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AUDIO RECORDING
MISSOURI PUBLIC SERVICE COMMISSION
IN RE: THE PETITION OF EMPIRE DISTRICT ELECTRIC
COMPANY, ET AL.
CASE NOS. EO-2022-0040 & EO-2022-0193
JUNE 15, 2022
VOLUME 5

(Due to the quality of the recorded media, portions were unable to be transcribed and include inaudible portions. The transcript may also include misinterpreted words and/or unidentified speakers. The transcriber was not present at the time of the recording; therefore, this transcript should not be considered verbatim.)

TRANSCRIBED BY: MELISSA LANE

1 DIANE CARTER: I don't know. Might be
2 why --

3 (Inaudible conversation.)

4 JASON HOLSMAN: Commissioner Holsman is on.

5 RYAN SILVEY: Chair Silvey is here as well.

6 UNIDENTIFIED MALE: Really was (inaudible).

7 (Inaudible conversation.)

8 UNIDENTIFIED MALE: You have the
9 reservation. There is no car. There's 30 people
10 (inaudible).

11 DIANE CARTER: It's a trick.

12 UNIDENTIFIED MALE: 11:30 at night.

13 UNIDENTIFIED MALE: Commissioner Holsman
14 and Chair Silvey said they're on the line.

15 DIANE CARTER: Judge, we do have
16 Mr. Mosindy(phonetic), our first witness here.
17 You're just in time.

18 UNIDENTIFIED MALE: (Inaudible).

19 DIANE CARTER: I think with a fair amount
20 of adventure, but he's here. (Inaudible). Okay.
21 (Inaudible) oh, but.

22 JUDGE WOODRUFF: Okay. It's 8:30, so let's
23 go ahead and get started. We're back for another day
24 of hearing in ER-2022-0040 and ER-2022-0193. We'll
25 begin today with witness for Liberty, Mr. Mosenby.

1 DIANE CARTER: Yes. Thank you, Judge.

2 We'd call Mike Mosindyto the stand.

3 JUDGE WOODRUFF: I apologize. I heard your
4 name, but I still mispronounced it.

5 THE WITNESS: It's okay. I've been getting
6 it all my life there. Mosenby.

7 JUDGE WOODRUFF: Okay. Mosindyit is. If
8 you'll please raise your right hand. Do you solemnly
9 swear or affirm the testimony you're about to give in
10 this matter is the truth, the whole truth, and nothing
11 but the truth?

12 THE WITNESS: I do.

13 JUDGE WOODRUFF: Thank you. You may
14 inquire.

15 DIANE CARTER: Thank you.

16 EXAMINATION

17 BY DIANE CARTER:

18 **Q. If you will, please, state your full name.**

19 **A. My full name is Michael Mosenby.**

20 **Q. And this is not normally part of our direct**
21 **questioning, but I would note for you, we talked about**
22 **how there would be a court reporter right in front of**
23 **you. There's not a court reporter here, but we are**
24 **being recorded, and they'll transcribe it, so it's**
25 **still important that you still speak slowly and**

1 **clearly.**

2 JUDGE WOODRUFF: Probably more -- more so
3 than normally.

4 DIANE CARTER: Yes. Yes.

5 JUDGE WOODRUFF: You can have a seat.

6 DIANE CARTER: Yeah.

7 THE WITNESS: Thank you, Your Honor.

8 **Q. (By Diane Carter:) By whom are you**
9 **employed and in what capacity?**

10 A. Liberty Utilities Canada Corp as director
11 of treasury.

12 **Q. And in your role as director of treasury,**
13 **does that include doing work also for the Empire**
14 **District Electric Company?**

15 A. That's correct.

16 **Q. Did you prepare pre-filed surrebuttal**
17 **testimony that has been marked Exhibit 15?**

18 A. I did.

19 **Q. Do you have any changes for that testimony?**

20 A. I don't.

21 **Q. If I asked you those same questions today,**
22 **would your answers be substantially the same?**

23 A. That's correct.

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

1 testimony. Can you point to where that --

2 Q. Yes. If you turn to Exhibit 15, page 2,
3 line 6.

4 A. Okay. Yes. That's correct.

5 Q. Liberty is proposing that certifications be
6 filed with the commission in connection with an
7 issuance of vice letter here; correct?

8 A. That's correct.

9 Q. And the certifications would be filed --
10 one would be filed by Liberty?

11 A. That's correct.

12 Q. And then another would be filed by the
13 underwriter?

14 A. That's correct.

15 Q. Would you agree that those certifications
16 should include a statement that the bonds as
17 structured provide quantifiable net present value
18 benefits to customers compared to traditional methods
19 for recovering costs?

20 A. That's correct. That is one of the
21 statutory requirements.

22 Q. And would you agree that the certifications
23 should also include calculations used to arrive at
24 that certification?

25 A. I would agree.

1 **Q. And would you agree that the certifications**
2 **should state any assumptions used in that calculation?**

3 A. Correct.

4 **Q. And would you also agree that**
5 **certifications should state that the bonds as**
6 **structured result in the lowest securitized charges**
7 **consistent with market concerns at the time the bonds**
8 **are priced?**

9 A. That's correct. That's consistent with my
10 testimony -- surrebuttal testimony.

11 **Q. Okay. Now, you also state in your**
12 **surrebuttal testimony that marketing and pricing of**
13 **bonds is, quote, not fundamentally different from**
14 **traditional debt security issues by letter; is that**
15 **correct?**

16 A. That's correct.

17 **Q. But for traditional debt securities Liberty**
18 **owes the obligation on those debts; correct?**

19 A. That's correct. If Liberty is an issue we
20 are --

21 **Q. But under securitization, under this**
22 **statute, the ratepayers would owe that obligation;**
23 **right?**

24 A. That's correct.

25 **Q. And Liberty would not owe that obligation?**

1 A. Correct.

2 Q. And that's a difference?

3 A. That is a difference.

4 Q. Okay. You also state in your surrebuttal
5 that the fundamental purpose of securitization of the
6 cost for Winter Storm Uri and Asbury is to benefit
7 customers through reduced customer rate impacts; is
8 that right?

9 A. Correct.

10 Q. You don't state that the fundamental
11 purpose is to include costs that couldn't, otherwise,
12 be included under traditional rates?

13 A. Can you clarify that question?

14 Q. Yeah. You don't say in your surrebuttal
15 that the fundamental purpose of securitization is to
16 include Liberty's recovery of costs that would not be
17 traditionally recovered under traditional rate --
18 ratemaking?

19 A. I don't state that, no.

20 Q. You state that the FAC and the rating
21 agency process are separate from the marketing and
22 pricing processes; correct?

23 A. Correct.

24 Q. And the statute only addresses the
25 marketing process; right? As far as the -- like, if

1 **the commission were to designate a staff**
2 **representative?**

3 A. No, I believe it's the entire process
4 there.

5 **Q. Okay.**

6 A. All facets of the -- of the issuance, the
7 designated person would be involved.

8 **Q. Okay. Have you reviewed the proposed**
9 **financing order attached to the testimony of**
10 **Ms. Niehaus?**

11 A. I have.

12 **Q. Now, in your surrebuttal testimony, you say**
13 **that staff representative and financial advisors would**
14 **be invited to join in a conference call?**

15 A. Correct.

16 **Q. But that financing order doesn't mention**
17 **any conference calls.**

18 A. I mean, it's -- I don't think it gets into
19 that detail in the financing order.

20 **Q. You also don't say that you -- staff**
21 **representative or financial advisor would be invited**
22 **to all calls?**

23 A. I mean, I don't think that -- I think -- I
24 think it says that the -- the designated
25 representative would be involved in the process from

1 start to finish.

2 Q. I'm just trying to get into the specifics
3 of what that means. You don't say that there would be
4 any in-person meetings?

5 A. I mean, during today's time, I think
6 everything is really virtually given where everyone is
7 located, but.

8 Q. But if there were an in-person meeting,
9 there is nothing in your testimony about financial
10 advisors and staff representatives being invited to
11 those in-person meetings?

12 A. There is not.

13 Q. Yeah. And your rebuttal also mentions
14 staff representatives and designated and financial
15 advisors asking questions?

16 A. Correct.

17 Q. But there's nothing in the financing order
18 or your testimony that requires those questions to be
19 answered?

20 A. I believe I do state in my testimony that
21 my surrebuttal testimony that any questions that are
22 answered will be taken and with advisement and -- and
23 responded to.

24 Q. Okay. Now, you also say that the staff
25 representative and financial advisor can provide

1 **suggestions?**

2 A. Correct.

3 **Q. But there's no way to resolve concerns**
4 **about those suggestions getting ignored or**
5 **disregarded; right?**

6 A. I think it's a collaborative effort.

7 **Q. Uh-huh. But there is no way to resolve**
8 **those concerns, if there is a difference of opinion,**
9 **there is no way to resolve --**

10 A. I think any -- any differences would be
11 addressed and discussed with the designated
12 representative to ensure that they are okay with the
13 approach, if there are differences.

14 **Q. Uh-huh. It -- if there were a difference,**
15 **though, under Liberty's proposal, the only way to**
16 **resolve it would be a recommendation to reject the**
17 **issuance advice letter; correct?**

18 A. I mean, I think -- I don't think --
19 hopefully, we wouldn't come to that, and I think we're
20 all working towards the same -- the same goal of -- of
21 saving customers money and getting the lowest cost
22 issuance, so I hope we wouldn't want to that.

23 **Q. Yeah. Because rejection of that issuance**
24 **advice letter would be catastrophic; correct?**

25 A. It would be.

1 **Q. Now, you say you hope it wouldn't come to,**
2 **that, but your proposal doesn't have any dispute**
3 **resolution process before that issuance advice letter**
4 **to resolve disputes about what the -- the marketing**
5 **and pricing of the bonds should be?**

6 A. I understand from my counsel based on other
7 securitizations that have issuance advice letters,
8 there's an informal process before the actual live
9 pricing where everyone would go around the room and
10 ensure the designated representative, the
11 underwriters, and the company all agree on the next
12 step, so that -- I think that should solve that issue.

13 **Q. Okay. Now, what if -- what if you go**
14 **around the room and everybody doesn't agree?**

15 A. Then that's -- I mean, that's something
16 that would need to be addressed at that time.

17 **Q. Uh-huh. And how would you address it?**

18 A. I think it depends on the issue.
19 Obviously, if the designated representative has
20 concerns, we can discuss with them, but ultimately,
21 the decision on the issuance is -- is -- is Liberty.

22 **Q. Uh-huh. Well, ultimately, it's the**
23 **commission that can approve or reject the issuance**
24 **advice letter; right?**

25 A. That's correct. That would be as you

1 mentioned catastrophic there.

2 Q. Uh-huh. So you didn't -- you're not
3 agreeing right now that some other method of dispute
4 resolution short of outright rejection of that
5 issuance advice letter would be a better alternative?

6 A. That's not something that I can commit to
7 here.

8 CURT STOKES: Okay. No further cross.

9 JUDGE WOODRUFF: Okay. For public counsel.
10 We'll come up for questions from the bench then. Any
11 questions from the commissioners who were on the line?

12 RYAN SILVEY: Judge, this is Commissioner
13 Silvey, I have no questions. Thank you.

14 JUDGE WOODRUFF: Thank you.

15 JASON HOLSMAN: Judge, this is Commissioner
16 Holsman. I also have no questions.

17 JUDGE WOODRUFF: Thank you, sir. I do have
18 some questions. First of all, what is your personal
19 experience with securitization bonds?

20 THE WITNESS: We -- Liberty has not issued
21 any securitization bonds to date.

22 JUDGE WOODRUFF: And I assume that you've
23 not had any experience anywhere else with them?

24 THE WITNESS: I have not, but we do have --
25 we are very seasoned issuer across our -- our company.

1 We.

2 JUDGE WOODRUFF: Issuing other kinds of
3 bonds you mean?

4 THE WITNESS: Lots of other kinds of bonds,
5 debt, equity, equity link securities. In the past two
6 years alone, I think we've issued over -- over
7 \$4 billion in the capital markets --

8 JUDGE WOODRUFF: Okay.

9 THE WITNESS: -- across the U.S. and
10 Canada.

11 JUDGE WOODRUFF: Okay. In your surrebuttal
12 testimony on page 2, lines 22 through page 3, line 2,
13 you state that there should not be additional
14 protocols or procedures added to the financing order
15 that could lead to delays in completing the
16 transaction. Ultimately, adding costs that Liberty's
17 customers will have to pay. What protocols or
18 procedures are you referring to there?

19 THE WITNESS: I think additional steps
20 of -- of having additional meetings with the -- the
21 designated representative. Anything that would slow
22 down the process could lead to -- anything that could
23 lead to delays, you're taking market risk, given our
24 environment right now, interest rates are going up, as
25 additionally, the -- the carrying charges would

1 continue to accumulate, and that's -- that would be
2 additionally a securitized --

3 JUDGE WOODRUFF: You're talking about the
4 risk of delays in general with the market conditions;
5 is that what you're talking about?

6 THE WITNESS: That's correct.

7 JUDGE WOODRUFF: Okay. Can you describe
8 for me what Liberty's proposal for the commission
9 staff and their advisors during the structuring
10 marketing and pricing phases -- what -- what is your
11 proposal?

12 THE WITNESS: I think they would be
13 involved in all facets of the process, any kind of
14 conference calls, meetings they would be invited to.
15 It's another -- it's another seat at the table to work
16 collaboratively to issue the securitized bonds.

17 JUDGE WOODRUFF: Okay. And I assume they
18 would be involved during the selection of the
19 underwriters?

20 THE WITNESS: That is -- that is something
21 that the company would -- would do.

22 JUDGE WOODRUFF: The company would select
23 underwriters?

24 THE WITNESS: Correct.

25 JUDGE WOODRUFF: Okay. Would they be

1 involved in the marketing?

2 THE WITNESS: I -- I'd imagine they would
3 be involved in helping address any concerns around
4 marketing. Usually, marketing is -- is done by -- you
5 know, the CFO or -- or treasurer of the company, but
6 they would definitely be involved in -- in providing
7 feedback for the process.

8 JUDGE WOODRUFF: Okay. Would they be
9 attending agency meetings?

10 THE WITNESS: I -- I -- I think it's all
11 facets of the -- the process is what we had indicated,
12 and what the statute also indicates.

13 JUDGE WOODRUFF: Okay. Is the selection of
14 the underwriter part of the process to place the bonds
15 to market?

16 THE WITNESS: It is, yes.

17 JUDGE WOODRUFF: But you indicated that the
18 staff would not be involved in selection of the
19 underwriters. What -- what's the reason for that?

20 THE WITNESS: I mean, I think the ultimate
21 decision comes from Liberty, and we can -- we can
22 obviously take suggestions from the -- the designated
23 representative and their -- and their financial
24 advisor. We do have a very robust process for
25 selecting underwriters at Liberty in Algonquin.

1 JUDGE WOODRUFF: Can you describe that
2 process for me?

3 THE WITNESS: Months in advance of any
4 potential issuance, we're talking with -- with
5 potential banks and understanding the market,
6 understanding their capabilities, their past record of
7 issuances, meeting with them, understanding, like,
8 timing of it, potential roadblocks to issuing, and
9 then we would, you know, meet with banks and regroup
10 and go through another -- another round and ask
11 additional questions after we've asked -- gone through
12 them all, and it's -- it's quite a process given that
13 we are issuing under many different markets that were
14 not always familiar with that we want to ensure that
15 we have the best underwriter that would lead to the --
16 the best pricing.

17 JUDGE WOODRUFF: Okay. And that's the
18 process you use now with -- with regular bond
19 issuances?

20 THE WITNESS: Correct. Correct.

21 JUDGE WOODRUFF: Okay. Now, switching
22 gears a little bit here. Should the commission issue
23 a single financing order addressing both Storm Uri and
24 Asbury securitizations or should they issue two
25 separate financing orders?

1 THE WITNESS: I believe we're -- we're
2 requesting for a combined financing order.

3 JUDGE WOODRUFF: And what's the advantages
4 and disadvantages of doing that?

5 THE WITNESS: There would be a savings on
6 some of the upfront costs of setting up the -- the
7 securitization. Additionally, having a bigger pool of
8 funds to securitize could -- could be more liquid and
9 so liquidity in the market or for investors, it is
10 important to -- to help drive down pricing. If it's a
11 smaller issuance, they may not be as -- as interested,
12 so it's important they have a sizable issuance or
13 to -- to (inaudible) sizable.

14 JUDGE WOODRUFF: Yeah. Do you have any
15 estimates of the difference in costs between issuing
16 the single order and a -- issuing two orders?

17 THE WITNESS: I believe that I -- I don't
18 have the figures in front of me, as I didn't do the
19 calculations myself, so I can't make an estimate here
20 at this time.

21 JUDGE WOODRUFF: Okay.

22 THE WITNESS: But I know there is a
23 (inaudible) and I believe Katrina, the company would
24 just -- Katrina Niehaus will -- could address that in
25 her testimony. She's more familiar.

1 JUDGE WOODRUFF: Okay. She'll be here
2 tomorrow. Can you explain the difference between rule
3 144-A, reg A bonds versus bonds registered with the
4 SCC?

5 THE WITNESS: Yeah. So 144-A is -- is sold
6 to qualified institutional buyers. These are large
7 institutions. They need to have a certain threshold
8 of -- of assets under management; whereas, a SCC
9 registered is available to the public, anyone can buy.

10 JUDGE WOODRUFF: Okay. And I believe
11 Liberty's petition indicates it will be issuing bonds
12 registered with the SCC; is that still the case or has
13 the position changed?

14 THE WITNESS: That's correct.

15 JUDGE WOODRUFF: Okay.

16 THE WITNESS: Based on advisement from our
17 structuring advisor, that will lead to the lowest
18 pricing.

19 JUDGE WOODRUFF: Was there any conditions
20 under which Liberty would consider issuing the -- the
21 other kind of bonds, the rule 144-A bonds?

22 THE WITNESS: I think we would definitely
23 take advisement from our -- from our underwriters who
24 are most familiar with the markets, and if it -- if
25 they felt it wouldn't be to better pricing, some

1 better savings for the customers, then obviously we
2 would -- we wouldn't be opposed to switching to that
3 type of issuance.

4 JUDGE WOODRUFF: And staff's representative
5 would be involved in that decision?

6 THE WITNESS: Yeah. I think staff --

7 JUDGE WOODRUFF: (Inaudible) about it
8 anyway.

9 THE WITNESS: Correct. It's a full process
10 there that the staff's designated representative be
11 involved.

12 JUDGE WOODRUFF: Okay. What's the minimum
13 dollar value of a securitized property at which a
14 reasonable underwriter would expect sufficient
15 investor interest liquidity in (inaudible) bonds are
16 issued (inaudible) for Liberty's customers? So what's
17 the smallest amount of securitization that would be
18 appropriate?

19 THE WITNESS: I think that question would
20 be answered by -- by Katrina Niehaus.

21 JUDGE WOODRUFF: Should the -- switching
22 gears again about the post-financing order process,
23 should the commission require that the bond advisory
24 body be established of Liberty, the commission, public
25 counsel -- or PSC staff, and then any designated staff

1 or consultants should we have a bond advisory team?

2 THE WITNESS: I think the -- the statute is
3 clear that the designated representative would be --
4 would be involved in the process, but Liberty would be
5 the ultimate decisionmaker.

6 JUDGE WOODRUFF: Okay. I believe that's
7 all the questions I have then.

8 THE WITNESS: Thank you, Your Honor.

9 JUDGE WOODRUFF: Any questions in response
10 to the -- any -- recross based on the questions from
11 the bench? Beginning with staff.

12 CURT STOKES: Yes, Your Honor.

13 EXAMINATION

14 BY CURT STOKES:

15 Q. I wanted to clarify. Earlier, you had
16 mentioned the selection of the underwriter, that --
17 that is a facet of issuing the bonds and that staff
18 would have collaboration in all facets of that?

19 A. That's something I will need to discuss
20 with the team. That's not something I can commit to
21 here.

22 Q. But if the commission ordered Liberty to
23 allow any staff representative and financial advisor
24 to have input and collaborations in all facets of the
25 selection of the underwriter, Liberty would comply

1 **with that order; right?**

2 A. If -- if that's what was ordered,
3 obviously, that's something we'll -- I'll need to take
4 back with my team. I can't commit to that here on the
5 stand.

6 Q. **And you -- you had said on the stand**
7 **earlier, though, the statute applies to all facets of**
8 **the -- of the bond issuance process?**

9 A. That's my understanding.

10 Q. **And the selection of the underwriter is one**
11 **of those facets?**

12 A. I suppose so.

13 Q. **So Liberty's proposing something less than**
14 **all facets?**

15 A. I think ultimately -- I mean, I've
16 mentioned that the underwriter -- the designator.

17 Q. **Yes or no. Is Liberty suggesting that**
18 **staff's representative and financial advisor be**
19 **something involved in collaboration, in something less**
20 **than all facets?**

21 A. No. No, we're not.

22 Q. **But the underwriter is one of those facets?**

23 A. But the ultimate decisionmaker is Liberty
24 based on the statute.

25 Q. **But you can't commit that the staff**

1 **representative and underwriter would have input and**
2 **collaboration with the selection of the underwriter?**

3 A. I -- I can take that back to the team, but
4 I -- I agree, collaboration from all facets is what is
5 written in the statute.

6 **Q. And the selection of the underwriter is one**
7 **of those facets; yes or no?**

8 A. Correct.

9 **Q. So if Liberty wants to follow the statute,**
10 **the staff representative and -- and financial advisor**
11 **would have to have input and collaboration with a**
12 **selection of the underwriter; yes or no?**

13 A. Yes.

14 CURT STOKES: Thank you.

15 JUDGE WOODRUFF: Counsel --

16 CURT STOKES: Hang on. I might have a
17 couple more clarifying questions.

18 JUDGE WOODRUFF: I misinterpreted your
19 thank you.

20 **Q. (By Curt Stokes:) Does Liberty owe a**
21 **fiduciary duty to its ratepayers?**

22 A. They do.

23 **Q. Would the underwriter owe a fiduciary to**
24 **its ratepayers?**

25 A. No, they don't.

1 Q. Would Liberty be obligated to repay these
2 bonds in any way once issued --

3 A. No.

4 Q. -- the ratepayers would?

5 A. Correct.

6 Q. Does the rating agency have a fiduciary
7 duty to the ratepayers?

8 A. I don't believe so.

9 Q. I believe somewhere in your testimony you
10 had mentioned that information provided to Liberty to
11 the rating agencies is usually posted on a website?

12 A. Correct.

13 Q. And that -- that's a secure website?

14 A. That's correct.

15 Q. And that password would be limited to only
16 one or two members of Liberty's team?

17 A. That's my understanding based on --

18 Q. For clarification, under your proposal,
19 would staff representative and financial advisor have
20 access to that secure website?

21 A. I -- I believe so, yes.

22 CURT STOKES: Okay. That's -- I just
23 wanted to clarify that. No further questions.

24 JUDGE WOODRUFF: All right. Public
25 counsel.

1 NATHAN WILLIAMS: Nathan Williams, no.

2 JUDGE WOODRUFF: Okay. Any redirect?

3 DIANE CARTER: Yes. Thank you, Judge.

4 Diane Carter for Liberty.

5 EXAMINATION

6 BY DIANE CARTER:

7 Q. Mr. Mosenby, you were asked if Liberty
8 would comply with a commission order; do you recall
9 that?

10 A. I do.

11 Q. Is it Liberty's intent to comply with any
12 order of the commission?

13 A. Yes.

14 Q. Is it Liberty's intent to get the best deal
15 on the bonds?

16 A. Yes. With any deal that we issue, it is
17 our intent we'll get the best deal possible.

18 Q. You were asked about the commission
19 represent -- designated representative being included
20 in in-person meetings and that that was not
21 specifically mentioned in your testimony; do you
22 recall that question?

23 A. I do.

24 Q. Is it typical to have in-person meetings in
25 your world right now?

1 A. No, it's not. No.

2 Q. If there were to be an in-person meeting
3 associated with this securitization, would the
4 designated representative be invited?

5 A. Of course.

6 Q. And if there are questions from the
7 designated representative, will the company try to
8 answer those questions?

9 A. Yes, of course.

10 Q. What is your concern about the designated
11 representative ultimately having a veto power or
12 decision-making authority being the one to finally
13 make a decision?

14 A. That ultimately that the process needs to
15 be very nimble and quick given that market volatility
16 can change very quickly. So anything that leads to a
17 delay in the process are taking a risk which
18 ultimately being bared by the ratepayers.

19 Q. And you were asked about your testimony not
20 spelling out a particular dispute resolution process
21 for during the pricing stage; do you recall that?

22 A. I do.

23 Q. I believe you fully answered already in
24 response to Judge Woodruff's question, but wanted to
25 give you the opportunity if there was anything else

1 **you wanted to explain regarding your concern, the**
2 **company's concern on having a formal dispute**
3 **resolution process set up during the post financing**
4 **order process.**

5 A. Yeah. I think that could also lead to --
6 to delays in the whole process, and ultimately, risk
7 of increasing the price of the bonds being issued.

8 **Q. When you speak in terms of timing, how fast**
9 **is this? Is it a month-long process? Is it multiple**
10 **months? What are we talking about?**

11 A. I think it all depends on -- on market
12 volatility, but in past experience, we're prepared and
13 ready to go well in advance of -- of starting the
14 process. So, like, a month in advance with -- with
15 dates in mind that we would need to go at any time,
16 given the market volatility.

17 **Q. Might decisions be needed -- let me**
18 **rephrase that. Do you always have a significant**
19 **amount of time before a decision -- a decision is**
20 **needed?**

21 A. No, we don't. Sometimes we need to be --
22 to be quick on decisions and taking that -- that
23 device from our -- our lead underwriters is -- is very
24 important given that they are the experts in the
25 field.

1 **Q. And when you say quick, what -- what do you**
2 **mean by that?**

3 A. I would say not -- not -- not waiting a
4 day, a day or two going back and forth, it is making a
5 decision that day when they do give the advice.

6 DIANE CARTER: Thank you. That's all the
7 questions I have.

8 JUDGE WOODRUFF: All right. Thank you,
9 Mr. Mosenby. And you can step down.

10 THE WITNESS: Thank you, Your Honor.

11 (Silence in audio._

12 JUDGE WOODRUFF: At this point we'll move
13 over to public counsel witnesses. Mr. Robinett.

14 DIANE CARTER: I am so sorry, Judge, I did
15 not hear that.

16 JUDGE WOODRUFF: We're moving onto
17 Mr. Robinett.

18 DIANE CARTER: Thank you.

19 JUDGE WOODRUFF: Good morning.

20 THE WITNESS: Good morning.

21 JUDGE WOODRUFF: If you'd please raise your
22 right hand. Do you solemnly swear or affirm that the
23 testimony you're about to give in this matter, the
24 whole truth, and nothing but the truth? Thank you.
25 You may inquire.

1 NATHAN WILLIAMS: This is Nathan Williams,
2 party representing the office of public counsel.

3 EXAMINATION

4 BY NATHAN WILLIAMS:

5 **Q. Mr. Robinett, would you please state and**
6 **spell your name?**

7 A. John Robinett, and Robinett is spelled
8 R-O-B-I-N-E-T-T.

9 **Q. Mr. Robinett, did you prepare -- let's see,**
10 **rebuttal testimony in case number E0-2022-0193 which**
11 **involves Asbury and surrebuttal testimony in case**
12 **number E0-2022-0040 which involves Storm Uri?**

13 A. Yes.

14 **Q. That was pre-filed in this case?**

15 A. Yes.

16 **Q. And did you also prepare or -- as part of**
17 **that testimony, did you also include schedules?**

18 A. Yes.

19 **Q. And was one of the schedules later filed**
20 **in -- at the time the question and answer form of the**
21 **testimony was filed?**

22 A. Repeat that question.

23 **Q. Was there one scheduled that was filed**
24 **later than the others?**

25 A. Yes. Per the commission's request.

1 Q. And your testimony that's your -- your
2 rebuttal testimony from case number E0-2022-0193 has
3 been marked for identification as Exhibit Number 210.
4 Would you have any changes to that testimony for it to
5 be your testimony here today?

6 A. I do not.

7 Q. And for your surrebuttal testimony from
8 case number E0-2022-0040, it's been marked as
9 Exhibit 211. Would you have any changes it to for it
10 to be your testimony here today?

11 A. I do not.

12 Q. Are Exhibits 210, 211 -- oh. And the late
13 filed exhibit has been marked as Exhibit Number --
14 schedule, I'm sorry, has been marked as Exhibit 212,
15 that would be schedule JAR-S-4-C. Are Exhibits 210,
16 211, and 212 your testimony here today?

17 A. They are.

18 NATHAN WILLIAMS: With that, I'll offer
19 Exhibits 210, 211, and 212.

20 JUDGE WOODRUFF: All right. 210, 211, and
21 212 have been offered. Any objection to their
22 receipt? Hearing none, they will be received.

23 NATHAN WILLIAMS: And Judge, I'll just note
24 that they do contain confidential and some of them
25 highly confidential information.

1 JUDGE WOODRUFF: Yes.

2 NATHAN WILLIAMS: With that, I'll tender
3 the witness.

4 JUDGE WOODRUFF: Okay. And for cross
5 examination, we begin with staff.

6 CURT STOKES: Thank you, Your Honor. Curt
7 Stokes for staff.

8 EXAMINATION

9 BY CURT STOKES:

10 Q. Good morning, Mr. Robinett. Your schedule
11 JAR-R-4 from case ER-2016-0023, you refer to that in
12 your rebuttal testimony at page 5?

13 A. Yes.

14 Q. Okay. Those are staff accounting schedules
15 from that 2016 rate case; correct?

16 A. They are.

17 Q. That was from staff's filed position, so it
18 doesn't necessarily establish an agreed upon rate base
19 for Asbury?

20 A. That is true.

21 Q. And doesn't necessarily establish an order
22 rate base for Asbury?

23 A. That is also true. Those were just my best
24 estimate to arrive at the depreciation expense and how
25 to calculate it.

1 CURT STOKES: No further cross here.

2 JUDGE WOODRUFF: Liberty?

3 DIANE CARTER: Yes. Thank you, Judge.

4 EXAMINATION

5 BY DIANE CARTER:

6 Q. Mr. Robinett, do you have your testimony
7 with you?

8 A. I do.

9 Q. Referencing your surrebuttal page 1, lines
10 13 to 17, you agree with staff's recommended
11 disallowance on the winter Storm Uri cost due to what
12 you call lack of availability of Riverton unit 11; is
13 that correct?

14 A. That's what it says there. My
15 recommendation is actually higher than staff's.

16 Q. And I was -- that was -- I was trying to
17 not have a compound question for you, and you got me
18 there. And then you also recommend an additional
19 disallowance on the storm cost for what you say not
20 being prepared with full capacity of fuel oil as a
21 back up for Riverton 11; correct?

22 A. Yes.

23 Q. The Riverton units are located in Kansas;
24 is that right?

25 A. Yes.

1 **Q. And the electricity generated from Riverton**
2 **is used by Liberty for service to customers in**
3 **Missouri, Arkansas, Kansas, and Oklahoma; correct?**

4 A. Yes, those are Liberty's service
5 jurisdictions.

6 **Q. And the Riverton units are used**
7 **traditionally in terms of cost allocation among the**
8 **four states?**

9 A. I -- yeah, I would assume so. Missouri
10 covers the vast majority of that share, but yes, I
11 would assume they are.

12 **Q. And on page 5 of your rebuttal testimony,**
13 **you explain your calculations and, you specifically**
14 **state that for your recommended disallowance you apply**
15 **the Missouri retail energy jurisdictional factor;**
16 **correct?**

17 A. Do you mean surrebuttal? I'm sorry, went
18 back to rebuttal.

19 **Q. I believe it was actually on page 5 of your**
20 **rebuttal where you originally explain that. It is**
21 **surrebuttal, I apologize.**

22 A. I mean, there is on rebuttal as well,
23 that's the Missouri jurisdictional for plant balances.

24 **Q. Okay. There we go. And, so you did make**
25 **that jurisdictional allocation?**

1 A. I did.

2 Q. Did you also take into consideration the
3 agreement Liberty has in place regarding revenues from
4 Riverton 11 with MJMEUC?

5 A. I did not.

6 Q. Would your recommended disallowance amount
7 change if Liberty were not receiving 100 percent of
8 the revenues from Riverton 11 at the time of Winter
9 Storm Uri?

10 A. Would you -- could you repeat that for me?

11 Q. Yes. Would your recommended amount of the
12 disallowance for Riverton 11 be reduced if Liberty
13 were not entitled to receive 100 percent of the
14 revenues from Riverton 11?

15 A. I don't know. Only because it didn't
16 generate, so there would not have been revenues
17 received for that unit.

18 Q. But your recommended disallowance amount is
19 calculated based on hypothetical revenues; correct?

20 A. Correct.

21 Q. And, so if those revenues would not have
22 been Liberty's, how would there still be a
23 disallowance based on those hypothetical revenues?

24 A. So that money still would have come to
25 Liberty is my understanding as they are the operators

1 of the system and the unit. They may have had to push
2 a payment to MJMEUC under that scenario.

3 **Q. Your disallowance -- your recommended**
4 **disallowance builds upon staff's disallowance;**
5 **correct? That Liberty did not tune Riverton 11 for**
6 **winter temperatures?**

7 A. I would say mine goes further than that.
8 And, so I assumed longer hours of operations than what
9 staff had done. I start at a different time of day
10 for the disallowance, and I also add in the fact
11 that -- and I'm not sure if it's highly confidential
12 or not, about the capacity and the amount of fuel that
13 was onsite.

14 **Q. Thank you. Would you agree being eligible**
15 **for a black start designation is not the same as**
16 **actually being listed as the black start resource in**
17 **Liberty's system restoration plan?**

18 A. I don't know that I've reviewed that plan,
19 but I am aware that it's public knowledge that those
20 two units have the capability of being black start
21 based on a -- the 2010 IRP.

22 **Q. And would you agree that being capable of**
23 **being a black start unit is not the same as being a**
24 **black start unit?**

25 A. I think it could be and could not be. I

1 think it's the square and rectangle scenario, where
2 rectangle may not be a square, but a square is a
3 rectangle.

4 **Q. Are you aware of the Southwest Power Pool**
5 **protocols that to be a black start resource it needs**
6 **to be listed in the approved system restoration plan?**

7 A. I'm not aware of that.

8 DIANE CARTER: Judge, may I approach?

9 JUDGE WOODRUFF: You may.

10 **Q. (By Diane Carter:) Mr. Robinett, I'll**
11 **represent to you that this Liberty's restoration plan**
12 **that has been approved by SPP; are you familiar with**
13 **that document?**

14 A. I'm not.

15 **Q. You did not review that document before**
16 **making the recommended disallowance?**

17 A. I did not.

18 **Q. Mr. Robinett, are you familiar with Brian**
19 **Mushimba's surrebuttal testimony?**

20 A. I am not.

21 **Q. You did not review Dr. Mushimba's testimony**
22 **in this case?**

23 A. I have not. We have a lot of cases going
24 on, and we had other deadlines in between when I filed
25 surrebuttal and the hearing today, so I have not had

1 the chance to review it.

2 Q. I'm going to ask you some questions and ask
3 if you agree or disagree with the statements. I
4 understand that you may not be able, then, to give me
5 an answer on the stand right now, if -- since you
6 hadn't reviewed Dr. Mushimba's testimony, so feel free
7 to just say to me you don't have an opinion on that,
8 but I'm going to read some more technical statements,
9 and I'd like to know if you agree or disagree. Do you
10 agree with Dr. Mushimba that black start testing is
11 not synonymous with tuning the unit?

12 A. I don't know that.

13 Q. Do you agree that Dr. Mushimba that tuning
14 the unit on natural gas does not improve the
15 performance of the unit when attempting to fire on
16 emergency fuel oil?

17 A. I don't know that.

18 Q. Do you agree with Dr. Mushimba that the
19 natural gas and emergency fuel oil delivery systems
20 are completely separate systems on Riverton unit 11?

21 A. I don't know that, but I would assume that
22 the fuel oil could be trucked in where natural gas
23 more than likely is a pipeline.

24 Q. Would you agree with Dr. Mushimba that the
25 control involve for natural gas delivery is, in fact,

1 **completely separate from the control valve for**
2 **emergency fuel oil delivery?**

3 A. I don't know that. It's been many years
4 since I've been to Riverton and 10 and 11 weren't
5 really the subject at the time of my visit.

6 Q. **Thank you, Mr. Robinett. Would you agree**
7 **that each of the control valves have unique flow**
8 **characteristics that would need to be taken into**
9 **account during the -- the tuning process for the**
10 **specific fuel type?**

11 A. I don't know that for certain, but they
12 certainly would have different types of flow, for the
13 different types of material.

14 Q. **And I would like to clear something up,**
15 **that may be a confusion in lots of folks' minds.**
16 **Winter Storm Uri was not a black start situation or**
17 **event; correct?**

18 A. My understanding is that the -- that Empire
19 had not lost all power, correct.

20 Q. **Liberty was not called upon to use its**
21 **designated black start unit for that purpose; correct?**
22 **There just wasn't a black start event here?**

23 A. I don't know what they were called on, but
24 I know that there was power at that site.

25 Q. **In this case, we're only talking about**

1 **black start because black start units have separate**
2 **testing requirements; correct?**

3 A. I honestly don't know if they do or don't
4 have different testing.

5 Q. **What is your understanding, then, of why**
6 **we're talking about black start requirements or black**
7 **start units in this case?**

8 A. I believe we're talking about these units
9 as resources that Empire had available under an
10 emergency scenario based on the KDHE requirements that
11 they sought a waiver for that did not operate when
12 called on.

13 Q. **And public counsel's and staff's contention**
14 **is that Liberty was imprudent in that regard because**
15 **the Riverton 11 unit hadn't been tested within the**
16 **last three years; correct?**

17 A. I -- I won't speak for staff. I mean, I
18 also have the additional that I don't believe there
19 was the level of fuel that was seen at other
20 facilities.

21 Q. **The Kansas air permit for the Riverton**
22 **units provides that Liberty may use fuel oil in**
23 **certain situations for meeting black start testing**
24 **requirements by any federal or state regulatory**
25 **agency; correct?**

1 A. I believe there are other requirements but
2 I believe that is one of them.

3 **Q. And the source of that testing requirement**
4 **that is the basis for staff and OPC's proposed**
5 **disallowances here is a NERC requirement, a Northern**
6 **Electric Reliability Corporation, requirement**
7 **regarding testing; is that correct?**

8 A. That I don't know.

9 **Q. About the testing to be done every three**
10 **years?**

11 A. I'm not aware of that requirement. I
12 relied heavily on staff's recommendation, and then
13 went looking at other things that were possibly wrong
14 with the situation.

15 **Q. So if staff's recommended disallowance**
16 **relied on that requirement, then that flows into your**
17 **recommended disallowance; correct?**

18 A. It is part of it. It's not all of it, but
19 yes.

20 **Q. And you're not in any way familiar with**
21 **that NERC requirement only applying to black start**
22 **resources?**

23 A. I am not.

24 **Q. And you're not aware of that NERC**
25 **requirement, then, only applying to the actual**

1 **designated black start resource --**

2 A. I am not.

3 **Q. -- restoration plan?**

4 A. I am not, sorry.

5 **Q. Again, you didn't review empire's**
6 **restoration plan?**

7 A. I did not.

8 **Q. If you could look for me at your**
9 **surrebuttal, page 4, lines 9 to 14, and this is what**
10 **you were just mentioning about the fuel oil tanks?**

11 A. Yes.

12 **Q. And you say these responses show that**
13 **Liberty took measures to make sure fuel oil tanks were**
14 **full at all of its combustion turbine units prior to**
15 **Winter Storm Uri except for Riverton units 10 and 11?**

16 A. Yes.

17 **Q. And then you go on to say, taking this into**
18 **account, this is why you recommend a much larger**
19 **disallowance for Riverton unit 11; correct?**

20 A. Right. Because if there was more fuel, it
21 would have been able to run longer.

22 **Q. Since filing your surrebuttal testimony,**
23 **have you learned why Riverton 10 and Riverton 11 fuel**
24 **oil tanks were not filled up to capacity?**

25 A. I don't believe I have.

1 **Q. Are you aware of how often fuel oil is used**
2 **at Riverton compared to other plants?**

3 A. I know that Riverton 10 and 11 are used
4 very infrequently to begin with compared to the other
5 CTs and combined cycle units.

6 **Q. And are you aware that there are also**
7 **differences in the plant characteristics between**
8 **Riverton and the other units in terms of why there**
9 **would be fuel oil at the other -- more fuel oil at the**
10 **other units?**

11 A. Not specifically. I don't know the sizes
12 of the -- the storage at those other facilities. That
13 would be one reason there could be more, and there are
14 more units at energy center for certain, but part of
15 those, I believe are run on a different type of fuel
16 source as well.

17 **Q. Exactly. Other plants use -- use fuel oil**
18 **more than the Riverton units; correct?**

19 A. I think it depends on the type of fuel oil,
20 but I -- I know there are jet engines that energy
21 center would be certainly a different type of fuel.

22 **Q. The Riverton units are only able to use**
23 **fuel oil in a Storm Uri level situation or worse;**
24 **correct? Because of the air permits?**

25 A. I believe it's only under emergency

1 scenarios and Liberty, in fact, had to seek out a
2 waiver to operate it or attempt to operate.

3 Q. And you did issue data request to Liberty
4 on that issue, and you received a response from
5 Liberty, I believe, it's -- it's DR8500 explaining why
6 there was not more fuel oil at the Riverton units?

7 A. The answer is -- I more than likely asked,
8 yes.

9 DIANE CARTER: Judge, if I can approach to
10 see if this refreshes his recollection?

11 JUDGE WOODRUFF: You may.

12 Q. (By Diane Carter:) And Mr. Robinett, what
13 I'm going to ask you is if this refreshes your
14 recollection on what you might have learned since you
15 filed your surrebuttal testimony, and then if that
16 changes your recommendation in any way, and it is just
17 that first page, I believe, Mr. Robinett?

18 A. Okay. Could you repeat the question for
19 me, if there was one?

20 Q. Yes. I was going to ask you if that
21 refreshes your recollection? Does that refresh your
22 recollection about finding out information from the
23 company after you filed your testimony in this case
24 about why there was not additional fuel oil at the
25 Riverton units?

1 A. I can't honestly tell you if I looked at
2 this or not since then with the other deadlines that
3 we've had in place for other cases.

4 **Q. And I certainly understand that. Would you**
5 **mind taking a look at it now and reviewing it? That**
6 **was your data request to the company; correct?**

7 A. Yes.

8 **Q. And after you've had an opportunity to**
9 **review that, if you could let me know if that changes**
10 **your recommended disallowance.**

11 NATHAN WILLIAMS: Doesn't recall. I'm not
12 sure what she's trying to do with it other than trying
13 to get it in as evidence.

14 JUDGE WOODRUFF: I understand your concern.
15 We'll deal with that when it's offered or if it's
16 going to be offered. I think the question at this
17 point is still proper.

18 THE WITNESS: The response here basically
19 says that the air permits are strict and Liberty says
20 that it does not require the same amount of fuel oil
21 for Riverton 10 and 11 as it does the other CTs in the
22 fleet.

23 **Q. (By Diane Carter:) Does that change your**
24 **recommended disallowance regarding Liberty having a**
25 **different amount of fuel oil at the Riverton units as**

1 **compared to the other generation units?**

2 A. I don't know that it does. I mean, it
3 was -- I was looking at it as what the company did in
4 respect to all of the others and that unit is an
5 outlier of how it -- of how it operated.

6 **Q. So for your assessment it doesn't matter if**
7 **there's a reason it's being treated differently?**

8 A. No, I don't think that's what I'm saying.
9 It's -- we -- we actually hit that emergency scenario.
10 I mean, you see the company filling up everywhere
11 else, and it's my mindset that why wouldn't you fill
12 it there?

13 **Q. And this gives you the answer of why you**
14 **wouldn't; correct? Because we didn't know Storm Uri**
15 **was going to happen in advance?**

16 A. I think there was some predictions that a
17 storm was coming that they were prepared for. I don't
18 know that the extent of the storm was anticipated.

19 **Q. We hadn't hit that target yet to trigger**
20 **the -- what's been called a waiver. I'm not sure that**
21 **that's accurate, but what we've been calling the**
22 **waiver in the air permit, that hadn't been triggered**
23 **yet; correct?**

24 A. You're saying at the time of the filling?

25 **Q. Yes. At the time when fuel oil was**

1 **procured for the other units?**

2 A. I -- I don't believe you would have hit the
3 emergency scenario for Riverton 10 and 11 operating on
4 fuel oil at the time of fuel purchase, correct.

5 DIANE CARTER: Judge, I'd like to just ask
6 one question in camera, if I could.

7 JUDGE WOODRUFF: Okay. We'll go in camera.
8 Just a moment.

9 (Hearing went in camera.)

10 JUDGE WOODRUFF: We're back in regular
11 session.

12 DIANE CARTER: Thank you.

13 **Q. (By Diane Carter:) Mr. Robinett, in your**
14 **rebuttal testimony, you describe three major**
15 **investments in Asbury after 2000, the year 2000?**
16 **Specifically, if you could look at page 2 of your**
17 **rebuttal, line 6 through 9. I'll give you a second to**
18 **get there. It states that you believe it is important**
19 **for the commission to understand Liberty's capital**
20 **spended at Asbury over its lifetime; is that correct?**

21 A. Yes.

22 **Q. All capital spending at Asbury was**
23 **previously found to be prudent by the commission;**
24 **correct, based on what was known at the time the costs**
25 **were incurred?**

1 A. I don't know that for certain. I don't
2 know if there were other -- if there have been
3 disallowances over the entire history.

4 **Q. But if the cost came in and were in rates,**
5 **that means the commission made a prudence**
6 **determination; correct?**

7 A. I don't know that for certain. I know that
8 they would have been ordered based on just and
9 reasonable rates. I don't know if prudence reviews
10 were part of all of that.

11 **Q. Looking at the same section of your**
12 **rebuttal testimony, you say that ratepayers did not**
13 **receive the full value of the assets that were**
14 **promised and expected; do you see that statement in**
15 **your testimony?**

16 A. I do.

17 **Q. And is that based on Asbury being retired**
18 **early, before the end of its expected life?**

19 A. Right. So when the air quality control
20 system was put on the life of Asbury was extended and
21 at the time I was with commission staff and the life
22 was extended and depreciation rates would have changed
23 to reflect that, and the unit did not make it to that
24 date, correct. And, so ratepayers haven't paid in
25 full for that, and I don't know that they would have

1 received the full value as it was built into rates.
2 They did during the time it was operating, but it --
3 it didn't meet what the last depreciation study said
4 it was expected to.

5 **Q. It was retired early; is that our easy way**
6 **of saying that?**

7 A. I think so, yes.

8 **Q. You're familiar, I'm sure, with the**
9 **securitization statute?**

10 A. I have looked at it once or twice, at
11 least, yes.

12 **Q. It's not small. I'll give you that. The**
13 **securitization statute provides that an electric**
14 **utility, like Liberty may petition for a financing**
15 **order to finance energy transition costs; are you**
16 **familiar with that? That's why we're here on Asbury.**

17 A. Yes. I believe -- I believe it states that
18 energy transition costs, yes.

19 **Q. And energy transition costs include in the**
20 **definition the un-depreciated investment in the**
21 **retired electric-generating facility; correct?**

22 A. I don't have it in front of me, but I will
23 take your word that -- I would assume that is likely
24 one of the many options for an energy transition cost.

25 **Q. And that when we file a petition like**

1 **Liberty did here, they were required to include in**
2 **that petition a description of the electric generating**
3 **facility that was retired prior to the date that all**
4 **undepreciated investment had been recovered through**
5 **rates; correct?**

6 A. I don't know that for certain but it
7 wouldn't surprise me that you had to describe
8 everything that you were seeking.

9 **Q. So essentially --**

10 NATHAN WILLIAMS: Judge, I'm going to
11 object to her just reading the statute, then saying,
12 does the statute say what the statute says of this
13 witness? I'm not sure what she's doing with this.

14 DIANE CARTER: My very next question.
15 Thank you, Nathan.

16 JUDGE WOODRUFF: I'll overrule the
17 objection. You can ask your question.

18 **Q. (By Diane Carter:) So the securitization**
19 **legislation, that statute is specifically about early**
20 **retirements?**

21 A. You're asking specifically only about the
22 energy transition? Because there's also the --

23 **Q. Yes.**

24 A. -- securitization for like a major storm.

25 **Q. Yes. On Asbury, it's only pertaining to**

1 **the un-depreciated amount, the securitization statute.**

2 A. No, I don't think it is because it also
3 includes, like, an allowance for dismantlement, so.

4 **Q. It only applies if -- if the facility were**
5 **retired early; correct? It wouldn't come into play if**
6 **you waited until all of the amount had been collected**
7 **through rates?**

8 NATHAN WILLIAMS: Judge, I'm going to
9 object to the question as vague. I'm assuming we're
10 to the second question, because I heard two, but I
11 don't know what amounts being collected in rates she's
12 referring to.

13 JUDGE WOODRUFF: Can you clarify your
14 question?

15 DIANE CARTER: I can. Maybe if it helps if
16 I back up.

17 **Q. (By Diane Carter:) Mr. Robinett, the**
18 **testimony that we just discussed, your rebuttal**
19 **testimony, on page 2, line 6 through 9, you agreed**
20 **that your concern, public counsel concern is that**
21 **Asbury was retired before the end of its expected**
22 **life?**

23 A. Yes.

24 **Q. It was retired early?**

25 A. Yes.

1 DIANE CARTER: Thank you. That's all the
2 questions I have.

3 JUDGE WOODRUFF: Okay. And then we'll come
4 up for questions from the bench. Do we have any
5 questions from the commissioner online?

6 JASON HOLSMAN: No questions, Judge.

7 JUDGE WOODRUFF: Thank you. That's
8 Commissioner Holsman, I believe.

9 JASON HOLSMAN: That's correct.

10 JUDGE WOODRUFF: I do have some questions.
11 I do have some questions, and first of all, are you
12 aware of how and where fuel oil is stored at Riverton?

13 THE WITNESS: I believe they have a tank
14 with a certain level of capacity onsite, and my best
15 recollection is that it is outside and not inside of a
16 facility.

17 JUDGE WOODRUFF: Okay. Do you know if it's
18 individual tanks for Riverton 10 and 11 or is it a
19 combined tank?

20 THE WITNESS: I'm not entirely certain, but
21 it would not surprise me if it was a combined tank
22 based on their locale at the facility.

23 JUDGE WOODRUFF: Let me just ask a general
24 question about the Riverton units. I believe the
25 testimony yesterday there were three units there, 10,

1 11, and 12. Do you know what happened to units 1
2 through 9?

3 THE WITNESS: I know 7, 8, and 9 were all
4 retired at the same time. And that was prior to the
5 2016 case, and I believe that case actually involved
6 dismantlement costs for them.

7 JUDGE WOODRUFF: Okay. So is this an old
8 facility that only a few of the units are left in.

9 THE WITNESS: Yeah. So if I recall
10 correctly, this facility at one time held the
11 generator that was part of the 1903 world's fair named
12 old Kate.

13 JUDGE WOODRUFF: Okay. So it's a little
14 old, parts of it were.

15 THE WITNESS: Yes.

16 JUDGE WOODRUFF: Okay. Now, in your
17 surrebuttal testimony at page 2, you state you had
18 discovered some perimeters that might affect the time
19 period of hypothetical operation. Did you -- you were
20 still looking for some discovery on those. Did you
21 ever get that discovery, and you -- did you make any
22 changes? Does that impact your disallowance
23 calculation?

24 THE WITNESS: So it's the best I have. I
25 tried to reach out to the Kansas Department of Health

1 and Environment to figure out the exact timing of when
2 the waiver was granted. I still haven't heard back
3 from them, so I -- I estimated a certain time of day
4 based on statements that were in a report attached to
5 Mr. Olson's testimony that said they got a waiver in
6 the afternoon, so I made a recommendation to start at
7 a certain time in the afternoon.

8 JUDGE WOODRUFF: Okay.

9 THE WITNESS: And then ran the unit until
10 it -- the market prices were below what I had
11 calculated for the hourly fuel cost for that unit.

12 JUDGE WOODRUFF: Okay. That's all the
13 questions I have. Is there any recross based on the
14 questions from the bench?

15 CURT STOKES: Yes, Your Honor. This is
16 Curt Stokes on behalf of staff.

17 EXAMINATION

18 BY CURT STOKES:

19 **Q. Mr. Robinett, do you remember when you were**
20 **asked on cross by Liberty's counsel that your**
21 **reimbursement was not a black start event?**

22 A. Yes.

23 **Q. Did Liberty know that going into your**
24 **reimbursement?**

25 A. I -- I don't think they would have known

1 that, no.

2 **Q. They didn't know whether Uri would be**
3 **serious enough to be black start or not?**

4 A. I -- I don't think they would have. I --
5 I -- I don't think they would have, no.

6 **Q. Was your rebuttal testimony criticized for**
7 **using a quote -- how it turns out standard for**
8 **prudence?**

9 DIANE CARTER: I would object, Your Honor,
10 that that redirect question goes beyond the scope of
11 any questions put to Mr. Robinett.

12 CURT STOKES: It goes directly to the
13 question that Uri was not a black start event.

14 JUDGE WOODRUFF: I didn't ask any questions
15 about whether Uri was a black start event, that came
16 from counsel, and this is recross based on
17 questions -- so I'll sustain the objection.

18 CURT STOKES: Okay.

19 **Q. (By Curt Stokes:) I think -- oh, yeah.**
20 **Dual fuel capability of Riverton, have ratepayers paid**
21 **extra for Riverton based on its fuel oil capability?**

22 A. I would say they've paid for the
23 availability of both and for both have access to both.

24 CURT STOKES: Okay. No further cross.

25 JUDGE WOODRUFF: Recross from Liberty?

1 DIANE CARTER: No, Judge. And I apologize.
2 I was confused there on what stage we were in.

3 JUDGE WOODRUFF: Okay. Any redirect?

4 NATHAN WILLIAMS: Just a few questions, I
5 believe. Nathan Williams.

6 EXAMINATION

7 BY NATHAN WILLIAMS:

8 Q. Mr. Robinett, do you recall there was a lot
9 of questioning during cross examination and
10 commissioner questioning about black start capability
11 and black start testing; do you recall that that?

12 A. Yes.

13 Q. What is the relevance to black start with
14 regard to your recommendation for a disallowance based
15 on Riverton 11 being capable of being run during Storm
16 Uri potentially?

17 A. The answer is, I don't really know. It was
18 more based on that unit is there, and I think with the
19 company's actions to get the waiver and it not being
20 able to fire was -- it was more based on the
21 availability of fuel and using spring boarding off of
22 staff to come to an adjustment.

23 Q. Well, what does black start capable mean?

24 A. My understanding is that black start
25 capable would mean that that unit is essentially able

1 to fire without the grid. It's the first unit to come
2 up, and it would then be used to provide power to the
3 rest of the units to bring those up because certain
4 ones of those need -- every station usually has some
5 sort of energy usage in order to bring it up and keep
6 it running. So it would provide power to the other
7 facilities in order for them to start.

8 **Q. So it impacts reliability in terms of being**
9 **dispatchable?**

10 A. In a blackout, it would be the first unit
11 able to come on to re-power the grid.

12 NATHAN WILLIAMS: No further questions.

13 JUDGE WOODRUFF: Mr. Robinett, you can step
14 down. We're due for a break. Let's come back at 10
15 minutes after 10.

16 NATHAN WILLIAMS: -- Mr. Riley.

17 THE WITNESS: Good morning, sir.

18 EXAMINATION

19 BY NATHAN WILLIAMS:

20 **Q. Would you please state and spell your name?**

21 A. My name is John S. Riley, R-I-L-E-Y.

22 **Q. Mr. Riley, did you prepare and have**
23 **pre-filed rebuttal and surrebuttal testimony for these**
24 **cases before the commission here today?**

25 A. Yes, I did.

1 review revenue procedure 2005-62 which was mentioned
2 in the direct testimony of Ms. Niehaus, and I think it
3 was also in the surrebuttal testimony of Ms. Bolin?

4 A. I think -- I think I'm familiar with what
5 you're referring to, yes.

6 Q. And for clarification, the -- when the
7 bonds are actually sold and issued, that is not
8 taxable; correct?

9 A. That is correct.

10 Q. But as the company collects the
11 securitization charges, that there is an income tax
12 associated with those charges?

13 A. I -- I actually have said that in
14 testimony, yes.

15 Q. Okay. I just wanted to make sure we had it
16 clarified.

17 No further cross.

18 JUDGE WOODRUFF: Okay. For Liberty.

19 DEAN COOPER: Yes, Your Honor. Dean Cooper
20 for Liberty.

21 EXAMINATION

22 BY DEAN COOPER:

23 Q. Let's just set some kind of timeframes
24 here, Mr. Riley, to start with. Would you agree that
25 the rates from case number ER-2019-0374 what's

1 commonly referred as Empire's 2019 rate case became
2 effective on -- or in September of 2020, and those
3 rates were no longer effective at the end of the day
4 on May 31st of 2022?

5 A. I could take your word on the start. I
6 know that rates became effective the end of May.

7 Q. Or the first of June of this year, rates?

8 A. June.

9 Q. And what we refer to, I think, in various
10 places is the Asbury AAO started or was to start on
11 January 1st of 2020; correct?

12 A. Yes.

13 Q. Now, you describe in your testimony,
14 obviously, a number of issues that you've raised with
15 regard to the company's calculation of energy
16 transition costs that it hopes to securitize. Do you
17 have your surrebuttal schedule JSR-S-01 before you?

18 A. Yes, sir.

19 Q. And on page 1 of that document, among other
20 things, I suppose, it purports to summarize the
21 differences between your calculations as of
22 surrebuttal and the company's calculations; correct?

23 A. Yes.

24 Q. And if we look at -- there -- and to that
25 end, there's a column for company and a column labeled

1 OPC; correct?

2 A. That's correct.

3 Q. Now, would you agree that the number you
4 have used for the company's position for Asbury ADIT
5 does not accurately represent the company's position
6 on that issue?

7 A. Yes, you're right. It is not the present
8 value that company has calculated.

9 Q. And, so to truly to get back to the
10 company's -- company's position, you'd have to use a
11 different number than what you've reflected on that
12 exhibit; correct? Or on that schedule?

13 A. That would be correct.

14 Q. Now, in your rebuttal testimony, I think
15 you indicate that there should be no net present value
16 applied to the ADIT amount; correct?

17 A. I believe my position is that it should run
18 through the AAO first, so if it -- if it goes through
19 the AAO, you wouldn't have a net present value.

20 Q. All right. So -- and I think in your
21 testimony, you -- you first kind of wondered why the
22 company applied the NPV calculation, and then kind of
23 surmised that, perhaps, it was Section 393.1700.2, sub
24 3, sub C, sub M; correct?

25 A. I'm glad you said that.

1 Q. Yeah. I think you actually make that
2 citation in your testimony; correct?

3 A. With some help, yes.

4 Q. Yeah. And if we look at that portion of
5 the securitization statute, as to ADIT, it indicates,
6 doesn't it, that the customer credit shall include the
7 net present value of the tax benefits calculated using
8 a discount rate equal to the expected interest rate of
9 the secured utility tariff bonds for the estimated
10 accumulated and access deferred income taxes at the
11 time of securitization including timing differences
12 created by the issuance of the securitized utility
13 tariff bonds amortized over the period of the bonds
14 multiplied by the expected interest rate on such
15 securitized utility tariff bonds. A lot of words
16 there. But certainly you would agree, wouldn't you,
17 that there is a -- a contemplation that there's going
18 to be a net present value of the tax benefits;
19 correct?

20 A. Within the securitization statute, yes.
21 They -- they have -- they have spelled out what you
22 just said as a net present value of the accumulated
23 deferred income tax.

24 Q. Well, and -- and even in that context, I
25 think, if I look at your rebuttal testimony, you

1 surmise or you sort of indicate an opinion that the
2 use of the NPV as designated by the statute would be a
3 confiscatory act; is that accurate?

4 A. That's probably accurate. I, myself, think
5 so.

6 Q. And you say probably, but what I'm looking
7 at is on line -- or page 13 of your rebuttal, and line
8 6 and 7?

9 A. I see this recalculation as a confiscatory
10 act that is my uninformed opinion as I have not sought
11 the advice of counsel regarding.

12 Q. Yeah. That's where I was going next.

13 A. Okay.

14 Q. Was that to the extent that's your opinion,
15 it's an admitted uninformed opinion; correct?

16 A. Well, sure.

17 Q. Yeah. Looking back at that first page of
18 JSR-S-01, I'm going to kind of go down the list of --
19 of the items at the top of the list there, and would
20 you agree with me that the number you reflect for net
21 retired Asbury plant for the company is essentially a
22 number that the company and the staff have agreed on?

23 A. I think that's probably accurate, yes.

24 Q. And the same question as to Asbury
25 environmental regulatory assets?

1 A. According to the most recent reconciliation
2 that was sent out yesterday, that would be accurate.

3 Q. And then same question as to the Asbury
4 fuel inventory, staff and company are on the same --
5 at the same place on those?

6 A. You're both wrong, yes.

7 Q. And as to Asbury access ADIT, I don't know
8 they're dollar for dollar the same, but they're in
9 pretty close proximity, staff and company; correct?
10 They're both at 12 million and a little bit more?

11 A. I -- that's a safe assumption, yes.

12 Q. Okay. Asbury -- additional Asbury
13 decommissioning cost, phase two, that's the same
14 between staff and company; isn't it?

15 A. Phase two, yes. All three of us are in the
16 same.

17 Q. Now, let's go back to access ADIT for a
18 minute, and we pointed out the difference and staff
19 and company are over a little over 12 million, and if
20 we look at your schedule, you're just shy of 17
21 million; correct?

22 A. That's correct.

23 Q. And if I understand your testimony
24 correctly, the differences because you don't recognize
25 any access ADIT having been returned to customers

1 through rates after Asbury was retired; correct?

2 A. That's my position that it's -- the clock
3 stopped when they retired it.

4 Q. Now, having said that, the return of access
5 ADIT was built in Liberty's rates up through the end
6 of May of this year; correct?

7 A. That's my understanding from staff, yes.

8 Q. Now, near the bottom of your schedule,
9 same -- on page 1, you have a cash-working capital
10 amount of 15,205,731; correct?

11 A. Yes, sir.

12 Q. And before we go on, would you agree with
13 me that staff and the company have a cash working
14 capital amount in each of their AAO liability
15 calculations?

16 A. I'm not sure about staff. I know that
17 company had originally when they filed had an amount
18 built in for cash working capital, but to be honest, I
19 can't put my finger on staff's.

20 Q. And you just don't know as to staff?

21 A. I don't know.

22 Q. Could be that they do have a cash-working
23 capital; correct?

24 A. Yes, sir.

25 Q. Now, your cash-working capital calculation,

1 I believe, is found on page 5 of -- of this schedule;
2 is that right?

3 A. Yes, sir.

4 Q. Now, they're not identified, but I assume
5 some of these columns represent your -- your lead lag
6 days?

7 A. Yeah. Yeah. Yes, sir.

8 Q. Which ones?

9 A. You would have your lead lag column --
10 well, the -- the expense lag is almost in the middle
11 of the -- of the page that would be if you're looking
12 45.04 -- 45.04 before going on down. Pretty much took
13 that from what staff did on their lead lag in the last
14 case, I think.

15 Q. The 45.04 is what staff did?

16 A. Yes. It was -- I didn't re-invent the
17 wheel there. I took what they had.

18 Q. How about the next column?

19 A. The 365s were all representative of -- of
20 collections that did not get paid out. The 181.24 for
21 the property taxes would have been staff calculation
22 as well as the 12 for payroll and the 91.11 for the
23 interest. Those would have been staff calculation.
24 The 364 would have been mine.

25 Q. Those were your calculations, and those

1 would not have been numbers that would have been
2 utilized in the setting of rates in the 2019 rate
3 case; correct?

4 A. No, they would not have been.

5 Q. So would you agree with me what you did was
6 not an attempt to approximate what part of the
7 cash-working capital in the 2019 Empire rate case was
8 represented by Asbury, but you essentially performed a
9 new calculation with -- with your new inputs?

10 A. I performed similar calculations using what
11 I know, and what my inputs were to the cash-working
12 capital calculations.

13 Q. And at least as to those three that we
14 identified, new values that were not a part of the
15 2019 Empire rate case; correct?

16 A. That would be correct.

17 Q. Now, if we turn over to the next page, page
18 2 of this schedule, is this essentially your version
19 of the AAO liability?

20 A. It's an accurate statement.

21 Q. And one of the items on there is property
22 taxes; correct?

23 A. Yeah. Line 24.

24 Q. Uh-huh. And when I look at that, I guess
25 I'm curious, because as I look at line 24, I see that

1 through June of 2021, you've got an amount of 2
2 millions \$860 and -- or \$860,004. I didn't say that
3 correctly, but let's see if we're on the same sheet of
4 music?

5 A. Uh-huh.

6 Q. A little over 2.8 million; correct?

7 A. Correct.

8 Q. And that represents from the start of the
9 AAO through June 21st which would be about 18 months;
10 correct?

11 A. That's what I've been told.

12 Q. And, so then in the next column, you
13 represent that you're extending that through May 2022,
14 which essentially would be 12 months, and yet, you
15 reflect a number that's twice that 2.8 million in the
16 first column; correct?

17 A. That's correct.

18 Q. And ultimately, coming with a property tax
19 of 8.5 million and some change that you represent is a
20 three-year number; correct?

21 A. That's correct.

22 Q. And -- now going back to where we started,
23 the rates from the 2019 Empire rate case ended
24 essentially as of June 1st of this year; correct?

25 A. Yes.

1 **Q. And, so would you agree from January 1st,**
2 **2020, through the end of those rates was a period of**
3 **29 months?**

4 A. Yes.

5 **Q. Now, I guess -- here's the why question.**
6 **Why is your one-year calculation from June of 2021**
7 **through the end of May 2022, twice as much as what was**
8 **utilized for the first 18 months?**

9 A. Property taxes are calculated on
10 January 1st of every year. They come -- they have to
11 be paid. They're not due. They have to be paid
12 without penalty by December 31st of the same year. So
13 when calculating what your expense would be for
14 property taxes, you have to look at each January 1st,
15 not how many months by how many January 1sts, because
16 all property taxes are due -- are calculated and are
17 expected to be paid by the owner that owns it on
18 January 1st. So taking the 2.8 million as of
19 January 1, 2020, would have been due the end of that
20 year, going to January 1st of 2021, you would have
21 another bill for 2.8 million and going to January of
22 2022, you would have a third bill for 2.8 million, so
23 if you -- if you've ever bought a car on any day of
24 the year other than January 1st, you don't owe any
25 property taxes for that year. Your clock, as far as

1 that goes, would be the following January 1st is when
2 the assessor would bill you for property taxes, so.

3 Q. So.

4 A. So we have three Januarys.

5 Q. Okay. So I think we're going two different
6 directions here, because would you agree with me that
7 what we're trying to capture in the AAO liability is
8 the amount of property tax included in Empire's rates
9 that are associated with Asbury?

10 A. There would be three years worth of rates
11 associated with Asbury.

12 Q. But would there not be 29 months as we
13 discussed before of a period that covers the time that
14 that AAO was in effect, and there was still an Asbury
15 property tax amount built into rates; correct?

16 A. It doesn't -- with property taxes, it
17 doesn't matter if it's 29 months or 22 months or -- or
18 actually 29 months or 26 months. It matters if you
19 own the property on January 1st of that year, so to
20 say, well, we need to stop property tax on --
21 because -- on the 29th month, it doesn't work that way
22 because it was due -- it was due the first of the
23 year.

24 Q. But you're talking about the company's
25 obligation; correct?

1 A. Company's obligation, yes.

2 Q. And you're not -- you're not talking at all
3 about what was built into rates and would be assumed
4 to be paid by the ratepayers on a monthly basis?

5 A. On a monthly basis, that would have fallen
6 under the cash working capital calculations, and yes,
7 you would care if it was 29 months or 24 months.

8 Q. But again, your assessment is solely on
9 what the company was paying in property taxes and not
10 what was built into rates over that 29-month period;
11 correct?

12 A. No. I had calculated cash-working capital
13 for property taxes and that would be on a monthly
14 basis.

15 Q. But as to your property tax adjustment?

16 A. Property tax adjustment, it would be a
17 different -- is a different animal than the -- the CWC
18 calculation.

19 Q. Correct. So here we are. Let's go back.
20 This is one of those items where the staff and the
21 company are pretty close; correct?

22 A. I think so, yes.

23 Q. Just slightly over \$4 million each on
24 property taxes?

25 A. Right.

1 Q. And you're at 8.5 million and some change;
2 correct?

3 A. Correct.

4 Q. And again, I take it from your discussion
5 that your 8.5 million in property taxes that you use
6 as liability in your AAO liability does not seek to
7 identify the amount of property taxes that were in
8 Empire's rates associated with Asbury; is that
9 correct?

10 A. No. I think mine are the accurate
11 calculation of -- of the --

12 Q. I didn't ask you whether they were accurate
13 or not. I asked you whether they tried to assess what
14 was in Empire's rates for Asbury property taxes from
15 January 1st, 2020, through the end of May of 2022. Or
16 did they try to calculate something different?

17 A. No. The -- as I said, the calculation
18 starts January 1st, so if you get to three Januarys,
19 you've got three years of -- of expenses.

20 Q. Whether or not those three years of
21 expenses have been built into rates, I take it?

22 A. They're built into -- they're built into
23 the rates.

24 Q. Let's talk ADIT for a minute. Now, we
25 always say that ADIT is about tax-timing differences;

1 correct?

2 A. Yes.

3 Q. So money is received for taxes that'll be
4 paid -- assume to be paid in later years; correct?

5 A. Yes.

6 Q. Because of the function of primarily
7 accelerated depreciation?

8 A. A timing difference, yes.

9 Q. And in the interim, those amounts paid by
10 customers that exceed the current taxes are used to
11 create rate base; correct?

12 A. Accumulated deferred income taxes of rate
13 base reduction.

14 Q. Yeah. That's the ADIT. And ultimately,
15 those deferred income taxes, again, are used to reduce
16 the rate base amount that's used to calculate the
17 rate; correct?

18 A. That's correct.

19 Q. And ADIT does not have within the -- within
20 the ratemaking context does not have a dollar for
21 dollar impact on annual revenue requirement; correct?

22 A. Rate -- base rate of return.

23 Q. If you have -- and this is kind of my
24 example, that I used with Ms. Bolin yesterday, just a
25 real simple example. I mean, we've got a thousand

1 **dollars in rate base, ADIT is \$100, that doesn't mean**
2 **that the revenue requirements going to be \$100 less;**
3 **does it?**

4 A. No.

5 **Q. I'm sorry?**

6 A. If I understand you correctly, it would be
7 \$100 times rate of return and that --

8 **Q. That's where it would benefit the customer;**
9 **correct?**

10 A. Yes.

11 CURT STOKES: Okay. Your Honor, may I
12 approach the witness?

13 JUDGE WOODRUFF: You may.

14 (Silence in audio.)

15 **Q. (By Curt Stokes:) Mr. Riley, what I've**
16 **handed you is from, I believe, Exhibit 21 in this case**
17 **and within that exhibit, it has what's been marked as**
18 **CTE-13 Asbury; do you see that?**

19 A. Yes, sir.

20 **Q. Okay. Now, this is Ms. Emery's calculation**
21 **of her ADIT number; correct?**

22 A. I think so.

23 **Q. Now, what I really want to focus on is kind**
24 **of a continuation of our most recent discussion about**
25 **the impact of ADIT in ratemaking. So just to kind of**

1 set this up, you can see on the left side that there
2 is an Asbury ADIT amount of \$35,665,767; correct?

3 A. Yes, sir.

4 Q. And in that first column that's taken, it's
5 split over 13 years, and essentially amortized over
6 13 years; correct?

7 A. Yes.

8 Q. And in the next column that says balance
9 ADIT, that reflects the balance after each year of
10 amortization; correct?

11 A. Yes.

12 Q. Now, let's -- let's skip over, then, to the
13 return on rate base number. That 6.77 is a -- it's a
14 number that's been used in this case some; correct?

15 A. That's correct.

16 Q. And the far right column, then, would you
17 agree is a yearly calculation of a revenue requirement
18 benefit to customers from the balance of the ADIT at
19 each of those 13 years?

20 A. I'm not quite sure I can say that because
21 I'm not really sure what the middle columns are, the
22 2.47 and this balance.

23 Q. Yeah. And -- and we can talk about those,
24 but let's skip those just for a second; okay? And --
25 let's see. Do you want to do some calculations? You

1 want me to do some calculations or do you -- or do we
2 want to eyeball what this is?

3 A. So are you implying that the running
4 balance in the second column?

5 Q. The balance ADIT column, yes?

6 A. Times the rate of return of 6.77 provides a
7 reduction of revenue requirement, I guess, for lack of
8 a better term of -- of the final right side column.

9 Q. That's correct. Is that -- would that be
10 consistent with your understanding?

11 A. I -- I think I can follow that, yeah.

12 Q. Okay. And we probably assume the way
13 that's done that there's a rate case every year, those
14 amounts wouldn't necessarily change on a yearly basis,
15 I suppose, for ratemaking purpose, but you --
16 generally that, that would reflect that that process
17 would reflect the -- the customer benefit associated
18 with ADIT within a rate case?

19 A. Anytime you're going to try and make these
20 kind of reviews that you would look at your balance
21 of -- of accumulated deferred income tax times, the
22 rate of return, you can calculate the -- the benefit
23 to the ratepayer of that rate pay reduction. I don't
24 necessarily agree with what she's done in her.

25 Q. With her assumption. So the process would

1 be consistent?

2 A. The process is that way.

3 Q. Now, let's go back to the middle two
4 columns and maybe you don't understand what these --
5 these are necessarily, but let me propose this to you.
6 Does the summary at the bottom look like the company's
7 position on the net present value of the ADIT that's
8 been put forward in Ms. Emery's testimony?

9 A. I think it seems to be pretty close, 4.7,
10 yeah.

11 Q. And the 2.47 would have been the
12 securitization yield that the company used --

13 A. Yeah.

14 Q. -- for its testimony; correct?

15 A. Yeah. That's -- that was the going rate, I
16 believe.

17 Q. Okay. Now, I'm going to skip -- skip
18 subjects here for you, for a second, in your
19 surrebuttal, and this is on -- I don't know --
20 pages -- let me make sure before I give you a page
21 number here, Mr. Riley. Pages 8 through 12 of your
22 surrebuttal, you discuss a tax deduction offset
23 associated with Storm Uri; correct?

24 A. Yes.

25 Q. And that's a big -- I would describe it as

1 a big offset; would you? I think about \$64 million?

2 A. Yeah. I calculated the original tax amount
3 and then grossed it up.

4 Q. Now, as a part of that testimony, I think
5 this is on -- starts on page 9, you say that inclusion
6 of -- of this adjustment could be allowed under a
7 couple of sections under the securitization statute;
8 correct?

9 A. Yes, sir.

10 Q. And in the first section that you cite has
11 to do with energy transition costs; correct?

12 A. Yes, sir.

13 Q. And the Storm Uri amounts are not energy
14 transition costs; are they?

15 A. I'm not all together sure. Can you repeat
16 that question?

17 Q. Yeah. I -- I guess my understanding would
18 be that what we're talking about in regard to Asbury
19 are costs that would be energy transition costs, but
20 that Storm Uri would fit under a different category of
21 qualified extraordinary costs; is that consistent with
22 your understanding?

23 A. So you're saying that Storm Uri would be
24 under a different section of the statute than the
25 energy transition cost?

1 Q. That's what I think. What do you think?

2 A. I -- well, I -- I didn't split that --
3 split that hair. I more went with the other
4 applicable capital and operating cost-accrued carrying
5 charges and deferred expenses, so I -- I -- I put them
6 both in under the same category.

7 Q. So -- so if -- if Storm Uri cost would fit
8 under qualified extraordinary cost than this energy
9 transition cost section you've cited would just be
10 inapplicable to your point; correct?

11 A. I'm not sure if they -- if Storm Uri would
12 fall under both or if they're mutually exclusive or --

13 Q. You just don't know?

14 A. I'm -- no.

15 Q. Now, then after that, you have a definition
16 for financing costs; correct?

17 A. Yeah.

18 Q. Starting on line 25?

19 A. Right.

20 Q. And that's the other section that you think
21 may provide some -- some authority for your -- your
22 tax deduction offset here for Storm Uri; correct?

23 A. That's correct.

24 Q. And as I read that, the one provision that
25 you highlight is the E about any statement and local

1 taxes, franchise, gross receipts, and other taxes, so
2 on, including commission assessment fees whether paid,
3 payable or accrued; correct?

4 A. Yes.

5 Q. Now, would you agree, however, that if you
6 look at the first couple of sections of that
7 definition, what's being referred to is cost
8 associated with securitized utility tariff bonds. For
9 example, subsection A interest and acquisition
10 defeasance or redemption premiums payable on
11 securitized utility tariff bonds?

12 A. Yes.

13 Q. In your proposed tax deduction offset
14 doesn't have anything to do with the security bonds;
15 does it?

16 A. Well --

17 Q. It's not a function of the issuance of
18 those bonds; is it?

19 A. As you go on down, you'll end up -- you run
20 into any taxes and license fees and any other fees
21 imposed on the revenue -- revenues generated from the
22 collection and securitized utility tariff charge.
23 There aren't any. There's -- bonds aren't taxable,
24 but they put in a provision just in case they are, so
25 it kind of falls under the idea that any sort of taxes

1 that may be associated with this event could fall
2 under this -- under this provision.

3 **Q. But your deduction really doesn't fall**
4 **under the issuance of the securitized bonds; does it?**
5 **It is merely a calculation based upon a federal income**
6 **tax return that's already been filed; correct?**

7 A. It's based on composite tax rate times, the
8 expected tax laws.

9 **Q. Okay. Now, are you aware that ADIT**
10 **associated with Storm Uri is in rates benefits**
11 **Liberty's customers as of June 1st of 2022?**

12 A. No, I'm not. I'm not familiar with ADIT
13 being associated with a storm.

14 **Q. How about the fuel and purchase power costs**
15 **associated with that storm?**

16 A. That would fall into the \$204 million that
17 company claims is their loss.

18 **Q. But in your opinion, none of those dollars**
19 **would have any impact on the -- on the ADIT for the**
20 **company?**

21 A. The definition of accumulated deferred
22 income tax, no. There is no accumulated deferred
23 income tax related to the storm unless you want to
24 talk about a net operating loss that carries on, you
25 would have some sort of deferral, but.

1 **Q. Did you -- what was your participation in**
2 **the last Empire rate case?**

3 A. The 2021 case?

4 **Q. No, I'm sorry. The case just resulted in**
5 **new rates the first of June?**

6 A. The 2021 case.

7 **Q. Yes.**

8 A. I participated in that one, yes.

9 CURT STOKES: Okay. That's all the
10 questions I have, Your Honor.

11 JUDGE WOODRUFF: We'll come up for
12 questions from the bench. Any questions from the
13 commissioners online?

14 JASON HOLSMAN: No questions, Judge.

15 JUDGE WOODRUFF: Thank you, commissioner.

16 GREG KOLKMEYER: Here either, Judge. Thank
17 you.

18 JUDGE WOODRUFF: Is that Commissioner
19 Kolkmeier.

20 GLEN KOLKMEYER: Yes, sir.

21 JUDGE WOODRUFF: Thank you. And the
22 earlier one was from Commissioner Holsman, I believe,
23 just so we have it clear on the record.

24 GLEN KOLKMEYER: Yes. The first one was
25 Commission Holsman. The second one was Commissioner

1 Kolkmeier.

2 JUDGE WOODRUFF: Thank you. Okay. I have
3 no questions from the bench either so need for
4 recross. Any redirect?

5 NATHAN WILLIAMS: Thank you, Judge. Nathan
6 Williams.

7 EXAMINATION

8 BY NATHAN WILLIAMS:

9 Q. On your schedule JSR-S-1, on your
10 cash-working capital calculations, do you remember
11 Mr. Cooper asking you questions about that?

12 A. Yes, sir.

13 Q. There's one column that has a -- the number
14 4504 in it throughout the column. As I recall, you
15 said you obtained that number from staff. What does
16 it represent?

17 A. That is the number of days -- it's the
18 expense lag that time staff had calculated to
19 represent the number of days the expenses out.

20 Q. And then the next column over to the right,
21 it starts with 365, and it has some different numbers
22 through it, what do those numbers represent?

23 A. That -- those numbers represent when the --
24 the actual expense is -- is paid through the
25 calculation. You know, like, property taxes are paid

1 at the end of the year, so the time lag is quite a bit
2 different, you'll notice it's like 181 days, however,
3 you look at payroll which is, you know, paid every
4 week or every two weeks, and we're just looking at a
5 12-day turnaround.

6 **Q. I also -- you've explained, I think, all of**
7 **the numbers pretty well except for, I guess interest**
8 **in the 365 days, would you explain why the numbers are**
9 **365?**

10 A. Well, in -- in the -- in the last Spire
11 case, and the case numbers escape me right now, but
12 the commission determined that -- that recognizing
13 that if you do not pay your income tax, income tax
14 total being federal, state, to a taxing authority, yet
15 you collect it from your ratepayers that they
16 recognize that the timeframe of payment would last an
17 entire -- lag of payment would last the entire year,
18 so to recognize that you would say it was a 365-day
19 lag. So what I did with tax on Asbury profits because
20 obviously it -- it was never paid out. The fuel
21 inventory which I -- I contend never existed, but was
22 built into rates, so it was paid for, but was never --
23 there was no payment of the inventory, and then the
24 tax on the fuel profits there was no -- there was no
25 pay out of that, so those three would show up as a

1 365-day lag and using that with the 45 -- 4504 makes a
2 net lag of almost 320 days.

3 **Q. Do you recall Mr. Cooper asking you about**
4 **the Storm Uri tax offset?**

5 A. Yes, sir.

6 **Q. What is your view about why that offset is**
7 **appropriate? Setting aside references to statutes.**

8 A. Well, they, of course, come in -- have come
9 in for Storm Uri's securitization and have claimed a
10 certain amount of loss, you know, quoting here, a loss
11 on how much they had to pay for purchase power and --
12 and fuel and whatnot and how it -- since, of course,
13 it did not run from a fuel adjustment clause, they
14 didn't -- they didn't get a compensating return of
15 revenues on that, and they're claiming a loss, so I --
16 I had sent a -- a data request to them and asked them
17 how much they expected to claim and don't have that
18 right in front of me, but it was \$204 million that
19 they expect it to reflect on their income tax return,
20 a loss. Now, when you talk about losses and gross
21 receipts and that's where they all can be commingled
22 together, and you know, the company could be healthy
23 enough that it's not actually going to show a loss;
24 however, as they requested the securitization, they
25 claim that they had 204 -- you know, \$204 million that

1 they were not compensated for. So on a tax return,
2 you would look at that and say, if you're actually
3 claiming 204 million and not getting any revenue on
4 it, that would be your -- your calculated loss and
5 you -- if -- if that's the case, then you just take
6 the composite tax rate of 23.84, multiply it by the
7 204 million, and you come up with your -- your tax
8 savings that you -- you expect to claim on your next
9 tax return.

10 **Q. And does that reflect how that tax benefit**
11 **would flow in customary ratemaking?**

12 A. Well, that -- that's my argument is it
13 won't show up in customer -- customer ratemaking is
14 that because of the -- really, the timing of when this
15 will be, their next rate case. I don't believe the
16 commission will be able to go back, and go, oh, you
17 had a rate -- you got a tax break in 2021, and they're
18 having a rate case in 2023. That's -- my argument is,
19 you need to address it here now because they've got a
20 tax benefit that will fall through the cracks, and
21 there won't be any benefit to the ratepayer, but
22 there's certainly going to be a \$48 million benefit to
23 the company, because they're going to claim
24 \$204 million actually quite a bit more than that, but
25 as far as taxes go, \$204 million of expenses that --

1 that don't have corresponding revenue. So they're
2 going to claim, you know, they're -- they're going to
3 be \$204 million less in taxable revenue than -- than
4 if this could flow through the fuel adjustment clause
5 and go through rates and that sort of thing, so
6 that -- that tax break needs to be addressed now,
7 because I don't think it can go back and get it in the
8 next rate case.

9 **Q. Mr. Riley, there was some references to**
10 **Liberty's last rate case, what's been referred to as**
11 **the 2021 case; do you recall that?**

12 A. Yes, sir.

13 **Q. Was Storm Uri an issue in that case?**

14 A. Yes, it was. I'm not sure the exact
15 sequence of events when securitization statutes were
16 passed, but it was the company's intention to
17 securitize Storm Uri, and they were not going to run
18 that -- run the expenses through that rate case.

19 **Q. Well, the commission order in that case did**
20 **not address Storm Uri in terms of impacts on rates;**
21 **did it?**

22 A. I don't think so, no. I -- I can't quote
23 the report and order -- or the stipulation, but, no,
24 it was not.

25 NATHAN WILLIAMS: No further questions.

1 JUDGE WOODRUFF: All right. Then
2 Mr. Riley, you can step down.

3 THE WITNESS: Yes, sir.

4 JUDGE WOODRUFF: And the next witness is
5 Dr. Marke.

6 DEAN COOPER: Judge, I need to locate
7 Ms. Carter before we move forward.

8 JUDGE WOODRUFF: Okay.

9 DEAN COOPER: If I could.

10 DIANE CARTER: Sorry about that.

11 JUDGE WOODRUFF: Before we swear Dr. Marke,
12 I do want to tell everybody that we do -- we'll need
13 to break for agenda at about 11:45, if we haven't
14 finished Dr. Marke at that time. So I may interrupt
15 you in the middle of testimony.

16 Please raise your right hand. Do you
17 solemnly swear or affirm that the testimony you're
18 about to give in the matter is the truth, the whole
19 truth, and nothing but the truth?

20 THE WITNESS: I do.

21 JUDGE WOODRUFF: Thank you. You may
22 inquire.

23 NATHAN WILLIAMS: Nathan Williams. Pardon
24 me.

25 EXAMINATION

1 BY NATHAN WILLIAMS:

2 Q. Good morning, Dr. Marke.

3 A. Good morning.

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

6 A. My name is Geoff Marke, and it's G-E-O-F-F,
7 last name is Marke, M-A-R-K-E.

8 Q. Dr. Marke did you prepare in written form
9 rebuttal testimony that was pre-filed in this case and
10 that is -- these cases actually and has been marked
11 for identification as Exhibit Number 204?

12 A. Yes.

13 Q. And did you also prepare pre -- in written
14 form surrebuttal testimony for case number
15 EO-2022-0193 that pertains to Asbury which has been
16 marked for identification as Exhibit Number 205?

17 A. Yes. Yes.

18 Q. Were those exhibits to be your testimony
19 here today would you have any revisions to them?

20 A. I do.

21 Q. And what is your first revision and which
22 piece of testimony -- yeah, testimony would it be to?

23 A. It would be the surrebuttal testimony, page
24 4, line 16. Currently reads as follows, the statute
25 envisions one-for-one replacement, not an 11

1 replacement. I'd revise that to say, the statute
2 envisions a one-for-one replacement, not a six for one
3 replacement, and then that's 200, 400, 600, 800, 1
4 billion, 1.2, so six for one, at the 200 mark. Thank
5 you.

6 **Q. And with that revision, are exhibit -- do**
7 **you have any other changes?**

8 **(Silence in audio.)**

9 JUDGE WOODRUFF: (Inaudible) have been
10 offered and (inaudible) hearing none, they will be
11 received.

12 NATHAN WILLIAMS: I tender the witness for
13 examination by others.

14 JUDGE WOODRUFF: Thank you. Begin with
15 staff.

16 CURT STOKES: Thank you, Your Honor. Curt
17 Stokes for staff.

18 EXAMINATION

19 BY CURT STOKES:

20 **Q. In your rebuttal testimony, page 20, lines**
21 **4 through 9, you mention three problems with selling**
22 **Asbury to a third party.**

23 A. Yes.

24 **Q. The first problem I see is that Asbury**
25 **would compete with other Liberty resources, and a**

1 second problem is that a wind farm would incur
2 additional -- interconnection costs; is that correct?

3 A. That's correct.

4 Q. Is there a third problem? I didn't see a
5 third in there.

6 A. There may have been. I can't think of it
7 off the top of my head.

8 Q. Just a clarification question.

9 A. Right.

10 Q. The next thing I want to ask is about the
11 95/5 sharing mechanism.

12 A. Okay.

13 Q. Are you familiar with the FAC case that
14 Liberty filed to remove extraordinary costs related to
15 winter Storm Uri?

16 A. Only vaguely.

17 Q. Okay. But you are aware that there was
18 some discussion about where to set the level for what
19 qualified as extraordinary and not?

20 A. Yes.

21 Q. Are you familiar with the AAO that Liberty
22 filed for their Winter Storm Uri costs?

23 A. I am.

24 Q. Did Liberty have a specific request in that
25 case about some assurance of recovery?

1 A. That they wanted it, yeah.

2 Q. And they based the request for some
3 assurance under the AAO on the idea that they would,
4 otherwise, be entitled to recovered under the FAC; is
5 that right?

6 A. That's correct.

7 Q. And they're taking a different position
8 here; right?

9 A. That's my understanding.

10 Q. That, you know, the FAC doesn't apply?

11 A. That's correct.

12 Q. Okay. Let's say a major storm hits in the
13 future, and there's extraordinary costs and -- are you
14 with me so far?

15 A. I am.

16 Q. And let's say that Liberty has been allowed
17 to recover 100 percent of their costs for Winter Storm
18 Uri here. What would the office of public counsel
19 have to do to figure out going forward how to -- how
20 do you balance the savings of the securitization less
21 the cost sharing under the FAC? What -- what position
22 does that put you in?

23 A. I would defer that question to OPC witness
24 Lena Mantle. She's probably a better one for that.

25 Q. Okay.

1 A. Yeah.

2 CURT STOKES: No further questions.

3 JUDGE WOODRUFF: All right. For Liberty.

4 DIANE CARTER: Yes. Thank you, Judge.

5 EXAMINATION

6 BY DIANE CARTER:

7 Q. Dr. Marke, I'm going to first ask you a
8 follow-up to what Mr. Stokes asked you. I believe he
9 asked you if Empire, Liberty is now saying the FAC
10 doesn't apply, but previously said it applied, and I
11 believe your answer was yes; is that correct?

12 A. Yes.

13 Q. Isn't it correct that at no time that --
14 did Liberty try to seek recovery of the storm costs
15 through the FAC?

16 A. I don't know.

17 Q. You don't recall in that initial FAC filing
18 that Liberty proposed to not have the extraordinary
19 storm costs flow the FAC?

20 A. Again, I'd ask witness Mantle. I was
21 involved in the AO case. I'm more familiar with that.

22 Q. So you don't know if there was a change in
23 position by the company?

24 A. If -- my understanding again is the 95/5,
25 so the position is through the FAC, you have a 95/5 at

1 play and the position of the company right now is that
2 the 95/5 is not applicable.

3 Q. Correct. Thank you.

4 A. Okay.

5 Q. Referencing page 1 of your rebuttal
6 testimony, starting at line 19 to page 2 of your
7 rebuttal testimony, line 1, you mention the remaining
8 balance of the air quality control system, the AQCS;
9 do you see that in your testimony?

10 A. I do.

11 Q. The -- and you contend that those costs
12 that have been collected by ratepayers should have
13 instead been borne by shareholders; that is your
14 position?

15 A. That is correct.

16 Q. The cost for the AQCS system were already
17 in rates as you said, so those costs were previously
18 found by the commission to be reasonable and prudently
19 incurred based on what was known at the time they were
20 incurred; correct?

21 A. What point are you specifying that?

22 Q. When they first came into rates, that means
23 they had been found to be reasonable and prudent when
24 they were incurred?

25 A. So in your -- in the initial investment?

1 Q. Yes.

2 A. Yes.

3 Q. Including the AQCS?

4 A. That is correct.

5 Q. On page 5 of your rebuttal at lines 18 to
6 21, you mentioned Liberty chose to build the wind
7 capacity --

8 A. I'm sorry, Ms. Carter, page 5 what?

9 Q. Yes. Page 5 of your rebuttal, lines 18 to
10 21.

11 A. Okay.

12 Q. You mentioned the wind projects?

13 A. I do.

14 Q. At the time the commission issued its final
15 order in the customer savings plan docket -- perhaps,
16 I should back up. Are you familiar with the customer
17 savings plan docket?

18 A. I am.

19 Q. At the time commission's order was issued
20 in that docket, Asbury had not been retired; correct?

21 A. That's correct.

22 Q. And Asbury still had not been retired when
23 the commission issued the CCNs for the wind projects;
24 correct?

25 A. That seems reasonable. I'll take your word

1 for it.

2 Q. Turning ahead to page 19 of your rebuttal
3 testimony, lines 19 to 22, regarding Asbury you say
4 that Liberty shut the plant down and could no longer
5 operate it on December 12th of 2019 (inaudible)
6 testimony?

7 A. Yes it is.

8 Q. At that point Asbury was still staffed by
9 Liberty; correct?

10 A. That is my understanding.

11 Q. And --

12 A. By staff, I mean, at least somebody was
13 there.

14 Q. Yes. People were at the plant. And Asbury
15 still had all of its permits in place after
16 December 12th; correct?

17 A. I don't know.

18 Q. Are you aware of any of them having expired
19 as of December 12th?

20 A. I can't speak to that, I'm sorry.

21 Q. And you're aware that Liberty provided
22 testimony that after December 12th of 2019, they were
23 still looking for economical coal to burn it Asbury?

24 A. I think witness Robinett probably would
25 have been a better one to ask those questions for.

1 **Q. Okay. At that time in 2019, the Southwest**
2 **Power Pool had a requirement to provide six months**
3 **advance notice of retirement; is that correct?**

4 A. Yes.

5 **Q. And six months after Liberty gave that**
6 **required notice would be March 1, 2020; correct?**

7 A. Could you repeat the first question again?

8 **Q. Yes. That looking back at that -- the**
9 **relevant time period for Asbury, the Southwest Power**
10 **Pool requirement was for them to be provided six**
11 **months of advance notice before a plant was retired?**

12 A. Again, I -- I would honestly say that
13 witness Robinett would probably be the better witness
14 to opine on the timeline of events that happened with
15 SPP and with Asbury shutting down.

16 **Q. But your testimony you state that Liberty**
17 **shut the plant down and could no longer operate it --**

18 A. That's right.

19 **Q. -- on December 12th of 2019?**

20 A. That's correct.

21 **Q. But you're not aware whether or not it**
22 **could or could not have been retired at that time,**
23 **based on the SPP protocols?**

24 A. I think the company is putting way too much
25 emphasis on the SPP protocols. I know that I reached

1 out to SPP on several occasions on this very matter
2 and what I got was a very cursory, this is -- this is
3 the company's discretion, we'd like to have
4 foreknowledge of what's going to happen.

5 **Q. So in your -- in your opinion, violation of**
6 **the SPP protocols regarding notice of retirement just**
7 **wouldn't be a big deal?**

8 A. That's the understanding I got from SPP.

9 **Q. Are you familiar with the retirement of**
10 **Evergy Sibley unit three?**

11 A. Yes, I am.

12 **Q. The retirement date I saw in filings was**
13 **November 3rd of 2018; does that sound right to you?**

14 A. That does sound correct.

15 **Q. But that wasn't the date when energy was --**
16 **was last generated at Sibley; correct? That was some**
17 **time prior to November 13th of 2018?**

18 A. Yes.

19 **Q. So what is the difference here, why OPC**
20 **would sometimes look at the date energy was last**
21 **generated, but other times would look at what the**
22 **company views as the retirement date?**

23 A. I guess I'm confused with the question,
24 Ms. Carter.

25 **Q. Well, as you know --**

1 A. Both cases, my understanding is we are
2 being consistent across the board, both plants were
3 not -- not -- did not have the ability to generate
4 capacity during those times, and that was based off of
5 affirmation through discovery and -- and follow-up. I
6 feel like the office has been pretty consistent, and
7 again, if we want to bring up OPC witness Robinett, I
8 would encourage that because he has done a lot of work
9 on this.

10 **Q. So it's your understanding that from public**
11 **counsel's position that a plant retires you look back**
12 **to the last date, it produced energy as opposed to the**
13 **date that the company believes it was retired when it**
14 **stopped having staff there when it intended to retire**
15 **the plant. You think you should look back when it**
16 **actually last generated energy?**

17 A. Again, I'm going to say witness Robinett
18 who happens to be right here is a good witness on this
19 issue.

20 **Q. Thank you. And I appreciate that. I was**
21 **asking the questions because your testimony says that**
22 **Liberty shut the plant down in December of '19?**

23 A. Yes.

24 **Q. On page 20 of your rebuttal testimony, you**
25 **state that Asbury could have been sold with sales**

1 price offsetting other costs?

2 A. I did.

3 Q. You're familiar with Drew Landoll's direct
4 testimony in the Asbury securitization docket?

5 A. I'm not.

6 Q. You're not? You didn't review
7 Mr. Landoll's direct testimony in securitization?

8 A. I did not.

9 Q. So when you filed your rebuttal testimony,
10 you weren't responding to Mr. Landoll's direct
11 testimony?

12 A. Are you asking for Mr. Landoll's -- which
13 testimony? The direct?

14 Q. Yes. His direct testimony in the Asbury
15 securitization docket, EO-2022 --

16 A. I'm not explicitly replying to
17 Mr. Landoll's testimony in this.

18 Q. So you weren't aware of the fact that
19 direct testimony in the case provided an estimation a
20 fair market valuation report on Liberty trying to --
21 to sell Asbury and what that valuation was?

22 A. I am familiar with that number from the
23 last rate case. I'm familiar that at least an
24 estimation was done.

25 Q. And that was that there was a value that

1 **was actually negative 134 million that we basically**
2 **have to pay someone to take Asbury as opposed to**
3 **receive money from them for Asbury?**

4 A. I think the timing of that valuation is
5 pertinent. It's important in the totality of
6 everything we're talking about here today. It is a
7 sequential issue. So what I mean by that is the value
8 of a base load coal plant has increased significantly
9 since that evaluation has taken -- took place.

10 **Q. Since Asbury was retired?**

11 A. Since the valuation took place. My
12 understanding is the valuation took place -- now, I
13 can't speak to that. I don't know the timing of
14 exactly when that valuation is in relation to the
15 12/12/19 retirement.

16 **Q. When do you believe the significant**
17 **increase in value occurred?**

18 A. As more wind came upon -- it came onto the
19 SPP footprint, basically, more base load generation
20 came retired and effectively you have the markets
21 responding to more volatile prices, a culmination of
22 several things. For example, one of the reasons we're
23 here today, Storm Uri.

24 **Q. But can you tell me if that was before or**
25 **after Asbury was retired?**

1 A. Before. Very much so before. That's
2 outlined in my testimony in the customer savings plan
3 at length.

4 **Q. So what -- what do you think Asbury could**
5 **be sold for today?**

6 A. Well, it doesn't exist today. You know, at
7 least not -- not in a position where it -- it could
8 operate without compromising your existing generation.
9 What could it be sold for today? It would be
10 speculative on my part. I know my research on the
11 issue of this, you know, my testimony outlined excel
12 energy as an example. That's just one rudimentary
13 example. I know there's been independent owners that
14 have looked at cleaner efficient coal plants in terms
15 of coal mining and others that would seem to fit the
16 Asbury model quite well. Empire would need to take
17 into consideration that if -- if a plant was up there
18 that that would be potentially at the expense of their
19 own wind investments.

20 **Q. Public counsel or you personally didn't**
21 **perform a fair market valuation on the potential sale**
22 **of Asbury before it was retired; correct?**

23 A. We did not.

24 **Q. Or after it was retired; correct?**

25 A. No.

1 **Q. Dr. Marke, do you have any experience**
2 **operating a coal plant?**

3 A. I do not.

4 **Q. So certainly, not experience operating a**
5 **coal plant that was built in 1970?**

6 A. And then retrofitted more than twice its
7 value in 2016.

8 **Q. No. No experience in those areas; correct?**

9 A. Neither one.

10 **Q. You're not a certified operator?**

11 A. I am not.

12 **Q. Are you an engineer?**

13 A. No, I'm not.

14 **Q. Do you have any experience assessing the**
15 **sales value of a 1970s coal plant?**

16 A. That's been retrofitted more efficient and
17 at a greater value when it was created in 1970?

18 **Q. Either way. Do you have experience**
19 **assessing the sales value of a coal plant?**

20 A. No.

21 **Q. At page 20 of your rebuttal testimony, you**
22 **state that Asbury could have been mothballed; is that**
23 **correct?**

24 A. That's correct.

25 **Q. But it's OPC's position that Liberty's**

1 **shareholders should bear all costs in that situation;**
2 **correct? That customers would pay nothing for Asbury**
3 **while it was mothballed?**

4 A. It's OPC's position that ratepayers should
5 not have to pay three times the usable capacity that
6 was available.

7 Q. And I'm sorry, Dr. Marke, if you could
8 answer me a yes or no, and if you can't, just tell me.
9 But first, if you can give me the yes or no, if that's
10 possible, is it OPC's position that customers would
11 not pay anything for Asbury while it was mothballed?

12 A. Yes.

13 Q. Are you aware of any time that a regulated
14 utility has mothballed a coal plant and continued to
15 main the operational status of that plant for a -- for
16 a possible future event?

17 A. Excel energy.

18 Q. And was that done at shareholder expense?

19 A. I'm going to step back. I'm not sure excel
20 is the only example and give me a second. This
21 becomes a little difficult question to answer because
22 most of the mothballed generation is going to be
23 subject under the D regulation with D regulated states
24 where you're going to see that most pronounced where
25 market actors went ahead and for a variety of reasons,

1 mothballed plants because of operating expense and
2 that opened them up again. As far as earning a return
3 from an investor owned utility from ratepayers, my
4 understanding is that it's a bit of mixed bag based
5 off of my research. Some commissions have -- there's
6 a prudence (sic) argument, and there's a use and
7 useful argument. In our case, you know, we believe
8 both apply to this. Apply to this situation.

9 **Q. On your rebuttal testimony, page 21, line**
10 **4, you are asked if there could have been options**
11 **other than selling or mothballing Asbury. And your**
12 **response is, I am sure there probably were; however,**
13 **based on my discovery with the company, Empire**
14 **management did not even explore the options I**
15 **articulated above; is that correct?**

16 A. That's correct.

17 **Q. And those options you articulated above**
18 **would be selling and mothballing?**

19 A. Yeah. I guess mothball is sort of a
20 blanket term. Sure.

21 **Q. Okay. But -- so you're saying that from**
22 **your understanding Empire didn't consider selling or**
23 **mothballing, that they didn't consider those options**
24 **let alone considering anything else?**

25 A. Not seriously, no.

1 Q. And in Drew Landoll's direct testimony, as
2 we mentioned, he discusses the market study that was
3 done regarding selling Asbury on the open market to
4 another owner/operator and that was in his direct
5 testimony in this case filed before you filed your
6 rebuttal; correct?

7 A. That's correct.

8 Q. And his direct testimony also discusses the
9 options of repurposes assets, abandoning in place and
10 demolishing; correct?

11 A. I'll take your word for it.

12 Q. Looking at your rebuttal testimony, page
13 26, lines 14 to 16?

14 A. I'm sorry, page 26?

15 Q. Yes. Rebuttal, page 26, lines 14 to 16,
16 say that Empire's management assume the risk of
17 stranding Asbury and I quote, so that it could utilize
18 Asbury's SPP interconnection lines for its
19 intermittent North Fork Ridge wind farm; is that your
20 testimony?

21 A. That is.

22 Q. But North Fork Ridge has its own
23 interconnection; correct? There was no transfer of an
24 interconnection, right, from Asbury to North Fork
25 Ridge?

1 A. My understanding was, it was the
2 interconnection line. There was some accelery
3 operating capital investment on Asbury that's being
4 utilized in conjunction with that wind farm.

5 **Q. So you weren't aware that in terms of the**
6 **physical facilities -- and again, this is separate**
7 **from transferring the interconnection, right, that we**
8 **just talked about, that was separate, but then in**
9 **terms of the physical facilities, the North Fork Ridge**
10 **interconnect didn't use any of the Asbury lines; you**
11 **weren't aware of that?**

12 A. This would become a surprise to me and
13 perhaps, I'm getting hung up on -- on -- it's just the
14 interconnection line. So am I to understand that
15 nothing from Asbury, none of the capital investments
16 that are associated with that are being used to help
17 operate North Ridge wind farm?

18 **Q. No. I was asking about -- I was asking**
19 **about your statement on the interconnect lines, that**
20 **you say the company stranded Asbury, so that it could**
21 **use Asbury's interconnection lines for North Fork**
22 **Ridge, so you weren't aware that that wasn't done?**

23 A. My point, then, I would revise my statement
24 to say that this capital -- there are certain capital
25 investments at Asbury that were utilized at the North

1 Ridge farm.

2 Q. Those things in Liberty's testimony we talk
3 about having been repurposed; is that what you mean?

4 A. Right.

5 Q. So you are aware that a utility -- or a
6 service provider can seek an additional interconnect
7 at or near a facility that already exists; correct?
8 There's nothing that requires only one generation
9 interconnect at a certain location?

10 A. There would need to be some -- you know,
11 additional SPP studies to determine congestion issues
12 associated with having more than one line operating
13 there.

14 Q. But for example, we have Kings Point?

15 A. Uh-huh.

16 Q. And Kings Point is interconnected at the
17 same substation as energy center; correct?

18 A. That's correct.

19 Q. And energy center has more generation than
20 Asbury did?

21 A. Energy center, yes.

22 Q. And Kings Point interconnect to that
23 substation as -- same substation as energy center
24 actually has the highest L and Ps of all the new wind
25 farms; correct? Those have the highest locational

1 **marginal price?**

2 A. Of Empire's wind farms or all wind farms?

3 Q. **Yes. The three wind farms.**

4 A. Yes.

5 Q. **So that's where Kings Point is**
6 **interconnected at the same substation with energy**
7 **center, it still has the highest L and Ps?**

8 A. Okay.

9 Q. **All right. If you'll please look for me,**
10 **we're going to move to your surrebuttal testimony,**
11 **page 2, lines 23 to page 3, line 3.**

12 A. Where am I starting?

13 Q. **Page 2, line 23.**

14 A. Okay.

15 Q. **You state that it is possible that Asbury**
16 **could be exposed to new greater environmental risk in**
17 **the future, and that if that happened, then management**
18 **would have to examine its options and weigh the cost**
19 **and benefits of compliance against early retirement;**
20 **is that your testimony?**

21 A. That is.

22 Q. **And then you continue on page 3, lines 2**
23 **and 3, that there was no cost prohibitive**
24 **environmental, air or water or other regulation that**
25 **necessitated the premature retirement of Asbury; is**

1 **that correct?**

2 A. That's correct.

3 **Q. So what -- what time period -- what future**
4 **time period were you referring to there?**

5 A. It's a hypothetical statement made out into
6 the future, let's say, over the life of that plant.

7 **Q. But that you didn't see any cost**
8 **prohibitive cost coming up in 2018/2019, the time 2020**
9 **when -- when Liberty was determining whether or not it**
10 **was the right decision to retire Asbury?**

11 A. Let me stress that there are two things
12 that I looked at in making that statement. First is,
13 what's the existing air quality, environmental
14 regulations or what's the status of the current play
15 in Jasper County, Joplin, greater Joplin area? To
16 inform that, I leaned on resources like the American
17 Lung Associations, state of the air report, 2020
18 report, it identifies clean cities, clean counties
19 across America. Of the cities identified in the state
20 of Missouri, the counties identified in the state of
21 Missouri, Joplin, Missouri, only one, and it's a 2020
22 report, but it's reflecting 2016 through 2018, when
23 Asbury's operational. So American Lung Association,
24 pretty verifiable group, that's going to -- to mission
25 statement's got to be looking at in terms of air

1 pollution identified where this coal plant operates,
2 this efficient, this environmentally, we put in
3 hundreds of millions of dollars in terms of AQS
4 scrubbers, that's the basis of me saying, I don't
5 foresee any initial hypothetical, large scale
6 investments associated with further retrofits that are
7 taking place, and I think I said in my testimony
8 before, I'm aware of no environmental regulators that
9 have come up and publicly stated that Asbury needs to
10 be shut down, because it's not clean, because it's
11 exceeding some sort of air quality limit at this
12 point. I had a second point and I forgot it now.
13 It'll come to me.

14 **Q. That's okay. I'll editorialize, yap**
15 **Joplin, yap Empire and its operators, good job, while**
16 **you're thinking about your second point.**

17 A. I think the second point probably means,
18 you know, yap customers, that they don't have to pay
19 for that additional cost.

20 **Q. Okay. There you go.**

21 A. Okay.

22 **Q. But that was on the hypothetical end, but**
23 **in terms of actual cost that were being faced by**
24 **Liberty, you are aware, and it's in our direct**
25 **testimony in this case, that Liberty was facing costs**

1 of approximately 20 million for a new landfill and a
2 wet to dry bottom ash-handling system conversion in
3 order for Asbury to remain compliant with the CCR,
4 combustion residuals rule, and the esteem electric
5 power-generating fluent guidelines, the ELJ rule, they
6 were facing that \$20 million in additional costs?

7 A. And I do reference that in my testimony.
8 Again, context is important here. \$20 million
9 relative to what is already -- what ratepayers are
10 already being asked there and what we've seen here is
11 how things have played out with Storm Uri. It's in my
12 surrebuttal testimony, but I did acknowledge that
13 there are additional -- I think I coined it -- well,
14 give me a second while on the stand. Yes, page 2,
15 lines 10 to 11 where there are avoided cost benefits,
16 yes, Empire avoided coal, ash-handling costs, but
17 these are relatively minor.

18 Q. And that was the \$20 million project you're
19 referring to?

20 A. I am.

21 Q. You made an edit to your testimony, and I
22 have a question on that issue. Surrebuttal, page 3,
23 line 25, to page 4, line 16?

24 A. My edit was page 4.

25 Q. Yes. And I'm sorry, my question's actually

1 not about your edit.

2 A. Okay.

3 Q. But that testimony, that topic, so starting
4 on page 3, line 25 of your surrebuttal, and then
5 continuing onto page 4, line 16?

6 A. I got it.

7 Q. You talk about a -- what you see as a
8 one-for-one replacement contemplated by the
9 securitization statute; correct?

10 A. That's correct.

11 Q. But that portion of the statute isn't
12 applicable in this proceeding; correct? Because
13 Liberty hasn't sought approval of replacement
14 resources under subsection 1705; correct?

15 A. It's was -- Empire's already been granted
16 more than six times over that replacement value.

17 Q. The wind projects are already in service
18 and are already in rates; correct?

19 A. Right. The six-for-one value. If it's any
20 other additional securitization, the normal
21 securitization docket would just be for one for one.
22 So my point there is that shareholders are being made
23 more than whole in this situation.

24 Q. And Dr. Marke, I'm sorry, when you say a
25 normal securitization proceeding, this is actually the

1 **commission's first securitization proceeding; correct?**

2 A. Let me qualify that statement and say
3 securitization where that section would be applicable.

4 **Q. Okay. So it -- in a docket where 393.1705**
5 **was at issue, but that's not at issue in this case;**
6 **correct?**

7 A. Right. Because Empire has spent
8 \$1.2 billion that ratepayers are covering.

9 **Q. Because we are not seeking approval of**
10 **replacement resources in this case; correct?**

11 A. Because you got the replacement value.

12 **Q. Dr. Marke, I am so sorry. If you can just**
13 **give me a yes or no. We didn't ask for anything under**
14 **393.1705 in this case --**

15 A. I'm not an attorney, but my understanding
16 is, legally you can't do that. I think there's a
17 cutoff date for that.

18 **Q. Okay. It's not at issue in this case.**

19 A. I -- I would contest that. I do believe
20 it's an issue in this case.

21 **Q. You believe section 393.1705 is at issue in**
22 **this case?**

23 A. I believe that section provides a north
24 star for what the general assembly felt was a fair
25 outcome.

1 **between Sibley and Asbury and public counsel's --**

2 A. Yes.

3 **Q. -- position? Did Sibley stop operating for**
4 **the same reason Asbury did?**

5 A. No.

6 **Q. What occurred at Sibley versus what**
7 **happened at Asbury that caused them to cease**
8 **operating?**

9 A. My understanding is that Sibley experienced
10 a malfunction in its system, in one of its -- there
11 was a malfunction, in September of that year. Can't
12 remember the year off the top of my head, the last
13 rate case.

14 **Q. Did the -- Evergy immediately decide what**
15 **to do with that plant upon that -- upon that**
16 **malfunction was there some time lag there?**

17 A. There was a little time lag.

18 **Q. And do you know why Asbury ceased**
19 **operating?**

20 A. For the reasons articulated in my opinion.

21 **Q. Lack of fuel?**

22 A. That's one of them.

23 NATHAN WILLIAMS: No further questions.

24 Thank you.

25 JUDGE WOODRUFF: Then Mr. Marke -- Dr.

1 Marke, you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: The only other witness
4 available for today would be Dr. -- or Lena Mantle,
5 and she's not here at this moment, so let me ask the
6 parties, do we want to come back this afternoon to do
7 Ms. Mantle or do we want to wait until tomorrow to do
8 her? Is that okay with everybody? Okay. We'll come
9 back at 1 o'clock with Ms. Mantle. At this point we
10 are adjourned until -- until 1 o'clock. Thank you
11 all.

12 And it's now 1 o'clock, and we will resume
13 for a moment, and I understand that Ms. Mantle, the
14 witness, who is on -- next on tap is not available yet
15 and anticipated that she will be available to be here
16 by 1:30; is that right?

17 NATHAN WILLIAMS: That is correct. This is
18 Nathan Williams for public counsel.

19 JUDGE WOODRUFF: All right. We will,
20 therefore, recess the hearing again until 1:30, and
21 we'll come back at that point with Ms. Mantle.

22 NATHAN WILLIAMS: Thank you.

23 JUDGE WOODRUFF: Thank you.

24 Oh, okay. I appreciate it. Anyway,
25 we're -- we're back on the record. It's 1:30. And

1 Ms. Mantle is here, and we're ready to proceed.
2 Please raise your right hand. Do you solemnly swear
3 or affirm that the testimony you're about to give in
4 this matter is the truth, the whole truth, and nothing
5 but the truth?

6 THE WITNESS: Yes.

7 JUDGE WOODRUFF: Thank you. You may
8 inquire.

9 NATHAN WILLIAMS: Nathan Williams for
10 public counsel.

11 EXAMINATION

12 BY NATHAN WILLIAMS:

13 Q. Good afternoon, Ms. Mantle.

14 A. Good afternoon.

15 Q. Would you please state and spell your name?

16 A. My name is Lena M. Mantle. Lena is
17 L-E-N-A. Mantle is M-A-N-T-L-E.

18 Q. Ms. Mantle, did you prepare and cause to be
19 filed in question and answer format rebuttal testimony
20 that's been marked for purposes of -- as an exhibit in
21 this case, 200, and surrebuttal testimony which has
22 been marked as Exhibit 201, and when I say case, it's
23 actually two cases, but -- is that correct?

24 A. That is correct.

25 Q. And then did you later file some --

1 pre-file a couple of additional schedules to rebuttal
2 testimony that have been marked as Exhibits 202 and
3 203, and I believe they're basically schedule 7 and 8
4 to your rebuttal testimony?

5 A. They're -- yes, they're schedules 7 and 8
6 to my rebuttal.

7 Q. Do you have any changes to any of those
8 exhibits for them to be your testimony here today?

9 A. I have one change in my rebuttal testimony.
10 On page 24, line 7, I have that Empire needs to have
11 accredited capacity, 112 percent greater than its
12 forecasted peak. That should be 12 percent greater
13 than its forecasted peak.

14 Q. Do you have any other revisions?

15 A. No, I do not.

16 Q. And with that change, are Exhibits 200, 201
17 and 202 and 203, your testimony here today?

18 A. Yes.

19 NATHAN WILLIAMS: I offer Exhibits 200
20 through 204.

21 JUDGE WOODRUFF: That would be through 203.

22 NATHAN WILLIAMS: I'm sorry. You're
23 correct. I apologize. 200 through 203.

24 JUDGE WOODRUFF: 200 through 203 has been
25 offered. Any objections to its receipt? Hearing no

1 objections, they will be received.

2 NATHAN WILLIAMS: I tender Ms. Mantle for
3 examination by others.

4 JUDGE WOODRUFF: All right. And cross
5 would be to staff.

6 CURT STOKES: Thank you, Your Honor. Curt
7 Stokes on behalf of staff this afternoon.

8 EXAMINATION

9 BY CURT STOKES:

10 Q. Ms. Mantle, were you here yesterday for the
11 examination of staff witness Jordan Hull?

12 A. Yes, I was.

13 Q. Okay. Do you recall a question about a
14 list of Empire resources in the integrated resource
15 plan?

16 A. Yes.

17 Q. And can you turn to page 18 of your
18 rebuttal testimony at table two?

19 A. I'm there.

20 Q. Is it your understanding that the 2019 IRP,
21 that side of that column of the table, is that
22 Liberty's most recent integrated resource plan or --

23 A. They may have one filed right now, but at
24 the time of the -- this proceeding and the cases
25 before it, these were the resource plans in question.

1 Q. Okay. And the numbers in those -- in that
2 table, that reflects the capacity for each unit in
3 megawatts?

4 A. It -- yes.

5 Q. Okay. The next thing I want to talk about
6 is the 95/5 sharing mechanism. Is it your
7 understanding that when Liberty filed its 2021-0332
8 fuel adjustment case that it sought to pull out
9 certain costs it described as extraordinary out of the
10 FAC?

11 A. Yes.

12 Q. And -- and OPC had a -- raised a concern
13 about where you set the level of what qualifies as
14 extraordinary or not?

15 A. Yes, we did.

16 Q. What was OPC's position in that case?

17 A. That minds could differ at -- where that
18 breakpoint was between ordinary and extraordinary, and
19 you know, we also have the -- the whole responsibility
20 to try to keep customers' bills low. I looked at what
21 the highest -- one measure of extraordinary versus
22 ordinary would be what the highest amount, the rate
23 had ever been, and that would have come up with a FAC
24 rate of, I think, seven. -- or yeah, 4.7 cents or
25 about 750 on a thousand kilowatt hour basis. The

1 commission at one time had said that was okay, so that
2 could be ordinary, and of course, the benefits to that
3 is, that money -- I think it was a 23.5 million, that
4 would not have been considered extraordinary, then
5 that would have received -- that would have been
6 recovered from customers quickly, and there would be
7 less to be recovered through -- at that time it wasn't
8 an AAO, because we didn't have securitization yet. So
9 that would be monies that would be collected from
10 customers within six months, short-term interest rate
11 on that instead of being either in an AAO or in this
12 case securitization where the company's asking for
13 other weighted average cost to capital and to recover
14 that amount over 13 years, so it's like taking out a
15 loan for 13 years, you end up paying more than, you
16 know, a lot more than your initial amount, so -- but
17 at the same time that would mean bills went up higher,
18 so we were really sort of ambivalent as to where --
19 where that breakpoint was.

20 **Q. And are you familiar with Empire --**
21 **Liberty's currently pending accounting authority order**
22 **filing requesting its -- it's a separate case, but its**
23 **requesting recovery of Winter Storm Uri costs or an**
24 **AAO for Winter Storm Uri costs?**

25 **A.** I may have read that a long time ago. I

1 really don't remember much about it.

2 Q. Do you remember a request that Liberty made
3 asking the commission to make a -- to include
4 something in its order about making sure that they
5 would recover the amount?

6 A. If I'm remembering correctly, there were
7 two dockets. There was the amount, the 95 percent,
8 and then they were also asking for the 5 percent to be
9 recovered.

10 Q. Okay. Let's -- let's raise a hypothetical.
11 Let's say in this case that Liberty recover -- is
12 ordered to recover 100 percent of its extraordinary
13 costs in Uri; are you with me so far?

14 A. Yes.

15 Q. Okay. Now, let's also imagine some time in
16 the future some other major event, like Uri happens,
17 it doesn't have to be Uri, it could be any -- any
18 utility. And the commission has again asked to defer
19 a certain extraordinary costs. What is OPC going to
20 have to do in its calculus to figure out, how do we
21 figure out what costs are extraordinary and what are
22 not? You mentioned earlier some considerations of
23 rate shock, but also considerations of, you know, not
24 sharing in the 95/5?

25 A. Of course, you're asking me what OPC could

1 do, and I am not OPC, and I can only speak for myself.
2 We -- I would look at, again, customers had paid and
3 knowing what came out of this case, because that will
4 make a difference, and I believe -- did you start the
5 hypothetical off with, they get a hundred percent?

6 **Q. Uh-huh.**

7 A. If they get a hundred percent, if they get
8 weighted average cost of capital, I will push more --
9 for more to be considered ordinary than extraordinary
10 knowing that the customers then would pay for it
11 quickly, lower interest rate, so lower total amount
12 coming from the customers.

13 **Q. Would it be difficult to find a line**
14 **between what level of, you know, increase in that FAC**
15 **customers would be willing to stomach?**

16 A. It would. If you're looking at a time such
17 as we now where gas prices are higher than ever been
18 seen before, inflation is just skyrocketing, a rate
19 increase has just been started for customers, it -- it
20 may be a bit lower than if -- you know, were stable,
21 and we weren't in a period of inflation, rates just
22 hadn't gone just up, there's a lot of factors to be
23 considered. Also, what -- what have customers paid in
24 the past, and I will say right now, I looked yesterday
25 for a thousand kilowatt hours, customers are paying

1 \$12.21 on Empire's FAC, so that bar of ordinary to
2 extraordinary, right now the commission has said a
3 much higher amount is ordinary and can pass through
4 the FAC, Empire, and that's what Empire requested, so
5 all of that would have to be looked at and considered.

6 **Q. Now, let's say -- let's reverse the**
7 **hypothetical. Let's say that Liberty's, you know,**
8 **ordered a 95/5 sharing, does that decision get a lot**
9 **easier on how you divide the line between**
10 **extraordinary and not extraordinary?**

11 A. Don't know. I should have been ready for
12 this question, but you got me, Curtis.

13 **Q. Sorry.**

14 A. I -- I think that knowing if it can't --
15 you know, knowing that the customers would not have to
16 pay that 5 percent would -- would mean -- be a little
17 more -- or more lenient in what is considered
18 extraordinary, but it also would have to consider the
19 way -- of what the interest rate was that's being
20 attached to what is extraordinary and how much time
21 they wanted to collect these extraordinary costs over.

22 **Q. Okay. And I guess I should emphasize. The**
23 **question was, is it easier, not is it easy?**

24 A. It would be easier.

25 **Q. Okay. So in the event there would not be**

1 cost sharing, under securitization, is it fair to say
2 that customers would have to be looking at the
3 tradeoff between not benefitting as much as they could
4 under the securitization statute because of the lack
5 of that 95/5 sharing, and that's part of the -- part
6 of the consideration?

7 A. Can I -- can you repeat that question?

8 Q. Yeah. Yeah. That was awkwardly phrased.
9 So it would it be part of your consideration that if a
10 utility was seeking 100 percent recovery of
11 extraordinary costs that there is some tradeoff
12 involved with securitization as far as like not having
13 a sharing, but still getting some kind of lower cost
14 to borrowing?

15 A. Yes.

16 Q. And is it your understanding that the
17 intent of the securitization statute is to force that
18 kind of tradeoff on ratepayers?

19 A. I have not read the statute, so I -- I
20 cannot speak to that.

21 Q. Okay. Would it be your preference that the
22 statute be used to save ratepayers money, not to force
23 them to make trade offs?

24 A. Yes.

25 Q. Let's switch now to -- to Asbury. Was

1 **Asbury up and running during Winter Storm Uri?**

2 A. No, it was not.

3 **Q. Were ratepayers paying for Asbury during**
4 **Winter Storm Uri?**

5 A. They -- they were paying return on and off,
6 they were paying O and M, they were paying for coal
7 costs, yeah, they were paying for Asbury.

8 **Q. And in your opinion, is that -- is a -- is**
9 **it just and reasonable for ratepayers to have paid the**
10 **full cost of Asbury when Asbury wasn't there during**
11 **winter Storm Uri?**

12 A. No.

13 **Q. Will -- will Asbury ever again serve**
14 **Liberty customers?**

15 A. No.

16 **Q. Will -- is Liberty asking its ratepayers to**
17 **continue paying for Asbury for the next 13 years?**

18 A. Yes.

19 **Q. In your opinion, is it just and reasonable**
20 **for Liberty's ratepayers to pay for the full cost of**
21 **Asbury when Asbury's not there to serve them?**

22 A. Can you say -- I want to give the correct
23 answer. What was the first part of that question?

24 **Q. In your opinion, is it just and reasonable**
25 **for Liberty's ratepayers to pay the entire cost of**

1 **Asbury while Asbury is not there and used and useful?**

2 A. No. The public has sort of a compact
3 with -- with the utility expecting the utility to
4 provide a service for them at just and reasonable
5 rates, and provide adequate and safe, reliable, and by
6 closing -- asking customers to pay for, you know, the
7 AQCS and then only getting four or five years of
8 benefits, they made a compact with the customers, you
9 pay for this, we'll provide you good, clean
10 electricity for another 15, 20 years, they broke that
11 contract when they -- they retired that plant. And,
12 so now for them to ask customers to pay, when
13 customers aren't getting the full benefit of that, I
14 don't think that's just and reasonable.

15 Q. Okay. Now, I know in your testimony, you
16 recommended some prudence disallowances for Asbury;
17 right? Or for resource planning?

18 A. For resource planning, yes.

19 Q. Setting that aside or would you be opposed
20 to staff's proposal for a -- a cost sharing between
21 Liberty and its ratepayers for Asbury based on the
22 used and useful principal?

23 A. I'm not comfortable enough with what
24 staff's position is with that, to have an opinion.

25 CURT STOKES: Okay. No further questions.

1 JUDGE WOODRUFF: For Liberty.

2 DIANE CARTER: Thanks, Judge.

3 EXAMINATION

4 BY DIANE CARTER:

5 Q. Ms. Mantle, I'm going to start with
6 something staff counsel asked you. He put the
7 hypothetical to you on if in this securitization
8 proceeding, Liberty were allowed to securitize
9 100 percent of the what's been deemed extraordinary
10 fuel and purchase power costs, and I believe you said
11 it would be easier for OPC looking in the future FAR
12 docket, fuel adjust rate docket, to -- to find that
13 line on what's extraordinary and what's not, that it
14 would be easier if Liberty didn't recover a hundred
15 percent here; is that correct?

16 A. Yes.

17 Q. I'm assuming you would agree with me, then,
18 that the exact flip is -- is true for the company,
19 that it would be easier for the company to make a
20 decision on what they would deem extraordinary or seek
21 to have deferred from the FAC clause if the tradeoff
22 was, you aren't able to recover a hundred percent of
23 the cost, but you're also not recovering them over six
24 months?

25 A. I can't speak for the company.

1 Q. You wouldn't agree that, that would -- much
2 like you're saying it would put you in a harder
3 situation, if a hundred percent is recovered, you
4 don't see that that's what would be reasonable from
5 the company's standpoint, that they would both not
6 recover over six months and not recover a hundred
7 percent?

8 A. I'm sorry, I really don't understand the
9 question well enough to speak, and I -- I don't want
10 to speak for utility either.

11 Q. Okay. That's fair enough. On the
12 hypothetical, again, that Mr. Stokes asked you about,
13 you said it would be foreseen customers into a
14 tradeoff, I believe, between either having recovery
15 stretched out or not paying that 5 percent above what
16 is in fuel costs, base costs; is that correct?

17 A. Not only time, but also, it depends on what
18 interest rates is put in that securitization amount,
19 but yes, there is a tradeoff of recovering over time
20 versus rate impact over a six-month time period. I
21 think that's the question you were asking.

22 Q. Yes. And, so then that would apply equally
23 on receiving the payments when the company's already
24 paid for the cost of fuel and purchase power?

25 A. Costs of fuel and purchase power is --

1 while it's not completely under the control of the
2 utility, it does have some control, and at the -- you
3 know, a lot of what my rebuttal testimony, it is
4 decisions on resource planning, it's decisions on what
5 goes on in the SPP, and -- and on the other side of
6 customers, there's a lot of them living paycheck to
7 paycheck, and you want to take out of their paycheck
8 for 13 years or six months, there's a lot to balance
9 there, and you know, the commission has been asked
10 to -- to do that balancing, and OPC is you know, we
11 represent the customers.

12 **Q. And ultimately, no matter what happens**
13 **here, just like in Liberty's FAR filing, immediately**
14 **file -- following Storm Uri, the commission ultimately**
15 **will still need to do that balancing and make the**
16 **decision and subsequent FAR filings, the commission**
17 **ultimately gets to decide where that line is on**
18 **extraordinary; correct?**

19 A. That is correct.

20 **Q. I'm going to refer your rebuttal testimony.**
21 **I believe you have that with you?**

22 A. Yes, I do.

23 **Q. I'm looking at page 3, and you state that**
24 **you are experienced in electric utility resource**
25 **planning in Missouri; correct?**

1 A. Yes.

2 Q. Have you participated in Liberty's resource
3 planning dockets at the commission since you joined
4 public counsel in 2014?

5 A. Marginally, not the way I was with the
6 commission -- when I worked with commission staff.

7 Q. So since -- since 2014, you have only been
8 what you would call marginally involved?

9 A. In the resource planning dockets, I was
10 very involved in the 2018 case for the customer
11 savings plan, I was very involved in the CCN case,
12 written testimony, then for the last rate case, too,
13 so I have been involved just not so much, not deeply
14 in the resource planning cases.

15 Q. And there's been an IRP docket either a
16 tri-annual or annual update every year; correct? That
17 is the process at the Missouri commission, there's
18 either a tri-annual or annual update every year?

19 A. That's correct.

20 Q. And to your knowledge, was Asbury addressed
21 in all of Liberty's IRP filings?

22 A. When you say, was Asbury addressed, can
23 you -- can you define that a little better?

24 Q. Yes. The Asbury coal plant was part of the
25 resources being considered in each of those filings?

1 NATHAN WILLIAMS: I'm going to object to
2 that as to being vague as to the filings, if you want
3 to put a range date or say it was every IRP that
4 Liberty's ever filed, that would be helpful, but.

5 JUDGE WOODRUFF: If you can clarify your
6 question, please.

7 DIANE CARTER: Yes.

8 **Q. (By Diane Carter:) And Ms. Mantle, I was**
9 **still referring to the ones we had just discussed**
10 **since you joined OPC in -- in August of 2014, that**
11 **there has been a Liberty Empire IRP docket every year**
12 **since then, and if you don't know or don't recall,**
13 **that's certainly fine, too.**

14 A. As shown in the table -- table 2, my table
15 2, on page 18 in my rebuttal testimony, I show what
16 the current position of Empire's is with respect to
17 its resources, and then what was in the 2016 resource
18 plan and the 2019 resource plan. In the 26 (sic)
19 resource plan, the AQCS had just recently come online.
20 At Asbury it was considered a resource, and then as
21 you can see and I discuss in my testimony in the 2019
22 of which it was the only resource that was allowed to
23 retire, the resource plan said, retire it, and I
24 discussed that in my testimony. So the -- the
25 resources you have now are fairly consistent with what

1 the 2019 was that does not have Asbury included. Once
2 the Asbury plant goes down, it's no longer included in
3 any resource plans.

4 **Q. Schedule 2 of your rebuttal testimony is a**
5 **document labeled resource planning of a vertically**
6 **integrated utility in the RTO world; correct?**

7 A. Yes.

8 **Q. And that is a -- what you call the white**
9 **paper authored by you; is that correct?**

10 A. That is correct.

11 **Q. And to inform you in the preparation of the**
12 **white paper, you did not attend any meetings of**
13 **working groups, advisory groups, task force or other**
14 **relevant meetings in either SPP or my so; correct?**

15 A. I don't know what relevant meetings are.
16 This goes back to the very basics of an RTO in a
17 market place. I -- to be accurate, to do that, you
18 would have to go to every single one of the meetings,
19 and no, I did not. These are conceptual. I don't
20 specify SPP, I don't specify MISO, I don't specify
21 PJM. It is just a generic -- now, here's how it works
22 now in the resource planning.

23 **Q. Ms. Mantle, when you were asked in the data**
24 **request to provide a list of all meetings of working**
25 **groupings, advisory groups, task force or other**

1 relevant attendance in either MISO or SPP, you simply
2 answered none; correct?

3 A. Correct.

4 Q. Turning your attention to your surrebuttal
5 testimony; you have that with you also?

6 A. I do.

7 Q. Lines 11 through 13?

8 A. Of which page?

9 Q. Oh, I'm sorry about that. Page 4.

10 A. Okay.

11 Q. You recommend that the commission not
12 authorize total recovery of the storm costs because
13 you contend Liberty was imprudent in its resource
14 planning process; correct?

15 A. Yes.

16 Q. You acknowledge that Storm Uri prices were
17 I believe 100 times higher than the average SPP market
18 price; is that correct?

19 A. I think it was more like a thousand.

20 Q. Okay. Do you believe it would be prudent
21 or even realistic to test a portfolio's efficacy using
22 prices that are a hundred or a thousand times greater
23 than normal?

24 A. Yes, I do.

25 Q. You do?

1 A. Yes. That tests the robustness of a
2 resource plan. It may not be what the resource plan
3 is based on, but it will show how the resource plan
4 meets those kind of conditions. A resource plan is
5 typically a combination of several scenarios,
6 different load forecasts, different market prices,
7 different gas prices, and they're all attached to
8 probability. And it's an expected value. It -- and
9 it's one thing that I learned in college. You have
10 something with a low expected value, but a big cost,
11 it can influence the final result.

12 **Q. Utilities are sometimes accused of gold
13 plating; are you familiar with how that term has been
14 used? Thank you, Siri.**

15 A. Yes, I'm familiar with that term.

16 **Q. I don't know whose phone is recognizing my
17 voice, but. Would it be gold plating in your opinion
18 to design a generation fleet for every possible,
19 although incredibly unlikely, new peak or extreme
20 prolonged temperature?**

21 A. It would be unwise. I don't know if I'd
22 characterize it as gold plating, and I would probably
23 say that was imprudent also.

24 **Q. Looking back to your rebuttal testimony on
25 page 4 -- I'll give you a second to get there.**

1 Looking at line 17 to 19, it's your position that
2 Liberty designed its resource portfolio to, quote,
3 beat the SPP market; correct?

4 A. Yes.

5 Q. Does that reference to beating the market
6 include applications -- include Kings Point, North
7 Fork Ridge, and the Neosho wind farms?

8 A. Yes. But it also includes taking down
9 Asbury.

10 Q. One question. First, on the wind part,
11 you'd agree with me that the commission-issued
12 certificates of convenience and necessity for the
13 three wind farms; correct?

14 A. Yes. But as I stated back in the back of
15 my rebuttal testimony, that doesn't mean they have to
16 be built. There's been other CCN granted for
17 generation where the generation was not built.
18 Probably the most obvious one is call way two is not
19 built, but yet, a CCN was granted for it.

20 Q. But you would agree with me that the
21 commission granting the CCN means that the commission
22 found it would be in the public interest for those
23 wind farms to be built?

24 A. At the time that the information -- and
25 based on the information that was given then, yes.

1 **Q. And as you notice, your reference to**
2 **beating the market was also applying to Asbury. OPC**
3 **never filed a complaint against Empire or Liberty**
4 **related to the operation of Asbury; correct?**

5 A. No. When it was running, it was an
6 efficient unit.

7 **Q. And prior to Asbury's retirement, OPC never**
8 **sought a disallowance based on alleged imprudence of**
9 **how Empire, Liberty operated Asbury; correct?**

10 A. No, that is not correct. We never asked
11 for a disallowance. We asked the commission find it
12 imprudent and that -- for the wind projects to be
13 built and for Asbury to be retired, that would be in
14 case EO-2018 -- I think it's 0092 in my surrebuttal
15 testimony.

16 **Q. And just so the record is clear, I think it**
17 **was a yes. So my question -- but I'll ask that again.**
18 **Prior to Asbury's retirement, OPC never sought a**
19 **disallowance based on alleged imprudence of how**
20 **Empire, Liberty were operating Asbury; is that**
21 **correct?**

22 A. That's correct.

23 **Q. With your rebuttal testimony, you respond**
24 **to the direct testimony of drew land doll; correct?**

25 A. Could you provide the reference on what

1 page?

2 Q. Well, I wasn't on a specific portion, but
3 you're critical of Liberty's decision to retire
4 Asbury; correct?

5 A. Correct.

6 Q. And Mr. Landoll in his direct testimony,
7 provided his testimony regarding why Asbury was
8 retired; correct?

9 A. I do not specifically remember who compiled
10 that testimony.

11 Q. Are you aware that it is Liberty's position
12 that Asbury was no longer economic in the SPP market
13 place, and again, I'm not asking about yours, but are
14 you aware that that's Liberty's position?

15 A. Yes.

16 Q. On page 19 of your rebuttal, excuse me, you
17 state that Liberty retired the only coal plant that it
18 controlled, because the margin of the coal plant --
19 because the margin the coal plant was making in the
20 SPP market was not covering its fixed operation and
21 maintenance costs; are you there in your testimony?

22 A. Yes.

23 Q. And you say that Empire now has no base
24 load coal generation resources that it has control
25 over, and then your words, meaning that Empire does

1 not participate in the decisions regarding hardening
2 these plants for operation in cold temperatures or
3 preparing the plants for operation during extreme
4 cold. Continuing your -- your words, these plants
5 have their generation limited for a variety of reasons
6 during Storm Uri, none of which were under the control
7 of Empire; is that your testimony?

8 A. It is.

9 Q. Would you agree with me that you do not
10 have concrete support for the position that Asbury
11 would have performed perfectly under the difficult
12 conditions of Storm Uri?

13 A. That is correct.

14 Q. In the testimony passage that we were just
15 reading, what plants are you describing when you say
16 these plants, the plants that have their generation
17 limited for a variety of reasons during Storm Uri?

18 A. It would be the plants in my surrebuttal --
19 or my rebuttal schedule LMRC, it is a net fuel and
20 purchase power report provided or submitted to the
21 commission, and it talks about -- and it is a
22 confidential document. It talks about D rates on
23 the -- that there were D rates on coal generation and
24 it -- it talks about specific units and the problems
25 that were at those units.

1 **Q. As far as the specific units you'd be**
2 **referencing, would it be Iatan 1 and 2 in Plum Point?**
3 **The other units where -- where Empire has an interest**
4 **but is not the controlling owner?**

5 A. Those are the only coal resources you have.
6 Once you shut down Asbury. So, yes, those are the
7 ones I'm referring to.

8 **Q. And during Storm Uri, it -- it's my**
9 **understanding that Iatan 1 ran about 91 percent of**
10 **capacity, Iatan 2 ran nearly a hundred percent and**
11 **that Plum Point D rated to 50 megawatts, I believe, by**
12 **February -- let's see, February 12th and then offline;**
13 **is that your recollection?**

14 A. I don't recollect the specifics past what
15 is in this attachment to my testimony.

16 **Q. Do you recall that some did well and some**
17 **didn't do well with the extreme conditions of Storm**
18 **Uri?**

19 A. Well, according to this report that's
20 attached to my testimony, yes, there were some that
21 did better and some that didn't do as good.

22 **Q. What is the purpose of emphasizing in that**
23 **passage that we just read, that Liberty does not have**
24 **control over these other plants, quote, meaning that**
25 **Empire does not participate in the decisions regarding**

1 **hardening these plants for operation in cold**
2 **temperatures or preparing the plants for operation**
3 **during extreme cold?**

4 A. Are you asking why I put that in my
5 testimony?

6 Q. Yes. What was the point -- in your
7 testimony, what was the point of calling that out that
8 Empire no longer has control for those specific
9 things?

10 A. Part of meeting a customers' loads is to be
11 able to say what generation can come on, what
12 generation is not to be dispatched. When O&M is to be
13 done, what kind of coal pile to have, the coal
14 inventory, all those are decisions that impact how
15 much energy's available to meet a -- the customer's
16 loads. When they are minority owners, Empire's
17 minority owners of these plants, I've been told by
18 Empire personnel that, you know, we -- we don't have
19 control over that. We don't know what's going to
20 happen at Iatan 1 and 2. We don't know what's
21 going -- you know, they know what's going on, but they
22 don't have control over it, so they don't know whether
23 it's going to be down for maintenance when Empire
24 needs it or -- what's -- you know, they might know the
25 coal pile amount, but they aren't directly in charge

1 of making that decision.

2 Q. Although, Liberty would not have direct
3 control over those decisions for those three plants we
4 mentioned, Iatan one and Iatan two and Plum Point.
5 Another Missouri regulated utility would be the one
6 making those decisions to the extent decisions are
7 made by the utility; correct?

8 A. Correct.

9 Q. And for all of our regulated utilities in
10 Missouri, the functional control has been given to the
11 RTO, SPP or MISO; correct?

12 A. Yes.

13 Q. Looking at your rebuttal testimony, page
14 10, lines 9 to 11, you state there that -- well, let
15 me let you get there. Sorry. You state that you have
16 not looked closely at the inputs in the resource
17 planning models, Empire relied on to know how Empire
18 may have manipulated the modeling to show Asbury would
19 be economic, that's your testimony?

20 A. Yes.

21 Q. Now, we talked about the IRP dockets and
22 that you were involved at least to some degree in all
23 of those IRP dockets, should you have looked closely
24 how Empire modeled Asbury in those dockets before
25 taking a position in this docket on the prudence of

1 **retiring Asbury?**

2 A. No.

3 **Q. You don't believe so?**

4 A. There are tens and thousands -- tens of
5 thousands, hundreds of thousands of inputs into these
6 models. Hourly, for 20 years, so that's 8760 times 20
7 inputs. There's -- there's no way to look at it, but
8 you can look at the results and see whether or not
9 they seem reasonable, and I do know the one thing that
10 was done was that to manipulate the model was only
11 allow Asbury to retire. Don't look at the other
12 generation plants to retire, and it would have -- I
13 don't know the O&M costs that were put in. There's --
14 there's so many inputs for every unit. There's
15 absolutely no way to -- I doubt that there's anybody
16 at Empire that has looked at every data point that's
17 put into these models. You know, the forecaster put
18 into the models by customer class 8760 for every year.
19 There's absolutely no way to do this.

20 DIANE CARTER: Thank you. That's all the
21 questions I have.

22 JUDGE WOODRUFF: Okay. Then we'll come up
23 for questions from the bench. Are there any questions
24 from the commissioners online?

25 JASON HOLSMAN: No questions, Judge.

1 Commissioner Holsman.

2 JUDGE WOODRUFF: Thank you. All right. I
3 do have some questions. And the first one is simply,
4 define a term that was used in your previous testimony
5 a few minutes ago. D rates. Can you describe for me
6 what D rates are?

7 THE WITNESS: A plant can go down
8 completely or partially. A D rate is typically going
9 down just partially so the plant can generate but not
10 to its fullest capacity.

11 JUDGE WOODRUFF: Okay. And what's --
12 declining units rates --

13 THE WITNESS: It would decline in its
14 efficiency, but it's something like Storm Uri every
15 megawatt hour they could get out was --

16 JUDGE WOODRUFF: Okay. I believe you said
17 Plum Point D rated by 50 percent; is that -- did I
18 remember that right?

19 THE WITNESS: Ms. Carter said that. And
20 that's a plant in Arkansas, and I do believe they had
21 some problems with their coal pile freezing or -- I
22 don't remember exactly what it was, but there was a D
23 rate.

24 JUDGE WOODRUFF: Okay. Then there was some
25 testimony from another witness about the

1 self-commitment policies of Liberty as to the -- the
2 Asbury plant. Are you familiar with what I'm talking
3 about with --

4 THE WITNESS: Yes.

5 JUDGE WOODRUFF: Okay. Do you believe that
6 it would have been imprudent for Liberty to continue
7 self-committing Asbury?

8 THE WITNESS: That would depend on a lot of
9 factors. It would mean that it likely was not --
10 would not be cost effective. As it was currently run
11 toward the ends, it was -- on the market, just looking
12 at the -- the cost of fuel and what the revenues made
13 in the market, they did make 4 million a year on this
14 power plant, so they -- it was marginal, but at the
15 same time operating a small loss doesn't necessarily
16 mean it's bad. For example, they've been running --
17 they've got two wind PPAs that they're losing a
18 million to \$2 million a month on, and they continue
19 with those PPAs. There's --

20 JUDGE WOODRUFF: Purchase power agreements?

21 THE WITNESS: Yes, sir. Sorry. Purchase
22 power agreements. So having Asbury would have given
23 them a resource that they could move dispatch, move
24 with the load or asking SPP to. They could sell into
25 market different values. Again, they do not dispatch

1 SPP does. So there's value other than just economic
2 value. And self-commit looks at whether they should
3 self-commit or not, looks completely at the economics
4 of the market, not necessarily, you know, having a
5 plant, you know, open, so there's benefits to
6 self-commit, that are not necessarily market benefits
7 but benefits to customers. Self-commit does mean that
8 there's periods of time or when you don't self-commit,
9 there's periods of time where that plant in the past
10 would have been running, but now it's not, and, so
11 there's -- there's benefits to both ways.

12 JUDGE WOODRUFF: Okay. Now, it's been
13 suggested that Liberty should have planned more
14 effective for Winter Storm Uri by having Riverton 11
15 ready to operate with fuel oil. After the retirement
16 of Asbury, which had a capacity of approximately
17 190 megawatts, what dispatchable capacity did Liberty
18 have left?

19 THE WITNESS: If you turn to the table 2 on
20 page 18 of my rebuttal testimony, the combustion
21 turbines, Riverton, state line, energy center,
22 Riverton 12, state line combined cycle, and the Iatan
23 plants, Plum Point, those were all -- you can dispatch
24 those.

25 JUDGE WOODRUFF: Okay.

1 THE WITNESS: The Meridian way wind was
2 purchase power agreement as is Elk River wind. Ozark
3 is a hydro. It's how much water's throwing --
4 flowing. That's Lake Taney -- they make Lake
5 Taneycomo, in Branson. So those -- they do have quite
6 a bit of dispatchable, but if you totaled up the
7 amount that's dispatchable against the loads, it -- it
8 just wasn't enough, and they are supposed to plan to
9 meet their winter peak.

10 JUDGE WOODRUFF: Now, with dispatchable
11 capacity, do any of the others have the ability to use
12 alternate fuels?

13 THE WITNESS: The Riverton units as you've
14 heard, I believe two of energy service, combustion
15 turbines can and state line CTs are dual fuel, they
16 can run on either natural gas or fuel oil.

17 JUDGE WOODRUFF: Should any of this have an
18 impact on how Liberty operated the Riverton 10 and 11?

19 THE WITNESS: Should any of this -- what do
20 you mean --

21 JUDGE WOODRUFF: Well, we were talking
22 about units with dispatchable capacity and alternative
23 fuel. Do you have any concerns about the Riverton 10
24 and 11?

25 THE WITNESS: Empire is a dual peaking

1 utility which means they peak in the summer and
2 sometimes they peak in the winter. They should have
3 been prepared for a winter peak. I heard that they
4 were tuned at 70 degrees. Well, that catches your
5 summer peak. They're probably going to get that, but
6 Empire was not prepared to use these for their winter
7 peak, and during Storm Uri, when prices are \$7,000
8 megawatt hour, any megawatt hour that can be squeezed
9 out of anything regardless of their fuel sources was a
10 valuable asset.

11 JUDGE WOODRUFF: Okay. How many other wind
12 units were operating on January 1, 2021?

13 THE WITNESS: On January 1st --

14 JUDGE WOODRUFF: Of 2021.

15 THE WITNESS: -- of 2021, I believe the
16 North Fork Ridge wind project was -- had been handed
17 over to them. The other two were still in
18 construction phase. They had some of their wind
19 turbines that were working and some were not, but even
20 then, they weren't in rates yet. So absolutely no
21 megawatt hour that was generated provided any benefit
22 to the customer other than keeping SPP up, keeping a
23 blackout from happening. Other than that, they did
24 not -- they did not provide any revenue benefits to
25 customers.

1 JUDGE WOODRUFF: Can you explain the last
2 statement about keeping SPP up, where it was actually
3 used some of that power to keep lights on?

4 THE WITNESS: SPP came close to going down
5 and, so every megawatt hour that was put in the system
6 kept that from happening.

7 JUDGE WOODRUFF: So you're saying they
8 couldn't sell it, but the power was going into the
9 system?

10 THE WITNESS: They did sell it. The
11 revenue from it went back to Empire's shareholders.

12 JUDGE WOODRUFF: Okay.

13 THE WITNESS: Because it wasn't in rates
14 yet.

15 JUDGE WOODRUFF: And I'm assuming you're
16 not saying it was an intentional decision on the part
17 of -- of Liberty, it just the way it was in the
18 process?

19 THE WITNESS: And not just the process of
20 this plant, but when Iatan wanted to rebuild the
21 generation -- the energy that was generated prior to
22 going into rates, that revenue was used to offset the
23 capital cost of the plants. Empire rate case was
24 black box settlement, so we can't really say how much,
25 you know, whether or not it actually offset the

1 capital cost, but that is typically the way it's
2 treated for new generation is up until the time the --
3 the customers wouldn't see the benefit in their fuel
4 and purchase power costs until it is in rates.

5 JUDGE WOODRUFF: Okay. Talking about the
6 balance between resource adequacy capacity, dispatch
7 ability, reliability versus cost effectiveness, can
8 you give me a range of appropriate actions that would
9 have been expected by Liberty to take -- that would
10 have expected Liberty to take an order to balance to
11 provide reliable service with cost effectiveness of
12 its generation units as it made its decision regarding
13 the retirement of Asbury?

14 THE WITNESS: Asbury provided great value
15 in being dispatchable and being there, it's often said
16 that the wind projects replaced Asbury which is of
17 complete, that's like saying, you know, a pineapple is
18 the same as an orange. They're just two -- neither
19 one is bad. They just have different qualities. One
20 cannot replace the other. To have -- and the wind
21 projects are only reliable when the wind is blowing
22 and load doesn't always care whether the wind is
23 blowing or not. It's there all the time. So wind is
24 a resource that's good at offsetting other resources.
25 It may be cheaper than say running a CT, but the

1 dependability is not there, so you need -- they need
2 not just Empire, but we need plants that we can depend
3 on. Asbury had -- was most -- partly paid for, had
4 just -- it was a very clean plant. We've got the
5 American Cancer Society reports that show Joplin in
6 one of the top 100 cleanest cities in air, and that
7 was while Asbury was running, so it -- it was a good
8 plant, and you can't replace that with wind. It would
9 be -- you can replace it with another coal unit, you
10 can replace it with -- and with that, you get high
11 costs, initial costs or you can replace it with
12 combustion turbines. They're cheaper to build, but
13 right now with the way the price of natural gas is and
14 the fact that we learned during Storm Uri that firm
15 transportation of natural gas doesn't mean you're
16 going to get natural gas when you need it. So, I
17 mean, all of these things need to be balanced when you
18 get too heavy in coal, then that's bad. You get too
19 heavy in wind, that's bad. You need a good balance
20 and with bringing Asbury down, if you take that as a
21 given and that was the right thing to do, then for the
22 customers benefit to have reliable power that they
23 know that they can flip a switch, and it can be on,
24 you would need combustion turbines or another coal
25 plant.

1 JUDGE WOODRUFF: Now, there was some
2 testimony earlier in this hearing about the heat rate
3 at Asbury. I believe the company witness indicated
4 that the heat rate at Asbury was the lowest of
5 their -- of their coal-firing units. Do you disagree
6 with that?

7 THE WITNESS: Heat rates are a funny thing.
8 I think lowest means best, but it was -- it was not as
9 good as the others is what I think was what the
10 testimony was, and I remember seeing graphs of heat
11 rates at Asbury before, and after the AQCS that was
12 installed in 2014/2015, and it really helped the plant
13 run more efficiently, because they did more than just
14 install the air quality control system. They did
15 other upgrades and improvements to the plant that made
16 it a more efficient plant. You know, different kind
17 of plants have different efficiencies, and it is a way
18 to compare cost plants, but Asbury was a clean plant.
19 It was a -- because of the additions of money, they're
20 asking customers to pay right now, because that was
21 spent. It was a clean plant with a better heat rate.
22 It was a better plant than before they put that on
23 there.

24 JUDGE WOODRUFF: Okay. Can you explain to
25 me what you believe -- does public counsel believe

1 that it's prudent for customers to pay 100 percent of
2 Storm Uri costs to securitization as opposed to an AAO
3 versus -- or an AAO uses 95 percent of the same costs
4 that would have, otherwise, recovered through the FAC;
5 is that -- am I making a coherent question?

6 THE WITNESS: I didn't understand. It may
7 have been coherent but not to me.

8 JUDGE WOODRUFF: Okay. I'll read it as
9 it's written here. Does OPC believe it's prudent for
10 customers to pay 100 percent of Winter Storm Uri costs
11 through securitization or an AAO versus or an AAO
12 versus 95 percent of those same exact costs that would
13 have otherwise would have been recovered through the
14 FAC?

15 THE WITNESS: It's OPC's position that only
16 95 percent of the cost should be recovered. The
17 commission has said that the company's need an
18 incentive to act efficiently when it comes to fuel and
19 purchase power decisions, and there were decisions
20 being made on the fly during Storm Uri. I mean, it
21 didn't say when everything is going well, then they
22 need a 5 percent, you know, incentive, and you've got
23 to remember that incentive goes both ways. Evergy
24 Metro which made revenue above its costs during the
25 storm got to keep 5 percent. They flowed it through

1 the FAC.

2 JUDGE WOODRUFF: And why did Evergy Metro
3 make extra revenue during this storm?

4 THE WITNESS: Because it had generation
5 well in excess of what it needed and that generation
6 was up and running, and they could sell it at the
7 market. Ms. Carter talked about the market prices
8 being a hundred times more than usual, but it was, you
9 know, closer to maybe a thousand, and a coal plant --
10 the coal is on the grounds, and if it's -- that's the
11 fuel cost. It -- that's what they're burning, and any
12 margin they make above that, off the market, offset
13 other costs, so they had a lot of generation sold into
14 the market at very high prices, so they generated a
15 lot of revenue so that they could even more than what
16 the load cost, so, because they had generation that
17 was dispatchable, that had the fuel source down on the
18 grounds. They were able to generate a lot more
19 revenues than what they -- they -- than the cost they
20 incurred.

21 JUDGE WOODRUFF: Is there a downside for
22 ratepayers of having too much capacity for a company
23 having too much capacity?

24 THE WITNESS: There is, because, remember,
25 all that capacity is capital cost, and that's in their

1 fixed base rates, and you know, that's the whole
2 reason -- the coal plant is expensive. Nuclear plant
3 is expensive, and that's part of the reason why
4 they're a natural monopoly instead of having, you
5 know, a whole bunch of generation built out there and
6 nobody can afford the capital costs, then let's build
7 this big plant. It has a high capital cost. Put that
8 into rates, but we're going to enjoy low fuel costs.
9 We're going to get the benefit of a reliable fuel cost
10 and versus the other way around, you put in, let's
11 say, wind, you've got your -- and please don't take me
12 as pro-coal and anti-wind. They each have their place
13 in a resource portfolio. But with wind, you get a
14 capital cost putting it in, and you make great
15 revenues, but only when the wind is blowing. You
16 can't count on that. So each of that needs to be
17 balanced. If you put too much capacity in, rates go
18 up because customers are paying for that. But then
19 their fuel costs are lower, so it's a balancing act.
20 That's what resource planning really is. It's
21 balancing or it was in the past before the market, it
22 was balancing trying to fit the best resources in to
23 meet the customer's load cost effectively. So you
24 didn't want everything to be base load. You didn't
25 want everything to be CTs. You didn't want everything

1 to be wind. You fit it to the customers' loads.

2 JUDGE WOODRUFF: You said that before
3 markets. What -- what -- what's the situation now
4 with markets?

5 THE WITNESS: Now, it's not just Empire,
6 but the utility see SPP as an unlimited resource for
7 energy. So if their resources aren't there to
8 generate electricity to meet their customers' needs,
9 the market will supply it, and while I believe a
10 market should be considered as a resource, it should
11 not be relied on, because what that does is it moves a
12 great risk onto the customers, because they're going
13 to have to pay those market cost. If they're stable
14 costs, that's not so bad, but when they get real
15 volatile, customers are at the winds of the market.
16 So, you know, just like you shouldn't rely on wind,
17 you shouldn't just rely on coal or natural gas, you
18 shouldn't have a great reliance on the market because
19 that exposes customers to a great risk.

20 JUDGE WOODRUFF: That's all the questions I
21 have. Are there any recross based on questions from
22 the bench, beginning with staff?

23 CURT STOKES: Curt Stokes for staff. No
24 questions, Your Honor.

25 JUDGE WOODRUFF: For Liberty.

1 DIANE CARTER: Yes, Judge. Thank you.
2 Just one -- one issue.

3 EXAMINATION

4 BY DIANE CARTER:

5 Q. Judge Woodruff, I don't recall the question
6 he asked you, but your answer was about two purchase
7 power agreements for wind that Liberty currently has;
8 do you recall that?

9 A. Yes. The Elk River and Meridian Way PPA,
10 purchase power agreements.

11 Q. And you indicated that Liberty is losing
12 money on those, but they keep the agreements in place;
13 do you recall that?

14 A. Yes. And I misspoke. Liberty isn't losing
15 money on that. Its customers are paying increased
16 cost because of those.

17 Q. Well -- and actually, Ms. Mantle, although,
18 on one side, would you be surprised to hear, I guess,
19 that on one side there's a \$16 million loss, but then
20 there's a positive 30 million in the market when you
21 take TCRs into account?

22 A. I'm --

23 JUDGE WOODRUFF: TCRs, what are they?

24 DIANE CARTER: Transmission cost revenues.

25 THE WITNESS: I'm not familiar with that,

1 but it does get to the fact that there's a lot of
2 things to be balanced and a lot of things to look at.

3 **Q. (By Diane Carter:) And also, as far as**
4 **Liberty keeping those PPAs, they're locked in on**
5 **contracts currently; correct?**

6 A. I don't know.

7 DIANE CARTER: All right. Thank you.
8 That's all I had, Judge.

9 JUDGE WOODRUFF: All right. Redirect.

10 NATHAN WILLIAMS: Thank you. Nathan
11 Williams for public counsel.

12 EXAMINATION

13 BY NATHAN WILLIAMS:

14 **Q. Let's go to your table of resources on page**
15 **18 of your rebuttal testimony; do you recall getting a**
16 **series of questions about that?**

17 A. Yes.

18 **Q. And you identified resources listed in that**
19 **table as being dispatchable; do you recall that?**

20 A. Yes.

21 **Q. Are those dispatchable resources equally**
22 **reliable in terms of being able -- available for**
23 **generating electricity, and if not, can you explain**
24 **how they differ and why?**

25 A. Well, nothing is a hundred percent

1 absolute. Coal plants, because they have -- they're
2 co-pile onsite. They typically keep an inventory of
3 coal, 30 to 60-day burn onsite. Their fuel source is
4 very reliable. The others, the combustion turbines,
5 the combined cycles, plants take natural gas as
6 necessary and that source is fairly reliable in a
7 normal basis, but it has also been shown during Storm
8 Uri, then again in January of this year, that that
9 fuel source is not always there when called upon.
10 That would be the dispatchable resources.

11 **Q. Well, whenever you talk about the gas**
12 **supply, is that -- is the gas supply as it's used?**

13 A. It is. There's no on -- well, the ones
14 have dual fuel does have fuel -- or diesel fuel
15 onsite, but typically, they prefer to run those on
16 natural gas.

17 **Q. Well, you're talking CTs. We're just**
18 **talking about the gas aspect of it. It's the fuel**
19 **that's burned is used as received. There's not onsite**
20 **storage; correct?**

21 A. There's no onsite storage for natural gas.

22 **Q. And there are some units that do have dual**
23 **fuel capability where they can burn diesel or fuel**
24 **oil, however you want to describe it?**

25 A. There's some combustion turbines, yes.

1 **Q. And you've identified those already, I**
2 **believe?**

3 A. I -- I'm pretty sure I got them right.

4 **Q. And they have a similar reliability as a**
5 **coal plant given that the fuel is onsite?**

6 A. Yeah. And then they would have the other
7 consideration of especially the Riverton, the Kansas
8 Health and -- they have to get an air permit to run on
9 fuel oil, but -- so there's different things for each
10 type of plant.

11 **Q. And what about their generation capacity**
12 **for dual fuel plant versus coal plant? In Liberty's**
13 **portfolio?**

14 A. The dual fuel plants are a lot smaller.
15 They're combustion turbines. Coal plants are
16 typically large. The small ones are all being shut
17 down. Where it has, like, Iatan 192, that's because
18 it's a portion of the coal plant, state line, you
19 know, you see Riverton, and state line combine cycles
20 there, they're fairly large, but Iatan and Plum Point
21 are much larger plants than either one of those. It's
22 just that Empire has a portion of those.

23 **Q. Now, there's also a hydro plant; is there**
24 **not?**

25 A. There is. Ozark is their hydro plant.

1 **Q. And how is it in terms of a reliability of**
2 **being able to dispatch?**

3 A. If the head water is there, they can
4 dispatch it, and because the fuel cost is zero, it
5 typically runs regardless of -- of the demand because
6 they can -- it can earn great revenue. It is very
7 small. It's actually 4 -- 4 megawatt units, and it's
8 been there since the early 1900s. It's an old plant,
9 but it -- it has done well for -- for Empire.

10 **Q. Now, you -- in response to, I believe it**
11 **was questions from the bench, you talked -- and maybe**
12 **from Liberty -- you talked about the market price**
13 **being a thousand times what they normally were. How**
14 **do those prices compare to the fuel used to generate**
15 **power from coal?**

16 A. From coal -- the price of coal is pretty
17 well set. I mean, it does not vary with the market.

18 **Q. But is it -- are we talking a thousand**
19 **times the price of coal or -- I'm trying to get at the**
20 **difference between what the market price is and what**
21 **the field price is in order of magnitude.**

22 A. I really can't say. Market prices are
23 dollars per megawatt hour. Fuel costs are MMBTUs, but
24 typically, coal price is lower, much lower, than
25 market price. That's what makes them a plant that's

1 run quite a bit, because the price -- its variable
2 cost is lower than the market price.

3 **Q. So in other words, if you're dispatching a**
4 **coal plant into a market where the market prices were**
5 **a thousand times normal, you should be making --**
6 **receiving all kinds of revenues from the market for**
7 **that generation?**

8 A. Yes.

9 **Q. You've got some questions about the white**
10 **paper that's a schedule to your rebuttal testimony, I**
11 **believe, schedule two; do you recall those?**

12 A. Yes.

13 **Q. What did you rely on for creating that**
14 **white paper?**

15 A. I relied on my 30 -- more than 30 years of
16 experience that resource planning, some of which
17 occurred before the (inaudible) markets and some that
18 occurred afterwards. I relied on resource plan
19 filings, I relied on training received from
20 Dr. Proctor, six or seven years ago on RTOs in the
21 markets and how they work. Just relied on my
22 experience working at OPC, because most of my
23 experience with RTOs have come after I started working
24 at OPC, but it's -- and some of it's just common
25 sense, that if you're going to -- if you match your

1 resources to your load, it's going to be there when
2 you need it and markets run off -- or if you get your
3 revenues on what is put into the market.

4 **Q. I think one more topic. Do you recall you**
5 **got some questions from staff about the Uri AAO, Storm**
6 **Uri AAO, that Liberty has pending?**

7 A. Yes.

8 **Q. And there was a reference it's seeking to**
9 **recover the 5 percent. What 5 percent are we talking**
10 **about? Is it all of the storm costs? Is it 5 percent**
11 **of the extraordinary? Is it something else?**

12 A. It's 5 percent of the -- it's not easy.
13 They incurred fuel and purchase power costs, but there
14 was some fuel and purchase power costs paid in base
15 rates, so it -- those -- the fuel and purchase power
16 costs were at of what was put into what was -- what
17 was recovered in base rates. I believe that was about
18 12 million, that total fuel and purchase was over 200
19 million, and it's 5 percent of what was left over
20 after you take out what was paid in base rates from
21 the total fuel cost.

22 NATHAN WILLIAMS: No further questions of
23 this witness at this time.

24 JUDGE WOODRUFF: All right. Thank you.
25 And Ms. Mantle, you can step down. And that is our

1 last witness for today. We'll resume at 8:30 tomorrow
2 with, I believe we said Ms. -- Mr. Murray would be
3 testifying first, and then -- and then we would be
4 going to Graves, Niehaus and Davis?

5 CURT STOKES: Yes.

6 JUDGE WOODRUFF: Right. Okay. Thank you
7 all very much. We're adjourned until tomorrow
8 morning.

9 RYAN SILVEY: Thank you, Judge.

10 (Audio ended.)

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