

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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5 TRANSCRIPT OF PROCEEDINGS  
6 Evidentiary Hearing  
7 May 15, 2008  
8 Jefferson City, Missouri  
9 Volume 7

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.

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

2 JUDGE VOSS: We're here for continuation of  
3 the hearing in Commission Case No. ER-2008-0093, in the  
4 matter of the Empire District Electric Company of Joplin  
5 Missouri for authority to file tariffs increasing rates  
6 for electric service provided to customers in the Missouri  
7 service area of the company.

8 We are going to begin today with the issue  
9 of Commission rules/tracker expense, Issue 7, I believe,  
10 and the company will be first to give an opening  
11 statement.

12 MR. COOPER: Thank you, your Honor. This  
13 issue concerns the Commission's new vegetation management  
14 and infrastructure rules. The final orders of rulemaking  
15 were published in the May 1, 2008 Missouri Register, and  
16 the rules will become effective approximately two months  
17 prior to the operation of law date in this case.

18 Empire believes that it will ultimately  
19 incur additional costs in the amount of 4 to \$6 million  
20 per year to comply with the new vegetation management and  
21 infrastructure rules. The new Commission rules provide  
22 that a utility may submit a request to the Commission  
23 regarding the deferral and tracking of the additional cost  
24 associated with the rules.

25 Empire's made a request in this case to

1 address its additional costs through a tracking mechanism,  
2 a mechanism by which the actual expenditures will be  
3 tracked against the amount utilized in the setting of  
4 rates and consequences provided if those expenditures  
5 differ from the rate case amount.

6                   The Staff has indicated its belief that it  
7 is in the public interest for Empire to take immediate  
8 action to increase the scope of its tree trimming  
9 activities. If that's the objective, Empire's proposal is  
10 a reasonable way to provide the financial resources  
11 necessary to accomplish the objective.

12                   Empire proposes that the annual expenditure  
13 target and its tracking mechanism be initially set at \$8.9  
14 million on a Missouri jurisdictional basis. That includes  
15 6.1 million for ongoing Missouri tree trimming and 2.8  
16 million for compliance with the new vegetation and  
17 infrastructure rules.

18                   Under Empire's proposal, if Missouri  
19 expenditures do not reach \$8.9 million, that in the  
20 following year Empire would be required to spend  
21 \$8.9 million plus the shortfall from the prior year to  
22 include -- to include an interest component calculated  
23 using the company's short-term interest rate.

24                   If Missouri expenditures exceed  
25 \$8.9 million, Empire proposes that it be authorized to

1 record these costs as a regulatory asset so that they can  
2 be considered for recovery in Empire's next rate case. No  
3 interest component would apply under Empire's proposal to  
4 any regulatory asset created.

5 Empire believes that its tracking mechanism  
6 would provide the funds necessary to ramp up the company's  
7 activities in accordance with the Commission rules as well  
8 as provide protections to the ratepayers if costs are less  
9 than those projected. Thank you.

10 JUDGE VOSS: Thank you. Staff?

11 MR. REED: Just to explain Staff's proposal  
12 and Staff's numbers at present, Staff proposes that the  
13 Commission should include in the current revenue  
14 requirement in this case the cost for the future  
15 compliance with the Commission's rules that are set to  
16 take effect about June 30th, 2008. That is within -- that  
17 is a couple months before the rates in this case will take  
18 effect.

19 It's Staff's position that these rules are  
20 really not unlike any other government mandate that causes  
21 additional costs, and the rules take effect during the  
22 course of the rate case.

23 So it seems proper that Empire should  
24 receive revenues for these costs in its new rates, but  
25 Staff's numbers are a little bit different in the first

1 year, including the current expenditures for vegetation  
2 management, Staff proposes that 2.4 million in addition be  
3 included for a total during the first year of compliance  
4 with these rules of 8.4 million, and then during the  
5 second year the total would be 8.7 million, contemplating  
6 that from one year to the next, as the company gains  
7 momentum in tree trimming and infrastructure standards,  
8 that a little bit more money would be spent.

9                   And that would bring us into -- we -- what  
10 we anticipate would be a new rate case filing that's  
11 contemplated to include the Iatan 2 investment that  
12 Empire's making, and we anticipate that would be in 2010  
13 when those rates would be set.

14                   Because this -- because the Staff is  
15 proposing an up-front recovery of these costs, in order to  
16 protect the consumers, the Staff proposes that the  
17 Commission order the company to spend certain amounts and  
18 that those amounts be tracked, be kept track of. In other  
19 words, Empire must spend these amounts, and if it doesn't,  
20 if it spends short of that, then in the following year  
21 Empire should be required to spend the additional amount  
22 plus interest that accrues on top of what they should have  
23 spent.

24                   That's it. Thank you.

25                   JUDGE VOSS: Thank you. Public Counsel?

1                   MR. MILLS: Public Counsel opposes the  
2 rules tracker in this case for a number of reasons. One  
3 is -- and this is not necessarily in any particular order,  
4 but one is the one that Mr. Reed just talked about.  
5 Staff's proposal is that the Commission order Empire to  
6 spend a certain amount of money on tree trimming.

7                   Well, I've got kids, if I send my kids out  
8 and say you go spend \$10 and buy some ice cream, I'm not  
9 going to worry that they're not going to do that. I may  
10 worry that they may not spend that money prudently, but  
11 they're going to go out and spend the money. I think  
12 that's just a terrible way to set a regulatory precedent.  
13 You don't order a utility to spend a certain amount of  
14 money on a particular topic, and if they do, that they're  
15 okay.

16                  The second reason that Public Counsel  
17 opposes this tracker and, in fact, the inclusion of any  
18 amounts for the estimates for compliance with the rule  
19 that will become effective soon is that we really don't  
20 know what the compliance is going to cost, what it will  
21 really cost to prudently comply with these rules.

22                  We've got some estimates from Empire. I  
23 don't believe that Staff has done an in-depth analysis to  
24 confirm that that's really a valid amount. Certainly  
25 Public Counsel hasn't. The numbers have been changing as



1 the case goes on. There's no experience in this state or  
2 any other state in operating under these rules. We just  
3 don't know what it's going to cost. These costs are not  
4 known and measurable.

5 Furthermore, this really is just sort of a  
6 one-sided thing. You never hear utilities come in and  
7 say, well, you know, we've got -- we've got a lot of  
8 revenue growth. Let's track that so we make sure that we  
9 capture all that in pre-rate cases and customers get it.

10 You heard from Mr. Gipson yesterday that  
11 load is growing on the Empire system. You're going to  
12 hear again about that from Mr. Overcast tomorrow. But yet  
13 we don't have a proposal here to try and track and capture  
14 that increased revenue between rate cases so that -- so  
15 that ratepayers get advantage of it.

16 Instead, we have a proposal that Empire, A,  
17 be required to spend a certain amount of money, and B,  
18 once it does, gets to recover that in rate cases  
19 regardless of whether that was the right way to comply  
20 with this rule or the wrong way to comply with this rule.  
21 The Public Counsel opposes the rules tracker for these  
22 reasons in this case. Thank you.

23 JUDGE VOSS: Thank you. Industrials have  
24 asked to be excused from this issue. Does Department of  
25 Natural Resources have an opening statement on this issue?

1 MS. WOODS: The Department does not take a  
2 position on this issue. Thank you.

3 CHAIRMAN DAVIS: Judge, can I inquire of  
4 Office of Public Counsel?

5 JUDGE VOSS: Proceed.

6 CHAIRMAN DAVIS: Okay. Mr. Mills, we've  
7 got a true-up now ordered in this case. Hypothetically  
8 speaking, if we required Empire Electric to come back and  
9 file a list of, you know, additional tasks, additional  
10 vegetation management activities that they intend to  
11 perform and a list of estimated costs for those  
12 activities, would that enhance your confidence at all?

13 MR. MILLS: Do you mean would I feel better  
14 if we gave Empire another bite at the apple? Not  
15 necessarily, no. I don't -- I think they've had a chance  
16 to put on their case. I don't know that they should be  
17 allowed now to come in and try and firm it up simply  
18 because it's been pointed out that their estimates are not  
19 all that accurate and they're moving targets.

20 You know, I just -- I don't think that  
21 that's the appropriate way to approach it. And  
22 furthermore, even by the end of the true-up period, Empire  
23 will still have no actual experience operating under these  
24 rules, and so it may be -- you know, it may be a different  
25 estimate and arguably a better estimate, but nonetheless

1 it would still be an estimate because we just don't know  
2 what it's going to cost to comply with these rules.

3 CHAIRMAN DAVIS: Okay. Thank you.

4 JUDGE VOSS: Empire, would you like to call  
5 your first witness? I believe you were going to call a  
6 witness that also had some policy questions referred from  
7 yesterday.

8 MR. COOPER: That's correct, your Honor.  
9 We're going to call Mr. Michael Palmer.

10 (Witness sworn.)

11 JUDGE VOSS: Thank you. Please proceed.

12 MICHAEL PALMER testified as follows:

13 DIRECT EXAMINATION BY MR. COOPER:

14 Q. Thank you. Please state your name?

15 A. Michael Palmer.

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

18 A. The Empire District Electric Company, Vice  
19 President of Commercial Operations.

20 Q. Have you caused to be prepared for the  
21 purposes of this proceeding certain direct testimony in  
22 question and answer form?

23 A. Yes.

24 Q. Is it your understanding that that  
25 testimony has been marked as Exhibit 13 for

1 identification?

2 A. Yes.

3 Q. Do you have any changes that you'd like to  
4 make to that testimony at this time?

5 A. No.

6 Q. If I ask you the questions which are  
7 contained in Exhibit 13, would your answers be the same?

8 A. Yes.

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

11 A. Yes.

12 MR. COOPER: Your Honor, I would offer  
13 Exhibit 13 into evidence and tender Mr. Palmer for  
14 cross-examination.

15 JUDGE VOSS: Are there any objections to  
16 the admission of the exhibits? It's just Exhibit 13,  
17 isn't it?

18 MR. COOPER: I believe it is, yes.

19 JUDGE VOSS: Are there any objections to  
20 the admission of Exhibit 13? Hearing none, it's admitted.

21 (EXHIBIT NO. 13 WAS RECEIVED INTO  
22 EVIDENCE.)

23 JUDGE VOSS: This looks like order of  
24 cross three. Department of Natural Resources?

25 MS. WOODS: Nothing. Thank you.

1 JUDGE VOSS: Staff?

2 CROSS-EXAMINATION BY MR. REED:

3 Q. Mr. Palmer, you filed only direct in this  
4 case, and I think in that direct you had talked about the  
5 numbers that you had estimated for compliance with the  
6 rules?

7 A. Yes.

8 Q. And are you still -- are you the one who  
9 has the best numbers for us with regard to Empire's  
10 compliance?

11 A. Yes.

12 Q. Tell us what those are now.

13 A. The --

14 MR. MILLS: Judge, I'm going to object to  
15 this as friendly cross. Mr. Palmer filed direct  
16 testimony. He had plenty of opportunity to file rebuttal  
17 and surrebuttal. For a party that's aligned with this  
18 party to now say, okay, well, after Public Counsel has a  
19 chance to file responsive testimony, let's tell us what  
20 your real numbers are. I think that's totally improper.

21 JUDGE VOSS: Would you like to comment on  
22 that, Mr. Reed?

23 MR. REED: Yes, I would. Mr. Mills is  
24 correct to a point. We disagree on the numbers.

25 JUDGE VOSS: You disagree with the company?

1                   MR. REED: As I indicated in my opening  
2 statement. So I want to know what the numbers are now  
3 because I believe they've changed. And even in spite of  
4 the change, I think that Empire's numbers are different  
5 than Mr. Oligschlaeger's in his surrebuttal.

6                   MR. MILLS: And they may or may not be, but  
7 I don't think that Empire should be allowed to put its  
8 current numbers in the record today without giving anybody  
9 else the chance to learn exactly what documents those are  
10 based on to file responsive testimony about that. As Mr.  
11 Cooper indicated in his direct examination, Mr. Palmer has  
12 only filed direct testimony. The other parties have filed  
13 two or three more rounds of testimony after that. If Mr.  
14 Palmer had new numbers, he should have put these in  
15 testimony so that we could have responded to them.

16                  MR. COOPER: Judge, I don't think you're  
17 going to find that there are any new -- new numbers.  
18 Certainly Mr. Palmer's direct testimony was filed at a  
19 time before the Commission had finalized and issued its  
20 Final Order of Rulemaking in regard to the vegetation  
21 infrastructure rules.

22                  However, the rules that -- or the  
23 underlying numbers that -- that represent Empire's  
24 estimates I think have been consistent since the time that  
25 the Final Order of Rulemaking has -- was entered.

1                   I think that all the parties have had  
2 opportunities to discover those numbers. I think Staff  
3 has discovered those numbers. Mr. Oligschlaeger has  
4 looked at those numbers. I don't know whether OPC has  
5 requested those numbers or not, but they certainly had the  
6 opportunity to do so.

7                   So I don't know that -- certainly you  
8 should not have the impression that there's some sort  
9 of -- some new set of numbers floating around that's new  
10 to the parties that the parties haven't seen before.

11                  MR. MILLS: Well, regardless of whether  
12 it's discoverable, it hasn't been presented in testimony  
13 and we have not had the opportunity to respond to it in  
14 testimony.

15                  JUDGE VOSS: Mr. Reed, I do understand that  
16 there's potentially a difference of opinion in the numbers  
17 between Staff's witness and the company witness. I think  
18 questioning is appropriate to get his impression of  
19 Staff's numbers. I don't think it's an appropriate time  
20 for him to enter new numbers into the record based on  
21 questions from a witness that is on the same side of the  
22 issue.

23                  MR. REED: Nothing further.

24                  JUDGE VOSS: Public Counsel?

25                  MR. MILLS: Yes. Thank you. Just a

1 couple.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Mr. Palmer, at page -- starting at the  
4 bottom of page 3 of your testimony and the first answer on  
5 the top of page 4, are you discussing there changes to  
6 your vegetation management that have occurred in the past?

7 A. Yes.

8 Q. Were those changes based on the proposed  
9 rules that the Commission issued a while back?

10 A. Yes. The proposed rules were some basis  
11 for that change. Our experience through the ice storm of  
12 January of last year also certainly influenced those  
13 changes we made.

14 Q. So those changes weren't based exclusively  
15 on the new rules?

16 A. Not exclusively.

17 Q. Now, page 5, you've got a little table that  
18 shows expenses on tree trimming for the last several  
19 years. Do you see that?

20 A. Yes.

21 Q. And at lines 2 and 3 you talk about a  
22 significant increase in expenses between 2005 and 2006; is  
23 that correct?

24 A. Yes.

25 Q. Was that increase captured in your



1 ER-2006-0315 case?

2 A. I believe the answer is yes to that.

3 MR. MILLS: I have no further questions.

4 JUDGE VOSS: Industrial is not present.

5 Are there questions from the Bench? Commissioner Jarrett?

6 QUESTIONS BY COMMISSIONER JARRETT:

7 Q. Good morning, Mr. Palmer. How are you?

8 A. Good morning.

9 Q. What is your job title again?

10 A. Vice President of Commercial Operations.

11 Q. And I take it from your testimony that

12 you're familiar with Empire's vegetation management

13 program --

14 A. Yes, sir.

15 Q. -- existing?

16 And have you had a chance to review our

17 vegetation management rules? Are you familiar with them?

18 A. Yes, sir.

19 Q. Can you tell me, just kind of summarize

20 some of the changes in your current program that you will

21 be making to comply with our new rules?

22 A. Yes. We made significant changes in our

23 tree trimming program beginning in 2005. We had studied

24 what changes would be necessary prior to 2005, but in 2005

25 we went out for bid on our tree trimming/vegetation

1 management contract, and we changed the plan as to how we  
2 do things.

3                   Most of the changes included going to what  
4 we call a pod trimming scenario, which is we have large  
5 crews of tree trimming folks that -- that are trimming  
6 entire circuits, versus the old plan where we pretty well  
7 did hot spotting or the managers used their discretion to  
8 say this portion of this circuit needs trimmed at this  
9 time and kind of prioritized from there. So in 2005 we  
10 made significant changes and went to this pod trimming  
11 program, and we think that's been very successful.

12                   Part of those changes included a more  
13 aggressive trimming plan, more clearance, more attempts at  
14 tree removal. It's been a very aggressive program. It  
15 has not come without some pain certainly for the company,  
16 some consternation from customers also that we -- that had  
17 felt we were trimming too aggressively in areas.

18                   Prior to the ice storms of last year, I had  
19 spent a great deal of my time talking with customers who  
20 felt we were on too aggressive of a trimming program.  
21 Even as recent as yesterday, we had an incident involving  
22 a customer firing some shots at our tree trimming crews.  
23 Fortunately, no one was injured. Our trimming personnel  
24 were able to take cover and call the law enforcement folks  
25 and the individual confessed to doing it. So that issue

1 has been resolved. But we had another incident in the ice  
2 storm of January of this year involving a customer  
3 wielding a pistol at our folks to try to get them to stop  
4 their trimming effort.

5                   So all this said, we implemented a very  
6 aggressive trimming program, and the way the rules have  
7 come out at this time, we feel like we are very compliant  
8 with the rules, except for the frequency that's required  
9 by the rules, meaning a ten -- a six-year cycle on rural  
10 circuits and a four-year cycle on urban circuits.

11                   So we think our plan was in place already  
12 is why we're very comfortable with our numbers, that our  
13 plan was in place. We feel like we've been in compliance  
14 except for the more aggressive cycle and the reporting  
15 components of the new rules, and certainly we will have to  
16 step up that effort to meet the reporting requirements.  
17 We'll have to add more of these pod crews that I've talked  
18 about, more personnel to assist in notification of the  
19 customers a little more aggressively than we have been  
20 notifying customers ahead of time.

21                   So with that said, I think the changes  
22 that -- in summary, the changes we're going to see are  
23 just more of what we're doing, plus additional reporting.

24           Q.       From your perspective, do you think the  
25 requirements in our rules will enhance or improve

1 reliability in Empire's --

2 A. Yes, sir.

3 Q. -- service territory?

4 A. Yes, sir, I do.

5 COMMISSIONER JARRETT: Thank you. No  
6 further questions.

7 JUDGE VOSS: Chairman Davis?

8 QUESTIONS BY CHAIRMAN DAVIS:

9 Q. Good morning, Mr. Palmer.

10 A. Good morning.

11 Q. In your direct testimony that you provided  
12 to the Commission, you stated that Empire would incur  
13 additional costs for complying with these new rules; is  
14 that correct?

15 A. Yes, sir.

16 Q. And what was that number again?

17 A. The additional cost that we expect will  
18 bring our Missouri jurisdictional tree trimming number to  
19 \$6.1 million.

20 Q. Okay. 6.1 million?

21 A. For the tree trimming portion and 2.8 for  
22 the infrastructure component.

23 Q. Now, has that number changed at all since  
24 your direct testimony?

25 A. Yes, sir, it has. At the time of my direct

1 testimony, we were anticipating a much more aggressive set  
2 of rulemaking coming forth.

3 Q. Okay. So it's less now?

4 A. Yes, sir.

5 Q. So if the Commission is going to include an  
6 amount of money in Empire Electric's rates, what number do  
7 you recommend today?

8 A. The Missouri jurisdictional component,  
9 6.1 million for tree trimming and 2.4, 2.8 additional for  
10 the infrastructure component.

11 Q. Well, that's the same number in your direct  
12 testimony.

13 A. I think my direct testimony was total  
14 company tree trimming number right at \$6 million.

15 Q. Okay.

16 A. Yeah. The Missouri component of that would  
17 be about 83 percent, so --

18 Q. All right. So again, let's go back and go  
19 through this one more time. What in your -- what in your  
20 direct testimony was the number for Missouri vegetation  
21 management with the rule compliance?

22 A. We had estimated an annual incremental cost  
23 of compliance with this rule at \$40 million. That was as  
24 our view of what the rules might have been in October of  
25 last year.

1           Q.       Okay. All right. And so now you're saying  
2   6.1 for Missouri vegetation management and 2.8 for  
3   infrastructure inspection?

4           A.       Yes.

5           Q.       Okay. Do you need a tracker?

6           A.       Yes, sir.

7           Q.       Why?

8           A.       We think it's of the utmost importance to  
9   meet the requirements of this rule. The rule requires  
10  certain time frames of compliance for certain percentages  
11  of the circuits to be completed. There has been  
12  tremendous cost pressure in the utility sector from labor  
13  issues, material issues. The cost of fuel for the tree  
14  trimming trucks and equipment has seen tremendous  
15  pressure.

16                   We're at a point now -- as I mentioned, we  
17  started a new tree trimming program in 2005. That was a  
18  three-year contract with our vegetation contractor. That  
19  contract expires at the end of August this year. We  
20  anticipate some very strong negotiations with them. Part  
21  of our plan may be to include an additional vegetation  
22  management contractor on our system to give them guidance  
23  and competition to make sure we get the best bang for our  
24  dollar. So we're -- there is some uncertainty as to what  
25  type of price we may see from the contract bids.

1           Q.       And when -- and when does that contract  
2     expire?

3           A.       I believe it's late August.

4           Q.       Okay.

5           A.       I may be off a month on that, but it's  
6     sometime this summer.

7           Q.       And today is May 15th?

8           A.       Yes, sir. Now, we did -- we did negotiate  
9     a six-month extension in that contract to give us some  
10    time to understand the rules and make our plan, submit our  
11    plan as required by the Commission on what our vegetation  
12    management plan will be, and we're on track to do that  
13    here in the next few weeks.

14          Q.       All right. So you got a contract extension  
15    through February '09?

16          A.       Yes. I think we've stated it as a one-year  
17    extension with them, but we've told them our intentions  
18    will be to rebid out the entire contract near the first of  
19    the year.

20          Q.       If you rebid out the entire contract near  
21    the first of the year -- okay. So you have a one-year  
22    extension or six months extension on this contract. Is it  
23    actually going to expire?

24          A.       The expiration will be in one year from the  
25    original expiration date, which would bring us to the

1 summer of 2009. We did indicate to the contractor when we  
2 negotiated the extension that our intention would be --

3 Q. To rebid?

4 A. -- to rebid prior to that expiration, but  
5 just in case there's some delays or other catastrophic  
6 events that come along, we wanted to give ourselves a  
7 little bit of cushion time to bid that out.

8 But our intention is to bid that out and  
9 get the expirations of these contracts more in the  
10 wintertime. Having a vegetation management contract  
11 expire in the middle of the summer is not a good thing.  
12 That's our busiest time of year, and we need to not try to  
13 change contractors during the summer months.

14 Q. Okay. And when -- when do you expect to  
15 begin incurring expenses to comply with the new vegetation  
16 management/infrastructure inspection and reliability  
17 reporting rules?

18 A. We began incurring additional expenses  
19 because of this at the very end of 2007.

20 Q. Okay.

21 A. We hired an individual to help us to  
22 analyze our current plans, to begin looking at the new  
23 proposed plans, to help us determine what directions we  
24 needed to go and begin assisting with the development of  
25 the new -- new plans to meet the Commission requirement.



1           Q.       But when do you actually expect that you  
2 are going to incur -- begin incurring those day-to-day  
3 operating expenses associated with those new rules?

4           A.       I think certainly we have posted new  
5 positions on the board at our company to add a few new  
6 folks to help manage this portion of the business. Those  
7 people should be in place within the next 30 days. Their  
8 time and labor and other expenses will start accumulating  
9 at that point.

10                   I expect as far as our vegetation  
11 management contractor goes, that by the time we get the  
12 inspections in place and geared up, it may be close to the  
13 first of September before we have additional chain saws in  
14 the trees.

15           Q.       Now, has the contractor said, hey, I need  
16 more money to do this?

17           A.       No. We have -- let me back up a little  
18 bit. We employ two different contractors. We have one  
19 contractor that is the actual vegetation management, you  
20 know, cutting the trees kind of guys.

21           Q.       All right. You've got the tree cutters.

22           A.       The second contractor is with a company  
23 called Environmental Consultants, Incorporated, ECI. They  
24 are -- they are the planners that go out ahead of the pod  
25 crews and determine what needs cut, what needs trimmed.

1 They do that actual work. Now, we have a -- we have  
2 incorporated their assistance in determining estimates  
3 that we've talked about in this case.

4 Q. Is that for the infrastructure inspection  
5 portion?

6 A. That is mostly for the vegetation  
7 management piece of it. There's another company, OSMOS,  
8 that has done infrastructure inspections for years. We've  
9 used them on our transmission system, and we have  
10 consulted with those folks to get an idea on the  
11 distribution pole inspection expense.

12 We have very good information on what it  
13 cost to inspect transmission poles, and there's some type  
14 of correlation certainly between those and distribution  
15 poles. So we had kind of a feel for that ahead of time as  
16 well.

17 Q. I guess -- I guess -- so tell me again, at  
18 what point do you think these expenses are going to become  
19 known and measurable?

20 A. I think --

21 MR. COOPER: I'm going to make an  
22 objection, I guess against my better judgment here with  
23 the Chairman asking questions, but my concern and my  
24 objection is that I think the phrase known and measurable  
25 is at least within the ratemaking context sort of a

1 legal -- a legal standard in some situations. I'm not  
2 sure that Mr. Palmer is qualified to -- to make an  
3 assessment of that, first off whether that even applies in  
4 this situation, second off, whether the facts as they may  
5 exist would -- would equate to something being known and  
6 measurable.

7 MR. MILLS: If I may respond? The known  
8 and measurable standard is applied by witnesses in case  
9 after case. There may be legal consequences to whether or  
10 not a particular expense is known and measurable, but the  
11 question of whether an expense is known and measurable is  
12 a fact question, not a law question, and I don't see any  
13 reason why Mr. Palmer can't understand the word known and  
14 the word measurable and offer his opinion on that.

15 CHAIRMAN DAVIS: Maybe I can rephrase the  
16 question here.

17 BY CHAIRMAN DAVIS:

18 Q. Okay. Mr. Palmer, when do you anticipate  
19 seeing the actual cost associated with complying with this  
20 rule on an ongoing basis? When does that start showing  
21 up, you know, for Empire Electric?

22 A. I believe it will be in the month of June.  
23 We will have additional personnel in place. We will be  
24 commencing with the additional inspection of the circuits,  
25 notification of the land owners, what I would consider

1 the -- you know, the non-cutting end of the rules. We'll  
2 start immediately with the selection of these postings  
3 that we have on the board, and I think -- I think that  
4 ramping up of our chain saw contractors will begin  
5 immediately as well.

6 Q. And so your chain saw contractors are going  
7 to start charging you more money in June?

8 A. We will -- they will. I expect they will.

9 Q. Okay. And it's all pursuant to the same --  
10 to the same contract?

11 A. Yes, under the terms of the existing  
12 contract.

13 Q. Under the terms. Okay.

14 A. Yeah, which is the pod crews work on a per  
15 unit cost. This might help clear up the situation a  
16 little bit, help clarify what I'm wanting to say. But the  
17 pod crews work on a unit cost basis. They work on as  
18 the -- as the planners go out and mark and actually map  
19 what trees we will trim and how they need to be trimmed,  
20 what trees would be removed, what sections might need to  
21 be sprayed, what sections we might need to use mechanical  
22 trimming on, this plan is all laid out. So the vegetation  
23 contractor, the chain saw contractor gets paid on a unit  
24 cost. So as we begin trimming more trees and removing  
25 more trees, his costs will go up. We'll see immediate

1 response in cost increase.

2 CHAIRMAN DAVIS: Thank you, Mr. Palmer.

3 THE WITNESS: You're welcome.

4 QUESTIONS BY JUDGE VOSS:

5 Q. I had one more question. This is based on  
6 some questions that were asked of Mr. Gipson on Monday  
7 that were deferred. He was talking about the ramping up  
8 of the money that's already in the budget for vegetation  
9 management of the company, and I think he had said it was  
10 6.6 or 6.8 million.

11 A. Yes. We had budgeted for this year  
12 6.6 million. Again, that's a company-wide number.

13 Q. And the question was, what is the Missouri  
14 component of that number now? Is it the 83 percent or is  
15 it going to be 83 percent ongoing because of the new rule?  
16 Because you threw out that number.

17 A. I'm not sure I understand the question  
18 again.

19 Q. What percentage of the 6.8 is Missouri  
20 jurisdictional expense?

21 A. I think it's 83 percent.

22 Q. It was before and it will continue to be  
23 83 percent?

24 A. I think so. We're planning to implement  
25 this same vegetation plan in our other state jurisdictions

1 as well.

2 JUDGE VOSS: Thank you.

3 THE WITNESS: You're welcome.

4 JUDGE VOSS: All right. Recross based on  
5 questions from the Bench, Department of Natural Resources?

6 MS. WOODS: Nothing. Thank you.

7 JUDGE VOSS: Staff?

8 MR. REED: No, thank you.

9 JUDGE VOSS: Public Counsel?

10 MR. MILLS: Just a couple.

11 RE-CROSS-EXAMINATION BY MR. MILLS:

12 Q. Mr. Palmer, I think in response to a  
13 question from Chairman Davis you referred to a filing that  
14 you're going to make in the next few weeks. Do you recall  
15 that answer, talking about the plan to implement the new  
16 rules?

17 A. Yes.

18 Q. When will you submit that plan?

19 A. I'd have to -- I'd have to double check. I  
20 think our interpretation of when the plan needs filed is  
21 June the 15th.

22 Q. About a month from now?

23 A. Yes.

24 Q. Now, I believe in response to some  
25 questions from Chairman Davis you were talking about the

1 way the pod -- the pod crews get paid, and you testified  
2 that, and correct me if I'm mischaracterizing your  
3 testimony, but I think you essentially testified that they  
4 get paid more if they cut more branches or cut down more  
5 trees; is that correct?

6 A. That's correct.

7 Q. Did the two recent ice storms take out a  
8 lot of branches in your service territory?

9 A. They did.

10 Q. Did they take out a lot of trees?

11 A. I would think so. I think yes would be a  
12 good answer. Certainly we saw many, many more limb issues  
13 than we saw total trees coming down, but there were a lot  
14 of trees down.

15 MR. MILLS: Thank you. I have no further  
16 questions.

17 JUDGE VOSS: Thanks. Redirect?

18 MR. COOPER: Just a few, your Honor.

19 REDIRECT EXAMINATION BY MR. COOPER:

20 Q. Just to further clarify this cutting issue,  
21 I think initially when Chairman Davis asked you some  
22 questions about whether the contractors were going to get  
23 more money, you said no. I take it from your later  
24 answers that that -- that was because they will get paid  
25 the same per cut; is that correct?

1           A.       That's correct. But I did confuse that  
2     issue. Certainly the unit cost that they get paid for,  
3     the cutting and the removal is at the same unit price that  
4     we've negotiated. There's not a change in that until we  
5     rebid the contract. But again, as they do more work,  
6     certainly the increased cost goes up immediately.

7           Q.       And you said historically Empire was on a  
8     six-year cycle; is that correct?

9           A.       No.

10          Q.       No. Okay.

11          A.       No. The new rules require a six-year cycle  
12     on the rural circuits, four years in town. We have been  
13     on about a ten-year cycle with the pod trimming crews.

14          Q.       So going back to the fact that your crews  
15     get paid essentially by the cut, if you go from a ten-year  
16     cycle to a six and four-year cycle, they're just going to  
17     be cutting that more -- that more limbs, correct?

18          A.       That's correct. They will -- they will  
19     need to trim more miles of circuits per year to meet that  
20     requirement.

21          Q.       And therein lies the cost increase?

22          A.       Therein lies the cost increase, yes.

23                   MR. COOPER: That's all I have, your Honor.

24                   JUDGE VOSS: Thank you, Mr. Palmer. I  
25     believe you're excused.



1 THE WITNESS: Thank you.

2 JUDGE VOSS: And I also believe that  
3 Mr. Taylor will not need to take the stand today.

4 MR. REED: Does that mean Monday, Judge?

5 JUDGE VOSS: Yes, he will be here Monday  
6 for fuel adjustment clause.

7 MR. REED: Oh, yeah, that's right.

8 JUDGE VOSS: And at this point I have not  
9 heard whether Commissioner Clayton will have questions on  
10 the other issue, but if he does, he can ask them at that  
11 time. Thanks. All right. Please call your next witness.

12 MR. COOPER: Empire would call Mr. Scott  
13 Keith.

14 (Witness sworn.)

15 JUDGE VOSS: Please proceed.

16 MR. COOPER: Your Honor, I believe  
17 Mr. Keith has testified previously, and his foundation at  
18 least for his testimony has been provided previously.  
19 Thus, I'll tender him for cross-examination.

20 JUDGE VOSS: Department of Natural  
21 Resources?

22 MS. WOODS: Nothing. Thank you.

23 JUDGE VOSS: Staff?

24 SCOTT KEITH testified as follows:

25 CROSS-EXAMINATION BY MR. REED:

1           Q.       Mr. Keith, you indicated that the cost of  
2       compliance with the new rules is 8.9 million per year for  
3       the next two years; is that correct?

4           A.       That's the results of a three-year average.

5           Q.       What do you mean by a three-year average?

6           A.       I looked at the estimates for tree trimming  
7       and infrastructure for the years 2008 through 2010 and  
8       used an average to arrive at the \$8.9 million.

9           Q.       How did you -- how did you estimate these  
10       amounts?

11          A.       Mr. Palmer's group provided me with some  
12       spreadsheets that had the cost estimates for compliance  
13       with both rules.

14          Q.       Why did you use a three-year average  
15       instead of a two-year average?

16          A.       Essentially because we probably won't get  
17       new rates until sometime in 2010.

18          Q.       Which indicates to me that the -- that you  
19       would be operating under this rate order for two years,  
20       wouldn't you agree, not three?

21          A.       Approximately, yes, that's right.

22          Q.       In your testimony you indicate that the 8.9  
23       million on a Missouri jurisdictional basis consists of 6.1  
24       for ongoing tree trimming. My understanding was that what  
25       you -- what Empire had included in rates for this case for

1 the ongoing tree trimming was 5.9 million?

2 A. I was using the staff's number that I got  
3 from Mr. Oligschlaeger. He said it was in his number,  
4 6.8 million.

5 Q. 6.1?

6 A. 6.8. The 6.1 is simply the Missouri  
7 jurisdictional piece of the 6.8.

8 Q. I see. Well, how much did Empire include  
9 in rates for the current tree trimming?

10 A. In the original filing?

11 Q. Yes.

12 A. I don't know that number off the top of my  
13 head.

14 Q. As far as you know, is the Iatan project  
15 still on schedule?

16 A. As far as I'm aware, yes.

17 Q. So in other words, I'm asking about whether  
18 there might be a delay in that rate case.

19 A. I'm not aware of that at this point.

20 Q. Does Empire currently budget tree trimming  
21 costs and then track them to make sure that the budget is  
22 utilized in full?

23 A. I know they budget tree trimming costs.  
24 Whether or not they're tracked to see if they're above or  
25 below the budget, I'm sure they're tracked to some degree

1     because each department has a budget and budget reports  
2     are produced that show variances.

3             Q.       Is there -- is there currently in place --  
4     let's say there's a certain budget set for tree trimming  
5     currently, and then if the manager or the supervisor of  
6     that particular budget doesn't utilize all of the amount  
7     that's budgeted for tree trimming, is that a good thing so  
8     that -- that might result in some incentive compensation?

9             A.       Not that I'm aware of. I'm -- I know each  
10    department has a budget, and variances from budgeted  
11    amounts have to be explained to management if they're  
12    significant.

13            Q.       Can you tell us how Empire would track the  
14    costs if given up-front recovery for compliance with the  
15    new rules?

16            A.       We would have to set aside some -- probably  
17    some specific subaccounts to track tree trimming  
18    expenditures and expenditures we make in relation to the  
19    infrastructure rule, and track those to see where they  
20    stand to what's in rates.

21                   MR. REED: That's all I have.

22                   JUDGE VOSS: Public Counsel?

23                   MR. MILLS: Just a few. Thank you.

24    CROSS-EXAMINATION BY MR. MILLS:

25             Q.       Mr. Keith, are there provisions in the

1 Commission's proposed rules that allow for the company to  
2 apply for a tracker?

3 A. In my mind, there are, yes. There's  
4 certainly a provision in the rule to allow for deferral  
5 and tracking. And this is somewhat of a hybrid of both of  
6 those systems.

7 Q. Is the -- is the -- are either of the  
8 infrastructure or the vegetation management rules in  
9 effect now?

10 A. I believe they're officially going to take  
11 effect in June, but not at this moment they're not in  
12 effect.

13 Q. Is it your testimony that today Empire has  
14 incurred expenses as a result of these rules?

15 A. I'm sure we have because we've -- we'll  
16 have to go into planning on how to comply, and I think  
17 Mr. Palmer just mentioned Empire has retained a consultant  
18 in that area, so certainly we've seen some costs in  
19 planning for compliance.

20 Q. And did you incur any of those expenses  
21 during the test year?

22 A. I don't know when they started looking at  
23 it. I'm sure the consultant looked at the original rule,  
24 which was back in '07. Probably during anything updated  
25 through December I would guess there's probably some cost

1 incurred.

2 Q. And have those costs been segregated into a  
3 tracker account?

4 A. I don't know.

5 Q. Who for Empire would know if you don't?

6 A. Probably one of the accounting people.

7 Q. So you think it's possible that Empire has  
8 a separate account for some of its tree trimming expenses  
9 that it's talking about in this case?

10 A. Well, certainly we know the vendor and we  
11 could come up with those numbers. So to the extent we  
12 knew the outside consultant, we could get the bills in to  
13 see what we spent.

14 Q. I'm sure you could. My question is for  
15 ratemaking purposes in this case, did you?

16 A. I don't know.

17 Q. Do you think it's possible that you did?

18 A. Possible that we did what?

19 Q. That you -- that you segregated those costs  
20 for ratemaking purposes into a separate account rather  
21 than run them through with the other tree trimming  
22 expenses?

23 A. I'm not aware that we put anything in in  
24 terms of an adjustment to account for that in this case.

25 Q. Were you here when -- excuse me. Were you

1 here when Mr. Palmer testified?

2 A. Yes.

3 Q. Do you agree with him that Empire will  
4 submit its compliance plan for compliance with the  
5 Commission's new proposed rules on June 15th?

6 A. I have no reason to doubt that.

7 Q. Is that compliance plan in the record in  
8 this case?

9 A. Not that I'm aware of.

10 Q. Have you seen it?

11 A. I've seen the estimates of the additional  
12 cost that we're going to incur in the two areas, but it  
13 only consists of a couple of pages of spreadsheet.

14 Q. And are those the same spreadsheets that  
15 you referred to in response to questions from Mr. Reed?

16 A. Yes, they are.

17 Q. Who prepared those spreadsheets?

18 A. I believe Mr. Palmer, Mr. Beecher and Sam  
19 McGarr, who works for them.

20 Q. And who provided the data that goes into  
21 those spreadsheets?

22 A. I don't know.

23 Q. Now, what in-the-field actual experience  
24 does Empire have complying with the Commission's new  
25 proposed rules?

1           A.       Well, they haven't taken effect yet, so we  
2 haven't specifically complied with them yet at this point.  
3 However --

4           Q.       Have there been any other Missouri  
5 utilities had any in the field experience complying with  
6 the proposed rules?

7           A.       I don't know.

8           Q.       You don't know any that do, do you?

9           A.       I don't -- I don't know of any.

10                  MR. MILLS: That's all I have. Thank you.

11                  JUDGE VOSS: Chairman, do you have any  
12 questions?

13                  CHAIRMAN DAVIS: No.

14                  JUDGE VOSS: Redirect? Well, actually, I  
15 do have a question.

16                  QUESTIONS BY JUDGE VOSS:

17           Q.       From yesterday or from when Mr. Gipson was  
18 on the stand, there were numbers 6.1 and 6.8 million --

19           A.       Yes.

20           Q.       -- for budget. I guess is that -- those  
21 are different yearly budgets, correct, for the total  
22 company?

23           A.       The 6.8 million represents a total company  
24 expenditure. The 6.1 million is representative of the  
25 Missouri jurisdictional piece of that, which is around



1 90 percent.

2 Q. That's one question I had because he had  
3 said he thought it was approximately 83 percent.

4 A. That's a different allocation driver. The  
5 driver we used on these costs is about 90 percent.

6 Q. So of the total tree trimming budget, it's  
7 approximately 90 percent rather than 83?

8 A. That's correct.

9 Q. What's the difference?

10 A. The 83 percent, if memory serves me right,  
11 it represents sort of an energy split between the Missouri  
12 jurisdiction versus the remainder of the system. The  
13 90 percent is more of a distribution O&M expense driver.

14 Q. So actually approximately 90 percent of  
15 those costs will be experienced in Missouri?

16 A. Well, they will be allocated to Missouri.

17 JUDGE VOSS: Okay. Thank you. Is there  
18 any recross? Public Counsel?

19 RE CROSS-EXAMINATION BY MR. MILLS:

20 Q. Mr. Keith, in the ER-2006-0315 case, what  
21 was the allocator used for tree trimming expense?

22 A. I don't remember. I doubt if it's changed  
23 very much.

24 Q. Do you know that for sure?

25 A. No, I don't.

1 Q. Do you know what was used in the  
2 ER-2004-0570 case?

3 A. No, I don't.

4 Q. Is Empire billed by its tree trimming  
5 contractors on a total company basis or do they bill by  
6 work State to state?

7 A. I don't know.

8 Q. What is the purpose of an allocation  
9 factor?

10 A. To try and split some of the costs between  
11 the various jurisdictions. You try and get the driver as  
12 close to the cost causer as you can.

13 Q. If the costs were direct billed by state to  
14 state, would there be a need for an allocation?

15 A. For those specific set of costs, there  
16 probably wouldn't, if you had a billing like that you  
17 could rely on.

18 Q. What other expenses does Empire allocate on  
19 the 90 -- on the basis of the 90 percent allocator?

20 A. The other distribution O&M maintenance  
21 costs.

22 Q. And how is that allocator derived?

23 A. I don't know off the top of my head.  
24 It's -- I believe it's displayed in my direct. I don't  
25 have those schedules in my direct testimony. All those

1 supporting schedules were attached in back and there is a  
2 section in those schedules that displays all of the  
3 allocation factors.

4 Q. But in any event, the allocation factor  
5 that you propose using for tree trimming expense in this  
6 case as well as for the tracker is the 90 percent  
7 allocator?

8 A. No, not necessarily. The tracker would be  
9 based on actual. We update those allocation factors every  
10 month. So when we drive costs out to jurisdictions, it  
11 would just be whatever that allocation factor was down the  
12 road.

13 MR. MILLS: No further questions.

14 JUDGE VOSS: Redirect?

15 MR. COOPER: Yes, your Honor.

16 REDIRECT EXAMINATION BY MR. COOPER:

17 Q. You were asked questions about how you  
18 would go about implementing this tracker mechanism. Does  
19 Empire currently have a tracker mechanism for a different  
20 set of expenses?

21 A. Yes, pension. Pension expenses.

22 Q. And is that FAS 87, FAS 106?

23 A. Yes, it is.

24 Q. You were asked questions by Mr. Mills as to  
25 whether you've segregated rule compliance expenses into a

1 tracker at this point. Do you remember that?

2 A. Yes.

3 Q. Do you have a Commission ordered tracker  
4 currently for these rule compliance expenses?

5 A. Do we have a Commission order on the  
6 vegetation/infrastructure tracker?

7 Q. Yes.

8 A. Not that I'm aware of.

9 Q. Has the company incurred expenses during  
10 the test year associated with tree trimming generally?

11 A. Yes, it has.

12 Q. Has it incurred expenses generally during  
13 the test year for infrastructure inspection?

14 A. Yes.

15 Q. You were asked questions near the end about  
16 the allocation factors that are used. To your knowledge,  
17 are the allocation factors used by Empire the same as  
18 those that have been utilized by the Staff in this case?

19 A. Yes, they are.

20 MR. COOPER: That's all the questions I  
21 have.

22 JUDGE VOSS: Mr. Keith, you may step down.  
23 I guess you'll be recalled, is it Monday, the fuel  
24 adjustment clause as well.

25 THE WITNESS: Either Monday or Friday.

1 Thank you.

2 JUDGE VOSS: Staff, would you like to call  
3 your witness.

4 MR. REED: Mark Oligschlaeger, please.

5 JUDGE VOSS: Remind Mr. Oligschlaeger  
6 you're still under oath. Please proceed.

7 MR. REED: Tender for cross, Judge.

8 JUDGE VOSS: Department of Natural  
9 Resources?

10 MS. WOODS: Nothing. Thank you.

11 JUDGE VOSS: Industrials are absent.  
12 Public Counsel?

13 MR. MILLS: Shouldn't I go after Empire on  
14 this witness?

15 JUDGE VOSS: Well, possibly, but --

16 MR. REED: He should.

17 JUDGE VOSS: -- on my Schedule 3 I had  
18 it -- maybe had it wrong. Empire?

19 MR. COOPER: We concede that point,  
20 Mr. Mills.

21 MARK OLIGSCHLAEGER testified as follows:

22 CROSS-EXAMINATION BY MR. COOPER:

23 Q. Mr. Oligschlaeger, is it common during the  
24 ratemaking process to normalize test year revenues and/or  
25 expenses in certain situations?

1           A.       Yes.

2           Q.       Would you agree with me that a definition  
3 of normalization would be to adjust test year amounts to a  
4 level that is representative of normal operations?

5           A.       I could agree with that, yes.

6           Q.       What's an example of a revenue  
7 normalization that you might go through in a rate case?

8           A.       The classic example is a weather  
9 normalization where you restate the company's actual  
10 revenue levels to reflect normal weather as opposed to the  
11 weather that was actually incurred in the test year that's  
12 being looked at.

13          Q.       So it's an attempt to adjust those revenues  
14 to reflect what you believe the most likely scenario will  
15 be on an ongoing basis; is that correct?

16          A.       Yes.

17          Q.       Now, I think we said expenses are also  
18 normalized, correct?

19          A.       That's correct.

20          Q.       What would be an example of an expense that  
21 would be normalized?

22          A.       A common example would be a company's  
23 maintenance expense, because that's partially tied to  
24 unplanned and irregular outages or maintenance problems at  
25 their facility. So any one year's maintenance expense is

1 not likely to be repeated from year to year. In other  
2 words, you'll see fluctuation from year to year in  
3 maintenance expense.

4 Q. And so in that situation would it be  
5 correct to say that you might take a three-year or  
6 five-year average of those maintenance expenses in order  
7 to come up with the amount that you would include in rates  
8 on an ongoing basis?

9 A. That is a common approach that is used,  
10 yes.

11 Q. Are there any expenses that you have  
12 normalized for purposes of this case?

13 A. Certainly the maintenance expenses that we  
14 just talked about, I believe Staff used either a five or  
15 six-year average of maintenance cost for your production  
16 plant units.

17 Q. Does the Staff expect there to be changes  
18 in Empire's tree trimming and infrastructure inspection  
19 and expenses as a result of the Commission's new  
20 vegetation management and infrastructure rules?

21 A. Yes.

22 Q. Have you had the opportunity to review  
23 Empire's projections of added cost associated with the new  
24 vegetation management and infrastructure rules?

25 A. The Staff has reviewed it. I discussed

1     these estimates with the individuals responsible for  
2     reviewing those estimates in the context of the actual  
3     rulemaking dockets themselves.

4             Q.       And if I look at your rebuttal testimony, I  
5     believe you have a statement that says perhaps you or  
6     Staff, I don't remember which, are satisfied that Empire's  
7     projections are reasonable projections of Empire's added  
8     costs; is that correct?

9             A.       Yes, and that should be attributed to the  
10    Staff.

11            Q.       I think in our opening statements, if not  
12    thereafter, it should have been clear that there's a  
13    slight difference between the number that Empire is  
14    proposing for its tracker and the number that Staff is  
15    proposing for the tracker; is that correct?

16            A.       Yes. The difference is around half a  
17    million. Whether that's slight or not may be a relative  
18    term.

19            Q.       Now, my understanding is that that  
20    difference is not based upon underlying estimates but  
21    rather the number of years that Empire averages to come up  
22    with its proposal and the number of years that Staff has  
23    averaged to come up with its proposal; is that correct?

24            A.       That is my understanding.

25            Q.       And Staff has utilized a two-year average;



1 is that correct?

2 A. Yes.

3 Q. And the company's used a three-year  
4 average?

5 A. Yes.

6 Q. Under the Staff's tracker proposal, what  
7 happens if the company ramps up faster than it anticipates  
8 and it spends more than the amount that has been  
9 identified for the tracker?

10 A. There's nothing -- well, the company should  
11 spend what it needs to spend both to be in compliance with  
12 the rules and otherwise maintain an appropriate tree  
13 trimming program. If that amount exceeds the allowance in  
14 rates suggested by the Staff, then basically you would  
15 wait 'til the next rate case to presumably -- to seek  
16 recovery of that additional amount.

17 Q. But under the Staff's proposal there's  
18 no -- there's no deferral mechanism built in to create a  
19 regulatory asset associated with any overage; is that  
20 correct?

21 A. That's correct. I would say certainly as  
22 we attempted to design our proposal for the first two  
23 years, there should not be any deferral mechanism in  
24 place.

25 Q. Now, on the other hand, if amounts are

1 spent less than the amount that's identified in the  
2 tracker, is there protection built into the Staff proposal  
3 for the customers?

4 A. Staff believes so. What we have proposed  
5 is that if there's a shortfall in any one year's spending,  
6 the amount of that shortfall would carry over to the next  
7 year, be added to full commitment for the spending for the  
8 next year with interest applied to the amount of  
9 the shortfall from the previous year.

10 Q. Mr. Mills earlier argued that somehow the  
11 form of the tracker forces the company to spend a certain  
12 amount. Are you familiar with any trackers that, instead  
13 of adding dollars and requiring them to be spent in a  
14 future year, merely would create a regulatory liability  
15 for an underspending situation like that?

16 A. I believe the current pension and OPEBs  
17 trackers work in both directions where they can result in  
18 either regulatory assets or regulatory liabilities.

19 Q. And in a given year if there's an asset and  
20 another year there's a liability, perhaps they would be  
21 offset against one another?

22 A. Yes. You would look at the aggregate at  
23 the time of the next rate case.

24 MR. COOPER: That's all the questions I  
25 have at this time, your Honor.

1 JUDGE VOSS: Public Counsel?

2 MR. MILLS: Yes, thank you.

3 CROSS-EXAMINATION BY MR. MILLS:

4 Q. Mr. Oligschlaeger, just in a general sense,  
5 under your proposal, if EDE realizes in any given year  
6 that it's going to take less than the amount that Staff  
7 has proposed to adequately trim trees, in your view, does  
8 the company have an incentive to go on and spend the  
9 balance in any event?

10 A. I think the idea is they would be required  
11 to spend the additional amount, and we don't think that's  
12 inappropriate to the extent that they can have the  
13 resources to go beyond minimum compliance with the rules  
14 as they exist, we would certainly expect that they would  
15 do so and use any extra dollars to go beyond the minimal  
16 levels of compliance.

17 Q. But assuming they were able to do a  
18 reasonable and prudent job for less than the amount, under  
19 your proposal they would be required to spend more; is  
20 that correct?

21 A. Our proposal to give them up front  
22 resources to meet the rule compliance is premised upon the  
23 expectation and the requirement that they spend those  
24 dollars, yes.

25 Q. Now, you heard Mr. Keith talk about a

1 couple of spreadsheets upon which he based his estimates.

2 Do you recall that?

3 A. Yes, I do.

4 Q. Have you seen those spreadsheets?

5 A. Yes, I have.

6 Q. And do you know who provided the data that  
7 went into them?

8 A. Into the spreadsheets?

9 Q. Yes.

10 A. I believe they originally came from the  
11 company's consultant, ECI. I believe that's Environmental  
12 Consultants, Inc., that they utilize for tree trimming --  
13 their tree trimming operation.

14 Q. Now, is that consultant the one that Empire  
15 uses both for input into compliance with the Commission's  
16 proposed new rule as well as ongoing tree trimming  
17 expenses?

18 A. Well, it is one of the consultants the  
19 company uses in their ongoing tree trimming operations.

20 Q. And because of that relationship, that  
21 company's compensation will be based on the amount of tree  
22 trimming work that's in the future; is that correct?

23 A. I haven't reviewed their contract recently,  
24 so I can't say I know that.

25 Q. But you heard Mr. Palmer testify that at

1 least for the other contractor, the pod trimming  
2 contractor, that's the case?

3 A. Yes, I did hear that.

4 Q. Do you have any reason to think that it  
5 would not be the case for ECI?

6 A. I would not be surprised if ECI was paid on  
7 a, shall we say, somewhat volumetric basis as opposed to  
8 flat fee.

9 Q. Now, Mr. Cooper asked you some questions  
10 about normalization. Do you recall that?

11 A. Yes.

12 Q. Is normalization by definition based on  
13 historical data?

14 A. The way the Staff approaches it, I would  
15 agree with that, yes.

16 Q. Is there another accepted definition of  
17 normalization that relies on projected data?

18 A. I suppose there could be. It's not -- if  
19 that's ever been tried in Missouri, it's not tried very  
20 often.

21 Q. So in Missouri at least, the accepted  
22 definition of normalization is to use historical data to  
23 come up with a -- a normalized number?

24 A. I would agree with that.

25 Q. Now, Mr. Oligschlaeger, have you ever

1     worked for a utility as a tree trimmer?

2             A.       No, I have not.

3             Q.       Do you have any kind of education in  
4     forestry?

5             A.       No.

6             Q.       What did you do specifically to verify that  
7     the estimates that Empire provided for its rule compliance  
8     were accurate?

9             A.       What I did personally was I contacted  
10    Mr. Daniel Beck of the Staff, who was involved in the  
11    ongoing Commission rulemaking dockets which we're  
12    concerned with here and I asked him a question, have you  
13    reviewed Empire's estimates and do they appear to be  
14    reasonable in light of the current version of the rules  
15    that has been sent over to the Secretary of State's --  
16    Secretary of State? Mr. Beck told me in his opinion they  
17    were.

18            Q.       And is Mr. Beck a witness in this case?

19            A.       No, he isn't. Well, he hasn't filed  
20    testimony on tree trimming, no.

21            Q.       What specifically did you see Mr. Beck do  
22    to verify those estimates?

23            A.       I was not involved in that process with  
24    Mr. Beck.

25            Q.       So is your answer that you didn't see him

1 do anything with your own eyes to verify those estimates?

2 A. I was not personally involved in the  
3 rulemaking docket, so no, I did not see whatever work he  
4 did.

5 Q. Do you know whether Mr. Beck has a degree  
6 in forestry?

7 A. I don't know.

8 Q. Do you know what his degree is in?

9 A. No.

10 Q. Is he an engineer?

11 A. I sometimes get confused over engineers  
12 versus economists up on our seventh floor. I'll happily  
13 concede, I believe he's either an economist or an  
14 engineer.

15 Q. Do you know whether he's ever worked for a  
16 utility in a capacity that's related to vegetation  
17 management?

18 A. To my knowledge, he has not.

19 Q. And you have never worked for a utility in  
20 a capacity related to vegetation management, have you?

21 A. I've never worked for a utility in any  
22 capacity, period.

23 Q. Now, getting back to some accounting stuff,  
24 which you may be more familiar with, in terms of the  
25 expenses for vegetation management and infrastructure

1 inspections that are included in the test period for this  
2 case, have any of those amounts that Empire booked been  
3 disallowed in Staff's audit?

4 A. We made -- the only adjustment we made  
5 to -- well, we made two adjustments to test year tree  
6 trimming expenses. One, we updated it through the end of  
7 calendar year 2007, the end of our update period. Second  
8 thing we did was removed any incremental tree trimming  
9 costs specifically associated with the January and  
10 December 2007 ice storms. And those are the two  
11 adjustments we made.

12 Q. Neither of those adjustments were intended  
13 to exclude any cost of compliance with the Commission's  
14 pending new vegetation management or infrastructure  
15 inspection rules; is that correct?

16 A. No, they were not.

17 Q. And from your point of view, would they  
18 have had that effect?

19 A. To disallow costs that may have been  
20 incurred in compliance with the rule?

21 Q. Yes.

22 A. No.

23 Q. And similarly, the questions I was just  
24 asking were about disallowance. Have any of those costs  
25 been segregated into a separate account for tracking



1 purposes in Staff's case?

2 A. Unless you're talking about the costs that  
3 were segregated for the purposes of the deferral that were  
4 related to the ice storm, no.

5 Q. I'm talking about a cost specific to  
6 compliance with the pending new rules.

7 A. No, we did not attempt to do that.

8 MR. MILLS: Nothing further. Thank you.

9 JUDGE VOSS: Questions from the Bench,  
10 Commissioner Jarrett?

11 COMMISSIONER JARRETT: I have no questions.

12 JUDGE VOSS: Commissioner Gunn?

13 COMMISSIONER GUNN: No questions.

14 JUDGE VOSS: Chairman?

15 CHAIRMAN DAVIS: No questions. Good to see  
16 you, Mr. Oligschlaeger.

17 THE WITNESS: Good to see you again.

18 JUDGE VOSS: I do have one question.

19 QUESTIONS BY JUDGE VOSS:

20 Q. In response to Public Counsel, you're  
21 saying that you didn't make any recommended disallowances  
22 for specific items. If the Commission were to put money  
23 in to cover compliance costs in a tracker, would the  
24 Commission lose the ability to later determine that any  
25 money spent wasn't reasonable and shouldn't be allowed to

1 be, I guess, included in that amount, or is that something  
2 that would be considered in the next rate case?

3 A. The way this -- I think the proposal would  
4 work is, I think you're going perhaps if the company for  
5 whatever reason spends the money imprudently or in a less  
6 than reasonable fashion, I think that would have to be  
7 looked at in the next rate proceeding and the appropriate  
8 actions taken in that context.

9 Q. Or if they tried to put something under  
10 that category that maybe Staff or another party didn't  
11 believe should have been included in a tree trimming  
12 category, that would also be able to be considered in a  
13 subsequent rate case?

14 A. Yes.

15 JUDGE VOSS: That's all the questions I  
16 have. Is there any recross based on questions from the  
17 Bench? Public Counsel?

18 RECROSS-EXAMINATION BY MR. MILLS:

19 Q. Mr. Oligschlaeger, in response to those  
20 questions, is what you're talking about sort of a prudence  
21 review in an after-the-fact fashion in the succeeding rate  
22 case?

23 A. Yes.

24 Q. Are you aware of anyone on the Commission  
25 Staff that has a degree in forestry or is an arborist?

1           A.       I'm personally not aware of any such  
2 person.

3           Q.       Do you know of anyone on the Commission  
4 Staff who has worked for a utility in any capacity related  
5 to vegetation management?

6           A.       There may be some I'm not personally aware  
7 of.

8           Q.       Would either that kind of education or that  
9 kind of experience be helpful in determining whether a  
10 utility's actual expenditures for vegetation management  
11 were prudent?

12          A.       It could be.

13                   MR. MILLS: No further questions. Thank  
14 you.

15                   JUDGE VOSS: Redirect?

16 REDIRECT EXAMINATION BY MR. REED:

17          Q.       Mr. Oligschlaeger, would you explain to me  
18 what -- I don't understand the difference between  
19 establishing regulatory assets or liabilities versus what  
20 your current proposal is.

21          A.       Use of a deferral mechanism such as what is  
22 I think contemplated in the vegetation management and  
23 infrastructure systems rules would probably give rise to  
24 regulatory assets or liabilities in which the company's  
25 actual expenditures for compliance with the rules will be

1 compared to whatever level of compliance costs are  
2 included in rates, and the opportunity would be afforded  
3 the company to come back in its next rate case and either  
4 recover any excess expenditures it has made from customers  
5 or to refund back or to give back to customers any under-  
6 expenditures it made for those areas compared to the level  
7 set in rates.

8                   Now, the tracker mechanism that the Staff  
9 is proposing is not a regulatory asset or regulatory  
10 liability. It's not based on those kinds of mechanisms  
11 for truing up the company's actual cost to its rate  
12 levels. It's basically based upon a premise, you give  
13 them money -- the companies certain funds up front to  
14 accomplish certain things. You monitor whether they are  
15 being accomplished, and if they do not spend the amount of  
16 money allowed to them in rates for the intended purposes,  
17 then certain consequences would happen.

18                   But the excesses or the shortfalls, any  
19 difference between the amounts they, the company, actually  
20 spends compared to the amount given -- provided to them in  
21 rates in this case would not be recoverable in the next  
22 rate case.

23           Q.       Does the company have any incentive to  
24 spend money over and above what you recommend to be  
25 established for future compliance costs?

1           A.       Would they have the incentive to spend more  
2 money for these activities? Well, again, obviously they  
3 would be expected and be required to adhere to the minimum  
4 requirements of the rules, and even if that minimal  
5 requirements would lead them -- would require them to  
6 spend more money than what would actually be afforded to  
7 them in this rate case, then hopefully compliance with the  
8 rules would be enough incentive for them to do so.

9           Q.       So the dollar amount that you have  
10 recommended doesn't necessarily -- doesn't necessarily  
11 mean that Empire will be in compliance with the new rules?

12          A.       Admittedly what we are dealing with are at  
13 this point estimated costs of compliance with the rules.  
14 That amount, in terms of minimum compliance, it may be  
15 more, it may be less.

16          Q.       And if it's more and Empire has to spend  
17 more than the amount you recommend, what happens -- does  
18 Empire somehow get that money back in the next rate case,  
19 or how's it treated?

20          A.       Not under the Staff's proposal. They would  
21 need to seek any additional amounts in base rates and in  
22 its next rate case.

23          Q.       And if they don't spend the required amount  
24 in the first year, what happens?

25          A.       In that case, whatever shortfall there was

1 would be carried over to the next year with interest  
2 applied to it and Empire would be expected to expend that  
3 amount in the second year to make itself whole, so to  
4 speak.

5 Q. Hypothetically, if these rules were not  
6 taking place, there would still be an amount in Empire's  
7 revenue requirement for tree trimming in this case, yes?

8 A. Certainly.

9 Q. What would that amount be? What would your  
10 recommendation be?

11 A. The Staff's recommendation, our take on  
12 that is approximately -- without the compliance rules,  
13 it's approximately \$6 million --

14 Q. All right.

15 A. -- Missouri jurisdictional.

16 Q. And then with -- with the compliance rules,  
17 your estimate is an additional how much?

18 A. We are recommending an additional allowance  
19 of 2.575 million.

20 Q. In the first year?

21 A. Well, we're not going to ratchet rates up  
22 from one year to the next. We are proposing that their  
23 average compliance costs for the first two years be  
24 provided to them up front in rates. That's the 2.575.  
25 Their first year compliance cost based on their estimates

1 was around 2.4 million. Their second year costs I believe  
2 are somewhere in the neighborhood of 2.75 million  
3 incremental.

4 Q. Why is your number different than that that  
5 Mr. Keith talked about? He talked about using a  
6 three-year average, and you talk about a two-year average.  
7 Explain to us why your two numbers are different.

8 A. Well, because the company's estimate of its  
9 compliance costs in the third year's -- for the third year  
10 is an amount greater than the first or second year, so if  
11 he uses a three-year average, he will have a higher  
12 amount.

13 Q. So why should we use the two-year average  
14 instead?

15 A. At this time, I think the best information  
16 we have is that the rates resulting from this case are  
17 likely to be in effect for approximately two years or  
18 maybe two years and several months.

19 Q. Until what happens?

20 A. Until such time as the company files its  
21 required rate proceeding under the regulatory plan to  
22 include the Iatan 2 investment and rates for that  
23 proceeding go into effect.

24 MR. REED: Thank you, Mr. Oligschlaeger.

25 JUDGE VOSS: Mr. Oligschlaeger, you may

1 step down.

2 I have a question. Based on Mr. Keith's  
3 comment as he was leaving the stand, is Mr. Keith  
4 potentially, if we get to him, going to testify Friday on  
5 the fuel adjustment clause issues? Because he's  
6 technically scheduled for Monday. I just want to make  
7 sure that, because not all the parties are here, that  
8 that's something everyone's aware of and will be ready to  
9 cross him.

10 MR. COOPER: I'm turning to look at someone  
11 who has a better grasp of the overall case than I do.

12 MS. CARTER: There's been no indication  
13 given that he'd go on a day other than Monday. I believe  
14 for the fuel adjustment clause, since it's just Overcast,  
15 Mr. Overcast, since he's also scheduled for ROE, I think  
16 we'll probably take a decent amount of time on ROE.

17 JUDGE VOSS: Well, Mr. Gorman won't testify  
18 on ROE until Tuesday, so that would make ROE shorter, and  
19 one of the issues for Friday has settled. All right.  
20 Public Counsel?

21 MR. MILLS: Before we go on to that, can I  
22 get you to recap what just happened? Are you saying that  
23 on Friday we're going to do ROE, except for Gorman, and  
24 then Overcast, and those are the only two things we'll  
25 take up on Friday?



1 JUDGE VOSS: As of right now, but when  
2 Mr. Keith was leaving the stand I said see you Monday, and  
3 he said or Friday. So I just wanted to clarify that he  
4 wasn't going to be called Friday if we had time.

5 MR. MILLS: And that's what I'm trying to  
6 clarify, too, and the answer I guess is no, he won't.

7 JUDGE VOSS: As far as we know right now,  
8 but if someone tries to call him and you're not prepared,  
9 you may object to that.

10 MR. MILLS: I'd object to that.

11 JUDGE VOSS: Please call your witness.

12 MR. MILLS: Ted Robertson, please.

13 (Witness sworn.)

14 JUDGE VOSS: Please proceed.

15 TED ROBERTSON testified as follows:

16 DIRECT EXAMINATION BY MR. MILLS:

17 Q. Could you state your name for the record,  
18 please.

19 A. Ted Robertson.

20 Q. And by whom are you employed and in what  
21 capacity?

22 A. I'm a regulatory accountant for the  
23 Missouri Office of the Public Counsel.

24 Q. And I will represent to you that your  
25 prefiled testimony has been marked as Exhibit 307 for your

1 direct, 308 for your rebuttal, and 309 for your  
2 surrebuttal. Do you have any additions or corrections to  
3 that testimony?

4 A. I do, and in my rebuttal testimony, page 5,

5 Q. Go ahead.

6 A. On line 9, towards the end, delete the word  
7 now, n-o-w. On line 10, at the end, delete the word at,  
8 and add the word approximates. On line 11, delete  
9 everything that starts with \$8 million down to the last  
10 paren where it says 50 percent capital, 50 percent expense  
11 or in other words from the 8 million to the comma and  
12 insert \$1,212,181. And that's it.

13 Q. Can you read that last number again?

14 A. \$1,212,181.

15 Q. So just so that we're clear on the record,  
16 can you read that sentence beginning with for example up  
17 to the semicolon?

18 A. For example, for calendar year 2008,  
19 company estimates the total incremental costs with  
20 vegetation management standards rules approximates  
21 \$1,212,181.

22 Q. Thank you. Do you have any further  
23 corrections?

24 A. I do not.

25 Q. With those corrections, if I were to ask

1     you the same questions that are contained in Exhibits 307,  
2     308 and 309 here this morning, would your answers be the  
3     same?

4             A.       They would.

5             Q.       And are those answers true and correct to  
6     the best of your knowledge and belief?

7             A.       They are.

8                     MR. MILLS:  Judge, with that, I would offer  
9     Exhibit 307, 308, 309 and tender the witness for  
10    cross-examination.

11                    JUDGE VOSS:  So all other issues that  
12    Mr. Robertson has filed testimony on is included in the  
13    stipulation?

14                    MR. MILLS:  They are included in the  
15    stipulation.  I don't know whether that has actually been  
16    filed yet or not.

17                    JUDGE VOSS:  I see he was scheduled Tuesday  
18    on one of the issues, I think.

19                    MR. MILLS:  If it hasn't been filed, it  
20    will probably be filed very shortly.

21                    JUDGE VOSS:  Are there any objections to  
22    the admission of Exhibits 307, 308 and 309?

23                    MR. MILLS:  That's correct.

24                    JUDGE VOSS:  Hearing none, those exhibits  
25    are admitted.

1 (EXHIBITS NO. 307, 308 AND 309 WERE  
2 RECEIVED INTO EVIDENCE.)

3 JUDGE VOSS: Department of Natural  
4 Resources?

5 MS. WOODS: Nothing. Thank you.

6 JUDGE VOSS: Staff?

7 CROSS-EXAMINATION BY MR. REED:

8 Q. Mr. Robertson, isn't there a tracker  
9 mechanism similar to the one proposed by Staff in this  
10 case already in place with AmerenUE?

11 A. That's a good question, as far as whether  
12 it's a tracker mechanism or not. There is a certain  
13 amount of money included -- that was included in the  
14 Ameren case, and based on a letter that Ameren provided  
15 Staff, they describe it as a tracker, yes. Point being, I  
16 guess what I'm trying to make is, I don't know that the  
17 actual stipulation describes it as a tracker.

18 Q. Nonetheless, has Ameren committed to  
19 performing in a manner similar to what the Staff proposes  
20 here?

21 A. That is my understanding, yes, and the  
22 company's understanding.

23 Q. In that case, similar to this case, or  
24 similar to Staff's proposal, the -- there is an amount  
25 established -- there was an amount established in Ameren's

1 revenue requirement that considered Ameren's compliance  
2 with these vegetation management and infrastructure rules,  
3 correct?

4 A. I wasn't involved in the case. I can tell  
5 you that I read portions of it to try and understand what  
6 occurred there. I think there was about \$145 million  
7 bantered about in the various testimonies, and I believe  
8 approximately \$145,000 was included in rates -- or excuse  
9 me. Not 145,000. I believe it was -- could have been as  
10 much as 145 million was -- anyhow, the amount was included  
11 in rates for vegetation management type stuff. I don't  
12 know that it was actually described as being implemented  
13 to specifically account for the new standards rules.

14 Q. Was the 45 million an amount that was  
15 contemplated for future vegetation standard -- for future  
16 vegetation and infrastructure management standards?

17 MR. MILLS: Judge, I'm going to have to  
18 object to the form of the question. When he talks about  
19 the 45 million, I think it's unclear what that reference  
20 is to.

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

23 BY MR. REED:

24 Q. Was -- well, we're talking with the number  
25 45 million for vegetation and tree trimming, correct?

1           A.       Subject to check, I believe that's the  
2 correct number, 45 million.

3           Q.       And that was for the amount that was  
4 contemplated that Ameren would spend in the upcoming year?

5                   MR. MILLS: And Judge, I'm going to object.  
6 I don't think we really got clarification for that, but I  
7 think the answer is that \$45 million is in a Stipulation &  
8 Agreement in a settled -- in a at least partially settled  
9 Commission rate case, and the Stipulation and Agreement I  
10 believe says that it has no precedential value. If I'm  
11 incorrect, then Mr. Reed can correct me.

12                   But if it does come from a Stipulation &  
13 Agreement, then the Stipulation & Agreement specifically  
14 says it has no precedential value, and we really shouldn't  
15 be going down this path.

16                   MR. REED: Well, I don't know whether it  
17 has -- says it has precedential value or not. The witness  
18 has indicated that he's familiar with the 45 million, but  
19 maybe he doesn't know what it's specifically for. So  
20 given that, I think I'm finished. Thanks.

21                   JUDGE VOSS: Thank you. Empire?

22                   MR. COOPER: No questions.

23                   JUDGE VOSS: Questions from the Bench?  
24 Commissioner Jarrett?

25                   COMMISSIONER JARRETT: I just have one

1 question.

2 QUESTIONS BY COMMISSIONER JARRETT:

3 Q. Can you tell me what is different in this  
4 case that is different from the Ameren case that would  
5 cause OPC to oppose this tracker mechanism?

6 A. Well, actually, I can tell you a number of  
7 things.

8 Q. Okay.

9 A. Initially, the Ameren case was -- regarding  
10 these dollars that were included for Ameren was part of a  
11 Stipulation & Agreement. Okay. I don't believe the  
12 dollars were specifically described as being used to meet  
13 the new standards rules because they're not in effect.  
14 They weren't in effect then. They're not in effect now.  
15 They're not law yet. Costs aren't being incurred for  
16 those rules per se.

17 Q. So it was vegetation management generally,  
18 not vegetation management under the rule? Am I  
19 characterizing that correctly?

20 A. I believe that's correct. Because the  
21 rules were not in effect, so they weren't provided money  
22 to meet rules that were not part of the current Commission  
23 law, Commission rules, whatever.

24 I do know -- I do recall that in the letter  
25 that Ameren, I believe the letter that Ameren provided to

1     Staff, that Mr. Zdellar informed Staff that if -- once the  
2     rules went into effect, they needed to ask for more cost,  
3     they would do so in the future to meet those rules. So  
4     essentially they were bifurcating. His position was, you  
5     know, we've got a certain amount in rates, but if we have  
6     to incur more because of the new rules, however they come  
7     into effect, we will ask -- request those additional  
8     amounts. That's one thing. Stipulation Agreement, not  
9     really defined that they were in compliance with the rules  
10    because the rules weren't in effect.

11                   In this case, the company essentially  
12    hasn't incurred any costs to meet those rules. I mean,  
13    same situation. They're not in effect yet. They had --  
14    they had -- there's no doubt, as Mr. Scott mentioned,  
15    they've incurred certain cost for a consultant to help  
16    them start looking at that.

17                   To my knowledge, those costs regarding that  
18    consultant are included in Staff's case. They haven't  
19    been adjusted out, disallowed. They're being considered  
20    just an annual part of the ongoing cost as a consultant  
21    cost.

22                   In the past, I know of no instance where  
23    future costs or estimates of future costs have been  
24    included in rates, and I don't know why we would allow or  
25    accept doing that in this case.



1                   I would also add that the vegetation rule,  
2   if you look at either one, infrastructure or the  
3   vegetation rule, there's a section in there regarding how  
4   the costs are to be accounted for, and essentially what it  
5   says is, if the company incurs more costs for, let's just  
6   say vegetation, than it's actually got built into rates,  
7   which means they've got a certain amount built into rates,  
8   but if they did incur more cost than what's built into  
9   rates, they can then come in and ask for accounting  
10  authorization to recover those costs in a future case,  
11  after the date that the rules become effective.

12                   So it's not so much that we are against the  
13  company recovering prudent costs, but we're against them  
14  being allowed in this case because they're estimates  
15  currently, they haven't been incurred, and there's an  
16  avenue down the road to where if they do incur them, they  
17  can then come in, we can look at them closely, see if  
18  they're prudent and then make our recommendations then.  
19  And they're essentially halfway through -- we're close to  
20  halfway through the year now. So --

21                   COMMISSIONER JARRETT: Thank you. The  
22  phone ringing just discombobulated me for a minute. My  
23  mind went blank. I did have one other question.  
24  Commissioner Gunn, do you have any questions? Maybe I'll  
25  think of it.

1 QUESTIONS BY COMMISSIONER GUNN:

2 Q. Just a quick clarification, and I take the  
3 Public Counsel's point that the stipulation -- previous  
4 stipulation doesn't have a precedential value, but just  
5 from a -- for my own purposes, was the -- in the Ameren  
6 case, were those monies put in in anticipation of  
7 compliance with the rule, but since the rules were not in  
8 effect they said that it was the vegetation management  
9 generally? You may not know the answer to the question.

10 A. I don't know that I can tell you what any  
11 party's anticipation was. I can only tell you what the  
12 stipulation says. One party's anticipation may be  
13 different from another party.

14 Q. Sure. So if instead of -- in this case, if  
15 they said vegetation management generally rather than  
16 compliance with the rule --

17 A. And I would tell you that that's fine.  
18 Staff's already included a certain amount in the case  
19 regarding that they know through the test year in the  
20 known and measurable period, they made a normalized  
21 amount. I understand there's now an Order out to do a  
22 true-up for the next -- through February sometime. They  
23 could adjust that cost through then, but still yet --

24 Q. Still estimated cost?

25 A. The costs for the standard rule of

1 compliance have not been incurred yet. They're yet to be  
2 incurred because it's not in effect yet.

3 COMMISSIONER GUNN: Thank you. I don't  
4 have anything else. Thank you.

5 FURTHER QUESTIONS BY COMMISSIONER JARRETT:

6 Q. I do remember my question now. You were  
7 here when Mr. Palmer -- you were here when Mr. Palmer  
8 testified?

9 A. I was.

10 Q. You're familiar with his testimony?

11 A. Yes.

12 Q. And I had asked him a question about, you  
13 know, what the company would be doing differently based on  
14 our rules, and I think his answer was basically the  
15 program would be basically the same but the frequency  
16 would increase and that would be what increased the costs.  
17 The cost of the rule was just the frequency of the  
18 inspections and the tree trimming. Would you agree with  
19 that, and would you agree that the rule does incur -- make  
20 them incur some additional costs?

21 A. From my reading, my analysis, my audit of  
22 the company, what I read about the current vegetation  
23 practices and what they will do in the future, I believe  
24 they will incur a certain amount of costs to meet those  
25 standard rules.

1                   Having said that, there's a certain amount  
2   of vegetation costs included in rates. Whether they will  
3   exceed that amount, that's possible. It's possible they  
4   won't. Since it's based on estimates, I can't really tell  
5   you what they're going to incur, and I don't think they  
6   can either.

7                   COMMISSIONER JARRETT: All right. Thank  
8   you, Mr. Robertson.

9                   JUDGE VOSS: Chairman Davis?

10                  CHAIRMAN DAVIS: No, thank you.  
11   Mr. Robertson, have a good day.

12                  THE WITNESS: You too, Chairman.

13                  JUDGE VOSS: Recross based on questions  
14   from the Bench? Department of Natural Resources?

15                  MS. WOODS: Nothing. Thank you.

16                  JUDGE VOSS: Industrials? Staff?

17                  MR. REED: No.

18                  JUDGE VOSS: Empire?

19                  MR. COOPER: No.

20                  JUDGE VOSS: Redirect?

21                  MR. MILLS: Just very briefly.

22   REDIRECT EXAMINATION BY MR. MILLS:

23                  Q.     Mr. Robertson, when you were talking --  
24   just to sort of put things in a time perspective, when you  
25   were talking about the AmerenUE case, you're talking about

1 the most recent rate case ER-2007-0002; is that correct?

2 A. I believe that's correct, yes.

3 Q. And if the Commission was interested in  
4 whether or not compliance with the new rules was  
5 contemplated by any of the parties to that Stipulation &  
6 Agreement, they could at least look at the timing of when  
7 the rules were proposed and when the Stipulation &  
8 Agreement was filed to perhaps get some idea about whether  
9 or not that could have been the case; is that true?

10 A. That's possible, yes.

11 Q. Now, regardless of whether it was called a  
12 tracker or not, there was in the UE case a Stipulation &  
13 Agreement that dealt with vegetation management; is that  
14 correct?

15 A. It's my understanding from the reading of  
16 the stipulation it was not all a tracker, but there was a  
17 certain amount of costs included, yes.

18 Q. How long have you been doing public utility  
19 regulation?

20 A. Since I was a child.

21 Q. Have you been involved in a lot of  
22 stipulations and agreements during that time?

23 A. July 1990, and yes.

24 Q. Have you ever seen a utility enter in a  
25 Stipulation & Agreement and give something up without

1 getting something in return?

2 A. It's always a process of give and take.  
3 Sometimes you get what you want and sometimes you don't.

4 MR. MILLS: No further questions.

5 JUDGE VOSS: Mr. Robertson, you may step  
6 down.

7 THE WITNESS: Thank you.

8 JUDGE VOSS: I believe that's the last  
9 witness we have for today; is that correct? And I'm given  
10 to understand there's nothing else we could possibly pick  
11 up today because the witnesses that we need to see first  
12 on the issues aren't available until tomorrow and/or  
13 Monday; is that correct?

14 MR. MILLS: I believe that's correct. And  
15 Judge, just so you don't think that we're using our time  
16 frivolously, I think we are anticipating a third  
17 Stipulation & Agreement having to do with the experimental  
18 low income program issue, and I will endeavor to spend my  
19 time usefully pursuing that.

20 JUDGE VOSS: I'm just looking forward to  
21 seeing the second Stipulation & Agreement. Thank you.  
22 And what time would the parties like to begin Friday?  
23 We're scheduled at 8:30. We are down one witness and one  
24 issue for tomorrow. So 8:30 or -- one witness, Gorman, is  
25 going to be testifying on Tuesday, so one of the primary

1 ROE witnesses will not be here, but Overcast is going to  
2 be testifying on ROE and fuel adjustment costs.

3 MR. COOPER: We would suggest nine o'clock,  
4 your Honor.

5 JUDGE VOSS: We will reconvene at nine  
6 o'clock tomorrow morning. Thank you. Hearing is  
7 adjourned for the day.

8 WHEREUPON, the hearing of this case was  
9 recessed until May 16, 2008.

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## 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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23  
24  
25