

In the Matter of:

**SPIRE MISSOURI, INC.'s d/b/a SPIRE REQUEST FOR AUTHORITY, etc.**

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**GR-2021-0108, VOL. XIII**

*August 05, 2021*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

August 5, 2021

Jefferson City, Missouri

Volume 13

In The Matter Of Spire Missouri Inc.'s )  
d/b/a Spire Request for Authority to )  
Implement a General Rate Increase for ) File No. GR-2021-0108  
Natural Gas Service Provided in the )  
Company's Missouri Service Areas )

CHARLES HATCHER, Presiding  
REGULATORY LAW JUDGE.  
RYAN SILVEY, Chairman,  
SCOTT RUPP,  
JASON HOLSMAN,  
GLEN KOLKMEYER,  
MAIDA COLEMAN,  
Commissioners.

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

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P R O C E E D I N G S

JUDGE HATCHER: Let's all come to order and go on the record. Today is August 5th. This is Day 4 of the Spire general rate case hearing, which is File Number GR-2021-0108. Again, we are having a hybrid hearing. We have many participants and counsel in person in the Commission's courtroom, Room 310 in the Governor Office Building. We also have participants and witnesses on WebEx, which is an Internet telecommunications and video conferencing system. And we also have people listening in on the Internet livestream.

The parties have notified the Commission that they have addressed all of the issues for today except for the NOL and that's net operating loss carryforward. There will also be some leftover questions that are related from yesterday regarding cash working capital. That is Issue 8. The NOL carryforward, again, net operating loss, is Issue 16.

We'll began with mini opening statements and I invite Spire to the podium. Mr. Caro.

MR. CARO: Good morning. Is this on? Good morning, Judge, and thank you.

OPENING STATEMENT BY MR. CARO:

MR. CARO: This is Frank Caro appearing on behalf of spire. May it please the Commission. Spire's position with regards to that net operating loss or NOLs as they are referred to is that the Commission should include net

1 operating loss carryforward, also well known as NOLs, as an  
2 offset to accumulated deferred income tax, commonly referred  
3 ADIT. Spire has claimed tax -- the tax benefits from  
4 accelerated depreciation including bonus depreciation on its tax  
5 returns to the extent that depreciation was available such that  
6 it will produce a net operating loss carryover.

7           On its regulatory books of accounts Spire  
8 normalizes the difference between regulatory depreciation and  
9 tax depreciation. This means that where accelerated  
10 depreciation reduces taxable income, the taxes that a taxpayer  
11 would have paid with regulatory depreciation instead of  
12 accelerated tax depreciation, would claim constitute cost-free  
13 capital with Spire.

14           To normalize these differences Spire maintains a  
15 reserve account showing the amount of tax liability that is  
16 deferred as a result of the accelerated depreciation. This  
17 reserve is the ADIT amount. In addition, Spire maintains an  
18 offsetting series of entries, a deferred tax asset, and a  
19 deferred tax expense that reflect that portion of those tax  
20 losses which while due to accelerated depreciation did not  
21 actually defer tax because of the existence of a carryforward of  
22 net operating losses.

23           In calculating its rate base, Spire included its  
24 ADIT balance as an offset to the rate base. Spire maintains  
25 that the ADIT balance should be reduced by the amounts that

1 Spire calculates where it did not actually defer the tax due to  
2 the presence of the NOLs as represented in the deferred tax  
3 asset account.

4 As you will hear from Spire's tax director,  
5 Chuck Kuper and PricewaterhouseCooper's managing director  
6 who is online by WebEx, Alan Felsenthal, this is a common  
7 accounting step for public utilities that has been blessed in  
8 the number of IRS private letter rulings, which you will hear  
9 referenced as PLRs. Of note the IRS states in nearly all of  
10 these rulings that failing to include the NOLs would result in a  
11 normalization violation under IRC Sections 168 (i-9) and  
12 Treasury Regulation Section 1.167 (i-1).

13 Importantly, Staff agrees with Spire's position  
14 and stated in their position statement that it is appropriate to  
15 include the NOL asset as an offset to total ADIT and excess  
16 ADIT because it represents a tax benefit Spire has not yet  
17 realized.

18 OPC opposes inclusion of the NOL because OPC  
19 concludes that NOL is a form of free cash to Spire. OPC does  
20 acknowledge that the IRS usually advises that NOLs be included  
21 as offsets to ADIT, but argues that the Commission is not  
22 obligated to include the NOLs in the rate base ignoring the  
23 conclusions and IRS rulings that NOL -- that the NOL must offset  
24 the ADIT or a normalization violation will occur.

25 OPC's position is that the Commission should

1 break with foundational IRS practices for treating NOLs simply  
2 because it is theoretically conceivable that the Commission can  
3 do so and apparently because OPC disagrees with the practice.  
4 But OPC does not make any persuasive arguments as to why current  
5 circumstances support a break with traditional accounting  
6 practices either by distinguishing Spire from the PLRs favoring  
7 Spire's position or by citing to a more contemporary persuasive  
8 solution of how Spire should include NOLs in its rate base  
9 calculations.

10           Further, the Commission must recognize that the  
11 IRS has normalization rules that must be followed in order for  
12 the taxpayer, in this case Spire, to be able to claim  
13 accelerated depreciation for income tax purposes. Violation of  
14 those rules would mean that Spire could not claim accelerated  
15 depreciation, which because there would no longer be book tax  
16 depreciation differences, would result in no rate base reducing  
17 ADIT in the future, thereby increasing rate base and revenue  
18 requirements.

19           As mentioned, when the IRS has been asked  
20 whether not including an NOL ADIT asset in rate base would  
21 result in a normalization violation, the IRS has consistently  
22 ruled a normalization violation would occur in such  
23 circumstances.

24           Spire asks the Commission to follow IRS protocol  
25 and include the NOL as an offset in rate base calculations and

1 to deny OPC's suggestion that the Commission break with the  
2 protocol. The loss of rate base reducing ADIT and increasing  
3 revenue requirements due to a normalization violation is too  
4 great a risk to take. Thank you.

5 JUDGE HATCHER: Mr. Caro, I do have a question  
6 before you go. Are you familiar with a recent Western District  
7 Court of Appeals decision on this issue?

8 MR. CARO: If you are referring to the Missouri  
9 American Water case.

10 JUDGE HATCHER: Yes, I am.

11 MR. CARO: I read that decision. I didn't know  
12 that that was really applicable to this case and involved a  
13 hypothetical ISRS. I don't know that it was actually on point.

14 JUDGE HATCHER: Okay. Thank you very much.

15 MR. CARO: We can address that in our brief.  
16 too, if you would like.

17 JUDGE HATCHER: All right. Thanks. We get to  
18 Staff. Ms. Myers?

19 OPENING STATEMENT BY MS. MYERS:

20 MS. MYERS: May it please the commission. Good  
21 morning. My name is Jamie Myers and I am here representing the  
22 staff of the Missouri Public Service Commission. Staff's  
23 position on this issue is straightforward. Staff acknowledges  
24 that Spire has a net operating loss asset and recommends that  
25 Spire's net operating loss asset balance should be included in



1 Spire's accumulated deferred income taxes sometimes referred to  
2 as ADIT and Spire's excess ADIT. Staff's calculated ADIT  
3 balance represents the accumulated cash consequences of tax  
4 benefits Spire has realized from book tax timing differences.  
5 Since its net operating loss asset represents a tax benefit as  
6 counsel for Spire just noted, that spire had not yet realized,  
7 is it appropriate to include this tax asset as an offset to  
8 Spire's total ADIT and excess ADIT.

9 Staff witness Matthew Young has written rebuttal  
10 and surrebuttal testimonies on Staff's recommendation to  
11 providing NOL carryforwards and is here today to answer  
12 questions on this topic. Additionally, I'll note following the  
13 Judge's instructions during yesterday's portion of this  
14 evidentiary hearing, Staff witness -- staff also has witness  
15 Antonija Neito available here today to answer further questions  
16 on cash working capital should there be any. Thank you.

17 JUDGE HATCHER: Thank you, Counselor. I would  
18 like to also ask you the same question: Are you familiar with  
19 the District Court of Appeals --

20 MS. MYERS: I am familiar. I think similar to  
21 the statements of Spire's counsel, Mr. Caro, that's probably  
22 something we would address in brief and not specifically on  
23 point to this specific issue.

24 JUDGE HATCHER: Okay. Thank you very much.

25 I go to Mr. Clizer, Office of the Public

1 Counsel.

2 MR. CLIZER: If you don't mind.

3 JUDGE HATCHER: Go ahead.

4 OPENING STATEMENT BY MR. CLIZER:

5 MR. CLIZER: Good morning. If it would please  
6 the Commission, John Clizer on behalf of the Office of the  
7 Public Counsel. The essential problem with this issue lies in  
8 the fact that there are two buckets of free money at play here.  
9 And Company and Staff only want to focus on one, ADIT. They are  
10 completely ignoring the other bucket of free money which is the  
11 whole basis of the OPC's argument. Now, I'm going to coin a  
12 term today to refer to that second bucket, but before I get into  
13 that let's break things down a little bit, make it a little bit  
14 more simple. Right.

15 Let's start with what is the cumulative deferred  
16 income tax? As you've already heard the IRS allows for  
17 companies to book depreciation different than how it is booked  
18 for accounting purposes in the regulatory world. That book tax  
19 timing different as we refer to it allows for a certain amount  
20 of taxes to be collected from ratepayers but not immediately  
21 paid to the IRS. It gets deferred. And these deferred taxes  
22 are booked to an account or they accumulate, and thus you have  
23 accumulated deferred income tax or ADIT. Okay.

24 But what about the other taxes. Right? ADIT or  
25 the accumulative deferred income taxes doesn't account for all

1 of the income tax that is built into a company's rate case.  
2 Right. Let's say that the Company has, I don't know -- Staff  
3 calculates that they are going to have to pay \$50 million in  
4 taxes. The deferred income taxes related to that book tax  
5 timing difference, let's say that is 10 million of it. The  
6 Company is still going to have to pay the other 40 million.  
7 Right. Except, what happens if the Company has other  
8 depreciation -- not other depreciation -- sorry -- other  
9 deductions that allow them to not pay that other 40 mil. Well,  
10 that is another pile of free money and it is not something that  
11 anybody else refers to by a good name. I'm going to give it a  
12 name for this purpose and I'm going to refer to it as the  
13 permanent deferred income taxes.

14                   Why do I use the word permanent? Because unlike  
15 accumulative deferred income taxes, which eventually have to be  
16 paid, permanent deferred income taxes represents the income tax  
17 expense that the Company collects from ratepayers and then never  
18 pays to the IRS. It is just a huge pile of free money the  
19 Company gets to keep. The OPC's argument in a nutshell is that  
20 the NOL should be offset against this PDIT before you offset it  
21 against the ADIT. In other words, you should offset it against  
22 free money that's being generated because the Company has income  
23 tax money that is collected but not remitted before you offset  
24 it against the free money that's generated because the Company  
25 has these book tax timing differences.

1 I want to pause for a moment here and I want you  
2 to think. The Commission needs to stop and think about the  
3 logic of ADIT. Why is it included in rate base? At a  
4 fundamental level, why is this included in rate base? The ADIT  
5 is referred to as an interest-free loan. It is a loan from the  
6 IRS to the utility paid for by ratepayers. Let's walk through  
7 that really quick. The ratepayer pays money for income taxes.  
8 The IRS says you can hold onto that money for a moment. We will  
9 take it later. The Company gets to hold onto it, pays it later,  
10 and in the meantime it reduces rate base.

11 Now, what about the permanent deferred income  
12 taxes I referred to. The logic here is the exact same. The  
13 ratepayers pay for it, then the IRS says nope, you have other  
14 deductions, we won't take it. And the Company gets to keep it.  
15 In fact, it is better than ADIT because it is not just a loan,  
16 it is a gift. The government is giving the Company money.

17 So again, all the OPC is asking for is to say to  
18 the Commission, look you want to acknowledge that NOL? Great.  
19 Acknowledge against the PDIT and when the PDIT is used up then  
20 acknowledge against the ADIT.

21 Now, you heard a lot of stuff about private  
22 letter rulings. And they basically said that, you know, the IRS  
23 has spoken on this. It has to be done this way. Not true.  
24 There are -- there is an IRS private letting ruling that  
25 supports the OPC's position. And what this is really is that

1 the normalization rules just say that the Commission has to  
2 account for the NOL. It does not say it has to be used to  
3 offset ADIT. It says it had to be accounted for, which is  
4 exactly what the OPC is requesting. We're asking you for to  
5 account for it by reducing PDIT, which otherwise isn't being  
6 tracked. And -- and this is exceptionally important, we have an  
7 alternative request for the Commission. You heard counsel for  
8 Spire stand up here and say the risk is too great. You have to  
9 offset the ADIT. And if you believe that true, go to the OPC's  
10 alternative request, which is a very simply track the PDIT.

11           If you are not going to offset the PDIT by the  
12 NOL, just track it. Just create a regulatory tracking mechanism  
13 that tracks the amount of income tax expense that is built into  
14 rates, but not remitted to the IRS. The great part about this  
15 is that the Commission's own staff, while they disagreed with  
16 the OPC on our position regarding NOL and the offset ADIT, the  
17 Commission's own staff says that the appropriate mechanism for  
18 dealing with this issue is to create that tracker. So there you  
19 have it.

20           The OPC is asking for you to not offset ADIT by  
21 the NOL because there's a huge pile of free money in the form of  
22 PDIT. If you disagree with that order a tracker for the PDIT.  
23 Any questions?

24           JUDGE HATCHER: Mr. Clizer, I have the same  
25 question as I did for the other counsel. Are you familiar with

1 that Western District appeal? I believe that you are.

2 MR. CLIZER: I am intimately familiar with the  
3 appeal. I'm going to give you an answer that might actually  
4 shock you, which is that I -- on the forefront I actually agree  
5 that it is not completely relevant to this point. I would have  
6 to go back and do additional legal research to see if there is  
7 any particular relevancy. However, the specific nuances of the  
8 ISRS case I think are distinct from the arguments that are being  
9 raised here. I can't vouch for that with certainty. I would  
10 want to do my own legal research, but that case is not what we  
11 are standing on.

12 What we are standing on is the very real fact  
13 that this company has collected money from customers to pay  
14 income taxes that they are not paying and that collected money  
15 needs to be recognized. There's no logical distinction between  
16 the PDIT that I refer to and the ADIT the Commission already  
17 recognizes. There's none. They both represent money that is  
18 collected, not paid, and which should be used as an offset to  
19 rate base. I literally -- just think there. Just stop and  
20 think.

21 What is the difference between this? The only  
22 real difference is that ADIT you have to pay back eventually.  
23 PDIT you never have to pay back. That is better for the  
24 Company.

25 JUDGE HATCHER: That is where I am stuck.

1 MR. CLIZER: Yeah.

2 JUDGE HATCHER: You keep saying never and I just  
3 -- I can't wrap my head around such an absolute.

4 MR. CLIZER: Okay. But --

5 JUDGE HATCHER: I think that will get cleared up  
6 because I did ask about the \$40 million bucket of taxes that I  
7 believe were testified to or collected each year and that is  
8 going to be a follow-up question for today's witnesses.

9 MR. CLIZER: It will be brought up during the --  
10 yes.

11 JUDGE HATCHER: Okay. I do have to say, I'm --  
12 I was not expecting all counsel to agree that the Western  
13 District decision wasn't relevant here.

14 MR. CLIZER: Subject to check, my honest opinion  
15 that is not what I am basing my argument on.

16 JUDGE HATCHER: Okay. I will leave that to you  
17 guys and we'll go from there.

18 Thank you, Mr. Clizer. That has all the  
19 questions I have.

20 Mr. Kuper?

21 (Witness sworn.)

22 JUDGE HATCHER: I thank everyone for their  
23 patience both online and on the WebEx. Everyone here in the  
24 courtroom saw all the technical changes that were happening it.  
25 It does take just a minute.

1 Mr. Kuper, thank you for your patience. Would  
2 you please raise your right hand?

3 (Witness sworn.)

4 JUDGE HATCHER: Thank you, sir. Please state  
5 and spell your name for the court reporter.

6 THE WITNESS: All right. My name is Charles J.  
7 Kuper, C-H-A-R-L-E-S, J. K-U-P-E-R.

8 JUDGE HATCHER: Thank you.

9 And Spire's witness.

10 MR. CARO: Thank you, Judge. Before we get  
11 started with Mr. Kuper, I'd would like to make a proffer to the  
12 Judge and mark an exhibit if you would. In Mr. Kuper's  
13 surrebuttal testimony he cites five private -- excuse me, seven  
14 private letter rulings. That is on Page 3 of his surrebuttal  
15 testimony. Again, it starts on Line 3 and rolls down to Line  
16 10. And what I would like to do is have that marked as Exhibit  
17 Number 51 for ease of reference to the Commission and the  
18 parties.

19 MR. APLINGTON: Is it 50 or 51?

20 JUDGE HATCHER: 50 is the next number.

21 MR. CARO: It would be Number 50, then. I'm  
22 going to hand a copy to counsel. Judge, would you like a copy?

23 JUDGE HATCHER: No. If you can email it to me,  
24 I will take care of getting it all filed as an exhibit. For the  
25 other counsel's edification, the Commission was going to be



1 asking for a copy of these PLRs to be filed as an exhibit. So I  
2 didn't hear you move for that. Let's get through the testimony  
3 and then we'll get there.

4 MR. CARO: Okay.

5 JUDGE HATCHER: Sorry about that. Go ahead,  
6 Mr. Caro.

7 CHARLES KUPER, having been first duly sworn, testifies as  
8 follows:

9 DIRECT EXAMINATION BY MR. CARO:

10 Q. You've already stated your name for the record  
11 Mr. Kuper. What is your business address please?

12 A. 700 Market Street, St. Louis, Missouri.

13 Q. And by whom are you employed and in what  
14 capacity?

15 A. I'm employed by Spire as their Director of Tax.

16 Q. Are you the same Charles J. Kuper who caused to  
17 be filed direct, rebuttal, and surrebuttal testimony in this  
18 proceeding on December 11th, 2020, March 12, 2021, and July  
19 14th, 2021 respectively?

20 A. I believe those dates are accurate, yes.

21 Q. Okay. Do you have any additions or corrections  
22 to make to your testimony at this time?

23 A. No, I do not.

24 Q. If I were to ask you the same questions again  
25 today, would your answers remain the same?

1           A.       Yes.

2           Q.       And are those answers true and correct to the  
3 best of your knowledge?

4           A.       To the best of my knowledge, yes.

5                   MR. CARO: Thank you. I move to -- the  
6 Commission entered all of Mr. Kuper's testimony into the record  
7 as Exhibits 18, 19 and 20.

8                           (WHEREIN; Spire Exhibits 18, 19, and 20 were  
9 offered into evidence.)

10                   JUDGE HATCHER: Any objections to the admission  
11 of Exhibits 18, 19, 20? Hearing none, so admitted.

12                           (WHEREIN; Spire Exhibits 18, 19, and 20 were  
13 received into evidence.)

14                   MR. CARO: And I'd also move for the admission  
15 of what's just been marked and identified as Exhibit Number 50,  
16 the seven PLRs that were referenced in Mr. Kuper's surrebuttal  
17 testimony.

18                           (WHEREIN; Spire Exhibit 50 was offered into  
19 evidence.)

20                   JUDGE HATCHER: Before I ask for any objections,  
21 there are four from Mr. Felsenthal's testimony that I also want  
22 to make sure I cover just for --

23                   MR. CARO: They may be included in the seven,  
24 but I haven't looked. I'd have to go back and --

25                   JUDGE HATCHER: I'll give you the last three

1 numbers of those four cases just for ease of identification.  
2 729, 037, 021, 001. And this is Mr. Felsenthal's rebuttal  
3 testimony, Page 11.

4 MR. CARO: Okay.

5 MR. APLINGTON: Your Honor, as this is going to  
6 be a group exhibit we will make sure to supplement all of the  
7 PLRs before we file it with Your Honor.

8 JUDGE HATCHER: That's where I was headed. I  
9 didn't know if we wanted to do just one or if they were already  
10 in those. If it easiest to do one, let's do one and --

11 MR. CARO: Add it to Exhibit Number 50 then?

12 JUDGE HATCHER: Are they already in there?

13 MR. CARO: No. We'll make sure that --

14 MR. APLINGTON: There's one that we will need to  
15 add, Your Honor.

16 JUDGE HATCHER: I hate to ask for any objections  
17 in advance.

18 MR. CLIZER: We don't have any objections and we  
19 are fine with you supplementing it to. Private letter rulings  
20 are available online.

21 JUDGE HATCHER: Okay. And I see head nodding by  
22 Staff's counsel. Thank you. Please, end of business tomorrow.  
23 Thank you.

24 Where are we at? You were offering Exhibit 50.  
25 Exhibit 50 is admitted onto the record without objection.

1 (WHEREIN; Spire Exhibit 50 was received into  
2 evidence.)

3 MR. CARO: Thank you. At this point I tender  
4 Mr. Kuper for cross-examination.

5 JUDGE HATCHER: Mr. Kuper, I believe your first  
6 cross is from Counselor Myers.

7 MS. MYERS: No questions, Judge.

8 JUDGE HATCHER: The attorneys are consulting,  
9 for everyone on the livestream or on WebEx.

10 Mr. Clizer, your witness.

11 CROSS-EXAMINATION BY MR. CLIZER:

12 Q. Good morning, Mr. Kuper.

13 A. Good morning.

14 Q. Just a kick off. I know you said for Spire. I  
15 want to make sure it's clear. Spire Missouri or Spire Inc.?

16 A. Well, I am an employee of Spire Inc. and through  
17 the operation of, I guess, the cost-sharing arrangement, you  
18 know, I provide services for all entities in the Spire  
19 companies.

20 Q. Okay. The reason I asked is because -- and make  
21 sure I get this right -- Spire Inc. files a consolidated tax  
22 return. Right?

23 A. Correct.

24 Q. And you would agree with me that Spire Inc.  
25 hasn't paid income taxes to the federal government over the last

1 four years. Correct?

2 A. That would be a correct statement.

3 Q. Do you know the amounts of an NOLC Spire Inc.  
4 currently has?

5 A. The amount of NOLC that Spire Inc. as a  
6 consolidated group as?

7 Q. As a carryforward, yeah?

8 A. It's based on the filing of our fiscal '20 tax  
9 return. That NOL balance is in excess of 760 million.

10 MR. CLIZER: All right. Thank you. No further  
11 questions.

12 JUDGE HATCHER: Thank you, Mr. Clizer.

13 I would like to take a pause for just a second  
14 and state for the record I have seen all five commissioners in  
15 attendance either on the WebEx or listening. And I would like  
16 to also note it is \*6 if you are on the telephone and you need  
17 unmute. At this time, we will turn to commissioner questions.  
18 Are there any commissioner questions for Witness Kuper?

19 COMMISSIONER HOLSMAN: No questions at this  
20 time, Judge.

21 JUDGE HATCHER: Thank you, Commissioner Holsman.

22 QUESTIONS BY JUDGE HATCHER:

23 Q. Mr. Kuper, when rates are being set for a  
24 utility as with this case, what do -- what is the calculation  
25 based on? How many years of income tax payments goes into the

1 rate calculation?

2 A. It's my understanding that the rate calculation  
3 is based upon a test year and therefore whatever the cost of  
4 service components that make up that test year, of which income  
5 taxes are a component of that, produces a revenue requirement  
6 that is put in place. And that income tax component of the cost  
7 of service is essentially based on the book depreciation or the  
8 regulatory depreciation calculation that is applicable under the  
9 normalization rules.

10 Q. As Mr. Clizer pointed out and you just  
11 testified, you paid zero doing the test year; is that correct?

12 A. We paid -- our current tax expense was zero.  
13 Correct. Yeah. The amount of taxes based on the filing of the  
14 tax return produces accelerated tax depreciation benefits that  
15 essentially reduce the taxable income to zero or really negative  
16 and therefore there's no current tax expense, but the tax  
17 expense associated with the rates are basically hung up in the  
18 ADIT. You know, it is a deferred tax liability that will be  
19 paid at some point in the future.

20 Q. Okay. I heard you confirm that you did not pay  
21 taxes in the test year and I have heard you testify that that is  
22 part of the calculation for how to figure out how much of the  
23 income taxes to include in rates, rate recovery. I apologize  
24 for my misuse of the industry jargon. How do you square the two  
25 truisms that we use the test year to set rates and Spire didn't

1 pay any taxes in the test year? I believe that is the sum of  
2 OPC's issue. Can you square how those two things would work  
3 together?

4 A. Well, I'll give it my best opportunity that  
5 hopefully answers your question. So say for instance, you know,  
6 in the test year I think a number of, I think, \$40 million of  
7 tax expense has been -- has been, you know, set. So therefore,  
8 if we didn't have any accelerated depreciation or any book tax  
9 differences that impacted the activities for the Company and we  
10 would just stick with the regulatory depreciation and have no  
11 other adjustments, then for that test year the current tax  
12 liability would be the \$40 million. Because of the availability  
13 of claiming accelerated depreciation, the additional  
14 depreciation deduction that you can claim on your tax return can  
15 reduce that tax liability down to zero or even make it negative.

16 So therefore, in an example say my accelerated  
17 depreciation, you know, produces a \$50 million benefit. Well, I  
18 only have \$40 million of what would be considered, you know, a  
19 tax expense based on the test year activities. So therefore, by  
20 having the deferred taxes of 50 million, my ADIT balance will  
21 increase so that's going to be considered a rate base offset.  
22 But if my ADIT balance is increasing by 50 million, but my tax  
23 expense in the test year was only 40 million, I am out of  
24 balance by \$10 million and that is where this NOL offset comes  
25 into play, to keep you from having a normalization violation,

1 which is essentially providing a benefit to the ratepayer sooner  
2 than the Company would get the benefit, that NOL adjustment has  
3 to be adjusted out of ADIT so the ADIT balance nets to only a  
4 \$40 million increase for that test year period, which would then  
5 create the total tax expense per rates is listed as 40 million  
6 in this example. So that's going to be made up of two  
7 components; a current tax expense and a deferred tax expense.  
8 And if the current tax is zero, then the deferred taxes is 40.  
9 I mean, it's basic math. And therefore that \$40 million because  
10 it is a timing difference, will reverse at some point in the  
11 future.

12                   But as, you know, the utilities are capital  
13 intensive they, you know, incur these capital projects on an  
14 annual basis and that is something that is going to continue to  
15 have a deferred tax component. But bonus depreciation, which  
16 was prevalent through, you know, the early teens of, you know,  
17 this century or this decade, you know, bonus depreciation is no  
18 longer in the law at the federal level. So the accelerated  
19 benefits of bonus depreciation are going to start to reverse  
20 over -- you know, over the next, you know, number of years.

21                   So that NOL that we have built up because of the  
22 federal policies allowing the bonus depreciation and  
23 consolidated depreciation, that balance is going to start  
24 diminishing as we go forward in the future. So therefore, you  
25 know, those taxes will eventually be paid. You know, it is not



1 that they are never going to be paid and you know, the concept  
2 of this permanent item, you know, I just really don't understand  
3 where OPC has come up with this permanent item because there are  
4 very few limited amounts of permanent items that, you know,  
5 reflected in our tax return but they are very insignificant to  
6 the overall, you know, calculation of our taxable income.

7 Q. I think I can summarize your statement, your  
8 position. I just want to see if you would agree with that.  
9 There is a timing difference that does create an interest-free  
10 loan as was the intent of that statute. And right now, Spire is  
11 in a good position for Spire financially and it is what it is.  
12 And eventually that will change and Spire will have to start  
13 paying out of that bucket of accumulated deferred income taxes  
14 to the government. But in the meantime, it is a collection that  
15 is being remitted to Spire and is being held for an as yet  
16 undetermined amount of time. Would that be fair, in plain  
17 language, summary?

18 A. I think it covers the -- you know, the majority  
19 of the concept. So I mean, really where the distinction is is  
20 if -- you know, if I have a -- you know, say with regulatory  
21 depreciation I have a taxable income balance of, you know, say,  
22 \$40 and if my depreciation adjustment now creates a negative  
23 amount, you know, the only interest-free loan that I have gotten  
24 is up to the \$40 because that is all the tax that was set in the  
25 rates for that test year. So anything above and beyond what tax

1 is in rates has not been a benefit to the Company as of that  
2 point in time, which is the -- essentially the NOL carryforward.

3 So once those NOL carryforwards are being  
4 utilized, then the Company will get the benefit of that and that  
5 is when it will come as an adjustment to that ADIT offset that  
6 will, you know, keep everything harmonized.

7 Q. I have picked on OPC's statement as being  
8 absolute. Their position is that Spire will never pay these  
9 taxes. You have disputed that. I have questioned the absolute  
10 nature of the word "never." Could you give me an estimate of  
11 when you think Spire will be paying taxes again?

12 A. Well, I -- that is a very difficult question.  
13 As OPC's question to me, I mean, from my consolidated basis the  
14 consolidated group has an NOL, you know, in excess of about 760  
15 million. Spire Missouri as a --

16 Q. I am sorry to interrupt. We started saying  
17 numbers and it clicked in my head that this might be  
18 confidential. Your attorney says it is not. Please go ahead.  
19 I apologize.

20 A. Okay. I am not sure if it's confi-- I mean, our  
21 tax returns are confidential documents, but I know that we have  
22 produced testimony in the case that I am not sure if all of the  
23 DRs are noted as confidential or not.

24 Q. He will stand up object.

25 A. Okay. So from a Spire Missouri aspect, you

1 know, their net operating loss carryforward is around, I think,  
2 235 million of that total. So I guess, could you maybe repeat  
3 your question. Oh never -- when will we anticipate paying  
4 taxes.

5           So the -- you know, currently in Washington  
6 there is some debate whether there is going to be an additional  
7 tax bill that comes through. And, you know, some of the  
8 terminology around what could potentially come to play is an  
9 increase in corporate tax rates. Who knows if they're going to  
10 make any other adjustments to certain deductions; the way you  
11 can compute depreciation, the way, you know, certain businesses  
12 can expense, you know -- interest expense or any other type of  
13 expenditure. You know, I think they're looking for revenue  
14 raisers from a tax perspective so how those would impact, you  
15 know, future tax filings that we have, you know, is unknown at  
16 this point in time.

17           I mean, given the, you know, current level of  
18 depreciation -- or the current level of NOLs that we have and  
19 you know, the projection for our, you know, future activities, I  
20 would say that, you know, we will start whittling down the NOLs,  
21 but when we will ultimately utilize those, you know, it could be  
22 -- you know, it could be a -- you know, a number of years.

23           Q.       More than a decade?

24           A.       Probably less than a decade, you know, but  
25 probably more than two- to three-year period. But it really

1 just depends on, you know, how tax policy changes, you know,  
2 from this point forward. You know, we can't project the future,  
3 we can only assess where we are today and then determine, you  
4 know, how we need to, you know, take tax positions on filings  
5 based on what the law says.

6 Q. Your uncertainty leads me back to Mr. Clizer's  
7 question, why now. Spire is a large company. Why not just wait  
8 and you can come back and file a rate case or file an accounting  
9 authority order or I am sure there's a number of different  
10 mechanisms that the Commission would be able to address a change  
11 in tax circumstances. It was before my time but the 2017 Tax  
12 Cut and Jobs Act, I believe, did generate a number of filings in  
13 the Commission for companies wanting to adjust how they approach  
14 their accounting, I guess, or taxes.

15 So my question is why now?

16 A. I guess, why now with regard to what specific  
17 question? The inclusion of a net operating loss carryforward as  
18 an offset to ADIT in the rate base? I mean, I think that is the  
19 -- that's the core question, I believe that we are here to  
20 discuss.

21 Q. My question is if Spire isn't paying income  
22 taxes in the test year and income taxes paid during the test  
23 year dictate what goes into rate recovery, why shouldn't the  
24 Commission put in a zero for how much income taxes are being  
25 paid by Spire, because that is the answer for the test year, and

1 then Spire can come back in three years or short of a decade or  
2 whatever time that your NOL position reverses and then come to  
3 the Commission and say we have got to change and we need to do  
4 this fix.

5 A. Well, because the way that the normalization  
6 rules are set up, the calculation of income tax expense in the  
7 rate year is based upon the book of the regulatory depreciation  
8 calculations. That is a requirement to have income taxes  
9 recorded as part of your rate base -- as part of your  
10 calculation of cost of service.

11 Q. Whose requirement?

12 A. That is a regulatory, you know, requirement that  
13 the -- the calculation of income tax expense based on the cost  
14 of service calculation is part of the cost of service for that  
15 specific test period.

16 Q. I need the citation.

17 A. I mean, that's -- I don't know. I guess, do we  
18 have a citation?

19 JUDGE HATCHER: Mr. Clizer has something to  
20 offer. Let's see where that goes.

21 MR. CLIZER: He's referring to the normalization  
22 violation rules, which you asked about yesterday and Mr. Riley  
23 pointed you to a citation in his testimony.

24 JUDGE HATCHER: Thank you.

25 MR. CLIZER: I ask if Spire would like to

1 correct that statement?

2 MR. CARO: Yeah. I don't know what the --

3 THE WITNESS: I mean, the normalization cite  
4 was, I think, Section 168.

5 MR. CARO: Mr. Kuper, hold on. It's cited  
6 throughout to our testimony as the citations with the IRC. We  
7 will make we get it to the Judge's attention.

8 JUDGE HATCHER: Not a problem. I got kind of  
9 laser focused right there and heard citing a rule. And I am  
10 lawyer, I want to know what the citation is. I apologize, I  
11 will get the citation myself. Not a problem.

12 MR. CARO: Judge, for clarification purposes,  
13 it's all over the PLRs. Every single PLR references it over and  
14 over again, the normalization rule.

15 JUDGE HATCHER: Thank you. And that actually  
16 brings me actually brings me to what I believe is my last  
17 question.

18 BY JUDGE HATCHER:

19 Q. Let's talk about PLRs?

20 A. Sure.

21 Q. I have a couple of PLR questions. First, are  
22 you aware that at the end of every PLR it states that this is  
23 not to be used for precedent?

24 A. Correct. Yes.

25 Q. Okay. Second question: Has Spire ever asked

1 for a PLR on this issue?

2 A. They have not.

3 Q. How come?

4 A. We feel that it is something that we don't need  
5 to ask for because the PLRs that have been produced thus far,  
6 you know, the majority of those PLRs based on the fact patterns  
7 that are listed there, you know, come to the conclusion that the  
8 NOL carryforward must be taken into account in the calculation  
9 of the ADIT rate base offset. And in our interpretation of that  
10 taking into account means that you've got to offset the ADIT  
11 rate base or the ADIT offset with the NOL carryforward to keep  
12 yourself in balance with where the calculation of the taxes per  
13 the test year are based on the regulatory calculation of  
14 depreciation expense.

15 Q. What about Mr. Clizer's tracker, wouldn't that  
16 account?

17 A. I think that it is already being accounted for  
18 through the ADIT offset. So as each year progresses, depending  
19 on what you're ADIT offset versus what your NOL carryforward is,  
20 you know, those numbers are going to be adjusted essentially on  
21 an annual basis, on a go forward period. So that is going to  
22 essentially be part of the equation. When -- so when you get to  
23 the next rate case, you know, we will have an ADIT offset number  
24 and we'll have presumably still an NOL carryforward, maybe that  
25 number will be down to zero. So I don't feel that, you know, a

1 tracker would produce any benefit with respect to this.

2 Q. Okay.

3 JUDGE HATCHER: That's all the questions I have.  
4 That triggers recross. Let's go back to Staff.

5 Counselor.

6 MS. MYERS: Judge, just a few.

7 RECROSS EXAMINATION BY MS. MYERS:

8 Q. Mr. Kuper, are you aware of other Missouri  
9 utilities in general realizing net operating losses due to bonus  
10 depreciation?

11 A. I have not -- I haven't looked into that.

12 Q. Okay. But would you say that Spire's situation  
13 is unique in the utility industry with net operating losses and  
14 carryforwards?

15 A. No.

16 MR. CLIZER: Objection; what portion of the  
17 Bench questions is this recross directed to?

18 MS. MYERS: Judge, I think you asked quite a few  
19 questions about Spire's tax situation, when they would expect it  
20 would be ultimately paying taxes. I think that goes to this  
21 point, to the situation that Spire is in in its tax situation.

22 JUDGE HATCHER: I did. And Mr. Clizer, I think  
23 generally I would appreciate the extra education.

24 MR. CLIZER: Fair enough.

25 BY MS. MYERS:



1 Q. And so Mr. Kuper, I'm sorry if you were cut off  
2 there. You do not believe that Spire's situation is unique in  
3 comparison to the other utility industry?

4 A. No, I do not. The utility industry is highly  
5 capitalized, so there is a lot of utilities that generate,  
6 accumulated and bonus depreciation and they are in an NOL  
7 position.

8 MS. MYERS: Thank you. No further questions,  
9 Judge.

10 JUDGE HATCHER: Thank you. That goes back to  
11 Mr. Clizer.

12 MR. CLIZER: Your Honor, I believe that Staff  
13 accounting schedules have been offered and accepted. Correct?  
14 Can I verify that?

15 JUDGE HATCHER: The exhibits that you offered  
16 yesterday?

17 MR. CLIZER: No. I believe that Staff has  
18 offered its own accounting schedules in the testimony of -- I  
19 think it was --

20 MS. MYERS: Judge, we have premarked our  
21 accounting schedules as Exhibit 102. I don't believe that they  
22 have been offered or admitted.

23 JUDGE HATCHER: No.

24 MR. CLIZER: The reason I ask this question is  
25 because I will be crossing him on a portion of account schedules

1 and I don't want to burden the record with additional citation.  
2 So I'm going to hand these out, and like I did yesterday,  
3 assuming the account schedules come in, I will need to mark this  
4 and offer it as an exhibit. Do you follow?

5 JUDGE HATCHER: You are going use it as a  
6 demonstrative for the time being?

7 MR. CLIZER: I'm assuming Staff intends to offer  
8 its accounting schedules.

9 MS. MYERS: We do.

10 JUDGE HATCHER: All right. I will hold you to  
11 it.

12 MR. CLIZER: Thank you.

13 JUDGE HATCHER: Okay.

14 RE CROSS EXAMINATION BY MR. CLIZER:

15 Q. All right. Now Mr. Kuper, you were asked a  
16 question by the Judge to which you responded that you believe  
17 that the \$40 million that was not going to be collected from  
18 rate -- sorry -- that was not going to be remitted accounted for  
19 the book tax timing differences, the deferred taxes. Do you  
20 recall that response?

21 A. Yes.

22 Q. Can you please look at Line 45 of either of  
23 these schedules?

24 JUDGE HATCHER: And no numbers yet.

25 MR. CLIZER: These are not confidential.

1 MR. APLINGTON: These are not confidential.

2 JUDGE HATCHER: Okay. Number away.

3 THE WITNESS: Okay.

4 BY MR. CLIZER:

5 Q. Do you agree with me that these numbers refer to  
6 the deferred taxes generated by the book tax timing difference  
7 that are included in Staff's case?

8 A. I mean, this is a Staff case computation. You  
9 know, I haven't had a chance to, you know, validate. I mean,  
10 that's -- what's included in Staff's case, you know, would be  
11 different than what is filed on our tax returns.

12 Q. Staff is not including \$40 million of book tax  
13 timing difference. Would you agree with that?

14 A. I probably cannot assess that from this  
15 schedule. I mean, it just has a net deferred income tax  
16 adjustment.

17 Q. Is that net deferred income tax adjustment add  
18 up to 40 million between these two companies?

19 A. I just have Spire West schedule in front of me.  
20 Based on the Spire West and East, you know, Line 45 amounts, you  
21 know, do not add up to 40 million.

22 Q. I would proffer to you that if you round up they  
23 add up to about 8 million together. Are you willing to accept  
24 that?

25 A. Based on the Staff's schedule, believe that

1 would be an accurate statement.

2 Q. I would offer to you that at Line 43 the total  
3 summary of current income tax from both of these, those would  
4 add up together for about 40 million. Correct?

5 A. Which line item?

6 Q. Line Item 43?

7 A. They seem -- I guess which column are you  
8 referencing?

9 Q. Let's use E?

10 A. Column E. Yeah, they would sum up to  
11 approximately 40 million.

12 Q. So is it fair to say that Staff has included  
13 approximately 40 million in current income taxes and only  
14 approximately -- less than 8 million in deferred income taxes in  
15 this case?

16 A. Based on their schedule, that would be seem to  
17 be how they have rolled up the tax number.

18 Q. So Staff is calculating that your deferred  
19 income taxes due to book tax timing differences only accounts to  
20 about \$8 million. Correct?

21 A. That's what, I guess, the Staff has put  
22 together. Correct.

23 Q. And the remaining \$32 million would be current  
24 income tax expense the Company would collect and expect to remit  
25 to the IRS under this schedule. Correct?

1           A.       Based on the calculation here, that would seem  
2 to be appropriate.

3           Q.       And if this schedule was ordered, would Spire  
4 remit that \$32 million to the IRS?

5           A.       That depends on how the Company completes the  
6 filing of its tax return because this is a regulatory  
7 calculation for purposes of setting rates. It is not the filing  
8 of a tax return.

9           Q.       Would the Company make use of other deductions  
10 beyond book timing tax depreciation to lower its tax liability?

11          A.       Sure. There are items that are not considered  
12 part of rate base that are timing differences that the Company  
13 could avail itself of in the current year with the reversal of  
14 those happening in a future year.

15          Q.       Mr. Kuper, you are not listening to my question.  
16 Are there deductions that are unrelated to timing differences  
17 that the Company can take advantage of?

18          A.       Unrelated to timing differences? Yes, there are  
19 a few items that are considered permanent differences.

20          Q.       Is a net operating loss carryforward a deduction  
21 that the Company can take to reduce its liability in a current  
22 year?

23          A.       Potentially. If the current year taxable income  
24 is positive, then a NOL carryforward from a prior year can be  
25 utilized to offset that taxable income to the extent of the

1 carryover or if the carryover is fully extinguished then there  
2 will be our remaining tax liability or taxable income left after  
3 the utilization of the NOL.

4 Q. So if Staff had included \$32 million in current  
5 income tax in Spire's rates and Spire utilized the net operating  
6 loss carryforward to not pay that \$32 million and reduce its tax  
7 to zero, that would be a possible outcome. Correct?

8 A. That is a possible outcome.

9 Q. Let's run down what would happen in that  
10 outcome. Let's assume that Staff has included \$32 million in  
11 current income tax in your rates and 8 million in deferred  
12 income taxes. We don't have to -- so in -- let's assume that  
13 Staff has included \$40 million of current income tax of which 8  
14 million is deferred. Let's set the 8 million aside. They're  
15 \$32 million left over the Company is expected to pay to the IRS.  
16 Okay. You follow me so far?

17 A. Yes.

18 Q. The Company utilizes a net operating loss  
19 carryforward to not pay that amount. How much money does the  
20 Company at hand at that point?

21 A. Are you talking from a cash basis standpoint or  
22 an accrual basis standpoint?

23 Q. Either.

24 A. Well, from an accrual standpoint if I'm  
25 utilizing NOL, that means I am utilizing a deferred asset that

1 will adjust where my net deferred tax balances are. So  
2 therefore, you know, I essentially get to the same position  
3 because now my deferred balance -- I utilized an asset so my net  
4 liability from a deferred standpoint will increase by the amount  
5 of the NOL that I'm utilizing.

6 Q. Maybe some visual aids will help. Let's go back  
7 to that example. The Company -- the Commission Staff has  
8 included \$40 million in your current income tax expense of which  
9 8 million is deferred. We remove that from this equation. You  
10 collect \$32 million from ratepayers in a single given year. I'm  
11 going to hand you a \$32 million dollar bill. Will you take that  
12 from me? You utilize or rather, Spire utilizes a net operating  
13 loss carryforward to not pay income taxes. Do you still have  
14 \$32 million of cash?

15 A. I would have \$32 million of cash.

16 Q. All right. And in the next year if the same  
17 thing happens and I hand you an additional \$32 million, over the  
18 course of two years you've now made \$64 million of cash?

19 A. I don't believe we've made \$64 million of cash;  
20 we have an adjustment on our balance sheet where we have 64  
21 million of cash, but then our deferred tax asset related to NOL  
22 carryforward would have been reduced by \$64 million to get me  
23 back to a zero net position.

24 Q. You have collected \$64 million from ratepayers  
25 and have not remitted it to the IRS. Do you agree with that

1 statement?

2 A. Not currently, but that is something that will  
3 be paid to the IRS in the future.

4 Q. At what point will it be paid?

5 A. That's an unknown at this point in time. I  
6 mean, tax laws can change. Based on the reversal of the  
7 depreciation differences, because a lot of the tax depreciation  
8 is set up -- the bonus depreciation was taken immediately  
9 whereas accelerated depreciation --

10 Q. I'm sorry. I don't want to cut you off, but  
11 again we are not talking about book tax timing difference.  
12 We're talking about deductions created by net operating loss  
13 carryforward. If you utilize a net operating loss carryforward  
14 in Year 1 to reduce tax liability to zero, and you don't pay the  
15 \$32 million you collected from customers, at what point is the  
16 IRS going to say, nope. You actually have to give us that \$32  
17 million?

18 A. That's the point I was trying to make. From a  
19 regulatory standpoint, assume that the book depreciation that is  
20 included at the rate calculation is a straight line depreciation  
21 of a 50-year life, which would say you are taking 2 percent  
22 depreciation a year for 50 years, for tax purposes you may take  
23 that depreciation immediately on a bonus depreciation at 100  
24 percent in Year 1. So you've taken that entire deduction for  
25 tax in Year 1, but the recovery through rates is going to be



1 happening over the next 49 years to -- at the end of the 50-year  
2 period get back to a zero balance. So therefore, these NOL  
3 carryforwards that we have currently will reverse over time and  
4 it may take up to 50 years to be able to do that.

5 Under the current law NOLs generated before 2017  
6 have a 20-year carryforward period. NOLs generated after 2017  
7 are unlimited.

8 Q. You understand that the amount of money we're  
9 talking about is unrelated to book tax timing differences?

10 A. I am not sure that is accurate because that is  
11 what generated the NOLs to begin with. If I have no book tax  
12 timing differences then whatever my book income is is going to  
13 what my taxable income is. So if book income was negative in  
14 any given year, then I would have a net operating loss generated  
15 because I've got a book loss.

16 Q. So you are saying all current income tax is  
17 deferred?

18 A. I'm saying all current income tax is deferred.  
19 That's correct.

20 Q. So the Staff should adjust its schedules to  
21 include all current income tax as deferred income tax?

22 A. I mean, I cannot speak for Staff.

23 Q. Would it be correct for Staff to adjust its  
24 schedules so that all current income tax is treated as deferred  
25 income tax?

1           A.       Well, from a ratemaking perspective I don't  
2 believe Staff is considering any accelerated depreciation or any  
3 tax method or any elections that the Company would make as part  
4 of their calculation or taxes.

5           Q.       But you would include all current income taxes  
6 as deferred income taxes?

7           A.       Well, I would look at the activity that we have  
8 for that respective year and determine if we are going to have a  
9 current tax liability or not. If we don't feel that we are  
10 going to have a current tax liability, we would classify it out  
11 as deferred tax.

12          Q.       Do you feel like Spire is going to have a tax  
13 liability in the next year?

14          A.       In the next year, the likelihood is remote that  
15 we would have a current tax payment.

16          Q.       So again, you would treat all current income tax  
17 as deferred income tax next year?

18          A.       Correct.

19                   MR. CLIZER: No further recross.

20                   JUDGE HATCHER: Mr. Caro, redirect.

21                   MR. CARO: Give me a minute please.

22                   JUDGE HATCHER: For everyone listening on the  
23 livestream and on WebEx, the lawyers are going to confer for  
24 just a moment. We will be silent for just a second.

25 REDIRECT EXAMINATION BY MR. CARO:

1 Q. Mr. Kuper, let me see if I understand. So you  
2 are not recommending the exclusion of the tax expense from  
3 rates, are you?

4 A. No, I am not.

5 Q. And why not?

6 A. That would be a normalization violation because  
7 based on the cost of service the income tax has to be a  
8 component based on the regulatory calculation of depreciation.

9 Q. And do Spire customers get the benefit of ADIT  
10 offsets?

11 A. They do.

12 Q. In what form?

13 A. It is a rate base offset. And I think currently  
14 what we have provided through one of our data requests is that  
15 rate base offset is approximately \$400 million.

16 Q. There is a reference to a PDIT or permanent  
17 deferred income tax. Is that a known regulatory tax concept?

18 A. In the context of what was stated, it's really  
19 not. There are certain permanent adjustments between book and  
20 tax, but the majority of the items are timing differences.

21 Q. That it not we're talking about with NOLs here,  
22 is it?

23 A. No. And the methodology that the IRS uses with  
24 respect to the NOL is really considered more of like a with and  
25 without calculation. So you have these other adjustments that

1 adjust your taxable income and to the extent that the  
2 accelerated depreciation related to these method life  
3 differences increase or create an NOL, you -- that is the  
4 component that we are really speaking about. So if I computed  
5 my calculation without bonus depreciation, you know, if I have  
6 an NOL of one and I've got a NOL of 30 with accelerated  
7 depreciation, 29 of that would be related to what we are  
8 speaking.

9 MR. CARO: Thank you. Your Honor, I have no  
10 further questions.

11 Thank you, Mr. Kuper.

12 JUDGE HATCHER: Thank you. Mr. Kuper, you are  
13 excused from the witness stand.

14 THE WITNESS: Thank you.

15 JUDGE HATCHER: Thank you, sir.

16 MR. CARO: While we have Mr. Kuper on the stand,  
17 are there any questions regarding cash working capital? While  
18 we have him here.

19 JUDGE HATCHER: Mr. Kuper, are you going to be  
20 in the room for the next hour?

21 THE WITNESS: Sure, I can be.

22 JUDGE HATCHER: Okay. I will wait to hear if I  
23 have any other questions and I believe that will be more than  
24 enough time to find out if I do.

25 I don't have any questions at this moment. You

1 are temporarily excused from the witness stand.

2 THE WITNESS: Okay. Thank you.

3 JUDGE HATCHER: I believe next we are going to  
4 Mr. Felsenthal.

5 MR. CARO: Yes.

6 JUDGE HATCHER: Thank you. I'm going to come  
7 over and get the monitor prepared at the witness stand.

8 And Mr. Felsenthal, if you can unmute yourself  
9 we will get started in just a minute.

10 Awesome. Somebody got it for me. All right. A  
11 quick announcement, Mr. Felsenthal will be testifying then I do  
12 intend to have a break before our final two witnesses for the  
13 day.

14 Mr. Felsenthal, please raise your right hand.  
15 (Witness sworn.)

16 JUDGE HATCHER: Thank you, sir. If you could  
17 please state and spell your name for the court reporter.

18 THE WITNESS: Sure. My name is Alan A-L-A-N,  
19 Felsenthal, F as in Frank, E-L, S, like Sam, E-N-T-H-A-L.

20 JUDGE HATCHER: Spire's witness.

21 MR. CARO: Thank you, Your Honor.

22 ALAN FELSENTHAL, having been first duly sworn, testifies as  
23 follows:

24 DIRECT EXAMINATION BY MR. CARO:

25 Q. Mr. Felsenthal, good morning. This is Frank

1 Caro on behalf of Spire. Are you the same -- would you please  
2 state your name again and business address for the record?

3 A. Yes. My name is Alan Felsenthal. My business  
4 address as 1 N. Wacker Drive, Chicago, Illinois 60606.

5 Q. And by whom are you employed and what is your  
6 title, sir?

7 A. I am a managing director at  
8 PricewaterhouseCoopers, LLP.

9 Q. And are you the same Alan Felsenthal that caused  
10 to be filed in this case direct testimony, rebuttal testimony,  
11 and surrebuttal testimony?

12 A. Yes.

13 Q. And do you have any additions, corrections or  
14 deletions to make to your testimony at this time?

15 A. I have one correction and it is on my rebuttal  
16 testimony, Page 10, Line 10. And I want to change the last  
17 word, which says "expense" to "payable." Change the word tax  
18 "expense" should be tax "payable."

19 Q. And are those the only changes you -- is that  
20 the only change you have to you direct, rebuttal, and  
21 surrebuttal testimony?

22 A. Yes.

23 Q. And if I were to ask you the same questions that  
24 are in that direct, rebuttal, and surrebuttal testimony would  
25 your answers be the same today?

1 A. Yes.

2 Q. And are those answers true and correct to the  
3 best of your knowledge?

4 A. Yes.

5 Q. Thank you.

6 MR. CARO: At this time I would like to move the  
7 Commission to enter all of Mr. Felsenthal's testimony into the  
8 record. They are listed as Exhibits 10, 11, and 12 on the  
9 exhibit list.

10 (WHEREIN; Spire Exhibits 10, 11, and 12 were  
11 offered into evidence.)

12 JUDGE HATCHER: You've heard the motion. Are  
13 there any objections? Hearing none, it is so admitted. Go  
14 ahead.

15 (WHEREIN; Spire Exhibits 10, 11, and 12 were  
16 received into evidence.)

17 MR. CARO: At this time I would like to tender  
18 Mr. Felsenthal for cross-examination.

19 JUDGE HATCHER: And counsel for Staff.

20 MS. MYERS: Just a couple, Judge.

21 CROSS-EXAMINATION BY MS. MYERS:

22 Q. Good morning, Mr. Felsenthal. My name is Jamie  
23 Myers with staff counsel.

24 A. Hello.

25 Q. You reference some PLRs in your testimony; is

1 that correct? Any by PLRs, I mean IRS private letter rulings.

2 A. Yes.

3 Q. And so even if a private letter ruling is not to  
4 be used as legal precedent, would a reasonable accountant read  
5 and rely on an IRS private letter ruling in advising a tax  
6 client?

7 A. Yes. Definitely. Let me just say that even  
8 though it says on each PLR that they are only applicable to the  
9 taxpayer who requested it. They publish these, they huddle on  
10 this and -- before releasing them. It is the agency's  
11 interpretation of the regulations -- of the IRS rules and  
12 regulations and they are, if nothing else, constructive.

13 Q. Thank you, Mr. Felsenthal.

14 MS. MYERS: No further questions, Judge.

15 JUDGE HATCHER: Thank you.

16 And Mr. Clizer.

17 MR. CLIZER: No cross.

18 JUDGE HATCHER: Thank you. Are there any  
19 commissioner questions for Mr. Felsenthal? Hearing none, I just  
20 have one and I asked this earlier of Witness Kuper.

21 QUESTIONS BY JUDGE HATCHER:

22 Q. To your knowledge has Spire ever requested its  
23 own private letter ruling issue -- private letter ruling on this  
24 issue?

25 A. I do not know. I don't believe so, though.



1 JUDGE HATCHER: Okay. That is all -- that is  
2 the only question that I had, but that does mean we go back to  
3 recross examination. First we go to Ms. Myers.

4 MS. MYERS: No questions, Judge.

5 JUDGE HATCHER: Mr. Clizer.

6 MR. CLIZER: No questions. Thank you.

7 JUDGE HATCHER: And redirect.

8 MR. CARO: Just one moment please.

9 REDIRECT EXAMINATION BY MR. CARO:

10 Q. Mr. Felsenthal, just a couple of questions  
11 related to the Judge's question of you. Based on your knowledge  
12 and experience as the director of -- in your firm,  
13 PricewaterhouseCoopers and as a long-standing accountant in  
14 this, are you familiar with the process to get a private letter  
15 ruling?

16 A. Somewhat, yes.

17 Q. Okay. And based on that -- based on the private  
18 letter rulings that you reviewed on this topic, what would you  
19 expect the IRC to rule regarding this issue?

20 A. Let me say a couple of things. One, the process  
21 for a utility in obtaining a PLR involves several steps. The  
22 first being that the Company summarizes what the issue is. They  
23 then have to have the regulatory agency agree that they  
24 represented the facts correctly. So the Company cannot just  
25 request in such a way as it to bias them in their favor. It's

1 got to be signed off by the Commission itself that they agree  
2 that these are in fact the facts. On this issue, there has been  
3 one ruling that claims -- that decided not including the ADIT  
4 asset, the NOL asset, in rate base was not a violation. And in  
5 that case, that case is different than all of the other ones,  
6 all of the subsequent rulings. And if you look at that first  
7 ruling, what the Commission did in that case is it permitted the  
8 Company to record the entire amount of book tax difference as a  
9 differed tax expense, have it recovered in rates without  
10 reducing that expense for the NOL, which is what happens in  
11 Spire's case and which is typically the case.

12                   So in that ruling the facts are different. The  
13 Commission -- or the IRS said because you have been able to  
14 monetize or realize the entire book tax depreciation difference,  
15 is it an interest-free loan, the whole amount and does not have  
16 to be reduced by the NOL offset.

17                   In every ruling subsequent, and I urge the  
18 Commission or the Judge to take a look at those, it is very  
19 clear that while they use of the words "take into account," they  
20 must take into account the deferred tax NOL asset, they rule  
21 that that means they must reduce the deferred tax liability by  
22 that amount. It says so very clearly. The words "take into  
23 account" are in the regulations, which the letter ruling cites  
24 as those are the words, "take into account."

25                   But then in the rulings themselves the IRS says

1 that if you do not reduce the book tax depreciation difference  
2 by the NOL offset, don't offset it by the NOL, it's a clear  
3 violation. So I would expect that if Spire were to prepare a  
4 ruling, have it approved by the Commission, send it, I'd be  
5 surprised -- although you never know with the IRS -- I would be  
6 surprised if they would end up getting a different answer. They  
7 have been very -- the IRS has been very, very consistent that  
8 you must reduce rate base by only the amount of deferred taxes  
9 realized. And to the extent that there is an NOL, those amounts  
10 have not been realized.

11 Q. Mr. Felsenthal, what would a normal  
12 normalization violation mean for the Company?

13 A. If the Company were to be -- were to violate the  
14 normalization rules, they would be prohibited from claiming  
15 accelerated depreciation on the assets existing today or future  
16 additions. It is a severe penalty. What that would mean is --  
17 I believe there is approximately 190 or \$200 million of ADIT,  
18 accumulated deferred income tax related to book tax depreciation  
19 differences. That amount would over time be reduced, you would  
20 not be able to add to it because there would no longer be  
21 accelerated depreciation and that ratepayers, the ratepayers  
22 would be -- no longer receive the rate base reducing effect of  
23 the 190 or \$200 million that they currently receive.

24 Q. And what impact would that have on Spire and  
25 Spire's customers?

1           A.       Well, just doing a back-of-the-envelope  
2 calculation, if there was no longer an interest-free source of  
3 funds, cost-free source of 190 or \$200 million, taking 200  
4 million times the rate of return, which is about seven-something  
5 percent, that gets you to about 15 million effect on operating  
6 income. You would gross up the equity component for taxes. It  
7 would be approximately \$20 million negative impact on revenue  
8 requirements.

9           The whole point of the normalization rules are  
10 to allow the utility to receive the same benefits of accelerated  
11 depreciation that all other entities do. So there's two parts  
12 to it which are referred to in the testimony. You must compute  
13 your regulated tax expense based on assuming book depreciation  
14 as used for tax purposes and then to the extent that you reduce  
15 your taxes because of accelerated depreciation, that provides  
16 cost-free capital to the utility. And that amount, the amount  
17 of the benefit must -- has to be used to reduce rate base.

18           I have an example. Again, it is hard to discuss  
19 this with numbers without looking at something. At least I  
20 think so. And in my surrebuttal testimony on Page 13, I have an  
21 example. And the example assumes only book tax difference of  
22 accelerated depreciation and there is both a current and a  
23 deferred component of tax expense, the total tax expense. And  
24 that example is based on book depreciation, like it has to be  
25 done. Current becomes negative, deferred becomes positive. And

1 the total is the amount of the deferral that can be used to  
2 reduce rate base.

3 Customers are getting a reduction in tax expense  
4 for the NOL. That is happening. Current taxes are reduced for  
5 the NOL. Deferred taxes are gross for the book tax difference.  
6 And net the two and that becomes a net tax expense that  
7 customers are paying, which is in this case equal to the amount  
8 of the deferral that the Company will eventually pay.

9 Q. One last question, Mr. Felsenthal. Will the  
10 Company ever be able to defer income tax in the future if Spire  
11 is found to be in violation of the normalization rules?

12 A. They would not be permitted to claim accelerated  
13 depreciation from here on out on existing assets or on future  
14 additions. To the extent that there are other book tax  
15 differences that are not covered by this Internal Revenue Code,  
16 they can record those deferred taxes, but the lion share of the  
17 deferred tax result from accelerated depreciation. And those  
18 are the ones that were covered by the normalization rules and  
19 would be lost.

20 MR. CARO: Thank you, Mr. Felsenthal.

21 JUDGE HATCHER: Thank you, Mr. Felsenthal. You  
22 are dismissed from our virtual witness stand. We appreciate you  
23 joining today from your office in Chicago.

24 The Commission would like to recall Mr. Kuper.

25 THE WITNESS: Thank you. Sorry I couldn't be

1 with you.

2 JUDGE HATCHER: Not a problem up. Thank you,  
3 sir.

4 THE WITNESS: Bye.

5 JUDGE HATCHER: And sir, I remind you we have  
6 already sworn you in. That is still applicable. I have one  
7 question. We did not specify.

8 CHARLES KUPER, having been duly sworn has been recalled:

9 FURTHER QUESTIONS BY JUDGE HATCHER:

10 Q. I like to talk about Missouri taxes. We talked  
11 about federal income taxes. Has Spire paid Missouri income  
12 taxes?

13 A. They have not.

14 Q. And over the test year period?

15 A. That's correct.

16 JUDGE HATCHER: Okay. Are there -- does any  
17 counsel have any questions since I've reopened this?

18 MR. CLIZER: No.

19 JUDGE HATCHER: I'm seeing all head shakes.  
20 Thank you, Mr. Kuper. You are excused again from the witness  
21 stand.

22 THE WITNESS: Thank you.

23 JUDGE HATCHER: I see it is 10:30 and I did  
24 state we would take a break. Let's go ahead and take that  
25 break. Come back at 10:45. You want longer?

1 MR. CLIZER: Could we push it to 11:00?

2 JUDGE HATCHER: 11:00. Going once, going twice.  
3 There's no objections. We will break until 11:00 a.m. 11:00  
4 a.m. We are at recess and off the record.

5 (OFF THE RECORD.)

6 JUDGE HATCHER: The hour of recess having  
7 expired, let's go back on the record. Again, this is the  
8 continuation of a Spire general rate case hearing. This is file  
9 Number GR-2021-0108. This is Thursday, the forth day of our  
10 evidentiary hearing. We are covering Issue 16, NOL  
11 carryforward. We have heard from the first two witnesses, both  
12 of Spire; Mr. Kuper, and Mr. Felsenthal. Now, we are coming  
13 back for our; last two witnesses of the day.

14 First up Mr. Young of commission Staff. Please  
15 come to the witness table.

16 JUDGE HATCHER: Thank you, Mr. Young. You were  
17 already sworn earlier in this evidentiary hearing and that still  
18 applies. I will tender you for examination.

19 Ms. Myers.

20 MS. MYERS: Thank you, Judge. And Judge, if I  
21 may confirm Mr. Young's rebuttal and surrebuttal testimonies,  
22 Exhibit 125 and 140 have already been offered and admitted. My  
23 records show that they have.

24 JUDGE HATCHER: I can confirm that.

25 MATTHEW YOUNG, having been first duly sworn, testifies as

1 follows:

2 DIRECT EXAMINATION BY MS. MYERS:

3 Q. I think, other than that, please just state you  
4 name for the record?

5 A. My name is Matthew Young, Y-O-U-N-G.

6 Q. Thank you, Mr. Young.

7 MS. MYERS: And I tender Mr. Young for  
8 cross-examination.

9 JUDGE HATCHER: Thank you. Let's go to the  
10 Office --

11 MR. CLIZER: The OPC is clearly further apart  
12 from the Company on this --

13 JUDGE HATCHER: Okay.

14 MR. CLIZER: -- issue, so the Company should  
15 have first cross.

16 JUDGE HATCHER: Mr. Caro?

17 MR. CARO: No objections here.

18 CROSS-EXAMINATION BY MR. CARO:

19 Q. Mr. Young, good morning.

20 A. Good morning.

21 Q. Quick question to you: How has the NOL issue  
22 been handled in cases involving other Missouri utilities?

23 A. Similar to this one. The NOL asset has been  
24 included in the ADIT number rate base.

25 MR. CARO: Thank you. No questions.



1 JUDGE HATCHER: Mr. Clizer.

2 CROSS-EXAMINATION BY MR. CLIZER:

3 Q. Good morning.

4 A. Good morning.

5 Q. Were you in the room earlier when Mr. Felsenthal  
6 was testifying?

7 A. Yes, I was.

8 Q. And Mr. Felsenthal -- I apologize to him. I am  
9 not sure if I -- probably several times -- testified that  
10 current income taxes are reduced for an NOL. Do you any recall  
11 him saying that?

12 A. I need to have -- I guess make a definition.  
13 When I hear current income taxes, I think of the accrual  
14 accounting income taxes. If you're -- if we -- I think  
15 Mr. Felsenthal was talking about taxes payable, which the tax  
16 return creation; is that correct?

17 Q. I have no idea what he was talking about. I  
18 just wanted to confirm that is what he said. But it doesn't  
19 really matter. The record reflect itself. I'm going to ask you  
20 directly, in your calculation the current income taxes to be  
21 included in rates in this case, was there a reduction for net  
22 operating loss?

23 A. No. The net operating loss did not reduce  
24 current or deferred income tax expense that I included in this  
25 case.

1           Q.       Thank you. Mr. Felsenthal -- I'm trying my best  
2 -- also testified that the only difference between the one  
3 private letter ruling that said no normalization violation had  
4 occurred and all of the others was the fact that in that one PLR  
5 the deferred tax amount was included in the current income tax  
6 amount. Do you recall that?

7           A.       Yes.

8           Q.       When you calculate the current income tax amount  
9 to be included in rates, is the deferred tax amount included in  
10 that amount?

11          A.       No.

12                   MR. CLIZER: What I am handing out, which I have  
13 not premarked as a selection from the accounting schedules as  
14 discussed earlier. It's my understanding that Staff intends to  
15 offer these into the record, so I am not asking it to be marked.

16                   MS. MYERS: Judge, if I may. Mr. Clizer, how is  
17 this different than the demonstrative Exhibit 102, I guess, is  
18 what we are calling it.

19                   MR. CLIZER: Specifically, I have included  
20 Schedule 1 as well, which is what I'm going to testify on. Not  
21 testify, what I'm going to question about.

22                   MS. MYERS: So this is the Spire Missouri level  
23 versus Exhibit 102 is broken out to Spire East and Spire West?

24                   MR. CLIZER: No. You're absolutely correct.  
25 Sorry. This is a top page of Schedule 11, which has the

1 combined company -- or has the Company on a combined level  
2 versus broken, which are subparts of Schedule 11. Again,  
3 though, it's all taken from Staff's accounting schedules.

4 MS. MYERS: I just wanted to be clear when you  
5 said this was the same document.

6 MR. CLIZER: Sorry. I did not mean that -- what  
7 I said. What I meant to indicate was, again I'm going to be  
8 relying on the fact that you will be introducing the accounting  
9 schedules and do not mark this as an exhibit.

10 BY MR. CLIZER:

11 Q. Okay. So turning to the second page of  
12 Accounting Schedule 11, which as Ms. Myers, counsel for Staff,  
13 identified is the combined company. Can you indicate for me  
14 what the Number for total summary of current income tax at Line  
15 46 is under Column E?

16 A. I would quickly like to point out an error in  
17 that schedule. The state income tax rate of 6.25 percent should  
18 be 4 percent. I compared them to this 4 percent in the East and  
19 West schedules. That said, the current income tax on Line 46  
20 for the test year is 27 million and approximately 40 million  
21 marked up for the revenue requirement.

22 Q. Okay. So for Column B, which is Staff's  
23 preferred rate of return, it's a 40,078,667?

24 A. Yes.

25 Q. And if I turn to the back of the first page,

1 Accounting Schedule 1 and I look at Line 7, Required current  
2 income tax, under C, which is that same percentage rate of  
3 return from column E on the other page, I see that it is the  
4 exact same number. Correct?

5 A. That's correct.

6 Q. And that number has not been reduced by the  
7 deferred income taxes?

8 A. That number, that \$40 million number is  
9 calculated from the net income required, which of course comes  
10 from Line 1, original cost rate base. That rate base number  
11 does have an offset for the NOL asset and deferred taxes.

12 Q. Let's go back to the second page and confirm  
13 that the amount at Line 47, Deferred income taxes is a negative  
14 7,471,955, under Column B?

15 A. That's correct.

16 Q. That amount has not been added to the  
17 40,078,667, which is included at Lines 46, Column E of  
18 Accounting Schedule 11?

19 A. Correct.

20 Q. And Line 6, Income tax requirement Schedule C  
21 -- or Line -- Column C of Schedule 1?

22 A. Again, the deferred tax expense would be  
23 included in Line 4 and that income available factors into Line  
24 7, required current income tax.

25 Q. I'm sorry. You're saying it would be included

1 in current income tax available? Line 8, is that what your  
2 argument is?

3 A. It would be the --

4 Q. The deferred --

5 A. -- deferred taxes would not be -- the deferred  
6 taxes flows to the net income available on Line 4, which  
7 trickles down through the rest of the calculations.

8 Q. So while the deferred tax is included in the net  
9 income available, it is not included in the calculation of the  
10 actual tax amount?

11 A. The actual tax amount? Could you define that a  
12 little for the --

13 Q. At Line 6 is the income tax requirement. The  
14 numbers computing the income tax requirement are the sum of  
15 seven, eight, and nine. Correct?

16 A. So the income tax requirement is summed up on  
17 Line 9. It is Line 7 minus Line 8.

18 Q. Sorry. It's Line 7 minus Line 8, plus Line 9  
19 equals Line 10; is that correct?

20 A. No. Line 7 minus Line 8 equals Line 9.

21 Q. I see. And neither Line 7 nor 8 include  
22 deferred income taxes? Let me rephrase that. Neither Line 7  
23 nor Line 8 have been reduced by deferred income taxes?

24 A. That's correct.

25 Q. So the amount included to pay current income tax

1 -- sorry. The about included to pay taxes, which are being  
2 deferred is included in Line 7 and 8?

3 A. Could you repeat that?

4 Q. The amount necessary to pay the deferred income  
5 taxes is included in Lines 7 and 8?

6 A. Yes. We would include in the revenue  
7 requirement an amount to pay deferred income taxes.

8 Q. So the amount to pay deferred income taxes is  
9 included in the calculation of current income taxes?

10 A. Yes.

11 Q. All right. Were you in the room when I was  
12 discussing -- when I was crossing Mr. Kuper?

13 A. Yes, I was.

14 Q. All right. Did you hear Mr. Kuper state the  
15 position that all current income taxes should be considered  
16 deferred income taxes?

17 A. And again I have a twist on the definition. I  
18 would agree that all income tax payable that produced by the tax  
19 returns should be -- could be counted at deferred income taxes.

20 Q. Are you currently in the calculation of these  
21 taxes including all current income taxes as deferred income  
22 taxes?

23 A. No. That is not how the EMS schedule --

24 Q. That is not how the EMS schedule works. Right?

25 A. That's right.

1 Q. Let's turned back to that Schedule 11. What is  
2 the amount at Line 48, Deferred income taxes, meant to  
3 represent?

4 A. That is meant to represent the deferred income  
5 taxes that relate to accelerated depreciation.

6 Q. So the tax book timing difference related  
7 depreciation, the amount that is put into ADIT is represented on  
8 that Line 48 of this schedule?

9 A. I don't think the lines on this -- Line 48 of  
10 this schedule or any schedules factor into how the Company book  
11 their ADIT.

12 Q. You would agree with me that that amount  
13 represents the book tax timing difference that creates ADIT?

14 A. With respect to accelerated depreciation, yes.

15 Q. This is the deferred taxes which are accumulated  
16 in ADIT. Correct?

17 A. No. This is our ratemaking deferred taxes. The  
18 ADIT that's in rate base comes from the Company's balance sheet.

19 Q. You would agree with me that the amount that's  
20 booked into this account is substantially less than the amount  
21 in current income taxes?

22 A. Yes.

23 Q. Is it Staff's understanding that the Company has  
24 \$40 million, roughly, in book tax timing depreciation  
25 differences related to -- book tax timing depreciation related

1 deferred taxes?

2 A. No, I don't think that is accurate.

3 Q. It is safe to say based on this schedule that  
4 Staff has effectively calculated that the Company would be  
5 paying somewhere in in the range of \$32 million in income tax  
6 after taking the book tax timing related depreciation  
7 differences into account?

8 A. For ratemaking purposes, that's the number we  
9 came up with after a select number of tax timing differences  
10 including depreciation. Well, let me back out. After a select  
11 number of tax timing differences were flowed through the  
12 customers, with the exception of the accelerated depreciation on  
13 here, which does not flow through to customers.

14 Q. So the Company -- you are expecting the Company  
15 to pay \$32 million, roughly, to the IRS?

16 A. No.

17 Q. And why not?

18 A. Because the federal government, when they set up  
19 the Internal Revenue Code through the United States Congress and  
20 maybe some rules promulgated by the IRS, they intended for these  
21 timing differences to create cash flows to companies so they  
22 could retain it and reinvest in the Company.

23 Q. So you expect that all deductions the Company  
24 are going to take are related to book tax timing differences?

25 A. Yes.



1 Q. Even though you've only included 8 million in  
2 this line?

3 A. Yes. That is just the timing difference that  
4 relates to accumulated depreciations. There are many other  
5 timing differences that are on Spire's tax returns.

6 Q. Is Spire's net operating loss carryforward  
7 currently increasing or decreasing?

8 A. Increasing.

9 MR. CLIZER: All right. Thank you. No further  
10 cross.

11 JUDGE HATCHER: Thank you, Mr. Clizer.

12 Again, I will ask for commissioner questions.  
13 And a quick reminder to unmute yourself. If you are on a phone  
14 it's \*6. Are there any commissioner questions for Staff Witness  
15 Young on net operating loss carryforward? I don't hear any. I  
16 do have a couple questions.

17 QUESTIONS BY JUDGE HATCHER:

18 Q. Mr. Young, I found your exchange with Mr. Clizer  
19 I think enlightening. I'm going to lay you out what I believe I  
20 learned and I want to ask you to either verify or tell me where  
21 my mistakes are. Okay?

22 A. Okay.

23 Q. This might be best if I just run through the  
24 whole list and then we'll come back and visit. I've jotted down  
25 some notes so hopefully I won't get lost. The Company, Spire,

1 has a round number \$7 million in book tax differences. We mark  
2 those down in the deferred income taxes column that Mr. Clizer  
3 was talking about. Because of the book tax differences, that  
4 creates an overall net operating loss situation. That net  
5 operating loss situation means that the Company pays no taxes.  
6 Every time they file for taxes they say IRS, we have all of  
7 these deductions we haven't taken yet. The IRS says, you are  
8 right, we will balance out the numbers but you do not owe us a  
9 check.

10 In the meantime, here is \$40 million coming in  
11 from customers that is not being paid to the IRS because of that  
12 net operating loss and those deductions. However, the taxes  
13 will be owed at some point in the future because the taxes  
14 aren't officially owed or excused from being paid on until Spire  
15 makes a tax filing. I'm sure there is an official word for it.

16 So we have to two wins for Spire. We have the  
17 congressionally enacted tax timing differences, the Company gets  
18 use of the money in the interim until it has to pay. I would  
19 think about it as an escrow account in my rather uneducated  
20 manner. The second bonus win for Spire is that they have a net  
21 operating loss. So the way that the rules are set up they're  
22 going to just keep that escrow money until they actually do  
23 finally have to pay taxes. Because they haven't filed their tax  
24 return yet, that is why the deferred income taxes only includes  
25 the book timing differences for whatever time period while the

1 \$40 million continues to accrue, period.

2 Please correct where I am wrong?

3 A. I will do my best. I agree with almost all of  
4 that.

5 Q. Okay. Good.

6 A. Except for the 8 million of deferred taxes only  
7 relates to the tax timing difference for depreciation. There  
8 are several, many, too many to list, tax timing differences that  
9 are not reflected in that \$8 million. And you're right, the --  
10 Spire collects money through rates for taxes they don't have to  
11 pay yet. You are correct. They will be paid in the future  
12 according to tax theory. The timing differences will reverse as  
13 long as they are temporary.

14 The second win, the NOL, exists because when  
15 taxable income goes negative, the IRS isn't going to write a  
16 check to Spire. They're just going to say, Keep track of it and  
17 you can use that money in the future. Okay. It's -- the NOL  
18 asset isn't some additional advantage to Spire. It is just a  
19 recordkeeping mechanism for tax deductions that aren't used.

20 So I guess to take it one step further, the ADIT  
21 that we have put into rate base represents the amount of cash  
22 Spire has avoided paying the IRS. The NOL asset is a critical  
23 component of that calculation. They are tied together.

24 Q. Does Spire's filing of its tax return have any  
25 implication in this discussion?

1           A.       No. We don't attempt to re-create the tax  
2 return. We -- there are --

3           Q.       I mean the timing. I alluded to perhaps the  
4 reason that the \$40 million isn't just simply accounted for in  
5 deferred income taxes. Am I -- is it because this year's tax  
6 return of Spire's hasn't been filed yet so legally we view the  
7 tax liability as still a possibility up until April 15th or  
8 whenever corporate taxes get filed?

9           A.       No. I don't think Staff has any expectation  
10 that Spire is going to write a check.

11          Q.       Okay. Then I am hearing that there's two rules  
12 at odds. The IRS normalization rule that Spire and Staff are  
13 saying, We are following and we account for income taxes and put  
14 it into our formula. And we have a rule that says, We figure  
15 out our rate of recovery based on expenses known and occurring  
16 during the test year.

17                   How do you square those two rules with the fact  
18 situation that Spire has not paid taxes in the test year. I  
19 know that I didn't identifying income versus some of the others,  
20 but for our purposes?

21          A.       Okay. I think that it goes back to the  
22 government's intent to provide a cash flow for the Company to  
23 reinvest in its operations, regulated and non-regulated. And so  
24 here at the ratemaking level to flow through all tax benefits to  
25 customers immediately would be to circumvent that concept. So

1 we choose to normalize a lot of temporary differences with the  
2 understanding that they will reverse over time.

3 Q. Is this case unique in that all things washing  
4 out over time A, includes a longer period of time than perhaps  
5 Staff has experienced or seen before or the Commission has seen  
6 before and a larger about money? Is that what makes this unique  
7 or is this happening more and more due to the leftover impacts  
8 of the 2017 Tax Cut and Jobs Act?

9 A. Full disclosure I haven't done a lot of research  
10 on the subject but my initial reaction is that is a common  
11 situation that started at least with bonus appreciation several  
12 years ago. And once that stopped, there is still accelerated  
13 depreciation Spire can claim and it's doing a lot of capital  
14 investment as we all know. As far as this case's uniqueness,  
15 since that -- the bonus depreciation has started generating net  
16 operating losses, this is not a unique situation at least since  
17 that time.

18 Q. I just want to restate what you just said. The  
19 2017 Tax Cut and Jobs Act, which gave businesses bonus or  
20 accelerated appreciation in order to achieve certain policy  
21 goals, which included economic development and use of that  
22 accelerated depreciation, that free loan fund to the Company,  
23 that that did generate economic activity on the behalf -- on  
24 behalf of for our purposes, utility companies, and some of those  
25 utility companies took advantage of that bonus and accelerated

1 depreciation so much so that they now have a large -- I don't  
2 want to say accumulated -- they have a large balance of -- help  
3 me out.

4 A. Accumulated deferred income taxes.

5 Q. All right. Okay. So they have a large balance  
6 and that is unique because of that 2017 Act?

7 A. I don't think that 2017 Act created -- I'm  
8 sorry. You were going for a large balance of net operating loss  
9 carryforward, so I think -- I don't think the 2017 Act is  
10 responsible for the balance of the NOLCs because Spire has been  
11 generating an NOL since fiscal year 2014, I think. That was  
12 brought about by prior legislation creating bonus depreciation  
13 maybe in 2001/2012 time frame.

14 JUDGE HATCHER: That's all the questions I have.  
15 Thank you. Not excused yet. Because I asked questions, we have  
16 recross. Somebody raise their hand and remind me of where we're  
17 at.

18 Thank you, Mr. Caro.

19 MR. CARO: I don't believe I have any questions.  
20 Thank you.

21 JUDGE HATCHER: Mr. Clizer.

22 MR. CLIZER: Thank you, Your Honor.

23 RECROSS EXAMINATION BY MR. CLIZER:

24 Q. When you started off and the Judge was walking  
25 through how he understood this, I think we came to a head. This

1 I believe is the critical part to understanding at least our  
2 arguments. The \$40 million that the Company is collecting in  
3 income taxes, is that amount being -- is the ADIT reducing rate  
4 base being increased by a dollar for dollar by that 40 million?

5 A. No.

6 Q. No. There is an amount of money that is being  
7 collected by the Company that is not being used to reduce rate  
8 base. Sorry. There is an amount of money collected by the  
9 Company that is not paid to a taxing authority which is also not  
10 being used to reduce rate base?

11 A. Correct. That's not paid to a taxing authority  
12 and something else is used to reduce rate base.

13 Q. So some part of 40 million is not being put into  
14 ADIT?

15 A. I don't think there is any link between the 40  
16 million and ADIT.

17 Q. The amount of money that the Company is  
18 collecting, but not remitting, that is supposed to be the  
19 interest-free loan that is the basis of ADIT, is it not?

20 A. No. The 40 million, I mean, it's income tax  
21 expense collected from customs but the ADIT we put in rate base  
22 comes from tax returns which flows through to the balance sheet  
23 of the Company.

24 Q. And that seven and a half million, that reduces  
25 rate base because it is considered an interest-free loan.

1 Right?

2 A. Correct.

3 Q. It's an interest-free loan because the IRS  
4 doesn't require the Company to pay taxes immediately. It allows  
5 them to hold onto the tax money that they collect from  
6 customers. Correct?

7 A. Correct.

8 Q. Okay. So the Company is currently collecting 40  
9 million. Is not remitting any of it and there's some portion of  
10 that that isn't currently being tracked in any mechanism?

11 A. I would agree with you except the description of  
12 the money that goes into ADIT.

13 Q. I don't know if that was the question I asked so  
14 let me try this again.

15 A. Okay.

16 Q. The Company is currently collecting \$40 million  
17 and not remitting all of it -- not remitting any of it to the  
18 IRS?

19 A. Correct.

20 Q. And some portion of that is not reducing rate  
21 base?

22 A. I guess I just don't follow the question. It is  
23 an expense and --

24 Q. What happens to the \$40 million the Company  
25 collects an doesn't remit to the IRS? What does the Company do



1 with it?

2 A. It collects it as a revenue and I don't -- I  
3 would be surprised if they earmark it for any specific purpose.

4 Q. It's just cash to the Company?

5 A. Correct.

6 Q. So customers are currently paying \$40 million in  
7 cash to the Company?

8 A. Well, these accounting schedules have 40  
9 million. I don't know what they are currently paying.

10 Q. Fair enough.

11 A. Yeah.

12 Q. If these accounting schedules are approved, the  
13 Company will be just collecting 40 million in cash?

14 A. Correct.

15 Q. And some amount would be reducing -- well,  
16 somewhere there is an amount of ADIT reducing rate base that is  
17 less than 40 million?

18 A. See, I don't know how the 40 million is related  
19 to the ADIT in rate base.

20 Q. Is the amount of ADIT less than 40 million?

21 A. No.

22 Q. The amount of accumulated deferred income tax  
23 reducing rate base?

24 A. In rate base we have approximately 286 million,  
25 I believe.

1 Q. How much is that ADIT being increased in this  
2 case?

3 A. From when?

4 Q. For the test period.

5 A. I don't remember the -- the change in the ADIT  
6 balance during the test period.

7 Q. Is the change in the ADIT balance -- is the  
8 change in the ADIT balance for the test period, the amount  
9 related to this case, is that greater or less than the 40  
10 million?

11 A. I don't know what the changes. I don't know.

12 Q. And you don't know how much Staff has included  
13 in its case as change for ADIT?

14 A. I do know at a point in time, at December 31st  
15 it was approximately \$296 million, but the \$40 million is an  
16 annual expense. They're different things.

17 Q. I am asking about the amount that was increased  
18 for this. Not the amount that was accumulated on their books.  
19 I'm asking about the amount of ADIT that was increased for this  
20 case.

21 MR. APLINGTON: Objection; ask and answered  
22 several times.

23 MR. CLIZER: Unless the answer is I don't know,  
24 it hasn't been answered.

25 JUDGE HATCHER: I thought the answer was, I

1 don't know. Mr. Young is that your answer?

2 THE WITNESS: That is my answer.

3 BY MR. CLIZER:

4 Q. How does the seven and half-million included in  
5 deferred income taxes on this schedule figure into ADIT?

6 A. Again, this is a ratemaking number. It doesn't  
7 flow to ADIT on the books. It's -- the ratemaking, our  
8 schedules do not -- are not the basis of their accounting  
9 system.

10 Q. All right. Final question -- well, I shouldn't  
11 say that. If there is an amount of money which is included in  
12 rates to pay taxes that is not being remitted and is not also  
13 being added to ADIT, is it possible to track that amount?

14 A. Prospectively you could probably track the  
15 amount they collect from customers against -- and compare that  
16 against the amount they pay to the IRS. But again, these  
17 schedules for ratemaking purposes are not relative or relevant  
18 to the tax returns.

19 MR. CLIZER: Thank you. No further questions.

20 JUDGE HATCHER: Redirect.

21 MS. MYERS: Thank you, Judge.

22 REDIRECT EXAMINATION BY MS. MYERS:

23 Q. Mr. Young, are you aware of other Missouri  
24 utilities in general realizing that operating losses due to  
25 bonus appreciation?

1           A.           It's my understanding that nearly all of them  
2 had an net operating losses for bonus appreciation, the large  
3 utilities I should say.

4           Q.           And the Judge asked you several questions about  
5 timing differences also about wins for Spire. Would the win for  
6 customers be the rate base offset of ADIT?

7           A.           That's correct. That gives the customers credit  
8 for funds they provided for taxes that don't get sent out from  
9 Spire.

10          Q.           And approximately what is the rate base offset?  
11 Do you know?

12          A.           In our direct case I believe it was around \$280  
13 million.

14          Q.           And just roughly, at an 8 percent rate of  
15 return, would that benefit customers by \$30-\$32 million per  
16 year?

17          A.           Yes.

18          Q.           And again, you may have answered this question,  
19 but I still think it is worth trying to clarify. So Mr. Clizer  
20 had asked you about the ADIT balance. Is ADIT measured at a  
21 point in time?

22          A.           Yes, it is.

23          Q.           And tax expense, is that an annual amount?

24          A.           That's correct.

25          Q.           Okay. And so measuring ADIT at a specific point

1 in time and measuring tax expense in an annual amount is that  
2 the correct methodology for ratemaking purposes?

3 A. It is. Expense and rate base are two separate  
4 things's.

5 MS. MYERS: Thank you, Mr. Young.

6 I have no further questions, Judge.

7 JUDGE HATCHER: Thank you, Mr. Young. You are  
8 excused from the witness stand. Would you please stick around  
9 for the next 30 minutes, just in case.

10 THE WITNESS: It will be my pleasure.

11 JUDGE HATCHER: Mr. Riley. Mr. Riley, as I  
12 recall you have already been sworn. This is just to remind you  
13 that that is still applicable. I did confirm that we have  
14 admitted Exhibits 209, 210, 211 public and 211 confidential, the  
15 various testimonies of Mr. Riley.

16 Mr. Clizer, your witness.

17 MR. CLIZER: I tender the witness for cross.

18 JUDGE HATCHER: Counsel, Myers.

19 MS. MYERS: No questions, Judge.

20 JUDGE HATCHER: Mr. Caro.

21 MR. CARO: No questions.

22 JUDGE HATCHER: Are there any commissioner  
23 questions? The Judge has a question.

24 JOHN RILEY, having first been duly sworn, testifies as follows:

25 QUESTIONS BY JUDGE HATCHER:

1 Q. Do you agree with Spire's position that at some  
2 point in time they'll have to pay taxes again? They will have  
3 taxes due?

4 A. At some point in time, they may pay taxes again  
5 as Mr. Kuper pointed out possible legislation and that sort of  
6 thing. However, at the rate of accumulation of net operating  
7 losses they won't pay taxes in the near future.

8 Q. The money technically belongs to the federal  
9 government. The 40 million that we have been discussing. It's  
10 their money. It's income tax money and Spire is allowed to hold  
11 onto it until their tax return indicates otherwise?

12 A. All things being equal, the income tax expense  
13 built into the case represents an amount that should be owed the  
14 US government.

15 Q. So why does the Office of the Public Counsel,  
16 what is its concerned with money that belongs to the federal  
17 government. The federal government has said, okay, you can keep  
18 it for a while and we will square up later. Can you tell me  
19 what the Office's concern is?

20 A. Well, I won't necessarily agree that it is  
21 entirely going to be the US government's money. It is earmarked  
22 as income tax expense. Now, my argument is that the IRS  
23 requires Staff to calculate that income tax and include it in  
24 the case and it is not being paid to the federal government.  
25 Some of it may never be paid to the federal government. I mean,

1 that's -- we are looking into the future. I just contend that  
2 if you are going to include something like a net operation loss  
3 but disregard the fact that income taxes are built into the case  
4 and are not being paid, it may never be paid. They're certainly  
5 not going to be pain in the future. That somehow you need to  
6 offset that number because that number is required by the IRS,  
7 that income tax expense and it's not being paid.

8 Q. Is this situation unique because of the length  
9 of time that Spire might be an NOL situation or could it be  
10 unique due to the amount of dollars at issue?

11 A. It's unique -- we would not be having this  
12 argument if we did not have a net operating loss. So if they  
13 were actually paying taxes we are not going to be here for this.  
14 It's only unique because of the net operating loss if that  
15 answers your question.

16 Q. Do you disagree with Mr. Young when he said, I  
17 think it was many, large utility companies would be in this NOL  
18 position?

19 A. No, I don't disagree. The last time I had  
20 looked at Ameren, they may now, but when I looked they weren't  
21 including any net operating loss in their -- the calculations.  
22 KCPL, I've argued against their net operating loss back in 2018  
23 and there is a small amount in Liberty. I haven't -- they just  
24 filed a case, but I haven't checked on that. But yeah, large  
25 companies have net operating losses. I don't argue against the

1 net operating loss itself. I only argue there's things to take  
2 care of. I mean, as the argument goes with the net operating  
3 loss you don't get to fully -- use of your interest-free money  
4 and my argument is there is some money there that's not getting  
5 spent, called on by the IRS to be there, not necessarily theirs.  
6 But it is called there to be there and I think that should  
7 reflect against it.

8 Q. Are you advocating for a -- some type of a  
9 refund of the money to the customers or a noncollection or are  
10 you advocating for an accounting treatment?

11 A. If I read you right there, I would be thinking  
12 an accounting treatment because I would offset the NOL that is  
13 included in rate base, which is increasing rate base and I would  
14 offset that. So it is really an accounting treatment.

15 Q. I am not an accountant, if that is not obvious.  
16 To slowly go one step further, Spire would still be collecting,  
17 but on their books it would show a liability? It would show  
18 something on the other side to balance that so that it is does  
19 not going into ratemaking. I'm out of my depth.

20 A. That's all right. Spire's books are more than  
21 likely completely different than what we are doing in rates as  
22 Mr. Young pointed out and I believe Mr. Kuper pointed out that  
23 the income tax expense that we are arguing about is actually  
24 just revenues. It is an inclusion into rates. We call it  
25 income tax expense and as far as I know on their books they're



1 calling it just revenue, income. So I kind of lost track here.  
2 I don't remember the question so much now, but is not  
3 necessarily -- ratemaking is not necessarily in line with their  
4 books.

5 Q. Would you agree that they and the federal  
6 government are keeping track somewhere? That's not the issue?

7 A. Not keeping track of -- not necessarily keeping  
8 track of how income tax expense is built into rates.

9 Q. Okay. That's the difference.

10 A. They are keeping track of how much --

11 Q. They are keeping track --

12 A. -- they net.

13 Q. -- on the tax side. And you are saying on the  
14 ratemaking side. Okay. Thank you.

15 JUDGE HATCHER: I am finished with my questions.  
16 That does trigger recross examination. I believe we go first to  
17 Counselor Myers.

18 MS. MYERS: No questions, Judge. Thank you.

19 JUDGE HATCHER: Mr. Caro.

20 MR. CARO: No questions.

21 JUDGE HATCHER: Mr. Clizer.

22 MR. CLIZER: Thank you.

23 REDIRECT EXAMINATION MR. CLIZER:

24 Q. I'm going try to do this in reverse order, the  
25 Bench's questions, so let's start with that accounting

1 treatment. Just to reaffirm what you said in response to the  
2 Judge, Spire's tax treatment is different than how things are  
3 handled in the ratemaking world. Right?

4 A. Yes, that's correct.

5 Q. And that kind of helps explain a lot of the  
6 confusion we've heard today from various people?

7 A. Well, yes. Well, discussing what they do on  
8 their income taxes and what we are doing in ratemaking is  
9 turning out to be quite different.

10 Q. The Judge asked you about a question -- I think  
11 it actually more of a statement that Mr. Young has said about  
12 having raised this issue for other utilities. Do you recall  
13 that?

14 A. Yes, sir.

15 Q. Have you raised this -- I mean, you answered you  
16 have raised this issue with other utilities. Right?

17 A. Yes, sir. I filed testimony in a KCPL case.  
18 And in fact, I think I filed this a number of times but this is  
19 the only time I ever got to sit here and discuss it.

20 Q. That's was going to be my next question. All  
21 the other cases you've raised this issue have settled or  
22 stipulated or something. This is the first time you've actually  
23 been able present the argument. Right?

24 A. This argument, yes.

25 Q. And let's be clear, an NOL, that is not unique

1 to utilities, is it?

2 A. No. NOLs as Mr. Young put it, you know, it is a  
3 product of legislation to stimulate investment and that runs  
4 true for most any company, especially companies that are  
5 capital-intensive.

6 Q. Your argument is based on the ratemaking nature?

7 A. That's true because what you have in ratemaking  
8 is a little different than what is going on in generally the  
9 private industry. Is that ratemaking -- the Commission when  
10 this is all settled is going to come up with -- I tell you what.  
11 Let me look at it this way. When the Commission comes up with  
12 all of the issues and everything, there's going to be an income  
13 amount set out for the Company. Let's just call it 20 bucks.

14 The Commission comes out and says, okay, Spire  
15 gets \$20. That is their net income. That's what they -- and  
16 then what the Commission does after that is they say, Staff  
17 figure me up income tax expense on the 20 bucks. So let's just  
18 say for the sake of argument that they come up with \$3. So  
19 we've got \$20 in income and they get to keep that \$20. Whereas,  
20 they come up with income tax expense to go with at to cover it  
21 so that Spire is always made whole on their \$20. So they got  
22 three bucks. Now, for sake of argument \$1 of this is going to  
23 be deferred income tax and they still got two bucks sitting here  
24 that isn't getting spent, but they still get their profit and  
25 they still get this \$2. This we have a earmarked for deferred

1 income tax. It's an accrual that goes on.

2 Now, with a company, say, GE or somebody, if  
3 they make 20 bucks and they owe got taxes it comes out of the 20  
4 bucks. It doesn't come out of this three, it comes out of here  
5 (indicating). They've got deferred taxes. They're built into  
6 the \$20. That's they're interest-free money. However, the  
7 interest-free money that I am arguing about is the income tax  
8 built in over and above this, and it's right here (indicating).  
9 It's not getting spent to the federal government, but the IRS  
10 says you've got to compute it. So it is done.

11 I mean, I don't take issue with the fact that  
12 the IRS has done that. It's just that I believe that this needs  
13 to be recognized against other IRS things like net operating  
14 loss. So what we have is something over and above what other  
15 companies get to ever experience because they only get the 20  
16 whereas a ratemaking -- and I'm not arguing with the ratemaking  
17 procedure either. It is just a fact that we got \$3 and we got  
18 \$20 and somewhere along the way, we have to recognize that \$3,  
19 at least two of it in my argument. \$2 of it is interest-free  
20 money. It is just sitting out there and it's out there every  
21 year.

22 Q. It's interest-free money that the Company is  
23 collecting but not recording?

24 A. Exactly. It is not a rate base item. It is an  
25 expense and it occurs. It's set in rates every year and it just

1 goes down the line until Spire comes back in for another rate  
2 case and they recompute the taxes. In this case it's 40  
3 million. We're going to have 40 million this year. We're have  
4 40 billion next year and 40 million the year after that. That's  
5 \$120 million sitting out there that nobody's -- nobody's -- I  
6 mean, the ratepayers are not seeing income taxes paid of it but  
7 it is earmarked for income taxes. So it's -- you know, it's --  
8 it's free money.

9 I mean, it's -- actually, you know, we call it  
10 deferred and Mr. Kuper had mentioned it and I believe that he  
11 said that current income taxes are all deferred. I believe they  
12 are too. That is my whole contention is that this money is not  
13 necessarily going to pay taxes down the road. It's certainly  
14 not going to pay them anytime soon.

15 Q. So your position is the NOL should be deferring  
16 -- should -- sorry -- be offset by that deferred income tax, the  
17 \$2 in your example, and not the ADIT that's on the Company's  
18 books?

19 A. Yes. That is an accurate statement.

20 Q. And in the alternative, you would say well the  
21 Commission should order the tracking of that \$2?

22 A. Yes. They can do that. That was brought up by  
23 Mr. Young and it certainly is a viable option. I had not  
24 thought about it before but if you do a tracker, I still believe  
25 that offsetting the NOL is the way to go. But if the Commission

1 thinks maybe a tracker is position -- that brings up some  
2 interesting points is that a tractor would probably not be under  
3 the IRS's decision-making in a private letter ruling. Trackers  
4 are trackers. So if you set something up for the \$40 million  
5 for each year and put a tracker on that and make a decision down  
6 the road that it needs to offset rate base, that is probably not  
7 an IRS thing.

8 Q. So tacking on to that, no risk of a  
9 normalization violation whatsoever if you go with a tracker?

10 A. Yeah. That is my -- that would be my  
11 understanding as to what the IRS usually does and what  
12 ratemaking usually does.

13 Q. Do you think there is a risk of normalization  
14 violation if you just offset the NOL by the amount of deferred  
15 income taxes that you are referring to?

16 A. Well, it's interesting. You know, when -- you  
17 know when the phrase normalization violation's been mentioned  
18 here today I almost feel like the lights ought to dim. It is  
19 just so scary. My gosh we're going to have a normalization  
20 violation. We aren't going to have a normalization violation.  
21 Even if you take our argument and look at it and go, yes, we're  
22 going to offset this NOL with this extra money, Spire is going  
23 to go to the IRS and ask if it is okay. And I think it is, but  
24 if the IRS -- you know, if you ever tried to figure out the IRS,  
25 if they say it isn't then they're going to come back here and

1 the Commission is going to change it. There's -- even if they  
2 say it is a violation you just fix it. Nobody is going to slap  
3 them on hand and say, You don't get your accelerated  
4 depreciation anymore. They're just going to say you need to fix  
5 that and that is what will happen. The way I look at it, which  
6 I don't think the IRS has ever had the question posed to them, I  
7 don't think it is a violation.

8           If on the other hand, the Commission goes ahead  
9 and does what I suggest and the IRS comes back and says that it  
10 is a violation, it will just be changed. The specter of death  
11 is not going to walk in and kill Spire Incorporated. It's just  
12 not going to happen. It is not an end-all thing if the decision  
13 is contradictory to what the IRS says.

14           MR. CLIZER: No further redirect. Thank you.

15           JUDGE HATCHER: Thank you, Mr. Riley, you are  
16 excused.

17           THE WITNESS: Do I need to be here for cash  
18 working capital?

19           JUDGE HATCHER: I have asked and we do not have  
20 any questions.

21           THE WITNESS: Thank you.

22           JUDGE HATCHER: We are winding down the hearing  
23 for Thursday. I note that it is 12:01. I intend to conclude  
24 Thursday's hearing in the next two minutes, so just a reminder  
25 if anybody has some announcements. We will begin again tomorrow

1 at 9:00 a.m. I have not heard further from any parties, so I  
2 will be preparing for two issues. The first --

3 MR. APLINGTON: Your Honor?

4 JUDGE HATCHER: Yes, sir.

5 MR. APLINGTON: I believe we have reached an  
6 agreement that would also resolve Issue Number 53, which is low  
7 income issues. My expectation is that a stipulation will be  
8 filed in the case this afternoon for the Commission's  
9 consideration leaving only Issue 1, cost of capital for  
10 tomorrow's schedule at 9:00 a.m.

11 JUDGE HATCHER: Excellent. It seems everyone  
12 agrees.

13 MR. CARO: One other issue. Just for  
14 clarification purposes, Your Honor, regarding the Exhibit Number  
15 50, which were the list of the PLRs, we will also include the  
16 PLRs cited in Mr. Felsenthal's testimony in addition to the  
17 seven we mentioned and I think that includes the ones you  
18 brought to our attention.

19 JUDGE HATCHER: Excellent. Thank you.

20 MR. CARO: Thank you.

21 JUDGE HATCHER: We are in recess until tomorrow  
22 -- yes, ma'am?

23 MS. MYERS: Sorry, Judge, to delay. Quickly,  
24 Staff Exhibit 102, which has been referenced, if no party  
25 objects Staff could offer that to be admitted right now instead



1 of waiting until tomorrow just so no mistakes are had.

2 (WHEREIN; Staff Exhibit 102 was offered into  
3 evidence.)

4 JUDGE HATCHER: We will take both questions at  
5 once. Does party object to taking it out of order and does  
6 anybody object to it?

7 MR. CLIZER: For the record, 102 would be the --

8 JUDGE HATCHER: Schedules.

9 MS. MYERS: Is the full Staff accounting  
10 schedules, not just the --

11 MR. CLIZER: Right. I just wanted to make sure  
12 that for the record --

13 MS. MYERS: Yeah. Full Staff --

14 MR. CLIZER: -- it is the full Staff accounting  
15 schedules?

16 MS. MYERS: Yes.

17 MR. CLIZER: Yes. I have no objection.

18 MR. APLINGTON: No objection.

19 JUDGE HATCHER: It's unanimous. It is admitted  
20 onto the hearing record.

21 (WHEREIN; Staff Exhibit 102 was received into  
22 evidence.)

23 JUDGE HATCHER: We are in recess until tomorrow  
24 at 9:00 a.m. and we're off the record.

25 (OFF THE RECORD.)

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CERTIFICATE OF REPORTER

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



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Lisa M. Banks, CCR No. 1081

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