And you-all don't believe those should be  
11 included either?

12          A.       Oh, no. I guess maybe I should clarify. We  
13 don't have any troubles with the accumulated deferred income  
14 taxes and accumulated depreciation related to the ISRS plant  
15 that was placed in service subsequent to the last rate case.  
16 Fundamentally, that's --

17          Q.       It's the connection with the type of property?

18          A.       It's the connection with this other property  
19 that was never involved in ISRS calculations.

20          Q.       Okay. Well, can you explain to me how  
21 accumulated deferred income taxes would work associated with  
22 the ISRS property?

23          A.       Sure. Let's take the \$60 million investment  
24 in ISRS eligible property again. For purposes of book  
25 reporting, we're depreciating that at 2 percent a year,



1 which is \$1.2 million. For IRS purposes -- for IRS  
2 purposes, we are able to utilize accelerated depreciation on  
3 that property, and currently there's also something known as  
4 bonus depreciation, which allows us to not only accelerate  
5 the depreciation on that property, but also take an  
6 additional, I believe it's 50 percent credit, of all  
7 eligible property right now that you're allowed to deduct  
8 for tax purposes.

9                   So whereas for book purposes we're deducting  
10 \$1.2 million, for tax purposes on that \$60 million, we may  
11 actually be taking a tax deduction on something closer to  
12 \$30 million. So that \$30 million in additional tax credits  
13 or additional money we doled out for tax purposes -- and  
14 let's take a simple -- let's assume a 40 percent tax rate.  
15 \$30 million times 40 percent would be around \$12 million  
16 that we would have as a deduction.

17                   That amount, that \$12 million difference  
18 between book and tax or book tax -- book taxes and tax taxes  
19 is a credit that we would take against the ISRS eligible  
20 property, because we have use of those funds at that point.  
21 We certainly agree that, yes, you should take into  
22 consideration the deduction for that.

23                   COMMISSIONER CLAYTON: I understand. Okay.  
24 Well, I appreciate your explanation with the examples. I  
25 know that wasn't necessarily easy, but I appreciate that.

1 Thank you for your time.

2 JUDGE PRIDGIN: Commissioner Clayton, thank  
3 you.

4 Mr. Buck, I don't believe I have questions for  
5 you. Thank you very much. We appreciate to your time and  
6 comments, sir.

7 Mr. Pendergast, any further witnesses for  
8 Laclede?

9 MR. PENDERGAST: No further witnesses, your  
10 Honor.

11 JUDGE PRIDGIN: All right. Thank you very  
12 much.

13 Mr. Fischer, do you have some testimony on  
14 behalf AmerenUE and Atmos?

15 MR. FISCHER: Your Honor, we don't have any  
16 accountants that we would like to offer. We do have a  
17 lawyer who could come forward and answer questions. Both  
18 companies, though, have filed written comments. Atmos has  
19 filed comments with the other gas utilities. Ameren filed  
20 separate comments, and they stand by those comments.

21 I'd be happy to come forward and answer  
22 questions, but otherwise, I would just direct you to those  
23 comments. We would concur in the comments that have been  
24 made on the record this morning by the other utility  
25 representatives.

1 JUDGE PRIDGIN: Mr. Fischer, thank you. Let  
2 me see if we think we'll have any questions from the Bench.  
3 Commissioner Murray, do you think you'll have any, or do you  
4 need a moment?

5 COMMISSIONER MURRAY: I think I do have one  
6 related to that section O, and I probably -- this isn't just  
7 for you, Mr. Fischer.

8 JUDGE PRIDGIN: Mr. Fischer, could I trouble  
9 you to come forward and be sworn, please. I'll note that  
10 your right hand is raised.

11 (Witness sworn.)

12 JUDGE PRIDGIN: Thank you very much,  
13 Mr. Fischer. If you would just very briefly identify  
14 yourself for the record.

15 JIM FISCHER testified as follows:

16 MR. FISCHER: My name is Jim Fischer, and I'm  
17 an attorney representing Atmos Energy Corporation and  
18 AmerenUE in this case.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Mr. Fischer, I think Ameren disagrees with the  
21 20, subsection O that was just being discussed also; is that  
22 right?

23 A. That's correct, your Honor, to the extent it  
24 would go to other property other than the actual ISRS -- or  
25 ISRS property itself.

1           Q.       And that is a part -- that is included in the  
2 list of things that Staff would be requiring at the time a  
3 petition is filed; is that your understanding?

4           A.       Yeah, it's in that list. I think now in  
5 section 20, it includes -- subsection O would be part of the  
6 information you provide.

7           Q.       And as to the net original cost of the  
8 infrastructure system replacement, how would you want that  
9 to read? Would you want it just to track the statute  
10 exactly?

11          A.       I would think that would be appropriate. Net  
12 original cost is defined, I believe. It's certainly a  
13 common accounting term.

14          Q.       I think the problem is that it wasn't defined  
15 specifically.

16          A.       I would think the NARUC manual -- if no place  
17 else we could go to on the depreciation, the NARUC manual  
18 talks about that. That's a manual, Judge, that's been out  
19 there for 30 years, at least, that talks about depreciation  
20 concepts.

21          Q.       And as far as the rest of that section goes,  
22 the amount of the cost and the breakdown of those costs  
23 identifying which of the following project categories apply  
24 and the specific requirements being satisfied by the  
25 infrastructure replacements for each, are those items that

1 are set out objectionable as well?

2           A.       I think if it was limited to the original cost  
3 of eligible infrastructure system replacement, net of  
4 accumulated deferred income taxes and the accumulated  
5 depreciation associated with the ISRS plant, that would be  
6 sufficient. It's whenever we expand it to any other plant  
7 that the companies have a problem.

8           Q.       And the information that was referred to  
9 earlier as being information that would be necessary to do a  
10 prudence review, is Ameren also saying that that information  
11 should not be required at the time of the filing of the  
12 application for the ISRS?

13          A.       I think Ameren certainly wants to cooperate  
14 with Staff and the Commission on whatever information is  
15 necessary, but there's a concern, I think, about codifying  
16 into the rule. That's unusual to do that. I think we'd  
17 prefer that we try just the informal Data Requests. They  
18 have standard Data Requests in PGA cases, and you can use  
19 that kind of an approach, rather than attempting to codify  
20 it into a rule at this point in time.

21                   Down the road, if it appears that everybody's  
22 wanting the same information year after year, I guess you  
23 could -- you could codify it, but at this point it seems  
24 unnecessary, since the Staff certainly could ask you  
25 information about those kinds of investments in the context

1 of a rate case.

2 Q. Do you think there's need for the rule?

3 A. Generally, I think Ameren and Atmos feel that  
4 the statute is very specific, and with the exception of  
5 these information requests, there's really not a lot that  
6 the rule adds. And specifically you can't go beyond the  
7 rule by the terms of the statute. So from that standpoint,  
8 I think the companies question whether there's really any  
9 need to have it codified in a rule at this point.

10 Q. So you don't see any -- any advantage  
11 accomplished by the rule?

12 A. Certainly if it's going to introduce concerns  
13 like on the depreciation issue, I think it's not helpful.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE PRIDGIN: Commissioner Murray, thank  
16 you. Commissioner Forbis?

17 COMMISSIONER FORBIS: Yes, Judge.

18 QUESTIONS BY COMMISSIONER FORBIS:

19 Q. Since you're up here, what the heck. In your  
20 filing for the Ameren filing, there's nothing specific about  
21 the notification issue, just that Ameren sort of generally  
22 agrees with what the other companies have said. Do you have  
23 anything specific to add about that? The changes that were  
24 made by Staff address your concerns? You still don't --

25 A. I think Ameren's concern is that whatever

1 notice requirements, if they are added to the rule, that  
2 they not be so burdensome that it would be a disincentive  
3 for the company to utilize this particular regulatory  
4 mechanism. They haven't gotten specific about one line or  
5 how many notices to provide. They certainly want to work  
6 with the Commission to do what you believe is appropriate.  
7 But we would ask that you just keep in mind the  
8 administrative burdens and postcard billing is fairly  
9 limited in what you can do.

10                   And certainly you do envelope billing and  
11 that kind of thing, put out flyers, but the more notice  
12 requirements you have, the more costly it is and, of course,  
13 we've already had testimony about the kinds of questions  
14 that it generates from the general public.

15                   But I think the overall perspective of Ameren  
16 was that we don't want to add so many notice requirements it  
17 makes it so burdensome that you just wouldn't want to do it.

18           Q.       One other quick question. Do you have any  
19 thoughts outside of what's here about what the intent was?  
20 There's been some -- of HB 208. There's been some  
21 discussion back and forth about regulatory lag and whether  
22 it's sort of uni-directional or bi-directional issue. Did  
23 you have any thoughts about that?

24           A.       Of course, we don't have legislative history,  
25 as everybody knows, so it's difficult to say. There's not

1 any purpose clause stated in the statute. Those of us that  
2 have been around this issue for a long time know that, back  
3 in 1989 the Public Service Commission had to change the  
4 rules related to replacement of these types of systems  
5 because of safety concerns. It was a government-mandated  
6 decision that imposed significant costs on the industry, and  
7 it was done because of the concern of public safety.

8               There's been a concern, though, that it's  
9 difficult to get recovery of those costs in a timely way,  
10 and certainly regulatory lag is part of that, but there's  
11 also, I think, a major concern about the company's  
12 willingness and incentives to invest out there, if they  
13 don't get reasonable recovery of their investment in a  
14 timely way.

15              And I wouldn't limit the purpose. I mean, I  
16 don't know. It doesn't say in the statute what the  
17 Legislature had in mind, but I certainly would think there  
18 would be an incentive to get these kinds of investments out  
19 there, since they're mandated by the government for a public  
20 safety purpose.

21           Q.     Not to put you on the spot, but if the  
22 regulatory lag, if you will, worked in the consumers' favor,  
23 then, do you think the -- do you think the calculation  
24 should be just directed toward that aspect of it, helping  
25 the company recover the costs of the infrastructure



1 replacement, exclusively?

2           A.       I think you have to look at the overall  
3 picture, too. I mean, Mr. Buck has described a situation  
4 where basically any advantage could be wiped out by adding  
5 this look back at other plant that's sort of like ISRS-type  
6 plant. By looking at the depreciation and the accumulated  
7 deferred taxes, you basically have taken away any financial  
8 incentives to utilize this. And I don't think that's what  
9 the Legislature had in mind. I think they were trying to  
10 encourage this investment.

11          Q.       And your sense of that intent is from just  
12 knowing the history, if you will, or being there during  
13 committee debates or --

14          A.       Well, just being around the issue generally  
15 from the time we -- I was on the Commission at the time the  
16 rules were changed, and we all knew that there were  
17 significant investments that were going to have to be made  
18 at that time.

19                   But there's been ongoing debate over the years  
20 about the efficacy of Accounting Authority Orders and other  
21 mechanisms for encouraging that investment. And  
22 just -- I'm just speaking from that sense of the whole  
23 context of that issue.

24                   COMMISSIONER FORBIS: Thank you.

25                   JUDGE PRIDGIN: Commissioner Forbis, thank

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1 you. Commissioner Clayton?

2 COMMISSIONER CLAYTON: No.

3 JUDGE PRIDGIN: Mr. Fischer, I don't believe I  
4 have any questions. Any further witnesses on behalf of  
5 AmerenUE of Atmos?

6 MR. FISCHER: No. I wish I had an accountant,  
7 your Honor, but I don't.

8 JUDGE PRIDGIN: I understand. Thank you very  
9 much, Mr. Fischer.

10 Mr. Cooper, on behalf of Aquila.

11 MR. COOPER: Your Honor, Aquila support the  
12 comments that have been made by the Missouri gas utilities  
13 and does have available for questions Mr. Joseph Barr, who's  
14 a senior financial manager for Aquila, but if there are no  
15 questions for Mr. Barr, we have no further comments at this  
16 time.

17 JUDGE PRIDGIN: Mr. Cooper, thank you. Let me  
18 see if we have any questions from the Bench.

19 Commissioner Murray?

20 COMMISSIONER MURRAY: I guess I would only  
21 have questions if there is disagreement with the other  
22 comments that have been made today.

23 MR. COOPER: In terms of the comments that  
24 have been made by Laclede and, I guess, both Mr. Buck and  
25 Mr. Pendergast on behalf of Laclede and Mr. Fischer on

1 behalf of Atmos and Ameren, we do not have any disagreement.

2 COMMISSIONER MURRAY: Thank you.

3 JUDGE PRIDGIN: Commissioner Forbis?

4 COMMISSIONER FORBIS: No.

5 JUDGE PRIDGIN: Commissioner Clayton?

6 COMMISSIONER CLAYTON: No.

7 JUDGE PRIDGIN: Mr. Cooper, thank you very

8 much. Anything further from Aquila?

9 MR. COOPER: No, your Honor.

10 JUDGE PRIDGIN: Thank you. Is there anyone

11 else who would like to enter an appearance or make a

12 comment?

13 Yes, ma'am?

14 MS. VUYLSTEKE: My name is Diana Vuylsteke, of

15 the law firm of Bryan Cave LLP, 211 North Broadway,

16 Suite 3600, St. Louis 63102, entering my appearance on

17 behalf of Missouri Industrial Energy Consumers.

18 We did submit comments in this proceeding on

19 December 4th. The comments that we made have been

20 incorporated into the new draft proposed rule that the Staff

21 has submitted, and for that reason we don't have anything

22 further to add and we support the Staff's rule.

23 We do have a witness, though, here today,

24 Morris Brubaker, in the event the Commission has any

25 questions for us.

1 JUDGE PRIDGIN: Ms. Vuylsteke, thank you. Let  
2 me see if the Bench has any potential questions.

3 COMMISSIONER MURRAY: I don't believe I do.

4 COMMISSIONER CLAYTON: I may, and I don't know  
5 if it requires her being sworn in or not.

6 JUDGE PRIDGIN: You need questions from  
7 counsel or from her witness?

8 COMMISSIONER CLAYTON: It's basically a  
9 statement of position. On the subsection O, does your  
10 client have a position on the language in the new subsection  
11 20, sub O?

12 JUDGE PRIDGIN: To be consistent if we're  
13 going to have you testify, we'll need you to come forward  
14 and be sworn, please.

15 MS. VUYLSTEKE: We do not have a position, but  
16 I will testify on that issue. We are not taking a position  
17 on this issue at this time, if that's acceptable to the  
18 Commission.

19 COMMISSIONER CLAYTON: I think that answers my  
20 questions.

21 JUDGE PRIDGIN: Thank you very much. Any  
22 other comments?

23 (No response.)

24 JUDGE PRIDGIN: Seeing none, anything that  
25 needs to be brought to my attention before we adjourn?

1 Seeing nothing --

2                   MR. COFFMAN: Excuse me. Yes, I would have  
3 maybe one point in rebuttal. Of course, if I do this, I  
4 don't want to necessarily open up the procedure, and I  
5 understand that others may be making comments. It may be  
6 something that could be done in the form of a reply comment,  
7 on whether or not that's acceptable I just wanted to inquire  
8 on that.

9                   I'd like to make one point that related to a  
10 characterization of Public Counsel's comments. Could that  
11 be done now or -- or could that be in the form of written  
12 reply comments later?

13                  JUDGE PRIDGIN: I see some eager lawyers who  
14 want to comment. Go ahead, Mr. Schwarz.

15                  MR. SCHWARZ: I would suggest that Mr. Coffman  
16 make whatever comments he has now. As we discussed earlier  
17 the Chapter 536 provisions, the courts are pretty strict in  
18 requiring adherence to them. The Commission, in the notice  
19 that was published in the Missouri Register, did not provide  
20 for reply comments after a hearing, which may be something  
21 that should be noted for future rulemakings, and so I -- out  
22 of a surfeit of caution, I don't think anyone here is  
23 capable of waiving the statutory requirements. So although  
24 I have no objection to anyone filing reply comments, I don't  
25 want to necessarily foul up the compliance with 536.

1                   MR. COFFMAN: It's not my intent to raise any  
2 new issue, but just to point out a disagreement I had about  
3 characterizations of our position.

4                   JUDGE PRIDGIN: Mr. Coffman, I think it would  
5 be the safer course if we just take your comment today, if  
6 you could please come up to the witness stand. And you are  
7 still under oath.

8                   MR. COFFMAN: Thank you. The only point I  
9 wanted to make was with regard to, I believe, Mr. McCartney,  
10 who referred to -- and I don't have the transcript of  
11 exactly what he said, but to the extent I believe I heard  
12 him say that Public Counsel admitted that certain reporting  
13 requirements were only for the purpose of reviewing prudence  
14 later in a rate case. And I wanted to make a couple of  
15 points about that.

16                   No. 1, the only point that we reference in  
17 our comments, on page 5 of our comments that do relate  
18 to prudence reviews would be subparagraph L, which would  
19 now, in Staff's new proposal be subparagraph 20 -- or  
20 paragraph 20, subsection L, so only to the degree that  
21 extent we see it as important for prudence review. The rest  
22 of the information we see as being very relevant to the  
23 calculation of the ISRS itself.

24                   So I didn't want -- first wanted to make sure  
25 that that was not taken out of context and that we believe

1 the rest of the information is clearly relevant to the  
2 proper calculation of an ISRS.

3           And to the extent that section L which relates  
4 to the RFP process could be required at the point of ISRS  
5 filing, we think it is positive, not necessarily because it  
6 would be relevant to the ISRS proceeding, but because that  
7 is when the information about any RFPs being done would be  
8 current and available to the company. And since that would  
9 be more contemporaneous at that time, the information could  
10 be collected and saved for possible review in the rate case  
11 following.

12           That was my point that I wanted to make.

13           JUDGE PRIDGIN: Mr. Coffman, thank you. Let  
14 me see if we have any clarifying questions. Commissioner  
15 Murray?

16           COMMISSIONER MURRAY: I don't believe so.

17           JUDGE PRIDGIN: Commissioner Forbis?  
18 Commissioner Clayton?

19           (No response.)

20           JUDGE PRIDGIN: Mr. Coffman, thank you very  
21 much.

22           Anything further? Mr. Pendergast?

23           MR. PENDERGAST: Your Honor, I will resist  
24 asking the opportunity to ask for surrebuttal comments on  
25 behalf of Mr. McCartney.

1 JUDGE PRIDGIN: Thank you very much.  
2 Seeing nothing further from the parties, all  
3 right, this hearing is now adjourned. We will go off the  
4 record. Thank you very much.  
5 WHEREUPON, the hearing of this case was  
6 concluded.

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