

In the Matter of:

**The Propriety of The Rate Schedules for Gas Service of Empire District Gas Co.**

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**GR-2018-0229 VOL. III**

*February 06, 2019*

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BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

On-The-Record Proceeding

February 6, 2019

Jefferson City, Missouri

Volume 3

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In The Matter of The Propriety Of )  
The Rate Schedules For Gas Service ) File No. GR-2018-0229  
Of Empire District Gas Company )

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

REPORTED BY:  
Lisa M. Banks, CCR No. 1081  
TIGER COURT REPORTING, LLC

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1 JUDGE WOODRUFF: We're here for an on-the-record  
2 proceeding in File Number GR-2018-0229, which concerns the  
3 impact on Empire District's Gas Company's rates of the tax cuts  
4 from last year. We'll begin the day by taking entries of  
5 appearance beginning with Empire.

6 MS. CARTER: Diana Carter with Brydon,  
7 Swearngen and England for the Empire District Gas Company. My  
8 contact information is on the written entry that I provided to  
9 the court reporter.

10 JUDGE WOODRUFF: For the Staff?

11 MR. BERLIN: Thank you, Judge. Robert S. Berlin  
12 appearing on behalf of the Staff of the Missouri Public Service  
13 Commission at the Commission's office in Jeff City, Post Office  
14 360, Jefferson City, Missouri 65102. I would point out that I  
15 have Staff witnesses Mark Oligschlaeger and Jamie Myers  
16 available for questioning as well.

17 JUDGE WOODRUFF: And Public Counsel?

18 MR. POSTON: Thank you. Marc Poston appearing  
19 for the Office of Public Counsel.

20 JUDGE WOODRUFF: MECG?

21 MR. WOODSMALL: Dave Woodsmall on behalf of  
22 MECG.

23 JUDGE WOODRUFF: Looking around the room I  
24 believe that is all the attorneys that are here to enter an  
25 appearance. Earlier the attorneys for the Renew Missouri and

1 Missouri School Board Association asked to be excused and I  
2 granted their request.

3 This is kind of an informal process. What I'm  
4 going to do is ask each of the parties if they wish to make a  
5 brief opening statement and then I'm going to turn it over to  
6 questions from the commissioners.

7 If the attorneys can answer questions, that's  
8 great; if you get to a question that you can't answer that you  
9 need an expert witness for, we'll swear the witness in then we  
10 can question them.

11 Let's go ahead and get started with an opening  
12 for Empire.

13 MS. CARTER: Just a few comments. Would you  
14 rather I sat there?

15 JUDGE WOODRUFF: Yes. Come on up to the podium.

16 OPENING STATEMENT BY MS. CARTER:

17 MS. CARTER: And yes, I will do my best and then  
18 Charlotte Emery with the company is here if you have more  
19 number-oriented questions that I am not able to answer. In this  
20 case that was opened some time ago to look at the effects of the  
21 tax reduction, there had been some discussion of kind of  
22 grouping it in with Empire Electric's case and having a global  
23 settlement that way for going forward rate predictions but then  
24 the Empire Electric case went off separately and we are left  
25 here just with Empire Gas. And as time went on Empire Gas

1 realized they needed to go ahead and do a tariff filing to  
2 reduce their rates.

3 So outside of this stipulation Empire Gas filed  
4 tariffs to reflect the annual revenue requirement reduction for  
5 the change in the tax rate from 35 percent to 21 percent and  
6 that would be the going forward reduction. And that took effect  
7 October 24th, 2018. That -- although it was not showing a whole  
8 year, the annual reduction was for \$773,566. Since it was just  
9 going forward it was for the period that was left in the year.  
10 It didn't reflect any other cost changes. It was just for the  
11 reduction in the tax rate. And related to that I would point  
12 out that Empire Gas last --

13 COMMISSIONER HALL: I'm sorry. I have a quick  
14 question. I apologize. I didn't understand what you just said.  
15 The 733,000 that is an annual reduction. Correct?

16 MS. CARTER: Yes.

17 COMMISSIONER HALL: Okay.

18 MS. CARTER: So we speak in terms of the annual  
19 amount, but it is just a going forward rate reduction.

20 COMMISSIONER HALL: Okay.

21 MS. CARTER: And related to that that reduction  
22 was the only related to the tax rate change. Empire Gas last  
23 filed a rate case change in June of 2009 and it had those rates  
24 take effect April 1st of 2010. So they voluntarily filed to  
25 reduce their rates based solely on the change in the tax

1 percentage and didn't adjust for any increases in cost that may  
2 have taken place between April 1, 2010 and October 24, 2018. I  
3 would also note that Empire Gas has the PGA ACA process but does  
4 not have any other trackers or utilize ISRS or anything of that  
5 sort. So the rates really had been the same since April 1, 2010  
6 until the reduction took effect October 24, 2018. So the  
7 stipulation since that reduction took place on his own -- the  
8 stipulation was really to just formalize the portion on  
9 excessive ADIT.

10 Empire Gas began tracking the excess ADIT as of  
11 January 1, 2018, but there wasn't an official regulatory  
12 liability as the phrase is used, started. So the stipulation  
13 provides that it will be specifically be called a regulatory  
14 liability effective back to January 1, 2018 for all of the  
15 excess ADIT and that is estimated at 2,776,935, the majority of  
16 which would be protected. And Empire is in the process of  
17 getting those numbers finalized.

18 MS. EMERY: I actually have an updated --

19 MS. CARTER: And Ms. Charlotte Emery there has  
20 the updated numbers for protected versus unprotected and the  
21 stipulation provides then that that will be addressed in the  
22 next rate case for Empire Gas with 100 percent of that then  
23 flowing back to customers in line with the IRS rules for  
24 flowback.

25 And then the other portion of the stip is that

1 Empire Gas would wait another year to file a new rate case. So  
2 they wouldn't file a rate case for an increase then until  
3 January 1 of 2020 and not that rates would take effect, but that  
4 a case wouldn't start. The tariffs would not be filed until  
5 January 1, 2020. I would be happy to answer any questions or  
6 Ms. Emery can give us numbers.

7 QUESTIONS BY CHAIRMAN SILVEY:

8 Q. Thank you. On subparagraph 4 at the top of Page  
9 3, it says in the event the IRS asserts the terms of the  
10 stipulation and agreement create a violation of normalization  
11 requirements, the stipulation shall be amended. Has Empire Gas  
12 reached out to the IRS for clarification or does it expect that  
13 this language just means if the IRS issues a generic statement  
14 concerning utilities and the normalization requirements? What  
15 is the purpose of that language?

16 A. By this point there's very little purpose to it.  
17 Back when we first started working on the stip the protected  
18 versus unprotected had not been finalized and numbers were still  
19 up in the air. Nothing is contemplated from Empire Gas's  
20 perspective of needing a ruling from the IRS or there being any  
21 normalization issue.

22 Q. Okay. All right. Thank you. On Paragraph 3 on  
23 Page 3, it says that in recognition of the fact that the revenue  
24 requirement reduction for the Tax Cut and Jobs Act did not take  
25 effect until 10/24/18 and the excess revenue collected between



1 01/01/18 and 10/24/18 will not be refunded to customers or taken  
2 into account in future rate cases, you agree quote, that it  
3 shall not file a rate case until January 1, 2020, which is what  
4 you were just talking about the end of your state. Does mean  
5 that you will file one then or that you will file one some time  
6 after that, but not before that?

7 A. The stipulation term is that we would not file  
8 before that. No one is -- none of these parties are asking that  
9 we definitely file on that date or come back in immediately. It  
10 is very likely that a filing would be shortly thereafter, a rate  
11 case filing would be made.

12 Q. Okay. Forgive me for maybe not following quite  
13 -- if the last rate case was in 2009 after this adjustment why  
14 do you assume that that is the time frame that you have another  
15 one shortly after that?

16 A. Costs have been increasing and there was  
17 consideration to file around this time period.

18 Q. Okay. So apart from this agreement, is it fair  
19 to say you may have come in before then?.

20 A. Yeah, it is certainly possible.

21 Q. Okay. How many customers do you guys serve?

22 A. Charlotte do you know the Empire Gas number  
23 offhand? It's smaller. It's in each of those intro paragraphs  
24 when we file an application.

25 Q. While they are looking it up, what about the

1 difference in the federal tax cut or the federal tax rate from  
2 35 to 21 for the stub period. What is that dollar amount?

3 A. That would be approximately 80 percent of that  
4 annual amount.

5 Q. So the annual amount was the 700?

6 A. And 73. And the amount until October 24th, 2018  
7 is stated in Empire's response to the show cause order. I don't  
8 have that in front of me but that dollar amount is in there.

9 COMMISSIONER HALL: It's about 640.

10 CHAIRMAN SILVEY: All right. Thank you.

11 JUDGE WOODRUFF: Commissioner Hall?

12 QUESTIONS BY COMMISSIONER HALL:

13 Q. Why do you anticipate filing a -- why did you  
14 anticipate filing a rate case around this time period?

15 A. And nothing had been finalized. Things had been  
16 looked at. I believe the main driver is a change in  
17 depreciation rates and how that has been affecting the company's  
18 bottom line. But it was determined that this is starting to be  
19 the right time period where they need to come in for a rate  
20 case. They had intentionally tried to stay out. Things had  
21 been going well, certainly service was still as it should be.  
22 There wasn't a need for a major capital project that would  
23 require the company to come in, but it just -- based on the  
24 passage of time was looking like it was time for a rate case.

25 Q. You don't have any actual numbers as to what

1 kind of the revenue requirement you may be seeking in your next  
2 rate case?

3 A. I don't standing up here. I'm sure the company  
4 has started doing that on their end but not that has made it to  
5 our office to start any pleadings or testimony.

6 Q. Is it safe to assume that you will be asking for  
7 something more than a \$640,000 increase?

8 A. I'm sorry I'm not able to answer that. If that  
9 is something that would will help you all to know in evaluating  
10 the stipulation, I can certainly get that information.

11 Q. I'd be curious because I mean as a general  
12 policy matter this commission has taken the position that the  
13 stub period amount should flow back to ratepayers. We've had a  
14 number of cases where this has been raised and for the most part  
15 the Commission has been consistent that that -- those dollars  
16 belong to ratepayers. I do understand though, how it can be  
17 traded for something that may be just as beneficial to  
18 ratepayers and we've had a couple of cases where that has  
19 occurred and the fact that OPC and MECG are standing here in  
20 support -- well, not opposing the stipulation, at least for me,  
21 gives me some comfort that that is the trade-off that is going  
22 on.

23 I'll just -- I really think that is important  
24 that as a general rule it is understood that it is the policy of  
25 this commission that that -- those -- the stub period amount

1 does belong to ratepayers.

2           A.           We certainly understand that has been the  
3 Commission's policy and that's why we made it so clear in the  
4 stipulation. We were not trying to hide the ball. I know there  
5 was quite a bit of confusion created with the recently approved  
6 Empire Gas stipulation. I was in that agenda meeting and heard  
7 the discussion. We wanted to make sure it was clear what we  
8 were doing here so the commissioners knew that the stub period  
9 was not being taken into account because of the trade-off for  
10 not having filed a rate case, not having the trackers, and then  
11 not coming in for another year for a rate case.

12                   COMMISSIONER HALL: I for one appreciate that  
13 transparency. Thank you.

14                   JUDGE WOODRUFF: Thank you.

15                   For Staff?

16 OPENING STATEMENT BY MR. BERLIN:

17                   MR. BERLIN: Thank you, Judge. May it please  
18 the Commission, I'm Bob Berlin, Staff counsel. I inherited this  
19 case, so I don't have a lot of the institutional knowledge. I  
20 don't have much more to add than what Ms. Carter just explained  
21 to the Commission other than the Staff supports the stipulation  
22 and agreement as it addresses the calculation and establishes  
23 the regulatory liability of excess ADIT beginning as of January  
24 1, 2018 and Staff also is of the belief that the rate case  
25 filing moratorium that a rate case would not be filed until

1 January 1st of 2020 is worthy consideration and a good deal.

2 I have Mark Oligschlaeger who can address any  
3 specific issues regarding any regulatory liability and any of  
4 the more intricate detailed accounting numbers that you may have  
5 questions about.

6 JUDGE WOODRUFF: Chairman?

7 QUESTIONS BY CHAIRMAN SILVEY:

8 Q. So just to clarify, your position is that it is  
9 beneficial to ratepayers for this trade-off because in Staff's  
10 opinion the potential of a new rate case would be more out of  
11 their pockets than if we did this trade-off?

12 A. Yes, Mr. Chairman. It is very possible. We  
13 believe that the trade-off has value to the ratepayers whereby  
14 the company would stay out through January 1st of 2020 and not  
15 file a rate case. So we believe that is an excellent trade-off.

16 CHAIRMAN SILVEY: Okay. Thank you.

17 JUDGE WOODRUFF: Commissioner Hall?

18 COMMISSIONER HALL: I think I -- I do have a  
19 couple of questions about the unprotected versus the protected.  
20 Is that -- are those questions best directed towards  
21 Mr. Oligschlaeger?

22 MR. BERLIN: Yes, sir.

23 JUDGE WOODRUFF: All right. I will swear you  
24 in.

25 MS. CARTER: If I may, while Mr. Oligschlaeger

1 is heading up there, give the final numbers. I have those now.  
2 We have changed since we last presented documentation in this  
3 case. The total excess ADIT has gone up significantly after all  
4 of the numbers came in 4,430,694 with the protected portion  
5 being determined to be 2,039,822 thus leaving 2,390,871 as  
6 unprotected. That is the gross-up excess ADIT, which would be  
7 including taxes et cetera.

8 JUDGE WOODRUFF: Turning our attention to  
9 Mr. Oligschlaeger.

10 (Witness sworn.)

11 JUDGE WOODRUFF: If you could answer the  
12 commissioner's questions.

13 QUESTIONS BY COMMISSIONER HALL:

14 Q. So well, the numbers that you just heard from  
15 Ms. Carter, those -- those will be audited by staff. Correct?

16 A. Yes.

17 Q. And before the next rate case, which will be  
18 sometime after January 1 of 2020, that will be a regulatory  
19 asset?

20 A. I believe these -- both amounts would be  
21 regulatory liabilities and represent --

22 Q. Okay. I think -- liability for consideration  
23 for ratemaking treatment by the Commission in the next rate  
24 case?

25 A. Yes.

1 Q. Are there carrying costs on that -- on those --  
2 on that amount?

3 A. I don't believe so. I think there would  
4 probably be an order from the Commission or something like that  
5 in order to establish that those should be added to the  
6 regulatory liability. The stipulation before you does not  
7 provide for that.

8 Q. Would that -- would that order be inconsistent  
9 with the terms of the stipulation?

10 A. I'm not sure it would have an extremely material  
11 impact, but yes it would potentially increase the amount of  
12 dollars the company would give back in future rate cases.

13 Q. Do we typically put carrying costs on regulatory  
14 liabilities?

15 A. I would say it is a case-by-case basis. I would  
16 not call it typical.

17 Q. What is the policy reason for doing it or not  
18 doing it?

19 A. I think it has mostly to do with the philosophy  
20 should there be a 100 percent recovery of all financial impacts  
21 either flowing to a company or in this case two customers as  
22 opposed to more or less just letting the nominal about the  
23 dollars flowing through opening rates over time.

24 Q. And you don't discern any consistency from the  
25 Commission in making those determinations? I will not take

1 insult from your answer.

2 A. I would not say there's been a general policy  
3 established.

4 Q. How about at Staff's level, is there a general  
5 policy?

6 A. No. We would look at it on a case-by-case  
7 basis.

8 Q. Could you refresh my recollection on the  
9 difference between protected and unprotected?

10 A. Sure. Protected deferred taxes relate to the  
11 accelerated depreciation, deductions allowed for tax purposes.  
12 As I'm sure you know, there are certain tax normalization  
13 restrictions on the ability of the Commission to treat the  
14 effects of that tax deduction in rates. In this context I  
15 believe the IRS more or less requires that the company or the  
16 Commission not flow back that -- those excess deferred taxes any  
17 faster than over generally the remaining life of the plant  
18 assets giving rise to the deferred taxes.

19 Unprotected, there are no restrictions. The  
20 Commission can flow those back as slow or fast as they see fit  
21 on a case-by-case basis and not be in conflict with the IRS  
22 code.

23 Q. And is there -- is there a reason why we -- why  
24 the parties agreed to roll the unprotected into the regulatory  
25 liability as opposed to including that in the tariff that was



1 filed or that was effective October 24th?

2 A. My recollection is the company at that time did  
3 not have a final and complete quantification of those amounts.  
4 Similar to other companies that we have dealt with, we decided  
5 to leave that for future rate cases when we had more definitive  
6 numbers.

7 Q. And is that an annual amount going forward or is  
8 that a one-time amount? Because if it was the one-time amount  
9 then that would be another reason why a regulatory liability  
10 treatment would make more sense?

11 A. Well, the four-plus million, I think identified  
12 by Empire today, is a total amount of excess accumulated  
13 deferred taxes. And that amount will be flowed back in rates  
14 over some period of time. In the past we've done ten years for  
15 unprotected, generally. It is a longer period for protected.

16 Q. Right. But if it is a one-time, then it  
17 wouldn't have made sense to roll that into the tariff that  
18 reduced rates on an annual basis going forward?

19 A. Yes. I agree. The income tax rate reduction is  
20 ongoing. This is a one-time even with a definite fiscal impact.

21 COMMISSIONER HALL: I have no further questions.  
22 Thank you.

23 JUDGE WOODRUFF: Do you have any questions?

24 CHAIRMAN SILVEY: No.

25 JUDGE WOODRUFF: You can step down.

1 Any other questions for staff?

2 We will move over to Public Counsel.

3 OPENING STATEMENT BY MR. POSTON:

4 MR. POSTON: Good morning. I don't have  
5 anything prepared, but I just wanted to say why we did not sign  
6 onto this agreement was one of the reasons that Commissioner  
7 Hall stated. We would have liked to see more going back to  
8 customers back to the effective date of the tax changes. But we  
9 are not opposing this because we do see value in the company  
10 coming in and filing their tariff not continuing to oppose this  
11 as other companies are, the agreement on the ADIT and  
12 moratorium. For those reasons we decided not to oppose this.  
13 I'd be happy to answer any questions.

14 JUDGE WOODRUFF: Mr. Chairman?

15 QUESTIONS BY CHAIRMAN SILVEY:

16 Q. Do you feel that the value of the trade-off is  
17 close or not close or --

18 A. I mean it is hard to say because, you know, we  
19 don't know if they really would have come in filed for a rate  
20 increase. We also have to factor in litigation risk, would we  
21 have won this case had we litigated it. There's a lot to be  
22 considered there. It was enough of a balance to get us to the  
23 point where we won't object to it or are not objecting to it.

24 CHAIRMAN SILVEY: Okay. Thank you.

25 JUDGE WOODRUFF: Commissioner Hall?

1 QUESTIONS BY COMMISSIONER HALL:

2 Q. Did OPC have any concern that the company was  
3 dragging its feet on filing the tariff effective October 24th?  
4 They could have done that two, three, four months earlier.

5 A. They could have. Admittedly I was not at OPC  
6 until October until they already filed this. I don't know what  
7 actually transpired. I guess the Commission opened this in  
8 February, so in the seven-month period I'm not quite sure what  
9 happened. It would have been nicer had they filed this right  
10 away once the Commission opened the docket.

11 COMMISSIONER HALL: Let me turn to Ms. Carter  
12 for a second. I think you alluded to this, why did it take  
13 Empire so long between February and October or February and  
14 September?

15 MS. CARTER: There were just a lot of things  
16 going on. I hate to say that because that shouldn't be an  
17 excuse, but it is for the most part what happened. This had  
18 been rolled in -- Empire did an offer on a settlement with the  
19 wind case and the similar Empire Electric case and this Empire  
20 Gas case. I don't have the exact date in front of me, but much  
21 earlier in the year. And it looked at various points that that  
22 was going to happen and it would be handled that way. And it  
23 took longer before we found out that was not going to happen.

24 The School Board Association had some issues and  
25 wasn't sure how they wanted the tariff to look. There were some

1 questions on rate design and if we were going to open it beyond  
2 what the company had proposed in terms of rate design and they  
3 did some data requests on that. Even after we filed those  
4 tariffs, the School Board Association still had questions on  
5 whether or not those tariffs were okay and served additional  
6 DRs. It was just various things happening. No intentional plan  
7 to drag our feet and delay the filing.

8 COMMISSIONER HALL: Okay. Thank you. Has  
9 Public Counsel made any kind of estimate at all as to the  
10 benefit from ratepayers by pushing the rate case back a year,  
11 even a back of the envelope estimate?

12 MR. POSTON: I don't think so. I don't know how  
13 we could even do that.

14 COMMISSIONER HALL: I don't either. Okay. I  
15 have no further questions.

16 JUDGE WOODRUFF: Thank you.

17 For MCEG?

18 OPENING STATEMENT BY MR. WOODSMALL:

19 MR. WOODSMALL: Thank you. Dave Woodsmall on  
20 behalf of MCEG. I too haven't prepared any comments. I agree  
21 with most of what was said by the other parties. To get  
22 something out of the way quickly, I honestly -- I went back  
23 today and I don't why we took a position of not opposing versus  
24 supporting. I'm wondering -- there was kind of a rush there at  
25 the end to get this done and I think that I hadn't gotten to the

1 clients to get their approval. I know that has occurred since  
2 then. So I don't see any reason why we are not supporting. I  
3 think at this point we can support this stipulation.

4           Regarding the moratorium, there is definitely  
5 value in that in my mind. No one knows right now whether it is  
6 an equal trade-off. No one has done an audit. The company  
7 doesn't -- in gas versus electric the companies don't do  
8 surveillance reports, so we don't know what they are earning  
9 now. There are a lot of question marks there. What I do know  
10 is that the company hasn't had a rate increase since January 1,  
11 2010. It has been a while. Just looking at that in a vacuum  
12 you would think, wow, they're due to have a rate increase. The  
13 company doesn't have an ISRS, so you would think that those  
14 pressures that require other companies to have an ISRS, those  
15 pressures would lead to them filing of rate case. They are  
16 replacing gas mains to comply with the pipeline safety rules, so  
17 you would think that that is putting pressure on them to  
18 eventually file a case.

19           Gas unlike electric doesn't see growth in  
20 customer service area. They really don't see growth in the  
21 number of customers of usage. You don't have the offset -- the  
22 things offsetting their need to file a rate case. So is it a  
23 one-for-one trade-off, the moratorium for the 600,000 of  
24 subperiod benefits, I don't know. But there was enough there to  
25 give us comfort that it was valuable and that we should go ahead

1 and support this. That's all I have.

2 JUDGE WOODRUFF: Commissioner questions?

3 COMMISSIONER HALL: No questions. Thank you so  
4 much.

5 JUDGE WOODRUFF: Thank you. That is opening  
6 from all of the parties who are here. Mr. Chairman, do you any  
7 other questions?

8 CHAIRMAN SILVEY: No.

9 JUDGE WOODRUFF: Commissioner Hall?

10 COMMISSIONER HALL: No. Thank you.

11 JUDGE WOODRUFF: All right. We are adjourned.

12 (WHEREIN; the hearing has concluded.)

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STAFF OF THE MISSOURI PUBLIC  
SERVICE COMMISSION EVIDENCE

MARK OLIGSCHLAEGER	
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CERTIFICATE OF REPORTER

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



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Lisa M. Banks, CCR No. 1081



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