

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3  
4 HEARING

5 June 6, 2001  
6 Jefferson City, Missouri  
7 Volume 10

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

15 BEFORE: VICKY RUTH, Presiding,  
16 REGULATORY LAW JUDGE.  
17 SHEILA LUMPE, Chair  
18 CONNIE MURRAY,  
19 KELVIN SIMMONS,  
20 STEVE GAW,  
21 COMMISSIONERS.

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FOR: Staff of the Missouri Public Service  
Commission.

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

2 JUDGE RUTH: Good morning. We are here to  
3 continue with the Empire hearing in Case ER-2001-299.

4 Today's date is Wednesday, June 6th. We are  
5 continuing with witness Janice Pyatte. We are ready for  
6 the cross-examination.

7 Public Counsel is not here. He indicated he  
8 will be back in just a few minutes.

9 I will move on, then, to Empire.

10 MR. SWEARENGEN: No questions. Thank you.

11 JUDGE RUTH: And Praxair?

12 MR. CONRAD: And as before, pursuant to the  
13 stipulation that has been filed and subject to the  
14 Commission's acceptance of that, we would have no  
15 questions for Ms. Pyatte.

16 JUDGE RUTH: Commissioner Murray, do you have  
17 any questions for this witness?

18 COMMISSIONER MURRAY: Yes, I do. And I hope  
19 that I can see them. My secretary is on her way down with  
20 my glasses, since I forgot to bring them.

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good morning, Ms. Pyatte.

23 A. Good morning.

24 Q. I wanted to ask you about your schedule. It  
25 was in your revised surrebuttal testimony, Schedule 1.

1 And since I can't see a thing on it right now, would you  
2 explain that schedule to me, please.

3 A. Okay. What this schedule is, is it shows  
4 example calculations of the distribution of additional  
5 revenues under Staff's rate design proposal.

6 This was our proposal in surrebuttal that was  
7 trying to address how -- if the Commission adopted the  
8 fuel and purchase power stip, how the interim energy  
9 charge would be incorporated into our rate design.

10 And what -- and a version of the schedule is  
11 also shown as the schedule attached to the suggestions in  
12 support. And it might be useful to have that out, too,  
13 because then you can see how we changed our position.

14 What that schedule is attempting to do is show  
15 the -- both the impact and kind of the mechanics of how  
16 this would work.

17 And so let me start in the middle, which is  
18 Column No. 7. And it's called or -- or 6 is called,  
19 Dollars to Refundable Fuel Charge, in both schedules.

20 Q. I'm sorry. Which column?

21 A. I think it's 6. It says Dollars to Refundable  
22 Fuel Charge, and it has this .0054.

23 Q. Yes.

24 A. Okay. What that represents is the value of the  
25 interim energy charge if the Commission were to adopt the

1 stipulation and agreement.

2 And what that is, that's half -- a little more  
3 than half a cent per kilowatt hour.

4 So what that column shows you is as close as I  
5 know before true-up what kind of money would be collected  
6 by that charge if it was implemented and how that would,  
7 in effect, be paid for by the various customer classes.

8 If you look at the bottom of that column,  
9 you'll see \$19,828,742.

10 So if you read the stip, we will say that the  
11 interim energy charge collects approximately \$20 million,  
12 and that's what this number represents.

13 And then you can see how that \$20 million will  
14 be collected by the various classes given the sales that  
15 are in the column right before it.

16 So, essentially, what this represents is -- is  
17 these dollars are equal to the kilowatt hours, the units  
18 in the prior column, times the .0054. I mean, that's the  
19 computation of what it is.

20 Q. The percentage changed to rate schedules, the  
21 second column, in your -- comparing the two documents,  
22 you're moving to higher numbers in the document that was  
23 attached as Appendix A to the suggestions in support.

24 And I see that the numbers in the column under  
25 percentage changed due to refundable fuel charge are also

1 different, somewhat different, in the two documents.

2 First, let's go to the percentage changed to  
3 rate schedules column. In the Appendix A they all show up  
4 as 4.96 percent. Is that correct?

5 A. Yes.

6 Q. And that represents the percentage change to  
7 rate schedules overall or -- I'm a little confused because  
8 the percentages are so different between the two  
9 documents.

10 A. Well, actually, they aren't. They just look  
11 that way, because in the surrebuttal, where I show 5.0,  
12 that simply is 4.96 rounded. All it has to do with is the  
13 precision I showed on the -- the actual schedule.

14 But the dollars that would be collected by  
15 that, which is in the column to the right, the 10,171,  
16 258, that's the same bucks.

17 Q. I'm sorry. Where are you --

18 A. In the column in dollars changed to rate  
19 schedules. Okay?

20 Q. I see 4 million. I thought you said  
21 10 million.

22 A. No, no.

23 4.96 percent times the revenues in the column  
24 before is the 10 million in the column to the right of the  
25 4.96. So that would be Column 1, 2, 3, 4, at the very

1 bottom.

2 Q. Oh. All right. You're looking at totals. I  
3 was just looking at the first class there.

4 A. Right.

5 Q. All right. But then the residential goes  
6 from -- I mean, the small general service goes from 2.5 to  
7 4.96, which as I understand, that with the refundable fuel  
8 charge, the percentage that they pay is greater than the  
9 percentage you have originally recommended. Is that  
10 correct?

11 A. Yes. There is two things going on. One is, is  
12 the refundable fuel charge. And the other -- so how to  
13 incorporate that. And the other is how to go from what is  
14 shown in my surrebuttal to the stipulation. Okay?

15 The -- on the two schedules we're looking at,  
16 the 2 1/2 percent change to the rate schedule for small  
17 general service, which goes to the 4.96 on the other,  
18 that's due to the settlement agreement.

19 This proposal here was that the change to the  
20 rate schedules would not be equal across all classes. And  
21 that, specifically, the small general service would get  
22 half of the percentage increase and the large power and  
23 special contracts would get greater than system average.  
24 That was -- that was the Staff's proposal.

25 The document in suggestions in support that

1 shows the 4.96 all of the way down is the settlement,  
2 which is going from an unequal percentage, which was our  
3 proposal, to an equal percentage.

4 Q. Okay. Now, then, I'm beginning to understand  
5 more of what was done with the settlement agreement.

6 And I would like to ask you if you know how  
7 many small general service customers there are?

8 A. 19,096.

9 Q. And there the total that they will pay under  
10 this stip and agreement is roughly 1.4 million versus  
11 709,000 that you had originally recommended. Is that  
12 correct?

13 A. That's correct.

14 Q. So theirs is essentially doubling, which, I  
15 guess, if you go from 2 1/2 percent to almost 5 percent,  
16 that's --

17 A. Yeah.

18 Q. All right. Then -- well, let me ask you this:  
19 Do you think that in that none of the small general  
20 service customers have intervened in this proceeding, do  
21 you think that that is fair and equitable to them as a  
22 rate increase?

23 A. The cost-of-service study would indicate that  
24 that class's revenues are far higher than its  
25 responsibility for costs. That's true currently. That



1 was true under our proposal. Our proposal was to try to  
2 narrow that difference.

3 As a result of this stipulation, you will still  
4 see that the small general service class will be getting  
5 less than the average that goes to everybody else.

6 So I would look at it as we're going in the  
7 right direction for those folks because if you look on  
8 the -- the table in the suggestions, you'll see, you know,  
9 over in the last three columns to the right, what it was  
10 at our various proposals -- and it is true that our  
11 original proposal put those customers at, what, a little  
12 more than 10 percent and the settlement puts them at  
13 12 percent.

14 So to that extent they're losers. But the  
15 other way to look at it is, if the overall change is  
16 almost 15 percent, as it is in this example, they're still  
17 getting less than the system average.

18 So to that extent there is a movement towards  
19 cost of service that is in the right direction.

20 Q. And you think it's important to continue to  
21 move in that direction?

22 A. Yes, I do.

23 Q. And for the large general service customers,  
24 where do they come out in relation to the cost-of-service  
25 studies showing the costs that they create?

1           A.       The cost-of-service studies showed -- our  
2   cost-of-service studies showed that the large general  
3   service customers were pretty much right on target in  
4   terms of their responsibility for costs compared to their  
5   revenues.

6                   And that schedule that we put in as Exhibit 117  
7   yesterday, this table --

8           Q.       Yes.

9           A.       -- well, this table is showing what the Staff's  
10   cost-of-service study showed would be required to shift  
11   revenue before we got any increases from this case.

12                   And what you'll see here, is the large general  
13   service, our cost-of-service study showed on a revenue  
14   neutral basis that they would need to collect an  
15   additional \$115,000 to be totally in balance.

16                   For them, that's, like, two-tenths of  
17   1 percent. I mean, for all effective purposes, our  
18   cost-of-service study showed LGS is just fine. They're  
19   just where they should be.

20          Q.       All right. And do you measure special  
21   contracts in the same way?

22          A.       Yes. Well, if I understand what you're saying.

23                   They showed that -- well, how to say this?

24                   What you don't see here is the percentages, and  
25   it's kind of misleading in that regard.

1                   But what happened in our cost-of-service study  
2   and the details are in, I believe, Ms. Ross's testimony.

3                   But, essentially, what the cost -- our  
4   cost-of-service study showed is that the large power  
5   customers, the special contract customers, which now are  
6   only Praxair, but -- I'm not used to talking about a  
7   specific customer by name, and it makes me a little  
8   nervous, because generally my confidentiality agreements  
9   don't allow that to happen.

10                  But in this case special contractors is one  
11   customer.

12                  What our cost-of-service study showed is that  
13   there was a significant imbalance for those two groups, in  
14   the range of -- I don't know -- 16 or 17 percent  
15   difference between what their cost responsibility was and  
16   the revenues that they're currently paying.

17                  What that would mean is that by Staff's  
18   cost-of-service study, those customers are not paying  
19   anywhere close to what they need to pay to recover the  
20   costs that we think -- or their responsibility to cover  
21   using our methodologies.

22           Q.       Okay. And the difference is in -- the  
23   disagreement is in the methodologies?

24           A.       Right.

25           Q.       I skipped over large power. Where does it fit?

1       A.       Okay. Large power, I think our cost-of-service  
2 study said, on a revenue neutral basis, large power needed  
3 an increase in the range of 16 to 17 percent to recover  
4 the revenues that they should be -- recover the costs that  
5 we thought should be attributed to them.

6               Our proposal was that those customers -- of  
7 which I think there is 37 of them -- should get a greater-  
8 than-system-average increase.

9               Now, what we didn't do is in our proposal, we  
10 didn't propose to put those customers all of the way up to  
11 class cost of service, because we felt that that was too  
12 big of an impact for them.

13              So what we did is we tempered our original  
14 position -- or our original recommendation by reducing  
15 small general service somewhat, but not as much as cost of  
16 service, and proposing to increase large power in special  
17 contracts somewhat, but not as much as cost of service.

18              That was in the original proposal.

19              The settlement proposal shows that large power  
20 gets in -- in this example, an increase of about  
21 19 percent, still less than our cost-of-service study  
22 showed that it should, slightly more than our original  
23 proposal which was somewhat impact driven, and less than  
24 what would have happened if the Commission had adopted  
25 Staff's surrebuttal proposal.

1                   And what is going on there is these customers  
2   get such a large percentage increase due to that interim  
3   energy charge, that we could justify just giving them an  
4   equal percentage increase on their rates.

5       Q.       Now, I assume that large power customers would  
6   have -- might disagree with your methodology?

7       A.       Oh, I'm certain that they would.

8       Q.       So they might say that they should not get the  
9   percentage increase that you say they need to get to bring  
10   them up to cost of serving?

11      A.       I agree with that.

12      Q.       All right. And how many large general service  
13   customers are there?

14      A.       1,937.

15      Q.       And residential?

16      A.       109,767.

17      Q.       Okay. I'd just like to go through each of  
18   these.

19               The electric furnace customers, what -- how  
20   many of those?

21      A.       There is simply one customer there.

22      Q.       Okay. And is that -- what relationship is the  
23   increase to what your cost-of-service study showed them  
24   needing?

25      A.       Our cost-of-service study did not examine that

1 customer individually. Because -- well, for various  
2 reasons.

3 So when we -- when we don't examine a class of  
4 customers, what that means is that we think that those  
5 customers are probably about right.

6 So what we propose for this particular customer  
7 class or customer is we propose that that customer get the  
8 system average.

9 Q. Okay. Lighting?

10 A. The same -- kind of the same deal.

11 We didn't study them explicitly. We don't  
12 think they should be studied in a cost-of-service study.

13 They -- we proposed the system average. And by  
14 the settlement they will get something lower than the  
15 system average. The numbers on the table that we're  
16 looking at indicates that lighting overall would get a  
17 9.79 percent.

18 The reason lighting will get a less-than-system  
19 average is because of the nature of the interim energy  
20 charge.

21 While they were still be paying the same  
22 .54 cents per kilowatt hour, lighting revenues are made up  
23 of a lot of fixture costs. You're paying for a pole;  
24 you're paying for a light. Only a small proportion of  
25 that is paying for the actual energy.

1                   So relative to the revenues, they have a small  
2   number of kilowatt hours and, therefore, on a percentage  
3   basis they go down.

4                   I would point out, however, Commissioner, that  
5   we will charge the interim energy charge to these  
6   customers, just like we will everybody else.

7       Q.       All right. And lighting customers, how many  
8   are there?

9       A.       What I have here is 968.

10                  I will put a caveat there. I'm never quite  
11   sure how you measure a customer with lighting. I don't  
12   know if it's a light in some guy's backyard or it's the  
13   City of St. Joe or something. I mean, but that's the  
14   numbers that we have.

15       Q.       All right. Now let's go back up to  
16   residential.

17                  And what do your cost-of-service studies show  
18   that would be the residential's share of the increase if  
19   they paid cost of serving them?

20       A.       Okay. Our cost-of-service study showed that  
21   residential was paying just about 1 percent more than  
22   their cost to serve.

23                  What we proposed is we proposed that they get  
24   system average because -- well, we propose they got system  
25   average.

1           Under the settlement proposal they will get, in  
2   this example, 13.42 percent, which is just slightly under  
3   the system average of 14.62.

4           So to that extent the settlement proposal puts  
5   residential just about where we think they should be  
6   compared to our cost-of-service study.

7       Q.     And is it accurate to say that the other  
8   parties would disagree with you, that residential is  
9   paying close to what is the cost to serve residential?

10      A.     OPC would agree, but the company and the  
11   industrial would disagree. Again, it comes down to  
12   methodology.

13      Q.     Now, the column under percentage change due to  
14   refundable fuel charge is all over the place because of  
15   the different amounts of fuel that they use. Is that  
16   correct?

17      A.     Yes.

18      Q.     And the overall percentage increase column  
19   includes both the percentage changed to rate schedules and  
20   the change due to the refundable surcharge --

21      A.     Yes.

22      Q.     -- fuel charge?

23      A.     Yes.

24            You can see the two pieces separate here. The  
25   percentage due to refundable fuel charge, that percentage



1 is strictly from the IEC, but the overall has -- the  
2 overall has -- the settlement overall percentage increase  
3 column has both pieces.

4 So let me make sure I said that correctly.

5 If we look at residential, we'll see that in  
6 this example the residential class will get a 4.96 percent  
7 change to the rate schedules, which means the customer  
8 charge goes up that amount, the energy charges, you know,  
9 anything that is on the schedule would go up by  
10 4.96 percent, which also means that a customer's bill  
11 would go up 4.96 percent if their usage was the same.

12 Okay?

13 That's what that column is.

14 Then, on top of that, you would have the  
15 .54 cents per kilowatt hour for the interim energy charge.  
16 And that will go up, in this example, an average of  
17 8.46 percent, and that has to do with the relationship  
18 between the kilowatt hours that are used, the amount of  
19 usage and -- compared to the other revenues.

20 The reason that is higher is because that's a  
21 per unit charge as opposed to a percent of revenue charge.

22 Okay. So if you take the 4.96 percent to the  
23 rate schedules, plus the 8.46 percent due to the interim  
24 energy charge, you get this overall increase of  
25 12.4 million or 13.42 percent.

1       Q.       All right. Have you done any calculations as  
2   to average increase in dollars per -- averaged over each  
3   class that the settlement proposal would provide?

4       A.       Ask that again. The average increase in  
5   dollars?

6       Q.       The average increase -- the dollar increase to  
7   the -- the average dollar increase to the average  
8   customer.

9       A.       Okay. I can tell you for residential, but  
10  there is a big caveat here.

11               Remember, these are examples. And while the  
12  dollars and the refundable fuel charge is probably pretty  
13  accurate, this other -- the part that goes to the rate  
14  schedules, I have no idea what that will be until the  
15  true-up and the Commission makes its decision. Okay?

16               So this is an example, and I hope it's -- it's  
17  reasonable, but I don't know.

18               But the -- in terms of the residential, I have  
19  kind of looked at that a little bit. And the refundable  
20  fuel charge at the .54 cents per kilowatt hour, which is a  
21  number that is known in the stipulation, that's going to  
22  turn out to be about \$6 a month for a typical residential  
23  customer.

24               And that is refundable. And the parties have,  
25  you know, agreements that make sure that any piece that

1 gets refunded, gets refunded to exactly the same person  
2 and all that sort of stuff.

3           So that's going to run about six bucks a month.  
4 That's the piece that we know what is going to be if the  
5 Commission adopts the stipulation and agreement.

6           Now, on the 4.96, which is just a number pulled  
7 out -- out of the air, that's going to be about \$3.50, I  
8 think, if that's what it turns out to be.

9           And right now the typical residential customer,  
10 my computation is that they're paying about 70, \$71 a  
11 month. You know, we average it over the year.

12           I would say something else, Commissioner, and  
13 that is, if you look at Empire's typical residential  
14 customer, it doesn't look like the residential customer  
15 that any of the other electric utilities have in the  
16 winter.

17           Empire's residential customers use a lot more  
18 electricity in the winter than the other utilities that we  
19 regulate, and the numbers will indicate -- the numbers I  
20 have indicate that the winter -- the winter average usage  
21 is almost as big as the summer, as opposed to what we're  
22 used to using, which is a high summer usage and not too  
23 much in the winter.

24           This -- this is a company where the residential  
25 customers evidently have high saturation of heating also.

1 So they have two in the winter and one in the summer.

2 Q. Any explanation for that?

3 A. I would guess they have a much higher  
4 saturation of electric space heating. Probably -- I'm  
5 trying to think.

6 I can't think of who the gas company would be  
7 down there. But I would guess they don't have a big  
8 presence. That's just my hunch.

9 Q. All right.

10 COMMISSIONER MURRAY: Thank you. You've been  
11 very thorough.

12 JUDGE RUTH: Commissioner Gaw?

13 COMMISSIONER GAW: I think Commissioner Murray  
14 has covered the territory pretty well for me. I  
15 appreciate that.

16 JUDGE RUTH: Okay.

17 Okay. Recross based on questions from the  
18 bench.

19 Mr. Coffman?

20 MR. COFFMAN: No questions.

21 JUDGE RUTH: Mr. Conrad?

22 MR. CONRAD: Yes, ma'am, very briefly.

23 RECROSS-EXAMINATION BY MR. CONRAD:

24 Q. Good morning, Ms. Pyatte.

25 A. Good morning, Mr. Conrad.

1           Q.       I just wanted to clarify a couple of things  
2 with you in the interrogation from Judge Murray.

3                    You talked about what Staff's cost-of-service  
4 study showed for special contracts and ultimately for some  
5 of the other rate groups.  Correct?

6           A.       Yes.

7           Q.       Would you agree with me that the  
8 cost-of-service study that was submitted by Praxair showed  
9 something different; namely, that the special contracts  
10 class was presently overcharged?

11          A.       Yes, that is true.

12          Q.       And that is the methodology issue that you --

13          A.       Yes.

14          Q.       -- discussed?

15                   And would you also agree with me that the  
16 percentage of fuel cost that is built into each class's  
17 rate varies?

18          A.       Yes.

19          Q.       So that if you were to look at a -- let's take  
20 a pie chart, and look at the proportion for the  
21 residential class that was fuel on that chart, as opposed  
22 to some other cost other than fuel, fixed charges,  
23 customer charges, whatever they might be, the slice of  
24 that pie that would be the fuel portion would be somewhat  
25 smaller than if you did the same type of a pie chart for,

1     like, the large power class, for example?

2             A.       That's true, Mr. Conrad.

3                     In fact, those very charts are in my rebuttal  
4     testimony, showed as a pie chart for each class that shows  
5     their proportion of fuel, which is mostly production --  
6     the chart will indicate that it's production-energy.

7                     But, yeah, they're there, and I agree with you.  
8     The place to find them would be in Exhibit 71, which is my  
9     rebuttal testimony.

10                    Where is it?

11                    I'm sorry. It's in Exhibit 70, which is my  
12     direct testimony. It's Schedule -- Schedule 4. And what  
13     I show there is exactly what Mr. Conrad is talking about.

14                    And, in fact, I'm showing it in this case  
15     vis-a-vis the prior case.

16                    But Schedule 4 shows -- if you want to look at  
17     it that way, the way Mr. Conrad is talking about, which is  
18     the proportion of fuel, you would look at the chart where  
19     it says production energy.

20                    So in Schedule 4.1 it shows that total Missouri  
21     is 42 percent. On Schedule 4.2, residential is  
22     37 percent. And if you skip all of the way over to  
23     Schedule 4-5, which is the last page in there, you will  
24     see for the large power and special contracts, that  
25     production energy is 51 percent.

1           Q.       Now, at one point in responding to Judge  
2 Murray's questions, you made reference, I think, to this  
3 sheet, which is attached to Staff's suggestions in support  
4 of the unanimous stipulation.

5           A.       Yes.

6           Q.       And I think I wrote this down correctly, that  
7 you hoped it was reasonable but you weren't sure. Do you  
8 remember that phrase?

9           A.       Yes.

10          Q.       Let me ask you: When you used that term, you  
11 were talking about your estimate of what the Commission  
12 might come up with at the end of the case insofar as a  
13 total revenue award --

14          A.       Yes.

15          Q.       -- rather than the methodology that has been  
16 recommended in the now unanimous stipulation. Am I  
17 correct?

18          A.       That's correct.

19          Q.       And to illustrate that and go to one question  
20 that Commissioner Murray had, if you'd look at that  
21 sheet --

22                   MR. CONRAD: I don't know, Judge, that this has  
23 been marked as an exhibit, and I don't know if we need to.

24                   JUDGE RUTH: It would probably be a good idea.  
25 The number on that would be exhibit --

1                   MR. CONRAD: Well, this is an attachment to --  
2 help me out, Mr. Frey.

3                   JUDGE RUTH: Suggestions in support of the  
4 unanimous stipulation and agreement regarding fuel and  
5 purchased power expense and class cost of service and rate  
6 design.

7                   The other stip and agreements have been marked  
8 for identification. I don't believe that most recent stip  
9 and agreement was marked, because when we started on  
10 Tuesday that exhibit didn't exist. So perhaps the proper  
11 thing to do -- am I incorrect?

12                  MR. CONRAD: This is an attachment, I believe,  
13 to, in effect, Staff's suggestion to the Commission --

14                  JUDGE RUTH: Okay.

15                  MR. CONRAD: -- in support of that document.

16                  JUDGE RUTH: So it's not part of the actual  
17 stipulation?

18                  MR. CONRAD: It's not part of the actual  
19 stipulation.

20                  JUDGE RUTH: I don't think we'll need to mark  
21 it, then, for identification.

22                  MR. CONRAD: I think, obviously, Commissioner  
23 Murray has it, and perhaps Judge Gaw does too. And  
24 perhaps we've sufficiently identified it with this  
25 discussion.



1 BY MR. CONRAD:

2 Q. Ms. Pyatte, look, if you would -- the columns  
3 around numbered, but it would be the fourth one from the  
4 right, the one that totals 30 million.

5 A. Yes.

6 Q. Are you with me?

7 Now, that is -- that \$30 million, that's what  
8 you're talking about is a reasonable estimate, but you  
9 don't know right now what the true-up and so on is going  
10 to bring?

11 A. That's true.

12 Q. Let's just -- and I won't -- I won't ask you or  
13 bore everybody with going through the calculations.

14 But just tell me quickly, if, for example, that  
15 overall increase column became 25 million, what columns  
16 would change?

17 And let me walk you through them here.

18 Probably the current revenues column, which is  
19 the second from the left, would not change. Correct?

20 A. That's correct.

21 Q. The current kWh sales, which is somewhat in the  
22 middle, would not change?

23 A. That's correct.

24 Q. And, in fact, the dollars to refundable, dollar  
25 sign, 0.0054 fuel charge, that would not change?

1           A.       That's correct.

2           Q.       And the column immediately to its right that is

3           the percentage would not change?

4           A.       That's correct.

5           Q.       The ones that would change would be the

6           percentage changed to rate schedules and the percentage --

7           and the dollars changed to rate schedules and then the

8           overall increase and so on?

9           A.       That -- that's correct.

10          Q.       The relationships would stay approximately the

11          same?

12          A.       That's correct.

13          Q.       But the percentages could change?

14          A.       Yes.

15                  And, in fact, I believe that we have written

16          the stip in such a way that if the overall increase,

17          which, as shown here, is 30 million, turned out to be less

18          than 20 million, that the actual percentage change to the

19          rate schedules can go negative.

20          Q.       And that was -- you anticipated my next

21          question, and let me kind of sum up and we'll move on.

22                  And I don't want to take you into the fuel side

23          of it, because that's yet to be theory spread before the

24          Commission.

25                  But just to tip-toe into that area for just one

1 second, would you agree with me that the fuel portion of  
2 that now unanimous stipulation represents both a  
3 methodology or a mechanism and a level?

4 A. Well, there is a methodology for how it shall  
5 be recovered.

6 Q. And there is a level --

7 A. And there is a level, which is the .54 cents  
8 per kilowatt hour.

9 Q. And those things won't change depending on what  
10 the Commission ultimately determines is an appropriate  
11 revenue requirement for this company?

12 A. That's true.

13 Q. Assuming they accept it?

14 A. That's true.

15 The only thing that will change is sales might  
16 change just a smidgen because we're -- those have to be  
17 trued-up to June 30, and what we have in here is an  
18 estimate of June 30. But that's a minor thing.

19 In general, the .54 is fixed once the sales are  
20 fixed, and these are probably very, very close. The total  
21 bucks that go with that are fixed according to the stip.

22 Q. And to bring us back and to close what we're  
23 talking about, at least at this moment this morning, the  
24 part of this that deals with class cost of service and  
25 rate design, that is a mechanism or a methodology rather

1     than a level?

2           A.       Yes.

3           MR. CONRAD:   Okay.   Thank you.

4           JUDGE RUTH:   Staff, do you have redirect?

5           MR. FREY:    Just one question, Your Honor,  
6     briefly.

7     REDIRECT EXAMINATION BY MR. FREY:

8           Q.       Ms. Pyatte, with regard to this table attached  
9     to your suggestions in support, I believe Mr. Conrad asked  
10    you some questions about the \$30 million figure.

11                  Do you recall that?

12          A.       Yes.

13          Q.       Is it your testimony that this number,  
14    \$30 million, is a reasonable estimate of the overall  
15    increase, or that it was simply a number that was used for  
16    illustrative purposes to show how the various rates would  
17    behave and the increases that would be associated?

18          A.       It's simply an illustrative number to show the  
19    mechanics.   I have no idea if 30 million is a reasonable  
20    number or not.

21                  MR. FREY:   Thank you, Ms. Pyatte.   I have no  
22    further questions.

23                  JUDGE RUTH:   Okay.   Thank you.

24                  Ms. Pyatte, you may step down.

25                  And, Staff, are you ready to call your next

1 witness?

2 MR. FREY: Yes, Your Honor. Thank you.

3 Staff calls Anne Ross.

4 JUDGE RUTH: Ms. Ross, would you please raise

5 your right hand.

6 (Witness sworn/affirmed.)

7 JUDGE RUTH: Okay. Thank you.

8 Please be seated.

9 Mr. Frey.

10 MR. FREY: Yes, ma'am.

11 ANNE ROSS testified as follows:

12 DIRECT EXAMINATION BY MR. FREY:

13 Q. Could you please state your name for the

14 record?

15 A. My name is Anne Ross.

16 Q. And by whom are you employed and in what

17 capacity?

18 A. I'm employed by the Missouri Public Service

19 Commission as a regulatory economist.

20 Q. And did you prepare and cause to be filed in

21 this proceeding what has been marked for purposes of

22 identification as Exhibit 73, Anne Ross direct?

23 A. Yes.

24 Q. And do you have any corrections to that

25 testimony?

1           A.       No.

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

4           A.       Yes.

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

7           A.       Yes.

8                   MR. FREY: Your Honor, at this time I would  
9 offer Exhibit 73 for admission into the record and tender  
10 the witness for cross-examination.

11                   JUDGE RUTH: Okay. Thank you.

12                   Exhibit 73 is the direct testimony of Anne  
13 Ross.

14                   Are there any objections to this document being  
15 admitted?

16                   MR. SWEARENGEN: We have none.

17                   JUDGE RUTH: Seeing no objections, Exhibit 73  
18 is received into the record.

19                   (EXHIBIT NO. 73 WAS RECEIVED INTO EVIDENCE.)

20                   JUDGE RUTH: Public Counsel, do you have  
21 cross-examination?

22                   MR. COFFMAN: No questions.

23                   JUDGE RUTH: Empire?

24                   MR. SWEARENGEN: No questions. Thank you.

25                   JUDGE RUTH: Praxair?

1                   MR. CONRAD: Pursuant to the stipulation and  
2 Commission -- on Commission's acceptance thereof, we don't  
3 have any questions for Ms. Ross.

4                   JUDGE RUTH: Okay. Thank you very much.

5                   Commissioner Murray, do you have questions?

6 QUESTIONS BY COMMISSIONER MURRAY:

7           Q.       Good morning, Ms. Ross.

8           A.       Good morning.

9           Q.       The class cost-of-service study that you did is  
10 based on a particular methodology. Is that correct?

11          A.       Yes.

12          Q.       And that differs from the methodology, for  
13 example, that Praxair has proposed, or did propose. Is  
14 that correct?

15          A.       Yes. I'd like to clarify that, you know.

16                   The -- my class cost of service is based on a  
17 group of methodologies, and many of them differ from the  
18 ones that Praxair used in their cost of service.

19          Q.       And why do you think that your study is an  
20 appropriate method combining those various methodologies?

21                   What do you think supports your methodology  
22 that you end up using?

23          A.       Many of the methodologies that I used have been  
24 used in other cases, and all of the methodologies used in  
25 this cost of service were used in the last Empire case by

1 the Staff.

2 I believe that Staff's methodology is  
3 reasonable.

4 Q. And in the last Empire case did Staff -- did  
5 the Commission accept your methodology?

6 A. I don't know.

7 Q. Can you tell me if you think that we should be  
8 moving from or moving toward each class bearing the  
9 responsibility equal to the costs that that class creates?

10 A. Yes, but I believe that you also need to take  
11 into account impacts on the classes.

12 Q. So is it your testimony that you need to have a  
13 balance between covering cost of service and impact to the  
14 classes?

15 A. I don't know if I said that in my testimony,  
16 but that is my belief, yes.

17 Q. Your Schedule 1, does that have any relevance  
18 now in relation to the stip and agreement?

19 A. Yes. It gave us a starting point. I think  
20 that the cost of service cannot only tell you which way  
21 you want to go, but perhaps which way you don't want to  
22 go.

23 So I think it's a good starting point to see  
24 where everyone is at and the directions in which you might  
25 move.



1 Q. And the bottom -- the last line on that  
2 schedule that gives the percentage change --

3 A. Yes.

4 Q. -- to the various classes, can you tell me what  
5 that represents?

6 A. Certainly.

7 At 15 -- at a \$15 million increase, which is  
8 what our accounting Staff filed in their direct testimony,  
9 that represents a 7.52 percent increase in revenues for  
10 the company.

11 And then we went to each cost-of-service study  
12 class and said if they were to go to cost of service, how  
13 much would their revenues need to increase?

14 So, for example, residential would need to  
15 increase 6.56 percent, which is an increase but it's not  
16 an increase as high as the system average or the total  
17 company increase.

18 Likewise, SGS would -- actually, they would  
19 decrease in our -- in our cost-of-service starting point.

20 Q. So let me stop you there a moment and look at  
21 the -- I want to compare this to the document that I was  
22 talking to Ms. Pyatte about, the Appendix A that was  
23 attached to Staff's suggestions in support.

24 Do you have that?

25 A. No, I don't.

1                   MR. FREY: I'll make it available to the  
2 witness.

3                   THE WITNESS: Thanks.

4 BY COMMISSIONER MURRAY:

5         Q.       Are you familiar with that?

6         A.       No. This is the first time I've seen it.

7         Q.       Well, if you will look in the third column from  
8 the right, at the settlement overall percentage  
9 increase --

10        A.       Yes.

11        Q.       -- for residential would be the first line?

12        A.       Yes.

13        Q.       That looks like the overall percentage increase  
14 there would have about -- be almost twice what your  
15 original proposal would have been, but I assume that would  
16 be because of the fact that you were looking at a  
17 \$15 million increase versus Appendix A looking at a  
18 \$30 million increase.

19                Would that explain that difference?

20        A.       Yes. I'm not sure that that would explain all  
21 of that difference, because it's my understanding that the  
22 interim energy charge is factored into this. And so I  
23 don't think that it's just double the 6.56. I think it's  
24 probably a little more complicated than that.

25        Q.       All right. And then the second column, you

1     were recommending a decrease for the small general service  
2     customers; whereas, the settlement agreement now shows  
3     them receiving a 12.81 percent overall increase.

4                     Would you agree with that?

5         A.         Yes.

6         Q.         However, I'm a little confused now, because the  
7     Staff direct rate design proposal was that there be a  
8     10.68 percent overall increase to the small general  
9     service. It looks like that from the Appendix A.

10                    Do you see what I'm referencing there?

11                    And then Staff's surrebuttal rate design  
12     proposal was 10.3.

13         A.         Yes.

14         Q.         Perhaps that is because at the time you did  
15     your calculations there was no interim energy charge being  
16     considered?

17         A.         That's true.

18         Q.         Okay. For your -- the LPS, is that the large  
19     power?

20         A.         Yes.

21         Q.         And your original document was recommending a  
22     24.57 percent increase. Is that correct?

23         A.         Yes.

24                    Although, Commissioner Murray, I wasn't  
25     recommending a 24.57 percent increase. The results of my

1 study showed that the mismatch between costs and revenues  
2 was about 24.57 percent, but our rate design proposals are  
3 where we actually recommend an increase or decrease.

4 Q. All right. And your special contracts, your  
5 cost-of-service study showed 22.89 percent?

6 A. Yes.

7 COMMISSIONER MURRAY: All right. I believe  
8 that is all of the questions I have. Thank you.

9 THE WITNESS: You're welcome.

10 JUDGE RUTH: Commissioner Gaw?

11 COMMISSIONER GAW: Thank you.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Good morning.

14 A. Good morning.

15 Q. If I understand this correctly, your original  
16 assessment of -- under your -- under your model,  
17 developing the costs attributable to each class, are shown  
18 in this Schedule 1 which is attached to your testimony.

19 Is that correct?

20 A. Yes.

21 Q. And you based -- if you could tell me what you  
22 based than that model upon, please, in developing in  
23 developing this -- the results that you have of  
24 residential having a 6.56 percent increase, and it's down  
25 the line with the other classes, what -- how did you

1 develop the methodology or the model? What did you use to  
2 come up with those conclusions?

3 A. Okay. We used a cost-of-service program that  
4 was developed by the Staff several years ago.

5 And first I go through and I take each  
6 accounting cost filed by our accountants. And we usually  
7 have quite a bit of detail.

8 I determine the function -- I functionalize  
9 those costs, which means that I take them to one of these  
10 areas, production, capacity, distribution, poles and  
11 conductors, primary feeder. So I categorize them as one  
12 of one of those costs.

13 Then, Mr. Watkins developed allocation factors,  
14 and we go to each of those categories. And allocation  
15 factors, then, takes them to the classes, okay, using some  
16 appropriate method of allocation.

17 Then we sum up the costs, we sum up the  
18 revenues and compare them, and that's where the percentage  
19 increases or decreases come from.

20 Q. All right. And on your -- as a result of going  
21 through that, the determination as to the increases or  
22 decreases to the various classes are shown on that  
23 Schedule 1. Is that correct?

24 A. Yes.

25 Q. Is that methodology that you utilize -- and

1 that you utilized in this case -- on Schedule 1, is that  
2 something that is used by others other than Staff?

3 Are you familiar with whether or not that is a  
4 methodology that is accepted by others?

5 A. I think that basically, yes, we're doing the  
6 same type of thing. We do it -- we arrive at our answers  
7 in different ways.

8 I believe that our cost of service is the only  
9 one that takes it to the functional categories before it's  
10 allocated -- before the costs are allocated to the  
11 customer classes.

12 Q. Now, have you seen the unanimous stipulation  
13 that's been filed regarding rate design in this case?

14 A. Yes.

15 Q. And the allocations are different than what  
16 your original proposal was? That's correct, isn't it?

17 A. Yes.

18 Q. Can you tell me in regard -- and I think this  
19 is fairly obvious, but if you wouldn't mind telling me how  
20 they are different with each class in regard to the impact  
21 of a rate increase on this case.

22 If you'd go down through residential, comparing  
23 your original assessment to what the stipulation called  
24 for.

25 A. Okay.

1 Q. Can you do that?

2 A. Yes. I think we'll be comparing apples and  
3 oranges though.

4 Q. Explain that for me then.

5 A. Well, they're based on different revenue  
6 requirements.

7 Q. All right.

8 A. Mine was based on the original 15,133,316  
9 deficiency, and this is based on \$30 million --  
10 approximately \$30 million.

11 Q. Approximately twice as much?

12 A. Yes.

13 Q. So it would be possible, would it not, to at  
14 least tell me whether or not the impact on each class was  
15 more or less as comparing your original methodology and  
16 proposal on Schedule 1 to what the stipulation calls for?

17 A. I think so.

18 For residential -- would you ask your question  
19 again? I'm not sure I understand.

20 Q. I'm just asking you to compare whether the  
21 impact to each class being greater than or less than your  
22 original proposal when you look at the stipulation and  
23 agreement.

24 A. Okay. For residential, the settlement proposal  
25 gives them a greater increase, has a greater impact. For

1 small general service, the same; the settlement proposal  
2 gives them a greater increase than is shown in my cost of  
3 service.

4 For large general service, again, the  
5 settlement gives them a higher increase. For special  
6 contract it looks like the increase is slightly less. And  
7 for -- hang on. I'm losing my place now.

8 And for large power service, it looks like the  
9 settlement increase is lightly less.

10 Q. Now, based upon your original analysis which is  
11 shown in Schedule 1, did you find reasons to -- for --  
12 from your study that would indicate that those shifts  
13 should occur, appropriately occur, and that this  
14 Commission should find that the stipulation and agreement  
15 is a more justifiable result than your conclusions in your  
16 original schedule?

17 A. My opinion is that since the settlement  
18 proposal is the result of negotiation between the parties,  
19 that, yes, it -- it is a more reasonable result when you  
20 look at -- at what everyone believes and the interests of  
21 all parties, yes.

22 Q. So would you say that it is more in line with  
23 your methodology that was utilized originally or that your  
24 methodology is flawed in some way and that we should  
25 accept the stipulation because your methodology is not as



1 good as the stipulation?

2 A. Oh, I don't think that the stipulation really  
3 comments on my methodology.

4 Cost of service is an art and not a science,  
5 and there is room for analyst judgment in both the  
6 functionalizations and in the allocations.

7 Q. So what you're saying, if I'm -- and maybe  
8 you -- please correct me if this is inaccurate, is that  
9 your original methodology is something that you believe is  
10 a good one but that you also do not necessarily discredit  
11 the stipulation and agreement as being not as good because  
12 of the results being different?

13 A. Yes.

14 Q. Is there anything in this rate design that  
15 encourages conservation of energy?

16 A. Commissioner Gaw, to be completely honest, I  
17 haven't looked closely at the rate design.

18 Q. All right. In your original proposal was  
19 there?

20 A. Well, my original proposal was cost of service  
21 and not rate design.

22 Q. So it didn't get to that point?

23 A. Exactly.

24 COMMISSIONER GAW: I understand.

25 I believe that is all of the questions I have.

1 Thank you.

2 JUDGE RUTH: Commissioner Murray?

3 COMMISSIONER MURRAY: Thanks. I have a couple  
4 of follow-up questions.

5 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

6 Q. I think you responded to Commissioner Gaw that  
7 your cost-of-service study was based on the original  
8 \$15 million.

9 Can you tell me where that original \$15 million  
10 came from?

11 A. Yeah. That was -- let me make sure I say it  
12 correctly. It was from Schedule 2 of Staff Witness Phil  
13 Williams' direct testimony filed on April 3rd.

14 Q. So that was Staff's original proposal for a  
15 revenue requirement increase?

16 A. I'm not sure.

17 Q. All right. You had indicated earlier to me  
18 that -- I believe when we were talking about cost-of-  
19 service methodology that it should take into account  
20 impact on classes.

21 My question to you is, does your cost-of-  
22 service methodology include impact on classes or is it  
23 purely designed to establish the relationship of actual  
24 costs to serve to the percentage increase required?

25 A. Yes. And I'm glad you clarified that, because

1 I misspoke.

2 Impact is taken into account in the rate  
3 design, not in my cost of service.

4 Q. So you're telling me that your cost-of-service  
5 methodology does not make adjustments to achieve a result?

6 A. Oh, no, no.

7 COMMISSIONER MURRAY: All right. That's all.

8 Thank you.

9 THE WITNESS: You're welcome.

10 JUDGE RUTH: Public Counsel, do you have  
11 recross?

12 MR. COFFMAN: Yes.

13 RECROSS-EXAMINATION BY MR. COFFMAN:

14 Q. Ms. Ross, you were asked about whether this  
15 rate design encourages conservation?

16 A. Yes.

17 Q. And I assume that you have read the unanimous  
18 stipulation?

19 A. I looked over it yesterday morning, yes.

20 Q. And you have a basic understanding of the  
21 interim energy charge?

22 A. I understand what it's designed to collect. I  
23 didn't study the document carefully.

24 Q. Do you understand that it is a per-kilowatt-  
25 hour charge?

1           A.       Yes.

2           Q.       In other words, the more a customer uses, for  
3 each kilowatt hour a customer uses they will be charged  
4 the .54 cents?

5           A.       Yes.

6           Q.       And would you say -- I'm not sure whether you  
7 have any specialized knowledge of conservation, but could  
8 you state as a general rule that the more costs that are  
9 allocated to a commodity charge or a per kilowatt hour  
10 charge, the more likely that rate design would be  
11 encouraging of conservation?

12          A.       It certainly would for me. So, yeah, I would  
13 say that that would encourage conservation.

14          Q.       And interim energy charge is a significant  
15 portion of the rate design settlement?

16          A.       Yes.

17                   MR. COFFMAN: That's all I have. Thank you.

18                   JUDGE RUTH: Thank you.

19                   Mr. Swearengen?

20                   MR. SWEARENGEN: Yes, just a couple,  
21 Your Honor.

22 RECROSS-EXAMINATION BY MR. SWEARENGEN:

23          Q.       Ms. Ross, in response to some questions from  
24 Commissioner Gaw -- let me ask you, your direct testimony,  
25 your class cost-of-service study, Exhibit 73, that's the

1 only piece of testimony that you filed in this case. Is  
2 that correct?

3 A. That's correct.

4 Q. Okay. And I think the Commission was asking  
5 you to look at the attachment to your direct testimony,  
6 the Staff class cost-of-service results that assumes a  
7 revenue deficiency of \$15 million.

8 Do you recall those questions?

9 A. Yes.

10 Q. And then you were asked some questions to  
11 compare that to Appendix A to the Staff's suggestions in  
12 support of the unanimous stipulation and agreement.

13 And I think you said that one of the major  
14 differences is Appendix A assumes a \$30 million revenue  
15 deficiency or rate increase, as opposed to the \$15 million  
16 that is contained in your direct testimony.

17 Is that true?

18 A. Yeah.

19 Q. And is it also not true that Appendix A to the  
20 memorandum or suggestions in support of the stipulation,  
21 really breaks out what we're talking about here into two  
22 components, one, a base increase, and the other piece  
23 would be the increase which would result from the  
24 forecasted fuel mechanism that is going to be discussed  
25 later today, presumably?

1           A.       This is the first time I've seen this document.  
2                    Yeah, it looks that way to me.  
3           Q.       Okay.  And so would I be fair in concluding  
4   that you really haven't filed any additional testimony and  
5   really haven't offered any additional testimony that would  
6   attempt to bridge the difference between your class  
7   cost-of-service study as set out in your direct testimony  
8   and the stipulation and agreement concerning not only the  
9   base rate increase but also the increase which will come  
10  from the forecasted fuel mechanism?  
11          A.       That's correct.  
12                  MR. SWEARENGEN:  Fine.  Thank you.  That's all  
13  I have.  
14                  JUDGE RUTH:  Mr. Conrad?  
15                  MR. CONRAD:  Nothing, Your Honor.  Thank you.  
16                  JUDGE RUTH:  Staff, do you have redirect?  
17                  MR. FREY:  No, Your Honor.  Thank you.  
18                  JUDGE RUTH:  Okay.  
19                  You may step down, Ms. Ross.  And I believe we  
20  should take a 15-minute break and start back at 10.  Thank  
21  you.  
22                  (A RECESS WAS TAKEN.)  
23                  JUDGE RUTH:  Before our break we had finished  
24  with Witness Anne Ross, and I believe we are now ready for  
25  Public Counsel to call your first witness.

1                   Is that correct?

2                   MR. COFFMAN: No. There are a couple other

3   Staff witnesses. We're ready to go.

4                   JUDGE RUTH: Okay. I'm sorry. I skipped

5   those.

6                   Go ahead.

7                   MR. BATES: Thank you, Your Honor.

8                   We would recall Roy Boltz to the stand.

9                   JUDGE RUTH: Mr. Boltz, I'll just note for the

10   record that you were sworn in earlier and you are still

11   under oath.

12                  Thank you.

13                  THE WITNESS: Yes.

14                  JUDGE RUTH: Mr. Bates.

15                  MR. BATES: Thank you.

16   ROY BOLTZ testified as follows:

17   DIRECT EXAMINATION BY MR. BATES:

18       Q.       Mr. Boltz, would you please restate your name

19   for the record?

20       A.       Roy M. Boltz, Jr.

21       Q.       And you've already answered questions

22   concerning your employment. So at this point I would ask

23   you if you prepared and caused to be filed direct

24   testimony in this case which has been marked for purposes

25   of identification as Exhibit No. 39?

1           A.       Yes.

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

5           A.       No, there is not.

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

8           A.       Yes.

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

11          A.       Yes.

12                   MR. BATES: Your Honor, with that I move for  
13 the admission of Exhibit No. 39 into the record, and I  
14 tender Mr. Boltz for cross-examination and questions from  
15 the bench.

16                   JUDGE RUTH: Okay. Exhibit No. 39 has been  
17 offered. It's Mr. Boltz's direct testimony.

18                   Are there any objections from the parties?

19                   Seeing no objections, Exhibit 39 is admitted  
20 into the record.

21                   (EXHIBIT NO. 39 WAS RECEIVED INTO EVIDENCE.)

22                   JUDGE RUTH: Public Counsel, do you have  
23 cross-examination?

24                   MR. COFFMAN: No questions.

25                   JUDGE RUTH: And Empire?



1 MR. SWEARENGEN: No questions.

2 JUDGE RUTH: And now Mr. Conrad.

3 MR. CONRAD: And as you might imagine, pursuant  
4 to the stipulation that has been tendered to the  
5 Commission and upon their acceptance of it, we don't have  
6 any questions for Mr. Boltz on this issue.

7 JUDGE RUTH: Okay. Thank you. That's noted  
8 for the record.

9 And, Commissioner Murray, do you have any  
10 questions?

11 COMMISSIONER MURRAY: Just a couple. Thank  
12 you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Mr. Boltz, I'm sure we have a document  
15 somewhere that says that you are going to be testifying  
16 again today, and I didn't see it, so I don't have your  
17 testimony with me.

18 Can you tell me what you have to add to this  
19 issue?

20 A. Well, I didn't do anything on class cost of  
21 service or rate design.

22 Q. So why are you on the stand?

23 A. I think they just wanted to get my exhibit  
24 marked.

25 COMMISSIONER MURRAY: All right. Thank you.

1 JUDGE RUTH: Commissioner Gaw, do you have any  
2 questions?

3 COMMISSIONER GAW: In that case I have lots of  
4 questions.

5 No, I have no questions. Thank you.

6 MR. CONRAD: If Your Honor, please, just so the  
7 Commission doesn't think ill of Mr. Boltz, or his Staff  
8 counsel, if you'll recall, early on there was an issue  
9 that was discussed by Mr. Boltz involving jurisdictional  
10 allocation, and that we saw as folded into the class cost-  
11 of-service issue.

12 So, accordingly, when we had been working with  
13 Staff as to who was going to be presented on that issue, I  
14 said I needed to have somebody to deal with -- with that  
15 testimony and Mr. Boltz was put forward.

16 Now that that has been tentatively resolved,  
17 that would now explain why Mr. Boltz doesn't know why he's  
18 here.

19 JUDGE RUTH: Thank you for that clarification,  
20 Mr. Conrad.

21 MR. BATES: And, Your Honor, I'd like to thank  
22 Mr. Conrad for his clarification.

23 JUDGE RUTH: Will there then be any recross  
24 from the parties?

25 I assume not.

1                   And no redirect?

2                   MR. BATES: That's correct, Your Honor.

3                   JUDGE RUTH: You may step down, Mr. Boltz.

4   Thank you.

5                   Staff, did you have another witness you wanted

6   to call?

7                   MR. FREY: Yes, Your Honor.

8                   Staff calls Alan Bax.

9                   I would point out that Mr. Bax is appearing

10 here for essentially the same reason as Mr. Boltz.

11                   You might say that his testimony is in regard

12 to the jurisdictional allocations as well, about which

13 Mr. Conrad earlier in the proceeding raised a question.

14                   MR. CONRAD: And, Your Honor, just -- I

15 believe -- and perhaps Mr. Frey will make this clear when

16 he does the foundation for the witness, but I believe he

17 is adopting Ms. Lissik's --

18                   MR. FREY: That's correct.

19                   MR. CONRAD: -- testimony, and she was the only

20 jurisdictional.

21                   MR. FREY: Right. I failed to point that out,

22 that Mr. Bax is going to be adopting Ms. Lissik's

23 testimony.

24                   JUDGE RUTH: Okay. Thank you very much.

25                   Mr. Bax, would you please raise your right

1 hand.

2 (Witness sworn/affirmed.)

3 JUDGE RUTH: Thank you. Please be seated.

4 Mr. Frey.

5 MR. FREY: Thank you, Your Honor.

6 ALAN BAX testified as follows:

7 DIRECT EXAMINATION BY MR. FREY:

8 Q. Please state your name, sir.

9 A. Alan Bax.

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

12 A. I'm employed by the Missouri Public Service  
13 Commission as a Utility Engineering Specialist III in the  
14 Energy Department.

15 Q. And what is the purpose of your appearing at  
16 the hearing today?

17 A. My purpose for appearing is to adopt the direct  
18 testimony of Eva Lissik.

19 Q. And why are you doing so, sir?

20 That is, can you comment on why Ms. Lissik is  
21 unable to testify on her own behalf?

22 A. Eve Lissik is no longer an employee of the  
23 Missouri Public Service Commission.

24 Q. And have you had an opportunity to read  
25 Exhibit 58, the direct testimony of Eve Lissik?

1           A.       Yes, I have.

2           Q.       And, in fact, as Ms. Lissik stated in her  
3 testimony, it was you who developed the numbers covered in  
4 that testimony. Were you not?

5           A.       That's correct.

6           Q.       Do you have any corrections to the testimony  
7 presented in Exhibit 58?

8           A.       No, I do not.

9           Q.       And do you at this time adopt the direct  
10 testimony of Eve Lissik, Exhibit 58, as your testimony?

11          A.       Yes.

12          Q.       If I were to ask you the same questions today  
13 as are in that testimony, would the answers be essentially  
14 the same?

15          A.       Yes.

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

18          A.       Yes.

19                 MR. FREY: Your Honor, at this time I would  
20 offer Exhibit 58 which has been adopted by Mr. Bax for  
21 introduction into evidence, and I would tender Mr. Bax for  
22 cross-examination.

23                 JUDGE RUTH: Thank you.

24                 Exhibit 58 has been offered into the record.  
25 Do the parties have any objections to this document?

1                   Seeing no objections, Exhibit 58 is received  
2   into the record.

3                   (EXHIBIT NO. 58 WAS RECEIVED INTO EVIDENCE.)

4                   JUDGE RUTH: Just in case, I do want to ask the  
5   parties if you have any cross-examination of the witness?

6                   Public Counsel?

7                   MR. COFFMAN: No.

8                   JUDGE RUTH: Empire?

9                   MR. SWEARENGEN: No. Thank you.

10                  JUDGE RUTH: And Praxair?

11                  MR. CONRAD: And pursuant to my prior  
12   statements, no questions.

13                  JUDGE RUTH: Thank you.

14                  Will there be any questions from the bench?

15                  COMMISSIONER MURRAY: I would like to ask one.

16   QUESTIONS BY COMMISSIONER MURRAY:

17                  Q.       Good morning.

18                  A.       Good morning.

19                  Q.       Did Ms. Lissik's testimony include anything  
20   related to class cost of service and rate design other  
21   than the jurisdictional allocation issue?

22                  A.       No, not to my belief.

23                  COMMISSIONER MURRAY: All right. Thank you.

24                  JUDGE RUTH: Commissioner Gaw?

25   QUESTIONS BY COMMISSIONER GAW:

1 Q. I just might ask, the stipulation that has been  
2 entered into, does it vary much from the original  
3 recommendation of Staff on jurisdictional occasions?  
4 A. Not to my belief, no.  
5 COMMISSIONER GAW: That was my understanding  
6 too.  
7 That's all I have. Thank you.  
8 JUDGE RUTH: Thank you.  
9 Will there be any recross based on questions  
10 from the bench?  
11 Public Counsel?  
12 MR. COFFMAN: No.  
13 JUDGE RUTH: Empire?  
14 MR. SWEARENGEN: No.  
15 JUDGE RUTH: Praxair?  
16 MR. CONRAD: No.  
17 JUDGE RUTH: Staff, do you have redirect?  
18 MR. FREY: No, Your Honor.  
19 JUDGE RUTH: Okay. Thank you, Mr. Bax. You  
20 may step down.  
21 Staff, do you have further witnesses at this  
22 time?  
23 MR. FREY: Not specifically on this issue, no.  
24 JUDGE RUTH: I believe, then, Public Counsel,  
25 are we ready for you?

1 MR. COFFMAN: Yes.

2 We would like to call to the stand Ms. Hong Hu.

3 JUDGE RUTH: Would you please raise your right

4 hand.

5 (Witness sworn/affirmed.)

6 JUDGE RUTH: Okay. Thank you.

7 Please be seated.

8 Mr. Coffman.

9 HONG HU testified as follows:

10 DIRECT EXAMINATION BY MR. COFFMAN:

11 Q. Please state your name and spell it for the

12 record.

13 A. My name is Hong Hu, H-o-n-g, H-u.

14 Q. And what is your title and by whom are you

15 employed?

16 A. I'm a public utility economist. I'm employed

17 by the Office of Public Counsel.

18 Q. Are you the same Hong Hu that has caused to be

19 filed in this case direct, rebuttal and surrebuttal

20 testimony which has been marked as Exhibits 88, 89 and 90?

21 A. Yes.

22 Q. Do you have any corrections to those filed

23 testimonies?

24 A. Yes, I have a few.

25 In my rebuttal testimony, page 3, line 19, the



1 words "and transmission" should be deleted.

2 Q. Please proceed to the next correction.

3 A. Page 5, line 12, the same two words should be  
4 deleted. "And transmission" should be deleted.

5 Q. The words "and transmission" in that  
6 question --

7 A. Yes.

8 Q. -- should be deleted?

9 A. Line 15, the words "and transmission" should be  
10 deleted. Line 16, "and transmission" should be deleted.  
11 And page 6, line 5, the last word, "and," should be  
12 deleted, and line 6 the first word, "transmission," should  
13 be deleted.

14 Q. Are those the only corrections that you are  
15 aware of that should be made to your prepared testimonies?

16 A. Yes.

17 Q. With those corrections, would the statements  
18 that are contained in those three testimonies be accurate?

19 A. Yes.

20 Q. And would they be accurate to your best  
21 information, knowledge and belief?

22 A. Yes, it would.

23 Q. And your answers would be the same today?

24 A. Yes.

25 Q. All right. Let me just add a general question.

1                   Have you reviewed the rate design settlement  
2   contained in the June 4 stipulation and agreement?

3           A.       Yes, I have.

4           Q.       And would you say that the rate design  
5   settlement contained in that stipulation and agreement  
6   moves each of Empire's customer classes closer to its  
7   responsibility as indicated by your class cost-of-service  
8   study?

9           A.       Yes.

10          Q.       So you believe it is a fair, just and  
11   reasonable resolution of this issue?

12          A.       Yes, I agree.

13                   MR. COFFMAN: Thank you.

14                   I now offer into evidence Exhibits 88, 89 and  
15   90 and tender Ms. Hu for cross-examination.

16                   JUDGE RUTH: Thank you, Mr. Coffman.

17                   Exhibit 88 is Ms. Hong Hu's direct testimony,  
18   Exhibit 89 is the rebuttal and Exhibit 90 is the  
19   surrebuttal.

20                   Do the parties have any objections to these  
21   three documents being admitted into the record?

22                   Seeing no objections, Exhibits 88, 89 and 90  
23   are received into the record.

24                   Thank you.

25                   (EXHIBIT NOS. 88 THROUGH 90 WERE RECEIVED INTO

1 EVIDENCE.)

2 JUDGE RUTH: Staff, do you have

3 cross-examination of the witness?

4 MR. FREY: No, Your Honor.

5 JUDGE RUTH: Empire?

6 MR. SWEARENGEN: No questions. Thank you.

7 JUDGE RUTH: Praxair?

8 MR. CONRAD: Pursuant to our stated

9 understandings, no, ma'am.

10 JUDGE RUTH: Thank you.

11 Commissioner Murray, do you have questions?

12 COMMISSIONER MURRAY: Just one.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good morning.

15 A. Good morning.

16 Q. Is it your understanding that all of the issues

17 related to class cost of service and rate design that you

18 testified to in your prefiled testimony are covered in the

19 stipulation and agreement?

20 A. Yes, I believe so.

21 COMMISSIONER MURRAY: All right. Thank you.

22 JUDGE RUTH: Commissioner Gaw?

23 COMMISSIONER GAW: Thank you.

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Good morning.

1           A.       Good morning.

2           Q.       Your testimony that has been filed here with us  
3   this morning, the portion of it that deals with pre-  
4   stipulation matters, can you tell me how that changed as a  
5   result of the stipulation and your recommendations,  
6   please?

7           A.       Our original recommendation recommends the  
8   small customers, the SGS and LGS customer, residential,  
9   get a slightly lower-than-system-average increase. And  
10   those large customers, large power customers and Praxair,  
11   would get a higher-than-system average increase.

12                   And on top of that we have added a  
13   recommendation for the interim energy charge portion,  
14   which is exactly the same as what is contained in the  
15   stip. It will be allocated to each customer class on a  
16   per-kilowatt-hour basis.

17                   The only difference between my previous  
18   recommendation and this stip is the smaller customers  
19   would be getting a slightly more increase and the larger  
20   customers would be getting somewhat a less increase.

21                   We feel this is acceptable because the part --  
22   the interim energy charge portion is moving toward the  
23   direction of what our cost-of-service study shows.

24                   So we feel it's a movement -- we never  
25   recommend to move toward an entire cost of service. So as

1 long as it's a movement -- and, also, it's -- it's an  
2 effort of settlement discussions. So we feel that's  
3 acceptable.

4 Q. When you're looking at rate design from your  
5 perspective, what factors do you look at in determining  
6 what rate design you believe is appropriate?

7 A. There are many factors. One important factor  
8 would be the cost. And there will be other factors, like,  
9 affordability, rate impact, level of service and many  
10 others.

11 Q. What would you consider the most important  
12 factors that you examined when you're listing those  
13 factors for me just now?

14 A. I would say cost is a very important factor.  
15 In some cases, especially when there are a very big --  
16 when there is a very big rate increase, total rate  
17 increase, than rate impact would be another very important  
18 factor.

19 Q. In this case when you look at cost, do you  
20 believe the agreement reached in the stipulation?

21 A. I believe it is moving toward that direction.

22 Q. Moving toward it.

23 You don't believe it reaches it, I gather --

24 A. That's right.

25 Q. -- is that correct?

1           A.       That's right.

2           Q.       If it were in your opinion to reach that, which  
3   classes would be impacted with an additional increase and  
4   which with a decrease, if that is accurate?

5           A.       According to our cost-of-service study --

6           Q.       That's what I'm talking about, and thank you  
7   for clarifying that.

8           A.       -- the large customers would get more increase  
9   and the smaller customers would get less increase.

10          Q.       And when you say smaller customers, what  
11   classes are you talking about?

12          A.       Residential customers, SGS customers,  
13   basically.

14          Q.       All right. As far as the impact is concerned  
15   on the customers that are affected by this case, what kind  
16   of factors do you look at within that category?

17          A.       Um, basically I would look at the total revenue  
18   increase compared to the current revenue.

19                    So, say, if the total revenue increase is, for  
20   example, over 50 percent, than I would consider it's a  
21   very great impact.

22                    And in that case I would be -- I would feel  
23   it's very hard to ask any class to get an even higher  
24   increase. But I don't believe this case we have that big  
25   of an increase.

1       Q.       You do not believe that any of the classes are  
2 impacted in that way or any of the customers within the  
3 classes are impacted that way, just for clarification?

4       A.       Any of the classes. I can't say for one  
5 particular customer if he uses a lot of energy, I -- well,  
6 I would say, generally, I don't think any customer would  
7 have -- would be impacted by more than 50 percent in this  
8 case.

9       Q.       If you were dealing with -- as far as the  
10 recommendations in the stipulation on rate design are  
11 concerned, if we're dealing with a residential customer  
12 who is living in an older home on a fixed income, is there  
13 anything in this rate design that takes that into account?

14      A.       Yes.

15               My belief is a low-income customer, for his  
16 bill the customer charge would be -- would have a greater  
17 proportion.

18               So our stip provided a mechanism that we put  
19 more ways, a commodity portion of his bill, which actually  
20 gives him less increase than an average customer or a  
21 customer who uses more electric.

22      Q.       Can you explain that for me and how that result  
23 occurs?

24      A.       Okay. For example, if, say -- say, his average  
25 monthly bill is \$20, which, say, \$8 is customer charge and

1 he paid \$12 for the commodity part, because the stip would  
2 result in less use, Staff's example, the 30 million  
3 increase, then he'll have a 5 percent increase on his  
4 customer charge.

5 But he'll probably have -- um, I don't remember  
6 the number, but probably a 15 percent increase on the  
7 commodity charge.

8 Q. And that is because of lower usage --

9 A. Well --

10 Q. -- or --

11 A. -- he uses less --

12 Q. Yes.

13 A. -- than another person who probably has a  
14 higher income.

15 And so the person who uses more would be paying  
16 a lot of commodity charges, which has a greater increase,  
17 a 15 percent increase.

18 Q. So you're referring to the portion that has --  
19 allocates cost according to kilowatt hour usage?

20 A. The IEC charge, yes.

21 Q. And that portion, however -- my original  
22 question had to do with fixed income, but it also had to  
23 do with an older home, inefficient home, with, perhaps,  
24 greater than normal usage of electricity because of  
25 inefficiencies in the home, the inefficiencies in the



1 home, wouldn't you agree, could cause there to be a  
2 greater usage of electricity?

3 A. I would agree, assuming everything else is  
4 constant.

5 Now, my belief is a low-income customer tends  
6 to live in a much smaller house, probably a rented  
7 apartment.

8 So even if this apartment or this old house is  
9 not as energy efficient as a newer house, the total  
10 consumption amount may still be smaller because the  
11 area -- you know, the housing area is much smaller.

12 Q. So your assumption is that the usage would be  
13 less in your testimony to me today --

14 A. Yes. And I --

15 Q. -- or to us?

16 A. -- and I think I have read a lot of materials  
17 that confirm that assumption.

18 Q. And would you agree with the -- I'm not sure if  
19 you were here, so let me rephrase that.

20 Earlier the counsel for the Office of Public  
21 Counsel elicited testimony that there was a conservation  
22 element in this particular stipulation.

23 A. Yes.

24 Q. Were you here when he asked that question and  
25 it was answered?

1           A.       Yes.

2           Q.       And that is based, again, upon the same

3           analysis that you have just given to me because of the

4           fuel cost portion --

5           A.       Right, a higher --

6           Q.       -- and rate design of that?

7           A.       Right. A higher rate, the commodity part off

8           of a customer's bill will encourage a customer to use less

9           energy.

10          Q.       There is in this case in the stipulation --

11          well, let me ask this first.

12                   Are you familiar with rate blocks?

13          A.       Yes.

14          Q.       Are there rate blocks -- is there a rate block

15          design in this case?

16          A.       Um, for the current tariff of Empire for

17          residential class, I believe there is a rate block design

18          in the winter season. In the summer season, I believe,

19          the commodity charge is the same for all usages.

20                   But in the winter season the first 600-kilowatt

21          hour has a higher price than the amount in excess of that.

22          Q.       Okay. If I understand that correctly, then, if

23          you're in the initial -- if you fall within the initial

24          block, you have a higher kilowatt hour charge?

25          A.       In the winter season. In the winter months,

1 right.

2 Q. Wouldn't that discourage conservation?

3 A. Um, well, electricity usage normally peaks in  
4 the summer. So the winter usage actually do not impose  
5 any more burden under costs of the company.

6 Q. Except that we had testimony earlier that  
7 indicated in that particular case, with this particular  
8 company, the winter usage was higher than normal for  
9 companies operating in the state, and it was -- and,  
10 therefore, would that necessarily be true in this case?

11 A. Um, that is correct.

12 However, the winter usage of this company still  
13 do not -- are not over the total usage in summer. So, I  
14 mean, it's comparable, but, still, winter usage is smaller  
15 than summer usage.

16 Q. And is that rate block design a part of the  
17 current -- the current rate design that's in effect at  
18 this time?

19 A. Yes, that's right.

20 Q. And it continues into the new design. Is that  
21 correct?

22 A. Yes. Because we are saying equal percentage  
23 for all rate components.

24 Q. All right. Would it also be accurate to say  
25 that a higher cost on the initial block in that wintertime

1 would fall upon those fixed-income users disproportionately  
2 to others?

3 A. That is right.

4 Q. Does the Office of Public Counsel support that  
5 type of a rate design, if you know?

6 A. Generally, for residential, we will not propose  
7 a block rate which have a lower price for higher usage.

8 However, I do believe this rate structure is  
9 cost based and reasonable, because, you know, additional  
10 usage do not impose more costs on the system.

11 Q. I understand that, and I understand your  
12 analysis on the cost of service.

13 However, on rate design itself, when you look  
14 at impact factors, doesn't that go against your analysis  
15 earlier on rationale for the fuel cost portion of this  
16 rate design, and isn't it contrary to the analysis on the  
17 impact of those fixed-income customers?

18 A. Um, I do not feel this is so big -- this impact  
19 on those fixed-income customers are so big that we need to  
20 challenge this, even -- you know, especially when --  
21 considering it's cost based.

22 Q. But you would not oppose, would you, flipping  
23 the rate block design so that early usage costs less for  
24 residential?

25 A. I would probably oppose because it wouldn't be

1 cost based.

2 Q. I see.

3 So you think the cost-based proportion, as far  
4 as Public Counsel is concerned, is more important than  
5 impact?

6 A. I won't say that.

7 I wouldn't oppose to say if the company  
8 proposed to eliminate the rate block structure. If the  
9 cost would be the same for the first block or any usage  
10 over that, I would not oppose that. But I would oppose a  
11 lower rate.

12 Q. And you believe that would be the position --  
13 excuse me.

14 And you would believe -- you believe that would  
15 be the position that Public Counsel would take?

16 A. In that case, yes.

17 COMMISSIONER GAW: I have no further questions.  
18 Thank you.

19 JUDGE RUTH: Commissioner Murray?

20 COMMISSIONER MURRAY: Thank you. I have  
21 another question for you, Ms. Hu.

22 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Would you state again what you include in your  
24 cost-of-service study?

25 A. Clarify it. You mean what costs --

1 Q. What elements are in your cost-of-service  
2 study?  
3 A. Basically the steps we do is, first, we take  
4 the accounting cost for each account.  
5 Q. Let me back up a minute. Maybe I'm not  
6 phrasing my question.  
7 In your cost-of-service study do you include  
8 cost --  
9 A. Yes.  
10 Q. -- of providing the service?  
11 A. Yes.  
12 Q. Do you include affordability?  
13 A. No.  
14 Q. Do you include rate impact?  
15 A. No.  
16 Q. Or level of service issues?  
17 A. No.  
18 Q. All right. Those elements beyond cost, then,  
19 are included in your rate design. Is that correct?  
20 A. That's right.  
21 Q. All right. So that you are not -- your  
22 cost-of-service study -- is it your testimony that it is  
23 in no way result oriented?  
24 A. No.  
25 COMMISSIONER MURRAY: All right. Thank you.

1 JUDGE RUTH: Okay. Do the parties have recross  
2 based on questions from the bench?  
3 Staff?  
4 MR. FREY: No questions, Your Honor. Thank  
5 you.  
6 JUDGE RUTH: Empire?  
7 MR. SWEARENGEN: No questions. Thank you.  
8 JUDGE RUTH: Praxair?  
9 MR. CONRAD: No questions.  
10 JUDGE RUTH: Public Counsel, do you have  
11 redirect?  
12 MR. COFFMAN: No, I don't, Your Honor.  
13 JUDGE RUTH: Okay. Thank you, Ms. Hu. You may  
14 step down.  
15 It's my understanding that we were going to  
16 move next to Praxair's witness. Is that correct?  
17 Okay. You may call your witness, Mr. Conrad.  
18 MR. CONRAD: Praxair would call Maurice  
19 Brubaker to the stand.  
20 JUDGE RUTH: Mr. Brubaker, would you please  
21 raise your right hand.  
22 (Witness sworn/affirmed.)  
23 JUDGE RUTH: Thank you.  
24 Please be seated.  
25 Mr. Conrad.

1 MR. CONRAD: Thank you.

2 MAURICE BRUBAKER testified as follows:

3 DIRECT EXAMINATION BY MR. CONRAD:

4 Q. Please state your name, Mr. Brubaker, for the  
5 reporter.

6 A. My name is Maurice Brubaker.

7 Q. And would you spell your first name for the  
8 benefit of the reporter?

9 A. M-a-u-r-i-c-e.

10 Q. By whom are you employed, Mr. Brubaker?

11 A. The firm of Brubaker and Associates.

12 Q. And their address is?

13 A. 1215 Fern Ridge Parkway, St. Louis, Missouri,  
14 63141.

15 Q. And by whom were you engaged for the purposes  
16 of this case?

17 A. By Praxair.

18 Q. Pursuant to that engagement, sir, did you cause  
19 to be filed with the Commission on or about April 3 or  
20 April 10 direct testimony in question-and-answer form  
21 that's been marked for identification as Exhibit No. 95,  
22 with schedules attached?

23 A. Yes.

24 Q. And did you also pursuant to that engagement in  
25 May of this year file rebuttal testimony marked for



1 identification as Exhibit 96 --

2 A. I did.

3 Q. -- with schedules attached?

4 A. Yes.

5 Q. And, similarly, Exhibit 97 that's been marked  
6 for identification with that number in mid May,  
7 surrebuttal testimony?

8 A. That is correct.

9 Q. Mr. Brubaker, on either of those marked  
10 exhibits, do you have any corrections or modifications of  
11 which you're aware?

12 A. I do not.

13 Q. Is it also true that subsequent to the filing  
14 of the direct testimonies, that you served upon the  
15 parties and submitted to the Commission a schedule --  
16 excuse me -- a corrected graph that had been originally  
17 filed in black and white but you had submitted it in  
18 color?

19 A. Yes, that's correct.

20 MR. CONRAD: And, Your Honor, I believe that  
21 was sent in on April 24. And as we had talked before, I  
22 think you didn't feel it was necessary to mark that as a  
23 separate exhibit, and I would not propose to do so. It's  
24 just an amendment to.

25 JUDGE RUTH: Right. Since that was provided

1 prior to the hearing, I didn't think it was necessary.

2 BY MR. CONRAD:

3 Q. Mr. Brubaker, were the schedules attached to  
4 each of the three components of your testimony prepared by  
5 you or under your direction and supervision?

6 A. Yes, they were.

7 Q. And if I were to ask you, sir, now that you're  
8 under oath, the questions that are contained in  
9 Exhibits 95, 96 and 97, would your answers thereto be the  
10 same to that?

11 A. Yes, they would.

12 MR. CONRAD: Your Honor, with that I would move  
13 the admission of Exhibits 95, 96 and 97, the schedules  
14 attached thereto, and thereafter tender the witness for  
15 cross.

16 JUDGE RUTH: Okay. Thank you.

17 Exhibits 95, 96 and 97 have been offered into  
18 the record. They are the direct, rebuttal and surrebuttal  
19 testimony of Mr. Brubaker.

20 Do the parties have any objections to these  
21 three documents being admitted?

22 Seeing no objection, then, I will receive into  
23 the record Exhibit 95, 96 and 97.

24 (EXHIBIT NOS. 95 THROUGH 97 WERE RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE RUTH: Okay. Thank you.

2 For our cross-examination, Empire, would you

3 like to begin?

4 MR. SWEARENGEN: No questions. Thank you.

5 JUDGE RUTH: And, Mr. Coffman?

6 MR. COFFMAN: No questions.

7 JUDGE RUTH: Mr. Frey?

8 MR. FREY: No questions. Thank you,

9 Your Honor.

10 JUDGE RUTH: Commissioner Murray, do you have

11 questions?

12 COMMISSIONER MURRAY: Yes. Thank you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good morning, Mr. Brubaker.

15 A. Good morning.

16 Q. The stipulation and agreement gives Praxair an

17 overall increase of 20.88 percent. Is that your

18 understanding, if the revenue requirement is determined to

19 be A \$30 million increase?

20 A. Commissioner, that is correct, except that

21 number does not -- does not reflect the \$100,000 reduction

22 that comes about because the interruptible credit would be

23 increased by that amount.

24 Q. Do you know what that percentage would be

25 taking that into account?

1           A.       On the -- I assume that we can -- you're  
2 looking at the schedule attached to Staff's suggestions --

3           Q.       Yes.

4           A.       -- that we talked about earlier this morning.

5                   And if you were to look at it on that basis,  
6 the overall increase on the \$1,868,000 revenue figure is  
7 16 percent.

8           Q.       16 percent?

9           A.       16 percent.

10          Q.       All right.

11                   And just briefly looking at some of your  
12 testimony, for example, the direct, page 14, at line 13,  
13 you indicate that overpricing the energy portion of the  
14 rate and underpricing the fixed components of the rate  
15 will result in a disproportionate share of revenues being  
16 collected from large customers and high-load factor  
17 customers.

18                   Is that -- was that your testimony?

19          A.       Yes.

20          Q.       With this rate design in the stipulation and  
21 agreement, do you not end up with a rate design that puts  
22 more into the energy portion and less into the fixed  
23 components?

24          A.       I think we do, yes, just because of the nature  
25 of the costs that are reflected in the stipulation.

1           Q.       So that would it be your testimony that a  
2   disproportionate share of the revenues would be collected  
3   from large customers and high-load factor customers, with  
4   the exception of Praxair, because of the \$100,000 credit?

5           A.       No. I think that you have to -- have to pull  
6   back a little bit and look at the stipulation in its own  
7   context.

8                   The presentations on rate design and cost of  
9   service by all parties initially used a lower level of  
10  fuel cost than is reflected in the stipulation and  
11  agreement.

12                  So when you get to the stipulation and  
13  agreement and you kind of -- the parties put aside their  
14  strongly held beliefs on the cost-of-service issue a  
15  little bit and try to see if there is a place that is  
16  reasonable to come out.

17                  In doing that we have to recognize that there  
18  is a 5.4 million-per-kilowatt-hour amount here that is  
19  fuel related.

20                  So if we're not going to be -- going to be  
21  focused on the cost-of-service issue, I think we focus,  
22  then, on how should the rates that exist be changed.

23                  And I recognize that with that perspective,  
24  that the 5.4 million is fuel cost and is proper to reflect  
25  it on a kilowatt-hour basis in the context that the

1 stipulation does.

2               So I don't have a problem with that, in that  
3 context.

4       Q.       So you're saying that that does not shift the  
5 revenue from the cost causers to include the 5.4 mills  
6 fuel cost, because that's based on actual costs?

7       A.       That's correct. If we were taking fixed costs  
8 that was not variable, was not fuel related, and put that  
9 on a kilowatt-hour basis, that would be a major shift, and  
10 I would have a problem with that.

11              And that is the kind of issue that I was  
12 addressing here in the testimony that you've asked me to  
13 comment on.

14       Q.       All right. Under this scenario with the  
15 stipulation and agreement, do you think that Praxair is  
16 still paying rates -- or will still be paying rates in  
17 excess of its fully allocated cost of service?

18       A.       Yes, I do.

19       Q.       By how much, roughly?

20       A.       It's difficult to quantify with all of the  
21 changes in the costs that have occurred and given the fact  
22 that Praxair is an interruptible customer and there is  
23 always room for judgment about how much -- how much  
24 contribution over cost is appropriate for an interruptible  
25 customer. So I haven't tried to quantify that.

1                   But obviously from -- our cost-of-service study  
2   showed that looking at the costs fairly allocated to  
3   Praxair as an interruptible company, they should see a  
4   decrease, and they are now receiving a decrease at least  
5   equal to the amount of the fuel.

6                   So my cost studies would still indicate even  
7   under that scenario that they're paying at least -- and  
8   certainly more than the cost that I would allocate to  
9   them.

10          Q.       The factors that you used in your cost study --  
11   I'm sure you were here when I asked the Staff witness and  
12   the Office of Public Counsel witness about what they  
13   included in their cost-of-service studies.

14                  For your cost-of-service study what do you  
15   include?

16          A.       Cost causation factors in the cost study  
17   itself. When you get to the revenue spread and rate  
18   design, then you broaden out to pick up other  
19   considerations. But in the cost-of-service study itself,  
20   it is a cost-of-service study.

21          Q.       Now, is it your belief that the methodology  
22   that Staff and -- the methodologies -- perhaps I should  
23   say the Staff and Office of Public Counsel use -- include  
24   more than the actual cost of service in their studies?

25          A.       No. I think when you look at their basic cost-

1 of-service studies, that those studies include just cost  
2 causation factors. The differences are that we have  
3 different methodologies for identifying and allocating  
4 those costs.

5 Q. Are those methodologies -- any of those  
6 methodologies in your opinion result oriented?

7 A. I do not believe that I would describe them as  
8 result oriented. I think the parties are putting forth  
9 what they believe to be reasonable cost allocation  
10 methods. We just happen to disagree about that.

11 Q. And, yet, each -- well, let's say if you just  
12 look at Office of Public Counsel's and yours, Office Of  
13 Public counsel representing the residential customers  
14 comes up with a cost-of-service methodology that benefits  
15 residential customers most strongly, and the cost-of-  
16 service methodology that you use representing large  
17 customers comes up with a methodology that benefits that  
18 class the most.

19 Do you have any explanation for that?

20 A. The explanation I would give is, as I did in  
21 the testimony that I presented, that the methods I have  
22 used are used throughout the industry. They're well-  
23 accepted methods. They're written up in the NARUC  
24 cost-of-service manual. They're used by many commissions.

25 So I presented cost of service in three



1 different ways, all of which are used throughout the  
2 industry and I believe they show a fair result.

3 Q. Okay. So there are legitimate differences in  
4 opinion by the experts as to what the various classes of  
5 customers cost the utility to serve them?

6 A. Yes, there are, certainly are.

7 Q. Earlier -- and I can't remember in which  
8 questioning this came up -- but it appeared to me that if  
9 the revenue requirement increase that is recommended here  
10 is less than the \$30 million, that your customer would pay  
11 more of a percentage of the increase.

12 Is that your understanding?

13 A. That's the way it would work out, that's  
14 correct.

15 Q. All right. So that if -- the lower the revenue  
16 requirement goes, the more expensive percentagewise it is  
17 for Praxair?

18 A. I believe that's right, on a relative basis.

19 COMMISSIONER MURRAY: Thank you. I believe  
20 that is all of the questions I have.

21 JUDGE RUTH: Commissioner Gaw?

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Good morning, Mr. Brubaker.

24 A. Good morning.

25 Q. I want to make sure I understand something

1     that -- I've already asked questions of a witness  
2     previously about this, so -- and I think it was clarified,  
3     but I want to make sure that you agree with that.

4                 On the \$100,000 credit, is that a fixed amount  
5     of credit every year?

6                 I believe that's what my understanding is, but  
7     I want to make sure that's your understanding as well.

8             A.     It is -- well, let me answer it this way,  
9     because it's almost yes but not quite.

10            Q.     That's why I'm asking, because I get the  
11     impression there may be a little bit of a difference  
12     between what I'm saying and what is real.

13            A.     Yeah.

14                 How this works is that we have a -- you know, a  
15     test year set of consumption for Praxair. And Praxair has  
16     an interruptible -- about 95 percent of the load is  
17     interruptible, and that is 7,600 kW.

18                 Unless that number changes sometime in the  
19     future, the \$100,000 stays \$100,000.

20            Q.     Because that sum is constant in regard to the  
21     interruptible amount. Is that correct?

22            A.     It is. It's expressed as an amount per  
23     kilowatt.

24                 So if for some reason Praxair's interruptible  
25     load should go down, the \$100,000 would get smaller.

1       Q.       Is that something that is subject to  
2 negotiation or is that an amount that changes as a result  
3 of other factors?

4       A.       It's not changed for many, many, many years.  
5 It's pretty much a function of the scale of Praxair's  
6 plant.

7               And, frankly, for them, electricity is such an  
8 overwhelming proportion of their manufacturing costs, that  
9 they take as much power uninterruptible as they possibly  
10 can, such why they only take 5 percent of their load as  
11 firm.

12              There is no scenario that I can think of that  
13 would cause that number to get smaller --

14       Q.       All right.

15       A.       -- because they have to --

16       Q.       But it is arrived at as a result of negotiation  
17 between Praxair -- an agreement between Praxair and the  
18 company, or is it as a result of just circumstances?

19              I'm just trying to get my arms around this is  
20 all.

21       A.       The number of kilowatts -- the 7,600 kilowatts  
22 was initially arrived at through negotiations between  
23 Praxair and Empire, and it's in their contract as an  
24 interruptible obligation.

25       Q.       So is there -- is that a contract that expires

1     sometime in the future, within the time barriers of this  
2     rate case, do you know?

3           A.       I believe it's -- the credits are a five-year  
4     rolling term. So for the five-year period, that amount --  
5     that credit would stay the same, is my understanding.

6           Q.       Are we at the beginning of a five-year period  
7     now?

8           A.       We would be, because it renews annually. So in  
9     this year there will be a new five-year agreement, that  
10    this rolls forward.

11          Q.       All right. I see. Now I'm following you. I'm  
12    following you.

13                  So -- okay. That answers my unresolved  
14    question then.

15                  In regard to this rate design, I understand  
16    that this is a compromise as far as Praxair is concern.  
17    It does not satisfy your belief that the costs of the  
18    service are now in line with what your methodology  
19    concludes that they should be.

20          A.       That's correct.

21          Q.       Do you believe it is more in line than the --  
22    is it possible for you to say that it is more in line than  
23    it is currently under the current relationship with  
24    Praxair and the company, or is that really comparing  
25    apples to oranges?

1           A.       It's comparing apples to oranges a little bit.

2                    I would say it's much closer to maintaining the  
3   current relationship than any of the other proposals that  
4   were being offered prior to the stipulation.

5           Q.       Okay.

6                    COMMISSIONER GAW:  I believe that's all I have.  
7   Thank you.

8                    Thank you, Mr. Brubaker.

9                    JUDGE RUTH:  Okay.  Based on the questions from  
10  the bench, do the parties have any recross?

11                   Mr. Swearengen?

12                   MR. SWEARENGEN:  We have none.  Thank you.

13                   JUDGE RUTH:  Mr. Coffman?

14                   MR. COFFMAN:  Yes, one.

15  RE CROSS-EXAMINATION BY MR. COFFMAN:

16           Q.       Mr. Brubaker, you were asked by Commissioner  
17  Murray about your testimony -- about your concerns in your  
18  direct testimony about overpricing the energy portion of a  
19  rate --

20           A.       Yes.

21           Q.       -- and how that testimony might relate to the  
22  interim energy charge settlement.

23                    Considering that the interim energy charge is  
24  designed to be subject to refund after the 24-month  
25  period, and, presumably, after refund be substantially

1 close to the actual fuel and purchase power costs of  
2 Empire, is that concern mitigated or is that --

3 A. Yeah. I mean, I thought I expressed that I  
4 didn't have a concern about it in the context of the  
5 stipulation and recognizing that it's fuel. And certainly  
6 the fact that the fuel part is refundable makes that even  
7 less of a concern.

8 Q. So you wouldn't believe that there is any  
9 concern at all about there being an overpricing on that  
10 component?

11 A. Not with respect to that particular issue.

12 MR. COFFMAN: Okay. I just wanted to clarify  
13 that. Thank you.

14 JUDGE RUTH: Mr. Frey?

15 MR. FREY: No questions, Your Honor. Thanks.

16 JUDGE RUTH: Praxair, do you have redirect?

17 MR. CONRAD: One very quick thing, Your Honor.

18 REDIRECT EXAMINATION BY MR. CONRAD:

19 Q. Mr. Brubaker, do you have before you the -- I  
20 believe it's been referred to as Exhibit A that was  
21 attached to Staff's suggestions and support of the  
22 unanimous stipulation?

23 A. Yes, I do.

24 Q. Just for purposes of this question, which is  
25 related to what both Commissioners this morning were

1 asking about, make two assumptions with me.

2 Make an assumption that instead of a  
3 \$30 million overall increase, that the amount of the  
4 increase that is found appropriate by this Commission  
5 would, I'm sure, be to the dissatisfaction of the company,  
6 but, nevertheless, make the assumption that the amount of  
7 the increase was \$19,828,742. That would be exactly the  
8 amount of the 5.4 million kWh fuel charge.

9 Are you with me?

10 A. Yes.

11 Q. And that there was no other increase. In other  
12 words, the only thing that the Commission saw appropriate  
13 to allow the recovery was the increase fuel cost as  
14 specified in the stipulation.

15 Would the change -- percentage change to rate  
16 schedules, that would necessarily be zero under the  
17 stipulation. Am I correct?

18 A. That's correct, yes.

19 Q. And if we were to go over to the percentage  
20 change due to refundable fuel charge column, they're not  
21 numbered, but you see with me that has the footing of  
22 9.66 --

23 A. Yes.

24 Q. -- those numbers corresponding to the rows for  
25 the classes would be the only increase that those

1 customers would see?

2 A. That's correct.

3 Q. And, correspondingly, special contracts would  
4 see a 15.93 percent increase as compared to an overall  
5 increase of 9.66 percent in that scenario?

6 A. That's correct.

7 Q. Correspondingly, residential, 8.46 and so on,  
8 even down to total lighting, at 4.83 percent?

9 A. That's correct.

10 MR. CONRAD: Okay.

11 JUDGE RUTH: Okay. Thank you, Mr. Brubaker.  
12 You may step down.

13 It's my understanding that this concludes all  
14 of the witnesses that the parties intend to call for the  
15 class cost of service/rate design issue.

16 Is that correct?

17 MR. FREY: Well, with one exception,  
18 Your Honor. And Mr. Watkins is going to take the stand  
19 next on the fuel and purchase power issue, and I was going  
20 to respectively propose to the Commission that he be  
21 permitted -- we're fortunate that he has expertise and the  
22 knowledge of both the rate design/class cost-of-service  
23 issue and the fuel and purchase power.

24 I was going to respectfully submit that some  
25 additional clarification will be needed -- would be



1 appropriate based on the questions that came from the  
2 bench earlier and would request that prior to Mr. Watkins  
3 taking questions on the fuel and purchase power portion,  
4 that he be allowed to remark -- offer some remarks on the  
5 cost of service and rate design issue.

6 JUDGE RUTH: Okay. Thank you. That's fine.

7 I do want to ask the attorneys whether you can  
8 clarify on the record -- this has come up several times,  
9 but the Commissioners indicated that it would be helpful  
10 to have this question answered all in one spot.

11 The question is whether all of the issues  
12 regarding class cost of service and rate design are  
13 covered by the unanimous stip and agreement.

14 And I'll start with Empire.

15 MR. SWEARENGEN: Yes, it is my understanding  
16 that they are.

17 There were two paragraphs someone referred to  
18 yesterday. I don't have it in front of me. I think it  
19 was 5 and 6. And I believe they are intending to address  
20 all of those issues.

21 JUDGE RUTH: Thank you.

22 Mr. Frey.

23 MR. FREY: Yes, Your Honor. It does dispose of  
24 all of those issues.

25 JUDGE RUTH: Thank you.

1 Mr. Coffman.

2 MR. COFFMAN: Yes, I agree.

3 JUDGE RUTH: And Mr. Praxair -- Mr Conrad.

4 MR. CONRAD: We believe it does, Your Honor.

5 Yes. Thank you.

6 JUDGE RUTH: Okay. Thank you for that  
7 clarification.

8 Then I want to go off the record for just a  
9 moment, and I'd like the parties to clarify for me -- I  
10 realize this was in the written material, but I want to  
11 make sure I have all of the changes made to my sheet that  
12 I'm following here as to the order of the witnesses that  
13 we're going to be calling for the cost of service fuel and  
14 purchase power.

15 (OFF THE RECORD.)

16 JUDGE RUTH: We are back on the record, and the  
17 parties have indicated they have a few housekeeping  
18 measures that we should address at this time.

19 It's my understanding the first one has to do  
20 with page limits of the briefs. And the parties --  
21 actually, do you want to speak for the parties?

22 MR. DUFFY: Yes, Your Honor, I'll be glad to  
23 speak for the parties.

24 On behalf of the parties, I would move that the  
25 Commission amend their order setting test year, setting

1 true-up hearing and adopting procedural schedule issued on  
2 January 4th, 2001, to eliminate the requirement on page 5,  
3 which sets a 30-page length for the initial brief and a  
4 15-page length for reply briefs.

5 It would be the motion of the parties to remove  
6 that page limitation entirely.

7 I would also, on behalf of the parties, move  
8 that the Commission change the schedule date for true-up  
9 reply briefs from September 3rd, 20001 at 3 p.m. to  
10 September 4, 2001, at 4 p.m.

11 JUDGE RUTH: Okay. As to the page limitations,  
12 I understand that your request is that the Commission  
13 actually remove the page limitations, but I want to ask,  
14 if the Commission chooses not to remove any page  
15 limitations, can the parties suggest an alternative page  
16 limitation. And I'll ask each of the parties what you  
17 feel is sufficient.

18 Empire.

19 MR. DUFFY: I think probably 100 for the  
20 principal brief and 50 for the reply brief would be  
21 adequate for our purposes.

22 JUDGE RUTH: Staff, your comments.

23 MR. FREY: Staff concurs in that number, 100,  
24 for the initial and 50 for the reply.

25 JUDGE RUTH: And Praxair.

1                   MR. CONRAD: We'll see if we can work up to  
2   that level.

3                   JUDGE RUTH: Public Counsel.

4                   MR. CONRAD: These are maximums, I understand.

5                   JUDGE RUTH: Yes.

6                   MR. COFFMAN: Yeah, I think that in most every  
7   rate case or Commission case I'm involved with, 100 for  
8   initial and 50 for reply would be a good maximum rule of  
9   thumb.

10                  JUDGE RUTH: I will consider the request and  
11   rule on this, perhaps, at the end of the hearing today,  
12   when we adjourn for the day.

13                  MR. DUFFY: Your Honor, there was also the  
14   question brought up that in that same order that we were  
15   talking about has a lot of -- or it has some 3 p.m.  
16   deadlines in it, and some of them we've already gone  
17   through.

18                  But I guess I would move on behalf of the  
19   parties that the 3 p.m. deadlines in that order be changed  
20   to 4 p.m. to reflect the closing of the record office at  
21   4 p.m.

22                  JUDGE RUTH: Okay. And I'll note that one of  
23   the parties during the break indicated that most orders  
24   are now being issued with a 4 p.m. deadline.

25                  It is not the Commission's practice to go back

1 and change the previously ordered times, change the  
2 three o'clock times to four o'clock, unless the parties  
3 feel that there is actually a need to do so.

4 If the parties feel that you need that extra  
5 hour, then tell me that now.

6 MR. COFFMAN: I would in join the motion.

7 MR. FREY: Staff joins the motion.

8 MR. CONRAD: To be out of town, it's sometimes  
9 helpful.

10 MR. COFFMAN: It's surprising how that last  
11 hour is important.

12 JUDGE RUTH: That extra hour is very important  
13 to the parties.

14 Then I will go ahead and change the time from  
15 3 p.m. to 4 p.m. for all of those dates that are listed on  
16 page 7 -- or the remaining dates that would be on page 7  
17 for that setting test year, setting up true-up hearing and  
18 adopting procedural schedule. The deadline for those will  
19 be four p.m. then.

20 One of the parties had also mentioned a need to  
21 change the time of the -- or the date -- excuse me -- of  
22 the true-up reply briefs.

23 The schedule currently indicates that the  
24 deadline is September 3rd, 2001, and that is a holiday.

25 One of the parties suggested that that be

1 changed to Tuesday, September 4th, and I find that request  
2 is quite reasonable. And that date will be changed  
3 September 4th.

4 I will try to follow-up with a notice, perhaps,  
5 tomorrow clarifying that that date is changed to the 4th.

6 Were there any other housekeeping matters?

7 MR. COFFMAN: I would join in Mr. Duffy's, I  
8 guess, inquiry as to the proposed findings of fact and  
9 conclusions of law that was -- in some cases that has been  
10 made a suggestion, a voluntary suggestion, and I just want  
11 to inquire if that is indeed voluntary or is this a new  
12 mandatory requirement in this case?

13 It is generally our practice that if we believe  
14 certain wording would be preferable as to the resolution  
15 of a particular issue, we can usually put that in our  
16 briefs.

17 Sometimes it doesn't seem necessarily  
18 productive to craft findings of fact and conclusions of  
19 law on every single issue in a separate filing.

20 JUDGE RUTH: Okay.

21 I will note that the order setting test year,  
22 setting true-up hearing and adopting procedural schedule  
23 that the Commission issued January 4th, 2001 and that was  
24 a different regulatory law judge than myself; however,  
25 that provided that proposed findings of fact and

1 conclusions of law would be filed by all parties on  
2 August 3rd, 2001.

3 If the parties feel that this is a requirement  
4 that should not be imposed, I'm going to require that you  
5 file a motion, whether it's individually or jointly,  
6 requesting that that be waived. I'm not going to rule on  
7 it on the record.

8 So that will be up to you, to the parties.

9 MR. DUFFY: Your Honor, I have one, hopefully,  
10 last question on the January 4th order.

11 I wasn't present, I guess, yesterday, but my  
12 understanding was that there was some talk about moving  
13 the dates of the true-up hearing.

14 And could you enlighten me as to what, if  
15 anything, has occurred on that?

16 JUDGE RUTH: Nothing has occurred at this  
17 point.

18 I inquired as to the parties whether they would  
19 be available on August -- I think it would be 23 and 24,  
20 instead of August 22 and 23.

21 And that is because the case has now been  
22 assigned to me, the Empire case, and I have another  
23 hearing scheduled for that Monday, Tuesday, Wednesday.

24 This has not been approved yet by the  
25 Commissioners. I wanted to check with the parties and see

1 if those dates would be available, and hopefully something  
2 would go out fairly soon.

3 So you might reserve that Friday as a tentative  
4 date on your schedule if you could, please.

5 MR. DUFFY: Okay. I have no problem with the  
6 23rd and 24th.

7 JUDGE RUTH: And it was my understanding that  
8 the other parties are comfortable with that Thursday and  
9 Friday also.

10 MR. COFFMAN: No objection.

11 MR. FREY: Staff is unaware of any problem with  
12 that at this point, Your Honor.

13 MR. CONRAD: No objection.

14 JUDGE RUTH: Okay. Thank you.

15 I just ask that you keep that date free, if  
16 possible, and I'll try to follow up once I hear from the  
17 Commissioners.

18 Any other housekeeping items?

19 Okay. Seeing none, we will proceed.

20 We are now ready for the issue of cost of  
21 service/fuel and purchased power.

22 Initially Empire was going to call the witness,  
23 Mr. Kaplan, but the Commissioners have agreed to waive his  
24 being required to be here, and we will move on then.

25 Empire, you may call your next witness.



1 MR. DUFFY: I call Greg Sweet to the stand.

2 JUDGE RUTH: Mr. Sweet, would you raise your  
3 right hand.

4 (Witness sworn/affirmed.)

5 JUDGE RUTH: Thank you.

6 Please be seated.

7 You may proceed.

8 MR. DUFFY: Your Honor, while we're at it, at  
9 this point, pursuant to the agreement of the parties and  
10 the indulgence of the Commission, I would like to move for  
11 the admission into evidence of Exhibit 10, the direct  
12 testimony of Mr. Kaplan, and Exhibit 19, the rebuttal  
13 testimony of Mr. Kaplan.

14 JUDGE RUTH: Okay. Exhibit 10 is Mr. Kaplan's  
15 direct testimony; Exhibit 19, the rebuttal.

16 Do the parties have any objections to these  
17 documents being admitted into the record?

18 Seeing no objections, Exhibits 10 and 19 are  
19 received into the record.

20 (EXHIBIT NOS. 10 AND 19 WERE RECEIVED INTO  
21 EVIDENCE.)

22 GREG SWEET testified as follows:

23 DIRECT EXAMINATION BY MR. DUFFY:

24 Q. Mr. Sweet, would you state your name for the  
25 record, please, and spell it?

1           A.       My name is Greg Sweet, G-r-e-g, S-w-e-e-t.

2           Q.       Mr. Sweet, do you have in front of you what's

3       been marked for purposes of identification as Exhibit

4       No. 8 which is identified as direct testimony of Greg

5       Sweet, and Exhibit No. 24, which is identified as rebuttal

6       testimony of Greg Sweet?

7           A.       Yes, I do.

8           Q.       Are you the same Greg Sweet that participated

9       in the preparation of those documents?

10          A.       Yes, sir, I am.

11          Q.       Do you have any changes or corrections to

12       either of those documents?

13          A.       I do have one correction to the direct

14       testimony.

15                    On page 6, beginning on line 23, and continuing

16       through line 2, on page 7, the statement concerning a

17       modeling credit for Riverton Units 9 and 10 running in

18       combined cycle, should be deleted.

19          Q.       Okay. Any other corrections at this time?

20          A.       Not at this time.

21          Q.       If I ask you the same questions that are that

22       appear in Exhibit No. 8 and Exhibit No. 24 as they appear

23       therein this morning, would your answers be the same as

24       they appear there?

25          A.       Yes, they would.

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

3           A.       Yes.

4                   MR. DUFFY: At this time I offer into evidence  
5 Exhibit No. 8 and Exhibit No. 24, and I tender the witness  
6 for cross-examination and questions from the bench.

7                   JUDGE RUTH: Thank you.

8                   Exhibit 8, Mr. Sweet's direct testimony, and  
9 Exhibit 24, his rebuttal testimony, have been offered into  
10 the record.

11                  Do the parties have any objections to these two  
12 documents?

13                  Seeing no objections, Exhibits 8 and 24 are  
14 received into the record.

15                  (EXHIBIT NOS. 8 AND 24 WERE RECEIVED INTO  
16 EVIDENCE.)

17                  JUDGE RUTH: Okay. My understanding, the  
18 cross-examination that the parties agreed to, the order is  
19 Staff, PC and then Praxair. Is that correct?

20                  Okay.

21                  Then, Staff, you may proceed.

22                  MR. FREY: We have no questions, Your Honor.

23                  JUDGE RUTH: Mr. Coffman?

24                  MR. COFFMAN: No questions.

25                  JUDGE RUTH: Mr. Conrad?

1                   MR. CONRAD: Pursuant to the understanding and  
2 the agreement and subject to the Commission's acceptance  
3 of that, we have no questions.

4                   JUDGE RUTH: Thank you.  
5 Commissioner Murray.

6                   COMMISSIONER MURRAY: Thank you.

7 QUESTIONS BY COMMISSIONER MURRAY:

8           Q.       Good morning, Mr. Sweet.

9           A.       Good morning.

10          Q.       Can you tell me the fuel -- the amounts that  
11 were determined for fuel costs in the stipulation and  
12 agreement, how does that differ from what you were  
13 suggesting originally?

14          A.       Empire's original filing was -- I believe it's  
15 on -- in the first few pages of my direct testimony.

16                   The number is 107 million, plus a little bit,  
17 which basically falls between the based and forecasted  
18 fuel amounts 91 million to 111 million from Exhibit A of  
19 the stipulation and agreement.

20          Q.       And that was your forecasted amounts, the 97 to  
21 111 million?

22          A.       The 91 to 111 is what is in Exhibit A of the --  
23 attached to the stipulated agreement, corresponding to the  
24 base and the forecasted levels.

25          Q.       In the stipulation and agreement?

1       A.       Right. Our 107 falls between those two.

2       Q.       And 107 was your initial recommendation?

3       A.       Right.

4               COMMISSIONER MURRAY: I believe that's all.

5   Thank you.

6               JUDGE RUTH: Commissioner Gaw?

7   QUESTIONS BY COMMISSIONER GAW:

8       Q.       Were you a part of the discussions on

9   developing the stipulation and agreement that's proposed

10   to us?

11       A.       I was peripherally involved, not intimately.

12   But yes.

13       Q.       Would it be appropriate to ask questions in

14   regard to the stipulation and agreement of you or another

15   witness of Empire?

16       A.       In all honesty, perhaps Mr. Beecher could

17   answer them better from an overall perspective of the

18   company. I would be glad to attempt to if there are

19   specific things that I can help with.

20       Q.       Have you looked at the -- I take it you've

21   looked at the stipulation and agreement. Is that correct?

22       A.       Yes.

23       Q.       Can you describe for me the mechanics of this

24   formula on the fuel costs and how it works?

25       A.       I may defer back to my earlier statement, that

1 others can probably describe those calculations better.

2 COMMISSIONER GAW: That's fine. Just checking.

3 In that case I believe I'll just wait and ask

4 my questions of another witness.

5 Thank you.

6 Thank you very much.

7 JUDGE RUTH: Do the parties have recross based

8 on the bench questions?

9 Staff?

10 MR. FREY: No, Your Honor.

11 JUDGE RUTH: Public Counsel?

12 MR. COFFMAN: No, Your Honor.

13 JUDGE RUTH: Praxair?

14 MR. CONRAD: No.

15 JUDGE RUTH: Empire, will there be redirect?

16 MR. DUFFY: No, ma'am.

17 JUDGE RUTH: Mr. Sweet, you may step down.

18 Thank you.

19 MR. DUFFY: At this time we would recall

20 Mr. Beecher to the stand on this issue.

21 JUDGE RUTH: Mr. Beecher, I will remind you

22 that you have previously been sworn as a witness and you

23 are still under oath.

24 You may be seated.

25 THE WITNESS: Thank you, Your Honor.

1 JUDGE RUTH: Mr. Duffy.

2 MR. DUFFY: Your Honor, again, I think -- and I  
3 can't remember if we covered this on the record or off of  
4 record, but it's my understanding that all of  
5 Mr. Beecher's prepared testimony has already been offered  
6 and admitted.

7 So I would just tender the witness for  
8 cross-examination and questions from the bench at this  
9 point.

10 JUDGE RUTH: Okay. Thank you.

11 Staff, do you have cross-examination?

12 MR. FREY: No, thank you, Your Honor.

13 JUDGE RUTH: Public Counsel has left the room,  
14 so I will move on to Mr. Conrad.

15 MR. CONRAD: The same -- pursuant to the same  
16 statement that I've made in all of these, no questions,  
17 ma'am.

18 JUDGE RUTH: Your statement is noted for the  
19 record.

20 Commissioner Murray, do you have questions?

21 COMMISSIONER MURRAY: I believe I'll pass.

22 JUDGE RUTH: Commissioner Gaw.

23 QUESTIONS BY COMMISSIONER GAW:

24 Q. You were in the room just a moment ago when I  
25 was asking a previous witness about their knowledge of the

1 stipulation and agreement.

2 Are you the appropriate person for me to make  
3 inquiry of?

4 A. From Empire's perspective, yes, sir.

5 Q. Oh. Good. All right.

6 I want you to -- and I know we've had some  
7 discussion of this, but I want you to go back and tell me  
8 how this mechanism works that's proposed in the  
9 stipulation and agreement on fuel costs.

10 A. I think it's probably important to go back and  
11 tell you a little bit about how we establish our original  
12 direct filing and methodologies that the Staff used.

13 Q. That's fine.

14 A. We run a model that inputs our loads, our fuel  
15 costs, our unit characteristics, such as heat rate and  
16 ramp rate, start-up rates, and Empire comes up with a  
17 direct filing number, as does Staff. And there is a lot  
18 of rebuttal testimony that talks about differences of  
19 opinion we have.

20 But much like rate design, there is a little  
21 bit of art to this and a little bit of science, and there  
22 is honest differences of opinion.

23 What we've tried to do with this stipulation is  
24 recognize that gas is volatile, recognize that the market  
25 prices and purchase prices is volatile and that there is



1 no way that we're going to hit the exact right fuel and  
2 purchase power numbers. And all parties recognize this in  
3 our stipulation.

4 And so what we tried to do was bound that with  
5 what we thought was a reasonable place for these costs to  
6 be.

7 From our point, or our perspective, we ran a  
8 fuel run with the Staff's gas prices, which were a  
9 historical look, and that helped us -- and formed the  
10 basis for us agreeing with the 20 per megawatt hour on the  
11 bottom.

12 We used, then, futures prices that were  
13 available to us during the prehearing conference, which I  
14 think averaged out about 564 million, to establish an  
15 upper end. And that helped us understand and agree with  
16 the \$25 on the top.

17 Our filing was in the middle of that. While we  
18 only changed one variable, the approach that we developed  
19 actually also allows for changes in purchase power and  
20 volatility and purchase power, as long as the cost is  
21 between 20 and 25.

22 So we think this stipulation balances the  
23 volatility and only passes through actual cost to the  
24 customer, while recognizing the impact that volatility has  
25 on Empire.

1           Q.       Is the calculation of the fuel and purchase  
2 power expense -- tell me what the variables are in that,  
3 other than fuel costs that are actually accounted for in  
4 the stipulation.

5           A.       The basis for us agreeing with 20 and 25 is  
6 founded in a fuel modeling approach that Empire has used  
7 for a long time.

8                   Like I said, one of the inputs is hourly loads,  
9 so that's a variable. Another input is coal prices,  
10 freight prices, unit heat rates, unit ramp rates,  
11 start-up/shut-down costs, forced outage rate, plant  
12 maintenance rates.

13                   There are a variety -- that's probably not all  
14 of them, but that's the majority of them that are  
15 accounted for in the fuel model.

16          Q.       And in regard to the setting of the amount that  
17 would be subject for refund -- subject to refund, all of  
18 those variables go into the calculation of the amount that  
19 will at some point in time be looked at to decide whether  
20 or not a refund is appropriate?

21          A.       All of those variables went into the  
22 calculation of both the 20 and the \$25 per megawatt hour.

23                   What we were trying to recognize between all  
24 parties is gas prices could go back to levels where they  
25 were, which would get us to the 20. They could stay where

1 they were; that would get us to the 25.

2 And, again, this mechanism is meant to -- at  
3 least in my opinion it suggests that we can't predict the  
4 future, and I think to that extent it's right.

5 Q. I guess what I'm trying to ask you is whether  
6 or not the driving -- the driving force of the numbers  
7 that we're dealing with on the refund provisions in the  
8 fuel costs is the cost of the fuel or other things in  
9 addition to that.

10 And maybe that question is not a fair question  
11 to ask, but if you -- if you can help me with that, I  
12 would appreciate it.

13 A. The 20 and \$25 per megawatt hour were arrived  
14 at by Empire changing only the gas price in the fuel  
15 model.

16 But it also allows for, just by virtue of our  
17 methodology, changes in purchased power prices within that  
18 range. And we have experienced purchased power  
19 volatilities through the last several years.

20 And so to that extent, because it's fuel and  
21 purchase power, it's much better than, say, Senate  
22 Bill 387, which was just natural gas on one unit.

23 So I think it -- it's a better mechanism and  
24 it's to the credit of all of the parties in this room that  
25 we figured out a way to do this.

1       Q.       But the driving forces in this particular  
2 formula are fuel costs and purchase -- purchase costs  
3 of -- on the spot market?

4       A.       The difference between the 20 and the 25 are  
5 really natural gas costs in our run. All of the variables  
6 are driving factors: Coal costs, maintenance rates,  
7 forced in-plant, all of these are driving factors.

8               But the difference between the 20 and 25 was  
9 established by changing fuel prices.

10      Q.       All right. I want you to -- do you have a copy  
11 of the stipulation in front of you?

12      A.       Yes, sir.

13      Q.       Would you go to page 4, paragraph A.

14      A.       I'm there, sir.

15      Q.       All right. And if you would, in your own  
16 words, tell me what paragraph A means.

17      A.       In essence, we're going to bill our cost of  
18 service at a rate of 3.0-- well, actually we're going to  
19 have a base rate of 2.52. We're going to have a rider  
20 that is .54 cents, which is the difference between the  
21 3.06 cents in that paragraph and the 2.52.

22               So there will be two component on the bill,  
23 2.52 cents and a .54 cents.

24               To the extent that we pay more than 3.06 cents  
25 per kilowatt hour, there will be no refund, and the

1 company will be liable for those kinds of costs.

2 To the extent that it falls between 2.53.06,  
3 there will be a refund made to the eligible customers,  
4 plus interest.

5 To the extent that it would fall below 2.52,  
6 there would be a refund to the customers for the whole  
7 .54 cents, plus interest, and the company would keep  
8 anything below the 2.52.

9 Q. What set of circumstances could theoretically  
10 arise to get below the 2.52?

11 A. It's hard to imagine any at this point.

12 But if natural gas went back to \$2 and we had a  
13 lot of new capacity come on line, and the market price for  
14 purchase power went through the floor, which neither one  
15 of which are likely in the next two-year period, I  
16 believe, that could precipitate that kind of fall-out.  
17 But it would be highly unlikely in my opinion.

18 Q. Highly unlikely, but, theoretically, it could  
19 occur?

20 A. Theoretically, you bet.

21 Q. And in that event, the company would keep  
22 anything below that figure?

23 A. Pursuant to the terms of this agreement, that's  
24 true.

25 Q. Is there a review under this agreement for the

1 Commission to make regarding the prudence of fuel  
2 purchased or power purchased during this two-year period?

3 A. We are going to provide monthly -- I don't know  
4 if you want to call them surveillance reports, but monthly  
5 reports to both OPC and Staff. And I believe those are  
6 listed in the stipulation on page -- Section E, on the  
7 bottom of page 5 and the top of page 6.

8 And so we're going to be providing reports on a  
9 monthly basis as we go through this two-year period.

10 Then, of course, there will be an audit at the  
11 end of the two-year period, and only our prudently  
12 incurred fuel costs would be allowed.

13 Q. There is a -- the portion of the -- dealing  
14 with refund here --

15 A. Uh-huh.

16 Q. -- can you explain how that would work, please?

17 A. The -- we're going to make sure that, (a), the  
18 refund goes back to the customers who deserve it, assuming  
19 that there is a refund.

20 Q. And when you say "deserve it," what does that  
21 mean?

22 A. If the customers were on our system and paid  
23 part of this interim energy charge, we're going to make  
24 every attempt to return the refund to that individual  
25 customer.

1 Q. Based upon -- based on what calculation?

2 A. Based on their usage.

3 So if we refunded a dollar per megawatt hour  
4 and they used, you know, one megawatt hour and was charged  
5 on the IEC, then we'd refund that dollar to that customer.

6 Subject to -- if any checks are less than \$3,  
7 we're going to send them to the Joplin Chapter of the  
8 American Red Cross.

9 Q. When you calculate the refund, you're looking  
10 at what span of time?

11 A. I believe it's October 1 -- or -- October 1 for  
12 24 months.

13 Q. All right. So if someone was a customer for a  
14 incorporate of that, is there a calculation in addition to  
15 the portion that they were a customer during that time  
16 frame?

17 A. Yes. If they're only a customer for a year, we  
18 will know how much usage they've had in that year and how  
19 many of the IEC they paid, and we will make every attempt  
20 to find that customer and refund that customer.

21 Q. And if you do not locate them, what becomes of  
22 that share of the refund?

23 A. I believe that that also goes to the project  
24 help of the Joplin Chapter of the American Red Cross.

25 Q. All right. And how it was arrived to use the

1 Red Cross as the party to receive any benefits out of --  
2 out of the \$3 -- less than \$3 provision or the additional  
3 amount of customers that could not be found?

4 A. And I'm not intimately familiar with this  
5 project help, but it provides energy assistance to  
6 customers within the Joplin area.

7 And it was an agency that was agreed upon by  
8 all of the parties as -- and we think properly that kind  
9 of money should go to places where they can give energy  
10 assistance.

11 Q. So those -- that money will be utilized for  
12 customers of Empire who need energy assistance. Would  
13 that be accurate?

14 A. That is my understanding.

15 Q. All right. Do you see -- do you see this  
16 particular agreement as being -- in regard to this  
17 particular provision on the fuel and purchase power  
18 expense, to be something that is necessary because of  
19 Empire's unique circumstances or is it something that  
20 relates to a broader policy matter?

21 And I realize it's not a question really for  
22 you, but if you have an opinion, I'd like to know.

23 A. Empire is very unique in how much natural gas  
24 and purchase power -- we're going to have a percentage of  
25 our total compared to other utilities in the state. And I



1 think that's recognized by and has been talked about a lot  
2 during our negotiations.

3           So outside -- this agreement was structured, in  
4 my belief, in context of this case, and it's really  
5 specific to Empire because of the amount of natural gas  
6 exposure that we have.

7       Q.     I want to digress for just a moment based upon  
8 that -- based upon that analysis, because it's -- not just  
9 in your testimony but throughout the presentation of this  
10 case.

11           But can you explain to me how Empire got to  
12 that position, if you know?

13       A.     I can explain to you -- and we're going to go  
14 back a long ways in time here.

15           But in general, the Southwest Power Pool over-  
16 built base-load generation in the mid '80s. And because  
17 of that we added combustion turbines and purchase power  
18 and a lot of nonfirm purchase powers in the early '90s  
19 just off the open market, and we added combustion  
20 turbines.

21           And along this same general time frame, new  
22 coal plants fell out of favor for a variety of reasons,  
23 environmental reasons, how long a lead time it took to  
24 build a new coal plant and environmental uncertainty and  
25 capital cost and cheap gas prices.

1           Along about -- I'm not going to have the exact  
2   date -- Empire filed its first IRP filing pursuant to  
3   regulations in Missouri Public Service Commission in about  
4   '95.

5           But the IRP rulemaking at the time called for  
6   us to analyze environmental externalities and really look  
7   at efficiency trends and movements.

8           And at least, in my opinion looking back, it  
9   would have made it very difficult to build a new coal  
10  plant and commit to something in '92 or '93 in order to  
11  have something on this year.

12          And so because of that and because reserve  
13  margins began to come down, they're just wasn't any new  
14  purchase power capacity available, and so we were forced  
15  to add a gas-fired generating unit that had a shorter lead  
16  time, lower capital costs and here we are.

17       Q.     Would it be fair to say that if you had  
18  hindsight capability, that it would be -- Empire would be  
19  in a better position if they had more diverse fuel  
20  supplies for generation?

21       A.     Diversity is important. I don't know -- even  
22  looking back, if we would have committed to a coal unit in  
23  1992, whether we would have survived the financial impacts  
24  and the lead times to get us to today.

25          Coal plants are nominally three times more

1 capital intensive than what we built on a combine cycle  
2 basis.

3 So diversity is important. We've managed to  
4 achieve some of that through a purchase power contract  
5 from Western Resources from the Jeffrey Plant that extends  
6 through 2009.

7 So I don't know that I would change our  
8 decision to build a gas-fired plant, even looking back.

9 Q. Of the combustion plants, the noncombined cycle  
10 plants that are on line -- I know there is testimony on  
11 this, but if you'd help me again --how many -- are there  
12 any of those that are being used for nonpeak purposes by  
13 Empire at the present time, or that will be in the next  
14 two years?

15 A. I'm going to have to again go back to some  
16 older thought processes. We used to think about peaking  
17 units only running a few hours a year.

18 And at this point Empire is going to have  
19 Riverton 9, 10 and 11, which total about 45 megawatts;  
20 Energy Center 1 and 2, which are going to total about  
21 180 megawatts; and State Line 1, which is about 100  
22 megawatts.

23 That's still a large percentage of peaking  
24 capacity. And whether you look at Staff's fuel run or  
25 Empire's fuel run, you'll see our peaking units running

1 10 to 15 to 20 percent at the time, which is still much  
2 more than our traditional thought process on peaking.

3 Q. Okay. Other than -- well, let me -- in regard  
4 to this agreement, other than the prudence review, what  
5 incentive or incentives exist within this proposal to  
6 cause Empire to have a financial -- financial incentive to  
7 purchase power at the -- purchase power or fuel at the  
8 lowest available cost?

9 A. Obviously if we could get below the 20, that  
10 would be a benefit.

11 And I can tell you that if we don't pay close  
12 attention, we're going to be above 25. So we've got to  
13 mind our ducks pretty well to stay in the range.

14 And I guess you're just going to have to take  
15 my word. We do the best we can to keep our prices the  
16 lowest we can every day.

17 We're adding a new group right now that is  
18 focused on gas procurement and market power purchases, to  
19 try to improve our ability to do this. That was going on  
20 regardless of the stipulation and regardless of this rate  
21 case.

22 Q. I think you answered my question in a  
23 roundabout way, but I'll leave it at that.

24 A. Okay.

25 COMMISSIONER GAW: I think that's all I have.

1 Thank you.

2 JUDGE RUTH: Commissioner Murray.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. How likely is it, in your opinion, that your  
5 fuel and purchase power expense might exceed 3.06 cents a  
6 kilowatt hour?

7 A. Given the financial tools that we have  
8 available to us today and gas prices today, I would say  
9 it's not likely that we're going to be over 3.06, given  
10 that we don't have a unit failure or transmission failure  
11 in our area that would change market power prices.

12 The 3.06 was set in our -- based on our fuel  
13 model run at five-sixty-four gas. So I would say it's not  
14 likely that we're going to be above 3.06, but it's still  
15 possible.

16 Q. And if you are above 3.06, then the company is  
17 assuming the entire risk of that. Is that correct?

18 A. That's correct.

19 There are provisions in the stipulation that  
20 say this doesn't preclude us from filing an emergency case  
21 should we have a major unit failure, for instance.

22 But, you know, if it's 3.1, 3.2, whatever that  
23 doesn't cause major financial implications on that, we  
24 would eat that.

25 COMMISSIONER MURRAY: I believe that's all.

1 Thank you.

2 JUDGE RUTH: Thank you.

3 Based on the questions from the bench, do the

4 parties have recross?

5 Staff?

6 MR. FREY: No, Your Honor.

7 JUDGE RUTH: Public Counsel?

8 MR. COFFMAN: No, Your Honor.

9 JUDGE RUTH: Praxair?

10 MR. CONRAD: No questions. Thank you.

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

12 MR. DUFFY: No questions, Your Honor.

13 JUDGE RUTH: Then, Mr. Beecher, you may step

14 down.

15 I believe we will go ahead and break for lunch

16 and start back up at one o'clock.

17 (THE LUNCH RECESS WAS TAKEN.)

18 JUDGE RUTH: We have had a break for lunch. We

19 are back on the record. I believe Staff is ready to call

20 their next witness.

21 MR. FREY: Thank you, Your Honor.

22 Staff recalls James Watkins.

23 JUDGE RUTH: Mr. Watkins, you were previously

24 sworn and you are still under oath.

25 THE WITNESS: Yes, ma'am.

1 JUDGE RUTH: Thank you.

2 You may proceed, Mr. Frey.

3 MR. FREY: Thank you.

4 First of all, we might ordinarily be  
5 introducing Exhibit No. 111, Mr. Watkins' supplemental  
6 testimony in support of the Staff's change of position  
7 regarding fuel and purchase power expense; however, there  
8 is no need to do that, because we -- last time Mr. Watkins  
9 was up there, we did admit that document.

10 In further evidence to the connection between  
11 the fuel and purchase power and the rate design/cost of  
12 service issues, I would like to mark an exhibit, if I  
13 might.

14 JUDGE RUTH: Yes. I believe we are up to 117.

15 Can you describe the document for me?

16 MR. FREY: Yes. It's the stipulation and  
17 agreement that was filed on June 4th.

18 (EXHIBIT NO. 118 WAS MARKED FOR IDENTIFICATION  
19 BY THE COURT REPORTER.)

20 JAMES WATKINS testified as follows:

21 DIRECT EXAMINATION BY MR. FREY:

22 Q. Mr. Watkins, do you have a copy of the  
23 unanimous stipulation and agreement that was filed on  
24 June 4th?

25 A. Yes, I do.

1 Q, And are you familiar with that document, sir?

2 A. Yes, I am.

3 Q. Is it not a fact that you are one of the  
4 principal drafters of that document?

5 A. That's correct.

6 MR. FREY: Your Honor, I would offer what has  
7 been marked on his identification as Exhibit 118 into  
8 evidence at this time.

9 JUDGE RUTH: Exhibit 118 is the stip and  
10 agreement which was filed on June 4th.

11 MR. FREY: Right.

12 JUDGE RUTH: Do the parties have any objection  
13 to this document being entered?

14 MR. CONRAD: Not as much as we are signatory  
15 thereto, we have no objection.

16 JUDGE RUTH: Seeing no objection, Exhibit 118  
17 is received into the record.

18 (EXHIBIT NO. 118 WAS RECEIVED INTO EVIDENCE.)

19 MR. FREY: And I believe last time, Your  
20 Honor -- the last time we were on the record, I indicated  
21 that we would like to have Mr. Watkins make a few  
22 clarifying remarks with respect to the prior class  
23 cost-of-service discussion as it pertains to rate design.  
24 And as I recall, you agreed to allow him to do so.

25 JUDGE RUTH: Yes.



1                   MR. FREY:  So I'll just ask Mr. Watkins to  
2   proceed and then we can have cross-examination on the fuel  
3   and purchase power expense issue.

4                   Thank you.

5                   Mr. Watkins.

6                   THE WITNESS:  Thank you.

7                   In order to add context, let me tell you a  
8   little about my experience working for the Missouri Public  
9   Service Commission.

10                  JUDGE RUTH:  Could you speak into the  
11   microphone, please.

12                  THE WITNESS:  I'm sorry.

13                  When I came to the Commission almost 19 years  
14   ago, one of my first responsibilities was in the area of  
15   determining the appropriate forecasted fuel allowance,  
16   what we called it at that time.  Now we're calling it the  
17   interim energy charge.

18                  They should be included in rates for electric  
19   utilities and in rate cases, which at that time were  
20   occurring about every year for every utility.

21                  That's really where my career here began.

22                  Subsequent to that time my responsibility was  
23   in the area of fuel and purchase power, with modeling --  
24   with determining those inputs in conjunction with the  
25   accounting department and actually doing the modeling,

1 both for the purposes of determining revenue requirement,  
2 and also because we needed the inputs out of that to do  
3 our rate design and our cost allocations.

4 Subsequent to that, my role has primarily been  
5 in the rate design area. And in one of the more recent  
6 reorganizations of whatever department I happened to be in  
7 at the time, I subsequently also became responsible for  
8 what we call tariffs.

9 So when the Commission approves a tariff and  
10 it's electric, it has my initials on it and it's my  
11 recommendation.

12 And what you see on this tariff sheet does what  
13 we've indicated that it's supposed to do.

14 And we would do that also in rate cases. When  
15 the rate case is over and the company files tariffs to  
16 comply with the order, I look at them and make sure that  
17 they do what the Commission ordered that they do.

18 So that's kind of my background.

19 In terms of trying to clarify some of the  
20 things that were asked about today, and one of those was  
21 the relationship between the cost -- class cost-of-service  
22 study and the rate design recommendation, I'd want to  
23 point out that in this case -- and it's not unlikely in  
24 rate cases that this would be the case -- that the data  
25 that goes into the cost-of-service study -- in this

1 particular case, into the compancost-of-service study that  
2 they filed approximately 30 days after the initial filing  
3 of their tariffs, the data that went into that, I believe,  
4 was seven months actual and five months projected were  
5 budgeted. So it wasn't hard numbers that went in there in  
6 the first place.

7               There were no annualizations involved in that.  
8 No normalizations for weather or anything else. So the  
9 initial cost-of-service study filed by the company, filed  
10 by Praxair, and the official study filed by the Office of  
11 Public Counsel was all based on that data, that there was  
12 five months projected.

13              When Staff filed its cost-of-service study, we  
14 used the revenue requirement that we filed in our direct  
15 testimony. And if you look at the accounting schedules  
16 that went with that, you'll find that the Staff's case was  
17 actually, I believe, about a minus 20 million.

18              But there was a \$35 million nebulous amount  
19 that was attributable to what we were -- at that time were  
20 expecting the update through June 30, and the inclusion of  
21 State Line unit to boost that revenue requirement.

22              So when we filed our cost-of-service studies,  
23 we didn't have the best data in the world to deal with.  
24 We had projected amounts. We had -- basically had  
25 projected amounts for a lot of it, whether it was the

1 company's projections or Staff's projections.

2           So, for example, the Staff's cost-of-service  
3 study is filed on a \$15 million increase; the company is  
4 on 41 million.

5           So that the question of, if we wanted to  
6 recommend to the Commission that they move to cost of  
7 serving each customer class, we don't have good numbers to  
8 tell you what those are.

9           When you look at the cost-of-service study, you  
10 see the results. We can put as many decimal places in  
11 there as you want to, but those numbers are not very  
12 accurate. They just don't have good data going into them.

13           I think all of the parties believe that the  
14 software that they use in modeling cost of service is  
15 perfectly accurate. I think they believe wholeheartedly  
16 that the allocation methodologies that they use are  
17 appropriate.

18           Frankly, the numbers that went into the study  
19 are not such that even if you wanted to go to cost of  
20 service for each class, that you could feel confident that  
21 that's what you were doing if you adopted those numbers.

22           So that the rate design analysts have looked at  
23 those numbers and used some judgment to come up with a  
24 rate design recommendation that considered cost of service  
25 and a variety of other factors.

1           And the consideration of the cost-of-service  
2   study was basically some relative magnitudes, given that  
3   the numbers are really pretty soft -- pretty soft coming  
4   out of the cost -- class cost-of-service study.

5           The other thing that I wanted to mention and to  
6   put it in context is that traditionally changes in rate  
7   structures, as in how to block energy charges or how much  
8   should be collected in the summer versus the winter, those  
9   types of changes to the tariff sheets are typically done  
10  as a result of a full cost of service and rate design  
11  investigation performed specifically on the company, and  
12  that's done outside of a rate case. It's usually done in  
13  an EO case, and it usually takes about two years, as  
14  opposed to the roughly 11 months of a rate case.

15          And in that situation we make sure that  
16  everybody is working with the same data, that it's all  
17  historical, it's all annualized, it's all normalized, and  
18  the numbers that we're getting out of our cost-of-service  
19  study are reliable.

20          And at that point we would have some numbers  
21  that we could recommend to you if you wanted to go to --  
22  exactly to each class's cost of service.

23          Typically, other considerations would prevent  
24  the Staff from recommending that. We've talked about  
25  impacts.

1                   One of our other considerations, particularly  
2   in a rate case, is that there is a certain continuity  
3   within customer -- within customer classes as to the  
4   tariffs that the various subgroups are on, and also  
5   between customer classes.

6                   One of the examples, I believe, was in  
7   Ms. Pyatte's testimony, had to do with small commercial  
8   customers.

9                   There are basically two tariff rate schedules  
10  for the small commercial customers. One for customers  
11  that have space heat in the winter.

12                  Those two tariffs have exactly the same  
13  customer charges. They have exactly the same rate per  
14  kilowatt hour in the summer, and they have exactly the  
15  same initial block charge per kilowatt hour in the winter.

16                  The only difference between those two schedules  
17  is the tail block, the second block in the winter. It's  
18  somewhat lower for space heating customers.

19                  And that in order to maintain that continuity,  
20  that limits us somewhat to how we can change those  
21  tariffs, because we want to keep all of the charges that  
22  are currently the same, the same.

23                  And so to some extent, when we recommend equal  
24  percentage increases to each rate component on each tariff  
25  within a customer class, it's to maintain all of the

1 relationships that were built into that and approved by  
2 the Commission in a rate design case.

3 We don't want to unintentionally throw that  
4 away in a rate case.

5 The other situation is that generally  
6 nonresidential customers can choose which tariff they want  
7 to be served under. So a customer will decide whether  
8 they want to be served under the large general service  
9 tariff or the large power tariff.

10 And so we're very aware that if you give -- for  
11 example, if you give the large power class a significant  
12 increase and the large general service class a significant  
13 rate reduction, that there will be some set of customers  
14 in a large power class who would now be better off  
15 changing to the other tariff.

16 And when that happens -- unless you have  
17 information on each individual customer, you don't know  
18 what the revenue effect of that is.

19 And certainly one of the goals we haven't  
20 talked about in the rate design is that the rates need to  
21 collect the revenue requirement that's authorized by the  
22 Commission, that the company can't just lose money, that's  
23 not attributable to something in the process of designing  
24 those rates.

25 We want to make sure that the rates collect the

1 right amount of money. And so we want to be careful about  
2 doing things to the rates that would cause the customers  
3 to switch the tariff that they're being served under.

4 One other item I wanted to mention was the  
5 blocking, for example, of the residential rate.

6 The facts of life regarding residential  
7 customers are that the costs of metering residential  
8 customers in order to determine more information about  
9 them than their kilowatt hour usage is basically  
10 prohibited -- prohibitive. I'm sorry.

11 So that the typical residential rates -- there  
12 are two ways -- two charges that you can put on  
13 residential customers.

14 One is the customer charge. If you're sending  
15 them a bill, you can send them a bill for \$10 whether it's  
16 electricity or not, or whatever that number might be.

17 The other is, in a sense, per kilowatt hour per  
18 charge. We don't have any demands or demand meters on  
19 them to know what the demand charge would be.

20 And basically there are two types of costs.  
21 There are those costs that are fixed and those costs that  
22 vary with usage.

23 So in designing the residential rates,  
24 basically what happens is that the initial blocks for  
25 residential or small commercial or anyone who is on a rate



1 schedule that doesn't have a demand charge, the initial  
2 block is designed to recover fixed costs on a per unit  
3 basis.

4 And that's why there is a cutoff, say, the  
5 600 kilowatt hours. For those customers that pay  
6 600 kilowatt hours, they're paying a certain amount of  
7 fixed costs in that, plus they're paying the energy costs.

8 So when you see the rate decline after that,  
9 what is happening primarily is that once you've paid the  
10 fixed costs in the first 600 kilowatt hours, then the only  
11 remaining part is the energy costs or the variable costs.

12 And so we're a little bit restricted in how we  
13 can recover costs from residential customers.

14 I believe several years -- maybe a dozen years  
15 ago Union Electric tried to have a rate for residential  
16 customers where they would install demand meters. And it  
17 was a nightmare and everybody hated it, and they cancelled  
18 that program. It didn't work very well.

19 The notion of a rate for conservation, where  
20 the conservation effects of the rates, the Staff is well  
21 aware of. We don't like to send price signals that the  
22 more you use, the less you pay.

23 And the only thing that we've managed to do to  
24 actually fix that, while still maintaining the fixed-cost  
25 recovery, is that on the summer rate we do not have the

1 declining block. If you use more electricity in the  
2 summer, it doesn't get cheaper.

3 And the cost of electricity is significantly  
4 higher in the summer than it is in the winter. The  
5 additional costs of a customer's space heating are  
6 considerably lower than anything that occurs in the  
7 summertime. It's just a significant difference.

8 The problem that the Staff has had with rates  
9 designed to help low-income customers is that the Staff  
10 has not been convinced what rate design would help low-  
11 income customers.

12 Because, frankly, we don't know whether it's a  
13 low-income customer that is, say, in new construction of  
14 public housing, you know, that's a fairly well insulated  
15 but small apartment, and in which case it would help them  
16 to reduce the customer charge or first block, or whether  
17 it's a low-income customer that in a larger single-family  
18 dwelling that's probably old, uninsulated, drafty, where  
19 their real problem is that they have high usage. Because  
20 in order to keep warm, it takes a lot of energy to, you  
21 know, heat the outside world too.

22 So we don't know who they are exactly, so we  
23 haven't been able to capture that.

24 Anyway, to summarize, basically, I wanted to  
25 say that in this case there is no good data to tell you

1    how to go to the cost of serving each customer class.  And  
2    that's unrelated to the modeling, and it's unrelated to  
3    the choice of the methodology used to allocate costs.

4                   And I wanted to mention the few other  
5    considerations that we have besides cost of service and  
6    rate impacts that are affecting our recommendation about  
7    how to change these tariff sheets, because we want to  
8    maintain the continuity that is in there that was  
9    determined in the last rate design case.

10                   Thank you.

11                   JUDGE RUTH:  Okay.  I take it you have no  
12   further direct?

13                   MR. FREY:  No.  I would tender the witness for  
14   cross-examination.

15                   JUDGE RUTH:  Okay.  Thank you.

16                   Public Counsel, do you have cross?

17                   MR. COFFMAN:  No, I don't.

18                   JUDGE RUTH:  Empire?

19                   MR. DUFFY:  Pursuant to the stipulation we do  
20   not.

21                   JUDGE RUTH:  Praxair?

22                   MR. CONRAD:  Ditto.

23                   JUDGE RUTH:  Chair Lumpe, do you have  
24   questions?

25                   CHAIR LUMPE:  Just one, and it was on what you

1 were discussing just now.

2 QUESTIONS BY CHAIR LUMPE:

3 Q. As we do some items every five years, or  
4 something like that, should a class cost of service be  
5 done on a periodic basis, since what I gathered you were  
6 saying, to do it in a rate case is not very effective or  
7 appropriate; that it's something that should be done,  
8 hence, a couple of years using real good data as opposed  
9 to sort of putting one together with not good data.

10 Should one be done in a period -- on a periodic  
11 basis?

12 A. I have two answers.

13 Q. All right.

14 A. I have to put this in context.

15 Let me tell you that the electric department  
16 has thought about that very idea very seriously.

17 Without any other context, I would say, yes,  
18 that's the way we should do it. If we did it every five  
19 years, we'd have good data. We could use those results  
20 for a lot of things, including the rate case, if it came  
21 along.

22 The realities of resources is that we probably  
23 can't afford it. It would take us significantly more  
24 staff to be able to do that, you know, than the way we do  
25 it now. Because when we absolutely have to, we do it.

1           Because we never know when these other things  
2   are coming to come up to require our resources as well.

3           We've done the integrated resource planning,  
4   and we've kind of cut back on the cases that we have and  
5   made those less formal, and we are going to save some  
6   resources. And someone else other than I would have to  
7   decide whether it's -- it's worth it to do it.

8           But, yes, it would be extremely valuable if we  
9   could do that.

10       Q.     Let me ask you this then: Often it's suggested  
11   that the class cost of service is really more of an art  
12   than a science, a lot of judgment.

13           If you were to do a periodically -- if you had  
14   the resources and did it periodically over a two-year  
15   period with good data, would it be less of an art and more  
16   of a science, or would it still be more art than science?

17       A.     I think there is always going to be a  
18   significant element of art to it, and that the reason is,  
19   is that the situation that the utility finds itself in  
20   with regard to its costs are always different and often  
21   surprising.

22           And what we may have thought worked well in the  
23   past, we may find all of a sudden it requires some artful  
24   approach to adequately deal with that.

25           And, of course, there is always going to be

1 disagreements as to the appropriate allocation  
2 methodologies.

3 Q. So there will still be art and judgment to that  
4 process and a guideline, more or less, to the Commission  
5 as opposed to a scientific fact. Is that correct?

6 A. We don't have a scientific fact in this regard,  
7 and not likely ever to.

8 CHAIR LUMPE: Okay. Thank you, Mr. Watkins. I  
9 have no questions on the fuel adjustments.

10 JUDGE RUTH: Thank you.

11 Commissioner Murray?

12 COMMISSIONER MURRAY: Thanks.

13 I don't really have any questions. I would  
14 just like to say that I appreciate all of the parties  
15 working together to come up with a recommendation here.

16 I know there is a lot of work involved in that  
17 and a lot of negotiation and cooperation involved in that,  
18 and I think it's great when the parties do work together.

19 So thank you.

20 JUDGE RUTH: Commissioner Gaw?

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Since you were discussing rate design, the  
23 issue of winter block rates, do you know how long that has  
24 been the way it's been handled by -- under Empire's rate  
25 design with the Commission?

1 Does it go back to one time or --

2 A. Oh, no. It goes back since I came to the  
3 Commission 19 years ago, I'm sure.

4 And I think I was explaining before you came  
5 back in that the part of the problem is that we have to  
6 collect fixed costs and variable costs, and the only place  
7 we have to collect it is in the usage charge.

8 So that's why we block it and why it falls off,  
9 is once you've paid the fixed charges in the first block,  
10 then you're just left with the variable charges in the  
11 trailing block.

12 Q. You're familiar with rate block designs that  
13 work just the opposite to that in other jurisdictions, are  
14 you not --

15 A. Somewhat, yes.

16 Q. -- that there are jurisdictions that have the  
17 initial rate block lower than subsequent rate blocks?

18 You're familiar that -- that some other  
19 jurisdictions do it that way?

20 A. Yes, I am.

21 And, in fact, we have a utility that has that  
22 type of blocks in the summer for residential rates in  
23 Missouri. That's Missouri Public Service.

24 Q. All right. So it would not be unheard of for  
25 rate block design to be handled that way?

1           A.       No, it wouldn't.

2           Q.       And if that were the case, at least there would

3           be some element in that rate design promoting

4           conservation. Is that correct?

5           A.       That's correct.

6           Q.       It would also in some cases mean that a lower

7           end user would -- well, in all cases, a lower end user

8           that does not exceed the initial rate block would pay a

9           lower cost per kilowatt hour on their electricity?

10          A.       Yes.

11          Q.       But that is -- and that is just the opposite of

12          what we have in this rate design, isn't it?

13          A.       That's correct. We haven't made any changes,

14          basically.

15          Q.       Yes.

16          Q.       Are you comfortable with the -- that Staff will

17          be able to easily review the amounts expended for fuel and

18          purchase power under this agreement from a prudence

19          standpoint after -- when it comes time to determine

20          whether or not there is a refund due under the provisions

21          of the stipulation?

22          A.       I'm confident that we will do it. It won't be

23          done easily.

24                    I believe we stated in the stipulation and

25          agreement -- and certainly what we contemplate -- is a



1 full-blown rate case, audit-type audit of those fuel  
2 costs. It won't be easy.

3 Q. Give me a time frame on when that would occur  
4 and how long you would anticipate it taking it to get to a  
5 conclusion where refunds would actually occur, if any were  
6 due?

7 A. Um, Staff Witness Cary Featherstone could give  
8 you a better idea.

9 Q. That's fine. I can ask that question later.

10 A. I think that process won't begin until probably  
11 a couple of months after the interim energy charge goes  
12 off, and he can give you a better idea of how long that  
13 audit will take.

14 COMMISSIONER GAW: All right. I'll ask that  
15 question later then.

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

17 JUDGE RUTH: Will there be recross based on the  
18 questions from the bench?

19 Mr. Coffman?

20 MR. COFFMAN: No.

21 JUDGE RUTH: Mr. Swaengen?

22 I'm sorry. Mr. Duffy?

23 RECROSS-EXAMINATION BY MR. DUFFY:

24 Q. You were asked that question about, perhaps,  
25 the concept of the companies submitting cost-of-service

1 studies on an annual -- or on a five-year basis. Do you  
2 remember that?

3 A. Yes.

4 Q. Okay. I guess my question is: Do you have any  
5 thoughts or do you think that that would impose some sort  
6 of burden on all of the electric companies if all of the  
7 electric companies had to file those things every five  
8 years?

9 You were talking about your Staff constraints.  
10 Would there be similar Staff constraints on utilities if  
11 they had to do that?

12 The information isn't already there; it doesn't  
13 come free. Right?

14 A. No. Only the basic data is there, and it  
15 requires extensive effort to develop from the basic data  
16 the type of information that needs to go into that study.

17 And that would be the case for all of the  
18 electric utilities. It would also be the case for the  
19 Office of Public Counsel and for any intervenors that  
20 happened to want to be involved in that.

21 MR. DUFFY: That's all I have. Thank you.

22 JUDGE RUTH: Mr. Conrad?

23 MR. CONRAD: Just very quickly, hopefully.

24 RECROSS-EXAMINATION BY MR. CONRAD:

25 Q. Mr. Watkins, Chair Lumpe asked you about the

1 very thing that I think Mr. Duffy was pursuing.

2           You indicated you'd been around here 19 --  
3 going on 19 years, going on 100, or however that counts.

4           And we have had for this company, perhaps --  
5 I'm wondering if in your recollection, we have had for  
6 this company a cost-of-service case, have we not?

7       A.       Certainly, yes.

8       Q.       And you and I both, I think, have had  
9 experience, not necessarily with this company, but with  
10 some of the others, that when that data is collected and  
11 it's all historical and all normalized and formalized and  
12 everything "ized" that we can -- that we could do to it,  
13 and as a result of that study there sometimes comes out  
14 that there should be some shifts between classes.

15           So far so good?

16       A.       I'm with you so far.

17       Q.       And it sometimes, then, creates a problem, if  
18 in the context of a nonrate case scenario for customers  
19 whose rates would go up as a result of those shifts.

20           To understand why their rates are going up when  
21 the company that is providing service to them is not  
22 asking for an increase, would you agree with me that that  
23 is sometimes a problem?

24       A.       I agree with you that that is sometimes a  
25 problem, and I agree that the Commission has in the past

1 recognized that problem.

2 Q. And sometimes how that recognition has taken  
3 form is by deferring the results of those cases into the  
4 next rate case, whenever that might be. Correct?

5 A. That's correct.

6 Q. And sometimes that next rate case might be as  
7 much as a year and a half or two years out, correct, or  
8 maybe more?

9 A. If you don't mind, I'll give you a long answer,  
10 which is -- I think that if you looked historically,  
11 that's correct.

12 Quite a while back there was, I think, more  
13 focus on such investigations, and it was more likely a  
14 while back that we -- much longer until the next rate case  
15 after the cost-of-service study was done.

16 We have done them less frequently. And I  
17 believe that the last couple, at least, that I've been  
18 involved in, the company has intentionally timed those to  
19 correspond with their next rate case. So there wasn't a  
20 particular lag in that respect.

21 Now, if you're talking about a schedule that is  
22 every five years, somehow staggered for each utility, then  
23 there is every potential that there could be a significant  
24 lag between the study and the next rate case.

25 Q. And if that was the case, and since the rate

1 case itself is typically on a ten- or eleven-month cycle  
2 with how the statutes work, you could then have a  
3 situation -- and I suspect you and I can both come up with  
4 examples if pressed.

5 I'll just ask you if you recall, without naming  
6 the companies situations, in which when that subsequent  
7 rate case came along, assertions were made by parties that  
8 the data that was used in the cost-of-service case was so  
9 old and so stale that it could no longer be relied upon?

10 A. I think that's the case.

11 Q. That ended my question, unless you had  
12 something else.

13 Let me quickly take up one other area, since  
14 I'm up here.

15 Judge Gaw asked you about conservation. When  
16 you use the term "conservation," what do you mean?

17 A. When I use the term "conservation"?

18 Q. Yes, as an economist.

19 A. As an economist.

20 Since I am an economist, I guess I use it as an  
21 economist and me both the same way, which is using less.

22 Q. Would you also agree that there is a sense of  
23 the word "conservation," in which if you were to look at  
24 the dictionary, that talks about the term "wise use of a  
25 resource"?

1           A.       I don't know that.

2           Q.       Okay.  You'd agree with me in the sense of the  
3   inverted block rate, which is what, I think, Judge Gaw was  
4   talking about -- at least that's what I'm used to calling  
5   it -- that if that had the effect of discouraging use off  
6   peak in such a way as to sharpen the peaks that the  
7   utility had and reduce the utility's overall load factor,  
8   you could create a situation that would actually be  
9   detrimental to overall utility health, financial health  
10   and to the overall financial impact on the customers,  
11   couldn't be, I think you said?

12          A.       Yes.  That would be a higher cost solution.

13                 MR. CONRAD:  Thank you.

14                 JUDGE RUTH:  Staff, do you have redirect?

15                 MR. FREY:  No, we don't, Your Honor.  Thank  
16   you.

17                 JUDGE RUTH:  Thank you.

18                 Mr. Watkins, you may step down.

19                 THE WITNESS:  May I be excused?

20                 JUDGE RUTH:  Let me verify that with the  
21   Commissioners.

22                 You may be excused.

23                 THE WITNESS:  Thank you.

24                 JUDGE RUTH:  Staff, you may call your next  
25   witness.

1 MR. FREY: Thank you, Your Honor.

2 Staff calls Cary Featherstone.

3 JUDGE RUTH: Mr. Featherstone, you were  
4 previously sworn in as a witness. You are still under  
5 oath.

6 Staff, you may proceed.

7 You may be seated.

8 THE WITNESS: Thank you.

9 CARY FEATHERSTONE testified as follows:

10 DIRECT EXAMINATION BY MR. FREY:

11 Q. Mr. Featherstone, did you prepare and cause to  
12 be filed what has been marked for purposes of  
13 identification as Exhibits 107, 108 and 109, respectively,  
14 Featherstone Revised Surrebuttal HC, Revised Surrebuttal  
15 NP and supplemental testimony in support of Staff's change  
16 in position?

17 A. Yes. Yes, I did.

18 Q. Do you have any corrections to that testimony  
19 at this time?

20 A. No, I don't.

21 Q. And if I were to ask you the same questions  
22 today as are in that testimony, would your answers be the  
23 same?

24 A. They would.

25 Q. Are those answers true and accurate to the best

1 of your knowledge, information and belief?

2 A. They are.

3 MR. FREY: Your Honor, at this time I would  
4 offer Exhibit 107, 108 and 109 for admission into the  
5 record and tender the witness for cross-examination.

6 MR. DUFFY: My records show they're already  
7 admitted.

8 JUDGE RUTH: Give me just a minute.

9 MR. COFFMAN: All except for 109.

10 JUDGE RUTH: I show that 107 and 108 and 109  
11 were admitted into the record.

12 MR. DUFFY: Yes.

13 MR. FREY: Fair enough. My record didn't show  
14 that.

15 JUDGE RUTH: Do the other parties disagree with  
16 that?

17 MR. DUFFY: I agree with that.

18 JUDGE RUTH: All right.

19 I checked them off, so I think they have been  
20 admitted. They are admitted.

21 MR. FREY: Okay. Thank you.

22 And that includes all three then, Your Honor?

23 JUDGE RUTH: 107, 108, 109. He had some others  
24 from before.

25 MR. FREY: Okay. Thank you.



1 JUDGE RUTH: Public Counsel, do you have  
2 cross-examination?  
3 MR. COFFMAN: No, I don't, Your Honor.  
4 JUDGE RUTH: Empire?  
5 MR. DUFFY: Pursuant to the stipulation we do  
6 not.  
7 JUDGE RUTH: Praxair?  
8 MR. CONRAD: Pursuant to the stipulation we do  
9 not either.  
10 JUDGE RUTH: Chair Lumpe, do you have  
11 questions?  
12 CHAIR LUMPE: I have no questions of  
13 Mr. Featherstone.  
14 JUDGE RUTH: Commissioner Murray?  
15 COMMISSIONER MURRAY: I don't believe I do  
16 either. Thank you.  
17 JUDGE RUTH: Commissioner Gaw?  
18 COMMISSIONER GAW: Yes. Thank you.  
19 QUESTIONS BY COMMISSIONER GAW:  
20 Q. Mr. Featherstone, are you satisfied that there  
21 will be no difficulty from the Staff's standpoint in  
22 reviewing the information necessary to make the proper  
23 calculations on whether or not and how much a refund will  
24 be due under the stipulation and agreement?  
25 A. Excuse me.

1                   Yes, with the caveat, I can't say that there  
2 won't be any difficulty. We do this every rate case.

3                   I don't know that I envision that it will be  
4 exactly like a rate case. We certainly have access to the  
5 information on an ongoing basis. So that's going to help  
6 us monitor, unlike a typical rate case.

7                   I think there is a lot of work that we can do  
8 in that respect as we get the information.

9                   I envision that we will have to go on site, and  
10 in that regard that is somewhat like a rate case. I don't  
11 think it's going to take us three months, which is the  
12 typical rate case audit.

13                  I think we can probably do some upfront work,  
14 and with the reports that we're going to get, we can  
15 probably do some things at our domicile, at our office  
16 site.

17                  And then when we get the final information, go  
18 down to Joplin, Empire's headquarters. And I hope to have  
19 a good, open dialogue with the company, which I fully  
20 expect that we're going to have.

21                  So I won't say that there is not going to be  
22 difficulty, but these are kinds of things that we normally  
23 and typically do in a rate case, so they're not  
24 insurmountable by any means.

25           Q.       And I'll ask you the same question that I just

1 asked a moment ago.

2 Can you give me a time frame on when we would  
3 see Staff's recommendation on how much, if any, refund  
4 would be due under this stipulation and agreement, if it  
5 were adopted?

6 A. I was afraid you were going to ask that  
7 question.

8 Not having a crystal ball and not knowing that  
9 we're going to, you know, run into a problems -- I don't  
10 foresee them.

11 But I think what is important about this  
12 process is -- is that it is not just going to be an audit  
13 where the company will file some numbers and we'll add  
14 them up and make sure that the columns add up and we sign  
15 off.

16 We fully intended that this process, while they  
17 protect all of the parties' rights, especially, and  
18 including the company's, that we will be looking -- we  
19 will be targeting to look at the operations of the power  
20 plants, the purchase power levels, prices, prices of the  
21 fuels, That takes some time.

22 And I would hate to give you -- certainly it's  
23 going to take longer than two weeks, but I can't believe  
24 that it's going to take three months either, as I said  
25 previously.

1           I think if we get the data, we get it in a good  
2   working format and we -- and a lot depends on how busy we  
3   are. A lot of times utilities will file something and  
4   we're just not equipped or we're off doing another  
5   project, and we have to kind of focus and shift gears.

6           But assuming that the timing is right,  
7   physically, I don't think that it's going to take us  
8   two months to do the audit.

9           I suspect it will be several weeks simply  
10  because of the amount of data.

11         Q.       Which means, approximately, when -- given your  
12  range of possibilities of up to three months,  
13  approximately when would that recommendation come in  
14  with -- under the time frames in the stipulation?

15         A.       If I can give you some ballparks, it would take  
16  us, say, four weeks from the close of the end of the  
17  interim surcharge -- or excuse me -- interim energy  
18  charge, you know, we could probably put -- if we have an  
19  agreement.

20           And that will streamline the process if we have  
21  an agreement, if we can file some type of a joint  
22  recommendation or stipulation among the parties, we could  
23  probably have that done two or three weeks after -- after  
24  the four-week review.

25           If we don't have agreement and testimony and I

1     assume at that -- at some point we would have to come  
2     before you and say we don't have an agreement, and so then  
3     there is going to be a procedural schedule. That will be  
4     ironed out. And that will then dictate how long it will  
5     be.

6                     But if we have an agreement and we can write a  
7     stipulation, four weeks to do the audit and, say,  
8     two weeks to negotiate the stipulation. We've learned  
9     some lessons from this one, and we can streamline that  
10    process.

11                    So filing, maybe, perhaps, in six weeks.

12         Q.         I'm still looking for a date, Mr. Featherstone.

13                    I'm trying to gather when this would all be  
14    included, when you add in the time frame for the  
15    provisions of the two-year provision that we're looking  
16    at, until we get a refund to a customer -- which is a  
17    little different than what I asked you earlier, a refund  
18    to the customer, if one is due, from the time frame that  
19    we started this two-year period.

20         A.         I think the stipulation spells out that this  
21    goes for two years. So that takes us to October 2003.

22                    If everything falls in place like I've  
23    described, probably sometime, maybe, the first quarter of  
24    2004.

25         Q.         All right. Now, from the standpoint of this

1 particular recommendation on the fuel and purchase power  
2 expense, can you tell me why Staff believes it's  
3 appropriate in this case to adopt this, for the Commission  
4 to adopt this stipulation?

5 A. As indicated in my testimony, I think there is  
6 really two fundamental reasons.

7 One, we've talked a lot about -- we've heard a  
8 lot about, just not in this proceeding, but in dealing  
9 with natural gas companies, we've saw wide swings of  
10 fluctuations.

11 We were not comfortable in, frankly, having a  
12 rate that was of this magnitude, 5 and \$6 gas rates,  
13 without some type of a safety net. So we felt that this  
14 mechanism afforded us that.

15 Secondly, the increase in gas usage at Empire  
16 is unique, in particular to this company, with the  
17 increased usage for the combined cycle unit that's  
18 expected to come on line shortly. That put the company at  
19 greater risk, but also its customers.

20 So we felt that this was a good balance, that  
21 if we could come up and determine a range, albeit it's  
22 kind of a broadband range, where there is some downsides  
23 and upsides, but we've tried to within the range create a  
24 balance of the risk.

25 So that if we miss whatever we think its

1 forecast is, we'll have the opportunity to either correct  
2 it and get the money to the customers, or if we miss it  
3 the other way, then the company is entitled to it and they  
4 become permanent rates.

5           So I think it was those two fundamental reasons  
6 is why the Staff supports this.

7       Q.       Would you say that this policy in this  
8 stipulation, this calculation through this formula would  
9 be -- would be a general policy that you would encourage  
10 the Commission to use in other cases?

11       A.       I've tried to structure my testimony thus far  
12 as that it's unique under the circumstances for this case.

13           If the circumstance continue and if there is  
14 another company that has similar characteristics of  
15 Empire, then I would say, yes, with those two caveats.

16       Q.       And is that because -- as I understand your  
17 testimony -- it is because of the fact that Empire has  
18 chosen over the course of its history to rely more on  
19 natural gas as its fuel for production of electricity, or  
20 is it something else in addition to that?

21       A.       I think Mr. Beecher gave a good overview of how  
22 they arrived in their decision-making process. I don't  
23 quarrel with that.

24           I think that I would add -- I would agree with  
25 everything he said, and I would probably add that the

1 utility is not just Empire but most of our utilities in  
2 this state, and in this region, for that matter, have  
3 moved in the direction of more gas production.

4           There are several combustion turbines that were  
5 being built and have been built. Kansas City Power &  
6 Light as an example. They've built a combined cycle unit  
7 that they just recently brought online.

8           So it is not just Empire. It is the direction  
9 of the industry.

10       Q.       The reason for my question and my concern is  
11 whether or not we are creating either an incentive or no  
12 disincentive for the purchase of power from higher-cost  
13 fuel, if the result is the allowance of the fuel costs to  
14 be passed through in the way that this particular  
15 stipulation allows it.

16           And what I'm inquiring of you is to whether or  
17 not you see that that is the case or you believe that it  
18 is not the case in regard to policy being set by the  
19 Commission on this particular matter and on any others?

20       A.       I think one of the -- one of the drivers and  
21 one of the difficulties -- while we had difficulty in  
22 reaching agreement -- even after we reached agreement on  
23 this particular matter, the interim energy charge, the  
24 very beginning stages -- and I don't want to get too much  
25 into the details to review any negotiations, but the very



1 beginning stage we looked at just one fuel source.

2 And we kept struggling with trying to develop a  
3 mechanism that was similar to what we used 15 or so years  
4 ago. That didn't get us anywhere but a great deal of  
5 frustration.

6 It was not until we started looking at the  
7 total fuel and purchase power -- which I hope is  
8 addressing your question.

9 Because once you do that, then you do not rely  
10 unnecessarily or unduly on any one particular fuel source,  
11 because there is a great deal of interplay between natural  
12 gas prices and the purchase power market.

13 And our concern was that if we just stuck with  
14 the forecasted fuel for natural gas prices and did a  
15 forecast fuel based on that fuel source alone, we might  
16 lock ourselves in -- or the company could lock themselves  
17 in -- to a price, forecasted price, but then it would  
18 become attractive to use some other fuel source or to go  
19 out on a purchase power interchange market.

20 And then we would be stuck with an agreement  
21 that deals with natural gas costs that we would have to  
22 true-up to when they didn't rely much on natural gas  
23 because they were purchasing on the interchange market.

24 So we tried to structure this particular  
25 proposal, that we'll compensate for that, if you will,

1 because it's intolerable.

2 And I would say the beauty of what the -- I  
3 think the thing that allows the balance is that we are  
4 truing up to actual costs incurred, prudently incurred  
5 costs.

6 Q. So if that is the case, that this is good  
7 policy for Empire in this case and it is not just related  
8 to the fact that they're in a situation where they rely  
9 more heavily on one fuel source for the production of  
10 their electricity, why is this not good policy for every  
11 other case that this Commission will hear regarding fuel  
12 costs on electric production?

13 A. I think when you look at Empire's fuel mix,  
14 it's different than KCPL's or Union Electric's or  
15 Utilicorp's, St. Joe Light and Power, for that matter.

16 Mr. Beecher addresses in his supplemental  
17 testimony that if we miss the mark for -- the forecast by  
18 a dollar for gas, that that is \$12 million, approximately,  
19 to the company, which is half their earnings.

20 There is a significant risk with their fuel  
21 burns and with the volatility of the natural gas market.

22 In prior rate cases we've had issues with the  
23 company, that Mr. Beecher and I have had numerous  
24 discussions dating back to 1995 about the gas prices.

25 In '95 we were arguing about whether gas was

1     \$1.60 or \$2.20.

2                   At a third of the burn, natural gas burn, the  
3     risk to the company, albeit that wasn't immaterial, it  
4     doesn't devastate their earnings if I miss or if he  
5     misses.

6                   And it makes for interesting discussions, and  
7     maybe ultimately to come in here and have an interesting  
8     day, and then you can make a decision based upon the  
9     record.

10        Q.        So if I'm understanding you correctly, while  
11     the case and the resolution of fuel costs is not now  
12     confined as it might have been under the bill that was  
13     passed to the Legislature to one fuel supply, that the  
14     rationale for the Commission adopting this is really about  
15     this company's financial position and the risk factors  
16     involved to it uniquely because of its heavy reliance on  
17     natural gas, and not to the fact that you believe that  
18     this particular resolution of calculation of pass-through  
19     of fuel and energy costs, fuel and purchase power expense,  
20     is the right solution from a policy standpoint independent  
21     of the company?

22                   And I realize that's a long question, but I  
23     hope I expressed it.

24        A.        I think it's the right solution for this  
25     company for now.

1           As Mr. Beecher says, if gas costs goes back to  
2     \$2 -- they'll have the gas burns. If it goes back to \$2,  
3     they'll have increased gas burns.

4           Q.       Because they'll be making more money to their  
5     shareholders pocket if it's below the -- no, that's not  
6     correct.

7           What price would the -- for natural gas would  
8     we be getting to the point where it would be below the  
9     amount necessary to generate a refund?

10          Do you know what I'm asking?

11          A.       I think so. And it really doesn't work that  
12     way.

13          We have a gas price built into a fuel model,  
14     but that fuel model has many other inputs.

15          Q.       Yes.

16          A.       And so you just can't go in and put in the gas  
17     price --

18          Q.       Yes.

19          A.       -- and it spits out an output and has kind of a  
20     break-even analysis per se.

21          The \$20 that we're speaking of is a total fuel  
22     and purchase power. It's a \$20 per megawatt hour. Part  
23     of it is built in as -- all of the components that  
24     Mr. Beecher spoke of earlier, with the gas prices, coal  
25     prices, purchase power level and purchase power.

1 Q. Have you ever -- have you ever seen this kind  
2 of a proposal recommended by Staff before today?

3 A. Not exactly like this in its totality.

4 This is premised upon the fuel -- forecasted  
5 fuel true-up audits or forecasted fuel true-up procedures  
6 that we did in the early '80s.

7 It dealt primarily with two fuel sources. And  
8 principally one fuel source, coal, in the freight rates.  
9 And as a secondary feature, in some cases it included  
10 natural gas.

11 COMMISSIONER GAW: Okay. I believe that's all  
12 I have. Thank you.

13 JUDGE RUTH: Are there any other Commissioner  
14 questions?

15 Okay. Based on the questions from the bench,  
16 the parties have the opportunity for recross.

17 Public Counsel, do you have recross?

18 MR. COFFMAN: No, Your Honor.

19 JUDGE RUTH: Empire?

20 RECROSS-EXAMINATION BY MR. DUFFY:

21 Q. If Empire owned a nuclear power plant, would  
22 they have a bigger rate base than they have right now?

23 A. Absolutely.

24 Q. And if they had a bigger rate base and they had  
25 earnings on that rate base, they would probably have

1 more -- oh, for lack of a better word, cushion, I guess,  
2 to deal with vagaries in the price of natural gas.

3 Would you agree with that?

4 A. Yes.

5 One of the problems that Empire has is its  
6 size. The margin of error is more critical for Empire  
7 than, say, Kansas City Power & Light or a Union Electric.

8 Q. Finally, do you have a concept or can we  
9 generalize with regard to where Empire's rates for  
10 electricity have been, let's say, over the last 10 or  
11 15 years in comparison to, perhaps, some of the rates of  
12 the other companies in the state, like Kansas City Power &  
13 Light or what's now AmerenUE?

14 Are Empire's rates generally -- have Empire's  
15 rates historically been at the end low end of the range or  
16 at high end of the range compared to the other companies?

17 A. You must have read my merger testimony filed in  
18 the Utilicorp's/Empire merger.

19 At the time when I filed that testimony, which  
20 was last summer, over a span of several years, there  
21 wasn't any particular one year but several years, and I  
22 don't recall -- probably the latest was the figures that I  
23 had was 1999, and it was probably at least five or six  
24 years worth of data.

25 Empire and St. Joe Light and Power would go

1 back and forth between the lowest cost provider of  
2 electricity in the state.

3 Q. Can you draw any conclusions from that data  
4 from the standpoint of saying that if Empire had the  
5 lowest or next-to-the-lowest electric rates in the state  
6 for that period of time, that they were doing a reasonable  
7 job of managing their generation of resources and their  
8 mix?

9 Can you draw any conclusion like that?

10 A. I don't -- I don't quarrel with the way that  
11 Empire has made decisions and have operated its company.

12 I don't know if I want to testify that they've  
13 done an outstanding job or they're the best management in  
14 the world, but I think they've done a very credible job in  
15 terms of when you look at their customer service complaint  
16 levels, and you look at their overall rate levels and  
17 their commitment to the community.

18 I've worked with several Empire cases. It  
19 dates back to probably the early '90s, mid '90s. So I  
20 think it's a pretty good company, and I think they have a  
21 track record that has provided good, adequate service to  
22 its customers.

23 MR. DUFFY: Thank you.

24 JUDGE RUTH: Praxair?

25 MR. CONRAD: No questions. Thank you.

1 JUDGE RUTH: Staff, do you have redirect?  
2 MR. FREY: No, Your Honor. Thank you.  
3 JUDGE RUTH: Mr. Featherstone, you may step  
4 down.  
5 THE WITNESS: Excused?  
6 JUDGE RUTH: You are excused, Mr. Featherstone.  
7 THE WITNESS: Thank you very much.  
8 JUDGE RUTH: Staff, would you like to call your  
9 next witness.  
10 MR. FREY: Yes, thank you, Your Honor.  
11 Staff calls Kwang Choe.  
12 JUDGE RUTH: Mr. Choe.  
13 (Witness sworn/affirmed.)  
14 JUDGE RUTH: Thank you.  
15 Please be seated.  
16 Staff.  
17 MR. FREY: Thank you, Your Honor.  
18 KWANG CHOE testified as follows:  
19 DIRECT EXAMINATION BY MR. FREY:  
20 Q. Please state your name for the record, sir.  
21 A. My name is Kwang Choe, K-w-a-n-g, C-h-o-e.  
22 Q. And by whom are you employed and in what  
23 capacity?  
24 A. I'm a regulatory economist in the procurement  
25 analysis with the Missouri Public Service Commission.



1 Q. Did you prepare and cause to be filed what have  
2 been marked for purposes of identification as Exhibits 41  
3 and 42, respectively, Choe direct and Choe surrebuttal?

4 A. Yes, I did.

5 Q. And do you have any corrections to that  
6 testimony at this time?

7 A. No, I don't.

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

10 A. Yes.

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

13 A. Yes.

14 MR. FREY: Your honor, at this time I would  
15 offer Exhibits 41 and 42 for admission into the record and  
16 tender the witness for cross-examination.

17 JUDGE RUTH: Thank you.

18 Sir, could you pronounce your last name for me  
19 again?

20 THE WITNESS: Yes. Some people say Choe, but  
21 I'd rather have Choe. Choe is enough, but I like Choe  
22 better than Choe.

23 JUDGE RUTH: Choe?

24 THE WITNESS: C-h-o-plus-e. Choe plus e. It's  
25 more like a German word.

1 JUDGE RUTH: Okay. I will try -- and feel free  
2 to correct me if and when I don't get it correctly.  
3 THE WITNESS: I've heard many different sounds  
4 though. I won't be surprised to hear --  
5 JUDGE RUTH: I will try to pronounce it  
6 correctly.  
7 THE WITNESS: Thank you, ma'am.  
8 JUDGE RUTH: Staff has offered Exhibits 41 and  
9 42, the direct and surrebuttal testimony of Mr. Choe.  
10 Are there any objections to these two  
11 documents?  
12 Seeing no objections, Exhibits 41 and 42 are  
13 admitted into the record.  
14 (EXHIBIT NOS. 41 AND 42 WERE RECEIVED INTO  
15 EVIDENCE.)  
16 JUDGE RUTH: Public Counsel, do you have  
17 cross-examination.  
18 MR. COFFMAN: I do not. Thank you.  
19 JUDGE RUTH: And Empire?  
20 MR. DUFFY: Pursuant to stipulation we do not.  
21 JUDGE RUTH: And Praxair?  
22 MR. CONRAD: Pursuant to the stipulation we do  
23 not either. Thank you, ma'am.  
24 JUDGE RUTH: Thank you.  
25 Chair Lumpe?

1 CHAIR LUMPE: I have no questions.  
2 JUDGE RUTH: Commissioner Murray?  
3 COMMISSIONER MURRAY: I believe I will pass.  
4 JUDGE RUTH: Commissioner Simmons?  
5 COMMISSIONER SIMMONS: I have no questions.  
6 Thank you.  
7 JUDGE RUTH: Commissioner Gaw?  
8 COMMISSIONER GAW: No, I have no questions.  
9 JUDGE RUTH: I assume, then, there will be no  
10 need for the recross and redirect then.  
11 And, sir, you may step down.  
12 THE WITNESS: Thank you very much.  
13 JUDGE RUTH: Staff, I believe you have another  
14 witness.  
15 MR. FREY: Yes. Thank you, Your Honor.  
16 Staff calls Bill Harris.  
17 JUDGE RUTH: Sir, would you raise your right  
18 hand, please.  
19 (Witness sworn/affirmed.)  
20 JUDGE RUTH: Okay. Please be seated.  
21 Staff.  
22 MR. FREY: Thank you, Your Honor.  
23 BILL HARRIS testified as follows:  
24 DIRECT EXAMINATION BY MR. FREY:  
25 Q. Please state your name for the record, sir.

1           A.       William Harris.

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

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

6           Q.       And did you prepare and cause to be filed in  
7   this proceeding what have been marked for purposes of  
8   identification as Exhibits 55, 56 and 57, respectively;  
9   Harris Direct HC, Harris Direct NP and Harris Surrebuttal?

10          A.       Yes, I did.

11          Q.       Do you have any corrections to that testimony  
12   at this time?

13          A.       Actually, I do have a very minor typographical  
14   error on both page -- both -- on page 2 of both 55 and 56.  
15                    On line 10, with reference to case numbers, the  
16   "s" should be stricken. It should just be case number.

17                    And, like I said, that's on page 2, line 2 on  
18   both 55 and 56.

19                    And that would be the only correction.

20          Q.       Okay. And with that correction, if I were to  
21   ask you the same questions today as were in that  
22   testimony, would your answers be the same?

23          A.       Yes, they would.

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

1           A.       Yes, they are.

2                   MR. FREY:   Your Honor, at this time I would  
3   offer Exhibits 55, 56 and 57 for admission into the record  
4   and tender the witness for cross-examination.

5                   JUDGE RUTH:   Thank you.

6                   Exhibit 55 is Mr. Harris's HC Direct, 56 is  
7   Mr. Harris's NP Direct and 57 is his surrebuttal.

8                   Do the parties have any objections to these  
9   three documents being admitted into the record?

10                  Seeing no objections, Exhibits 55, 56 and 57  
11   are received into the record.

12                  (EXHIBIT NOS. 55 THROUGH 57 WERE RECEIVED INTO  
13   EVIDENCE.)

14                  JUDGE RUTH:   Mr. Coffman, do you have any  
15   cross-examination?

16                  MR. COFFMAN:   I do not, Your Honor.

17                  JUDGE RUTH:   Mr. Duffy?

18                  MR. DUFFY:   Pursuant to the stipulation we do  
19   not.

20                  JUDGE RUTH:   Mr. Conrad?

21                  MR. CONRAD:   Given that Mr. Harris has now  
22   corrected that part of the testimony and also pursuant to  
23   the stipulation, we have no questions.

24                  JUDGE RUTH:   Thank you.

25                  Chair Lumpe, do you have questions?

1 CHAIR LUMPE: I have no questions.

2 JUDGE RUTH: Commissioner Murray?

3 COMMISSIONER MURRAY: No questions. Thank you.

4 JUDGE RUTH: Commissioner Simmons?

5 COMMISSIONER SIMMONS: I have none. Thank you.

6 JUDGE RUTH: Commissioner Gaw?

7 COMMISSIONER GAW: No questions. Thank you.

8 JUDGE RUTH: Okay. Then we will again dispense

9 with the recross and the redirect.

10 Sir, you may step down.

11 And, Staff, you may call your next witness.

12 MR. FREY: Thank you, Your Honor.

13 Staff calls Leon Bender.

14 JUDGE RUTH: Okay. Mr. Bender, would you

15 please raise your right hand.

16 (Witness sworn/affirmed.)

17 JUDGE RUTH: Okay. Thank you.

18 Please be seated.

19 Staff.

20 MR. FREY: Thank you, Your Honor.

21 LEON BENDER testified as follows:

22 DIRECT EXAMINATION BY MR. FREY:

23 Q. Please state your name for the record, sir.

24 A. Leon C. Bender, B-e-n-d-e-r.

25 Q. And by whom are you employed and in what

1 capacity?

2 A. I'm employed by the Missouri Public Service  
3 Commission as a regulatory engineer.

4 Q. And did you prepare and cause to be filed in  
5 this proceeding what has been marked for purposes of  
6 identification as Exhibits 36, 37 and 38, which are,  
7 respectively, Bender direct, rebuttal and surrebuttal?

8 A. Yes, I did.

9 Q. Do you have any corrections to that testimony  
10 at this time?

11 A. On Exhibit 38, yes, I do.

12 On Exhibit 38, on surrebuttal -- I'm sorry.

13 On page 7, line 16, between -- it says, in Greg  
14 Sweet's testimony. That should be in Greg Sweet's  
15 rebuttal testimony.

16 Q. Are there any other corrections at this time,  
17 sir?

18 A. No. That's all.

19 Q. And with that correction, if I were to ask you  
20 the same questions today as are in that testimony, would  
21 your answers be the same?

22 A. Yes, they would.

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

25 A. Yes, they are.

1                   MR. FREY: With that, Your Honor, I would offer  
2 Exhibits 36, 37 and 38 for admission into the record and  
3 would tender the witness for cross.

4                   JUDGE RUTH: Thank you.

5                   Exhibit 36, Mr. Bender's direct testimony,  
6 Exhibit 37, his rebuttal, and Exhibit 38, the surrebuttal,  
7 have been offered.

8                   Do the parties have any objections to these  
9 documents?

10                  Seeing no objections, Exhibits 36, 37 and 38  
11 are received into the record.

12                  (EXHIBIT NOS. 36 THROUGH 38 WERE RECEIVED INTO  
13 EVIDENCE.)

14                  JUDGE RUTH: Mr. Coffman, do you have  
15 cross-examination?

16                  MR. COFFMAN: I do not, Your Honor.

17                  JUDGE RUTH: Mr. Duffy?

18                  MR. DUFFY: Pursuant to the stipulation we do  
19 not.

20                  JUDGE RUTH: Mr. Conrad?

21                  MR. CONRAD: Pursuant to the stipulation we do  
22 not.

23                  JUDGE RUTH: Commissioners, I'll start with  
24 Chair Lumpe. Do you have questions?

25                  CHAIR LUMPE: I have no questions of



1 Mr. Bender.

2 JUDGE RUTH: Commissioner Murray?

3 COMMISSIONER MURRAY: No questions. Thank you.

4 JUDGE RUTH: Commissioner Simmons?

5 COMMISSIONER SIMMONS: I have none. Thank you.

6 JUDGE RUTH: Commissioner Gaw?

7 COMMISSIONER GAW: No. Thank you.

8 JUDGE RUTH: Again, we will dispense with the

9 recross and the redirect, and you may step down.

10 THE WITNESS: Thank you.

11 Okay. Staff, is that all of your witnesses?

12 MR. FREY: Yes, Your Honor.

13 JUDGE RUTH: Okay. Thank you.

14 Public Counsel, would you like to call your

15 witness?

16 MR. COFFMAN: Yes.

17 We would call James A. Busch to the stand.

18 (Witness sworn/affirmed.)

19 JUDGE RUTH: Please be seated.

20 Public Counsel.

21 MR. COFFMAN: Thank you.

22 JAMES A. BUSCH testified as follows:

23 DIRECT EXAMINATION BY MR. COFFMAN:

24 Q. Would you please state your name and title for

25 the record?

1           A.       My name is James A. Busch, and I'm a utility  
2 economist with the Office of Public Counsel.

3           Q.       And are you the same James A. Busch that has  
4 called to be caused in this case direct, rebuttal and  
5 surrebuttal testimony which has been marked for  
6 identification as Exhibits 91, 92 and 93 respectively?

7           A.       Yes, I am.

8           Q.       Do you have any corrections to those prepared  
9 testimonies?

10          A.       Yes, I do.

11                   I have one correction in my rebuttal testimony.  
12 On page 3, line 4, the per MMBtu price I have as .4849.  
13 That should be 4.849.

14          Q.       So, essentially, the decimal point needs to be  
15 moved over?

16          A.       Yes.

17          Q.       Is that your only correction?

18          A.       Yes.

19          Q.       With that correction, if I asked you the same  
20 questions contained in these three testimonies today,  
21 would your answers be the same to your best information,  
22 knowledge and belief?

23          A.       Yes.

24          Q.       Okay. And for clarification, your  
25 responsibility and the subject of your testimony was

1 limited to the natural gas price component of the fuel and  
2 purchase power issue?

3 A. Yes.

4 MR. COFFMAN: I would then offer into the  
5 records Exhibits 91, 92, 93 and offer Mr. Busch for  
6 cross-examination.

7 JUDGE RUTH: Thank you.

8 Exhibit 91, Mr. Busch's direct testimony,  
9 Exhibit 92, his rebuttal, and Exhibit 93, his surrebuttal,  
10 have been offered.

11 Do the parties have any objections to these  
12 three documents?

13 Seeing no objections, Exhibits 91, 92 and 93  
14 are admitted into the record.

15 (EXHIBIT NOS. 91 THROUGH 93 WERE RECEIVED INTO  
16 EVIDENCE.)

17 JUDGE RUTH: Staff, do you have  
18 cross-examination for this witness?

19 MR. FREY: No, thank you, Your Honor.

20 JUDGE RUTH: Empire?

21 MR. DUFFY: Pursuant to the stipulation we do  
22 not.

23 JUDGE RUTH: Praxair?

24 MR. CONRAD: Nor do we pursuant to the  
25 stipulation.

1 JUDGE RUTH: Okay. Commissioners, let me ask  
2 if you have any questions for this witness.

3 COMMISSIONER MURRAY: No.

4 COMMISSIONER SIMMONS: No.

5 COMMISSIONER GAW: Yes.

6 JUDGE RUTH: Okay. Commissioner Gaw.

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. Good afternoon.

9 A. Good afternoon, sir.

10 Q. Have you reviewed the stipulation and agreement  
11 regarding fuel and purchase costs?

12 A. I reviewed what was the original one. When  
13 they did it with the -- added the rate design I have  
14 glanced at it, because it really didn't affect my issue  
15 that much more. So it's been a few weeks, but I've  
16 reviewed it, yes.

17 Q. All right. And can you tell me how much it  
18 differs from your recommendation in your testimony?

19 A. The recommendation in my testimony fell  
20 somewhere between what the company filed in its direct  
21 testimony and above what the Staff had filed.

22 So with the bands that we now have for a base  
23 and a ceiling, it might -- it would fall -- my testimony  
24 would fall right in there.

25 Q. All right. But how does it compare to the

1 stipulation and agreement in your testimony, if you know?

2 A. My testimony was --

3 Q. If you don't, I understand.

4 A. My testimony was to choose one price, as was  
5 the direct testimony of the other parties in this case.

6 The stipulation is creating a band with a  
7 refund provision, which my testimony did not do.

8 Q. And so you really haven't reviewed in depth the  
9 ramifications of the stipulation and agreement. Would  
10 that be fair to say?

11 A. I'm familiar with what the stipulation will do.  
12 As far as ramifications as to what that is going to be to  
13 the customers as opposed to, you know, what's been in the  
14 stipulation, I don't have any further analysis on that,  
15 no.

16 COMMISSIONER GAW: All right. That's fine.

17 Thank you.

18 Thank you, Judge.

19 JUDGE RUTH: Based on the questions from the  
20 bench, do the parties have any recross?

21 Staff?

22 MR. FREY: No, Your Honor.

23 JUDGE RUTH: Empire?

24 MR. DUFFY: No, thank you.

25 JUDGE RUTH: Praxair?

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

2                   JUDGE RUTH:  And will there be redirect from

3  Public Counsel?

4                   MR. COFFMAN:  No, thank you.

5                   JUDGE RUTH:  Sir, you may step down.

6                   Public Counsel, do you have another witness?

7                   MR. COFFMAN:  Yes.  We would then call to the

8  witness stand Russell W. Trippensee.

9                   (Witness sworn/affirmed.)

10                  JUDGE RUTH:  Thank you.

11                  Please be seated.

12                  Public Counsel.

13  RUSSELL W. TRIPPENSEE testified as follows:

14  DIRECT EXAMINATION BY MR. COFFMAN:

15           Q.       Please state your name and title again for the

16  record.

17           A.       My name is Russell W. Trippensee.  I'm the

18  chief utility accountant for the Office of the Public

19  Counsel.

20           Q.       And are you the same Russell W. Trippensee that

21  has caused to be filed in this case what was titled direct

22  testimony marked as Exhibit 94?

23           A.       Yes, I am.

24           Q.       And did you file that testimony in support in

25  an explanation of the original stipulation and agreement

1     which was nonunanimous and filed on May 14, 2001?

2           A.       That is correct.

3           Q.       And have you then subsequently reviewed the  
4     unanimous stipulation and agreement filed on June 4?

5           A.       Yes, I have.

6           Q.       Do the interim energy charge provisions in  
7     those two stipulations differ in any significant way?

8           A.       Not to my knowledge, no, they do not.

9           Q.       And in this testimony which you filed on  
10    May 22nd, you refer to the stipulation and agreement.

11                   And for clarification, you were referring to  
12    the May 14 stipulation and agreement, were you not?

13          A.       Yes, I was.

14          Q.       Are any of your statements, explanations or  
15    opinions in this testimony regarding the May 14  
16    stipulation and the interim energy charge equally  
17    applicable to the June 4 stipulation and the interim  
18    energy charge contained in that stipulation?

19          A.       Yes, they are consistent.

20                   MR. CONRAD:  That would conclude my questions,  
21    and I would offer Exhibit 94 into the record and offer  
22    Mr. Trippensee for cross-examination.

23                   JUDGE RUTH:  Exhibit 94, Mr. Trippensee's  
24    direct testimony, has been offered.

25                   Do the parties have any objections?

1                   Seeing no objections, Exhibit 94 is received  
2 into the record.

3                   (EXHIBIT NO. 94 WAS RECEIVED INTO EVIDENCE.)

4                   JUDGE RUTH: Staff, do you have  
5 cross-examination?

6                   MR. FREY: No, thank you, Your Honor.

7                   JUDGE RUTH: Mr. Duffy?

8                   MR. DUFFY: No questions pursuant to the  
9 stipulation.

10                  JUDGE RUTH: Mr. Conrad?

11                  MR. CONRAD: Pursuant to the stipulation, no  
12 questions.

13                  JUDGE RUTH: Chair Lumpe?

14 QUESTIONS BY CHAIR LUMPE:

15                  Q.       Mr. Trippensee, I think I asked one of the  
16 company witnesses this question.

17                       The interest that is to accrue over the -- over  
18 the period of this, would you explain that to me?

19                       My understanding was that it doesn't occur in  
20 the first year; it waits until the second year.

21                       Would you -- can you explain that to me?

22                  A.       Yes, ma'am.

23                       The stipulation provides that if there is a  
24 refund determined, that the interest will accrue -- begin  
25 accruing on the refund amount at the end of the first year



1     that the IEC is in effect.

2                   The IEC -- and through the time that the refund  
3     is actually made to the customers either through a bill of  
4     credit or a check.

5                   The IEC is calculated on an annualized basis.  
6     So at any point in time during that initial year you could  
7     not make a determination as whether they were in a refund  
8     position or a nonrefund position, because you have to look  
9     at it on an annualized basis for fuel cost.

10        Q.        Okay.  Thank you.  I think I now understand.

11                   And Public Counsel does support this  
12     stipulation and agreement?

13        A.        Yes, we do.

14                   CHAIR LUMPE:  Thank you.

15                   JUDGE RUTH:  Commissioner Murray?

16                   COMMISSIONER MURRAY:  No questions.

17                   JUDGE RUTH:  Commissioner Simmons?

18                   COMMISSIONER SIMMONS:  I do not have anything.

19     Thank you.

20                   JUDGE RUTH:  Commissioner Gaw?

21     QUESTIONS BY COMMISSIONER GAW:

22        Q.        Good afternoon.

23        A.        Good afternoon.

24        Q.        Your support for this provision in this  
25     stipulation and agreement regarding the refund provisions

1 and the calculation figures for fuel and purchase power  
2 expense, does it extend beyond this case?

3 A. No, sir, it does not.

4 Q. And why not?

5 A. Um, we believe the factors in this case are  
6 fairly unique and that it does not preclude a similar  
7 mechanism in a future case, but the fact -- some of the  
8 factors, such as fuel mix, volatility of a fuel that  
9 causes a significant financial impact, the size of the  
10 utility, are factors that needed to be taken into  
11 consideration in this case to ensure that the customers  
12 received service, that Empire had an opportunity to earn a  
13 reasonable return, and that's why we believe it's  
14 appropriate in this case. We do not see it as a long-term  
15 solution.

16 Q. From Public Counsel's standpoint, tell me how  
17 this particular stipulation is in the best interests of  
18 the consumers.

19 A. Um, one consideration is there was quite  
20 divergent views on what the appropriate gas price would be  
21 to put into a fuel model for determining annualized fuel  
22 costs. Arguments could be made on each side in our view.  
23 I mean, gas costs had approached \$8 and \$9 at one point in  
24 time.

25 We wanted to ensure that the stip -- that the

1 fuel cost stipulation such as this provided the protection  
2 to the ratepayers. We believe the refund mechanism does  
3 that.

4 Also, from the standpoint of the customers,  
5 provision of service and continued provision of reliable  
6 service is critical. And that requires normally that a  
7 utility have the financial ability to do so.

8 I believe it's been discussed earlier, but the  
9 difference in these fuel gas prices, that variable alone  
10 could eat up well over half of the net income on an  
11 annualized basis of Empire.

12 That is a significant, significant financial  
13 implication if that, in fact, occurred.

14 So the two divergent views or positions on  
15 price, while both could be justified and were, I think,  
16 adequately by Mr. Busch for our office, by the Staff  
17 witnesses, by the company witnesses, may not have been --  
18 and I think the parties' view was not the best solution to  
19 bring to this Commission to pick between such extremes,  
20 but to look at more of a solution that could address  
21 hopefully what is a short-term volatility in this market  
22 as the market adjusts to the kind of some of the new  
23 realities and paradigms that are occurring in the utility  
24 business with gas prices, deregulation, things along that  
25 line.

1       Q.       Would your recommendation on this stipulation  
2   be the same regardless of -- let me say it this way:  
3   Would it be the same if there had not been any legislation  
4   passed this session regarding the pass-through of fuel  
5   costs relating to Empire?

6       A.       Would our recommendation have been the same?

7       Q.       Yes.

8       A.       I'm not going to sit here and say that we were  
9   not aware of the legislation.

10               We -- our office took an active position in  
11   opposition to the legislation. We thought it had some bad  
12   incentives built into it. So, therefore, I think it did  
13   impact the recommendation.

14               I think it is a good impact in that we are  
15   looking at this recommendation at total fuel cost, not  
16   simply providing an incentive for gas costs or to build  
17   gas or anything like that. We're looking at the total  
18   package.

19               Empire was stuck in a situation of bringing on  
20   a unit that because of its size, the unit size and  
21   Empire's size, put extraordinary emphasis on gas because  
22   it was a gas-fired unit.

23               But base load or this size units come on in  
24   large blocks and have temporary skewing of the resources  
25   available to the company.

1                   As their load grows, as they put on another  
2   unit of some sort or acquire purchase power contracts,  
3   fixed capacity contracts, their mix will hopefully come  
4   back more into a more diverse type of mix.

5       Q.       Let me make sure I understand what you're  
6   telling me here on my question.

7                   If there had not been any passage of any  
8   legislation relating to Empire this year, would -- if this  
9   stipulation were available to you, would Public Counsel  
10   have signed off and supported it?

11      A.       Maybe -- let me rephrase your question, just so  
12   I can make sure I understood it.

13      Q.       You can rephrase it. I'll ask it again if it's  
14   not rephrased to my liking.

15      A.       That's perfectly understandable.

16                  Are you saying we would -- would we have signed  
17   the stipulation had there not been legislation?

18      Q.       Yes.

19      A.       Yes, I believe we would have.

20      Q.       That is my question.

21                  You were telling me, independent of that  
22   legislation, that Public Counsel believes this is a  
23   positive and a good solution for the consumers of Empire.  
24   Would that be --

25      A.       Under the current set of circumstances, yes,

1 sir, that's correct.

2 Q. And the current sets of facts are factual, not  
3 relating to the legislation?

4 A. That is correct.

5 COMMISSIONER GAW: That's what I was asking.

6 I think that's all I have. Thank you.

7 JUDGE RUTH: Any other Commission questions?

8 Staff, do you have recross?

9 MR. FREY: No, Your Honor. Thank you.

10 JUDGE RUTH: Empire?

11 MR. DUFFY: No, thank you.

12 JUDGE RUTH: Praxair?

13 MR. CONRAD: No, Your Honor. Thank you.

14 JUDGE RUTH: Public Counsel, do you have  
15 redirect?

16 MR. COFFMAN: Yes, just a little.

17 REDIRECT EXAMINATION BY MR. COFFMAN:

18 Q. Mr. Trippensee, you were asked about whether  
19 this interim energy charge would be applicable to other  
20 companies or other situations, and I wanted to make sure  
21 that you had the opportunity to give every qualification  
22 or limitation that you thought might be appropriate.

23 I believe you did mention that the size of this  
24 company, its reliance on -- significant reliance on  
25 natural gas fuel at this time and the financial

1     implications of those were factors.

2                     Is the current unstable nature of the natural  
3     gas and other fuel markets a consideration as well?

4             A.       I think I testified that the parties had widely  
5     divergent one-price projections, and that was a  
6     consideration in how we crafted the stipulation and  
7     agreement, the interim energy charge.

8                     But those -- that wide fluctuation in price for  
9     natural gas comes right back to the fuel mix, the unit mix  
10    of Empire, the size of Empire, their ability to -- I think  
11    Mr. Duffy used the term "cushion," how much cushion they  
12    have.

13                    They don't have that much financial flexibility  
14    as, say, an Ameren, as a KCP&L, who are -- and those two  
15    companies, in particular, are dealing with large nuclear  
16    unit with a fixed lease on the nuclear fuel, which  
17    provides a significant portion of their power.

18                    They can absorb fluctuations in different  
19    fuels. They can go to other sources much more readily  
20    than Empire can.

21             Q.       Do you believe that the interim energy charge  
22    would continue to be an approach that would be in the  
23    public interest if the natural gas market stabilized?

24             A.       The entire concept of this stipulation and  
25    agreement came out of discussions where people who had

1    been through the forecasted fuel procedures in the early  
2    '80s, it's just an extension of those.

3                   At that point in time there was fluctuating  
4    markets.  Markets, over time, if they are competitive, or  
5    close to truly competitive, have a tendency to stabilize.  
6    That's the whole economic theory.

7                   Assuming that the natural gas market is  
8    competitive today, they should stabilize within a  
9    reasonable period of time also, and there would be no more  
10   need for this.

11       Q.        Were you involved in the public utility  
12    ratemaking process in the early '80s when the forecasted  
13    fuel mechanism was used a few times?

14       A.        Yes, I was.

15       Q.        And that turned out to be -- or do you believe  
16    that that was an appropriate response during that limited  
17    time of instability?

18       A.        It was the best response available to provide  
19    both good price signals to the customers, but also let the  
20    companies have an opportunity to earn the rate of return  
21    as is required by case law that's 60, 70 years old in the  
22    field of regulation.

23       Q.        And just again to reemphasize or clarify:  The  
24    interim energy charge in your opinion would be far  
25    superior to any fuel adjustment clause such as that



1 contained in the legislation, Senate Bill 387?

2 A. Yes.

3 As I tried to respond to Commissioner Gaw's  
4 question, it was a consideration in developing this  
5 stipulation, Senate Bill 387 was, in that we felt there  
6 were significant deficiencies in that legislation, and  
7 that we did not -- if we were going to craft something, we  
8 did not want to include those deficiencies in what was  
9 crafted.

10 MR. COFFMAN: Very good. Thank you.

11 JUDGE RUTH: Okay. It's my understanding that  
12 that is all of the witnesses that the parties plan to  
13 call.

14 Is that correct?

15 MR. COFFMAN: That is correct.

16 JUDGE RUTH: Mr. Trippensee, you may step down.

17 THE WITNESS: Thank you.

18 JUDGE RUTH: I believe the only matters we have  
19 left are a couple of housekeeping issues that we had  
20 discussed briefly, and I said we would come back to those.

21 MR. DUFFY: Your Honor, I've got a couple of  
22 housekeeping-type things.

23 I would like to move for the admission of  
24 Exhibit No. 4, the direct testimony of Mr. Fancher, and  
25 Exhibit No. 7, the direct testimony of Mr. Coit.

1                   Those are both witnesses of Empire that were on  
2   issues that have been resolved in the course of the  
3   proceeding.

4                   JUDGE RUTH:   And Exhibit 4, then, was  
5   Mr. Francher's.   Is that correct?

6                   MR. DUFFY:   Fancher, F-a-n-c-h-e-r.

7                   And 7 is Coit, C-o-i-t.   Those were both  
8   premarked.

9                   JUDGE RUTH:   Okay.   Exhibit 4, do the parties  
10   have any objections to this document?

11                  Okay.   Exhibit 4, Mr. Fancher's direct, is  
12   admitted into the record.

13                  (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

14                  JUDGE RUTH:   Exhibit 7 is the direct testimony  
15   of Coit.   Are there any objections to this document?

16                  Exhibit 7, then, is also received into the  
17   record.

18                  (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

19                  JUDGE RUTH:   Mr. Duffy, did you have any other  
20   housekeeping matters?

21                  MR. DUFFY:   Not at this point.   Thank you.

22                  JUDGE RUTH:   Okay.   I did --

23                  MR. DUFFY:   I'm sorry.   Could you tell me the  
24   status of 115 and 116?

25                  JUDGE RUTH:   Exhibit 115, the company's

1 response to Data Request 318HC, that's what you're  
2 referring to?

3 MR. DUFFY: I'm trying to read Swearengen's  
4 handwriting, and all I can see is Exhibit 115, and it  
5 doesn't say whether it was admitted or not.

6 JUDGE RUTH: That was admitted into the record.

7 And 116 was a similar document, but it was in  
8 response to 331, and it was also received into the record.

9 MR. DUFFY: Thank you, ma'am.

10 JUDGE RUTH: I thought since we had so many  
11 documents, so many exhibits, some of which were never  
12 offered into the record, I wanted to take just a little  
13 bits of time to go through and make sure our records all  
14 comport as to what was admitted and what was not admitted.

15 We'll go off the record briefly for this  
16 portion.

17 (OFF THE RECORD.)

18 JUDGE RUTH: I need to state on the record that  
19 we have discussed the schedule of exhibits.

20 And the record shows that Exhibits 1 through 15  
21 have been admitted into the record.

22 In addition, Exhibits 16 through 31 have been  
23 admitted into the record.

24 Staff, did you wish to offer Exhibit 32, Staff  
25 accounting schedules?

1                   MR. FREY: Yes, we do. We do, Your Honor.

2                   JUDGE RUTH: Do the parties have any objection

3 to Exhibit 32 being received?

4                   Seeing no objection, Exhibit 32, the Staff

5 accounting schedules, are received into the record.

6                   (EXHIBIT NO. 32 WAS RECEIVED INTO EVIDENCE.)

7                   JUDGE RUTH: Okay. I show that Exhibits 33

8 through 46 were received into the record.

9                   I also show that Exhibits 47 and 48 and 49 were

10 not offered into the record. Is that correct, parties?

11                  MR. FREY: That's correct.

12                  JUDGE RUTH: Okay. And it's my understanding

13 that the parties do not intend to offer 47, 48 and 49?

14                  MR. FREY: That's correct, Your Honor.

15                  JUDGE RUTH: Thank you.

16                  I also show that Exhibits 50 through 58 were

17 received into the record.

18                  Staff, do you intend to offer Exhibit 59, or

19 did I miss -- was that already offered?

20                  MR. FREY: No, Your Honor. We do intend to

21 offer it. That's the direct testimony of Linda Mantle.

22                  JUDGE RUTH: Okay.

23                  Do the parties have any objections to

24 Ms. Mantle's direct testimony being admitted into the

25 record?

1                   MR. CONRAD: Your Honor, she was on issues that  
2 disappeared. Could I get clarification on that?

3                   MR. FREY: That's correct.

4                   MR. CONRAD: No objection.

5                   JUDGE RUTH: Exhibit 59 is received into the  
6 record.

7                   (EXHIBIT NO. 59 WAS RECEIVED INTO EVIDENCE.)

8                   JUDGE RUTH: Staff, I show Exhibit 60 was  
9 marked for identification purposes as Mr. McDuffy's direct  
10 testimony. Did you intend to offer that?

11                  MR. FREY: Yes, Your Honor.

12                  JUDGE RUTH: Do the parties have any  
13 objections?

14                  Exhibit 60 is received into the record.

15                  (EXHIBIT NO. 60 WAS RECEIVED INTO EVIDENCE.)

16                  JUDGE RUTH: Exhibits 61, 62 and 63 were  
17 previously received into the record.

18                  Staff, did you intend to offer Ms. McMellen's  
19 testimony as Exhibit 64?

20                  MR. FREY: Yes, Your Honor.

21                  JUDGE RUTH: Do the parties have any  
22 objections?

23                  Exhibit 64 is received into the record.

24                  (EXHIBIT NO. 64 WAS RECEIVED INTO EVIDENCE.)

25                  JUDGE RUTH: Exhibits 65, 66 and 67 were

1 previously received into the record.

2 I'm sorry. Clarify for me.

3 Was Exhibit 68 offered?

4 MR. FREY: It was not, Your Honor. We would  
5 like to do so at this time.

6 JUDGE RUTH: Exhibit 68, Mr. Patterson's direct  
7 testimony, do the parties have any objection?

8 Seeing no objection, 68 is received into the  
9 record

10 (EXHIBIT NO. 68 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE RUTH: Exhibit 69 was marked for  
12 identification purposes as Ms. Pyatte's direct testimony  
13 filed 4-3-2001. My notes indicate it was not previously  
14 offered.

15 Staff, do you wish to offer it now?

16 MR. FREY: We would like to, Your Honor.

17 JUDGE RUTH: Do the parties have any objections  
18 to 69?

19 MR. CONRAD: Just the clarification. I had  
20 down that that was originally -- that's the 4-3 -- the  
21 April 3 version, Your Honor, and that -- my understanding  
22 is it was not going to be and 72 was, but apparently I've  
23 gotten that crossed up.

24 MR. FREY: Mr. Conrad, that's as to the revenue  
25 issue that Ms. Pyatte filed testimony on.

1 JUDGE RUTH: I just noted it was not offered at  
2 that time.

3 MR. FREY: Right.

4 JUDGE RUTH: And I wasn't sure if Staff  
5 intended to offer it later.

6 MR. FREY: It does not pertain to the cost of  
7 service rate design that was filed on April 10th.

8 JUDGE RUTH: Right. There was some confusion  
9 about the two different dates of direct testimony.

10 MR. CONRAD: No objection.

11 JUDGE RUTH: Okay. Exhibit 69 is received into  
12 the record then.

13 (EXHIBIT NO. 69 WAS RECEIVED INTO EVIDENCE.)

14 JUDGE RUTH: Exhibits 70 and 71 were previously  
15 received into the record.

16 My notes indicate that Exhibit 72, Ms. Pyatte's  
17 surrebuttal, was not offered and not received.

18 MR. FREY: And we are not offering it,  
19 Your Honor.

20 JUDGE RUTH: Okay.

21 Exhibits 73 through 76 were previously received  
22 into the record.

23 Exhibit 77 was marked for identification  
24 purposes. It was Mr. Watkins' direct testimony and  
25 support of the stip and agreement on the fuel issue.

1                   My notes indicates that Staff does not intend  
2 to offer this document.

3                   MR. FREY: That's correct, Your Honor.

4                   JUDGE RUTH: Okay. Exhibits 78 and 79 were  
5 previously offered into the record and received, as was  
6 Exhibit 80, the stip and agreement on in-service criteria.  
7 Is that not --

8                   MR. DUFFY: I don't think 80 was ever offered  
9 or received, but I would offer Exhibit 80 into evidence.

10                  JUDGE RUTH: Okay. Exhibit 80 has been  
11 offered.

12                  Do any of the parties have an objection to that  
13 stip and agreement on in-service criteria?

14                  It is received into the record.

15                  (EXHIBIT NO. 80 WAS RECEIVED INTO EVIDENCE.)

16                  JUDGE RUTH: Okay. A document had been  
17 previously marked as Exhibit 81. That document will not  
18 be received into the record.

19                  Exhibit 82 was the unanimous stip and agreement  
20 regarding State Line Combined Cycle capital cost. I note  
21 that that was received into the record.

22                  Exhibit 83, the reconciliation, Staff, did you  
23 previously offer that?

24                  MR. FREY: We did not, Your Honor, but we would  
25 do so now.



1 JUDGE RUTH: Are there any objections to  
2 Exhibit 83?

3 It is received into the record.

4 (EXHIBIT NO. 83 WAS RECEIVED INTO EVIDENCE.)

5 JUDGE RUTH: Public Counsel, I marked for  
6 identification purposes Ms. Bolin's direct and rebuttal  
7 testimony as 84 and 85. Did you previously offer those?

8 MR. COFFMAN: No, I haven't, but I would like  
9 to do so at this time.

10 JUDGE RUTH: Are there any objections to  
11 Exhibits 84 and 85?

12 Okay. Seeing no objection, Ms. Bolin's direct  
13 is admitted as Exhibit 84 and her rebuttal is admitted as  
14 85.

15 (EXHIBIT NOS. 84 AND 85 WERE MARKED FOR  
16 IDENTIFICATION BY THE COURT REPORTER.)

17 Exhibit -- there is a lot of exhibits.

18 Okay. Exhibits 86 through 96 I note were  
19 admitted into the record.

20 Okay. Exhibits 97 through 99 were received  
21 into the record.

22 I note that Exhibit 100 was marked for  
23 identification purposes but was not offered.

24 Is that correct?

25 MR. DUFFY: It's our understanding.

1 JUDGE RUTH: Exhibit 100 was admitted into the  
2 record over objections.

3 MR. COFFMAN: No.

4 MR. DUFFY: Exhibit 100 was not offered.

5 JUDGE RUTH: I'm sorry. I meant 101. It was  
6 admitted into the record over objections. That was the  
7 company's changes to direct testimony of Ms. Roberta  
8 McKinney.

9 MR. COFFMAN: Yes, Your Honor.

10 And if I might tell you what my notes indicate,  
11 that it was admitted with a title change.

12 JUDGE RUTH: With the title change. And the  
13 new title I wrote down was company changes to direct  
14 testimony of Ms. Roberta McKinney.

15 MR. COFFMAN: I believe that's correct.

16 JUDGE RUTH: I'll make a notation of the "with  
17 title changes."

18 MR. COFFMAN: And the same applies to  
19 Exhibit 104.

20 JUDGE RUTH: Thank you.

21 Okay. Exhibit 102 was a graph from the  
22 schedule DAM-29. Empire withdrew that exhibit and it was  
23 not offered into evidence.

24 Exhibit 103, the New York Stock Exchange page  
25 received into the record.

1           Exhibit 104 was admitted into the record with  
2 the title change. The document is now called company  
3 changes to direct testimony of Roberta McKinney.

4           Exhibit 105, I note that this was received into  
5 the record, as was 106, 107, 108, 109, 110, 111, 112 and  
6 113.

7           I also note that Exhibits 114 through 118 are  
8 also received into the record.

9           Does that comport with the parties' records?

10          MR. DUFFY: Yes, ma'am.

11          JUDGE RUTH: Okay. Thank you.

12          MR. FREY: Your Honor, could we go off the  
13 record for just a second?

14          JUDGE RUTH: Yes.

15          (OFF THE RECORD.)

16          JUDGE RUTH: Staff, you pointed out that there  
17 was a revised reconciliation filed.

18          Did you intend to offer that document?

19          MR. FREY: Yes, we would, Your Honor. It was  
20 filed yesterday June 5th.

21          JUDGE RUTH: Okay. That document would be  
22 Exhibit 119, the revised reconciliation filed 6-5.

23          Are there any objections to this document being  
24 received?

25          MR. COFFMAN: No.

1 JUDGE RUTH: Seeing no objections, Exhibit 119  
2 is received into the record.

3 (EXHIBIT NO. 119 WAS RECEIVED INTO EVIDENCE.)

4 JUDGE RUTH: Okay. I note that we had a  
5 previous discussion regarding the limitations placed on  
6 the list -- on the length of the briefs.

7 The parties are unhappy with the limits of  
8 30 pages for initial brief and, I think, 15 was the reply.

9 The parties had suggested a more reasonable  
10 amount would be 100 pages for the initial and 50 for the  
11 reply. I indicated that there was a concern that this  
12 might still be too lengthy.

13 Do the parties -- have they been able to  
14 discuss whether this could be reduced?

15 MR. DUFFY: And you want to do this on the  
16 record?

17 JUDGE RUTH: I do.

18 MR. DUFFY: Well, you're putting us in the  
19 position of bidding against ourselves, since we first  
20 indicated that 100 pages was, in our mind, a maximum  
21 reasonable amount for the initial brief.

22 I think there have been some discussions along  
23 those lines, and I guess I would say with some reluctance  
24 that at least Empire could probably live with something  
25 like 75 pages as the maximum on the initial, but we would

1 still want 50 on the reply.

2 And I say that in the context that, number one,  
3 I don't think page limits in briefs are appropriate in the  
4 first place.

5 And I think they infringe upon our rights to  
6 due process, because Chapter 536 indicates that we do have  
7 a right to file briefs in these type of proceedings, and  
8 they do not contain any kind of page limitations on them.

9 And I say that also in the context, as I  
10 indicated earlier, that I've been working with some of  
11 these people for 20 or so years, and I don't believe any  
12 of them under any circumstance have ever abused what I  
13 would consider to be the amount of -- maybe, well,  
14 Mr. Conrad, once or twice -- have ever abused the latitude  
15 that has been afforded the parties over the past 20 or so  
16 years when we have not had page limitations on briefs.

17 So I guess what I'm saying is, I think the  
18 Commission can trust the parties in this case to act  
19 responsibly and not give them, you know, a huge redundant  
20 brief.

21 And if the Commission thinks that somebody has  
22 given them a brief that has got a lot of redundancy in it,  
23 the Commission could certainly ignore those portions of  
24 it.

25 So I'm saying that 75 is I think the minimum

1 that we could agree to under any kind of page limitation  
2 circumstance.

3 JUDGE RUTH: Do the other parties have comments  
4 on this issue?

5 MR. CONRAD: Except for certain parts of  
6 Mr. Duffy's comments, I probably would endorse it --  
7 endorse what he said.

8 I'd also add for the consideration of the  
9 examiner and the Commission that under, I believe, the  
10 statute that he cited, the Commission has three ways that  
11 they can accept the record in this case: either sit for  
12 it, which probably none of the Commissioners collectively  
13 have done on this case, as a whole; they can read the  
14 transcript, which is, no disrespect to the reporter, but  
15 it's exciting; or they can read the briefs.

16 And I guess I have always felt that perhaps the  
17 more useful way for them to read that material from which  
18 they were not able to be present because of pressing  
19 business was through the briefs, that cite them to the  
20 particular portions of the record, so if they wanted to go  
21 and look and see what that was, then they could do so.

22 By constraining that, it really does not help,  
23 in effect, the Commission themselves.

24 JUDGE RUTH: Any other comments?

25 MR. COFFMAN: I would say 75 and 50 would be

1    ample for this case at this point, although there have  
2    been other cases when that might be difficult even for me.

3               Page limits are a little bit troubling.

4               JUDGE RUTH:   Okay.  I want to go off the record  
5    because I want to make a comment.

6               (OFF THE RECORD.)

7               JUDGE RUTH:  I've heard the parties' opinions  
8    regarding the length of the transcript -- or I'm sorry --  
9    the briefs.

10              Although Empire has indicated they would really  
11    like 100 pages, I am going to request and strongly request  
12    that they limit it to 75 for the initial brief and that  
13    they limit it to 50 pages in the reply briefs.

14              If the briefs should exceed that amount, they  
15    will not be rejected, and I will certainly read every page  
16    that you write.

17              However, I strongly suggest that you do your  
18    very best to limit it to no more than 75 pages for the  
19    initial and 50 for the reply brief.

20              We also had discussed the findings of facts and  
21    conclusions of law -- the proposed findings of fact and  
22    conclusions of law.

23              And although I stated earlier that I would  
24    require the parties to file a written motion regarding the  
25    possible waiver of that requirement, I've changed my mind.

1 I'd like to go ahead and address it now.

2 I understand the parties' concern with  
3 preparing the proposed findings of fact and conclusions of  
4 law. However, the Commissioners have discussed this, and  
5 they believe that well written proposed findings of fact  
6 and proposed conclusions of law are very helpful tools,  
7 and they want the parties to go ahead and comply with that  
8 requirement.

9 Specifically, they like to see references in  
10 those proposed findings of fact and conclusions of law to  
11 exactly what evidence or statutory authority that the  
12 parties are relying on.

13 MR. DUFFY: Is there a page limitation on that?

14 JUDGE RUTH: There is absolutely no page  
15 limitation on proposed findings of fact and conclusions of  
16 law, because, Mr. Duffy, I know you will be so concise  
17 that there will be no fluff. Right?

18 MR. COFFMAN: You're serious?

19 JUDGE RUTH: I do not -- I did not want to put  
20 a page limitation on the proposed findings of facts and  
21 conclusions of law.

22 I found it hard to believe that any of the  
23 parties would abuse my not putting a page limitation on  
24 that. Maybe I'm wrong.

25 MR. COFFMAN: I've seen in a recent case more



1     than 100 pages of proposed findings.

2                 JUDGE RUTH:  I'm going to have to trust the  
3     parties here.  I am -- previously there was not a page  
4     limitation on those proposed findings of fact and  
5     conclusions of law.  Am I correct on that?

6                 MR. DUFFY:  Yes, ma'am.

7                 JUDGE RUTH:  And I'm not going to impose one.

8                 MR. DUFFY:  I don't have any problem with that.

9                 MR. COFFMAN:  Okay.

10                MR. DUFFY:  Empire doesn't have any problem  
11     with providing you proposed findings of fact and  
12     conclusions of law.

13                JUDGE RUTH:  Did you have comment, Staff?

14                MR. FREY:  Not on this, Your Honor.

15                JUDGE RUTH:  Those are the only housekeeping  
16     items I had noted.  However, Mr. Frey, it looks like you  
17     have something.

18                MR. FREY:  Yes.

19                I'd like to go off the record for just a second  
20     if we could, Judge.

21                JUDGE RUTH:  We're off the record.

22                (OFF THE RECORD.)

23                JUDGE RUTH:  Were there any other housekeeping  
24     matters?

25                I'm sorry.  Let me back up.

1                   I will state that there was some discussion as  
2   to whether or not an additional document needed to be  
3   offered. It was a schedule from some suggestions in  
4   support of the stip and agreement that Staff had filed,  
5   and it was decided it was not necessary to offer that as a  
6   separate exhibit.

7                   Were there any other housekeeping measures?  
8                   Okay.

9                   MR. DUFFY: I assume you're going to rule on  
10  the change in the date on the true-up brief? And I'm  
11  trying to remember what the other thing that we brought  
12  up.

13                  JUDGE RUTH: Well, the true-up -- the dates on  
14  the true-up has to be discussed during tomorrow's agenda  
15  during the scheduling portion, so that all four  
16  Commissioners will be together and can look at their  
17  calendars and decide if they want to move it.

18                  Until then it's still set as August 22 and 23,  
19  I think. I just asked you to keep that Friday reserved.  
20  And I will follow up with a notice or an order after  
21  tomorrow's agenda date, agenda session.

22                  And then I will point out that Kevin Thompson's  
23  previous order had indicated that initial briefs in this  
24  case are due on the portions to the true-up stuff, those  
25  are due July 20th and the reply briefs are due August 3rd.

1                   MR. DUFFY: Right.

2                   JUDGE RUTH: Was there something else?

3                   MR. CONRAD: I think you were talking about the

4 hours from three to --

5                   JUDGE RUTH: I did previously rule that

6 although I didn't think it was necessary to change the

7 time from three to four for documents to be filed, since

8 the parties wanted that, it is changed, where the

9 procedural schedule says four o'clock -- I'm sorry --

10 three o'clock, it is now four o'clock.

11                   I will send a notice out notifying everyone of

12 that, and that way it will also be clear to the records

13 room.

14                   Anything else?

15                   MR. DUFFY: I can't think of anything at the

16 moment.

17                   JUDGE RUTH: I think we're about to go off the

18 record, then, if there is nothing else.

19                   Okay. Seeing no other concerns, this hearing

20 is adjourned.

21                   (EXHIBIT NO. 119 WAS MARKED FOR IDENTIFICATION

22 BY THE COURT REPORTER.)

23                   WHEREUPON, the hearing was concluded.

24

25

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