

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 Evidentiary Hearing
7 May 14, 2008
8 Jefferson City, Missouri
9 Volume 6

10 In the Matter of The Empire)
District Electric Company of)
11 Joplin, Missouri for Authority to)
File Tariffs Increasing Rates for) Case No. ER-2008-0093
12 Electric Service Provided to)
Customers in the Missouri Service)
13 Area of The Company)

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16 CHERLYN D. VOSS, Presiding,
17 REGULATORY LAW JUDGE.

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19 JEFF DAVIS, Chairman,
20 ROBERT M. CLAYTON III,
TERRY JARRETT,
KEVIN GUNN,
COMMISSIONERS.

21

22 REPORTED BY:

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

2 JUDGE VOSS: We are on the record in the
3 second day of the hearing in Commission Case No.
4 ER-2008-0093, in the matter of the Empire District
5 Electric Company of Joplin, Missouri for authority to file
6 tariffs increasing rates for electric service provided to
7 customers in the Missouri service area of the company, and
8 we are ready to proceed with opening statements on the
9 issue of policy and overview.

10 MR. SWEARENGEN: Your Honor, Jim Swearengen
11 for the company. We really don't have an opening
12 statement on policy overview. Mr. Gipson is here. He
13 filed some brief testimony and he's prepared to take the
14 stand on that.

15 JUDGE VOSS: Excellent. Does Staff have an
16 opening on policy and overview?

17 MR. REED: Yes, always, and it's very
18 brief, Judge. The policy witness today, of course,
19 Mr. Gipson is for Empire. Today the Staff would put on
20 the stand James Watkins, who through his testimony
21 sponsored the Staff report regarding the rate design
22 aspect of this case. So with regard to policy in
23 particular, I think generally James Watkins addressed rate
24 design issues as a whole, so he would be available for
25 questions.

1 Mark Oligschlaeger, the co-case coordinator
2 on this case, was in charge of the revenue requirement
3 aspect of this case and would be available for questions
4 as well. That's my opening. Thank you.

5 JUDGE VOSS: Thank you. Public Counsel?

6 MR. MILLS: I don't have an opening
7 statement for this issue. Thank you.

8 JUDGE VOSS: Industrials?

9 MR. WOODSMALL: No, your Honor. Thank you.

10 JUDGE VOSS: Natural Resources?

11 MS. WOODS: No, your Honor. Thank you.

12 JUDGE VOSS: All right. Mr. Swearengen,
13 would you like to call your first witness?

14 MR. SWEARENGEN: Thank you, Judge. I call
15 Mr. Gipson at this time.

16 (Witness sworn.)

17 JUDGE VOSS: Thank you. Please proceed.

18 WILLIAM L. GIPSON testified as follows:

19 DIRECT EXAMINATION BY MR. SWEARENGEN:

20 Q. Would you state your name for the record,
21 please.

22 A. William L. Gipson.

23 Q. By whom are you employed and in what
24 capacity?

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

1 President and Chief Executive Officer.

2 Q. Did you prepare for purposes of this case
3 certain direct testimony in question and answer form?

4 A. I did.

5 Q. And do you have a copy of that testimony in
6 front of you this morning?

7 A. I do.

8 Q. For your information, I believe your direct
9 testimony has been marked as Exhibit 1. Are there any
10 changes or corrections that you wish to make with regard
11 to that testimony at this time?

12 A. There are none.

13 Q. If I ask you the questions that are
14 contained in Exhibit 1, would your answers this morning
15 under oath be the same?

16 A. Yes, they would.

17 Q. And those answers would be true and correct
18 to the best of your knowledge, information and belief?

19 A. Yes, they would.

20 MR. SWEARENGEN: With that, your Honor, I
21 would offer into evidence Exhibit 1, Mr. Gipson's direct
22 testimony, and tender him for cross-examination.

23 JUDGE VOSS: Are there any objections to
24 the admission of Mr. Gipson's testimony? Hearing none,
25 they're admitted.

1 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE VOSS: And I believe first up for
3 cross is Department of Natural Resources.

4 MS. WOODS: I have no questions for this
5 witness. Thank you, your Honor.

6 JUDGE VOSS: Commission Staff?

7 MR. REED: I have no questions, Judge.

8 JUDGE VOSS: Public Counsel?

9 MR. MILLS: Just briefly, your Honor. To
10 begin, I'd like have an exhibit marked.

11 JUDGE VOSS: Is this 310? I have 309 as
12 Robertson surrebuttal.

13 MR. MILLS: That's what I have, too.

14 JUDGE VOSS: So this is marked Exhibit 310.

15 (EXHIBIT NO. 310 WAS MARKED FOR

16 IDENTIFICATION BY THE REPORTER.)

17 CROSS-EXAMINATION BY MR. MILLS:

18 Q. Mr. Gipson, I've just handed you a copy of
19 what's been marked as Exhibit 310, and I will represent to
20 you that it's a printout of a -- of a story that the
21 Joplin Globe ran yesterday, I believe. Have you seen this
22 story in the Joplin Globe?

23 A. I had not.

24 Q. The Joplin Globe reports that Empire is
25 suing AGT Services of Amsterdam, New York. Do you know

1 who AGT Services of Amsterdam, New York is?

2 A. AGT Services is the company that we
3 contracted to perform the generator rewind in -- I believe
4 we contracted with them in October of 2007.

5 Q. And is this report accurate? Is Empire
6 suing AGT Services?

7 A. Yes, we are.

8 Q. And the report also states that the
9 extended outage because of the problems with the generator
10 rewind cost the utility as much as \$10 million. Do you
11 agree with that figure?

12 A. I think that's -- I think that's out of our
13 10Q, so yes. I believe that's what we disclosed in the Q.

14 Q. If Empire prevails in that suit -- first of
15 all, let me ask you this: Do you know what Empire's
16 asking for in the suit against AGT Services?

17 A. I believe our technical filing was damages
18 to exceed \$50,000.

19 Q. So you haven't established a number yet in
20 your pleading?

21 A. No.

22 Q. If Empire prevails and recovers money
23 perhaps somewhere in the neighborhood of \$10 million, does
24 Empire have any plans to flow that recovery back to
25 ratepayers?

1 A. Well, that \$10 million represents the
2 incremental cost for purchased power over and above the
3 cost to produce the power at the Asbury power station.
4 Those costs were not -- those incremental purchased power
5 costs were not reflected in the customers' bills because
6 they were part of base fuel and purchased power cost, and
7 thus, no, we wouldn't have any plans to return those
8 dollars, however much we would be able to prevail upon,
9 back to the consumers.

10 Q. Is it your intention to --

11 A. Let me --

12 Q. Go ahead.

13 A. I would say that is the case for the
14 Missouri customers. In the other jurisdictions we have a
15 fuel adjustment mechanism, and it is likely that we would
16 be required to flow those dollars back to the consumers in
17 those other jurisdictions.

18 Q. And how does Empire intend to account for
19 the cost of pursuing that lawsuit?

20 A. It will be one of our corporate expenses,
21 yes.

22 Q. And do you anticipate -- assuming that some
23 of those costs end up in a test year, would you plan to
24 exclude those, the cost of pursuing that lawsuit from
25 Missouri jurisdictional rates?

1 A. I hadn't given that any thought, Mr. Mills.

2 Q. Do you believe that would be appropriate?

3 A. I'll agree with you that that would be
4 appropriate for our Missouri jurisdiction.

5 Q. Now, the report also indicates that the
6 extended outage added expenses of about \$5.8 million in
7 the first quarter of 2008. Do you believe that's
8 accurate?

9 A. Yes.

10 Q. But nonetheless, revenue from electric
11 operations was up in the quarter considerably, is that
12 correct, over the prior year?

13 A. Yes.

14 Q. And was a portion of that increase in
15 revenue from an increase in off-system sales?

16 A. According to the Globe article here, it
17 says that Empire noted that the revenue from its electric
18 operations was up in the quarter because of colder
19 weather, off-system sales, customer growth and rate
20 changes.

21 Q. And my question is, do you agree that at
22 least part of that revenue growth was from an increase in
23 off-system sales?

24 A. I don't have our earnings statement in
25 front of me, but if I assume that the Joplin Globe

1 reported it correctly, which is a fair assumption, then
2 yes, I would agree with that.

3 Q. You don't have any independent knowledge
4 about the level of off-system sales year over year?

5 A. I could dig out my 10Q and find the
6 information, but I'd have to dig out the 10Q to do it, or
7 look at our press release.

8 Q. Do you have either of those documents with
9 you?

10 A. I do have the Q with me.

11 Q. If you wouldn't mind confirming that?

12 A. Now, this may take a minute, Mr. Mills. I
13 haven't committed it all to memory.

14 JUDGE VOSS: Mr. Gipson, for the sake of
15 the Commissioners, could you refer to what a 10Q is?

16 THE WITNESS: This is our quarterly filing
17 with the SEC on Form 10Q for the first quarter of 2008.

18 JUDGE VOSS: Thank you.

19 THE WITNESS: I would have expected by this
20 time that somebody in the back of the room would tell me
21 what page this is on.

22 MR. SWEARENGEN: Somebody way in the back
23 of the room.

24 THE WITNESS: They don't have a Q. All
25 right. Here we are. What I have is a quarter over

1 comparison here on page 34 of our form 10Q, and revenues
2 for the first quarter 2008, 8.1 million, against
3 4.2 million in the first quarter of last year. Net,
4 that's the, you know, the revenues less expenses, 1.9 in
5 the first quarter 2008, 1.4 million in the first quarter
6 2007.

7 BY MR. MILLS:

8 Q. And the 1.9 and the 1.4 are the margins
9 from off-system sales?

10 A. Yes.

11 MR. MILLS: Judge, I don't have any further
12 questions. I'd like to offer Exhibit 310.

13 JUDGE VOSS: Are there any objections to
14 the admission of Exhibit 310?

15 (No response.)

16 JUDGE VOSS: Hearing none, it is admitted.

17 (EXHIBIT NO. 310 WAS RECEIVED INTO
18 EVIDENCE.)

19 JUDGE VOSS: And that brings us to Empire.

20 MR. WOODSMALL: I have some.

21 JUDGE VOSS: Sorry. I'm getting off on my
22 chart.

23 MR. WOODSMALL: I'll be very brief.

24 MR. SWEARENGEN: I was looking forward to
25 cross-examining him.

1 JUDGE VOSS: I'm still in my mind thinking
2 Taylor. We've got three different orders of cross. It
3 does get a bit confusing.

4 CROSS-EXAMINATION BY MR. WOODSMALL:

5 Q. Good morning, sir. How are you?

6 A. Fine. How are you?

7 Q. I'm doing great. Do you have Exhibit 1,
8 your direct testimony, before you?

9 A. I do.

10 Q. A couple brief questions. Starting with
11 the question on page 3 and continuing over to the answer
12 on page 4, you state the reasons for Empire's rate
13 request. Do you see that?

14 A. Yes.

15 Q. And on lines 4 through 6 of page 4, you
16 note that one of the major factors is, quote, the large
17 capital expenditures we are making to participate in
18 construction and ownership of two new coal-fired
19 generating units, Iatan 2 and Plum Point. Do you see
20 that?

21 A. I do.

22 Q. Can you tell me how the construction and
23 ownership of those plants affect your rate increase
24 request?

25 A. You know, maybe I wasn't as eloquent with

1 that statement as maybe I should have been, but the real
2 driver here is as we're constructing those plants, it's
3 putting pressure on our cash flow metrics, so the need for
4 timely rate relief and timely recovery of our prudently
5 incurred costs such as fuel and purchased power or the
6 investment with the Asbury SCR or the Riverton 12, the
7 timely recovery of that in order to help bolster our cash
8 flow is important during the construction of those two
9 projects.

10 Q. I see. Thank you. Turning to the bottom
11 of page 5, lines 21 through 22, you're talking about the
12 fuel adjustment clause, and you state, quote, as
13 indicated, however, Empire is still exposed to increased
14 fuel cost risk and thus has requested an FAC. Do you see
15 that?

16 A. I do.

17 Q. And then continuing on page 6, you talk
18 about how S&P views fuel adjustment clauses and they view
19 it as a very positive step for regulation. Do you see
20 that?

21 A. I do.

22 Q. Would you agree that the fuel adjustment
23 clause as authorized by SB 179 would decrease Empire's
24 risk?

25 A. Yes, I would.

1 Q. Finally, on page 7 --

2 A. Can I add a little bit to that?

3 Q. Not with me you can't, but I'm sure you
4 will in a second.

5 Finally on page 7, line 5 through line 9,
6 you talk about the additional regulatory amortization, and
7 you state on line 8 that -- you state, no, that Empire's
8 not requesting any additional regulatory amortization. Do
9 you see that?

10 A. I do.

11 Q. Do you believe that that statement is still
12 true?

13 A. I'm not familiar with the last analysis,
14 but in our direct filing we requested no additional
15 amortization. I'd have to defer to Mr. Sager.

16 Q. Okay. So you don't know if that's still
17 true as of today or not?

18 A. I do not.

19 MR. WOODSMALL: I have no further
20 questions, your Honor.

21 JUDGE VOSS: Now, questions from the Bench.
22 Commissioner Jarrett?

23 QUESTIONS BY COMMISSIONER JARRETT:

24 Q. Good morning, Mr. Gipson.

25 A. Good morning, Commissioner.

1 Q. I have just a few questions. I know one of
2 the issues before the -- before us is the ice storm costs,
3 and I just wanted, if you could, give me a little overview
4 of what the company has been doing and is -- in the future
5 is going to do to improve customer reliability.

6 A. Commissioner, we -- that's an every day
7 occurrence at our organization, since the -- since I
8 became CEO, we've been battered by a number of severe
9 weather events, beginning with a series of tornadoes in
10 2003, the ice storm in January of '07, followed up by
11 another ice storm in December of '07, and yet another
12 round of tornadoes this past weekend.

13 So customer reliability and restoration
14 isn't a hobby with us. It's something that unfortunately
15 we get to perform quite often. We are in the midst of
16 looking at all of our operations as a result of those
17 with -- that's a continuous process with us.

18 After every one of these kind of major
19 events, we have a debriefing to look at the things that we
20 think we did properly, the things that we can improve
21 upon. Certainly access to our personnel is important in
22 terms of our customers making contact with us, so we've
23 been making some improvements in our -- in our call center
24 in terms of staffing and training and automation.

25 We've made some improvements to our website

1 most recently where we can indicate to the general
2 public -- of course, those that don't have electricity
3 can't quite see the website, and we understand that, but
4 more to the general public about, you know, outage safety
5 tips, things of that nature, generator safety, and as well
6 an outage display on our -- on our website of the actual
7 number of outages by particular areas.

8 We continually work to improve our tree
9 trimming efforts, and I believe we have a company witness
10 later on this week that has sponsored some testimony with
11 respect to vegetation management, but I'll give a quick
12 overview.

13 For years and years we have been steadily
14 increasing the amount of money that we spend on tree
15 trimming, and, you know, up until the last case, I really
16 fought to try to get at least our test year expenses
17 reflected in prospective rates. Now, we remedied that in
18 the last case, but in the previous cases that had been a
19 real problem for us.

20 Even this year when we knew that we were
21 going to have extensive cost pressures with the extended
22 outage at the Asbury plant, we increased our tree trimming
23 budget and intend to spend 10 percent more than we did
24 last year. Now, that's 10 percent more of the normal tree
25 trimming. I'm excluding all the tree trimming that we did

1 as a result of those two storms.

2 You know, we build our facilities to the
3 IEEE standard of half inch of ice load and a 30 mile an
4 hour wind, and we intend to maintain it that way. I've
5 got item after item on this, Commissioner. Tell me when
6 you're tired of me talking.

7 Q. No. Yeah. That's good, and I appreciate
8 that answer, and certainly I know the that southwest
9 Missouri area's been battered and even recently so. Our
10 thoughts and prayers are with all the folks down there.

11 A. Thank you, sir.

12 Q. And you did mention a little bit about
13 customer service. Obviously that's an important issue
14 that I look at. And could you talk a little bit more
15 about your call center and how you're addressing customer
16 complaints.

17 A. Well, I think one of the things that we --
18 our call center, we continually work to improve our
19 targets, and you know, it's average speed of answer, it's
20 the percent of calls that's answered within -- that are
21 answered within 30 seconds. It's -- it's courtesy, which
22 is a lot of training. It's a number of issues that we
23 work on there.

24 One of the things that we did to help
25 facilitate any kind of -- any kind of complaint issues is

1 we instituted a process very recently where the Commission
2 Staff has access to our customer information database,
3 such that if an individual does call the Commission Staff
4 lodging some sort of issue, that the Commission Staff can
5 get in and view payment history records and things of that
6 nature, so to try to streamline that effort.

7 We've also provided some access for the --
8 for the low-income agencies to provide access to those
9 agencies for the individuals that they're working on.

10 Continually we look for ways that make it
11 easier for our customer to do business with us. We've
12 instituted a number of changes to our website where we
13 can -- where customers can actually, you know, review
14 their own payment history and research particular issues,
15 energy calculator, you know, just a variety of things.

16 But, you know, it comes down to the basics,
17 you know, the blocking and tackling, and that is we've got
18 to answer the phone, we've got to answer it promptly,
19 we've got to be courteous when we do it, and those are the
20 things we work on.

21 Q. Thank you. I had a couple of questions
22 about fuel costs. I know that's again another issue in
23 this case. What does the company foresee fuel costs doing
24 short term, long term? Are they going to go up, down?

25 A. Well, we have -- depending on whose fuel

1 model you want to look at, what's kind of baked into base
2 rates today, that \$30.95 megawatt hours, is roughly 6.80
3 gas, and we're hedged pretty good on gas in that -- in
4 that kind of range, but not for 100 percent of our
5 expected burn for the next several years.

6 What we're seeing for the next -- for short
7 term and long term is no less than \$8 and, you know,
8 upwards of \$11 in the short term. That's for natural gas.
9 Coal prices are escalating as well. You know, history I
10 think is -- is a good predictor of the future in this
11 particular area.

12 In 2002 our total fuel and purchased power
13 cost, this is company-wide, was about \$115 million, and
14 last year was \$192 million. Now, that's roughly a
15 70 percent increase. And if you look at it on a dollars
16 per KWH, it was 1.8 cents in 2002, and 3.2 cents in 2007.

17 You know, Staff in its own report indicated
18 that we had not recovered \$85 million worth of fuel and
19 purchased power costs over that same time period. I don't
20 see fuel and purchased power costs declining in -- in the
21 short or the long term, unfortunately.

22 Q. Thank you. You know, another issue that's
23 big is, of course, you know, the carbon standards that
24 might be coming down and also renewable portfolio
25 standards. What is -- what is Empire doing on those

1 issues?

2 A. Well, let me take the last one first if you
3 don't mind. On the renewable portfolio standard, of
4 course we don't have a standard in any of the states that
5 we serve, and of course there's no federal standard. But
6 years ago, several years ago, we analyzed a particular
7 resource near Beaumont, Kansas. It's called Elk River
8 Wind Farm. But we brought that project on in late 2005,
9 and I can't give you -- I could if we went in-camera, but
10 I can't give it to you in open session what we actually
11 pay for that -- pay for that energy.

12 But if I were to equate that to our most
13 efficient natural gas unit, it would look like \$3.50
14 natural gas. So we think that's a real bargain for our
15 consumers. Now, it's a -- it's not as reliable a resource
16 as, you know, coal plant or a combined cycle natural gas
17 plant. You know, God pushes the green button and turns
18 those units on. We don't. And he also pushes the red
19 button to stop them.

20 Late this year we'll bring on another
21 project that is the Meridian Wave Wind Farm. It will be
22 located near Concordia, Kansas. And again, if I took --
23 looked at the cost of that energy as it starts, it will
24 look like \$5.50 gas, so we think that again is a bargain
25 for our consumers.

1 When we get to 2009 and have these projects
2 on, we'll have about 15 percent of the energy that we
3 deliver to our customers that are derived from these --
4 from these two wind projects combined. So we're very
5 proud of the position that we've taken with these
6 projects, and it's not because it looks good and it feels
7 good or we have some sort of standard to apply to it.
8 It's because it's been -- it is the economical choice for
9 our consumers.

10 With respect to carbon, I don't know where
11 the -- I don't know where to hedge at this point. You
12 know, this is an issue that is -- that there are as many
13 opinions on this and how to -- how to deal with it as
14 there are people that are talking about it. I can tell
15 you that it is one of those things that we try to take a
16 look at as we do our -- as we do our integrated resource
17 planning. It is one of the things that we think about as
18 we continue to look for different resources to -- to
19 provide energy for our consumers going forward.

20 But I don't know how to hedge it at this
21 point, other than to continue to -- to try to provide a
22 balanced mix of resources for our consumers. And, you
23 know, I think if you look at our balance, you know, we've
24 got 15 percent wind, we'll have roughly 25 percent that's
25 related to natural gas, and the bulk of it will be coal,

1 and -- which we will hope will be more stability in terms
2 of the price for our consumers.

3 COMMISSIONER JARRETT: Thank you,
4 Mr. Gipson. I have no further questions.

5 JUDGE VOSS: Commissioner Clayton?

6 COMMISSIONER CLAYTON: No questions.

7 JUDGE VOSS: Commissioner Gunn?

8 COMMISSIONER GUNN: I don't have any
9 questions.

10 JUDGE VOSS: Chairman?

11 QUESTIONS BY CHAIRMAN DAVIS:

12 Q. Good morning, Mr. Gipson.

13 A. Good morning, Chairman.

14 Q. You've seen Exhibit 310 that OPC marked and
15 I believe -- has it been offered?

16 JUDGE VOSS: Yes, and admitted.

17 BY CHAIRMAN DAVIS:

18 Q. Okay. So you've seen that, correct?

19 A. I have.

20 Q. Now, in the first sentence, first graph it
21 says, Empire District Electric Company reported earnings
22 for its first quarter which ended March 31st of \$7 million
23 for 21 cents per share. Is that -- that's correct?

24 A. It is.

25 Q. Okay. And then the last sentence, the

1 board of directors for Empire also declared a quarterly
2 dividend of 32 cents per share on common stock payable
3 June 15th to shareholders of record as of June 1. That is
4 also correct?

5 A. That is correct.

6 Q. Okay. So are you paying out more in
7 dividends than you're actually earning?

8 A. In that -- in this quarter, yes.

9 Q. In this particular quarter, yes. And
10 that's been a fairly common practice for Empire in the
11 last few years?

12 A. In 2006 in the aggregate, we earned more
13 than our annual dividend obligation, but we did not in
14 2007, and I don't -- I don't have the other years in front
15 of me, Commissioner.

16 Q. Okay. So in -- what would -- what was your
17 RO -- what was your -- what was your actual return on
18 equity in 2007?

19 A. About 7 percent.

20 Q. And do you recall what it was in 2006?

21 A. Right about 9 percent, I believe.

22 Q. And is it fair to say that fuel costs are
23 the most predominant factor?

24 A. Yes. Historically, yes. It may not be
25 quarter to quarter, but historically, yes.

1 Q. Are you familiar with your 10Q statement
2 that Empire Electric recently filed with the SEC?

3 A. Yes, I am.

4 Q. And if we were to look at the 10Q
5 statement, what would the 10Q statement say about earnings
6 per share in the 12 months ended March 31st, 2008 in terms
7 of electric and fuel -- electric fuel and purchased power
8 expenses?

9 A. Commissioner, I'm not sure I understand
10 your question.

11 Q. And was it -- I mean, how significant an
12 expense was it on a per share basis?

13 A. I've got 12 months -- I can give you -- I'm
14 not sure I've got that.

15 Q. Okay.

16 A. Well, we do have -- I don't think we do
17 a -- a per share analysis on the 12 months ended.

18 Q. Okay.

19 A. I know I've got the -- I've got the actual
20 dollars.

21 Q. What were the actual dollars?

22 A. 12 months ended fuel was 119 million,
23 119.3. And purchased power was 83.4. I don't have a
24 calculator with me.

25 Q. So 119.3 plus 83.4 --

1 A. Correct.

2 Q. -- total those up, that's approximately
3 \$202 million?

4 A. Yes, on a 12-month ended basis.

5 Q. On a 12 months basis. And what are you
6 currently recovering in rates for fuel and purchased
7 power?

8 A. \$30.95 a megawatt hour. Now I don't know
9 how many megawatt hours are -- I don't know the divisor
10 here.

11 Q. You don't know the divisor?

12 A. No, I don't. It's roughly -- it's going to
13 be roughly \$32.50, because we ended the year -- we ended
14 the year at 32 -- 32.30.

15 Q. Okay.

16 A. 2007. And then the first quarter we had
17 some costs that were higher than the first quarter of
18 2007, so it's going to be higher than that 32.30.

19 Q. Okay. So somewhere between a \$1.30 and
20 1.50 per megawatt hour?

21 A. Yes.

22 Q. And -- how many million megawatt hours?

23 A. About four and a half million for Missouri.

24 Q. Four and a half million for Missouri?

25 A. Uh-huh.

1 Q. What were Empire Electric's net earnings?

2 A. \$1.09 -- or \$1.14 on that same 12 months
3 ended basis.

4 Q. Okay.

5 A. Oh, you mean dollars, dollars and cents?

6 Q. Well, dollars and cents.

7 A. \$35,000,733.

8 Q. So roughly fuel costs at four and a half
9 million megawatts an hour times \$1.30, you're talking
10 roughly 6, \$7 million at a -- 35 million in earnings?

11 A. Uh-huh.

12 Q. Okay. Now, Mr. Gipson, I'm going to switch
13 now. The Asbury SCR issue.

14 A. Yes, sir.

15 Q. Empire has -- has stated that because
16 Empire has, you know, acted early, they were able to bring
17 their SCR project in at a lower cost relative to what
18 other utilities' SCR projects are costing?

19 A. Yes.

20 Q. And can you give us -- can you give us any
21 examples out there that you know of or can you cite any
22 empirical data for that statement?

23 A. Mr. John Twitty is the general manager of
24 City Utilities in Springfield, Missouri.

25 Q. Okay.

1 A. I spoke with him recently, and --

2 MR. MILLS: Judge, I'm not going to object
3 yet, but if we're going where I think we're going, I think
4 he's about to offer a price or amount or a statement from
5 someone who is not a witness in this case to establish the
6 truth of the matter therein. So if that is, in fact,
7 where he's going, I would object to his answer as being
8 hearsay.

9 JUDGE VOSS: Can you answer the question
10 without providing hearsay testimony?

11 MR. SWEARENGEN: Let me speak to that, your
12 Honor. I'm not so -- I don't know what the witness is
13 going to say obviously, but even if he says what Mr. Mills
14 thinks he's going to say, whether that's true or not
15 doesn't matter. The question is what does the witness
16 believe.

17 MR. MILLS: Well, if he's going to offer
18 prices that City Utilities have to show that his price is
19 better, then he's offering that for the truth of the
20 prices that he's heard from City Utilities, not that
21 he's -- whether or not Mr. Gipson believes that his price
22 is better is not the issue. It's whether it actually is
23 better. So the only reason that a hearsay statement would
24 be in this conversation is to prove the truth of the
25 matter herein.

1 MR. SWEARENGEN: That's not right. It goes
2 to the witness' state of mind, not to the truth of the
3 underlying statement.

4 MR. MILLS: I'd be happy to stipulate that
5 in this witness' state of mind, he thinks he's got a
6 better deal. That's fine with me.

7 CHAIRMAN DAVIS: Can I rephrase the
8 question, Judge?

9 JUDGE VOSS: Please do.

10 BY CHAIRMAN DAVIS:

11 Q. What is your -- what is your mental
12 impression regarding Asbury's SCR costs to -- relative to
13 that of other utilities?

14 A. Similarly sized units, half price.

15 Q. Okay. And are you aware of any public data
16 available that would support that contention that we could
17 take judicial notice of?

18 A. Commissioner, I'm not.

19 CHAIRMAN DAVIS: Thank you, Mr. Gipson.

20 JUDGE VOSS: Commissioner Clayton?

21 COMMISSIONER CLAYTON: Thank you.

22 QUESTIONS BY COMMISSIONER CLAYTON:

23 Q. Good morning, Mr. Gipson.

24 A. Good morning.

25 Q. Welcome back to Jefferson City. I just

1 have a couple of quick questions that I want to talk to
2 you about. Empire's had some difficulties in the last
3 couple of years with some very severe storms that have
4 ripped through the area and caused some significant damage
5 to the system.

6 What I wanted to ask you is, first of all,
7 whether you personally attended any of the local public
8 hearings that have been held associated with this case or
9 any other case?

10 A. Since I've been CEO, I've attended every
11 local public hearing.

12 Q. Okay. That's good to hear. I don't always
13 get that answer from the CEOs of utility companies.

14 A. I know you don't. That's why I do it.

15 Q. That's planning ahead right there. That's
16 great. Well, since you did attend each of those, you did
17 hear the testimony that your customers and the residents
18 of southwest Missouri conveyed to this Commission as part
19 of this rate case, correct?

20 A. I did.

21 Q. And what was your impression of the
22 frustration that was -- that was vented at those local
23 public hearings?

24 A. You know, I think there were a couple of
25 frustrations that I picked up on. One is, for whatever

1 reason, they believe that following the January event that
2 we should have been out and trimmed every tree in the
3 service area.

4 Second impression is that times are tough.
5 Fuel prices, gasoline prices, diesel fuel prices, milk,
6 eggs and butter are expensive and not going to get less
7 expensive, and cost pressures on a household are causing
8 people to stand back and say, well, if there's something
9 we can -- if there's someplace we can go and talk about
10 another cost increase, we're going to go and vent
11 ourselves and now have ourselves heard.

12 Q. Did you hear any concerns that warranted,
13 in your opinion, attention by Empire, any specific
14 concerns?

15 A. There were a few that we followed up on
16 with customers. We had an individual, you know, after a
17 storm event we -- you know, let me tell you that -- those
18 two storm events combined, we had 2,500 extra men on our
19 system. That's tree trimmers, linemen, electricians,
20 crafts people, and when you have that kind -- and we
21 normally have a complement of somewhere around 300 of
22 similarly skilled individuals.

23 When you bring on that kind of -- that kind
24 of extra resources, there are things that are going to get
25 temporarily repaired that fall through the cracks, and we

1 had a few of those. We had some issues with some
2 facilities that had been propped up to -- for lack of a
3 better term, or held up with ropes and we had not
4 gotten -- we had not gotten back to those customers'
5 facilities. And we were glad to learn that we needed to
6 get back there.

7 We had some issues with specific tree
8 trimming that I took care of some of those myself
9 personally. So yeah, there were some specific issues that
10 we followed up on.

11 Q. There were quite a few witnesses compared
12 to Empire's past cases since I've been here. In fact, I
13 think in past years, over the last five since I've been
14 here, Empire's had one or two witnesses and most of them
15 say, well, don't -- Empire deserves something in terms of
16 a rate increase but not much. This year we had -- I know
17 just from this one hearing we had over 20 witnesses and I
18 know it was --

19 A. I believe we had 42 individuals in total,
20 and that compares to our previous case where we had six.

21 Q. Well, that -- those numbers are certainly
22 consistent with my recollection of the last several cases.

23 A. Which I take as a positive testament in
24 those previous cases.

25 Q. I agree. I agree as well. However, since

1 we're dealing with the current case and the witnesses
2 increased for this case, Empire's faced two significant
3 storms, but also Empire's customers have experienced
4 significant outages, some 7, 8, 9, 10, 12 days or more in
5 some instances. In your opinion, do we need to be
6 changing the way we do business with regard to tree
7 trimming and infrastructure inspection? Do you think that
8 the rules that this Commission has passed will make a
9 difference in outages that potentially will face Empire in
10 the future?

11 A. You know, I responded to a similar set of
12 questions with Commissioner Jarrett. We continually look
13 for improvements in our system both on infrastructure
14 maintenance inspection and tree trimming. And the short
15 answer to your question is, yes, I do believe that the
16 rules that the Commission has passed will have an
17 improvement on reliability.

18 Q. Do you know what Empire's budget is for
19 tree trimming?

20 A. \$6.6 million this year.

21 Q. And how does that compare to, say, the last
22 three or four years over the last several rate cases that
23 Empire's had?

24 A. As I was talking with Commissioner Jarrett
25 or responding to his questions a few moments ago --

1 Q. I apologize for being repetitive.

2 A. That's fine. I don't mind repeating it.
3 We have increased our tree trimming/vegetation management
4 spending since I've been CEO every year. Even this year
5 when we believed -- when we knew that we were going to
6 have cost pressures because of the extended outage at the
7 Asbury unit, we increased our tree trimming expenses by
8 10 percent more than what we spent in 2007. And when I
9 say more than what we spent in 2007, I'm excluding the
10 tree trimming expenses that we incurred as a result of
11 those two ice storms.

12 We have -- up until the last case, we have
13 been really disappointed that we were unable to get at
14 least our test year tree trimming expenses reflected in
15 prospective rates. Now, in this last case we were able to
16 get that done, but prior to that we were taking a
17 five-year average of our tree trimming expenses and
18 reflecting those in prospective rates.

19 Now, so that -- you know, I guess the
20 bottom line of that is, notwithstanding the fact that we
21 weren't getting the recovery of all of our tree trimming
22 expenses, we were increasing our tree trimming spending.

23 Q. Let me make sure I understand that. What
24 years are we talking about?

25 A. I became the CEO in 2002.

1 Q. So '02. Do you recall what the budget
2 would have been for tree trimming in '02? I know that's
3 -- probably wasn't your number one priority when you came
4 in, but --

5 A. No, I don't recall, Commissioner.

6 Q. You don't recall. What is -- what would
7 have Empire's tree trimming budget been in say '03, '04,
8 '05, do you recall? You used some figures in terms of
9 10 percent increases and five-year averages, so I'm
10 assuming you have some knowledge of what -- how Empire's
11 budget has changed prior to '07, which I think is the
12 \$6.6 million figure.

13 A. No. '08 is 6.6. Last year was 6. The
14 previous year was about \$5 million. Previous to that I
15 think it was about four and a half million dollars.
16 Commissioner, Mr. Palmer, vice president of commercial
17 operations, is a witness later on this week, and I'm sure
18 we could have those numbers prepared for you.

19 Q. Well, and I'll get to those. I don't want
20 to lock you in to necessarily having the specifics of
21 that, but you did make a comment about -- it sounds like
22 some disputes either with Staff or some other parties
23 about inclusion in rates certain expenditures for tree
24 trimming. Did I -- did I hear that?

25 A. Up until the last case, yes.

1 Q. Up until the last case. And these figures
2 that you've just given me, are these actual figures or are
3 they amounts -- they were -- are these amounts that were
4 estimated in rate cases to be?

5 A. No. These would have been our actual tree
6 trimming expenses, and we'll get that -- we'll get that
7 ironed out and get it to Mr. Palmer and he can speak to it
8 when he's on the stand.

9 Q. Okay. Since you've been CEO, are you aware
10 of Empire not spending the -- not actually spending the
11 amount of money on tree trimming that was included in
12 rates?

13 A. No, sir.

14 Q. We've had other utilities not spending
15 their full amount on tree trimming as I understand it in
16 past cases. I was wondering if that was the dispute in
17 past Empire matters?

18 A. No, sir, not to my knowledge.

19 Q. Okay. Has Empire prepared a plan or had
20 prepared a plan of tree trimming that would match up to
21 its request for tree trimming in those past cases?

22 A. Yes.

23 Q. Do you recall the Staff response to --

24 A. Maybe I misunderstood your question. Can
25 you repeat the previous question?

1 Q. I guess what I'm trying to get at is, you
2 suggested that you've asked for more tree trimming funds
3 in the past --

4 A. No.

5 Q. -- in a rate case and that --

6 A. What I'm suggesting --

7 Q. Hang on for one second.

8 -- that the Commission hadn't -- wasn't
9 giving you the amount that you thought was necessary and
10 that now we're getting up higher. So I'm trying to
11 understand what Staff's position would have been and
12 actually what you-all requested.

13 A. What we requested, I believe, were our
14 actual test year tree trimming costs and expenses. And
15 what occurred in the previous cases prior to, you know,
16 prior to the last case, was this averaging the previous
17 five years of tree trimming expense.

18 Q. I see. So can I take from that, and I
19 certainly can't ask you to speak for other parties, but
20 what was your understanding of the reasoning behind that?
21 Was it just the Staff was disagreeing with the --

22 A. I can't speak to their -- to the rationale
23 of the other parties.

24 Q. You don't know?

25 A. Huh-uh.

1 Q. Okay. So the requested amount for '08 is
2 \$6.6 million?

3 A. No. That's what we have budgeted to spend
4 in 2008.

5 Q. Okay. And does that reflect a change in
6 tree trimming policy?

7 A. It does. We changed our practices several
8 years ago to a -- and Mr. Palmer can give you a lot more
9 details on this than I can, but essentially to change to a
10 different style of trimming that is called -- it's called
11 directional pruning. It's better for the tree. Has a
12 longer cycle. Customers don't like it at all.

13 In addition to that, we've contract -- the
14 contract that we have with the contractor we have on
15 system today provides for different means by which to --
16 for the trimming. We have individuals that go out ahead
17 of crews and mark just the trees that need to be trimmed,
18 and then they're paid based on the size of the tree or the
19 size of the limb. Whereas, the previous contractor was
20 basically time and material. So we believe we're getting
21 a lot more bang for our buck with this new methodology and
22 new contractor.

23 Q. Do you believe that we need to be putting
24 more into tree trimming in light of the weather patterns
25 that Missouri's been experiencing in recent years?

1 A. Yes, I do.

2 Q. What further changes do you think need to
3 be made?

4 A. Well, I think there's a -- you know, you
5 can look at the tree trimming costs on a -- in the test
6 year, pick some nominal increase to that and put in place
7 a mechanism similar to what we have in place for our
8 pension costs or our OPEB costs that would track any
9 changes above and below that set amount to be either
10 returned to the consumers if we don't spend that much
11 money or, you know, the consumers would pay for it on a
12 prospective basis if we spent more.

13 Q. Has Empire changed its -- any policies on
14 infrastructure either investment or inspection programs?

15 A. No. No, we've not.

16 Q. So have you-all identified any problems
17 associated with -- with infrastructure that's been out in
18 the field, have you found any failing infrastructure that
19 perhaps shouldn't have failed that needs to be addressed?

20 A. You know, that's a continual process is to
21 continue to take a look at the facilities that you have
22 installed and make sure that they're maintained properly.
23 When we build facilities, we build them to last a long
24 darn time.

25 I can tell you in the ice storm in January

1 of 2007, that we had a circuit -- a 69 KV circuit north of
2 Monett, Missouri that was virtually brand-new. It had
3 been destroyed in the tornadoes in 2003, and the ice load
4 crushed that particular transmission segment to the
5 ground. So it -- in that particular case, it didn't
6 matter a lot whether it was a new structure or an old
7 structure. You know, the ice load was simply more than
8 any structures could bear.

9 Q. I understand in those circumstances where
10 you have eight inches of ice or whatever the circumstances
11 are, and I saw some of the photographs. I guess my
12 question is, in your inspections and also considering the
13 new rules that the Commission has put in place, do you
14 anticipate that Empire will be looking at infrastructure
15 investments in a different light --

16 A. Oh, I --

17 Q. -- than it has in the past? Your other
18 response was almost like, well, no, we haven't found any
19 problems --

20 A. Well, you asked me if we had.

21 Q. Yeah.

22 A. Now, if you're asking me if we're going to,
23 then the answer to your question is, if we're going to,
24 the answer is yes. I approved some additions to our staff
25 last week to -- to assist in the infrastructure inspection

1 and maintenance.

2 Q. I don't think I have any other specific
3 questions. I appreciate you coming up, and I appreciate
4 the fact that you did attend those local public hearings.
5 I have had other management officials in other situations
6 not be aware of what's going on at those, so I think that
7 is very important. And it is my hope that we see some
8 improvement and don't see the outages that have been faced
9 by Empire in 2007.

10 A. We need to have -- it would help to have a
11 little bit of luck and a lot better weather.

12 Q. I agree. I agree. Thank you.

13 A. Thank you.

14 JUDGE VOSS: Chairman?

15 CHAIRMAN DAVIS: Can I go back and ask
16 Mr. Gipson a couple questions?

17 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

18 Q. Mr. Gipson, I think I heard in your
19 questioning with Commissioner Clayton, is it 6.6 or
20 6.8 million that Empire has budgeted for vegetation
21 management in 2008?

22 A. 6.6.

23 Q. 6.6. And does that include compliance with
24 the new Commission rules on vegetation management?

25 A. You know, I can't answer that,

1 Commissioner, because we put that budget together before
2 the rules were finalized. I'd have to defer to Mr. Palmer
3 on that.

4 Q. Okay. So you're going to defer to
5 Mr. Palmer. And that's Missouri specific, that 6. --

6 A. No. That's company-wide.

7 Q. Okay. That 6.6 is company-wide?

8 A. Uh-huh.

9 Q. What's the Missouri specific?

10 A. Be roughly 80 percent. You know, there
11 would be some differences based on the --

12 Q. Roughly 4.8 million?

13 A. I don't have my calculator, Commissioner.

14 Q. All right. How many miles of transmission
15 and distribution lines does Empire have to maintain
16 roughly?

17 A. I thought I could turn to it in the K.
18 Commissioner, I'm not finding it.

19 Q. Is there someone who can -- who will be
20 appearing here later?

21 A. Mr. Palmer.

22 Q. Mr. Palmer. All right. So that's a
23 question for Mr. Palmer. And okay -- last question,
24 Mr. Gipson. In your experience as CEO, are you aware
25 that -- not saying that Empire has, but that sometimes

1 when money gets tight for electric utilities, that one of
2 the first things that gets cut is vegetation management?
3 Is that a fair statement?

4 A. I have -- I've heard that, yeah.

5 Q. Has Empire ever done that?

6 A. Not since I've been CEO.

7 Q. They do it before you were CEO?

8 A. I can't -- I can't ans -- I can't speak to
9 that. I don't know.

10 CHAIRMAN DAVIS: All right. Thank you,
11 Mr. Gipson.

12 JUDGE VOSS: Any additional questions from
13 the Bench?

14 Let's do redirect based on questions from
15 the Bench, beginning with Department of Natural Resources?

16 MS. WOODS: I have nothing. Thank you.

17 JUDGE VOSS: Commission Staff? Public
18 Counsel?

19 MR. MILLS: No questions.

20 JUDGE VOSS: Industrials?

21 MR. WOODSMALL: Just one, your Honor.

22 RE CROSS-EXAMINATION BY MR. WOODSMALL:

23 Q. In a question in a response to Commissioner
24 Jarrett, you mentioned the Elk River and Meridian Way Wind
25 Farms. Do you recall that?

1 A. Yes.

2 Q. Just for clarity of the record, do you own
3 those facilities?

4 A. No. Those are purchased power agreements.

5 MR. WOODSMALL: Okay. Thank you.

6 JUDGE VOSS: Recross?

7 MR. SWEARENGEN: Redirect. I have just a
8 couple, your Honor.

9 JUDGE VOSS: Proceed, please.

10 REDIRECT EXAMINATION BY MR. SWEARENGEN:

11 Q. Mr. Gipson, I think it was in response to a
12 question from Chairman Davis, you were giving some numbers
13 about earned return on equity in various years. Do you
14 recall that?

15 A. Yes, I do.

16 Q. I want to make sure the record is clear. I
17 think for 2007 you said the company actually earned about
18 7 percent return on equity. Is that your testimony?

19 A. It was.

20 Q. And what was the number for 2006?

21 A. I believe it was about 9 percent.

22 Q. And that's actual earned return on equity?

23 A. Yes.

24 Q. What about 2005, do you recall?

25 A. I don't recall answering that question. I

1 can -- let me take a look here quickly if you don't mind.
2 I know I'm not going to have that in any of the documents
3 that I have, Mr. Swaengren.

4 Q. During the 2006-2007 time frame, what was
5 your authorized return on equity, authorized by this
6 Commission, do you recall?

7 A. In the -- I don't recall the previous case.
8 In the most recent case, the authorization I believe was
9 10.9 percent. The previous case to that would have been
10 the 2004 case, and it was a little north of 10 percent as
11 I recall.

12 Q. You still have Exhibit 310 in front of you,
13 the copy of the article from the Joplin Globe?

14 A. I do.

15 Q. And I want to make sure that the record is
16 clear on this. The newspaper article reports that the
17 generator problem may have cost the utility as much as
18 \$10 million?

19 A. Yes.

20 Q. And that number -- is that number known now
21 or is there an approximation?

22 A. That's including the, you know, outage that
23 was -- the extended outage beyond December 10th, 2007
24 through about February 10th of 2008. As I testified
25 earlier, that's the -- that's the incremental purchased

1 power cost to replace the fuel and purchased power cost
2 for the Asbury unit, and yes, I believe we've disclosed
3 that in our SEC filings.

4 Q. Has the company recovered those costs
5 through the rates that it currently charges its Missouri
6 customers or any customers?

7 A. Only to the extent that the costs of that
8 purchased power would have been below that \$30.95.
9 Anything above the aggregate \$30.95 we would not have
10 recovered from our Missouri jurisdictional customers.

11 Q. Now, this newspaper article, Exhibit 310,
12 reports on your financial circumstances for the first
13 quarter of this year; is that not correct?

14 A. Yes.

15 Q. And how does that compare, just generally
16 speaking, to the financial circumstances that the company
17 has experienced say over the last two or three years?

18 A. Well, you know, it's -- it's -- it's been
19 kind of a -- it's been kind of a rough two or three years.
20 We've had an extreme volatility in fuel and purchased
21 power costs. We've had several severe weather events, and
22 we've incurred significant expenses and costs related to
23 those. Our financial condition is fairly -- I mean, look
24 at the return on equity. It's fairly weak at this point.

25 Q. Comparatively speaking, are your

1 circumstances about the same now as they have been for the
2 last two or three years?

3 A. Yeah. You know, the -- the thing that
4 keeps us coming back are, you know, spending to build
5 facilities to serve our customers and volatility in fuel
6 and purchased power costs.

7 Q. I think it was Mr. Woodsmall that was
8 asking you a question about your direct testimony. Do you
9 have your testimony in front of you?

10 A. I do.

11 Q. He directed you to a statement you made on
12 page 4 at lines 4 through 6 about capital expenditures
13 associated with the Iatan 2 generating unit and the Plum
14 Point unit. Do you recall those questions?

15 A. I do.

16 Q. And both of those units are currently being
17 constructed; is that correct?

18 A. That's correct.

19 Q. Now, is the company seeking recovery of any
20 of the costs associated with the construction of those two
21 plants in this case?

22 A. No.

23 Q. Mr. Woodsmall also asked you about whether
24 or not the requested fuel adjustment clause in this case
25 might reduce the risk for your company. Do you recall

1 that question?

2 A. I do.

3 Q. And I think you answered yes, but wanted to
4 explain or put a qualifier on that. Do you recall?

5 A. I might add --

6 MR. WOODSMALL: Your Honor, I'd object. I
7 don't think there's a question pending here except do you
8 recall. If he wants to ask a question, he can ask a
9 question, but just to allow the witness to speak ad
10 nauseam I don't think is appropriate.

11 JUDGE VOSS: He asked if the witness had
12 wished to qualify his statement.

13 MR. WOODSMALL: He asked him do you recall.

14 JUDGE VOSS: Would you like to rephrase
15 your question, Mr. Swearengen?

16 BY MR. SWEARENGEN:

17 Q. Do you recall that you wished to put a
18 qualifier on your answer?

19 A. I do recall that.

20 Q. And what is that qualifier?

21 MR. WOODSMALL: Your Honor, again, there is
22 no question. If he wants to ask him questions about --
23 repeat the last question. I may be -- I may be wrong.

24 MR. SWEARENGEN: That's certainly the
25 question. I asked him how he wanted to qualify his

1 answer.

2 MR. WOODSMALL: I may be wrong. What was
3 that last question?

4 JUDGE VOSS: Would you like it read back or
5 would you like to restate the question?

6 MR. SWEARENGEN: How would you like to
7 qualify your answer?

8 MR. WOODSMALL: There's no objection.

9 JUDGE VOSS: Okay. I assumed there wasn't.

10 THE WITNESS: A properly structured fuel
11 adjustment mechanism would reduce our risk.

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

14 JUDGE VOSS: All right. Then I believe the
15 witness is excused. This is the only issue he's
16 testifying on. Did you want to offer his testimony?

17 MR. SWEARENGEN: I did offer it, and I
18 think it's been received. I would ask that the witness be
19 excused from these proceedings, if that would be possible.

20 JUDGE VOSS: I've probably received it.
21 I'm not familiar. I don't recall receiving it. So in the
22 event it hasn't been received, if there are no objections
23 it's going to be received into the record. And you may
24 step down. You're excused.

25 THE WITNESS: Thank you.

1 JUDGE VOSS: Staff, would you like to call
2 your first witness?

3 MR. REED: Mark Oligschlaeger.
4 Mr. Oligschlaeger previously testified and was previously
5 sworn.

6 JUDGE VOSS: You're correct. I'm just
7 going to remind Mr. Oligschlaeger that he's still under
8 oath. Continue, Mr. Reed.

9 MARK OLIGSCHLAEGER testified as follows:

10 DIRECT EXAMINATION MR. REED:

11 Q. Mr. Oligschlaeger, your testimony was
12 previously marked, but for the Commission's benefit, could
13 you just tell us what your responsibility is with regard
14 to policy and overview in this case?

15 A. My responsibility was in the areas
16 generally pertaining to revenue requirement determination
17 to coordinate and oversee the determination and the
18 preparation of the Staff's recommendations.

19 MR. REED: Tender the witness for cross,
20 Judge.

21 JUDGE VOSS: Department of Natural
22 Resources? Industrials?

23 MR. WOODSMALL: No, your Honor.

24 JUDGE VOSS: Public Counsel?

25 MR. MILLS: No questions.

1 JUDGE VOSS: Empire?

2 MR. SWEARENGEN: Yes, your Honor, we have a
3 couple questions.

4 CROSS-EXAMINATION BY MR. SWEARENGEN:

5 Q. Good morning, Mr. Oligschlaeger. How are
6 you today?

7 A. Good morning. I'm doing well.

8 Q. Take a look at your direct testimony, if
9 you would, please. I think it's Exhibit 200, and I'm
10 looking at -- you have that in front of you?

11 A. Yes, I do.

12 Q. I'm looking at page 11, the question and
13 answer at the top of the page about the return on equity
14 range that the Staff is recommending for Empire in this
15 case?

16 A. Yes.

17 Q. And your answer is a range of 9.4 to
18 10.55 percent. Am I correct that that has subsequently
19 been updated?

20 A. Yes, it has been updated since I filed
21 this.

22 Q. And what is the current return on equity
23 range that the Staff is recommending in this case?

24 A. Unfortunately, I don't have the range
25 itself in front of me. I can tell you the current Staff

1 mid-point ROE recommendation is 10.26 percent.

2 Q. And so can I assume from that that the
3 range would be something above that and something below
4 that or do you know?

5 A. Tell you what, I can give you an
6 approximation of what that range is. Let me just do a
7 simple numerical calculation. This won't be exact
8 figures. Mr. Barnes will be taking the stand later and
9 can obviously give you those. But our range is generally
10 between, I believe, around 9.7 percent at the low to
11 around 10.8 percent at the high.

12 Q. And if you know, can you tell the
13 Commission how that would contrast, for example, with the
14 Staff's recommendation in the last Empire case?

15 A. Our recommendation in this case is at a
16 somewhat higher level.

17 Q. Can you quantify that? If you can't,
18 that's okay.

19 A. I don't have the last case's numbers in
20 front of me.

21 Q. That's fine. Let me ask you about,
22 beginning on page 16 of your direct testimony, you talk
23 about regulatory plan amortizations. Do you have that in
24 front of you?

25 A. Yes, I'm there.

1 Q. And I think you explained how that number
2 is derived. Is that a fair characterization of your
3 testimony?

4 A. Yes.

5 Q. And do I understand that that's something
6 that is an ongoing process in any given case and
7 particularly this one?

8 A. It's usually a constantly moving number,
9 yes.

10 Q. And can you explain why that is just
11 briefly?

12 A. Because the direct input -- some of the
13 direct inputs into the calculation are derived from the
14 current , at least in our case, the Staff revenue
15 requirement recommendation and its changes to rate base
16 and our operating expenses and so on. And to the extent
17 we adjust our case in any of those areas, it's likely to
18 flow through to the regulatory plan amortization.

19 Q. So would it be possible, for example, that
20 in this case when Empire filed its request for rate
21 relief, it did not ask for any regulatory amortization,
22 but during the process it might appear as though some is
23 required, and then at the end of the process maybe none is
24 required. Are those types of scenarios reasonable?

25 A. None of that would be surprising to me

1 based on my experience with this.

2 Q. Now, I don't think your testimony really
3 directly addresses what happens at the end of that
4 process, if there is a regulatory amortization. How does
5 that work into the company's cost of service? Can you
6 explain that?

7 A. If I understand your question, we would
8 look at the Commission's report and order, determine how
9 that works out in terms of the traditional or baseline
10 revenue requirement recommendation and then flow that
11 through the amortization calculation to see whether any
12 additional amounts are necessary on top of that.

13 Q. And if there -- if there are any additional
14 regulatory amortization amounts as a result of this case,
15 does that result in any corresponding adjustments to the
16 books and records of the company?

17 A. Again, if I understand your question, any
18 additional amount granted to the company in terms of a
19 regulatory plan amortization will be reflected on the
20 company's books as a depreciation expense and added to the
21 depreciation reserve to be subtracted from rate base in
22 future cases.

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

25 JUDGE VOSS: Questions from the Bench,

1 Commissioner Clayton?

2 COMMISSIONER CLAYTON: Go ahead.

3 JUDGE VOSS: Commissioner Jarrett?

4 COMMISSIONER JARRETT: I don't have any
5 questions.

6 JUDGE VOSS: Commissioner Gunn?

7 COMMISSIONER GUNN: Are you going to ask
8 the questions about yesterday?

9 COMMISSIONER CLAYTON: All right.

10 QUESTIONS BY COMMISSIONER CLAYTON:

11 Q. We were talking about the Order we issued
12 yesterday associated with your education of me on the
13 differences in terminology associated with the test year
14 update period and true-up hearing. Did we issue the Order
15 in the right way yesterday?

16 A. I wasn't aware it was issued, and I haven't
17 read it.

18 Q. Okay. That was helpful.

19 I think what -- I think what the Commission
20 intended to do was extend the update period to include
21 February 29, 2008, I think is what the Commission intended
22 to do, and the Order says that we moved the true-up date
23 to February 29th and then set a true-up hearing that would
24 follow that, or that that would be some time off in the
25 future from now.

1 So my question to you, if we're going to
2 take in all relevant factors that include up to February
3 29, 2008, isn't the right way to phrase that changing the
4 update period?

5 A. Probably not.

6 Q. Okay. Then tell me how would -- then I'm
7 wrong then. So I'm going to take responsibility on the
8 Internet here and in the record. What exactly are we
9 doing if we take up and include --

10 A. And again, this is semantics to some
11 degree, and I'm not sure it would change what we actually
12 do.

13 Q. We got four different answers upstairs when
14 we were talking about this, so we need to be clear on
15 making sure that our Orders are correct, and if we need to
16 amend it, then we will.

17 A. Because you are directing us to look at
18 data and review it and audit it beyond that that was
19 available at the time of our direct testimony. In fact,
20 because we haven't reviewed it or audited it as of today,
21 that would technically be a true-up as opposed to an
22 extension of the test year update period.

23 Q. So then -- but I thought the update period
24 was for that. I mean, what is the purpose of the update
25 period? You have a test year, which is a calendar year,

1 or it's a 12-month period of time, and then what is the
2 additional six months known as the update period? What's
3 that for?

4 A. That is an additional period of time where
5 you review and audit the information in your initial audit
6 so that you can reflect that, if appropriate, in your
7 direct testimony and you can discuss any issues associated
8 with that data here in these initial set of hearings.

9 Q. And then what would -- if you don't change
10 the date, then what would be the true-up, the purpose of
11 true-up? Would you look at data that fall outside the
12 update period?

13 A. Yes.

14 Q. You would?

15 A. Well, if you order a true-up, yes, that
16 would be then an additional period of time even beyond the
17 update period that would need to be reviewed and audited.

18 Q. I thought the true-up review was basically
19 getting new information that wasn't available during the
20 update period but related to in time that period,
21 including the update period. That didn't make any sense.
22 You're looking at me funny.

23 A. Well, okay. An update period is, you know,
24 you update plans, you update revenues, the major expenses,
25 for in this case the additional six months through

1 December, because you can do that in the initial phase of
2 the audit and we can present hopefully recommendations to
3 you based on the last and best -- last known and best
4 information we can.

5 Q. Okay.

6 A. Now, if the circumstances of the case are
7 such that you need to even go beyond that period of time
8 in order to set a good level of ongoing rates for this
9 company, then you tack on an additional two, three, four
10 months, whatever, in a true-up period that needs to be
11 reviewed and audited, but that will have to be done in a
12 separate audit and in a separate set of testimony filings
13 and in a separate set of hearings if need be other than
14 what was done initially for the direct testimony.

15 COMMISSIONER CLAYTON: Got it. I guess I
16 want to ask the attorneys, if we -- was the Order done the
17 right way? Was it clear from what we did yesterday? Have
18 you-all looked at that?

19 MR. SWEARENGEN: I haven't seen it.

20 MR. REED: We weren't -- I guess EFIS
21 didn't notify us that the Order went out. We got agenda
22 notes this morning, I think.

23 JUDGE VOSS: It was listed on the agenda as
24 a possible Order to be issued, and it should have went out
25 in EFIS. I'm not sure why.

1 COMMISSIONER CLAYTON: You got the agenda
2 this morning for yesterday?

3 MR. REED: The notes.

4 COMMISSIONER CLAYTON: Oh, the notes.

5 JUDGE VOSS: When we take a break later,
6 that might be something for the parties to look at and
7 advise the Commission and make sure that what the
8 Commission did was what was intended. So if there's any
9 motion for --

10 COMMISSIONER CLAYTON: I don't think there
11 was any dispute among the Commissioners, I don't think, on
12 what we were intending to do, but it was a matter of
13 semantics and I might be wrong.

14 COMMISSIONER GUNN: My recollection of the
15 Order is that we actually did do it correctly, that we
16 ordered a -- the true-up period go through February 29th
17 and then ordered the true-up hearing I think for the first
18 couple days in June. So I believe that even under the --
19 I believe even under the semantics that we had a
20 disagreement, the Order was correct.

21 JUDGE VOSS: The hearing is the 19th and
22 the 20th of June, the dates that the parties all said were
23 --

24 MR. WOODSMALL: Based upon the item that
25 was listed on the agenda, the title, I haven't seen the

1 Order, but based upon the title, I think Commissioner
2 Gunn's right, because it talked on the title about a
3 true-up and not an extension of the known and measurable
4 periods.

5 COMMISSIONER CLAYTON: So I've got to get
6 corrected by the new guy, geez. Embarrassing.

7 MR. WOODSMALL: He's a quick study.

8 COMMISSIONER GUNN: I read these things now
9 actually.

10 JUDGE VOSS: Thank you so much for that
11 clarification, Mr. Oligschlaeger. There were at least
12 four different opinions. Okay. Are there any additional
13 questions from the Bench? Chairman, did you have any
14 questions for Mr. Oligschlaeger?

15 CHAIRMAN DAVIS: No. But good to see you,
16 Mr. Oligschlaeger.

17 THE WITNESS: Good to see you, Chairman.

18 JUDGE VOSS: Is there any recross based on
19 questions from the Bench, beginning with Department of
20 Natural Resources?

21 MS. WOODS: I have nothing. Thank you.

22 JUDGE VOSS: Industrials?

23 MR. WOODSMALL: No, your Honor.

24 JUDGE VOSS: Public Counsel?

25 MR. MILLS: Just briefly.

1 RE CROSS-EXAMINATION BY MR. MILLS:

2 Q. Assume for the purpose of these questions
3 that the Commission's Order issued required a true-up of
4 two -- the first two months in 2008. Okay?

5 A. All right.

6 Q. Will there be any problems with data
7 looking at simply two months out of a quarter? Let me
8 just leave that question.

9 A. Not necessarily. In some cases it may be
10 preferable to look at a full quarter's worth of
11 information because the company will have a -- and I think
12 it's been discussed this morning -- a 10Q filing with the
13 SEC every quarter which goes into some detail about what's
14 happened to its financial situation in that quarter. So
15 it may be easier to tie out some of the trends and changes
16 in costs if you have a, in this case, a three-month period
17 to look at that would tie to the 10Q as opposed to only
18 two months, but I would not call that necessarily a
19 material or significant problem.

20 Q. Are there some accounts for which you won't
21 be able to get data for two months that would only be
22 tabulated on a quarterly basis?

23 A. Not that I'm aware of.

24 MR. MILLS: No further questions.

25 JUDGE VOSS: Empire?

1 MR. SWEARENGEN: No questions. Thank you.

2 JUDGE VOSS: Is there any redirect based on
3 questions from the Bench?

4 REDIRECT EXAMINATION BY MR. REED:

5 Q. Only with regard to the questions about a
6 change in rates and how it affects the regulatory plan
7 amortization that's in effect.

8 A. Yes.

9 Q. Can you tell us, if there is an increase in
10 rates, is there necessarily a change to the regulatory
11 plan amortization or do we have to flow that through the
12 calculations to make that determination?

13 A. In general terms, a change in the
14 traditional revenue requirement has to be looked at as
15 whether it will affect the company's cash flow or not.
16 And just to speak broadly, the Commission's Orders in the
17 areas of return on equity and depreciation expense in
18 particular would have an impact on the bottom line result
19 for the regulatory plan amortization. Other issues, just
20 to take an example, the tree trimming tracker for example,
21 that probably -- how they decide probably wouldn't change
22 the amount of the amortization calculation.

23 Q. Now, the regulatory plan amortizations are
24 in effect in order to maintain credit metrics, correct?

25 A. Allow the company an opportunity to

1 maintain them at investment grade levels, yes.

2 Q. If there were -- if there were a change in
3 rates, in traditional rates ordered by the Commission in
4 this case, an increase, and then in order to maintain
5 those credit measures as part of a regulatory plan
6 amortization, if there were a change in those as well, is
7 there any way that the regulatory plan amortization
8 changes can affect rates that the Commission sets in this
9 case?

10 A. If I follow that --

11 Q. Customer rates.

12 A. Customer rates?

13 Q. Yes.

14 A. Well, the customer rates that should result
15 from this case would be the Commission's findings in terms
16 of traditional revenue requirement, and added on to that
17 would be any regulatory plan amortization calculation that
18 would be performed inputting those findings, and at this
19 point, you know, you really can't say whether there will
20 need to be an amortization or not specific to this case.

21 MR. REED: All right. Thank you.

22 JUDGE VOSS: Is that all, Mr. Reed?

23 MR. REED: Yes. Thank you.

24 JUDGE VOSS: Mr. Oligschlaeger, I believe
25 you may step down, of course to be recalled later on

1 additional issues. Thank you very much for your
2 clarification. Staff, would you like to call your next
3 witness?

4 MR. REED: I would, Judge, but my witness
5 is delayed just a few minutes. I'm sorry.

6 JUDGE VOSS: In that case, let's take about
7 a ten-minute break. Come back at five after. Do you
8 believe he'll be here by then, Mr. Reed? Okay. Just take
9 a break 'til about five after ten.

10 (A BREAK WAS TAKEN.)

11 JUDGE VOSS: We are back on the record.
12 Staff, will you call your next witness, please.

13 MR. REED: Staff's next witness is James
14 Watkins.

15 (Witness sworn.)

16 JAMES WATKINS testified as follows:

17 DIRECT EXAMINATION BY MR. REED:

18 Q. Mr. Watkins, you prepared and filed direct
19 testimony, rebuttal and surrebuttal in this case; am I
20 right?

21 A. That's correct.

22 Q. I have marked your direct as Exhibit
23 No. 210, your rebuttal as Exhibit 212, and your
24 surrebuttal as Exhibit 213. Also, the Staff filed a class
25 cost of service and rate design report. Were you

1 responsible for filing that report?

2 A. Yes, I was.

3 Q. I've marked that class cost of service and
4 rate design report as Exhibit 211. Do you have any
5 changes or additions to your -- any of your filed
6 testimony or the report, I should say any corrections?

7 A. The only correction I would have would be
8 on the Staff's report in Schedule 9, page 2 of 2, which is
9 a section of a special transmission service for Praxair.
10 On that page, about the third bolded point is metering
11 adjustment, and the very last number there is incorrect.
12 The .9806 should be 1.0086. That corresponds to the same
13 number on Schedule 8, page 2 of 2 for special transmission
14 service. Those two numbers should be the same, and should
15 be the 1.0086.

16 Q. All right. Mr. Watkins, I was -- I can see
17 that you'll testify again on the fuel adjustment clause;
18 is that correct?

19 A. That's my understanding.

20 Q. Could you tell us, tell the Commission
21 briefly your overall responsibility for policy and the
22 overview in this case?

23 A. I'm not sure I understand the question.

24 Q. In other words, your overall responsibility
25 for this case would be? Describe that.

1 A. Primarily in the areas of rate design and
2 revenues, and then in addition to that I guess the rate
3 design, the possible fuel adjustment clause.

4 Q. Okay.

5 A. Rate design and revenue is my primary
6 responsibilities.

7 MR. REED: I'll tender the witness for
8 cross.

9 JUDGE VOSS: Department of Natural
10 Resources?

11 MS. WOODS: I have nothing for this
12 witness. Thank you.

13 JUDGE VOSS: Industrials?

14 MR. WOODSMALL: Nothing.

15 JUDGE VOSS: Public Counsel?

16 MR. MILLS: No questions on policy and
17 overview.

18 JUDGE VOSS: Empire?

19 MR. SWEARENGEN: No questions. Thank you.

20 JUDGE VOSS: Any questions from the Bench?

21 COMMISSIONER JARRETT: No questions.

22 JUDGE VOSS: Then there should not be a
23 need for redirect. You're excused until you're recalled
24 later on fuel adjustment clause. Thank you, Mr. Watkins.

25 THE WITNESS: Thank you.

1 JUDGE VOSS: At this point the parties have
2 requested a 30-minute recess to allow them to pursue
3 additional settlement discussions on upcoming issues, so
4 we are going to take a break until approximately 10 'til
5 11.

6 MR. MILLS: And Judge, it's my anticipation
7 that after that break we will take up the depreciation
8 issue; is that correct?

9 JUDGE VOSS: That's correct, unless you
10 come in and tell me otherwise. Thank you.

11 (A BREAK WAS TAKEN.)

12 JUDGE VOSS: We are back on the record.
13 Did counsel want to address which issue to go to next?
14 I'm assuming if everything was productive over the break
15 we're moving to depreciation.

16 MR. BOUDREAU: That's what I'm prepared
17 for.

18 JUDGE VOSS: Are we doing opening
19 statements on depreciation?

20 MR. BOUDREAU: I'll have a short opening
21 statement, yes.

22 JUDGE VOSS: Please proceed.

23 MR. BOUDREAU: Thank you. May it please
24 the Commission?

25 In this case Empire has proposed revised

1 depreciation rates which are supported by a comprehensive
2 study performed by Donald Roff, president of Depreciation
3 Specialty Resources. This is the same Mr. Roff who
4 performed and sponsored the company's depreciation study
5 in the 2004 rate case, which was Case No. ER-2004-0570.
6 The Commission may recall that it adopted a number of
7 Mr. Roff's recommendations in its Report and Order in that
8 case. Depreciation rates were not an issue in Empire's
9 2006 rate case, which was Case No. ER-2006-0315.

10 I think it's important to note that no
11 other party in this case has offered a comprehensive
12 depreciation study for the Commission's consideration in
13 this case. Now, Staff asserts that no change should be
14 made to the existing depreciation rates.

15 It is worthy of mention, I think, that
16 Staff witnesses Rosella Schad and Mark Oligschlaeger will
17 be testifying that the Commission has established a
18 policy, is the term that Mr. Oligschlaeger uses, of not
19 changing depreciation rates during the term of a
20 regulatory plan and points to Kansas City Power & Light
21 Company's 2006 rate case Order in Case No. ER-2006-0314 to
22 support this proposition. Empire suggests that this is
23 just a misreading of what the Commission said and
24 certainly does not stand for the proposition that Staff
25 claims it does.

1 First, the cases are factually
2 distinguishable in significant ways. In the KCP&L case,
3 the company relied on the depreciation rates that had been
4 agreed to in its experimental regulatory plan docket.
5 Empire's experimental regulatory plan, by way of contrast,
6 contains no similar provisions.

7 Second, the Commission in that case
8 rejected a Staff sponsored depreciation study as seriously
9 flawed. The Commission did not state that a change in
10 depreciation rates was out of bounds because KCP&L's
11 experimental regulatory plan was in place. The Commission
12 simply noted that the result of its decision, that is
13 standing pat on existing depreciation rates, had no impact
14 on customer rates because of the regulatory plan
15 amortization which is an accurate general statement
16 concerning the cash flow implications as far as it goes.

17 In fact, Staff's testimony in this case
18 will be that an increase in Empire's depreciation rates
19 will increase funds from operations and decrease the
20 amount of the regulatory plan amortization the company
21 would need.

22 But the Commission's simple statement of
23 fact in the KCP&L rate case was not intended to send the
24 signal that setting proper depreciation rates are not
25 relevant or appropriate during the term of an experimental

1 regulatory plan. It was simply noting that its decision
2 in that case would not have an impact on customer rates.

3 Frankly, the company's somewhat dismayed by
4 Staff's interpretation of this rather innocuous
5 observation in the Commission's Order. The regulatory
6 plan amortization was intended to act as a substitute for
7 legitimate or what -- excuse me.

8 The regulatory plan amortization was not
9 intended to act as a substitute for legitimate cost
10 recovery in a traditional rate case. There is no language
11 in the stipulation in Empire's regulatory plan case, which
12 is Case No. EO-2005-0263, or the Order approving the
13 stipulation in that case, to support that suggestion.

14 Also, it just makes no practical sense that
15 any item that might otherwise increase funds from
16 operations should be ignored because, after all, there's
17 always the RPA, or the regulatory plan amortization, to
18 fall back on. This to me distorts the purpose of the
19 experimental regulatory plan, which was to provide a tool
20 to support investment grade financial metrics for a period
21 of time, and this is a point that will be addressed by
22 Scott Keith, the company witness, Scott Keith.

23 The Commission's rules require the filing
24 of periodic depreciation studies, too, is an observation
25 I'd like to make, and surely this requirement was not --

1 was intended to have some practical purpose in the context
2 of setting customer rates.

3 Ultimately the Commission should consider
4 Empire's proposal for revised depreciation rates in this
5 case on its merits without regard to the company's
6 experimental regulatory plan.

7 Mr. Roff will present the results of a
8 comprehensive depreciation study that he conducted for
9 Empire as of December 31, 2006. He recommends that Empire
10 adopt the depreciation rates shown in column 6 of Table 1
11 of Schedule DSR-3. Application of these rates to
12 December 31, 2006 depreciable balances results in an
13 increase in annual depreciation expense of approximately
14 \$1.38 million.

15 The two principal elements that account for
16 this are, first, longer lives, which has the effect of
17 decreasing annual depreciation expense, and secondly, the
18 effect of negative salvage, which has the effect of
19 increasing annual depreciations expense.

20 Mr. Roff also discusses that the
21 Commission, like many other states, should allow Empire to
22 adopt what is called vintage amortization accounting,
23 which has been approved by the FERC and numerous state
24 public utility commissions. Mr. Roff will endorse the use
25 of vintage amortization accounting as resulting in a

1 systematic and rational process for certain general plant
2 accounts -- or categories I guess is a better terminology
3 there.

4 Mr. Roff's study results provide a fair and
5 reasonable level of depreciation expense which will
6 provide Empire with adequate capital recovery for the time
7 the depreciation rates are in effect and until such time
8 as a new study indicates a need for a change. So I invite
9 you to inquire of Mr. Roff about his study and its
10 conclusions.

11 Staff witness Schad will testify that
12 Empire's depreciation study uses inappropriate
13 methodologies and is not reliable. Her testimony seems to
14 focus on the net salvage issue and complaint about how the
15 company maintains its plant data. Mr. Roff will address
16 these matters when he takes the stand, and you will find
17 his rebuttal of Ms. Schad's criticisms in his prepared
18 surrebuttal testimony.

19 But suffice it to say for now that he
20 explains that the issues raised are either based on her
21 lack of understanding about the study's inputs or an
22 unjustified extrapolation about the quality of the
23 company's plant data based on erroneous entries arising
24 out of a solitary and unique transaction. Mr. Roff will
25 tell you that his results and recommendations are based on

1 accurate and reliable plant data maintained by the
2 company. More importantly, he will testify that he
3 believes that the company is in compliance with the
4 Commission's rules.

5 Public Counsel's also taken issue with some
6 aspects of Mr. Roff's study. Mr. Roff will address
7 these -- those observations as well in his rebuttal
8 testimony, noting that the Commission has endorsed whole
9 life depreciation, but if it were in this case to approve
10 the use of remaining life technique, then it should be
11 implemented in the appropriate manner and not based on a
12 reallocation as suggested by Mr. Dunkel.

13 That concludes my comments at this time.
14 Thank you.

15 JUDGE VOSS: Thank you. Staff?

16 MR. REED: Any change in the depreciation
17 rates in this case will not affect the rates that
18 customers pay because Empire's currently operating under
19 the regulatory plan amortizations approved by the
20 Commission in Case No. EO-2005-0263. The Commission
21 addressed the issue of changing depreciation rates while a
22 company is operating with regulatory plan amortizations in
23 the KCPL case that Mr. Boudreau mentioned. There the
24 Staff proposed a change in depreciation rates, but the
25 Commission found and determined in its Order that any

1 decrease in depreciation likely would not affect the rates
2 that KCPL charged because there would be allowed
3 additional amortizations to meet the credit metrics.

4 Conversely, in this case any increase in
5 depreciation rates as proposed by Empire's witness Roff
6 would be offset by a smaller regulatory plan amortization
7 and the rates would remain the same.

8 In addition, the depreciation rates should
9 not be changed in this case because there are serious
10 problems with Empire's data that you'll hear about through
11 the testimony today. There are problems with Mr. Roff's
12 depreciation study based upon that data. There are
13 problems with the integrity of Empire's data.

14 Empire's historical salvage and cost of
15 removal data provided to the Staff does not have any
16 entries coded as reimbursements. That means we can't
17 track reimbursements like insurance proceeds or government
18 payments separately from salvage amounts. Empire can't
19 code retirements that are not regular retirements. That
20 means we can't track property retired for an event other
21 than reaching the end of its useful life. These are
22 significant issues because of the storm damage through
23 tornados and ice storms that Empire has experienced over
24 the years.

25 Even Empire's witness Roff discusses what

1 he calls unrecorded retirements of property in Empire's
2 data. In other words, there are retirements made that are
3 not recorded, not kept track of. Staff can't make a
4 determination of what amounts of reimbursements were
5 received by Empire, so Staff can't evaluate the
6 appropriateness of including or not reimbursements in the
7 depreciation rate calculation.

8 For accounts in any given year, the dollars
9 reflected in the historical cost of salvage -- in the
10 historical cost of removal and salvage data should be
11 exactly the same as retirement dollars in the historical
12 mortality data. Ms. Schad has included testimony to show
13 that that is not so with Empire. The numbers don't match.

14 Before the Commission orders a change in
15 depreciation rates for Empire, we need reliable data.
16 Empire needs to tighten its internal controls, get ahold
17 of these unrecorded retirements and comply with Commission
18 rules regarding data retention.

19 JUDGE VOSS: Thank you. Public Counsel?

20 MR. MILLS: Very briefly. Public Counsel
21 concurs with the Staff that a change in depreciation rates
22 in this case would be essentially a one-to-one offset in
23 regulatory plan amortizations, and so would have no
24 objection if the Commission were to adopt the Staff's
25 position to make no changes to depreciation rates in this

1 case.

2 If the Commission does decide to make
3 changes to depreciation rates in this case, it should not
4 rely to any great extent on the testimony of Mr. Roff.
5 The testimony of Mr. Dunkel, as well as the Staff
6 witnesses and as well as the cross-examination of Mr. Roff
7 will show that his study is badly flawed. There are many
8 -- there are many inconsistencies within it, and the
9 Commission should not rely on it to change depreciation
10 rates. Thank you.

11 JUDGE VOSS: Thank you. Industrials?

12 MR. WOODSMALL: Very briefly, your Honor.
13 The Industrials concur in the positions advanced by Staff
14 and by OPC. I'm baffled by this issue. In 17 years
15 practicing here, I'm baffled by why this issue is here.
16 This issue is merely an academic exercise. It will have
17 no effect on rates. It will have no effect on revenues.
18 It will have no effect on cash flow. It has no effect on
19 anything. I'm baffled why we're spending our time
20 litigating this issue, why Empire spent the time to hire a
21 consultant to do this issue.

22 We merely ask that as long as the
23 regulatory plan is in place, that you keep the
24 depreciation rates in place for this company. Thank you.

25 JUDGE VOSS: Thank you. Department of

1 Natural Resources?

2 MS. WOODS: I have no additional opening
3 for this issue. Thank you.

4 JUDGE VOSS: Empire, would you like to call
5 your first witness?

6 MR. BOUDREAU: Yes. I'd like to call
7 Donald Roff to the stand, please.

8 (Witness sworn.)

9 JUDGE VOSS: Thank you. Please proceed.

10 MR. BOUDREAU: Thank you.

11 DONALD S. ROFF testified as follows:

12 DIRECT EXAMINATION BY MR. BOUDREAU:

13 Q. Would you state your name for the record,
14 please, sir.

15 A. My name is Donald S. Roff.

16 Q. By whom are you employed and in what
17 capacity?

18 A. I am the president of a company called
19 Depreciation Specialty Resources.

20 Q. On whose behalf are you testifying here
21 today?

22 A. The Empire District Electric Company.

23 Q. And you were retained by the Empire
24 District Electric Company to testify as to what particular
25 topic?

1 A. Depreciation rates and a depreciation study
2 that I performed on their behalf.

3 Q. Are you the same Mr. Roff that has prepared
4 and caused to be filed with the Commission prepared
5 direct, rebuttal and surrebuttal testimony which have been
6 marked for identification as Exhibits 25, 26 and 27 for
7 identification purposes respectively?

8 A. Yes.

9 Q. Was that testimony prepared by you or under
10 your direct supervision?

11 A. Yes, it was.

12 Q. Do you have any corrections that you would
13 like to make to any of your items of testimony at this
14 time?

15 A. I do. Just three small changes.

16 Q. Do you have any -- are any of those changes
17 related to your direct testimony?

18 A. Yes, one change to my direct testimony.
19 With respect to Schedule DSR-3, page 13, at the bottom of
20 the page, there's a heading calculation of depreciation
21 rates. The first sentence there should read a straight
22 line whole life rate. So change remaining to the word
23 whole, w-h-o-l-e.

24 JUDGE VOSS: I'm having trouble finding it.
25 DSR-3 you said?

1 THE WITNESS: Schedule DSR-3. It's after
2 the testimony.

3 JUDGE VOSS: What page was that?

4 THE WITNESS: Page 13.

5 JUDGE VOSS: I don't have the back
6 schedules.

7 MR. WOODSMALL: They're only numbered
8 through 6.

9 MR. BOUDREAU: Well, is this the text of
10 your depreciation study?

11 THE WITNESS: The depreciation study
12 report, yes.

13 MR. BOUDREAU: Give us a moment for the
14 parties to get their bearings. He's got some tabulations
15 that are attached to the report, but the report itself has
16 numbered pages.

17 JUDGE VOSS: There are only six. Now I
18 see. There was two sets of numbering in the exhibit or in
19 the attachments. I'm good.

20 MR. BOUDREAU: I just want to make sure the
21 rest of the parties have located it.

22 JUDGE VOSS: Could you repeat that
23 correction? I'm sorry.

24 THE WITNESS: Sure. On page 13 of that
25 schedule, near the bottom of the page there's a heading

1 calculation of depreciation rates. The first sentence,
2 change the word remaining to whole, w-h-o-l-e.

3 JUDGE VOSS: Thank you.

4 BY MR. BOUDREAU:

5 Q. Is that the only correction to that --

6 A. Yes.

7 Q. -- piece of testimony?

8 Do you have any corrections you need to
9 make to your rebuttal testimony?

10 A. No.

11 Q. Do you have any corrections you would like
12 to make to your surrebuttal testimony?

13 A. Yes.

14 Q. Could you please direct us to those?

15 A. On page 3 of my surrebuttal testimony,
16 line 23, insert the word study after the word
17 depreciation. And on the very next page, page 4, line 21,
18 I believe the reference should be to Schedule DSR-3, not
19 DSR-3. And to the best of my knowledge, those are the
20 only corrections or revisions that I have.

21 Q. Very good. Thank you. Taking those
22 corrections into account, if I were to ask you the same
23 questions as are contained in the prepared direct,
24 rebuttal and surrebuttal testimony, would your answers as
25 contained therein be substantially the same?

1 A. Yes, they would.

2 Q. Would they be true and correct to the best
3 of your information, knowledge and belief?

4 A. Yes.

5 MR. BOUDREAU: With that, I would like to
6 offer Exhibits 25, 26 and 27 into the record and tender
7 the witness for cross-examination.

8 JUDGE VOSS: Are there any objections to
9 the admission of Exhibits 25, 26 and 27?

10 (No response.)

11 JUDGE VOSS: Hearing none, they're
12 admitted.

13 (EXHIBIT NOS. 25, 26 AND 27 WERE RECEIVED
14 INTO EVIDENCE.)

15 MR. BOUDREAU: Thank you.

16 JUDGE VOSS: Department of Natural
17 Resources? Staff?

18 CROSS-EXAMINATION BY MR. REED:

19 Q. Mr. Roff, my name is Steve Reed. I'm an
20 attorney with the General Counsel's Office here
21 representing the Staff.

22 In your testimony, you discuss an Order
23 from a case, Case No. EO-2005-0263. In your testimony,
24 let's see, your surrebuttal testimony on page 3 -- do you
25 have that with you? It actually begins on the bottom of

1 page 2. What's your understanding of the Commission's
2 Order Approving Stipulation & Agreement in Case
3 No. EO-2005-0263, and then you answer the question. Do
4 you see that?

5 A. Yes, I see that.

6 Q. Now, you indicate that the Order states the
7 following, and then you put quotation marks, the
8 Commission should review Empire's depreciation and
9 amortization rates accordingly in Empire's future rate
10 cases. Do you see that?

11 A. Yes, I do.

12 Q. I take it you had the Order available when
13 you prepared this testimony, the Order from EO-2005-0263?

14 A. Yes.

15 Q. Do you have it with you today?

16 A. I do not.

17 Q. I have a copy here, and you can see on page
18 2, I'm going to show this to you, you can see the portions
19 that I've highlighted at the top it says, Empire asked the
20 Commission to find. Do you see that?

21 A. Yes.

22 Q. And then at the bottom you can see the
23 other highlighted portion. It describes what Empire asked
24 the Commission to find, doesn't it?

25 A. That's what it states, yes.

1 Q. And it says that Empire asked the
2 Commission to find that the Commission should review
3 Empire's depreciation and amortization rates. Do you see
4 that?

5 A. Yes.

6 Q. So flip through the rest of the Order and
7 see if you can find anywhere that the Commission ordered
8 this particular paragraph that Empire asked.

9 A. I don't see where the Order, I guess, says
10 anything specifically regarding depreciation or anything
11 else on that related topic.

12 Q. Well, what I'm getting at is, your
13 testimony seems to represent that the Commission issued an
14 Order to this effect, but in fact, this is what Empire
15 asked the Commission to find, right, so you've
16 misrepresented the Commission's Order in your testimony?

17 MR. BOUDREAU: I'm going to object to the
18 form of the question. It's okay if he pursues this line
19 of questioning, but the counsel at this point is
20 testifying himself.

21 JUDGE VOSS: Could you restate the
22 question, Mr. Reed?

23 MR. REED: Well, I'm cross-examining the
24 witness, and I can characterize the question in any way I
25 see fit.

1 BY MR. REED:

2 Q. Do you agree with my characterization or
3 not?

4 A. The statement in my testimony merely
5 repeats what the language of the Order is.

6 Q. All right. In your testimony you indicate
7 that depreciation -- a depreciation study consists of four
8 phases, distinct yet related, and the first is data
9 collection or gathering of information; am I correct?

10 A. Yes.

11 Q. As I understand it from your testimony,
12 Empire's responsible for gathering the data?

13 A. That is correct.

14 Q. They provide that data to you, correct?

15 A. That is correct.

16 Q. The second phase is data analysis, and can
17 you describe -- in part you describe this as the
18 statistical processing of the data; am I right?

19 A. I want to make sure that that's what it
20 says. Where are you referring to? Because I have a
21 different set of steps here as defined in my depreciation
22 study report.

23 Q. Well, are -- do you agree there are four
24 steps?

25 A. The four steps are laid out on

1 Schedule DSR-3 of my direct testimony on page 9.

2 Q. So there are four steps?

3 A. Yes.

4 Q. The first is data collection?

5 A. And that's where I'm having a disconnect,
6 because I don't see that as the four steps as referenced
7 in my study.

8 Q. Is there a step that you would refer to as
9 data collection?

10 A. There is a data collection process that is
11 used, yes.

12 Q. And who collects the data?

13 A. The company normally crea -- provides the
14 data.

15 Q. All right. And then is there a step that
16 includes data analysis?

17 A. Yes, there is.

18 Q. Do you undertake the data analysis?

19 A. Yes.

20 Q. Does Empire undertake the data analysis as
21 well?

22 A. No.

23 Q. Is there a phase that you would refer to as
24 evaluation?

25 A. Yes.

1 Q. And then finally rate calculation?

2 A. Yes.

3 Q. Would you agree with me that your

4 depreciation study that you prepared is only as good as

5 the data that goes into it?

6 A. With certain qualifications, I guess. And

7 that would be the development of an understanding of the

8 source of those -- of that data as well as the practices

9 and policies that support that data.

10 Q. So if you can understand the data, you can

11 use it and prepare your study?

12 A. It would be helpful to do that, yes.

13 Q. But if there's missing data, that may be a

14 problem?

15 A. I'm not aware of any missing data, but --

16 Q. There are a series of e-mails that are

17 attached to Rosella Schad's testimony. I take it you have

18 seen those?

19 A. Yes.

20 Q. And some of those are yours, are they not?

21 A. I don't recall. Perhaps.

22 Q. Do you recall sending e-mails to Empire --

23 A. Yes.

24 Q. -- regarding the data? Yes?

25 A. Yes.

1 Q. You had questions about some of the data?

2 A. Yes.

3 Q. Were all of your questions answered?

4 A. I believe so.

5 Q. In your testimony, you indicate that you

6 were absolutely convinced that Empire is in compliance

7 with Commission rules?

8 A. With respect to the data requirements, yes.

9 Q. And you stand by that today?

10 A. I believe so.

11 Q. You're absolutely convinced?

12 A. Yes.

13 Q. Are you aware that the historical salvage

14 cost of removal data received by the Staff in this case

15 did not have any entries quoted as reimbursements?

16 A. It's my understanding that that's correct.

17 That isn't the data that I received.

18 Q. Pardon me?

19 A. That's not the form of data that I

20 received.

21 Q. Your data was different?

22 A. My data was, I guess, more extensive

23 apparently.

24 Q. So you had -- you received data that was --

25 that showed that entries were coded as reimbursement?

1 A. I received a file of reimbursements that is
2 attached to my surrebuttal testimony as a schedule.

3 Q. Now, were those -- were those coded in
4 Empire's software as reimbursements or were they done
5 manually?

6 A. I don't know the exact origin of that file.

7 Q. All right.

8 A. They certainly were separately
9 identifiable.

10 Q. Now, even though -- even though you say
11 Staff may have received different data than you, that
12 would have been prepared by Empire; do you agree?

13 A. Yes.

14 Q. You nonetheless are absolutely convinced
15 that the data that Empire had provided to Staff complies
16 with rule 20.030?

17 A. I can't answer that. I don't -- I wasn't
18 privy to that. I don't know exactly what data Empire
19 provided to Staff at any point in time.

20 Q. So it may have been different than the data
21 you received?

22 A. Apparently, yes, and I think I already
23 answered that and said that my data was perhaps more
24 extensive.

25 Q. And better, I take it?

1 A. I don't know that I would say better. Just
2 different.

3 Q. Do you agree that for any given account,
4 for any given year that the retirement dollars reflected
5 in the historical cost of removal and salvage should be
6 the same as the dollars in the historical mortality data?

7 A. In general, that would be correct. There
8 may be instances where certain adjustments occur between
9 years, but in general, that would be accurate.

10 Q. Well, let's take a look at the rebuttal
11 testimony of Rosella Schad. You've seen that before,
12 correct? You have it, don't you?

13 A. I do not have it with me, no.

14 Q. I'll show you the rebuttal testimony. I
15 think it is marked as Exhibit 217. Actually, we haven't
16 identified it for the record, but we'll do so now.
17 Rosella Schad rebuttal is 217. If you'll turn to
18 Schedule 2.

19 A. Okay.

20 Q. Now, as I understand these charts, you can
21 see on the left is the historical cost of removal salvage
22 data. Do you see that? And on the right is the
23 historical mortality data.

24 A. Okay.

25 Q. My question to begin this issue had to do

1 with the general matching of these two accounts. okay.
2 And on the left the removal -- the cost of removal entries
3 add up to about 2.8 million.

4 A. Do you mean retirement?

5 Q. Yes, the cost of retirement.

6 A. Yes.

7 Q. On the right, the retirement entry is the
8 first one. It says Account 343R, the retirement entry is
9 166,000.

10 MR. BOUDREAU: You know, I think at this
11 point I'm going to object. I'm not quite sure where
12 counsel's going with this, but it seems like a series of
13 questions about data that's in another witness' testimony,
14 and I think I'm okay with -- if the witness is just
15 saying, well, that's what this says, but I mean, I guess
16 my question's more a foundation. Is this witness being
17 asked somehow to validate or verify some other witness'
18 testimony and schedules?

19 JUDGE VOSS: Not at this point. I think
20 wait until a question that might be objectionable is asked
21 and then -- please proceed, Mr. Reed.

22 BY MR. REED:

23 Q. The question is, shouldn't these two charts
24 match? If this is accurate data supplied by Empire,
25 shouldn't it match?

1 A. I guess the short answer in theory is yes.
2 I suspect there are reasons why they do not match.

3 Q. Have you ever -- have you had occasion to
4 look at Empire's FERC, FERC -- what's it called? It's
5 called the FERC financial report, the FERC Form 1, have
6 you looked at those for Empire?

7 A. No.

8 MR. REED: I have -- I have copies of some
9 exhibits, Judge, which I'm going to mark as -- hold on,
10 please.

11 I'll mark these and I'll hand them out as
12 well. I have copies for everyone. FERC Form 1 for 2006
13 is Exhibit 222.

14 JUDGE VOSS: What was 221?

15 MS. HEINTZ: That was Mark Oligschlaeger's
16 responsive testimony.

17 JUDGE VOSS: That's right. Okay. Please
18 proceed, Mr. Reed. I'm just trying to keep my record
19 straight.

20 MR. REED: The FERC Form 1 for 2003 is 223?

21 JUDGE VOSS: This is Exhibit 222 that you
22 just handed me?

23 MR. REED: Yes. This is 223.

24 (EXHIBIT NOS. 222 AND 223 WERE MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 MR. REED: I have the FERC Form 1 for 2004
2 marked as 224.

3 (EXHIBIT NO. 224 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 MR. REED: For the year 2005 is 225.

6 (EXHIBIT NO. 225 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 MR. REED: May I, Judge? May I continue?

9 JUDGE VOSS: Please do.

10 BY MR. REED:

11 Q. This will go quickly once I get started.
12 Exhibit No. 222 is the year report, period of report end
13 of 2006. You can see that in the lower right-hand corner,
14 Mr. Roff. If you'd turn to the third page, page 219 at
15 the bottom, it says -- you'll see -- I want you to look at
16 items 13 and 14 on that sheet, cost of removal and
17 salvage.

18 A. Okay.

19 Q. Cost of removal is 2.5 million, salvage is
20 1.1 million. Do those numbers seem out of sorts in any
21 way to you?

22 MR. BOUDREAU: I think I'm going to object
23 on the grounds of no foundation's been laid for his
24 testimony about these documents.

25 JUDGE VOSS: This is your report from your

1 company. He's your expert witness. And I'm sure he's
2 qualified if he doesn't know an answer to a question to
3 say so. I'm not --

4 MR. BOUDREAU: I think as a matter of
5 foundation I think he needs to be asked whether he's seen
6 these, whether he's familiar with them, and that's my
7 point. Does he have any familiarity with these documents?

8 MR. REED: Maybe the point is he should be
9 familiar with them. I mean, they're Empire's reports.

10 MR. BOUDREAU: He may be. I'm just saying
11 that the questions ought to be asked to establish a
12 foundation about his knowledge about these documents.

13 JUDGE VOSS: I'm going to allow Mr. Reed to
14 ask the questions and see where they go, if there's a true
15 foundation issue that comes up, but at this point the
16 witness hasn't had a chance to state anything about the
17 documents.

18 BY MR. REED:

19 Q. Well, did you look at 2006 data to prepare
20 your depreciation study?

21 A. Yes, I did.

22 Q. How far did you go back?

23 A. In some cases, I believe it was to the
24 account inceptions for some of the vintages.

25 Q. What does that mean?

1 A. The beginning of the account. As long
2 as the -- as far back as they had data.

3 Q. Did you look at cost of removal data?

4 A. Yes.

5 Q. Did you look at salvage data?

6 A. Yes, I did.

7 Q. On Exhibit No. 222, do you see anything
8 in -- extraordinary about the entries for 13 and 14?

9 A. Those numbers seem realistic.

10 Q. Let's look at Exhibit 223. This is the
11 2003 Form 1. I think here it's the fourth page, cost of
12 removal and salvage. 3.4 million for cost of removal and
13 salvage of 951,000. Anything unusual?

14 A. Just -- no. The size of those numbers is
15 not unusual.

16 Q. Let's look at Exhibit 224. Third page in
17 this exhibit, the cost of removal is 3.2 million, the
18 salvage is 2.9 million.

19 A. Agreed.

20 Q. Now let's look at the last one,
21 Exhibit 225. This is from the report end of 2005, the
22 cost of removal negative 28,000. That means that Empire
23 received money to remove or retire property, right?

24 A. I'm not sure that's what that means at all.
25 It merely means that the sum of those entries is a

1 negative.

2 Q. You're not sure what that means?

3 A. I just stated what I thought it meant.

4 Q. But in the data that you reviewed for

5 2005 --

6 A. And this is the year in which there was one
7 unique transaction, and it was recorded in a special
8 fashion in Empire's accounting system to account for it
9 properly.

10 Q. In that you've testified in your written
11 that you're absolutely convinced that Empire is in
12 compliance with the Commission's rules regarding data
13 retention, are you familiar enough with the rules that the
14 Commission has to say whether or not your depreciation
15 study complies with the Commission's rules?

16 A. I guess the short answer is no.

17 Q. Do you know whether or not your
18 depreciation study complies with the Commission's rules?

19 A. I believe there are certain parts of it
20 that probably do not, and they've been addressed in my
21 surrebuttal testimony.

22 Q. Have you changed your depreciation study,
23 then?

24 A. No.

25 MR. REED: All right. Thank you. That's

1 all I have.

2 JUDGE VOSS: Public Counsel? Did Staff
3 wish to move for the admission of those exhibits?

4 MR. REED: Yes, Judge.

5 JUDGE VOSS: Are there any objections to
6 the admission, I believe of Exhibits 22, 23, 24 and 25,
7 26; is that correct? I lost count on one. I'm trying --

8 MR. BOUDREAU: I have 222, 223, 224 and
9 225.

10 JUDGE VOSS: 225.

11 MR. BOUDREAU: And no, I don't have an
12 objection.

13 JUDGE VOSS: Hearing no objections, they're
14 received into the record.

15 (EXHIBIT NOS. 222, 223, 224 AND 225 WERE
16 RECEIVED INTO EVIDENCE.)

17 CROSS-EXAMINATION BY MR. MILLS:

18 Q. Good morning, Mr. Roff. I'm Lewis Mills.

19 I represent the Public Counsel in this matter.

20 Now, just to get some terminology straight
21 so that I know we're on the same page, for the purposes of
22 my questions, if the amount of the actual accumulated
23 depreciation reserve is above the theoretical reserve
24 amount, I'm going to call that a reserve surplus, does
25 that sound like a reasonable way to refer to that?

1 A. Yes.

2 Q. And similarly, if the amount of the actual
3 accumulated depreciation reserve is below the theoretical
4 reserve amount, we'll call that a reserve deficiency. Is
5 that all right?

6 A. Okay.

7 Q. You have copies of your testimony there
8 with you?

9 A. Yes.

10 Q. On page 4 of your rebuttal testimony, lines
11 10 through 14, are you there?

12 A. One more page.

13 Q. Okay.

14 A. Okay.

15 Q. Is it correct that you admit that
16 Mr. Dunkel is partially correct when he says that you have
17 been inconsistent and actually used the book reserve in
18 calculating an adjustment for certain plant accounts?

19 A. Yes, partially correct.

20 Q. Now, if I can get you to flip back to your
21 direct testimony, Schedule DSR-3, Table 1A.

22 A. Okay.

23 Q. On column 8, is the \$731,122 amount shown,
24 the annual amount of the adjustment you made for the
25 reserve surpluses and deficiencies in these general plant

1 accounts?

2 A. Correct.

3 Q. Is it correct that to arrive at that amount
4 in column 8, you recovered the reserve surpluses or
5 deficiencies in these general plant accounts over a
6 four-year period?

7 A. I calculated an amount that was based upon
8 a four year amortization. I would hesitate to say that
9 they would be recovered necessarily.

10 Q. Okay. That's fine. So the total for these
11 accounts was a reserve deficiency of four times 731,122 or
12 approximately \$2.9 million for these general plant
13 accounts; is that correct?

14 A. Yes, which would disappear after four
15 years.

16 Q. Right. So if you were to recover that
17 reserve deficiency over those four years, that would
18 increase the proposed annual expense by 731,122 over what
19 it would have been if you did not recover the differences
20 between the theoretical and the actual reserve in those
21 general plant accounts; is that correct?

22 A. Yes, just for that four-year period.

23 Q. Now, back in your rebuttal testimony,
24 Schedule DSR-2 and if I -- I may be too late, but don't --
25 don't put away your direct testimony DSR-1,

1 Table 1A because I'm going to refer to the two of them
2 together.

3 A. All right.

4 Q. Is it correct that Schedule DSR-2 to your
5 rebuttal testimony shows the accounts in the case that
6 were not shown on your direct Schedule DSR-3, Table
7 1A that we just discussed?

8 A. Yes.

9 Q. And on your rebuttal Schedule DSR-2, do you
10 show the annual effect that would occur if the reserve
11 surplus or deficiencies were recovered for these accounts?

12 A. I don't like the word recovered. If they
13 were included as expense over their remaining lives, that
14 would be the amounts, yes.

15 Q. Do you, in fact, make any such adjustment
16 in the expense for the reserve differences in these
17 accounts?

18 A. No, and because the Commission has had a
19 longstanding practice of approving whole life depreciation
20 rates.

21 Q. But you didn't make the adjustment?

22 A. No.

23 Q. So in your direct testimony, you did adjust
24 your proposed annual expense for the difference between
25 the theoretical and actual reserves for the accounts on

1 direct Schedule DSR-3, Table 1A, but you did not adjust
2 your proposed annual expense for the differences between
3 the theoretical and actual reserves through the account
4 shown on your rebuttal Schedule DSR-2; is that correct?

5 A. Yes, but the reason for that is --

6 Q. Thank you.

7 A. -- because of the amortization --

8 Q. Mr. Roff, that was a yes or no question.

9 If your counsel wants to explore with you why you did what
10 you did, he certainly can. But for my purposes, I'm
11 simply asking a yes or no question. Thank you.

12 Now, looking at your rebuttal
13 Schedule DSR-2, is it correct that your calculation shows
14 that if we adjusted these accounts for the reserve
15 surpluses and deficiencies, that would reduce the annual
16 expense you filed in your direct testimony by a total of
17 \$845,000 -- \$845,330?

18 A. Correct.

19 Q. Now, in column -- remaining on rebuttal
20 Schedule DSR-2 for a moment, looking at column 5 of that
21 schedule, is it correct that for those accounts you spread
22 the reserve -- reserve surplus and/or deficiency of each
23 account over the remaining life of that account?

24 A. That's correct.

25 Q. Now, going to the accounts shown in your

1 direct testimony, Schedule DSR-3, Table 1A, is it correct
2 you did not spread the reserve surplus and/or deficiency
3 of each account over the remaining life of that account
4 but instead spread it over four years?

5 A. That is correct, but that is a different
6 process.

7 MR. MILLS: Your Honor, may I approach the
8 witness?

9 JUDGE VOSS: Yes.

10 BY MR. MILLS:

11 Q. Mr. Roff, I've just handed you a single
12 page out of some of the work papers you provided for us,
13 and for my purposes I'm going to ask you about the average
14 remaining lives column, roughly two-thirds of the way
15 across this sheet. First off, do you recognize this as
16 one of your -- as a piece of one of your work papers?

17 A. Yes.

18 Q. And do you have a copy of Mr. Dunkel's
19 surrebuttal testimony there with you?

20 A. No.

21 MR. MILLS: May I approach again?

22 JUDGE VOSS: Yes, you may.

23 BY MR. MILLS:

24 Q. Mr. Roff, I've just handed you a copy of
25 Schedule WWD-S8, which is attached to the prefiled

1 surrebuttal testimony of Public Counsel witness William
2 Dunkel. Do you recall having seen that schedule?

3 A. Yes.

4 Q. And looking, for example, at Account 391.1,
5 office furniture and equipment, Mr. Dunkel uses a
6 remaining life of 15.4 years, is that correct, on his
7 Schedule S8?

8 A. Of column F, yes.

9 Q. Does that -- well, let me back up a second.
10 On Schedule WWD-S8, Mr. Dunkel uses remaining life only
11 through -- with a resolution of only tenths of years, is
12 that correct, single decimal point?

13 A. Apparently, yes.

14 Q. And on your work paper you also calculate
15 remaining lives; is that correct?

16 A. Yes.

17 Q. And you calculate them out to hundredths of
18 years?

19 A. Okay.

20 Q. Does the 15.4 years for Account 391.1 that
21 Mr. Dunkel shows on his schedule correspond to the 15.35
22 years that you show on your work paper?

23 A. Yes.

24 Q. And similarly, with the caveat that his
25 rounding is different than yours, are the remaining lives

1 that Mr. Dunkel uses on that schedule consistent with the
2 way you calculated them in your work papers?

3 A. Yes.

4 Q. Now, is it correct that the \$2,924,487
5 difference in column E of the Dunkel schedule that I just
6 handed you between the theoretical and actual reserves is
7 the same \$2.2 million difference you used to calculate the
8 proposed 731,122 annual adjustment for these accounts?

9 A. I'm sorry. Would you repeat that?

10 Q. Okay. Mr. Dunkel at the bottom of column E
11 on his schedule comes up with a figure of approximately
12 2.9 million; is that correct?

13 A. Yes.

14 Q. Is that number divided by 4 the number that
15 you used to arrive at the 731,122 that you have on your
16 table?

17 A. Yes.

18 Q. Okay. Thank you. And for the record, it's
19 shown on Schedule DSR-3, Table 1A to your direct
20 testimony?

21 A. That's correct.

22 Q. Okay. Now, looking at column G of
23 Mr. Dunkel's Schedule WWD-S8 attached to his surrebuttal
24 testimony, is it correct that if the reserve surplus or
25 deficiency for the general plant accounts were recovered

1 over the remaining life, the annual expense increase for
2 these general plant accounts would be 381,693?

3 A. Yes.

4 Q. Instead of the 731,122 you got?

5 A. Yes, that's correct.

6 Q. Okay.

7 MR. MILLS: Your Honor, I'd like to have an
8 exhibit marked.

9 JUDGE VOSS: As 311.

10 (EXHIBIT NO. 311 WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 BY MR. MILLS:

13 Q. Mr. Roff, I've handed you a spreadsheet
14 that's been marked for identification purposes as
15 Exhibit 311. Does that exhibit sort of sum up the
16 calculations that we just went through?

17 A. I'm sorry. I'm not sure that all these
18 numbers tie together.

19 Q. Which numbers do you believe don't tie
20 together?

21 A. Never mind. I see where the source is now.

22 Q. Okay. Does this exhibit accurately reflect
23 the numbers we were just talking about?

24 A. Yes.

25 MR. MILLS: Judge, with that I'd like to

1 offer Exhibit 311.

2 JUDGE VOSS: Are there any objections to
3 the admission of Exhibit 311?

4 (No response.)

5 JUDGE VOSS: Hearing none, it's admitted.

6 (EXHIBIT NO. 311 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. MILLS:

9 Q. Now, Mr. Roff, I'm going to turn to some
10 questions about reimbursement and insurance that are
11 raised in your surrebuttal testimony, and I believe just
12 for general reference, that this discussion begins on
13 about page 4 at the very bottom, line 22, and continuing
14 on from there. At page 5, lines 20, through page 6, line
15 7 you provide two examples. Do you see that section of
16 your testimony?

17 A. Did you say page 5? I'm sorry.

18 Q. Page 5. Well, it really begins at about
19 line 13 is the question, and then the -- in the answer you
20 give a couple of examples.

21 A. Okay.

22 Q. The first example has to do with a
23 hypothetical line extension; is that correct?

24 A. Yes, for a customer.

25 Q. Yes. In this example, is the customer

1 contribution what we would generally refer to as
2 contributions in aid of construction, or in Missouri we
3 pronounce that as CIAC?

4 A. CIAC as I say, yes.

5 Q. Tomato, tomato. Missouri we say CIAC. Is
6 it generally correct that line extensions are for new
7 service?

8 A. I would think so.

9 Q. Now, your second example has to do with --

10 A. Actually, it doesn't have to be for new
11 service, not necessarily.

12 Q. But generally it would be; is that not
13 correct?

14 A. Well, you're extending an existing
15 facility, so I'm assuming that perhaps there was something
16 there already. All I'm saying is I don't think it has to
17 be for a new service.

18 Q. So you believe that Empire's line extension
19 policy and line extension tariffs cover replacement of
20 service lines or distribution lines?

21 A. No.

22 Q. So under what circumstances would a line
23 extension not be for a new service?

24 A. I guess if you were extending an existing
25 service and you want to call it a new service, it seems to

1 me that that would -- is a differentiation.

2 Q. Okay. But a replacement of an existing
3 line foot for foot wouldn't be categorized as a line
4 extension, would it?

5 A. No.

6 Q. Now, the second example that you raise in
7 your testimony has to do with the Department of
8 Transportation or DOT, requiring Empire -- I'm sorry, DOT
9 requiring Empire to relocate a line due to highway
10 construction; is that correct?

11 A. Yes.

12 Q. And this example is the third-party
13 reimbursement example that you talk about in your
14 testimony, correct?

15 A. Correct.

16 Q. Now, in this DOT example, do you state that
17 the construction is \$14,000 and DOT reimbursed the company
18 \$4,000, which is credited to accumulated depreciation; is
19 that correct?

20 A. Yes.

21 Q. Does this credit increase or decrease the
22 amount in the accumulated depreciation account?

23 A. Let's see. Credits would increase the
24 amount in the accumulated depreciation account.

25 Q. Now, in this example, the DOT example,

1 there would also be a retirement of the existing line; is
2 that correct?

3 A. Most likely, yes.

4 Q. Were there any circumstances consistent
5 with this example in which it would not be -- would not
6 have retirement associated with it?

7 A. I don't think so, no.

8 Q. Now, as a result of that retirement, an
9 amount equal to the original cost of the retired line
10 would be a debit or a decrease to the accumulated
11 depreciation account; is that correct?

12 A. Yes.

13 Q. Now, flipping over to the next page, on
14 page 6, you state that third-party reimbursements must be
15 related to the addition; is that correct?

16 A. In my view, yes.

17 Q. Okay. Would the cost of removal associated
18 with that third-party reimbursed retirement also be
19 related to the addition?

20 A. No.

21 Q. Now, if we look at Schedule DSR-5 -- I'm
22 sorry, DSR-3, which is attached to your surrebuttal, and
23 I'm looking at page 5 out of 10. Are you there?

24 A. Yes.

25 Q. And this shows account 364 distribution

1 pole towers; is that correct?

2 A. Yes.

3 Q. And the F stands for fixtures, I assume?

4 A. Yes.

5 Q. On that schedule, the amounts for the

6 reimbursement amount would represent the \$4,000

7 reimbursement amount in the DOT example; is that correct?

8 A. Yes.

9 Q. So for the period of time shown on

10 Schedule DSR-3, page 5 of 10, the company received a total

11 of \$1,342,728 in reimbursements; is that correct?

12 A. I would say for the period 2000 to 2006.

13 Q. Okay. So that figure only corresponds to

14 the reimbursements from -- of 2000 to 2006 because the

15 prior amounts were zero. Okay. I got you.

16 The reimbursement ratio calculation, the

17 column that calculates reimbursements ratio in that

18 schedule is calculated by dividing the reimbursement

19 amount by the additions; is that correct?

20 A. That's correct.

21 Q. So the 4 percent total ratio for

22 reimbursements is 1,342,728 divided by the total additions

23 of 32,136,117; is that correct?

24 A. Yes.

25 Q. The salvage amount shown on this schedule

1 is the amount the company receives for the retired plant
2 such as for scrap value or salvage to another party; is
3 that correct?

4 A. Yes.

5 Q. And the salvage ratio shown on that
6 schedule is calculated by dividing a salvage amount by the
7 retirement; is that correct?

8 A. Yes.

9 Q. So the 58 percent shown for salvage ratio
10 is 1,694,720 divided by 2,901,798?

11 A. Correct.

12 Q. In turning to the cost of removal on that
13 schedule, the cost of removal amount is the amount that
14 the company pays in labor or other cost associated with
15 removing the plant; is that correct?

16 A. Yes.

17 Q. And the cost of removal ratio is calculated
18 by dividing the cost of removal amount by the retirement
19 amount; is that correct?

20 A. Yes.

21 Q. So you achieved the 203 percent ratio in
22 that column by dividing 585 -- 5,885,291 by 2,901,798; is
23 that correct?

24 A. Correct.

25 Q. Now, the net salvage with reimbursements

1 column, that's found by adding the reimbursement ratio and
2 the salvage ratio and then subtracting the cost of removal
3 ratio; is that correct?

4 A. That's correct.

5 Q. So the negative 140 percent is found by
6 adding 4 percent to 58 percent and then subtracting the
7 203 percent?

8 A. And I believe there's actually -- the
9 separate ratios are developed, the reimbursement divided
10 by the addition plus the salvage divided by the
11 retirement. So there's some rounding differences there.

12 Q. So you don't actually calculate the bottom
13 line under net salvage with reimbursements by calculating
14 the bottom line of the other columns. You're saying you
15 do each column row by row to come up with the bottom, is
16 that what you're saying?

17 A. No. I'm saying that the simple subtract --
18 addition of 4 plus 58 minus 203 will not equal 140.
19 There'll be some rounding.

20 Q. Okay. Okay. So it's just a rounding
21 question. All right. Now, the 58 percent salvage ratio
22 and the 203 percent cost of removal ratio are both found
23 by relating the amounts to the retirement amount; is that
24 correct?

25 A. Yes.

1 Q. The 4 percent reimbursement amount that's
2 found by relating the amount to the addition column; is
3 that correct?

4 A. Reimbursement amounts to the additions
5 column, correct.

6 Q. Do you have a calculator there with you?

7 A. I do not.

8 Q. Let me throw some numbers out and see if
9 you can agree with them. Would you agree that if the
10 reimbursement amount was related to the retirement rather
11 than to additions, that the reimbursement ratio would be
12 46 percent instead of 4 percent? In other words, if you
13 divided 1.342728 by 2,901,798 it'll get you somewhere in
14 the neighborhood of 40 to 50 percent?

15 A. That would be the result of that
16 calculation, but it wouldn't be correct.

17 Q. And I'm just asking you about the math
18 right now.

19 A. The math would be --

20 Q. I know you didn't do that calculation, but
21 if you did, would that be the result?

22 A. The mathematics are correct.

23 Q. So if you were -- if you were to do that
24 and you came up with a 46 percent number instead of the
25 4 percent number, and then you recalculated the net

1 salvage reimbursements, that would yield a -- instead of a
2 negative 140, it would be approximately 42 percent closer
3 to zero, is that correct, if you simply substituted 46
4 percent for the 4 percent?

5 A. Yes, but that would be incorrect.

6 Q. Well, and let me clarify that last answer.
7 You mean that's not the way you would approach making that
8 evaluation, you're not saying that that would be incorrect
9 mathematically?

10 A. Mathematically, that would be correct, but
11 the interpretation and use of those figures would be
12 incorrect.

13 Q. Thank you. Now, turning back to the DOT
14 example that you began to discuss on page 5 of your
15 surrebuttal testimony, in the life analysis would this
16 retirement due to relocation at the request of DOT tend to
17 decrease the realized life of the plant?

18 A. I guess it depends on how old the plant
19 was, the facility.

20 Q. Well, assuming it's not at or past the end
21 of its depreciable life, would it tend to decrease the
22 life of the plant?

23 A. Under that scenario, yes.

24 Q. In general, would a shorter life increase
25 depreciation expense as opposed to a longer life?

1 A. In general, the shorter the life, the
2 higher the depreciation rate, although I believe Empire's
3 service lives have been increasing.

4 MR. MILLS: Your Honor, I'd ask that that
5 last gratuitous addition be stricken from the record. I
6 didn't ask him a question about Empire's service lives.
7 It's not in response to my question.

8 JUDGE VOSS: Do try to be responsive to the
9 questions. That will be stricken. However, I'm fairly
10 certain that counsel from Empire will be able to ask you
11 any questions to rebut and get that additional information
12 stricken.

13 MR. MILLS: They may be able to ask, but
14 it's entirely beyond the scope of my examination, so if
15 they do ask, I will likely object to it.

16 BY MR. MILLS:

17 Q. Moving on, Mr. Roff, on page 6, line 8, you
18 begin to discuss insurance proceeds. Do you see that
19 section of your testimony?

20 A. Yes.

21 Q. There you state that insurance proceeds
22 were eliminated from the depreciation study, salvage and
23 cost of removal analysis; is that correct?

24 A. Yes.

25 Q. Now, for the purpose of the next few

1 questions, I'm going to refer to retirements for which
2 there was some insurance reimbursement as insurance
3 reimbursed retirements.

4 A. Okay.

5 Q. Can you -- can you follow me if I use that
6 phrase?

7 A. All right.

8 Q. Thank you. Were the removal costs
9 associated with that insurance reimbursed retirement
10 included in the cost of removal analysis?

11 A. I don't believe that they were separately
12 identified, so I'm going to say yes.

13 Q. And the removal cost associated with that
14 retirement would be a decrease to accumulated depreciation
15 account; is that correct?

16 A. Yes.

17 Q. For the insurance reimbursed retirement,
18 the amount equal to the original cost of retirement line
19 would be a reduction to the accumulated depreciation
20 account; is that correct?

21 A. The original cost of the retirement for the
22 insurance reimbursement would reduce accumulated
23 depreciation.

24 Q. Is that a yes?

25 A. Yes.

1 Q. Okay. Would the retired amount associated
2 with that insurance reimbursed retirement be included in
3 the cost of removal analysis?

4 A. I don't believe that they were separately
5 identified, so I think the answer is yes.

6 Q. In the life analysis would this insurance
7 reimbursed retirement tend to decrease the realized life
8 of the plant?

9 A. Once again, depending upon the age of that
10 retirement.

11 Q. So your answer would be the same --

12 A. Yes.

13 Q. -- as when I asked you a similar question
14 about that?

15 MR. MILLS: Your Honor, that's all the
16 questions I have. Thank you.

17 JUDGE VOSS: Industrials?

18 MR. WOODSMALL: No questions.

19 JUDGE VOSS: Are there any questions from
20 the Bench? Commissioner Jarrett?

21 COMMISSIONER JARRETT: No questions.

22 JUDGE VOSS: Chairman?

23 CHAIRMAN DAVIS: No questions.

24 JUDGE VOSS: Redirect?

25 MR. BOUDREAU: Yes, just a few. Thank you.

1 REDIRECT EXAMINATION BY MR. BOUDREAU:

2 Q. Mr. Roff, do you recall that you were asked
3 a number of questions by Staff about Exhibits 222 through
4 225, which I will represent to you are copies of FERC
5 Form 1s? Do you recall that?

6 A. Yes. Certain pages from the FERC, yes.

7 Q. Certain pages. And with respect
8 specifically to Exhibit 225, which I'll represent to you
9 is the FERC Form 1 for 2005, do you have that, sir?

10 A. I do.

11 Q. And you were asked about certain entries
12 thereon; isn't that correct?

13 A. Yes.

14 Q. What were those entries?

15 A. I believe it was for line 13 cost of
16 removal and line 14 salvage.

17 Q. And you had some observation about a unique
18 transaction during that year that might account for the
19 way those numbers are entered. Do you recall that?

20 A. Yes.

21 Q. What was the nature of the transaction that
22 you're referring to so the Commission understands the
23 context of your comments?

24 A. Yes. I believe that there was a generating
25 unit that was placed into inventory, and the way that the

1 company accounted for that was as a credit to cost of
2 removal, and that was the way that they removed that
3 amount from accumulated depreciation, and that is why I
4 believe that this \$28,000 credit figure here is, in fact,
5 a credit. There were some adjustments to the normal cost
6 of removal that produced that result.

7 Q. I believe you were also asked some
8 questions by Mr. Mills where he was contrasting two of
9 your schedules, one of which was DSR-3 to your direct
10 testimony. Was it DSR-2 to your rebuttal testimony? Do
11 you recall that? Or do I have that wrong? I think it was
12 DSR-2 to your rebuttal testimony.

13 A. I believe he was comparing this to the
14 Schedule 1A from --

15 Q. Let me get my bearings here.

16 A. Excuse me. Table 1A. Schedule DSR-3 from
17 direct testimony.

18 Q. Yeah. DSR-3, Table 1A , and it was being
19 compared to Schedule DSR-2 to your rebuttal?

20 A. Yes.

21 Q. And what was your understanding of the
22 point or the contrast that was being made?

23 A. Well, I believe that the OPC was trying to
24 say that I treated these differently. In fact, I did, but
25 there was a specific reason why they were treated

1 differently. The --

2 Q. Would you explain what that reason was --
3 or is or was?

4 A. Yes. The purpose of Table 1A was to show
5 the results of the vintaged amortization proposal for
6 certain general plant accounts. And the purpose of the
7 column 8 amount was to, in effect, true up the reserve
8 differences over a four-year period to correspond to the
9 timing of periodic depreciation studies.

10 So the point being that when this four-year
11 time frame is over and those amounts are, in fact, I'll
12 use the term recovered through expense, there would be no
13 longer an adjustment, and then pure whole life
14 amortization rates comparable to whole life depreciation
15 rates would apply to those accounts. So the purpose was
16 different because it was applying to a different set of
17 assets.

18 Q. Thank you. I believe in response to some
19 questions that you received from counsel for Staff, you
20 referred to a number of e-mails that I think are attached
21 to Staff witness Schad's testimony. Do you recall that?

22 A. Yes.

23 Q. Do you recall that line of questions?

24 A. Yes, I do.

25 Q. Is it unusual or atypical to -- for you in

1 performing a depreciation study for a client to ask some
2 questions about clarification or explanation about data
3 entries or information with which you're familiar?

4 MR. MILLS: I object. That's a leading
5 question.

6 JUDGE VOSS: Overruled. Answer the
7 question.

8 THE WITNESS: Yes, ma'am. It would be my
9 normal practice to review accounting data, review
10 accounting practices and policy statements, and,
11 therefore, certainly question or seek information
12 regarding certain transactions that I find of note or
13 maybe unusual. So yes, a normal part of my depreciation
14 study practice.

15 MR. BOUDREAU: That's all the questions I
16 have. Thank you.

17 JUDGE VOSS: Should we take an hour break
18 for lunch before we go to the next depreciation witness at
19 1:15? All right. We'll take a break until 1:15.

20 THE WITNESS: I guess I'm excused.

21 JUDGE VOSS: You're excused. I sent out an
22 e-mail and I haven't heard from any of the other
23 Commissioners that they have questions for you, so I
24 believe you're excused.

25 (A BREAK WAS TAKEN.)

1 JUDGE VOSS: We're going to go back on the
2 record. During the break I was advised by counsel, who
3 might wish to speak to that statement...

4 MR. BOUDREAU: Sure. Just for the record,
5 as I mentioned informally before we went on the record,
6 there's another company witness listed on the issue of
7 depreciation, Scott Keith. He's not available today
8 because of some other obligations out of town. He will be
9 testifying later on some other issues and will be
10 available.

11 Earlier we inquired of the other parties,
12 and I believe it's fair to say that nobody -- there was an
13 indication that nobody had -- none of the parties had
14 cross-examination for Mr. Keith on the issue of
15 depreciation. I can't speak to whether the Commissioners
16 may or may not, but my suggestion would be that we just,
17 to the extent that they have questions on that topic, to
18 put them to Mr. Keith the next time he takes the stand or
19 at their convenience for that matter.

20 JUDGE VOSS: I believe Mr. Keith is
21 scheduled to testify on the rule tracker issue tomorrow.

22 MR. BOUDREAU: I believe that's correct,
23 yes, and our expectation is he will be here tomorrow.

24 JUDGE VOSS: And he will be available then
25 for depreciation questions the Commissioners may have?

1 MR. BOUDREAU: Yes.

2 JUDGE VOSS: Then I believe the next thing
3 is for Staff to call its witness on the depreciation
4 issue.

5 MR. REED: Thank you, Judge. Rosella
6 Schad. (Witness sworn.)

7 JUDGE VOSS: Thank you. Proceed.

8 ROSELLA SCHAD testified as follows:

9 DIRECT EXAMINATION BY MR. REED:

10 Q. Spell your last name for us.

11 A. S-c-h-a-d.

12 Q. How are you employed, Ms. Schad?

13 A. As an engineer with the Public Service
14 Commission.

15 Q. Did you -- did you prepare part of the
16 Staff cost of service report in this case?

17 A. Yes.

18 Q. It's been marked as Exhibit 204 today. You
19 did address depreciation in that report, did you not?

20 A. I did.

21 Q. I have marked your rebuttal testimony in
22 this case as Exhibit No. 217. You did prepare rebuttal
23 testimony, did you not?

24 A. I did.

25 Q. Do you have any corrections to the report

1 that you participated in or the rebuttal testimony that
2 you filed?

3 A. I do not.

4 Q. If asked the same questions today that
5 appear in your testimony, would your answers be the same?

6 A. Yes.

7 MR. REED: Move for admission, Judge, of
8 Exhibit 217, the rebuttal testimony of Rosella Schad.

9 JUDGE VOSS: Are there any objections to
10 the admission of Exhibit 217?

11 MR. BOUDREAU: None.

12 JUDGE VOSS: Hearing none, it is admitted.

13 (EXHIBIT NO. 217 WAS RECEIVED INTO
14 EVIDENCE.)

15 MR. REED: And that's all. Thank you.

16 JUDGE VOSS: Department of Natural
17 Resources? Industrials?

18 MR. WOODSMALL: No questions.

19 JUDGE VOSS: Public Counsel?

20 MR. MILLS: No questions.

21 JUDGE VOSS: Empire?

22 MR. BOUDREAU: Yes, please, just a few.

23 CROSS-EXAMINATION BY MR. BOUDREAU:

24 Q. Good afternoon, Ms. Schad. My name is Paul
25 Boudreau. I'm an attorney for the Empire District

1 Electric Company.

2 A. Good afternoon.

3 Q. I just have a few questions I want to ask
4 you today about your testimony in this case.

5 Now, you are -- I think you are familiar,
6 are you not, with Mr. Roff who prepared the depreciation
7 study on behalf of Empire in this case?

8 A. I have spoken with him before, yes.

9 Q. Would you agree with me that Mr. Roff
10 conducted a competent depreciation study for Empire in
11 this case?

12 A. Yes.

13 Q. Would you agree with me that the study he
14 conducted in this case was done in a manner that was
15 generally consistent with his last study that was filed in
16 support of Empire's 2004 rate case?

17 A. No.

18 Q. You do not agree with that?

19 A. That is correct.

20 Q. That it's not generally consistent?

21 A. Correct.

22 Q. Could you elaborate on why you say that?

23 A. Yes. I believe in the 2004-0570 case the
24 depreciation study he performed did not treat
25 reimbursements the same way he did in this case.

1 Q. Okay. Fair enough. Thank you for that.

2 Are you familiar with the Empire's experimental regulatory
3 plan case -- or is -- let me rephrase that.

4 Are you familiar with Empire's experimental
5 regulatory plan?

6 A. To some degree.

7 Q. Okay. Let me ask you this, then: Would
8 you agree with me that the stipulation in that case that
9 was approved by the Commission did not include any
10 specific provisions with regard to depreciation rates?

11 A. I believe there was a specific provision in
12 that they could be looked at in the future.

13 Q. Do you have a recollection of where that --
14 do you believe that that was in the stipulation?

15 A. I believe so.

16 Q. Okay. That's fine. Would you agree with
17 me that the last time Empire's depreciation rates were at
18 issue were in its 2004 rate case? That's Case
19 No. ER-2004-0570.

20 A. I believe that is correct.

21 Q. Do you recall that Mr. Roff conducted a
22 comprehensive depreciation study for Empire that was filed
23 in that case?

24 A. That is my understanding.

25 Q. Who was Staff's witness on the issue of

1 depreciation in that case, do you recall?

2 A. I believe it may have been Mr. Greg Macias
3 and Mr. Guy Gilbert.

4 Q. That's consistent with my recollection as
5 well. Mr. Macias, is he still with the Commission?

6 A. He is not.

7 Q. At the time that he was with the
8 Commission, did he report to you?

9 A. No.

10 Q. Did you work with Mr. Macias with respect
11 to the issue of depreciation in the Empire rate case?

12 A. No.

13 Q. So you had -- is it fair for me to conclude
14 from that that you had little or no involvement in the
15 Empire rate case on the issue -- on the 2004 rate case on
16 the issue of depreciation?

17 A. Right, not to the specifics of it, I did
18 not.

19 Q. Can you tell me the degree of your
20 involvement in that case in some general terms?

21 A. I think as a department we converse on the
22 context of depreciation both in its context and in the
23 form of a formula.

24 Q. Thank you for that. Did you review his
25 work in -- on the issue of depreciation in that case?

1 A. I don't believe so.

2 Q. You have testified, though, I think in your
3 rebuttal testimony that Staff did perform and sponsor a
4 comprehensive depreciation study for the Commission's
5 consideration in that case?

6 A. I believe that's correct.

7 Q. You've also testified, I believe, that
8 Staff did prepare a depreciation study for Empire in this
9 proceeding?

10 A. There was the attempt to conduct it.

11 Q. Okay. Is it fair for me to conclude from
12 what you just said that although it attempted to --
13 although Staff attempted to prepare a depreciation study,
14 it did not, in fact, complete a depreciation study for
15 Empire in this case?

16 A. It could not complete conclusions.

17 Q. And in any event, at whatever stage it was,
18 Staff chose not to file a depreciation study in this case?

19 A. Well, without conclusions, you have -- you
20 don't have one to submit.

21 Q. And if I read your testimony correctly, the
22 concerns that you express on behalf of Staff is that it
23 was unable to be completed because of concerns with
24 Empire's recordkeeping; is that a fair statement?

25 A. I think as a generality, yes.

1 Q. Do you know whether any similar concerns
2 about the quality of the company's recordkeeping with
3 respect to its plant accounts was expressed by the Staff
4 in the 2004 rate case?

5 A. I do not.

6 MR. BOUDREAU: Just give me a moment. I
7 think I may be wrapped up here. I think that's all the
8 questions I have for this witness. Thank you, Ms. Schad.

9 THE WITNESS: Thank you.

10 JUDGE VOSS: Questions from the Bench? No
11 questions from the Bench. Redirect?

12 MR. REED: No, thank you.

13 JUDGE VOSS: Ms. Schad, you may step down.
14 In the event one of the Commissioners have a question,
15 which they haven't advised me that they do, will you be
16 available later in the week eventually for recall?

17 THE WITNESS: I will be here through
18 Thursday.

19 JUDGE VOSS: Great. I'll make sure they
20 know, so if they do have any questions, they can call you
21 before then. Thank you.

22 THE WITNESS: Very good. Thank you.

23 JUDGE VOSS: Well, aside from the issues
24 that the parties have stated that have been settled, that
25 concludes the issues for today and the witnesses. I

1 understand Mr. Dunkel --

2 MR. REED: I think Oligschlaeger has
3 some -- he filed surrebuttal on some depreciation issues.

4 JUDGE VOSS: That's correct. Sorry. I was
5 thinking that Dunkel was the last one, and he's going on
6 Thursday, right? In that case, Staff, would you like to
7 call your next witness?

8 MR. REED: Mark Oligschlaeger.

9 JUDGE VOSS: Mr. Oligschlaeger, just to
10 remind you that you're still under oath. Please proceed.

11 MR. REED: Tender for cross, Judge.

12 JUDGE VOSS: Department of Natural
13 Resources? Industrials?

14 MR. WOODSMALL: No.

15 JUDGE VOSS: Public Counsel?

16 MR. MILLS: No questions.

17 JUDGE VOSS: Empire?

18 MR. BOUDREAU: I just have two or three
19 questions for Mr. Oligschlaeger. Thank you.

20 MARK OLIGSCHLAEGER testified as follows:

21 CROSS-EXAMINATION BY MR. BOUDREAU:

22 Q. Good afternoon, sir.

23 A. Good afternoon.

24 Q. I want to circle back to I think a dialog
25 you had earlier today with my partner, Mr. Swearengen,

1 about the interplay of the rate -- traditional ratemaking
2 process and then the application of the regulatory plan
3 amortizations. Do you recall that exchange?

4 A. Yes, I do.

5 Q. And I believe that Mr. Swearengen said that
6 a number of scenarios could play out where you do the rate
7 case and there's a need for an amortization, and you do a
8 rate case and -- and the financial metrics that result
9 from that indicate that there's perhaps no need for a
10 regulatory plan amortization. Do you recall that?

11 A. Yes, I do.

12 Q. Is it -- okay. Let me move on.

13 Let's take the latter scenario where you go
14 through the traditional ratemaking process and then the --
15 with this company or -- let's stick with Empire. We'll
16 take a look at the regulatory plan and see whether there's
17 a need for regulatory plan amortization, correct?

18 A. Right.

19 Q. If that analysis shows that no amortization
20 is required, would you agree with me that increased
21 depreciation rates would have an impact on the company's
22 rates?

23 A. I'd probably somewhat reverse what you just
24 said. You would make a decision on what level of
25 depreciation expense was to be included in cost of

1 service. Then you would run those numbers through the
2 amortization calculation to determine whether anything
3 additional was needed.

4 Q. Okay. And in the event you go through that
5 process and it showed that no additional amortization was
6 needed, would you agree with me that the determination of
7 the depreciation rates could actually affect customer
8 rates? And if there's an increase in depreciation, it
9 could increase customer rates?

10 A. That possibility exists, yes.

11 Q. And that is a possibility in this case, we
12 just don't know what the answer is yet; isn't that
13 correct?

14 A. It depends upon the final numbers that are
15 associated with an Order from the Commission.

16 MR. BOUDREAU: Fair enough. That's all the
17 questions I have for this witness. Thank you. And thank
18 you, Mr. Oligschlaeger.

19 JUDGE VOSS: Questions from the Bench?
20 Redirect?

21 MR. REED: (Shook head.)

22 JUDGE VOSS: Mr. Oligschlaeger, you're
23 excused for this issue.

24 THE WITNESS: Thank you.

25 MR. MILLS: Judge, it appears that none of

1 the parties have -- or at least none of the parties here.
2 I don't know about DNR, but I would be very surprised if
3 they did. None of the parties here have questions for
4 Mr. Dunkel. He's out of town, and if we could save the
5 expense of bringing him here, it would be helpful to my
6 budget. So if you could inquire as to the Bench whether
7 or not they have questions.

8 JUDGE VOSS: I'll send an e-mail very
9 quickly. We'll address the other issues first. It's my
10 understanding that aside from Mr. Dunkel's potential
11 testimony, that all the issues that were scheduled for
12 today have been either settled or covered, and that the
13 parties have no issue that they're ready for, no other
14 issues that they're ready for at this point?

15 MS. CARTER: That's correct.

16 JUDGE VOSS: I think Staff had offered up
17 their witnesses, but other parties objected to taking
18 Staff witnesses before company witnesses, which is
19 understandable. Well, then I guess I will see -- we'll
20 see everybody at 8:30 tomorrow morning. And I will
21 contact you, Mr. Mills, and let you know if the Commission
22 has any questions for Mr. Dunkel.

23 MR. MILLS: That would be great. Thank
24 you.

25 JUDGE VOSS: As soon as possible. And with

1 that, this concludes today's portion of the hearing.

2 WHEREUPON, the hearing of this case was
3 recessed until May 15, 2008.

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1	I N D E X	
2	POLICY AND OVERVIEW	
3	Opening Statement by Mr. Reed	220
4	EMPIRE'S EVIDENCE:	
5	WILLIAM L. GIPSON	
	Direct Examination by Mr. Swearengen	221
6	Cross-Examination by Mr. Mills	223
	Cross-Examination by Mr. Woodsmall	229
7	Questions by Commissioner Jarrett	231
	Questions by Chairman Davis	239
8	Questions by Commissioner Clayton	245
	Further Questions by Chairman Davis	257
9	Recross-Examination by Mr. Woodsmall	259
	Redirect Examination by Mr. Swearengen	260
10		
	STAFF'S EVIDENCE:	
11	MARK OLIGSCHLAEGER	
12	Direct Examination by Mr. Reed	266
	Cross-Examination by Mr. Swearengen	267
13	Questions by Commissioner Clayton	271
	Recross-Examination by Mr. Mills	277
14	Redirect Examination by Mr. Reed	278
15	JAMES WATKINS	
	Direct Examination by Mr. Reed	280
16		
17	DEPRECIATION	
18	Opening Statement by Mr. Boudreau	283
	Opening Statement by Mr. Reed	289
19	Opening Statement by Mr. Mills	291
	Opening Statement by Mr. Woodsmall	292
20		
	EMPIRE'S EVIDENCE:	
21	DONALD S. ROFF	
22	Direct Examination by Mr. Boudreau	293
	Cross-Examination by Mr. Reed	297
23	Cross-Examination by Mr. Mills	312
	Redirect Examination by Mr. Boudreau	333
24		
25		

1 STAFF'S EVIDENCE:

2 ROSELLA SCHAD

 Direct Examination by Mr. Reed 338

3 Cross-Examination by Mr. Boudreau 339

4 MARK OLIGSCHLAEGER

 Cross-Examination by Mr. Boudreau 345

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	EXHIBITS INDEX		
2		MARKED	RECEIVED
3	EXHIBIT NO. 1		
3	Direct Testimony of W.L. Gipson	19	223
4	EXHIBIT NO. 25		
4	Direct Testimony of Donald S. Roff	19	297
5	EXHIBIT NO. 26		
6	Rebuttal Testimony of Donald S. Roff	19	297
7	EXHIBIT NO. 27		
7	Surrebuttal Testimony of Donald S. Roff	19	297
8	EXHIBIT NO. 217		
9	Rebuttal Testimony of Rosella L. Schad	19	339
10	EXHIBIT NO. 222		
10	2006 FERC Form 1	307	312
11	EXHIBIT NO. 223		
12	2003 FERC Form 1	307	312
13	EXHIBIT NO. 224		
13	2004 FERC Form 1	308	312
14	EXHIBIT NO. 225		
15	2005/04 FERC Form 1	308	312
16	EXHIBIT NO. 310		
16	Joplin Globe Article, May 13, 2008	223	228
17	EXHIBIT NO. 311		
18	Comparison of Various Treatments of		
18	Reserve Differences	320	321
19			
20			
21			
22			
23			
24			
25			

1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
21
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25