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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

HEARING

June 4, 2001
Jefferson City, Missouri
Volume 8

In the Matter of The Empire)
District Electric Company's)
Tariff Sheets Designed to)
Implement a General Rate Increase) Case No. ER-2001-299
for Retail Electric Service)
Provided to Customers in the)
Missouri Service Area of the)
Company.)

BEFORE:

VICKY RUTH, Presiding,
REGULATORY LAW JUDGE.

CONNIE MURRAY,
KELVIN SIMMONS,
STEVE GAW,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS, INC.

ASSOCIATED COURT REPORTERS, INC.
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551
625

1 APPEARANCES:

2 JAMES C. SWEARENGEN, Attorney at Law

DEAN L. COOPER, Attorney at Law

3 GARY W. DUFFY, Attorney at Law

Brydon, Swearengen & England, P.C.

4 312 East Capitol

P.O. Box 456

5 Jefferson City, Missouri 65102-0456

(573)635-7166

6

FOR: The Empire District Electric Company.

7

STUART CONRAD, Attorney at Law

8 Finnegan, Conrad & Peterson

3100 Broadway

9 1209 Penntower Office Center

Kansas City, MO 64111

10 (816)753-1122

11 FOR: Praxair.

12 JOHN B. COFFMAN, Deputy Public Counsel

P.O. Box 7800

13 Jefferson City, Missouri 65102-780

(573)751-4857

14

FOR: Office of the Public Counsel

15 and the Public.

16 DANA K. JOYCE, General Counsel

STEVEN DOTTHEIM, Chief Deputy Counsel

17 DENNY L. FREY, Assistant Counsel

KEITH KRUEGER, Deputy Counsel

18 BRUCE H. BATES, Assistant Counsel

NATHAN WILLIAMS, Legal Counsel

19 ERIC ANDERSON, Legal Counsel

DAVID MEYER, Associate Counsel

20 P.O. Box 360

Jefferson City, Missouri 65102

21 (573)751-3234

22 FOR: Staff of the Missouri Public
23 Service Commission.

24

25

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

2 JUDGE RUTH: Good morning. We are here today
3 on Monday, June 4th, 2001, for a continuation of the Empire
4 hearing, Case No. ER-2001-299.

5 Before we went on the record the parties
6 indicated that there are some housekeeping measures we need
7 address first of all. Is Denny in the room? Can someone
8 else? Staff, did you -- Mr. Duffy?

9 MR. DUFFY: I can do a few of mine if that's
10 all right.

11 JUDGE RUTH: Okay.

12 MR. DUFFY: In the housekeeping vein, the
13 company would like at this time to offer into evidence
14 what's been marked for purposes of identification as
15 Exhibit No. 25, which is the prepared rebuttal testimony of
16 Marty Lyons.

17 As the parties will recall, cross-examination
18 on Mr. Lyons was waived, and he did not appear as scheduled,
19 pursuant to agreement, and so we'd like to just get that
20 testimony stipulated into the record per our earlier
21 agreement.

22 JUDGE RUTH: Thank you. So Exhibit 25, the
23 rebuttal testimony of Martin Lyons has been offered. Since
24 the parties waived cross-examination, I assume there's no
25 objection to that being admitted at this time.

1 MR. WILLIAMS: Staff has no objection.

2 MR. CONRAD: No objection.

3 MR. COFFMAN: No objection.

4 JUDGE RUTH: Seeing no objection,

5 Exhibit 25 is admitted into the record.

6 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

7 JUDGE RUTH: I made a note here that the cover

8 says surrebuttal on that and it's really rebuttal.

9 MR. DUFFY: That's correct. The cover is

10 incorrect, and then I think on the table of contents page

11 it's incorrect also, because it says surrebuttal and it's

12 really rebuttal.

13 And as long as we're still doing housekeeping,

14 I'd just like to take this opportunity to offer what's been

15 marked for identification as Exhibit 1 and Exhibit 2.

16 Exhibit 1 is simply a copy of the Minimum Filing

17 Requirements that the company filed with the Commission when

18 they filed the case, and Exhibit 2 is a copy of the tariffs

19 the company filed when it filed the case.

20 JUDGE RUTH: Exhibit 1, Minimum Filing

21 Requirements, and Exhibit 2, the tariffs have been offered.

22 Do the parties have any objections to these exhibits?

23 MR. WILLIAMS: Staff has no objection.

24 JUDGE RUTH: Okay. Seeing no objections,

25 Exhibit 1, the Minimum Filing Requirements, and Exhibit 2,

1 the tariffs, are received into evidence.

2 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
3 EVIDENCE.)

4 MR. DUFFY: Thank you. That's all I had in
5 the way of housekeeping.

6 JUDGE RUTH: Thank you, Mr. Duffy.

7 Mr. Frey, did you have a few housekeeping
8 matters for on the record?

9 MR. FREY: Yes. Thank you, your Honor.

10 The parties indicated to you over the weekend
11 that they had reached an agreement in principal on a number
12 of issues in this case, in particular fuel and purchased
13 power expense and rate design/class cost of service.

14 We are in the process of preparing a Unanimous
15 Stipulation and Agreement on that. I believe my expectation
16 is that it will be filed today, perhaps tomorrow, but I
17 believe it will be filed today.

18 You have indicated that we are to,
19 nevertheless, file a list of issues revised, as we have in
20 accordance with the structure that we presented to you, I
21 believe off the record on Friday, wherein the fuel issues
22 are delineated with some specificity, and we are prepared to
23 file that or will be prepared to file that today as well.

24 We understand also that we are not required to
25 file a Revised Statement of Positions on all of the issues.

1 The parties, of course, have filed such a statement
2 previously. There will, however, perhaps be a need to file
3 an updated Position Statement with regard to the incentive
4 compensation issue, and presumably, if that need should
5 arise, that will also be filed today.

6 I believe that's -- that's the only matters
7 that I have to put on the record.

8 JUDGE RUTH: Okay.

9 MR. FREY: Thank you.

10 JUDGE RUTH: Then it's my understanding,
11 Mr. Frey, since the Unanimous Stip and Agreement, you
12 anticipate it will fully deal with the issue that was
13 scheduled to be heard on Tuesday, I have down class cost of
14 service rate design was Gibson, Watkins, Pyatte, Ross, Hu,
15 Brubaker.

16 So the parties do not anticipate
17 cross-examining those witnesses. They would be available,
18 however, for Commission questions; is that correct?

19 MR. FREY: That's correct, your Honor.

20 JUDGE RUTH: And then the other item that the
21 Stip and Agreement deals with is Wednesday's issue, cost of
22 service, fuel and purchase power.

23 MR. FREY: Right.

24 JUDGE RUTH: And again, Kaplan, Sweet,
25 Beecher, Watkins, Bender, Harris, Choe --

1 MR. FREY: Right.

2 JUDGE RUTH: -- Featherstone, Trippensee and
3 Busch are the witnesses scheduled for that, and the parties
4 do not anticipate cross-examining those witnesses?

5 MR. FREY: That's correct, your Honor.

6 JUDGE RUTH: Now, it was my understanding from
7 some discussion off the record that Mr. Kaplan is one of
8 Empire's witnesses coming from Washington, D.C. And,
9 Mr. Duffy, you had indicated that if the Commissioners have
10 no questions for Mr. Kaplan, you would preferably like to
11 know that today so that he does not make the trip out; is
12 that correct?

13 MR. DUFFY: Yes, ma'am. It's my understanding
14 he will be getting on an airplane in Washington, D.C. in the
15 morning sometime and be here late afternoon tomorrow to be
16 ready to testify on Wednesday. Obviously the parties will
17 not have questions of Mr. Kaplan.

18 Mr. Kaplan's prepared testimony is on natural
19 gas prices, and his testimony essentially has been
20 supplanted, I suppose -- maybe that's the right term, maybe
21 it isn't -- by the settlement, which incorporates the
22 concept of the interim energy charge.

23 And I would represent to the Commission that
24 the concept of the interim energy charge was first made
25 known to the Commission in the document that I think was

1 filed on May 14th.

2 So nothing in this new Stipulation is
3 essentially going to change the concept of the interim
4 energy charge which relates to natural gas prices which
5 relates back to Mr. Kaplan's prepared testimony.

6 So we would just as soon avoid the additional
7 rate case expense of bringing, both transporting and paying
8 for Mr. Kaplan's time. That's something that we can perhaps
9 keep out of the rate case expense in this case if the
10 Commissioners have no questions of Mr. Kaplan.

11 JUDGE RUTH: Okay.

12 MR. DUFFY: So we'd like to know perhaps by
13 late afternoon today so we can call him and tell him whether
14 he has to come or not.

15 JUDGE RUTH: Mr. Duffy, then later this
16 morning I will discuss that issue with the Commissioners,
17 and you and I will just need to get in touch so that I can
18 tell you what I find out.

19 MR. DUFFY: We appreciate that very much.

20 JUDGE RUTH: Mr. Frey, was there anything
21 else?

22 MR. FREY: I don't have anything, your Honor.

23 JUDGE RUTH: Okay. Then we are now ready to
24 discuss the issue of State Line Power Plant and Energy
25 Center. This is --

1 MR. DOTTHEIM: Judge, if I might address some
2 further housekeeping matters.

3 JUDGE RUTH: Okay.

4 MR. DOTTHEIM: On Friday -- as a result of the
5 Commission's ruling on Thursday of last week, May 31, on
6 Friday the Staff filed supplemental testimony regarding fuel
7 and purchased power expense, a Staff change in position,
8 testimony of Cary G. Featherstone and James C. Watkins. The
9 Staff also filed revised surrebuttal testimony of Mr.
10 Featherstone and Janice Pyatte.

11 Again, all of that testimony, including the
12 surrebuttal of Mr. Featherstone and Ms. Pyatte, were filed
13 as a result of the Commission's ruling on Thursday, May 31.

14 As a result of the settlement that has
15 occurred on fuel and purchased power expense and rate
16 design, what the Staff would propose doing is, at the
17 appropriate time, offering the testimony that was filed on
18 Friday, but not offering the testimony that was originally
19 filed, the supplemental direct of Mr. Featherstone and
20 Mr. Watkins on fuel and purchased power expense and the
21 original surrebuttal testimony of Mr. Featherstone and
22 Ms. Pyatte.

23 Rather than seeking, asking leave to withdraw
24 that testimony, the Staff thought it would just not offer it
25 into evidence. It was marked on Tuesday of last week as

1 exhibits. So exhibit numbers do exist. For example,

2 Ms. -- excuse me.

3 Mr. Featherstone's surrebuttal testimony, of
4 which there was HC and NP versions, is Exhibit No. 47 for HC
5 and 48 for the NP, the nonproprietary. Ms. Pyatte's
6 surrebuttal testimony is Exhibit 72, and the supplemental
7 testimony, supplemental direct of Mr. Featherstone on fuel
8 and purchased power expense is Exhibit 49, and the
9 supplemental direct of Mr. Watkins is Exhibit 77 on fuel and
10 purchased power expense.

11 Those pieces of testimony, those exhibit
12 numbers which comprise that testimony, the Staff would
13 propose to not offer those pieces of testimony and, again,
14 at the appropriate time have marked as exhibits the
15 testimony that was filed on Friday and ask that it be
16 received into evidence.

17 JUDGE RUTH: So Staff does not intend to offer
18 47, 48, 49, 72 and 77?

19 MR. DOTTHEIM: That is correct from my review
20 of the exhibit list.

21 JUDGE RUTH: So those -- you would offer
22 those, the supplemental revised tomorrow -- no -- on
23 Wednesday; is that correct?

24 MR. DOTTHEIM: Well, and I've been reminded
25 that the surrebuttal testimony that Mr. Featherstone filed

1 is not limited to fuel and purchased power expense. It also
2 addresses the issue or issues that are to be heard this
3 morning involving the capital costs of the State Line
4 combined cycle unit.

5 So that testimony that was filed on Friday of
6 Mr. Featherstone's, his revised surrebuttal, will be offered
7 this morning for the first time because it also covers the
8 issue or issues to be heard today, in addition to his
9 surrebuttal regarding fuel and purchased power expense.

10 JUDGE RUTH: Okay. Thank you.

11 MR. DOTTHEIM: On another matter that I
12 addressed late Friday, the Staff is also filing this morning
13 the supplemental surrebuttal of Janis Fischer on incentive
14 compensation.

15 The Staff was not able to complete the
16 pleading to accompany that testimony and file it on Friday
17 afternoon, but copies of that testimony were provided to the
18 company and they've had an opportunity to review it, and
19 it's my understanding that Empire is preparing some
20 responsive testimony to the supplemental surrebuttal
21 testimony of Ms. Fischer, and that will be filed today.

22 As a consequence, that issue, incentive
23 compensation, which was planned to be heard tomorrow if the
24 schedule permitted, because there was at least one issue
25 before it, rate design, I believe since that issue no longer

1 is a contested one, incentive compensation could be heard
2 tomorrow.

3 But in that it is thought that that issue will
4 not go very long, I haven't had an opportunity to visit with
5 the company on this, but I'd like to at least at this stage
6 make the suggestion that that issue start up possibly at
7 1:30 in the afternoon.

8 In that manner, it would hopefully not
9 conflict with the Commissioners' agenda schedule tomorrow,
10 and also with Mr. McKinney's responsive testimony being
11 filed later today, it would afford the Staff a little more
12 of an opportunity to review that testimony.

13 JUDGE RUTH: Okay. I will defer ruling on
14 that until the end of the hearing today. Parties, I'd like
15 you to consider whether that would be acceptable if we start
16 the hearing tomorrow at 1:30.

17 MR. DUFFY: Empire has no problem with that.

18 JUDGE RUTH: Okay. I'll still defer ruling
19 until the end of the hearing, but thank you.

20 Any other housekeeping matters that we didn't
21 address? Okay. Seeing none, then we will move to the issue
22 of capital costs, and the first witness scheduled to be
23 heard was Empire. Are you ready to call your first witness?

24 MR. DUFFY: Yes, ma'am. Empire will call
25 Natalie Rolph to the stand, please.

1 (Witness sworn.)

2 JUDGE RUTH: Thank you. Please be seated.

3 Mr. Duffy.

4 MR. DUFFY: Thank you.

5 NATALIE ROLPH testified as follows:

6 DIRECT EXAMINATION BY MR. DUFFY:

7 Q. Would you state your name for the record,

8 please.

9 A. Natalie Rolph.

10 Q. Would you spell it for us.

11 A. The last name is R-o-l-p-h.

12 Q. Ms. Rolph, do you have in front of you what's

13 been marked for purposes of identification as Exhibit 12,

14 which is a document entitled direct testimony of Natalie

15 Rolph, and Exhibit No. 18, which is a document entitled

16 rebuttal testimony of Natalie Rolph?

17 A. I actually don't have 12 with me. I do have

18 18 with me.

19 Q. Okay. You're familiar with the direct

20 testimony you filed?

21 A. Yes.

22 Q. Do you have any corrections or additions to

23 either of those two documents?

24 A. Yes. I have one correction on page 7,

25 line 10.

1 Q. Which document are we talking about?

2 A. Of Exhibit 18.

3 Q. Page 7, line 10?

4 A. Correct. There is a reference there on

5 line 10 to a State Line approximate advantage of \$90 a

6 kilowatt. That should be \$80 a kilowatt.

7 Q. Are there any other changes to your direct or

8 rebuttal testimony that you're aware of at this point?

9 A. No, there's not.

10 Q. If I ask you the same questions that appear in

11 those two documents this morning, would your answers be the

12 same as they appear, with that correction?

13 A. Yes.

14 Q. Are those answers true and correct to the best

15 of your knowledge, information and belief?

16 A. Yes, they are.

17 MR. DUFFY: Your Honor, at this time I would

18 offer into evidence Exhibits 12 and 18, and I tender the

19 witness for cross-examination.

20 JUDGE RUTH: Exhibit 12 is the direct

21 testimony of Ms. Rolph, and Exhibit 18 is the rebuttal. Do

22 the parties have any objections?

23 (No response.)

24 Seeing no objections, Exhibits 12 and 18 are

25 admitted into the record.

1 (EXHIBIT NOS. 12 AND 18 WERE RECEIVED INTO
2 EVIDENCE.)

3 JUDGE RUTH: Will there be any
4 cross-examination for this witness, Praxair?

5 MR. CONRAD: Pursuant to our settlement, no.

6 JUDGE RUTH: Public Counsel?

7 MR. COFFMAN: That's correct.

8 JUDGE RUTH: And Staff?

9 MR. WILLIAMS: No.

10 JUDGE RUTH: Okay. Questions from the Bench,
11 Commissioner Gaw? Commissioner Simmons, did you have any
12 questions?

13 COMMISSIONER SIMMONS: I have none.

14 JUDGE RUTH: Commissioner Gaw?

15 MR. CONRAD: Just to help out, I have a copy
16 of hers. She indicated she didn't have her direct. I'm
17 going to make that available.

18 JUDGE RUTH: Okay. Thank you.

19 MR. DUFFY: Thank you, Mr. Conrad.

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Good morning.

22 A. Good morning.

23 Q. Have you seen the Stipulation that the parties
24 have entered into?

25 A. Yes.

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1 Q. And you have reviewed it?

2 A. I've read it, yes.

3 Q. Can you tell me the differences between your
4 position and the stipulation of the parties, please?

5 A. I don't know that I have any particular
6 difference. I was not a part of that stipulation, so my --
7 as stated in my testimony, I think the capital costs of the
8 State Line combined cycle plant are actually coming in right
9 in the middle of the range of capital costs for similar
10 combined cycle plants of the same vintage.

11 Q. So you would not offer any testimony in
12 support of the stipulation of the parties?

13 A. I don't think that I can one way or the other.

14 COMMISSIONER GAW: I don't have any further
15 questions.

16 JUDGE RUTH: Will there be any recross based
17 on questions from the Bench, parties? Praxair?

18 MR. CONRAD: No, ma'am.

19 JUDGE RUTH: Public Counsel?

20 MR. COFFMAN: No.

21 JUDGE RUTH: Staff?

22 MR. WILLIAMS: No.

23 JUDGE RUTH: And Empire, do you have redirect?

24 MR. DUFFY: No, your Honor.

25 JUDGE RUTH: Okay. Ms. Rolph, you may step

1 down. Thank you.

2 (Witness excused.)

3 JUDGE RUTH: Empire, would you please call
4 your next witness.

5 MR. DUFFY: Call James Wilson to the stand.

6 (Witness sworn.)

7 JUDGE RUTH: Thank you.

8 JAMES WILSON testified as follows:

9 DIRECT EXAMINATION BY MR. DUFFY:

10 Q. Would you state your name for the record,
11 please, and spell it.

12 A. Yes. James E. Wilson. Wilson, W-i-l-s-o-n.

13 Q. Mr. Wilson, do you have in front of you what's
14 been marked for purposes of identification as Exhibit
15 No. 20, which is identified as rebuttal testimony of Jim E.
16 Wilson on behalf of the Empire District Electric Company?

17 A. Yes, I do.

18 Q. Is that, in fact, the prepared rebuttal
19 testimony for this proceeding that you participated in?

20 A. Yes, it is.

21 Q. Do you have any changes or corrections to that
22 document?

23 A. I do have one that I noticed. On page 8,
24 line 17, I noticed that the two dates at the bottom, hydro
25 as-planned dates of October 7th and November 30th,

1 October 7th should have been October 16th.

2 Q. Do you have any other changes to this
3 document?

4 A. No, I do not.

5 Q. If I were to ask you the same questions that
6 appear in Exhibit 20 this morning, would your answers be the
7 same with that correction?

8 A. Yes, sir, they would.

9 Q. Are those answers true and correct to the best
10 of your knowledge, information and belief?

11 A. Yes, they are.

12 MR. DUFFY: Your Honor, at this time I would
13 offer into evidence Exhibit No. 20, and I would tender the
14 witness for cross-examination.

15 JUDGE RUTH: Thank you, Mr. Duffy. Exhibit 20
16 has been offered. It's the rebuttal testimony of
17 Mr. Wilson. It's my understanding based on the Stip and
18 Agreement from the parties that there is no
19 cross-examination for Mr. Wilson; is that correct?

20 MR. CONRAD: That is correct.

21 MR. WILLIAMS: Yes.

22 JUDGE RUTH: Commissioner Simmons, do you have
23 any questions for this witness?

24 COMMISSIONER SIMMONS: I do have one, your
25 Honor. Thank you very much.

1 QUESTIONS BY COMMISSIONER SIMMONS:

2 Q. Good morning, Mr. Wilson.

3 A. Good morning, sir.

4 Q. As I look at your rebuttal testimony, there is
5 one question that I have in relationship to the
6 construction. In your testimony you talk about the Nooter
7 Construction Company needing to be mobilized in April of
8 2000 so that you could meet the projected schedule
9 requirements and if the project would -- if you would not
10 have moved, I guess expeditiously, the project would have
11 been greater.

12 Do you have a dollar amount that goes along
13 with the greater cost for moving forward? I didn't seem to
14 catch that in the testimony.

15 A. Yes, sir. Later --

16 Q. Go ahead.

17 A. Later in the report I obtained information
18 from Empire that if the cost per month of the plant not
19 coming on line is \$12.9 million per month, and so each month
20 delay would be -- would result in that much of a cost to the
21 plant. And if the remobilization of the replacement
22 contractor did not occur as quickly as possible for each
23 month lost, there would be that amount of money.

24 Q. Okay. One last question, I think. I wanted
25 to ask about the increased labor cost. You spoke that there

1 was a shortage of skilled labor that was available at that
2 time. Was that just because of the area that did not have
3 the kind of skilled labor that you would have needed to
4 continue construction, or what was the rationale or what was
5 the reasoning that we didn't have the skilled labor?

6 A. Two reasons basically, sir. There was in the
7 immediate Joplin area, southwest Missouri area, a shortage
8 of skilled labor to build this plant, to build the total
9 plant.

10 And it was originally, prior to the bidding of
11 the contract, discussed that it was crucial from a
12 construction perspective that the HRSG units be constructed
13 first, and those craft people would then move to the balance
14 of plant construction and the construction of the steam
15 turbine generator because of the shortage of manpower.

16 In addition to that, it is my experience
17 nationally working on power plants and outages that there's
18 a skilled labor shortage throughout the country. We've
19 brought people in to Chicago from half the country distance
20 away.

21 COMMISSIONER SIMMONS: Thank you, sir. That's
22 all the questions I have. Thank you, your Honor.

23 JUDGE RUTH: Okay. Praxair, do you have any
24 recross based on the questions from the Bench?

25 COMMISSIONER GAW: I have one.

1 JUDGE RUTH: I'm sorry. Go ahead.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. Good morning, Mr. Wilson.

4 A. Good morning, sir.

5 Q. Thank you for coming this morning. Let me ask
6 you the same question I just asked the previous witness,
7 whether or not you have reviewed the stipulation of the
8 parties on this issue.

9 A. I did read it, sir, just basically last night.
10 I was not part of its development.

11 Q. All right. So you don't have any testimony to
12 offer in support of it this morning; is that correct?

13 A. That's correct, sir.

14 Q. Let me ask you some questions regarding your
15 testimony, then. In regard to the original Fru-Con -- I'm
16 not sure I'm pronouncing that correctly -- contract, the
17 amount of difference between what was to be paid to that
18 contractor and what was actually paid to in total costs,
19 including anticipated costs left, if there are any, how much
20 difference was that again?

21 A. It's my understanding Fru-Con's contract
22 amount was \$5.3 million. Their initial bid was 4.9, but it
23 was reviewed and increased to 5.3 million. My understanding
24 is the actual cost of the HRSG portion of the plant is about
25 \$15 million. I'm not exactly sure of the actual cost.

1 Q. Is that the replacement contractor?

2 A. That includes replacement contractor's cost to
3 actually complete the project.

4 Q. So how much difference was there in the amount
5 of money expended because of the change in the contractors?

6 A. That is not as simple as comparing 5.3 to
7 approximately \$15 million. One, per my testimony, it was
8 always going to cost more than the base contract amount
9 issued to Fru-Con of \$5.3 million. On an industrial project
10 such as this, it's my experience there's always between 5
11 and 20 percent, typically 15 percent change orders that
12 would have increased that cost.

13 Q. And in this case, what change orders were
14 implemented that increased the cost?

15 A. On this project, I can't remember just what
16 the change orders were on Fru-Con because they were on the
17 project so briefly and then were terminated, and the
18 replacement contractor, Nooter Construction Company's
19 contract was a T&M contract. So there was no change orders
20 on that contract.

21 Q. All right. So help me out here, then. Can
22 you identify any change orders that increased the cost in
23 this project?

24 A. I can't offhand. Perhaps Mr. Beecher could
25 comment on that.

1 Q. I understand. Thank you.

2 Now, so as far as the rationale for needing to
3 change contractors was concerned, can you explain that to
4 me? I know it's in testimony here, but if you have
5 information that you could shed light on, I'd appreciate it.

6 A. Yes, sir. The decision to replace Fru-Con
7 Construction with Nooter was due to Fru-Con Construction's
8 poor performance on the project, the fact that as of
9 approximately April 1st, their notice of termination, they
10 were running approximately two months behind schedule.

11 And the delay in the schedule of the HRSG
12 construction project was the most critical aspect of the
13 project. It could not be tolerated because of, one, the
14 unavailable manpower resources to construct both the HRSG
15 and the balance of plant turbine generator concurrently and,
16 two, because this plant needed to be completed by June 1st
17 of 2001.

18 So because of Fru-Con's delay of two months
19 and the problems that they were causing on the job that were
20 in contradiction to what they originally said they could do
21 during their bid review and their negotiations for contract
22 award, they were terminated at a time where schedule could
23 be maintained and recovered, and, in fact, that's what
24 actually did occur.

25 The HRSGs were hydro on the as-plant as

1 contract dates that were specified, which was October 16th
2 of 2000 and November 30th of 2000. In fact, HRSG 1 was
3 hydro tested about nine days early. There was no leaks
4 found in HRSG 1. The leaks found in HRSG 2 were all
5 repaired by the contract date of November 30th, and the
6 plant has, in fact, come on line essentially June 1st.

7 Q. And why was that June 1st date so important?

8 A. My understanding is that was a requirement of
9 the utility for power that they knew, that cost analysis
10 that I really haven't been involved in. I know June 1st was
11 a critical date for the utility company.

12 What I focused on more was the manpower, the
13 skilled craft people, because it was a physical restraint in
14 this job that was made well known to the bidding contractors
15 that the HRSGs had to be done early. And, in fact, the
16 HRSGs would sit completed mechanically and would sit idle
17 while those mechanical skilled workers moved to the turbine
18 generator and the balance of plant piping.

19 Q. So from the standpoint of the June 1st
20 deadline, your testimony is that you knew that was very
21 important to the company, but you're not sure why that
22 particular date was vital?

23 A. I have been told, sir, that power was needed
24 by that date. I've been told and I forget the particulars
25 on it, but it was not a -- the reason was not a particular

1 thing that I focused on. The contract said June 1st to
2 Fru-Con Construction Company and to Nooter Construction, the
3 replacement contractor, and, in fact, June 1st was achieved.

4 Q. And the thing that you might help me
5 understand a little better here, too, if I gather this
6 testimony correctly, the original contractor, Fru-Con, did
7 not pay any damages to the company for their alleged
8 defaults in the contract; is that correct?

9 A. That's correct. In the mediation settlement,
10 \$1,050,000 was paid to Fru-Con in addition to their first
11 progress request payment of 125,000. I believe the total
12 amount is \$1,175,000 approximately was paid to Fru-Con for
13 work that they actually achieved on the project during the
14 three months they were on site.

15 Q. Was there any -- was that -- was the amount of
16 money paid to Fru-Con in your understanding the amount of
17 value of the work and no more or no less than that that they
18 provided up to that point?

19 A. I've looked at that very carefully, sir, and
20 we estimated from what records that we had, I had, that
21 Fru-Con had actually expended on this project in the
22 neighborhood of \$1,256,000. I felt the mediation settlement
23 of \$1,050,000 was a very good settlement, and the reason for
24 that is there was an outstanding -- there was an invoice
25 amount due of 926,000, less \$125,000 that was paid was about

1 \$800,000 that was owed to Fru-Con.

2 That \$800,000 was for progress that they had
3 actually achieved by achieving 17 percent of the work. It
4 was a difficult position because in accomplishing that
5 17 percent of their work, they had laid down material on the
6 site in such a disorganized fashion that they had actually
7 created more work to complete the project than what they to
8 some extent had gained.

9 But the fact was, erection had occurred,
10 certain modules had been erected, and they had achieved
11 progress. So Empire was going to have to pay them a
12 progress of work.

13 Q. The thing that I'm having -- that I'm hung up
14 on here is that, assuming no change orders, which I know may
15 not be accurate, but since we haven't identified any
16 particularly, assuming no change orders, if there had been
17 no change in contractor, would there have been any provision
18 in the contract to allow the contract price to have been
19 different than what was originally contracted for and, if
20 so, what were they? And I'll reask that again if --

21 A. Please, sir. I don't quite understand.

22 Q. Well, the original contract price that was
23 agreed to by Fru-Con --

24 A. Yes.

25 Q. -- if they had remained the contractor and

1 there had been no change orders, would that contract price
2 have remained the amount that would have been owed by the
3 company upon completion of the work, assuming that it was
4 completed on time?

5 A. That's correct. That's what Fru-Con entered
6 into this job to build it for, and assuming there was no
7 change orders and they had been allowed to proceed, they
8 would have been only contractually entitled to that amount
9 of money.

10 The problem was, is they had mis-estimated
11 their erection crane size and capabilities. They had
12 mis-estimated the amount of material handling on this
13 project. They had admittedly mis-estimated the weights of
14 the heaviest 18 modules that form the HRSB unit.

15 And because of these problems, they were
16 delaying the project. They were not performing to the
17 amount of speed that was anticipated or required in order to
18 meet the contract dates, and this project was going to come
19 in late at a cost of about \$12.9 million per month.

20 That delay from both a cost perspective and a
21 schedule perspective because of the shortage of workmanship,
22 workers, could not be tolerated.

23 Q. And how is it that that was the company's
24 responsibility and not Fru-Con's?

25 A. It's any company's responsibility when a

1 contractor fails to perform, the company, the construction
2 management team has to take action; one, putting the
3 contractor on notice that he is not performing; two,
4 requesting a recovery schedule.

5 And if the contractor fails to improve
6 productivity through staff and to get ample equipment, the
7 contractor -- as much as I dislike termination, the
8 contractor has to be replaced. The only time termination
9 works for a project, in my opinion, is if it's done early
10 enough where there's enough time remaining that a
11 replacement contractor can mobilize and schedule can be
12 regained.

13 Q. And do you believe that there's no
14 responsibility on the contractor's part if they have not
15 complied and apparently, according to your testimony, would
16 not be able to comply with the deadlines in the contract?
17 There's no responsibility for them to share, at least share
18 or pay for the damages done to the company as a result of
19 that default?

20 A. Yes, there is a responsibility for the
21 contractor to pay that, and what this project encountered
22 was in order to confirm and substantiate, document what this
23 contractor had done to this project, what the actual damages
24 were going to be, the contract -- the owner, the
25 construction management team would have had to take a wait

1 and see attitude.

2 They would have to have waited, documented,
3 seen exactly what the delays were, what the impact of the
4 project was. They would have had to build a litigation
5 case, if you will, in order to recover these costs through
6 arbitration or some type of litigation mode.

7 To do that, they would have sacrificed, the
8 construction management team would have sacrificed the
9 schedule.

10 Q. The June 1st date?

11 A. Yes.

12 Q. But you don't know the reason that that date
13 was important, your testimony?

14 A. I do know that it was related to the need for
15 power, sir. I don't know the particulars behind it.

16 Q. But there was something happening on June 2nd
17 that required them to be done on June 1st that related to
18 power?

19 A. There's something, sir. I've forgotten. I've
20 been told and I --

21 Q. Wouldn't have anything to do with making sure
22 they met a deadline on a rate case?

23 A. I'm not sure, sir. I know there's something
24 connected with June 1st.

25 Q. And there was no pursuit in any court or any

1 arbitration proceeding to recover from Fru-Con the damages
2 that were done to the company, to the ratepayers or to the
3 shareholders indirectly as a result of Fru-Con's alleged
4 default on their obligations under that contract; is that
5 correct?

6 A. Could you read back the question for me,
7 please?

8 Q. I'll be glad to if the court reporter would do
9 so.

10 (THE REQUESTED TESTIMONY WAS READ BY THE
11 REPORTER.)

12 THE WITNESS: That's correct. There was no
13 pursuit in a court or arbitration. The one thing when we
14 discussed this that I didn't mention is the \$1,050,000, in
15 addition to that, the owner, the construction management
16 team was able to retain the use of Fru-Con's equipment for
17 the -- for the replacement contractor.

18 They were able to retain the erection crane,
19 all the tools, the trailers. Everything that Fru-Con was
20 using, attempting to use to build the project, that
21 equipment went to the replacement contractor for the next
22 six to eight months, and the value of that was about
23 \$600,000 and was critical in order to give the replacement
24 contractor a chance to regain the schedule and meet the
25 original dates.

1 BY COMMISSIONER GAW:

2 Q. And did Fru-Con get any -- was that a part of
3 the arrangement to pay them at the termination of the
4 contract with Fru-Con?

5 A. I believe that document is dated April 9th,
6 right after the termination on April 5th, as part of the
7 termination agreement.

8 Q. So it was included in the amount to determine
9 how much to pay Fru-Con when the contract was terminated,
10 the value of that equipment?

11 A. It was -- yes, it was considered as part. The
12 termination amount was really done at the mediation in
13 December of 2000.

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

16 JUDGE RUTH: First of all, I'm not sure if I
17 stated on the record that your testimony is admitted into
18 the record. It's Exhibit 20, and I may not have stated
19 that. It's my understanding there were no objections to
20 that being offered. So Exhibit 20 is admitted into the
21 record. I want to do that before I forget.

22 (EXHIBIT NO. 20 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE RUTH: Based on the questions from the
24 Bench, the parties will have an opportunity for
25 cross-examination. Praxair, do you have any questions?

1 MR. CONRAD: We do not, ma'am. Thank you.

2 JUDGE RUTH: Public Counsel, do you have

3 recross?

4 MR. COFFMAN: No questions.

5 JUDGE RUTH: And Staff?

6 MR. WILLIAMS: No questions.

7 JUDGE RUTH: And Mr. Duffy, do you have

8 redirect?

9 MR. DUFFY: A few.

10 REDIRECT EXAMINATION BY MR. DUFFY:

11 Q. I believe Commissioner Gaw asked you some

12 questions, and in one of those answers you made the

13 statement that Fru-Con's actions on the job were

14 contradictory to what they said they could do.

15 Could you just briefly expand on that and I

16 guess hit the high points in your mind of what things

17 Fru-Con represented to Empire that they could do in the

18 prebid or later operations, but then it turned out they

19 didn't do what they said they were going to do?

20 A. Yes, sir. After Fru-Con had submitted their

21 bid proposal, a bid review of Fru-Con's cost was conducted,

22 and there is documents in the file dated November 9th,

23 November 16th, November 18th and December 3rd where an

24 intensive review of Fru-Con's bid occurred.

25 And Fru-Con stated during those meetings with

1 the construction management team that they had bid double
2 handling material. What that means is they had bid taking
3 the HRSG material to a lay-down yard and then bringing it
4 back from that yard to the HRSG erection site, which would
5 be double handling the material from the railroad cars.

6 Fru-Con had agreed and it was discussed that
7 Fru-Con would unload the Nooter Erickson railroad car
8 deliveries within a certain amount of time, and a delivery
9 schedule from Nooter Erickson's fabrication plant was given
10 to Fru-Con, and they had no problems on November 16th and
11 18th of meeting that schedule.

12 In addition, Fru-Con said -- it was asked of
13 Fru-Con, excuse me, that if Fru-Con had bid working five
14 days a week paying premium time to the craft workers, the
15 skilled labor, in order to attract people to this job site.
16 Fru-Con stated that they intended to attract people by
17 offering four ten-hour days, and if that was not sufficient,
18 that Fru-Con would pay any premium time, premium cost.

19 It was further discussed in those meetings
20 that Fru-Con's erection crane, the M250 crane, was smaller
21 than the other bidding contractors, and concerns were
22 discussed about that.

23 Fru-Con responded saying that the M250 crane
24 was mobile. It could move from the center area between the
25 two HRSGs, HRSGs 1 and 2, to the outer south edge, to the

1 outer north edge, and would be able to handle the erection
2 of the heaviest modules.

3 And by being able to move from these outer
4 edges, even though it was small in size and did not have a
5 reach to reach over the top of one HRSG and erect the
6 farthest of three of the modules, because the three modules
7 set abreast of HRSGs 1, 2, 3 staging area, and the smaller
8 crane would have to move around to the sides, Fru-Con said
9 that the crane was mobile. It could handle this.

10 So the questions, in my opinion, the concerns
11 were discussed with Fru-Con as to their capability to
12 construct this plant. The appropriate answers were
13 responded to the construction management team, and I saw no
14 reason for not granting Fru-Con a contract during this
15 review time.

16 Q. Fru-Con's contract, I believe, was
17 substantially lower than the next highest bid. If Empire
18 had had concerns that were not addressed in this -- in these
19 discussions that you just talked about but they still didn't
20 trust Fru-Con, do you have an opinion as to what would have
21 occurred or what could occur if Empire had said, Well,
22 Fru-Con, we just don't believe you that can you do all these
23 things that you said you can do, and so we're not going to
24 give you the contract, we're going to go to a higher bidder,
25 do you have any opinion on what might have occurred in that

1 situation, based on your experience?

2 A. Yes, sir. Two things would have occurred.
3 The difference between Fru-Con's bid and the second place
4 bidder originally was \$1.5 million. With the adjustment in
5 Fru-Con's bid of 400,000, the actual difference became
6 \$1.1 million.

7 If there was a decision, an impression left
8 after these questions were asked of Fru-Con, and I had been
9 in these meetings in deciding these issues, where there's
10 still suspicion, doubt whether Fru-Con can make it, the gut
11 feel is they probably could still not achieve what they were
12 committing to.

13 If that was the basis for denying Fru-Con a
14 contract, the first thing that would happen was that Fru-Con
15 would file a bid process, because they had answered the
16 questions and had explained how they intended to build this
17 job, and they would be entitled to file a bid protest.

18 And that in and of itself could have delayed
19 the notice to proceed to the second contractor by very
20 possibly 30 days and maybe longer, depending on how long it
21 took to resolve it. But that 30 days in the delay of notice
22 to proceed would be critical to the project schedule, just
23 as the eventual delay by Fru-Con was in the March of 2000
24 time frame.

25 There was not time to delay the HRSG

1 construction in order to maintain the milestone completion
2 dates because of craft labor, and also because of the
3 June 1st date.

4 The second thing that would have occurred is
5 if this had been -- this contract had been awarded to the
6 second place contractor and based on gut feel, the second
7 bidding contractor was paid an additional \$1.1 million, I
8 probably and other Empire people would probably be here
9 before you today explaining to you why that \$1.1 million was
10 paid to the second bidder, which was ABB, and not paid to --
11 and Fru-Con's contract was not accepted because they did
12 answer the questions.

13 Q. Again, in response to questions from
14 Commissioner Gaw, I believe you indicated that a total of
15 \$1,050,000 was paid to Fru-Con as a part of this settlement
16 to essentially make them go away and not make any other
17 charges, and I just want to briefly, I guess, understand.

18 Part of your testimony, if I understood it
19 correctly, was that that part of that million-fifty was for
20 work that had legitimately already been done by Fru-Con; is
21 that correct?

22 A. That's correct, sir.

23 Q. And part of it was for consideration of the
24 tools and the equipment that belonged to Fru-Con or was
25 under Fru-Con's control that was left on the site for the

1 rest of the project even though Fru-Con was gone; is that
2 correct?

3 A. That's correct.

4 Q. Am I missing any kind of a component in there?
5 In other words, did Empire in your mind pay Fru-Con some
6 amount of money just to go away?

7 A. I don't believe so. The way I looked at the
8 numbers and judged this is Fru-Con had invoices, progress
9 payments issued to Empire for the total amount of \$926,000.
10 Fru-Con was actually paid with the mediation settlement and
11 that first progress payment a total of \$1,175,000.

12 The difference between those two numbers is
13 \$250,000. That \$250,000 basically paid Fru-Con the charges
14 for the railroad cars that they were slow in unloading and
15 failed to unload for several days.

16 That \$250,000 gave myself a lot of heartburn
17 to give that to Fru-Con, but what Empire regained, whether
18 that 250,000 goes against railroad cars or something else,
19 what Empire, the construction management team, regained that
20 was crucial to this project was the \$600,000 that they were
21 able to use all the equipment, the tools, the trailers for
22 the replacement contractor.

23 That is the more important issue. So in that
24 regards, Empire did not pay Fru-Con anything for termination
25 for convenience to disappear and, in fact, gained money of

1 250 versus 600, about \$350,000.

2 Q. So is it fair to say that Fru-Con gained no
3 windfall out of this situation?

4 A. Fru-Con did not gain a windfall. If you look
5 at Fru-Con in and of itself, their numbers, their initial
6 claim was for \$1.8 million.

7 The best I could determine of what Fru-Con
8 actually expended on this job was \$1,256,000. Fru-Con was
9 actually paid \$1,175,000, and they lost the use of their
10 tools, their trailers and everything valued at an additional
11 \$600,000. There was no windfall here for Fru-Con.

12 Q. Did Empire get into Fru-Con's pocket in some
13 fashion in this settlement, in your opinion?

14 A. I think they did slightly. The difference
15 between 1,175,000 and 1,256,000 and the use of their tools
16 at some value in accordance with Fru-Con's perspective on
17 it, I think that they absolutely did.

18 Because of the mismanagement by Fru-Con on
19 this project, I would have liked to, quote, got into their
20 pocket a little bit more, but this was a very good
21 settlement, and our focus here was to maintain schedule,
22 which we actually -- the construction management team
23 actually did.

24 Q. Would there in your mind have been some other
25 alternative that Empire and Fru-Con could have pursued that

1 would have been a better resolution than what actually
2 occurred?

3 A. No. This was a textbook example of a
4 contractor who says that he can do the job in going through
5 in-depth contract negotiations, then the contractor failing
6 to do that, the owner construction management team watching
7 that contractor daily, hourly, putting him on notice the
8 first time he stumbles, putting him on notice and
9 terminating him the first time he trips, while there's still
10 time to maintain schedule and bring this job in on time.

11 No, I don't see any other way it could have
12 been done, and I certainly do not see a way where Fru-Con
13 was able to recapture their own cost delays and bring this
14 job in on time.

15 Q. I think Commissioner Gaw asked you a question
16 which I understood to mean that -- well, if Fru-Con had a
17 fixed price contract, was there any way for Fru-Con to raise
18 the price of that contract; in other words, get more money
19 out of it, without change orders?

20 Can you comment on whether in your experience
21 Fru-Con or a contractor in Fru-Con's situation could have
22 perhaps forced Empire to pay more money than the agreed-upon
23 fixed price absent change orders?

24 A. Yes, sir. Timing was everything on this
25 project. Fru-Con knew Fru-Con's own errors, and their -- in

1 my opinion, their hopes were to negotiate with Empire an
2 acceleration change order to recapture the delays and for
3 problems that Fru-Con had caused.

4 That's not an unrealistic position from a
5 contractor. Fru-Con knew exactly how critical this schedule
6 was, how much Empire needed the HRSGs done early, and how
7 much they needed the plant done on time. It was not
8 unreasonable for Fru-Con to think that they could remain on
9 the site, negotiate an acceleration change order.

10 There was a debate, a dispute over the
11 lay-down yards, the access roads, who was going to maintain
12 it. There was weather being encountered on the job which
13 Fru-Con was saying was delaying their handling of material
14 and delaying their unloading of railroad cars. There was a
15 dispute on those issues.

16 Fru-Con could have possibly negotiated an
17 acceleration change order or Fru-Con could have continued to
18 document any type of disruptions they had and attempted to
19 arbitrate this position at a later date, knowing that the
20 owner was in a difficult position because for each 30 days,
21 each month this project was delayed, it was costing the
22 owner \$12.9 million.

23 Q. There were some questions asked of you about
24 why June 1 was so critical, and I believe your testimony was
25 that you couldn't recall the exact reasons. If I mentioned

1 to you the expiration of some previously existing purchased
2 power contracts that Empire had with another power supplier
3 on May 31st, 2001, would that refresh your recollection as
4 to the reason for June 1 being critical?

5 A. Not really, because I was -- I did hear the
6 June 1 and the purchase of power was critical, but that
7 didn't really require my involvement. I dealt with the
8 contract. The June 1 date was what we were focusing on. I
9 didn't really pursue my knowledge of purchasing of power
10 until later.

11 So I knew June 1 was very critical for other
12 aspects in regards to power, but that's really as much as I
13 know.

14 Q. Okay. Did Empire remove Fru-Con as the
15 contractor before Empire filed this case in November, early
16 November of 2000? Was Fru-Con gone by early November 2000?

17 A. Could you restate that, please? I don't
18 understand.

19 Q. I'm asking you essentially when Empire removed
20 Fru-Con as a contractor in relation to when Empire filed
21 this rate case with the Public Service Commission, which was
22 on November 3rd, 2000.

23 In other words, was Fru-Con removed before
24 Empire filed the case or was Fru-Con removed after Empire
25 filed the case in November of 2000?

1 A. Absolutely Fru-Con was removed prior to
2 November of 2000. Fru-Con was removed on April 6th of 2000.
3 They were given notice of termination on March 31st of 2000.

4 Q. To your knowledge, were there any -- did
5 Empire represent that they were removing Fru-Con because of
6 the rate case that they were, I guess, six months in the
7 future going to filing? Did that topic come up?

8 A. I've not seen any of that type of information
9 in the document file. Everything that I've read purely
10 relates to Fru-Con being two months behind schedule, not
11 performing and not showing any ability in order to maintain
12 or regain the two months of lost time.

13 Q. Empire obviously had to make a decision as to
14 whether to settle with Fru-Con or, I think as you indicated
15 in one of your answers, pursue a litigation strategy. Based
16 upon what you know, did Empire do the right thing?

17 A. Yes, absolutely. The timing here was perfect
18 for termination. As I understood the project better, we
19 could not have waited any longer. Any time during the month
20 of March would have been a good time to terminate, replace
21 in order to maintain schedule.

22 Had they waited until later, taken a wait and
23 see approach, they would have lost the opportunity to
24 recapture the schedule.

25 Q. Several places in your answers you talked

1 about a HRSG. Is it appropriate to have the record reflect
2 that HRSG is acronym, HRSG, that stands for heat recovery
3 steam generator?

4 A. That's correct. I'm sorry. I should have
5 said that in the beginning.

6 Q. And can you just very briefly explain what a
7 heat recovery steam generator is?

8 A. Yes. A HRSG is a unit that is attached at the
9 end, at the exhaust of a gas turbine. I think the two gas
10 turbines one and two on this blasts exhaust and heat in the
11 neighborhood of around 1100 degrees.

12 A HRSG is nothing but a box of pipe tubing
13 that goes back and forth and allows the exhaust gas heat air
14 to go between these pipe tubes, and the pipe tubes are full
15 of water, circulating water that creates steam. The steam
16 is collected on top of the HRSGs in a steam drum.

17 The steam drum starts out as wet steam versus
18 water. It's recycled through the HRSG unit again, making it
19 dry steam and then we eventually super-heated steam which is
20 lower in moisture content.

21 That super-heated steam is then sent to the
22 steam turbine, which is a new facility being built on this
23 project. The steam turbine accepts that steam through the
24 turbine blades and it's spun and the rotator is spun and
25 that creates your electricity. It's a great way to

1 recapture heat loss.

2 Q. Are the HRSGs that we're talking about here,
3 is one of them bigger than this room or can you give me some
4 idea of how big a HRSG is?

5 A. Yes.

6 Q. How big is the HRSG we're talking about?

7 A. Yes. It's huge, maybe as big as this
8 building.

9 Q. And there were two of them?

10 A. Yes, sir.

11 Q. Okay. And so they needed a huge crane to deal
12 with this, and that's the crane problems that you were
13 talking about earlier?

14 A. Yes, sir. The weight of these modules, these
15 pipe tube modules that go inside the HRSG frame is a
16 tremendous weight for a crane to lift. And what I found on
17 this project is the root cause of a lot of Fru-Con's
18 problems on this job was, for whatever reason, they
19 misunderstood their erection crane, the M250 crane. As they
20 stated on November 16th and December 3rd, they said it was a
21 mobile crane.

22 In fact, it was not a mobile crane. It could
23 not move from the middle to the south and north sides of
24 HRSG 2. In fact, that crane was very stationary. What made
25 it stationary was that under -- not typical of the normal

1 erection crane that can crawl around, what made it
2 stationary is the counterweight on this crane.
3 Counterweight is a component that allows the boom to lift a
4 lot more weight than without a counterweight, and the
5 counterweight was on a set of tires. It was like a trailer
6 that set perpendicular to the crane.

7 So when the crane would pivot, the
8 counterweight would also pivot, roll around the crane in a
9 circular condition. In order for the crane to move even as
10 much as two feet, the counterweight would have to be
11 disconnected from the crane and put in a trailer mode so it
12 could move forward and then turn in a perpendicular mode so
13 it can swing with the crane as it pivoted. That condition
14 of this crane made it a stationary crane, made it immobile.

15 And Fru-Con admitted to this, that they
16 discovered this in their January 31st, 2000 status report,
17 page 2. They go in great detail as far as their discovery
18 of how this crane is not mobile.

19 MR. DUFFY: Thank you, Mr. Wilson.

20 JUDGE RUTH: Mr. Wilson, you may step down.

21 (Witness excused.)

22 JUDGE RUTH: Empire, are you ready to call
23 your next witness?

24 MR. DUFFY: Call Brad Beecher to the stand.

25 (Witness sworn.)

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1 JUDGE RUTH: Thank you. Please be seated.
2 Mr. Duffy.
3 MR. DUFFY: Thank you. Could we go off the
4 record for a second to mark an additional exhibit, some of
5 his prepared testimony?
6 JUDGE RUTH: We can stay on the record to mark
7 the exhibit.
8 MR. DUFFY: I would like to have marked --
9 according to my records, it would be 106.
10 JUDGE RUTH: Yes, 106 is the next number.
11 MR. DUFFY: -- a document entitled
12 supplemental testimony of Brad P. Beecher regarding Empire's
13 change of position on fuel and purchased power expense,
14 calculation and methodology on behalf of Empire District
15 Electric Company. This was filed on June 1. So the parties
16 and the Commission already have it, and I'm just going to
17 provide the three copies to the court reporter.
18 This testimony deals with the fuel and
19 purchased power issue rather than the State Line issue, but
20 because we're putting up Mr. Beecher at this time and this
21 is the first time he's been put up, it's my intention to
22 identify all of his prepared testimony at one time.
23 (EXHIBIT NO. 106 WAS MARKED FOR IDENTIFICATION
24 BY THE REPORTER.)
25 BRAD P. BEECHER testified as follows:

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1 DIRECT EXAMINATION BY MR. DUFFY:

2 Q. Would you state your name for the record,
3 please, and spell it.

4 A. Brad P. Beecher, B-e-e-c-h-e-r.

5 Q. Mr. Beecher, did you cause to be prepared
6 several documents which would be your prepared testimony in
7 this case and are you also prepared to adopt what's been
8 marked as Exhibit No. 5, the direct testimony of Virgil E.
9 Brill?

10 A. Yes, sir, I did, and I will.

11 Q. Let's start with the direct testimony of
12 Virgil Brill, which was marked as Exhibit 5. Do you have a
13 copy of that available to you?

14 A. Yes, sir, I do.

15 Q. Is it your intention to adopt that testimony
16 except, obviously, for the parts that talk about the
17 personal history of Mr. Brill?

18 A. Yes, sir.

19 Q. Are you aware of any changes or corrections
20 that need to be made to what's been marked as Exhibit No. 5?

21 A. I have no corrections or changes. I do have
22 one clarification. On page 10 of Mr. Brill's testimony, we
23 talk about in-service criteria and some disagreements that
24 we have with Staff, and this is our proposed. We have since
25 filed a Unanimous Stipulation and Agreement on this issue.

1 Q. So if I asked you the same questions that
2 appear in that documents this morning, with the
3 clarification that you've just made, your answers today
4 would be the same as those given previously by Mr. Brill?

5 A. Yes, sir.

6 Q. With that -- and are those answers true and
7 correct to the best of your knowledge, information and
8 belief?

9 A. Yes, sir.

10 MR. DUFFY: With that, I would offer into
11 evidence Exhibit No. 5.

12 JUDGE RUTH: Exhibit No. 5, which was
13 identified as the direct testimony of Virgil Grill (sic), is
14 being offered by Empire to be adopted by Mr. Beecher. Do
15 the parties have any objections to this, Staff?

16 MR. WILLIAMS: No objection.

17 JUDGE RUTH: Praxair?

18 MR. CONRAD: No.

19 JUDGE RUTH: Public Counsel?

20 MR. COFFMAN: No.

21 JUDGE RUTH: Seeing no objections, this
22 document is admitted into the record.

23 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

24 MR. DUFFY: I would just note that I believe I
25 understood you to say his name was Grill, and his name is

1 Brill, B-r-i-l-l.

2 JUDGE RUTH: Thank you for that correction.

3 BY MR. DUFFY:

4 Q. The next document I would like you to look at,
5 Mr. Beecher, is what's identified as your rebuttal testimony
6 in this proceeding, and that's been marked as Exhibit
7 No. 15. Do you have that?

8 A. Yes, sir, I do.

9 Q. Do you have any changes or corrections to your
10 prepared rebuttal testimony?

11 A. I do not have any corrections. I do have some
12 clarifications. On the first issue, which begins on page 2,
13 which is State Line combined-cycle prudence, we have entered
14 into a Stipulation and Agreement with the Staff, and I am
15 able to answer questions on Empire's behalf regarding our
16 positions in the stipulation.

17 On fuel and purchased power expense, I had
18 filed change of position testimony, which I believe was
19 referred to as supplemental testimony, and then we are
20 working towards a Joint Stipulation that we hope to get
21 filed this afternoon that resolves this issue.

22 State Line Combined Cycle In-Service Criteria
23 has also changed, and we filed a Joint Stipulation on that,
24 and I'm able to answer questions regarding Empire's position
25 on that as well.

1 Fourth is Iatan, State Line Combined Cycle,
2 State Line 1 and Energy Center Maintenance Expense. We have
3 came to agreement with Staff and other parties on Iatan, so
4 this is no longer an issue. State Line Combined Cycle,
5 State Line 1 Energy Expense are topics to be discussed later
6 today.

7 Q. With those clarifications, if I asked you the
8 same questions that appear in Exhibit No. 15, being your
9 rebuttal testimony, would your answers be the same?

10 A. Yes, sir.

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

13 A. Yes, sir.

14 MR. DUFFY: With that, I would offer into
15 evidence Exhibit No. 15.

16 JUDGE RUTH: Okay. Exhibit 15, Mr. Beecher's
17 rebuttal testimony, has been offered. Do the parties have
18 any objection to this document? Staff?

19 MR. WILLIAMS: No objection.

20 JUDGE RUTH: Praxair?

21 MR. CONRAD: No.

22 JUDGE RUTH: And Public Counsel?

23 MR. COFFMAN: No.

24 JUDGE RUTH: Okay. Exhibit 15 is admitted
25 into the record. Thank you.

1 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)

2 BY MR. DUFFY:

3 Q. The document I would like to turn your
4 attention to is entitled surrebuttal testimony of Brad
5 Beecher, and that has been marked for purposes of
6 identification as Exhibit 30. Do you have any changes or
7 corrections to that document?

8 A. I have a couple corrections. The first on
9 page 5, line 10, the 284,869 should be replaced with
10 196,572. The second number, which is 267,190, should be
11 replaced with 179,548. And the third number 17,679 should
12 be replaced with 17,024.

13 I also have changes on line 3 of page 6. The
14 424,442 should be 414,858. The 261,928 should be 253,483,
15 and the 162,514 should be 161,375.

16 Q. Do you have any other changes to this
17 document?

18 A. No, sir.

19 Q. With those corrections, if I asked you the
20 same questions that appear in Exhibit No. 30 this morning,
21 would your answers be the same?

22 A. Yes, sir.

23 Q. Are those answers true and correct to the best
24 of your knowledge, information and belief?

25 A. Yes, sir.

1 MR. DUFFY: At this time I would offer into
2 evidence Exhibit No. 30.

3 JUDGE RUTH: Exhibit 30, the surrebuttal
4 testimony of Brad Beecher, are there any objections to this
5 document, Staff?

6 MR. WILLIAMS: No objection.

7 JUDGE RUTH: Praxair?

8 MR. CONRAD: No.

9 JUDGE RUTH: And Mr. Coffman?

10 MR. COFFMAN: No.

11 JUDGE RUTH: Okay. Exhibit 30 is admitted
12 into the record.

13 (EXHIBIT NO. 30 WAS RECEIVED INTO EVIDENCE.)

14 BY MR. DUFFY:

15 Q. Finally, I would like you to turn your
16 attention to what's been marked for purposes of
17 identification as Exhibit No. 106, which is your
18 supplemental testimony regarding Empire's change of
19 possession on fuel and purchased power expense that's
20 previously been filed with the Commission. I would ask you
21 if you have any changes or corrections to that document?

22 A. No changes or corrections. This summarized
23 the change of position and will be incorporated mostly in a
24 Unanimous Stipulation that the parties intend to file.

25 Q. Are those answers as they appear there -- if I

1 ask you the same questions, would your answers be the same,
2 with that clarification?

3 A. Yes, sir.

4 Q. And are those answers true and correct to the
5 best of your knowledge, information and belief?

6 A. Yes, sir.

7 MR. DUFFY: With that, I would offer into
8 evidence Exhibit No. 106.

9 JUDGE RUTH: Exhibit 106 regarding
10 Mr. Beecher's supplemental testimony has been offered. Are
11 there any objections? Staff?

12 MR. WILLIAMS: No objection.

13 JUDGE RUTH: Praxair?

14 MR. CONRAD: No, ma'am.

15 JUDGE RUTH: Public Counsel?

16 MR. COFFMAN: No.

17 JUDGE RUTH: Okay. Exhibit 106 is also
18 admitted into the record. Thank you.

19 (EXHIBIT NO. 106 WAS RECEIVED INTO EVIDENCE.)

20 MR. DUFFY: And with the parties' permission,
21 I believe the stipulation, the Unanimous Stipulation and
22 Agreement on the State Line capital costs, which is the
23 subject of this hearing this morning, has been marked for
24 purposes of identification as Exhibit No. 82.

25 And simply to take advantage of this

1 opportunity, I guess I would offer a copy of that
2 Stipulation into evidence as Exhibit No. 82.

3 JUDGE RUTH: That was the Unanimous Stip and
4 Agreement on the State Line combined cycle unit capital
5 costs?

6 MR. DUFFY: Yes, ma'am.

7 JUDGE RUTH: That's been offered. It's marked
8 as Exhibit 82. Are there any objections, parties?

9 MR. WILLIAMS: No objection.

10 MR. CONRAD: No.

11 JUDGE RUTH: It's admitted into the record
12 then. Thank you.

13 (EXHIBIT NO. 82 WAS RECEIVED INTO EVIDENCE.)

14 MR. DUFFY: I think that deals with all the
15 preliminaries with Mr. Beecher, and so I would tender him
16 for cross-examination.

17 JUDGE RUTH: Okay. I understand that the
18 parties may have agreed to waive cross-examination on this
19 witness; is that correct?

20 MR. WILLIAMS: That's correct.

21 MR. CONRAD: That's correct.

22 MR. COFFMAN: Yes.

23 JUDGE RUTH: Then we'll move to questions from
24 the Bench. Commissioner Simmons, do you have questions?

25 COMMISSIONER SIMMONS: I do not.

1 JUDGE RUTH: Commissioner Gaw?

2 COMMISSIONER GAW: Yes.

3 QUESTIONS BY COMMISSIONER GAW:

4 Q. I would like to repeat my earlier question,
5 and maybe I can -- that will assist me here. Can you
6 explain to me the difference in your position between the
7 original testimony that you offered in your direct, the
8 adopted direct and the rebuttal and what you have agreed to
9 now as far as the company is concerned?

10 A. The company filed both direct and rebuttal
11 testimony that basically said, we think this plant is -- and
12 the cost of this plant is just and reasonable when you
13 compare it to the rest of the market.

14 There was a contractor issue with Fru-Con, and
15 Mr. Featherstone pointed that out in his testimony, as well
16 as reflecting on some previous decisions this Commission has
17 made with regard to Lasene, Iatan, Wolf Creek and Callaway.

18 When we read through those documents, it was
19 clear to us that the Commission has not ruled in favor of
20 places where there's been contractor error in the past.
21 They have said that's on the company.

22 We had identified this Fru-Con issue as about
23 a \$12 million issue. At least from Empire's perspective,
24 and I can't speak for the other parties, we negotiated to
25 this \$8.3 million number, as opposed to \$12 million to

1 reflect some of the things that Mr. Wilson said previous to
2 me about Fru-Con could have never built this for
3 \$5.3 million, there were going to be change orders.

4 And so that's the reasoning that we negotiated
5 to that position is what we perceived as risk of losing the
6 whole 12 million from you-all, based on previous decisions,
7 and then also based on the fact that we really think
8 8.3 million is what's associated with Fru-Con given
9 estimates on what it would have maybe taken Fru-Con to
10 actually build the job.

11 Q. Do you know whether there were change orders
12 that came about after the second contractor took over?

13 A. There were no change orders to Fru-Con.
14 Nooter Erickson Construction Company signed what was called
15 a time and material contract. Mr. Wilson referred to that
16 as a T&M contract. Basically, what it allows for is they
17 just bill their actual expenses as they come.

18 Q. So when that contract was signed, at that
19 point in time the company couldn't have estimated how much
20 the cost of completing the contract would have been by
21 looking at the contract itself? It would have had to have
22 made the estimates based upon what they foresaw in the
23 market and other things? Would that be accurate? And if
24 you want to use your own words, please do.

25 A. We could have estimated, and part of what

1 happened is we had to estimate based on how the job was
2 left, and so that and some of the issues about where
3 equipment was laid and where tube bundles were laid caused
4 Nooter Erickson to do some things that they may not have did
5 if they were on the job themselves the whole time.

6 The other thing that happened on this job is
7 there was a lack of skilled labor, which also was talked
8 about earlier. We had to pay increased -- we started at
9 Joplin, Missouri rates. Could not attract enough
10 pipefitters and laborers, so we went to Springfield rates.
11 We could not attract and get our forces full yet, and so we
12 added an incentive piece on top of that, and we were able to
13 get enough labor to the job at that time.

14 At this point in time, the steam turbine has
15 made about 30 megawatts, and both combustion turbines have
16 operated near full load. We have not yet made 500
17 megawatts.

18 Q. Do you have any estimates on the time to get
19 to that point at this stage?

20 A. Our intent or belief right now is that we will
21 reach 500 megawatts by the end of the week. There's a big
22 difference between that and the in-service criteria that
23 we've agreed to.

24 Q. All right. You want to venture into the
25 June 1st deadline for me? Was that -- at the point in time

1 when the June 1st deadline was placed, and I assume it was
2 placed in the Fru-Con contract, the rationale for that
3 deadline was what?

4 A. There were about three items, three distinct
5 items that went into June 1, and one is a contract year
6 requirement for capacity that the Southwest Power Pool has,
7 and right now there is no penalty if you don't meet that
8 requirement, but the power pool requires and we have
9 contractually obligated to provide 12 percent capacity
10 margin, at a minimum. So June 1 is critical for your new
11 load growth.

12 Concurrent with this, we had two purchased
13 power contracts that were expiring, one with Southwestern
14 Public Service Company for 45 megawatts and one with Kansas
15 Gas & Electric Company for 80 megawatts. So we had
16 125 megawatts of capacity expiring.

17 And while June is not your typical month to
18 peak, it's not unlikely, outside of the weather today, but
19 it's not impossible for us to peak in June. So we had
20 calculated this \$12 million number based on a
21 five-hour-per-day, 16-hour-per-week schedule at 300
22 megawatts at approximately the then-current futures market
23 prices.

24 So if we had to go replace State Line Combined
25 Cycle on the open market, it was going to cost us in this

1 \$12 million a month range, and that was a estimate of what
2 market purchases would have cost. With the transmission
3 situation today, if it's hot, there's no guarantee I could
4 have bought it at any price, and it may have been more and
5 it may have been less, but that was our best estimate at the
6 time.

7 Q. Were you familiar -- are you familiar with the
8 original contract with Fru-Con?

9 A. Not near to the extent Mr. Wilson was.

10 Q. That's all right.

11 The decision to use June 1st as far as the --
12 and I assume that the June 1st date was also relevant as far
13 as this rate case is concerned, is it not?

14 A. As this rate case has played out, the
15 in-service criteria is July 31 of 2001. We have a true-up
16 in this case through the end of June 30. So from this rate
17 case perspective, June 1 was not -- as it has played out,
18 June 1 was not a driving factor.

19 Q. Was it ever a driving factor?

20 A. From my perspective, June 1 was always a power
21 pool requirement economic risk to Empire if we had to be on
22 the market for purchased power.

23 Q. Were you involved in the second negotiation on
24 getting the second contractor into the job?

25 A. No, sir, I was not. I was not employed with

1 Empire at that time.

2 Q. When did you start your work, by the way?

3 A. I worked for Empire from 1988 until summer of
4 '99. I left, went to Black & Veatch Corporation, and then I
5 returned in February, I believe, of 2001.

6 Q. So your exposure to this case, is it limited
7 to your employment with Empire or were you also familiar
8 with it through your work at Black & Veatch?

9 A. I was very involved on the front end of this
10 project.

11 Q. Which would have been when?

12 A. Which would have been in '98-'99 when we were
13 putting the project together, going through economic
14 analysis. I was, then, at Empire not involved in the
15 construction arm of Black & Veatch that was working on this
16 project. I was in a consulting arm of Black & Veatch and --

17 Q. Were you -- I'm sorry.

18 A. I really didn't have any involvement in the
19 construction side of this project in my absence.

20 Q. So your familiarity with it then resurfaces
21 upon your reemployment with Empire?

22 A. That's correct.

23 COMMISSIONER GAW: That's all the questions I
24 have. Thank you.

25 JUDGE RUTH: Commissioner Simmons?

1 QUESTIONS BY COMMISSIONER SIMMONS:

2 Q. I do just have one question. It's a question
3 of curiosity. I'm looking at are your rebuttal testimony,
4 Mr. Beecher, and as you start to talk about the State Line
5 Combined Cycle Plant, there's one segment, I guess it's on
6 page 3, line 12, where you start to talk about the risk
7 involved in the project, and I believe you go on to say that
8 the risk could have -- you could have had a much less
9 riskier role in the project than what you did.

10 I guess I'm looking at, as I continue on down
11 with your testimony and you get to the final cost, if you
12 would have had a general contractor, do you know how much
13 that cost would have been compared to not taking as much
14 risk? Because I'm assuming that, you know, by going in a
15 different direction, that, you know, your statement is that
16 you're reducing the cost.

17 A. Two things to consider here. We could have
18 tried to negotiate an EPC contract, an engineer, procure,
19 construct contract for a fixed price. Firms like Black &
20 Veatch provide that service. Firms like Bectel provide that
21 kind of service. So it's a fixed price all-in price, and so
22 they have to build in risk to cover that.

23 The market has changed significantly from '97
24 to '98 'til today. My understanding and my knowledge from
25 Black & Veatch is that EPC firms are pretty much full up

1 right now. So the premium that you're going to pay has
2 changed over time. My estimate is going to be someplace
3 between 5 and 20 percent.

4 State Line was a little bit more complicated
5 than a green field EPC site, because we had this existing
6 combustion turbine sitting there. So if you wanted an
7 overall plant guarantee, they were going to have to up the
8 ante, in my opinion, or up what they call the profit
9 percentage, because they didn't know exactly what State
10 Line 2, the existing combustion turbine was going to -- how
11 it was going to perform.

12 So short answer, no, I do not have an exact
13 number, but there would have been a profit and contingency
14 amount that we would have had to pay an EPC contractor
15 without a doubt.

16 COMMISSIONER SIMMONS: Thank you. That's all
17 the questions I have.

18 JUDGE RUTH: Do the parties have recross based
19 on the questions from the Bench, Mr. Conrad?

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

21 JUDGE RUTH: Mr. Coffman?

22 MR. COFFMAN: No.

23 JUDGE RUTH: And Staff?

24 MR. WILLIAMS: No.

25 JUDGE RUTH: Empire, do you have redirect?

1 MR. DUFFY: No, your Honor.

2 JUDGE RUTH: Thank you, Mr. Beecher. You may
3 step down.

4 THE WITNESS: Thank you, your Honor.

5 (Witness excused.)

6 JUDGE RUTH: It's my understanding, Staff, you
7 are set to call your witness now.

8 MR. WILLIAMS: Yes. Staff calls
9 Mr. Featherstone.

10 (Witness sworn.)

11 JUDGE RUTH: Thank you. Please be seated.
12 Mr. Williams.

13 CARY G. FEATHERSTONE testified as follows:

14 DIRECT EXAMINATION BY MR. WILLIAMS:

15 Q. Would you please state and spell your name.

16 A. Cary G. Featherstone. Last name is spelled
17 F-e-a-t-h-e-r-s-t-o-n-e.

18 Q. And by whom are you employed?

19 A. Missouri Public Service Commission.

20 Q. In what capacity?

21 A. I'm a regulatory auditor.

22 Q. And did you cause to be prefiled in this case
23 testimony that's highly confidential in nature that's
24 designating the direct testimony of Cary G. Featherstone
25 that's marked for identification in this proceeding as

1 Exhibit 45?

2 A. Yes, I did.

3 Q. Do you have any revisions to that testimony?

4 A. I have a couple. Relates to some of the
5 information that at the time I filed it was highly
6 confidential which has been declassified. So if I can go
7 through.

8 Q. If you would go through those changes, please.

9 A. Schedules 3, 4, 5, 6 and 7 have been
10 declassified from highly confidential to nonproprietary in
11 their entirety.

12 JUDGE RUTH: 3, 4, 5, 6 and 7?

13 THE WITNESS: Yes.

14 BY MR. WILLIAMS:

15 Q. Do you have any other changes?

16 A. Yes. There are several, and they all relate
17 to the declassification of highly confidential. Page 23,
18 lines 19 and 20, and 23 and 24, the dollar amounts that
19 appear as highly confidential should now be declassified to
20 nonproprietary.

21 Continuing, page 32, lines 12, 17 and 19
22 should also be declassified. Page 37, line 21 should be
23 declassified. Page 39, line 11, page 40, line 14, and
24 page 42, line 8 should all be declassified.

25 Q. Do you have any further revisions?

1 A. Not to my knowledge.

2 Q. Did you also cause to be filed a
3 nonproprietary version of that testimony that's been marked
4 as Exhibit No. 46?

5 A. Yes.

6 Q. If I were to ask you the questions that are
7 set forth in Exhibits 45 and 46, would your answers be the
8 same today as they were as set forth in that testimony with
9 the revisions you've just made?

10 A. They would.

11 MR. WILLIAMS: I offer Exhibits 45 and 46.

12 JUDGE RUTH: Exhibit 45 is the direct
13 testimony of Mr. Featherstone. That's the HC version. And
14 Exhibit 46 is the nonproprietary version of
15 Mr. Featherstone's direct testimony. It's my understanding
16 that the parties have no objections to these documents being
17 admitted into the record; is that correct?

18 MR. CONRAD: That is correct.

19 MR. COFFMAN: That's correct.

20 MR. DUFFY: Yes.

21 JUDGE RUTH: Then Exhibit 45 and Exhibit 46
22 are received into the record.

23 (EXHIBIT NOS. 45 AND 46 WERE RECEIVED INTO
24 EVIDENCE.)

25 MR. WILLIAMS: I'd like to get some exhibits

1 marked, your Honor.

2 JUDGE RUTH: Okay. The next number I have is
3 107.

4 MR. WILLIAMS: That would be the revised
5 surrebuttal testimony of Cary Featherstone, HC version.

6 JUDGE RUTH: 107, you said revised
7 surrebuttal?

8 MR. WILLIAMS: Yes. And 108 then would be the
9 nonproprietary version of that testimony. Let the record
10 reflect I've given three copies of each of these to the
11 court reporter.

12 (EXHIBIT NO. 107 AND 108 WERE MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. WILLIAMS:

15 Q. Mr. Featherstone, have you also caused to be
16 prepared revised testimony that's been filed in this case?

17 A. Yes.

18 Q. And have those been marked as Exhibit Nos. 107
19 and 108?

20 A. They have.

21 Q. And Exhibit 107 contains highly confidential
22 information while Exhibit 108 is the same with that
23 information redacted?

24 A. That's correct.

25 Q. Do you have any revisions to those exhibits?

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1 A. Not to my knowledge.

2 Q. If I were to ask you the questions set forth

3 in those exhibits today, would your answers be the same?

4 A. They would.

5 MR. WILLIAMS: I offer Exhibits 107 and 108.

6 JUDGE RUTH: Exhibits 107 and 108, the revised

7 surrebuttal testimony of Mr. Featherstone, the HC copy and

8 the NP copy, have been offered. Are there any objections to

9 these exhibits from the parties?

10 (No response.)

11 Okay. Seeing no objections, Exhibits 107 and

12 108 are received into the record.

13 (EXHIBIT NOS. 107 AND 108 WERE RECEIVED INTO

14 EVIDENCE.)

15 MR. WILLIAMS: I would also like to get

16 another exhibit marked. This is the Supplemental Testimony

17 in Support of the Staff's Change in Position Regarding Fuel

18 and Purchased Power Expense of Cary G. Featherstone.

19 JUDGE RUTH: So Exhibit 109.

20 MR. DUFFY: Just for my purposes, is that

21 what's the document filed apparently May 22nd called Direct

22 Testimony in Support of the Stipulation and Agreement

23 Regarding Fuel and Purchased Power Expense? Do I have the

24 right document?

25 MR. WILLIAMS: No. This is a new document.

1 JUDGE RUTH: Mr. Williams, is this one that
2 has been filed yet?

3 MR. WILLIAMS: I believe it is June 1st.

4 JUDGE RUTH: So that was Friday?

5 MR. WILLIAMS: Right.

6 JUDGE RUTH: Do you want to go off the record
7 for five minutes and we'll make sure everyone has copies?

8 MR. DUFFY: No. I'll trust him. I don't
9 think they caught up with me in the circulation. Go ahead
10 and proceed.

11 JUDGE RUTH: You don't need a moment to look
12 at them, Mr. Duffy?

13 MR. DUFFY: I trust him.

14 MR. WILLIAMS: If you'd like, I've got three
15 copies for the court reporter.

16 JUDGE RUTH: Are you offering these at this
17 time, Mr. Williams?

18 MR. WILLIAMS: I think I want to establish
19 that Mr. Featherstone has testified to what's in these
20 exhibits.

21 JUDGE RUTH: Continue, then, please.

22 (EXHIBIT NO. 109 WAS MARKED FOR IDENTIFICATION
23 BY THE REPORTER.)

24 BY MR. WILLIAMS:

25 Q. Mr. Featherstone, have you caused to be filed

1 in this case supplemental testimony in support of the
2 Staff's change in position regarding fuel and purchased
3 power?

4 A. I have.

5 Q. Has that been marked as Exhibit 109?

6 A. Yes.

7 Q. If I were to ask you the questions that are
8 set forth in that exhibit, do you have any -- first, do you
9 have any changes to that exhibit?

10 A. No, I don't.

11 Q. If I were to ask you the questions that are
12 set forth in that exhibit here today, would your answers be
13 the same as what's set forth therein?

14 A. They would.

15 MR. WILLIAMS: I offer Exhibit 109.

16 JUDGE RUTH: Exhibit 109, the supplemental
17 testimony in support of Staff's change in position regarding
18 the fuel and purchased power, has been offered. Do the
19 parties have any objections to this document being received
20 into the record?

21 MR. CONRAD: No.

22 JUDGE RUTH: Praxair says no. Public Counsel?

23 MR. COFFMAN: No.

24 JUDGE RUTH: And Empire?

25 MR. DUFFY: No.

1 JUDGE RUTH: Then Exhibit 109 is received.
2 (EXHIBIT NO. 109 WAS RECEIVED INTO EVIDENCE.)
3 MR. WILLIAMS: I tender the witness.
4 JUDGE RUTH: Thank you. And again, do the
5 parties have any cross-examination or has that all been
6 waived?
7 MR. DUFFY: We waive cross.
8 JUDGE RUTH: Mr. Conrad?
9 MR. CONRAD: Pursuant to the earlier
10 indication that we had agreement in principle on those
11 issues, that stipulation is as yet, as you know, unexecuted,
12 but it's in the process of being brought together. Pursuant
13 to that understanding, we would have no cross for this
14 witness under that understanding.
15 JUDGE RUTH: That's a good point. I'll make a
16 note on the record that that Stipulation and Agreement is
17 only in principle. It's expected to be filed later today,
18 and if something happens and it is not, we will revisit this
19 issue.
20 Okay. With that, cross-examination is waived.
21 Questions from the Bench, Commissioner Simmons?
22 COMMISSIONER SIMMONS: I don't have any at
23 this time. Thank you.
24 JUDGE RUTH: Commissioner Gaw?
25 QUESTIONS BY COMMISSIONER GAW:

1 Q. I realize that you have filed some direct.
2 I'd like for you, if you could, please, to tell me, in
3 regard to the stipulation, the rationale for the Staff's
4 change in position regarding construction costs that have
5 been in issue prior to that stipulation being filed.

6 A. The Staff's original filing contained a
7 discussion, kind of an overview of the construction project,
8 the State Line Combined Cycle Unit, and identified
9 approximately \$31 million of overruns. \$12 million of those
10 overruns were identified as the installation of the heat
11 recovery steam generator, the HRSGs is what it's been
12 referred to as.

13 I don't see the settlement that we reached
14 with Empire as materially different from that original
15 position. The original contract that was awarded Fru-Con
16 was \$5.3 million. There were two other bidders that ranged
17 upwards of almost \$7 million, \$6.9 million, I believe, to be
18 exact.

19 It was our belief in review of the
20 documentation that was provided by Empire and information
21 that was supplied by their construction management team
22 through interview processes that the \$5.3 million original
23 estimate of Fru-Con probably was not a number that could be
24 sustained. It was going to have some changes to it.

25 In Mr. Wilson's analysis done outside the

1 context of the rate case, he was engaged to evaluate and
2 assess the dollar impact to the loss in schedule and the
3 replacement/removal of Fru-Con with Nooter Erickson.

4 And in his report, as he went through the
5 analysis, he determined that the dollar amount that the
6 HRSGs should be installed for was in the neighborhood of
7 8 million, 8.3 to \$8.6 million. It was Staff's position
8 that that would form a good basis for a settlement if we
9 could reach that level.

10 You need to remember that the final number for
11 the installation of the HRSGs with the Fru-Con settlement,
12 Fru-Con's invoices to date and the Nooter Erickson time and
13 material contract, that the total installation cost was
14 approximately \$16.6 million.

15 So when we were assessing the settlement with
16 the company, you know, at no time were we interested in the
17 settlement with Fru-Con, the \$1 million that we were
18 speaking of this morning. That was -- that was really off
19 the table for us. We felt that the company should absorb
20 that and believe they have.

21 They went through an arbitration process, the
22 beginning stages of an arbitration process, but we felt that
23 that was between Fru-Con and Empire and Western Resources,
24 who was the other partner of the State Line Combined Cycle
25 Unit.

1 So from our perspective, the settlement with
2 Fru-Con did not enter into our negotiations with the company
3 in this case.

4 Q. So if I'm understanding you correctly, then,
5 the basis for Staff's change in position has more to do with
6 what you believe the reasonable value of the -- or the
7 reasonable cost of the construction of the State Line unit
8 should have been; is that accurate?

9 A. Yes. It should have been absent what's
10 referred to as the contractor error or contractor failure
11 performance issues.

12 Q. You're still -- you're still above the, if I'm
13 not mistaken, with this settlement still above the second
14 lowest bid?

15 A. Yes.

16 Q. Is that accurate?

17 A. Yes. There were two, and I believe the
18 highest bid for the work that was identified in the latter
19 stages of 1999 when the bids -- I think the bids came in in
20 November of 1999, I believe the highest bid was close to
21 \$7 million.

22 Q. All right. So we're even above the highest
23 bid with this settlement?

24 A. Yes.

25 Q. And can you tell me why you believe it's

1 appropriate for that higher than the highest bid amount to
2 be this stipulated amount by Staff in this case?

3 A. In our assessment, when we looked at
4 Mr. Wilson's report -- and I think it's important to
5 recognize that this report was not done in the context of
6 the rate case.

7 Mr. Wilson was engaged really shortly after
8 Fru-Con was terminated. Fru-Con was removed from site work,
9 I believe he said in April, early stages of April. They
10 were discussing it in the latter stages of March.
11 Mr. Wilson was engaged in the mid to late spring time frame.

12 His report was really a report that was
13 developed or he was retained to assess the actual cost in
14 damages, and I really want to say that the report was
15 probably developed to prepare for litigation. So it was not
16 done in the context of the rate case, and so that was
17 important from our perspective.

18 So it was more of an independent analysis.
19 Mr. Wilson is a -- was contracted. He is not an employee of
20 Empire, and he was independent from the project. He was
21 brought in to assess kind of in an after-fact fashion.

22 In his report, it was his belief that the
23 Fru-Con had low bid and perhaps the other bidders were --
24 would have needed some change orders as well to finish up
25 the project on schedule. So as we went through the thought

1 process, we relied heavily on where he believed the dollar
2 amount would be, the final dollar amount for the
3 installation of the heat recovery system.

4 Q. The change orders that you're talking about,
5 do you see any -- are you aware of change orders that
6 occurred during the project from the original contract terms
7 and bid for proposal terms or whatever they were originally
8 called that added to the costs of this project? Did you see
9 any in looking at --

10 A. Yes, there were many change orders. One I've
11 used in my testimony. They related to the outside crane,
12 overhead crane. It's a maintenance crane for the combustion
13 turbines. It was not thought to be necessary or needed in
14 the original drawings of the project and was not in the
15 original estimates.

16 At some point the company decided that it
17 would be better to have an overhead crane for future
18 maintenance. It's very common to have a crane that allows
19 the units to be broken down, torn apart and to be inspected
20 and to maintain. That added, I think, approximately a
21 million dollars.

22 That was not contemplated as part of the
23 original estimate, and it was certainly something that we
24 were not going to dispute, and it was -- we deemed it as it
25 was a management decision, that they saw fit that that

1 should be included in the project, and that's something that
2 we would have included in our original.

3 Q. You believe that was a prudent expenditure?

4 A. Yes.

5 Q. All right. Anything else?

6 A. Not that comes to mind. I mean, there were a
7 lot of change orders that relate to this issue of labor
8 cost, and as the Stipulation Agreement has envisioned that
9 we're going to address that further with the company in the
10 true-up phase of the rate case.

11 Q. Now, are we talking about the 8.3 or the
12 19 million now when you get into that?

13 A. The 8.3 from the stipulation is locked in.
14 It's the \$19 million.

15 Q. I'm going to go to that in a minute. I just
16 want to make sure that I'm understanding when you're talking
17 about labor costs at this point in time, which part you're
18 talking about.

19 A. The labor costs would have been primarily in
20 the \$19 million, and also the crane as well.

21 Q. Oh, the crane would have as well?

22 A. Yes. The crane was not a -- was not a HRSG
23 scope work. It was outside that contract.

24 Q. All right. Is there anything else that you
25 can tell me regarding the 8.3 million as to Staff's

1 believing that that is a more appropriate figure than the
2 three original bid prices that the company had in front of
3 it? I believe there were three.

4 A. I think the evidence or at least the documents
5 that we reviewed and accepted and the information provided
6 by Empire in terms of interviews, clearly the labor issue
7 and craft, skilled craft issue, trying to get welders and
8 electricians and boilermakers primarily to the site at the
9 time of the construction, the principal construction, I
10 think that definitely impacted, and we accepted that there
11 were going to be some additional overruns.

12 They were not dollars that the company was
13 going to anticipate or could have anticipated in its
14 original estimate. I think that would have impacted the
15 Fru-Con scope of work, if I can refer to it as that.

16 Q. Help me to understand that issue, because
17 maybe I'm making a bad assumption here, that that would --
18 that would have been the contractor's expense if there were
19 added costs if they stayed under the contract.

20 Were there provisions in the contract for
21 adding additional amounts because of labor shortage or other
22 issues regarding labor that you're familiar with?

23 A. While they were fixed contracts, all of them
24 except for the Nooter Erickson Construction contract, there
25 are provisions for change orders, the change in scope and

1 design, which is what the crane was as an example.

2 Q. But that is not referring to a change in labor
3 costs, is it?

4 A. They could have invoked and submit and indeed
5 did submit change orders relating to the issue of labor
6 costs.

7 Q. Explain that to me, then.

8 A. The original estimate that was developed by
9 Black & Veatch, and there was an oversight by Empire, had to
10 do with developing labor rates based on the Joplin region.
11 That worked for a very short period of time. They simply
12 found that they could not attract the necessary number and
13 skill sets, the quality and experience levels that they were
14 looking for and needed for the project.

15 Q. And do you believe that that would have
16 qualified as a change order, instead of it falling as
17 additional cost to the original contractor if they had
18 stayed under the original contract that was offered and
19 accepted?

20 A. I don't believe they could have -- with
21 evidence that we've seen and based upon what was provided by
22 Empire, I don't believe they could have maintained schedule
23 nor attracted the quality of workmanship and craftsmen at
24 that level. So yes, I think that they had to do what they
25 did in terms of labor rates.

1 Q. I'm understanding what you're telling me, but
2 I'm not sure you're answering my question.

3 A. I'm sorry.

4 Q. What I want to know is whether or not that
5 burden of the additional cost would have fallen on the
6 contractor or the company if they had maintained their
7 original contract, if you know?

8 A. I think the contracts provided -- provision
9 provided for that, for those kinds of changes.

10 Q. You do believe additional labor costs could
11 have fallen upon the company under the original contract?

12 A. Yes.

13 Q. And you've seen that provision?

14 A. I've looked at the contract. I couldn't take
15 you to that provision. I couldn't cite you what language
16 would permit that, but --

17 Q. Perhaps someone else will be able to at some
18 point.

19 Let's go to the 19 million. Tell me what's at
20 issue there and what the settlement contemplates that's
21 different from what you originally were proposing.

22 A. Last question first. There really isn't any
23 difference from what we originally proposed. We basically
24 maintained all along that in order for the company to
25 include these amounts in investment rate base, that they

1 should explain the \$19 million.

2 What is different is that they have -- really,
3 the settlement contemplates a contingency. We believe that
4 they can and will be able to and felt all along that they
5 could provide a meaningful and satisfactory explanation.

6 The settlement contemplates that if they're
7 unable to do so to the satisfaction of Staff, they can
8 certainly challenge that and bring that issue before you.
9 But if they are unable to do so and they don't want to
10 challenge it, then there's a million-dollar contingency or
11 million-dollar hit additional over and above the
12 8.3 million. And these are total company project costs by
13 the way, not a Missouri jurisdictional allocated amount.

14 Q. Explain to me what's involved in the
15 \$19 million figure.

16 A. It's going to be the crane certainly is in the
17 19. There are other scope changes that I'm -- that escape
18 me. I don't have them all memorized. Certainly there are
19 this issue on labor and craft, a good portion of it.
20 Estimates run as high as 5 to \$6 million and maybe perhaps
21 even more that relate to this craft issue.

22 There was an incentive labor issue which they
23 had to provide certain bonuses and incentives, additional
24 incentives for some of the skilled workers. That amount is
25 estimated to be, I think, around 4 to 5 million.

1 So we think that when the company is able to
2 explain all the costs, that most of those can be explained.

3 Q. Now, so I'm tracking with you here, the
4 \$19 million figure, originally Staff's position in this case
5 was that how much of that should be allowed?

6 A. Right.

7 Q. How much?

8 A. Well, we did not allow it in my original
9 filing.

10 Q. The entire 19 million?

11 A. Right.

12 Q. Pursuant to the stipulation, how much is in
13 controversy?

14 A. It will be approximately a million dollars of
15 the total project costs.

16 Q. So has Staff consented that \$18 million is
17 appropriate for the company in this stipulation?

18 A. Yes. That's premised upon the belief that the
19 company can do a better job of explaining the differences,
20 but we believe the explanations are there.

21 Q. And do you have those explanations in your
22 testimony that you've offered here or have you provided
23 testimony that indicates that Staff's position currently is
24 that \$18 million of that \$19 million are appropriate for the
25 company as far as rate base is concerned?

1 A. Not to detail it in that fashion, I haven't.
2 That's contemplated for our -- another filing in the true-up
3 phase of the case, which at that time we would expect to
4 offer evidence as to whether they have indeed explained the
5 19 million or not.

6 Q. If the Commission agrees with this
7 Stipulation, would we have an opportunity at that future
8 date to do anything in regard to that \$18 million or would
9 we be looking at the \$1 million figure at that point in
10 time?

11 A. If you adopt the Stipulation --

12 Q. Yes.

13 A. -- it would be the \$1 million figure at that
14 time, if you adopt the Stipulation in its entirety.

15 Q. So Staff has consented to 8.3 plus 18 in this
16 provision; is that accurate?

17 A. Through this provision, yes.

18 Q. And your original position was that how much
19 of that should be allowed?

20 A. The original position was that the 19 had to
21 be explained, and we even when we filed your direct case
22 believed that explanation was forthcoming. So that in
23 effect really didn't change much as part of the Stipulation.

24 Q. How much of that 19 million, if any, was --
25 are terms and conditions that were in the original contract

1 with Fru-Con? Any?

2 A. No.

3 Q. And were they as a part of anything else in
4 any other contract that we have in front of us, or were they
5 simply costs that you now believe were appropriately
6 incurred by the company in regard to construction of the
7 site?

8 A. I'm a little confused. Are you asking was
9 Fru-Con a part of any other contract itself?

10 Q. No. I'm asking you what -- I'm asking you the
11 genesis of the 19 million and whether or not any of that
12 related to Fru-Con. I believe you've already answered that
13 question.

14 A. That there were no Fru-Con-related costs. To
15 be more accurate, there were no HRSG installation costs,
16 either Nooter or Fru-Con, in the \$19 million.

17 Q. All right. And the \$19 million consists of
18 what kind of construction and labor costs and for what
19 purpose?

20 A. A large part of the \$19 million is referred to
21 as the mechanical side. It's the installation of the
22 non-heat-recovery-system items, the steam turbine, the new
23 combustion turbine, the conversion of Unit 2 to combined
24 cycle operation.

25 There were a lot of costs associated with the

1 installation of the other materials, the erection of the
2 steam turbine building, and those costs were affected by
3 this labor cost issue that we spoke of, which makes up, I
4 believe, the vast majority of the \$19 million.

5 COMMISSIONER GAW: Thank you very much. Thank
6 you.

7 JUDGE RUTH: Okay. Based on questions from
8 the Bench, will there be any recross, Praxair?

9 MR. CONRAD: Your Honor, just to clarify,
10 based on Judge Gaw's questions, if I could.

11 JUDGE RUTH: Please, yes, move over.

12 RECROSS-EXAMINATION BY MR. CONRAD:

13 Q. Mr. Featherstone, Judge Gaw asked you a
14 question about the 8.3 million in the context of this
15 Stipulation. Do you recall that?

16 A. Yes.

17 Q. All right. Clarify for me, because I thought
18 how you answered his question seemed the reverse of what I
19 understood, and you-all may have been communicating but you
20 weren't communicating with me.

21 Pursuant to this Stipulation, the 8.3 million
22 that's been discussed, that is -- I think you said that was
23 locked up, and what you mean by that, I think, is that is
24 disallowed. Am I correct?

25 A. Yes and no. It is also the exact amount of

1 the inclusion coincidentally. 8.3 million, which is a
2 little bit confusing, is the disallowed amount, but it also
3 represents \$8.3 million, different \$8.3 million of the
4 amount that we have included per the Stipulation and
5 Agreement with the parties for the rate base inclusion for
6 the installation of the heat recovery steam generator.

7 Q. Now, as to the 19 million that he was
8 referring to, I believe you answered that if the Commission
9 were to approve this agreement, that the only thing that
10 would be in issue would be something like the 1 million or
11 the 1.2 that you characterized as the kicker.

12 I want you to hold that thought in your mind
13 because as I'm understanding it, and help me clarify that,
14 the Commission Staff would look at, review the information
15 that the company has yet to supply with respect to the
16 19 million. So far so good?

17 A. Yes.

18 Q. And not by reason of this Stipulation or by
19 its approval would the Commission be agreeing that that
20 19 million would go into rate base, you simply would look at
21 that and provide additional testimony. I think you
22 characterized it as an additional filing.

23 A. Yes.

24 Q. Which would support your conclusions as Staff
25 based on that review of the additional material that the

1 company would submit on the 19. So far so good?

2 A. Yes.

3 Q. And then the Commission would have the

4 opportunity in its discretion to consider that testimony and

5 make a decision about that 19 million. So far so good?

6 A. Yes.

7 Q. Now, then, clarify -- and that would be at a

8 future date. The only thing that the Stipulation is really

9 providing insofar as that 19 million is that mechanism that

10 I've just described?

11 A. Yes, but I believe --

12 Q. Plus the one -- the one million or the one

13 million two slice?

14 A. Right. It's the amount that the -- that's

15 identified on page 3 of the Stipulation. It's referred to

16 as a contingency for the \$19 million, and it's that

17 \$1 million amount.

18 If, as an example, the company can only

19 identify 17-and-a-half million dollars, leaving a

20 one-and-a-half-million-dollar difference, the adoption of

21 the Stipulation and Agreement would only permit \$1 million

22 disallowance in addition to the Fru-Con of 8.3 million.

23 Q. But would -- I guess the question then maybe

24 underlying Judge Gaw's question, the Staff would review what

25 the company would submit so far as the 19. By approving

1 this Stipulation, it's not -- is it your understanding that
2 the Commission is surrendering any decisional discretion
3 with respect to that 19 million at this time?

4 A. I think that's more of a --

5 Q. Didn't mean to ask a legal question. I'm
6 sorry if I did.

7 A. That's more of a legal question, but I don't
8 think so.

9 Q. But they could -- reviewing your-all's future
10 filing and what material the company might have, they would
11 be able to make a decision at that time with respect to all
12 or part of that 19 million?

13 A. Yes, but I think it's embodied in the
14 Stipulation and Agreement. I think if they went beyond
15 that, then they would not -- they would not be bound by the
16 Stipulation and Agreement.

17 Q. Okay. And that's -- that was kind of my
18 point.

19 MR. CONRAD: Okay. Thank you. Judge Gaw, I
20 hope that clarified.

21 JUDGE RUTH: Public Counsel?

22 MR. COFFMAN: No questions.

23 JUDGE RUTH: Empire?

24 RECROSS-EXAMINATION BY MR. DUFFY:

25 Q. Just a brief point of clarification. This

1 notion that Empire is going to supply additional reasons for
2 the things underlying the 19 million, has Empire supplied
3 information to the Staff already in the form of responses to
4 Data Requests or interviews covering this topic?

5 A. Covering the \$19 million or covering the plant
6 itself, yes.

7 Q. Okay. I just wanted to -- so it's fair to say
8 that what the Staff is looking for is additional
9 justification or explanation as opposed to the company just
10 now providing something for them, because the company has
11 provided documentation and information in the past, the
12 Staff just wants more?

13 A. Right.

14 MR. DUFFY: That's all I have.

15 JUDGE RUTH: Mr. Williams, redirect?

16 MR. WILLIAMS: Just briefly.

17 REDIRECT EXAMINATION BY MR. WILLIAMS:

18 Q. Mr. Featherstone, you referred to \$1 million
19 being an issue between the 18 and the 19 million. As part
20 of the Stipulation and Agreement, isn't it required of the
21 company that it prove up the total amount up to or even
22 exceeding the 19 million in order for Staff to favorably
23 recommend that amount?

24 A. Yes. And also there's a provision that the
25 project was capped. If you look at paragraph 7 on page 3 of

1 the Stipulation and Agreement, the amount is \$23.2 million
2 dollars. So that if the project comes in over that
3 estimate -- the plant's still being constructed, so it is an
4 estimate -- the company has agreed through this Stipulation
5 to provide detailed information on why the final project
6 cost is over that amount.

7 Q. So when you're saying there's one million in
8 issue, you're saying that because of the 18 million that the
9 Staff's agreeing to?

10 A. Right.

11 Q. But the company will actually have to prove up
12 the full amount?

13 A. Yes.

14 MR. WILLIAMS: No further questions.

15 JUDGE RUTH: Okay. Mr. Featherstone, you may
16 step down.

17 (Witness excused.)

18 We need to take a short recess for the court
19 reporter and everyone else. We'll start back up at 20 after
20 11.

21 (A recess was taken.)

22 JUDGE RUTH: We are back on the record, and I
23 believe we are ready for Staff to call their next witness.

24 MR. WILLIAMS: Staff calls Mark Oligschlaeger.

25 (Witness sworn.)

1 JUDGE RUTH: Mr. Williams.
2 MARK OLIGSCHLAEGER testified as follows:
3 DIRECT EXAMINATION BY MR. WILLIAMS:
4 Q. Would you please state and spell your name.
5 A. My name is Mark L. Oligschlaeger. The last
6 name is spelled O-l-i-g-s-c-h-l-a-e-g-e-r.
7 Q. Would you state your employer and the capacity
8 in which you're employed.
9 A. I work for the Missouri Public Service
10 Commission as a regulatory auditor.
11 Q. Did you prepare direct testimony that's been
12 marked as Exhibit No. 65 that contains highly confidential
13 information?
14 A. Yes, I did.
15 Q. Did you also prepare a nonproprietary version
16 of that testimony where the highly confidential information
17 has been redacted that's been marked as Exhibit No. 66?
18 A. Yes.
19 Q. Do you have any revisions to either of those
20 exhibits?
21 A. No, I do not.
22 Q. If I were to ask you the questions that are
23 contained in those exhibits, would your answers here today
24 be the same?
25 A. Yes, they would.

1 MR. WILLIAMS: I offer Exhibits 65 and 66.

2 JUDGE RUTH: Okay. Exhibit 65 is the HC

3 direct. Exhibit 66 is the NP direct. Are there any

4 objections from the parties to these two exhibits?

5 MR. CONRAD: No.

6 JUDGE RUTH: Okay. Exhibit 65 and 66 are

7 received into the record.

8 (EXHIBIT NOS. 65 AND 66 WERE RECEIVED INTO

9 EVIDENCE.)

10 BY MR. WILLIAMS:

11 Q. Mr. Oligschlaeger, did you also prepare what's

12 been marked as Exhibit No. 67, the surrebuttal testimony of

13 Mark Oligschlaeger?

14 A. Yes, I did.

15 Q. Do you have any changes to that exhibit?

16 A. No, I do not.

17 Q. If I were to ask you the questions contained

18 in that exhibit, would your answers be the same as set forth

19 therein?

20 A. Yes, they would.

21 MR. WILLIAMS: I offer Exhibit No. 67.

22 JUDGE RUTH: Exhibit 67, Mr. Oligschlaeger's

23 surrebuttal, has been offered. Are there any objections

24 from the parties?

25 (No response.)

1 Seeing no objections, Exhibit 67 is received
2 into the record.

3 (EXHIBIT NO. 67 WAS RECEIVED INTO EVIDENCE.)

4 MR. WILLIAMS: I offer Mr. Oligschlaeger for
5 cross-examination.

6 JUDGE RUTH: Thank you. It's my understanding
7 that the parties have agreed that there will be no
8 cross-examination on this witness; is that correct?

9 MR. COFFMAN: That's correct.

10 JUDGE RUTH: Seeing the parties' agreement,
11 then we will move to questions from the Bench. Commissioner
12 Gaw?

13 COMMISSIONER GAW: Thank you.

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. Good morning.

16 A. Good morning.

17 Q. You are familiar, I take it, with the
18 Stipulation that's been entered into by the parties on
19 construction costs; is that correct?

20 A. Yes, I am.

21 Q. Has your position changed in regard to your
22 original testimony as to what is appropriate for allowance
23 in calculation of rate base in this case?

24 A. It has changed to the extent that in -- at the
25 time I prepared these testimonies, our position was that no

1 amount of the cost overrun should be reflected in rates
2 until a further explanation or discussion of the reasons why
3 these overruns occurred had been granted.

4 Q. All right. And have you received that
5 explanation?

6 A. I believe we have through discussions with the
7 company, in responses to data request responses, through a
8 number of different sources. We are satisfied with the --
9 generally satisfied with the explanations that have been
10 granted as they relate to the \$19 million of cost overruns
11 that don't apply to the HRSGs.

12 All that's left at this point, we'd like to
13 see this information brought together in a more easy to --
14 or brought together in a document that we can look at and
15 the Commission can look at, and at that point we expect that
16 we can sign off on that.

17 Q. So your position has changed to the extent
18 that you believe you now have more information regarding the
19 \$19 million question; is that accurate?

20 A. That's accurate.

21 Q. But you are not satisfied that you received
22 all the information necessary to make a final recommendation
23 on that 19 million; is that accurate?

24 A. Well, I think the Stipulation reflects the
25 treatment that would be appropriate if no further

1 explanation is received, and that is to allow rate base
2 recovery of 18 of the 19 million.

3 Q. So you believe that approximately \$18 million
4 of that \$19 million you now have sufficient information that
5 you're comfortable that that is appropriate to include in
6 the rate base calculation?

7 A. That is correct.

8 Q. In regard to did you -- you also testified in
9 regard to the Fru-Con question; is that correct?

10 A. That is correct.

11 Q. Has your position changed in regard to that
12 part of this case?

13 A. Once again, in the sense that our direct case
14 did not reflect any recovery or rate base treatment of the
15 cost overruns associated with the Fru-Con scope or the HRSGs
16 piece, however you want to look at it, after further
17 discussions with the parties and looking at all the
18 documentation that was made available to us during this
19 entire case, we believe that a reasonable resolution of this
20 would be to allow recovery of the \$8.3 million that's
21 specified in the -- or I know it's confusing because the
22 8.3 million is the amount of the disallowance and the amount
23 of the recovery, but we think allowing recovery of
24 \$8.3 million of those costs is a just resolution of our
25 concerns.

1 Q. Based upon what?

2 A. I think as Mr. Featherstone indicated, based
3 upon our belief that some amount of cost overruns above the
4 original estimate for the scope of work would have occurred
5 under any circumstances even without consideration of the
6 contractor performance issues that ultimately developed with
7 Fru-Con.

8 Q. Have you identified those or is that just
9 something that your gut is telling you and your experience?

10 A. As once again indicated with Mr. -- by
11 Mr. Featherstone, we relied to some degree on the report
12 developed for Empire by Mr. Wilson or by Mr. Wilson's firm
13 which indicated that a reasonable cost for the Fru-Con scope
14 would have exceeded the \$5.3 million original bid.

15 Q. And that wasn't your original position, was
16 it?

17 A. No. That was not the position reflected in
18 our direct filing.

19 Q. And you believe -- but you're not identifying
20 any additional information that you've received that has
21 changed your position. Is there any?

22 A. We had further discussions with the company in
23 terms of these issues, and we were satisfied that that
24 amount of the cost overrun above the \$5.3 million could not
25 be tied to imprudent or improper or lack of performance by

1 Fru-Con or Empire and the contractor on the project.

2 Q. Since the Commission is the body that's going
3 to have to ultimately decide to approve this, do you mind
4 sharing with me the rationale of the Staff in coming to that
5 conclusion so we can evaluate it as well?

6 A. Okay. As I lay out in my direct testimony, I
7 believe, there is some past history here in which the
8 Commission has looked at various issues involving cost
9 overruns on power plants, and particularly in the Wolf Creek
10 project, for example, there were vast cost overruns above
11 the original or definitive estimate in that project.

12 And the Staff and the Commission ultimately
13 took the approach of trying to identify the reasons for that
14 and to separate the reasons for that into reasons that could
15 not be tied to imprudence on the contractor's or the
16 utility's part in those cases as opposed to the impacts of
17 additional regulatory requirements and other things that
18 really were not within the direct control of the parties
19 constructing those units.

20 To the extent that the Staff and ultimately
21 the Commission was satisfied that the ultimate costs of the
22 unit were not tied to imprudent or ineffective management or
23 practices by the utilities or the contractors, those costs
24 were allowed in the rate base for those cases, and I -- we
25 have tried to apply the same approach here.

1 Q. I'm still struggling to find some specifics,
2 and I understand what you're saying. If -- let me just move
3 on.

4 In regard to the \$19 million and the allowance
5 of approximately \$18 million at this point in time, what
6 additional information -- is there additional information
7 that has been detailed in followup testimony that you have
8 filed here that indicates the change in position of Staff
9 and why that change in position has occurred to ask the
10 Commission to approve this Stipulation?

11 A. I don't believe that there has been testimony
12 filed in regards to the Unanimous Stipulation and Agreement
13 for the State Line unit that would provide you that
14 information.

15 Q. Could you do that for us today while you're on
16 the stand, or would that require a lot of testimony to do
17 that?

18 A. Well, I think once again very generally, and
19 this would be consistent with what Mr. Featherstone
20 indicated, we have looked at information regarding the
21 \$19 million worth of cost overruns, and explanations have
22 been given in various documents.

23 Perhaps our biggest problem to date has been
24 that this information was never really presented by the
25 company in testimony form, but was more done through data

1 request responses, through individual meetings with, you
2 know, company employees and so on.

3 As a result of all that information, we were
4 satisfied that these overruns were not attributable to
5 imprudent or ineffective management by the company or its
6 contractors.

7 But the settlement is set up to, I guess,
8 encourage the company to come forward with a more
9 comprehensive and concise explanation of these overruns for
10 this case or else they would forfeit \$1 million of rate base
11 as stated on a total company basis for purposes of setting
12 rates.

13 Q. Let me see if I understand that \$1 million.
14 Is that \$1 million tied to something specific you're
15 reviewing, or as I think I heard testified to earlier, is
16 that simply something similar to a penalty provision if
17 you're not satisfied that the full \$19 million is
18 reasonable?

19 A. I'm not sure I'd call it a penalty provision.
20 What it is, if the company chooses to do nothing from this
21 point forward, then they would not recover the million
22 dollars. If they choose to provide an explanation of these
23 cost overruns, then we would take -- we, the Staff and other
24 parties and ultimately the Commission, would take a look at
25 it.

1 If we're satisfied with the explanations, then
2 we will recommend allowance of another million dollars. If
3 we are not satisfied, we would not make such a
4 recommendation. If the company wanted to challenge that,
5 they would go to you and ask for recovery, I guess.

6 Q. Are we -- I apologize for this. Are we
7 talking about the Staff being satisfied today that
8 \$18 million of these, as you classify them, overruns are
9 documented to you and should be allowed and that there is an
10 additional \$1 million in controversy, or are you talking
11 about reviewing the full 19 million and that, if you're not
12 satisfied that any portion of that \$19 million is a
13 reasonable cost, that \$1 million, up to \$1 million could be
14 taken away from that 19 from a rate base calculation
15 standpoint?

16 A. It is the latter scenario that I think is
17 applicable. We are reasonably and generally satisfied about
18 the full 19 million. We just want to see a document which
19 sets it all out in order to recommend recovery of the
20 additional \$1 million.

21 Q. And you do not believe that there is any
22 chance that, upon receiving that additional information, you
23 would believe that anything less than \$18 million should be
24 allowed in the rate base?

25 A. That is correct. If we had thought such a

1 chance existed, we would not have entered into the
2 agreement.

3 Q. But you're not providing us with any specifics
4 as to what portions of that \$19 million that you believe you
5 already have full documentation for and that you think
6 should be allowed today?

7 A. I know that those pieces exist in data request
8 responses and so on. I -- actually, Mr. Featherstone's
9 probably more familiar with the specific documentation we're
10 talking about.

11 Q. When you characterize the \$19 million as
12 overrun costs --

13 A. Yes.

14 Q. -- explain to me why you're using that term
15 overrun.

16 A. Because those are amounts incurred above the
17 amounts that were set out in the original estimate developed
18 by Black & Veatch and Empire before actual construction work
19 on the project commenced.

20 Q. But there was not a contract in the
21 \$19 million issue that ever provided that the actual amount
22 of the cost would be a particular figure, is that accurate,
23 as there was in the Fru-Con portion of the capital cost
24 question?

25 A. Okay. I don't have the detailed knowledge. I

1 know there were contracts signed with other contractors to
2 the project, and they may well have provided for fixed-cost
3 awards as well.

4 Q. You don't know whether that was the case in
5 the \$19 million?

6 A. I don't know the details, no.

7 COMMISSIONER GAW: That's all I have. Thank
8 you.

9 JUDGE RUTH: Okay. And based on the questions
10 from the Bench, will there be recross from Praxair?

11 MR. CONRAD: No.

12 JUDGE RUTH: Public Counsel?

13 MR. COFFMAN: No questions.

14 JUDGE RUTH: Empire?

15 MR. DUFFY: No questions.

16 JUDGE RUTH: Mr. Williams, do you have
17 redirect?

18 MR. WILLIAMS: No, Judge.

19 JUDGE RUTH: You may step down.

20 (Witness excused.)

21 And Staff, would you please call your next
22 witness.

23 MR. WILLIAMS: Staff calls David Elliott.

24 (Witness sworn.)

25 JUDGE RUTH: Thank you. Please be seated.

1 Mr. Williams.

2 MR. WILLIAMS: Thank you.

3 DAVID ELLIOTT testified as follows:

4 DIRECT EXAMINATION BY MR. WILLIAMS:

5 Q. Please state and spell your name.

6 A. My name is David W. Elliott. The last name is

7 E-l-l-i-o-t-t.

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

9 A. I am employed by the Missouri Public Service

10 Commission. I am a Utility Engineering Specialist III.

11 Q. Did you prepare direct testimony in this case

12 that contained highly confidential information that's been

13 marked as Exhibit No. 43?

14 A. Yes, I did.

15 Q. Did you also prepare a nonproprietary version

16 of that testimony that's been marked as Exhibit No. 44?

17 A. Yes, I did.

18 Q. Do you have any revisions to those exhibits?

19 A. No, I do not.

20 Q. If I were to ask you the questions that are

21 set forth in those exhibits, would your answers be the same

22 as what's set out in those exhibits?

23 A. Yes.

24 MR. WILLIAMS: I offer Exhibit Nos. 43 and 44.

25 JUDGE RUTH: Okay. Exhibits 43, the HC direct

1 of David Elliott, and Exhibit 44, the NP direct, have been
2 offered into evidence. Parties, are there any objections to
3 these two exhibits?

4 (No response.)

5 Okay. Seeing no objection, Exhibit 43 and
6 Exhibit 44 are received into evidence.

7 (EXHIBIT NOS. 43 AND 44 WERE RECEIVED INTO
8 EVIDENCE.)

9 MR. WILLIAMS: I tender the witness for
10 examination.

11 JUDGE RUTH: Okay. It was my understanding
12 again that the parties have waived cross-examination of
13 Mr. Elliott; is that correct?

14 MR. DUFFY: Yes.

15 JUDGE RUTH: Then we will move to questions
16 from the Bench. Commissioner Gaw?

17 COMMISSIONER GAW: I don't believe I have any
18 questions of this witness.

19 JUDGE RUTH: I assume, then, that there's no
20 need for redirect?

21 MR. WILLIAMS: You assume correctly.

22 JUDGE RUTH: Then we are finished with this
23 witness. Mr. Elliott, you may step down.

24 (Witness excused.)

25 I think we will break for lunch. We will come

1 back at one o'clock and begin with the operating and
2 maintenance expense.

3 We're off the record. Thank you.

4 (A recess was taken.)

5 (EXHIBIT NOS. 110 THROUGH 113 WERE MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 JUDGE RUTH: We broke for lunch. Before we
8 had the break we finished with Staff witness Elliott. We
9 are now ready to begin with operating and maintenance
10 expense. It's my understanding that Empire will be calling
11 the first witness.

12 MR. DUFFY: Empire calls Mr. Groninger.

13 (Witness sworn.)

14 JUDGE RUTH: Please be seated. You may
15 proceed, Mr. Duffy.

16 MR. DUFFY: Thank you.

17 GARY L. GRONINGER testified as follows:

18 DIRECT EXAMINATION BY MR. DUFFY:

19 Q. Would you state your name for the record and
20 spell it, please.

21 A. Gary L. Groninger, G-r-o-n-i-n-g-e-r.

22 Q. Do you have in front of you what's been marked
23 for purposes of identification as Exhibit 9, which purports
24 to be your direct testimony in this proceeding?

25 A. Yes, sir.

1 Q. Do you have any changes or corrections to that
2 document?

3 A. No, sir.

4 Q. If I asked you the same questions that appear
5 in that document this afternoon, would your answers be the
6 same?

7 A. Yes, sir.

8 Q. Are those answers true and correct to the best
9 of your knowledge, information and belief?

10 A. Yes, sir.

11 MR. DUFFY: I offer Exhibit 9 into evidence
12 and I tender the witness for cross-examination.

13 JUDGE RUTH: Thank you. Exhibit 9,
14 Mr. Groninger's direct testimony, has been offered. Do the
15 parties have any objections?

16 MR. MEYER: No objection.

17 MR. CONRAD: No objection.

18 JUDGE RUTH: Seeing no objections, Exhibit 9
19 is received into the record.

20 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE RUTH: Cross-examination. Mr. Conrad,
22 would you like to begin?

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

24 JUDGE RUTH: Mr. Coffman?

25 MR. COFFMAN: None.

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1 JUDGE RUTH: Staff?

2 MR. MEYER: I have a few questions.

3 CROSS-EXAMINATION BY MR. MEYER:

4 Q. Good afternoon, Mr. Groninger.

5 A. Good afternoon.

6 Q. You're familiar with the Siemens Westinghouse

7 long-term contract negotiations, I presume?

8 A. Yes, sir. I worked for Siemens Westinghouse

9 for eight years.

10 Q. But you're familiar with the contract

11 negotiations in this case?

12 A. Yes.

13 Q. I direct your attention in your prefiled

14 testimony to Table 2. Actually, as a preliminary matter,

15 the page before the table, begins Table 2 (five pages). In

16 the version that I received it appears as though Table 2 is

17 actually only two pages. Is that correct?

18 A. Actually, I have Table 2 as three pages. It

19 should --

20 Q. My copy came from the file room downstairs.

21 A. Yeah. This is a copy from the actual report.

22 Q. Is it double-sided?

23 A. No. I don't know why it would say five pages.

24 MR. BEECHER: Your Honor, if I may approach

25 the witness, I have a copy.

1 JUDGE RUTH: Is that a copy like what's in the
2 file room?

3 MR. BEECHER: Should be.

4 JUDGE RUTH: Please.

5 THE WITNESS: Yeah, it should be two pages.

6 JUDGE RUTH: What schedule?

7 MR. MEYER: It's Table 2.

8 JUDGE RUTH: Thank you.

9 BY MR. MEYER:

10 Q. So in other words, the five pages should
11 actually be two pages?

12 A. Correct.

13 Q. Regarding Table 2 in your direct testimony,
14 could you identify for us which of the items listed in that
15 left-hand column you believe would be covered in a contract
16 for long-term maintenance with Siemens Westinghouse?

17 A. Yes. The items midway down the table variable
18 O&M cost, State Line Combined Cycle, all those items under
19 combustion turbine maintenance would be in a contract with
20 Westinghouse, Siemens Westinghouse. Everything else would
21 be extraneous to that contract.

22 Q. Could you describe for us how you estimated
23 the dollar amounts for the items in that column?

24 A. In the Westinghouse contract?

25 Q. Exactly.

1 A. Yeah. We -- well, we have -- at Black &
2 Veatch we do lots of these, dozens of these estimates, and
3 so we have a database that we draw on for that. And plus,
4 in this case we actually went out and got some actual data
5 from Siemens Westinghouse on these actual costs so we could
6 kind of compare.

7 That's why there is a Table 4, as you can see
8 further back, that has different numbers for these same
9 items, and we were doing that just kind of as a sanity check
10 to see how close we were with our estimates. And granted,
11 all of these estimates could be different today because this
12 is a moving target, if you will.

13 Q. Could you tell us a little bit more? You
14 mentioned that you have the database that do you draw on.
15 What kind of sources you use for that?

16 A. Well, we do lots of O&M estimates, probably
17 one a week, I would say, on the average for different plants
18 that Black & Veatch is constructing or maybe just doing
19 feasibility studies or whatever, and so we draw upon all of
20 that data. It is confidential. We do keep it -- we don't
21 release it to other clients, and -- but we have that
22 database to draw on from other jobs.

23 Some of them are F frame units. Some of them
24 are Ds. We have, of course, General Electric machines in
25 addition to Siemens Westinghouse.

1 So I think in this two on one F alone, I just,
2 just for my own education, kind of went back and looked and
3 saw what we had done in the past year or so, and we've done
4 seven or eight of just specifically this kind of a plant,
5 and so we used that as the basis for the estimate.

6 Q. Could you discuss for us a little bit the
7 methodology used to estimate the amounts on the rest of the
8 Table 2 that aren't covered under the long-term contract
9 proposal?

10 A. Very much the same, database driven. There's
11 some rules of thumb we have on some of the fixed price. For
12 example, once we have an estimate of the Staff, the numbers
13 of the Staff, and we put a labor rate times that number, and
14 then we always have a rule of thumb that supplies and
15 materials, for example, is going to be 10 percent of what
16 that labor cost is.

17 So there are a few rules of thumb, but mostly,
18 again, it's based on our experience, our database that we
19 have, and that goes for -- it's everything that's on that
20 table.

21 MR. MEYER: I have no further questions.

22 JUDGE RUTH: Thank you. We'll move to
23 questions from the Bench, Commissioner Murray.

24 COMMISSIONER MURRAY: Thank you.

25 QUESTIONS BY COMMISSIONER MURRAY:

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1 Q. Good afternoon.

2 A. Hi, Commissioner.

3 Q. Would it be accurate to say that long-term O&M
4 expenses will be incurred regardless of whether there's a
5 long-term contract in place?

6 A. Yes, ma'am.

7 Q. And is it your testimony that it is possible
8 to make a reasonable accurate -- reasonably accurate
9 estimate of those costs absent a long-term contract?

10 A. Yes, ma'am.

11 COMMISSIONER MURRAY: I believe that's all I
12 have for you. Thank you.

13 JUDGE RUTH: Commissioner Gaw?

14 COMMISSIONER GAW: I have no questions.

15 JUDGE RUTH: Based on the question from the
16 Bench, Praxair, do you have any recross?

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

18 JUDGE RUTH: Mr. Coffman?

19 MR. COFFMAN: No questions.

20 JUDGE RUTH: Mr. Anderson?

21 MR. MEYER: Meyer.

22 JUDGE RUTH: Meyer. Sorry. Mr. Meyer.

23 MR. MEYER: Nothing further. Thank you.

24 JUDGE RUTH: And Empire, do you have redirect?

25 MR. DUFFY: Just briefly.

1 REDIRECT EXAMINATION BY MR. DUFFY:

2 Q. Mr. Groninger --

3 JUDGE RUTH: Sir, you'll need to move to the
4 podium.

5 MR. DUFFY: 20 years of habit is hard to
6 break. I guess I'm much more effective up here at the
7 podium.

8 BY MR. DUFFY:

9 Q. Want you to look at the table 12 that Staff
10 asked you about. I just want to clarify what's in various
11 categories here.

12 I understood you to say that the items under
13 variable O&M cost State Line CC that's almost right in the
14 middle of the page on the left-hand side, the combustion
15 turbine maintenance items, the items with the little dash in
16 front of them, from initial spares through management fee,
17 that that's what you would contemplate being in this
18 long-term contract; is that right?

19 A. Yes, sir.

20 Q. So the HRSG and SCR maintenance would not be
21 in that long-term contract?

22 A. Right. It would be a separate item.

23 Q. And who would likely be doing that?

24 A. Well, your SCR manufacturer or your HRSG
25 manufacturer would.

1 Q. What about steam turbine maintenance, the
2 labor and materials listed under there?

3 A. Steam turbine manufacturer.

4 Q. And what about generator inspections?

5 A. That was something that we normally don't put
6 in there, but I know in this particular case Empire is
7 required to have generator inspections. Their property
8 insurance I think mandates that they have generator
9 inspections. So it's every five years, and we just prorated
10 it for each year is what we did on that one.

11 Q. Okay.

12 A. So we normally probably wouldn't have that.

13 Q. The next line there is BOP maintenance.
14 What's BOP mean?

15 A. Balance of plant maintenance, and that's all
16 your -- you've got the combustion turbines, you've got the
17 steam turbine, you've got the HRSGs, and this is for
18 everything outside of those three major components, the
19 piping, the valves, all the stuff that connects them you
20 might say.

21 Q. And who would you expect to be doing that and
22 under what basis?

23 A. Well, that could be a whole bunch of different
24 contractors, and, again, we're kind of basing that just on
25 what we've seen in the past in the industry.

1 Q. Okay. What about the item called water
2 consumption?

3 A. Water consumption is just based on the size of
4 this unit, how much it operates and the price of water, and
5 I forget exactly what the price was on this. It was
6 something we calculated given Empire's direction on that.

7 Q. Help me understand what kind of maintenance
8 you have to do with regard to water consumption.

9 A. It's not maintenance. It's water consumption.

10 Q. So it's a supply?

11 A. Yes.

12 Q. It's a component?

13 A. Consumable.

14 Q. It's an input, consumable?

15 A. Right.

16 Q. So it's production costs for water?

17 A. Right.

18 Q. Let's go -- as far as I know, then, we've
19 covered the bottom half of the table.

20 A. Uh-huh.

21 Q. Let's go up to the top half.

22 A. Okay.

23 Q. Says fixed O&M costs State Line 1 CC.

24 A. Uh-huh.

25 Q. The first item is staffing. Would that be in

1 the long-term contract?

2 A. No.

3 Q. To your knowledge, is that covered by the cost

4 of service approach of the Staff and payroll in this case?

5 A. I'm not sure what's included in that, but --

6 Q. That would be a logical assumption --

7 A. Yeah.

8 Q. -- as far as you know?

9 A. I think it would.

10 Q. What about supplies and materials, is there a

11 long-term contract for that --

12 A. No.

13 Q. -- or is that -- okay. What about rentals?

14 A. Rentals is for things like cranes and mobile

15 equipment that you need periodically for doing maintenance,

16 and that would be very sporadic possibly and that definitely

17 would not be in any kind of a long-term contract.

18 Q. What about contracted services?

19 A. Contracted services is for things like snow

20 removal, for example, heating, air conditioning, that sort

21 of thing, pest control, those --

22 Q. Mowing the grass?

23 A. Mowing the grass, painting. I guess painting

24 the buildings is in routine maintenance typically. These

25 are things you go out to contract a company for, and they

1 would not be in a long-term contract.

2 Q. Okay. What's encompassed in routine
3 maintenance?

4 A. Routine maintenance is everything outside of
5 maintenance on the power train, the power, the turbines
6 themselves. It's for painting the buildings and maintaining
7 the inside of the control room and stuff like that.

8 Q. What about safety, what's that?

9 A. Safety and the next item, employee training,
10 are kind of related. Just keeping your operators up on the
11 state of the art. Safety is really periodic training for
12 OSHA requirements and things like that. So those are pretty
13 well tied together.

14 Q. Okay. What's the listing for environmental
15 fees?

16 A. Well, that's -- I think I've got a list in
17 here. That's for how much we need to pay for pollutants
18 based on how much pollutants that we're turning out.

19 Q. Are these payments -- excuse me.

20 A. That's pursuant to the Missouri air law.

21 Q. So these are payments to the Missouri state
22 government?

23 A. Right. Right.

24 Q. Okay.

25 A. Department of Natural Resources.

1 Q. What about insurance, is that just property
2 and casualty --

3 A. Right.

4 Q. -- and auto insurance?

5 A. Right.

6 Q. I assume that would not be any kind of
7 long-term contract?

8 A. No.

9 Q. Staff would look at that as a part of the
10 normal cost of service?

11 A. Absolutely.

12 Q. And is that also true with regard to
13 applicable property taxes on facilities?

14 A. Yes, sir.

15 Q. Let's talk quickly about variable O&M costs
16 State Line 1, and the heading under that is Combustion
17 Turbine Maintenance, and then there are several things
18 listed with a little hyphen in front of them. Can you
19 address all of those at once or do we need to go through the
20 list?

21 A. Yeah, I can address all of those at once. I
22 should say, those could also be contained in a long-term
23 contract if you -- I was referring to the combined cycle
24 when I said those other items would be.

25 But if you deemed it necessary to get a

1 long-term contract for the State Line 1, the simple cycle
2 unit, you could do that as well. So all those items from
3 labor down to management fee could be also contained in a
4 long-term contract.

5 Q. What are those initials after the listings of
6 labor, what do those things mean?

7 A. Well, those refer to the type of inspection
8 that you incur at various times. The CI is a combustion,
9 and they typically recommend you do that every 8,000 hours
10 or 400 starts, for example, 400 equipment starts.

11 An HG is a hot gas. That's -- you do an
12 inspection of the parts of the combustion turbine that are
13 exposed to the hot gas, and they recommend in this size of a
14 combustion turbine you do that every 24,000 hours.

15 And then M is major, and that's just as it
16 implies, a major overhaul of the machine, which is done
17 every 48,000 hours approximately, and it involves
18 replacement of a lot of the parts and a lot of the
19 surrounding apparatus.

20 Q. Okay. So it sounds like it's kind of like a
21 car, you've got to do maintenance on it every once in a
22 while or it won't run perhaps?

23 A. Yeah. I use the analogy, I don't know if
24 there's -- anybody remembers there's an old Fram oil filter
25 commercial and the mechanic would say, You can pay me now or

1 you can pay me later. That's kind of true with this as
2 well.

3 MR. DUFFY: Okay. Thank you.

4 JUDGE RUTH: Okay. I don't think there are
5 any further questions for you at this time, so you may step
6 down.

7 (Witness excused.)

8 Empire, would you call your next witness,
9 please.

10 MR. DUFFY: Call Brad Beecher.

11 JUDGE RUTH: Mr. Beecher, you are still under
12 oath from previously. I'll just remind you of that, and you
13 may sit down.

14 THE WITNESS: Thank you, your Honor.

15 BRAD BEECHER testified as follows:

16 DIRECT EXAMINATION BY MR. DUFFY:

17 Q. It's my understanding, Mr. Beecher, that your
18 rebuttal testimony, Exhibit 15, and your surrebuttal
19 testimony, Exhibit 30, I've got that your -- I've got that
20 your rebuttal testimony, Exhibit 15's been admitted. I
21 don't have marked down that surrebuttal is admitted.

22 MR. DUFFY: Am I correct on that, your Honor.

23 JUDGE RUTH: That's what my notes show.

24 BY MR. DUFFY:

25 Q. Would your rebuttal and surrebuttal testimony

1 be the relevant testimony for this O&M issue?

2 A. Yes, sir.

3 MR. DUFFY: At this time, then, since I
4 believe we've identified and I've at least offered both of
5 them, I would offer again Exhibit No. 30 and tender the
6 witness for cross.

7 JUDGE RUTH: First of all, my records show
8 that Exhibit 15 was previously offered and received into the
9 record.

10 Exhibit 30, however, has not yet been
11 received. Do the parties have any objections to Exhibit 30,
12 Mr. Beecher's surrebuttal, from being admitted into the
13 record?

14 MR. CONRAD: We do not.

15 JUDGE RUTH: Seeing no objections, Exhibit 30
16 is received into the record.

17 (EXHIBIT NO. 30 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE RUTH: Mr. Conrad, do you have
19 cross-examination?

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

21 JUDGE RUTH: Public Counsel?

22 MR. COFFMAN: No questions.

23 JUDGE RUTH: And Staff?

24 MR. MEYER: Just a few.

25 CROSS-EXAMINATION BY MR. MEYER:

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1 Q. Good afternoon, Mr. Beecher.

2 A. Good afternoon.

3 Q. You stated in your surrebuttal testimony at
4 page 2 that you, quote, think Staff has a general
5 misunderstanding concerning the operation and maintenance
6 expenses at State Line and Energy Center. Could you please
7 elaborate for us what you think that misunderstanding was?

8 A. Yes, I will, and it has a lot to do with what
9 you just went through with Mr. Groninger on the stand.
10 Whenever I read the brief statements in Staff's direct and
11 rebuttal testimony, they talked in general terms that if
12 Empire had a contract, then they would consider those terms
13 or those expenses in the true-up portion of this case. And
14 as we went through before, there are a lot of things outside
15 of the contract that we are contemplating that are expenses
16 that we will have for this plant.

17 That's the misunderstanding that we had had up
18 until some discussions we've had the last couple weeks, and
19 I think we fleshed out a lot of those misunderstandings
20 through the last couple weeks.

21 Q. Without revealing any confidential information
22 or material, could you tell us what is the current status of
23 negotiations on that long-term contract?

24 A. There are really two long-term contracts that
25 we're contemplating. The first is a long-term contract for

1 the engines that drive State Line Combined Cycle. We have
2 been negotiating on and off with Siemens Westinghouse since
3 about 1999 when we procured the equipment from them.

4 We have really gotten serious here in the last
5 three or four months. We have a draft that has some
6 commercial terms around negligence and indemnity issues that
7 I am not ready to sign just yet, but we are close, and we
8 think by the end of June there's a strong probability we're
9 going to have a contract signed.

10 The second issue is a long-term contract --
11 let me back up a second. The long-term contract on the
12 combined cycle will most likely be an hours-based contract.

13 On the simple cycle units we're also pursuing
14 a contract. We just really started substantive negotiations
15 with Siemens Westinghouse in the last month. It is not
16 quite as far along as the combined cycle contract, though we
17 have worked through a lot of the issues that are the same in
18 both contracts. It would be an hours -- or a start-based
19 program where we do overhauls based on starts instead of
20 hours, as we would the combined cycle.

21 Again, it's got some of the same commercial
22 terms issues that we're trying to work through, but it's
23 probable that we should have a contract by the end of June
24 2001.

25 Q. Could you explain what your perception of

1 major maintenance is as you used it in your prefiled
2 testimony relative to other types of maintenance that you've
3 referred to? Just elaborate, please, for us.

4 A. I spell that out on page 3 of my surrebuttal,
5 but, in general, the combustor inspections, the hot gas
6 inspections and the major inspections are things that I
7 would call major maintenance. Again, it's the major
8 overhauls that we do on the combustion turbines.

9 Things outside of that, whether it be HRSG or
10 boiler maintenance, SCR maintenance, steam turbine
11 maintenance, Empire would anticipate performing those
12 functions just like we do at all our other power plants.

13 We do a lot of them ourselves. When we don't
14 have enough talent inside or enough people inside, then
15 we'll supplement that with short-term contracts, potentially
16 with the boiler manufacturer or someone like them or
17 potentially completely outside of that.

18 Really, the major maintenance components even
19 now, without a long-term contract, we've had major
20 maintenance expenses on our combustion turbines. We've did
21 that one off contracts, just one contract with Siemens to
22 overhaul say the energy center. Whereas, now we're looking
23 at a longer term contract that would encompass several major
24 maintenance events.

25 Q. And finally, do you believe that aspects of

1 this or that this issue should be actually a true-up issue?

2 A. I believe it should be a true-up issue. To
3 this time, we have not really fully developed, and I think
4 State Line issues are part of the true-up.

5 MR. MEYER: I have no further questions.

6 JUDGE RUTH: Thank you. Commissioner Murray,
7 do you have questions for the witness?

8 COMMISSIONER MURRAY: I have just one or two.

9 Thank you.

10 QUESTIONS BY COMMISSIONER MURRAY:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. In regard to Iatan's O&M costs, in
14 Mr. Featherstone's testimony he indicated that Staff had
15 agreed to change its three-year average to a two-year
16 average, and my question for you is, is the company willing
17 to accept that two-year average?

18 A. Yes, ma'am, we are. In my opening remarks
19 this morning when they put me up for another issue, I stated
20 that fact, that we were willing to agree to that.

21 Q. All right. And on page 24 of your rebuttal
22 testimony, at lines 14 through 16, you state, Once again,
23 when compounded by recommended rate of return that allows
24 for no room for error, Empire simply cannot agree to
25 Mr. Williams' methodology.

1 My question is, would Empire agree with
2 Mr. Williams' methodology if it were combined with a higher
3 rate of return than what Staff is recommending?

4 A. These are big dollar issues to Empire, whether
5 it's energy center O&M or State Line O&M or Iatan O&M, a
6 million dollar swing back and forth. When we're looking at
7 rates of return recommended by Staff, I believe in the 8 1/2
8 to 9 1/2 percent range, that just doesn't leave any net
9 income with room for error.

10 And Mr. Duffy opened this thing with we can
11 bleed from a thousand cuts just as easily as one big gash,
12 and this is just one of those thousand cuts that we were
13 trying to bandage a little bit. We don't have room for
14 error any place else.

15 Q. Do you fundamentally have a disagreement with
16 Staff with Mr. Williams's methodology?

17 A. We're going to get into my opinion here, but
18 Iatan's forced outage rate has got progressively worse over
19 the last two or three years, and part of that is because of
20 the amount of O&M we were spending on Iatan. So it's -- and
21 it doesn't show up you don't do maintenance this year and
22 you get a high forced outage rate this year. It may show up
23 two or three years down the road.

24 So part of what they're doing with what they
25 spent last year was trying to get us back to a place on

1 forced outage rates where we should be. And so when you use
2 a three-year average, in this case we were ending up quite a
3 bit lower than what Iatan or Kansas City Power & Light had
4 provided us for as a budget, and so it wasn't something I
5 could agree to.

6 When you go to a two-year average, we get
7 close to what they're providing for us for next year as a
8 budget figure.

9 COMMISSIONER MURRAY: Thank you very much.

10 JUDGE RUTH: Commissioner Gaw?

11 COMMISSIONER GAW: I have no questions.

12 JUDGE RUTH: Okay. Based on the questions
13 from the Bench. Mr. Conrad, do you have any recross?

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

15 JUDGE RUTH: Mr. Coffman?

16 MR. COFFMAN: No questions.

17 JUDGE RUTH: Mr. Meyer?

18 MR. MEYER: Nothing further. Thank you.

19 JUDGE RUTH: Empire, do you have redirect?

20 MR. DUFFY: No, ma'am.

21 JUDGE RUTH: Mr. Beecher, you may step down.

22 Thank you.

23 (Witness excused.)

24 I understand, Staff, you'll be calling the
25 next witness. Please do so.

1 MR. MEYER: Staff would call Cary Featherstone
2 to the stand.

3 JUDGE RUTH: Mr. Featherstone, you are still
4 under oath from earlier, so you may go ahead and be seated.
5 Please proceed.

6 CARY G. FEATHERSTONE testified as follows:

7 MR. MEYER: Just as a point of clarification
8 for the record, earlier this morning there was some
9 discussion of Mr. Featherstone's Exhibits 47 and 48, that
10 those might have language that would be pertinent to this
11 issue.

12 As I understand it, Exhibits 107 and 108,
13 which are Mr. Featherstone's testimony which have been
14 brought into evidence, in fact, contain the identical
15 language as Exhibits 47 and 48, pertinent to this issue.
16 Therefore, those -- Staff will not be moving to have those
17 exhibits entered into evidence.

18 JUDGE RUTH: That was 107 and 108?

19 MR. MEYER: Which have admitted are, in fact,
20 on this topic.

21 JUDGE RUTH: Okay. Thank you.

22 MR. MEYER: And as that has been admitted
23 already, Staff would tender Mr. Featherstone for questions.

24 JUDGE RUTH: Okay. Mr. Conrad, do you have
25 cross-examination?

1 MR. CONRAD: No questions. Thank you.

2 JUDGE RUTH: Mr. Coffman?

3 MR. COFFMAN: No questions.

4 JUDGE RUTH: Mr. Duffy?

5 MR. DUFFY: Just a few.

6 CROSS-EXAMINATION BY MR. DUFFY:

7 Q. Mr. Featherstone, I assume you agree with us

8 that, and I think the previous testimony, that if you run

9 combustion turbines you have to do maintenance on them at

10 some point?

11 A. Absolutely.

12 Q. And so -- and the Staff has indicated in its

13 prepared testimony that it's going to look at these

14 long-term contracts which would, in Mr. Beecher's words, try

15 to capture the major maintenance aspects, and they're going

16 to look at those in true-up, is that correct, since we don't

17 have them yet?

18 A. Yes, that's correct.

19 Q. And the Staff recognizes that there are

20 maintenance items that may come outside the scope of these

21 long-term contracts and be more on a non-long-term contract

22 basis, similar to what Mr. Groninger was explaining in his

23 testimony about when you do balance and plant maintenance

24 and things like that. Are we in agreement on that also?

25 A. Yes. Mr. Beecher refers to it as a

1 misunderstanding. I think the misunderstanding on our part,
2 Staff's part, was when we attempted to tie back some of the
3 dollar amounts and we looked at it from a total perspective,
4 not -- we didn't try to get into an individual balance of
5 plant issue, whether it was the maintenance on the HRSGs or
6 not or whether it was for the combined cycle unit or the
7 steam turbine.

8 When we looked at Mr. Groninger's testimony,
9 we saw a total dollar figure, and while we didn't include
10 that amount in our direct filing per se, we did include it
11 in what we refer to as the allowance for non-measurable
12 change, and we picked up a figure that I think is going to
13 be far greater than what the -- what we're being led to
14 believe that the contract will be.

15 And the reason why that is, is because many of
16 these items, these balance of plant items or these other
17 HRSG maintenance items, those items were included in that
18 figure.

19 I think the concern and misunderstanding came
20 about was when we're looking at the contract kept saying
21 sign the contract or we'll review the contract when it's
22 signed. The concern was, as I understand what the concern
23 on the company's part was, that that's not going to include
24 all of the maintenance items. And we're committed to not
25 only look at the contract items in that scope, but in

1 addition the other items that are associated with the
2 combined cycle unit.

3 In addition, there's some concern on the
4 company's part of maintenance for Energy Center 1 and 2 and
5 State Line 1, and we're going to look at those amounts, too.
6 They're a little easier to get our arms around per se
7 because there is some history with those units.

8 While the company does have concerns,
9 particularly in Energy Center 1 and 2, they're coming up to
10 some major overhaul work that has not been reflected in the
11 history. So during the true-up phase we hope to sit down
12 with the company and try to work out some of those details.

13 MR. DUFFY: Thanks very much. That's all I
14 have.

15 JUDGE RUTH: Commissioner Murray?

16 COMMISSIONER MURRAY: Thank you.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Good afternoon, Mr. Featherstone.

19 A. Good afternoon.

20 Q. On page 31 of your surrebuttal testimony, you
21 speak there, and I'm on line 10, about Staff's concern being
22 that it has not seen adequate support for what the company
23 has proposed and has not been given detailed information
24 relating to a substantial amount of costs necessary to be
25 included in the true-up.

1 And I'm wondering now, in light of what you've
2 said and the additional time since your testimony was filed,
3 have you gotten additional information that you felt was
4 necessary?

5 A. We've had numerous discussions. I guess it
6 really started with the prehearing conference. There were a
7 lot of other issues that the Staff, company and the other
8 parties have been working on. I'm not going to say that
9 this issue has fallen through the cracks, but there were
10 things like the combined cycle, capital cost issue and the
11 fuel and purchased power issues has consumed an awful lot of
12 time.

13 While we have gotten some additional
14 information -- as a matter of fact, the other day I received
15 a data response from the company that I haven't had a chance
16 to really get into much of the details. There's been
17 discussion. There's been additional information. There's
18 been additional data requests that have been submitted.

19 And I think everyone has gotten some of the
20 other issues, once they get put aside we can start focusing
21 our attention on the true-up and will do so immediately at
22 the conclusion of the hearings. We will, I think, have an
23 opportunity to sit down with the company and start sorting
24 through some of these things.

25 When we looked at the direct filing of the

1 company, we were under the misimpression -- and that was, I
2 think, mostly my fault -- that we saw that the testimony,
3 and based on some of the things that I heard from the
4 company, that we assumed that there was a contract already
5 signed.

6 And when we started the discovery phase of the
7 audit, we soon very quickly learned that that was not the
8 case and the fact that the contract was -- the company was
9 attempting to get the power plant online. So all of its
10 energy was to get it constructed, get it completed, and not
11 to say that this wasn't an important issue. It just had to
12 be prioritized differently than getting the unit on line.

13 And so right now, with the power plant at
14 its -- hopefully soon to be at its completed stage, both the
15 company and Staff will be able to focus more of its
16 attention on this particular item.

17 Q. Okay. Just a moment ago with Mr. Duffy you
18 indicated that Staff is committed to look at contract items
19 as well as those that will not be included in the contracts
20 during the true-up phase.

21 Now, do I understand you to mean that you will
22 be -- you are agreeing to include amounts that would be
23 included in a long-term contract even if the contract has
24 not been executed during the true-up phase?

25 A. We, in discussions with the company, I guess

1 are kind of hanging our hat, so to speak, that there will
2 be a contract. We've talked to them about the kind of
3 contract that we might find attractive. We don't want them
4 to sign an agreement, if you will, just to get it in for
5 this rate case. We don't want them to enter into a bad
6 contract. I don't believe they'll do that, just because of
7 the rate case timing.

8 With that said, we recognize the need to
9 estimate some type of cost for maintenance, O&M cost to
10 operate this power plant. I don't think anyone would
11 suggest that no dollar amount would be put in the rate case
12 to operate a power plant of this size and magnitude.

13 These are complicated pieces of equipment.
14 They have many thousands of parts. They're industrial type
15 of construction, equipment, and they require a lot of
16 maintenance. All power plants do.

17 And in that respect, if we don't have a
18 contract, then we're going to have to go back to the drawing
19 board and figure something out, and we'll do that in the
20 true-up phase.

21 Q. In that there are two contracts under
22 negotiation here, are you speaking in terms of both of them
23 when you say Staff is hanging its hat on the fact that there
24 will be a contract in place?

25 A. All throughout we -- yes. All throughout this

1 process, initially we thought that there was a contract that
2 was signed. We believed that the contract encompassed the
3 State Line Combined Cycle Unit, the State Line Unit 1 unit,
4 which is a combustion turbine unit that's been in operation
5 since 1995, and also Energy Center 1 and 2, which are
6 combustion turbines.

7 It was at prehearing that we learned that
8 there were two separate contracts that were being
9 contemplated. So the principal focus was the combined cycle
10 unit initially from the company's perspective because that's
11 the largest of the units and probably will be the most
12 complicated in the contract to negotiate.

13 As Mr. Beecher testified this afternoon,
14 they're further along in that contract than they are the
15 combustion turbine contracts. We expect to see something in
16 the way of a contract or some type of -- I won't call it a
17 draft agreement, but some type of contract on that unit.

18 The importance of that unit is that there are
19 no maintenance dollars in the test year for the combined
20 cycle unit because it didn't exist. At least Energy
21 Center 1 and 2 and State Line 1 as well as State Line
22 Unit 2, has some maintenance in the test year.

23 Mr. Beecher will say that that's not
24 sufficient and that we will need to examine that because
25 there's some additional maintenance that those units are

1 going to require in the future that the test year did not
2 include.

3 We do have some history on those plants,
4 speaking of Units 1 and 2 and Energy Center and State Line.
5 So it's going to be a little easier for us, I think, to deal
6 with those units than it is for the combined cycle where
7 it's a brand-new unit with no history whatsoever.

8 Q. For the combined cycle unit, if there were no
9 contract in place by the end of the true-up period, are you
10 saying that you can make an estimate of what the costs would
11 be that would be included in the long-term contract?

12 A. I'm saying that we're going to have to do
13 something. I don't know what that will be until we get
14 there. We don't have a chance. An attempt, an estimate,
15 some type of process will have to be examined, and we will
16 have to come and bring before you some type of estimates
17 absent a contract.

18 Q. In Mr. Groninger's testimony he spoke about
19 Empire being required by their property insurance carrier to
20 follow manufacturer's recommendations, including a generator
21 inspection every five years. Do you recall his reference to
22 that?

23 A. Yes.

24 Q. And he stated that since that's required
25 they've included that in the expense. And my question for

1 you is, did Staff include that?

2 A. I will say yes to the extent that we relied on
3 his estimates which form the basis of the discussion that he
4 had with you earlier in the afternoon, only to the extent,
5 however, that we've included those amounts in what we refer
6 to as the allowance for known and measurable change. Our
7 initial filing in our direct case did not include the State
8 Line unit at all. So, therefore, we didn't include the
9 maintenance.

10 But by the same token, when we filed the case
11 we didn't want to include those estimates. We did include
12 an estimate, what we refer to as the allowance figure so
13 that no one misunderstood what our case was attempting to
14 show.

15 As an example, if you look at our initial
16 filing, we actually show a negative number. We didn't see
17 that as being realistic when we were bringing on a power
18 plant and with gas prices where it was and we were going to
19 be looking at fuel and several other items.

20 So we included an allowance figure to try to
21 be more representative of where we thought the true-up would
22 be. It was just an estimate. As part of that estimate we
23 include an estimate for the power plant and an estimate for
24 the O&M to run the power plant.

25 Q. And in Mr. Groninger's testimony he gave a

1 figure that he would expect the annual average O&M expenses
2 to be \$2,001 for the entire plant site. Do you recall that?

3 A. I don't recall the figure.

4 Q. Okay.

5 A. I recall him saying something about that.

6 Q. Did Staff come up with a figure?

7 A. No.

8 Q. And has not been able to because you're
9 waiting for the additional information and you're waiting
10 for the contracts, assuming they come into place; is that
11 correct?

12 A. That's correct. I think in a nutshell the
13 contract will drive what the amounts are in terms of, one,
14 the contract itself and, two, as Mr. Beecher has indicated,
15 what's left to identify.

16 So you'll identify the contract amount,
17 assuming that it's signed and assuming that we can agree to
18 the terms, and then you'll start looking at what that
19 contract encompasses and what's left over, what additional
20 items will need to be added to the contract amounts if you
21 will.

22 Q. Did you do an analysis as to whether
23 Mr. Groninger's estimate was reasonable or looked
24 reasonable?

25 A. Staff did discovery on the support. We had

1 some difficulty in getting that. We think we have some of
2 that information now.

3 As an example, Mr. Groninger indicated that he
4 has a proprietary database. There was, I think, seven or
5 eight different power plant of similar size and vintage of
6 the combined cycle unit, and that information has been
7 recently given to us. We didn't have it at the time we
8 filed our testimony, but that information has been supplied,
9 and that will form some of the basis of our evaluation.

10 I don't want to belabor the point that there
11 were other issues that we spent more time on than this one.
12 This issue simply did not get as fully developed as we would
13 like to have had it when we filed our testimony.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE RUTH: Commissioner Gaw?

16 COMMISSIONER GAW: No questions.

17 JUDGE RUTH: Based on the questions from the
18 Bench, Mr. Conrad, do you have recross?

19 MR. CONRAD: No questions. Thank you.

20 JUDGE RUTH: Mr. Coffman?

21 MR. COFFMAN: No questions.

22 JUDGE RUTH: Mr. Duffy?

23 RECROSS-EXAMINATION BY MR. DUFFY:

24 Q. I just want to touch on one thing that -- one
25 aspect you talked about. Do you have the response to Data

1 Request No. 215 up there that you said you just received?

2 A. I do, yes.

3 Q. And I know you probably haven't looked at all

4 these numbers, but I want to direct your attention to the

5 last page.

6 A. Is that the long page?

7 Q. The O&M expenditures.

8 A. The legal size?

9 Q. Yes.

10 A. Yes.

11 Q. Apparently it is on yours. It isn't on mine.

12 I hope it's got the same numbers on it.

13 A. Hope so, too.

14 Q. You made a comment about Mr. Beecher might not

15 agree that the test year amounts of O&M expenditures are

16 accurate when you look back in time, and I just want to very

17 briefly touch on that. And I hope this doesn't involve you

18 adding a bunch of numbers because that's not my desire,

19 but -- and I hope maybe you can just add some of these in

20 your head.

21 I'm looking at the column of 1998, which is

22 the third from the right.

23 A. Yes.

24 Q. And I'm looking at the four bold numbers at

25 the top. One is 147,000. One's 83,000. One's 120,000.

1 One's a million eight, looks like.

2 A. Yes.

3 Q. I think if you add those four together you'll
4 get something like \$2,193,148. And I want to, I guess, just
5 make a note of two million two in round numbers there. And
6 would I be correct that if these numbers are accurate, that
7 reflects O&M or maintenance on the Energy Center unit in
8 1998 according to this document?

9 A. Yes. I haven't added them. I'll accept your
10 numbers.

11 Q. And I'm going to do the same thing on those --
12 the same types of numbers moving right to the column on
13 1999. That's the 112,000, 105,000, 139,000 and a million
14 four, and I'll represent to you they add up to something
15 close to 1,766,000.

16 A. Okay.

17 Q. And then if we move again to 2000 and we add
18 those same four numbers, the 142, the 58, the 111 and the
19 102, we get about \$415,000.

20 So I just want to -- I guess what I'm trying
21 to do is say and get you to agree with me that maintenance
22 on Energy Center was about 2,100,000 or 2,200,000 in '98,
23 1,766,000 in 1999, and then it drops to 414,000 in 2000.

24 And so there would be some basis for
25 Mr. Beecher to say, well, maybe that test year 2000 isn't

1 exactly accurate when you start going back and looking at
2 historical things?

3 A. Right. And I didn't want to imply that we
4 were talking about an accuracy issue. And keep in mind, I
5 didn't have this information until this morning.

6 Q. Right. All I'm trying to do is, I guess,
7 indicate that, you know, a reasonable person might look at
8 this and say, you know, based on your comment, Mr. Beecher
9 maybe does have a point that these costs do vary and that
10 maybe the test year costs are not representative based on
11 prior years?

12 A. Absolutely. In fact, when you consider some
13 of the testimony that Mr. Beecher gave this afternoon
14 regarding Iatan as an example and where we were on that
15 issue, O&M does vary by power plant and by year. And had we
16 had this kind of information, we could have made a judgment
17 about using some type of an average or certainly something
18 greater than the lowest of the last three years.

19 Q. And without going into the numbers on the
20 bottom four sets of numbers that are bolded in the '98, '99
21 and 2000 columns, if I add them together, I get -- and I'm
22 looking at the -- this would be for State Line stuff, not
23 the combined cycle but the State Line combustion turbines.
24 Look like it would be about a million three in '98, a
25 million one in '99, and 196,000 in 2000.

1 So if those numbers add up, we're talking
2 about the same kind of magnitude we were talking about on
3 Energy Center?

4 A. Absolutely.

5 MR. DUFFY: That's all I have. Thank you.

6 JUDGE RUTH: Staff, do you have redirect?

7 MR. MEYER: I do not.

8 JUDGE RUTH: Mr. Featherstone, you may step
9 down.

10 (Witness excused.)

11 Staff, would you call your next witness,
12 please?

13 MR. MEYER: Commission Staff calls David
14 Elliott to the stand.

15 JUDGE RUTH: Mr. Elliott, you were previously
16 sworn in.

17 THE WITNESS: That's correct.

18 JUDGE RUTH: You are still under oath, and you
19 may be seated. Staff, please proceed.

20 MR. MEYER: Just to confirm, your Honor, I
21 believe Exhibits 43 and 44, which were Mr. Elliott's direct
22 testimony, have been offered and admitted into evidence.

23 JUDGE RUTH: Yes.

24 DAVID ELLIOTT testified as follows:

25 DIRECT EXAMINATION BY MR. MEYER:

1 Q. Okay. Mr. Elliott, did you prepare the
2 prefiled testimony in this case entitled rebuttal testimony
3 of David Elliott which has been marked as Exhibit 79?
4 A. Yes, I did.
5 Q. Do you have any corrections or additions to
6 make to your prefiled testimony at this time?
7 A. No, I do not.
8 Q. Are the answers you provided in that testimony
9 true and accurate to the best of your knowledge?
10 A. Yes.
11 Q. If you were asked those same questions today,
12 your answers would still be the same?
13 A. Yes.
14 MR. MEYER: I would offer Exhibit 79 into the
15 record and tender the witness for cross-examination.
16 JUDGE RUTH: Okay. Exhibit 79, Mr. Elliott's
17 rebuttal testimony, correct?
18 MR. MEYER: Yes.
19 JUDGE RUTH: Do the parties have any objection
20 to this document being admitted?
21 (No response.)
22 Seeing no objection, Exhibit 79 is received
23 into the record. Thank you.
24 (EXHIBIT NO. 79 WAS RECEIVED INTO EVIDENCE.)
25 JUDGE RUTH: Regarding cross-examination,

1 Mr. Conrad, do you have any questions?

2 MR. CONRAD: No questions, your Honor.

3 JUDGE RUTH: Mr. Coffman?

4 MR. COFFMAN: No questions.

5 JUDGE RUTH: Mr. Duffy.

6 MR. DUFFY: No questions.

7 JUDGE RUTH: And, Commissioner Murray, do you
8 have questions?

9 COMMISSIONER MURRAY: No questions.

10 JUDGE RUTH: Commissioner Simmons, do you have
11 questions for Mr. Elliott? I'm sorry. I called you
12 Commissioner Simmons. I meant Commissioner Gaw.

13 COMMISSIONER GAW: I just wanted to make sure.
14 No, I have no questions.

15 JUDGE RUTH: Okay. Then I assume there is no
16 need for redirect, and we will move on. Staff, you have one
17 more witness?

18 MR. MEYER: Correct.

19 JUDGE RUTH: Please call your next witness.

20 MR. MEYER: Staff calls Phillip Williams to
21 the stand.

22 (Witness sworn.)

23 JUDGE RUTH: Please be seated. Staff.

24 PHILLIP WILLIAMS testified as follows:

25 DIRECT EXAMINATION BY MR. MEYER:

1 Q. Could you please state your name for the
2 record, sir.

3 A. Phillip K. Williams.

4 Q. And by whom are you employed and in what
5 capacity?

6 A. I'm employed by the Missouri Public Service
7 Commission as a regulatory auditor.

8 Q. Did you prepare the prefiled testimony in this
9 case previously marked for identification as Exhibit 78
10 which is entitled the direct testimony of Phillip K.
11 Williams, CPA, CIA in this case?

12 A. Yes, sir.

13 Q. Do you have any corrections or additions to
14 make to your prefiled testimony at this time?

15 A. Not to my knowledge.

16 Q. And are the answers you provided in that
17 testimony true and accurate to the best of your knowledge?

18 A. Yes, sir.

19 Q. So if I'd ask you the same questions today,
20 your answers would still be the same?

21 A. Yes, sir.

22 MR. MEYER: I would offer Exhibit 78 into the
23 record and tender the witness for cross-examination.

24 JUDGE RUTH: Thank you. Are there any
25 objections from the parties to Exhibit 78, Mr. Williams'

1 direct testimony?

2 (No response.)

3 Okay. Seeing no objections, this is admitted

4 in as Exhibit 78. Thank you.

5 (EXHIBIT NO. 78 WAS RECEIVED INTO EVIDENCE.)

6 JUDGE RUTH: Mr. Conrad, do you have

7 cross-examination?

8 MR. CONRAD: No questions, your Honor.

9 JUDGE RUTH: Mr. Coffman?

10 MR. COFFMAN: I have none either.

11 JUDGE RUTH: Mr. Duffy?

12 MR. DUFFY: No questions.

13 JUDGE RUTH: Commissioner Murray?

14 COMMISSIONER MURRAY: Just one.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. In your testimony you indicate that Staff will

19 include an estimate for the maintenance contract in the

20 estimate for known and measurable changes through June 30,

21 2001?

22 A. Yes, ma'am.

23 Q. How will you determine what is known and

24 measurable in terms of long-term maintenance?

25 A. Are you talking about what we already put in

1 the estimate or what we're going to include in the true-up?

2 Q. In the true-up.

3 A. What was anticipated at the time this was
4 filed was, at least I anticipated was that I believe the
5 number provided by Mr. Groninger was going to include the
6 contract for the power plant.

7 Since that time I found out that the number
8 that we were looking at not only included the contracts for
9 the power plant, but also included additional maintenance.
10 And we will look at the historical cost of those plus the
11 estimates and determine, based on the historical cost and
12 the estimates, what we believe those additional costs will
13 be.

14 Q. So it will be some combination of historical
15 costs and estimated future costs?

16 A. I believe it's going to have to be because we
17 did not have any historical information on the combined
18 cycle. So it's going to have to be a combination of the
19 two, yes.

20 COMMISSIONER MURRAY: Thank you.

21 JUDGE RUTH: Commissioner Gaw?

22 COMMISSIONER GAW: No questions.

23 JUDGE RUTH: Okay. Based on the questions
24 from the Bench, Mr. Conrad, do you have recross?

25 MR. CONRAD: No, ma'am, thank you.

1 JUDGE RUTH: Mr. Coffman?
2 MR. COFFMAN: None, thank you.
3 JUDGE RUTH: Mr. Duffy?
4 MR. DUFFY: No questions.
5 JUDGE RUTH: Staff, do you have redirect?
6 MR. MEYER: No, I do not. Thank you.
7 JUDGE RUTH: Okay. Mr. Williams, you may step
8 down.
9 THE WITNESS: Thank you.
10 (Witness excused.)
11 JUDGE RUTH: Okay. It's my understanding that
12 concludes what was scheduled, the witnesses that were
13 scheduled to be heard today. We do have a couple of
14 housekeeping measures.
15 I want to go off the record, take a very brief
16 break, and one of the things the parties were supposed to
17 discuss was what time we start up in the morning. When we
18 go back on the record we'll address that and anything else
19 that we need to do today.
20 Off the record.
21 (A recess was taken.)
22 JUDGE RUTH: Let's go back on the record,
23 please.
24 First of all, I do want to discuss Empire's
25 request that Mr. Kaplan be excused from appearing on

1 Wednesday. I have discussed this with the Commissioners,
2 and they indicate that that is acceptable. Mr. Kaplan is
3 excused from appearing on Wednesday.

4 MR. DUFFY: We appreciate that.

5 JUDGE RUTH: Then I also wanted to clarify.
6 It's my understanding that the issues list, the revised
7 issues list has been filed; is that correct?

8 MR. FREY: That's correct, your Honor.

9 JUDGE RUTH: Okay. I'll look for my copy.
10 And did the parties have an update on the Stipulation and
11 Agreement on the fuel and purchased power rate design?

12 MR. FREY: Yes, we do, your Honor. Thank you.
13 The document has just been executed and it will be filed
14 post haste. I'll make a copy available to you as soon as
15 it's done.

16 JUDGE RUTH: Thank you very much.

17 Then I did want to ask for some clarification
18 regarding the request that we start at 1:30. I was unclear
19 as to whether or not the request was to start all issues at
20 1:30 or just some. Can someone speak to that, please?

21 MR. DOTTHEIM: I think the request was to
22 start all issues at 1:30. In particular the request was for
23 the one contested issue remaining, the incentive
24 compensation issue. The Staff filed the supplemental
25 surrebuttal testimony of Janis Fischer this morning, and the

1 company has filed the responsive testimony of Mr. Myron
2 McKinney. So it would appear that all testimony on that
3 issue has been filed with the Commission.

4 And the thought was that because tomorrow
5 morning there's an agenda, given what is anticipated as the
6 amount of time that would be required to try that issue,
7 that it could start at 1:30, and hopefully the Commissioners
8 would be available and it would afford parties an
9 opportunity to review the testimony that has been filed this
10 date by both the Staff and the company.

11 JUDGE RUTH: Okay. Let me make a suggestion,
12 then. If we are going to postpone the hearing until 1:30, I
13 suggest that we take up first the incentive compensation
14 issue, which is Empire witness McKinney and Staff Fischer,
15 and then move to the class cost of service rate design, if
16 the Commissioners have any questions on that.

17 Do the parties have any objection to this idea
18 or comments? Mr. Frey?

19 MR. FREY: Could we just have a moment on
20 that?

21 JUDGE RUTH: Sure. We'll go off the record.
22 (Discussion off the record.)

23 JUDGE RUTH: Can the parties tell me what they
24 have decided regarding start times and which witnesses we'll
25 hear on Tuesday and Wednesday?

1 MR. COFFMAN: As I understand it, we're just
2 sticking with the regular schedule
3 JUDGE RUTH: Regular schedule starting at
4 1:30?
5 MR. COFFMAN: Starting at 1:30 incentive comp,
6 and then the rate design witnesses will be available for
7 questions from the Bench following that, and then all the
8 fuel witnesses will be available on Wednesday.
9 MR. DUFFY: Start at 8:30 on Wednesday.
10 JUDGE RUTH: That sounds good. Thank you.
11 Are there any other housekeeping items? No.
12 Then that will conclude --
13 MR. COFFMAN: Look for the big stipulation.
14 JUDGE RUTH: I will go look for it. Thank
15 you. That will conclude the hearing for today.
16 WHEREUPON, the hearing of this case was
17 adjourned until 8:30 a.m., June 5, 2001.
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