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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Oral Argument

May 24, 2017
Jefferson City, Missouri
Volume 1

In the Matter of the Propriety of)
the Rate Schedules for Electric)File No.
Service of Union Electric Company,)ER-2018-0226
Doing Business as Ameren Missouri.)

In the Matter of the Propriety of)File No.
the Rate Schedules for Natural Gas)GR-2018-0227
Service of Union Electric Company,)
Doing Business as Ameren Missouri.)

In the Matter of the Propriety of)File No.
the Rate Schedules for Electric)ER-2018-0228
Service of The Empire District)
Electric Company.)

In the Matter of the Propriety of)Case No.
the Rate Schedules for Gas Service)GR-2018-0229
of Empire District Gas Company.)

In the Matter of the Propriety of)Case No.
the Rate Schedules for Natural Gas)GR-2018-0230
Service of Summit Natural Gas of)
Missouri, Inc.)

In the Matter of the Propriety of)Case No.
the Rate Schedules for Steam)HR-2018-0231
Service of KC&L, Greater Missouri)
Operations Company.)

In the Matter of the Propriety of)Case No.
the Rate Schedules for Steam)HR-2018-0232
Service of Veolia Energy Kansas)
City, Inc.)

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

ORAL ARGUMENT

JUDGE MORRIS WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

COMMISSIONERS PRESENT:

DANIEL Y. HALL, Chairman,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
RYAN SILVEY,,
COMMISSIONERS

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A P P E A R A N C E S (CONTINUED)

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

2 JUDGE WOODRUFF: All right. Let's go
3 ahead and get started. We're here this morning for
4 what we described as oral arguments concerning a
5 number of cases that concern the effect of the
6 Federal tax rate cuts here. They are Case
7 Nos. GR-2018-0227, ER-2018-0228, GR-2018-0229,
8 GR-2018-0230, HR-2018-0231 and HR-2018-0232.

9 And, initially, we had ER-2018-0226, which
10 concerned Ameren Missouri Electric. That was
11 dismissed at the request of the Staff. That may
12 come up in discussions, but it's not officially
13 part of this proceeding.

14 There was also -- Staff initially
15 dismissed a case involving Empire Electric,
16 ER-2018-0228, that was reinstated by Staff later
17 that same day.

18 At this point, I'm considering it to be a
19 -- an open case that will be subject to today's
20 proceedings.

21 All right. Let's begin the day by taking
22 entries of appearance. We'll begin with Staff.

23 MR. THOMPSON: Thank you, Judge. Kevin
24 Thompson for the Staff of the Missouri Public
25 Service Commission, Post Office Box 360, Jefferson

1 City, Missouri, 65102.

2 JUDGE WOODRUFF: Okay. Public Counsel?

3 MR. WILLIAMS: Thank you, Judge. Hampton
4 Williams for the Office of the Public Counsel. My
5 information has been provided to the reporter.

6 JUDGE WOODRUFF: All right. Then we'll
7 start going through all the utilities, beginning
8 with Ameren Missouri.

9 MR. LOWERY: James B. Lowery of Smith
10 Lewis, LLP, appearing on behalf of Union Electric
11 Company. The court reporter has my information.

12 JUDGE WOODRUFF: Empire Electric?

13 MS. CARTER: Diana Carter with Brydon,
14 Swearngen & England for both the Empire District
15 Electric Company and the Empire District Gas
16 Company. And my contact information is on the
17 written entry provided to the court reporter.

18 JUDGE WOODRUFF: For Summit Gas?

19 MR. BOUDREAU: Yes. Let the record
20 reflect the appearance of Paul Boudreau with the
21 law firm of Brydon, Swearngen & England on behalf
22 of Summit Natural Gas of Missouri, Inc.

23 And as some of the other attorneys have
24 indicated, my contact information I've given on my
25 written entry of appearance.

1 JUDGE WOODRUFF: Okay. KCP&L, Greater
2 Missouri Operation Companies?

3 MR. FISCHER: Yes, Judge. Let the record
4 reflect the appearance of James M. Fischer of
5 Fischer & Dority, PC, appearing today on behalf of
6 the Steam Operations of KCP&L Greater Missouri
7 Operations company. And my contact information has
8 been given to the reporter.

9 JUDGE WOODRUFF: Anyone here for Veolia?

10 MR. MILLS: Yes, your Honor. Let the
11 record reflect the appearance of Lewis Mills of the
12 Law Firm of Bryan Cave, Leighton, Paisner. My
13 address is 221 Bolivar Street, Jefferson City,
14 Missouri, 65101.

15 JUDGE WOODRUFF: Thank you. Then we'll go
16 through the intervening parties. Renew Missouri?
17 Anyone here?

18 MR. OPITZ: Thank you, Judge. Tim Opitz
19 on behalf of Renew Missouri. The court reporter
20 has my address.

21 JUDGE WOODRUFF: MECG?

22 MR. WOODSMALL: David Woodsmall on behalf
23 of Midwest Energy Consumers Group.

24 JUDGE WOODRUFF: Missouri School Boards'
25 Association?

1 MR. BROWNLEE: Richard Brownlee. The
2 reporter has my information on my firm.

3 JUDGE WOODRUFF: And City of Joplin?

4 MS. BELL: Stephanie Bell on behalf of the
5 City of Joplin. I have provided my information to
6 the court reporter.

7 JUDGE WOODRUFF: Consumers Council? I
8 don't see anyone here for Consumers Council.
9 Anybody I've missed?

10 All right. Well, the way -- what we're
11 going to do today is give the parties a chance to
12 make a brief opening statement, if they wish to do
13 so, as well, you know, all the intervening parties
14 as well. And then we'll turn it over for questions
15 from Commissioners.

16 This is not an evidentiary hearing. If
17 you believe that some evidence needs to be
18 presented, we'll go ahead and swear in witnesses.
19 But, otherwise, I'm suspecting this will be
20 something for arguments for Counsel. For opening,
21 we'll start with Staff.

22 MR. THOMPSON: Thank you, Judge. Is it
23 acceptable if I speak from here?

24 JUDGE WOODRUFF: That's fine.

25 MR. THOMPSON: Thank you.

1 ORAL ARGUMENT BY MR. THOMPSON:

2 MR. THOMPSON: Staff has filed a written
3 argument, and so that is already in the possession
4 of the Commission. That lays out generally what
5 Staff has to say.

6 This is a case that's about regulatory
7 lag. An item of expense, which is to say income
8 tax liability, has changed. And it changed
9 effective January 1st, 2018, with the effective
10 date of the Tax Cuts and Jobs Act.

11 So since that date, ratepayers have been
12 paying rates that were calculated based on the tax
13 -- the expected tax liability, and that liability
14 has changed.

15 So like any other instance where you have
16 an item of cost changing, the Commission's response
17 needs to be to change rates. And how the
18 Commission does that, I guess, is the matter for
19 discussion.

20 There's a lot of different tools in the
21 Commission's tool box that it can use. And the
22 question that was expressly set for discussion
23 today is whether the Commission should set AAOs,
24 that is Accounting Authority Orders, in order to
25 defer the -- let's call it excess revenue, the tax

1 impact revenue for possible return to the
2 ratepayers or other treatment at a subsequent rate
3 case.

4 And Staff's suggestion is that, yes, yes,
5 you should. There's no question that you can under
6 Section 393.140(8), which gives the Commission the
7 authority after hearing to order how any particular
8 item of expense or any receipt is accounted for.

9 So the Commission can order that it be
10 deferred in an AAO. By hearing, I assume the
11 statute means an evidentiary hearing. So you would
12 have to at least offer the opportunity for
13 evidentiary hearing and see whether anyone takes
14 you up on that.

15 How is it, then, that the Commission could
16 return deferred funds to the ratepayers? And I
17 suggest that you will find your guidance in the
18 Midwest Gas Users Association case that approved
19 the PGA ACA mechanism.

20 Judge Stiff there went through all of the
21 various principles, the filed tariff doctrine, the
22 prohibition against single issue rate-making, the
23 prohibition against retroactive rate-making and
24 explained how each of those could be satisfied.

25 I don't think that an AAO is the only tool

1 that the Commission should employ. One thing that
2 the Commission can do is order interim rates and
3 order those to be subject to refund so that the due
4 process rights of the corporations of the utilities
5 and their shareholders do not attach.

6 That would provide immediate rate relief
7 to the ratepayers, and a traditional rate case
8 could then occur in which basically the amounts
9 would be trued up and all relevant factors
10 considered ending with a final rate order.

11 CHAIRMAN HALL: Let me stop you for a
12 second there, Mr. Thompson. So on the interim rate
13 subject to refund, would that be -- would that only
14 capture the difference in costs going forward? Or
15 would it also cover January 1 to the present?

16 MR. THOMPSON: It would capture costs
17 going forward. I would -- I would recommend you
18 use kind of a two-bladed approach, an AAO and
19 deferral from January 1 until the date of the
20 effective date of interim rates to capture the
21 money that's already been paid under existing
22 tariffs.

23 And then, prospectively, those receipts
24 would be interim subject to refund. And so the --
25 the legality of returning that money after true-up

1 is much more clear.

2 CHAIRMAN HALL: Thank you.

3 MR. THOMPSON: Staff, in its written
4 filing and -- and previously in the motion that
5 Staff filed to open each of these cases, discussed
6 the Hotel Continental case and Midwest Gas Users,
7 of course, is one of the progeny of that case.

8 The companies one and all describe the
9 treatment as being -- of the Hotel Continental
10 treatment being available, that -- that has to do
11 with expenses that are different in kind from
12 normal expenses and where things that are under the
13 company's control can have no effect on the
14 amounts, such as a gross receipts tax in Hotel
15 Continental, such as the commodity cost of gas
16 discussed in Midwest Gas Users Association.

17 I think it's at least arguable that the
18 income tax liability is of that kind. But it
19 doesn't matter if you deal with it in the context
20 of a full-blown rate case. Each of these cases is
21 a rate case.

22 And I recommend that, in addition to
23 ordering interim rate relief subject to refund,
24 that you also set procedural schedules in each
25 case.

1 Since it is the companies that argue that
2 the Hotel Continental treatment is inappropriate, I
3 would order the companies to file direct testimony
4 and schedules by a date certain so that the cases
5 can proceed. Thank you very much.

6 CHAIRMAN HALL: So you in -- in Midwest
7 Gas, was that a -- a full-blown rate case?

8 MR. THOMPSON: I do not know offhand.

9 CHAIRMAN HALL: Okay. So I'm interested
10 in -- in what the mechanism was that was -- that
11 was used to return the excess.

12 MR. THOMPSON: Well, Midwest Gas Users
13 dealt with the legality of the familiar PGA ACA
14 mechanism whereby, pursuant to a tariff, the gas
15 company will make is -- allowed to make a number of
16 rate -- set a number of rates based on what they
17 believe the commodity cost of gas is going to be.

18 And then after the year is over and
19 closed, so to speak, there is the ACA portion,
20 which is an audit and true-up where it is
21 determined whether customers overpaid or underpaid
22 for the commodity gas, and a credit then goes to
23 either the company or the ratepayers based on the
24 result of true-up.

25 CHAIRMAN HALL: Okay. On page -- your

1 argument, page -- on page -- on page 5 of your
2 argument, I wondered if you could elaborate on your
3 assertion that the Commission can return deferred
4 excess revenues, and this is a quote, If the
5 adjustments are charged only prospectively to
6 future customers on future bills and the amount
7 charged past customers on past bills is for the
8 adjusted up or down or retroactively adjusted.

9 MR. THOMPSON: That -- that comes straight
10 out of Midwest Gas Users Association.

11 CHAIRMAN HALL: Well, I guess what I don't
12 understand is aren't you proposing that -- I mean,
13 if -- if there -- if there is an AAO put in place
14 or there are interim rates subject to refund in
15 both of those cases, customers will -- current
16 customers going forward will have -- will be billed
17 less than they would otherwise, correct?

18 MR. THOMPSON: If there's interim rate
19 relief, that's correct.

20 CHAIRMAN HALL: Or if there's an AAO
21 that's -- that is subsequently put into rates at a
22 -- at a point in time. So their -- their rates are
23 adjusted, correct?

24 MR. THOMPSON: The adjustment would have
25 to be prospective.

1 CHAIRMAN HALL: Well, right. But that's
2 what I -- that's what I'm getting at.

3 MR. THOMPSON: Right. I understand that.

4 CHAIRMAN HALL: So Mr. Smith, who is a
5 ratepayer --

6 MR. THOMPSON: Right.

7 CHAIRMAN HALL: -- has a bill of a hundred
8 dollars. And after this tax cut is put into rates
9 in one or both of the mechanisms that you suggest,
10 he will have a -- a bill that is less than he would
11 but for us taking this action. Right?

12 MR. THOMPSON: Correct. At a future time.

13 CHAIRMAN HALL: All right. So -- so is
14 that -- is that consistent with this? Or is it
15 inconsistent with this?

16 MR. THOMPSON: Well, probably the best way
17 to illustrate it is to look at the more familiar
18 situation where what is being deferred and
19 recovered is an unexpected expense that the company
20 has suffered.

21 So let's talk about an ice storm, for
22 example. Public policy favors having immediate and
23 -- and a great magnitude of response to an ice
24 storm to restore service as quickly as possible.

25 This is an extraordinary event in that it

1 wasn't expected. It wasn't budgeted for. It's not
2 already in rates. But public policy favors paying
3 the company its expenses for that ice storm so that
4 they will respond appropriately when the next ice
5 storm happens.

6 So how do we do that? Typically, it's
7 done through an AAO. So the ice storm costs are
8 deferred. Why is that done? In order to bring a
9 past expense into it a rate case.

10 You know, and every rate case has a test
11 year. The ice storm probably didn't occur during a
12 rate case test year, right? So that brings it into
13 the test year that's being considered.

14 And so why is it legal to give the company
15 that expense that already happened in a different
16 year for an ice storm a couple of seasons ago?

17 It's legal because the people who are
18 going to be paying it, it's going to be paid
19 prospectively by whoever the customers happen to be
20 at the time that rates are set that include that
21 expense.

22 So you're not going back to the bills that
23 were paid during the year the ice storm actually
24 happened and telling those customers, Oh, we're
25 going to have to collect some more money from you

1 because of this unexpected ice storm.

2 CHAIRMAN HALL: I guess I see some
3 semantics there. And, I mean, I -- I'm not saying
4 -- what you're saying is wholly consistent with --
5 with the cases that interpreted this.

6 MR. THOMPSON: Right.

7 CHAIRMAN HALL: I do not -- I'm in
8 complete agreement with you. What I'm really
9 trying to understand is whether it's just
10 semantics. Because -- because --

11 MR. THOMPSON: Maybe it is. But it's
12 semantics that the Missouri Supreme Court has found
13 acceptable.

14 CHAIRMAN HALL: I under -- I understand
15 that. So what would a retroactive adjustment be?
16 I mean, would that be --

17 MR. THOMPSON: That would be billing --

18 CHAIRMAN HALL: -- me going out to Joe
19 Smith's house and saying, You owe me five bucks,
20 pay up?

21 MR. THOMPSON: Right.

22 CHAIRMAN HALL: Okay. Well --

23 MR. THOMPSON: You owe me five bucks
24 because what you paid last May didn't turn out to
25 be enough. So I'm coming around now, and I'm

1 collecting because we've recalculated last May's
2 bill.

3 CHAIRMAN HALL: How about I show up at his
4 house with five bucks and hand it to him. Is that
5 -- is that -- is that a retroactive adjustment?

6 MR. THOMPSON: I think it would be.
7 That's the other side of the coin.

8 CHAIRMAN HALL: But isn't that what we're
9 doing here?

10 MR. THOMPSON: You paid too much last May,
11 so here it is.

12 CHAIRMAN HALL: Isn't that what we're
13 doing here?

14 MR. THOMPSON: If we follow the recipe of
15 Midwest Gas Users Association, it's lawful.

16 CHAIRMAN HALL: Okay. So concerning the
17 standard for -- for an AAO, it -- it needs to be
18 extraordinary, unique and non-recurring.

19 MR. THOMPSON: Well, actually, we're
20 dealing with two different things here.

21 CHAIRMAN HALL: Right. And I'm talking --
22 and I'm talking about standard for an AAO.

23 MR. THOMPSON: I understand. But even
24 with the standard of an AAO, I -- I would suggest,
25 respectfully, we're dealing with two different

1 things because deferrals are allowed under the
2 Uniform System of Accounts that the Commission has
3 adopted in its rules and ordered companies to
4 follow.

5 And companies are authorized to defer
6 extraordinary expenses. I believe it's Account
7 186. And that's where all that language of
8 extraordinary comes from.

9 And there's been quite a bit of litigation
10 about that in front of the Commission, and some of
11 it has gone to the various Appellate Courts.

12 But under 393.140(8), the Commission's
13 authority after hearing to direct how any receipt
14 or expense is accounted, there is no limitation.
15 There is no requirement that it be an extraordinary
16 expense. The only requirement is that there be a
17 hearing.

18 CHAIRMAN HALL: Hasn't this Commission,
19 though, consistently, when these types of issues
20 have come up applied the AAO standard as to whether
21 or not we order a utility to account for such
22 expenses?

23 MR. THOMPSON: Yes, it has.

24 CHAIRMAN HALL: But you're arguing that --
25 that we are not statutorily required to do that?

1 MR. THOMPSON: That's exactly right. Yes,
2 sir.

3 CHAIRMAN HALL: Well, with -- and I under
4 -- and I understand that argument. Concerning the
5 -- the standard for an AAO -- AAO, it does require
6 that it -- that it be extraordinary and
7 non-recurring.

8 MR. THOMSON: That's correct.

9 CHAIRMAN HALL: And that it be material.

10 MR. THOMPSON: As I recall -- and I don't
11 have the statement -- the US -- Uniform Statement
12 of Accounts in front of me.

13 But as I recall, materiality is a -- is a
14 standard that Staff has often argued should be
15 applied, but I believe the Commission has refused
16 to adopt it.

17 CHAIRMAN HALL: My -- my memory is that we
18 have, at least in the cases that I've been involved
19 in that we have invoked that standard.

20 And I guess what I'm -- what I'm getting
21 at, is there -- is there any question as to
22 materiality on -- on the tax cut issue?

23 MR. THOMPSON: I do not believe that there
24 is.

25 CHAIRMAN HALL: And then let me ask you

1 this. If -- does the amount -- I mean, assuming
2 that you're over the materiality threshold, which I
3 think is the case in -- in these cases, is it
4 relevant how much over that threshold?

5 Is -- is -- is the amount of money that's
6 at stake here, is that something that -- that we
7 should take into account when determining the
8 proper accounting treatment for it?

9 MR. THOMPSON: I don't believe you should.
10 I think that -- that the tax cut impact is
11 different. It's different than, say, an ice storm.

12 Maybe an ice storm is a bad example. But
13 I think the tax cut issue is also invested with a
14 degree of -- of -- the public is conscious of it.
15 The public is aware of it.

16 People are wondering, What is the
17 Commission doing about this change in taxes? How
18 come we're not seeing rate changes? So given its
19 -- its public -- degree of public concern that
20 exists for the issue, I don't think you should take
21 the degree by which it exceeds the materiality
22 threshold.

23 I don't think you should take that into
24 account. I guess what I'm saying is it's material
25 in a different way.

1 CHAIRMAN HALL: Why did Staff dismiss the
2 -- the complaint against Ameren?

3 MR. THOMPSON: Because of the passage of
4 Senate Bill 564.

5 CHAIRMAN HALL: Which has not been signed
6 into law.

7 MR. THOMPSON: That is correct.

8 CHAIRMAN HALL: So why did --

9 MR. THOMPSON: Because it has an emergency
10 clause, the part of it that it is -- that deals
11 with the treatment of the tax impact. And so as
12 soon as the Governor signs that, whenever that
13 might be, it becomes effective. And by the terms
14 of the statute --

15 CHAIRMAN HALL: Of the Bill?

16 MR. THOMPSON: Excuse me?

17 CHAIRMAN HALL: By the terms of the Bill?

18 MR. THOMPSON: By the terms of the Bill.
19 Thank you. It does imply that electrical
20 corporations are having a pending general rate case
21 on the effective date of the session.

22 CHAIRMAN HALL: So there was some concern
23 that the complaint pending before us could
24 constitute or someone could argue that it
25 constitutes a general rate case?

1 MR. THOMPSON: Yes, sir. So that's why
2 that action was taken.

3 CHAIRMAN HALL: So if the -- if Senate
4 Bill 586 is not signed by the -- by the Governor,
5 would -- would Staff take action?

6 MR. THOMPSON: Staff would refile and
7 bring a new rate proceeding against Ameren.

8 CHAIRMAN HALL: I believe that's all I
9 have for now. Thank you.

10 MR. THOMPSON: Thank you, Chairman.

11 JUDGE WOODRUFF: Commissioner Rupp, do you
12 have any questions?

13 COMMISSIONER RUPP: No.

14 JUDGE WOODRUFF: Mr. Thompson, I have a
15 question about a particular case, and that's the
16 one involving -- it's HR-2018-0232 involving
17 Veolia.

18 MR. THOMPSON: Yes, sir.

19 JUDGE WOODRUFF: I believe Veolia has
20 filed a small rate case procedure case. It's
21 pending in HR-2018-0431. Does that mean we should
22 be -- should dismiss this pending action against
23 Veolia?

24 MR. THOMPSON: Veolia has been talking to
25 us about that. And the reason that we haven't

1 agreed to dismiss it yet is because, in a small
2 rate case proceeding, all the company has to do is
3 send a letter in which they request money. And
4 that's all that Veolia has done.

5 So we have no commitment from them to deal
6 with the tax issue in the context of that case, and
7 we have no -- no idea of how they propose to deal
8 with it within that case.

9 JUDGE WOODRUFF: So the small case is
10 proceeding, the phase at this point, I believe it
11 is.

12 MR. THOMPSON: I believe it is.

13 JUDGE WOODRUFF: Okay. That's all the
14 questions I had.

15 MR. THOMPSON: Thank you, Judge.

16 JUDGE WOODRUFF: Let's move on, then, to
17 -- well, let's move on with Public Counsel.

18 ORAL ARGUMENT

19 BY MR. WILLIAMS:

20 MR. WILLIAMS: Thank you, Judge. Last
21 week, Public Counsel submitted comments in this
22 case very briefly responding to the Commission's
23 request as to its authority to issue AAOs.

24 Like Staff, we find that the Commission
25 does have authority. We did argue for the

1 materiality for the expense for the case.

2 On page 4, we -- we -- there's a
3 discussion on the difference between at least the
4 arguments between AAOs and rate-making.

5 As far as a recommendation of how to
6 proceed with respect to the non-electric utilities,
7 Public Counsel would support Mr. Thompson's
8 recommendation to authorize an AAO for the expenses
9 from January 1st on and then authorize interim
10 rates on a prospective basis to account for as much
11 subject to a refund in Count 4, the Federal tax
12 component.

13 With regard to those cases which -- for
14 the electric utilities, unlike Staff, Public
15 Counsel's position is that this proceeding itself
16 is not a general rate proceeding at this point in
17 time and that any Legislation would be authorize or
18 statutory authority that would be granted through
19 SB-564 would be applied to the electric utilities
20 that currently do not -- are not engaged in that
21 general proceeding at this point in time.

22 JUDGE WOODRUFF: Any questions from the
23 Chairman?

24 CHAIRMAN HALL: Yeah. Are you aware of ==
25 generally of what's happening elsewhere around the

1 country on this issue?

2 MR. WILLIAMS: As far as tax proceedings?
3 Generally, there has been a discussion through the
4 National Association of Consumer Advocates that
5 just got provided a general update.

6 And it's -- it's -- it's kind of a
7 mismatch. There are some states that have either
8 expressed statutory authority granted to deal with
9 the impacts of this tax cut.

10 There are other states who either have
11 some proceeding authority through either in --
12 weight authority to address where some kind of
13 reduction with extraordinary costs.

14 I think what -- you know, what we've
15 argued here, I think what this Commission has
16 identified is mechanisms that would allow the full
17 capture of the benefits for the rate reduction and
18 applied in a lawful manner kind of within our
19 statutory and legal situation.

20 CHAIRMAN HALL: Thank you.

21 JUDGE WOODRUFF: Commissioner Rupp?

22 COMMISSIONER RUPP: No.

23 JUDGE WOODRUFF: Commissioner Silvey?

24 COMMISSIONER SILVEY: No.

25 JUDGE WOODRUFF: Let's move on to Ameren

1 Missouri.

2 ORAL ARGUMENT

3 BY MR. LOWERY:

4 MR. LOWERY: Good morning. May it please
5 the Commission. I'm Jim Lowery, and I represent
6 Ameren Missouri's Gas Operations in this particular
7 matter.

8 The question that you posed in this docket
9 was, Should the Commission issue an AAO to preserve
10 any -- and you called it excess revenues resulting
11 from the income tax rate changes for possible
12 adjustment either in this case or in a future case.

13 And the company's answer to that question
14 is no for a couple of reasons. But before I get
15 into those reasons, I -- I want to make a couple
16 things clear. And I also wanted to address a
17 couple of the questions that came up during
18 Mr. Thompson's exchange with the Chairman.

19 The fact that we believe the answer to
20 that question is no does not mean at all that
21 Ameren's Missouri's gas rates should be re-examined
22 and perhaps reset if -- if that examination
23 indicates that they should be.

24 Such an examination should take into
25 account the impact of the Tax Cuts and Jobs Act,

1 but it should also take into account other factors
2 as well.

3 Something else that's undoubtedly going to
4 happen, whether it happens in this case or happens
5 in the future, I think all of you are familiar with
6 excess ADIT, Accumulated Deferred Income Tax.

7 That issue came up in the Spire and
8 Missouri-American Water cases. That money is going
9 to be being given back. The question is when and
10 over what period?

11 But that -- that's not really at issue.
12 What -- the only thing that's really at issue is --
13 is the impact of the ongoing tax rate change.

14 The fact that we believe the answer to the
15 question posed is no also does not mean that the
16 company thinks that an examination and possible
17 resetting of its gas rates necessarily needs to
18 take 11 or more months as might be typical in an
19 over-earnings complaint case, which is effectively
20 what I think this is. Or at least that's the way
21 we're viewing it.

22 But as I mentioned, for a couple of
23 reasons, we think that the AAO should not be
24 issued. First of all, you have essentially twice
25 confronted that very question recently.

1 You confronted it in the Missouri-American
2 Water case, and you confronted it in the Spire rate
3 case. Spire's rates took effect on a prospective
4 basis after about four and a half plus months.
5 Missouri-American's rates on a prospective basis
6 are going to take place and be in effect after
7 about five months.

8 You are going to -- you've accounted for
9 the Tax Cuts and Jobs Act impact in those rates on
10 a prospective basis, but you've also accounted on a
11 prospective basis for all other costs in revenue
12 changes.

13 We believe that fairness and regulatory
14 consistency strongly indicates that you should not
15 order an AAO for Ameren Missouri having not done so
16 to take into account this January 1 to mid April,
17 January 1 to end of May period in those cases.

18 Second, as we've said from the beginning
19 when this issue first came up in the workshop
20 docket and also has come up in this case,
21 obviously, that what you should be striving to do
22 is to reset rates, assuming they need to be reset,
23 by accounting not for just changes in income tax
24 expense, but what are undoubtedly changes, and
25 probably material ones, in cost of service overall.

1 Ameren Missouri's gas rates have not been
2 reset for quite a number of years. I think it goes
3 back to 2011. I know it's been more than four or
4 five years.

5 You -- you have today, and you had ever
6 since the Tax Cuts and Jobs Act was enacted in
7 December, you've had a means to deal with the
8 impact of the tax cuts.

9 And we don't believe that an AAO should be
10 a substitute for that means, and that is to examine
11 all factors and -- and change rates.

12 Mr. Thompson indicated this is about
13 regulatory lag, and that's true. It may be. We
14 don't know. It may be that regulatory lag is
15 benefiting the company's gas operations because of
16 the tax cut.

17 But it may -- but we may not be given that
18 it's been quite a while since the rates have been
19 reset. And we don't have the answer at this point.

20 Now, as I alluded to a moment ago, the
21 company is cognizant of the fact that there is a
22 time open here. We've been talking about that this
23 morning.

24 We believe that a proper examination of
25 the company's gas revenue requirement ought to be

1 able to be concluded in five or six months, not
2 eleven months, not a year and a half that you might
3 see.

4 We -- we think -- there's only three or
5 four parties in this case. We think that the
6 Commission gave some pretty impactful guidance in
7 the Spire case on some of the major issues you
8 would have in a gas rate case just recently, and we
9 think that there ought to be an ability for parties
10 to come together, take some of those issues off the
11 table and otherwise do an abbreviated examination
12 and get a case done in a matter of several months
13 as opposed to a year or more.

14 We actually started that discussion on the
15 electric side a couple of weeks ago and the need to
16 pursue that was obdugated by the passage of
17 Legislation.

18 But there's nothing stopping us from
19 proceeding with those discussions in the near term
20 on the gas business.

21 Those are all the prepared remarks that I
22 -- that I had. But I wanted to address a couple of
23 things. I first want to address this interim rates
24 concept that's been discussed and that Staff
25 brought up in its written argument.

1 I would submit to you that you don't have
2 authority in this kind of case to order interim
3 rates. Interim rates are a -- essentially a
4 Judge-made doctrine in the Laclede case, which was
5 decided in 1976, I think it was '76, followed by
6 the Fischer case, Dr. O'Collie and Jim Fischer who
7 was with Public Counsel at the time.

8 And what the Court said was, Interim rate
9 authority is ancillary to the file and suspend
10 process when a utility asks for a rate increase.

11 But that's the only authority the
12 Commission has. And, in fact, this issue came up
13 back in 1987 when the 1986 tax reform was passed.

14 And OPC, ironically, did a fairly -- it's
15 actually a very extensive examination of this very
16 question because somebody suggested it then.

17 And what OPC said -- and we -- we cite
18 this in our filing on March -- and I think voted on
19 March 19th, we cite this, what OPC said was, Under
20 the holdings of the Laclede and Fischer cases
21 discussed above, the ability to grant interim
22 relief in a proceeding involved under the complaint
23 method, which this is what this is, I think, is
24 dubious.

25 OPC went on to say, Under the complaint

1 procedure, the Missouri Public Service Commission
2 does not have the right to determine the proper
3 rates to be charged prior to and as a full hearing
4 on the merits.

5 Therefore, the powers according to the
6 Commission and the file and suspend statutes, which
7 form the basis of the decision by the Missouri
8 Courts, Laclede and Fischer, that the Commission
9 has authority to grant interim release do not exist
10 under the complaint procedure, which is where we
11 are today.

12 And then Staff, in response to that, after
13 this argument came up, Staff said -- if I can find
14 it here, Staff said Staff concurs with the
15 conclusion reached by most of the parties that
16 pursuing such a course of action, interim rates,
17 poses serious legal problems and should not be
18 pursued.

19 So I don't think that's an option that's
20 available to you in this case. Let me briefly
21 address MGE UE and Hotel Continental.

22 And, Mr. Chairman, I think Mr. Thompson
23 cleared it up, but the MGE UE case was simply a
24 question of whether or not you could have a single
25 issue PGA, whether you can have -- whether that's

1 authorized or not.

2 And what the Court says is because of the
3 unique nature of gas commodity costs that you can.
4 And that's really all the Court said.

5 But that -- that decision simply doesn't
6 extend to something like income tax. Staff's oral
7 argument really gets to the heart of this.

8 I don't know if it was intentional or not.
9 But what Staff said in its written argument was, If
10 the Commission determines that income taxes are, in
11 fact, different in kind so there is no possibility
12 of offsetting savings elsewhere, then you could
13 dispense with the single issue rate-making problem
14 and somehow do a rider, I suppose.

15 But it's clear that there is not only a
16 possibility of off-setting savings. Off-setting
17 savings -- and I think what they maybe meant to say
18 is off-setting expenses in this context are a
19 virtual certainty.

20 And -- and you recognized this in a number
21 of contexts. Back in 1986 -- or the Order probably
22 came out in 1987, you actually asked the utilities
23 -- you ordered the utilities -- when this issue
24 came up, and it did come up, you ordered the
25 utilities to specify off-setting expense increases

1 that would offset for tax expense.

2 So you recognized that there were offsets
3 unlike the case where you have the gas commodity,
4 which is a unique animal.

5 You also rejected a Laclede -- and this is
6 cited in our papers. You rejected a Laclede
7 request to include the gas portion of bad debt
8 expense in its PGA back in 2009.

9 And they -- and you said MGUA doesn't
10 stand for that proposition. The gas costs are
11 unique. You can't put bad debt expense through the
12 PGA, just like you can't put -- and I don't know --
13 I couldn't tell if that was being suggested this
14 morning, but you certainly can't take income tax
15 expense and put it through the PGA either.

16 So I think those were the two main things
17 that came up in the earlier questioning that I
18 wanted to address.

19 Those were all the prepared remarks I had.
20 The company is prepared to engage in trying to
21 figure out a way to get an abbreviated schedule,
22 examine our rates and see whether -- see whether or
23 not they do need to be reset in light of the Tax
24 Cuts and Jobs Act.

25 But that was not certainly not ever a

1 discussion about materiality before. That's
2 certainly not a given, particularly in the
3 company's situation where we would not have gas
4 rates for a number of years.

5 Staff actually was looking at our gas
6 rates, I think it was about a year, year and a half
7 ago, and concluded that no downward adjustment
8 needed to be made.

9 And I can tell you that I don't know
10 whether we would have filed a gas case by now, but
11 there was certainly discussion six, seven, eight
12 months ago about filing a rate case as early as
13 about April of this year.

14 Certainly, the tax cuts change that aspect
15 of the revenue requirement, and we haven't filed
16 on. But it's certainly not a given that when you
17 consider the impact of the tax cuts together with
18 all costs and revenue items that there's anything
19 wrong with the rates that we have right now from --
20 from the standpoint of having a proper revenue
21 requirement in rates that are just and reasonable
22 and recovery or designed to recover with the right
23 amount. I'd be happy to attempt to answer any
24 questions you might have.

25 JUDGE WOODRUFF: Mr. Chairman?

1 CHAIRMAN HALL: Thank you. Thank you. Is
2 there a legal reason why we could not establish an
3 AAO? I understand the policy arguments, and you've
4 -- you articulated them well. But is there any
5 legal little reason why we could not institute an
6 AAO?

7 MR. LOWERY: There probably is not is the
8 honest answer.

9 CHAIRMAN HALL: Okay. And that's -- and
10 that's -- and I appreciate your candor. Second --
11 second question is if we were to establish an AAO,
12 it obviously would not -- in and of itself would
13 not affect rates until potentially at the next rate
14 case, correct?

15 MR. LOWERY: That's right.

16 CHAIRMAN HALL: And you are -- you're
17 indicating that -- that that rate case shouldn't
18 take a full 11 months, could -- could take five
19 months, and you've been thinking about that rate
20 case since January 1.

21 MR. LOWERY: Right.

22 CHAIRMAN HALL: And -- and earlier. You
23 said -- so you said eight months ago.

24 MR. LOWERY: Well, let me -- let me --
25 because I think I might have not been clear. We

1 were thinking about a rate increase request of a
2 traditional rate case several months ago before the
3 Tax Cuts and Jobs Act had happened, before there
4 was any impact. So that would have been -- was a
5 one track.

6 Since the Tax Cuts and Jobs Act was
7 enacted, that did reduce our income tax expense.
8 So we're not disputing that our income tax expense
9 has gone down.

10 But we were in -- we felt we like we were
11 in a revenue deficiency position of a certain
12 amount of money -- and I don't have that at the
13 ready, and I don't know that we finalized any
14 members anyway, that revenue deficiency was
15 certainly reduced by the impact of the tax cuts.

16 But I don't know that it was eliminated
17 necessarily, and I -- and sort of the back of the
18 envelope understanding that I have is that it's not
19 clear whether we really should have a rate decrease
20 or rate increase right now even with the Tax Cuts
21 and Jobs Act impact.

22 CHAIRMAN HALL: So if we were to establish
23 an AAO, then you would go back to your pre tax cut
24 evaluation to determine whether or not the company
25 was under-earning and consider filing a rate case?

1 MR. LOWERY: I'll have to think about that
2 one. Our ongoing revenue requirement is not
3 impacted by whether or not you file -- or whether
4 you grant an AAO or not. So --

5 CHAIRMAN HALL: Right. But if -- but if
6 the potential was for the Commission to take that
7 -- that reduction in taxes, that savings and apply
8 it to rates going forward at some point, I assume
9 the company would take that into account when
10 determining whether -- whether to come in for a
11 rate case. Because if that money comes off the
12 top, then that changes your calculus.

13 MR. LOWERY: It does. I mean, of course,
14 it depends on the amortization period and how much
15 it actually affects the revenue requirement
16 because you wouldn't -- I don't think you would do
17 an AAO for -- and I'm just making this up, a
18 million dollars and -- and put a million dollars in
19 -- prospectively in rates because rates are
20 designed to be in effect in theory forever, but
21 certainly not just for a year.

22 So I'm not entirely sure, Commissioner,
23 how you granting an AAO does or does not affect a
24 decision about seeking rate relief. So I don't --
25 other than some amortization of that amount,

1 whatever that would be in the revenue requirement,
2 the revenue requirement doesn't really change by
3 the AAO.

4 CHAIRMAN HALL: So let me ask you the same
5 -- same couple of questions I asked Mr. Thompson
6 concerning his -- his statement on page 5 of his --
7 of Staff's argument, which I believe does
8 accurately describe the holding in that case and --
9 and for -- and the law generally in this area.

10 I'm just trying to figure out if -- if --
11 if we're playing semantics here or not. And I'm
12 interested in your thoughts on that.

13 MR. LOWERY: Well, my -- my thoughts are
14 this. Not just an MPUEA, but in numerous other
15 cases -- and I've argued in some of them and I've
16 been involved in some of these.

17 This issue has come up. Our friends at
18 you MIEC have made the argument that AAOs are just
19 flat out illegal. You can't -- you can't defer a
20 past expense and then take it into consideration in
21 a rate case and include an amortization on a
22 going-forward basis.

23 And as Mr. Thompson said, the courts have
24 repeatedly said, not just in this case, that, oh,
25 yes, you can. You can do that. You have the power

1 to do that.

2 I understand the point you're making. I
3 understood the point that MIEC made when they made
4 these arguments.

5 But this has been examined by the Court
6 several times, and they disagree. But that's a
7 semantic argument.

8 You're not redetermining past rates. Past
9 rates of 10 cents a kilowatt hour back in January,
10 it was still 10. That's what the customer paid for
11 those -- that power.

12 And if they paid 9.95 cents after a rate
13 change because you amortized an AAO, you didn't --
14 you didn't redetermine their past rate. And that's
15 the logic behind it, and that's what the Courts are
16 saying.

17 CHAIRMAN HALL: And I agree. Thank you.

18 MR. LOWERY: Thank you.

19 JUDGE WOODRUFF: Commissioner Rupp?

20 COMMISSIONER RUPP: No questions.

21 JUDGE WOODRUFF: Commissioner Coleman?

22 COMMISSIONER COLEMAN: No questions.

23 JUDGE WOODRUFF: Commissioner Silvey?

24 COMMISSIONER SILVEY: No.

25 CHAIRMAN HALL: Actually, I do -- I do

1 have one other -- one other question. Ameren
2 Illinois -- I know you don't represent Ameren
3 Illinois. At least I don't think you do.

4 My understanding is that in that company
5 over in -- on the Illinois side right after the tax
6 cut came to the -- to the -- to the Commission and
7 agreed to a rate cut for the ratepayers. Is that
8 correct?

9 MR. LOWERY: I will tell you what I know
10 about it. And I do know something about it. On
11 the electric side, Ameren Illinois did come to the
12 Commission and want the Commission to go ahead and
13 reflect that in its formula rates.

14 There was some financial detriment to a
15 utility for not including it now because there was
16 going to be a, as I understand it, cost of capital
17 applied to that liability.

18 Because, I mean, there was no question
19 that on the electric side it was going to go back
20 and track everything. They appointed the rates,
21 right?

22 So -- so if your tax expenses goes down
23 \$5 million today and maybe -- maybe it's not time
24 for your annual reconciliation proceedings yet, but
25 next year, you're going to give that money back.

1 And I think had they not done it
2 immediately, that amount would have grown, and they
3 would've had to get more back. So on the electric
4 side, that's -- that's what happened and that's why
5 they did it.

6 CHAIRMAN HALL: Okay. So it was a
7 function of -- of the different regulatory
8 structure --

9 MR. LOWERY: Absolutely.

10 CHAIRMAN HALL: -- of Illinois with the
11 formula rate?

12 MR. LOWERY: Absolutely. That's -- that's
13 why.

14 CHAIRMAN HALL: Okay.

15 MR. LOWERY: So -- so Ameren is not acting
16 inconsistently is the point.

17 CHAIRMAN HALL: Acting inconsistent
18 because of a different -- of an inconsistent
19 regulatory scheme?

20 MR. LOWERY: Absolutely. Absolutely.
21 We're under different schemes.

22 CHAIRMAN HALL: Thank you.

23 JUDGE WOODRUFF: Thank you. Then we'll
24 move to Empire Electric and Gas.

25 OPENING STATEMENT

1 BY MS. CARTER:

2 MS. CARTER: Good morning again. We filed
3 some written comments for Empire Electric and
4 Empire Gas. I won't restate those.

5 I think the only thing I'll point out, and
6 we're all in the room aware of this, an AAO is not
7 rate-making, so it won't resolve anything for the
8 ratepayers if an AAO is put in place at this time.

9 As was noted, rates don't change with an
10 AAO. Issuance of an AAO won't benefit ratepayers
11 at this time and may or may not benefit ratepayers
12 at any point in the future.

13 To my knowledge, we haven't dealt with
14 this exact same issue. I think it's different than
15 with the PGA, ACA cases.

16 We'd be plowing a bit of new ground if the
17 Commission were to issue an AAO or the income
18 taxes, and then in a future rate case try to give
19 that money back through future adjustments.

20 Although the Courts have repeatedly said,
21 AAOs are okay, trackers are okay when they're
22 imposed in rate cases, I don't believe the Courts
23 have had an opportunity to deal with this exact
24 situation.

25 So I think there will be questions going

1 forward, which is why Empire and, in particular,
2 Empire Electric would again urge you to look at the
3 stipulation that was filed in both this tax docket
4 case and the customer savings plan case.

5 And we would encourage approval of that
6 stipulation that would have a known result on
7 taxes, which would be almost 18 million going back
8 to ratepayers as of October 1.

9 And when we were first discussing
10 settlement in the customer savings plan case in
11 conjunction with the tax docket cases, we had
12 everyone involved -- Mr. Brownlee's client is in
13 the Empire Gas case, but not in the Empire Electric
14 case.

15 And Empire would be willing to do
16 settlement of the tax issue in the Empire Gas case
17 based on those same terms as what's proposed in
18 step for the customers savings plan docket and the
19 Empire Electric tax docket case.

20 So in the event that stipulation is
21 approved, it would take all of these legal
22 questions out. All of the issues with an AAO, all
23 of that would be resolved for both Empire Electric
24 and Empire Gas customers. I'd be happy to answer
25 any questions or attempt to answer any questions

1 you may have.

2 CHAIRMAN HALL: No questions.

3 MS. CARTER: Thank you.

4 JUDGE WOODRUFF: I do have one question.

5 MS. CARTER: Uh-huh.

6 JUDGE WOODRUFF: Does Empire have a
7 question as to what happens if the stip. in this
8 case and the other case is not approved?

9 MS. CARTER: We would be in the same boat
10 then as most everyone else who is here with the
11 issues still open. Much like Mr. Lowery had said
12 before, Ameren Gas, Empire is very interested in
13 continuing settlement discussions.

14 We set up a meeting early on in these
15 dockets to see if we could get things moving and
16 get things resolved. And that led into the
17 customer savings plan case as well.

18 But -- but, ultimately, that would be our
19 goal is to get both of these resolved so we don't
20 have all those legal issues both for the companies
21 and the ratepayers hanging out there with the AAO
22 Legislation, all of that, we'd like to get things
23 resolved on a going-forward basis.

24 And the same as Mr. Lowery said for
25 Ameren, there's no question on the excess ADIT.

1 That's being tracked back to January 1 and will be
2 given back to ratepayers, that being a completely
3 separate issue than the amount from the tax rate
4 reduction.

5 JUDGE WOODRUFF: Okay. Thank you.

6 MS. CARTER: Thanks.

7 JUDGE WOODRUFF: For Summit Gas?

8 ORAL ARGUMENT

9 BY MR. BOUDREAU:

10 MR. BOUDREAU: Good morning. May it
11 please the Commission. My name is Paul Boudreau.
12 I'm here representing Summit Natural Gas of
13 Missouri, Inc., which I'll just shorthand as Summit
14 for ease of -- of the conversation.

15 I've got to say, this is something for me
16 of de-ja-vu all over again. I am sufficiently old
17 enough to remember the 1986 -- or the spin-off
18 proceedings in 1986. And I'm sorry to say that I
19 can remember that. I guess it just indicates I've
20 been around too long.

21 But it -- these are similar to -- similar
22 discussions that we've had. There's been some
23 change in the law in terms of the Commission's
24 rate-making authorization since that time to deal
25 with certain adjustment clauses.

1 But, essentially, it was the same -- it's
2 been the same discussion. And so we're here again.

3 The -- we have filed some written
4 comments, and I'm not going to -- to burden the
5 record with repeating those matters other than I've
6 just tried to draw the Commission's attention to
7 some recent proceedings that dealt with property
8 tax, not income tax, but property tax and whether
9 or not an AAO was available for these purposes.

10 I do think -- you know, I think that I
11 differ a little bit from some of the discussion
12 about whether or not the -- the provisions that
13 deal with accounting, the Uniform System of
14 Accounts, dealing with the gas company here -- at
15 least I'm representing a gas company, so I'm
16 talking about the FERC Uniform System of Accounts,
17 which the Commission has adopted by rule and which
18 gas companies are -- are obligated to follow.

19 And I think that in terms of deciding
20 whether or not a deferral is available, I think the
21 Commission needs to take a look at the system of
22 accounts that they have -- that they have directed
23 that gas companies follow.

24 And so I think that drives us to this
25 discussion that the -- that the Chairman was having

1 with Mr. Thompson about, is this the standard that
2 needs to be looked at in terms of deferrals. And I
3 would respectfully suggest that it is.

4 The Staff has -- has taken the position, I
5 think, from listening to Mr. Thompson that, Well,
6 we've got the Uniform System of Accounts. That's
7 one thing. And then we've got this statutory
8 provision, 393.140(8) that he's pointing to.

9 I would just direct the Commission to the
10 fact that in 1991, the Commission looked at that --
11 looked at that discussion about whether subsection
12 4 or subsection 8 of 393.14, if my memory serves me
13 right, and decided it wasn't subsection 8. It was
14 subsection 4, which is the accounting.

15 It's that power of the Commission to
16 establish a system of accounts. So I think it's a
17 false dichotomy. I think you need to take a look
18 at -- at the rule that the Commission has adopted
19 in terms of accounting. That drives, I think, the
20 discussion to whether or not under the system of
21 accounts has been adopted by FERC whether a
22 deferral is appropriate.

23 So without going into the details of it,
24 you know, I'll just draw your attention to the
25 cases that the Commission's applied recently in

1 terms of property tax. And I think that will
2 provide some pretty good guidance.

3 I concur with Mr. Lowery's discussion. I
4 won't repeat that about the idea of the interim
5 rates concept that Staff has quoted in its written
6 comments and in its oral arguments today. So I
7 concur with Mr. Lowery on that.

8 You've got a question for -- and this
9 circles back to what I just talked about, when the
10 Chairman asked Mr. Lowery if there was a legal
11 reason why the Commission couldn't issue an AAO.
12 And I'm not sure if I agree with his -- his
13 conclusion of the answer is no.

14 And it goes back to once the Commission
15 has adopted a system of accounts, it's -- it's
16 obligated to follow that.

17 Now, can it change the system of accounts?
18 It certainly can. Under subsection 4, if you go
19 ahead and embark, I think, on a rule-making, which
20 is how they've done it previously, and change the
21 system of accounts.

22 But I -- I do think that once the -- once
23 the Commission's adopted rules under the power of
24 the statutes that give it -- gives it the authority
25 to establish a system of accounts. I think it's

1 bound to that system until it changes the system.

2 CHAIRMAN HALL: So -- so are you telling
3 us that every AAO that we've issued was in
4 violation of statute?

5 MR. BOUDREAU: No. Because the AAOs were
6 issued pursuant to the terms of the Uniform System
7 of Accounts, which is what is an extraordinary item
8 and what's materiality.

9 CHAIRMAN HALL: Okay. So -- so -- okay.
10 I understand. So you're saying that we can't -- or
11 we should not take the position abdicated by Staff
12 Counsel, but that as long as it's extraordinary
13 under Section 8, we can -- we can -- we can order a
14 deferral. But you're not saying that we can't
15 apply the AAO standard and order one?

16 MR. BOUDREAU: Yes. I think the
17 Commission can apply the AAO standard. And I
18 think that's the question before it.

19 CHAIRMAN HALL: Okay.

20 MR. BOUDREAU: Are these costs
21 extraordinary and are they material.

22 CHAIRMAN HALL: Okay. I'll ask you the
23 same question I asked Mr. Lowery, which is would it
24 be legal for the Commission to do that here?

25 MR. BOUDREAU: To -- I'm sorry. I'm not

1 -- maybe I'm not --

2 CHAIRMAN HALL: The Commission may
3 under --

4 MR. BOUDREAU: I think if this Commission
5 were to determine that the event is extraordinary
6 and the impact is material, it certainly could do
7 so.

8 CHAIRMAN HALL: Okay. Thank you.

9 MR. BOUDREAU: In -- in looking at that
10 language, and it's cited both in the brief that --
11 that -- it's the General Instruction No. 7.

12 If you'll take a look at that -- at that
13 language -- and a number of the parties have
14 addressed it. I've addressed it. OPC has
15 addressed it.

16 The interesting thing about it is it talks
17 about a significant event, which is different from
18 the typical activities of the company. And I think
19 that that's language that is -- that is important
20 in this exchange.

21 And we know by looking at what the
22 Commission has done in the past -- and this isn't
23 an exhaustive list, but just an illustration, that
24 a repair response to a storm damage is an activity
25 of the company and that a repair response to flood

1 damage is an activity of the company.

2 We know that a power station rebuild to
3 burn low sulfur coal is an activity of the company.
4 But I -- the point I want to make in -- with
5 respect to some of the arguments that have been
6 made by Staff and Public Counsel that a change in
7 Federal income tax policy is not an activity of the
8 company. It's an activity of Commerce.

9 And as Staff has routinely argued over the
10 past, and OPC as well, it's the payment of tax
11 that's the activity of the company.

12 So just -- just the context, you know,
13 would suggest to you that a change in the tax code
14 is the extraordinary event that the Uniform System
15 of Accounts is talking about.

16 As far as the comments that Mr. Lowery
17 made about earnings, and I completely agree with
18 him, is that in the end what the Commission needs
19 to do in terms of changing rates is not just look
20 at this element, but look at all the other elements
21 that come to -- to setting rates for utilities.

22 In the first round, the first exchanges in
23 this docket, my client filed -- it's highly
24 confidential, but filed some information, the point
25 f which was illustrating that even -- even with the

1 marginal tax -- corporate tax rate change, it still
2 is not earning in excess. It's not in an excess
3 earnings situation.

4 So that's something that I think after
5 that filing there was signaling from the Staff to
6 the company that they'd -- they'd be interested in
7 having a dialogue about this.

8 And, certainly, we're open to talking
9 about that. But it kind of goes to the effect that
10 -- that each company's circumstance is different.

11 Summit hasn't filed for -- I think the
12 last -- the last time its rates were determined in
13 2014, and it's the same -- it's the same
14 circumstance that Mr. Lowery is talking about.

15 A lot of things have changed since then.
16 We don't really know how all the numbers are going
17 to shake out. But in -- in the context of Summit's
18 situation, it probably doesn't change it in terms
19 of whether or not it's in an earnings -- whether
20 it's an earnings deficiency earnings access
21 situation.

22 So it's -- it's -- I don't think it really
23 changes the picture for that company. So I urge
24 the Commission to consider that in each case
25 they're dealing the company at a different

1 circumstance.

2 Also, I think that issuing AAOs -- the
3 issuance of the AAO itself can have some accounting
4 and reporting consequences. And those are things
5 that I'm not really -- it's about two levels above
6 my pay grade.

7 But these are things that I think need to
8 be taken into account is that if the Commission
9 issues or directs an AAO that can have an impact on
10 -- on how a utility reports its earnings, what
11 remedies are available to it to meet ongoing
12 operations? So take that into consideration as
13 well. And we'd certainly request that the
14 Commission do so.

15 I think that's all I have at this -- at
16 this time in terms of any additional comments
17 beyond those that were written. I'm certainly
18 willing to answer any questions or attempt to
19 answer any questions that the Commissioner --
20 Commissioners may have.

21 CHAIRMAN HALL: No further questions.

22 COMMISSIONER RUPP: Nothing further.

23 COMMISSIONER SILVEY: No questions.

24 COMMISSIONER COLEMAN: No questions.

25 JUDGE WOODRUFF: GMO Steam?

1 OPENING STATEMENT

2 BY MR. FISCHER:

3 MR. FISCHER: Good morning. My name is
4 Jim Fischer representing the GMO Steam Operations
5 this morning.

6 Based on the surveillance information that
7 we filed with the Commission, GMO's theme
8 operations will have a revenue deficiency of
9 approximately \$1.5 million even after the tax
10 impacts are taken into account.

11 That is probably not too surprising since
12 the GMO Steam Operations rates haven't been changed
13 since about 2009.

14 So it's been several years since we've
15 looked at that. There are only five steam
16 customers out there that are served, and they're
17 quite sensitive to rate increases. And we're --
18 we're very much aware of that.

19 As the Chairman suggested, a deferral of
20 the tax impact in this case would cause the company
21 to re-examine when it would need to file a rate
22 case based upon that deferral.

23 And, currently, GMO does have a pending
24 electric case where electric steam allocations of
25 the Lake Road flat will be re-examined, and that

1 could impact the cost of service for the steam
2 operation as well as in 2018, there are significant
3 capital expenditures going on out there at the Lake
4 Road plant that would also need to be taken into
5 account whenever we look at overall rates of the
6 company.

7 GMO is willing, though, to commit to file
8 a rate case no later than March 31st of -- of 2019.
9 And that, of course, would reflect the -- the
10 income tax changes.

11 Now, in the past, the Commission's
12 rejected our attempts to get AAOs for such things
13 as property taxes, transmission expenses, critical
14 infrastructure protection and cyber security
15 expenses on the grounds that those weren't
16 extraordinary.

17 We suggested that wasn't the right
18 standard, but we haven't prevailed. Certainly, the
19 Federal income taxes aren't anything extraordinary.
20 They're usual. They're recurring. They're not
21 unique.

22 And we would suggest that under that
23 standard, they wouldn't -- wouldn't be appropriate
24 to be applied for the AAO.

25 I guess regulatory consistency would say

1 if it didn't work for those others, it shouldn't
2 work this -- for this one.

3 But in 1986, there's been several folks
4 bring that up. I happened to be serving on the
5 Commission. And we were given this particular
6 issue, how do we deal with this -- this tax reform
7 that came through.

8 And we came to the conclusion that you
9 needed to consider all relevant factors when you
10 did that. And the best way to do that would be to
11 order the Staff and other interested parties to
12 engage in negotiations with those utilities to
13 determine what would be an appropriate reaction to
14 the tax before that.

15 And as it turned out, it was quite a
16 successful endeavor. The companies were in
17 different situations.

18 And in the case of the Kansas City Power &
19 Light and Union Electric, they had extensive
20 phase-in plans, phase-in rate increase plans for
21 their nuclear power plant cases.

22 But as a result of the Tax Reform Act
23 being passed, we were able to modify those plans
24 and eliminate several of the years in phase-in.

25 That also happened for Arkansas Power &

1 Light that had a grand gulf plan. But there were
2 other cases where there were pending rate cases.
3 And in those cases, they -- they reflected the tax
4 impacts through the rate cases themselves.

5 And then in other cases, there were just
6 stand-alone agreements to reduce utility's tax
7 rates based upon the tax impacts.

8 But those were negotiated by the Staff and
9 Public Counsel and other interested parties. And
10 they were -- they were done on an individual basis.
11 There was no cookie cutter approach. There was no
12 one size fits all solution.

13 They looked at all of those. And in our
14 current situation at GMO Steam, we think the best
15 approach would be to not to establish an AAO at
16 this time, but to recognize that we will commit to
17 filing a rate case in the first quarter of 2019
18 where all of that could be taken into account.

19 Now, a couple other things I might just
20 mention. The question of interim rates came up.
21 If you look at the cases over the years, and I've
22 been around a while, the interim rate case standard
23 has always been an emergency standard.

24 It hasn't been a typical kind of
25 situation. But if you look at the case where

1 interim rates have been allowed, it has been under
2 very unusual emergency circumstances. That's what
3 that Laclede case that Mr. Lowery mentioned held,
4 and that's where it was approved.

5 But anyway, with that, I'd be happy to
6 answer any questions that you might have. We -- we
7 would suggest please don't issue an AAO on the case
8 of GMO Steam and let us file a rate case down the
9 -- down the road where all the factors can be
10 looked at.

11 JUDGE WOODRUFF: Any questions?

12 CHAIRMAN HALL: No questions. Thank you.

13 JUDGE WOODRUFF: Thank you, Mr. Fischer.
14 Then for Veolia?

15 ORAL ARGUMENT

16 BY MR. MILLS:

17 MR. MILLS: Good morning. May it please
18 the Commission. Veolia is in a -- in a different
19 situation than any of the other utilities in that
20 two weeks ago on May 10th, Veolia filed a request
21 to begin a small rate case proceeding.

22 Veolia, unlike the other utilities that
23 you've heard from today, actually does have a
24 currently pending general rate proceeding going.

25 And Veolia believes that that is the

1 appropriate place in which to address this issue
2 when it can be addressed with all of the other
3 relevant factors.

4 And, in fact, in the letter requesting
5 that the Commission begin a small rate case
6 proceeding, Veolia talked about the -- the tax act
7 and said, In order to efficiently and effectively
8 address the reduction in Federal tax rates due to
9 the Federal Tax Act recently signed by the
10 President, Veolia seeks to address this matter in
11 this rate case, that being the small company rate
12 case, and avoid participation in a separate
13 document -- docket involving multiple utilities
14 with this case that we're here today, HR-2018-0232,
15 and the attendant unnecessary expense.

16 And I'm -- I'm happy in response to your
17 question, Judge, from Mr. Thompson said Staff was
18 unaware of the company's commitment to address that
19 issue in a pending small company rate case, and I'm
20 happy on the record to reaffirm that commitment
21 here today, which I think should address Staff's
22 concerns. I'd be happy to answer any questions.

23 CHAIRMAN HALL: No questions.

24 JUDGE WOODRUFF: Thank you, Mr. Mills.

25 Thank you. That's all the utilities. We'll move

1 over to Renew Missouri.

2 ORAL ARGUMENT

3 BY MR. OPITZ:

4 MR. OPITZ: Thank you. May it please the
5 Commission. I -- I think at the end of
6 Mr. Thompson's statement, he suggested a procedural
7 schedule would be appropriate in these -- each of
8 these cases.

9 I would second that. I think that is
10 appropriate because it would permit the parties to
11 continue discussing how to resolve this.

12 As Renew Missouri sees it, utilities are
13 merely continuing to collect the rates that were
14 most recently authorized.

15 But at the same time, it's inequitable to
16 ignore the fact that their cost of service has
17 changed considerably.

18 In our view, inequitable outcome would
19 have a combination of a rate reduction at an
20 expedited basis, money spent on items in the public
21 interest and perhaps some money kept by the
22 utility.

23 An expedited determination of prospective
24 rates is the best way to ensure that customers will
25 be able to see the benefits of this Federal tax cut

1 and this -- it's our hope it would be possible
2 through voluntary agreements reached by the parties
3 of these cases.

4 This is possible, and I will say here, we
5 entered an agreement in -- in an Empire case
6 recently that that stipulation and agreement is our
7 position statement in that pending case.

8 So we reaffirm our commitment to that and
9 as an example that the utilities have agreed to
10 expedite rate reductions.

11 That being said, we don't believe an AAO
12 is appropriate at this time. But we would support
13 a procedural schedule. And if negotiations do not
14 proceed in a way that -- that effectuates an
15 equitable result, I think a procedural schedule
16 that permits an evidentiary basis for a finding
17 that -- that the results of the tax cut is either
18 extraordinary material or that it is not
19 extraordinary material would be appropriate.
20 So with that, I'm happy to answer questions.

21 JUDGE WOODRUFF: Any questions from
22 Commissioners? All right.

23 CHAIRMAN HALL: So -- so your suggestion
24 that it would be appropriate to set a procedural
25 schedule, that would be merely for purposes of

1 encouraging settlement?

2 MR. OPITZ: I think that it could be a
3 schedule that had, you know, technical conferences
4 built into it. There are cases that do that.

5 But it would also keep this case open so
6 that, in the event that those negotiations were
7 unfruitful, there's the possibility that an AAO
8 could ultimately be issued.

9 CHAIRMAN HALL: Well, we -- we set this
10 hearing how many weeks ago? Six weeks ago? Eight
11 weeks ago?

12 JUDGE WOODRUFF: About six weeks ago.

13 CHAIRMAN HALL: So what negotiations
14 occurred during those six or eight weeks ago
15 that --

16 MR. OPITZ: So I will say that in that
17 time, there were negotiations with -- with Empire
18 as part of a separate case.

19 Renew Missouri has met with several
20 parties that are in this room and talked with them.
21 And the consensus from those meetings was we need
22 to wait to see what the Legislature does.

23 And so there was people who were willing
24 to discuss that, but they didn't believe it was the
25 right time to talk about it.

1 CHAIRMAN HALL: Thank you.

2 MR. OPITZ: Thank you.

3 JUDGE WOODRUFF: Missouri School Boards'
4 Association?

5 ORAL ARGUMENT

6 BY MR. BROWNLEE:

7 MR. BROWNLEE: Good morning. I'm Richard
8 Brownlee. I represent the Missouri School Boards'
9 Association.

10 Just quickly, they're a not-for-profit
11 trade association. We represent about 400
12 different School Districts, and there's about 2,300
13 schools involved in the account.

14 Very quickly, we're in this because we're
15 a little unique in that, for example, in 19 -- in
16 2002, Missouri Legislature passed a very special
17 Bill allowing the schools to purchase natural gas
18 on the market.

19 We utilize the local lines for the various
20 utilities to transport the gas into the schools,
21 and we pay balancing fees and other fees for that.

22 So we are unique, and we have filed in
23 this document on -- in our document that we did
24 file, we suggested that, while unique, we did give
25 you a solution, which is to how we should be

1 treated when whatever occurs.

2 Mr. Boudreau brought up that he was here
3 in the early '80s. I was here in the '70s. And
4 you -- rate cases were a far, far different animal
5 at that time. They were much simpler. They didn't
6 last forever and ever and ever. There were very
7 few people involved.

8 But one thing that occurred in the rate
9 case back at that time is that income taxes were
10 treated separately, and they were accounted for
11 separately.

12 And all rates set as early as I've been
13 around, that income tax was a separately
14 accountable, a separately identifiable treatment.
15 Rates were set on that. That was in '74.

16 And that's the same for, I think, every
17 rate today that's being charged. There's a
18 separate, unique treatment for income tax. It's
19 not complicated.

20 And that's one thing we can say is true.
21 Because of that, that I think where you -- where
22 you reach that is to recognize this is -- is a
23 separate unique issue.

24 I heard that tax costs, whether they're
25 material or extraordinary, the tax expenses are not

1 extraordinary. They are material, I think.

2 But the refund provisions raised by this
3 tax law, those are. This is a unique situation.
4 And what it's done, it's created a windfall. I
5 don't know if anybody used that word in their
6 papers, but that's really what's happened here.

7 And I don't think because of that windfall
8 or the pot of gold that utilities should be able to
9 take those found monies and apply them on other
10 things that they wish and hope for or what might
11 occur in a future rate case or that we haven't
12 filed for six years. But if we do, this will be
13 real important when they do.

14 I think the Commission should keep this as
15 a separate issue. I think you should treat it
16 separately. I think the briefs and the papers that
17 have been written, to my knowledge, they're really
18 good. They've got a lot of -- they've laid out a
19 lot of choices. They've laid out a lot of the
20 issues and problems and what's before the
21 Commission and the solution.

22 But there is a solution. And I think, in
23 that solution, this Commission should do a couple
24 of things. One, it should be consistent. I don't
25 think -- whatever reasons or anything, I believe

1 every utility, regulated utility in the United
2 States is undergoing this same issue. And I would
3 urge the Commission to keep that in mind.

4 Secondly, I think it's important to look
5 who paid -- who paid the money in? For some
6 strange reason, when the utility gets their hands
7 on the money that's gone in to pay income taxes,
8 it's like it becomes their money. It's like it's
9 part of their operation of generating power.

10 It's not. It's purely a pass-through.
11 And with that in mind, I think the Commission has a
12 -- two things. A, I think you should look at who
13 pays the money in, realize this is pass-through and
14 do the best you can to return it to those parties
15 who paid it in in these various methodologies.

16 But, for example, schools are a little
17 different. But I think if you do that, you do
18 really the best thing in this unique situation,
19 which is the right thing.

20 There is a right thing to do here. And it
21 doesn't -- it shouldn't be applied like it is a pot
22 of gold that's been discovered around the corner at
23 somebody's utility plant.

24 This is uniquely separate money, and we
25 have a -- it is material. We go from an income tax

1 of 35 percent back, I think, to 21 percent. That's
2 material. For your own taxes, that's material.

3 So I really don't have anything else. I
4 think the comments have been good. And I -- I
5 don't -- I wish I could give you a magic solution,
6 but I really -- I don't know what it is.

7 Thank you. I'd be happy to try to answer
8 any questions. Some of this is past my pay grade,
9 too.

10 CHAIRMAN HALL: I have no questions.

11 Thank you.

12 JUDGE WOODRUFF: Thank you so much.

13 COMMISSIONER COLEMAN: Thank you.

14 JUDGE WOODRUFF: And so City of Joplin?

15 OPENING STATEMENT

16 BY MS. BELL:

17 MS. BELL: May it please the Commission.
18 Stephanie Bell on behalf of the City of Joplin. As
19 I've stated here before and recently, the City of
20 Joplin's interest has been, will be, will continue
21 to be ratepayer impact.

22 And as you heard from me recently in the
23 Empire case, I think Joplin ratepayers -- and
24 that's the only case we're in before you is the
25 0228 Empire case.

1 And there is a stipulation and agreement
2 in -- on file in that both the customer savings
3 plan case and this case.

4 And as you know, City of Joplin objected
5 to that stipulation and agreement on other grounds,
6 not specifically with respect to the TCGA portion.

7 But as you heard from me in that case, the
8 City of Joplin ratepayers since 2006 have
9 experienced a 62 percent increase.

10 I think Ms. Carter represented today that
11 an \$18 million a year decrease as a result of Tax
12 Cuts and Jobs Act, which I believe might be about a
13 3 percent decrease for the Joplin ratepayers.

14 Given all of their recent increases, I
15 would suggest to you that it is an extraordinary
16 event. It is material to ratepayers.

17 And so Joplin's position is that we -- we
18 do believe the Commission has the authority to
19 issue an Accounting Authority Order. And we concur
20 with the written arguments made in this case by
21 OPC.

22 We urge the Commission to return the
23 benefits from the tax rate reduction to the
24 ratepayers.

25 JUDGE WOODRUFF: Thank you.

1 CHAIRMAN HALL: No questions. Thank you.

2 JUDGE WOODRUFF: Thank you.

3 Mr. Woodsmall, MECG?

4 OPENING STATEMENT

5 BY MR. WOODSMALL:

6 MR. WOODSMALL: Good morning. David
7 Woodsmall on behalf of Midwest Energy Consumers
8 Group.

9 As a result of a number of other matters
10 pending before both the Commission and at the
11 Capitol, MECG did not file initial comments.

12 Nevertheless, MECG has some thoughts that
13 it would like to share. Initially, MECG warned you
14 against taking a look at '86 as a model for what
15 should be done here.

16 In '86, AAOs didn't exist. The Commission
17 struggled with how do we address this tax cut? And
18 they didn't have AAOs to take care of that.

19 You have a tool that's been endorsed by
20 the Courts, so don't look at '86 given that things
21 have changed since then.

22 MECG believes that the Commission does
23 have authority to issue Accounting Authority Orders
24 to defer the savings associated with the Tax Cut
25 and Job Act.

1 In reaching this conclusion, I want to be
2 clear about where that authority come from. While
3 MECG agrees with Staff's conclusion that you do
4 have the authority, MECG disagrees with the way
5 that Staff reaches its conclusion.

6 Staff claims that authority to defer these
7 savings is absolute and based upon Section 393.140.
8 MECG strongly disagrees.

9 In the '70s, the Commission attempted to
10 implement fuel adjustment clauses. As you know, a
11 fuel adjustment clause, like an AAO, simply defers
12 current costs for recovery in a separate case.

13 That decision to implement fuel adjustment
14 clauses in the '70s was challenged by the Missouri
15 Supreme Court.

16 As part of the requirement to show that
17 it's decision to implement that a fuel adjustment
18 clause is legal, the Commission pointed to its
19 authority in Chapter 393.

20 Specifically, the Commission pointed to
21 the same authority that Staff points to now,
22 Section 393.140.

23 The Court rejected the Commission's
24 argument noting that these statutes are simply a
25 general discussion of power and not the specific

1 grant of authority needed to justify the deferrals.

2 As regards Section 393.140, the court
3 stated, quote, Section 393.140 sets out the general
4 powers of the Commission.

5 While this statute gives the PSC general
6 supervisory over electric utilities, it gives the
7 PSC broad discretion only within the circumference
8 of the owners conferred on it by the Legislature.

9 The provisions cannot in itself give the
10 PSC authority to change the rate-making scheme set
11 up by the Legislature, unquote.

12 Ultimately, the Court held that the
13 Commission does not have the authority to implement
14 a fuel adjustment clause. That authority did not
15 come about until the Legislature implemented the
16 fuel adjustment clause in 2005.

17 So just as 393.140 did not provide the
18 Commission with authority in the '70s, it also does
19 not provide it the authority here today.

20 That said, you do have the authority. So
21 how do we get there? The Commission has the
22 authority to order deferrals within the limited
23 exception provided by case law.

24 In 1993, the Commission issued a decision
25 in a Missouri Public Service case whereby it

1 allowed for the deferral of certain costs that it
2 termed, quote, extraordinary.

3 Rationalizing that these extraordinary
4 costs are not otherwise reflected in rates, the
5 Commission approved the deferral.

6 The Western District Court of Appeals
7 agreed saying, quote, Because rates are set to
8 recover continuing operating costs plus a
9 reasonable return on investment, only an
10 extraordinary event should be permitted to adjust
11 the balance to permit costs to be deferred -- to be
12 deferred for consideration in a later period,
13 unquote.

14 So while the Commission has some authority
15 to allow a deferral of costs, that deferral must
16 fit within the exception provided by the Missouri
17 Court of Appeals.

18 So what I'm telling you is your authority
19 to defer costs is not absolute like Staff claims.
20 Rather, it's limited to the exception provided by
21 the Missouri Court of Appeals. That is the
22 extraordinary standard.

23 And this interpretation has been recently
24 affirmed by the Western District Court of Appeals
25 in a KCP&L appeal in 2017 where they affirmed your

1 use of the extraordinary standard.

2 MECG would warn you against relying upon
3 the United -- or the U.S. -- Uniform System of
4 Accounts.

5 The Uniform System of Accounts can't give
6 you authority. If you don't have the authority,
7 you can't create it by simply passing a rule. Only
8 statutes and case law can give you authority, so
9 don't look at Uniform System of Accounts as the
10 authority you need to defer costs.

11 That has to come from statutes or case
12 law. And as I said, that comes from the case law.
13 As I mentioned, MECG believes that the Commission
14 has the authority to defer these costs.

15 This opinion is based upon the belief that
16 the Tax Cut and jobs Act is, quote, an
17 extraordinary event, end quote.

18 We have not previously seen a Federal tax
19 cut in over 30 years. That's extraordinary.
20 Certainly, extraordinary is also met by the
21 infrequent nature as well as the sheer magnitude of
22 the decrease.

23 Finally, on general nature, MECG would
24 warn against setting a procedural schedule. This
25 has been going on for quite a while. Simply issue

1 the Accounting Authority Orders that is
2 contemplated by the order here. And if the parties
3 need to have agreements or negotiations, that can
4 happen after the AAO.

5 The AAO does nothing but defer these
6 costs. So issue the AAO. Parties can continue to
7 talk.

8 So that was in MECG's general comments.
9 On to specific comments. MECG -- as other have
10 noted, MECG has executed an agreement to resolve
11 this matter with the Empire District Electric for
12 the return of \$18 million of tax savings to
13 customers.

14 This agreement is reflected in the
15 non-unanimous stip in Case No. EO-2018-0092. As we
16 indicated in that case, MECG would ask that the
17 Commission approve that non-unanimous stipulation.

18 Here's the predicament. This is my
19 concern. As others have said, this case as applies
20 to Empire District is a general rate case.

21 So what happens if you reject the
22 settlement in the Empire wind case? If you reject
23 that settlement, we have a general rate case here,
24 so the provisions of SB-564 don't apply.

25 You reject the settlement. You don't have

1 the one-time authority anymore under SB-564. How
2 do you get that money back to customers?

3 So -- so that's my concern. What I'd like
4 to say is quickly approve that before the Governor
5 signs SB-564, but that doesn't meet up with the
6 briefing schedule.

7 So I believe Staff had it right initially
8 by dismissing this case. Dismiss this case, get
9 rid of the general rate case.

10 That way, if you reflect the settlement in
11 the Empire wind case, you can still make the
12 one-time change under SB-564.

13 But right now, you've really boxed
14 yourself. There's a predicament as it applies to
15 Empire Electric.

16 Moving on. As to the Empire District Gas,
17 MECG has also had initial discussions with Empire
18 and agrees with the comments of Empire Gas that a
19 settlement is close there. In fact, it is hoped
20 that that settlement would follow the same lines as
21 Empire Electric.

22 That said, however, an AAO for both of
23 those companies is still appropriate. The
24 settlement in both those cases is prospective in
25 nature as was said for Empire Electric October 1

1 going forward.

2 Since this is a general rate case, SB-564
3 wouldn't apply. So the provision that allows -- in
4 SB-564 that allows for a capturing of the savings
5 for what I call the stub period, January 1, 2018.
6 to October 1, 2018, that provision of SB-564 would
7 apply.

8 In order to capture that for Empire
9 District Electric and Empire District Gas, you
10 would need to have an AAO.

11 So we support approving the settlement for
12 Empire District Electric. That provides a
13 prospective piece. But there will still need to be
14 an AAO to capture the stub period.

15 On to GMO Steam Heat. MCEG has a
16 completely different position there. And I hope
17 you don't feel like I'm being somewhat
18 contradictory. But this is a really, really unique
19 situation with GMO Steam Heat.

20 As a general rule, MCEG believes that the
21 Commission should defer savings and return it to
22 customers as soon as possible.

23 MCEG represents large commercial and
24 industrial customers. In this rule, I believe that
25 MCEG represents most, if not all, of GMO Steam's

1 five customers. That's what makes this case unique
2 for GMO Steam. Five customers.

3 If they're all represented and they can
4 agree to something, let them do that. MECG has had
5 conversations with GMO on this line -- along these
6 lines.

7 In this limited case, MECG does not want a
8 tax savings AAO because it would subject those
9 customers to a rate case that's otherwise not going
10 to happen.

11 We've had conversations. We know the
12 situation with GMO's financial picture. We -- we
13 had -- we were subject to information in both the
14 last GMO case that ended just last February --
15 well, I guess it was February 2017 as well as the
16 pending case.

17 So what I'd tell you as regards GMO Steam
18 Heat, just wait a while. Perhaps do something
19 like, say, the parties have like till August 1 to
20 get something done. And if that doesn't happen,
21 we're going to issue the AAO.

22 The AAO isn't time sensitive. It can
23 still go back to January 1. But allow us a little
24 bit of time to work that out with GMO and perhaps
25 obviate the need for the AAO.

1 CHAIRMAN HALL: On that issue, explain to
2 me how an AAO would -- would -- would affect the
3 negotiations between MECG and -- and the company.

4 Couldn't that just be taken into account
5 and -- at whatever the settlement is between the
6 five customers in the utility, then you bring that
7 before us and --

8 MR. WOODSMALL: I guess it could.
9 Honestly, it could.

10 CHAIRMAN HALL: Okay.

11 MR. WOODSMALL: It -- it may undo what the
12 AAO does, but as long as the Commission's open to
13 that type of situation, it -- it could.

14 CHAIRMAN HALL: Yeah. I mean, I can't
15 speak for that Commission. I mean, I would assume
16 that if all five customers and the company are all
17 in agreement that that would -- that would be a
18 significant motivation for accepting whatever the
19 amendment was.

20 MR. WOODSMALL: Finally, there were
21 comments about Hotel Continental. Rarely do I
22 agree with the utilities. But this is a situation
23 where I do.

24 I don't believe Hotel Continental provides
25 the legal basis to create a mechanism to flow this

1 back.

2 If you look at the UCCM case from 1979, it
3 really limited the scope of the Hotel Continental
4 Holding. And so read that case closely, UCCM,
5 before you make a decision in which you believe
6 Hotel Continental applies.

7 I think that will lead you to believe that
8 it -- that that holding is severely limited. So I
9 agree with the utilities on that side. I think
10 that was the entirety of my comments.

11 CHAIRMAN HALL: I have no questions.
12 Thank you.

13 COMMISSIONER COLEMAN: Thank you.

14 JUDGE WOODRUFF: Thank you.

15 MR. WOODSMALL: Thank you.

16 JUDGE WOODRUFF: Any other questions from
17 the Bench on any of the participants?

18 CHAIRMAN HALL: I have no questions.

19 COMMISSIONER COLEMAN: No, sir.

20 JUDGE WOODRUFF: All right. Then with
21 that, we are adjourned. Thank you all for coming
22 today.

23 (The proceedings were concluded at 11:35 a.m. on
24 May 24, 2018.)

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REPORTER'S CERTIFICATE


STATE OF MISSOURI)

) ss.

COUNTY OF OSAGE)

I, Monnie S. Mealy, Certified Shorthand Reporter,
Certified Court Reporter #0538, and Registered Professional
Reporter, within and for the State of Missouri, do hereby
certify that I was personally present at the proceedings as
set forth in the caption sheet hereof; that I then and there
took down in stenotype the proceedings had at said time and
was thereafter transcribed by me, is fully and accurately
set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal on June 11, 2018.



Monnie S. Mealy, CSR, CCR #0538
Registered Professional Reporter

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