

*Exhibit No.:*  
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Removal Deferred Tax Amortization;  
State Income Tax Flow-Through  
Amortization*  
*Witness:* *Mark L. Oligschlaeger*  
*Sponsoring Party:* *MoPSC Staff*  
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*Case No.:* *ER-2012-0345*  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**REGULATORY REVIEW DIVISION  
UTILITY SERVICES - AUDITING**

**REBUTTAL TESTIMONY**

**OF**

**MARK L. OLIGSCHLAEGER**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. ER-2012-0345**

*Jefferson City, Missouri  
January 2013*

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**REBUTTAL TESTIMONY OF**

**MARK L. OLIGSCHLAEGER**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. ER-2012-0345**

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, 200 Madison Street, Suite 440,  
Jefferson City, MO 65102.

Q. What is your present position with the Missouri Public Service Commission  
("Commission")?

A. I am the Manager of the Auditing Unit, Utility Services Department,  
Regulatory Review Division.

Q. Are you a Certified Public Accountant (CPA)?

A. Yes, I am. In November 1981, I passed the Uniform Certified Public  
Accountant examination and, since February 1989, have been licensed in the state of Missouri  
as a CPA.

Q. Have you previously filed testimony before this Commission?

A. Yes, numerous times. A listing of the cases in which I have previously filed  
testimony before this Commission, and the issues I have addressed in testimony in cases from  
1990 to current, is attached as Schedule 1 to this rebuttal testimony.

Q. What knowledge, skills, experience, training and education do you have in the  
areas of which you are testifying as an expert witness?

A. I have been employed by this Commission as a Regulatory Auditor for over  
30 years, and have submitted testimony on ratemaking matters numerous times before the  
Commission. I have also been responsible for the supervision of other Commission

Rebuttal Testimony of  
Mark L Oligschlaeger

1 employees in rate cases and other regulatory proceedings many times. I have received  
2 continuous training at in-house and outside seminars on technical ratemaking matters since I  
3 began my employment at the Commission.

4 Q. Have you participated in the Commission Staff's ("Staff") audit of The Empire  
5 District Electric Company ("Empire" or "Company") concerning its request for an increase to  
6 its customer rates in this proceeding?

7 A. Yes, I have, with the assistance of other members of the Staff.

8 Q. What is the purpose of this rebuttal testimony?

9 A. The purpose of this testimony is to respond to Empire witness W. Scott Keith's  
10 direct testimony at pages 16 - 22 where he requests the Commission authorize the Company  
11 to establish a "tracker mechanism" to account for its future Southwest Power Pool (SPP)  
12 transmission expense. I will explain why Staff opposes Empire's request for an SPP tracker  
13 in this proceeding. While Staff opposes Empire's requested SPP transmission tracker, Staff  
14 also recognizes it is possible the Commission will authorize Empire to implement one. I  
15 provide Staff's recommendations as to the conditions the Commission should attach to any  
16 SPP tracker mechanism the Commission may authorize Empire to use.

17 In addition, I will respond to the Company's direct filing regarding two income tax  
18 expense matters. First, I address the reasons Staff opposes the recommendation found in  
19 Empire witness James I. Warren's direct testimony that an amortization of a deferred tax asset  
20 be included in the Company's cost of service in this proceeding in order to provide Empire  
21 with certain tax benefits associated with cost of removal that it allegedly failed to receive in  
22 prior cases. I will also respond in opposition to the Company's proposed state income tax  
23 amortization adjustment to effectively reduce the amount of prior deferred taxes flowed back

1 to customers on account of an alleged prior policy of treating state income taxes on a  
2 “flow-through” basis in prior cases.

3 **EXECUTIVE SUMMARY**

4 Q. Please summarize your surrebuttal testimony

5 A. Staff opposes authorization of an SPP transmission tracker for Empire at  
6 this time. However, Staff also recommends that, if the Commission rejects Staff’s  
7 recommendation not to authorize Empire to implement a SPP tracker and allows the Company  
8 to use one, then certain conditions be attached to the Commission’s authorization.

9 Staff opposes Empire’s proposed amortization of deferred taxes associated with cost  
10 of removal tax deductions that were allegedly passed on to customers twice due to prior  
11 ratemaking practices.

12 Staff also opposes Empire’s proposed amortization of deferred taxes associated with  
13 an alleged prior policy of “flowing through” of state income tax impacts in prior rate cases.

14 **TRANSMISSION TRACKER**

15 Q. What is a “tracker mechanism?”

16 A. A “tracker mechanism,” frequently referred to simply as a “tracker,” is a  
17 regulatory mechanism that allows a direct comparison to be made between the amounts of a  
18 utility’s ongoing expenditures for a particular cost of service item compared to its rate  
19 recovery for that item. Any differential between the amounts of a cost of service item  
20 compared to its rate recovery by the utility is booked to a regulatory asset or regulatory  
21 liability account on the utility’s balance sheet. Then, in a subsequent rate case following the  
22 establishment of the tracker, the utility or other parties can seek inclusion in its rates of the  
23 regulatory asset or regulatory liability balance associated with the cost of service item being

1 tracked, usually through an amortization to expense over a multi-year period. In Missouri,  
2 many utilities are using trackers for pension/OPEB expenses, for costs incurred to comply  
3 with Commission rules, and other items. As discussed in the Commission's *Report and*  
4 *Order* in Case Nos. ER-2012-0174 and ER-2012-0175, a tracker mechanism gives a utility  
5 authority to make accounting entries similar to those made under a more common Accounting  
6 Authority Order (AAO) request; namely, to defer an expense or revenue incurred in one  
7 period to be recorded to expense or revenue in another period.

8 Q. Are trackers a tool that should be used as a regular course of action in  
9 rate regulation?

10 A. No. By design, trackers measure over or under recovery of the individual cost  
11 of service elements; thus, reducing the risk of recovery by the utility and transferring that risk  
12 to its customers. However, under normal circumstances, review of a utility's earnings levels  
13 for purposes of determining the need for rate relief is and should be based upon an  
14 examination of all relevant factors (rate base, rate of return, expenses). A tracker singles out  
15 an individual rate element for possible special rate treatment without examination of other,  
16 potentially offsetting, changes in the utility's revenue requirement caused by fluctuations in  
17 its rate base, expenses, required rate of return and revenues. For this reason, use of trackers to  
18 set rates should be authorized sparingly, if at all.

19 Q. What basis does Mr. Keith allege for his request for authorization of a tracker  
20 for Empire's SPP transmission expenses?

21 A. At page 17, lines 10-12 of his direct testimony, Mr. Keith states that "In the  
22 coming years, it is widely expected that SPP's billings to Empire for regional transmission  
23 upgrade projects and SPP administrative fees will increase Empire's transmission charges

1 significantly.” Accordingly, Empire’s request for a transmission expense tracker is premised  
2 upon an expectation of future escalations in this cost.

3 Staff witness Daniel I. Beck discusses Empire’s projections of future SPP transmission  
4 expense in his rebuttal testimony in this proceeding.

5 Q. Does Empire also receive revenues from SPP, in addition to  
6 incurring expenses?

7 A. Yes. In Empire’s revenue requirement calculation, inclusion of transmission  
8 revenues has the impact of offsetting in whole or in part its recorded transmission expenses.

9 Q. Has Empire also proposed to track SPP transmission revenues within its  
10 transmission tracker?

11 A. No, not in its direct testimony filing.

12 Q. Have other utilities requested authorization for transmission trackers related to  
13 SPP transmission expenses in recent rate proceedings?

14 A. Yes. Both Kansas City Power & Light Company (KCPL) and KCPL – Greater  
15 Missouri Operations (GMO) have requested trackers for their SPP transmission expenses in  
16 Case Nos. ER-2012-0174 and ER-2012-0175, respectively.

17 Q. Has the Commission ruled on those tracker requests?

18 A. Yes, in an Order for both cases dated January 9, 2012. The Commission  
19 denied authorization of transmission trackers for both utilities.

20 Q. Why did the Commission deny KCPL’s and GMO’s request for transmission  
21 trackers?

22 A. The Commission’s Order in Case Nos. ER-2012-0174 and ER-2012-0175  
23 indicates that KCPL’s and GMO’s transmission tracker request was denied because:

- 1                   1.    KCPL’s and GMO’s request was based upon projections of future  
2                                increases in SPP transmission expense, and the Commission believes  
3                                that requests for deferrals of expenses should be based upon actual  
4                                incurred changes in the level of the expense, and not an expectation of  
5                                future changes; and
- 6                   2.    Requests for deferrals are ordinarily applicable only to “extraordinary  
7                                expenses,” and KCPL and GMO did not demonstrate that its SPP  
8                                transmission expenses were extraordinary in nature.

9            Q.    Do these same criteria apply to Empire’s request for a transmission tracker in  
10   this case?

11           A.    Yes.  Empire’s request for a tracker is premised upon projections of future  
12   increases in this cost, and Empire has not attempted to demonstrate that its SPP transmission  
13   expenses are extraordinary in nature.

14           Q.    Based upon the rationale stated in the Commissions’ Order in the recent KCPL  
15   and GMO rate proceedings, does Staff recommend that Empire’s request for a SPP  
16   transmission tracker be similarly denied?

17           A.    Yes.

18           Q.    At page 20 of Mr. Keith’s direct testimony in this proceeding, he requests that  
19   Empire be allowed to accrue “carrying costs” on deferred SPP transmission expenses if it is  
20   authorized use of a tracker.  In the event that the Commission approves the Company’s  
21   tracker request, does Staff agree with Empire’s carrying cost proposal?

22           A.    No.  Authorization of a tracker would mean that Empire has the ability to  
23   request extraordinary rate treatment of SPP transmission expenses incurred outside of an  
24   ordered test year, update period or true-up period in a future rate proceeding.  Allowing  
25   Empire to additionally accrue carrying costs on deferred amounts would effectively make the



1 Company “whole” in respect to the time value of money for its transmission expenditures  
2 incurred between rate proceedings. There is no justification in this particular instance for the  
3 Commission to provide Empire complete protection against the risk of regulatory lag related  
4 to its transmission costs in this manner.

5 Q. At pages 20-21 of Mr. Keith’s direct testimony, he proposed that deferred SPP  
6 transmission expenses be amortized to cost of service in Empire’s next rate proceeding over  
7 the length of time the SPP costs were accumulated in a tracker. Again, if the Commission  
8 grants Empire’s deferral request, does Staff agree with this proposed amortization period?

9 A. No. Staff recommends that all relevant ratemaking considerations regarding  
10 transmission revenue and expense amounts deferred by the Company – if such authority is  
11 granted – should be reserved and decided in Empire’s next rate proceeding.

12 Q. If the Commission rejects Staff’s recommendation not to authorize Empire to  
13 implement a SPP tracker and allows the Company to use one, then should the Commission  
14 condition that authorization?

15 A. Yes. If the Commission authorizes Empire to implement a SPP tracker, then  
16 the Commission should order a number of conditions to that authorization. Those conditions  
17 follow:

- 18 1. That the tracker reflect both transmission revenues and expenses, and  
19 thereby operate as a two-way mechanism (i.e., tracking both under and  
20 over collections of net transmission costs).
- 21 2. That Empire will provide to all parties in this case on a monthly basis  
22 copies of billings from SPP for all SPP rate schedules that contain  
23 charges and revenues that will be included in the tracker and will report,  
24 per its general ledger, all expenses and revenues included in the tracker  
25 by month by Federal Energy Regulatory Commission (FERC) Uniform

1 System of Accounts (USOA) account and Empire subaccount or minor  
2 account. Empire shall also provide, on no less than a quarterly basis, the  
3 internally generated reports it relies upon for management of its ongoing  
4 levels of transmission expenses and revenues. Empire should also commit  
5 to notify the parties to this case of any changes to its existing reporting or  
6 additional internal reporting instituted to manage its transmission  
7 revenues and expenses.

8 3. That all ratemaking considerations regarding transmission revenue and  
9 expense amounts deferred by Empire pursuant to a tracker be reserved to  
10 the next Empire rate proceeding, including examination of the prudence  
11 of the revenues and expenses.

12 4. That Empire must impute into its tracker mechanism, the level of  
13 transmission revenues earned by any transmission company affiliate  
14 related to facilities in Empire's service territory into its tracker  
15 mechanism to the extent necessary to ensure that no additional revenue  
16 requirement resulting from any decision by Empire to transfer  
17 responsibility for transmission construction activity from Empire's  
18 regulated business is passed on to Empire's Missouri retail customers  
19 through the tracker.

20 5. That nothing in any order authorizing Empire's use of a transmission  
21 tracker is intended to amend, modify, alter, or supersede any previous  
22 Commission order or agreement approved by the Commission concerning  
23 Empire's involvement in SPP or treatment of SPP transmission revenues  
24 and expenses.

25 6. That deferrals resulting from the transmission tracker mechanism  
26 cease under certain circumstances, identified in the sixth condition  
27 specified below, depending upon Empire's reported return on equity  
28 (ROE) level.

1 Q. What is the purpose of Staff's first proposed condition, "that the tracker reflect  
2 both transmission revenues and expenses, and thereby operate as a two-way mechanism  
3 (i.e., tracking both under and over collections of net transmission costs)?"

4 A. The intent of this condition is to require that both over collections and  
5 under collections in rates of Empire's actual net transmission expenses (i.e., SPP transmission  
6 expenses less SPP transmission revenues) be booked by the Company as a regulatory asset or  
7 liability for potential reflection in Empire's rates.

8 Q. Is exclusion of transmission revenues from a transmission tracker acceptable?

9 A. No. In the case of Empire's SPP membership, Empire is both assigned  
10 expenses by SPP for transmission service and receives revenues from SPP for the Empire  
11 facilities used by SPP to provide transmission service. The SPP transmission charges paid by  
12 Empire are intended to reimburse other SPP members for use of their transmission facilities  
13 by Empire. Empire pays a portion of its costs associated with use of its facilities for SPP  
14 transmission service, but receives all of the related revenues. Empire's revenue requirement  
15 associated with membership in SPP is dependent upon the ongoing relationship of its assigned  
16 SPP transmission revenues to its assigned SPP transmission expenses.

17 If one side of the SPP transmission equation is included in a tracker (the expenses),  
18 but the other side is excluded (the revenues), a skewed and inappropriate approach to  
19 transmission ratemaking results. Under this approach, changes in transmission expenses will  
20 be deferred for future recovery from ratepayers, while offsetting and concurrent transmission  
21 revenues will be ignored. This result should not be accepted by the Commission.

22 Q. What is the purpose of Staff's second condition, "that Empire will provide to  
23 all parties in this case on a monthly basis copies of billings from SPP for all SPP rate

1 schedules that contain charges and revenues that will be included in the tracker and will  
2 report, per its general ledger, all expenses and revenues included in the tracker by month by  
3 FERC USOA account and Empire subaccount or minor account. Empire shall also provide,  
4 on no less than a quarterly basis, the internally generated reports it relies upon for  
5 management of its ongoing levels of transmission expenses and revenues. Empire should also  
6 commit to notify the parties to this case of any changes to its existing reporting or additional  
7 internal reporting instituted to manage its transmission revenues and expenses?”

8 A. The purpose of Staff’s second condition is to specify ongoing reporting  
9 requirements for Empire in regard to the transmission costs and revenues flowing through  
10 the tracker.

11 Q. What is the purpose of Staff’s third proposed condition, “that all ratemaking  
12 considerations regarding transmission revenue and expense amounts deferred by the  
13 Company pursuant to a tracker be reserved to the next Empire rate proceeding, including  
14 examination of the prudence of the revenues and expenses?”

15 A. The purpose of Staff’s third condition is to avoid any claim that any order  
16 entered by this Commission implementing a tracker in this proceeding has the effect of  
17 making or setting any present or future ratemaking determinations by the present Commission  
18 or regarding a future Commission case. Typically, when authorizing trackers or other  
19 accounting authority, the Commission includes language in its order reserving rate treatment  
20 of costs and revenues included in a special accounting mechanism, such as a tracker or  
21 accounting authority order, to subsequent rate proceedings.

22 Q. What is the purpose of Staff’s fourth condition, “that Empire must impute into  
23 its tracker mechanism the level of transmission revenues earned by any transmission company

1 affiliate related to facilities in Empire’s service territory to the extent necessary to ensure that  
2 no additional revenue requirement resulting from any decision by Empire to transfer  
3 responsibility for transmission construction activity from Empire’s regulated business is  
4 passed on to Missouri retail customers?”

5 A. Any decision by Empire to transfer responsibility for construction of  
6 transmission projects from its regulated utility entity to a transmission company affiliate will  
7 also transfer primary ratemaking authority over the transmission project’s costs and capital  
8 investment to FERC. In recent years, FERC has adopted a number of ratemaking policies that  
9 would have the probable impact of increasing revenue requirements associated with these  
10 transmission projects above the level that would be normally established under this  
11 Commission’s ratemaking policies. The purpose of this condition is to require Empire to pass  
12 through SPP transmission revenue requirements associated with affiliated transactions to  
13 Missouri retail customers calculated on an equivalent basis with Missouri Commission  
14 ratemaking practices. Staff has expressed a view that the Missouri Commission ratemaking  
15 practices rather than the FERC ratemaking practices are appropriate.

16 Q. Has Empire to date created an affiliate designed to construct, own or operate  
17 transmission facilities in Missouri and other jurisdictions?

18 A. No, not to date. However, imposition of this condition is appropriate in the  
19 event that Empire chooses to do so at a future date.

20 Q. What is the purpose of Staff’s fifth proposed condition, “that nothing in  
21 any order authorizing Empire’s use of a transmission tracker is intended to amend, modify,  
22 alter, or supersede any previous Commission order or agreement approved by the

1 Commission concerning Empire’s involvement in SPP or treatment of SPP transmission  
2 revenues and expenses?”

3 A. The purpose of this condition is to make clear that any approval of a tracker for  
4 Empire in this proceeding is not intended to and does not change any prior order from the  
5 Commission or stipulation and agreement approved by the Commission involving Empire’s  
6 participation in SPP.

7 Q. What is the purpose of Staff’s sixth and final condition, “that deferrals  
8 resulting from the transmission tracker mechanism cease under certain circumstances  
9 depending upon Empire’s reported return on equity (ROE) level?”

10 A. The Commission has authorized tracker mechanisms primarily as earnings  
11 protection measures for both the utilities and their customers. From that perspective, there is  
12 no reason for Empire to defer the impact of under collections in rates of one cost of service  
13 element when it is earning in excess of its authorized ROE on an overall basis. Conversely, if  
14 a tracker is authorized, there is no reason for Empire to defer over collections in rates of one  
15 cost of service element when it is earning below its authorized ROE on an overall basis. For  
16 that reason, Staff recommends that if the Company reports it is earning at or in excess of its  
17 authorized ROE on a twelve-month rolling forward average basis in quarterly FAC earnings  
18 “surveillance” reporting, any tracker deferrals of under collections in net transmission costs  
19 should cease from that point forward, and only resume on a prospective basis if this  
20 surveillance reporting shows it is now earning below its authorized ROE. Likewise, tracker  
21 deferrals of over collection of net transmission costs should cease from the point that FAC  
22 surveillance shows it is earning below its authorized ROE.

1 **COST OF REMOVAL DEFERRED TAX AMORTIZATION**

2 Q. What is “cost of removal?”

3 A. “Cost of removal” is the cost of demolishing, dismantling, tearing down or  
4 otherwise removing plant in service at the end of its useful life.

5 Q. How is cost of removal currently treated for ratemaking purposes?

6 A. In this jurisdiction, cost of removal is currently included in cost of service on  
7 an accrual basis as a component of a utility’s authorized depreciation rates for plant assets.  
8 Except for a relatively brief period in the prior decade, Empire’s cost of removal has been  
9 recovered from customers using this approach going back many years. This approach means  
10 that customers pay in rates an estimation of the future cost of removal for all plant while the  
11 plant is still in service.

12 Q. How is cost of removal treated for income tax purposes?

13 A. The Internal Revenue Service (IRS) allows a deduction on a utility’s income  
14 tax returns only for cost of removal amounts that are actually incurred. The difference  
15 between the accrual approach used for cost of removal in setting rates and the cash approach  
16 used for this cost for income tax purposes means that cost of removal is a “tax timing  
17 difference.” The term “tax timing differences” applies to costs for which the timing of  
18 recognition for financial accounting and income tax purposes differs.

19 Q. Is it reasonable to expect that the amount of cost of removal collected in rates  
20 by a utility will ever be equal to the amount of cost of removal actually incurred by a utility?

21 A. No. Current ratemaking policy allows for collection in rates of estimated cost  
22 of removal amounts in some cases decades in advance of when the actual expenditures are  
23 expected to be made. This means, as a practical matter, that the amount of cost of removal

1 collected in rates will never be “trued-up” to the amount of actual cost of removal  
2 expenditures for a company. It is the lengthy gap between the time of rate collection and the  
3 time of actual incurrence of cost of removal by the utility that makes it very difficult to  
4 determine whether income tax expense related to cost of removal has been over or under  
5 collected at a point in time.

6 Q. What is the difference between “normalization” treatment and “flow-through”  
7 treatment of tax timing differences for rate purposes?

8 A. “Normalizing” tax timing differences means that, for rate purposes, a cost is  
9 considered to be recognized in the income tax calculation at the same time as the item is  
10 recognized as an expense on the utility’s income statement. “Flowing through” tax timing  
11 differences means that, for rate purposes, a cost is recognized in the income tax calculation at  
12 the same time the item is recognized as a deduction on the utility’s income tax returns.

13 As it applies to cost of removal, normalization of this item would mean the cost is  
14 taken as a deduction for ratemaking purposes at the time it is accrued as part of the utility’s  
15 depreciation rates. Under the flow-through approach, the cost would be taken as an income  
16 tax deduction at the time the utility’s cost of removal expenditures are made.

17 Q. How is Empire witness Warren alleging that the cost of removal tax timing  
18 difference was treated for rate purposes in prior Empire rate proceedings?

19 A. Mr. Warren alleges that the tax deduction for cost of removal was  
20 inadvertently provided to customers twice in prior Empire rate proceedings from 1981 to  
21 2008, once by normalizing the cost of removal component included in Empire’s authorized  
22 depreciation rates for tax purposes and again by simultaneously flowing through the amount  
23 of cost of removal actually incurred by the utility in the Company’s income tax calculation.



1 Mr. Warren goes on to state that providing excess cost of removal deductions to Empire's  
2 ratepayers has resulted in an under recovered accumulated deferred income tax account, and  
3 that Empire should recoup this under recovery through an amortization of a cost of removal  
4 deferred tax asset over an 18-year period.

5 Q. During the entire period of time the double reflection of cost of removal  
6 deductions is alleged to have taken place, did Empire ever take a position opposing the  
7 income tax treatment proposed by Staff regarding cost of removal?

8 A. I am not aware that Empire raised any concerns regarding prior rate treatment  
9 of income taxes related to cost of removal any earlier than its 2008 and 2010 rate cases.

10 Q. What is Staff's position regarding this proposed amortization?

11 A. Staff is opposed to inclusion in rates of this amortization for the following  
12 reasons:

- 13 1. Empire has not provided credible evidence that this alleged  
14 double-reflection of the cost of removal tax deduction in cost of service  
15 actually occurred, nor has Empire provided an accurate quantification of  
16 the amount of the alleged double recovery;
- 17 2. Empire's analysis of this issue ignores the point that the tax straight-line  
18 depreciation calculation does not necessarily provide for a deduction of  
19 cost of removal; and
- 20 3. Even assuming that this double-reflection of the cost of removal tax  
21 deduction in Empire's cost of service actually occurred, my  
22 understanding is that prospective correction in rates of "errors" in setting  
23 a utility's prior rates is may not be permissible from a legal perspective.

24 Q. What evidence, if any, does Empire provide in Mr. Warren's direct testimony  
25 to support its contentions of the manner in which cost of removal has been treated for income  
26 tax purposes in its prior rate cases?

1           A.     In Mr. Warren’s direct testimony, at page 15, lines 6-8, he states that he has  
2 reached his conclusions regarding past rate treatment of the income tax impact of cost of  
3 removal from a review of various tax expense schedules and discussions with Company  
4 personnel.

5           Q.     Is it possible in all instances to definitively determine how items are treated for  
6 rate purposes from a review of income tax accounting schedules?

7           A.     No. This is because income tax accounting schedules do not necessarily  
8 contain the detail of how certain values contained therein are derived, and also because  
9 settlement of rate case proceedings on a negotiated dollar basis often preclude a direct tying of  
10 the stipulated revenue requirement to any parties’ sponsored accounting schedules.

11          Q.     Were some of Empire’s rate case filings from 1981 to 2008 resolved by  
12 stipulation and agreement?

13          A.     Most of them were. Even for those cases that went to hearing, to my  
14 knowledge no tax issues associated with cost of removal were litigated. Of course, the  
15 existence of stipulations and agreements in Empire’s past rate cases reflecting “black box”  
16 revenue requirements makes it very difficult to make conclusive determinations of how  
17 certain items, such as the income tax treatment of cost of removal, were treated for  
18 ratemaking purposes in those proceedings.

19          Q.     What documentary support has Empire provided Staff in this proceeding to  
20 support its contention of double reflection of cost of removal deductions?

21          A.     The Company provided Staff with copies of the Staff income tax accounting  
22 schedules from two Empire rate cases filed in the 1990s.

1 Q. Was this evidence sufficient to fully support Empire's assertions?

2 A. No. These accounting schedules do show that Staff included a deduction for  
3 cost of removal in its income tax calculations on a stand-alone basis. These schedules also  
4 show an amount for a tax straight-line depreciation deduction in the tax calculation.  
5 However, these schedules do not show to what extent a cost of removal accrual was  
6 incorporated within Staff's tax straight-line depreciation deduction. Mr. Warren appears to  
7 assume that the tax straight-line amount on prior Staff income tax accounting schedules  
8 contains a full deduction for estimated cost of removal charged to consumers which is  
9 duplicative of the actual cost of removal amounts included on Empire's tax returns and also  
10 reflected in Staff's income tax accounting schedules. Mr. Warren's evaluation of this matter is  
11 deficient, which I will explain later in this testimony.

12 Q. What is "tax straight-line depreciation?"

13 A. A utility's tax depreciation deduction amount is split into two pieces for  
14 ratemaking purposes. "Tax straight-line depreciation" is the application of the utility's  
15 authorized book depreciation rates to the tax basis of their depreciable assets. "Excess  
16 depreciation" is the application of the allowed accelerated tax depreciation rates to the  
17 tax basis of the utility's depreciable assets. If cost of removal is included as part of  
18 the depreciation rates to calculate tax depreciation, it would be incorporated in the tax  
19 straight-line depreciation calculation.

20 Q. In this testimony, are you asserting that Staff's position in this matter is that no  
21 double reflection of a cost of removal tax deduction occurred in prior rate cases?

22 A. Yes. Mr. Warren's assumption that a prior double recovery of the tax benefits  
23 of cost of removal occurred ignores the fact that the tax straight-line depreciation amount as

1 measured over the life of a company's assets does not allow for recognition of cost of removal  
2 in the calculation. Therefore, the approach of utilizing the tax straight-line depreciation  
3 deduction alone to recognize the tax benefits associated with cost of removal is problematic.  
4 The use of the tax depreciation model to calculate tax straight-line depreciation, as normally  
5 done in rate cases, ultimately prevents the recognition of any cost of removal in tax  
6 straight-line depreciation amounts.

7 Q. Please explain this point in greater detail.

8 A. Tax depreciation is based on "vintage accounting." "Vintage accounting" is  
9 accounting for a group of assets based upon the year the assets were placed in service, as  
10 opposed to accounting for each asset on an individual basis. Total tax depreciation is the  
11 result of the amount of a depreciation deduction allowed for each year, or vintage, of the  
12 Company's plant investment. Once the total tax depreciation deductions for a particular  
13 vintage over time equals the total dollar amount of the plant investment (as measured for  
14 tax purposes) made within that vintage, no further tax depreciation is allowed for that vintage  
15 of assets.

16 Q. Can you illustrate this point using a simple example?

17 A. Yes. Assume a plant asset has an original cost of \$100 and an estimated cost  
18 of removal value of \$20. (We will assume that there is zero expected salvage value for this  
19 asset.) The utility's depreciation rates should be set recover a total of \$120, the book basis of  
20 the asset plus the estimated cost of removal, over the asset's assumed life. However, if the  
21 asset has a longer life than originally assumed, the utility may well collect an amount of  
22 depreciation expense in rate in excess of \$120 associated with that asset.

1           Then, assume that for tax purposes the depreciable basis of the same asset is \$95.  
2 (The book basis and tax basis of assets will often be different, for reasons to be discussed  
3 later.) Remembering that cost of removal is not part of the tax depreciation calculation  
4 (because no deduction for cost of removal is allowed until the cost is incurred), the tax  
5 depreciation treatment applied to this asset will result in a total tax depreciation deduction  
6 equal to \$95, and no more. In this example, it can be seen that use of a tax straight-line  
7 depreciation deduction to calculate income tax expense will not provide for a deduction  
8 amount for cost of removal, only for the amount of the tax basis of the asset.

9           Q.     What are the implications of this point to Mr. Warren's argument of double  
10 recovery of cost of removal tax deductions in prior Empire rate proceedings?

11           A.     Given that the past tax straight-line depreciation calculations made by  
12 Staff that Mr. Warren cites to support his conclusion that double recovery occurred were  
13 apparently not opposed by Empire at the time of the calculations, this suggests that Staff's tax  
14 straight-line depreciation calculations did not allow for any recognition of cost of removal.  
15 Thus, reflecting the amount of the Company's actual cost of removal tax return deductions on  
16 the Staff income tax accounting schedule would not have resulted in a double reflection of the  
17 tax deduction

18           Q.     Is it possible at this time to make a definitive determination of the exact  
19 amount of cost of removal deductions passed on to customers in previous Empire rate cases?

20           A.     No. Under the best light that the Company's position on this issue can be  
21 examined, I am asserting that it is very difficult to demonstrate that any double recovery  
22 occurred years after the fact, and that Empire has failed to do so to date in this proceeding.  
23 This is an inherent problem when a company makes broad assertions regarding rate treatment

1 of items that occurred for the most part in the distant past, and particularly when most of the  
2 utility's rate proceedings over time have ended in negotiated stipulations and agreements, as  
3 is the case with Empire.

4 Q. Has Empire supported its contention that the amount of cost of removal  
5 deductions provided to customers in rates for the period 1981 to 2008 was excessive and  
6 duplicative?

7 A. No. Among other flaws in its approach to this issue, Empire has not attempted  
8 to demonstrate that its customers received full benefit of tax deductions for cost of removal  
9 expenditures made from 1981 to 2008 through tax depreciation treatment in earlier rate cases.  
10 For example, actual cost of removal expenditures incurred by Empire in 1981 may have been  
11 recovered from customers in rates many years prior. Assuming an average depreciable life of  
12 Empire's assets at that time of approximately 30 years, any analysis that claims flow-through  
13 treatment of cost of removal in 1981 was excessive and duplicative would require an  
14 examination of depreciation and income tax ratemaking approaches dating to the early 1950s,  
15 at least.

16 Q. What is the nature of the deferred tax asset that Empire seeks to amortize in the  
17 rate proceeding?

18 A. The amount proposed for amortization by Empire in this case is derived from a  
19 deferred tax asset booked by Empire pursuant to Financial Accounting Standard No. 109,  
20 "*Accounting for Income Taxes.*" This asset was not booked by Empire until the early 1990s,  
21 when the provisions of FAS 109 went into effect, even though some of the cost of removal  
22 expenditures reflected within the asset balance date back to 1981. It is my understanding that

1 the amount of this deferred tax asset was quantified by adding up the amount of all cost of  
2 removal deductions taken by Empire on its income tax returns since 1981.

3 Q. Is the cost of removal deferred tax asset the same type of deferred tax  
4 asset/liability ordinarily given rate treatment by the Commission?

5 A. No. The deferred tax assets and liabilities reflected in the Company's rate base  
6 result from prior normalization treatment of utility tax timing differences. The cost of  
7 removal deferred tax asset Empire is seeking to amortize results from prior flow-through  
8 treatment of this tax timing difference. This amount has also not been reflected in Empire's  
9 rate base in past rate proceedings, unlike other deferred tax assets and liabilities.

10 Q. Is the cost of removal deferred tax asset that Empire seeks to amortize a  
11 "regulatory asset?"

12 A. No, not in the usual sense of that term. It is my understanding that Empire is  
13 booking this particular asset as a requirement applied to regulated utilities under the  
14 provisions of FAS 109. This amount is not a regulatory asset in the sense that its booking was  
15 ever authorized by or approved of by the Commission through an accounting authority order  
16 application or other means. This issue has the characteristics of attempting to validate after the  
17 fact a regulatory asset placed on the books without regulatory approval that will need to  
18 written off if regulatory approval for rate recovery of the asset is not given.

19 Q. For the period of time covered by the cost of removal deferred tax asset, can  
20 Staff state affirmatively that for any portion of that period there was not even a theoretical  
21 possibility of a double reflection of the cost of removal deduction to the benefit of ratepayers?

22 A. Yes, for the approximate period of 2001 through 2004, the Commission  
23 ordered that cost of removal be included in Empire's cost of service as an element of expense

1 on its income statement, and not as a component of Empire's depreciation expense. For at  
2 least this period of time, inclusion of cost of removal in Empire's income tax calculation for  
3 ratemaking purposes could not have occurred as part of a tax depreciation calculation.

4 Q. Assuming that Empire is correct in asserting that, in at least some past rate  
5 proceedings, cost of removal was reflected in income tax accounting schedules twice (once as  
6 a component of depreciation expense and again as a separate line item in the schedule), even  
7 then does this mean that customers necessarily received a proportionately greater tax benefit  
8 associated with cost of removal than merited by the amount of cost of removal they provided  
9 to Empire in rates?

10 A. No. Customers may not have received the full benefit of a tax deduction  
11 for the entire amount of cost of removal provided to the Company in rates for an  
12 additional reason.

13 The amount of tax straight-line depreciation reflected in a utility's income tax  
14 calculation for rate purposes is almost always less than the amount of book depreciation it is  
15 collecting in customer rates. This is because the "tax basis" of utility assets for depreciation  
16 purposes is almost always less than the book basis, because in the past the income tax code  
17 allowed for some elements of a company's book basis of assets to be charged to expense  
18 immediately rather than capitalized as plant in service. The full book value of the assets will  
19 not be reflected in a utility's tax straight-line depreciation calculation under these  
20 circumstances. Accordingly, a proportional amount of a cost of removal tax benefit  
21 associated with the difference in basis between a utility's assets for book and tax purposes  
22 also would not have passed on to customers in rates as part of a tax straight-line depreciation  
23 deduction. This point is particularly applicable to Empire's rate levels set in the 1980s, prior



1 to the time its income tax expense would have been calculated using the provisions of the  
2 Tax Reform Act of 1986, which had the impact of prospectively reducing the amount of  
3 differences between measurement of book basis and tax basis for purposes of depreciation  
4 of assets.

5 Q. Assuming again that the Company's contentions that customers have unduly  
6 benefited from prior rate treatment of cost of removal tax deductions are fully accurate (which  
7 Staff believes has not been demonstrated), does that mean that the proposed deferred tax asset  
8 amortization is appropriate and should be ordered by the Commission?

9 A. No. Staff asserts that Empire is effectively claiming that its rates were  
10 improperly set in prior proceedings, due to the alleged double reflection of cost of removal tax  
11 deductions in its cost of service. Therefore, because Empire asserts its rates were set too low  
12 in past rate cases for this reason (with Empire's apparent concurrence), Empire is now seeking  
13 to increase its rates through the proposed deferred tax asset amortization. Based upon  
14 discussions with Staff counsel, I have been advised that seeking to correct alleged errors made  
15 in setting a utility's prior rates in the context of setting new, prospective rates constitutes  
16 prohibited "retroactive ratemaking."

17 **STATE TAX FLOW THROUGH**

18 Q. Please describe this issue.

19 A. The state tax flow-through adjustment amount was buried in the Company  
20 workpapers, with no supporting testimony submitted by Empire in its direct filing as to its  
21 justification. However, based upon subsequent discussions with the Company, my  
22 understanding of this issue is that Empire is asserting that the normalization treatment of tax  
23 timing differences provided to it by the Commission up to the early 1990s was authorized

1 only at the stand-alone federal tax rate, and not the composite federal-state income tax rate  
2 usually used to record deferred taxes resulting from normalization of tax timing differences.  
3 Therefore, when Staff applies the current composite federal-state tax for the purpose of  
4 returning deferred taxes to customers, Empire claims that use of the composite tax rate for this  
5 purpose, which is higher than the stand-alone federal rate, results in a shortfall to the  
6 Company. Empire is proposing in this case to increase its cost of service through an  
7 amortization of the amount its deferred tax flow back to customers allegedly exceeds the  
8 amount of the original deferred income taxes booked by Empire.

9 Q. What is the current difference between the federal-state composite tax rate and  
10 the stand-alone federal income tax rate?

11 A. The current composite income tax rate used by Staff is 38.3886%, while the  
12 stand-alone federal rate is 35.0%. These values would have been different in the past when  
13 the statutory tax rates for corporations were set at different levels by federal and state taxing  
14 authorities.

15 Q. Is Empire claiming that its prior rates were set using tax normalization  
16 computed on a stand-alone federal income tax rate basis?

17 A. Since Empire filed no testimony supporting this adjustment, it is not clear  
18 whether Empire is making this specific contention. At a minimum, it appears the Company's  
19 position on this issue is based upon its assertion that Commission orders dating back to the  
20 1950s only authorized Empire to book deferred taxes using a stand-alone federal rate.

21 Q. Has Empire provided any Commission orders supporting this contention?

22 A. No.

Rebuttal Testimony of  
Mark L Oligschlaeger

1 Q. What is Staff's position on this issue?

2 A. Staff is opposed to Empire's proposed state tax flow-through amortization.

3 Q. To your knowledge, what has been Staff's position in the past regarding  
4 calculation of deferred taxes for purposes of setting customer rates?

5 A. I have been employed as a regulatory auditor by the Commission since 1981,  
6 and I have discussed this question as well with others whose auditor experience with the  
7 Commission dates back to the mid-1970s. Their recollection is identical to mine. Since at  
8 least the mid to late 1970s, Staff advocated the approach of calculating deferred taxes using a  
9 composite federal-state income tax rate, and not a federal stand-alone rate or any other rate.  
10 We are not aware of the Commission ordering rates be set using a different income tax rate  
11 for purposes of calculating deferred taxes.

12 Q. Has Staff reviewed its prior rate case filings for Empire to examine what  
13 income tax rate were used to calculate the Company's deferred taxes?

14 A. Yes. I reviewed the Staff's testimony and accounting schedules from Case No.  
15 ER-90-138, an Empire rate increase filing within the period that the valuation of the  
16 Company's deferred taxes using the stand-alone federal tax rate allegedly occurred. Staff's  
17 testimony in that case stated clearly that it calculated deferred taxes using a composite  
18 federal-state income tax rate. Though this case was ultimately resolved through stipulation,  
19 Staff's position taken in that case certainly illustrates that, at the very least, there was no  
20 agreement among the parties to that proceeding that a stand-alone federal income tax rate  
21 should be used to calculate deferred taxes.

22 Q. Was calculation of Empire's deferred taxes a litigated issue in any rate  
23 proceedings prior to the Company's 1994 case?

Rebuttal Testimony of  
Mark L Oligschlaeger

1           A.     No. In fact, to my knowledge all of Empire's rate proceedings were resolved  
2 by stipulation and agreement in the 1980s and early 1990s

3           Q.     If Empire's deferred taxes were calculated using the normal composite  
4 federal-state tax rate, how would acceptance of its state tax flow-through amortization affect  
5 its customers?

6           A.     Adoption of Empire's proposed amortization would mean its ratepayers would  
7 not be fully compensated for the full amount of deferred taxes they provided to Empire in  
8 earlier rate cases. This result would be unfair and inequitable.

9           Q.     Do you consider it likely that the premise behind Empire's position is correct  
10 and that its cost of service currently reflects a greater payback of deferred taxes to its  
11 customers than those customers earlier paid in rates to the Company?

12          A.     No. In fact, I think the opposite scenario is more likely. If Empire only  
13 recorded its deferred taxes prior to 1994 at a federal stand-alone income tax rate, while  
14 customers were providing it deferred taxes in rates calculated using the higher composite  
15 state-federal rate, then Empire's rate base has been overstated for a lengthy period of time,  
16 and customer rates have been set at a higher level than warranted. This is an item that should  
17 be examined in Empire's next rate case.

18          Q.     Is it possible that this proposed adjustment, if adopted, would be another  
19 example of retroactive ratemaking?

20          A.     Yes, though this is uncertain without additional information from the company  
21 supporting this adjustment.

22          Q.     Does this conclude your rebuttal testimony?

23          A.     Yes, it does.


**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of The Empire District Electric )  
Company of Joplin, Missouri Tariffs ) Case No. ER-2012-0345  
Increasing Rates for Electric Service Provided )  
to Customers in the Missouri Service Area of )  
the Company )

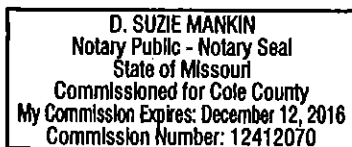
AFFIDAVIT OF MARK L. OLIGSCHLAEGER

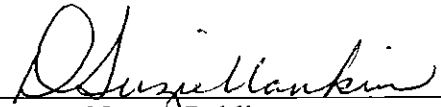
STATE OF MISSOURI     )  
                                  )     ss.  
COUNTY OF COLE     )

Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 26 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Mark L. Oligschlaeger

Subscribed and sworn to before me this 16<sup>th</sup> day of January, 2013.



  
\_\_\_\_\_  
Notary Public

**CASE PARTICIPATION OF  
MARK L. OLIGSCHLAEGER**

<b>Company Name</b>	<b>Case Number</b>	<b>Issues</b>
Western Resources	GR-90-40 and GR-91-149	Take-Or-Pay Costs
Missouri-American Water Company	WR-91-211	True-up; Known and Measurable
Missouri Public Service	EO-91-358 and EO-91-360	Accounting Authority Order
Generic Telephone	TO-92-306	Revenue Neutrality; Accounting Classification
Generic Electric	EO-93-218	Preapproval
Western Resources & Southern Union Company	GM-94-40	Regulatory Asset Transfer
St. Louis County Water	WR-95-145	Policy
Union Electric Company	EM-96-149	Merger Savings; Transmission Policy
St. Louis County Water	WR-96-263	Future Plant
Missouri Gas Energy	GR-96-285	Riders; Savings Sharing
The Empire District Electric Company	ER-97-82	Policy
Missouri Public Service	ER-97-394	Stranded/Transition Costs; Regulatory Asset Amortization; Performance Based Regulation
Western Resources & Kansas City Power & Light	EM-97-515	Regulatory Plan; Ratemaking Recommendations; Stranded Costs
United Water Missouri	WA-98-187	FAS 106 Deferrals
Laclede Gas Company	GR-99-315 (remand)	Depreciation and Cost of Removal
Missouri-American Water	WM-2000-222	Conditions
UtiliCorp United & St. Joseph Light & Power	EM-2000-292	Staff Overall Recommendations
UtiliCorp United & The Empire District Electric Company	EM-2000-369	Overall Recommendations
Green Hills Telephone	TT-2001-115	Policy
IAMO Telephone Company	TT-2001-116	Policy
Ozark Telephone Company	TT-2001-117	Policy

**CASE PARTICIPATION OF  
MARK L. OLIGSCHLAEGER**

<b>Company Name</b>	<b>Case Number</b>	<b>Issues</b>
Peace Valley Telephone	TT-2001-118	Policy
Holway Telephone Company	TT-2001-119	Policy
KLM Telephone Company	TT-2001-120	Policy
Missouri Gas Energy	GR-2001-292	SLRP Deferrals; Y2K Deferrals; Deferred Taxes; SLRP and Y2K CSE/GSIP
The Empire District Electric Company	ER-2001-299	Prudence/State Line Construction/Capital Costs
Ozark Telephone Company	TC-2001-402	Interim Rate Refund
Gateway Pipeline Company	GM-2001-585	Financial Statements
Missouri Public Service	ER-2001-672	Purchased Power Agreement; Merger Savings/Acquisition Adjustment
Union Electric Company	EC-2002-1	Merger Savings; Criticisms of Staff's Case; Injuries and Damages; Uncollectables
Laclede Gas Company	GA-2002-429	Accounting Authority Order Request
Aquila, Inc., d/b/a Aquila Networks-MPS-Electric and Aquila Networks-L&P-Electric and Steam	ER-2004-0034 and HR-2004-0024 (Consolidated)	Aries Purchased Power Agreement; Merger Savings
Missouri Gas Energy	GR-2004-0209	Revenue Requirement Differences; Corporate Cost Allocation Study; Policy; Load Attrition; Capital Structure
Empire District Electric	ER-2006-0315	Fuel/Purchased Power; Regulatory Plan Amortizations; Return on Equity; True-Up
Missouri Gas Energy	GR-2006-0422	Unrecovered Cost of Service Adjustment; Policy
Laclede Gas Company	GR-2007-0208	Case Overview; Depreciation Expense/Depreciation Reserve; Affiliated Transactions; Regulatory Compact
Missouri Gas Utility	GR-2008-0060	Report on Cost of Service; Overview of Staff's Filing

**CASE PARTICIPATION OF  
MARK L. OLIGSCHLAEGER**

<b>Company Name</b>	<b>Case Number</b>	<b>Issues</b>
The Empire District Electric Company	ER-2008-0093	Case Overview; Regulatory Plan Amortizations; Asbury SCR; Commission Rules Tracker; Fuel Adjustment Clause; ROE and Risk; Depreciation; True-up; Gas Contract Unwinding
KCP&L Greater Missouri Operations Company	EO-2008-0216	<b>Rebuttal:</b> Accounting Authority Order Request
Missouri Gas Energy, a Division of Southern Union	GR-2009-0355	<b>Staff Report Cost of Service: Direct</b> Report on Cost of Service; Overview of the Staff's Filing; <b>Rebuttal:</b> Kansas Property Taxes/AAO; Bad Debts/Tracker; FAS 106/OPEBs; Policy; <b>Surrebuttal:</b> Environmental Expense, FAS 106/OPEBs
The Empire District Electric Company, The-Investor (Electric)	ER-2010-0130	<b>Staff Report Cost of Service: Direct</b> Report on Cost of Service; Overview of the Staff's Filing; Regulatory Plan Amortizations; <b>Surrebuttal:</b> Regulatory Plan Amortizations
The Empire District Electric Company	ER-2011-0004	<b>Staff Report on Cost of Service: Direct:</b> Report on Cost of Service; Overview of the Staff's Filing, <b>Surrebuttal:</b> SWPA Payment, Ice Storm Amortization Rebasing, S02 Allowances, Fuel/Purchased Power and True-up
Missouri-American Water Company	WR-2011-0337	<b>Surrebuttal:</b> Pension Tracker
Missouri Gas Energy, A Division of Southern Union	GU-2011-0392	<b>Rebuttal:</b> Lost Revenues <b>Cross-Surrebuttal:</b> Lost Revenues
KCP&L Greater Missouri Operations Company	EO-2012-0009	<b>Rebuttal:</b> DSIM
Union Electric Company d/b/a Ameren Missouri	EU-2012-0027	<b>Rebuttal:</b> Accounting Authority Order <b>Cross-Surrebuttal:</b> Accounting Authority Order
Union Electric Company d/b/a Ameren Missouri	EO-2012-0142	<b>Rebuttal:</b> DSIM



**CASE PARTICIPATION OF  
MARK L. OLIGSCHLAEGER**

<b>Company Name</b>	<b>Case Number</b>	<b>Issues</b>
Union Electric Company d/b/a Ameren Missouri	ER-2012-0166	<b>Responsive:</b> Transmission Tracker
Kansas City Power & Light Company	ER-2012-0174	<b>Rebuttal:</b> Flood Deferral of off- system sales <b>Surrebuttal:</b> Flood Deferral of off- system sales, Transmission Tracker conditions
KCP&L Greater Missouri Operations Company	ER-2012-0175	<b>Surrebuttal: Transmission Tracker Conditions</b>
The Empire District Electric Company	ER-2012-0345	<b>Direct (Interim):</b> Interim Rate Request

**Cases prior to 1990 include:**

<u>COMPANY NAME</u>	<u>CASE NUMBER</u>
Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14