

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 May 31, 2001
6 Jefferson City, Missouri
7 Volume 6

8 In the Matter of the Empire District)
9 Electric Company's Tariff Sheets)
10 Designed to Implement a General Rate) ER-2001-299
11 Increase for Retail Electric Service)
12 Provided to Customers in the)
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: Let's go ahead and go on the
3 record.

4 Good morning. Today's date is May 31st, 2001.
5 It's almost 8:35. We're continuing the Empire hearing,
6 and it's ER-2001-299.

7 As I indicated yesterday, I wanted to start by
8 taking up, again, Staff's motion, where they requested to
9 file the nonunanimous stipulation and agreement regarding
10 fuel and purchase power expense, for that to be received
11 as a joint recommendation.

12 This is the issue that Mr. Conrad for Praxair
13 has filed a motion in opposition to.

14 I have reviewed the matter and have decided
15 that the motion -- or the joint recommendation will not be
16 received as a joint recommendation.

17 The Staff is welcome to refile it as a change
18 of position, a statement of position, including the
19 relevant parts, removing all references to the
20 nonunanimous stip and agreement or the word stip and
21 agreement. Instead it will be simply, statement of
22 position or change of position.

23 And you can file the testimony in support of
24 that position, but it will be in support of that change of
25 position, not in support of a stipulation and agreement.

1 And I want to also state on the record that I
2 strongly encourage all of the parties in the future, if
3 you have stip and agreements, you still need to have an
4 issue on the issues list, whether it's unanimous or
5 nonunanimous, but especially if it's a nonunanimous stip.

6 You need that issue on the issues list, and you
7 need some kind of reference in your statement of position.

8 Part of the problem and the confusion regarding
9 this could have been avoided if the stip -- or the
10 statement of positions had identified the issues and
11 identified possible stips.

12 I noted that one of the stip and agreements,
13 the issue isn't even listed on the proposed list of
14 issues, which makes it a little more difficult to follow.

15 So just please take that word of advice back.

16 Are there any questions on this ruling?

17 MR. DOTTHEIM: Yes, Judge.

18 Are you looking for a filing other than the
19 testimony in this matter, as opposed to a separate
20 document that was originally filed as a stipulation and
21 agreement?

22 I indicated yesterday that that document, in
23 essence, could be attached to the refiled testimony but
24 have any reference to it as a stipulation and agreement
25 removed and just have it indicate that it's a change of

1 position?

2 JUDGE RUTH: I think you would need to reformat
3 slightly, and you would need to remove all of those
4 references to stip and agreement or nonunanimous stip and
5 agreement.

6 Is that clear?

7 MR. DOTTHEIM: You're also looking for
8 documents that do not make reference to a joint
9 recommendation?

10 JUDGE RUTH: Exactly.

11 In essence, it is a type of joint
12 recommendation, but it's the three parties' position, and
13 that's what we're going to call it.

14 Questions on that?

15 Okay.

16 MR. CONRAD: Your Honor, just on housekeeping
17 matters, so it can be cleared up on the record, as we
18 noted yesterday, two pages from Praxair's response were
19 omitted as a result, I think, of the copier collating
20 process.

21 We fixed that this morning, and I have filed
22 the transmittal letter, as you suggested, and nine sets of
23 the two pages, which were pages 14 and 15.

24 And I've supplied that to the copies -- to the
25 parties, rather, and to the bench.

1 JUDGE RUTH: I appreciate that.

2 I know that there was a copy for me on the
3 bench, and like I mentioned yesterday, since I am not the
4 regulatory law judge assigned to this case, I appreciate
5 it when you make the effort to go ahead and get a copy to
6 me, so I don't have to search from Kevin Thompson or
7 someone else.

8 So thank you.

9 Were there any other housekeeping or
10 preliminary matters to address?

11 No. Then we're going to go ahead and start the
12 hearing.

13 I am listed as an item on agenda. They've told
14 me that they will e-mail me. And so when it's my turn, I
15 will probably interrupt whoever is talking, and we will
16 adjourn the hearing briefly.

17 I speculate that my item could last anywhere
18 from 15 minutes to 30, but hopefully not more. And I'm
19 sorry I can't be more specific than that.

20 But I'll be flexible. Try not to leave too
21 far, but I'll try to hunt you down before we start the
22 hearing back up.

23 Okay. Correct me if I'm wrong, but my notes
24 state that we're ready to start the issue of bad debt
25 expense. And the first witness is Empire's Mr. Gipson.

1 MR. SWEARENGEN: Gipson with a P, that's
2 correct.
3 JUDGE RUTH: Please call your witness.
4 MR. SWEARENGEN: I call Mr. Gipson at this
5 time.
6 JUDGE RUTH: Mr. Gipson, would you please raise
7 your right hand.
8 (Witness sworn/affirmed.)
9 JUDGE RUTH: Thank you. Please be seated.
10 Mr. Swearengen.
11 MR. SWEARENGEN: Thank you, Your Honor.
12 Before I inquire of the witness, it may be of
13 some benefit for me to state what my understanding is as
14 to how this bad debt expense issue has evolved and is
15 before the Commission this morning.
16 And counsel obviously would be free to state
17 their view on that as well.
18 It's my understanding that in the Company's
19 direct filing, an amount for bad debt expense, the test-
20 year amount, was included in the case, and that
21 represented approximately .50 percent of the Company's
22 total revenues.
23 The Staff conducted its audit. I believe Staff
24 Witness Phil Williams made some sort of an adjustment to
25 that.

1 When we got to the prehearing conference in
2 this case, the Company negotiated an agreement with the
3 Staff, that instead of using the .50 percent factor, we
4 would take less than that, .25 percent. And the Staff was
5 willing to do that.

6 And my understanding is, put that amount of
7 money in its case for bad debt expense, which was about
8 half of what the Company had asked for originally.

9 However, the Company made its position known at
10 that time that it would like that .25 percent factor to be
11 applied to any revenue increase that the Company might get
12 in this case. And the Staff said, no, we can't go along
13 with that. I think the other parties have sided with the
14 Staff.

15 But that's the issue, as I understand it,
16 that's before the Commission this morning. And obviously
17 counsel can state their views on that topic as well.

18 WILLIAM L. GIPSON testified as follows:

19 DIRECT EXAMINATION BY MR. SWEARENGEN:

20 Q. But having said that, would you state your name
21 for the record, please?

22 A. William L. Gipson.

23 Q. Mr. Gipson, by whom are you employed and in
24 what capacity?

25 A. The Empire District Electric Company. I'm the

1 Executive Vice-President.

2 Q. Did you cause to be prepared for purposes of
3 this case certain rebuttal testimony in question-and-
4 answer form?

5 A. Yes, I did.

6 Q. And do you have a copy of that testimony with
7 you this morning?

8 A. Yes, I do.

9 Q. Is it your understanding that that testimony
10 has been marked for purposes of identification as
11 Exhibit 21?

12 A. Yes.

13 Q. Are there any changes that you wish to make in
14 that testimony at this time?

15 A. No, there are not.

16 Q. And did you also cause to be prepared in
17 question-and-answer form certain surrebuttal testimony?

18 A. Yes, I did.

19 Q. And do you have a copy of that with you?

20 A. Yes.

21 Q. Is it your understanding that that document has
22 been marked for purposes of identification as Exhibit 28?

23 A. Yes.

24 Q. Are there any changes which you wish to make in
25 that testimony?

1 A. Yes, one change.

2 Q. And where is that?

3 A. Page 2, line 6.

4 Q. What change would you make there?

5 A. Following 1997, and prior to the comma, insert

6 the word "and 1999."

7 Q. Are there any other changes that you need to

8 make in that testimony?

9 A. No, there are not.

10 Q. If I asked you the questions which are

11 contained in Exhibits 21 and 28, would your answers as

12 corrected be the same as contained in those documents?

13 A. Yes.

14 Q. And are they true and correct to the best of

15 your knowledge, information and belief?

16 A. Yes, they are.

17 MR. SWEARENGEN: With that I would offer into

18 evidence Exhibit 21 and Exhibit 28 and tender the witness

19 for cross-examination.

20 JUDGE RUTH: Okay. Exhibit 21 is the rebuttal

21 testimony of Mr. Gipson, and Exhibit 28 is the surrebuttal

22 testimony of Mr. Gipson.

23 Do the parties have any objections to these

24 documents?

25 Seeing no objection, they will be admitted into

1 the record. Thank you.

2 (EXHIBIT NOS. 21 AND 28 WERE RECEIVED INTO
3 EVIDENCE.)

4 JUDGE RUTH: Cross-examination, we'll begin
5 with Mr. Conrad.

6 MR. CONRAD: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. CONRAD:

8 Q. Good morning, Mr. Gipson.

9 A. Good morning, Mr. Conrad.

10 Q. I just want to turn quickly to your Exhibit 21,
11 being your rebuttal, and direct your attention, please, to
12 page 1 of that, the answer beginning at line 10.

13 You state you worked for an international
14 furniture manufacturing company. What was that company?

15 A. Leggett and Platt, Incorporated in Carthage,
16 Missouri.

17 Q. Is Leggett and Platt an Empire customer?

18 A. Yes, they are.

19 Q. Did you have any dealings when you worked for
20 Leggett and Platt with their energy acquisitions or energy
21 purchasing?

22 A. No, none at all.

23 Q. Do you know Mark Schlicht?

24 A. I do not know Mr. Schlicht.

25 Q. Okay. And let me ask you about your correction

1 on page 2 of Exhibit 28.

2 A. Are you talking about the surrebuttal now?

3 Q. Yes, sir. Excuse me.

4 You probably don't have yours numbered, but
5 that's the surrebuttal.

6 And line 6 was where your correction was, if I
7 understood it.

8 The correction you made -- or the addition you
9 made, except for a slight bump in 1997, and then you
10 inserted "and 1999"?

11 A. That's correct.

12 Q. Okay. In the table above that you had five
13 years listed that you were identifying for specific
14 attention?

15 A. That's correct.

16 Q. And you're identifying that two of those years
17 had a slight bump that you needed to regard as an anomaly?

18 A. You know, those are the years that I used in
19 this analysis for -- because those are the same years that
20 we worked with Staff during prehearing on.

21 Had I gone back further, let's say, to 1992,
22 which I have --

23 Q. Well, can you just stay on the question that I
24 asked.

25 Is that -- those are the two years out of the

1 five that you had selected that were the anomaly years?

2 A. Yeah, those are the two years out of the five
3 where bad debt --

4 Q. So would you --

5 A. -- expense decreased.

6 Q. Of the two year -- excuse me -- of the five
7 years that you selected, that 40 percent of them are
8 regarded as an anomaly?

9 A. Three of the five years, the bad debt increased
10 as revenues increased.

11 Q. Would you agree with me that two of the five
12 years, which is 40 percent of the years you selected, you
13 have identified as anomalies?

14 A. I would agree that the bad debts decreased in
15 those years.

16 MR. CONRAD: Thank you, sir. That's all.

17 JUDGE RUTH: Mr. Coffman, do you have
18 questions?

19 MR. COFFMAN: No questions.

20 JUDGE RUTH: And Staff, Mr. Bates.

21 MR. BATES: Yes. Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. BATES:

23 Q. Good morning, Mr. Gipson.

24 A. Good morning.

25 Q. Would you please explain for the Commission,

1 what are bad debt write-offs?

2 A. You know, there is two things that you have to
3 consider when you're discussing bad debt. One is what you
4 expense with bad debt, which we try to match with the
5 associated revenue.

6 You know, I'm not an accountant, but I
7 understand the theory of matching expense to revenues.

8 Sometimes the bad debt write-offs, what
9 actually occurs do not match exactly with bad debt
10 expense, because we're trying to match the revenues with
11 the expenses.

12 Was that not responsive?

13 Q. It was responsive.

14 I wonder if you could tell me how that you go
15 about matching those up.

16 A. We try to take a look at what our actual
17 experience is with the bad debt write-offs and try to make
18 some estimate in terms of what we might not have achieved
19 in terms of write-offs for that particular set of
20 revenues.

21 Q. And how do you go about doing that?

22 A. It is an estimate based on our experience over
23 the years.

24 Q. What means, though, do you go about calculating
25 that figure?

1 A. Generally, what we have done is we've taken a
2 look at what we anticipate our -- our on-system revenues
3 to be for the next year, and we estimate bad debt expense
4 based on our previous experience with bad debt expense and
5 bad debt write-offs.

6 Generally, that's going to fall somewhere in
7 the one-quarter of 1 percent of revenue.

8 Q. What is Empire's criteria for determining
9 whether a past-due account should be written off?

10 A. We have a lot of different criteria.

11 It depends on whether or not it is affected by
12 particular Commission rules and regulations; for instance,
13 the Cold Weather Rule.

14 We also have a Company policy during the
15 summertime, where we don't do cutoffs during extreme
16 weather.

17 But in terms of whether or not we write an
18 account off, you know, I don't know the exact cut-off in
19 Missouri, but it has to do with the length of time that
20 that account has been past due, and collection efforts
21 have not -- and have not been successful.

22 Q. Does Empire have a specific time that it allows
23 for how long a debt is bad or past due before it's written
24 off?

25 A. Yes, we do, but I can't tell you exactly the

1 length of time.

2 Q. Okay. And I've asked you -- you've answered
3 this some for me.

4 But as far as bad debt expense, can you give us
5 any more enlightenment about how that is determined?

6 A. How that is determined?

7 Q. Yes.

8 How would you determine a bad debt expense?

9 A. If it's --

10 Q. What criteria would you use?

11 A. Are you talking about the bad debt expense that
12 we calculate for the -- you know, to try to match
13 revenues, or are you talking about actual write-offs of
14 the accounts?

15 Q. Both, please.

16 A. The bad debt expense, as I explained earlier,
17 we estimate at the beginning of the year, and we accrue an
18 amount every month for the bad debt expense based on what
19 our experience has been.

20 And, generally, that experience over the past
21 several years has been about one-quarter of 1 percent of
22 on-system revenues.

23 With an actual write-off, it depends state to
24 state, and I can't quote Missouri exactly. But it's the
25 length of time that that customer has been delinquent and

1 collection efforts have failed that we then write off the
2 account.

3 Q. Okay. And I believe you stated that you're not
4 aware yourself of what period of time is determined?

5 A. I can't tell you exactly what that is.

6 Q. Is bad debt expense also what is known as an
7 accused expense?

8 A. Yes.

9 Q. Okay.

10 A. You know, I'm not an accountant --

11 Q. I understand.

12 A. -- but that is my understanding, yes.

13 Q. Is accrued bad debt expense generally equal to
14 bad debt write-offs for a given period of time?

15 A. It's generally pretty close.

16 I believe I looked in Mr. Boltz's testimony,
17 and there is some difference in some of the years,
18 particularly 1999.

19 As I put in my testimony regarding the year
20 2000, we were in the midst of a conversion to a
21 customer -- new customer information system that we
22 developed in-house.

23 Through that conversion we were not able to
24 execute our write-offs to the extent that we should have
25 been able to.

1 We made that decision. It was a decision we
2 made as management to work on other parts of the system in
3 terms of producing accurate bills for the customers,
4 improved response time for our customer service
5 representatives, and really turn our attention toward
6 those more high-priority issues than this issue.

7 That same effect that we saw in the year 2000
8 also affected November and December of 1999. So what you
9 see is actual write-offs for 1999 are depressed as
10 compared to what was expensed because of that system
11 conversion.

12 Q. And is it your belief that what the condition
13 that you've described accounted for the unusual situation
14 in 1999?

15 A. The unusual situation in 1999 and also the
16 unusual situation in the year 2000.

17 Q. Okay. Do you think there may have been other
18 reasons involved as well?

19 A. You know, if there are other reasons, I'm not
20 aware of them.

21 Q. Okay. Thank you.

22 If you know, generally, is the amount of bad
23 debts reflected in rates in Missouri based upon actual
24 write-offs or are on accrued bad debt expense?

25 A. I don't -- I don't know the answer to that

1 question. What we submitted in our direct filing was our
2 bad debt expense, I believe.

3 Q. Would you agree with me that basing rate
4 recovery of bad debts for utilities on actual write-offs
5 is potentially a less subjective exercise than basing the
6 recovery on the amount of booked accrued bad debt expense?

7 A. I'm not sure I understood the question. Could
8 you repeat it, please?

9 Q. Sure.

10 Basing rate recovery on bad debts for utilities
11 on actual write-offs, would you agree that that would be a
12 more objective, more fact based, less subjective means of
13 basing recovery than basing the recovery on the amount of
14 booked actual bad debt expense?

15 A. No, I don't think so. I don't think I could
16 agree with that.

17 Q. And why not?

18 A. Because we're trying to match bad debt expense
19 with actual revenues received.

20 Q. At this point -- and I'm going to hand you a
21 copy, but I'd like to refer you to Staff witness
22 Roy Boltz's surrebuttal testimony, which has been marked
23 for --

24 A. I have it.

25 Q. -- excuse -- marked for identification as

1 Exhibit No. 40.

2 A. I believe I have that.

3 Q. And I'd like you to turn to Schedule 1, please.

4 A. Yes.

5 Q. And I'd like you to look specifically at the
6 column on the far right which is entitled actual
7 write-offs.

8 A. Yes.

9 Q. To your knowledge are those amounts an accurate
10 representation of Empire's actual write-offs for the years
11 1996 through 1999?

12 A. I believe they are. I didn't perform any
13 independent evaluation, but I believe they are.

14 Q. I wonder if I might ask you to do an exercise
15 with me.

16 MR. BATES: May I approach the witness?

17 JUDGE RUTH: Yes.

18 BY MR. BATES:

19 Q. I'd like to hand you a calculator, and turn it
20 on. I'm sure you can do it better than I.

21 Would you divide for us the amount of actual
22 write-offs for the year 1996 by the amount of total
23 Company on-system revenues for the year 1996 that is shown
24 in the second column of Mr. Boltz's schedule?

25 A. If I could learn how to run this calculator, I

1 will, sir.

2 If I haven't made a mistake, I believe the
3 percentage is .21.

4 Q. All right. And would you do the same thing,
5 please, for the year 1997.

6 A. I believe that percentage is .28.

7 Q. And would you please do it for the year 1998.

8 A. I believe that percentage is .23.

9 Q. And, finally, would you please do it for the
10 year 1999.

11 A. That was '97. Do you want me to skip '98?

12 Q. You're correct. I'm sorry.
13 Would you do it for 1998, please.

14 A. I believe that percentage is .26.

15 Q. And, finally, for 1999, please.

16 A. I believe that percentage is .21.

17 Q. Now, I'd like to refer you back to your
18 surrebuttal testimony, page 2. And, again, I'd like to
19 refer you to the year 1999, and specifically the percent
20 of revenue entry for that year.

21 I believe it is .25. Is that correct?

22 A. Yes, it is.

23 Q. And can you explain the discrepancy, then,
24 between your result for the exercise that you just did for
25 1999, which you said, I believe, was .21 with your figure

1 here in your own testimony.

2 A. What we calculated for Mr. Boltz's testimony
3 was the percent of on-system revenues compared to actual
4 write-offs, which as I explained earlier were depressed
5 because of the system conversion factor that we were going
6 through.

7 What I have in my testimony is the bad debt
8 expense, which is the expense that we think more
9 accurately reflects the revenues that should be associated
10 with that expense.

11 Q. And I understand that.

12 But I believe for the other years that your
13 answers generally followed what you have in your own
14 testimony save for that one year.

15 A. I didn't write those down as we were
16 proceeding.

17 Q. I can tell you that they did.

18 A. Okay.

19 Q. And do you have any further explanation for
20 that other than what you've given?

21 A. No, I don't.

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

23 THE WITNESS: Thank you.

24 JUDGE RUTH: So that concludes your questions,

25 Staff?

1 MR. BATES: Yes. Thank you.

2 JUDGE RUTH: Okay. Commissioner Gaw, do you
3 have any questions?

4 COMMISSIONER GAW: No questions.

5 JUDGE RUTH: Empire, redirect?

6 MR. SWEARENGEN: Just a couple, Your Honor.

7 REDIRECT EXAMINATION BY MR. SWEARENGEN:

8 Q. Mr. Gipson, just so the record is clear on this
9 point, your surrebuttal testimony, at page 2, where you
10 set out a chart showing those five years, is essentially
11 the same information that shows up on Schedule 1, is it
12 not, of Mr. Boltz's surrebuttal testimony?

13 A. Yes. I rounded to the nearest one-thousand on
14 both revenue and bad debt expense, but I believe the
15 numbers are the same.

16 Q. Mr. Boltz has added an additional column
17 entitled actual write-offs.

18 And that doesn't appear in your testimony, does
19 it?

20 A. That's correct.

21 Q. Now, can you tell us, what was the purpose of
22 your calculation of a percent of revenue for the
23 five years that you show on page 2 of your surrebuttal?

24 A. I wanted to demonstrate that on average, over
25 the past five years, the years that I chose to put in this

1 table, that bad debt expense on average is about one-
2 quarter of 1 percent, the same level that we agreed to for
3 test-year purposes.

4 Q. And, once again, is it your understanding that
5 the Staff has agreed to accept that bad debt factor for
6 purposes of determining the Company's revenue requirement
7 in this case?

8 A. As it pertains to test-year revenue only.

9 Q. And it's your understanding and belief that the
10 Staff has or will include those dollars in its case?

11 A. Yes, it is.

12 Q. Now, I think in response to a question from
13 Mr. Bates, once again, about the origin of that factor,
14 you said one-quarter of 1 percent is based on historical
15 experience. Is that what I understood you to say?

16 A. Yes.

17 Q. And what did you mean by that exactly?

18 A. For instance, the table that I have in
19 surrebuttal shows the bad debt expense that we have --
20 that we have booked over the previous five years at
21 one-quarter of 1 percent.

22 Q. And is the history of the Company prior to that
23 time also consistent with that factor?

24 A. It's consistent with that factor. It may be a
25 little bit lower than that from year to year or a little

1 bit higher than that from year to year.

2 Q. And, finally, I think in response to a question
3 from Mr. Conrad, you pointed out that at least in the
4 table shown in your testimony, two years you considered to
5 be an anomaly. Is that correct?

6 A. Yes, that's correct.

7 Q. And what did you mean by that?

8 Q. Well, on those two years, like I said earlier,
9 these are the years that we selected to put in the table.
10 Had I chosen to go back further, for instance,
11 to 1992, which I have, it turns out that six of the past
12 eight years' bad debt expense increased as revenues
13 increased.

14 MR. SWEARENGEN: Okay. Thank you. That's all
15 I have. Thank you very much.

16 JUDGE RUTH: Okay. You may step down.

17 THE WITNESS: Thank you.

18 JUDGE RUTH: Staff, are you ready to call your
19 witness?

20 MR. BATES: Yes, we are.

21 We'd call Roy Boltz to the stand.

22 JUDGE RUTH: Thank you.

23 Would you please raise your right hand.

24 (Witness sworn/affirmed.)

25 JUDGE RUTH: Please be seated.

1 Proceed, Mr. Bates.

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

3 DIRECT EXAMINATION BY MR. BATES:

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

6 A. Roy M. Boltz, Jr.

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

8 A. P. O. Box 360.

9 Q. And for whom do you work?

10 A. The Missouri Public Service Commission.

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

12 A. Regulatory auditor.

13 Q. Mr. Boltz, did you prepare and cause to be
14 filed in this case direct and surrebuttal testimony which
15 has been marked for purposes of identification as Exhibit
16 Nos. 39 and 40?

17 A. Yes, I did.

18 Q. Are there any corrections, changes or additions
19 to that testimony which you would want to make at this
20 time?

21 A. No, there is not.

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

24 A. Yes, they would.

25 Q. Are your answers true and accurate to the best

1 of your information, knowledge and belief?

2 A. Yes.

3 MR. BATES: Your Honor, with that I move for
4 the admission of Exhibit Nos. 39 and 40 into the record,
5 and I tender Mr. Boltz for cross-examination.

6 JUDGE RUTH: Okay. Thank you.

7 Exhibits 39 and 40, the direct testimony and
8 the surrebuttal testimony of Roy M. Boltz, have been
9 offered.

10 Do the parties have any objections to this
11 being admitted?

12 MR. SWEARENGEN: Your Honor, I would only say,
13 I'm not sure about Exhibit 39. I don't know whether that
14 includes this issue or other issues. I don't have that
15 document with me.

16 I understood the only testimony Mr. Boltz filed
17 on the issue this morning is in Exhibit 40.

18 And so I would say I have no objections to the
19 admission of the exhibits subject to the opportunity to
20 check on the earlier one, that it doesn't include any
21 other subject matter --

22 JUDGE RUTH: Let's check on that right now.

23 MR. BATES: Your Honor, Mr. Swearengen is
24 correct.

25 As far as the issue this morning, only

1 Exhibit 40 is relevant.

2 JUDGE RUTH: Would you like to instead offer,
3 then, Exhibit 39 when we get to that issue?

4 MR. BATES: Yes, Your Honor, I think that would
5 be best.

6 That's correct. I'm reminded by
7 Mr. Oligschlaeger that there are no further issues that
8 Mr. Boltz will be testifying on in this case.

9 And, therefore, while it might be procedurally
10 neater to offer it at a later time, that probably will not
11 be possible.

12 MR. SWEARENGEN: Under those circumstances I
13 have no objection to him offering both pieces of testimony
14 at this time and the Commission receiving them. That's
15 fine.

16 JUDGE RUTH: Okay. Thank you.

17 Then the exhibits have been offered. There are
18 no objections, and Exhibits 39 and 40 are admitted into
19 the record.

20 (EXHIBIT NOS. 39 AND 40 WERE RECEIVED INTO
21 EVIDENCE.)

22 JUDGE RUTH: Cross-examination, Mr. Conrad?

23 MR. CONRAD: Just very briefly, Your Honor.

24 CROSS-EXAMINATION BY MR. CONRAD:

25 Q. Mr. Boltz, now that we have gone ahead and put

1 39 in, let me ask you to look at that for a moment.

2 And specifically let's start on page 4.

3 JUDGE RUTH: I'm sorry. Was this the rebuttal?

4 MR. CONRAD: No. This is 39. This would be
5 his direct.

6 JUDGE RUTH: Okay. Thanks.

7 MR. CONRAD: Now, let me stop here.

8 I didn't anticipate that this issue was going
9 to come up, because it's not really on the schedule for
10 today, so -- but since it's offered, would you prefer that
11 we --

12 JUDGE RUTH: If you are prepared to ask your
13 questions now, go ahead.

14 MR. CONRAD: Well, frankly, not really, not the
15 way I would like to have been, because I didn't realize
16 that we were going to go into that area.

17 MR. SWEARENGEN: And, Your Honor, if I could
18 speak just briefly, it was my understanding that that
19 testimony, which I do not have with me and I have not
20 reviewed, did not pertain to any issues to be contested
21 before the Commission, and it was on that basis that I
22 withdrew my objection to the admission of it.

23 So if Mr. Conrad is going to inquire on that
24 exhibit, it must mean that it has something to do with
25 some issue before the Commission.

1 And what I would urge my good friend,
2 Mr. Conrad, to do, and the Commission, is to bring it back
3 later on when the issue is to be litigated.

4 JUDGE RUTH: Can I ask, is this one of the
5 issues that is the subject of the stip and agreement,
6 or -- the No. 39, the direct?

7 MR. BATES: Your Honor, --

8 MR. CONRAD: I'm not sure exactly where it
9 fits, Your Honor.

10 JUDGE RUTH: If you can help me figure out
11 where it is --

12 MR. CONRAD: We had some questions about the
13 jurisdictional allocation factors. We had some
14 questions -- just a couple, really -- about the revenues
15 specifically with respect to ICI, and that's mentioned on
16 page 4. But I really hadn't anticipated --

17 JUDGE RUTH: Well --

18 MR. CONRAD: -- getting into that today.

19 JUDGE RUTH: Right.

20 And I want to give the parties an opportunity
21 to have their questions, so I think we're probably going
22 to move it to some other time, but I need to figure out
23 when is appropriate, what it --

24 MR. CONRAD: Well, it probably --

25 JUDGE RUTH: Do you need a five-minute recess,

1 Mr. Bates?

2 MR. BATES: Your Honor, all of the issues that
3 are contained within Exhibit No. 39 have been settled by
4 the parties, but there is no stipulation concerning them.

5 JUDGE RUTH: Okay. So they are not subject --
6 they're not on the issues list and they're not part of the
7 stip and agreement?

8 MR. BATES: That is correct, Your Honor.

9 JUDGE RUTH: But Mr. Conrad has questions.

10 MR. CONRAD: Well, yeah. I mean, if what we're
11 saying is we want to put this gentleman's testimony in,
12 39, and not have cross on it, then I really do have an
13 objection to doing that, and maybe we should go back to
14 Mr. Bates' original suggestion and just not put that in at
15 this point.

16 The thing that it relates to from our
17 perspective -- and this may respond to your question -- it
18 relates to what we -- how we perceive the Commission --
19 particularly, the Commission Staff, has dealt with the
20 question of jurisdictional allocations.

21 I don't want to make an opening statement or
22 re-argue that point at this time, but it has to do with
23 what we perceive is an inconsistency between how they want
24 to treat Missouri, Kansas, Oklahoma and Arkansas for
25 allocation purposes as between jurisdictions and then use

1 an entirely different methodology when it comes time to
2 allocate cost to my client.

3 MR. SWEARENGEN: If that's the case, it would
4 be, I guess, a rate design issue, which I think is
5 scheduled for hearing sometime next week.

6 And he's not my witness, obviously, but I'm
7 interested in that issue. And my suggestion would be that
8 we not offer the exhibit at this time but would defer it
9 until sometime later.

10 JUDGE RUTH: And, Mr. Bates, do you hear what
11 the other parties are stating?

12 Do you wish to withdraw your offer of the
13 exhibit?

14 MR. BATES: Yes, Your Honor, I do.

15 I do think that Mr. Conrad and Mr. Swearengen's
16 suggestion is wise, and I would move, or withdraw myself,
17 Exhibit No. 39 at this time for offer at a later time.

18 JUDGE RUTH: Okay. I want the record to
19 clearly note that Exhibit 39 is not yet received into
20 evidence, marked for identification purposes only.

21 And, Mr. Bates, I would like for you to make
22 sure that we do address this issue one way or the other
23 again before the end of the hearing.

24 MR. BATES: Yes, Your Honor.

25 JUDGE RUTH: Just remind me if I forget.

1 MR. BATES: Thank you.

2 JUDGE RUTH: So we're with just Exhibit 40, the
3 surrebuttal, at this time?

4 MR. CONRAD: Yes, ma'am.

5 And that being the case, we don't have any
6 questions for Mr. Boltz on that issue.

7 JUDGE RUTH: Thank you.

8 Mr. Coffman.

9 MR. COFFMAN: Yes, I think I have a couple.

10 CROSS-EXAMINATION BY MR. COFFMAN:

11 Q. Good morning, Mr. Boltz.

12 A. Good morning.

13 Q. I just wanted to ask a couple of definitional
14 questions.

15 Mr. Gipson, I guess, stated he wasn't an
16 accountant and wasn't able to give a certain definition.

17 You are an accountant?

18 A. Right.

19 Q. And can you give me a definition of what is a
20 bad debt?

21 A. A bad debt?

22 Q. Yes.

23 A. It's something that hasn't been paid, according
24 to me.

25 Q. What is the relationship between bad debt and a

1 write-off by the company?

2 A. A write-off is what they have actually written
3 off.

4 Q. And is there generally a formula or a set of
5 criteria about when an unpaid account or bad debt is
6 written off by a company?

7 A. They usually have some kind of policy, but I
8 don't know what Empire's is right offhand.

9 Q. Do you know if Empire even has a policy?

10 A. I think they do, but I haven't reviewed it.

11 Q. Okay. Is it customary for utility companies to
12 have a written policy or --

13 A. Usually it is, yes.

14 Q. -- a formula?

15 Is there typically some discretion that a
16 company has about when certain accounts are written off?

17 A. I'm sure there is, yes.

18 Q. And are the guidelines or the formula that they
19 have for when an account is written off, is that usually
20 applied mechanistically, or is there usually some judgment
21 applied?

22 A. Probably some judgment, I would say.

23 Q. So a company has discretion about how much bad
24 debt is written off in a particular year?

25 A. I am sure they do, yes.

1 Q. So they might have the ability to determine
2 just how much of their accounts they write off in one
3 year, how much they may hold over for a while?

4 A. It depends on their collection policies.

5 Q. Okay. I might have one more question.

6 Essentially, the point you're making in your
7 surrebuttal testimony is that from your analysis there is
8 not a direct correlation between revenues and bad debt
9 expense for this company?

10 A. That's correct. If you'd look at the schedule,
11 you can see it goes up one year and down the next year.

12 Q. Is that unusual for electric companies, or
13 utilities, generally?

14 A. No, I don't think so.

15 Q. That's a general rule that applies to all
16 utilities?

17 A. Probably.

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

19 JUDGE RUTH: Thank you.

20 And Empire.

21 MR. SWEARENGEN: Yes, Your Honor, a few.

22 CROSS-EXAMINATION BY MR. SWEARENGEN:

23 Q. Mr. Boltz, how long have you been with the
24 Commission?

25 A. Twenty-six years and several months.

1 Q. And I take it over that period of time you've
2 been involved in lots of audits. Is that a fair
3 statement?

4 A. That's a true statement.

5 Q. About how many, just offhand? Do you have any
6 idea at all? 100, 200?

7 A. Probably 100 maybe. I don't know.

8 Q. How many different companies?

9 A. Oh, gas, telephone, water, sewer, electric.

10 Q. Maybe 40, 50 different utility companies over
11 that period of time?

12 A. Yes.

13 Q. Is it fair to say that all utility companies
14 have bad debts?

15 A. I'm sure they do, yes.

16 Q. And would your experience indicate that bad
17 debt is just simply a cost of doing business?

18 A. Right.

19 Q. Have you audited a bad debt expense issue with
20 respect to any other utility company other than Empire?

21 A. I haven't personally.

22 Q. Is this the first time you've ever done any
23 work in your many years on this particular issue, on the
24 bad debt expense issue?

25 A. Well, I didn't really do the work on this

1 issue.

2 Q. Okay. We'll get to that in just a second.

3 A. Okay.

4 Q. But what I'm trying to find out is, what is
5 your knowledge of the bad debt expense or experience of
6 other utility companies? Do you have any at all?

7 A. I think they usually go up and down --

8 Q. Okay.

9 A. -- and they vary.

10 Q. Well, let me ask you this question: Would you
11 have any information as to how Empire's level of bad debt
12 expense, in terms of its total revenue, would compare to
13 the experience of any other utility company that you may
14 have audited?

15 A. Not offhand, no.

16 Q. Okay. That's fine.

17 And let me make sure that I understand.

18 You heard Mr. Gipson testify, and have you read
19 his surrebuttal testimony -- or his rebuttal and his
20 surrebuttal testimony?

21 A. Yes, I have.

22 Q. And I take it, then, that you understand that,
23 as Mr. Gipson has stated on page 2 of his rebuttal
24 testimony, that at the prehearing conference he discussed
25 this issue with your colleague, Mr. Phil Williams.

1 Was Mr. Williams the one that actually did the
2 work on this issue?

3 A. Yes, he was.

4 Q. And as a result of those discussions, the Staff
5 agreed and the Company agreed to use a .25 percent bad
6 debt factor in this case. Is that right?

7 A. That was based on net write-offs.

8 Q. Well, whatever it was based on, that was the
9 factor that was --

10 A. Right.

11 Q. -- that was agreed to. Is that true?

12 A. That's true.

13 Q. And has that revenue now been put into the
14 Staff's case?

15 A. Yeah, it's been factored into our case.

16 Q. So the actual amount of test-year bad debt
17 expense isn't really an issue here, is it?

18 A. No, not test year.

19 Q. Okay. What we're talking about is whether or
20 not that factor ought to be applied to any increase that
21 the company might get as a result of this case. Is that
22 true?

23 A. That's correct.

24 Q. Okay. Is it your understanding from reading
25 Mr. Gipson's testimony, that as far as bad debt expense is

1 concerned, the Company is actually getting less in its
2 settlement with you than it had asked for -- or its
3 settlement with the Staff?

4 A. That it asked for?

5 Q. Well, that it had built into its initial case.

6 A. Less than the test year.

7 Q. Okay. So your answer would be yes then?

8 A. Yeah. Yes.

9 Q. But the issue say, for example, as a result of
10 this case -- and I'm just going to take a number. There
11 is no significance to the number.

12 But let's say the Company would get a \$100,000
13 rate increase as a result of this case. The Company's
14 argument is that it ought to get an additional .25 percent
15 of that \$100,000 for additional bad debt expense.

16 Is that your understanding of the Company's
17 position?

18 A. That's my understanding.

19 Q. Okay. And your position is, no, we're just
20 going to give you whatever we agree to?

21 A. Right.

22 Q. Let me ask you this question: Let's say
23 that -- and don't attach any significance to this either,
24 especially the bench -- that your position, the Staff's
25 position, in this case is that instead of -- let's say the

1 Company's test year revenues are \$100,000, and the Company
2 thinks that they ought to be increased by 10, and you
3 think they ought to be decreased by 10, in that situation
4 you would argue -- or let me ask you, what would your
5 position be in terms of calculating the amount of bad debt
6 expense in your rate reduction case?

7 Would you apply the bad debt expense factor to
8 the present rate revenues of 100,000, or would you apply
9 it to what you believe the present rate revenues ought to
10 be, the 90,000?

11 A. I think it would be the present, present rate
12 revenues.

13 Q. So even if you were in a rate reduction
14 situation, you would calculate the bad debt factor based
15 on the present rate revenues. Is that right?

16 A. Right.

17 Q. As opposed to subtracting out what you thought
18 the excess was?

19 A. That's probably what I'd do, yes.

20 Q. Okay. Is that what the Staff has done in the
21 past, do you know?

22 A. I can't speak for all of the Staff.

23 Q. Have you ever done that in a case where you
24 have been involved on this particular issue?

25 A. Not me personally.

1 Q. And have you ever done -- made an adjustment of
2 that type with respect to any other issue in a rate
3 reduction proceeding?

4 A. Not that I can recall.

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

6 JUDGE RUTH: Commissioner Gaw?

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. Mr. Boltz, it's my understanding that you
9 didn't -- did you do any of the actual work regarding the
10 calculation on bad debt?

11 A. Not actually the work on it during the audit,
12 but I did the schedules that are in my testimony.

13 Q. Do you believe there is any correlation between
14 the amount of revenue a company brings in and its bad
15 debt, the amount of its bad debt?

16 A. No, I don't.

17 Q. Let me ask you this: The Company had no
18 revenue. How much bad debt would it have?

19 A. Probably no bad debt.

20 Q. And if it had \$100,000 in revenue, would you
21 expect it to be reasonable for it to have some bad debt?

22 A. I'm sure there would be some bad debt. I don't
23 know what it would be.

24 Q. But you don't believe there is any correlation
25 between revenue and the amount of bad debt at all, or that

1 it is of little significance?

2 A. I believe it's probably of little significance.

3 Q. When you're determining the amount of bad debt
4 on a factor to allow, what factors do you believe are
5 relevant in making that determination?

6 A. Well, I believe we used a five-year average to
7 get what the test-year level of bad debt should be.

8 Q. So from your standpoint, the issue of whether
9 or not the amount of revenue that may be projected or may
10 actually occur may not be an extremely relevant factor,
11 but the historical income and bad debt of a company is a
12 significant factor. Would that be accurate?

13 A. For setting bad debt expense in the test year.

14 COMMISSIONER GAW: I believe I'll quit there.
15 Thank you.

16 JUDGE RUTH: Mr. Boltz, I wanted to let you
17 know that Chair Lumpe has indicated she may have some
18 questions for you later.

19 So although you're going to be temporarily
20 excused in just a moment, you'll need to stick by.
21 Hopefully, today, she'll know for sure if she has any more
22 questions for you.

23 THE WITNESS: Okay. I'll be next door at a
24 prehearing.

25 JUDGE RUTH: Okay. You'll be easy to find

1 then.

2 Will there be any recross based on the
3 questions from the bench?

4 MR. SWEARENGEN: I think I have just one, if I
5 may.

6 RECROSS-EXAMINATION BY MR. SWEARENGEN:

7 Q. Mr. Boltz, once again, I'm trying to make sure
8 I understand where you are on this issue in response to
9 Commissioner Gaw's question.

10 If you've agreed -- if the Staff has agreed as
11 to an appropriate bad debt expense factor based on some
12 sort of historical study -- which I think you have and I
13 think the Company has accepted that -- why would you not
14 for purposes of setting rates in this case want to apply
15 that same factor to the revenues which will result in this
16 case, which would include not only what the Company would
17 have in its test year but what it would get in the
18 increase proceeding, presuming it would get an increase?

19 A. Because I don't know if that is going to be the
20 right factor, for one thing, and I don't know if I'd still
21 apply it to that anyway.

22 Q. Well, let me ask you about that.

23 You don't have any doubt that that's the right
24 factor to use for purposes of settling the issue now?

25 A. Right. That's what we agreed on.

1 Q. And you looked at at least five years of data
2 to satisfy yourself that that was the appropriate factor?
3 A. Yeah. I think we originally looked at six --
4 Q. Okay.
5 A. -- but we used five, I think.
6 Q. Based on that review, do you have anything that
7 would lead you to believe that that factor would change in
8 the next year, the year the new rates are in effect?
9 A. I have no idea. There is a lot of unknown
10 factors out there.
11 Q. And what are those unknown factors?
12 A. Oh, it could be -- weather could play a part in
13 it. Collection policies could play a part in it.
14 Q. So you think that weather and collection
15 policies would make that factor change significantly?
16 A. It could. And paying habits of the customers
17 could.
18 Q. Now, you indicated that you really had never
19 looked at the bad debt expense issue for any other
20 company; this is the first time you've looked at it.
21 Is that right?
22 A. Well, it could be the first time.
23 Well, I didn't look at it this time.
24 Q. Mr. Williams really looked at it?
25 A. Yes.

1 Q. So you don't really know from your auditing
2 experience whether or not any of those factors really
3 would influence it one way or the other; you're just
4 saying that they possibly could?

5 A. They possibly could.

6 Q. But from a standpoint of what I would like to
7 say is -- what would appear to me to be logical, if it's
8 good for this case, why wouldn't it be good for the
9 foreseeable future?

10 A. Because I don't know what that factor is going
11 to be.

12 MR. SWEARENGEN: Okay. Thanks. That's all.

13 JUDGE RUTH: Thank you.

14 Staff, will you have redirect?

15 MR. BATES: Yes.

16 JUDGE RUTH: Please proceed.

17 MR. BATES: Thank you.

18 REDIRECT EXAMINATION BY MR. BATES:

19 Q. Mr. Boltz, I believe in response to
20 Commission -- excuse me -- a question you were asked by
21 Commissioner Gaw, you made the statement that you believe
22 there was little relation between the revenue and the bad
23 debt. Did I understand you correctly?

24 A. Yes.

25 Q. And would you explain your answer more fully?

1 Why do you believe that?

2 A. Well, because the revenues will go up some

3 years and the bad debts will go down, and they'll go up

4 and they'll go down. They fluctuate.

5 Q. Is there any way to predict that?

6 A. No, there isn't.

7 Q. Do you believe that bad debts can be directly

8 correlated with changes in revenues due to Commission-

9 ordered rate changes?

10 A. No.

11 Q. Why not?

12 A. For the same reason, I believe.

13 Q. Okay. And I believe you testified that you did

14 prepare the schedules that are contained in your

15 surrebuttal testimony?

16 A. Yes, I did.

17 Q. But you did not participate in the audits

18 themselves?

19 A. Phil did.

20 Q. Who is Phil, by the way?

21 A. Staff Witness Phil Williams.

22 Q. And did you review those audits, however?

23 A. I looked over them a little bit with him, but

24 just for prehearing. That's all I did.

25 MR. BATES: Thank you.

1 JUDGE RUTH: Okay. Thank you, Mr. Boltz. You
2 may step down. Like I said, we may need to recall you
3 later -- probably this afternoon.

4 JUDGE RUTH: I believe now we're ready to move
5 on to the issue of payroll incentive pay.

6 And we have Empire down first,
7 Witness McKinney. Is that correct?

8 MR. SWEARENGEN: That's right, Your Honor.

9 But before we do that, I mentioned to
10 Mr. Dottheim a minute ago that if it would be possible, I
11 would like to ask that we take a recess at this time so
12 that I can visit with him about the status of this issue.

13 Because as I understand it, based on the
14 prefiled testimony, the Staff has indicated that it would
15 make a decision as to whether or not it was going to
16 include or exclude the \$323,000 that's at issue here.

17 And Mr. Dottheim can correct me if I'm wrong,
18 but my understanding is that a Staff representative spoke
19 with Mr. Myron McKinney of the Company some time late
20 yesterday afternoon and indicated that was still an issue.

21 My reading of the testimony that has been
22 prefiled to date indicates that the Staff may want to file
23 supplemental surrebuttal testimony.

24 The way the file testimony stands right now,
25 the Staff hasn't gone one way or the other with respect to

1 that, and I'm not sure how Mr. Dottheim intends to
2 proceed.

3 I guess in my mind, what I anticipated was that
4 it couldn't be resolved, that there would be some
5 additional testimony filed by the Staff, which would be
6 fine, and that we would have an opportunity to review that
7 prior to the cross-examination.

8 And although no one has said this to me --
9 Mr. Dottheim hasn't represented this to me and no one else
10 has -- but my assumption was that maybe that was something
11 that might be carried over later on in the context either
12 of the true-up hearing later on this summer or perhaps
13 later next week in the context of this hearing.

14 But I haven't had a chance to speak to
15 Mr. Dottheim about this. This is the first time he's
16 heard it, and that's what I want to visit with him about.

17 JUDGE RUTH: Can you give me an estimate of how
18 long I should make the recess for?

19 MR. SWEARENGEN: I don't know. 15, 20 minutes
20 perhaps.

21 JUDGE RUTH: We'll make it for 20 minutes, 10
22 to 10.

23 We're off the record now.

24 (A RECESS WAS TAKEN.)

25 JUDGE RUTH: We're back on the record.

1 We've had a brief recess for the parties to
2 discuss a few issues, including Ms. Fischer's testimony.

3 Mr. Dottheim, would you explain, then, for the
4 record what is going on.

5 MR. DOTTHEIM: Yes.

6 As I think Mr. Swaengren indicated before we
7 got -- before we went off the record, he had raised a
8 question as to what was the status of the case at the
9 moment, given that in the surrebuttal testimony of
10 Janis E. Fischer, she does make reference to the
11 possibility of the Staff submitting some supplemental
12 testimony based upon the response to an outstanding Staff
13 data request.

14 We did receive the data request response Friday
15 of last week.

16 JUDGE RUTH: The 25th?

17 MR. DOTTHEIM: The 25th, yes.

18 And we have had an opportunity to go through it
19 for position prospecting disallowance, as we've indicated
20 that was our -- in essence, our position at the moment, I
21 think, is what we indicated.

22 There is no change in that, but we're not
23 interested in even purportedly denying someone their due
24 process and what have you.

25 And if the schedule permits, which I think it

1 does -- not that I'm keen on suggesting that -- but we
2 think we could file some supplemental testimony by the end
3 of the day.

4 Tomorrow the Company, of course, needs an
5 opportunity to review it, and then maybe Mr. Swearngen
6 could indicate to us procedurally where he thinks we're
7 at, as to whether there is any need for Empire to file
8 anything in response or whether we can just schedule it
9 for hearing one day next week when the schedule might
10 accommodate it, other than Wednesday.

11 JUDGE RUTH: Okay. I want to make sure. I
12 think you answered this question, but I was trying to
13 figure out why on the day this issue was scheduled to be
14 heard I'm finding out that there may be supplemental
15 surrebuttal testimony.

16 And I guess it goes back to the data request
17 which was -- the answer filed on May 25th, which was last
18 Friday?

19 MR. DOTTHEIM: The data request response that
20 the Staff received last Friday.

21 JUDGE RUTH: So Staff received the response on
22 May 25th.

23 And if you-all have made reference to this
24 problem earlier in the week, I think I missed it.

25 MR. DOTTHEIM: No, there was no reference to it

1 earlier.

2 JUDGE RUTH: Okay. And I can tell you, I don't
3 think the Commissioners are going to be happy. I wish I
4 had some warning to at least prepare them for this. And
5 instead --

6 MR. DOTTHEIM: Well, frankly, the Staff hadn't
7 viewed this as a problem. Nothing was said to the Staff,
8 to my knowledge, about this matter prior to Mr. Swearengen
9 mentioning it to me while part of the bad debt expense
10 issue was being heard.

11 So it's not something that had been raised with
12 the Staff prior to the conclusion of the bad debt expense
13 issue this morning.

14 MR. SWEARENGEN: What Mr. Dottheim says is
15 correct.

16 Let me, once again, if I could refer you to the
17 supplemental -- or excuse me -- the surrebuttal testimony
18 of Janis Fischer.

19 On page 10, the question is: When will the
20 Staff make its determination of the allowance of the
21 323,000 incentive awards? And the answer is there, the
22 Staff is going to evaluate what we give them and then let
23 us know what their position is, and they may file
24 surrebuttal testimony.

25 So we were hoping, until late yesterday

1 afternoon, that the Staff would agree with our position on
2 that and it would go away as an issue.

3 We only learned then that it was still an issue
4 in the case. And my problem, I guess, from an evidentiary
5 standpoint, is the way the record now stands from the
6 Staff's input, they haven't really said yes or no in the
7 prepared testimony.

8 And so I could, I guess, roll the dice and say
9 I have no questions for the witness on cross-examination,
10 and as long as the bench or my good friends over here
11 don't do any friendly cross-examination, they haven't made
12 their case.

13 That's kind of got your regulation, and I don't
14 want to do that. And this is just a situation that has
15 developed.

16 And you're right, we weren't really aware of it
17 until late yesterday, and I didn't have a chance to talk
18 to Mr. Dottheim about it until this morning. But I don't
19 think it will take long to try the issue.

20 JUDGE RUTH: Well, you know, explaining on the
21 record why it's happened helps, and it will be there for
22 the Commissioners to review, when the data request came
23 in, et cetera.

24 But I didn't follow. What page were you
25 referring to?

1 MR. SWEARENGEN: I'm looking at page 10 of her
2 surrebuttal testimony, lines 3 and 4, where the question
3 is asked, when will Staff make its determination? And
4 they said they would do that once we gave them the
5 additional information.

6 And we appreciate that the Staff kept an open
7 line on this issue and was willing to continue to look at
8 it.

9 And Mr. Dottheim can correct me, but at some
10 point in this process my sense of it was that if it
11 continued to be an issue, it would be one that would be
12 dealt with at the true-up hearing in August.

13 Now, I can't point you to a document where it
14 says that, but that was the sense and the impression that
15 I had. So --

16 MR. COFFMAN: I mean, isn't it true that
17 we're -- I mean, we've got several payroll issues,
18 unfilled positions and so forth, that are going to be
19 brought up at the true-up hearing. Maybe it would just be
20 appropriate to do it then.

21 MR. SWEARENGEN: Well, that would be fine with
22 us too. And maybe in the meantime we can convince the
23 Staff that we're right, and maybe there is some more
24 information that we can give them and it goes away as an
25 issue. I don't know, but --

1 JUDGE RUTH: I'm going to point out, I'm
2 reluctant to move anything else to the true-up hearing.

3 MR. SWEARENGEN: Sure. I understand.

4 JUDGE RUTH: We've already -- in opening
5 statements, we've had comments about how everything gets
6 pushed off.

7 MR. SWEARENGEN: Right. I understand.

8 JUDGE RUTH: And whether it's Kevin Thompson
9 writing this or someone else, I don't want to leave all of
10 the issues to that point --

11 MR. SWEARENGEN: I understand. And we're
12 willing to do it next week. If Mr. Dottheim can file
13 something tomorrow, if we decide we need to file
14 something, we'll do it by Tuesday. And I think in an hour
15 and a half sometime next week we could try the issue. It
16 might not even take that long.

17 JUDGE RUTH: If Mr. Dottheim were to file
18 something by tomorrow afternoon and the parties could
19 respond by Tuesday, which day do you propose addressing
20 this?

21 Wednesday was out. Right?

22 MR. DOTTHEIM: Right.

23 JUDGE RUTH: Wednesday the 6th was a no.

24 I don't know how long the parties were
25 expecting the hearing to go.

1 So you were thinking Thursday?

2 MR. DOTTHEIM: Well, it's certainly, I think,
3 something that certainly the Staff would be flexible on --

4 MR. SWEARENGEN: Sure.

5 MR. DOTTHEIM: -- that being it's not something
6 that we would say we'd like some advance notice, like,
7 24 hours in advance.

8 So long as, from the Staff's perspective,
9 Ms. Fischer is available, which she won't be on Wednesday,
10 the Staff would be ready to go when the Company says it's
11 had an opportunity to review that testimony and do
12 anything supplemental itself, which, again, we don't have
13 an indication as to whether the Company might believe or
14 would request an opportunity to file something in
15 response.

16 JUDGE RUTH: Do the parties have a sense of, do
17 you expect the issues that we're starting on Wednesday,
18 the 6th, to carry over to Thursday?

19 MR. SWEARENGEN: I'm sorry. What issues are
20 those?

21 MR. DOTTHEIM: The fuel --

22 JUDGE RUTH: The document I have in front of me
23 is the original procedural schedule. Somewhere in my file
24 is the amended.

25 MR. COFFMAN: My estimation is that it will

1 take all Wednesday and possibly some of Thursday.

2 MR. CONRAD: Yes.

3 MR. COFFMAN: Largely up to Mr. Conrad.

4 JUDGE RUTH: So we're expecting those issues to
5 go Wednesday and Thursday anyway; therefore, we could
6 perhaps add on Ms. Fischer's on Thursday when the other
7 stuff finishes.

8 MR. DOTTHEIM: Yes. From the Staff's
9 perspective, yes.

10 JUDGE RUTH: Tentatively, how does that sound
11 to the other parties?

12 MR. SWEARENGEN: Let me -- Mr. McKinney, who is
13 going to decide whether or not he needs to file any more
14 testimony, says that -- tells me that he -- we could do
15 that on Monday and that would create Tuesday as an
16 opportunity to try the issue after we finish cost of
17 service and rate design. That's another option.

18 MR. COFFMAN: If possible. That can take all
19 day too.

20 MR. SWEARENGEN: Well --

21 JUDGE RUTH: My first thought was Tuesday, but
22 when you said you wanted until Tuesday --

23 MR. SWEARENGEN: Well, I just shaved a day off.
24 We'll have the testimony Friday, and hopefully by
25 four o'clock or so on Monday we can have anything that we

1 want to file to the parties or tell them that we're not
2 going to, and we can try the issue on Tuesday.

3 JUDGE RUTH: What I'd like for you to do is try
4 and be prepared Tuesday, just in case we get that far.

5 MR. SWEARENGEN: That's fine.

6 JUDGE RUTH: If we don't, it's going to be
7 moved, then, perhaps to the very end.

8 MR. SWEARENGEN: I appreciate that. Thank you.

9 MR. CONRAD: And, Judge, the only -- from our
10 perspective, I guess, since you're talking about
11 Tuesday -- and we do kind of have that -- at least that
12 day -- whether it takes all of it to do that, I don't
13 know, because that will depend on other things.

14 We don't -- we wouldn't have a problem, if we
15 got done with that issue, if there was time to do this
16 issue, horning it in.

17 What I would not want to do -- and I understand
18 your indication to be that you would not want to do
19 this -- is somehow insert this issue in the middle of the
20 cost-of- service deal.

21 I really think that's -- that would not be
22 something we'd want to do. And I think --

23 JUDGE RUTH: Right. My idea was to -- if it's
24 done on Tuesday, it would be at the conclusion of the
25 cost-of-service/rate design, all of those people. It

1 would come at the very end, then, of Tuesday. And if
2 there is not time it do it then, then it's going to come
3 on Thursday when the fuel and purchase power issues are
4 complete.

5 MR. CONRAD: I think that works for us,
6 particularly in view of my colleagues at the bar's
7 admission that he's going to discontinue got-you
8 regulation.

9 MR. SWEARENGEN: Thank you, Mr. Conrad.

10 JUDGE RUTH: Okay.

11 Do the parties plan, then, on calling Empire?

12 Are you ready to call Empire or do you want to
13 wait --

14 MR. SWEARENGEN: I think we need to wait,
15 because Mr. McKinney may be filing another piece of
16 testimony.

17 JUDGE RUTH: Well, I didn't know if we were
18 going to do him twice.

19 MR. SWEARENGEN: Right.

20 JUDGE RUTH: Then you're not going to like what
21 I have to say. But I've been diligently working, trying
22 to get caught up to date in this case. I don't feel like
23 I can try it very well unless I've read everything. I've
24 read everything now. I'm trying to understand it.

25 And my impression is that the proposed list of

1 issues and statements of position is not the parties best
2 effort. I think you all can do better. I think you
3 can -- you need to file a revised statement of issues. It
4 needs to include all of the issues.

5 If the issues are stipulated -- or settled by
6 stipulation and agreement, I want it in there, and I want
7 it to say this has been settled, by the parties agree
8 under, and give me the caption of whatever document it is
9 that you've agreed to.

10 That means you'll also need to refile -- I want
11 you to file a revised reconciliation. I'm assuming that
12 some of those numbers may change or may have been
13 stipulated out.

14 If you take a look at it and there is no
15 change, that's fine, but I want you to look at it and make
16 sure.

17 Now, I know what I want. Have I made it clear
18 to the parties?

19 MR. DOTTHEIM: Is your problem with the list of
20 issues, statements of positions, that not everything is
21 listed, or does it also go to what issues are listed and
22 statements of positions made are not adequate from your
23 perspective?

24 JUDGE RUTH: It's not adequate. The direct --
25 just a minute ago with Bruce Bates, in the direct

1 testimony of Mr. Boltz, there is jurisdictional issues
2 which may or may not be an issue, but they're not listed
3 on the list of issues, statements of position.

4 We may be discussing that later. And if I'm
5 the one writing this, I'm not sure where it falls in. I
6 don't want to -- I don't want to miss any issues.

7 And at this point Kevin Thompson still plans on
8 writing it, but I want to have all of the evidence,
9 everything -- I don't want him to have to hunt and peck
10 for it like I've been trying to hunt and peck and find it.

11 So I think the parties need to be more detailed
12 in what the issues are. And some of the responses seemed
13 a little cursory.

14 And then I think you've left off some of the
15 issues, like, whether it's Mr. Boltz's jurisdictional
16 issues or some of the stip and agreement issues.

17 At least list them for me and say, this is
18 settled by the unanimous stip and agreement.

19 Because, you know, one of the things we're
20 talking about in agenda today are the stip and agreements.
21 And I have had to discuss with several Commissioners why
22 they cannot find the unanimous -- or it was the first stip
23 and agreement, the May 14th case. Those issues aren't on
24 the list of issues.

25 And so then I'm trying to figure out, well,

1 you're right, they're not on there. Where are they? Oh,
2 they aren't on there because you didn't put them on there.
3 I want it all on there.

4 MR. DOTTHEIM: You're referring to the in-
5 service criteria issue?

6 JUDGE RUTH: Yes.

7 And that wouldn't take a lot of effort, but it
8 would be laid out for the Commissioners and the RLJ to
9 know, well, this was an issue and it settled by the
10 May 14th stip and agreement that is being treated as
11 unanimous.

12 And, anyway, that's what I want. I will --
13 Mr. Coffman, you're looking confused.

14 MR. COFFMAN: Yeah. There sometimes may be
15 100 issues in a case, and typically what the Commission's
16 order is to list the issues that are contested.

17 JUDGE RUTH: Exactly. But it sounds like
18 Mr. Boltz's jurisdictional issues may be contested.

19 MR. COFFMAN: It's my understanding that's a
20 settled issue; however, Mr. Conrad was attempting to do
21 cross-examination as it may relate to a contested issue,
22 which is rate design.

23 JUDGE RUTH: And if that's the case, that's
24 fine. Then that one wouldn't need to be added.

25 MR. COFFMAN: Okay. You're not asking that

1 every settled issue be --

2 JUDGE RUTH: No, not every settled issue, but
3 the ones that the Commission is going to have to address.
4 And that includes issues that are in the stip and
5 agreement.

6 There is the May 14th stip and agreement that
7 is treated as unanimous, and there is the May 25th stip
8 and agreement. And one of those is apparent -- the
9 May 25th one addresses Issue 6A, I believe. It wasn't
10 laid out. It didn't say 6A. But when I review it, it
11 looks like it addresses 6A.

12 So in your revised stip and agreement, you
13 could clarify that.

14 MR. COFFMAN: 6A.

15 JUDGE RUTH: And I may have that wrong.

16 MR. COFFMAN: That's the subject, I guess, of a
17 third stipulation and agreement.

18 JUDGE RUTH: The May 25th, right. But it's the
19 May 25th stip and agreement.

20 That one seems to address the State Line Power
21 Plant and Energy Center, Issue A part.

22 And I want the parties to go ahead, then, and
23 clarify that in the issues list, since I'm asking you to
24 do this other stuff anyway.

25 MR. COFFMAN: Okay.

1 MR. SWEARENGEN: Are you wanting one pleading
2 that all of the parties are on that sets out these
3 matters, or are you asking each party to file something?

4 JUDGE RUTH: One revised list of issues is
5 adequate, so long as the parties feel that they have
6 provided the statement of position on that issue.

7 And then on the reconciliation, there may not
8 be a change, but in looking at it, I thought that some of
9 the numbers may have been agreed to or -- I want you to
10 look at it again and make sure that nothing has changed.
11 If nothing has changed, fine.

12 Mr. Conrad.

13 MR. CONRAD: Judge, I think I'm
14 understanding -- just, I guess, by way of explanation, I
15 have disowned or disclaimed being an architect, certainly,
16 of this somewhat still new procedure that we are using
17 now, in lieu of what we struggled with for several years,
18 which was a hearing memorandum, that began to become
19 itself almost, you know, a tree-killing exercise, and
20 became, at least I felt, of little value.

21 I think what, perhaps, happens is as you go
22 through this process, people tick off issues and then they
23 don't -- then they don't think they're there anymore.

24 There are several people, for instance, from
25 the Staff who have testimony that's been marked, hasn't

1 yet been offered, that may have information that I would
2 like to get into at least with respect to those -- those
3 other issues.

4 The old process used to be that everybody just
5 came across, and now it seems like we're doing something
6 else differently. And that's fine. And we'll comply with
7 that.

8 What I hear you saying is that you really would
9 like to have a much more complete list of the issues, at
10 least those that have at one stage or another been
11 identified as testimony, and then some indication on
12 those that this -- this has been resolved and it's
13 comprehended -- the resolution is comprehended by this
14 particular package which has been submitted and filed,
15 and how those -- how those things have been resolved.
16 And then hooking that back into the -- into the
17 reconciliation, so that you can see, okay, this number has
18 been settled as a result of this, as a result of this, and
19 then these still are in play.

20 JUDGE RUTH: Exactly, Mr. Conrad. You've been
21 more articulate than I have been.

22 What I am looking for is the document -- like I
23 said, I'm going under the assumption of whether I write it
24 or Kevin Thompson writes it. If I'm confused, he might be
25 confused too.

1 So I want to make sure -- I don't want to miss
2 any issues that have to be resolved by the Commission, and
3 at this point I'm uncomfortable with what's been provided.
4 I'm not sure if I'm missing issues.

5 MR. DOTTHEIM: On the pain of prolonging this
6 and saying something that might be misconstrued, it's
7 oftentimes difficult to lay out all issues.

8 It is not unusual, at least from my
9 perspective, that all of the issues -- if all issues are
10 ever identified, but all issues aren't completely set out
11 until potentially when the briefs are filed. And the
12 briefs may provide, and hopefully do provide, a road map
13 of the issues that need to be decided.

14 Each of the parties that's filed testimony, we
15 can indicate what our perception is of the issues, but we
16 rely on the other parties to indicate what they believe
17 are the issues.

18 I'm under the impression that with the bad debt
19 expense issue this morning, there was a potential sub-
20 issue that was raised, that, I think, from the Staff's
21 perspective, had not been identified for us as what
22 someone -- what some party believed to be an issue.

23 And Mr. Conrad, who made reference to the
24 hearing memorandum, which we used for many years, and I
25 think in part was abandoned because of how voluminous they

1 became, there was always, to my recollection -- my
2 recollection, a paragraph or a couple of sentences that
3 indicated that these were the issues as we know it.

4 And it does happen that issues do not appear or
5 do not make themselves known to the parties until --
6 until, actually, the hearing themselves or when you're
7 putting together the reconciliation and having the other
8 parties take a look at it.

9 So to think that we could identify all of the
10 issues or provide a document that goes into considerable
11 detail as far as setting out the issues, we may be back to
12 more the nature of a hearing memorandum than a statement
13 of position.

14 JUDGE RUTH: I don't expect you to provide the
15 level of detail as would be in the old hearing memorandum.

16 I just feel that -- you know, it started off by
17 when the statement of -- or list of issues was filed,
18 along with a nonunanimous stip that got objected to;
19 therefore, that stip has gone away. You know, from right
20 there it could have been done differently. And I would
21 suggest in the future it be done differently.

22 A nonunanimous stip is certainly not
23 guaranteed, and so that issue should have been included on
24 the list of issues, even if -- to do no more than
25 reference the nonunanimous stip.

1 And then the unanimous stips, it still would be
2 wise to go ahead and list them as an issue because it's
3 something that the Commission has to take action on.

4 The issues that have gone away before we ever
5 got to hearing, the Commission does not have to take a
6 position on, I don't expect -- I don't want to see those.

7 And I don't want you to write paragraph after
8 paragraph of the statement of position. I just want it
9 clarified all in one document.

10 And I agree with you, that issues come up all
11 through the hearing, and I don't -- there is no way you
12 can know that ahead of time, and I did not intend to
13 criticize any party for that.

14 But I would be greatly aided if you would do
15 this, and that's why I'm asking you to. What I would like
16 your feedback on is how long you want to do it.

17 MR. DOTTHEIM: You're asking how long it will
18 take us to get the revised document to you?

19 JUDGE RUTH: Yes. And to take a look at the
20 reconciliation, to make sure it doesn't need changes.

21 Mr. Coffman.

22 MR. COFFMAN: Obviously, I guess, what we have
23 given you wasn't helpful. And if I understand your
24 concern --

25 JUDGE RUTH: It was helpful but I want some

1 more help.

2 MR. COFFMAN: Obviously, your concern is that
3 you're worried that something is missing, that you're
4 losing something.

5 And it's my feeling that, I guess, the original
6 list of issues and then the -- just the statement of the
7 fuel and purchase power issue and supplemental list covers
8 every contested issue that the parties have.

9 But I'm assuming that you would be satisfied
10 with a document that compiled those and had all of the
11 parties in agreement, that these were the only issues that
12 were -- we are aware of at this time?

13 JUDGE RUTH: Yes. But I want -- you know, if
14 you have -- like the issue that was the subject of the
15 nonunanimous stip and agreement filed on the 14th to which
16 Praxair did not object to, that should be listed. It
17 should have been listed as an issue to begin with.

18 MR. DOTTHEIM: The in-service?

19 MR. COFFMAN: In-service criteria. Okay.

20 JUDGE RUTH: And, you know, so that should be
21 on there. So it's slightly more than just compiling
22 the --

23 MR. COFFMAN: Okay.

24 JUDGE RUTH: -- the list of issues and the
25 addendum.

1 MR. COFFMAN: Okay.

2 JUDGE RUTH: Okay. How long do you want?

3 I want to be reasonable, but, of course, I want
4 it --

5 MR. DOTTHEIM: Now.

6 JUDGE RUTH: I want to be reasonable. We'll go
7 off the record for five minutes. You can talk.

8 (OFF THE RECORD.)

9 JUDGE RUTH: We have been off the record for a
10 few minutes discussing in a little bit more detail what I
11 would like for the parties to please file regarding a
12 revised or amended list of issues.

13 I think the parties and I now have come to an
14 understanding, and they're going to take a look at that.
15 They're also going to look at the reconciliation and make
16 sure that it does not need to be updated or amended.

17 Now, on the record, someone help me. Did we
18 decide on a date for that to be filed, though, the
19 revised -- you're just going to show it to me, and if it's
20 adequate -- okay.

21 So at this point there is no date for that to
22 be filed.

23 MR. DOTTHEIM: We certainly could, I think,
24 give you an indication tomorrow morning as to where we
25 are, and you can indicate to us whether that's acceptable

1 or not.

2 JUDGE RUTH: That sounds good.

3 Are there any other matters we need to take
4 care of on the record?

5 MR. CONRAD: Just one quick thing, Your Honor.

6 And as you said a few moments ago, we might not
7 like what you said.

8 I'm finding out this morning from your earlier
9 discussion that a different administrative law judge or
10 regulatory law judge than the one that is hearing the case
11 and observing the credibility and demeanor of the
12 witnesses may be the one that is writing the order.

13 Since that hasn't happened yet, I don't think I
14 would yet be entitled to or should object to that, but in
15 the interest of protecting the record and my client's
16 interest, I do need to make you aware of a concern, I
17 guess, that we would have.

18 I have a case pending, some argue in two
19 courts, but at least in one, in which the question of
20 whether a witness's testimony can be pushed aside or
21 disregarded on the basis of a determination as to that
22 witness's credibility is being made by putting -- by
23 people who did not observe the cross-examination of the
24 witness, did not observe anything of their demeanor, any
25 of those other indicia that we lawyers all supposedly hold

1 so dear and near to our hearts.

2 And I'd be remiss if I didn't at least make you
3 aware of that concern.

4 Now, please understand, Judge Ruth, I'm not
5 trying to suggest to you that you need to have more work.
6 I think it's just something at this point that you folks
7 need to sort out, but I do need to make you aware of that
8 concern.

9 JUDGE RUTH: Off the record for just a moment.

10 (OFF THE RECORD.)

11 JUDGE RUTH: As I indicated before, the case is
12 still assigned to Deputy Chief Regulatory Law Judge
13 Kevin Thompson. I have been assigned to hold the hearing.
14 At this point I have not been assigned to write the case.

15 Mr. Conrad's concerns are noted for the record.
16 And, unfortunately, I can't tell you whether or not Kevin
17 will be writing it or I will.

18 I can assure you that whoever writes it, the
19 entire record is read, just as there are times when some
20 of the Commissioners are out of the room but they still
21 read the entire record.

22 But your concern is noted. And I think with
23 that we have finished our business for the day, and we can
24 go off the record.

25 Oh. Wait a minute. Do we have something else?

1 MR. DOTTHEIM: Yes.

2 Mr. Frey has reminded me that we may have an
3 open question regarding the appearance tomorrow -- or the
4 need for the appearance tomorrow of Mr. Lyons.

5 And I don't know if the Staff has indicated
6 this previously to the Company, but the Staff has no
7 cross-examination for Mr. Lyons, and from the Staff's
8 perspective, he can be excused.

9 But, of course, that's not to say that the
10 judge, you, or the Commissioners might have some
11 questions, and Mr. Conrad or other parties. I can only
12 speak on what is conveyed to me regarding the Staff's
13 position, of course.

14 JUDGE RUTH: Right. And thanks for reminding
15 me.

16 The Commissioners did discuss this issue
17 yesterday, and what they have instructed me to tell you is
18 that they have no questions for Mr. Lyons and, therefore,
19 it is up to Empire whether they bring him in.

20 You know, the concern, I think, they were
21 trying to get across is it's hard for them to guess ahead
22 of time that something that a witness says today or
23 tomorrow might not spark a question and, therefore, they
24 might wish he were here.

25 However, that's always the case when a witness

1 is being excused. And they indicated that you are able to
2 excuse the witness if you wish and not bring him in, but
3 you do so at your own risk, just as you always do.

4 MR. SWEARENGEN: Okay. Thank you.

5 JUDGE RUTH: Anything else?

6 Okay. Then we will conclude the hearing.

7 For the day, adjourned for the day. We're not
8 concluded.

9 (THE HEARING WAS ADJOURNED UNTIL 8:30 A.M. ON
10 FRIDAY, JUNE 1, 2001.)

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I N D E X

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