

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3  
4 HEARING

5 May 30, 2001  
6 Jefferson City, Missouri  
7 Volume 5

8 In the Matter of the Empire District)  
9 Electric Company's Tariff Sheets )  
10 Designed to Implement a General Rate)  
11 Increase for Retail Electric Service)  
12 Provided to Customers in the ) ER-2001-299  
13 Missouri Service Area of the )  
14 Company )

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BEFORE: VICKY RUTH, Presiding,  
REGULATORY LAW JUDGE.  
SHEILA LUMPE, Chair  
CONNIE MURRAY,  
KELVIN SIMMONS,  
STEVE GAW,  
COMMISSIONERS.

REPORTED BY:

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FOR: Staff of the Missouri Public Service  
Commission.

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

2                               JUDGE RUTH:   Okay.   We are on the record.

3                               Today is Wednesday, May 30th.   It's 8:30.

4   We're here for the hearing in ER-2001-299, in the matter  
5   of Empire District Electric Company's tariff sheets  
6   designed to implement a general rate increase for retail  
7   electric service provided to customers in the Missouri  
8   service area of the company.

9                               Before we move on to the opening statements,  
10   there are some preliminary matters continued from  
11   yesterday that we need to address.

12                              There had been a question yesterday as to  
13   whether or not the parties could dispense with some of the  
14   introductory foundation questions for the witnesses, and  
15   I'm not going to allow that.   It doesn't take too much  
16   time.   We're going to go ahead and do your standard  
17   foundation questions.

18                              Then I also noted that in the Staff's May 29  
19   filing -- it was an addendum to the list of issues, list  
20   of witnesses and order of cross-examination -- the parties  
21   indicated that they would file the witnesses and the order  
22   of cross-examination well in advance of the hearing on  
23   that issue on June 6, but I would like to ask the parties  
24   to file that by four o'clock on Friday.

25                              If you can't do it, then you need to file

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1 something telling me you're not ready to file that by  
2 Friday.

3 MR. DOTTHEIM: I think we have indicated in  
4 that filing, if I understand you correctly, the witnesses.  
5 We did not indicate the order of cross.

6 JUDGE RUTH: Right. If you would do so by  
7 Friday, please.

8 MR. DOTTHEIM: Yes.

9 JUDGE RUTH: On May 29th Public Counsel filed a  
10 request a leave to late file the prepared direct testimony  
11 of Russell Trippensee, and on the record I will grant that  
12 motion.

13 And I also want to address Praxair's response  
14 in opposition to Staff's motion.

15 MR. DOTTHEIM: Are you going to take responses  
16 to the response that Praxair filed yesterday?

17 JUDGE RUTH: The response -- I can give you a  
18 brief, if you wish, but you'll need to move up to the  
19 podium.

20 MR. DOTTHEIM: That would be fine. I'll try to  
21 be brief as possible.

22 May it please the Commission, in the pleading  
23 that Praxair filed yesterday, Staff believes that Praxair  
24 clearly misconstrues the Fisher case.

25 The Fisher case does not stand for the

1 proposition that the Commission cannot consider  
2 nonunanimous stipulations and agreements.

3 Fisher states that the Commission cannot limit  
4 a hearing to solely consider whether or not to approve a  
5 stipulation and agreement.

6 The question before the Commission is what fuel  
7 and purchase power expense proposal to adopt. The  
8 procedure proposed by the Staff permits that inquiry.

9 The Staff has submitted additional testimony of  
10 Cary G. Featherstone and James Watkins. The Staff has not  
11 withdrawn the fuel and purchase power expense testimony  
12 originally filed by Mssrs. Featherstone, Watkins, Harris,  
13 Bender or Choe.

14 Praxair in its response in opposition to the  
15 Staff motion seems to challenge the supplemental testimony  
16 of Mssrs. Featherstone and Watkins, but I think it's not  
17 entirely clear what relief Praxair is requesting, if it's  
18 requesting anything in regard to that supplemental  
19 testimony.

20 Praxair has submitted data requests to the  
21 Staff relating to the nonunanimous stipulation and  
22 agreement, the joint recommendation, the Staff's present  
23 position, and the Staff is processing those data requests  
24 as quickly as possible.

25 Praxair has not been denied any discovery that

1 it has asked to date that I am aware of. Praxair has not  
2 been denied any opportunity to file any testimony  
3 respecting the nonunanimous stipulation and agreement and  
4 joint recommendation, change in position of the Staff.

5 Nonetheless, Praxair asserts that the Staff is  
6 engaged in an effort to hide information. The Staff does  
7 not seek to impose a nonunanimous stipulation and  
8 agreement on Praxair. Staff's proposed procedure permits  
9 all issues to be heard.

10 Praxair asserts, quote, consider what would  
11 have been the case if Praxair and Empire had submitted a  
12 nonunanimous stipulation settling -- settling as between  
13 those parties, that is, Praxair and Empire, a rate design  
14 issue in a manner not acceptable to the Staff.

15 The Staff's principal concern in a situation  
16 like that would be securing the opportunity to respond to  
17 the nonunanimous stipulation and agreement and joint  
18 recommendation, change in position.

19 Praxair in its pleading, its response in  
20 opposition to Staff motion, cites an article titled  
21 Ratepayers and Nonunanimous Settlements of Public  
22 Utilities Rate Cases.

23 And in the excerpt that Praxair provides in its  
24 pleading, it excerpts from a recent case, fairly recent  
25 case, City of Abilene, 1993, the Public Utility

1 Commission.

2           And if one would consult that case, one would  
3 find some interesting language. And if I could quote some  
4 from that case. I also can provide copies.

5           But in that case the Texas Court of Appeals  
6 stated, we recently considered the adoption of a  
7 nonunanimous stipulation in a rate case.

8           See City of El Paso v Public Utilities  
9 Commission, 839 S.W.2d 895, Texas Appeals, Austin, 1992,  
10 writ granted.

11           In City of El Paso we determined that a  
12 nonunanimous stipulation could be considered as a basis  
13 for a final order in a rate case as long as nonstipulating  
14 parties had an opportunity to be heard on the merits of  
15 the stipulation and the Commission made an independent  
16 finding on the merits, supported by substantial evidence  
17 in the record, that the stipulation set just and  
18 reasonable rates. Id. at 903.

19           The consideration of a nonunanimous stipulation  
20 as a basis for the final order is proper unless it is,  
21 quotation, arbitrary, unreasonable, an abusive discretion,  
22 or involves consideration of factors other than those the  
23 Legislature has directed the Commission to consider, close  
24 quote. Id. at 904.

25           And in a subsequent page the court states, and,

1 again, I quote, the Cities cite the Missouri case for the  
2 proposition that the limited hearing violates due process.  
3 See State ex rel Fisher v Public Service Commission,  
4 645 S.W.2d 39 (Mo.Ct.App 1982).

5 The Fisher case presents a similar procedural  
6 history of a preliminary hearing to consider a  
7 nonunanimous stipulation in a rate case.

8 That hearing was also limited to a  
9 determination of acceptance or rejection of the  
10 stipulation. The court determined that the opponents did  
11 not have an opportunity to present any positions which  
12 could be adopted at the stipulation hearing and, thus,  
13 were denied due process. We do not find this rationale  
14 compelling.

15 And the court goes on. I won't quote further.

16 But if one would look behind some of the  
17 statements and the authorities that Praxair seeks to cite  
18 to this Commission, I think the Commission would find that  
19 the very documents, authorities, do not support what  
20 Praxair is suggesting.

21 The article itself titled Problems for Captive  
22 Ratepayers in Nonunanimous Settlements of Public Utility  
23 Rate Cases, by Stefan H. Krieger, contains rather  
24 voluminous footnotes.

25 And I can provide copies of that document.



1           The article seems internally inconsistent as to  
2   how it views the case law in Missouri.

3           On page 261 it states, while some states  
4   require unanimous consent before allowing settlements of  
5   rate cases -- and there is a reference to footnote 20 --  
6   many public utility commissions have abandoned the  
7   traditional predicate for settlement, unanimity and have  
8   approved rate case settlements to which several of the  
9   parties had not given their assent.

10          And when one consults footnote 20 to see the  
11   states that require unanimous consent before allowing  
12   settlements of rate cases, one finds in the footnote, the  
13   Fisher case and the Missouri ex rel Monsanto Company, the  
14   Public Service Commission case, 716 S.W.2d 791 Mo 1986.

15          But if one continues further on pages 264 and  
16   265 there is the statement, to date, 16 state commissions  
17   in the District of Columbia, and the District of Columbia  
18   Commission, have recognized the validity of nonunanimous  
19   settlement of rate cases, footnote 30.

20          And if one would consult footnote 30 there is  
21   the statement, the states in which commissions have  
22   recognized the validity of nonunanimous settlements are  
23   Arkansas, California, Indiana, Illinois, Kentucky,  
24   Maryland, Michigan, Missouri, New Mexico, New York, Ohio,  
25   Oregon, Pennsylvania, Texas, Vermont and West Virginia.

1 See supra note 27.

2           The very next sentence: Six of those  
3 commissions have gone so far as to adopt formal rules  
4 providing procedures for approval of such settlements,  
5 footnote 31.

6           And if one goes to footnote 31, one finds  
7 references to the rules and regulations of area's public  
8 utility commissions, including a reference to Mo. Code  
9 Regs, Title 3, 240-2.115.

10           So there are any number of other references  
11 in -- in that article that do not appear to support the  
12 assertions of Praxair.

13           JUDGE RUTH: Just a moment, please.

14           (OFF THE RECORD.)

15           JUDGE RUTH: Thank you. Back on the record.

16           MR. DOTTHEIM: I won't go -- I won't go through  
17 all of them. Again, I can provide the citations. I will  
18 refer to maybe one or two more.

19           There is a statement on -- or a sentence on  
20 page 294: Three courts have held that in the absence of  
21 unanimity, Commission-enabling acts require full  
22 evidentiary rate base hearings, footnote 172.

23           And if one turns to footnote 172, one finds  
24 reference to the State ex rel Fisher and the State  
25 ex rel Monsanto Company cases.

1                   And I will cite one more reference, on  
2   page 297 the sentence appears: In other words, under  
3   these statutes when confronted with a nonunanimous  
4   settlement, the issue for a Commission is not whether the  
5   settlement proposal reasonably balances the interest of  
6   ratepayers or whether substantial evidence supports that  
7   particular agreement, footnote 190, which is Id. at 702;  
8   State ex rel Fisher v Public Service Commission,  
9   645 S.W.2nd 39, 43 (Mo.Ct.App 1982.)

10                  And the very next sentence: Instead, as in any  
11   rate case, a Commission must make findings on the merits  
12   regarding rate base operating expenses, rate of return and  
13   rate design.

14                  And footnote 191 cites to the Fisher case,  
15   645 S.W.2nd at 43.

16                  And, again, I won't go through others, but I  
17   believe a careful review of the article that Praxair has  
18   cited does not actually support the relief that Praxair is  
19   seeking in this instance.

20                  Praxair asserts that the joint recommendation  
21   is sought by the Staff to stand alone. That is not the  
22   case.

23                  As previous noted, there is supplemental  
24   testimony of Mssrs. Featherstone and Watkins, that address  
25   the nonunanimous stipulation agreement, joint

1 recommendation, change in positions.

2           There is the assertion that the joint  
3 recommendation is hearsay. Again, there is the -- there's  
4 the supporting testimony of Mssrs. Featherstone and  
5 Watkins which is not hearsay.

6           Mssrs. Featherstone and Watkins can be  
7 cross-examined by counsel for Praxair and by the bench.

8           Praxair cites a number of cases arguing  
9 privilege against the use of the nonunanimous stipulation  
10 and agreement, joint recommendation, change in position.

11           The cases cited by Praxair are not  
12 administrative law cases. I think they are limited to  
13 civil litigation. There is not a utility regulatory case  
14 among the cases which are cited.

15           Praxair also cites the UCCM case, Utility  
16 Consumers Counsel of Missouri, for the proposition that  
17 the nonunanimous stipulation and agreement, joint  
18 recommendation, change in position violates the UCCM case,  
19 in that the interim energy charge, the proposal adopted by  
20 the Staff engages in one issue, ratemaking, no  
21 consideration of all relevant factors.

22           They are very material differences between the  
23 fuel adjustment clauses, which were the subject of the  
24 UCCM case and the interim energy charge.

25           The interim energy charge does not change over

1 time, as did the fuel adjustment clause charges. It is  
2 set and remains set for a set period of time.

3 And then, subsequently, there is a true-up when  
4 the charges that have been collected can be refunded with  
5 interest. There are no changes in rates that occur  
6 outside of the context of the determinations that the  
7 Commission will be making in this case, which it will be  
8 hearing this week and next week.

9 Also, prudence challenges can be made at the  
10 time of the true-up hearing.

11 I won't try to go through an exhaustive list of  
12 the differences between the interim energy charge that is  
13 proposed in this proceeding and the fuel adjustment  
14 clauses that -- and the interim surcharge that were found  
15 to be unlawful by the Missouri Supreme Court in 1979 of  
16 the UCCM case.

17 On that note I'd like to conclude my response.

18 Of course, counsel for Praxair only had the  
19 Staff's pleading for a short period of time. The Staff in  
20 attempting to respond to the pleading filed yesterday by  
21 Praxair, of course, had a short period of time, which we  
22 tried to be as complete as possible.

23 And if the Commission is looking for anything  
24 further in the way of information, we would be willing to  
25 provide that, whether it be written or just documents,

1 such as the Texas case that I cited, and the article that  
2 is cited, along with the Texas case, in the pleading that  
3 Praxair filed yesterday.

4 JUDGE RUTH: Mr. Dottheim, I would like a copy  
5 of the cases that you've cited and the article. I don't  
6 know if you'll provide that today --

7 MR. DOTTHEIM: I can do that today.

8 JUDGE RUTH: I'm sorry. Did you have something  
9 to say?

10 MR. DUFFY: I'd like to just add something, if  
11 I could.

12 JUDGE RUTH: Come forward, Mr. Duffy.

13 MR. DUFFY: I'll be much briefer than  
14 Mr. Dottheim.

15 And I'll just say that Empire wants to state on  
16 the record that it concurs with and supports the arguments  
17 made by Mr. Dottheim on this particular matter.

18 I think you just have to realize that Praxair  
19 is repeatedly arguing that somehow the parties are  
20 attempting to impose this recommendation that the three of  
21 them put together upon Praxair.

22 I've seen no pleading that says that the  
23 Commission will be restricted to only considering that  
24 joint recommendation in the hearing.

25 Indeed, the parties have indicated in the

1 findings that they've made that they'll make all of the  
2 witnesses on these issues available for Mr. Conrad to  
3 cross-examine to whatever extent he wishes.

4 I think it's also important to realize that  
5 none of the parties have attempted to hide any information  
6 from the Commission on this. I think the allegations made  
7 by Praxair on that are completely false.

8 We're the only three parties that filed  
9 testimony on the issue. Mr. Conrad had the opportunity  
10 through surrebuttal to file testimony in response to the  
11 nonunanimous stipulation and agreement, because it was  
12 filed before surrebuttal. And I've never seen any  
13 testimony from Praxair even close to any of these issues.

14 So I want the Commission to understand that we  
15 do support the nonunanimous stipulation and agreement. We  
16 think Praxair's agreement is full of hyperbole and false  
17 statements and should not be considered by the Commission.

18 The Commission should just consider the joint  
19 recommendation as one of the options open to it to  
20 consider when it hears all of the issues involved in fuel  
21 and purchase power.

22 Thank you.

23 JUDGE RUTH: Please don't step down.

24 I have a question for clarification. And,  
25 Public Counsel, you can either jump in, and I'll give you

1 a chance to speak also, and, Mr. Dottheim.

2 I would like you to clarify, what is the  
3 difference and the advantage to treating this document as  
4 a joint recommendation versus just treating it as a  
5 changed statement of position?

6 MR. DUFFY: Frankly, I don't know what the  
7 substantive difference in that is. I think that the  
8 Staff's motion -- and I would suggest they speak for  
9 themselves, but since you've got me up here.

10 We filed it as a nonunanimous stipulation and  
11 agreement because the Commission has a rule that talks  
12 about nonunanimous stipulation and agreements.

13 And it became nonunanimous when Praxair said  
14 they wanted to have a hearing on it.

15 The Commission issued an order, which, as I  
16 recall, said -- well, this thing really now just becomes a  
17 joint recommendation.

18 Well, I don't think that that had any change or  
19 any effect on the document. The document is still the  
20 document.

21 Whether you call it a nonunanimous stipulation  
22 or a joint recommendation, it is still the position of  
23 those three parties, that they think that instead of their  
24 original positions, the Commission should pursue this  
25 alternative that we have together hammered out.



1                   So I don't -- I don't see any great substantive  
2   difference of what you call the thing, as long as the  
3   Commission recognizes that it's an alternative and the  
4   Commission recognizes that it can consider it in addition  
5   to all of the other issues that may be raised on the  
6   point.

7                   I hope that answers your question.

8                   And if I misstated the Staff's position, I'll  
9   sure they can say so.

10                  MR. DOTTHEIM: In particular, the Staff was  
11   attempting to respond to the language of the Commission's  
12   order in the cases cited by the Commission.

13                  JUDGE RUTH: You're speaking of the May 24th  
14   order?

15                  MR. DOTTHEIM: Yes. I'm sorry. The May 24th  
16   order, where there is -- it's on page 3. There is -- it's  
17   the first full sentence on the page after the first  
18   citation on the page, being nonunanimous, the proposed  
19   stipulation and agreement is no more than the joint  
20   recommendation of the parties that signed it.

21                  And counsel for Praxair asserted in the  
22   pleading filed yesterday that, if I understood it  
23   correctly, that Staff cited for authority certain cases,  
24   which the cases that the Staff cited were the cases that  
25   the Commission cited.

1                   And so that is in particular the origin of the  
2   term "joint recommendation."

3                   On page 5, at the top of the page, is the  
4   reference to the change in position, where the very first  
5   sentence at the top of the page, it says, in several cases  
6   the Commission has explained that it considers an  
7   objective to nonunanimous stipulation and agreement,  
8   quote, to be merely a change in position by the signatory  
9   parties from their original positions to the stipulated  
10   position, close quote. And then there is a citation to  
11   two cases.

12                  Changing the name, the title, of the document,  
13   I think it's formed to a certain extent over substance.

14                  It doesn't recognize that there is something  
15   more than that document; that is, the testimony of two  
16   Staff witnesses that refer to that document and explain  
17   that document, and I think stands on their own also.

18                  So that -- I don't know if that provides any  
19   light, but that's the basis for the -- for the change in  
20   terminology, in particular, that the -- that the Staff  
21   utilized was because of the Commission's order of May 24.

22                  We even suggested that if the Commission  
23   desired, we could refile the testimony, removing  
24   references to nonunanimous stipulation and agreement, or,  
25   for that matter, joint recommendation, and just continue

1 the characterization on the testimony as a change in  
2 position, which it is, and there would be no substantive  
3 change.

4 There would be a change in terminology, and it  
5 no slight of hand is intended by that in order to get the  
6 Commission to consider something that it cannot lawfully  
7 consider.

8 I don't think there is anything in the State  
9 ex rel Fisher case that indicates that the Commission  
10 cannot consider a nonunanimous stipulation and agreement,  
11 so long as its hearing is not limited solely to  
12 consideration of the nonunanimous stipulation and  
13 agreement.

14 Thank you.

15 JUDGE RUTH: Thank you.

16 Public Counsel.

17 MR. COFFMAN: Thank you.

18 If I can add my two cents, I just want to  
19 briefly emphasize what I think is important here.

20 Due process is very important in Public Service  
21 Commission cases, and we would never diminish the  
22 importance of the Fisher case. That was a case where  
23 Public Counsel was not a party to a nonunanimous  
24 stipulation.

25 But in that case the other parties attempted to

1 limit what could be tried at the hearing. Public Counsel  
2 was not afforded an opportunity to cross-examine and to  
3 have its due process on all of the issues.

4 That's not the case here. There is no dispute  
5 that Praxair should have the opportunity to cross-examine  
6 any witness he wishes on any topic he wants, as well as  
7 offer witnesses on any issue he wants.

8 The issue in question is fuel and purchase  
9 power expense. That has been what the issue has been  
10 described as, and that is what it continues to be.

11 No one has suggested that there be another  
12 issue called stipulation or agreement or joint  
13 recommendation. The issue is fuel and purchase power  
14 expense.

15 Mr. Conrad has an opportunity to take whatever  
16 position he wants and have all of the due process that he  
17 deserves, and this is what the all important Fisher case  
18 stands for.

19 But the other parties also have due process  
20 rights, and the other three parties have a right to  
21 present whatever positions they have. They also have the  
22 right to change their positions, and have evidence placed  
23 into the record supporting what their changed positions  
24 are.

25 The changed position, which is outlined in the

1 stipulation and agreement, the nonunanimous stipulation  
2 and agreement on fuel, has now been noticed up to everyone  
3 for over two weeks.

4 And by the time we get to the litigation of  
5 that issue, the testimony of Mr. and of Mr. Watkins and  
6 Mr. Featherstone in support of that interim energy charge  
7 recommendation will have been available for over two weeks  
8 as well.

9 We believe this is ample notice, and that when  
10 we get to the issue, we believe Mr. Conrad should have all  
11 of the latitude to explore and have his due process on  
12 that matter.

13 That's basically what due process requires:  
14 notice and opportunity for hearing.

15 We think the issue should be fully explored,  
16 and we believe that the Commission should have every  
17 option available to it.

18 We just want to emphasize that the other  
19 parties also have due process rights, as to its joint --  
20 as to the joint recommendation, and that we be allowed to  
21 present that to the Commission in a full and fair hearing.

22 I'm not sure that there is a distinction  
23 between what you asked about a change of position in the  
24 joint recommendation, other than, I think, calling  
25 something a joint recommendation points out that the new

1 position of Public Counsel, Staff and the electric company  
2 here in this case are identical, at least in that we  
3 believe, primarily, the terms, as they're laid out in that  
4 document, in their entirety is what the Commission should  
5 approve on that one issue.

6 I think that's it. Thank you.

7 JUDGE RUTH: Thank you.

8 Mr. Conrad, would you like the opportunity to  
9 respond to these arguments?

10 MR. CONRAD: I told Mr. Swearngen earlier that  
11 it seemed like no one liked me, that everyone hated me,  
12 that I guess I better go and eat some worms.

13 I will be brief, and if Your Honor will permit,  
14 I will work from here, but I suspect it's probably --

15 JUDGE RUTH: I'd prefer you move to --

16 MR. CONRAD: But I'd be happy to answer your  
17 question.

18 I think the issue has gotten lost in the law  
19 review article. We tried to expose all of the issues in  
20 particular areas and have the author discuss the various  
21 authorities on one side or the other.

22 I appreciate Mr. Dottheim spending the evening  
23 reading an article that perhaps he had not read before,  
24 And I'm glad that it's brought that matter to your  
25 attention.

1           But, rather clearly, the thrust of the author  
2   is that nonunanimous stipulations are not the best way to  
3   proceed in regulatory areas. And I think he builds that  
4   case very well, as you'll see when you'll see the article.

5           I'd be happy to provide you with a copy also.  
6   It's also, I think, on Lexus.

7           When counsel for Staff was here, he responded  
8   to my hypothetical question -- my hypothetical in a  
9   response in which I had posited the situation of a  
10  nonunanimous settlement between my client and the company,  
11  with which Staff disagreed.

12          He said that his desire would be to respond to  
13  the stipulation and agreement.

14          Mr. Duffy, a few moments ago in response to  
15  your question, said, well, what we really want to have is  
16  a hearing on it, "it," and that's the subtle problem.

17          We're talking here, and my position is very  
18  simply, these parties could change their position. They  
19  can file a new statement of position if they wish.

20          But they are seeking to put their nonunanimous  
21  stipulation into the record of this case as an exhibit and  
22  position me and my client against this big wall.

23          And say, oh, look how reasonable this joint  
24  recommendation is in the circumstances, and thereby create  
25  a subtle, or perhaps not so subtle, bias in favor of that,

1 before we've ever heard a single piece of evidence.

2 We've already gotten into material that is, I  
3 believe, beyond the scope of this.

4 Take this case. Let's say, Judge Ruth, you  
5 walk out and you're going across to the parking lot and  
6 you're hit by a car. And after recovery you bring a suit  
7 for your injuries and damages.

8 And let's say -- let's add to it somehow that  
9 there were two defendants. Let's say you had the driver  
10 of the car and the owner of the car.

11 Now, those two defendants in your lawsuit sit  
12 down and say, well, I think Ms. Ruth should be paid  
13 \$50,000 rather than the 500,000 that she's suing for.

14 So the day of trial comes and the two  
15 defendants get up and say, well, finder of fact, judge or  
16 jury, the two of us, we got together. We had an agreement  
17 that she should get \$50,000. Isn't that reasonable?

18 We're acknowledging this problem. We're saying  
19 she should have \$50,000.

20 You sit there and say, hey, wait a minute.  
21 That's a settlement discussion that shouldn't even be  
22 coming into the record of this process.

23 I didn't participate in that. I didn't join in  
24 this settlement. I think I'm entitled to more.

25 Why are you able to tell the jury, or the



1 finder of fact in the case if it's a judge, about this?

2 That creates the bias that we're having  
3 troubles with. And the very statements that counsel for  
4 Staff and counsel for Company made show the confusion, and  
5 what's going to lead the Commission into this, that you  
6 end up having a hearing on their joint recommendation and  
7 positioning their joint recommendation against what the  
8 evidence shows.

9 If the joint recommendation, ma'am, was  
10 supported by the evidence, why would they need to file  
11 additional testimony to support it.

12 I have no problem if they want to change their  
13 position. I have no problem if they want to modify their  
14 statements of position that they've made here.

15 What I have a problem with is putting this  
16 document into the record of this case as an exhibit.

17 I cannot cross-examine it. Certainly, I can  
18 cross-examine other witnesses, but I cannot cross-examine  
19 that document. That is not an exhibit.

20 It is not -- it's self-relevant, it is hearsay.  
21 I've gone through all of that. I won't bore you with  
22 that. I think that's the confusion.

23 JUDGE RUTH: I have a question. I just want to  
24 be sure I understand your position.

25 Mr. Dottheim had stated that he would be

1 willing to refile the document and entitle it something,  
2 indicating that it was a change in position. It would  
3 then be like their statement of position as opposed to an  
4 exhibit.

5 And what is your position on that?

6 MR. CONRAD: I'd have no problem with that.  
7 Because if that's, in fact, what it is, then that's, in  
8 fact, what it is. And he seems to suggest that's what it  
9 is.

10 My problem is making that document into an  
11 exhibit that is then before the Commission as some kind of  
12 a package that they can sit and say, well, hey, we've got  
13 this thing already decided for us. All we have to do is  
14 just pick this thing up.

15 Well, as you'll find out, there is some  
16 problems with that, when we get to that, but that's a long  
17 ways down the pike. And there is some problems with the  
18 package itself.

19 But I think that, you know, to go beyond that  
20 gets us beyond where we are today.

21 JUDGE RUTH: Okay. Do you have anything  
22 further?

23 MR. CONRAD: No. Thank you, ma'am.

24 JUDGE RUTH: Thank you.

25 As I indicated before, I would like the

1 documents that Mr. Dottheim cited to. Depending on when  
2 you provide those and I have a chance to review them, we  
3 will take this matter up again.

4 MR. CONRAD: Judge, I noticed on a couple of  
5 copies that I had of this, that one page had gotten  
6 dropped when it went through the copier out at Kinko's.  
7 And I don't know if that is universally true, but we'll  
8 check on that and we'll get you the --

9 JUDGE RUTH: That's what I was trying to get  
10 the file for this morning.

11 My copy was missing two pages, I believe 14 and  
12 15, and I called your office yesterday and got copies of  
13 those.

14 MR. CONRAD: Okay.

15 JUDGE RUTH: And I don't know about the other  
16 parties.

17 MR. CONRAD: Well, they were faxed from my  
18 office, and they also received e-mails, with the exception  
19 of Mr. Duffy, and I had to try about twice for him, but we  
20 did get e-mails.

21 As far as I know, those were completed. I  
22 think it's just with the copies that we --

23 JUDGE RUTH: That were faxed?

24 MR. CONRAD: No, not the faxed ones, but the  
25 ones that we had made here.

1 JUDGE RUTH: Okay.

2 MR. CONRAD: And those may include -- those may  
3 include the ones that we filed downstairs, because I hand-  
4 delivered one up to your office.

5 JUDGE RUTH: Mr. Dottheim indicated that he was  
6 going to check on the official file because it wasn't down  
7 there in the records room at eight o'clock when I checked.  
8 And so it would have been checked out by Staff.

9 MR. CONRAD: Oh, you mean the file?

10 JUDGE RUTH: Yeah. I wanted to see if the  
11 official file copy had all of the pages. I can't answer  
12 right now whether it does.

13 My copy, I now have all of the pages, and we'll  
14 see about the official file.

15 MR. CONRAD: Well, I apologize for that if that  
16 happened. We're making a lot of copies, and 17 pages, and  
17 I didn't go through and hand count each one. But we'll  
18 get that straightened out.

19 JUDGE RUTH: Thank you.

20 MR. CONRAD: You do have a full copy?

21 JUDGE RUTH: I do. I got the extra pages from  
22 your office yesterday.

23 MR. DOTTHEIM: I believe that the copies that  
24 were filed with the Commission may be missing the two  
25 pages, because I originally got a copy from the records

1 department and didn't realize until after the records  
2 department had closed that I was missing two pages.

3 And I just assumed that the copy had -- the  
4 copier had misfed them.

5 But Mr. Conrad graciously provided copies  
6 otherwise by fax and by e-mail, so I was able to obtain  
7 the two pages, I think 14 and 15, that were missing from  
8 the copy that I obtained from the records department.

9 JUDGE RUTH: Okay. We'll verify, then, at  
10 lunchtime whether or not the records department now has  
11 those copies in the file.

12 MR. CONRAD: And if they don't, we'll get that  
13 taken care of.

14 JUDGE RUTH: Thank you.

15 MR. DOTTHEIM: Judge Ruth, again, going back to  
16 your question to Mr. Conrad and his response, the Staff  
17 has stated in a motion that it filed last Friday that it  
18 would be willing to refile the testimony, removing  
19 references to joint recommendation and -- well, in  
20 particular, references to nonunanimous stipulation and  
21 agreement or references to stipulation and agreement, and  
22 attach the substantive provisions of the stipulation and  
23 agreement as it was originally denominated, removing any  
24 reference to stipulation and agreement.

25 The Staff remains willing to do that. And if

1     that would -- resolve this matter, the Staff would suggest  
2     proceeding in that manner.

3                 JUDGE RUTH:  I appreciate that.  But I would  
4     like to take a look at the articles and the cases you  
5     cited, and we'll come back to this issue.

6                 Thank you.

7                 And I believe that concludes the preliminary  
8     matters that we had agreed to discuss.

9                 Do the parties have any other preliminary  
10    matters before we move on to opening statements?

11                Mr. Dottheim.

12                MR. DOTTHEIM:  Judge, excuse me for prolonging  
13    this.  I don't know if there would be an objection from  
14    Mr. Conrad, and he could supplement, but I think in that  
15    journal article there were over 400 footnotes.

16                And I've attempted to identify every single  
17    footnote where there is a reference to a decision of the  
18    Missouri Commission.  And if I by attachment would  
19    identify those footnotes, and he can check that, and if  
20    I've missed anything, provide those.

21                It might help those who are trying to wade  
22    their way through that article to see any direct reference  
23    to the Missouri Commission which is not found in literally  
24    the body, at least the copy that I have, where all of the  
25    footnotes are at the end.

1                   There are no references to the Missouri  
2 Commission in the body of the article. It is in the  
3 footnotes.

4                   JUDGE RUTH: Just a moment.

5                   Rather than prolong this, I would like you two  
6 to discuss this on the next break. If Mr. Conrad has any  
7 objections when you bring the document to me after our  
8 break, we'll discuss that then.

9                   But this way you can show Mr. Conrad what it is  
10 you're proposing to do, and I will give him an opportunity  
11 to speak to that.

12                  MR. CONRAD: I don't have -- and I appreciate  
13 that and don't want to prolong this.

14                  It's a published article, and it's published  
15 where it's published and it's accessible. If you want one  
16 or the other of us or both of us to provide you with a  
17 copy, we can get you -- I can get you an electronic copy  
18 of it.

19                  I think the way they do it on that is they put  
20 the footnotes essentially at the end of the text, and they  
21 have the footnote number up in the body, as opposed to how  
22 it probably appears in the journal of which it is  
23 published, which is where the footnotes would be at the  
24 bottom of the respective page. If that doesn't make any  
25 difference, I would just say give you the whole article.

1           The article itself is not that long. It's  
2 pretty thorough research. It might be useful in some  
3 other context.

4           JUDGE RUTH: I have no preference whether the  
5 copy is electronic or paper, but I would like a copy.

6           And if you have already annotated those  
7 Missouri cases, I would like that, unless Mr. Conrad  
8 objects.

9           MR. CONRAD: I have no objection to that. The  
10 point is, it's not -- the offer -- the article wasn't  
11 cited to say this is what Missouri law is.

12          JUDGE RUTH: Sure, I understand that.

13          MR. CONRAD: It's a much broader scope article.

14          JUDGE RUTH: And I would like the opportunity  
15 to review that, but we'll move on now.

16          I wanted to make sure, also, from the parties  
17 earlier filings, the parties wish the opening statements  
18 to be Empire, Staff, Public Counsel and then Praxair.

19          Is that correct?

20          MR. DOTTHEIM: That would be fine.

21          JUDGE RUTH: Well, we'll take a short five-  
22 minute recess while I notify the Commissioners that we are  
23 ready for opening statements.

24          We'll go off the record just briefly. Thank  
25 you.



1 (A RECESS WAS TAKEN.)

2 JUDGE RUTH: Please be seated.

3 Okay. We are back on the record. We are ready  
4 to begin opening statements.

5 Empire, you may start.

6 MR. DUFFY: Good morning.

7 I'm Gary Duffy representing Empire District  
8 Electric Company.

9 The parties have accomplished a great deal in  
10 this case in the way of attempting to resolve many of the  
11 issues prior to reaching this point.

12 I would like to compliment the Staff, the  
13 Office of Public Counsel and Praxair for their  
14 cooperation.

15 I would especially like to compliment the Staff  
16 for the way they arranged and conducted the prehearing  
17 conference in this case.

18 As a result of the prehearing conference and  
19 extensive negotiations thereafter, three documents have  
20 been submitted to you which represent a partial resolution  
21 of the issues in this case.

22 I'd like to talk to them briefly before getting  
23 to the remaining issues.

24 You've been presented with a stipulation and  
25 agreement regarding the in-service criteria to be applied

1 by the Staff to the operation of the new State Line  
2 Combined Cycle Plant, which is now in the final phases of  
3 construction.

4 Since Praxair did not request a hearing on  
5 what was a nonunanimous stipulation on that point, your  
6 rules -- and you've recognized -- allow you to treat that  
7 document as an unanimous agreement which resolves those  
8 issues.

9 You've also been presented with a stipulation  
10 and agreement between the Staff, Empire and the Office of  
11 Public Counsel regarding the fuel and purchase power  
12 issue.

13 Praxair has requested a hearing on that  
14 document, which you have said you will treat as a joint  
15 recommendation by the three signatory parties.

16 The parties have presented you with an addendum  
17 to the list of issues which provides for the fuel and  
18 purchase power issue to be tried starting on Wednesday of  
19 next week.

20 In the way of a very brief summary, I will say  
21 that the Public Counsel, the Staff and Empire have agreed  
22 upon a procedure which those three parties --

23 MR. CONRAD: Your Honor, I'm very hesitant to  
24 interpose an objection at this point, but that's -- I  
25 think that is going to what we were talking about before

1 the Commission came in, and I think at this point it's  
2 inappropriate to go into that until you have ruled on  
3 that.

4 JUDGE RUTH: Empire, you do need to be careful  
5 on what you say as to the procedure in that the Commission  
6 has not ruled on how to treat the nonunanimous stipulation  
7 and agreement that has been objected to by the Company.

8 MR. DUFFY: I understand that, and I'm going to  
9 tell you what we think the procedure ought to be.

10 JUDGE RUTH: Thank you. Please proceed.

11 MR. DUFFY: Those three parties are  
12 recommending a procedure which they believe is a  
13 reasonable resolution to a very thorny problem; namely,  
14 trying to estimate in advance what fuel and purchase power  
15 costs are going to be, when, number one, they can be very  
16 volatile as the evidence will show, and that those costs  
17 have a tremendous impact upon a company of the size of  
18 Empire and with the particular generating characteristics  
19 of Empire, as the evidence will also show.

20 As the prepared testimony which has been  
21 submitted by the Staff and the Public Counsel recite,  
22 these types of costs are very difficult to predict very  
23 far into the future.

24 Due to the potential magnitude and the impact  
25 of these costs on Empire, those three parties worked out

1 an approach which they believe is beneficial to all  
2 concerned.

3 It calls for the establishment of an interim  
4 energy charge on Empire's tariffs for a period of two  
5 years.

6 It basically sets a range in which the parties  
7 believe it is reasonable to expect the costs to occur.

8 Under this approach, if it is adopted by the  
9 Commission after the evidentiary hearing, the ratepayers  
10 will only have to pay the actual costs of fuel and  
11 purchase power up to a certain amount --

12 MR. CONRAD: Your Honor, once again, I'm sorry,  
13 but this is -- this is exactly and precisely the situation  
14 that I wanted to try to avoid, because what we are doing  
15 is we are now talking about a nonunanimous stipulation,  
16 and we're placing the terms of it and we're placing the  
17 conditions of it before the -- before this Commission.

18 And it's being characterized, as I've told you  
19 it would be, as an agreement that is so reasonable, my  
20 gosh, why could anybody ever argue about it, and I ask  
21 that this be stopped at this point.

22 This is prejudicial to my client's interests  
23 and my client's interest on this particular issue. You  
24 have not ruled on it, and I ask that counsel be directed  
25 to move on and discuss something else in his statement,

1 please.

2 MR. DUFFY: Your Honor, this is opening  
3 statement, and we are allowed to comment on all of the  
4 prefiled material that has been submitted and to present  
5 our view on it.

6 We are presenting our view on some things which  
7 we agree; we'll be presenting our view on some things  
8 which we disagree.

9 It's inappropriate for counsel for Praxair to  
10 stop -- or to attempt to stop me from commenting upon what  
11 I think the evidence will show, because that's what the  
12 purpose of an opening statement is.

13 JUDGE RUTH: I do not want to limit what you're  
14 allowed to bring out in your opening statement, but I  
15 caution you not to characterize the nonunanimous  
16 stipulation and agreement which has been objected to as a  
17 stipulation and agreement.

18 Instead, you would be wise to characterize it  
19 as this point as the position of the parties.

20 MR. DUFFY: Okay.

21 JUDGE RUTH: Thank you.

22 MR. DUFFY: I think I was saying that under the  
23 position of the three parties, the ratepayers will only  
24 have to pay the actual costs up to a certain amount.

25 If the actual costs go above that amount, under

1 this approach of the three parties, Empire is responsible  
2 for those costs. If the actual costs are less than  
3 expected, the ratepayers will get a refund with interest.

4 I've just tried to give you the briefest of  
5 overviews of this approach. And since Praxair has  
6 requested a hearing on the fuel and purchase power issues,  
7 I'm sure we'll go into a lot more detail on it when we  
8 take up this issue next week.

9 That summarizes two of the three documents that  
10 have been filed. Last Friday the parties filed a  
11 unanimous stipulation and agreement on capital costs for  
12 the State Line Combined Cycle Unit.

13 If you approve that agreement as a resolution  
14 of those issues, it will resolve the issue listed as 6A on  
15 the original list of issues.

16 We urge you to give appropriate and timely  
17 consideration to that unanimous agreement. If possible,  
18 Empire would like to know by the end of this week whether  
19 we need to bring the outside expert witnesses, to present  
20 them to you if you have any questions about that issue, or  
21 whether they may be excused.

22 Those two witnesses are Ms. Rolph and  
23 Mr. Wilson.

24 I'd now like to turn to a topic which you  
25 indicated the parties should address in opening statement,

1 and that is the possible impact of what I'll call Senate  
2 Bill 387 on this case.

3 I think at heart of that topic are two  
4 questions. The first question is, will Senate Bill 387  
5 become law? The second question is, if it does become  
6 law, will it have an effect on this case?

7 When we address the question of whether Senate  
8 Bill 387 will become law, we don't know.

9 The present status is that Senate Bill 387 is  
10 not the law, because, although it has been passed by the  
11 General Assembly, it has not been signed by the Governor.

12 The bill has an emergency clause, so that if it  
13 is signed, it will take effect upon the Governor's  
14 signing.

15 We have no indication as this time when that  
16 might occur or if that might occur. The Governor could  
17 veto that bill.

18 If the Governor vetoes it, it does not become  
19 law unless the Governor's veto is subsequently overridden  
20 by the General Assembly.

21 Several of you know a whole more about that  
22 than I do.

23 Alternatively, as we understand it, the  
24 Governor could decide to take no action on the bill.

25 Our understanding is that if the Governor does

1 not sign the bill before July 14th of this year, then it  
2 becomes law anyway.

3 That brings us to the second question I posed.

4 Assuming Senate Bill 387 becomes law, will it  
5 have some impact on this case?

6 We assume that a final report and order will  
7 not be issued by you in this case until approximately  
8 September 21st of this year.

9 It, therefore, seems possible that Senate  
10 Bill 387 could become law before this case is completed.

11 If it does, the following possibilities could  
12 arise: Empire District Electric Company could apparently  
13 make an emergency filing under that new law or Empire  
14 could refrain from making an emergency filing under that  
15 law.

16 If it becomes law, Senate Bill 387 to us does  
17 not appear to contain any provisions which operate  
18 independently of a request by a utility to the Commission  
19 for relief under the law.

20 In other words, Senate Bill 387 doesn't operate  
21 by itself to change anyone's utility rates.

22 Instead, it provides that the costs recovery  
23 specified under its provisions shall be, quote, pursuant  
24 to rate schedules designed to specifically recover such  
25 costs, unquote.



1               Senate Bill 387 also gives the Commission,  
2     quote, authority to approve a recovery mechanism, unquote.

3               So while it says that the mechanism the  
4     Commission uses must be similar to the purchase gas  
5     adjustment clause that you all are very familiar with --  
6     and an approach the Commission has used for decades -- the  
7     Commission, as we understand it, is not totally deprived  
8     of discretion on how to fashion the procedure to be  
9     reflected on the rate schedules.

10              Therefore, as we understand it at this time,  
11     even if Senate Bill 387 becomes law, it would first take  
12     action on Empire's part in the form of a filing with the  
13     Commission, to request the invoking of that provision, and  
14     it would take action on your part to implement that  
15     procedure.

16              Section 7 of Senate Bill 387 appears to allow  
17     an electrical corporation to seek within 90 days of the  
18     enactment of Senate Bill 387 emergency establishment of  
19     interim schedules, quote, unquote, but only if the utility  
20     is experiencing a 25 percent or greater increase in the  
21     price of natural gas as compared to the price used to  
22     establish its then currently effective rate schedules.

23              If we assume Senate Bill 387 becomes law on or  
24     before July 14th of this year, it appears reasonable to  
25     interpret Section 7 to mean that if Empire can satisfy

1   that 25 percent natural gas price test at that time, it  
2   could submit proposed emergency rate schedules to the  
3   Commission after Senate Bill 387 becomes law but before  
4   the Commission issues a report and order in this case.

5               In Empire's view that could complicate things  
6   in this case.

7               There are unanswered questions about what  
8   procedure the Commission might follow in such a situation.

9               For example, would the Commission require an  
10   audit before allowing the emergency interim rate schedules  
11   to take effect?

12              Would the Commission have any discretion to  
13   reject the proposed emergency interim rate schedules that  
14   the law contemplates?

15              Empire does not propose to speculate at this  
16   time about those or other problems that you might think of  
17   that could arise under such a situation.

18              Empire's view is that it is not necessary to  
19   engage in speculation about what Empire might do under  
20   those circumstances and assumptions.

21              That's because Empire executed a document  
22   regarding fuel and purchase power expense with the Staff  
23   and the Public Counsel on May 14th, 2001. That was filed  
24   with you.

25              MR. CONRAD: Your Honor -- excuse me.

1                   Your Honor, again, here we are back into the  
2     text, and the reference is to the document. This has got  
3     to be stopped.

4                   JUDGE RUTH: Can you restate your reference  
5     to --

6                   MR. DUFFY: What do you want me to call it?  
7                   I've tried to call it a document, is the most  
8     innocuous thing I can think of.

9                   MR. CONRAD: Your Honor, if Mr. Duffy is  
10    struggling for words, I might suggest that he could use  
11    what his client's position is.

12                  JUDGE RUTH: Yes. I would prefer that you  
13    state your client's position.

14                  First of all, we have not addressed -- or we  
15    have addressed, but we haven't decided what will happen to  
16    the nonunanimous, objected-to stipulation and agreement,  
17    and at this point it's a position.

18                  MR. DUFFY: I understand that.

19                  And I'm going to quote a sentence out of that  
20    thing that we filed in order to explain to the Commission  
21    as they requested what our position regarding Senate Bill  
22    387 is, and I have to do that in order to make clear what  
23    our position is.

24                  JUDGE RUTH: And actually, Mr. Conrad, I'm  
25    going to allow him to call to a document, because it has

1    been filed as a document, whether it's a position  
2    statement or joint recommendation, what have you.  He can  
3    call it a document.

4                   MR. DUFFY:  Okay.  As I was saying, I don't  
5    think it's necessary to engage in a lot of speculation  
6    about what Empire may or may not do because of a statement  
7    that Empire made in the context of this document that we  
8    filed with the Commission.

9                   And I'm going to read you one sentence that  
10   reflects what Empire's position was in that document, and  
11   it comes out of paragraph 9.

12                   And that statement was:  In consideration of  
13   the implementation of the IEC, the interim energy charge,  
14   in this proceeding, meaning this rate case, and  
15   co-extensive with the duration of the IEC, Empire agrees  
16   to voluntarily forego any right it may have to request the  
17   use of or to use any other procedure or remedy available  
18   under current Missouri statute or subsequently enacted  
19   Missouri statute in the form of a fuel adjustment clause,  
20   a natural gas cost recovery mechanism or other energy  
21   related adjustment mechanism to which Empire would  
22   otherwise be entitled.

23                   Well, I want to go back and just emphasize what  
24   we said.

25                   In consideration of the implementation of the

1 IEC in this proceeding, Empire agrees to voluntary forego  
2 any right it would have under any statute in the form of a  
3 fuel adjustment clause.

4 Now, Empire's position is that that statement  
5 makes it clear that Empire prefers the treatment of fuel  
6 and purchase power expense available under that document,  
7 the position as hammered out between the Staff, Public  
8 Counsel and Empire, assuming its implemented by the  
9 Commission.

10 And we prefer that procedure over the procedure  
11 that appears in Senate Bill 387, if it becomes law.

12 And to us it is apparent that the Staff and the  
13 Public Counsel also approve and endorse that procedure as  
14 opposed to the procedure under Senate Bill 387; otherwise,  
15 we would assume the Staff and Public Counsel wouldn't have  
16 joined in that document with us.

17 By entering into that document, making that  
18 statement, its Empire's position that we are clearly  
19 waiving the right to take advantage of the Senate Bill 387  
20 procedure if the Commission approves the recommendation  
21 that we've made.

22 Therefore, although it might be theoretically  
23 possible for Empire to make an emergency interim tariff  
24 filing under the terms of Senate Bill 387 while this case  
25 is still in progress and the Commission is considering the

1 fuel and purchase power issues, Empire has no current  
2 intention of doing that.

3           Such a hypothetical filing of relief by Empire  
4 seeking relief under Senate Bill 387 while the Commission  
5 was still considering this case would -- and I said  
6 earlier -- likely only cause consternation and confusion.

7           It might be considered a breach of good faith  
8 on Empire's part given the representations and assurances  
9 that we've given the Staff and Public Counsel and the  
10 Commission in that document that I quoted from, that it  
11 would not seek relief under such statute while the IEC  
12 provision is in effect.

13           As Empire's supplemental position statement on  
14 the fuel and purchase power issue states, Empire fully  
15 supports the approach contained in that document, and it  
16 urges the Commission after it's heard all of the evidence  
17 on all of the fuel and purchase power issues to adopt that  
18 approach.

19           Now I'd like to turn to the remaining issues in  
20 this case and give you a brief summary of what we think  
21 the evidence will demonstrate with regard to them.

22           There are two primary issues involving the  
23 depreciation issue that you'll hear shortly. The first  
24 concerns the treatment of net salvage.

25           The Staff has proposed to remove net salvage

1 from the depreciation calculation and instead expense it  
2 as it is incurred.

3 Empire believes that this is a radical approach  
4 out of the mainstream of utility accounting.

5 Further, we believe there are no compelling  
6 reasons for the Commission to take such an approach in  
7 this case.

8 We believe the evidence will show that Staff's  
9 proposal is inequitable because it creates inter-  
10 generational subsidies.

11 In other words, it would make one generation of  
12 ratepayers pay for something used by an earlier generation  
13 of ratepayers.

14 Additionally, rather than spreading the costs  
15 of removal over the entire life of the affected property,  
16 and, thereby, smoothing the effect of that on rates, we  
17 believe the Staff's proposal would potentially result in  
18 unneeded rate shock by the payment of the same cost of  
19 removal over a much shorter period of time.

20 The second depreciation issue relates to the  
21 service life of generation property.

22 Both the new State Line Combined Cycle Unit, as  
23 well as -- as well as existing generating plants of  
24 Empire, the evidence will show that the Staff has failed  
25 to synchronize life span with the investment that is

1 required in order for the plants to achieve that life span  
2 that is assumed.

3 For example, the Staff proposes to depreciate  
4 the investment in the new State Line Combined Cycle Unit  
5 over a period of 35 years, when, in order to actually  
6 achieve a life span of 35 years, Empire will be required  
7 to make significant additional investments, and those  
8 investments are not included in the Staff's calculation.

9 Staff's failure, we believe, to properly match  
10 life span with investment will result in the inability of  
11 Empire to recover its investment in plant which is used  
12 and useful over the service life of the investment.

13 On what is shown as the bad debt issue, we  
14 believe the evidence will show that there is a historical  
15 correlation between revenues and bad debts for this  
16 Company.

17 Empire and the Staff have agreed in this case  
18 that the appropriate level of bad debt expense expressed  
19 as a percentage of the test year revenue is .25 percent,  
20 .25 percent.

21 But all that does is recognize that there is a  
22 bad debt level based on the current level of revenues.

23 All Empire is asking in this issue is that that  
24 very same percentage, .25 percent, be applied to the  
25 increase that the Commission orders in this case.



1                   Because we believe that as the revenue  
2   increases, the bad debts are likely to increase by that  
3   same .25, and we've presented evidence to that effect.

4                   On the incentive pay issue, we believe the  
5   evidence will show that an additional \$323,000 of  
6   compensation should be included in the cost of service and  
7   recovered through rates, because Empire's performance-  
8   based incentive pay is a cost-effective approach which  
9   benefits both consumers and shareholders.

10                  We believe this is also an approach that the  
11   Commission approved in a prior Empire rate case, the one  
12   in 1997.

13                  On the rate of return issue, we believe the  
14   evidence will show that the Staff has misapplied the  
15   discounted cash flow, or DCF, formula in several respects.

16                  Most importantly, the Staff has utilized  
17   Empire's stock prices which reflect the premium associated  
18   with the proposed merger, proposed and failed merger,  
19   between Empire and Utilicorp United.

20                  The evidence will show that at one time as a  
21   result of the pending merger, Empire's stock traded as  
22   high as \$30.75 a share, 30.75. I think it closed  
23   yesterday at 20.

24                  The Staff's approach relies upon abnormally  
25   high stock price.

1                   On January 2nd, 2001, as you well know,  
2   Utilicorp announced unilaterally that it would not go  
3   forward with that merger.   Empire's stock price dropped  
4   dramatically.

5                   Since that time the evidence will show that  
6   Empire's stock has traded in a narrow range, between \$19  
7   and \$20 per share, nowhere close to the 30.75, when people  
8   were thinking that merger was going to occur.

9                   We believe that this mistaken approach by the  
10   Staff, which has not been used by either Empire or Public  
11   Counsel, can be fixed by either using a 19 or \$20 stock  
12   price in the DCF formula, which we believe the evidence  
13   will support, or the Commission could choose to perhaps  
14   true-up the stock price to June 30th of this year, which  
15   would then allow the Commission to use five months,  
16   February through June of this year, of actual stock  
17   prices, which would exclude the anticipated merger  
18   premium.

19                   The evidence will show, we believe, that fixing  
20   this mistaken approach of the Staff, along with several  
21   others made by the Staff and Public Counsel, which I won't  
22   go into detail on, will result in an authorized return on  
23   equity for Empire in the range of 11.5 to 12 percent.

24                   On the capital structure issue, the evidence  
25   will show that the Commission should adopt a capital

1 structure for Empire of 52.5 percent debt and 47.5 percent  
2 common equity as filed, or a trued-up normal capital  
3 structure of 45 percent common equity, 7.2 percent trust  
4 preferred and 47.1 percent long-term debt.

5 This is as opposed to Empire's actual of  
6 June 30, 2001 capital structure.

7 The evidence will show that Empire's actual  
8 capital structure is abnormal because it is a direct  
9 result of the failed merger, the rejection of the merger  
10 by Utilicorp.

11 As a result of that merger agreement between  
12 Empire and Utilicorp, Empire was prohibited from issuing  
13 additional common equity.

14 As a result of the merger agreement, Empire  
15 also redeemed its previously outstanding preferred stock.

16 As a consequence of these things, the evidence  
17 will show that Empire's actual capital structure right now  
18 is much more debt heavy than Empire's historically normal  
19 capital structure.

20 That historically normal capital structure  
21 ranged from 45 to 50 percent equity, 45 to 50 percent debt  
22 and 5 to 10 percent preferred stock, all prior to entering  
23 into the merger agreement.

24 On the issue involving the State Line Combined  
25 Cycle Plant, as I indicated earlier, there is a unanimous

1 agreement on the capital costs of that plant.

2 That agreement is in the context of the true-up  
3 portion of this case, so we presume there will be further  
4 evidence presented on that topic in the true-up.

5 On the operation and maintenance cost issue for  
6 the State Line Plant and the Energy Center Plant, the  
7 important point to remember is that generating plants must  
8 have maintenance performed on them in order for them to  
9 continue to function.

10 Some of this maintenance will be performed by  
11 Empire on its own, much as it does with its other  
12 generating facilities.

13 Some of it will most likely be performed under  
14 the terms of a long-term contract which is under  
15 negotiation.

16 Empire believes that the evidence will show  
17 that it is vital that the rates set in this case reflect  
18 the appropriate levels of maintenance costs for Empire's  
19 combustion turbine-based generating facilities.

20 Part of the problem is that there is very  
21 little, if any, historical experience at the Energy Center  
22 and State Line to utilize for the purpose of setting a  
23 normal level of expense.

24 Traditionally, you're used to the Staff  
25 presenting multi-year averages, perhaps, of historical

1 costs. Well, we don't have those in this situation.

2 The Energy Center is being used completely  
3 differently than it has in the past, and that drives  
4 different maintenance costs. And, of course, the State  
5 Line Plant is brand new, so we don't have a track record  
6 on that.

7 Empire has presented expert evidence on what  
8 level of maintenance costs should be experienced for the  
9 State Line Combined Cycle and State Line 1.

10 And we have two -- essentially two different  
11 plants at State Line. One is State Line 1. It's a simple  
12 cycle combustion turbine. The other is a State Line  
13 Combined Cycle, where we took one of the existing plants,  
14 added another combustion turbine to it, added the heat  
15 recovery steam generators. So state Line is essentially  
16 two different things.

17 Because this is also part of the true-up  
18 process, it may be that this issue is not decided in this  
19 phase of the hearing, and it may work itself out in the  
20 true-up.

21 On the issue of cost of service and rate  
22 design, we believe the evidence will show that it is  
23 appropriate to increase the nonfuel portion of any  
24 increase that you allow in this case by applying an equal  
25 percentage to all rate classes.

1                   However, any increase related to fuel and  
2   purchase power, Empire believes the evidence will show,  
3   should be applied on a per kilowatt hour basis.

4                   I'm going to skip over the fuel and purchase  
5   power issues since we've talked about that at length.

6                   In conclusion, I'd like to tell you that this  
7   is not an ordinary rate case. There is something of a  
8   sense of being on the edge of a precipice.

9                   We're dealing with a situation where this  
10   Company has been derated by two of the three rating firms  
11   that follow it.

12                  Empire has always been a very conservative  
13   company, but it's now a conservative company that is  
14   having trouble earning enough to meet the obligations to  
15   its bondholders, its shareholders and its ratepayers.

16                  This is a company that has done the responsible  
17   thing for southwest Missouri. It has planned and built  
18   more generation, a very highly efficient form of  
19   generation, in the form of the State Line Combined Cycle  
20   Unit.

21                  It did that rather than try an easier route, as  
22   some other jurisdictions have, and try to rely upon the  
23   vagaries of the wholesale spot market.

24                  As we're learning from the headlines in the  
25   nightly newspapers, energy cannot necessarily be taken for

1 granted today.

2 Empire stepped up to the plate, brought on line  
3 a new generation resource for its customers. The  
4 shareholders made that investment. Now it's time for the  
5 customers to start paying for that plant.

6 I want to leave you with this thought: This is  
7 not a case about shareholder greed. Except for the brief  
8 abnormal period when the merger premium was reflected in  
9 Empire's stock price, Empire's long-term shareholders had  
10 seen no appreciation in the share price over the last  
11 decade.

12 There has been no increase in the dividend paid  
13 on Empire's common stock since 1992. This is not about  
14 shareholder greed. This is about the Commission supplying  
15 the authority for Empire to recover enough revenue to  
16 recover its reasonable operating costs and to meet its  
17 obligations to its bondholders and its shareholders and  
18 its customers.

19 While the Commission will be focusing on  
20 several issues in this case, it should not lose sight of  
21 the situation in which Empire finds itself.

22 A person with 100 cuts, 100 small cuts, can  
23 bleed to death just as easily as a person with one gaping  
24 wound. When you're dealing with all of the individual  
25 issues in this case, I want you to think about that.

1           The Commission's adoption of several positions  
2   that do not favor Empire, which individually and by  
3   themselves may seem small, can have an overall serious  
4   effect on Empire's financial health and its future.

5           Please keep that in mind as you hear the  
6   evidence and make your decision to this case.

7           Thank you.

8           JUDGE RUTH: Thank you, Mr. Duffy.

9           Staff.

10          MR. FREY: Thank you, Your Honor.

11          May it please the Commission, this case was  
12   initiated on November 3rd of last year. The empire  
13   District Electric Company filed for an increase in revenue  
14   requirement of more than \$41 million, which represents  
15   almost a 20 percent increase over existing electric  
16   revenues.

17          From the very beginning the case has been  
18   driven by two major circumstances that the company  
19   currently faces. The first is the extreme volatility in  
20   natural gas prices, which counsel for Empire has alluded  
21   to, the volatility that we have witnessed this year and  
22   which has seen prices soar to unprecedented levels.

23          The second is Empire's construction now nearing  
24   completion of a combined cycle plant at its State Line  
25   facilities.



1               Indeed, these two circumstances are  
2     inextricably linked, because the new State Line facility  
3     is, in retrospect, perhaps unfortunately, designed to  
4     operate strictly on natural gas.

5               As a result, Empire Company, already heavily  
6     relying on natural gas compared to other electric  
7     utilities in this state, would produce an even greater  
8     percentage of its electricity from natural gas.

9               In other words, the Company has sustained, if  
10    you will, a double whammy in connection with natural gas  
11    both in terms of its increased price and the company's  
12    considerably increased usage of this commodity.

13              It turns out that most of the major issues you  
14    will hear are connected to the new combined cycle unit.

15              The combination of anticipated growth in  
16    Empire's service area and the imminent expiration of two  
17    contracts for purchase power -- actually, they will expire  
18    at midnight tomorrow -- cause the Company to seek  
19    additional capacity.

20              It was only after Empire had investigated the  
21    possibility of obtaining firm purchase power to meet its  
22    need for additional capacity that it decided to focus on  
23    the build option.

24              After considering a number of proposals, the  
25    Company ultimately entered into a agreement with Western

1 Resources to jointly construct the State Line Combined  
2 Cycle Unit.

3 Empire must have a 60 percent equity position  
4 in the plant; the Western, the remaining 40 percent.

5 The new plant has the capability of delivering  
6 500 megawatts of capacity, with 60 percent of its output,  
7 or 300 megawatts belonging to Empire, and the remaining  
8 40 percent going to Western.

9 The combined cycle plant incorporates already  
10 existing State Line Unit 2, which had a capacity of  
11 150 megawatts.

12 Hence, when one factors in the expiration of  
13 two purchase power contracts, the Company is expected to  
14 realize a net capacity gain of less than 150 megawatts.

15 The combined cycle unit is nearing completion,  
16 and is, in fact, scheduled to come on line on or about  
17 June 1st of this year.

18 The June 1 date is some -- is of some  
19 importance, because it permits certification of the new  
20 capacity by the Southwest Power Pool.

21 More important is the fact that the unit is  
22 scheduled to be in service in time for the company's  
23 summer peak.

24 The June 1 date, in essence, dictated the need  
25 for the company to file for its rate case -- for its rate

1    increase -- excuse me -- back in November of last year.

2                   This would help ensure that Empire would have  
3    rates in place in close proximity to the in-service date,  
4    and, thus, would be able to minimize the time period  
5    during which the Company would be unable to earn a return  
6    on its investment funds through the allowance for funds  
7    used during construction, the so-called AFUDC.

8                   As a consequence of the installation of this  
9    major new production facility, this case is what one might  
10   term back-end loaded; that is, a higher than normal  
11   percentage of the dollars at issue are at the current time  
12   not -- not right for argument.

13                  As a consequence, neither the Staff, nor any  
14   other party, is at this time capable of making a solid  
15   recommendation regarding revenue requirement.

16                  Once the evidentiary hearing is completed, the  
17   true-up phase of the proceeding will commence.

18                  This phase will provide an opportunity for the  
19   parties to firm up their cases as answers to a number of  
20   key questions, primarily involving the combined cycle  
21   plant, will begin to surface.

22                  The true-up hearings are scheduled for  
23   August 22nd and August 23rd.

24                  Evidence of back-end loading of this case can  
25   be seen in the approach taken by the Staff in filing its

1 direct case.

2               Staff's original filing, which, among other  
3 things, did not include recognition of the State Line  
4 Combined Cycle Unit was on the order of a negative  
5 \$18 million, a figure that is a result of some  
6 adjustments, has moved to the current figure of minus,  
7 approximately, 15 million.

8               However, at the same time, the Staff,  
9 recognizing the considerable likelihood of the combined  
10 cycle unit would come on line, did not wish to send a  
11 misleading signal to key groups and stakeholders in the  
12 state that the Staff's case is, in fact, negative, and  
13 then at a later time have to reverse its field when things  
14 came into focus and dollar impacts could be quantified  
15 with far greater precision.

16              For that reason, following some appropriate  
17 modeling of various scenarios, the Staff included in its  
18 direct case an increase in the revenue requirement of  
19 \$35 million.

20              This amount -- and so would net out to, if  
21 you're adding the 35 million to the negative 18, would be,  
22 I guess, about 7 -- 17 million positive.

23              This amount is not intended be a recommendation  
24 of any kind. Rather, it is simply an estimate designed to  
25 provide a signal as to where the Staff believes the case

1 will go following the true-up and other adjustments, and  
2 assuming that the combined cycle plant is deemed to be  
3 in-service for purposes of this rate case.

4 Since the filings of the direct cases the  
5 parties have made considerable progress. As mentioned  
6 earlier, two stipulation and agreements, now unanimous,  
7 have now been filed. One deals with the question of the  
8 appropriate in-service criteria to be used for evaluation  
9 of the new combined cycle plant.

10 Testing will begin shortly, and the Staff will  
11 be actively involved in that process.

12 The other unanimous stipulation and agreement  
13 proposes to resolve the matter of the appropriate  
14 construction costs of the new unit to be included in the  
15 rate base.

16 It might be noted that the Staff hasn't  
17 performed a construction audit since the nuclear projects  
18 of the '80s.

19 Although, in fact, Empire State Line Units  
20 No. 1 and 2 have come on line since then. Each of these  
21 was more of a so-called turn-key package, with little room  
22 for additional costs, and as a result, these projects did  
23 not require a full-blown audit.

24 In the wake of its audit in this case, the  
25 Staff raised an issue related to contractor performance on

1 the heat recovery steam generators.

2               Parties have reached a unanimous agreement  
3 regarding that issue, and have also agreed as to the  
4 manner in which other sources of additional construction  
5 costs are to be considered for rate base treatment.

6               The Staff's case embraces the very important  
7 issues of fuel and purchase power.

8               As suggested earlier, the problem of natural  
9 gas prices is especially critical in the case of Empire,  
10 because of its heavy and now increasing allowance on  
11 natural gas fuel generation.

12              Moreover, the volatility of the market for  
13 proposed -- for purchase power is well known and not  
14 likely to abate in the foreseeable future.

15              Under the circumstances the Staff felt that it  
16 had to come up with something a bit out of the ordinary in  
17 an effort to deal with this vexing problem in this case.

18              Staff chose not to put such an approach in its  
19 direct case because it did not wish to saddle any of the  
20 parties with a position and create a situation in which  
21 parties might feel the need to posture.

22              Staff felt that this approach stood a better  
23 chance of producing a free and open discussion during the  
24 prehearing conference, with an approved prospect for  
25 developing consensus on this difficult issue.

1           The result was a nontraditional, somewhat  
2   unique, though, not entirely unprecedented approach to the  
3   issue of fuel and purchase power, and this has become  
4   Staff's position; namely, the approach being this interim  
5   energy charge above a base rate for a combination of fuel  
6   and purchase power.

7           The proposal costs, the interim energy charge,  
8   which would last for up to two years, in which following  
9   an audit would be subject to refund to the appropriate  
10   customers to the extent that the interim energy charge  
11   exceeds actual costs, provided that the Company is  
12   permitted to keep all revenues generated at the base  
13   level.

14           In the opinion of the Staff, the interim energy  
15   charge successfully addresses the two fundamental concerns  
16   presented, especially by the uncertainties and prices of  
17   natural gas.

18           Specifically, Staff did not want to see the  
19   ratepayers get stuck with \$6 or \$7 gas during a period of  
20   declining prices.

21           By the same token, the Staff did not want to  
22   expose the Company to the financial risk of putting gas in  
23   a range of \$2 and \$3 and having it jump to \$7.

24           Such a result could cost the Company in excess  
25   of \$20 million, which is on the order of a year's worth of

1 earnings for Empire.

2 In its May 24th, 2001 order directing filing,  
3 the Commission ordered, among other things, that the  
4 parties be prepared to address in their opening statements  
5 the effect of any of the passage of SCS/SB 387 on this  
6 case.

7 Mr. Duffy has spoken on that issue. The Staff  
8 believes that it has adequately addressed the matter in  
9 its May 25th pleading filed in response to the  
10 Commission's May 24th order.

11 In paragraph 1 of its pleading, Staff noted  
12 that Empire has agreed not to avail itself of any rights  
13 it may have under such legislation during the period of  
14 effectiveness of an energy credit.

15 The Staff, after pointing out that the bill had  
16 not yet been signed into law by the Governor, then  
17 expressed the view that the approach adopted and proposed  
18 by Staff is much superior to the one created by that bill.

19 So far I have been focusing on the somewhat  
20 unique issues that are driving this case.

21 With the growing need for electrical power  
22 nationwide, it's probably fair to say that the Commission  
23 and its Staff expect to see more cases such as this one  
24 coming along in the not too distant future.

25 This case has, however, also presented some



1 issues that one might view of a more traditional nature.

2 Today, for example, we expect to address the  
3 issue of depreciation, where the Staff and Company have  
4 substantial differences amounting to some \$10 million.

5 In particular, two parties differ substantially  
6 in the service lives and the assets -- of the assets in  
7 question.

8 The Staff believes that the longer service  
9 lives, it is sponsoring a more realistic than those  
10 proposed by the Company.

11 With regard to the future expenditures of an  
12 asset, on an asset, the Company believes that these should  
13 be included in the depreciation rate calculation.

14 On the other hand, Staff believes that they  
15 should not be included because they are not known and  
16 measurable.

17 Another area of disagreement involves whether  
18 or not to include estimated future net salvage dollars of  
19 existing assets and depreciation calculation.

20 The Commission has already ruled on this  
21 question at least twice.

22 In a recent Laclede case, I believe it's  
23 GR-99-315, the Commission ordered that Staff's approach be  
24 adopted.

25 In the recently decided St. Louis Water case,

1     however, Case WR-2000-844, the Commission decided against  
2     the Staff's approach.

3                 While the Staff does not quarrel with the  
4     Commission's decision in the water case, Staff asserts  
5     that this case is different.

6                 Here there is not a need to replace plant  
7     infrastructure over a finite period. Moreover, revenue  
8     reduction is not anticipated in the instant case.

9                 The Staff believes that estimated future net  
10    salvage costs are to be too speculative and, at any rate,  
11    not yet incurred and, therefore, takes the position that  
12    they should not be included. Instead, only currently  
13    incurred net salvage costs should be included and they  
14    should be expensed.

15                The Staff differs substantially with the  
16    Company on the issue of return on equity as well.

17                Staff is proposing a range of 8 1/2 to  
18    9 1/2 percent, and Empire at 11 1/2 to 12 percent. Public  
19    Counsel falls in the middle at about 10 to 10 1/4 percent.

20                Staff believes the evidence will show that the  
21    stock prices it used in its DCF calculation are  
22    appropriate.

23                With regard to the issue of capital structure,  
24    Staff and Public Counsel agree that the Company's actual  
25    capital structure should be used as opposed to the

1     hypothetical one proposed by the Company.

2                     Both Staff and Public Counsel are in the  
3     general area of a 60/40 percent debt-to-equity ratio.  
4     Public Counsel is more -- I think it's 58 to 42, but it's  
5     much closer to Staff on that issue than it is to the  
6     Company.

7                     Further, the Staff has agreed to a true-up  
8     capital structure to the actual as of June 30th.

9                     In addition to this issue -- these issues,  
10    you'll here about the difference between the Company and  
11    the Staff on the appropriate treatment of bad debt  
12    vis-a-vis Missouri jurisdictional revenues.

13                    Mr. Duffy touched on that and suggested that  
14    there was a correlation between bad debt and growth and  
15    revenues, and Staff would simply disagree and say there  
16    is -- that the evidence will show that there is no such  
17    correlation.

18                    Finally, there are the issues of class cost of  
19    service and rate design.

20                    Here the Staff and Public Counsel take issue  
21    with Praxair regarding the appropriate allocation of  
22    transmission and capacity costs.

23                    The latter proposes an allocation method that  
24    places substantially greater weight on the usage of  
25    capacity during the systems peak, while Staff and Public

1 Counsel's approach is based on an entirely different  
2 philosophy; namely, that allocation of transmission and  
3 production capacity should be based upon demands and every  
4 hour the capacity is utilized.

5           Among other things, the parties also differ on  
6 the treatment of the interim energy charge that may be  
7 ordered in this case.

8           Only Praxair believes that an equal percentage  
9 increase should be applied to all classes, including the  
10 interim energy charge component.

11           The Company, Public Counsel and the Staff all  
12 oppose Praxair's rate design recommendation, which could  
13 result in a permanent rate reduction to Praxair and a rate  
14 increase to every other customer.

15           Thank you.

16           JUDGE RUTH: Thank you.

17           Public Counsel.

18           MR. COFFMAN: Thank you.

19           May it please the Commission, good morning. My  
20 name is John Coffman. I'm Deputy Public Counsel.

21           And this is indeed an unusual rate case in a  
22 couple respects.

23           First of all, much of the potential rate impact  
24 in this case will not be known for certain until we reach  
25 the true-up hearing, and after the new unit at the State

1 Line Plant has been audited pursuant to the agreed-upon  
2 in-service criteria.

3 Another reason this case is unusual is that the  
4 largest and most important issue in the case, the fuel and  
5 purchase power expense, has been exceedingly difficult for  
6 the parties to grapple with.

7 And that's because, I think, at this particular  
8 moment in history, it has been an even greater challenge  
9 than normal to accurately predict what fuel prices will be  
10 in the near future.

11 And because, as the Commission has noted, a  
12 piece of legislation, which Public Counsel believes would  
13 be dangerous to consumers, has been preceding along in the  
14 General Assembly simultaneous to the timetable of this  
15 case.

16 Now, the good news that has been mentioned is  
17 that several issues in this case has settled, and we  
18 should have no trouble completing the hearing within the  
19 time that you've allotted.

20 As to the fuel and purchase power issue, the  
21 three parties that have filed prepared testimony on this  
22 issue have each changed positions to a joint  
23 recommendation that we believe is a creative and balanced  
24 approach to the problem, and that is the interim energy  
25 charge that has been outlined in the May 14 document.

1                   But let me go back and first briefly review the  
2 original filed positions as to the parties on the natural  
3 gas component of the fuel expense.

4                   Staff had recommended a three-year historical  
5 average for that cost. Empire had recommended a one-year  
6 future strip for natural gas. Public Counsel had  
7 recommended a hybrid approach, which took an average of  
8 two years historical and two years future strip. And that  
9 recommendation is contained in the prepared testimony of  
10 James Busch.

11                  Now, if we feel that -- if you for whatever  
12 reason do not want to adopt the interim energy charge  
13 recommendation and you feel that you must pick one number  
14 on a given day to represent this price into the future,  
15 that Public Counsel's hybrid method is the smoothest  
16 predictor and the fairest way to do that, although I  
17 believe all parties have recognized this year's unstable  
18 energy markets have made the task of estimation tricky  
19 with regard to natural gas rates.

20                  And that's why the parties have had  
21 constructive talks on this issue, and I believe that we  
22 have come up with a better way to resolve the issue.

23                  And it is based on a method that was used by  
24 the Commission during the last energy crisis after fuel  
25 adjustment clauses were outlawed. And in a few cases

1 adjustments were ordered to occur subsequent to the  
2 completion of a rate case.

3 Now, the joint recommendation for an interim  
4 energy charge is a solution that I believe would present  
5 the most just and reasonable method of resolving this  
6 issue for this Company in this rate case.

7 I can say without reservation that this 24-  
8 month interim subject-to-refund methodology would be in  
9 the public interest.

10 But, again, I would condition that as a  
11 temporary solution for this small company in its current  
12 situation and given the unusually unstable energy markets  
13 that we're currently seeing.

14 Our chief accountant, Russell W. Trippensee,  
15 has filed prepared testimony and will be available for  
16 cross-examination during the fuel and purchase power  
17 expense issue to explain the desirability of this  
18 recommendation from the perspective of Empire's captive  
19 residential and small business consumers.

20 I urge you to inquire of him about this  
21 recommendation when he takes the stand.

22 The Commission has asked the parties to address  
23 Senate Bill 387.

24 As the participants were negotiating, we were  
25 all keenly aware of the debate that was raging across the

1 street over this bill. And this is why Public Counsel  
2 insisted that one component of this interim energy charge  
3 recommendation be a condition that Empire would forego the  
4 use of any fuel adjustment remedy that could become  
5 possibly -- could possibly become available if the  
6 Governor signs Senate Bill 387.

7 This would prevent Empire from double recovery  
8 from the ratepayers under two different rate procedures,  
9 and should prevent the complication that Mr. Duffy  
10 explained to you under the emergency provision.

11 The Commission will have the opportunity to  
12 accept or reject a proposed fuel adjustment clause if  
13 Senate Bill 387 is passed, if it believes that it is not  
14 in the long-term best interests of the ratepayers.

15 However, this flexibility for the Commission I  
16 do not believe applies pursuant to Section 7 of that  
17 legislation, which is the emergency provision that  
18 Mr. Duffy explained. So it would be a complicated mess.

19 So the condition that Empire forego use of  
20 Senate Bill 387 if the interim energy charge  
21 recommendation is approved is absolutely critical to our  
22 recommendation that you approve the interim energy charge.

23 Now, if this legislation is signed into law,  
24 Public Counsel will use whatever resources it can muster  
25 to point out to the Commission what we believe to be the



1 dangers of fuel adjustment clauses.

2 And if Empire attempts to use it, we will  
3 participate as fully as we can in the new parallel  
4 procedure to help the Commission avoid as many of the  
5 dangers that we see in that procedure as possible.

6 Public Counsel is concerned that despite some  
7 of the safeguards written into the bill, that it could be  
8 utilized in a manner that would be unfair to consumers and  
9 result in volatile rate increases.

10 We hope that it won't come to that and that  
11 Missouri will not become a fuel adjustment state, but that  
12 is something that we have to be aware of.

13 When the Supreme Court struck down fuel  
14 adjustment clauses in 1979, stating that they violate the  
15 fundamental provisions against single-issue ratemaking and  
16 the prohibition against retroactive ratemaking, we  
17 considered that to be a very important consumer victory.

18 What a lot of people did not remember is the  
19 dire predictions that came from electric companies at the  
20 time, that economic ruin would certainly follow that  
21 decision.

22 What followed was not economic ruin. In fact,  
23 we believe that both shareholders and ratepayers have done  
24 very well.

25 Not only have electric rates been comparatively

1 low in our state since that time, electric companies have  
2 thrived and enjoyed very healthy profits.

3 Many experienced regulatory auditors believe  
4 that without a fuel adjustment clause to use as a crutch,  
5 our Missouri companies have become more efficient in  
6 managing their fuel portfolios and fuel purchases, and  
7 this has benefited them in the long-run.

8 Now, Empire is not one of the companies that is  
9 currently enjoying record profits, but we do not believe  
10 that it's temporarily -- the temporary economic situation  
11 is something that will continue. And I think that the  
12 financial analyst would bear this out.

13 We do not believe that they're in an emergency  
14 situation. We do not believe they are on a precipice. We  
15 believe that no matter what the Commission decides on the  
16 contested issues in this case, the resulting rate increase  
17 will place Empire in a very positive situation, to be very  
18 healthy into the future.

19 I might also point out that Empire has not  
20 during this difficult year, after the failed merger and  
21 other circumstances, has not decreased its regular  
22 dividends to shareholders.

23 But getting back to the interim energy charge,  
24 I think there is several things that need to be point out  
25 as to how this approach would be far superior to the fuel

1 adjustment clause approach of Senate Bill 387.

2 The interim energy charge we are recommending  
3 in this case would be the product of a rate case, and that  
4 is significant because all relevant factors can be  
5 considered in establishing it.

6 Senate Bill 387 would explicitly permit single-  
7 issue ratemaking through a new parallel process, parallel  
8 to the rate case procedure.

9 With an interim energy charge as opposed to a  
10 fuel adjustment clause, there will be fewer rate changes  
11 and less volatility in rates over the next two years.

12 Now, this next point is very important. In  
13 fact, we think it's huge.

14 The interim energy charge has been designed --  
15 and you can see it in the May 14 document -- to be a per  
16 kilowatt hour charge, covering the expense for all fuel  
17 that could be used to generate electricity.

18 And we believe this would encourage Empire to  
19 use the most efficient fuel mix available to it other the  
20 next 24 months.

21 On the other hand, Senate Bill 387 would allow  
22 preferential treatment for burning natural gas as fuel  
23 even if other fuels may be cheaper or more efficient.

24 We believe that this is not a desirable  
25 incentive. Electric and utilities should be incented to

1 use the most efficient fuel sources available to it.

2 And, again, this is crucial to Public Counsel's  
3 recommendation on this issue.

4 The interim energy charge would be preferable  
5 to the more complicated fuel adjustment clause procedure  
6 of Senate Bill 387 because it could also save the state as  
7 much as a half a million dollars over at least the first  
8 year.

9 The fiscal note for this legislation, if  
10 utilized by Empire, includes significant costs for  
11 Public Counsel to participate, and these dollars would  
12 come out of general revenue in a very tight budget year.

13 The Commission has projected \$250,000 a year in  
14 its fiscal note to implement the new fuel adjustment  
15 clause procedure.

16 And this money, as you know, would be paid the  
17 utility assessments, presumably, the lion share of this on  
18 Empire, since the legislation only applies to Empire as a  
19 regulated shareholder-owned company.

20 And in the future rate case, I assume this  
21 level of assessment could be passed right on to Empire's  
22 customers, the ones who would be suffering for the fuel  
23 adjustment clause.

24 One other point -- and you'll find in this  
25 paragraph 8 of the May 14 document -- there are important

1 provisions in the interim energy charge recommendation  
2 that would require an offset for natural gas capacity  
3 release and off-system sales for natural gas.

4 Praxair has argued that it deserves a full and  
5 fair hearing on the fuel issue, as is its right under the  
6 Fisher case.

7 As I said earlier, we should not diminish the  
8 importance of that case.

9 And Mr. Conrad should be, I believe, afforded  
10 all due process that is fair. He should have the  
11 opportunity to offer witnesses and cross-examine any  
12 witnesses that have prepared testimony in this case on any  
13 issue.

14 However, we believe the other parties also have  
15 due-process rights, and we do believe we should have the  
16 opportunity to have our testimony in support of the  
17 interim energy charge accepted into evidence and allowed  
18 an opportunity to more fully explore this new position.

19 There are two other issues on which Public  
20 Counsel is participating of the contested issues.

21 On capital structure and rate of return, we  
22 believe the Commission should utilize the actual capital  
23 structure from the end of the test year in this case.

24 We believe you should also adopt a return on  
25 common equity, consistent with Public Counsel Witness Mark

1 Burdette's discounted cash flow analysis. And that would  
2 be a common equity recommendation in the range of  
3 10.0 percent to 10.25.

4 And then, finally, as to rate design, we  
5 believe the Commission should recognize the class cost of  
6 service recommendation of Public Counsel Economist Hung  
7 Hu.

8 The Commission should reject the average and  
9 excess method of Company and Praxair, which would allocate  
10 production and transmission plant costs differently than  
11 Staff and Public Counsel would recommend.

12 Staff and Public Counsel use different methods  
13 but reach results very similar, and either Staff or Public  
14 Counsel's approach on that allocation of production and  
15 transmission plant costs would be reasonable.

16 And as Public Counsel typically recommends, we  
17 believe that the Commission should move halfway towards  
18 the class cost-of-service study results, balancing  
19 movement towards cost of service, with affordability and  
20 other rate impact considerations.

21 The customer charge should be increased for  
22 residential consumers in the same percentage as the  
23 overall increase to residential revenues.

24 And if the Commission adopts the interim energy  
25 charge, we believe that it should be applied after the

1 changes to the cost of service under our recommendation;  
2 that is, the rate design recommendation should be applied  
3 and then the interim energy charge should be in a separate  
4 tariff placed on top of that.

5 And that is all I have. Thank you very much.

6 JUDGE RUTH: Thank you, Mr. Coffman.

7 And, Mr. Conrad, are you ready?

8 MR. CONRAD: I am. At least I believe I am.

9 Good morning, and may it please the Commission,  
10 and a particular welcome to the new commissioner,  
11 Commissioner Gaw.

12 I think you'll find this process to be perhaps  
13 not as challenging but certainly different from what you  
14 had across the street.

15 Your Honors, I'm here this morning to represent  
16 Praxair. I want to tell you for a moment or two a little  
17 bit about Praxair, but before I do that, I want to quickly  
18 address a couple of points that have been made, most  
19 particularly in this point by Staff counsel, in which he  
20 has referred to this case as back-end loaded.

21 He's right. I agree with them.

22 The problem, however, is that this Commission  
23 has in kind of incremental stages gotten itself into a  
24 situation in which cases are back-loaded, instead of  
25 having the full statutory time period to do the

1 investigation, by use of this true-up mechanism.

2 In the past clients that I have represented,  
3 and the Public Counsel, have objected to that. We have  
4 said that that compresses the time frame that you-all have  
5 to work in. It compresses the time frame that the Staff  
6 has to work in. It -- these cases are, Commissioner Gaw,  
7 complicated.

8 There is a lot of accounting data. At the same  
9 time it would seem that the companies have built into  
10 their rates of return the idea of regulatory lag.

11 And essentially what has happened in  
12 incremental stages, just a little bit, a little bit here,  
13 a little bit here, a little bit here. But the case has  
14 been moved -- not just this case, but other cases. You'll  
15 see this in the MGE case to come. You'll see in this  
16 other cases -- get moved further and further and further  
17 back to the operation of law date, to the point that  
18 you-all don't have any time to consider it, the Staff  
19 doesn't have time to research it and do their audits  
20 thoroughly. They are pressed. Everybody gets pressed  
21 into that last three or four weeks.

22 That's not how the situation was originally  
23 designed by the Legislature to work.

24 Just as a flip note -- it's not particularly an  
25 issue. We haven't briefed it. I frankly don't intend to.



1 But I would ask, since I have all four of you here today,  
2 that you-all think about how that process of this true-up  
3 has incrementally has affected how this Commission  
4 regulates and how that has affected the idea of regulatory  
5 lag that is built into the company's rates of return.  
6 Perhaps those rates of return are too high if they have  
7 virtually immediate relief.

8               You have asked us to talk briefly about Senate  
9 Bill 387. I'll do that. I don't have a lot to add.

10              My client here opposed that bill pretty much  
11 for the same reasons that Public Counsel has indicated.  
12 We think it's bad legislation. It has a number of things  
13 wrong with it.

14              And I suspect that if it is made law and is  
15 utilized, that it will be subjected to some degree, shall  
16 we say, of judicial review on that.

17              I'll stand on their statements with respect to  
18 it. I think that's probably adequately covered.

19              But let me tell you now about Praxair.

20              Praxair is the largest, so far as we're aware,  
21 industrial customer. It's the largest load that Empire  
22 serves. Its approximately a 7 1/2 to 8 megawatt. That's  
23 8,000 kilowatts of load.

24              Praxair is unique. Praxair is an interruptible  
25 customer. It's firm load by contract is 300 kilowatts.

1           That means that it is virtually completely  
2 interruptible, and on exceptionally short notice for an  
3 interruptible customer pursuant to the terms of its  
4 contract.

5           The significance that that has for you as we  
6 address the issue of cost-of-service allocation and rate  
7 design is that this customer imposes practically no load  
8 on Empire that cannot be virtually instantaneously shed.

9           It means that Praxair's load largely  
10 disappears, except for that tiny slice at the bottom, when  
11 Empire needs that capacity to serve other customers.

12           And as a result, we don't think that Empire  
13 sees capacity costs that are imposed by its need to serve  
14 Praxair.

15           Praxair works in a very competitive business.  
16 Some of you may have seen the trucks around that say  
17 Praxair. Some of you may have seen -- I think one of the  
18 hospitals over here has a big tank on the outside of it  
19 that says Praxair.

20           Praxair is a manufacturer of commercial and  
21 industrial gases. They make an exceptionally high use of  
22 electricity. Electric is, fact, their highest cost item.

23           They compress and use a process which they call  
24 liquification to fraction out air into its various  
25 components, carbon dioxide, oxygen, nitrogen, various

1 other types of industrial gases.

2           Their business is highly competitive. They  
3 face, unlike this Company that you're regulating today,  
4 actual competition, and that competition is determined on  
5 pennies per unit of product for that.

6           The plant here that is served by Empire is  
7 located near Neosho, Missouri. It dispatches its load to  
8 its point of consumption for its customers by truck.

9           Those trucks are dispatched and orders are  
10 filled based on a very complicated computer program that  
11 is somewhere back in the -- in the East Coast, that  
12 actually figures out what it costs to fill a particular  
13 order for a particular plant and say, okay, it's cheaper  
14 for us to fill that order from this plant than from this  
15 plant and so on.

16           What you end up with, if you think that  
17 through, is you end up with a radius. It's not a precise  
18 circular radius because it's going to be driven by how the  
19 interstates and so on go.

20           But their business from this plant is  
21 subscribed --

22           JUDGE RUTH: Just a moment, please. I don't  
23 know what is making that noise.

24           (OFF THE RECORD.)

25           JUDGE RUTH: Sorry for the interruption. We'll

1 continue.

2 MR. CONRAD: I understand. Technology is fun.

3 But I was trying to point out that they have a  
4 competitive service area that is dictated to a large  
5 extent by their cost.

6 Praxair is also a unique customer in that it  
7 has its own classification from this company for  
8 ratemaking purposes. It receives the electricity that it  
9 does take at high load -- excuse me -- at high voltage  
10 levels.

11 Praxair, perhaps, is not unique of having its  
12 own substation, but it has one of the largest ones, and  
13 that -- the level of voltage at which it takes service  
14 affects the cost.

15 And, importantly, I want to discuss with you  
16 for just a moment that because of its interruptibility, in  
17 a traditional load factor calculation, Praxair's load  
18 factor would actually be over 100 percent. That's not  
19 really theoretically possible.

20 But what that means is that its load and  
21 capacity needs disappear because of its interruptibility.

22 Commissioner Gaw, you may or may not be  
23 familiar with the term "load factors." We use it over  
24 here. But as I use it, it is an index or a measure of how  
25 uniform use is.

1           If you had, for example, a machine that cost a  
2 million dollars, it could produce 10,000 widgets an hour.  
3 If you only ran that machine and produced 10,000 widgets  
4 for one hour, you would have to take the cost of that  
5 \$1 million machine and spread it over the 10,000 widgets.

6           Alternatively, if you could run that machine  
7 for 8,760 hours, which would be the whole hours in a year,  
8 you could produce and spread the cost of the machine over  
9 87,600,000 widgets. And so the cost per widget goes down.

10           By having high-load factor customers on the  
11 system, on an electric system, you create efficiencies for  
12 that system that otherwise would not be there.

13           The utility has to install or provide for the  
14 capacity needs of its customers at its peak.

15           Now, the question is, can you then use up  
16 capacity that is otherwise underutilized or not utilized  
17 at all in off-peak periods? High-load factor customers do  
18 that by their very nature.

19           The class cost-of-service issue is going to  
20 surface here. And I would mention to you just briefly  
21 that the very purpose of regulation is to stand as a  
22 substitute, as a surrogate, for competition.

23           Some 80 years ago the people of this state,  
24 through their elected representatives, said we're going to  
25 have a Public Service Commission, but, importantly, we're

1 going to allow public utilities, because they're capital  
2 intensive in their operations, to have monopoly service  
3 territories.

4 And within that territory we're only going to  
5 allow one company to provide that service. We're not  
6 going to have duplication of facilities and so on.

7 But if they're going to do that, we're going to  
8 have a tradeoff with them, and that is, they're going to  
9 have to accept a substitute for what would otherwise be a  
10 competitive market.

11 So they decreed -- the Legislature, General  
12 Assembly, decreed a limited monopoly within an area. The  
13 public utility has the right to exclude competitors. And  
14 within that area it has other sovereign rights that are  
15 given only to the sovereign; namely, eminent domain, to  
16 condemn property. And they replace competition with you  
17 folks, a regulatory commission.

18 We group customers into classes based on common  
19 shared load and surface characteristics, so that they're  
20 relatively homogeneous in those groups, and we attempt to  
21 set prices at the approximate levels that would be  
22 achieved if there were competition. And we submit that  
23 that is going to be based on what cost of service is.

24 Imagine for a moment with me that you had an  
25 iterative process, that the Legislature had not acted, and

1   that you had the ability as a residential, as a commercial  
2   or industrial commercial, to go out and, in effect, plug  
3   your extension cord into several different utilities, and  
4   you had that choice.

5               The utility trying to serve you would  
6   ultimately get its rates down through an iterative process  
7   to what would be a cost-of-service level.

8               If one utility said, well, I'm going to serve  
9   this customer that is at the low-cost rate and make up the  
10  difference over here, he might attract -- he might attract  
11  a lot of customers for a relatively short period of time,  
12  but then the others would come in and match that.

13              Because the guys over here whose prices were  
14  increased to make up the loss would disappear and go to  
15  Company B.

16              So if you model that through an entire economy,  
17  what you end up with is an iterative process that pushes  
18  everybody's rates down to where their costs are, and the  
19  costs for that purpose include the profit for the  
20  provider.

21              Now, how do we do that? Since we don't have  
22  that competitive market, that we try to model that through  
23  cost-of-service pricing.

24              We say that's the substitute for monopoly. We  
25  try to eliminate what we call in the statutes undue

1 preferences, undue discriminations.

2           Now, a lot of people will argue about what  
3 undue means, but essentially what I think it means is its  
4 recognition if that if you have 3 or 400,000 customers,  
5 that you simply cannot have a price or a rate for each  
6 customer that exactly recovers what their costs are.

7           You have to group them. So there are going to  
8 be people at one extreme or the other. And you have to  
9 recognize that when you do that homogeneous grouping,  
10 there is going to be some give in that system.

11           Nonetheless, the objective is to try to get  
12 those costs and identify them and reflect them in rates.

13           We index that by rate of return, and we test it  
14 whether the rate of return for a particular customer or a  
15 customer class is greater than or less than the rate of  
16 return for the utility as a whole.

17           No particular type of business should be more  
18 profitable or less profitable for a utility to serve.

19           The situation in this case is not really unique  
20 in my view. The company's original proposal was an equal  
21 percentage increase.

22           I find out this morning that they have -- based  
23 on Mr. Duffy's statement, that they have a new proposal  
24 which we haven't seen yet and which isn't reflected in  
25 their testimony.



1                   Our problem is, very simply, they have the  
2 wrong revenues for Praxair.

3                   A simple thing, you say. Take 12 monthly bills  
4 add them up; there you got it.

5                   Huh-uh. The Company has admitted that its  
6 Praxair revenue number is wrong in their study, but they  
7 have never gone back and corrected their cost of service  
8 study.

9                   And when it's corrected, Praxair is shown under  
10 current rates to be producing at an above average rate of  
11 return.

12                  And what that means is that Praxair's rates are  
13 in excess of the cost that Praxair causes for the utility  
14 to provide that service.

15                  Now, sadly, you all are going to hear and have  
16 to be bored with a long struggle about which class  
17 cost-of-service study should be used.

18                  Well, we would submit that there are certain  
19 time-proven methods in the industry to do this. You're  
20 not having to reinvent the wheel.

21                  The average and excess method which was used by  
22 the Company, albeit incorrectly, is one that recognizes  
23 both the demands for capacity and the overall use of that  
24 capacity.

25                  And both Company and our consultant,

1 Mr. Brubaker, who you'll hear from next week, have used  
2 this method.

3 Now, some don't like the results that industry-  
4 standard studies produce. I understand that. That's why  
5 we have arguments about this.

6 Staff and Public Counsel have used a class  
7 cost-of-service method that is unique to them. And Public  
8 Counsel acknowledges that, as does Staff counsel, in their  
9 opening statements.

10 Their methods are unique to them. They're not  
11 used by anybody else. They're unique insofar as we're  
12 aware of to Missouri. They're not modeled by any --  
13 anywhere else. And they both massively allocate -- over-  
14 allocate costs to business customers. Not just Praxair  
15 but to all business customers, all high-load factor  
16 customers.

17 In the specific case of Praxair, both studies  
18 treat Praxair as though it's not interruptible.

19 They treat all 8 megawatts as though it were a  
20 firm load, despite the fact that there is a contract  
21 there, despite the fact that the classification is there  
22 and despite the fact that Praxair has been interrupted  
23 numerous times by the utility.

24 They simply say, well, we'll handle the issue  
25 of the interruptibility off over here somewhere. But when

1 we talk start talking about revenues, when we start  
2 talking about the cost allocation, they don't want to  
3 recognize that my client simply disappears from the  
4 system.

5 And that results in an increase that they would  
6 propose to Praxair that is far greater than the system  
7 average. It is particularly onerous because its  
8 concentrated on one customer and one class.

9 Let me sum up for Praxair.

10 We believe we are entitled under the evidence  
11 that will come in to an increase that is less than system  
12 average, but certainly we should not have an increase that  
13 is greater than system average.

14 And as you will see, that is what both Staff  
15 and Public Counsel propose.

16 We ask your consideration of that evidence, and  
17 we would ask your rejection of nontraditional, unique and  
18 result-driven approaches to allocate costs.

19 Those approaches are not developed to identify  
20 cost causation or cost causal relationships, but they are,  
21 rather, developed to justify a particular result.

22 Thank you.

23 JUDGE RUTH: Okay. Thank you.

24 The clock in the back of the room indicates  
25 it's about eight minutes until 11. Let's take an eight-

1 minute break, then, and start back up at eleven o'clock.

2 (A RECESS WAS TAKEN.)

3 JUDGE RUTH: Let's go back on the record.

4 We finished the opening statements before our  
5 break, and we are now ready to have Empire call its first  
6 witness.

7 MR. COOPER: Your Honor, good morning.  
8 Commissioners, good morning. My name is Dean Cooper. I'm  
9 from the law firm of Brydon, Swearngen and England. And  
10 along with Mr. Duffy and Mr. Swearngen, I'll be  
11 representing Empire in this matter.

12 At this time Empire would call Mr. L. W. Loos.

13 JUDGE RUTH: Thank you.

14 Would you please raise your right hand.

15 (Witness sworn/affirmed.)

16 JUDGE RUTH: Thank you.

17 Please proceed with your foundation questions.

18 L. W. LOOS testified as follows:

19 DIRECT EXAMINATION BY MR. COOPER:

20 Q. Please state your name and your business  
21 address.

22 A. L. W. Loos, 8400 Ward Parkway, Kansas City,  
23 Missouri, 64114.

24 Q. By whom are you employed and in what capacity?

25 A. I'm a vice-president with the firm of Black and

1 Veatch Corporation.

2 Q. Have you been retained by Empire to appear and  
3 testify in this matter?

4 A. Yes, I have.

5 Q. For purposes of this case, have you prepared  
6 direct, rebuttal and surrebuttal testimony in  
7 question-and-answer form?

8 A. Yes, I have.

9 Q. Is it your understanding that this testimony  
10 has been marked as Exhibits 11, 22 and 31, respectively,  
11 for identification?

12 A. Yes.

13 Q. Are there any changes or corrections that you  
14 would like to make to that testimony at this time?

15 A. Yes, there is several.

16 In connection with my direct testimony, which  
17 is Exhibit 11, on page 8, lines 2 and 3, the reference to  
18 45-year life should be 40-year life. The reference to the  
19 year 2015 should be 2010. The reference to the year 2031  
20 should be 2020 -- 2025.

21 In my rebuttal testimony, Exhibit 22, page 4,  
22 line 23, the parenthetical, exclusive of SLCC, should be  
23 deleted.

24 Surrebuttal testimony, Exhibit 31, page 9,  
25 line 8, the words "lot of" should be replaced with short.

1                   Also in the surrebuttal testimony, page 11,  
2   line 1, in that line there is an extra "of net" included.  
3   It should read, impacts on the level of interim additions  
4   and no consideration of net salvage.

5       Q.       Do you have any other changes or corrections?

6       A.       No, I do not.

7       Q.       If I were to ask you the same questions  
8   contained in Exhibits 11, 22 and 31, would your answers as  
9   just corrected be substantially the same?

10      A.       Yes, they would.

11      Q.       Are those answers and the attached schedules  
12   true and correct to the best of your knowledge,  
13   information and belief?

14      A.       They are.

15               MR. COOPER: Your Honor, at this time I would  
16   offer Exhibits 11, 22 and 31 and tender the witness for  
17   cross-examination.

18               JUDGE RUTH: Okay. Thank you.

19               Praxair, do you have any objections to  
20   Exhibits 11, 22 and 31 being offered into the record?

21               MR. CONRAD: No, ma'am.

22               JUDGE RUTH: Okay. And Public Counsel?

23               MR. COFFMAN: None.

24               JUDGE RUTH: Staff?

25               MR. WILLIAMS: No objection.

1 JUDGE RUTH: Okay. Then Exhibit 11, the direct  
2 testimony, Exhibit 22, the rebuttal, and Exhibit 31, the  
3 surrebuttal, of Mr. Loos -- is that correct?

4 THE WITNESS: Yes

5 JUDGE RUTH: -- are admitted into the record.

6 (EXHIBIT NOS. 11, 22 AND 31 WERE RECEIVED INTO  
7 EVIDENCE.)

8 JUDGE RUTH: Okay. We'll begin our  
9 cross-examination with Praxair.

10 MR. CONRAD: And we have no questions for  
11 Mr. Loos on this issue. Thank you, Your Honor.

12 JUDGE RUTH: Okay. And Public Counsel.

13 MR. COFFMAN: No questions.

14 JUDGE RUTH: Staff.

15 MR. WILLIAMS: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. WILLIAMS:

17 Q. Mr. Loos, my name is Nathan Williams, and I'm  
18 representing Staff, and I have a few questions for you.

19 On Table 4-2 that's attached to your direct  
20 testimony as Schedule LWL-1 on page 4-4 --

21 A. I have that.

22 Q. -- you set out some projected retirement dates.

23 A. Yes.

24 Q. And for the Riverton Units, 7, 8 and 9 you have  
25 projected retirement dates of 2008?

1           A.       That is correct.

2           Q.       And those three units make up approximately  
3   100 megawatts of capacity?

4           A.       Yes.

5           Q.       Does Empire have any plans to make up that  
6   capacity assuming those units are retired as you  
7   projected?

8           A.       I'm unaware of any existing plans as to  
9   precisely what that capacity would be replaced with.

10          Q.       Do you know if there are plans to replace that  
11   capacity?

12          A.       No, I'm not aware of any specific plans.

13          Q.       And would that also be the case for Asbury  
14   Units 1 and 2 which have projected retirement dates of  
15   2014?

16          A.       Yes.

17          Q.       And also Iatan Unit 1?

18          A.       Yes.

19          Q.       On page 4-1 of Schedule LWL-1, it's attached to  
20   your direct testimony, which is Exhibit 11, you state  
21   that, quote, the retirement dates shown in Table 4-2 are  
22   based on the company's current plans.

23                 Then in your surrebuttal testimony, which is  
24   Exhibit 31, at page 7, you indicate that you did not have  
25   from Empire detailed plans regarding plant additions,



1 upgrades, modifications and retirement.

2 A. What was that reference again?

3 Q. It's on page 7 of your surrebuttal testimony.

4 A. Yes, I have that.

5 Q. Did you request from Empire what its plans were  
6 regarding plant retirement?

7 A. We inquired as to whether there were any change  
8 in plans from what we had been -- had received previously  
9 in prior studies.

10 Q. And are the projected retirement dates you have  
11 shown on Table 4-2 based on the information that the  
12 Company provided you as to its planned retirement dates?

13 A. That information, plus my judgment with respect  
14 to the life span of the various types of generating units.

15 Q. Can you point out which of these dates are  
16 based on the Company information and which are based on  
17 your engineering judgment?

18 A. With respect to the Riverton Units 7, 8 and 9,  
19 that 2008 date is one that we obtained from the Company.  
20 The other dates are based on the company's indication that  
21 at the present time there is no definitive plans as to  
22 when those would be retired.

23 Based on my experience, I concluded that a 45-year  
24 life span for Asbury, 35 for Iatan and the 35 for  
25 combustion turbine-based technology generally should be

1 used.

2 Q. Where did you get the information on the 1008  
3 projected retirement date for the Riverton Units 7, 8 and  
4 9 from Empire?

5 A. Originally that was 1998. And I reconfirmed  
6 that today with respect to the -- what would happen with  
7 respect to various situations surrounding the Riverton  
8 plant and what would be a reasonable, anticipated  
9 retirement date for the purpose of depreciation.

10 Q. I want to direct your attention to the Asbury  
11 plant.

12 In your direct you've indicated that the plant  
13 life for both of the turbines should be determined by the  
14 boiler life. Is that correct?

15 A. Yes, that's generally the case.

16 Q. And you've conducted studies for Empire for --  
17 based on plant as of December 31st of 1992, 1995, 1996 and  
18 1997, have you not?

19 A. I believe so, yes.

20 Q. And did you recommend that same treatment for  
21 Asbury in those studies?

22 A. I believe so, yes.

23 Q. And were all of those studies done in  
24 connection with rate cases before this Commission?

25 A. No.

1 Q. Were any of those studies done in connection  
2 with rate cases before this Commission?

3 A. The 1992 study, I believe, was around the time  
4 of the rate case, although I did not testify on it.

5 Q. Was it prepared for purposes of that rate case?

6 A. I don't believe so. I think it was in  
7 conjunction with the five-year requirement for the  
8 Commission.

9 Q. What about any of the other studies?

10 A. My recollection is those were also updates.

11 Q. So none of those were done in connection with  
12 rate cases?

13 A. That's my understanding and recollection.

14 Q. How do you distinguish a life-extending project  
15 from a maintenance project?

16 A. A life-extending project typically is one  
17 which, because of the magnitude of the dollars or the  
18 nature of the project, indicates that a plant will have  
19 additional life.

20 For example, if as a result of changes in  
21 environmental law, a substantial capital addition or  
22 modification is required at a plant at the 20th year,  
23 25th year, typically that will require an order to  
24 economically justify that addition, that the life be  
25 extended for analysis purposes, and taking into

1 consideration the additional improvements would be likely  
2 to be required.

3           If a major project is indicated which can't be  
4 economically justified on existing plant -- for example,  
5 you mentioned the Riverton plant earlier.

6           If a substantial environmental is introduced at  
7 Riverton, then most likely Empire would be unable to  
8 economically justify that addition in light of the plant's  
9 age and the other possible maintenance requirements --  
10 maintenance capital requirements that that plant would  
11 reasonably -- reasonably be anticipated to have during the  
12 economic evaluation period.

13       Q.     You stated in your surrebuttal testimony at  
14 page 14 that the cyclone project at Asbury, which was a  
15 \$10 million expenditure, as I understand it, was not a  
16 life-extension project?

17       A.     That's correct.

18       Q.     Why not?

19       A.     That project is required in order for the plant  
20 to continue to operate through the 45-year life that I've  
21 assumed -- life span -- excuse me -- that I've assumed in  
22 this engagement.

23           Without that improvement, then the plant would  
24 at some time fail to be economical with respect to its  
25 ability to generate electricity.

1 Q. And why wouldn't that extend the life span  
2 beyond the 45 years?

3 A. Well, at the present time, based on a 45-year  
4 life span, the projected retirement date would be 2015,  
5 which is some 12 years down -- down the way.

6 Over 12 years, \$10 million is a relatively  
7 modest investment compared to, say, the -- I believe it's  
8 18 million -- the \$18 million investment in 1990 for  
9 pollution control, when the plant had a total investment  
10 of only 27 million.

11 And there was also -- in connection with the  
12 addition of Unit 2, a fairly substantial capital addition  
13 in 19-- that would be something else. That would be  
14 another environmental project.

15 Q. So are you saying your criteria is a percentage  
16 of the capital investment in the plant?

17 A. The criteria is the economics of the plant and  
18 how -- whether or not the existing life span can  
19 accommodate a major capital addition.

20 Had the plant been 40 years, with a ten-year --  
21 or \$10 million capital required for cyclone, then we would  
22 probably consider whether or not that, plus other  
23 anticipated capital improvements, would necessitate the  
24 increase of the life span in order to accommodate those  
25 conditions economically.

1                   MR. WILLIAMS: No further questions at this  
2 time.  
3                   JUDGE RUTH: Thank you.  
4                   Chair Lumpe, do you have questions?  
5                   CHAIR LUMPE: Yes.  
6 QUESTIONS BY CHAIR LUMPE:  
7           Q.       Mr. Loos, in listening to the statements, the  
8 opening statements -- and I think I gathered this -- that  
9 this item, this depreciation item is a \$10 million item.  
10 Is that correct?  
11          A.       I believe I calculated it at 9, but it's 9 to  
12 10.  
13          Q.       Okay. All right.  
14                   Well, I was looking at -- the net salvage  
15 appeared to be about 1.5 million, and then somewhere I got  
16 the 9, I guess, in listening to -- maybe I just deducted  
17 that or something.  
18                   But you're saying -- is that all together, this  
19 depreciation item, net salvage, et cetera, comes to a  
20 9-million item?  
21          A.       Yes.  
22          Q.       Okay.  
23          A.       I believe in my rebuttal testimony I attempt  
24 to --  
25          Q.       Come up with --

1       A.       -- put together a reconciliation of the  
2 components, yes.

3       Q.       Okay. I think that may be where I got the 9,  
4 and then I was trying to figure out how you got -- okay.

5               Let me ask you -- and this is an issue that  
6 we've been struggling with now in the last several cases.

7               Why would we not want to use actual and current  
8 versus estimates?

9       A.       There is several reasons, but I think perhaps  
10 the most compelling is that cost removal and salvage  
11 represents a cost element attributable to an existing  
12 plant.

13              For example, the cost of the Asbury plant  
14 includes a salvage -- that might be realized, plus any  
15 cost of removal or retirement cost that might be incurred.

16              If we look at only the actual amount and  
17 expense the actual amount, then the existing ratepayers,  
18 the ratepayers that are using and benefit from the Asbury  
19 plant, do not pay those costs that will be incurred.

20              Now, I certainly recognize that there is some  
21 difficulty in projecting what kind of costs those might  
22 be, but I believe we put together reasonable estimates.

23              So that the ratepayers that benefit from the  
24 plant pay all of the costs to the plant. We don't shift  
25 those costs to future generations of ratepayers.

1       Q.       How do the current customers not pay it when  
2       it's expensed?

3       A.       Well, the -- the demolition, retirement of the  
4       Asbury plant, will amount to a considerable amount of  
5       money from the standpoint of tearing down the boiler,  
6       removing the pumps, tearing down the pipes, removing the  
7       structure and putting the site back to greenfield  
8       condition.

9               Those costs are, in my opinion, every bit as  
10      related to the original cost, when the plant was  
11      originally installed, as that original cost.

12              And if we expense it, none of those costs -- if  
13      we look at only actual, none of those costs that will come  
14      about when the plant is finally retired are reflected or  
15      recovered from existing ratepayers.

16      Q.       So the expense issue is that only those things  
17      that are actually being used up, as it were, that would  
18      only be the expense that the current ratepayers would be  
19      paying for, and then somewhere down the line the  
20      additional amount that is there would be paid for in the  
21      future. Is that what you're saying?

22      A.       Yes. That's my understanding of Staff's  
23      proposal.

24      Q.       Okay. Is there a way of -- let's see.  
25      Traditionally -- and we hear a lot of this; traditionally,



1 this is the way it's been done and times have changed.

2           Traditionally, was it thought that there would  
3 be negative net salvage, or was there the assumption that  
4 it would be positive?

5       A.       Well, since I have been familiar with  
6 depreciation for the past 30 years, I've always considered  
7 it was going to be negative, that the cost of removal  
8 would exceed any salvage.

9           Perhaps back in the earlier days when equipment  
10 was smaller, then that relationship would have been  
11 reversed. But from personal experience, I've not been  
12 exposed to it.

13       Q.       Would the '70s and '80s take it back to the  
14 30 years, then, that you're talking about?

15           If traditionally it was thought to be positive  
16 in the, say, '70s, that would put it before your  
17 addressing it as positive. Is that correct?

18       A.       I predate -- predate the '80s. I've been doing  
19 this throughout most of the '70s.

20       Q.       Okay. Let me see.

21           The question -- or what we're also sometimes  
22 told is that those estimates tend to create a pool of  
23 money that can be used, then, by the Company to do  
24 whatever it wishes to with.

25           Should -- should there be an updating on those

1 estimates every so often and a refund given?

2 A. Well, I think there are several aspects to your  
3 to your question.

4 And if I might, first of all, we -- through  
5 depreciation we generate dollars, and certainly the  
6 dollars that are generated -- the cash is that is  
7 generated is used by the Company for other -- for other  
8 purposes.

9 But once it's expensed, in my view, it tends to  
10 lose its identity. The Company is using those funds, and  
11 every five years at least, based on Commission's  
12 requirements, we look at what actually happened with  
13 salvage, make some kind of determination of what we  
14 anticipate its going to be into the future, and adjust  
15 those estimates.

16 We look at the reserve deficiency or reserve  
17 surplus to take those into consideration.

18 I think the other thing that you should be  
19 aware of is that with regard to a refund, is that once  
20 it's booked into depreciation, the customers, in effect,  
21 earn a return on that, because it increases the  
22 depreciation reserve, which based on Missouri regulations,  
23 we deduct did from original plant.

24 And if I am -- have a higher rate as a result  
25 of including a salvage allowance, then that builds my

1    reserve faster, in which case my rate base goes down, and  
2    the customers are, in fact, compensated, until the Company  
3    spends that money for the retirement as a result of the  
4    treatment through the rate base.

5           Q.       Okay. Did I hear you correctly, that -- let me  
6    just give an assumption here.

7                    If you said a plant had a 35-year life span --  
8    okay -- and it goes beyond that; in other words, 45 years  
9    later they're still using it, does the depreciation stop  
10   or should it stop at that 35-year assumption, or should  
11   they continue to depreciate and add net salvage,  
12   et cetera?

13                   Doesn't that just create another pool?

14          A.       It potentially could create a problem where  
15   that -- the reserve exceeds the plant. But as we -- we go  
16   through time -- and assume that we didn't, weren't  
17   required to put any money into these -- into these plants,  
18   I start off with a 35-year life span.

19                   20th, 25th year at the latest I would be  
20   reviewing that to see if, perhaps, that should be extended  
21   based on the performance of the plant and what the  
22   outlooks of the plants are to 40 to 45 years.

23                   We would adjust the rate. We'd take into  
24   consideration what would happen on the reserve to go  
25   forward.

1       Q.       Okay.  So that looking at it every five years  
2       gives the opportunity to adjust what you said or what one  
3       said the life span originally might be, and if it's  
4       continuing, then you could adjust the depreciation  
5       downward, I guess, or make it less or -- and adjust net  
6       salvage also?

7       A.       Yes.

8               And the hypothetical we put together is less,  
9       but as a result of -- and speaking of life span property  
10       generation, as a result of historical additions, the  
11       actual dollars that are installed in the plant on  
12       relatively major capital additions, such as this  
13       \$10 million, typically find that the rates go up as  
14       opposed to down, because of the influence of those  
15       additions.

16       Q.       All right.  Now, let me ask you this:  I think  
17       you made some comment that a gas company plant might be  
18       different from an electricity company plant, I think it  
19       was in your testimony, because an electricity company  
20       plant is mostly aboveground, poles and wires and plant, as  
21       opposed to underground, much of the distribution of gas  
22       company is underground.

23       A.       Yes, I did.

24       Q.       So that one might treat one differently, the  
25       electric different than gas, potentially?

1           A.       Yes. I believe that there is very definite  
2 differences and considerations there. Because the current  
3 practice of most gas utilities is to ultimately abandon  
4 those underground facilities in place.

5           Q.       One last question.

6                    On page 2 it is, of your surrebuttal, on  
7 line 16 I think you're commenting on definitions there of  
8 what -- depreciation, et cetera.

9                    What do you mean by the phrase you use there on  
10 line 16 in quotes?

11           A.       Mr. Adam has characterized my testimony that  
12 I've attempted to modify the definition. And I believe  
13 that Mr. Adam's treatment constitutes a modification of at  
14 least the traditional treatment of depreciation.

15                   CHAIR LUMPE: Okay. Thank you. That's all I  
16 have.

17                   JUDGE RUTH: Thank you.

18                   Commissioner Murray.

19                   COMMISSIONER MURRAY: Thank you.

20 QUESTIONS BY COMMISSIONER MURRAY:

21           Q.       Good morning, Mr. Loos.

22           A.       Good morning.

23           Q.       In your rebuttal testimony on page 35,  
24 beginning at line 7, you indicate that your overriding  
25 concern with Mr. Adam's proposals is that -- well,

1 basically I'm paraphrasing -- that it's a radical  
2 departure from past precedence and leaves the Commission  
3 with little leeway to choose something in between the  
4 Staff and the Company.

5 Is that a correct characterization?

6 A. Yes, it is.

7 Q. In the past Empire has -- the depreciation for  
8 Empire has been treated under the traditional method. Is  
9 that correct?

10 A. Yes, it is.

11 Q. So that plant that has been in service for a  
12 number of years has been treated with net salvage being  
13 included in the depreciation?

14 A. That is correct, yes.

15 Q. So that ratepayers who were using the plant  
16 were also paying -- helping to pay for the retirement of  
17 that plant that was being used to serve those?

18 A. That was our intent, yes, it was.

19 Q. So if the Staff's proposal were adopted here  
20 and we changed this treatment to omit net salvage and  
21 expensed depreciation -- or expensed retirement as they  
22 occurred, then the plant that is currently being used, the  
23 ratepayers that are serviced by that plant would no longer  
24 be paying anything to retire that particular plant. Is  
25 that correct?

1       A.       Yes. The allowance that they would pay, the  
2 amount that they expensed, would relate to plant that they  
3 no longer use.

4       Q.       And that would relate to plant that has been  
5 used in the past; whereas, the plant that is currently  
6 being used will be retired at some time in the future?

7       A.       Yes.

8       Q.       And in the future when the plant that is  
9 currently being used is retired, logic would indicate that  
10 it will be more expensive to retire that plant in the  
11 future than it is today to retire plant currently. Is  
12 that correct?

13      A.       If we continue the way that we have in the  
14 past, yes.

15      Q.       So your concern, primarily, is matching the  
16 cost causer to the ratepayer that pays for the costs. Is  
17 that correct?

18      A.       Yes.

19      Q.       And you indicate that because we require  
20 utilities to submit depreciation rate studies at least  
21 every five years, that any adjustments that need to be  
22 made are recognized and those adjustments are made in a  
23 timely fashion. Is that correct?

24      A.       I'd say that more accurately provides a forum  
25 or a window where it would be addressed, much like the

1 reports that we've prepared, that would then be available  
2 to be issues in rate cases.

3 Q. And I believe your testimony referenced  
4 Mr. Adam's quoting from NARUC principles, but I think you  
5 indicated that while he quoted from them, he didn't  
6 properly apply the NARUC treatment of depreciation.

7 Is that a -- I'm actually referring to your  
8 testimony in your rebuttal, pages 15 and 16.

9 A. Could I have your question again? I see --

10 Q. Okay. Mr. Adam's references to NARUC, do you  
11 take issue with how he applies those references?

12 A. Well, at this point my concern is -- is that he  
13 focuses on these quotes and then he points out -- or makes  
14 a statement that when the property is sold, the  
15 responsibility for removal or retirement becomes the  
16 purchaser's responsibility.

17 And my point here is that in connection with  
18 valuation work, when we value, for example, a power plant  
19 for sale, one of the considerations is -- and a discount  
20 in the price that we offer is based on our anticipated  
21 cost of removing that plant when the time comes.

22 So while NARUC identifies these various  
23 elements, my concern is with respect to property sold, any  
24 amount that is included that has been recovered from the  
25 standpoint of depreciation rates is also a factor that is



1 considered by the purchaser and, to some degree, the  
2 seller in connection with the purchase price that is  
3 offered.

4 Q. Okay. So it's not something that has been  
5 collected and is never used?

6 A. Right.

7 And, again, if you sell a piece of property,  
8 then ultimately the Commission makes a determination as to  
9 whether -- on various factors with respect to the sale.

10 So the Commission does have an opportunity to  
11 review at that time the various factors surrounding a  
12 particular transaction, which could include consideration  
13 of historical allowances for cost of removal.

14 COMMISSIONER MURRAY: Thank you. I believe  
15 that's all I have.

16 JUDGE RUTH: Commissioner Simmons.

17 COMMISSIONER SIMMONS: Thank you, Judge.

18 QUESTIONS BY COMMISSIONER SIMMONS:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Could you give me the pronunciation of your  
22 last name?

23 A. Loos.

24 Q. Mr. Loos. Thank you.

25 Mr. Loos, I have some questions, and some of

1 the questions about depreciation will stem from some of  
2 the questions you received from the commissioners earlier,  
3 particularly Chair Lumpe and also Commissioner Murray, and  
4 I'll just kind of start with that.

5 To piggyback off of what Commissioner Murray  
6 was just saying, when you look at the NARUC definition of  
7 depreciation, in your testimony you talk about the FERC  
8 Uniform System of Accounts as a definition of a  
9 depreciation.

10 Are there two different definitions of  
11 depreciation, and if so, how different are they?

12 A. To my knowledge there are not -- I've looked at  
13 both the Uniform System of Accounts and the NARUC chart of  
14 accounts, and I really haven't identified -- or I don't  
15 recall any differences.

16 Q. Okay.

17 A. If they're not different, they're very similar  
18 at least. And I believe the definition that NARUC has got  
19 is, if not identical, is very close to the same as the  
20 Uniform System of Accounts.

21 Q. Very close.

22 When the statement is made that in depreciation  
23 accounting, as far as NARUC is concerned, that the goal is  
24 recognizing costs, not providing funds for replacement of  
25 the asset, how do you characterize that statement?

1                   Is that off centered, is that right on or is  
2   that --

3           A.       Um, I believe -- I believe that that statement  
4   can be at least gotten from page 15. And that's from a  
5   publication other than the chart of accounts that I  
6   referred to in the prior question.

7                   Perhaps I was off in my response to the prior  
8   question.

9                   But from my view they're on target. We're not  
10   looking for depreciation in order to specifically generate  
11   cash. We are looking for depreciation as an allocation of  
12   an investment over its life among different generations of  
13   ratepayers.

14          Q.       Okay. Now I'm going to go into another line of  
15   questioning, and I'd like to get your comments on these  
16   questions.

17                   In your opinion what should be done with the  
18   cost of removal funds that are collected in excess of the  
19   actual removal?

20          A.       Those funds will be -- if we were able to  
21   identify the dollars, those funds would be returned to  
22   customers in the future as a result of future studies,  
23   where we relook the collections depreciation and adjust  
24   the reserve to accommodate what has been collected.

25          Q.       I guess I'm -- from our perspective and from

1 the perspective of the customers, can we be certain that  
2 when you have pre-collection of costs of removal, that it  
3 will offer any type of assurance that the Company will  
4 have those funds available to proceed with removal if the  
5 plant is retired?

6 A. Other than the continued obligation of the  
7 Company to meet its obligations, no.

8 Q. And probably lastly, how will there be any  
9 certainty that a Company that pre-collects cost of removal  
10 will be there if there is a new owner -- yeah, if there is  
11 a new owner?

12 A. Well, perhaps I can interject two points here.

13 First of all, if a property is sold before its  
14 useful life is extended, generally, the liability for  
15 removal is extended to the new owner.

16 I think that the example that perhaps you're  
17 most familiar with is these foreign manufactured gas  
18 sites, where there has been extensive costs required in  
19 the cleanup.

20 In that particular instance, rightly or  
21 wrongly, EPA, or whatever organization it is, has come  
22 back to the existing gas utility and required that to be  
23 cleaned up, even though title to that property passed from  
24 a gas utility some time ago.

25 And there would be a potential there with

1    respect to, perhaps, some of the material that's stored or  
2    placed in the ashbeds and the other -- the facilities at  
3    coal-fired plants.

4                   COMMISSIONER SIMMONS:  Thank you, sir.

5                   That's all of the questions I have at this  
6    moment.

7                   JUDGE RUTH:  Commissioner Gaw.

8                   COMMISSIONER GAW:  Thank you.

9    QUESTIONS BY COMMISSIONER GAW:

10       Q.       Mr. Loos, I wanted to first of all ask about  
11    the issues concerning retirement dates that are referred  
12    to in your testimony.

13                There seems to -- I'm a little confused about  
14    your testimony earlier on cross, about the way you arrived  
15    at the dates that you have arrived at in your direct and  
16    in your rebuttal.

17                You used a phrase regarding the Riverton plant,  
18    that that was based upon actual information from the  
19    Company for purposes of depreciation, if I understood you  
20    correctly.

21                My question, first of all, is when you use that  
22    phrase for purposes of depreciation, was that a qualified  
23    answer in regard to your information from the Company?

24       A.       Yes and no.

25                When we went with the 2008 date several years

1 ago, there was some kind of plan that indicated that that  
2 was the appropriate date.

3 In my discussions in firming that, while the  
4 Company has not specifically said on June 1st, 2008 we're  
5 going to take the plant out of service based on current  
6 anticipated environmental legislation, anticipated what  
7 may happen in the plant, our best estimate at the present  
8 time is that most likely that will be taken out of service  
9 on perhaps the 2006 to 2010 time frame.

10 And it may be that single units will be taken  
11 out of service and not all three units at the same time.

12 It's -- it's not -- it's not an exact science.

13 As I indicated in my -- I believe it's  
14 surrebuttal testimony, the Riverton units are a major  
15 outage away from retirement.

16 Now, if there is something that significant  
17 happens there, most likely it would not be economical to  
18 replace that component, and, hence, the plant would be  
19 retired, that unit would be retired.

20 Q. So in regard to the units -- I guess that would  
21 be 7 and 8 and 9 at the Riverton plant, your information  
22 from the Company is that they intend to retire all three  
23 in the range of between 2006 to 2010?

24 A. They anticipate that they will have to retire.  
25 It falls a little bit short of intending, but they

1 anticipate that they will require --

2 Q. Is that based upon current law or anticipated  
3 legislation?

4 A. A little bit of both.

5 Q. All right.

6 So at the present time those are estimates  
7 based upon their anticipation of passage of additional  
8 legislation regarding clean air, in addition to the  
9 current status of the plant and the current status of the  
10 law.

11 Anything else?

12 A. Well, it would be -- it would be more  
13 regulations than law. It depends on how the existing  
14 regulations are implemented.

15 Q. If the regulations stayed the same as they --  
16 as they are today, does that change the estimates in  
17 regard to the retirement of those three units?

18 A. The -- a lot of it depends on what happens to  
19 the new source requirements.

20 If the conclusion is a result of actions with  
21 EPA on new source, come to play based on EPA's position,  
22 then there is no way that they could economically justify  
23 the new source requirements on those plants.

24 Under existing regulations I understand that  
25 there are potential NOX limitations that would have to be

1 addressed, putting SCRs, selective catalytic reduction,  
2 devices on that, costs probably in order of \$20 million.

3 It would be very difficult to justify in light  
4 of the age and condition of the other components of the  
5 plant.

6 It's a very dynamic situation with respect to  
7 regulations on the one hand, court rulings, perhaps, and  
8 the condition and what you may have to do with the  
9 equipment over the next eight years.

10 Q. If we base this upon current law and current  
11 condition of those units, is that 2000 -- would your 2008  
12 projected retirement date remain the same?

13 A. Yes.

14 Q. Exclusive of anything that might change on  
15 regulation?

16 A. Yes. And it may -- I doubt the regulations is  
17 going to relax, but as I said, one major outage away from  
18 retirement.

19 Q. And two of those units are coal fueled?

20 A. I believe all -- I believe all three of them  
21 are. One is -- serves in kind of a co-generation  
22 arrangement with one of the turbines.

23 Q. All right. The information I have in front of  
24 me on Schedule LWL-1, 4 through -- 4-4 shows nine as being  
25 gas oil. Is that incorrect?



1           A.       No. That is correct. I'm sorry. It is  
2 correct. It is a CT and it's dual fuel.

3           Q.       Okay. In regard to the other units that are --  
4 that are in front of us, those estimates of retirement are  
5 based upon your models rather than information from the  
6 Company.

7                   Did I understand that correctly?

8           A.       It's based on my experience with respect to  
9 reasonable life span and the additions that are required  
10 to maintain plants and to keep them in service.

11                   As I indicated, 45 years for Asbury. We will  
12 relook that, especially in light of the \$10 million that  
13 is going in out there on the next -- in the next case.

14                   And perhaps --

15          Q.       I'm sorry.

16          A.       Perhaps, then, we'll extend it to 50 years.

17          Q.       All right. But the information in regard in  
18 your estimates on the remainder of the plants are not  
19 based upon information from the Company that they intend  
20 to retire them on those dates. Would that be correct?

21          A.       Yes, it is.

22          Q.       Turning to the net salvage issue, it's my  
23 understanding that the question of net salvage as it  
24 applies to units being retired may vary from entity to  
25 entity, from type of utility to type of utility.

1                   When we're talking about electric, the plants,  
2   in your experience, upon retirement, generally what  
3   becomes of them as far as the Company is concerned?

4           A.       Let me -- let me answer your question; then I  
5   want to back up just a minute.

6                   Typically with respect to generating units,  
7   upon retirement they stay in place -- the equipment stays  
8   in place for some time.  It's been retired on the books,  
9   but it still stays in place, recognize that some time it's  
10  going to be torn down.

11                  For example, at the Riverton plant I understand  
12  that Unit 6 is still in place in there.  It's not  
13  operational, but it has been retired.  But it -- it's too  
14  expensive to go in and try to extract Unit 6 out of the  
15  balance of the plant.

16                  It's better to leave it there, so that when  
17  the other units are retired, then it can be taken down  
18  en masse.

19                  With respect -- the other aspect is -- in your  
20  question you identified plants, and then you compared it  
21  with gas, for example, utilities.

22                  The type of gas plant, the type of gas  
23  facilities that I'm referring to with respect to the  
24  difference between gas and electric is equivalent to the  
25  poles and conductor of electric, not to power plants.

1 Q. All right. That's helpful.

2 Let's stick with the power plant for now.

3 Does that vary according to the type of plant  
4 that we're discussing as to what becomes of them, whether  
5 or not they are torn down or sold without -- without being  
6 torn down and salvage said?

7 A. When we speak of retiring, we speak of a plant  
8 that is not sellable for operation. It can be sold for  
9 salvage.

10 An operating plant, of course, could be sold.  
11 And it does vary depending on what the type is. And  
12 certainly the salvage is a function of the type of  
13 equipment, and its size.

14 So it's -- and we've attempted to recognize  
15 that in our salvage allowances between different types of  
16 technologies and to some degree to the specific plants.

17 Q. Be more specific for me. Tell me what normally  
18 becomes of a coal plant as opposed to a different type of  
19 fuel plant, if there is a difference, as far as the normal  
20 procedure is concerned on what would become of that asset?

21 A. Typically, at least in the long run, it's going  
22 to be torn down and it's going to be converted into a  
23 greenfield site, or it's going to be sold for the purpose  
24 of building another power plant.

25 It may be sold, still dirty -- I say dirty from

1 the standpoint that perhaps some of the equipment is still  
2 there, but it may very well be that the owner would have  
3 to pay somebody to take it off of his hands. The new  
4 owner would then clean it up and use it for something  
5 else.

6 Q. Now, when we're talking about what we're  
7 selling here, what are we talking about selling?

8 Are we talking about selling the equipment  
9 itself? Are we talking about selling the real estate with  
10 the equipment on the real estate? Can you explain that to  
11 me, please?

12 A. It can be done different ways. Generally  
13 speaking, what I'm speaking of is disposal of all of the  
14 assets, which would include the land and the equipment.

15 Q. All right. So would you say that that would be  
16 more typical than not in regard to the dispensing of a  
17 power plant after retirement?

18 A. I can't -- I can't really conclude one way or  
19 the other what would be the most typical.

20 Q. But it is -- but that is a typical way?

21 A. Right.

22 Q. So let's assume that one of these -- one of  
23 these plants -- I assume we could talk about Riverton,  
24 were retired, all of the units retired, and the real  
25 estate sold to some third party.

1           A.       Yes.

2           Q.       Upon that sale what kind of -- how would you  
3   adjust the calculation to take into account what had been  
4   done on the books on net salvage to what had actually  
5   occurred upon that sale?

6           A.       Well, the recording of the sale, based on my  
7   understanding of regulatory accounting, is if we sell an  
8   asset, we reduce the plant and service by its original  
9   cost.

10                   We reverse the depreciation that is accrued to  
11   it, and the difference between that net value and what is  
12   actually the purchase price is then included in a separate  
13   account. I'm at a blank as to what -- what that account  
14   is.

15                   At which my understanding is that if Empire  
16   sells an asset, that that sale then comes to the  
17   Commission for the determination of precisely what the  
18   gain on that sale might -- might be, whether it's shared  
19   with ratepayers or whether it stays with the stockholders.

20           Q.       All right. So if we started out with -- at  
21   some point in time the Company acquired this real  
22   estate --

23           A.       Right.

24           Q.       -- without any improvements on it, I would  
25   assume, that relate to power plant?

1       A.       I'll accept that -- that as an assumption.

2       Q.       Take that as an assumption in this scenario --

3       A.       Asbury certainly.

4       Q.       All right. Then they added power plant

5 facilities and incurred a cost for doing so?

6       A.       Yes, as well as extensive earth work.

7       Q.       So with that -- with a value and actual expense

8 for incurring the dirt work and building the plant, the

9 facilities, and that was added to the books -- and that is

10 the first amount we're talking about is starting out with

11 an appreciation -- excuse me -- with a value to

12 depreciate.

13       A.       Yes.

14       Q.       Would that be acknowledge?

15               And then we're adding to that based upon the

16 company's position, and to some extent past treatment, a

17 net salvage value, which we are in all of these cases

18 assuming will be negative because the cost of removal will

19 be assuming -- will assume to exceed the value of the

20 salvaged assets?

21       A.       We did -- we assumed a positive salvage on

22 State Line to be conservative. But with the -- with that

23 exception they're all negative.

24       Q.       Thank you for clarifying that. That's helpful,

25 actually.

1                   So with a negative salvage value we are  
2   developing a model that anticipates the Company actually  
3   removing that facility and the cost of the actual removal,  
4   and that becoming a negative number because of the fact  
5   that the value of those items salvaged if you just took  
6   them out and sold them would be less than what it cost to  
7   take them out?

8           A.       Yes.

9           Q.       But, in fact, in some cases those things are  
10   never removed from the Company. Is that correct?

11          A.       I don't believe -- I don't believe that's the  
12   case with respect to the aboveground equipment.

13          Q.       But I thought we just talked about the fact  
14   that in some cases that real estate with those assets are  
15   sold without the Company ever removing them?

16          A.       Oh, yes.

17          Q.       And I know that can also be the case, that  
18   those assets may never be removed, but that's not what I'm  
19   asking you.

20                   Never removed by the Company?

21          A.       Right.

22          Q.       Now, the depreciation net was done, was done  
23   based upon the value of the physical plant that was added  
24   to the real estate. Correct?

25          A.       Yes.

1 Q. That's an actual amount that was expended  
2 upfront; maybe it was through money borrowed but it was  
3 expended upfront?

4 A. Yes.

5 Q. And so when we're depreciating it out, that's  
6 money that was expended on behalf of the ratepayers to put  
7 that plant in service. Correct?

8 A. Yes.

9 Q. All right. When we get to the issue, then, of  
10 the real estate that this physical plant sits on, the real  
11 estate is never depreciated because the real estate by  
12 definition is not property that you're adding -- that you  
13 added value to, I assume, by purchasing the equipment and  
14 things to do that. The real estate does not get  
15 depreciated --

16 A. The improvements --

17 Q. -- on your books?

18 A. The improvements to the real estate wouldn't.

19 Q. But not the real estate itself?

20 A. For example, the earth work.

21 Q. Yes. That could be depreciated?

22 A. Right.

23 Q. It's not expensed; it's depreciated generally?

24 A. I believe it's always depreciated. I can't  
25 remember an example where it's not.



1           Q.       I'm just for my own purposes trying to make  
2   sure I'm following you.

3                   Now, the real estate itself, many cases --  
4   would you say over the last 30 years real estate has gone  
5   down or up in value?

6           A.       The farm real estate, for example, what is  
7   Asbury, it's very difficult to say in a 30-year horizon.  
8   It goes up; it goes down.

9                   Generally I think that the conventional thought  
10   was it's gone up.

11          Q.       I would think generally the conventional  
12   thought would be that too.

13                   Does that appreciation show up in the rate base  
14   calculation in the -- in this information that's in front  
15   of us?

16          A.       No, it does not.

17          Q.       So the ratepayer who may be dealing with the  
18   total value of assets that may later be sold never gets  
19   the benefit of any appreciation on the actual real estate  
20   appreciation. Is that correct?

21          A.       That's correct. Until -- until -- if there is  
22   a gain on the transaction or a loss on a transaction.  
23   That should come to the Commission.

24          Q.       And if the end result is that that asset with  
25   this depreciated plant, and, additionally, depreciated net

1 negative salvage is sold with the appreciated real estate,  
2 then that ratepayer never got the benefit of that  
3 appreciation even though -- and based upon this  
4 intergenerational problem that you cited before, they're  
5 caught without any -- without ever having gotten the  
6 benefit of the good that came along with the bad of having  
7 to pay for that removal of the asset that never was  
8 removed by the Company. Is that correct?

9 A. Under your example that's true, yes.

10 Q. So is it really possible to say that we know  
11 today or can even estimate today the cost that the Company  
12 will incur for removing an asset if, in reality, many  
13 times these -- these items, these pieces of real estate,  
14 with the physical plant there are sold to a third party  
15 even though the ratepayers have paid for their removal?

16 A. The -- it is an estimate -- cost removal is an  
17 estimate, and the balance of what has not been depreciated  
18 or what has been depreciated comes across in gain on the  
19 sale.

20 Q. And that gain on sale is really treated more  
21 like the opposite of a deposit of an expense, isn't it?

22 A. It's -- I -- I believe it's -- I believe it's  
23 treated as a revenue.

24 Q. At the time it's received?

25 A. Right.

1 COMMISSIONER GAW: Thank you.

2 JUDGE RUTH: Okay.

3 CHAIR LUMPE: I have two quick questions,  
4 Mr. Loos.

5 FURTHER QUESTIONS BY CHAIR LUMPE:

6 Q. One -- and they're both follow-ups.

7 One, you talked about a unit in a plant that is  
8 not being used, so it's left there until the full plant  
9 might be salvaged or whatever.

10 If it's left there and if it's already been  
11 depreciated, we would not be continuing to collect  
12 depreciation on that particular unit, would we?

13 A. No, you would not. It has been retired. It's  
14 been removed from the books. It just has not physically  
15 been removed.

16 Q. Okay. The other one is on your -- in your  
17 rebuttal, on page 35, where you talked about the  
18 traditional versus what you'd call radical departure from  
19 past precedence.

20 And I think Commissioner Murray talked about  
21 that, not giving leeway to choose something in between.

22 Could I ask you, what -- is your final  
23 paragraph what you would be suggesting as the in between,  
24 or do you -- could you tell me what part of Staff's we  
25 should -- could, should, take, what part of Company's we

1     could, should take?

2           A.       That's my dilemma. That's a dilemma that I'm  
3     trying to present to the Commission on line 7.

4                    Mr. Adam's proposal is all or nothing. We  
5     either expense it or we continue to accrue it in  
6     depreciation.

7                    Typically, the issue is -- or has been that we  
8     include an allowance in the depreciation rate. The issue  
9     is, Mr. Adam may be proposing a plus 10 percent net  
10    salvage. I may be proposing a minus 10 percent.

11                   So, you know, there is a difference there that  
12    the Commission can say, well, you know, Loos is right  
13    here, Adam's is right here. We'll say that it's  
14    5 percent, positive 5 percent.

15                   There's really -- there is some room. But when  
16    we go to the expensing it, it's an all or nothing type of  
17    transaction.

18           Q.       So the in-between choice is really whether the  
19    depreciation is -- I mean, whether the net salvage or  
20    depreciation -- which is it -- is this amount or that  
21    amount?

22           A.       Right.

23                   And the Commission, it would seem to me, could  
24    make a decision at whatever level you could -- it would  
25    seem to me that the Commission could make a finding with

1 regard to the total rate, depreciation rate, or the  
2 salvage allowance to include.

3 Q. Okay. And your final paragraph, are those some  
4 of the other items that you're suggesting as a, quote, in-  
5 between solution?

6 A. No. The last paragraph -- the last question  
7 and answer on page 35 goes toward that -- with the five-  
8 year rule, the Commission's practice, you can review these  
9 issues and bring them -- bring factors that are considered  
10 up to date as things do change.

11 Q. So in your suggestion of finding something in  
12 between, you did not expand on that other than what you've  
13 just told me now?

14 A. I was unable to come -- to present something in  
15 between with respect to the salvage.

16 Q. Do you think you might be able to come up with  
17 something?

18 A. I could -- you know, the in-between would be  
19 to, for example, you know, reduce the negative salvage  
20 levels that I have would be an in-between-type  
21 transaction.

22 On the other hand, I have already reduced the  
23 negative net salvage levels. I have a hard time  
24 visualizing that.

25 The component and depreciation rates for

1 salvage, net salvage, has been reduced under my proposal  
2 relative to the existing depreciation rates.

3 Q. Okay.

4 But you're suggesting that we might find  
5 something in between -- how do I find it between your  
6 proposal and his proposal?

7 A. That's my dilemma, because he's proposing what  
8 I call a radical departure. You can't select anything  
9 between, because --

10 Q. But that I could select something lesser than  
11 what you've suggested in terms of net salvage?

12 A. Yes.

13 CHAIR LUMPE: Thank you.

14 JUDGE RUTH: Commissioner Simmons.

15 COMMISSIONER SIMMONS: Judge Ruth, just real  
16 quick.

17 FURTHER QUESTIONS BY COMMISSIONER SIMMONS:

18 Q. Mr. Loos, I stated a question earlier, and I  
19 didn't state the whole question. I'm just going to  
20 restate this question again for your response.

21 Again, how will there be a certainty that a  
22 Company that pre-collects the cost of removal will either  
23 be the owner of and responsible for the removal of the  
24 plant when it's retired?

25 A. There is no absolute guarantee.

1 Q. There is no guarantee?

2 A. Right.

3 COMMISSIONER SIMMONS: Thank you. That's the  
4 question I had.

5 Thank you.

6 JUDGE RUTH: Commissioner Gaw.

7 COMMISSIONER GAW: Thank you.

8 FURTHER QUESTIONS BY COMMISSIONER GAW:

9 Q. Regarding the issue of -- for instance, in  
10 Riverton, when you have multiple units, if there is no  
11 removal of a unit until all of the units are retired, does  
12 that change how you reflect on your books the depreciation  
13 scheduled for the net negative salvage, or is it -- does  
14 it anticipate removal on the books at the time that it's  
15 actually retired, rather than when it actually occurs?

16 A. Any -- any allowance for negative salvage -- or  
17 positive salvage, for that matter -- remains on the books  
18 until it's expended.

19 When -- when I retire -- when the Company  
20 retired Unit 6 at Riverton --

21 Q. Yes.

22 A. -- it credited original cost -- or original  
23 cost -- by its original cost, and they debit it, they  
24 reduced depreciation reserve by the same amount.

25 So that to the extent there was negative

1 salvage that had been collected, that remains in the  
2 reserve account.

3           And under the traditional Uniform System of  
4 Accounts, when money is expended to remove that, then  
5 that's charged against the reserve, and that pot of money,  
6 then, or book money, is reduced to the extent that it's  
7 expended.

8       Q.       For instance, on Unit 7, if it is retired in  
9 2008, would the books reflect all of the depreciation for  
10 Unit 7 having been completed by 2008, including negative  
11 net salvage?

12       A.       It would -- it would include everything that  
13 has been collected, whether -- if it's retired in 2008 --

14       Q.       It's actually retired in 2008.

15       A.       -- and we assume for depreciation purposes it's  
16 going to be retired in 2012, then the reserve will be  
17 short by some amount in covering the original cost.

18       Q.       Now you're complicating things for me.

19               If it's actually retired in 2008 and your  
20 projected retirement date is 2008, will there be anything  
21 in 2009 to further depreciate, assuming no additional  
22 expenses incur between now and then?

23       A.       It will not be depreciated after it's retired.

24       Q.       Including negative net salvage. It will all  
25 have gone -- you will have depreciated fully --



1           A.       Yes.

2           Q.       -- at that point?

3                    That's what I'm asking you.

4                    Even though it may not be actually -- even  
5 though the removal, first of all, may never occur, second  
6 of all, if it is -- if it does occur, it will not occur  
7 until all of the units are retired?

8           A.       Not always, but at the present time, my  
9 information is that it doesn't make economic sense to  
10 remove 6 and try to keep the others standing.

11          Q.       I understand.

12                   But the expense for removal would not occur  
13 until -- if we use these dates, until 2017, even though  
14 you've got all of the same written back off of the books  
15 in 2008?

16          A.       The expenditure would not include that. They  
17 could very well take the plant down in 2008 because the  
18 CTs are outside.

19          Q.       They could, but you don't believe they're  
20 anticipating doing that?

21          A.       Well, I would presume -- I assume that some  
22 time after they retire those last coal units, that they'll  
23 bring the plant down.

24          Q.       Oh. I'm following you now. Okay. On the coal  
25 itself?

1           A.       Yeah.

2           Q.       But the principles remain the same?

3           A.       Uh-huh.

4                    COMMISSIONER GAW:  Thank you.

5                    JUDGE RUTH:  Okay.  It is almost 20 after 12.

6   We will break for one hour and come back at 1:20 and

7   continue where we left off.

8                    Thank you.

9                    (THE LUNCH RECESS WAS TAKEN.)

10                  JUDGE RUTH:  We are back on the record.  It's

11   almost 1:30.

12                  Before our break we had questions from the

13   bench, and I believe that is all of our questions from the

14   bench at this point.

15                  Then we will move on to recross based on those

16   questions from the bench.

17                  Praxair was scheduled to ask questions first.

18   They are not in the room.  We will move on.

19                  And, Public Counsel, do you have recross?

20                  MR. COFFMAN:  No recross.

21                  JUDGE RUTH:  Staff.

22                  MR. WILLIAMS:  Yes, Judge.

23                  JUDGE RUTH:  Okay.  Thank you.

24   RE CROSS-EXAMINATION BY MR. WILLIAMS:

25           Q.       Mr. Loos, you used the term "greenfielding."

1 Would you define that term, please?

2 A. Greenfield is taking a site where construction  
3 has been built on, a building on it, some kind of  
4 facility, and returning it to a condition that would be  
5 essentially as it was before construction took place. For  
6 example, back to farmland.

7 Q. Might that include some environmental cleanup?

8 A. Yes.

9 MR. WILLIAMS: No further questions.

10 JUDGE RUTH: It's a bit unorthodox, but I'm  
11 going to move on to redirect. And when Mr. Conrad gets  
12 back in, we may have recross and then redirect again.

13 Mr. Cooper, do you want to go ahead?

14 MR. COOPER: Yes, Your Honor.

15 REDIRECT EXAMINATION BY MR. COOPER:

16 Q. Mr. Loos, during the course of questions I  
17 believe from Mr. Williams, as well as to some questions  
18 from the bench, you referred to -- well, you were asked  
19 about the use of your judgment in establishing retirement  
20 dates. Do you remember those questions?

21 A. Yes.

22 Q. In answer to that you referred to your  
23 experience. What experience were you referring to?

24 A. The 30 years that I've been engaged in  
25 engineering economics in the energy industry.

1 All of the way back into the early '70s we were  
2 looking at life characteristics of plants, and the various  
3 elements that go into assuring that the plants will last  
4 for a period of time.

5 More recently, about 18 months ago I did an  
6 extensive analysis of the factors that go into coal-fired/  
7 steam generation life and the nature of expenditures that  
8 are required to attain lives that we assume.

9 Q. Now, I think, also, connected to some of the  
10 questions about retirement dates, and specifically  
11 Empire's potential plans for retirement of different units  
12 and their potential plans for replacing capacity, I think  
13 you were asked whether -- about your knowledge of such  
14 plans to replace capacity.

15 Let me back up.

16 In your experience what kind of lead time does  
17 a company like Empire need in order to work towards the  
18 replacement of capacity?

19 A. The lead time, the planning horizon for  
20 electric generation has shrunk by orders of magnitude over  
21 the past 10 to 15 years.

22 With the availability of merchant power, with  
23 the relatively short lead times and construction periods  
24 for combined cycle, perhaps you need to start thinking  
25 about it maybe four years in advance, but you really don't

1 have to make a decision until, you know, perhaps  
2 24 months, maybe even shorter, before the power is needed.

3 Q. In some questions about the estimates of costs  
4 of removal, I believe you answered that you recognized  
5 there are some difficulty in projecting such amounts.

6 Do you remember that?

7 A. Yes.

8 Q. Are there checks and balances to offset this  
9 difficulty?

10 A. Yes, there are. The -- what has been termed  
11 the traditional approach, first of all, compensates  
12 customers for the money that they have paid in as a result  
13 of the reduction in rate base.

14 And, ultimately, then, the depreciation reserve  
15 is trued-up through subsequent studies and reserve  
16 deficiencies and surplus adjustments in order that the  
17 customers initially pay only what costs were incurred.

18 Q. Well, along the same lines: Once you set an  
19 amount for, let's say, net salvage, will that amount stay  
20 the same forever or is that amount reexamined  
21 periodically?

22 A. Each time we do a study we reexamine it. I  
23 believe each time it's brought before the Commission the  
24 Commission reexamines it.

25 In this particular case, on our examination, we

1 reduced fairly substantially some of the net salvage  
2 allowances that had been employed in the existing rates.

3 Q. And when you say this would be examined, what  
4 sorts of things would be looked at?

5 A. We look at the historical pattern of  
6 retirements, cost of removal, salvage. We also examine  
7 what forecast conditions may be into the future.

8 Perhaps the best example is gas property, where  
9 five years ago we always thought it was going to be  
10 removed but now we're finding that that's not the case,  
11 and so we have adjusted our allowances accordingly.

12 Q. Now, you were asked some questions as to -- I  
13 guess the hypothetical was, if regulations -- I believe  
14 it's environmental regulations -- stayed the same, would  
15 you change your estimate for Riverton.

16 As a part of that answer I believe you said no,  
17 and then you expressed that even without those regulations  
18 Riverton was still an outage away.

19 Can you expand upon that? What do you mean by  
20 still an outage away?

21 A. Well, the plant has been in operation -- Unit 7  
22 has been in operation since 1950. It's already over  
23 50 years old. By 2008 it will be about 58 years old.

24 It's getting old. The equipment has been  
25 subject to the high pressures and relatively high

1 temperatures over that period, and thermal stresses,  
2 fatigue, corrosion, erosion, all of the various factors  
3 that go into the need to replace components that have been  
4 working away. And as a result, there is just not that  
5 much life left in them.

6 Q. Now, also, along, I guess, on the subject of  
7 Riverton, you were asked about the status of Unit 6 at  
8 Riverton.

9 Do you have any knowledge about the status of  
10 some of the prior units, Units 1, 2, 3 and 4, what has  
11 become of those units?

12 A. Based on the tour that I made of the plant, I  
13 recall that all of that equipment had been removed prior  
14 to my tour, which with have been in 1992, I believe.

15 Q. Okay. You were asked some questions about the  
16 impact of land values on a generation plant and the costs  
17 of that generation plant.

18 Generally, for a plant such as the State Line  
19 unit that's of primary interest in this rate case, what  
20 would generally be the total plant cost of such a plant?

21 A. Well, the total cost plant of State Line,  
22 Units 1 and 2, is on the order of perhaps 300 million  
23 dollars, \$275 to 300 million.

24 The site itself is 77 acres. At \$1,000 an acre  
25 it would be \$77,000, relative to a total plant cost of

1 300 or so million.

2 So it's not very significant at all. It's a  
3 very small portion.

4 Q. Now, you were asked some questions about your  
5 assumptions of negative salvage and the possibility that  
6 perhaps in some cases salvage may indeed be positive.

7 Do you remember those questions?

8 A. Yes.

9 Q. Let's say that does come about. If salvage  
10 does not turn out to be negative on any individual piece  
11 of property here, do you view that to be a problem with  
12 the Whole Life method itself or a potential issue with the  
13 specific net salvage that would have been used?

14 A. No. To me it's a problem with the allowances  
15 that are used, not with the approach.

16 Q. And have you ever had the opportunity to  
17 change -- let's move beyond net salvage, but, for example,  
18 in this case, have you had the opportunity to change lives  
19 based upon information that you have gathered along the  
20 way?

21 A. Yes. We've -- we've changed lives. We've  
22 changed salvage allowances in the study relative to other  
23 studies, not significantly, but we have -- we have made  
24 those changes with respect to the lives, based on further  
25 study, more current information.



1       Q.       And you may have hit on this a little bit  
2 earlier, but I want to come back to it.

3               We talked about the situation where a piece of  
4 property is retired and it is not removed for some period  
5 of time, so the actual cost of removal is not incurred for  
6 some period of time.

7               What happens to the cost of removal during that  
8 interim period between the retirement of the property and  
9 when the money is actually expended for the removal?

10       A.       It goes toward reducing the rate base. And so  
11 the customers are compensated for the use -- or the use of  
12 those funds by the utility.

13       Q.       And that's because this remains in the  
14 depreciation reserve during the interim time period?

15       A.       Yes, until either it's spent or future studies  
16 have concluded it's no longer necessary to maintain it.

17               MR. COOPER: That's all of the questions I have  
18 at this time, Your Honor.

19               JUDGE RUTH: Thank you, Mr. Cooper.

20               I will note for the record that Praxair's  
21 counsel, Mr. Conrad, is back in the room, and I will even  
22 allow you the opportunity to make a few brief recross  
23 questions if you wish.

24               MR. CONRAD: Judge, I very much appreciate the  
25 courtesy, and I apologize for being late coming back from

1 lunch, with trying to get copies made and everything else.

2 We will not need to ask the witness any  
3 questions. Thank you.

4 JUDGE RUTH: Thank you.

5 We will move on, then, to the next witness. I  
6 believe it would be Staff's witness, Mr. Adam, because  
7 Mr. Lyons is going to be taken out of order on Friday.

8 Is that correct?

9 MR. DUFFY: Partially, Your Honor. That brings  
10 up an issue.

11 I think that it was mentioned previously that  
12 we've been informed that the other parties do not have any  
13 cross-examination questions for Mr. Lyons.

14 Mr. Lyons is currently traveling. We would  
15 appreciate it if the Commissioners could consider whether  
16 they have any cross-examination or any questions for  
17 Mr. Lyons, and, if possible, inform us by sometime  
18 tomorrow, for if that's the case, we would be able to  
19 avoid Mr. Lyons' travel.

20 JUDGE RUTH: Okay. We will discuss that on a  
21 break and let you know.

22 Staff, would you like to call your witness.

23 MR. WILLIAMS: Yes.

24 Staff calls Paul Adam.

25 JUDGE RUTH: And I would like to point out --

1 let's go off the record for a moment.

2 (OFF THE RECORD.)

3 JUDGE RUTH: We'll go back on the record.

4 Would you raise your right hand, please.

5 (Witness sworn/affirmed.)

6 JUDGE RUTH: Thank you.

7 PAUL ADAM testified as follows:

8 DIRECT EXAMINATION BY MR. WILLIAMS:

9 Q. Please state your name.

10 A. Paul Adam.

11 Q. And who are you employed by?

12 A. Missouri Public Service Commission.

13 Q. In capacity are you employed?

14 A. Depreciation engineer.

15 Q. And what's your address, work address?

16 A. Post Office Box 360, Jefferson City, Missouri,

17 65102.

18 Q. And have you prepared some exhibits that have

19 been marked as exhibits numbered 33, 34 and 35, the first

20 being your direct testimony, the second being rebuttal

21 testimony and the third being surrebuttal?

22 A. Yes.

23 Q. Do you have any revisions to make to your

24 direct testimony, Exhibit 33?

25 A. Yes.

1 Q. What corrections are those?

2 A. On page 3, line 9, the amount 1.5 appears

3 twice. That's an error. It should be 2.5. It's the same

4 number.

5 And line 22, that same number comes up again.

6 The 1.5 should be 2.5. And then that paragraph adds up,

7 2.5, 1.5 and 5 are 9 million, which are mentioned on

8 page 4.

9 Q. You said there are two locations on line 9.

10 Are there also two locations on line 22?

11 A. Just one location on line 22.

12 Q. And that's the first one?

13 A. The first one, yes. Thank you.

14 Q. Do you have any additional revisions?

15 JUDGE RUTH: I'm sorry. I want to make I

16 followed that.

17 On line 9, then, both the numbers 1.5 should be

18 changed to 2.5?

19 THE WITNESS: Correct.

20 JUDGE RUTH: And then the only other change is

21 on line 22?

22 THE WITNESS: The first 1.5.

23 JUDGE RUTH: Okay. Thank you.

24 BY MR. WILLIAMS:

25 Q. Do you have any other revisions to that

1 exhibit?

2 A. Yes.

3 On page 24, line 9, the number 24 million  
4 should be changed. The correct number is 26,474, 878.

5 And line 11, that 19 million needs to be  
6 changed. The correct number is 19,638,073.

7 Those numbers will then tie to the table that  
8 is on page 26.

9 Q. Are those all of the revisions you have to  
10 Exhibit 33, your direct testimony?

11 A. Yes.

12 Q. If I were to ask you all of the questions that  
13 are set forth in that exhibit, would your answers be the  
14 same here today as you submitted them?

15 A. Yes.

16 MR. WILLIAMS: I offer Exhibit No. 33.

17 JUDGE RUTH: Okay. Do the parties have any  
18 objections to Exhibit 33 being admitted?

19 Seeing no objection, it will be admitted into  
20 the record.

21 (EXHIBIT NO. 33 WAS RECEIVED INTO EVIDENCE.)

22 BY MR. WILLIAMS:

23 Q. I'll turn your attention to Exhibit No. 34,  
24 which is your rebuttal testimony. Do you have any  
25 revisions to that?

1           A.       Yes.

2                   On line 15, page 3, the word "future" should be

3 in front of the word "gross."

4                   On line 16 the word "future" should be in front

5 of the word "cost."

6                   On line 19, future should be in front of the

7 word "gross," and future should be in front of the word "cost."

8                   On page 10, in the footnote, for clarification,

9 there should have been a comma after the 16 megawatts --

10 16 MW. Excuse me.

11          Q.       Do you have any further revisions to that

12 exhibit?

13          A.       No.

14          Q.       If I were to ask you the questions that are set

15 forth in that exhibit as you've revised it, would your

16 answers be the same as what's set forth therein?

17          A.       Yes.

18                   MR. WILLIAMS: I offer Exhibit No. 34.

19                   JUDGE RUTH: Do the parties have any objections

20 to Exhibit 34, the rebuttal testimony of Mr. Adam?

21                   Okay. Seeing no objections, it is admitted

22 into the record.

23                   (EXHIBIT NO. 34 WAS RECEIVED INTO EVIDENCE.)

24 BY MR. WILLIAMS:

25          Q.       I'm going to direct your attention now to

1 Exhibit 35, which is surrebuttal testimony of Paul W.  
2 Adam. Do you have any revisions to that document?  
3 A. Yes.  
4 Page 2, line 11, the sentence starts with  
5 therefore. Therefore should have a comma after it.  
6 Q. Do you have any further revisions?  
7 A. No.  
8 Q. If I were to ask you the questions that are set  
9 forth in the exhibit as you have revised it, would your  
10 answers be the same?  
11 A. Yes.  
12 MR. WILLIAMS: I offer Exhibit No. 35 into  
13 evidence.  
14 JUDGE RUTH: Do the parties have any objections  
15 to Exhibit 35, the surrebuttal testimony of Mr. Adam's,  
16 being admitted into the record?  
17 Seeing no objections, it is admitted.  
18 (EXHIBIT NO. 35 WAS RECEIVED INTO EVIDENCE.)  
19 MR. WILLIAMS: I tender the witness.  
20 JUDGE RUTH: Cross-examination will begin with  
21 Mr. Conrad.  
22 MR. CONRAD: Do you want me to --  
23 JUDGE RUTH: Yes. I need you to stand over at  
24 the podium, please.  
25 CROSS-EXAMINATION BY MR. CONRAD:

1           Q.       Mr. Adam, I just have a very, I guess,  
2 personally puzzling area about this whole topic, as I hear  
3 what you're -- what the controversy is.

4                   My question to you is, is there ever a point  
5 which in your experience depreciation should stop?

6           A.       Yes.

7           Q.       And what is that point?

8           A.       That's when the plant is retired.

9           Q.       Here is -- here is my example. Let's say that  
10 you have -- and we'll take it out of the context of this  
11 company.

12                   Let's say you have a nuclear plant such as  
13 Wolf Creek that is set up on a 30-year life. And we get  
14 to the end of that 30 years -- or we approach the end of  
15 it, and a license is renewed, and the company is  
16 successful in getting another 20 years tacked on, does the  
17 depreciation stop at the 30th year, or do you-all have to  
18 recalculate it now over whatever is left over the  
19 remaining 20 years?

20          A.       Well, it would -- it would depend on things as  
21 far as additional dollars that might have been added over  
22 that 30 years. And if you had a Whole Life 30 year, some  
23 of those dollars would not be fully retired.

24                   But the general answer to your question is that  
25 it would have to be recalculated if it wasn't fully



1 recovered to determine what should be recovered over the  
2 determined future life.

3           There are instances where plant has become  
4 fully recovered and is still on the books. As a matter of  
5 fact, this Commission addressed one of those in a Laclede  
6 case about two years ago.

7           There were four gasholders in St. Louis which  
8 not only are fully recovered; they're over-recovered. And  
9 we had a position -- Staff took the position that that  
10 depreciation rate should be set to zero for those  
11 gasholders.

12           The company wanted to continue depreciation  
13 because they wanted to collect for this future cost of  
14 removal of those gasholders, but the company would not  
15 make a commitment as to when they would be removed or what  
16 the cost would be at the time.

17           So the decision that was made and the order  
18 that came out was that the depreciation rate would be set  
19 at zero for those gasholders.

20       Q.     Now, I've been through St. Louis, and you're  
21 talking about those aboveground storage tanks that Laclede  
22 has?

23       A.     Correct.

24       Q.     Now, work with me just for a second on another  
25 real short hypothetical.

1           Let's assume a customer has been on the system  
2   as a gas customer, or in this case, an electric customer,  
3   for, let's say, 30 years.

4           And during that time there has not been any  
5   additions or any replacements to their service facilities.  
6   And those service facilities were originally set up a  
7   30-year life.

8           Obviously, absent the Commission doing  
9   something, that depreciation would, in effect, continue to  
10   be recovered, but would that be a situation where the  
11   depreciation should stop?

12          A.     Are you saying that for the whole company no  
13   service is added during that whole 30-year life?

14          Q.     No.   Just for this --

15          A.     One customer.

16          Q.     Let's say that you have a customer that has --  
17   has a large installation at their place of business  
18   that's --

19          A.     But there are other service activities going on  
20   in the company?

21          Q.     Throughout the company, sure.

22          A.     I believe the company should get recovery on  
23   their service activities.

24          Q.     Okay.   But with respect to this particular item  
25   that would be on the company's books that have been set up

1 a 30-year life, it's your testimony that the company  
2 should continue to refer that even though it's run through  
3 its 30-year life?

4 A. That's where we look at depreciation rates,  
5 every three to five years. Hopefully, if the Company  
6 comes in for a rate case, we can adjust them.

7 Because you're looking at the recovery versus  
8 what the plant balance is.

9 Q. Okay. So at least in that case, you'd agree  
10 that that is something that should be looked at, and if  
11 that was shown, then that depreciation might want to go  
12 away?

13 A. What you may be looking for is the net effect  
14 is that that plant would be no longer depreciated, because  
15 when you analyzed it, you would find that you had recovery  
16 or an accrual that covered the cost of that particular  
17 plant.

18 But when we're looking at something like  
19 services, that's mass property, and we don't isolate them  
20 one by one.

21 Q. I understand the distinction.

22 And I was asking you to be a little bit more  
23 precise on a customer basis.

24 MR. CONRAD: Thank you.

25 JUDGE RUTH: Public Counsel.

1 MR. COFFMAN: No cross-examination. Thank you.

2 JUDGE RUTH: And Empire.

3 MR. COOPER: Yes, Your Honor.

4 CROSS-EXAMINATION BY MR. COOPER:

5 Q. Mr. Adam, do you have copies of your testimony  
6 with you?

7 A. Yes.

8 Q. Okay. If you'd look at your direct testimony,  
9 beginning on page 18, line 20.

10 Do you find the question that begins there?

11 A. Yes.

12 Q. If I wanted to find really a short summary of  
13 your proposal, would you agree with me that it would be  
14 the question that starts there on line 20 and the answer  
15 that continues to line 6 on the next page, on page 19?

16 A. That's probably a good summary.

17 Q. Now, there is nothing about your approach to  
18 net salvage that's designed to prohibit any recovery of  
19 dollars related to cost of removal. Correct?

20 A. I believe I agree with you.

21 The Company would always collect what they  
22 spend based on the way that Staff is proposing net  
23 salvage. Is that --

24 Q. And I think the way I've heard you say it  
25 before, or possibly, is that you believe you're just

1 shifting the time period of recovery but not eliminating  
2 recovery. Would you agree with that?

3 A. The Company would collect everything they spend  
4 for cost of removal, net salvage.

5 Q. Do you have an opinion as to whether or not it  
6 would be permissible to eliminate completely recovery of  
7 cost of removal?

8 A. Say that again, please.

9 Q. As I understand your proposal, you'll tell  
10 me -- and, in fact, just have -- that you proposed to  
11 merely shift the time period when the Company would  
12 recover cost removal.

13 Rather than recovering it over the life of the  
14 piece of property, you want the Company to recover it at  
15 the time or near the time it's expended. Correct?

16 A. I believe their cost of removal or net salvage,  
17 whichever term you want to use, should be determined on a  
18 current basis when you're looking at the revenue  
19 requirement, which is what we utilize these numbers to do.

20 Q. But let's say we went one step further.

21 What if someone proposed the cost removal be  
22 eliminated completely, that the Company received no  
23 recovery for costs for removal.

24 Do you believe that that would be permissible?

25 A. I wouldn't argue that position.

1 Q. What do you mean by you wouldn't argue that  
2 position?

3 A. I would not write testimony proposing that the  
4 Company would not get cost of removal.

5 Q. Would you agree with me that cost of removal is  
6 a normal anticipated expense related to the ownership and  
7 operation of utility property?

8 A. Not always. We had a discussion this morning  
9 where Commissioner Gaw was asking questions, that the cost  
10 of removal is not necessarily part of what a particular  
11 owner has to face.

12 Q. Let's step back from that for a moment.

13 Let's assume that there will be -- or there is  
14 cost of removal incurred. Okay. We're going to set aside  
15 the hypotheticals where it might not ever be expended.

16 So we're going to assume that cost of removal  
17 is expended. Do you view that to be an expense related to  
18 the ownership and operation of the specific piece of  
19 utility property?

20 A. When costs of removal is expended, is what  
21 we're proposing, is that it should be included in the  
22 calculation of revenue.

23 Q. Now, as I understand it, beyond merely delaying  
24 the recovery of costs for removal until after property has  
25 been retired and cost of removal incurred, the Staff is

1 also proposed to calculate net salvage on a five-year  
2 average.

3 Is that consistent with your understanding?

4 A. The current calculation for net salvage is not  
5 done by depreciation engineers any longer on staff.

6 Q. So you have no understanding of what they may  
7 have done with it, what the auditors may have done with  
8 it?

9 A. In this particular case I'm not sure, whether  
10 they did it over five years or a longer period. There  
11 will be a witness that can testify to what he did.

12 Q. Well, let's back up a little bit. Let's go  
13 back to your testimony.

14 We just talked about, I think, your direct  
15 testimony, beginning on page 18, line 20, a question. And  
16 as a part of that answer, I believe over on line 1, on  
17 page 19, you say: This -- and I believe you're referring  
18 to the current level of net salvage costs -- will be  
19 normalized over several years. Do you see that?

20 A. Yes, I see that.

21 Q. Okay. So let's set aside whether you're going  
22 to normalize over five years or six years or three years  
23 or whatever period of time.

24 But in your testimony you do express that the  
25 number that would be utilized for ratemaking purposes

1 would be some sort of normalized number or number derived  
2 over a period of years. Correct?

3 A. Yes. And that's my understanding of how the  
4 auditors are doing it.

5 Q. Okay. Now I want you to make an assumption for  
6 me.

7 Let's assume that cost of removal over time  
8 increases due to labor costs, environmental costs,  
9 whatever it might be.

10 Am I correct that the impact of using this  
11 normalized number, or this average number, in that  
12 scenario will mean that the Company will not be made whole  
13 as to its cost for removal?

14 A. That would be a shortcoming of using the  
15 technique that the Staff is proposing.

16 If the number was included as is, yet was in  
17 the depreciation accrual, and there was either an over-  
18 collection or an undercollection for cost of removal, then  
19 at the time that the next rate case came up, that could be  
20 determined, and then an adjustment could be made to make  
21 the Company whole, if there was a shortfall, or to reduce  
22 depreciation rates to compensate for an overcollection.

23 And with the case of doing it as an expense --  
24 and I think what you're looking for -- doing it as an  
25 expense as the Staff has proposed it here, an under-



1 collection is lost to the Company; an overcollection is  
2 simply their gain.

3 Q. Okay. Now, going back to your general theory  
4 of treatment of net salvage, you don't believe that there  
5 is any difference in applicability of your net salvage  
6 theory to either natural gas, water or electric utility  
7 industries, do you?

8 A. We're applying the same technique to all  
9 industries that we do cost regulation on.

10 Q. Now, is it your understanding that Empire is  
11 required by this Commission to maintain its books and  
12 records in accordance with the FERC Uniform System of  
13 Accounts?

14 A. I'm not -- I'm not an accountant or an auditor,  
15 but I would expect the answer to be yes.

16 Q. Well -- and let me -- if the judge will permit  
17 me, let me hand you a document.

18 JUDGE RUTH: Do you want to show a copy to  
19 counsel?

20 BY MR. COOPER:

21 Q. Mr. Adam, I'm handing you a copy of  
22 4 CSR 240-20.030 entitled Uniform System of Accounts,  
23 Electrical Corporations.

24 And if you would, could you read for me the  
25 first sentence of Subsection 1?

1       A.       Beginning January 1st, 1994 every electrical  
2       corporation subject to the Commission's jurisdiction shall  
3       keep all accounts in conformity with Uniform System of  
4       Accounts prescribed for the public utilities and  
5       licensees, subject to the provisions of the Federal Power  
6       Act as prescribed by the Federal Energy Regulatory  
7       commission, FERC, and published at 18 CFR Part 101, 1992,  
8       and 1 FERC stat, s-t-a-t, and regs, paragraph 15.001, and  
9       following 1992, except as otherwise provided in this rule.

10               Do you want me to stop?

11       Q.       I think that will be good.

12               Now, having read that, would you agree with me  
13       that Empire is required to keep its books and records in  
14       accordance with FERC Uniform System of Accounts?

15       A.       Based on that rule, yes.

16       Q.       Okay. The FERC Uniform System of Accounts  
17       doesn't provide for expensing current costs to removal as  
18       you've proposed, does it?

19       A.       Doesn't provide for expensing current costs of  
20       removal?

21       Q.       In the method that you have proposed in this  
22       case, or that Staff has proposed in this case?

23       A.       Again, I'm not the right person to answer that  
24       question.

25       Q.       Okay. So the proposal you put together was put

1 together without any knowledge of what might or might want  
2 be required by the FERC Uniform System of Accounts.

3 Correct?

4 A. The proposal -- would you ask that one more  
5 time?

6 Q. Sure.

7 I think you've told me that you're not familiar  
8 with what the FERC Uniform System of Accounts that Empire  
9 is required by Commission rule to follow --

10 A. Uh-huh.

11 Q. -- that you're not familiar with what the FERC  
12 Uniform System of Accounts may require or not require in  
13 regard to costs of removal. Correct?

14 A. Uh-huh.

15 Q. Your answer to that would be yes?

16 A. Yes.

17 Q. So I take it that the proposal that you've put  
18 together, Staff has put together, that's been brought  
19 before the Commission in this case has been put together  
20 without any knowledge of what might or might not be  
21 required by the FERC Uniform System of Accounts. Is that  
22 correct?

23 A. Well, I believe that Bob Schallenberg and the  
24 auditors have that knowledge. I don't personally because  
25 I'm a depreciation engineer.

1                   But I do know that certain companies, Ameren  
2   being one, expenses things that other companies don't when  
3   it comes to cost of removal. So I -- I don't know exactly  
4   where we're headed here.

5       Q.       Well, let's make this assumption. Let's assume  
6   that the FERC Uniform System of Accounts requires the  
7   Company to keep its books such that cost of removal is  
8   deemed to be recovered over the life of a piece of  
9   property. I think that's contrary to what the Staff and  
10   what you have proposed in this case for Empire.

11               If that's the case, Empire is going to be  
12   required to keep two sets of depreciation books. Correct?

13       A.       I guess if your theory holds they may. Again,  
14   I'm not an accountant. And if they're going to have to  
15   keep a separate sets of books for that, it would appear to  
16   me that they would only need to keep certain data as a  
17   record, not a whole separate set of books. But, again,  
18   I'm an engineer.

19       Q.       And you're not familiar with that process?

20       A.       I'm not an accountant.

21       Q.       Okay.

22               JUDGE RUTH: Mr. Cooper, I'm going to have to  
23   call a brief recess and go off the record. It is a few  
24   minutes after 2, and we'll start back up at 20 after.

25               (A RECESS WAS TAKEN.)

1 JUDGE RUTH: We are back on the record.

2 When we broke, Mr. Cooper --

3 MR. COOPER: That's correct.

4 JUDGE RUTH: -- was -- we'll go ahead and let  
5 you continue your questions then.

6 MR. COOPER: Thank you, Your Honor.

7 BY MR. COOPER:

8 Q. Earlier, Mr. Adam, I think we mentioned that  
9 your net salvage theory, you intend to apply equally to  
10 natural gas, water, electric utility industries. Correct?

11 A. On a going-forward basis, that's what we're --  
12 we're going to do all of them on the same basis, on a  
13 going-forward basis.

14 MR. COOPER: I want to hand a document to the  
15 witness, if I may.

16 JUDGE RUTH: Okay.

17 BY MR. COOPER:

18 Q. I'd like to ask you to take a look at 393.135.  
19 Can you read through that for us?

20 A. Charges based on nonoperational property of  
21 electrical corporation prohibited. Any charge made or  
22 demanded by an electrical corporation for service, or in  
23 connection there with, which is based on the cost of  
24 construction and progress upon any existing or new  
25 facility of the electrical corporation, or any other cost

1 associated with owning, operating, maintaining or  
2 financing any property it is fully operational and used  
3 for service is unjust and unreasonable and is prohibited.

4 Now, 393.135 states that it applies  
5 specifically to electric plant. Correct?

6 A. It says by an electrical corporation, yes.

7 Q. And there are no other utility industries  
8 mentioned. Correct?

9 A. Not in that paragraph.

10 MR. COOPER: I apologize, Your Honor, for  
11 not --

12 JUDGE RUTH: Thanks.

13 BY MR. COOPER:

14 Q. Have you ever read the statute before?

15 A. Not to my recollection, no.

16 Q. So to the extent it may or may not have any  
17 impact on your net salvage theory, you've not taken it  
18 into account in reaching the recommendations that are  
19 included in your testimony. Correct?

20 A. As far as determining rates for the new plant  
21 that is not in operation yet.

22 Q. Actually, I'm thinking more in terms of  
23 globally, your net salvage theory.

24 And let me get at it this way. And I want you  
25 to make an assumption -- and, indeed, that's what it is,

1 it's an assumption.

2 I want you to assume with me that one possible  
3 interpretation of this statute is that recovery cannot be  
4 had for any costs related to electric plant that is not in  
5 service.

6 If that's the correct interpretation of the  
7 statute, would this statute have an impact upon your  
8 proposal to recover costs for removal after electric --

9 MR. WILLIAMS: I'm --

10 THE COURT REPORTER: I'm sorry. After  
11 electric?

12 MR. WILLIAMS: -- going to object to the  
13 question. If he wants to ask if the assumption has an  
14 impact, that's fine, but I don't think he should be  
15 putting gloss on the statutory language.

16 JUDGE RUTH: Can you read the question back?

17 THE COURT REPORTER: I don't have the end of  
18 the question. That is why I interrupted.

19 JUDGE RUTH: Okay. Can you restate your  
20 question?

21 MR. COOPER: Yes, Your Honor.

22 And what I want the witness to do, and I think  
23 what I asked before, was to assume with me that one  
24 possible interpretation of the statute is that recovery  
25 cannot be had for any costs related to electric plant that

1 is not in service. Okay?

2 BY MR. COOPER:

3 Q. And my question from that would be: Making  
4 this assumption, would the statute or that principle, then  
5 have an impact upon your proposal that costs for removal  
6 be recovered after electric plant has been retired?

7 A. Well, I read this as addressing the electric  
8 plant, not the cost of removal, not those expenses that  
9 you'll have at a later date.

10 And certainly, you know, the way they're  
11 estimated is, I think, what concerns Staff more than  
12 anything.

13 Where you take a simple ratio of what it costs  
14 to remove property today and relate that to the original  
15 cost of that property that might have been 30 years ago,  
16 and calculate that ratio, which has inflation in it and  
17 the effects of environmentalism and everything, and use  
18 that to determine off of today's plant what you should  
19 collect from customers rather than what you're currently  
20 spending.

21 And the difference in those two numbers, what  
22 you're currently spending versus that calculation of that  
23 ratio is the basis of what Staff is objecting to as far as  
24 the costs of removal done the way Empire is proposing it  
25 and the way Staff is proposing it.



1 Q. Let's get at it a little differently here.

2 Have you ever heard of -- and I'm guessing you  
3 have.

4 You've heard of the used and useful theory in  
5 regulatory ratemaking. Correct?

6 A. Uh-huh.

7 Q. And I'm going to read to you a definition  
8 that's been used by the Court of Appeals to describe that  
9 theory.

10 Under the used and useful theory, the Company  
11 is allowed to charge customers only for the cost of plant  
12 and equipment actually in use to provide service for  
13 current customers.

14 And my question is similar to what I asked in  
15 relation to 393.135.

16 Have you considered the potential impact of, in  
17 this case, the used and useful theory on your proposal,  
18 that cost of removal not be recovered until after a piece  
19 of electric plant has been retired?

20 A. I think I understand it entirely different than  
21 you do.

22 You're putting the cost of removal, which is  
23 something that is unknown in the future, at best by done  
24 by an estimate, which is normally done with a simple ratio  
25 calculation based on what is happening today against the

1 purchase price of plant years ago, and you're including  
2 that in plant. And I don't see that as part of plant.

3 So I believe you and I are coming from  
4 different perspectives on the cost of removal.

5 Q. Well, I'm not so sure.

6 Earlier when I'd asked you a question in regard  
7 to cost for removal and recovery of cost for removal, I  
8 think you told me that where cost of removal was actually  
9 expended, that you would view that to be a normal expense  
10 related to the ownership and operation of utility  
11 property.

12 Now, both the statute that I've showed you  
13 talks in terms of costs associated with owning, operating,  
14 maintaining or financing property, and I believe this  
15 definition of used and useful talks about costs of plant  
16 and equipment.

17 Do either of those possible prohibitions to  
18 recovery of costs for removal bother you in terms of the  
19 recommendation you've made on treatment of net salvage?

20 A. I believe that the Company should recover the  
21 net salvage that they're currently spending.

22 When we did the Laclede case about two years  
23 ago, that calculation was in the depreciation  
24 determination. I have no problem with what we did in the  
25 Laclede case.

1           A subsequent change was made, and the cost of  
2 removal, or the net salvage -- more accurately, the net  
3 salvage determination, was handed off to the auditors, and  
4 it's been that way on a going-forward basis.

5       Q.       But I think my point is, it appears to me that  
6 if either because of the statutory prohibition or a  
7 regulatory theory, the Company, in fact, cannot recover  
8 costs for removal after a particular piece of property has  
9 been retired, that that is contrary to what you propose.

10           Would you agree with that?

11       A.       Well, we propose that there be an amortization  
12 plant as retired and not fully recovered.

13       Q.       Let's turn to your direct testimony again, if  
14 you still have that in front of you.

15       A.       Uh-huh.

16       Q.       On page 2, line 23. Now, starting in the  
17 middle of line 23 and extending on to page 3, you're  
18 expressing, I think, some of your problems with the way  
19 net salvage is currently treated by the Commission, at  
20 least in terms of Empire's past depreciation rates.

21           You say even though this original dollar amount  
22 will not be needed for decades, the Company proposes to  
23 pre-collect it from its customers decades prior to the  
24 retirement and removal of the plant.

25           Do you see that?

1           A.       Uh-huh.

2           Q.       Now, in that statement you talk about the  
3   Company proposes.

4                   Now, the Company's proposal in this case is not  
5   a new proposal, is it?

6           A.       Not to my knowledge.

7           Q.       The method that Mr. Loos proposes is, in fact,  
8   consistent with the Staff and Commission prior approaches  
9   that are reflected in Empire's existing depreciation  
10   rates.  Would you agree with that?

11          A.       I didn't work on those cases, but I'll accept  
12   your word for it.

13          Q.       Well, but you did go back and you reviewed the  
14   ordered depreciation rates.  Correct?

15          A.       Yes.

16          Q.       And your review of those depreciation rates  
17   would lead you to believe that that is the case.  Correct?

18          A.       That would be true.

19          Q.       Now, the Commission has referred to this method  
20   that's proposed by the Company in this case as the whole-  
21   life method, hasn't it?

22          A.       The formula that is used is the Whole Life  
23   formula.

24          Q.       Now, also, as a part of the statement that I  
25   read out of your direct testimony, you state that the

1 Company proposes to pre-collect dollars from its customers  
2 decades prior to retirement.

3 Now, Empire is not proposing to collect all of  
4 its future costs of removal next year, is it?

5 A. No.

6 Q. The Whole Life method would rather seem to  
7 include the net salvage and the depreciation calculation  
8 and recover that cost removal gradually over the life of  
9 the subject property. Correct?

10 A. They would recover an estimated cost removal  
11 that would include inflation and other things that have  
12 applied to the history, and they don't do an analysis of  
13 what might apply to the future.

14 Q. But whatever recovery is had will be recovered  
15 over the life of the property. Correct?

16 A. It will be referred over the average service  
17 life that is assigned to that account.

18 Q. And the alternative, as Staff proposes it, is  
19 to recover those amounts actually expended, but the  
20 amounts actually expended immediately or soon after  
21 they're incurred. Correct?

22 A. Correct.

23 Q. Okay. And so, thus, under Staff's proposal,  
24 removal of costs would be paid in a lump sum by customers  
25 after that subject property had been retired. Correct?

1           A.       No.

2                   Only on mass property would you have it to that  
3 effect, where it's a churn year by year.

4                   If there is a major removal -- and I talked  
5 about it in more detail in the preceding case.

6                   But if there is a major removal, where there is  
7 a large dollar to, say, tear down a plant -- and I think  
8 that was discussed earlier, as a lot of times a plant is  
9 retired, it's left in place and maybe not torn down for  
10 years and years.

11                  But at the time that it would be torn down,  
12 if -- at that time the cost that was incurred would be  
13 looked at, and if it was reasonable, then an amortization  
14 would be proposed.

15                  And the period of that amortization would be  
16 designed principally to get it as quickly as possible for  
17 the Company without incurring rate shock.

18       Q.       Yeah. And that does get to my next question.

19                  I think if we went back to -- I think what we  
20 referred to as the summary of your proposal that is  
21 found -- well, in particular, on line 2 of page 19 of your  
22 direct testimony, you state that if there is a major  
23 retirement in removal, such as a power plant, Staff  
24 depreciate engineers will evaluate the Company's cost  
25 presentation and will propose an amortization that will

1 allow the Company to recover the appropriate amount from  
2 customers.

3 That's what you're referring to. Correct?

4 A. Yes.

5 Q. Okay. How do you define what constitutes a  
6 major retirement or removal?

7 A. On life span plant, those are plants, such as a  
8 power plant, that normally -- that a whole plant or a  
9 large segment of it is shut down at one time, rather than  
10 having a continual churn, like poles, which is mass  
11 property.

12 And when that plant is shut down, a company can  
13 leave it stand or they can tear it down or tear it down in  
14 part.

15 If they tore down part of it and said, you  
16 know, we've incurred a million dollars and we want to  
17 recover that, then Staff would address it.

18 Q. And getting back to one of the things that you  
19 said previously, one of the reasons that you would propose  
20 an amortization in this situation is to avoid a large rate  
21 impact on customers. Correct?

22 A. We would schedule the amortization such that it  
23 wouldn't cause rate shock.

24 Q. Now -- and I assume that how long that  
25 amortization might be would depend upon the specific facts

1 of the situation you were examining. Correct?

2 A. Correct.

3 Q. But, potentially, it could go on for several  
4 years. Would you agree with me?

5 A. Characteristic -- well, the thing we see most  
6 is a plant that is retired that has not been fully  
7 recovered, and amortizations are anywhere from one to  
8 five years characteristically.

9 Q. So in that situation, payment of the cost for  
10 removal could go on for one to five years beyond the  
11 retirement, or, actually, the removal of that piece of  
12 property. Correct?

13 A. It -- it would -- it would depend -- the  
14 payment, if you're wanting to talk about revenue  
15 requirement now, it would depend on how the amortization  
16 was set up.

17 If the amortization didn't have a cut-off --  
18 say, if it was a five-year amortization and it wasn't  
19 ordered to be shut off, it would keep going beyond, and  
20 the Company would continue to collect from the -- from the  
21 ratepayers based on that being in the rates beyond the  
22 five years.

23 Q. And that's five years after that property would  
24 have actually been removed. Correct?

25 A. Probably.



1 Q. It could be more?

2 A. It could be, you know, that the property is  
3 being retired when you start -- or being removed when you  
4 start the amortization.

5 Q. Would Staff recommend that the Company be  
6 permitted to earn a return on the unamortized portion of  
7 any amount that was amortized?

8 A. I don't know.

9 Q. Now, in your direct testimony you spent some  
10 time and effort quoting from a 1953 textbook entitled  
11 Engineering Evaluation and Depreciation.

12 Now, from reading your testimony, it would be  
13 my belief that you would agree that costs for removal is a  
14 greater factor now than in 1953 when the textbook you cite  
15 was written?

16 A. I believe it, yeah, has a greater effect on the  
17 revenue requirement, increasing it.

18 Q. And if I were to quote some language from your  
19 testimony -- and this is on, just for reference purposes,  
20 page 17, line 16, you state that during the very late 1970  
21 and early 1980s, two external conditions changed  
22 significantly, resulting in a change in the value  
23 calculated as net salvage in the traditional Whole Life  
24 formula.

25 These two external conditions were rapid

1 increases in labor rates and environmentalism. In turn,  
2 those external conditions have caused net salvage to  
3 become a large cost instead of a positive value.

4 Do you recall that?

5 A. I'm looking at it, yes.

6 Q. So I take it that you truly believe that cost  
7 of removal has increased since 1953?

8 A. Yeah, that's the problem that I see with it,  
9 because you're using these ratios that include these large  
10 increases in inflation and environmentalism and saying  
11 these same events are going to occur in the future or  
12 something is going to occur that is going to have the same  
13 effect. And for all we know, costs for removal may go  
14 down.

15 When you get costs that are very large,  
16 entrepreneurs start figuring out ways to make them  
17 cheaper.

18 And so that's the problem that we see as Staff,  
19 with using these ratios of what has occurred over the last  
20 30 years or 40 years or whatever the period may be, and  
21 applying them to current plants and saying, well, this  
22 same ratio applies for the next 30 or 40 years into the  
23 future. We simply don't know that that is going to  
24 happen.

25 Q. Let's back up for a second.

1                   As you've testified, your experience is  
2   contrary to that up to this point in time.

3                   You indeed have seen an increase from 1953,  
4   when the textbook was written, to today.  Correct?

5       A.       I haven't seen that, but I believe that's true.

6       Q.       Now, in your direct testimony you also quote  
7   from a text, and indicating that there are practical  
8   difficulties with estimating, reporting and accounting for  
9   net salvage and cost of retirement as support for your  
10  proposed change to treatment of net salvage.

11                  Do you recall that?

12       A.       I recall words to that effect, yes.

13       Q.       Doesn't the entire depreciation process have  
14  this sort of practical difficulty with estimating,  
15  reporting and accounting?

16       A.       Are you talking about the life, or what are you  
17  talking about?

18       Q.       Well, let's, yeah, set net salvage aside for a  
19  moment and just talk about the establishment of average  
20  service life, the other parts of the process.

21       A.       Typically, the accounts are analyzed account by  
22  account.  And, typically, the plant is similar in the  
23  accounts.

24                  Occasionally some companies will mix plant when  
25  they go from an old type of plant which, might be a

1 metallic pipe for services, to a plastic pipe for  
2 services, in natural gas, I'm talking about. And then you  
3 do get a mix.

4 But the software that we use to analyze the  
5 data, allows us to split it, and we can do band analysis  
6 on certain years of data, so that we can do analysis of  
7 life for the years that the metallic plant was in place,  
8 and we can do analysis for the years that the plastic pipe  
9 is in place.

10 And that type of work was done in the Laclede  
11 case just a few years ago, where they told us when  
12 basically they had 100 percent plastic pipe in place, and  
13 we were able to run an analysis on the data that occurred  
14 only for the plastic pipe.

15 Q. But in the end you're still making an estimate  
16 of that life. Correct?

17 A. Yes. It is definitely an estimate, because you  
18 have what is called a stub curve, and you fit to that stub  
19 curve, which is the actual events that are occurring on  
20 that account as far as life plant from the day it's placed  
21 until the day it's retired, age by age, and you plot that  
22 out, and then you use a curve to overlay, which is a time  
23 curve.

24 Characteristically, we use Iowa curves. And  
25 those Iowa curves are a set of curves that are used to

1 determine what the average service life will be, because  
2 they go to zero percent surviving.

3 Q. And to get back to my point, as I say, you  
4 attack the net salvage calculation as relying upon  
5 estimating, reporting and accounting.

6 It seems to me that estimation is going to be a  
7 part of depreciation whether net salvage is there or not.

8 And, in fact, I believe in your direct  
9 testimony, you also assert that the -- you make a  
10 statement that the future is unknown and it cannot be  
11 determined what plant will retire, nor can it be  
12 determined at what time it will retire.

13 Those are two of the factors that would go into  
14 your estimation of service lives. Correct?

15 A. Well, my point is, is that the determination of  
16 that future retirement cost is nowhere near as easy to  
17 analyze as it is to analyze what you would expect the  
18 future life of plant to be.

19 Q. But you do tell me that you do not have a known  
20 date for when plant will retire, nor at what time it will  
21 retire. Correct?

22 A. I -- when we query the Company on their  
23 generating plant, they cannot give us retirement dates.  
24 They do not give us retirement dates.

25 Q. Well, and your point would be that those may

1 not be known. Correct?

2 A. Those retirement dates?

3 Q. Sure.

4 A. I certainly see them as unknown. I don't know  
5 when Riverton is going to retire if the Company doesn't  
6 know.

7 Q. And that's important to the service life of  
8 Riverton, as well as net salvage. Correct?

9 A. The average service life would be determined  
10 based off of a retirement date, if you knew when it was.

11 Of course, if you can set a very short  
12 retirement date in there and do a life-span calculation,  
13 you can get the depreciation rate up high.

14 Q. Now, let me ask you this: In your review of  
15 Empire specifically, did you find any property that would  
16 fit this description: A type of asset that is at or very  
17 near the end of its service life that is not likely to be  
18 replaced and for which the cost of removal is high and  
19 likely to move higher?

20 A. What do you mean by cost for removal is high?

21 Q. I'm leaving it open to your definition.

22 A. Well, let me answer the question, then, so that  
23 I cover both bases.

24 Mass property accounts will be retiring all of  
25 the time. I would not call that high individual costs,

1 but the costs for the full account could be considered  
2 relatively high in any given year.

3 For a life-span-type account, the only thing  
4 that we can see now is what is interim retirements, where  
5 part of the plant is retired and either replaced with new  
6 plants, such as, say, a boiler tube replacement in a power  
7 plant, or something like that, then you have an interim  
8 retirement and a new placement, and you have brand new  
9 dollars in that account.

10 And when you do that, I see that as life  
11 extending, and that is part of what keeps the active plant  
12 going to where we can't -- where the Company doesn't know  
13 what the retirement date is.

14 Q. Let me move on to average service life for the  
15 time being.

16 Now, in this case with regard to the Company's  
17 generating plant, you state that you're proposing to use  
18 the same lives and depreciation rates as determined by the  
19 Staff in Case No. ER-94-174. Correct?

20 A. Yes.

21 Q. Do you have a copy of your data request  
22 responses to the Company's data requests with you by  
23 chance?

24 A. No.

25 MR. COOPER: Your Honor, I'd like to hand a

1 document to the witness, if I could.

2 JUDGE RUTH: Show it to counsel first, please.

3 BY MR. COOPER:

4 Q. If you'll flip back -- I don't know -- it's two  
5 or three pages, I think you'll see the cover sheet that  
6 you signed covering the data request responses.

7 Do you see that?

8 A. Uh-huh.

9 Q. And that's your signature at the bottom, isn't  
10 it?

11 A. Yes.

12 Q. Okay. And then, I think, there is a couple of  
13 pages there with the questions, and then behind that are  
14 your answers. Correct?

15 A. Yes.

16 Q. Okay. Now, if you'd look at Empire Data  
17 Request No. 18-K. I believe the Company requested a copy  
18 of all workpapers, interview notes, memoranda, analyses  
19 and other rationale used as a basis to conclude that no  
20 adjustments to lives and depreciation rates determined for  
21 mortality data were required.

22 And your response to this request in part was  
23 that there was no rationale to support changing generating  
24 plant lives from those determined in the 1994 study.  
25 Correct?



1           A.       18-K?

2           Q.       Yes.

3           A.       The answer here says line 13, page 20, relates  
4 to generation plant only.

5                    Am I reading the wrong page?

6           Q.       (Indicating.)

7           A.       Oh. Okay.

8           Q.       I believe it's the lines right below what you  
9 were taking a look at.

10          A.       I'm sorry.

11                    Okay.

12          Q.       Would you agree me that that was your answer?

13          A.       That's the response I gave.

14          Q.       That there was no rationale to support change  
15 in generating plant lives from those determined in the  
16 1994 study.

17                    That would be correct?

18          A.       Yes.

19          Q.       Okay. Now, if you'd look at your answer to  
20 Data Request 18-0.

21          A.       Uh-huh.

22          Q.       I believe you stated that the ER-94-174  
23 depreciation rates include a provision for future net  
24 salvage cost. Depreciation Staff addresses depreciation  
25 of original plant cost only. Staff auditors address net

1 salvage costs.

2           Therefore, the currently proposed depreciation  
3 rates vary from the depreciation rates by the amount of  
4 future net salvage cost that was added into the ER-94-174  
5 depreciation rates.

6       A.       Uh-huh.

7       Q.       Is that a correct statement of your answer?

8       A.       That's my understanding of what we did.

9       Q.       Now, I take it from your response that your  
10 proposed depreciation rates applicable to generating plant  
11 differ from the currently effective rates which were  
12 proposed by Staff in Case No. ER-94-174 solely by virtue  
13 of your proposal to exclude future salvage costs from  
14 depreciation rates. Correct?

15      A.       I believe that's right.

16      Q.       Okay. Now, I want to turn over to Schedule 1-1  
17 of your direct testimony.

18           Have you had the opportunity to get there?

19      A.       Yes.

20      Q.       Now, as I look at Schedule 1-1, I believe the  
21 column labeled ordered refers to the rates as proposed by  
22 Staff in Case No. ER-94-174 and which were ordered by the  
23 Commission pursuant to a stipulation and agreement in that  
24 same case. Am I correct?

25      A.       I believe that's correct.

1 Q. Could you look at -- let's see -- the existing  
2 depreciation rate, where the ordered depreciation rate,  
3 you show for Account 314, which is turbo generator units  
4 at the Asbury plant?

5 A. Yes.

6 Q. Okay. And what is that?

7 A. The ordered is 39, life --

8 Q. What is the depreciation rate?

9 A. Oh. Excuse me. 2.6.

10 Q. Okay. And as you pointed out, that's based on  
11 a life of 39 years?

12 A. Uh-huh.

13 Q. And a negative net salvage allowance of  
14 1 percent. Correct?

15 A. Uh-huh.

16 Q. Now, look down to Riverton. What is the  
17 depreciation rate you show in your proposal for  
18 Account 314 at the Riverton plant?

19 A. Staff's proposed depreciation rate?

20 Q. Yes.

21 A. 1.59.

22 Q. Okay. And that rate is based on a life of  
23 63 years?

24 A. That would be the interim retirements, I  
25 believe.

1           Q.       Okay.  Let's move down to the -- well, hold on  
2   just a second here.  Let's back up.

3                    We talked about Asbury plant, the ordered rate,  
4   Account 314, as being 2.6.  Correct?

5           A.       Yes.

6           Q.       If we do the same thing, the ordered rate for  
7   Account 314 at Riverton, we get 1.79.  Correct?

8           A.       Yes.

9           Q.       Okay.  And the Asbury 314 account based on life  
10   of 39 years, negative net salvage of 1 percent.  Correct?

11          A.       That's the ordered -- that's what this shows as  
12   the order, and I believe it's correct.

13          Q.       As the order existing, however we refer to it.  
14                    We go to Riverton Account 314, we show that the  
15   1.79 existing is based upon 56.4 years and a negative  
16   1 percent net salvage.  Correct?

17          A.       Yes.

18          Q.       Okay.  Now, just to reiterate, if we look at  
19   those Riverton numbers for Account 314, Asbury numbers for  
20   314 and, in fact, if we look at Iatan numbers for 314, the  
21   ordered or existing depreciation rates, all three of those  
22   include a negative 1 percent net salvage.  Correct?

23          A.       Yes.

24          Q.       And if we look at the lives, however, for those  
25   same accounts, the existing or ordered depreciation rates,

1 Account 314 at Riverton, Asbury and Iatan, each of those  
2 accounts is based on a different life. Correct?

3 A. I believe that was probably determined off of  
4 the interim retirements. I can't tell you for sure.

5 Q. But your schedule reflects 56.4 years for  
6 Riverton on Account 314 and 39 years for Asbury for  
7 Account 314 and 34 years for Iatan for Account 314.  
8 Correct?

9 A. As being the ordered lives, yes.

10 Q. Okay. Now, if we move over to your  
11 recommendation, which I believe is under the column  
12 Staff's proposal --

13 A. Yes.

14 Q. -- and we look at Account 314 at Riverton, what  
15 is the depreciation rate reflected there?

16 A. 1.59.

17 Q. Based upon a life of how long?

18 A. 63.

19 Q. And if I look at Account 314 at Asbury, what's  
20 the depreciation rate recommended?

21 A. 1.59.

22 Q. Based upon --

23 A. 63.

24 Q. If I do the same thing at Iatan, what is the  
25 rate?

1           A.       1.59.

2           Q.       And the life is?

3           A.       63.

4           Q.       Okay.  So you would agree with me, wouldn't

5   you, that not only is there a change in the use of net

6   salvage, but there is a change in the life being used in

7   Staff's proposal for Account 314 versus the ordered

8   depreciation rates as reflected on your schedule for

9   Account 314 for Riverton, Asbury and Iatan?

10          A.       That's correct.

11          Q.       Let's turn to Empire data request response --

12   or your response to Empire Data Request 18-F.

13                 I believe the Company requested all support and

14   documentation on which you rely for your statement on

15   page 9, line 9 of your direct testimony, that the Company

16   does not spend the money currently and sometimes never.

17                 And I believe your response to that same data

18   request was, for my experience in meetings, I have learned

19   that sometimes plant is sold rather than retired, and at

20   retirement some plant is not removed.

21                 Is that correct?

22          A.       That's the answer to 18-F, yes.

23          Q.       With regard to the meetings you mentioned in

24   response to 18-F, how many of those meetings were Empire

25   specific?

1           A.       We've -- we only met with Empire once relative  
2 to this rate case.

3           Q.       And I take it you did not perform any sort of  
4 study -- any sort of written study or review of Empire's  
5 past practice in retirement and removal of property?

6           A.       No.

7           Q.       Did you have the opportunity to review Company  
8 Witness Mr. Loos's workpapers in preparing your testimony  
9 in this case?

10          A.       I've reviewed them to some degree.

11                   MR. COOPER: Your Honor, I'll show this  
12 document to opposing counsel; then I'd like permission to  
13 hand it to the witness, if that's all right.

14                   JUDGE RUTH: Can you go ahead and describe it  
15 for the record?

16                   MR. COOPER: Yes.

17                   What I'm going to show to counsel and then hand  
18 to the witness will be Mr. Loos's workpapers.

19                   JUDGE RUTH: Thank you.

20                   MR. COOPER: And as pointed out by Staff, I'll  
21 clarify that they were a portion of Mr. Loos's workpapers.  
22 BY MR. COOPER:

23           Q.       Do you recognize that document as a portion of  
24 the workpapers that you would have reviewed during the  
25 course of preparing your testimony?

1           A.       I'm going to say I presume it's the same ones  
2 we received, because -- I can't tell you right offhand.  
3 The ones we had were clipped together, xeroxed copies of  
4 stuff. I don't remember handwritten sheets on them.

5                   But go ahead.

6           Q.       Okay. In the upper right-hand corner there are  
7 sequential handwritten numbers. Do you see those?

8           A.       Yes.

9           Q.       If you could please turn to handwritten number,  
10 page 717, I'd appreciate it.

11                   Does that purport to be the depreciation rate  
12 analysis for Riverton Station?

13          A.       Yes.

14          Q.       Can you look down at line 13, I believe it's  
15 entitled Future Interim Additions.

16          A.       Yes.

17          Q.       Is there a total for Riverton of 3.2 -- well,  
18 \$3,288,436?

19          A.       Yes.

20          Q.       Now, if you would turn to your surrebuttal  
21 testimony, page 5, line 11, could you please read the  
22 question that starts on that line followed by the answer?

23          A.       On page 26 and forward of Mr. Loos's rebuttal  
24 testimony, he discusses the need for his estimated future  
25 investments, also called capital maintenance, to the State



1 Line Combined Cycle, SLCC, unit to be -- to achieve his  
2 proposed average service life of that unit.

3 Is this consistent with other plant that he  
4 addresses in his depreciation work?

5 Q. Now, if you could read for us the answer that  
6 follows?

7 A. No. To be consistent, Mr. Loos would be making  
8 estimates of plant additions (his future interim Capital  
9 Maintenance) to all other plant. Although he does include  
10 State Line Unit 1, the simple combustion turbine used for  
11 peaking, in his future interim Maintenance Capital  
12 projections, he has no such projections for Iatan, Asbury  
13 Riverton, Ozark Beach and Power Center generating plants.

14 He fails to explain why he projects future  
15 interim Maintenance Capital for over \$212 million at the  
16 State Line location and zero future interim Maintenance  
17 Capital at all other locations.

18 Q. Now, let's go back to those workpapers that you  
19 still have, I believe.

20 Can you turn to handwritten, Page No. 736.

21 A. Yes.

22 Q. And that purports to be the Depreciation Rate  
23 Analysis for Asbury Unit Train Line -- let me back up --  
24 Depreciation Rate Analysis for Asbury Unit Train.  
25 Correct?

1           A.       Yes.

2           Q.       And at line 13 we have an item for Future

3 Interim Additions.   Correct?

4           A.       Yes.

5           Q.       And what is that total?

6           A.       \$440,000.

7           Q.       Okay.   Let's turn to handwritten page 754 in

8 the same document.

9                    That page purports to be Depreciation Rate

10 Analysis for Asbury Station.   Correct?

11          A.       Yes.

12          Q.       Okay.   Line 13, again, is entitled Future

13 Interim Additions.   Correct?

14          A.       Yes.

15          Q.       And what's the total reflected?

16          A.       26.2 million.

17          Q.       And if we turn to handwritten page 771, that

18 purports to be Depreciation Rate Analysis for Iatan

19 Station.   Correct?

20          A.       Yes.

21          Q.       And line 13, again, is entitled Future Interim

22 Additions.   Correct?

23          A.       Yes.

24          Q.       And what total is reflected there?

25          A.       3.46 million.

1       Q.       And let's turn to handwritten page 788. That  
2       purports to be the Depreciation Rate analysis for  
3       Ozark Beach Station. Correct?  
4       A.       Yes.  
5       Q.       Line 13, again, is entitled Future Interim  
6       Additions. Correct?  
7       A.       Yes.  
8       Q.       And what is the total reflected there?  
9       A.       1 million.  
10      Q.       And if we turn to handwritten page 805, I  
11      believe we have a document that purports to be  
12      depreciation rate analysis for Combustion Turbine  
13      (Riverton, Energy Center.) Is that correct?  
14      A.       Riverton and Energy Center, yes.  
15      Q.       Line 13, again, entitled Future Interim  
16      Additions. Correct?  
17      A.       Yes.  
18      Q.       And you actually have two numbers on --  
19      A.       About 7 1/2 million.  
20      Q.       Okay. And if we turn to page 842, handwritten  
21      page 842, that purports to be Depreciation Rate Analysis  
22      for State Line Units. Correct?  
23      A.       Yes.  
24      Q.       And line 13, again, is entitled Future Interim  
25      Additions. Is that correct?

1           A.       Yes.

2           Q.       And there is a dollar amount there for State  
3 Line Unit 1 and State Line Unit 2.  Correct?

4           A.       Yes.

5           Q.       And the total of those would be approximately  
6 212 million.  Correct?

7           A.       Yeah.  That's the part that I referred to.

8                    I believe his testimony wrote that -- in his  
9 testimony wrote this \$212 million was the only future  
10 interim additions that he was addressing.

11                   I didn't pick these others up.  I'm sorry.

12           MR. COOPER:  Your Honor, at this time I'd like  
13 to do two things, I guess.

14                   First, I'd like to ask the Commission to take  
15 official notice of Section 393.135, Revised Statutes of  
16 Missouri, which we discussed earlier during this  
17 cross-examination.

18                   I can provide copies of those to the reporter  
19 if we want to mark -- if we want to mark that.  I really  
20 don't have a preference.  I'm asking for how you refer to  
21 do it.

22           JUDGE RUTH:  I don't believe it's necessary to  
23 mark one of those for identification.  We'll take official  
24 notice of Section 393.135.

25                   Is that the correct cite?

1                   MR. COOPER: That is correct, yes, Your Honor.

2                   Similarly, a regulation that I referred to  
3 earlier, and Mr. Adam read from was, 4 CSR 240-20.030, and  
4 I'd like to ask that the Commission take official notice  
5 of that regulation as well.

6                   JUDGE RUTH: Let me make sure I have that  
7 right.

8                   4 CSR 240-20.030?

9                   MR. COOPER: Correct.

10                  JUDGE RUTH: The Commission will also take  
11 official notice of that CSR provision.

12                  MR. CONRAD: Judge, maybe I'm confused. I  
13 don't have any objection to either thing, but I don't know  
14 that you need to take official notice of the statutes or  
15 your own rules. I mean, they're there.

16                  JUDGE RUTH: I'll just note for the record,  
17 though, that they have been pointed out, and the  
18 Commission will be sure and review them.

19                  MR. COOPER: And the last thing, I would like  
20 to mark an exhibit, if I could.

21                  JUDGE RUTH: Okay. Would you please identify  
22 it?

23                  MR. COOPER: This will be those pages of  
24 Mr. Loos's workpapers that Mr. Adam and I just went  
25 through while he was on the stand.

1 JUDGE RUTH: Thank you.

2 I believe we're up to Exhibit 98, for  
3 identification purposes.

4 So this would be workpapers from Mr. Loos  
5 marked as Exhibit 98 for identification purposes?

6 MR. COOPER: Correct.

7 Do you want to describe it as an excerpt from  
8 Mr. Loos's workpapers?

9 JUDGE RUTH: Yes. Thank you. Excerpts.

10 (EXHIBIT NO. 98 WAS MARKED FOR IDENTIFICATION  
11 BY THE COURT REPORTER.)

12 MR. COOPER: At this time, Your Honor, I would  
13 like to offer Exhibit 98.

14 JUDGE RUTH: Okay. Do the parties have any  
15 objections to Exhibit 98?

16 MR. CONRAD: These were excerpts from  
17 Mr. Loos?

18 JUDGE RUTH: Yes, excerpts from Mr. Loos.

19 And I count there are seven pages. At the top  
20 they're marked 717, 736, 754, 771, 788 and 805 and 842.

21 MR. CONRAD: Judge, did this witness prepare  
22 them, or has he identified them?

23 MR. COOPER: I believe, Your Honor, that this  
24 witness has stated that it was part of the material that  
25 he reviewed in putting together his recommendation.

1 JUDGE RUTH: Just a moment.

2 MR. CONRAD: No foundation.

3 JUDGE RUTH: You'll need to lay more of a  
4 foundation. And if you need to recall your witness, we  
5 can do that later.

6 So we'll wait on admitting this into the  
7 record.

8 BY MR. COOPER:

9 Q. Mr. Adam, let's go back to your surrebuttal  
10 testimony. I believe that on page 5 of your surrebuttal  
11 testimony, we talked about a statement that you made in  
12 relation to what interim plant additions Mr. Loos included  
13 in his documentation. Correct?

14 A. Correct.

15 Q. And the point of your answer was that you  
16 believed at the time you wrote that answer, that Mr. Loos  
17 had included 212 million of interim additions for the  
18 State Line unit but zero interim additions at Iatan,  
19 Asbury, Riverton, Osage Beach and Power Center. Correct?

20 A. Yes.

21 I believe there is part of -- either his  
22 testimony or somewhere else in his statements where he  
23 talks about capital maintenance only being at State Line.

24 Q. And I believe we also discussed that in putting  
25 together your testimony and arriving at your testimony to

1 include the question and answer on page 5, beginning at  
2 line 11, that part of the information you took into  
3 account was Mr. Loos's workpapers. Correct?

4 A. I believe I had access to that. I'll have  
5 to -- I would double-check, if requested to.

6 Q. And prior to beginning our series of questions  
7 and answers and regarding Mr. Loos's workpapers, I believe  
8 you at least acknowledged that you believed the workpapers  
9 you had been handed were the workpapers or a copy of the  
10 workpapers that you reviewed in preparing your testimony.  
11 Correct?

12 A. I believe I had these at my disposal.

13 Q. Did you ever look at them?

14 A. Yes.

15 Q. Okay.

16 A. But I told you at the beginning that I didn't  
17 look at them in detail.

18 Q. And I believe as a result of our conversation,  
19 our questions and answers, you told me that you had  
20 overlooked the interim additions that Mr. Loos had indeed  
21 included for Asbury, Riverton, Osage Beach and the  
22 Power Center. Correct?

23 A. I have overlooked them in this statement, yes.

24 It wouldn't change my position in my rates.

25 Q. But it would change the statement, wouldn't it?



1           A.       Oh, yes.

2           Q.       Yeah.

3                   MR. COOPER:  At this time I would reoffer  
4 Exhibit 98.

5                   JUDGE RUTH:  Okay.  I will note that you have  
6 laid some additional foundation questions.

7                   Are there any objections to admitting what's  
8 been marked as Exhibit 98?

9                   MR. CONRAD:  Yeah, I'll make the objection.  I  
10 really don't think the foundation is there.

11                   The witness didn't prepare them, he's not  
12 underscoring them, he's not attesting to them.

13                   Mr. Loos is here, was here.  Foundation should  
14 have been laid then.

15                   JUDGE RUTH:  Okay.

16                   And, Mr. Williams, it's your witness.  Do you  
17 have a comment?

18                   MR. WILLIAMS:  I concur that there is  
19 inadequate foundation.

20                   MR. COOPER:  Okay.  Well, I guess I would make  
21 a couple of responses.

22                   First off, the fact that Mr. Loos is here,  
23 makes -- I guess is of limited value in this type of  
24 proceeding, because I don't believe that when I put  
25 Mr. Loos on the stand, I had the opportunity to do

1 anything with him other than present his prefiled  
2 testimony in this case.

3 So it's not a situation where I could have gone  
4 through this with Mr. Loos. And, in fact, it's not a  
5 situation where I could have gone through it in prefiled  
6 testimony, because this appears in Mr. Adam's surrebuttal  
7 testimony.

8 So if I'm not going to be allowed -- let me add  
9 one more thing.

10 I believe that Mr. Adam is testifying in an  
11 expert -- as an expert in this matter. I believe that one  
12 of the things that he took into account in reaching his  
13 recommendations and his testimony, specifically that we're  
14 referring to on page 5 of the surrebuttal testimony, was  
15 Mr. Loos's workpapers.

16 So I guess my argument would be that I should  
17 be allowed to admit them at least for the purpose of  
18 impeaching Mr. Adam's testimony, based upon one of the --  
19 based upon the information that he claims he depended upon  
20 in reaching his recommendation.

21 JUDGE RUTH: Let me ask you, Mr. Cooper, is  
22 Mr. Loos available? Is he still here?

23 MR. COOPER: He is here, Your Honor, yes.

24 JUDGE RUTH: I suggest that you go ahead and  
25 re-call him. We can change witnesses at the stand. You

1 can lay a better foundation, and then we can recall  
2 Mr. Adam.  
3 Do you wish to do that?  
4 MR. COOPER: I do, Your Honor.  
5 JUDGE RUTH: Okay. Would you please step down,  
6 Mr. Adam.  
7 Mr. Loos, I'll just remind you that you are  
8 still under oath.  
9 And, Mr. Cooper, you may proceed.  
10 And, Mr. Adam, you are going to stay.  
11 L. W. LOOS testified as follows:  
12 RECROSS-EXAMINATION BY MR. COOPER:  
13 Q. Mr. Loos, I'm going to hand to you the document  
14 that previously was in Mr. Adam's possession.  
15 Now that I have done so, do you recognize that  
16 document?  
17 A. Yes, I do. It's the workpapers that were  
18 prepared under my direction pertaining to the development  
19 of depreciation expense rates for production plant.  
20 Q. Okay. And did you have the opportunity to  
21 review those papers after they were produced?  
22 A. Yes, I did.  
23 Q. And did you believe that the numbers reflected  
24 in there were true and correct to the best of your  
25 knowledge and belief?

1           A.       Yes, they are.

2           Q.       Tell me, again, what use you made of those  
3   workpapers.

4           A.       These workpapers show the development of, in  
5   detail, the depreciation rates that I propose in this  
6   matter.

7                    It includes details with respect to historical  
8   additions, retirements, includes forecast of future,  
9   interim activity based on historical additions and  
10   retirements, excluding major environmental, maintenance  
11   and other items. Just the routine things, and the  
12   development of the base depreciation rate and then  
13   adjusted for salvage.

14                   They do not include allowance for amortization  
15   of reserve deficiency.

16          Q.       And, ultimately, they were used, again, for  
17   that purpose?

18          A.       They are the underlying support for my  
19   recommended depreciation rates.

20          Q.       Did you have the opportunity to provide those  
21   workpapers that are before you to the Commission Staff?

22          A.       I understand that they were provided to the  
23   Commission Staff, but at the time that our direct  
24   testimony was filed.

25          Q.       I'm going to hand you what has been marked as

1 Exhibit 98 at this time.

2 I believe those are pages that are identified  
3 by handwritten numbers in the upper right-hand corner as  
4 pages 717, 736, 754, 771, 788, 805, and 842. Is that  
5 correct?

6 A. Yes.

7 Q. Could you compare those pages to the pages that  
8 are included within the workpapers that are before you?

9 A. They are the same.

10 Q. So you would say that they accurately represent  
11 pages 717, 736, 754, 771, 788 and 805 of your workpapers  
12 that were provided to the Staff in this case?

13 A. Also, 842, yes.

14 Q. And 842.

15 MR. COOPER: At this time I would again offer  
16 Exhibit 98.

17 MR. WILLIAMS: I'm going to object based on  
18 relevance.

19 JUDGE RUTH: Explain.

20 MR. WILLIAMS: He also had an opportunity to  
21 provide this in his direct testimony and his rebuttal  
22 testimony and his surrebuttal testimony.

23 Mr. Adam has not testified that he relied upon  
24 these documents in preparing his testimony filed in here  
25 that Mr. Cooper is attempting to impeach. He's indicated

1     that he did rely upon workpapers, but he's certainly not  
2     indicated he relied on these specific papers.

3                 JUDGE RUTH:   Okay.

4                 And, Mr. Conrad, were you ready to object?

5                 MR. CONRAD:   Well, I was going to ask if I  
6     could very quickly do -- maybe this is what -- oh, this is  
7     dead.  Maybe that's what the problem is.

8                 John, quit kicking my microphone.

9                 MR. CONRAD:   If I could ask the witness a  
10    couple of voir-dire questions?

11                JUDGE RUTH:   Yes.  But you're going to need to  
12    speak into the microphone more.

13                MR. CONRAD:   I'll try do so.

14    VOIR-DIRE EXAMINATION BY MR. CONRAD:

15                Q.     Mr. Loos, the testimony that you filed, I  
16    believe that was Exhibit 11, is dated October 31.  Is that  
17    correct?

18                A.     Yes.

19                Q.     Did these workpapers exist as of October 31?

20                A.     They would have existed prior to that date.  
21    They may have been printed subsequently.

22                Q.     And secondly, Exhibit 98, is that a complete  
23    copy of your workpapers?

24                A.     No.  It's only those pages which are identified  
25    as page 2, generally, of 15 for each production plant and

1     only for the production units.

2                   MR. CONRAD:  Thank you, Mr. Loos.

3                   Your Honor, I would join in the objection on  
4     the basis that it's out of sequence supplementation of  
5     direct testimony material that clearly existed.

6                   The witness has testified it existed at the  
7     time of his original testimony, so it obviously existed at  
8     the time of his rebuttal and surrebuttal.

9                   And, secondly, it's an incomplete offering of  
10    the exhibit, even if it's offered in supplement.

11                  JUDGE RUTH:  Okay.

12                  And, Public Counsel, did you want to add your  
13    two cents?

14                  MR. COFFMAN:  No, thank you.

15                  MR. WILLIAMS:  Judge, may I inquire, too, of  
16    the witness?

17                  JUDGE RUTH:  Yes.

18    VOIR-DIRE EXAMINATION BY MR. WILLIAMS:

19       Q.       Exhibit 98 is seven pages?

20       A.       Yeah.  Yes.

21       Q.       And how many are the total pages of the  
22    document from which that is excerpted?

23       A.       The final page in this document is 855.  The  
24    first page is 713.

25                  More likely with respect to mass accounts and

1 other accounts, 713, or 12 before that.

2 Q. And that document you're looking at, is that  
3 your entire workpapers or is that a subset also?

4 A. A subset with respect to production plants.

5 MR. WILLIAMS: No further questions.

6 JUDGE RUTH: Okay. Let me restate then here:  
7 We had further foundation questions from Mr. Cooper.  
8 We've had objections from the parties, voir dire. I've  
9 heard them. I think the foundation is adequate.

10 I'm going to allow the document in and Mr. Loos  
11 can step down. We will re-call Mr. Adam.

12 So Exhibit 98 is admitted into the record, and  
13 the parties' objections are noted.

14 (EXHIBIT NO. 98 WAS RECEIVED INTO EVIDENCE.)

15 JUDGE RUTH: Okay.

16 Mr. Adam, you're back on the stand, and you are  
17 still under oath.

18 Mr. Cooper, you may continue your  
19 cross-examination of the witness.

20 MR. COOPER: Thank you, Your Honor.

21 PAUL ADAM testified as follows:

22 CROSS-EXAMINATION (CONT'D) BY MR. COOPER:

23 Q. First, just kind of a point of clarification,  
24 Mr. Adam.

25 I believe in a prior response you may have said



1     that Empire is proposing to include costs of removal in  
2     plant.

3                 Is Empire really proposing to include -- or to  
4     add cost of removal to plant in-service or proposing to  
5     reduce reserve by the cost of removal?

6             A.       Well, they're including the cost of removal in  
7     the determination of the depreciation rate.

8             Q.       And it has nothing to do with plant in-service.  
9     Correct?

10            A.       Correct. Plant in-service is what you multiply  
11    it by to get the accrual.

12            Q.       Now, as I understand your testimony, you have a  
13    concern with including a net salvage allowance based on  
14    the historical relationship of net salvage to retirements.  
15    Correct?

16            A.       The characteristic way that they calculate net  
17    salvage in the Whole Life formula is to take current cost  
18    of removal and divide it by the original cost of the plant  
19    that was removed.

20            Q.       Now, when you were deriving a net salvage  
21    allowance --

22            A.       I didn't derive one.

23            Q.       When a net salvage allowance is derived in the  
24    traditional Whole Life formula, is it possible to reflect  
25    factors other than just the historical relationship of net

1 salvage and retirement?

2 A. It would be -- that's what we're doing.

3 Q. Yeah.

4 But even within the Whole Life method -- let's  
5 refer to the Whole Life method being a situation where you  
6 establish the life, percentage of net salvage and come up  
7 with a resulting depreciation rate.

8 In establishing that number that you're going  
9 to use for net salvage, it's possible to include factors  
10 in arriving at that number other than just the historical  
11 relationship of net salvage and retirements, isn't it?

12 A. It would be possible. Go out and do an  
13 independent study of what you think the cost is going to  
14 be in the future entirely exclusive of what has occurred.

15 Q. And as a result of such study, then, a person  
16 could go back and persons of, I suppose, reasonable minds  
17 could then differ and present different opinions as to  
18 what the precise number should be that is used for net  
19 salvage in that calculation. Correct?

20 A. For future calculation?

21 For a future determination?

22 Q. No. Let's say we're -- and we may -- your  
23 question may have just thrown me.

24 But let's say that we're utilizing -- and set  
25 aside your proposal for a minute.

1           Let's say we're utilizing what we refer to as  
2   the Whole Life method of deriving a depreciation rate.

3           And as I said before, we're going to assume  
4   through that method we're going to -- we're going to come  
5   up with a life, a net salvage number and then a resulting  
6   depreciation rate. Okay?

7       A.     Yes.

8       Q.     And I believe what you told me was, that in  
9   arriving at that net salvage number, you, someone else,  
10   some depreciation professional, could take a look at, make  
11   a study of, potential future cost of removal costs, and  
12   from that come up with a proposal of numbers to be  
13   reflected as net salvage. Correct?

14      A.     Certainly.

15           MR. COOPER: That's all of questions I have,  
16   Your Honor.

17           JUDGE RUTH: This is a good time for a break.

18           We will go off the record and come back at  
19   four o'clock.

20           (A RECESS WAS TAKEN.)

21           JUDGE RUTH: Let's go ahead and go back on the  
22   record.

23           We are back on the record.

24           And we will now take some questions from the  
25   bench.

1 Commissioner Murray, would you like to begin?

2 COMMISSIONER MURRAY: Thank you.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon, Mr. Adam.

5 A. Hi, Commissioner Murray.

6 Q. I just have a couple of questions for you.

7 In your surrebuttal testimony on page 5, you  
8 speak about the future costs being unknown and in cases  
9 where the plant is sold before retirement, the future net  
10 salvage costs never occurs for the Company, although  
11 consumers would have paid for it if the Company's  
12 consultant's depreciation rates are ordered.

13 Do you recall that?

14 Isn't it true that a buyer usually insists that  
15 costs -- future costs, such as retirement or environmental  
16 remediation, those types of costs be considered and  
17 included in the pricing?

18 A. I think if we were probably to look at all of  
19 the power plants that have been sold in the last few  
20 years, that have been sold at much over books, sometimes  
21 multiples of books, that those people were looking at  
22 getting over the power plants to sell the power and were  
23 not determining the price they were willing to pay on what  
24 the retirement cost was going to be.

25 If there was an environmental hazard, I would

1 expect that they would probably try to put something in  
2 the contract when they purchased it to exempt themselves  
3 from the cost of an environmental problem.

4 Q. Isn't it ordinary for a buyer to insist upon an  
5 environmental audit of some kind?

6 A. I can't speak as an expert in that area, but I  
7 would expect that to be the normal.

8 Q. My other question relates to your direct  
9 testimony, on page 19, and I believe you spoke briefly  
10 with Mr. Cooper about where a major retirement and removal  
11 is necessary -- or would be necessary with Staff's  
12 depreciation method, how that would be done.

13 A. Uh-huh.

14 Q. Do you recall that?

15 Is it accurate that you are suggesting that  
16 under Staff's method, when a major retirement and removal  
17 is necessary, that the Company would first spend the money  
18 for retirement and then collect from the ratepayers in the  
19 future?

20 A. Removal rather than retirement.

21 And essentially, yes. I've also said in  
22 testimony -- I believe I said in the county water  
23 testimony that if there was some kind of contract or  
24 commitment that was taken care of between a company and  
25 the company that was going to do the tear-down and the

1 remediation, that Staff would look upon that favorably as  
2 saying, yes, there is a commitment here by this company to  
3 actually go forward with the removal as planned.

4           This is the very same kind of issue -- if you  
5 happen to remember the Laclede case and the gasholders, is  
6 that they have told us they're going to get rid of the  
7 gasholders, but they would not commit to it in that rate  
8 case.

9           Q.       And the instance that we're talking about here,  
10 where removal and/or remediation were required, the  
11 Company would have to spend the money?

12          A.       The Company will spend the money, and they will  
13 collect it from the customers, yes. And we would set up  
14 an amortization.

15          Q.       So they would collect it from the ratepayers in  
16 the future over time?

17          A.       A relatively short period of time, uh-huh.

18          Q.       And did I hear you say that you did not know  
19 whether Staff would recommend to include the unamortized  
20 portion in rate base?

21          A.       Unrecovered.

22                   Well, I -- I don't think I answered that  
23 question. If it was answered -- if it was asked, I don't  
24 remember answering it.

25                   But the unamortized portion would be

1     calculated, I believe, out of the balance.  So in other  
2     words, if it's -- if it's on the books -- well, they  
3     wouldn't be removing it if it was not retired.  So if it's  
4     retired it's off of the books.

5           Q.       But if you --

6           A.       If there is -- I think what you might have  
7     heard was I talked about the unrecovered portion of the  
8     plant.  In other words, if you had set up a depreciation  
9     rate and accrued and accrued and accrued and then they  
10    retired the plant and they hadn't accrued the full cost of  
11    the original plant.

12                   We also frequently -- we've had this case with  
13    digital switches, the early digital switches for tel co.  
14    We would set up an amortization for the company to recover  
15    the unrecovered portion of the original cost of the plant.

16          Q.       Okay.  Did I understand you to say, though,  
17    that rather than expensing the cost of removal in year  
18    one, that you would amortize that out over the future?

19          A.       It would be am-- yeah, we'd set up an -- for a  
20    cost of removal of a major plant, like, tearing down a  
21    power plant, we would simply set up an amortization.

22                   And if there was, say, a million dollars spent  
23    and that was not going to cause rate shock, we'd do it in  
24    a year.  If it was going to cause rate shock, we might do  
25    it in three years.  Or we would propose that at least.

1           Q.       Okay.  So potentially it would be collected  
2   from ratepayers who did not use the plant that was  
3   retired?

4           A.       That would be a true statement.

5                    COMMISSIONER MURRAY:  I think that's all.

6                    Thank you, Judge.

7                    JUDGE RUTH:  Thank you.

8                    Commissioner Gaw, do you have any questions for  
9   the witness?

10                   COMMISSIONER GAW:  Yes.  Thank you.

11   QUESTIONS BY COMMISSIONER GAW:

12           Q.       Mr. Adam, there were some questions earlier  
13   about whether or not you were estimating the -- estimating  
14   certain things in regard to the depreciation amount and  
15   whether or not that was not the same thing that Staff was  
16   complaining about in regard to the way that depreciation  
17   is handled when you deal with negative net salvage.

18                    When a plant is put in service initially, and  
19   there is -- there is a -- there are a couple of things --  
20   there is one thing known, I suppose, isn't there, and that  
21   is the amount of money expended to create the plant.  
22   Would that be accurate?

23           A.       It's known sometimes shortly after the plant is  
24   in service, when they get all of the true numbers brought  
25   together.



1           If you were to look at this Company right now,  
2   what they're booking are estimates of the cost.

3           At some point in time after the plant is  
4   running, maybe as much as a year later, they will bring  
5   together all of the true costs, they'll book them, reverse  
6   out the estimates.

7       Q.     And those will be the figures that are actually  
8   used for all of the years after that as adjusted by  
9   additional improvements to the plant?

10      A.     That would be the plant -- that would be -- the  
11   depreciation rate would be multiplied times that plant  
12   balance.

13      Q.     So that is a known figure basically upon the --

14      A.     Yes.

15      Q.     -- year or so period expiring?

16      A.     Yes.

17      Q.     So we're not estimating that. Is that correct?

18      A.     Correct.

19      Q.     What you do estimate, I assume, and what we  
20   have to estimate, when you were talking about amortization  
21   at that point, would be the number of years of useful  
22   life?

23      A.     At that point -- are you talking about when the  
24   plant is brand new?

25      Q.     Yes.

1           A.       We do similar to what we did in this case, is  
2 we talked to the people that design the plant.

3                   Usually engineers, when they take on a job, are  
4 given a design life, where they develop the design of a  
5 plant with a design life.

6                   In the case of power plants, 30, 35, 40 years  
7 are common. In the case -- in this case we talked to the  
8 engineer that was responsible for the design, and this is  
9 a phone-call-type thing that we did, and were told that  
10 the design life was 35 years.

11          Q.       And that's for which plant?

12          A.       The new combined cycle plant.

13          Q.       I just want to make sure that we have it  
14 correctly on the record.

15                   From the standpoint of other plants that are  
16 already in service, the remaining life that you estimated  
17 on those plants, was it the same or different than what  
18 the Company --

19          A.       On the other plants, the life that is the life  
20 given on the schedules is calculated from interim  
21 retirements.

22                   In other words, even in a big power plant  
23 you're always retiring something and replacing it. Maybe  
24 replacing it with something newer that's better or similar  
25 but better, more efficient.

1                   And those interim retirements still allow you  
2   to develop a survivor curve. And you can then do a  
3   overlay of a type curve to the actual events that have  
4   occurred and develop an average service life on those  
5   interim retirements.

6                   Now, when you have that, at some point in time  
7   you've got all of these additions that have occurred since  
8   the original construction of the plant.

9                   At some point in time there will be a final  
10  retirement of that whole plant, and it will retire all  
11  together.

12                  And so you'll have some of that plant that was  
13  bought later and have a very short life up to that  
14  retirement date. Some of it maybe is from the original  
15  plan.

16                  And at that point in time you have to analyze  
17  what is the life based on that retirement date.

18       Q.       And did your dates -- did the dates of Staff --  
19  how did they compare with the dates of the Company?

20       A.       Well, they're considerably different, because  
21  the Company picks a retirement date in that table that was  
22  talked about earlier.

23                  They picked that Riverton would retire in  
24  2000 -- or several units at Riverton would retire in 2008.  
25  They picked that Asbury would retire 2014 and that Iatan

1 would retire 2014. So they're putting the cut on that  
2 curve.

3 The area under the curve represents the average  
4 service life. So if you cut that curve off, you're  
5 reducing the area under the curve. You reduce the average  
6 service life.

7 What we asked when we go on plant tours is when  
8 is this going to be retired? Do you see a retirement  
9 date?

10 And if they told us they saw a retirement date,  
11 we would say, well, where are you going to get the  
12 replacement power?

13 With this Company and other power companies, we  
14 have not been told that there is a retirement date for  
15 power plants, specifically, coal-burning power plants that  
16 they have, we have not been able to get the Company to  
17 tell us, yeah, we have a retirement date planned.

18 Q. So from your standpoint on this particular  
19 case, you made those inquiries about -- of the Company  
20 about when they intended to retire the plants that are in  
21 issue here?

22 A. I made them not only of the Company; I  
23 discussed with our electric department what the Company is  
24 telling them about their future with their plants and  
25 their plant additions.

1           And through the data that is released  
2   confidentially to our electric department, they are not  
3   talking about retiring plant. They're talking about  
4   developing more plant, adding more plant.

5       Q.       What do you mean by that? Explain that to me,  
6   please.

7       A.       Well, they need -- based on their demand that  
8   they expect to see in the next three to five years, they  
9   need more power than they're capable of producing at this  
10   time.

11      Q.       Even with the two -- even with the additions  
12   that we have in front of us here?

13      A.       With all of the base load and with all of the  
14   peaking, they will not have enough peak load power by  
15   2003.

16      Q.       All right. And, now, I also would assume,  
17   though, that it is possible that they could retire some of  
18   these plants and replace them with another one, that  
19   that's a way -- in addition to -- to trying to make the  
20   assumption that they're just not going to retire these  
21   plants and build additional ones on top of that.

22           Do you have any information -- or did you get  
23   any information that indicated that there was an intention  
24   to retire any of the plants that are currently in service?

25      A.       No.

1 Q. Do you believe based upon your information that  
2 your estimates in regard to -- well, I assume you do.

3 You're telling us that your estimates are more  
4 accurate in regard to when these plants will actually  
5 retire than company's estimates on when they will actually  
6 be retired? I assume that's correct?

7 A. I believe their retirement dates are shorter  
8 than will actually occur.

9 Q. Right.

10 A. Because if they --

11 Q. All right.

12 A. -- because if -- the Company would need to be  
13 making plans now.

14 Combustion turbines from GE or Seimens  
15 Westinghouse are five years out. That's -- that's how  
16 much of a backlog they have on their demand for combustion  
17 turbines.

18 This Company is looking at an alternate  
19 supplier of a combustion turbine to try to pick up the  
20 shortfall that they expect to have in 2003.

21 And that shortfall has to be given that all of  
22 the power, including the 300 megawatts out of the combined  
23 cycle unit that is not running yet, are in place.

24 Q. So what are the estimates of the shortfall by  
25 2003?

1                   Do you know the answer to that?

2           A.       Yeah. But it's given confidentially to our  
3 electric department.

4           Q.       All right. I understand.

5                   Let's avoid that for the time being.

6                   From this -- is that number that you're  
7 starting to see the shortfall in 2003, is it likely to  
8 get -- to get better or worse after 2003?

9           A.       It gets -- by their own projections, it gets  
10 worse.

11          Q.       Do you see -- do you see any evidence, based  
12 upon the information that you were given, that any of the  
13 plants that are estimated to be terminated by -- I think  
14 it's 2007 -- that that will be a retirement date that is  
15 likely to occur?

16          A.       I don't believe it will. That's one place  
17 where we differ.

18          Q.       All right. I want to get back to the issue of  
19 estimates again.

20                   So when we're doing classic depreciation -- and  
21 I don't know. Maybe I should just say depreciation --  
22 initially we know the value of the item to be depreciated.  
23 Is that correct?

24          A.       That's a fair statement.

25          Q.       We're estimating the length, the period of time

1 of useful life?

2 A. To recover that capital investment, yes.

3 Q. We're doing that based upon whether it be  
4 models or experience or whatever, there is some way that  
5 we've got to come up with an idea about when that may  
6 actually occur, and that's what we have some disagreement  
7 on in front of us, one of the issues?

8 A. One of the issues is life, yes.

9 Q. When you're dealing with net salvage, if we  
10 deal with net salvage, we are having to estimate two  
11 different things, are we not, first of all, the value of  
12 net salvage and, secondly, when that will occur?

13 Is that accurate?

14 A. That's -- that's a good statement.

15 You would be needing to know the date that you  
16 expect to retire that plant and remove it, so that that  
17 cost would be incurred.

18 And exactly as you say, what it's really going  
19 to be?

20 Q. Is it possible that a plant that is retired  
21 never -- that the Company never incurs the expense of  
22 removal of the plant itself?

23 A. It's possible that the physical plant could be  
24 sold in place on the land.

25 Q. All right.



1                   And based upon your experience, is that -- if  
2   that is sold, is that sold for a positive number or does  
3   the Company have to pay someone to take it off of their  
4   hands?

5           A.       Well, I've never been an employee of a power  
6   company, but my -- I would probably bet everything I'm  
7   totally worth that they don't pay someone to take it off  
8   of their hands.

9           Q.       Well, I'm asking that question because it was  
10   brought up a little earlier, that the significance of the  
11   value of the land may be very small.

12                   Can you tell me what the -- in comparison to  
13   some of the other numbers we're talking about, can you  
14   tell me what the figures are for the cost of removal that  
15   is being estimated in terms of calculating net salvage on  
16   some of these plants that are at issue in front of us?

17          A.       Can I tell you what the cost of net salvage is?

18          Q.       What the Company is estimating net salvage  
19   should be.

20          A.       Versus the value of the land?

21          Q.       Let's ignore the land for the time being.

22          A.       Okay.

23          Q.       Just tell me, if you know, what the Company is  
24   estimating that net salvage should be on these plants upon  
25   their removal?

1           A.       I don't know that off the top of my head, no.

2           Q.       They have provided numbers, I assume, for what

3 they believe net salvage should be?

4           A.       When they do a life span calculation, they're

5 going to have a retirement at the end of it -- or removal.

6       Excuse me.

7           Q.       And are those -- can you give me some range or

8 idea of what kind of numbers we would be talking about

9 when we're dealing --

10          A.       For cost of removal?

11          Q.       Yes.

12          A.       I really can't.

13                    It would partly be dictated by the size of the

14 plant, location of the plant and those kinds of things.

15                    But, honestly, in the work that I've done here,

16 I haven't dug into the numbers to see what they were

17 using.

18          Q.       All right. Do you know if those numbers are --

19          A.       I would suspect that --

20          Q.       Do you know if any of those numbers have been

21 provided to Staff?

22          A.       I would think that in all of these workpapers

23 and such that were addressed earlier, that somewhere in

24 there those numbers would be located.

25          Q.       Is it possible that those numbers for cost of

1 removal would exceed the value of the real estate that  
2 they're on?

3 A. It's possible.

4 Q. But you don't believe that selling that real  
5 estate would be -- would cause the Company to pay someone  
6 to take it off of their hands?

7 A. I'm just doubtful of it.

8 But there is more to it than just looking at  
9 that. There is --

10 Q. I suspected that. Go ahead.

11 A. There is an infrastructure there that is  
12 already set up to carry electricity away from there. If  
13 it's a coal plant, there is already a train track set up  
14 there to bring the train in and dump the coal.

15 And there is a lot of infrastructure that tells  
16 you why would you want to abandon this location.

17 Even if you shut down a coal-burning plant, it  
18 would be very logical to still use the location for  
19 something like a combined cycle unit or something like  
20 that, because the infrastructure is there to carry the  
21 power away.

22 Q. Even though those items may have been  
23 depreciated out already as far as the Company is  
24 concerned, they may still have value to them?

25 A. The location would have value and those other

1 infrastructure parts have value to them.

2 Q. If we use the calculation mode that Staff has  
3 proposed, you don't have to estimate the cost of removal  
4 under that scenario, do you?

5 A. That's right.

6 Q. Because you used the actual numbers?

7 A. We -- as I was telling Commissioner Murray, if  
8 there was a removal of a major plant, when that is known,  
9 then we would set up -- we would propose an amortization  
10 to recover that, for the Company to recover it.

11 Q. You also do not have to estimate when that  
12 occurs?

13 A. That's true.

14 Q. So we have two knowns in those cases -- in that  
15 scenario as opposed to two unknowns under the -- under the  
16 scenario where we allow amortization of negative net  
17 salvage?

18 A. That's -- that's my argument. That's my  
19 position, yes.

20 Q. If we use negative net salvage in the Company's  
21 position and the retirement date is estimated to be at a  
22 specified year, assuming that there are no additional  
23 improvements added over the course of time, should all of  
24 the depreciation be done by the time that you arrive at  
25 the end of useful life year?

1           A.       And are we only recovering the original cost?

2           Q.       Original cost, plus negative net salvage,

3   assume there is a negative --

4           A.       Well, that would be their objective, yes.

5           Q.       That's what I'm asking.

6           A.       Yes.

7           Q.       So when we get to --

8           A.       The day they would retire the plant.

9           Q.       That they're making the estimate from a book

10   standpoint?

11          A.       Yes.

12          Q.       If the actual removal were not done for years

13   later, what would be the advantage to the Company of

14   having the retirement date earlier in regard to -- I'm

15   just going to limit it to the negative salvage value -- if

16   the removal were not done for many years afterward but the

17   value had been depreciated out by the end of that useful

18   life?

19          A.       Well, one advantage would be that the Company

20   would have that money to use for whatever they wanted to

21   use it for, as real dollars to buy something with or pay

22   salaries or whatever.

23                    The disadvantage is, is what happens is you let

24   that plant sit. Do you have a problem, as one of the

25   power companies did, with kids scrambling over a chain-

1 link fence and one of them getting hurt and they got a big  
2 lawsuit, and they decided then it was time to tear the  
3 plant down.

4 So you never know. They actually may end up  
5 spending more money by letting the plant --

6 Q. But the value, as far as the depreciation is  
7 concerned, and the value of money, there is -- and believe  
8 me, I'm probably asking this incorrectly, but there is  
9 something called -- that says that if you get money in  
10 sooner, it's worth more than if you get it in later.  
11 Correct?

12 A. Present worth at valuation.

13 Q. What do you call --

14 A. Present worth at valuation.

15 Q. All right. So if the Company is able to take  
16 advantage of getting the money in and then not actually  
17 paying for removal until later, there are some additional  
18 dollars of value to that. Is that not correct?

19 A. From a present worth point of view, yes.

20 Q. Are you aware of any requirements that the  
21 improvements actually be removed at any point in time?

22 A. I'm not aware of one.

23 COMMISSIONER GAW: That's all I have. Thank  
24 you.

25 JUDGE RUTH: Chair Lumpe.

1 CHAIR LUMPE: Just a couple, Mr. Adam.

2 QUESTIONS BY CHAIR LUMPE:

3 Q. To go back to Mr. Loos statement about your  
4 proposal versus his proposal, that it doesn't leave any,  
5 quote, middle ground, that we could choose some of yours  
6 and some of theirs, do you have any thoughts on what a  
7 middle ground would be?

8 A. Commissioner Lumpe, although I wouldn't  
9 probably be elated to see you do it, you could go account  
10 by account and pick the rates we propose on certain  
11 accounts and the rates they propose on other accounts.

12 Q. And how about with net salvage?

13 A. Well, then you would have to --

14 Q. Is that --

15 A. -- make a determination of how much we ought to  
16 reduce the net salvage number that we show as an expense  
17 due to the increase that they would have in their  
18 depreciation numbers.

19 Q. So on net salvage it would either be expensing  
20 it or including it in depreciation; there is not someplace  
21 in the middle there that is something different?

22 A. Well, you could take the number that our  
23 auditors have proposed and make an amortization, which  
24 would then bring it over on the depreciation side, where  
25 it would become accrual, but that would not change the

1 revenue requirement because you're still working with the  
2 same dollar amount.

3           What it would do would -- the concern that some  
4 of the people with the Company have about the possibility  
5 that these removal costs will increase in the next two or  
6 three years greater than what Staff has determined as the  
7 current expense level, if you did that, then you would be  
8 able to track that number and the Company would be able to  
9 say -- say if they came back three years from now for  
10 another rate case, they'd say, look, we had this under-  
11 recovery against this amortization amount, and we want to  
12 recover that in this next rate case.

13       Q.       So that would be an alternative way of --

14       A.       It's an alternative to what is proposed, but it  
15 doesn't change -- it doesn't give them any additional  
16 revenue, which I think is what they really want.

17       Q.       The intergenerational issue is raised, that if  
18 you do net salvage the way you're suggesting, that somehow  
19 people are paying for it who didn't have use of it.

20           And I'm not quite clear on that, because it  
21 seems to me that if you're expensing it and it's in the  
22 rate, is it in the rate then, would not people be paying  
23 for it as they were using it?

24       A.       What -- the way we propose it, the customers  
25 would be paying an amount equal to the plant that is



1     retired today.

2                     What they're proposing is that you make an  
3     estimate of some future cost of removal.

4                     Typically it's done on a ratio of what the  
5     original cost of plant was 30, 40 years ago to the cost to  
6     remove that same plant today.

7                     And you apply that ratio, then, to today's  
8     plant and say, well, that same ratio applies for when I'll  
9     retire it in the future.

10                    If that ratio were to apply, then they put it  
11    in the formula and they say, I want to collect that amount  
12    of money over the life of this plant also.

13                    That's the difference in our positions, is  
14    we're saying that the Company is collecting, then, more  
15    than they currently spend, and there is no fund or  
16    anything that those dollars go into to be certain that  
17    they will be available for retirement of that plant in the  
18    future.

19                    There is no certainty that that plant is going  
20    to cost that amount to retire it or remove it in the  
21    future.

22                    So those are the reasons that we have come  
23    up -- the Company will collect as much as they spend on  
24    our basis. They will collect what they're spending now  
25    for cost of removal, and they'll collect a reasonable

1 portion of the capital investment that they have in plant.

2 Q. And they will be collecting it from the people  
3 that are currently using --

4 A. -- using the plant.

5 Q. Okay.

6 And one other thing. I think I heard you say  
7 that -- the question was asked about whether we're  
8 violating the accounting standards in our rules, and you  
9 said that should be better asked of a later witness --

10 A. I think there will be an accountant or an  
11 auditor testifying later who can probably give you a much  
12 better answer than I could attempt.

13 CHAIR LUMPE: Okay. I will wait for that  
14 person then.

15 Thank you, Mr. Adam.

16 JUDGE RUTH: Commissioner Murray.

17 COMMISSIONER MURRAY: Yes. I have something  
18 else that I forgot to ask you, Mr. Adam.

19 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

20 Q. In relation to the retirement, the estimated  
21 retirement of certain plant and your claim that Empire  
22 doesn't have any plans to retire --

23 A. Generating.

24 Q. -- these plants, and at the time that they are  
25 saying that they will retire them.

1           Can you tell me if a -- if at the end of the  
2   depreciation period the plant -- any plant is not retired  
3   but it is fully depreciated, wouldn't the plant, then,  
4   continue to operate even though it was fully removed from  
5   rate base at that time, and wouldn't the net effect be  
6   that the Company would be serving the ratepayers with  
7   assets that no longer were in rate base, and wouldn't that  
8   be to the ratepayers advantage?

9       A.     If there is a case -- a rate case that allows  
10   that calculation to be done, your assumption would be  
11   right, and we would set the depreciation rate to zero.

12           Again, it would be essentially identical to the  
13   gasholders in St. Louis in the Laclede case, where we set  
14   the depreciation rate to zero because they already over-  
15   recovered the original cost.

16       Q.     So there is not necessarily any harm that  
17   occurs from a plant being depreciated before it's actually  
18   retired?

19       A.     Any harm?

20           What we're talking about right now is recovery  
21   of the original costs.

22           We're not talking about a net salvage amount  
23   that is in excess of what they're currently spending.

24       Q.     Okay. I think you have to separate those two  
25   issues.

1                   But it appears to me that one of the issues  
2   that Staff is having a problem with in terms of the  
3   Company's proposal is that they don't have any definite  
4   plans in mind to retire the plant as of certain dates?

5       A.       Generating plant, correct.

6       Q.       Okay. Correct.

7                   But that is separate from the net salvage  
8   issue, is it not?

9       A.       Correct.

10      Q.       And that's the issue that I was trying to  
11   explore right now.

12                  There is not necessarily any harm done by  
13   having fully depreciated a particular generating plant  
14   before it's retired?

15      A.       As far as the customers are concerned, I  
16   believe your statement is reasonably correct, given that  
17   there are rate cases held on a reasonable frequency.

18                  COMMISSIONER MURRAY: Thank you.

19                  JUDGE RUTH: Commissioner Lumpe.

20                  CHAIR LUMPE: Just one more.

21                  And I don't know who to ask this of, but it's  
22   Mr. Lyons' testimony, and I don't necessarily have a  
23   question of him, but I'd like some clarification on what I  
24   think he's trying to say, but I don't know if I'm correct  
25   in what I think he's trying to say.

1                   Is there -- so I'm not quite sure. I don't  
2 know that I need him to come, but if there is some  
3 accountant I can ask at some point whether I'm correct in  
4 what he's trying to say.

5                   MR. COOPER: Chair Lumpe, I'm kind of looking  
6 for help here from the Company. I may need to discuss  
7 that with Company personnel.

8                   I suppose it's possible that one of the Company  
9 accountants would feel qualified to answer that question.

10                  CHAIR LUMPE: If they would, all I need to have  
11 is my -- you know, clarify, is this what he's trying to  
12 say. If they say yes, that's fine. If they say no, then  
13 I'll know I haven't correctly interpreted it. But that's  
14 all I need to know about it.

15                  MR. COOPER: Commissioner, it's a little  
16 difficult, I guess, for them to say without knowing what  
17 your question is.

18                  But would it be possible for you to go ahead  
19 and state your question?

20                  CHAIR LUMPE: Yes, I can do that. And in the  
21 morning, if you want, you can tell me.

22                  As I read his testimony, he's discussing new  
23 accounting standards or a proposed draft that the  
24 accounting board is proposing, and stating what he thinks  
25 those new standards will say.

1                   If he's going beyond that, then I haven't  
2 caught it.

3                   MR. COOPER: Yes, Commissioner.

4                   I guess I feel comfortable confirming that,  
5 although I shouldn't testify.

6                   And a Company accountant is available that  
7 could confirm that for you on the stand if you would like  
8 for him to do so.

9                   CHAIR LUMPE: Okay. Thank you.

10                  MR. WILLIAMS: Chair, we anticipate putting the  
11 exposure draft -- portions of the exposure draft in as an  
12 exhibit.

13                  CHAIR LUMPE: Okay. Then that will get to it  
14 that way. Okay. Thanks very much.

15                  I'm sorry.

16                  JUDGE RUTH: While we still have Mr. Adam on  
17 the stand, are there any other questions for him from the  
18 Commissioners?

19                  Okay. Well, I'd like to go ahead and at least  
20 start -- maybe I should ask how long Praxair anticipates  
21 recross.

22                  MR. CONRAD: Zero.

23                  JUDGE RUTH: Zero.

24                  Public Counsel.

25                  MR. COFFMAN: No recross.

1 JUDGE RUTH: And Empire.

2 MR. COOPER: Just a few minutes, Your Honor.

3 JUDGE RUTH: Go ahead and start then, please.

4 RECROSS-EXAMINATION BY MR. COOPER:

5 Q. Mr. Adam, the subject of Laclede gasholders  
6 came up several times during your testimony.

7 Empire doesn't have any gasholders, do they?

8 A. Not that I'm aware of.

9 Q. Okay. Secondly, early in your testimony, in  
10 response to questions from the bench, I believe you talked  
11 about property, specifically, generation property, being  
12 sold at prices above book value.

13 I take it that you're referring to the sale of  
14 a piece of generating property that would still be used  
15 and useful. Correct?

16 A. Correct, in other states, as a matter of fact.

17 Q. And in Missouri, if a piece of property such as  
18 generating property is still used and useful, an electric  
19 corporation must come to the Commission for permission to  
20 sell that property. Correct?

21 A. Yeah. The generating side is not deregulated  
22 in the State of Missouri.

23 Q. Next I think there was some reference to  
24 retirement dates of 2008. Do you recall those?

25 A. (Nods head.)

1 Q. And I take it your answer is yes?

2 A. Yes. I'm sorry.

3 Q. And I take it you were referring to some

4 retirement -- projected retirement dates that were used by

5 Mr. Loos. Is that correct?

6 A. Table, yes.

7 Q. And that table, the 2008 retirement dates,

8 referred to Riverton Units 7, 8 and 9. Correct?

9 A. That sounds right.

10 Q. Okay. Do you remember whether Mr. Loos later

11 in his testimony adjusted those retirement dates?

12 A. I believe there were surrebuttal where he

13 proposed some alternative dates.

14 Q. Okay. And do you happen to have Mr. Loos's

15 surrebuttal in front of you?

16 A. No, I don't.

17 Q. Let me hand that to you, if I can.

18 MR. COOPER: Your Honor, if you would allow me

19 to hover just momentarily. I can do this pretty quickly,

20 I think.

21 BY MR. COOPER:

22 Q. Mr. Adam, on page 15, if you'll look at

23 approximately line 8. There is a section referring to

24 some changes that Mr. Loos has made.

25 Would you take a look at Item No. 1 that



1 actually begins on line 11.

2 A. Okay. Just right here?

3 Q. Correct.

4 A. Do you want me to read it?

5 A. The life span for generating units which have a  
6 projected retirement date prior to 2013, being Riverton 7,  
7 8 and 9, is increased so that the projected retirement  
8 date is 2013.

9 Q. So as to Riverton 7, 8 and 9, Mr. Loos is  
10 actually talking about 2013. Correct?

11 A. No. I think -- I think he says earlier in that  
12 testimony that he still believes in his previous dates,  
13 but here is an alternative if you'd like to look at it.

14 Q. And, indeed, he provides a schedule with his  
15 surrebuttal that would do just that. Correct?

16 A. He provides a schedule, yes. I don't believe  
17 he's supporting. I believe he's supporting his original  
18 data -- or dates.

19 Q. Now, in response to a question from  
20 Chair Lumpe, I think she asked you whether under your  
21 proposal you would be collecting cost removal from people  
22 currently using the plant.

23 And I had some question about that. Because  
24 it's my understanding that when we talk about cost of  
25 removal and the actual cost of it -- or the actual

1 expenditure of dollars for cost of removal, we've got to  
2 assume that that particular piece of plant has already  
3 been retired. Would you agree with that?

4 A. Uh-huh. Yes, I would.

5 Q. So if they're -- under your proposal any  
6 payment for actual cost for removal would necessarily  
7 relate to plant that has already been retired and is no  
8 longer in service. Correct?

9 A. Yes, sir, at least a contractual agreement.

10 MR. COOPER: Okay. That's all of the questions  
11 I have, Your Honor.

12 JUDGE RUTH: Mr. Williams, do you have some  
13 redirect?

14 MR. WILLIAMS: A little.

15 JUDGE RUTH: That's fine. If you go over  
16 five o'clock, we'll just stop and pick it up tomorrow.

17 MR. WILLIAMS: Well, I certainly hope not.

18 JUDGE RUTH: Okay.

19 REDIRECT EXAMINATION BY MR. WILLIAMS:

20 Q. Mr. Adam, you've testified using the  
21 terminology "life span property." Do you mean the same  
22 thing as what Mr. Loos has called the unit property when  
23 you use that term?

24 A. I think so.

25 You could have multiple units in the power

1 plant, and you could look at those units if they will  
2 stand alone as individual life span units.

3 Q. Now, Mr. Cooper asked you a series of questions  
4 regarding your responses to the Company's discovery  
5 requests, 18-K and 18-0, and then he referred you to  
6 Schedule 1-1 attached to your direct testimony and had you  
7 review some ordered lives and depreciation rates.

8 Do you recall that?

9 A. Right.

10 Q. And it sounded like there might be some  
11 inconsistency between the data request responses and that  
12 table. Can you explain that?

13 A. Well, the difference is in the life that is  
14 projected by the Staff which appears to be longer, and is  
15 in the table longer than the life that is stated as  
16 ordered.

17 But the ordered life had a life span cut-off on  
18 it. As I described to Commissioner Gaw, that cut-off  
19 shortens the life, the average service life. And these  
20 columns are average service lives.

21 Q. And you remember Exhibit 98 which is excerpts  
22 from Loos's workpapers?

23 A. I do today.

24 Q. Had you seen that before today?

25 A. I don't think I saw it. I think I had access

1 to the papers, but if I had seen that, I wouldn't have  
2 written what I wrote in my surrebuttal.

3 MR. WILLIAMS: No further questions.

4 JUDGE RUTH: Thank you.

5 That will conclude the questions for Mr. Adam  
6 at this time.

7 You may step down.

8 I'll state that we'll have to take up the  
9 question of whether or not Mr. Lyons will be needed on  
10 Friday, tomorrow morning, and we'll try and do that first  
11 thing.

12 Let's see.

13 That will conclude the hearing.

14 But I did want to talk to the parties a little  
15 bit about -- there had been some indication as to what  
16 time they thought we'd finish tomorrow. And I wanted to  
17 ask, once again, are there any other witnesses that you  
18 could bring in tomorrow besides the ones listed on the  
19 schedule?

20 We have down Empire has Gibson; Staff, Boltz;  
21 Empire, McKinney; Staff, Fischer.

22 If we get through those, is that as far as the  
23 parties are going to be able to go?

24 MR. DUFFY: I think that's right.

25 JUDGE RUTH: Okay. So I hear that.

1           Then I want you-all to think about, we may end  
2 up breaking for a bit in the morning to allow the  
3 Commissioners to conclude some business during agenda and  
4 take a longer-than-usual break.

5           I'll allow you-all to think about that and ask  
6 your opinion first thing in the morning. Of course, the  
7 Commissioners may decide that for you. But I'll see what  
8 you have to say.

9           I just -- if we're going -- if there is only  
10 enough testimony tomorrow to take until noon, it just  
11 might be an idea to consider allowing a longer break so  
12 the Commissioners can finish their agenda and get back  
13 down here.

14           MR. DUFFY: Alternatively, if you don't want to  
15 start the hearing until after the Commission's agenda,  
16 that would work too.

17           JUDGE RUTH: Well, the problem is, at this  
18 point they're still expecting to come down at 8:30.

19           If you-all want to hang around, I can run  
20 upstairs and ask them that, but I'm not going to not start  
21 at 8:30 unless they give the okay.

22           MR. DUFFY: As far as I'm concerned, it's  
23 whatever is convenient for the Commission and makes the  
24 most sense for you.

25           JUDGE RUTH: Okay. Well, let's go off the

1 record.

2 I will at least try and call them.

3 (OFF THE RECORD.)

4 JUDGE RUTH: Mr. Williams has brought up to the  
5 bench -- what would you characterize -- this is  
6 financial --

7 MR. WILLIAMS: Exposure draft.

8 JUDGE RUTH: Exposure draft.

9 MR. WILLIAMS: Financial Accounting Standards  
10 Board. It's numbered 206-B, February 17, 2000.

11 MR. DUFFY: Are we going to mark this as an  
12 exhibit? Is that what is going on?

13 MR. WILLIAMS: Yes.

14 JUDGE RUTH: For identification purposes at  
15 this point.

16 MR. WILLIAMS: And the parties are willing to  
17 stipulate this into the record.

18 JUDGE RUTH: Is this No. 99?

19 MR. DUFFY: Yes.

20 (EXHIBIT NO. 99 WAS MARKED FOR IDENTIFICATION  
21 BY THE COURT REPORTER.)

22 JUDGE RUTH: So I have marked as Exhibit 99 for  
23 identification purposes this exposure draft. It is  
24 approximately 60 pages.

25 Mr. Williams, are you wanting to go ahead and

1 offer it, then, at this time?

2 MR. WILLIAMS: Sure.

3 JUDGE RUTH: Okay. It's my understanding that  
4 the parties all agreed to this document being admitted  
5 into the record.

6 Is that correct?

7 MR. DUFFY: Yes, Your Honor. Except that I  
8 don't want the record to reflect that it is the complete  
9 exposure draft. It is --

10 JUDGE RUTH: A partial?

11 MR. WILLIAMS: -- selective pages.

12 MR. DUFFY: Yes, selective pages from the  
13 exposure draft.

14 JUDGE RUTH: So I will note that it is  
15 selective pages from the exposure draft, and it is  
16 admitted into the record as Exhibit 99.

17 (EXHIBIT NO. 99 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE RUTH: Okay. We'll start back at 8:30,  
19 and we'll need to discuss Mr. Lyons, and then, also, the  
20 nonunanimous stipulation and agreement that has  
21 been objected to. I wanted to discuss that further on the  
22 record in the morning.

23 Did you have something else, Your Honor?

24 MR. COOPER: Yes, Your Honor, one further  
25 thing.

1                   Is Mr. Loos excused such that we can send him  
2 home? He is not scheduled to reappear.

3                   JUDGE RUTH: He is excused. However, I cannot  
4 guarantee that one of the Commissioners won't think of a  
5 question later and then ask about him.

6                   But, you know, I understand he's not scheduled  
7 to testify later, and the Commissioners at this point have  
8 told me they're finished with him.

9                   MR. DUFFY: Could I inquire about your remark  
10 about doing something in the morning about this  
11 nonunanimous stipulation agreement, so that I know what to  
12 prepare for?

13                  JUDGE RUTH: I still haven't ruled on how to  
14 handle or treat the nonunanimous stipulation and agreement  
15 that Mr. Conrad has objected to.

16                  And you don't need to do anything. I just want  
17 to address it on the record in the morning.

18                  MR. DUFFY: Okay.

19                  JUDGE RUTH: Any other matters we need to  
20 address?

21                  Okay. Off the record again. Thank you.

22                  (THE HEARING WAS ADJOURNED UNTIL 8:30 A.M. ON  
23 THURSDAY, MAY 31ST, 2001.)

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