

In the Matter of:

**THE OFFICE OF PUBLIC COUNSEL, et al.**

v.

**KCP&L GREATER MISSOURI OPERATIONS CO.**

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**EC-2019-0200 VOL. I**

*August 07, 2019*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

August 7, 2019

Jefferson City, Missouri

Volume 1

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The Office of the Public	)	
Counsel and The Midwest Energy	)	File No. EC-2019-0200
Consumers Group,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
KCP&L Greater Missouri	)	
Operations Company,	)	
	)	
Respondent.	)	

MORRIS L. WOODRUFF, Presiding  
CHIEF REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,  
WILLIAM P. KENNEY,  
SCOTT T. RUPP,  
MAIDA J. COLEMAN,  
COMMISSIONERS

REPORTED BY:  
Tracy Taylor, CCR No. 939  
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A P P E A R A N C E S

ROBERT J. HACK  
Kansas City Power & Light Company  
1200 Main, 16th Floor  
Kansas City, Missouri 64105  
816.556.2791  
FOR: KCP&L Greater Missouri Operations Company

KARL ZOBRIST  
Dentons US LLP  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111-7700  
816.460.2545  
FOR: KCP&L Greater Missouri Operations Company

JAMES M. FISCHER  
Fischer & Dority, PC  
101 Madison, Suite 400  
Jefferson City, Missouri 65101  
573.636.6758  
FOR: KCP&L Greater Missouri Operations Company

DAVID WOODSMALL  
308 E. High Street, Suite 204  
Jefferson City, Missouri 65101  
573.636.6006  
FOR: Midwest Energy Consumers Group

CALEB HALL  
200 Madison Street, Suite 650  
PO Box 2230  
Jefferson City, Missouri 65102  
573.526.1445  
FOR: Office of the Public Counsel

NICOLE MERS  
CASI ASLIN  
200 Madison Street, Suite 800  
PO Box 360  
Jefferson City, Missouri 65102-0360  
573.526.4887  
FOR: Staff of the Missouri Public Service Commission

1 JUDGE WOODRUFF: We're here for the  
2 hearing in File Number EC-2019-0200, which is Office  
3 of Public Counsel and Midwest Energy Consumers Group  
4 versus KCPL Greater Missouri Operations Company. And  
5 we'll start the day off by starting with entries of  
6 appearance beginning with Public Counsel.

7 MR. HALL: Good morning. Thank you, Your  
8 Honor. Caleb Hall appearing on behalf of the Office  
9 of Public Counsel. My contact information has been  
10 previously provided to the court reporter.

11 JUDGE WOODRUFF: Thank you. MECG.

12 MR. WOODSMALL: David Woodsmall on behalf  
13 of MECG.

14 JUDGE WOODRUFF: For Greater Missouri  
15 Operations Company.

16 MR. FISCHER: On behalf of GMO, Robert  
17 Hack, Karl Zobrist and James Fischer. And our contact  
18 information has been provided to the court reporter.

19 JUDGE WOODRUFF: Thank you. And for  
20 Staff?

21 MS. ASLIN: Casi Aslin and Nicole Mers  
22 for Staff. And our information has been provided to  
23 the court reporter.

24 JUDGE WOODRUFF: That's all the entries  
25 of appearance. Mr. Hack, you indicated you had a

1 preliminary matter you wanted to bring up?

2 MR. HACK: Yes. Yes, Judge. In a  
3 nutshell, GMO objects to the requests made in the  
4 notice issued on August 5th, that the parties should  
5 be prepared, based on the cost-of-service calculations  
6 from GMO's most recent rate case, to provide the  
7 expected revenues and recurring expenses to operate  
8 Sibley.

9 This request, issued just two days ago,  
10 effectively shifts the burden of proof and is  
11 inconsistent with the procedural schedule, depriving  
12 GMO of due process as the respondent in this matter.  
13 GMO hasn't had sufficient time to prepare an estimate  
14 of the amount included in GMO's revenue requirement  
15 for Sibley.

16 GMO filed Rebuttal Testimony explaining  
17 in detail how the OPC and MCEG Direct Testimony  
18 estimates of the magnitude of the deferral were  
19 overstated and incorrect and that no baseline of  
20 Sibley costs was included in the Settlement Agreement  
21 approved by the Commission in GMO's most recent rate  
22 case. Staff witness Oligschlaeger made similar points  
23 in his Cross-Rebuttal Testimony. Neither OPC nor MCEG  
24 attempted in surrebuttal to provide better estimates  
25 of the magnitude of the deferral or to identify a

1 baseline of Sibley costs included in GMO's rates.

2 OPC and MECG, as the moving parties, bear  
3 the burden of proof and they failed to address these  
4 shortcomings, the overstated statement of the deferral  
5 and the absence of a baseline for Sibley costs in  
6 rates, in their Surrebuttal Testimony when they had an  
7 opportunity to do so.

8 To ask for a Sibley cost baseline when  
9 the Settlement Agreement was a black box and to do so  
10 just two days before the hearing with no time to  
11 conduct discovery is a deprivation of GMO's right to  
12 due process.

13 In addition, to ask for such a  
14 quantification under the present circumstances  
15 effectively shifts the burden of proof. It is like a  
16 trial judge in a civil lawsuit asking the defendant to  
17 quantify damages for the jury before liability has  
18 been established and before the plaintiff has -- has  
19 made a showing of damages.

20 In making this objection, Judge, GMO is  
21 not saying that it cannot or will not respond to the  
22 question, but that due process requires a more orderly  
23 process that permits adequate time to conduct  
24 discovery and analysis. GMO does not bear the burden  
25 of proof in this proceeding. OPC and MECG do.

1           As such, OPC and MECG should propose a  
 2 baseline and method of measuring the deferral before  
 3 GMO has to take a position, with time for GMO to  
 4 conduct discovery before cross-examination. That time  
 5 simply doesn't exist today. GMO believes the hearing  
 6 this week should proceed as scheduled based on the  
 7 record as it exists today so that the Commission can  
 8 determine whether Sibley's retirement is  
 9 extraordinary.

10           Based on the state of the record today,  
 11 it's clear that substantial disagreement exists  
 12 between GMO and OPC/MECG as to the magnitude of the  
 13 deferral. The OPC/MECG position on the magnitude of  
 14 the deferral appears to be pa-- based, at least in  
 15 part, on the notion that rate-base has fallen  
 16 substantially as a result of the retirement of Sibley.  
 17 Meaning that rate-base the day before the retirement  
 18 is substantially higher than rate-base the day after  
 19 the retirement.

20           That's categorically false. The  
 21 retirement causes no material reduction in GMO's  
 22 rate-base. Mr. Klote and Mr. Ives address this and  
 23 can respond to questions.

24           If the Commission determines that the  
 25 Sibley retirement is extraordinary, it can then

1 establish further proceedings to resolve issues about  
2 quantifying the -- the deferral, including  
3 establishment of a baseline of Sibley costs in GMO's  
4 rates.

5           To proceed as hastily as requested in  
6 Monday's notice will produce a poor evidentiary record  
7 and deprive GMO of due process under the law. To be  
8 clear, we're objecting -- GMO's objecting to questions  
9 one and two to provide additional testimony into the  
10 record. We are prepared to answer questions about the  
11 FERC Form 1s. We believe that is appropriate. With  
12 that, I -- I state my objection.

13           JUDGE WOODRUFF: Anyone else wish to be  
14 heard about that?

15           MR. WOODSMALL: Yes, Your Honor. As an  
16 initial matter, I would say MECG would never object to  
17 providing the Commission any type of information that  
18 it desires. I think it's interesting that at the same  
19 time utilities claim that they need relief from the ex  
20 parte rule so that they can talk to the Commission and  
21 provide the Commission information, now in the context  
22 of a contested case, they don't want to provide the  
23 Commission information.

24           Be that as it may, we don't agree with  
25 the concept that this shifts the burden of proof.



1 Burden of proof applies to the necessary elements of a  
2 case. In this case, the necessary element is, is the  
3 retirement of Sibley extraordinary. Period, end of  
4 story. Bas-- and that's what it's always been. You  
5 go through all the AAO cases throughout time, it is  
6 simply an analysis of was the event extraordinary.  
7 That's the issue here.

8           So this discussion that the Commission  
9 wants information regarding the amount of savings,  
10 costs, revenues, that type of thing, it's not a  
11 shifting of the burden of proof because that's not a  
12 necessary element of the case. If the Commission  
13 wants to inquire of that, I don't have a problem, but  
14 the necessary element is solely focused on burden --  
15 or on extraordinary.

16           That said, I don't object to Mr. Hack's  
17 suggestion that we focus on the element in this case,  
18 that being extraordinary here. And if the Commission  
19 at some point in time in the future, after they find  
20 that it's extraordinary, wants to inquire as to what  
21 is the savings, what are the costs, that type of  
22 thing, I think they can do that.

23           In fact, that's what we suggested in our  
24 position statement. Focus be on extraordinary and  
25 then the parties analyze what are the savings later.

1 That is the way AAO cases work. And so we don't have  
2 any problem with the Commission seeking information.  
3 We will do our best to answer that. But this doesn't  
4 shift burden.

5 We agree with Mr. Hack's suggestion that  
6 we can deal with savings and stuff in the later  
7 inquiry if the Commission wants to do that.

8 MR. HALL: If I could also respond?

9 JUDGE WOODRUFF: Sure.

10 MR. HALL: The Commission is an  
11 investigatory body. The -- this Commission would be  
12 free to ask the same questions they gave us in the  
13 notice during the hearing and we would have even less  
14 time to prepare during a hearing than the two times  
15 that the Commission graciously granted us.

16 Within that limited time lindow --  
17 window, Public Counsel found it more than enough to  
18 prepare not only two more witnesses to speak to the  
19 questions the Commission asked, but also to prepare  
20 written testimony should the Commission wish to have  
21 more evidence on foregone revenues.

22 Public Counsel just does -- does not view  
23 a question from the Commission as a violation of due  
24 process. Thank you.

25 JUDGE WOODRUFF: All right. Anyone else

1 wish to be heard? Mr. Hack.

2 MR. HACK: If I may respond briefly?

3 JUDGE WOODRUFF: Sure.

4 MR. HACK: Thank you, Judge. We are not  
5 unwilling to provide information. We are unwilling or  
6 unable to do so on the timeline requested and we  
7 believe due process requires more.

8 Regarding the notion or the -- the  
9 suggestion that baseline -- or a way to measure the  
10 deferral is not a required element of the case, we  
11 disagree. If the Commission orders a deferral, GMO  
12 will be required to put it on its books, to record a  
13 number on its books.

14 At this point there is massive disparity  
15 between the estimates of the magnitude of the deferral  
16 that OPC and MECG estimate and our view of how those  
17 estimates are overstated. And there is no --  
18 absolutely no baseline in that rate case agreed to.  
19 So it's not a simple exercise to go through and do  
20 that.

21 And even when a baseline is established,  
22 how do you -- what is -- how do you measure savings  
23 off that baseline? We don't think it's as easy as has  
24 been suggested and -- and that's our point.

25 JUDGE WOODRUFF: And so to make sure I

1 understand, your -- your suggestion is that we have  
2 this hearing today on the question of whether an AAO  
3 is appropriate and then have a subsequent proceeding  
4 if -- if the Commission finds that an AAO is  
5 appropriate to establish the baseline?

6 MR. HACK: Establish the base-- establish  
7 the baseline and how to measure the deferral, yes,  
8 Your Honor. I mean we think the current record exists  
9 and is fine for purposes of -- of deciding whether the  
10 retirement is extraordinary, but -- but it is woefully  
11 inadequate in terms of identifying how to measure the  
12 deferral.

13 MR. WOODSMALL: And MECG doesn't have a  
14 problem with that. It -- it -- it highlights the fact  
15 that the Commission can order a deferral without any  
16 consideration of savings. Savings is an ancillary  
17 matter. The Commission can, based upon the record  
18 here today, make a determination as to whether the  
19 retirement of the Sibley order is extraordinary. So  
20 we don't have a problem with that suggestion; take up  
21 savings after the Commission determines it's  
22 extraordinary.

23 JUDGE WOODRUFF: All right. Well, I'm --  
24 your objection is noted for the record at this point.  
25 I'll take it under advisement and we'll proceed with

1 the opening statements at this point and then make a  
2 ruling on it later.

3 MR. HACK: Thank you, Judge.

4 JUDGE WOODRUFF: Beginning with opening  
5 statements then for MEGC.

6 MR. WOODSMALL: Good morning. May it  
7 please the Commission. David Woodsmall on behalf of  
8 the Midwest Energy Consumers Group.

9 Now, I know that I give long opening  
10 statements, but let me tell you why. This is my only  
11 chance, as a party, to engage the Commission. I have  
12 to hope that you read position statements, testimony,  
13 that type of thing. But if you're sitting here, I  
14 know you're listening to me -- fingers crossed. And  
15 so I can hear your concerns and I can attempt to  
16 alleviate your concerns. So that's why.

17 And this -- every case that goes by, you  
18 decide the lower hanging fruit and so we continue to  
19 deal with more and more complex issues. So this is  
20 the opportunity to engage you and attempt to educate  
21 you on our view and try to alleviate your concerns.

22 So given that, MEGC filed this petition  
23 because it recognized that utilities have routinely  
24 sought and received deferral accounting for costs.  
25 Dozens of times the Commission has allowed a utility

1 to defer costs. This deferral of costs works to the  
2 benefit of utility shareholders. What it does is has  
3 the practical effect of inflating current earnings and  
4 simultaneously inflating future rates.

5           So ratepayers don't like deferral of  
6 costs, but it's happened and it's happened repeatedly.  
7 And no utility has relied more upon the deferral of  
8 costs than KCP&L and GMO. But all along, MECG  
9 realized that there would become a day of reckoning.  
10 There would come a day when an event -- an  
11 extraordinary event caused savings.

12           And Staff even noted this. Staff has  
13 filed testimony and they have data requests in this  
14 case saying that it is appropriate to defer savings  
15 when the savings result from an extraordinary case.  
16 So that event has occurred. The day of reckoning has  
17 occurred and the ratepayers are here now saying you've  
18 deferred costs; now it's time to defer savings.

19           The retirement of Sibley is an  
20 extraordinary event and the Commission should be  
21 equally willing to apply deferral accounting for the  
22 benefit of ratepayers as it has been to apply deferral  
23 accounting for the benefit of shareholders.

24           I knew that GMO would oppose this  
25 request. After all, GMO wants to keep tens of

1 millions of dollars of retirement savings solely for  
2 its benefit. What I didn't know was the hypocrisy GMO  
3 would demonstrate when it argued against a deferral of  
4 savings. Now, I don't use that word lightly, but it  
5 is hypocrisy.

6           As I mentioned, more than any other  
7 utility, KCP&L and GMO have sought and relied on the  
8 deferral of costs. Therefore, there are lots of  
9 previous KCP&L and GMO applications where they've  
10 stated what their positions are on deferrals. And I  
11 reviewed a lot of them. And what I saw is hypocrisy.

12           I feel comfortable saying that arguments  
13 and positions that GMO is taking today are arguments  
14 and positions that they criticized and rebutted in  
15 previous cases where it was the deferral of costs.

16           So let's move on to my presentation.  
17 What am I going to talk about? First, I want to talk  
18 about the basis for the Commission's use of a deferral  
19 accounting. I will discuss the Uniform System of  
20 Accounts and what it provides. And the Uniform System  
21 of Accounts has been adopted by rule by the  
22 Commission. So it's very relevant in this matter.

23           I will also discuss the Commission's  
24 orders where they attempt to clarify and apply the  
25 Uniform System of Accounts on extraordinary events.

1 I will then provide you a summary of  
2 evidence and show you how the evidence dictates that a  
3 finding of the retirement of Sibley is extraordinary  
4 and that the savings should be deferred.

5 Next, I want to make a fairness argument.  
6 And what I'm going to try to do is provide you some  
7 graphics to show you how deferral of costs occurs and  
8 show you how the issue in this case is framed. From  
9 this -- these graphics, I hope you have a better  
10 understanding of what the true issue is in this case.

11 Finally, I will discuss the arguments  
12 that GMO and Staff make in opposition to MECG's  
13 position.

14 I was hoping Commissioner Coleman would  
15 be here because I wanted her to see this and I'll tell  
16 you why. I wanted to provide some pragmatic  
17 information. For anyone that's been listening to MECG  
18 and the Commission and before the General Assembly,  
19 you know that Missouri rates are skyrocketing.

20 Missouri rates, since 2006, have  
21 increased close to 68 percent. The national average  
22 rate has increased less than 32 percent. So Missouri  
23 rates have more than doubled the national average over  
24 the last 13 years. This is troubling for businesses  
25 in Missouri and should be troubling to you as well.



1 I discuss Missouri rates because this is  
2 a Missouri issue. This isn't solely a GMO issue.  
3 Other utilities will undoubtedly digest the  
4 Commission's decision in the -- this case. In fact,  
5 Ameren's attorney is listed on the service list  
6 because they're watching this case.

7 This is a Missouri issue. Lots of  
8 Missouri utilities are scheduled to close power plants  
9 in the near future and what you do here dictates how  
10 they will handle that. Will they close it based upon  
11 a consideration just of economics? Or will they close  
12 it based upon how they can maximize the savings and  
13 earnings to themselves? This is a Missouri issue.

14 Now, recently I saw a video of an  
15 interview that Commissioner Coleman had discussing  
16 poverty at a recent NARUC summit. In that interview,  
17 Commissioner Coleman pointed out that there are  
18 concerns of affordability and impoverished people.  
19 Specifically Commissioner Coleman recognized that  
20 Commissioners should think outside the box and  
21 consider issues of poverty and affordability. She  
22 encouraged Commissioners to consider approaches  
23 brought by the consumer advocate.

24 Well, this is one of those instances.  
25 The residential, Public Counsel, and industrial

1 consumer advocates are before you today presenting an  
2 issue that can have a dramatic effect on rates and, as  
3 a result, an effect on affordability of rates.

4           The issue is whether utilities, based  
5 upon nothing more than timing a retirement of a power  
6 plant, should be able to keep all the savings or  
7 should it be timed based upon economics and those  
8 savings, because it's an extraordinary event, flow  
9 back to ratepayers? It affects affordability. Not  
10 only for GMO's customers but for all Missouri  
11 customers.

12           In general, the Uniform System of  
13 Accounts requires a utility to book profits and losses  
14 in the period in which they are incurred. Sections  
15 434 and 435 provide an exception for extraordinary  
16 items. So what is an extraordinary item? General  
17 Instruction Number 7 tells you. It says that  
18 extraordinary items are those events, quote, which are  
19 of unusual nature and infrequent occurrence, end  
20 quote.

21           Importantly -- and I will discuss this in  
22 more detail later -- the Uniform System of Accounts  
23 applies both equally to items of profit and items of  
24 loss. As I mentioned, the Commission has routinely  
25 allowed the deferral of a loss caused by extraordinary

1 costs. Losses related to extraordinary costs have  
2 been routinely deferred for the benefit of utility  
3 shareholders.

4 But the Uniform System of Accounts also  
5 applies to the deferral of extraordinary savings. It  
6 also applies for the benefit of ratepayers. But GMO  
7 says no. GMO says that the deferral of savings is,  
8 quote, inappropriate, end quote.

9 I'm going to discuss it later, but the  
10 Uniform System of Accounts clearly applies both ways.  
11 It's appropriate to defer costs from extraordinary  
12 events, but also savings from extraordinary events.

13 So the Uniform System of Accounts allows  
14 for events -- allows for the deferral of costs and  
15 savings for events of unusual nature and infrequent  
16 occurrence. How has the Commission applied this  
17 standard? In previous cases, the Commission has  
18 looked at whether the event is, quote, ordinary and  
19 typical, not abnormal and significantly different, end  
20 quote. In another case, the Commission looked at  
21 whether the event is, quote, rare, unusual and  
22 infrequent.

23 So is the retirement of a generating unit  
24 like Sibley an extraordinary event? To say it another  
25 way, is the retirement of Sibley, quote, ordinary,

1 typical, frequent or unusual? The undisputed evidence  
2 here shows that GMO has not retired a generating  
3 station in over 32 years. How can that activity be  
4 considered ordinary, typical, frequent or -- or usual?

5           It can't be logically argued that this  
6 doesn't fall within the definition of extraordinary  
7 items. Therefore, there should be no dispute that the  
8 retirement of Sibley is extraordinary and the effects  
9 of that retirement should be deferred for later  
10 consideration.

11           Given that the retirement of Sibley is an  
12 extraordinary event, the savings associated with the  
13 event should be deferred. What savings are we talking  
14 about? MECG asserts that this should be all savings,  
15 including operation and maintenance cost savings,  
16 property tax savings, payroll savings and the capital  
17 costs of the Sibley investment.

18           Now, I want to be very clear about what  
19 we are seeking here. We are not saying in this case  
20 today that you say that all savings flow back to  
21 customers. That's not how AAO cases work. What we're  
22 saying here is simply defer the savings. Capture it.  
23 And then make a decision on how they flow back to  
24 customers later.

25           In the next rate case, the Commission

1 will be faced with how do we handle the undepreciated  
2 investment in the Sibley units. Are you going to  
3 continue to give them recovery of that? Well, we're  
4 saying you should have all the pictures to that  
5 financial decision at that point in time. Not only  
6 how do you handle the cost of the Sibley retirement,  
7 but what about the offsetting savings?

8           In a recent Laclede case, the Commission  
9 said -- they handled an issue regarding the profit on  
10 the sale of the Forest Park building that Laclede had,  
11 but you offset it with previous amounts. And that's  
12 what we're saying here. Take all the financial  
13 picture, be able to consider all the financial  
14 effects. Don't bury your head in the sand and  
15 consider one aspect like GMO wants you to do but  
16 ignore all the other aspects because they happened in  
17 a previous case.

18           So that's all we're asking for here.  
19 We're asking you to defer the savings and then make a  
20 decision on how to handle those savings in the next  
21 rate case. That's what an AAO case does. We are not  
22 saying here return them all to ratepayers.

23           I indicated that deferral of savings is  
24 dictated by the application of the Uniform System of  
25 Accounts and the Commission's previous decisions.

1 Deferral of savings is also dictated by notions of  
2 fairness. In the past, the Commission has routinely  
3 granted the deferral of costs associated with the  
4 construction of power plants.

5 In Case Number EO-2005-0322 and  
6 EU-2011-0034, the Commission provided for deferral of  
7 costs associated with the Iatan unit. The Commission  
8 also allowed the deferral of costs associated with the  
9 renovation of power plants. In Case Numbers  
10 EO-2005-0329, EU-2014-0255 and EO-91-358 the  
11 Commission has allowed KCP&L and GMO to defer costs  
12 associated with the renovation of Iatan 1, La Cygne  
13 and Sibley.

14 After repeatedly being allowed to defer  
15 costs associated with power plants, GMO now opposes  
16 the deferral of savings associated with those same  
17 power plants. Effectively, GMO is taking the position  
18 that the deferral of costs for the benefit of  
19 shareholders is good, but the deferral of savings for  
20 the benefit of ratepayers is somehow, in their words,  
21 quote, inappropriate.

22 I'm now going to attempt to graphically  
23 explain to you what an AAO does. I'm going to apply  
24 this to all phase -- three phases of the -- of a power  
25 plant; the construction, the renovation, and then the

1 retirement. I'm hoping that this will not only frame  
2 the issue in your mind visually, but also demonstrate  
3 the fairness argument that I've been referring to.

4           So here's how normal rate-making works.  
5 You have an event occur. For the power plant, the  
6 construction phase. And the construction happens, but  
7 due to some lag, getting a rate case filed, a rate  
8 case done, there's necessarily lag between when the  
9 construction is completed and when rates are approved.

10           And under normal rate-making, these costs  
11 aren't reflected until the rates are approved.

12 Similarly, under normal rate-making, renovation  
13 happens, but there's some lag and those costs aren't  
14 reflected in rates. Still rates are approved. And  
15 finally, normal rate-making, retirement happens, rates  
16 are approved and they finally get into rates.

17           Let's break this down into three phases.  
18 So you see here just the construction phase.  
19 Construction is completed under normal rate-making.  
20 Rates are approved some time after. And that's when  
21 the costs are reflected in rates. But the costs are  
22 real. Once the utility finishes the power plant, the  
23 costs are real. And they have to start booking  
24 depreciation and they're not allowed to earn any  
25 return. So between when construction happens and when

1 rates are approved, they are realizing actual costs.

2 So the utilities didn't like this.

3 The -- the utility said we can't have this and started  
4 asking for a deferral. So the Commission started  
5 allowing deferring -- deferral of costs associated  
6 with construction.

7 And you see that here. What -- what  
8 effectively happens is you magically make it as if the  
9 construction was completed on the same day that rates  
10 are approved. So the value of the AAO is shown in  
11 this box. It -- it shows up in the fact that the  
12 deferral of costs happens until rates are approved.  
13 So that's the value of the AAO. And this is for  
14 construction of a power plant.

15 Same thing with renovation of the power  
16 plant. What you see here after the construction AAO  
17 happened, the power plant did a renovation. But those  
18 costs aren't reflected in rates immediately. There's  
19 some lag.

20 Again, the utilities didn't like that, so  
21 they asked for deferral of renovation costs. And  
22 again, it magically makes it as if the timing of the  
23 renovation and the effectiveness of rates happened on  
24 the same day. And this, like I said, is a real thing.  
25 The Commission has repeatedly granted deferral of



1 costs for power plants; both for the construction and  
2 for the renovation of the power plant.

3 Now, let's look at the retirement.

4 Again, after getting construction AAOs, after getting  
5 renovation AAOs, now we're dealing with the final  
6 phase of a power plant, the retirement. And again, if  
7 you don't do anything, under normal rate-making, the  
8 savings associated with the retirement will not be  
9 reflected until rates are done. But the retirement  
10 has already occurred.

11 So what we're asking for is treat it the  
12 same way as you did construction and for renovation.  
13 Give deferral treatment and allow the savings to be  
14 booked and make it as if magically the retirement  
15 happened at the same time rates went into effect.

16 So here's what the issue in the case is.  
17 You've done construction AAOs. You've done renovation  
18 AAOs. And under both of those, you went, as you can  
19 see, with deferral treatment. Now we're dealing with  
20 the retirement. And the question is, do you use  
21 deferral accounting, as MECG and OPC suggest? Or do  
22 you use normal rate-making?

23 And this is the fairness argument that I  
24 talked about. That it's seemingly unfair, in my mind,  
25 to allow deferral treatment of both construction and

1 renovation for the benefit of shareholders, but then  
2 deny it when it works for the benefit of ratepayers.  
3 So graphically this is the issue. Graphically this is  
4 the fairness argument that I'm trying to make you see.

5           So how does GMO argue against this?  
6 First, GMO states that the deferral of savings, quote,  
7 is inappropriate, end quote. Second, GMO states that  
8 the determination of whether an event is extraordinary  
9 should be based upon the electric industry and not  
10 based upon whether it is extraordinary specifically to  
11 GMO.

12           Third, GMO argues that the quantification  
13 of costs in MCEG's testimony is, quote, erroneous, end  
14 quote. Fourth, GMO argues that the retirement of  
15 Sibley is not extraordinary because, quote, it was  
16 anticipated and communicated well in advance, end  
17 quote. Finally, GMO argues that MCEG failed to  
18 consider GMO's earnings.

19           Let's take them one at a time. Contrary  
20 to GMO's assertion, the deferral of savings is not  
21 inappropriate. As I mentioned, GMO is effectively  
22 claiming that the deferral of costs for the benefit of  
23 shareholders is appropriate, but the deferral of  
24 savings for the benefit of ratepayers is somehow  
25 inappropriate. But as I pointed out earlier, the

1 Uniform System of Accounts applies equally to, quote,  
2 both items of profit and loss. So it's not  
3 inappropriate.

4                   Staff agrees with MECG on this issue.  
5 Staff has previously filed testimony on this very  
6 point. And in its previous testimony, Staff Witness  
7 Oligschlaeger specifically stated that, quote,  
8 consistent treatment of both financial benefits and  
9 detriments is appropriate when considering deferrals.  
10 Be fair. Be consistent. Allow deferral of both costs  
11 and of savings. It's appropriate.

12                   The Commission also agrees on this issue.  
13 In a recent -- whoops -- in a recent Empire tax case,  
14 this five-member Commission addressed whether the  
15 deferral of savings is appropriate associated with the  
16 reduction of the Federal Tax Act. There the  
17 Commission stated that, quote, it would still be  
18 appropriate for the Commission to exercise its  
19 authority to order Empire to establish an AAO for that  
20 period, end quote.

21                   Notice that in contrast to GMO's current  
22 argument the deferral of savings is inappropriate,  
23 both the Commission and the Staff has stated that the  
24 deferral of savings is, in fact, quote, appropriate.  
25 Their words. Not mine.

1           Next, GMO argues that in determining  
2 whether an event is extraordinary, the Commission  
3 should look at the industry and not whether the event  
4 is, quote, unusual or infrequent to GMO specifically.

5           GMO spends the entirety of Mr. Rogers'  
6 testimony on this misplaced assertion, and much of  
7 Mr. Ives' testimony. But as Mr. Meyer points out in  
8 his surrebuttal, the experience of the industry, is,  
9 quote, entirely irrelevant as far as the Uniform  
10 System of Accounts is concerned, end quote.

11           The Uniform System of Accounts is very  
12 clear on this issue. And I've provided you a quote  
13 here. Specifically -- specifically you are to look  
14 for, quote, events and transactions of significant  
15 effect which are abnormal and significantly different  
16 from the ordinary and typical activities of the  
17 company.

18           It doesn't say anything in the Uniform  
19 System of Accounts about the industry. It says is  
20 this extraordinary -- is this abnormal and  
21 significantly different from the activities of the  
22 company. Not only is the Uniform System of Accounts  
23 clear on this matter, but previous Commission orders  
24 also indicate that GMO's argument is misplaced.

25           Repeatedly despite GMO's current novel

1 assertion, the Commission has granted AAOs for events  
2 that were usual and frequent for the industry but were  
3 still considered unusual for the particular Missouri  
4 utility. For instance, in 2011, the Commission  
5 allowed GMO to defer the effects associated with the  
6 construction of Iatan 2. But the construction of  
7 power plants was usual and frequent in the industry.  
8 But the Commission allowed the deferral because it was  
9 extraordinary for GMO, not for the industry.

10 In fact, Mr. Meyer in his testimony shows  
11 you that over the previous 30 years, over 2,700 fossil  
12 fuel plants had been built. It was usual and frequent  
13 in the industry, but the Commission allowed deferral,  
14 allowed a finding of extraordinary because it was  
15 extraordinary for GMO.

16 Similarly, the renewable energy standard.  
17 The Commission allowed deferral of renewable energy  
18 standard costs for GMO even though it was usual and  
19 frequent in the industry. In fact, at the time  
20 38 states had enacted those. But the Commission found  
21 this is extraordinary for GMO.

22 Y2K costs. Everybody and their mother  
23 were experiencing costs associated with Y2K. But  
24 Missouri utilities were given deferral of costs  
25 because it was extraordinary to that utility.

1                   Finally, the reduction in federal tax  
2 rate; and I talked about that. In fact, GMO has  
3 recognized this themselves. In 1991, GMO expressly  
4 acknowledged that the extraordinary standard is based  
5 solely on company experience.

6                   There, in some cross-examination in  
7 the -- in the Sibley renovation case was this question  
8 and answer: Quote, Then is extraordinary a relative  
9 term depending upon, for example, the size of the  
10 company involved? Specific to the company.

11                   GMO's witness, Mr. Brooks, says: Yes, it  
12 is. I think that it has to be taken into  
13 consideration. We have a different circumstance in  
14 our division than other utilities may have in the  
15 state.

16                   Clearly they're saying there that  
17 extraordinary is based upon the company, not based  
18 upon the industry.

19                   Prior to filing its testimony in this  
20 case, GMO agreed. MEGC submitted a number of data  
21 requests to GMO in this case. Some of these GMO  
22 objected to. In those objections, GMO expressly  
23 acknowledged that it's the effect on the company.

24                   Specifically, GMO objected to some data  
25 requests on the basis that, quote, it is, quote,

1 unusual -- that the only inquiry was whether the ret--  
2 retirement is, quote, unusual, abnormal and  
3 significantly different from the ordinary and typical  
4 operations of the company.

5           GMO was objecting to data requests  
6 because they thought it didn't go to whether it was  
7 extraordinary for the company. So GMO recognized that  
8 extraordinary should be determined based upon the  
9 ordinary and typical operations of the company and not  
10 the industry. So GMO's assertion in this regard is  
11 entirely self-serving and should be ignored.

12           Moving on, quantification of savings.  
13 GMO asserts that MECG cost savings are, quote,  
14 oversimplified, erroneous and overstated, end quote.  
15 But as I said previously, the quantification of  
16 savings is premature and not an issue in this case.

17           Historically, the Commission has only  
18 looked at whether the event is extraordinary and then  
19 only asks for a basic calculation to show that the  
20 amount exceeds a materiality standard. The Commission  
21 didn't want to mess around with the deferral of  
22 trivial costs and savings so they asked is this more  
23 than 5 percent? They didn't ask for an exact  
24 quantification. Does it meet a threshold and then  
25 we're done with it.

1           And then in -- in this case, no one has  
2 challenged the materiality. As Mr. Meyer points out,  
3 quote, my calculation of cost savings is very  
4 conservative and only for purposes of showing that the  
5 deferred amount will exceed the Commission's  
6 historical materiality standard, end quote.

7           As I said, no one's challenging that  
8 these costs are material. Your inquiry then is  
9 limited to is it extraordinary. Quantification will  
10 come later. As I say here, it's premature.

11           Moreover, under any circumstance, the  
12 actual savings cannot be exactly quantified at this  
13 point in time. The savings are continuing. Let's  
14 think about this. Sibley was shut down or was retired  
15 in September. But there are ongoing activities to  
16 close it. They are moving the coal pile from there  
17 to -- up to Iatan.

18           So it wasn't as if on day one they locked  
19 the door and employees stopped showing up. Some  
20 employees might have stopped showing up, but there  
21 were other employees that were getting the place shut  
22 down. So the savings can't be nailed down right now.  
23 The savings are compounding every day.

24           So that is why we're saying that it's  
25 premature to look at whether -- what savings are.



1 It's premature to expect an exact quantification at  
2 be-- at this point in time.

3 I reviewed a number of KCP&L and GMO  
4 applications on AAOs, and I can't find a single  
5 instance in which a utility was required to exactly  
6 quantify costs or savings at this point in time. In  
7 fact, here are two of GMO's AAO applications. In  
8 EU-2012-0131, GMO sought to defer renewable energy  
9 standard time -- costs.

10 At that time GMO simply said that their  
11 es-- that it was, quote, an estimate, end quote. No  
12 one required them to provide an exact quantification  
13 at that time. At this stage of the game, it's only  
14 estimating.

15 Similarly, in 2012 -- in EU-2012-0130,  
16 KCP&L sought a deferral of flood costs. KCP&L in the  
17 application didn't provide an exact quantification.  
18 Instead, KCP&L simply said that, quote, this amount  
19 will be revised once final costs are determined, end  
20 quote.

21 So it seems to me a little bit  
22 hypocritical, as I said, for GMO to expect MEGC to  
23 have an exact quantification of savings when they file  
24 deferrals and say we can provide just estimates.

25 Given this, I challenge KCP&L and GMO to

1 provide a single instance in which an electric utility  
2 has provided an exact quantification of costs and  
3 savings tho-- that it now expects from MECG. In any  
4 matter, Mr. Meyer will be here later to discuss the  
5 issue and will take any questions regarding the  
6 quantification of costs.

7           Next, GMO suggests that the retirement of  
8 Sibley cannot be extraordinary since it, quote, was  
9 anticipated and communicated well in advance, end  
10 quote. Noticeably, however, that standard that they  
11 now seek to impose in this case is not found in the  
12 Uniform System of Accounts and has never been utilized  
13 in any previous Commission cases.

14           In fact, GMO's responses to several MEC  
15 data request demonstrate that this notion is just a  
16 recent innovation of GMO designed to avoid having to  
17 defer savings. MECG asks GMO to provide citations to  
18 the Uniform System of Accounts or previous Commission  
19 orders for the notion that, quote, anticipated and  
20 communicated well in advance was a consideration.  
21 Interestingly, GMO could not provide a single  
22 citation. Instead they simply state it was their,  
23 quote, opinion, end quote.

24           So this requirement that they now seek to  
25 impose is found nowhere in the Uniform System of

1 Accounts or in previous Commission orders. And I say  
2 it's not fo-- contained in any previous Commission  
3 orders because I've looked at previous Commission  
4 orders.

5           And what do those previous Commission  
6 orders say? Previous Commission orders say that the  
7 Commission will defer costs routinely for events that  
8 are anticipated and communicated well in advance. And  
9 GMO recognizes this in several data requests.

10           In fact, when GMO renovated Sibley in  
11 1991, that was communicated and anticipated. When  
12 they installed new scrubbers at the Sioux plant, that  
13 was anticipated and communicated. GMO's construction  
14 of Iatan 2, the same way. GMO costs renewable energy  
15 standard. Everybody knew the renewable energy  
16 standard was anticipated. Y2K costs; anticipated.  
17 Cold Weather Rule; anticipated. Reduction in federal  
18 tax rate; anticipated.

19           The Commission routinely allows for the  
20 deferral of costs for events that are anticipated.  
21 But GMO now wants to say no, you can't defer things  
22 that were anticipated. But the Commission and the  
23 uniform System of Accounts say different.

24           GMO earnings. Final argument. GMO  
25 argues that MECG failed to consider its earnings in

1 requesting the deferral of the Sibley savings. The  
2 Commission directly on point has acknowledged that  
3 consideration of earnings is, quote, irrelevant to a  
4 request for the deferral of costs or savings.

5           In 1991 -- and Mr. Oligschlaeger will  
6 tell you more about this later. In 1991, Staff argued  
7 that the Commission should consider a utility's  
8 earnings in such deferral cases. At that time GMO  
9 argued against any consideration of utility earnings.  
10 Ultimately the Commission stated that, quote, Staff's  
11 emphasis on whether a utility was earning above its  
12 authorized rate of return is a rate case issue and  
13 best left for rate case review, end quote. It has no  
14 place here.

15           In data requests, Staff agrees with MECG  
16 that the utility's earnings are irrelevant to this  
17 case and we'll talk about this more later.

18           Again, this is an argument that GMO has  
19 previously fought against, but now amazingly embraces  
20 when we're seeking the deferral of savings. Like its  
21 other assertions, I challenge GMO to provide a single  
22 Commission AAO order in which the utility's earnings  
23 were considered.

24           Nevertheless, Mr. Meyer questions GMO's  
25 assertion -- assertion regarding earnings. It is

1 important to recognize that GMO's quantification is  
2 based entirely on actual results. GMO has not  
3 conducted any normalizations or considered weather.

4           The Commission has previously pointed out  
5 that any calculation of earnings without at least  
6 normalizing for weather is irrelevant. Moreover, in  
7 light of the fact that GMO operates under several  
8 utility-friendly mechanisms, how can they not be  
9 earning its authorized return?

10           Think about this. They just agreed to  
11 reduce rates in September of last year, effective in  
12 December of last year. And since that time, they  
13 operate under a Fuel Adjustment Clause. They operate  
14 under Plant in Service Accounting. They operate  
15 currently where they get to keep all savings from the  
16 merger with Westar. How is this company not earning  
17 its authorized return? It has everything in its  
18 advantage.

19           The other utilities -- Empire is waiting  
20 till the last minute before it files because it's  
21 earning its authorized return. How can you not earn  
22 your authorized return in Missouri now when you have  
23 Fuel Adjustment Clauses, PISA, allowed to keep all the  
24 merger savings? But GMO, given numbers that are not  
25 audited in any way, claims we're not earning our

1 authorized return. Under any event, it's all  
2 irrelevant because the Commission has told us so.

3           GMO agreed initially. Early on,  
4 anticipating this argument, I filed some data requests  
5 with GMO trying to get at what their earnings were. I  
6 thought they might argue about this so I asked them  
7 some data requests regarding earnings. And you know  
8 what they said? They said you can't do that because  
9 data requests regarding earnings are, quote,  
10 irrelevant. This is their objection. They said your  
11 data requests, quote, are not relevant, end quote.

12           So I tried to inquire of this. I thought  
13 they would argue this. And they told me no, it's not  
14 relevant to this case. Only later, when they filed  
15 their Rebuttal Testimony, did this argument amazingly  
16 pop up. So they're pretty self-serving. Like I said,  
17 pretty hypocritical in the way they bounce back and  
18 forth case to case and even within this case as to  
19 what they think should be considered.

20           Brings us to Staff's position. I've  
21 already highlighted a number of points where Staff is  
22 in agreement with MECG. Staff agrees that earnings  
23 are irrelevant in an AAO case. Staff agrees that the  
24 grant of deferral accounting has not only been limited  
25 in the past to costs that are unanticipated, as GMO

1 suggests. Staff agrees that the deferral of savings  
2 and not simply the deferral of costs is appropriate.

3 Finally, while Staff suggests that the  
4 retirement of Sibley is not extraordinary here, Staff  
5 agrees that the recognition of savings may be  
6 appropriate under cer-- certain circumstances in the  
7 future associated with the Sibley case.

8 So what is the major point of  
9 disagreement between MCEG and Staff? As I indicated,  
10 Staff asserts that the Sibley retirement is not  
11 extraordinary. Why do Staff and MCEG reach such  
12 radically different opinions on this issue? How can  
13 MCEG say that this is extraordinary, but Staff say  
14 that the retirement of a power plant is not  
15 extraordinary?

16 Staff claims utilities, quote, are both  
17 constantly adding new plant items to its system and  
18 constantly retiring other plant items, end quote.  
19 Given this, the constant addition and retirement of  
20 plant items, Staff asserts that additions and  
21 retirements to plant are, quote, routine and typical  
22 operations of a regulatory utility and, therefore, not  
23 extraordinary.

24 How do you reconcile Staff's claim that  
25 the retirements are being done constantly with the

1 fact that GMO has not retired a generating unit in  
2 32 years? Staff's saying this is done constantly.  
3 But GMO hasn't retired a power plant in 32 years.

4 Notice that Staff -- you got to look  
5 carefully at the words Staff use-- uses. Notice that  
6 Staff simply states that plant assets, end quote, not  
7 generating plants, are added and retired routinely.

8 As Mr. Meyer points out in his testimony,  
9 Staff conflates the ideas of retiring generating  
10 plants, like we're talking about, with the notion of  
11 retiring other day-to-day electric plant. So Staff  
12 lumps generating plants, which are very, very seldom  
13 retired, with the retirement of computers, power  
14 lines, pole transformers, desks and other general  
15 plant.

16 Staff -- Staff lumps it all together. By  
17 lumping all assets together, Staff is able to reach  
18 its desired conclusion. As Mr. Meyer further  
19 explains, however, electric utilities, including GMO,  
20 routinely treat power plants much different than  
21 any -- than other electric plant, like computers.

22 As Mr. Meyer posits, when was the last  
23 time that the retirement of a company computer, the  
24 retirement of a power line, a pole transformer or  
25 general plant was communicated in press releases?



1 That doesn't happen. The retirement of a power plant  
2 is a unique beast.

3           Along these lines, GMO found it necessary  
4 to notify the world and the investment community that  
5 it was retiring Sibley. Why? If they're doing this  
6 every day, why tell the world? Because they know the  
7 retirement of a power plant is a unique beast.

8           Unfortunately, Staff failed to recognize  
9 a similar distinction when it established its  
10 position. But the Commission has recognized this  
11 distinction. The Commission has recognized that  
12 there's a difference in power plants and a difference  
13 in the retirement of other things.

14           As Staff notes, the utility's constantly  
15 adding new plant and retiring plant to its system.  
16 Despite the day-to-day occurrence of the addition of  
17 plant, the Commission allowed for an AAO associated  
18 with the addition of Iatan 2. How can this be? If  
19 they're adding plant on a day-to-day basis, why did  
20 the Commission allow -- find it extraordinary when  
21 they added a power plant? It's happening all the  
22 time. Staff tells you it's happening all the time.

23           But the Commission said it's extra--  
24 extraordinary to add a power plant. It's unusual.  
25 It's infrequent. It's rare to add a power plant. The

1 Commission recognizes a distinction between power  
2 plants and all the other stuff that the utility adds.  
3 The Commission recognized it when GMO added the  
4 Iatan 2 generating station. The Commission recognized  
5 it when GNO-- GMO renovated Sibley.

6           And the renovation is an addition. It's  
7 simply taking stuff there and adding to it. So they  
8 recognized it there. They also recognized it when  
9 Ameren added Sioux scrubbers; another addition to the  
10 utility's plants. The Commission said this is  
11 extraordinary. This isn't day-to-day. The Commission  
12 recognized it when La Cygne had an environmental  
13 improvement. Again, doesn't happen every day.

14           The Commission has recognized the  
15 addition of a power plant or its improvements as  
16 entirely different from the addition of other pieces  
17 of plant. For the same reason, if the addition of a  
18 power plant is somewhat unique, shouldn't the  
19 retirement of a power plant be unique? Shouldn't the  
20 fact that GMO announced to the world it was retiring  
21 it, not just retiring another desk, make it unique,  
22 make it extraordinary, make it unusual, make it  
23 infrequent?

24           Again, Staff failed to recognize the  
25 Commission's previous guidance on this and lump power

1 plants in with desks and computers and everything else  
2 and say you retire stuff every day; it's ordinary.

3 Last thing I want to do -- this is my  
4 last slide. I want to compare two situations. I want  
5 to compare when GMO added Iatan 2, compare the facts  
6 of that case and compare the retirement here and go  
7 through all the criticisms that are raised now to try  
8 to stop the deferral of savings.

9 As you can see, both events -- the first  
10 criteria was, was the event usual in the industry?  
11 That's one of GMO's assertions here. But they'll tell  
12 you that the construction of Iatan 2 was usual in the  
13 industry. In fact, Mr. Meyer tells you that over  
14 2,000 generating plants were built.

15 It was -- so the construction of a power  
16 plant was usual in the industry and the Commission  
17 allowed for the deferral. Similar, the retirement of  
18 this generating station is also usual. So it checks  
19 both those boxes.

20 Second. Was the event anticipated and  
21 well communicated? GMO concedes this in a data  
22 request that I'll give you later. Yeah, the  
23 construction of Iatan 2 was anticipated. Similarly,  
24 this retirement is anticipated.

25 Were earnings considered? Iatan 2

1 earnings weren't considered. It was a deferral of  
2 costs. Utility didn't want to consider earnings.  
3 Earnings shouldn't be considered here. So both those  
4 are no.

5           Was costs or savings quantified in the  
6 AAO case? Costs weren't quantified in that case with  
7 Iatan 2. They simply asked for a deferral and the  
8 Commission gave them. And the quantification came in  
9 the later case, 2012-0175 case. Similarly,  
10 quantification shouldn't occur here. It should occur  
11 in the next rate case.

12           Final thing is were retirements and  
13 additions being done frequently? Retirements and  
14 additions are done all the time. Staff told you so.  
15 But power plants are different. So construction of  
16 Iatan 2 was considered extraordinary. Similarly the  
17 retirement is extraordinary of Sibley.

18           So if we're checking all the same boxes,  
19 why shouldn't this savings from this be deferred? Is  
20 the only difference simply the fact that the  
21 Commission will extend such treatment for the benefit  
22 of utility earnings and shareholders, but not for the  
23 benefit of ratepayers? I doubt that's it. So if  
24 they're all the same, defer the savings here. That's  
25 my presentation.

1 COMMISSIONER KENNEY: Is that your  
2 longest?

3 MR. WOODSMALL: May be.

4 JUDGE WOODRUFF: Chairman?

5 BY CHAIRMAN SILVEY:

6 Q. Thank you. I just have a couple quick  
7 questions. So just for the record, the Sibley  
8 generating units are not currently operating.  
9 Correct?

10 A. The Sibley generating units quit  
11 operating the day after GMO filed surrebuttal in the  
12 rate case.

13 Q. Which was what day?

14 A. September 5th. They filed surrebuttal on  
15 September 4th, quit operating on September 5th.  
16 Haven't produced a kilowatt hour of electricity since.

17 Q. Okay. Is the Company allowed to receive  
18 a recovery of and on a plant that is not currently  
19 providing electricity?

20 A. A plant -- I don't want to quibble with  
21 you. When you say a plant, you mean a plant that is  
22 in construction? A plant that's no longer operating?  
23 There is a statute that says if you have a plant  
24 that's in construction and that's not operating, you  
25 can't earn anything on it. So there's a statute

1 there.

2           After a plant is retired, there is no --  
3 there's been no determination -- I don't know of any  
4 rate case yet where there's been a decision from the  
5 Commission as far as how to handle return on and of a  
6 plant that's retired with a -- with a big in-- de-- a  
7 big unrecovered investment. So I'm distinguishing, if  
8 you see my distinction.

9           Q.     Sure. No, I do. And -- and so along  
10 with that, then statute is silent on how to treat that  
11 as well?

12           A.     The anti-CWIP statute does not address  
13 the retirement.

14           Q.     Okay. Thank you.

15                   JUDGE WOODRUFF: Commissioner Kenney?

16                   COMMISSIONER KENNEY: No. I'm good.

17 Thank you.

18                   JUDGE WOODRUFF: Commissioner Rupp?

19 BY COMMISSIONER RUPP:

20           Q.     Yeah. Morning.

21           A.     Good morning, sir.

22           Q.     First, I have to comment that I'm glad  
23 that the torch has passed now to Commissioner Coleman  
24 for being quoted in all of your opening.

25           A.     I just want to show you guys I pay

1 attention to what you say.

2 Q. The torch -- the torch has been passed.

3 You commented on the Uniform System of  
4 Accounts where you're -- you were stating that they --  
5 they allow this type of treatment because during the  
6 current period of which are of unusual nature and  
7 infrequent occurrence shall be considered  
8 extraordinary items.

9 A. Correct.

10 Q. It says "and" not "or." So your  
11 testimony is that this is both unusual in nature of a  
12 retirement of -- of a plant and infrequent occurrence?

13 A. Correct. For -- for GMO, the retirement  
14 of Sibley is unusual, it is infrequent, it is rare, it  
15 is all those adjectives that the Commission uses.

16 Q. Okay. Also, you gave us a -- a -- a  
17 history of KCP&L and GMO cases that had deferments.

18 A. Yes.

19 Q. Only one of those was basically in the  
20 purview of -- of any time any of us were -- were --  
21 were on the -- on the Commission. How other -- how  
22 other frequent has this Commission provided AAOs  
23 across all the other utilities? I figured you might  
24 have that rather than me having to go look it up.

25 A. I -- I don't know of any cases yet where

1 this five-member Commission has had to address the  
2 construction or renovation of a power plant. Those  
3 all occurred prior -- construction and renovation of  
4 power plants aren't occurring now. You read the trade  
5 rags; you see that they're being retired. They're not  
6 being renovated.

7           So I don't believe that this Commission,  
8 even as far back as six years, so just Commissioner  
9 Kenney, has had to address the deferral associated  
10 with costs associated with building or renovating a  
11 power plant. So it all pre-- they've always preceded  
12 this five-member Commission.

13           COMMISSIONER RUPP: Okay. I think that's  
14 all I have at this time, Judge. Thank you.

15           MR. WOODSMALL: Thank you, sir.

16 BY JUDGE WOODRUFF:

17           Q. I have a couple of questions as well.

18           A. Yes.

19           Q. Just to clarify, if the Commission were  
20 to order an AAO to be entered in this case, at what  
21 point would we need to make a determination about how  
22 much was being deferred?

23           A. Theoretically it would only come up in  
24 the next rate case. So what would you -- what you  
25 would have is the Commission says it's extraordinary,



1 defer the savings. And GMO can't file its next rate  
2 case for two and a half years, whatever under the PISA  
3 statute. So you have two and a half years where the  
4 parties can analyze this, quantify what the savings  
5 are.

6 And GMO says well, we need to know what  
7 goes on the books. They never needed to know that  
8 before. They -- they -- so GMO --

9 Q. Now, if -- if they were to defer  
10 20 million dollars or a half million dollars on -- on  
11 their books, would it make any difference when it came  
12 time for the rate case?

13 A. No. The Commission --

14 Q. Why is that?

15 A. -- isn't bound by what they put on their  
16 books. So GMO could take the first shot. The  
17 Commission says defer the savings. If they feel the  
18 need to put something on the books, then they make a  
19 quantification of putting it on the books.

20 But in the next rate case if they  
21 defer -- if they put 20 million dollars of savings on  
22 the books, that doesn't take -- stop the Commission  
23 from analyzing the savings, listening to the parties  
24 say well, we quantified it at 22, we quantified it at  
25 18. The Commission makes that decision.

1           GMO can put on its financial books what  
2 it believes the amount is. The Commission's  
3 determination of what are the savings will happen in  
4 the next rate case. That's why I'm saying this isn't  
5 a matter for this rate case. You know, this can be  
6 decided later.

7           Q.     Okay. Now, there was a suggestion made  
8 this morning that we basically bifurcate this  
9 proceeding and have a second proceeding in this case  
10 to determine the amount of -- that should be deferred.  
11 Do you agree with that?

12           A.     I want to be real clear what I think GMO  
13 was saying. Bifurcate, make a decision is this  
14 extraordinary. And we agree with that. Make a  
15 determination of it's extraordinary. Later we'll  
16 determine what the savings are.

17                     But savings is a two-prong inquiry.  
18 First, you need to know how much are they recovering  
19 currently and then how much less do they incur, and  
20 there's your savings. So if they had 10 dollars in  
21 payroll costs -- and like I say, one of those guys is  
22 still working, you know, wrapping up things, helping  
23 to move coal and so you have 2 dollars of savings now,  
24 another dollar of savings later. You know, that's all  
25 done going forward.

1                   If the Commission wants to have a second  
2 part of this to determine how much is in rates now, I  
3 don't have -- so they know what the baseline is to  
4 compare to, I don't have a problem with that. You  
5 know, at some point it has to be done, but it's not  
6 part of your determination as to whether to grant a  
7 deferral. We can do that. I have no problems with  
8 that.

9                   But savings is a two-prong exercise. How  
10 much is in rates now? How much do they incur going  
11 forward? The amount they incur going forward is going  
12 to be changing. So we can't quantify that exactly  
13 now.

14           Q.       But a baseline could be established?

15           A.       In a separate inquiry, sure.

16           Q.       In a separate inquiry. And would that  
17 necessarily -- would it be appropriate to be -- make  
18 it part of this case or would it be appropriate to  
19 have GMO file an action if they felt it was necessary?

20           A.       I would say the latter. This case simply  
21 asks you to make a determination that its  
22 extraordinary and to er-- order the deferral of  
23 savings. If GMO then wants guidance from you as to  
24 how to calculate savings, do it in a separate case, do  
25 it -- whatever, we can do that. But this case is

1 solely focused on is it extraordinary and should  
2 deferral of savings occur.

3 Q. Okay. Thank you.

4 A. Thank you.

5 JUDGE WOODRUFF: Chair, go ahead.

6 BY CHAIR SILVEY:

7 Q. Sorry, one final. You referenced a press  
8 release.

9 A. Yes.

10 Q. Do you know the date of that press  
11 release?

12 A. Oh, they've had multiple press releases.  
13 They ha--

14 Q. The first press release saying that  
15 Sibley was going to close.

16 A. No. I can find it for you. They -- they  
17 had press releases saying -- and you probably saw it  
18 in The Kansas City Star. We are going to close  
19 Montrose, KCP&L side, and Sibley at some point in the  
20 near future.

21 So they had those preceding the event.  
22 And then I believe there was -- at least in their FERC  
23 Form 1, there was notice to the investment community  
24 that we did retire. So there was one preceding, then  
25 there was one after it retired, so.

1 Q. Okay. But you're not sure right now what  
2 the dates were of --

3 A. No.

4 Q. -- when they started to put that out to  
5 the public?

6 A. The FERC Form 1, which tells FERC that we  
7 actually retired it, is filed in April of 2019.  
8 Whether there was a separate notice of some sort to  
9 FERC preceding that, I don't know. Whether there was  
10 a separate notice to the SEC, I can look and I can get  
11 that to you if you want that. But I don't know the  
12 date of that.

13 Q. Okay. Thanks.

14 BY COMMISSIONER KENNEY:

15 Q. I just had one brief question. What was  
16 the early retirement based on the projected life span  
17 of the -- of Sibley?

18 A. The -- the projected life span of Sibley  
19 is not a fixed number forever and ever and ever. It's  
20 not like a nuclear unit where you get a 40-year  
21 license. The fixed life span is just an estimate and  
22 then you look at, you know, how are things breaking  
23 down and how are you replacing things and -- so saying  
24 how did it compare to the life --

25 Q. Can't do that?

1           A.     -- the life span, you can't do it.  It's  
2 a changing number.

3           Q.     How many years was it in operation?

4           A.     Mr. Meyer has that in his Direct  
5 Testimony, and I can get that if you want.

6           Q.     That's fine.  I'll -- I'll look it up.

7           A.     But there are three units at Sibley.  Two  
8 of them -- I think they were all built in the '50s,  
9 but it's like at page 6 of Mr. Meyer's direct.  He has  
10 a table with all the units.

11          Q.     That's fine.  I'll wait for -- for him.

12          A.     Okay.

13          Q.     Thank you.

14          A.     You bet.

15                    JUDGE WOODRUFF:  Thank you.

16                    MR. WOODSMALL:  Thank you.

17                    JUDGE WOODRUFF:  Opening for Public  
18 Counsel.

19                    MR. HALL:  Good morning.  And may it  
20 please the Commission.  My name is Caleb Hall,  
21 appearing on behalf of the Office of Public Counsel.

22                    For the same and additional reasons  
23 raised by Mr. Woodsmall, counsel for Midwest Energy  
24 Consumers Group, GMO's retirements of the Sibley units  
25 is deserving of an accounting order because the

1 retirement is extraordinary and material.

2           But before I get into those elements, I  
3 want to talk about the problem that brings us here  
4 today. We are here because customers are paying for a  
5 nonexistent plant as if it was operational and giving  
6 them benefits. Sibley is not generating any power at  
7 this time, but it is generating a return for GMO.  
8 That is to say, customers are receiving no energy, no  
9 benefits of off-system sales, but are paying rates as  
10 if they are.

11           Ask yourself. How did this problem come  
12 to be? This came to be because Sibley became a  
13 fictional plant when GMO chose to strand that asset  
14 during a pending rate case. Not to be mistaken as  
15 sitting out on a potential issue. The OPC has  
16 repeatedly tried to address the imminent retirement of  
17 Sibley in multiple prior dockets.

18           We raised this issue of Sibley's  
19 retirement in both a 2017 and 2018 -- 2018 IRP filings  
20 with the Company. We again warned about the impacts  
21 of stranding such a huge asset in two separate special  
22 contemporary topics filings.

23           In every instance GMO's response was to  
24 say that the retirements may not actually occur. GMO  
25 made this response despite a January 2017 press

1 release announcing the retirement by the end of 2018.  
2 When we raised this issue again during the -- GMO's  
3 last rate case last year, GMO responded that our  
4 conclusion that Sibley was going down was, quote, an  
5 assumption.

6           GMO -- despite making this defense, GMO  
7 had actually started to shut down the plant in October  
8 of 2018; two months before GMO's new rates became  
9 effective and two months before GMO -- GMO's customers  
10 began paying for the operation and maintenance expense  
11 of a fictional plant going forward. At the same time,  
12 GMO is now also asking customers to pay for the  
13 retirement costs while they're still paying as if this  
14 fictional plant is still occurring.

15           This is a problem. And this problem can  
16 be solved with the tool of an accounting order. All  
17 an accounting order will do is track these fictional  
18 costs in a transparent manner so that a future  
19 Commission will have all information available to  
20 credit customers in the future as it sees fit.

21           Ordering deferral accounting merely  
22 preserves the accuracy of information lest to be lost  
23 to the passages of time. This is not retroactive  
24 rate-making and this takes no actual dollars out of  
25 the hands of GMO.



1           After explaining that, let's switch back  
2 to the gears -- let's switch gears rather and discuss  
3 the elements of the Sibley test. I say the Sibley  
4 test because this -- that was the moniker coined by  
5 this Commission when judging Accounting Authority  
6 Order requests.

7           This Commission chose that name because  
8 the pro-- the progenitor case was judging whether or  
9 not the costs incurred to extend the life of the  
10 Sibley units was -- were extraordinary and material.  
11 In that case, the Commission did indeed find that the  
12 costs incurred to extend the life of such a massive  
13 generating unit were extraordinary and material.

14           In this case, no party here disputes the  
15 materiality component of the Sibley test. And as you  
16 just heard, MECG's counsel has explained why the  
17 retirement was extraordinary. We agree with  
18 Mr. Woodsmall and we believe that the retirement of  
19 Sibley is extraordinary because Sibley is different.

20           In this proceeding, OPC has offered two  
21 witnesses to speak to materiality and  
22 extraordinariness. Mr. Robert Schallenberg has been  
23 offered on particularly both points. He has decades  
24 of experience before this Commission on both Staff and  
25 OPC. He will testify to the rarity of retiring any

1 base load generation unit, let alone in Missouri.  
2 Mr. Schallenberg will also explain the function of  
3 accounting order, why retiring Sibley was material,  
4 and the current state of GMO's customers being charged  
5 for a fictional coal plant while also being asked to  
6 bear the burden of a regulatory asset being made by  
7 the Company to encompass the retirement costs of this  
8 plant as it's going down.

9 Dr. Geoff Marke, our office's chief  
10 economist, will testify on his participation in both  
11 of GMO's prior IRP and special contemporary topics  
12 filings. He will also speak on how one should  
13 approach the extraordinariness standard within the  
14 Sibley test and the particular uniqueness of Sibley.

15 The Sibley unit re-- I remind this  
16 Commission the Sibley units represented at least a  
17 third of GMO's base load, with 150 million plus on the  
18 conservative estimate -- estimate of depreciation left  
19 while this re-- while -- after this plant was retired  
20 22 years earlier than projected from just the 2016  
21 IRP.

22 That is bizarre under the Sibley test or  
23 any other analysis. Utilities simply do not shutter  
24 that much generation without announcements, planning  
25 and accounting. To abruptly terminate Sibley during a

1 pending rate case when just months prior they had  
2 asserted that Sibley may even operate past 2018 is  
3 odd.

4 I should also add that in response to the  
5 questions the Commission has offered this Monday, I  
6 have conscripted two more witnesses in our batting  
7 lignment -- lineup. We have Ms. Lena Mantle who can  
8 testify to foregone revenues for the shuttering of the  
9 plant. And Mr. John Robinett can also speak to the  
10 annual reports that the Commission mentioned in its  
11 questions.

12 Finally, I want this Commission to  
13 consider the incentives other utilities may have in  
14 the future. Without the corrective action of an  
15 accounting order, I see no disincentive for any other  
16 utility to keep a plant artificially in operation;  
17 that is to say, treat it as retirement for practical  
18 purposes, but not record it as retired until the  
19 moment new rates are set and thereby burden their  
20 customers with a fictional plant.

21 That risk can be resolved today by  
22 ordering an accounting order and recognizing that  
23 Sibley's retirement was re-- was material and  
24 extraordinary.

25 And again, it was. Retiring your largest

1 base generation unit is extraordinary. It's  
2 extraordinary in and of itself because customers are  
3 continuing to pay for a fictional coal plant. And  
4 it's because without proper recognition -- recognition  
5 of all those fictional costs customers are  
6 contributing to, they may otherwise see -- receive no  
7 credit.

8                   For these reasons, OPC requests that this  
9 Commission order GMO to undertake deferral accounting  
10 of the cost savings it is currently enjoying. Thank  
11 you. I believe I have nothing further to offer other  
12 than what has been thoroughly provided by  
13 Mr. Woodsmall. Otherwise, I'm available for  
14 questions. I will provide -- I will attempt to  
15 provide coherent responses. If they are more  
16 technical, I must ask that you -- that I -- that you  
17 inquire of the witnesses Public Counsel has provided.

18                   JUDGE WOODRUFF: Mr. Chairman.

19                   COMMISSIONER KENNEY: No questions.

20 Thank you very much.

21 BY JUDGE WOODRUFF:

22                   Q. I have -- I have some questions similar  
23 to the questions that I asked Mister -- Mr. Woodsmall.  
24 If the Commission does order an AAO, at what point do  
25 we need to establish a baseline and a determination of

1 how much is -- should be deferred?

2 A. I agree with Mr. Woodsmall that that  
3 would normally be left to a later proceeding in the  
4 next rate case. However, I'm also impatient. We have  
5 the witnesses available now. We've written the  
6 testimony. We can testify to that right now today or  
7 tomorrow as time permits.

8 Q. Okay. Up until the notice that came out  
9 on Monday, were -- was that your plan to do that?

10 A. In response to the notice, yes.

11 Q. Okay. All right. Thank you very much.

12 JUDGE WOODRUFF: Opening for Staff.

13 MS. ASLIN: Good morning. May it please  
14 the Commission. My name is Casi Aslin and I am here  
15 representing Commission Staff.

16 GMO's most recent case, ER-2018-0146, was  
17 recently completed. The case was resolved via four  
18 unopposed Stipulation and Agreements, which the  
19 Commission treated as unanimous and approved. The  
20 rates went into effect on December 6th, 2018.

21 Sibley units 2 and 3, the boiler unit  
22 from unit 1 and common plant were retired in November  
23 2018 after the true-up date in this case. So GMO's  
24 rates currently include costs related to Sibley.

25 It is important to note as stated in

1 paragraph 6 of the complainant's petition, GMO had  
2 already announced the impending retirement of Sibley.  
3 In fact, all of Sibley unit 1, except the boiler, had  
4 been retired on June 1st, 2017. Thus, during the rate  
5 case, parties were aware of GMO's general plans,  
6 though a specific date had not yet been announced.

7           On December 28th, 2018, OPC and MECG  
8 filed their petition seeking an AAO related to the  
9 retirement of Sibley. The petition requests that the  
10 Commission, quote, order GMO to record as a regulatory  
11 liability in Account 254 the revenue and the return on  
12 the Sibley unit investments collected in rates for  
13 non-fuel operation and maintenance cost taxes,  
14 including accumulated deferred income taxes and all  
15 other costs associated with Sibley units 1, 2 and 3  
16 and common plant.

17           OPC and MECG have failed to prove that  
18 GMO's retirement of Sibley meets the standards for an  
19 AAO. For cost or savings to be deferred under an AAO,  
20 first and foremost, the associated event must be  
21 extraordinary. Then the costs involved must be  
22 material.

23           There's no argument in this case that the  
24 savings revenues associated with the Sibley retirement  
25 meet the second prong and are material. However,

1 materiality does not make an event extraordinary. The  
2 issue in this case is whether the retirement meets  
3 this extraordinary standard.

4           Based on USOA guidance, prior Missouri  
5 case law regarding deferral accounting and previous  
6 Commission decisions, Staff continues to take the  
7 position that for an event to be considered  
8 extraordinary, it must be unusual or unique in nature  
9 and outside of the normal and typical activities of a  
10 utility.

11           Often, AAOs are sought following natural  
12 disasters that affect a utility's service territory  
13 and result in material, unanticipated costs. Though  
14 it is possible for the retirement -- retirement of a  
15 generating unit to meet the extraordinary standard,  
16 the retirement of Sibley does not.

17           As soon as a generating unit or utility  
18 plant of any kind is put into service, it is known  
19 that the life of that asset is finite. The retirement  
20 of a generating unit, while less common than the  
21 retirement of many other plant items, will still occur  
22 at some point as part of the ordinary life cycle of a  
23 generating unit. Plant retirement is not inherently  
24 extraordinary, unusual, unique or nonrecurring absent  
25 rare circumstances that are not present in this case.

1                   Staff Witness Mark Oligschlaeger will be  
2   testifying today and is able to respond to the  
3   questions included in the notice filed on Monday.  
4   Karen Lyons, who did not provide testimony in this  
5   case but worked on GMO's most recent rate case, is  
6   also here to assist in answering the questions  
7   included in the notice if needed. And I am also  
8   willing to answer any questions that you may have.

9                   JUDGE WOODRUFF: Mr. Chairman.

10                  BY CHAIRMAN SILVEY:

11                  Q.     Thank you. When was the last time GMO  
12   retired a generating plant 20 years before it was  
13   expected?

14                  A.     I -- I don't know the answer to that  
15   question. I could get the answer. I know that it's  
16   been 30 years since their last -- at least 30 years  
17   since their last generating unit was retired.

18                  Q.     So you say that it's expected that the  
19   life is finite.

20                  A.     Correct.

21                  Q.     And we usually project what that useful  
22   life is going to be. When it's retired 20 years  
23   before that expected date that it -- everyone was  
24   operating under, how is that not extraordinary?

25                  A.     I think that there are other factors that



1 Staff has looked at, including economic concerns that  
2 the Company looked at in deciding to retire the plant.  
3 And looking at economic concerns are something that we  
4 would want a utility to look at in deciding whether or  
5 not a retirement was the correct decision.

6 Q. Would those economic concerns include the  
7 failure of the turbine and the cost to repair it?

8 A. I would think so, yes.

9 Q. And is that normal or is that  
10 extraordinary when a piece of equipment fails?

11 A. I think it would depend on the  
12 circumstances. I don't think that I could -- that you  
13 could wholesale say that the failure of a piece of  
14 equipment would be an extraordinary event. I also  
15 think that the fact that it was a planned retirement  
16 would also go into that calculation.

17 Q. So the Company announced in -- was it  
18 June of 2017 that they were expecting to retire this  
19 plant early?

20 A. I believe the first announcement related  
21 to Sibley retirement was in 2015 sometime, but I know  
22 that there were a few different announcements.

23 Q. And did -- did those announcements  
24 include a target date for when it would be retired?

25 A. I -- I think the final announcement,

1 which I don't have the date of in front of me, said  
2 that they anticipated retiring it before the end of  
3 2018.

4 Q. Before the end of 2018. And when was the  
5 settlement reached?

6 A. I don't know when settlements were filed  
7 in the case, but the rates went into effect on  
8 December 6th. I don't have the full rate case  
9 procedure dates in front of me.

10 Q. Okay. So you back up a couple months.

11 A. Uh-huh.

12 Q. And in September I think there were  
13 filings, October there were filings --

14 A. I believe.

15 Q. -- and then you guys reached a settlement  
16 knowing that they were planning to retire this within  
17 60, 90 days of the discussions you were having at the  
18 time?

19 A. I believe that's correct.

20 Q. So how does -- how did you justify in  
21 your settlement that Sibley -- the costs associated  
22 with Sibley -- that Sibley was used and useful when  
23 that settlement was reached?

24 A. That would have been a part of settlement  
25 talks that I was -- that I was not a part of. But

1 that was a agreement that was reached by many of the  
2 parties and was unopposed by any others.

3 Q. I guess I'm just confused how you didn't  
4 anticipate this closure happening shortly after the  
5 conclusion of the case, when it was announced that  
6 that's exactly what was going to happen and how that's  
7 not extraordinary.

8 MS. MERS: Chairman, if I can shed some  
9 light on it because I was involved in that case a  
10 little bit more intimately than -- than Counsel Aslin  
11 was.

12 If you read the -- the testimony that we  
13 filed in that case, our -- our thought on it was that  
14 the retirement of Sibley would just be part of the  
15 symmetrical relationship of regulatory lag where  
16 sometimes it is a benefit for the utilities and  
17 sometimes it's a cost for the utilities.

18 In this case, it was outside the test  
19 year and -- and Staff generally takes a position that  
20 we don't like to expand and -- and reach beyond the  
21 test year to -- to make adjustments.

22 CHAIRMAN SILVEY: But an AAO could have  
23 been set up in that settlement at that time?

24 MS. MERS: Yes.

25 CHAIRMAN SILVEY: So why was the decision

1 made not to?

2 MS. MERS: There were multiple parties,  
3 including some that are requesting an AAO in this  
4 case. And the decision just did not -- was not part  
5 of settlement. I don't think the inclusion or  
6 disclosure of an AAO was so problematic that any  
7 party, as -- as Ms. Aslin said, opposed the  
8 settlement. And there was also a provision in the  
9 stip for I believe both Montrose and Sibley for  
10 deferral of the return on and the depreciation.

11 CHAIRMAN SILVEY: Okay. Thank you.

12 JUDGE WOODRUFF: Commissioner Kenney?

13 COMMISSIONER KENNEY: Thank you. Just a  
14 follow-up on that. Was that -- was that a  
15 Non-Unanimous Stipulation and Agreement?

16 MS. MERS: There were -- there were four  
17 Stipulation and Agreements. I believe the first one  
18 that addresses the Montrose and Sibley provisions was  
19 non-unanimous, but no party opposed it so the  
20 Commission treated it as unanimous.

21 COMMISSIONER KENNEY: Okay. So MECG, did  
22 you oppose that -- that -- that --

23 MR. WOODSMALL: No. And I can explain  
24 why. We were part of that. The timing of all this is  
25 very, very relevant and you need to understand that.

1 GMO had announced repeatedly in press releases that it  
2 was going to retire Sibley. Going to. No fixed date  
3 out there.

4 Repeatedly OPC kept raising the issue of  
5 Sibley and saying don't put it in rates, don't put in  
6 rates. And GMO kept saying you can't do that. It's  
7 not retired yet. They kept arguing test year. It's  
8 still -- it's still operating --

9 COMMISSIONER KENNEY: And I -- I -- I --  
10 I -- I know that.

11 MR. WOODSMALL: Okay. So we didn't  
12 oppose it because it was still operating and GMO never  
13 told anybody except Staff --

14 COMMISSIONER KENNEY: So -- so --

15 MR. WOODSMALL: -- when it broke down on  
16 September 5th.

17 COMMISSIONER KENNEY: Okay. So we -- so  
18 this -- this -- this stip was -- this agreement was  
19 before that final announcement?

20 MR. WOODSMALL: Right. Before -- GMO  
21 never told the Commission th-- they filed surrebuttal  
22 on September 4th. The unit broke down on September  
23 5th. GMO never told any of the parties, except Staff  
24 from what I can tell, never told the Commission in  
25 anything that Sibley's no longer operating. So we

1 trust the utility to give us relevant information.

2 They never told us that Sibley's not operating, so --

3 COMMISSIONER KENNEY: I -- I know that --

4 I know that --

5 MR. WOODSMALL: -- we did execute --

6 COMMISSIONER KENNEY: I don't want to be

7 redundant, so --

8 MR. WOODSMALL: We did execute the

9 settlement, yes.

10 COMMISSIONER KENNEY: Okay. And it

11 was -- and I understand your process behind it. Okay.

12 Thank you.

13 MR. WOODSMALL: You bet.

14 MS. MERS: And I'm sorry. I misspoke.

15 The -- the stipulation was for deferral of

16 depreciation only; not return. So I apologize for the

17 misstatement.

18 COMMISSIONER RUPP: Well, that changes

19 everything. Just kidding.

20 BY COMMISSIONER RUPP: (Answers by Ms. Aslin)

21 Q. So let's back up from my 10,000 foot view

22 here. So you believe that this whole issue is --

23 should just go away, Staff's position, because it

24 was -- it's not unusual and it's not extraordinary?

25 A. That's correct.

1 Q. From Staff's perspective, give me  
2 examples of things that are unusual and extraordinary.

3 A. Natural disasters are typically  
4 considered extraordinary. I know from my own personal  
5 experience that Missouri American's lead line  
6 replacement, that was considered extraordinary. And  
7 then just a -- a more recent example that would more  
8 closely associate with this case is in the most recent  
9 Empire rate case, the Commission did not allow Asbury  
10 deferral and that would have included both costs and  
11 savings related to Asbury.

12 Q. So construction of a new plant is not  
13 extraordinary or unusual?

14 A. I -- I don't know what our position would  
15 be on a given case. I don't know that we have a -- I  
16 don't believe that we have a blanket position that  
17 construction of a generating unit would be  
18 extraordinary.

19 Q. So has Staff argued against all AAOs for  
20 construction of new plants?

21 A. I'm not sure.

22 Q. Thank you.

23 BY JUDGE WOODRUFF:

24 Q. All right. I'm going to go ahead and ask  
25 you the same questions that I asked of Public Counsel

1 and MECG about at what point does the Commission need  
2 to determine the baseline or the amounts deferred,  
3 assuming that the Commission grants an AAO?

4 A. Right. If an AAO were granted, obviously  
5 that would be dealt with in a -- in a rate case. But  
6 I think that it would be a complicated calculation  
7 that Mr. Oligschlaeger could speak to, but that we  
8 think that it might be beneficial before a rate cases  
9 for the parties involved to discuss that, discuss what  
10 that should be to make that easier and possibly put  
11 that before the Commission for a decision.

12 Q. Should that be done through this case or  
13 an additional filing or something?

14 A. I don't think that we have a position on  
15 that at this time.

16 Q. Okay. Well, thank you very much.

17 A. Thank you.

18 JUDGE WOODRUFF: Opening for GMO.

19 CHAIRMAN SILVEY: One quick follow-up.

20 JUDGE WOODRUFF: I'm sorry.

21 CHAIRMAN SILVEY: One quick follow-up.

22 JUDGE WOODRUFF: Ms. Aslin, one quick  
23 follow-up.

24 BY CHAIRMAN SILVEY:

25 Q. One quick follow-up. Why did Staff agree



1 in the stip to defer the depreciation but not the  
2 savings?

3 A. I -- I don't know. I'm -- I'm unsure of  
4 Staff's -- Ms. Mers was involved in that case.

5 MS. MERS: I believe that that was just  
6 part of the nature of the settlement, that that's what  
7 the parties could agree to. I don't know if there  
8 was --

9 CHAIRMAN SILVEY: Why did you agree to  
10 it?

11 MS. MERS: That would probably be on the  
12 advice of the auditors and the engineers in that case.  
13 I don't know if I could recall a particular reason.  
14 But you may want to inquire with Mark Oligschlaeger  
15 or, more importantly, Karen Lyons was part of those  
16 negotiations. She might have a better recall. She's  
17 making a face. This was a little bit ago, so.

18 CHAIRMAN SILVEY: Okay. Thank you.

19 JUDGE WOODRUFF: All right. Thank you.  
20 Then opening for GMO.

21 MR. FISCHER: GMO -- maybe we could take  
22 a five-minute break while I get my computer ready and  
23 if you need a bathroom break too, that would be --

24 JUDGE WOODRUFF: All right. We'll --  
25 we'll take a five-minute break. We'll come back at

1 10:35.

2

3 (A recess was taken.)

4 JUDGE WOODRUFF: All right. It's 10:35,  
5 we're back from our break and we're about to begin  
6 opening for GMO.

7 MR. FISCHER: Thank you, Judge. May it  
8 please the Commission.

9 This proceeding begin with the December  
10 2018 filing of a petition requesting an Accounting  
11 Authority Order by the Office of Public Counsel and  
12 MECG. The petitioners requested the Commission order  
13 GMO to defer to a regulatory liability account all  
14 revenue associated with the costs and return on Sibley  
15 investments associated with GMO's Sibley generation  
16 units 1, 2 and 3 and the common plant that were  
17 included in the revenue requirement used to set rates  
18 in the most recent GMO rate case.

19 The Commission, as you know, issued the  
20 notice of complaint on January 2nd of this year, which  
21 stated that the Commission would treat this matter as  
22 a complaint under 4 CSR 240-2.070.

23 Now, in their petition, complainants have  
24 alleged that the retirement of Sibley is an  
25 extraordinary event of such an unusual nature and

1 infrequent occurrence justifying the approval of an  
2 AAO. As the complainants, the Public Counsel/MECG  
3 have the burden to support their allegation that the  
4 re-- retirement of a power plant is an extraordinary  
5 event. But this allegation is just not supported by  
6 the weight of the evidence.

7           Indeed, Public Counsel and MECG have a  
8 very heavy burden of proof. The bar is very high for  
9 the complainants because this Commission has never,  
10 ever found a retirement of a power plant to be  
11 extraordinary in its 106-year history.

12           In fact, in all of the various cases  
13 involving numerous retirements of power plants in  
14 Missouri, the Commission has never issued an order  
15 deferring the revenues and the costs associated with  
16 the retirement of a power plant, as is requested in  
17 this case by the complainants.

18           The bar is very high for Public Counsel  
19 and MECG because we found no examples of a public  
20 utility commission anywhere in the country that has  
21 ever found the retirement of a power plant is  
22 extraordinary and justified the creation of an AAO.

23           In fact, during discovery, Public  
24 Counsel's witness, Mr. Robert Schallenberg, confirmed  
25 that he was not aware of any order or decision of a

1 federal or a state commission that has found that it's  
2 appropriate to have an AAO for the retirement of a  
3 power plant.

4                   Similarly, Mr. Greg Meyer, MECG's  
5 witness, who has participated in many cases across the  
6 country, did not provide any examples of cases in  
7 which a federal or a state commission found the  
8 retirement of generating plant to be extraordinary and  
9 justified an AAO.

10                   On the other hand, GMO, the Company, has  
11 cited the recent Wisconsin Public Service Commission  
12 decision, which is attached to the Rebuttal Testimony  
13 of Darrin Ives, which considered this particular  
14 issue. And in that ca-- case, that Commission  
15 concluded that the retirement of the Pleasant Prairie  
16 coal-fired plant did not justify the opening of a  
17 docket to consider the imposition of deferred  
18 accounting measures requested by third parties.

19                   Instead, the Wisconsin Commission  
20 declined to authorize deferral accounting treatment  
21 for the net savings arising from the retirement of the  
22 Pleasant Prairie Power Plant. The Wisconsin order  
23 also found that public utilities routinely retire  
24 generating units between rate cases and joint  
25 petitioners have not cited any prior Commission

1 decision where deferral accounting treatment has been  
2 authorized for the cost or any net savings associated  
3 with such retirements.

4           It's not surprising that Public Counsel  
5 and MECG couldn't provide precedent for their  
6 position. The competent and substantial evidence in  
7 this proceeding will show that the retirement of a  
8 power plant like Sibley is routine and not an  
9 extraordinary event and does not justify an AAO.

10           Now, GMO's plans to stop burning coal at  
11 Sibley were announced nearly five years ago. And its  
12 planned retirement for the end of 2018 was announced,  
13 as the Chairman mentioned, on June 2nd of 2017. As  
14 I'll discuss in a moment, GMO also plans to retire  
15 another generating unit later this year, which again,  
16 was disclosed well in advance of the retirement date.

17           And just to digress, the -- all the  
18 parties at the time of the rate case were certainly  
19 aware that the retirement of Sibley was a -- was  
20 pending in 2017. The particular date that it did  
21 retire was also a function of a forced outage that  
22 occurred.

23           But the witnesses for the Company will  
24 show that the retirement of generating assets is a  
25 recurring event, happening virtually every day in the

1 normal course of operations of a public utility.  
2 During the five-year period from October '13 through  
3 September of 2018, GMO retired approximately  
4 90 million dollars worth of generating plant assets.

5           Mark Oligschlaeger, the Staff witness,  
6 also testified that the Staff position is that  
7 decisions to retire plant assets are inherently part  
8 of the routine and typical operations of a regulated  
9 utility and, thus, cannot be considered to be  
10 extraordinary, unusual, unique or nonrecurring except  
11 in very rare circumstances.

12           For that reason, the Staff is  
13 recommending in this case that the Commission find  
14 that the Sibley unit retirement should not be eligible  
15 for deferral accounting treatment recommended by the  
16 OPC and MECG in this proceeding.

17           Generating units have previously been  
18 retired by GMO or its corporate predecessors and an  
19 AAO was never established. For example, in 1982, the  
20 Ralph Green Plant was retired. And in 1987, the  
21 Edmond Street Plant was retired. The Commission did  
22 not determine these retirements were extraordinary or  
23 that such retirements warranted defer-- deferral  
24 accounting treatment. In fact, our research indicates  
25 that no party at all made any assertion that such

1 retirements were extraordinary.

2           And more recently, GMO retired all of the  
3 Sibley unit 1 except for the boiler on June 30 of  
4 2017. The Commission did not determine there that  
5 that was extraordinary or that the retirement  
6 warranted deferral accounting treatment. In fact, no  
7 party made any assertion at all that that retirement  
8 was extraordinary.

9           And now GMO has also announced plans to  
10 retire the Lake Road Plant before the end of 2019.  
11 Now, the retirement of that plant, like the Sibley  
12 retirement, resulted from the Integrated Resource  
13 Planning process, which showed it's in the best  
14 interest of customers for the Company to retire that  
15 plant at that time.

16           GMO's plans to retire Lake Road is highly  
17 relevant to this case and that's because the USOA  
18 General Instruction Number 7, which you've already  
19 heard so much about, which the Commission has found  
20 provides guidance on the meaning of what is  
21 extraordinary, that particular instruction provides  
22 that an abnormal event is one which would not  
23 reasonably be expected to recur in the foreseeable  
24 future. But as I said, we're expecting to have  
25 another retirement before the end of the year.

1           In addition, GMO's sister utilities have  
2 also retired a number of generating units recently.  
3 Kansas City Power & Light Company retired Montrose  
4 unit 1 on April 16, 2016. The Commission didn't  
5 determine that that retirement was extraordinary. In  
6 fact, no party, including the Public Counsel or MECG,  
7 made any assertion that the retirement was  
8 extraordinary.

9           Even more recently, KCPL retired Montrose  
10 units 2 and 3 on December 31st of last year. Now,  
11 these retirements were also driven by the results of  
12 the IRP process. While -- while the Company is  
13 deferring depreciation expense on Montrose 2 and 3 and  
14 the common plant pursuant to a stipulation in the last  
15 rate case, no party made the assertion that such  
16 retirements were extraordinary or that they warranted  
17 deferral accounting treatment for revenue and return  
18 on those assets and the related non-fuel O and M  
19 costs.

20           Then also if you look at one of our other  
21 sister utilities, Westar, its relevant for purposes of  
22 assessing whether Sibley's retirement is an  
23 extraordinary event. From 1949 through 2019, Westar  
24 retired 38 generating units; 5 of which were retired  
25 last year in 2019-- in 2018. Now, none of those



1 retirements resulted in the approval of an AAO by a  
2 regulatory agency.

3           Moreover, the retirement of the Sibley  
4 unit is consistent with the pattern of fossil fuel  
5 generating unit retirements occurring across the  
6 country right now.

7           Chris Rogers who was a -- who was the  
8 manager of generating facilities at the Commission  
9 Staff back in the mid-80s testifies that the  
10 retirements of coal-fired power plants is a  
11 commonplace and routine event for utilities today.

12           In fact, Mr. Rogers explains that in the  
13 utility industry today, it would be extraordinary if  
14 GMO were not retiring fossil fuel fired generating  
15 units.

16           Federal and state regulatory policy  
17 changes, technological and operational developments  
18 and consumer demand for renewable energy have resulted  
19 in a significant transformation of the economics that  
20 affect the business of -- of generating electricity.  
21 As a result, coal-fired plants across the United  
22 States have been retired more frequently and in the  
23 ordinary course of business.

24           Now, I -- I thought two of Mr. Rogers'  
25 charts were particularly interesting. The first chart

1 shows the trend in all fossil fuel generating unit  
2 retirements from 1970 to 2019. As shown on that  
3 slide, there is a dramatic increase to the number of  
4 fossil-- fossil fuel units being retired in the last  
5 decade.

6           And then if you just focus on coal-fired  
7 units, the second chart shows the trend of coal-fired  
8 generating unit retirements. The rate of coal-fired  
9 plant retirements has accelerated during the last  
10 decade compared to the prior 40 years.

11           543 coal-fired generating units with a  
12 combined capacity of 76,526 megawatts retired since  
13 the beginning of 2010. That was more than double the  
14 238 coal units retired from 2000 to 2009 and about  
15 seven times the capacity for that decade. For the  
16 three decades from 1970 to 1999, only 34 coal units  
17 totaling 2,248 megawatts retired.

18           So in nearly 50 years since 1969, a total  
19 of 815 coal-fired units have retired with 543 units or  
20 two-thirds of the total having retired in the last  
21 nine years. So let me say that again. In  
22 two-thirds -- in the last 50 years, two-thirds of the  
23 retirements have occurred in the last nine years.

24           Clearly this evidence shows that there's  
25 nothing extraordinary, unusual, rare or infrequent

1 about the retirement of coal-fired generating units in  
2 the United States today and Sibley's retirement is  
3 certainly no exception.

4           While the objective data presented by  
5 Mr. Rogers demonstrates that coal plant retirements  
6 are prevalent across the country and have been for  
7 some time, OPC's Witness Marke suggests that only SPP  
8 utility coal plant retirements are relevant for  
9 purposes of determining whether the GMO retirement of  
10 Sibley is an extraordinary event.

11           The Company is confident that the  
12 Commission will not except this invitation to ignore  
13 the common industry experience across the country,  
14 which is highly relevant to understanding whether a  
15 coal plant, like the retirement of Sibley, is likely  
16 to recur in the reasonably foreseeable future. These  
17 retirements are happening all the time now and we need  
18 to recognize that.

19           Without any doubt, the retirement -- the  
20 data presented by Mr. Rogers establishes conclusively  
21 that the pr-- prevailing practice in the electric  
22 industry is that we are retiring coal plants.

23           Public Counsel's Witness Schallenberg  
24 also claims that the Sibley retirement is -- is  
25 extraordinary because he says the retirement occurred

1 before the end of Sibley's projected life. However,  
2 this contention should also be rejected. As discussed  
3 in the -- John Spanos's testimony, the Company  
4 witness, it's very common under mass asset accounting  
5 for generation units to retire with undepreciated  
6 value remaining on the books.

7           Now, as I mentioned earlier, the Sibley  
8 retirement date is driven largely by the economic  
9 factors of the IRP process, which shows that it's in  
10 the best interest of the Company's customers for  
11 Sibley to be retired.

12           Such economic factors have changed as  
13 renewables have become more cost effective. And the  
14 fact that Sibley was retired before the end of its  
15 most recently estimated depreciable life is no basis  
16 to find that the retirement is extraordinary or  
17 premature as -- as suggested by Public Counsel.

18           The bottom line, Sibley's retirement is  
19 not extraordinary and certainly does not justify the  
20 approval of an AAO. The Public Counsel and MECG have  
21 simply not met their burden to support their  
22 allegation and the retirement of Sibley is an  
23 extraordinary event -- is not an extraordinary event.  
24 Therefore, their complaint should be dismissed.

25           Granting the AAO requested by the

1 complainants would vio-- would violate the  
2 Commission's policy that the broad use of deferral  
3 accounting should be limited, and would contravene  
4 Commission rate-making practices that establishes  
5 prospective rates based on historic test year data.

6           Mr. Ives has explained in his Rebuttal  
7 Testimony that the Commission has historically applied  
8 the criteria as outlined for extraordinary items in --  
9 that is included in the USOA General Instruction  
10 Number 7. This instruction states that extraordinary  
11 items are of an unusual nature, infrequent occurrence  
12 and will be events and transactions of significance --  
13 significant effect which are abnormal and  
14 significantly different from the ordinary and typical  
15 activities of the company and which would not  
16 reasonably be expected to recur in the foreseeable  
17 future.

18           Now, in -- in Case Number EU-2014-0077,  
19 KCPL and GMO requested an AAO which would have allowed  
20 the deferral of transmission costs. Applying that  
21 particular general instruction criteria, the  
22 Commission denied the Company's request and found that  
23 transmission costs were not extraordinary and,  
24 therefore, not eligible for an AAO.

25           In the KCPL 2014 rate case, the

1 Commission also stated -- and I've got it on the  
2 board -- that the broad use of deferral accounting  
3 should be limited because it violates the matching  
4 principle, tends to unreasonably skew rate-making  
5 results, and dulls the incentives of -- a utility has  
6 to efficiently and productively under the rate  
7 regulation approach employed by Missouri. And that  
8 source was from one of our rate cases in 2014.

9           Now, in that case, the Commission denied  
10 KCPL's request for the use of deferral accounting for  
11 SPP transmission expenses, for property taxes, for  
12 SIPS and cyber security costs based upon findings that  
13 the costs did not constitute extraordinary items  
14 because they were -- and I'll quote -- normal,  
15 ordinary and recurring operation costs that were not  
16 abnormal or significantly different from the ordinary  
17 and typical activities of the company so that they are  
18 not extraordinary and, therefore, not subject to  
19 deferral under the USOA.

20           Now, the Company appealed that decision  
21 to the Western District Court of Appeals. And the  
22 Court affirmed the Commission's decision. And what it  
23 said was it will not second guess the PSC's reasoned  
24 decision that only extraordinary items may qualify for  
25 deferral of treatment.

1           Now granting the petition of the Public  
2 Counsel/MECG in this case would violate that well  
3 established and recent policy of the Commission.

4           The recording of amounts to a regulatory  
5 liability account would serve to reduce GMO's achieved  
6 earnings or net income by the magnitude of the amount  
7 so recorded. In other words, under the existing  
8 accounting rules, GMO's earnings or net income will go  
9 down by the total amount of the deferral directly as a  
10 result of the Commission's order requiring deferral.

11           The large deferrals being advocated by  
12 the complainants would, if adopted by the Commission,  
13 have a very adverse impact upon the Company's  
14 earnings. This fact alone is reason enough not to  
15 adopt the AAO in this case.

16           Mr. Ives and Mr. Klote also discuss in  
17 their Rebuttal Testimony the inconsistent, vague and  
18 uncertain claims and requests related to the financial  
19 impact of the AAO on the Company made by the Public  
20 Counsel and MECG witnesses.

21           Now, Mr. Meyer estimates his  
22 recommendation as a deferral of approximately  
23 30 million dollars, which he characterizes as  
24 conservative. While Mr. Schallenberg estimates the  
25 income effect of his deferral to be over 39 million

1 dollars annually.

2           These amounts would be deferred each and  
3 every year until GMO is able to complete its next rate  
4 case; at the earliest, in December 2021 -- 2021. Now,  
5 I would just note that those estimates, as I  
6 understand them, are not all inclusive. And maybe  
7 we'll hear more testimony from the -- the -- the  
8 parties today, but that -- they are suggesting other  
9 costs would be associated too, so their numbers could  
10 be bigger.

11           As context for those numbers, GMO's net  
12 income is approximately 160 million dollars as of the  
13 true-up date in our last rate case. Multiplying the  
14 OPC and MEGC's annual estimates over the total period  
15 of time until the completion of the next GMO rate case  
16 results in deferrals of between 90 million, using  
17 MEG-- MEGC's number, and 117 million dollars, using  
18 Public Counsel's estimate.

19           If the Commission adopted either of the  
20 recommendations of the Office of Public Counsel or  
21 MEGC, GMO's achieved earnings would be expected to  
22 fall from 8.42 percent to either 5.69 percent, un--  
23 using Public Counsel's recommendation, or 6.32 percent  
24 using MEGC's number.

25           Now, in the last GMO rate case, even



1 MECG's cost of capital witness, Mr. Michael Gorman,  
2 recommended an ROE of 9.3 percent. His 9.3 percent  
3 recommendation is significantly higher than GMO would  
4 be expected to achieve if you adopted MECG's position  
5 in this case.

6           So by any measure, the Public Counsel and  
7 MECG's estimated financial impacts upon GMO would be  
8 extremely significant and damaging to GMO and would be  
9 viewed by investors very negatively. A decision by  
10 the Commission to adopt the position of the  
11 complainants in this proceeding could also impact  
12 other regulated utilities in Missouri since the  
13 investment community would likely question the  
14 fairness of Missouri regulation.

15           Now, in their testimony, witnesses for  
16 OPC and MECG assert that the need for an AAO -- they  
17 need that in order to make adjustments in GMO's next  
18 rate case. But that's simply not the case.

19           In the next rate case, the Commission  
20 will consider all relevant factors like it has done  
21 for many years and the Company will be required to  
22 maintain the same books and records, whether or not an  
23 AAO is -- is adopted in this case. We are under the  
24 regulations to retain those records. Those records  
25 will be there whether an AAO is granted or not so that

1 they can use that for the next rate case.

2           Mr. Oligschlaeger specifically addressed  
3 this point where he testified on page 7 of his cross  
4 sur-- cross rebuttal where he said, The ability of  
5 other parties to propose a rate-making offset -- and  
6 he was talking about related to the Sibley  
7 retirement -- in the next GMO rate case is not  
8 dependent upon the creation of a Sibley unit  
9 regulatory liability at this time.

10           While -- while we don't know what issues  
11 might be raised in GMO's next rate case, what is  
12 certain is that if the Commission issues a deferral  
13 order in this case, there will be an immediate and  
14 very adverse impact upon GMO's earnings during the  
15 deferral period, with no evidence whatsoever that  
16 GMO's earnings are excessive.

17           The negative impact upon earnings could  
18 occur whether or not the Commission ever makes a  
19 rate-making adjustment in the next rate case. Now,  
20 this would be a very unfortunate result, which will  
21 have wider consequences particularly for the  
22 investment community's perception of regulation in  
23 Missouri.

24           Now, given the importance of this case  
25 upon GMO, other public utilities and perception of

1 regulation by the wider investment community, I would  
2 encourage you to ask your questions of our witnesses  
3 today. We will be presenting four.

4           Mr. Darrin Ives will rebut the testimony  
5 of Public Counsel and MECG witnesses who characterize  
6 the retirement of Sibley as extraordinary. He will  
7 also explain the accounting issues surrounding the  
8 request for an AAO and explain how the request is  
9 inconsistent with the Commission's policy and  
10 rate-making practices and also violates an order  
11 approving stipulations in the last rate case.

12           Finally, he will address questions of  
13 fairness and will demonstrate why the imposition of an  
14 AAO for Sibley is not reasonable under the  
15 circumstances of this case.

16           Our second witness, Mr. Ron Klote, will  
17 testify on a variety of accounting matters related to  
18 Public Counsel and MECG's request and will demonstrate  
19 that their requests are vague, inaccurate and  
20 overstated.

21           Mr. Chris Rogers provides a national  
22 perspective and gives the Commission a very  
23 interesting overview I think of what is happening with  
24 retirements across the coun-- country, particularly  
25 coal-fired retirements.

1                   And then finally, Mr. John Spanos will  
2 present information related to the net book value of  
3 Sibley as of the true-up date in GMO's most recent  
4 rate case, which was June 30, 2018. And he'll testify  
5 that the Sibley retirement is not extraordinary or  
6 premature, the retirement of the generating facilities  
7 with undepreciated value remaining is a commonplace  
8 occurrence.

9                   And with that, I will in-- conclude my  
10 remarks, take your questions and suggest my witness  
11 will be here to answer your questions too.

12                   JUDGE WOODRUFF: Mr. Chairman?

13                   CHAIRMAN SILVEY: Thank you.

14 BY CHAIRMAN SILVEY:

15                   Q. Thank you for your opening statement.  
16 Your suggestion that it's not extraordinary to retire  
17 coal plants and you've listed a number of instances.  
18 And I think you made the statement that not once in  
19 the history of the Commission have they treated the  
20 retirement of a coal plant as extraordinary.

21                   A. Nowhere in the country.

22                   Q. Nowhere in the country. Do you have any  
23 handle on how many of those were retired 20 years or  
24 more before their projected end of service?

25                   A. You know, there -- you might ask that to

1 Mr. Chris Rogers. He's much more familiar with the  
2 data on that. But I would suggest to you that the --  
3 those -- those -- as Mr. Woodsmall suggested, the --  
4 that life is just an estimate. It was some -- it came  
5 out of a depreciation study.

6           And what has really driven this is the  
7 economics that have changed so dramatically with  
8 renewables and the -- the economic factors that make  
9 it in the best interest of customers to retire that  
10 plant.

11           Q.     Well, let's look at the two that you  
12 brought up specifically that were GMO plants. Ralph  
13 Green units 1 and 2 in 1982 and Edmond Street Plant in  
14 1987. What was their projected end of life in  
15 relation to when they were actually retired?

16           A.     We -- we should ask that of probably  
17 Mr. Ron Klote or one of the Company witnesses. I  
18 don't know going back that far. But it's not  
19 uncommon, using mass accounting that we use for  
20 depreciat-- or for depreciation of -- of power plants  
21 that you do have un-- unrecovered balances at the end  
22 of the -- at the end of its life.

23                     Sometimes -- sometimes it retires -- or  
24 it goes longer than what you estimate it, but a lot of  
25 times there is still an unrecovered balance there.

1 And that's not unusual at all. Mr. Spanos could  
2 address that question. He'll -- he'll tell you that  
3 that's very common.

4 Q. Okay. And currently the rates that are  
5 in place are factored on this plant being in  
6 operation; is that accurate?

7 A. It's correct that CMO was in operation  
8 during the historic test year. And under the  
9 rate-making practices we use in this -- this state, it  
10 was appropriate that it be included because it was  
11 operating at the time of test year.

12 Q. So --

13 A. Now, had you used a future test year that  
14 would have looked ahead, you might -- you would have  
15 picked up the retirement.

16 Q. So is it fair to say that the Company is  
17 currently earning a recovery of and on a plant that is  
18 not generating electricity in its current rates?

19 A. I don't think that's really fair to say.  
20 What we've got -- we've got rates that were  
21 established using a historic test year. Customers are  
22 paying for --

23 Q. In the historic test year, that plant was  
24 in full operation?

25 A. It was in full operation and -- and --

1 Q. Which it's not today?

2 A. It's not today, but it --

3 Q. But the rates are the same?

4 A. We are using the matching principle that  
5 at the -- the time of the -- the historic test year,  
6 we had -- we had that plant operating, along with  
7 expenses and we set rates based on that --

8 Q. Yeah. No, I get that. But my point is  
9 the rates were based on as if that plant were in full  
10 operation. Now the rates are in effect and the plant  
11 is not in operation --

12 A. We -- we looked at all --

13 Q. -- so some portion of that rates is  
14 taking into account operating a plant that's not  
15 operating. Is -- I mean --

16 A. And -- yeah. Of course, there are  
17 other --

18 Q. Is there another way to look at it?

19 A. -- other -- well, there are other ways to  
20 look at it too. We -- we used -- we used the matching  
21 principle, like we've used in every case, because we  
22 looked at what the costs were and what the revenues  
23 were at the time to match those -- those things. And  
24 that -- that was done in the historic test year.

25 Now, going forward, things change. We

1 have retirements, we have costs, we have additional  
2 revenues. That -- so the next time you look at it,  
3 you'll have a different test year to look at.

4 Q. Sure. So think -- but -- but it -- where  
5 we stand right now, the rates that people are paying  
6 right now are based on as if that plant were  
7 operating --

8 A. They were --

9 Q. -- which it's not?

10 A. -- they -- they were determined at the  
11 time to be just and reasonable based upon historic  
12 test year that included an operating Sibley, yes.

13 Q. Okay. In the process of retiring plants,  
14 is it normal to come back and seek decommissioning  
15 costs?

16 A. For nuclear power plant cases, we have a  
17 de-- decommissioning fund usually set up. For other  
18 plants we do not.

19 Q. So in future rate cases, once you've  
20 begun decommissioning, is it normal to come back and  
21 seek costs associated with that decommissioning in the  
22 next rate case?

23 A. There could be de-- decommissioning costs  
24 in a historic test year if that de-- decommissioning  
25 has occurred during that time, yes.



1 Q. So I guess my concern is -- and I don't  
2 know if you will have an answer to this, but if the  
3 Company is earning money on a plant that's not  
4 operating now, is it likely that in their next rate  
5 case, they will also seek money associated with  
6 decommissioning?

7 A. Decommissioning is somewhat different  
8 than what I think just making sure that -- that plant  
9 is safe and -- dark and safe or whatever they call  
10 that at the time. Decommissioning would be actually  
11 tak-- or dismantling, might be taking it down. If  
12 they did that in a historic test year, they -- they  
13 might very well ask for those kinds of costs. But I  
14 would say that --

15 Q. Would it be inappropriate to consider the  
16 costs of operating a plant that's not operating and  
17 using that to offset the costs of decommissioning it?

18 A. I'm not sure I -- I understand your  
19 question. What --

20 Q. It seems like it might be double dipping.  
21 If you're earning on a plant that's not generating  
22 electricity and then you come back and ask for  
23 decommissioning costs while you have been earning  
24 money --

25 A. But --

1 Q. -- when it wasn't in operation.

2 A. What we did, we set rates in the last  
3 rate case using the traditional methods of the  
4 Commission.

5 Q. I got -- I understand that.

6 A. And -- and -- and what I'm -- customers  
7 have been paying their electricity costs. They're not  
8 paying for a power plant. They're just paying  
9 whatever the Commission said were just and reasonable  
10 rates. They're not paying on any fictional power  
11 plant as some of these folks have suggested. They are  
12 paying electricity for their electricity. And the  
13 method and the Commission has used --

14 Q. Part of that calculation was the  
15 operation of that plant.

16 A. Yeah. Using the historic test year  
17 period traditionally used by the Commission. Now, in  
18 the future when -- as things change, electric rates  
19 will change based upon the circumstances that occur  
20 during the next test year.

21 Q. So aside from potential reduced achieved  
22 earnings, are there other -- is there other potential  
23 harm that would come to GMO if the Commission were to  
24 issue the AAO; and if so, what is it?

25 A. I think the earnings is the biggest

1 issue, by far. We don't have a baseline and that's  
2 another major problem. Like what's being asked for  
3 here is effectively a tracker. A tracker in a rate  
4 case, we always have a baseline to set. We don't have  
5 that here and it's going to be very difficult to  
6 quantify those savings on a going-forward basis  
7 without a baseline and without a specific  
8 determination of what is to be determined as far as  
9 those savings go.

10 Q. Am I confused --

11 A. And then --

12 Q. -- that that's what you were seeking  
13 another hearing for --

14 A. Yeah, yeah, yeah.

15 Q. -- if we were to --

16 A. If we have -- if -- if the Commission  
17 would decide this is extraordinary, we have to have a  
18 baseline. We can't go forward and we don't have a  
19 baseline now.

20 Q. But you objected to setting that baseline  
21 here in this setting.

22 A. In -- on two days' notice, we didn't --  
23 we weren't in a position to give you the best  
24 information that we need, yeah.

25 Q. Okay. All right. Thank you.

1 BY COMMISSIONER KENNEY:

2 Q. Who is the best witness to discuss the  
3 IRP process with?

4 A. I think Mr. Ives would be the best one of  
5 our four that are here today.

6 Q. Okay. Thank you.

7 A. Burton Crawford in future cases is a --  
8 is definitely our IRP guru too, but Mr. Ives can I  
9 think answer your questions.

10 JUDGE WOODRUFF: I think you've answered  
11 the questions I was going to ask.

12 MR. FISCHER: Thank you very much.

13 JUDGE WOODRUFF: Thank you for -- for  
14 your opening.

15 At this point we'll go ahead and take a  
16 break. We'll take about let's say 25 minutes and  
17 we'll come back at 11:35.

18 (A recess was taken.)

19 JUDGE WOODRUFF: All right. It's 11:35  
20 and we're back from the break. Before we proceed with  
21 the first witness, I want to address the objection  
22 that was made this morning by -- by GMO about the --  
23 the notice that was issued on Monday.

24 That notice indicated that the Commission  
25 would like to take up -- consider issues regarding --

1 to establish a baseline in this -- in this proceeding.  
2 After consideration, the Commission has decided that  
3 if a baseline needs to be established, it will hold  
4 another proceeding to do that some-- somewhere down  
5 the line, which would only be necessary if the  
6 Commission finds that there -- an AAO -- AAO should be  
7 granted.

8                   So basically this is essentially  
9 withdrawing that -- that notice. We will not be  
10 addition-- addressing those questions of baseline  
11 establishment in today's and tomorrow's proceedings.

12                   MR. HACK: Thank you, Judge.

13                   JUDGE WOODRUFF: All right. And while we  
14 were on break, I'll switch the camera over here to the  
15 witness. And Mr. Meyer has taken the stand. If you'd  
16 please raise your right hand, I'll swear you in.

17                   (Witness sworn.)

18                   JUDGE WOODRUFF: You may inquire.

19                   MR. WOODSMALL: Yes, Your Honor. Before  
20 we start, I handed both copies -- Mr. Meyer filed two  
21 pieces of testimony, direct and surrebuttal. Can we  
22 mark those?

23                   JUDGE WOODRUFF: Yes.

24                   MR. WOODSMALL: If you're doing it  
25 sequentially, his Direct Testimony would be Exhibit 1;

1 is that correct?

2 JUDGE WOODRUFF: That is correct.

3 MR. WOODSMALL: And his surrebuttal  
4 Exhibit 2. And I've handed copies of that to the  
5 court reporter.

6 JUDGE WOODRUFF: Thank you.

7 MR. WOODSMALL: May I proceed?

8 JUDGE WOODRUFF: You may.

9 (Exhibits 1 and 2 were marked for  
10 identification.)

11 GREG MEYER, having been sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. WOODSMALL:

13 Q. Good morning, Mr. Meyer.

14 A. Good morning.

15 Q. Do you have in front of you Exhibits  
16 Number 1 and Number 2?

17 A. I do.

18 Q. And who -- who are you appearing on  
19 behalf of in this case?

20 A. Midwest Energy Consumers Group.

21 Q. And were Exhibits 1 and 2 prepared by  
22 you?

23 A. Yes.

24 Q. And are those correct to the best of your  
25 knowledge, information and belief?

1 A. Yes.

2 Q. Do you have any changes to either of  
3 those pieces of testimony?

4 A. I do. Exhibit 2, my surrebuttal, page  
5 21. In the footnote, the citation to WO-98-223,  
6 St. Louis County Water, deferral of water main  
7 replacement costs should be stricken.

8 Q. Okay. And your second correction?

9 A. Page 28, line 17, the statement should  
10 read, AAOs should -- and the word "not" be inserted  
11 there.

12 Q. So that line now reads, AAOs should not  
13 be limited to unanticipated costs; is that correct?

14 A. That's correct.

15 Q. With that change, do you have any other  
16 corrections?

17 A. I do not.

18 MR. WOODSMALL: At this time I'd offer  
19 Exhibits Number 1 and Number 2 into evidence and  
20 tender the witness for cross-examination.

21 JUDGE WOODRUFF: Exhibits 1 and 2 have  
22 been offered. Any objections to their receipt?

23 Hearing none, they will be received.

24 (Exhibits 1 and 2 were received into  
25 evidence.)

1 JUDGE WOODRUFF: And for  
2 cross-examination then we begin with Public Counsel.

3 MR. HALL: Public Counsel has no  
4 questions at this time. Thank you.

5 JUDGE WOODRUFF: For Staff.

6 MS. ASLIN: I just have a couple  
7 questions.

8 CROSS-EXAMINATION BY MS. ASLIN:

9 Q. Good morning, Mr. Meyer.

10 A. Morning.

11 Q. Do you have your Direct Testimony in  
12 front of you?

13 A. I do.

14 Q. If you could turn to page 3. On that  
15 page you state that in 1991, the Missouri Commission  
16 authorized Missouri Public Service Company to defer  
17 depreciation expenses and carrying costs associated  
18 with the Sibley life extension project. Correct?

19 A. That's correct.

20 Q. And if you know, did the Commission  
21 authorize MPS to defer any O and M expenses associated  
22 with the Sibley unit as part of that AAO?

23 A. I can check, if you'd like.

24 O and M expense? Is that what your  
25 question is?



1 Q. Correct.

2 A. I don't -- I don't believe they did, no.

3 Q. Thank you. And then at page 4 of your  
4 Direct Testimony, lines 7 and 8, you state that KCPL  
5 GMO's current rates include costs, revenues and  
6 investment associated with the Sibley units; is that  
7 correct?

8 A. That's correct.

9 Q. What revenue items specifically  
10 associated with Sibley are you referencing there?

11 A. Off-system sales and the revenues to  
12 collect the operating expenses that are built into  
13 rates.

14 Q. Thank you. No further questions.

15 JUDGE WOODRUFF: For GMO.

16 CROSS-EXAMINATION BY MR. ZOBRIST:

17 Q. Good morning.

18 A. Good morning.

19 Q. Mr. Meyer, let me ask you a couple of  
20 questions about your background. You have a Bachelor  
21 of Science in Business Administration with a major in  
22 accounting. Right?

23 A. Correct.

24 Q. Okay. But you are not a certified public  
25 accountant; is that correct?

1 A. That's correct.

2 Q. Okay. Did you ever sit for the  
3 examination?

4 A. Nope.

5 Q. Okay. Now, you worked as an auditor here  
6 at the Commission from 1979 to 2008. Correct?

7 A. Correct.

8 Q. And you worked all those years in the  
9 Auditing Department?

10 A. That's where I -- that's where I  
11 reported, but my duties expanded beyond just the  
12 Auditing Department.

13 Q. Okay. Did you ever work in the Financial  
14 Analysis Department?

15 A. I worked with them.

16 Q. Okay. But you did not work in that  
17 department. Correct?

18 A. No, I did not.

19 Q. Okay. Now, you left the Public Service  
20 Commission in May of 2008 to go to Brubaker and  
21 Associates?

22 A. That's correct.

23 Q. Okay. And at that time was your ultimate  
24 supervisor Mr. Schallenberg, who's one of the  
25 witnesses for Public Counsel?

1 A. When I left?

2 Q. Correct.

3 A. No.

4 Q. Okay. Was Mr. Schallenberg in a  
5 supervisory position while you were an auditor here at  
6 the Commission?

7 A. Yes.

8 Q. Okay. And did you ever report directly  
9 to Mr. Schallenberg?

10 A. Yes, I did.

11 Q. Okay. And for how long was he your  
12 direct supervisor?

13 A. That would depend on the work that was  
14 assigned to us.

15 Q. Okay. Now, am I correct that you have  
16 never worked for a corporation that is subject to  
17 Generally Accepted Accounting Principles?

18 A. My only job has been the two that you  
19 described.

20 Q. And when I a GAAP, G-A-A-P, you know that  
21 that's refers to Generally Accepted Accounting  
22 Principles. Correct?

23 A. Right.

24 Q. Okay. So would it be fair to say that  
25 you've never audited a corporation to determine if its

1 accounting and financial records were kept according  
2 to GAAP?

3 A. I've never had that specific assignment.

4 Q. Okay. Would it be rather fair to say  
5 that when you performed your auditing duties, they  
6 were with regard to the Uniform System of Accounts  
7 that this Commission follows and that have been  
8 promulgated by the Federal Energy Regulatory  
9 Commission?

10 A. Predominantly that would be correct. I  
11 mean but we were exposed and made aware of GAAP  
12 provisions.

13 Q. Okay. Is it fair to say that you would  
14 not be qualified to express an opinion on whether a  
15 regulatory liability or a regulatory asset on a  
16 company's financial statements are in conformity with  
17 GAAP?

18 A. No, I don't agree with that.

19 Q. Okay. Why are you qualified then to  
20 offer an opinion as to whether a regulatory liability  
21 or regulatory asset is in conformity with GAAP when  
22 you aren't a certified public accountant and you've  
23 never audited a company with regard to whether its  
24 financial records are in conformity with a GAAP?

25 A. My answer was related to utilities. If I

1 reviewed those regulatory assets and regulatory  
2 liabilities as a utility, I would be able to -- to  
3 make a determination if those were in conformance with  
4 GAAP.

5 Q. Okay. Even though you're not a certified  
6 public accountant?

7 A. I don't believe that's necessary.

8 Q. Okay. And even though you have never  
9 worked for a company that's been subject to the GAAP  
10 financial accounting rules?

11 A. Same answer.

12 Q. Okay. Do you know whether a regulatory  
13 asset or a regulatory liability on GAAP financial  
14 statements have any different components to them or  
15 different requirements to them than regulatory assets  
16 or regulatory liabilities under the Uniform System of  
17 Accounts?

18 A. I'm not sure that there's a distinction.

19 Q. Okay. So you -- you don't know one way  
20 or another; is that correct?

21 A. Same answer.

22 Q. Okay. The answer is yes, you do not  
23 know. Correct?

24 A. Correct.

25 Q. Okay. Now, this Commission has adopted

1 the requirements of the Uniform System of Accounts.

2 Correct?

3 A. Correct.

4 Q. Okay. And the numbers that appear in the  
5 USOA of GMO are what this Commission relies upon in  
6 order to set rates and conduct its rate-making.

7 Correct?

8 A. Your reporting requirements are  
9 consistent with the USOA per Commission rules.

10 Q. Okay. And not with GAAP. Correct?

11 A. That's my -- that's my understanding.

12 Q. Okay. So rates are not set by this  
13 Commission based upon GAAP. They're set based upon  
14 the financial information in the Uniform System of  
15 Accounts that GMO and other Missouri public utilities  
16 keep. Correct?

17 A. They're -- they're established under the  
18 Uniform System of Accounts and their instructions.

19 Q. Okay. And in this case, in fact, the  
20 complaint that Public Counsel and MECG has brought is  
21 based upon the Uniform System of Accounts exclusively.  
22 Correct?

23 A. Correct. Because that's the standard  
24 that this Commission has historically applied.

25 Q. Okay. And -- and GAAP isn't even

1 mentioned in the petition that was filed by MECG and  
2 Public Counsel. Correct?

3 A. I did not rely on GAAP to make these  
4 recommendations.

5 Q. Okay. And the complaint is not based  
6 upon GAAP. It's based upon the Uniform System of  
7 Accounts. Correct?

8 A. Our complaint is based off of the  
9 Commission's standards for the Uniform System of  
10 Accounts, correct.

11 Q. Okay. Would -- would you agree that it's  
12 important to distinguish between regulatory assets and  
13 regulatory liabilities under GAAP versus the USOA as  
14 we proceed in this case?

15 A. I'm not sure there's a reason to be --  
16 have a difference, no.

17 Q. Okay. And is that because you really  
18 don't know what the differences are, as you've  
19 testified?

20 A. I don't believe that -- that -- that what  
21 we're here today to discuss would be in conflict with  
22 GAAP. I have no reason to believe it would be in  
23 conflict with GAAP, but we -- we are here to discuss  
24 the deferral of a liability according to the USOA,  
25 which this Commission has adopted.

1 Q. Okay. And if there are any differences  
2 between GAAP and the USOA -- USOA as far as regulatory  
3 liabilities, you don't think that they matter for  
4 purposes of this case?

5 A. I haven't been informed that they have.  
6 And you had an opportunity.

7 Q. Now, in this case you have testified that  
8 the retirement of the Sibley units is an extraordinary  
9 event. Correct?

10 A. Absolutely.

11 Q. Okay. And your testimony and the  
12 position of MECG is that the retirement of a  
13 generating unit is extraordinary in that the  
14 retirement occurs for that particular unit only once;  
15 is that correct?

16 A. The final retirement, correct.

17 Q. Okay. And you stated at your direct --  
18 in your Direct Testimony, I believe at pages -- pardon  
19 me, page 8, lines 8 and 9, that because its retirement  
20 occurs only once, therefore, it is extraordinary.  
21 Correct?

22 A. Correct.

23 Q. And, therefore, any retirement of any  
24 plant that occurs, in your opinion, is per se an  
25 extraordinary event. Correct?



1 A. A generating plant?

2 Q. Yes, a gen-- an electric generating  
3 plant.

4 A. Correct.

5 Q. Okay. And so without exception, it is an  
6 extraordinary event because an electric generating  
7 plant only retires once. Correct?

8 A. And it's nonrecurring and it's rare and  
9 it's not a normal operating expense.

10 Q. And so your opinion is that because it's  
11 an extraordinary event, it meets the test under  
12 General Instruction Number 7 as an extraordinary item?

13 A. It's not -- it -- the retirement of a  
14 generating plant fits directly into USOA 7, yes.

15 Q. So all plants, whenever they're retired,  
16 that is an extraordinary event and it's an  
17 extraordinary item under General Instruction 7?

18 A. I believe that every -- that -- that  
19 GMO's retirement of its generating units is an ex--  
20 are extraordinary events, correct.

21 Q. Okay. And, therefore, if the Commission  
22 finds that the Sibley retirement is an extraordinary  
23 event and an extraordinary item and should be  
24 deferred, that would remove the plant's income and  
25 expenses from the utility's income statement and

1 transfer those amounts as regulatory assets and  
2 regulatory liabilities to the utility's balance sheet.  
3 Correct?

4 A. What we're seeking is a deferred  
5 liability for the costs built into rates that is no  
6 longer in existence.

7 Q. I don't believe you answered my question.  
8 My question is such a deferral would remove the  
9 plant's income and expenses from the income statement  
10 and transfer them over to the balance sheet. Correct?

11 A. Correct. Correct.

12 Q. And that would have an effect on the  
13 earnings of the Company. Correct?

14 A. Could.

15 Q. You don't dispute that it's going to  
16 have -- if it were ordered, to have an effect on the  
17 earnings of the Company?

18 A. Well, if you -- I mean I think you have  
19 to look at the entirety of the earnings of the Company  
20 before I can tell you which way it's going to go or if  
21 it's going to impact it.

22 Q. It would have a negative effect on the  
23 earnings of the Company.

24 A. Holding everything else constant?

25 Q. Yes.

1 A. Potentially, yes.

2 Q. And although you say that the retirement  
3 of an electric generating plant is an extraordinary  
4 event and should be considered an extraordinary item  
5 under General Instruction 7, isn't it true that this  
6 Commission has never ordered a deferral for such a  
7 retirement in its history?

8 A. Well, that's sort of misleading.

9 Q. Well, just answer my question. Isn't it  
10 true --

11 A. Why don't you -- why don't you repeat it  
12 then?

13 Q. Sure. Sure. Isn't it true that this  
14 Commission has never, in over 100 years of regulating  
15 Missouri electric utilities, issued an order that  
16 granted deferral accounting on the basis of an  
17 electric plant being retired?

18 A. I don't know that it's ever come up as an  
19 issue.

20 Q. But plants have been retired in Missouri  
21 for 116 years. Correct?

22 A. And you have to look at the total  
23 circumstances associated with that retirement. For  
24 instance, when you retired Ralph Green in 1982, you  
25 had two rate cases in that exact year where those --

1 that retirement could have been addressed.

2 Q. Let me ask you this: Do you have the  
3 responses to KCPL Data Requests 1 and 2 with you?

4 A. From --

5 Q. To you -- to MECG.

6 A. Yes.

7 Q. Okay. Now, on the -- the first one --  
8 and these are attached to Mr. Ives' rebuttal as  
9 Schedule DRI-1, page 1. You were asked if you were  
10 aware of any order or decision by any federal or state  
11 utility regulatory body in the United States granting  
12 or denying a request to establish regulatory  
13 accounting for the purpose of deferring capital costs  
14 and non-fuel operating and maintenance expenses  
15 included in rates for a generating unit retired by the  
16 unit -- by -- by the utility. Do you recall that?

17 A. Unfortunately, Mr. Zobrist, I do not have  
18 1 and 2.

19 Q. Well, I just happen to have a set --

20 A. That's fine.

21 Q. -- so let me --

22 A. Thank you.

23 JUDGE WOODRUFF: Did you wish to mark  
24 this as an exhibit or?

25 MR. ZOBRIST: Judge, since I'm using it

1 with -- with the witness, let's mark it Exhibit 3.

2 MR. HALL: Just for clarification, Your  
3 Honor, could we get the number of the DR?

4 MR. ZOBRIST: I've got other copies.  
5 Sorry.

6 (Exhibit 3 was marked for  
7 identification.)

8 BY MR. ZOBRIST:

9 Q. Mr. Meyer, I've handed you what has been  
10 marked as Exhibit 3. Do you have that before you?

11 A. I do.

12 Q. Okay. And is that a true and correct  
13 copy of your response to KCPL Data Request 1?

14 A. It is.

15 Q. Okay. And you stated that you had not  
16 conducted any review of any regulatory treatment  
17 implemented by other regulatory bodies regarding  
18 rate-making for retired generating units; is that  
19 correct?

20 A. That's correct.

21 Q. And is that still true today? That you  
22 have not conducted such an investigation?

23 A. Specifically about the deferrals of -- of  
24 expenses, no.

25 Q. Right. In response to the DR question.

1           A.     I haven't done anything further since  
2 this response.

3           Q.     And to read the second part of the  
4 response, quote, as such, he is not aware as to  
5 whether other utility regulatory bodies have granted  
6 or deni-- denied deferral of capital costs or O and M  
7 expenses; is that correct?

8           A.     That's what it says.

9           Q.     Okay. And that -- that's true and  
10 correct?

11          A.     Still is.

12          Q.     Okay. And the second question that was  
13 posed to you is, Were you aware of any order or  
14 decision by any federal or state utility body in the  
15 United States finding that the retirement of a  
16 generating facility was an extraordinary event under  
17 the Uniform System of Accounts; is that correct?

18          A.     That's correct.

19          Q.     Okay. And again, you said you hadn't  
20 conducted any review of such decisions; is that true?

21          A.     Yes.

22          Q.     And still true today?

23          A.     Yes.

24          Q.     Okay. And so you're not aware today of  
25 any other decision ever rendered by either a federal

1 or state regulatory agency finding that a retired --  
2 that the retirement of an electric generating plant  
3 was an extraordinary event?

4 A. That's what these say.

5 Q. Okay. And -- and that's your testimony.  
6 Correct?

7 A. That's -- yes.

8 Q. Okay. Did you read Mr. Ives' Rebuttal  
9 Testimony?

10 A. I did.

11 Q. Okay. Did you read Schedule DRI-4, which  
12 is the decision of the Wisconsin Public Service  
13 Commission that denied a similar deferral accounting  
14 request for a retired electric plant owned by  
15 Wisconsin Electric Power Company?

16 A. I'm not sure that I read the Wisconsin  
17 order, no.

18 Q. Okay. But you're aware that the  
19 Wisconsin Commission had a similar request and they  
20 denied the request for deferral. True?

21 A. It's my understa-- that's my  
22 understanding, but --

23 Q. Okay.

24 A. -- but the regulatory scheme in Wisconsin  
25 is totally different than here.

1 Q. Now, do you have a copy of General  
2 Instruction Number 7 before you? I've got an extra  
3 copy if that would be --

4 A. No, I --

5 Q. -- more helpful.

6 A. I've got it. It's in my testimony.

7 MR. ZOBRIST: Judge, that is in  
8 Mr. Meyer's testimony, but I've got a copy that I'd  
9 like to mark and put into evidence just so we have it  
10 before us.

11 JUDGE WOODRUFF: Exhibit Number 4.

12 (Exhibit 4 was marked for  
13 identification.)

14 BY MR. ZOBRIST:

15 Q. Now, Mr. Meyer, I've handed you what is a  
16 copy of the first three pages of the general  
17 instructions of the Uniform System of Accounts. It's  
18 marked as Exhibit 4. And does the third page include  
19 General Instruction 7, which is entitled Extraordinary  
20 Items?

21 A. It does.

22 MR. ZOBRIST: Okay. Judge, I'd like to  
23 offer Exhibits 3 and 4 at this time.

24 JUDGE WOODRUFF: Three and four have been  
25 offered. Any objections to their receipt?



1                   Hearing none, they will be received.

2                   (Exhibits 3 and 4 were received into  
3 evidence.)

4 BY MR. ZOBRIST:

5           Q.       Now, Mr. Meyer, Instruction 7 directs --  
6 pardon me.

7                   There's nothing in General Instruction 7  
8 that directs this Commission or any regulatory body to  
9 ignore industry trends or ind-- industry practices as  
10 far as what is extraordinary or unusual or unique;  
11 isn't that correct?

12           A.       I disagree.

13           Q.       All right. Where does it say that this  
14 Commission is to ignore industry trends or industry  
15 practices?

16           A.       When it says it's specific to a company.

17           Q.       Okay. Does it say you should not  
18 consider whether an extraordinary item has affected  
19 the company, but you should ignore what's going on in  
20 the industry?

21           A.       It says that if it's an extraordinary  
22 event to the company, it should be considered. It  
23 does not mention anything about the industry.

24           Q.       Right.

25           A.       If it -- if it had -- if it needed to

1 have the industry in it, it would have put it in  
2 there.

3 Q. On what authority do you say that? That  
4 FERC should have said either ignore or consider  
5 industry practices?

6 A. Mr. Zobrist, this instruction has been in  
7 for over 40 years. It hasn't changed. So obviously  
8 the FERC has done some reviews -- or at least I would  
9 hope they've done some reviews to make sure it's still  
10 applicable after being in the -- in the instructions  
11 for over 40 years. And it doesn't -- and it has never  
12 changed it to now include the industry and look at the  
13 industry.

14 Q. And it doesn't forbid it to look at the  
15 industry?

16 A. It says to the company.

17 Q. There is nothing in here that says,  
18 Commission, you are to ignore what is going on in the  
19 industry to decide if a company has experienced an --  
20 and extraordinary event.

21 A. I will agree with you that it doesn't say  
22 that the Commission can -- can -- can consider the  
23 industry. But the standard for an extraordinary event  
24 goes back to the company.

25 Q. Okay. So you would agree that in

1 considering whether the retirement of Sibley is  
2 extraordinary for GMO, it's appropriate for the  
3 Commission to see what is happening in the markets  
4 today to determine if that retirement was an  
5 extraordinary event?

6 A. That might be your opinion. That's not  
7 mine.

8 Q. Okay. Well, your counsel, Mr. Woodsmall,  
9 said don't bury your head in the sand. Do you  
10 remember that? Are you telling this Commission to  
11 bury its head in the sand and to ignore what is going  
12 on in the industry today with regard to the retirement  
13 of the Sibley plants?

14 A. What I'm telling -- what I'm advising or  
15 hoping that this Commission does is stay consistent  
16 with what they've done for over 25 years in applying  
17 the AAO standards, and that is to apply it to the  
18 company.

19 Q. But in applying these standards to the  
20 company, it can take into consideration what is going  
21 on in the economy today. Correct?

22 A. I don't understand your question.

23 Q. Never mind. Let's move on. In your  
24 testimony, you did not dispute the trends in coal  
25 plant retirements that Mr. Rogers discussed in his

1 Rebuttal Testimony. Correct?

2 A. Did I dispute the -- the -- the -- the  
3 information he provided?

4 Q. Pardon me. Let me rephrase that. You  
5 did not dispute, in your Surrebuttal Testimony, the  
6 trends in coal plant retirements that Mr. Rogers  
7 discussed in his Rebuttal Testimony?

8 A. I think what I said in my Rebuttal  
9 Testimony was that the analysis performed by  
10 Mr. Rogers was -- was not relevant to this case.

11 Q. Okay. But I think you told the  
12 Commission that while they have to apply these  
13 standards to this Company, they can consider what's  
14 happening in the economy and in the energy industry  
15 today?

16 A. That's your statement again.

17 Q. Okay. Do you disagree with it?

18 A. Yes.

19 Q. Okay.

20 A. I told you before that the standard that  
21 should be applied, in my opinion, should be to the  
22 Company and not the industry.

23 Q. So are you telling the Commission to  
24 ignore what is happening in the electricity industry  
25 today?

1           A.     As -- as I said to you before,  
2 Mr. Zobrist, and I'll say it again, that the standard  
3 that this Commission has applied in the past and I  
4 continue to -- to support is that the standard for  
5 extraordinary should be applied to the Company.

6                   MR. ZOBRIST: Judge, I move to strike the  
7 answer. He's not responding to my question.

8                   JUDGE WOODRUFF: Overruled.

9 BY MR. ZOBRIST:

10           Q.     Okay. Let me ask you once again. Are  
11 you telling this Commission to ignore what is  
12 happening in the electricity industry today in making  
13 its decision as to whether the retirement of the  
14 Sibley units was extraordinary? Yes or no.

15           A.     Mr. Zobrist, I would never tell this  
16 Commission what they should do. However, I am here  
17 today to -- to -- to support what they've done over  
18 the past 25 years, and that is to apply it to the  
19 Company.

20           Q.     Are you saying that this Commission has  
21 in the past ignored these trends when it's decided  
22 whether or not to approve deferral accounting?

23           A.     If the Commission in the past has  
24 considered the industry, they haven't found it  
25 worthwhile or worthy of noting it in their orders,

1 because they haven't.

2 Q. And you've looked at all the orders for  
3 the last 112 years?

4 A. If you can cite me one in -- that's  
5 relevant to this case, I can tell you if I've looked  
6 at it.

7 Q. Well, I think we agree on this. We're  
8 not going to tell the Commission what they should not  
9 look at. Is that fair to say?

10 A. I've never advised the Commission not to  
11 look at certain things.

12 Q. So as far as Mr. Rogers' testimony, you  
13 can't dispute his number that 543 coal plants have  
14 retired in the last nine years. Correct?

15 A. As I said to you before, I looked at it  
16 and I told you in my Rebuttal Testimony that I didn't  
17 find it relevant.

18 Q. Okay. But you cannot dispute the fact  
19 that 400-- pardon me, 543 coal plants have retired in  
20 the last nine years?

21 A. I did not do any analysis on whether  
22 Mr. Rogers' work is accurate or not because I -- quite  
23 honestly, I didn't need to.

24 Q. Okay. Because you determined that it was  
25 irrelevant and you did not consider it?

1           A.       Because the Commission has determined  
2 that it's --

3           Q.       No, I'm asking you personally did not  
4 consider --

5           A.       I said that in my di-- in my testimony  
6 and it's based off of the application of the AAO  
7 standard from this Commission for the past 25-plus  
8 years.

9           Q.       Okay. Let -- let me switch topics on  
10 you. You talked about the 5 percent materiality  
11 standard.

12          A.       Yes.

13          Q.       Okay. And to be clear, just because the  
14 Sibley depreciation expense and rate of return that  
15 you calculated exceeded 5 percent of GMO's reported  
16 net income, this does not mean that the retirement of  
17 the Sibley units must be considered an extraordinary  
18 item?

19          A.       Just -- it was just another point of  
20 qualification that makes it extraordinary.

21          Q.       Okay. So this Commission is not required  
22 to grant a deferral request in this case just because  
23 the 5 percent income threshold may have been exceeded.  
24 Correct?

25          A.       That's correct. I hope they do.

1 Q. Okay. But they're not required to.  
2 Correct?

3 A. Obviously, Mr. Zobrist, they can deny  
4 this deferral.

5 Q. Just -- Mr. Meyer, just answer my  
6 question.

7 A. I think I just did.

8 Q. They are not required to grant a deferral  
9 request in this case just because the 5 percent income  
10 threshold has been exceeded. Correct?

11 A. That's correct.

12 Q. Okay. And if the Commission decides not  
13 to grant the deferral request in this case, it will  
14 not have violated any provision of the Uniform System  
15 of Accounts. Correct?

16 A. If they make the decision to deny it,  
17 it's -- it's -- it's a moot point.

18 Q. Okay. But it wouldn't be in conflict  
19 with the USOA. Correct?

20 A. That's their decision. It's not in  
21 conflict because they adopt the USOA to regulate  
22 utilities. If they -- if a -- if a -- if the clause  
23 that -- they believe that we didn't meet our burden  
24 in -- in Instruction 7, then -- then they have the --  
25 the -- the right, and I wouldn't argue against it,



1 that they can deny this deferral. Absolutely.

2 That's --

3 Q. Let me ask you some questions about  
4 rate-making. Would you agree with the proposition  
5 that rates do not reflect the exact levels of revenue  
6 costs and investments of a utility even on the day  
7 they become effective?

8 A. On the day they become effective, rates  
9 reflect the relationship between revenues, expenses  
10 and rate-base that we expect to -- to have in effect  
11 for a year at least.

12 Q. But in this Commission as of the true-up  
13 date. Correct?

14 A. But the -- the relationship is -- is --  
15 is -- is thought to exist even at the day the rates  
16 are going to go into effect. Because that's the --  
17 that's the whole premise of rate-making in a  
18 historical test year is you set up a relationship that  
19 you believe is going to exist the year rates are in  
20 effect.

21 Q. And in this -- and for GMO, the cut-off  
22 date was in June of 2018. Correct? And those numbers  
23 were not updated to the time that rates became  
24 effective in December 2018. Right?

25 A. But that doesn't mean that you have to

1 ignore.

2 Q. My question is when you cut off --

3 A. No. I'm disagreeing with you,  
4 Mr. Zobrist.

5 Q. So we're -- we're in the additional  
6 investments and revenues and costs that come in after  
7 the true-up date when this Commission sets rates?

8 A. Because the -- the argument is that the  
9 relationship between the historical revenues, expenses  
10 and rate-base still exist at the time rates are set  
11 and put into effect.

12 Q. Well, that may be the argument, but  
13 that's not the absolute reality when the tariffs  
14 become effective; isn't that true?

15 A. It most certainly is.

16 Q. So what happened to all the costs that  
17 were generated since the true-up date and the plant or  
18 whatever that is retired since the true-up date since  
19 they haven't been accounted for in a rate case?

20 A. If that relationship would have  
21 materially changed, a party can argue that it should  
22 be reflected in the rates before the effective date of  
23 new rates.

24 Q. And you would do that, for example, if  
25 you were MEEG, by filing an earnings complaint to say

1 I want to have all your revenues and your expenses  
2 once again re-- re-examined in a rate case?

3 A. Absolutely not.

4 Q. Okay.

5 A. You would -- you would propose an  
6 isolated adjustment to the -- to the true-up data.

7 Q. Now, rate-making is not a real-time  
8 process. Can we agree on that?

9 A. You have to define real-time for me.

10 Q. The rates today, August 7th, 2019, do not  
11 reflect today for GMO rate-ma-- ratepayers the exact  
12 investments and costs that are being incurring today.

13 A. They're not supposed to.

14 Q. Okay. So rate-making not a perfectly  
15 timed process. It's not a real-time process.

16 A. It's exactly like I just described to  
17 you. It's -- the rates are established on the  
18 relationship between rate-base and revenues and  
19 expenses.

20 Q. And would you agree then -- let's look at  
21 it a different way -- that rates never match the  
22 current level of costs and revenues because there is  
23 no perfect matching of costs and incurred -- of costs  
24 incurred and costs recovered?

25 A. If you're asking me if the rates that

1 we -- or that the rates that are established exactly  
2 match the labor expenses of the Company in a -- in a  
3 future period, the answer is no.

4 Q. Okay.

5 A. But again, the relationship between all  
6 of those factors that I just described are -- are to  
7 maintain -- are to be maintained for the period rates  
8 are in effect.

9 Q. So what we use is past expenses as a  
10 basis to determine what rates are reasonable to be  
11 charged in the future. Correct?

12 A. That's how we've always done it.

13 Q. Okay. And part of that is to avoid  
14 excess profits or future losses by the utility one way  
15 or the other. Right?

16 A. The -- the theory is that that  
17 relationship is going to exist until such time as  
18 either a party that's not the utility alleges that  
19 that relationship has become distorted towards the --  
20 the utility or the utility looks at that relationship  
21 and says we need to come in and file another rate case  
22 to -- to re-establish that relationship.

23 Q. Now, would you agree with the proposition  
24 that customers don't pay for the cost of specific  
25 assets, but rather pay for the service that they're

1 receiving from their utility?

2 A. I think that those rates can be traced  
3 back to -- to assets that -- the rate-base, yes, I do  
4 believe that.

5 Q. So all the elements that come into rates  
6 that are not part of -- that were not part of the rate  
7 decision when those tariffs are effective, they're not  
8 being traced even though they're providing electric  
9 service. Correct?

10 A. You'll have to rephrase that because I  
11 don't understand.

12 Q. Okay. Well, what I'm saying is, is that  
13 customers don't get on their bill a charge for Wolf  
14 Creek or La Cygne or a wind farm. They get a bill  
15 that says this is what you're going to pay us for we,  
16 the utility, providing electric service. Correct?

17 A. They get a bill that -- that incorporates  
18 all of that -- all of the expenses and -- and return  
19 on rate-base that we've described before.

20 Q. Even though we've agreed that investments  
21 and costs that are being incurred today are not  
22 exactly reflected in those rates?

23 A. Well, there's certain components that --  
24 of the cost today that if we went back, we'd find --  
25 we could find what those are, absolutely.

1 Q. Well, would you agree that current rates,  
2 whatever they may be, lead to a regulatory lag  
3 situation by their under-earning or over-earning by  
4 the utility? Is that a fair way to look at it?

5 A. Regulatory lag exists either positively  
6 or negatively towards utilities and customers  
7 depending on the -- on the cost shift.

8 Q. Okay. And if the utility is  
9 under-earning, as you said, then it can file a rate  
10 case. Correct?

11 A. I'm sorry. Say that again.

12 Q. If a utility is under-earning, if it's  
13 costs are exceeding the rates, it can file a rate  
14 case?

15 A. Whenever a utility believes that the  
16 relationship between its revenues, rate-base and  
17 expenses have come -- have gone so far out of  
18 alignment that they need to file a rate case, that's  
19 when they file.

20 Q. And --

21 A. It doesn't necessarily mean that just  
22 because a utility has become -- is -- is under-earning  
23 that they automatically file.

24 Q. And -- if they're -- if they are  
25 over-earning, Public Counsel or Staff can initiate an

1 earnings complaint; is that correct?

2 A. It is. It's much more difficult.

3 Q. Okay. Now, you stated in your  
4 surrebuttal that earnings are irrelevant; is that  
5 correct?

6 A. For purposes of this case, that's  
7 correct.

8 Q. Okay. Would you generally agree that  
9 maintaining the financial integrity of a utility is a  
10 reasonable goal?

11 A. I believe that it -- it is, yes.

12 Q. Okay. And you -- but you have not  
13 offered any testimony in either your direct or your  
14 surrebuttal regarding GMO's earnings, let alone their  
15 current earnings. Is that fair to say?

16 A. I wouldn't agree with that. I think in  
17 my Surrebuttal Testimony I describe why we believe  
18 that -- that the earnings of GMO is -- is -- we -- we  
19 can't reconcile the argument that you're not earning  
20 your authorized return given all the factors and the  
21 special regulatory tools that you're able to enjoy.

22 Q. Now, in your surrebuttal -- I'm looking  
23 at pages 23 to 25 -- you stated that there would be  
24 difficulty in calculating Sibley costs and savings  
25 because of the passage of time. Do you recall that?

1           A.     Yes.  I think the argument would be made  
2 that that --

3           Q.     Again, I'm just asking you was that your  
4 testimony?

5           A.     You want -- you want to show me or refer  
6 me to the page?

7           Q.     Pages --

8           A.     I'd be happy to look.

9           Q.     -- 23 to 25 you talked about the  
10 difficulty in calculating Sibley cost and savings.  
11 Correct?

12          A.     If you could point me out on page 23 to  
13 25 where I make that statement, Mr. Zobrist.

14          Q.     So are you saying it isn't difficult then  
15 to calculate the Sibley cost and savings?

16          A.     Absolutely not.

17          Q.     Okay.

18          A.     It's easy.

19          Q.     And -- and that's because all this  
20 financial data exists because it's required to be  
21 maintained in existence by the Uniform System of  
22 Accounts.  Correct?

23          A.     No.  Because -- because we've literally  
24 just went through a rate case and the data is still  
25 very current for all parties.  And that the ability to



1 go back and have the discussions about what was  
2 included in rates for those specific portions of  
3 Sibley would much -- be much more beneficial and be  
4 much more clear done today than it would be to wait  
5 two and a half years for the rate case.

6 Q. Now, this data is not going to disappear.  
7 Correct?

8 A. No. But, Mr. Zobrist --

9 Q. Okay. Well, that's my question. The  
10 data will not disappear. Correct?

11 A. I hope not.

12 Q. Okay. And that's because --

13 A. But I have been --

14 Q. -- because GMO is required, under the  
15 Uniform System of Accounts, to keep all of its books  
16 and records and they cannot be destroyed by virtue of  
17 the rules of this Commission. Correct?

18 A. But that's not what you're going to look  
19 for.

20 Q. Okay. And how long do the FERC  
21 regulations require the preservation of records  
22 related to plant retirements, do you know?

23 A. I believe the CPRs require them from the  
24 date that they are put into service until after  
25 they're retired.

1 Q. Okay. And for how long are they kept  
2 after retirement?

3 A. I don't know what the Company's retention  
4 rates are.

5 Q. No. I'm asking about what the Code of  
6 Federal Regulations, the FERC, has promulgated, tell  
7 the utilities how long they must maintain records  
8 after they retire a plant.

9 A. I don't know.

10 Q. Okay. You're not familiar with part 368  
11 of 18 Code of Federal Regulations?

12 A. If that's what it -- talks about  
13 retentions, then I'm not aware of that, no.

14 Q. Okay. Okay. Now, let me ask you just  
15 one final question. You quoted I believe at page 8 of  
16 your direct -- pardon me, it may be your surrebuttal.  
17 You had a reference to the Department of Energy's  
18 Energy Information Administration. I believe it's  
19 your surrebuttal, page 8, lines 14 through 17 on coal  
20 plant construction.

21 A. Yes.

22 Q. Okay. And do you consider the data  
23 produced by the Energy Information Administration as  
24 reliable and authoritative?

25 A. It's -- it's a source of data, yes, I

1 believe.

2 Q. And as a witness testifying here today,  
3 offering expert testimony, you have reasonably relied  
4 upon this EIA data to present to the Commission?

5 A. I did.

6 Q. Okay.

7 MR. ZOBRIST: Nothing further, Judge.

8 JUDGE WOODRUFF: All right. We'll go to  
9 questions for the Bench. Before we start that, I  
10 would just want to tell the parties that with the  
11 Commissioners needing to go to agenda at 12:00 -- or  
12 excuse me -- at 1:00, we'll take a break for lunch at  
13 12:30 and -- until two o'clock. So Mr. Chairman.

14 CHAIRMAN SILVEY: No

15 COMMISSIONER KENNEY: No questions.

16 Thank you.

17 COMMISSIONER RUPP: None from me either.

18 COMMISSIONER COLEMAN: No questions.

19 JUDGE WOODRUFF: There was no questions  
20 from the Bench so no need for recross. Any redirect?

21 MR. WOODSMALL: Yes. And I'll get this  
22 done before 12:30 easy.

23 REDIRECT EXAMINATION BY MR. WOODSMALL:

24 Q. You were asked about your experience.  
25 Can you tell me what your experience is applying the

1 Uniform System of Accounts?

2 A. I reviewed the Uniform System of Accounts  
3 and -- on numerous occasions to make sure that I have  
4 a complete understanding of what's being applied.

5 Q. And how long have you personally had  
6 experience applying the Uniform System of Accounts?

7 A. It's a tool we've used since you become  
8 a -- a regulatory auditor.

9 Q. And how long has that been for you?

10 A. Unfortunately, since 1979.

11 Q. Okay. Has the PSC adopted GAAP for  
12 financial purposes for Missouri regulated utilities?

13 A. My understanding is that it follows GAAP,  
14 but it's -- the USOA is the -- is the driving force.

15 Q. You were asked questions about  
16 materiality and whether an event not being material  
17 would affect the determination -- let's scratch that.

18 You were asked questions about that this  
19 is unique, that no one's ever asked for an AAO for the  
20 retirement of a power plant. Do you recall those  
21 questions?

22 A. I do.

23 Q. And when was the last time that you know  
24 of that GMO retired a power plant?

25 A. I believe the data suggests it's 1987.

1 Q. Okay. And so there hasn't been an  
2 opportunity with GMO to even ask for an AAO for  
3 32 years; is that correct?

4 A. Correct. But it also -- I mean you also  
5 have to look at the entirety of the package. If you  
6 retire a unit within the proper time frames of a rate  
7 case, that retirement can be addressed in that rates  
8 and reflected in rates going forward.

9 So this -- this AAO request is because of  
10 the timely retirement of the -- of the Sibley units  
11 and that those costs are now included in customer  
12 rates, which exceed, you know, with conservative  
13 estimates, 30 million dollars. That -- that --  
14 that -- that when the Commission approved the rates in  
15 December of 2018, neither -- none of the Sibley units  
16 were operating. They quit operating. The last time  
17 they operated was -- the major one was September 5th.

18 And yet we were building in rates that  
19 customers are paying in excess of 30 million dollars  
20 annually for an asset that's producing nothing and  
21 wasn't producing anything when the rates were  
22 approved.

23 Q. And when a unit is retired, would you  
24 agree that the materiality of that may be affected by  
25 the amount of rate-base left on that unit?

1 A. That's correct.

2 Q. Okay. So if a unit operates for  
3 100 years like Edmond Street did, it's likely that its  
4 rate-base was much, much less and the impact was less  
5 material than it would be for Sibley?

6 A. That's correct. That's -- that -- that  
7 goes right to the -- to the heart of the whole picture  
8 argument. You have to look at it in its entirety, but  
9 you also have to recognize that -- that many of these  
10 could have been addressed within the context of a  
11 timely-filed rate case.

12 Q. Okay. And so if you retire Edmond Street  
13 after 100 years and it has very little undepreciated  
14 investment left on it, the retirement would be perhaps  
15 not material and so no one asks for an AAO?

16 A. Could be. Or -- or it could have been  
17 addressed in a rate case.

18 Q. Okay. You were asked questions about  
19 earnings and you commented that the Commission  
20 previously held that earnings were irrelevant. Do you  
21 recall that?

22 A. I do.

23 Q. Do you know, having looked at a number of  
24 GMO applications for AAOs, has GMO ever raised  
25 earnings in the context of a request to defer costs?

1           A.     Well, I know that in the Sibley retrofit,  
2 that the argument was made that -- that to get -- for  
3 granting of the deferral, that would push off a rate  
4 case. Otherwise, they would have had to file a rate  
5 case. So I think it -- you know, they've looked at it  
6 in that regard.

7           Q.     You were asked a brief question about the  
8 Wisconsin decision and you said it's a different  
9 regulatory structure. Can you tell me how it's  
10 different?

11          A.     It's my understanding that -- that  
12 Wisconsin deals with forecasted test years. So  
13 they -- they have a forecasted test year instead of  
14 historical. So I think you would have to look at the  
15 context of their regulatory process versus Missouri's  
16 to see if that denial is even applicable or apples to  
17 apples here.

18          Q.     Okay. You were asked a lot of questions  
19 about the Commission considering industry data. Do  
20 you recall that?

21          A.     Yes.

22          Q.     Do you know when GMO asked for a AAO  
23 associated with the renovation of Sibley, did they  
24 provide any data that you know of regarding whether  
25 renovations were common in the industry at the time?

1           A.     It wasn't mentioned in the stuff I -- I  
2 reviewed, no.

3           Q.     And it was your testimony in your  
4 surrebuttal that when GMO asked for an AAO associated  
5 with the construction of Iatan 2, that at that time  
6 while it wasn't raised, construction of power plants  
7 were typical and frequent in the industry. Correct?

8           A.     Correct. And -- and -- and that  
9 construction and accounting was -- was approved way in  
10 advance.

11          Q.     And renewable energy standards, Y2K  
12 costs, cold weather rules, pipeline safety costs,  
13 AM/FM mapping costs, and tax reduction savings, those  
14 are all matters that were frequent in the industry but  
15 the Commission said were extraordinary to a specific  
16 Missouri utility; is that correct?

17          A.     Yeah. I mean the -- the renewables, as  
18 we've put in our surrebuttal, when the -- at the time  
19 that the renewable standard was approved for an AAO,  
20 there was 38 states that either had mandatory or goals  
21 for renewable standards. I -- I'm still looking for  
22 the utility that -- that doesn't claim that there's  
23 some type of an effect on tax reform. I haven't found  
24 one.

25          Q.     So despite those matters being frequent



1 in the industry at the time, the Commission gave AAOs  
2 for those?

3 A. Right. And -- and the -- yes. And  
4 parties, including the Staff, supported those.

5 Q. You were asked questions about  
6 rate-making and items happening after the true-up  
7 date. Let's try to apply that to the last rate case.  
8 Do you know when the true-up date was in the last rate  
9 case?

10 A. I believe it was June of 2018.

11 Q. June 30th of 2018?

12 A. Yes.

13 Q. And when was surr-- surrebuttal filed in  
14 that case? Would you accept September 4th?

15 A. That's what I've learned.

16 Q. Okay. And do you know when Sibley quit  
17 producing electricity?

18 A. Sibley 1 did not produce a megawatt hour  
19 of electricity after around noon of September 5th.

20 Q. Do you mean Sibley 3?

21 A. Sibley 3, I'm sorry.

22 Q. Yes. So the day after surrebuttal was  
23 filed, Sibley had a turbine problem; is that correct?

24 A. That's my understanding.

25 Q. And do you know, did GMO inform the

1 parties of that or seek to file supplemental  
2 surrebuttal?

3 A. No. In fact, I was involved in  
4 negotiations of that case I think around September  
5 10th. And it was never -- it was never mentioned that  
6 the -- the operating status of Sibley had -- had  
7 dramatically changed. It wasn't discussed.

8 Q. And do you know -- did GMO make any  
9 effort that you know of to inform the Commission that  
10 Sibley had a turbine problem and was not producing  
11 anymore?

12 A. I -- I have no knowledge that they were  
13 informed.

14 Q. So when the stipulation was executed and  
15 approved in that case, no effort had been made to  
16 inform the parties or the Commission that Sibley was  
17 no longer producing; is that correct?

18 MR. ZOBRIST: Objection, lack of  
19 foundation. The witness said he did not know.

20 JUDGE WOODRUFF: I'll sustain that  
21 objection. You may rephrase the question.

22 BY MR. WOODSMALL:

23 Q. Let's go back to do you know if GMO had  
24 made any filings with the Commission informing the  
25 Commission that Sibley was no longer producing energy?

1           A.     It's my understanding that they have to  
2 inform the Staff if the unit goes off line. But no  
3 other -- when we were around those tables for that  
4 case, no one made any in-- discussion or had any  
5 discussion about the fact that Sibley was not  
6 operating.

7           Q.     So when the stipulation was filed and  
8 approved, maybe the Staff knew, but none of the other  
9 parties knew that Sibley was no longer producing; is  
10 that correct?

11                   MR. ZOBRIST:  Objection, lack of  
12 foundation to other parties.

13 BY MR. WOODSMALL:

14           Q.     Okay.  MECG -- MECG didn't know that  
15 Sibley was no longer producing?

16           A.     It's my understanding -- well, I know  
17 that we did not know.  And it's my understanding from  
18 a discussion yesterday, that the Public Counsel did  
19 not know either.

20                   MR. ZOBRIST:  Objection, hearsay.

21                   JUDGE WOODRUFF:  Sustained.

22 BY MR. WOODSMALL:

23           Q.     You were asked questions about financial  
24 integrity.  Do you have any reason to believe that  
25 GMO -- that granting this AAO -- AAO threatens GMO's

1 financial integrity?

2 A. No.

3 Q. Do you have any reason to believe GMO  
4 will not be able to raise capital if this AAO is  
5 granted?

6 A. No.

7 Q. Finally, you said that it was easy to  
8 calculate savings. Can you tell me why it would be  
9 easier to calculate savings now than wait till the  
10 next rate case?

11 A. Yes. The data is still relatively fresh  
12 on -- on -- on the -- the calculations of both the  
13 Staff and the -- and the Company at -- at the true-up  
14 date. If the parties were -- could sit down and  
15 discuss the appropriate way to extract the numbers  
16 associated with the Sibley units, that can be done  
17 with -- I believe with ease. It's not -- it's not an  
18 impossible task.

19 It's not reflected currently in the  
20 accounting schedules, but the back-up support is there  
21 to pull these numbers and -- and -- and have some type  
22 of discussion about their -- whether they're the  
23 correct amounts or not.

24 If you wait, I can just imagine --  
25 because I've -- I've had it argued with me, that if

1 you wait till some time down the road, the argument  
2 will be that we haven't maintained the -- the -- the  
3 data, we don't have the back-up, the information is  
4 stale.

5           So I would suggest strongly that if the  
6 Commission is thinking about doing -- granting the  
7 AAO, that the parties be ordered to meet quickly to  
8 quantify the baseline. Because I think that's when it  
9 can be most -- it's more fresh and the argument of  
10 staleness would come not come in.

11           Q.     So when you use fresh, the data being  
12 fresh, you mean the data being easier to understand,  
13 interpret; is that correct?

14           A.     Well, the people -- and -- and -- we have  
15 turnover. Let's -- let's face it. So let's get the  
16 people in that developed the numbers. Let's get the  
17 people in that supported those numbers. Because we  
18 don't know in two and a half years if the same people  
19 are going to be around. Mr. Rush retired just  
20 recently and he was an integral part of that utility.  
21 So I don't want to have that occur with another  
22 individual and then find out that we can't quantify it  
23 because someone left the Company or someone left the  
24 Staff.

25           Q.     And so similarly, if you have turnover at

1 Staff, accountants out of the Kansas City office that  
2 conducted this audit, if they left, that would hinder  
3 the ability to calculate this going forward?

4 MR. ZOBRIST: Objection, leading and  
5 suggestive.

6 JUDGE WOODRUFF: I'll sustain that.

7 THE WITNESS: Yes.

8 MR. WOODSMALL: No further.

9 JUDGE WOODRUFF: I'll strike the answer.

10 MR. ZOBRIST: Thank you.

11 MR. WOODSMALL: No further questions.

12 JUDGE WOODRUFF: All right. The -- at  
13 this point we will go ahead and take a lunch break.  
14 We'll come back at two o'clock.

15 (A recess was taken.)

16 JUDGE WOODRUFF: All right. It's  
17 two o'clock and we're back from lunch, so let's go  
18 ahead and get started. While we've gone on break,  
19 Dr. Marke has taken the stand. Let me get the camera  
20 on you first here.

21 Before we -- before I swear him in, I had  
22 Mr. Schallenberg as going next. Did -- is that --  
23 does anybody care?

24 MR. FISCHER: We're okay taking Dr. Marke  
25 out of order. We thought too that Bob was going to be

1 next, but this is fine with us.

2 JUDGE WOODRUFF: We would prefer that  
3 Mr. Schallenberg be next.

4 MR. WOODSMALL: You know what it is, Bob?  
5 The headliner always goes last.

6 That's why you're going now. You're the  
7 opening act.

8 JUDGE WOODRUFF: All right,  
9 Mr. Schallenberg.

10 (Witness sworn.)

11 JUDGE WOODRUFF: Thank you. You may  
12 inquire.

13 ROBERT SCHALLENBERG, being first duly sworn, testified  
14 as follows:

15 DIRECT EXAMINATION BY MR. HALL:

16 Q. Mr. Schallenberg, good afternoon.

17 A. Good afternoon.

18 Q. Would you please state your name and  
19 spell it for the benefit of the court reporter?

20 A. Robert E. Schallenberg. It's  
21 S-c-h-a-l-l-e-n-b-e-r-g.

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

24 A. I'm employed by the Office of Public  
25 Counsel, and my position is the director of policy.

1 Q. And on whose behalf are you testifying  
2 today?

3 A. On behalf of the Office of Public  
4 Counsel.

5 Q. Are you the same Robert Schallenberg who  
6 caused to be filed Direct Testimony on April 23rd,  
7 2019, subsequently corrected April 24th?

8 A. I am.

9 Q. Are you also the same Robert Schallenberg  
10 who caused to be filed Surrebuttal Testimony on July  
11 7th of 2019 in this docket?

12 A. I am.

13 Q. If I asked you the questions in the --  
14 the Direct Testimony that you caused to be filed,  
15 would your answers be the same or substantially  
16 similar?

17 A. Yes.

18 Q. Do you have any corrections to make to  
19 your Direct Testimony?

20 A. No.

21 Q. Again, similarly, if I asked you the  
22 questions provided in your -- in your Surrebuttal  
23 Testimony, would your answers be the same or  
24 substantially similar?

25 A. Yes.



1 Q. Do you have any corrections to make to  
2 your Surrebuttal Testimony?

3 A. No.

4 Q. Do you -- is your Direct and Surrebuttal  
5 Testimony a true and accurate representation of your  
6 testimony in this case?

7 A. Yes.

8 MR. HALL: At this time, Your Honor, I  
9 would move that Mr. Schallenberg's Direct and  
10 Surrebuttal Testimony be moved -- be moved to be --  
11 move to admit them as exhibits. We had them  
12 previously marked as Exhibits 6 and 7.

13 JUDGE WOODRUFF: They would be 5 and 6  
14 now.

15 MR. HALL: Five and six now?

16 JUDGE WOODRUFF: Direct is 5 and 6 is  
17 surrebuttal.

18 MR. HALL: So for -- for clarity sake  
19 though so, we had initially filed a version of Direct  
20 Testimony that, unfortunately, did not contain line  
21 numbers. The -- the exhibit that's been offered does  
22 have the correct line numbers.

23 I am at this time moving that the  
24 confidential version be classified as public. After  
25 conversations with GMO's counsel, the number that we

1 thought may have been confidential and marked as such  
2 out of an exercise of caution turns out not to be  
3 confidential. Barring any objections at this time, I  
4 request that that be treated as public well.

5 JUDGE WOODRUFF: Was that on the direct  
6 or on the surrebuttal?

7 MR. HALL: The direct, Your Honor.

8 MR. ZOBRIST: And my understanding is  
9 that's correct, Judge.

10 JUDGE WOODRUFF: Okay. We will accept  
11 them as -- as the formerly confidential version was --  
12 is now public.

13 MR. HALL: Thank you. And I --

14 JUDGE WOODRUFF: And let -- anyone object  
15 to receiving those documents into evidence?

16 Hearing no objections, they are received.

17 (Exhibits 5 and 6 were received into  
18 evidence.)

19 (Exhibits 5 and 6 were marked for  
20 identification.)

21 MR. HALL: I tender the witness for  
22 cross.

23 JUDGE WOODRUFF: Okay. And for cross, we  
24 will begin with MECG

25 MR. WOODSMALL: Yes, thank you.

1 CROSS-EXAMINATION BY MR. WOODSMALL:

2 Q. Mr. Schallenberg -- well, first, good  
3 afternoon. Are you a CPA?

4 A. Yes.

5 Q. Can you -- and you're familiar with the  
6 terms USOA and GAAP; is that correct?

7 A. I am.

8 Q. Can you tell me what the relevance of  
9 GAAP is to this case?

10 A. GAAP is the overriding accounting  
11 principles that is used for financial statement  
12 preparation. And what was the other part of the  
13 question?

14 Q. How is it relevant to this case? And I  
15 think you just answered that.

16 Can you tell me, does the USOA build upon  
17 GAAP or what is the relationship between the two?

18 A. Well, GAAP for a utility recognizes the  
19 Uniform System of Accounts and also recognizes  
20 regulatory decisions and -- and that kind of material  
21 in terms of what is GAAP applied to a utility.

22 Q. Okay. Do you believe that you need to be  
23 a CPA in order to interpret, analyze under GAAP or  
24 USOA?

25 A. Well, no. I -- I -- I know the answer's

1 no because I could have done the same thing before I  
2 was a CPA that I could do after a CPA.

3 Q. Okay. Do you recognize Mr. Meyer as an  
4 expert on analyzing documents or analyzing under GAAP  
5 and USOA?

6 MR. ZOBRIST: Objection, lack of  
7 foundation.

8 MR. WOODSMALL: He was his -- he was his  
9 supervisor for --

10 JUDGE WOODRUFF: The-- th-- that's the  
11 foundation we need if you can ask about that.

12 MR. WOODSMALL: Okay. I get it now.

13 BY MR. WOODSMALL:

14 Q. Did you supervise Mr. Meyer for a number  
15 of years in your previous role?

16 A. I -- I did on the audits that he was  
17 assigned on that I was on.

18 Q. Do you recognize Mr. Meyer as an expert  
19 when it comes to applying GAAP and USOA?

20 MR. ZOBRIST: Judge, I object. That  
21 invades the province of the Commission to determine  
22 who is an expert and who is not an expert.

23 JUDGE WOODRUFF: I'm going to overrule  
24 that objection.

25 You can answer.

1 THE WITNESS: Yes. I mean we -- you  
2 know, you're always -- when you're with the --  
3 especially when the Commission made the chief  
4 accountant the CPA, you always were under the  
5 direction or advice of a CPA.

6 MR. WOODSMALL: I'd like to mark three  
7 exhibits, Your Honor.

8 JUDGE WOODRUFF: Is this first one then  
9 7?

10 MR. WOODSMALL: Yeah, I guess it would  
11 be.

12 JUDGE WOODRUFF: Okay.

13 MR. WOODSMALL: And we can -- I'll  
14 clarify that when we --

15 MR. FISCHER: Would you happen to have an  
16 extra copy of any of these?

17 MR. WOODSMALL: Yeah, I will.

18 And, Your Honor, what I've handed the  
19 witness is -- and I'll have him identify these, but if  
20 we could mark them. The first one has a number. It  
21 says end of 2016 Q4 at the top, if I could mark that  
22 as Exhibit 7. The next one says at the top end of  
23 2017 Q4, if we could mark that as Exhibit 8. And then  
24 end of 2018 Q4, if we could mark that as Exhibit 9.

25 BY MR. WOODSMALL:

1 Q. Mr. Schallenberg, I've handed you  
2 Exhibits 7, 8 and 9. Can you tell me what those are?

3 A. These are selected pages from the FERC  
4 Form 1 for the year that's up in the upper right-hand  
5 corner.

6 Q. And they're FERC Form 1s for GMO; is that  
7 correct?

8 A. Yes. KCP&L Greater Missouri Operations.

9 Q. And you're familiar with this document in  
10 general -- with FERC Form 1's; is that correct?

11 A. I am.

12 Q. And are you familiar if you had  
13 opportunity to review the KCPL GMO specific FERC Form  
14 1's for this time period?

15 A. Yes.

16 Q. Okay. Turning to Exhibit 7 -- well,  
17 let's start with Exhibit 9. Can you tell me looking  
18 at that -- you see a line that is line 16. And just  
19 so I understand this properly, that is the steam  
20 production plant line and it adds up the balances for  
21 steam production plant; is that correct?

22 A. That's correct.

23 Q. And if you turn to the backside,  
24 column D, that shows the retirements for all steam  
25 production plant; is that correct?

1 A. In that year.

2 Q. Yes. And can you tell me for 2018 what  
3 the total retirements were for steam production plant  
4 for GMO?

5 A. This page doesn't identify -- oh, you  
6 said GMO.

7 Q. Yeah.

8 A. It's 486 -- 16, 60 -- it's 486,451,128  
9 dollars.

10 Q. Okay. And does -- does GMO in any way  
11 attempt to explain that number to the reader?

12 A. If you -- I -- the footnotes for page 204  
13 are on the third page of this exhibit. Now, I'm  
14 sorry. What did you ask me?

15 Q. I asked you -- you answered my question.  
16 And what does that footnote that says schedule page  
17 204, line number 16 column D, what does that show you?

18 A. 16D. It shows you -- it identifies the  
19 retirements of the Sibley generating units 1, 2 and 3  
20 and common plant that was retired on November 13th,  
21 2018.

22 Q. And the total retirement associated with  
23 Sibley's 1, 2 and 3 and common plant were how much?

24 A. 470,686,028 dollars.

25 Q. Okay. So of the total steam production

1 plant retirements of 486 million, 400 and  
2 approximately 71 million of that was associated with  
3 Sibley; is that correct?

4 A. Yes. This footnote would tell you how  
5 much of the total was the Sibley generating units.

6 Q. Okay. Turning to Exhibit 8, which is the  
7 FERC Form 1 selections from 2017, do you have that in  
8 front of you?

9 A. I do.

10 Q. And just so I'm trac-- I'm following this  
11 correctly, the retirement for -- for 2017 for total  
12 steam production was how much?

13 A. 26,834,314.

14 Q. And does GMO attempt to explain in any  
15 way what that is made up of?

16 A. 15 -- no.

17 Q. And turning to Exhibit 7, can you tell me  
18 what the total retirements were for that?

19 A. 30,998,133 dollars.

20 Q. And does GMO in 2016 provide any  
21 explanation of what that is made up of?

22 A. No.

23 Q. So in 2018 -- to get to the heart of  
24 this, in 2018 they provide a footnote and say here is  
25 what we're retiring Sibley; is that correct?



1           A.     On the last page, that -- that identifies  
2 the retirements of Sibley.

3           Q.     And in 2016 and 2017, even they -- even  
4 though they had retirements, albeit much smaller, they  
5 don't provide any explanation to the reader of we're  
6 retiring any general -- any plant. It's just all  
7 lumped together; is that correct?

8           A.     Well, yes. You -- this -- this schedule  
9 doesn't identify -- the first two pages doesn't --  
10 just identifies numbers in an aggregate of steam  
11 production. So it doesn't identify Sibley  
12 specifically.

13          Q.     Or any other unit? It doesn't --

14          A.     That's correct.

15          Q.     -- provide a footnote; is that correct?

16          A.     It's -- it's the aggregation of all their  
17 steam production. And then that -- that footnote  
18 on -- is it 9?

19          Q.     Yes. Sorry.

20          A.     That footnote on 9 gives you information  
21 regarding the retirement numbers that are on the  
22 second page of that exhibit.

23                 MR. WOODSMALL: No further questions,  
24 Your Honor. Did I move -- can I move Exhibits 7, 8  
25 and 9? I'm sorry.

1 JUDGE WOODRUFF: Yes. 7, 8 and 9 have  
2 been offered. Any objections to their receipt?

3 Hearing none, they will be received  
4 (Exhibits 7, 8 and 9 were received into  
5 evidence.)

6 MR. WOODSMALL: No further questions,  
7 Your Honor.

8 JUDGE WOODRUFF: For Staff.

9 MS. ASLIN: No questions.

10 JUDGE WOODRUFF: For GMO.

11 (Exhibits 7, 8 and 9 were marked for  
12 identification.)

13 CROSS-EXAMINATION BY MR. ZOBRIST:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Now, Mr. Schallenberg, you were an  
17 auditor here at the Missouri Public Service Commission  
18 until May 15th, 2018; is that correct?

19 A. I -- that's when I changed positions from  
20 the Staff. Are you talking about how long I was an  
21 auditor? I guess off and on it would go from November  
22 of '76 up to that date, except I was working for the  
23 KCC for I think it's five to eight months in 1978.

24 Q. Now, your last position at the Commission  
25 was not as an auditor; is that correct? You were a

1 manager of Operational Analysis?

2 A. No. That wasn't my title. I'm trying to  
3 think of what my title was again. I don't remember.  
4 I was a manager of something, but.

5 Q. You know, I happen to have kept a phone  
6 listing from June of 2017 and it states that you're  
7 the only member of a group known as Operational  
8 Analysis. Does that sound correct?

9 A. No.

10 MR. ZOBRIST: Okay. Would you mark that?  
11 Is it Number 10?

12 JUDGE WOODRUFF: It would be Number 10.  
13 (Exhibit 10 was marked for  
14 identification.)

15 MR. ZOBRIST: Judge, I'm not sure I have  
16 all the necessary copies, but I can give --

17 JUDGE WOODRUFF: If you can give me  
18 three.

19 MR. ZOBRIST: -- I can give three for you  
20 and Commissioner Kenney and Chairman Silvey. And  
21 Mr. Woodsmall.

22 BY MR. ZOBRIST:

23 Q. So let me show what you I've marked as  
24 Exhibit 4 [sic]. Do you see that, sir?

25 A. I do.

1 Q. I'm sorry.

2 MR. ZOBRIST: Exhibit 10 is it, Judge?

3 JUDGE WOODRUFF: Exhibit 10.

4 BY MR. ZOBRIST:

5 Q. Okay. Does that appear to be the PSC  
6 Divisional Phone Listing of June 23rd, 2017?

7 A. I don't know that it's the -- the  
8 official one of the PSC. There's several of these  
9 that go around.

10 Q. Well, I mean this appears to be something  
11 that was printed from the Commission's official  
12 website on June 23rd, 2017. And you are listed just  
13 above Safety Engineering and toward the bottom of the  
14 middle column. Correct?

15 A. I'm on this sheet. I don't know that  
16 this is some official -- I don't know how official  
17 this is.

18 Q. You don't -- you worked here for 25 years  
19 and you don't know the PSC's official website?

20 A. I know the PSC's official website.

21 Q. Well, isn't that the official website  
22 there at the bottom of Exhibit 10, PSC.Mo.gov?

23 A. I -- I -- I guess. I mean I -- I do not  
24 remember. And as I remember my last position with the  
25 PSC was to be the manager of Financial Analysis and

1 Management Services and something like that.

2 Q. Okay. Do you see the middle column here?

3 A. Yes.

4 Q. Okay. If you would count up about ten  
5 names, I've underlined your name in red. Do you see  
6 that?

7 A. Yes.

8 Q. Okay. It says Bob Schallenberg and above  
9 that it says Operational Analysis. Correct?

10 A. Yes.

11 Q. And that doesn't have anything to do with  
12 auditing, it doesn't have anything to with finance.  
13 Correct?

14 A. I don't know what Operational Analysis  
15 means.

16 Q. Okay. Was your telephone number at the  
17 time 751.7162?

18 A. It was.

19 Q. Okay. But you weren't the head of  
20 auditing when you left the Commission to work for  
21 Public Counsel; is that correct?

22 A. That's correct.

23 Q. Okay. Now, let me ask a couple of  
24 questions about the Uniform System of Accounts. That  
25 is the comprehensive basis of accounting that this

1 Commission and the Federal Energy Regulatory  
2 Commission uses to carry out their rate-making duties.  
3 Correct?

4 A. Yes. In general.

5 Q. And the Missouri PSC has directed  
6 electrical corporations, which are public utilities  
7 under its state regulations, to follow the Uniform  
8 System of Accounts. Correct?

9 A. I -- I believe the Commission has a  
10 specific version of the Uniform System of Accounts it  
11 adopted.

12 Q. Right. And that was at 4 CSR 240-20.030.  
13 Correct?

14 A. I don't remember it off -- you know, the  
15 numbers and stuff. I know there's -- it's in the  
16 rules.

17 Q. Okay. And it's in -- meaning it's in the  
18 Commission's regulations. Right?

19 A. Yes.

20 Q. Okay. And the Missouri Commission uses  
21 this financial information that GMO, in this  
22 particular case, records under its Uniform System of  
23 Accounts books and records to carry out its  
24 responsibilities under Missouri law. Correct?

25 A. It would be a component. It's not the --

1 it's not the only basis that the Commission does its  
2 cases and its activities.

3 Q. Well, is it -- is it fair to say that the  
4 rates that the Commission sets are based upon the  
5 financial information in the Uniform System of  
6 Accounts?

7 A. Not -- no.

8 Q. Okay. And what's -- what's the basis for  
9 that? Is that an opinion?

10 A. The basis for the like setting rates is  
11 based on the numbers that are put into a  
12 cost-of-service study and a class cost-of-service.  
13 And those numbers aren't necessarily Uniform System of  
14 Account numbers that are recorded. Some of them are  
15 proforma, some of them are estimates and -- and all  
16 that.

17 Now, the -- the -- the basic book on  
18 record that you start with is supposed to be done in  
19 a -- consistent with the Uniform System of Accounts,  
20 but it gets modified in a rate case.

21 Q. But the -- the information that forms the  
22 basis for rate-making, whether they're proformas or  
23 what, stem from the USOA books and records that GMO  
24 and other Missouri public utilities keep. Correct?

25 A. As I said before, they start there, but

1 they don't end up there.

2 Q. Okay. Is it true that this is the first  
3 case where you have ever testified that an AAO should  
4 be ordered by the Commission as a result of retirement  
5 of an electric generating plant?

6 A. I -- I'd have to say yes, because I don't  
7 remember another case like this.

8 Q. Okay. And do you recall that data  
9 requests were propounded to you, Numbers KCPL 3 and 4  
10 that asked if you were aware of any other federal or  
11 state utility decisions that had granted or denied a  
12 request to establish a regulatory accounting for the  
13 purpose of deferring capital costs when a generating  
14 unit retired?

15 A. Yes.

16 Q. Okay. And am I correct that those  
17 responses essentially said that you were not aware of  
18 any such decision. Correct?

19 A. Yes. I didn't -- I didn't make an effort  
20 to study beyond the Missouri boundaries as to this  
21 case.

22 Q. Okay. And am I correct that those  
23 responses are contained in Schedules DRI-1, page 2 and  
24 page 3 of Mr. Ives' Rebuttal Testimony?

25 A. I don't have his testimony, but if that's



1 what it is, then that's what it is.

2 MR. ZOBRIST: Okay. Judge, I have extra  
3 copies so I'm just going to hand them to the witness  
4 to make sure that we identify those correctly.

5 JUDGE WOODRUFF: Okay. Are you going to  
6 mark this?

7 MR. ZOBRIST: Yes. If you could remind  
8 me what numbers those would be.

9 JUDGE WOODRUFF: This would be 11.

10 (Exhibit 11 was marked for  
11 identification.)

12 MR. ZOBRIST: This will be 12, Judge.

13 (Exhibit 12 was marked for  
14 identification.)

15 BY MR. ZOBRIST:

16 Q. Mr. Schallenberg, I'm not going to have  
17 you read all of that into the record, but can you  
18 identify Exhibit 11 as response to KCPL 3 and Exhibit  
19 12 is the response to KCPL 4?

20 A. Yes.

21 Q. Okay.

22 MR. ZOBRIST: Judge, I move Exhibits 11  
23 and 12 into evidence at this time.

24 MR. HALL: Public Counsel objects merely  
25 because this seems overly redundant, as Mr. Zobrist

1 already remarked, these are attached to Mr. Darrin  
2 Ives's testimony and form part of the basis for his  
3 testimony. I see no reason why these should be  
4 admitted as separate exhibits.

5 MR. ZOBRIST: Well, Judge, in the  
6 unlikely event that Mr. Ives' schedules don't come  
7 into evidence, I just want to make this -- ensure that  
8 this is in the record.

9 JUDGE WOODRUFF: Okay. Just keeping up  
10 with all the paper here. 11 and 12 have been offered.  
11 There was an objection from Public Counsel that they  
12 were redundant. That will be overruled and they will  
13 be admitted.

14 (Exhibits 11 and 12 were received into  
15 evidence.)

16 BY MR. ZOBRIST:

17 Q. And, Mr. Schallenberg, just to confirm,  
18 on Number 12, in your response there you didn't say  
19 that you didn't inquire. You actually said that you  
20 were not aware of any order or decision of any federal  
21 or state utility regulatory body in the US that found  
22 and rejected consideration of the retirement of a  
23 generating facility as an extraordinary event under  
24 the USOA. Correct?

25 A. Yeah. The reason I'm not aware is

1 because I didn't try to find out.

2 Q. Okay. And you're not aware today as  
3 well. Correct?

4 A. Yeah. The answer still is good today.

5 Q. Okay. Now, in your Direct Testimony on  
6 page 4, you stated that GMO has already established a  
7 regulatory asset in the amount of 159.9 million  
8 dollars regarding the retirement of the Sibley  
9 generating units. Do you remember that?

10 A. Yes.

11 Q. Okay. And that is under the GAAP records  
12 of the company, not under the Uniform System of  
13 Accounts; is that correct?

14 A. Yes. The number's in a different spot  
15 under the Uniform System of Accounts.

16 Q. Okay. And we don't have a decision from  
17 the Commission that directed the Company to list the  
18 retirement of the Sibley generating units in any  
19 amount as a regulatory asset or a regulatory  
20 liability. Correct?

21 A. The -- the Uniform System of Accounts,  
22 this money is -- has been booked against the  
23 depreciation reserves. So if that's the -- if that's  
24 what you asked me, that's what it is.

25 Q. Well, actually what I asked you was the

1 Commission had not directed GMO to create either a  
2 regulatory account or a regulatory asset on its books  
3 with regard to the retirement of the Sibley plant.

4 Correct?

5 A. Yeah. But I don't -- it's not necessary  
6 that the Commission has to give them authority to make  
7 that -- that entry.

8 Q. But under the Uniform System of Accounts,  
9 it would be. Correct?

10 A. That's why I told you it's in the --  
11 under the Uniform System of Accounts, it's in the  
12 depreciation reserve. And then on their GAAP  
13 statements, it's a regulatory asset.

14 Q. Okay. Now, let me switch topics on you  
15 and -- and let's discuss a little bit about  
16 retirements and whether they're extraordinary.  
17 Generally speaking, unless there's an explosion or an  
18 extreme weather event that damages or destroys a  
19 plant, the retirement of a plant is typically an event  
20 that is scheduled. Correct?

21 A. I -- I would say ultimately it is. I --  
22 a lot of the ones that I've seen have been caused by  
23 accidents.

24 Q. Okay. But if you don't have an accident,  
25 it's -- it's ordinary business for a utility to say we

1 think we're going to retire a plant in so many years.

2 Correct?

3 A. Well, you need a -- they do that for  
4 depreciation because you have to have that date to  
5 estimate the life. In real life, units stay in  
6 service until it's no longer beneficial to have them  
7 in service.

8 Q. In this case, the retirement of Sibley  
9 unit 1 and unit 2 was announced in January 2015.

10 Correct?

11 A. Yes.

12 Q. Okay. And the announcement of Sibley 3,  
13 plus the boiler in 1 and common plant, that was  
14 announced in June of 2017. Correct?

15 A. I have those press releases.

16 Q. And these were also attached to Mr. Ives'  
17 rebuttal as Schedule DRI-3; is that correct?

18 A. I'm not as familiar with his testimony as  
19 I am with this.

20 Q. Okay.

21 A. But the -- the June 2nd press release is  
22 in my Schedule RES-D4, page 44 and it goes -- goes on.  
23 And then you asked me about the '15, the first one,  
24 which had Sibley 1 and 2 listed. That was on January  
25 20th of 2015 and that's Schedule RES-D4, page 38.

1 MR. ZOBRIST: Okay. Judge, I have three  
2 copies for the two Commissioners and -- and you. I  
3 think everybody else has got access to this, so I'm  
4 not going to put this into evidence, but -- I happen  
5 to have a fourth one here for Commissioner Rupp.

6 JUDGE WOODRUFF: And are you going to be  
7 marking this as --

8 MR. ZOBRIST: No, I'm not. Because  
9 Mr. Schallenberg has got a copy and I'm going to ask  
10 him if it's the same one and go over and see if it's  
11 the same document and then I've got just a few  
12 questions.

13 JUDGE WOODRUFF: Okay.

14 BY MR. ZOBRIST:

15 Q. Is that the same one?

16 A. I think it is.

17 Q. For the record, is that the same one in  
18 your records?

19 A. Yes. Let me check the last page. Page 4  
20 future events. Okay. So this one is. And I gave  
21 you -- I gave you back the --

22 Q. All right.

23 A. -- wrong one.

24 Q. I think they're the same. 2017.

25 A. Oh, okay. So -- all right. I thought

1 you were asking me about the other one.

2 Q. All right. So we're all looking at the  
3 media release that was issued on June 2nd, 2017.

4 Correct?

5 A. Yes.

6 Q. And this is the release that's dated in  
7 2015. KCPL and GMO had issued notice with regard to  
8 the retirement of certain plants. And then this one  
9 is the release that added Sibley 3 to the return of  
10 the notice. Correct?

11 A. Now, you're talking about the 2017. This  
12 is the one that announces 3. Right?

13 Q. Correct.

14 A. And the prior one only talked about 1 and  
15 2.

16 Q. Right. That's -- that's correct.

17 A. Okay.

18 Q. So a number of factors, the Company  
19 advised, contributed to the decision to retire these  
20 units. Do you see that on pages 1 and 2 of the press  
21 release?

22 A. Are you talking about those four bullets  
23 on the second page?

24 Q. Yes, sir.

25 A. Yeah. It -- it a lists four items.

1 Q. Okay. Now, on the first bullet point it  
2 refers to the reduction in wholesale electricity  
3 market prices. Are you generally aware that prices  
4 have fallen in recent years?

5 A. Yes. And I'm aware there's competing  
6 forecasts about what that will be in the future.

7 Q. And on the second bullet point, the  
8 Company cites near-term capacity needs. Is it --  
9 would you generally agree with the proposition that  
10 utilities have seen flat, long-term peak load growth  
11 in the past five to eight years?

12 A. I would -- I mean it doesn't apply to  
13 GMO, but I would say the rest of the industry is  
14 generally flat. But I noticed that in this press  
15 release they're only talking about KCP&L. They're not  
16 mentioning GMO.

17 Q. But there are GMO plants that are listed  
18 here at the end of the press release. Correct?

19 A. That -- that's correct.

20 Q. Okay. And, in fact, at the -- on page 3  
21 it talks about Great Plains Energy, the former name of  
22 the holding company, and it talks about it being the  
23 holding company of both KCPL and KCPL Greater Missouri  
24 Operations Company. Correct?

25 A. It does.



1 Q. Okay. Now, plant age. Would you agree  
2 that all of the Sibley units were approximately  
3 50 years or older at the time that they were retired?

4 A. Yes. I think Sibley 3 is the last one  
5 and I think it came on in -- in '69, so that would be  
6 50. But it had some problems at first and I don't  
7 remember if they officially made -- I think it was '71  
8 or '73, but yeah, it's about 50 years.

9 Q. And would you generally agree that  
10 increasing environmental compliance costs have led  
11 many utilities, including GMO, not to retrofit plants  
12 with controls that are needed to meet expected  
13 environmental requirements?

14 A. That -- did you ask were they retired  
15 because of those reasons?

16 Q. No. I'm -- what I'm saying is would you  
17 agree that environmental compliance costs continue to  
18 rise and that has contributed to decisions by many  
19 electric utilities, including GMO, not to further  
20 retrofit plants with controls needed to meet expected  
21 environmental requirements?

22 A. Well, you said in respect to GMO and  
23 that's not true. GMO put new scrubbers on Sibley 3 in  
24 2019. So they didn't make the decision because of  
25 environmental upgrades not to shut the unit down.

1 They just spent the money and -- and improved it.

2 I would say, based on what you asked me  
3 earlier about retirements, it's a decision you have to  
4 make. Is -- is it -- is it beneficial to retire and  
5 not spend the money or is it better to spend the money  
6 and use the unit.

7 Q. So you're saying that the Company put  
8 scrubbers on a unit in 2019 that it retired in 2018?

9 A. 2009.

10 Q. 2009. Okay.

11 A. Ten years.

12 Q. Ten years ago?

13 A. Yeah. With a 40-year life.

14 Q. Now, would you agree that all plants  
15 retire at some point in time. Correct?

16 A. Well, I -- I guess conceptually there  
17 are. I mean there's some that's older than I am and  
18 they've got a good chance to last longer than I will.  
19 So I can't say that every plant --

20 Q. Are you --

21 A. To -- to -- to understand a power plant,  
22 it's not like a car that's not -- that runs out of  
23 date. You can rebuild parts and do things to reha--  
24 rehabilitate, which is done on some of these units to  
25 keep a planet -- plant alive.

1 Q. Forever?

2 A. Well, until you don't need electricity.

3 Q. So you're saying that we shouldn't build  
4 new power plants? We should just keep retrofitting  
5 power plants and not worry about what's going on in  
6 the economy?

7 A. Here's what I'm trying to say to you,  
8 sir, is that some of those power plants have  
9 right-of-ways and access to transmission that would be  
10 extremely hard to get and is another factor you have  
11 to look at if you're going to get your electricity  
12 from something else. I mean there are power plants  
13 that were here before I was born and they're still  
14 here and they're --

15 Q. And so -- pardon me. Go ahead.

16 A. And they should stay until it's  
17 beneficial for them to be retired.

18 Q. But this is the first case in your almost  
19 30 years here at the Commission, now at Public  
20 Counsel, where you have stated that the decision to  
21 retire a plant is now extraordinary. Correct?

22 A. Well, I didn't say what you said I said.

23 Q. So -- all right.

24 A. I'm saying that this situation of the  
25 Sibley retirement is extraordinary. I'm not saying

1 that every -- every retirement is extraordinary,  
2 because it's not. But I am saying that the Sibley  
3 retirement that's before us today is extraordinary.

4 Q. Now, apart from the Sibley retirement, is  
5 it fair to say that GMO's rates today -- today do not  
6 reflect GMO's exact levels of revenues, cost and  
7 investments?

8 A. Well, I'm having trouble because you said  
9 revenues. And its rates today determine its revenues.

10 Q. So you're saying that here today,  
11 August 7th, 2019, rates perfectly match the cost  
12 structure, the revenues, the expenses, the investments  
13 of the Company even though they were set about a year  
14 ago?

15 A. In fact, you're missing another point.  
16 Billing determinants have a big deal. You don't  
17 collect -- as long as you have fixed costs in your  
18 commodity charge, they're never in sync.

19 Q. And that's the point. They're never in  
20 sync. Rate-making in Missouri and in most states is  
21 not a real-time process. Correct? Expenses --

22 A. I'm not -- I -- I'm having trouble with  
23 real-time. I mean if you're asking do we -- do we  
24 take the costs, run them in and change the rate today  
25 for what the costs are as of today, no, we don't do

1 that.

2 Q. Okay. Because rate-making does not  
3 perfectly reflect at all times the revenues, costs and  
4 investments of a utility?

5 A. If you're talking about at that point in  
6 time on that day, that rates don't match up to the  
7 cost on that day, like most pricing decisions don't  
8 match the inner prices cost.

9 Q. Okay. Now, let me talk a little bit  
10 about the baseline issue. You disagree with Mr. Ives'  
11 testimony that there is no baseline or measuring point  
12 from which to quantify the regulatory liability that  
13 Public Counsel has requested. Correct?

14 A. Yes.

15 Q. Okay. And you say that the costs to  
16 operate the Sibley station was not a contested issue  
17 when the GMO rate case settled in 2018. Right?

18 A. It wasn't a contested issue as to the  
19 costs, no.

20 Q. And you stated that the numbers provided  
21 by GMO and Staff in that rate case are enough for the  
22 determination of a baseline. Correct?

23 A. Yes.

24 Q. Okay. Did you provide those numbers in  
25 your Direct Testimony or your Surrebuttal Testimony?

1 A. I -- I did, yes.

2 Q. And where are they?

3 A. If you go to my direct of the -- it's in  
4 the tes-- the body of the testimony. If you go to  
5 page 11 of my direct, I gave at that time the best  
6 estimates that we had at the Office of Public Counsel  
7 for those items that are listed there.

8 Q. And that estimate is not the same that  
9 Mr. Meyer has in his testimony. Correct?

10 A. That -- that's correct. I mean that's --  
11 that's why the -- the numbers are not going to be  
12 exactly the tr-- right because people won't know  
13 what's going to go in and what's not.

14 Q. Now, the -- the GMO rate case settled a  
15 variety of revenue requirement issues by reducing  
16 GMO's revenue by 24 million dollars. Correct?

17 A. That was the -- that was the rate impact  
18 in the settlement, yes.

19 Q. Okay. And that rate impact, that  
20 reduction to 24 million dollars, wasn't allocated to  
21 Sibley or to any other operational unit or issue that  
22 was set forth on the first two pages of that  
23 Stipulation and Agreement. Correct?

24 A. I think the stip talked about an  
25 Accounting Authority Order for Sibley. I know it was

1 an adjustment in the case. I -- I don't re-- I -- I  
2 know there was mention about the authority to file for  
3 an accounting order in the stip.

4 Q. Are you talking about the regulatory  
5 liability that the companies agreed to for Sibley and  
6 for Montrose?

7 A. Well, the accounting -- the one for the  
8 depreciation, if that's what you're asking me for,  
9 there is that provision for all of the type -- these  
10 types of retirements. Now, for the accounting order  
11 that we're here today, there is a mention that at  
12 least -- I don't know if Staff had the right, but OPC  
13 had the right, but the Company has the right to  
14 oppose.

15 Q. Well, the 24 million dollar reduction  
16 in -- in GMO's revenues in the stipulation, in that  
17 agreement was not allocated by the 30 or so issues  
18 that are on the first two pages of the Stipulation and  
19 Agreement. Correct?

20 A. Yeah. I mean -- yes, excuse me. Most of  
21 it's driven by income tax reductions.

22 Q. Well, the point is there -- there's no  
23 allocation in there. You're not disputing that, are  
24 you, sir?

25 A. There's no allocation in the order?

1 Q. Correct.

2 A. Or the stip?

3 Q. Or the stip.

4 A. Yes. That's -- that's true.

5 Q. Okay. So this is what I think some of  
6 the parties in opening statement referred to as the  
7 black box settlement. It was simply a negotiated  
8 agreement to reduce KCPL's revenue requirement by  
9 20 million dollars and to reduce GMO's revenue  
10 requirement by 24 million dollars. Correct?

11 A. That's for the signatories, yes.

12 Q. I'm sorry?

13 A. That's for the signatories, yes.

14 Q. Okay. And one of those signatories was  
15 the -- was MECG. Correct?

16 A. I'm not aware -- I don't remember whether  
17 they signed or not.

18 Q. And -- and Public Counsel did not object  
19 to this stipulation. Correct?

20 A. In -- with the stipulation that has the  
21 language so we can do this case, yes, that's -- we did  
22 not oppose the stip once that was put into the stip.

23 Q. You didn't object to this stipulation.  
24 Correct?

25 A. You're talking about the rate reduction?



1 Q. Yes.

2 A. Yeah. I mean the -- the office was not  
3 going to hold up a rate reduction, so.

4 Q. But it --

5 A. But it got -- it got the provision that  
6 it could -- it could pursue -- pursue this Accounting  
7 Authority Order after the rates changed -- rate  
8 reduction was put in place.

9 Q. The Commission, therefore, properly  
10 treated the unanimous -- pardon me, Non-unanimous  
11 Partial Stipulation and Agreement as a Unanimous  
12 Stipulation and Agreement. Right?

13 A. I think that's -- if you don't oppose,  
14 that's how they're going to treat it, yes.

15 Q. Now, let me show you -- I think it's  
16 Exhibit Number 4. The --

17 MR. ZOBRIST: Do you have Exhibit 4?  
18 Would you hand that to the witness, please?

19 BY MR. ZOBRIST:

20 Q. This is the first three pages of the  
21 general instructions of the Uniform System of  
22 Accounts. Do you see that, sir?

23 A. I -- you said three pages?

24 Q. It's been marked as --

25 A. Yes.

1 Q. -- Exhibit 4.

2 A. Yes.

3 Q. Now, although I was asking Mr. Meyer  
4 about the extraordinary items, let me turn your  
5 attention to page 2. And it's Section 2 that deals  
6 with records. Would you agree that the regulations  
7 there in subpart 2B and 2C have provisions with  
8 regarding -- with regard to the books and records that  
9 are kept by a public utility?

10 A. You said 2B?

11 Q. Right. It's in the first column of  
12 Exhibit 4.

13 A. Yeah. I see -- I see 2B and 2C, yes.

14 Q. And 2B says, The books and records  
15 referred to herein include not only accounting records  
16 in the limited technical sense, but all other records  
17 such as minute books, stock books, reports,  
18 correspondence, memoranda, et cetera, which may be  
19 useful in developing the history of or facts rela--  
20 regarding any transaction. Correct?

21 A. That's what it says.

22 Q. And then subsection 2C says, No utility  
23 shall destroy any such books or records unless the  
24 destruction thereof is permitted by rules and  
25 regulations of the Commission. Correct?

1 A. That's what it says.

2 Q. And here Commission with a capital C  
3 means FERC; is that right?

4 A. On this exhibit?

5 Q. Yeah.

6 A. Yeah, this is a FERC document.

7 Q. Okay. But these are also the general  
8 instructions that are part of the USOA that the  
9 Missouri Commission has adopted and stated that its  
10 public utilities must abide by. Correct?

11 A. I -- I would -- if I look at the first  
12 page, it says 4/1/11 edition, I -- I'm pretty sure  
13 that's not the version that was adopted by the  
14 Commission in its rules.

15 Q. Well, actually I'll represent to you that  
16 this rule predates back to that time. So you're not  
17 saying that FERC and this Commission now allow records  
18 to be destroyed?

19 A. Well, I'd have to disagree with that.  
20 Records are destroyed every day.

21 Q. Well, they have to be pursuant to the  
22 regulations of this Commission. Correct?

23 A. Or to the -- to the judgment of the  
24 utility as to what's relevant that they have to keep  
25 and what they don't want to keep.

1 Q. Right. Do you know offhand what KCPL and  
2 GMO's corporate records policy is as far as the  
3 retention of corporate records related to plant  
4 retirements and general plant in service?

5 A. No. I'm -- I'm aware of affiliate  
6 transactions, but I don't know about the other.

7 Q. Okay. Are you aware of the specific  
8 regulations that FERC has enacted with regard to the  
9 preservation of records of holding companies and the  
10 service companies, meaning public utilities?

11 A. If you're talking about in terms of  
12 affiliates, I understand that.

13 Q. No, I'm not talking in terms of  
14 affiliates.

15 A. Okay.

16 Q. I'm talking about whether you're aware --  
17 and I'll cite it to you -- it's part 368 of 18 --  
18 Title 18 of the Code of Federal Regulations.

19 A. I'm not that familiar with the code of  
20 regulations that you can tell me that cite and I know  
21 what it is.

22 MR. ZOBRIST: Is this Exhibit 13?

23 JUDGE WOODRUFF: 13.

24 (Exhibit 13 was marked for  
25 identification.)

1 BY MR. ZOBRIST:

2 Q. Mr. Schallenberg, I've handed you what  
3 I've marked as Exhibit 13. It's part 368 of Title 18  
4 of the Code of Federal Regulations and it relates to  
5 the preservation of records of public utility holding  
6 companies and their service companies. Based upon  
7 your many years here at the Commission of the Public  
8 Counsel's Office, does that appear to be the case?

9 A. It's holding company or service comp--  
10 okay. I mean that's what it says in that 368.1.

11 Q. Okay.

12 A. But the holding company and service  
13 company are not GMO or KCPL.

14 Q. You don't think that GMO meets the  
15 definition of a service company under the Code of  
16 Federal Regulations?

17 A. GMO doesn't have any employees. They're  
18 serviced by KCP&L.

19 Q. I'm talking about the public utility.  
20 You're saying this Code of Federal Regulations does  
21 not apply to GMO?

22 A. I'm saying --

23 MR. HALL: Objection, calls for legal  
24 conclusion.

25 JUDGE WOODRUFF: Overruled.

1 THE WITNESS: If you ask me who -- about  
2 the holding company, the ultimate holding company is  
3 Evergy right now. Used to be Great Plains. And you  
4 asked me about the service company. They have a  
5 service company called -- what used to be Great Plains  
6 Energy Services Company. I don't know what it's  
7 called under the new name, but neither one of those  
8 entities is KCP&L or GMO.

9 BY MR. ZOBRIST:

10 Q. So is that your legal opinion or is that  
11 based upon your many years here at the Commission?

12 A. Well, it's still -- it comes from dealing  
13 with affiliate transactions.

14 Q. And I'll represent to you this does not  
15 deal with affiliate transactions. This deals with the  
16 schedule of records and period of retention. Sir,  
17 would you turn to page -- it's marked 1069 at the  
18 bottom. I think it's about the fourth or fifth page  
19 back of Exhibit 13.

20 A. I'm there.

21 Q. Okay. And do you see where it says at  
22 the bottom Property Depreciation and Investments?

23 A. Property -- okay. I -- at the very  
24 bottom?

25 Q. Yeah.

1 A. 14.

2 Q. If you would turn then to the next page  
3 where it's Section 16 and it relates to retirement  
4 work and progress ledgers, project or work orders and  
5 supplemental records. It's about two-thirds of the  
6 way down the page. Do you see that?

7 A. Yes.

8 Q. Okay. And it says there that records  
9 related to such retirement are to be kept five years  
10 after the property is retired. Correct?

11 A. Yes.

12 Q. Okay. And registers of retirement were  
13 to be kept five years. Correct?

14 A. Yes.

15 Q. Okay. And so the plant -- the Sibley  
16 plants were retired, at least 3 and 2 and the common  
17 plant and the boiler in 1, in November 2018. And so  
18 all of those retirement records, if GMO was subject to  
19 this regulation, will all be in effect for at least  
20 five years, which would put it in late 2023. Correct?

21 A. Yes.

22 MR. ZOBRIST: Judge, I offer Exhibit 13.

23 JUDGE WOODRUFF: 13 has been offered.

24 Any objections to its receipt?

25 Hearing none, it will be received.

1 (Exhibit 13 was received into evidence.)

2 BY MR. ZOBRIST:

3 Q. Mr. Schallenberg, let's confirm a couple  
4 other things. You have not conducted any analysis of  
5 GMO's earnings since the new rates went into effect  
6 December 6th, 2018 on the basis of surveillance  
7 reports. Correct?

8 A. That's not true.

9 Q. Well, you didn't dispute in your  
10 surrebuttal Mr. Ives' statement about GMO's achieved  
11 earnings for the 12-month period ending March 31,  
12 2019, did you?

13 A. You asked me if I considered it and it's  
14 at the --

15 Q. No, no. I said conducted. Have you  
16 conducted --

17 A. Okay. Okay. I can do conduct for you.

18 Q. Okay.

19 A. If you look at -- I -- I took -- they  
20 have to report earnings for surveillance for the fuel  
21 clause. And if you go to Exhibit 6, the very last two  
22 pages, I have the -- I have the reported earnings  
23 return on equity for GMO at March 31st and at December  
24 31st.

25 Q. Okay.



1           A.     And I did conduct an analysis because I  
2 looked at the 54 percent that's on here. In fact, I  
3 just asked one of my colleagues about if that's  
4 what -- what GMO had because that's high and that  
5 makes the rate of return lower, asking where would  
6 that number come from. So I did conduct that analysis  
7 on -- on that schedule.

8           Q.     But you didn't put it in your Surrebuttal  
9 Testimony, did you?

10          A.     I -- I didn't finish that analysis until  
11 recently.

12          Q.     Okay.

13          A.     But I put the schedule in.

14          Q.     So your Surrebuttal Testimony does not  
15 dispute what Mr. Ives provided in his Rebuttal  
16 Testimony about what the effect of a deferral in this  
17 case would have on GMO. Correct?

18          A.     Could you repeat that?

19          Q.     Yeah. I'm just saying this isn't in your  
20 surrebuttal. This is new stuff that you're bringing  
21 out right today. You, in your surrebuttal, did not  
22 contradict Mr. Ives' testimony about the effect that a  
23 deferral order in this case would have on GMO's  
24 earnings; isn't that true?

25          A.     It's true that my testimony doesn't

1 dispute that, but that -- just because I didn't put it  
2 in my surrebuttal doesn't mean I agree with it.

3 Q. Now, let me just ask you one final  
4 question. If you'd turn to your direct at pages 6 and  
5 7, you have a statement -- are you there, sir?

6 A. Not yet, but go ahead.

7 Q. Okay.

8 A. Okay.

9 Q. I'm sorry. This may be your surrebuttal.  
10 Let me -- let me ask you and I'll find it if I need  
11 to.

12 You have a statement in your testimony  
13 that there is a trend of rehabilitation, retrofits and  
14 environmental upgrades that is also likely to extend  
15 into the future as rehabilitation has been more  
16 economic and reliable than relying on the market or  
17 building new generation.

18 Have I roughly quoted what you said in  
19 your testimony?

20 A. Yeah, I don't -- I don't know exactly if  
21 that's what I said, but I agree with that statement.

22 Q. Okay. Now, you didn't cite any studies  
23 or data supporting this opinion in your testimony.  
24 Correct?

25 A. That's true.

1 Q. Okay. And it's also true that in your  
2 surrebuttal, you did not address or rebut the trends  
3 that GMO's witness Christopher Rogers presented in his  
4 rebuttal. Right?

5 A. I -- I would say that's not true.  
6 That -- if you're asking me do I dispute the  
7 retirements that he has in there for the units, I  
8 don't dispute that. I do dispute that he la-- that it  
9 does not consider the individual factors related to  
10 each of those retirements to see what -- if there's a  
11 commonl-- commonalty by factor.

12 Q. Well, Mr. Schallenberg, I did a word  
13 search of your testimony. And you didn't mention the  
14 name "Rogers" in your surrebuttal; is that true?

15 A. I think I have data requests that I -- I  
16 reviewed.

17 Q. Okay. But your surrebuttal did not rebut  
18 Mr. Rogers' testimony. Correct?

19 A. I -- I think I have some of the answers  
20 to -- in the -- that we got the data requests that's  
21 in there.

22 Q. Well, let me get back to the topic. You  
23 essentially believe that there is a trend of  
24 rehabilitation, retrofits and environmental  
25 retrogrades that would have been more economic and

1 reliable to do those types of rehabilitations and  
2 retrogrades than building new generation or relying on  
3 the market. Correct?

4 A. That's -- that's -- in fact, that would  
5 be the -- it would be imprudent not to follow that  
6 approach.

7 Q. Okay. Now, are you aware of an Energy  
8 Information Administration report that came out just  
9 about a week ago, July 26th, 2019, regarding US  
10 coal-fired power plants and there being decommissioned  
11 and retired?

12 A. I'm not aware of that.

13 Q. Okay.

14 MR. HALL: Mr. Zobrist, do you have a  
15 copy of that document?

16 MR. ZOBRIST: Yes, I do. I'm sorry.

17 BY MR. ZOBRIST:

18 Q. Now, Mr. Schallenberg, you recognize the  
19 US Energy Information Administration that's part of  
20 the US Department of Energy as coming out with these  
21 reports on a regular basis. Correct?

22 A. I -- I have no -- no familiarity with  
23 that organization.

24 Q. You really don't?

25 A. Well, it may surprise you, but I told you

1 the truth.

2 Q. Okay. Well, I'll represent to you this  
3 is a copy from -- of a report issued by the US Energy  
4 Information Administration. And the headline states  
5 More US Coal-Fired Power Plants are Decommissioning as  
6 Retirements Continue.

7 Is -- is that a surprise to you, that the  
8 research arm of the Department of Energy would come  
9 out with that headline on a report?

10 A. Well, it -- I don't know the  
11 organization, so it's not going to surprise me or  
12 anything like that.

13 Q. Okay.

14 A. If you're asking me do I -- I see that  
15 coal units will be retired, yes, that's a fact. A lot  
16 of coal units were put on several -- several decades  
17 ago.

18 MR. ZOBRIST: Okay. Judge, I have  
19 nothing further. Oh, just a minute.

20 MR. HACK: Can we have a brief sidebar?

21 JUDGE WOODRUFF: Sure.

22 MR. ZOBRIST: Judge, we don't have  
23 anything further.

24 JUDGE WOODRUFF: Did you wish to offer  
25 Number 10? That's the phone listing.

1 MR. ZOBRIST: No, not at this time. Oh,  
2 I'm sorry. The phone list, yes, I would like to offer  
3 that.

4 JUDGE WOODRUFF: All right. Exhibit 10,  
5 which is the phone listing for the Commission, has  
6 been offered. Any objections to its receipt?

7 Hearing none, it will be received.

8 (Exhibit 10 was received into evidence.)

9 MR. ZOBRIST: Okay. And we'll use this  
10 with a different witness, Judge.

11 JUDGE WOODRUFF: All right. Now we'll  
12 come up to questions from the Bench.

13 CHAIRMAN SILVEY: Thank you.

14 QUESTIONS BY CHAIRMAN SILVEY:

15 Q. Were you here to hear the testimony of  
16 Mr. Meyer?

17 A. Yes.

18 Q. Okay. My recollection of his testimony  
19 was that the closure of a generation facility was in  
20 and of itself extraordinary. Would you -- do you feel  
21 that that's an accurate representation of his  
22 statement?

23 A. Well, I don't know.

24 Q. Every closure was extraordinary?

25 A. I don't -- I don't believe -- and I

1 don't -- I didn't interpret that statement that every  
2 generating unit that retires is extraordinary.

3 Q. Okay. So you're not taking the position  
4 that every closure is extraordinary?

5 A. No.

6 Q. Okay. But you are taking the position  
7 that this closure is extraordinary?

8 A. Yes.

9 Q. Okay. What specifically makes this  
10 closure extraordinary?

11 A. The discrepancy between rates and the  
12 existing -- the retirement of the unit that's not not  
13 producing. In fact, it's accumulating unrecovered  
14 costs as we speak, so that's -- that's what makes this  
15 situation extraordinary.

16 Q. So in no other situation that was brought  
17 up in opening statements --because we -- there --  
18 there was the Montrose unit 1 and some of the others.  
19 Those did not meet the level of extraordinary because?

20 A. Well, in some of those they were picked  
21 up in rate cases. So they -- there would not be the  
22 issue of the customers paying for something that is  
23 not producing. The other thing is, is there are  
24 retirements that people accept are good retirements;  
25 they -- they should happen. So you don't usually

1 contest those. You might think it's extraordinary,  
2 but you're not going to raise the issue.

3 Q. Okay. Under the stip, aren't  
4 depreciation amounts already tracked in a regulatory  
5 liability account?

6 A. In the stip it has -- it has a provision  
7 that depreciation expense will be deferred as a  
8 regulatory liability.

9 Q. So then what specifically is Public  
10 Counsel requesting the Commission ordered to be  
11 tracked for accounting purposes?

12 A. That one piece that Mr. Zobrist asked me  
13 about. It's in my direct. I -- I know -- I can tell  
14 you off -- that the -- it's O and M.

15 Q. O and M.

16 A. It's a -- a big chunk, 20 million plus.  
17 And the -- oh, and then the effect on the fuel clause  
18 of the lost revenue that was built into rates for the  
19 operation of the unit that now won't be available and  
20 will cause the fuel clause to have to pick that up.

21 Q. Okay. Have you seen Mr. Oligschlaeger's  
22 testimony?

23 A. Yes.

24 Q. On page 7, he says -- and I'm going to  
25 read it, quote, If GMO were to request enhanced acc--



1 or accelerated recovery of the unrecovered balance of  
2 Sibley unit net plant costs in its next rate case, I  
3 would expect other parties to argue that such costs  
4 should, at a minimum, be offset by past GMO cost  
5 savings amounts.

6 Do you agree with that testimony?

7 A. Well, I -- I agree to the testimony to  
8 the extent that in concept what he's talking about.  
9 In reality, if you don't -- if you -- the -- the  
10 Accounting Authority Order -- because they're not  
11 going to file -- I think they said two and a half  
12 years. You're going to be exposed to retroactive  
13 rate-making claims if you don't have this order to --  
14 and I'm -- I'm pretty confident that that would be a  
15 real risk if you don't grant the order to have the  
16 deferrals.

17 Two is, when they keep talking about  
18 the -- calculating the number, one of the things is,  
19 it's not just the data. The people who did those  
20 issues in the rate case also have information as to  
21 what went into those numbers and stuff. And I don't  
22 believe that we're going to have all those people  
23 available at -- at the next case.

24 Q. So you don't believe that the Commission  
25 and other parties can consider offsets in a future

1 rate case without granting this AAO?

2 A. Well, they could, but they would be  
3 subject to the problems I just mentioned. That is,  
4 you'd be exposed to a retroactive rate-making claim  
5 and then you'd have trouble in terms of getting the  
6 numbers. And one of the troubles in getting the  
7 numbers is you still have to know what billing  
8 determinants were using during the period that the new  
9 rates were in effect.

10 Q. Okay.

11 A. And so if you don't have that done, like  
12 I say, the odds are very great that you'll have  
13 discrepancies and difficulties in getting the number  
14 in the next rate case if you follow we'll just do --  
15 we'll just defer it to the next rate case.

16 Q. Okay. Thank you.

17 JUDGE WOODRUFF: Commissioner Kenney.

18 COMMISSIONER KENNEY: I'm good

19 JUDGE WOODRUFF: Commissioner Rupp.

20 Commissioner Coleman.

21 Anyone wish to recross based on those  
22 questions? All right. And redirect.

23 MR. HALL: Briefly.

24 REDIRECT EXAMINATION BY MR. HALL

25 Q. Mr. Schallenberg, Mr. Zobrist was

1 remarking using a phone listing, that you weren't the  
2 head of the Auditing Department at the PSC Staff. Do  
3 you have to be the head of auditing to know how to  
4 audit?

5 A. No.

6 Q. In response to one of other Mr. Zobrist's  
7 questions, you said something to the effect that you  
8 couldn't remember, quote, a case like this. Does that  
9 make this case one of first impression?

10 A. Well, I'm not sure what you mean a first  
11 impression, but this is a unique case.

12 Q. In your -- in -- based on your years of  
13 experience, has the Missouri Public Service Commission  
14 ever denied a request for deferral accounting  
15 associated with the retirement of a base load  
16 generating facility?

17 A. Well, no, but I don't know there's been  
18 another request.

19 Q. In response to another question, you  
20 remarked that GMO's load growth is not flat. What did  
21 you mean by that?

22 A. That it's growing.

23 Q. Can you elaborate?

24 A. They have customer growth and they have a  
25 industrial customer that they've -- I can't remember

1 the name, but they have growth in load and demand.

2 Q. And is that similar to other utilities  
3 we're seeing in Missouri?

4 A. No. Most -- most utilities -- what you  
5 would expect to see is flat or a slightly declining  
6 demand.

7 Q. Okay. Changing gears, Mr. Schallenberg,  
8 there was discussion of the preservation of records.  
9 Let me ask you. If -- if records are preserved, are  
10 they necessarily, by definition, updated every year?

11 A. Well, as I -- I took the -- the word  
12 "preserve" is the record is how long you keep the  
13 record. Now if you're asking me about updating  
14 meaning do you go electronic and stuff like that,  
15 there isn't a requirement now that you have to -- you  
16 have to update the means of keeping the record.

17 Q. Specifically to the unique data sets that  
18 are recorded, are those always necessarily updated  
19 just by the nature of being preserved?

20 A. I'm having trouble -- the term "records"  
21 is pretty broad. I -- I don't -- like, for example,  
22 if you're talking about the records for the rate case,  
23 that will be -- that will be preserved erratically.  
24 There's no requirements on how you have to keep those  
25 records. If you're talking about the company's books

1 and records, they have a retention schedule that they  
2 have that defines all their formal and official paper  
3 and how long they will be retained.

4 Q. Thank you. Mr. Zobrist inquired about  
5 your Surrebuttal Testimony. Did anyone else from the  
6 Office of Public Counsel file surrebuttal?

7 A. Yes. Doctor -- Dr. Marke.

8 Q. From your recollection, does Dr. Marke's  
9 testimony speak to GMO Witness Mr. Rogers' testimony?

10 A. I believe so ye-- in fact, I know so,  
11 yes.

12 Q. The Chairman asked you about what exactly  
13 Public -- Public Counsel's request is for a regulatory  
14 liability. And you mentioned that it should include  
15 operations and maintenance expense, depreciation and  
16 other numbers. Should it also include taxes,  
17 including accumulated deferred income taxes?

18 A. Well, it should consider that, but my  
19 understanding from a data request from the Company,  
20 that they have not altered the deferred taxes because  
21 of the retirement. So once you can get validation of  
22 that -- but you'd want to consider it, but it may not  
23 have -- have to be addressed by an additional  
24 deferral.

25 Q. And you'd want to consider -- or pardon

1 me. Let me rephrase that question.

2           Would you also want to consider any and  
3 all other costs attributed to the retirement of the  
4 Sibley facility?

5           A.     Well, yes, you want to consider. But in  
6 terms of actually what you would actually say or -- or  
7 calculate for the deferral, there may be some  
8 difficulty -- property taxes, for example. It may --  
9 it may be difficult in getting a good quantification  
10 as to what was put in the rate case for property taxes  
11 for Sibley, but you definitely want to at least make  
12 the effort.

13           Q.     Okay. Thank you. That is all from  
14 Public Counsel.

15           JUDGE WOODRUFF: All right. Then  
16 Mr. Schallenberg, you can step down.

17           THE WITNESS: Thank you.

18           JUDGE WOODRUFF: And Dr. Marke is the  
19 next witness, I believe.

20           (Witness sworn.)

21           JUDGE WOODRUFF: Thank you. You may  
22 inquire.

23 GEOFF MARKE, being first duly sworn, testified as  
24 follows:

25 DIRECT EXAMINATION BY MR. HALL:

1 Q. Good afternoon, Dr. Marke. Please state  
2 your name and spell it for the court reporter.

3 A. Good afternoon. My name is Geoff Marke.  
4 And it's G-e-o-f-f, Marke, M-a-r-k-e.

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

7 A. Missouri Office of Public Counsel, and I  
8 am the chief economist for the office.

9 Q. And on whose behalf are you testifying  
10 today?

11 A. The Office of Public Counsel.

12 Q. Are you the same Geoff Marke who caused  
13 to be filed within this docket Surrebuttal Testimony  
14 on July 7th of 2019?

15 A. Yes.

16 Q. If I asked you the same or similar  
17 questions contained in the -- in that testimony, would  
18 your answers be the same or substantially similar  
19 today?

20 A. The same.

21 Q. Do you have any corrections to make to  
22 this testimony at this time?

23 A. I do not.

24 Q. Does this -- is this testimony a fair and  
25 accurate representation of your views in this case as

1 of now?

2 A. Yes, it is.

3 MR. HALL: Your Honor, at this time I  
4 move to admit Exhibits -- I believe we're up to 14 as  
5 the --

6 JUDGE WOODRUFF: 14 would be the Direct  
7 and 15 would be the Surrebuttal.

8 MR. HALL: There was no Direct Testimony.

9 JUDGE WOODRUFF: There was no direct.  
10 Okay. So 14 is surrebuttal. Okay. 14 surrebuttal  
11 has been offered. Any objection to its receipt?

12 Hearing none, it will be received.

13 (Exhibit 14 was received into evidence.)

14 MR. HALL: And I tender the witness for  
15 cross.

16 JUDGE WOODRUFF: All right. And once  
17 again, for cross we begin with MEGG.

18 MR. WOODSMALL: No questions.

19 JUDGE WOODRUFF: Staff.

20 MS. ASLIN: No questions.

21 JUDGE WOODRUFF: GMO.

22 MR. FISCHER: Yes. Briefly, Judge.

23 Thank you.

24 CROSS-EXAMINATION BY MR. FISCHER:

25 Q. Good afternoon, Dr. Marke.



1 A. Good afternoon, Mr. Fischer.

2 Q. You've mentioned a personal conflict.

3 Did you get that revolved?

4 A. I did. Thank you.

5 Q. Okay. Good. Okay. Well, let's try to  
6 get through it anyway by --

7 A. I appreciate it.

8 Q. -- as quickly as we can.

9 I believe you have Schedule GM-1 attached  
10 to your Surrebuttal Testimony, which lists the various  
11 cases and issues you've identified or testified about  
12 in the past --

13 A. Yes.

14 Q. -- is that right?

15 The first case listed is the current case  
16 and it indicates you're testifying on the issue of  
17 deferral accounting and stranded costs; is that right?

18 A. Yes, sir.

19 Q. Is it correct that this is the first time  
20 you've testified about the issue of deferral  
21 accounting?

22 A. Yes, sir.

23 Q. Are you holding yourself out as an expert  
24 witness in the field of regulatory accounting to the  
25 Commission?

1 A. No, sir.

2 Q. Okay. Do you have any undergraduate or  
3 graduate degrees in accounting?

4 A. No.

5 Q. Okay. I believe you indicated you're  
6 employed as the chief economist for the Office of the  
7 Public Counsel. Is your Ph.D. degree in -- in  
8 economics?

9 A. Public policy.

10 Q. Public policy. Okay. Do you have any --  
11 any Master's or Bachelor Degrees in the field of  
12 accounting?

13 A. No, sir.

14 Q. Is it correct you -- let's see. You  
15 received your Bachelor of Arts degree in English from  
16 Citadel; is that right?

17 A. Yes, sir.

18 Q. And the Master's Degree from the  
19 University of Missouri?

20 A. Yes, sir.

21 Q. What was the field of study for your  
22 Master's?

23 A. I got Master's Degree in English as well.

24 Q. English. Okay. And you said your --  
25 your Doctorate is in public policy analysis. Correct?

1 A. That's correct.

2 Q. How many accounting courses would you  
3 have taken while you pursued your Bachelor's, Master's  
4 or Ph.D. degrees?

5 A. None.

6 Q. No -- no accounting at all. Correct?

7 A. That's correct, sir.

8 Q. So would any of your courses dealt with  
9 the topic of deferral accounting?

10 A. No, sir.

11 Q. And have you ever written on that topic  
12 before?

13 A. This would be the first time.

14 Q. Okay.

15 A. As mentioned earlier.

16 Q. Okay. Well, thank you. I appreciate the  
17 clarifications.

18 On page 5 of your Surrebuttal Testimony  
19 at lines 15 through 16, you indicate that you will  
20 respond in your Surrebuttal Testimony to each of the  
21 objections raised by GMO and Staff's witnesses over  
22 what you understand to be the four criteria for  
23 granting an Accounting Authority Order; is that right?

24 A. Yes, sir.

25 Q. And you previously testified about the

1 four criteria listed on page 5 for granting AAOs?

2 A. I have not.

3 Q. Did you read the testimony of the Staff  
4 Witness Mark Oligschlaeger in this case?

5 A. Yes, sir.

6 Q. And are you familiar with him and his  
7 work here at the Commission?

8 A. I am.

9 Q. Is it your understanding that  
10 Mr. Oligschlaeger has testified before the Commission  
11 on numerous occasions about the topic of AAOs?

12 A. Yes.

13 Q. Is it your understanding that he is  
14 really the primary Staff witness that addresses that  
15 topic?

16 A. The only Staff witness in this case.

17 Q. Okay. And he's testified in a lot of  
18 other cases too. Right?

19 A. Yes, sir.

20 Q. Based on your experience with him over  
21 the last five years, do you consider him to be a  
22 qualified expert to deal with the topic of Accounting  
23 Authority Orders?

24 A. Do I consider Mr. Oligschlaeger an  
25 expert?

1 Q. Qualified and highly respected?

2 A. Qualified -- he -- he is a qualified  
3 expert, yes.

4 Q. Okay. Is it your understanding that the  
5 Commission is supposed to balance the interests of  
6 consumers and shareholders as it regulates public  
7 utilities in Missouri?

8 A. Yes, sir.

9 Q. As a matter of fact, on page 3 of your  
10 Surrebuttal Testimony at line 16 you state, There's a  
11 balancing of benefits and costs between the public and  
12 a utility when setting just and reasonable rates; is  
13 that correct?

14 A. That's what I said, yes.

15 Q. Okay. Would you agree that the  
16 Commission Staff's role is to assist the Commission as  
17 it balances the interest of consumers and shareholders  
18 in this proceeding?

19 A. I think that's a fair assessment of what  
20 Staff tries to do.

21 Q. The Commission Staff is sometimes  
22 referred to as an objective party in these utility  
23 proceedings. Have you heard them referred to in that  
24 way?

25 A. Have I heard of the Staff referred to as

1 an objective party? I haven't.

2 Q. You haven't heard that?

3 A. No. Not Staff as an objective party.

4 Q. Okay. By contrast, is it your  
5 understanding that the role of the Office of the  
6 Public Counsel is to represent and protect the  
7 interests of the public in any proceeding before the  
8 Public Service Commission?

9 A. Yes.

10 Q. As the chief economist for the Office of  
11 Public Counsel, is it your job to be a consumer  
12 advocate and suggest positions that are intended to  
13 benefit consumers?

14 A. Yes.

15 Q. You don't have any responsibility to  
16 balance the interests of shareholders as you advocate  
17 on behalf of consumers. Wouldn't you agree?

18 A. Other insofar as that we believe that  
19 there should be a healthy utility.

20 Q. Okay. That's fair. But otherwise,  
21 you're -- you're focusing on the interests of the  
22 consumers and not the interest of balancing --

23 A. Yes, sir.

24 Q. -- with shareholders. Correct?

25 Now, in that role, that role is different

1 than the role of Public Service Commission who  
2 balances interests between shareholders and consumers?

3 A. Yes.

4 Q. And it would be different than the  
5 Commission Staff if they are assisting to do that  
6 balancing between shareholders and consumers.

7 Correct?

8 A. Sure.

9 Q. Okay. On page 6 of your Surrebuttal  
10 Testimony, beginning at line 10 you were asked the  
11 question, Mr. Ives raises concerns over the material  
12 impact to GMO's profits; namely, that an AAO would  
13 decrease GMO's ability to earn its authorized return.  
14 And then you go on to ask yourself the question,  
15 Should that be a consideration? And you answer, No.  
16 Is that correct?

17 A. That is correct.

18 Q. As a consumer advocate, you are not  
19 concerned if the deferral advocated by Public Counsel  
20 has a very negative impact upon GMO's earnings; is  
21 that correct?

22 A. I would say yes, it's the same condition.  
23 We -- we want a healthy utility.

24 Q. Wouldn't you agree that if the Commission  
25 is to balance the interests of the Company and its

1 shareholders along with the consumer interests, that  
2 it needs to consider the fact that the deferral  
3 advocated by Public Counsel and MECG at the levels  
4 initially estimated by OPC and MECG would  
5 substantially reduce GMO's earnings for the deferral  
6 period?

7 A. Would I agree with that?

8 Q. Would you agree that that -- if the  
9 Commission is to balance the interest of shareholders  
10 and consumers, they need to take that into account?

11 A. I think, Mr. Fischer, I mean the reason  
12 we brought this case in front of the Commission is to  
13 balance both consumers and shareholders.

14 Q. So it's fair for them to look at the  
15 earnings of the Company and what impact this case  
16 would have on the earnings?

17 A. If you read the answer in response to my  
18 question, as you teed it up, historically the  
19 Commission has not -- I'll just quote it.

20 Q. Well, I'm just asking you the question.  
21 It's really yes or no. Should the -- if the  
22 Commission is going to balance the interests of  
23 shareholders and consumers, isn't it fair for the  
24 Commission to be looking at the impact that your  
25 deferral, if it was adopted, would have on the



1 Company's shareholders?

2 A. No doubt the Commission needs to consider  
3 all relevant factors.

4 Q. And that would be one of them?

5 A. It would be one of them.

6 Q. A big one?

7 A. I think it rolls both ways too. Again,  
8 that's why we're here.

9 Q. Okay. Now, when does that deferral  
10 period begin under Public Counsel's proposal?

11 A. I believe we have a date -- I think  
12 Mr. Oligschlaeger probably would have been a better  
13 witness for that. Unless you know the answer to that  
14 and can direct me.

15 Q. Well, I don't know. It's Public  
16 Counsel's proposal.

17 A. I -- sitting here, I don't think I know  
18 that answer.

19 Q. Okay. When would it end? Do you know  
20 that?

21 A. When --

22 Q. Would the deferral period end?

23 A. Presumably in the next rate case after  
24 the Commission makes an order.

25 Q. Okay. So at the end of the next rate

1 case when the rates become effective?

2 A. Correct.

3 Q. To your knowledge, has either the Public  
4 Counsel or MECG made any showing that GMO's existing  
5 earnings levels are excessive in this case?

6 A. To my knowledge, we have not.

7 Q. Public Counsel's petition that was filed  
8 in this case made no allegation that GMO was  
9 over-earning. Correct?

10 A. We did not file an earnings complaint  
11 case, no.

12 Q. You had that ability to do so though.  
13 Correct?

14 A. It's a good question.

15 Q. That's the reason I asked it.

16 A. Yeah. I teed up that question in my  
17 testimony. Give me one quick second. Because both  
18 Mr. Oligschlaeger and Mr. Ives I believe suggested  
19 that we should file a complaint case. You know, my  
20 understanding, and I'm not an attorney here, but the  
21 plain reading of the PISA, SB 564 legislation, was  
22 that we weren't in a position to actually file a  
23 complaint case.

24 Q. Does -- does PISA say that the Public  
25 Counsel can't file a complaint case or, for that

1 matter, the Staff?

2 A. Well, you can't change base rates.

3 Q. Okay. It just says that there's a rate  
4 moratorium until the end of three years after their  
5 last rate case. Right?

6 A. I --

7 Q. Rate freeze, I'm sorry.

8 A. That -- that's true. It doesn't say --  
9 specifically say we can't file a complaint case. It's  
10 just that --

11 Q. So we could begin the process --

12 A. -- we can't do anything about it, right?

13 Q. We could process a rate complaint  
14 beginning tomorrow if you filed it. Right?

15 A. Sure. Sure.

16 Q. Okay.

17 A. And I guess in two and a half years we  
18 might see something.

19 Q. It does take a while to do a rate  
20 complaint case, doesn't it?

21 A. Especially when you've got statutes  
22 saying that you can't change it.

23 Q. On page 28, lines 12 through 13 of  
24 Mr. Ives' testimony, he testifies that GMO's achieved  
25 earnings level for the 12-month period ending

1 March 31, 2019 is 8.42 percent. Do you recall that  
2 testimony?

3 A. I'll take your word for it. I mean I  
4 vaguely recall it, yes.

5 Q. Okay. Do you consider a rate of return  
6 on equity of 8.42 percent for GMO to be excessive in  
7 today's financial environment?

8 A. Taking Mr. Ives' word at face value and  
9 that those numbers are correct and accurate, just as  
10 an 8.2, no.

11 Q. It's not excessive?

12 A. No.

13 Q. Okay. Do you recall that the lowest ROE  
14 recommendation of the various cost of capital  
15 witnesses in GMO's last rate case was Mr. Gorman's  
16 9.3 percent rate of return on equity?

17 A. Yes.

18 Q. Are you also aware that the Missouri  
19 Commission found that a 9.8 percent is fair and  
20 reasonable return for equity for Spire Missouri, which  
21 I think was the most recently litigated ROE case or  
22 where that was an issue?

23 A. About two years ago?

24 Q. GR-2017-0215.

25 A. Yes.

1 Q. March 7th, 2018.

2 A. Yeah, that would be the largest last big  
3 litigated case.

4 Q. So 9.8 was fair and reasonable for Spire  
5 at that time?

6 A. I think it's about 9.53 now for gas  
7 utilities nationwide.

8 Q. Okay. But --

9 A. But yes.

10 Q. -- that's considerably more than the 8.42  
11 that -- that the evidence shows we're earning in this  
12 case?

13 A. I'm not accepting Mr. Ives -- if those  
14 numbers aren't correct, right?

15 Q. And I'm not asking you to.

16 A. Okay.

17 Q. But that's the only evidence in the  
18 record that you're aware of. Right?

19 A. Yes, sir.

20 MR. FISCHER: Judge, just for purposes of  
21 the record, I'd ask that the Commission take an  
22 administrative notice of its Amended Report and Order  
23 in the Spire rate case, File Number GR-2017-0215 which  
24 was issued on March 7th, 2018.

25 JUDGE WOODRUFF: And that's for the

1 purpose of the ROE designation?

2 MR. FISCHER: Yes, that's correct.

3 JUDGE WOODRUFF: We'll take notice of  
4 that.

5 BY MR. FISCHER:

6 Q. Dr. Marke, on page 2 of your surrebuttal,  
7 you state that Mr. Oligschlaeger also recommends  
8 rejecting the AAO. He maintains that the  
9 extraordinary threshold was not met by noting that  
10 plant retirements do not resemble previous Commission  
11 approved AAOs; is that correct?

12 A. Yes, sir.

13 Q. Is it your understanding that  
14 Mr. Oligschlaeger has been employed here at the  
15 Commission for about 38 years?

16 A. Yes, sir.

17 Q. Now, in his deposition he testified that  
18 he wasn't aware of any PSC decision in its 106-year  
19 history that granted an AAO for retirement of a power  
20 plant. Were you aware of that?

21 A. It -- to me, sir, that -- that's  
22 extraordinary. I mean this is the definition of what  
23 we're talking about here. No.

24 Q. And do you know of any decision by the  
25 Missouri Commission that found a retirement of a power

1 plant to be extraordinary?

2 A. No.

3 Q. One last area about your background. You  
4 had never been employed by an electric company where  
5 you participated in a decision to retire a power  
6 plant; is that right?

7 A. That is correct.

8 Q. Okay. Now, on page 10 of your testimony  
9 at lines 8 through 10, you state, If we filter the  
10 data to include coal plant retirements that are in the  
11 SPP footprint and controlled by a regulated utility,  
12 then we would have -- we would have a much more  
13 accurate picture of similarly situated utilities; is  
14 that right?

15 A. Yes, sir.

16 Q. Are you referring there to the plant  
17 retirement data that Mr. Chris Rogers included in his  
18 Rebuttal Testimony?

19 A. Yes, sir.

20 Q. Did you read that Mr. Rogers -- his  
21 background that he was a Staffer here at the  
22 Commission in the '80s whenever he was the head of the  
23 Generating Facilities Unit?

24 A. Yes, sir.

25 Q. And that period would have included the

1 mid-80's, the Ameren Callaway plant and the KCPL Wolf  
2 Creek rate cases. Is that your understanding?

3 A. Yes, sir.

4 Q. Probably two of the most complicated  
5 cases we had. Okay.

6 A. They're big ones.

7 Q. I'd like to refer you to page 10 of your  
8 Surrebuttal Testimony at page 8 where you state --

9 A. I'm sorry?

10 Q. On page 10.

11 A. Line 8?

12 Q. And line 8.

13 A. Okay.

14 Q. And I believe you say, If we filtered the  
15 data to only include coal plant retirements that are  
16 in the SPP footprint and controlled by a regulated  
17 utility, then it would -- would have a much more  
18 accurate picture of similarly situated utilities.  
19 Correct?

20 A. Correct.

21 Q. Are you suggesting in that testimony on  
22 page 10 that it would be appropriate for the  
23 Commission to use only coal plant retirements that are  
24 in the SPP footprint and controlled by a regulated  
25 utility in its assessment of whether Sibley's



1 retirement is an extraordinary event?

2 A. No.

3 Q. You're not suggesting that?

4 A. It -- I think it's a better control  
5 factor I think is what I'm saying there.

6 Q. Okay. So it's better, but not -- you're  
7 not saying it's the only thing?

8 A. It's the only? Would incur more  
9 transparency, more data, the better. Yeah.

10 Q. You don't recall any Commission orders  
11 where the Commission stated it was appropriate to  
12 limit its analysis to the SPP or MISO footprint when  
13 it was assessing some other AAO. Correct?

14 A. Correct.

15 Q. And it hasn't ever limited its review of  
16 data to just the SPP and MISO markets? For -- for  
17 example, transmission AAOs or property tax AAOs or PSC  
18 assessment AAOs. None of those kinds of things have  
19 they ever limited their analysis really for anything,  
20 but spec-- specifically for the SPP or MISO  
21 footprints?

22 A. Have they limited it? I can't speak to  
23 all of that. I mean it's -- I -- I think reasonable  
24 minds would say that the Commission in the past has  
25 looked at similar situated utilities, similar

1 geographic areas that operate in its -- its market.  
2 You know, whether or not the Commission has  
3 considered, you know, foreign countries and how that's  
4 happened, I mean, I guess those are all potential  
5 options.

6 Q. Okay.

7 A. Yeah.

8 Q. Dr. Marke, you do a lot of analysis of  
9 national reports and -- and studies and journal. I  
10 know I've heard you talk a lot --

11 A. I -- I try.

12 Q. Okay. Are you familiar with US Energy  
13 Information Administration?

14 A. I am.

15 Q. Okay.

16 MR. FISCHER: Judge, I'd like to have a  
17 document marked.

18 JUDGE WOODRUFF: All right. This will be  
19 Number 15.

20 BY MR. FISCHER:

21 Q. I'm going to give you one that's marked  
22 just so I can refer you to it.

23 A. Thank you.

24 MR. FISCHER: Judge, what would be the  
25 next number for this one?

1 JUDGE WOODRUFF: This would be 15.

2 MR. FISCHER: Thank you.

3 (Exhibit 15 was marked for  
4 identification.)

5 BY MR. FISCHER:

6 Q. Dr. Marke, I'd like to refer you to  
7 what's been marked as Exhibit 15. It's a document  
8 from the US Energy In-- Information Administration  
9 publication called Today in Energy, dated July 26th,  
10 2019. It discusses the recent trend in coal-fired  
11 power plant retirements in the United States. I'd  
12 like for you to take a moment just to read that first  
13 paragraph of the report.

14 A. Yes, sir.

15 Q. Does that indicate -- well, let me give  
16 you time to read it. Let me know.

17 A. I'm good.

18 Q. Does that indicate that between 2010 and  
19 the first quarter of 2019, US power companies  
20 announced the retirement of more than 546 coal-fired  
21 power units, totaling 112 gigawatts of generating  
22 capacity?

23 A. Yes, sir.

24 Q. And does that report also indicate that  
25 more than 546 coal-fired power plants were retired in

1 the last nine years?

2 A. Yes, sir.

3 Q. Would you agree that the coal-fired power  
4 plants in the United States remain under significant  
5 economic pressure as is suggested by that report?

6 A. Yes.

7 Q. Would you also agree that many plant  
8 owners have retired their coal-fired units because of  
9 the relatively flat electricity demand growth and  
10 increased competition from natural gas and renewables?

11 A. Yes.

12 Q. And finally, would you agree with the  
13 bottom of that page where it indicates that the US  
14 coal units that retired in 2018 had an average  
15 capacity of 350 megawatts and an average age of  
16 46 years compared with an average capacity of 129  
17 megawatts and an average of 56 years for the coal  
18 plant units that were retired in 2015?

19 A. Across the United States.

20 Q. Yes.

21 A. Yes.

22 MR. FISCHER: Okay. Judge, then I would  
23 move for the admission of -- of Exhibit 15.

24 JUDGE WOODRUFF: All right. 15 has been  
25 offered. Any objections to its receipt?

1                   Hearing none, it will be received.

2                   (Exhibit 15 was received into evidence.)

3 BY MR. FISCHER:

4           Q.       Looking at your Schedule GM-1, page 2 of  
5 7, there's a case listed there which is the Missouri  
6 American Water case where you addressed I believe the  
7 topic of future test years; is that right?

8           A.       Yes. I'm getting to the page. I did  
9 address that in the Missouri American case.

10          Q.       Is it correct that you did not support  
11 the use of future test years in that Missouri American  
12 case?

13          A.       Yes, sir.

14          Q.       The Office of Public Counsel has his--  
15 has historically opposed the use of future test years  
16 in rate-making proceedings in Missouri; is that right?

17          A.       That is correct.

18                   MR. FISCHER: Judge, I'd like to have a  
19 piece of testimony marked as an exhibit.

20                   JUDGE WOODRUFF: Okay. This will be  
21 Number 16.

22                   (Exhibit 16 was marked for  
23 identification.)

24 BY MR. FISCHER:

25          Q.       Dr. Marke, does this appear to be a copy

1 of the public version of your Direct Testimony in the  
2 2017 Missouri American rate case that we talked about?

3 A. Yes, it does.

4 Q. Would you turn to page 5 beginning at  
5 line 15 of that testimony? There you explain the  
6 basis of OPC's opposition to the use of a future test  
7 year?

8 A. Would you like me to read it?

9 Q. Yeah. Go ahead.

10 A. Line 15?

11 Q. Yes.

12 A. OPC's opposition is based on several  
13 factors, all of which centered on the rate-making  
14 principles adopted by the Missouri Commission and  
15 Missouri courts that were designed to protect captive  
16 customers and ensure utility rates are set at a level  
17 no more than necessary to provide safe and adequate  
18 service at just and reasonable price.

19 These factors or principles, including  
20 the prohibition of single-issue rate-making, the  
21 Commission's rate case matching principle, and the  
22 Commission's known and measurable standard provide the  
23 basis for OPC's position.

24 Q. And you believe that is true today too?

25 A. I do.

1 Q. Would you agree that some public  
2 utilities in Missouri have argued that the use of a  
3 historic test year results in regulatory lag that  
4 is -- can be detrimental to utility shareholders?

5 A. Yes.

6 Q. Nevertheless, the Missouri Commission has  
7 widely used historic test years that sometimes mean  
8 updated for known and measurable changes; is that  
9 right?

10 A. So -- yes. So in-- including proforma?

11 Q. Right.

12 A. Right.

13 Q. Okay. And your office has supported this  
14 widely used practice here at the Commission, using  
15 historic test years?

16 A. And the additional --

17 Q. Updated known and measu--

18 A. -- updated --

19 Q. And true-ups?

20 A. Yes.

21 Q. Sure. Would you agree that regulatory  
22 lag --

23 A. Normalization --

24 THE COURT REPORTER: I'm sorry? I didn't  
25 hear you.

1 THE WITNESS: I said normalization,  
2 annualization. Yes, all of it.

3 BY MR. FISCHER:

4 Q. I didn't mean to interrupt.

5 A. Yeah.

6 Q. Would you agree that regulatory lag has  
7 sometimes been said by Public Counsel to encourage  
8 public utilities to be more efficient between rate  
9 cases?

10 A. Public Counsel and other parties.

11 Q. Regulatory lag can serve to make the  
12 utility more efficient and more prudent, as well as  
13 provide the utility with retained benefits from  
14 synergies; is that right?

15 A. That's what it's designed, yes. To  
16 reward efficient utilities.

17 Q. In other words, the use of historic test  
18 years and its resulting regulatory lag provides an  
19 incentive for companies like GMO to try to operate as  
20 efficiently as possible until the next rate case  
21 reviews of rates again; is that right?

22 A. Yes.

23 Q. That might include cutting costs or  
24 implementing more efficient practices between rate  
25 cases; is that right?



1 A. That is correct.

2 Q. The parties and the Commission used the  
3 historic test year in GMO's last rate case with a  
4 true-up period that ended in June 2018. Is that your  
5 understanding?

6 A. Yes, sir.

7 Q. Is it correct that the Sibley plant was  
8 operating during the te-- historic test year used in  
9 GMO's last rate case?

10 A. That is my understanding.

11 Q. And the Sibley plant retired shortly  
12 after the end of the true-up period; is that right?

13 A. Yes.

14 Q. Assuming that the Commission and the  
15 parties had used a future test year instead of a  
16 historic test year, then wouldn't you expect that  
17 future test year would have captured the retirement of  
18 the Sibley unit since it retired at the end of 2018?

19 A. Be speculative on my part.

20 Q. Depends on what the future test year  
21 would be. Right?

22 A. It would depend on what the future test  
23 year is. It would also depend on whether or not --  
24 well, let me step back. OPC was operating under the  
25 notion that it wasn't a decision -- the decision had

1 not been made to actually retire the Sibley plant.

2 Q. But if the Company was projecting that it  
3 would be retired in 2018, it would have been captured  
4 if that's what its projections were for a future test  
5 year. Right?

6 A. But that's not the answer the Company  
7 gave us. I mean you're asking me to -- to --

8 Q. The Company did tell you they were still  
9 projecting that they were going to close that plant at  
10 the end of 2018. They just didn't know exactly when.  
11 Right?

12 A. No.

13 Q. Okay. A future test year that spanned  
14 the time after Sibley retired wouldn't have had  
15 Sibley's O and M in rate -- in the future test year.  
16 Correct?

17 A. I think the issue that I'm stumbling on  
18 is we spent a considerable -- considerable amount of  
19 effort over the last two years raising this as an  
20 issue when it came to our attention. When the  
21 opportunity for the rate case rolled around, we went  
22 to great lengths not only filing testimony, but filing  
23 suggestions on top of that to consolidate both KCPL  
24 and GMO so it was in sync with their IRP to retire --

25 MR. FISCHER: Judge, I think --

1 THE WITNESS: -- the plant.

2 MR. FISCHER: He's not answering my  
3 question. Can I --

4 THE WITNESS: I think I'm trying to.

5 BY MR. FISCHER:

6 Q. Okay. Let me ask it again to make sure  
7 you have it down. A future test year that spanned the  
8 time after Sibley retired would not have had Sibley's  
9 O and M accounts in that future test year. Correct?

10 A. If the Company fire-- filed a future test  
11 year and that's how we were operating and within their  
12 case in chief said we are retiring this plant on this  
13 date, it is known and measurable within this context  
14 of the test year that we're talking about, it would  
15 include the things you were talking about.

16 Q. So --

17 A. However, that's not what happened.

18 Q. No, we didn't use a future test year.

19 A. No. Nor --

20 Q. We used a historic test year where Sibley  
21 was operating. Right?

22 A. Nor did you tell us that you were going  
23 to --

24 Q. And a historic test year that has  
25 operating plants normally have that included in

1 their -- in the rates. Correct?

2 A. Please repeat that ques-- that statement,  
3 sir.

4 Q. A historic test year that has a plant  
5 that is operating, typically has the plant-in-service  
6 and the O and M related to that plant in rates?

7 A. Those rates are supposed to reflect the  
8 costs that are going to be incurred moving forward.

9 Q. But a future test year where there's a  
10 protection of a retirement, you would think would not  
11 have the O and M associated with that plant?

12 A. Our office at no point approached this  
13 case, that settlement with the intention that a plant  
14 needed to be retired for the utility to earn its  
15 authorized return.

16 Q. And you didn't support a future test year  
17 either?

18 A. I can't recall the Company asking for a  
19 future test year in that case.

20 Q. Okay. Let's -- let's look at your  
21 testimony on page 7 in this Missouri American case.  
22 At page 7, lines --

23 A. They did request a future test year, yes.

24 Q. At lines 26 through 28 you state, The  
25 best way to evaluate how all of the company's expenses

1 and revenues interact and counterbalance each other is  
2 by looking at known and measurable data from a  
3 historic test year.

4 That's what you testified to. Correct?

5 A. Yes, sir.

6 Q. And you still believe that?

7 A. I -- I absolutely still believe that.

8 Q. And that's sometimes referred to as the  
9 matching principle. Correct?

10 A. That is correct. I think the rest of my  
11 testimony talks about that.

12 Q. Yeah. If we turn to page 8, you do ask  
13 yourself what is the matching principle. I'm not  
14 going to ask you to read that whole thing, but  
15 basically it says that if the rate-base and revenues  
16 and/or expenses are mismatched in the -- in the  
17 rate-making process, the resulting rates will either  
18 over- or under-recover costs causing rates to be  
19 unjust and unreasonable. This reasonableness of rates  
20 is what is at risk here if the Commission abandons its  
21 long-standing rate case matching principle.

22 Is that what you said?

23 A. Yes.

24 Q. Now then, you go onto discuss in the next  
25 question and answer the Commission's Report and Order

1 in a KCPL rate case in 2014 where the -- excuse me,  
2 where the Commission described the importance of the  
3 matching principle; is that right?

4 A. Yes, sir.

5 Q. And you quoted three separate paragraphs  
6 from that order, paragraph 114, 115 and 116. Would  
7 you take a look at look at 114? And I'd just like to  
8 ask you if you agree with that -- what's stated in the  
9 Commission -- in that -- in that part of the order?

10 A. Read it or --

11 Q. Don't read it out loud.

12 A. Okay.

13 Q. You can just read it. I'd just like to  
14 ask you, to just cut this short, if you still agree  
15 with that?

16 A. Yes, sir.

17 Q. Would you agree that an AAO is sometimes  
18 called a tracker and that both AAOs and trackers make  
19 use of deferral accounting for purposes of the  
20 recording regulatory assets and liabilities?

21 A. Yes.

22 Q. Now, you go on in -- on page 9 to quote  
23 paragraph 116 of the Commission's Report and Order  
24 rejecting the use of KCPL's request for a tracker.  
25 And there it says -- the order said, The broad use of

1 trackers should be limited because they violate the  
2 matching principle, tend to unreasonably askew  
3 rate-making results, and dull the incentives a utility  
4 has to have operate efficiently and productively under  
5 the rate regulation approach employed in Missouri; is  
6 that right?

7 A. Yes, sir.

8 Q. And then you also go onto include a  
9 quotation from the Western District decision which  
10 affirmed the KCPL rate order in which the Commission  
11 declined to approve a tracker; is that right? And  
12 that was on transmission, property taxes and cyber  
13 security costs?

14 A. Yes, sir.

15 Q. The Commission -- the Western District  
16 decision recognized that the PSC has decided that the  
17 use of trackers should be limited because they violate  
18 the matching principle, tend to unreasonably askew  
19 rate-making results, and dull the incentives a utility  
20 has to operate efficiently and productively under rate  
21 regulation employed in Missouri; is that right?

22 A. That is right.

23 Q. Do you agree with the Commission that the  
24 broad use of trackers should be limited because they  
25 violate the matching principle?

1 A. Yes.

2 Q. Do you agree that the use of trackers  
3 tend to unreasonably skew rate-making results?

4 A. Yes.

5 Q. Do you agree that the use of trackers may  
6 dull the incentives that a utility has to operate  
7 efficiently and productively?

8 A. Yes.

9 MR. FISCHER: Judge, I'd move the  
10 admission of this exhibit, 16

11 JUDGE WOODRUFF: 16 has been offered.  
12 Any objections to its receipt?

13 Hearing none, it will be received.

14 (Exhibit 16 was received into evidence.)

15 BY MR. FISCHER:

16 Q. Dr. Marke, to your knowledge, has the  
17 Commission departed from the use of the historic test  
18 years in major rate cases that you've been the chief  
19 economist for the Office of Public Counsel?

20 A. No.

21 Q. And you agree that Sibley was operating  
22 during the historic test year and true-up period of  
23 the GMO rate -- GMO's last rate case. Correct?

24 A. Correct.

25 Q. Is it correct that the rate-base and the



1 cost-of-service expenses would have included rate-base  
2 and expenses associated with the operation of the  
3 Sibley plant?

4 A. Do I believe rates include an operational  
5 Sibley plant?

6 Q. Yes.

7 A. Yes.

8 Q. Does the Office of Public Counsel believe  
9 that the Commission should encourage public utilities  
10 to operate as efficiently as possible?

11 A. Could you help me define what you mean by  
12 efficient?

13 Q. Well, let me -- let me refer you to the  
14 Integrated Resource Planning rule.

15 A. Oh, okay.

16 Q. Isn't that essentially what the  
17 Commission's Integrated Resource Planning process is  
18 designed to do, to encourage the utilities to operate  
19 efficiently and produce the lowest net present value  
20 of revenue requirements for consumers?

21 A. Yes.

22 Q. I'd like to refer you to your Schedule  
23 GM-3, which is attached to your testimony in this  
24 case. It's the Public Counsel's Amended Suggested  
25 Special Contemporary Resource Planning Issues.

1 A. I'm ready.

2 Q. Okay. In paragraph 1 it states, As  
3 described in the Commission's regulations --

4 A. I'm sorry, sir. In -- in my memo? In  
5 the -- in the opening pleading?

6 Q. It's your -- your Amended Suggested  
7 Special Contemporary Resource Planning, which is  
8 Schedule GM-3. It's I think in a pleading that --

9 A. The pleading, right.

10 Q. Yeah.

11 A. All right. So -- all right. I'm there.  
12 And which number?

13 Q. I was looking at paragraph 1.

14 A. Okay. Paragraph 1.

15 Q. As described in the Commission's  
16 regulations, the fundamental objective of the  
17 Commission's electric utility resource planning  
18 process for electric utilities is to provide the  
19 public with energy services that are safe, reliable,  
20 efficient at just and reasonable rates in compliance  
21 with all legal mandates.

22 Is that basically what it says?

23 A. Yes, sir. That's exactly what it says.

24 Q. Doesn't that mean that the electric  
25 company's planning process has a fundamental purpose

1 to ensure that utilities will be efficient and  
2 minimize the net present value revenue requirements as  
3 they operate their electric systems?

4 A. That's the idea.

5 Q. And if you look at -- let me show you a  
6 copy of the Commission's report -- of the Commission's  
7 rule on electric resource planning, if that would be  
8 all right?

9 A. Sure.

10 Q. I don't think we need to make this an  
11 exhibit, but --

12 A. Thank you.

13 Q. I'd like to refer you to that IRP Rule  
14 4 CSR 240-22.010 and it is subsection 2B. There it  
15 states, The fundamental objective requires that the  
16 utility shall -- and then if you drop down to the B  
17 part -- use minimization of the present worth of long  
18 run utility costs as the primary selection criteria in  
19 choosing the preferred resource plan.

20 Is that what it says?

21 A. That's exactly what it says.

22 Q. Do you believe that electric companies  
23 should continue to operate less efficient coal plants  
24 even though a different combination of generating  
25 resources would be more efficient?

1           A.     As a broad general statement like that, I  
2 think it absolutely depends on the specific utility  
3 and the specific -- the circumstances surrounding that  
4 utility and its generation make-up.

5           Q.     So some specific utilities should not try  
6 to be as efficient as possible and operate less  
7 efficient coal plants if -- if they --

8           A.     That's not what I said.

9           Q.     Okay. Let me ask you the question again.  
10 Do you believe electric companies should continue to  
11 operate less efficient coal-fired plants even though a  
12 different combination of generating resources would be  
13 more efficient?

14          A.     I mean again, you know, Mr. Fischer, I  
15 don't think I could -- I could definitively make that  
16 statement. It's going to be case specific and it's  
17 going to depend on the utility and its make-up.

18          Q.     When would you want a company to operate  
19 a coal-fired plant if something else would be more  
20 efficient?

21          A.     When it's cheaper. When it's largely  
22 depreciated. When it's still in rates. When --

23          Q.     Let me define it.

24          A.     -- the market makes it more attractive  
25 than other options. I mean there -- there -- there

1 are a whole host of reasons why.

2 Q. Well, let me -- let me --

3 A. Ameren's not retiring their coal plants  
4 yet.

5 Q. Let me -- let me define deficient -- or  
6 efficient as producing the lowest net present value of  
7 revenue requirements. When -- when would you believe  
8 electric -- or do you believe that electric companies  
9 should continue to operate their coal-fired plants if  
10 a different combination of generating resources would  
11 produce a lower net revenue requirement?

12 A. I have yet to see a KCPL Greater Missouri  
13 Operation Integrated Resource Plan that modeled  
14 specifically for their net present revenue requirement  
15 in this case.

16 Q. Okay. I'm not asking you that question.  
17 I'm asking you do you believe the electric company  
18 should continue to operate less efficient coal plants  
19 if they're -- if it was possible that a different  
20 combination of generating units would lower rates to  
21 consumers?

22 A. Again, it's -- you know, it -- it's going  
23 to depend on the overall make-up and the modeling, the  
24 projected growth of that utility. I -- I -- I can't  
25 just make a blanket statement.

1 Q. Okay. Well, let me --

2 A. When you're talking with resource  
3 planning, you're really talking about a moving target  
4 here. I mean, it's -- it -- it is one where you have  
5 to consider a number of confounding variables. And  
6 it's a model on top of that. So for -- for me just to  
7 categorically say that we should shut down all coal  
8 plants, the reality of it is if you were to do that,  
9 customers couldn't afford it. I mean the -- the --  
10 the impact of that would be enormous.

11 Q. Well, I'm assuming it's going to lower  
12 the net present value revenue requirements to  
13 consumers.

14 A. That's an assumption that's not  
15 necessarily shared.

16 Q. Okay. Well, let me just ask you more  
17 general question. As a general rule, consumers  
18 benefit when electric companies operate more  
19 efficiently. Don't you agree to that?

20 A. Yes. I believe I answered that before.

21 Q. Now let's change topics. On page 3 of  
22 your Surrebuttal Testimony at line 3 -- yeah, line 3  
23 you state, GMO's ratepayers are paying for a fictional  
24 power plant; is that right?

25 A. Yes.

1 Q. Dr. Marke, wouldn't you agree that  
2 consumers are paying for the electricity that they  
3 use?

4 A. I'm trying to understand the question.

5 Q. When you pay your electric bill, you're  
6 paying for the electricity that you used during that  
7 last month. Correct?

8 A. Yes.

9 Q. Consumers are not paying electric rates  
10 to become the owners of power plants; is that right?

11 A. Yes.

12 Q. And while rates may be based upon a  
13 rate-base, expenses, depreciation and taxes, consumers  
14 are not acquiring an ownership interest in any of  
15 its -- of GMO's plants, including the Sibley units,  
16 when they pay their electric bills; is that right?

17 A. Well, I think this goes back both -- to  
18 get to your point, Mr. Fischer, I think this goes back  
19 to --

20 Q. Is it right? Is that correct?

21 A. That we're still paying for Sibley?

22 Q. No. That you're paying rates that are --  
23 that are designed to pay your electric costs, not  
24 your -- not to become owners to any power plants.

25 A. Oh, no doubt. That's the who-- again, I

1 mean, it supports why we're -- we're filing this case.

2 Q. That's -- okay. So it -- we're -- you're  
3 paying for electricity and we're not paying for any --

4 A. We're not paying for fictional plants.

5 Q. -- power plants, fictional or otherwise?

6 A. Well, I guess we'll see.

7 Q. Isn't the Public Counsel's real complaint  
8 in this case that the Commission used a historic test  
9 year that included an operating Sibley plant in the  
10 last rate case, and GMO is now trying to operate the  
11 company more efficiently with the retirement of  
12 Sibley?

13 A. No.

14 Q. That's all the questions I have.

15 MR. FISCHER: Thank you, Judge.

16 JUDGE WOODRUFF: All right. We'll come  
17 up for questions from --

18 MR. FISCHER: I would move for the  
19 admission of any exhibit I didn't.

20 JUDGE WOODRUFF: I believe you've got  
21 them all.

22 MR. FISCHER: Thank you.

23 JUDGE WOODRUFF: Commissioner questions  
24 then. Commissioner Kenney.

25 COMMISSIONER KENNEY: Thank you.



1 QUESTIONS BY COMMISSIONER KENNEY:

2 Q. Good afternoon, Dr. Marke.

3 A. Afternoon, Commissioner.

4 Q. I've got a couple of questions. I  
5 listened to counsel for MECG and your counsel talk  
6 about the fact that -- that Staff knew about the  
7 closure of the Sibley plants and no one else did  
8 before the Stipulation and Agreement; is that correct?

9 A. That's what I heard.

10 Q. Or no, the -- I don't know which  
11 stipulation. I knew there was, what, four of them --

12 A. I think there were four.

13 Q. -- during that time.

14 What difference would that have made?

15 A. We wouldn't have signed. I mean we  
16 would --

17 Q. You didn't sign anyway, did you?

18 A. I -- well, let me rephrase that. We  
19 would have contested.

20 Q. Okay. And what -- so what would we have  
21 done?

22 A. We would have gone to hearing.

23 Q. Okay. And your argument would have been  
24 what?

25 A. Well, our argument would have been

1 two-fold. I mean the -- well, there would have been a  
2 lot of arguments that -- that were on there. But --  
3 but two-fold, being one we had asked for future  
4 consolidation of both KCPL and GMO, which would again  
5 be in line with what their IRP is -- is talking about  
6 and the basis for all of this.

7           The second part would be everything  
8 essentially that we had filed in -- in Mr. Robinett's  
9 testimony, I want to say Mr. Schallenberg's testimony  
10 in that case --

11           Q.     Okay. You're -- you're --

12           A.     -- regarding the prudence of --

13           Q.     -- giving me a historical les--

14           A.     We would be arguing the prudence of  
15 shutting down the plant.

16           Q.     What about -- okay. But let's just talk  
17 about the Sibley unit. What would we -- because we  
18 deal with a historical test year.

19           A.     Yes.

20           Q.     We've all -- I'm on my seventh year. You  
21 hear that, Governor Parson?

22                     But that's what we do.

23           A.     Right.

24           Q.     So how would you tackle -- I mean, I  
25 guess you could have fought for an AAO there or

1 something?

2 A. Yeah. We -- we could have. That would  
3 have been one outcome.

4 Q. But everybody -- everybody seems really  
5 surprised, but I'm looking at the 2-- 2017 IRP annual  
6 update and it says December 31st, Sibley 2 and 3 are  
7 going to be closed.

8 A. Yes.

9 Q. I'm looking at the executive -- Executive  
10 Summary from the IRP case 2018-0269, Sibley units  
11 fully retired 12/31/2018. So I don't understand -- I  
12 mean I understand -- I -- I appreciate the  
13 presentation and I -- I don't know -- I'm not -- I  
14 don't know where I'll be on this issue.

15 A. Yeah.

16 Q. But it seems to me everybody knew they  
17 were going to be closing.

18 A. Right. I agree with you.

19 Q. So the fact that they closed -- I mean, I  
20 don't understand the argument that okay, they closed  
21 after that case and they said well, we don't know when  
22 they're going to close but -- I mean it was going to  
23 be some time at -- within that time frame.

24 A. Perhaps. I mean that's -- that -- I'll  
25 put it this way --

1 Q. I'm just -- I'm just reading what they  
2 said they were going to do in the last two cases, IR--  
3 2017 IRP --

4 A. Uh-huh.

5 Q. -- and then the 2000-- the IRP case in  
6 2018.

7 A. In -- in both of those cases we filed  
8 comments immediately after that. We brought it up  
9 in -- in the rate case itself. The Company  
10 essentially said we don't know what we're going to do.

11 Q. Okay.

12 A. I don't know how to respond to that. If  
13 we would have taken the issue to hearing, if it would  
14 have been in front of you and the Company saying well,  
15 it's our discretion, we don't know what we're going to  
16 do, we're in a position of taking them at face  
17 value --

18 Q. If they say we plan on closing it in  
19 2020, we plan on -- I mean that's a Company decision.  
20 I've been one I don't interfere with Company  
21 decisions. I strongly --

22 A. Uh-huh.

23 Q. They run the business. They run it a lot  
24 better than you or I could run it --

25 A. Right.

1 Q. -- because that's what they do.

2 A. I wish the Company would have come in and  
3 actually had dealt with the prudency issue of whether  
4 to shut it down, whether that was appropriate.

5 Q. But we deal with these things in a lot of  
6 different ways where I understand this one -- because  
7 you're talking two and a half years and not --

8 A. Right.

9 Q. -- 18 months or less. But I remember  
10 KCPL and GMO came out when the -- with the Tax Cuts  
11 and Jobs Act and right away were the only utility that  
12 offered to change their rates immediately. They did.

13 And then where Empire, didn't they  
14 just -- they got a windfall of about -- I don't know  
15 how many months, a year, because of when they came in.  
16 So I understand the process. I'm just trying to  
17 understand what -- what really would have been  
18 different other than have the case go to a hearing,  
19 from your standpoint.

20 A. Our fault was --

21 Q. Because I don't think this Commission is  
22 ready to go to a historical tax year. I don't think  
23 they look -- really doesn't seem that they've been  
24 going that way.

25 A. I would agree with you. You know, our

1 fault, I guess if there was one, was just believing  
2 them and just saying that we didn't know. The fact  
3 that they shut it down immediately afterwards, the  
4 fact that they shut it down before your order came  
5 out, you know, that's what really prompted it and  
6 that's why we're here.

7 Q. Irked you, didn't it?

8 A. A little.

9 Q. Thank you. I'm done.

10 JUDGE WOODRUFF: Commissioner Rupp.

11 QUESTIONS BY COMMISSIONER RUPP:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. There we go. Maybe. There we go. The  
15 point was made that regulatory lag forces utilities to  
16 be efficient between rate cases and there-- by cutting  
17 costs and things being more -- more proficient -- more  
18 efficient. So how is retiring a plant different than  
19 laying off a bunch of people, selling something,  
20 reducing overhead? How -- how is -- how is that  
21 different? Help me -- help me grapple with that  
22 question.

23 A. Thank you. Two-fold. I mean, one of our  
24 argument is not just retiring a plant, but retiring  
25 Sibley is different. And on page 12 and 13 of my

1 testimony, I've got about nine or ten bullet points  
2 specifically outlining why Sibley -- this particular  
3 case is so unique, so extraordinary, so unusual,  
4 non-recurring and material.

5 Q. So it's just this case, not the overall  
6 we've got an AAO when we -- when we construct a plant,  
7 we get one when we -- when we upgrade a plant and we  
8 don't have one, when we -- when we retire a plant.

9 A. I -- you got to stay true to yourself.  
10 Sitting here, in none of the previous IRPs did I sit  
11 there and say we're calling you out on Montrose, we're  
12 calling you out on Lake Road. No. Retire those.  
13 Okay? Those are coal plants at the end of their  
14 useful life. For all sorts of reasons, they don't fit  
15 the description that we're talking about. In fact,  
16 they look just like this (indicating).

17 Sibley is categorically different. The  
18 impact, the overall size. That's -- that's why we've  
19 been doing this for two and a half years and -- and  
20 trying to make this an issue. And repeatedly across  
21 the way, the utility has basically just ignored us.

22 Q. So if the utility had a new software  
23 system that allowed them to lay off 30 percent of  
24 their workforce to cut overhead and that would help  
25 them be more efficient in between the regulatory lag,

1 how is that different than them retiring a plant that  
2 is -- maybe has more useful life and things that align  
3 with your nine bullet points?

4           A.     I think for a variety of reasons that  
5 those bullet points talk about. You've got a utility  
6 who's actually -- this is unique and it's not like the  
7 rest of this. Because you've got a utility that's  
8 actually growing load, they're getting more customers,  
9 more people moving up in North Kansas City, you've got  
10 more communities opening up there. You've got huge  
11 base load coming in because of our economic  
12 development that's pulling forward.

13                     This is base load generation. This is a  
14 utility that's already short on capacity. Ameren's  
15 crazy long. GMO's not. If -- if I could do a mix and  
16 match and say like oh, take this issue with this  
17 utility, then I've got -- then it makes sense.

18                     But for this particular utility under  
19 these circumstances, given the -- the investment that  
20 we just made into it, for all of those reasons, we  
21 felt like it was imprudent. And I can't stress this  
22 enough, that we don't feel like there's any  
23 rate-making implications here. Really all we're doing  
24 is asking is to preserve the information for a future  
25 Commission to go ahead and look at. Just the



1 transparent information out there.

2 Q. So if they would have announced that they  
3 were shutting down Sibley 45 days after -- after  
4 the -- the Surrebuttal Testimony --

5 A. Right.

6 Q. -- was given, would we be here?

7 A. It's a fair question. My recommendation  
8 to -- in the office would be yes. Given, you know,  
9 the fact that we can't -- we can't change base rates,  
10 it's included there. Obviously I think the optics  
11 look worse, the fact that it happened almost  
12 immediately after as opposed to 45 days. But -- but  
13 ultimately I think we would be in the same position.

14 Q. Okay. That's all I have. Thank you.

15 FURTHER QUESTIONS BY COMMISSIONER KENNEY:

16 Q. I just had a follow-up on that. I'm just  
17 curious. You already said something to Commissioner  
18 Rupp.

19 A. Uh-huh.

20 Q. I understand -- I thought -- I understand  
21 the AAO and what the necessary customer expense, but  
22 you -- you mentioned -- are you questioning the  
23 judgment of KCPL GMO to shut down Sibley --

24 A. I am --

25 Q. -- or just the timing of it? Because

1 that --

2 A. In this case, the timing.

3 Q. Okay. So -- because you said they're  
4 short. So if the fact that they announce hey, we're  
5 shutting down Sibley because we think we can do it in  
6 two years --

7 A. Uh-huh.

8 Q. -- that wouldn't be an issue to you?  
9 It's when they did it? Because that comes to me  
10 whether -- was it a -- not a prudent decision?

11 A. Prudent. Right. Correct.

12 Q. So you don't think it was a prudent  
13 decision?

14 A. That's an issue that we raised in -- in  
15 all of the IRPs leading up to this. We raised it in  
16 the rate case itself. In this case, I agree -- and I  
17 actually say so in my testimony. I agree with  
18 Mr. Ives that this -- that rate-making is not an issue  
19 in this case. That prudence is not an issue.

20 Q. I just wanted to make sure what I heard  
21 you say. Thank you.

22 A. Okay.

23 JUDGE WOODRUFF: Commissioner Coleman.

24 COMMISSIONER COLEMAN: I'm good. Thank  
25 you.

1 JUDGE WOODRUFF: We've been going for  
2 over two hours. Let's go ahead and take --

3 MR. FISCHER: Judge, do you want me to  
4 finish my -- my cross -- my follow-up to the  
5 Commissioner questions? I do have a couple, but I'm  
6 willing to take a break.

7 JUDGE WOODRUFF: I understand. We need  
8 to take a break.

9 MR. FISCHER: Okay.

10 JUDGE WOODRUFF: We'll be back at 4:15  
11 and then we'll finish up.

12 (A recess was taken.)

13 JUDGE WOODRUFF: Okay. We're -- we're  
14 back from our break and if I -- people misinterpreted  
15 what I said to say 4:50, I apologize. I intended to  
16 say 4:15. But anyway, it's now 4:21 and we are back  
17 on the record. Dr. Marke is still on the stand and we  
18 are beginning -- ready for recross. Anyone wishing to  
19 re-cross?

20 MR. FISCHER: I briefly have a couple.

21 JUDGE WOODRUFF: Okay. Go ahead.

22 RECROSS-EXAMINATION BY MR. FISCHER:

23 Q. Dr. Marke, not to keep you too long, but  
24 as I understood your testimony to the Commissioners,  
25 you confirmed that the Public Counsel was aware that

1 the Companies had plans to retire Sibley by the end of  
2 the year at the time the rate case was going on?

3 A. What I told the Commission -- and I mean  
4 the record I guess will speak for itself, so I can  
5 only say what -- I guess what -- how I interpreted it.  
6 We -- we were aware of a press release that took place  
7 in June of 2017. Almost immediately we filed comments  
8 within that IRP docket stating our concern about it.  
9 We did that again at the special contemporary topics,  
10 we did that again on following IRP and the  
11 contemporary topics after that. We filed that again  
12 in the rate case.

13 At no point did the Company -- well, in  
14 the rate case itself -- I mean Mr. Ives' testimony  
15 speaks to that and left it up as an issue that was  
16 still pending.

17 Q. So you were aware though the Company was  
18 planning to retire the Sibley plant by the end of the  
19 year 2018?

20 A. No. We knew -- we -- we took you at face  
21 value when you made that comment. In the rate case  
22 you left it up as it was a decision that was still  
23 pending. A position that Staff took as well too.

24 Q. And is it your understanding that the  
25 plant actually shut down because of a forced outage?

1           A.     I think that's a loaded statement.  If --  
2 do you mean shut down en-- entirely because of the  
3 forced outage?

4           Q.     I mean it stopped elec-- producing  
5 electricity because of a forced outage.

6           A.     We became aware of that --

7           Q.     I'm not --

8           A.     -- in November.

9           Q.     -- asking you when you became aware of  
10 it.  That's what happened.  Right?  That's what your  
11 understanding is?

12                   MR. HALL:  Objection, compound question.  
13 I'm not entirely sure what Dr. Marke's supposed to be  
14 answering at this time.

15                   JUDGE WOODRUFF:  If you could clarify  
16 your question.

17 BY MR. FISCHER:

18           Q.     Okay.  Is it correct that Sibley stopped  
19 producing electricity due to a forced outage?

20           A.     Yes.  Today we know that Sibley stopped I  
21 believe September 5th, but we did not know that  
22 September 6th, 7th, 8th, so on.

23           Q.     And the Company had already planned,  
24 through all the press releases that you were aware of,  
25 to retire it within -- by the end of 2018.  That's

1 what their announced plan was. Right?

2 A. That's not what Mr. Ives's testimony came  
3 through in that rate case. That might have been what  
4 their press releases said, but that --

5 Q. Didn't he say that he didn't have a  
6 specific date that that retirement might occur?

7 A. You've got Mister -- I believe it's in my  
8 testimony what Mr. Ives said.

9 MR. FISCHER: Well, it will speak for  
10 itself, Judge. I don't have any other questions.  
11 Thank you very much.

12 JUDGE WOODRUFF: All right. Redirect?

13 REDIRECT EXAMINATION BY MR. HALL:

14 Q. Dr. Marke, you were asked about  
15 efficiencies -- efficiencies and regulatory lag. Do  
16 you believe that a company increases efficiency by not  
17 accounting for retirement when setting rates?

18 A. No. Right now -- I mean what you've got  
19 is a shift in risk, period. I mean we've -- we've  
20 just put costs essentially onto ratepayers. I mean in  
21 short, what you have is -- is a utility that is --  
22 this is a plant that's not producing any power, but it  
23 is producing revenues for shareholders. And that is  
24 not consistent with what I believe the regulatory  
25 compact is -- is designed and what regulation -- what

1 this whole building is to go ahead and -- and serve,  
2 which is a proxy for the market.

3 Q. Mr. Fischer asked you about the Public  
4 Service Commission's role of balancing consumers and  
5 utilities when setting rates. Do you believe that a  
6 system is -- that balance is achieved when rates  
7 are -- when a generating unit is retired during a  
8 pending rate case and then that is not accounted for?

9 A. Clearly not. You're -- you're not  
10 balancing -- it's -- it's gaming it. I mean at the  
11 end of the day, that's -- you know, I -- I don't use  
12 that language loosely. I cringe a little bit even  
13 sitting here saying here, that's -- that's what I used  
14 in my testimony. And I don't see other -- any other  
15 interpretation of what took place here.

16 Q. You were asked questions about the  
17 Company's earnings. Did you audit the Company's  
18 representations as to their earnings they made in  
19 their testimony?

20 A. No, I did not. You know, I -- I -- I had  
21 attempted to try to speak a little bit more to that  
22 with Mr. Fischer. And I -- I have a section on there  
23 about the relevancy of earnings within the context  
24 of -- of looking at an AAO. And really again this is  
25 relying on past Commission precedent.

1 First of all, when you're looking at  
2 earnings, you need to look at -- what I -- what I  
3 think is the term I used is all relevant factors.  
4 In -- in this case, what does that mean? You've got a  
5 utility that's getting it as an FAC. You have an  
6 utility that has PISA, you have a utility that has a  
7 MEEIA, a RESRAM. You've got all sorts of different  
8 mechanisms that essentially shield it and make it  
9 whole and have rich earnings.

10 You know, I -- I have not had an  
11 opportunity to go ahead and examine Mr. Ives' numbers  
12 or the assumptions behind it, but what I do know --  
13 what I do know is that past Commissions have said that  
14 if maintaining financial integrity means sustaining a  
15 specific return on equity, this is not the purpose of  
16 regulation. It is not reasonable to defer costs to  
17 insulate shareholders from any risk.

18 And I'll take it a step further because  
19 it was brought up in -- in KCPL's opening that somehow  
20 this would send a negative message, you know, for --  
21 for other utilities by somehow a Commission actually  
22 just enforcing regulation here and the balancing of  
23 risk.

24 I cited to a study by the RAND Journal of  
25 Economics by Economists Thomas Lyon and John Mayo that



1 essentially looked at a long-term aggregate study of  
2 what took place with deregulation when you had a lot  
3 of coal plants retiring essentially because of the  
4 market opening up. And what they found, you know, in  
5 situations where a specific utility was penalized or,  
6 you know, was deemed hit by a Commission was that the  
7 market and the investors essentially looked at that as  
8 an isolated case, that it had no impact on future  
9 capital investment or the credit ratings of other  
10 utilities.

11                   In short, what does that mean translated?  
12 At least according to the data and the empirical  
13 evidence, it suggests this isn't going to have any  
14 impact on Ameren or Empire or anything else. So to  
15 suggest otherwise -- especially in light of passing  
16 really sweeping legislation with PISA seems a stretch.

17           Q.     You mentioned PISA. Could you elaborate  
18 on your understanding of what that is?

19           A.     Plant-in-service accounting is a --  
20 generally the agreed to acronym that that's included  
21 to it. But really it's -- it's -- it's an opportunity  
22 for -- for the utilities to go ahead and increase  
23 overall capital investment on -- on an expedited basis  
24 that has certain insulations for -- for consumers,  
25 certain caps.

1           But, you know, essentially it freezes,  
2 you know, what can be done to base rates over that  
3 period. At the end of -- I believe it's two and a  
4 half years is what's been thrown out there. But --  
5 but moving forward whether that gets renewed or not, I  
6 guess remains to be seen. But in short, it provides a  
7 very attractive landscape for investors.

8           Q.     You mentioned the base rates. What  
9 specifically changes when a utility elects PISA  
10 regarding their base rates?

11          A.     They're frozen, is my understanding.

12          Q.     With that understanding then, what --  
13 what -- assuming that a party is successful in their  
14 petition, what -- what would the end result be of an  
15 over-earnings complaint?

16          A.     I think the exact same situation that we  
17 would have here today, which is essentially that we  
18 would be looking at some sort of deferral accounting;  
19 whether you call that a regulatory liability or a  
20 tracker or something along these lines. Essentially  
21 what we would be looking at is holding this number  
22 and -- and booking it accordingly to give all relevant  
23 information for future Commissions in their  
24 consideration.

25          Q.     Are you saying that a deferral accounting

1 could be the end result because GMO elected  
2 plant-in-service accounting treatment?

3 A. Am I -- can you please repeat that?

4 Q. You said that the end result of an  
5 over-earnings complaint would be some type of deferral  
6 accounting. Are you saying -- is your question -- is  
7 your answer then related particularly to this case  
8 regarding GMO?

9 A. I'm not an attorney, you know, Mr. Hall,  
10 as you obviously know. You know, my -- my plain  
11 reading of the statute is -- is that is what would  
12 happen.

13 Q. Pardon me. I seem to have misplaced my  
14 pen somewhere. I'm sure it's in some pocket.

15 MS. ASLIN: In your binder.

16 MR. HALL: Thank you.

17 BY MR. HALL:

18 Q. You were -- you -- I believe your answer  
19 was cut off. You were asked about representations  
20 that the Company made during the rate ca-- during  
21 their last rate case during the retirement of Sibley.  
22 Could you please expand on that? You mentioned  
23 Mr. Ives' testimony, but you weren't able to answer.

24 A. We -- I mean we -- we hit essentially  
25 a well, figurative wall. We raised it as an issue.

1 We raised it -- the -- the prudence of it. We wanted  
2 to make it an issue. We clearly made -- it was a  
3 concern for our office within that rate case. And the  
4 response that we got back from the Company was we  
5 don't know. We don't know if it's actually going to  
6 go down. We don't believe it's an issue.

7           You know, we went to great lengths within  
8 that first st-- the first of the four stipulations,  
9 the one that we didn't sign because of our concern  
10 over that out of an abundance of caution. But I mean  
11 at -- at the end of the day, we -- we did not know  
12 anything about the blown turbine. We didn't know  
13 anything about the status of Sibley other than the  
14 representation the Company had made to us, which we  
15 took at face value.

16           Q.     Commissioner Kenney had asked you about  
17 future and historical test years.

18           A.     Yes.

19           Q.     Is an Accounting Authority Order or any  
20 other type of deferral accounting a test year?

21           A.     No.

22           Q.     Have tho-- has the Commission  
23 historically instituted deferral accounting regardless  
24 of a historical test year?

25           A.     Yes. Most recently there was some

1 deferral accounting issued in the EV charging.  
2 Obviously much smaller capital issue than what we're  
3 talking about here in the hundreds and millions of  
4 dollars.

5 Q. No further questions at this time.

6 JUDGE WOODRUFF: All right. Then you may  
7 step down.

8 THE WITNESS: Thank you.

9 JUDGE WOODRUFF: It is now 4:33 and  
10 Mr. Oligschlaeger will be the next witness, but I  
11 believe we'll wait until tomorrow to start with him.

12 MR. ZOBRIST: Judge, could I just ask  
13 Commission to take official notice of one thing that I  
14 was asking Mr. Schallenberg about and has been  
15 mentioned here? It's Commission's order approving the  
16 stipulations and agreements in the last KCPL Greater  
17 Missouri Operations Company rate case, Number  
18 ER-2018-0146 of October 31, 2018, which includes the  
19 Revenue Requirement Non-unanimous Partial Stipulation  
20 Agreement that Mr. Schallenberg and perhaps others  
21 have testified about which was presented at the  
22 Commission on September 19th, 2018.

23 JUDGE WOODRUFF: Any objections to the  
24 Commission taking notice of that?

25 Hearing no objection, we will take

1 notice.

2 MR. ZOBRIST: Okay. Thank you.

3 JUDGE WOODRUFF: All right. As I was  
4 indicating, we'll wait until tomorrow morning with  
5 Mr. Oligschlaeger and then we have the four or is it  
6 three witnesses for GMO? I believe Mr. Spanos, there  
7 was no questions for him.

8 MR. ZOBRIST: He's here.

9 MR. HACK: He is here.

10 JUDGE WOODRUFF: He is here.

11 MR. HACK: So it's 9:00 a.m. tomorrow?

12 JUDGE WOODRUFF: 9:00 a.m. tomorrow. All  
13 right. Thank you all.

14 (Exhibit 14 was marked for  
15 identification.)

16 (WHEREUPON, the hearing was adjourned  
17 until 9:00 a.m. August 8, 2019.)

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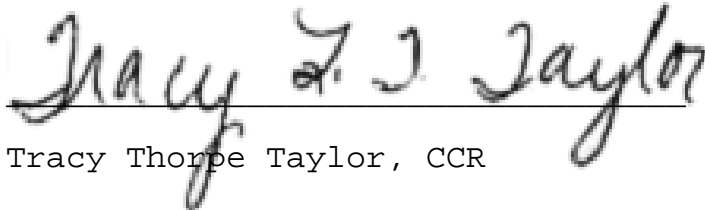
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

  
Tracy Thorpe Taylor, CCR

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