

In the Matter of:

THE APPLICATION OF THE EMPIRE ELECTRIC COMPANY

EA-2019-0010 VOL. II

April 08, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

April 8, 2019

Jefferson City, Missouri

Volume 2

In The Matter Of The Application) File No.
Of The Empire District Electric) EA-2019-0010
Company For A Certificate Of)
Convenience And Necessity Related)
To Its Customer Savings Plan)

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,
WILLIAM P. KENNEY,
DANIEL Y. HALL,
COMMISSIONERS

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1 (Empire Exhibits 1, 2, 3-HC, 3-P, 4-HC,
2 4-P, 5-HC, 5-P, 6-HC, 6-P, 7-HC, 7-P, 8, 9-HC, 9-C,
3 9-P, 10-HC, 10-C, 10-P, 11-HC, 11-P were marked for
4 identification.)

5 JUDGE DIPPELL: Okay. Let's go ahead and
6 go on the record. This is April 8th, 2019 and we are
7 here for a hearing in EA-2019-0010 in the matter of
8 the application of the Empire District Electric
9 Company for certificates of convenience and necessity
10 related to wind generation facilities. This case was
11 previously consolidated for all purposes with Case
12 Number EA-2019-0118.

13 My name's Nancy Dippell. I'm the
14 Regulatory Law Judge assigned to preside over this
15 hearing. And we're going to begin with entries of
16 appearance; start with Empire.

17 MR. COOPER: Thank you, Your Honor. Dean
18 Cooper with the law firm of Brydon, Swearengen,
19 England, PC, as well as Sarah Knowlton of the Company
20 on behalf of the Empire District Electric Company.

21 JUDGE DIPPELL: Renew Missouri.

22 MR. OPITZ: Thank you, Judge. For Renew
23 Missouri, I'm Tim Opitz. And I've provided my
24 information to the court reporter.

25 JUDGE DIPPELL: The National Resources

1 Defense Council and Sierra Club previously asked to be
2 excused, and I did so. Missouri Energy Consumers
3 Group.

4 MR. WOODSMALL: Good morning, Your Honor.
5 David Woodsmall on behalf of MEGC.

6 JUDGE DIPPELL: Commission Staff?

7 MS. MERS: Nicole Mers and Casi Aslin on
8 behalf of the Commission Staff. And our information
9 has been provided to the court reporter.

10 JUDGE DIPPELL: Missouri Department of
11 Conservation.

12 MS. BELL: Stephanie Bell with Ellinger
13 and Associates, and Jennifer Frazier on behalf of the
14 Missouri Department of Conservation. And the court
15 reporter has our information.

16 JUDGE DIPPELL: And the Office of Public
17 Counsel.

18 MR. WILLIAMS: Nathan Williams and Caleb
19 Hall appearing on behalf of the public and the Office
20 of the Public Counsel. And the court reporter has our
21 contact information.

22 JUDGE DIPPELL: And has anyone arrived
23 yet for Division of Energy? Not yet. I'm expecting
24 them to come later, but we will proceed.

25 Okay. I would ask if everybody would

1 please silence their cell phones or any other
2 electronic devices. And I did not order a specific
3 list of exhibit numbers so I would like to go ahead
4 and do that now and have you pre-mark your direct
5 filed exhibits.

6 Would Division of Entry -- or Division of
7 Energy like to make their entry of appearance?

8 MS. REEVES: Yes. I'm Rochelle Reeves.
9 And I apologize for being late. I thought we started
10 at 9:00 this morning.

11 JUDGE DIPPELL: That's quite all right.

12 Okay. I received, before the hearing, a
13 copy of an exhibit list that the Empire District
14 Electric Company put together and -- beginning with
15 Exhibit Number 1, which is usually the way we assign
16 these numbers. And so just for purposes of this
17 hearing, I'm going to assign Empire Exhibits Number 1
18 through 99 and Staff Numbers 100 through 199 and
19 Public Counsel numbers 200 through 299 and Renew
20 Missouri 300 to 399 -- and I'm hoping you guys aren't
21 planning on using all of these -- Division of Energy
22 will be 400 through 499, MEGC will be 500 through 599,
23 Missouri Department of Conservation will be 600
24 through 699, and then should National Resources
25 Defense Council and Sierra Club decide at the last

1 minute that they need to participate, they'll be 700
2 through 799.

3 And like I say, Empire gave the court
4 reporter their -- a copy of their exhibits and I
5 believe she's already had an opportunity to -- or at
6 least their exhibit list and she's had an opportunity
7 to look at those and we'll make sure those get marked
8 as we go. I also -- has Staff also given the court
9 reporter copies of exhibits or --

10 MS. MERS: Yes. Copies of exhibits and
11 testimony.

12 JUDGE DIPPELL: And Public Counsel?

13 MR. WILLIAMS: Provi-- I provided the
14 court reporter with copies of the exhibits but they're
15 not numbered.

16 JUDGE DIPPELL: Okay. And I'll just
17 remind you all if you haven't already done so, to give
18 the court reporter copies of exhibits. We will -- I'm
19 not going to go through and number each -- each
20 specific one at this time individually, but I will --
21 will begin with Empire's -- we will mark those the way
22 that they are already set out and then when we get to
23 the other witnesses, we'll number them as they come up
24 on the witness stand.

25 I will remind you if there's exhibits

1 that you have that aren't pre-filed, please provide me
2 with copies for myself and all five of the
3 Commissioners even if not all five of the
4 Commissioners are present at that time so that I can
5 make sure that they have a copy of it. And -- and
6 also be sure that you give a copy of any exhibits that
7 you have that haven't already been pre-filed to the
8 court reporter.

9 So Friday we had a couple of Stipulation
10 and Agreements filed. They were not unanimous so I'm
11 going to start with the first one that came in, which
12 was the wildlife Stipulation and Agreement. Do we
13 know at this time if there will be any objections to
14 that agreement?

15 MR. COOPER: Yes, Judge. I think we
16 footnoted in there that the parties -- all parties
17 that were not signatories had affirmatively stated no
18 objection and no request for a hearing on that
19 wildlife stipulation. So I think that it's in a form
20 that it can be treated as unanimous under the rule.

21 JUDGE DIPPELL: Okay. And then with
22 regard to the second Stipulation and Agreement, which
23 purported to resolve all issues, do we know at this
24 time if there will be objection?

25 MR. WILLIAMS: We do not.

1 JUDGE DIPPELL: You do not know if there
2 will be an objection?

3 MR. WILLIAMS: Correct.

4 JUDGE DIPPELL: Okay.

5 MR. WILLIAMS: We got it late Friday.
6 We're still reviewing it.

7 JUDGE DIPPELL: Okay. So then in terms
8 of proceeding, do you want to present that Stipulation
9 and Agreement in your -- I'm assuming that you will
10 present that as part of your opening statement?

11 MR. COOPER: The Company will, yes, Your
12 Honor. You know, at a minimum, it becomes the -- the
13 position of the Company so certainly we will talk
14 about it in the opening.

15 JUDGE DIPPELL: Okay. Well, I guess we
16 will proceed with the hearing as originally scheduled
17 with the addition of trying to determine the -- the
18 significance of the Non-Unanimous Stipulation and
19 agreement that was filed on Friday and how its terms
20 might change the positions of the parties.

21 With regard to the witness order and so
22 forth and the order of opening statements, I was going
23 to adopt the pre-filed order. Has the filing of the
24 Stipulation and Agreements changed any of the witness
25 order or the order of cross-examination that you would

1 follow?

2 MR. COOPER: I believe as to Department
3 of Conservation witnesses, it has.

4 JUDGE DIPPELL: Okay.

5 MS. BELL: Yes. The Department of
6 Conservation previously requested that the parties
7 waive cross on the witnesses and all parties did. So
8 unless the Commission has additional questions for the
9 witnesses, we were prepared to give an opening.
10 Seeing as I think there's no objection to that
11 stipulation, we're still happy to do that or happy to
12 give that time up.

13 And we would request -- we have our
14 exhibits to go ahead and offer of our testimony, but
15 then we'd go ahead and request to be excused from the
16 hearing.

17 JUDGE DIPPELL: Okay. I think I would
18 have you go ahead and give an opening just so that we
19 can hear about that stipulation. And then if there
20 are any Commission questions, I will let you know.

21 And then Renew Missouri had listed on the
22 witness list that its witness needed to testify on
23 Tuesday. Is that still accurate?

24 MR. OPITZ: Yes, that's still accurate,
25 Judge.

1 JUDGE DIPPELL: Okay. Okay. If you'll
2 hold -- bear with me just one moment. Would Public
3 Counsel like some more time to review that Stipulation
4 and Agreement before witnesses begin or are you --

5 MR. WILLIAMS: Perhaps. Why don't we go
6 ahead and do the openings and then take a break and
7 let you know.

8 JUDGE DIPPELL: Okay. We'll do that.
9 We'll start with openings and then after that, we'll
10 reassess and see where we are with going forward with
11 witnesses.

12 All right then. Just want to notify
13 everybody that we're getting ready to begin. All
14 right. If nobody has anything further, we can go
15 ahead and start with opening statements. And the
16 first up is the Company.

17 MR. COOPER: Take me just a minute to get
18 set up, Judge. As I mentioned earlier, my name is
19 Dean Cooper. I'll be representing the Empire District
20 Electric Company today, along with Ms. Sarah Knowlton
21 in the hearing.

22 Before I go any further, I will say that
23 we'll have to see how this PowerPoint experience goes.
24 This is the first time I've tried to use the remote in
25 the room. Many -- I've seen many others do it quite

1 successfully, but if it goes awry, we do have copies
2 of the documents out there for you.

3 JUDGE DIPPELL: And we'll see how I do.
4 I have had trouble in the past, but looks like I've
5 got your presentation up on the -- the video so --

6 MR. COOPER: Very good. Well, we'll --
7 we'll see. I was thinking before I -- the last time I
8 made up one of these for a hearing, it had the blue at
9 the top because the person that created the template
10 for me put blue at the top. So if at some point in
11 the future I come in and I have one with green, you'll
12 know that my skill level has -- has moved forward.

13 We're here today to discuss -- or to
14 consider the second step in what has been a two-step
15 process regarding Empire's proposal to develop 600
16 megawatts of wind generation in order to deliver
17 significant savings to its customers.

18 Step one of this process, which was Case
19 EO-2018-0092, which is sometimes called the customer
20 savings plan case, in that case the Commission
21 determined that Empire's proposed acquisition of 600
22 megawatts of additional wind generation assets is
23 clearly aligned with the public policy of the state --
24 of the Commission and the state.

25 As we now move forward with step two of

1 the regulatory process, that is the request for
2 certificates of convenience and necessity, the three
3 wind projects comprising the 600 megawatts of
4 generation, this remains the case. Empire will
5 demonstrate through the testimony of its witnesses
6 that the acquisition of these wind projects, two of
7 which are in southwest Missouri and one of which is in
8 Kansas, are necessary or convenient for the public
9 service as contemplated by the Missouri CCN statute.

10 COMMISSIONER HALL: Mr. Cooper, let me
11 ask you a quick question.

12 MR. COOPER: Yes, Commissioner.

13 COMMISSIONER HALL: I'm sorry to
14 interrupt, but I'm wondering what -- what do you think
15 the legal significance was of the Commission's ruling
16 in that prior case on this issue?

17 MR. COOPER: Well, I hope that it was a
18 indication of the Commission's thoughts at that point
19 in time based upon the record that was presented to it
20 in that case. Don't believe I'd go so far as to say
21 that the Commission's prohibited from doing something
22 different, but again, I think that you'll find that
23 the evidence will be very similar in this case that
24 you'll see.

25 COMMISSIONER HALL: So there's no legal

1 significance to that ruling? I mean it's an
2 indication of that Commission's view of these issues,
3 which is pretty telling because it's the same
4 Commission, but -- but from a legal perspective, it
5 doesn't have any significance?

6 MR. COOPER: We certainly to this point
7 have not argued that -- that the Commission is bound
8 by that -- that determination.

9 COMMISSIONER HALL: All right. Thank
10 you.

11 MR. COOPER: Now, you may recall from the
12 customer savings plan docket from -- from last year
13 that we were discussing, that -- that Empire arrived
14 at this plant to acquire wind generation after
15 conducting an analysis to determine whether it could
16 deliver savings to its customers through the
17 acquisition of renewable resources and the retirement
18 of a coal-fired power plant. We referred to that --
19 that analysis as the generation fleet savings
20 analysis. It further considered whether using tax
21 equity financing could deliver savings to -- to the
22 customers.

23 Empire selected wind projects on the
24 basis of a detailed portfolio analysis using industry
25 standard modeling software and detailed and

1 wide-ranging scenarios to test risk. That analysis
2 included evaluating alternative portfolios across
3 scenarios that flexed fuel and market prices, CO2
4 policy, nodal basis, load and the build-out of wind
5 in -- in SPP.

6 All in all, Empire ran 54 scenario
7 combinations, as well as the high wind case requested
8 by the parties. The modeling indicated that adding
9 wind generation to Empire's portfolio in or near
10 Empire's service territory was not only possible, but
11 brought significant benefits to Empire's customers.

12 In relation to the status quo, the
13 modeling showed that the added wind generation
14 provided less risk for customers when measured against
15 three different market price cases; a high market
16 price case, a base market price case and a low market
17 price.

18 The purposes of the analysis was to test
19 to see how wind resources would perform under a wide
20 range of market scenarios. The analysis demonstrated
21 that in all three scenarios, significant savings would
22 be delivered to Empire's customers.

23 This makes sense because relative to
24 conventional resources, winds cost are more certain.
25 The vast majority of a wind project's cost is incurred

1 during construction and our reasonably foreseeable.
2 Wind fuel prep-- fossil fuel plants, I'm sorry, on the
3 on the other hand, tend to have significant fuel costs
4 that are a major expense throughout the plant's life.

5 A key component, as we mentioned before,
6 of the savings is derived from the availability of the
7 production tax credits and tax equity financing. Tax
8 equity financing allows for quick monetization of
9 those incentives to the customer's benefit as the tax
10 equity partner will invest for approximately half of
11 the cost of the wind projects.

12 Now, in Case EO-2018-0092, step one of
13 this proposal, Empire, Staff, Midwest Energy Consumers
14 Group, Renew advocates -- Renew Missouri advocates,
15 and the Division of Energy entered into a
16 Non-Unanimous Stipulation in which Empire agreed to
17 reduce its proposed acquisition of wind generation
18 from the original 800 megawatts it had sought to 600
19 megawatts. It also agreed to delay the retirement of
20 Asbury, the coal-fired plant that I referred to
21 earlier.

22 While the Commission did not adopt the
23 Non-Unanimous Stipulation in its Report and Order in
24 that case, the Commission did make several statements
25 in regard to Empire's wind generation proposal. On

1 the -- on the screen and on the handout is one of
2 those -- those statements.

3 And you'll see that it's a discussion of
4 pop-- public policy of this state to diversify energy
5 supply. And it concludes with the statement that I
6 had quoted previously, that the 600 megawatts is
7 aligned with the public policy.

8 That order further provided as follows:
9 That adding wind generation to Empire's portfolio
10 significantly reduces financial risk for Empire's
11 customers. And concludes by -- by citing Empire's
12 credible analysis shows that adding up to 600
13 megawatts of wind to its portfolio would result in
14 lower risk to that portfolio under three different
15 market scenarios relative to Empire's current resource
16 plan. We believe that to continue to be the case.

17 With the conclusion to step one, Empire
18 subsequently entered into the purchase and sale
19 agreements that the Company is presenting in this case
20 with its request for certificates of convenience and
21 necessity.

22 First, Empire has contracted to purchase
23 approximat-- well, globally Empire has contracted to
24 purchase approximately 600 megawatts of wind
25 generation once it's been constructed and in service.

1 Two of those projects as I mentioned before are in
2 southwest Missouri.

3 On October 12, 2018, Empire entered into
4 two purchase and sale agreements, one for each
5 project, with Tenaska Missouri Matrix Wind Holdings
6 and Steelhead Missouri Matrix Wind Holdings. Those
7 two projects again are called Kings Point and North
8 Fork Ridge.

9 This is a map of Kings Point. Along with
10 North Fork Ridge, their facilities and associated
11 generation tie lines are located entirely within the
12 state of Missouri, primarily centered not far from --
13 from Joplin, Missouri. This is a map of -- of North
14 Fork as well.

15 The partner -- the primary partner,
16 Tenaska, is based in Omaha, Nebraska. It is a leading
17 independent power producer in the United States. It
18 is ranked by Forbes among the largest private US
19 companies and has plant and office locations across
20 the United States and in Canada.

21 That company has developed more than
22 10,000 megawatts of fossil fuel and renewable power
23 generation projects, both in the United States and
24 internationally and has vast experience owning,
25 operating and managing these types of assets.

1 Currently Tenaska has approximately 686 megawatts of
2 wind projects in mid to advanced stage wind
3 development in the United States.

4 And if I failed to mention it -- and I
5 think it was on the first slide -- each of these
6 projects, Kings Point and North Fork Ridge, is
7 designed for approximately 150 megawatts.

8 The third project is a project that I
9 mentioned that's in the state of Kansas, located in
10 Neosho County, Kansas and -- and referred to Neosho
11 Ridge. That project is a single project of up to 301
12 megawatts, approximately 300 megawatts. Empire
13 entered into a purchase and sale agreement for this
14 project on November 16 of 2018 with a joint venture
15 between a subsidiary of Apex Clean Energy and a
16 subsidiary of Steelhead Wind.

17 I guess the -- unfortunately, the small
18 map on the upper left gives you a little better
19 perspective of where it is located in Kansas, but
20 its -- both its facility and associated generation tie
21 line will be located approximately 35 miles to the
22 west of Empire's service territory in Kansas.

23 Apex Clean Energy is a US-focused,
24 independent renewable energy company based in
25 Charlottesville, Virginia. It's the fastest growing

1 clean energy company in the industry with over 220
2 employees. Apex has completed development and
3 construction of 12 wind and solar facilities in
4 Illinois, Texas and Oklahoma.

5 These projects represent a total capital
6 investment of approximately 4 billion dollars and
7 operating assets under management have grown to over
8 15-- 1,500 megawatts. Apex has signed contracts for
9 power in the sale of 16 projects, totaling nearly
10 3,200 megawatts of capacity with utility co-ops,
11 government and -- and corporate customers.

12 As I mentioned before, the tax equity
13 financing continues to be an important aspect of the
14 Empire proposal, something that Empire's witness Todd
15 Mooney discussed in the last case and is prepared to
16 do again here today.

17 Tax equity structure is a method of
18 financing renewable energy projects, to include both
19 wind and solar, to optimize the value in the near term
20 of the available tax incentives. In this case, tax
21 equity financing is expected to provide approximately
22 50 percent of the capital of the projects, meaning
23 that the rate-base impact of the project will be
24 approximately 50 percent of the total cost.

25 Given the time value of money, using a

1 tax equity structure as compared to direct ownership
2 of the wind projects by Empire without a partner,
3 results in between four and seven dollars per megawatt
4 hour of savings for Empire customers.

5 Now, functionally to create the tax
6 equity structure, Empire and a tax equity partner will
7 own a holding company for each of the wind projects.
8 Each of which will be a subsidiary of -- of Empire.
9 And Empire, through the wind hold company, will
10 acquire -- once it's in -- in service, it's been
11 constructed and in service will acquire a wind project
12 company that owns a specific wind project.

13 After approximately ten years of tax
14 equity participation and Empire's joint ownership of
15 the wind project company through the wind hold
16 company, Empire will have the right to purchase the
17 tax equity partner's ownership interest in the wind
18 hold co. at which point Empire would wholly own the
19 wind com-- project company.

20 It is this tax equity financing that
21 provides some of the timing concerns that we have in
22 this case. Congress has legislated the phase-out of
23 PTCs over the next several years. And in order to
24 qualify for the full PTC value of the projects Empire
25 has contracted for, must be completed before the end

1 of 2020.

2 In Case ER-2018-0092 [sic], Empire's
3 witness James McMahon estimated the customers savings
4 associated with acquiring 600 megawatts of wind
5 generation based upon the bids provided in response to
6 a Request for Proposals issued by -- by Empire. The
7 levelized cost of electricity or the LCOE utilized for
8 the 600 megawatt portfolio provided for the modeled
9 169 million dollars in customer savings over 20 years.

10 While some of the costs have moved during
11 the negotiation of the three purchase sale agreements,
12 the overall portfolio LCOE has decreased slightly and
13 the projects as contracted are considered -- or
14 consistent with the modeling performed in the customer
15 savings plan case.

16 I mentioned previously our standard,
17 Section 393.170.3, states in rel-- relevant part that
18 the Commission may grant a CCN when it determines that
19 such construction is necessary or convenient for the
20 public service.

21 When making a determination as to whether
22 a project is necessary or convenient for the public
23 service, the Commission has traditionally exercised
24 its discretion by applying the five criteria on the
25 board commonly known as the Tartan factors. You know,

1 one is there a need for the service; two, is the
2 applicant qualified to provide it; three, is the
3 applicant -- does it have the financial ability to
4 provide the service; four, is the proposal
5 economically feasible; and five, is -- is it in the
6 public interest.

7 In reading the statements of position, it
8 would appear that the question for the Commission in
9 this case is not so much whether the requested CCNs
10 should be granted, but rather what conditions should
11 be imposed on those CCNs. However, the Commission, we
12 think, still must address the Tartan factors and --
13 and we will as well.

14 The first two items -- well, actually I'm
15 going to skip ahead. The second and third items, is
16 the applicant qualified, does the applicant have the
17 financial ability to provide the service. We
18 certainly believe Empire is qualified to provide the
19 service. It has a vast amount of experience in
20 generation, transmission and distribution of
21 electricity. Empire owns and operates an electric
22 utility system located in contiguous parts of
23 Arkansas, Kansas, Missouri and Oklahoma, which is used
24 to serve approximately 172,000 total electric
25 customers.

1 Empire also has the financial ability to
2 provide the service. It has an investment grade
3 credit rating and is part of a corporate family that
4 is also investment grade and has nearly 9 billion
5 dollars in assets. I don't believe any party has
6 challenged whether Empire is qualified to provide the
7 service or whether it has the financial ability to
8 provide the service.

9 Move on to the question though of -- of
10 need. When determining whether the project is
11 necessary or convenient for the purpose for the public
12 service, the term "necessity" has been said to not
13 mean essential or absolutely indispensable, but that
14 an additional service would be an improvement,
15 justifying its cost.

16 The proposed wind projects will take
17 advantage of real opportunities that exist today to
18 add generation capacity to Empire's fleet at reduced
19 cost given the availability of production tax credits,
20 which, in turn, will provide low cost energy for
21 Empire's customer for years to come.

22 Adding wind to the pa-- to the portfolio
23 reduces risk, in addition to decreasing cost because
24 wind performs much better than the status quo under
25 most market conditions. On the other hand, the status

1 quo is not only more costly in the base case, it's
2 more costly in most of the scenarios that were
3 evaluated.

4 This is especially important for Empire
5 as two of its existing Purchase Power Agreements for a
6 total of 255 megawatts will expire after the 600
7 megawatts of wind come online in December of 2020.
8 There's the expiration of the Elk River Wind Farm in
9 2025, which is 150 megawatts; and the Meridian Way
10 Wind Farm in 2028, which is 105 megawatts. These
11 expiring contracts represent all of Empire's current
12 wind capacity and more than 40 percent of -- of the
13 new capacity.

14 We would say that there is a need for the
15 proposed wind generation to further the -- the policy
16 as it's been set forth by the Commission.

17 Through the use of a tax equity ownership
18 structure -- well, let me back up. The next question:
19 is it economically feasible. Through the use of tax
20 equity ownership structure in conjunction with the
21 approximately 600 megawatts of wind generation, Empire
22 has a time limited opportunity to bring significant
23 savings.

24 These savings are occasioned based on
25 unique market conditions which allows for production

1 tax credits and the availability of financing to
2 support those tax credits.

3 As I said previously in regard to need,
4 adding wind to the portfolio reduces risk. This is a
5 graph that was utilized in the first case, step one,
6 but it's also in Mr. McMahon's testimony in this case.
7 It shows that -- well, let me back up.

8 It shows that the proposed projects are
9 projected to bring benefits to the customers under, as
10 I said before, the low, mid and high priced scenarios.
11 We believe that the pros-- proposed projects are
12 economically feasible.

13 We move onto -- to public interest.
14 Of -- on slide 12 there's a quote from the
15 Commission's recent order in the Grain Belt case. I
16 won't read it here. It's obviously available to
17 everyone. But I think this is a strong statement
18 of -- of the state energy policy. We think, again,
19 that the projects that are being proposed by Empire
20 are consistent with this policy.

21 In that Grain Belt case, the Commission
22 went onto say there can be no debate that our energy
23 future will require more diversity in energy
24 resources, particularly renewable resources. We are
25 witnessing a worldwide, long-term and comprehensive

1 movement towards renewable energy in general and wind
2 energy specifically. Wind energy provides great
3 promise as a source for affordable, reliable, safe and
4 environmentally friendly energy.

5 Empire's wind projects will -- will meet
6 and further these policy goals that have been
7 identified by the Commission. And as said before,
8 poised to deliver savings to Empire's customers for
9 many years to come. The projects proposed by Empire
10 will facilitate the movement to diverse energy
11 resources in Missouri and will thereby benefit
12 Missouri citizens and we believe our and the public
13 interest.

14 I mentioned previously conditions. The
15 stipulations that we talked about previously are
16 essentially conditions that have been proposed by
17 various parties. That's because the statutes for the
18 Commission state that in granting a certificate of
19 convenience and necessity, the Commission may, by its
20 order, impose such condition or conditions as it may
21 deem reasonable and necessary.

22 Again, Empire believes that the projects
23 satisfy the Tartan factors; however, having stated
24 this, to further address the concerns that have been
25 raised by parties in testimony, Empire believes the

1 addition of the conditions found in the stipulations
2 filed in this case will serve additionally to mitigate
3 any negative impacts that could arise.

4 We mentioned previously two -- two
5 stipulations have been filed; the first one dealing
6 with wildlife concerns. It's a stipulation between
7 Empire and the Missouri Department of Conservation.
8 No other party has objected to that stipulation and,
9 in fact, has -- all the other parties have
10 affirmatively stated their non-objection and that they
11 do not request a hearing; therefore, by rule, it may
12 be treated as unanimous by the Commission so the --
13 should the Commission choose to do so.

14 Second stipulation that's been filed is
15 signed by Empire, Missouri Energy Consumers Group, the
16 Staff of the Commission, Missouri Department of
17 Economic Development, slash, Division of Energy, and
18 Renew Missouri advocates. Missouri Department of
19 Conservation, Sierra Club and National Resources
20 Defense Council have all affirmatively stated their
21 non-objection.

22 The -- the Non-Unanimous Stipulation, the
23 second stipulation I will refer to, requires tax
24 equity financing within certain parameters to provide
25 benefits in order to take advantage of the PTC as

1 we've discussed. To provide additional comfort, the
2 Company has agreed to add a Market Protection
3 Provision, or MPP, which provides 52.5 million dollars
4 of protection for customers in the unlikely event that
5 the wind sh-- project should not generate enough
6 revenue in the early years to cover the revenue
7 requirement associated with the project.

8 The Market Protection Provision manages
9 the cost-benefit risk associated with the wind
10 projects in terms of the capital costs, operating
11 costs, SPP prices, and wind production while still
12 providing customers with all upside benefits.

13 A Market Protection Provision that
14 provides protection for customers is a unique concept
15 in Missouri in regard to a CCN case. In fact, if
16 anything similar has been used previously, I'm just --
17 I am not aware of it.

18 We think that it's a -- a significant
19 step in that Non-Unanimous Stipulation and Agreement
20 to -- again, to provide mitigation for many of the
21 concerns that have been expressed and something that
22 the Commission should adopt as a part of its order in
23 this case. Empire's witness David Holmes can provide
24 greater detail about the Market Protection Provisions
25 if you have further questions.

1 Well, let me back up just a little bit
2 before I go any further with that. Let me talk about
3 the MPP just a little bit more. It probably bears
4 mentioning that it operates by assessing wind value in
5 each year, where the wind value is equal to the wind
6 revenue minus the revenue requirement, plus in later
7 years the value of the Purchase Power Agreements for
8 Elk River and Meridian Way when they go away.

9 As crafted, it will factor in actual
10 interconnection costs, tax equity cash distributions,
11 pay-go contributions, ongoing operation and
12 maintenance costs and -- and curtailment. And as I
13 said, if there's a harm caused, there's a sharing
14 mechanism with a jurisdictional cap of 52.5 million
15 that is Missouri jurisdictional for the Company to
16 reduce costs to customers; while if the wind projects
17 perform as projected, customers retain 100 percent of
18 the upside.

19 Other provisions in the Non-Unanimous
20 Stipulation and Agreement include in-service criteria
21 for the projects; notice to the Commission and parties
22 to this docket once tax equity term sheets have been
23 ex-- executed they conform to the specified parameters
24 in the -- in the agreement; quarterly filings
25 concerning plans and specifications permits and other

1 matters; accounting matters should Asbury be sold or
2 retired between general rate cases; auditing of books
3 and records; and rate-basing of the wind projects on a
4 depreciation study that would be consistent with the
5 Commission's Report and Order in EO-2018-0092.

6 Now, we would like to mention a couple of
7 the arguments or proposals that have been made by --
8 by the Office of the Public Counsel in this case.

9 The Office of Public Counsel's testimony asks the
10 Commission to either hold Empire's customers harmless
11 on an annual basis or impose a reduced ROE for these
12 projects in future rate cases. These proposals, we
13 believe, are both unreasonable and unnecessary.

14 Empire has a duty to its customers to
15 provide safe and reliable electric service at just and
16 reasonable rates. In doing so, Empire seeks to invest
17 in ways that will provide its customers with
18 opportunities for savings and that will reduce price
19 risks in the future. The wind projects for which
20 Empire seeks CCNs in this case fit this description.

21 More practically, we would argue that the
22 Commission cannot lawfully unilaterally impose either
23 of these conditions without a finding -- in particular
24 on the ROE, without a finding that that ROE is -- is
25 just and reasonable ultimately.

1 The Market Protection Provision, on the
2 other hand, is available to the Commission as a result
3 of Empire's participation in the Non-Unanimous
4 Stipulation and Agreement and more appropriately
5 balances the risks and rewards between customers and
6 shareholders.

7 Further, in its position statement, OPC
8 intro-- introduced a new alternative proposal for
9 conditions. And significant amongst those things, the
10 proposal would cause -- call for Empire to receive
11 neither a return on or a return of its investment in
12 a -- in these projects during the period the hedging
13 agreements are in effect or for approximately ten
14 years.

15 Again, like the OPC's testimony proposal,
16 we certainly would argue that the Commission cannot
17 lawfully impose a no return on/no return of situation
18 without further evidence, without something --
19 something else beyond what's in this case.

20 In conclusion, the wind project at issue
21 in -- in what we've called step two will meet the
22 policy goals identified by the Commission and are
23 poised to deliver significant savings to Empire's
24 customers for years to come at a lower risk to energy
25 production costs. Any potential negative impacts of

1 the projects are mitigated by the conditions tain--
2 contained in the Non-Unanimous Stipulation and
3 Agreement.

4 The projects for which Empire seeks
5 certificates of convenience and necessity are in the
6 public interest and the Commission should grant the
7 requested certificates subject to the stipulations
8 that have been filed in -- in this case.

9 We have -- we will present the following
10 witnesses: Mr. Blake Mertens, Mr. Holmes, Mr. Todd
11 Mooney, Mr. James McMahon, and Mr. Tim Wilson to
12 discuss the subjects that are listed there next to
13 their names, amongst any other subjects that you may
14 believe are in their testimony. All of these
15 witnesses testified before the Commission in step one
16 of this process and are -- are returning today.
17 That's all I have.

18 JUDGE DIPPELL: Thank you. Commissioner
19 Hall, you had some questions?

20 BY COMMISSIONER HALL:

21 Q. Just a few. First, concerning Neosho
22 Ridge, which is in Kansas, what is the Company's
23 position as to whether a CCN is required?

24 A. I think standing here today, we would say
25 it is required. Ultimately how -- I guess I'm aware

1 of an appellate case that has challenged that. I
2 suppose depending on the outcome of that, my opinion
3 could change. But as of today, the Commission's rule
4 is the Commission's rule.

5 Q. Okay. So it's based upon the rule
6 that -- that -- that you believe that it is likely
7 that we do have jurisdiction over -- over Neosho Ridge
8 and -- in terms of how it relates to -- to -- to
9 Missouri ratepayers?

10 A. Well, that's kind of a different
11 question. Don't believe -- well, I think some of the
12 filings when -- when the rule was being considered,
13 Empire, as well as other companies, argued that the
14 Company did not have -- or that the Commission did not
15 have the authority to promulgate that rule as to
16 projects in other states.

17 Having said, that the rule has been
18 promulgated. It's in effect. It's not been stayed.
19 The Company, through its application in this case,
20 is -- is attempting to comply with the rule. So I
21 think that's probably all the farther I can go with
22 that.

23 Q. And that's fine. Second set of questions
24 has to do with the non-un-- non-unanimous stip as it
25 relates to Asbury.

1 A. Yes.

2 Q. So let me make sure I understand
3 what's -- what's in here. And -- and who would be
4 your -- your witness who could answer more detailed
5 questions on this if --

6 A. It's probably going to be Mr. Mertens.

7 Q. So as I understand this -- this
8 provision, it only -- it only concerns the situation
9 where -- where -- where Asbury is -- is sold or
10 retired between rate cases and it only covers the
11 situation up until the next rate case?

12 A. Well, it may be further than that, but
13 certainly between now and -- well, let -- when
14 Mr. Woodsmall gives his opening, you may want to ask
15 him that question as well. What's throwing me off a
16 little bit is certainly I think it's going to apply
17 through the -- through the rate case that brings into
18 rates these completed projects. But it may continue
19 out through the -- further than that as well.

20 Q. Now, the -- the language of the stip is
21 that the Commission should authorize Empire to create
22 a regulatory asset, and then the next provision is
23 Empire will create a regulatory liability. Is there a
24 reason for that language being different?

25 A. I think the practical reason is, is that

1 it's a little harder for the Company, with its
2 auditors, to -- to record an asset than it is a
3 liability, so that's the reason for the difference.
4 We would want just a little bit more confirmation from
5 the Commission in regard to the asset.

6 Q. And I -- and I assume that this language,
7 the Commission should authorize a regulatory asset is
8 based upon the understanding that whatever -- if --
9 if -- if the Commission -- if this Commission were to
10 approve this stip with this language, the Company
11 would still need to seek that -- that accounting
12 treatment. This -- this order -- or is it your view
13 that this order would be all that was necessary?

14 A. Yeah. We're -- we're hoping to get to
15 the latter situation, yes, Commissioner. The reason
16 for the should is, is that we -- we sometimes hesitate
17 to say the Commission shall since we can't tell the
18 Commission what to do.

19 But I think that this is certainly the --
20 the should language is that that's the recommendation
21 of the -- certainly the signatories to that
22 stipulation and that if the Commission adopts the
23 stipulation, that it will have provided the Company
24 the authority it needs to -- to utilize that asset in
25 the situation set forth.

1 Q. So under the terms of -- of these
2 provisions -- and I'm looking at B and C under 17 --
3 what happens to the return on the investment? Is that
4 included in the -- in the regulatory liability?

5 A. Well, that's a good question. That --
6 that probably should be asked of someone with more
7 information than me. But I mean certainly what the
8 parties were attempting to do was to kind of hit both
9 sides of that retirement situation. On one side hit a
10 liability that would capture dollars that were in
11 rates associated with that plant that at that point
12 would have been retired or -- or sold potentially.

13 And then on the other side to provide a
14 means for the Company to take its undepreciated
15 investment in that asset, book it as -- or in that --
16 that plant, book it as an asset on its balance sheet
17 and then to have both those things available in the
18 next rate case for the Commission's determination.

19 Q. If the Commission were to -- were to
20 determine that the rest of the Non-Unanimous
21 Stipulation is -- is in the public interest but wanted
22 to hold on making these decisions until such time that
23 the Company wanted to close or decided to close
24 Asbury, would that be a deal breaker as far as the
25 Company is concerned?

1 A. Well, it would in that we've -- we've
2 signed an agreement with other parties and it's a part
3 of that agreement. So I think at least from that
4 perspective, I have to initially say it would be a
5 deal breaker. Having said that, I -- again, and I'm
6 sure you will ask the other parties to the stipulation
7 about their opinions.

8 Q. Who would be the appropriate witness to
9 ask questions about where these projects stand in the
10 SPP queue?

11 A. Probably going to be Mr. Mertens and/or
12 Mr. Wilson.

13 Q. That's all I have. Thank you.

14 A. Thank you.

15 JUDGE DIPPELL: Thank you. Mr. Chairman,
16 did you have any questions?

17 BY JUDGE DIPPELL:

18 Q. I just had one. Can -- can you explain
19 to me how this Non-Unanimous Stipulation and Agreement
20 compares with that that was filed with EO-2018-0092 or
21 how it relates to what the Commission ultimately
22 decided in that case?

23 A. Well --

24 Q. Are there similarities? Are there --

25 A. Yeah. There's going to be many

1 similarities. I think that most of the subjects are
2 going to be found in both of those documents that you
3 referred to. The Market Protection Provision has
4 changed somewhat. The 52.5 million dollar guarantee
5 amount in this case was essentially 35 million in --
6 in the pr-- prior stipulation.

7 There's also -- there was a dead band
8 provision in that Market Protection Provision that is
9 gone, has been eliminated in this -- this document.
10 I'm sure there are other differences that -- that are
11 not coming to my mind right now in terms of those
12 details and -- and Mr. Holmes would be the right
13 person that -- that could -- could talk to those
14 details.

15 You heard from my opening, Asbury was
16 treated a little differently. You know, just
17 different time period, different situation that was --
18 was being addressed with Asbury. These -- these
19 accounting provisions that we just discussed are --
20 are different. I don't believe there were -- those
21 were -- were in the prior stipulation.

22 We're a little further along -- we're a
23 lot further along in the process in that we have
24 purchase and sale agreements now for the projects. So
25 there's -- there's some filing requirements that --

1 that are necessarily different because of that --
2 because of the point in time that we're now standing
3 here.

4 Q. Thank you. Thank you.

5 JUDGE DIPPELL: Renew Missouri.

6 MR. OPITZ: May it please the Commission.
7 I'm Tim Opitz with Renew Missouri. We are a
8 non-profit that advocates for renewable energy and
9 energy efficiency policy in Missouri. In this case we
10 filed testimony supporting the project and we've taken
11 the position opposing conditions which we believe
12 might be undue or unreasonable road blocks to
13 advancing renewable energy in Missouri.

14 This Friday we signed onto the
15 Non-Unanimous Stipulation and Agreement and now
16 encourage the Commission to issue a CCN with only
17 those conditions articulated in that agreement. It's
18 important -- I believe it's important to point out
19 that this project is a continuation of the customer
20 savings plan that we heard last April and throughout
21 the summer where Empire made -- should be commended
22 for its efforts to add renewable energy in order to
23 save customers money.

24 And in that project -- in that case, the
25 project was already scaled back significantly from 800

1 megawatts of wind down to 600 megawatts of wind. So
2 we would oppose anything that -- that adds conditions
3 that further scale it back.

4 Renew Missouri urges this Commission to
5 grant these requested CCNs that will allow its
6 customers to benefit from economic renewable
7 generation for many years to come and advance
8 Missouri's policy of renewable energy. With that, I'm
9 happy to answer any questions.

10 JUDGE DIPPELL: Thank you. Are there any
11 questions from Commission?

12 COMMISSIONER HALL: No questions. Thank
13 you.

14 JUDGE DIPPELL: Thank you.

15 MR. OPITZ: Thank you.

16 JUDGE DIPPELL: Division of Energy.

17 MS. REEVES: Good morning. My name is
18 Rochelle Reeves and I'm general counsel at the
19 Department of Economic Development. I'm here today to
20 represent the Missouri Division of Energy.

21 The Division of Energy is Missouri's
22 State energy office. It provides assistance and
23 education to advance the efficient use of diverse,
24 affordable and reliable energy resources, as well as
25 to achieve greater energy security and balance a

1 healthy environment with a healthy economy for future
2 generations. Additionally, the Division supports
3 efforts to improve and modernize Missouri's
4 infrastructure, spur innovation and emerging
5 technologies and create jobs.

6 The first question before the Commission
7 today is whether to approve Empire's applications to
8 construct three proposed wind farms. Given that the
9 wind projects will create economic development
10 benefits and improve the diversity and security of
11 Missouri's energy supply, the Division supports those
12 applications.

13 These factors support Missouri's ability
14 to perform more competitively on the national economic
15 stage. The projects are also consistent with recent
16 Commission orders and meet the Commission's criteria
17 regarding need and public interest.

18 With respect to the second question
19 before the Commission, the Division has not taken a
20 position at this time on what, if any, conditions may
21 be reasonable and appropriate. Thank you.

22 JUDGE DIPPELL: Any questions

23 COMMISSIONER HALL: No questions. Thank
24 you.

25 JUDGE DIPPELL: Thank you. Missouri

1 Energy Consumers Group.

2 MR. WOODSMALL: I printed off a -- or I
3 prepared a PowerPoint presentation and then I forgot
4 to put it on a disc. So we're going to have to do it
5 the old way, just through paper.

6 David Woodsmall on behalf of the Midwest
7 Energy Consumers Group. I'll be probably pretty brief
8 since much of my material will reiterate what
9 Mr. Cooper said.

10 One of the -- what I first want to talk
11 about is the wind that will be added through this
12 stipulation. Secondly, I want to discuss in a little
13 detail about the tex-- tax equity financing. Third, I
14 want to talk about various stipulation provisions.

15 I talk about all these because I believe
16 that they all go to the public interest standard under
17 the Tartan criteria. I'm not going to talk about the
18 four other criteria; that is, economic feasibility,
19 whether they're qualified. I'm going to talk instead
20 just about public interest.

21 You see on slide three, as Mr. Cooper
22 mentioned, that this will add three different wind
23 farms; 150 megawatts known as the Kings Point, 150
24 megawatts known as North Fork, and 300 megawatts in
25 Kansas known as Neosho Ridge.

1 Slee-- you see on slide four where Kings
2 Point is located, basically just east of Jasper. Then
3 on slide five you see North Fork and it's located just
4 west of Jasper. So that gives you some idea where
5 they are located relative to each other in Missouri.
6 And finally, on slide six where Neosho Ridge, the 300
7 megawatts in Kansas, is located. You can see it's in
8 the very far southeast corner of Kansas. And you have
9 some idea then of where it is relative to Joplin.

10 Slide seven. The -- the addition of this
11 wind is expressly conditioned in the stipulation on
12 the use of tax equity financing. And that's a big
13 deal to us. Tax equity financing allows this project
14 to be done at a lower cost to the ratepayers.

15 Tax equity financing works kind of like
16 this. The Federal Tax Code provides for two different
17 aspects that encourage the development of wind.
18 First, it provides for what is known as modified
19 accelerated cost recovery system. That is accelerated
20 depreciation. And that's a depreciation deduction to
21 whoever makes the development.

22 The second thing is it provides for
23 production tax credits. Different than a deduction,
24 it's a tax credit. And the production tax credits are
25 slowly going to be phased out. If you get your wind

1 project done by December 31st, 2020, you can maximize
2 these production tax credits at 24 dollars a megawatt
3 hour, but over time those will be phased out.

4 So there is a timeliness factor involved
5 here. We need to get this project done so they can
6 get developing and get the projects in by December
7 31st, 2020 to -- to maximize these production tax
8 credits.

9 Now, the way tax equity financing works,
10 if Empire built this project entirely on their own,
11 they would get the accelerated depreciation and they
12 would get the production tax credits. But as
13 Mr. Mooney will talk about later, they really don't
14 have -- because of their -- their size, their
15 financial situation, their tax needs, they really
16 don't have the appetite to use all this accelerated
17 depreciation deductions and the production tax credits

18 So what do you do with it? What they've
19 done is attach equity financing, whereby you take both
20 the accelerated and the production tax credits and you
21 give those to a third party in exchange for that third
22 party making capital investment into the project. The
23 tax equity structure has been used to develop over
24 62 gigawatts of wind and solar projects over the past
25 decade.

1 On slide eight you see how the tax equity
2 financing works. You see on the left -- the upper
3 left, the tax equity investor. And the actual amount
4 of the capital investment by the tax equity partner I
5 have here as 60 percent, but the actual amount is a
6 highly confidential number that you'll see a range
7 that you'll see in the stipulation. So the tax equity
8 investor makes -- gives 60 percent of the capital
9 investment into the project partnership and Empire
10 gives the other remaining 40 percent.

11 So what do they get for that capital
12 investment? The tax equity investor gets, as I said,
13 all the production tax credits for the ten-year period
14 or until they're -- they're out of the project, they
15 get all the accelerated depreciation deduction and
16 they get some of the cash out of the wind project.

17 Empire gets the remainder of the cash,
18 they get all the capacity, an-- they get all the
19 energy and they get the renewable energy credits.

20 COMMISSIONER HALL: By "cash" do you mean
21 proceeds from the sale of -- of -- of the energy?

22 MR. WOODSMALL: I would encourage you to
23 talk to Mr. Mooney about this further because I know
24 I'm going to butcher it. There are -- there's cash I
25 believe related both to sale of energy into the

1 market -- but cash is cash no matter where it comes
2 from -- as well as internal hedging agreements through
3 the project. But talk to Mr. Mooney about that.

4 So that is how the tax equity financing
5 works. Basically though, we can get 1 billion --
6 1.1 billion of wind investment for a much lower
7 credit. So rate-base is lower and rates are lower
8 going forward.

9 So slide nine. What does the stipulation
10 do? The most important part probably relative to the
11 statute is the stipulation, if approved, would give
12 Empire a certificate of convenience and necessity to
13 do all three wind projects; the two in Missouri and
14 the one in Kansas. But it says that the wind projects
15 must be done through a tax equity financing
16 arrangement.

17 The stipulation also provides for several
18 reporting and filing requirements. It requires --
19 you're familiar with this from the Grain Belt case.
20 It requires the filing of certain permits, certain
21 documents related to when they complete the closing
22 with the tax equity partner, when they finish the
23 proposal with the entity that's going to construct it,
24 certain documents related to SPP.

25 All those are required to be filed with

1 the Commission. It also says that Empire's capital
2 investment will be built into the rates in future rate
3 cases subject to a prudency review. So that is what
4 it does relative to the statute.

5 But as Mr. Cooper said, Section 393.170
6 gives the Commission the authority to impose certain
7 conditions to make this project in the public
8 interest. And that's what we believe the other
9 conditions do. It makes it in the public interest.

10 So what are those provisions? Slide ten
11 talks about the implementation of a Market Protection
12 Plan. And what the Market Protection Plan attempts to
13 do is shield customers to some degree from a situation
14 in which forward-looking SPP revenues from selling
15 this energy into the SPP integrated marketplace are
16 less than cost. And if that happens, it creates a
17 mechanism to protect customers to some degree in that
18 situation.

19 As I mentioned, the Market Protection
20 Plan attempts to look at all of the revenues from the
21 SPP sales and compare them to all the costs. So you
22 have the capital costs, the depreciation, the O and M,
23 fu-- fuel would be elsewhere, but all those costs.
24 And it looks at it.

25 And you'll see on slide 11 what happens.

1 So the Market Protection Plan takes an annual look at
2 cost and revenues. To the extent that revenues exceed
3 costs, great. Customers have benefited, we go
4 forward. But to a situation where costs are less than
5 revenues, we'd have a situation where customers would
6 otherwise be harmed.

7 So annually you make this comparison.
8 And if costs exceed revenues, we create a regulatory
9 liability every year and it has carrying costs
10 attached to it. And that regulatory liability every
11 year is summed together to get to an ultimate
12 regulatory liability, if one exists after the ten-year
13 period.

14 COMMISSIONER HALL: So are -- are you
15 including the -- the tax credit with the SPP revenues
16 or is that separate?

17 MR. WOODSMALL: The production tax
18 credits will all be going to the tax equity partners.
19 So they will not flow through the ten-year Market
20 Protection Plan. And Mr. Holmes is kind of the
21 architect of this whole MPP so he can answer a lot of
22 questions on this.

23 But every year a regulatory liability, to
24 the extent one is needed, is created. After ten
25 years, they're summed together and if that amount is

1 less than 52.5 million dollars, then it is baked into
2 rates, amortized into rates over a certain period of
3 time.

4 What if that regulatory liability is
5 greater than 52.5 million dollars? Well, the amount
6 up to 52.5 million dollars is amortized into rates,
7 but any amount above that is treated by the Commission
8 at that point in time. So that's how the Market
9 Protection Plan works.

10 Slide 12. There's a provision in there
11 regarding Asbury, as the Ch-- Commissioner noted
12 earlier. In my mind, the addition of 600 megawatts of
13 wind will create a situation in which the retirement
14 of Asbury is more likely. If we weren't adding
15 capacity, it's -- they would need Asbury going
16 forward. We're adding all this capacity, albeit at
17 probably 15 percent of nameplate capacity, but it
18 makes the retirement of Asbury more likely.

19 So what this provision does is says if
20 they retire Asbury between rate cases, we carry all
21 cost implications of that forward to the next rate
22 case. So Empire would get a regulatory asset for all
23 undepreciated investment. The other costs, including
24 as you see there, the capital costs, which is cost of
25 debt, return on equity as well as O and M, fuel,

1 depreciation, everything else, is booked into a
2 regulatory liability.

3 And both amounts -- without any
4 rate-making finding by the Commission here, both
5 amounts are simply carried forward for the Commission
6 to make a decision on the entire pie at a future point
7 in time.

8 COMMISSIONER HALL: Is there some reason
9 why you wouldn't just net those?

10 MR. WOODSMALL: They would effectively
11 net. I don't know if there's an accounting reason why
12 you create one versus the other. But effectively, the
13 Commission could net it at some point in time. I
14 guess at some point after this is done, the Commission
15 could say we'll give recovery of the regulatory asset,
16 but not the liability or vice-versa. But I think
17 effectively the Commission could net those at some
18 point in time.

19 COMMISSIONER HALL: And I believe you
20 said this -- and this is related to the -- to a
21 question I asked earlier. Where -- where it says
22 capital costs for the -- for the regulatory liability,
23 that's -- that is including the -- the return on that
24 investment?

25 MR. WOODSMALL: In my mind, it's both the

1 return through the invest return on equity as well as
2 cost of debt. All capital costs, correct.

3 COMMISSIONER HALL: Okay. Thank you.

4 MR. WOODSMALL: So that's the Asbury
5 provision.

6 Slide 13. There's a provision in here
7 regarding battery technology or other energy storage.
8 And the reason this is in here is because you've
9 probably seen in the trade rags talk about energy
10 storage. And we believe that the addition of further
11 wind capacity makes the use of energy storage more
12 likely going forward.

13 And why is that? Base load units can run
14 24 hours a day. You know what you're getting out of
15 them. Wind generation is obviously dependent on wind.
16 So if wind is blowing at a different time than the
17 peak demand for the utility, you have a situation
18 where it's not providing the maximum efficiency.

19 So to the extent you can implement
20 batteries or other energy storage to capture that
21 energy so that you can use it to meet peak demand and
22 meet the energy needs at that point in time, it
23 creates a greater efficiency.

24 So recognizing that the two may naturally
25 pair at some point in time, there's a -- a provision

1 that calls for Empire to make a presentation on the
2 cost -- if Empire decides that they're going to
3 implement energy storage, it requires them to make a
4 presentation three months prior to implementing the
5 energy storage.

6 And the presentation talks about the
7 costs and benefits of energy storage, the impact on
8 rates, the impact of the energy storage on the
9 retirement of other generation units or the delay in
10 having to build other energy generation. It talks
11 about how the energy storage is dispatched into the
12 SPP marketplace.

13 And if the energy storage is on the
14 customer's side of the meter, it talks about rate
15 design changes that are necessary to maximize the
16 value of the energy storage. So -- so we believe that
17 energy storage naturally pairs, to some degree, with
18 wind generation and that's why this is in here.

19 COMMISSIONER HALL: And I would
20 wholeheartedly agree with that, but I do have a
21 question. That whole provision in the stip is
22 premised on in the event that it's determined that a
23 CCN is not required. What is the argument that a CCN
24 would not be required for -- for -- for energy
25 storage?

1 MR. WOODSMALL: For why it would not be
2 required?

3 COMMISSIONER HALL: Yeah.

4 MR. WOODSMALL: I can't make that
5 argument.

6 COMMISSIONER HALL: Did somebody make
7 that argument?

8 MR. WOODSMALL: No. I -- I don't
9 believe. I think the extent to which that has been
10 discussed was that there may be issues going forward,
11 someone may make that argument. But no one has, to my
12 mind, made that argument yet.

13 COMMISSIONER HALL: Okay.

14 MR. WOODSMALL: But it is certainly my
15 position that energy storage like Taum Sauk, like any
16 other generation unit, should be subject to a CCN. So
17 if there is a CCN that is required, we really don't
18 need this provision because all that would be subsumed
19 in a CCN case.

20 COMMISSIONER HALL: Right. Okay. Thank
21 you.

22 MR. WOODSMALL: The final provision on
23 slide 14 calls for a non-residential rec program. And
24 you may be familiar with this through previous
25 programs that Ameren, KCP&L and GMO have sought in

1 Missouri.

2 What this is designed to do is meet some
3 customer needs. You have large customers like
4 Wal-Mart and Facebook and Amazon and Google, General
5 Mills and Cargill that have implemented sustainability
6 programs.

7 In a monopoly environment, it's difficult
8 for these customers to meet that sustainability
9 program. They are forced to take their energy from
10 the utility. And if the en-- if the utility decides
11 to use all coal generation, they're stuck and there's
12 no way for them to build their own wind to meet their
13 sustainability program.

14 So what this does -- and what the Ameren
15 and KCP&L programs do -- is it provides a mechanism
16 for these large customers to access some of the pe--
17 or the recs created by the wind generation. So once
18 the utility -- or once the customer gets the recs in
19 their hand, then they can -- they're that much closer
20 to meeting their sustainability goals.

21 Like I say, this has been implemented by
22 all the utilities thus far in Missouri, as well as the
23 utilities in Kansas. And I believe it's in the public
24 interest because it meets a customer demand.

25 That's the extent of my presentation. If

1 you have any questions, I'd be happy to take them.

2 JUDGE DIPPELL: Thank you. Any
3 additional questions?

4 BY COMMISSIONER HALL:

5 Q. Just -- just one more. I'm going to ask
6 you a question and I'm -- I'm -- I'm going to ask
7 Public Counsel the same question when it's their turn.

8 From your perspective, is there any
9 difference -- any financial reason -- any financial
10 difference between the position of residential
11 customers and industrial or commercial customers with
12 regards to this application and this stipulation? Are
13 they pretty much all in the same boat?

14 A. I would say 99 percent customers are all
15 aligned on this. The last thing I -- I mentioned was
16 that there is a non-residential program created. So
17 that may give a heightened benefit to non-residential
18 customers, but just as it regards the rates coming out
19 of wind additions, I think we're all aligned.

20 Q. Okay. Thank you.

21 A. Thank you.

22 BY JUDGE DIPPELL:

23 Q. And I just have one for you. So how has
24 MEGG's position changed since position statements were
25 filed with regard to the stipulation?

1 A. Our position statement, just as my
2 opening statement did, focused entirely on the public
3 interest and the conditions that should be attached to
4 meet that public interest.

5 MECG's position statement aligned with
6 Staff's at that point in time. Staff's position --
7 Company's position on a Market Protection Plan at the
8 time they filed was that it should be capped at
9 25 million dollars. Staff said compare all the costs
10 and all the revenues and it should be uncapped. And
11 so you -- those were the two ends of the spectrum.

12 The Market Protection Plan in the
13 stipulation is a compromise between those two ends at
14 52.5 million dollars. So the change in our position
15 is that instead of uncapping the Market Protection
16 Plan, cap it -- it's a soft cap at 52.5 million
17 dollars.

18 Q. Okay. Thank you.

19 A. Thank you.

20 JUDGE DIPPELL: Commission Staff.

21 MS. MERS: Good morning, Commissioners.
22 Good morning, Judge. May it please the Commission.
23 My name is Nicole Mers and I'm here on behalf of
24 Staff.

25 And this will be a relatively short

1 opening as to what I hope is a relatively short
2 hearing. The reason for the brevity is that this is
3 the second time this case has been heard in front of
4 the Commission.

5 Aside from some details and some
6 additional information and of course a different
7 remedy is being requested in this case, not much has
8 changed since the signatories in the EO-2018-0092 case
9 presented to the same Commissioners presiding here
10 today a plan to bring benefits to Empire's customers
11 and provisions to mitigate customer risk in the event
12 that reality differs drastically from the assumptions
13 and modeling performed in that case and in this case.

14 So there's little need to bog through the
15 procedural history, the scope and depth of Empire's
16 supporting analyses, the benefits of a tax equity
17 partner, or the overall benefits of the project. This
18 has all been well debated and established.

19 In fact, the very same Commission found
20 in the 0092 case that, quote, Adding wind generation
21 to Empire's portfolio significantly reduces financial
22 risk for Empire's customers. Wind in the portfolio
23 mitigates the impact that rising fuel and market
24 prices have on Empire's retail rates. And in a -- in
25 a rising market price environment, Empire would be

1 able to sell the wind output at higher prices without
2 incremental fuel costs.

3 Empire's credible analysis shows that
4 adding up to 600 megawatts of wind to its portfolio
5 would result in lower risk to that portfol-- portfolio
6 under three different market scenarios relative to the
7 current resource plan. The Report and Order also
8 stated it is the public policy of this state to
9 diversify the energy supply through the support of
10 renewable and alternative energy sources.

11 In past decisions the Commission has
12 stated its support in general for renewable energy
13 generation which provides benefits to the public.
14 Empire's proposed acquisition of 600 megawatts of
15 additional wind generation assets is clearly aligned
16 with the public policy of this Commission and the
17 state.

18 And while the Commission in that case
19 determined that you couldn't make a legal decision
20 regarding the -- the acquisition of the wind projects
21 at that time, it was acknowledged that the millions of
22 dollars in customer savings and the addition of the
23 renewable wind energy resulting from the CSP in the
24 joint position of the parties would be a considerable
25 benefit to Empire's customers in the entire state.

1 So as this, you know, Commission had made
2 this decision less than a year ago, I don't think I
3 need to go any further repeating the findings and
4 conclusions from the Report and Order and I'm sure
5 you're all aware of what you said in that Report and
6 Order.

7 Just as you, Commissioners, and hopefully
8 all the parties to this case are aware of the
9 statements the Commission made a mere 18 days ago in
10 the Grain Belt case that, quote, There can be no
11 debate that our energy future will require more
12 diversity in energy resources, particularly renewable
13 resources. We are witnessing a worldwide, long-term
14 and comprehensive movement towards renewable energy in
15 general and wind energy specifically. Wind energy
16 provides great promise as a source for affordable,
17 reliable, safe and environmentally friendly energy.

18 So if the benefits of Empire's projects
19 and renewables in general have been established,
20 what's left for me to discuss in the remainder of my
21 opening? Well, that would be the terms of the
22 Non-Unanimous Stipulation and Agreement, which is now
23 the joint position of Empire, Staff, MCEG, Renew and
24 DE.

25 The remaining parties, aside from OPC,

1 have indicated they have no objections to the
2 stipulation. The signatories ask you to order the
3 terms of the Stipulation and Agreement as a just and
4 reasoned outcome to this case.

5 All projects come with risk. Staff's
6 rebuttal report outlined the risk and the uncertainty
7 that these projects face, but recommended that with
8 the adoption of a Market Protection Provision to share
9 risk, that the wind projects would be necessary and
10 convenient for the public and, thus, should receive a
11 CCN.

12 This is in line with the years of
13 Commission practice and court holdings that a project
14 or service need not be absolutely essential to be
15 considered necessary. It just simply must be an
16 improvement that justifies the cost.

17 Staff believes that the potential for
18 169 million dollars in customer benefits over the next
19 20 years, according to the extensive modeling that
20 Empire performed, and the imposition of a Market
21 Protection Provision to share in the risk in the
22 highly unlikely scenario that the projects drastically
23 underperform, makes the wind projects an improvement
24 justifying their cost.

25 The stipulation incorporates such a

1 Market Protection Provision. The stipulation is in
2 most aspects very similar to the stipulation that was
3 presented in the 0092 case. There are a few notable
4 differences, all of which inure to the benefit of the
5 customers.

6 The largest change is the change to the
7 Market Protection Provision cap. In general terms,
8 that market provision provides that if there's a
9 financial detriment that results to customers from
10 these wind projects, that shareholders will equally
11 share in that detriment up to 52.5 million dollars.
12 That is a sizable increase from the 35 million dollars
13 in the last stipulation.

14 The dead band was also eliminated so
15 customers no longer have to pass a certain threshold
16 of loss before the risk sharing starts.

17 Staff finds the increasing guarantee a
18 major benefit for customers. In Staff's view, this
19 amount covers the shared amount in the very worst case
20 scenario of exposure customers face. Staff came to
21 this conclusion based on the modeling performed.

22 I'm going to walk through some high level
23 examples -- very high level, but if you have
24 questions, Staff witness J Luebbert and especially
25 Empire's witness David Holmes can walk you through

1 more detailed scenarios and can explain the
2 probabilities and assumptions made.

3 We had this issue last time.

4 JUDGE DIPPELL: Yes. I always seem to
5 have technical difficulties with the ELMO. So if
6 you'll bear with me just a moment.

7 MS. MERS: It's in a smaller-to-read
8 format, and I'm not sure if every person has the
9 stipulation in front of them, but the Non-Unanimous
10 Stipulation and Agreement does have these examples in
11 the back if we want to move along and look at it that
12 way. We -- we might have it in slide format as well,
13 so we'll send my wonderful assistant.

14 JUDGE DIPPELL: Slides apparently I can
15 do today, but --

16 MS. MERS: Okay. Well, hopefully we can
17 too.

18 JUDGE DIPPELL: -- I'm having difficulty
19 getting the ELMO.

20 MS. MERS: All right. Sorry about that.
21 So here we have the expected case or the base case. I
22 don't know if he's in control or I'm in control.

23 MR. LUEBBERT: I'm trying to make it
24 larger.

25 MS. MERS: There we go. Okay. So

1 this --

2 COMMISSIONER HALL: I'm sorry. Where is
3 this? This is in the non-unanimous stip?

4 MS. MERS: Yes.

5 COMMISSIONER HALL: Okay.

6 MS. MERS: I believe it's attachment --
7 is it C or D? We have -- we have quite a few, but --

8 JUDGE DIPPELL: So the Non-Unanimous
9 Stipulation attachment?

10 MS. MERS: Yeah, it's Attachment D.
11 There are four examples. So this would be the first
12 example. And this first example is the most likely
13 scenario according to ABB's IRP analysis.

14 So in this case, the guarantee -- or the
15 Market Protection Provision is not needed as though
16 there's a few years where you see a little bit of a
17 downfall. By year six -- if you look at the column
18 year six and the accumulated annual wind value, you'll
19 see that customers have gotten nearly 6 million
20 dollars in benefits at this point. And by year ten,
21 customers have received a cumulative benefit to the
22 tune of over 145 million dollars, and that's the base
23 case.

24 Now, we ran some worst case scenarios and
25 the next example is a case -- it will be the low

1 market case example. And that is a situation where
2 wind production is going as expected but market prices
3 are much lower than what has been modeled in the base
4 case. So if you look at this, it may look like oh,
5 those numbers are a little bit dismaying. But then
6 when you get to year ten, the customers have still
7 received almost 10 million dollars of benefit from the
8 wind farm.

9 So then finally, we have our worst --

10 COMMISSIONER HALL: I'm sorry. Could you
11 go back to the expected case, for example? Where is
12 the price on here? I'm --

13 MS. MERS: The -- by price do you mean
14 like the --

15 COMMISSIONER HALL: The market price.
16 The SPP.

17 MS. MERS: I -- I believe it's tied to
18 a -- one of the Excel spreadsheets that -- that
19 Empire's witness David Holmes provided. So I don't
20 know if I -- if I know the numbers, but I believe that
21 if you asked him, he probably could tell you what
22 exactly the -- that range would be.

23 COMMISSIONER HALL: And that would be --
24 but whatever that price is is -- is what's included in
25 the SPP market revenue?

1 MS. MERS: Yes. And -- and when it comes
2 to how this is actually implemented, everything will
3 be actuals. It's, you know, what the actual market
4 prices are, what the actual wind production is, what
5 the actual cost of the wind farm is, what the revenues
6 are. So it -- these are examples to kind of show you,
7 you know, the -- the range of possibilities, but it
8 will definitely be the actual results when it comes
9 time to implement this.

10 All right. So if you turn to the very
11 last case, that's the last page, this is the -- that's
12 incredibly hard to read -- the low market case and low
13 wind example. This -- this is the worst case
14 scenario. This is where the wind projects are
15 drastically under-performing.

16 It's been modeled a P95. And a P95 wind
17 production value means there's a 95 percent
18 probability that the wind project will produce more
19 and only a 5 percent probability that they would
20 perform worse. Market prices have also fallen in this
21 scenario.

22 So in this case, the wind projects are a
23 net detriment of over 93 million dollars for the total
24 jurisdiction. You can see that if you -- you look at
25 year ten and you look at a cumulative AWV line.

1 So this is where the guarantee springs
2 into action. The risk is shared equally between
3 shareholders and customers so the total jurisdictional
4 impact is around 46.7 million dollars for -- for all
5 of Empire's customers. The Missouri customers would
6 bear about 39.7 million of that amount. So Missouri
7 customers will receive their regulatory liability,
8 with carrying costs, which will be amortized beginning
9 in the first rate case after the guarantee period in
10 the amount of 39.7 million dollars plus the carrying
11 costs.

12 In other words, even in this highly
13 unlikely scenario, the detriment does not exceed the
14 guaranteed cap contained in the stipulation, the cap
15 of 52.5 million. And it is important to remember that
16 even in this scenario and in everyone modeled, that
17 the wind projects by year 20 are a net benefit to
18 customers and will continue to be for the life of the
19 project.

20 As alluded to above, another change to
21 the Market Protection Provision is simplifying the
22 process by the creation of a regulatory liability in
23 year ten, which will be amor-- amortized in future
24 rate cases. This change is also beneficial because it
25 provides a smoothing effect to ratepayers by

1 addressing the regulatory liability after the
2 guarantee period. That means that rates won't
3 decrease in a case, increase in a case, decrease back
4 and forth which would create rate volatility and
5 uncertainty.

6 Incorporating the terms of this
7 stipulation into a Final Report and Order is the
8 appropriate and reasonable resolution to the issues
9 presented in this case. There's no -- been no
10 credible evidence presented that this outcome would
11 not be fair and just. In fact, the only other
12 mechanism on the table to protect ratepayers was one
13 presented for the first time in position statements
14 with no testimony or evidence supporting its adoption.

15 The Commission should order the terms of
16 the stipulation, which would allow for customers to
17 share up to 52.5 million dollars of risk for clean
18 generation source and yet still receive 100 percent of
19 the potential benefits.

20 Thank you. And I'm happy to answer any
21 questions you may have. Staff witnesses Natelle
22 Dietrich, J Luebbert and Mark Oligschlaeger will also
23 be able to answer questions regarding the Stipulation
24 and Agreement. And Staff will also have Jeffrey
25 Smith, Cedric Cunigan, David Buttig, Shawn Lange and

1 Claire Eubanks appearing to answer any questions you
2 may have about the technical aspects or Staff's
3 rebuttal report.

4 JUDGE DIPPELL: Are there any Commission
5 questions? Mr. Chairman?

6 COMMISSIONER HALL: I have no questions.

7 JUDGE DIPPELL: Commissioner Hall?

8 BY JUDGE DIPPELL:

9 Q. I just have one for you or maybe two.
10 I'm going to ask you the same that I asked MCEG. So
11 how has Staff's position changed from filing of
12 position statements to -- with the filing of the
13 Stipulation and Agreement?

14 A. I think Mr. Woodsmall explained it well.
15 It's just that we had this -- this realm of
16 possibilities to begin with, with Empire's position on
17 one end and Staff's position on the other end. And
18 that, you know, through the negotiation and settlement
19 process and -- and reviewing of modeling and -- and
20 seeing, you know, what is the worst case, we came to
21 this agreement that this number would -- would work
22 for Staff, that -- that we could live with this, that
23 this adequately protects ratepayers from the potential
24 risks involved in these projects.

25 Q. And you mentioned the hopes for a short

1 hearing. That's always the hope. And that the
2 Commission had previously found these things in other
3 cases, but the Staff is still prepared to put on
4 witnesses so that the Commission has the evidence
5 before it to find those same things --

6 A. Yes, we are.

7 Q. -- in this case?

8 A. Yes.

9 Q. Okay. Thank you.

10 A. Thank you.

11 JUDGE DIPPELL: Department of
12 Conservation?

13 MS. BELL: May it please the Commission.
14 My name is Stephanie Bell and I'm here on behalf of
15 the Missouri Department of Conservation.

16 And I know we've talked about this case
17 being similar to a previous case, but one thing that
18 is different is the participation of the Missouri
19 Department of Conservation. This is actually --
20 although Missouri Department of Conservation has
21 participated in several cases here recently, this is
22 the first appearance at a PSC hearing in recent memory
23 by the Missouri Department of Conservation. So I did
24 want to just kind of back up and explain kind of why
25 Missouri Department of Conservation did decide to get

1 involved in the PSC process.

2 We have heard a lot today, both from
3 Mr. Cooper and I think from Ms. Mers too, about the
4 public policy of the state. And -- but the energy
5 policy is not the only public policy of the state.
6 And while I understand in the Grain Belt case, as
7 Ms. Mers pointed out, the Commission and the state is
8 moving toward a newer diverse -- diverse energy,
9 particularly with respect to wind, as we make that
10 movement, we are presented with new challenges.

11 Wind is new for Missouri. And one of
12 those new challenges is it -- is the challenge that it
13 pre-- presents to Missouri wildlife and Missouri
14 conservation interests.

15 So MDC has a constitutional mandate to
16 conserve fish, forest and wildlife. MDC was first
17 formed through a citizen initiative and then later
18 voters decided to constitutionally dedicate funding to
19 MDC and its goals. MDC's goal is to utilize these
20 resources -- these dedicated resources to sustain a
21 diverse and healthy plant and animal community well
22 into the future.

23 And so as the Commission is considering
24 the energy policy, it has to balance that policy with
25 this voter-imposed state policy to conserve fish,

1 forest and wildlife.

2 MDC has a long history of consulting with
3 private developers and regulators on development
4 projects in an attempt to reduce the impact to fish,
5 forest and wildlife. It has only been more recently,
6 with the rise of commercial wind development, that
7 regulated utilities and the Missouri Department of
8 Conservation have begun to cross paths.

9 So not only does the Missouri Department
10 of Conservation have a constitutional duty to conserve
11 and protect fish, forest and wildlife, it also has an
12 interest in preserving and protecting the significant
13 investments it has made through the conservation sales
14 tax and Missouri's wildlife resources.

15 This investment is not only in the
16 particular species and the wildlife, but also in their
17 habitats and in these -- and in particular, this
18 project is very -- two of the sites are very close to
19 conservation areas which the Department of
20 Conservation has invested significant resources in
21 maintaining. And so MDC has an interest in protecting
22 those conservation areas.

23 The Department of Conservation hopes that
24 its participation in this case can bring -- and in
25 other PSC cases can bring its expertise and a greater

1 understanding of the wildlife issues and conservation
2 issues that are presented as commercial wind
3 development continues.

4 So on the first issue -- so first, I
5 think it's important to say Conservation does not take
6 a position on the Neosho Ridge project. That's in
7 Kansas and in the purview of the Kansas Department of
8 Conservation.

9 But with respect to the other two
10 projects, the first issue, you know, does the evidence
11 establish the projects are necessary and convenient?
12 And while the -- while MDC doesn't take a -- basically
13 a stance on the final question, MDC's position is that
14 under the Tartan factors, the factor on public
15 interest, that conservation should be a consideration
16 under that factor.

17 And so when evaluating public interest,
18 the Commission not only can consider conservation and
19 wildlife issues, but it should consider those issues.
20 And it has before. I think most recently in the Grain
21 Belt case, in that decision we saw that the Commission
22 addressed both environmental and agricultural concerns
23 under the public interest.

24 And a few years back in the Ameren
25 Illinois transmission case, specifically there was

1 some testimony about bats. And under the public
2 interest factor, the Commission addressed wildlife
3 issues. And so we believe in this case it would be
4 appropriate for the Commission to consider wildlife
5 issues under the public interest Tartan factor.

6 So here in this case you do have the
7 Rebuttal Testimony of Jennifer Campbell, who is MDC's
8 policy coordinator. And she is the one who is the
9 point of contact regularly with the private developers
10 on other projects. You also have the testimony of
11 Dr. Janet Has-- Haslerig, who is the MDC's eel expert.

12 And you also have testimony before you of Doctor --
13 Dr. Kathryn Bulliner, who is the MDC bat expert in the
14 state.

15 And all of the -- all of the testimony
16 suggests that there are significant conservation
17 concerns, particularly to the sites of the North Fork
18 Ridge and Kings Points sites. And so this evidence
19 should be considered -- can and should be considered
20 when the Commission is deciding to grant the CCN.

21 As to the second question, whether --
22 what conditions should be imposed, Judge, I know
23 you've talked about how positions have changed. And
24 so our original position was set forth in our
25 testimony, but since then we filed a stipulation and

1 joined a stipulation with the Company. That was filed
2 on Friday and that now represents MDC's position as
3 far as what conditions should be imposed. Those are
4 attached to the stipulation.

5 And so if the Commission does approve --
6 ultimately approve the CCN, we would urge the
7 Commission to impose the conditions in that
8 stipulation. The Company and MDC have had extensive
9 discussions regarding how to balance those public
10 policy interests; the State's interest in renewable
11 energy and the State's interest in protecting and
12 preserving conservation and wildlife issues. And so
13 we feel like this stipulation has found that balance.

14 I'm not going to go through each of the
15 provisions of the stipulation, but just on a high
16 level, the stipulation provides protection for known
17 eagle nests. It provides protection for known
18 riparian corridors for the gray bat. The stipulation
19 provides buffers or setbacks from conservation areas.
20 And it also provides reporting and monitoring
21 provisions that will help us learn more about the
22 impact of commercial wind development on Missouri's
23 species. So we would, again, urge the Commission to
24 adopt the -- the provisions of that stipulation.

25 JUDGE DIPPELL: Are there any Commission

1 questions?

2 BY COMMISSIONER HALL:

3 Q. Good morning. I was wondering how these
4 conditions compare to conditions in place for other
5 wind farms? Are these fairly typical or is there
6 something unique about any of these provisions?

7 A. So there are other wind farms that are
8 non-regulated utilities. And in those instances, it's
9 just a negotiation between the non-regulated wind
10 developer and MDC. And so they have come to I believe
11 some agreements on certain issues. I don't have all
12 of those memorized.

13 As far as other regulated utilities,
14 there's been two stipulations previously approved that
15 had conditions. And so, many of these conditions are
16 similar to what you will have seen in the previous
17 Ameren cases. I think what's -- each -- so it should
18 be said Missouri Department of Conservation is not --
19 does not take the position that, you know -- is not
20 anti-wind in any way. The -- what they're trying to
21 do is -- is make sure we protect wildlife.

22 So the ones in Ameren, I think you'll see
23 the -- the newer things is that some of these
24 implicate conservation areas. And so what MDC is
25 doing with each case is looking very particularly at

1 that site. And, you know, there may be sites in
2 Missouri that don't implicate any wildlife issues.
3 And so you're not going to see a carbon copy in each
4 case because in each case, MDC takes a look at the
5 data as far as what species are present, what areas
6 are -- are close by and then the stipulation should
7 meet those specific needs.

8 Q. So bottom line -- so bottom line, there's
9 nothing in this stipulation that anyone could view as
10 radical compared to conditions in place for other wind
11 farms?

12 A. No. We don't -- we see them to be very
13 reasonable. They are a compromise off of our original
14 position and we would expect similar provisions. If
15 you were to locate another wind farm in an area that
16 implicates the eagle, that implicates the gray bat and
17 implicates conservation areas, which is what we had in
18 this case, we would expect to request something very
19 similar.

20 Q. Thank you.

21 A. Uh-huh.

22 JUDGE DIPPELL: Thank you very much.

23 MS. BELL: Thank you.

24 JUDGE DIPPELL: And the Office of Public
25 Counsel.

1 MR. WILLIAMS: Thank you. I do have a
2 handout which contains some highly confidential
3 information, so what I will put on the screen will
4 not.

5 JUDGE DIPPELL: Okay. So --

6 MR. WILLIAMS: There will be --

7 JUDGE DIPPELL: Mr. Williams -- in case
8 that wasn't picked up -- says that he is -- has a
9 handout that contains some highly confidential
10 information that he's using in his opening, but that
11 the one presented for public viewing will not contain
12 that information.

13 And I didn't mention before we started
14 that there is a lot of confidential information in
15 this case. We certainly can go in-camera if we need
16 to hear any of that in the -- in the open hearing, but
17 if we can accomplish it without having to close the
18 proceedings, that is preferable.

19 MR. WILLIAMS: May it please the
20 Commission. My name is Nathan Williams and I
21 represent the Office of the Public Counsel here today.

22 The Office of the Public Counsel does not
23 oppose Empire building these three 1.1 billion dollar
24 wind projects. Let me repeat that. The Office of the
25 Public Counsel does not oppose Empire building these

1 1.1 billion dollar wind projects. But the Office of
2 the Public Counsel does oppose how Empire plans for
3 its retail customers to play -- pay for them.

4 Empire is promoting these wind projects
5 only on the economic proposition that projected SPP
6 market revenues over 20 years or more will exceed the
7 cost of the projects. Requesting a -- certificates
8 for a project solely based on projected revenue
9 streams is novel and sounds like an investment pitch,
10 which it is.

11 If Empire carries out its plan, its
12 captive customers essentially would become investors
13 in a speculative business proposition; that these wind
14 projects will create more revenues in the SPP market
15 than they cost. However, one of the fundamental bases
16 of utility rate regulation is that retail customers
17 should only pay for what is used to provide them their
18 utility service.

19 Public Counsel has two perspectives on
20 this. The first one's a regulatory perspective. From
21 a regulatory perspective, the Office of the Public
22 Counsel opposes Empire's intention to recover its
23 investment and profit for generating plant that it
24 does not need to provide its captive customers with
25 safe and reliable electric service. Empire is long on

1 capacity and has sufficient excess capacity that it
2 should remain long on capacity for the next decade.

3 OP-- OPC's position is supported by the
4 regulatory concept of used and useful, which means
5 that for a utility recover its investment in plant,
6 the utility must be using that plant to provide
7 utility service to its customers. It is also
8 supported by Section 393.135, which was passed by
9 voter initiative. That statute is on the handout that
10 I've given you and also appears on the screen and I
11 guess the public is seeing it.

12 Of particular significance -- well, I
13 don't know if I want to just read through the whole
14 thing. But in particular, the Commission and parties
15 should note the language "and used for service."
16 Plain language reading in Missouri is that it would be
17 used for service to serve customers, utility service.
18 Not to make money in the SPP market.

19 In the past, this Commission has
20 disallowed utility recovery of investment in excess
21 capacity. If built now, these wind projects will be
22 not only excess capacity, they will be additional
23 excess capacity. OPC witnesses Dr. Geoff Marke and
24 Lena Mantle in particular testify to this point.

25 OPC is also looking at this from an

1 economic perspective. OPC opposes Empire's intention
2 to recover its investment in profit for these wind
3 projects from a purely economic perspective as well.

4 Although Empire could build these wind
5 projects as an independent power producer without any
6 Commission approval, rather than doing so, Empire
7 intends to obtain its profit from its retail
8 customers, not the SPP market. This point bears
9 repeating. Empire is not opting to build these wind
10 projects as unregulated assets where it would obtain
11 its profit from the markets.

12 While Empire points to its Market
13 Protection Plan as retail customer protection, the
14 focus of that plan is to limit Empire's exposure to
15 downside risk in the SPP market. Rather than capping
16 customers' exposure to that downside risk, it is
17 Empire's exposure that is capped at 1.25 million --
18 apparently the new position is 52.5 million, but in
19 any event, it's Empire's exposure that is capped.

20 The downside risk is substantial. These
21 wind projects will cost about 1.1 billion dollars of
22 which Empire intends to invest about 550 million.
23 That figure is actually unknown at this point in time,
24 the exact investment Empire will make. An Empire
25 capital investment of 550 million would increase

1 Empire's rate-base by about 40 percent. Empire
2 intends for its 172,000 retail customers to be at the
3 mercy of the SPP market revenues to offset Empire's
4 increase in revenue requirement these wind projects
5 would cost.

6 A prudent investor would carefully
7 analyze the prospects of profiting in the SPP market.
8 The SPP market is undergoing rapid and fundamental
9 changes. As the Commission stated in its just issued
10 Grain Belt Report and Order on remand, you're going --
11 you've heard this quote already, but I'm going to say
12 it again, quote, We are witnessing a worldwide,
13 long-term and comprehensive movement towards renewable
14 energy in general and wind energy specifically, closed
15 quote.

16 Public Counsel agrees. That also means
17 there's going to be a lot more generation in the SPP
18 market, which should do nothing except drive prices
19 downward.

20 The Commission also made an important
21 finding in that case. Quote, The wind industry will
22 not need the federal production tax credit after 2023
23 because of continuing technology improvements, closed
24 quote. There is no reason to believe that technology
25 improvements will not continue after 2023 and every

1 reason to believe they will. And that the cost of
2 generating electricity from wind will continue to
3 decline, putting downward pressure on SPP market
4 prices.

5 As Dr. Geoff Marke testified --
6 testifies, not only is SPP abundant when generating
7 capacity now, there is an impending onslaught between
8 6.5 and 11.5 gigawatts of new wind that SPP anticipa--
9 anticipates will come online by 2025. Despite this,
10 Empire only models 6.5 gigawatts of wind additions for
11 its high case.

12 This additional wind capacity can only
13 put downward pressure on SPP market prices. When the
14 wind is blowing regionally, it will put downward
15 pressure on SPP market prices at the same time when
16 Empire's wind projects would be producing energy.

17 Despite the continuing increase in
18 requests to SPP required to add wind, Empire has not
19 updated its analyses based on now two-year-old data to
20 account for that now known data.

21 From an investor's perspective, perhaps
22 most concerning are what is still unknown. As Staff
23 indicated or stated, not much has changed since
24 before. Well, the unknowns have not changed either.
25 Some of those unknowns are when will Empire -- when

1 Empire will have generation interconnection agreements
2 with SPP for any of the wind projects; the cost of
3 those interconnection agreements; how much Empire will
4 invest; who its tax equity partner or partners will
5 be; the actual terms and conditions of the tax equity
6 partnership; the hedge price.

7 With the settlement filed last Friday
8 afternoon, in the face of these unknowns and issues,
9 you are presented with essentially two proposals. You
10 will have the settlement proposal that shields
11 shareholders to a 50/50 sharing of downside risk up to
12 a maximum exposure of 52.5 million over the first ten
13 years of the projects lives.

14 And you have OPC's proposal that
15 accepting that the 25 million dollars Empire's
16 witnesses Blake Mertens and David Holmes testify in
17 surrebuttal is sufficient, shares downside risk 50/50
18 between customers and Empire and limits customers, not
19 Empire's exposure, to 25 million over the first ten
20 years.

21 In conclusion, OPC would like to see
22 Empire move forward with these projects, but as
23 non-regulated business venture where Empire and its
24 tax equity partner or partners bear all the risk.
25 Empire does not need these wind projects to serve its

1 customers' load so those customers should not be
2 required to pay for Empire adding generation that it
3 does not use to serve them.

4 Empire only has about 172,000 retail
5 customers. Not over a million like Ameren Missouri.
6 If these projects fail, the impact on Empire's
7 customers would be substantial and every home and
8 business in Empire's territory would suffer.

9 Empi-- I want to turn to a question that
10 Commissioner Hall said he was going to ask of Public
11 Counsel, and that was whether all customers are
12 similarly situated, in particular residential and
13 commercial and industrial.

14 I don't believe they are. I think most
15 residential customers' primary concern are economics,
16 but I know some of the commercial and industrial
17 customers have stated their support for wind. And I
18 believe that support -- certainly they have financial
19 considerations, but they might be willing to pay more
20 for being in a position to say that they're being
21 served by wind than not.

22 Public Counsel's witnesses in this case
23 are Dr. Geoff Marke, Ph.D., chief economist who has
24 testified on economic and policy issues in numerous
25 cases before this Commission. In this case he is

1 testifying to conditions in the SPP market, the
2 levelized cost of energy, Empire's modeling
3 assumptions and economic and regulatory policy.

4 John Robinett, who is an engineering
5 specialist and who has testified before the Commission
6 both live and by affidavit in numerous cases. He is
7 testifying to the impact of these wind projects on
8 Empire's net plant in service and the increase in
9 Empire's turbine costs.

10 John S. Riley, who is a certified public
11 accountant and who has appeared and testified before
12 the Commission on accounting issues numerous times.
13 He is testifying to the increase in revenue
14 requirement that these projects will cause Empire's
15 customer -- customers to bear for generation that is
16 not needed.

17 And finally, Lena M. Mantle, who is a
18 professional engineer registered with the State of
19 Missouri and who was involved in the development and
20 revision of the Commission's resource planning rules
21 and has reviewed the resource planning processes of
22 Empire and the other Missouri electric utilities since
23 the early 1990's. She is testifying to the magnitude
24 of Empire's plant investment in these wind projects
25 and the riskiness of relying on Empire's economic

1 projections of SPP market prices.

2 Are there any questions?

3 JUDGE DIPPELL: Are there any Commission
4 questions? Mr. Chairman.

5 CHAIRMAN SILVEY: Thank you.

6 BY CHAIRMAN SILVEY:

7 Q. Thank you. I just specifically want to
8 clarify something -- one of OPC's positions that was
9 referenced actually I think in Empire's opening.

10 If you look at the position statement in
11 the Customer Protection Plan, Number 6, rate-basing of
12 wind projects says, While Empire's investment in the
13 Kings Point, North Fork Ridge and Neosho Ridge wind
14 projects are included in Empire's rate case, Empire's
15 Missouri retail customers shall pay in their rates
16 neither a return of nor a return on Empire's
17 investments in those projects during the hedging
18 period of this plan nor any amount in the excess -- in
19 excess of the 25 million dollar limitation.

20 Does the Commission, in fact, have the
21 legal authority to set that as a condition in this CCN
22 for treatment in a future rate case?

23 A. Well, first I'll explicate that what we
24 were trying to do, and we may have done a bad job of
25 wording it, was say that essentially the projects

1 would be treated as if they were not similar to an
2 independent power producer. So the -- the wording of
3 the -- including in rate-base may have been not
4 correct, but we were wanting to make it clear that
5 whether they would be rate-based after ten years would
6 not be an issue that we would bring up in our
7 settlement position -- or I mean our -- the position
8 we took in the case as our offer as -- as an approach.

9 But as to your question, basically what
10 we have now are a lot of rate-making issues that are
11 being looked at in the context of a certificate case
12 because Empire has said go forward for economic
13 reasons. I don't know if you want to focus -- call it
14 the Tartan factor of economic feasibility, but they're
15 saying -- their real pitch is build these things
16 because they're going to bring in more revenues than
17 they're going to cost in the long run.

18 That really depends on what the
19 Commission does with rates. So there have been -- I
20 think everybody's position in this case has addressed
21 rate-making in some fashion or another. Whether the
22 Commission can actually bind a -- this Commission can
23 actually a bind a future Commission to any rate-making
24 principles, I think that's questionable. Legally
25 bind.

1 Q. Questionable how?

2 A. I think that the Commission should always
3 have the freedom and does have the freedom to look at
4 all relevant factors when setting rates. I'm -- I'm
5 aware that the certificate statute says that the
6 Commission can impose any conditions -- it -- it
7 doesn't put a limitation on the Commission --
8 expressly put a limitation on the Commission's ability
9 to set conditions, but I -- I don't think it's ever
10 been in front of a court, but I question whether or
11 not a Commission can do a rate-making condition in a
12 certificate that would legally bind a future
13 Commission. It certainly would be a relevant factor.

14 Q. Thank you.

15 JUDGE DIPPELL: Commissioner Hall, did
16 you have questions?

17 COMMISSIONER HALL: Yeah.

18 BY COMMISSIONER HALL:

19 Q. Can you explain to me what you are using
20 393.135 to show or to argue?

21 A. Well, it's our -- questionable whether or
22 not the Commission can issue a certificate in this
23 case -- well, let me back that up. 393.135 is talking
24 about what you can recover in rates. In order to
25 recover or --

1 Q. What you can recover in rates before
2 something is built, which is based on the cost of
3 construction in progress. So this is the anti-quip
4 statute and it concerns what you can put in rates
5 before something is built.

6 A. But it -- it also says that it has to be
7 used for service before you can include it in rates.

8 Q. I don't see that.

9 A. We're saying --

10 Q. I mean I've always viewed and I thought
11 everybody viewed "before it is fully operational and
12 used for service" as one requirement and it's all
13 concerning the cost of construction in progress.

14 A. Well, it was done under -- it's voter
15 initiative that was done in response to -- in 1976 I
16 think to the construction of nuclear plants across the
17 country. There are similar kinds of statutes. Rather
18 than the "used for service" language there's the "used
19 and useful" language in the other states, which is
20 clearly you can't recover until it is used. I think
21 the "used for service" language is -- plain meaning is
22 it just means that you cannot start recovering
23 anything in rates unless the utility property is being
24 used to provide utility service to the utility
25 customers.

1 Q. I'd like some -- some -- some case cites
2 for that assertion. I mean I think that there is some
3 case law out there that -- that plant has to be in
4 service for -- for rates to be just and reasonable,
5 but I think that's under a different statute. So I'm
6 somewhat baffled that you're taking this statute for
7 that proposition.

8 But continue with your -- your analysis
9 as to how this is relevant to any issue before us.

10 A. Well, I mean that's it. That if this
11 plant is -- until it's being used to provide utility
12 service, electricity, capacity, something to actually
13 provide service to customers aside from getting a
14 revenue stream from the SPP, because it is additional
15 excess capacity, this statute would say you cannot
16 recover in rates because it is not being used for
17 service. That's it. And if you're looking for some
18 case that's -- expressly says that, it's not out
19 there.

20 Q. Okay. Well, I look forward to the -- to
21 the briefing that you will provide on -- on that
22 interpretation of that statute after -- after this
23 hearing.

24 Let me move onto the -- the provision
25 on -- on Asbury in the --

1 A. On the stip?

2 Q. -- in -- in the non-- in the
3 non-unanimous stip. I know that -- that you just
4 received this on Friday. Your office is still
5 evaluating it. I'm not going to ask you to take a
6 position before you are ready to do so, but maybe you
7 are ready to do so. Do -- do you have a position
8 on -- on that provision or is that part of what you're
9 still analyzing?

10 A. Let me take a look at it. I don't know
11 that we would oppose that provision in and of itself.
12 It's -- may not be, if you were going to address
13 Asbury at all, how we would prefer that it be
14 addressed.

15 Q. How would you prefer it be addressed?

16 A. We'd entertain a provision where if
17 the -- Empire decided it wanted to sell Asbury, it
18 would come in and ask the Commission for authority
19 to -- I mean retire Asbury, not sell it necessarily --
20 it would come in and ask the Commission for authority
21 to sell Asbury and --

22 Q. Or retire?

23 A. Well, the statutes give ex-- explicit
24 authority to sell it.

25 Q. Correct.

1 A. But if it was contemplating retirement,
2 it would first come in and get Commission authority to
3 sell, put it on the market, see what it could get and
4 then decide whether to retire it or sell it.

5 Q. So you -- you -- Public Counsel would
6 want the Company to come in before retiring and seek
7 approval to sell it? That's all?

8 A. If Asbury were even a condition. I mean
9 we don't really view Asbury as part of this case.
10 It's a certificate case for wind projects.

11 Q. Okay. All right. And then turning to
12 the Customer Protection Plan -- and I think I
13 understand and I -- and I haven't come to an opinion
14 as to whether I agree or not, but I think I understand
15 Public Counsel's position on that to some extent.

16 Would -- if -- if that 52.5 million
17 figure was changed in a -- is it -- would it -- is
18 that the figure -- is that the problem? Or is it the
19 entire concept that is problematic to your office?

20 A. Well, at some point I guess the figure
21 gets high enough it would alleviate our concern, but I
22 don't know what that number would be.

23 Q. Okay. So it -- so at some point if it
24 got high enough, it would insulate customers
25 sufficiently that Public Counsel could -- could --

1 could support it? You just don't know what that
2 figure is?

3 A. I'm not certain of that, but I think
4 that's probably the case.

5 Q. Okay. Thank you.

6 JUDGE DIPPELL: Mr. Chairman, did you
7 have follow-up?

8 BY CHAIRMAN SILVEY:

9 Q. Yeah. Just to -- just to follow up on
10 the Commissioner's questions on the quip statute. So
11 your contention is that the phrase "and used for
12 service" stands on its own and is not tied to "fully
13 operational"?

14 A. Yes.

15 Q. Okay. Thank you.

16 JUDGE DIPPELL: Okay. Thank you very
17 much.

18 Okay. That concludes our openings. At
19 this time I think Missouri Department of Conservation
20 wanted to go ahead and offer its exhibits for its
21 witnesses and ask that they be excused.

22 MS. BELL: Yes, Your Honor. We have
23 Exhibits 600 through 606. Would you like me to
24 identify them individually?

25 JUDGE DIPPELL: Yes. Go ahead.

1 MS. BELL: Okay. So 600 is the Rebuttal
2 Testimony of Jennifer Campbell, the HC version of her
3 testimony. 601 is the public version of her
4 testimony. 602 is the written Rebuttal Testimony of
5 Dr. Kathryn Bulliner, and that is the highly
6 confidential version. 603 is the public version of
7 her testimony. And 604 is the written Rebuttal
8 Testimony of Dr. Janet Haslerig, and that is the
9 highly confidential version of her testimony. 605 is
10 the confidential version of her testimony. And 606 is
11 the public version of her testimony.

12 And at this time we would offer those in
13 and -- well, we'll go ahead and just offer those
14 first.

15 JUDGE DIPPELL: Okay. So let me back up
16 just really quickly there. So you designated each
17 public, highly confidential or confidential with its
18 own number?

19 MS. BELL: Correct.

20 JUDGE DIPPELL: Okay. And that then
21 ended up being 600 through 606?

22 MS. BELL: Uh-huh.

23 JUDGE DIPPELL: Okay. Are there any
24 objections to Exhibits 600 through 606 coming into the
25 record?

1 Seeing none, then I will admit those
2 exhibits.

3 (Exhibits 600 through 606 were received
4 into evidence.)

5 JUDGE DIPPELL: And seeing that the
6 agreement stated, but I'll just ask again. Would
7 there be any questions for those witnesses?

8 Seeing none, then cross-examination is
9 waived on those witnesses and they may be excused.

10 MS. BELL: Okay. And we would request
11 that Department of Conservation be excused as well;
12 counsel.

13 JUDGE DIPPELL: And you may also be
14 excused with my usual caveat that you accept what
15 whatever -- you -- you forfeit your opportunity to
16 object to the proceedings and the testimony and
17 evidence as it comes in here today -- or this week.

18 MS. BELL: Understood. Thank you, Judge.

19 JUDGE DIPPELL: Uh-huh. Okay. Is there
20 anything else before -- I think we'll go ahead and
21 take a short break and we'll let Public Counsel decide
22 where it stands on the Stipulation and Agreement and
23 going forward with witnesses and so forth and I'll let
24 you inform me of that when we return from a short
25 break. Let's -- let's break until five till 11:00.

1 We can go off the record.

2 (A recess was taken.)

3 (Missouri Department of Conservation
4 Exhibits 600-HC, 601-P, 602-HC, 603-P, 604-HC, 605-C
5 and 606-P were marked for identification.)

6 JUDGE DIPPELL: Okay. So we've returned
7 from our break and are back on the record. Before we
8 went back on the record, I was explaining to counsel
9 that before we adjourned or before we went to our
10 break, I had intended for Public Counsel not to make a
11 decision about whether or not it objected to the
12 Stipulation and Agreement, but about whether it needed
13 more time or a break in the hearing to review that.

14 And Mr. Williams tells me that it's
15 actually more helpful for them in reviewing their
16 position on the agreement to just go ahead and
17 continue with the witnesses, so that's what we're
18 going to do. Did I restate that correctly,
19 Mr. Williams?

20 MR. WILLIAMS: Yes, you did.

21 JUDGE DIPPELL: Thank you.

22 Okay. So in that case, we will just
23 proceed forward. And so this morning you said that
24 there was no change then in witness order or order of
25 cross-examination as a result from the agreement. Is

1 that still correct?

2 MR. COOPER: I believe that's still
3 correct, Your Honor.

4 JUDGE DIPPELL: Okay. All right. Then
5 we can begin with Empire's first witness, which is
6 Mr. Mertens.

7 MR. COOPER: Yes. Empire would call
8 Mr. Blake Mertens.

9 (Witness sworn.)

10 JUDGE DIPPELL: Thank you.

11 BLAKE A. MERTENS, being first duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION BY MR. COOPER:

14 Q. Please state your name.

15 A. Blake Mertens, M-e-r-t-e-n-s.

16 Q. Have you caused to be prepared for
17 purposes of this proceeding certain Direct and
18 Surrebuttal Testimony in question and answer form?

19 A. I have.

20 Q. Is it your understanding that that
21 testimony has been marked as Exhibit -- well, let me
22 back up. Direct Testimony, both in the EA-2019-0010
23 case and Direct Testimony in the EA-2019-0118 case?

24 A. That's correct.

25 Q. Is it your understanding that the Direct

1 Testimony in the 0010 case has been identified as
2 Exhibit 1, that the Direct Testimony in the 0118 case
3 has been identified as Exhibit 2, that the Surrebuttal
4 Testimony in highly confidential form has been marked
5 as Exhibit 3-HC, and the Surrebuttal Testimony in
6 public form has been marked as 3-P for public?

7 A. Correct. Yes.

8 Q. By whom are -- were you employed and in
9 what capacity at the time you prepared the referenced
10 testimony?

11 A. I was employed by Liberty Utility Service
12 Co. as vice president of electric operations for the
13 Central Region, otherwise known as Empire District
14 Electric Company.

15 Q. Sitting here today, by whom are you
16 employed and in what capacity?

17 A. As of April 1st, I've taken a position
18 with Tetrad Corporation based out of Omaha, Nebraska
19 as executive vice president.

20 Q. Okay. How recently did that happen?

21 A. As I said, April 1st is -- was my first
22 day. I turned in my notice of resignation about
23 60 days ago.

24 Q. And sitting here today, are you still
25 testifying on behalf of Empire District Electric

1 Company and -- and authorized to testify on behalf of
2 the Company?

3 A. Yes. That's correct.

4 Q. If I were to ask you the same questions
5 in the referenced Direct and Surrebuttal Testimony
6 today, would your answers be the same with the
7 exception of the who you are currently employed by and
8 in what capacity?

9 A. Yes.

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

12 A. Yes.

13 Q. Okay.

14 MR. COOPER: Your Honor, I would offer
15 Exhibits 1, 2, 3-HC and 3-P at this time.

16 JUDGE DIPPELL: Would there be any
17 objection to Exhibits 1, 2 and 3, both public and
18 highly confidential versions, coming into the record?

19 MR. WILLIAMS: No objection.

20 JUDGE DIPPELL: Seeing no objection, I
21 will admit those exhibits.

22 (Exhibits 1, 2, 3-HC and 3-P were
23 received into evidence.)

24 MR. COOPER: At this time we would tender
25 Mr. Mertens for cross-examination.

1 JUDGE DIPPELL: Is there
2 cross-examination by Renew Missouri?

3 MR. OPITZ: No, thank you, Judge.

4 JUDGE DIPPELL: Division of Energy?

5 MS. REEVES: No, Your Honor.

6 JUDGE DIPPELL: Missouri Energy Consumers
7 Group?

8 MR. WOODSMALL: Yes, Your Honor.
9 Briefly.

10 CROSS-EXAMINATION BY MR. WOODSMALL:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. Congratulations on the new job.

14 A. We'll see. Thank you.

15 Q. I wanted to talk briefly about three of
16 the conditions contained in the Non-Unanimous
17 Stipulation. Are you familiar with the Non-Unanimous
18 Stipulation?

19 A. Yes. I believe I have a copy here as
20 well.

21 Q. Okay. Working backwards, there's a
22 provision that talks about the development of the
23 non-residential rec program. Are you familiar with
24 that?

25 A. Yes.

1 Q. And can you tell me what that does?

2 A. Well, there are many -- as -- as you
3 articulated earlier, there are many larger customers,
4 commercial customers or industrial customers, that
5 have sustainability programs that require -- or they
6 want to prove their greenness or their sustainability.
7 So this program will allow us to -- when completely
8 defined, assign or sell those recs to those -- those
9 commercial or industrial customers to meet their
10 sustainability goals.

11 Q. And do you believe that the offering of
12 such a program is in the public interest?

13 A. Yes.

14 Q. And why?

15 A. Well, you know, just as -- as it is
16 important for us as an electric utility to show our
17 customers that we are trying -- trying to become more
18 sustainability, these larger commercial and industrial
19 cus-- larger industrial and commercial customers have
20 the same type of goals. And to -- to prove to their
21 customers that they are becoming more sustainable,
22 that's what this program allows them to do.

23 Q. Then there is a provision for battery
24 energy storage. Are you familiar with that?

25 A. Yes.

1 Q. And can you tell me what your
2 understanding of that provision is?

3 A. Well, to the extent a certificate of
4 convenience and necessity would not be required, if we
5 would move forward with a battery storage program,
6 we -- we would have to basically go forward -- we
7 would have to basically present the same facts that we
8 would at a CCN process to prove the battery storage is
9 in the public good and a necessity for our customers.

10 Q. And do you believe that's in the public
11 interest?

12 A. Yes.

13 Q. And why?

14 A. You know, very similar. Just to prove
15 that it's the lowest cost alternative for our
16 customers and provides good service in the long run.

17 Q. And finally, there's a provision
18 regarding the creation of a regulatory asset slash
19 liability for Asbury. Are you familiar with that
20 provision?

21 A. Yes.

22 Q. And can you tell me what your
23 understanding of that provision is?

24 A. Yeah. Well, to the extent we would
25 make -- management would make the decision to retire

1 Asbury before our next rate case or a rate case
2 proceeding, there would obviously be costs and
3 revenues that need to be trued up in the next rate
4 case proceeding. So we've asked for permission to
5 create regulatory assets and regutory -- regulatory
6 liabilities to cost -- track those costs and liab--
7 cost and revenues in those accounts.

8 Q. And do you believe that provision is in
9 the public interest?

10 A. Yes.

11 Q. And can you tell me why?

12 A. Again, just to true that up -- true those
13 costs up both for the shareholders and -- and the
14 customers, to make sure that those are appropriately
15 addressed in rates going forward.

16 Q. So it would allow for treatment of the
17 entire pie at one time, both the assets that the
18 utility may seek as well as the liabilities that the
19 customers may seek?

20 A. Exactly.

21 Q. Okay. I have no further questions.
22 Thank you, sir.

23 JUDGE DIPPELL: Is there
24 cross-examination by Staff?

25 MS. MERS: Very briefly.

1 CROSS-EXAMINATION BY MS. MERS:

2 Q. There's been some criticism of the market
3 forecast and how that's been used in your analysis in
4 this case or the analyses that have been done. Is
5 that your understanding there's --

6 A. I understand there's been some criticism
7 of that, yes.

8 Q. Are there any other analyses that Empire
9 performs as part of other Commission requirements or
10 resource planning that rely on the same kind of market
11 forecast?

12 A. Integrated resource plan would be the one
13 that would come to the top of the mind, yes.

14 Q. Are there any others?

15 A. You know -- you know, I'm -- when we do
16 prudence costs on fuel and those type of things, we
17 al-- we always rely on fuel -- fuel forecasts and
18 market price forecasts, yes.

19 Q. And in any of those cases, has the issue
20 about market forecasts been raised before?

21 A. I couldn't say definitively yes or no.
22 You know, I know we've had discussions in -- in
23 previous cases where we talk about the validity of
24 those. And I think everyone would agree the day that
25 a forecast is put forward is the day that it's

1 incorrect. I mean it's just a matter of how -- how
2 ac-- the relativity of that in-- incorrectness.

3 But we know that the day we put that out,
4 you know, a year from now, market conditions are going
5 to be slightly different, yes.

6 Q. But even with all of those
7 considerations, it's something that's pretty typically
8 re-- relied upon by you and other utilities in doing
9 your resource planning and other process. Correct?

10 A. Yes. Absolutely. That's the reason we
11 go through those resource planning. And they
12 absolutely require us to do forecasting.

13 Q. Okay. No further questions. Thank you.

14 JUDGE DIPPELL: Public Counsel?

15 MR. WILLIAMS: Thank you.

16 CROSS-EXAMINATION BY MR. WILLIAMS:

17 Q. Since we're on the topic of resource
18 planning --

19 A. Uh-huh.

20 Q. -- what is the purpose of resource
21 planning?

22 A. To find the least cost alternative for
23 our customers to -- to -- to meet their demand needs,
24 whether that's from a supply resource perspective or
25 demand response initiatives.

1 Q. And for the resource planning that Empire
2 did for its filing that it has not yet made this year,
3 has Empire updated market prices for that filing?

4 A. It's my understanding that we have.
5 Mr. McMahon would probably be the better witness to
6 address all that, but yes, we have updated those with
7 ABB price forecasts, yes.

8 Q. And were those updated forecasts
9 presented to the Commission in this case?

10 A. I do not believe so. As we have stated,
11 the initial analysis we had showed an overall
12 levelized cost of energy --

13 Q. I think you've answered the question.

14 A. Okay.

15 Q. What is Empire's current rate-base?

16 A. I believe total company, we have
17 1.6 billion roughly net assets, net plant.

18 Q. And do you know by how much Empire's
19 rate-base will increase if the Commission grants
20 certificates in this case?

21 A. Well, roughly our -- our portion of the
22 customer savings plan would require somewhere between
23 550, 600 million dollars of additional investment. So
24 increase that 1.6 billion by that amount.

25 Q. And how is it that Empire intends to

1 obtain a return of and return on its investment in the
2 wind projects that are the subject of this case?

3 A. Well, we would -- we would put these
4 assets in that rate-base and they would be treated
5 as -- as net plant and we'd get a return on equity
6 in -- in that manner is my -- I mean it would be the
7 wind project co's. Not those assets directly, but
8 the -- the portion of those -- our portion of the
9 investments in those wind project co's would be in net
10 plant.

11 Q. So ultimately Empire intends to get a
12 return of and on its investment from its re-- retail
13 customers. Correct?

14 A. That's correct.

15 Q. Does Em-- has Empire executed a tax
16 equity partnership agreement for any of the three wind
17 projects?

18 A. It is my understanding we have not
19 entered into full agreements, but Mr. Mooney would be
20 the correct person to ask the majority of those tax
21 equity questions.

22 Q. Does Empire have any -- have an
23 SPP-approved generation interconnection agreement for
24 any of the wind projects?

25 A. We do not have one in hand. We have

1 applied for interconnection agreements for all three
2 wind projects.

3 Q. Do you know when you will have
4 generation -- SPP-approved generation interconnection
5 agreements for any of the projects?

6 A. We -- we applied in the 2000-- May of
7 2017 or the first quarter of 2017 -- first half -- let
8 me restate that.

9 We applied in May of 2017, which was the
10 first DISIS study that SPP allowed in the -- the 2017
11 year. SPP has a long backlog for this interconnection
12 request. And as of today, they have told us they're
13 going to start that study process in May of this year.

14 Q. And how long will that study process
15 take?

16 A. At this point they've told us it would be
17 complete by October 20th.

18 Q. Of?

19 A. Of this year.

20 Q. So when you will have SPP-approved -- any
21 SPP-approved generation interconnection agreement
22 depends upon SPP?

23 A. Yes. I mean they drive the study process
24 along with several participants, including ourselves
25 and other load serving entities and transmission

1 providers within the SPP footprint.

2 Q. Do any of the electric utilities that are
3 members of SPP have retail customer choice?

4 A. I couldn't answer that definitively.

5 Q. Are you aware of any utilities that are
6 in SPP that do have retail choice?

7 A. I'm hesitating because I -- I do not know
8 the cooperatives like Golden Spread that are located
9 in Texas. I do not know what their retail choice
10 availability of their customers is. So I couldn't
11 answer that positively one way or the other.

12 Q. Well, let's exclude Texas from the SPP
13 footprint and then ask the question. Excluding
14 utilities in Texas, are you aware of any members of
15 SPP who have retail customer choice?

16 A. I am not aware.

17 Q. How many retail customers does Empire
18 serve?

19 A. Roughly 175,000.

20 Q. And how many of them are located in
21 Missouri?

22 A. Roughly 85 percent, 140-some-odd
23 thousand.

24 Q. I think you testified last time it was
25 around 153,000, but whatever 85 percent of 172 -- I'm

1 sorry. I think you gave a different number for that
2 too.

3 A. I think I probably gave 172,000 last
4 time. We've grown a little bit since we last
5 testified so we're up at 174-, 175,000 today.

6 Q. But 85 percent of that number, whatever
7 that is?

8 A. 84 percent.

9 Q. When is it that Empire projects that its
10 customers will start seeing bill savings from the
11 three generation projects for which Empire's seeking
12 certificates in this case?

13 A. You could probably -- Mr. Holmes would
14 probably be the best person to ask that, but it's my
15 understanding through the modeling, year three or
16 four, maybe five is -- is when we would see savings
17 come through. There will be some initial impacts due
18 to putting those assets into our -- our net plant in
19 service, but, you know, somewhere that tips in year
20 three, four or five. But Mr. Holmes could clarify
21 that.

22 Q. The market prices you used for that
23 modeling are increasing over time, are they not?

24 A. That's correct.

25 Q. Is there any point in time at where they

1 don't? Where they level off or decrease going out
2 into the future?

3 A. I would have to go back and look at the
4 details. I know Mr. McMahon could answer that
5 specifically.

6 Q. So you don't know?

7 A. I don't know if there's one or two years
8 that it would dip. I do not know that.

9 Q. What do you expect to happen to SPP
10 market prices when -- in the next few years?

11 A. You know, I think our -- our forecasts
12 show that they are slightly increasing, relatively
13 flat, increasing over -- over a period of time due to
14 natural gas prices that drive a lot of the SPP market
15 prices. So that would be my answer.

16 Q. You don't view that to be inconsistent
17 with the amount of wind that's anticipated to come on
18 in the next few years?

19 A. Well, again, natural gas prices
20 historically and -- and per our modeling have largely
21 driven the prices that we see in SPP. While I will
22 admit that the wind has helped reduce those, but -- we
23 have seen in the past, but still natural gas is the
24 marginal price in SPP.

25 Q. Does Empire have an immediate need to

1 expand its generating resource capacity?

2 A. We believe that by adding wind, we -- we
3 provide an improvement by lowering the overall cost to
4 our customers. So as Mr. Cooper explained, you know,
5 depends on definition of needs. It's my understanding
6 this Commission has used that definition of need to
7 also include improvements. So we have -- by adding
8 this wind, we improve by lowering the overall cost to
9 our customers.

10 Q. I think in your testimony you testified
11 Empire having something like 1,447 megawatts of
12 capacity, do you not?

13 A. Somewhere in that neighborhood would be
14 correct, yes.

15 Q. And is that SPP accredited capacity?

16 A. Do you by chance have a reference for me?
17 I'm looking through this here.

18 Q. I don't know that I have another copy of
19 it. I have a Empire DR response to a Staff Data
20 Request 11-52.

21 A. Uh-huh. I'm hesitating because I'm just
22 trying to figure out the amount of wind in that 1,447.
23 So if you showed me a table, I could probably say --
24 answer your question yes or no.

25 Q. You mean something like this?

1 A. Yeah.

2 MR. WILLIAMS: May I approach?

3 BY MR. WILLIAMS:

4 Q. I'm handing you what's been -- well,
5 hasn't been marked for identification, but it's a
6 Empire response to Staff Data Request 11-- well, at
7 least the Company's designated it Staff 11-52. Take a
8 look at that.

9 A. So could you ask me your question again?

10 Q. I was asking whether the 1,447 was SPP
11 approved capacity or if it's -- I'm sorry. Let me try
12 that again.

13 I'm asking whether or not it's SPP
14 accredited capacity or if it's something else, usually
15 nameplate or it may be a mix? I don't know.

16 A. Yeah. Well, I'm trying to reconcile
17 there's a 1,477 in th--the main response to the data
18 request. There's 1,477 megawatts of accredited
19 capacity -- capacity; 1,390 megawatts of that owned
20 and 86 megawatts of that purchased. So that purchased
21 would be coming from Plum Point and the two wind
22 farms.

23 I'm trying to reconcile when I look at
24 this table it says 1,447, which I think is the -- the
25 non-- excludes the -- I'm not sure what it excludes.

1 There's a difference of 30 megawatts there, but --

2 Q. Let's see. What exhibit number did we
3 get? Do you have a copy of your Direct Testimony in
4 EA-2019-0010 that's been marked for identification as
5 Exhibit Number 1?

6 A. Yes.

7 Q. Do you want to turn to the page -- pages
8 6 and 7?

9 A. Okay.

10 Q. There's a sentence that runs on into the
11 top of page 7. That's where the 1,447 megawatts first
12 shows up.

13 A. Sorry. I was looking at the -- looking
14 at my surrebuttal there.

15 Yes, so I think with -- the clarification
16 is, is we own 1,447 megawatts and have purchased
17 generation capacity of 303 megawatts. And then when
18 you go through the calculation to figure out what's
19 accredited, whether it's owned or purchased, that's
20 the 1,477 I was talking about earlier.

21 Q. Are you saying there's something that's
22 not clear in the data request response? Because it
23 was asking about this testimony and the 1,447?

24 A. Right. And -- and what I'm saying is in
25 the testimony, the 1,447 talks about what we own

1 versus the Purchase Power Agreements that would be on
2 top of that from an accredited capacity perspective.

3 Q. And the Purchase Power Agreements that
4 you're referring to are?

5 A. The Elk River and Meridian Way Wind
6 Farms.

7 Q. Don't you have a --

8 A. And we have a Purchase Power Agreement
9 with Plum Point.

10 Q. And how much are those accredited at and
11 what are their nameplates?

12 A. The Elk River Wind Farm is accredited
13 according -- in the 2017 version, at 17 megawatts. It
14 is 150 megawatts in total capacity. The Meridian Way
15 Wind Farm is -- in 2017, we had 19 megawatts of
16 accredited capacity and it is 105 megawatts nameplate.

17 Q. And Plum Point?

18 A. Plum Point is -- our share of that unit
19 is 101 megawatts of off-take. 51 megawatts of that is
20 ownership and 50 megawatts of it is Purchase Power
21 Agreement.

22 Q. And is that SPP accredited or nameplate
23 or both?

24 A. That would be -- that would be both
25 effectively, yes.

1 Q. And whenever you were talking about the
2 wind farms, you made a point about the SPP
3 accreditation in 2017. Do you know what those wind
4 farms are accredited at now by the SPP?

5 A. Off the top of my head, I do not know
6 what our -- our 2018 update was. Mr. Wilson's group
7 is -- that will be up here to testify later, he -- his
8 group oversees the updates of those statistics so he
9 could probably tell you specifically what they're
10 accredited now.

11 Q. Would you expect the accreditation to
12 have changed substantially?

13 A. Depends on what you call substantially,
14 but you could see them based off of historical wind in
15 the SPP footprint and the -- the -- so that
16 calculation tries to match up SPP overall's load along
17 with what has -- how the wind operates during those
18 peak periods and that's averaged over a historical
19 five-year period.

20 So you can see if a -- if a high year
21 drops off and we bring into a new year where there's
22 lower wind production and/or the SPP's peak is lower,
23 that that can change. So, you know, a 10 megawatt
24 change wouldn't probably be out of the -- out of the
25 norm, I guess --

1 Q. Would a 20?

2 A. -- or out of reasonable -- reason, I
3 guess.

4 Q. Would a 20 watt -- megawatt change in
5 accreditation be something you would not expect?

6 A. N-- I mean, I don't think it's out of the
7 realm of possibilities.

8 Q. How much would be out of the realm of
9 possibilities?

10 A. Well, I'd never expect to get the full
11 nameplate capacity as an accredited capacity.

12 Q. Would you expect to get 50 percent?

13 A. I would not, no.

14 Q. 25 percent?

15 A. We could, yes.

16 Q. 40 percent?

17 A. Again, it all depends on how the wind is
18 blowing in August and/or October when those peak
19 periods occur -- I guess probably not October, but
20 August when the peak periods occur, how much wind is
21 blowing versus the peak load. So I wouldn't think
22 that something much above 25 percent would be
23 expected.

24 Q. Overall, do the utility members of the
25 SPP have excess capacity?

1 A. I don't have a table in front of me, but
2 there is -- there is excess capacity in the SPP
3 footprint today.

4 Q. Do you have -- do you know approximately
5 what the capacity is in the SPP footprint?

6 A. The -- the available generation capacity?

7 Q. Yes.

8 A. I don't. I know that peak is -- is
9 roughly somewhere between 50- and 55,000 megawatts.
10 And I'm thinking I'm getting that right because I know
11 we've recently added North Dakota and South Dakota,
12 but I think our -- our peak capacity is somewhere
13 between 50- and 55,000.

14 And you're probably trying to get to what
15 is the excess reserve margin. I think SPP put out a
16 model that -- or not a model, but a report for 2018
17 that specifically addressed that.

18 Q. Do you know what that report says?

19 A. Don't hold me to this, but I believe it's
20 22 percent.

21 Q. When did the SPP energy market start?

22 A. I believe March of 2013; is that correct?
23 I think March of 2013. And the reason I probably
24 hesitated there because I believe Ms. Mantle -- Mantle
25 in her testimony had said something along the lines of

1 2015, which struck me off because I thought it was
2 March of 2013.

3 Q. Hasn't been around too terribly long
4 though. Correct?

5 A. Within the last five years for -- for
6 sure, yes.

7 Q. And when is it that Empire entered into
8 its Purchase Power Agreement with -- for power from
9 Elk River?

10 A. That would have been in 2005.

11 Q. Early 2005 or late 2005?

12 A. I know the -- the in-service was December
13 of 2005. I don't know when we specifically entered
14 the agree-- the Purchase Power Agreement.

15 Q. And I think you may have said this
16 already, but how many megawatts is Elk River in terms
17 of nameplate?

18 A. 150.

19 Q. And what's the term of the Purchase Power
20 Agreement for energy from Elk River?

21 A. Twenty years.

22 Q. And why was it that Empire entered into
23 the agreement for Elk River power?

24 A. At the time we had a large amount of
25 combined cycle and -- and -- and combustion turbine

1 operations. So natural gas plants that operated and
2 natural gas prices were high, so largely we -- we
3 entered into those agreements as a hedge from an
4 energy perspective for those natural gas prices.

5 Q. So you -- when you say those agreements,
6 were you just referring to Elk River or Meridian Way
7 as well or maybe Plum Point?

8 A. Elk River and -- and Meridian Way. In a
9 similar time we were negotiating contracts for Plum
10 Point that helped diversify our overall portfolio.

11 Q. So you were -- you were -- Empire entered
12 into those agreements for economic reasons; is that
13 fair?

14 A. That would be fair, yes.

15 Q. And it was based on projections that was
16 going to be the least cost I guess mix in your
17 portfolio going forward?

18 A. Correct.

19 Q. How has that worked out?

20 A. You know, the -- the -- I guess you'd
21 have to be more specific with your question.

22 Q. Are those agreements currently in the
23 money?

24 A. Which agreements are you referring to?

25 Q. Elk -- well, let's do Elk River first.

1 Is Elk River in the money?

2 A. It would be roughly at market. I mean
3 today, but I mean we -- again, we have to look at this
4 not just today because the agreement's been in place
5 for 13 years. So when we entered in 2005 through the,
6 you know, 2010, 2011 time frame when natural gas
7 prices were high, yes, they definitely were. As
8 natural gas prices have gotten lower, it's -- it's
9 more marginal. Elk River is more marginal than it was
10 back in those time periods.

11 Q. Well, the projections you had at the time
12 you entered into the agreements don't match what's
13 occurred; is that correct?

14 A. I'd have to go back and look at the
15 agreements -- or the -- not the agreements, but the
16 projections. You know, that's a 13 years ago,
17 14 years ago analysis. So will I concede that the
18 projections are different than what reality is? Yes.

19 Q. Materially different?

20 A. Again, I'd have to go back and review
21 that before I could say yes or no.

22 Q. Is that true of Meridian Way as well?

23 A. Is what true?

24 Q. That you would have to go back and look
25 at the projections to see how they compare to what's

1 hap-- occurring now in order to express a view as to
2 whether or not they're -- they match or how much they
3 differ?

4 A. Yes, I'd have to go back and look at
5 that.

6 Q. Did Empire consider its experience with
7 Elk River and Meridian way whenever it was looking at
8 building these -- let's see -- Neosho Ridge, North
9 Fork Ridge and Kings Point Wind Farms?

10 A. We definitely looked it at from the
11 perspective of our participation in the SPP integrated
12 marketplace. Because the new wind farms from a market
13 perspective, will be bid into the market very
14 similarly and we -- we have a lot of experience with
15 that.

16 We have, at an arm's length, been
17 involved in -- I shouldn't say involved, but we -- we
18 have viewed the operation and maintenance practices
19 and kept up with that. But largely from the operating
20 and maintenance perspective, the expertise that
21 Algonquin and Liberty Power bring to the table drove
22 the -- more of the operation decisions around it.

23 Q. Well, did you look at how your forecast
24 for Elk River and Meridian Way had panned out whenever
25 you were considering your forecast for the wind

1 projects that are the subject of this case?

2 A. I can't say that was a large discussion,
3 no.

4 Q. Was it discussed at all?

5 A. Not that I can recall.

6 Q. I think you may have said this too, but
7 how many megawatts is Meridian Way?

8 A. It is -- our share of that facility is
9 105 megawatts.

10 Q. Is Empire providing capacity and/or
11 energy to Monett and Mount Vernon currently?

12 A. Yes.

13 Q. Will it after -- I think it's June of
14 2020?

15 A. Yes.

16 Q. How?

17 A. Through a -- I'd say a third-party
18 Purchase Power Agreement with an intermediary party;
19 Missouri Public Utility Lines acting as that
20 intermediary.

21 Q. And are there designated supply side
22 resources at Empire for meeting the Mount Vernon and
23 Monett or the MPUA contract?

24 A. Yes.

25 Q. And I don't know if we're getting into HC

1 or not, so if we do --

2 A. Uh-huh.

3 Q. -- I won't in the question, but your
4 answer might.

5 A. Right.

6 (REPORTER'S NOTE: At this time an
7 in-camera session was held, contained in Volume 3,
8 page 126.)
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1 (REPORTER'S NOTE: At this time, public
2 session was resumed.)

3 MR. COOPER: Judge, we -- I think we're
4 getting into some confidential material. So if we
5 want to continue this, I think we need to go
6 in-camera.

7 JUDGE DIPPELL: Okay.

8 MR. WILLIAMS: I think I'm done. I mean
9 if -- I wasn't certain if I was -- but I'm not
10 planning to go into the amounts or any of that.

11 Are you wanting something stricken or --

12 MR. COOPER: Yeah, I think -- excuse me.

13 MR. WILLIAMS: Or I'm not sure I should
14 say stricken.

15 MR. COOPER: Our folks are bothered by
16 the -- by the named sources and would want them
17 stricken.

18 MR. WILLIAMS: You're going to want those
19 treated -- well, not stricken but treated as
20 confidential?

21 MR. COOPER: Correct.

22 JUDGE DIPPELL: So back to how many
23 questions?

24 MR. WILLIAMS: I think two, but --

25 JUDGE DIPPELL: Just those last two

1 questions?

2 MR. COOPER: I think two, yeah.

3 JUDGE DIPPELL: Okay. So I will ask the
4 court reporter, when she's making the transcript, to
5 begin a highly confidential session at the -- at those
6 last two questions. And then did we need to go
7 in-camera to get the answer? I wasn't sure he
8 answered that last question.

9 MR. WILLIAMS: He did answer the
10 question.

11 JUDGE DIPPELL: Okay.

12 MR. WILLIAMS: And I think what you'll
13 need to do is go back and -- on the video and ex-- or
14 make part of that confidential as opposed to available
15 to the public, but --

16 JUDGE DIPPELL: Yeah. And I will -- I'm
17 sure our technical folks will love that. But just for
18 reference, it is 11:38 on my computer, if that helps
19 determine where we are in the -- in the video.

20 So you -- that was the -- all of your
21 questions on those?

22 MR. WILLIAMS: With regard to the -- I
23 guess I'll call it indirect supply to Monett and Mount
24 Vernon, yes.

25 JUDGE DIPPELL: Okay. Okay. So then we

1 can call that the end of the in-camera session. Did
2 you have additional questions?

3 MR. WILLIAMS: I don't think we actually
4 had anything that wound up being in-camera except for
5 some responses that were given out publicly that we're
6 now going to make confidential.

7 JUDGE DIPPELL: Okay. I guess I'm asking
8 do you have any additional questions?

9 MR. WILLIAMS: I don't believe I have any
10 questions that will elicit any confidential
11 information at this point.

12 JUDGE DIPPELL: But you have additional
13 cross-examination?

14 MR. WILLIAMS: Yes.

15 JUDGE DIPPELL: Okay.

16 MR. WILLIAMS: No, I'm not done with
17 examination.

18 JUDGE DIPPELL: Okay. Go ahead.

19 If -- Mr. Cooper or Mr. Mertens, if we do
20 get into something that you feel is confidential, just
21 stop and -- and let us know and we will go in-camera.

22 Okay. Thank you, Mr. Williams. Go
23 ahead.

24 BY MR. WILLIAMS:

25 Q. Mr. Mertens, if Empire had not entered

1 into that third-party contract to supply capacity and
2 energy to Monett and Mount Vernon, it would have
3 that -- those resources available to sell into the SPP
4 market, would it not?

5 A. Yes. Those units would not have been
6 designated to those two cities and they would have
7 been Empire resources and treated like our -- the rest
8 of our units.

9 Q. And it would have increased your
10 available capacity and ability to supply energy by
11 approximately 77 megawatts?

12 A. 77, 78 megawatts is the City of Mount
13 Vernon and Monett's capacity requirements, yes, in
14 the --

15 Q. And what's Empire's retail peak load been
16 , maximum, the past few years?

17 A. Roughly 1,200 megawatts is our all time
18 peak.

19 Q. And has it been roughly 1,200 megawatts
20 for roughly a decade?

21 A. Yeah. I think we got near the 1,200
22 megawatt mark back in 2007, 2008 and that's where we
23 currently are, yes.

24 Q. Well, my recollection it was something
25 like January of 2018 you hit 2011 megawatts, but --

1 A. 2011?

2 Q. No. 2018, January of 2018.

3 A. Yeah, but I think you said 2011
4 megawatts.

5 Q. Then I misspoke. I'm -- I'm sorry. What
6 I meant to say was my recollection is that you
7 testified that you'd -- Empire had hit a new peak in
8 20-- January of 2018 of about 1,211 megawatts.

9 A. That's correct. I think we hit 1,211
10 then. If you go back to 2007 time frame, it was like
11 1,198. So we increased by, you know, 10 to 15
12 megawatts over that period as far as a -- from a peak
13 perspective.

14 Q. And is Empire projecting for that peak
15 load to increase dramatically over the next ten years?

16 A. You'd have to define dramatically, but we
17 do show that increasing. We -- we've been in a period
18 where we've been recovering from the 2011 tornado and
19 we've kind of got back to where we feel status quo and
20 our overall customer growth numbers are -- I don't
21 know -- I don't know what the right word's -- probably
22 not substantial, but we continue to see about
23 .8 percent customer growth on an annual basis.

24 Q. And that's what you're anticipating your
25 growth to be for the near term foreseeable future,

1 .8 percent?

2 A. Well, that's the customer growth
3 number -- number. On top of that customer growth,
4 which is largely div-- driven by residential
5 customers, we do have several of our commercial,
6 industrial customers making significant investments in
7 their local facilities that increase our load as well.

8 Q. Did Empire analyze looking at any of its
9 CTs being retired as opposed to -- strike that.

10 I want to turn to page 6 of your Direct
11 Testimony in the 0010 case.

12 A. Okay. I'm there.

13 Q. I think I have you in the right place,
14 but let's see. Well, skip that.

15 But do you agree with the statement that
16 the wind in-- wind generation industry has been
17 maturing over the last 10 to 15 years?

18 A. I do agree with that.

19 Q. Is it still maturing?

20 A. As with any industry, continually growing
21 and learning. I would say the exponentially of that
22 learning curve is -- is starting to flatten out.

23 Q. Do wind farms generate electricity when
24 the wind is not blowing?

25 A. No.

1 Q. Do you agree that it's most likely that
2 if wind is blowing where the Neosho Ridge, North Fork
3 and Kings Point Winds Farms are located, it's probably
4 blowing across the SPP region or a good swath of it?

5 A. There are -- are variations that we see
6 even with our two existing wind farm, Elk River and
7 Meridian Way that we have Purchase Power Agreements
8 with, that we can see significant differences between
9 the amount of output at those facilities based on the
10 wind resources. But I would say largely if the -- if
11 it's windy in the Central Plains, you're going to see
12 it across all Missouri, Oklahoma, Kansas. It's just a
13 relative basis as to how much.

14 Q. I have some questions regarding the more
15 global, the second Stipulation and Agreement. Are you
16 familiar with it?

17 A. Which one are you referring to? I mean
18 the -- the one --

19 Q. The one that was filed Friday afternoon
20 that's -- all the parties, except Public Counsel, have
21 either --

22 A. Yes.

23 Q. -- joined or not opposed.

24 A. Yes, I was -- I'm familiar with that.

25 Q. On page 4 under Number 12-A, which is

1 dealing with -- it says, the header, CCN Conditions.

2 A. I'm there.

3 Q. The end of A says, And in a manner that
4 is not detrimental to EDE's customers.

5 What does Empire understand that to mean?

6 A. During negotiations there was discussion
7 that the wind farms would not be bid in at a negative
8 price. And, in fact, it is sometimes to our benefit
9 and the customers' benefits to offer those in at
10 negative prices because of the nature of the
11 production tax credits.

12 Q. Would you explain that more?

13 A. So as was discussed this morning, the
14 production tax credit today is worth 24 dollars per
15 megawatt hour. So it is actually to -- versus
16 shutting the wind generation off or bidding it in --
17 not bidding it in at negative prices, you can actually
18 bid it in at up to negative 24 dollars per megawatt
19 hour and it's actually to the benefit of customers and
20 the off-takers of the production tax credits, et
21 cetera that you actually continue operating even at a
22 negative price because you're still getting the credit
23 for those production tax credits.

24 Q. And that production tax credit goes to
25 the tax equity partner; that's the plant. Correct?

1 A. The -- the production tax credits, yes,
2 the -- the tax equity partner would get the benefit of
3 those.

4 Q. So why is it if the tax equity partner is
5 getting the production tax credit benefit, that
6 Empire's customers benefit even if the wind is
7 negative to say 23 -- negative 23 dollars?

8 A. And Mr. Mooney can be the one that can
9 take this on a little bit bitter, but you know, the
10 tax equity partners assuming over a per-- over a
11 ten-year period a certain amount of generation. So
12 there is a true-up period at the end of that based on
13 how much actual production there is.

14 So it is to our benefit to keep operating
15 that wind farm, to make that production, to get that
16 tax equity partner per se out of the wind farm and
17 that flip date as soon as possible. But Mr. Mooney
18 could probably address that more technically than I
19 could.

20 Q. And then the first part of that sentence
21 talks about operating in accordance with Southwest
22 Power Pool integrated marketplace rules. What was
23 contemplated by that, if anything?

24 A. Well, we just wanted to make sure that,
25 you know, we could not sign up as a load-serving

1 entity and a transmission provider in there. We have
2 to comply with those inmat-- integrated marketplace
3 rules. So we were just trying to assure whatever we
4 assigned up for took that into consideration.

5 Q. So, for example, if the rules were
6 changed so that wind was curtailed whenever you -- the
7 SPP was experiencing market -- negative market prices,
8 would that be an example of a circumstance?

9 A. If -- if the SPP and its member entities
10 made that change, then yeah, we'd have to comply with
11 those rules.

12 Q. So if there's a conflict between the SPP
13 marketplace rules and I guess what you could otherwise
14 do in a manner that's not detrimental to EDE's --
15 Empire's customers, you'd have to comply with
16 marketplace rules. Right?

17 A. Yes. We'd have to comply with
18 marketplace rules. And -- and to be clear, today we
19 can't just withhold a generation, whether it's a wind
20 farm or a thermal unit. They have to be bid into the
21 market if they're available.

22 Q. Does Empire have discretion as to what
23 price they're bid into the market if they're
24 available?

25 A. Yes, we do.

1 Q. Is it unfettered?

2 A. No. There are limitations as to what we
3 could bid our units in.

4 Q. And what are those limitations?

5 A. I believe the rules are no greater than a
6 23.5 percent margin above our -- our actual cost --
7 variable cost to run the unit, fuel and/or variable O
8 and M.

9 Q. But not capital costs?

10 A. I guess I don't understand your question.

11 Q. Capital costs aren't a factor that comes
12 into play on -- at what price you can bid into the SPP
13 market? Is -- I'm just trying to get clarification.

14 A. Yeah.

15 Q. Because you said marginal costs like fuel
16 and O and M.

17 A. And, you know, again, I'm not the expert.
18 I'm tr-- I'm not as -- as -- for wind generating
19 units, I'm not as familiar what capital components may
20 be able to. Since there's no fuel cost, there has to
21 be some basis in there. I'm not as familiar with
22 that -- those rules.

23 Q. Well, what about for coal or gas-fired
24 units? Are you more familiar with those?

25 A. Right. We are not allowed to include

1 capital costs in -- in those bidding parameters.

2 Q. And I want to turn to -- let's see. It's
3 another one of the CCN conditions under 12, 12-E. It
4 says, Empire shall file a copy of the SPP Definitive
5 Impact System Impact Studies.

6 Is that literally correct or is there a
7 typo in there, or do you know?

8 A. What would you believe the typo would be?
9 So Definitive Impact Study Impact Studies is a --
10 often referred to as the DISIS, so --

11 Q. So that is -- there's nothing wrong with
12 how that's worded is what you're saying?

13 A. Not that I'm aware.

14 Q. That's what I was asking. The wording
15 looked awkward.

16 A. It reads a little weird, yeah. I'll
17 agree with you, yes.

18 Q. And it talks about in its subsequent
19 quarterly report, Empire shall address any results of
20 the study that are a material change in assumptions or
21 costs related to the wind st-- projects.

22 What quarterly report is that referring
23 to?

24 A. I believe as part of this process, we
25 have -- we have agreed that we would file quarterly

1 updates to the parties to keep them apprised of the
2 overall construction proc-- pro-- process as well as
3 any material changes to the projects.

4 Q. So I'll -- I'll make sure you're aware of
5 this. If you look at 12-D, it talks about filing
6 quarterly -- quarterly reports with the Commission.
7 Is this a different quarterly report or the same?

8 A. It would be the same.

9 Q. And other than including a proposed plan,
10 is there anything else that Empire's required to do
11 under this agreement with the results?

12 A. Could you ask that question again?

13 Q. Well, what I'm trying to get at is are
14 you going to do anything more than just make a report
15 to the Commission? Does it require Empire to do
16 anything else?

17 A. I think we're -- we -- the reports re--
18 or the stipulation requires us to file a report to
19 keep parties apprised so that when we go into the next
20 rate proceedings, everyone is up to speed. And when
21 these -- these units are put into permanent rates,
22 that we're all on the same page which would be very
23 similar to any other unit we've done in the past.

24 Q. So it's to keep everyone apprised, but
25 it -- from what you're saying, there's no -- I'll call

1 it rubber meets the road until some subsequent rate
2 case?

3 A. I don't -- I don't think there's anything
4 in here that would -- that requires us to say whether
5 we're going to stop the project or renegotiate. But
6 obviously as part of our prudent process and ability
7 to get these into rates the next time, it will be our
8 job to manage them just as we have any -- all the rest
9 of our previous projects.

10 Q. And what's Empire's understanding of --
11 I've heard the term "decisional prudence," but is the
12 Commission deciding now for purposes of a rate case if
13 this agreement's approved, that these are the wind
14 projects that Empire should be building at this time?

15 A. Could you ask that again -- could you ask
16 that again? Sorry.

17 Q. Well, I've heard it called decisional
18 prudence. Is it your understand-- is it Empire's
19 understanding that under this agreement, the decision
20 about whether or not these wind projects should be
21 built by Empire at this point in time is being
22 decided?

23 A. I guess I'd respond -- again I'm not --
24 not an attorney, but we are going through the
25 certificate of convenience and necessity process to

1 allow us to proceed with construction and
2 implementation of these. So I'll allow you to legally
3 interpret what that means.

4 Q. So you don't have -- well, let me ask it
5 this way. Do you have an opinion about the clause
6 that says EDE should be -- and this is 13. EDE should
7 be authorized to record its capital investment to
8 acquire the wind projects as utility plant in-service
9 subject to an audit in its -- in EDE's next general
10 rate case? What -- in your opinion, what significance
11 is that language, if any?

12 A. Not an accountant or -- or attorney, but
13 it allows us to -- to go forward, record those
14 investments. And then the -- the prudence of the --
15 the way we made those investments or the decisions
16 around those investments would be handled in the next
17 rate case.

18 Q. So -- but in your view then, the next
19 rate case wouldn't be addressing whether or not the
20 investment should have been made?

21 MR. COOPER: Objection. Mister --
22 Mr. Mertens has already said he's not an attorney. I
23 think the nature of the question is the legal
24 implication of decisions that are made or might be
25 made by the -- by the Commission in their implication

1 for rate cases. But we -- we certainly could brief
2 these things.

3 MR. WILLIAMS: I just asked if he has an
4 opinion about it. If he doesn't, that's fine.

5 JUDGE DIPPELL: I'm going to allow the
6 question, but the -- the witness can state whether he
7 knows or has an opinion. But he has stated that he is
8 not an attorney so we'll -- we will actually leave the
9 weight of legal opinions to the briefs.

10 THE WITNESS: Could you ask me the
11 question one more time, Mr. Williams?

12 BY MR. WILLIAMS:

13 Q. All I'm really trying to get at is
14 whether or not you have an opinion about whether or
15 not we'd be litigating in the -- Empire's next rate
16 case whether or not Empire should have built these
17 wind projects if the Commission grants certificates in
18 this case?

19 A. It is my nonlegal opinion that if we had
20 all parties that signed up to this -- so we had a
21 Unanimous Stipulation and Agreement and we had no new
22 parties in -- in the next case, that we would not be
23 questioning the prudency decision around the wind
24 farms based on this Number 13.

25 But again, I will defer that to legal

1 briefs and my counsel. We'll see how hard he sighs
2 after that response.

3 Q. Turn your attention to -- I guess it's
4 paragraph 21, the market price protection mechanism.
5 And under this mechanism it could be -- it will be at
6 least ten years, but it could be longer; is that
7 correct?

8 A. State that again for the ten years.

9 Q. That the mechanism will be in place at
10 least ten years, but it could be a little bit longer,
11 as much as eleven months longer or more.

12 Q. My understanding of it, it's supposed to
13 be ten years and then we would, you know, potentially
14 true it up in a rate case if it was -- if that rate
15 case wasn't until eleven months after that ten years.
16 But Mr. Holmes could correct me later when he gets up
17 here if there is -- if I'm misinterpreting that.

18 Q. Well, is it ten years from the latter
19 rate case where any of these wind projects are
20 included in Empire's revenue requirement?

21 A. I guess I'll state it this way. My
22 interpretation is if we got rates effective for these
23 wind farms in May of 2021, then that ten-year period
24 would end in May of 2031.

25 Q. And under this market price prot-- well,

1 you're familiar with the purchase and sale agreements
2 for the wind farms. Correct?

3 A. At a high level. Mr. Mooney and then
4 secondary Mr. Wilson would probably be the better
5 folks to ask details about those PSAs.

6 Q. Well, without getting into what they are,
7 do those contracts include provisions for when Empire
8 will be responsible for increased costs?

9 A. Increased costs associated with the
10 construction?

11 Q. Yes.

12 A. There are -- they are fixed price
13 contracts. And with any fixed price contracts, if --
14 there's a scope associated with that. So if things
15 would material-- materially change from the scope,
16 sub-surface conditions or something along those lines
17 that -- you know, engineering specs are different than
18 what we put in that scope, then yeah, there would be
19 provisions for change orders.

20 Q. Are there provisions that put -- well,
21 aside from change orders, I'm -- I'm looking for if
22 there are particular things that don't occur or that
23 do occur that are anticipated that if they happen or
24 do not happen, that Empire would pay any increased
25 costs associated with that?

1 A. You'll have to ask Mr. Mooney these
2 specific questions.

3 Q. I was trying to avoid getting into
4 anything confidential. I think I'll stay that way at
5 this point.

6 And then on paragraph 22 about future
7 battery energy storage technology, that contemplates
8 that if a certificate's not required for that storage,
9 then Empire will make some kind of a presentation
10 to -- and it says the parties. Who are the parties?
11 What's your understanding of who the parties are?

12 A. Well, I think, you know, in general it
13 would be the parties that are signatories to this.
14 But obviously we would have no objection to the normal
15 participants in our integrated resource planning
16 process being part of that presentation.

17 Q. It's not contemplating a presentation to
18 the Commission. Correct?

19 A. I don't believe so.

20 Q. Could Empire provide renewable energy
21 credits to customers without building these wind
22 projects?

23 A. Beyond the -- the PPAs that we already
24 have or -- I guess clarify what you're -- you're
25 asking there.

1 Q. No, not beyond the current PPAs
2 necessarily. You have excess renewable energy credits
3 now, do you not?

4 A. That's correct.

5 Q. And you could sell those or supply those
6 to retail customers potentially, could you not?

7 A. We do today, yes.

8 Q. No further questions at this time. Thank
9 you, Mr. Mertens.

10 A. Thank you.

11 JUDGE DIPPELL: Thank you. Are there
12 questions from the Bench, Mr. Chairman?

13 CHAIRMAN SILVEY: I just have one
14 question first.

15 QUESTIONS BY CHAIRMAN SILVEY:

16 Q. Do you know where in the queue these
17 particular projects are at SPP?

18 A. When you say where in -- where in the
19 queue they're -- I mean we are in the --

20 Q. Well, it's not the only wind project that
21 SPP is considering.

22 A. Right. So we're -- we're part of a --
23 that large DISIS study that -- that -- and within that
24 DISIS study, there are -- you know, there's not an
25 order. We're all just aggre-- aggregated together

1 within that study process. So at this point we're
2 being held up because the 2016 study process is not
3 complete.

4 Q. And that's the one that finishes in
5 October?

6 A. Our 2017 is scheduled to begin in May and
7 be complete in October. So the 2016 study process is
8 scheduled to be done by May of this year. Does that
9 make sense?

10 Q. Okay. Thank you.

11 JUDGE DIPPELL: Commissioner Hall, did
12 you have questions?

13 QUESTIONS BY COMMISSIONER HALL:

14 Q. Yeah. Do you know what the un--
15 undepreciated plant in rate-base is for Asbury? I'm
16 told it's roughly 200 million. Do you know?

17 A. That was what I was getting ready to say,
18 that exact number. Roughly 200 million dollars.

19 Q. Okay. And the capacity is -- is 198
20 megawatts; is that correct?

21 A. 198, 200, yes, it's right in there.

22 Q. And somebody -- one of the attorneys in
23 opening said that it's running at 15 percent of
24 capacity. Is that about right?

25 A. Fifteen or --

1 Q. Fifteen is what I thought I heard, but
2 maybe I misheard.

3 A. I -- it's capacity factor in 2018 was
4 roughly around 55 percent.

5 Q. Okay. I probably misheard then. Okay.
6 Is that -- for Asbury, is -- does -- does Empire
7 self-schedule that with SPP or do they bid in a price?

8 A. We -- we bid that unit in just like all
9 the rest of ours. We bid in a price.

10 Q. Now --

11 A. And I could -- I could -- there are times
12 where we may self-commit it for operational issues,
13 but the majority of the time -- and I'm say-- speaking
14 over 90 percent of the time, it's -- it's bid into the
15 market.

16 Q. Okay. Is that how you would anticipate
17 these wind facilities be handled as well or would they
18 be self-scheduled?

19 A. They'd be bid into the market.

20 Q. They would be bid in?

21 A. Yes.

22 Q. Would they be bid in at a dollar?

23 A. There could be times that could call for
24 a dollar, yes.

25 Q. In fact, there could be times that it

1 would be, from a financial perspective, wise to bid in
2 at -- at a negative number?

3 A. That's correct.

4 Q. But regardless of what it's bid in at, it
5 clears at the LMP. Correct?

6 A. That's correct.

7 Q. So were you involved in putting together
8 these scenarios that are attached to the stipulation
9 or would that be --

10 A. That would be Mr. Holmes would have done
11 that.

12 Q. Mr. Holmes.

13 A. Yes.

14 Q. Okay. So he -- he would be -- he would
15 be able to answer questions about the -- the various
16 prices that are utilized in those -- in those four
17 scenarios?

18 A. He would be the witness to cover that,
19 yes.

20 Q. Okay. So looking at page 4 of your
21 Surrebuttal, you -- you -- you note that 40 percent of
22 the 600 megawatts at issue here would -- would be
23 covered essentially by the expiring contracts with --
24 with -- with the two -- with Elk River and Meridian
25 Way; is that correct?

1 A. Correct. Those -- those units are
2 roughly -- together, 255 megawatts. So that's roughly
3 40 percent of the 600 megawatts that we're adding.

4 Q. So there's -- there's an additional
5 60 percent that at this point in time you don't --
6 you -- you don't know if there is -- if there will be
7 a need for that in terms of Empire's requirement to
8 find generation to meet load?

9 A. I mean that -- that -- that additional
10 60 percent would be above what we currently have, yes.

11 Q. So -- so would -- would that additional
12 60 percent just be sold into -- into the SPP market?

13 A. It, like all of our generation, is -- is
14 sold into the SPP market, yes.

15 Q. But that 60 percent would -- would be
16 additional sales that would flow back to customers
17 through the FAC. Correct?

18 A. That's correct.

19 Q. And so when -- when the revenue
20 requirement is being set or -- being set -- being
21 estimated, those -- those FAC sales are taken into
22 account?

23 A. Correct.

24 Q. You had a couple of questions from Public
25 Counsel related to condition 12-A on the non-unanimous

1 stip and I'm not sure I understood the answer. Were
2 the -- it -- the projects shall be operated in
3 accordance with applicable SPP marketplace and in a
4 manner that is not detrimental to Empire customers.

5 What does that mean?

6 A. So simply put, the -- the -- when we were
7 negotiating this, there was parties that believed that
8 we should not bid the units in at a negative price or
9 make them available at a negative price. And that's
10 just simply -- we have to make them -- bid them into
11 the -- into the market. So per the rules, we have
12 to -- we have to make them available.

13 And secondarily, there are times, just
14 like you pointed out, that at a negative price, it may
15 be to our customers' benefit to actually bid them even
16 at a negative price. So that's what those two
17 sentences together are trying to address.

18 Q. So what is that requiring you to do that
19 you would not otherwise do? What -- what protection
20 is that providing your customers?

21 A. I guess that's what I'd probably say. A,
22 probably from -- from our operational standpoint is
23 nothing different than what we do today. And I think
24 there were some parties wanting us to do differently
25 than what we do today and we -- we felt that was not

1 in the interest of all of our customers or all
2 parties.

3 Q. All right. Thank you.

4 A. Uh-huh.

5 QUESTIONS BY JUDGE DIPPELL:

6 Q. I just wanted to make one clarification.
7 We -- you've mentioned the DISIS study and just in
8 case that wasn't already clear, that's the Definitive
9 Impact System Impact Study. Correct?

10 A. Correct. Thank you.

11 Q. Okay.

12 MR. COOPER: We might amend that to be
13 the Definitive Interconnection System Impact Study,
14 so.

15 JUDGE DIPPELL: Okay. Thank you.

16 Is -- is there further cross -- let me
17 just ask in general, is there further
18 cross-examination based on Commission questions?

19 COMMISSIONER HALL: I'm sorry. I have
20 one more question.

21 JUDGE DIPPELL: Go ahead, Commissioner
22 Hall.

23 COMMISSIONER HALL: I apologize.

24 JUDGE DIPPELL: That's fine.

25 FURTHER QUESTIONS BY COMMISSIONER HALL:

1 Q. Is there any SPP requirement that --
2 that -- that Empire have capacity to meet its load?

3 A. Yes. We have to have a -- there's a
4 12 percent reserve margin that we have to meet.

5 Q. But you couldn't meet your load through a
6 bilateral contract or -- or through -- through
7 generation that's not your own or --

8 A. We -- we could go out and contract
9 capacity, yes. We could enter into a bilateral
10 agreement for it.

11 Q. Okay. Thank you.

12 JUDGE DIPPELL: Okay. My -- my question
13 is pertaining to when to break for lunch. So is there
14 going to be significant questions on further
15 cross-examination?

16 MR. WOODSMALL: I'll probably have two
17 minutes.

18 MR. WILLIAMS: I'll have just a few
19 questions depending on what others ask.

20 JUDGE DIPPELL: And would there be
21 significant redirect after that?

22 MR. COOPER: Probably not -- probably not
23 significant.

24 JUDGE DIPPELL: Okay. Then let's go
25 ahead and continue and try to finish this witness

1 before we break for lunch.

2 So is there further cross-examination
3 from Renew Missouri?

4 MR. OPITZ: No, thank you, Judge.

5 JUDGE DIPPELL: Division of Energy?

6 MS. REEVES: No, Judge.

7 JUDGE DIPPELL: Missouri Energy Consumers
8 Group?

9 MR. WOODSMALL: Yes, Your Honor. Real
10 quickly.

11 FURTHER CROSS-EXAMINATION BY MR. WOODSMALL:

12 Q. There was a reference to a 15 percent
13 capacity factor, and I believe I might have caused the
14 confusion. Would you agree that, in general, wind is
15 given a capacity factor of about 15, 17 percent by
16 SPP?

17 A. It's given a roughly 15 percent
18 accredited capacity factor, not a capacity factor. So
19 of the nameplate capacity, it's our experience that
20 roughly 15 percent of that could be counted as
21 accredited capacity.

22 Q. Gotcha. Okay. Turning to provision
23 12-A, let me see if I -- if I can help with this.
24 Would you agree that there are two interested parties
25 in the production from these wind projects; that is,

1 the tax equity partner and the utility, slash,
2 customers?

3 A. Correct.

4 Q. Okay. And there are situations in which
5 those interests may not align, that the tax equity
6 partner may want this project to generate energy no
7 matter what the market price. Would you agree with
8 that?

9 A. I'd agree with that.

10 Q. Okay. And -- and that is because the tax
11 equity partner is getting money from the PTCs, they
12 might want this project to generate even when the
13 market prices are detrimental to the customers and the
14 utility?

15 A. Again, I'll point to probably Mr. Mooney
16 to help -- help answer, but I -- even in those
17 scenarios, it would be to the customer's advantage
18 from the perspective of, you know, making that tax
19 equity partner whole sooner rather than later.

20 Q. Okay. And all this says is that you will
21 dispatch into SPP in a manner that is not detrimental
22 to the customers; that is, you won't dispatch solely
23 in a manner that it's beneficial to the tax equity
24 partner?

25 A. That's correct.

1 Q. Okay. No further questions. Thank you.

2 JUDGE DIPPELL: Thank you. Is there
3 further cross-examination from Staff?

4 MS. MERS: No, thank you.

5 JUDGE DIPPELL: Public Counsel?

6 MR. WILLIAMS: Thank you.

7 FURTHER CROSS-EXAMINATION BY MR. WILLIAMS:

8 Q. Mr. Mertens, you remember that Chairman
9 Silvey asked you about where the projects were in the
10 SPP queue?

11 A. That's correct.

12 Q. And your response was related to DISIS?

13 A. Yes.

14 Q. Is that related to generation
15 interconnection agreements?

16 A. Yes.

17 Q. And is that a precursor to actually
18 entering into a generation interconnection agreement?

19 A. Yes.

20 Q. And is that study what will determine the
21 cost of doing the interconnection?

22 A. Yes.

23 Q. And ultimately those costs -- the results
24 of that study will be what Empire decides, whether to
25 go forward with a generation interconnection; is that

1 correct?

2 A. We -- we will be st-- part of that study
3 process, yes, to determine the overall cost that we'd
4 have to pay ultimately.

5 Q. Well, once a study is completed, you'll
6 know what costs SPP is saying it will require in terms
7 of I think upgrades to its system or --

8 A. Right.

9 Q. Whatever it takes that Empire will be
10 responsible for to interconnect with SPP's
11 transmission system. Correct?

12 A. Correct.

13 Q. And then at that point Empire will make a
14 decision about whether or not to enter into a
15 generation interconnection agreement with SPP?

16 A. Correct.

17 Q. And the results of those studies then set
18 at least some of the terms of that generation
19 interconnection agreement?

20 A. Correct.

21 Q. Then you had some questions or a question
22 with Commissioner Hall, one or more, where you were
23 talking about Meridian Way and Elk River and capacity.
24 Will Empire still have sufficient capacity to meet --
25 meet its load even if it doesn't have Meridian Way and

1 Elk River?

2 A. Today we would, yes.

3 Q. Do you anticipate you would in 2028, all
4 other things remaining equal?

5 A. Yes.

6 Q. Congratulations on your new employment.

7 Thank you.

8 A. Thanks.

9 JUDGE DIPPELL: Is there redirect?

10 MR. COOPER: There is. Thank you, Your
11 Honor.

12 REDIRECT EXAMINATION BY MR. COOPER:

13 Q. Mr. Mertens, you were asked about
14 forecasting. And I think you used the -- the sort of
15 common description that -- that -- that they're
16 inaccurate or incorrect the day they're put forward.
17 Correct? You remember that?

18 A. Correct.

19 Q. And yet the Company utilizes forecasting
20 extensively, doesn't it?

21 A. That's correct.

22 Q. And in particular, it uses ABB forecasts
23 in a variety of -- of ways?

24 A. Correct.

25 Q. And has that been done for a number of

1 years?

2 A. Yes. You know, since at least 2005 it's
3 been part of our integrated resource planning process.

4 Q. And I assume that that's because you
5 believe that those -- those forecasts have value to
6 you?

7 A. That's correct.

8 Q. You had a couple different discussions
9 about, oh, the DISIS and the timing of that and
10 interconnection agreements. Has Empire done
11 interconnections and interconnection agreements
12 before?

13 A. Yes, we have. For basically every
14 generating unit that we've added as long as I've been
15 there.

16 Q. So you have experience in -- in how that
17 process works and potential costs and that sort of
18 thing?

19 A. Correct. You know, if you go back to our
20 participation in Iatan 2, Meridian Way, Elk River, you
21 know, we went through the same DISIS process. And
22 very similar to now, that -- for whatever reason,
23 that's been a very log-jammed study process. And, you
24 know, we usually have to start making construction and
25 project decisions before we have those agreements in

1 hand.

2 Q. So it's not unusual for -- for that to
3 come together late in the -- in the process?

4 A. No. It would be the norm, unfortunately.

5 Q. You had a discussion with I believe it
6 was Mr. Williams about accredited capacity -- Empire's
7 current accredited capacity. And -- and there was
8 some -- some different numbers I think as to -- to the
9 Company's total accredited capacity. I kind of think
10 you -- you got to this, but -- but just to make sure,
11 will -- will wind assets accredited capacity commonly
12 change from year to year?

13 A. Yes.

14 Q. And to your knowledge, does that happen
15 with Empire's wind assets between -- I don't know what
16 we're -- two years you were talking about, 2017 and
17 2018?

18 A. Yeah. I think we saw a step change in
19 those years.

20 Q. There was some discussion about Meridian
21 Way and -- and Elk River, the -- the Purchase Power
22 Agreements on those facilities and -- and Empire's
23 expectation in regard to those.

24 I think in the last case when you got
25 into some of those conversations, we talked about

1 things that Empire could have done differently or
2 could do differently in regard to those projects if it
3 owned them rather than took in -- in -- in accordance
4 with the Purchase Power Agreement. Do you remember
5 that discussion?

6 A. Yeah. I -- I recall us discussing that,
7 yes.

8 Q. Would -- would you have more options
9 available to you if you owned Elk River and Meridian
10 way?

11 A. We believe so. We --

12 MR. WILLIAMS: Judge, I'm going to object
13 to this as going beyond the scope of cross and
14 Commissioner questions.

15 MR. COOPER: Well, I believe Mister --
16 Mr. Williams was asking about, you know, what the
17 Company thought about Meridian Way, Elk River, kind of
18 the -- their performance under those Purchase Power
19 Agreements. And so it seems to me it's -- it's
20 certainly within the scope of that to -- to ask
21 Mister -- Mr. Mertens how -- how that would have been
22 different had the Company owned those -- those assets
23 and was able to have other options at this point in
24 time, like retooling or whatever they might be at this
25 time.

1 JUDGE DIPPELL: I'm going to overrule the
2 objection and allow it.

3 THE WITNESS: Yes, I believe I -- I was
4 stating that -- and recalling the discussion last
5 time. You know, we would have the option to re-power
6 those ourselves, potentially get more output from
7 them. And probably most importantly, you know, get
8 the full life of those assets versus being stuck to a
9 20-year PPA agreement.

10 BY MR. COOPER:

11 Q. And when you say re-power, I assume that
12 means that's an opportunity -- with some investment,
13 but it's -- it's an opportunity to update them to more
14 advanced technology than they may have today?

15 A. Right. Just as we discussed earlier, the
16 wind industry continues to evolve. We could take some
17 of those, you know, newer blades, those type of
18 things, retrofit the existing unit to get more output
19 and -- and capacity and take the benefit of those to
20 our customers.

21 Q. There was a fair amount of discussion
22 about -- or some discussion anyway about bidding in of
23 the wind farms and the SPP and different aspects with
24 that. But ultimately whose responsibility are those
25 wind farms in terms of how they are treated in SPP,

1 how they're bid in, how they're operated? Is that
2 Empire's responsibility?

3 A. With our existing Purchase Power
4 Agreements or --

5 Q. No, no. I'm sorry. With the -- the
6 proposed wind projects that we're considering in this
7 case, there was some discussion about interaction with
8 tax equity partners. But -- but ultimately whose
9 responsibility is it to bid those into the SPP market?

10 A. Ultimately those would be Empire
11 Districts.

12 Q. And to operate them as well?

13 A. That's correct. We may have third-party
14 services, but it would be still under our management.

15 Q. Right.

16 MR. COOPER: That's all the questions I
17 have, Your Honor.

18 JUDGE DIPPELL: I just had one
19 clarification, Mr. Cooper. I think you mentioned a
20 name in the kind of forecasts and you used an acronym
21 and I wasn't sure I caught that.

22 MR. COOPER: ABB.

23 JUDGE DIPPELL: And do you know what that
24 stands for?

25 MR. COOPER: I think that's actually

1 their -- their business name as near as I can tell.

2 JUDGE DIPPELL: Oh -- oh, okay. ABB.

3 Yeah. All right. That was -- never mind.

4 MR. COOPER: A business rather than a
5 type of forecast.

6 JUDGE DIPPELL: Right. Okay. Thank you.

7 Well, with that then, I believe that that
8 concludes your testimony, Mr. Mertens, and you may
9 step down. It is almost 12:30 and we will break for
10 lunch. We will -- let's return at 1:40. Go ahead and
11 go off the record.

12 (A recess was taken.)

13 (OPC Exhibits 200-HC, 200-P, 201-HC,
14 201-P, 202-HC, 202-P, 203-HC, 203-P, 204-HC, 204-P,
15 205-HC, 205-P, 206-HC, 206-P and Staff Exhibits 100,
16 101-HC, 101-P and 102 were marked for identification.)

17 JUDGE DIPPELL: We are back after our
18 lunch break and ready to begin with Empire's next
19 witness.

20 MR. COOPER: Empire would call Mr. David
21 Holmes, please.

22 (Witness sworn.)

23 JUDGE DIPPELL: Thank you. Go ahead,
24 Mr. Cooper.

25 DAVID HOLMES, being first duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION BY MR. COOPER:

3 Q. Please state your name.

4 A. David Holmes.

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

7 A. Liberty Utilities (Canada) Corp. And the
8 director of EAM transformation strategy.

9 Q. Have you caused to be prepared for the
10 purposes of this proceeding certain Surrebuttal
11 Testimony in question and answer form?

12 A. I have.

13 Q. And is it your understanding that that
14 testimony has been marked as 4-HC for the highly
15 confidential version and 4-P for the public version?

16 A. I do.

17 Q. Did you previously have corrections that
18 needed to be made to pages 12 to 14 of your testimony?

19 A. I did.

20 Q. Is it your understanding that those
21 corrected pages were filed with the Commission on
22 March the 15th of 2019?

23 A. Yes, that's my understanding.

24 Q. And is it your understanding that the
25 testimony that has been provided to the court reporter

1 today contains those corrected pages?

2 A. It is.

3 Q. Okay. If I were to ask you the questions
4 that are contained in Exhibits I guess 4-HC and 4-P
5 today with the corrected pages we just discussed,
6 would your answers be the same?

7 A. They would.

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

10 A. Yes.

11 MR. COOPER: Your Honor, I would offer
12 Exhibits 4-HC and 4-P into the -- into evidence and
13 tender Mr. Holmes for cross-examination.

14 JUDGE DIPPELL: So let me make sure I've
15 got this correct. So the pages that were filed on
16 March 15th are now attached to that testimony as it
17 was given to the court reporter?

18 MR. COOPER: Not just attached. They
19 were -- they were substituted for the original 12 --

20 JUDGE DIPPELL: They were substituted.
21 Okay.

22 MR. COOPER: -- to 14. And -- and that's
23 the notation on my list I guess with corrected pages
24 there next to 4-HC and 4-P.

25 JUDGE DIPPELL: Okay. Okay. But the --

1 so they are substituted then at least in the version
2 that the court reporter has. Correct?

3 MR. COOPER: Correct.

4 JUDGE DIPPELL: Okay. So the -- I'm
5 going to call it the corrected tes-- Surrebuttal
6 Testimony of David Holmes has been offered, Exhibit
7 Number 4. Would there be any objection? And that's
8 both highly confidential and public. Any objection?

9 Seeing none then, I will admit Exhibits
10 4-HC and P.

11 (Exhibits 4-HC and 4-P were received into
12 evidence.)

13 JUDGE DIPPELL: Is there
14 cross-examination from Renew Missouri?

15 MR. OPITZ: No, thank you, Judge.

16 JUDGE DIPPELL: Division of Energy?

17 MS. REEVES: No, thank you, Your Honor.

18 JUDGE DIPPELL: MECG?

19 MR. WOODSMALL: Briefly, Your Honor.

20 CROSS-EXAMINATION BY MR. WOODSMALL:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

23 Q. Nice to see you again. You're familiar
24 with the Market Protection Plan that was dealt --
25 developed in the CSP docket?

1 A. I am.

2 Q. And you're familiar with the Market
3 Protection Plan as contained in your Surrebuttal or --
4 Surrebuttal Testimony; is that correct?

5 A. I am.

6 Q. And you're familiar with the Market
7 Protection Plan that is contained in non-unanimous
8 stip; is that correct?

9 A. I am.

10 Q. Okay. I wanted to ask some questions to
11 make sure the Commission is familiar with what is
12 contained in the stipulation and how it differs from
13 other versions. First off, would you briefly describe
14 how the Market Protection Plan works?

15 A. The Market Protection Plan is trying to
16 look at the value created by the wind farms, looking
17 at SPP revenue, the costs to own and operate the
18 facilities and the associated value assigned to the
19 replacement of the PPA.

20 It looks at it over a ten-year period and
21 provides an additional level of protection. In the
22 unlikely event that the -- the -- the value is not
23 created, there's the ability for sharing up to
24 52.5 million Missouri jurisdictional to go back to the
25 customers after the ten years.

1 Q. Okay. And you say that's the -- the
2 stipulation version. In your testimony, can you tell
3 me what the customer protection was in that?

4 A. Sure. In -- in that, there were a couple
5 of differences. There was a value added to part of
6 that wind value for capacity over the ten years
7 associated with the facilities. And the customer cap
8 was at -- or sorry, the -- the Company maximum was
9 25 million. And there was also a dead band of kind of
10 2 million dollars that was applied on an annual basis
11 as well. I believe those are the three major
12 differences.

13 Q. Okay. And so on the customer cap, in
14 your testimony, it was 25 million; is that correct?

15 A. Correct.

16 Q. And in the CSP version, it was 35
17 million?

18 A. Correct.

19 Q. And in this version, how much is it?

20 A. 52.5.

21 Q. Okay. And can you tell me how the
22 dead band operated in previous versions of the Market
23 Protection Plan?

24 A. In previous versions the dead band would
25 either slow how fast you could dig a hole essentially.

1 So it would -- if the annual wind value was negative
2 10, 2 million of that would not count in the value
3 that would then go into sharing. So instead of
4 10 million that would be shared to 5 million, and
5 5 million, 2 million would -- would be in that dead
6 band. And you would then only have 8, which would be
7 then 4 and 4.

8 It worked in both directional --
9 directions. So if you were going into a more negative
10 value, you went down a little slower, but also if you
11 were climbing out of that negative value, you would go
12 up a little slower. So with -- with that gone, in the
13 worst case scenarios there is an additional kind of
14 20 million of value that comes back to -- on the
15 customers' side.

16 Q. And in this stipulation version, the dead
17 band has been eliminated; is that correct?

18 A. That is correct.

19 Q. And would you agree that the MPP is
20 easier to administer with the elimination of the dead
21 band?

22 A. Yes.

23 Q. Okay. You mentioned the capacity value
24 line. That was something that was contained in the
25 MPP version of your Surrebuttal Testimony; is that

1 correct?

2 A. That is correct.

3 Q. And it's been eliminated in the context
4 of the stipulation?

5 A. That is correct.

6 Q. Okay. Finally, let's talk about how the
7 Market Protection Plan will be implemented as far as
8 how and when it will hit rates. Can you tell me --
9 would you agree that the Market Protection Plan will
10 not have an impact on rate cases, but rather any
11 amounts will be recovered at the end of the ten-year
12 period?

13 A. Yes. So the intent is to track the
14 performance over the ten-year period. And then if
15 there is a balance at the end that requires a
16 regulatory liability to be created, it would be
17 created and amortized based on the rate case after the
18 end of the guarantee period. And in such then,
19 there's no -- there's one adjustment being made to
20 rates. You don't get an up or down during the interim
21 periods.

22 Q. And that may alleviate some volatility
23 concerns, would you agree?

24 A. It would, yes.

25 Q. Okay. And final-- and also, any

1 regulatory liability, according to the stipulation,
2 would also car-- include carrying costs over and above
3 the 52.5 million; is that correct?

4 A. That is my understanding.

5 Q. Okay. And then what if the regulatory
6 liability is above 52.5 million? How is that treated?

7 A. At that point it would go back to the
8 Commission for the parties to -- to decide how to deal
9 with it.

10 Q. Okay. And do you believe in your expert
11 opinion that the MPP contained in the stipulation is
12 in the public interest?

13 A. I do.

14 Q. And why is that?

15 A. I think that what the MPP does is it adds
16 another layer of protection for low probability events
17 and a level of -- of protection that I don't believe
18 is -- is preceded in -- in Missouri for -- for
19 supply side generation. And it provides protection up
20 to the -- kind of the 0.5 percent probability where we
21 don't -- we think that 52.5 million covers us in a --
22 in a P-95.

23 So a probability that the wind will
24 exceed that amount of generation 95 percent of the
25 time and in a low market environment, which ABB

1 defines as kind of the 10 percent probability. So,
2 you have enough of a guarantee to cover off something
3 during a -- a 5 percent event at the same time as a
4 10 percent event, so you end up with a pretty low
5 amount. So I think you provide -- this provides a lot
6 of adequate protection that is, again, to my
7 understanding, unprecedented.

8 Q. Thank you. No further questions.

9 JUDGE DIPPELL: Is there
10 cross-examination from Staff?

11 MS. MERS: Yes, there is.

12 CROSS-EXAMINATION BY MS. MERS:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Are you familiar with the corrected work
16 papers and testimony of OPC witness John Riley?

17 A. Yes.

18 Q. With his correction, do you agree with
19 his analysis?

20 A. To which specific exhibit?

21 Q. We can go through all of them.

22 A. Oh, okay. So I -- I -- I primarily
23 focused I believe on JSR-R2 where he's calculating
24 the -- the -- the revenue requirement of the wind
25 projects. I believe it's been deemed highly

1 confidential. I don't have a copy and I don't believe
2 that was updated during his corrected testimony.

3 MS. MERS: Okay. I guess to be safe, we
4 should go in-camera.

5 JUDGE DIPPELL: Okay. At this time we're
6 going to go in-camera. If there's anyone in the room
7 who is not authorized to hear highly confidential
8 information, I would ask you to leave at this time.

9 COMMISSIONER HALL: Let me just ask,
10 what -- what's -- what's confidential about it?

11 JUDGE DIPPELL: Ms. Mers?

12 MS. MERS: I believe it -- I mean --

13 THE WITNESS: I'm -- I'm just reading --

14 MS. MERS: It's not my information. I
15 think it was the -- OPC's marked it confidential and
16 they might have marked it confidential based on
17 Empire's assertions. So other than that, I --

18 THE WITNESS: I'm not -- I don't have a
19 copy either. I have the public version in front of
20 me, so it just says HC.

21 JUDGE DIPPELL: Are we going to ask
22 questions about the confidential documents?

23 MS. MERS: Yes. I think out of an
24 abundance of caution, if Empire thinks that this
25 information --

1 COMMISSIONER HALL: And I'd like to know
2 why Empire thinks this information is confidential.

3 MS. MERS: Also, if I could approach to
4 give him a copy of it.

5 THE WITNESS: It's OPC document.

6 COMMISSIONER HALL: Okay.

7 MR. COOPER: Your Honor, we're going to
8 hand some documents to the witness and hope he knows
9 what he's looking at here.

10 JUDGE DIPPELL: Do we need a minute off
11 the record to --

12 MR. COOPER: We do, Your Honor.

13 JUDGE DIPPELL: Let's go ahead and go off
14 the record briefly.

15 (Off the record.)

16 JUDGE DIPPELL: Okay. We're back on the
17 record -- we're back on the record. Okay. So the
18 witness now has a corrected schedule from Mr. Riley's
19 testimony, JSR-R2. And that is marked as highly
20 confidential. Correct? That's what we're looking at,
21 Mr. Cooper?

22 MR. COOPER: I believe so.

23 JUDGE DIPPELL: And this was marked as
24 confidential by Public Counsel because it contained
25 information that Empire had marked as confidential

1 when they provided it to Public Counsel; is that
2 correct?

3 MR. HALL: Yes, that is correct.

4 MR. COOPER: I believe that's correct as
5 well.

6 JUDGE DIPPELL: Okay.

7 MR. COOPER: And I believe Empire's --
8 and Mr. Holmes can explain this a little bit perhaps
9 more fully than I can, but it is the revenue
10 projections that -- that are sensitive to -- to
11 Empire. So that's -- that's the -- I believe that
12 that is the -- sort of the sensitive point for us, but
13 again, Mr. Holmes can probably explain that a little
14 better.

15 COMMISSIONER HALL: Well, and I'd like to
16 know why those are sensitive.

17 THE WITNESS: So I -- I don't see a
18 problem with JSR-R2. What we -- what we've been
19 trying to be careful about is ABB's forward price
20 curve is proprietary. People have to pay and
21 subscribe to it. So that's the piece that becomes
22 confidential if there's the forward kind of price
23 curve that's kind of clear and transparent.

24 I -- I don't -- because Mr. Riley shows
25 kind of an expected revenue, it's more kind of

1 bundled. It -- it -- I don't know if you'd
2 necessarily glean that from this so I don't see a
3 problem subject to my counsel, you know, the -- so I
4 think this is okay.

5 JUDGE DIPPELL: All right. Then if -- if
6 counsel agrees that this can then be public, we will
7 remain in the public session. And if this schedule
8 can be --

9 COMMISSIONER HALL: And I would just --
10 going forward, simply because something is identified
11 as confidential by someone, if someone here wants to
12 clear the hearing room because it's confidential, I'd
13 like them to explain in that request why it's
14 confidential. But I understand that explanation.

15 JUDGE DIPPELL: Okay. Let's go ahead
16 then. Ms. Mers, you can continue.

17 BY MS. MERS:

18 Q. It sounds like you don't agree even with
19 the corrected analysis. Could you point out the areas
20 of disagreement and explain the issues you have?

21 A. Sure. So in general, when -- when we're
22 trying to look at what is the net impact of -- of the
23 wind projects from kind of a net revenue requirement
24 basis, in my Surrebuttal I kind of walk through the --
25 kind of the two major items that -- that kind of look

1 different to me, which would be the expected revenue
2 line item where the expected revenues projected by
3 Mr. Riley are -- are less than what we had been
4 projecting for the wind projects revenue through, you
5 know, the docket 2018-0092 which showed all our market
6 price forward estimates for this. And so that I think
7 becomes pretty significant.

8 And then depending on the -- the manner,
9 the -- if the expected revenue -- the way I read
10 Mr. Riley's testimony is the expected revenue is the
11 SPP revenue. And so if you have -- sort of have the
12 SPP revenue and then add back in the hedging costs,
13 I'm not sure if that's adding in additional cost
14 because, again, since the hedge is between Empire and
15 the wind projects, if Empire's paying a hedge down to
16 the wind projects, then, you know, it's kind of taking
17 from one company, putting it back in the same company.
18 So -- so there would be a revenue line item that would
19 go in there as well.

20 So based on my understanding of the --
21 the expected revenue item, I think that that becomes
22 off. And I know that there's commentary that yes, the
23 wind project co pays out contribution to some of that
24 revenue to tax equity, but we believe that that's
25 captured in the tax equity contribution line item

1 where you're covering off both pay-go and cash
2 distribution. So those were the -- the major ones
3 from my -- from my surrebuttal.

4 Q. So the -- the pay-go payments and the --
5 the fact that you believe that it's captured in the --
6 the tax equity line item, that has the effect of
7 double counting?

8 A. So I think the easiest way to look at the
9 wind revenue requirement for these facilities is to
10 have the hedge net out. And -- and that's kind of
11 what I propose in, you know, my schedule to my
12 surrebuttal.

13 I think it's DH-S-1 where we show -- and
14 I think Mr. Mooney has some information on the -- the
15 way the hedges kind of net out where you end up with
16 what is the net impact, which becomes SPP revenue less
17 your operating and -- and -- and all the costs
18 associated with putting new plant in service,
19 operating and maintaining it and the tax equity piece.

20 If you do all the hedge treatment, I did
21 expand in the bottom section of my surrebuttal all --
22 the -- the kind of the transactions between the wind
23 project co's and the old co-op just to try to show
24 that -- that it's -- if you do the simplistic way, you
25 get the same result as the -- kind of the detailed

1 way. So again, on the assumption that the expected
2 revenue is SPP revenue, then I think that there's just
3 a cost without an offsetting well, where did that
4 money go to.

5 Q. So if the worst case scenario did occur
6 and market prices would drop, aside from the market
7 price protection mechanism, is there any other
8 potential upside to customers in that situation?

9 A. So in the event that you had really low
10 market pricing, obviously customers were going to
11 benefit because their purchase power costs are going
12 to vastly reduce. And if the -- under the -- under
13 the stipulation Market Protection Provision obviously,
14 if -- if something went really bad and it exceeded the
15 52.5 million, then there becomes options again for the
16 parties to discuss with the Commission.

17 Q. And isn't it true that all electricity
18 generated by Empire's generation units generate
19 revenues from the SPP integrated market?

20 A. Correct.

21 Q. And that all electricity --

22 A. Sorry. I'm -- there could be an
23 exception on Plum Point, but other than that.

24 Q. And all the electricity needed to meet
25 load is purchased from the integrated market.

1 Correct?

2 A. Correct.

3 Q. So there would be nothing unique about
4 how this wind project would be run and treated in SPP
5 compared to any of your other generating units.

6 Correct?

7 A. That's correct.

8 Q. And much like all of your other
9 generating units, you would expect to have a return of
10 and on projects operating in this manner. Correct?

11 A. That's correct.

12 Q. And do you have any generating units
13 currently being used solely to meet native load?

14 A. We use all of our generating units as a
15 portfolio to meet our portfolio of -- of load
16 requirements. Not sure if that answers your question.

17 Q. Outside of the SPP integrated market?

18 A. No. All -- all generation in SPP is
19 offered into SPP and all of our load purchases come
20 out of SPP. SPP serves as a clearinghouse to combine
21 buyers and sellers of the least cost solution to
22 the -- to the market.

23 Q. And my final question, is it your
24 understanding that the guarantee period may be longer
25 than ten years if the wind projects come in service in

1 different rate cases?

2 A. Based on the way the stipulation is
3 written, I believe it's -- it is specified in there as
4 ten years from -- sorry. I'm just looking for the
5 exact wording.

6 Q. The -- and I'd be referring to the
7 guarantee period of the MPP if that helps clarify.

8 A. Right. And so the guarantee period I
9 believe in the -- in the stipulation agreement in
10 Section 21 that the mechanism would go into effect at
11 the first day of the month after the effective date of
12 rates in which wind project is first placed into
13 service and shall remain in effect for ten years
14 following the effective date of rates resulting from
15 the first general rate case and all wind projects are
16 included in rates.

17 Q. So that contemplates a wind project going
18 in in one rate case, but then the ten-year period
19 kicking off from the first rate case in which all the
20 wind projects --

21 A. That is --

22 Q. -- are included?

23 A. -- my interpretation, yes.

24 Q. Okay. Thank you very much.

25 JUDGE DIPPELL: Is there

1 cross-examination from Public Counsel?

2 MR. HALL: Yes, Your Honor.

3 CROSS-EXAMINATION BY MR. HALL:

4 Q. Good afternoon.

5 A. Good morn-- good afternoon.

6 Q. You know, Mr. Holmes, I don't think we've
7 had the pleasure. I think I'm the only differing
8 actor in this case, so --

9 A. Other -- I met you a couple of weeks ago.
10 Other than that, yes.

11 Q. So help me out. Is it -- would you agree
12 that like you're the market price modeling guru behind
13 this?

14 A. I helped prepare and document the --
15 the -- kind of the spreadsheets for the market price
16 protection.

17 Q. So your counsel, Mr. Cooper, he referred
18 to you as the market price provision expert then. Can
19 I ask you on the market price projections that were
20 used in this modeling?

21 A. Yes.

22 Q. And can I ask you about market prices
23 generally then?

24 A. I think so.

25 Q. Cool. So help me -- okay. Basic macro

1 level. Basic macro level economics. In -- supply has
2 an inverse relationship to -- to price. Correct?

3 A. You're saying supply and price are
4 related?

5 Q. Are inversely related, yes.

6 A. And by inversely you mean as supply goes
7 up, price is going to go down?

8 Q. Exactly. I mean generally we know that
9 supply goes up, prices go down. You agree with that.
10 Correct?

11 A. I do.

12 Q. And if I were -- if an investor were
13 wanting to strategize a high return scheme -- high
14 return investment strategy based on high -- high
15 returns -- or sorry, let me rephrase that.

16 An investor were looking into high
17 returns, they wouldn't nec-- they wouldn't necessarily
18 want to look for high supply, would they?

19 A. I -- I don't exactly know where you're
20 going. Like -- I don't know.

21 Q. No, not going anywhere. Just generally.
22 Okay. Let's put in --

23 A. My understanding of --

24 Q. Let's -- let's put it in a real world
25 example. So --

1 A. Thank you.

2 Q. -- the technology of hydraulic fracturing
3 became very commonplace around 2007, 2008. And as a
4 result, you would -- are you aware that like gas
5 prices went down as the supply of gas went up?

6 A. Yes.

7 Q. So high gas producers -- so the -- there
8 may have been individual gas producers making money
9 over the past ten years, but the price per volume of
10 gas has dropped?

11 A. Yes. The market price of gas has
12 dropped.

13 Q. And the only way to increase your profit
14 in that type of environment would be to increase your
15 volume to offset your low cost per volume. Correct?

16 A. Not necessarily. You're making an
17 assumption of what your prior cost was of production.

18 Q. Okay. But that's -- that's fair.
19 Assume -- but assuming no other changes, if you have a
20 decreasing price per vol-- decreasing price per unit,
21 you need to make up for that with volume. Correct?

22 A. Well, again, not necessarily. It would
23 depend on why you got a decreasing price. So if your
24 premise is that you create hydraulic fracturing and
25 that that is now a new cost way of creating gas, then

1 that means you're no longer on the old cost which
2 would have driven the old price. So, you know,
3 profitability's not just the sales side.

4 Q. Maybe I -- maybe we should reorient away
5 from gas. So Empire's looking to make money on wind
6 with this. Correct?

7 A. Empire's looking to provide our customers
8 a low cost, low risk solution for our portfolio. And
9 we think that wind helps get to that portfolio level
10 of lower cost and lower risk scenario.

11 Q. Because you think wind will be
12 profitable?

13 A. Because we think that as you go through a
14 supply side resource study, as per kind of Case
15 2018-0092, if you run a series of options on supply
16 side resources and you look at different potential
17 price outcomes, that -- that it shows a benefit in
18 that if market prices are increasing, then lower price
19 wind provides a benefit. If market prices are -- are
20 decreasing, that there is either a benefit from the
21 wind or benefit from reduction on customer load costs.

22 Q. I don't believe that answered my
23 question. Are you saying that you believe that wind
24 won't be profitable in the future? Because my
25 question was yes or no, do you believe wind will be --

1 does Empire believe wind will be profitable in the
2 future?

3 A. Define future. Like on these projects,
4 yes, we believe these are profitable projects. How --
5 how about that? Is that good?

6 Q. Okay.

7 A. Okay.

8 Q. Do you -- so are you expecting wind
9 prices to increase over the life of these projects?

10 A. Which wind price? The cost or the
11 revenue side?

12 Q. The revenue side.

13 A. We're expecting -- so as per the -- the
14 projected revenues from -- again, from the -- the
15 customer savings plan docket, that's what our
16 projections are and that those do show increasing.
17 And if you want kind of details on that price
18 formation side, Witness McMahon's an expert on the
19 price formation side of that forecast.

20 Q. You used the estimated -- I may have
21 mismatched some words. You used -- you have used
22 these revenues in your work papers though?

23 A. Correct. From the modeling out of ABB,
24 we've pulled over those market prices to help show
25 these scenarios in the market price per -- protection

1 provision.

2 Q. And this is the same modeling that Empire
3 thought would -- Empire saw prudent to use in the IRP.
4 Correct?

5 A. Which -- which modeling? So --

6 Q. In your integrated resource plan
7 modeling. You are -- Empire's working with ABB for
8 that. Correct?

9 A. For which year?

10 Q. For -- I think I'm getting some papers
11 shuffled my way. For 2016?

12 A. Right. So in 2016's IRP we went through
13 the -- the process largely with ABB doing a lot of
14 the -- providing both the price formation and the kind
15 of supply side resourcing and the production cost
16 resources. We did the same thing in the CSP in --
17 for -- as we went through that process in 2017, 2018.

18 Q. Okay. And for 2019?

19 A. In 2019 we're still using ABB's forward
20 projections on market curves, but we are using Charles
21 River Associates to do the actual 2019 IRP work.

22 Q. Were those updated numbers used in the --
23 these work papers now?

24 A. No. These work papers are still based
25 off of the fall 2017 curves, which are where the end

1 of the docket 2018-0092 had finished. So that was the
2 numbers used.

3 Q. So you haven't updated anything -- you
4 haven't updated those numbers since the last case?

5 A. Not in these files, no.

6 Q. Do you believe the model -- do you
7 believe -- do you believe that the model in the work
8 papers that you've provided would be more accurate if
9 those numbers were updated?

10 A. Maybe. I think that these are still in
11 the range of good. I think Witness McMahon will talk
12 about whether or not there's been any, you know, macro
13 changes that would make this a out-of-range type of
14 estimate. But they still seem reasonable and when we
15 look at what the kind of -- the prices are in the
16 Empire area where these wind farms are going, seems
17 still very reasonable.

18 Q. Okay. So you said reasonable. Would a
19 reasonable investor want to rely on the most recent
20 data or data from years prior?

21 A. I can't speak for all reasonable
22 investors, but I would say you go through and you run
23 a series of risk analysis and you figure out what is
24 your range of -- of -- of numbers and you pick a point
25 to proceed with your project. And I feel that we are

1 in a good spot for that.

2 MR. HALL: Your Honor, may I approach?

3 JUDGE DIPPELL: Yes.

4 BY MR. HALL:

5 Q. Now, that -- that heavy tomb I've just
6 handed you is a copy of a -- one of -- is a portion of
7 the transcript from the prior -- I'm going to call it
8 a sister docket to this, the EO-2018-0092. You were a
9 witness in that case. Correct?

10 A. Yes.

11 Q. And you testified on same or similar
12 matters as you're testifying now. Correct? I'm
13 sorry. You testified in that case in the same or
14 similar matters as you're testifying now today in this
15 docket. Correct?

16 A. I think so.

17 Q. Okay. Could you please turn to page 586?
18 It should be top right above the PDF pages I printed
19 out.

20 A. Yep.

21 Q. Okay. Can you follow -- follow along.
22 There's a -- line 3, this is a question from
23 Ms. Stephanie Bell. She was then counsel for City of
24 Joplin, now counsel for Missouri Department of
25 Conservation. She asked you, Was the ABB 2017

1 forecast lower than the 2016 forecast?

2 Do you see where I'm reading?

3 A. I do.

4 Q. And by lower she is asking about lower
5 market -- she was looking at the lower revenues from
6 the model SPP revenue. Do you remember when she asked
7 you that question?

8 A. Sure.

9 Q. And you answered that the 2017 forecasts
10 were lower than the 2016 forecasts?

11 A. Correct.

12 Q. And then she asked you, And do you expect
13 that trend to continue?

14 Did I read that correctly?

15 A. That's what the paper says, yeah.

16 Q. And your answer, if I'm reading this
17 correctly is, I don't think so, but I'd be
18 speculating.

19 Am I reading that correctly?

20 A. I think so.

21 Q. Okay. About five minutes ago you said
22 that you do see -- or at least you predict that the
23 wind prices are going to increase. Last year you said
24 that any information as to wind prices decreasing
25 would be speculation. So --

1 A. Okay. So --

2 Q. Am I understanding you correctly then
3 that any -- any wind price decrease would be a
4 speculation on your part, but you know that the wind
5 prices are going to increase?

6 A. Both the 2017 and the 2016 curve, both
7 have increasing prices on both of them. So to say
8 that a 2017 curve is lower than a 2016 curve in
9 talking about, you know, a 30 -- 20- to 30-year curve
10 in the future going up or down, I can't say. But I
11 would say that both of those still show increasing
12 pricing over time. And I don't see any reason why
13 that won't continue to happen, especially on an
14 inflationary basis.

15 Q. If you'll please skip forward to page
16 592. As Ms. Bell continued questioning you, I'm at
17 line 16, please correct me if I'm reading this
18 incorrectly. She asks, With more wind adding to SPP,
19 would you expect that trend to continue?

20 Did I read that correctly?

21 A. As it relates to it looks like negative
22 price intervals?

23 Q. Yes.

24 A. Yeah. I believe you're reading that
25 correctly.

1 Q. So her question was with more wind being
2 added to the SPP, would you expect the trend of
3 increasing negative price mark -- price intervals to
4 continue? And your answer was, I'm not certain of
5 that.

6 A. Correct.

7 Q. Your ans-- your answer going forward was,
8 To me, negative pricing is an imbalance of generators
9 following the market signals in real-time. And
10 there's many ways in which that can be accomplished.
11 And I do believe that RTOs work to eliminate deltas
12 and with the day ahead. But that means I don't know
13 enough to know.

14 You don't know enough to know as to
15 whether or not increasing wind -- increasing wind
16 supply will result in more negative pricing. Do you
17 still stand by that answer today?

18 A. Correct. Because negative pricing is not
19 a function of just more wind.

20 Q. And despite what we agreed earlier that
21 increasing supply results in lower prices?

22 A. Correct. Again, are you proposing that
23 every negative price comes with generators that can't
24 turn off and that all negative prices are a result of
25 over-supply? Like there's a lot of ways and reasons

1 on what creates negative pricing. And an increase of
2 wind is not the only factor. So how --

3 Q. Well --

4 A. -- people choose to mitigate these things
5 in the future, especially if they're driven by cur--
6 constraints or other, I don't know.

7 Q. I guess I'm not really proposing
8 anything. I just want to see where your knowledge and
9 assumptions come into when you use these revenues in
10 your work papers.

11 A. Right.

12 Q. Do you --

13 A. And so we do rely on ABB as an expert
14 modeler --

15 Q. I -- pardon me. I didn't ask a question
16 there.

17 A. No problem.

18 Q. What -- would you please turn to your
19 work papers actually? I'm looking at the back of --
20 or sorry. I shouldn't have said these are your work
21 papers. I'm looking at the Non-Unanimous Stipulation
22 and Agreement and I jumped ahead and called these work
23 papers because I see these four worksheets at the
24 back. They look modeled very much off your work
25 papers. Am I correct on that?

1 A. These are examples of the way the market
2 price protection would work.

3 Q. Are these modeled off the work papers
4 that you've provided the parties in this case?

5 A. Yes.

6 Q. So you -- you -- so you can speak to
7 these worksheets then?

8 A. Yes.

9 Q. I'm hoping that you can help explain a
10 little bit of confusion I have. I'm looking at the
11 low market case example. This was a case that Staff
12 highlighted in their opening. Do you have that in
13 front of you now?

14 A. Is it the P-50 low or the P-95 low?

15 Q. The P-50 low marked case example.

16 A. Okay.

17 Q. Where -- row 18, farthest right column
18 has the number 9,776,501.

19 A. Uh-huh.

20 Q. Okay. Tell me what this -- the PPA
21 replacement value, row 15, is.

22 A. The PPA replacement value is a -- an
23 assigned amount of value from the fact that when the
24 PPAs roll off, that there -- these wind farms will
25 provide support to our PS requirements and other

1 value.

2 And so it's detailed -- if you backed up
3 a bunch of pages in Exhibit C, kind of five pages
4 back, it's essentially doing a proration of the amount
5 of energy that is replaced from those PPAs. So as the
6 PPA rolls off and is replaced by these and we're
7 prorating the amount of energy that's replaced by the
8 PPA over the total revenue requirement of the new
9 projects to create a value stream that went into the
10 MPP calculation.

11 Q. Okay. So where is that money coming
12 from?

13 A. It's a value assigned in -- in lieu of
14 replacing those other PPAs. So again, looking at the
15 portfolio benefits of the project and trying to say
16 what else is contributed onto the wind value.

17 Q. Why is there value to that?

18 A. We believe that it has value. Otherwise,
19 we think that, again, when you're looking at a
20 portfolio over this 20-, 30-year period, you're going
21 to have to replace -- if you didn't replace the
22 wind -- the PPAs with this wind, you'd be replacing
23 with some other wind. And so we're just assigning
24 some of that future portfolio value in this document.

25 Q. Okay. So years one you have a zero and

1 that's because these wind PP-- the PPAs are still
2 operating then?

3 A. That is correct.

4 Q. And you're getting renewable energy
5 credits at that time. Right?

6 A. That is correct.

7 Q. And that's the same case for years two
8 through five as well?

9 A. That is correct.

10 Q. Five years of getting renewable energy
11 credits?

12 A. From the -- from the new projects or from
13 the old projects? Because I guess you would be
14 looking at -- you'd come from both at that time
15 period.

16 Q. Sorry. I didn't mean from these new
17 projects. I mean for five years you've indicated zero
18 values because you're already getting the P-- the PPAs
19 are still active?

20 A. Correct. You haven't replaced anything.

21 Q. Got it. And you know that these
22 renewable energy credits can be banked for future
23 redemption. Correct?

24 A. I don't have a lot of knowledge on the
25 RPS stuff. I think Mr. Wilson is the better witness

1 on recs and rec treatment with buying and selling.

2 Q. And yet you attributed a value to them
3 and put that in your modeling for the spreadsheets?

4 A. I did. By no means did I create the
5 spreadsheet on my own. We worked with many
6 stakeholders to try to determine what was fair and
7 appropriate value and how to calculate it and we
8 documented it appropriately.

9 Q. One of those other -- was one of those
10 other stakeholders Staff?

11 A. They were.

12 Q. Okay. Were you here to listen to
13 Ms. Mers opening?

14 A. I was.

15 Q. And so she brought -- she blew this
16 spreadsheet up for everyone. Did you see that?

17 A. I did.

18 Q. And she pointed to this 9,776,501 number.
19 And that is -- that's in row 18, the accu-- what you
20 call -- or what is called the Accumulative Annual Wind
21 Value. Am I reading that correctly?

22 A. Correct.

23 Q. Is that the number that goes directly --
24 in -- in this hypothetical entertained by this
25 spreadsheet, is that the number that Empire's

1 customers pocket?

2 A. At the end of the -- I'm not sure if I
3 would use the word "pocket." Again, the purpose of
4 the MPP is to determine if you need to create a
5 regulatory liability to help compensate back. Since
6 there's a positive value after the ten years, there
7 would be no action. It would be zero and you'd
8 continue the operations for the next 20 years of this
9 wind farm.

10 Q. But so the actual number that you would
11 flo-- that presumably may be flowed back to customers
12 is not the very right end of row 18, is it? Because
13 you take this annual wind value and then that's
14 applied with a sharing value. Correct?

15 A. No. You have a positive value here. So
16 upside is all to customers. And so the way this is
17 going to happen is the -- the -- the wind farms will
18 continue through rate cases and they'll be providing
19 benefits based on more of row 16. Right? They're
20 going to be going through and providing value.

21 The -- the whole part down in row 18 is
22 to try to say if there's a negative number, well, then
23 that's where the Company has to provide more value
24 back to the customers. So hopefully that made sense.

25 Q. So at the end of ten years then, in this

1 hypothetical the 9 million figure is a positive and so
2 that would be -- that is what goes to Empire's
3 customers at the end of ten years in this
4 hypothetical. Right?

5 A. No. So again, the only purpose of the
6 MPP is for the downside protection to customers.
7 Right? So these are -- these are wind farms, they're
8 in rates, they're generating -- they -- they generate
9 costs and -- and -- and revenues, they're going to be
10 treated through rate cases.

11 And the purpose of this is to create a
12 tracking mechanism so that if something goes bad at
13 the end of the ten years, we have a way of flowing
14 credit back to customers. In -- in this scenario,
15 they would -- customers would have been seeing benefit
16 probably since year six and then the -- the total sum
17 of their benefits after the ten years that they would
18 have already seen, we're estimating at that
19 9.7 million dollars.

20 Q. Okay. So you have the 9 million number
21 and then beneath that in the annual sharing value sum,
22 that's broken down to 4 million. That 4 million is
23 half of the 9 million. Correct?

24 A. That is correct.

25 Q. What is that 4 million?

1 A. So that is representing half of the
2 accumulated wind value.

3 Q. And that's di-- is that divided as to the
4 wind co and Empire's customers?

5 A. So the -- in -- again, because it's a
6 positive number, nothing will happen. But the
7 intention would be you take the balance after the ten
8 years, you apply a sharing value, 50/50. And if that
9 is a negative value, then that creates a regulatory
10 liability that you have to provide as a credit back to
11 customers after the end of the guarantee period.

12 Q. So then -- okay. So let's play this out.
13 We've had a Market Protection Plan for ten years. In
14 this case now, we have -- we have the 9 million at the
15 end. Do Empire's customers get to pocket all of that
16 in their lower rates or what?

17 A. Correct. So they would have already
18 received it. Because the wind farm's already in rates
19 and they're already in the cost-of-service up above,
20 they will have already seen it. So again, the MPP is
21 just to cover the downside risks of these low
22 probability events where you might need to provide
23 additional credits back to customers.

24 Q. Where -- so you're saying they've already
25 seen those benefits once you see the positives at

1 about -- I think year 6 in the annual wind value you
2 have 4 million?

3 A. That is correct.

4 Q. Where we're also paying for 18 million in
5 a -- for a PPA -- PPA replacement value?

6 A. We've assigned 18 million of value there
7 and -- and basically avoiding having to replace it
8 another way, yeah.

9 Q. For credits that can be banked?

10 A. No. Not for credits. For avoiding to
11 pur-- to replace those wind farms without their owned
12 assets.

13 Q. Looking -- stepping back and looking at
14 all of these spreadsheet, I see that there's a
15 expected case, a high case, a low case and low
16 market/low wind case. There's four different ones. I
17 see that the first three that I mention use a value of
18 P-50, whereas, the final one, low market and low wind
19 case, uses a P-95 value. Explain to me what the P --
20 the P values are again.

21 A. So P values represent kind of a
22 confidence interval or like a probability of what is
23 the amount of wind that would be expected over a
24 period of time. since obviously wind is variable,
25 you're not going to have the exact same predicted

1 output every year.

2 P-50 is deemed the expected case. It's
3 the amount of wind that you would expect to see
4 50 percent of the time over a period of time. P-75 is
5 a lower number because it's got a higher probability
6 of being exceeded over that time period. And so P-75
7 would be a number that you will exceed 75 percent of
8 the time. And then down to P-90 and P-95.

9 So with the workbook we provided, it
10 creates toggles. So if people wanted to play with
11 different combinations, they could see it. We
12 provided four examples for clarity.

13 Q. So your P-95 scenario then is where
14 you -- where we can expect the most certainty as to
15 wind production?

16 A. It's a pretty unlikely scenario. Like by
17 definition, it's a 5 percent scenario.

18 Q. So we're just dealing with a P factor of
19 .05 then?

20 A. By that are you just trying to say
21 5 percent?

22 Q. Yeah. Referring back to --

23 A. Yeah.

24 Q. -- like basic stats. I -- so I'm curious
25 because -- like you said, you brought -- you brought

1 illustrative examples, but then for your low
2 market/low wind example where -- so we expect the
3 lowest revenues with the lowest amount of wind, you've
4 given us the highest certainty as to wind production
5 in this example. You've given --

6 A. Yeah.

7 Q. -- us -- you've inputted P-95 instead of
8 the P-50.

9 A. Correct. We were trying to portray
10 within the data set we had, what would be a worse case
11 scenario.

12 Q. And all the other ones use P-50?

13 A. That's correct.

14 Q. So it's apple, apple, apple, orange?

15 A. We were trying to portray a range of
16 options. And I believe the parties all have the
17 workbooks so you could look at any combination you
18 would like.

19 Q. Workbooks -- you know this was filed on
20 Friday. Correct?

21 A. The document is in the substantial same
22 form as it was a year under the CSP case, so there's
23 a -- I don't know.

24 Q. So that's a yes then? You were aware
25 that this was filed Friday?

1 A. Yes, I'm aware.

2 Q. And submitted for parties for
3 consideration --

4 A. In the same form as the document was
5 12 months ago, yes.

6 Q. Uh-huh. Thank you. Yes is fine.

7 Now, Mr. Woodsmall just asked you
8 about -- he called it a customer cap and then you
9 clarified as a -- you called it something else. Do
10 you remember what you called it?

11 A. I don't know what you're referring to.

12 Q. I believe he was talking about the
13 52,500,000 exposure. And Woodsmall called that a
14 customer cap and then you clarified and said it was a
15 Company cap, I believe?

16 A. So the way it's set up right now is that
17 there is a guarantee up to 52.5 Missouri
18 jurisdictional. If you were to -- and it's 50/50
19 sharing. So once you get above that, all options come
20 back on the table to the Commission, to the
21 stakeholders. So if you consider that an escape hatch
22 would probably be also a customer at 52.5, you could
23 look at it depending on how you wanted to look at it.

24 Q. Okay. So how -- how does that play out
25 on this ten-year Market Protection Plan cycle? So let

1 me give you a ridiculous hypo. First year,
2 200 million dollars lost. 200 is higher than 52.
3 Have we reached the cap then?

4 A. Right now it's contemplated to look at
5 over a ten-year period. My understanding is that any
6 party has the right to petition the Commission at any
7 point in time kind of regardless of the agreement,
8 not --

9 Q. Is that anywhere explicitly stated in the
10 agreement? I couldn't find that anywhere.

11 A. I'm not a lawyer, but my understanding is
12 those are your rights under law, that parties have the
13 right to object to anything at any time.

14 Q. So first year in we see -- if Public
15 Counsel sees a loss, we could petition to stop Market
16 Protection Plan after the first year?

17 A. I'm not sure your rights under law, but
18 I'm sure you would have whatever rights you would
19 have.

20 Q. Okay. Well, put away the petition. So
21 let's -- how is this going to work in a rate case?
22 Empire's going to come in soon, we see -- we see a
23 delta. How do we address that? Do we push that off
24 to wait for ten years or do we address it then in that
25 rate case?

1 A. The contemplated market price protection
2 right now is that you would track the performance over
3 the time and you would deal with it at the end of the
4 ten years. Obviously each rate case would be treated
5 as prudent cost-of-service and -- and would be, you
6 know, dealt with in -- in the normal manner and people
7 would challenge as they saw fit.

8 And if you thought that there was some
9 disastrous outcome, you would have whatever your
10 rights are under the law to -- to object.

11 Q. So shareholders aren't going to -- am I
12 right to say that shareholders aren't being exposed to
13 that 15 million dollar value until the end of ten
14 years -- 52 million, pardon me?

15 A. I believe that that is correct. We had
16 originally proposed interim adjustments to flow back
17 if there needed to be flow back early. And then
18 through working with other stakeholders to come to
19 larger agreement for rate stability, it was deemed to
20 push that out until the end of the ten years.

21 Q. Okay. But so as it is now then,
22 ratepay-- shareholders aren't exposed to that
23 52 million dollar figure until the end of ten years.
24 Meanwhile, over ten years customers are paying for the
25 wind farms in rate-base?

1 A. In the low events -- low probability
2 events where things could be not good, I believe that
3 that's correct.

4 Q. Okay. The total am-- I mean this is a --
5 you're looking at a billion dollar project but only
6 500 million in rate-base. Correct?

7 A. Yep.

8 Q. All of these -- would you please look at
9 the only one that -- this -- I'm looking at the table
10 for low market/low wind case again.

11 A. Uh-huh.

12 Q. Row 48, Missouri reg input.

13 A. Yep.

14 Q. What does that 39 number mean? Or sorry,
15 39,712,233.

16 A. So the -- the market price protection, it
17 goes through and calculates everything at the -- the
18 gross value of all the wind plants. And so it comes
19 down with the sharing value and you end up with -- in
20 this scenario, 46.7 million of -- of funds that would
21 be owing up at the -- the total wind level. And
22 then -- so that 39 is after you've applied the
23 Missouri jurisdictional factor to determine what is
24 the -- the amount that would have to be flowed back as
25 a credit to the Missouri customers.

1 Q. 30-- 39 million is the credit to
2 customers?

3 A. In this --

4 Q. In this scenario?

5 A. In this scenario, correct.

6 Q. But they'll still have paid -- but
7 they're still paying for a 500 million dollar asset in
8 rate-base?

9 A. That is correct.

10 Q. 500 is higher than 39? Just as a number.

11 A. Yeah.

12 Q. Mr. Holmes, are there any other
13 provisions of this stip that you feel qualified to
14 speak to? I actually -- I'm sorry. That was -- I
15 think that could have been phrased in -- I phrased
16 that in the worst possible way.

17 If I want to go through the stip, if
18 there's a provision in the stip that you don't feel --
19 if you feel like there's another witness that could
20 better speak to it, just please stop me and let me
21 know.

22 A. Okay.

23 Q. I'm looking at paragraph 12, CCN
24 conditions. There's the phrase "and in a manner that
25 is not detrimental to Empire's customers."

1 A. Yep.

2 Q. Were you -- are you -- are you familiar
3 with this term? Can I ask -- can I ask you questions
4 on this term?

5 A. Sure. I can answer at high level.
6 Details would be Mr. Wilson. But if it's something
7 simple, I'm sure I can help you out.

8 Q. I guess I'm just curious. There's no --
9 is there a definitions paragraph or anything in this
10 to define what detrimental means?

11 A. Not to my knowledge.

12 Q. Do you see -- do you think a customer has
13 taken a detriment if they have a fixed income and
14 their rates have gone up?

15 A. I -- I don't know.

16 Q. Did -- is there a witness on your team
17 that would be able to better speak to this?

18 A. Well, I don't really understand the
19 question.

20 Q. Okay. So scenario A, customer with fixed
21 income. Scenario B, the only X factor that has
22 changed is the rates have gone up, income stays the
23 same. Has that customer received a detriment?

24 A. Sorry. Is the premise of the question
25 that the only thing that has changed in the providing

1 of the utility service is just the wind farms and
2 nothing else?

3 Q. The only change in the scenario is that
4 otherwise safe and adequate service has been provided,
5 but now the rates have gone up.

6 A. Okay. So is the question just related to
7 if rates go up for providing just and reasonable
8 service, is that a detriment?

9 Q. To the customer, yes.

10 A. Again, I struggle a little bit with
11 detriment, but I would acknowledge that if a person's
12 costs go up, that most people would deem that bad. I
13 guess it would come down to do you have an
14 alternative? And if it's fair and reasonable rates,
15 you know, I would assume that their alternative is not
16 to turn off their power, so --

17 Q. I guess --

18 A. I think you're just trying to say that is
19 costs going up if your revenue doesn't go up, bad.
20 Then I guess --

21 Q. Well, I'm -- I'm confused too. I'm
22 trying to figure out what do you think this term
23 means? Because I don't know what detriment means.

24 A. Well, I think this -- this term is pretty
25 simple. This term is about bidding into the -- the

1 marketplace and trying to make sure that you offer in
2 your generation at a value where it makes more sense
3 to operate then not operate. Right?

4 So as -- as -- as the market price -- as
5 the clearing price in the market drops, at some point
6 it does not make sense to run. So the easy example
7 would be like a gas unit. If it's come below your
8 cost of emission plus fuel costs plus your variable
9 O and M, you would no longer operate because your
10 costs are higher than your -- your revenues.

11 So this term is just really trying to say
12 if you're o-- if you're going to offer the wind into
13 the market, you have to do it at a level that there is
14 at least more value being created by operating than
15 not operating.

16 Q. Was this what Mr. Mertens was referring
17 to when he -- when my co-counsel asked him on this
18 provision, Mr. Mertens referred to bidding into the
19 market with negative pricing?

20 A. Yes. That's my understanding of this
21 clause.

22 Q. So this -- this clause stops that
23 bidding?

24 A. No. It makes sure that you're bidding it
25 rationally. Right? So you would have to show that

1 your bidding process, the exact same as the bidding
2 process we use for the current, you know, wind PPAs,
3 is a -- is a reasonable process. Right? So this is
4 the same way you offer in all your other generation.

5 Q. Is that all this term means?

6 A. That's my understanding.

7 Q. Do you have any -- do you have any
8 knowledge as to why it was phrased in a manner that is
9 not detrimental to customers as opposed to how you
10 just explained?

11 A. Other than what Mr. Woodsmall had kind of
12 said earlier when he asked Mr. Mertens, no.

13 Q. Okay. Can you speak at all to paragraph
14 17, 17-A?

15 A. No. Asbury --

16 Q. Agreement with -- I think that's
17 International Brotherhood of Electric Workers.

18 A. Yeah. I've not been involved in any of
19 the Asbury stuff.

20 Q. Who should we ask on that paragraph?

21 A. I don't know. Mr. Mertens was -- was --
22 was probably your best. Otherwise, I'd probably talk
23 to Mr. Wilson is -- is the next most reasonable
24 person.

25 Q. Thank you. Can you speak to page 13, if

1 there's in-service criteria. I'm looking at paragraph
2 5.

3 A. In-service criteria, I'd talk with --
4 with Mr. Wilson.

5 Q. Okay. So I should -- so we should ask
6 Mr. Wilson on this?

7 A. Right.

8 Q. Okay. Well, Mr. Holmes, do you have a
9 copy of your testimony in front of you?

10 A. I do.

11 Q. I noticed on page 2, line 19 you are
12 talking about Mr. Riley's analysis and you remarked
13 that there's many differences and one typo. Correct?
14 You wrote that. Correct?

15 A. I did.

16 Q. Was there any reason why you fixated on
17 that typo?

18 A. So I was asked, you know, do I agree
19 with -- with the calculations for Mr. Riley's revenue
20 requirement. And so the typo does flow -- or what I
21 perceived as a typo does flow through the revenue
22 requirement calculations. So it was just -- it was
23 just a comment that there's a typo I noticed that
24 could affect the revenue requirement.

25 Q. You were im-- were you -- so were you

1 implying some type of credibility failing because he
2 used a typo?

3 A. I was saying that the numbers are wrong
4 as a result of it. It's minor in my opinion, but
5 there's -- you know, it's in the year 2025 under PTCs.
6 There are negative values everywhere in the schedule
7 and then that one is a positive value. So it's --
8 it's minor, but it just means that the number -- the
9 math is just a little off. That's all.

10 Q. Okay. Can you help me out here? On
11 page 6, line 11 you're -- you're referring to a
12 schedule that you've attached to the back of your
13 testimony. And the phrase -- the sentence that you
14 have is, The net Empire cast position -- position is
15 shown in row 67 and it's the sum of several -- sum of
16 several other rows. Correct?

17 A. Yep.

18 Q. That schedule is DH S-1 or 2?

19 A. I think we're in 1. Yeah, Number 1.

20 Q. Okay. Because when I go to 1, I go to
21 row 56 and I don't see anything in that row. Am I
22 missing something?

23 A. I don't know. I'd have to add up the
24 other three numbers to see if 59, 61 and 65 still
25 equal 67.

1 MR. HALL: Okay. I have no further
2 questions, Your Honor.

3 JUDGE DIPPELL: Are there questions from
4 the Commission, Mr. Chairman?

5 CHAIRMAN SILVEY: Yeah, I do have a
6 couple. Thank you.

7 QUESTIONS BY CHAIRMAN SILVEY:

8 Q. On the Non-Unanimous -- Non-Unanimous
9 Stipulation and Agreement, page 4, do you have that in
10 front of you?

11 A. I do.

12 Q. Okay. Down at the bottom in 12, sub D
13 there's a sentence here that I'm a little confused by.
14 It says, Plans and specifications. Empire shall file
15 with the Commission quarterly progress reports on the
16 construction level plans and specifications for the
17 project. And the first report shall be due on the
18 earlier of the first day of the first calendar quarter
19 beginning after the CCN is issued.

20 It seems to me like that sentence was
21 starting out to be an either/or statement and yet
22 there's only one option. So how would -- how would
23 you take that?

24 A. I would take it that -- that Empire's
25 agreeing to try to provide updates on how things are

1 going. And -- and so they're -- like many stips,
2 there was probably a couple options and one probably
3 was deleted. But I think for plans and
4 specifications, Mr. Wilson's your -- your best to
5 answer if you -- if I had something wrong with that.

6 Q. Okay. On page 5, this is going to be the
7 end of the top paragraph. It says, In its subsequent
8 quarterly report, Empire shall address any results of
9 the study that are material changes in assumptions or
10 costs related to the wind projects.

11 How would you define material?

12 A. I don't know. I'm not sure. I'd be
13 guessing if I throw out a number.

14 Q. Well, I mean if -- if that is the
15 threshold for -- for which they're supposed to be
16 addressing the results of the study, how will we ever
17 know if a material threshold has been reached? Is
18 there a dollar figure or a percentage?

19 A. I'm sure we would -- can come -- whether
20 it's a dollar figure or a percentage, I'm sure if --
21 if it was something we could work out with Staff and
22 the other stakeholders, we'd pick a reasonable number
23 for providing the updated documentation at -- on a
24 change of the interconnection costs. And I'm sure
25 that that's -- we can be pretty flexible I'm sure on

1 that.

2 Q. Okay. And then on page 18 -- and I think
3 you kind of touched on this a while ago early on in
4 the testimony. I think there were some questions
5 about this. But the 52.5 million dollar figure. Why
6 does the Company believe that 52.5 guarantee is
7 reasonable and what is included in that that is above
8 the original 25 million that the Company supported?

9 A. So as we went through the process with
10 other stakeholders to try to come to an agreement on
11 what's a -- you know, a good, fair and reasonable
12 amount of protection, certain items in, you know, the
13 way we assigned value had changed.

14 And so both in the customer savings plan
15 docket last year and in my surrebuttal, the -- the max
16 guarantee has kind of always been able to cover this
17 P-95 low or kind of our worse case, 0.5 percent
18 scenario. And so this -- this 52.5 still does cover
19 that. It's just now that there is, you know, no
20 dead band and the capacity value is out, the -- the
21 25 million from my surrebuttal was -- you know, was no
22 longer as -- as -- as accurate.

23 So I think we -- the 52.5, the fact that
24 it covers up to kind of a 0.5 percent probability, we
25 feel that's a good number.

1 Q. So does that 52.5 number include
2 protections for network upgrade costs?

3 A. It does. So network upgrade costs would
4 be -- go into the calculation as part of the -- the
5 net plant part and then it does flow through the
6 costs.

7 Q. Okay. And then back to my previous
8 question, is there another witness that the Company's
9 going to put on that would be better to answer the
10 question on what is material?

11 A. Yes. I'd ask Mr. Wilson. He's going to
12 be doing most of the construction-related document
13 providing.

14 Q. Okay. Thank you.

15 CHAIRMAN SILVEY: Thank you, Judge.

16 JUDGE DIPPELL: Commissioner Hall?

17 Sorry, Commissioner Kenney?

18 COMMISSIONER KENNEY: I have no
19 questions.

20 JUDGE DIPPELL: Commissioner Hall?

21 QUESTIONS BY COMMISSIONER HALL:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. You said earlier that -- that customers
25 benefit from -- from -- from low market prices, but

1 that's not taken into account in the MPP; is that
2 correct?

3 A. That's correct.

4 Q. Can you -- can you elaborate on that?

5 A. So when we did the -- the production cost
6 modeling, when we did the -- all the customer savings
7 plan, we were looking at, you know, all of our
8 generation supply side resources and all of the -- the
9 load costs so -- when we run through the different
10 scenarios.

11 And the -- the portfolio effect is very
12 beneficial on adding wind when you have load. And
13 yes, we have -- you know, we have some coal and we
14 have some gas and other generation parts, but the wind
15 does provide kind of some risk mitigation aspects.

16 And yes, if market prices crashed to, you
17 know, zero, that's -- that would be bad for -- for new
18 generation, but there is an offset even in that worst
19 case scenario as the customers' purchase cost goes
20 down. Right? None of the -- none of the thermal
21 units would ever run again if you went to that power
22 amount, so there's a lot of weird things that happen.
23 But hopefully that answers your question.

24 Q. And so if -- if those -- if the market
25 prices were to go down significantly, ratepayers would

1 benefit through -- through the fuel adjustment clause.

2 Correct?

3 A. That -- that is correct.

4 Q. Now, you're not saying that the addition
5 of 600 megawatts of wind is necessarily going to have
6 much of an impact on -- on market prices, or are you?

7 A. We don't see it as a -- as a massive
8 swing in our portion to -- to rege-- you know, all the
9 market prices, no.

10 Q. Okay. So if -- if market prices were to
11 go down significantly with or without this additional
12 600 megawatts, customers would benefit probably about
13 the same?

14 A. I believe that's about correct.

15 Q. So then the only difference would be that
16 customers are paying for this 600 megawatts of wind?

17 A. For the downside?

18 Q. Yeah.

19 A. Yes. I would say that is -- if you only
20 look at the downside, yes. If you do consider that
21 there is always the chance there could be an increase
22 in price, then the -- that's when the wind would
23 provide significant price protection.

24 Q. Which is the perfect segue into my next
25 line of questioning. And that is that there seems to

1 be some mild consensus that -- that there is going to
2 be some increase in -- in wind prices, in -- in --
3 right?

4 A. In -- in market prices?

5 Q. Yes.

6 A. Yes. I would --

7 Q. And what do you attribute that to?

8 A. Mr. McMahon's going to be your best on
9 the -- kind of the macro level price formation that
10 ABB does that -- that shows how prices go up over time
11 in -- in their forecast. So he'd be the best. I do
12 rely on that ABB forecast as a professional opinion of
13 where gas and electricity prices are going to be
14 moving.

15 Q. Well, does -- does the phasing out of the
16 PTC plan do that as well?

17 A. It changes on your cost side, but for the
18 most part, wind is not on the margin to set the
19 electricity price. Right? So the -- when the -- when
20 the market clears, there's one price that -- that kind
21 of goes and then is adjusted for congestion. And
22 that's typically going to be a gas unit, although, you
23 know, there are sometimes wind's on the margin and
24 other sometimes coal's on the margin so --

25 Q. Well, but -- but one of the main reasons

1 why wind isn't on the margin is because of the PTC.
2 Because it's bid in at a dollar frequently.

3 A. Correct. So the PTC helps make it more
4 cost effective up front typically to -- to reduce what
5 your costs are. Right? Ror-- for us, we're using the
6 tax equity to reduce the up front cost and get some of
7 the pay back over time.

8 As the PTCs are phased out, remember
9 they're -- they're going to be there for ten --
10 existing projects -- these projects will have that PTC
11 value for ten more years. So it will be a long time I
12 think before you see that phase-out of the PTC drive
13 through on the market price. And again, I think
14 Mr. McMahon's your better guy for those detailed
15 market formation stuff.

16 Q. Ten years at the 24 dollars?

17 A. So --

18 Q. I thought it phased out.

19 A. -- so the phase-out is based off of the
20 percentage of qualification. I think Mr. Mooney's got
21 this. So --

22 Q. Okay.

23 A. -- if we get this in start of
24 construction 2016, placed in service 2020, we get
25 100 percent of the PTCs. After that, they drop by

1 20 percent. But the 24 dollars goes up based on an
2 inflation number. And again, Mr. Mooney will correct
3 me. There -- there's an IRS inflation number so it
4 will go 24 and eventually will tick up to 25. They
5 don't do decimal points so it's 24, and it will go 25,
6 and then three, four years later it will go to 26.

7 Q. What's -- what's the total cost of this
8 project?

9 A. That's in Mr. Mooney's testimony. But
10 like your 550 million is what we're looking at in
11 increasing our net plant, I believe. Something in
12 that range.

13 Q. But I thought that the increase in
14 rate-base was going to be about 50 percent of the
15 total cost of the project?

16 A. Correct.

17 Q. Okay.

18 A. And again, Mr. Mooney's got the exact
19 purchase price numbers.

20 Q. Okay. The -- the four scenarios that are
21 attached to the non-unanimous stip --

22 A. Uh-huh.

23 Q. -- can you tell me what -- what the
24 market price is for each of those scenarios or where I
25 might look to find that?

1 A. So there is an exhibit of -- in my
2 testimony that does have it. It's a little bit more
3 buried. It -- in kind of a quick level, in the mid
4 ABB market price, we've got 26 dollars a megawatt hour
5 in 2021.

6 Q. Okay. Is that -- an this is for the
7 expected case example?

8 A. Correct.

9 Q. Okay. Which -- which exhibit are you
10 referring to?

11 A. Hold on. Actually I did find it. It's
12 in my --

13 MR. COOPER: And I just want to ask one
14 question I guess of the witness. And this is kind of
15 a sore subject from earlier. But I just want to make
16 sure that Mister -- Mr. Holmes is thinking about
17 whether -- which items are confidential and which
18 aren't as he works his way through this.

19 COMMISSIONER HALL: Fair enough.

20 THE WITNESS: I think individual data
21 points, not so bad. Full curves, that's when it --

22 I -- I -- I'm going to keep flipping for
23 it, but I did print one out that shows the market
24 price that goes with the mid, the low and the high if
25 you -- if you wanted it until I find that piece of

1 paper.

2 So it's in -- there's a hole punch right
3 in the schedule name. I think it's in DS -- DH S-2 in
4 the highly confidential.

5 BY COMMISSIONER HALL:

6 Q. Well, so it's fine to -- to get the
7 actual dollar amount for each of those scenarios?

8 A. Yes.

9 Q. Okay.

10 A. So in DH S-2, in the highly confidential,
11 at the bottom of the -- the bottom of the page, you --
12 after you get to -- go through my revenue requirement
13 calculation, you'll see mid modeled SPP revenue in
14 dollars, you'll see the modeled energy in gigawatt
15 hours. And then the actual revenue in dollar per
16 megawatt hour for the mid, the low and the high
17 scenario. So it gives you some basis to compare at
18 least.

19 JUDGE DIPPELL: Are those -- those pages
20 in that schedule, do they have any numbers or name?

21 THE WITNESS: They do not.

22 MR. COOPER: Well, they -- yeah, they
23 don't have numbers, but they -- they have a schedule
24 designation. But as Mister -- Mr. Holmes pointed out,
25 if you're -- if you've three hole punched, you've lost

1 them.

2 COMMISSIONER HALL: Yeah. That's what
3 I'm suffering from.

4 JUDGE DIPPELL: Only if you didn't double
5 side.

6 THE WITNESS: So it's below that.
7 That's -- that's number one. You -- no -- yeah.
8 Close. Keep going. More. One more. There you go.

9 So see down at the -- so if you look at
10 the bottom there, just before that big dark line you
11 see the wor-- you'll see the three points. There's a
12 mid model SPP revenue and -- with the dollar sign and
13 then a gigawatt hour and then a dollar per megawatt
14 hour and then it shows the forecast. And all those
15 numbers are straight out of that customer savings plan
16 docket 2018-0092.

17 BY COMMISSIONER HALL:

18 Q. So where's the dollar amount per megawatt
19 hour?

20 A. Just the very first row below that dark
21 line that goes all the way across.

22 Q. Okay.

23 A. There you go.

24 Q. 23, 26, 20--

25 A. Correct.

1 Q. Okay. And -- and this came from what
2 source?

3 A. That came out of the -- the ABB modeling
4 that we did during the customer savings plan. So we
5 pulled that dollar per megawatt hour and applied it to
6 the updated production numbers.

7 Q. And have any parties taken issue with
8 that methodology that you're aware of?

9 A. Not that I've discussed, no.

10 Q. Okay. So that's the -- that's the mid--
11 that's -- that's the expected case?

12 A. Yeah. And then the low is two rows below
13 that and the high --

14 Q. Okay.

15 A. -- is two rows below that.

16 Q. Okay. And so then let me just make sure
17 that I -- of the four scenarios, the only one that
18 would implicate the -- the MPP is the fourth scenario?

19 A. Correct.

20 Q. And in that scenario there would be
21 46 million dollars in a regulatory liability?

22 A. And it ends up being the 39 for the
23 Missouri level. So the 46 would be all the projects
24 and then there would be a 39 at the Missouri level.

25 Q. And so under -- under that scenario,

1 ratepayers are -- are protected from 50 percent of
2 their -- of what would otherwise be a loss --

3 A. That's correct.

4 Q. -- or an increase in rates?

5 A. And then obviously we were hoping that
6 even in that bad scenario, that you still have a -- a
7 wind farm that's now one-third depreciated that still
8 has the ability of providing value for the next
9 20 years after that.

10 Q. So nothing in these four scenarios takes
11 into account how much of this wind is being produced
12 to certain native load and how much of it is going
13 into the integrated marketplace for sale -- well,
14 for -- for sale to others?

15 A. Well, so all Empire generation goes into
16 the integrated marketplace. So you can't really kind
17 of trace electron to electron. So I think the -- it
18 works off of the same thought process from the rest of
19 the ABB modeling of everything goes in, everything
20 comes out. And there's a lot of timing issues that
21 can create differences, but yeah.

22 Q. But it -- it -- in other words, it
23 doesn't matter if Empire is long or short. It's the
24 same -- same dollars?

25 A. Correct. This does not contemplate a

1 long or short position.

2 Q. I think that's all I have. Thank you.

3 JUDGE DIPPELL: Is there --

4 QUESTIONS BY JUDGE DIPPELL:

5 Q. Oh, I guess before -- I've got one -- one
6 question for you. I -- I had asked questions earlier
7 about the differences between this Stipulation and
8 Agreement and the one in the prior case. Can you shed
9 any light on --

10 A. Yeah. So between Case 2018-0092, the --
11 a lot of the -- there are a lot of similarities.
12 The -- the ways we calculate the annual wind value is
13 the same. The dead band was eliminated. So in the
14 worst case scenario, there's 20 million dollars kind
15 of more protection for customers. So when the dead
16 band was eliminated, that -- that -- that was -- you
17 know, a 20 million dollars change there. And then the
18 guarantee cap went from 35 million in 2018-0092 to the
19 52.5 for the Missouri jurisdictional amount now.

20 And then the other piece would be when to
21 apply the credit through that regulatory liability.
22 In the -- the customer savings plan case, there -- it
23 was contemplated to make an adjustment to rates at
24 each rate case during the ten-year period and then do
25 a true-up. And then after working with stakeholders

1 to get people comfortable, it was thought that that
2 could create too much volatility and so we deferred it
3 to the end in this one.

4 I believe those are the -- the material
5 changes from -- from the CSP case to this one.

6 Q. Okay. Thank you.

7 JUDGE DIPPELL: Is there further
8 cross-examination based on questions from the Bench
9 from Renew Missouri?

10 MR. OPITZ: No, thank you, Judge.

11 JUDGE DIPPELL: Division of Energy?

12 MS. REEVES: No, thank you, Judge.

13 JUDGE DIPPELL: MEGC?

14 MR. WOODSMALL: Very briefly.

15 FURTHER CROSS-EXAMINATION BY MR. WOODSMALL:

16 Q. Getting to a question from Commissioner
17 Hall, you were asked about the increase in rate-base
18 and how much this would cost. Do you recall that
19 question?

20 A. I do.

21 Q. The im-- the cost to Empire, the increase
22 in rate-base, if you will, would be roughly
23 550 million dollars; is that correct?

24 A. That's my understanding.

25 Q. Okay. But the total cost of the wind

1 project, that is the cost including the piece
2 contributed by the tax equity partner, would be
3 somewhat above that; is that correct?

4 A. Yeah. Your gross numbers are cle-- you
5 know, more in the billion dollar range. And, again,
6 Mr. Mooney has got the exact figures for all that.

7 Q. Okay. No further questions. Thank you.

8 JUDGE DIPPELL: Staff?

9 FURTHER CROSS-EXAMINATION BY MS. MERS:

10 Q. Going back to the four scenarios you just
11 went through with Commissioner Hall, I just want to
12 make sure that -- that everybody has the same
13 understanding and you have the same understanding and
14 I have the same understanding.

15 That in that low market case and low wind
16 example, it includes both the low market price and
17 wind production at P-95, which means that 95 percent
18 of the time you would expect to have more wind
19 production and only 5 percent of the time you would
20 expect to have less wind production. Is that correct?

21 A. That's correct.

22 Q. Okay. And then finally, in these
23 assumptions, these scenarios, would you agree that
24 when you're getting like the zero liability, it is
25 because the wind revenues have covered the cost of the

1 wind revenue requirement in rate-base so customers are
2 held neutral?

3 A. Yes.

4 Q. Okay. Thank you. I have nothing
5 further.

6 JUDGE DIPPELL: Is there anything from
7 Public Counsel?

8 MR. HALL: Yes, briefly. Thank you.

9 FURTHER CROSS-EXAMINATION BY MR. HALL:

10 Q. Mr. Holme-- Mr. Holmes, Commissioner Hall
11 asked you about whether or not customers will see
12 benefits even though the market prices are zero. Do
13 you recall that question?

14 A. Yes.

15 Q. Okay. Work this out for me. If there
16 are zero revenues, the tax equity partner is still
17 going to receive some value from the hedge. Correct?

18 A. I'm -- I probably won't be able to do all
19 of the math in my head on where you're going to
20 like -- to be able to walk through that, but if --
21 if -- in a hypothetical world, if electricity prices
22 went to zero, the wind farms would not do very well,
23 as would any generator. But load would obviously
24 benefit.

25 Q. So explain this situation to me. So you

1 have zero revenues. There's just nothing. Does that
2 mean that both the tax equity partner and Empire
3 receive nothing or is -- or is the hedge going to make
4 up some of that?

5 A. So the hedge is paid from Empire to the
6 wind co and then so -- I'm not -- okay. Can you ask
7 that again one more time?

8 Q. Sure. So you have zero revenues going
9 towards the wind co.

10 A. Okay.

11 Q. And now the wind co is going to be
12 splitting the -- your revenue bucket between tax
13 equity partner and Empire. Am I understanding that
14 correctly?

15 A. Subject to Mr. Mooney who is our tax
16 equity expert, yep.

17 Q. Sure. Okay. Now, Empire is paying a
18 hedge to the wind co, is it not?

19 A. It is.

20 Q. Okay. If there's zero revenues --

21 A. Zero SPP revenues is what --

22 Q. Zero SPP revenues, correct.

23 A. So then there's a hedge revenue. That --
24 that's what you're saying?

25 Q. There's a hedge revenue paid for by

1 Empire.

2 A. Correct.

3 Q. Just --

4 A. So that's a cost. Okay. Yeah.

5 Q. Secure the tax equity partner?

6 A. Uh-huh.

7 Q. So when there's zero revenues --

8 A. Zero SPP revenues.

9 Q. Zero SPP revenues, you're saying that
10 customers still get a benefit because they get the
11 benefit of the hedge that they supported?

12 A. No. So I'm saying if in the hypothetical
13 world the market prices go to zero, every generator is
14 in pr-- going to have problems, including these wind
15 projects. Right? In the hypothetical world that you
16 can't sell your energy for anything, all generators
17 will have a problem.

18 My -- my comment was if electricity goes
19 to zero, load can purchase energy for free. So the
20 benefit was not tied to the wind projects going to
21 zero dollars nor do I believe it's likely that
22 energy's going to zero dollars in the next ten years.

23 Q. But even in that crazy hypothetical then,
24 Empire is still spotting a hedge for this
25 relationship?

1 A. Correct.

2 Q. Okay. Thank you.

3 JUDGE DIPPELL: Is there any redirect?

4 MR. COOPER: There is. Thank you, Your
5 Honor.

6 REDIRECT EXAMINATION BY MR. COOPER:

7 Q. Mr. Holmes, on that last question that
8 you just got, you talked about this example where the
9 price goes to zero and I think you said all generators
10 have a problem. By that, do you mean generators other
11 than just wind generation?

12 A. I do.

13 Q. And explain that a little bit. So you --
14 you're talking coal, natural gas, all generators have
15 a problem. Right?

16 A. Right. Your primary source of revenue in
17 SPP is energy revenues. And if all generators don't
18 have energy revenues, then they all need to have their
19 cost-of-service paid for in some other way.

20 Q. And in -- as we talked about before,
21 those other generation options have costs as well.
22 Correct? The cost of the -- the fuel?

23 A. Cost of the fuel, labor, maintenance. It
24 doesn't go away if you're not running. You have to
25 maintain a plant; otherwise, it degrades really

1 quickly, especially thermals.

2 Q. You were asked questions about your
3 Schedule DH-S-2. And maybe -- I don't know whether
4 you can do this or not, but -- but you specified
5 the -- the prices I think or you were pointing out the
6 prices that were utilized for the mid case. Can you
7 describe how those compare to prices that have been
8 experienced?

9 A. My understanding from Empire's trailing
10 12-month revenue estimates for kind of 12 months
11 ending January 2018, the -- the -- the market price at
12 Asbury was 28 dollars a megawatt hour and the market
13 price that Empire was purchasing at was 30 dollars a
14 megawatt hour.

15 So when -- when I look at what's
16 forecasted here for -- for prices in the mid and
17 compare it to other prices that we see in the
18 marketplace today, I -- I still feel comfortable with
19 the revenue forecast as presented.

20 Q. During your -- your testimony there was
21 discussion about bid pricing and I think there was
22 some of that this morning as well. Is the bid price
23 the same as the settled price?

24 A. No. So all generators will offer based
25 on usually the rules, which is usually your marginal

1 cost of variable energy subject to, you know, minor
2 adjustments. SPP's job is to balance all of its
3 supply side versus all of the load and ancillary
4 requirements.

5 Subject to all the constraints they have,
6 they settle it out and create what that final market
7 price is, but all generators receive what their market
8 price is, not what their offered price is.

9 Q. So those are -- those are two different
10 things ultimately?

11 A. That's correct.

12 Q. I -- I think there was a question
13 around -- I think it was the stipulation at page --
14 about P-95 low and questions about rate-base in there
15 that I didn't -- I didn't quite understand. But when
16 you go through the -- the Market Protection Provision,
17 the rate-base impact of this investment, that's a part
18 of the -- the cost of the wind, isn't it?

19 A. Correct. The -- the impact on rates will
20 be the -- the -- the total revenue requirement for the
21 plants less any of the -- the revenues that it
22 generates.

23 Q. Also, you may have gotten to this later,
24 but there were some questions about, you know, where
25 would the customers see the benefits, where would --

1 you know, where would they see the benefits along the
2 way. And I think is that through the -- the revenues
3 that are flowed through the fuel adjustment clause?

4 A. Yes.

5 Q. Early on, Attorney Hall asked you some
6 questions about just basic -- what's that?

7 MR. HALL: We are both attorneys.

8 MR. COOPER: Commissioner -- oh, I'm
9 sorry. Well, I'm trying to --

10 MR. HALL: You need -- you need to be
11 more specific.

12 MR. COOPER: I'm actually referring to
13 OPC Attorney Hall here so I don't know how better to
14 do that, so.

15 JUDGE DIPPELL: You said it correctly.

16 MR. COOPER: I guess I can say OPC
17 Attorney Hall as opposed to Commissioner Attorney Hall
18 or something.

19 BY MR. COOPER:

20 Q. When the OPC attorney was cross-examining
21 you earlier, he asked you some questions about just
22 sort of a high level supply versus -- or interaction
23 of supplies and price. Do you remember that?

24 A. I do.

25 Q. Is that easily applied to a situation

1 where we're talking about electric generation? Are
2 there other -- other factors that -- that come into
3 play when you start talking about the pricing of -- of
4 this generation in the market? And I guess I'm
5 thinking about transmission and other things that may
6 impact the ultimate price.

7 A. Yeah. There are. And obviously
8 Mr. McMahon is being a -- kind of a markets and price
9 formation expert will be able to provide much more
10 adequate detail.

11 Q. Let me ask this as well just to see if
12 you have an answer. But is there a reason that in the
13 0092 case the Company focused on projects in or near
14 its service territory?

15 A. Yes. SPP has -- has a lot of inflexible
16 generation, both -- both from large coal plants and
17 from large wind resources and -- and has been trying
18 to catch up on transmission build-out for the last
19 probably ten years they've been going pretty hard at
20 it, but there are lots of congestion type of -- type
21 of issues.

22 Empire does -- is in a higher priced area
23 and -- and we were very cautious to try to avoid high
24 basis differentials to help make sure that these wind
25 projects both would provide -- you know, a more true

1 hedge up against our load, but also take off that risk
2 that other transmission developments would happen
3 between our customers and these projects that could be
4 unforeseen in the future. So we certainly were
5 interested to keep them close by and were very happy
6 with how close they -- we were able to get them.

7 Q. That's all the questions I have.

8 JUDGE DIPPELL: Thank you. I believe
9 that concludes your testimony, Mr. Holmes, and you may
10 step down.

11 With that, I think we can take a short
12 break. Return at 3:40.

13 (A recess was taken.)

14 JUDGE DIPPELL: We are back on the record
15 after a short break and we are ready to begin with
16 Empire's third witness.

17 MS. KNOWLTON: Good afternoon. The
18 Company calls Todd Mooney.

19 (Witness sworn.)

20 JUDGE DIPPELL: Thank you. Go ahead.

21 TODD MOONEY, being first duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION BY MS. KNOWLTON:

24 Q. Good afternoon. Would you please state
25 your full name for the record.

1 A. Todd Thomas Mooney.

2 Q. Mr. Mooney, by whom are you employed and
3 in what capacity?

4 A. I'm employed by Liberty Utilities
5 (Canada) Corp. in the capacity of vice president
6 finance and administration.

7 Q. Have you caused to be prepared for the
8 purposes of this proceeding certain Direct and
9 Surrebuttal Testimony in question and answer form?

10 A. Yes.

11 Q. Is it your understanding that the
12 testimony has been marked as Exhibits 5-HC and 5-P,
13 your Direct Testimony in label Docket EA-2019-0010,
14 6-HC and 6-P, your Direct Testimony in Docket Number
15 EA-2019-0118, and tes-- excuse me, Exhibit 7-HC and
16 7-P, Surrebuttal Testimony, both highly confidential
17 and public?

18 A. Yes. That's my understanding.

19 Q. Do you have any changes that you would
20 like to make to your testimony at this time?

21 A. No, I do not.

22 Q. If I asked you the questions which are
23 contained in Exhibits 5-HC, 5-P, 6-HC, 6-P, 7-HC and
24 7-P today, would your answers be the same?

25 A. Yes, they would.

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

3 A. Yes.

4 MS. KNOWLTON: Your Honor, I offer
5 Exhibits 5-HC, 5-P, 6-HC, 6-P, 7-HC and 7-P into
6 evidence.

7 JUDGE DIPPELL: Would there be any
8 objection to Exhibits 5, 6 and 7, the highly
9 confidential and the public versions, coming into the
10 record?

11 Seeing none then, I will admit those
12 Exhibits.

13 (Exhibits 5-HC, 5-P, 6-HC, 6-P, 7-HC and
14 7-P were received into evidence.)

15 MS. KNOWLTON: The Company would make
16 Mr. Mooney available for cross-examination.

17 JUDGE DIPPELL: Is there
18 cross-examination by Renew Missouri?

19 MR. OPITZ: No, thank you, Judge.

20 JUDGE DIPPELL: Division of Energy?

21 MS. REEVES: No, Your Honor.

22 JUDGE DIPPELL: MEGC?

23 MR. WOODSMALL: Very briefly.

24 CROSS-EXAMINATION BY MR. WOODSMALL:

25 Q. Good afternoon, sir.

1 A. Good afternoon.

2 Q. You're the tax equity guy for Empire; is
3 that correct?

4 A. That is what I've been called.

5 Q. Okay. Now, under the tax equity
6 mechanism structure, a tax equity partner will provide
7 some of the up front capital contribution in exchange
8 for getting the accelerated depreciation and
9 production tax credits; is that correct?

10 A. That's correct.

11 Q. And can you tell me why Empire is willing
12 to forego accelerated depreciation and production tax
13 credits instead of -- in -- in place of getting the --
14 the up front contribution?

15 A. Sure. So Empire's willing to partner
16 with the tax equity partner so the tax equity partner
17 can monetize those tax benefits because Empire doesn't
18 have the tax appetite at present to receive those
19 benefits in a timely fashion.

20 In the past, Empire has used bonus
21 depreciation to claim depreciation for tax purposes at
22 a far greater pace than for regulatory purposes and,
23 hence, has not had a cash tax payable position for
24 some time. As well, production tax credits for the
25 wind projects will be very substantial and Empire

1 would not be able to utilize them all as they are
2 earned.

3 By partnering with the tax equity
4 partner, the tax equity partner can monetize those tax
5 benefits as quickly as possible; thus, providing
6 benefit due to the time value of money.

7 Q. So to a large extent, those benefits, the
8 production tax credits and the accelerated
9 depreciation, would be lost to some extent to the
10 extent they were retained by Empire?

11 A. Yes. Those -- those benefits -- I
12 wouldn't use the term "lost," but they would be
13 reduced in value because they would be used years
14 later. And with the time value of money, there would
15 be a reduction in the value that Empire would be able
16 to realize from them.

17 Q. Great. Thank you. No further questions.

18 JUDGE DIPPELL: Is there cross from
19 Staff?

20 CROSS-EXAMINATION BY MS. MERS:

21 Q. Good afternoon, Mr. Mooney.

22 A. Good afternoon.

23 Q. Without getting into confidential
24 information, is Empire still engaged in productive
25 discussions with tax equity partners?

1 A. Yes.

2 Q. And do you remain optimistic about
3 reaching agreement with a tax equity partner?

4 A. Yes.

5 Q. Are you familiar with OPC's testimony
6 regarding the hedging agreements?

7 A. Yes.

8 Q. Do you agree with those concerns?

9 A. No. In fact, I spent a number of
10 paragraphs and pages of my Surrebuttal Testimony
11 expressing my concerns with the OPC's position.

12 Q. It seems to me that there almost might be
13 a misunderstanding about what the hedging agreement
14 is. Would you agree with that?

15 A. Yes. Especially the misunderstanding
16 being that the hedge has no net impact to Empire or
17 Empire's customers because, in essence, whatever
18 Empire pays to the wind project under the hedge, the
19 wind project pays back to Empire as cash distributions
20 for its operations.

21 Q. And I guess to make sure everybody's on
22 the same page, could you just briefly explain the
23 hedging agreement?

24 A. So the hedging agreement is a fixed for
25 floating price swap. It sets a fixed price and to the

1 extent that the wind project realizes prices for
2 selling energy into SPP that is below that fixed
3 price, Empire will pay the difference for a defined
4 quantity.

5 The opposite is also true. To the extent
6 that the wind project realizes -- the wind project
7 realizes prices by selling it into SPP that are higher
8 than that fixed price, it's the wind project that has
9 to pay Empire.

10 The other key thing to note is that since
11 Empire owns the wind project, the net cash flows from
12 the wind project, which do include the hedge revenues,
13 end up being distributed back to Empire.

14 Q. So do these misunderstandings impact the
15 accuracy of some of the work papers and analysis that
16 OPC has provided?

17 A. Yes. I believe Mr. Holmes already
18 mentioned that in the testimony of Mr. Riley, there
19 was a line item added to one of the schedules that
20 indicated that the hedge was an absolute cost to the
21 wind projects to Empire's customers. That is, in
22 fact, inaccurate and not true. There is no net cost
23 to Empire's customers from the hedge.

24 Q. And you might have mentioned this, but
25 does the hedge have rate-making implications?

1 A. No, it does not.

2 Q. And finally, is it appropriate to tie the
3 tax equity's ROE to Empire's ROE as OPC has suggested?

4 A. No, I don't believe so. There is
5 rationale that I present in my Surrebuttal Testimony
6 that indicates that this comparison is -- is not valid
7 and the -- the argument, even if you were to accept
8 it, which -- which we do not, is actually confusing.

9 The rate of return on investment that --
10 that the tax equity partner is earning with return on
11 equity, which are two completely different concepts --
12 and, in fact, if you compare related concepts, return
13 on rate-base to the return on investment that the tax
14 partner was earning, they are approximately equal.

15 Q. Thank you so much.

16 JUDGE DIPPELL: Are there -- is there
17 cross-examination from Public Counsel?

18 MR. HALL: Yes, Your Honor.

19 CROSS-EXAMINATION BY MR. HALL:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. You spoke just recently on the production
23 tax credits. I notice that part of your testimony
24 or -- actually I -- never mind.

25 It wasn't your testimony, but there's

1 been a lot of discussion of a prior ruling of this
2 Commission on the Clean Line case. Are you familiar
3 with that decision?

4 A. Sir, can you repeat the name of that
5 case?

6 Q. The Clean Line case. Grain Belt. Sorry.

7 A. I have heard that mentioned today. I
8 have not read that ruling nor seen a summary of it.

9 MR. HALL: Your Honor, may I approach?

10 JUDGE DIPPELL: Yes.

11 BY MR. HALL:

12 Q. I'm afraid I only have one copy of this,
13 Todd.

14 A. Thank you.

15 Q. Mr. Mooney, I've just handed you a copy
16 of the Commission's order on -- in the Grain Belt case
17 and I turned to page 29. Could you please turn to
18 paragraph 94 in that decision?

19 A. Okay.

20 Q. And in there that's a Commission Finding
21 of Fact that, quote, The wind industry will not need
22 the federal production tax credits after 2023 because
23 of continuing technology improvements.

24 Did I read that correctly?

25 A. Yes.

1 Q. Do you disagree with the Commission?

2 A. I have not been able to read this;
3 therefore, I've not formed a basis of opinion. To
4 form a basis of opinion, I would need to understand
5 what those technology improvements were and how they
6 were impacting the levelized cost of energy with wind
7 compared to other energy generating sources. Those
8 are all things I have not done, especially since this
9 is the first time I've read this document.

10 Q. But you would normally trust a Commission
11 Finding of Fact?

12 A. I trust that the Commission has weighed
13 evidence very carefully and come to a conclusion that
14 it believes in.

15 Q. And you have no reason to doubt them at
16 this time?

17 A. I have no reason to doubt the Commission,
18 no.

19 Q. Ms. Mers from Staff questioned you about
20 the tax equity partner. You are -- you seem confident
21 that there -- discussions are productive as that we
22 will have a tax equity partner?

23 A. Yes.

24 MR. HALL: Your Honor, may I approach
25 again?

1 JUDGE DIPPELL: Yes.

2 BY MR. HALL:

3 Q. Mr. Mooney, the small forest of trees
4 I've handed you is a copy of the transcript from the
5 sister docket in this case, the E0-2018-0092 docket.
6 Are you familiar with that case?

7 A. Yes, I am.

8 Q. Were you a witness in that case?

9 A. Yes, I was.

10 Q. Would you please turn to page 436 in the
11 book I've given you? At this segment of the hearing
12 Mr. Woodsmall from MECG was questioning you. He
13 starts asking on line 10, And the tax equity partner
14 has not yet been identified for this project; is that
15 correct? Did I read that correctly?

16 A. Yes, you did.

17 Q. And what was your answer at that time?

18 A. That's correct. We have not finalized
19 the selection of the tax equity partner was my answer
20 at that time.

21 Q. And then he went on to ask, And so the
22 contract then obviously hasn't been nailed down; is
23 that correct? Or he said, Is that correct and I quit.
24 And I ask you now, am I reading that correctly?

25 A. Yes.

1 Q. And what was your answer at that time?

2 A. At that time the answer was, That's
3 correct, although we are advancing in discussions.

4 Q. And this hearing was held May 10th of
5 2018. Correct?

6 A. I don't recall the exact date, but I
7 trust your recollection.

8 Q. May 10th. And had a tax equity partner
9 been identified when you -- when Empire filed the
10 application for this docket?

11 A. We are working with Wells Fargo as a tax
12 equity partner. As indicated in my Direct Testimony
13 for this case, we are continuing to work with Wells
14 Fargo and are advancing in preparation of a binding
15 term sheet.

16 Q. But you can't identify them as a tax
17 equity partner now?

18 A. Well, if you use the word "identify" in
19 terms of we have found a partner, we have found one.
20 If you use the term "identify" to mean have we signed
21 definitive agreements, we have not signed definitive
22 agreements.

23 Q. Do you have a copy of the Non-Unanimous
24 Stipulation and Agreement between the parties that was
25 filed in this docket on Friday?

1 A. Yes, I do.

2 Q. Would you please turn to page 4 and look
3 at footnote 2? I'm reading here that there may be
4 multiple tax equity partners and multiple wind -- wind
5 holding companies as a result. Am I reading that
6 right?

7 A. That's what footnote 2 says, yes.

8 Q. So we may not be dealing with just Wells
9 Fargo if at all in this -- as a tax equity partner?

10 A. That's correct.

11 Q. Would that result in differing hedge
12 prices?

13 A. No.

14 Q. If we have mul-- just be clear. If we
15 have multiple different tax equity partners, they'd
16 all have the same uniform hedge price?

17 A. Each project will have a hedge contract.
18 In fact, in my testimony I filed the key terms for the
19 Kings Point and the North Fork Ridge hedges. Those
20 are key terms that are defined for those projects and
21 hedges will be entered into under that basis. The --
22 those key terms are specific to each project. There
23 was not a separate hedge for each tax equity provider
24 for each project.

25 Q. Okay. And despite this year of not

1 having it nailed down and now we might have more tax
2 equity partners, you're confident that you'll find a
3 tax equity partner?

4 A. Yes. We have found a tax equity partner
5 with whom we are currently in detailed discussions,
6 but with whom we have yet to execute a definitive
7 agreement.

8 Q. Now, if we could delve a bit -- if we
9 could delve a bit deeper into the hedge. We don't need
10 to drag it out, but so on -- I found out on page 2 and
11 6 of your surrebuttal and page 20 of your Direct
12 Testimony you've used a phrase or something thereof
13 that, quote, The hedge, in fact, has no rate-making
14 impact whatsoever.

15 Does that sound like something in your
16 testimony?

17 A. That's -- that sounds like a
18 representation of my testimony, yes.

19 Q. Okay. And Staff counsel re-- just asked
20 you something to that effect as well and you agreed
21 that there's no rate-making impact?

22 A. Yes.

23 Q. Does that mean then that we're not going
24 to see any hedge activity through the fuel adjustment
25 clause?

1 A. I'm not aware of how the fuel adjustment
2 clause functions. I just know that there will be no
3 rate-making impact from the hedge with Empire
4 receiving or paying payments to the wind project and
5 then the wind project making payments or making lower
6 payments to Empire that will result in a net zero for
7 the hedge.

8 Q. You don't see the fuel adjustment clause
9 payments as part of customer rates?

10 A. I did not say that.

11 Q. But do you see those as part of customer
12 rates?

13 A. I understand that the fuel adjustment
14 clause is a mechanism by which customer rates are
15 adjusted, but I would have to defer to a subject
16 matter expert other than myself on that issue.

17 Q. Mr. Mooney, did you answer a Company Data
18 Request 1318 from -- pardon me just a second. Pardon
19 me. This is OPC Data Request 1318.

20 A. I don't find it on my records, but there
21 were quite a number so I'm pretty sure I did.

22 MR. HALL: Pardon me, Judge, as I
23 approach counsel. Your Honor, may I approach?

24 JUDGE DIPPELL: Yes.

25 MS. KNOWLTON: We'd like a copy of what

1 you've handed the witness, please.

2 MR. HALL: Your Honor, I'll -- we'll get
3 a copy at this moment. Mr. Mooney, could I get that
4 back? Thank you.

5 JUDGE DIPPELL: Are you going to continue
6 with questioning or do we need to wait?

7 MR. HALL: Pardon the delay, Your Honor.
8 I won't [sic] keep going. I'll continue questioning.

9 BY MR. HALL:

10 Q. When you say -- so when you say no
11 rate-making impact, is there going to be -- will we
12 see any hedge activity when Empire comes in for its
13 next rate case?

14 A. When Empire comes in for the next rate
15 case, assuming that rate case is after Empire acquires
16 the facilities, it's important to note that there are
17 two elements to the hedge. There's not just the cash
18 received or paid by Empire to the wind project, but
19 the cash distributions received by Empire from the
20 wind project.

21 When looking at the hedge portion of
22 those cash distributions, it will be equal and
23 opposite to the hedge cash paid or received by Empire;
24 thus, adding them -- when added together, it will
25 equal zero. So by hedge activity, there will be

1 activity with two sides of a hedge transaction that
2 will net to zero.

3 Q. Well, you -- but those numbers will be
4 presented and accounted for in a rate case. Correct?

5 A. I believe so.

6 Q. I mean I'm really just curious. So are
7 we going to see the math in a rate case? Will it be
8 part of traditional rate-making or are we going to see
9 this in FAC? Or will we not see any of this at all
10 and you're just telling us that it goes out to net
11 zero?

12 A. Well, I believe I presented in my
13 Surrebuttal Testimony an example. I provided numerous
14 data requests which I've included in the Surrebuttal
15 Testimony as exhibits that demonstrates the
16 functioning of the hedge. When Empire proceeds to the
17 rate case, there's -- there's no intention to try to
18 include benefits for shareholders and not for
19 customers. There's no intention whatsoever other than
20 to properly reflect the net impact of the hedging
21 transaction, which is zero.

22 Q. Is there a difference between rate-making
23 impact and the phrase "rate impact" to you?

24 A. I -- I'm sure there's a distinction, but
25 at present I don't know if there's a material

1 difference.

2 Q. So would you -- would you say then that
3 the hedge has no rate impact to customers?

4 A. The hedge should have no rate impact to
5 customers.

6 Q. The rate -- no customer rate will go up a
7 cent because of the hedge?

8 A. That is correct.

9 Q. And customers won't be paying for the
10 hedge through the fuel adjustment clause?

11 A. If the appropriate rate-making treatment
12 is implemented which accounts for both elements of the
13 hedge, yes.

14 MR. HALL: Your Honor, may I approach
15 again?

16 JUDGE DIPPELL: Yes.

17 THE WITNESS: Thank you.

18 BY MR. HALL:

19 Q. Again, I apologize for the delay, but
20 Mr. Mooney, I have handed you a copy of a data request
21 that was sent to you, OPC DR 1318. Do you recognize
22 this data request?

23 A. Yes.

24 MS. KNOWLTON: I would just like to note
25 for the record that what Mr. Mooney is being shown is

1 from the prior docket, E0-2018-0092 and is dated
2 April 30th, 2018.

3 MR. HALL: Yes, that is correct.

4 JUDGE DIPPELL: Thank you.

5 MR. HALL: Thank you.

6 BY MR. HALL:

7 Q. Mr. Mooney, the question in that data
8 request was whether -- how and whether the hedge
9 amounts will be recorded in the Uniform System of
10 Accounts. Do I have that correct?

11 A. That's correct.

12 Q. And then in response B you posited that
13 it's anticipated that the net cost revenue of the
14 hedge will be recorded in Account Number 555 purchase
15 power. Am I reading that correctly?

16 A. Yes.

17 Q. Should I -- from this then, do I -- is it
18 your opinion that putting this into Account Number 555
19 is not rate-making?

20 A. Sorry. Could you please repeat the
21 question?

22 Q. You've repeated -- you've repeated your
23 assertion that the hedge just has -- has no
24 rate-making impact. Correct?

25 A. I have indicated that it has no

1 rate-making impact. And I've mentioned in responding
2 to some of your questions earlier that it is important
3 to look at both elements of the hedge, the element
4 being the payments received by or paid by Empire to
5 the wind project as well as the cash distributions
6 from the wind project that are paid to Empire. The
7 cash flows around in a circle and nets to zero.

8 And so if you look at this data request
9 and focus only on one of the two legs, that is
10 accurate for that half of the hedging transaction.
11 But this data request, to my knowledge, does not
12 address the other half of the rate-making treatment.

13 Q. So it is getting rate-making treatment
14 though? So when you say no rate-making impact, you're
15 just saying that it's going to -- that you're looking
16 at the end result zeroing out. You're not looking at
17 whether or not we'll all have to deal with the hedge
18 in a fuel adjustment clause case or a future rate case
19 or anything like that?

20 A. I'm indicating that the net impact of the
21 hedge is zero. And if you decompose zero into two
22 separate items, one a plus, one a minus, the net
23 impact is zero. And, hence, you could interpret that
24 as being -- you can exclude it entirely from
25 consideration or you can include both elements that

1 have a net impact of zero and achieve the same result.
2 I'm not indicating a preference for one method or
3 another.

4 Q. Okay. As long as I got that. Is this
5 the same -- was that your understanding of the hedge
6 incorporated in the Non-Unanimous Stipulation and
7 Agreement that was filed?

8 A. Was my under-- sorry. Can -- can you
9 please repeat that question? Rephrase that?

10 Q. Sure. The hedge as you've just described
11 it, was that function incorporated in the
12 Non-Unanimous Stipulation and Agreement that was
13 filed?

14 A. I don't believe the Non-Unanimous
15 Stipulation and Agreement addresses all of the details
16 of that rate-making. So I guess the -- the response
17 to that would be I believe it was incorporated, but it
18 did not go into details.

19 Q. Is the -- is it your understanding that
20 the hedge is part of the proposed Market Protection
21 Plan?

22 A. Let me take a look at the proposed Market
23 Protection Plan because I'm not aware of the
24 paragraphs that specifically address the hedge. Can
25 you point me to --

1 Q. Well, the Market Protection Plan is
2 paragraph 21 of the Non-Unanimous Stipulation and
3 Agreement. And I'm sincerely asking. I see no
4 reference of the word "hedge" in this document.

5 Q. Right. Thank you for that clarification.
6 So with no reference to the hedge in the document,
7 that would adopt the approach that the hedge has zero
8 impact. And as a matter of simplification, it has not
9 been specifically called out in the document.

10 An alternative approach could have been
11 taken to go into very detailed accounting of which
12 FERC accounts would be used for what elements, but I
13 understand that that is not the approach that was
14 taken in Stipulation and Agreement as -- and that is
15 what is reflected in the document.

16 Q. I'd like to go through a few of the stip
17 terms of what's there. If there's anything at which
18 point you believe another witness would be more
19 capable to speak to, please stop me and let me know.

20 A. Will do.

21 Q. Turning back to page 4, paragraph 12-A,
22 there's the phrase that the wind projects will not be
23 operated in a manner that's in a manner detrimental to
24 customers' ratepayers -- to Empire's customers. Do
25 you see where I'm reading?

1 A. I see where you're reading.

2 Q. What does that phrase mean to you?

3 A. I believe you already asked Mr. Mertens
4 and Mr. Holmes this question. I would concur with
5 their testimony.

6 Q. Well, you see, I'm asking -- so Mertens
7 was phrasing -- I don't want to misquote anyone, but
8 whatever Mertens' answer was, you gave a very emphatic
9 breathing "no" from the back gallery so I wanted to
10 make sure we were all getting it right. This phrase
11 is just relating to whether or not Empire's going
12 to -- this phrase bars Empire from selling the wind at
13 negative prices in the market?

14 A. That is not what this phrase means.

15 Q. What's it mean?

16 A. This phrase means that Empire will
17 continue to operate wind projects in the exact same
18 way that it is currently operating the Elk River and
19 Meridian Way wind projects, which is in a way that is
20 consistent with the SPP rules and in a manner that is
21 not detrimental to customers.

22 Q. Was there a reason why a vague phrase
23 like "not detrimental" was used instead of talking
24 about the bidding into the market?

25 A. I don't believe that "not detrimental" is

1 vague. In fact, I believe that it means -- and I'm
2 not a lawyer so I can't interpret legal language, but
3 I would say "not detrimental" means we're not causing
4 harm to customers and in a way that is consistent with
5 how we've been operating and bidding the Elk River and
6 Meridian Way wind facilities for more than a decade.

7 Q. Mr. Mooney, could you please turn to
8 page 8, paragraph 17, regarding Asbury. I'm looking
9 at 17-A. Can you speak to that?

10 A. No, I cannot.

11 Q. Who would be the proper Empire witness to
12 question on this?

13 A. I believe Mr. Holmes already identified
14 Mr. Wilson or Mr. Mertens as the appropriate witness.

15 Q. Mr. Mooney, can you speak to the wind
16 project in-service criteria on page 13?

17 A. I have some general familiarity, but I
18 would recommend Mr. Wilson is the witness to be
19 requesting information about this provision.

20 Q. Okay. I'll defer questions on that to a
21 later time.

22 Mr. Mooney, do you have a copy of your
23 Surrebuttal Testimony in front of you?

24 A. I do.

25 Q. Would you please turn to page 18? I'm

1 looking at lines 5 through 13. Do you follow?

2 A. Not there yet.

3 Q. Oh, pardon me.

4 A. Sorry. Could you please repeat the page
5 number?

6 Q. Page 18.

7 A. Okay. I've got page 18.

8 Q. Okay. I believe we'll have to go
9 in-camera at this time. I just wanted you to see what
10 we were talking about beforehand so we can ascertain
11 whether or not we will need to go full in-camera.

12 JUDGE DIPPELL: Okay. So --

13 MR. HALL: Do I move to go in-camera at
14 this time?

15 JUDGE DIPPELL: -- there's either
16 in-camera or not in-camera, so --

17 MR. HALL: Well, this -- this isn't -- I
18 move to go in-camera.

19 JUDGE DIPPELL: Are you going to ask
20 specific questions about the information that has been
21 designated as highly confidential?

22 MR. HALL: Yes. I only had some
23 question -- I only had some question as to whether we
24 would go in-camera because the Commission indicated
25 that if we were to go in-camera and clear out the

1 room, we should be certain as to -- whoever is
2 maintaining confi-- confidentiality should be able to
3 express and justify that.

4 As this is not information that Public
5 Counsel's maintaining confidential, I wanted Empire to
6 see what we're looking at before we -- I started going
7 into it -- the subject matter.

8 JUDGE DIPPELL: Okay. And is the subject
9 of that information from lines 5 through 13 on page 18
10 of the stip and agreement that was designated highly
11 confidential by Empire, is that --

12 MS. KNOWLTON: Correct. Starting on line
13 6 through line 11 is information that relates to
14 confidential Vestus pricing.

15 JUDGE DIPPELL: Okay. Okay. Well, if
16 you maintain that this still needs to be confidential,
17 we can go ahead and go in-camera. So I will ask
18 anyone in the room not able to hear confidential
19 information -- and if the attorneys would help police
20 that and I will go to the in-camera session.

21 (REPORTER'S NOTE: At this time an
22 in-camera session was held, contained in Volume 3,
23 pages 267 to 269.)
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1 (REPORTER'S NOTE: Public session was
2 resumed at this time.)

3 JUDGE DIPPELL: We're back in the public
4 session. You can continue.

5 MR. HALL: Thank you Mr. Mooney. I have
6 no further questions at this time.

7 THE WITNESS: Thank you.

8 JUDGE DIPPELL: I apologize. Are there
9 questions from the Commission, Mr. Chairman?

10 CHAIRMAN SILVEY: Yes. Thank you.

11 QUESTIONS BY CHAIRMAN SILVEY:

12 Q. Do you have a copy of the Non-Unanimous
13 Stipulation and Agreement?

14 A. Yes.

15 Q. Okay. Great. On page 6, you have a
16 chart there. Second row of the chart starts with
17 Approximate Expected Return. What does that return
18 include? Does it include just equity or both debt and
19 equity?

20 A. I'm unaware of how tax equity partners
21 financed our investments in wind projects, in tax
22 equity partnerships for wind projects. But one would
23 expect, like any company, they would use both debt and
24 equity to finance. What I don't know is what their
25 leverage ratio would be for that investment.

1 Q. Okay. Is there going to be any other
2 witness that may have a better answer for that or --

3 A. No. I believe I am the most qualified
4 witness, but I -- I don't know, for instance, what
5 criteria a bank like Wells Fargo would contemplate in
6 terms of percentage equity versus percentage debt for
7 such an investment.

8 Q. But you would expect to include both?

9 A. Yes.

10 Q. In some ratio?

11 A. Yes.

12 Q. Okay. Thank you. And then how will
13 Empire know when the tax equity partner has met their
14 expected return? Are there reports or --

15 A. There's a detailed tracking model in form
16 and substance very similar to the work papers that
17 were filed with this application. So each project has
18 a very detailed financial model that keeps track of
19 all of the cash flows, production tax credits and tax
20 balances for the -- the projects and keeps track of
21 the return. And that model is updated on a quarterly
22 basis throughout the ten-year anticipated lifetime of
23 the tax equity partner's involvement.

24 Q. Okay. And it's expected that it will be
25 approximately ten years when they meet their expected

1 return?

2 A. That's correct.

3 Q. And the market price protection is in
4 place for exactly 120 months after it begins. So what
5 happens if they meet their expected return let's say
6 in 7 years or if it takes 15 years? How would
7 those -- how would those be treated?

8 A. With respect to the tax equity
9 partnership, if they meet their return in a shorter
10 period of time -- seven years would be exceedingly
11 fast, but just sticking with that example, then at
12 that time Empire would have an ability to purchase the
13 remainder -- the remaining 5 percent stake that the
14 tax equity partner had.

15 The -- the benefits to Empire would be
16 exceedingly substantial, given if tax equity earns
17 their return in that short of a period, then almost by
18 definition there would be no implication to the MPP
19 because it would be in such a favorable position, no
20 regulatory liability would be created.

21 In the opposite scenario, if the tax
22 equity return takes longer to -- to achieve then the
23 expected 10-year time frame, that expected 10-year
24 time frame then would be longer than -- sorry, the
25 time frame for tax equity to achieve its return would

1 extend let's just say for example to 12 years. That
2 12-year period overlaps with the 10-year period of the
3 MPP and I'm afraid that I'm not familiar with the
4 provisions in the MPP for that type of overlap.

5 Q. Okay. And then on page 8 as it pertains
6 to Asbury, Number 17, B says that if Asbury is sold or
7 retired between general rate cases, the Commission
8 should authorize Empire to create a regulatory asset
9 representing the undepreciated balance of the Asbury
10 facility.

11 So does this Stipulation and Agreement
12 create that or does it -- does it mean that Empire
13 will come back if that situation occurs for the
14 Commission to create the regulatory asset at that
15 time?

16 A. Well, I'm not a lawyer and can't
17 necessarily interpret the language. I think it was
18 one of our witnesses that -- that testified that the
19 use of the word "should" in this instance is in
20 essence a position presented by the parties to the
21 Commission, and the Commission then clearly has the
22 authority to make that decision.

23 But I believe this language indicates
24 this is the position put forward by the signatories to
25 this Non-Unanimous Stipulation and Agreement as a

1 recommendation to the Commission.

2 Q. Okay. And then in the next one, in C, it
3 uses the language, If Asbury is sold or retired
4 between general rate cases, EDE will -- will create a
5 regulatory liability account.

6 So is that something that they would come
7 back to or under the Stipulation and Agreement, is
8 that something that would automatically happen? And I
9 guess my question is why is the language different in
10 B and C and how those are handled?

11 A. While I can't speak to how this pertains
12 to the rules of the Commission, I would indicate that
13 the intent is that we are in agreement with the notion
14 that Empire's not going to benefit its shareholders by
15 shutting Asbury, realizing cost savings and flowing
16 through those savings to shareholders rather than
17 customers. Hence, the use of the word "will" is an
18 indication of our intent to benefit our customers.

19 Q. Okay.

20 CHAIRMAN SILVEY: Thank you, Judge.

21 JUDGE DIPPELL: Commissioner Kenney?

22 COMMISSIONER KENNEY: I have no
23 questions.

24 JUDGE DIPPELL: Commissioner Hall?

25 QUESTIONS BY COMMISSIONER HALL:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Empire is planning on purchasing the wind
4 projects on or around January 4th of 19-- of 2021; is
5 that correct?

6 A. Yes.

7 Q. And the hope is for an in-service date of
8 December 31, 2020. Correct?

9 A. I would say that that's not the planned
10 in-service date. That would be cutting it fairly
11 close. The planned in-service date is -- is earlier,
12 but the purchase date by Empire is at the beginning of
13 January.

14 Q. Okay. I was just looking at pages 24 and
15 25.

16 A. Pages 24 and 25 of which testimony?

17 Q. Direct.

18 JUDGE DIPPELL: Commissioner Hall, he has
19 direct from both cases. Do you --

20 COMMISSIONER HALL: Oh.

21 THE WITNESS: Is this the November 18th
22 testimony or the October testimony?

23 BY COMMISSIONER HALL:

24 Q. October.

25 JUDGE DIPPELL: So that's --

1 BY COMMISSIONER HALL:

2 Q. So has that changed since then? And
3 that's fine if it has.

4 A. I -- I don't recall. Perhaps it has --
5 oh, I -- I can verify if you would like me to.

6 Q. Well, the in-service date has to be
7 before the -- the wind projects are purchased?

8 A. The in-service date has to be before,
9 yes.

10 Q. Okay. So the -- the sooner the better,
11 but that is the -- that's the final deadline. And
12 I'm -- and I'm getting to this because at least in
13 this prior testimony, you -- you made that point in
14 order to make it clear that the Commission -- that the
15 Company would like the Commission to act quickly on
16 the request.

17 A. Yes. The December 31st, 2020 date is the
18 last date that the wind turbines can be placed in
19 service and still qualify for 100 percent of PTCs.

20 Q. And that's because you've -- you've --
21 you've already met the -- the -- the 2007 -- FERC 2017
22 deadline for starting construction, but you have to
23 have it done within four years of that?

24 A. That's correct.

25 Q. Are there hedging agreements with just

1 the two Missouri wind farms or is there also one
2 with -- with the Kansas wind farm?

3 A. There's also one with the Kansas wind
4 farm.

5 Q. Okay. I must -- same terms?

6 A. Very similar terms. Slight difference in
7 pricing I believe in -- in cents, not dollars.

8 Q. Okay. And in this testimony you also --
9 and again, I'm looking at this Direct Testimony from
10 October of '18. You -- and it was indicated here that
11 it was confidential so I won't give the number, but
12 the -- the levelized cost of energy for the three
13 projects.

14 A. Right.

15 Q. And I'm wondering if you could explain to
16 me why that is significant to -- to the determination
17 that's being -- the application that's pending before
18 the Commission?

19 A. Why the levelized cost of energy is an
20 important metric?

21 Q. Yes.

22 A. That is a metric that we have used to
23 make sure that as we move forward from the previous
24 docket, the 2018-0092 with the full generation fleet
25 savings analysis, that we ensure that we are

1 proceeding on the same basis as was analyzed in that
2 docket in all material respects.

3 In order to do so, we have focused on the
4 metric levelized cost of energy as a way to ensure
5 that as we've negotiated the purchase sale agreements
6 and finalized and executed those agreements, that the
7 updated costs, whether it is capital costs or
8 operating costs do result in a materially similar
9 value for LCOE. And then by extension, deliver the
10 same level of benefits to customers as was put forward
11 in the previous docket.

12 Q. Okay. And if I were to compare the
13 levelized cost of energy with the projected market
14 price in SPP, what would I do with the difference
15 between those two numbers?

16 A. The difference between those two numbers
17 if -- if I'm following your question correctly, let me
18 know if I'm not, I believe would represent the
19 anticipated -- the forecasted savings that will be
20 attributed to customers.

21 Q. And then you -- you also noted that
22 Empire does not have the tax appetite -- and I guess
23 that's a term of art -- to take advantage of the
24 accelerated depreciation and the tax credits. What is
25 tax appetite? Is that the size of the company or --

1 or --

2 A. And sorry, maybe that's an imprecise
3 term. With the previous use of bonus depreciation for
4 previous capital expenditures, Empire has accumulated
5 tax loss carry forwards. Those tax loss carry
6 forwards can be used to offset cash tax payable in
7 future years.

8 Q. And they have to be used within a certain
9 number of years?

10 A. I'm not familiar, but that's the general
11 concept that applies, yes. Production tax credits
12 similarly. I think it's a bit of a different issue
13 where -- with the production tax credits with over
14 2.4 million megawatt hours of anticipated annual
15 generation, the value of the tax generated in any
16 given year actually exceeds the income tax liability
17 that Empire would have before considering other loss
18 carry forwards or those tax credits and, hence,
19 the -- the size of the projects, combined with the
20 previous tax loss carry forwards from bonus
21 depreciation mean that Empire cannot realize cash
22 savings from these tax benefits in the near term.

23 Q. And so that's the difference between the
24 position that Empire is in and say Ameren or KCP&L
25 with regards to their wind projects? They -- they --

1 they have the tax appetite to --

2 A. Yes. That's correct I -- I believe on
3 both fronts. I'm not familiar with their actual tax
4 position, but I know that they are much larger
5 organizations and 600 megawatts would be a much
6 smaller proportion generating production tax credits
7 that -- that might not offset their full income tax
8 liability.

9 Q. Okay. Thank you.

10 A. Thank you.

11 JUDGE DIPPELL: All right. Is there
12 further cross-examination based on questions from the
13 Bench from Renew Missouri?

14 MR. OPITZ: No, thank you, Judge.

15 JUDGE DIPPELL: Division of Energy?

16 MS. REEVES: No, Your Honor.

17 JUDGE DIPPELL: MECG?

18 MR. WOODSMALL: No, thank you.

19 JUDGE DIPPELL: Staff?

20 MS. MERS: No, thank you.

21 JUDGE DIPPELL: Public Counsel?

22 MR. HALL: None at this time.

23 JUDGE DIPPELL: Is there redirect?

24 MS. KNOWLTON: Very limited, thank you.

25 REDIRECT EXAMINATION BY MS. KNOWLTON:

1 Q. Mr. Mooney, you were asked about the
2 Company's identification of a tax equity partner by
3 OPC Counsel Hall and whether there would be multiple
4 partners. Does Wells Fargo have any role in
5 soliciting other tax equity partners to participate in
6 the transaction that's being proposed?

7 A. Yes. Wells Fargo is leading that
8 solicitation. Has, in fact, contacted a number of tax
9 equity partners who are very interested in the project
10 and has identified a short list of those other
11 partners with whom to then move forward in a short
12 time frame.

13 Q. Would those other tax equity partners
14 participate on the same terms that Wells Fargo does
15 with regard to its investment?

16 A. Yes.

17 Q. Commissioner Hall asked you about the
18 Company's request for an order-- asked you with regard to
19 the timing of the order-- of the need for an order in
20 this docket. Would you explain what is driving the
21 Company's request for an order relatively quickly in
22 this docket?

23 A. Well, as -- as mentioned earlier, there
24 is the ultimate deadline of needing to have the
25 projects placed in service by December 31st, 2020 in

1 order to be eligible for the full PTC value. And in
2 order to do so, there are obviously interim deadlines
3 in terms of starting construction.

4 Those construction deadlines would see
5 the project starting construction on June 15th for the
6 Neosho Ridge project and somewhat later, I don't
7 recall the exact dates, for Kings Point and North Fork
8 Ridge. It's at the -- at those dates that in order to
9 maintain that schedule and complete the projects on
10 time, that Empire has to commit significant funds to
11 the projects through bond supply agreements and
12 engineering procurement and construction agreements
13 with an EPC contractor.

14 So with those significant financial
15 commitments, Empire would like to have a certainty as
16 to the regulatory outcome before committing Empire
17 customers to those significant financial commitments.

18 MS. KNOWLTON: The Company has nothing --
19 nothing further for Mr. Mooney.

20 JUDGE DIPPELL: Okay. Thank you.

21 Mr. Mooney, I believe that concludes your
22 testimony and you may step down.

23 THE WITNESS: Thank you.

24 JUDGE DIPPELL: Okay. It is almost
25 20 till 5:00. I had not intended to go past 5:00 this

1 evening, but maybe we could go ahead and take
2 advantage of the last 20 minutes and get Mr. McMahon
3 started.

4 MS. KNOWLTON: Sure. We'd be glad to.

5 MR. WILLIAMS: We may get him finished.

6 MS. KNOWLTON: The Company calls James
7 McMahon.

8 JUDGE DIPPELL: Let's take just a brief
9 break while the witnesses switch. I'm just -- I'm
10 just going to go off the record for about five
11 minutes. We'll come back on at a quarter till.

12 (A recess was taken.)

13 JUDGE DIPPELL: Okay. We are back on the
14 record and Mr. McMahon --

15 THE WITNESS: Yes.

16 JUDGE DIPPELL: -- is that the way you
17 say it? Sorry. I mispronounced it earlier -- has
18 taken the witness stand. Do you -- let me go ahead
19 and swear you in.

20 THE WITNESS: Uh-huh.

21 (Witness sworn.)

22 JUDGE DIPPELL: Thank you. You can go
23 ahead.

24 CASEY JAMES MCMAHON, being first duly sworn, testified
25 as follows:

1 DIRECT EXAMINATION BY MS. KNOWLTON:

2 Q. Good afternoon. Would you please state
3 your full name for the record.

4 A. Casey James McMahon.

5 Q. Mr. McMahon, by whom are you employed and
6 in what capacity?

7 A. Charles River Associate as vice
8 president.

9 Q. Have you caused to be prepared for the
10 purposes of this proceeding certain Surrebuttal
11 Testimony in question and answer form?

12 A. Yes.

13 Q. Is it your understanding that that
14 testimony has been marked as Exhibits 7-P and 8 --

15 A. Yes.

16 Q. -- for identification?

17 A. Yes.

18 Q. Oh, excuse me. Just -- I -- correct
19 that. Just 8.

20 A. Yes.

21 Q. Do you have any changes that you would
22 like to make to that testimony today?

23 A. I do not.

24 Q. If I asked you the questions contained in
25 that testimony in Exhibit 8 today, would your answers

1 be the same?

2 A. Yes.

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

5 A. Yes.

6 MS. KNOWLTON: Your Honor, I offer
7 Exhibit 8 into evidence.

8 JUDGE DIPPELL: Would there be any
9 objections to Exhibit 8?

10 Seeing none, then I will admit it.

11 (Exhibit 8 was received into evidence.)

12 MS. KNOWLTON: The Company offers
13 Mr. McMahon for cross-examination.

14 JUDGE DIPPELL: All right. Is there
15 cross-examination from Renew Missouri?

16 MR. OPITZ: No, thank you, Judge.

17 JUDGE DIPPELL: Division of Energy?

18 MS. REEVES: No, Your Honor.

19 JUDGE DIPPELL: MEGC?

20 MR. WOODSMALL: No questions.

21 JUDGE DIPPELL: Staff?

22 MS. ASLIN: Just a few questions.

23 CROSS-EXAMINATION BY MS. ASLIN:

24 Q. Mr. McMahon, are you familiar with the
25 testimony of OPC witnesses Marke and Mantle and the

1 concerns that they expressed regarding these projects
2 generally?

3 A. Yes.

4 Q. And what sort of analysis would you
5 usually expect to support the sort of claims that they
6 make?

7 A. Well, I would expect -- first of all,
8 their claims are generally about historical pricing
9 conditions and the current situation in SPP. And I
10 would expect modeling that looks to supply and demand
11 in the future to drive decision making.

12 Q. And did you see that sort of analysis in
13 OPC's testimony?

14 A. No.

15 Q. Based on your experience, is every
16 project that enters the SPP queue eventually built?

17 A. No. No. Many -- many more projects
18 enter the queue than are built.

19 Q. Thank you. No further questions.

20 JUDGE DIPPELL: Anything from Public
21 Counsel?

22 MR. WILLIAMS: Just a few. Thank you.

23 CROSS-EXAMINATION BY MR. WILLIAMS:

24 Q. Good afternoon, Mr. McMahon.

25 A. Good afternoon.

1 Q. Are you familiar with technology
2 improvements that have taken place in the wind -- wind
3 generation industry?

4 A. Yes.

5 Q. Are you familiar with wind generation
6 technology improvements that have not yet made it into
7 commercial operation?

8 A. No.

9 Q. Earlier you heard a quote from a
10 Commission Report and Order on remand in the Grain
11 Belt case --

12 A. Uh-huh.

13 Q. -- that the Commission recently -- a
14 finding of the Commission that it recently made and
15 I'll repeat it for you. Quote, The wind industry will
16 not need the federal production tax credit after 2023
17 because of continuing technology improvements, closed
18 quote.

19 Do you agree or disagree with that
20 statement by the Commission or have no opinion?

21 A. I have an opinion that the production tax
22 credit has been extremely favorable to wind,
23 particularly as capacity factors have risen. And so
24 I -- I think that the PTC is still a very important
25 part of a project decision.

1 Q. Well, specifically do you agree or
2 disagree with the Commission's statement that the wind
3 industry won't need the production tax credits after
4 2023?

5 A. I think it depends on -- on what your
6 view is on -- on the wind and the future of -- of wind
7 technology. I think that wind will continue to be
8 built in s-- at some level without the production tax
9 credit, but not nearly to the levels of today.

10 Q. No further questions.

11 JUDGE DIPPELL: Are there any questions
12 from the Commission --

13 COMMISSIONER KENNEY: I have none.

14 JUDGE DIPPELL: -- Commissioner Kenney?

15 I don't have any at this time either.

16 However, there may still be some questions for you,
17 Mr. McMahon, from the Bench. Are you -- are you
18 planning to stay the -- stay and be here tomorrow?

19 THE WITNESS: I didn't intend to be on
20 the stand today, so yes I'll be here tomorrow, yeah.

21 JUDGE DIPPELL: Okay. I -- I hate to ask
22 you to --

23 THE WITNESS: That's fine.

24 JUDGE DIPPELL: -- hang around if you
25 hadn't planned on that, but -- is there any redirect

1 based on the cross-examination?

2 MS. KNOWLTON: There's none.

3 JUDGE DIPPELL: Okay. Well, then at this
4 time I will -- I will tell you that you can step down,
5 but I'm going to hold you for further questions if
6 they come up. I will let you know as soon as I do
7 whether there are any additional Commissioner
8 questions. I wasn't expecting to get this far either,
9 so -- so you can go ahead and step down for now.

10 THE WITNESS: Thank you.

11 JUDGE DIPPELL: Okay. Is there anything
12 else? I think that's about a good place to stop for
13 the day. And maybe we'll have a little more airflow
14 tomorrow, it won't be quite as stuffy in this room.
15 Is there anything else that we need to take care of
16 before we go off the record?

17 MR. WILLIAMS: 8:30 tomorrow morning?

18 JUDGE DIPPELL: 8:30 is what I had in
19 mind. Not seeing any major objections, so 8:30 we
20 will resume in the morning. We will conclude
21 Mr. McMahon and go on to Mr. Wilson. We can go ahead
22 and go off the record.

23 (WHEREUPON, the hearing was adjourned
24 until April 9, 2019 at 8:30 a.m.)
25

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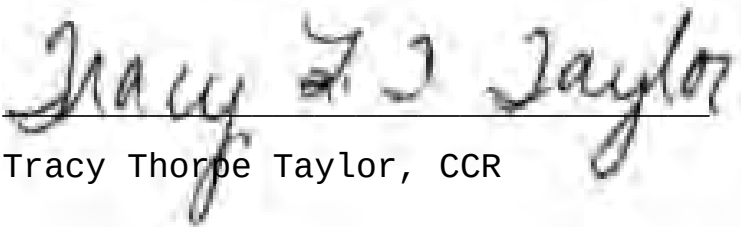
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1 CERTIFICATE OF REPORTER
2

3 I, Tracy Thorpe Taylor, CCR No. 939, within the
4 State of Missouri, do hereby certify that the
5 testimony appearing in the foregoing matter was duly
6 sworn by me; that the testimony of said witnesses was
7 taken by me to the best of my ability and thereafter
8 reduced to typewriting under my direction; that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to the action in which this matter was
11 taken, and further, that I am not a relative or
12 employee of any attorney or counsel employed by the
13 parties thereto, nor financially or otherwise
14 interested in the outcome of the action.

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16 Tracy Thorpe Taylor, CCR
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