

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING
August 23, 2001
Jefferson City, Missouri
Volume 11

In the Matter of The Empire)
District Electric Company's)
Tariff Sheets Designed to) Case No. ER-2001-299
Implement a General Rate) Tariff No. 200100518
Increase for Retail Electric)
Service Provided to Customers)
in the Missouri Service Area)
of the Company.)

BEFORE:

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

REPORTED BY:

KRISTAL R. MURPHY, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS
714 West High Street
Post Office Box 1308
JEFFERSON CITY, MISSOURI 65102
(573) 636-7551

1 APPEARANCES:

2

3 JAMES C. SWEARENGEN, Attorney at Law
4 GARY W. DUFFY, Attorney at Law
5 Brydon, Swearengen & England, P.C.
6 P.O. Box 456
7 312 East Capitol Avenue
8 Jefferson City, Missouri 65102-0456
9 573.635.7166

10 FOR: Empire District.

11 STUART W. CONRAD, Attorney at Law
12 Finnegan, Conrad & Peterson
13 3100 Broadway, Suite 1209
14 Kansas City, Missouri 64111
15 816.753.1122

16 JOHN B. COFFMAN, Deputy Public Counsel
17 P.O. Box 7800
18 Jefferson City, Missouri 65102
19 573.751.5559

20 FOR: Office of Public Counsel and the Public.

21 KEITH R. KRUEGER, Deputy Counsel
22 DENNY L. FREY, Associate Counsel
23 BRUCE H. BATES, Associate Counsel
24 P.O. Box 360
25 Jefferson City, Missouri 65102
573.751.6434

FOR: Staff of the Missouri Public Service
Commission.

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Written Entries of Appearance filed.)

(EXHIBIT NOS. 120 THROUGH 142 WERE MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

JUDGE RUTH: Let's go on the record.

Good afternoon. We are here for a true-up hearing in Case No. ER-2001-299 in the matter of Empire District Electric Company's tariff sheets designed to implement a general rate increase for retail electric service provided to customers in the Missouri service area of the Empire Company.

The purpose of the true-up hearing is to adjust the test year figures for known and measurable events outside of the test year.

I would like to do entries of appearance quickly.

Empire?

MR. DUFFY: Gary W. Duffy and James C. Swaengen, Brydon, Swaengen & England, P.C., P.O. Box 456, Jefferson City, Missouri, 65102, appearing for The Empire District Electric Company.

JUDGE RUTH: Thank you.

Staff?

MR. FREY: Thank you.

Appearing for the Staff of the Missouri

1 Public Service Commission, Dennis L. Frey, P.O.
2 Box 360, Jefferson City, Missouri, 65101.

3 JUDGE RUTH: Public Counsel?

4 MR. COFFMAN: John B. Coffman, appearing on
5 behalf of the Office of the Public Counsel and the
6 ratepaying consumers, P.O. Box 7800, Jefferson City,
7 Missouri, 65101.

8 JUDGE RUTH: Thank you.

9 And Praxair?

10 MR. CONRAD: On behalf of intervenor
11 Praxair, Stuart W. Conrad of the law firm Finnegan,
12 Conrad, Peterson, Kansas City, 3100 Broadway Street,
13 12090, K.C., Mo., 64111.

14 JUDGE RUTH: Thank you.

15 The procedure for today's hearing will be
16 the parties will first be allowed to do some opening
17 remarks. Then we will move to Empire witness Dave
18 Gibson, who will testify on the property tax issue,
19 then Staff witness Roy Boltz. Then Empire witness
20 Dave Gibson will come back on the TOPrS issue. Staff
21 witness Roberta McKiddy and OPC witness Mark Burdette
22 will follow.

23 And then, if the Commission wishes, they may
24 call some of the other witnesses that filed prefiled
25 testimony.

1 Are there any questions as to the procedure?

2 Okay. Empire, please call your first
3 witness.

4 MR. DUFFY: Did you want --

5 JUDGE RUTH: I'm sorry. I skipped right
6 over your opening remarks, but we'll let you start
7 with your opening remark.

8 MR. DUFFY: It's going to be kind of a
9 remark, because it's going to be brief.

10 My impression is there are two distinct
11 issues in the true-up. One is property taxes; one is
12 what we call TOPrS.

13 The property tax issue, very briefly, as I
14 understand it, is that the Staff has brought forward
15 from December 31, 2000 to June 30, 2001, plant
16 balances, and for purposes of this case, the majority
17 of that plant balance is the State Line combined cycle
18 plant that you heard about in the main part of this
19 case, that new power plant that's now in operation.

20 Roughly, it's my understanding, there is
21 about 122,400 -- or, excuse me -- \$122,400,000, in new
22 plant. And the issue is, has the Staff properly
23 attributed property taxes to that new plant. And the
24 Staff believes that they have given it appropriate
25 treatment for property taxes. Empire's position, the

1 evidence will be, that there are no property taxes in
2 the Staff's true-up case that relate to all of this
3 new plant.

4 So the issue is should -- should the
5 Commission increase the revenue requirement to deal
6 with the property taxes attributable to this new plant
7 that has been recognized as a part of the true-up.

8 On the TOPrS issue, the trust preferred
9 securities, my understanding is that the issue was
10 raised in the testimony in true-up by the Public
11 Counsel about whether the issuance cost for that
12 should be recovered in rates. And it's my
13 understanding that the Staff and the Company both
14 believe that because these trust preferred securities
15 have some relationships -- or can be characterized for
16 some purposes as debt, and because it has a specific
17 life of 30 years, it's our position that the issuance
18 cost should be amortized over a 30-year period.
19 Public Counsel is saying no, there should not be any
20 kind of recovery for those costs.

21 Obviously, since we're going to have these
22 witnesses up here, the Commission may ask other
23 questions on other issues. We may get back into some
24 other things, but for our understanding, those are the
25 main things that we're here for today.

1 Thank you.

2 JUDGE RUTH: Thank you.

3 Staff?

4 MR. FREY: Thank you, your Honor.

5 May it please the Commission?

6 I'm going to attempt to fix this microphone.

7 I'm going to attempt to -- briefly, to put
8 things in a little bit of perspective with regard to
9 where we've been and where we are now.

10 During the main trial phase of this
11 proceeding, we presented a total of seven issues that
12 were subject to hearing at that time. The first issue
13 was a depreciation issue, and it then broke down into
14 the appropriate service lives of the Company's plant,
15 or certain areas of the Company's plant, as well as
16 the treatment of the net salvage value component.
17 These questions were fully litigated and are now
18 before the Commission.

19 The same is true of two other issues. Bad
20 debt expense; that is, whether Empire's bad debt
21 expense should be allowed to follow changes in the
22 Missouri jurisdictional revenues, and a payroll issue
23 concerning whether discretionary performance-based
24 incentive pay for employees should be allowed.

25 The fourth issue, the appropriate capital

1 structure and rate of return for the Company, was also
2 previously litigated; however, in the true-up phase,
3 the Staff updated its recommended capital structure
4 and overall rate of return as of June 30th of this
5 year.

6 The true-up phase, or exercise, has produced
7 an issue among the parties, and I will -- Mr. Duffy
8 has already mentioned that, and I'll probably say a
9 word or two in a little bit about that.

10 The fifth issue that we presented back at
11 the time of the evidentiary hearing involved the State
12 Line power plant, the new -- and the energy center.
13 The first issue with regard -- involved the in-service
14 criteria which were to be used to determine whether or
15 not the State Line -- the new combined cycle unit
16 should be included in rate base.

17 This issue was covered in an agreement among
18 the parties, and the Company deemed the combined cycle
19 unit commercial, as I understand it, as of June 25th
20 of this year. Using these agreed upon in-service
21 criteria, the Staff pronounced the new unit in service
22 as of the end of the update period, June 30th, 2001.

23 Staff would assert that there is no issue
24 before the Commission at this time regarding whether
25 or not the unit was in service. That is as among the

1 parties. Of course, the -- the Stipulation and
2 Agreement which was submitted has yet to be ruled
3 upon.

4 Staff witness Dave Elliott can be made
5 available -- will be made available, I should say, to
6 answer any questions from the Commissioners on this
7 subject.

8 The second sort of sub-issue involving these
9 power plants was whether -- what the appropriate
10 capital costs to be included in rate base for the new
11 State Line combined cycle unit. Again, we had a
12 Stipulation and Agreement, a Unanimous Stipulation and
13 Agreement among the parties, which provided for the
14 disposition of approximately \$12,000,000 of overrun
15 due to the contractor performance issue, and it left
16 an additional \$19,000,000 in overruns to be explained
17 by the Company.

18 The Staff has received the required
19 information from Empire and has concluded that these
20 costs were justified and is recommending that they be
21 included in rate base.

22 Again, there is no dispute. Staff would
23 assert that there is no dispute among the parties here
24 and there is no issue here before the Commission.

25 Staff witnesses Featherstone, Oligschlaeger,

1 and Elliott are available, in any event, to answer
2 questions from the Commission regarding this matter.

3 A third area under this -- under the State
4 Line and energy center was the issue of the
5 appropriate expenses for operation and maintenance at
6 the State Line power plant and the energy center.
7 This was an issue that it was felt had not ripened at
8 the time of the main evidentiary hearing and so was
9 deferred to the true-up phase.

10 And when the Company filed its direct case
11 back in November of last year, estimated the dollar
12 amount of this item, prior to engaging in serious
13 negotiations from two maintenance contracts, one
14 for -- as I understand it, for State Line unit one and
15 the energy center and the other for the combined cycle
16 plant.

17 During the true-up phase -- those contracts,
18 I should say, were concluded, and during the true-up
19 phase Staff reviewed those maintenance contracts and
20 levelized their costs. And, in addition, regarding
21 other non-contract maintenance for this plant, the
22 Staff discovered a level based on historical
23 information.

24 The Company is comfortable with Staff's
25 number for operation and maintenance, and so, again,

1 there is no disagreement among the parties, or, I
2 should say, between these parties.

3 While not presuming to speak for Office of
4 the Public Counsel or Praxair on this matter, Staff
5 would note that we -- no concerns have been raised,
6 and there has been no testimony filed by the other
7 parties with regard to the issue of operation --
8 operating maintenance expenditures. Accordingly,
9 Staff believes this is not an issue before the
10 Commission here in the true-up hearing.

11 The sixth issue which we presented at the
12 time of the main hearing was the fuel and purchase
13 power expense, as well as -- I should say, fuel and
14 purchase power expense, and this matter, again, was
15 settled among the parties, along with the seventh
16 issue, which is class cost of service and rate design,
17 via a Unanimous Stipulation and Agreement, which is
18 currently before the Commission for its consideration.

19 During the true-up phase, the Staff
20 recalculated the interim energy credit using monthly
21 kilowatt sales that reflect actual growth in the
22 number of customers through the updated period. The
23 recalculated Missouri jurisdictional amount for the
24 interim energy credit is approximately \$19.6 million.

25 With regard to rates, the Staff took its

1 overall revenue increase in assuming the rate design
2 scheme set forth in the Stipulation and Agreement and
3 filed testimony showing the effect on class revenue
4 and individual rates.

5 Staff witness Janice Pyatte is available to
6 answer questions from the Commission regarding her
7 true-up testimony covering these matters.

8 At this point, I think it's appropriate to
9 mention an occurrence which arose at the time the
10 Staff was in the process of filing its true-up
11 testimony in this case which has caused the Staff to
12 want to revise its revenue requirement to the tune of
13 \$320,000, an increase.

14 At the point of the filing, the Staff was
15 made aware that we -- there were problems in the area
16 of the allocator that's used for Missouri
17 jurisdiction. The problem was that the Company
18 disagreed with the amount of dollars that had been
19 allocated to transmission -- to the transmission
20 function from the distribution plant. They felt that
21 it should have been a smaller allocation.

22 This is an issue that legitimately and by
23 rights should have been raised at the time of the
24 evidentiary hearing. However, the Company, through
25 inadvertence and oversight, failed to do so.

1 When we learned of the problem, the Staff
2 reviewed it and realized that we had understated the
3 amount of money that should be moved to the
4 transmission function, which carries a different
5 allocator than to Missouri jurisdiction, and so we
6 engaged in discussions with the Company.

7 The number \$620,000 came up as being
8 associated with rate base. And the Staff decided,
9 because we have understated it, and due to the fact
10 that there was no -- there was not sufficient time to
11 get the information that would be necessary to a
12 precisely state what -- what the degree of shift of
13 plant from distribution to transmission would be, that
14 we would agree to split the difference of -- I think I
15 said 620,000. It's \$640,000, and add \$320,000 to
16 revenue requirement, with the understanding that the
17 Company in future rate cases would provide us with the
18 necessary information so that we could make a more
19 accurate determination what that number should be.

20 And, today, the Staff has filed a revised
21 revenue requirement reflecting this increase of
22 \$320,000 and are prepared to, if necessary, to have a
23 Staff witness testify on this or to move for the
24 admission at the appropriate time of this document
25 without need of a witness.

1 I'll pass out copies to the Commissioners.

2 This brings me to pretty much where
3 Mr. Duffy started off, and he pretty well covered the
4 two issues we're going to talk about today, the issue
5 of property taxes and -- as well as the TOPrS issue.

6 With regard to the property tax, one could
7 argue that the issue should have been raised by the
8 Company, again, in time for the evidentiary hearing.
9 It was not. Nevertheless, Staff witness Roy Boltz has
10 responded with True-up Surrebuttal Testimony to the
11 property tax issue, and you'll be hearing that
12 exchange a little bit later.

13 And then the other area, of course, is this
14 cost of capital involving a concern raised by OPC
15 witness Mark Burdette concerning the appropriate way
16 the Staff calcu-- the appropriate way to calculate
17 embedded costs and trust preferred stock, or the
18 TOPrS, as they call it.

19 The Company supports the Staff method which
20 involves recognizing the cost of issuing the
21 securities and calculating the embedded costs. Staff
22 witness Roberta McKiddy will testify on this issue.

23 That's all I have. Thank you.

24 JUDGE RUTH: Thank you.

25 Public Counsel?

1 MR. COFFMAN: Thank you.

2 May it please the Commission?

3 The only issue that we are presenting a
4 witness on today is what has been referred to as the
5 TOPrS issue. Really, the -- the issue in contention
6 has to do with what is the embedded cost of these
7 trust preferred stocks? How should the issuance costs
8 for preferred stock be treated? Should they be
9 treated the way you normally treat equity, or should
10 they be treated the way that you treat long-term debt?

11 Now, trust preferred stock is a hybrid. It
12 has some elements of debt and equity.

13 The Commission has issued a Report and Order
14 that dealt with the issue of TOPrS that was in
15 GR-96-285. This was a Missouri Gas Energy case, and
16 in that case the Commission said that TOPrS should be
17 treated for regulatory purposes as equity.

18 Public Counsel disagreed with that, and may
19 in the future raise that issue. We continue to
20 believe that it has more elements of debt and should
21 be treated as debt for regulatory purposes.

22 But for the purposes of the issue that
23 you're going to hear today, we would simply ask that
24 the Commission be consistent. If the Commission is
25 going to continue to treat trust preferred stock as

1 equity, we believe that the issuance costs should be
2 treated the way that issuance costs are treated for
3 equity, no matter which way you go.

4 It's not a large dollar issue in this case,
5 but it is an important principle and could be a bigger
6 dollar issue in a future case.

7 So if the Commission was to take a different
8 positions than they took in the Missouri Gas Energy
9 case, it can do that. And if it does, we would then
10 agree with the way that Ms. McKiddy and the Company
11 agree that issuance costs should be treated. If the
12 Commission is going to continue to treat trust
13 preferred stock as equity, then we disagree with that.
14 We simply ask that the Commission be consistent.

15 The issue of property tax, we have not filed
16 any prepared testimony on this issue. But we just,
17 number one, state that, procedurally, we agree that it
18 was an issue that the Company should have raised in
19 the initial phase of the proceedings. Secondly, we
20 would just urge the Commission to be very cautious
21 about treating known and measurable items beyond the
22 true-up date, and -- or, much less, beyond the
23 operation of law date. It should just be very careful
24 not to take that too far.

25 Other issues which are, I guess, not going

1 to be tried here, capital structure, that remains an
2 issue. We litigated that in the initial evidentiary
3 hearing. There is no dispute about what the capital
4 structure actually was at June 30th, but the issue
5 remains as to whether we use the actual level or not.
6 Public Counsel and Staff agree that it should be the
7 actual level that's recognized in this rate case. The
8 Company proposes a different structure.

9 Payroll, Public Counsel is in complete
10 agreement with Staff regarding the levels and
11 calculations that they have done.

12 And with regard to the new issue that Staff
13 has raised and the amounts, we have not addressed that
14 and take no position on that at this point.

15 That's all I have. Thank you very much.

16 JUDGE RUTH: Okay. Thank you.

17 And Praxair?

18 MR. CONRAD: Your Honor, we didn't have an
19 opening statement, so we would waive.

20 JUDGE RUTH: Thank you.

21 Okay. Now, Empire, you may call your first
22 witness.

23 MR. DUFFY: Call Dave Gibson to the stand.

24 (Witness sworn.)

25 JUDGE RUTH: Thank you.

1 You may proceed.

2 MR. DUFFY: Thank you.

3 DAVID W. GIBSON testified as follows:

4 DIRECT EXAMINATION BY MR. DUFFY:

5 Q. Would you state your name for the record,
6 please.

7 A. My name is David W. Gibson, G-i-b-s-o-n.

8 Q. Are you the same David W. Gibson that's
9 previously testified in this case?

10 A. Yes, I am.

11 Q. And do you have in front of you what have
12 been marked for purposes of identification as Exhibit
13 No. 120, being the True-up Rebuttal Testimony of
14 David W. Gibson, and Exhibit No. 121, True-up
15 Surrebuttal Testimony of David W. Gibson?

16 A. Yes, I do.

17 Q. And did you participate in the preparation
18 of those documents?

19 A. Yes, I did.

20 Q. Do you have any changes or corrections to
21 either of those documents?

22 A. No, I don't.

23 Q. If I asked you the same questions that
24 appear in those documents this afternoon, would your
25 answers be the same as they appear therein?

1 A. Yes, they would.

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

4 A. Yes, they are.

5 MR. DUFFY: With that, your Honor, I would
6 offer into evidence Exhibits No. 120 and 121, and
7 tender the witness for cross-examination on the
8 property tax issue.

9 JUDGE RUTH: Okay. Exhibit 120, the True-up
10 Rebuttal Testimony of Dave Gibson has been offered.

11 Are there any objections to this document?

12 (No response.)

13 JUDGE RUTH: Seeing no objection, it is
14 received into the record.

15 (EXHIBIT NO. 120 WAS RECEIVED INTO
16 EVIDENCE.)

17 JUDGE RUTH: Exhibit No. 121, the True-up
18 Surrebuttal Testimony of Mr. Gibson, has been offered.

19 Are there any objections?

20 (No response.)

21 JUDGE RUTH: Seeing none, Exhibit 121 is
22 also received into the record.

23 (EXHIBIT NO. 121 WAS RECEIVED INTO
24 EVIDENCE.)

25 JUDGE RUTH: Moving to cross, Mr. Conrad, do

1 you have any?

2 MR. CONRAD: No questions, ma'am.

3 JUDGE RUTH: Thank you.

4 And Public Counsel?

5 MR. COFFMAN: No questions.

6 JUDGE RUTH: Staff?

7 MR. BATES: Thank you, your Honor.

8 JUDGE RUTH: Sir, I think earlier you did

9 not enter an appearance. Do you want to go ahead and

10 state for the record --

11 MR. BATES: Thank you, your Honor.

12 My name is Bruce H. Bates. I'm an associate

13 General Counsel with the Missouri Public Service

14 Commission Staff. My address is Post Office Box 360,

15 Jefferson City, Missouri, 65102-0360.

16 JUDGE RUTH: Thank you.

17 Proceed.

18 MR. BATES: Thank you.

19 CROSS-EXAMINATION BY MR. BATES:

20 Q. Good afternoon, Mr. Gibson.

21 A. Good afternoon.

22 Q. Mr. Gibson, I believe I read in your Direct

23 Testimony, which was marked and received into

24 testimony as Exhibit No. 120 that you always heard

25 that the only two things that were certain in life

1 were death and taxes?

2 A. Yes, sir, that's correct.

3 Q. So I'd like to -- I believe you're up here
4 as an expert on taxes. I think I'll ask you about
5 that.

6 A. Thank you.

7 Q. Can you tell me when Empire's next property
8 tax payment will be made?

9 A. For the state of Missouri, it will be made
10 approximately in December.

11 Q. December of this year?

12 A. Yes, that's correct.

13 Q. Will an amount associated with the new State
14 Line combined cycle unit be included in that payment?

15 A. With the completed State Line unit or with
16 the pieces of the State Line unit?

17 Q. Either.

18 A. Either? Yes.

19 Q. Okay. Which one?

20 A. The pieces of the State Line equipment.

21 Q. Okay. Do you have any idea at this time
22 what approximately that amount would be?

23 A. I could calculate an amount which is
24 basically what we've done by using a prior tax rate,
25 but, you know, since we don't have the actual tax

1 bills, I can't say for certain that they're going to
2 equal exactly that amount.

3 Q. Okay. Thank you.

4 I take it you would agree with me that
5 although taxes may be certain, the amount and the
6 timing may not always be?

7 A. That's absolutely true.

8 Q. Thank you.

9 On what assessment date for the new SLCC
10 unit will that payment be based upon, the payment that
11 will be made?

12 A. The payment that will be made?

13 Q. Yes.

14 A. This coming -- this coming fourth quarter?

15 Q. Yes.

16 A. What was the assessment date?

17 Q. Yes.

18 A. The assessment date was 1-1-2001, or
19 12-31-2000.

20 Q. Okay. Thank you.

21 And do you know what the new SLCC unit --
22 was it in service on that date?

23 A. No, it wasn't.

24 Q. When did it -- if it has, when was it put
25 into service?

1 A. As I think has been referenced, it was
2 actually put in service for our purposes on June 25th,
3 which, for all practical purposes, June 30th of this
4 year.

5 Q. Thank you.

6 How is Empire treating on its books in the
7 year 2001 the estimated property taxes associated with
8 that unit?

9 A. For the estimated property taxes for 2001,
10 they were capitalized.

11 Q. Okay. Is Empire currently accruing an
12 expense on its books related to property taxes
13 associated with that unit?

14 A. They were capitalized.

15 Q. Okay. Would you --

16 A. They weren't expensed.

17 Q. Would you explain for my benefit, and
18 perhaps also for the Commission's, how that operates?

19 A. I would be more than happy to.

20 What we're looking at is the total amount of
21 property taxes that are paid will include a portion
22 that is capitalized. In other words, part of that
23 that we are capitalizing is due to State Line being in
24 progress. So those -- those taxes are actually paid
25 this year, but rather than being reflected on our

1 books as an expense, they are actually reflected or
2 added to plant, if you will.

3 Q. Okay. Would you agree with me that Empire
4 will begin accruing an expense on its books related to
5 property taxes associated with the new unit in January
6 of next year?

7 A. We will -- yes. The expense -- yes. All
8 that really will change, if you stop and think about
9 it, if we look at what is happening this year, if we
10 added no -- if we hadn't included any more plant from
11 the beginning of this year to the beginning of next
12 year, and we capitalized the piece, the total property
13 taxes -- everything else if it was held equal, the
14 total property taxes that we paid would remain the
15 same, but the amount of expense would increase by the
16 amount that we had capitalized in the prior year.

17 Q. Would you agree with me that as far as
18 treating for rate-making purposes the property taxes
19 associated with the new unit based upon its January
20 2001 assessment, that the Staff is also proposing to
21 capitalize them?

22 A. Would you say that again, please?

23 Q. Yeah. In regard to the property taxes
24 associated with the new SLCC unit, based upon its
25 January 2001 assessment, the Staff is also proposing

1 to treat for rate-making purposes them by capitalizing
2 them?

3 A. Well, all I -- I don't know. All I know is
4 that, you know, when I looked at what they proposed
5 for expense, as far as an ongoing basis, there wasn't
6 any adjustment for that. So it may be that -- you
7 know, that they've included a piece in their work.
8 I'm not certain.

9 Q. Does Empire disagree with the Staff's
10 proposed rate-making treatment of property taxes
11 associated with the January 2001 assessment of the new
12 SLCC unit?

13 A. I'm not quite sure how to answer that.
14 What we don't agree on is that since we are
15 adding -- if you're just talking January 1, 2001, I
16 guess what you would have to do is look at when we put
17 the new plant in service, are we really reflecting the
18 appropriate amount of property taxes on a prospective
19 basis that represents that plant, and it's my
20 contention that we're not.

21 Q. Do I understand, then, that you're saying
22 that the property tax payment that you will be making
23 late 2001, the exact amount is not known to the
24 Company today?

25 A. No. That's absolutely right.

1 Q. Did any taxing authority, to your knowledge,
2 perform an assessment for property tax valuation
3 purposes of the new SLCC unit on June 25th, 2001, when
4 it went in service?

5 A. No, they didn't.

6 Q. Do you know if any has done so since that
7 date?

8 A. No, I don't.

9 Q. What is the next date in which the value of
10 the new SLCC unit will be assessed for property tax
11 purposes?

12 A. When we file the next tax forms will be in
13 the first part of next year.

14 Q. Okay. Will it be -- I believe a minute ago
15 you said it would be either -- it might be -- the
16 assessment date might be either December 31st of this
17 year or January 1st of next year?

18 A. For all practical purposes, since one is a
19 holiday, they are both the same.

20 Q. Okay. I was just trying to determine if you
21 knew exactly which one.

22 How will Empire account for the property
23 taxes associated with the new unit on its books during
24 the calendar year 2002.

25 A. Expense.

1 Q. And when will that expense accrual start?

2 A. January -- well, actually January of 2002.

3 Q. When will Empire know the effective property

4 tax rate associated with all of its plant including

5 the new SLCC unit that will be assessed in January of

6 next year?

7 A. Well, we'll know those the same -- it would

8 be the same this year as it is next year, and that

9 will be in the fourth quarter of 2002.

10 Q. And I take it you don't know exactly what

11 that rate will be at this time?

12 A. No.

13 Q. When will Empire know the actual amount of

14 property taxes payable to taxing authorities it will

15 be required to make based upon the assessed value of

16 Empire's property, including new unit as of January 1,

17 2002?

18 A. In 2002.

19 Q. I realize that's a variation on the question

20 I just asked you, but do you know more precisely when

21 in 2002 it will be?

22 A. When we receive the tax bills, or --

23 Q. I'm sorry. Go ahead.

24 A. Well, I know when -- basically when we're

25 supposed to receive them, but, generally, we receive

1 them over a period of about a month. And we'll
2 actually make those payments in December.

3 Q. Okay. And as I understand it, you don't
4 know what exactly that amount will be at this time?

5 A. No, I don't.

6 Q. And when do you expect you would know?

7 A. When we receive the tax bills.

8 Q. Okay. And there is no way that you would
9 speculate before that time?

10 A. Well, what we've attempted to do is to -- I
11 won't say speculate, but I'll say estimate what we
12 think the tax impact will be for the addition of the
13 State Line plant, or, really, it's additional plant as
14 of June of this year.

15 Q. And when do you anticipate doing that?

16 A. We already did it.

17 Q. Okay. And what was the process that you
18 went about in estimating that?

19 A. What we did to estimate that is we took the
20 additional plant balance that we saw change from the
21 end of December 2000 up through June 30th of 2001 and
22 applied to that increase the rate that we saw at the
23 end of 1999.

24 Q. Okay. And what was that rate? Do you
25 recall?

1 A. I sure do. Let's see. .00838, I believe.
2 MR. BATES: I believe that's all of the
3 questions I have right now.
4 Thank you, Mr. Gibson.
5 THE WITNESS: Yes, sir.
6 JUDGE RUTH: Okay. Questions from the
7 Bench.
8 Commissioner Murray?
9 COMMISSIONER MURRAY: No questions. Thank
10 you.
11 JUDGE RUTH: Commissioner Lumpe?
12 QUESTIONS BY COMMISSIONER LUMPE:
13 Q. Just briefly, Mr. Gibson.
14 If I heard correctly, you actually will not
15 be paying property tax on the new unit until 12-2002;
16 is that correct?
17 A. On the total amount that we reflected on the
18 books as of -- or the increment that we had as of
19 June, that is -- that is correct.
20 Q. Okay. So the assessments you will know
21 sometime in January, but those taxes won't be due
22 until two thousand -- December 2002. Correct?
23 A. Yes. And let me just point out -- what I'm
24 really talking about is the change from the amount as
25 of the end of December until -- in State Line and what

1 was actually capitalized.

2 So if I can make that a little bit
3 clearer -- I think it's kind of muddy right now, but
4 at the end of December we had -- let's --

5 Q. This December or next December?

6 A. I'm sorry. December 2000.

7 If we had, let's just say, \$100,000,000 in
8 plant that had not been capitalized yet, and at the
9 end of June we had 150,000,000, it would be that
10 \$50,000,000 increment that would not be known
11 precisely, if that's the term that we're looking for.

12 Q. And that's what you've estimated on?

13 A. Yes.

14 COMMISSIONER LUMPE: Okay. Thank you.

15 JUDGE RUTH: Commissioner Gaw?

16 COMMISSIONER GAW: I have no questions.

17 Thank you.

18 JUDGE RUTH: Okay. Praxair, do you have
19 recross based on questions from the Bench?

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

21 JUDGE RUTH: Public Counsel.

22 MR. COFFMAN: None. Thank you.

23 JUDGE RUTH: And Staff?

24 MR. BATES: No. Thank you.

25 JUDGE RUTH: Okay. Will there be redirect?

1 MR. DUFFY: A little bit.

2 REDIRECT EXAMINATION BY MR. DUFFY:

3 Q. Mr. Gibson, you were asked some questions by
4 Staff counsel about when the actual amount of property
5 taxes will be known, and I believe your response
6 was -- you gave a time. But I believe you also
7 indicated that you can estimate the amount of the
8 property taxes that are at issue here, which -- and
9 let's try to frame that briefly.

10 As I understand it, what you're
11 saying, correct me if I'm wrong, is the Staff
12 recommended a plant balance at the end of 12-31 and
13 now they've recommended a plant balance at the end of
14 June of this year; is that right?

15 A. That's correct.

16 Q. And your contention is that they have not
17 properly recognized the property tax effect on the
18 difference between those two numbers; is that right?

19 A. That is correct.

20 Q. Okay. And we've established, have we not,
21 that you will not get property tax bills on that
22 until, what, 2002?

23 A. Yes, that's correct.

24 Q. Okay. But is it impossible to come
25 reasonably close to an estimate on what the property

1 taxes would be for that amount of increase in plant?

2 A. No, it's not impossible. As a matter of
3 fact, you know, when you -- when you really look at
4 what we've done in this case as of the end of June, we
5 have made estimates of other items, such as, when we
6 take a look at customer growth, we make some
7 assumptions based on what's the usage for that
8 customer growth. Since some -- we don't know exactly
9 what a customer who is added in June, how much revenue
10 that customer is going to generate, we make some
11 assumptions.

12 And, you know, we basically -- we haven't
13 done it quite like that, but what we've done is we've
14 gone back to a historical rate, property tax rate, to
15 calculate what the property taxes prospectively would
16 be on that additional plant. So it's -- the
17 methodology is -- I think it's consistent with some
18 other estimates that are made in a traditional rate
19 case.

20 Q. Are you aware of anything that would cause
21 the various taxing jurisdictions that Empire pays
22 taxes to to substantially reduce their property tax
23 levies and throw off that estimate?

24 A. No, but we would be more than happy to take
25 any reductions that they would be willing to throw our

1 way.

2 Q. Okay. What in your -- in layman's term and
3 in simple terms, if can you do it, what's the effect
4 on Empire if the Commission rules in favor of the
5 Staff on this issue?

6 A. Well, what it means is -- and as the
7 Commission is very well aware, this is such a -- the
8 State Line addition is such a large amount of
9 additional plant for Empire in this case that the
10 property taxes that this plant will be paying is a
11 large increase for Empire, and if -- what it really
12 would mean is that we would be forced to come back in
13 and appear before the Commission just to recoup those
14 property taxes. And if we didn't do that, then the
15 shareholders would be bearing that cost.

16 Q. Is it appropriate for shareholders to bear
17 property taxes for plant in service in your opinion?

18 A. Well, it's -- the property taxes go with the
19 plant, and the plant is there to provide energy to our
20 customers, and so it should be one of those things
21 that's appropriate to assign to the ratepayers.

22 MR. DUFFY: Okay. Thank you.

23 JUDGE RUTH: Okay. Mr. Gibson, you may step
24 down. We will recall you in a few minutes.

25 And I believe, Staff, then you will be

1 calling your witness.

2 MR. BATES: Yes, your Honor. We call Roy
3 Boltz to the stand, please.

4 (Witness sworn.)

5 JUDGE RUTH: Thank you.

6 Mr. Bates.

7 MR. BATES: Thank you, your Honor.

8 ROY M. BOLTZ, JR. testified as follows:

9 DIRECT EXAMINATION BY MR. BATES:

10 Q. Would you please state your name for the
11 record?

12 A. Roy M. Boltz, Junior.

13 Q. And, Mr. Boltz, what is your business
14 address?

15 A. P.O. Box 360, Jefferson City, Missouri,
16 65102.

17 Q. By whom are you employed?

18 A. Missouri Public Service Commission.

19 Q. And what is your position at the Commission?

20 A. Regulatory auditor.

21 Q. Mr. Boltz, do you prepare and cause to be
22 filed True-up Direct and Surrebuttal Testimony in this
23 matter which has been marked for purposes of
24 identification as Exhibits 122 and 123?

25 A. Yes, I did.

1 Q. Are there any corrections, changes, or
2 additions to that testimony which you would want to
3 make at this time?

4 A. No, there isn't.

5 Q. If I asked you the same questions today,
6 would your answers be substantively the same?

7 A. Yes.

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

10 A. Yes.

11 MR. BATES: Your Honor, with that, I move
12 for the admission of Exhibit 122 and 123 into the
13 record, and I tender this witness for
14 cross-examination.

15 JUDGE RUTH: Okay. Exhibit 122 is
16 Mr. Boltz' Direct Testimony for the true-up.

17 Are there any objections to this document?

18 (No response.)

19 JUDGE RUTH: Seeing none, its received into
20 the record.

21 (EXHIBIT NO. 122 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE RUTH: Exhibit 123 is Mr. Boltz'
24 True-up Surrebuttal Testimony.

25 Any objections to this document?

1 (No response.)

2 JUDGE RUTH: Seeing none, Exhibit 123 is
3 also received into the record.

4 (EXHIBIT NO. 123 WAS RECEIVED INTO
5 EVIDENCE.)

6 JUDGE RUTH: Okay. It's my understanding
7 that cross-examination will begin with Public Counsel;
8 is that correct?

9 MR. COFFMAN: Yes, but we have no questions,
10 your Honor.

11 JUDGE RUTH: And Mr. Conrad?

12 MR. CONRAD: No questions. Thank you.

13 JUDGE RUTH: Mr. Duffy?

14 CROSS-EXAMINATION BY MR. DUFFY:

15 Q. Good afternoon, Mr. Boltz.

16 A. Good afternoon.

17 Q. You would agree with me, would you not, that
18 Empire pays property taxes based directly on the
19 amount of plant that it has?

20 A. Yes, they do.

21 Q. So as an example of that, if Empire had no
22 property, it would pay no property taxes. Correct?

23 A. Exactly.

24 Q. And if Empire had \$2,000,000 worth of plant,
25 it would pay about twice as much in property taxes if

1 it had \$1,000,000 worth of plant; is that right?

2 A. I don't know. It depends on what the rate
3 is.

4 Q. You don't have an opinion that if the
5 plant --

6 A. It could be twice that much.

7 Q. Okay. Would it stand to reason, then, that
8 if Empire has more plant, it will pay more in property
9 tax?

10 A. Sure.

11 Q. It's not a declining block type of thing.
12 You don't get a break the more property you own.
13 Right?

14 A. No.

15 Q. Okay. You would also agree with me, would
16 you not, that property taxes are not a discretionary
17 expense? In other words, it is not an expense that
18 Empire can choose to ignore if it wants to?

19 A. No, they can't.

20 Q. If you do not pay your property taxes, the
21 government can sell your property to the highest
22 bidder in order to collect those property taxes; isn't
23 that true?

24 A. I think so.

25 Q. Where does Empire get the funds to pay its

1 property taxes?

2 A. They get it through either expense or they
3 get it through capitalization which they earn a return
4 on it and then they get depreciation on that plant.

5 Q. Okay. Let's look at it another way. Would
6 it be fair to say that Empire gets the revenues to pay
7 property taxes from the sales of electricity that it
8 makes to the customer, so the customers provide the
9 money to pay the property taxes?

10 A. Right.

11 Q. And the revenue it gets from its customers
12 is determined largely by the rates set by regulatory
13 commissions such as this one. Correct?

14 A. That's correct.

15 Q. And the amount of property taxes expressed
16 in cents or dollars per \$100 of assessed valuation is
17 assessed by various governmental bodies such as county
18 governments for roads and bridges, school districts to
19 pay teachers' salaries and through tax levies; is that
20 correct?

21 A. That's correct.

22 Q. That tax money gets distributed to all of
23 the counties in Missouri where Empire has its
24 operations; is that correct?

25 A. That's correct.

1 Q. And those counties and school districts rely
2 on those tax payments to do what they need to do.

3 Correct?

4 A. That's correct.

5 Q. And those tax levies usually are set about
6 this time of the year every year; isn't that true?

7 A. Somewhere around this time, yes.

8 Q. Based upon your experience as a regulatory
9 auditor, would you say that property levy amounts are
10 relatively stable from year to year?

11 A. I think that varies from year to year. I
12 don't know. I haven't -- not having done an analysis,
13 I don't know for sure.

14 Q. Well, let's try to figure out.

15 Are you saying that for general purposes
16 they are stable or for general purposes they vary from
17 year to year?

18 A. They could vary from year to year, depending
19 on what the taxing authorities figure for their fiscal
20 year what their needs are. They may lower it, the
21 rate, or increase it. It could vary.

22 Q. Would it be fair to say that they may vary
23 by 50 percent or more from year to year or something
24 less than that?

25 A. It could be something less than that.

1 Q. But what's your experience? Are they
2 generally about the same level with some minor
3 variations, or do they vary widely?

4 A. It's probably some minor variations.

5 Q. Okay. If you know the amount of taxable
6 property that a utility has, and you know what the
7 current tax levies are, and if you have a long history
8 of tax payments to governmental authorities, is it
9 impossible for the Staff to come up with a reasonable
10 estimate of the amount of property taxes that a
11 utility company will pay on that amount of plant?

12 A. I think we have done that in our case.

13 Q. Did you come up with a -- and you say you
14 came up with a reasonable estimate?

15 A. I think so.

16 Q. All right. So you would agree with me that
17 it's not impossible for the Staff to come up with a
18 reasonable estimate of property taxes?

19 A. Well, we did calculate property taxes for
20 the true-up.

21 Q. Okay. But you did -- you used an estimate
22 rather than the actual amount that was paid on a
23 historical basis; is that correct?

24 A. What we used was a ratio of the actual tax
25 payments made in 2000 to the beginning of the year

1 2000 plant and applied that to the end of the year --
2 or January 1, 2001 plant balances.

3 Q. Okay. So in strict terms, that was an
4 estimate as opposed to an actual amount that was paid?

5 A. If you want to call it an estimate, yes.

6 Q. Well, you would agree with me that it was
7 different than the actual amount paid, so it was an
8 estimate --

9 A. Right.

10 Q. -- arrived at by means you just described?

11 A. It was different. It was different than
12 what the actual payment was, yes.

13 Q. Okay. You agree that the State Line
14 combined cycle plant is in service at this time, is it
15 not?

16 A. Yes. I believe it came on line June 25th of
17 this year.

18 Q. And you would also agree with me that Empire
19 will have to pay property taxes on that plant in the
20 future, will it not?

21 A. Yeah, late 2002.

22 Q. Are you aware of any lawful approach that
23 Empire could use to avoid paying property taxes on the
24 State Line combined cycle plan?

25 A. Not that I'm aware.

1 Q. Can you think of any reasonably like
2 scenario under which Empire would not have to pay
3 property taxes on SLCC?

4 A. I can't think of any right now.

5 Q. Okay. Would you agree with me that in
6 Staff's original filing in this case it recognized
7 Empire's plant balance as of December 31, 2000 at
8 \$909,895,340?

9 A. Yes, subject to check.

10 Q. I think I've got something here that I'll be
11 glad to show you.

12 JUDGE RUTH: If we need to take a moment for
13 the witness to refresh his memory, that would be fine,
14 because I'm not going to allow an answer subject to
15 check.

16 MR. DUFFY: That's why I'm going to hand him
17 these things:

18 BY MR. DUFFY:

19 Q. Okay. Mr. Boltz, just for the record, I've
20 showed you a couple of documents, and I just want to
21 tie down two numbers if we might. And those numbers
22 I'd like to tie down are the total plant in service
23 shown on Accounting Schedule 3-4 from the accounting
24 schedule that was filed, I think April 3rd, 2001 in
25 this case -- I'm sorry. I don't have the exhibit

1 number. And that number was 909,895,340.

2 Do you agree with that?

3 A. I agree with that.

4 Q. And the next number is what was filed, or
5 became a part of the evidence today the Staff's
6 accounting schedule, and I'm looking at, again,
7 Accounting Schedule 3-4, and the new number for total
8 plant in service is \$1,032,374,387.

9 Do you agree with that?

10 A. I agree.

11 Q. And the difference between that, if you'll
12 believe my math, is \$122,479.47. So, roughly,
13 122 million difference increase in plant in service
14 between 12-31-2000 or 1-1-2001, and June 30, 2001.
15 Would you agree?

16 A. I agree.

17 Q. And would you agree that basically a big
18 chunk of that 122 million is the State Line combined
19 cycle plant?

20 A. That's correct.

21 Q. So the Staff has recognized that there have
22 been substantial plant additions since January 1,
23 2001, and it has increased Empire's plant balance for
24 purposes of this case to reflect those property
25 additions as of June 30, 2001. Correct?

1 A. Correct.

2 Q. And the Staff has also adjusted the balance
3 in other accounts in its audit for purposes of this
4 case to June 30, 2001, for various expenses and
5 revenues; is that correct?

6 A. That's correct.

7 Q. And these adjustments the Staff made were
8 for both revenues and expenses. Right?

9 A. Right.

10 Q. Now, if the Staff had only included
11 additional expenses but had ignored additional
12 revenues during that period, that would have been an
13 unfair and one-sided adjustment, would it not?

14 A. Could you repeat that?

15 Q. If you had only included expenses and not
16 additional revenues, that would have been an unfair,
17 one-sided type of adjustment. Right?

18 A. Right.

19 Q. And the converse would also be true. If you
20 had only included additional revenues, but had ignored
21 additional expenses, that also would have been unfair
22 and one-sided?

23 A. That's correct.

24 Q. Property tax is an expense that's recognized
25 by the Staff as a legitimate expense in rate cases, is

1 it not?

2 A. Yes, it is.

3 Q. But in this situation the Staff did not
4 adjust property tax expenses to reflect the property
5 taxes that will be due on that \$122 million in
6 additional plant that has come into existence between
7 1-1-01 and June 30, '01; isn't that true?

8 A. No. Those taxes won't be due -- won't be
9 paid until 2002, late 2002.

10 Q. I understand when they will be paid, but you
11 answered my question by saying that -- by disagreeing
12 with my question, so let me rephrase the question
13 again and make sure you understand it.

14 In this situation, the Staff has not
15 included or adjusted property taxes to reflect the
16 property taxes that will be due on that \$122 million
17 in additional plant, because I believe that you
18 testified you applied the tax rate to the plant
19 balance at the end of the year of 2000; is that right?

20 A. Right.

21 Q. Okay. So you would agree with me that there
22 are no property taxes in the Staff's case for this
23 \$122 million in plant then?

24 A. There is -- well, property taxes that were
25 capitalized are in -- that were capitalized when the

1 plant went into service are in the Staff's case.

2 Q. But those would have been the costs that
3 were booked in 2000. Right?

4 A. Well, they would have been -- you
5 capitalized them in June 25th when you switched over
6 to plant in service.

7 Q. Okay. So how much property tax that was
8 capitalized on June 25th of 2001 is included in
9 this -- in the Staff's case?

10 A. I don't have the calculation with me, but --
11 I haven't done it.

12 Q. Is it -- is it going to be even close to
13 the amount that will actually be paid in 2002 on the
14 122 million?

15 A. No, it probably won't be --

16 Q. Okay.

17 A. -- because you capitalize some and then you
18 pay expenses later on on the rest.

19 Q. Well, you would agree with me, would you
20 not, that for the most part there are no property
21 taxing recognized by the Staff for that 122 million,
22 except for this capitalized portion that you've talked
23 about?

24 A. Right. They won't be paid -- they won't be
25 an expense until the year 2002.

1 Q. I understand then.

2 As far as the Staff is concerned, would
3 Empire have to file another rate case in Missouri in
4 order to obtain recognition of the property taxes, the
5 full amount of property taxes on that \$122 million in
6 increased plant?

7 A. That would be their decision, not mine.

8 Q. When would Empire have to file another rate
9 case in Missouri in order to get that property taxes
10 for that \$122 million in plant?

11 A. Whenever they feel they have to file to get
12 them. Probably in 2002.

13 Q. You think Empire should have to file
14 another rate case in 2002 just to obtain recognition
15 in rates of the property taxes associated with that
16 122 million?

17 A. No, I don't.

18 MR. DUFFY: Okay. That's all I have.

19 Thank you.

20 JUDGE RUTH: Commissioner Murray, do you
21 have questions for this witness?

22 COMMISSIONER MURRAY: Yes, I do. Thank you.

23 QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Good afternoon, Mr. Boltz.

25 A. Good afternoon.

1 Q. You indicated that you applied a ratio to
2 the beginning of the year plant balance to determine
3 the --

4 A. The annualized property taxes.

5 Q. Couldn't you have just as easily have
6 applied that same ratio to the plant balance as of
7 June 30, 2001?

8 A. No, I don't think we could have.

9 Q. Why?

10 A. It wouldn't be the same.

11 Q. Obviously, it would be a different number,
12 but why could -- why would it be any more of an
13 estimate than applying that same ratio to the plant in
14 service as of the end of 2000?

15 A. Because that won't give you the expense
16 level that's going to be -- that's going to be on the
17 Company's books that's going to be there in the year
18 2002.

19 Q. On Page 66 of your True-up Surrebuttal
20 Testimony, you talk about known and measurable
21 expense. Do you see that? It begins on Line 5.

22 A. Right.

23 Q. And you indicate that "measurable" means
24 that the rate impact of the change, for example,
25 property tax expense, can be calculated with a high

1 degree of accuracy. And I'm trying to understand why
2 it is that you think that the property taxes in
3 question here could not be calculated with as high a
4 degree of accuracy as the property taxes that you did
5 agree to include in expenses as known as measurable
6 that were calculated.

7 Why would the degree of accuracy be any less
8 for the -- to base it upon the amount that was plant
9 balance as of June 30, '01?

10 A. Because we don't know what -- I think it
11 would give you a distorted level of expenses.

12 Q. Well, that's what I'm trying to understand.
13 You're not making that clear to me.

14 A. Okay. They're assessed on the plant on
15 January 1 as the assessment date, and then the
16 final -- the bill comes -- they get their tax bills
17 late November or December, and then they true-up what
18 they had estimated throughout the year for property
19 taxes. And when they get that true-up, that's the
20 expense for the year.

21 So we won't know what -- the plant at
22 January 1, 2001, the payments won't be known until
23 December of 2001. So we won't know what the expense
24 level is on that plant. In fact, they won't even be
25 accruing the expenses until 2002 for the plant that's

1 going to be assessed January 1, 2002 --

2 Q. Okay.

3 A. -- which will include the June 30th balance.

4 Q. The property taxes that Staff agreed to

5 include in the expenses is known and measurable?

6 A. Right.

7 Q. When will they be paid?

8 A. They will probably be paid December of this

9 year.

10 Q. December of 2001?

11 A. Right.

12 Q. And when were they known and measurable?

13 A. When we calculated them for the true-up.

14 Q. And when was that?

15 A. Right before we filed testimony this year.

16 Q. And when was that?

17 A. I forgot what day we filed.

18 August -- August 17th, August 16th.

19 Q. And again, go through how you calculated

20 that, please. You applied a ratio to --

21 A. To the plant balance as June 30th -- or

22 January 1, 2001, and then we -- what we did, we had

23 our factors at .00838 that Mr. Gibson referred to

24 earlier, and we applied that to the plant in service

25 at 12-31-2000, and that gave us a figure for

1 annualized property taxes. And we subtracted out what
2 the property tax expense was in 2000 to get the
3 annualized amount to be used for ongoing purposes.

4 Q. And you indicated that the amount was not
5 known and measurable until you did your calculations
6 on August 16th?

7 A. Right. After we got done with our field
8 audit and we put together testimony.

9 Q. Was it not known and measurable before that,
10 but you just didn't measure it until then?

11 A. Well, we measured it while we were doing the
12 true-up audit.

13 Q. But when did it actually become known and
14 measurable?

15 A. Probably -- probably December 30th when we
16 found out what the actual tax bills for 2000 were, so
17 we could apply that factor to the plant.

18 Q. Okay. Did you hear Mr. Gibson when he
19 responded to a question as to the impact that failure
20 to include the amount of property taxes as of the
21 plant -- based upon the plant balance as of June 30,
22 2001, the impact that that would have upon Empire
23 District Electric Company? Did you hear that?

24 A. I heard him.

25 Q. Do you agree with that?

1 A. Not really.

2 Q. How do you disagree?

3 A. Because he's trying to put in for expenses
4 in this case, expenses that won't be known until late
5 2002.

6 Q. I understand that, but what is the impact?

7 A. What is the impact?

8 Q. On the Company. Do you disagree that the
9 impact upon the Company in treating it the way Staff
10 wants to treat it is as Mr. Gibson stated?

11 A. Well, they'll have to pay the taxes later in
12 2002.

13 Q. Will they be able to recover what they paid?

14 A. They -- they will recover some of it, of the
15 taxes that were capitalized. They will earn
16 depreciation and a return on that.

17 Q. And you didn't make a calculation as to what
18 that would be? Did I hear you correctly? You did not
19 calculate that?

20 A. The --

21 Q. The amount that they will recover or --

22 A. No, I haven't calculated that.

23 Q. And wouldn't that be an interesting number
24 for you to know?

25 A. Well, it would be kind of hard to calculate

1 at the moment.

2 Q. But you're saying that they -- they are
3 going to recover enough through what they capitalize?

4 A. No. They won't recover it all through what
5 they capitalize.

6 Q. I thought I just heard you say that.

7 A. They'll recover the capitalized part. Then
8 they will get the expenses when the expenses become
9 known.

10 Q. Okay. And in order to get those expenses
11 once they become known, what do they have to do?

12 A. I assume they'll have to come in here for a
13 rate increase.

14 Q. So they have to file a full-blown rate
15 increase since we can't look at one item at a time?

16 A. Right.

17 Q. And you think that's appropriate?

18 A. I don't know if it's appropriate or not,
19 but -- but that's the way it works. That's the way it
20 works out.

21 Q. Do you think that that is the preferable
22 method if they are going to recover?

23 A. Well, they are going to recover what we put
24 in the case, the annualized amount. They are going to
25 recover that. Plus, they are going to recover

1 whatever was capitalized on June 30th.

2 Q. What I'm asking you is, do you think that's
3 the appropriate manner --

4 A. Yes.

5 Q. -- for them to go about it?

6 COMMISSIONER MURRAY: All right. Thank you.
7 Thank you, your Honor.

8 JUDGE RUTH: Commissioner Lumpe?

9 QUESTIONS BY COMMISSIONER LUMPE:

10 Q. Mr. Boltz, I'm looking on Page 10 of your
11 testimony, and the question on Line 24, was the Staff
12 aware of the property tax expense on the plant was
13 going to be a true-up issue in this case?

14 It was not listed on the items of true-up
15 items?

16 A. I think it was listed on there, but they
17 didn't bring up the issue for the State Line plant at
18 that time.

19 Q. So --

20 A. On the Statement of Issues, it was "if
21 applicable," so -- and Staff -- we've already
22 calculated what the annualized property taxes were
23 based on the new plant at June 30th.

24 Q. So if the issue was on the list as a true-up
25 item, what you were not aware of is that they were

1 considering property tax extended out to the year
2 2002?

3 A. Right.

4 Q. Okay. That's -- and on a true-up item, the
5 issue is, I think as you've said, is to be known and
6 measurable, and your concern is that it isn't known
7 and it isn't measurable until 2002?

8 A. That's correct.

9 Q. Okay. Now, Mr. Gibson mentioned that
10 various parts of the plant are included in the
11 property tax. Various pieces of it, I assume, as it
12 was being constructed were assessed during the
13 construction?

14 A. Right.

15 Q. Okay. So the -- so parts of the plant are
16 somewhere in the current property taxes being paid?

17 A. Some of them are, yes.

18 Q. Okay. So it's the amount -- the difference,
19 then, between what is already in the property tax and
20 what won't be known until 2002 that -- and is that
21 what is being capitalized, or is that -- is that being
22 capitalized, that part?

23 A. Part of it's being capitalized, but that
24 plant that went in in June, it won't be assessed on
25 that until January 1 --

1 Q. January 1.

2 A. -- 2002, and then they won't know what the
3 actual property tax payment is on that until late
4 2002.

5 Q. But are there parts of the plant that were
6 assessed on January 1, 2001? Was any part of the
7 plant assessed in 2001?

8 A. The part of it that was cap-- that was
9 capitalized in June --

10 Q. Right.

11 A. -- was assessed as CWIP, or construction
12 work in progress. And that was capitalized and put in
13 plant, and now they are earning a return and
14 depreciation.

15 Q. They are earning a return and depreciation
16 on that?

17 A. Right. That's how they recover it.

18 Q. Right. And so -- I don't know if I'm
19 correct or not, but then that is already assessed? Is
20 there any part of the plant that's been assessed by
21 the assessor?

22 A. Yeah, the capitalized part.

23 Q. The capitalized part. That's what I really
24 want to know.

25 So it's really that difference that is not

1 known and measurable that you won't know until 2002?

2 A. Correct.

3 Q. Okay. Has the Commission ever allowed
4 property tax to be estimated so far out from the test
5 year? When is the test year? '99?

6 A. Our test year --

7 Q. Yes.

8 A. -- was December 2000 with a true-up through
9 June 30, 2001.

10 Q. Okay. And can you answer that question, for
11 me? Have we ever allowed property tax that far out
12 from the test year?

13 A. No, we haven't, and especially not --
14 especially not past the operation of law date.

15 Q. Okay. So this is -- this is normally the
16 way we would treat property tax?

17 A. Right.

18 COMMISSIONER LUMPE:: Okay. Thank you.

19 JUDGE RUTH: Commissioner Gaw?

20 COMMISSIONER GAW: Thank you.

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Let me make sure I'm understanding this,
23 Mr. Boltz.

24 First of all, the portion that you allowed
25 the Company in regard to property tax, did you

1 calculate that based upon the plant that was partially
2 constructed as of January 1st of 2001? Is that the
3 part you're referring to as being capitalized?

4 A. Right. That part was capitalized.

5 Q. So up to that date of January 1st of 2001,
6 is that included in what you believe the Company
7 should be allowed to earn upon on return, on a rate of
8 return?

9 A. In the rate base?

10 Q. Yes. In the rate -- I'm sorry. In the rate
11 base.

12 A. Yes.

13 Q. All right. Is there any part that's not
14 included that would have been on-site January 1st
15 that's not being capitalized in your calculation and
16 what Staff is allowing in rate base?

17 A. We've allowed it all in rate base at
18 June 30th.

19 Q. You haven't allowed all of the plant that
20 was constructed through June 30th in rate base, have
21 you?

22 A. Yes, we have.

23 Q. As far as property taxes are concerned?

24 A. No. We won't know what the property taxes
25 are on that until 2002.

1 Q. So as far as property taxes are concerned,
2 what are you allowing the Company? Is it what was
3 constructed up through January 1st of 2001?

4 A. Whatever was in plant and service January 1,
5 2001.

6 Q. Well, plant and service is different than
7 what was on-site in the construction process, isn't
8 it?

9 A. Right.

10 Q. So what are you allowing that was on-site in
11 the construction process as of January 1st of 2001?

12 A. Just the capitalized piece that was
13 capitalized June 30th.

14 Q. And what is that?

15 A. That -- I don't have that figure with me.

16 Q. What does it include? Not number-wise, but
17 what does it include, what -- what improvements?

18 A. It's all of the plant that wasn't -- wasn't
19 capitalized on the books January 1. It's all of the
20 improvements from January 1 up through June 30th that
21 were booked to plant in service.

22 Q. That's what you've capitalized?

23 A. Yeah, the plant additions.

24 Q. On property taxes?

25 A. The capitalized portion, yes.

1 Q. Okay. If you had a -- if you had a
2 situation where there was a plant the equivalent size
3 and age that were already up and running as of
4 January 1st of 2001, what would you do in regard to
5 the property taxes in your recommendation?

6 A. On the plant that's already up and running?

7 Q. Yes, if that were the case in this matter,
8 which it's not, but if it were.

9 A. We would give them the property taxes on
10 that plant, the expense.

11 Q. And how would you calculate it?

12 A. It would be whatever the property tax
13 expense was for that plant.

14 Q. What would that be?

15 A. I don't know.

16 Q. How would you calculate that?

17 A. You would have to take --

18 Q. Assuming that -- let's say it magically
19 appeared on January the 1st of 2001. It had never
20 been there before, but it was up and running.

21 A. It was up and running.

22 Q. How would you calculate it?

23 A. The property taxes?

24 Q. Yes.

25 A. I would use the property tax payments for

1 the previous year and put that in the case as a
2 property tax expense.

3 Q. The property tax rates?

4 A. I would take the rates -- or the property
5 tax expense, or the final number that came in December
6 of that previous year from January 1, we would stick
7 that in as the ongoing property tax expense level.

8 Q. All right. And you would -- and how would
9 you come up with your valuation?

10 A. We would take the -- whatever was paid and
11 go back to whatever January 1st of that year was,
12 there had to be something, and figure out what the
13 property tax rate was and then apply that to the
14 plant. Actually, it would be the payments since you
15 didn't have any plant the first of the year. They
16 wouldn't have even been assessed on it.

17 Q. Let me ask -- let me ask it in my own words,
18 and maybe you can tell me if this is correct or not.

19 Would you not look at the rates that were in
20 effect for 2000 as far as the rates were concerned
21 in -- in one part. As far as the rates were
22 concerned, would you look at the rates that were in
23 effect for 2000?

24 A. The property tax rates?

25 Q. Yes.

1 A. Yes.

2 Q. And would you also, then, calculate the
3 value of the plant as of January 1st of 2001,
4 multiplied by the factor that is normally allowed for
5 commercial property and for property taxes and then
6 multiply that by the rate in 2000 in coming up with
7 what taxes would be for 2001?

8 A. If you didn't have -- yes, I think you
9 would.

10 Q. And is that how Staff would normally
11 estimate what the taxes would be on that plant in
12 service as of January 1st?

13 A. Right. We use the tax rates that are in
14 effect during the previous year, or the actual tax
15 payments, and you use that expense for the expense
16 going forward.

17 Q. All right.

18 A. Because then January 1st they would be
19 assessed on that plant, and they wouldn't pay property
20 taxes on that until the following December.

21 Q. Yes. They would pay property taxes on that
22 plant normally as of December of 2001, would they not,
23 in my example?

24 A. Right.

25 Q. All right. Now, as far as calculation is

1 concerned, what is the difference between that
2 calculation and the one that you would make in coming
3 up with the amount that would be anticipated to be
4 paid in 2002, assuming the current fact situation, if
5 you took -- if you're differentiating between that and
6 what the Company is asking in their position? I'm
7 asking you what the difference is.

8 A. Well, what we did -- in our case, we applied
9 what the actual tax rate was for 2000, applied it to
10 the January 1 plant balance to get an annualized level
11 of property tax.

12 Now, that plant that went in service in
13 June, they won't be assessed on that until January 1,
14 2002, and they won't pay property taxes on that until
15 2002.

16 Q. I understand that part, and I'm going to get
17 to that in a moment. But I'm trying to understand
18 what the difference is in what Company is proposing as
19 their calculation for determining what those property
20 taxes will be in 2002 and what you would do under my
21 hypothetical with the plant in service as of
22 January 1st of 2001.

23 Is there any difference in the way you would
24 arrive at that calculation?

25 A. There is no -- really no difference in the

1 calculation, but you don't know what the expense is
2 going to be, really, on that plant until January 1 of
3 2001 until the end of the year.

4 Q. You don't know what the rates are going to
5 be on the property taxes; is that what you mean?

6 A. Yeah. Until the end.

7 Q. But you're still able to make that estimate?

8 A. You could make an estimate, sure.

9 Q. And you would make that estimate under my
10 hypothetical, would you not?

11 A. Hypothetically, yes, you could do it.

12 Q. Would you do it if you ran into that
13 situation in your normal way of assessing what
14 property taxes would be in taking Staff's normal
15 positions?

16 A. If I didn't have anything else to use, that
17 would be it, a reasonable, simple way to do it.

18 Q. And would you normally do it in some fashion
19 similar to that, given those facts in my hypothetical?

20 A. Probably, yes.

21 Q. Okay. Now, let me go to the next -- the
22 next phase of this. I'm trying to see where the line
23 is here.

24 If that's the case, then help me understand
25 what the difference is when we move this another year

1 out, which is basically what we're dealing with in the
2 current fact situation.

3 In 2001, the Company will not pay taxes on
4 the entire plant in service as of June 25th of 2001,
5 will they?

6 A. No.

7 Q. And that is because the assessment is done
8 as of January 1st of 2001 for taxes that are paid in
9 December of 2001?

10 A. Right.

11 Q. Assuming they paid on time.

12 A. Right.

13 Q. Okay. So as far as 2001 is concerned, there
14 would not be a payment for the full plant in service
15 as of January -- excuse me -- June of 2001?

16 A. Correct.

17 Q. All right. Now, what would happen in regard
18 to Company's position if they were allowed in the rate
19 base the full amount that they were requesting on
20 property taxes, if you know? Would they be
21 overcompensated if that were allowed, or is there an
22 adjustment because 2001 is a lesser amount in the
23 property -- in the property tax calculation?

24 A. Could you kind of rephrase that for me?

25 Q. Yeah. This is -- what I'm asking you is,

1 with -- in analyzing Company's position here, if you
2 take their position, do they get overcompensated
3 because the amount of taxes that they're requesting is
4 a calculation for what they believe taxes will be for
5 2002? Are they being overcompensated in their
6 position because taxes do not rise to that level on
7 that plant until a year-and-a-half later in 2002?

8 A. That could be true.

9 Q. Do you know whether it is true or not,
10 because I don't. I'm asking for information really,
11 and I don't know what the answer is.

12 A. No, I don't either, because I don't know
13 what -- how the taxing authorities -- if they're going
14 to either lower their rate or raise their rates.

15 Q. You're back on the rates again.

16 Assuming the rates will remain the same,
17 which may be a bad assumption, but assuming that,
18 would they be overcompensated in regard to what they
19 could assess the ratepayers if we use their
20 calculation, assuming the rates would remain the same
21 in 2001 and 2002 and on out from there? I realize
22 that's a major assumption.

23 But is there -- do they get overcompensated
24 or is there an adjustment that accounts for the fact
25 that 2001 will not give -- will not assess the full

1 plant in service that we're talking about being
2 completed in June of 2001?

3 A. I'll have to say I don't know if they will
4 be overcompensated. They could be, or they could be
5 undercompensated, too.

6 Q. Okay. I appreciate -- I appreciate your
7 help.

8 Now, let me ask you this hypothetical: If
9 we had a situation where this was a plant that -- one
10 similar to one we're talking about was already in
11 existence throughout all of 2001, up to -- excuse
12 me -- up to June 30th of 2001, but through the
13 beginning of the year, and then it was sold on
14 June 30th of 2001, what would you do with the property
15 tax for that plant if you were using your normal
16 process of figuring property taxes?

17 A. What would I do with the property taxes that
18 had already been paid on that?

19 Q. No, they haven't been paid.

20 A. But they're going to be assessed --

21 Q. They will be paid --

22 A. -- in December.

23 Q. -- in December, but there will no longer be
24 a plant owned by the Company as of June 30th of 2001.

25 A. I probably wouldn't allow any property tax

1 expense for that.

2 Q. I'm -- I'm suggesting --

3 A. Assuming it's sold.

4 Q. I'm suggesting they are going to be paid,
5 but you probably wouldn't allow any; is that correct?

6 A. Property tax expense?

7 Q. Yes.

8 A. Right. The new owner would probably pay the
9 expense.

10 Q. They could or they may share it, but over
11 the --

12 A. True.

13 Q. As far as rate -- rate base is concerned,
14 you would excluded it under the way you analyze your
15 normal expenses?

16 A. Yeah. You -- you would exclude the plant
17 from rate base.

18 Q. Property -- I'm only on the property taxes
19 now.

20 A. Property taxes.

21 Q. Don't get off of that.
22 Would you include it or exclude it?

23 A. The expense?

24 Q. Yes.

25 A. If it was June 30th -- you're saying it was

1 sold June 30th?

2 Q. Sold June 30th.

3 A. I would probably exclude it.

4 Q. And why would you do that?

5 A. Because they no longer own it. It's not in
6 plant and service anymore.

7 Q. All right. So if I can narrow this down a
8 little bit, then, to the rationale, in essence, there
9 it appears that you're on one hand saying they can't
10 have it if they have it, and, on the other hand, they
11 can't have it if they don't, so I'm trying to
12 understand why that is.

13 Is it -- would it be accurate to say that
14 the sole reason that you will not allow the property
15 taxes for the full plant in service as of June -- the
16 end of June of this year, and the property tax
17 portion, is because it is difficult for you to
18 calculate the amount and, therefore, not known and
19 measurable?

20 A. Correct.

21 Q. Is that the only reason, or -- or is -- and
22 before you answer, is it also -- does it also relate
23 to the distance out that it is to be paid being
24 December 2002? Is it both of those things, or is it
25 just the first?

1 A. It's both. Both of them.

2 COMMISSIONER GAW: All right. I think I've
3 sufficiently muddied the water. I'll stop right
4 there.

5 Thank you.

6 JUDGE RUTH: Thank you.

7 COMMISSIONER GAW: Thank you, Mr. Boltz.

8 JUDGE RUTH: We've been going since 1:00, so
9 I think it's appropriate to take a break now until 20
10 after 3:00. That's about 12 minutes.

11 We're off the record.

12 (A recess was taken.)

13 JUDGE RUTH: Before we took a break,
14 Commissioner Gaw had been asking some questions of
15 Mr. Boltz. Let me make sure.

16 Commissioner Gaw, are you finished with this
17 witness?

18 COMMISSIONER GAW: Yes.

19 JUDGE RUTH: Thank you.

20 Mr. Coffman, do you have recross based on
21 the questions from the Bench?

22 MR. COFFMAN: I do not, your Honor.

23 JUDGE RUTH: Mr. Conrad?

24 MR. CONRAD: No, ma'am.

25 JUDGE RUTH: Mr. Duffy?

1 MR. DUFFY: Just a few.

2 RE-CROSS-EXAMINATION BY MR. DUFFY:

3 Q. Mr. Boltz, as I understand it, Mr. Gibson's
4 testimony says that Empire wants \$1,027,000 to
5 represent the property taxes on this 122 million that
6 we've been talking about. Do you understand that
7 also?

8 A. Yes, that's the amount.

9 Q. And the Staff's opposed to the recognition
10 for all of the reasons you've stated.

11 Let's just assume hypothetically that the
12 Commission gave us the \$1,027,000 in rates. If we
13 start collecting those in rates on October 1 of this
14 year, would I be correct in assuming that it would
15 take a year for us to collect that \$1,027,000 the way
16 the rates are structured?

17 A. Correct, it would.

18 Q. So that would put us at October 1, 2002.
19 And I believe you've testified several times that we
20 would then have to pay the property taxes to the
21 taxing authorities in December of 2002 --

22 A. Correct.

23 Q. -- right?

24 So if the Commission built this into rates,
25 the most -- or the argument that anybody could make

1 that we were being overcompensated, as far as I can
2 tell, and correct me if I'm wrong, is we have that
3 money for two months longer than absolutely was
4 necessary to have it before we had to give it to the
5 taxing authorities. That would be November and
6 December of 2002. Is that right?

7 A. But you could have been overcollecting, too,
8 depending on what the payments are going to be.

9 Q. That's right, because at its very heart,
10 it's an estimate, is it not?

11 A. Yes, it is.

12 Q. We're all relying on the fact that there is
13 not going to be a wide valuation -- a wide variation
14 in the tax levies, and we're all relying on the
15 assumption that the revenues that the Commission will
16 approve in this case are accurate. And, you know,
17 rate-making isn't an exact science. It's a process of
18 estimations of what's going to be in the future, is it
19 not?

20 A. Yes.

21 Q. And you've already admitted that the process
22 you used to get the number you're recommending is an
23 estimate, is it not?

24 A. Yes, it is.

25 Q. Okay. So even if -- under a worst-case

1 scenario, if the Commission were concerned that
2 somehow Empire was going to have this money for two
3 months longer than was absolutely necessary, if the
4 Commission felt there should be some sort of
5 discounted present value for those two months, they
6 could adjust this \$1,027,000 figure so that it was --
7 it could be as exact a match as possible under the
8 circumstances, couldn't it?

9 A. Could you repeat that?

10 Q. I guess what I'm trying to say is, could you
11 use some sort of discounted present value to deal with
12 the fact that Empire might have the use of these funds
13 for two months longer than is absolutely necessary in
14 order to get around the Staff's concern that giving
15 Empire's money now for something that isn't going to
16 be paid until the end of 2002, you could deal with
17 that? That's why you discount present value things,
18 isn't it?

19 A. Yes.

20 MR. DUFFY: Okay. That's all I have.

21 JUDGE RUTH: Redirect?

22 MR. BATES: Yes. Thank you, your Honor.

23 REDIRECT EXAMINATION BY MR. BATES:

24 Q. Mr. Boltz, I believe that both Commissioner
25 Murray and Commissioner Gaw asked you a question about

1 the capitalization of the Company.

2 If I referred you to Exhibit No. 120, which
3 has been admitted into evidence and is the True-up
4 Rebuttal Testimony of Mr. Gibson, is that information,
5 to your knowledge, found on Page 3?

6 A. Yes.

7 Q. Okay. Let me ask you this: In order to
8 determine whether Empire has to file a new rate case
9 in 2002, as Commissioner Murray asked you about, and
10 that rate case would have to be filed to recover any
11 additional property taxes on the State Line unit,
12 would you need to know what is happening in other
13 areas of revenues, expenses, and rate base in order to
14 make some sort of a calculation?

15 A. Yes, I would.

16 Q. What other items, then, would you need to
17 look at?

18 A. Besides the rate base --

19 Q. Yes.

20 A. -- and the expense?

21 You would have to look at customer
22 annualization for revenues, customer growth, and
23 various other expenses that could have decreased or
24 gone up.

25 Q. Can you -- can you detail for the Commission

1 what some of those expenses would be?

2 A. Payroll. You might lose some people on the
3 payroll. You would have to adjust for that. Or you
4 might have put more people on. You would have to
5 adjust for that.

6 Q. Any other significant factors?

7 A. Maybe property insurance or something.
8 There could be a lot of things, a lot of items.

9 Q. In response to the large increase in plant
10 subject to property taxes on Empire's part, is it
11 possible that the taxing authorities might choose to
12 lower the property tax rate to limit the tax windfall
13 that they would receive?

14 A. It's possible, yes.

15 Q. Would you be uncomfortable, then, applying
16 an historical property tax rate to Empire's current
17 plant balance, including the new tax (sic) line unit,
18 or comfortable?

19 A. Uncomfortable.

20 Q. And why is that?

21 A. Because they could fluctuate, even though --
22 on Mr. Gibson's table you can see they fluctuate up
23 and down and up and down, so you don't know what the
24 property tax rates are going to do.

25 Q. If you know, approximately how much did

1 Empire file for in increased rates in this case?

2 A. 41,000,000, approximately.

3 Q. Okay. And what's the approximate value of

4 the issue that we're talking about right now?

5 A. About \$1,027,000.

6 Q. Assuming no other favorable changes occur in

7 Empire's revenue requirement that would affect the

8 impact of any increased property taxes, do you think

9 that Empire would in your experience likely file a

10 rate case to recover approximately \$1,027,000?

11 A. I doubt it.

12 Q. And you included property taxes on State

13 Line construction amounts in the base balance for the

14 new State Line unit?

15 A. Not after January 1.

16 Q. And why not after January 1?

17 A. Because it hasn't been assessed yet, for one

18 thing.

19 Q. At what point in time was that construction

20 amount assessed for property tax purposes?

21 A. January 1 of 2001.

22 Q. Of 2000?

23 A. 2001.

24 Q. Oh, 2001. Thank you.

25 Has any construction amount for State Line

1 spent after January 1, 2001 been assessed for property
2 tax purposes at this time?

3 A. No, they haven't.

4 Q. Has the Staff included property taxes on
5 State Line construction costs incurred after January 1
6 of this year in either rate base or expense in this
7 case?

8 A. Repeat that, please.

9 Q. Has the Staff included property taxes on
10 State Line construction costs incurred after January 1
11 of this year in either rate base or expense in this
12 case?

13 A. No.

14 Q. For plant that might be sold by an owner
15 after property taxes are assessed on it, would
16 property taxes on that plant be an ongoing expense for
17 the old owner?

18 A. No, it wouldn't.

19 Q. What would it be?

20 A. They would have to -- well, they would have
21 to work out some kind of an agreement between the new
22 owners on who's going to pay for those property taxes.

23 Q. I believe that Commissioner Gaw asked you
24 whether Empire would ever collect the property taxes
25 if its position on this issue prevails.

1 When will Empire begin accruing property tax
2 expense on the new State Line unit?

3 A. On the new State Line unit?

4 Q. Yes.

5 A. It would be January 1 of 2002.

6 Q. Okay. And will -- when will they make those
7 property tax payments on those assessments?

8 A. Late 2002.

9 Q. Are both of these dates outside the
10 operation of law date for this case?

11 A. Yes.

12 Q. And what significance does that have?

13 A. Outside the law date?

14 Q. Yes.

15 A. We usually don't allow anything past the law
16 dates, and the Commission hasn't usually given
17 anything past the law dates either.

18 MR. BATES: Okay. Thank you very much.

19 JUDGE RUTH: Okay. Mr. Boltz, you may step
20 down. At this time you're not excused. If you will
21 just stay in the courtroom.

22 It's my understanding that Empire now wishes
23 to recall Mr. Gibson on the TOPrS issue; is that
24 correct?

25 MR. SWEARENGEN: That's correct. We'll call

1 Mr. Gibson at this time.

2 JUDGE RUTH: Mr. Gibson, I'll remind you
3 that you are still under oath.

4 THE WITNESS: Okay.

5 JUDGE RUTH: Empire, your witness.

6 MR. SWEARENGEN: Thank you.

7 I would simply tender Mr. Gibson for
8 cross-examination at this time.

9 And I think for the convenience of the
10 Commission and the parties, it's my understanding that
11 all of his testimony on this particular issue is
12 contained in his True-up Surrebuttal Testimony, which
13 is Exhibit 121. I'm sure Mr. Gibson will correct me
14 if I'm wrong, but I believe that's the case.

15 JUDGE RUTH: Thank you.

16 Okay. On this portion of the
17 cross-examination, my notes indicate the order was
18 going to be Staff, Praxair, OPC; is that correct?

19 MR. SWEARENGEN: Yes, your Honor.

20 JUDGE RUTH: Then, Staff, you may begin.

21 MR. KRUEGER: Thank you, your Honor.

22 I would first begin by entering my
23 appearance as an attorney for the Staff. My name is
24 Keith R. Krueger. My address P.O. Box 360, Jefferson
25 City, Missouri, 65102.

1 DAVID W. GIBSON, being previously sworn, testified as
2 follows:

3 CROSS-EXAMINATION BY MR. KRUEGER:

4 Q. Good afternoon, Mr. Gibson.

5 A. Good afternoon.

6 Q. I have just a couple of questions that I'd
7 like to ask about the nature of these trust preferred
8 stocks, or TOPrS, as they're called.

9 Am I correct to understand that the Company
10 has sold junior subordinated notes to a trust known as
11 Empire District Electric Trust 1?

12 A. That is correct.

13 Q. And is this trust a subsidiary of the
14 Company?

15 A. It's -- yes, it is.

16 Q. Am I also correct to understand that the
17 trust, then, is the entity that actually issued the
18 TOPrS?

19 A. That's exactly correct.

20 Q. And the trust will pay the dividends on that
21 preferred stock?

22 A. That's true.

23 Q. How did the trust utilize the proceeds that
24 it received from the sale of the trust preferred
25 stock?

1 A. The proceeds were actually used by Empire.
2 We -- the funds from the sale of the trust preferred
3 were actually given back to Empire District as an
4 entity, and we issued the -- issued to the trust the
5 unsecured long-term debt.

6 Q. So the trust paid the money to Empire in
7 exchange for the notes?

8 A. That's correct.

9 Q. Okay. So does that mean, then, that the
10 trust preferred stock is, in essence, backed by debt?

11 A. Yes, it is.

12 Q. How did the Company utilize the proceeds
13 that it received from the sale of the junior
14 subordinated notes?

15 A. The proceeds were basically added to the
16 general funds of the Company, and, in essence, what we
17 did was we paid down our short-term debt that was --
18 that we had incurred because of our construction
19 program.

20 Q. So does that mean, then, that basically
21 Empire has retired short-term debt and replaced it
22 with long-term debt?

23 A. That's correct.

24 Q. Has Empire unconditionally guaranteed the
25 payment by the trust of the amounts due on the

1 preferred securities?

2 A. Yes, we have.

3 Q. When must these securities be redeemed in
4 full?

5 A. The trust preferred will be redeemed at the
6 same time that the unsecured long-term debt will be
7 redeemed, which is in 2031.

8 MR. KRUEGER: Thank you.

9 That's all of the questions I have, your
10 Honor.

11 JUDGE RUTH: Mr. Conrad?

12 MR. CONRAD: No questions. Thank you.

13 JUDGE RUTH: Mr. Coffman?

14 MR. COFFMAN: No questions, your Honor.

15 JUDGE RUTH: Commissioner Murray?

16 COMMISSIONER MURRAY: I'll pass. Thank you.

17 JUDGE RUTH: Commissioner Lumpe?

18 QUESTIONS BY COMMISSIONER LUMPE:

19 Q. Very briefly, Mr. Gibson.

20 A. Yes, ma'am.

21 Q. In listening to Mr. Coffman's opening
22 statement, I was a little confused.

23 Are you treating in this case the TOPrS as
24 debt as opposed to equity?

25 A. Yes. In our instance, they are debt. The

1 equity really -- the treatment that you receive for
2 being equity is something that Standard & Poor's
3 recognizes. Moody's, when they rate these, they rate
4 them as debt. They look at them as debt. The IRS --
5 excuse me. The IRS recognizes this as debt because
6 they -- they authorize the tax deductibility of these
7 payments.

8 Q. And that is the same position that Staff has
9 taken, and you're in agreement --

10 A. Yes.

11 Q. -- with the position of Staff?

12 And this has an effect on the capital
13 structure? Is -- is that the key significance?

14 A. Yes, that is correct.

15 COMMISSIONER LUMPE: Okay. Thank you.

16 JUDGE RUTH: Commissioner Gaw?

17 COMMISSIONER GAW: Thank you.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Can you explain to me, Mr. Gibson, why this
20 was done in this fashion instead of just having Empire
21 directly barrow the money?

22 A. Sure. I would be happy to.

23 Keep in mind that when we did this, it was
24 the first part of this year. It was after the
25 merger -- or proposed merger with UtiliCorp had

1 failed, and we looked around at our financing. Our
2 short-term debt, we have a \$100,000,000 line of credit
3 basically. That's the maximum that we were -- we are
4 allowed to issue.

5 And so what we did was, when we looked
6 around, the common stock -- we looked at several
7 things, but one of them that we looked at was what was
8 going to happen with the Company financially for the
9 rest of the year. And when we looked at this, we had
10 to take several things into account. One of them was,
11 you know, Can we do this, and, What is the financial
12 impact?

13 So we looked at the issuance of common
14 stock. We looked at additional issuance of bonds.
15 And the -- the -- you know, What would really happen?
16 What would be the effect financially on the Company if
17 we did something like that. And then we looked at
18 these what are called TOPrS, or what I call trust
19 preferred securities.

20 From our standpoint, the common stock really
21 didn't seem like a viable option. We could have done
22 that, but it really didn't seem like a viable option
23 at that time because we hadn't been in the market, in
24 the common equity market for approaching two years.

25 The long-term debt, we were stretching our

1 limits as far as long-term debt. That would have --
2 we may have been able to do something like that, but
3 not without a downgrade.

4 And this really looked at -- we had talked
5 with Standard & Poor's before about this particular
6 type of instrument. They were very receptive to
7 recognizing approximately a 10 -- a range of
8 10 percent of the total capitalization on trust
9 preferred.

10 And, lastly, when we looked at this, one of
11 the -- you know, everything else included, one of the
12 things that we really liked about it was, it actually
13 resulted in a benefit to our customers, the
14 ratepayers, because we do -- when we issued these --
15 these trust preferred, since we get a tax benefit,
16 just as we do long-term debt, it's actually beneficial
17 to our customers.

18 And that was -- that was -- that was one of
19 the other reasons that we went ahead and issued the
20 trust preferred.

21 Q. And when you say as opposed to long-term
22 debt, you're really saying, if I'm following you, as
23 opposed to issuing more common stock?

24 A. Yes.

25 Q. Which would not have given you a similar

1 deduction?

2 A. Exactly. The only thing you get a tax
3 deduction on is trust preferred and ordinary long-term
4 debt, whether it be secured or unsecured.

5 Q. So the -- the rationale was to try to figure
6 out a way to allow you to have more capital; at the
7 same time, trying to avoid the consequences of a
8 possible downgrade on -- from Standard & Poor's as a
9 result of having more debt on your books, and this
10 provided you with that -- with that way out?

11 A. Yes, sir. That's --

12 Q. Did I follow that?

13 A. Yes, sir, that's absolutely correct.

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

16 Thank you.

17 JUDGE RUTH: Staff, do you have recross?

18 MR. KRUEGER: No, your Honor.

19 JUDGE RUTH: Mr. Conrad?

20 MR. CONRAD: Nothing. Thank you, your

21 Honor.

22 JUDGE RUTH: And Mr. Coffman?

23 MR. COFFMAN: Yes.

24 RECROSS-EXAMINATION BY COFFMAN:

25 Q. This is in response to Commissioner Lumpe's

1 question.

2 You responded to her that you are treating
3 the trust preferred stock, or TOPrS, in this case as
4 debt?

5 A. Yes.

6 Q. Correct. And you had cited in response to
7 Mr. Krueger's question certain technical criteria that
8 led you to this conclusion?

9 A. Yes.

10 Q. Do you believe that in this case, despite
11 what the Commission has said in a 1997 Missouri Gas
12 Energy case, should the Commission state in this case
13 that TOPrS is debt for regulatory purposes?

14 A. Well, you know, what -- what -- when I
15 looked at it, and I continue to look at it this way:
16 If I looked at the characteristics of this particular
17 instrument, it has more characteristics of debt than
18 it does common equity.

19 You know, if you look -- when you stop and
20 think, when we issue common stock, we don't issue it
21 for a definite period. We issue common stock for
22 perpet-- as far as, you know, the life of the company.

23 You know, this is not the case with the
24 trust secured. It really has the characteristics of
25 debt, although, for Standard & Poor's purposes, it

1 does get common equity recognition, or they will view
2 it as common equity.

3 MR. COFFMAN: Okay. Thank you.

4 THE WITNESS: Okay.

5 JUDGE RUTH: Redirect?

6 MR. KRUEGER: Just a couple, your Honor.

7 REDIRECT EXAMINATION BY MR. SWEARENGEN:

8 Q. Mr. Gibson, just to make sure I understand,
9 Mr. Coffman, based on his opening statement and his
10 line of questions to you, seems to suggest or has
11 asked the question as to whether Empire is asking this
12 Commission to make some sort of a policy decision in
13 this case as to whether or not TOPrS should be
14 considered debt or equity for all regulatory purposes.

15 And my question to you is, is that what
16 you're asking in this case?

17 A. No. I think what I'm asking in this case is
18 the recognition of the cost of the -- or the embedded
19 costs of this particular security at this time, so --
20 and the embedded costs -- the recognition of the
21 embedded costs is actually based on the same criteria
22 that we use for debt, not equity.

23 Q. I think you said in response to the question
24 from the Bench that, in your view, TOPrS have the
25 characteristics of both debt and equity, and I think

1 you said that you think maybe it has -- this
2 particular issue has more characteristics of debt than
3 equity. Is that a correct --

4 A. Yes. Yes, that's correct.

5 Q. -- summary of your testimony?

6 And what are those characteristics of debt
7 that these TOPrS have that allow you to believe that
8 it should be treated in the fashion that you've
9 requested for purposes of the capital structure in
10 this case?

11 A. Sure. The primary one is that it's for a
12 specific period. We issued it on March 1st of this
13 year, and it will be redeemed on -- in 2031. And,
14 also, for tax purposes, the same as debt, we get a tax
15 deduction. You don't get that with common dividends.

16 Q. What is the value of this issue for
17 rate-making purposes? Can you tell the Commission the
18 approximately dollar value?

19 A. Oh, on a --

20 Q. It's a capital structure issue; isn't that
21 correct?

22 A. Yes. Yes, it is. Well, it's an embedded
23 rate issue. It's -- I think it was -- OPC came up
24 with 8.77 percent embedded and Staff came up with an
25 8.88 embedded rate. So when you -- when you take that

1 down to a return-on-rate base, it gets pretty small.
2 \$100,000, I'm guessing, somewhere in that range.

3 Q. Let me ask you one last question and make
4 sure the record is clear on this. You're supporting
5 the Staff's position on the embedded rate for the cost
6 of the TOPrS; is that correct?

7 A. Yes, I am.

8 MR. KRUEGER: Thank you.

9 That's all I have.

10 Thank you.

11 JUDGE RUTH: Mr. Gibson, you may step down.
12 I'll ask that you remain in the courtroom through the
13 day.

14 Staff, would you like to call your next
15 witness?

16 MR. KRUEGER: Roberta McKiddy.

17 JUDGE RUTH: Ms. McKiddy, would you raise
18 your right hand, please?

19 (Witness sworn.)

20 JUDGE RUTH: Thank you.

21 Proceed.

22 ROBERTA A. MCKIDDY testified as follows:

23 DIRECT EXAMINATION BY MR. KRUEGER:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. State your name and address.

2 A. Roberta McKiddy, Post Office Box 360,
3 Jefferson City, Missouri, 65102.

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

6 A. I'm employed as a public financial analyst
7 by the Missouri Public Service Commission.

8 Q. Did you prepare and cause to be filed
9 Exhibit 124, the Direct Testimony of Roberta A.
10 McKiddy, Direct True-up Testimony?

11 A. Yes, I did.

12 Q. Do you have any corrections, changes, or
13 additions to that testimony?

14 A. No, I do not.

15 Q. Did you also prepare and cause to be filed
16 with the Commission Exhibit 125, the True-up
17 Surrebuttal Testimony of Roberta A. McKiddy?

18 A. Yes, I did.

19 Q. Do you have any corrections, changes, or
20 additions to that testimony?

21 A. No, I do not.

22 Q. Are your answers to the questions in
23 Exhibits 124 and 125 true and correct to the best of
24 your knowledge?

25 A. Yes, they are.

1 Q. If I asked you the same questions today as
2 are contained in Exhibits 124 and 125, would your
3 answers be the same?

4 A. Yes, they would.

5 MR. KRUEGER: I would at this time offer
6 Exhibits 124 and 125, and tender the witness for
7 cross-examination, your Honor.

8 JUDGE RUTH: Exhibit 124 has been offered.
9 It's the True-up Direct Testimony of Ms. McKiddy.

10 Are there any objections to this document?

11 (No response.)

12 JUDGE RUTH: Seeing no objections, the
13 Exhibit 124 is received into the record.

14 (EXHIBIT NO. 124 WAS RECEIVED INTO
15 EVIDENCE.)

16 JUDGE RUTH: Exhibit 125 is Ms. McKiddy's
17 True-up Surrebuttal Testimony.

18 Are there any objections to this document?

19 (No response.)

20 JUDGE RUTH: Seeing none, Exhibit 125 is
21 also received.

22 (EXHIBIT NO. 125 WAS RECEIVED INTO
23 EVIDENCE.)

24 JUDGE RUTH: Empire, do you wish to start
25 cross?

1 MR. SWEARENGEN: We have no questions for
2 the witness.

3 JUDGE RUTH: Praxair?

4 MR. CONRAD: No questions.

5 JUDGE RUTH: Public Counsel?

6 MR. COFFMAN: Yes. Thank you.

7 CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. Good afternoon, Ms. McKiddy.

9 A. Good afternoon.

10 Q. You use a different method to calculate cost
11 of equity than you use to calculate the embedded cost
12 of debt, do you not?

13 A. Say that again?

14 Q. You would agree with me, wouldn't you, that
15 it's proper to use a different method to calculate the
16 cost of equity than it is to calculate the embedded
17 cost of debt?

18 A. Yes, it is.

19 Q. Okay. And I assume that you're aware of the
20 Commission's decision in Missouri Gas Energy case,
21 GR-96-285?

22 A. Yes. I believe it was mischaracterized a
23 little bit in your opening remarks, and I would like
24 to clarify that on the record, if I might.

25 Q. Well, you understand in that case that

1 whether TOPrS, that is trust preferred stock, was
2 treated as either debt or equity was a crucial issue
3 in that case, that the whole case hinged on whether
4 the Commission found that TOPrS was either debt or
5 equity. Correct?

6 A. My understanding in that case is the only
7 reason that the Commission determined it was equity
8 was because it was a requirement under the acquisition
9 of those properties in order to qualify under the
10 Commission's requirements to be able to file a rate
11 case.

12 The embedded costs, however, in that case,
13 the Staff's position was exactly the same as it was in
14 this case, to treat it as debt and to do the embedded
15 costs as such.

16 Q. Okay. But the Commission finding in that
17 case was that TOPrS is equity?

18 A. Not for the purposes of determining its
19 costs. The Commission ruled that it was equity only
20 for purposes of meeting the requirement of having to
21 maintain an investment-grade equity ratio in order to
22 be able to file the rate case to begin with.

23 Q. And you don't believe it's necessary for the
24 Commission to be consistent in how it treats TOPrS?

25 A. I believe you're implying that the

1 Commission, in making that determination, determined
2 that the embedded costs of TOPrS should be treated as
3 a determination of return on equity. That is not my
4 understanding of what the Commission did.

5 The Commission only determined TOPrS to be
6 equity in order to meet a Standard & Poor's benchmark
7 equity ratio in order to give MGE permission to file
8 the rate case. That was, to me, my understanding of
9 the criteria of the acquisition made by Southern
10 Union.

11 There was actually a merger case, it's my
12 understanding, prior to that rate case that said MGE
13 would be allowed to file a rate case after, I believe
14 it's January of 1997, only if MGE's equity ratio was
15 at that same level as an S&P investment-grade bond.

16 Q. Okay. Do you recall what Public Counsel's
17 position was in that case?

18 A. No, I do not. I did not work that case.

19 Q. Okay.

20 A. I do know that Staff's position was that
21 TOPrS would be treated for purposes of embedded costs
22 as debt.

23 Q. Would you suggest that this Commission could
24 treat TOPrS as debt in this case?

25 A. I believe they can, and that's why I've

1 proposed that position.

2 Q. Okay. And there wouldn't be anything
3 inconsistent with the Commission saying that for
4 regulatory purposes, generally, TOPrS shall be treated
5 as debt?

6 A. I believe, due to the nature of how the
7 Commission made its determination in the MGE case that
8 TOPrS was equity, I do not believe they would be
9 inconsistent to now look at TOPrS embedded cost as an
10 embedded cost of debt, because I do believe that
11 although they made the determination of equity, when
12 they looked at overall rate of return, they still
13 looked at TOPrS as an embedded cost of debt, not
14 equity. So I believe they are still being consistent
15 if they chose to adopt my position.

16 Q. And you understand that Public Counsel would
17 have no objection to your testimony provided that the
18 Commission rules that TOPrS shall be treated as debt?

19 A. Again, I kind of tend to agree with
20 Mr. Swearingen's characterization that you're trying
21 to get the Commission to make a policy decision on how
22 it will treat TOPrS.

23 I think, as Staff, I need to say that that's
24 not the position I'm taking. I'm taking the position
25 that this particular instrument that I'm looking at

1 does have characteristics that are more like debt than
2 like equity, and, in this particular case, they need
3 to look at the TOPrS as a debt.

4 What they may do in the next case that
5 presents a TOPrS issue, again, it will depend on the
6 characteristics of that particular instrument. I
7 don't know that they can make a policy decision that
8 all TOPrS will be treated the same, because, as we all
9 know, TOPrS is a hybrid, and it can be considered as
10 both equity and debt to a certain proportion, and it
11 depends strictly on how the hybrid is basically
12 developed.

13 Q. And it is your understanding the Commission
14 can change -- is not bound by past decisions, or do
15 you know?

16 A. I don't know exactly what you're -- what
17 you're implying there.

18 If you're implying because they considered
19 the TOPrS equity in MGE, they should consider it
20 equity here, I think we're talking about two different
21 circumstances. When the Commission declared it equity
22 in the MGE case, they were not declaring it equity for
23 purposes of calculating the costs associated with it.
24 They were only using it as a determinant of equity in
25 order to meet the criteria in which MGE had to meet in

1 order to be able to file the rate case to begin with.

2 Q. And that wasn't necessarily Staff's
3 recommendation in that case, what Staff recommended?

4 A. I don't know what Staff's position was on
5 whether MGE met the requirement in order to file the
6 rate case. I do know they figured the embedded cost
7 as debt.

8 Q. Okay. And we all agree that TOPrS is
9 something of a hybrid, but do you see any benefit in
10 the Commission being consistent in the way it treats
11 TOPrS for regulatory purposes?

12 A. Well, I think the Commission is being
13 consistent. They considered it as cost of debt in the
14 MGE case, and if they would take my position in this
15 case, they would, again, being considered the embedded
16 cost as a cost of debt.

17 MR. COFFMAN: Okay. Thank you.

18 That's all I have.

19 JUDGE RUTH: Commissioner Murray, do you
20 have questions?

21 COMMISSIONER MURRAY: I don't. Thank you.

22 JUDGE RUTH: Commissioner Lumpe?

23 COMMISSIONER LUMPE: No.

24 JUDGE RUTH: Commissioner Gaw?

25 COMMISSIONER GAW: No questions.

1 JUDGE RUTH: Staff, do you have redirect
2 based on the cross-examination?

3 MR. KRUEGER: No, your Honor.

4 JUDGE RUTH: Ms. McKiddy, you may step down.

5 And I understand the next witness will be
6 Public Counsel's.

7 MR. COFFMAN: Yes.

8 JUDGE RUTH: You may call your witness.

9 MR. COFFMAN: I would call to the stand Mark
10 Burdette.

11 JUDGE RUTH: Mr. Burdette, would you raise
12 your right hand?

13 Thank you.

14 (Witness sworn.)

15 JUDGE RUTH: Thank you.

16 Mr. Coffman, I'll need to ask you to move
17 over. Thank you.

18 MARK BURDETTE testified as follows:

19 DIRECT EXAMINATION BY MR. COFFMAN:

20 Q. Are you the same Mark Burdette who has
21 caused to be filed in this case Direct True-up
22 Testimony and Rebuttal True-up Testimony and marked as
23 Exhibits 126 and 127 respectively?

24 A. Yes.

25 Q. What is your -- by whom are you employed and

1 what is your title?

2 A. I'm employed by Missouri Office of Public
3 Counsel as a public utility financial analyst.

4 Q. Do you have any corrections to these two
5 prepared testimonies?

6 A. No.

7 Q. If I asked you the same questions contained
8 in Exhibits 126 and 127, would your questions (sic) be
9 the same to your best information, knowledge, and
10 belief today?

11 A. Yes.

12 MR. COFFMAN: Okay. I would offer Mark
13 Burdette for cross-examination, and offer into the
14 record Exhibits 126 and 127.

15 JUDGE RUTH: Okay. Exhibit 126 is
16 Mr. Burdette's Direct Testimony for the true-up.

17 Are there any objections to this document?

18 MR. SWEARENGEN: We have none.

19 JUDGE RUTH: Okay. Seeing no objections,
20 Exhibit 126 is received into the record.

21 (EXHIBIT NO. 126 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE RUTH: Exhibit 127 is Mr. Burdette's
24 True-up Rebuttal Testimony.

25 Any objections to this document?

1 (No response.)

2 JUDGE RUTH: Seeing none, it is also
3 received into the record.

4 (EXHIBIT NO. 127 WAS RECEIVED INTO
5 EVIDENCE.)

6 JUDGE RUTH: Mr. Conrad, do you have
7 cross-examination?

8 MR. CONRAD: No, ma'am, I do not. Thank
9 you.

10 JUDGE RUTH: Okay. And Empire?

11 MR. KRUEGER: Yes, I do have cross.

12 JUDGE RUTH: Go ahead.

13 CROSS-EXAMINATION BY MR. SWEARENGEN:

14 Q. Good afternoon, Mr. Burdette.

15 A. Good afternoon.

16 Q. I will try to be brief because some of the
17 questions I had for you, I think, have been answered
18 by other witnesses, and so we have a record on that.

19 Let me ask you, first of all, at Page 2 of
20 your Direct True-up Testimony, you testify that the
21 Public Counsel recommends a capital structure for
22 Empire in this case as of June 30, 2001; is that
23 correct?

24 A. Where are you, line --

25 Q. Well, Page 2, and -- the pages aren't

1 numbered.

2 A. That's true. Sorry about that.

3 Q. The summary of findings.

4 A. Yeah. Line 7. Correct.

5 Q. And that's 37.75 percent common equity, 7.88
6 trust preferred, or TOPrS, and 54.36 percent long-term
7 debt; is that correct?

8 A. Correct.

9 Q. And then on the next page of that same
10 testimony you say the embedded cost rate for Empire's
11 trust preferred securities or TOPrS is 8.77 percent;
12 is that right?

13 A. Correct.

14 Q. And then when you turn to your Rebuttal
15 True-up Testimony, it's at that point that you raise
16 the issue concerning the appropriate method to
17 calculate the embedded cost of Empire's TOPrS; is that
18 a fair statement?

19 A. Yes.

20 Q. And again you say there that the cost is
21 8.77 percent?

22 A. Yes.

23 Q. Now, is it your understanding that the
24 Company and the Staff take the position that the
25 embedded cost is 8.88 percent?

1 A. Yes.

2 Q. And somewhere I made a calculation, or
3 somebody gave me a number, that that translates into a
4 revenue requirement difference of about \$52,500. Is
5 that right?

6 I asked Mr. Gibson that question. He
7 thought it was something less than 100,000. He wasn't
8 sure.

9 A. It's \$51,694.

10 Q. Okay. That's effectively the revenue
11 requirement?

12 A. Approximately.

13 Q. And that -- all of those dollars relate to
14 the costs of issuing the TOPrS; is that a fair
15 statement?

16 A. Correct.

17 Q. Now, there's been some testimony as to what
18 TOPrS are.

19 What is your understanding of trust
20 preferred securities or trust preferred stock?

21 A. In general, my position is that absent a
22 ruling from this Commission that they are equity, I
23 believe TOPrS are debt.

24 Q. Okay. And that's a fair answer.

25 What -- can you just describe them briefly,

1 though, for the Commission, what they are --

2 A. TOPrS --

3 Q. -- as opposed to debt or common equity?

4 A. Common equity and long-term debt would be
5 issued directly by the corporation. Empire would
6 directly issue their own long-term debt, would
7 directly issue common equity.

8 In the case of TOPrS, they formed a trust
9 subsidiary, issued long-term debt to the trust
10 subsidiary. The trust subsidiary then issued a form
11 of security which is called TOPrS.

12 Q. Okay. Thank you.

13 So there is no issue that the -- question in
14 your mind that, in fact, TOPrS have been issued.

15 Was that in March of 2001? Would that be
16 correct and if I said that was the approximate time
17 they were issued?

18 A. That's what I heard in this proceeding, yes.

19 Q. And is it your understanding that they
20 are -- have a definite fixed term of 30 years?

21 A. Yes.

22 Q. Would you dispute it if I told you that the
23 money raised by issuance of the TOPrS was used to fund
24 the general operations of Empire? That's been
25 Mr. Gibson's testimony. You don't have any reason to

1 dispute that, do you?

2 A. No.

3 Q. And would you agree that Empire's operations
4 generally benefit its customers, its ratepayers?

5 A. That's certainly our hope, yes.

6 Q. Thank you.

7 Specifically, with respect to the cost of
8 issuing the TOPrS, do you have any evidence that these
9 costs were not incurred for the benefit of ratepayers?

10 A. I don't know that I would necessarily make
11 that leap without further thought and study. I didn't
12 analyze whether or not Empire should or should not
13 have issued TOPrS.

14 Q. You don't have any evidence, though, or
15 information that would lead you to believe that the
16 costs were not incurred for the benefit of the
17 ratepayers, do you?

18 A. I don't have any evidence for that, no.

19 Q. Thank you.

20 Now, let me ask you a couple of questions
21 about long-term debt.

22 A. Okay.

23 Q. In calculating the embedded costs of
24 long-term debt for rate-making purposes, would you
25 agree that you deduct all of the unamortized debt

1 issuance expense from the amount outstanding and then
2 also include a yearly amortization expense?

3 A. Correct.

4 Q. And would you agree that that is, in fact,
5 the procedure which this Commission has followed when
6 it calculates the cost of long-term debt for
7 rate-making purposes?

8 A. Yes.

9 Q. Would you also agree that according to
10 generally accepted accounting principles, costs
11 associated with issuing long-term debt are required to
12 be amortized over the life of the asset?

13 A. I'm not an expert on GAAP, but from my
14 experience, I would say that's my understanding.

15 Q. Excuse me. I didn't hear your answer.

16 A. I'm not an expert on GAAP, but based on my
17 experience, I believe that is correct.

18 Q. Thank you.

19 Would you agree that trust preferred stock
20 has both debt and equity characteristics?

21 A. Yes.

22 Q. And can you briefly describe the debt
23 characteristics of TOPrS?

24 A. Well, it's got a specified life. It's --
25 there are contractual obligations for payment. That

1 would probably be the two biggest that would come to
2 mind.

3 Q. What would the equity characteristics of
4 TOPrS be?

5 A. They pay a dividend, what is called a
6 dividend. I'd have to think about that a little
7 longer. I answered already that I consider TOPrS
8 essentially to be debt.

9 Q. Okay. So the one equity characteristic you
10 can think of is that the costs or the payments to the
11 holders are called dividends?

12 A. Yes. I -- I do not -- I do not believe that
13 there would be indentures with covenants with TOPrS,
14 but I don't know for sure.

15 Q. Okay. That's fine. Thank you.

16 Would you agree that traditional preferred
17 stock and common stock is issued for an indefinite
18 period of time?

19 A. Yes.

20 Q. And I think you have said that you agree
21 that the TOPrS that Empire has issued have a definite
22 redemption date, and that would be 30 years from the
23 date of issuance in 2031; is that correct?

24 A. Correct.

25 Q. And I believe you've talked about this. In

1 connection with the issuance of the TOPrS, is it your
2 understanding that Empire has a trust which makes the
3 dividend payment, which is what you would call it, to
4 the holders of the TOPrS?

5 A. Yes.

6 Q. And is it your understanding that Empire has
7 issued 50,000,000 in unsecured debt to this trust
8 which guarantees or backs up the TOPrS dividend
9 payments?

10 A. Yes.

11 Q. And would you agree that the life of this
12 unsecured debt which Empire has issued is also
13 30 years?

14 A. Yes.

15 Q. Would you consider that unsecured debt that
16 Empire has issued in connection with the TOPrS to be
17 long-term debt?

18 A. I would consider 30 years long-term, yeah.

19 Q. Would you agree that under your proposal, if
20 it would be accepted by the Commission, when Empire's
21 TOPrS and their related unsecured debt is retired in
22 2031, the TOPrS issuance costs would not have been
23 recovered in Empire's rates?

24 A. Correct, yes.

25 Q. On the other hand, if Empire had issued --

1 instead of TOPrS had issued traditional long-term
2 debt, the issuance costs associated with that
3 long-term debt presumably would have been recovered in
4 rates; is that a fair statement?

5 A. Yes.

6 Q. Is it your testimony that Empire's TOPrS
7 should be considered as an equity component in
8 Empire's capital structure in this case?

9 A. I don't believe I address capital structure
10 concerns. My testimony addresses the consistency of
11 what the security is versus how you should calculate
12 the cost. If TOPrS are going to be considered equity,
13 then you should cost them as an equity component. If
14 they're going to be considered debt, then I don't have
15 a problem costing them as debt.

16 Q. Let me ask you this question. I think it's
17 on the last page, and, once again, they are not
18 numbered, but it's your Direct True-up Testimony filed
19 on August 7 of this year. You -- Lines 19 and 20, you
20 conclude by saying that you recommend that Empire be
21 allowed a return on common equity of 10 percent to
22 10.25 percent; is that right?

23 A. Correct.

24 Q. And that's been your position throughout
25 this proceeding. That hasn't changed. Right?

1 A. Correct.

2 Q. And is it still your understanding that the
3 Staff continues to recommend a range of 8 1/2 percent
4 to 9 1/2 percent?

5 A. Yes, the numbers I have seen. That would be
6 consistent.

7 Q. Back on the TOPrS, what is the dividend rate
8 or the interest rate or cost to the Company of those
9 TOPrS? Do you know offhand?

10 A. I'm going to have to -- 8 1/2 percent.

11 Q. Okay. Thank you.

12 Is that, in essence, a guaranteed rate to
13 the holders of the TOPrS?

14 A. Guaranteed.

15 Q. And I'll let you define that term.

16 A. I guess if -- if you would phrase it as, is
17 that their expected return, yes.

18 MR. SWEARENGEN: Okay. That's fine.

19 Thank you very much.

20 That's all I have. Thank you very much.

21 JUDGE RUTH: Staff?

22 MR. KRUEGER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. KRUEGER:

24 Q. Good afternoon, Mr. Burdette.

25 A. Good afternoon.

1 Q. Do I correctly understand, then, that you
2 said absent a ruling by the Commission, you would
3 regard TOPrS as debt?

4 A. Yes. I fought in GR-96-285 for TOPrS to be
5 debt, yes.

6 Q. But your testimony in this case is
7 different? You're asking that it be regarded as
8 equity; is that correct?

9 A. My testimony in this case is attempting to
10 be consistent with the Commission ruling in GR-96-285,
11 so if I'm starting from the position that TOPrS are
12 equity, then I costed them as equity.

13 Q. So you're saying that in order to be
14 consistent with the Commission's decision in that
15 case, you have to regard it as equity?

16 A. Yes, it was to be consistent. Public
17 Counsel's position that TOPrS were then and still are
18 debt has remained.

19 Q. And that's the only reason for the change in
20 position is the decision in Case No. GR-96-285; is
21 that right?

22 A. What change in position?

23 Q. The change in determining the embedded cost
24 of TOPrS.

25 A. Change from what?

1 Q. Did you file any testimony in GR-96-285 --
2 A. I did, yes.
3 Q. -- in regard to calculating the embedded
4 cost of TOPrS?
5 A. Yes.
6 Q. And what position did you take at that time?
7 A. I don't know.
8 Q. You don't recall whether you said it should
9 be --
10 A. Oh, in terms of debt or equity.
11 Q. How the embedded cost should be determined
12 on the basis of considering TOPrS as debt or as
13 equity?
14 A. I don't have that testimony in front of me.
15 I can't answer that question. I don't have that -- I
16 don't have the testimony in front of me.
17 Q. Do you recall if the Commission made a
18 decision in that case about whether the embedded costs
19 of TOPrS should be calculated as -- as debt or equity?
20 A. I don't believe the Commission specified
21 whether the cost should be specifically determined as
22 a debt cost or an equity cost. They made a
23 determination that it was equity. They accepted a
24 particular method to calculate the cost.
25 Q. And so, basically, they -- the issue in that

1 case and what they determined was that for purposes of
2 meeting the benchmark, it would be considered as
3 equity; is that right?

4 A. Yes.

5 MR. KRUEGER: That's all of the questions I
6 have, your Honor.

7 JUDGE RUTH: Commissioner Murray, do you
8 have questions for the witness?

9 COMMISSIONER MURRAY: No, I don't believe
10 so. Thank you.

11 JUDGE RUTH: Okay. Commissioner Lumpe?

12 QUESTIONS BY COMMISSIONER LUMPE:

13 Q. Just one, Mr. Burdette.

14 Mr. Gibson testified in his True-up
15 Surrebuttal on Page 3, "The money raised by this
16 financing was used to fund the operation of Empire.
17 If these costs are not included as part of the
18 embedded costs of the trust preferred, then the
19 shareholders would be required to bear these costs."

20 In other words, if it were -- tell me this:
21 If it were considered equity, it would go to the
22 shareholders? If it's considered debt, it goes to the
23 ratepayers?

24 A. Under the -- under the contractual
25 obligations of debt, yes, we did issue those costs for

1 debt into rate of return.

2 Q. Okay. So that -- that is the significance
3 of that testimony there, that if we were to consider
4 it equity, it would be --

5 A. It would be cost of ownership and the
6 shareholders' responsibility.

7 Q. Okay. And by calling it debt, which you
8 agree it's debt, as I understand -- or you are
9 suggesting -- you think it is debt also?

10 A. Yes.

11 Q. Okay. And so, therefore, using that, then,
12 it does go to the ratepayers and there are some
13 benefits to the ratepayers because it's
14 tax-deductible, so they won't pay as much?

15 A. Potential -- potential benefits. TOPrS, in
16 general -- in general, I believe TOPrS tend to be more
17 expensive than regular preferred stock. I have not
18 done a detailed analysis to determine exactly where
19 the costs fall out and if one is more expensive than
20 the other in all cases.

21 COMMISSIONER LUMPE: Okay. Thank you.

22 JUDGE RUTH: Commissioner Gaw?

23 COMMISSIONER GAW: Oh, I think I'll leave it
24 alone. Thank you.

25 JUDGE RUTH: Praxair, do you have recross

1 based on the Bench questions?

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

3 JUDGE RUTH: And Empire?

4 MR. SWEARENGEN: No. Thank you.

5 JUDGE RUTH: Staff.

6 MR. KRUEGER: No, your Honor.

7 JUDGE RUTH: Will there be redirect?

8 MR. COFFMAN: Yes.

9 REDIRECT EXAMINATION BY MR. COFFMAN:

10 Q. Mr. Burdette, you stated you didn't remember
11 precisely what your recommendation was in the Southern
12 Union/Missouri Gas Energy case, GR-96-285?

13 A. Correct. I didn't review all of GR-285.

14 Q. Is your -- is it your custom to make
15 recommendations that are inconsistent with regard to
16 whether something is debt or equity within the rate of
17 return recommendations you make?

18 A. Can you ask that question again?

19 Q. Well, would you have enough of a
20 recollection to know whether you would have
21 consistently treated TOPrS in that case as either debt
22 for all regulatory purposes or equity for all
23 regulatory purposes?

24 A. I would hope I was consistent. I don't have
25 a recollection right now.

1 Q. We didn't speak about this earlier, but do
2 you have a recollection of what the Staff witness on
3 these matters, David P. Broadwater, recommended in
4 that case?

5 A. No.

6 Q. Okay. Would it refresh your memory if I
7 showed you a copy of Mr. Broadwater's testimony?

8 A. I'm sure it would.

9 Q. I've flagged there what I believe are the
10 places where Mr. Broadwater made a recommendation to
11 the Commission in that rate case regarding how TOPrS
12 would be treated. And, if you would, please, refresh
13 your recollection, and tell me if you can recall what
14 Staff recommendation was in that case.

15 MR. KRUEGER: Your Honor, I'm going to
16 object to this questioning. Mr. Broadwater is not a
17 witness in this case, and it's not relevant to the
18 issues here.

19 MR. COFFMAN: Staff has already brought into
20 issue what Staff recommended in that case, and I
21 believe it's relevant to the -- in regard to the
22 Commission. And Mr. Krueger had asked about what had
23 occurred in that Missouri Gas Energy case in which
24 Mr. Burdette was a participant.

25 MR. KRUEGER: The reason I inquired about

1 the testimony in the Missouri Gas Energy case was to
2 test the consistency of Mr. Burdette's testimony in
3 that case with the testimony that he is giving now.

4 MR. COFFMAN: Staff is contending that they
5 are consistent in this case, and that is, essentially,
6 as I see it, the issue, as to whether or not it is
7 consistent to treat TOPrS for one purpose as equity
8 and for another purpose as debt.

9 MR. SWEARENGEN: Well, your Honor, I'm going
10 to object on the grounds that if that's his purpose,
11 he should have used that testimony to impeach the
12 Staff witness, not his own witness on redirect
13 examination. So this is clearly improper, and I
14 object to it on that basis.

15 MR. COFFMAN: I think it's directly relevant
16 to Mr. Krueger's line of questioning.

17 JUDGE RUTH: I'll let you start with this,
18 but I may interrupt you if I feel it's not relevant.

19 MR. COFFMAN: Okay.

20 JUDGE RUTH: Continue.

21 BY MR. COFFMAN:

22 Q. I believe the only question I have at this
23 point is if Mr. Burdette is able, after reviewing
24 Mr. Broadwater's testimony from GR-96-285, to see what
25 Staff's recommendation was.

1 A. Staff's recommendation in GR-96-285 was
2 consistent -- the methodology was consistent with the
3 methodology in this case.

4 Q. Okay. And that would be to treat TOPrS as
5 debt?

6 A. That would be to cost TOPrS by not only
7 subtracting unamortized issuance expense from amount
8 outstanding, but also to amortize the issuance expense
9 over the life of the security.

10 MR. COFFMAN: Okay. Thank you.

11 That's all of the questions I have.

12 MR. SWEARENGEN: I will withdraw my
13 objection.

14 JUDGE RUTH: Okay. At this time I want to
15 go off the record for just a couple of moments.

16 (A recess was taken.)

17 JUDGE RUTH: The Commission does not wish to
18 call any of the other witnesses that the parties had
19 stipulated as to having no questions for.

20 And the Bench has no further questions for
21 this witness, so, Mr. Burdette, you may step down. In
22 fact, you are excused.

23 And the other witnesses are excused also.

24 (All witnesses excused.)

25 JUDGE RUTH: I believe that the parties have

1 some other exhibits that they wish to offer.

2 Staff, do you want to start with yours?

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

4 JUDGE RUTH: Staff, do I need to give you a
5 moment off the record?

6 MR. FREY: Yes.

7 JUDGE RUTH: Okay. Thank you. We'll go off
8 the record for just a moment.

9 (A DISCUSSION WAS HELD OFF THE RECORD.)

10 JUDGE RUTH: Let's go back on the record,
11 please.

12 MR. FREY: Thank you, your Honor.

13 JUDGE RUTH: Staff?

14 MR. FREY: I believe the parties are
15 prepared to stipulate to the admission of a number of
16 items of evidence here, and I'll just list them, and
17 we'll see what kind of a response we get.

18 Exhibit 128, the accounting schedules;
19 Exhibit 129, Allen Bax Direct Testimony, True-up, that
20 is; Exhibit 130, David Elliott HC True-up Direct
21 Testimony; 131, David Elliott NP True-up Direct
22 Testimony; 132, Cary G. Featherstone, True-up -- I
23 believe it's Direct Testimony; 133 is the schedule to
24 Allen Bax's True-up Direct Testimony. I believe it's
25 Schedule 1.

1 Exhibit 134 would be Janis Fischer's Direct
2 Testimony, HC; Exhibit 135, Ms. Fischer's NP True-up
3 Direct Testimony; Exhibit 136, the Direct Testimony
4 True-up, of W -- excuse me -- V. William Harris; 137,
5 is the Direct True-up Testimony of Amanda McMellen;
6 138 is the Direct True-up Testimony of Mark
7 Oligschlaeger. That's O-l-i-g-s-c-h-l-a-e-g-e-r.

8 MR. DUFFY: Don't spell it. Just offer them
9 by the number, will you?

10 MR. FREY: Oh, okay. I'm sorry.

11 JUDGE RUTH: We're almost finished. I'll
12 let him spell it out.

13 MR. FREY: 139 -- I'm sorry.

14 JUDGE RUTH: This is fine.

15 MR. FREY: -- the Direct True-up Testimony
16 of Janice Pyatte; and 140, Direct True-up Testimony of
17 Phil Williams, and Exhibit 141 is Staff's Revised
18 True-up Revenue Requirement, and it's -- it's the
19 Schedule 11, Revised Schedule 11 attached to the
20 pleading.

21 That does it for the Staff, your Honor.

22 MR. DUFFY: I think you have to say the
23 magic words, we offer these exhibits into evidence.

24 MR. FREY: We offer these exhibits into
25 evidence.

1 JUDGE RUTH: Okay. Now, I'm going to take
2 these in groups, except for the first one is 128, the
3 accounting schedules that Staff has offered. The
4 parties, I understand, there has been some type of
5 stipulation.

6 MR. DUFFY: We have no objection to the
7 admission of those documents, of 128 through 141.

8 JUDGE RUTH: Through 141, and that was
9 Mr. Duffy speaking.

10 MR. CONRAD: And we will -- and Praxair will
11 stipulate to the admission of 128 through 141.

12 JUDGE RUTH: Mr. Coffman?

13 MR. COFFMAN: As will Public Counsel.

14 JUDGE RUTH: Okay. Then Exhibits 128
15 through 141 are all received into the record.

16 (EXHIBIT NO. 128 THROUGH 141 WERE RECEIVED
17 INTO EVIDENCE.)

18 JUDGE RUTH: And then I believe Public
19 Counsel has a document.

20 MR. COFFMAN: Yes. The True-up Direct
21 Testimony of Kim Bolin, Exhibit 142, we would now
22 offer that into evidence.

23 MR. DUFFY: No objection.

24 JUDGE RUTH: Mr. Conrad?

25 MR. CONRAD: We'll stipulate to the

1 admissibility of 142.

2 JUDGE RUTH: And Staff?

3 MR. FREY: No objection.

4 JUDGE RUTH: Okay. Exhibit 142, Direct
5 True-up Testimony of Kim Bolin is also received into
6 the record.

7 (EXHIBIT NO. 142 WAS RECEIVED INTO
8 EVIDENCE.)

9 JUDGE RUTH: We have no further matters.

10 I will just remind the parties that the
11 initial brief for the true-up portion of the hearing
12 is due August 30th, and the reply brief portion is due
13 September 4th.

14 Thank you very much.

15 MR. DUFFY: Your Honor?

16 JUDGE RUTH: Yes.

17 MR. DUFFY: The order says the briefs are
18 due at 3:00. Are we going to stay with the 3:00 or
19 are we going to 4:00?

20 JUDGE RUTH: Let me explain. Although the
21 Commission's general time is 3:00, if an order says
22 otherwise, 3:00 or noon, whatever, not to change it
23 unless the parties ask us to change it.

24 MR. COFFMAN: I would second Mr. Duffy's
25 motion to change it.

1 MR. DUFFY: I didn't make a motion. I just
2 asked which it was going to be.

3 JUDGE RUTH: It is 3:00 unless you-all ask
4 me to change it.

5 MR. COFFMAN: I would ask that it be
6 extended to 4:00.

7 MR. FREY: I second that, your Honor.

8 JUDGE RUTH: I will grant that then. Those
9 dates are changed to 4:00.

10 But I do request, but not require, that you
11 send me an e-mail copy of those briefs.

12 MR. DUFFY: And I would also like a
13 stipulation between the parties that e-mail copies of
14 the briefs be sent to the counsel for all parties.

15 JUDGE RUTH: I encourage you to send them to
16 each other. I'm just not going to require you to send
17 them to me. I just like them if you can.

18 MR. DUFFY: Because of the short
19 turn-around, it would sure help if we get an e-mail
20 version by no later than 4:00 on the initial brief.

21 JUDGE RUTH: Okay. It looks like the
22 parties are nodding their heads and agree to e-mail
23 each other, and I appreciate that.

24 Any other matters?

25 MR. DUFFY: I don't think so.

1 Thank you.

2 JUDGE RUTH: Okay. Thank you.

3 We're off the record.

4 WHEREUPON, the hearing in this matter was
5 concluded.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Opening Statement by Mr. Duffy	1127
Opening Statement by Mr. Frey	1129
Opening Statement by Mr. Coffman	1137
PROPERTY TAX:	
EMPIRE'S EVIDENCE:	
DAVID W. GIBSON:	
Direct Examination by Mr. Duffy	1140
Cross-Examination by Mr. Bates	1142
Questions by Commissioner Lumpe	1151
Redirect Examination by Mr. Duffy	1153
STAFF'S EVIDENCE:	
ROY M. BOLTZ, JR.:	
Direct Examination by Mr. Bates	1156
Cross-Examination by Mr. Duffy	1158
Questions by Commissioner Murray	1169
Questions by Commissioner Lumpe	1176
Questions by Commissioner Gaw	1179
Recross-Examination by Mr. Duffy	1193
Redirect Examination by Mr. Bates	1195
TRUST PREFERRED STOCK:	
EMPIRE'S EVIDENCE:	
DAVID W. GIBSON:	
Cross-Examination by Mr. Krueger	1202
Questions by Commissioner Lumpe	1204
Questions by Commissioner Gaw	1205
Recross-Examination by Mr. Coffman	1208
Redirect Examination by Mr. Swearngen	1210
STAFF'S EVIDENCE:	
ROBERTA A. McKIDDY:	
Direct Examination by Mr. Krueger	1212
Cross-Examination by Mr. Coffman	1215
OPC'S EVIDENCE:	
MARK BURDETTE:	
Direct Examination by Mr. Coffman	1221
Cross-Examination by Mr. Swearngen	1223
Cross-Examination by Mr. Krueger	1232
Questions by Commissioner Lumpe	1235
Redirect Examination by Mr. Coffman	1237

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S I N D E X

Marked Received

Exhibit No. 120 True-up Rebuttal Testimony of David W. Gibson	1125	1141
Exhibit No. 121 True-up Surrebuttal Testimony of David W. Gibson	1125	1141
Exhibit No. 122 True-up Direct Testimony of Roy M. Boltz, Jr.	1125	1157
Exhibit No. 123 True-up Surrebuttal Testimony of Roy M. Boltz, Jr.	1125	1158
Exhibit No. 124 True-up Direct Testimony of Roberta A. McKiddy	1125	1214
Exhibit No. 125 True-up Surrebuttal Testimony of Roberta A. McKiddy	1125	1214
Exhibit No. 126 Direct True-up Testimony of Mark Burdette	1125	1222
Exhibit No. 127 Rebuttal True-up Testimony of Mark Burdette	1125	1223
Exhibit No. 128 Staff Accounting Schedules	1125	1243
Exhibit No. 129 Direct True-up Testimony of Alan J. Bax	1125	1243
Exhibit No. 130-HC True-up Direct Testimony of David Elliott, HC	1125	1243

1	E X H I B I T S I N D E X		
2	Continued		
3		Marked	Received
4	Exhibit No. 131	1125	1243
5	True-up Direct Testimony of David Elliott, NP		
6	Exhibit No. 132	1125	1243
7	Direct True-up Testimony of Cary G. Featherstone		
8	Exhibit No. 133	1125	1243
9	Staff Witness Alan J. Bax's Schedule 1		
10	Exhibit No. 134-HC	1125	1243
11	Direct True-up Testimony of Janis E. Fischer, HC		
12	Exhibit No. 135	1125	1243
13	Direct True-up Testimony of Janis E. Fischer, NP		
14	Exhibit No. 136	1125	1243
15	True-up Direct Testimony of V. William Harris		
16	Exhibit No. 137	1125	1243
17	True-up Direct Testimony of Amanda C. McMellen		
18	Exhibit No. 138	1125	1243
19	True-up Direct Testimony of Mark L. Oligschlaeger		
20	Exhibit No. 139	1125	1243
21	True-up Direct Testimony of Janice Pyatte		
22	Exhibit No. 140	1125	1243
23	True-up Direct Testimony of Phillip K. Williams, CPA, CIA		
24	Exhibit No. 141	1125	1243
25	Staff's Revised True-up Revenue Requirement		

