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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

6

HEARING

7

June 5, 2001

Jefferson City, Missouri

8

Volume 9

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

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BEFORE:

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VICKY RUTH, Presiding,
REGULATORY LAW JUDGE.

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SHEILA LUMPE, Chairperson,

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KELVIN SIMMONS,

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CONNIE MURRAY,

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STEVE GAW,

COMMISSIONERS.

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REPORTED BY:

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MELINDA ADOLPHSON, CSR
ASSOCIATED COURT REPORTERS, INC.

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FOR: Staff of the Missouri Public Service
Commission.

P R O C E E D I N G S

JUDGE RUTH: We're here in case
ER-2001-299, the Empire case. It is Tuesday,
June 5th, and we are ready to begin with the issue
of incentive pay. We're going to start up with the
incentive pay issue and then move to class cost of
service rate design.

I believe that the first witness is
scheduled be to Empire's; is that correct?

MR. SWEARENGEN: That's correct, your
Honor.

JUDGE RUTH: Would you like to call your
first witness, please?

MR. SWEARENGEN: Mr. Myron McKinney.

JUDGE RUTH: Now, Mr. McKinney, you were
previously sworn in, so you may be seated.

Mr. Swearngen, you may proceed.

MR. SWEARENGEN: Thank you, your Honor.

MYRON MCKINNEY, previously sworn, testified as
follows:

DIRECT EXAMINATION BY MR. SWEARENGEN:

Q. State your name for the record, please.

A. Myron W. McKinney.

Q. And, Mr. McKinney, by whom are you
employed and in what capacity?

A. The Empire District Electric Company. I'm
President and CEO.

Q. Have you caused to be prepared for
purposes of this case various sets of direct,
rebuttal, surrebuttal and finally supplemental
surrebuttal testimony in question and answer form?

A. Yes, I have.

Q. And I believe your direct testimony has
been marked Exhibit 3 and has been offered and
received according to my information, but do you
have a copy of that with you today?

A. Yes, I do.

Q. And your rebuttal testimony has been
marked as Exhibit 23 and a portion of that does, in
fact, concern the issue that we're going to

16 litigate this afternoon. Do you have a copy of
17 Exhibit 23?

18 A. Yes, I do.

19 Q. Your surrebuttal testimony has been marked
20 as Exhibit 27. Do you have a copy of that
21 testimony with you?

22 A. Yes.

23 Q. And that also involves the issue which
24 we're going to litigate this afternoon. If I ask
25 you the questions in Exhibit 3, Exhibit 23 and

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1 Exhibit 27, would your answers with be the same?

2 A. Yes, it would.

3 Q. As contained in those documents?

4 A. Yes.

5 Q. And would they be true and correct to the
6 best of your knowledge, information and belief?

7 A. Yes, it would.

8 Q. At this time I would like to have marked
9 for purposes of identification Mr. McKinney's
10 supplemental surrebuttal testimony, which was filed
11 yesterday afternoon. I have three copies for the
12 reporter, and I have some extra copy in the event
13 the Commissioners do not have theirs.

14 JUDGE RUTH: That would be marked for
15 identification as 114, I believe.

16 (EXHIBIT NO. 114 WAS MARKED FOR
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. SWEARENGEN:

19 Q. Mr. McKinney, do you have in front of you
20 what's been marked for purposes of identification
21 as Exhibit 114?

22 A. Yes, I do.

23 Q. And that's the supplemental surrebuttal
24 testimony of Myron W. McKinney?

25 A. That's correct.

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1 Q. And if ask you the questions contained in
2 Exhibit 114, would your answers be the same under
3 oath this afternoon as contained in that document?

4 A. Yes, it would.

5 Q. And those answers, I take it, would be
6 true and correct?

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

8 MR. SWEARENGEN: Fine. Thank you.

9 With that, your Honor, since Exhibit 3 has
10 been offered and received and Exhibits -- I would
11 reoffer Exhibit 23, Exhibit 27 and offer for the
12 first time Exhibit 114 and tender the witness for
13 cross-examination.

14 JUDGE RUTH: Thank you very much. First
15 we'll handle Exhibit 23. It's Mr. McKinney's
16 rebuttal testimony. Do the parties have any
17 objections to this document?

18 Seeing no objections, Exhibit 23 is
19 admitted into the record.

20 (EXHIBIT NO. 23 WAS RECEIVED INTO
21 EVIDENCE.)

22 JUDGE RUTH: Exhibit 27 is Mr. McKinney's
23 surrebuttal. Are there any objections to this?

24 Seeing no objection, Exhibit 27 is also
25 received into the record.

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1 (EXHIBIT NO. 27 WAS RECEIVED INTO
2 EVIDENCE.)

3 JUDGE RUTH: Last, Exhibit 114 is the
4 supplemental surrebuttal testimony of Mr.
5 McKinney. Are there any objections to this
6 document?

7 Seeing no objections, it is also received
8 into the record.

9 (EXHIBIT NO. 114 WAS RECEIVED INTO
10 EVIDENCE.)

11 JUDGE RUTH: Mr. Conrad, would you like to
12 begin with cross-examination?

13 MR. CONRAD: We have no questions for
14 Mr. McKinney on these issues, ma'am. Thank you.

15 JUDGE RUTH: Thank you.

16 Mr. Coffman?

17 MR. COFFMAN: I have no questions either.

18 Thanks.

19 JUDGE RUTH: And Staff?

20 MR. DOTTHEIM: Yes. I have some
21 questions.

22 CROSS-EXAMINATION BY MR. DOTTHEIM:

23 Q. Good afternoon, Mr. McKinney.

24 A. Good afternoon.

25 Q. First, I'd like to apologize to the

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1 Company and to the Commission. The Staff had said
2 in its surrebuttal testimony that once it received
3 responses to outstanding data requests, it would
4 alert the Company as to where the Staff was on this
5 issue. And unfortunately, we were not as attentive
6 as we should have been, and ultimately the issue
7 has moved to this day. And we are very sorry for
8 the inconvenience to all of those concerned.

9 Mr. McKinney, I would like to direct you
10 to your supplemental surrebuttal testimony, which
11 has been marked Exhibit 114. And I'd like to
12 direct you to page 4, line 6.

13 A. Yes.

14 Q. And therein you discuss the Company's 1997
15 case and Incentive Awards in that case. You were a
16 witness in that case, ER-97-881, were you not?

17 A. I believe I was, yes.

18 Q. And are you seeking to indicate in that
19 answer there that the Staff did not exclude
20 Incentive Awards, compensation from its case?

21 A. Mr. Dottheim, what I had was some
22 accounting schedules. That case was stipulated and
23 so there is really no order that speaks
24 specifically to that issue. What I had were some
25 work papers showing the inclusion of Incentive

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1 Awards. Those are Accounting Schedule 10, was
2 dated 5-21-97. It was the basis for that answer.

3 MR. DOTTHEIM: If I may approach the
4 witness, I'd like to provide him a copy of the
5 Commission's Report and Order from that case,
6 ER-97-81.

7 JUDGE RUTH: Can you show to it his
8 counsel first, please?

9 MR. DOTTHEIM: Yes. I have a copy for his
10 counsel, too.

11 JUDGE RUTH: Thank you.

BY MR. DOTTHEIM:

Q. Mr. McKinney, if you would take a look at at document, and ultimately I would like to direct you in particular to the paragraph, the page where I have the flag on the page, which is page 8 of the unanimous stipulation and agreement, which is Attachment A to the Commission's Report and Order.

And if I could direct you in particular to paragraph 14 on page 8 from the unanimous stipulation and agreement.

A. I'm there.

Q. Okay. Do you recognize that Report and Order as the Report and Order in the Company's last rate increase case?

A. I don't know that I immediately recognize it, but I would accept it as that it appears to be that.

Q. Okay. And I would just like to read into the record just part of paragraph 14 on page 8 of the attachment, which is the unanimous stipulation and agreement. The Staff will submit to the Commission a memorandum explaining its rationale for entering into paragraphs 1 to 7 of the stipulation and agreement. Each party of record shall be served with a copy of any memorandum, and shall be entitled to submit to the Commission within five days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties.

Did I read accurately the first two sentences in paragraph 14?

A. Yes, you did.

MR. DOTTHEIM: I'd like to approach the witness again with a document. I have a copy for his counsel also.

JUDGE RUTH: Okay. Thank you.

BY MR. DOTTHEIM:

Q. Mr. McKinney, if you would take a look at that document, there's a cover letter and then a

document behind it. In particular, I flagged several pages, which I'd like to ask you about.

A. Okay.

Q. The cover letter is a letter from Roger W. Steiner, Assistant General Counsel, is it not or does it appear to be such?

A. Appears to be that, yes.

Q. Is that letter stamp filed, filed April 16, 1997 Missouri Public Service Commission?

A. Yes, it is.

Q. And the first sentence from that sentence -- excuse me -- the first sentence from that letter is, Enclosed for filing in the above captioned case or an original and 14 conformed copies of a memorandum in support of stipulation and agreement. Did I read that accurately?

A. Yes, you did.

Q. And I have the second page to that letter flagged, and would it appear to be a service list attached to the letter?

A. I would assume that's what it is, yes.

Q. And is Mr. James C. Swearengen shown as

23 being served with the letter and the attached
24 document?

25 A. Yes, he is.

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1 Q. If I could direct you to the attached
2 document. It's a memorandum. Says, To Chair Karl
3 Zobrist, Commissioner Kenneth McClure, Commissioner
4 Harold Crumpton, Vice Chair M. Dianne Drainer,
5 Administrative Law Judge Joe Derque from Roger W.
6 Steiner, Blair Hosford, subject Empire rate case
7 ER-97-81, date April 16, 1997. Did I read those
8 lines correctly?

9 A. Yes.

10 Q. And does there appear to be a stamp on
11 that page filed April 16, 1997, Missouri Public
12 Service Commission?

13 A. Yes.

14 Q. And the first paragraph reads, and I'll
15 quote, The purpose of this memorandum is to provide
16 the Commission with additional information
17 concerning various provisions of the unanimous
18 stipulation and agreement paren S and A, closed
19 paren, filed by the parties in Case No. ER-97-81 on
20 April 4, 1997.

21 Among other things, this additional
22 information includes, one, a summary of the major
23 substantive provisions of the S and A. Two, an
24 explanation of how the recommendation is reflected
25 in the S and A compared to various positions taken

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1 by the parties in their prefiled direct testimony.
2 And, three, a quantification of the estimated
3 impact of those recommendations on the Empire
4 District Electric Company's, paren, Empire or
5 Company, closed paren, customers.

6 Did I read accurately that first
7 paragraph?

8 A. Yes, you did.

9 Q. I'd like to direct you to page 6 of that
10 document.

11 A. Yes. I'm there.

12 Q. About halfway down that page is a line
13 that says, Staff reconciliation to stipulated
14 revenue requirement?

15 A. Yes.

16 Q. And then there is several lines that say,
17 Summary of settlement run and then parenthetically
18 thousands omitted?

19 A. Yes.

20 Q. And then there's another line, Staff's
21 case is filed mid point of ROCE range, and the
22 number 6,817, but with the thousands omitted, that
23 would appear to be 6,817,000?

24 A. That's correct.

25 Q. If I could direct you to the next page,

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1 page 7.

2 A. Yes. I'm there.

3 Q. And about a quarter of the way down the
4 page, there's a list with a heading, Stipulated
5 Items?

6 A. Yes.

7 Q. And in that list there is an item

8 identified with the words, Payroll slash Incentive
9 Compensation?

10 A. Yes.

11 Q. And there's a number to the right of 220?

12 A. Yes.

13 Q. Which if in thousands that would be
14 \$220,000?

15 A. That's correct.

16 Q. And finally, I'd like to direct you to
17 page 9 of that document. And in particular, about
18 halfway down the page, item No. 5?

19 A. Yes. I'm there.

20 Q. And I'd like to read that into the
21 record. Item 5, payroll slash incentive
22 compensation. Then there are two lines starting
23 with the word, Empire, colon, during prehearing
24 sought inclusion of an incentive compensation
25 payment made in February 1997.

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1 Then there's another line which starts,
2 Staff, colon, did not include this payment as it
3 was outside the test year. Then another line which
4 starts, Staff settlement basis, colon, included
5 payment in settlement of revenue requirement. And
6 another line, Adjustment to Staff revenue
7 requirement, colon, the numbers preceded by a
8 dollar sign 220?

9 A. Yes.

10 Q. Then another line, Value of initial
11 difference between Empire and Staff, colon, no
12 initial difference, semicolon, was not reflected in
13 either Empire's or Staff's direct filing. And
14 finally, last line for that item 5, Related
15 stipulation and agreement paragraph, colon, none.

16 Did I read those entries correctly?

17 A. Yes, you did.

18 Q. Mr. McKinney, do you know whether Empire
19 filed a response to this document in 1997?

20 A. Mr. Dottheim, I honestly do not know.

21 Q. Okay. Thank you.

22 Mr. McKinney, what employees of Empire are
23 eligible for the Incentive Awards Program?

24 A. The Incentive Awards Program, all
25 non-union, non-officer employees of the company.

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1 So it includes hourly employees through mid
2 managers.

3 Q. Would you happen to have a breakdown
4 number-wise or percentage-wise as to how many of
5 those individuals are managers and how many are
6 non-managers?

7 A. I don't have that breakdown with me. I
8 would just quickly say about a third would be
9 managers and probably two-thirds are not.

10 Q. Were the first Incentive Awards made in
11 1997 for the year 1996?

12 A. Actually in -- there were incentive Awards
13 made in 1996, in October of 1996. Those were not
14 for the program that's in question here today that
15 included the stretch goals and the base goals.
16 That was on an older program that the company had.
17 The first payments that were actually made that
18 were based on the system that we're using today

19 were made in February of '98, I believe, for
20 calendar year '97.

21 Q. I'd like to direct you again to your
22 supplemental surrebuttal testimony, Exhibit
23 No. 114, in particular, page 4, line 17?

24 A. I'm there.

25 Q. You state, do you not, That the Company

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1 compensates its employees for the value of a job is
2 determined by the survey process, which includes
3 surveys of local employers, the Missouri State
4 Chamber of Commerce surveys, and National Industry
5 Data provided by Edison Electric Institute, do you
6 not?

7 A. Yes, I do.

8 Q. What local employers are surveyed?

9 A. We survey a group of local employers that
10 operate in Southwest Missouri. There's a group of
11 probably 20. I don't have that list with me, but
12 it picks up other major businesses in the area
13 where we operate.

14 Q. Are any of those companies utility
15 companies?

16 A. No, I don't believe they are. If they
17 are, there might -- no, I don't think so,
18 Mr. Dottheim.

19 Q. You make reference to a Missouri State
20 Chamber of Commerce survey surveys, I should say?

21 A. Yes.

22 Q. Do you know what companies are included in
23 the Missouri State Chamber of Commerce surveys?

24 A. I can't name the companies specifically,
25 but it's a statewide survey that the Missouri State

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1 Chamber does, I think, at least biannually and
2 probably annually.

3 Q. It's not exclusively utility companies?

4 A. No. No. It covers a broad range of
5 business interest.

6 Q. Do you know whether utility companies are
7 covered?

8 A. I think there are some utilities covered
9 in that survey, yes.

10 Q. Would those be electric, gas,
11 telecommunications, water, any idea?

12 A. I think all of the above are included in
13 their survey, but they are not broken out in into
14 separate classification either.

15 Q. You also mention National Industry Data
16 provided by the Edison Electric Institute?

17 A. Yes.

18 Q. Does the EDI National Industry Data
19 include only electric investor-owned utilities?

20 A. The data that we compare with is electric
21 and energy companies. It also has some independent
22 energy producing companies in the mix. There are
23 some gas, electric combination companies in that
24 mix. There are no water or telephone companies
25 included and no sole gas companies included.

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1 Q. Can you identify any of the independent
2 energy companies?

3 A. Not off the top of my head, I can't.

4 Q. Does Empire utilize the Hay Group for
5 employment compensation analysis purposes?

6 A. We have in the past. And I actually have
7 them right now doing a survey for officer and
8 director's salaries. We are not using their
9 specific plan at this point in time. We have used
10 them in the past.

11 Q. So is the company using the Hay Group in
12 any capacity for purposes of the Incentive Awards
13 Program?

14 A. No.

15 Q. I'd like to direct you again to your
16 supplemental surrebuttal testimony, page 6,
17 line 18.

18 A. Yes.

19 Q. Where you state that Empire's compensation
20 levels are at or below average. At or below what
21 average, Mr. McKinney?

22 A. The average of the surveys that we are
23 comparing with. Typically the reason we say that
24 is typically there's some increase in those surveys
25 from year to year. We're always using a survey

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1 setting wages that are usually several months old.
2 So as the surveys are updated, we typically are
3 falling below the average.

4 Q. Is that in a composite manner or is that
5 for individual categories as far as --

6 A. No. That would be for a composite. But
7 each job is evaluated against the jobs, as nearly
8 as we can find them in those surveys individually,
9 too.

10 Q. In any of those comparisons in the
11 non-composite manner, does Empire exceed the
12 average?

13 A. I'm sure. If we look through the total
14 list, we can probably find one or two. But as a
15 group, I think the answer of that would be no.

16 Q. Is Empire's Incentive Awards Program set
17 out in the Empire Employees Handbook under the
18 subject Performance Compensation and Career
19 Development Approach?

20 A. Yes, it is.

21 MR. DOTTHEIM: At this time I'd like to
22 have a document marked as an exhibit. I believe it
23 would be 115. It's a highly confidential document,
24 but my reference to it, I believe, will not require
25 any highly confidential information to be put on

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1 the record.

2 JUDGE RUTH: Okay. I'll caution the
3 witness, also, not to respond with any highly
4 confidential information unless you first warn me,
5 and we'll go in camera.

6 THE WITNESS: Yes, ma'am.

7 JUDGE RUTH: So I'll mark this as
8 Exhibit 115 for identification. Can you describe
9 it briefly for me?

10 MR. DOTTHEIM: Yes. It is the response to
11 Staff Data Request No. 318.

12 JUDGE RUTH: Thank you.

13 (EXHIBIT NO. 115 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

BY MR. DOTTHEIM:

Q. Mr. McKinney, if I could direct you, in particular, respecting Empire's Response to Staff Data Request No. 318, which has been marked as Exhibit No. 115. If I could direct you to the document, multi-page document after the company's response, which is a document which on the cover states, The Empire District Electric Company Performance Compensation and Career Development Approach, Employees' Handbook.

Did I read that accurately?

A. Yes, you did.

Q. Mr. McKinney, do you recognize that document as being the company's Incentive Award Program?

A. Yes, it is.

Q. Mr. McKinney, can you identify how many Empire employees were given base and incentive or stretch goals, objectives in the year 2000 under the Incentive Awards Program?

A. You mean the ones that were paid in 2001 for year 2000?

Q. Yes.

A. Roughly 250.

Q. That's the universe or is that the actual paid?

A. I think that's the actual paid.

Q. Would you have the actual number of employees who qualified for the Incentive Awards Program?

A. No, I don't. I'd be happy to provide that. I don't have it with me.

Q. If I could direct you to the attachments to 318, other than the attachment that I've already referred to the excerpt from the employees' handbook. And those are lists which identify

except in one instance Merit Awards for a year paid in a subsequent year. There is one document, I think it may be is the last one in the list that instead of saying Merit Award, says incentive awards. Do you recognize any of those lists?

A. Yes, I do.

Q. And I'd also direct you to the data request questions themselves, No. 3, which asks, Designate if the amount received was a lump sum or will be paid throughout the year 2001, please explain in detail. And the answer on the next page is, All Merit Awards, paren, referred to as Incentive Awards in the employee handbook, closed paren, are lump sum amounts received on the date indicated each year.

Did I read that accurately?

A. Yes, you did.

Q. Do you know, is that an indication that these lists, other than the one that's identified as Incentive Awards, that the lists that are identified as Merit Awards are actually the Incentive Awards that were made for the years indicated?

A. Well, they are the Merit Awards that were made for year indicated, yes. I think it's very

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1 important to keep the terminology correct here.
 2 Merit Awards are the awards that are paid as a
 3 result of reaching the stretch goals and the base
 4 and stretch goals. And so to the extent that they
 5 are designated as Merit Awards, as I understand it,
 6 that's what this issue is about.

7 Q. But the issue has also been designated
 8 Incentive Awards; is that correct?

9 A. It has. But I think the Merit Awards,
 10 again, are the issue that's at hand here.

11 Q. Are there awards that are denominated
 12 Incentive Awards that are not Merit Awards?

13 A. There are awards that are Discretionary
 14 Awards, which are also called Lightning Bolt
 15 Awards. Then Merit Awards are the awards that are
 16 made to base salary. Incentive Awards are the
 17 awards that are made after reaching the stretch
 18 goals and the base goals. And Discretionary Awards
 19 are what are also called Lightning Bolts. Like I
 20 said, it's important to keep the terminology
 21 straight.

22 Q. And let me ask you again, so maybe I can
 23 try to do that. Based upon the answer to Item 3,
 24 question 3, which says, All Merit Awards, paren,
 25 referred to as Incentive Awards in the employee

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1 handbook, closed paren, are lump-sum amounts
 2 received on the date indicated each year?

3 A. Those are the Merit Awards, yes.

4 Q. Are they also Incentive Awards?

5 A. They are Incentive Awards, yes.

6 Q. Would the group that's stapled together, a
 7 list of names that has up at the top 2000 Merit
 8 Awards paid 3-2-2001, would that comprise the
 9 \$323,000 for which total the Incentive Awards paid?

10 A. It does with the exception that the
 11 officer group is included in this list, and they
 12 need to be subtracted out. So if you subtract the
 13 five officers out, then you would have that, yes.

14 Q. And if you could identify by name who the
 15 five officers are who should be subtracted from the
 16 list.

17 A. Yes. Brill, Fancher, Gibson, McKinney,
 18 and Stark.

19 Q. There are some names in the column Merit
 20 Award a zero or zeros appear?

21 A. Yes.

22 Q. Would those be individuals who did not
 23 receive Incentive Awards, Merit Awards for that
 24 year?

25 A. Yes.

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1 Q. So if one subtracted the five officers and
 2 counted the number of names minus the four
 3 officers, that would provide the total number of
 4 Empire employees that were subject to possibly
 5 being awarded Incentive Awards, Merit Awards for
 6 this case, the year 2000?

7 A. No, I don't think that's correct. I think
 8 there are some that show up on the list. And if my
 9 memory serves me correctly, those that I'm seeing
 10 on the list that have zeros are part-time employees

11 who are not eligible. People that did not receive
12 Merit Awards wouldn't be on this list. I think the
13 part-timers kind of showed up there by accident.

14 Q. Would what you've just identified for this
15 list 2000 Merit Awards paid 3-2-2001, would that
16 also apply to the other list or do you know, for
17 the other years that were provided in response to
18 Staff Data Request 318?

19 A. I think to the extent that the officers --
20 as I recall when I looked through this list
21 earlier -- in some case the officers were included,
22 in some cases they were not. In any case, where
23 the officers were included in that group, those
24 same five names, they would need to be subtracted
25 out. And on one of the lists, I don't recall the

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1 year, it also subtracted out Mrs. Settle and
2 Mrs. Moss. Those two needed to be added back in.
3 So in that particular case, that was another
4 adjustment that would have to be made.

5 Q. Could you identify -- and excuse me if
6 I've asked you this before -- but the percentage of
7 Empire non-officer, non-bargaining unit employees
8 who received Incentive Awards as a percentage of
9 the total number of non-officer, non-bargaining
10 unit employees who could have received awards?

11 A. I don't think you have asked me that
12 question, and I don't have that data here with me.
13 I'm not sure.

14 Q. Do you know know that for any of the years
15 of the Incentive Award Program?

16 A. No, I don't.

17 Q. And if I asked you the same question
18 instead of saying Incentive Awards, but said Merit
19 Awards, would your answers be the same?

20 A. Yes.

21 Q. Because it's the same list?

22 A. If we're talking about the same list that
23 says Merit Awards at the top, it would be the same,
24 yes.

25 Q. In this instance which would be the list

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1 of individuals who received Incentive Awards under
2 the Incentive Awards Program?

3 A. Well, under the Merit Awards Program, yes.

4 Q. Okay. Which is, again, the program for
5 which there's an excerpt provided out of the
6 employees' handbook, which is titled Performance
7 Compensation and Career Development Approach?

8 A. Yes.

9 Q. Mr. McKinney, if the merger with UtiliCorp
10 had occurred in January 2001, do you know whether
11 there would have been any lump sum Incentive Awards
12 paid to Empire employees in February 2001?

13 A. I don't know whether there would have been
14 or not. That would have been a decision that
15 UtiliCorp would have made, assuming the merger
16 closed by February.

17 Q. Is that something that Empire had sought,
18 Empire management had sought any commitment from
19 UtiliCorp regarding?

20 A. No, we had not.

21 MR. DOTTHEIM: I'd like to have another

document marked as an exhibit, Exhibit 116. And that would be the Company's Response to Staff Data Request No. 331.

JUDGE RUTH: We will mark the Company

Response to Staff Data Request 331; is that correct?

MR. DOTTHEIM: Yes.

JUDGE RUTH: As Exhibit 116 for identification.

(EXHIBIT NO. 116 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE RUTH: Is this one also HC?

MR. DOTTHEIM: Yes, it is. Excuse me.

JUDGE RUTH: You may proceed.

MR. DOTTHEIM: I would note for the record that because of the sensitive nature of this document, in particular which contains information on individual employees of Empire, that Staff took the liberty of stamping each page confidential. Not each page of the document was stamped confidential, but just to make certain that there would be no confusion, because we certainly assume that all pages were confidential. So if for any reason, at least to our knowledge, that would be the only reason why that would not match up with the copy that the Company has.

BY MR. DOTTHEIM:

Q. Mr. McKinney, if I could direct you to the question and the response, and I think you're

familiar with the document, you make reference to it in your own supplemental surrebuttal testimony.

The question in the information request, it states, Please provide copies of the incentive objectives and base objectives used to determine incentive compensation awards for the years 1996 to 2000 for the following Empire employees, paren, see attached, closed paren. Per conversation with Judy Baker, these are included in personnel files. These are the awards outlined in the employees' handbook received in response to Data Request No. 318.

And the Company's response on the next page, and I will delete the names of the employees who are identified, Copies of the base and incentive objectives were partially or wholly unavailable for employees. Three employees are named. In addition, copies of base and incentive objectives were unavailable for most the employees listed for the year 2000. Due to the pending merger close with UtiliCorp, managers and supervisors were not required to formulate base and incentive objectives. However, some managers and supervisors did complete the process, as in the case of employees. And then there are four

employee names.

In place of incentive objectives, managers were instructed to use discretion in awarding incentives to those employees who played a role in maintaining the organization through the merger process whether or not that was accomplished

7 through the formal goal setting process.

8 Mr. McKinney, did I read that accurately?

9 A. Yes, you did.

10 Q. I'd like to direct you to that last
11 paragraph which states, In place of incentive
12 objectives, managers were instructed to use
13 discretion in awarding incentives the those
14 employees who played a role in maintaining the
15 organization through the merger process whether or
16 not that was accomplished through the formal goal
17 setting process.

18 Now, can you identify when Empire's
19 managers were given that instruction?

20 A. I believe in February of this year.

21 Q. And that was, again, you have identified
22 February of this year after UtiliCorp --

23 A. After the first group.

24 Q. From the merger?

25 A. Yes, that's correct.

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1 Q. Again, directing you to the response, was
2 assisting and maintaining the organization through
3 the merger process the sole criterion for giving
4 Empire lump sum Incentive Awards in February of
5 2001?

6 A. That was the major one, Mr. Dottheim. The
7 managers were also expected to look at other
8 aspects of the employee's performance. Whether or
9 not they were able to achieve anything beyond that,
10 and the managers have a pretty wide discretion in
11 the application of those monies. So they were
12 certainly free to look at other aspects.

13 Q. Do you know if any of the Empire
14 non-officer, non-bargaining unit employees fall
15 into a category of not assisting and maintaining
16 the organization through the merger process?

17 A. I can think of one that's on this list,
18 yes, who did not receive an Incentive Award.

19 Q. Let me ask the question again. Did any
20 of -- I was not asking did anyone not receive the
21 award, but did any of the Empire non-officer,
22 non-bargaining unit employees not fall into the
23 category of assisting and maintaining the
24 organization through the merger process?

25 A. I think the answer to that is yes for the
0812
1 same reason.

2 Q. Most an employee achieve 100 percent of
3 his or her stretch incentive goals before the
4 employee can receive an Incentive Award for the
5 particular year?

6 A. 100 percent is not required, Mr.
7 Dottheim. Again, that's to the discretion of the
8 individual manager.

9 Q. Is there a ceiling as to how much
10 Incentive Award a non-officer or non-bargaining
11 unit employee can receive?

12 A. No. Each manager is provided with an
13 amount of money that he is to spread throughout his
14 work force. If he felt that one individual in that
15 group played such a major role to the exclusion of
16 all others, all that money could go to one
17 individual. That has never happened, of course,

18 but the discretion is how to distribute that money
19 within the work group is left to the managers.

20 And just to take that one step further,
21 the way that determination is made, the payroll or
22 the incentive amounts that is to distributed is
23 spread basically between the vice president as a
24 percentage of payroll, they then spread it within
25 their organizations. And they have discretion as

0813

1 how it is spread to their managers within the
2 organization.

3 Q. I'd like to direct you to your surrebuttal
4 testimony, Exhibit 27, page 2, lines 3 through 6
5 where you make reference to an accrual of 2 to
6 2.5 percent being made every month. What is that
7 2 to 2.5 percent of?

8 A. That's of the non-union, non-officer
9 payroll.

10 Q. Is that 2 to 2.5 percent serve as a
11 ceiling in any manner?

12 A. Yes, it does. That is the amount that is
13 accrued. And is the standard practice, we would
14 try to hold any incentive payments within the
15 accrual.

16 Q. And the 2 to 2.5 percent that's of the
17 base wages that are in existence?

18 A. That's of the payroll that's paid. So if
19 overtime was paid, we would accrue on that basis as
20 well.

21 Q. How was the 2 to 2.5 percent amount
22 chosen?

23 A. That was a decision that was made by the
24 officers and it's made each year as we start the
25 year as to how much we will accrue. It's a

0814

1 management decision, trying to hold the cost of
2 labor in a reasonable range.

3 Q. I think you identified in your
4 supplemental surrebuttal testimony that in some
5 instances the incentive goals, the stretch goals of
6 non-officer, non-bargaining unit employees may not
7 change from year to year. Am I correct in that?

8 A. I'm sorry. Which testimony did you
9 reference?

10 Q. I think it's your supplemental
11 surrebuttal.

12 A. I think I know what you're talking about.
13 And, yes, if a person had reached full job value,
14 and the values of that job did not change as a
15 result of the surveys, then that person would not
16 receive a base increase.

17 Q. Do non-officer, non-bargaining unit
18 employees' base goals -- not incentive goals, but
19 base goals -- change from year to year?

20 A. They may or may not depending on the
21 employee and the supervisor. I think I referenced
22 in my testimony there some work is more or less
23 repetitive in nature. It doesn't change much from
24 year to year. In that case, the base and the
25 stretch goals may not change from one year to the

0815

1 next.

2 MR. DOTTHEIM: Pardon me a moment.

3 I have no further questions. Thank you,
4 Mr. McKinney. You have been very patient.

5 THE WITNESS: Thank you.

6 JUDGE RUTH: Thank you.

7 Chair Lumpe, do you have questions?

8 CHAIR LUMPE: Just some follow-ups.

9 QUESTIONS BY CHAIR LUMPE:

10 Q. Mr. McKinney, I think you said it was a
11 management made each year on the payroll accrual or
12 the 2 percent or he 2.5?

13 A. Yes.

14 Q. Is there a range? In other words, what is
15 it this year and what was it the year before, the
16 test year?

17 A. I believe in the test year we accrued at
18 two and a half percent. I believe this year we're
19 accruing at 2 percent of salaries.

20 Q. And in year before the test year, do you
21 know what it might have been?

22 A. I have slept too many times since then.
23 I'm sorry. I don't remember.

24 Q. But it does change from year to year?

25 A. Yes.

0816

1 Q. All right.

2 A. Let me say it might change from year to
3 year. It doesn't necessarily. We don't -- if we
4 thought we were accruing at the right rate at
5 2 percent, we wouldn't change it in the following
6 year.

7 Q. But in the test year, you did 2.5, and
8 this year you think it's 2 percent?

9 A. I believe that's correct, yes.

10 Q. You talked about some programs going back
11 to '96, '97, but you sort of said they were the old
12 programs and you don't use those anymore?

13 A. That's right.

14 Q. And so how many different programs do you
15 have now? I heard you say Lightning Bolt and Smart
16 (sic). So how many different ones do you have now?

17 A. We basically have three ways that an
18 employee could receive increased compensation.
19 Merit Increases are increases that are done on an
20 annual basis to base salary. In other words, after
21 we --

22 Q. That continues on?

23 A. Yes. After we run the surveys, if an
24 employee has not reached job value, and they are
25 making satisfactory progress in their work, they

0817

1 could receive a Merit Increase, which is an
2 adjustment to base salary. If they have achieved
3 their goals and their stretch goals, then they
4 could receive an Incentive Award. And an Incentive
5 Award is a one-time payment that does not feed into
6 their base salary. It's just a one-time payment.

7 Q. So it's stretch, not smart?

8 A. Stretch, yes. Base and stretch.

9 Q. All right.

10 A. The third way is what we call
11 Discretionary Awards or Lightning Bolts. And
12 that's a fairly small amount of money. In this
13 case it was \$28,000. That's just an opportunity we

14 take as managers of the company to find people
 15 doing something right. It's very easy as a manager
 16 to find people doing something wrong, but when we
 17 see somebody doing something right, that goes
 18 beyond what we would normally expect them to do or
 19 if they worked on a project where they put in an
 20 extraordinary amount of time, particularly salaried
 21 people who don't receive any extra compensation, we
 22 might give them a Lightning Bolt or a Discretionary
 23 Award.

24 Q. So these would just be for salaried?

25 A. No. No. Hourly people.

0818

1 Q. Hourly also?

2 A. Right. And actually for the Discretionary
 3 Awards -- these blend in and out a little bit. The
 4 Discretionary Awards actually could go to a union
 5 employee as well or an hourly employee.

6 Q. And both of these, the stretch and the
 7 Lightning Bolt are one-time like bonus?

8 A. That's correct, yes.

9 Q. It doesn't continue on into the future?

10 A. That's right. Yes.

11 Q. I was just going to ask, on your
 12 supplemental surrebuttal where you respond on page
 13 6, was the purpose of this supplemental surrebuttal
 14 to respond to Ms. Fischer's comment about and not
 15 having received the numbers yet, are these the
 16 numbers?

17 A. These are the numbers, yes.

18 CHAIR LUMPE: Okay. Thank you. That's
 19 all I have.

20 JUDGE RUTH: Commissioner Murray.

21 COMMISSIONER MURRAY: Thank you.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Merit Increases are not the same as Merit

0819

1 Awards; is that correct?

2 A. No. Merit Increases and Merit Awards are
 3 the same thing.

4 Q. Well, I thought I understood this until
 5 the questioning by Mr. Dottheim, and then I got a
 6 little confused because --

7 A. I may have, too.

8 Q. -- Merit Increases are not at issue here;
 9 is that correct?

10 A. That's correct.

11 Q. But the --

12 A. The incentive --

13 Q. -- Merit Awards -- which are also Merit
 14 Awards?

15 A. No.

16 Q. Okay. The Incentive Awards are at issue?

17 A. The Incentive Awards are at issue, yes.

18 Q. I still don't understand where Merit
 19 Awards come in, but maybe I don't need to
 20 understand that.

21 A. I'd be happy to try again. I think I
 22 maybe not made myself as clear as I should have.
 23 Merit Increases or Merit Awards are one time -- are
 24 once-a-year payments that adjust base salary and

25 they are ongoing. The Incentive Awards do not

0820

1 effect base salary. They are a one-time payments.

2 Q. So Merit Increases are the same as Merit
3 Awards?

4 A. Yes.

5 Q. All right. Thank you. Now, I
6 understand.

7 On page 9 of your supplemental
8 surrebuttal, you indicate there in your closing
9 remarks on the issue that the Company would be
10 willing to include a four-year average for the
11 Incentive Awards, which is would bring that total
12 down to 223,500 instead of the 323; is that
13 correct?

14 A. That's correct, yes.

15 Q. And I think somewhere in Staff's testimony
16 that Staff suggested a five-year average. Do you
17 know what that total would come to if a five-year
18 average were used?

19 A. I think I may have that in some of my
20 material here, if you will give me just a minute.
21 Subject to some calculations on the back of an
22 envelope, I think about \$251,000.

23 Q. Using a five-year average?

24 A. Let me be sure I've done that right. I
25 think if we took out the payment, the 2001 payment,

0821

1 the \$325,000, the average would be \$251,400 using a
2 five-year average.

3 Q. So I would assume if the Company was
4 willing to use a four-year average coming up with
5 223,500, that the Company would also be willing to
6 use a five-year average coming up with a greater
7 number?

8 A. I would be hard pressed to argue against
9 myself on that, yes. The -- never mind.

10 Q. I just want to make sure, going back to
11 these three types of incentive plans again. There
12 is no dispute as to Merit Increases; is that
13 correct?

14 A. It's my understanding, yes.

15 Q. And then Discretionary Awards, the Company
16 has agreed not to contest Staff's disallowance of
17 that \$28,000 for this --

18 A. That's correct. Just because of the
19 amount.

20 COMMISSIONER MURRAY: Thank you.

21 JUDGE RUTH: Commissioner Simmons?

22 COMMISSIONER SIMMONS: Yes. Thank you,
23 your Honor.

24 QUESTIONS BY COMMISSIONER SIMMONS:

25 Q. Good afternoon, Mr. McKinney.

0822

1 A. Good afternoon.

2 Q. I just have a few questions, and some of
3 my questions will probably go back over some of the
4 questions that were been raised by Mr. Dottheim
5 earlier, and some of them will just be
6 clarification.

7 The first question I have is, how would
8 you define the Commission's traditional test for
9 rate recovery of an incentive compensation?

10 A. I have struggled a bit with that as I have
11 read through Staff's testimony on that issue. And
12 what I found when they referred me back to the
13 Union Electric case, which was the case that was
14 cited in Ms. Fischer's testimony. That test was a
15 management incentive plan. It really, as best I
16 could tell from reading that, did not apply to
17 hourly and lower-level employees.

18 Also the goals in that plan were more
19 corporate goals. Things like reducing the number
20 of accidents and reducing the amount of sick time
21 and things of that nature. Those goals were not
22 tied down to individual performance, as best I
23 could tell.

24 Now, there was a second set of criteria
25 there that had to do with being directly beneficial

0823 1 to the ratepayers, I think, and clearly
2 discernible. I don't know in the limited amount of
3 time I've worked on this, I wasn't able to find
4 where that set of criteria came from.

5 Q. So your employees or your managers that
6 would have devised the criteria for, I guess, the
7 incentive compensation, would not have necessarily
8 used the case that we have mentioned as a format to
9 look at how you award incentive compensation in
10 your company?

11 A. No, absolutely not. What they try to do
12 is to set what the individual employee -- look at
13 that employee's individual work that he's doing,
14 determine how he can do that work better, how that
15 individual can grow his skill base, things of that
16 nature, things that are related to the individual.
17 Now, they also need to be consistent with the
18 company goals.

19 Q. That was actually leading into my next
20 question. As your supervisors or individuals that
21 basically define the criteria as they set that out,
22 is it a management team or the executive team that
23 then approves that criteria that says this meets
24 the goals that we think should have the kind of
25 criteria that will lead to the kind of productive

0824 1 effects at this or whatever you believe?

2 A. If I could take just a second and try to
3 explain that process. It's basically a top-down
4 goal-setting process. The officers of the company
5 typically in the fall of the year will sit down and
6 work sift through what we think the specific goals
7 for the company need to be for the coming year. We
8 pass that to the department, who then take those
9 goals and formulate the goals for their department
10 within the framework of the company goals.

11 Individual goals are worked in that same
12 format. So theoretically at least, the individual
13 goals would always build back to the company goal.

14 Q. So at that point in time maybe those that
15 come down the chain, so to speak, would not be able
16 to interject subjective criteria? I mean, would
17 you characterize what you just said as forming the
18 objective criteria for your company?

19 A. It's a combination. One of the things I
20 have struggled with being a non-engineer for a long

21 time working at a company with an engineering
 22 attitude is, in my opinion, not everything can be
 23 quantified. For many years in our companies, if
 24 you couldn't count it, it didn't count. That's one
 25 of the things I tried to work our company away

0825

1 from, but there are qualitative aspects as well as
 2 quantitative aspects of the work we do. And to
 3 that degree, there are things that probably are
 4 subjective. In fact, I know there are things that
 5 are subjectives in our goals.

6 Q. I think I heard earlier in your testimony
 7 some of the questions Mr. Dottheim asked you. You
 8 stated which employees were ineligible for the
 9 program. Could you tell me again which set of
 10 employees are ineligible?

11 A. Officers of the company are ineligible and
 12 the bargaining unit employees are ineligible,
 13 part-time employees are ineligible, employees who
 14 have been with the company less than a year at the
 15 time the Incentive Awards are made are ineligible.
 16 Now, I think in this year we probably have
 17 accidentally paid some people that hadn't been there
 18 for the full time. So we're in error a little bit
 19 with the application this year.

20 Q. The non-bargaining employees are
 21 ineligible, but yet they could receive a
 22 Discretionary Award?

23 A. I'm sorry. I should have said bargaining
 24 unit.

25 Q. Okay. I'm sorry.

0826

1 They are ineligible, yet they can receive
 2 a Discretionary Award?

3 A. Yes, that's correct.

4 COMMISSIONER SIMMONS: That's all the
 5 questions I have. Thank you, sir.

6 JUDGE RUTH: I'm sorry. Commissioner
 7 Simmons, are you finished?

8 COMMISSIONER SIMMONS: I am finished.

9 JUDGE RUTH: Thank you.

10 Commissioner Gaw?

11 COMMISSIONER GAW: Thank you.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Hi, Mr. McKinney. How are you?

14 A. Good afternoon.

15 Q. Let me follow up with what Commissioner
 16 Simmons was just asking you, and see if I can get
 17 my material to sink in with what the testimony has
 18 been so it will help me understand.

19 The exhibit numbered 115, do you still
 20 have that in front of you?

21 A. I'm sorry. I didn't number those. If you
 22 can tell me which one it is.

23 Q. It has a number 318 at the top of it.

24 A. Yes, I have that.

25 Q. The material that's contained -- without

0827

1 addressing the specifics, the material that is
 2 contained in there, the amounts and the individuals
 3 listed, tell me again which category of the three
 4 categories those awards fall under so I can -- if
 5 you could, please?

6 A. The people that received the awards?
7 Q. Yes?
8 A. Okay. Those people would be
9 non-bargaining unit of non-union, non-officer,
10 full-time employees of the company.
11 Q. All of them that are in this exhibit?
12 A. That's all of the people that are eligible
13 for the Merit Awards -- I'm sorry. For the
14 Incentive Awards.
15 Q. And you're sure there's no one else in
16 there on this exhibit besides those individuals
17 that fall into that category?
18 A. That's all that should be on this list.
19 If we looked at the first list, which is Merit
20 Awards paid in March of 2001.
21 Q. Yes. Let me come back to this, because we
22 may have to ask questions in a different way in a
23 moment in order for me to get this clarified.
24 Again, which of the three -- are those all
25 three of the categories on this page or which one?
0828
1 Are they separated out on this exhibit?
2 A. Anybody that's on this exhibit should be
3 non-union, non-officer, full-time employees.
4 Q. But of the three categories that you --
5 the merit categories, and the stretch and the
6 lightning, and I'm using those terms very loosely
7 here, but are all three of those categories in this
8 document?
9 A. No. No.
10 Q. Go ahead. Then tell me what categories
11 are in this document.
12 A. The category that's in this document is
13 the Incentive Awards.
14 Q. Which is?
15 A. The one-time bonus payment.
16 Q. One time. But there are two things that
17 you have that are one-time bonus?
18 A. Yes. They are Discretionary Awards, and
19 they are not included in this.
20 Q. All right. So this is the stretch?
21 A. This is the stretch. This is the stretch
22 list, yes.
23 Q. Thank you. I'm getting closer.
24 Now, the other category, the lightning
25 category, has that been shown to you as an exhibit
0829
1 since you have been on the stand or is that even in
2 front of us?
3 A. That's really not in front of you. That
4 amount was \$28,000, and we gave up on that issue.
5 Q. All right. Now, could you hold for just a
6 second.
7 Mr. McKinney, let me ask again, and maybe
8 I can ask this in a different way and it will
9 help.
10 On this list, Exhibit No. 115 --
11 A. Yes.
12 Q. -- are there any other individuals listed
13 there that perhaps don't fall under the category of
14 non-officers and --
15 A. Non-union.
16 Q. And non-union? Thank you.

17 A. Full time. I believe there are some
18 people listed here, who I believe are part-time
19 employees.

20 MR. SWEARENGEN: Can we go off the record
21 for a minute, please?

22 JUDGE RUTH: No. We're going to stay on
23 the record for right now.

24 BY COMMISSIONER GAW:

25 Q. Mr. McKinney, what I'm getting at, I think

0830

1 you've already testified to, and I'm not trying to
2 trick you or anything. I'm just trying to make
3 sure I've got this clarified.

4 Were there individuals that you listed
5 earlier in your testimony that should not be on
6 this Exhibit No. 115 that are included there
7 now? And I don't want you to name them. I'm just
8 asking you if you testified to that earlier?

9 A. I believe I testified to that earlier that
10 there are some employees on this list that are part
11 time that should not be.

12 Q. Other than part time.

13 A. Other than part time.

14 Q. That are perhaps officers?

15 JUDGE RUTH: I believe you specifically
16 listed five officers who should be deleted from the
17 list?

18 THE WITNESS: That's correct.

19 JUDGE RUTH: And during your testimony you
20 gave five names. I'm not going to repeat them, but
21 you gave five names. And I think that goes to the
22 heart of Commissioner Gaw's question. Those five
23 names are on this list with amounts after them and
24 that is --

25 THE WITNESS: Should not be.

0831

1 BY COMMISSIONER GAW:

2 Q. That's all I'm trying to get to. I'm
3 sorry that it's taken so much time. I can't be as
4 direct as I'd like under the circumstances.

5 So there are names, and you're not asking
6 for those amounts to be included?

7 A. No, sir. No.

8 Q. Okay. That's my question.

9 A. Those are handled -- were handled in
10 another part of our discussions with Staff under
11 the management incentive plan.

12 Q. And that's a different issue?

13 A. That's an issue we have resolved with
14 Staff, yes.

15 Q. Thank you. Now, in regard to the setting
16 up policy on the incentive plan that is an issue in
17 this particular part of the case --

18 A. Yes.

19 Q. -- who sets that plan up in the company?
20 Who is responsible for the genesis of that plan?

21 A. Actually the plan itself was designed 1996
22 by an employee group made up of mid-level managers,
23 some people who were not managers, some
24 professional people who were not managers in the
25 company. There was a group of about 12 of them who

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1 worked with an outside consultant for several

2 months to come up with this insensitive pay
3 arrangement. So it was a plan that was
4 basically -- the genesis of it was with that
5 employee group.

6 Q. And the approval for it, how high of a
7 level did it go to in order to be approved?

8 A. It went to the officer level to be
9 approved.

10 Q. So it wasn't a board decision, it was an
11 officer decision?

12 A. It was an officer level. Two of the
13 officers of the company do serve on the Board of
14 Directors as well. So in a sense, it was a board
15 decision.

16 Q. How big is the board, by the way?

17 A. Nine persons. I'm sorry -- 10 persons. I
18 forget to include myself.

19 COMMISSIONER GAW: I think that's all the
20 questions I have. Thank you. And I apologize for
21 that.

22 THE WITNESS: I'm sorry I didn't get to
23 the genesis of the question.

24 COMMISSIONER GAW: That's all right.

25 JUDGE RUTH: Are there any other

0833

1 Commission questions?

2 Commissioner Murray?

3 BY COMMISSIONER MURRAY:

4 Q. I just have one follow up. And that is
5 with the management incentive plan that was
6 resolved with Staff, is a portion of the management
7 incentive plan being sought for recovery?

8 A. A portion is being sought for recovery,
9 yes.

10 Q. And is that in one of the stip or --

11 A. No. That was just a resolved issue with
12 Staff. I don't think it's represented in a
13 specific stip by itself.

14 Q. Where would we find that issue?

15 A. I think you would have to go back into the
16 Staff work papers. Ms. Fischer does refer to it in
17 one of her testimonies. There's a \$22,000
18 disallowance for the management incentive plan. I
19 do remember the amount.

20 COMMISSIONER MURRAY: Okay. Thank you.

21 JUDGE RUTH: Any additional Commission
22 questions?

23 We'll move to recross based on questions
24 from the Bench.

25 Mr. Conrad?

0834

1 MR. CONRAD: No questions. Thank you.

2 JUDGE RUTH: Mr. Coffman?

3 MR. COFFMAN: No questions.

4 JUDGE RUTH: Mr. Dottheim?

5 MR. DOTTHEIM: No questions.

6 JUDGE RUTH: Empire, it's your redirect.

7 MR. SWEARENGEN: Thank you. Just a
8 couple.

9 REDIRECT EXAMINATION BY MR. SWEARENGEN:

10 Q. Mr. McKinney, I think Commissioner Lumpe
11 and Commissioner Murray got this matter cleared
12 up. I was confused a little bit, too, during

Mr. Dottheim's cross-examination, because I started hearing the phrase merit increase and Incentive Awards used interchangeably. And I think maybe it was done that way perhaps for the first time in the question and possibly in an answer or two that you may have provided. I think you have cleared that up, but I just want to -- if I can beat this dog to death one last time.

If you would look at your supplemental surrebuttal testimony, at the bottom of page 2 and then over on page 3 where you define the three separate components of Empire's compensation for non-bargaining unit, non-officer employees you set

out Merit Increases, Incentive Awards and Discretionary Awards. You're not changing any of that testimony now, are you?

A. Absolutely not.

Q. And the Incentive Awards, which are shown on page 3, Item No. 2 are the dollars that are at issue in this case this afternoon; is that correct?

A. That's correct, yes.

Q. Now, Commissioner Simmons asked you about the traditional test that you have referred to, and in response you reference the fact that it's your understanding that the Staff, for purposes of the issue that is before us, is applying a test which the Commission applied in a Union Electric case involving a management incentive plan; is that correct? Was that your testimony?

A. Yes, it was.

Q. Is the incentive compensation, which is at issue here today, in your mind that incentive compensation for hourly workers, a management incentive plan?

A. No, it's not. Not at all.

Q. You have a management incentive plan, do you not?

A. We do have a management incentive plan for the officers of the company.

Q. And that's what Commissioner Gaw was getting at with respect to his questions about Exhibit 115; is that your understanding?

A. That's correct, yes. That those numbers should not be included in this issue.

Q. That some Empire employees, who are under the management incentive plan, their names appears on that list along with dollar amounts; is that true?

A. That's correct.

Q. And that's not something that we're hopefully arguing about here today?

A. We've already argued about that.

Q. I think Mr. Dottheim was asking you some questions also in response to your answer to Staff Data Request 318, which is Exhibit 115. And you indicated that Empire awarded incentives in some instances even though no goals have been set for the year 2000. Do you remember that answer?

A. Yes, I do. Yes.

Q. And my question to you is, why did you do

24 that?

25 A. The reason we did that was during 2000, we
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1 were operating with an extremely short work force.
2 Typically in our organization we'll have 15 to 20
3 vacancies. We had 60 vacancies for most of the
4 year. As the year went on, we got closer and
5 closer to what, I think, all of us perceived to be
6 a closing of the merger, became and more difficult
7 to try to hire anyone. Particularly anyone with
8 utility experience.

9 And as a result of that, we were asking
10 people who were working with short department to
11 try to complete all the work that had to be done.
12 We were asking people to work extra hours. People
13 that were salaried, we were asking them to work
14 extra hours. So people stretched just to keep the
15 organization intact and to keep providing service
16 to customers through the year.

17 As a result of that in February when we
18 found ourselves with no merger taking place, and
19 we're all still there and we're all still
20 operating, it only seemed appropriate to reward
21 those employees who have really extended themselves
22 on behalf of our company and our customers.

23 Q. Mr. Dottheim also asked you about Empire's
24 overall compensation levels as they might compare
25 to other companies. Do you remember that question?

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1 A. Yes, I do.

2 Q. And I think you indicated that in making
3 your statement in your testimony on that point that
4 you had looked at EEI, Edison Electric Institute
5 data, was that your answer?

6 A. Yes, it was.

7 Q. And I'm going to use the word bandwidth.
8 What bandwidth of companies did you look at when
9 you reviewed that material for purposes of reaching
10 the conclusion you reached?

11 A. The EEI data encompasses every electric
12 utility and some electric and gas utilities and
13 some independent energy producers in the United
14 States, and we looked at that. That data is
15 further broken down by revenue bands. And the
16 group of companies that we compare ourselves with
17 is revenue less than \$1,000,000,000. So we fall in
18 the small end of that.

19 We don't try to get to the mid-point of
20 those. If we did, salaries at my level would
21 probably be at least 50 percent higher than they
22 are. We run around the 25th percentile where our
23 revenue would fall in that band as well. So that
24 study is done annually for EEI by Towers Parns
25 (phonetic sp). It's an extensive report. And we

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1 look at the jobs that are identified. Now, not all
2 jobs are clearly identified, and you get a clearly
3 one for one match. Sometimes you have to interpret
4 the data a little bit.

5 Q. And is that the type of data that you look
6 at when you make decisions about the amount of
7 Merit Increases that you talk about on page 2 of
8 your supplemental surrebuttal testimony, you look

9 at that type of data in helping you make those
10 Merit Increase decisions?

11 A. Yes. We will look at the average
12 increases over a period of time, the job values
13 that we can identify and whether or not those job
14 values have increased. Each job gets valued
15 according to the surveys. So there is no cost of
16 living and no broad band movement of living --

17 Q. Once again, those --

18 A. -- for those salaries. Excuse me.

19 Q. Once again, those Merit Increases are
20 adjustments to the employees base pay; is that
21 true?

22 A. That's correct, yes.

23 Q. And once they are set, they do not change;
24 is that true?

25 A. They do not change until the survey data

0840

1 would indicate that there's justification to
2 increase those.

3 Q. But the Incentive Awards, which are at
4 issue here, are not set; is that true?

5 A. They are not set and they are not added
6 into the base of the salary. They are a one-time
7 payment. You receive it today and it's gone
8 tomorrow.

9 Q. Finally, Mr. Dottheim began his
10 cross-examination by directing you to a statement
11 you made on page 4 of your supplemental surrebuttal
12 testimony. If you could turn there for a minute,
13 and I'll direct you to the statement that
14 Mr. Dottheim focused on. It's on lines 7, 8 and 9
15 where you indicated that Staff work papers in case
16 ER-97-81 indicate the inclusion of incentive
17 payroll. And then you say so the Incentive Awards
18 should not have been a new item to Staff. Do you
19 recall Mr. Dottheim's questions about that
20 statement?

21 A. Yes, I do.

22 Q. Looking at the top of that page, is it my
23 understanding that -- the question is, What is your
24 understanding of whether or not the Staff had been
25 aware of the Incentive Awards prior to this case.

0841

1 And you indicate, Yes. Please explain. And your
2 answer beginning on line 6 and ending on line 9 is
3 your attempt to explain why you think that Staff
4 should have been aware of the Incentive Awards
5 prior to this case; is that correct?

6 A. That's absolutely right, yes.

7 Q. And then Mr. Dottheim asked you quite a
8 few questions about a document, which is a
9 memorandum in support of the stipulation and
10 agreement in that case, ER-97-81 case. I don't
11 know. Do you have that document in front of you?

12 A. It's here in the stack. I can find it.

13 Is it the document in support of the stipulation?

14 Q. Memorandum in support of stipulation and
15 agreement. The packet that he gave me had a cover
16 letter on the top.

17 A. Yes, I have it.

18 Q. Dated April 16, 1997. If you would turn
19 to page 6 of the memorandum in support of the

20 stipulation and agreement?

21 A. Yes.

22 Q. Down there four lines, five lines from the
23 bottom, there's an item highlighted, Incentive Pay;
24 is that correct? It's not highlighted, but it
25 appears the words Incentive Pay?

0842

1 A. Are you on page 6?

2 Q. Page 6 of the memorandum in support of the
3 stipulation and agreement. It has, Staff
4 reconciliation to stipulated revenue requirement.

5 Can I approach the witness for a moment?

6 JUDGE RUTH: Yes.

7 THE WITNESS: I'm there. The payroll
8 issue?

9 BY MR. SWEARENGEN:

10 Q. It says, Corrections to payroll and
11 incentive pay; is that correct?

12 A. Yes.

13 Q. And Mr. Dottheim pointed that out to you,
14 did he not?

15 MR. DOTTHEIM: I object. I don't believe
16 I pointed out that line to Mr. McKinney.

17 BY MR. SWEARENGEN:

18 Q. Well, if he didn't, I will point it out to
19 you, Mr. McKinney. That is on the document that
20 Mr. Dottheim cross-examined you about; is that
21 true?

22 A. Yes.

23 Q. Then turn to page 7, if you would,
24 please. The next page about a third of the way
25 down is a line, Payroll, slash, incentive

0843

1 compensation?

2 A. Yes.

3 Q. And then finally, turn over to page 9.

4 A. Yes.

5 Q. Item 5, Payroll, slash, incentive
6 compensation?

7 A. Yes.

8 Q. And then the next line during
9 prehearing -- Empire during prehearing sought
10 inclusion of an incentive compensation payment made
11 in February 1997?

12 A. Yes.

13 Q. And that's when you make the incentive
14 compensation payments, is it not, in February of
15 1997?

16 A. Yes.

17 Q. My question to you is, looking at those
18 three pages, those items I pointed out, what would
19 you conclude from this with respect to the Staff's
20 knowledge of the item known as incentive pay prior
21 to the case that we're litigating today?

22 A. Well, my conclusion, as I state in my
23 testimony was, that Staff seemed to be aware of the
24 issue of incentive pay, because we had dealt with
25 it in the '97 case.

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1 MR. SWEARENGEN: Thank you. That's all I
2 have.

3 JUDGE RUTH: Okay. Thank you.

4 Mr. McKinney, you may step down.

(WITNESS EXCUSED.)

JUDGE RUTH: It is now five minutes after 3. We will take a 15-minute break and start back up at 3:20. We're off the record. Thank you.

(OFF THE RECORD.)

JUDGE RUTH: Before we took a break, we had finished with Empire's witness Mr. McKinney. We are now ready for Staff to call a witness. I'm sorry. Mr. Dottheim?

MR. DOTTHEIM: Yes. At this time I'd like to offer Exhibits 115 and 116.

JUDGE RUTH: I notice we are missing Mr. Coffman and Mr. Conrad. However, I said we would start at 3:20, and it's 3:24. So let me ask the other parties first on Exhibit 115. It's the highly confidential response to Staff Data Request No. 318. Are there any objections to this being admitted into the record?

Empire, you're the only one present. Do you --

MR. SWEARENGEN: We have no objection.

JUDGE RUTH: I'll note then for the record that Mr. Conrad and Mr. Coffman were not present, and the Exhibit 115 will be admitted into the record.

(EXHIBIT NO. 115 WAS RECEIVED INTO EVIDENCE.)

JUDGE RUTH: Mr. Dottheim also offered Exhibit 116. It's a highly confidential Company response to Staff Data Request No. 331. Are there any objections from the parties to admitting this document? Again, Mr. Coffman and Mr. Conrad are not present, and the exhibit will be admitted into the record.

(EXHIBIT NO. 116 WAS RECEIVED INTO EVIDENCE.)

JUDGE RUTH: Mr. Dottheim, did you have anything further?

MR. DOTTHEIM: No I didn't.

JUDGE RUTH: Thank you. Then would you please call your next witness.

MR. DOTTHEIM: The Staff would call as a witness on the Incentive Compensation Issue, Janis E. Fischer.

(WITNESS SWORN.)

JUDGE RUTH: Thank you. Please be

seated.

Mr. Dottheim?

JANIS E. FISCHER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DOTTHEIM:

Q. Would you please state your name and business address for the record.

A. Janis E. Fischer, and it's J-a-n-i-s, Fischer, F-i-s-c-h-e-r. My business address is 3675 Nolan Road, Independence, Missouri 64055.

Q. And would you please state the nature of your employment?

A. I'm employed by the Missouri Public Service Commission as a regulatory auditor.

Q. Ms. Fischer, do you have before you copies

16 of what have been marked as Exhibit 50, your direct
 17 highly confidential testimony in this proceeding,
 18 Exhibit 51 your non-proprietary direct testimony,
 19 Exhibit 52 your rebuttal testimony in this
 20 proceeding, highly confidential; Exhibit 53, your
 21 non-proprietary rebuttal testimony in this
 22 proceeding; Exhibit 54 which has been marked as
 23 your surrebuttal testimony in this proceeding;
 24 Exhibit 112 which is your supplemental surrebuttal,
 25 that is the highly confidential version of your

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1 supplemental surrebuttal testimony; and Exhibit 113
 2 which is the non-proprietary version of your
 3 supplemental surrebuttal testimony in this
 4 proceeding?

5 A. I only have the HC versions because the
 6 others are repetitive.

7 Q. That's fine.

8 A. I do have two corrections to make.

9 Q. Yes. Would you state at this time if you
 10 do have any correction?

11 A. Yes, I do. The first one is in my direct
 12 testimony on page 13, on line 8. The line reads,
 13 The union employee pay increases effective
 14 November 6, 1999. The year should be 2000 instead
 15 of 1999.

16 Q. All right. And that correction would be
 17 for both Exhibit 50 and Exhibit 51, both the highly
 18 confidential and the non-proprietary versions of
 19 your direct testimony?

20 A. Yes. And then I have one other correction
 21 in the supplemental surrebuttal. That is on
 22 page 9, line 11. The line reads, Example of an
 23 Incentive Award that is not quantifiable, and I
 24 would like to insert the word goal after the word
 25 award, so that it reads, Example of an Incentive

0848

1 Award goal.

2 Q. And that correction would be to both
 3 Exhibit 112, which is the highly confidential
 4 version of your surrebuttal testimony and Exhibit
 5 113, which is the non-proprietary version of your
 6 supplemental surrebuttal testimony?

7 A. Yes, that's correct.

8 Q. If I were to ask you the same questions
 9 that are contained in your direct, rebuttal,
 10 surrebuttal and supplemental surrebuttal as just
 11 corrected, would your answers be the same?

12 A. Yes, they would be.

13 Q. Is the information contained therein true
 14 and correct to the best of your knowledge and
 15 belief?

16 A. Yes, it is.

17 MR. DOTTHEIM: At this time I would offer
 18 Exhibits 50, 51, 52, 53, 54, 112 and 113 and tender
 19 Ms. Fischer for cross-examination.

20 JUDGE RUTH: Okay. Thank you. First
 21 let's address Ms. Fischer's HC direct, which is
 22 Exhibit 50, and the NP direct, Exhibit 51. Are
 23 there any objections to these two documents being
 24 admitted into the record?

25 MR. SWEARENGEN: We have none.

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1 JUDGE RUTH: Seeing no objections,
2 Exhibits 50 and 51 are received into the record.
3 (EXHIBIT NOS. 50 AND 51 WERE RECEIVED INTO
4 EVIDENCE.)

5 JUDGE RUTH: Exhibit 52 is Ms. Fischer's
6 HC rebuttal, Exhibit 53 is her NP rebuttal. Are
7 there any objections to these two documents?

8 MR. SWEARENGEN: We have none.

9 JUDGE RUTH: Then these two documents are
10 also admitted into the record.
11 (EXHIBIT NOS. 52 AND 53 WERE RECEIVED INTO
12 EVIDENCE.)

13 JUDGE RUTH: Exhibit 54 is Ms. Fischer's
14 surrebuttal testimony. Are there any objections to
15 this document?

16 MR. SWEARENGEN: We have none.

17 JUDGE RUTH: Okay. Seeing no objections,
18 Exhibit 54 is also received into the record.
19 (EXHIBIT NO. 54 WAS RECEIVED INTO
20 EVIDENCE.)

21 JUDGE RUTH: Exhibits 112 and 113 are the
22 supplemental surrebuttal. The first one is the HC,
23 113 is the NP. Are there any objections to these
24 two documents?

25 MR. SWEARENGEN: We have none.

0850 1 JUDGE RUTH: Okay. Then Exhibits 112 and
2 113 are also admitted into the record.
3 (EXHIBIT NOS. 112 AND 113 WERE RECEIVED
4 INTO EVIDENCE.)

5 JUDGE RUTH: Thank you.
6 Praxair, are you ready to begin
7 cross-examination?

8 MR. CONRAD: Yes, ma'am. Thank you.
9 CROSS-EXAMINATION BY MR. CONRAD:

10 Q. Ms. Fischer, Stuart Conrad for Praxair. I
11 just have one very quick thing I wanted to ask
12 you. If you could just, in a nutshell -- you heard
13 Mr. McKinney earlier today, if you could just, in a
14 nutshell, tell me why it is that Staff is proposing
15 to disallow these -- and I believe it's the
16 incentive compensation we've settled on; is that
17 correct?

18 A. Yes.

19 Q. Just quickly.

20 A. In reviewing what Empire provided in
21 reference to their Incentive Awards, Staff compared
22 those awards in the criteria set in order to give
23 those awards based on what we believe to be the
24 Commission's criteria set out in the UE case, and
25 that's basically the criteria that we applied in

0851 1 that. The awards would have to be based upon goals
2 that both showed improvement in job performance and
3 also were quantifiable that they would apply back
4 to the plan.

5 And the other criteria that we also looked
6 at was the fact based on the information we
7 received from the company was that goals were not
8 actually even put in place for most employees for
9 the year 2000 based on the merger activity at the
10 time. So I guess there's actually more than one
11 part to why we disallowed. First, being the fact

12 that there weren't any goals set, and then also,
13 that led to the fact that they didn't meet the
14 criteria.

15 Q. So really the two points. One, is
16 comparing in your view to the UE standard that
17 those two things didn't jive, and so that's out.
18 And then there was an administrative problem to it?

19 A. Yes, that's correct. The fact that the
20 year 2000 did not lend itself to even follow the
21 plan that Empire had in place, which would be to
22 set goals. And then based on the performance of
23 the goals determined if the Incentive Awards were
24 allowable or not.

25 MR. CONRAD: Okay. Thank you.

0852

1 Thank you, your Honor.

2 JUDGE RUTH: Mr. Coffman?

3 MR. COFFMAN: No questions.

4 JUDGE RUTH: Mr. Swearengen?

5 MR. SWEARENGEN: Yes, thank you.

6 CROSS-EXAMINATION BY MR. SWEARENGEN:

7 Q. Good afternoon, Ms. Fischer.

8 A. Good afternoon.

9 Q. I have just a few questions for you. I
10 looked at Schedule 1 to your direct testimony where
11 you indicated a summary of rate case testimony you
12 filed, and I want to make sure I understand the
13 only two rate cases that you have been involved in
14 prior to the present case is the Empire District
15 Electric Company case ER-97-81 and the Union
16 Electric Company gas rate case 97-393; is that
17 correct?

18 A. Yes. Well, those are the only two cases
19 that I filed testimony on. I also was involved in
20 a KCPL electric rate case 99, I believe, it's 313,
21 but we settled that case before we actually wrote
22 testimony.

23 Q. Okay. Thank you.

24 In the prior Empire case ER-97-81, did
25 your work and responsibilities in that case concern

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1 or involve employee compensation or payroll issues?

2 A. No, they did not.

3 Q. How about the Union Electric Company case
4 GR-97-393?

5 A. No. That was not in my area.

6 Q. So would it be fair for me to say that
7 perhaps this is the first time that you have looked
8 at these types of issues in a rate case?

9 A. Well, the KCPL case that I mentioned
10 earlier that we settled, I was assigned to payroll
11 and benefits in that case.

12 Q. So you did do some work in payroll and
13 benefits in that case; is that right?

14 A. Yes, I did.

15 Q. Prior to commencing your work in this
16 particular case, the present Empire case, did you
17 go back and review the audit work papers from the
18 prior case, ER-97-81?

19 A. Yes, I did.

20 Q. And did you review the memorandum in
21 support of the stipulation and agreement in that
22 case which Mr. Dottheim cross-examined Mr. Myron

23 McKinney about?

24 A. No. I don't believe that I saw that prior
25 to a few weeks ago.

0854

1 Q. In ER-97-81, do you recall were any of
2 Empire's base salaries or the base level of
3 compensation for Empire employees disallowed by the
4 Staff for rate-making purposes? And I'm talking
5 about non-incentive-type compensation. I'm talking
6 about base salaries, base levels of compensation.

7 A. Based on that time and place or --

8 Q. In that case. In the ER-97-81 case, did
9 the Staff disallow any of Empire's base
10 compensation for rate making purposes?

11 A. I don't recall seeing that it was
12 disallowed.

13 Q. Okay. And would I be correct in
14 understanding in this case, ER-2001-299, that the
15 Staff has not proposed to disallow any of Empire's,
16 and I will call it base salaries or base level of
17 compensation?

18 A. That's true.

19 Q. Would you agree that your understanding of
20 the three types of compensation which Empire
21 utilizes for its non-officers, non-union workforce
22 is as described in Mr. McKinney's supplemental
23 surrebuttal testimony, and he was cross-examined
24 rather extensively on that. He listed the three
25 categories, Merit Increases, which are not an issue

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1 in this case; Incentive Awards, which is the issue;
2 and Discretionary Awards or the Lightning Bolts,
3 which are not at issue. Would you agree with your
4 understanding that -- is your understanding the
5 same as Mr. McKinney's as set out in his testimony?

6 A. That those are the three opportunities for
7 incentive compensation? I'm sorry. I missed
8 the -- I don't remember the first part of your
9 question.

10 Q. Is your understanding of the three types
11 of compensation Empire utilizes for its
12 non-officers, non-union workforce as described in
13 Mr. McKinney's supplemental surrebuttal?

14 A. Well, those three forms of compensation do
15 not include the base compensation. So I really
16 wouldn't agree that those are the only compensation
17 available to employees.

18 Q. So you would add base compensation to that
19 then?

20 A. And if we're including all employees,
21 there is the management incentive plan.

22 Q. Okay.

23 A. I believe that's all that I can think of
24 right now.

25 Q. So within base compensation, the

0856

1 management incentive plan or the MIP, the Incentive
2 Awards, the Discretionary Awards, and the Merit
3 Increases, you pretty much get everything then; is
4 that right?

5 A. Actual dollars that flow through
6 paychecks, yes. If you want to include
7 compensation as to benefits, then there would be

8 additional.

9 Q. I understand. The information in which
10 you requested in Staff Data Request 139 in this
11 case is set out in your supplemental surrebuttal
12 testimony, is it not, at page 2 beginning at line
13 15?

14 A. Yes.

15 MR. SWEARENGEN: Could I approach the
16 witness, please?

17 JUDGE RUTH: Yes.

18 BY MR. SWEARENGEN:

19 Q. Ms. Fischer, I'm going to hand you in a
20 minute Staff Data Request No. 145 from Empire's
21 last rates case ER-97-81. And I'm going to ask you
22 just to read into the record the information
23 requested on that document.

24 A. It states, Information requested. Please
25 provide the amount of discretionary compensation

0857 1 awards budgeted in 1994, 1995 and 1996. Also
2 provide a list of awards presented since January 1,
3 1994 indicating, A, the recipient, B, a description
4 of the performance being recognized, C, actual
5 dollar amount of award, D, accounting treatment
6 for, I believe it's those awards on Empire's books
7 and record and, E, quantify the benefit to the
8 ratepayer of the idea or performance being
9 recognized.

10 Q. Thank you. Now, Ms. Fischer, let me ask
11 you this question: Other than the change in the
12 dates, would you agree with me that that Data
13 Request No. 145 from ER-97-81, the last Empire
14 electric rate case, is virtually identical to the
15 Staff Data Request 139, which you describe on page
16 2 of your supplemental surrebuttal testimony?

17 A. Yes, it is.

18 Q. And would you agree that in both cases, if
19 you know, that Empire provided the information
20 requested, which was the amounts for discretionary
21 compensation awards; is that true?

22 A. They provided a portion of what I was
23 asking for. So I couldn't really say that in this
24 case they provided everything at this point in time
25 I would have expected to be included.

0858 1 Q. Well, let me ask you this: Did you go
2 back and look at the data request that I just asked
3 you to read in the record from the prior case Data
4 Request 145?

5 A. Yes.

6 Q. And did you look at the information that
7 was provided in response to that Data Request 145
8 in KCR 97-81?

9 A. Yes, I did.

10 Q. And is it your testimony that the
11 information -- let me ask you this question: Was
12 not the information that was provided in response
13 to your Data Request 139 in this case, the same
14 information that the Company had provided to the
15 prior response or request in the prior case?

16 A. Actually the response in this case wasn't
17 as complete as in the other case. I believe in the
18 prior case they quantified the benefits. And in

19 this case, I believe, that's part E, they did not
20 quantify the benefits.

21 Q. But all that had to do with the item of
22 discretionary compensation awards, is that not
23 true, because that's what the data requests asked
24 for in this case and also the prior case?

25 A. We asked for discretionary compensation

0859

1 award information, and they provided what was
2 characteristic of the response in the last case,
3 which referred more specifically to what now is
4 called the Lightning Bolt Awards.

5 Q. Well, let me ask you about that. In your
6 supplemental surrebuttal testimony at page 2,
7 line 25, you indicate, The response from Empire to
8 Data Request 139 did not include the 323,000
9 Incentive Awards or any indication that the
10 Incentive Awards Program existed; is that correct?

11 A. Yes, that's correct.

12 Q. That's what you say?

13 A. Yes.

14 Q. Do you have your rebuttal testimony with
15 you?

16 A. Yes, I do.

17 Q. If you would take a look at that, please,
18 and turn to page 7?

19 A. Yes.

20 Q. Do you have that?

21 A. Yes, I do.

22 Q. There beginning on line 14, you talk about
23 what Empire addressed in the terms of bonuses and
24 incentive pay. And direct testimony your answer,
25 No. Empire did not address in its direct testimony

0860

1 its support for inclusion in cost of service,
2 bonuses and incentive pay. Although the annualized
3 payroll adjustments included in Company Witness
4 Gibson's Section J, Schedule 2 reflect the
5 inclusion of bonuses and incentive pay, period.
6 The work papers of the Company supporting Section
7 J, Schedule 2 of Mr. Gibson's direct testimony,
8 which were provided in response to Data Request
9 No. 1, indicate that an amount for bonuses and
10 incentive pay was included in the payroll
11 annualization summary. Is that correct, that's
12 your testimony?

13 A. Yes, it is.

14 Q. On your surrebuttal testimony, if you
15 would turn to that, please, page 10, line 15. Do
16 you have that?

17 A. Yes.

18 Q. Down there on line 15 you say, Incentive
19 compensation recovered from ratepayers should only
20 reward employees for performance that is both
21 exceptional and beneficial to ratepayers. In other
22 words, employee performance that is beyond an
23 employee's usual job description of beneficial
24 ratepayers.

25 Let me ask you this: Is it your

0861

1 understanding that that standard comes from the
2 Union Electric case, which was discussed earlier,
3 and I think appears in your testimony?

A. Yes.

Q. Would you agree that under this standard, an Empire clerk who works in stockholder records could never receive an Incentive Award, regardless of how that person works or how the job might be stretched?

A. It would depend on the goals that were actually set for the individual. I don't have the job requirements for that individual. It appears that if you were in -- your job duty was focused on shareholder benefits, although maintaining the records would be something that would be required in any organization. I don't really believe that we would necessarily exclude that person from being eligible if they met the criteria.

Q. Okay. Thank you.

On your surrebuttal testimony, page 10, line 19, you go on to say, To reward employees for activities that they are required to do as a part of the normal job duties would be duplicative and should not be borne by ratepayers.

If an employee is, let's say, at full-job value and does not receive a Merit Award, which is an increase to base salary, but that employee does reach clearly defined stretch goals, that wouldn't be duplicative, would it?

A. If we're defining incentive compensation and looking at the criteria set by the Commission, stretch goals, if that relates to improve job performance beyond what is considered normal job duties, I believe it would be -- it would be -- they would be in a category where they possibly could receive the awards.

Q. So your answer, I think, then would be yes to the question?

A. Yes.

Q. And assuming those things that happened, would you agree that that employee should get an Incentive Award under those circumstances?

A. Could you repeat the question?

Q. Assuming those things happened, would you agree that the employee should get an Incentive Award under those circumstances?

A. Are you referring to the things that I said would have to happen?

Q. Right.

A. They would have to have set goals and the goals would have to show -- represent improve job performance, and then the supervisor of person in charge of determining the outcome would be able to quantify those goals, that would appear to me to meet the criteria set by the Commission, yes.

Q. And my question earlier was, the employee is at full-job value and, therefore, didn't receive a Merit Award, and I think you said yes to all that, and I understand how you qualified it?

A. Well, I guess I know there's been some confusion as to the difference between Merit Award and Incentive Award. My understanding is that the Merit Award is based on the review of the surveys and how that employee measures up compared to the

15 job market or their base.

16 Q. That's right.

17 A. And that according to Empire's plan, those
18 individuals still must meet base goals in order to
19 qualify for that. And then the Incentive Awards
20 are above the recognition of the market base. So
21 with my understanding, the Incentive Awards are
22 available for people that have already talked out
23 or met the market level for their job.

24 Q. Okay. So they would be at full-job value
25 then under those circumstances?

0864

1 A. Right.

2 Q. But once again, I think your answer would
3 be yes. You said that if they did all those things
4 they should get an Incentive Award. Should that
5 award then be included in rates for rate making
6 purposes?

7 A. If they meet the criteria sent by the
8 Commission and if -- yes. I believe they would be
9 eligible to receive the Incentive Awards.

10 MR. SWEARENGEN: Could I have just a
11 minute, please?

12 JUDGE RUTH: Yes.

13 MR. SWEARENGEN: Could I approach the
14 witness?

15 JUDGE RUTH: Yes. Are going to show the
16 witness something?

17 MR. SWEARENGEN: I am.

18 JUDGE RUTH: Are you going to show it to
19 counsel first?

20 MR. SWEARENGEN: I am.

21 JUDGE RUTH: Thank you.

22 BY MR. SWEARENGEN:

23 Q. Ms. Fischer, I'm going to hand you a
24 document. At the top it says, Union Electric 29
25 MoSMo PCS new series 325. And it discusses under

0865

1 Item F, Management Incentive Plan?

2 A. Yes.

3 Q. Are you familiar with that?

4 A. Yes, I have seen this before.

5 Q. What is your understanding of what that
6 is?

7 A. This is part of the order for the Union
8 Electric Case ER-87-114.

9 Q. And is that the case that you referred to
10 in your testimony?

11 A. Yes.

12 Q. And is that the case which in your view
13 sets the standard which the Commission should apply
14 in this instance?

15 A. Yes.

16 Q. Now, back once again on your surrebuttal,
17 page 10, line 15, you say that, Incentive
18 compensation recovered from ratepayers should only
19 reward employees for performance that is both
20 exceptional and beneficial to ratepayers. In other
21 words, employee performance that is beyond the
22 employee's usual job description and beneficial to
23 ratepayers. Is that standard mentioned in that
24 language in that decision that you have in front of
25 you?

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1 A. Well, the wording isn't the same, but I
2 believe the intent is the same.

3 MR. SWEARENGEN: Okay. Thank you. That's
4 all I have.

5 JUDGE RUTH: Mr. Swearengen, I just wanted
6 to clarify. You did show the witness a couple of
7 documents. Do you intend to mark those or offer
8 those?

9 MR. SWEARENGEN: I do not.

10 JUDGE RUTH: Thank you.

11 MR. SWEARENGEN: Thank you.

12 JUDGE RUTH: Chair Lumpe, do you have
13 questions?

14 CHAIR LUMPE: Just a few.

15 QUESTIONS BY CHAIR LUMPE:

16 Q. Ms. Fischer, in your testimony you did not
17 suggest that Staff was unaware of earlier incentive
18 plans, did you?

19 A. The position I have and what happened was
20 that we were aware that Empire had a management
21 incentive plan, and we were also aware of the
22 Lightning Bolts. And in my issuing or in Staff's
23 issuing of that initial data request, which I
24 wasn't the actual person that submitted it, we were
25 trying to encompass anything that might be out

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1 there. And I understand that there was some
2 misunderstanding in exactly what we were asking
3 for, and then when what we received, we relied on
4 it when we shouldn't have as the circumstances have
5 shown.

6 Q. So you knew there were some plans, but you
7 were trying to find out what the total --

8 A. Right. I wanted to review everything that
9 they had, so that I could make a determination as
10 to whether it would be allowable or not.

11 Q. And if I understood you correctly, using
12 the criteria from the UE case, your concern about
13 the incentive plan here was that no goals were
14 required based on the merger having not taken
15 place, and so supervisors did not have to make sure
16 that someone had established goals. Was that your
17 concern?

18 A. Our initial concern was based upon the
19 fact that for the year 2000 there were not goals
20 specific for individuals for the majority of
21 employees at Empire, and that without the goals, we
22 wouldn't measure whether improved job performance
23 had occurred or whether the things that did occur
24 actually benefitted ratepayers.

25 Q. And part of the reason there were no goals

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1 was because of the merger intervention and that
2 sort of thing?

3 A. That's my understanding based upon what
4 Empire responded in the data request.

5 Q. In your surrebuttal on page 9, line 23,
6 would you explain what you mean by that sentence to
7 me?

8 A. The sentence reads, If these awards are
9 already included as expenses during the test year,
10 and it is determined by the Staff -- okay. Just

11 let me read it here. I think at that point what I
 12 was trying to do was to convey that if we found
 13 that we had already included the Incentive Awards,
 14 that we would not include them a second time. That
 15 we would try to clear it up so that they would be
 16 recognized once.

17 Q. Only once. Okay. And I think -- yes. It
 18 was Commissioner Murray that asked Mr. McKinney.
 19 He talked about using a four-year average, and you
 20 were suggesting a five-year average. Would you
 21 explain that?

22 A. In my review of the management incentive
 23 plan, I used a five-year average. And what I did
 24 in that case, I went back to each of the preceding
 25 five years, determined which goals were ratepayer

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1 driven versus shareholder driven. I disallowed the
 2 ones that were shareholder driven, and then
 3 averaged the five years based on what would be
 4 acceptable because of benefitted ratepayers. And
 5 the management incentive plan is much more
 6 quantified as to the goals, and specifically each
 7 employee identifies how they believe they met the
 8 goal.

9 So then when I -- was unaware of exactly
 10 what we actually had in the Incentive Awards, I
 11 assumed that if we found that they met the
 12 criteria, that we could also look at a five-year
 13 average. The problem we have now is that, in
 14 reviewing the DR-331, which included the actual
 15 base objectives and incentive objectives, we found
 16 that -- I would say in every employee that I
 17 reviewed, there were some incentive objectives that
 18 I didn't think met the criteria, and that they
 19 didn't really stretch the individual to perform,
 20 improve job performance, and that they were also
 21 hired to quantify or extend it to ratepayer
 22 benefits.

23 So I believe a five-year average or a
 24 four-year average could be used if the plan met the
 25 criteria, but --

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1 Q. So the criteria are still significant to
 2 you?

3 A. Yes. And that it wasn't met, wouldn't
 4 allow me to use the average.

5 CHAIR LUMPE: Okay. Thank you. That's
 6 all.

7 JUDGE RUTH: Commissioner Murray?

8 COMMISSIONER MURRAY: Thank you.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. I just want to clarify your final position
 11 on this.

12 A. Yes.

13 Q. The Staff is taking the position that none
 14 of the Incentive Awards should be allowed; is that
 15 correct?

16 A. That's correct.

17 Q. And you're basing that on the fact that
 18 you don't think the plan met the criteria?

19 A. That and -- yes. And specifically the
 20 fact that goals weren't set in 2000, which makes it
 21 impossible for Empire to have met the criteria in

22 that year specifically.

23 Q. Do you think it is reasonable for the
24 company to have had an incentive plan to have
25 rewarded its employees for what they consider an

0871 1 outstanding performance?

2 A. I believe that a company should have that
3 discretion to enact an incentive plan that if
4 demonstrated to meet the criteria, would be
5 allowable.

6 Q. And if this Commission were to disagree
7 with Staff to the point that we felt that the
8 Incentive Awards should be allowed, would it be
9 Staff's recommendation to use a five-year average?

10 A. If the Commissioners determine that the
11 goals -- that the criteria had been met, which is
12 not Staff's position, but if that were the case,
13 then it would be similar to the management
14 incentive plan, and I believe we would accept an
15 average.

16 Q. Based on five years?

17 A. Well, to normalize it, and I believe
18 Empire agreed that they would include in the
19 average as zero for the year 2000 since the goals
20 had not been met. That's my understanding. We
21 would want to include a zero, and I believe that
22 was included in Mr. McKinney's computation of the
23 200 and -- I'm not sure if it's 23 or 25,000 for
24 his four-year average.

25 COMMISSIONER MURRAY: All right. Thank

0872 1 you.

2 JUDGE RUTH: Commissioner Gaw?

3 COMMISSIONER GAW: I have no questions.

4 JUDGE RUTH: Okay. We'll have recross
5 based on the questions from the Bench.

6 Mr. Conrad?

7 MR. CONRAD: Nothing further, your Honor.

8 Thank you.

9 JUDGE RUTH: Mr. Coffman?

10 MR. COFFMAN: No questions.

11 JUDGE RUTH: Mr. Swearingen?

12 MR. SWEARENGEN: No questions. Thank you.

13 JUDGE RUTH: Redirect, Staff?

14 MR. DOTTHEIM: Yes. Just a couple of
15 questions.

16 REDIRECT EXAMINATION BY MR. DOTTHEIM:

17 Q. Ms. Fischer, in response to a question
18 from Mr. Conrad, you made reference to the UE case,
19 the criteria established in the UE case -- and I
20 think Mr. Swearingen provided you a copy -- the
21 very excerpt from the UE case.

22 Has the Commission applied that criteria
23 solely in the context of the UE case?

24 A. No. I've reviewed several orders, maybe
25 half a dozen or so that were related to various

0873 1 types of incentive plans. And I believe the UE
2 case is -- that order is what is cited in all of
3 those others.

4 Q. And those cases you're referring to, are
5 those Missouri Commission cases?

6 A. Yes, they are.

Q. And those are compensation issues that you're referring to?

A. Yes, they would be.

Q. Mr. Swearengen again asked you to read into the record and asked also some questions regarding to Data Request 145 in Case No. ER-97-81. Did the Incentive Award Plan exist at the time of that data request in the form that it presently exists?

A. No. My understanding is that there were Incentive Awards related to 1996, but that the current plan was not effective until goals were set for the year 1997.

Q. I think Mr. Swearengen again referred you to your rebuttal testimony, page 7, where you have referenced to the work papers of the Company. Do you recall whether in the work papers supporting its direct filing, did Empire's specifically set out an amount related to the test year Incentive

Awards?

A. If I recall correctly, the work papers included numbers related to payroll annualization, and there was a line referring to bonuses and incentive pay. And I believe the amount was 400 -- I'm not sure if it was 408,000 or in that ballpark. There was no detail provided explaining what portion of that represented management incentive plan as opposed to Merit Awards versus Incentive Awards versus Lightning Bolts. It was a lump sum.

MR. DOTTHEIM: Thank you. I have no further questions.

JUDGE RUTH: Okay. Ms. Fischer, you may step down. Thank you.

(WITNESS EXCUSED.)

JUDGE RUTH: Based on the procedural schedule that we had set out earlier, we would now move to the issue of Class Cost of Service and Rate Design.

Empire, are you ready to call your first witness?

MR. SWEARENGEN: I think so. I call Mr. Dave Gibson.

JUDGE RUTH: Off the record for a minute.

(OFF THE RECORD.)

JUDGE RUTH: Mr. Gibson, I will remind you that you have previously been sworn.

And, Mr. Swearengen, you may proceed.

MR. SWEARENGEN: Thank you.

DAVID GIBSON, previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. SWEARENGEN:

Q. State your name for the record, please.

A. David Gibson.

Q. And once again, by whom are you employed and in what capacity?

A. Empire District Electric, and I'm Vice President of Finance.

Q. Mr. Gibson, did you cause to be prepared for purposes of this case certain direct testimony, which has been marked Exhibit 6 and certain

18 rebuttal testimony, which has been marked
 19 Exhibit 14?
 20 A. Yes, I did.
 21 Q. And have you prepared and prefilled any
 22 other testimony in this proceeding other than your
 23 direct and your rebuttal testimony?
 24 A. On this issue?
 25 Q. Yes.
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 1 A. No, not on this issue.
 2 Q. Okay. So in other words, anything that
 3 you have, just tell the Commission or that you
 4 would like the Commission to know about the Rate
 5 Design Class Cost of Service issue would be found
 6 in Exhibit 6, your direct testimony or Exhibit 14,
 7 your rebuttal testimony; is that correct?
 8 A. That is correct.
 9 Q. If I asked you the question which are in
 10 Exhibit 6 and 14, would your answers this afternoon
 11 under oath be the same?
 12 A. Yes, they would.
 13 Q. Would they be true and correct to the best
 14 of your, knowledge, information and belief?
 15 A. Yes, they would.
 16 MR. SWEARENGEN: I would offer into
 17 evidence, if it has not already been done so,
 18 Exhibit 6 and 14.
 19 JUDGE RUTH: Okay. My notes indicate that
 20 those have not yet been admitted into the record.
 21 So we would look at Mr. Gibson's direct testimony.
 22 Are there any objections to that being admitted at
 23 this time?
 24 Seeing no objections, Exhibit 6, the
 25 direct testimony is admitted.
 0877
 1 (EXHIBIT NO. 6 WAS RECEIVED INTO
 2 EVIDENCE.)
 3 JUDGE RUTH: Exhibit 14 is Mr. Gibson's
 4 rebuttal testimony. Are there any objections to
 5 this document?
 6 Seeing no objections, Exhibit 14 is
 7 admitted into the record.
 8 (EXHIBIT NO. 14 WAS RECEIVED INTO
 9 EVIDENCE.)
 10 JUDGE RUTH: Staff? Mr. Frey, are you
 11 ready to begin cross-examination?
 12 MR. FREY: We have no questions, your
 13 Honor.
 14 JUDGE RUTH: Mr. Conrad?
 15 MR. CONRAD: Pursuant to the stipulation
 16 that was filed yesterday and subject to the
 17 Commission's approval of that, we would have no
 18 questions for Mr. Gibson on this issue.
 19 JUDGE RUTH: And, Mr. Coffman?
 20 MR. COFFMAN: That would be my same
 21 response. Thank you.
 22 JUDGE RUTH: Thank you.
 23 Then we would move to questions from the
 24 Bench.
 25 Chair Lumpe?
 0878
 1 CHAIR LUMPE: I don't think I have any
 2 questions on the stipulation and agreement. That

3 would be what we would be questioning on? I don't
4 any questions on that.

5 JUDGE RUTH: Commissioner Murray?

6 QUESTIONS BY COMMISSIONER MURRAY:

7 Q. I just want to make sure that I'm clear
8 here. The issues, Class Cost of Service and Rate
9 Design are all covered in the proposed stipulation
10 and agreement between the parties; is that correct?

11 A. Yes, ma'am that is correct.

12 COMMISSIONER MURRAY: Thank you. I have
13 no questions then.

14 JUDGE RUTH: Commissioner Gaw?

15 COMMISSIONER GAW: Thank you.

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. You have reviewed the stipulation and
18 agreement regarding rate design; is that correct?

19 A. Yes, sir, I have.

20 Q. And can you briefly tell me what that
21 stipulation calls for?

22 A. Sure. What we are agreeing to is that the
23 percentage increase that will be realized by rate
24 class will be equal if you exclude the amount of
25 the interim energy charge. That particular amount

0879 1 will be based on usage KWH.

2 Q. And that's excluding the provision dealing
3 with Praxair; is that correct?

4 A. Yes, sir.

5 Q. All right. So in regard to -- tell me
6 again about the last part of your statement, and
7 explain that to me, if you would, regarding the
8 kilowatt hour usage.

9 A. Kilowatt hour usage, what that does is
10 that is intended to -- it's a flat rate. And what
11 that will do if a person uses 100 kilowatt hours or
12 a million, they are going to pay the same amount
13 per kilowatt hour for each customer. That is
14 what -- so if you use more, you pay more and that's
15 it in a nutshell.

16 Q. But the rate is --

17 A. The rate is the same.

18 Q. -- the same?

19 I thought I understood you to
20 differentiate between the two factors. Did I --

21 A. Yes.

22 Q. Can you explain that differentiation,
23 please, for me?

24 A. Yes, sir. What that does is -- let me
25 give you an example. Let's say you have a

0880 1 15 percent increase.

2 Q. A 15 percent increase in what?

3 A. In total rates.

4 Q. All right. Thank you.

5 A. Let's say that we have said that the fuel
6 and purchase power amount amounts to 5 percent.
7 That would mean that the -- and that would be based
8 on a kilowatt-hour basis. That would mean that the
9 base increase that would be left, which would be
10 applied equally to everyone, would be 10 percent.
11 So everyone would get a -- that would be mean,
12 like, the residential, commercial, we would
13 increase their base rates or their rates by

14 10 percent. And then on top of that we would have
 15 an increase based on kilowatt hours used or
 16 consumed, I guess.

17 Q. Can you run through -- is it possible for
 18 you to run through a scenario with hypothetical
 19 numbers to give me an idea of what that might do to
 20 a ratepayer?

21 A. Okay. Let's assume that you use -- let me
 22 make it so -- I'm going to do this in my head.

23 Q. Let's make it simple for all of us it.
 24 That would be nice. Thank you.

25 A. Let's assume that someone uses 1,000

0881

1 kilowatt hours. That would mean at 5 cents apiece,
 2 that would be -- I'm doing it in my head -- \$5 --
 3 no. \$50 excuse me. One decimal point off. That
 4 would be \$50. That would be the usage part.

5 Now, when we look at the base rate, if
 6 based on that, let's assume that your bill would
 7 have been -- make it simple -- \$25. We would apply
 8 a 10 percent increase to that. So that would mean
 9 that your \$25 bill would now be an additional \$2.50
 10 or \$27.50 for the base rate, and then you would add
 11 on top of that the fuel and purchase power or the
 12 IEC piece.

13 Q. All right. Which you have already
 14 described?

15 A. Yes.

16 Q. How does that compare with what has been
 17 done in the immediate past in regard to increases
 18 of Empire, do you know?

19 A. Well, what we propose -- I can tell you
 20 what we proposed. In this case we proposed a flat
 21 increase, so that would be the same for everyone.
 22 So regardless of what your usage was, everyone
 23 would get the same increase. So if you used -- in
 24 our example, if you used 1,000 versus a million
 25 kilowatt hours, percentage-wise you would receive

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1 the same increase. In this case 15 percent. And
 2 this one is a little bit unique, because what it
 3 does is it takes the higher-usage customers, if
 4 they continue to use at that rate, then they pay
 5 more.

6 Q. All right. And the amount of usage is
 7 after the scope of their billing period?

8 A. Yes.

9 Q. Not at particular peak times?

10 A. Well, whatever they use.

11 Q. Whatever they use during a particular
 12 billing period?

13 A. Yes.

14 Q. In total?

15 A. Yes.

16 Q. Now, if you go to the Praxair portion and
 17 explain that for me, please.

18 A. Okay. What that does is, we basically do
 19 the same thing with Praxair. The only difference
 20 is in order to come to a stipulation and agreement,
 21 a unanimous stipulation and agreement, what we did
 22 is we agreed to increase the interruptible piece or
 23 the interruptible credit, if you will, to them by
 24 roughly \$100,000. That part is after we allocate

25 all of the revenue requirements to everyone else.

0883

1 So it doesn't effect the residential customers or
2 other customers. They are not -- they are not
3 going to get -- or receive an increase because of
4 that credit.

5 Q. All right. Are they receiving -- is
6 Praxair receiving a credit currently?

7 A. Yes, they are.

8 Q. Is that disclosed? Do you know what that
9 amount is?

10 A. It's \$3.76 per month.

11 Q. Okay. Per month?

12 A. Yes. And it's going to \$4.86 per month.

13 Actually, going off the top of my head, it's 300
14 and -- I want to say \$50,000 approximately
15 currently. And it will go to 4.50. I think that's
16 in that range.

17 Q. Okay. And that is the amount that is
18 totaling up to the \$100,000 a year?

19 A. Yes. The difference between the two, yes,
20 that's correct.

21 Q. That's the increase?

22 A. Yes, sir.

23 Q. Now, I want to make sure I'm clear about
24 this other part. You're telling me that no other
25 ratepayers are bearing a cost of the Praxair

0884

1 credit?

2 A. That's correct.

3 Q. And so who is bearing the cost on the
4 Praxair credit?

5 A. That's if no one else is, that means that
6 Empire is.

7 COMMISSIONER GAW: That's all I have.

8 Thank you.

9 JUDGE RUTH: Chair Lumpe?

10 CHAIR LUMPE: Yes. I did have a couple of
11 little notes down here.

12 QUESTIONS BY CHAIR LUMPE:

13 Q. And this is on the assumption that there
14 is a refund that would occur. And it says that any
15 check over \$3.00 would not be refunded. Would that
16 then go in to the pool that it would go to the Red
17 Cross; is that where that money would go?

18 A. I believe that's correct, yes, ma'am.

19 Q. Okay.

20 A. That's subject to check, though. I think
21 that's correct.

22 Q. Okay.

23 JUDGE RUTH: Sir, I can't allow you to
24 give an answer subject to check. If you don't know
25 then, the record will just reflect that.

0885

1 THE WITNESS: That's how I remember it,
2 but --

3 BY CHAIR LUMPE:

4 Q. That's fine. And the other feature of
5 this or another feature of this that would collect
6 assuming there is an overage, you would collect
7 that for a full year, and then you would start
8 paying interest after the first year? In other
9 words, no interest would accrue the first year?

10 A. Well, actually what that does mechanically
11 is, you're going to get -- if you think about it,
12 you get -- you start collecting -- it's over a
13 two-year period, so the net effect is, what you do
14 is if you assume that you're going to collect half
15 in one year and half in another year, by putting
16 that language in there, you're really saying that
17 you're going to get whatever it is, you're going to
18 get a full year's worth, and you're analyzing your
19 refund that way.

20 Q. I see. And the other thing, is this
21 process weighed out so meticulously that we would
22 not be quarreling about whether it's this amount of
23 refund or that amount of refund? Can it be done
24 precisely?

25 A. I believe that's correct. I'll speak for

0886

1 Empire. I think that's correct. The other
2 parties, I would suggest that you would ask them
3 the same thing.

4 Q. Ask them the same question?

5 A. Yes, ma'am.

6 CHAIR LUMPE: Thank you.

7 JUDGE RUTH: Commissioner Murray?

8 COMMISSIONER MURRAY: Thank you.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Sometimes when other Commissioners ask
11 questions, it stimulates the brain to work a
12 little.

13 You indicated to Commissioner Gaw that the
14 percentage increase by class would be equal,
15 excluding the IEC, which would be based on usage,
16 and that that would result in larger users paying
17 more of an increase. I guess the question that I
18 have in regard to that is that this was determined
19 by the parties to this case who do not include any
20 large users; is that correct?

21 A. Praxair is a large user.

22 Q. Okay. I wasn't sure whether Praxair was
23 considered to be a large user, but Praxair also has
24 a special arrangement with the company that other
25 large users do not have; is that correct?

0887

1 A. Well, part of that goes to the fact that
2 Praxair is interruptible, and they are the largest
3 interruptible customers that we have.

4 Q. The largest interruptible?

5 A. Uh-huh.

6 Q. Is it your testimony that this rate design
7 is fair to the other large users who are not
8 intervenors in this case?

9 A. When you look at -- yes, ma'am, it is.
10 When you look at the load profiles of the other
11 customers, they are not as good as what Praxair is,
12 and Praxair can interrupt in a shorter time frame
13 once we notify them that they will be subject to
14 interruption than other customers can. So we feel
15 that, all in all, it's a fair situation for Empire
16 and everyone else concerned.

17 Q. And the \$100,000 credit going to Praxair,
18 is that -- do you just assume that they interrupted
19 for that amount? Is that where that credit is
20 coming in that they get that \$100,000 credit

21 whether they interrupt or not?

22 A. That's true. The way that it's designed
23 if we interrupt, we can interrupt them, and I
24 believe it's approximately up to 400 hours per
25 year, which is quite a lot.

0888

1 Q. And that has not changed, the amount that
2 you can interrupt?

3 A. No. And so theoretically, if we interrupt
4 them once or if we interrupt them, say, 200 times,
5 the amount of the credit is the same.

6 Q. But you have just increased the amount
7 that you are willing to pay them for being
8 interruptible up to that point?

9 A. Yes, that's correct.

10 COMMISSIONER MURRAY: And I have a
11 clarification question for you, Judge Ruth. In
12 that we seem to be addressing the stipulation on
13 fuel and purchase power at this time. Is the
14 testimony that we are taking right now related to
15 all the remaining issues?

16 JUDGE RUTH: It was my understanding that
17 this testimony was limited to the class cost of
18 service and rate design. Is that correct,
19 parties?

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

21 JUDGE RUTH: So Empire, Staff, Praxair,
22 OPC, you all agree?

23 MR. CONRAD: Yes.

24 MR. COFFMAN: Yes.

25 JUDGE RUTH: So this testimony is limited

0889

1 to the class cost of service and rate design, and
2 then tomorrow we'll pick up testimony that's
3 related to the fuel -- was it fuel and purchase
4 power portion of this -- would you like me to take
5 a quick break?

6 COMMISSIONER MURRAY: No. I'm a little
7 unclear because we are dealing with the fuel and
8 purchase power issue that's in the stipulation and
9 agreement, but we will deal with other issues in
10 the stipulation and agreement tomorrow morning; is
11 that that my understanding?

12 MR. COFFMAN: Yes.

13 JUDGE RUTH: Yes.

14 COMMISSIONER MURRAY: Thank you for that
15 clarification.

16 COMMISSIONER GAW: Can I ask a point of
17 clarification, too?

18 JUDGE RUTH: Yes.

19 COMMISSIONER GAW: Because I'm not clear
20 about whether the refund questions relate to the
21 rate design or the fuel purchase, and so I just
22 want to make sure I'm not precluded from inquiring
23 about that portion tomorrow.

24 JUDGE RUTH: It's my understanding you can
25 ask --

0890

1 COMMISSIONER GAW: I'm fine. Just as long
2 as I -- I don't have any further questions.

3 MR. CONRAD: Judge Ruth, if I can help a
4 little bit, it's -- and I think I understand what
5 Judge Gaw (sic) is struggling with, because it's

6 kind of difficult to pull a part of this part. I
 7 think the thing that we had intended to put before
 8 you-all today, and it's not to preclude you from
 9 going into these other things at all. It's just to
 10 try to sequence the witnesses. And I believe it's
 11 paragraphs 5 and 6, if I'm not incorrect of my
 12 recollection, where this part of the issue is
 13 resolved, but it's resolved, Judge, as a whole.
 14 And I think other witnesses would, perhaps, tell
 15 you that they are somewhat interrelated, as even
 16 Mr. Gibson has indicated.

17 So from our perspective, there's no desire
 18 to preclude you and say, No, you should have asked
 19 that question yesterday. That's not it at all.

20 COMMISSIONER GAW: Okay. I just wanted to
 21 make sure we're okay on the way I'm thinking we're
 22 proceeding, so I'm fine. I don't have any further
 23 questions.

24 JUDGE RUTH: Thank you.

25 Any other Commissioner questions?

0891

1 Based on the questions we have had from
 2 the Bench, we'll move to recross.

3 Staff, Mr. Frey?

4 MR. FREY: No questions, your Honor.

5 JUDGE RUTH: Mr. Conrad?

6 MR. CONRAD: Just very quickly, your
 7 Honor, if I can come up there.

8 CROSS-EXAMINATION BY MR. CONRAD:

9 Q. Mr. Gibson, in response to questions by
 10 Judge Gaw (sic), and you were talking about the
 11 \$3.76 and the interruptible credit. Am I correct
 12 that that is a per KW amount, per kilowatt --

13 A. Yes.

14 Q. -- of curtailable demand?

15 A. Yes, that's correct.

16 Q. And the second point, I believe in
 17 response to Judge Murray (sic), mentioned that that
 18 credit was -- that credit is already in your
 19 tariff, is it not?

20 A. Yes, it is.

21 Q. We're just dealing with the increase to
 22 the amount; is that correct?

23 A. Yes, that's correct.

24 Q. And nothing else in either the contract or
 25 the tariff is changed by this understanding?

0892

1 A. No. That's also correct.

2 Q. Now, you would agree with me, I take it,
 3 that the amount does not change, that the amount of
 4 that credit either as it is now or as it would be
 5 if this is approved, would not change as a function
 6 of the number of hours that Praxair is asked to
 7 curtail?

8 A. No. That's correct.

9 Q. And I take it you would agree with me,
 10 that while it would be difficult to identify on a
 11 particular time slice basis, there is a certain
 12 stand-ready cost for Praxair to say to you, the
 13 company, we will agree to install the equipment
 14 necessary to take our equipment off line quickly
 15 and in effect reorder our affairs at your-all's
 16 discretion, would you agree with me?

17 A. Yes, that's correct.
 18 MR. CONRAD: Thank you.
 19 JUDGE RUTH: Mr. Coffman?
 20 MR. COFFMAN: Yes. Thank you.
 21 CROSS-EXAMINATION BY MR. COFFMAN:
 22 Q. In response to Commissioner Murray's
 23 question about the impact of the settlement on the
 24 large power customer class. First of all, can you
 25 tell me approximately how many customers fall into
 0893 that customer class?
 1 A. Not right offhand. It's not -- right off
 2 hand I can't.
 3 Q. Is it fair to say that both the rate
 4 design recommendations of the Public Counsel and of
 5 the Commission Staff would have allocated more than
 6 a system average allocation to that customer class?
 7 A. Yes. I think that's correct.
 8 Q. And so an equal percentage allocation
 9 assigns less to that class than either Public
 10 Counsel or Staff would have recommended?
 11 A. Yes, that's correct.
 12 Q. And, of course, we are in the stipulation
 13 agreeing to equal percentage excluding the interim
 14 energy charge?
 15 A. That's also correct, yes.
 16 MR. COFFMAN: Okay. I think that
 17 clarifies what I wanted. Thank you.
 18 JUDGE RUTH: Mr. Swearengen, do you have
 19 redirect?
 20 MR. SWEARENGEN: Mr. Conrad did a suburb
 21 job of cleaning up all the loose ends, so I have no
 22 questions.
 23 JUDGE RUTH: Thank you.
 24 Off the record for just a moment, please.
 0894 (OFF THE RECORD.)
 1 JUDGE RUTH: We will go on. I believe the
 2 procedural schedule shows that Staff will be
 3 calling the next witness.
 4 MR. FREY: Thank you, your Honor. Staff
 5 calls James Watkins.
 6 (WITNESS SWORN.)
 7 JUDGE RUTH: Mr. Frey?
 8 MR. FREY: Thank you, your Honor.
 9 JAMES C. WATKINS, being first duly sworn, testified
 10 as follows:
 11 DIRECT EXAMINATION BY MR. FREY:
 12 Q. Please state your name for the record,
 13 sir.
 14 A. James C. Watkins.
 15 Q. And by whom are you employed and in what
 16 capacity?
 17 A. Missouri Public Service Commission as a
 18 research economist.
 19 Q. And did you prepare and cause to be filed
 20 in this proceeding what have been marked for
 21 purposes of identification as Exhibits 74, 75, 76,
 22 and 111 respectively James Watkins direct,
 23 rebuttal, surrebuttal and supplemental testimony on
 24 Staff's change of position?
 0895 A. Yes, I did.

2 Q. Do you have any corrections to that
3 testimony?

4 A. No, I do not.

5 Q. If I were to ask you the same questions
6 today as are in that testimony, will your answers
7 be the same?

8 A. Yes, they would.

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

11 A. Yes, sir.

12 MR. FREY: Your Honor, at this time I
13 would offer Exhibits 74, 75, 76 and 111 for
14 admission into the record and tender the witness
15 for cross-examination.

16 JUDGE RUTH: Thank you.

17 Exhibit 74 is Mr. Watkins' direct
18 testimony; Exhibit 75 is Mr. Watkins' rebuttal
19 testimony. Do the parties have any objections to
20 these two exhibits.

21 Seeing no objections, Exhibits 74 and 75
22 are received into the record.

23 (EXHIBIT NOS. 74 AND 75 WERE RECEIVED INTO
24 EVIDENCE.)

25 JUDGE RUTH: Exhibit 76 is Mr. Watkins'

0896 1 surrebuttal testimony. Any objections to this
2 document?

3 Seeing no objections, Exhibit 76 is
4 admitted into the record.

5 (EXHIBIT NO. 76 WAS RECEIVED INTO
6 EVIDENCE.)

7 JUDGE RUTH: Exhibit 111 is Mr. Watkins'
8 supplemental -- is it surrebuttal?

9 THE WITNESS: Just testimony, I believe.

10 JUDGE RUTH: Just supplemental testimony.
11 Are there any objections to Exhibit 111?

12 Seeing no objections, Exhibit 111 is also
13 received into the record.

14 (EXHIBIT NO. 111 WAS RECEIVED INTO
15 EVIDENCE.)

16 JUDGE RUTH: Public Counsel, are you ready
17 to begin cross-examination?

18 MR. COFFMAN: No, because I have no
19 questions. Thank you.

20 JUDGE RUTH: Mr. Swearingen?

21 MR. SWEARENGEN: No questions. Thank you.

22 JUDGE RUTH: Mr. Conrad?

23 MR. CONRAD: And as before, pursuant to
24 the stipulation and subject to the Commission's
25 acceptance on that, we would have no questions.

0897 1 JUDGE RUTH: Thank you.

2 Chair Lumpe?

3 QUESTIONS BY CHAIR LUMPE:

4 Q. Mr. Watkins, your testimony 111, that was
5 a change of position. Did that address the cost of
6 service, as well as the change of position on the
7 fuel issue?

8 A. Yes, ma'am. In the sense that the cost of
9 service study is used to provide guidance to the
10 rate design recommendation. But once the rate
11 design is decided, the cost of service issues
12 basically go away. So they are subsumed in the

13 rate design recommendation.

14 Q. And Staff is agreeing to the, what I
15 understand, is an equal percent across the board
16 for all classes?

17 A. Yes, ma'am. For the piece that is not
18 included interim energy charge.

19 CHAIR LUMPE: Okay. Thank you.

20 JUDGE RUTH: Commissioner Murray?

21 COMMISSIONER MURRAY: Can I have one
22 moment?

23 JUDGE RUTH: Certainly.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. I guess you wouldn't have agreed to the

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1 stipulation and agreement if this were not the
2 case, but I'll just ask you, is it your opinion
3 that the class cost of service and rate design is
4 fair and equitable to all of the classes?

5 A. Yes, ma'am, I believe it is.

6 COMMISSIONER MURRAY: That's all I have.
7 Thank you.

8 JUDGE RUTH: Commissioner Gaw?

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. How does this stipulation in regard to
11 rate design differ from your original
12 recommendation?

13 A. The original recommendation is in Janice
14 Pyatte's direct testimony. We modified that after
15 we discussed the possibility of an interim energy
16 charge. She has a subsequent recommendation in her
17 surrebuttal testimony that indicates Staff's
18 position to incorporate the interim energy charge.
19 The settlement that we reached is basically
20 somewhere in between in terms of the overall
21 increases to the classes from what we had
22 originally proposed and what would have resulted
23 from adopting the recommendation and surrebuttal.

24 In the suggestions in support that Staff
25 filed today, there is a table that Ms. Pyatte put

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1 together that shows in the far right-hand columns
2 the percentage increases that would result to each
3 customer class as the result of adopting the
4 stipulation and agreement and adopting the Staff's
5 recommendation from its direct testimony and of
6 adopting the Staff's recommendation in surrebuttal.

7 Q. So in regard to the position that Staff
8 took after the discussion of the interim energy
9 charge, and the current position of Staff, can you
10 be more specific as to your change in position of
11 those two position periods as to how they vary from
12 one another?

13 A. I'll try. The original rate design
14 recommendation was a recommendation for what should
15 happen overall to revenues of each class.

16 Q. Which was?

17 A. Which was? I'm sorry. It was that the
18 residential and large general service class receive
19 a system average increase. The small general
20 service class receive half the system average
21 increase. And both Praxair and the large power
22 class receive greater than system average increase
23 enough to make up for small general service not

24 paying as much as system average. And then the
 25 various lighting schedules or lighting classes and
 0900

1 the rate 70, which an electric power furnace, I
 2 believe, we propose that they get system average
 3 increase as well.

4 Q. And that was your initial position?

5 A. Yes.

6 Q. I want you to go to the second position.

7 A. That would be in rebuttal testimony.

8 Q. Yes?

9 A. Surrebuttal. I'm sorry.

10 Q. Whatever it was, if you would tell me what
 11 that position was.

12 A. Our position was that the same
 13 recommendation that we had filed in direct should
 14 apply to the portion of the increase that was not
 15 included in the incremental energy charge. And the
 16 incremental mental energy charge would go to the
 17 classes on an equal sense per kilowatt-hour basis.

18 Q. Now, compare that position to your current
 19 position under the stipulation.

20 A. Now, what we have agreed to is the interim
 21 energy charge will still go to the classes on an
 22 equal cents per kilowatt-hour basis, but the
 23 portion of any revenue increase that's beyond that
 24 or perhaps less than that, would go to the classes
 25 on an equal percentage of current revenues basis.

0901
 1 Q. All right. Who wins and who loses on the
 2 change of position?

3 A. It depends on where you start, sir. From
 4 Staff's surrebuttal position, those classes that we
 5 recommended get an equal percentage increase are
 6 still getting a equal percentage increase, and
 7 there's been no change for them. The small general
 8 service class that we recommended should get
 9 somewhat less than system average is still getting
 10 less than system average, but not as much less as
 11 we originally proposed. Praxair and the large
 12 power customers, therefore, have less revenue to
 13 pick up and are paying above system average, but
 14 not as much above as we had recommended.

15 Q. So I'm understanding the timing on this,
 16 the surrebuttal testimony, did the surrebuttal
 17 testimony relate at all to the original stipulation
 18 that was filed regarding rate design or the final
 19 one, either one or was it prior to both?

20 A. No. It was subsequent. Because when we
 21 put together the list of issues that we were going
 22 to address in surrebuttal testimony, the interim
 23 energy charge concept was one of those issues that
 24 we had all agreed we would address -- or that we
 25 all agreed was an issue. And so Staff filed its

0902
 1 testimony to revise its rate design proposal to
 2 reflect what should be done if the interim energy
 3 charge concept was approved.

4 Q. I want to make sure I'm clear. The first
 5 position you filed regarded Staff's original
 6 position before any stipulations were filed?

7 A. Right.

8 Q. The second position related to your

9 initial stipulation filing, which was a
10 recommendation of position which was not unanimous
11 because of Praxair's failure to join; is that
12 correct?

13 A. That's correct.

14 Q. And then this position is in support of
15 your testimony in support of this unanimous
16 stipulation?

17 A. Yes, sir.

18 Q. Are you comfortable with the credit
19 provision for Praxair? Obviously, you are or you
20 wouldn't have filed a stipulation. I'm asking you,
21 I guess, again, but can you tell me what your
22 position is in regard to that?

23 A. I think that Staff filed its position in
24 our suggestions in support, which that was a
25 mechanism by which this case was settled. It's not

0903

1 going to cost any of the other ratepayers any
2 money, and we had no problem with it. I mean,
3 frankly, Praxair is going to pay tariff rates. So
4 the \$100,000 had to come from somewhere. And I
5 think I probably had some role in that, which is
6 you take their basic rates, and we're going to do
7 the same with them that we are everybody else's
8 basic rates. If everybody is getting an equal
9 percentage increase, they are going to get an equal
10 percentage increase.

11 If we're going to make up the \$100,000
12 somewhere, the other place you can get it is the
13 interruptible credit of unlike other customers the
14 interruptible credit for Praxair is specified on
15 the tariff sheet for special transmission service
16 to Praxair. There's a separate rider, the rider IR
17 that specifies the interruptible credit to smaller
18 customers. That's where we put it. We can live
19 with it if it's not going to cost the ratepayers
20 any money.

21 Q. Am I understanding this correctly that the
22 amount of the credit, is it -- there's a reference
23 in the stipulation to \$100,000. There's also a
24 reference to differences in kilowatt-hour charges.
25 Is it both, is it one or the other, is one an

0904

1 estimate? Can you clear that up for me, please?

2 A. They are both accurate in their own way.
3 The agreement was to reduce those charges by
4 \$100,000. When you implement that agreement, you
5 take the \$100,000, you divide by 7,600 KW or per
6 month, times 12, and you get the number that rounds
7 to the difference between the 3.76 and the 4.86.
8 So there is a rounding problem in that credit that
9 accounts for maybe a couple hundred dollars. I
10 don't remember exactly what it is. But to the
11 accuracy of that rate, the reduction is \$100,000,
12 but there is a rounding. It's off a little bit.

13 Q. But in the future if we have to go back
14 and look at this stipulation for guidance, there is
15 no question about -- there be no question from
16 Staff's point of view about the amount of that
17 credit in future years while we're under this
18 particular case?

19 A. No, there won't.

20 COMMISSIONER GAW: All right. Thank you.
 21 JUDGE RUTH: Okay. Recross.
 22 Public Counsel, do you have any?
 23 MR. COFFMAN: No recross.
 24 JUDGE RUTH: Mr. Swearingen?
 25 MR. SWEARENGEN: No, ma'am. Thank you.

0905

1 JUDGE RUTH: Praxair?
 2 MR. CONRAD: Nothing further, your Honor.
 3 Thank you.
 4 JUDGE RUTH: Mr. Frey, do you have
 5 direct?
 6 MR. FREY: No, your Honor. Thank you.
 7 JUDGE RUTH: If the parties don't object,
 8 I think we will go ahead and move on to the next
 9 witness. Obviously, we probably will not finish
 10 with the next witness.
 11 It's my understanding, Staff, you are
 12 going to call Pyatte?
 13 MR. FREY: Staff calls Ms. Janice Pyatte.
 14 Thank you.
 15 JUDGE RUTH: You may step down,
 16 Mr. Watkins. Thank you.
 17 (WITNESS EXCUSED.)
 18 (WITNESS SWORN.)
 19 JUDGE RUTH: Mr. Frey, you may proceed
 20 with your direct examination.
 21 MR. FREY: Thank you, your Honor. Staff
 22 would like to enter into evidence a correction that
 23 Ms. Pyatte has that she will talk about in her
 24 rebuttal testimony. She filed a Schedule 1-1 and
 25 should give copies to the Bench. Schedule 1-1 was

0906

1 actually flip-flopped compared to the one I'm going
 2 to offer here. It's correct depending on your
 3 interpretation, but it's not consistent with the
 4 way the other exhibits or schedules are shown in
 5 Ms. Pyatte's rebuttal testimony. So I would like
 6 to enter this into the record, if I could. And I
 7 have just now distributed copies to the other
 8 parties, so --
 9 JUDGE RUTH: So you would like this
 10 schedule to be marked as Exhibit 117?
 11 MR. FREY: Well, I guess I would ask if --
 12 I would ask you, your Honor, whether we should
 13 offer it as a separate exhibit or whether we should
 14 just have Ms. Pyatte refer to this as a change to
 15 her testimony?
 16 JUDGE RUTH: I think since it's a
 17 schedule, it would be better to have it as a
 18 separate exhibit. And hopefully the parties will
 19 make a note that in the original rebuttal testimony
 20 Schedule 1-1; is that correct? Is that the
 21 number?
 22 MR. FREY: Right.
 23 JUDGE RUTH: That is being replaced with
 24 Exhibit 117.
 25 (EXHIBIT NO. 117 WAS MARKED FOR

0907

1 IDENTIFICATION BY THE REPORTER.)
 2 JUDGE RUTH: So I will note Exhibit 117 is
 3 Ms. Pyatte's corrected Schedule 1-1.
 4 JANICE PYATTE, being first duly sworn, testified as

follows:

DIRECT EXAMINATION BY MR. FREY:

Q. Ms. Pyatte, can you please state your full name for the record?

A. Janice Pyatte.

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

A. Missouri Public Service Commission. I'm a Regulatory Economist III.

Q. And did you prepare and cause to be filed in this proceeding what have been marked for purposes of identification as Exhibit 70, 71, and 110 respectively Janice Pyatte direct class cost of service and rate design, Janice Pyatte rebuttal and Janice Pyatte revised surrebuttal?

A. Yes.

Q. And I guess I would add this revised Schedule 1-1 to your rebuttal testimony, which has now been marked Exhibit 117, I believe. Did you prepare that as well?

A. Yes.

Q. Could you just comment on the Exhibit 117, if you would, please?

A. As Mr. Frey has described, it's a correction to a schedule in my rebuttal testimony. And essentially the numbers haven't really changed. What happened is, I got the table upside down.

Q. Thank you. Do you have any corrections to your testimony other than as represented by Exhibit 117?

A. No.

Q. If I would ask you the same questions today as were in that testimony, would your answers be the same?

A. Yes.

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

A. Yes.

MR. FREY: Your Honor, at this time I would offer Exhibits 69, 70, 71 and 110 and 117 for admission into the record, and I would tender the witness for cross-examination.

JUDGE RUTH: Okay. Exhibit 69 is Ms. Pyatte's testimony, direct testimony filed on 4-3.

MR. FREY: Your Honor, excuse me. That was filed on April 10.

JUDGE RUTH: I'm sorry. So Exhibit 69 is the April 10th.

MR. FREY: Pardon me, your Honor. Perhaps I have that incorrect.

THE WITNESS: We don't want to put 69 in.
JUDGE RUTH: I marked that the first one was 4-3.

MR. FREY: I'm sorry. I see. I said 69, 70, 71. We're only offering Exhibits 70, 71 and 110. That was my fault, your Honor.

JUDGE RUTH: So you do not want to offer Exhibit 69?

MR. FREY: Right. 110 and 117. 70, 71,

16 110 and 117.
 17 JUDGE RUTH: Okay. So Exhibit 70 is
 18 Ms. Pyatte's direct testimony, which was filed on
 19 April 10?
 20 MR. FREY: Right.
 21 JUDGE RUTH: Do the parties have any
 22 objections to this document being admitted?
 23 Seeing no objections, Exhibit 70 is
 24 admitted into the record.
 25 (EXHIBIT NO. 70 WAS RECEIVED INTO
 0910 EVIDENCE.)
 1 JUDGE RUTH: Exhibit 71 is Ms. Pyatte's
 2 rebuttal testimony. Is there any objections to
 3 this document being received?
 4 Seeing no objections, Exhibit 71 is
 5 admitted into the record.
 6 (EXHIBIT NO. 71 WAS RECEIVED INTO
 7 EVIDENCE.)
 8 JUDGE RUTH: Exhibit 110 is Ms. Pyatte's
 9 revised surrebuttal testimony. Do the parties have
 10 any objections to this document being admitted?
 11 Seeing no objections, Exhibit 110 is
 12 received into the record.
 13 (EXHIBIT NO. 110 WAS RECEIVED INTO
 14 EVIDENCE.)
 15 JUDGE RUTH: And Exhibit 117 is
 16 Ms. Pyatte's corrected Schedule 1-1 from the
 17 rebuttal testimony. Do the parties have any
 18 objections to this document?
 19 Exhibit 117 is then admitted into the
 20 record.
 21 (EXHIBIT NO. 117 WAS RECEIVED INTO
 22 EVIDENCE.)
 23 JUDGE RUTH: I think this is a good place
 24 to stop then. We will start up with
 0911 cross-examination in the morning. And we do begin
 1 at 8:30 tomorrow. We will go off the record now.
 2 Thank you.
 3 WHEREUPON, the hearing was adjourned and
 4 will continue on June 6, 2001 at 8:30 a.m.
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I N D E X

INCENTIVE PAY ISSUE

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E X H I B I T S

MARKED REC'D

EXHIBIT NO. 6

Direct Testimony of David Gibson	876
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EXHIBIT NO. 14

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Rebuttal Testimony of Myron McKinney	785
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EXHIBIT NO. 27

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EXHIBIT NO. 50HC

Direct Testimony of Janis Fischer	849
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EXHIBIT NO. 51NP

Direct Testimony of Janis Fischer	849
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15	EXHIBIT NO. 52HC		
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23	Direct Testimony of James C. Watkins	895	
24	EXHIBIT NO. 75		
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1	EXHIBIT NO. 76		
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13			
	EXHIBIT NO. 116HC		
14	Company's Response to Staff's		
	Data Request No. 331	808	845
15			
	EXHIBIT NO. 117		
16	Janice Pyatte's Schedule 1-1	906	910
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